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THE  
ENGLISH AND EMPIRE DIGEST  
WITH  
COMPLETE AND EXHAUSTIVE  
ANNOTATIONS.

**SUPPLEMENT No. 5**

DEALING WITH  
**VOLUMES I—XLIV.**

**In this Volume the new English Cases reported up to 1st January, 1930, are included, and other new cases are included so far as the Volumes of Reports of the same were available in London on that date.**

# THE ENGLISH AND EMPIRE DIGEST

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COMPLETE AND EXHAUSTIVE  
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VOLUMES I—XLIV.

*BEING CUMULATIVE AND CONTAINING ALL THE MATTER OF THE  
PREVIOUS SUPPLEMENTS, AND, IN ADDITION, ALL THE NEW CASES  
AND ANNOTATIONS WHICH HAVE BEEN DECIDED IN THE INTERVAL*

EDITED BY  
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## PUBLISHERS' PREFACE.

IN accordance with their original plan the Publishers are continuing to keep "THE ENGLISH AND EMPIRE DIGEST" up to date, the method adopted being very similar to that employed in the case of the "LAWS OF ENGLAND," and the system has been found by Subscribers to be equally satisfactory in use.

Supplement No. 5, to which this note is a preface, brings the Work up to January 1st, 1930.

The use of this Supplement will enable subscribers to find with the minimum of time and trouble all the judicial decisions and annotations reported since the Volumes were each and severally published.

As regards English cases additional citations and annotations are preceded by the number of the case in the original volume, while new cases follow as far as possible the arrangement in the original volume, and are given the number of the case which they should follow, with the addition of a letter of the alphabet, beginning with the letter "a."

In dealing with the Scottish and Irish decisions, and the decisions of the Overseas Dominions, where they can be justifiably connected with a specific English case in the original volume, or in the Supplement, or with a specific Colonial case in the original volume, that fact is indicated by giving them the number borne by the English case, or the letter of the alphabet borne by the Colonial case, followed by a serial number in Roman numerals. Cases that cannot be joined in this manner are marked with two letters of the alphabet, the first one being the letter "s," and are placed as near as possible to the English or Colonial case which they most resemble.

As regards the Table of Cases to the Supplement the name of the title in which the case is cited is given in an abbreviated form between the number of the original volume in which the title appears and, as regards English cases, the number of the case, or, as regards Scottish and Irish cases and decisions of the Overseas Dominions, the number of the page of the Supplement on which the case is dealt with. The abbreviated forms of the titles are set out below :—

# TABLE OF ABBREVIATIONS OF THE TITLES IN THE WORK.

FULL TITLE.	ABBREVIATIONS.	FULL TITLE.	ABBREVIATIONS.
<b>Vol. I.</b>		<b>Vol. XII.</b>	
ACTION . . . . .	Action	CONTRACT . . . . .	Contr.
ADMIRALTY . . . . .	Adm.	<b>Vol. XIII.</b>	
AGENCY . . . . .	Agcy.	COPYHOLDS . . . . .	Cohlds.
<b>Vol. II.</b>		COPYRIGHT AND LITERARY	
AGRICULTURE . . . . .	Agric.	PROPERTY . . . . .	Coprt.
ALIENS . . . . .	Aliens	CORONERS . . . . .	Crnrs.
ANIMALS . . . . .	Animals	CORPORATIONS . . . . .	Corpns.
ARBITRATION . . . . .	Arbn.	COUNTY COURTS . . . . .	Cty. Cts.
<b>Vol. III.</b>		<b>Vols. XIV. &amp; XV.</b>	
AUCTION AND AUCTIONEERS .	Auct.	CRIMINAL LAW AND PRO-	
BAILMENT . . . . .	Bailmt.	CEDURE . . . . .	Crim.
BANKERS AND BANKING .	Bank.	<b>Vol. XVI.</b>	
BARRISTERS . . . . .	Barr.	CONTEMPT OF COURT, ATTACH-	
BASTARDY . . . . .	Basty.	MENT AND COMMITTAL .	Cntmpt.
<b>Vols. IV. &amp; V.</b>		COURTS . . . . .	Courts
BANKRUPTCY AND INSOLVENCY	Bkpcy.	CROWN PRACTICE. . . . .	Cr. Pract.
<b>Vol. VI.</b>		<b>Vol. XVII.</b>	
BILLS OF EXCHANGE, PRO-		CUSTOM AND USAGES . . .	Custom
MISSORY NOTES & NEGOTI-		DAMAGES . . . . .	Damgs.
ABLE INSTRUMENTS . . .	B. of Exch.	DEEDS AND OTHER INSTRU-	
<b>Vol. VII.</b>		MENTS . . . . .	Deeds
BILLS OF SALE . . . . .	B. of Sale	DEPENDENCIES INCLUDING	
BONDS . . . . .	Bonds	DOMINIONS, DEPENDENCIES,	
BOUNDARIES, FENCES AND		COLONIES AND BRITISH POS-	
PARTY WALLS . . . . .	Bounds.&F.	SESSIONS . . . . .	Dep.
BUILDING CONTRACTS, EN-		<b>Vol. XVIII.</b>	
GINEERS & ARCHITECTS .	Bldg. Conts.	DESCENT AND DISTRIBUTION	Desct.
BUILDING SOCIETIES . .	Bldg. Soc.	DISCOVERY, INSPECTION AND	
BURIAL AND CREMATION .	Burial	INTERROGATORIES . .	Discy.
<b>Vol. VIII.</b>		DISTRESS . . . . .	Distr.
CARRIERS . . . . .	Carr.	<b>Vol. XIX.</b>	
CHARITIES . . . . .	Char.	EASEMENTS AND PROFITS &	
CHOSSES IN ACTION . . .	Chos.	PRENDRE . . . . .	Easmt.
CLUBS . . . . .	Clubs	ECCLESIASTICAL LAW . .	Eccl.
<b>Vols. IX. &amp; X.</b>		EDUCATION . . . . .	Educ.
COMPANIES . . . . .	Coys.	<b>Vol. XX.</b>	
<b>Vol. XI.</b>		ELECTIONS . . . . .	Elect.
COMMONS AND RIGHTS OF		ELECTRIC LIGHTING AND	
COMMON . . . . .	Comns.	POWER . . . . .	Electric
COMPULSORY PURCHASE OF		EQUITY . . . . .	Eqy.
LAND AND COMPENSATION		<b>Vol. XXI.</b>	
CONFLICT OF LAWS . . .	Comp. Pche.	ESTATE AND OTHER DEATH	
CONSTITUTIONAL LAW . .	Conf.	DUTIES . . . . .	E.D.
	Const. L.	ESTOPPEL . . . . .	Estpl.
		EXECUTION . . . . .	Exon.

**TABLE OF ABBREVIATIONS OF THE TITLES IN THE WORK—Continued.**

FULL TITLE.	ABBREVIATIONS.	FULL TITLE.	ABBREVIATIONS.
<b>Vol. XXII.</b>		<b>Vol. XXXIV.</b>	
EVIDENCE . . . .	Evid.	MASTER AND SERVANT . .	Mast. & S.
<b>Vols. XXIII. &amp; XXIV.</b>		MAYOR'S AND CITY OF LONDON COURT . .	May. Ct.
EXECUTORS AND ADMINISTRATORS . . . .	Exors.	MEDICINE AND PHARMACY . .	Med.
EXTRADITION AND FUGITIVE OFFENDERS . . . .	Extrdn.	METROPOLIS . . . .	Metrop.
FACTORIES AND SHOPS . .	Fact.	MINES, MINERALS AND QUARRIES . . . .	Mines
FAMILY ARRANGEMENTS . .	Fam. Arr.	<b>Vol. XXXV.</b>	
FERRIES . . . .	Ferries	MISREPRESENTATION AND FRAUD . . . .	Misrep.
<b>Vol. XXV.</b>		MISTAKE . . . .	Mistake
FISHERIES . . . .	Fish.	MONEY AND MONEY-LENDING . .	Money
FOOD AND DRUGS . . . .	Food	MORTGAGE . . . .	Mtge.
FRAUDULENT AND VOIDABLE CONVEYANCES . . . .	Fraud. Conv.	NAME AND ARMS . . . .	Name
FRIENDLY SOCIETIES . . . .	Fr. Soc.	<b>Vol. XXXVI.</b>	
GAME . . . .	Game	NEGLIGENCE . . . .	Negl.
GAMING AND WAGERING . .	Gaming	NOTARIES . . . .	Notar.
GAS . . . .	Gas	NUISANCE . . . .	Nuis.
GIFTS . . . .	Gifts	OPEN SPACES AND RECREATION GROUNDS . . . .	Open Sp.
<b>Vol. XXVI.</b>		PARLIAMENT . . . .	Parl.
GUARANTEE AND INDEMNITY .	Guar.	PARTITION . . . .	Partn.
HIGHWAYS, STREETS, AND BRIDGES . . . .	Hghys.	PARTNERSHIP . . . .	Prtners.
<b>Vol. XXVII.</b>		PATENTS AND INVENTIONS .	Pats.
HUSBAND AND WIFE . . . .	H. & W.	<b>Vol. XXXVII.</b>	
<b>Vol. XXVIII.</b>		PAWNS AND PLEDGES . . . .	Pawns
INCOME TAX . . . .	Inc. T.	PEERAGES AND DIGNITIES . .	Peer.
INDUSTRIAL, PROVIDENT, AND SIMILAR SOCIETIES . . . .	Ind. Soc.	PERPETUITIES . . . .	Perps.
INFANTS AND CHILDREN . .	Infnts.	PERSONAL PROPERTY . . . .	Pers. Prop.
INJUNCTION . . . .	Injon.	POLICE . . . .	Police
<b>Vol. XXIX.</b>		POOR LAW . . . .	Poor L.
INNS AND INNKEEPERS . .	Inns	POST OFFICE . . . .	Post Off.
INSURANCE . . . .	Insce.	POWERS . . . .	Powers
INTERPLEADER . . . .	Intpr.	PRESS AND PRINTING . . . .	Press
<b>Vols. XXX. &amp; XXXI.</b>		PRISONS . . . .	Prsns.
INTOXICATING LIQUORS . .	Intox.	PRIZE LAW AND JURISDICTION .	Prize L.
JUDGMENTS AND ORDERS . .	Jdgmts.	<b>Vol. XXXVIII.</b>	
JURIES . . . .	Juries	PUBLIC AUTHORITIES, BODIES AND OFFICERS . . . .	Pub. Auth.
LAND IMPROVEMENT . . . .	Land Imp.	PUBLIC HEALTH AND LOCAL ADMINISTRATION . . . .	Pub. Hlth.
LAND TAX . . . .	Land Tax	RAILWAYS AND CANALS . . . .	Rys.
LANDLORD AND TENANT . .	L. & T.	RATES AND RATING . . . .	Rates
<b>Vol. XXXII.</b>		REAL PROPERTY AND CHATELS REAL . . . .	Real Prop.
LIBEL AND SLANDER . . . .	Libel	<b>Vol. XXXIX.</b>	
LIEN . . . .	Lien	RECEIVERS . . . .	Recrs.
LIMITATION OF ACTIONS . .	Limit. of A.	REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS .	Regn.
LITERARY AND SCIENTIFIC INSTITUTIONS . . . .	Lit. Inst.	RENTCHARGES AND ANNUITIES .	Rntchg.
LOAN SOCIETIES . . . .	Loan Soc.	REVENUE . . . .	Revenue
<b>Vol. XXXIII.</b>		ROYAL FORCES . . . .	Royal F.
LOCAL GOVERNMENT . . . .	L. G.	SALE OF GOODS . . . .	S. Goods
LUNATICS AND PERSONS OF UNSOUND MIND . . . .	Lunat.	<b>Vol. XL.</b>	
MAGISTRATES . . . .	Mags.	SALE OF LAND . . . .	S. Land
MALICIOUS PROSECUTION AND PROCEDURE . . . .	Mal. Pros.	SET-OFF AND COUNTERCLAIM .	Set-off
MARKETS AND FAIRS . . . .	Mkts.	SETTLEMENTS . . . .	Sttlmts.
		<b>Vol. XLI.</b>	
		SEWERS AND DRAINS . . . .	Sewers
		SHERIFFS AND BAILIFFS . . .	Shrffs.
		SHIPPING AND NAVIGATION .	Ship.

TABLE OF ABBREVIATIONS OF THE TITLES IN THE WORK—*Continued.*

FULL TITLE.	ABBREVIATIONS.	FULL TITLE.	ABBREVIATIONS.
<b>Vol. XLII.</b>		<b>Vol. XLIII.—Continued.</b>	
SMALL HOLDINGS, SMALL DWELLINGS, AND ALLOTMENTS . . . . .	Sm. Hldgs.	TRADE MARKS, TRADE NAMES, AND DESIGNS . . . . .	Trade Mks.
SOLICITORS . . . . .	Solrs.	TRAMWAYS AND LIGHT RAILWAYS . . . . .	Tram.
SPECIFIC PERFORMANCE . . . . .	Sp. Pfce.	TRESPASS . . . . .	Tresp.
STATUTES . . . . .	Stats.	TROVER AND DETINUE . . . . .	Trov.
STOCK EXCHANGE . . . . .	Stk. Ex.	TRUSTS AND TRUSTEES . . . . .	Trusts
STREET AND AERIAL TRAFFIC . . . . .	Str. Traf.	VALUERS AND APPRAISERS . . . . .	Vlrs.
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THEATRES AND OTHER PLACES OF ENTERTAINMENT . . . . .	Theatres		
TIME . . . . .	Time	<b>Vol. XLIV.</b>	
TORT . . . . .	Tort	WATERS AND WATERCOURSES . . . . .	Waters
<b>Vol. XLIII.</b>		WEIGHTS AND MEASURES . . . . .	Wghts.
TRADE AND TRADE UNIONS . . . . .	Trade	WILLS . . . . .	Wills
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A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 ( <i>e.g.</i> , [1891] A. C.)	Eng.
A. Jur. Rep. ...	Australian Jurist Reports ...	Aus.
A. L.-T. ...	Australian Law Times ...	Aus.
A. R. ...	Ontario Appeal Reports, 27 vols., 1876—1900 ...	Can.
Act. ...	Acton's Reports, Prize Causes, 2 vols., 1809—1841 ...	Eng.
Ad. & El. ...	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842 ...	Eng.
Adam ...	Adam's Justiciary Reports (Scotland), 1893—(current) ...	Scot.
Add. ...	Addams' Ecclesiastical Reports, 3 vols., 1822—1826 ...	Eng.
Agra ...	Agra High Court ...	Ind.
Agra F. B. ...	Agra High Court, Full Bench ...	Ind.
Alc. & N. ...	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833 ...	Ir.
Alc. Reg. Cas. ...	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841 ...	Ir.
Aleyn ...	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649 ...	Eng.
All. ...	New Brunswick Reports (Allen) ...	Can.
Alta. L. R. ...	Alberta Law Reports ...	Can.
Amb ...	Ambler's Reports, Chancery, 1 vol., 1716—1783 ...	Eng.
And. ...	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605 ...	Eng.
Andr. ...	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740 ...	Eng.
Anst. ...	Anstruther's Reports, Exchequer, 3 vols., 1792—1797 ...	Eng.
App. Cas. ...	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890 ...	Eng.
App. Ct. Rep. ...	Appeal Court Reports ...	N.Z.
App. D. ...	South African Law Reports, Appellate Division ...	S. Af.
Architects' L. R. ...	Architects' Law Reports, 4 vols., 1904—1909 ...	Eng.
Argus L. R. ...	Argus Law Reports ...	Aus.
Arkley ...	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848 ...	Scot.
Arm. M. & O. ...	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842 ...	Ir.
Arn. ...	Arnold's Reports, Common Pleas, 2 vols., 1838—1839 ...	Eng.
Arn. & H. ...	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841 ...	Eng.
Ashb. ...	Ashburner's Principles of Equity, 1902 ...	Eng.
Asp. M. L. C. ...	Aspinall's Maritime Law Cases, 1870—(current) ...	Eng.
Atk. ...	Atkyns' Reports, Chancery, 3 vols., 1736—1754 ...	Eng.
Ayl. Pan. ...	Ayliffe's New Pandect of Roman Civil Law ...	Eng.
Ayl. Par. ...	Ayliffe's Parergon Juris Canonici Anglicani ...	Eng.
B. ...	Barber's Gold Law ...	S. Af.
B. & Ad. ...	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834 ...	Eng.
B. & Ald. ...	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822 ...	Eng.
B. & C. ...	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830 ...	Eng.
B. & C. R. (preceded by date)	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) ( <i>e.g.</i> , [1918—19] B. & C. R.) ...	Eng.
B. & S. ...	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870 ...	Eng.
B. C. R. ...	British Columbia Reports ...	Can.
B. Dig. ...	Bose's Digest ...	Ind.
B. L. R. ...	Bengal Law Reports ...	Ind.
B. L. R. A. C. ...	Bengal Law Reports, Appeal Cases ...	Ind.
B. L. R. P. C. ...	Bengal Law Reports, Privy Council ...	Ind.
B. L. R. Sup. Vol. ...	Bengal Law Reports, Supp. Vol. ...	Ind.
B. R. A. ...	Butterworths' Rating Appeals, 2 vols., 1913—1925 ...	Eng.
B. W. C. C. ...	Butterworths' Workmen's Compensation Cases, 1907—(current) ...	Eng.
Bac. Abr. ...	Bacon's Abridgment ...	Eng.
Bail Ct. Cas. ...	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854 ...	Eng.

# xvi      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Baild. ... ..	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)	Eng.
Ball & B. ... ..	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814	Ir.
Bankr. & Ins. R. ... ..	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855	Eng.
Bar. & Arn. ... ..	Barron and Arnold's Election Cases, 1 vol., 1843—1846	Eng.
Bar. & Aust. ... ..	Barron and Austin's Election Cases, 1 vol., 1842	Eng.
Barn. CM. ... ..	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741	Eng.
Barn. K. B. ... ..	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734	Eng.
Barnes ... ..	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760	Eng.
Batt. ... ..	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826	Ir.
Beat. ... ..	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830	Ir.
Beav. ... ..	Beavan's Reports, Rolls Court, 36 vols., 1838—1866	Eng.
Beav. & Wal. ... ..	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846	Eng.
Beaw. ... ..	Beawes's <i>Lex Mercatoria</i>	Eng.
Bell, C. C. ... ..	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860	Eng.
Bell, Ct. of Sess. ... ..	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792	Scot.
Bell, Ct. of Sess. fol. ... ..	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795	Scot.
Bell, Dict. Dec. ... ..	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833	Scot.
Bell, Sc. App. ... ..	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850	Scot.
Bellewe ... ..	Bellewe's Cases <i>temp.</i> Richard II., King's Bench, 1 vol.	Eng.
Belt's Sup. ... ..	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756	Eng.
Ben. ... ..	Benloe's Reports, Common Pleas, fol., 1 vol., 1357—1579	Eng.
Benl. ... ..	Benloe's (or Bendloe's) Reports, King's Bench, fol., 1 vol., 1440—1627	Eng.
Ber. ... ..	New Brunswick Reports (Berton)	Can.
Bing. ... ..	Bingham's Reports, Common Pleas, 10 vols., 1822—1834	Eng.
Bing. N. C. ... ..	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840	Eng.
Biss. & Sm. ... ..	Bisset and Smith's Digest	S. Af.
Bitt. Prac. Cas. ... ..	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876	Eng.
Bitt. Rep. in Ch. ... ..	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884	Eng.
Bl. Com. ... ..	Blackstone's Commentaries	Eng.
Bl. D. & Osb. ... ..	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848	Ir.
Bli. ... ..	Bligh's Reports, House of Lords, 4 vols., 1819—1821	Eng.
Bli. N. S. ... ..	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837	Eng.
Bluett ... ..	Bluett's Isle of Man Cases	I. of M.
Bom. ... ..	Bombay High Court Reports	Ind.
Bom. A. C. ... ..	Bombay Reports, Appellate Jurisdiction	Ind.
Bom. Cr. Ca. ... ..	Bombay Reports, Crown Cases	Ind.
Bom. O. C. ... ..	Bombay Reports, Original Civil Jurisdiction	Ind.
Bos. & P. ... ..	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804	Eng.
Bos. & P. N. R. ... ..	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807	Eng.
Bott. ... ..	Bott's Laws Relating to the Poor, 2 vols., 6th ed., 1827	Eng.
Bourke ... ..	Bourke's Reports	Ind.
Br. & Col. Pr. Cas. ... ..	British and Colonial Prize Cases, 3 vols., 1914—1919	Eng.
Bract. ... ..	Bracton De Legibus et Consuetudinibus Angliæ	Eng.
Bro. Abr. ... ..	Sir R. Brooke's Abridgement	Eng.
Bro. C. C. ... ..	W. Brown's Chancery Reports, 4 vols., 1778—1794	Eng.
Bro. Ecc. Rep. ... ..	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872	Eng.
Bro. N. C. ... ..	Sir R. Brooke's New Cases, 1 vol., 1515—1558	Eng.
Bro. Parl. Cas. ... ..	J. Brown's Cases in Parliament, 8 vols., 1702—1800	Eng.
Bro. Supp. to Mor. ... ..	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.	Scot.
Bro. Synop. ... ..	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827	Scot.
Brod. & Bing. ... ..	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822	Eng.
Brod. & F. ... ..	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864	Eng.
Broun ... ..	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845	Scot.
Brown. & Lush. ... ..	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866	Eng.
Brownl. ... ..	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624	Eng.
Bruce ... ..	Bruce's Decisions, Court of Session (Scotland), 1714—1715	Scot.

Buch. ... ..	Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868—1879 ... ..	S. Af.
Buch. A. C. ... ..	Buchanan's Reports of Appeal Court (Cape) ... ..	S. Af.
Buchan. ... ..	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813 ... ..	Scot.
Buck ... ..	Buck's Cases in Bankruptcy, 1 vol., 1816—1820 ... ..	Eng.
Bull. N. P. ... ..	Buller's Nisi Prius (published, London, 1772) ... ..	Eng.
Bulst. ... ..	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626 ... ..	Eng.
Bunb. ... ..	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741 ... ..	Eng.
Burr. ... ..	Burrow's Reports, King's Bench, 5 vols., 1756—1772 ... ..	Eng.
Burr. S. C. ... ..	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776 ... ..	Eng.
Burrell ... ..	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840 ... ..	Eng.
C. A. ... ..	Court of Appeal Reports, 3 vols., 1867—1877 ... ..	N.Z.
C. & P. ... ..	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841 ... ..	Eng.
C. B. ... ..	Common Bench Reports, 18 vols., 1845—1856 ... ..	Eng.
C. B. N. S. ... ..	Common Bench Reports, New Series, 20 vols., 1856—1865 ... ..	Eng.
C. B. R. ... ..	Canadian Bankruptcy Reports Annotated, 1920—(current) ... ..	Can.
C. C. Ct. Cas. ... ..	Central Criminal Court Cases (Sessions Papers), 1834—1913 ... ..	Eng.
C. L. Ch. ... ..	Common Law Chambers ... ..	Can.
C. L. J. ... ..	Cape Law Journal ... ..	S. Af.
C. L. J. N. S. ... ..	Canada Law Journal, New Series, 1865—(current) ... ..	Can.
C. L. J. O. S. ... ..	Canada Law Journal, Old Series, 10 vols., 1855—1864 ... ..	Can.
C. L. R. ... ..	Common Law Reports, 3 vols., 1853—1855 ... ..	Eng.
C. L. R. ... ..	Commonwealth Law Reports ... ..	Aus.
C. L. R. ... ..	Calcutta Law Reporter ... ..	Ind.
C. L. T. ... ..	Canadian Law Times ... ..	Can.
C. L. T. Occ. N. ... ..	Canadian Law Times, Occasional Notes ... ..	Can.
C. P. ... ..	Upper Canada Common Pleas ... ..	Can.
C. P. D. ... ..	Law Reports, Common Pleas Division, 5 vols., 1875—1880 ... ..	Eng.
C. P. D. ... ..	Cape Provincial Division Reports ... ..	S. Af.
C. R. [date] A. C. ... ..	Canadian Reports, Appeal Cases ... ..	Can.
C. T. R. ... ..	Cape Times Reports of the Supreme Court of the Cape of Good Hope ... ..	S. Af.
C. W. N. ... ..	Calcutta Weekly Notes ... ..	Ind.
Cab. & El. ... ..	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885 ... ..	Eng.
Cald. Mag. Cas. ... ..	Caldecott's Magistrates' Cases, 1 vol., 1770—1785 ... ..	Eng.
Calth. ... ..	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618 ... ..	Eng.
Cam. Cas. ... ..	Cameron's Supreme Court Cases ... ..	Can.
Cam. Prac. ... ..	Cameron's Supreme Court Practice ... ..	Can.
Camp. ... ..	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816 ... ..	Eng.
Can. Com. Cas. ... ..	Commercial Law Reports of Canada, 4 vols., 1901—1905 ... ..	Can.
Can. Crim. Cas. ... ..	Canadian Criminal Cases, Annotated, 1898—(current) ... ..	Can.
Can. Gaz. ... ..	Canadian Gazette ... ..	Can.
Can. Ry. Cas. ... ..	Canadian Railway Cases ... ..	Can.
Car. & Kir. ... ..	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853 ... ..	Eng.
Car. & M. ... ..	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1842 ... ..	Eng.
Car. C. L. ... ..	Carrington's Treatise on Criminal Law ... ..	Can.
Card. Doc. Ann. ... ..	Cardwell's Documentary Annals of the Reformed Church of England, 2 vols., 1546—1716 ... ..	Eng.
Carl. ... ..	New Brunswick Reports (Carleton) ... ..	Can.
Carp. Pat. Cas. ... ..	Carpmael's Patent Cases, 2 vols., 1602—1842 ... ..	Eng.
Cart. ... ..	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673 ... ..	Eng.
Cart. ... ..	Cases on British North America Act (Cartwright) ... ..	Can.
Carth. ... ..	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700 ... ..	Eng.
Cary ... ..	Cary's Reports, Chancery, 1 vol. ... ..	Eng.
Cas. in Ch. ... ..	Cases in Chancery, fol., 3 parts, 1600—1697 ... ..	Eng.
Cas. Pract. K. B. ... ..	Cases of Practice, King's Bench, 1 vol., 1655—1775 ... ..	Eng.
Cas. Sett. ... ..	Cases of Settlements and Removals, 1 vol., 1685—1727 ... ..	Eng.
Cas. temp. Finch ... ..	Cases temp. Finch, Chancery, fol., 1 vol., 1673—1680 ... ..	Eng.
Cas. temp. King ... ..	Select Cases temp. King, Chancery, fol., 1 vol., 1724—1733 ... ..	Eng.
Cas. temp. Talb. ... ..	Cases in Equity temp. Talbot, fol., 1 vol., 1730—1737 ... ..	Eng.
Cass. Dig. ... ..	Cassells' Digest ... ..	Can.
Ch. (preceded by date) ... ..	Law Reports, Chancery Division, since 1890 ( <i>e.g.</i> , [1891] 1 Ch.) ... ..	Eng.
Ch. App. ... ..	Law Reports, Chancery Appeals, 10 vols., 1865—1875 ... ..	Eng.
Ch. Cas. in Ch. ... ..	Choyce Cases in Chancery, 1557—1606 ... ..	Eng.
Ch. Ch. ... ..	Upper Canada Chancery Chambers Reports ... ..	Can.
Ch. D. ... ..	Law Reports, Chancery Division, 45 vols., 1875—1890 ... ..	Eng.
Ch. Rob. ... ..	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808 ... ..	Eng.
Char. Cham. Cas. ... ..	Charley's Chamber Cases, 2 vols., 1875—1876 ... ..	Eng.
Char. Pr. Cas. ... ..	Charley's New Practice Reports, 3 vols., 1875—1876 ... ..	Eng.
Chip. ... ..	New Brunswick Reports (Chipman) ... ..	Can.

Co. Ent.	...	...	Coke's Entries	...	...	...	...	...	Can.
Co. Inst.	...	...	Coke's Institutes	...	...	...	...	...	Eng.
Co. L. J.	...	...	Colonial Law Journal	...	...	...	...	...	Eng.
Co. Litt.	...	...	Coke on Littleton (1 Inst.)	...	...	...	...	...	N.Z.
Co. Rep.	...	...	Coke's Reports, 13 parts, 1572—1616	...	...	...	...	...	Eng.
Coch.	...	...	Nova Scotia Reports (Cochran)	...	...	...	...	...	Eng.
Cockb. & Rowe	...	...	Cockburn and Rowe's Election Cases, 1 vol., 1833	...	...	...	...	...	Can.
Coll.	...	...	Collyer's Reports, Chancery, 2 vols., 1844—1846	...	...	...	...	...	Eng.
Coll. Jurid.	...	...	Collectanea Juridica, 2 vols.	...	...	...	...	...	Eng.
Colles	...	...	Colles' Cases in Parliament, 1 vol., 1697—1713	...	...	...	...	...	Eng.
Colt.	...	...	Cottman's Registration Cases, 1 vol., 1879—1885	...	...	...	...	...	Eng.
Com.	...	...	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740	...	...	...	...	...	Eng.
Com. Cas.	...	...	Commercial Cases, 1895—(current)	...	...	...	...	...	Eng.
Com. Dig.	...	...	Comyns' Digest	...	...	...	...	...	Eng.
Comb.	...	...	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	...	...	...	...	...	Eng.
Con. & Law.	...	...	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843	...	...	...	...	...	Eng.
Cong. Dig.	...	...	Congdon's Digest	...	...	...	...	...	Ir.
Const	...	...	Const's edition of Bott's Poor Laws, 3 vols., 1807	...	...	...	...	...	Can.
Cooke & Al.	...	...	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834	...	...	...	...	...	Eng.
Cooke, Pr. Cas.	...	...	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747	...	...	...	...	...	Ir.
Cooke, Pr. Reg.	...	...	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742	...	...	...	...	...	Eng.
Coop. G.	...	...	G. Cooper's Reports, Chancery, 1 vol., 1792—1815	...	...	...	...	...	Eng.
Coop. Pr. Cas.	...	...	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838	...	...	...	...	...	Eng.
Coop. temp. Brough.	...	...	C. P. Cooper's Cases temp. Brougham, Chancery, 1 vol., 1833—1834	...	...	...	...	...	Eng.
Coop. temp. Cott.	...	...	C. P. Cooper's Cases temp. Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)	...	...	...	...	...	Eng.
Cor.	...	...	Coryton's Reports	...	...	...	...	...	Ind.
Corb. & D.	...	...	Corbett and Daniell's Election Cases, 1 vol., 1819	...	...	...	...	...	Eng.
Correspondances Jud.	...	...	Correspondances Judiciaires	...	...	...	...	...	Can.
Couper	...	...	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885	...	...	...	...	...	Scot.
Cout.	...	...	Coutlees' Unreported Cases	...	...	...	...	...	Can.
Cout. Dig.	...	...	Coutlees' Digest	...	...	...	...	...	Can.
Cowp.	...	...	Cowper's Reports, King's Bench, 2 vols., 1774—1778	...	...	...	...	...	Eng.
Cox & Atk.	...	...	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846	...	...	...	...	...	Eng.
Cox, C. C.	...	...	E. W. Cox's Criminal Law Cases, 1843—(current)	...	...	...	...	...	Eng.
Cox, Eq. Cas.	...	...	S. C. Cox's Equity Cases, 2 vols., 1745—1797	...	...	...	...	...	Eng.
Cox, M. & H.	...	...	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852	...	...	...	...	...	Eng.
Cr. & J.	...	...	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	...	...	...	...	...	Eng.
Cr. & M.	...	...	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834	...	...	...	...	...	Eng.
Cr. & Ph.	...	...	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841	...	...	...	...	...	Eng.
Cr. App. Rep.	...	...	Cohen's Criminal Appeal Reports, 1908—(current)	...	...	...	...	...	Eng.
Cr. M. & R.	...	...	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835	...	...	...	...	...	Eng.
Craw. & D.	...	...	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	...	...	...	...	...	Ir.
Craw. & D. Abr. C.	...	...	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	...	...	...	...	...	Ir.
Cress. Insolv. Cas.	...	...	Cresswell's Insolvency Cases, 1 vol., 1827—1829	...	...	...	...	...	Eng.
Cripps' Church Cas.	...	...	Cripps' Church and Clergy Cases, 2 parts, 1847—1850	...	...	...	...	...	Eng.
Cro. Car.	...	...	Croke's Reports temp. Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641	...	...	...	...	...	Eng.
Cro. Eliz.	...	...	Croke's Reports temp. Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603	...	...	...	...	...	Eng.
Cro. Jac.	...	...	Croke's Reports temp. James I., King's Bench and Common Pleas, 1 vol., 1603—1625	...	...	...	...	...	Eng.
Cru. Dig.	...	...	Cruise's Digest of the Law of Real Property, 7 vols.	...	...	...	...	...	Eng.
Cunn.	...	...	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	...	...	...	...	...	Eng.
Curt.	...	...	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844	...	...	...	...	...	Eng.
D.	...	...	Duxbury's Reports of the High Court of the South African Republic	...	...	...	...	...	S. Af.
D. C. A.	...	...	Dorion's Queen's Bench Reports	...	...	...	...	...	Can.
D. L. R.	...	...	Dominion Law Reports	...	...	...	...	...	Can.

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

xix

Dal. ... ..	Dalison's Reports, Common Pleas, fol., 1 vol., 1540—1574 ...	Eng.
Dalr. ... ..	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720 ...	Scot.
Dan. ... ..	Daniel's Reports, Exchequer in Equity, 1 vol., 1817—1823 ...	Eng.
Dan. & Ll. ... ..	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829 ...	Eng.
Dav. & Mer. ... ..	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844 ...	Eng.
Dav. Ir. ... ..	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol., 1604—1611 ...	Ir.
Dav. Pat. Cas. ... ..	Davies' Patent Cases, 1 vol., 1785—1816 ...	Eng.
Day ... ..	Day's Election Cases, 1 vol., 1892—1893 ...	Eng.
Dea. & Sw. ... ..	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857 ...	Eng.
Deac. ... ..	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840 ...	Eng.
Deac. & Ch. ... ..	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835 ...	Eng.
Dears. & B. ... ..	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856—1858 ...	Eng.
Dears. C. C. ... ..	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856 ...	Eng.
Deas & And. ... ..	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832 ...	Scot.
De G. ... ..	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848 ...	Eng.
De G. & J. ... ..	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859 ...	Eng.
De G. & Sm. ... ..	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852 ...	Eng.
De G. F. & J. ... ..	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—1862 ...	Eng.
De G. J. & Sm. ... ..	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865 ...	Eng.
De G. M. & G. ... ..	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols., 1851—1857 ...	Eng.
Delane ... ..	Delane's Decisions, Revision Courts, 1 vol., 1832—1835 ...	Eng.
Den. ... ..	Denison's Crown Cases Reserved, 2 vols., 1844—1852 ...	Eng.
Dick. ... ..	Dickens' Reports, Chancery, 2 vols., 1559—1798 ...	Eng.
Dirl. ... ..	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677 ...	Scot.
Dods. ... ..	Dodson's Reports, Admiralty, 2 vols., 1811—1822 ...	Eng.
Donnelly ... ..	Donnelly's Reports, Chancery, 1 vol., 1836—1837 ...	Eng.
Doug. El. Cas. ... ..	Douglas' Election Cases, 4 vols., 1774—1776 ...	Eng.
Doug. K. B. ... ..	Douglas' Reports, King's Bench, 4 vols., 1778—1785 ...	Eng.
Dow ... ..	Dow's Reports, House of Lords, 6 vols., 1812—1818 ...	Eng.
Dow & Cl. ... ..	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832 ...	Eng.
Dow. & L. ... ..	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849 ...	Eng.
Dow. & Ry. K. B. ... ..	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827 ...	Eng.
Dow. & Ry. M. C. ... ..	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827 ...	Eng.
Dow. & Ry. N. P. ... ..	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823 ...	Eng.
Dowl. ... ..	Dowling's Practice Reports, 9 vols., 1830—1841 ...	Eng.
Dowl. N. S. ... ..	Dowling's Practice Reports, New Series, 2 vols., 1841—1843 ...	Eng.
Dr. & Wal. ... ..	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841 ...	Ir.
Dr. & War. ... ..	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1811—1843 ...	Ir.
Dra. ... ..	Drapor's King's Bench Reports ...	Can.
Drew. ... ..	Drewry's Reports, Chancery, 4 vols., 1852—1859 ...	Eng.
Drew. & Sm. ... ..	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865 ...	Eng.
Drinkwater ... ..	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841 ...	Eng.
Drury temp. Nap. ... ..	Drury's Reports temp. Napier, Chancery (Ireland), 1 vol., 1858—1859 ...	Ir.
Drury temp. Sug. ... ..	Drury's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1841—1844 ...	Ir.
Dugd. Orig. ... ..	Dugdale's Origines Juridiciales ...	Eng.
Dunl. (Ct. of Sess.) ... ..	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1838—1862 ...	Scot.
Dunning ... ..	Dunning's Reports, King's Bench, 1 vol., 1753—1754 ...	Eng.
Durie ... ..	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642 ...	Scot.
Dyer ... ..	Dyer's Reports, King's Bench, 3 vols., 1513—1581 ...	Eng.
E. & A. ... ..	Upper Canada Error and Appeal ...	Can.
E. & B. ... ..	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858 ...	Eng.
E. & E. ... ..	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861 ...	Eng.
E. B. & E. ... ..	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860 ...	Eng.
E. D. O. ... ..	Reports of the Eastern Districts Court (Cape) from 1880 ...	S. Af.
E. D. L. ... ..	South African Law Reports, Eastern Districts Local Division ...	S. Af.
E. L. R. ... ..	Eastern Law Reporter ...	Can.
E. R. (or Eng. Rep.) ... ..	English Reports ...	Eng.
E. R. ... ..	Ontario Election Reports ...	Can.
Eag. & Y. ... ..	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825 ...	Eng.

East ... ..	East's Reports, King's Bench, 16 vols., 1800—1812 ... ..	Eng.
East, P. C. ... ..	East's Pleas of the Crown ... ..	Eng.
Ecc. & Ad. ... ..	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855 ... ..	Eng.
Eden ... ..	Eden's Reports, Chancery, 2 vols., 1757—1766 ... ..	Eng.
Edgar ... ..	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725 ... ..	Scot.
Edw. ... ..	Edwards' Reports, Admiralty, 1 vol., 1808—1812 ... ..	Eng.
Elchies ... ..	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754 ... ..	Scot.
Emden's B. C. ... ..	Emden's Building Contracts, Building Leases and Building Statutes ... ..	Eng.
Eng. Pr. Cas. ... ..	Roscoe's English Prize Cases, 2 vols., 1745—1858 ... ..	Eng.
Eq. Cas. Abr. ... ..	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744 ... ..	Eng.
Eq. Rep. ... ..	Equity Reports, 3 vols., 1853—1855 ... ..	Eng.
Esp. ... ..	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810 ... ..	Eng.
Ex. D. ... ..	Law Reports, Exchequer Division, 5 vols., 1875—1880 ... ..	Eng.
Exch. ... ..	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856 ... ..	Eng.
Exch. C. R. ... ..	Exchequer Court Reports ... ..	Can.
F. (Ct. of Sess.) ... ..	Fraser, Court of Session Cases (Scotland), 5th series, 8 vols., 1898—1906 ... ..	Scot.
F. ... ..	Food's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880 ... ..	S. Af.
F. & F. ... ..	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867 ... ..	Eng.
F. N. D. ... ..	Finnemore's Notes and Digest of Natal Cases, 1863—1867 ... ..	S. Af.
Fac. Coll. ... ..	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841 ... ..	Scot.
Falc. ... ..	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751 ... ..	Scot.
Falc. & Fitz. ... ..	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838 ... ..	Eng.
Fenton ... ..	Fenton, Important Judgments ... ..	N.Z.
Ferg. ... ..	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817 ... ..	Scot.
Fitz. Nat. Brev. ... ..	Fitzherbert's Natura Brevium ... ..	Eng.
Fitz-G. ... ..	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731 ... ..	Eng.
Fl. & K. ... ..	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842 ... ..	Ir.
Fonbl. ... ..	Fonblanc's Reports, Bankruptcy, 2 parts, 1849—1852 ... ..	Eng.
For. ... ..	Forrest's Reports, Exchequer, 1 vol., 1800—1801 ... ..	Eng.
Forb. ... ..	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713 ... ..	Scot.
Fort. De Laud. ... ..	Fortesque, De Laudibus Legum Angliæ ... ..	Eng.
Fortes. Rep. ... ..	Fortescue's Reports, fol., 1 vol., 1692—1736 ... ..	Eng.
Post. ... ..	Foster's Crown Cases, 1 vol., 1708—1760 ... ..	Eng.
Fount. ... ..	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712 ... ..	Scot.
Fox & S. Ir. ... ..	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825 ... ..	Ir.
Fox & S. Reg. ... ..	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895 ... ..	Eng.
Fras. ... ..	Fraser (Simon), Election Cases, 2 vols., 1793 ... ..	Eng.
Freem. Ch. ... ..	Freeman's Reports, Chancery, 1 vol., 1660—1706 ... ..	Eng.
Freem. K. B. ... ..	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704 ... ..	Eng.
G. ... ..	Gregorowski's Reports of the High Court of the Orange Free State from 1883 ... ..	S. Af.
G. & R. ... ..	Nova Scotia Reports (Geldert & Russell) ... ..	Can.
G. I. Dig. ... ..	General Index Digest ... ..	Can.
G. W. D. ... ..	South African Law Reports, Griqualand West Local Division ... ..	S. Af.
G. W. L. ... ..	South African Law Reports, Griqualand West Local Division ... ..	S. Af.
Gale & Dav. ... ..	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843 ... ..	Eng.
Gale ... ..	Gale's Reports, Exchequer, 2 vols., 1835—1836 ... ..	Eng.
Gaz. L. R. ... ..	New Zealand Gazette Law Reports ... ..	N.Z.
Geld. Dig. ... ..	Geldert's Digest ... ..	Can.
Gib. Cod. ... ..	Gibson's Codex Juris Ecclesiastici Anglicani ... ..	Eng.
Giff. ... ..	Giffard's Reports, Chancery, 5 vols., 1857—1865 ... ..	Eng.
Gilb. ... ..	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714 ... ..	Eng.
Gilb. C. P. ... ..	Gilbert's History and Practice of the Court of Common Pleas ... ..	Eng.
Gilb. Ch. ... ..	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726 ... ..	Eng.
Gilm. & F. ... ..	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686 ... ..	Scot.
Gl. & J. ... ..	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828 ... ..	Eng.
Glanv. ... ..	Glanville, De Legibus et Consuetudinibus Regni Angliæ ... ..	Eng.
Glanv. El. Cas ... ..	Glanville's Election Cases, 1 vol., 1623—1624 ... ..	Eng.
Glascocck ... ..	Glascocck's Reports (Ireland), 1 vol., 1831—1832 ... ..	Ir.

Godb.	...	...	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637	...	...	Eng.
Gouldsb.	...	...	Gouldsbrough's Reports, Queen's Bench and King's Bench. 1 vol., 1586—1601	...	...	Eng.
Gow	...	...	Gow's Reports, Nisi Prius, 1 vol., 1818—1820	...	...	Eng.
Gr.	...	...	Upper Canada Chancery (Grant)	...	...	Can.
Griffin's Patent Cases	...	...	Griffin's Patent Cases, 1884—1887	...	...	Eng.
Gwill.	...	...	Gwillim's Tithe Cases, 4 vols., 1224—1824	...	...	Eng.
H.	...	...	Hertzog's Reports of the High Court of the South African Republic, 1893	...	...	S. Af.
H. & C.	...	...	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	...	...	Eng.
H. & N.	...	...	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862	...	...	Eng.
H. & Tw.	...	...	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850	...	...	Eng.
H. & W.	...	...	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841	...	...	Eng.
H B. R. (preceded by date)	...	...	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 ( <i>e.g.</i> , [1915] H. B. R.)	...	...	Eng.
H. C.	...	...	Reports of the High Court of Griqualand West	...	...	S. Af.
H. E. C.	...	...	Hodgin's Election Reports	...	...	Can.
H. L. Cas.	...	...	Clark's Reports, House of Lords, 11 vols., 1847—1866	...	...	Eng.
Hag. Adm.	...	...	Haggard's Reports, Admiralty, 3 vols., 1822—1838	...	...	Eng.
Hag. Con.	...	...	Haggard's Consistorial Reports, 2 vols., 1789—1821	...	...	Eng.
Hag. Ecc.	...	...	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833	...	...	Eng.
Hailes	...	...	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791	...	...	Scot.
Hale, C. L.	...	...	Hale's Common Law	...	...	Eng.
Hale, P. C.	...	...	Hale's Pleas of the Crown, 2 vols.	...	...	Eng.
Han.	...	...	New Brunswick Reports (Hannay)	...	...	Can.
Har. & Ruth.	...	...	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866	...	...	Eng.
Har. & W.	...	...	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836	...	...	Eng.
Harc.	...	...	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691	...	...	Scot.
Hard.	...	...	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669	...	...	Eng.
Hare	...	...	Hare's Reports, Chancery, 11 vols., 1841—1853	...	...	Eng.
Hawk. P. C.	...	...	Hawkins's Pleas of the Crown, 2 vols.	...	...	Eng.
Hay	...	...	Hay's Reports	...	...	Ind.
Hay & Marr.	...	...	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	...	...	Eng.
Hayes	...	...	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832	...	...	Ir.
Hayes & Jo.	...	...	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834	...	...	Ir.
Hem. & M.	...	...	Hemming and Miller's Reports, Chancery, 2 vols., 1802—1865	...	...	Eng.
Het.	...	...	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	Eng.
Hob.	...	...	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625	...	...	Eng.
Hodg.	...	...	Hodges' Reports, Common Pleas, 3 vols., 1835—1837	...	...	Eng.
Hog.	...	...	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834	...	...	Ir.
Holt, Adm.	...	...	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	...	...	Eng.
Holt, Eq.	...	...	W. Holt's Equity Reports, 2 vols., 1845...	...	...	Eng.
Holt, K. B.	...	...	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	...	...	Eng.
Holt, N. P.	...	...	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817	...	...	Eng.
Home, Ct. of Sess.	...	...	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744	...	...	Scot.
Hong Kong L. R.	...	...	Hong Kong Reports	...	...	Hong Kong
Hop. & Colt.	...	...	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878	...	...	Eng.
Hop. & Ph.	...	...	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867	...	...	Eng.
Horn & H.	...	...	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839	...	...	Eng.
Hov. Supp.	...	...	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817	...	...	Eng.
How. C.	...	...	Howard's Chancery Practice	...	...	Ir.
How. C. S.	...	...	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland	...	...	Ir.
How. E. E.	...	...	Howard's Equity Exchequer	...	...	Ir.
How. P. L.	...	...	Howard on the Popery Laws	...	...	Ir.
Hud. & B.	...	...	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831	...	...	Ir.
Hudson's B. C.	...	...	Hudson on Building Contracts, 2 vols.	...	...	Eng.
Hume	...	...	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	...	...	Scot.
Hut.	...	...	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638	...	...	Eng.
Hy. Bl.	...	...	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	...	...	Eng.
Hyde	...	...	Hyde's Reports	...	...	Ind.
I. C. L. R.	...	...	Irish Common Law Reports, 17 vols., 1849—1866	...	...	Ir.
I. Ch. R.	...	...	Irish Chancery Reports, 17 vols., 1850—1867	...	...	Ir.
I. Eq. R.	...	...	Irish Equity Reports, 13 vols., 1838—1851	...	...	Ir.

I. L. R. ...	Irish Law Reports, 13 vols., 1838—1851	Ir.
I. L. R. (Vol.) All.	Indian Law Reports, Allahabad	Ind.
I. L. R. (Vol.) Bom.	Indian Law Reports, Bombay	Ind.
I. L. R. (Vol.) Calc.	Indian Law Reports, Calcutta	Ind.
I. L. R. (Vol.) Lah.	Indian Law Reports, Lahore	Ind.
I. L. R. (Vol.) Mad.	Indian Law Reports, Madras	Ind.
I. L. R. (Vol.) Pat.	Indian Law Reports, Patna	Ind.
I. L. R. (Vol.) Ran.	Indian Law Reports, Rangoon	Ind.
I. L. T. ...	Irish Law Times, 1867—(current)	Ir.
I. L. T. Jo. ...	Irish Law Times Journal, 1867—(current)	Ir.
I. R. (preceded by date)	Irish Reports, since 1893 ( <i>e.g.</i> , [1894] 1 I. R.)	Ir.
I. R. (Vol.) C. L.	Irish Reports, Common Law, 11 vols., 1866—1877	Ir.
I. R. Eq. ...	Irish Reports, Equity, 11 vols., 1866—1877	Ir.
I. R., R. & L. ...	Irish Reports, Registry Appeals in the Court of Exchequer Chamber and Appeals in the Court for Land Cases Reserved, 1 vol., 1868—1876	Ir.
Ind. Awards ...	Industrial Awards Recommendations	N.Z.
Ind. Jur. N. S. ...	Indian Jurist, New Series	Ind.
Ind. Jur. O. S. ...	Indian Jurist, Old Series	Ind.
Ir. Cir. Rep. ...	Reports of Irish Circuit Cases, 1 vol., 1841—1843	Ir.
Ir. Jur. ...	Irish Jurist, 18 vols., 1849—1866	Ir.
Ir. L. Rec. 1st ser.	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831	Ir.
Ir. L. Rec. N. S.	Law Recorder (Ireland), New Series, 6 vols., 1833—1838	Ir.
Irv. ...	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867	Scot.
J. Bridg. ...	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	Eng.
J. D. R. ...	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	S. Af.
J. P. ...	Justice of the Peace, 1837—(current)	Eng.
J. P. Jo. ...	Justice of the Peace (Weekly Notes of Cases)	Eng.
J. R. ...	Jurist Reports	N.Z.
J. R. N. S. ...	Jurist Reports, New Series	N.Z.
J. Shaw, Just.	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852	Scot.
Jac. ...	Jacob's Reports, Chancery, 1 vol., 1821—1823	Eng.
Jac. & W. ...	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821	Eng.
James ...	Nova Scotia Reports (James)	Can.
Jebb & B. ...	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol., 1841—1842	Ir.
Jebb & S. ...	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	Ir.
Jebb, C. C. ...	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840	Ir.
Jebb, Cr. & Pr. Cas.	Jebb's Crown and Presentment Cases	Ir.
Jenk. ...	Jenkins' Reports, 1 vol., 1220—1623	Eng.
Jo. & Car. ...	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839	Ir.
Jo. & Lat. ...	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	Ir.
Jo. Ex. Ir. ...	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1854—1838	Ir.
John. ...	Johnson's Reports, Chancery, 1 vol., 1858—1860	Eng.
John. & H. ...	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	Eng.
Jur. ...	Jurist Reports, 18 vols., 1837—1854	Eng.
Jur. N. S. ...	Jurist Reports, New Series, 12 vols., 1855—1867	Eng.
K. ...	Kotze's Reports of the High Court of the Transvaal Province 1877—1881	S. Af.
K. & G. ...	Keane and Grant's Registration Cases, 1 vol., 1854—1862	Eng.
K. & J. ...	Kay and Johnson's Reports, Chancery, 4 vols., 1854—1858	Eng.
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900 ( <i>e.g.</i> , [1901] 2 K. B.)	Eng.
Kames, Dict. Dec.	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	Scot.
Kames, Rem. Dec.	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1710—1752	Scot.
Kames, Sel. Dec.	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	Scot.
Kay ...	Kay's Reports, Chancery, 1 vol., 1853—1854	Eng.
Keb. ...	Keble's Reports, fol., 3 vols., 1661—1677	Eng.
Keen ...	Keen's Reports, Rolls Court, 2 vols., 1836—1838	Eng.
Keil. ...	Keilway's Reports, King's Bench, fol., 1 vol., 1327—1578	Eng.
Kel. ...	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	Eng.
Kel. W. ...	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734	Eng.
Keny. ...	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759	Eng.
Keny. Ch. ...	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	Eng.
Kerr ...	New Brunswick Reports (Kerr)	Can.





# xxiv      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Leg. Rep.	...	...	Legal Reporter	...	...	...	...	...	...	Ir.
Leggo	...	...	Legge's Reports	...	...	...	...	...	...	Aus.
Leon.	...	...	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	...	...	...	...	...	...	Eng.
Lev.	...	...	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	...	...	...	...	...	...	Eng.
Lew. C. C.	...	...	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	...	...	...	...	...	...	Eng.
Ley	...	...	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	...	...	...	...	...	...	Eng.
Lib. Ass.	...	...	Liber Assisarum, Year Books, 1—51 Edw. III.	...	...	...	...	...	...	Eng.
Lilly	...	...	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	...	...	...	...	...	...	Eng.
Litt.	...	...	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	...	...	...	...	Eng.
Lloyd, L. R.	...	...	Lloyd's List Law Reports, 1919—(current)	...	...	...	...	...	...	Eng.
Lloyd, Pr. Cas.	...	...	Lloyd's Reports of Prize Cases, 10 vols., 1914—1924	...	...	...	...	...	...	Eng.
Lofft	...	...	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774	...	...	...	...	...	...	Eng.
Long. & T.	...	...	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842	...	...	...	...	...	...	Ir.
Lords Journals	...	...	Journals of the House of Lords	...	...	...	...	...	...	Eng.
Lud. E. C.	...	...	Luder's Election Cases, 3 vols., 1784—1787	...	...	...	...	...	...	Eng.
Lumley, P. L. C.	...	...	Lumley's Poor Law Cases, 2 vols., 1834—1842	...	...	...	...	...	...	Eng.
Lush.	...	...	Lushington's Reports, Admiralty, 1 vol., 1859—1862	...	...	...	...	...	...	Eng.
Lut.	...	...	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	...	...	...	...	...	...	Eng.
Lut. Reg. Cas.	...	...	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	...	...	...	...	...	...	Eng.
Lynd.	...	...	Lyndwood, Provinciale, fol., 1 vol.	...	...	...	...	...	...	Eng.
M.	...	...	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	...	...	...	...	...	...	S. Af.
M. & S.	...	...	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	...	...	...	...	...	...	Eng.
M. & W.	...	...	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	...	...	...	...	...	...	Eng.
M. C. C.	...	...	Mining Commissioner's Cases	...	...	...	...	...	...	Can.
M. C. R.	...	...	Montreal Condensed Reports	...	...	...	...	...	...	Can.
M. H. C. R.	...	...	Madras High Court Reports	...	...	...	...	...	...	Ind.
M. L. R. (Vol.) K. B. or Q. B.	...	...	Montreal Law Reports, King's Bench or Queen's Bench	...	...	...	...	...	...	Can.
M. L. R. (Vol.) S. C.	...	...	Montreal Law Reports, Superior Court	...	...	...	...	...	...	Can.
M. M. Cas.	...	...	Martin's Reports of Mining Cases	...	...	...	...	...	...	Can.
Mac.	...	...	Macassey's New Zealand Reports	...	...	...	...	...	...	N.Z.
Mac. & G.	...	...	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	...	...	...	...	...	...	Eng.
Mac. & H.	...	...	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	...	...	...	...	...	...	Eng.
M'Cle.	...	...	M'Clelland's Reports, Exchequer, 1 vol., 1824	...	...	...	...	...	...	Eng.
M'Cle. & Yo.	...	...	M'Clelland and Younge's Reports, Exchequer, 1 vol., 1824—1825	...	...	...	...	...	...	Eng.
Macfarlane	...	...	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	...	...	...	...	...	...	Scot.
Macf. & Rob.	...	...	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	...	...	...	...	...	...	Scot.
Macph. (Cl. of Sess.)	...	...	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	...	...	...	...	...	...	Scot.
Macq.	...	...	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	...	...	...	...	...	...	Scot.
Macr.	...	...	Macrory's Patent Cases, 2 parts, 1847—1856	...	...	...	...	...	...	Eng.
Mad.	...	...	Madras High Court Reports	...	...	...	...	...	...	Ind.
Madd.	...	...	Maddock's Reports, Chancery, 3 vols., 1815—1822	...	...	...	...	...	...	Eng.
Madd. & G.	...	...	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	...	...	...	...	...	...	Eng.
Madox	...	...	Madox's Formulæ Anglicanum	...	...	...	...	...	...	Eng.
Madox, Exch.	...	...	Madox's History and Antiquities of the Exchequer, 2 vols.	...	...	...	...	...	...	Eng.
Mag.	...	...	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1818—1852	...	...	...	...	...	...	Eng.
Man & G.	...	...	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	...	...	...	...	...	...	Eng.
Man. & Ry. K. B.	...	...	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	...	...	...	...	...	...	Eng.
Man. & Ry. M. C.	...	...	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	...	...	...	...	...	...	Eng.
Man. L. J.	...	...	Manitoba Law Journal	...	...	...	...	...	...	Can.
Man. L. R.	...	...	Manitoba Law Reports	...	...	...	...	...	...	Can.
Man. R. temp. Wood	...	...	Manitoba Reports temp. Wood	...	...	...	...	...	...	Can.
Mans.	...	...	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	...	...	...	...	...	...	Eng.
Mar. L. C.	...	...	Maritime Law Reports (Crockford), 3 vols., 1860—1871	...	...	...	...	...	...	Eng.
March	...	...	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642	...	...	...	...	...	...	Eng.
Marr.	...	...	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	...	...	...	...	...	...	Eng.
Marsh.	...	...	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	...	...	...	...	...	...	Eng.
Marsh.	...	...	Marshall's Reports	...	...	...	...	...	...	Ind.
Mayn.	...	...	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1320	...	...	...	...	...	...	Eng.
Meg.	...	...	Megone's Companies Acts Cases, 2 vols., 1889—1891	...	...	...	...	...	...	Eng.

Men. ... ..	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850 ... ..	S. Af.
Mer. ... ..	Merivale's Reports, Chancery, 3 vols., 1815—1817 ... ..	Eng.
Milw. ... ..	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843 ... ..	Ir.
Mod. Rep. ... ..	Modern Reports, 12 vols., 1669—1755 ... ..	Eng.
Mol. ... ..	Molloy's Report's, Chancery (Ireland), 3 vols., 1808—1831 ... ..	Ir.
Mont. ... ..	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832 ... ..	Eng.
Mont. & A. ... ..	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838 ... ..	Eng.
Mont. & B. ... ..	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833 ... ..	Eng.
Mont. & Ch. ... ..	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840 ... ..	Eng.
Mont. & M. ... ..	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830 ... ..	Eng.
Mont. D. & De G. ... ..	Montagu, Deacon. and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844 ... ..	Eng.
Moo. & P. ... ..	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831 ... ..	Eng.
Moo. & S. ... ..	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834 ... ..	Eng.
Moo. Ind. App. ... ..	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1830—1872 ... ..	Eng.
Moo. P. C. C. ... ..	Moore's Privy Council Cases, 15 vols., 1836—1863 ... ..	Eng.
Moo. P. C. C. N. S. ... ..	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873 ... ..	Eng.
Mood. & M. ... ..	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830 ... ..	Eng.
Mood. & R. ... ..	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844 ... ..	Eng.
Mood. C. C. ... ..	Moody's Crown Cases Reserved, 2 vols., 1824—1844 ... ..	Eng.
Moore, C. P. ... ..	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827 ... ..	Eng.
Moore, K. B. ... ..	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620 ... ..	Eng.
Mor. Dict. ... ..	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808 ... ..	Scot.
Morr. ... ..	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893 ... ..	Eng.
Mos. ... ..	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730 ... ..	Eng.
Mun. Rep. ... ..	Municipal Reports ... ..	Can.
Murd. Epit. ... ..	Murdoch's Epitome ... ..	Can.
Murp. & H. ... ..	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837 ... ..	Eng.
Murr. ... ..	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830 ... ..	Scot.
My. & Cr. ... ..	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841 ... ..	Eng.
My. & K. ... ..	Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835 ... ..	Eng.
N. A. C. ... ..	Native Appeal Cases ... ..	S. Af.
N. & S. ... ..	Nichols and Stop's Reports (Tasmania) ... ..	Tasmania
N. B. Dig. ... ..	New Brunswick Digest (Stevens) ... ..	Can.
N. B. Eq. Rep. ... ..	New Brunswick Equity Reports ... ..	Can.
N. B. R. ... ..	New Brunswick Reports ... ..	Can.
N. B. R. (All.) ... ..	New Brunswick Reports (Allen) ... ..	Can.
N. B. R. (Ber.) ... ..	New Brunswick Reports (Berton) ... ..	Can.
N. B. R. (Carl.) ... ..	New Brunswick Reports (Carleton) ... ..	Can.
N. B. R. (Chip.) ... ..	New Brunswick Reports (Chipman) ... ..	Can.
N. B. R. (Han.) ... ..	New Brunswick Reports (Hannay) ... ..	Can.
N. B. R. (Kerr) ... ..	New Brunswick Reports (Kerr) ... ..	Can.
N. B. R. (P. & B.) ... ..	New Brunswick Reports (Pugsley and Burbidge) ... ..	Can.
N. B. R. (P. & T.) ... ..	New Brunswick Reports (Pugsley and Trueman) ... ..	Can.
N. B. R. (Pug.) ... ..	New Brunswick Reports (Pugsley) ... ..	Can.
N. B. R. (Tru.) ... ..	New Brunswick Reports (Trueman) ... ..	Can.
N. I. (preceded by date) ... ..	Northern Ireland Law Reports, 1925—(current) (c.g., [1925] N. I.) ... ..	Ir.
N. L. R. ... ..	Natal Law Reports ... ..	S. Af.
N. P. D. ... ..	South African Law Reports, Natal Provincial Division ... ..	S. Af.
N. S. R. ... ..	Nova Scotia Reports ... ..	Can.
N. S. R. (Coch.) ... ..	Nova Scotia Reports (Cochran) ... ..	Can.
N. S. R. (G. & O.) ... ..	Nova Scotia Reports (Geldert and Oxley) ... ..	Can.
N. S. R. (G. & R.) ... ..	Nova Scotia Reports (Geldert and Russell) ... ..	Can.
N. S. R. (James) ... ..	Nova Scotia Reports (James) ... ..	Can.
N. S. R. (Old.) ... ..	Nova Scotia Reports (Oldrights) ... ..	Can.
N. S. R. (R. & C.) ... ..	Nova Scotia Reports (Russell and Chesley) ... ..	Can.
N. S. R. (R. & G.) ... ..	Nova Scotia Reports (Russell and Geldert) ... ..	Can.
N. S. R. (Thom.) ... ..	Nova Scotia Reports (Thomson) ... ..	Can.
N. S. W. Adm. or Ad. ... ..	New South Wales Reports, Admiralty ... ..	Aus.
N. S. W. B. ... ..	New South Wales Reports, Bankruptcy ... ..	Aus.
N. S. W. Bkpty. Cas. ... ..	New South Wales Bankruptcy Cases ... ..	Aus.
N. S. W. Eq. ... ..	New South Wales Reports, Equity ... ..	Aus.
N. S. W. Ind. Arbtrn. Cas. ... ..	New South Wales Industrial Arbitration Cases ... ..	Aus.
N. S. W. L. R. ... ..	New South Wales Law Reports ... ..	Aus.
N. S. W. Land App. Cts. ... ..	New South Wales Land Appeal Courts ... ..	Aus.
N. S. W. S. C. R. (Eq.) ... ..	New South Wales Supreme Court Reports (Equity) ... ..	Aus.
N. S. W. S. C. R. (L.) ... ..	New South Wales Supreme Court Reports (Law) ... ..	Aus.
N. S. W. S. C. R. N. S. ... ..	New South Wales Supreme Court Reports, New Series ... ..	Aus.
N. S. W. W. N. ... ..	New South Wales Weekly Notes ... ..	Aus.
N. W. ... ..	North-Western Provinces High Court Reports ... ..	Ind.
N. W. T. R. ... ..	North-West Territories Reports ... ..	Can.
N. Z. Jur. ... ..	New Zealand Jurist ... ..	N.Z.
N. Z. Jur. Mining Law ... ..	New Zealand Jurist Mining Law ... ..	N.Z.

# xxvi      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

N. Z. Jur. N. S. ...	... New Zealand Jurist, New Series ... ..	N.Z.
N. Z. L. R. ...	... New Zealand Law Reports, 1883—(current) ... ..	N.Z.
N. Z. L. R. C. A. ...	... New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
Nels. ...	... Nelson's Reports, Chancery, 1 vol., 1625—1693 ... ..	Eng.
Nev. & M. K. B. ...	... Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836	Eng.
Nev. & M. M. C. ...	... Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836	Eng.
Nev. & P. K. B. ...	... Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838	Eng.
Nev. & P. M. C. ...	... Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837 ...	Eng.
New Mag. Cas. ...	... New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850 ... ..	Eng.
New Pract. Cas. ...	... New Practice Cases (Bittleston and others), 3 vols., 1844—1848	Eng.
New Rep. ...	... New Reports, 6 vols., 1862—1865 ... ..	Eng.
New Sess. Cas. ...	... New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851 ... ..	Eng.
Nfld. L. R. ...	... Newfoundland Reports ... ..	Nfld.
Nolan ...	... Nolan's Magistrates' Cases, 1 vol., 1791—1793 ... ..	Eng.
Notes of Cases ...	... Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850 ... ..	Eng.
Noy ...	... Noy's Reports, King's Bench, fol., 1 vol., 1558—1649 ...	Eng.
O. B. & F. ...	... Ollivier Bell and Fitzgerald's Reports ... ..	N.Z.
O. B. S. P. ...	... Old Bailey Session Papers ... ..	Eng.
O. Bridg. ...	... Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660— 1666 ... ..	Eng.
O. F. S. ...	... Reports of the High Court of the Orange Free State, 1879—1883	S. Af.
O. L. R. ...	... Ontario Law Reports ... ..	Can.
O'M. & H. ...	... O'Malley and Hardcastle's Election Cases, 1869—(current) ...	Eng.
O. P. D. ...	... South African Law Reports, Orange Free State Provincial Division	S. Af.
O. R. ...	... Ontario Reports ... ..	Can.
O. R. ...	... Official Reports of the South African Republic, 1894—1899 ...	S. Af.
O. R. C. ...	... Reports of the High Court of the Orange River Colony ...	S. Af.
O. S. ...	... Upper Canada Queen's Bench, Old Series ... ..	Can.
O. W. N. ...	... Ontario Weekly Notes ... ..	Can.
O. W. R. ...	... Ontario Weekly Reporter ... ..	Can.
Old. ...	... Nova Scotia Reports (Oldrights) ... ..	Can.
Ont. Dig. ...	... Digest of Ontario Case Law, 4 vols., 1823—1900 ... ..	Can.
Owen ...	... Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614 ... ..	Eng.
P. (preceded by date) ...	... Law Reports, Probate, Divorce, and Admiralty Division, since 1890 ( <i>e.g.</i> , [1891] P.) ... ..	Eng.
P. & B. ...	... New Brunswick Reports (Pugsley and Burbidge) ... ..	Can.
P. & T. ...	... New Brunswick Law Reports (Pugsley and Trueman) ... ..	Can.
P. Cas. ...	... Prize Cases Heard and Decided in the Prize Court During the Great War, 3 vols., 1914—1922 ... ..	Eng. & Col.
P. D. ...	... Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890 ... ..	Eng.
P. E. I. ...	... Prince Edward Island Reports ... ..	Can.
P. R. ...	... Ontario Practice ... ..	Can.
P. Wms. ...	... Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735 ... ..	Eng.
Palm. ...	... Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629 ...	Eng.
Park. ...	... Parker's Reports, Exchequer, fol., 1 vol., 1743—1767; App. 1678—1717 ... ..	Eng.
Pat. App. ...	... Paton's Scotch Appeals, House of Lords, 6 vols., 1720—1822	Scot.
Pater. App. ...	... Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873	Scot.
Peake ...	... Peake's Reports, Nisi Prius, 1 vol., 1790—1794 ... ..	Eng.
Peake, Add. Cas. ...	... Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812 ...	Eng.
Peck. ...	... Peckwell's Election Cases, 2 vols., 1803—1806 ... ..	Eng.
Pelham ...	... Pelham (S. A.) Reports ... ..	Aus.
Per. & Dav. ...	... Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841	Eng.
Per. & Kn. ...	... Perry and Knapp's Election Cases, 1 vol., 1833 ... ..	Eng.
Per. C. S. ...	... Perrault's Conseil Supérieur ... ..	Can.
Per. P. ...	... Perrault's Prévosté de Quebec, 1726—1756 ... ..	Can.
Ph. ...	... Phillips' Reports, Chancery, 2 vols., 1841—1849 ... ..	Eng.
Phil. El. Cas. ...	... Phillips' Election Cases, 1 vol., 1780 ... ..	Eng.
Phillim. ...	... J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821 ...	Eng.
Phillim. Eccl. Jud. ...	... Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875	Eng.
Phip. ...	... Phipson's Digest of Natal Reports, 1858—1859 ... ..	S. Af.
Pig. & R. ...	... Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845 ...	Eng.
Pitc. ...	... Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624 ...	Scot.
Plowd. ...	... Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I. ... ..	Eng.
Poll. ...	... Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682 ...	Eng.
Poph. ...	... Popham's Reports, King's Bench, fol., 1 vol., 1591—1627 ...	Eng.
Pow. R. & D. ...	... Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856	Eng.

Pratt	...	...	Pratt's Supplement to Bott's Poor Laws, 1833	...	...	Eng.
Prec. Ch.	...	...	Precedents in Chancery, fol., 1 vol., 1689—1722	...	...	Eng.
Price	...	...	Price's Reports, Exchequer, 13 vols., 1814—1824	...	...	Eng.
Price	...	...	Price's Mining Commissioners' Cases	...	...	Can.
Pug.	...	...	New Brunswick Reports (Pugsley)	...	...	Can.
Py. R.	...	...	Pykes' Lower Canada Reports	...	...	Can.
Q. B.	...	...	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	...	...	Eng.
Q. B. (preceded by date)	...	...	Law Reports, Queen's Bench Division, 1891—1901 ( <i>e.g.</i> , [1891] 1 Q. B.)	...	...	Eng.
Q. B. D.	...	...	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	...	...	Eng.
Q. J. P.	...	...	Queensland Justice of Peace Reports	...	...	Aus.
Q. L. J.	...	...	Queensland Law Journal and Reports, 11 vols., 1879—1901	...	...	Aus.
Q. L. R.	...	...	Quebec Law Reports	...	...	Can.
Q. L. R. (Beor)	...	...	Queensland Law Reports by Beor, 1876—1878	...	...	Aus.
Q. P. R.	...	...	Quebec Practice Reports	...	...	Can.
Q. R. (Vol.) K. B. or Q. B.	...	...	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892—(current)	...	...	Can.
Q. R. (Vol.) S. C.	...	...	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	...	...	Can.
Q. S. C. R.	...	...	Queensland Supreme Court Reports, 5 vols., 1860—1881	...	...	Aus.
Q. S. R.	...	...	Queensland State Reports, 6 vols., 1902—1906	...	...	Aus.
Q. W. N.	...	...	Weekly Notes, Queensland	...	...	Aus.
R.	...	...	The Reports, 15 vols., 1893—1895	...	...	Eng.
R.	...	...	Roscoe's Reports of the Supreme Court of the Cape of Good Hope, 1861—1867, 1871—1872, 1877—1878	...	...	S. Af.
R. (Ct. of Sess.)	...	...	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	...	...	Scot.
R. A. C.	...	...	Ramsay, Appeal Cases	...	...	Can.
R. & C.	...	...	Nova Scotia Reports (Russell & Chesley)	...	...	Can.
R. & G.	...	...	Nova Scotia Reports (Russell and Geldert)	...	...	Can.
R. C.	...	...	La Revue Critique de Législation et de Jurisprudence de Canada	...	...	Can.
R. de J.	...	...	Revue de Jurisprudence	...	...	Can.
R. de L.	...	...	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	...	...	Can.
R. E. D.	...	...	New South Wales, Reserved and Equity Decisions	...	...	Aus.
R. E. D.	...	...	Ritchie's Equity Decisions (Russell)	...	...	Can.
R. J. R. Q.	...	...	Quebec Revised Reports	...	...	Can.
R. L. N. S.	...	...	Revue Légale, New Series, 1895—(current)	...	...	Can.
R. L. O. S.	...	...	Revue Légale, Old Series, 21 vols., 1869—1892	...	...	Can.
R. P. C.	...	...	Reports of Patent Cases, 1884—(current)	...	...	Eng.
R. R.	...	...	Revised Reports	...	...	Eng.
Rast.	...	...	Rastell's Entries	...	...	Eng.
Rayn.	...	...	Rayner's Tithe Cases, 3 vols., 1575—1782	...	...	Eng.
Real Prop. Cas.	...	...	Real Property Cases, 2 vols., 1843—1847	...	...	Eng.
Rep. Ch.	...	...	Reports in Chancery, fol., 3 vols., 1615—1710	...	...	Eng.
Rep. in C. of A.	...	...	Reports in Courts of Appeal	...	...	N.Z.
Res. & Eq. Jud.	...	...	New South Wales Reserved and Equity Judgments	...	...	Aus.
Reserv. Cas.	...	...	Reserved Cases	...	...	Ir.
Rick. & M.	...	...	Rickards and Michael's <i>Locus Standi</i> Reports, 1 vol., 1885—1889	...	...	Eng.
Rick. & S.	...	...	Rickards and Saunders' <i>Locus Standi</i> Reports, 1 vol., 1890—1894	...	...	Eng.
Ridg. L. & S.	...	...	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795	...	...	Ir.
Ridg. Parl. Rep.	...	...	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	...	...	Ir.
Ridg. temp. H.	...	...	Ridgeway's Reports <i>temp.</i> Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746	...	...	Eng.
Ritch. Eq. Rep.	...	...	Ritchie's Equity Reports	...	...	Can.
Rob. Eccl.	...	...	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	...	...	Eng.
Rob. L. & W.	...	...	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	...	...	Eng.
Robert. App.	...	...	Robertson's Scotch Appeals, House of Lords, 1 vol., 1707—1727	...	...	Scot.
Robin. App.	...	...	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	...	...	Scot.
Roll. Abr.	...	...	Rolle's Abridgment of the Common Law, fol., 2 vols.	...	...	Eng.
Roll. Rep.	...	...	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	...	...	Eng.
Rom.	...	...	Romilly's Notes of Cases, 1 part, 1767—1787	...	...	Eng.
Roscoe's B. C.	...	...	Roscoe, Digest of Building Cases	...	...	Eng.
Rose	...	...	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	...	...	Eng.
Ross, L. C.	...	...	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	...	...	Eng.
Rowe	...	...	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	...	...	Eng.
Rul. Cas.	...	...	Campbell's Ruling Cases, 25 vols.	...	...	Eng.
Russ.	...	...	Russell's Reports, Chancery, 5 vols., 1824—1829	...	...	Eng.
Russ. & M.	...	...	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	...	...	Eng.

## xxviii      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Russ. & Ry. ... ..	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	Eng.
Rus. E. R. ... ..	Russell's Election Reports ... ..	Can.
Ry. & Can. Cas. ... ..	Railway and Canal Cases, 7 vols., 1835—1854 ... ..	Eng.
Ry. & Can. Tr. Cas. ... ..	Railway and Canal Traffic Cases, 1855—(current) ... ..	Eng.
Ry. & M. ... ..	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826 ... ..	Eng.
Ryde & K. Rat. App. ... ..	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904 ... ..	Eng.
Ryde, Rat. App. ... ..	Ryde's Rating Appeals, 3 vols., 1871—1893 ... ..	Eng.
S. ... ..	Searle's Reports of the Supreme Court of the Cape of Good Hope	S. Af.
S. A. L. J. ... ..	South African Law Journal ... ..	S. Af.
S. A. L. R. ... ..	South Australian Law Reports ... ..	Aus.
S. A. L. R. ... ..	South African Law Reports ... ..	S. Af.
S. A. R. ... ..	Reports of the High Court of the South African Republic, 1881—1892 ... ..	S. Af.
S. A. S. R. ... ..	South Australian State Reports, since 1921 ( <i>e.g.</i> , [1921] S. A. S. R.) ... ..	Aus.
S. C. ... ..	Reports of the Supreme Court of the Cape of Good Hope from 1880 ... ..	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 ( <i>e.g.</i> , [1906] S. C.)	Scot.
S. C. (H. L.) (preceded by date)	Court of Session Cases (Scotland) (House of Lords), since 1906 ( <i>e.g.</i> , [1906] S. C. (H. L.)) ... ..	Scot.
S. C. (J.) (preceded by date)	Court of Justiciary Cases (Scotland), since 1906 ( <i>e.g.</i> , [1906] S. C. (J.)) ... ..	Scot.
S. C. R. ... ..	Canada, Supreme Court Reports ... ..	Can.
S. L. T. ... ..	Scots Law Times, 1893 (current) ... ..	Scot.
S. Q. R. ... ..	Queensland State Reports ... ..	Aus.
S. R. ... ..	Reports of the High Court of Southern Rhodesia ... ..	S. Af.
S. R. C. ... ..	Stuart's Lower Canada Reports ... ..	Can.
S. R. N. S. W. ... ..	New South Wales, State Reports ... ..	Aus.
S. R. Q. ... ..	Queensland Reports, Supreme Court ... ..	Aus.
S. V. A. R. ... ..	Stuart's Vice-Admiralty Reports ... ..	Can.
S. W. A. ... ..	South-West Africa Law Reports ... ..	S.-W. Af.
Saint ... ..	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ... ..	Eng.
Salk. ... ..	Salkeld's Reports, King's Bench, 3 vols., 1689—1712 ... ..	Eng.
Sask. L. R. ... ..	Saskatchewan Law Reports ... ..	Can.
Sau. & Sc. ... ..	Sausce and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840 ... ..	Ir.
Saund. ... ..	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ... ..	Eng.
Saund. & A. ... ..	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	Eng.
Saund. & B. ... ..	Saunders and Bidder's Locus Standi Reports, 1905—(current)	Eng.
Saund. & C. ... ..	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ... ..	Eng.
Saund. & M. ... ..	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858 ... ..	Eng.
Sav. ... ..	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ... ..	Eng.
Say. ... ..	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ... ..	Eng.
Sc. Jur. ... ..	Scottish Jurist, 46 vols., 1829—1873 ... ..	Scot.
Sc. L. R. ... ..	Scottish Law Reporter, 61 vols., 1865—1924 ... ..	Scot.
Sc. R. R. ... ..	Scots Revised Reports ... ..	Scot.
Sch. & Lef. ... ..	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806 ... ..	Ir.
Scott ... ..	Scott's Reports, Common Pleas, 8 vols., 1834—1840 ... ..	Eng.
Scott. N. R. ... ..	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ... ..	Eng.
Sea. & Sin. ... ..	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860 ... ..	Eng.
Sel. Cas. Ch. ... ..	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.) ... ..	Eng.
Selwyn's N. P. ... ..	Selwyn's Abridgement of the Law of Nisi Prius ... ..	Eng.
Sess. Cas. K. B. ... ..	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	Eng.
Sett. & Rem. ... ..	Cases adjudged in K. B. concerning Settlements & Removals, 1 vol., 1685—1727 ... ..	Eng.
Sh. (Ct. of Sess.) ... ..	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838 ... ..	Scot.
Sh. & MacL. ... ..	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838 ... ..	Scot.
Sh. Dig. ... ..	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868 ... ..	Scot.
Sh. Just. ... ..	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831	Scot.
Sh. Sc. App. ... ..	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	Scot.
Sh. Teind Ct. ... ..	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	Scot.
Shep. Touch. ... ..	Sheppard's Touchstone of Common Assurances ... ..	Eng.
Show. ... ..	Shower's Reports, King's Bench, 2 vols., 1678—1695 ... ..	Eng.
Show. Parl. Cas. ... ..	Shower's Cases in Parliament, fol., 1 vol., 1694—1699 ... ..	Eng.
Sid. ... ..	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670 ... ..	Eng.

Sim. ... ..	Simons' Reports, Chancery, 17 vols., 1826—1852 ... ..	Eng.
Sim. & St. ... ..	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826 ... ..	Eng.
Sim. N. S. ... ..	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852 ... ..	Eng.
Skin. ... ..	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697 ... ..	Eng.
Sm. & Bat. ... ..	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825 ... ..	Ir.
Sm. & G. ... ..	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857 ... ..	Eng.
Smith, K. B. ... ..	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806 ... ..	Eng.
Smith, L. C. ... ..	Smith's Leading Cases, 2 vols. ... ..	Eng.
Smith, Reg. Cas. ... ..	C. L. Smith's Registration Cases, 1895—(current) ... ..	Eng.
Smythe ... ..	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840 ... ..	Ir.
Sol. Jo. ... ..	Solicitors' Journal, 1856—(current) ... ..	Eng.
Spence ... ..	Spence's Equitable Jurisdiction of the Court of Chancery ... ..	Eng.
Spinks ... ..	Spinks' Prize Court Cases, 2 parts, 1851—1856 ... ..	Eng.
St. R. Qd. (preceded by date) ... ..	Queensland State Reports, since 1902 ( <i>e.g.</i> , [1902] St. R. Qd.) ... ..	Aus.
Stair Rep. ... ..	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681 ... ..	Scot.
Stark. ... ..	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823 ... ..	Eng.
State Tr. ... ..	State Trials, 34 vols., 1163—1820 ... ..	Eng.
State Tr. N. S. ... ..	State Trials, New Series, 8 vols., 1820—1858 ... ..	Eng.
Stewart ... ..	Stewart's Nova Scotia Admiralty Reports, 1803—1813 ... ..	Can.
Stockton ... ..	Stockton's Vice-Admiralty Report and Digest ... ..	Can.
Story ... ..	Story's Commentaries on Equity Jurisprudence ... ..	Eng.
Stra. ... ..	Strange's Reports, 2 vols., 1716—1747 ... ..	Eng.
Stu. M. & P. ... ..	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853 ... ..	Scot.
Stuart ... ..	Sessions Cases (Stuart) ... ..	Scot.
Stuart, Adm. ... ..	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856 ... ..	Can.
Stuart, Adm. N. S. ... ..	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874 ... ..	Can.
Stuart, K. B. ... ..	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835 ... ..	Can.
Sty. ... ..	Style's Reports, King's Bench, fol., 1 vol., 1646—1655 ... ..	Eng.
Sw. ... ..	Swabey's Report, Admiralty, 1 vol., 1855—1859 ... ..	Eng.
Sw. & Tr. ... ..	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865 ... ..	Eng.
Swan. ... ..	Swanston's Reports, Chancery, 3 vols., 1818—1821 ... ..	Eng.
Swin. ... ..	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841 ... ..	Scot.
Syme ... ..	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829 ... ..	Scot.
T. & M. ... ..	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851 ... ..	Eng.
T. H. ... ..	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909 ... ..	S. Af.
T. Jo. ... ..	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685 ... ..	Eng.
T. L. ... ..	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current) ... ..	S. Af.
T. L. R. ... ..	The Times Law Reports, 1884—(current) ... ..	Eng.
T. P. ... ..	Reports of the Supreme Court of the Transvaal, 1910—(current) ... ..	S. Af.
T. P. D. ... ..	South African Law Reports, Transvaal Provincial Division ... ..	S. Af.
T. Raym. ... ..	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683 ... ..	Eng.
T. S. ... ..	Reports of the Supreme Court of the Transvaal, 1902—1909 ... ..	S. Af.
Taml. ... ..	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830 ... ..	Eng.
Tas. L. R. ... ..	Tasmanian Law Reports ... ..	Aus.
Taunt. ... ..	Taunton's Reports, Common Pleas, 8 vols., 1807—1819 ... ..	Eng.
Tax Cas. ... ..	Tax Cases, 1875—(current) ... ..	Eng.
Tay. ... ..	Taylor's King's Bench Reports ... ..	Can.
Temp. Wood ... ..	Manitoba Reports temp. Wood ... ..	Can.
Term Rep. ... ..	Term Reports (Durnford and East), fol., 8 vols., 1785—1800 ... ..	Eng.
Terr. L. R. ... ..	Territories Law Reports ... ..	Can.
Thom. ... ..	Nova Scotia Reports (Thomson) ... ..	Can.
Toth. ... ..	Tothill's Transactions in Chancery, 1 vol., 1559—1646 ... ..	Eng.
Town St. Tr. ... ..	Townsend, Modern State Trials ... ..	Eng.
Trem. P. C. ... ..	Tremaine Pleas of the Crown, 1 vol., 1667 ... ..	Eng.
Trist. ... ..	Tristram's Consistory Judgments, 1 vol., 1872—1890 ... ..	Eng.
Tru. ... ..	New Brunswick Reports (Trueman) ... ..	Can.
Tudor, L. C. Merc. Law. ... ..	Tudor's Leading Cases on Mercantile and Maritime Law ... ..	Eng.
Tudor, L. C. Real Prop. ... ..	Tudor's Leading Cases on Real Property ... ..	Eng.
Turn. & R. ... ..	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825 ... ..	Eng.
Tyr. ... ..	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835 ... ..	Eng.
Tyr. & Gr. ... ..	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836 ... ..	Eng.
U. C. Jur. ... ..	Upper Canada Jurist ... ..	Can.
U. C. L. J. N. S. ... ..	Canada Law Journal, New Series, 1865—(current) ... ..	Can.

# xxx REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

U. C. L. J. O. S.	...	Canada Law Journal, Old Series, 10 vols., 1855—1864	...	Can.
U. C. R.	...	Upper Canada Reports, Queen's Bench	...	Can.
Udal	...	Fiji Law Reports (Udal)	...	Fiji.
V. L. R.	...	Victorian Law Reports	...	Aus.
V. R.	...	Victorian Reports	...	Aus.
V. R. (Adm.)	...	Victorian Reports (Admiralty)	...	Aus.
V. R. (Eq.)	...	Victorian Reports (Equity)	...	Aus.
V. R. (Law)	...	Victorian Reports (Law)	...	Aus.
Vaugh.	...	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673	...	Eng.
Vent.	...	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691	...	Eng.
Vern.	...	Vernon's Reports, Chancery, 2 vols., 1680—1719	...	Eng.
Vern. & Scr.	...	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	...	Ir.
Ves.	...	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817	...	Eng.
Ves. & B.	...	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814	...	Eng.
Ves. Sen.	...	Vesey Sen.'s Reports, 2 vols., 1747—1756	...	Eng.
Vin. Abr.	...	Viner's Abridgment of Law and Equity, fol., 22 vols.	...	Eng.
Vin. Supp.	...	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	...	Eng.
W.	...	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857...	...	S. Af.
W. A. L. R.	...	West Australian Law Reports	...	Aus.
W. A'B. & W.	...	Webb, A'Beckett and Williams' Victorian Reports	...	Aus.
W. & W.	...	Wyatt and Webb	...	Aus.
W. C. C.	...	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	...	Eng.
W. H. C.	...	South African Law Reports, Witwatersrand High Court	...	S. Af.
W. Jo.	...	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	...	Eng.
W. L. D.	...	South African Law Reports, Witwatersrand Local Division	...	S. Af.
W. L. R.	...	Western Law Reporter	...	Can.
W. L. T.	...	Western Law Times	...	Can.
W. N. (preceded by date)	...	Law Reports, Weekly Notes, 1866—(current) ( <i>e.g.</i> , [1866] W. N.)	...	Eng.
W. N.	...	Calcutta Weekly Notes	...	Ind.
W. R.	...	Weekly Reporter, 51 vols., 1852—1906	...	Eng.
W. R.	...	Sutherland's Weekly Reporter	...	Ind.
W. R.	...	Weekly Reporter, reporting cases in the Cape Provincial Division	...	S. Af.
W. W. & A'B.	...	Wyatt, Webb and A'Beckett	...	Aus.
W. W. R.	...	Western Weekly Reports	...	Can.
Wallis by Lyne	...	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791	...	Ir.
Web. Pat. Cas.	...	Webster's Patent Cases, 2 vols., 1602—1855	...	Eng.
Welsh, Reg. Cas.	...	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	...	Ir.
Went. Off. Ex.	...	Wentworth's Office and Duty of Executors	...	Eng.
West	...	West's Reports, House of Lords, 1 vol., 1839—1841	...	Eng.
West temp. Hard.	...	West's Reports temp. Hardwicke, Chancery, 1 vol., 1736—1740	...	Eng.
West. Tithe Cas.	...	Western's London Tithe Cases, 1 vol., 1592—1822	...	Eng.
White	...	White's Justiciary Reports (Scotland), 3 vols., 1886—1893	...	Scot.
White & Tud. L. C.	...	White and Tudor's Leading Cases in Equity, 2 vols.	...	Eng.
Wight	...	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	...	Eng.
Will. Woll. & Dav.	...	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	...	Eng.
Will. Woll. & H.	...	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	...	Eng.
Willes	...	Willes' Reports, Common Pleas, 1 vol., 1737—1758	...	Eng.
Wilm.	...	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	...	Eng.
Wils.	...	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	...	Eng.
Wils. & S.	...	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835	...	Scot.
Wils. Ch.	...	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	...	Eng.
Wils. Ex.	...	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817	...	Eng.
Win.	...	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625	...	Eng.
Wm. Bl.	...	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	...	Eng.
Wm. Rob.	...	William Robinson's Reports, Admiralty, 3 vols., 1838—1850	...	Eng.
Wms. Saund.	...	Williams' Notes to Saunders' Reports, 2 vols.	...	Eng.
Wolf. & B.	...	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	...	Eng.
Wolf. & D.	...	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858	...	Eng.
Woll.	...	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	...	Eng.
Wood	...	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	...	Eng.
Y. A. D.	...	Young's Vice-Admiralty Reports	...	Can.



## REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

xxxi

Y. & C. Ch. Cas	...	Young and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843	...	...	...	...	...	Eng.
Y. & C. Ex.	...	Young and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841	...	...	...	...	...	Eng.
Y. & J.	...	Young and Jervis' Reports, Exchequer, 3 vols., 1826—1830	...	...	...	...	...	Eng.
Y. B. (Rolls Series)	...	Year Books (Rolls Series)	...	...	...	...	...	Eng.
Y. B. (Sel. Soc.)	...	Year Books (Selden Society)	...	...	...	...	...	Eng.
Yelv.	...	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613	...	...	...	...	...	Eng.
You.	...	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832	...	...	...	...	...	Eng.



# ABBREVIATIONS

## USED IN THIS WORK.

(For Abbreviations used in citing Reports, *see* pp. xv—xxxi, *ante*.)

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A.-G.	.	.	.	.	for Attorney-General.
Act.	.	.	.	.	„ Actiengesellschaft.
Add.	.	.	.	.	„ Additional.
Admlty.	.	.	.	.	„ Admiralty.
Affd.	.	.	.	.	„ Affirmed.
Affg.	.	.	.	.	„ Affirming.
Akt.	.	.	.	.	„ Aktiengesellschaft ; Aktiebolaget ; Aktieselskabet.
Alta.	.	.	.	.	„ Alberta.
Anon.	.	.	.	.	„ Anonous.
Apld.	.	.	.	.	„ Applied.
Appct.	.	.	.	.	„ Applicant.
Appln.	.	.	.	.	„ Application.
Appln.	.	.	.	.	„ Application to Register a Trade Mark.
Applt.	.	.	.	.	„ Appellant.
Apprvd.	.	.	.	.	„ Approved.
Arbn.	.	.	.	.	„ Arbitration.
Archbp.	.	.	.	.	„ Archbishop.
Art.	.	.	.	.	„ Article.
Ass. Tax Case	.	.	.	.	„ Assessed Tax Case.
Assce.	.	.	.	.	„ Assurance.
Assocn.	.	.	.	.	„ Association.
B. C.	.	.	.	.	„ Borough Council.
B. C.	.	.	.	.	„ British Columbia.
Bkpcy.	.	.	.	.	„ Bankruptcy.
Bkpt.	.	.	.	.	„ Bankrupt.
Bldg. Soc.	.	.	.	.	„ Building Society.
Bp.	.	.	.	.	„ Bishop.
C. A.	.	.	.	.	„ Court of Appeal.
C. & S. L. Ry. Co.	.	.	.	.	„ City & South London Railway Co.
C. C. A.	.	.	.	.	„ Court of Criminal Appeal.
C. C. R.	.	.	.	.	„ County Court Rules.
C. C. R.	.	.	.	.	„ Court of Crown Cases Reserved.
C. L. P. Act.	.	.	.	.	„ Common Law Procedure Act.
C. L. Ry. Co.	.	.	.	.	„ Central London Railway Co.
C. O. R.	.	.	.	.	„ Crown Office Rules.
C. S. U. C.	.	.	.	.	„ Consolidated Statutes of Upper Canada.
Ca. sa.	.	.	.	.	„ <i>Capias ad satisfaciendum</i> .
Cale. Ry. Co.	.	.	.	.	„ Caledonian Railway Co.
Ch.	.	.	.	.	„ Chancery.
Ch. Div.	.	.	.	.	„ Chancery Division.
Co.	.	.	.	.	„ Company.
Co-op. Assocn.	.	.	.	.	„ Co-operative Supply Association.
Comrs	.	.	.	.	„ Commissioners.
Consd.	.	.	.	.	„ Considered.
Corpn.	.	.	.	.	„ Corporation.
Ct.	.	.	.	.	„ Court.
Ct. of Ch.	.	.	.	.	„ Court of Chancery.
Ct. of Eq	.	.	.	.	„ Court of Equity.
Ct. of R	.	.	.	.	„ Court of Review.
D. C.	.	.	.	.	„ Divisional Court.
Dbtd.	.	.	.	.	„ Doubted
J.S.	.	.	.	.	

Deft. . . . .	for Defendant.
Distd. . . . .	„ Distinguished.
Div. Ct. . . . .	„ Divisional Court.
Eccl. Comrs. . . . .	„ Ecclesiastical Commissioners.
Eccl. Ct. . . . .	„ Ecclesiastical Court.
Ex. Ch. . . . .	„ Exchequer Chamber.
<i>Ex p.</i> . . . . .	„ <i>Ex parte.</i>
Exch. . . . .	„ Exchequer.
Exor. . . . .	„ Executor.
Exorship. . . . .	„ Executorship.
Expld. . . . .	„ Explained.
Extd. . . . .	„ Extended.
Extrix. . . . .	„ Executrix.
<i>Fi. fa.</i> . . . . .	„ <i>Fieri facias.</i>
Folld. . . . .	„ Followed.
G. & S. W. Ry. Co. . . . .	„ Glasgow & South Western Railway Co.
G. C. Ry. Co. . . . .	„ Great Central Railway Co.
G. E. Ry. Co. . . . .	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co. . . . .	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co . . . . .	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co. . . . .	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland . . . . .	„ Great Southern & Western Railway Co. of Ireland
G. W. Ry. Co. . . . .	„ Great Western Railway Co.
Govt. . . . .	„ Government.
Grdns. . . . .	„ Guardians or Guardians of the Poor.
H. C. of A. . . . .	„ High Court of Australia.
H. L. . . . .	„ House of Lords.
I. R. Comrs. . . . .	„ Inland Revenue Commissioners.
Insee. . . . .	„ Insurance.
JJ. . . . .	„ Justices.
Jud. Act . . . . .	„ Judicature Act.
K. B. Div. . . . .	„ King's Bench Division.
L. & B. Ry. Co. . . . .	„ London & Brighton Railway Co.
L. & N. E. Ry. Co. . . . .	„ London & North Eastern Railway Co.
L. & N. W. Ry. Co. . . . .	„ London & North Western Railway Co.
L. & S. W. Ry. Co. . . . .	„ London & South Western Railway Co.
L. & Y. Ry. Co. . . . .	„ Lancashire & Yorkshire Railway Co.
L. B. . . . .	„ Local Board.
L. B. & S. C. Ry. Co. . . . .	„ London, Brighton & South Coast Railway Co.
L. C. . . . .	„ Lord Chancellor.
L. C. & D. Ry. Co. . . . .	„ London, Chatham & Dover Railway Co.
L. C. C. . . . .	„ London County Council.
L. Elec. Ry. Co. . . . .	„ London Electric Railway Co.
L. G. Board . . . . .	„ Local Government Board.
L.J. . . . .	„ Lord Justice.
L.JJ. . . . .	„ Lords Justices.
L. M. & S. Ry. Co. . . . .	„ London, Midland & Scottish Railway Co.
L. T. & S. Ry. Co. . . . .	„ London, Tilbury & Southend Railway Co.
M. S. Act . . . . .	„ Merchant Shipping Act.
M. S. & L. Ry. Co. . . . .	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags. . . . .	„ Magistrates.
Man. . . . .	„ Manitoba.
Mentd. . . . .	„ Mentioned.
Met. Dist. Ry. Co. . . . .	„ Metropolitan District Railway Co.
Met. Ry. Co. . . . .	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co. . . . .	„ Midland Great Western Railway Co.
Mid. Ry. Co. . . . .	„ Midland Railway Co.
Mtge. . . . .	„ Mortgage.
Mtgee. . . . .	„ Mortgagee.
Mtgor. . . . .	„ Mortgagor.
N. B. . . . .	„ New Brunswick.
N. B. Ry. Co. . . . .	„ North British Railway Co.
N. E. Ry. Co. . . . .	„ North Eastern Railway Co.
N. F. . . . .	„ Not Followed.
N. P. . . . .	„ Nisi Prius.

# ABBREVIATIONS.

XXXV

N. S.	.	.	.	.	for Nova Scotia.
N. W. P.	.	.	.	.	„ North-West Provinces.
N. W. T.	.	.	.	.	„ North-West Territories.
Ont.	.	.	.	.	„ Ontario.
Ord.	.	.	.	.	„ Order.
Overd.	.	.	.	.	„ Overruled.
P. C.	.	.	.	.	„ Privy Council.
P. E. I.	.	.	.	.	„ Prince Edward Island.
Petn.	.	.	.	.	„ Petition or Election Petition.
Pltf.	.	.	.	.	„ Plaintiff.
Q. B. Div.	.	.	.	.	„ Queen's Bench Division.
Qu.	.	.	.	.	„ <i>Quere.</i>
Que.	.	.	.	.	„ Quebec.
R. C.	.	.	.	.	„ Rural Council.
R. D. C.	.	.	.	.	„ Rural District Council
R. S. A.	.	.	.	.	„ Rural Sanitary Authority.
R. S. O.	.	.	.	.	„ Revised Statutes of Canada.
R. S. C.	.	.	.	.	„ Rules of the Supreme Court, 1883.
Refd.	.	.	.	.	„ Referred.
Regn. of Trade Mk.	.	.	.	.	„ Registration of Trade Mark.
Regr. of Trade Mks.	.	.	.	.	„ Registrar of Trade Marks.
Resp.	.	.	.	.	„ Respondent.
Restg.	.	.	.	.	„ Restoring.
Revsd.	.	.	.	.	„ Reversed.
Revsd.	.	.	.	.	„ Reversing.
Ry. Co.	.	.	.	.	„ Rail. Co. or Railway Co.
S. C.	.	.	.	.	„ Same Case.
S. C. (name of colony following)	.	.	.	.	„ Supreme Court of a Colony.
S. E.	.	.	.	.	„ Settled Estates.
S. E. & C. Ry. Co.	.	.	.	.	„ South Eastern & Chatham Railway Co.
S. E. Ry. Co.	.	.	.	.	„ South Eastern Railway Co.
S. P.	.	.	.	.	„ Same Point.
S.S.	.	.	.	.	„ Steamship.
Sask.	.	.	.	.	„ Saskatchewan.
Sched.	.	.	.	.	„ Schedule.
<i>Sci. fa.</i>	.	.	.	.	„ <i>Scire facias.</i>
Sect.	.	.	.	.	„ Section.
Set. Land Act	.	.	.	.	„ Settled Land Act.
Settlmt.	.	.	.	.	„ Settlement.
Soc.	.	.	.	.	„ Society
Soc. Anon.	.	.	.	.	„ Société Anonyme, etc.
Solr.	.	.	.	.	„ Solicitor.
Trade Mk.	.	.	.	.	„ Trade Mark.
Tram. Co.	.	.	.	.	„ Tramways Company.
U. C.	.	.	.	.	„ Urban Council.
U. D. C.	.	.	.	.	„ Urban District Council.
U. S. A.	.	.	.	.	„ United States of America.
Union Assmt. Com.	.	.	.	.	„ Union Assessment Committee.
Urban S. A.	.	.	.	.	„ Urban Sanitary Authority.
V.-C.	.	.	.	.	„ Vice-Chancellor.
Workmen's Comp. Act	.	.	.	.	„ Workmen's Compensation Act.
Y. T.	.	.	.	.	„ Yukon Territory.



## MEANING OF TERMS

### USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases, except such as are classified as "Mentioned," are grouped according to the points in the case which they annotate: within these groups they are listed chronologically, except such as are classified as "Referred to," which come at the end of the group and are arranged *inter se* in chronological order. Cases which annotate the annotated case generally are grouped together after cases which annotate specific points, similarly arranged, and are followed by cases classified as "Mentioned" arranged chronologically *inter se*. The terms used in classifying the annotating cases are as follows:—

- "APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.
- "APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.
- "CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.
- "DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.
- "DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.
- "EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.
- "EXTENDED" (Extd.).—Compare "APPLIED," *supra*.
- "FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.
- "NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.
- "OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.
- "REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.
- "MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.





# TABLE OF CASES.

INCLUDING CASES FROM THE COURTS OF SCOTLAND, IRELAND, THE EMPIRE OF INDIA, AND DOMINIONS BEYOND THE SEAS.

*The Figures in Black Type relate to Volumes.*

*The Figures in Ordinary Type relate as regards English cases to the number of the case, and as regards other cases to the page in the Supplement on which the case appears.*

## A.

- *v.* — (1839); **19. Eccl.** No. 4034
- A. *v.* A. (Can.); **27. H. & W.** pp. 795, 798, 799
- A. & B., *Re* (Can.); **35. Mtge.** p. 1024
- A. & B. Taxis, Ltd. *v.* Secretary of State for Air (1922); **11. Const. L.** No. 499a
- A. & C. Black, Ltd. *v.* Claude Stacey, Ltd. (1929); **13. Coprt.** No. 196a
- A. & M., *Re* (1926); **4. Bkpcy.** No. 226a
- A. B.'s Application, *Re* (1902); **36. Pat.** No. 1352a
- A. B.'s Committee *v.* Simpson (1928); **28. Inc. T.** No. 545d
- A. B.'s Petition, *Re* (1927); **3. Basty.** Nos. 130d, 130e; **16. Courts.** No. 280a
- , *Re* (1926); **27. H. & W.** No. 4280a
- A. K. A. C. T. V. Chettyar (Firm) *v.* Income Tax Comr. (Ind.); **16. Cr. Pract.** p. 564; **28. Inc. T.** p. 839
- A. R. Williams Machinery Co., Ltd. *v.* Moore (Can.); **8. Chos.** p. 348
- A. W., Ltd. *v.* Cooper & Hall, Ltd. (1925); **13. Cty. Cts.** Nos. 645a, 783a
- Abass *v.* Globe & Rutgers F. Insurance Co. (Can.); **29. Insee.** p. 874
- Abbotsford Lumber Co. *v.* Stevenson (Can.); **9. Coys.** p. 377
- Abbott *v.* McDougall & Cowans (Can.); **1. Agcy.** p. 51
- Abdul Aziz Khan *v.* Nanhe Khan (Ind.); **28. Infts.** p. 849
- Abdul Hamid *v.* Muhammad Afzal (Ind.); **2. Arbn.** p. 147
- Abdul Razack *v.* Khandi Row (Ind.); **2. Aliens.** p. 116
- Abdul Wahad, etc. *v.* Hasanalli Atibhai, etc. (Ind.); **9. Coys.** p. 365
- Abdur Rahim *v.* Mahomed Barkat Ali (Ind.); **21. Estpl.** p. 683
- Abdur Rahman, son of Ismail *v.* Abdur Rahman, son of Zahuri (Ind.); **20. Elect.** p. 654
- A'Beckett *v.* Trustees, Executors & Agency Co. (Aus.); **37. Powers.** p. 1063
- Abell (John) Engine & Machine Works Co. *v.* Scott (Can.); **21. Exon.** p. 694
- Aberdeen Assessor *v.* Aberdeen Cemetery Co., Ltd., Aberdeen Assessor *v.* Master of Trades Hospital (Scot.); **7. Burial.** p. 313
- Aberdeen Harbour Comrs. *v.* Stott (Scot.); **25. Fish.** p. 745
- Abergavenny Settled Estates, *Re*, Abergavenny (Marquis) *v.* Nevill (1926); **21. E. D.** No. 274a
- Abid-Ud-Din *v.* Bisharat Ali, etc., Raoof-Ud-Din, etc. (Ind.); **21. Estpl.** p. 682
- Abraham, *Re* (Can.); **5. Bkpcy.** p. 235
- Abraham *v.* Abraham & Harding (1919); **3. Barr.** No. 383b
- *v.* Durban Corp'n. (S. Af.); **17. Dep.** pp. 601, 602
- Abram S.S. Co. *v.* Westville Shipping Co. (1923); **3. Barr.** No. 421a
- Abramson *v.* United States Fire Insurance Co. (Can.); **18. Discy.** p. 616
- Abubaker Haji Abdulla, *Re* (Ind.); **5. Bkpcy.** p. 255
- Acadia Coal Co. *v.* McNeil (Can.); **36. Negl.** pp. 1027, 1028
- Acadia Coal Co.'s Assessment, *Re* (Can.); **38. Rates.** p. 1081
- Accountants & Auditors Society *v.* Goodway & London Assocn. of Accountants, Ltd. (1907); **28. Injon.** No. 906b
- Accumulator Industries, Ltd. *v.* Vandervell & Co. (1912); **28. Injon.** No. 830a
- Achilli *v.* Tovell (1927); **28. Injon.** No. 677a
- Achillopoulos, *Re*, Johnson *v.* Mavromichali (1928); **23. Exors.** No. 2441a
- Achutha Naidu *v.* Oakley, Bowden & Co. (Ind.); **1. Agcy.** p. 56
- Ackerman *v.* Morrison (Can.); **39. S. Goods.** p. 1105
- Ackles *v.* Beatty (Can.); **1. Agcy.** p. 66
- Acklom, *Re*, Oakeshott *v.* Hawkins (1929); **40. Stillmts.** No. 2739a
- Acme Grain Co., Ltd. *v.* Wenaus (Can.); **12. Contr.** p. 440
- Acme Steel Goods Co. of Canada, Ltd. *v.* Walsh Construction Co., Ltd. (Can.); **1. Agcy.** p. 45
- Acuna *v.* Bingley (1616); **1. Action.** No. 366a
- Adair, *Ex p.*, *Re* Gross (1871); **3. Bank.** No. 347
- *v.* Colville & Sons, Ltd. (Scot.); **34. Mast. & S.** p. 999
- *v.* Tilton (Can.); **35. Misrep.** p. 1010
- Adam, *Ex p.*, *Re* Cooke (1813); **4. Bkpcy.** No. 218b
- *v.* Jhavary (S. Af.); **17. Deeds.** p. 586
- *v.* Zomogen Food Products, Ltd. (Scot.); **34. Med.** p. 1002
- Adams *v.* Adams (Aus.); **27. H. & W.** p. 799

- Adams v. Camfoni (1929); **30. Intox.** No. 733a  
 — v. Fairweather (Can.); **19. Easmt.** p. 628  
 — v. Galloway (1925); **2. Animals**, No. 090a  
 — v. Huck (Can.); **20. Elect.** p. 653  
 — v. Huck (No. 2) (Can.); **20. Elect.** p. 651  
 — v. Liverpool Corpn. (1927); **34. Mast. & S.** No. 628a  
 — v. Loomis (Can.); **27. H. & W.** p. 789  
 — v. M'Goldrick (Ir.); **31. L. & T.** p. 902  
 — v. Morgan & Co. (1924); **1. Agcy.** No. 1872a  
 Adams & Batealds Case (1591); **34. Mast. & S.** No. 1300c  
 Adams & Westlake v. Wright (E. T.), Ltd. (Can.); **36. Pats.** p. 1044  
 Adams (Francis), Ltd. v. Fishwick (1928); **9. Coys.** No. 3335a  
 Adams River Lumber Co. v. Kamloops Sawmills, Ltd. (Can.); **16. Cr. Pract.** p. 565  
 Adams Shoe Co., *Re, Ex p.* Penetanguishene Town (Can.); **4. Bkpcy.** pp. 217, 226  
 Adamson v. Adamson (Can.); **38. Real Prop.** p. 1092  
 — v. Melbourne & Metropolitan Board of Works (1929); **42. Stat.** No. 342a  
 — v. Newcastle Steam-Ship Freight Insurance Assocn. (1879); **12. Contr.** No. 3178a  
 — v. Vachon (Can.); **22. Evid.** p. 708  
 Adanac Grain Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 223  
 Adanson Fibre Co., *Re*, Miles' Claim (1874); **6. B. of Exch.** No. 691a  
 Addie (R.) & Sons (Collieries) v. Dumbreck (1929); **36. Negl.** No. 457a  
 Addington Election, *Re* (Can.); **20. Elect.** p. 651  
 Adelaide Corpn. v. Australasian Performing Right Assocn., Ltd. (Aus.); **13. Coprt.** p. 481  
 Adelaide, Local Court, Action, *Re*, Burke v. Staehr (Aus.); **16. Cr. Pract.** p. 569; **33. Mags.** p. 956  
 Adelmann & Ham Boiler Corpn. v. Llanrwst Foundry Co. (1928); **36. Pats.** No. 308a  
 Adelom, *Re*, Oakshott v. Hawkins (1928); **40. Sttlmts.** No. 2738a  
 Adey v. Adey (Aus.); **27. H. & W.** p. 797  
 Administration Act, *Re, Re* Haddon (Can.); **28. Infls.** p. 850  
 Admiralty, The v. Mills (1908); **3. Bank.** No. 338a  
 Admiralty Comrs. v. National Provincial & Union Bank of England, Ltd. (1922); **3. Bank.** No. 333a  
 Adolph v. Hilton & Stephens (Can.); **21. Exon.** p. 697  
 Advance Rumely Thresher Co. Incorporated v. Manske (Can.); **17. Deeds**, p. 587  
 Advance Rumely Thresher Co. Incorporated v. Service (Can.); **1. Agcy.** p. 82  
 Advance Rumely Thresher Co. Incorporated v. Yorga (Can.); **12. Contr.** p. 443  
 Advocate, An, *Re* (Ind.); **3. Barr.** p. 193  
 Advocate, H.M. v. Aitken (Scot.); **14. Crim.** p. 517  
 — v. Anderson (Scot.); **15. Crim.** p. 540  
 — v. Bickerstaff (Scot.); **14. Crim.** pp. 507, 516  
 — v. Carson (Scot.); **14. Crim.** p. 522  
 — v. Joseph (Scot.); **14. Crim.** p. 516  
 — v. Keen (Scot.); **14. Crim.** p. 517  
 — v. Lee (Scot.); **14. Crim.** p. 519  
 — v. Lieser (Scot.); **14. Crim.** p. 517  
 — v. M'Fadyen (Scot.); **14. Crim.** p. 517  
 — v. Macphie (Scot.); **14. Crim.** p. 519  
 — v. Montgomery (Scot.); **15. Crim.** p. 540  
 — v. Ritchie (Scot.); **14. Crim.** p. 500  
 — v. Savage (Scot.); **15. Crim.** p. 537  
 — v. Sharp (Scot.); **14. Crim.** p. 500  
 Advocate-General of Bengal v. Webb-Johnson (Ind.); **8. Char.** p. 342  
 Affréteurs Réunis Société Anonyme v. Leopold Walford (London), Ltd. (1919); **1. Agcy.** No. 1786a  
 Agar v. Nokes (1905); **41. Sewers**, No. 304a  
 Agha Husain v. Qasim Ali (Ind.); **21. Exon.** p. 692  
 Agricultural Fire Insurance Co. of Watertown, New York Claim, Clarke v. Union Fire Insurance Co. (Can.); **29. Insce.** p. 860  
 Agricultural Wholesale Society, *Re* (1929); **10. Coys.** Nos. 6394a, 6396a, 6409a  
 Agricultural Wholesale Society v. Biddulph & District Agricultural Society (1925); **9. Coys.** Nos. 431a, 1226a  
 Agriculture & Fisheries Minister v. Dean (1924); **2. Agric.** No. 266g  
 Agriculture Minister, *Ex p.*, *Re* Noyce, Mildura Co-operative Fruit Co., Ltd. v. Noyce (Aus.); **21. Exon.** p. 697; **38. Pub. Auth.** p. 1069  
 Aheir v. Caplette (Can.); **2. Animals**, p. 134  
 Ahmed Hamid Moussa, *Ex p.*, *R. v.* Graham Campbell (1921); **2. Aliens**, Nos. 553d, 558h, 558i  
 Ahmed Hassan v. Hassan Mahomed Malek (Ind.); **12. Contr.** p. 452  
 Ah Yet v. Union Government (S. Af.); **2. Aliens**, p. 121  
 Aickin v. Baxter & Co. (Can.); **44. Work.** p. 1185  
 Aikens v. O'Brien (Can.); **32. Lien**, p. 930  
 Aikins, *Re* (Can.); **21. Estpl.** p. 679; **23. Exors.** p. 727  
 Aikman v. Burdick Brothers (Can.); **1. Agcy.** pp. 47, 54  
 Ainley v. Lowey (Can.); **2. Agric.** p. 86  
 Ainleyville Trustee Wesleyan Methodist Church v. Grever (Can.); **22. Evid.** p. 705  
 Ainsbury v. Ainsbury (S. Af.); **27. H. & W.** p. 795  
 Ainslie v. Ainslie (Aus.); **11. Confl.** p. 424  
 Aker, *Ex p.*, *Re* Dominion Ticket, etc. Corpn. (Can.); **5. Bkpcy.** p. 239  
 Akers v. London & North Eastern Ry. Co. (1926); **34. Mast. & S.** No. 4055a  
 Akkayya v. Vanama Lakshamma (Ind.); **24. Exors.** p. 735  
 Akt. fur Autogene Aluminium Schweissung v. London Aluminium Co., Ltd. (No. 2) (1921); **18. Discy.** No. 1283a  
 Akt. Ocean v. Harding (B.) & Sons, Ltd. (1928); **41. Ship.** Nos. 1780a, 4001a, 4126a  
 Alabama Coal, Iron, Land & Colonization Co., Ltd. v. Mylam (1926); **28. Inc. T.** No. 122a  
 Alaire & Frechette, *Re* (Can.); **35. Mtge.** p. 1017  
 Albemarle Supply Co., Ltd. v. Hind & Co. (1928); **32. Lien**, No. 322a  
 Alberni Pacific Lumber Co., *Re*, Thomas v. Lawson (Can.); **10. Coys.** p. 390  
 Albert v. Gramophone Co., Ltd. (Aus.); **13. Coprt.** p. 479  
 Albert v. Hoffnung & Co., Ltd. (Aus.); **13. Coprt.** p. 481  
 Albert v. Storey (Can.); **12. Contr.** p. 464; **18. Distr.** p. 621  
 Albert Mining Co. v. Spurr (Can.); **12. Contr.** p. 456  
 Alberta Act, Section 17, *Re* (Can.); **17. Dep.** p. 594  
 Alberta Election Act, *Re*, *Re* Bow Valley Election (Can.); **20. Elect.** p. 651  
 Alberta Lumber Co. v. Alberta Department of Agriculture, *Re* Froment (Can.); **4. Bkpcy.** p. 219  
 Alberta Potato & Vegetable Co. v. Canadian Pacific Ry. Co. (Can.); **8. Carr.** p. 316  
 Alberta Province, *Re, Re* Cardston U.F.A. Co-operative Assocn., Ltd. (Can.); **4. Bkpcy.** p. 227

- Alberta Province's Claim, *Re, Re Standard Pharmacy, Ltd. (Can.)*; **4. Bkpcy.** pp. 226, 227
- Alberta Railway Legislation, *Re (Can.)*; **17. Dep.** p. 597
- Alderman v. Bannister (1826); **2. Agric.** No. 964a
- Alderson v. R. (Can.); **2. Animals.** p. 136
- Aldred v. Aldred (S. Af.); **27. H. & W.** p. 795
- Aldridge v. Wright (1929); **19. Easmt.** No. 210a
- Alexander, *Ex p.*, *Re Anderson (Aus.)*; **4. Bkpcy.** p. 208
- v. Alexander (1929); **27. H. & W.** No. 5680a
- v. A.-G. (Can.); **11. Confl.** p. 413; **21. E. D.** p. 675
- v. City & South London Ry. Co. (1928); **8. Carr.** No. 598b
- v. Cowie (Can.); **18. Distr.** p. 622
- v. Webber (1922); **1. Agcy.** No. 1638a
- Alexander Brown Milling Co. v. Canadian Pacific Ry. Co. (Can.); **11. Comp. Pche.** pp. 404, 405
- Alexander's Will, *Re (Can.)*; **8. Char.** p. 339
- Alford's Case (1662); **37. Perps.** No. 53
- Alien Enemy Property Custodian v. Passavant (Can.); **2. Aliens.** p. 111
- Aliotis & Cliris, *Re (Can.)*; **5. Bkpcy.** pp. 234, 246
- Alison (J. Gordon) & Co., Ltd. v. Wallsend Slipway & Engineering Co., Ltd. (1927); **17. Deeds.** No. 1735a
- All Risk Insurance Agencies, Ltd., *Re (Can.)*; **10. Coys.** p. 394
- Allahabad Bank, Ltd., Lahore v. Rattan Chand Chawla (Ind.); **6. B. of Exch.** p. 275
- Allan, *Ex p.*, *Re Hercules Rubber Co. (Can.)*; **4. Bkpcy.** p. 227
- v. Bower (1790); **30. L. & T.** No. 503a
- v. Levesconte (Can.); **27. H. & W.** p. 789
- Allan Brown's, Ltd. & Dryall, *Re (Can.)*; **9. Coys.** p. 379
- Allan Grain Growers' Co-operative Assocn., *Re, Ex p. Robinson, Little & Co. (Can.)*; **4. Bkpcy.** p. 221
- Allbrighton, *Ex p.*, *R. v. Leicester JJ.* (1927); **30. Intox.** No. 381a
- Allchurch v. Healey (Aus.); **30. Intox.** p. 882
- Allen v. Embleton (1858); **40. Stillms.** No. 2207a
- v. Hanson, *Re Scottish Canadian Asbestos Co. (Can.)*; **10. Coys.** p. 397
- v. Harrison (Can.); **32. Lien.** p. 931
- v. Lord (Can.); **36. Negl.** p. 1028
- v. Norfolk Co-operative Dairy Co., Ltd. (N.Z.); **7. B. of Sale.** p. 291
- v. Royal Bank of Canada (1925); **12. Contr.** No. 3784c
- v. Smith (Can.); **2. Animals.** p. 133
- v. Whitehead (1929); **14. Crim.** No. 616a; **30. Intox.** No. 716a
- Allen & Bennett Brothers, Ltd.'s Patents, *Re (1929)*; **36. Pats.** No. 1687d
- Allen & Co., Ltd. v. Whiteman (1920); **1. Agcy.** No. 836b
- Allen-Stoltze Lumber Co., Ltd. v. Summit Lake Lumber Co., Ltd. (Can.); **7. B. of Sale.** p. 285
- Allenach v. Des Brisay (Can.); **21. Exon.** p. 695
- Allester (D.), Ltd., *Re (1922)*; **3. Bank.** No. 865a; **7. B. of Sale.** No. 138a
- Alliance & Dublin Consumers' Gas Co. v. Davies (Ir.); **28. Inc. T.** p. 825
- v. M'Williams (Ir.); **28. Inc. T.** p. 818
- Alliance Film Corpn., Ltd. v. Knoles (1927); **10. Coys.** No. 6436a
- Alliance Finance Co. & Standard Motors, Ltd. v. Simons (Can.) (1928); **32. Lien.** p. 929; **39. S. Goods.** p. 1107
- Alliance Finance Co. & Standard Motors, Ltd. v. Simons Garage & Goodchap (Can.), (1925); **32. Lien.** p. 929
- Alliance Trust Co. v. Johnson (Can.); **6. B. of Exch.** p. 274
- Allied Oil & Gas Co., *Re, Smith v. Trustee (Can.)*; **4. Bkpcy.** p. 218
- Allison, *Re (Can.)*; **18. Desct.** p. 609
- v. Allison (1927); **27. H. & W.** No. 5523a
- v. Paice, *Re Bogg (1917)*; **20. Egy.** No. 1283a
- v. Smith (Can.); **38. Real Prop.** p. 1091
- Allnutt v. Mills (1925); **21. Estpl.** No. 204a
- Alloway v. Campbell (Can.); **38. Rates.** p. 1086
- Alloway & Champion, Ltd. v. Stephenson (Can.); **35. Mge.** p. 1022
- Almon v. Fairbanks (Can.); **7. Bldg. Soc.** p. 307
- Alpha Mortgage & Investment Co., *Re (Can.)*; **9. Coys.** p. 374
- Alston v. Alston (1929); **27. H. & W.** No. 5680b
- Althouse v. Besana (Can.); **2. Animals.** p. 128
- Altobelli v. John Ellis & Sons, Ltd. (1926); **34. Mast. & S. Nos.** 2426a, 2574a
- Altrincham Urban District Council v. O'Brien (1927); **26. Hghys.** No. 2229a
- Alymer v. Mahaffey (Ir.); **21. Estpl.** p. 679
- Amalgamated Anthracite Collieries, Ltd.'s Application, *Re (1927)*; **34. Mines.** No. 180a
- Ambatielos, The, The Cephalonia (1923); **1. Adm.** No. 430a
- American Canning Co. v. Canadian Government Merchant Marine (1928); **30. Jdgmts.** No. 728a
- American Timber Holding Co. v. Fukukawa (Can.); **2. Agric.** p. 97
- Amherst Boot & Shoe Co. v. Carter (Can.); **7. B. of Exch.** p. 292
- Amin v. Ebrahim (S. Af.); **31. L. & T.** p. 910
- Amiss v. Hall (1857); **24. Exors.** No. 7250a
- Amjad Khan v. Ashraf Khan (Ind.); **25. Gifts.** p. 764
- Amusements Construction Co., Ltd., *Re (1927)*; **10. Coys.** No. 5908a
- Anandi v. Nand Lal (Ind.); **22. Evid.** p. 707
- Anan Tapur District Board President v. Ismail Shahib (Ind.); **34. Mast. & S.** p. 964
- Anchor Donaldson, Ltd. v. Crossland (1929); **34. Mast. & S. No.** 3702d
- Anderson, *Ex p.*, *R. v. Wood (1928)*; **13. Crnrs.** No. 308a
- , *Re (N.Z.)*; **4. Bkpcy.** p. 224
- , *Re, Ex p. Alexander (Aus.)*; **4. Bkpcy.** p. 208
- v. Boyer (Can.); **34. Mast. & S.** p. 963
- v. Cameron (Can.); **1. Agcy.** p. 40
- v. Gorrie (1894); **11. Const. L.** No. 324a
- v. Herbert Paint & Varnish Co., Ltd. (Can.); **9. Coys.** p. 368
- v. Hickman (H.) & Co., Ltd. (1928); **34. Mast. & S. No.** 2368a
- v. John Deere Plow Co., Ltd. (Can.); **27. H. & W.** p. 788
- v. Kennedy (Can.); **2. Animals.** p. 133
- v. Lake (Can.); **1. Agcy.** p. 67
- v. McIntyre (Can.); **12. Contr.** p. 444
- v. McLaren (Can.); **6. B. of Exch.** p. 268
- v. Royer (Can.); **3. Bailmt.** p. 167
- v. Serge (Can.); **4. Bkpcy.** pp. 222, 223
- v. Stasiuk (Can.); **2. Agric.** p. 94; **21. Exon.** p. 694
- v. Stasiuk (No. 3) (Can.); **21. Exon.** p. 694
- Anderson & Munro, Ltd., *Re (Scot.)*; **9. Coys.** p. 361
- Anderson Estate, *Re (Can.)*; **28. Inc. T.** p. 816
- Anderson Estate, *Re, Canada Permanent Trust Co. v. McAdam (Can.)*; **21. E. D.** p. 675
- Anderson, Ltd. v. Daniel (1924); **2. Agric.** No. 978a
- Anderson-Berry, *Re, Harris v. Griffith (1928)*; **20. Egy.** No. 2702a; **23. Exors.** No. 2744a

- Anderton (Township) v. Malden & Colchester South (Townships) (Can.); **41. Sewers**, p. 1125
- Anderton v. Seroke (Can.); **3. Basty**, pp. 200, 201
- Andover & Perth Electric Light Comrs., *Ex p.* (Can.); **20. Electric**, p. 655
- Andrew v. Griffin (Can.); **3. Bailmt.** p. 166
- Andrew Kelly, The v. Commodore, The (Can.); **1. Adm.** p. 28
- Andrew Motherwell Estate, *Re* (Can.); **4. Bkpcy.** p. 219; **5. Bkpcy.** p. 263
- Andrew Motherwell of Canada, Ltd., *Re* (Can.); **5. Bkpcy.** p. 260; **32. Lien**, p. 930
- Andrews, *Ex p.*, *Re* Emmett (1816); **4. Bkpcy.** No. 3558
- v. Andrews & Chalmers (1924); **3. Basty.** No. 22a
- v. Carlton (1928); **33. Mags.** No. 500a
- v. Sinclair (Can.); **1. Agcy.** p. 41
- Angelides v. Stedman (James), Hendersons Sweets, Ltd. (Aus.); **43. Trade Mks.** p. 1162
- Angerstein, *Re*, *Ex p.* Angerstein (1874); **5. Bkpcy.** No. 7438a
- Anglia v. R. (S. Af.); **2. Aliens**, p. 121
- Anglican Synod v. Russell & May (Can.); **35. Mtge.** p. 1023
- Anglo-American Brush Electric Light Corp. v. Crompton (1886); **36. Pats.** No. 2664a
- Anglo-Australian & Universal Family Life Assurance Co., *Re* (1875); **12. Contr.** No. 4985
- Anglo-Austrian Bank, *Re*, *Re* Dredner Bank, *Re* Direction der Disconto Gesellschaft (1920); **2. Aliens**, Nos. 219c, 223e
- , *Re*, *Re* National Bank für Deutschland (1921); **2. Aliens**, No. 236b
- Anglo-Baltic & Mediterranean Bank v. Barber & Co. (1924); **10. Coys.** No. 7034
- Anglo-Newfoundland Development Co. v. R. (1920); **2. Arbn.** Nos. 316a, 379a, 408a
- Anglo-Persian Oil Co., Ltd. (Madras) v. Panchapakesa Aiyar (Ind.); **2. Arbn.** p. 144
- Anglo-Spanish Tartar Refineries, Ltd., *Re* (1924); **10. Coys.** No. 7407a
- Aniff v. Jadu Nath Majumdar (Ind.); **19. Contr.** p. 448
- Anna Christiana, The (1778); **37. Prsns.** No. 1177a
- Annable v. Coventry (Can.); **38. Real Prop.** p. 1090
- Annapolis Municipality, N. S. v. Canadian National Rys. (Can.); **38. Rys.** p. 1078
- Annapurnabai v. Ruprao (1924); **16. Courts.** No. 403a
- Annesley, *Re*, Davidson v. Annesley (1926); **11. Confl.** Nos. 249a, 251a
- Annette, The, The Dora (1919); **1. Adm.** Nos. 141b, 170a
- Anon. (1364), Y. B. 38 Edw. 3, fo. 1a; **27. H. & W.** No. 1860a
- (1469), Y. B. 9 Edw. 4, fo. 31, pl. 4; **34. Mast. & S. No.** 1306b
- (1470), Y. B. 10 Edw. 4, fo. 7, pl. 19; **2. Animals**, No. 174a
- (1523), Y. B. 14 Hen. 8, fo. 16, pl. 3; **15. Crim.** No. 8459a; **16. Courts**, No. 302a
- (1531), Bro. N. C. 86; **17. Deeds**, No. 1869a
- (1538), Bro. N. C. 16; **12. Contr.** No. 1914a
- (1541), Cary, 9; **3. Bailmt.** No. 106
- (1553), Bro. N. C. 95, pl. 437; **30. L. & T. No.** 1225a
- (1561), Moore, K. B. 24, pl. 82; **31. L. & T.** No. 1783a
- (1563), Dal. 53; **19. Eccl.** No. 292
- (1574), 1 And. 47; **19. Eccl.** No. 3615
- (1606), Lane, 22; **25. Fraud. Conv.** No. 604a
- (1632), Cro. Car. 264; **19. Eccl.** No. 3391a
- (1654), Sty. 414; **32. Libel**, No. 2587a
- Anon. (1667), Freem. Ch. 128; **25. Gifts**, No. 73a
- (1675), 1 Vent. 274; **7. Burial**, No. 165
- (1677), 2 Vent. 35; **19. Eccl.** No. 2599a
- (circa 1678), 1 Eq. Cas. Abr. 20, pl. 5; **12. Contr.** No. 1217a
- (circa 1680), cited in 1 Eq. Cas. Abr. 20, pl. 5; **12. Contr.** No. 1217b
- (1695), 12 Mod. Rep. 73; **21. Exon.** No. 1579b
- (1701), 12 Mod. Rep. 495; **15. Crim.** No. 7033a
- (1702), 7 Mod. Rep. 8; **21. Exon.** No. 1584a
- (1702), 7 Mod. Rep. 118; **21. Exon.** No. 881a
- (1704), 6 Mod. Rep. 105; **21. Exon.** No. 574a
- (1705), 1 Salk. 404; **11. Confl.** No. 352
- (circa 1716), cited in 2 Atk. at p. 32; **6. B. of Exch.** No. 295a
- (1718), 2 Eq. Cas. Abr. 48; **30. L. & T. No.** 472a
- (1774), Lofft. 390; **21. Exon.** Nos. 1569, 1578b
- (1806), 12 Ves. 4; **23. Exors.** No. 209a
- (1820), 4 Bro. C. C., Belt's ed. 284, n.; **36. Partn.** No. 35a
- (1837), 1 Jur. 84; **21. Exon.** No. 1577a
- (1839), 3 Jur. 125; **22. Evid.** Nos. 6052a, 6108a
- (1849), 13 L. T. O. S. 325; **17. Deeds**, No. 1157a
- Ansell v. Inland Revenue Comrs., (1929); **39. Revenue**, No. 440a
- Anson v. Black & White Cabs, Ltd. (N.Z.); **36. Negl.** p. 1029
- v. Parker (N.Z.); **3. Basty.** p. 202; **33. Mags.** p. 956
- Anthony Salt Co., *Re* (Can.); **4. Bkpcy.** p. 228
- Antrobus, *Re*, Henderson v. Shaw & Morton (N.Z.); **37. Perps.** p. 1055
- Antwerpen, The (1919); **2. Aliens**, No. 156a
- Anweiler v. Grand Trunk Pacific Ry. Co. (Can.); **18. Discy.** p. 618
- Anziani, *Re*, Herbert v. Christopherson (1929); **8. Chos.** No. 27b
- Apex Lumber Co. v. Johnstone (Can.); **4. Bkpcy.** p. 230
- Apothecaries' Co. v. Fernyhough (1826); **22. Evid.** No. 2486a
- Appasamu Mudaliar v. R. (Ind.); **14. Crim.** p. 504
- Appelbe v. West Cork Board of Health (Ir.); **38. Pub. Auth.** p. 1070
- Appleton v. Doily (1609); **23. Exors.** No. 3687a
- Appleton & Ross, *Re* (Can.); **35. Mige.** p. 1019
- Apsley v. Barr (Ir.); **31. L. & T.** p. 917
- Aramayo Francke Mines, Ltd., *Re* (1921); **2. Aliens**, No. 237b
- v. Public Trustee (1922); **2. Aliens**, No. 237b
- Araya v. Coghill (Scot.); **4. Bkpcy.** p. 205
- Arbitration Act, *Re*, *Re* Guyot & Vigouret & Award made by Gosselin (Can.); **2. Arbn.** p. 152
- , *Re*, *Re* Roshko & Winnipeg School District No. 1 (Can.); **11. Comp. Pche.** p. 408
- , *Re*, *Re* Woods (Can.); **11. Comp. Pche.** p. 407
- Archangel Saw Mills Co. v. Baring Brothers & Co. (1922); **1. Agcy.** No. 2814a
- Archer v. Sadler (1859); **2. Agric.** No. 311a
- Archer-Shee v. Baker (1927); **28. Inc. T. No.** 442
- Archibald, *Re* (Can.); **38. Real Prop.** p. 1087
- v. McNerhanie (Can.); **36. Prinrs.** p. 1041
- v. Truro Corp. (Can.); **38. Pub. Auth.** p. 1071
- v. Washer & Co. & Kinnerney (N.Z.); **3. Auct.** p. 163; **3. Bailmt.** p. 171
- v. Youville (Can.); **38. Rates**, p. 1085
- Architects (Society of) v. Kendrick (1910); **28. Injon.** No. 906a
- Architects Registration Board of Victoria v. Hutchison (Aus.); **16. Cr. Pract.** p. 564
- Arden v. Goodacre (1852); **8. Chos.** No. 106a
- v. Rutter (1923); **2. Agric.** No. 264a
- v. Sharpe & Gilson (1797); **6. B. of Exch.** No. 713a

- Arden & Rutter, *Re* (1923); **2. Agric.** No. 264a  
 Ardesar Jivanji v. Aimagi Kuvarji (Ind.); **26. Hghys.** p. 780  
 Argo, *The* v. Emma Heyn, *The* (1856); **1. Adm.** No. 1304a  
 Argonaut v. Hani (1918); **1. Agcy.** No. 2609  
 Argos, *The* (Cargo Ex), Gaudet v. Brown, *The* Hewsons, Geipel v. Cornforth (1873); **1. Adm.** No. 40  
 Argyll Education Authority v. Campbelltown Corp., *Re* Campbell Endowment Trust (Scot.); **19. Educ.** p. 646  
 Aria v. Bridge House Hotel (Staines), Ltd. (1927); **29. Inns.** No. 151a  
 Ariadne S.S. Co., Ltd. v. McKelvie (J.) & Co. (1922); **1. Agcy.** No. 2549a  
 Ariff v. Jadu Nath Majumdar (Ind.); **20. Eqty.** p. 658; **30. L. & T.** p. 899; **38. Real Prop.** p. 1091  
 Arizona Copper Co., Petitioners (Scot.); **9. Coys.** p. 360  
 Arlidge, *Ex p.*, R. v. Chapman (1918); **1. Agcy.** No. 1083a  
 Armaghdale (Lord), *Re*, Craig v. Armaghdale (Lady) (1928); **28. Inc. T.** No. 896a  
 Armand v. Carr & Carr & Wilcox (Can.); **36. Negl.** p. 1026  
 Armour v. Dinner (Can.); **3. Barr.** p. 193  
 Armonson v. Thompson (Can.); **23. Exors.** p. 729  
 Armstrong, *Re*, *Ex p.* Lipton (1926); **4. Bkpcy.** Nos. 3105a, 3173a  
 — v. Bastedo (Can.); **42. Sp. Pfce.** p. 1144  
 — v. Canadian Northern Ry. (Can.); **34. Mast. & S.** p. 964  
 — v. Kelleher (N.Z.); **30. Intox.** p. 882  
 — v. Marshall (Can.); **8. Chos.** p. 349  
 — v. Thompson (Can.); **2. Animals.** p. 127  
 Armstrong Growers' Asscn. v. Harris (Can.); **21. Exon.** p. 697  
 Armstrong-Logan Agency, Ltd. v. Ehmann (Can.); **6. B. of Exch.** p. 278  
 Arnholz v. Hudson, *Re* Northcliffe (1929); **21. E. D.** No. 137a  
 Arnold & Weaver v. Amari (1928); **27. H. & W.** No. 1792a  
 Arnoldi v. Gouin (Can.); **32. Lien.** p. 931  
 Aron (J.) & Co. v. Miall (1928); **29. Insec.** Nos. 480a, 488a  
 Arranging Debtor, *An*, *Re* (Ir.); **4. Bkpcy.** p. 226  
 Artemisia (Owners) v. Douglas (Owners) (1925); **1. Adm.** No. 1198b  
 Arthur Fuel Co., *Re* (Can.); **5. Bkpcy.** p. 263  
 Article X of Articles of Agreement for a Treaty between Great Britain & Ireland, *Re* (1929); **16. Courts.** No. 690b; **17. Dep.** No. 714c  
 Artley v. Curry (Can.); **7. Bounds. & F.** p. 296  
 Arunachalam Chetty v. Income Tax Comrs. (Ind.); **28. Inc. T.** p. 825  
 Arunachala Naidu v. Balakrishna & Co. (Ind.); **16. Courts.** p. 553  
 Arundell, *Ex p.*, Innes v. Arundell (Aus.); **31. L. & T.** p. 912  
 Aschrott, *Re*, Clifton v. Strauss (1927); **21. E. D.** Nos. 96a, 136a  
 Ascot Timber Co. Pty., Ltd. v. Carter, *In the Estate of* Carter (Aus.); **21. Exon.** p. 693  
 Ashbridge v. Shaver & Harrison (Can.); **17. Dep.** p. 607  
 Ashby-de-la-Zouch Guardians v. Summers (1928); **37. Poor L.** No. 225a  
 Ashford v. McNaughton (Can.); **38. Real Prop.** p. 1091  
 Ashiq Husain v. Chatarbhuji & Ahmad-Ullah Khan (Ind.); **32. Limit. of A.** p. 935  
 Ashley v. Brenton (Can.); **18. Discy.** p. 612  
 Ashton v. Horsfield (1860); **24. Exors.** No. 6014a  
 Askarau Choutmal v. East Indian Ry. Co. (Ind.); **3. Barr.** p. 194  
 Askwith, *Re* (Can.); **22. Evid.** p. 709  
 Aspdon v. Seddon (1874); **30. Jdgmts.** No. 506a  
 Aspell v. Seymour (1929); **2. Arbn.** No. 336a  
 Assaf & Dabous, *Re* (Can.); **5. Bkpcy.** pp. 251, 252  
 Assessment Act, *Re* (Can.); **28. Inc. T.** p. 834  
 Associated Growers of British Columbia, Ltd. v. British Columbia Fruit Land, Ltd. (Can.); **9. Coys.** pp. 357, 374, 378; **17. Damys.** p. 581  
 Associated Growers of British Columbia, Ltd. & Kelowna Growers Exchange v. Edmunds & Byzant Orchards, Ltd. (Can.); **9. Coys.** p. 355  
 Associated Newspapers, Ltd. v. City of London Corp. (1913); **36. Parl.** 2b  
 Assurantie Compagnie Excelsior v. Smith (1923); **11. Const. L.** No. 412a  
 Aston v. Innis (Can.); **38. Rates.** p. 1085  
 Aston & White, *Re* (Can.); **38. Real Prop.** p. 1090  
 Aston Coal Co., Ltd. v. Stancil (1926); **34. Mast. & S.** No. 3275a  
 Astra-National Productions, Ltd. v. Neo-Art Productions, Ltd. (1928); **13. Coprt.** No. 657a; **18. Discy.** No. 436a  
 Atherton v. British Insulated & Helsby Cables, Ltd. (1925); **28. Inc. T.** No. 264  
 Athey, *Re*, Pickerings, Ltd.'s Application (1926); **34. Mast. & S.** No. 3359c  
 — v. Pickerings, Ltd. (1926); **34. Mast. & S.** No. 3359c  
 Atkinson, *Re*, *Ex p.* Rowe (Aus.); **34. Mast. & S.** p. 982  
 —, *Re*, Atkinson v. Atkinson (1916); **37. Perps.** No. 402a  
 —, *Re*, Webster v. Walter (1929); **23. Exors.** No. 5919a  
 Atkinson v. London & North Eastern Ry. Co. (1926); **24. Fact.** No. 76a  
 Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd., *Re*, Burnham (Viscount) v. Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd. (1928); **10. Coys.** No. 4904a; **32. Limit. of A.** No. 785a  
 Atlantic Coast S.S. Co. v. Montreal Transportation Co. & The Mary Ellen (Can.); **1. Adm.** p. 26  
 Atlantic Shipping & Trading Co. v. Dreyfus (L.) & Co. (1922); **2. Arbn.** Nos. 165a, 265a  
 Attfield, *Re* (1924); **16. Cr. Pract.** No. 46a  
 Attorney, *Re* Registration of a Power of, *Re* Land Titles Act (Can.); **1. Agcy.** p. 41  
 A.-G. v. Bedford (Duke) (1926); **21. E. D.** No. 799a  
 — v. Belilios (1927); **21. E. D.** No. 796a  
 — v. — (1928); **21. E. D.** Nos. 90a, 796a  
 — v. Birkenhead Corp. (1928); **33. L. G.** No. 69a; **43. Trade.** No. 1047  
 — v. Blackpool Corp. (1928); **13. Corpms.** No. 997a  
 — v. Boden (1912); **16. Courts.** No. 143a  
 — v. Brown (1844); **16. Courts.** No. 974a  
 — (Macken) v. Cavan (Ir.); **30. Intox.** p. 879  
 — v. Christie (Can.); **12. Contr.** p. 462  
 — v. Colman's Publicity Service (1928); **13. Coprt.** No. 332b  
 — v. County of London Electric Supply Co. (1926); **20. Electric.** No. 42a  
 — v. Cunningham (Ir.); **20. Elect.** p. 651  
 — v. Davidson (N.Z.); **16. Cntmpt.** p. 547  
 — v. Dunedin (N.Z.); **26. Hghys.** p. 773  
 — v. Forsikringsakt. National (of Copenhagen) (1924); **10. Coys.** No. 7490a  
 — v. Glen Line, Ltd. & Liverpool & London War Risks Insurance Association, Ltd. (1929); **29. Insec.** No. 2463a

- A.-G. v. Goddard (1929); **1. Agcy.** Nos. 1608b, 1626a; **16. Cr. Pract.** No. 298a
- v. Great Southern & Western Ry. Co. of Ireland (1925); **16. Cr. Pract.** No. 328a; **17. Dep.** No. 714
- v. Guy Motors, Ltd. (1928); **11. Const. L.** No. 339a
- v. Healy (Ir.); **16. Courts**, pp. 551, 571; **33. Mags.** p. 952; **39. Revenue**, p. 1100
- v. Hodgson (1922); **19. Easmt.** No. 721a
- v. Hornsey Borough Council (1927); **26. Hghys.** No. 2766a
- v. Howe (Earl) (1925); **21. E. D.** No. 129a
- v. Johnstone (1926); **28. Inc. T.** No. 642a
- v. Joyce (Ir.); **14. Crim.** pp. 506, 526
- v. Langford (Lord) (Ir.); **16. Cr. Pract.** p. 558
- v. Leeds Corpn. (1929); **13. Corpns.** No. 986a
- v. Linehan (Ir.); **14. Crim.** pp. 519, 520
- v. London & Home Counties Joint Electricity Authority (1929); **20. Electric**, No. 6b
- v. Luncheon & Sports Club, Ltd. (1929); **39. Revenue**, No. 93a
- v. M'Bride (Ir.); **17. Dep.** p. 608; **33. Mags.** p. 956
- v. M'Cabe (Ir.); **14. Crim.** p. 517
- v. M'Gann (Ir.); **14. Crim.** p. 527
- v. Metropolitan Water Board (1928); **28. Inc. T.** No. 394a
- v. Middleton (1751); **13. Corpns.** No. 770a
- v. Mucklow (1815); **20. Eqq.** No. 2637a
- v. Murray (Ir.); **14. Crim.** pp. 510, 517, 518
- v. — (No. 2) (Ir.); **14. Crim.** p. 533
- v. National Provincial & Union Bank of England, *Re Tetley* (1924); **8. Char.** No. 740b
- v. National Provincial Bank, Ltd. (1928); **28. Inc. T.** No. 9a
- v. Norwich Corpn. (1851); **33. L. G.** No. 557a
- v. O'Kelly (Ir.); **16. Cntmpt.** p. 546
- v. O'Leary (Ir.); **14. Crim.** p. 515
- v. Percy (Ir.); **39. Revenue**, p. 1097
- v. Pritchard (1928); **3. Bailmt.** No. 258a
- v. Public Trustee & Tuck (1929); **21. E. D.** No. 209d
- v. Quixley (1929); **19. Educ.** No. 293b; **21. E. D.** No. 33a
- v. Ringwood Rural District Council (1928); **22. Evid.** No. 5403b
- v. Rudge (1928); **21. E. D.** No. 462a
- v. Sharp (1929); **42. Str. Traf.** No. 86a
- (Butler) v. Sheehan (Ir.); **30. Intox.** p. 885
- v. Smith (Ir.); **14. Crim.** p. 528
- v. Smith & France (N.Z.); **12. Contr.** p. 464
- v. South Staffordshire Waterworks Co. (1909); **16. Cr. Pract.** No. 3678a
- (Feversham's (Earl) Trustees) v. Stokesley Rural District Council (1928); **26. Hghys.** No. 355b
- v. Sunderland Corpn. (1929); **11. Comp. Peche.** No. 133a; **13. Corpns.** No. 991a; **42. Str. Traf.** No. 5b
- v. Tasker (1928); **26. Hghys.** Nos. 263a, 274a
- v. Walsh (Ir.); **14. Crim.** pp. 506, 526
- v. Westminster City Council (1924); **16. Cr. Pract.** No. 3687a
- v. Wreford-Brown, *Re Bateman* (Baroness) (1925); **21. E. D.** Nos. 107a, 755a
- A.-G. & Dommes v. Basingstoke Corpn. (1876); **13. Corpns.** No. 1275a
- A.-G. & Lumley v. T. S. Gill & Son Pty., Ltd. (Aus.); **13. Corpns.** p. 486; **38. Pub. Hlth.** p. 1073
- A.-G. & Public Trustee v. Woolwich Metropolitan Borough Council (1929); **26. Hghys.** Nos. 137a, 951a
- A.-G. for Alberta v. A.-G. for Canada (1928); **17. Dep.** Nos. 98b, 178a, 381a
- v. Cook (1926); **11. Confl.** No. 899a & p. 411
- A.-G. for Australia v. Somerville (1924); **8. Char.** No. 199b
- A.-G. for British Columbia v. Brooks, Bidlake & Co. (Can.); **12. Contr.** pp. 450, 451, 462
- v. Canadian Pacific Ry. Co. (1927); **17. Dep.** No. 135b
- v. Pacific Foam, The (Can.); **41. Ship.** p. 1137
- v. Robertson (Can.); **2. Agric.** p. 99
- v. Standard Lumber Co., Ltd. (Can.); **28. Inc. T.** p. 819
- v. Wilson, *Re Succession Duty Act* (Can.); **21. E. D.** p. 675
- A.-G. for British Columbia & Watt v. Saanich Corpn. (Can.); **2. Agric.** p. 95
- A.-G. for Canada, *Ex p.*, *Re Canadian Carpet & Comforter Manufacturing Co.* (Can.); **4. Bkpcy.** p. 217; **5. Bkpcy.** p. 255
- A.-G. for Canada Intervening, A.-G. for New Brunswick v. Canadian Pacific Ry. Co. (1925); **17. Dep.** Nos. 121a, 130d
- A.-G. for Canada v. Alexander Brown Milling & Elevator Co. (Can.); **17. Dep.** p. 595
- v. A.-G. for British Columbia (1929); **17. Dep.** No. 119a
- v. Gordon (Can.); **18. Distr.** p. 620
- v. Pugh (Can.); **11. Const. L.** p. 438
- A.-G. for Manitoba v. A.-G. for Canada (1925); **17. Dep.** No. 135a
- v. A.-G. for Canada (1929); **17. Dep.** No. 117a
- v. Kelly (1922); **2. Arbn.** Nos. 238a, 1593a
- A.-G. for New Brunswick v. Canadian Pacific Ry. Co., A.-G. for Canada Intervening (1925); **17. Dep.** Nos. 121a, 130d
- A.-G. for New South Wales v. Dickson (1904); **11. Const. L.** No. 728a
- A.-G. for Nova Scotia v. Nova Scotia Legislative Council (1928); **17. Dep.** Nos. 52a, 52b
- A.-G. for Ontario v. A.-G. for Canada (1925); **17. Dep.** Nos. 181a, 200a
- v. Baby (Can.); **11. Confl.** p. 414; **17. Dep.** p. 596; **21. E. D.** p. 675
- v. Booth (Can.); **7. Bounds. & F.** p. 296
- v. Canadian Wholesale Grocers Asscn. (Can.); **17. Dep.** p. 593
- v. Daly (1924); **16. Courts**, p. 552; **Cr. Pract.** p. 564; **17. Dep.** Nos. 538a, 538b
- v. McLean Gold Mines, Ltd. (Can.); **16. Cr. Pract.** p. 558
- v. Reciprocal Insurers (1924); **17. Dep.** Nos. 108a, 128a, 145a, 162a, 170a
- v. Russell (Can.); **11. Const. L.** p. 431; **16. Cr. Pract.** p. 571
- A.-G. for Quebec v. A.-G. for Canada (1926); **17. Dep.** No. 378a
- v. Nipissing Central Ry. Co. & A.-G. for Canada (1926); **17. Dep.** No. 122a
- A.-G. for Straits Settlements v. Pang Ah Yow (1925); **16. Cr. Pract.** No. 356a
- A.-G. of Alberta v. Cowan (Can.); **21. E. D.** p. 674
- v. Smoky Lake Municipal District (Can.); **38. Rates**, p. 1085.
- A.-G. of British Columbia v. A.-G. of Canada (1924); **17. Dep.** No. 128b
- A.-G. of Canada v. Flint (Can.); **17. Dep.** p. 595
- v. Foster (Can.); **17. Dep.** p. 595
- A.-G. of Newfoundland v. Ryan (Nfld.); **11. Const. L.** p. 438
- A.-G. of Prince of Wales v. Lambe (1848); **18. Discy.** No. 1090a

- Auchterlonie v. Arms (Can.)**; **12. Contr.** p. 462  
**Auchteroni & Co. v. Midland Bank, Ltd. (1928)**; **3. Bank.** No. 600a  
**Auckland Harbour Board v. R. (1924)**; **17. Dep.** No. 238a  
**Audet v. Wetsch (Can.)**; **36. Negl.** p. 1026  
**Auditorium, Ltd. v. Lumsden (Can.)**; **9. Coys.** p. 363  
**Auerbach v. Nelson (1919)**; **12. Contr.** No. 1022a  
**Augusta, The (1909)**; **1. Adm.** No. 1078a  
**Augustino v. Canadian North-Western Ry. Co. (Can.)**; **2. Aliens.** p. 102  
**Aumann v. McKenzie (Can.)**; **32. Lien.** p. 930;  
**35. Mistake.** p. 1012  
**Aurora Trading Co., Ltd. & Jackson v. Nelson Freezing Co., Ltd. (N.Z.)**; **3. Bailmt.** p. 168  
**Ausman (Doe d.) v. Minthorne (Can.)**; **21. Exon.** p. 690  
**Austen, Re, Collins v. Margetts (1929)**; **40. Stillmts.** No. 2600a  
**Austin v. Boone (Can.)**; **17. Deeds.** p. 588  
**— v. Columbia Graphophone Co. (1923)**; **13. Coprt.** Nos. 118a, 488a  
**Austin (Doe d.) v. Cowderoy (1837)**; **31. L. & T.** No. 5788a  
**Austin v. O'Keefe (Aus.)**; **40. Set-off.** p. 1113  
**— v. Partington Steel & Iron Co., Ltd. (1928)**; **34. Mast. & S. Nos.** 3056b, 3057b  
**— v. Wright (Aus.)**; **19. Easmt.** p. 628  
**Australasian Investment Co., Ex p., Ex p. Union Bank of Australia, Re Queensland Mercantile & Agency Co. (1892)**; **11. Confl.** No. 417a  
**Australia (Owners) v. Nautilus (Owners), The Australia (1927)**; **1. Adm.** No. 1198a  
**Australia, Commonwealth of v. New South Wales State (1929)**; **17. Dep.** Nos. 56a, 390a  
**Australian Bank of Commerce v. Perel (1926)**; **1. Agcy.** No. 338a  
**Australian Metropolitan Life Assurance Co., Ltd. v. Lea (Aus.)**; **7. B. of Exch.** p. 285  
**Australian Performing Right Assn. & J. Leist Incorporated v. Turner & Son (Aus.)**; **13. Coprt.** p. 482  
**Automatic Bottle Makers, Re, Osborne v. Automatic Bottle Makers (1926)**; **10. Coys.** No. 4730a  
**Automatic Telephone Manufacturing Co., Ltd., Re, Re Mellinger's Patent (1928)**; **36. Pats.** No. 2127a  
**Avelsgaard's Case, Re Land Titles Act (Can.)**; **38. Real Prop.** p. 1039  
**Averbach v. Bloom & Dworkin (Can.)**; **17. Deeds.** pp. 587, 588  
**Avory & Son v. Parks (Can.)**; **2. Arbn.** p. 159  
**Axford v. Prior (1866)**; **29. Inns.** No. 116a  
**Ayer v. Orme (1563)**; **19. Eccl.** No. 292  
**Ayers, Re (Can.)**; **11. Confl.** p. 425  
**— v. South Australian Banking Co. (1871)**; **35. Mtge.** No. 78a  
**Aylesford's (Earl) Case (1727)**; **12. Contr.** No. 1234a  
**Aylet v. Dodd (1741)**; **2. Agric.** No. 107a  
**Aylward, Re, Ex p. McMillan (Can.)**; **4. Bkpcy.** p. 222; **35. Mtge.** p. 1007  
**— v. Aylward (1928)**; **27. H. & W.** No. 2733a  
**Aylwin v. Evans (1882)**; **29. Inpr.** No. 443a  
**Ayotte, Re (Can.)**; **22. Evid.** p. 710  
**Ayre, Re, Ex p. Potts (1840)**; **4. Bkpcy.** No. 1007a  
**Ayres v. South Australian Banking Co. (1871)**; **35. Mtge.** No. 78a  
**Ayrshire Education Authority v. Buteshire Education Authority (Scot.)**; **19. Educ.** p. 644
- Ayscough v. Sheed Thomson & Co. (1923)**; **2. Arbn.** No. 164a  
**— v. — (1924)**; **2. Arbn.** No. 164a  
**Azamgarh (Nakil of), Re (Ind.)**; **3. Barr.** p. 193  
**Azzole v. Yates Construction Co. (Can.)**; **36. Negl.** p. 1026
- B.**
- B., Re, Canada Trust Co. v. Gardiner (Can.)**; **43. Trusts.** p. 1169  
**B. v. L. (1919)**; **22. Evid.** No. 3437a  
**B. N. Sen & Brothers v. Chuni Lal Dutt & Co. (Ind.)**; **3. Barr.** p. 194  
**B. W. B. Navigation Co. v. Kiltuish, The (Can.)**; **1. Adm.** p. 30  
**Babbitt v. Clarke (Can.)**; **37. Real Prop.** p. 1088  
**Babcock v. Standish (Can.)**; **30. Jdgmts.** p. 886  
**Babineau v. Bourque (Can.)**; **12. Contr.** p. 463  
**Babitt v. Boileau (Can.)**; **38. Real Prop.** p. 1090  
**Back v. Kett (1822)**; **20. Egy.** No. 1637a  
**Backer, Klorasance v. Ahmed Esmail Jamal (Ind.)**; **7. B. of Sale.** p. 292  
**Backus v. Smith (Can.)**; **19. Easmt.** p. 629  
**Badat, Ex p. (S. Af.)**; **30. Regn.** p. 1094  
**Badische Co., Ltd., Re, Re Bayer Co., Ltd., Re Griesheim Elektron, Ltd., Re Kalle & Co., Ltd., Re Berlin Aniline Co., Ltd., Re Meister Lucius & Bruning, Ltd. (1921)**; **2. Aliens.** Nos. 195a, 405a  
**Badman v. Allechurch (Aus.)**; **30. Intro.** p. 885  
**Badman Brothers v. R. (1924)**; **16. Cr. Pract.** No. 374a  
**Badtolph v. Bamfield (1674)**; **11. Confl.** No. 788  
**Baelz v. Public Trustee (1926)**; **9. Coys.** No. 26a  
**Baglehole v. Walters (1811)**; **39. S. Goods.** No. 643b  
**Bagshaw v. Johnston (Can.)**; **32. Lien.** p. 932  
**Baijnath v. Atlas Assurance Co., Ltd. (S. Af.)**; **29. Insee.** p. 874  
**Bailey (or Balasanovich), Re, Foam Lake Town v. Insinger Rural Municipality (Can.)**; **37. Poor L.** p. 1060  
**Bailey v. Bailey (1926)**; **3. Bank.** No. 112a  
**Baillie v. Inglis & Co., Ltd. & Jamison (Ir.)**; **18. Discy.** p. 612  
**Baillie, Re, Whiting v. Cavendish (Aus.)**; **43. Trusts.** p. 1169  
**Bain, Re, Public Trustee v. Ross (1929)**; **8. Char.** No. 717a  
**Bain v. McIntyre (Can.)**; **23. Exors.** p. 716  
**— v. Ormeston (Scot.)**; **41. Ship.** p. 1127  
**Bainbridge v. Black (Can.)**; **21. Exon.** p. 692  
**Baines v. Harman (Can.)**; **32. Lien.** p. 931  
**Baines v. National Provincial Bank, Ltd. (1927)**; **3. Bank.** No. 270a  
**Baird v. Lees (Scot.)**; **10. Coys.** p. 385  
**— v. Murphy (Ir.)**; **21. Exon.** p. 698; **39. Recrs.** p. 1093  
**— (William) & Co. v. Campbell (Scot.)**; **21. Exon.** pp. 696, 698; **34. Mast. & S.** p. 990  
**Baird & Peters, Ex p., Re Wetmore (Can.)**; **5. Bkpcy.** p. 250  
**Baittle, Re, Freedman v. Hart (Can.)**; **5. Bkpcy.** p. 258  
**Baker, Re (Can.)**; **33. Mags.** p. 953  
**— v. Archer-Shee (1927)**; **28. Inc. T.** No. 442  
**— v. Baker (Can.)**; **21. Estpl.** p. 686  
**— v. Baker, Re Baker (1929)**; **44. Wills.** Nos. 1651a, 2008a  
**— v. Dewey (Can.)**; **32. Lien.** p. 931  
**— v. Gillum (Can.)**; **21. Exon.** p. 691  
**— v. Henderson (1830)**; **18. Discy.** No. 651a  
**— v. Lloyds Bank (1920)**; **3. Bank.** Nos. 921a, 921b

- Baker v. Mabie Todd & Co., Ltd.** (1927); **28. Inc. T.** No. 241a  
 — **v. McClelland (Can.)**; **21. Exon.** p. 690  
 — **v. New South Wales Ry. Comrs. (Aus.)**; **34. Mast. & S.** p. 968  
 — **v. Peck** (1860); **30. Jdgmts.** No. 752a  
 — **v. R. (Can.)**; **14. Crim.** p. 515  
 — **v. Richards (Can.)**; **5. Bkpcy.** p. 245  
**Baker, Carver & Morell Inc. v. Astoria (Can.)**; **1. Adm.** p. 19  
**Bakewell v. Bakewell (Aus.)**; **27. H. & W.** p. 793  
**Balasanovich (or Bailey), Re Foam Lake Town v. Insinger Rural Municipality (Can.)**; **37. Poor L.** p. 1060  
**Balcombe, The, The Carlston** (1926); **1. Adm.** No. 894b  
**Baldwin v. Baldwin** (1922); **17. Dep.** No. 586a  
 — **v. Brianger (Can.)**; **2. Animals**, p. 133  
 — **v. Ellis** (1929); **20. Elect.** Nos. 1145a, 1146a, 1146b  
 — **v. Mooney, Re Donald Estate (Can.)**; **18. Deact.** p. 610  
 — **v. Snook (Can.)**; **2. Animals**, p. 136  
**Baldwin & Willinsky, Re (Can.)**; **2. Arbn.** p. 151  
**Baldwin Raper v. Baldwin Raper & Metz, Baldwin Raper v. Baldwin Raper** (1926); **27. H. & W.** No. 4882a.  
**Ball v. Krokback & Co. (Can.)**; **43. Tresp.** p. 1165  
 — **v. Thorne (Can.)**; **4. Bkpcy.** p. 227  
**Ballam v. Hatfield (Can.)**; **12. Contr.** p. 442  
**Ballantine v. International Ry. Co. (Can.)**; **36. Negl.** p. 1031  
**Ballantyne v. Clouett (Aus.)**; **1. Agcy.** p. 59  
 — **v. McCulloch & Co. & Sims (Can.)**; **21. Exon.** p. 693  
**Ballard v. Horton's Estate, Ltd.** (1926); **26. Hghys.** No. 2591a  
**Ballem v. Fried (Can.)**; **6. B. of Exch.** p. 277  
**Ballingall & Son v. Dundee Ice & Cold Storage Co. (Scot.)**; **3. Bailmt.** p. 168  
**Balls v. McGregor (Can.)**; **1. Agcy.** p. 63  
**Banbury, Ex p., Re Wegg** (1843); **5. Bkpcy.** No. 7735  
**Bane v. Foxall & Canfor in the County Court of Norfolk** (1856); **13. Cty. Cts.** No. 272a  
**Banfield v. Chester** (1925); **11. Conf.** No. 1243b; **17. Dep.** No. 714a  
**Bangley's Trust, Re** (1852); **40. Stillmts.** No. 2209b  
**Bank of Australasia v. Bank of Australia** (1847); **3. Bank.** Nos. 156, 264  
 — **v. Curtis (N.Z.)**; **6. B. of Exch.** p. 275  
**Bank of Baroda, Ltd. v. H. B. Shivdasani (Ind.)**; **10. Coys.** p. 381  
**Bank of British North America v. Edgecombe (Can.)**; **5. Bkpcy.** p. 246  
**Bank of British North America v. St. John & Quebec Ry. Co. (Can.)**; **9. Coys.** p. 378  
**Bank of Commerce, Ex p., Re Wiarton Lumber Co. (Can.)**; **3. Bank.** p. 190  
**Bank of Hamilton v. Black (Can.)**; **25. Fraud. Conv.** p. 748  
**Bank of Liverpool & Martins, Ltd. v. Holland** (1926); **8. Chos.** Nos. 204a, 221a  
**Bank of Montreal, Re, Re Winding-up Act & Franco-Canadian Mortgage Co., Ltd. (Can.)**; **26. Guar.** p. 771  
**Bank of Montreal v. Haffner (Can.)**; **32. Lien**, p. 932  
 — **v. Holoboff (Can.)**; **3. Bank.** p. 188  
 — **v. Hopkins (Can.)**; **21. Exon.** p. 690; **35. Mtge.** p. 1024  
 — **v. Hueston (Can.)**; **3. Bank.** p. 189  
 — **v. Irvine & Feinstein (Can.)**; **6. B. of Exch.** p. 277  
 — **v. Isbell (Can.)**; **3. Bank.** p. 189  
 — **v. Lyon (Can.)**; **18. Distr.** p. 620  
**Bank of Montreal v. McNeill & McNeill (Can.)**; **6. B. of Exch.** p. 278  
 — **v. Normandin (Can.)**; **3. Bank.** p. 189  
 — **v. Reis (Can.)**; **25. Fraud. Conv.** p. 748  
 — **v. Tannas (Can.)**; **21. Exon.** p. 691  
 — **v. Taylor (Can.)**; **21. Exon.** p. 690  
 — **v. Weisdepp (Can.)**; **3. Bank.** p. 189; **12. Contr.** p. 467  
**Bank of Montreal Assessment, Re (Can.)**; **28. Inc. T.** p. 325  
**Bank of N. T. Butterfield & Son, Ltd. v. Golinsky** (1926); **9. Coys.** No. 2703a  
**Bank of New Zealand v. Baker (N.Z.)**; **3. Bank.** p. 191  
**Bank of Nova Scotia, Ex p., R. v. Woodstock Town Assessors (Can.)**; **16. Cr. Pract.** p. 568  
**Bank of Nova Scotia v. Cushing (Can.)**; **6. B. of Exch.** p. 284  
 — **v. Hatfield (Can.)**; **1. Agcy.** p. 79  
**Bank of Ottawa v. McLaughlin (Can.)**; **6. B. of Exch.** p. 284  
**Bank of Toronto v. Adames (Can.)**; **3. Bank.** p. 189  
 — **v. Bennett (Can.)**; **6. B. of Exch.** p. 278  
 — **v. Borys (Can.)**; **6. B. of Exch.** p. 275  
 — **v. Cochrane (Can.)**; **6. B. of Exch.** p. 275  
 — **v. Matheson (Can.)**; **1. Agcy.** p. 41  
 — **v. Matheson & M'Caskill (Can.)**; **35. Mtge.** p. 1023  
 — **v. Sweeney (Can.)**; **6. B. of Exch.** p. 275  
**Bank of Upper Canada v. Armstrong (Can.)**; **38. Real Prop.** p. 1092  
 — **v. Beatty (Can.)**; **30. Jdgmts.** p. 888  
 — **v. Murphy (Can.)**; **21. Exon.** p. 693  
**Bankers' & Traders' Insurance Co., Ltd. v. Jumna Khan (Aus.)**; **29. Insee.** p. 861  
**Banking Service Corp., Ltd. v. Toronto Finance Corp., Ltd. (Can.)**; **9. Coys.** p. 363  
**Bankruptcy Act, Re, Re Tenenbein (Can.)**; **4. Bkpcy.** p. 208  
**Bankruptcy Notice, A, Re** (1924); **4. Bkpcy.** No. 797a; **5. Bkpcy.** No. 8782a; **12. Contr.** Nos. 1178a, 1248a  
 — (No. 292 of 1928), **Re** (1928); **4. Bkpcy.** No. 274b  
**Bankruptcy Notice, A (No. 62 of 1924), Re, Ex p. Petitioning Creditors v. Debtor** (1924); **4. Bkpcy.** No. 797a; **12. Contr.** No. 1178a  
**Banks v. Beals (Can.)**; **7. Bounds & F.** p. 296  
**Banks Peninsula Electric Power Board v. Akaroa Borough Council (N.Z.)**; **12. Contr.** p. 440; **17. Deeds.** p. 586; **19. Easmt.** p. 625  
**Bannan v. Toronto Corp. (Can.)**; **30. Intor.** p. 885  
**Bannatyne v. Pritchard (Can.)**; **38. Rates**, p. 1085  
**Bannermann v. Bradley (Can.)**; **1. Agcy.** p. 66  
**Bannister, Re, Heys-Jones v. Bannister** (1921); **43. Trusts**, No. 544a  
**Banque Belge Pour L'Etranger v. Hambrouck** (1921); **3. Bank.** No. 639a  
**Banque Canadienne Nationale v. Sawchuk (Can.)**; **3. Bank.** p. 189; **10. Coys.** p. 393  
 — **v. Tencha (Can.)**; **25. Fraud. Conv.** p. 749; **27. H. & W.** p. 788  
**Banque d'Hochelaga v. Brownstone (Can.)**; **7. B. of Sale**, p. 285  
 — **v. Brunet (Can.)**; **3. Bank.** p. 175  
 — **v. Hayden & Gillespie Elevator Co. (Can.)**; **7. B. of Sale**, p. 290  
 — **v. Jeannotte (Can.)**; **5. Bkpcy.** p. 251  
 — **v. Marshall (Can.)**; **1. Agcy.** p. 81  
**Banque Internationale de Commerce de Petrograd v. Goukassow** (1925); **10. Coys.** No. 8524  
**Banque Provinciale du Canada v. Capital Trust Corp. (Can.)**; **24. Exors.** p. 781; **35. Mtge.** p. 1018



- Bansilal Abirchand v. Ghulan Mahbub Khan (Ind.); **12. Contr.** p. 463
- Banting v. Law Union & Crown Mortgage Co. (Can.); **29. Insce.** p. 869
- v. Western Assurance Co. (Can.); **29. Insce.** p. 869
- Banvard v. Moolla (Ind.); **25. Gaming,** p. 755
- Barager v. Wallace (Can.); **1. Agcy.** p. 59
- Barakat, *Re* (N.Z.); **4. Bkpcy.** p. 214
- Barber, *In the Goods of* (1886); **23. Exors.** No. 774a
- Barber v. Chudley (1922); **8. Char.** No. 23a
- Barber & Sons v. Rigley (1922); **5. Bkpcy.** No. 6150a
- Barber, etc. v. New Zealand Sounds Hydro Electric Concessions, Ltd. (N.Z.); **9. Coys.** p. 375
- Barclay, *Re*, Gardner v. Barclay, Steuart v. Barclay (1929); **8. Char.** Nos. 79a, 128a, 991a
- v. Collett (1838); **38. Real Prop.** No. 536a
- v. Pearce (1884); **10. Coys.** No. 7479a
- Barclay & Co., Ltd. v. Malcolm & Co. (1925); **12. Contr.** Nos. 4340a, 4377a
- Barish & Co. v. Gap No. 3 Rural Municipality & Biss (Can.); **38. Rates,** p. 1085
- Barker v. Hutson (1929); **31. L. & T.** Nos. 7037a, 7351a, 7352d, 7359a
- v. Martin (1647); **21. Estpl.** No. 555a
- v. Stead (1847); **30. Jdgmts.** No. 661a
- v. Westover (Can.); **27. H. & W.** p. 792
- Barker (Walker) & Co., Ltd. v. Flint (1929); **34. Mast. & S.** No. 3737b
- Barkley v. Winnychuk (Can.); **1. Agcy.** p. 76
- Barkwell, *In the Estate of*, Barkwell v. Barkwell (1928); **23. Exors.** No. 938a
- v. Barkwell (1928); **23. Exors.** Nos. 938a, 1022a
- Barley, *Re, Ex p.* Harrison (1923); **4. Bkpcy.** No. 3152a
- Barlow v. Barlow (Aus.); **27. H. & W.** p. 793
- v. Breeze (Can.); **18. Distr.** p. 621
- v. Canadian Pacific Ry. Co. (Can.); **30. Juries,** p. 895
- Barnard v. Barnard (Ind.); **11. Confl.** p. 421
- v. Evans (1925); **2. Animals,** No. 572a
- Barnes v. Allen (1927); **19. Easmt.** No. 1442a
- v. Black (Can.); **8. Chos.** p. 349
- v. Coburg (City) (Aus.); **38. Pub. Hlth.** p. 1073
- v. London & North Eastern Ry. Co. (1929); **34. Mast. & S.** No. 3283a
- v. Sharpe (Can.); **21. Exon.** p. 698
- v. Strathern (Scot.); **25. Gaming,** p. 760
- v. Sykes (Can.); **32. Libel,** pp. 924, 926
- Barnet Glass Rubber Co., Ltd. v. McDonald (N.Z.); **12. Contr.** p. 451
- Barnet Lighterage Co. v. Kiltuish, The (Can.); **1. Adm.** p. 30
- Barnett v. Beirnsstein (or Bernstein), *Re* Beirnsstein (or Bernstein) (1925); **23. Exors.** No. 5594a
- v. Caxton Floors, Ltd. (1928); **24. Fact.** Nos. 153a, 180a
- v. Milner (S. Af.); **27. H. & W.** p. 791
- v. Sanker (1925); **12. Contr.** No. 2089b; **17. Custom,** No. 734a
- Barney v. Lauzon (Can.); **6. B. of Exch.** pp. 276, 277
- Barnhart v. Robertson (Can.); **12. Contr.** p. 466
- Baron Vernon S.S. v. Metagama S.S. (Scot.); **41. Ship,** No. 6240a
- Barr v. H.M. Advocate (Scot.); **15. Crim.** p. 545
- Barr & Anderson v. Percy & Co. (Can.); **32. Lien,** p. 931
- Barr & Higgins, Ltd. v. Green (1928); **34. Mast. & S.** No. 3993a
- Barrat, *Re*, Body v. Barrat (1929); **40. Stillmts.** No. 3138a
- Barre v. R. (Can.); **14. Crim.** p. 526
- Barrett v. Baron (Can.); **4. Bkpcy.** p. 223; **25. Fraud. Conv.** pp. 748, 749
- v. Gallagher (Aus.); **43. Trav.** p. 1167
- v. Hardie & Thompson, Ltd. (N.Z.); **2. Animals,** p. 129
- v. Rapelje (Can.); **12. Contr.** p. 441
- Barron, *Re, Ex p.* Barron (Can.); **4. Bkpcy.** p. 228
- Barrow, Lane & Ballard, Ltd. v. Phillip Phillips & Co., Ltd. (1929); **39. S. Goods,** No. 403a
- Barrowcliff, *Re*, Elder's Trustee & Executor Co., Ltd. v. Kenny (Aus.); **37. Pers. Prop.** p. 1057
- Barry v. Desrosiers (Can.); **7. Bounds & F.** p. 296
- v. James (S. Af.); **11. Confl.** pp. 412, 413
- v. Porthleven (Owners) (1928); **34. Mast. & S.** No. 3226c
- v. Roberts (1835); **3. Bailmt.** No. 103a
- v. Rubenstein (Can.); **30. Juries,** p. 894
- v. Winnipeg Electric Co. (Can.); **36.** p. 1032
- Barstow v. Terry (1924); **13. Coprt.** No. 308a
- Bartel v. Beyea (Can.); **17. Deeds,** pp. 585, 586
- Barter, *Re* (Can.); **5. Bkpcy.** p. 251
- Barthe v. Sharples (Can.); **17. Dep.** p. 600
- Bartlet v. Delaney (Can.); **44. Waters,** p. 1174
- Bartlett v. Bartlett (1925); **11. Confl.** No. 440a
- v. Nova Scotia Steel Co. (Can.); **34. Mines,** p. 1006
- v. Wells (1862); **28. Infts.** No. 363a
- v. West Metropolitan Tramways Co. (1893); **10. Coys.** No. 8444a
- Bartley v. Gall (Can.); **3. Basty.** p. 201
- Bartman v. Ukrainian Publishing Co. of Canada (Can.); **32. Libel,** p. 927
- Barton v. Keeble (1928); **31. L. & T.** Nos. 2913a, 2981a, 7358b
- v. Muir (1874); **12. Contr.** No. 2435a
- Bartram v. Brown (1929); **31. L. & T.** Nos. 7037a, 7351a, 7352d, 7359a
- Bashford v. Cann (1863); **29. Insce.** No. 3052c
- Bateman (Baroness), *Re*, A.-G. v. Wreford-Brown (1925); **21. E. D.** Nos. 107a, 755a
- Bateman v. Snelgrove & Garden (Can.); **1. Agcy.** p. 61
- Bateman & Matthews v. Spencer (Can.); **12. Contr.** p. 445
- Bates, *Re*, Mountain v. Bates (1928); **40. Stillmts.** No. 2009a
- Bates & United Shoe Machinery Co., Ltd.'s Patent, *Re, Re* Bates, Richards & United Shoe Machinery Co., Ltd.'s Patent (1928); **36. Pats.** No. 2064b
- Bath's Estate, *Re* (Can.); **24. Exors.** p. 732
- Batho v. Fulton (1824); **23. Exors.** No. 3732a
- Bathurst v. Workmen's Compensation Board (Can.); **34. Mast. & S.** p. 996
- Bathurst Co., *Ex p.* (Can.); **19. Educ.** p. 645; **38. Rates,** p. 1081
- Batt (John) & Co. (London) v. Kanoolal & Co. (Ind.); **2. Arbn.** p. 158
- Batten, *In the Goods of* (1849); **24. Exors.** No. 993a
- Batten Pool v. Kennedy (1907); **21. Estpl.** No. 1318a
- Battersea Borough Council, *Ex p.*, R. v. Roberts (1914); **38. Rates,** No. 675f
- Battle Creek Toasted Corn Flake Co. v. Kellogg Toasted Corn Flake Co. (Can.); **1. Agcy.** p. 79; **16. Courts,** p. 553; **17. Deeds,** p. 584; **Dep.** p. 605; **21. Exon.** p. 689
- Baumfelder v. Secretary of State of Canada (Can.); **2. Aliens,** p. 104
- Baxter v. Kennedy (Can.); **32. Lien,** pp. 930, 931
- v. Rollo (Can.); **17. Deeds,** p. 587

- Bayer v. Kalzer (Can.); 17. *Dep.* p. 594  
 Bayer Co., Ltd., *Re* (1921); 2. *Aliens*, Nos. 195a, 405a  
 Bayly v. Sydney Municipal Council (Aus.); 33. *L. G.* p. 944; 38. *Pub. Auth.* p. 1071  
 Baynes & Horie v. Vancouver Board School Trustees (Can.); 7. *Bldg. Conts.* p. 300  
 Beach v. Hydro-Electric Power Commission of Ontario (Can.); 2. *Arbn.* pp. 153, 155; 16. *Cr. Pract.* p. 571; 20. *Electric*, p. 657  
 Beadman v. Beadman, *Re* Hack (1925); 13. *Cohlds.* No. 1533a  
 Beale v. Moulis (1847); 1. *Agcy.* No. 645a  
 Beaman v. Tully (Can.); 2. *Agric.* p. 94  
 Beamish v. Owens (1846); 22. *Evid.* No. 4161a  
 Bean (William) & Sons, Ltd. v. Flaxton Rural District Council (1929); 38. *Pub. Hlth.* Nos. 121a, 333a, 509b  
 Bear v. Soper (1759); 24. *Exors.* No. 3611b  
 Beard v. Davidson (1843); 5. *Bkpcy.* No. 7801b  
 Beard & Scott's Patent, *Re*, *Re* Scott & Beard's Patent (1927); 36. *Pats.* Nos. 1557b, 1687a, 1706a  
 Beardmore & Co., Ltd. v. Barry (Scot.); 9. *Coys.* p. 362  
 Beasley v. Suare (1849); 39. *Recrs.* No. 233b  
 Beattie v. Ebury (Lord) (1872); 21. *Estpl.* No. 1036a  
 — v. — (1874); 21. *Estpl.* No. 1036a  
 Beatty v. Beatty (1924); 11. *Confl.* No. 1113a  
 — v. London Spiritualistic Alliance, *Re* Hummeltenberg (1923); 8. *Char.* No. 4a  
 — v. Mathewson (Can.); 2. *Agric.* p. 97  
 Beatty & Finlayson, *Re* (Can.); 21. *Exon.* p. 603  
 Beaty v. Radenhurst (Can.); 35. *Mtge.* p. 1022  
 Beau Monde Ladies' Tailoring Co. v. Garrett (Can.); 21. *Exon.* p. 699  
 Beauchamp Brothers, *Re*, *Ex* p. Carr (1896); 4. *Bkpcy.* Nos. 4116a, 4152a  
 Beauchene *Ex* p. (Can.); 16. *Cr. Pract.* p. 568; 22. *Evid.* p. 712  
 Beauchene & Peltier v. Gunson (Can.); 22. *Evid.* p. 712.  
 Beaumont v. Grover (1701); 24. *Exors.* No. 6861a  
 — v. Jeffery (1925); 13. *Cohlds.* No. 394a  
 Beausejour School District, *Re*, *Re* Public Schools Act (Can.); 19. *Educ.* p. 645; 38. *Rates*, p. 1084  
 Beaver Lumber-Co., Ltd. v. Curry (Can.); 32. *Lien*, pp. 931, 932  
 — v. Korotky (Can.); 32. *Lien*, p. 931  
 Beaver Truck Co., *Re* (Can.); 10. *Coys.* p. 389  
 Beaver Wood Fibre Co., Ltd. & American Forest Products Corp., *Re* (Can.); 2. *Arbn.* p. 152  
 Beazley, *Ex* p., R. v. Magistrates' Court & Esmond (Aus.); 7. *Bounds. & F.* p. 297; 16. *Cr. Pract.* p. 567  
 Bebside Coal Co., Ltd., *Re* (1929); 34. *Mast. & S.* No. 3688a  
 Bechoff & Co. v. Bubna, *Re* Sutherland (Duchess) (1921); 2. *Aliens*, Nos. 156b, 166  
 Beck, *Re* (Can.); 4. *Bkpcy.* p. 222  
 Beck, *Re*, Crook v. Royal National Lifeboat Institution (1926); 8. *Char.* No. 1186a  
 Beck v. Motley (1835); 24. *Exors.* No. 7225a  
 Becker v. Bachman (Can.); 6. *B. of Exch.* p. 275  
 Becker, Shillan & Co. & Barry Brothers, *Re* (1921); 2. *Arbn.* Nos. 1954a, 2361a  
 Beckett v. Booth (1708); 26. *Guar.* No. 782a  
 — v. Case (1828); 6. *B. of Exch.* No. 696a  
 Beckman's Estate, *Re* (Can.), 24. *Exors.* p. 731  
 Beckstead, *Re* (Can.); 44. *Wills*, p. 1182  
 Bedali, *Ex* p., *Re* Olympia Cafe Co., Ltd. (Can.); 4. *Bkpcy.* pp. 218, 227  
 Bedard v. Dawson & A.-G. for Quebec (Can.); 17. *Dep.* p. 600  
 Beddow v. Beddow (1878); 28. *Injon.* No. 22a  
 Beddy v. Smith (Ir.); 23. *Exors.* p. 724  
 Bede Steam Shipping Co., Ltd. v. Bunge y Born Limitada S.A. (1927); 2. *Arbn.* No. 165d  
 Bedford v. Bedford & Powdrill (1926); 27. *H. & W.* No. 4677a  
 Bednall v. Bednall & Shivussawa (1927); 3. *Basty.* No. 130a; 27. *H. & W.* No. 5781a  
 Beechbay S.S. Co., Ltd. v. Wenchita, The (Can.); 41. *Ship.* p. 1135  
 Beel (Doe d.) v. Reaumore (Can.); 18. *Distr.* p. 623  
 Beevor v. Simpson (1829); 40. *S. Land*, No. 1416a  
 Begg v. Hagan (N.Z.); 1. *Agcy.* p. 74  
 Beinrstein, *Re*, Barnett v. Beinrstein (1925); 23. *Exors.* No. 5594a  
 Bejoy Lal Seal v. Benarasidas Khandelwal (Ind.); 30. *L. & T.* p. 900  
 Belanger, etc. v. Royal Bank of Canada (Can.); 17. *Dep.* p. 593  
 Belcham & Gawley's Contract, *Re* (1929); 40. *S. Land*. No. 838a  
 Belcher v. Dixon (N.Z.); 6. *B. of Exch.* p. 276  
 — v. Magnay (1843); 5. *Bkpcy.* No. 7000a  
 Belfast Riots Commission Case (1886); 3. *Barr.* No. 66a  
 Belford v. Foord (1595); 19. *Eccl.* No. 3614  
 Belgian Industrial Co., Ltd. v. Canada Cement Co., Ltd. (Can.); 12. *Contr.* p. 458  
 Bell, *Re* (Can.); 5. *Bkpcy.* pp. 240, 249, 250; 22. *Evid.* p. 705; 32. *Limit. of A.* p. 936.  
 Bell (or Young or Farrell) v. Arnott (Scot.); 2. *Arbn.* p. 145  
 — v. Bell (Can.); 27. *H. & W.* p. 790  
 — v. Bell (Ir.); 11. *Confl.* p. 422  
 — v. Bennett (1928); 34. *Mines*, Nos. 1117a, 1120a  
 — v. Carruthers (Can.); 38. *Real Prop.* p. 1091  
 — v. Chartered Trust & Executor Co. (Can.); 5. *Bkpcy.* p. 248  
 — v. Harker (1928); 25. *Fr. Soc.* No. 35a  
 — v. Long (Can.); 21. *Exon.* p. 699  
 — (Doe d.) v. Roe (Can.); 38. *Real Prop.* p. 1091  
 — v. Union Bank (N.Z.); 3. *Bank.* p. 178  
 Bell & Schiesel v. Jacobson & Weitzer (Can.); 18. *Distr.* p. 621  
 Bell & Sime v. Dundee Assessor (Scot.); 38. *Rates*, p. 1083  
 Bell (Robert) Engine & Thresher Co. v. Farquharson (Can.); 1. *Agcy.* p. 47  
 Bella Guidita, The (1785); 2. *Aliens*, No. 419a  
 Bellamy v. Green (Can.); 34. *Mast. & S.* p. 964  
 — v. Porter (Can.); 6. *B. of Exch.* p. 281  
 Bellemare v. Gamache (Can.); 7. *B. of Sale*, p. 293  
 Beller v. Klotz (Can.); 12. *Contr.* p. 445  
 Belliss, *Re*, Polson v. Parrott (1929); 33. *Lunat.* No. 204a  
 Belyea v. Belyea (Can.); 7. *Bounds. & F.* p. 296  
 Benabu & Co. v. Produce Brokers Co., Ltd. (1921); 2. *Arbn.* No. 1107a  
 Benaim & Co. v. Debono (1924); 11. *Confl.* No. 658a  
 Bence-Jones v. A.-G., *Re* Ludlow (1923); 8. *Char.* No. 755a  
 Bender v. National Acceptance Corp., Ltd. (Can.); 39. *S. Goods*, p. 1106  
 Bendigo, etc. Co. v. Cunningham (Aus.); 1. *Agcy.* p. 56  
 Bengal National Bank, Ltd. v. Janaki Lath Roy (Ind.); 31. *L. & T.* p. 906  
 Benjamin, *Re* (Can.); 29. *Insce.* p. 870  
 — v. Benjamin (Ind.); 27. *H. & W.* p. 794  
 Bennet v. Bennet (1879); 20. *Egy.* No. 1873a  
 Bennett, *Re*, Clarke v. White (1898); 35. *Mtge.* No. 583a

- Bennett, *Re*, Gibson v. A.-G. (1920); **8. Char.** No. 751a  
 Bennett v. Ewens (1928); **25. Gaming**, No. 401a  
 — v. Gilmour (Can.); **21. Estpl.** p. 684; **38. Real Prop.** p. 1090  
 — v. Greensill (N.Z.); **12. Contr.** p. 439  
 — v. Kidd (Ir.); **17. Deeds**, p. 584  
 — v. Peattie (Can.); **22. Evid.** p. 712  
 — v. Quebec Pharmaceutical Assocn. (Can.); **17. Dep.** p. 592  
 — v. Smith (1852); **3. Auct.** No. 155a  
 Bennett (Sidney), Ltd. v. Kreeger (1925); **17. Damgs.** No. 215a  
 Benson-Johnston, Ltd., *Re* (Can.); **4. Bkpcy.** p. 219  
 Bensted v. Midland Dairy Farmers, Ltd., Society (1928); **28. Inc. T.** No. 483b  
 Bent, *Re* (Can.); **24. Exors.** p. 734  
 — v. Banks (Can.); **30. Jdgmts.** p. 888  
 — v. McDougall (Can.); **18. Distr.** p. 620  
 Bentley v. Mackay (1862); **12. Contr.** No. 1432a  
 — v. O'Sullivan (1925); **2. Arbn.** No. 2580a  
 Benton v. Campbell, Parker & Co. (1925); **1. Agcy.** No. 2753a; **3. Auct.** No. 312a  
 Benyon v. Thorpe (1928); **28. Inc. T.** No. 496b  
 Berchtold, *Re*, Berchtold v. Capron (1923); **11. Confl.** Nos. 302, 439a  
 Berge v. Grew (Can.); **2. Arbn.** p. 143; **35. Misrep.** p. 1009  
 Bergen & Mott, *Re* (Can.); **31. L. & T.** p. 915  
 Bergeon v. De Kermor Electric Heating Co., Ltd. (Can.); **36. Pats.** pp. 1045, 1048  
 Bergerem v. Marsh (1921); **5. Bkpcy.** No. 6115b  
 Bergin's Will, *Re* (Aus.); **2. Agric.** p. 94  
 Bergman, *Re* (Can.); **22. Evid.** p. 706; **23. Exors.** p. 716  
 Bergman v. Canadian Farm Imp. Co. (Can.); **1. Agcy.** p. 49  
 Bergman & Waldron, *Re*, *Re* Infants Act (Can.); **11. Confl.** p. 425  
 Berkley v. Ryder (1754); **25. Gifts**, No. 169a  
 Berlin Aniline Co., Ltd., *Re* (1921); **2. Aliens**, Nos. 195a, 405a  
 Berliner Gramophone Co., Ltd. v. Phinney (N. H.) & Co., Ltd. (Can.); **12. Contr.** p. 470  
 Bermondsey Borough Council v. Mortimer (1926); **7. Burial**, Nos. 300a, 300b, 323a  
 Bernard v. Williams (1928); **12. Contr.** No. 2621a; **40. S. Land**, No. 2009a  
 Berners v. Fleming (1925); **12. Contr.** No. 2835a  
 Bernhard v. Gahan (1928); **28. Inc. T.** No. 226a  
 — v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 226a  
 Bernhardt v. Galsworthy (1929); **43. Trusts**, No. 3475a  
 Bernstein, *Re*, Barnett v. Bernstein (1925); **23. Exors.** No. 5594a  
 Bernstein v. Erickson (Can.); **12. Contr.** p. 454  
 Berquist, *Re* (Can.); **16. Cr. Pract.** p. 569  
 Berry v. Adanson (1827); **33. Mul. Pros.** No. 101a  
 — v. Berry (1929); **12. Contr.** No. 2936a; **20. Egy.** No. 497a  
 — v. Confederation Life Assocn. (Can.); **1. Agcy.** p. 67  
 — v. Morse (1847); **28. Infts.** No. 1074a  
 — v. Sempronius (1827); **33. Mul. Pros.** No. 101a  
 Berthiaume v. Dastous (1929); **11. Confl.** No. 835a  
 Besinnett v. White (Can.); **28. Injon.** p. 857  
 Best v. Barber (1782); **4. Bkpcy.** No. 5399b  
 — v. Barker (1782); **4. Bkpcy.** No. 5399b  
 — v. Wertheim, *Re* Biedermann (1922); **2. Aliens**, No. 215b  
 Betford v. Ford (1596); **19. Eccl.** Nos. 3614, 3615  
 Bethel v. Automatic Totalizers, Ltd. (Aus.); **10. Coys.** p. 392  
 Bethlem Hospital, *Re* (1875); **30. Jdgmts.** No. 680a  
 Bettcher v. Turner (Can.); **36. Nuis.** p. 1035  
 Bettinson's Representative v. Trustee, *Re* Wadsley (1925); **2. Agric.** No. 226a; **5. Bkpcy.** No. 7756a  
 Bevan v. Lancasters Steam Coal Collieries (1927); **34. Mast. & S.** No. 2831a  
 — v. Nixon's Navigation Co., Ltd. (1929); **34. Mast. & S.** No. 3243b  
 — v. Waterhouse (1876); **40. Stilmts.** No. 2197b  
 Bevan & Girling, *Re* (1863); **16. Cntmpt.** No. 931a  
 Bevilockway v. Schneider (Can.); **38. Real Prop.** p. 1089  
 Bevington v. Perks & Bell Assurance Society (1925); **13. City. Cts.** No. 695b  
 Bevoy Krishna Mukherjee v. Satish Chandra Giri (1927); **16. Courts**, No. 348a; **39. Recrs.** No. 106a  
 Bewley v. Hancock (1856); **36. Pats.** No. 1557a  
 Bhagwan Sahai v. Bhagwan Din (Ind.); **35. Alige.** p. 1017  
 Bhagwati Dayal v. Dhan Khunwar (Ind.); **17. Dep.** p. 607  
 Bhamboo Mal v. Ram Narain (Ind.); **1. Agcy.** p. 54; **16. Courts**, p. 550  
 Bharat National Bank v. Banarje Das (Ind.); **3. Bank.** p. 186  
 Bhawani Singh (Raja) v. Maulvi Misbah-ud-din (1929); **1. Agcy.** No. 1438a  
 Bhogi Ram v. Kishori Lal (Ind.); **6. B. of Exch.** p. 268  
 Bhowanidas Ramgobind v. Pannachand Luchmipat (Ind.); **2. Arbn.** p. 142  
 Bick v. Motly (1835); **24. Exors.** No. 7225a  
 Bickerdike v. Lucy (1920); **2. Agric.** No. 267b  
 Bickerton v. Dakin (Can.); **32. Lien**, p. 932  
 Biddulph & District Agricultural Society v. Agricultural Wholesale Society (1927); **9. Coys.** No. 431a; **28. Ind. Soc.** No. 45  
 Bidgood v. Davies (1826); **11. Const. L.** No. 264a  
 Biedermann, *Re*, Best v. Wertheim (1922); **2. Aliens**, No. 215b  
 — v. Allhausen & Co. (1921); **6. B. of Exch.** No. 2205a  
 Biel's Estate, *Re*, Gray v. Warner (1873); **25. Fraud. Conv.** No. 895a  
 Bielitski v. Obadisk (Can.); **17. Damgs.** p. 577  
 Bifrost Rural Municipality v. Stadnick (Can.); **38. Pub. Auth.** p. 1068  
 Bigaouette v. R. (Can.); **14. Crim.** p. 512  
 Bigelow v. Craigellachie-Glenlivet Distillery Co. (Can.); **12. Contr.** p. 441  
 Biggar, *Re*, Biggar v. Stinson (Can.); **38. Real Prop.** p. 1088  
 — v. Stinson, *Re* Biggar (Can.); **38. Real Prop.** p. 1088  
 Biggard (Doe d.) v. Millard (Can.); **25. Fraud. Conv.** p. 749  
 Biggs v. Burridge (1924); **14. Crim.** No. 72b  
 Bijou Motor Parlors v. Keel (Can.); **3. Bailmt.** p. 166  
 Bilbrough v. Demaer (Can.); **29. Insee.** p. 861  
 Bill's Estate, *Re* (Can.); **7. B. of Sale**, p. 291  
 Billingsly (Lady) v. Hersey (1612); **2. Agric.** No. 518a  
 Bills of Sale & Chattel Mortgage Act, *Re*, *Re* Crop Payments Act (Can.); **7. B. of Sale**, p. 285  
 Bilodeau v. McLean (Can.); **1. Agcy.** p. 66; **12. Contr.** p. 149  
 Bingle, *Re* (1854); **22. Evid.** No. 5951a  
 Binkley v. Stewart (Can.); **29. Insee.** p. 861  
 Binns, *Re*, Public Trustee v. Ingle (1929); **20. Egy.** No. 2006a  
 Bipin Behari Ghatak v. Ramnath Ghatak (Ind.); **19. Easmt.** p. 628; **44. Waters**, p. 1174

- Bir Bikram Kishore Manikya v. Ali Ahmad (Ind.); **17. Dep.** p. 602  
 Birch, *Re* (1808); **33. Lunat.** No. 827a  
 Birch's Estate, *Re* (1929); **23. Exors.** No. 1772b  
 Birdsall v. Merritt (Can.); **2. Animals**, p. 129  
 Birkdale District Electric Supply Co. v. Southport Corp'n. (1926); **20. Electric**, No. 52  
 Birkenhead School, Ltd. v. Dring (1926); **28. Inc. T.** No. 59a  
 Birkett v. Northern L. Assurance Co. (Can.); **29. Insee.** p. 869  
 — v. Purdom (1895); **4. Bkpcy.** No. 4334a  
 Birkett & Sons, Ltd., *Ex p.*, *Re* Sun Ray Manufacturing Co. (Can.); **9. Coys.** p. 363  
 Birmingham Corp'n. v. Inland Revenue Comrs. (1929); **28. Inc. T.** No. 393b  
 — v. Mother-General of Convent of Sisters of Charity of St. Paul (1927); **26. Hghys.** No. 2466a  
 Birt v. Magnay (1843); **33. Mal. Pros.** No. 14  
 Birtchnell v. Morris (Aus.); **1. Agcy.** p. 60  
 Birtwhistle v. Sumner Engineering Co. (1928); **36. Pats.** Nos. 502a, 2697a  
 Bisheshwar Pratap Narayan Sahi v. Chandreshwar Prasad Narayan Singh (Ind.); **39. Recrs.** p. 1093  
 Bishop v. Black (Can.); **27. H. & W.** p. 794  
 — v. Cox (Can.); **32. Limit. of A.** p. 936; **38. Real Prop.** p. 1089  
 — v. Kilcup (Can.); **16. Courts**, p. 550  
 — v. Western Trust Co. (Can.); **38. Real Prop.** p. 1000  
 Biskawbad v. Mukamnad (Ind.); **17. Deeds**, p. 585  
 Bjornstad & Ouse Shipping Co., *Re* (1924); **2. Arbn.** No. 629a  
 Black v. Drouillard (Can.); **21. Exon.** p. 691  
 — v. Hesperides (Owners) (1929); **34. Mast. & S.** No. 2561a  
 — v. Hunter (Can.); **28. Infts.** p. 847  
 — v. Ocean Accident & Guarantee Co. (Can.); **18. Discy.** pp. 613, 615  
 — v. Wiebe (Can.); **32. Lien**, p. 932  
 — v. Williams & Co. (Wishaw), Ltd. (Scot.); **2. Arbn.** p. 147  
 Black & White Cabs, Ltd. v. Anson (N.Z.); **16. Courts**, pp. 552, 553; **36. Negl.** p. 1029  
 — v. Nicholson (N.Z.); **21. Estpl.** pp. 687, 688  
 Black & White Hat Shop, Ltd., *Re*, Newton v. Finesilver (Can.); **5. Bkpcy.** p. 250  
 Black (A. & C.), Ltd. v. Claude Stacey, Ltd. (1929); **13. Coprt.** No. 196a  
 Blackburn, *Re*, *Ex p.* Moffatt (Can.); **7. B. of Sale**, p. 291  
 — v. McIntosh (Can.); **34. Mast. & S.** p. 978  
 Blacker v. Waters (Aus.); **36. Negl.** p. 1029  
 Blackett v. Clutterbuck Brothers (Adelaide), Ltd. (Aus.); **12. Contr.** p. 441  
 Blackie v. Miniota Municipality (Can.); **26. Hghys.** p. 775  
 Blackley v. Kenny (Can.); **25. Fraud. Conv.** p. 749  
 Blackman v. R. (Can.); **21. E. D.** p. 676  
 Blackmore, *Ex p.* (1801); **4. Bkpcy.** No. 79a  
 Blackmore v. Cumberford (1680); **17. Deeds.** No. 1944a  
 — v. Tidderley (1705); **32. Limit. of A.** No. 131a  
 Blackstock v. North Alberta Land Registration District Registrar (Can.); **38. Real Prop.** p. 1090  
 Blackwell v. Wood (1831); **40. Stillnts.** No. 897a  
 Blagburn Estate, *Re* (Can.); **23. Exors.** p. 720  
 Blagg (Doe d.) v. Steel (1832); **35. Mtge.** No. 3495a  
 Blaina Colliery Co., Ltd., *Re* (1926); **9. Coys.** No. 1448a  
 Blair, *Re*, *Ex p.* Maple Leaf Millg. Co. (Can.); **7. B. of Sale**, p. 290  
 Blair v. Martin (N.Z.); **42. Solrs.** p. 1142  
 Blakeley v. Charleswood Rural Municipality (Can.); **33. L. G.** p. 944; **38. Pub. Auth.** p. 1071  
 Blakie v. McLennan (Can.); **17. Deeds**, p. 587  
 Blanc, Le v. Emilien Burke, The (Can.); **1. Adm** p. 26  
 Blanchard v. Blanchard (1928); **27. H. & W.** No. 2813a  
 — v. Scanlan (Can.); **38. Rates**, p. 1086  
 Bland & Mohun, *Re* (Can.); **8. Chos.** p. 347  
 Blanshay, *Re* (Can.); **17. Dep.** p. 591  
 Blatcher v. Kemp (1782); **14. Crim.** No. 1678a  
 Blay v. Dadswell (1922); **2. Agric.** No. 30d  
 Bleecker v. Stutsman (Can.); **1. Agcy.** p. 76  
 Bleeker v. Bleeker (S. Af.); **27. H. & W.** p. 796  
 Bletchingdon Surveyor v. Dand (1849); **18. Distr.** No. 1532  
 Bloemfontein Municipality v. Jacksons, Ltd. (S. Af.); **18. Distr.** p. 620  
 Blois v. Halifax (City) (Can.); **35. Misrep.** p. 1010  
 Blome v. Regina (City) (Can.); **2. Arbn.** p. 155; **7. Bldg. Conts.** pp. 302, 306  
 Bloom, *Ex p.*, R. v. Brixton Prison (Governor) (1920); **2. Aliens**, No. 553a  
 Bloomaert v. Dunlop (Can.); **30. Juries**, p. 895; **L. & T.** p. 898  
 Bloomfield v. Lysnar (N.Z.); **34. Mines**, p. 1006  
 — v. Monarch Overall Manufacturing Co., Ltd. (No. 1) (Can.); **18. Discy.** p. 616  
 — v. Monarch Overall Manufacturing Co., Ltd. (No. 2) (Can.); **9. Coys.** p. 373  
 Bloor v. Sutton (Owners) (1926); **34. Mast. & S.** No. 2166a  
 Bloudoff v. Canadian National Rys. (Can.); **36. Negl.** p. 1032  
 Blouin, *Re*, Gagnon v. Grain & Provision Co. (Can.); **5. Bkpcy.** p. 246  
 Bloxham v. Medical Defence Union, Ltd. (1894); **9. Coys.** No. 4072a  
 Bloxholm v. Oldham (1750); **5. Bkpcy.** No. 6998a  
 Bludoff v. Osachoff (Can.); **25. Fraud. Conv.** p. 748; **26. Guar.** p. 768  
 Bluebird Corp'n., Ltd., *Re* (Can.); **9. Coys.** pp. 361, 363  
 Bluebird Fashion Shops, Ltd., *Re* (Can.); **5. Bkpcy.** p. 263  
 Blyth v. A.-G., *Re* Smith (1920); **8. Char.** Nos. 703a, 841a  
 — v. Hudson (Aus.); **42. Str. Traf.** p. 1152  
 Blyth Shipbuilding & Dry Docks Co., *Re*, Forster v. Blyth Shipbuilding & Dry Docks Co. (1926); **7. Bldg. Conts.** No. 319a  
 Boak v. Merchants' Marine Insurance Co. (Can.); **29. Insee.** p. 864  
 — v. Woods (Can.); **9. Coys.** p. 368  
 Boak (Geo. E.) & Son, *Re* (Can.); **5. Bkpcy.** p. 249  
 Board of Trade v. Cayzer, Irvine & Co. (1927); **2. Arbn.** No. 254a; **32. Limit. of A.** Nos. 16, 79, 139a  
 — v. Hain S.S. Co. (1929); **41. Ship.** No. 8760  
 Board of Trade of Halifax, St. John & Sackville, N. B., Canadian Lumbermen's Assocn. v. Canadian National Rys. (Can.); **38. Rys.** p. 1078  
 Bobby v. Chodiker (Can.); **28. Infts.** p. 847; **42. Str. Traf.** p. 1153  
 Bocalter v. Hazle (Can.); **12. Contr.** p. 442  
 Bocz v. Hugonnard (Can.); **38. Pub. Auth.** p. 1069  
 — v. Spiller (Can.); **21. Exon.** p. 690  
 Boddy v. Dawes (1836); **23. Exors.** No. 5240a  
 Boden v. Smith (1849); **36. Parl.** No. 2a  
 Body, *In the Goods of* (1865); **23. Exors.** No. 1031c  
 — v. Body (Can.); **27. H. & W.** p. 790  
 Boehner v. Backman (Can.); **7. Bldg. Conts.** p. 301

- Bogg, *Re*, Allison v. Paice (1917); **20. Eqq.** No. 1283a
- Bogota (Owners) v. Alconda (Owners) (Scot.); **1. Adm.** p. 29
- Bohan v. Walker (Can.); **12. Contr.** p. 444; **25. Gifts.** p. 765
- Bohane v. Driscoll (Ir.); **19. Educ.** p. 648
- Bohemian Union Bank v. Austrian Property Administrator (1927); **2. Aliens.** No. 49g
- Boily v. McNulty (Can.); **4. Bkpcy.** pp. 205, 231
- Boisseau v. R. (Can.); **14. Crim.** p. 517
- Boks & Co. & Peters, Rushton & Co., *Re* (1919); **2. Arbn.** No. 1985a
- Boland v. Canadian National Rys. (Can.) (1920); **17. Dep.** p. 606
- v. Canadian National Rys. (1927); **11. Comp. Pche.** Nos. 62a, 99a
- Boland v. McCarroll (Can.); **20. Eqq.** p. 666
- Boland & Canadian National Rys., *Re* (Can.); **38. Rys.** p. 1078
- Bolckow, Vaughan & Co. v. Young (1880); **18. Discy.** No. 1442a
- Bolton, *Re* (Ir.); **5. Bkpcy.** p. 239
- v. Bolton (N.Z.); **27. H. & W.** p. 809; **28. Infis.** p. 849
- v. MacDonald (Can.); **18. Distr.** p. 624
- Bolus & Co., Ltd. v. Inglis Brothers, Ltd. (N.Z.); **1. Agcy.** p. 72
- Bombay (Sheriff) v. Hakmoji Motaji & Co. (Ind.); **13. Corpns.** p. 485
- Bombay Income Tax Comr. v. Ahmedabad New Cotton Mills Co., Ltd. (1929); **28. Inc. T.** No. 204c
- Bombay Municipality v. Yenkantha Ellappa (Ind.); **33. Mkts.** p. 959
- Bonaparte, The (1851); **1. Adm.** No. 304
- (1853); **1. Adm.** No. 936
- Bond v. Dawson (Aus.); **1. Agcy.** p. 64
- v. Pettie (1921); **31. L. & T.** Nos. 7235a, 7318a
- v. Sturgeon Consolidated Collieries, Ltd. (Can.); **1. Agcy.** p. 59
- Bonham v. Bonham (Can.); **6. B. of Exch.** p. 272
- v. Maycock (1928); **1. Agcy.** No. 710a; **35. Mtgc.** No. 3436a
- Bonnerji v. Sitanath Das (Ind.); **1. Agcy.** p. 49
- Bonnybridge Roman Catholic School v. Stirlingshire Education Authority (Scot.); **19. Educ.** p. 644
- Bontex Importing Co. v. Panar (Can.); **1. Agcy.** p. 51
- Booker, *Ex p.*, Waterhouse v. Clout (1871); **23. Exors.** No. 5864a
- Boorne v. Wicker (1927); **24. Exors.** No. 6446a
- Boose v. Zeederberg & Duncan (S. Af.); **1. Agcy.** p. 60
- Boosey & Co., Ltd. v. Goodson Gramophone Record Co., Ltd. (1929); **13. Coprt.** No. 325a
- Booth v. Ford & Shaw (Can.); **34. Mast. & S.** p. 964
- v. Ibbotson (1827); **30. Jdgmts.** No. 529a
- v. Southend-on-Sea Estate Co.'s Contract (1927); **8. Char.** No. 1532a
- v. Wellby (1928); **3. Railmt.** No. 272a
- Booth & Southend-on-Sea Estates Co.'s Contract, *Re* (1927); **8. Char.** Nos. 1532a, 1870a
- Bordass, *In the Estate of*, (1929); **23. Exors.** No. 1772a
- Border v. Edley (S. Af.); **1. Agcy.** p. 62
- Borg, *Ex p.* (Aus.); **16. Cr. Pract.** p. 566
- Borne v. Wicker (1927); **24. Exors.** No. 6446a
- Borre, The (1921); **1. Adm.** Nos. 781a, 781b, 781c
- Borthwick (Thomas) & Sons, Ltd. v. Nolder (1926); **28. Inc. T.** No. 204a
- Bortoluzzi v. Kaplan (Can.); **4. Bkpcy.** p. 222
- Boslund v. Abbotsford Lumber Mining & Development Co. (Can.); **11. Confl.** p. 414; **30. Jdgmts.** p. 886
- Bossi, *Re* (Can.); **23. Exors.** p. 725
- Boston v. Boston (1928); **3. Busty.** No. 65d; **27. H. & W.** No. 6250d
- Boston Corp. v. Witham Outfall Board (1927); **41. Ship.** No. 8661
- Bosworthick v. Bosworthick (1927); **27. H. & W.** No. 5623a
- v. Clegg (1929); **40. Stillmts.** No. 146a
- Bothamley v. Heyward (1862); **21. Exon.** No. 883a
- Bott v. Chester, *Re* Park (1921); **3. Barr.** No. 220a
- Bottomley v. Heyward (1862); **21. Exon.** No. 883a
- v. Hurst & Blackett, Ltd. & Houston (1928); **32. Libel.** No. 1854a
- Bouboulis v. Mann, MacNeal & Co., Ltd. (Scot.); **10. Coys.** p. 386
- Boucaut Bay Co., Ltd. v. Commonwealth, The (Aus.); **12. Contr.** p. 456; **17. Damgs.** p. 581
- Boucher, *Ex p.* (Can.); **16. Cr. Pract.** p. 560
- Boucher v. Smith (Can.); **35. Mtgc.** p. 1022
- Boucicault v. Ponsford (1886); **29. Inlpr.** No. 497a
- Boulton v. Gillespie (Can.); **32. Lien.** p. 931
- Boulton Brothers & Co., *Re*, *Ex p.* Moncrieff v. Official Receiver (1927); **4. Bkpcy.** Nos. 1657a, 5093a
- Boulton's Settlement Trust, *Re*, Stewart v. Boulton (1928); **37. Powers.** Nos. 187a, 872a
- Boulton v. Paignton Urban District Council (1928); **26. Hghys.** Nos. 311a, 339a
- Boundary between Canada & Newfoundland in Labrador Peninsula, *Re* (1927); **17. Dep.** No. 378b
- Bounty v. Heaton (1865); **36. Prlms.** No. 718a
- Bourdon v. Selwyn (Can.); **12. Contr.** p. 454
- Bourgeois, *Re* (Can.); **4. Bkpcy.** p. 222
- v. Weddell & Co. (1924); **2. Arbn.** No. 1023a
- Bourgoin v. Compagnie du Chemin de Fer de Montréal, Ottawa, et Occidental (1880); **17. Dep.** No. 154a
- Bourke v. Butterfield & Lewis, Ltd. (Aus.); **24. Fact.** p. 738
- Bourne v. Mole (1843); **35. Mtgc.** No. 385b
- Bourne & Hollingsworth, Ltd. v. Ogden (1929); **28. Inc. T.** No. 224c
- Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons (1929); **24. Ferries.** Nos. 31a, 55a; **42. Stats.** No. 1248a
- Bourque v. Chappell (Can.); **38. Real Prop.** p. 1089
- Bouter (Doe d.) v. Frazer (Can.); **38. Real Prop.** p. 1091
- Bouwer v. Masondo (S. Af.); **33. Mags.** p. 955
- Bouyer's Patent, *Re* (1928); **36. Pats.** Nos. 2021a, 2064c
- Bow v. Pfeiffer & Gilbert (Can.); **12. Contr.** p. 452
- Bow Valley Election, *Re*, *Re* Alberta Election Act (Can.); **20. Elect.** p. 652
- Bow's Emporium, Ltd. v. Brett (A. R.) & Co., Ltd. (1927); **1. Agcy.** Nos. 1687a, 1706a; **36. Parl.** No. 135a
- Bowden v. R. (N.Z.); **7. B. of Sale.** p. 289
- Bowdler v. Smith (1706); **23. Exors.** No. 5697b
- Bowen, *Re*, *Ex p.* The Debtor (1924); **4. Bkpcy.** No. 1357a
- v. Bramidge (1833); **5. Bkpcy.** No. 8929a
- v. Davidson, *Re* Stokes (1928); **23. Exors.** No. 5273a
- v. Lightfoot (Can.); **2. Animals.** p. 129
- Bower, *Re* (Can.); **23. Exors.** p. 726
- *Re*, Bower v. Mercer (1929); **37. Powers.** Nos. 521a, 521b
- Bower Williams, *Re*, *Ex p.* Trustee (1927); **5. Bkpcy.** No. 7096b
- Bowerbank v. Walker (1787); **16. Cr. Pract.** No. 3185b

- Howers v. Cator (1798); **30. L. & T. No.** 463a  
 Bowes, *Ex p.* (Can.); **21. Exon.** p. 697  
 — v. Chaleyler (Aus.); **12. Contr.** p. 462  
 — v. Reid (Can.); **19. Easmt.** p. 628  
 Bowker v. Premier Drug Co. (1928); **25. Food,**  
 Nos. 78a, 98a, 150a  
 — v. Woodroffe (1928); **25. Food,** Nos. 78a, 98a, 150a  
 Bowker & Richards, *Re* (Can.); **41. Sewers,** p. 1125  
 Bowler v. Lovegrove (1921); **3. Auct. No.** 15a  
 Bowman v. A.-G. (Can.); **21. E. D.** p. 676  
 Bowser & Co., *Ex p.*, *Re* Randwick Municipal  
 Council (Aus.); **16. Cr. Pract.** p. 565  
 Boyce v. Cox (1922); **3. Bastly. No.** 262a  
 Boyd, *Re* (Can.); **8. Char.** p. 340  
 — v. Millett (Can.); **38. Real Prop.** p. 1091  
 — v. O'Connor (Aus.); **1. Agcy.** p. 43  
 Boyd & Anderson v. Superior Spruce Mills, Ltd.  
 (Can.); **32. Lien,** p. 930  
 Boyd & Elgie v. Kersey (Can.); **21. Exon.** p. 698  
 Boyd (T. L.) & Sons, Ltd. v. Stephen (1926); **28.**  
*Inc. T. No.* 179  
 Boyd's Estate, *Re*, Boyd v. Boyd (Ir.); **23. Exors.**  
 p. 725  
 Boyd's Settled Estates, *Re* (1880); **35. Mtge.**  
 No. 383a  
 Boyes v. Borley (Can.); **21. Estpl.** p. 685  
 Boylan & Toronto Corp., *Re* (Can.); **38. Pub.**  
*Hlth.* p. 1072  
 Boyle v. Blackstock (1863); **5. Bkpcy.** No. 8920b  
 — v. Boyle (Can.); **11. Confl.** p. 413  
 — v. Fitzsimons (Ir.); **31. L. & T.** pp. 917, 918, 919  
 Boynton v. Richardson (1924); **2. Arbn.** Nos. 53a,  
 71a  
 Boys v. Star Ptg. & Pub. Co. (Can.); **32.**  
 p. 926  
 Braby v. Donaldson (S. Af.); **13. Coprt.** p. 483  
 Bracey v. Pales (1927); **31. L. & T. No.** 7037b  
 — v. Royal National Lifeboat Institution, *Re*  
 Clarke (1923); **8. Char.** Nos. 47a, 735a  
 Bradburn v. Edinburgh Life Assurance Co. (Can.);  
**17. Dep.** p. 594  
 Bradbury v. London Guarantee & Accident Co.,  
 Ltd. (Aus.); **29. Insec.** p. 868  
 — v. Loney (Can.); **21. Exon.** p. 695  
 — v. Moffatt & Carman (Can.); **18. Discy.** p. 614  
 Bradford Advance Co., Ltd. v. Ayers (1924); **7.**  
*B. of Sale,* No. 283b  
 Bradford & Sons v. Price Brothers (1923); **1.**  
*Agcy.* No. 747a  
 Bradford City Premises, *Re*, Scaife v. Public  
 Trustee (1928); **36. Open Sp. No.** 24a  
 Bradford Overseers & Bradford Corp., *Ex p.*,  
*Re* Lister (1926); **5. Bkpcy.** No. 7764a  
 Bradford Overseers & Corp. v. Durrance, *Re*  
 Lister (1925); **5. Bkpcy.** No. 7764a  
 Bradley v. — (1744); **8. Chos.** No. 274a  
 Bradley v. Bailey & Jasperson (Can.); **17. Damgs.**  
 pp. 576, 578, 580  
 Bradley v. Bell Bus Co. (N.Z.); **8. Curr.** p. 318  
 — v. Imperial Bank of Canada (Can.); **27. H. & W.**  
 p. 790  
 Bradshaw v. Air Council (1926); **11. Comp. Pche.**  
 No. 773a  
 — v. Bird (1920); **2. Agric.** Nos. 265b, 266a  
 — v. British Columbia Rapid Transit Co., Ltd.  
 (Can.); **17. Dep.** p. 606; **30. Juries,** p. 894  
 — v. Customs & Excise Minister (Can.); **39.**  
*Revenue,* p. 1098  
 — v. Lemon (Ir.); **31. L. & T.** p. 906  
 — v. Patterson (Can.); **32. Limit. of A.** p. 936  
 Bradshaw & Simcoe County Registrar, *Re* (Can.);  
**35. Mtge.** p. 1017  
 Bragg v. Hatchard (1858); **16. Cntmpt.** No. 781a  
 Bragg & Hatchard, *Re* (1858); **16. Cntmpt.** No.  
 781a  
 Braithwaite v. Braithwaite (N.Z.); **5. Bkpcy.** p. 246  
 Brakspear (W. H.) & Sons, Ltd. v. Barton (1924);  
**13. Cty. Cts. No.** 71a  
 Branch v. Bennett's Dairies, Ltd. (1928); **31.**  
*L. & T. No.* 7346a  
 Brand v. Culme-Seymour, *Re* Watson (1928); **40.**  
*Stlmts.* Nos. 3032a, 3032b, 3032c  
 — v. National Life Assurance Co. of Canada  
 (Can.); **2. Arbn.** pp. 143, 144  
 Brandon v. Bank of Montreal (Can.); **3. Bank.**  
 p. 175  
 Brandt v. Heatig (1818); **24. Exors.** No. 7439a  
 Brandwood v. Banker (1928); **28. Inc. T. No.**  
 97b  
 — v. Inland Revenue Comrs. (1928); **28. Inc. T.**  
 No. 97b  
 Branigan v. Saba (N.Z.); **12. Contr.** p. 454; **21.**  
*Estpl.* pp. 679, 687  
 Brantford Cordage Co. v. Milne (Can.); **3. Bank.**  
 p. 175  
 Brantford Corp. v. Grand River Navigation Co.  
 (Can.); **35. Mtge.** p. 1022  
 Brassard v. Smith (Can.); **21. E. D.** p. 675  
 Brasseth v. Royal Bank of Canada (Can.); **1.**  
*Agcy.* p. 50; **3. Bank.** p. 189  
 Bratt v. Malden (Township) (Can.); **19. Easmt.**  
 p. 625  
 Braund v. Mutual Life & Citizens Assurance Co.,  
 Ltd. (N.Z.); **29. Insec.** p. 860  
 Bray v. Vulcan Iron Works (Can.); **25. Gifts,**  
 p. 765  
 Brazewell v. Emmott & Wallshaw, Ltd. (1929);  
**34. Mast. & S. No.** 2143a  
 Bready v. McLennan (No. 2) (Can.); **19. Easmt.**  
 p. 627  
 Breakey (Doe d.) v. Breakey (Can.); **22. Evid.**  
 p. 708  
 Brealey v. Andrew (1837); **12. Contr.** No. 1285a  
 Brebner v. Henderson (Scot.); **6. B. of Exch.**  
 p. 273  
 Brechin & Drapery Importing Co., Ltd., *Re* (N.Z.);  
**2. Arbn.** pp. 150, 153  
 Brecht v. Heffel (Can.); **6. B. of Exch.** p. 277  
 Bremner v. Bleakley (Can.); **1. Action,** p. 4  
 — v. Trusts & Guaranty Co. (Can.); **38. Real Prop.**  
 p. 1089  
 Brendziz v. Hajdij (Can.); **19. Eccl.** p. 634  
 Brennan v. Berwick Fruit Co. (Can.); **1. Agcy.**  
 p. 80  
 Brenner v. American Metal Co. (Can.); **5. Bkpcy.**  
 p. 258  
 Brenner\* (N.) & Co., Ltd., *Re* (Can.); **5. Bkpcy.**  
 p. 260  
 Brenner's Trustee v. Brenner (Can.); **5. Bkpcy.**  
 p. 258  
 Brennock v. Fraser (Can.); **17. Deeds,** p. 587  
 Brentall v. Hetrick (N.Z.); **43. Trade,** p. 1159  
 Bresand v. Northern S.S. Co., Ltd. (N. Z.); **34.**  
*Mast. & S.* p. 987  
 Bresnik, *Re* (Can.); **2. Aliens,** p. 118  
 Bressler, *Ex p.*, R. v. Home Secretary (1924); **2.**  
*Aliens.* No. 553c  
 Brethour v. Taylor & Bank of Montreal (Can.);  
**21. Exon.** p. 698  
 Brett, *Ex p.*, R. v. Lincolnshire JJ. (1926); **3.**  
*Basty.* No. 403b  
 Brett & Co., Ltd. v. Bow's Emporium, Ltd. (Scot.)  
**1. Agcy.** p. 61  
 Brewer v. Calori (Can.); **3. Bailmt.** p. 165  
 Brewster v. Hendershot (Can.); **19. Eccl.** p. 640  
 Brice & Sons v. Christiansi & Nielsen (1928); **3.**  
*Bailmt.* No. 218a  
 Bridgeford v. Dixon (S. Af.); **1. Agcy.** p. 38  
 Bridges v. Hales (1729); **20. Ety.** Nos. 1918a,  
 1920a  
 Bridgett & Hayes' Contract, *Re* (1928); **23.**  
*Exors.* No. 3819a

- Bridgman v. Vollans (Can.); **7. Bldg. Conts.** p. 306  
 Bridson v. Perth Diocesan Trustees (Aus.); **34. Mast. & S.** p. 975  
 Briggs v. Carson (Can.); **21. Exon.** p. 693  
 — v. Lee (Can.); **32. Lien.** p. 931  
 Bright v. McMurray (Can.); **35. Mlge.** p. 1022  
 Bright & Sarnia, Re, Re Wilson & Sarnia (Can.); **41. Sewers.** p. 1125  
 Brigstocke v. Brigstocke (1878); **40. Stilmts.** No. 1975a  
 Brij Raj v. Ram Sarup (Ind.); **28. Infts.** p. 851  
 Brilliant Silk Manufacturing Co. v. Kaufinan (Can.); **12. Contr.** p. 456  
 Brindle, Ex p., R. v. Henderson (Can.); **33. Mags.** p. 953  
 Brine v. Bazalgette (1849); **32. Libel.** No. 1910a  
 Brining, In the Goods of (1870); **24. Exors.** No. 1011a  
 Brinton, Re, Brinton v. Preen (1923); **23. Exors.** No. 4869a  
 Brisbane City Council v. Hodge (Aus.); **33. Mags.** p. 951; **38. Rates.** p. 1086  
 Briscoe v. Molsons Bank (Can.); **5. Bkpcy.** p. 251  
 — v. Standard Bank (Can.); **5. Bkpcy.** p. 250  
 Bristol Channel Steamers, Ltd. v. R. (1924); **11. Const. L.** No. 526a  
 Bristol Corp'n. v. Virgin (1928); **38. Pub. Hlth.** No. 502c  
 Britain S.S. Co., Ltd. v. Bunge & Co., Ltd. (1929); **41. Ship.** No. 1731a  
 Britannia Hygienic Laundry Co. v. Thornycroft & Co. (1925); **17. Damgs.** No. 235a  
 Britannic Assurance Co., Ltd. & Assurance Companies Act, 1909, Re (1927); **10. Coys.** No. 7542a  
 British America Nickel Corp'n. v. O'Brien (1927); **10. Coys.** No. 4858a  
 British American Continental Bank v. British Bank for Foreign Trade (1926); **12. Contr.** No. 4590a  
 British & North European Bank, Ltd. v. Zalstein (1927); **3. Bank.** No. 284a  
 British Broadcasting Co. v. Wireless League Gazette Publishing Co. (1926); **13. Coprt.** Nos. 85a, 332a  
 British Canadian Securities v. Mutual Life Assurance Co. (Can.); **35. Mlge.** p. 1018  
 British Columbia & Alberta (Provinces of) v. Canadian National & Canadian Pacific Ry. Cos. (Fares for Provincial Police Case) (Can.); **38. Rys.** p. 1078  
 British Columbia County Courts, Re (Can.); **17. Dep.** p. 598  
 British Columbia Hop Co., Ltd. v. Kent District (Can.); **26. Hghys.** p. 775  
 British Columbia Law Society v. Stewart (Can.); **36. Notar.** p. 1034  
 British Columbia Mills, Timber & Trading Co. v. Horrobin, Henshaw & Senkler (Can.); **32. Lien.** p. 932  
 British Columbia Permanent Loan Co. v. Canadian Northern Ry. Co. (No. 3) (Can.); **11. Comp. Pche.** p. 404  
 British Columbia Permanent Loan Co. v. Canadian Northern Ry. Co., Re Arbitration under the Railway Act (No. 1) (Can.); **11. Comp. Pche.** p. 407  
 British Columbia Tie & Timber Co., Re (Can.); **10. Coys.** p. 389  
 British Empire Steel Corp'n., Ltd., Re (Can.); **10. Coys.** p. 385  
 British Extracting Co., Ltd., British Soap Co., Ltd. & British Creameries, Ltd. v. London & North Eastern Ry. Co. (1925); **8. Carr.** No. 1349a  
 British Hay Traders' Assocn. v. London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Southern Ry. Co., & Great Western Ry. Co. (1925); **8. Carr.** No. 1326a  
 British Imperial Oil Co., Ltd. v. Federal Comr. of Taxation (Aus.); **16. Courts.** p. 549; **17. Dep.** pp. 600, 601; **28. Inc. T.** p. 839  
 British Incandescent Mantle Works, Ltd., Re (1923); **2. Aliens.** No. 223g  
 British Industries Federation v. London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Southern Ry. Co., & Great Western Ry. Co. (1925); **8. Carr.** No. 1326a  
 British Music Industries Federation v. Caledonian Ry. Co. (1922); **8. Carr.** No. 1323b  
 British North America Act, Sect. 24, Re (Can.); **42. Stats.** p. 1146  
 British Oxygen Co. v. Liquid Air, Ltd. (1925); **13. Coprt.** Nos. 43a, 398a  
 British Petroleum Co., Ltd. v. A.-G. for Ceylon (Ceylon); **11. Const. L.** p. 431  
 British Petroleums, Ltd., Re, Re Companies Act (Can.); **9. Coys.** p. 364  
 British Provident Life & Fire Assurance Co., Orpen's Case (1863); **9. Coys.** No. 2299b  
 British Provident Life & Fire Assurance Society, Re, Re Orpen (1863); **9. Coys.** No. 2299b  
 British Railway Traffic & Electric Co. v. Kahn (1921); **7. B. of Sale.** No. 15a  
 British Reinforced Concrete Engineering Co., Ltd., Re (1929); **16. Courts.** No. 22b  
 British Thomson-Houston Co. v. Crowther & Osborn, Ltd. (1924); **9. Coys.** No. 3327a  
 British Thomson-Houston Co., Ltd. v. Henry (P.) & Co., Ltd. (1928); **36. Pats.** No. 2781a  
 — v. Metropolitan-Vickers Electrical Co., Ltd. (1928); **36. Pats.** Nos. 472a, 659  
 — v. Sterling Accessories, Ltd. (1924); **9. Coys.** No. 3327a  
 British Thomson-Houston Co.'s Patent, Re (1929); **36. Pats.** No. 2036a  
 British Trade, The (1924); **1. Adm.** Nos. 368a, 417a  
 British Traders Insurance Co., Ltd. v. Queen Insurance Co. of America (Can.); **29. Insee.** p. 860  
 British United Shoe Machinery Co., Ltd. v. Gimson Shoe Machinery Co., Ltd. (1928); **36. Pats.** No. 680b  
 — v. Gimson Shoe Machinery Co. (No. 2) (1928); **36. Pats.** No. 3081a  
 — v. Lambert Howarth & Sons, Ltd. (1929); **18. Discy.** No. 77a  
 — v. Lambert Howarth & Sons, Ltd. & Gimson Shoe Machinery Co., Ltd. (1927); **36. Pats.** No. 680a  
 Britt v. Galmoye & Nevill (1928); **34. Mast. & S.** No. 1100a  
 Broadbent v. Broadbent (1927); **27. H. & W.** No. 6250a  
 Broadview (Town) v. Saskatchewan Co-operative Creameries, Ltd. (Can.); **20. Electric.** p. 656  
 Brock v. Benness (Can.); **30. L. & T.** p. 898  
 — v. Cameron (Can.); **23. Exors.** p. 723  
 — v. Saul (Can.); **3. Auct.** p. 162  
 Brock & Patterson, Ltd. v. Crockett (Can.); **6. B. of Exch.** p. 278  
 Brocklebank, Ltd. v. R. (1924); **11. Const. L.** No. 526b  
 — v. — (1925); **11. Const. L.** No. 526b  
 Broderick v. Broderick (1713); **25. Fraud. Contr.** No. 964a  
 Brodie & Bowmanville Corp'n., Re (Can.); **38. Pub. Hlth.** p. 1072

- Brody v. Dominion Life Assurance Co. (Can.); **29. Inacc.** p. 860
- Brohm v. British Columbia Mills, Timber & Trading Co. (Can.); **11. Const. L.** p. 437
- Broit v. Bennie S. Cohen & Son (N. S. W.), Ltd. (Aus.); **29. Inacc.** pp. 868, 874
- Brojo Lal Saha Banikya v. Budh Nath Pyarilal (Ind.); **36. Ptnrs.** p. 1041
- Broken Hill Associated Smelters Proprietary, Ltd. v. Vella (Aus.); **34. Mast. & S.** p. 994
- Broken Hill Proprietary Co. v. Broken Hill Municipal Council (1926); **21. Estpl.** No. 256a
- Broken Hill Proprietary Co., Ltd. v. Warnock (Aus.); **2. Aliens**, pp. 110, 116
- Bromley Guardians, *Re* (1845); **11. Comp. Pche.** No. 1242a
- Brondson v. Northgraves (Can.); **22. Evid.** p. 701
- Bronstone v. Burdett (Can.); **39. S. Goods**, p. 1103
- Brook & Allison v. Hendricks (Can.); **1. Agcy.** p. 61
- Brooke v. Bool (1928); **1. Agcy.** No. 2318b; **36. Negl.** No. 473a
- Brookes v. Liffen (1928); **31. L. & T.** No. 7352c
- Brooks, *Re* (Can.); **21. Exon.** p. 693
- v. Bloor (1920); **2. Agric.** No. 30c
- v. Blount (1923); **15. Crim.** No. 9899a
- v. R. (Can.); **14. Crim.** pp. 529, 531
- Broome v. Agar (1928); **32. Libel**, No. 1045a
- Brophy v. A.-G. of Manitoba (1895); **17. Dep.** No. 177b
- Brotherson v. Kennedy (Can.); **2. Animals**, p. 125
- Brotherton v. Jackson (J. & A.), Ltd. (1928); **34. Mast. & S.** No. 2430a
- Brovey v. Bull (Can.); **1. Agcy.** p. 57
- Brown, *Ex p.*, *Re* Fada (Australia), Ltd. (Aus.); **43. Trusts**, p. 1169
- Brown, *Ex p.*, *R. v. McTavish* (Can.); **14. Crim.** p. 505
- , *Ex p.*, *R. v. Midland, etc. Ry. Co.* (1867); **11. Comp. Pche.** No. 160
- , *Re* (Can.); **12. Contr.** p. 404; **16. Cr. Pract.** p. 563; **30. Intox.** p. 883; **35. Mtge.** p. 1024; **38. Real Prop.** p. 1089
- v. Albany Bell, Ltd. (Aus.); **34. Mast. & S.** p. 908
- v. Aveling & Porter, Ltd. (1929); **34. Mast. & S.** No. 3025a
- v. Brown (Can.); **21. Exon.** p. 695
- v. — (N.Z.); **21. E. D.** p. 671
- v. Brown (Scot.); **11. Confl.** p. 413
- v. Bulmer (Can.); **5. Bkpcy.** p. 248
- v. Dagenham Urban District Council (1929); **33. L. G. Nos.** 52a, 212a; **37. Poor L.** No. 24a
- v. Dixon (William), Ltd. (Scot.); **34. Mast. & S.** p. 996
- v. Dominion Express Co. (Can.); **8. Carr.** pp. 315, 316
- v. Doyle (1788); **1. Agcy.** No. 2740a
- v. Eastern & Midlands Ry. Co. (1889); **26. Hghys.** Nos. 1457a, 1546a
- v. Great Northern Ry. Co. (Can.); **38. Rys.** p. 1077
- v. Hand-in-Hand Fire Insurance Society (1895); **3. Bailmt.** No. 374a
- v. Harrower (Can.); **40. S. Land.** p. 1108
- v. Hose (Can.); **16. Courts**, p. 550
- v. Jones, *Re* Morgan (1927); **3. Barr.** No. 191a
- v. Kelly-Douglas & Co. (Can.); **4. Bkpcy.** pp. 208, 210
- v. Leech (1924); **3. Basty** No. 65a
- v. McInness (Can.); **11. Confl.** p. 422
- v. McKeel (Can.); **26. Hghys.** p. 775
- v. M'Millan (1840); **21. Exon.** No. 1564a
- v. MacPherson (1840); **21. Exon.** No. 1564a
- v. McRae (Can.); **36. Negl.** p. 1032
- Brown v. Moore (Can.); **16. Courts**, p. 553
- v. Patchell (Can.); **1. Agcy.** p. 63
- v. Roberts (Can.); **40. S. Land.** p. 1110
- v. Sage (Can.); **21. Exon.** p. 603
- v. St. Francois Xavier Rural Municipality & Breland (Can.); **18. Distr.** p. 624
- v. State Taxation Comr. (Aus.); **28. Inc. T.** p. 819
- v. Street (Can.); **43. Tresp.** p. 1165
- v. Thornes (N.Z.); **1. Agcy.** p. 52
- (Ellis) v. Van Rooyen (S. Af.); **1. Agcy.** p. 76
- v. Weil (Can.); **25. Fraud. Conv.** p. 749, 750
- v. William Dixon, Ltd. (Scot.); **34. Mast. & S.** p. 996
- & Argue, *Re* (Can.); **3. Basty** pp. 196, 197
- Brown & Sons v. Lincolnshire Beet Sugar Co., Ltd. (1929); **39. S. Goods**, No. 433a
- Brothers & Burnstad, Ltd., *Ex p.*, *Re* Progressive Farmers Co. (Can.); **5. Bkpcy.** p. 250
- , Janson & Co. v. Hutchinson & Co. (1895); **36. Ptnrs.** No. 1459a
- , Jr. v. Indochine S.S. (Can.); **1. Adm.** p. 16
- (Alexander) Milling Co. v. Canadian Pacific Ry. Co. (Can.); **11. Comp. Pche.** pp. 404, 405
- Taxi Co. & Detroit Radiator Co., *Re* (Can.); **4. Bkpcy.** pp. 217, 218
- Transfer Co. v. Townshend (Can.); **13. Corpns.** p. 486
- Brown's Case (1500); **7. Bonds**, No. 536
- Case (1647); **14. Crim.** No. 1663a
- (Allan), Ltd. & Dryall, *Re* (Can.); **9. Coys.** p. 379
- Browne v. Collins (1872); **24. Exors.** No. 7190b
- v. Garborough (1588); **12. Contr.** No. 1828a
- v. London Necropolis & National Mausoleum Co. (1857); **10. Coys.** No. 8621a
- v. Pearce (Ind.); **21. Exon.** p. 697
- v. Sidney Mills, Ltd. (Can.); **5. Bkpcy.** p. 255
- Brownie Wireless Co. of Great Britain, *Re* (1929); **36. Pat.** Nos. 1651a, 1655a
- Browning v. Aylwin (1827); **18. Discy.** No. 640a
- Brownlee (J.) & Co. v. Canadian National Rys. (Can.); **38. Rys.** p. 1076
- Brownscombe v. Johnson (1898); **13. Corpns.** No. 326a
- Bruce v. Bruce (Can.); **27. H. & W.** p. 797
- v. Tolton (Can.); **12. Contr.** p. 442
- Bruff v. Conybeare (1862); **12. Contr.** No. 3379a
- v. — (1868); **12. Contr.** No. 3379a
- Brule, *Re* (Can.); **44. Wills**, p. 1180
- Brunet v. R. (Can.); **14. Crim.** p. 505
- Brunning v. Kollross (1923); **2. Aliens**, No. 558c
- Brunstetter v. Zushing (Can.); **1. Agcy.** p. 81
- Brutton, *Ex p.*, *Re* Fisher (1845); **4. Bkpcy.** No. 4704a
- Bryant v. City Dairy Co. (Can.); **1. Action**, p. 9
- Bryant, Isard & Co., *Re* (Can.); **4. Bkpcy.** pp. 217, 218; **5. Bkpcy.** pp. 235, 259
- , *Re*, *Ex p.* Langley (Can.); **16. Cntmpt.** p. 547
- Bryden v. Bryden (Grierson) (Scot.); **43. Trusts**, p. 1170
- Brylinski v. Inkol (Can.); **2. Arbn.** p. 142; **8. Clubs**, p. 351
- Bryson v. Bryson (Can.); **3. Bank.** p. 175
- v. Rosser Municipality (Can.); **32. Lien**, p. 932
- Buccleuch (Duke) v. Metropolitan Board of Works (1872); **11. Comp. Pche.** No. 275a
- Buchanan v. Crawford (or Mollison) (Scot.); **20. Eqp.** p. 664
- v. Glasgow Corp'n. (Scot.); **8. Carr.** p. 319
- v. Kerby (Can.); **35. Mtge.** p. 1023
- v. Neale (N.Z.); **1. Agcy.** pp. 67, 68



- Buchanan v. Samson** (N.Z.); **1. Agcy.** pp. 39, 54, 59  
 — (R. M.) Co., Ltd. v. Eby (Can.); **1. Agcy.** p. 60  
**Buchanan, Re** (Can.); **5. Bkpcy.** p. 251  
**Buck v. Denning** (1926); **34. Mast. & S.** No. 3227a  
**Buckhaven & Methil Corpn. v. Wemyss Coal Co.** (Scot.); **38. Rates.** p. 1082  
**Buckie Magistrates v. Seafeld's** (Dowager Countess) Trustees (Scot.); **26. Hghys.** p. 781; **38. Pub. Hlth.** p. 1074  
**Buckingham, Re, Re Howell, Liggins v. Buckingham** (1915); **30. Jdgmts.** No. 789a  
**Buckland v. French** (1929); **34. Mast. & S.** No. 2388a  
**Buckland Rural Municipality v. Donaldson & Horton** (Can.); **38. Rates.** p. 1080  
**Buckle v. Holmes** (1926); **2. Animals.** No. 103a  
**Buckley, Re, Public Trustee v. Wellington Society for Prevention of Cruelty to Animals Inc.** (N. Z.); **8. Char.** p. 339  
**Buckley v. Queen Insurance Co.** (Can.); **2. Arbn.** p. 144  
**Buckmaster v. Knickle** (Can.); **20. Elect.** p. 654  
**Buczko v. Chobotar** (Can.); **15. Crim.** p. 533  
**Bueb, Re, Ex p. Trustee** (1927); **4. Bkpcy.** No. 3365a  
**Bueckert v. Friesen** (Can.); **6. B. of Exch.** p. 282  
**Buerger v. New York Life Assurance Co.** (1927); **17. Damgs.** No. 612a  
**Buerger & Co. v. Barnett** (1919); **2. Arbn.** Nos. 1603a, 1822a  
**Buff Pressed Brick Co., Re** (Can.); **9. Coys.** p. 361  
**Buffalo & Lake Huron Ry. Co. v. Gordon** (Can.); **32. Lien.** p. 929  
**Buffet v. Waller & Lazarnick** (Can.); **1. Agcy.** pp. 61, 62  
**Buick Sales, Ltd., Re** (N.Z.); **10. Coys.** pp. 380, 387  
**Bulgaria (Ferdinand, Ex-Tsar), Re** (1921); **2. Aliens.** No. 208a  
**Bulger v. Home Insurance Co.** (Can.); **2. Arbn.** pp. 145, 146; **30. Jdgmts.** p. 886  
**Bull (A. H.) & Co. v. West African Shipping, etc. Co.** (1927); **34. Mast. & S.** No. 55a  
**Bullar, Ex p.** (1857); **8. Char.** No. 2111a  
**Bullen, Re** (Can.); **23. Exors.** p. 718  
**Bulley v. Bulley** (1874); **20. Eqq.** No. 233a  
**Bullock v. Hansen** (Can.); **42. Str. Traf.** p. 1152  
**Bulmer v. R.** (Can.); **11. Const. L.** p. 430  
**Bulters v. Roope** (N.Z.); **1. Agcy.** pp. 38, 52  
**Bulwer v. Hoare** (1825); **20. Eqq.** No. 1580a  
**Bunarsee Dass v. Gholam Hossein** (1870); **6. B. of Exch.** No. 692a  
**Bund, Re, Cruikshank v. Willis** (1929); **44. Wills.** Nos. 1707a, 2196a  
**Bunge (Australia) Pty., Ltd. v. Ying Sing** (Aus.); **35. Mistake.** p. 1012  
**Bunk v. Bouffard** (Can.); **42. Str. Traf.** p. 1152  
**Bunn, Ex p., Re Electric Telegraph Co. of Ireland** (1860); **9. Coys.** No. 1265a  
**Bunn's Case, Re Electric Telegraph Co. of Ireland** (1860); **9. Coys.** No. 1265a  
**Bunting v. Bell** (Can.); **32. Lien.** p. 932  
 — v. Hovland & Watkins (Can.); **1. Agcy.** p. 60  
**Bunton v. Miller** (Scot.); **25. Gaming.** p. 757  
**Buonaparte Ranch v. Schneider** (Can.); **44. Waters.** p. 1174  
**Burchell v. Burchell** (Can.); **11. Confl.** pp. 423, 426  
 — v. Sydney Corpn. (Can.); **32. Lien.** p. 930; **38. Pub. Hlth.** p. 1072  
**Burdett v. Abbot** (1811); **21. Exon.** No. 574b  
 — v. — (1817); **21. Exon.** No. 574b  
 — v. Colman (1817); **21. Exon.** No. 574b  
**Burdett Coutts, Ex p.** (1927); **11. Comp. Pche.** No. 1384a  
**Bureau v. Campbell** (Can.); **32. Libel.** pp. 923, 925  
**Burgin's Will, Re** (Aus.). See **Bergin's Will, Re** (Aus.)  
**Burjor F. R. Joshi v. Ellerman City Lines, Ltd.** (Ind.); **2. Arbn.** p. 137; **41. Ship.** p. 1130  
**Burkard v. Oakley** (Aus.); **2. Aliens.** p. 106  
**Burkard & Co., Ltd. v. Wahlen** (Aus.); **17. Damgs.** p. 581; **22. Evid.** p. 701; **39. S. Goods.** p. 1106  
**Burke, Re, King v. Terry** (1919); **5. Bkpcy.** No. 6115a  
 — v. Beatty & White (Ir.); **12. Contr.** p. 467  
 — v. British Columbia Electric Ry. Co., Ltd. (Can.); **8. Carr.** p. 318  
 — v. Clausen (N. Z.); **30. Intox.** p. 882  
 — v. Ritchie (Can.); **35. Mistake.** p. 1012  
 — v. Staehr, Re Adelaide, Local Court Action (Aus.); **16. Cr. Pract.** p. 569; **33. Mags.** p. 956  
 — v. Weir (Can.); **39. S. Goods.** p. 1107  
**Burke Estate, Re** (Can.); **11. Confl.** pp. 413, 415, 417  
**Burley (C.), Ltd. v. Lloyd** (Edw.), Ltd. (1929); **44. Waters.** No. 961a  
**Burlington Presbyterian Church, Re** (Can.); **19. Eccl.** p. 641  
**Burn v. Carvalho** (1834); **5. Bkpcy.** No. 6208a  
 — v. — (1839); **5. Bkpcy.** No. 6208a  
**Burnaby District Corpn. v. Ocean View Development, Ltd.** (Can.); **7. Burial.** p. 313  
**Burnard v. Lysnor** (N. Z.); **26. Guar.** p. 770  
**Burnard & Algers, Ltd. v. Player & Co.** (1928); **41. Ship.** No. 3089a  
**Burnes v. Sykes** (Can.); **32. Libel.** p. 924  
**Burnett v. Berry** (1896); **14. Crim.** Nos. 6298a, 6298b  
**Burnfiel v. Burnfiel** (Can.); **11. Confl.** p. 422; **18. Desct.** p. 610  
**Burnham (Viscount) v. Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd., Re Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd.** (1928); **10. Coys.** No. 4904a; **32. Limit. of A.** No. 785a  
**Burnham v. Carroll Musgrove Theatres, Ltd. & Victoria Arcade, Ltd.** (Aus.); **21. Estpl.** p. 679; **31. L. & T.** p. 912  
**Burnham v. Ramsay** (Can.); **7. Bonds.** p. 294  
**Burns v. Associated Newspapers, Ltd.** (1925); **20. Elect.** No. 1038a  
 — v. Burne (S. Af.); **2. Arbn.** pp. 147, 148  
 — v. Dilworth Trust Board (N.Z.); **31. L. & T.** p. 903  
 — v. Graham (Can.); **5. Bkpcy.** pp. 248, 251, 258  
 — v. Minchau (Can.); **1. Agcy.** p. 63  
 — v. Royal Bank of Canada (Can.); **5. Bkpcy.** pp. 248, 251  
**Burns & Brown v. Zulauf & Doer** (Can.); **7. B. of Sale.** p. 287  
**Burns (J.) & Co. v. Canadian S.S. Explorer** (N.Z.); **41. Ship.** p. 1130  
**Burns & Co. v. Carlton Hotel** (Can.); **42. Str. Traf.** p. 1151  
**Burns & Co., Ltd. v. Corry** (Can.); **42. Str. Traf.** p. 1151  
**Burns (P.) & Co. v. Czernij** (Can.); **23. Errors.** p. 716  
**Burnside v. Reid** (Can.); **36. Negl.** p. 1029  
**Burradon & Coxlodge Coal Co., Re** (1929); **10. Coys.** No. 5149b  
**Burrell v. Maashaven S.S. Co., Ltd.** (Scot.); **2. Aliens.** p. 111  
 — v. Watt & Hardinge (Can.); **16. Courts.** p. 550; **18. Distr.** p. 621; **42. Sp. Pfee.** p. 1145  
**Burrell & Son v. Leven** (1926); **25. Gaming.** No. 70a

- Burridge & Son v. Haines (F. H.) & Sons, Ltd. (1918); **2. Animals**, No. 145a
- Burris v. Dartmouth Town (Can.); **13. Corpsns.** p. 490; **34. Mast. & S.** p. 963
- v. Rhind (Can.); **12. Contr.** p. 443
- Burrough's Adding Machine, Ltd. v. Aspinall (1924); **21. Estpl.** No. 1318a
- Burroughs v. Intercolonial Gold Min. Corp'n. (Can.); **22. Evid.** p. 713
- v. R. (Can.); **11. Const. L.** p. 431
- Burrowes v. Isnor (Can.); **30. Jdgmts.** p. 888
- Burrows v. Base, *Re* Whitrod (1926); **23. Exors.** No. 5340a
- v. Burrows (1827); **27. H. & W.** Nos. 5995a, 5995b; **44. Wills**, No. 597a
- v. Greenwood (1840); **40. Sttlmts.** No. 803a
- v. Johnston (Can.); **7. B. of Arch.** p. 292
- v. Rapson (1927); **25. Food**, No. 475a
- Bursaw's Estate, *Re* (Can.); **12. Contr.** p. 443
- Burt v. Broken Hill South, Ltd. (Aus.); **34. Mast. & S.** p. 968
- v. National Bank of South Africa, Ltd. (S. Af.); **3. Bank.** p. 188
- Burton v. Board (1929); **32. Libel**, No. 1849a
- v. Burton (N. Z.); **27. H. & W.** p. 806
- Burton (James) & Sons, Ltd., *Re* (1927); **9. Coys.** No. 1654a
- Bury v. Canner, *Re* Canner (1923); **34. Mines**, No. 277a
- Busby v. Avgherino (1928); **19. Eccl.** No. 3454a
- Busch, *Re* (Can.); **24. Exors.** p. 731
- v. Eastern Trust Co. (Can.); **44. Wills**, p. 1182
- Bush & Niagara Falls Park Comrs., *Re* (Can.); **11. Comp. Pche.** p. 404
- Bussell v. Bussell & McKenna (No. 2) (Can.); **27. H. & W.** p. 800, 804
- v. — (No. 3) (Can.); **27. H. & W.** p. 800
- v. Stoner (Can.); **16. Cr. Pract.** p. 561
- Butchart v. Doyle (Can.); **19. Easmt.** p. 630
- Bute (Marquess), *Re* Bute (Marquess) v. Ryder (1884) **40. Sttlmts.** No. 2205a
- Butler v. Evans (Can.); **6. B. of Arch.** p. 284
- v. Fairhall (Can.); **9. Coys.** p. 364
- v. Kleine Patent Fire Resisting Flooring Syndicate, Ltd. (1928); **24. Facit.** Nos. 153a, 180a
- v. Mortgage Co. of Egypt, Ltd. (1928); **28. Inc. T.** No. 430b
- Butler's Trust, *Re* (1852); **40. Sttlmts.** No. 2209c
- Butson v. Davies, *Re* Davies (1888); **16. Contmpt.** No. 98
- Butt v. Oshawa Corp'n. (Can.); **17. Dams.** p. 582
- Butterfield v. Cormack & Mawkie (Can.); **12. Contr.** p. 450
- Butterfield (N. T.) & Son's Bank, Ltd. v. Golinsky (1926); **9. Coys.** No. 2703a
- Buttrum v. Udell (Can.); **22. Evid.** p. 711
- Butts v. Sydney Mines (Can.); **37. Poor L.** p. 1059
- Butwick v. Grant (1924); **1. Agcy.** No. 714a
- Buxton v. Cumming (1927); **22. Evid.** No. 31a; **25. Gaming**, No. 62a
- Buxton & High Peak Publishing & General Printing Co. v. Mitchell (1885); **5. Bkpcy.** No. 7950a
- Byam v. Byam (1854); **40. Sttlmts.** No. 1011a
- Bye-law made by Prospect District Council, *Re*, *Ex p.* Hill (Aus.); **22. Evid.** p. 703
- Bye-law No. 304 of Minnedosa (Town), *Re*, Wong Sing v. Minnedosa (Can.); **38. Pub. Hlth.** p. 1072
- Byers v. Chinn (S. Af.); **42. Stats.** pp. 1146, 1149
- v. Murphy (Can.); **21. Exon.** p. 691
- v. Singleton (Can.); **16. Courts**, p. 550
- Byrne v. Baird & Co. (Scot.); **34. Mast. & S.** p. 998
- Byrom, *Re*, *Ex p.* Eckersley (1853); **4. Bkpcy.** No. 3134
- Bysouth v. Blackburn Shire & Mitcham (No. 2) (Aus.); **7. Bldg. Conts.** p. 302
- Byzantion, The (1922); **1. Adm. Nos.** 248a, 768a

C.

- C., *Re* (Ir.); **5. Bkpcy.** p. 265
- C. & W. v. H.M. Advocate (Scot.); **15. Crim.** p. 540
- C. D.'s Petition, *Re* (1927); **3. Basty.** No. 130e; **16. Courts**, No. 280a
- C. L. v. C. F. W. (1928); **27. H. & W.** Nos. 5360a, 5513a
- Caballero v. Slater (1854); **31. L. & T.** No. 4142a
- Cabana v. Bank of Montreal (Can.); **3. Bank.** p. 183
- Caddick v. Terry (1864); **12. Contr.** No. 487b
- Cadman v. Strong (Can.); **38. Real Prop.** p. 1088
- Cadwell v. Campeau (Can.); **26. Guar.** p. 769
- Cadzow Colliery Co., Ltd. v. Lanarkshire Assessor (Scot.); **38. Rate**, p. 1083
- Caerphilly Urban District Council v. Griffin (1928); **20. Electric**, No. 39a
- Calhill v. Nicholls, (Can.); **35. Misrep.** p. 1011
- Cahuac v. Erle (Can.); **30. L. & T.** p. 899
- v. Scott (Can.); **30. L. & T.** p. 899
- Caie, *In the Estate of*, *In the Estate of* Davis (1927); **23. Exors.** No. 1371a
- Cain v. Copeland (Can.); **7. Bounds. & F.** p. 296
- v. Teare (1843); **38. Real Prop.** No. 520a
- Caine v. Schultz (Can.); **2. Agric.** p. 97
- Caire, *Re*, Public Trustee v. Hood (Aus.); **29. Insce.** p. 871
- Cairns v. Brown (Can.); **12. Contr.** p. 463
- Cairns & McNairn, *Re* (Can.); **12. Contr.** p. 467
- Calcraft v. London General Omnibus Co. (1923); **13. Cty. Cts.** No. 497b
- Calcus Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 231
- , *Re*, *Ex p.* McGuire (Can.); **4. Bkpcy.** p. 227
- Calder v. Alexander (Scot.); **19. Educ.** p. 644
- Calder's Yeast Co. v. Stockdale (1928); **31. L. & T.** No. 4482a
- Caldwell, etc. v. Fleming (N.Z.); **21. E. D.** p. 671
- Caledonia & Haldimand, *Re* (Can.); **26. Hghys.** p. 785
- Caledonia Grammar & Common School Trustees v. Farroll (Can.); **19. Educ.** p. 645
- Caledonian Employees Benevolent Society, *Re* (Scot.); **10. Coys.** p. 396
- Caledonian Heritable Estates, Ltd. v. Methven (Scot.); **31. L. & T.** p. 920
- Caledonian Ry. Co. v. Greenock Corp'n. (Scot.); **3. Barr.** p. 193
- Calgary (City) v. Blow (Can.); **2. Arbn.** p. 145
- Calgary Furniture Store, Ltd. & Higgs, *Re* (Can.); **10. Coys.** p. 389
- Calgary Herald, Ltd. v. Barnes Corp'n. (Can.); **17. Dams.** p. 576
- Calhoun, *Ex p.*, *Re* Germantown Lake District Sewers Comrs. (Can.); **38. Rates**, p. 1083
- v. Canadian National Rys. (Can.); **38. Rys.** p. 1079
- v. Reid (Can.); **2. Animals**, p. 125; **27. H. & W.** p. 789
- California State (People of) v. Skinner (Can.); **15. Crim.** pp. 540
- Calkin v. Wolfville Fruit Co. (Can.); **44. Work**, p. 1185
- Callaghan v. Nicholls (Can.); **11. Confl.** p. 425
- Callan v. Harty, *Ex p.* Harty (Aus.); **3. Basty.** p. 201
- Callander v. Callander (Can.); **27. H. & W.** p. 799
- Calow, *Re*, Calow v. Calow (1928); **20. Egy.** No. 937a

- Calow v. Shelton Iron, Steel & Coal Co., Ltd. (1928); **34. Mast. & S. No. 3737a**
- Calthorpe's (Lord) Will Case (*circa* 1790); **40. Stillmts. No. 2020a**
- Calver's Yeast Co. v. Stockdale (1928); **31. L. & T. No. 4482a**
- Calvert, *Re* (Can.); **35. Mtge. p. 1020**; **44. Wills, p. 1179**
- v. Burham (Can.); **35. Mtge. p. 1020**
- v. Taxes Comr. for Victoria (Aus.); **28. Inc. T. p. 823**
- Camberwell Motors Pty., Ltd., *Re* (Aus.); **9. Coys. p. 368**
- Cambo Shipping Co., Ltd. (Rossetti (Owners)) v. Dampskibsselskabet Magnus (Scot.); **1. Adm. p. 29**
- Cambridge County Council Case, Fordham v. Webber (1925); **20. Elect. No. 1593a**
- Cambridge University v. A.-G., *Re* Stanford (1924); **8. Char. No. 1457a**
- Cambridge University Press v. University Tutorial Press (1928); **13. Coprt. No. 420a**; **43. Trade Mks. No. 1121b**
- Camden (Marquis), *Ex p.*, R. v. Powell (1925); **2. Agric. Nos. 29b, 29c**
- Camden (Lord) v. Home (1791); **16. Cr. Pract. No. 2187a**
- Cameron v. Dauphin (Can.); **38. Pub. Hlth. p. 1074**
- v. Harper (Can.); **23. Errors. p. 724**
- v. Milloy (Can.); **24. Errors. p. 733**
- v. Moseley (Can.); **4. Bkpcy. p. 217**
- v. St. Luke's Salt Springs (Trustees) (Can.); **19. Eccl. p. 641**
- v. Sweeney (Scot.); **39. Revenue, p. 1100**; **42. Str. Traf. p. 1152**
- Camillo Tank S.S. Co., Ltd. v. Alexandria Engineering Works (1921); **1. Agcy. No. 2139b**
- Cammaert v. Grasswold (Can.); **3. Bailmt. p. 167**
- Cammell, *Re*, Public Trustee v. A.-G. (1925); **8. Char. No. 657a**
- Campbell, *Re* (Can.); **44. Wills, p. 1182**
- Campbell, *Re*, Commercial Bank of Scotland v. Campbell (1923); **28. Inc. T. No. 646a**
- v. Baillic (1823); **36. Ptnrs. No. 631a**
- v. Campbell (Can.); **11. Confl. p. 422**
- v. Canadian Pacific & Canadian National Ry. Cos. (Can.); **8. Curr. p. 316**
- v. Cleugh (Can.); **21. Exon. p. 692**
- v. Cochrane (Scot.); **22. Evid. p. 708**
- v. Elliott, Black, Moore & Southwick (Can.); **19. Educ. p. 649**
- v. Gallant, Crockett & Royal Bank of Canada, *Re* Milligan Estate (Can.); **5. Bkpcy. p. 252**
- v. Gemmell (Can.); **21. Exon. p. 696**
- v. Hedley (Can.); **2. Animals, p. 125**
- v. Imperial Bank (Can.); **3. Bank. p. 186**
- v. McGregor (Can.); **16. Courts, p. 500**
- v. McIsaac (Can.); **26. Guar. p. 767**
- v. Mahler (Can.); **12. Contr. pp. 443, 446**; **17. Damgs. p. 580**
- v. Raynor (Can.); **35. Mtge. p. 1023**
- v. Royal Canadian Bank (Can.); **38. Real Prop. p. 1087**
- v. Smith (Can.); **21. Exon. p. 694**
- (Doe d.) v. Thompson (Can.); **21. Exon. p. 693**
- v. Woods, Irmie & The Canadian Press (Can.); **18. Discy. pp. 613, 615**
- Campbell & Cowdy, *Re* (Can.); **40. S. Land, p. 1111**
- Campbell Endowment Trust, *Re*, Argyll Education Authority v. Campbelltown Corpn. (Scot.); **19. Educ. p. 646**
- Campbell's Trustees v. Campbell (Scot.); **8. Char. p. 337**
- Campbell's Trusts, *Re* (1871); **30. Jdgmts. No. 422a**
- Campbellford, Lake Ontario & Western Ry. Co. v. Massie (Can.); **2. Arbn. p. 138**
- Campbeltown Coal Co. v. Argyll (Duke) (Scot.); **31. L. & T. p. 913**
- Camrud v. Camrud (Can.); **27. H. & W. pp. 799, 802, 803, 804**
- Canada & Newfoundland in Labrador Peninsula, *Re* Boundary between (1927); **17. Dep. No. 378b**
- Canada (Dominion of) & Provinces of Ontario & Quebec, *Re*, Indian Claims (Can.); **17. Dep. p. 604**
- Canada Central Ry. Co. v. McLaren (Can.); **22. Evid. pp. 701, 707**
- Canada Cycle & Motor Co., Ltd. v. Mehr (Can.); **12. Contr. p. 470**
- Canada Drugs, Ltd. v. A.-G. for Saskatchewan (Can.); **17. Dep. p. 597**
- Canada Life Assurance Co., *Re* (1929); **10. Coys. No. 7493a**
- Canada Life Assurance Co.'s Case, *Re* Land Titles Act (Can.); **35. Mtge. p. 1017**; **38. Real Prop. p. 1090**
- Canada Life Insurance Co. v. McHardy (Can.); **35. Mtge. p. 1022**
- Canada Lumber Co. v. Gaffney (Can.); **5. Bkpcy. p. 261**
- Canada, Minister of Interior for v. Nelson (Can.); **7. Bounds. & F. p. 297**
- Canada Morning News, Ltd. v. Thompson (Can.); **18. Distr. p. 620**
- Canada Permanent Loan & Savings Co. v. McKay (Can.); **38. Real Prop. p. 1091**
- Canada Permanent Mortgage Corpn. v. Barnard (Can.); **12. Contr. p. 441**
- v. Dalglish (Can.); **35. Mtge. p. 1024**
- Canada Permanent Trust Co. v. McAdam, *Re* Anderson Estate (Can.); **21. E. D. p. 675**
- Canada Preserving Co., *Re* (Can.); **4. Bkpcy. p. 226**
- Canada Southern Ry. Co. v. International Bridge Co. (Can.); **26. Highys. p. 775**
- Canada Trust Co. v. Gardiner, *Re* B. (Can.); **43. Trusts, p. 1169**
- v. Schultz (Can.); **31. L. & T. p. 915**
- Canadian American Shipping Co. v. Woran S.S. (1927); **1. Adm. No. 1794a**
- Canadian Bank of Commerce v. Brookdale Collieries, Ltd. (Can.); **6. B. of Exch. p. 278**
- v. Colwell (Can.); **6. B. of Exch. pp. 275, 277**
- v. Foreman (Can.); **26. Guar. p. 644**; **27. H. & W. pp. 771, 790**
- v. Johnson (Can.); **6. B. of Exch. p. 283**; **10. Coys. p. 380**
- v. Kenzie (Can.); **5. Bkpcy. p. 261**
- v. Koffman & Cherry (Can.); **26. Guar. p. 768**
- v. La Brash (Can.); **8. Chos. p. 318**
- v. Livingston (Can.); **6. B. of Exch. p. 268**
- v. Munroe (Can.); **7. B. of Sale, p. 291**
- v. Peebles (Can.); **6. B. of Exch. p. 276**
- v. Pioneer Farm Co., Ltd. & Hall (Can.); **9. Coys. p. 377**
- v. Reid (Can.); **3. Bank. p. 189**
- v. Rolston (Can.); **21. Exon. p. 693**
- v. Royal Bank of Canada (Can.); **8. Chos. p. 348**
- v. Smith (Can.); **9. Coys. p. 371**; **12. Contr. p. 464**
- v. Treacy (Can.); **5. Bkpcy. p. 251**
- v. Winnipeg District Registrar (Can.); **38. Real Prop. p. 1090**
- Canadian Birkbeck Investment & Savings Co. v. Ryder (Can.); **38. Real Prop. p. 1089**

- Canadian Cap Co., *Re, Ex p. Trustee* (Can.); **4. Bkpcy.** p. 208
- Canadian Cap Co., Ltd., *Re, Stevenson v. Taylor* (Can.); **5. Bkpcy.** p. 248
- Canadian Carpet & Comforter Manufacturing Co., *Re, Ex p. A.-G. for Canada* (Can.); **4. Bkpcy.** p. 217; **5. Bkpcy.** p. 255
- Canadian Cereal & Flour Mills Co., *Re* (Can.); **4. Bkpcy.** p. 217
- Canadian Chocolate Co., *Re* (Can.); **4. Bkpcy.** p. 209
- Canadian Coal Supply, *Re, Ex p. Staples Bell Inc.* (Can.); **4. Bkpcy.** p. 215
- Canadian Collieries (Dunsmuir), Ltd. *v. Dunsmuir* (Can.); **17. Deeds.** p. 586
- Canadian Cordage & Manufacturing Co., *Re* (Can.); **10. Coys.** p. 387
- Canadian Credit Men's Assocn., Ltd. *v. Jenkins* (Can.); **5. Bkpcy.** p. 248
- Canadian Credit Men's Trust Assocn. *v. Anderson* (Can.); **6. B. of Exch.** p. 284
- *v. Bungalow Construction Co.* (Can.); **35. Misrep.** p. 1010
- *v. Caldwell, Re Supplies, Ltd.* (Can.); **9. Coys.** p. 363
- *v. Edmonton (City)* (Can.); **4. Bkpcy.** p. 226
- *v. Jang Bow Kee & Yin Shee* (Can.); **4. Bkpcy.** p. 231; **5. Bkpcy.** p. 258
- *v. Monka* (Can.); **4. Bkpcy.** p. 227
- *v. Morton* (Can.); **18. Discy.** p. 616
- *v. Spivak, Re Cohen & Mahlin* (Can.); **4. Bkpcy.** p. 225; **5. Bkpcy.** pp. 234, 246, 249, 252
- *v. Winnipeg Fire Underwriters' Agency* (Can.); **5. Bkpcy.** p. 238
- Canadian Dredging Co. *v. Northern Navigation Co.* (Can.); **1. Adm.** p. 31
- Canadian Educational Films, Ltd. & Goodart Pictures Incorporated *v. Moran & Nichols Theatres, Ltd.* (Can.); **42. Solrs.** p. 1142
- Canadian Equipment & Supply Co. *v. Bell & Schiesel* (Can.); **32. Lien.** p. 931
- Canadian Express Co., *Ex p., Re Christie Grant, Ltd.* (Can.); **5. Bkpcy.** p. 240
- , *Ex p., Re Standard Imports, Ltd.* (Can.); **5. Bkpcy.** p. 239
- Canadian Farm Implement Co., Ltd. *v. Alberta Foundry & Machine Co., Ltd.* (Can.); **35. Misrep.** p. 1009
- Canadian Flexible Skate Co., Ltd. *v. Monarch Brass Manufacturing Co., Ltd.* (Can.); **17. Damgs.** p. 580
- Canadian General Electric Co., Ltd. *v. Fada Radio, Ltd.* (Can.); **36. Pats.** p. 1046
- Canadian General Securities Co., Ltd. *v. George* (Can.); **1. Agcy.** p. 48
- Canadian Grain Co., Ltd. *v. Nichol* (Can.); **1. Agcy.** p. 69
- Canadian Guarantee Trust Co. *v. Delisle, Re Smith's Estate* (Can.); **21. Exon.** p. 587
- Canadian Hart Products, *Re* (Can.); **5. Bkpcy.** p. 259
- Canadian Hart Products, Ltd. (Trustee) *v. Royal Bank* (Can.); **3. Bank.** p. 189
- Canadian Highlander, The, Gosse Millerd, Ltd. *v. Canadian Government Merchant Marine, Ltd.* (1929); **30. Idgmts. No. 728a**; **41. Ship.** No. 2721
- Canadian Lumbermen's Assocn. *v. Canadian National & Canadian Pacific Ry. Cos.* (Can.); **38. Rys.** pp. 1076, 1078
- Canadian Minister of Finance *v. Smith* (1926); **28. Inc. T. No. 99e**
- Canadian Mortgage Assocn. *v. R.* (Can.); **35. Mistake.** p. 1013
- Canadian National Rys. *v. Boland* (Can.); **11. Comp. Pche.** p. 408
- *v. Hydro Electric Power Commission & Department of Highways for Ontario* (Westhill Crossing Case) (Can.); **38. Rys.** p. 1077
- *v. Lepage* (Can.); **8. Carr.** p. 319
- *v. Montreal Tramways* (Guy St. Crossing Case) (Can.); **38. Rys.** p. 1077
- *v. Nova Scotia Province* (Can.); **38. Rys.** p. 1078
- *v. Stamford (Township)* (Can.); **38. Rys.** pp. 1078, 1079
- *v. Toronto Iron Works* (Can.); **11. Comp. Pche.** p. 401
- Canadian Northern Quebec Ry. Co. *v. Fleet* (Can.); **8. Carr.** p. 315
- Canadian Northern Ry. Co. *v. Ketcheson* (Can.); **11. Comp. Pche.** p. 407
- *v. Ousley* (Can.); **2. Arbn.** p. 146
- Canadian Northern Ry. Co. & Ottawa, *Re* (Can.); **17. Deeds.** p. 587
- Canadian Oil Co., Ltd. *v. Jamieson* (Can.); **25. Fraud. Conv.** p. 749
- Canadian Oil Cos., Ltd. *v. Margeson* (Can.); **16. Courts.** p. 550
- Canadian Pacific Ry. Co., *Re* (Can.); **38. Real Prop.** p. 1089
- *Re, Crown Lumber Co. v. McKenzie* (Can.); **21. Exon.** p. 691
- *v. Calgary* (Can.); **28. Injon.** p. 856
- *v. Hickman Grain Co.* (Can.); **8. Carr.** p. 316
- *v. Mang* (Can.); **38. Real Prop.** p. 1089
- *v. Ottawa Fire Insurance Co.* (Can.); **17. Dep.** p. 598
- *v. Parent* (Can.); **22. Evid.** p. 714
- *v. Paul* (Can.); **11. Comp. Pche.** p. 407
- *v. R.* (Can.); **1. Agcy.** p. 41
- *v. Stewart* (Can.); **2. Agric.** p. 94; **21. Exon.** p. 691
- *v. Windebank* (Can.); **2. Arbn.** p. 152
- Canadian Pacific Ry. Co. & County & Township of York, *Re* (Can.); **17. Dep.** p. 594
- Canadian Pacific Ry. Co., Grand Piles, P. Q., *Re* (Can.); **38. Rys.** p. 1078
- Canadian Peerless Jewelry Co. & Royal Trust Co. *v. R.* (Can.); **32. Lien.** p. 930
- Canadian Performing Right Society *v. Famous Players Canadian Corpn.* (Can.); **13. Coprt.** p. 480
- Canadian Permanent Mortgage Corpn. *v. Dalgleish* (Can.); **35. Mtge.** p. 1024
- Canadian Port Huron Co. *v. Burnett* (Can.); **35. Mtge.** p. 1021
- Canadian Provincial Power Co., Ltd. *v. Nova Scotia Power Commission* (Can.); **38. Real Prop.** p. 1090
- Canadian Shippers' Traffic Bureau *v. Canadian National Rys.* (Can.); **38. Rys.** p. 1078
- Canadian Stevedoring Co., Ltd. *v. Robin Line S.S. Co.* (Can.); **17. Deeds.** p. 586
- *v. Seas Shipping Co.* (Can.); **17. Deeds.** p. 586
- Canadian Vickers Co., Ltd. *v. Susquehanna, The* (Can.); **1. Adm.** pp. 31, 35
- Canadian Western Steel Corpn., *Re* (Can.); **4. Bkpcy.** pp. 222, 223
- Canadian Westinghouse Co., Ltd. *v. Canadian Pacific Ry. Co.* (Can.); **8. Carr.** p. 315
- Canal Co., Ltd. & Minister of Marine, *Re* (Aus.); **11. Comp. Pche.** p. 403
- Cann, *Re* (Can.); **20. Egy.** p. 663
- Cannel *v. Buckle* (1724); **7. Bonds.** No. 947a
- Canner, *Re, Bury v. Canner* (1923); **34. Mines.** No. 277a
- Canniffe *v. Howie* (Aus.); **1. Agcy.** p. 39
- Cannon *v. Southwark Borough Council* (1929); **33. L. G. No. 48a**
- Cannon Brewery Co., Ltd. *v. Signal Press, Ltd.* (1928); **31. L. & T. No. 6352a**

- Cantiere v. Clyde (Scot.); **2. Aliens**, p. 116  
 Cantiere Navale Triestina v. Handelsvertretung der Russ. Soz. Föd. Soviet Republik Naphtha Export (1925); **12. Contr.** No. 3183a  
 Canton, The (1928); **36. Parl.** No. 155a  
 Canton (Owners) v. Rhesus (Owners) (1928); **1. Adm.** No. 1095a; **36. Parl.** No. 155a  
 Cantrell & Cochrane v. Neeson (Ir.); **3. Bailmt.** p. 165  
 Canvey Island Comrs. v. Preedy (1922); **7. Bounds. & F.** No. 171a  
 Cape Asbestos Co., Ltd. v. Lloyds Bank, Ltd. (1921); **3. Bank.** No. 756c  
 Capel St. Mary, Suffolk (Rector & Churchwardens) v. Packard (1927); **19. Eccl.** Nos. 1768a, 2801a, 2809a, 2818a, 2824a, 2899a, 2899b, 2904a, 2915a, 2924a, 2947a, 2947b, 2947c, 2947d, 2965a, 2972a, 3015a  
 — v. Packard (1928); **19. Eccl.** Nos. 1768a, 1775a, 1789a, 2801a, 2809a, 2818a, 2824a, 2899a, 2899b, 2904a, 2915a, 2924a, 2947a, 2947b, 2947c, 2947d, 2965a, 2972a, 3015a  
 Caplan, *Re* (Can.); **4. Bkpcy.** p. 230  
 Capron v. Capron (1927); **21. Exon.** No. 1754a; **27. H. & W.** No. 5957a  
 Captain J. A. Cates Tug & Wharfage Co. v. Franklin Insurance Co. (1927); **29. Insee.** Nos. 2014a, 2055a, 2152a, 2333a  
 Caraman Rowley & May v. Aperghis (1923); **12. Contr.** No. 5066a  
 Carbon Coal & Clay Co. v. Nanoose-Wellington Collieries (Can.); **12. Contr.** p. 441  
 Carbonit Akt., *Re*, *Re* Letters Patent No. 139,207 (1924); **11. Const. L.** No. 348a  
 Cardell v. New Quay Local Board (1875); **36. Nuis.** No. 134a  
 Cardiff Collieries, Ltd. v. Great Western Ry. Co. (1927); **8. Carr.** No. 1237b  
 — v. Meredith (1929); **34. Mines.** No. 1106a  
 Cardiff Corp'n. v. Cook (1923); **11. Comp. Pche.** No. 533a  
 Cardiff Hall, The (1918); **1. Adm.** No. 1286a  
 Cardinal v. R. (Can.); **14. Crim.** p. 526  
 Cardston U.F.A. Co-operative Assocn., Ltd., *Re*, *Re* Province of Alberta (Can.); **4. Bkpcy.** p. 227  
 Carew's Trusts, *Re*, Gellibrand v. Carew (1910); **5. Bkpcy.** No. 5902a  
 Carey & Lot 65, Sub-division of Lot 39 E., St. John, *Re* (Can.); **38. Rates**, p. 1085  
 Carland (David) & Sons, Ltd. v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 839  
 Carlile v. Northern Trusts Co. (Can.); **1. Agcy.** p. 53  
 Carlino v. Zimblarte (Can.); **32. Limit. of A.** p. 933  
 Carlisle v. Orr (No. 2) (Ir.); **1. Action**, p. 9  
 Carlson v. Thompson (Can.); **1. Agcy.** p. 64  
 Carlsson v. Saga, The (Can.); **1. Adm.** pp. 29, 30  
 Carlston, The, The Balcombe (1926); **1. Adm.** No. 894b  
 Carlton Hall Club v. Laurence (1929); **25. Gaming.** No. 188b  
 Carlyle, The (1858); **1. Adm.** No. 970a  
 Carmichael, *Ex p.*, R. v. Postmaster-General (1928); **16. Cr. Pract.** No. 2736a  
 Carmichael v. Bowers (Can.); **1. Agcy.** p. 62  
 Carmichael Rural Municipality v. Gilberg (Can.); **32. Limit. of A.** p. 933  
 Carmichael's Trustee v. Carmichael (Scot.); **4. Bkpcy.** p. 221  
 Carnarvon's (Earl) Chesterfield Settled Estates, *Re*, *Re* Carnarvon's (Earl) Highclere Settled Estates (1927); **13. Corpns.** No. 903a  
 Carnegie v. Cox (Can.); **18. Discy.** p. 616  
 Carney v. Fair (Ir.); **1. Agcy.** p. 48  
 Carnoustie Golf Course Committee v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 818  
 Caron, *Ex p.*, R. v. Begin (Can.); **16. Cr. Pract.** p. 570; **30. Intox.** p. 881  
 — v. R. (1924); **17. Dep.** Nos. 130b, 130c  
 Carpathia Tin Mining Co., Ltd., *Ex p.* (Aus.); **28. Inc. T.** p. 839  
 Carpenter v. Commercial Bank of Canada (Can.); **21. Estpl.** p. 680  
 — v. Fox (1929); **42. Str. Traf.** Nos. 185a, 232a, 232b  
 Carpenter Hales & Co., Ltd., *Re* (Aus.); **10. Coys.** p. 389  
 Carpet Import Co., Ltd. v. Beath & Co., Ltd. (N.Z.); **19. Easmt.** p. 628; **26. Hghys.** p. 773; **28. Injon.** p. 854  
 Carpmael's Application, *Re* (1928); **36. Pats.** No. 1495a  
 Carr, *Ex p.*, *Re* Beauchamp Brothers (1896); **4. Bkpcy.** Nos. 4116a, 4152a  
 — v. Fry & McCune (Can.); **1. Agcy.** p. 46  
 — v. Guardian Assurance Co., Ltd. & Cracknell & Crimp (N. Z.); **29. Insee.** p. 872  
 — v. La Dreche (Can.); **1. Agcy.** p. 61  
 — v. Tannahill (Can.); **1. Action**, p. 12  
 Carr-Harris v. Canadian General Electric Co. (Can.); **12. Contr.** p. 452  
 Carrall v. Montreal Bank (Can.); **21. Exon.** p. 692  
 Carrique v. Catls (Can.); **35. Misrep.** p. 1010  
 Carroll, *Re* (Can.); **30. Intox.** p. 885  
 — v. Baer (Can.); **17. Damgs.** p. 582  
 — v. National Press, Ltd. (Can.); **32. Libel.** p. 927  
 — v. Rogers (Can.); **35. Mtge.** p. 1021  
 Carrot River Rural Municipality, *Re*, *Re* Rural Municipality Act, Minaker v. Sanderson (Can.); **20. Elect.** p. 653  
 Carruthers, *Ex p.*, *Re* Gaudreau (Can.); **5. Bkpcy.** p. 258  
 — v. MacGregor (Scot.); **7. Bldg. Conts.** p. 302; **36. Negl.** p. 1029  
 Carscallen v. Leeson (Can.); **2. Agric.** p. 93  
 — v. Moodie (Can.); **21. Exon.** p. 692  
 Carson, *Re* (Can.); **5. Bkpcy.** pp. 249, 250  
 — v. Simpson (Can.); **21. Exon.** p. 691  
 Carstairs v. Spence (Scot.); **19. Easmt.** p. 630  
 Carter, *In the Estate of*, Ascot Timber Co. Pty., Ltd. v. Carter (Aus.); **21. Exon.** p. 693  
 —, *In the Goods of* (1843); **23. Exors.** No. 1031c  
 Carter v. Beard (1839); **7. Burial.** No. 20a  
 — v. British Thomson-Houston Co., Ltd. (1927); **34. Mast. & S.** No. 2515a  
 — v. Maritime United Farmers Co-operative (Can.); **12. Contr.** p. 469  
 — v. Suddaby (Can.); **19. Easmt.** p. 631  
 — v. Warne (1830); **5. Bkpcy.** Nos. 7649b, 9026a  
 Cartwright v. Glover (1861); **5. Bkpcy.** No. 7670a  
 Carver v. A.-G. of Prince Edward Island (Can.); **11. Const. L.** p. 432  
 Carvill v. Black (Can.); **21. Exon.** p. 692  
 Casa Loma, *Re* (Can.); **38. Pub. Hlth.** p. 1072; **Rys.** p. 1079  
 Case (J. I.) Threshing Machine Co. v. General Motors Acceptance Corp'n. (Can.); **8. Chos.** p. 348  
 — v. Mitten (Can.); **21. Estpl.** p. 688  
 Casey v. Grey County Council (N.Z.); **34. Mast. & S.** p. 965  
 Cassel, *Re*, Public Trustee v. Mountbatten (1927); **21. E. D.** Nos. 22a, 136b, 251a  
 Cassidy v. Daily Mirror Newspapers, Ltd. (1929); **32. Libel.** Nos. 866a, 907a  
 — v. Ingoldsby (Can.); **21. Estpl.** p. 680  
 — v. Stuart (Can.); **42. Solrs.** p. 1142  
 Cassimjee v. Maharaj (S. Af.); **6. B. of Exch.** p. 280

- Casswell & Co., Ltd. & Donald & Jacobs, Ltd., *Re* (N.Z.); **2. Arbn.** p. 153
- Castle v. Bilsky (Can.); **12. Contr.** p. 464
- Castlecomer Co-operative Society, *Re* (Ir.); **28. Ind. Soc.** p. 845
- Castleman v. Johnson (Can.); **16. Cr. Pract.** p. 565
- Catala, *The v. Dagsland* (Can.); **1. Adm.** p. 36; **34. Mast. & S.** p. 999
- Catchpool, *Re*, Harris v. Catchpool (1928); **40. Stilmts.** No. 3139a
- Catholic Publishing & Bookselling Co., Ltd. v. Wyman (1863); **22. Evid.** No. 5523a
- Catlin & Reid, *Re* (Can.); **43. Trusts.** p. 1170
- Cato v. Alion (S. Af.); **17. Damgs.** p. 576
- Catton v. Ashwell & Nesbit, Ltd. (1928); **34. Mast. & S.** No. 3702c
- Caudwell v. George (Can.); **21. Exon.** pp. 590, 694
- Caulfield v. R. (Can.); **14. Crim.** p. 509
- Caughy v. Copeland, *Re* Patton (Ir.); **23. Exors.** p. 727
- Cauldon Potteries, Ltd. v. Johnson (1926); **34. Mast. & S.** Nos. 3192a, 3821a
- Caulfield v. Arnold (No. 1) (Can.); **12. Contr.** p. 452
- v. Arnold (No. 2) (Can.); **35. Mistake**, p. 1012
- Cavaliero v. Slater (1854); **31. L. & T.** No. 4142a
- Cave v. Page (1923); **2. Agric.** No. 265a
- Caven v. Canadian Pacific Ry. Co. (Can.); **18. Discy.** pp. 616, 618
- Cavenett, *Re* (N.Z.); **16. Cr. Pract.** p. 562; **33. Mags.** p. 953
- Cawthra v. McGuire (Can.); **35. Mtge.** p. 1023
- Cayzer, Irvine & Co. v. Board of Trade (1925); **2. Arbn.** No. 254a
- v. Board of Trade (1927); **32. Limit. of A.** No. 139a
- Cecil v. Plaistow (1794); **5. Bkpcy.** No. 9253a
- Cecil v. Wettlaufer (Can.); **1. Agty.** p. 64
- Cecilian Co., *Re* (Can.); **4. Bkpcy.** p. 226
- Cedar Rapids Manufacturing & Power Co. v. Iacoste (Can.); **11. Comp. Pche.** p. 407; **38. Rys.** p. 1076
- Central Bank & Hogg, *Re* (Can.); **9. Coys.** p. 362
- Central India Mining Co. v. Société Coloniale Anversoise (1920); **2. Aliens**, No. 198a
- Central Motors Glasgow Ltd. v. Cessnock Garage & Motor Co. (Scot.); **3. Bailmt.** p. 167
- Centre Star Mining Co., Ltd. v. Rossland Miners' Union (Can.); **13. Corpns.** p. 485; **18. Discy.** p. 612
- Cephalonia, *The*, *The Ambatielos* (1923); **1. Adm.** No. 430a
- Chalifoux, *Ex p.*, *Ex p.* Fong, *Ex p.* You (Can.); **16. Cr. Pract.** p. 580; **17. Dep.** p. 600
- Chalmers, *Re* (N.Z.); **3. Barr.** p. 193
- Chanuandy Brothers, Ltd. v. Albert (Can.); **6. B. of Each.** p. 274
- Chamberlain, *Ex p.* (Can.); **38. Real Prop.** p. 1090
- v. Agar (1813); **23. Exors.** No. 718a
- v. Chamberlain, *Re* Chamberlain's Settlement (1921); **2. Aliens**, Nos. 49c, 49j, 215c
- Chamberlain & Poorless Bumper & Accessories, Ltd., *Re* (Can.); **18. Distr.** p. 620
- Chamberlain & Sproat v. Wall & Lloyd (1920); **3. Bank.** No. 38a
- Chamberlain's Settlement, *Re*, Chamberlain v. Chamberlain (1921); **2. Aliens**, Nos. 49c, 49j, 215c
- Chamberlin v. Maw (Can.); **1. Agcy.** p. 59
- Chambers, *Re* (Aus.); **44. Wills.** p. 1182
- v. Chambers (1730); **40. Stilmts.** No. 2319a
- v. Dollar & Stevenson (Can.); **21. Estpl.** p. 679
- v. Unger (Can.); **21. Estpl.** p. 680
- v. Waters (1833); **43. Trusts.** No. 769a
- Chamier v. De Vere Hotels, Ltd. (1928); **29. Inns**, No. 177a
- Champagne Heidsieck et Cie Monopole Societe Anonyme v. Buxton (1929); **43. Trade Mks.** No. 414a
- Champaklal Gopaladas v. Keshrichand Naganmal (Ind.); **6. B. of Each.** p. 268
- Champdany Jute Co., Ltd., *Re* (Scot.); **10. Coys.** p. 392
- Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. (1923); **2. Arbn.** No. 1598b
- Chance v. Billing, *Re* Chance's Settlement Trusts (1918); **20. Egy.** No. 2373a
- Chance's Settlement Trusts, *Re*, Chance v. Billing (1918); **20. Egy.** No. 2373a
- Chandanmull Benganey v. National Bank of India, Ltd. (Ind.); **3. Bank.** p. 187
- Chandler (J. H.) & Co., Ltd., *Re* (Ind.); **9. Coys.** p. 357
- Chandler & Massey v. Irish (Can.); **9. Coy.** p. 368
- Chandler's Estate, *Re* (Can.); **24. Exors.** p. 735; **35. Mtge.** p. 1021
- Chandra Das v. Raseswari Chaudhurani (Ind.); **16. Contmpt.** p. 548
- Chandra Kishore Chakravarty v. Biseswar Pal (Ind.); **38. Real Prop.** p. 1088
- Chandreshwar Prasad Narain Singh v. Bisheshwar Pratap Narain Singh (Ind.); **23. Exors.** p. 720
- Chaney v. Maclow (1929); **3. Auct.** No. 63a
- Channel Queen, *The* (1928); **1. Adm.** No. 1521a
- Channell v. O'cedar Corpn. (Can.); **36. Pats.** p. 1049
- Pyv v. Saw Sin (Ind.); **11. Confl.** p. 415; **17. Custom.** p. 573
- Chantrey's Will, *Re*, Leighton v. Hughes & A.-G. (1889); **32. Lit. Inst.** No. 10a
- Chapel-en-le-Frith Church Council v. Bagshawe, *Re* Lichfield Cathedral Grant (1929); **19. Eccl.** No. 1981a
- Chapiewski v. Campbell (Can.); **2. Agric.** p. 97
- Chaplin, *Ex p.*, *Re* Harrington Motor Co. (1928); **10. Coys.** No. 6056a
- Chapman, *Re*, Hales v. A.-G. (1922); **8. Char.** Nos. 740a, 1424a, 1449a
- v. Chapman (N.Z.); **27. H. & W.** p. 799
- v. Doherty (Can.); **12. Courts.** p. 550
- v. Fylde Waterworks Co. (1894); **26. No.** 1372a
- v. Morley (1891); **33. Mal. Pros.** No. 100a
- v. Paulson (Can.); **32. Limit. of A.** p. 934
- Chapman (or Oliver) v. Saddler & Co. (1929); **36. Negl.** No. 662a
- Chappell, *Ex p.*, *Re* Merchant Traders' Ship, Loan & Insurance Assocn. (1852); **4. Bkpcy.** No. 5367
- v. Rees (1852); **32. Limit. of A.** No. 976a
- Chappell & Co., Ltd. v. Associated Radio Co. of Australia, Ltd. (Aus.); **13. Coprt.** p. 481
- Chapple v. Chapple (1929); **27. H. & W.** No. 5364a
- Chapple v. Moss (Aus.); **1. Agcy.** p. 59
- Chappus v. La Salle (Town), (Can.); **26. Hghys.** p. 776
- Chappus & La Salle (Town), *Re* (Can.); **38. Pub. Hlth.** p. 1072
- Chardon, *Re*, Johnston v. Davies (1928); **8. Char.** No. 231a; **37. Persps.** No. 408a
- Charlebois v. Baril (Can.); **12. Contr.** p. 442
- Charles v. Cardiff Collieries, Ltd. (1928); **34. Mines**, No. 1106a
- (Doe d.) v. Cotton (Can.); **31. Limit. of A.** p. 936
- v. Kempthorne, *Re* Kempthorne (1929); **20. Egy.** No. 817a

# TABLE OF CASES.

- Charles v. Lewis & McMahon (Can.); **20. Elect.** pp. 650, 652
- Charles Dale, Ltd. (Scot.); **10. Coys.** p. 393
- Charlotte, The (1920); **1. Adm.** No. 781g
- Charlotte (Owners) v. Theory (late) (Owners), The Charlotte (1921); **1. Adm.** No. 1553a
- Charlton v. Fox (1865); **30. Jdgmts.** No. 448a
- v. Saden (1836); **24. Exors.** No. 7276a
- v. West (1861); **33. Lunat.** No. 1459a
- Charrington, Gardner, Lockett & Co., Ltd. v. Southern Ry. Co. (1926); **8. Carr.** No. 976a
- Chartered Trust & Executor Co. v. Bell & Bursey (Can.); **5. Bkpcy.** p. 248
- Charteris, Re (Can.); **33. Lunat.** p. 948
- Charters, Re, Ex p. Trustee (1923); **5. Bkpcy.** No. 7119a
- Chase v. Coleridge (Can.); **2. Animals,** p. 126
- v. Layton, Re Grazebrook (Aus.); **44. Wills,** p. 1180
- v. Layton, Re Grazebrook (No. 2) (Aus.); **24. Exors.** p. 736
- Chatham (Township) Corp'n. v. Houston (Can.); **12. Contr.** p. 466
- Chatterby, Ex p., Re Wix (1881); **5. Bkpcy.** No. 7601
- Chatterson v. Dutton (Can.); **2. Arbn.** p. 159
- Cheang Thye Phin v. Lam Kin Sang (1929); **43. Trusts,** p. 1171
- Cheeseman v. Corey (Can.); **40. S. Land,** p. 1111
- Chelsea Vestry v. King (1864); **2. Animals,** No. 333a
- Chelston, The (1920); **1. Adm.** No. 1600a
- Chemische Fabrik auf Actien (Vorm E. Schering) Patent, Re (1928); **36. Pats.** No. 810a
- Cherrier & Orton v. McCreight & Pennington (Can.); **12. Contr.** p. 461
- Cherry v. Bredin (Can.); **2. Agric.** p. 93
- Cheshbrough Manufacturing Co. v. Kudhoos (1929) **16. Courts,** No. 592a
- Cheshire County Council v. Hopley (1923); **2. Agric.** No. 229a
- Chesline v. Hearnston (Can.); **44. Wills,** p. 1178
- Chester v. Kinnear (Can.); **36. Negl.** p. 1028
- Chesterman v. Federal Comm. of Taxation (Aus.); **8. Char.** p. 330; **21. E. D.** p. 670
- Chesterville Public School Board, Re (Can.); **19. Educ.** p. 644
- Cheveley v. Fuller (1853); **22. Evid.** No. 2477a
- Chevrier & Son, Ltd., Re (Can.); **4. Bkpcy.** p. 217
- Cheyne v. Paterson (Scot.); **42. Sm. Hldgs.** p. 1141
- Chhathi Lalsahkalwah v. Bindeshwari Pranadsahu (Ind.); **35. Mtge.** p. 1018
- Chhote Lal v. Kedar Nath (Ind.); **5. Bkpcy.** p. 240
- Chiandetti, Re, Ex p. Trustee (1921); **5. Bkpcy.** Nos. 6912a, 6916a, 7113a
- Chidambaram Chettyar v. Chettyar Firm (Ind.); **30. Jdgmts.** p. 886
- Chidzey v. Breckler (Aus.); **1. Action,** p. 2
- Chiemelewski, Re (Can.); **28. Infsts.** pp. 848, 849
- Chihattoo Lal Misser v. Naraindas Baijnath Prasad (Ind.); **17. Dep.** p. 602; **36. Ptnrs.** p. 1041
- Child v. Comber (1723); **12. Contr.** No. 1185
- v. Mann (1867); **29. Intp'r.** No. 173a
- Child Villiers' Application, Re, Villiers v. A.-G. (1922); **8. Char.** No. 2137
- Children's Aid Society of St. Adelard v. Ste. Rose Rural Municipality (Can.); **16. Cr. Pract.** p. 567
- Chillingworth v. Esche (1924); **12. Contr.** No. 546b
- Chin Kow v. Moquin (Can.); **16. Cr. Pract.** p. 570
- Chin Man Yee, Ex p., Porter v. R. (Aus.); **16. Contmpt.** p. 546; **17. Dep.** p. 601
- Chin Shack, Ex p. (Can.); **2. Aliens,** p. 120
- Chinese Immigration Act & Lee Chow Ying, Re (Can.); **2. Aliens,** p. 120; **16. Courts,** p. 549; **Cr. Pract.** p. 561
- Chinniah, Re (Ind.); **25. Gaming,** p. 757
- Chipman (Doe d.) v. Deveber (Can.); **32. Limit. of A.** p. 937
- Chippendale v. Winnipeg Electric Co. (Can.); **36. Negl.** p. 1029; **43. Tram.** p. 1164
- Chippendall v. Tomlinson (1785); **5. Bkpcy.** No. 6298
- Chisholm v. Chisholm (Can.); **28. Infsts.** p. 849
- v. Sheldon (Can.); **2. Agric.** p. 95
- Chisholme & Oakville (Town), Re (Can.); **38. Real. Prop.** p. 1090
- Chittick v. Lowery (Can.); **21. Exon.** p. 691
- Chmelnitsky, Re (Can.); **5. Bkpcy.** p. 264
- Chockolinga Mudaliar v. Durairwami Mudaliar (Ind.); **8. Char.** p. 343
- Chorba v. Kimbriel (Can.); **42. Str. Traf.** p. 1153
- Chorlton upon Medlock (Constables & Burgesses) v. Walker (1842); **26. Hghys.** No. 2470a
- Chowood, Ltd. v. Lyall (1929); **7. Bounds & F.** No. 436a
- Christ College Trust v. Hobart (City) Corp'n. (Aus.); **38. Rates,** p. 1080
- Christchurch (Mayor, etc.) v. Pyne, Gould, Guinness (N. Z.); **38. Rates,** p. 1080
- Christensen (Hans. C.), Ltd., Re, Tan v. E (Can.); **35. Mtge.** p. 1017
- Christian, Ex p., Re Jamieson (Aus.); **38. Rates,** p. 1085
- Christie v. Fraser (Can.); **23. Injon.** p. 855
- Christie Estate, Re, Re Great West Life Assurance Co. (Can.); **35. Mtge.** p. 1023
- Christie, etc. Petitioners (Scot.); **7. Burial,** p. 311
- Christie Grant, Ltd., Re (Can.); **4. Bkpcy.** p. 221
- , Re, Ex p. Canadian Express Co. (Can.); **5. Bkpcy.** p. 240
- Christmanson v. Christmanson (Can.); **27. H. & W.** p. 798
- Christoforides v. Terry (1924); **1. Agcy.** No. 1550a
- Christopher v. Cohen (Ind.); **19. Easmt.** p. 629
- Christy v. Courtenay (1849); **25. Gifts,** No. 83a
- v. McKay (Can.); **32. Lien,** p. 932
- Church v. College of Physicians & Surgeons (Can.); **34. Med.** p. 1001
- Churchbridge Rural Municipality No. 211 v. London Guarantee & Accident Co., Ltd. (Can.); **26. Guar.** p. 771
- Cie des Bois du Nord v. St. Louis S.S. (Can.); **1. Adm.** p. 18
- Cimitian v. Gout (1922); **2. Aliens,** No. 13a
- Citizens Coal & Forwarding Co., Re (Can.); **9. Coys.** p. 375
- Citizens Insurance Co. v. Johnston (Can.); **11. Const. L.** p. 130
- City Equitable Fire Insurance Co., Ltd., Re (1925); **9. Coys.** Nos. 432a, 3059a, 3060a, 3063a, 3063b, 3068a, 3109a, 3127a, 3128a, 3280a, 3282a, 3661a, 3662a, 3670a; **10. Coys.** Nos. 6150a, 6173a
- City Garage & Machine Co., Ltd., Re, Re Land Titles Act (Can.); **5. Bkpcy.** p. 261
- City Life Assurance Co., Ltd., Re (1926); **10. Coys.** No. 7627b
- City of Baroda, The (1926); **1. Adm.** No. 1062b; **18. Discy.** Nos. 373a, 874a
- City of Edinburgh, The (1921); **1. Adm.** No. 579a
- City of London Insurance Co., Ltd., Re (1925); **9. Coys.** No. 432c
- City of London Real Property Co., Ltd. v. Jones (1929); **28. Inc. T.** No. 116b
- Claman v. Claman (Can.); **27. H. & W.** p. 794
- v. — (No. 2) (Can.); **27. H. & W.** p. 804

- Clan Line Steamers, Ltd. v. Board of Trade, The Clan Matheson (1929); **41. Ship.** No. 8755a
- Clan Line Steamers, Ltd. (Clan Stuart (Owners)) v. Uskside S.S. Co., Ltd. (Uskhaven (Owners)) (Scot.); **41. Ship.** No. 6104a
- Clan Matheson, The, Clan Line Steamers, Ltd. v. Board of Trade (1929); **41. Ship.** No. 8755a
- Clancarty, *Re* (Ir.); **5. Bkpcy.** p. 242
- Clapham, *Re*, Minister of Finance v. Burke-Roche (Can.); **21. E. D.** p. 676
- Clappison Bridge Case, Public Highways Dept., Ontario v. Canadian Pacific Ry. Co. (Can.); **26. Hghys.** p. 786
- Clara Camus, The (1925); **1. Adm.** No. 1655a
- (1926); **1. Adm.** No. 1655a
- Clare & Heyworth v. Betts (1927); **28. Inc. T.** No. 210
- Clarendon's (Earl) Case (1667); **14. Crim.** No. 967a
- Clark, *Re*, Clark v. Clark (1926); **4. Bkpcy.** No. 5387a; **5. Bkpcy.** No. 5826a
- v. Appleby (Can.); **35. Mistake.** p. 1212
- v. Barnes (1929); **19. Easmt.** Nos. 181a, 190a
- v. Bellamy (Can.); **24. Errors.** p. 733
- v. Buchanan, *Re* Mellish (1927); **21. E. D.** Nos. 209a, 271a
- v. Chambers (1878); **26. Hghys.** No. 1381a
- v. Epsom Rural District Council (1929); **30. Jdgmts.** No. 198a; **38. Pub. Hlth.** No. 29a; **41. Sewers.** No. 19a
- v. Hepworth (Can.); **1. Agcy.** p. 57
- v. Hume (1825); **5. Bkpcy.** No. 7650a
- v. Lawson (Can.); **14. Crim.** p. 499
- v. Urquhart (1929); **9. Coys.** No. 770a; **17. Damgs.** No. 1a
- v. Wilson (Aus.); **36. Negl.** p. 1032
- Clark (Marcus) (Australia), Ltd. v. Brown (Aus.); **3. Bailmt.** p. 170; **39. S. Goods.** p. 1104
- Clark's Case (1596); **13. Corpns.** No. 736a
- Clarke, *Re*, Bracey v. Royal National Lifeboat Institution (1923); **8. Char.** Nos. 47a, 735a
- v. Anderson (Can.); **40. S. Land.** p. 1110
- v. Babbitt (Can.); **32. Limit. of A.** p. 936
- v. Chamberlin (1880); **38. Real Prop.** No. 663a
- v. Clarke (Can.); **27. H. & W.** pp. 788, 797
- v. Eby (Can.); **43. Trusts.** p. 1168
- v. Edmonton (City) (Can.); **44. Waters.** p. 1174
- v. Fidelity-Phoenix Fire Insurance Co. of New York (Can.); **29. Insee.** p. 868
- v. Griffiths (1927); **8. Clubs.** No. 111b
- v. Haney & Dunlop (Can.); **38. Real Prop.** p. 1091
- v. Hawke (Can.); **23. Exors.** p. 726
- v. Hoggins (1862); **42. Str. Traf.** No. 50a
- v. Langa & Roddis, Ltd. (Can.); **12. Contr.** p. 444
- v. London & Manchester Assurance Co. (1929); **25. Fr. Soc.** No. 175b
- v. Moore & Simpson (Can.); **32. Lien.** p. 931
- v. Moose Jaw (City) (Can.); **17. Dep.** p. 596
- v. Murray (Can.); **17. Damgs.** p. 583
- v. Plummer & Marcellus (Can.); **33. Mags.** p. 951
- v. Southern Ry. Co. (1927); **34. Mast. & S.** No. 2488a
- v. Union Fire Insurance Co., Agricultural Fire Insurance Co. of Watertown, New York Claim (Can.); **29. Insee.** p. 860
- v. Wentworth Stores, Ltd. (Can.); **34. Mast. & S.** p. 965; **42. Stats.** p. 1147
- v. White, *Re* Bennett (1898); **35. Mtgc.** No. 583a
- Clarke Brothers, Ltd. v. Goodin & Pederson (Can.); **8. Chos.** p. 347
- Clarke-Jervoise v. Scutt (1920); **2. Agric.** Nos. 56a, 117a
- Clarkson v. Alliston Corp'n. (Can.); **19. Educ.** p. 645; **40. Set-Off.** p. 1113
- v. Corrimall Balgownie Collieries, Ltd. (Aus.); **34. Mast. & S.** p. 965
- Clarkson v. Hanway (1723); **25. Fraud. Conv.** No. 807a
- v. Lawson (Can.); **6. B. of Exch.** p. 278
- v. McLean (Can.); **3. Bank.** p. 174
- v. Robinet (Can.); **3. Bank.** p. 175
- v. Ryan (Can.); **17. Dep.** p. 600
- v. Smith & Goldberg (Can.); **3. Bank.** p. 175
- Clarkson & Home Bank of Canada v. Lancaster (Can.); **3. Bank.** p. 175
- Clarkson Lamplough, *Re*, *Ex p.* Harding (1835); **5. Bkpcy.** No. 9034a
- Clary v. Boulay (Can.); **38. Rates.** p. 1085
- Clatworthy & Son, Ltd. v. Dale Display Fixtures, Ltd. (Can.); **43. Trade Mks.** p. 1161
- Clausen v. Canada Timber & Lands, Ltd. (Can.); **12. Contr.** p. 456; **17. Damgs.** p. 582
- Clavel's Application, *Re* (1928); **36. Pals.** No. 1363a
- Clavelle v. Russell (Can.); **1. Agcy.** p. 66
- Claxton, *Re* (Can.); **21. Exon.** p. 693
- Clay, *Re*, Clay v. Booth, *Re* A Deed of Indemnity (1919); **1. Action.** No. 153a
- v. Boulay (Can.); **35. Mtgc.** p. 1024
- Clayton v. Barclay (1895); **35. Mtgc.** No. 3378
- v. Newcastle (Duke) (1682); **21. Estpl.** No. 993b
- Clayton & Barclay's Contract, *Re* (1895); **35. Mtgc.** No. 3378
- Clayton & Beaumonts' Contract, *Re* (1895); **5. Bkpcy.** Nos. 6331, 7689
- Clayton's Petition, *Re* (1927); **3. Basty.** No. 130d
- Clazy, *Re* (Can.); **23. Exors.** p. 716; **38. Real Prop.** p. 1089
- Clearing Office Controller v. Edwards & Co. (Bread Street), Ltd. (1923); **2. Aliens.** No. 215b
- v. Weir & Co. (1925); **2. Aliens.** No. 215o
- v. — (1926); **2. Aliens.** No. 215o
- Clearview, Ltd. v. Yatala South District Council (Aus.); **38. Rates.** p. 1080
- Cleary v. Hite (Can.); **2. Animals.** p. 128
- Cleave v. McDonald (N.Z.); **16. Courts.** p. 554
- Clementi v. Fielding (1848); **37. Perps.** No. 19a
- Clements v. Coughlan (Can.); **1. Agcy.** p. 67
- v. County of Devon Insurance Committee (1918); **2. Arbn.** No. 36a
- Clemons v. St. Andrews (Can.); **38. Rates.** p. 1086
- Clemow, *Re*, Yeo v. Clemow (1900); **23. Exors.** Nos. 5448a, 5458a
- Clerical Disabilities Act, 1870, *Re*, *Ex p.* Cowan (1927); **19. Eccl.** No. 1851a
- Clibborn v. Forstall (Ir.); **28. Infts.** p. 851
- Cliffe v. Gibbons (1714); **24. Exors.** No. 4089a
- Clifford & Son, Ltd. v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 224a
- Clifford & Son, Ltd. v. Puttick (1928); **28. Inc. T.** No. 224a
- Clifton v. Holborn Borough Council (1929); **42. Time.** No. 131a
- v. Johnstone (N.Z.); **1. Agcy.** p. 39
- v. Strauss, *Re* Aschrott (1927); **21. E. D.** Nos. 96a, 136a
- Cline v. Battle (Can.); **34. Mast. & S.** p. 964
- Clinton v. Bernard (Ir.); **28. Infts.** p. 851
- Clonard Brick & Estate Co., Ltd., *Re* (Ir.); **10. Coys.** p. 393
- Cloncurry (Lord) v. Laffan (Ir.); **12. Contr.** pp. 446, 447
- Close v. Stewart (Can.); **26. Guar.** p. 770
- Clouse v. Coleman (Can.); **22. Evid.** p. 704
- Cloutman v. Regnart, *Re* Rayner (1920); **8. Char.** No. 27a
- Clow v. Doull (Can.); **6. B. of Exch.** pp. 276, 278, 280



- Clubine v. McMullen (Can.); **21. Estpl.** p. 681  
 Cluff Brothers, *Re* (Can.); **4. Bkpcy.** p. 210, 211  
 Clutterbuck v. Imperial Lumber Co. (Can.); **35. Mfg.** p. 1017  
 Clyde & Dobbie McInnes, Ltd. Patents, *Re* (1929); **36. Pats.** No. 2060a  
 Clyde Engineering Co., Ltd. v. Cowburn (Aus.); **17. Dep.** p. 601  
 Clyde Industrial Training Ship Assocn. (Scot.); **8. Char.** p. 342  
 Clyde Navigation Trustees v. Kelvin Shipping Co., Ltd. (Scot.); **35. Money.** p. 1014  
 Clydebank Investment Co., Ltd. v. Marshall (Scot.); **31. L. & T.** p. 917  
 Clydesdale Bank, Ltd. v. Senior (James Allan) & Son (Liquidators) (Scot.); **3. Bank.** p. 181  
 Coady, *Re* (Can.); **30. Intox.** p. 885  
 Coakley v. Summerlee Iron Co., Ltd. (Scot.); **34. Mast. & S.** p. 982  
 Coal & Coke Rates Case, Standard Hardwood Lumber Co. v. Canadian Pacific Ry. Co. & Canadian National Rys. (Can.); **38. Rys.** p. 1078  
 Coal Mines Regulation Amendment Act, 1890, *Re* (Can.); **17. Dep.** p. 598  
 Coaldrake v. Brisbane City Council (Aus.); **38. Rates.** p. 1081  
 Coaster, The (1922); **1. Adm.** No. 1548a  
 Coats v. Union Bank of Scotland, Ltd. (Scot.); **3. Bank.** p. 188  
 Cobalt Corpn. v. Temiskaming Telephone Co. (Can.); **38. Pub. Auth.** p. 1069  
 Cobb v. Roy (Can.); **7. Bldg. Conts.** p. 306  
 Cobban Manufacturing Co. v. Lake Simcoe Hotel Co. (Can.); **32. Lien.** p. 932  
 Cobbett, *Re* (Aus.); **8. Char.** p. 332  
 Cobbold v. Garrett (1929); **22. Evid.** No. 6743a  
 Cobourg & Grafton Toll Road Co., *Re* (Can.); **11. Comp. Pchs.** p. 406  
 Cobourg Felt Co., *Re, Ex p.* Weaver (Can.); **5. Bkpcy.** p. 265  
 Coca Cola Co. v. Duckworth & Co. (1928); **18. Discy.** No. 1690a  
 Cochran's Trusts, *Re* (No. 2) (Can.); **2. Arbn.** p. 159  
 Cochrane, *Re* (N.Z.); **5. Bkpcy.** p. 251  
 Cochrane (Town) & King, *Re* (Can.); **38. Rates.** p. 1080  
 Cockburn v. Eager (Can.); **28. Injon.** p. 854  
 — v. Gordon (Scot.); **33. Mags.** p. 955; **39. Revenue.** p. 1098; **42. Str. Traf.** p. 1152  
 — v. Sylvester (Can.); **6. B. of Exch.** p. 275  
 Cockorill, *Re*, Mackaness v. Percival (1929); **21. E. D.** No. 265b; **44. Wills.** No. 2732a  
 Cocks Estate & Consort Trading Co., *Re* (Can.); **5. Bkpcy.** p. 239  
 Cockshutt Plow Co., Claimant, Imperial Lumber Yards, Ltd. v. Ferguson (Can.); **7. B. of Sale.** pp. 289, 291  
 Codville, *Re* (Can.); **11. Comp. Pchs.** p. 402  
 Codville Co., Ltd. v. Goddard (Can.); **12. Contr.** p. 464  
 Codville Co. v. Jordan (Can.); **6. B. of Exch.** pp. 275, 278  
 Cody v. Cody (Can.); **11. Confl.** p. 424; **28. Infts.** p. 849  
 Coffey v. Quebec Bank (Can.); **39. S. Goods.** p. 1104  
 Cofield v. Waterloo Case Co., Ltd. (Aus.); **24. Facf.** p. 738  
 Coghlin v. La Fonderie de Joliette (Can.); **17. Dams.** p. 583  
 Cogstad (C. T.) & Co. v. Newsum (H.), Sons & Co. (1921); **2. Arbn.** Nos. 1058a, 1083a, 1357a  
 Cohen, *Re, Ex p.* Trustee v. Snow (W. R.) & Co. (1924); **4. Bkpcy.** No. 4665a; **5. Bkpcy.** No. 7225a  
 —, *Re*, Cohen v. Cohen (1915); **40. Stillmts.** No. 83a  
 —, *Re*, Cohen v. Cohen (1918); **3. Bank** No. 128a  
 — v. Cohen, *Re* Cohen (1915); **40. Stillmts.** No. 83a  
 — v. Gold (1927); **31. L. & T.** No. 7351b  
 — v. Jonesco (1926); **21. Estpl.** No. 103a  
 — v. Lapin (Aus.); **21. Estpl.** p. 681  
 — v. Roche (1927); **3. Auct.** Nos. 76a, 151b  
 — v. Sellar (1926); **25. Gifts.** No. 175a  
 Cohen & Cohen, *Ex p.*, *Re* Lavey (1920); **5. Bkpcy.** No. 8104a  
 —, *Ex p.*, *Re* Lavey (1921); **4. Bkpcy.** No. 2028a; **5. Bkpcy.** No. 8104a  
 Cohen & Mahlin, *Re*, Canadian Credit Men's Trust Assocn., Ltd. v. Spivak (Can.); **4. Bkpcy.** p. 225; **5. Bkpcy.** pp. 234, 246, 249, 252  
 Cohen & Sweigman, *Re, Ex p.* Gelman (Can.); **4. Bkpcy.** p. 222  
 —, *Re, Ex p.* Rosenberg (Can.); **4. Bkpcy.** p. 205  
 Cohn v. Canary (Can.); **27. H. & W.** p. 788  
 Coimbra, The (1923); **1. Adm.** No. 1541a  
 Cokers v. Belleville (Can.); **26. Hghys.** p. 777  
 Colchester v. Peck (1926); **3. Basty.** No. 366a  
 Colchester South (Township) v. Hackett (Can.); **32. Limit. of A.** p. 936; **38. Real Prop.** p. 1091  
 Coldman v. Hill (1919); **2. Animals.** No. 346a  
 Cole v. Cole (Can.); **20. Eqq.** p. 665  
 — v. London & North Eastern Ry. Co. (1928); **34. Mast. & S.** No. 2310a  
 — v. Merton Park (Wimbledon) Golf Club, Ltd. (1927); **8. Clubs.** No. 21a  
 — v. Nanalal Morarji Dare (Ind.); **3. Bailmt.** p. 170  
 — v. Operative Plasterers Federation of Australia (N.S.W. Branch) & Hudson (Aus.); **32. Libel.** p. 926  
 — v. Reed (Can.); **36. Priturs.** p. 1042  
 — v. Sumner (Can.); **12. Contr.** p. 443  
 Cole & Knowles, *Re* (Can.); **34. Mines.** p. 1005  
 Colebourne v. Harrop (Can.); **38. Rys.** p. 1077  
 Coleman, *In the Goods of* (Ir.); **23. Exors.** p. 719  
 — v. Monahan (Can.); **31. L. & T.** p. 906  
 Coleman (Township) & Northern Ontario Light & Power Co., Ltd., *Re* (Can.); **28. Inc. T.** p. 818; **38. Rates.** p. 1080  
 Coleman & Toronto & Niagara Power Co., *Re* (Can.); **2. Arbn.** p. 157  
 Coleman's Case (1619); **15. Crim.** No. 7564a  
 Coleridge v. Coleridge (Can.); **27. H. & W.** pp. 794, 800  
 Coles, *In the Goods of* (1871); **23. Exors.** No. 54a  
 — v. Wawken Rural Municipality (Can.); **38. Pub. Hlth.** p. 1074  
 — v. White City (Manchester) Greyhound Assocn., Ltd. (1929); **9. Coys.** No. 525a  
 Coleshill v. Manchester Corpn. (1928); **16. Courts.** No. 22a; **26. Hghys.** No. 1191b; **30. Juries.** No. 295a  
 Colgrove v. Gundy (Can.); **20. Eqq.** p. 666  
 Collaroy Co., Ltd. v. Giffard (1928); **10. Coys.** No. 6989b  
 College Brand Clothes Co., Ltd. v. Brown & Fitzpatrick (Can.); **18. Discy.** p. 614; **22. Evid.** p. 712  
 Collingwood v. Union Government (S. Af.); **2. Aliens.** p. 121  
 — v. Wallis (1727); **20. Eqq.** No. 911a  
 Collins, *Re* (1925); **5. Bkpcy.** Nos. 6129a, 6659a, 6745b  
 —, *Re* (Can.); **24. Exors.** p. 735

- Collins, *Re, Ex p. Salaman* (Trustee) (1925); **5. Bkpcy.** No. 6659a  
 —, *Re, Jowers v. Collins* (1929); **40. Stillmts.** No. 3138b  
 —, *Re, Towers v. Collins* (1929); **40. Stillmts.** No. 3138b  
 — v. Associated Greyhounds Racecourses, Ltd. (1929); **1. Agcy.** No. 2130a  
 — v. Cahir (Can.); **27. H. & W.** p. 788  
 — v. Collins (Ind.); **27. H. & W.** p. 797  
 — v. Collins (Ir.); **18. Descr.** p. 609  
 — v. General Service Transport Co. (Can.); **36. Negl.** p. 1027  
 — v. Margetts, *Re Austen* (1929); **40. Stillmts.** No. 2600a  
 — v. Reid (Can.); **35. Mtge.** p. 1020  
 — v. Whiteway (Henry) & Co. (1927); **16. Courts,** No. 17a; **32. Libel,** No. 1347a  
 Collinson, *Re, Collinson v. Collinson* (1853); **25. Gifts,** No. 103a  
 Colman (J. & J.), Ltd. Application to Register Trade Mark (1929); **43. Trade Mks.** No. 326a  
 Colonial Assurance Co., *Re* (Can.); **10. Coys.** p. 389  
 Colonial Investment & Loan Co. v. Demerchant (Can.); **38. Real Prop.** p. 1092  
 — v. Hush (Can.); **25. Fraud. Conv.** p. 748  
 — v. Martin (Can.); **11. Confl.** p. 426; **35. Mtge.** p. 1022  
 Colorado, *The* (1923); **11. Confl.** No. 1309a  
 Colp v. Hunter (Can.); **12. Contr.** p. 444; **25. Fraud. Conv.** p. 751  
 Colpen v. Callahan (Can.); **34. Mines,** p. 1005  
 Colpitts v. Sherwood (Can.); **35. Mtge.** p. 1021  
 Colquhoun v. Driscoll (Can.); **38. Rates,** p. 1081  
 Colquitt v. United Steel Co., Ltd. (1928); **34. Mast. & S.** No. 3247a  
 Colson's Trusts, *Re* (1853); **44. Wills,** No. 9071a  
 Columbia Furnishing Co. v. Goldblatt (S. Af.); **21. Exon.** p. 691  
 Columbia Gramophone Co., Ltd. v. Fossey (Aus.); **36. Pats.** p. 1051  
 Columbia Graphophone Co. v. Union Bank of Canada (Can.); **3. Bank.** pp. 183, 186  
 Columbia Phonograph Co., General v. Regent Fittings Co. (1913); **36. Pats.** No. 3152a  
 Colville (D.) & Sons, Ltd. v. Ayresshire Assessor (Scot.); **38. Rates,** p. 1083  
 Colwood Park Asscn., Ltd. v. Oak Bay Corp'n. (Can.); **35. Mistake,** p. 1012  
 Comba v. Simpson (Can.); **16. Courts,** p. 550  
 Comeau v. Leblanc (Can.); **12. Contr.** p. 462  
 Comforter & Cushion Manufacturing Co., *Re, Ex p. Henderson* (J. B.) & Co. (Can.); **7. B. of Sale,** p. 289  
 Commane, *Re* (Aus.); **43. Trusts,** p. 1170  
 Commercial & Estates Co. of Egypt v. Board of Trade (1925); **11. Const. L.** Nos. 534a, 535a  
 Commercial Bank of Scotland v. Campbell, *Re Campbell* (1923); **28. Inc. T.** No. 646a  
 Commercial Credit Co. of Canada, Ltd. v. Fulton Brothers (Can.); **7. B. of Sale,** p. 290  
 Commercial Pacific Cable Co. v. Prince Albert, The (Can.); **1. Adm.** pp. 14, 15  
 Commercial Properties, Ltd., *Re* (Ind.); **28. Inc. T.** p. 818  
 Commodore, *The* (1853); **1. Adm.** No. 1277  
 Common Councilmen for the Ward of Farringdon Without in the City of London, *Re Election of* (1925); **20. Elect.** No. 1038a  
 Commonwealth, *The v. Kreglinger & Fernau, Ltd. & Bardsley* (Aus.); **17. Dep.** p. 600  
 Commonwealth & A.-G. for Commonwealth v. Australian Commonwealth Shipping Board (Aus.); **13. Corpsn.** p. 491; **17. Dep.** p. 600  
 Commonwealth & Central Wool Committee v. Colonial Combing, Spinning & Weaving Co., Ltd. (Aus.); **17. Dep.** p. 601  
 Commonwealth & Commonwealth Oil Refineries, Ltd. v. State of South Australia, Ltd. (Aus.); **17. Dep.** p. 601  
 Commonwealth of Australia v. New South Wales State (1929); **17. Dep.** Nos. 58a, 390a  
 Community of Sisters of the Holy Names of Jesus & Mary, *Re, Re Winnipeg Charter* (Can.); **16. Courts,** p. 552  
 Compania Mercantil Argentina v. United States Shipping Board (1924); **1. Action,** No. 393a  
 Compania Mexicana de Petroleo el Aguila v. Essex Trading & Transport Co. (1929); **36. Negl.** Nos. 636a, 790a  
 Companies Act, *Re, Re British Petroleum, Ltd.* (Can.); **9. Coys.** p. 364  
 Companies Registrar, *Re, Re Pioneer Savings & Loan Society* (Can.); **16. Cr. Pract.** p. 563; **32. Loan Soc.** p. 911  
 Companies Winding Up Act, *Re, Re Saskatchewan Co-operative Elevator Co., Ltd.* (Can.); **2. Agric.** p. 84  
 Compressed Yeast, Ltd. v. Distributing Agency, Ltd. (S. Af.); **12. Contr.** p. 461  
 Compte de Wohronzoff, *The* (1781); **2. Aliens,** No. 419a  
 Comstock v. Ashcroft Estates, Ltd. (Can.); **2. Animals,** p. 131  
 Con Planck, Ltd. v. Kolynos Incorporated (1925); **13. Coprt.** No. 229a  
 Condon v. Gassall & Drinkle (Can.) **21. Exon.** p. 689  
 Condon Estate, *Re* (Can.); **22. Evid.** p. 711  
 Conds v. Kabota (Can.); **16. Cr. Pract.** p. 563  
 Coneys v. Morris, *Re Morris* (Ir.); **3. Bank.** p. 190  
 Conlan's Estate, *Re* (Ir.); **32. Limit. of A.** p. 937  
 Conley v. Lee (Can.); **38. Real Prop.** p. 1092  
 Conn Presbyterian Church, *Re* (Can.); **19. Eccl.** p. 641  
 Connel (Doe d.) v. Dickinson (Can.); **17. Deeds,** p. 588  
 Connell v. Rorke (Nfld.); **25. Fish.** p. 745  
 — v. Union S.S. Co. (Aus.); **34. Mast. & S.** p. 999  
 Connolley v. Connolley (Can.); **27. H. & W.** p. 795  
 Connolly v. Shives (Can.); **24. Exors.** p. 733  
 Connor, *Re* (Ir.); **3. Basti.** pp. 199, 200  
 — v. McPherson (Can.); **38. Rates,** p. 1085  
 — v. Nelson, Moate & Co. (N.Z.); **31. L. & T.** p. 903  
 — v. Rockhampton City Council (Aus.); **38. Rates,** p. 1080  
 Connors v. Egli (Can.); **17. Dep.** pp. 598, 603  
 — v. McGregor (Can.); **12. Contr.** p. 470; **17. Damgs.** p. 580; **Deeds,** pp. 587, 588  
 — v. Myatt (Can.); **21. Estpl.** p. 686  
 Conquer v. Boot (1928); **21. Estpl.** No. 447a  
 Conquest, *Re, Royal Exchange Assurance v. Conquest* (1929); **40. Stillmts.** No. 1873a  
 Conradie v. Roussouw (S. Af.); **12. Contr.** p. 449  
 Conrod v. R. (Can.); **34. Mast. & S.** p. 964  
 Conron v. London County Council (1922); **11. Comp. Pche.** No. 2225a  
 Consett Industrial & Provident Society, Ltd. v. Consett Iron Co. (1922); **11. Comns.** No. 903  
 Consett Iron Co., Ltd. v. Durham County Assessment Committee for the North-Western Area (1929); **38. Rates,** No. 1057a

- Consolidated Rendering Co. v. Canadian National Rys. (Can.); **38. Rys.** p. 1076
- Consolidated Wafer Co., Ltd. v. International Cone Co., Ltd. (Can.); **22. Evid.** p. 700; **36. Pats.** p. 1049
- Conson v. London County Council (1922); **11. Comp. Pche.** No. 2225a
- Constitutional Questions Determination Act, *Re*, *Re* Legal Professions Act (Can.); **17. Dep.** p. 597
- Consumers' Gas Co. v. R. (Can.); **25. Gas.** p. 763
- Continental, *Re* (Aus.); **2. Aliens.** pp. 115, 116
- Continental Contractors v. Medway Oil & Storage Co. (1928); **40. Set-Off.** No. 562
- Continental Fire & Casualty Co., *Re* (Can.); **10. Coys.** pp. 386, 395
- Continental Guaranty Corp'n. of Canada, Ltd. v. Horodyske & Canmore Coal Co., Ltd. (Can.); **21. Exon.** p. 698
- v. Mark (Can.); **28. Infts.** p. 847
- Continental Guaranty Corp'n. v. Vance (Can.); **6. B. of Exch.** p. 269
- Continental Publishing Co., *Re*, *Ex p.* Davis & Simmons (Can.); **4. Bkpcy.** pp. 221, 227
- Cooley v. Bromo Municipality (Can.); **17. Dep.** p. 597
- Coolil v. Clarkson (Can.); **21. Estpl.** p. 688
- Cook, *Ex p.*, *Re* Gunsbourg (1920); **5. Bkpcy.** No. 5775a
- , *Re* (Aus.); **21. E. D.** p. 671
- v. Belshaw (Can.); **32. Lien.** p. 932
- v. Cook (Can.); **32. Limit. of A.** p. 937
- v. Davidson (Can.); **13. Corps.** p. 491
- v. Lemieux (Can.); **38. Real Prop.** p. 1092
- v. M'Dougall (Scot.); **4. Bkpcy.** p. 214
- v. Orr (Can.); **7. B. of Sale.** p. 292
- v. R. (Can.); **39. Revenue.** p. 1097
- Cooke, *Re*, *Ex p.* Adam (1813); **4. Bkpcy.** No. 218b
- Cooke v. Mocroft (Can.); **32. Lien.** p. 932
- v. Wallace (N.Z.); **1. Agcy.** p. 39
- Cookson v. Mackie (Scot.); **39. Revenue.** p. 1098
- Cooley v. Walsh & Cooney (Ir.); **31. L. & T.** p. 919
- Coolin v. Coolin (Can.); **39. S. Goods.** p. 1002
- Cooper v. Collins Electrical, Ltd. (1926); **34. Mast. & S. No.** 3698b
- v. Micklefield Coal & Lime Co., Ltd. (1912); **12. Contr.** Nos. 4908a, 4931a
- v. Pennington (Can.); **44. Work.** p. 1185
- v. Rayner (1912); **12. Contr.** Nos. 4908a, 4931a
- v. Swadling (1929); **36. Negl.** No. 781b
- v. Toronto Casualty Insurance Co. (Can.); **29. Insc.** p. 868
- v. Visser (S. Af.); **2. Animals.** p. 126
- Co-operative Music Supply Co. v. Gold Medal Furniture Manufacturing Co., *Re* Hughes Music Sales Co. (Can.); **5. Bkpcy.** p. 249
- Cope's Trusts, *Re* (1877); **24. Exors.** No. 5353a
- Copley v. Finkelstein (Can.); **17. Damgs.** p. 580; **43. Tresp.** p. 1165
- Copp, *Ex p.*, *R. v.* Murray (Can.); **33. Maqs.** p. 952
- Copp v. Williams (Can.); **5. Bkpcy.** p. 250
- Corano, *Re* (Can.); **30. Intox.** p. 885
- Corballis, *Re* (Ir.); **5. Bkpcy.** p. 238
- Corbett v. Jamieson (N.Z.); **3. Bailmt.** p. 165
- Cork, *Ex p.*, *Re* Tabor (1920); **5. Bkpcy.** Nos. 6516a, 6881a, 6890a
- Cornish Coast (Owners) v. Societa Nazionale di Navigazione, The Fagernes (1927); **11. Const. L. No.** 136a; **16. Courts.** No. 37a
- Cornthwaite v. Frith (1851); **5. Bkpcy.** No. 9540a
- Cornwall v. Williams (1701); **40. S. Land.** No. 2242a
- Corones, *Ex p.*, *R. v.* Charleville Town Council (Aus.); **33. L. G.** p. 944; **42. Theatres.** p. 1155
- Corporation Agencies, Ltd. v. Home Bank of Canada (1926); **16. Courts.** No. 388a
- Corporation Agencies v. Home Bank of Canada (1927); **3. Bank.** No. 544a
- Corrigan v. Boulton (Can.); **26. Guar.** p. 770
- Corsini v. Palm (Can.); **35. Mlge.** p. 1023
- Corson Shoe Co., *Re* (Can.); **4. Bkpcy.** p. 227
- Corsten v. Noblet (Aus.); **15. Crim.** p. 543
- Cory Lighterage, Ltd. v. Dalton (Owners), The Harlow (1922); **1. Adm.** No. 1536a
- Cosgrove v. Canadian National Rys. (Can.); **17. Damgs.** pp. 577, 578, 583
- v. Corbell (Can.); **32. Limit. of A.** p. 936
- Costar v. Hetherington (1859); **21. Estpl.** No. 597a
- Costin v. Chappell (Can.); **11. Const. L.** p. 138
- Cottage Club Estates v. Woodside Estates Co. (Amersham), (1928); **7. Bldg. Confs.** No. 345a
- Cotter v. National Union of Seamen (1929); **43. Trade.** No. 1122a
- Cottingham v. Boulton (Can.); **35. Mistake.** p. 1012
- v. Cottingham (Can.); **21. Exon.** p. 698
- Cottle, *Ex p.*, *Re* Wolverhampton, Chester & Birkenhead Junction Ry. Co. (1850); **1. Agcy.** No. 646
- Cotton v. Dempster (Can.); **21. Exon.** p. 689
- Couch v. Western Trust Co. (Can.); **32. Limit. of A.** p. 937
- Coughlin & Co., *Re*, *Ex p.* Guarantee Co. of North America (Can.); **4. Bkpcy.** pp. 219, 223
- Coull v. Fife Education Authority (Scot.); **19. Educ.** p. 647
- Coulson v. Austin Motor Co., Ltd. (1927); **9. Coys.** No. 3734a
- v. Gzowski (Can.); **41. Ship.** p. 1133
- Coulter & Treffene v. R. (Aus.); **14. Crim.** p. 512
- County Hotel & Wine Co. v. London & North Western Ry. Co. (1918); **1. Action.** No. 604a
- v. — (1921); **1. Action.** No. 604a
- Coupland v. Elmore P. Burns & Co., Ltd. (Can.); **39. S. Goods.** p. 1105
- Courcier v. Courcier (Can.); **28. Infts.** p. 847
- Coursolles v. Fookes (Can.); **20. Eqq.** p. 666
- Court v. Holland, *Ex p.* Holland & Walsh (Can.); **22. Evid.** p. 702
- v. Walsh (Can.); **32. Limit. of A.** p. 937
- Courtaulds, Ltd. v. City of London Corp'n. (1926); **11. Comp. Pche.** No. 2286a
- Courteis v. Johnson (1853); **10. Coys.** No. 7723a
- Cousin v. Edinburgh Assessor (Scot.); **38. Rates.** p. 1083
- Cousins v. Greaves (Can.); **2. Animals.** p. 128
- Coutu v. James (Can.); **32. Lien.** p. 931
- Coventry v. Great Eastern Ry. Co. (1883); **21. Estpl.** No. 1610a
- Covington, *Re* (Can.); **4. Bkpcy.** p. 232
- Cowan, *Ex p.*, *Re* Clerical Disabilities Act, 1870 (1927); **19. Eccl.** No. 1851a
- v. A.-G. (Can.); **21. E. D.** p. 675
- v. Eisler (Can.); **34. Mast. & S.** p. 962
- v. Macaulay (Can.); **38. Real Prop.** p. 1089
- Cowan & Co. v. Edinburgh Assessor (Scot.); **38. Rates.** p. 1083
- v. Glasgow Assessor (Scot.); **38. Rates.** p. 1083
- Cowan Brothers, Ltd. & Rymer (Henry) & Co., *Re* (1919); **2. Arbn.** No. 1857c
- Coward, Chance & Co., *Re* (1928); **35. Mlge.** No. 4061a
- Cowcher v. Mills & Co., Ltd. (1927); **28. Inc. T.** No. 248b
- Cowdenbeath Public-House Society, Ltd. v. Fife Assessor (Scot.); **38. Rates.** p. 1085
- Cowdray v. Ferries (Scot.); **2. Agric.** p. 88
- Cowie v. Robinson (Can.); **32. Label.** p. 926
- v. Sawyer-Massey Co. (Can.); **1. Agcy.** p. 68

- Cowley (Earl) v. Wellesley (1866); **40. Stillmts.** Nos. 2197a, 2205b
- Cowlishaw v. Ponsford (Aus.); **19. Easmt.** p. 627
- Cowne v. Cordery (1862); **18. Distr.** No. 1266a
- Cowper v. Frankenberg (Aus.); **2. Aliens**, p. 107
- Cox, *Re* (Can.); **11. Const. L.** p. 437; **23. Exors.** p. 717
- v. Hogan & Victoria Corpn. (Can.); **8. Char.** p. 336
- Cox Towing Line v. Bunfield & Co. (Can.); **2. Arbn.** pp. 139, 142
- Coxe v. Basset (1796); **23. Exors.** No. 5839a
- Coyle, *Ex p.* (Can.); **33. Mags.** p. 952
- Cozier, *Re*, Parker v. Glover (Can.); **24. Exors.** p. 735
- Cragoe v. Sleeman, *Re* Sleeman (1929); **44. Wills.** No. 7911a
- Craig, *Re* (Can.); **21. Exon.** pp. 693, 694
- v. Armaghdale (Lady), *Re* Armaghdale (Lord) (1928); **28. Inc. T.** No. 696a
- v. Kennedy (Can.); **5. Bkpcy.** p. 235
- v. McCreath (Can.); **1. Agcy.** p. 40
- v. University of Toronto (Governors) (Can.); **19. Educ.** p. 646
- Craig & Co. v. Blackater (Scot.); **1. Agcy.** pp. 73, 77
- Craig (W. G.) & Co., Ltd. v. Gillespie (Can.); **5. Bkpcy.** p. 250; **7. B. of Sale**, p. 290
- Craigon v. R. (1924); **17. Dep.** No. 108a
- Cramb v. Goodwin (1919); **1. Agcy.** No. 1829a
- Crawford, *Re* (1847); **22. Evid.** No. 6092a
- v. Lundy (Can.); **20. Eqq.** p. 663
- v. Northern Lighthouses Comrs. (Scot.); **7. Bldg. Confs.** pp. 305, 306
- v. Western Assurance Co. (Can.); **29. Insec.** p. 860
- v. White City Rink (Newcastle-on-Tyne), Ltd. (1913); **12. Contr.** No. 845a
- Crawford & Co. v. Hunters & Co. (Nfld.); **4. Bkpcy.** p. 228
- Craythorne v. Jenkins (N.Z.); **12. Contr.** p. 469
- Creagh v. Sutherland & Reade (Can.); **21. Exon.** p. 696
- Creaghan Co., Ltd. v. Davidson (Can.); **42. Sp. Pfce.** p. 1144
- Crediton Gas Co. v. Crediton Urban District Council (1928); **25. Gas**, No. 51a
- Creelman & Verge v. R. (Can.); **11. Const. L.** p. 430
- Creighton v. United Oils, Ltd. (Can.); **11. Const. L.** p. 437
- Crellin v. Mellling, *Re* Reade-Revell (1929); **24. Exors.** No. 6267a
- Cremidas v. British Columbia Electric Ry. Co. (Can.); **2. Aliens**, p. 113
- Crerar v. Bank of Scotland (Scot.); **3. Bank.** p. 180
- Crerer & Patterson v. Braybrook (Can.); **1. Agcy.** p. 65
- Crest Estate, *Re* (Can.); **23. Exors.** p. 724
- Creteforest, The (1920); **1. Adm.** Nos. 856a, 979a, 1001a
- Crew (Doc d.) v. Clarke (Can.); **21. Exon.** p. 694
- Crew v. Petit (1834); **1. Agcy.** No. 2658
- Crewkerne United Breweries, Ltd. v. Slade, *Re* Slade (1921); **4. Bkpcy.** No. 4335a
- Crichton Estate, *Re* (Can.); **37. Perps.** p. 1055
- Crieff Gas Light Co., Ltd. v. Perthshire Assessor (Scot.); **38. Rates**, p. 1083
- Crimdon, The (1918); **1. Adm.** Nos. 131a, 141a
- Criss v. Alexander (Aus.); **39. S. Goods**, p. 1103
- Cristal v. Simovitch (Can.); **6. B. of Exch.** p. 282
- Crocker v. Hutchinson (Can.); **21. Estpl.** p. 686
- Croft v. Whiting (Can.); **38. Real Prop.** p. 1090
- Croft & Sons, Ltd., *Ex p.*, *Re* Gardner (Can.); **5. Bkpcy.** p. 264
- Croker v. Martin (1827); **20. Eqq.** No. 1619a
- v. Penny, *Re* Walker (Aus.); **44. Wills**, p. 1183
- Cromarty v. Cromarty (Can.); **11. Confl.** pp. 421, 423
- Crombie v. R. (Can.); **16. Cr. Pract.** p. 560
- Cromwell's (Lord) Case (1578); **22. Evid.** No. 1200a
- Cronholm v. Cole (Can.); **40. S. Land**, p. 1110
- Cronshaw v. Chapman (1862); **21. Exon.** No. 1231a
- Crook v. Royal National Lifeboat Institution, *Re* Beck (1926); **8. Char.** No. 1186a
- v. Wilson (1855); **19. Easmt.** No. 1406a
- Crooks & Co. v. Agricultural Co-operative Union, Ltd. (S. Af.); **1. Adm.** p. 37
- Crop Payments Act, *Re*, *Re* Bills of Sale & Chattel Mortgage Act (Can.); **7. B. of Sale**, p. 285
- Cropper v. Mellersh (1855); **35. Mtge.** No. 2897a
- Crosby, *Re* (Aus.); **44. Wills**, p. 1182
- v. Thomson (Can.); **11. Confl.** p. 412
- Crosfield's Oil & Cake Co., Ltd. v. London, Midland & Scottish Ry. Co. (1925); **8. Carr.** No. 1377h
- Croskill v. Wortman (Can.); **31. L. & T.** p. 902
- Crosman & McLeod's Election, *Re*, *Ex p.* Howard (Can.); **16. Cr. Pract.** p. 566
- Cross v. Wood (Can.); **1. Agcy.** p. 62
- Crosse v. Crosse & Heath (Aus.); **27. H. & W.** p. 803
- Crossingham v. Park (1928); **35. Money**, Nos. 377a, 379a
- Croteau & Clark Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 212
- Crowder v. Coleman (Can.); **21. Exon.** p. 692
- Crowley, *Ex p.*, *Ex p.* Kenneth Staples Drug Co. (Can.); **16. Cr. Pract.** p. 570; **30. Intor.** p. 881
- Crown Lumber Co. v. McKenzie, *Re* Canadian Pacific Ry. Co. (Can.); **21. Exon.** p. 691
- v. Saulsberry (Can.); **1. Agcy.** p. 40
- Crown's Customs Duties Claim, *Re* (Can.); **4. Bkpcy.** p. 228
- Crowther v. Heaven (Can.); **7. Bounds. & F.** p. 297
- Croydon Canal Co., *Re* (1839); **2. Arbn.** Nos. 1435a, 1516a
- Croyston v. Banes (1702); **12. Contr.** No. 1184a
- Crucible Steel Co. v. Ffolkes (Can.); **21. Exon.** p. 699
- Cruikshank v. Willis, *Re* Bund (1929); **44. Wills.** Nos. 1707a, 2196a
- Crush v. Crush (1605); **32. Libel**, No. 2528a
- Crystal, *Re* (Can.); **4. Bkpcy.** p. 227
- Crystal, Ltd. v. Willard Kitchen, Ltd. (Can.); **18. Distr.** p. 621
- Crystall v. Olsen (Can.); **7. B. of Sale**, p. 293; **18. Distr.** p. 620
- Cubitt v. Smith (1864); **7. Bldg. Confs.** No. 273a
- Cudney, *Re* (Can.); **5. Bkpcy.** p. 248
- Cudworth v. Eddy (Can.); **1. Agcy.** p. 67
- Cull v. Grand Trunk Ry. Co. (Can.); **16. Cr. Pract.** p. 571
- Cull v. Green (Aus.); **26. Hghys.** p. 780
- Cullen v. Cullen (Can.); **21. Exon.** p. 689
- v. Kemp (Can.); **28. Infts.** p. 348
- v. Stanley (Ir.); **20. Elect.** p. 651
- Culp v. Culp (Can.); **7. Bounds. & F.** p. 296
- Culver & Culver v. Lloydminster (Can.); **18. Discy.** p. 618
- Cumberland v. Lanarkshire Tramways Co. (Scot.); **34. Mast. & S.** p. 999
- Cumberland Coal & Ry. Co. v. McDougall (Can.); **28. Injon.** p. 853
- Cumming, *Re*, *Ex p.* Neilson & Craig v. Adamson (Trustee) (1929); **5. Bkpcy.** No. 7155a
- Cumming & West, *Re*, *Ex p.* Neilson & Craig v. Trustee (1929); **4. Bkpcy.** No. 3832a; **5. Bkpcy.** No. 7155a
- Cummings & Ellis v. O'Flynn (Can.); **25. Fraud. Conv.** p. 749
- Cummins v. Bond (1927); **13. Coprt.** No. 197a

- Cunard's Lessee v. Irvine (Can.); **32. Limit. of A.** p. 936  
 Cunliffe v. Planta (Can.); **1. Agcy.** p. 80  
 Cunnard v. Plummer (Can.); **26. Guar.** p. 767  
 Cunningham v. Cunningham (Ir.); **18. Descr.** p. 610  
 — v. — (Scot.); **27. H. & W.** p. 810  
 — v. Insinger (Can.); **17. Damgs.** p. 576  
 — v. Northern Banking Co., Ltd. (Ir.); **3. Bank.** p. 175  
 — v. Sigfusson (Can.); **32. Lien.** p. 931  
 Cunningham's Trustees v. Cunningham (Scot.); **11. Confl.** p. 115  
 Cunnington, Re, Healing v. Webb (1924); **11. Confl.** No. 526a  
 Curlews v. Butts (1831); **19. Eccl.** No. 2496  
 Curley v. Briggs (Administrator of Drury Estate) (Can.); **3. Bank.** p. 182; **6. B. of Exch.** p. 268  
 Curling v. Austin (1862); **23. Exors.** No. 3766a  
 — v. Johnson (1833); **33. L. G.** No. 105a  
 Curran (Edward) & Co. v. Kays (1928); **34. Mast. & S. No.** 3753a  
 Currie v. McKnight (1897); **30. Jdgmts.** No. 595a  
 — v. Nicholson (Can.); **16. Courts.** p. 550  
 — v. Wardrop (Scot.); **17. Damgs.** p. 577  
 — v. Wreford Rural Municipality, No. 280, & Lasher (Can.); **1. Agcy.** p. 78  
 Currier v. Crosby (Can.); **3. Auct.** p. 162  
 Curtis v. Curtis (1833); **18. Discy.** No. 555a  
 — v. Plindall (Can.); **12. Contr.** p. 468  
 — v. French (1929); **40. S. Land.** No. 771a  
 — v. Harris (Can.); **32. Limit. of A.** p. 939  
 — v. Sheffield (1836); **5. Bkpcy.** No. 6390a  
 Curtis Moffatt, Ltd. v. Wheeler (1929); **12. Contr.** No. 420a; **48. S. Land.** No. 2475a  
 Curzon Syndicate, Ltd., Re (1920); **8. Clubs,** Nos. 53a, 54a, 148a  
 Cusack v. Day (Can.); **3. Bank.** p. 186; **25. Gifts.** p. 766  
 Cushion v. Tredegar Iron & Coal Co., Ltd. (1927); **34. Mast. & S. No.** 3274a  
 Custodian, The v. Blucher (Can.); **17. Damgs.** p. 582; **35. Money,** p. 1014  
 Custodian of Alien Enemy Property v. Passavant (Can.); **2. Aliens.** p. 111  
 Custom House Motor Co., Ltd., Re (Aus.); **9. Coys.** p. 361  
 Customs Comr. v. Airtion Timber Co., Ltd. (S. Af.); **17. Dep.** p. 590  
 Cuthbertson v. Lethbridge (Can.); **22. Evid.** p. 708  
 Cutinha v. Salvadora Minazes (Ind.); **31. L. & T.** p. 911  
 Cutler v. Chiffey (Can.); **5. Bkpcy.** p. 261  
 Cutten v. Bickell (Can.); **1. Agcy.** p. 54  
 Cuvillier v. Thibodo (Can.); **22. Evid.** p. 711  
 Cyr v. Dufault (Can.); **12. Contr.** p. 445  
 Czarnikow v. Roth, Schmidt & Co. (1922); **2. Arbn.** No. 1036a
- D.
- D. Simpson, Ltd. (Scot.); **9. Coys.** p. 360  
 Dabbs v. Humphries (1835); **29. Intpr.** No. 503b  
 Dadoo v. Krugersdorp (S. Af.); **2. Aliens.** p. 103  
 Dadson v. Grest (Can.) (1927); **9. Coys.** p. 379  
 — v. Grest & Grest (Can.) (1928); **9. Coys.** p. 357; **20. Eqq.** p. 665  
 Dagmar, The (1929); **41. Ship.** No. 5608a  
 Dagsland v. Catala, S.S. (Can.); **34. Mast. & S.** pp. 980, 999  
 Dahlberg v. Swanson (Can.); **27. H. & W.** pp. 787, 802  
 Daily Telegraph Co., Ltd. v. Stuart (Aus.); **28. Injon.** p. 853; **36. Nuis.** p. 1035  
 Dainton v. Chivers (Aus.); **1. Agcy.** p. 61  
 Dairy Proprietary Asscn. (Inc.) v. New Zealand Dairy Produce Control Board (N.Z.); **30. Jdgmts.** p. 887  
 Dale v. Hatfield Chase Corpn. (1922); **2. Agric.** Nos. 265c, 266b, 266c, 266d  
 — v. Mitcalfe (1928); **28. Inc. T.** No. 515b  
 Dale & Carroll, Re (Can.); **5. Bkpcy.** p. 248  
 Dale (Charles), Ltd. (Scot.); **10. Coys.** p. 393  
 Dale, Reynolds & Co. v. General Newspaper Co. (1884); **37. Press.** No. 102a  
 Daley & Morin v. Fogel (Can.); **4. Bkpcy.** p. 223  
 Dalgetty v. Hamilton Radial Electric Ry. Co. (Can.); **36. Negl.** p. 1029  
 Dalgetty v. Gray (Aus.); **1. Agcy.** p. 57  
 Dalgetty & Co., Re (N.Z.); **10. Coys.** p. 383  
 Dalhousie Mills Presbyterian Church, Re (Can.); **19. Eccl.** p. 644  
 Dalison v. Stark (1802); **22. Evid.** No. 1829a  
 Dalley, Re (1926); **23. Exors.** No. 2585a  
 Dalling v. McKendrick (Can.); **33. Mal. Pros.** p. 957  
 Dalphe v. Fairbanks, Gosselin & Co. (Can.); **5. Bkpcy.** p. 239  
 Dalton v. Ashfield (Township) (Can.); **41. Sewers.** p. 1125  
 — v. Botts (Can.); **12. Contr.** p. 148  
 — v. Eaton (Can.); **7. B. of Sale,** p. 287  
 Daly, Re (Can.); **23. Exors.** p. 724  
 — v. Irish Transport & General Workers' Union (Can.); **32. Libel,** p. 926  
 — v. Keliher (Can.); **1. Agcy.** p. 68  
 Dalye v. Robertson (Can.); **31. L. & T.** p. 914; **38. Real Prop.** p. 1087  
 Damodar Prasad Tewari v. Lachmi Prasad Singh (Ind.); **31. L. & T.** p. 912; **38. Real Prop.** p. 1091  
 D'Amours v. Trois-Pistoles (Can.); **7. Bldg. Conts.** p. 301  
 Dampney & Co., Ltd. & Reduced, Re (1924); **9. Coys.** No. 1019b  
 Dampelskab Svendborg v. London, Midland & Scottish Ry. Co. (1929); **41. Ship.** No. 3634a  
 Danby v. Wakaw (Village) & Kraus (Can.); **38. Pub. Hlth.** p. 1073  
 Daniel v. Metropolitan Ry. Co. (1871); **22. Evid.** No. 55b  
 Daniels, Re, London City & Midland Executor & Trustee Co., Ltd. v. Daniels (1918); **24. Exors.** No. 6281a  
 Danish Dairy Co., Ltd. v. Gillespie (Scot.); **1. Agcy.** p. 44  
 Dansey v. Orcutt (Can.); **33. Mal. Pros.** p. 958  
 Daphne v. Shaw (1926); **28. Inc. T.** No. 268a  
 Darapale, etc. v. Nazir (Ind.); **17. Deeds,** p. 586  
 D'Arcy v. Land (Can.); **1. Agcy.** p. 57  
 Darling v. Burton (Scot.); **39. Revenue,** p. 1098  
 — v. McLeon (Can.); **26. Guar.** p. 770  
 Darnbrough v. Darnbrough (1929); **27. H. & W.** No. 5049a  
 Darnborough v. Darnborough & Smith (1926); **27. H. & W.** No. 4985b  
 Darrock v. Burns (S. Af.); **6. B. of Exch.** p. 276  
 Darwen & Pearce, Re (1927); **26. Guar.** No. 1224a  
 Dash v. Faulkner (1886); **3. Bailmt.** No. 271a  
 Dasharathi Ghose v. Khondkar Abdul Hannan (Ind.); **12. Contr.** pp. 455, 461  
 Dashwood v. Dashwood (1927); **16. Contmpt.** No. 429a  
 Daum & Plaetzer, Re, Ex p. Monroe (Can.); **4. Bkpcy.** p. 225  
 Dauncey v. Howlett (1926); **28. Inc. T.** Nos. 504a, 510  
 Dauphinee v. Dauphinee (Can.); **17. Deeds,** p. 587

- Davey v. Christoff (Can.); **31. L. & T.** p. 905  
 — v. Robinson (1928); **13. Cty. Cts.** No. 373a  
 — v. Tallon (Can.); **1. Action**, p. 13  
 David, *Ex p.* (Can.); **14. Crim.** p. 504; **16. Cr. Pract.** p. 502  
 David, *Re* (Can.); **5. Bkpcy.** p. 251  
 David Jones, Ltd. v. Leventhal (Aus.); **31. L. & T.** p. 903  
 Davidge v. Johnson & McDonald, Ltd. (Can.); **36. Negl.** p. 1031  
 Davidson, *Ex p.*, *Re* v. Norfolk JJ. (1925); **16. Cr. Pract.** No. 2142a  
 — v. Annesley, *Re* Annesley (1926); **11. Confl.** Nos. 249a, 251a  
 — v. Scott's Shipbuilding & Engineering Co., Ltd. (Scot.); **33. Lunat.** p. 949  
 — v. Swanson, *Re* Saskatchewan Co-operative Elevator Co., Ltd. (Can.); **10. Coys.** p. 390; **21. Eron.** p. 698  
 Davidson & Smith, *Re*, *Ex p.* London Guarantee & Accident Co. (Can.); **21. Eron.** p. 698  
 Davidson & Vancouver Terminal Grain Co. v. North Western Dredging Co. & Vancouver Harbour Comrs. (Can.); **28. Injon.** p. 857  
 Davie v. Hooper (1711); **37. Powers**, No. 1233a  
 Davies, *Re*, *Ex p.* Miles (1921); **5. Bkpcy.** No. 7339a  
 —, *Re*, *Ex p.* Trustee (1921); **5. Bkpcy.** No. 7339a  
 —, *Re*, Butson v. Davies (1888); **16. Cntmpl.** No. 98  
 —, *Re*, Davies v. Duggan (Can.); **30. Jdgmts.** p. 886  
 — v. Abbott (1927); **28. Inc. T.** No. 25c  
 — v. Baldwins, Ltd. (1926); **34. Mast. & S.** No. 3801b  
 — v. Davies (1928); **13. Cty. Cts.** No. 404b  
 — v. — (Can.); **40. Set-Off.** p. 1113  
 — v. Donald (S. Af.); **1. Agcy.** p. 57  
 — v. Duggan, *Re* Davies (Can.); **30. Jdgmts.** p. 886  
 — v. Lowndes (1835); **22. Evid.** No. 2707a  
 — v. — (1838); **22. Evid.** No. 2707a  
 — v. Nelson (Can.); **24. Exors.** p. 733; **43. Trusts**, p. 1171  
 — v. Property & Reversionary Investments Corpn. (1929); **18. Distr.** No. 737a  
 — v. Ripon Corpn. (1928); **25. Gas**, No. 15a; **26. Hghys.** No. 1761a  
 — v. Schuilli (Can.); **34. Mines**, p. 1005; **36. Ptnrs.** p. 1041  
 Davies Footwear Co., *Re*, Underhills, Ltd. v. Barber (Can.); **4. Bkpcy.** p. 217  
 Davis, *Ex p.*, *Re* v. Minister of Health (1929); **38. Pub. Hlth.** No. 506a  
 —, *In the Estate of*, *In the Estate of* Caie (1927); **23. Exors.** No. 1371a  
 —, *Re* (Can.); **4. Bkpcy.** pp. 217, 227  
 —, *Re*, Thomas v. Davis (1923); **8. Char.** No. 724a  
 — v. Beggs (Can.); **1. Agcy.** p. 58  
 — v. Davis (Can.); **20. Egy.** p. 663; **27. H. & W.** pp. 793, 797  
 — v. Davis & Helbing (1928); **27. H. & W.** Nos. 3635a, 4848b  
 — v. Elliot (Can.); **8. Carr.** p. 316  
 — v. Harrison (1927); **28. Inc. T.** No. 502a  
 — v. Holding (1836); **4. Bkpcy.** No. 1366a  
 — v. Lowry (Can.); **36. Ptnrs.** p. 1042  
 — v. Mayhew, *In the Estate of* Musgrove (1927); **23. Exors.** No. 2979a  
 — v. Nuttall (N.Z.); **25. Gaming**, p. 758  
 — v. R. (Can.); **14. Crim.** p. 526  
 — v. Samuel (Aus.); **37. Perps.** p. 1056  
 — v. Symonds (1787); **17. Deeds**, No. 1177a  
 — v. Wallis (1908); **38. Rules**, No. 675c  
 Davis & Primrose, Ltd. v. Clyde Shipbuilding & Engineering Co., Ltd. (Scot.); **2. Aliens**, p. 116  
 Davis & Simmons, *Ex p.*, *Re* Continental Publishing Co. (Can.); **4. Bkpcy.** pp. 221, 227  
 Davis Log & Raft Patents Co. v. Gathels (Can.); **36. Pats.** pp. 1044, 1048, 1051  
 Davison, *Re* (Can.); **5. Bkpcy.** p. 252  
 — v. Benjamin (Can.); **17. Deeds**, p. 589  
 — v. Conrad (Can.); **36. Negl.** p. 1029  
 — v. Holmside & South Moor Collieries, Ltd. (1929); **34. Mast. & S.** Nos. 2512a, 3885a  
 — v. King (Ir.); **9. Coys.** p. 376  
 — v. Vickery's Motors, Ltd. (Aus.); **9. Coys.** p. 371  
 Davy v. Hooper (1711); **37. Powers**, No. 1233a  
 Daw v. Inland Revenue Comrs (1928); **21. E. D.** No. 917; **23. Exors.** No. 5352a; **28. Inc. T.** No. 673b  
 Dawson v. Dawson (1929); **27. H. & W.** No. 3010a  
 — v. Great Central Ry. Co. (1919); **3. Barr.** No. 356a  
 — v. Paradise Mine & Canadian Pacific Ry. Co. (Can.); **2. Animals**, p. 126  
 — v. R. (Aus.); **15. Crim.** p. 540  
 — v. Rouhae Zamani Begum (Princess) (Ind.); **19. Easmt.** p. 628; **26. Hghys.** p. 774; **28. Injon.** p. 845  
 — v. Sinclair (N.Z.); **25. Gaming**, p. 757  
 Dawson's Settled Estates, *Re* (1928); **40. Sttlmts.** No. 3138  
 Day v. Crown Grain Co. (Can.); **32. Lien**, p. 931  
 — v. Harrison, *Re* Harrison (1920); **3. Bank.** No. 391a  
 — v. Horton (Can.); **23. Exor.** p. 722  
 — v. Tuckett (1846); **18. Discy.** No. 539a  
 Dayholos v. Kuniec (Can.); **21. Eron.** p. 690  
 Dean (Henry) & Sons (Sydney), Ltd. v. P. O'Day Proprietary, Ltd. (Aus.); **39. S. Goods**, p. 1105  
 Deane v. Rastron (1792); **25. Fraud. Conv.** No. 909a  
 Deans v. Orr (Can.); **1. Agcy.** pp. 48  
 Dearne Valley Ry. Co. v. Great Northern Ry. Co. & Great Central Ry. Co. (1914); **8. Carr.** Nos. 1051a, 1058a  
 Death v. New South Wales Railway Comrs. (Aus.); **38. Rys.** p. 1078  
 Debenham's, Ltd. v. Perkins (1925); **21. Estpl.** No. 581a  
 Debortoli v. R. (Can.); **15. Crim.** p. 539  
 Debret v. Debret (Can.); **2. Arbn.** p. 153  
 Debtor, *The*, *Ex p.*, *Re* Bowen (1924); **4. Bkpcy.** No. 1357a  
 Debtor (No. 718 of 1920), *Ex p.*, *Re* Debtor (1921); **4. Bkpcy.** No. 1548a  
 Debtor, *The*, *Ex p.*, *Re* A Debtor (No. 16 of 1922) (1922); **4. Bkpcy.** No. 875a  
 Debtor *The*, *Ex p.*, *Re* A Debtor (No. 13 of 1922) (1923); **4. Bkpcy.** No. 1483a  
 Debtor, *The* (No. 1088 of 1923), *Ex p.*, *Re* A Debtor (1924); **4. Bkpcy.** No. 1552a  
 Debtor, *Ex p.*, *Re* Debtors (No. 807 of 1922) (1922); **4. Bkpcy.** Nos. 804a, 887a, 1500a  
 Debtor, A (No. 446 of 1918), *Re* (1920); **4. Bkpcy.** Nos. 1515a, 1519a  
 Debtor, A (No. 1507 of 1921), *Re* (1922); **4. Bkpcy.** Nos. 1367a, 1541a  
 Debtor, A (No. 199 of 1922), *Re* (1922); **4. Bkpcy.** Nos. 389a, 1545a  
 Debtor, A (No. 3 of 1926), *Re* (1926); **4. Bkpcy.** No. 274a  
 Debtor, A (No. 82 of 1926), *Re* (1927); **4. Bkpcy.** No. 3740a; **10. Coys.** No. 6442a  
 Debtor, A (No. 229 of 1927), *Re* (1927); **1. Agcy.** No. 1640a; **4. Bkpcy.** No. 1047a  
 Debtor (No. 883 of 1927), *Re* (1928); **4. Bkpcy.** No. 1491a

# TABLE OF CASES.

- Debtor (No. 99 of 1928), *Re* (1928); **4. Bkpcy.** No. 1286a
- Debtor, *Re* (1929); **4. Bkpcy.** No. 3052a
- Debtor (No. 549 of 1928), *Re* (1929); **4. Bkpcy.** Nos. 1016a, 1498a
- Debtor, A. (No. 737 of 1928), *Re* (1929); **4. Bkpcy.** Nos. 390, 957a
- Debtor, A. (No. 76 of 1929), *Re* (1929); **4. Bkpcy.** Nos. 830, 1019a
- Debtor, *Re, Ex p. Debtor* (No. 718 of 1920) (1921); **4. Bkpcy.** No. 1548a
- Debtor, A. (No. 16 of 1922), *Re, Ex p. The Debtor* (1922); **4. Bkpcy.** No. 875a
- Debtor, A. (No. 13 of 1922), *Re, Ex p. The Debtor* (1923); **4. Bkpcy.** No. 1483a
- Debtor, A, *Re, Ex p. The Debtor* (No. 1088 of 1923) (1924); **4. Bkpcy.** No. 1552a
- Debtor (No. 27 of 1927), *Re, Ex p. Debtor v. Petitioning Creditor* (1928); **4. Bkpcy.** No. 3052a
- Debtor, A, *Re, Ex p. The Debtor v. Petitioning Creditors & Official Receiver* (1920); **4. Bkpcy.** No. 1515a
- Debtor, *Re, Ex p. Lawrence* (No. 21 of 1928) (1928); **4. Bkpcy.** No. 1077a
- Debtor, A, *Re, Ex p. Newburys, Ltd.* (1926); **4. Bkpcy.** No. 1177a
- Debtor, A, *Re, Ex p. Petitioning Creditor* (1920); **4. Bkpcy.** No. 1347a
- Debtor, A. (No. 4 of 1922), *Re, Ex p. Petitioning Creditor* (1922); **4. Bkpcy.** No. 1110a
- Debtor (No. 21 of 1928), *Re, Ex p. Petitioning Creditor v. Debtor* (1928); **4. Bkpcy.** No. 1077a
- Debtor, A, *Re, Ex p. Petitioning Creditors* (No. 21 of 1924) (1924); **4. Bkpcy.** No. 1179a
- Debtor v. Official Receiver, *Ex p., Re Kutner* (1921); **4. Bkpcy.** No. 5264a
- Debtor v. Petitioning Creditor, *Ex p. Official Receiver, Re Mumford* (1927); **4. Bkpcy.** No. 3740a; **10. Coys.** No. 6442a
- Debtor v. Petitioning Creditor, *Ex p., Re Debtor* (No. 27 of 1927) (1928); **4. Bkpcy.** No. 3052a
- Debtor, The v. Petitioning Creditors & Official Receiver, *Ex p., Re A Debtor* (1920); **4. Bkpcy.** No. 1515a
- Debtors (No. 771 of 1926), *Re* (1926); **4. Bkpcy.** No. 923a; **5. Bkpcy.** No. 5760a
- Debtors (No. 669 of 1926), *Re* (1927); **4. Bkpcy.** No. 1051a
- Debtors (No. 807 of 1922), *Re, Ex p. Debtor* (1922); **4. Bkpcy.** Nos. 804a, 887a, 1500a
- De Bunsen v. Hardinge, *Re Sturt* (1922); **20. Eqq.** No. 1316a
- De Bury v. De Bury (Can.); **27. H. & W.** p. 790
- Decker's Delicatessen, *Re* (Can.); **4. Bkpcy.** p. 226
- Decock v. Barrager (Can.); **2. Agric.** p. 91
- Dedford v. Boulton (Can.); **32. Limit. of A.** p. 937
- Dee Conservancy Board v. McConnell (1928); **41. Ship.** No. 6809a
- Deed of Arrangement, A. (No. 9 of 1924), *Re* (1925); **5. Bkpcy.** No. 8645a
- Deed of Indemnity, A, *Re, Re Clay, Clay v. Booth* (1919); **1. Action.** No. 153a
- Deeley v. Dick (Aus.); **25. Gaming.** p. 758
- v. McEvoy (Aus.); **25. Gaming.** p. 760
- Deere (John) Plow Co., Ltd. v. Bowen (Can.); **27. & W.** p. 788
- v. Peters & Spohn (Can.); **17. Deeds.** p. 581
- 25. Gifts.** p. 765
- Deergarden, The (1747); **2. Aliens.** No. 419a
- De Freville v. Dill (1927); **30. Juries.** Nos. 301a, 423a; **33. Lunat.** Nos. 1856b, 1856d
- Degrow v. Union Bank of Canada (Can.), **3. Bank.** p. 188
- De Hourmelin v. A.-G. (1839); **2. Aliens.** No. 119a
- v. Sheldon (1839); **2. Aliens.** No. 119a
- Delra Dun-Mussoorie Electric Tramway Co., Ltd., *Re, Re Panna Lal* (Ind.); **10. Coys.** p. 387
- De Jong, *Re, Public Trustee v. Goldsmid* (1929); **8. Char.** No. 884a
- De Kock v. Fincham (S. Af.); **1. Agcy.** p. 53
- Delafield v. Freeman (1829); **5. Bkpcy.** No. 7968a
- De la Garde v. Worsnop & Co. (1928); **2. Arbn.** No. 237a
- Delahunt v. Moody (Ir.); **34. Mast. & S.** pp. 980, 982
- Delaney v. Gant (Aus.); **30. Intox.** p. 882
- v. McDonald (Can.); **25. Fish.** p. 745
- Delap v. Hayden (Can.); **17. Dep.** p. 604
- Delaporte v. Delaporte (Can.); **11. Confl.** p. 425
- Delhi Cloth & General Mills Co., Ltd. v. Delhi Income Tax Comrs. (Ind.); **17. Dep.** p. 607
- Delisle v. Dewitt (Can.); **21. Exon.** p. 691
- Dell v. Quilty (N.Z.); **2. Animals.** p. 133
- Dellaca, *Ex p.* (Aus.); **34. Mines.** p. 1007
- Dellow v. Bell (N.Z.); **34. Mast. & S.** p. 966
- Delombre v. Fouquault (1900); **3. Bastj.** No. 306a
- Delory v. Guyett (Can.); **1. Agcy.** p. 47
- Demand Drafts of Imperial Bank of India, *Re* (Ind.); **6. B. of Exch.** p. 281
- Demchenko v. Fricke (Can.); **12. Contr.** p. 153
- Demers, Garnishee, Morris v. Kline (Can.); **5. Bkpcy.** pp. 235, 237
- Demery, *Re* (Can.); **5. Bkpcy.** p. 249
- De Mille, *Re* (Can.); **22. Evid.** p. 703
- Demings v. Bedell (Can.); **21. Estpl.** p. 686
- De Monchy v. Phoenix Insurance Co. of Hartford (1928); **29. Insee.** No. 2404a
- Dempsey v. Piper (N.Z.); **4. Bkpcy.** p. 205
- Dempsey & Midland L. & S. Co., *Re* (Can.); **17. Deeds.** pp. 586, 588
- Demry & Demry, *Re, Trustee v. Halland* (Can.); **4. Bkpcy.** p. 222; **5. Bkpcy.** p. 217
- Dening v. Ware (1856); **40. Stittms.** No. 803b
- Denis, *In the Will of* (Aus.); **18. Discy.** p. 616
- v. Morinill Corp'n. (Can.); **3. Auct.** p. 162
- Denison v. Union Bank of Canada, *Re Raport* (Can.); **8. Chos.** p. 350
- Denman v. Tousaw, Hart & Anderson & Bell Telephone Co. (Can.); **5. Bkpcy.** p. 239
- Denman Picture Houses v. Thompson & Collins Enterprises, *Re King's Theatre, Sunderland* (1929); **13. Cohlds.** Nos. 2032b, 2032c; **43. Trusts.** No. 1434a
- Dennerley v. Prestwich Urban District Council (1929); **26. Guur.** No. 483; **26. Hghys.** No. 2439a
- Dennis v. Ivey & Boyce (Can.); **6. B. of Exch.** p. 276
- v. Leonard (1929); **42. Str. Traf.** No. 185b
- Dennison, *Ex p.* (1797); **9. Coys.** No. 2667a
- Dennison v. Keiller, Ltd. (1926); **34. Mast. & S.** No. 2479a
- Dennistoun v. Dennistoun (1925); **22. Evid.** No. 6876a
- Denovich v. Hucal (Can.); **27. H. & W.** p. 792
- Dent, *Re, Ex p. Trustee* (1923); **4. Bkpcy.** No. 2902a; **5. Bkpcy.** Nos. 7153a, 7161a
- Dental Board of Victoria v. Denison (Aus.); **34. Med.** p. 1002
- Dentistry Act, *Re, Re Neff & College of Dental Surgeons* (Can.); **34. Med.** p. 1002
- Denton v. Goodman (Can.); **1. Agcy.** p. 74

- Denton Estate, *Re* (Can.); **23. Exors.** p. 715  
 Deoraj Tewari v. Indrasan Tewari (Ind.); **32. Limit. of A.** p. 934  
 De Pass' Case (1859); **9. Coys.** No. 2344a  
 Deputy Federal Comr. of Taxation for Tasmania v. Thomas (Aus.); **16. Courts.** p. 550  
 Derby (Lord) v. Bassom (1926); **28. Inc. T.** No. 99  
 Deremore Estate, *Re* (Can.); **8. Char.** p. 341  
 De Robeck (Lady) v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 668a  
 Derry v. Great Western Ry. Co. (1926); **34. Mast. & S.** No. 2890a  
 — v. Inland Revenue (Scot.); **28. Inc. T.** p. 837  
 Derwa v. Rio De Janeiro Tramway, Light & Power Co. (Can.); **35. Money.** p. 1014  
 Desabrais v. Desabrais (Can.); **27. H. & W.** p. 795  
 Desai v. Immigrants' Appeal Board (S. Af.); **2. Aliens.** p. 121  
 Des Brisay v. Glencross (Can.); **17. Deeds.** pp. 587  
 Desjardine v. Callison (Can.); **25. Fraud. Contr.** p. 748  
 Des Oliveira, *Ex p.*, *Re* Pinto Leite & Nephews (1929); **4. Bkpcy.** No. 4353a; **8. Chos.** No. 601a  
 Desrochers v. Quebec Liquor Commission & Simard (Can.); **22. Evid.** p. 710  
 Desroisers v. R. (Can.); **1. Agcy.** p. 73  
 Des Rosiers v. Balmoral & Dalhousie School Districts No. 1 (Can.); **19. Educ.** p. 643  
 Des Salles D'Epinoix v. Des Salles D'Epinoix & Orbach (1919); **2. Aliens.** No. 261a  
 Detro v. Detro (Can.); **11. Confl.** p. 426  
 Detroit Rubber Products Inc. v. Republic Rubber Co. (Can.); **36. Pats.** p. 1045  
 Deutsche Bank (London Agency), *Re* (1921); **2. Aliens.** Nos. 198b, 219b  
 Devall v. Gorman, Clancey & Grindley, Ltd. (Can.); **1. Agcy.** p. 66  
 De Veber v. Andrews (Can.); **44. Wills.** p. 1179  
 — (Doe d.) v. Roe (Can.); **31. L. & T.** p. 915  
 Deveber v. Roop (Can.); **22. Evid.** p. 701  
 De Villiers v. O'Sullivan (S. Af.); **2. Agric.** p. 95  
 Devine v. Carson & Co. (Belfast) (Ir.); **41. Shiffs.** p. 1126  
 — v. Devine & Queensland Insurance Co., Ltd. (Aus.); **29. Inscr.** p. 872  
 Devlin v. Grand Trunk Ry. Co. of Canada (Can.); **8. Carr.** p. 316  
 — v. Moore's Mills Creamery, Ltd. (Can.); **6. B. of Exch.** p. 276  
 Devon Mutual Steamship Insurance Assn. v. Ogg (1927); **28. Inc. T.** No. 307b  
 De Vries v. Smallbridge (1928); **13. City. Cts.** Nos. 206a, 235a; **30. Jdgmts.** No. 642a  
 — v. Sparks (1927); **31. L. & T.** No. 7281a  
 Dew v. United British S.S. Co., Ltd. (1928); **30. Juries.** No. 571a; **41. Ship.** No. 614a  
 Dewdney v. Matheson (Aus.); **1. Agcy.** p. 62  
 Dewdney Election Appeal, *Re*, Smith v. Catherwood (Can.); **20. Elect.** p. 651  
 Dewe v. Dewe (1928); **27. H. & W.** Nos. 595a, 2040a, 6124a  
 Dewhurst v. McCoppin (Can.); **18. Distr.** p. 622  
 De Wolf v. Delmage (Can.); **1. Agcy.** p. 64  
 Dexter v. Cosford (Can.); **38. Real Prop.** p. 1090  
 Dexters, Ltd. v. Hill Crest Oil Co. (Bradford) (1926); **2. Arbn.** Nos. 1083b, 1851a  
 Dharam Paakash v. Kalawati Deri (Ind.); **21. Estpl.** p. 684  
 Diamanti v. Martelli (N.Z.); **9. Coys.** p. 362  
 Diamond v. Montgomery (Can.); **21. Estpl.** p. 68  
 — v. Western Realty Co. (Can.); **21. Estpl.** p. 479  
 Dibrugarh District Club, Ltd., *Re* (Ind.); **28. Inc. T.** p. 818  
 Dick v. Schwartz (Can.); **17. Deeds.** p. 588; **35. Mtge.** p. 1023  
 Dickens v. Mitchell (Aus.); **42. Str. Traf.** p. 1152  
 Dickenson v. Gapp (1821); **2. Animals.** No. 416a  
 — v. Gross (1927); **28. Inc. T.** No. 613a  
 Dickie v. Spare (Can.); **2. Agric.** p. 86  
 Dickinson v. Del Solar (1929); **11. Const. L.** No. 465a; **29. Inscr.** No. 3202a  
 — v. Kitchen (1858); **21. Exon.** No. 680  
 — v. Stonehague Rural Municipality (Can.); **1. Agcy.** p. 69  
 Dicks v. Barbour (Can.); **18. Distr.** p. 621  
 Dickson v. Chamberland (Can.); **25. Gifts.** p. 764  
 — v. Halesowen Steel Co. (1928); **9. Coys.** No. 3771a  
 — v. Hampstead Borough Council (1927); **28. Inc. T.** No. 393a  
 — v. Jacques (Can.); **12. Contr.** p. 445  
 Dickson's Settled Estates, *Re* (1921); **20. Eqq** No. 815a  
 Digby v. Alexander (1831); **37. Peer.** No. 89a  
 — v. Stirling (Lord) (1831); **37. Peer.** No. 89a  
 Diggins v. Diggins (1927); **27. H. & W.** No. 6179a  
 Dille v. Great West Life Assurance Co. (Can.); **2. Animals.** p. 126  
 Dimitroff v. Gonder (Can.); **1. Agcy.** p. 53  
 Dinabandhu Jana v. Durgaprasad Jana (Ind.); **2. Arbn.** p. 143  
 Dinabandhu Saha v. Abdul Latif Molla (Ind.); **1. Agcy.** p. 74  
 Dindigul Municipal Council v. Bombay Co. (Ind.); **12. Contr.** p. 466  
 Dinkel v. Union Government (S. Af.); **42. Stats.** p. 1147  
 Dinsmore v. Philip (Can.); **1. Agcy.** p. 41  
 Direct Cable Co. v. Dominion Telegraph Co. (Can.); **11. Confl.** p. 418  
 Direction der Disconto Gesellschaft, *Re*, *Re* Anglo-Austrian Bank, *Re* Dresdner Bank (1920); **2. Aliens.** Nos. 219c, 223c  
 Disher v. Clarris (Can.); **12. Contr.** p. 144  
 Disourdi v. Sullivan Group Mining Co. & Maryland Casualty Co. (Can.); **29. Inscr.** p. 872  
 Distillers Co., Ltd. v. Edinburgh Assessor (Scot.); **38. Rates.** p. 1083  
 — v. Glasgow Assessor (Scot.); **38. Rates.** p. 1083  
 Divarka Prasad Mithal, *Re* (Ind.); **3. Barr.** p. 195  
 Dixon v. Duffield (1862); **23. Exors.** No. 5483a; **24. Exors.** No. 6014b  
 — v. Richelieu Navigation Co. (Can.); **8. Carr.** p. 321  
 — v. Seiler, *Ex p.* Seiler (Aus.); **25. Food.** p. 746  
 — v. South Australian Railways Comrs. (Aus.); **7. Budg. Contrs.** p. 300  
 Dixon & Toronto Corpn., *Re* (Can.); **11. Comp. Pche.** p. 407  
 Dixon (T. & M.), Ltd. v. London, Midland & Scottish Ry. Co. (1924); **8. Carr.** No. 1337b  
 Dobbel v. Loudoun (N. Z.); **24. Exors.** p. 731  
 Dobbin v. Ogden (1929); **31. L. & T.** No. 2306b  
 Dobeck v. Jennings (Can.); **38. Real Prop.** p. 1091  
 Dobie (Doe d.) v. Vanderlip (Can.); **24. Exors.** p. 733  
 Dobing, *Ex p.*, R. v. Hartlepool Corpn. (1851); **20. Elect.** No. 146a  
 Dobree & Co., *Re* (1929); **4. Bkpcy.** No. 1378a, 1793a  
 Dobrolowski v. Danyluk (Can.); **2. Animals.** p. 128  
 Dobrovitch, *Re*, Dobrovitch v. Canadian Credit Men's Trust Assn., Ltd. (Can.); **5. Bkpcy.** p. 240  
 Dodd v. Amalgamated Marine Workers' Union (1923); **13. Corpns.** Nos. 340a, 345a



- Dodd v. Oceanic Steam Navigation Co., Ltd. (1928); **34. Mast. & S.** No. 3702b
- Dodge Estate, *Re* (Can.); **24. Exors.** p. 733
- Doe d. McKay v. Allen (Can.); **38. Real Prop.** p. 1087
- d. France v. Andrews (1850); **22. Evid.** No. 1459a
- d. Rankin v. Andrews (Can.); **5. Bkpcy.** p. 257
- d. Galt Presbyterian Church Trustees v. Bain (Can.); **38. Real Prop.** p. 1091
- d. Breakey v. Breakey (Can.); **22. Evid.** p. 708
- d. Fenton v. Butcher (1847); **22. Evid.** No. 3919a
- d. v. Cahill (Can.); **38. Real Prop.** p. 1092
- d. Keogh v. Calhoun (Can.); **21. Exon.** p. 690
- d. Crew v. Clarke (Can.); **21. Exon.** p. 694
- d. Charles v. Cotton (Can.); **31. Limit. of A.** p. 936
- d. Austin v. Cowderoy (1837); **31. L. & T.** No. 5788a
- d. St. Julian, Shrewsbury (Parish) v. Cowley (1823); **26. Hghys.** No. 1717a
- d. Lyons v. Crawford (Can.); **32. Limit. of A.** p. 937
- d. McGregor v. Crow (Can.); **32. Limit. of A.** p. 937
- d. Sullivan v. Currey (Can.); **24. Exors.** p. 731
- d. Chipman v. Deveber (Can.); **32. Limit. of A.** p. 936
- d. McMackin v. Devine (Can.); **38. Real Prop.** p. 1092
- d. Connel v. Dickinson (Can.); **17. Deeds.** p. 588
- d. French v. Dunn (Can.); **38. Real Prop.** p. 1091
- d. Upper v. Edwards (Can.); **38. Rates.** p. 1085
- d. McKinlay v. Elliott (Can.); **23. Exors.** p. 716
- d. Hoak v. Empey (Can.); **43. Tresp.** p. 1165
- d. Lees v. Ford (1853); **40. Stlmnts.** Nos. 134a, 1786a
- d. Bouter v. Frazer (Can.); **38. Real Prop.** p. 1091
- d. v. Hanson (Can.); **35. Mtge.** p. 1020
- d. Munro v. Hanson (Can.); **38. Real Prop.** p. 1091
- d. McGregor v. Hawke (Can.); **32. Limit. of A.** p. 937
- d. St. John v. Hore (1799); **22. Evid.** No. 2475a
- d. Hay v. Hunt (Can.); **38. Real Prop.** p. 1092
- d. Wilt v. Jardine (Can.); **38. Real Prop.** p. 1089
- d. Williams v. Leavitt (Can.); **38. Real Prop.** p. 1091
- d. McBernie v. Lundy (Can.); **35. Mtge.** p. 1019
- d. Proudfoot v. McCrae (Can.); **25. Fraud. Conv.** p. 750
- d. Tiffany v. McLewan (Can.); **21. Estpl.** p. 684
- d. Steel v. McGill (Can.); **25. Fraud. Conv.** p. 748
- d. Fields v. McKay (Can.); **38. Real Prop.** p. 1091
- d. Peabody v. McKnight (Can.); **21. Exon.** p. 694
- d. Biggard v. Millard (Can.); **25. Fraud. Conv.** p. 749
- d. Ausman v. Minthorne (Can.); **21. Exon.** p. 690
- d. McKenzie v. Mosher (Can.); **32. Limit. of A.** p. 936
- d. Evans v. Page (1844); **32. Limit. of A.** No. 1190a
- d. Purdy v. Peters (Can.); **31. L. & T.** p. 901
- d. Simpson v. Privat (Can.); **21. Exon.** p. 690
- d. Beel v. Beaumore (Can.); **18. Distr.** p. 623
- d. Petit v. Renard (Can.); **22. Evid.** p. 700
- d. Harcourt v. Roe (1813); **21. Exon.** No. 1706a; **31. L. & T.** No. 6315a
- Doe d. Kirk v. Roe (1838); **19. Eccl.** No. 4033a
- d. Smith (or Smythe) v. Roe (1840); **19. Eccl.** No. 4034a
- d. Bell v. Roe (Can.); **38. Real Prop.** p. 1091
- d. De Veber v. Roe (Can.); **31. L. & T.** p. 915
- d. Peck v. Roe (Can.); **21. Exon.** p. 694
- d. St. John Corp'n. v. Roe (Can.); **38. Real Prop.** p. 1091
- d. White v. Roe (Can.); **38. Real Prop.** p. 1091
- d. McKay v. Rykert (Can.); **11. Const. L.** p. 438
- d. Shore v. Saunders (Can.); **20. Eqp.** p. 665
- d. McGill v. Shea (Can.); **21. Estpl.** p. 684
- d. Smith v. Snarr (Can.); **38. Real Prop.** p. 1091
- d. Blagg v. Steel (1832); **35. Mtge.** No. 3495a
- d. Hagerman v. Strong (Can.); **21. Exon.** p. 694
- d. Campbell v. Thompson (Can.) (1843); **21. Exon.** p. 693
- d. v. Thompson (Can.) (1860); **24. Exors.** p. 731
- d. Moffatt v. Thompson (Can.) (1877); **38. Real Prop.** p. 1091
- d. Dobie v. Vanderlip (Can.); **24. Exors.** p. 733
- d. Hastings v. Waters (1850); **30. L. & T.** No. 330a
- d. Roberts v. Watson (Can.); **21. Exon.** p. 694
- d. Stocking v. Watts (Can.); **22. Evid.** p. 706
- d. Gilmour v. Whitney (Can.); **22. Evid.** p. 704
- d. Nesmith v. Williston (Can.); **21. Exon.** p. 693
- d. Upton v. Witherwick (1825); **21. Exon.** No. 1658a
- Doherty v. Hawthorne (Can.); **16. Cr. Pract.** p. 560
- Dolan v. Joyce & Kirwan (Ir.); **28. Inc. T.** p. 816
- Doll v. Howard (Can.); **9. Coys.** p. 365
- Dollar (Robert) Co. v. Walker (Can.); **21. Exon.** p. 690
- Dollar Taxi Co., *Re, Ex p.* Trustee (Can.); **5. Bkpcy.** p. 238
- Dolsen, *Re* (Can.); **38. Real Prop.** p. 1088
- Domanisky v. Fitzgerald (Can.); **38. Rates.** p. 1086
- Dombrowski, *Re, Ex p.* Trustee (1923); **5. Bkpcy.** No. 5775b
- Domendietti v. Ryan (1920); **31. L. & T.** Nos. 7011a, 7238a
- Domestic Relations Act, 1927, *Re, Re* Pulkabrek (Can.); **28. Infts.** pp. 847, 850
- Domingo v. De Souza (Ind.); **9. Coys.** No. 366; **39. S. Goods.** p. 1102
- Dominion Art Co., Ltd. v. Murphy (Can.); **3. Barr.** p. 194; **17. Dams.** p. 581
- Dominion Building Corp'n., Ltd. v. R. (Can.); **2. Arbn.** p. 138; **11. Const. L.** p. 431
- Dominion Coal Co. v. Lord Strathcona S.S. Co. (Can.); **12. Contr.** p. 461
- Dominion Fire Insurance Co. v. Nakata (Can.); **12. Contr.** p. 453
- Dominion Fire-Brick & Clay Products, Ltd. v. Pollock (Can.); **38. Real Prop.** p. 1090
- Dominion Iron & Steel Co. v. Canadian Bank of Commerce (Can.); **10. Coys.** p. 381
- Dominion Iron & Steel Co., Ltd. v. Invernairn (1927); **9. Coys.** No. 260a
- Dominion Iron & Steel Co. v. R. (Can.); **12. Contr.** p. 442
- Dominion Loose Leaf Co. v. Manuel (Can.); **28. Injon.** p. 858
- Dominion Lumber & Fuel Co. v. Knapp (Can.); **21. Exon.** p. 697
- Dominion Lumber Co. v. Alberta Fish Co. (Can.); **7. B. of Sale.** p. 291
- Dominion Meat Co. v. Jameson (Can.); **12. Contr.** p. 448
- Dominion Millers' Assocn. v. Canadian National & Canadian Pacific Ry. Cos. (Can.); **38. Rys.** p. 1076

- Dominion of Canada Guarantee & Accident Co., Ltd. v. Housing Commission of City of Halifax (Can.); **26. Guar.** p. 771
- Dominion Press, Ltd. v. Customs & Excise Minister (Can.); **39. Revenue**, p. 1097
- Dominion Savings & Investment Society v. Kilroy (Can.); **27. H. & W.** p. 791
- Dominion Securities v. Duncan (N.Z.); **9. Coys.** p. 364
- Dominion Shipbuilding & Repair Co., Ltd., *Re* (Can.); **7. B. of Sale**, p. 285; **10. Coys.** p. 390.
- Dominion Steel Corpn., *Re* (Can.); **10. Coys.** p. 385
- Dominion Sugar Co. v. Warrell (Can.); **36. Ptnrs.** p. 1043
- Dominion Tar & Chemical Co., Ltd., *Re* (1929); **10. Coys.** No. 6988b
- Dominion Textile Co. v. Skaife (Can.); **30. Jdgmts.** p. 886
- Dominion Ticket, etc. Corpn., *Re, Ex p. Aker* (Can.); **5. Bkpcy.** p. 239
- Dominion Trust Co. v. Mutual Life Assurance Co. (Can.); **35. Mtge.** p. 1018
- Donald v. Donald (N.Z.); **11. Confl.** p. 413
- *v. Jukes* (Can.); **8. Chos.** p. 318
- Donald Estate, *Re, Baldwin v. Mooney* (Can.); **18. Descr.** p. 610
- Donald Mason & Co., *Re* (Can.); **28. Inc. T.** p. 822; **38. Rates**, p. 1080
- Donaldson's Executors v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 842
- Donaldson's Hospital (Edinburgh) Trustees v. Esslemont (Scot.); **2. Agric.** pp. 84, 88
- Donegal Tweed Co., Ltd. v. Stephenson (1929); **31. L. & T.** No. 2306a
- Doner v. Loose (Can.); **1. Agcy.** p. 62
- *v. Ross* (Can.); **24. Exors.** p. 734
- Donnelly, *Re* (Aus.); **44. Wills.** p. 1184
- *v. Donnelly* (Can.); **27. H. & W.** p. 791
- Donohoe v. Schroeder (Aus.); **2. Aliens**, p. 118
- *v. Wong Sau* (Aus.); **2. Aliens**, p. 119
- Donovan v. Crofts (Ir.); **28. Inc. T.** p. 837
- *v. Hanna* (N.Z.); **35. Mtge.** p. 1024
- *v. Hogan* (Can.); **38. Rates**, p. 1086
- Dooley v. Burke & Hackett (Nfld.); **34. Mast. & S.** p. 962
- *v. Dooley* (Ir.); **21. Estpl.** p. 679
- Dora, The, The Annette (1919); **1. Adm. Nos.** 141b, 170a
- Doran v. McKinnon (Can.); **12. Contr.** pp. 446, 447
- Dorenwends, Ltd., *Re* (Can.); **9. Coys.** pp. 303, 370
- Dorey v. Gray (Can.); **17. Decds.** p. 586
- Dorf v. Neumann, Luebeck & Co. (1924); **1. Agcy.** No. 1426a
- Dorizzi v. Mackey (Aus.); **34. Mast. & S.** p. 970
- Dorman v. Crapper (Can.); **7. B. of Sale**, p. 292
- Dorrell v. Campbell (No. 2) (Can.); **38. Real Prop.** p. 1091
- Dorrell v. Meux (1854); **22. Evid.** No. 2345a
- Dorrington's Case (1615); **1. Adm.** No. 12a
- Doty v. Marks (Can.) (1924); **5. Bkpcy.** p. 248
- Doty & Marks, *Re* (Can.) (1925); **21. Estpl.** p. 678
- Doucet v. Sydney Lumbering Co. (Can.); **2. Agric.** p. 97
- Doughty v. Taxes Comr. (N.Z.); **28. Inc. T.** p. 819
- Douglas v. Addie (Can.); **27. H. & W.** p. 789; **38. Real Prop.** p. 1089
- *v. Associated Newspapers, Ltd.* (1922); **3. Barr.** No. 162a
- *v. Carrington* (Can.); **18. Distr.** p. 620
- *v. Forrest* (1828); **11. Confl.** Nos. 1044a, 1262a
- *v. Maritime United Farmers Co-operative, Ltd* (Can.); **10. Coys.** p. 380
- Douglas v. Mutual Life Assurance Co. (Can.); **35. Mtge.** p. 1022
- *v. Rawding* (Can.); **32. Limit. of A.** p. 939
- *v. Smith* (1849); **4. Bkpcy.** No. 5364a
- Douglas Packing Co. Incorporated, Douglas Pectin Corpn. & Postum Co. Incorporated v. Evans & Co. (Hereford & Devon), Ltd. (1929); **36. Pats.** No. 1205a
- Douglas' Patent, *Re, Re Wade's Patent* (1929); **36. Pats.** No. 2044a
- Douglass v. Lloyds Bank (1929); **3. Bank.** Nos. 342b, 403a, 1008a
- Doulin v. Parcell (1926); **31. L. & T.** No. 7352b
- Doull v. Keefe (Can.); **21. Exon.** p. 694
- *v. McIlreith* (Can.); **5. Bkpcy.** p. 266
- Dover v. Mills (1831); **3. Bailmt.** No. 195a
- Dow v. Dayment (Can.); **5. Bkpcy.** p. 267
- Dowell v. Benningfield (1841); **15. Crim.** No. 11,642a
- Dowglas v. Kendall (1610); **3. Bailmt.** No. 123a
- Dowlin v. — (1823); **1. Action**, No. 711a
- Dowling v. Methven, Sons & Co., Ltd. (Scot.); **1. Agcy.** p. 70
- *v. Rae* (Aus.); **12. Contr.** p. 458
- Down County Council v. Stewart (Ir.); **26. Hghys.** p. 782
- Downes v. Freshney (Aus.); **25. Food**, p. 746
- Dowsett v. Edmunds (Can.); **17. Dep.** p. 595; **30. Jdgmts.** p. 891
- Doyle, *Ex p., Re Grantham* (Can.); **4. Bkpcy.** pp. 224, 226
- *v. Bartlett* (Nfld.); **25. Gifts**, p. 764
- *v. Deady* (Can.); **17. Dep.** p. 600
- *v. Doyle* (1850); **21. Estpl.** No. 1285a
- *v. Foley-O'Brien, Ltd.* (Can.); **34. Mines**, p. 1007
- *v. Gibbon* (S. Af.); **1. Agcy.** p. 60
- *v. McKinnon* (Can.); **26. Guar.** p. 767
- Drabble (Harold), Ltd. v. Nylcolite Manufacturing Co. (1928); **13. Coprt.** No. 229b
- Drage (J.) & Sons, *Re, Palmer & Roberts v. Knight* (1926); **5. Bkpcy.** Nos. 7166a, 7237a
- Drake, *Re, Drake v. Wilson* (1926); **21. E.D.** No. 244a
- *v. Preston* (Can.); **38. Pub. Auth.** p. 1070
- Drake's Estate, *Re* (Ir.); **8. Char.** p. 343
- Draper, *Re* (1888); **5. Bkpcy.** No. 5932a
- *v. Radenhurst* (Can.); **40. S. Land.** p. 1111
- *v. South Australian Railways Comr.* (Aus.); **11. Comp. Pche.** p. 106
- Dresdner Bank (London Agency), *Re* (1920); **2. Aliens**, No. 219a
- Dresdner Bank, *Re, Re Direction der Disconto Gesellschaft, Re Anglo-Austrian Bank* (1920); **2. Aliens**, Nos. 219c, 223e
- *v. Russo-Asiatic Bank* (1923); **2. Aliens**, Nos. 221a, 223a
- Dressler's Patents, *Re* (No. 2) (1928); **36. Pats.** No. 1687b
- Drevon v. Drevon (1864); **11. Confl.** Nos. 52a, 64a, 67a, 243a
- Drew, *Re* (Ir.); **31. L. & T.** pp. 913, 919
- Drewe-Mercer v. Drewe-Mercer, *Re Mercer* (1889); **35. Name**, No. 62a
- Drewitt v. Britannic Assurance Co., Ltd. (1927); **34. Mast. & S.** No. 3031a
- Drewry v. Barnes (1826); **20. Egy.** No. 258a
- *v. Drewry* (Can.); **27. H. & W.** p. 788
- Dreyfus & Co. v. Atlantic Shipping & Trading Co. (1921); **2. Arbn.** No. 165a; **16. Courts.** No. 150
- Dreyfus (Louis) & South Australian Milling & Trading Co., *Re* (Aus.); **2. Arbn.** p. 153; **22. Evid.** p. 701
- Driscoll v. Colletti (Can.); **1. Agcy.** p. 75; **30. Jdgmts.** p. 891
- Driver v. Simpson (1818); **11. Comns.** No. 939a

- Drogheda & District Co-operative Society, Ltd., *Re* (Ir.); **10. Coys.** p. 389
- Drought Area Relief Act, *Re*, Snowden v. Baker (Can.); **16. Cntmpt.** p. 548
- Drughorn (F.), Ltd. v. Rederiakt. Trans-Atlantic (1919); **1. Agcy.** No. 2609a
- Drummond v. Hervey (1927); **13. Cty. Cts.** No. 962a
- Drummond's Trustees v. Peel's Trustees (Scot.); **28. Infsts.** p. 851
- Drury v. Johnston (Ir.); **31. L. & T.** p. 916
- Dryden v. Orr (Aus.); **17. Damgs.** p. 583; **36. Negl.** p. 1029
- Drysdale v. Dugas (Can.); **2. Animals**, p. 131
- v. Reid (Can.); **2. Animals**, pp. 125, 126
- Dube v. Algoma Steel Corp., Ltd. (Can.); **34. Mast. & S.** p. 964
- v. Morneault (Can.); **6. B. of Exch.** p. 274
- Dubord v. Lambert (Can.); **32. Libel**, p. 923
- Dubuc v. Marston Corp. (Can.); **21. Estpl.** p. 686; **42. Solrs.** p. 1142
- Ducat v. Sweeney (Can.); **12. Contr.** p. 468
- Duchman v. Oakland Dairy Co. (Can.); **36. Nuis.** p. 1035
- Duck v. Braddyll (1824); **30. L. & T.** No. 1082a
- Ducker v. Roes Roturbo Development Syndicate, Ltd. (1928); **28. Inc. T.** No. 96a
- Duckett v. Imposts Collector (Aus.); **39. Revenue**, p. 1099
- Duckworth & Skinkle, *Re* (Can.); **3. Basty.** p. 196
- Ducondu v. Dupuy (Can.); **30. L. & T.** p. 900
- Dudley & District Benefit Building Society v. Gordon (1929); **31. L. & T.** No. 6957a, **35. Mtge.** No. 732a
- Duff v. Progress. The (Can.); **41. Ship.** p. 1138
- Duff Development Co., Ltd. v. Kelantan Government (1923); **1. Action**, Nos. 392a, 393b, 407a; **2. Arbn.** No. 1644a; **22. Evid.** No. 3122a
- v. — (1924); **1. Action**, Nos. 387a, 393c, 407b; **22. Evid.** Nos. 1264a, 3122b
- v. — (1925); **2. Arbn.** No. 1051a
- Duff-Dunbar v. Inland Revenue Commrs. (1928); **21. E. D.** No. 917; **23. Errors.** No. 5352a; **28. Inc. T.** No. 673b
- Duffy v. Graham (Can.); **23. Errors.** p. 719
- Duguid v. Muirhead (Scot.); **2. Agric.** p. 84
- Dula Singh v. R. (Ind.); **15. Crim.** p. 511
- Dulson, *Re* (1929); **43. Trusts**, No. 401a
- Dumais, *Re* (Can.); **4. Bkpcy.**, p. 223
- Dumart Packing Co. v. Dumart (Can.); **9. Coys.** p. 379
- Dumfermline Trading Co., *Re*, *Ex p.* Reliable Trading Co. (Can.); **4. Bkpcy.** pp. 221, 222
- Dumont v. Landry (Can.); **2. Bldg. Conts.** p. 302
- Duncan v. Associated Scottish Newspapers, Ltd. (Scot.); **32. Libel**, p. 926
- v. Campbell (1842); **27. H. & W.** No. 757a
- v. McCalmont (1841); **1. Adm.** No. 25
- Duncan & Gray, Ltd. v. Silver Spring Brewery (Can.); **10. Coys.** p. 390
- Duncanson v. Atwell (Can.); **32. Limit. of A.** p. 936
- Dundee Assessor v. Caird Dundee, Ltd. (Scot.); **38. Rates**, p. 1083
- v. Don Brothers Buist & Co., Ltd. (Scot.); **38.** p. 1083
- Duncan v. Duncan (Ir.); **18. Descr.** p. 610
- Dunkelman v. Lister (Can.); **31. L. & T.** p. 911
- Dunkley v. Sullivan, *Re* Sullivan (1929); **44. Wills**, No. 299a
- Dunlop & Douro (Township), *Re* (Can.); **38. Pub. Hlth.** p. 1072
- Dunlop Drug Depot v. Hartt Boot & Shoe Co. (Can.); **18. Discy.** pp. 617, 618
- Dunn, *Ex p.*, *Re* Hutchinson's Settlement (1852); **37. Powers**, No. 133a
- v. Braybrook Shire (Aus.); **21. Estpl.** p. 688; **26. Hghys.** p. 785
- v. Graf (Can.); **1. Agcy.** p. 68
- v. Hanson (Can.); **12. Contr.** p. 455
- v. R. (Can.); **35. Money**, p. 1014
- v. Sedziak (Can.); **32. Lenc.** p. 931
- v. Sinclair (Can.); **1. Agcy.** p. 63
- v. Thickett (Can.); **26. Guar.** p. 769
- Dunn & Expropriation Act, *Re* (Can.); **38. Rates**, p. 1086
- Dunn (M.), Ltd. v. Jefferson (1925); **6. B. of Exch.** Nos. 577a, 2040a
- Dunnet v. Nelson (Scot.); **32. Libel**, p. 926
- Dunphy v. Scottish Metropolitan Assurance Co. (Can.); **29. Insec.** p. 872
- Dunsany, *Re* (1849); **22. Evid.** No. 6096a
- Dunshea v. Kesteven (N.Z.); **6. B. of Exch.** p. 276
- Dunsmuir v. MacKenzie (Can.); **17. Deeds**, p. 586
- Dunstable (Prior) v. B. (1133); **33. Mkts.** No. 339a
- Dunstone v. Ferrari (Aus.); **34. Mast. & S.** p. 988
- Du Plessis v. Levy (S. Af.); **3. Basty.** p. 201
- Du Preez v. Laird (S. Af.); **1. Agcy.** p. 43
- Dupuis Freres, Ltd. v. Customs & Excise Minister (Can.); **28. Inc. T.** p. 833
- Durand v. Kingston (City) (Can.); **38. Real Prop.** p. 1090
- Durnford (James) & Sons, Ltd. v. Great Western Ry. Co. (1927); **26. Guar.** No. 1826a
- Durost v. Home-Mixed Fertilizers, Ltd. (Can.); **9. Coys.** pp. 368, 370
- Durrant v. Port of London Authority (1929); **34. Metrop.** No. 29a
- Durrant & Stoner, *Re* (1881); **40. S. Land**, No. 2379a
- D'Usez v. Traffics & Discoveries, Ltd. (1924); **7. B. of Sale**, No. 213a; **12. Contr.** No. 3784b
- Dustoor v. R. (Can.); **14. Crim.** p. 531
- Dutch v. Dutch (1928); **27. H. & W.** No. 6250c
- Dutton v. Evans (Aus.); **2. Animals**, p. 136
- Dutton, Massey & Co., *Re*, *Ex p.* Manchester & Liverpool District Banking Co. (1924); **4. Bkpcy.** Nos. 3375a, 3383a, 4102a
- Dwijendra Nath Mullick v. Gopiram Gobindaram (Ind.); **12. Contr.** p. 452
- Dwirnchuk v. Zaichuk (Can.); **19. Eccl.** p. 611
- Dwyer v. Bulbeck (Can.); **3. Basty.** p. 202
- v. Hickey, *Re* Hickey (Aus.); **22. Evid.** p. 703
- Dyament & Pzadkawolski v. Canadian Express Co. (Can.); **8. Carr.** p. 315
- Dyck v. Dyck (Can.); **2. Agric.** p. 91
- Dyke v. Stephens (1885); **16. Courts**, No. 1014a
- Dykes v. Baird (Scot.); **34. Mast. & S.** p. 988
- Dynes v. Bales (Can.); **17. Deeds**, p. 584
- Dyster v. Randall & Sons (1926); **1. Agcy.** No. 2125a; **5. Bkpcy.** No. 8138a
- Dytrych, *Re* (Aus.); **44. Wills**, p. 1178
- Dzydz, *Re*, *Re* Rozecki (Can.); **28. Infsts.** p. 849

## E.

- E. A., *Re* (1928); **33. Lunat.** No. 529b
- E. J. Lane, Ltd., *Re*, *Ex p.* Milligan (Can.); **9. Coys.** p. 377
- Eades v. Maxwell (Can.); **38. Real Prop.** p. 1092
- Eagan & Dawson, *Re* (Can.); **7. Bonds**, p. 291sc
- Eagle, Star & British Dominions Insurance Co. v. Dinanath (Ind.); **2. Arbn.** p. 138; **18. Discy.** p. 612
- Eagle, Star & British Dominions Insurance Co., Ltd. v. Reiner (1927); **29. Insec.** No. 720b

# TABLE OF CASES.

- Eagles v. Canadian Bank of Commerce (Can.); **22**  
*Evid.* p. 701
- Earl v. Earl & Kyle, Earl v. Earl (1926); **27**.  
*H. & W.* No. 4985a
- Earl of Auckland, The (1862); **1**. *Adm.* No. 39
- Earle (G. & T.) (1925), Ltd. v. Hemsworth Rural  
District Council (1928); **7**. *Bldg. Conds*  
No. 342a; **8**. *Chos.* Nos. 77a, 483a
- Early, Smith & Pavey, *Re, Ex p.* Trustee (1928)  
**5**. *Bkpcy.* No. 8645b
- Easington Rural District Council v. Gibson (1929);  
**25**. *Food.* No. 476a
- East v. Newman (1601); **24**. *Exors.* No. 3611a
- East India Co. v. Oditchurn (1850); **17**. *Dep.*  
No. 315a
- East India Distilleries v. Mathias (Ind.); **31**. *L. & T.*  
p. 909
- East Kent Colliery Co. v. Heath (1926); **34**.  
*Mast. & S.* No. 3860a
- East Riding of Yorkshire County Council v. Selby  
Bridge Co. of Proprietors (1925); **24**.  
*Ferries.* No. 8
- East Tamari Co-operative Dairy Co. v. Nornen  
(N. Z.); **18**. *Discy.* p. 611
- Eastbourne Corp'n. v. A.-G., *Re*, Towner (1923); **8**.  
*Char.* No. 432a
- Eastbourne County Borough v. Fuller & Sons  
(1928); **26**. *Hghys.* No. 1775a
- Easterbrook v. Hopkins (N.Z.); **1**. *Agcy.* p. 82
- Eastern Carrying Insurance Co. v. National  
Benefit Life & Property Assurance Co.,  
Ltd. (1919); **2**. *Akens.* No. 198c
- Eastern Development Co. v. McKay (Can.); **17**.  
*Dep.* p. 598
- Eastern Ontario Milk Products Co., *Re* (Can.);  
**4**. *Bkpcy.* p. 227
- Eastern S.S. Co. v. Alice (Can.); **41**. *Ship.* p. 1135
- Eastern S.S. Co., Ltd. v. Canada Atlantic Transit  
Co. (Can.); **41**. *Ship.* p. 1134
- Eastern Townships Investments Co. v. McLennan  
(Can.); **6**. *B. of Exch.* p. 268
- Eastern Trust Co. v. Lloyd Manufacturing Co.  
(Can.); **5**. *Bkpcy.* p. 257
- v. Nova Scotia Steel & Coal Co., Ltd. (Can.);  
**10**. *Coys.* p. 383; **35**. *Mtgc.* p. 1022
- Eastern United Assurance Corp'n., *Re* (1928); **22**.  
*Evid.* Nos. 6056a, 6083a
- Eastmans, Ltd. v. Inland Revenue Comrs. (1928);  
**28**. *Inc. T.* No. 252a
- v. Shaw (1928); **28**. *Inc. T.* No. 252a
- Easton v. Niddrie & Benhar Coal Co., Ltd. (Scot.);  
**34**. *Mast. & S.* p. 998
- Eastwood & Holt v. Studer (1926); **21**. *Estpl.*  
No. 214a
- Eaton v. Brant (Can.); **21**. *Exon.* p. 698
- Ebbw Vale Steel, Iron & Coal Co., Ltd. v. London,  
Midland & Scottish Ry. Co. (1927); **8**.  
*Carr.* No. 1377k
- Ebner v. Lascelles (1928); **31**. *L. & T.* Nos. 7067a,  
7103a, 7302a
- Ebrahim Mamoojee Parekh v. R. (Ind.); **22**.  
*Evid.* p. 710
- Eby-Blain, Ltd. v. Matthews (Can.); **26**. *Guar.*  
p. 771
- Eccles, *Re* (Can.); **16**. *Courts.* p. 555
- , *Re* (Ir.); **43**. *Trusts.* p. 1170
- Eccles v. Merchants Bank of Canada (Can.);  
**6**. *B. of Exch.* p. 270
- v. Russell (Can.); **42**. *Solrs.* p. 1121
- Eckersley, *Ex p.*, *Re* Byron (1853); **4**. *Bkpcy.*  
No. 3134
- Eckhardt v. Raby (Can.); **38**. *Real Prop.* p. 1091
- Eddie, *Re* (Can.); **23**. *Exors.* p. 729
- Edell v. Dulieu (1924); **2**. *Agrie.* No. 24a
- Edgar v. Mackay (Scot.); **15**. *Crim.* p. 542
- Edgar, etc. v. Cassells (Scot.); **8**. *Char.* p. 337
- Edgett, Ltd. v. Pacific Great Eastern Ry. Co.  
(Can.); **8**. *Carr.* p. 315
- Edinburgh Assessor v. Cairn & Crolla (Scot.); **38**.  
*Rates.* p. 1083
- Edinburgh Entertainment, Ltd. v. Stevenson  
(Scot.); **9**. *Coys.* pp. 379, 380
- Edinburgh Life Assurance Co. v. Allen (Can.); **25**.  
*Fraud. Conv.* p. 750
- v. Barnhart (Can.); **19**. *Easmt.* p. 626
- Edinburgh Master Plumbers' Assocn. v. Munro  
(Scot.); **43**. *Trade.* p. 1159
- Edinburgh Parish Council v. Couper (Scot.);  
**23**. *Exors.* p. 724
- Edinburgh, Perth & Dundee Ry. Co. v. Philip  
(1857); **38**. *Rys.* No. 31a
- Edinburgh Southern Cemetery Co., Ltd. (Scot.);  
**9**. *Coys.* p. 378
- Edison Accumulators, Ltd. v. Edison Storage  
Batteries, Ltd. (1929); **43**. *Trade Mks.*  
No. 818a
- Edmond, *Re, Ex p.* Neilson (1853); **9**. *Coys.* No.  
2299a
- Edmondstone v. Greaves (Aus.); **34**. *Mast. & S.*  
p. 987
- Edmonton (Town) v. Brown & Curry (Can.); **26**.  
*Hghys.* p. 773
- Edmonton (City) v. Macdonald (Can.); **33**. *Mkts.*  
p. 959
- Edmonton Brewing & Malting Co., Ltd., *Re*  
(No. 2) (Can.); **3**. *Bank.* p. 189
- Edmonton Charter, *Re*, Freeman Co., Ltd. v.  
Edmonton Corp'n. (Can.); **11**. *Comp. Pche.*  
p. 404
- , *Re*, Michael Hrushevsky Ukrainian Institute  
v. Edmonton Corp'n. (Can.); **11**. *Comp.*  
*Pche.* p. 404
- , *Re*, R. (Clarke) v. Bury (Can.); **33**. *L. G.* p.  
944
- Edmonton Dunvegan & British Columbia Ry. Co.  
& McLellan School District, *Re, Re* Mannix  
& Walgren & McLellan School District  
(Can.); **19**. *Educ.* p. 645; **38**. *Rates.* p. 1081
- Edmonton School Board Election, *Re* (Can.);  
**19**. *Educ.* p. 612
- Edmunds v. Edmunds (1926); **27**. *H. & W.* No.  
5410a
- Edscall v. Hamell (Can.); **2**. *Agric.* p. 97
- Education (Minister's of) Petition, *Re* (Can.);  
**19**. *Educ.* p. 644
- Educational Supply Assocn., *Re* (1928); **36**. *Pats.*  
2130b
- Edward v. Wyvill (1885); **5**. *Bkpcy.* No. 8499a
- Edward Curran & Co. v. Kays (1928); **34**. *Mast.*  
& *S.* No. 3753a
- Edwards, *Ex p.* (1745); **4**. *Bkpcy.* No. 3566a
- v. A.-G. for Canada (1929); **17**. *Dep.* No. 52c;  
**36**. *Parl.* p. 1039
- v. Bennett (Can.); **21**. *Eron.* p. 694
- v. Edwards (1836); **13**. *Chlds.* No. 798a
- v. Freeman (1727); **18**. *Descl.* No. 165a
- v. Gattmann (Can.); **32**. *Libel.* p. 925
- v. Gwauncaegurwen Colliery Co. (1926); **34**.  
*Mast. & S.* No. 2492a
- v. London Midland & Scottish Ry. Co. (Scot.);  
**36**. *Negl.* p. 1028
- v. Ocean Coal Co., Ltd. (1929); **34**. *Mast. & S.*  
No. 2512b
- v. "Old Bushmills" Distillery Co., Ltd.  
(In Liquidation) (1926); **21**. *Estpl.* No.  
222a; **28**. *Inc. T.* No. 629a
- v. Ottawa River Navigation Co. (Can.); **22**.  
*Evid.* p. 701
- v. Pearson (Can.); **2**. *Animals.* p. 134
- v. Rawlins (N.Z.); **2**. *Animals.* p. 127
- v. Smith, *Re* Unite (1906); **8**. *Char.* No. 1382a
- v. Wanstall (1929); **42**. *Str. Traf.* Nos. 3a, 3b

- Eenigheid, The (1795); **2. Aliens**, No. 419a  
 Egan v. A.-G. (1929); **38. Pub. Auth.** No. 1048a  
 — v. Egan (Ir.); **11. Confl.** p. 121  
 Egbert v. National Crown Bank (1918); **3. Bank**.  
 No. 932a & p. 191  
 Eggington v. Lichfield Corpn. (1855); **13. Corpsus**.  
 No. 1262a  
 Eglinton & Bedford Park Presbyterian Church,  
*Re* (Can.); **40. S. Land**, p. 1112  
 Egyptian Delta Land & Investment Co., Ltd. v.  
 Todd (1929); **28. Inc. T.** No. 144a  
 Ehinger v. South-Eastern & Chatham Ry. Co. &  
 Pullman Car Co., Ltd. (1922); **8. Carr.**  
 Nos. 804a, 851a  
 Ehmka v. Border Cities Improvement Co. (Can.);  
**9. Coys.** p. 355; **11. Confl.** p. 119  
 Eisdell v. Hammersley (1862); **40. Sttlmts.** No.  
 2390a  
 Eisenhauer v. Mackay (Can.); **2. Animals**, p. 133  
 — v. Whynacht (Can.); **19. Easmt.** p. 628  
 Ekraleshwari Bahuasini v. Homeshwar Singh  
 (Ind.); **16. Courts**, pp. 552, 554  
 Elder's Trustee & Executor Co., Ltd. v. Kenny. *Re*  
 Barrowcliff (Aus.); **37. Pers. Prop.** p. 1057  
 Eleanor & Nancy, The (1837); **1. Adm.** No.  
 1300a  
 Electric Telegraph Co. of Ireland, *Re, Ex p.* Bunn  
 (1860); **9. Coys.** No. 1265a  
 —, *Re*, Bunn's Case (1860); **9. Coys.** No. 1265a  
 — v. Bunn (1860); **9. Coys.** No. 1265a  
 Electrical Fittings & Foundry Co., Ltd., *Re*  
 (Can.); **3. Bank**, p. 189  
 Electrohux, Ltd., *Ex p.*, *Re* Lewis (Aus.); **16.**  
*Courts*, p. 550; **33. Mugs.** p. 951  
 Electrolytic Zinc Process Co. v. French's Complex  
 Ore Reducing Co. of Canada, Ltd. (Can.);  
**36. Pats.** pp. 1044, 1046, 1047, 1048  
 Elford v. Elford (Can.); **1. Agcy.** p. 41  
 Elgin v. Stubbs (Can.); **22. Evid.** p. 711  
 Eliasoph v. Steel Co. of Can. (Can.); **1. Adm.**  
 pp. 19, 37  
 Elizabeth, The (1749); **2. Aliens**, No. 419a  
 Elkington v. Wandsworth Corpn. (1924); **7.**  
*Bldg. Confs.* No. 452a  
 Elkowech v. Elkowech (Can.); **27. H. & W.** p. 801  
 Ellard v. Waterloo Manufacturing Co., Ltd. (Can.);  
**12. Contr.** p. 442  
 Ellerman Lines, Ltd. v. Read (1927); **11. Confl.**  
 Nos. 1135a, 1332a; **17. Dams.** No. 141a;  
**21. Estpl.** No. 385a; **30. Jdgmts.** No. 260a  
 — v. — (1928); **11. Confl.** Nos. 1135a, 1332a;  
**17. Dams.** No. 141a; **21. Estpl.** No. 385a;  
**30. Jdgmts.** No. 260a  
 Ellermans Wilson Line, Ltd. v. Northern Light-  
 houses Comrs. (Scott.); **1. Adm.** p. 29  
 Ellerton v. Ellerton (Can.); **27. H. & W.** p. 787  
 Ellesmere (Earl) v. Wallace (1920); **25. Gaming**.  
 Nos. 15a, 15c  
 Ellins, *Re, Ex p.* Hickin (1850); **4. Bkpcy.** No.  
 4295a  
 Elliot v. Hunter (1909); **34. Mast. & S. No.** 244a  
 Elliott v. Appleton (Aus.); **16. Cntmpt.** p. 548  
 — v. Bax-Ironside (1925); **6. B. of Exch.** No. 763a  
 — v. Brown (Can.); **27. H. & W.** p. 789  
 — v. Elliott (N.Z.); **27. H. & W.** p. 796  
 — v. Johnson (Can.); **36. Negl.** p. 1028  
 — v. St. Catharines Municipal Corpn. (Can.); **33.**  
*L. G.* p. 944  
 — v. Toronto Transportation Commission (Can.);  
**8. Carr.** p. 318  
 — v. Warburton (Can.); **1. Agcy.** p. 66  
 Ellis, *Ex p.* (Can.); **17. Dep.** p. 598  
 —, *Re, Ex p.* Myttenacre (1925); **5. Bkpcy.**  
 Nos. 8645a, 9311a  
 — v. Atkinson (1792); **37. Powers**, No. 299a  
 — v. Ellis (1820); **6. B. of Exch.** No. 292a  
 Ellis v. Mayhew (M.). Ltd. (1926); **36. Negl.**  
 No. 812c  
 — v. Steele (1855); **36. Ptnrs.** No. 556a  
 — v. Torrington (1920); **1. Action**, No. 621a  
 Ellis & Co., *Re* (1924); **5. Bkpcy.** No. 7393a  
 Ellis & Co.'s Trustee v. Dixon-Johnson (1925);  
**4. Bkpcy.** No. 3696a  
 — v. Watsham (1923); **1. Agcy.** No. 1529a  
 Ellis Brown v. Van Rooyen (S. Af.); **1. Agcy.**  
 p. 76  
 Ellison v. Pickering (1803); **21. Exon.** No. 417a  
 Ellwell v. Birmingham Canal Navigation (Pro-  
 prietors) (1852); **38. Rys.** No. 918a  
 Ellwood, *Re*, River Dee Drainage Board v. Hooson  
 (1927); **4. Bkpcy.** No. 4281a  
 Elmsley v. Madden (Can.); **8. Char.** p. 335  
 El Oso, The (1925); **1. Adm.** No. 894a  
 Elton v. Jordan (1815); **2. Animals**, No. 430  
 Elvin v. Clough (Can.); **1. Agcy.** p. 60  
 — v. Nightingale, *Re* Pink (1927); **24. Exors.**  
 No. 8484a  
 Elvington Tenants, Ltd. v. Hatton (1928); **31.**  
*L. & T.* No. 7181a  
 Elwell v. Crane Foundry Co. (1929); **34. Mast. & S.**  
 No. 4034a  
 Elworthy Estate, Elworthy & Hale, *Re* (Can.);  
**44. Wills**, p. 1183  
 Embleton v. Norwich Union Life Insurance Society  
 (1927); **28. Inc. T.** Nos. 25b, 50a  
 Emerson, *Ex p.* (1895); **3. Bastly**, No. 204a  
 — v. Cammiff (Can.); **24. Exors.** p. 734  
 Emery, *In the Goods of*, Emery v. Emery (1923);  
**1. Action**, No. 90b  
 —, *Re*, Emery v. Emery (1923); **1. Action**,  
 No. 90b  
 Emmett, *Re, Ex p.* Andrews (1816); **4. Bkpcy.**  
 No. 3558  
 Emperor v. Vazirally (Ind.); **25. Gaming**, p. 760  
 Empire Builders, Ltd., *Re, Re* Transvaal United  
 Trust & Finance Co., Ltd. (1919); **10.**  
*Coys.* No. 7014a  
 Empire Financiers, Ltd. v. Nance (Can.); **6.**  
*B. of Exch.* p. 284  
 Empire of India Life Assurance Co., Bombay v.  
 Nanu Ayyar (Ind.); **1. Agcy.** p. 67  
 Empire Stevedoring Co., Ltd. v. Empress of Japan,  
 The (Can.); **1. Adm.** p. 37  
 Empire Traction Co., Ltd., *Re* (Can.); **4. Bkpcy.**  
 p. 223  
 Employers' Liability Assurance Corpn. v. Sedgwick  
 Collins & Co. (1927); **10. Coys.** No. 8527a;  
**11. Confl.** No. 1307b; **21. Exon.** No. 2170a  
 Emsley, *Re* (Can.); **18. Descl.** p. 610  
 Enderby v. Scott & Wanganui (City) (N.Z.); **36.**  
*Negl.* p. 1029  
 Enc's Case (1627); **7. Bonds**, No. 701a  
 Energine Refining & Manufacturing Co. v. Irving  
 (Can.); **43. Trade Mks.** p. 1160  
 Enfield Cycle Co., Ltd. & Smith's Patent, *Re*  
 (1927); **36. Pats.** No. 2090a  
 Enfield Realty Co. v. Peterson (Can.); **25. Fraud.**  
*Conv.* p. 749  
 Enfield Rural Municipality v. London Guarantee  
 & Accident Co., Ltd. (Can.); **29. Insec.** p. 874  
 Eng Chow v. Balfour (Can.); **30. L. & T.** p. 899  
 Engeland, *Re* (Can.); **4. Bkpcy.** p. 225  
 Engelke v. Musmann (1928); **11. Const. L.** Nos.  
 136b, 418a, 421a, 447a  
 Engineering Profession Act, *Re* Johnson (Can.);  
**7. Bldg. Confs.** p. 306  
 England v. Lavers (1866); **20. Eqq.** No. 1578a  
 English v. English (Can.); **27. H. & W.** p. 787  
 — v. O'Neill (Can.); **17. Dep.** p. 597  
 English Branch Council of General Medical Council  
 v. Inland Revenue Comrs. (1928); **28.**  
*Inc. T.* No. 472e

- English Crown Spelter Co., Ltd., *Ex p.*, R. v. Income Tax General Comrs. (1925); **16. Cr. Pract.** No. 2149a
- English Crown Spelter Co., *Ex p.*, R. v. Swansea Income Tax Comrs. (1925); **16. Cr. Pract.** No. 2149a
- English Dairies, Ltd. v. Inland Revenue Comrs. (1927); **28. Inc. T.** No. 99f
- v. Phillips (1927); **28. Inc. T.** No. 99f
- English Hop Growers v. Dering (1928); **17. Dams.** No. 426a
- English Insurance Co., *Ex p.*, *Re* National Benefit Assurance Co. (1928); **10. Coys.** No. 7612a
- English Insurance Co., Ltd., *Ex p.*, *Re* National Benefit Assurance Co., Ltd. (1929); **29. Insce.** No. 252a
- English Insurance Co. v. National Benefit Assurance Co. (Official Receiver) (1929); **10. Coys.** No. 7612a; **29. Insce.** No. 252a
- Ennis Gold Mining Co. v. Henderson (Can.); **34. Mines.** p. 1006
- Ennos v. McLean (Can.); **1. Agcy.** p. 55
- Enterprise, The, Strong v. Taylor (1853); **34. Mast. & S.** No. 1145a
- Enticknap & Enticknap Concrete Machines v. Humbys (1929); **36. Pats.** No. 3137a
- Eolo, The (Ir.); **1. Adm.** p. 15
- Epsom Urban Council v. London County Council (1900); **26. Hghys.** No. 1858a
- Equal Guardianship of Infants Act, *Re*, *Re* S. (Can.); **3. Bast.** p. 199
- Ereault v. Girls' Public Day School, Trust, Ltd. (1929); **19. Educ.** No. 182a; **28. Inc. T.** No. 62a
- Erickson v. Campbell's, Ltd. (Can.); **36. Negl.** p. 1031
- v. Canadian Pacific Ry. Co. (Can.); **8. Carr.** p. 320; **36. Negl.** p. 1029
- Erie & Niagara Ry. Co. v. Rousseau (Can.); **32. Limit. of A.** p. 936
- Erie Beach Co., Ltd. v. A.-G. for Ontario (1929); **17. Dep.** No. 142a
- Erie Beach Co. v. A.-G. for Ontario (Can.); **21. E. D.** pp. 674, 675
- Eriksen Brothers v. Maple Leaf, The (Can.); **1. Adm.** pp. 18, 24
- Ernest v. Metropolitan Police Comr. (1919); **2. Aliens.** No. 561a
- Ernewein v. Welch (Can.); **31. L. & T.** p. 912
- Ernewein & Welch, *Re* (Can.); **21. Espl.** p. 681; **38. Real Prop.** p. 1091
- Errington v. Aynesly (1788); **7. Bldg. Conts.** No. 265a
- Erwin v. Snelgrove (Can.); **12. Contr.** p. 444
- Esdaile v. Matthews Thompson, Ltd. (Aus.); **43. Trade Mks.** p. 1102
- Eshughbayi Fleko v. Nigeria Government (Administering Officer) (1928); **16. Cr. Pract.** No. 613a
- Espanoleto, The (1920); **1. Adm.** Nos. 668a, 683a
- Esquimalt & Nanaimo Ry. Co. v. Granby Consolidated Mining, Smelting & Power Co. (Can.); **18. Discy.** p. 618
- Esser v. Pritzker (Can.); **35. Mtge.** p. 1024
- Essery v. Cowland (1884); **40. Stillms.** No. 740b
- Essex Envoy, The (1929); **41. Ship.** Nos. 2102a, 6736a
- Essex Land & Timber Co., *Re*, Trout's Case (Can.); **10. Coys.** p. 384
- Estcourt Corp'n. v. Union Government (S. Af.); **38. Rules.** p. 1081
- Esten v. Rosen (Can.); **42. Tort.** p. 1157
- Etchells, Congdon & Muir, Ltd. v. Eagle, Star & British Dominions Insurance Co., Ltd. (1928); **29. Insce.** No. 3203a
- Etteson, *In the Will of* (Aus.); **44. Wills.** p. 1178
- Etheringham v. Etheringham (1846); **23. Exors.** No. 1031a
- Ethier v. Nolle (Can.); **21. Exon.** p. 694
- Etic, Ltd., *Re* (1928); **10. Coys.** Nos. 6150b, 6151b
- European & North American Ry. Co. v. Dunn (Can.); **9. Coys.** p. 364
- European Assurance Society Arbitration Acts, 1872, 1873, & 1875, *Re*, *Re* Anglo-Australian & Universal Family Life Assurance Co., Harman's Case, Pratt's Case (1875); **12. Contr.** No. 4985
- Eustace v. Eustace (1924); **11. Confl.** No. 918c
- Eva, The (1921); **1. Adm.** Nos. 1489a, 1497a
- , *Re* (N.Z.); **4. Bkpcy.** p. 207
- Evanovitch's Patent, *Re* (1928); **36. Pats.** No. 2077a
- Evans, *Ex p.* (Aus.); **38. Pub. Auth.** p. 1071
- , *In the Goods of* (1923); **23. Exors.** No. 17a
- , *Re*, Public Trustee v. Evans (1920); **5. Bkpcy.** Nos. 5932b, 5936a
- , *Re*, Thomas v. Thomas (1908); **39. Rutchys.** No. 336a
- v. Chandler (Can.); **16. Courts.** p. 550
- v. Draper (Can.); **7. Bldg. Conts.** pp. 301, 302
- v. Ebbw Vale Steel Iron & Coal Co., Ltd. (1929); **34. Mast. & S.** No. 3295a
- v. Fletcher (1926); **30. Intox.** No. 755a
- v. Hulton (E.) & Co., Ltd. (1924); **13. Coprt.** No. 394b
- v. James Webster & Brothers, Ltd. (1928); **41. Ship.** Nos. 2230a, 2262a
- v. Lloyd's Furniture Palace, Ltd., *Re* Lloyd's Furniture Palace, Ltd. (1925); **10. Coys.** No. 4783a; **25. Fraud. Conv.** Nos. 422a, 428a
- v. Martyn (Can.); **32. Libel.** p. 924
- v. Morgan (1928); **37. Poor L.** No. 225b
- (Doc. d.) v. Page (1844); **32. Limit. of A.** No. 1190a
- v. Piauneau (1927); **2. Aliens.** No. 558d
- v. Simpson (James) & Son (1926); **34. Mast. & S.** Nos. 2856a, 2890b
- v. Webster (James) & Brothers, Ltd. (1928); **41. Ship.** No. 2257a
- v. Welsh Navigation Steam Coal Co. (1926); **34. Mast. & S.** No. 2120a
- (Richard) & Co., Ltd. v. Gilbie (1926); **34. Mast. & S.** Nos. 3057a, 3541a
- (Richard) & Co., Ltd. v. Scahill (1927); **34. Mast. & S.** No. 3834
- Evans, Coleman & Evans, Ltd. v. Roman Prince, The (Can.); **1. Adm.** p. 23
- Everest v. Wood (1824); **43. Trov.** No. 653b
- Everett v. Islington Guardians (1923); **13. Cty. Cts.** No. 499a
- Everitt, *Ex p.*, *Re* Moss (1923); **4. Bkpcy.** No. 3945a
- Ewart v. Dryden (Can.); **35. Mtge.** p. 1023
- Ewen, *Re* (N.Z.); **23. Exors.** p. 717
- Excel Footwear Co., *Re*, *Ex p.* Nova Scotia Trust Co. (Can.); **9. Coys.** p. 375
- Excelsior Electric Dairy Machinery, Ltd., *Re* (Can.); **4. Bkpcy.** p. 218; **16. Cr. Pract.** p. 558
- Excess Insurance Co., Ltd. v. Mathews (1925); **2. Aliens.** No. 412a
- Exchequer Court Jurisdiction, *Re* (Can.); **11. Comp. Pchc.** p. 408
- Exmouth's Annuity, *Re* (1925); **21. E. D.** No. 128a
- Expedite van Rotterdam, The (1782); **2. Aliens.** No. 419a
- Extra-Judicial Seizures Act, *Re*, Rudder v. Lundin (Can.); **7. B. of Sale.** p. 292
- Eyles v. Cary (1687); **23. Exors.** No. 5697a

## F.

- F. & E. Stanton, Ltd., *Re* (1928); **10. Coys.** Nos. 4709a, 5316a  
 —, *Re* (1929); **10. Coys.** No. 4709a  
 Factor, *Ex p.*, *R. v. Daily Mail* (Editor) (1928); **16. Cmtpt.** No. 192a  
 Fada (Australia), Ltd., *Re, Ex p.* Brown (Aus.); **43. Trusts**, p. 1169  
 Fada Radio, Ltd. v. Canadian General Electric Co., Ltd. (Can.); **36. Pats.** p. 1051  
 Faddes v. McNeish (Scot.); **3. Basty.** p. 201  
 Fader v. Smith (Can.); **44. Waters**, p. 1174  
 Fafard v. Beaupre (Can.); **11. Confl.** p. 420  
 Fagan v. Green & Edwards, Ltd. (1926); **8. Carr.** Nos. 4b, 12b  
 Fagernes, The (1927); **11. Const. L.** No. 136a; **16. Courts**, No. 37a  
 —, The, Cornish Coast (Owners) v. Societa Nazionale di Navigazione (1927); **11. Const. L.** No. 136a; **16. Courts**, No. 37a  
 Fairbairn, *Ex p.* (Can.); **17. Dep.** p. 598  
 Fairer's Will, *Re* (Aus.); **23. Exors.** p. 720  
 Fairfax (John) & Son, Ltd. & Smith's Newspapers, Ltd. v. New South Wales State (Aus.); **17. Dep.** p. 601  
 Fairgrieve v. O'Mullin (Can.); **12. Contr.** p. 415  
 Fairhall v. Butler (Can.); **9. Coys.** p. 376  
 Fairley, *Re, Ex p.* Low & Bonar, Ltd. (1922); **5. Bkpcy.** No. 6918a  
 —, *Re, Ex p.* Official Receiver (1922); **5. Bkpcy.** No. 6918a  
 Fairman v. Perpetual Investment Building Society (1923); **30. Jdgmts.** No. 739a  
 Fairweathers, *Re, Ex p.* Montreal (City) (Can.); **4. Bkpcy.** p. 211  
 Fairweathers, Ltd., *Re* (Can.); **4. Bkpcy.** p. 224  
 Falcon v. Famous Players Film Co., Ltd. (1926); **13. Coprt.** Nos. 16a, 180a, 180b, 308b, 394a, 510a; **22. Evid.** Nos. 580a, 624a, 3513a  
 Falkirk Parish Council v. Stirlingshire Assessor (Scot.); **7. Burial**, p. 313  
 Fallis v. Dalthaser (Can.); **17. Dep.** p. 598  
 Falls v. Sargent (Can.); **1. Agcy.** p. 77  
 Fanshawe v. Fanshawe (1927); **27. H. & IV.** Nos. 6006a, 6012a  
 Faraday, Rodgers & Eller v. Carter (1927); **28. Inc. T.** No. 210a  
 Fares for Provincial Police Case, Provinces of British Columbia & Alberta v. Canadian National & Canadian Pacific Ry. Cos. (Can.); **38. Rys.** p. 1078  
 Farey v. Cooper (1927); **5. Bkpcy.** No. 9576a  
 — v. Welch (1929); **2. Animals**, No. 67a; **14. Crim.** No. 72a  
 Farm Products, Ltd. v. Macleod Flouring Mills, Ltd. (Can.); **1. Agcy.** p. 46  
 Farman v. Farman (1924); **3. Basty.** No. 73a  
 Farmer, *Re* (Can.); **21 E. D.** p. 676  
 — v. Grand Trunk Ry. Co. (Can.); **36. Negl.** p. 1032  
 Farmers Mutual Hail Insurance Co. v. Foster (Can.); **29. Intpr.** p. 877  
 Farmers Pack Co., Ltd. v. Havers (Can.); **10. Coys.** p. 386  
 — v. Tully & Tully (Can.); **10. Coys.** p. 386  
 Farmers' Milking Machine Co., Ltd. v. Knapp (N.Z.); **36. Pats.** p. 1048  
 Farnham Union v. Cambridge Union (1929); **37. Poor L.** No. 482a  
 Farnworth v. Manchester Corpn. (1929); **20. Electric.** No. 65a; **38. Pub. Auth.** No. 263a  
 Farquharson v. Colville (Lord) (1772); **20. Eqq.** No. 1424a  
 Farr v. Annable (Can.); **18. Distr.** p. 620  
 Farr v. Ginnings (1928); **31. L. & T.** No. 5282a  
 Farr, Smith & Co. v. Messers, Ltd. (1928); **12. Contr.** Nos. 859a, 900a  
 Farrell v. Magic Silver-Black Fox Co. (Can.); **9. Coys.** p. 379  
 Farrer & Gilbert's Contract, *Re* (1914); **30. Land Imp.** No. 216a  
 Farrington Without in the City of London, *Re* Election of Common Councilmen of the Ward of (1925); **20. Elect.** No. 1038a  
 Farrow v. Massey-Harris Co., Ltd. (Can.); **18. Distr.** p. 623; **38. Rates**, p. 1086  
 Farrow's Bank, Ltd., *Re* (1923); **3. Bank.** Nos. 274a, 479a  
 Farshind, etc. v. Bechely-Crundall (Scot.); **12. Contr.** p. 456  
 Fasbender v. A.-G. (1922); **2. Aliens**, Nos. 49d, 215i, 215j, 538a  
 Fassnidge v. Flint & Son (1892); **21. Eron.** No. 2086a  
 Fast v. Zarchekoff (Can.); **26. Guar.** p. 769  
 Fateh Ali v. Gehna (Ind.); **35. Mtge.** p. 1021  
 Faulkner v. Faulkner (Can.); **17. Deeds**, p. 584  
 — v. Hythe Corpn. (1927); **26. Hghys.** No. 2430a  
 Favorke v. Steinkopff, *Re* Steinkopff (1922); **2. Aliens**, No. 215f; **8. Chos.** No. 21  
 Fawcett v. Shafto, *Re* Shafto (1903); **20. Eqq.** No. 2075a  
 Fawell v. Andrew (Can.); **18. Distr.** p. 624  
 Fayne v. Martin (Ir.); **25. Gifts**, p. 766  
 Federal Comr. of Taxation v. Australian Tesselated Tile Co. Proprietary, Ltd. (Aus.); **28. Inc. T.** p. 838  
 — v. Clarke (Aus.); **28. Inc. T.** p. 839  
 — v. Hipsleys, Ltd. (Aus.); **17. Dep.** p. 600  
 — v. Lewis Berger & Sons (Australia), Ltd. (Aus.); **28. Inc. T.** p. 839  
 — v. Munro (Aus.); **17. Dep.** p. 600; **28. Inc. T.** p. 839  
 — v. Reid (Aus.); **28. Inc. T.** p. 838  
 Federal Motor Co. v. Topham (Can.); **7. B. of Ech.** p. 292  
 Federated Seamen's Union of Australasia v. Huon, Channel & Peninsular S.S. Co., Ltd. (Aus.); **17. Deeds**, p. 586  
 Feeney v. Firbeck Main Collieries, Ltd. (1926); **12. Contr.** No. 4059a  
 Fegan, *Re, Fegan v. Fegan* (1928); **23. Exors.** No. 5620a  
 — v. McLean (Can.); **17. Dep.** p. 604  
 Feiber v. Romanciewicz (Can.); **7. B. of Sale**, p. 288  
 Feinstein v. Paulin-Chambers Co., Ltd. (Can.); **33. Mal. Pros.** p. 957  
 Fellowes, O'Brien, Gordon & Tootal (carrying on business as Ellis & Co.), *Re* (1924); **5. Bkpcy.** No. 7393a  
 Fellows-Smith v. Shanks (S. Af.); **1. Action**, p. 10  
 Fenerty v. Halifax County (Can.); **17. Dams.** p. 583  
 Fenn v. Harrison (1791); **1. Agcy.** No. 845a  
 Fennell v. East Ham Corpn. (1926); **19. Educ.** No. 302b  
 — v. Montreal S.S. Co. (Nfld.); **8. Carr.** p. 321  
 — v. Union Bank of Canada (Can.); **7. B. of Sale**, p. 288  
 Fenton (Doe d.) v. Butcher (1847); **22. Evid.** No. 3919a  
 Fenton v. Mewbinney, *Re* North Bruce Provincial Election (Can.); **20. Elect.** p. 651  
 Fenton Estate, *Re* (Can.); **8. Char.** p. 336  
 Fenton Textile Assocn., Ltd. v. Lodge (1928); **10. Coys.** Nos. 5067a, 5069a  
 — v. Thomas & Clark (1928); **9. Coys.** No. 432b

- Fenton Textile Assocn., Ltd. v. Thomas & Clark (1929); **9. Coys.** No. 432b; **12. Contr.** No. 4578a
- Fenwick, *Re* (Can.); **11. Confl.** p. 416
- , *Re*, Lloyds Bank, Ltd. v. Fenwick (1922); **21. E. D.** No. 234a
- v. Huntingdon Rural District Council (1928); **26. Hghys.** No. 322a
- Fenwick (France) & Co. v. R. (1927); **11. Const. L.** No. 58a
- Ferdinand, Ex-Tsar of Bulgaria, *Re* (1921); **2. Aliens**, No. 208a
- Fergus & Glen Insolvent Estate (Nfld.); **4. Bkpcy.** p. 228
- Ferguson v. Donovan (Ir.); **28. Inc. T.** p. 837
- v. Eyer (Can.); **3. Bailmt.** p. 165
- v. Ferguson (Can.); **21. Econ.** p. 604
- v. Innes (Can.); **19. Easmt.** p. 628
- v. Kinnoull (Earl) (1842); **1. Action**, No. 206a
- v. Shotts Iron Co., Ltd. (Scot.); **34. Mast. & S.** p. 976
- v. Taylor (Can.); **3. Basty.** p. 202
- v. Wagner (Aus.); **1. Agcy.** p. 75
- Ferns (J. P.) v. Ingelby, The (Can.); **1. Adm.** p. 35
- Feroze Din Khan v. Nawab Khan (Ind.); **17. Dep.** p. 605
- Ferrando v. Pearce (Aus.); **2. Aliens**, p. 122
- Ferreira v. Gingell (S. Af.); **1. Agcy.** p. 53
- Ferrie v. Atherton (1852); **20. Eqq.** No. 1040a
- v. Cleghorn (Can.); **21. Exon.** p. 691
- Fester Fothergill & Hartung v. Russian Transport & Insurance Co. (1927); **13. Corps.** No. 1544b
- Ficowich v. Maleshchak (Can.); **2. Animals**, p. 125
- Fidelity Oil & Gas Co. v. Janse Drilling Co. (Can.); **3. Bank.** p. 182
- Fidelity Phenix Fire Insurance Co. of New York v. McPherson (Can.); **17. Dep.** p. 607
- Fidelity Trust Co. v. Terminal Land & Investment Co. (Can.); **6. B. of Erch.** p. 277
- Field v. Allen (1842); **1. Agcy.** No. 1385a
- v. Peckett (No. 3) (1861); **24. Exors.** No. 7190a
- v. Poplar Borough (1929); **33. L. G.** No. 508a
- v. Sandwell Park Colliery Co., *Re* Sandwell Park Colliery Co. (1929); **10. Coys.** No. 5036b
- Fielder v. Bannister (Can.); **19. Easmt.** p. 630; **30. L. & T.** p. 901
- Fielding & North of Scotland Mortgage Co., *Re*, *Re* Land Titles Act (Can.); **35. Mige.** p. 1021
- Fields v. Fields (Can.); **11. Confl.** p. 423
- v. Livingston & Wightman (Can.); **21. Exon.** p. 694
- (Doe d.) v. McKay (Can.); **38. Real Prop.** p. 1091
- Fife Assessor v. Dunfermline District Committee (Scot.); **38. Rates**, p. 1083
- Filteau & De Roussy v. Nesbitt (Can.); **1. Agcy.** p. 58
- Finance Minister v. Burke-Roche, *Re* Clapham (Can.); **21. E. D.** p. 676
- v. Caledonian Insurance Co., *Re* Land Registry Act & Higginson (Can.); **21. E. D.** p. 676
- v. Smith (1926); **28. Inc. T.** No. 99d
- Finch v. Risley (1903); **38. Pub. Auth.** No. 436a
- v. Stamp Duties Comrs. (N.Z.); **21. E. D.** p. 668
- Findlay v. Beeter (S. Af.); **4. Bkpcy.** p. 212
- v. Menzies (Can.); **21. Exon.** pp. 690, 691
- Fingard v. Merchants Casualty Insurance Co. (Can.); **29. Insee.** p. 862
- Fingland & Mitchell v. Howie (Scot.); **31. L. & T.** p. 906
- Finlay v. Black (Can.); **1. Agcy.** p. 79; **8. Clubs**, p. 352
- Finlay (James) & Co. v. N. V. Kwik Hoo Tong Handel Maatschappij (1928); **17. Damgs.** No. 347a
- Finlay (James) & Co. v. N. V. Kwik Hoo Tong Handel Maatschappij (1929); **17. Damgs.** No. 347a; **39. S. Goods**, Nos. 885a, 1814a, 2519a
- Finlayson v. Balfour, White & Co., *Re* Thornton Davidson & Co. (Can.); **5. Bkpcy.** p. 258
- v. Copeland Flour Mills (Can.); **7. Bounds. & F.** p. 298
- v. Powell (Can.); **19. Educ.** p. 647
- v. Silzer (Can.); **32. Lien**, p. 930
- Finnie v. Carroll (Aus.); **36. Negl.** p. 1032
- Finnigan v. Northwest S.S. (Can.); **1. Adm.** p. 17
- Fino v. South African Railways & Harbours (S. Af.); **2. Arbn.** p. 145
- Finucane v. Standard Bank of Canada (Can.); **3. Bank.** p. 182
- Fireman's Fund Insurance Co. v. Western Australian Insurance Co., Ltd. (1927); **29. Insee.** No. 720a
- Firmstone v. Wheeley (1844); **7. Bounds & F.** No. 258a
- First Co-operative Investment Trust, Ltd. v. General Radio Co., Ltd., *Re*, General Radio Co., Ltd. (1929); **10. Coys.** No. 6477a
- First Garden City v. Bonham-Carter (1928); **9. Coys.** No. 3959a
- First Mortgage Co. v. Noud (Can.); **1. Action**, p. 11
- First National Bank of Minneapolis v. Mann & Conway (Can.); **7. B. of Sale**, pp. 288, 291, 292
- First Russian Insurance Co. v. London & Lancashire Insurance Co. (1928); **29. Insee.** No. 712a
- Firth v. Halloran (Aus.); **34. Mines**, p. 1006
- Fischel & Co. & Mann & Cook, *Re* (1919); **2. Arbn.** No. 1822b
- Fischer v. Kamala Naicker (1860); **30. L. & T.** No. 845a
- Fish v. Higgins (Can.); **7. B. of Sale**, p. 288
- Fisher, *Re* (1850); **33. Lunat.** No. 1009a
- *Re*, *Ex p.* Brutton (1845); **4. Bkpcy.** No. 4704a
- v. Automobile Finance Co. of Australia, Ltd. (Aus.); **32. Lien**, p. 929
- v. Cox (Can.); **7. Bldg. Conts.** p. 301
- v. Johnston (Can.); **38. Real Prop.** p. 1091
- v. Kowalski (Can.); **25. Fraud. Conv.** p. 749
- v. Luke (Aus.); **35. Mistake**, p. 1013
- v. Matson & Co. (N.Z.); **2. Arbn.** pp. 152, 155
- v. St. John Lumber Co. (Can.); **1. Agcy.** p. 51
- v. Wilkie, Ltd. (Can.); **4. Bkpcy.** p. 209
- Fisheries Comrs. v. Button (Aus.); **25. Fish.** p. 745
- Fisner v. Thornton (S. Af.); **21. Exon.** p. 689
- Fitchell v. Lawton (Can.); **1. Agcy.** p. 63
- FitzGeorge v. FitzGeorge, *Re* Hamilton (1921); **5. Bkpcy.** No. 5909a
- Fitzgerald, *Re* (Ir.); **18. Discy.** p. 611; **22. Evid.** p. 707
- v. Apperley (Can.); **32. Lien**, p. 931, 932
- v. Buckley (Can.); **1. Agcy.** p. 60
- v. McMorrow (Can.); **5. Bkpcy.** pp. 242, 257
- v. National Bank (1929); **20. Eqq.** Nos. 2046a, 2057a
- v. White, *Re* Fitzgerald's Settlement (1887); **5. Bkpcy.** No. 9538b
- Fitzgerald's Settlement, *Re*, Fitzgerald v. White (1887); **5. Bkpcy.** No. 9538b
- Fitzgibbon, *Re* (Can.); **8. Char.** p. 342
- v. Duggan (Can.); **35. Mige.** p. 1020
- Fitzpatrick v. Michel (Aus.); **35. Misrep.** p. 1009
- v. R. (Can.); **16. Cr. Pract.** p. 559; **17. Dep.** p. 604
- v. Sehram (Can.); **36. Negl.** p. 1033
- Flanagan v. Ackers Whitley & Co. (1926); **34. Mast. & S.** No. 2317a
- v. Chapman (Can.); **1. Agcy.** p. 64
- v. England (Can.); **21. Exon.** p. 699



- Flannaghan v. Healy (Can.); **12. Contr.** p. 454  
 Flather v. Hood (1928); **2. Agric.** No. 24b  
 Fleetwood's Policy, *Re* (1926); **27. H. & W.** No. 1226a  
 Fleetwood-Hesketh v. Fleetwood-Hesketh (1929), **28. Inc. T.** No. 357a  
 Fleming v. Doig (J. S.) (Grimsby), Ltd. (1921); **2. Arbn.** No. 26a  
 — v. Duncan (Can.); **12. Contr.** p. 444  
 — v. Eclipse Laundry Co. (N.Z.); **9. Coys.** p. 362  
 — v. Horniman (1928); **11. Confl.** Nos. 48a, 51a; **23. Exors.** No. 3171a  
 — v. Livingstone (Can.); **16. Courts.** p. 550  
 — v. McDougall (Can.); **35. Mtge.** p. 1022  
 — v. McNair (1812); **6. B. of Exch.** No. 691b  
 — v. West (Can.); **21. Estpl.** p. 686  
 — v. Wilkinson (1925); **28. Inc. T.** Nos. 131a, 446a  
 Fletcher, *Ex p.*, *Re* Jobhorns (1835); **38. Real Prop.** No. 183a  
 — v. Claggett (Can.); **32. Lien.** p. 930  
 — v. Fletcher (1928); **27. H. & W.** Nos. 6124c, 6300a  
 — v. Hudson (1881); **33. L. G.** No. 27b  
 — v. Intestate Estates Curator, *Re* Mallows (Aus.); **22. Evid.** p. 711  
 — v. Lyons (Can.); **2. Agric.** p. 85  
 — v. Robertson (Scot.); **2. Arbn.** pp. 147, 156  
 — v. Sinclair Iron Co., Ltd. (1928); **34. Mast. & S.** Nos. 2668b, 2890d  
 Fletcher (W. & R.), Ltd. v. Geelong Harbour Trust Comrs. (Aus.); **44. Waters.** p. 1174  
 Flexlume Sign Co. v. Macey Sign Co. (Can.); **16. Cr. Pract.** p. 559  
 Flick v. Brishin (Can.); **17. Dep.** p. 595  
 Flockton v. Bunning (1868); **24. Exors.** No. 7169a  
 Flood v. Pritchard (1879); **40. S. Land.** No. 1458a  
 Flora, La (1805); **2. Aliens.** No. 440a  
 Flower v. Gardner (1857); **22. Evid.** No. 4521a  
 — v. Lyme Regis Corp'n. (1921); **4. Bkpcy.** No. 1775a; **5. Bkpcy.** No. 8882a  
 — v. Sanderson (Can.); **1. Agcy.** p. 58  
 Flynn v. Irish Sugar Manufacturing Co. (Ir.); **36. Negl.** p. 1033  
 Foam Lake (Town) v. Insinger Rural Municipality, *Re* Balasanovich (or Bailey); **37. Poor L.** p. 1060  
 Fogo v. Fogo's Trustee (Scot.); **40. Stllmts.** p. 1119  
 Folan v. Lee (Ir.); **31. L. & T.** p. 919  
 Foley v. Moodie (Can.); **18. Distr.** p. 623  
 Foley's Estate, *Re* (Ir.); **28. Inc. T.** p. 816  
 Folkes v. King (1923); **1. Agcy.** No. 495a  
 Fong, *Ex p.*, *Ex p.* You, *Ex p.* Chalifoux (Can.); **16. Cr. Pract.** p. 560; **17. Dep.** p. 600  
 Fong (Joe), *Re* (Can.); **2. Aliens.** p. 120  
 Fong Young v. Shing Wah (Can.); **17. Dams.** p. 583; **18. Dmsy.** p. 612  
 Fonseca v. Schultz (Can.); **38. Rates.** p. 1086  
 Foong Tai & Co. v. Buchheister & Co. (1908); **1. Adm.** No. 352b  
 Foord's Case (1595); **19. Eccl.** Nos. 3614, 3615  
 Forbes, *Ex p.*, *Re* Milner (Can.); **4. Bkpcy.** p. 227  
 —, *Re*, Harrison v. Commis. (Can.); **44. Wills.** p. 1179  
 — v. Matthew (Scot.); **3. Basty.** p. 201  
 — v. Ralli (Ind.); **21. Estpl.** p. 685  
 — v. Wasson (Can.); **16. Courts.** p. 551  
 Ford, *Re*, *Ex p.* Hawkins (1929); **5. Bkpcy.** No. 6882a  
 —, *Re*, *Ex p.* Trustee v. Restell, Brown & Co. (1929); **5. Bkpcy.** No. 6882a  
 —, *Re*, *Ex p.* Trustee, Powell's Case (1929); **5. Bkpcy.** No. 6882b  
 —, *Re*, *Ex p.* Trustee, Restall, Brown & Clennell's Case (1929); **5. Bkpcy.** No. 6882a  
 Ford, *Re*, Trustee v. Powell (1929); **5. Bkpcy.** No. 6882b  
 — v. Dabbs (1843); **5. Bkpcy.** No. 8025a  
 — v. Radford (1920); **1. Action.** No. 599a; **12. Contr.** No. 2089a  
 Ford & Canadian Pacific Ry. Co., *Re* (Can.); **11. Comp. Pchc.** p. 108  
 Ford (H.) & Co. v. Compagnie Furness (France) (1922); **2. Arbn.** No. 165b  
 Ford & Hardy, *Re* (Can.); **17. Deeds.** p. 586  
 Ford Motor Co. v. Union S.S. Co. (Can.); **8. Carr.** p. 329  
 Forder, *Re*, Forder v. Forder (1927); **5. Bkpcy.** No. 5935a  
 Fordham v. Webber, Cambridge County Council Case (1925); **20. Elect.** No. 1593a  
 Foreman v. Smith (Aus.); **2. Animals.** p. 131  
 Foreman & Ellams, Ltd. v. Blackburn (1928); **39. S. Goods.** No. 1812a  
 Foreshow v. Public Trustee, *Re* Neuburger's Settlement (1923); **2. Aliens.** No. 215g  
 Forewood v. Diction (1615); **7. Bonds.** No. 456  
 Forman v. Union Trust Co., Ltd. (Can.); **17. Deeds.** p. 586, 587  
 Forrest v. Metropolitan Meat Industry Board (Aus.); **38. Pub. Hlth.** p. 1075  
 — v. Solloway (Can.); **12. Contr.** p. 411  
 Forsikringsakt National (of Copenhagen) v. A.-G. (1925); **10. Coys.** No. 7490a  
 Forster, *Re*, Somerville v. Oldham (1929); **40. Stllmts.** No. 3143c  
 — v. Blyth Shipbuilding & Dry Docks Co., *Re* Blyth Shipbuilding & Dry Docks Co. (1926); **7. Bldg. Contrs.** No. 319a  
 — v. Page (1929); **29. Inscr.** No. 3217b  
 — v. Toronto Ry. Co. (Can.); **8. Carr.** p. 318  
 Forsyth, *Re* (Can.); **22. Evid.** p. 704  
 — v. Bury (Can.); **21. Estpl.** p. 680  
 Forsyth & Richardson v. Hall (Can.); **21. Exon.** p. 693; **24. Exors.** p. 734  
 Fort Erie Village & Buffalo & Fort Erie Public Bridge Co., *Re* (Can.); **38. Rates.** p. 1083; **44. Waters.** p. 1174  
 Fort Frances Pulp & Paper Co. v. Telegram Printing Co. (Can.); **21. Exon.** p. 690  
 Fort Frances Pulp Co. v. Spanish River Pulp Co. (Can.); **1. Action.** p. 5; **42. Stats.** p. 1149  
 Forth Shipbreaking Co., Ltd., Petitioners (Scot.); **10. Coys.** p. 392  
 Fortier v. Lambe (Can.); **17. Dep.** p. 598  
 Fortin v. Caron (Can.); **19. Easmt.** p. 631  
 Fortuna, The (1795); **2. Aliens.** No. 419a  
 Fortune v. Cockburn (Can.); **7. Bonds.** p. 294  
 Foshay v. Burnes (Can.); **31. L. & T.** p. 906  
 Foss v. Sterling Loan (Can.); **21. Exon.** p. 693  
 Foster v. Crabb (1852); **38. Real Prop.** No. 537a  
 — v. Driscoll (1929); **6. B. of Exch.** Nos. 568a, 2455a, 2462a, 3121a; **11. Confl.** No. 732a; **39. S. Goods.** No. 1376a  
 — v. Foster (Can.); **27. H. & W.** p. 791  
 — v. Foster's Trustees (Scot.); **11. Confl.** p. 414  
 — v. Halifax (Can.); **33. L. G.** p. 944  
 — v. Heintzman & Co. (Can.); **12. Contr.** p. 455; **17. Dams.** p. 580  
 — v. Lyons & Co. (1927); **19. Easmt.** No. 898a  
 — v. Morden (Can.); **35. Mtge.** p. 1024  
 — v. Reaume (Can.); **1. Agcy.** p. 57; **2. Arbn.** p. 160; **21. Estpl.** p. 679  
 — v. Smith (1856); **2. Animals.** No. 176a  
 Foster's Case (1585); **31. L. & T.** No. 4978a  
 Foucar & Co. v. Mudaliar (Ind.); **1. Agcy.** p. 64  
 Foulds v. Bowler (Can.); **22. Evid.** p. 704  
 — v. Chambers (Can.); **21. Exon.** p. 698  
 — v. Curtelett (Can.); **27. H. & W.** p. 791  
 Fournier v. Canadian National Ry. Co. (1927); **17. Dams.** No. 592a

- Fournier v. McKenna (Can.); **3. Bailmt.** p. 167  
 Fowkes v. Minister of Finance (Can.); **21. E. D.** p. 674  
 Fowler v. Fowler (1864); **8. Char.** No. 769a  
 Fowlers (Aberdeen), Ltd. (Scot.); **9. Coys.** p. 360  
 Fox, *Re*, Lester v. Porter (Can.); **4. Bkpcy.** p. 208;  
**5. Bkpcy.** p. 248  
 — v. Allchurch (Aus.); **38. Pub. Hlth.** p. 1072  
 — v. Charlton (1865); **30. Jdgmts.** No. 448a  
 — v. Equity Trustees, Executors & Agency Co., Ltd., *Re* Maybelle (Aus.); **44. Wills.** p. 1183  
 — v. London, Midland & Scottish Ry. Co. (Ir.); **2. Animals.** p. 134  
 — v. Nipissing Ry. Co. (Can.); **25. Fraud. Conv.** p. 749  
 — v. Price (1926); **34. Mast. & S.** No. 3162a  
 Fox & Consolidated Mining & Smelting Co. of Canada, *Re* (Can.); **2. Arbn.** p. 157  
 Fox & Son v. Morrish, Grant & Co. (1918); **1. Agcy.** No. 1243b  
 Fox & Windsor Corp., *Re* (Can.); **28. Inc. T.** p. 821  
 Foxcroft & London, *Re* (Can.); **38. Pub. Hlth.** p. 1072  
 Foxton v. Hamilton Steel & Iron Co., Ltd. (Can.); **39. S. Goods.** p. 1093  
 Foy, *In the Goods of* (1839); **11. Confl.** No. 580a  
 Foy v. Merrick (Can.); **3. Auct.** p. 162  
 Fraher v. Waterford County Council (Ir.); **26. Guar.** p. 770  
 Frame v. Farrand (1928); **28. Inc. T.** No. 540b  
 France (Doe d.) v. Andrews (1850); **22. Evid.** No. 1459a  
 France v. Humphreys (Aus.); **22. Evid.** p. 703;  
**30. Intox.** p. 882  
 France Fenwick & Co. v. Mannheim Insurance Co. (1905); **17. Custom.** No. 729a  
 — v. R. (1927); **11. Const. L.** No. 58a  
 Francis Adams, Ltd. v. Fishwick (1928); **9. Coys.** No. 3335a  
 Franco v. Dutto (1923); **5. Bkpcy.** No. 8290a  
 Franco-Belgium Investment Co. v. McNamara (Can.); **21. Exon.** p. 699  
 Franco-British Ship Store Co., Ltd. v. Compagnie des Chargeurs Francaise (1926); **12. Contr.** No. 923a; **17. Damys.** No. 412a  
 Frankau (Ronald) Productions, Ltd. v. Bell (1927); **12. Contr.** No. 546c; **42. Theatres.** No. 64a  
 Frankland v. M'Gusty (1830); **6. B. of Exch.** No. 694b  
 Franklin v. Reardon (Can.); **9. Coys.** p. 365  
 Franklin & Swathing's Arbitration, *Re* (1929); **2. Arbn.** No. 626a; **36. Ptnrs.** No. 952a  
 Fraser, *Re* (1928); **33. Lunat.** No. 529b  
 — v. Aztec S.S. (Can.); **1. Adm.** pp. 29, 35, 37  
 — v. Campbell (Scot.); **3. Basty.** p. 201  
 — v. Cummings & Leopold (Can.); **6. B. of Exch.** p. 280  
 — v. Douglas (Can.); **27. H. & W.** p. 790  
 — v. Ekstron & Massey (Can.); **29. Intpr.** p. 876  
 — v. Harrison (Can.); **1. Agcy.** p. 60  
 — v. Locie (Can.); **12. Contr.** p. 464  
 — v. McGregor, Johnston & Thomas, Ltd. (Can.); **6. B. of Exch.** p. 275  
 — v. Pearce (Can.); **31. L. & T.** p. 909  
 — v. Thomas (1852); **13. Cohlds.** No. 1461a  
 Fraser River Mining Co. v. Gallagher (Can.); **21. Estpl.** p. 680  
 Fraser's Appeal, *Re*, *Re* Winnipeg Charter (Can.); **2. Arbn.** p. 138; **38. Rules.** p. 1085  
 Frayes v. Worms (1861); **11. Confl.** No. 1098a  
 Frazer v. Mattice (Can.); **18. Distr.** p. 623  
 — v. Pate (Scot.); **2. Animals.** p. 129  
 Fredericke & Whitworth, *Re*, *Er* p. Hibbard (1927); **4. Bkpcy.** No. 923a  
 Fredericton School Trustees v. Kingsclear School Trustees (Can.); **19. Educ.** p. 645  
 Frederiksen v. Western Can. Inv. Co. (Can.); **35. Mtge.** p. 1020  
 Freeburg v. Farmers' Exchange Bankers (Can.); **32. Lien.** p. 930  
 Freedon, The (1795); **2. Aliens.** No. 419a  
 Freedman, *Re* (Can.); **4. Bkpcy.** p. 210  
 — v. French (Can.); **12. Contr.** p. 456  
 — v. Hart, *Re* Baittle (Can.); **5. Bkpcy.** p. 258  
 Freeman, *R. ex rel.*, *R. ex rel* Royal Trust Co., *Re* Winnipeg Charter (Can.); **38. Rates.** p. 1085  
 Freeman, *Re* (1927); **33. Lunat.** No. 529a  
 — v. Keney (Can.); **30. L. & T.** p. 900  
 — v. Maxwell (Scot.); **40. S. Land.** p. 1110  
 Freeman Co., Ltd. v. Edmonton Corp., *Re* Edmonton Charter (Can.); **11. Comp. Pche.** p. 404  
 "Freeman's Journal" v. Fernstrom & Traesliberi (Ir.); **16. Courts.** p. 552; **17. Dep.** p. 607  
 Freemantle v. Taylor (1808); **28. Infts.** No. 1006a  
 Freeze v. Carey (Can.); **32. Lien.** p. 932  
 Freiya, The v. R. S., The (Can.); **1. Adm.** p. 24  
 French (Doe d.) v. Dunn (Can.); **38. Real Prop.** p. 1091  
 — v. Gething (1922); **7. B. of Sale.** No. 673a  
 — v. Paris (Can.); **17. Damys.** p. 575  
 French (L.) & Co. v. Leeston Shipping Co. (1922); **1. Agcy.** No. 1768a  
 French Government v. Tsurushima Maru (Owners) (1921); **2. Arbn.** Nos. 841b, 888a, 1022a  
 Freney v. Perpetual Trustees, Executors & Agency Co. of Tasmania, Ltd. (Aus.); **44. Wills.** p. 1184  
 Frere v. Frere (1847); **11. Confl.** No. 594a  
 Fried v. German Property Administrator (1925); **2. Aliens.** No. 215n  
 Fried Krupp Akt. v. Orconera Iron Ore Co., Ltd. (1919); **2. Aliens.** No. 406  
 Friedman v. Friedman's Executors (S. Af.); **11. Confl.** p. 420  
 — v. Mayer (Can.); **12. Contr.** p. 447  
 Friendship, The (1814); **17. Dep.** No. 252a  
 Friern Barnet Urban Council v. Adams (1927); **26. Hghys.** No. 2351a  
 Friesen v. Saskatchewan Mortgage & Trust Corp., (Can.); **35. Mtge.** p. 1024  
 Fright v. Scheck (Can.); **35. Misrep.** p. 1009  
 Frome United Breweries Co. v. Bath J.J. (1926); **30. Intox.** No. 381  
 Froment, *Re*, Alberta Lumber Co. v. Alberta Department of Agriculture (Can.); **4. Bkpcy.** p. 219  
 Frontenac Loan Co. v. Morice (Can.); **23. Exors.** pp. 723, 724  
 Frost v. Allen (Aus.); **3. Basty.** p. 201  
 — v. Caslon (1929); **19. Educ.** No. 96a; **43. Trade.** No. 10a  
 — v. Rochon & Verhelst (Can.); **21. Exon.** p. 697  
 — v. Wilkins (1929); **19. Educ.** No. 96a; **43. Trade.** No. 10a  
 Frost Brothers, *Re* (Can.); **11. Const. L.** p. 431  
 Frostad v. Libek (Can.); **27. H. & W.** p. 789; **38. Real Prop.** p. 1087  
 Fry v. Burma Corp., (1929); **28. Inc. T.** No. 200b  
 — v. Byrne (Aus.); **1. Agcy.** p. 65  
 — v. Russell (1858); **3. Bank.** No. 215a  
 Fryer v. Buttar (1837); **23. Exors.** No. 4712a  
 Fryer & Hampson's Contract, *Re* (1929); **7. Bldg. Soc.** No. 285a  
 Fryers & Co., Ltd. v. Steeves (Can.); **6. B. of Exch.** p. 276; **27. H. & W.** p. 790  
 Fuataga v. Inspector of Police (N.Z.); **17. Dep.** p. 601  
 Fujita & Co., Ltd. v. Northern Fruit Co., Ltd. (Can.); **12. Contr.** p. 456

- Fukukawa & Queen Charlotte Timber Holding Co., Ltd. v. American Timber Holding Co. (Can.); **2. Agric.** p. 97
- Fulford, *Re*, Fulford v. Hyslop (1929); **40. Stillmts.** No. 2131a
- v. Hyslop, *Re* Fulford (1929); **40. Stillmts.** No. 2131a
- Fuli Bibi v. Khokai Mondal (Ind.); **28. Insts.** p. 851
- Fuller v. Cheveley (1853); **22. Evid.** No. 2477a
- v. Garneau (Can.); **11. Const. L.** p. 437
- v. Pattrick (1849); **7. Bldg. Confs.** No. 325a
- Fuller & Co. v. Holland (Can.); **6. B. of Exch.** p. 274
- Fuller's Theatres, Ltd. v. Musgrove (Aus.); **12. Contr.** pp. 456, 457, 458
- Fullerton v. Blenkhorn (Can.); **32. Limit. of A.** p. 939
- Fullwood v. Hurley (1928); **1. Agcy.** No. 1608a
- Fulton, *Re* (Can.); **4. Bkpcy.** p. 229; **5. Bkpcy.** p. 248
- Fulton v. Randall, Gee & Mitchell, Ltd. (Can.); **2. Animals**, p. 126
- Furber v. Sturmev (1859); **21. Exon.** No. 783a
- Furlong v. Reid (Can.); **29. Intrp.** p. 876
- v. Russell (Can.); **12. Contr.** p. 453
- Furness v. Guarantee Savings & Loan Assocn. (Can.); **32. Loan Soc.** p. 941
- Furness Withy Co., Ltd. v. Ahlin (Can.); **3. Bailmt.** p. 168
- Furphy v. Nixon (Aus.); **35. Money**, p. 1014
- Fusarelli v. Ioco Townsite Co. (Can.); **2. Arbn.** p. 159
- Futcher v. Futcher (1881); **12. Contr.** No. 1263a
- Fyfe v. Fife Coal Co., Ltd. (1927); **34. Mast. & S.** No. 2822a
- Fyhri v. Burke (Can.); **31. L. & T.** p. 915
- G., *Re* (Can.); **3. Basty.** p. 198
- v. G. (1928); **3. Basty.** No. 130b; **27. H. & W.** Nos. 2484a, 5781b
- v. G. (Can.); **11. Confl.** p. 422
- G. & T. Earle, Ltd. v. Hensworth Rural District Council (1928); **7. Bldg. Confs.** No. 342a; **8. Chos.** Nos. 77a, 483a
- G. H. L., etc., *Re* (Ir.); **33. Lunat.** p. 948
- G. Stanley & Co., *Re* (1925); **5. Bkpcy.** No. 7361a; **10. Coys.** No. 6746a
- Gabriel v. Ah Mook (Aus.); **2. Aliens**, p. 119
- v. Eliatamby (Ceylon); **27. H. & W.** p. 802
- Gaddar Mal v. Tata Industrial Bank, Ltd., Bombay (Ind.); **3. Bank.** p. 188
- Gadlela v. Mountjoy (S. Af.); **1. Agcy.** p. 71
- Gadsby, *Re*, *Ex p.* White & Elliott (Can.); **5. Bkpcy.** p. 240
- Gagara, The (1919); **1. Adm.** No. 142b
- Gage & Roper v. Pigott & De Jenner (Ir.); **2. Agric.** p. 96
- Gagne v. Finance Minister (Can.); **28. Inc. T.** p. 718
- Gagnon v. Grain & Provision Co., *Re* Blouin (Can.); **5. Bkpcy.** p. 226
- v. Langis (Can.); **2. Animals**, p. 132
- Gainer v. Cunyngham (1758); **20. Eqq.** No. 1428a
- Gainers v. Canadian Northern Ry. Co. (Can.); **22. Evid.** p. 713
- Gajadhar Mahton v. Ambika Prasad Tiwari (Ind.); **16. Courts**, pp. 553, 554
- Gale v. Motor Union Insurance Co., Ltd. (1928); **29. Insee.** No. 3217a
- Galibert v. Societe D'Administration Generale & Banque Nationale & Cie. General D'Entreprises Publiques (Can.); **25. Fraud. Conv.** p. 749
- Gallacher v. Baird (William) & Co., Ltd. (Scot.); **34. Mast. & S.** p. 990
- v. Gallacher (Scot.); **27. H. & W.** p. 799
- Gallagher v. Murphy (Can.); **6. B. of Exch.** p. 269
- Galloway, *Re* (Can.); **38. Real Prop.** p. 1089
- v. Anderson (Scot.); **38. Pub. Hlth.** p. 1074
- v. Galloway (Scot.); **22. Evid.** p. 709
- v. Harris, *Re* Read (1892); **7. Burial**, No. 56a
- v. Watson (Aus.); **27. H. & W.** p. 806; **33. Mags.** p. 951
- Gallway (Lord) v. Mathew & Smithson (1808); **6. B. of Exch.** No. 695a
- Galt Brothers & Burnaby Arbitration, *Re* (Can.); **22. Evid.** p. 709; **42. Solrs.** p. 1142
- Galt Presbyterian Church Trustees (Doe d.) v. Bain (Can.); **38. Real Prop.** p. 1091
- Galway (Lord) v. Matthew & Smithson (1808); **6. B. of Exch.** No. 695a
- Gamage (A. W.), Ltd. v. Payne (1925); **18. Distr.** No. 421a
- Gamble, *Re* (Can.); **24. Exors.** p. 733
- v. Excelsior Life Assurance Co. (Can.); **1. Agcy.** p. 60
- Gammon v. Jodrey (Can.); **38. Real Prop.** p. 1091
- Gammon Estate, *Re*, Payne v. Gammon (Can.); **23. Exors.** p. 715
- Ganapathy Pillay v. Alamaloo (1929); **44. Wills**, No. 9571a
- Ganda Singh v. Bhag Singh-Bhagwan Singh, Mst. Bhani (Ind.); **32. Limit of A.** p. 934
- Gangadhar v. Kanhai (Ind.); **5. Bkpcy.** p. 233; **26. Guar.** p. 769
- Ganga Prasad v. Ganeshi Lal (Ind.); **11. Confl.** pp. 424, 425
- Gannon v. Farquhar Trading Co. (Can.); **31. L. & T.** p. 907
- Ganpat Tukaram Mali v. Sopana Tukaram Mali (Ind.); **6. B. of Exch.** p. 280
- Gapes v. Fish (Aus.); **19. Easnd.** p. 625
- Garber v. Union Bank of Canada (Can.); **3. Bank.** p. 175
- Garbet, *In the Goods of* (1869); **23. Exors.** No. 1375a
- Garbrey v. Brown (1588); **12. Contr.** No. 1828a
- Garbutt, *Ex p.* (S. Af.); **4. Bkpcy.** p. 209
- Garden River Rural Municipality v. Montreuil (Can.); **35. Mistake**, p. 1013
- Gardiner v. Gardiner (Can.); **23. Exors.** p. 728
- v. Heading (1928); **1. Agcy.** No. 2487a
- Gardner, *Re*, *Ex p.* Croft & Sons, Ltd. (Can.); **5. Bkpcy.** p. 264
- , *Re*, Langlois v. Lemire (Can.); **4. Bkpcy.** p. 218
- v. Gorman (Can.); **32. Lien**, p. 932
- v. Guy Street Garage (Can.); **5. Bkpcy.** p. 256
- v. Hirawanu (N.Z.); **2. Agric.** p. 96
- v. Vickers, Ltd. (1928); **34. Mast. & S.** No. 3482a
- Gardner & Co. v. Cone (1928); **31. L. & T.** Nos. 5269a, 5295a
- Gardner's Trusts, *Re* (1878); **33. Lunat.** No. 1336b
- Garey v. Dominion Manufacturers, Ltd. (Can.); **6. B. of Exch.** p. 282
- Garland v. Newman (Can.); **1. Agcy.** p. 59
- v. O'Reilly (Can.); **25. Gifts**, p. 764
- Garland & Toronto, *Re* (Can.); **11. Comp. Pche.** p. 403
- Garlick & Co. v. Poynton (S. Af.); **2. Arbn.** p. 159
- Garment (J. & G.) Mfg. Co., *Ex p.*, *Re* Morgan (J. R.), Ltd. (Can.); **9. Coys.** p. 378
- Garner v. Garner (1860); **40. Stillmts.** No. 86a
- Garnett v. Pratt (1926); **11. Commis.** No. 939a
- Garrard v. James (1925); **9. Coys.** No. 4050a
- Garrett v. Johnstone (Can.); **26. Guar.** p. 768
- v. Saunders (Can.); **35. Atge.** p. 1020

- Garrioch v. Canadian Bank of Commerce (Can.); **3. Bank.** pp. 178, 182
- Garrison v. Thomsen & Clarke Timber Co. (Can.); **12. Contr.** p. 456
- Garrod v. Moor (1846); **40. Sttlmts.** No. 2358a
- Garrold, *Ex p.*, *Re* Hereford Municipal Election Petition (1889); **20. Elect.** No. 1626
- Garry Cafeteria, *Re* (Can.); **4. Bkpcy.** p. 222
- Garson v. Canadian Credit Men's Trust Assocn., Ltd. (Can.); **4. Bkpcy.** p. 231
- Gartrell, *Re, Ex p.* Kearns (Can.); **4. Bkpcy.** p. 204
- Gas Meter Co., Ltd. v. Diaphragm & General Leather Co., Ltd. (1925); **9. Coys.** No. 1814a
- Gaskell, Ltd. v. Askwith (1929); **35. Money.** No. 353b
- Gaskill v. Gaskill (1921); **3. Basty.** No. 43a
- Gaston, *Re* (Ir.); **5. Bkpcy.** p. 265
- Gaston, Williams & Wigmore & Gaston, *Re, Williams & Wigmore Steamship Corp'n. v. R.* (Can.); **11. Const. L.** p. 435
- Gates, *In the Goods of* (1928); **23. Exors.** No. 2056a
- , *Re, Gates v. Cabell* (1929); **44. Wills.** Nos. 5720a, 5734a
- v. Cabell, *Re Gates* (1929); **44. Wills.** Nos. 5720a, 5734a
- Gatty v. Phillipson (1848); **35. Mtge.** No. 389b
- Gaudet v. Brown, *The Argos* (Cargo Ex) (1873); **1. Adm.** No. 40
- Gaudreau, *Re, Ex p.* Carruthers (Can.); **5. Bkpcy.** p. 258
- , *Re, Ex p.* Royal Bank of Canada (Can.); **7. B. of Sale.** pp. 288, 290
- Gaul & Houlston's Contract, *Re* (1928); **40. Sttlmts.** No. 2597
- Gauns v. R. (Ind.); **14. Crim.** p. 514
- Gaussen v. Lower Bann Navigation Trustees (Ir.); **42. Stats.** p. 1147; **44. Waters.** p. 1175
- Gauthier v. R. (Can.); **2. Arbn.** p. 145
- Gautreau, *Ex p.* (Can.); **16. Cr. Pract.** p. 568
- Gavagan, *Re* (Ir.); **3. Basty.** p. 199
- Gavazzi v. Inland Revenue Comrs. (1926); **28. Inc. T.** No. 179
- v. Mace (1926); **28. Inc. T.** No. 179
- Gaviller v. Beaton (Can.); **21. Exon.** p. 604
- Gay, *Re* (Can.); **14. Confl.** p. 423
- Gay Co., Ltd. v. Trick (Can.); **17. Damgs.** p. 583; **30. Juries.** p. 894
- Gayler & Pope, Ltd. v. Davies (B.) & Son, Ltd. (1924); **2. Animals.** Nos. 156b, 206a
- Gaze (W. H.) & Sons, Ltd. v. Port Talbot Corp'n. (1929); **7. Bldg. Conts.** Nos. 36a, 58a
- Gearhart v. Quaker Oats Co. (Can.); **1. Agcy.** p. 47
- Geary v. Clifton Co. (Can.); **31. L. & T.** pp. 902, 905; **42. Sp. Jfcs.** p. 1144
- Gebbie & Forrest v. Kershaw (Can.); **27. H. & W.** p. 701
- Geddes v. Dunfermline District Committee (Scot.); **34. Must. & S.** pp. 907, 909
- Gee, *Re* (Can.); **44. Wills.** p. 1180
- Geelong City Buildings Pty., Ltd. v. Bennett (Aus.); **31. L. & T.** p. 906
- Gehm, *Re, Gehm v. Gadjens* (Can.); **28. Infts.** p. 849
- Geipel v. Cornforth, *The Howsons* (1873); **1. Adm.** No. 40
- Geldert v. Hoar, *Ex p.* Geldert (Can.); **21. Exon.** p. 695
- Geller Brothers, *Re* (Can.); **5. Bkpcy.** p. 265
- Gellibrand v. Carew, *Re Carew's Trusts* (1910); **5. Bkpcy.** No. 5902a
- Gelman, *Ex p.*, *Re Cohen & Sweigman* (Can.); **4. Bkpcy.** p. 222
- Gemmel v. Sinclair (Can.); **38. Rates.** p. 1085
- Gemmell & M'Fadyen v. MacNiven (Scot.); **14. Crim.** pp. 509, 510, 518
- General Accident Assurance Co., *Re* (Can.); **29. Insce.** p. 875
- General Electric Co. (1900), Ltd. v. Safety Lift & Elevator Co. (1903); **18. Discy.** Nos. 1625a, 1626a
- General Electric Trading Co. v. Siemans (India), Ltd. (Ind.); **2. Arbn.** p. 146
- General Medical Council v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 472e
- General Radio Co., Ltd., *Re, First Co-operative Investment Trust, Ltd. v. General Radio Co., Ltd.* (1929); **10. Coys.** No. 6477a
- General Supply Co. of Canada v. O'Neill Morkin Machinery Co. (Can.); **12. Contr.** p. 440; **17. Damgs.** p. 577
- Genesee, *The* (1917); **37. Prsns.** No. 1302a
- Gent One, *Re, Ex p.* Pratt (Aus.); **42. Solrs.** p. 1142
- Geoghegan v. Henry (Ir.); **19. Easmt.** p. 630
- Geologists' Assocn. v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 476b
- George v. Brayley (Can.); **26. Guar.** p. 768
- v. Canadian Northern Ry. Co. (Can.); **8. Carr.** p. 315
- George & Stamford Hotels, *Ex p.*, *R. v. Huntingdon Confirming Authority* (1929); **30. Indox.** Nos. 368a, 368b
- George W. Griffiths Co., *Re* (Can.); **9. Coys.** p. 357
- Georgeson v. Dominion Bank (Can.); **3. Bank.** p. 189; **17. Damgs.** p. 580
- v. Urwin & Co. (N.Z.); **36. Pats.** p. 1046
- Georget Estates, *Re* (Can.); **18. Descr.** p. 611
- Georgia Construction Co. v. Pacific Great Eastern Ry. Co. (Can.); **7. Bldg. Conts.** p. 302; **30. Jdgmts.** p. 890
- Gerard v. Hudson (Can.); **22. Evid.** p. 711
- Gerlach-Barklow Co. v. MacPherson (Can.); **43. Trade.** p. 1158
- German v. Risley (1839); **38. Real Prop.** No. 761a
- Germantown Lake District Sewers Comrs., *Re, Ex p.* Calhoun (Can.); **38. Rates.** p. 1083
- Gertrud, *The* (1927); **1. Adm.** No. 682a
- Ghamandi Lal-Narain Das v. Churanji Lal-Pokhar Mal (Ind.); **2. Arbn.** p. 152
- Ghanshyam Singh v. R. (Ind.); **14. Crim.** p. 514
- Gharib-Ul-Lah v. Khalak Singh (Ind.); **28. Infts.** p. 850
- Ghee, *Re, Ex p.* Lowe King, Public Trustee v. Lowe King (N.Z.); **24. Errors.** p. 735
- Ghitlerman v. Ralph (Can.); **14. Crim.** p. 526; **33. Mags.** p. 955
- Ghosh v. R. (Ind.); **14. Crim.** p. 500
- Gibaud v. Great Eastern Ry. Co. (1921); **3. Bailmt.** No. 192a
- Gibb v. Sell (Aus.); **12. Contr.** p. 445
- Gibbings, *In the Estate of* (1928); **23. Errors.** No. 2585c
- Gibbons, *Re* (Can.); **7. B. of Sale.** p. 290
- v. Riddle (Can.); **2. Agric.** p. 96
- v. Vanguard Motor Bus Co., Ltd. (1908); **26. Hghys.** No. 1513a
- Gibbons & Carnes v. Royal Bank of Canada (Can.); **3. Bank.** p. 180
- Gibbs, *Re, Lyne v. Gibbs, Re Lyne's Settlement Trusts* (1919); **11. Confl.** No. 511
- , *Re, Nelson v. National Trustees, Executors & Agency Co. of Australasia, Ltd.* (Aus.); **32. Limit. of A.** p. 937
- v. Flight (1853); **30. Jdgmts.** No. 366b
- v. Gibbon (1841); **5. Bkpcy.** No. 9538a
- v. Gibbs (Can.); **27. H. & W.** p. 800
- v. Glamis (1841); **5. Bkpcy.** No. 9538a
- v. Mersey Ry. Co., *Re Mersey Ry. Co.* (1895); **10. Coys.** No. 8412a

- Giblin v. McMullen (1869); **22. Evid.** Nos. 55a, 59a
- Gibson v. A.-G., *Re* Bennett (1920); **8. Char.** No. 751a
- v. Humphrey (1833); **5. Bkpcy.** No. 7008a
- v. McVeigh (No. 1) (Can.); **12. Contr.** pp. 449, 450
- v. National Cash Register Co. (Scot.); **22. Evid.** pp. 701, 711
- v. O'Keeney (Ir.); **1. Agcy.** p. 75; **3. Bailmt.** p. 173
- v. Plumstead Burial Board (1897); **7. Bounds. & F.** No. 154a
- v. Reynolds (Ir.); **1. Agcy.** p. 75
- v. Sherret (Scot.); **2. Agric.** p. 87
- v. Wilson & Downer (Can.); **3. Bailmt.** p. 165
- (Hidney v. Morgan (Can.); **32. Lien.** p. 932
- Gier v. Van Aalst (Can.); **1. Agcy.** p. 38
- Gieves v. O'Connor (Ir.); **11. Confl.** p. 426
- Giffen v. Wedd, *Re* Monk (1927); **8. Char.** Nos. 34a, 1098a
- Gifford v. Dent (1926); **31. L. & T.** No. 3026a
- v. Gifford & Freeman (1926); **27. H. & W.** No. 3092a
- Gilbert, *Ex p.* (Can.); **19. Educ.** p. 642
- v. Gilbert & Boucher (1928); **27. H. & W.** No. 5583a
- v. Jarvis (Can.); **21. Eron.** p. 690; **24. Exors.** p. 735
- v. Standard Trusts Co. (Can.); **11. Confl.** p. 423
- Gilbert Brothers, Ltd. v. Keiser (Can.); **1. Agcy.** p. 60
- Gilbert Brothers v. McDill (Can.); **1. Agcy.** p. 59
- Gilbert's Patents, *Re* (1927); **36. Pats.** No. 2062a
- Gilbey v. Cossey (1912); **30. L. & T.** No. 470a
- v. Gilbey (1927); **27. H. & W.** No. 5382a
- Gilchrist v. National Cash Register Co. (Scot.); **22. Evid.** p. 713
- v. Wiley (Can.); **21. Eron.** p. 696
- Gilchrist & Sullivan Corp., *Re* (Can.); **38. Pub. Hlth.** p. 1072
- Giles v. Nuttall, *Re* House Improvement Assn., Ltd. (1885); **10. Coys.** No. 5011a
- Gill v. Perrott (1928); **34. Mast. & S.** Nos. 2668a, 2885a
- v. Power (Nfld.); **32. Lien.** p. 929
- Gillett v. Abbott (1838); **21. Estpl.** No. 786a
- Gillette Safety Razor Co. v. Gamage (A. W.) & Co., Ltd. (1907); **16. Cntbmpt.** No. 298a
- Gillette Safety Razor, Ltd. v. Pellett, Ltd. (1909); **28. Injon.** No. 923a
- Gillies v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 844
- v. McConochie (Can.); **8. Char.** p. 340
- Gillies Supply Co. v. Allan (Can.); **32. Lien.** p. 932
- Gillis v. Sounding Creek (Can.); **32. Lien.** p. 930
- Gilmer, *Re*, Public Trustee v. Stamp Duties Comr. (N.Z.); **21. E. D.** p. 668
- Gilmore v. Callies (Can.); **21. Eron.** p. 691
- Gilmour v. Gilmour (Can.); **23. Exors.** p. 724
- Gilmour (Doe d.) v. Whitney (Can.); **22. Evid.** p. 704
- Gilpinville, Ltd. v. Dumaresq (Can.); **28. Injon.** p. 854
- Gilroy v. Brennan (Ir.); **14. Crim.** p. 523
- v. Stephens (1882); **24. Exors.** No. 7273a
- Girard v. Garipey (Can.); **1. Adm.** p. 15
- Girgaway v. Strathern (Scot.); **15. Crim.** p. 536
- Giroux, *Ex p.* (Can.); **9. Coys.** p. 373
- Gissing v. Eaton (T.) Co. (Can.); **12. Contr.** p. 450
- Git v. Forbes (Can.); **7. Bldg. Conts.** p. 300
- Giusti Patents & Engineering Works, Ltd. v. Maggs (1923); **13. Cty. Cts.** Nos. 980a, 1008a; **16. Cr. Pract.** Nos. 3131b, 3168b
- Gladstone Spinning Co. v. Nangle (1928); **34. Mast. & S.** No. 3184a
- Gladue v. Walch (Can.); **1. Agcy.** pp. 73, 77
- Glamorgan (former Sheriff), *Ex p.*, Walter v. Davies (1858); **21. Eron.** No. 380
- Glanville v. Sutton & Co., Ltd. (1928); **2. Animals.** No. 305a
- Glasgow v. Hood (N.Z.); **1. Agcy.** pp. 39, 58, 59, 76, 77
- Glasgow & South Western Ry. Co. v. Greenock Corp., (Scot.); **3. Barr.** p. 193
- Glasgow Assessor v. Glasgow Corp., (Scot.); **38. Rates.** p. 1085
- v. Scottish Tube Co., Ltd. (Scot.); **38. Rates.** p. 1083
- Glasgow Corp., v. Strathern (Scot.); **42. Str. Traf.** p. 1152; **43. Tram.** p. 1164
- Glasgow Dental Hospital (Incorporated) v. Lord Advocate (Scot.); **9. Coys.** p. 378
- Glasgow Domestic Training School, *Re* (Scot.); **8. Char.** p. 312
- Glasgow Navigation Co. v. Iron Ore Co. (1910); **16. Courts.** No. 33a
- Glasgow Underwriters v. Smith (Can.); **2. Arbn.** p. 151
- Glaskie v. Watkins (1927); **30. Jdgmts.** No. 628a, 628b
- Glatton, H.M.S. (1923); **1. Adm.** No. 130a
- Glebe Sugar Refining Co., Ltd. v. Greenock Port & Harbours Trustees (1921); **3. Barr.** No. 383a
- Gleed v. Gleed (1927); **27. H. & W.** No. 3825a
- Glen v. Inland Revenue (Scot.); **21. E. D.** p. 670
- Glen Bain Rural Municipality v. Halsey (Can.); **22. Evid.** pp. 704, 705
- Glenavon Garw Collieries, Ltd. v. Rhondda & Swansea Bay Ry. Co., (Great Western Ry. Co. & Barry Ry. Co. (1916); **8. Carr.** Nos. 1013a, 1060a
- Glendinning, *Re*, Steel v. Glendinning (1918); **3. Bank.** No. 402a
- Glenn & Babb v. Schofield (Can.); **2. Animals.** p. 126
- Glennie v. Delmar (1850); **13. Cty. Cts.** No. 83
- v. Rushton (Can.); **12. Contr.** p. 462
- Gliksten (J.) & Son v. Green (1929); **28. Inc. T.** No. 204b
- Globe & Rutgers Fire Insurance Co. v. Glace Bay Corp., (Can.); **15. Crim.** p. 534
- v. Truedell (Can.); **29. Insee.** p. 868
- Globe Land Co. v. Heaslip (Can.); **31. L. & T.** p. 906
- Globe Wine Co., *Re* (Can.); **21. Estpl.** p. 680
- Glyncorwg Colliery Co., *Re*, *Re* Railway Debenture & General Trust Co. (1926); **10. Coys.** No. 5149a
- Glyncorwg Colliery Co., *Re*, Railway Debenture & General Trust Co. v. Glyncorwg Colliery Co. (1926); **10. Coys.** No. 5149a
- Gobinda Ramanuj Das Mohanta v. Ram Charan Das (Ind.); **21. Estpl.** pp. 686, 687
- Godard v. Tuck (Can.); **2. Agric.** p. 96
- Goddard v. Arnold (S. Af.); **1. Agcy.** p. 61
- v. Bainbridge Lumber Co. (Can.); **11. Comp. Pche.** p. 407
- v. Coulson (Can.); **32. Lien.** p. 931
- v. Goddard (1929); **27. H. & W.** No. 1909a
- Godson v. Sanctuary (1832); **5. Bkpcy.** No. 7042a
- Goebel v. Canadian Bank of Commerce (Can.); **3. Bank.** p. 189
- Goff v. Barron (Nfld.); **34. Mast. & S.** p. 962
- v. Strohm (Can.); **23. Exors.** 721
- Goffin v. Houlder (1920); **12. Contr.** No. 429a; **17. Damgs.** No. 408a
- Goforth v. Goforth (Can.); **11. Confl.** p. 424; **27. H. & W.** p. 809; **28. Infts.** p. 850

- Goggin v. Young (N.Z.); **25. Gaming**, p. 758  
 Goggins v. Morrison (Can.); **25. Gaming**, p. 758  
 Gogi v. Wilson & Collins (S. Af.); **34. Mast. & S.** p. 961  
 Gokul Das v. Nathu (Ind.); **12. Contr.** p. 463  
 Golaa, The (1926); **11. Confl.** No. 1379a  
 Gold v. South Vancouver (Can.); **2. Arbn.** p. 145  
 Gold Brothers & Nash, Ltd. v. Fuller (1925); **13. Cty. Cts.** No. 404a  
 Gold Medal Camp Furniture Manufacturing Co. v. Gold Medal Manufacturing Co. (Can.); **43. Trade Mks.** p. 1160  
 Gold Medal Furn. Mfg. Co., *Re, Ex p.* Scythes & Co. (Can.); **35. Mistake**, p. 1012  
 Gold Seal, Ltd. v. Dominion Express Co. & A.-G. for Alberta Province (Can.); **17. Dep.** p. 594  
 Goldberg, *Ex p.*, *Re* Jacobson (Can.); **4. Bkpcy.** p. 228; **5. Bkpcy.** p. 257  
 —, *Re* (Can.); **5. Bkpcy.** p. 258  
 Goldhammer v. R. (Can.); **14. Crim.** p. 526  
 Goldman v. Barnfield (Aus.); **1. Agcy.** p. 75  
 — v. Cox (1924); **6. B. of Exch.** No. 209a  
 — v. Goldman (Can.); **27. H. & W.** p. 794  
 — v. Harrison (Can.); **5. Bkpcy.** p. 250; **25. Fraud. Conv.** p. 749  
 — v. Kirby & Sons, Ltd. (Aus.); **17. Damgs.** p. 583  
 Goldsbrough, Mort & Co., Ltd. v. Black (Aus.); **12. Contr.** p. 452  
 Goldsmith v. Harris (Can.); **21. Exon.** p. 690  
 Goldstein, *Ex p.*, *Re* Hersh (Can.); **4. Bkpcy.** p. 215; **5. Bkpcy.** p. 253  
 —, *Re* (Can.); **5. Bkpcy.** pp. 249, 250  
 — v. Craft (Aus.); **35. Money**, p. 1015  
 Gollan v. Sterling (Can.); **18. Distr.** p. 624  
 Gooch, *Re, Ex p.* Judd (1921); **6. B. of Exch.** Nos. 567a, 2096a  
 —, *Re, Gooch v. Gooch* (1929); **43. Trusts**, No. 493a  
 — v. Stratman (1927); **31. L. & T.** No. 7298a  
 Good (John) & Sons, Ltd. v. London & North Eastern Ry. Co. (1927); **8. Carr.** No. 1377i  
 "Good Friday," etc. Mineral Claims, *Re* (Can.); **34. Mines**, p. 1005  
 Goodall v. Cousins (Can.); **1. Agcy.** p. 67  
 — v. Hoogendoorn, Ltd. (S. Af.); **9. Coys.** p. 379  
 Goodbun v. Mitchell (Can.); **9. Coys.** p. 379; **18. Discy.** p. 618; **21. Estpl.** p. 681; **24. Exors.** p. 734  
 Goodchild v. Fenton (1829); **23. Exors.** No. 3959a; **24. Exors.** No. 7256a  
 Gooderham v. Nipissing Ry. Co. (Can.); **25. Fraud. Conv.** p. 749  
 Goodger, *Re* (Aus.); **44. Wills**, p. 1183  
 Gooding v. Crocker (Can.); **32. Lien**, p. 932  
 Goodison Thresher Co. v. Doyle (Can.); **12. Contr.** p. 441  
 Goodman v. Armstrong (S. Af.); **6. B. of Exch.** p. 281  
 — v. Packer (1870); **31. L. & T.** No. 4116a  
 Goodman Brothers, Auto & Service Co., Ltd., *Re, Ex p.* Rose (Aus.); **9. Coys.** p. 364  
 Goodrich v. Ogle, *Re* Johnson (1893); **8. Char.** No. 894a  
 Goodwin v. Royal Trust Co. (Can.); **40. Sttlmts.** p. 1115  
 Goodwin Ferreira & Co., Ltd. v. Lamport & Holt, Ltd. (1929); **41. Ship**, Nos. 2777a, 3649a  
 Goold v. Goold (Scot.); **27. H. & W.** p. 797  
 Goole & Hull Steam Towing Co., Ltd. v. Ocean Marine Insurance Co., Ltd. (1928); **29. Insee.** No. 2010a  
 Goom v. West (1838); **4. Bkpcy.** No. 3750a  
 Gopika Raman Roy v. Atal Singh (Ind.); **18. Discy.** p. 614; **32. Limit. of A.** p. 936  
 Gordanier v. C. N. R. (Can.); **18. Discy.** p. 616  
 Gordean Furniture Co., *Re, Ex p.* Sladden (Can.); **4. Bkpcy.** p. 227  
 Gordon v. Dunlevy (Ir.); **25. Gaming**, p. 757  
 — v. Earle (Can.); **34. Mines**, p. 1006  
 — v. Goldstein (1924); **7. B. of Sale**, No. 288a  
 — v. Gordon (1882); **40. Sttlmts.** No. 140a  
 — v. Gordon (Can.); **8. Chos.** p. 348  
 — v. Hebblewhite (Can.); **3. Bank.** p. 191  
 — v. Somerville (Scot.); **24. Fact.** p. 740  
 — v. Wilhelm (Can.); **31. L. & T.** pp. 903, 912, 913  
 — v. Williamson (1892); **19. Eccl.** No. 482a  
 Gordon Brothers, Ltd., *Re* (Can.); **4. Bkpcy.** p. 230  
 Gordon MacKay & Co., Ltd. v. Capital Trust Co., Ltd. (Can.); **7. B. of Sale**, p. 287  
 Gordon Store, Ltd., *Re, Ex p.* Standard Bank (Can.); **5. Bkpcy.** p. 239  
 Gorfett's Trust, *Re, Ex p.* Price (1850); **35. Mtge.** No. 1324a  
 Gorham, *Re* (Ir.); **4. Bkpcy.** p. 207  
 Goring v. Barfield (1864); **26. Hghys.** No. 1380a  
 Gorman v. Young (Can.); **1. Agcy.** p. 66  
 Gorrie (A. D.) Co., Ltd. v. Whitfield & Michaud (Can.); **6. B. of Exch.** p. 277  
 Gosse Millard v. Canadian Government Merchant Marine (1928); **30. Jdgmts.** No. 728a  
 Gosse Millard, Ltd. v. Canadian Government Merchant Marine, Ltd., The Canadian Highlander (1929); **30. Jdgmts.** No. 728a; **41. Ship.** No. 2721  
 Gosse-Millard, Ltd. v. Devine (Can.); **35. Misrep.** p. 1010  
 Gottesman, *Re* (Can.); **2. Aliens**, pp. 114, 120  
 Goudge v. Broughton (1929); **31. L. & T.** Nos. 7037a, 7351a, 7352d, 7359a  
 Gough, *Re, Hanning v. Lowe* (1927); **5. Bkpcy.** No. 7693a  
 Gough v. McBride (Can.); **22. Evid.** p. 705  
 Gough v. Rees (1929); **14. Crim.** No. 613a; **42. Str. Traf.** No. 117a  
 Gouin v. R. (Can.); **14. Crim.** p. 530  
 Gouin Boulevard Crossing Case, Montreal Corp'n. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 1077  
 Gould v. Ryan (Can.); **17. Dep.** p. 598  
 Goulding, *Ex p.*, *Re* O'Neill (1829); **6. B. of Exch.** No. 701b  
 — v. Rabinovitch (Can.); **12. Contr.** p. 450  
 Goulding v. Shirlcliffe, *Re* Willey (1929); **44. Wills**, No. 5625a  
 Goulin v. Caldwell (Can.); **2. Agric.** p. 96  
 Gout v. Cimitian (1922); **2. Aliens**, No. 13a  
 Government Pleader v. Siddick (Ind.); **3. Barr.** p. 193  
 Gowan v. Bownen (S. Af.); **1. Agcy.** p. 64; **12. Contr.** p. 471  
 Gowans v. Crocker Press Co. (Can.); **6. B. of Exch.** p. 280  
 Gower v. Hales (1928); **36. Negl.** Nos. 421a, 842  
 Gowland Brothers, *Re, Ex p.* Procter Shotton (1928); **4. Bkpcy.** No. 1451a  
 Gowr v. — (1651); **3. Bailmt.** No. 90a  
 Grace Brothers, Ltd. v. Lawson (Aus.); **3. Bailmt.** p. 173  
 Gracey, *Re* (Can.); **23. Exors.** pp. 716, 726, 732  
 Grady & Grady v. Devitt (Can.); **33. Mal. Pros.** p. 957  
 Graeff v. Graeff (1928); **27. H. & W.** No. 6094a  
 Graham, *Ex p.*, *Re* Howard Graham & Co. (Can.); **5. Bkpcy.** p. 253  
 —, *Re* (Can.); **3. Bkpcy.** p. 205

- Graham, *Re*, Graham v. Graham (1929); **44. Wills**, No. 3131a
- v. Canada Life Assurance Co. (Can.); **27. H. & W.** p. 789
- v. Carpenter (Aus.); **1. Agcy.** p. 46
- v. Chalmers (Can.); **38. Real Prop.** p. 1089
- v. Graham (1923); **11. Confli.** No. 918a
- v. — (Can.); **12. Contr.** p. 443
- v. Graham, *Re* Graham (1929); **44. Wills**, No. 3131a
- v. Manders (Ir.); **1. Agcy.** p. 41
- v. Maskell & Smylie (Ir.); **34. Mast. & S.** p. 990
- v. Meneilly (Can.); **27. H. & W.** p. 789
- v. Powell (Can.); **1. Agcy.** p. 80
- v. Provident Life Assurance Co. (N.Z.); **2. Arbn.** pp. 139, 143
- v. Stirling (Scot.); **2. Agric.** p. 84
- Graham & Co. v. United Turkey Red, etc. Co., Ltd. (Scot.); **1. Agcy.** p. 68
- Graigola Merthyr Co., Ltd. v. Swansea Corpn. (1926); **22. Evid.** No. 5403c
- v. — (1928); **20. Egy.** No. 2705a; **22. Evid.** Nos. 5403a, 5403c
- v. — (1929); **20. Egy.** No. 2705a; **22. Evid.** No. 5403a
- Grain Claims Bureau, Ltd. v. Canadian Surety Co. (Can.); **18. Discy.** p. 615
- v. Canadian Surety Co. (No. 2) (Can.); **29. Insce.** p. 714
- Grainger v. Singer (1927); **28. Inc. T.** No. 632a
- Gramophone Co., Ltd. v. Leo Feist Incorporated (Aus.); **13. Coprt.** p. 481
- Granby (Marquis) v. Bakewell Urban District Council (1923); **35. Fish.** No. 353a
- Granby Consolidated Mining Smelt & River Co., Ltd. v. West Kootenay Power & Light Co., Ltd. (Can.); **28. Injon.** p. 853
- Granby Consolidated Mining, Smelting & Power Co., Ltd. v. A.-G. for British Columbia (Can.); **28. Inc. T.** p. 836
- Granchuk v. Springfield Fire & Marine Insurance Co. (Can.); **2. Arbn.** p. 143
- Grand Trunk Pacific Coast S.S. Co. v. B.B., The (Can.); **1. Adm.** p. 29
- Grand Trunk Pacific Coast S.S. Co. v. Simpson (Can.); **8. Carr.** p. 320
- Grand Trunk Pacific Coast S.S. Co. v. Victoria-Vancouver Stevedoring Co. (Can.); **26. Guar.** p. 772
- Grand Trunk Ry. Co. v. Credit Valley Ry. Co. (Can.); **17. Dep.** p. 595
- Grand Trunk Ry. Co. of Canada v. Murphy (Can.); **8. Carr.** p. 318
- Grant, *Re* (Can.); **5. Bkpcy.** p. 246; **18. Distr.** p. 623; **29. Insce.** p. 869
- Grant v. Derwent (1929); **40. S. Land.** No. 2705a; **41. Sewers**, No. 319a
- v. Dominion Loose Leaf Co. (Can.); **9. Coys.** p. 379
- v. Knaresborough Urban Council (1928); **30. Jdgmts.** No. 202a; **38. Rates**, No. 1158a
- v. McDonald (Can.); **23. Exors.** p. 624
- v. Southern Cross Assurance Co., Ltd. (Aus.); **29. Insce.** p. 872
- v. Travis (Can.); **8. Chos.** p. 347
- v. Van Norman (Can.); **5. Bkpcy.** p. 250
- v. Whitzman (Can.); **3. Auct.** p. 162
- v. Wolfe (Can.); **23. Exors.** p. 722
- Grant Estate, *Re*, Mullin & Mullin v. Annable (Can.) **8. Chos.** p. 346
- Grantham, *Re*, *Ex p.* Doyle (Can.); **4. Bkpcy.** pp. 224, 226
- Grasett v. Hutchinson (Can.); **26. Guar.** p. 767
- Gravelbourg Town, *Ex p.*, *Re* Noel (Can.); **4. Bkpcy.** p. 226
- Graves v. Griffith (1820); **20. Egy.** No. 2667a
- v. Sprague (Can.); **21. Exon.** p. 692
- Gray, *Re* (Can.); **28. Injls.** pp. 847, 849
- , *Re*, Todd v. Taylor (1925); **8. Char.** No. 199a
- v. Ford (Can.); **25. Fraud. Conv.** p. 748
- v. Glasgow Corpn. (Scot.); **8. Carr.** p. 318
- v. Hackney Borough Council (1904); **34. Metrop.** No. 29c
- v. Johnston (Scot.); **12. Contr.** p. 440; **23. Exors.** p. 732
- v. Murchison (Can.); **1. Agcy.** p. 81
- v. Perpetual Trustee Co. (1928); **20. Egy.** No. 1438a; **37. Powers**, No. 1105a
- v. Perpetual Trustee Co., Ltd. (Aus.); **44. Wills**, p. 1177
- v. Warner, *Re* Biel's Estate (1873); **25. Fraud. Conv.** No. 895a
- Gray Tractor Co. of Canada & Van Troyen, *Re* (Can.); **2. Arbn.** p. 141
- Grayson v. Grayson (1927); **27. H. & W.** No. 3449a
- v. Walsh (Can.); **23. Exors.** p. 727
- Gravebrook, *Re*, Chase v. Layton (Aus.); **44. Wills**, p. 1180
- , *Re*, Chase v. Layton (No. 2) (Aus.); **24. Exors.** p. 736
- Great Central Ry. Co. v. London & North Western Ry. Co. (1922); **8. Carr.** No. 1010a
- Great Central Ry. Co. v. Swann (1913); **8. Carr.** No. 1316a
- Great Indian Peninsula Ry. Co., Ltd. v. Jesraj Patwari (Ind.); **8. Carr.** p. 315
- Great Indian Peninsular Ry. Co. v. Kashinath Chimaji (Ind.); **34. Mast. & S.** pp. 970, 971, 978
- Great North Insurance Co., *Re*, Painter's Case (Can.); **9. Coys.** p. 363
- Great Northern Ry. Co. v. L. E. P. Transport & Depository, Ltd. (1922); **8. Carr.** Nos. 5a, 90a, 234a, 896a
- Great Southern & Western Ry. Co. of Ireland v. R. (1924); **16. Cr. Pract.** No. 323a; **17. Dep.** No. 714
- Great West Farms, Ltd. v. Hansberger (Can.); **1. Agcy.** pp. 51, 52
- Great West Life Assurance Co., *Re*, *Re* Christie Estate (Can.); **35. Mtgc.** p. 1023
- Great West Life Assurance Co. v. Campbell (Can.); **7. Bonds**, p. 294; **35. Mtgc.** p. 1023
- v. Prairie Developments, Ltd. (Can.); **40. S. Land**, p. 1110
- v. Wright (Can.); **21. Exon.** p. 699
- Great West Permanent Loan Co., *Re*, *Re* Winding-Up Act (Can.); **10. Coys.** p. 386
- Great West Permanent Loan Co. & Winding-Up Act, *Re* (Can.); **10. Coys.** p. 386; **3. Exors.** p. 887
- Great West Saddlery Co. v. Canadian Ingot Iron Co. (Can.); **21. Estpl.** p. 686
- Great West Saddlery Co. v. Prime (Can.); **39. S. Goods**, p. 1107
- Great Western Ry. Co. v. Birmingham & Gloucester Ry. Co. (1844); **28. Injon.** No. 105a
- v. Durnford (James) & Sons, Ltd. (1928); **26. Guar.** No. 1826a
- v. Jones (Can.); **24. Exors.** p. 734
- v. Laing (J.) & Co., Ltd. (1922); **8. Carr.** No. 1331a
- v. Monmouthshire County Council (1929); **38. Rys.** No. 978a
- v. Mostyn (Owners), The Mostyn (1928); **30. Jdgmts.** Nos. 498a, 569c, 588b; **36. Negl.** No. 706
- Greater Britain Products Development Corpn., Ltd., *Re* (1924); **9. Coys.** No. 1411a
- Greaves, *Re* (Can.); **8. Char.** p. 337
- Grech v. Board of Trade (1923); **2. Arbn.** No. 1985b

- Grecian, *The* (1902); **1. Adm. No.** 1603b  
 Green (A Debtor), *Re* (N.Z.); **4. Bkpcy.** p. 206  
 — *v.* Green (1929); **3. Bastly.** No. 130b; **27. H. & W. No.** 1781b  
     Mockett, *Re* Sangster (1894); **3. Bank.** No. 380a  
 — *v.* Premier Glynrhonwy Slate Co., Ltd. (1928); **34. Mast. & S. No.** 3359c  
 — *v.* Tress (Can.); **31. L. & T.** p. 914  
 — *v.* Watson (Can.); **36. Pats.** p. 1049  
 — *v.* Weatherill (1929); **21. Estpl.** No. 529a; **43. Trusts.** No. 1499a  
 — *v.* Whitehead (1929); **1. Agcy.** No. 296a  
 Greenaway *v.* Canadian Pacific Ry. Co. (Can.); **26. Hghys.** p. 775  
 Greenberg *v.* Cooperstein (1926); **9. Coys.** No. 272a; **10. Coys.** No. 8581a  
 Greene, *Re*, *Re* Whitworth, *Re* E. A., *Re* Fraser, *Re* Wood (1928); **33. Lunat.** No. 529b  
 — *v.* Ruggles (Can.); **10. Coys.** p. 380  
 Greenhalgh (W. P.) & Sons *v.* Union Bank of Manchester (1924); **3. Bank.** No. 289a  
 Greenham *v.* Watt (Can.); **12. Contr.** p. 150  
 Greenhill *v.* Federal Insurance Co. (1927); **29. Insee.** No. 1265a  
 Greenlaw *v.* King (1841); **25. Fraud. Contr.** No. 844a  
 Greenock (Provost) *v.* Peters (Scot.); **19. Eccl.** p. 641  
 Greenock Corp'n. *v.* Admiralty, *The* (Scot.); **38. Pub. Auth.** p. 1069  
 Greenstreet *v.* Paris (Can.); **9. Coys.** p. 371; **38. Rates**, pp. 1085, 1086  
 Greenway *v.* A.-G. (1927); **3. Bastly.** No. 130c; **16. Courts.** No. 280a  
 Greenwell *v.* Humphries, *Re* Williams' Settlement (1929); **40. Stillmts.** No. 146b  
 Greenwood *v.* Evans (1841); **31. L. & T.** No. 2287a  
 — *v.* Rothwell (1844); **18. Discy.** No. 1039a  
 — *v.* Waverley Municipality Council (Aus.); **3. Bailmt.** p. 165  
 Greenwood & Greenwood *v.* Welford (Can.); **1. Agcy.** pp. 65, 66  
 Greer, *Re* (1929); **23. Exors.** No. 3478a  
 — *v.* Downs Supply Co. (1927); **1. Agcy.** No. 2126a; **20. Eqq.** No. 661a  
 — *v.* Godson (Can.); **1. Agcy.** pp. 61, 62  
 — *v.* Mulmur (Township) (Can.); **26. Hghys.** p. 778  
 Gregg *v.* Coates (1856); **40. Stillmts.** No. 1881a  
 — *v.* Richards (1926); **19. Easmt.** No. 186a  
 Gregory *v.* Cochrane (Ind.); **24. Fact.** p. 741  
 Greswolde-Williams *v.* Newcastle-upon-Tyne Corp'n. (1927); **11. Comp. Pche.** No. 595a  
 Greville *v.* Attkins (1829); **17. Deeds.** No. 1235  
 Grey *v.* Couchier (Can.); **35. Mtgc.** p. 1018  
 Grey's (Lord) Case (1541); **14. Crim.** No. 960a  
 Gribble *v.* Gribble (1929); **27. H. & W.** No. 5050a  
 Grice *v.* Bartram (Can.); **9. Coys.** p. 365  
 Grier *v.* Georgas (Can.); **7. Bldg. Contr.** p. 300  
 Griese *v.* Walker (Can.); **21. Exon.** p. 694  
 Griesheim Elektron, Ltd., *Re* (1921); **2. Aliens.** Nos. 105a, 405a  
 Grieve McGlory, Ltd. *v.* Dome Lumber Co., Ltd. & Thompson (Can.); **17. Deeds.** p. 585  
 Griffin *v.* Cape Breton Electric Co. (Can.); **8. Carr.** p. 318  
 — *v.* State of South Australia (Aus.); **17. Dep.** p. 601; **18. Discy.** p. 615  
 Griffith *v.* Frederickson (Can.); **1. Agcy.** p. 63  
 Griffiths, *Re*, Jones *v.* Jenkins (1926); **5. Bkpcy.** No. 5922a  
 — *v.* Anderson (Can.); **1. Agcy.** p. 61  
 — *v.* Carleton (Aus.); **25. Gifts.** p. 764  
 — *v.* Fraser (Can.); **19. Eccl.** p. 640  
 — *v.* Hughes (1847); **30. Jdgmts.** No. 366a  
 Griffiths (George W.) Co., *Re* (Can.); **9. Coys.** p. 35  
 Griggs *v.* Stevens (1909); **38. Rates.** No. 675b  
 Grimsby & Lincoln County, *Re* (Can.); **19. Educ.** p. 645  
 Grimwood *v.* Aldenham (1928); **8. Clubs.** No. 20a  
 Grindell *v.* Bass (1920); **1. Agcy.** No. 164a  
 Grindley *v.* Blakie (Can.); **21. Exon.** p. 693  
 Tringham *v.* Davies (1929); **30. Juries.** No. 423b; **36. Negl.** No. 842b  
 Gripaios *v.* Kahl Wallis & Co., Ltd. (1928); **41. Ship.** No. 1723a  
 Iriewood & Smith's Case (1859); **9. Coys.** No. 2344a  
 Irocery Specialty Co., *Re*, *Re* Shulman (Can.); **5. Bkpcy.** p. 251  
 Grocock *v.* Grocock (1920); **3. Bastly.** No. 367a  
 Groebel *v.* Hungarian Property Administrator (1925); **2. Aliens.** No. 215p  
 Groedel *v.* Hungarian Property Administrator (1927); **2. Aliens.** Nos. 49h, 49l  
 Groning *v.* Crockett (1811); **2. Aliens.** No. 493a  
 Groom, *Re* (1869); **22. Evid.** Nos. 6053a, 6066a  
 — *v.* West (1838); **4. Bkpcy.** No. 3750a  
 Gross, *Re*, *Ex p.* Adair (1871); **3. Bank.** No. 347  
 — *v.* Brodrecht (Can.); **22. Evid.** p. 701  
 Gross, Sherwood & Heald, Ltd. *v.* Essex County Council (1927); **11. Comp. Pche.** No. 702a  
 Grothe *v.* Montreal Corp'n. (Can.); **2. Arbn.** p. 141  
 Grothkop *v.* Grothkop (N.Z.); **11. Confli.** p. 412  
 Grove-Grady, *Re*, Plowden *v.* Lawrence (1929); **8. Char.** Nos. 4b, 208a  
 Groves *v.* Hull (Can.); **40. S. Land.** p. 1111  
 Grundy *v.* Broadbent (Ir.); **2. Aliens.** p. 115  
 Grunwaldt, *Ex p.*, *Re* Lee (1920); **5. Bkpcy.** Nos. 8778a, 9032a, 9109a, 9198a  
 Guaglieni *v.* Matthews (1865); **15. Crim.** No. 8154  
 Guarantee Co. of North America, *Ex p.*, *Re* Coughlin & Co. (Can.); **4. Bkpcy.** pp. 219, 223  
 Guaranteed Batteries, Ltd., *Re* (Can.); **4. Bkpcy.** p. 223  
 Guatemala (Republica de) *v.* Nunez (1927); **8. Chos.** No. 27a  
 Guelph & Ontario Investment & Savings Society *v.* Lethbridge Northern Irrigation District Board of Trustees (Can.); **7. B. of Exch.** p. 293  
 Guelph Carpet Mills Co. *v.* Guelph Corp'n. (Can.); **22. Evid.** p. 712  
 Guelph Worsted Spinning Co. *v.* Guelph Corp'n. (Can.); **22. Evid.** p. 712  
 Guest *v.* Linden (Can.); **32. Lien** p. 932  
 Guettler *v.* Canadian International Paper Co. (Can.); **36. Pats.** p. 1044  
 Guggisberg *v.* Weber (Can.); **6. B. of Exch.** p. 272  
 Guiborn *v.* Fellows (1717); **6. B. of Exch.** No. 946a; **12. Contr.** No. 2102a  
 Guilbault *v.* Brothier (Can.); **21. Estpl.** p. 678  
 Guilday *v.* Winnipeg Electric Ry. Co. (Can.); **8. Carr.** p. 318  
 Guildford Trust, Ltd. *v.* Goss (1927); **6. B. of Exch.** No. 588a  
 — *v.* Pohl & Maritch (1928); **6. B. of Exch.** No. 1051a  
 Guilding *v.* Morel Brothers, Cobbett & Sons, Ltd. (1888); **28. Injon.** No. 929a  
 Guilfoil *v.* McAvity (T.) & Sons, Ltd. (Can.); **36. Negl.** p. 1027  
 Guinand *v.* Naish (1845); **37. Powers.** No. 637a  
 Guinee, *In the Estate of* (1929); **23. Exors.** No. 3478b  
 Guisti Patents & Engineering Works, Ltd. *v.* Maggs (1923); **13. Cty. Cts.** No. 980a; **16. Cr. Pract.** Nos. 3131b, 3168b  
 Gulbenkian *v.* Gulbenkian (1927); **27. H. & W.** No. 5623b  
 Gump, *Re* (Can.); **4. Bkpcy.** p. 218  
 Gunn *v.* Mackhenry (1750); **16. Cr. Pract.** No. 3185a



- Gunning, *In the Estate of* (Ir.); **19. Eccl.** p. 639  
 Gunning v. Lusby (No. 1) (Can.); **1. Agcy.** p. 57  
 Gunns, Ltd. v. Wark (Can.); **6. B. of Exch.** p. 275  
 Gunsbourg, *Re, Ex p.* Cook (1920); **5. Bkpcy.** No. 5775a  
 —, *Re, Ex p.* Trustee (1920); **5. Bkpcy.** No. 5775a  
 Gunsoll v. Engstrom (Can.); **6. B. of Exch.** p. 278  
 Gunson v. Municipal Tramways Trust (Aus.); **11. Comp. Pche.** p. 403  
 Guran Ditta v. Ram Ditta (Ind.); **27. H. & W.** p. 790  
 Gurdial Singh v. Srydarbar Sahib Amritsar Central Board Local Committee (Ind.); **42. Stats.** p. 1146  
 Gurditta v. R. (Can.); **14. Crim.** p. 526  
 Gurevitch v. Melchoir (Can.); **32. Lien.** p. 930  
 Gurney v. James (Can.); **21. Exon.** p. 691  
 Gushowaty v. Gushowaty & Jones (Can.); **27. H. & W.** p. 860  
 Guss, *Re* (Aus.); **21. Exon.** p. 693  
 Gussage All Saints & Gussage St. Michael, Dorset, Parishes, *Re* (1925); **19. Eccl.** No. 2443a  
 Guthrie v. Stewart (Scot.); **31. L. & T.** p. 917  
 Gutieres, *In the Goods of* (1869), **11. Confl.** No. 587b  
 Guttierrez, *In the Goods of* (1869); **11. Confl.** No. 587b  
 Guy v. Dormer (1677); **40. Stllmts.** No. 913a  
 Guy St. Crossing Case, Canadian National Rys. v. Montreal Tramways (Can.); **38. Rys.** p. 1077  
 Guyot & Vigouret & Award made by Gosselin, *Re, Re Arbitration Act* (Can.); **2. Arbn.** p. 152  
 Gwydyr Castle, *Re* (S. Af.); **1. Adm.** pp. 14, 19  
 Gwynne, *Re* (Can.); **21. E. D.** p. 674  
 Gwyon, *Re, Public Trustee v. A.-G.* (1929); **3. Char.** Nos. 266a, 1089a
- H.
- H. v. H. (1928); **11. Confl.** Nos. 894a, 899b, 903b; **21. Estpl.** No. 10a  
 — v. — (otherwise N.) (1929); **27. H. & W.** No. 2345a  
 H. G. Hamilton Pty., Ltd. v. Rae (Aus.); **12. Contr.** p. 458  
 H. J. Webb & Co. (Smithfield, London), Ltd., *Re* (1922); **10. Coys.** Nos. 6460, 6936  
 H.M. Advocate v. Aitken (Scot.); **14. Crim.** p. 517  
 — v. Anderson (Scot.); **15. Crim.** p. 540  
 — v. Bickerstaff (Scot.); **14. Crim.** pp. 507, 516  
 — v. Carson (Scot.); **14. Crim.** p. 522  
 — v. Joseph (Scot.); **14. Crim.** p. 516  
 — v. Keen (Scot.); **14. Crim.** p. 517  
 — v. Lee (Scot.); **14. Crim.** p. 519  
 — v. Lieser (Scot.); **14. Crim.** p. 517  
 — v. M'Fadyen (Scot.); **14. Crim.** p. 517  
 — v. Macphie (Scot.); **14. Crim.** p. 519  
 — v. Montgomery (Scot.); **15. Crim.** p. 540  
 — v. Ritchie (Scot.); **14. Crim.** p. 500  
 — v. Savage (Scot.); **15. Crim.** p. 537  
 — v. Sharp (Scot.); **14. Crim.** p. 500  
 Haack v. Martin (Can.); **17. Dmgs.** p. 580  
 Haberlack v. Burr (Can.); **30. Intoz.** p. 878  
 Habib Rouji v. Standard Aluminium & Brass Works, Ltd. (Ind.); **9. Coys.** p. 367  
 Habi Laxman Joshi v. Secretary of State for India (Ind.); **12. Contr.** p. 461  
 Hachborn, *Re* (Can.); **4. Bkpcy.** p. 218  
 Hack, *Re, Beadman v. Beadman* (1925); **13. Cohlds.** No. 1533a  
 Hack v. Tuck (1818); **39. Rntchs.** No. 336b  
 Hackett v. Colchester South Municipal Corpn. (Can.); **32. Limit. of A.** p. 936; **38. Real Prop.** p. 1091  
 Hackney v. Lyne (Can.); **1. Agcy.** p. 68  
 Hackney Pavilion, Ltd., *Re* (1924); **9. Coys.** No. 2389  
 Haddon, *Re, Re Administration Act* (Can.); **28. Infsts.** p. 850  
 Hadley, *Ex p.*, R. v. North Worcestershire Assessment Committee (1929); **16. Cr. Pract.** No. 2287a; **38. Rates.** Nos. 1116a, 1146b  
 Hædwig, The (1853); **1. Adm.** No. 1351a  
 Haffize v. Jacobson (S. Af.); **1. Agcy.** p. 42  
 Haffner v. Weston & Detchon (Can.); **42. Stats.** p. 1147  
 Hagart & Burn-Murdoch v. Inland Revenue Comrs. (1929); **28. Inc. T.** No. 217a  
 Hagel & Law Society of British Columbia, *Re* (Can.); **3. Barr.** p. 193  
 Hagelberg (W.) Akt., *Re* (1916); **2. Aliens.** No. 219  
 Hagen v. Ferris (Can.); **40. S. Land.** p. 1110  
 Hagerman (Doe d.) v. Strong (Can.); **21. Exon.** p. 694  
 Hagersville (Village) v. Hambleton (Can.); **21. Estpl.** p. 679; **38. Rates.** p. 1085  
 Haggerty v. Wilsons & Clyde Coal Co. (Scot.); **34. Mast. & S.** p. 900; **Mines.** p. 1007  
 Haglund v. Derr (Can.); **32. Lien.** p. 930  
 Hahn v. Public Trustee (1925); **2. Aliens.** No. 49b  
 Haig, *Re* (1912); **35. Mtgs.** No. 368a  
 Haines v. Haines (1702); **23. Errors.** No. 1031d  
 Haji Ah Jon v. Abdul Jalil Khan (Ind.); **2. Aliens.** pp. 104, 114  
 Haji Rahimbux Ashan Karim v. Central Bank of India (Ind.); **42. Stats.** p. 1146  
 Haldane v. Sinclair (Scot.); **31. L. & T.** p. 916  
 Hales v. A.-G., *Re Chapman* (1922); **3. Char.** Nos. 740a, 1424a, 1449a  
 — v. Islington Borough Council (1909); **38. Rates.** No. 675d  
 — v. Thomson (Can.); **1. Agcy.** p. 65  
 Haley v. Comox S.S. (Can.); **1. Adm.** p. 18  
 Haley & Ennis, *Re* (Can.); **2. Arbn.** p. 151  
 Halifax (City) v. Jones (Can.); **17. Dep.** p. 598  
 — v. Read (Can.); **38. Pub. Hlth.** p. 1073; **43. Wtr. Sply.** p. 1173  
 Halifax & Cape Breton Coal & Ry. Co. v. Gregory (Can.); **12. Contr.** p. 462  
 Halifax Automobile Co. v. Drew (Can.); **3. Auct.** p. 162  
 Halifax Banking Co. v. Matthew (Can.); **25. Fraud. Conv.** p. 748  
 Halifax Corpn. v. Brown (Can.); **14. Crim.** p. 522  
 — v. Fairbanks' Estate (1927); **17. Dep.** No. 135c  
 — v. O'Connor (Can.); **14. Crim.** p. 529  
 Halifax (City) Corpn. v. Western Assurance Co. (Can.); **17. Dep.** p. 597  
 Halifax Graving Dock Co. v. R. (Can.); **12. Contr.** p. 441  
 Halifax Power Co. v. Christie (Can.); **32. Limit. of A.** p. 936  
 Halifax's (Lord) Case (undated); **22. Evul.** Nos. 1382a, 1526a  
 Hall, *Re* (Can.); **16. Cr. Pract.** p. 564  
 — v. Ball (Can.); **3. Barr.** p. 193  
 — v. Begg (Scot.); **30. Intoz.** p. 881  
 — v. Doe d. Surtees (1822); **32. Limit. of A.** No. 1353a  
 — v. Dyson (1852); **4. Bkpcy.** No. 5035b  
 — v. Electric Comrs. of Lawrencetown (Can.); **2. Arbn.** p. 155  
 — v. Goldstone (N.Z.); **12. Contr.** pp. 445, 447; **17. Deeds.** p. 586  
 — v. Hall (1850); **36. Prtnrs.** Nos. 1480a, 1496a  
 — v. Hogg (Can.); **32. Lien.** pp. 931, 932  
 — v. Inland Revenue Comrs. (1926); **28. Inc. T.** No. 666  
 — v. Jenkinson (1813); **39. Recrs.** No. 451a

- Hall v. More (Can.); **43. Trade**, p. 1159  
 — v. Padley (1923); **12. Contr.** No. 3784a  
 — v. Pelmadulla Valley Tea & Rubber Co. (Ind.);  
     **38. Real Prop.** p. 1090; **43. Trusts**, p. 1169  
 — v. Pilz (Can.); **32. Lien**, p. 932  
 — v. Smith (1808); **20. Eqq.** No. 719a  
 — v. Taylor (Can.); **33. Mags.** p. 593  
 — v. Wightman (Ir.); **2. Animals**, p. 129  
 — v. Yorkton District Registrar (Can.); **38. Real Prop.** p. 1090  
 Hall Coal Co. v. Bayusona, The (Can.); **1. Adm.** pp. 22, 24  
 Hallen v. Spaeth (1923); **2. Arbn.** No. 305a  
 Hallenstein, *Re*, Halsted v. Blank (1922); **2. Aliens**, Nos. 215d, 237c  
 Halligan v. Lawson (Aus.); **2. Arbn.** p. 154  
 Halls v. Mitchell (Can.); **32. Libel**, pp. 923, 925, 926, 927  
 Halse v. Peters (1831); **35. Mtge.** No. 623a  
 Halsted v. Blank, *Re* Hallenstein (1922); **2. Aliens**, Nos. 215d, 237c  
 Halton (County) v. Trafalgar (Township) (Can.); **13. Corpn.** p. 489  
 Hamar, *Re. Ex p.* McGuinty & Co. (Can.); **11. Confl.** p. 425  
 Hambro v. Burnand (1903); **1. Agcy.** No. 2139a  
 — v. — (1904); **1. Agcy.** No. 2139a  
 Hambrook v. Stokes Brothers (1925); **1. Action**, No. 205b; **17. Damgs.** No. 146a  
 Hamburg v. Cape Breton Elec. Co. (Can.); **31. L. & T.** p. 901  
 Hamel v. Patenaude (Can.); **1. Agcy.** p. 59  
 Hamelin v. Phillips (Can.); **16. Courts**, p. 550  
 Hamer, *Re. Ex p.* Royal Bank of Canada (Can.); **5. Bkpcy.** p. 265  
 Hamilton, *Re. FitzGeorge v. FitzGeorge* (1921); **5. Bkpcy.** No. 5909a  
 — v. Hamilton Steel Co. (Can.); **10. Coys.** p. 386  
 — v. Houghton (1820); **30. Jdgmts.** No. 407a  
 — v. Izard (N.Z.); **40. Stillts.** p. 1115  
 — v. Lightbody (Can.); **38. Real Prop.** p. 1091  
 — (Duke) v. Lord Advocate (1892); **21. E. D.** No. 384a  
 — v. Montreal Assurance Co. (Can.); **29. Insce.** p. 867  
 — v. Palliser Hotel Auto & Taxi Co., Ltd. (Can.); **36. Negl.** p. 1031  
 — v. R. (Can.); **11. Const. L.** p. 431  
 — v. Railton (Can.); **8. Chos.** p. 349  
 — v. Stokes (Can.); **38. Real Prop.** p. 1090  
 — v. Street (Can.); **18. Discy.** p. 614  
 — v. Taylor (Can.); **40. S. Land**, p. 1110  
 — v. York & Baldry (Can.); **43. Trusts.** p. 1170  
 Hamilton & Co., Ltd., *Re* (N.Z.); **10. Coys.** p. 392  
 Hamilton & Oakes, *Re* (Can.); **4. Bkpcy.** pp. 222, 223; **5. Bkpcy.** pp. 245, 256  
 Hamilton & Wragge v. Stokes (Can.); **38. Real Prop.** p. 1089  
 Hamilton Gear & Machine Co. v. Lewis Brothers (Can.); **12. Contr.** pp. 442, 457; **17. Damgs.** pp. 575, 578, 580  
 Hamilton (William) Manufacturing Co. v. Victoria Lumbering & Manufacturing Co. (Can.); **22. Evid.** p. 712  
 Hamilton Provident & Loan Society v. Campbell (Can.); **21. Exon.** p. 690  
 Hamilton Provident Loan & Investment Co. v. Smith (Can.); **32. Lien**, p. 931  
 Hamilton (H. G.) Pty., Ltd. v. Rae (Aus.); **12. Contr.** p. 458  
 Hamilton Trusts, *Re* (Can.); **26. Guar.** p. 768  
 Hamilton-Gell v. White (1922); **2. Agric.** No. 266i  
 Hamm v. Krokback & Co. (Can.); **43. Tresp.** p. 1165  
 Hammer v. Hoffnung (S.) & Co., Ltd. (Aus.); **22. Evid.** p. 711  
 Hammond, *Re* (Can.); **8. Char.** pp. 337, 340  
 Hampson v. Boulton (Can.); **22. Evid.** p. 707  
 Hampstead Garden Suburb Trust, Ltd. v. Denbow (1913); **43. Tresp.** No. 247a  
 Hampstead Guardians v. Barclays Bank, Ltd. (1923); **3. Bank.** No. 692b  
 Hanbury, *Ex p.*, *Re* Wegg (1843); **5. Bkpcy.** No. 7735  
 — v. Hanbury (1892); **33. Lunat.** No. 186a  
 Hanbury's Settled Estates, *Re* (1913); **2. Agric.** No. 479a  
 Hancock v. Midland Junction Municipality Corpn. (Aus.); **20. Electric**, p. 657  
 Hancock & Co., Ltd. v. Johnstone (N.Z.); **6. B. of Exch.** p. 279  
 Hands v. Simpson, Fawcett & Co., Ltd. (1928); **34. Mast. & S.** Nos. 530a, 565a  
 Handy v. Carruthers (Can.); **2. Agric.** p. 94  
 Haney v. Canadian Northern Ry. Co. (Can.); **2. Arbn.** p. 155  
 Hankey & Co., Ltd. v. Vernon (Can.); **21. Exon.** p. 696  
 Hanks v. Coombes (1928); **36. Pats.** Nos. 308b, 804a  
 Hanna v. Costerton (Can.); **1. Action**, p. 2  
 Hanning v. Lowe, *Re* Gough (1927); **5. Bkpcy.** No. 7693a  
 Hans C. Christensen, Ltd.; *Re. Tom v. Everett* (Can.); **35. Mtge.** p. 1017  
 Hansen v. Lechtzier (Can.); **1. Agcy.** p. 69  
 Hansen v. Nugget Publishers, Ltd. (Can.); **32. Libel**, p. 926  
 Hansford v. London Express Newspaper, Ltd. (1928); **29. Insce.** No. 3157b  
 Hanson v. Gleaner, Ltd. (Can.); **18. Discy.** p. 619; **22. Evid.** p. 711  
 — v. Parks (Can.); **7. Bldg. Conls.** p. 301  
 Hanton v. Royal Trust Co. (Can.); **1. Agcy.** p. 66  
 — v. Stedman (Can.); **1. Agcy.** pp. 39, 59  
 Hantsport Fruit Co., Ltd. v. Coldwell (Can.); **12. Contr.** p. 469  
 Harby v. Moore (1860); **43. Trusts**, No. 409a  
 Harcourt (Doe d.) v. Roe (1813); **21. Exon.** No. 1706a; **31. L. & T.** No. 6315a  
 Hardaker v. Tjabring (S. Af.); **32. Libel**, p. 922  
 Hardie & Lane v. Chiltern (1927); **16. Courts**, Nos. 831a, 834a  
 Hardie & Lane, Ltd. v. Chiltern (1928); **12. Contr.** No. 4676a; **16. Courts**, Nos. 831a, 834a  
 Harding, *Ex p.*, *Re* Lamplough (Clarkson) (1835); **5. Bkpcy.** No. 9034a  
 —, *Re* (Can.); **38. Real Prop.** p. 1089  
 Harding & Co. v. Hamilton (N.Z.); **9. Coys.** p. 363  
 Hardisty & Ribstone, *Re. Re* Local Option Provision of Government Liquor Control Act of Alberta (Can.); **30. Intox.** p. 884  
 Hardman v. McLeod (Aus.); **17. Damgs.** p. 583; **35. Misrep.** p. 1010  
 Hardy, *Re* (Can.); **4. Bkpcy.** p. 226; **32. Lien**, p. 929; **42. Stats.** p. 1146  
 —, *Re* (No. 2) (N.Z.); **5. Bkpcy.** p. 248  
 — v. Edmonton Corpn. (Can.); **38. Pub. Hlth.** p. 1072  
 Hardy's, Ltd. v. New South Wales Railway Comrs. (Aus.); **8. Carr.** p. 323; **38. Rys.** p. 1078  
 Hare v. Taylor (1837); **2. Animals**, No. 486a  
 Hare & Chase, Ltd. v. Commercial Finance Corpn., Ltd. (Can.); **1. Agcy.** p. 39  
 Hargreaves v. Hargreaves (1926); **27. H. & W.** No. 5624a  
 — v. Shuttleworth, *Re* Nightingale (1927); **22. Evid.** No. 1489a

- Hargrove v. Burn (1920); **36. Negl. Nos.** 4a, 59b, 131a, 580a, 770a, 781a, 784a
- Hari Chandana Joga Deva v. Hindustan Co-operative Insurance Society, Ltd. (Ind.); **9. Coys.** p. 374
- Harichand Mancharam v. Govind Luxman Gokhale (Ind.); **12. Contr.** p. 442
- Harilal Dalsukhram v. Mulchand (Ind.); **40. S. Land.** p. 1112
- Hari Laxman Joshi v. Secretary of State for India (Ind.); **12. Contr.** p. 461
- Harkaway, The (1928); **41. Ship.** No. 5400a
- Harker v. Britannic Assurance Co., Ltd. (1928); **25. Fr. Soc.** No. 175a
- Harkesh Singh v. Hardevi (Ind); **38. Real Prop.** p. 1088
- Harkins v. Benson (Can.); **41. Ship.** p. 1138
- Harkins v. Doney (Can.); **32. Libel.** p. 924
- Harley v. Sholl (1925); **16. Cntmpt. Nos.** 182a, 709a
- Harlow, The (1922); **1. Adm.** No. 87a
- Harlow, The, Cory Lighterage, Ltd. v. Dalton (Owners) (1922); **1. Adm.** No. 1536a
- Harman, *Re*, Lloyd v. Tardy (1894); **11. Confl.** No. 626a
- Harman's Case (1875); **12. Contr.** No. 4985
- Harmans, Ltd. & Toronto (City), *Re*, *Re* Porter & Toronto (City), *Re* Stewart & Toronto (City) (Can.); **11. Comp. Pche.** p. 406
- Harmonic Resonator, Ltd. v. Walton (Aus.); **9. Coys.** p. 361
- Harms Incorporated v. Embassy Club, Ltd. (1927); **13. Coprt.** No. 483a
- Harms Incorporated & Chappell & Co. v. Martans Club (1927); **13. Coprt.** No. 483a
- Harmsworth v. Smith (S. Af.); **17. Damgs.** p. 576
- Harnam Singh v. Kapoor Singh (Can.); **18. Discy.** p. 613; **36. Ptnrs.** p. 1042
- Harnett v. Fisher (1927); **33. Lunat.** Nos. 1856a, 1856c
- Harney v. Harney (Can.); **27. H. & W.** p. 799
- Harold Drabble, Ltd. v. Hycolite Manufacturing Co. (1928); **13. Coprt.** No. 229b
- Harper v. Associated Newspapers, Ltd. (1927); **29. Insce.** No. 3157a
- v. Harper (Can.); **23. Errors.** p. 725
- v. Harper (Scot.); **27. H. & W.** p. 794; **30. Jdgmts.** p. 888
- v. Hayton (1829); **33. Mags.** No. 958b
- v. McLean (Can.); **36. Negl.** p. 1031
- v. Pearson (1861); **43. Trade Mks.** No. 1121a
- Harper's Trustees v. Jacobs (Scot.); **8. Char.** p. 339
- Harriers, Hall & Kruse v. South Sarnia Properties, Ltd. (Can.); **7. Bldg. Conts.** p. 306
- Harrington, *Ex p.*, R. v. Wilson (Can.); **14. Crim.** p. 504
- v. Bush (1709); **18. Distr.** No. 1732a
- v. Harrington (Can.); **27. H. & W.** p. 790
- Harrington Motor Co., *Re*, *Ex p.* Chaplin (1928); **10. Coys.** No. 6056a
- Harris, *Re* (Can.); **38. Real Prop.** p. 1090
- v. Catchpool, *Re* Catchpool (1928); **40. Sttlmts.** No. 3139a
- v. Chapman (1868); **22. Evid.** No. 2480a
- v. Dublin & South Eastern Ry. Co. (Ir.); **8. Carr.** p. 316
- v. Garson (Can.); **11. Confl.** p. 426
- v. Griffith, *Re* Anderson-Berry (1928); **20. Egy.** No. 2702a; **23. Errors.** No. 2744a
- v. Harris (N.Z.); **27. H. & W.** pp. 804, 806
- v. Healing (A. G.) & Co., Pty., Ltd. (Aus.); **36. Negl.** p. 1029
- v. Holler (1849); **22. Evid.** No. 4228a
- v. Lerner (Can.); **6. B. of Exch.** p. 282
- v. Lucas (1919); **2. Animals.** No. 563a
- Harris v. Manor Powis Coal Co., Ltd. (Scot.); **34. Mast. & S.** p. 994
- v. Myers (Can.); **16. Cntmpt.** p. 548
- v. R. (S. Af.); **14. Crim.** pp. 501, 515, 518
- v. Richardson (N.Z.); **25. Fraud. Conv.** p. 751
- v. Shaw (1739); **1. Action.** No. 497a
- Harris Abattoir Co. v. Aledo (Owners) (Can.); **1. Adm.** pp. 21, 24
- Harrison, *Ex p.*, *Re* Barley (1923); **4. Bkpcy.** No. 3152a
- , *Re* (Can.); **4. Bkpcy.** p. 227
- , *Re*, Day v. Harrison (1920); **3. Bank.** No. 391a
- v. Armstrong (Ir.); **2. Animals.** p. 128
- v. Carberry Elevator Co. (Can.); **7. B. of Sale.** p. 287
- v. Commis, *Re* Forbes (Can.); **44. Wills.** p. 1179
- v. Forth (1695); **20. Egy.** No. 239a
- v. Great Western Ry. Co. (1875); **8. Carr.** No. 833a
- v. Harbottle, *Re* Vulcan Coal Co. (1922); **2. Aliens.** Nos. 223c, 223f
- v. Harrison (Can.); **2. Arbn.** pp. 137, 138, 151
- v. Harrison (N.Z.); **11. Confl.** p. 413
- v. King (Can.); **18. Discy.** pp. 617, 618
- v. King (No. 2) (Can.); **18. Discy.** p. 619
- v. McGlashan (Can.); **24. Errors.** p. 733
- v. McSheehan (1885); **17. Damgs.** No. 260a
- v. Ridgway (1925); **2. Agric.** No. 29d
- Harrison Bay Co., Ltd. v. Gauthier (Can.); **17. Dep.** p. 604
- Harrison, etc. v. Crespian (Aus.); **2. Arbn.** p. 144
- Harrods, Ltd. v. Harrod (It.), Ltd. (1924); **9. Coys.** No. 228a
- v. Stanton (1923); **7. B. of Sale.** No. 710a
- Harrow School Governors & Murray's Contract, *Re* (1927); **8. Char.** No. 629a
- Harrup v. Bayley (1856); **33. Mags.** No. 1015
- Har Swarup v. Muhammad Siraj (Ind.); **32. Libel.** p. 924; **37. Press.** p. 1065
- Hart, *Ex p.*, *Re* Wigzell (1921); **4. Bkpcy.** Nos. 1579a, 1893a
- , *Ex p.*, R. v. Police Magistrates at Blackall & Hart (Aus.); **7. Bounds. & F.** p. 297
- v. Barclays Bank, *Re* Wigzell (1921); **4. Bkpcy.** No. 1893a
- v. Bennett & Co. (1928); **34. Mast. & S.** No. 711a
- v. Hanson (Can.); **31. L. & T.** p. 412
- v. Nadeau (Can.); **31. L. & T.** p. 912
- v. Reynolds (Can.); **21. Exon.** p. 692
- v. Riversdale Mill Co. (1928); **24. Fact.** No. 264b; **30. Jdgmts.** No. 679a
- v. Ruttan (Can.); **21. Exon.** p. 689
- v. Rye (Can.); **21. Exon.** p. 691
- Hartin v. London County Council (1929); **38. Pub. Auth.** No. 777a
- Hartley v. Hindmarsh (1866); **21. Estpl.** No. 599a
- v. Humphris (Aus.); **35. Mtge.** p. 1022
- v. Maycock (Can.); **27. H. & W.** p. 789
- Harton, The (1884); **41. Ship.** No. 6437a
- Harvest Home, The (1905); **41. Ship.** No. 6594a
- Harvesting Machine Co. v. Hunt (Can.); **21. Exon.** p. 694
- Harvey, *Re* (Aus.); **1. Action.** p. 2
- v. Canadian Pacific Ry. Co. (Can.); **22. Evid.** p. 710
- v. Collett (1846); **10. Coys.** No. 8576a
- v. Johnston (Can.); **31. L. & T.** p. 913
- v. Sylvia Court, Ltd. (Can.); **18. Discy.** p. 616
- Harvey & Co. v. Herefordshire County Council (1920); **2. Agric.** No. 974a
- Harvey & Mann, *Re* (1920); **2. Agric.** No. 268b
- Harvie v. Canadian Pacific Ry. Co. & Hurst Engineering & Construction Co., Ltd. (Can.); **18. Discy.** p. 616
- Harwood v. Astley (1804); **32. Libel.** No. 525a

- Hasan v. Zaman (Ind.); **26. Hghys.** p. 775  
 Hascall v. Royal Bank of Canada (Can.); **7. B. of Sale.** p. 287  
 Haskell v. Marlow (1928); **31. L. & T.** No. 4730a  
 Haslam v. Cron, Olivant's Claim (1871); **3. Basty.** No. 24a  
 — v. Diggles (1824); **7. Bonds.** No. 155a  
 Haslam Foundry & Engineering Co., Ltd. v. Hall & Co. (1888); **36. Pats.** No. 3108a  
 Haslett, *Re*, McKenna v. Haslett (Aus.); **24. Errors.** p. 734  
 Hastie, *Re* (N.Z.); **4. Bkpcy.** p. 214  
 Hastings (Lord) v. Astley (1861); **35. Mtge.** No. 505a  
 Hastings v. Hastings (N.Z.); **11. Confl.** p. 421  
 — v. Leonidas (Aus.); **31. L. & T.** p. 901  
 — v. Orde (1840); **28. Infts.** No. 657a  
 — (Doe d.) v. Waters (1850); **30. L. & T.** No. 330a  
 Hatch v. Pick (Can.); **2. Agric.** p. 96  
 Hate v. Hate (Can.); **27. H. & W.** p. 791  
 Hatfield & Co. v. Canadian Pacific Ry. (Can.) (1926); **8. Carr.** p. 315  
 Hatfield & Co. v. Cronkhite (Can.); **17. Dungs.** p. 580  
 Hatfield & Scott, Ltd. v. Canadian Pacific Ry. Co. (Can.) (1921); **8. Carr.** p. 316  
 Hatimblai Massanally v. Eduljee Dinshaw (Ind.); **17. Dep.** p. 602  
 Hatt v. Verdier (1770); **4. Bkpcy.** No. 5309a  
 Hatter v. Bowman's Bldrs. Supplies, *Re* Morris (Can.); **29. Insee.** p. 869  
 Hatton v. Akt. Durban Hansen (Scot.); **1. Adm.** pp. 22, 29, 30  
 — v. Denison (1926); **5. Bkpcy.** No. 8281a  
 — v. Morton (Can.); **2. Animals.** p. 128  
 Haug & Sons, Ltd. v. Stack (Can.); **39. S. Goods.** p. 1107  
 Hauxton Parochial Church Council v. Stevens (1929); **19. Eccl.** Nos. 472b, 472c  
 Haw, *Re* (N.Z.); **5. Bkpcy.** p. 238  
 — v. Haw's Official Assignee (N.Z.); **4. Bkpcy.** p. 222  
 Hawes v. Hawes (1880); **38. Real Prop.** No. 297a  
 Hawker v. Royal Bank of Canada (Can.); **3. Bank.** p. 189  
 Hawkins, *Ex p.*, *Re* Ford (1929); **5. Bkpcy.** No. 6882a  
 Hawkins, *Re*, Hawkins v. Dew & Sons (1926); **19. Educ.** No. 293a  
 — v. Aglassinger (Can.); **24. Fact.** p. 741; **25. Fraud. Conv.** p. 748  
 — v. Gaden (Aus.); **1. Agcy.** p. 43  
 — v. Hawkins (1836); **40. Sllmits.** No. 2254a  
 — v. Woodgate (1844); **29. Insee.** No. 3052a  
 Hawley v. Wright (Can.); **23. Errors.** p. 722  
 Haworth v. Webb (Can.); **2. Animals.** p. 126  
 Hawthorne, *Ex p.*, *Re* Nathan Crystal (Can.); **7. B. of Sale.** p. 291  
 Hay v. Allen (Can.); **6. R. of Exch.** p. 276  
 — v. Bain (Can.); **22. Evid.** p. 711  
 — (Doe d.) v. Hunt (Can.); **38. Real Prop.** p. 1092  
 Hay & Sons (Scot.); **9. Coys.** p. 360  
 Hayes v. Bell (1924); **5. Bkpcy.** No. 8782b  
 — v. Duggan (Ir.); **28. Inc. T.** p. 818  
 — v. Standard Bank (Can.); **3. Bank.** p. 181  
 Hayes Williams, *Re* (Aus.); **22. Evid.** p. 710  
 Hayford v. Forrester-Paton (Scot.); **32. Libel.** p. 926  
 Haygarth v. Webb (Can.); **1. Agcy.** p. 58  
 Hayle, The (1929); **41. Ship.** Nos. 8629a, 8688a, 8711a  
 Hayman v. City Property Investment Trust Corp., Ltd. (Scot.); **26. Hghys.** p. 779; **36. Negl.** p. 1028  
 Haynes v. Mundle (Can.); **3. Bailmt.** p. 166  
 Haynes v. Haynes (Can.); **27. H. & W.** p. 802  
 — v. Hayton (1827); **33. Mags.** No. 958a  
 — v. Hayton (1828); **22. Evid.** No. 3802a; **33. Mags.** No. 958a  
 Haynes Smith, *Ex p.*, R. v. Church Assembly Legislative Committee & Church Assembly (1928); **19. Eccl.** No. 1a  
 Hays v. O'Connor (Can.); **29. Intrpr.** p. 876  
 Haythornthwaite & Sons, Ltd. v. Kelly (1927); **28. Inc. T.** No. 632f  
 Hayward v. Hayward (1928); **3. Basty.** No. 90a  
 Headlam, *In the Will of* (Aus.); **44. Wills.** p. 1183  
 Healing v. Webb, *Re* Cunningham (1924); **11. Confl.** No. 526a  
 Healing (A. G.) & Co. Proprietary, Ltd. v. Harris (Aus.); **36. Negl.** p. 1031  
 Healy v. Saunders (Aus.); **1. Agcy.** p. 60  
 Heaney v. Lobley (Can.); **32. Lien.** p. 931  
 Heap v. Motorists' Advisory Agency, Ltd. (1923); **1. Agcy.** Nos. 483a, 495b, 505a, 507a  
 Heap & Son v. Bradford Dyers' Assocn., Ltd. (1929); **36. Pats.** No. 391a  
 Hearn v. Southern Ry. Co. (1925); **8. Carr.** No. 685b  
 Heaslip v. Hasemer (1927); **28. Inc. T.** No. 540a  
 Heath v. Parkinson (1926); **1. Agcy.** No. 1848a  
 — v. Portage La Prairie Corp. (Can.); **22. Evid.** p. 706  
 Heathcote v. Maguire (Ir.); **31. L. & T.** p. 903  
 Heather v. Maddock, *Re* Municipal Act (Can.); **20. Elect.** p. 653  
 Heaton v. Flater (Can.); **12. Contr.** p. 444  
 Heaton & Dugard, Ltd. v. Cutting Brothers, Ltd. (1925); **10. Coys.** No. 4716a  
 Heavyside v. Smith (Scot.); **44. Wills.** p. 1182  
 Hecht, *Re*, *Re* Succession Duty Act (Can.); **21. E. D.** p. 675  
 Heddle v. Bank of Hamilton (Can.); **3. Bailmt.** p. 166  
 Hedges' Trust Estate, *Re* (1874); **39. Rntchgs.** No. 511a  
 Hedley v. Scissons (Can.); **2. Agric.** p. 97  
 Hedwig, The (1853); **1. Adm.** No. 1351a  
 Hegler v. MacNab (Can.); **18. Discy.** p. 616  
 Heidner & Co. v. Hanna Nielsen, The (Can.); **18. Discy.** p. 617  
 Heiser v. Clarke (1709); **25. Fraud. Conv.** No. 619a  
 Heistein & Sons v. Polson Iron Works, Ltd. (Can.); **2. Arbn.** p. 144  
 Heiwa Maru, The v. Bird & Co. (Ind.); **1. Adm.** p. 36  
 Hellet v. South African Railways & Harbours (S. Af.); **18. Discy.** p. 615  
 Hempenstall Brothers, Ltd. v. Poulson (Aus.); **21. Estpl.** p. 686  
 Hemstreet v. North West Biscuit Co. (Can.); **9. Coys.** p. 378  
 Henderson, *In the Goods of* (1850); **11. Confl.** No. 563a  
 —, *Re* (Can.); **18. Descr.** p. 610; **38. Rates.** p. 1085  
 — v. Bailleul (Can.); **33. Mal. Pros.** p. 957  
 — v. Dickson (Can.); **40. S. Land.** p. 1109  
 — v. Gesner (Can.); **6. B. of Exch.** p. 284  
 — v. Graves (Can.); **20. Eqq.** p. 660  
 — v. Henderson & McKay (Can.); **27. H. & W.** p. 804  
 — v. Kane & Pioneer Club (N.Z.); **8. Clubs.** p. 351  
 — v. Mair (Scot.); **36. Negl.** p. 1029  
 — v. Ross (Scot.); **30. Intox.** p. 882; **38. Pub. Hlth.** p. 1072  
 — v. Shaw & Morton, *Re* Antrobus (N.Z.); **37. Perps.** p. 1055  
 — v. Toronto General Trusts Corp. (Can.); **30. L. & T.** p. 899

# TABLE OF CASES.

- Henderson (J. B.) & Co., *Ex p.*, *Re Comforter & Cushion Manufacturing Co.* (Can.); **7. B. of Sale**, p. 289
- Henderson Estate, *Re* (Can.); **8. Char.** p. 339
- Hendsbee v. Sonora Timber Co., Ltd. (Can.); **8. Chos.** p. 348; **32. Lien**, p. 930
- Heney Co., Ltd. v. Birmingham (Can.); **26. Guar.** p. 768
- Henke v. Henke (Can.); **27. H. & W.** p. 793
- Henley v. Henley (Aus.); **27. H. & W.** p. 796
- Henn v. Smith (Can.); **32. Libel**, p. 926
- Hennessy v. Toronto City (Can.); **26. Ghys.** p. 778
- Hennig v. Trautman (Can.); **19. Eccl.** p. 634
- Hennigar v. Hennigar (Can.); **17. Damgs.** p. 583
- Henry v. Dickie (Can.); **12. Contr.** p. 452
- v. Sexsmith (Can.); **7. B. of Sale**, p. 291
- v. Sharp (Can.); **24. Exors.** p. 734
- Henry Dean & Sons (Sydney), Ltd. v. P. O'Day Proprietary, Ltd. (Aus.); **39. S. Goods**, p. 1105
- Henry, Ltd. v. McGlade (Ir.); **30. L. & T.** p. 899
- Henschel v. Hoffman Bank of Montreal & Henschel (Can.); **26. Guar.** p. 769
- Henshall v. Widdison (1923); **7. B. of Sale**, No. 237a
- Henton v. International Harvester Co. (Can.); **7. B. of Sale**, pp. 288, 289
- Hepenstal v. Merritt (Can.); **22. Evid.** p. 712
- Heppells, Ltd. v. Eppels, Ltd. & Eppel (Isaac Jacob) (1928); **43. Trade**, No. 1212a
- Herbert, *In the Goods of* (1926); **23. Exors.** No. 1883a
- , *Re* (1926); **23. Exors.** Nos. 1431a, 1883a
- v. Christopherson, *Re Anyiani* (1929); **8. Chos.** No. 27b
- Herbert Whitworth, Ltd. v. Jannadas Lenchand Mehta (Ind.); **43. Trade Mks.** p. 1162
- Herbert's Trustee v. Higgins (1926); **5. Bkpcy.** No. 7546a; **7. B. of Sale**, No. 420a
- Hercules Rubber Co., *Re, Ex p.* Allan (Can.); **4. Bkpcy.** p. 227
- Hereford Municipal Election Petition, *Re, Ex p.* Garrod (1889); **20. Elect.** No. 1626
- Heritable Securities & Mtge. Investment Assocn., Ltd. v. Glasgow Assessor (Scot.); **38. Rates**, p. 1083
- Herlihy v. Kelly (Scot.); **39. Revenue**, p. 1098
- Herman Wedel, The (1870); **1. Adm.** No. 596a
- Hernandez v. Bamfield, The (Can.); **1. Adm.** p. 31
- Hero (Owners) v. Lord High Admiral of United Kingdom (Comrs. for Executing the Office of) (1912); **1. Adm.** No. 1695
- Herr v. Weston (Can.); **38. Real Prop.** p. 1092
- Herron v. Mayland (Can.); **17. Decds.** p. 587; **35. Mtge.** p. 1017
- Hersh, *Re, Ex p.* Goldstein (Can.); **4. Bkpcy.** p. 215; **5. Bkpcy.** p. 253
- Hervey v. French (Can.); **26. Ghys.** p. 778
- Hesclwood v. Jones (Can.); **11. Const. L.** p. 438
- Hess v. Ross (Can.); **35. Misrep.** p. 1010
- Hetherington v. Dublin & Blessington Steam Tramway Co. (Ir.); **34. Mast. & S.** p. 975
- Hetherington v. Security Export Co., Ltd. (Can.); **16. Cr. Pract.** p. 569
- Hett, *In the Goods of* (1842); **23. Exors.** No. 931
- Heward, *Re* (1845); **16. Cr. Pract.** No. 926a
- Hewett v. Essex County Council (1928); **11. Comp. Pche.** Nos. 274a, 288a, 289a
- v. Jermyn (Can.); **24. Exors.** p. 732
- v. Smith (Aus.); **28. Infts.** p. 851
- Hewitt v. Biffen (1925); **22. Evid.** No. 5407a
- v. Essex County Council (1927); **11. Comp. Pche.** No. 727a
- Hewitt & Hewitt, *Re* (Can.); **11. Confl.** p. 418
- Hewson v. Ontario Power Co. (Can.); **17. Dep.** p. 592
- Hewsons, The, Geipel v. Cornforth (1873); **1. Adm.** No. 40
- Hextall Estate, *Re* (Can.); **24. Exors.** p. 731
- Hey v. Appleyard (1855); **40. S. Land**, No. 2623a
- Heyden v. Castle (Can.); **38. Rates**, p. 1085
- Heys-Jones v. Bannister, *Re Bannister* (1921); **43. Trusts.** No. 511a
- Heyward, *Re* (1845); **16. Cr. Pract.** No. 926a
- Heywood, *Ex p.*, *Re Holmes* (1815); **8. Chos.** No. 250a
- v. Waring (1815); **8. Chos.** No. 250a
- Hianson, *Ex p.*, *Ex p.* Moller, R. v. Bannstead (Can.); **2. Aliens**, pp. 119, 120
- Hibbard, *Ex p.*, *Re Frederick & Whitworth* (1927); **4. Bkpcy.** No. 923a
- Hibberd v. Jamieson (Can.); **33. Lunat.** p. 949
- Hickerson v. Parrington (Can.); **5. Bkpcy.** p. 249
- Hickey, *Re*, Dwyer v. Hickey (Aus.); **22. Evid.** p. 703
- Hickey v. McGuinness (Can.); **29. Insee.** p. 861
- Hickin, *Ex p.*, *Re Ellins* (1850); **4. Bkpcy.** No. 4295a
- Hickman v. Bacon (1793); **20. Eqq.** No. 775a
- v. Kent or Romney Marsh Sheepbreeders' Assocn. (1920); **1. Action**, Nos. 561b, 584a
- v. Moose Jaw (City) (Can.); **26. Ghys.** p. 781
- Hickman (A. E.) & Co., Ltd. v. Ernst Shipbuilding Co., Ltd. (Can.); **41. Ship**, p. 1128
- Hickman Grain Co. v. Canadian Pacific Ry. Co. (Can.); **8. Carr.** p. 316
- Hicks v. Snook (1928); **31. L. & T.** No. 7057a
- Hickson, *Re* (Can.); **11. Confl.** pp. 114, 422; **33. Lunat.** p. 948
- Hiddleston v. Wilson (Scot.); **19. Educ.** p. 644
- Higby v. Cummings (Can.); **26. Guar.** p. 768
- Higgins v. Ewing's Trustees (Scot.); **22. Evid.** p. 714
- v. Macdonald (Can.); **14. Crim.** p. 504; **41. Shrrfs.** p. 1126
- v. Mitchell (Can.); **1. Agcy.** p. 63
- v. Warren (Ir.); **31. L. & T.** p. 918
- Higgins (W.), Ltd. v. Northampton County Borough (1927); **13. Corps.** No. 1127b
- Higginson & Arundel v. Pyman, Higginson & Arundel v. Pyman (1926); **21. Estpl.** No. 265a
- Higginson & Arundel's Patent, *Re* (1927); **36. Pats.** No. 2064a
- Higgs, *Ex p.*, *Re Smith's Newspapers, Ltd.* (Aus.); **15. Crim.** p. 546; **22. Evid.** p. 712
- Highland v. Sherry (Can.); **30. Land Imp.** p. 896
- Highland Glen, The (1927); **1. Adm.** No. 914a
- Hilditch v. Yott (Can.); **34. Mines.** p. 1006
- Hill, *Ex p.*, *Re Bye-Law made by Prospect District Council* (Aus.); **22. Evid.** p. 703
- , *Re, Ex p.* Holt & Co. (1921); **4. Bkpcy.** No. 800a
- v. Booth (1929); **31. L. & T.** No. 2792a
- v. Grand Trunk Ry. Co. (Can.); **8. Carr.** p. 318
- v. Greenwood (Can.); **38. Real Prop.** p. 1088
- v. Hill (Can.); **17. Dep.** p. 600; **25. Fraud. Conv.** p. 748; **27. H. & W.** p. 794
- v. Hochelaga Bank (Can.); **3. Bank.** p. 179
- v. Macaulay (Can.); **38. Rates**, p. 1086
- v. Mallach (Can.); **2. Animals**, p. 126
- v. Mathews (1925); **28. Inc. T.** No. 99a
- v. Moisan (Can.); **36. Pats.** p. 1019
- v. Tasmanian Metals Extraction Co., Ltd. (Aus.); **34. Mines.** p. 1006
- v. Thompson (Can.); **27. H. & W.** p. 791
- v. Union Insurance Society, Canton, Ltd. (Can.); **29. Insee.** p. 865

- Hillas (W. N.) & Co., Ltd. v. Rederi Akt. Acolus (1926); **17. Custom**, No. 544a
- Hillman, *Re* (Can.); **16. Cr. Pract.** pp. 562, 569
- Hillman v. Imperial Bank of Canada (Can.); **18. Discy.** p. 617
- Hills v. Milton (1853); **4. Bkpcy.** No. 5039b
- Hills v. Swift Canadian Co. (Can.); **1. Agcy.** p. 77
- Hilton v. Westminster Bank, Ltd. (1926); **3. Bank.** No. 589a
- Hime v. Coulthard (Can.); **21. Exon.** p. 696
- Hin v. Purshotumdas & Co. (1923); **12. Contr.** No. 3101a
- Hinchcliffe v. Baird & Botterell (Can.); **1. Agcy.** p. 49
- Hinckes v. Harris (1921); **2. Animals**, No. 246a
- Hinckes v. Sowerby (Can.); **21. Exon.** p. 690
- Hind v. Westbrook (Can.); **40. S. Land**, p. 1109
- Hindmarch v. Carterthorne Colliery, Ltd. & Durham Colliery Owners' Mutual Protection Assocn. (1928); **29. Insce.** No. 3205b
- Hindustan Assurance & Mutual Benefit Society, Ltd., Lahore v. Khalsa Bank, Ltd., Gujranwala (Ind.); **9. Coys.** p. 371; **10. Coys.** p. 394
- Hines v. Tousley (1926); **2. Animals**, No. 274a
- Hingston-Smith, *Re*, *Ex p.* MacPherson Estate (Can.); **18. Distr.** pp. 622, 623
- Hinkey, *Ex p.*, *Re* Walker (N.Z.); **4. Bkpcy.** p. 205
- Hinks v. Riscoe (James) & Sons (1927); **34. Mast. & S. Nos.** 2856b, 2890c
- Hinshelwood v. Auld (Scot.); **22. Evid.** p. 709
- Hira Bibi v. Ram Hari Lal (Ind.); **17. Deeds**, p. 584
- Hirawanu v. Gardner (N.Z.); **2. Agric.** p. 96
- Hirjee Devraj & Co. v. Maung Iyun Shein (Ind.); **12. Contr.** p. 453
- Hirji Mulji v. Cheong Yue S.S. Co. (1926); **2. Arbn.** No. 565a; **12. Contr.** Nos. 3172a, 3199a
- Hirsch v. Alton (Can.); **5. Bkpcy.** p. 265
- v. Montreal Protestant Board School Comrs. (1928); **17. Dep.** No. 176a & p. 593
- Hirst v. Liverpool Victoria Friendly Society (1929); **25. Fr. Soc.** No. 175b
- Hirst & Liverpool Victoria Friendly Society, *Re* (1929); **25. Fr. Soc.** No. 175b
- Hitchcock v. Columbia Valley Land Co., Ltd. (Can.); **1. Agcy.** p. 72
- Hitchens & Co., Ltd. v. Hart (1927); **34. Mast. & S. Nos.** 3559a, 3704a
- Hives v. Dawson (1927); **13. Cty. Cts.** No. 779a
- Hjorth v. Smith (Can.); **17. Deeds**, p. 584
- Hoak (Doc d.) v. Empey (Can.); **43. Tresp.** p. 1165
- Hoare v. Inverarity (Aus.); **36. Negl.** pp. 1028, 1031
- Hobbs, *Ex p.*, *R. v.* Evening News (1925); **16. Contmpt.** No. 180a
- v. Nottingham Journal (1929); **30. Juries**, Nos. 295b, 304a; **32. Libel**, No. 2041a
- v. Taite (1738); **20. Eqq.** No. 2102a
- v. Tinning (1929); **30. Juries**, Nos. 295b, 304a; **32. Libel**, No. 2041a
- v. Ward (1929); **25. Gaming**, No. 504a
- Hobrecker's Estate, *Re*, (Can.); **9. Coys.** p. 365
- Hobson, Houghton & Co., *Re* (1929); **9. Coys.** Nos. 2283a, 2585a
- Hoby v. Hoby (1828); **33. Lunat.** No. 265a
- Hocker v. Waller (1924); **1. Agcy.** No. 1746a
- Hocking, The (1917); **37. Prsns.** No. 1302a
- Hodder & Tolley, Ltd. v. Cornes (N.Z.); **12. Contr.** p. 451
- Hodge v. McLean & Union Bank of Canada (Can.); **4. Bkpcy.** p. 222; **5. Bkpcy.** pp. 250, 252
- Hodges v. Marks (1818); **21. Exon.** No. 556a
- Hodgkins v. Harris Investors, Ltd. (Can.); **21. Exon.** p. 695
- Hodgkinson v. Hewitt (1928); **31. L. & T.** No. 7145a
- v. Martin (Can.); **17. Damgs.** p. 580; **43. Tresp.** p. 1166
- Hodgson v. Coates (1856); **40. Sttlmts.** No. 1884a
- v. Davies (1810); **1. Agcy.** No. 1104a
- v. McCreagh (1923); **11. Comns.** Nos. 323a, 347a
- v. Towning (1837); **21. Exon.** No. 1577a
- Hodson v. Star Paper Mills, Ltd. (1927); **34. Mast. & S. No.** 3251a
- Hoff Trading Co. v. Union Insurance Society of Canton (1929); **29. Insce.** No. 143a
- Hoffman v. Cohen (Can.); **12. Contr.** p. 445
- Hoffman v. Nielsen (Aus.); **36. Negl.** p. 1029
- Hoffstrom v. Stanley (Can.); **32. Lien**, p. 931
- Hogan v. R. (Can.); **17. Damgs.** pp. 576, 577
- Hogg v. Belfast Corpn. (Ir.); **2. Arbn.** pp. 143, 144
- v. Macpherson (Scot.); **26. Hghys.** p. 778
- Hogg & Carr's Patents, *Re* (1927); **36. Pats.** No. 2130a
- Hogg & Co., Ltd. v. Taxes Comr. (N.Z.); **28. Inc. T.** p. 826
- Hoggan v. Esquimalt & Nanaimo Ry. Co. (Can.); **11. Const. L.** p. 438
- Hoggett v. Hoggett (Aus.); **27. H. & W.** p. 797
- Hogle v. Erneststown Township (Can.); **2. Animals**, p. 127
- Hokanson v. Lample (Can.); **33. L. G.** p. 944
- Holden v. Milburn (Can.); **21. Exon.** p. 692
- v. Ryan (Can.); **28. Injon.** p. 858
- Holden National Co.'s Claim, *Re* Progressive Farmers (Can.); **5. Bkpcy.** p. 241
- Holder, *Ex p.*, *Ex p.* Williams, *Re* Madrid Bank, Ltd. (1866); **10. Coys.** No. 6368a
- Holding v. South Australian Railways Comr. (Aus.); **34. Mast. & S.** p. 968
- Holland, *Ex p.*, *Re* Holland (Aus.); **23. Exors.** p. 730; **29. Insce.** p. 870; **35. Mtge.** 1023
- , *Re* (Can.); **16. Cr. Pract.** p. 564
- , *Re*, *Ex p.* Holland (Aus.); **23. Exors.** p. 730; **29. Insce.** p. 870; **35. Mtge.** p. 1023
- (Queen of) v. Drukker, *Re* Visser (1928); **11. Confl. No.** 6a
- v. Gillam, *Re* Robins (1928); **40. Sttlmts.** No. 1873
- v. Holland (1925); **3. Basty.** No. 65b
- Holland & Humble's Assignees v. — (1815); **8. Chos.** No. 250a
- Holland & Walsh, *Ex p.*, Court v. Holland (Can.); **22. Evid.** p. 702
- Holliday v. Hogan (Can.); **26. Guar.** p. 771
- v. Petty, *Re* Petty (1929); **23. Exors.** No. 5917b
- Hollinger Consolidated Gold Mines, Ltd. v. Northern Canada Power Co., Ltd. (Can.); **20. Electric**, p. 655
- Hollister, *Re* (Can.); **5. Bkpcy.** p. 238
- Holloway, *Re*, *Re* Peterson (Can.); **4. Bkpcy.** p. 222
- Holmes, *Ex p.* (Aus.); **16. Cr. Pract.** p. 568
- , *Re*, *Ex p.* Heywood (1815); **8. Chos.** No. 250a
- v. Allchurch (Aus.); **25. Gaming**, p. 759
- v. Holmes (Can.); **27. H. & W.** p. 788
- v. Stamp Duties Comr. (N.Z.); **21. E. D.** p. 669
- Holmes (Samuel), Ltd., *Re* (Ir.); **10. Coys.** p. 382
- Holmes, Wilson & Co., Ltd. v. Bata Kristor De (Ind.); **17. Custom**, p. 573
- Holmested v. Alberta Pacific Grain Co., Ltd. (Can.); **9. Coys.** p. 361
- Holmstead v. Minister of Customs & Excise (Can.); **17. Dep.** p. 596

- Holowachuk v. Holowachuk (Can.); **27. H. & W.** p. 792
- Holt v. Markham (1923); **12. Contr.** No. 4534a
- Holt & Co., *Ex p.*, *Re* Hill (1921); **4. Bkpcy.** No. 800a
- Holt Brewery Co., Ltd., *Ex p.*, *R. v. Smethwick* Confirming Authority (1929); **30. Intor.** Nos. 55a, 306a
- Holten v. Holten (Can.); **27. H. & W.** p. 793
- Holy Law South Broughton Burial Board v. Failsworth Urban District Council (1928); **26. Hghys.** No. 2405a
- Home v. Camden (Earl) (1795); **16. Cr. Pract.** No. 2187a
- Home & Colonial Insurance Co., Ltd., *Re* (1928); **10. Coys.** Nos. 7174a, 7452a
- Home & Colonial Insurance Co., Ltd., *Re* (1929); **10. Coys.** Nos. 6164a, 6180a
- Home & Colonial Insurance Co., Ltd. v. London Guarantee & Accident Co., Ltd. (1928); **35. Mistake.** No. 464a
- Home Bank v. Hamona Farmers Assocn. (Can.); **3. Bank.** p. 175
- Home Bank of Canada, *Re* (Can.); **3. Bank.** p. 175
- , *Re*, National Trust Co.'s Case (Can.); **3. Bank.** p. 175
- Home Bank of Canada & Winding-Up Act, *Re* (Can.); **10. Coys.** p. 390
- Home Insurance Co. of New York v. Gavel (Can.); **29. Insee.** p. 868
- Home Investment & Savings Assocn. v. Lethbridge Northern Colonisation Manager (Can.); **33. L. G.** p. 943
- Honeyman v. Marryatt (1857); **12. Contr.** No. 501a
- Hong Kong & Shanghai Bank v. Lo Lee Shi (1928); **6. B. of Exch.** No. 2485a
- Hontestroom, The, The Sagaporack (1927); **1. Adm.** No. 1642a
- Hontestroom S.S. v. Durham Castle S.S. (1927); **1. Adm.** No. 1642a
- v. Sagaporack S.S. (1927); **1. Adm.** No. 1642a
- Hood, *Re* (Can.); **14. Crim.** pp. 503, 522
- Hood's Trustees v. Southern Union General Insurance Co. of Australasia (1928); **5. Bkpcy.** No. 5958a
- Hooley v. Fountain, *Re* Potts (1884); **24. Exors.** No. 8841a
- Hooper v. Anderson (Edward) & Co., Ltd. (N.Z.); **1. Agcy.** p. 58
- v. Anderson (Edward) & Co., Ltd. (No. 2) (N.Z.); **1. Agcy.** p. 58
- v. Smith & Hamilton (Can.); **28. Injon.** p. 856
- Hoover v. Sabourin (Can.); **7. Bounds. & F.** p. 296
- Hope v. Thorp, *Re* Hope's Will Trust (1929); **44. Wills.** No. 239a
- Hope (Henry) & Sons, Ltd. v. Canada Foundry Co. (Can.); **12. Contr.** p. 455
- v. Sheehy (Richard) & Sons (Can.); **7. Bldg. Conts.** p. 305
- Hope's Will Trust, *Re*, Hope v. Thorp (1929); **44. Wills.** No. 239a
- Hopgood v. Feener (Can.); **7. Bldg. Conts.** p. 301
- Hopkins v. Crowe (1836); **43. Tresp.** No. 733a
- v. Nightingale (1794); **21. Exon.** No. 1578c
- Hopper No. 13, The (1925); **1. Adm.** No. 1062a; **18. Discy.** No. 891a
- Hopper No. 21, The (1903); **1. Adm.** No. 1297a
- Hopps v. Borowski (Can.); **35. Mtge.** p. 1024
- Hore v. General Steam Navigation Co. (1929); **34. Mast. & S.** No. 2735a
- Horlick v. Scully (1927); **31. L. & T.** No. 4760a
- Horn v. Duckett (Scot.); **39. Revenue.** p. 1100; **42. Str. Traf.** p. 1152
- Horne, *Re* (N.Z.); **2. Aliens.** p. 119
- v. Barber (Aus.); **1. Agcy.** p. 67
- Horne v. Moulds (Can.); **31. L. & T.** p. 910
- v. Munro (Can.); **11. Const. L.** p. 437
- Horner v. Crew (1928); **42. Solrs.** No. 3451a
- v. Sayner (1838); **24. Exors.** No. 4738a
- v. Walker (1923); **12. Contr.** No. 1123a; **30. L. & T.** No. 396a
- Hornidge v. Wilson (1840); **24. Exors.** No. 6667a
- Horrell v. St. John of Bletso (Lord) (1928); **2. Agric.** No. 206z
- Horseman v. Nairn (Aus.); **34. Med.** p. 1001
- Horsfall v. Garnett (1858); **12. Contr.** No. 339a
- Horsfield v. Ashton (1856); **24. Exors.** No. 6011a
- v. Cana Rural Municipality, No. 214 (Can.); **26. Hghys.** p. 778
- v. Sidebotham (1860); **24. Exors.** No. 6014a
- Horst v. Livesley (Can.); **11. Confl.** p. 418
- Horstmann & Edgar's Patent, *Re* (1928); **36. Pats.** No. 2023a
- Horton v. Moggridge (1816); **4. Bkpcy.** No. 5402a
- v. Thompson (1855); **32. Limit. of A.** No. 964a
- Horton's Estate, Ltd. v. Beattie, Ltd. (1927); **19. Easmt.** No. 934a
- Horwood v. Statesman Publishing Co. (1929); **32. Libel.** No. 2300a
- Hosanna Arathoon Kerakoos v. Serle (1844); **16. Courts.** No. 949a
- Hosier v. Read (1724); **12. Contr.** No. 1186a
- Hosier Brothers v. Derby (Earl) (1918); **1. Agcy.** No. 2733a
- Hoskins-Abraham v. Paignton Urban Council (1929); **7. Burial.** No. 262a
- Hotel Dunlop, Ltd., *Re*, Quinn v. Guernsey (Can.); **4. Bkpcy.** p. 231
- Hoth v. Cowan (Scot.); **2. Arbn.** p. 139
- Hough v. Taylor (Aus.); **19. Easmt.** p. 628
- Houghton & Co. v. Nohard, Lowe & Wills (1927); **20. Eqp.** No. 649a
- Houghton & Co. v. Nohard, Lowe & Wills (1928); **9. Coys.** Nos. 3157a, 3540a, 3567a, 4170a; **20. Eqp.** No. 649a
- Houlder, *Re* (1929); **4. Bkpcy.** No. 2514a
- , *Re*, Rabbidge v. Eagle Star Dominions Insurance Co. (1929); **4. Bkpcy.** No. 2514a
- Houlding, *Re* (Can.); **5. Bkpcy.** p. 252
- Houlding v. Canadian Credit Men's Trust Assocn., Ltd. (Can.); **4. Bkpcy.** p. 229; **5. Bkpcy.** pp. 257, 265
- Hours of Labour, *Re*, *Re* Treaty of Versailles (Can.); **17. Dep.** p. 600
- House, *Re*, Westminster Bank v. Everett (1929); **40. Stillnds.** No. 3151a; **43. Trusts.** No. 3475b
- House Improvement Assocn., Ltd., *Re*, Giles v. Nuttall (1885); **10. Coys.** No. 5011a
- House Repair & Service Co., Ltd. v. Miller (Can.); **2. Arbn.** p. 159; **7. Bldg. Conts.** p. 300
- Houston v. Victoria Machinery Depot, Ltd. (Can.); **9. Coys.** pp. 373, 379
- v. Wittner's Pty., Ltd. (Aus.); **25. Food.** p. 747
- Hovenden v. Ellison (Can.); **32. Lien.** p. 932
- Hovey v. Ferguson (Can.); **25. Gifts.** p. 765
- How, *Re*, How v. How (1929); **8. Char.** No. 823a
- How v. Mansfield (N.Z.); **31. L. & T.** p. 912
- Howard, *Ex p.*, *Re* Crosman & McLeod's Election (Can.); **16. Cr. Pract.** p. 566
- v. Bergin, O'Connor & Co. (Ir.); **2. Animals.** p. 130
- v. Burtonwood (1742); **27. H. & W.** No. 3224a
- v. Duncane (1823); **40. Stillmt.** No. 2397a
- v. High River Trading Co. (Can.); **21. Exon.** p. 689
- v. Miller (1915); **40. S. Land.** No. 1488a
- v. Okeover (1778); **12. Contr.** No. 1027a
- Howard & Toronto Corpn., *Re*, *Re* Sweet & Toronto Corpn. (Can.); **33. L. G.** p. 941; **38. Pub. Hlth.** p. 1072

- Howard Graham & Co., *Re, Ex p. Graham* (Can.); **5. Bkpcy.** p. 253
- Howard Houlder & Partners, Ltd. v. Manx Isles S.S. Co. (1923); **1. Agcy.** Nos. 1751a, 1791a
- Howard-Flanders v. Malden Corp'n. (1926); **26. Hghys.** No. 1146a
- Howarth v. Forder (1903); **12. Contr.** No. 467b
- v. Singleton (J. E.) & Sons (1926); **34. Mast. & S.** No. 3698a
- Howden & Hyslop's Contract, *Re* (1928); **23. Exors.** No. 3111a
- Howe, *Ex p.*, *R. v. Carvery* (Can.); **14. Crim.** p. 505
- , *Re* (Can.); **5. Bkpcy.** p. 264
- v. Kipp (Can.); **18. Distr.** p. 623; **38. Rates.** p. 1085
- v. Niagara St. Catharines & Toronto Ry. Co. (Can.); **8. Carr.** p. 320
- v. Teefy (Aus.); **17. Dams.** p. 581
- Howell, *Re, Re* Buckingham, Liggins v. Buckingham (1915); **30. Jdgmts.** No. 789a
- v. Evans (1926); **12. Contr.** No. 1213a
- v. Howell & Davidson (1926); **27. H. & W.** No. 4354a
- v. Warner (Can.); **1. Action.** p. 2
- v. Wilton Rural Municipality, No. 472 (Can.); **2. Animals.** p. 126
- Howells v. Great Western Rly. Co. (1928); **34. Mast. & S.** No. 2342a
- Howgate v. Ralph (1929); **25. Gaming.** No. 464b
- Howie v. Chatterton (N.Z.); **23. Exors.** p. 717
- v. Lawrence (Can.); **36. Negl.** p. 1032
- Howith v. McFarlane (Can.); **22. Evid.** p. 702
- Howlett & Bell v. Doran & Gallant (Can.); **32. Lien.** p. 932
- Howley v. Pieuze (Can.); **16. Cr. Pract.** p. 560
- Howley v. R. (Can.); **14. Crim.** p. 526
- Howson v. Buxton (1928); **2. Agric.** No. 266m
- v. Crow (Can.); **9. Coys.** p. 363
- Howson's Policy Trusts, *Re* (1885); **27. H. & W.** No. 1233a
- Hoy v. Auckland Harbour Board (N.Z.); **36. Negl.** p. 1032
- Hoyland & York, *Re* (Can.); **19. Educ.** p. 644
- Hoyle, *Re, Ex p. Trustee* (1924); **5. Bkpcy.**, Nos. 7172a, 7267a
- Hoystead v. Taxation Comr. (1926); **21. Estpl.** No. 296a
- Hoyt's Proprietary, Ltd. v. O'Connor (Aus.); **36. Negl.** p. 1020
- Htin, Gyaw v. R. (Ind.); **14. Crim.** p. 515
- Hubin v. R. (Can.); **14. Crim.** p. 530; **15. Crim.** p. 540
- Huckell v. Saintry (1923); **2. Agric.** No. 237a
- Hucknall v. Manchester Corp'n. (1928); **34. Mast. & S.** No. 3896a
- Huddersfield Fine Worsteds, Ltd. v. Todd (1925); **5. Bkpcy.** Nos. 8782d, 9198b, 9229a
- Hudson v. Martin (1726); **23. Exors.** No. 3999a
- v. Silzer (Can.); **2. Animals.** p. 126
- v. Snellgar (1921); **18. Distr.** No. 234
- Hudson & Hardy v. Biddulph Township (Can.); **2. Animals.** p. 127
- Hudson Fashion Shoppe, Ltd., *Re, Ex p. Royal Dress Co.* (Can.); **4. Bkpcy.** p. 231
- Hudson's Bay Co. v. A.-G. for Canada (Can.); **11. Const. L.** p. 438
- v. Bullock Farms, Ltd. (Can.); **21. Exon.** p. 690
- Hudson-Mattagami Exploration Mining Co. v. Wettlaufer Brothers, Ltd. (Can.); **1. Agcy.** p. 79
- Hue v. Whiteley (1929); **26. Hghys.** No. 298a
- Huestis v. Toronto (City) (Can.); **26. Hghys.** p. 777
- Huffman v. Ross (Can.); **21. Estpl.** p. 685
- Hugg v. Low (Can.); **1. Agcy.** p. 49; **21. Estpl.** p. 685
- Huggard v. Ontario & Saskatchewan Land Corp'n. (Can.); **17. Deeds.** p. 584
- Huggins v. Bambridge (1740); **7. Bonds.** No. 119a
- Hughes, *Ex p.*, *Re* Petrie Manufacturing Co. (Can.); **9. Coys.** p. 373
- v. Beban Lumber Co. (Can.); **32. Limit. of A.** p. 939
- v. Quentin (1838); **2. Animals.** No. 136a
- v. Sun Publishing Co. (Can.); **32. Libel.** p. 926
- v. Watkins (J. H.) & Co. (Can.); **21. Estpl.** p. 688
- Hughes (W.) & Son v. Satchell (1925); **13. Cty. Cts.** No. 691a
- Hughes Music Sales Co., *Re, Co-Operative Music Supply Co. v. Gold Medal Furniture Manufacturing Co.* (Can.); **5. Bkpcy.** p. 249
- Huhn v. Bogach (Can.); **21. Exon.** p. 697
- Hull v. McKenna (Ir.); **16. Courts.** p. 552; **17. Dep.** p. 607
- v. Seneca Superior Silver Mines, Ltd. (Can.); **34. Mines.** p. 1007
- Humber Conservancy Board v. Federated Coal & Shipping Co., Ltd. (1928); **13. Cty. Cts.** No. 206b
- Humberstone Coal Co., Ltd., *Re, Ex p. National Trust Co., Ltd.* (Can.); **4. Bkpcy.** p. 227
- Hume v. Hume (Scot.); **27. H. & W.** p. 809
- Hummeltenberg, *Re, Beatty v. London Spiritualistic Alliance* (1923); **8. Char.** No. 4a
- Humphery v. Bowers (1929); **41. Ship.** No. 8732a
- v. Wilson (1929); **25. Gaming.** No. 188a
- Humphrey & Denman, Ltd. (In Liquidation) v. Kavanagh (1925); **9. Coys.** No. 1589a
- Humphreys v. Taylor (N.Z.); **6. B. of Exch.** p. 270
- v. Welling (1862); **4. Bkpcy.** No. 5039c
- Hunmantrao v. R. (Ind.); **17. Dep.** p. 606
- Hunt, *Re* (Can.); **23. Exors.** p. 729
- v. Balfour (Aus.); **21. Exon.** pp. 696, 697
- v. Brant School District Trustees (Can.); **19. Educ.** p. 648
- v. College of Physicians & Surgeons of Saskatchewan (Can.); **16. Courts.** p. 549; **17. Dep.** p. 599
- v. Colson (1833); **30. L. & T.** No. 1758a
- v. Cronin (1929); **39. Revenue.** No. 93b
- v. Danvers (1680); **31. L. & T.** No. 2727a
- v. Morgan (Can.); **21. Estpl.** p. 685
- v. Weiberg (Can.); **2. Agric.** p. 86
- Hunt & Co. v. Joly (1928); **28. Inc. T.** No. 595a
- Hunter, *In the Estate of* (Aus.); **23. Exors.** p. 720
- v. Damodar Das (Ind.); **10. Coys.** p. 392
- v. Farrell (Can.); **38. Real Prop.** p. 1087
- v. Hunter (Scot.); **29. Insee.** p. 871
- v. Lawrie (Can.); **25. Fraud. Conv.** p. 749
- v. Thompson (Can.); **32. Limit. of A.** p. 934
- v. West Maitland Municipal Council (Aus.); **12. Contr.** p. 444
- Hunter (Sir G. B.) (1922) "U" Trust (Trustees) v. Inland Revenue Comrs. (1929); **28. Inc. T.** No. 472f
- Hurley v. Boyce (Can.); **34. Mast. & S.** p. 964
- Hurley v. Stepney Borough Council (1923); **16. Cr. Pract.** No. 3722a
- Hurnandrai Fulchand v. Pragdas Budhsen, *Ex p. Pragdas Budhsen* (1924); **16. Courts.** No. 535a
- Huron (Synod of) v. Ferguson (Can.); **2. Arbn.** p. 145
- Hurst v. Downard (Can.); **32. Lien.** p. 931
- v. Walter's Palm Toffee Co., Ltd. (1929); **34. Mast. & S.** No. 2612a
- Husband, *Re, Neave v. Barnardo's Homes National Incorporated Assocn.* (1923); **8. Char.** No. 891a



- Hussain v. Chin Chong (Ind.)**; **17. Deeds**, p. 589  
**Hussey v. Fiddall (1699)**; **5. Bkpcy.** No. 7630a  
**Hutchings v. Campbell, Wilson & Horne, Ltd. (Can.)**; **19. Easmt.** p. 629  
**Hutchinson v. Beatty (Can.)**; **2. Agric.** p. 97  
 — **v. Morley (1839)**; **35. Misrep.** No. 434a  
 — **v. Zive (S. Af.)**; **7. Bldg. Conls.** p. 306  
**Hutchinson Brothers & Co., Ltd. v. Perkins (Can.)**; **21. Estpl.** p. 687  
**Hutchinson's Settlement, Re, Ex p. Dunn (1852)** **37. Powers**, No. 133a  
**Hutchison v. Cumming (Scot.)**; **24. Fact.** p. 739  
 — **v. Paxton (Can.)**; **21. Estpl.** p. 687  
**Hutson v. Valliers (Can.)**; **32. Lien**, p. 932  
**Hutton v. A.-G. (1927)**; **11. Const. L. Nos.** 505a, 505b  
 — **v. Dent (Can.)**; **11. Confl.** p. 425  
 — **v. Mayne (Ir.)**; **28. Infts.** p. 851  
 — **v. Wey (1827)**; **12. Contr.** No. 2248a  
**Hutton, McLea & Co. v. Kelly (Nfld.)**; **16. Courts**, p. 550  
**Huxham v. Johnson (1926)**; **28. Inc. T. No.** 79a  
**Hyam v. Inland Revenue Comrs (Scot.)**; **28. Inc. T.** pp. 824, 825  
**Hyams, Re, Ex p. Lindsay v. Hyams (1923)**; **5. Bkpcy.** No. 7778a  
**Hyatt v. Owens (Can.)**; **21. Eron.** p. 699  
**Hyde v. Tyler (1926)**; **25. Gaming**, No. 64a  
**Hydro-Electric Power Commission of Ontario v. Grey County (Can.)**; **20. Electric**, p. 655  
**Hydro-Electric Power Commission of Ontario & Thorold & Pelham (Townships), Re (Can.)**; **38. Rates**, p. 1081  
**Hyland v. Costerton (Can.)**; **1. Agcy.** p. 53  
**Hylton, Re (N.Z.)**; **28. Infts.** p. 849  
**Hyman v. Hyman (1929)**; **27. H. & W.** No. 2085a  
**Hynes v. Alton (Can.)**; **3. Bastj.** p. 202; **22. Evid.** p. 703
- I.
- Ibis VI., The (1921)**; **1. Adm.** No. 1520a  
**Ikala, The, Strathfillan (Owners) v. Ikala (Owners) (1929)**; **41. Ship**, No. 6677  
**Ilchester (Earl), Ex p. (1803)**; **12. Contr.** No. 2938b  
**Illing v. Manne & Manne (S. Af.)**; **31. L. & T.** p. 912  
**Imeson v. Lister (1920)**; **1. Agcy.** No. 1558a  
**Immigration Act, Re, Re Pong Fook Wing (Can.)**; **2. Aliens**, p. 120  
 —, **Re, R. v. Jen Jang How (Can.)**; **2. Aliens**, pp. 119, 120  
**Immigration Act & Santa Singh, Re (Can.)**; **2. Aliens**, p. 120  
**Immigration Act & Wong Shee, Re (Can.)**; **2. Aliens**, p. 120  
**Imperial Bank of Canada v. Alley (Can.)**; **3. p. 188**; **26. Guar.** p. 767, 770  
 — **v. Barber (Can.)**; **4. Bkpcy.** p. 204  
 — **v. Dennis (Can.)**; **6. B. of Exch.** p. 277; **9. Coys.** p. 363  
 — **v. Nixon (Can.)**; **26. Guar.** p. 767  
 — **v. Reid (Can.)**; **28. Infts.** p. 846  
 — **v. Simpson (Can.)**; **32. Limit. of A. p.** 934  
 — **v. Trusts & Guarantee Co. (Can.)**; **6. B. of Exch.** p. 278  
 — **v. Western Supply & Equipment Co. (Can.)**; **3. Bank.** p. 190  
**Imperial Bank of India Demand Drafts, Re (Ind.)**; **6. B. of Exch.** p. 284  
**Imperial Canadian Trust Co., Ltd. v. North American Lumber & Supply Co., Ltd., Re Stevens (Can.)**; **5. Bkpcy.** p. 252  
**Imperial Elevator & Lumber Co. v. Olive (Can.)**; **35. Mtge.** p. 1017  
**Imperial Elevator Co. v. Welch (Can.)**; **32. Lien**, p. 932  
**Imperial Loan & Investment Co. v. O'Sullivan (Can.)**; **35. Mtge.** p. 1021  
**Imperial Lumber Co. v. Johnson (Can.)**; **4. Bkpcy.** p. 223  
**Imperial Lumber Yards, Ltd. v. Ferguson, Cockshutt Plow Co., Claimant (Can.)**; **7. B. of Sale**, pp. 289, 291  
 — **v. McManus (Can.)**; **18. Discy.** p. 616; **32. Lien**, p. 932  
**Imperial Veterans in Canada v. Eastern Freighters, Ltd. (Can.)**; **41. Ship**, p. 1127  
**Importers Co. v. Westminster Bank (1927)**; **3. Bank. Nos.** 292b, 672a, 680a  
**Incanpe, Re (Can.)**; **24. Extradn.** p. 737  
**Inche Noriah v. Shaik Allie Bin Omar (1929)**; **25. Fraud.** **Contr. No.** 834a  
**Inches v. Fogg & Dowling (Can.)**; **17. Deeds**, p. 581  
**Income Tax Act of 1924 (No. 2), Re (Aus.)**; **28. Inc. T.** p. 819  
**Income Tax Comr. v. Western India Turf Club (Ind.)**; **28. Inc. T.** p. 840  
**Income Tax Comrs. v. Phra Phraison Salarak (Ind.)**; **28. Inc. T.** p. 836  
**Incorporated Glasgow Dental Hospital v. Lord Advocate (Scot.)**; **9. Coys.** p. 378  
**Indar Singh v. Munshi (Ind.)**; **1. Action**, p. 10  
**Independent Lumber Co. v. Boez (Can.)**; **32. Lien**, p. 932  
**Independent Order of Oddfellows v. Independent Order of Oddfellows Bon Accord Lodge No. 11 (Aus.)**; **25. Fr. Soc.** p. 753  
**India Electric Co. v. General Electric Trading Co. (Ind.)**; **2. Arbn.** p. 130  
**India General Navigation & Ry. Co. v. Dekhari Tea Co. (1923)**; **8. Carr.** No. 92a  
 — **v. Dekhari Tea Co., Ltd. (Ind.)**; **8. Carr.** p. 315  
**India General Navigation & Ry. Co., Ltd. v. Giridharilal Goberdhone Das (Ind.)**; **8. Carr.** p. 316  
**India Rubber, Gutta Percha & Telegraph Works Co., Ltd. v. Chapman (1926)**; **22. Evid.** No. 3850a; **34. Mast. & S. No.** 2811a  
**Indian Claims, Re, Re Dominion of Canada & Provinces of Ontario & Quebec (Can.)**; **17. Dep.** p. 604  
**Indian Immigration Trust Board of Natal v. Govindsamy (S. Af.)**; **2. Aliens**, p. 121  
**Indian Sugar Mills Co., Ltd. v. Brij Lal, Jagannath, Re Union (Ind.)**; **4. Bkpcy.** p. 221  
**Indrajit Pratap Sahi v. Amar Singh (Ind.)**; **16. Courts**, p. 553  
**Ines v. Calgary General Hospital (Can.)**; **18. Discy.** p. 618  
**Infants Act, Re, Re Bergman & Waldron (Can.)**; **11. Confl.** p. 425  
**Inge v. Lippingwell (1772)**; **12. Contr.** No. 2938a  
**Inglewood Pulp & Paper Co. v. New Brunswick Electric Power Commission (1928)**; **11. Comp. Pehe.** No. 1205a  
**Ingram v. Crawshaw Brothers (1928)**; **34. Mast. & S. No.** 3243a  
**Ingrebretsen v. Christensen (Can.)**; **32. Limit. of A.** p. 934  
**Inland Revenue v. Granite City S.S. Co. (Scot.)**; **28. Inc. T.** p. 825  
**Inland Revenue Comr. v. Royal Exchange Assurance Co. (S. Af.)**; **17. Dep.** p. 601  
**Inland Revenue Comrs. v. A. & B. (Scot.)**; **28. Inc. T.** p. 824  
 — **v. Adam (Scot.)**; **28. Inc. T.** p. 825  
 — **v. Anderstrom (Scot.)**; **28. Inc. T.** p. 830

- Inland Revenue Comrs. v. Bone (Scot.); **28. Inc. T. p. 836**  
 — v. Brown (1926); **28. Inc. T. No. 131e**  
 — v. Coke (1926); **28. Inc. T. No. 662a**  
 — v. Dalgety & Co. (1929); **28. Inc. T. No. 557a**  
 — v. Dickson (Scot.); **28. Inc. T. p. 814**  
 — v. Drysdale Trustees (1928); **28. Inc. T. p. 831**  
 — v. Falkirk Temperance Cafe Trust (Scot.); **28. Inc. T. pp. 832, 833**  
 — v. Fergus (1926); **28. Inc. T. No. 674b**  
 — v. Fleming (Scot.); **28. Inc. T. p. 835**  
 — v. Forth Conservancy Board (1928); **28. Inc. T. No. 36a**  
 — v. Forth Conservancy Board (Scot.); **28. Inc. T. p. 815**  
 — v. Glasgow Musical Festival Asscn. (Scot.); **28. Inc. T. pp. 832, 833**  
 — v. Hamilton (Lord) of Dalzell (Scot.); **28. Inc. T. p. 842**  
 — v. Hawley (1928); **28. Inc. T. No. 673a**  
 — v. Leydenberg Platinum Ltd. (S. Af.); **28. Inc. T. p. 818**  
 — v. Livingston (Scot.); **28. Inc. T. p. 819**  
 — v. Longford (Countess) (1928); **28. Inc. T. Nos. 691a, 691b**  
 — v. Lysaght (1928); **28. Inc. T. No. 131c**  
 — v. Marshall & Mitchell (Scot.); **28. Inc. T. p. 824**  
 — v. Medical Charitable Society for West Riding of Yorkshire (1926); **28. Inc. T. No. 472a**  
 — v. Pakenham (1928); **28. Inc. T. No. 691a, 691b**  
 — v. Peeblesshire Nursing Asscn. (Scot.); **28. Inc. T. p. 832**  
 — v. Rees Roturbo Development Syndicate (1928); **28. Inc. T. No. 96a**  
 — v. Roberts (1927); **28. Inc. T. No. 662b**  
 — v. Roberts Marine Mansions Trustees (1926); **28. Inc. T. No. 472c**  
 — v. Scottish Central Electric Power Co. (Scot.); **28. Inc. T. p. 825**  
 — v. Society for Relief of Widows & Orphans of Medical Men (1926); **28. Inc. T. No. 472a**  
 — v. Stott (S. Af.); **28. Inc. T. p. 819**  
 — v. Temperance Council of Christian Churches of England & Wales (1926); **28. Inc. T. Nos. 472b, 476a**  
 — v. Wilson (Scot.); **9. Coys. p. 366**  
 — v. Wright (1926); **28. Inc. T. No. 662a**  
 — v. — (1927); **28. Inc. T. No. 662a**  
 — v. Yorkshire Agricultural Society (1928); **28. Inc. T. No. 472d**  
 — v. Zorab (1926); **28. Inc. T. No. 131d**  
 Inlay Hardwood Floor Co. Ltd. v. Dierssen (Can.); **42. Solrs. p. 1142**  
 Inman, *Re*, Inman v. Inman (1903); **30. Jdgmts. No. 709a**  
 Innes v. Arundell, *Ex p.* Arundell (Aus.) **31. L. & T. p. 912**  
 — v. Ferguson (Can.); **19. Easmt. p. 628**  
 — & Griffith v. Cameron Valley Land Co. (Can.); **9. Coys. p. 371**  
 Innis v. Satchwell (Can.); **34. Med. p. 1001**  
 Innisfail, The, The Secret (1876); **1. Adm. No. 1280a**  
 Inrig Shoe Co., *Re* (Can.); **9. Coys. p. 376**  
 Institute of Chartered Accountants of England & Wales v. Hardwick (1919); **28. Injon. No. 906c**  
 Institute of Chartered Accountants of Manitoba v. Bellamy (Can.); **28. Injon. p. 856**  
 Insurance Contracts, *Re* (Can.); **17. Dep. pp. 591, 596**  
 Interior Trust Co. v. Essex Border Utilities Commission (Can.); **8. Chos. p. 346**  
 — v. Mackenzie (Can.); **5. Bkpcy. p. 265**  
 International Harvester Co. Ltd. v. Kirk (Can.); **21. Exon. p. 698**  
 International Metal Works, Ltd., *Re*, *Ex p.* R. (Can.); **4. Bkpcy. p. 226**; **10. Coys. p. 389**  
 International Transportation Asscn. Incorporated v. Capital Storage Co. (Can.); **35. Misrep. p. 1009**  
 Interprovincial Flour Mills, Ltd. v. Western Trust Co. (Can.); **4. Bkpcy. p. 221**  
 Interstate Investment Co., Ltd. v. Mobbs (Aus.); **8. Chos. p. 349**  
 Inverarity v. Edinburgh Collieries, Ltd. (Scot.); **34. Mast. & S. p. 983**  
 Inverarity Estate, *Re* (Can.); **17. Dep. p. 596**  
 Inverclyde's (Lord) Trustees v. Inland Revenue Comrs. (1924); **21. E. D. No. 277a**  
 Inverclyde's (Lord) Trustees v. Millar (1924); **21. E. D. No. 277a**  
 Inverness Railway & Coal Co. v. McIsaac (Can.); **2. Arbn. p. 145**  
 Investors Mortgage Security Co. v. McDonald & Henry (Can.); **32. Limit. of A. p. 935**  
 Inwald (Josef) Act. v. Pfeiffer (1927); **2. Aliens, No. 280b**  
 — v. Pfeiffer (1928); **2. Aliens, No. 280b**  
 Ireland v. London (Can.); **32. Limit. of A. p. 936**  
 — v. Noble (Can.); **31. L. & T. p. 907**  
 — v. Quirke (Ir.); **25. Fish. p. 745**  
 Irish Civil Servants *Re* (1929); **16. Courts, No. 690b**; **17. Dep. No. 714c**  
 Irish People's Assurance Society v. Dublin City Assurance Co., Ltd. (Ir.); **25. Fr. Soc. p. 753**; **32. Libel, p. 924**  
 Irma Co-operative Co., Ltd., *Re*, *Re* Love & Knudson (Can.); **10. Coys. pp. 385, 387, 388**  
 Ironmonger & Co. v. Dyne (1928); **3. Bank. No. 1012b**; **25. Gaming, No. 15d**  
 Ironsides v. Green (Can.); **38. Real Prop. p. 1087**  
 Irvine *Ex p.* (Can.); **38. Real Prop. p. 1087**  
 Irving v. McLachlan (Can.); **19. Eccl. p. 641**  
 — v. Merygold (Can.); **35. Misrep. p. 1010**  
 — v. South Eastern Ry. Co. (1857); **9. Coys. No. 2332a**  
 Irwin v. Barker (1925); **15. Crim. No. 12,169b**  
 — v. Beynon (Can.); **32. Lien p. 931**  
 — v. Campbell (Can.); **2. Arbn. p. 138**  
 — v. Hamal (N.Z.); **31. L. & T. p. 905**  
 — v. Irwin (Can.); **27. H. & W. p. 787**  
 — v. Mariposa Corpn. (Can.); **26. Guar. p. 771**  
 Isaac Walton & Co. Ltd. v. Vanguard Motor Bus Co., Ltd. (1908); **26. Hghys. No. 1513a**  
 Isaacs v. Keech (1925); **14. Crim. No. 1622a**  
 Isipingo Health Committee v. Jadwat (S. Af.); **17. Dep. p. 601**  
 Isitt & Isitt v. Hammond & National Resources Sec. Co. (Can.); **18. Discy. p. 613**  
 Ismail Hoosain Manisa v. K. Purbhubbhai (Ind.); **6. B. of Arch. p. 280**  
 Isman v. Widen (Can.); **26. Guar. p. 771**  
 Iveagh v. Harris (1929); **40. S. Land, No. 2807a**  
 Iverson & Greater Winnipeg Water District, *Re* (Can.); **2. Arbn. p. 158**  
 Iwanchuk v. Iwanchuk (Can.); **25. Fraud. Conv. p. 751**  
 Izard v. Colbron (1824); **5. Bkpcy. No. 8970a**

## J.

- J. & G. Garment Mfg. Co., *Ex p.*, *Re* J. R. Morgan, Ltd. (Can.); **9. Coys. p. 378**  
 J. B. Rogers, Ltd. v. Harry Lesnie, Ltd. (Aus.); **39. S. Goods. p. 1102**  
 J. Brownlee & Co. v. Canadian National Rys. (Can.); **38. Rys. p. 1076**

- J. H. Chandler & Co., Ltd., *Re* (Ind.); **9. Coys.** p. 357
- J. I. Case Threshing Machine Co. v. General Motors Acceptance Corp'n. (Can.); **8. Chos.** p. 348
- v. Mitten (Can.); **21. Estpl.** p. 688
- J. J. D. etc., *Re* (Ir.); **33. Lunat.** p. 946
- J. P. Ferns v. Ingelby, The (Can.); **1. Adm.** p. 36
- J. R. Morgan, Ltd., *Re, Ex p.* J. & G. Garment Mfg. Co. (Can.); **9. Coys.** p. 378
- J. Stanley Wedlock, Ltd., *Re* (Can.); **3. Bank.** p. 189; **4. Bkpcy.** p. 217
- J. Stanley Wedlock, Ltd., *Re, Ex p.* Royal Bank (Can.); **9. Coys.** p. 373
- Jabbar Ali Sardar v. Monmoham Paudey (Ind.); **22. Evid.** p. 703
- Jack v. Nanoose Wellington Collieries, Ltd. (Can.); **17. Deeds.** p. 584
- Jacks & Co. v. Joosab Mahomed (Ind.); **21. Estpl.** p. 685
- Jacks (William) & Co. v. Palmer's Shipbuilding & Iron Co. (1928); **12. Contr.** No. 2861a; **39. S. Goods.** No. 430a
- Jackson, *Ex p.* R. v. Lewisham Corp'n. (1929); **26. Hghys.** Nos. 1435a, 1435b, 1435c
- , *Re* (Can.); **4. Bkpcy.** p. 215
- v. Anglo-American Oil Co. (1923); **13. Cty. Cts.** No. 695a
- v. Bennan (1893); **18. Distr.** No. 654a
- v. Black (Can.); **21. Exon.** p. 692
- v. Bridge (1702); **12. Contr.** No. 4936a
- v. Glasgow Corp'n. (Scot.); **36. Negl.** p. 1032
- v. Innes (1819); **35. Allec.** No. 501a
- v. Jackson (N.Z.); **27. H. & W.** p. 806
- v. Saskatchewan Co-operative Elevator Co., Ltd. (Can.); **1. Agcy.** p. 52
- Jackson & Co., Ltd. v. Co-operative Freezing Co. of South Canterbury, Ltd. (N.Z.); **12. Contr.** p. 455
- Jackson (John) & Co. (Iron Merchants), Ltd. v. Glasgow Assessor (Scot.); **38. Rates.** p. 1083
- Jackson (J. B.), Ltd. & Gettas, *Re* (Can.); **31. L. & T.** p. 913
- Jackson Machines, Ltd. v. Michaluck (Can.); **6. B. of Exch.** p. 276
- Jackson Water Supply Co. v. Bardeck (Can.); **32. Licn.** p. 931
- Jackson's Trustees v. Inland Revenue (Scot.); **8. Char.** p. 337; **28. Inc. T.** p. 832
- Jacob & Co. v. Rash Behari Ghose (Ind.); **3. Barr.** p. 193
- Jacob's Estate, *Re, Lancaster v. Gaselee, Ex p.* Lancaster (1851); **29. Insee.** No. 3050
- Jacobs v. Batavia & General Plantations Trust (1924); **9. Coys.** No. 814a
- v. Inland Revenue Comrs. (1925); **28. Inc. T.** No. 671a
- v. Seward (1872); **20. Eqq.** No. 293a
- Jacobs Levitatz & Braude v. Kroonstad Roller Mills (S. Af.); **1. Agcy.** p. 39
- Jacobson, *Re, Ex p.* Goldberg (Can.); **4. Bkpcy.** p. 228; **5. Bkpcy.** p. 258
- v. Fort Morgan (Can.); **1. Adm.** p. 20
- v. Frachon (1927); **11. Confl.** No. 1147a
- v. Schneider (Can.); **2. Animals.** p. 128
- Jacobson, etc. v. Jacobson, etc. (S. Af.); **5. Bkpcy.** p. 248
- Jacques v. Jacques (Can.); **22. Evid.** p. 713
- Jaeger Co., Ltd. v. Jaeger (1929); **21. Estpl.** No. 521a; **43. Trade Mks.** No. 696a
- Jagan Mohan Sarkar v. Brojendra Kumar Chakrabarti (Ind.); **31. L. & T.** p. 907
- Jaggo Bai v. Utsava Lal (Ind.); **32. Limit. of A.** p. 936
- Jai Narain v. Jafar Beg (Ind.); **21. Estpl.** p. 686
- J. S.
- Jaipal Bhagat v. R. (Ind.); **24. Extrad.** p. 737
- Jamal v. Moolla Dawood, Sons & Co. (1916); **9. Coys.** No. 2269b
- James, *In the Estate of* (1926); **23. Exors.** No. 2585b
- v. Beaver Consolidated Mines, Ltd. (Can.); **9. Coys.** p. 376
- v. Bell (Can.); **38. Rates.** p. 1085
- v. British General Insurance Co. (1927); **29. Insee.** Nos. 3191a, 3211a, 3216a, 3216b
- James v. Federal Comr. of Taxation (Aus.); **28. Inc. T.** p. 816
- v. Grand Trunk Ry. Co. (Can.); **38. Ryss.** p. 1076
- v. Gwauncaegurwen Colliery Co. (1926); **34. Mast. & S.** No. 2492a
- v. Penderyn Limestone Quarries (Ihrwain), Ltd. (1926); **34. Mast. & S.** No. 2491a
- v. R. (S. Af.); **15. Crim.** p. 512
- v. South Australia State (Aus.); **17. Dep.** p. 601, 602
- v. Toronto (Can.); **26. Hghys.** p. 1083
- James (M. A.) & Sons, *Ex p.* Re McMurtry & Co. (Can.); **4. Bkpcy.** p. 221
- James Finday & Co. v. N. V. Kwik Hoo Tong Handel Maatschappij (1928); **17. Dams.** No. 347a
- v. N. V. Kwik Hoo Tong Handel Maatschappij (1929); **17. Dams.** No. 347a; **39. S. Goods.** Nos. 885a, 1811a, 2519a
- James Lumbers Co., Ltd., *Re* (Can.); **10. Coys.** p. 385
- James Ross & Co. (Lime Wharf), Ltd. v. Stirlingshire Assessor (Scot.); **38. Rates.** p. 1083
- James W. Elwell, The (1921); **1. Adm.** No. 700b
- Jameson v. Cotter, *Re* Wheeler (1929); **21. E. D.** Nos. 117a, 209c, 271b
- v. Sinclair (Scot.); **25. Gaming.** p. 759
- Jamieson, *Ex p.* Re Raper (Can.); **7. B. of Sale.** p. 290
- , *Re, Ex p.* Christian (Aus.); **38. Rates.** p. 1085
- v. Jamieson (Can.); **2. Arbn.** p. 159
- v. Sherwood (Can.); **25. Gaming.** p. 756
- Jamieson Construction Co., Ltd. v. Lacombe & North Western Ry. (Can.); **7. Bldg. Conls.** p. 301
- Janera, The (1928); **11. Confl.** No. 1378a
- Janon v. Janion (1926); **27. H. & W.** Nos. 5519, 5625a
- Janoo Hassan Sait v. Mahamad Ohuthu (Ind.); **11. Confl.** p. 421
- Janvier v. Sweeney (1919); **1. Action.** No. 205a
- Jacques v. Federal Comr. of Taxation (Aus.); **28. Inc. T.** p. 836
- Jardine v. Prescott Lumber Co., Ltd. (Can.); **1. Agcy.** p. 60
- Jarvis v. Jarvis (Can.); **1. Agcy.** p. 56; **24. Exors.** p. 732; **25. Gifts.** p. 764
- Jasperson v. Dominion Tobacco Co. (1923); **1. Agcy.** No. 1501a
- Jawett, *Re* (1929); **5. Bkpcy.** No. 5499b
- Jebara v. Ottoman Bank (1927); **1. Agcy.** No. 215c; **2. Aliens.** No. 402a
- Jeffery v. Rangoon Official Assignee (Ind.); **4. Bkpcy.** p. 221
- Jeffrey (F. W.) & Sons, Ltd. v. Copeland Flour Mills (Can.); **7. Bounds. & F.** p. 298
- Jeffreys, *Re* (Aus.); **5. Bkpcy.** p. 216
- Jells, *Re* (Can.); **22. Evid.** p. 703
- Jenkins, *In the Goods of* (1869); **28. Infts.** No. 1441a
- v. Ash (1929); **2. Animals.** Nos. 587a, 587b
- v. Briant (1834); **39. Intchys.** No. 525a
- v. Gwauncaegurwen Colliery Co. (1926); **34. Mast. & S.** No. 2492a
- v. Jenkins (1928); **6. B. of Exch.** Nos. 2393a, 2976a; **23. Exors.** Nos. 154a, 165b

- Jenkins & Brash v. Vulcan Iron Works (Can.); **25. Gifts**, p. 765
- Jenkins & Co. v. Simon (1920); **13. Cty. Cts.** Nos. 410a, 691b
- Jensen, *Re* (Can.); **18. Desct.** pp. 609, 611
- Jenyns v. Jenyns (Aus.); **36. Pats.** p. 1051
- Jerger v. Pearce (Aus.); **2. Aliens**, pp. 118, 122
- Jersey's (Lord) Executors v. Bassom (1926); **28. Inc. T.** No. 99
- Jerusalem-Jaffa District Governor v. Suleiman Murra (1926); **17. Dep.** Nos. 20a, 398a
- Jessie Mac, The v. Sea Lion, The (Can.); **1. Adm.** p. 30
- Jewan Lal Daga v. Nilmani Chaudhuri (Ind.); **22. Evid.** p. 710; **35. Mtge.** p. 1017
- Jewan Ram Khettry v. East Indian Ry. Co. (Ind.); **8. Carr.** p. 318
- Jex v. Hicks (Can.); **38. Real Prop.** p. 1091
- Jeyes Sanitary Compounds Co., Ltd. v. Philadelphus Jeyes & Co., Ltd. (1929); **43. Trade Mks.** No. 1415a
- Jhandoo Mal-Jagan Nath v. Puhl Chand-Faten Chand (Ind.); **12. Contr.** p. 45
- Jivanchand Gambhirmal, etc. v. Laxminarayan Ganeshram (Ind.); **25. Gaming**, p. 755
- Jivanguri Guru Chamelgiri v. Gajanan Narayan Patkar (Ind.); **17. Dep.** p. 607
- Jnauendra Nath Bagchi v. Sures Chandra Roy (Ind.); **2. Arbn.** p. 138
- Joachimson v. Swiss Bank Corp'n. (1921); **3. Bank.** No. 338b
- Joannis Vatis, The (1922); **1. Adm.** No. 781e
- Joannis Vatis, The (No. 2) (1922); **1. Adm.** Nos. 706a, 781d
- Job v. Job (1853); **37. Powers**, No. 351a
- Jobhiers, *Re*, *Ex p.* Fletcher (1835); **38. Real Prop.** No. 183a
- Joe Fong, *Re* (Can.); **2. Aliens**, p. 120
- Joe Lee, Ltd. v. Dalmeny (Lord) (1927); **25. Gaming**, No. 15b
- v. Tattersall's Committee (1927); **25. Gaming**, No. 15b
- Jogendra Lal Sarkar v. Mohesh Chandra Sadhu (Ind.); **31. L. & T.** p. 907
- Jogesh Chandra Roy v. Annada Charan Chaudhury (Ind.); **31. L. & T.** p. 902
- Johannesburg Consolidated Investment Co., Ltd. v. Transvaal Provincial Administration (S. Af.); **17. Dep.** p. 561
- John Abell Engine & Machine Works Co. v. Scott (Can.); **21. Exon.** p. 694
- John Batt & Co. (London) v. Kanoolal & Co. (Ind.); **2. Arbn.** p. 158
- John Deere Plow Co. v. Bowen (Can.); **27. H. & W.** p. 788
- John Deere Plow Co., Ltd. v. Peters & Spohn (Can.); **17. Deeds**, p. 584; **25. Gifts**, p. 765
- John Jackson & Co. (Iron Merchants), Ltd. v. Glasgow Assessor (Scot.); **38. Rates**, p. 1083
- John Walker & Sons, Ltd. v. Kilmarnock Assessor (Scot.); **38. Rates**, p. 1083
- John Wright & Eagle Range, Ltd. v. General Gas Appliances, Ltd. (1929); **36. Pats.** No. 308c
- Johns, *Re*, Worrell v. Johns (1928); **5. Bkpcy.** No. 5861a
- Johnson, *Ex p.*, *Re* Yates (Aus.); **17. Dep.** pp. 600, 601
- , *In the Goods of* (1865); **23. Exors.** No. 2603a
- *Re*, *Re* Engineering Profession Act (Can.); **7. Bldg. Contrs.** p. 306
- , *Re*, Goodrich v. Ogle (1893); **8. Char.** No. 894a
- v. A.-G., *Re* Jones (1925); **23. Exors.** No. 5423a
- v. Beaver Dam Municipal District (Can.); **18. Distr.** p. 624
- Johnson v. Berry (Can.); **22. Evid.** p. 711
- v. Buchanan (Can.); **21. Exon.** p. 689
- Charles S. Neff, The (Can.), **21 Exch. C. R.** 171; **1. Adm.** p. 37
- v. Clarke (1928); **31. L. & T.** No. 1978a
- v. Commonwealth (Aus.); **17. Damgs.** p. 577
- v. Finlay (Nfld.); **12. Contr.** p. 471
- v. Giffen (Can.); **2. Animals**, p. 126
- v. Grant (Scot.); **16. Cntmpt.** p. 546
- v. Hawkes (Can.); **18. Discy.** p. 616
- v. Johnson (Can.); **6. B. of Exch.** p. 275
- v. Johnson & Ericksen (Can.); **27. H.** p. 803
- v. Mavromichali, *Re* Achilopoulos (1928); **23. Exors.** No. 2411a
- v. Medicine Hat Brewing Co., Ltd. (Can.); **1. Agcy.** p. 67
- v. R. (Can.); **22. Evid.** p. 706
- v. Rand Daily Mail (S. Af.); **32. Libel**, p. 923
- v. Richardson (Can.); **6. B. of Exch.** p. 284
- v. Routh (1857); **20. Eqq.** No. 1040a
- v. Smith (1584); **32. Libel**, No. 2582a
- v. Warren (F.) & Co. (1928); **34. Mast. & S.** No. 2836a
- Johnson & Mackay v. Charles S. Neff, S.S. (Can.), **18 Exch. C. R.** 168; **1. Adm.** p. 28
- v. Charles S. Neff, S.S. (No. 1) (Can.), **17 Exch. C. R.** 155; **1. Adm.** pp. 36, 37
- v. Charles S. Neff, S.S. (No. 2) (Can.), **17 Exch. C. R.** 158; **1. Adm.** p. 37
- Johnson Investments, Ltd. v. Pagritide (Can.); **17. Deeds**, p. 588
- Johnson-Ferguson v. Board of Agriculture (Scot.); **2. Agric.** p. 91
- Johnston, *Ex p.*, *Re* Noden, Hallett & Johnston (Can.); **4. Bkpcy.** p. 219
- , *Re* (Can.); **4. Bkpcy.** p. 217
- , *Re* (Ir.); **4. Bkpcy.** p. 222
- , *Re*, Johnston v. Hogg (Can.); **23. Exors.** p. 723
- v. Davies, *Re* Chardon (1928); **8. Char.** No. 231a; **37. Perps.** No. 408a
- v. Hogg, *Re* Johnston (Can.); **23. Exors.** p. 611
- v. McCallum, *Re* South Bruce Provincial Election (Can.); **20. Elect.** pp. 651, 652, 654; **42. Stats.** p. 1148.
- v. McMorran (Can.); **36. Negl.** p. 1031
- v. Steacy (Can.); **20. Eqq.** p. 659
- Johnstone v. Goodson (N.Z.); **1. Agcy.** p. 67
- v. Johnstone (1929); **27. H. & W.** No. 4281a
- v. Mappin (1891); **40. Stillts.** No. 201a
- v. Mount Vernon Colliery Co., Ltd. (Scot.); **34. Mast. & S.** p. 996
- v. Pedlar (1921); **2. Aliens**, No. 65a
- v. Smith & Nelson (Can.); **43. Trusts**, p. 1171
- Johnstone Lumber Co. v. Hager (Can.); **25. Fraud. Conv.** p. 749
- Johurmull Bhutra v. Kedar Nath Bhutra (Ind.); **3. Barr.** p. 194
- Jolly v. Virgo (Aus.); **30. Intox.** p. 882
- Jonah v. Hitchcock (Can.); **21. Exon.** p. 698
- Jonas v. Gilbert (Can.); **17. Dep.** p. 598
- v. Marshall (Can.); **17. Dep.** p. 598
- Jonasson v. Dubinak (Can.); **39. S. Goods**, p. 1106
- Jones, *Ex p.* (Can.); **16. Cr. Pract.** p. 569
- , *In the Estate of* (1927); **23. Exors.** No. 911a
- , *In the Estate of*, Thomas v. Jones (1928); **23. Exors.** No. 3127b
- , *Re* (Can.); **8. Char.** p. 334
- , *Re* (N.Z.); **4. Bkpcy.** p. 231
- , *Re*, Johnson v. A.-G. (1925); **23. Exors.** No. 5423a
- , *Re*, Lambert v. Colbourn (1928); **21. E. D.** No. 238a

- Jones, *Re*, Public Trustee v. Clarendon (Earl) (1929); **3. Char.** No. 217a  
 — v. Burgess (Can.); **1. Agcy.** p. 69  
 — v. Cooke, *Re* Tithe Act, 1891, Roberts v. Potts (1894); **12. Contr.** No. 4358a  
 — v. Cory Brothers & Co., Ltd. (1921); **1. Action**, No. 116a  
 — v. Cory Brothers & Co., Ltd. (1926); **34. Mast. & S.** No. 3129a  
 — v. Cushing (Can.); **12. Contr.** p. 455  
 — v. Dorland (Can.); **19. Eccl.** p. 611  
 — v. Eckley (Can.); **33. Mal. Pros.** p. 957  
 — v. Evans (1923); **2. Agric.** No. 266u  
 — v. —, *Re* Rees (1929); **8. Char.** No. 702a  
 — v. Garforth Collieries, Ltd. (1926); **34. Mast. & S.** No. 3226b  
 — v. Hutton (Can.); **32. Limit. of A.** p. 939  
 — v. Jenkins, *Re* Griffiths (1926); **5. Bkpcy.** No. 5922a  
 — v. Jones (1929); **3. Bastj.** No. 130c; **21. Estpl.** No. 153a; **27. H. & W.** Nos. 5781c, 6121d; **30. Jdgmts.** No. 11a  
 — v. — (Aus.); **17. Dep.** p. 602; **21. Econ.** p. 696; **30. Jdgmts.** p. 891  
 — v. — (Can.); **21. Econ.** p. 694; **27. H. & W.** p. 795  
 — v. — (Ind.); **11. Confl.** p. 413  
 — v. Kinnear (Can.); **25. Gifts.** p. 761  
 — v. Oceanic Steam Navigation Co., Ltd. (1924); **8. Carr.** No. 685c; **11. Confl.** No. 639a  
 — v. Pickering (1874); **20. Elect.** No. 859  
 — v. Potts (1894); **12. Contr.** No. 4358a  
 — v. Ryder (Can.); **21. Estpl.** p. 681  
 — v. St. John (City) (Can.); **21. Estpl.** p. 679  
 — v. Smith (Can.); **11. Confl.** p. 425  
 — v. South-West Lancashire Coal Owners' Assocn (1927); **28. Inc. T.** No. 307a; **30. Jdgmts** No. 569b  
 — v. Thomas & Norman (Can.); **6. B. of Exch.** p. 268  
 — v. William Muirhead Macdonald Wilson & Co., Ltd. (1926); **34. Mast. & S.** No. 3829a  
 — v. Wright (1927); **28. Inc. T.** No. 313a  
 Jones & Carter's Arbitration, *Re* (1922); **2. Agric.** No. 266v  
 Jones & Colquhoun v. Finch (Can.); **6. B. of Exch.** p. 276  
 Jones & James v. Provincial Insurance Co., Ltd. (1929); **29. Insec.** No. 3217c  
 Jones (David), Ltd. v. Leventhal (Aus.); **31. L. & T.** pp. 903, 908  
 Jones (R. E.), Ltd. v. Waring & Gillow, Ltd. (1926); **6. B. of Exch.** No. 896a  
 Jordan v. Roberts (1862); **22. Evid.** No. 4461a  
 Jorgenson, *Re* (Can.); **2. Animals**, p. 132  
 Josef Inwald Act. v. Pfeiffer (1927); **2. Aliens**, No. 280b  
 — v. Pfeiffer (1928); **2. Aliens**, No. 280b  
 Journal Printing Co. v. McViety (Can.); **13. Corps.** p. 487  
 Journeay v. Railway Passengers Assurance Co. (Can.); **21. Estpl.** p. 684  
 Jowers v. Collins, *Re* Collins (1929); **40. Stillmts.** No. 3138b  
 Jowett v. Federal Taxation Comr. (Aus.); **30. Land Tax**, p. 897  
 Joyce & Scarry, *Re* (Can.); **14. Exors.** p. 731  
 Joylall & Co. v. Gopiram Bhotica (Ind.); **2. Arbn.** p. 144  
 Jubilee Cotton Mills, Ltd., *Re* (1924); **9. Coys.** No. 75  
 Jubilee Cotton Mills, Ltd. (Official Receiver & Liquidator) v. Lewis (1924); **9. Coys.** No. 75  
 Judd, *Ex p.*, *Re* Gooch (1921); **6. B. of Exch.** Nos. 567a, 2096a  
 Judd v. McKeon (Aus.); **17. Dep.** p. 600  
 Jude v. Archer & Goodman (Can.); **21. Estpl.** p. 683  
 Judges Act, *Re* (Can.); **17. Dep.** pp. 598, 602  
 Judmaier v. Standard Bank of Canada (Can.); **6. B. of Exch.** p. 269  
 Juffrouw Louisa Margaretha, The (1781); **2. Aliens**, No. 119a  
 Jugendra Lal Sarkar v. Mohesh Chandra Sadhir (Ind.); **30. L. & T.** p. 898  
 Juggi Lal-Kamalapat v. Swadeshi Mills Co., Ltd. (Ind.); **43. Trade Mks.** p. 1163  
 Juggi Lal-Kamalapat & Juggilal-Kamalapat Mills of Cawnpore v. Swadeshi Co., Ltd. (1928); **43. Trade Mks.** No. 1557a  
 Jukes v. Miskelly (Can.); **2. Animals**, p. 128  
 Julian v. Auckland (Mayor, etc.) (N.Z.); **35. Mistake**, p. 1013  
 Jumna Khan v. Bankers & Traders Insurance Co., Ltd. (Aus.); **29. Insec.** p. 861  
 Jung Yin, *Re* (Can.); **2. Aliens**, p. 120  
 Jungo Lee v. R. (Can.); **2. Aliens**, p. 121  
 Juno, The (1922); **11. Confl.** No. 1383a  
 Jupiter, The (1924); **1. Adm.** No. 142d  
 —, The (No. 2) (1925); **1. Adm.** Nos. 143a, 171a  
 —, The (No. 3) (1927); **11. Const. L.** No. 387a  
 Juran Mandal v. Ram Mandal (Ind.); **17. Decds.** p. 585  
 Jury Gold Mine Development Co., Ltd., *Re* (Can.); **10. Coys.** p. 385  
 Justice v. Justice (Aus.); **3. Bastj.** p. 197; **27. H. & W.** p. 802  
 Jwaladutt R. Pillam v. Bansilal Motilal (Ind.) **36. Pcturs.** p. 1011

K.

- K. v. K. (Can.); **27. H. & W.** p. 793  
 K. E. v. Maung Tu Saw (Ind.); **37. Press.** p. 1065  
 Kaemena v. Central Bank of London, Ltd. (1888); **20. Eqq.** No. 1  
 Kait v. Star Publishing Co. (Can.); **18. Discy.**  
 Kaik v. Boraski (Can.); **13. Corps.** p. 486  
 Kaikushroo Tal-Yar-Khan v. Bai Gulab (Ind.); **5. cy.** p. 238; **42. Stl. Ex.** p. 1150  
 Kajes v. Immigrants' Appeal Board (S. Af.); **2. Aliens**, p. 121  
 Kajner v. Kovacz (Can.); **7. Bounds. & F.** p. 296  
 Kalachand Mulherji v. Jafindra Mohan Banerji (Ind.); **37. Perps.** p. 1055  
 Kalle & Co., Ltd., *Re* (1921); **2. Aliens**, Nos. 195a, 405a  
 Kalyani Pillai v. Thiruvankadaswami Ayyangki (Ind.); **16. Courts.** p. 554  
 Kamala Prosad Sukul v. Kishori Mohan Pramanik (Ind.); **38. Real Prop.** p. 1092  
 Kamloops Copper Co., *Re*, *Ex p.* Kamloops (Can.); **4. Bkpcy.** p. 222  
 Kamta Singh v. Chaturbhuj Singh (Ind.); **35. Mtye.** p. 1022  
 Kaneen v. Mellish (Can.); **7. Bounds. & F.** p. 296  
 Kankakee, The, The Hocking, The Genesee (1917); **37. Press.** No. 1302a  
 Kanwar Bhan-Sukha Nand v. Ganpat Rai-Ram Jiwan (Ind.); **12. Contr.** p. 151; **25. Gaming**, p. 755  
 Kaplan, *Re*, McLean (J. J. H.) Estate Co. v. Newton (Can.); **4. Bkpcy.** p. 222  
 Kapurji Magniram v. Panaji Berchand (Ind.); **1. Agcy.** p. 77; **36. Pcturs.** p. 1042  
 Karrar v. Schubert (Can.); **12. Contr.** p. 444  
 Kasler & Cohen v. Slavouski (1928); **17. Damgs.** No. 227a

# TABLE OF CASES.

- Kaslo Municipal Voters' List, *Re* (Can.); **20.** *Elect.* p. 650
- Kassop v. Evans (Nfld.); **21.** *Exon.* p. 690
- Kaster v. Cowan (Can.); **2.** *Animals*, p. 133; **17.** *Deeds*, p. 586
- Kathleen, The (1925); **1.** *Adm.* No. 1553b
- Katzman v. Ownahome Realty Co. (Can.); **1.** *Agcy.* p. 78; **17.** *Deeds*, p. 587
- Kaufield v. Kaufield (Can.); **27.** *H. & W.* p. 795
- Kaufman v. British Surety Insurance Co., Ltd. (1929); **29.** *Insec.* Nos. 11a, 36a, 218a
- Kaufman Segal & Domb, *Re, Ex p.* Trustee (1923); **5.** *Bkpcy.* Nos. 6802a, 6879a
- Kaulbach v. Boylan (Can.); **28.** *Injon.* p. 853
- v. Cook (Can.); **32.** *Limit. of A.* p. 936
- v. Taylor (Can.); **35.** *Mtgc.* p. 1023
- Kavanagh v. Whittle (Ir.); **31.** *L. & T.* pp. 915, 919
- Kavaner v. Bowhey (Can.); **9.** *Coys.* p. 378; **35.** *Misrep.* p. 1009
- Kawaluk v. Kawaluk (Can.); **27.** *H. & W.* p. 787
- Kawin v. Kawin (Can.); **27.** *H. & W.* p. 788
- Kawula v. R. (S. Af.); **14.** *Crim.* p. 516
- Kaye, *Re* (1822); **16.** *Cr. Pract.* No. 3352a
- Keyley v. Hothersall (1925); **21.** *Exon.* No. 88a
- Kean v. Edwards (Can.); **2.** *Arbn.* p. 157
- Kean & Bird, *Re* (Can.); **16.** *Cntmpl.* p. 548
- Keane, *Re* (Ir.); **5.** *Bkpcy.* p. 256
- Keane, *Re*, Lumley v. Desborough (1871); **28.** *Infls.* No. 42a
- v. Australian S.S. Pty., Ltd. (Aus.); **41.** *Ship.* p. 1131
- v. Canadian Pacific Ry. Co. (Can.); **12.** *Contr.* p. 465
- Kearl v. Wonnacott (Can.); **25.** *Fraud. Conv.* p. 748
- Kearney v. Creelman (Can.); **38.** *Real Prop.* p. 1092
- Kearney's Estate, *Re*, Whitehurst, Appellant (Aus.); **21.** *Estpl.* p. 687
- Kearns, *Ex p.*, *Re* Gartrell (Can.); **4.** *Bkpcy.* p. 204
- Keating v. Horwood (1926); **25.** *Food.* No. 414a
- v. Keating (Ir.); **33.** *Lunal.* p. 946
- Keddy v. Daurey (Can.); **12.** *Contr.* p. 443
- Keefe v. McLennan (Can.); **17.** *Dep.* p. 597
- Keen v. Mear (1920); **1.** *Agcy.* Nos. 834b, 836a
- Keenan Brothers, Ltd. v. Langdon (Can.); **32.** *Lien.* p. 931
- Keene, *Ex p.* (Aus.); **34.** *Med.* p. 1002
- , *Re* (1922); **5.** *Bkpcy.* Nos. 5495b, 5811a
- v. Colley (Can.); **17.** *Dep.* p. 591
- Keenleyside v. Partridge (Can.); **25.** *Fraud. Conv.* p. 748
- Keep Brothers v. Birch & Bradshaw (N.Z.); **18.** *Disce.* pp. 612, 614
- Keewatin Power Co., Ltd. v. Keewatin Flour Mills Co., Ltd. (Can.); **11.** *Const. L.* pp. 437, 438; **16.** *Cr. Pract.* p. 558; **17.** *Deeds*, p. 586
- Keewatin Power Co., Ltd. v. Lake of the Woods Milling Co., Ltd. (Can.); **11.** *Const. L.* p. 437, 438; **16.** *Cr. Pract.* p. 558; **17.** *Deeds*, p. 586
- Keir v. Hunter (Can.); **40.** *S. Land.* p. 1110
- Keir v. Robins (1838); **31.** *L. & T.* No. 2286a
- Keith v. Lincoln Pulpwood Co. (Can.); **17.** *Dangs.* p. 576
- Kelantan Government v. Duff Development Co. (1923); **2.** *Arbn.* No. 1644a
- Kelleyway, *Ex p.*, *Re* Southern Cross Motor Fuels, Ltd. (Aus.); **10.** *Coys.* p. 387
- Kellington v. Rosa (Can.); **29.** *Intpr.* p. 877
- Kellogg v. Dappen (Can.); **2.** *Animals*, p. 126
- Kelly, *Ex p.*, *R. v. Dalby* Licensing Authority (Aus.); **16.** *Cr. Pract.* p. 570; **30.** *Intox. L.* p. 881
- Kelly v. Grimmer S. D. 25 (Can.); **19.** *Educ.* p. 649
- v. Kelly (Can.); **22.** *Evid.* p. 713
- v. Kelly (Scot.); **27.** *H. & W.* p. 803
- v. Rae (Aus.); **12.** *Contr.* p. 458
- Kelly v. Sullivan (Can.); **17.** *Dep.* p. 602
- Kelly Brothers & Co. v. Tourist Hotel Co. (Can.); **32.** *Lien.* p. 929
- Kelowna Growers' Exchange & Okanagan United Growers v. De Caqueray (Can.); **28.** *Injon.* p. 855
- Kelpon v. Stewart (Can.); **31.** *L. & T.* p. 905
- Kelsey v. Birmingham Corpn. (1927); **34.** *Mast. & S.* No. 628b
- Kelso v. McLachlan (Aus.); **25.** *Gaming.* p. 761
- Kelty Gas Co. v. Fife Assessor (Scot.); **38.** *Rules.* p. 1083
- Kelvington Grain Growers' Co-operative Assocn., *Re* (Can.); **4.** *Bkpcy.* p. 218
- Kemish v. Betson (1732); **24.** *Exors.* No. 6861b
- Kemp v. Beattie (Can.); **28.** *Infls.* p. 847
- Kemp (Lady) v. Kemp (1671); **20.** *Egy.* No. 2188a
- Kemp v. Waddingham (1866); **23.** *Exors.* No. 4210a
- Kempthorne, *Re*, Charles v. Kempthorne (1929); **20.** *Egy.* No. 817a
- Kempton v. Packham (1790); **31.** *L. & T.* No. 2282b
- Kendall v. R. (Can.); **16.** *Cr. Pract.* p. 558
- Kendrick v. Dominion Bank & Bowmas (Can.); **3.** *Bank.* p. 182; **6.** *B. of Exch.* p. 268
- Kennedy v. Agricultural Development Board (Can.); **35.** *Mtgc.* p. 1019
- v. Berryman (N.Z.); **31.** *L. & T.* p. 902
- v. Haddow (Can.); **32.** *Lien.* p. 932
- v. Harris (Can.); **17.** *Dangs.* p. 582
- Shotts Iron Co. (Scot.); **34.** *Mast. & S.* p. 983
- v. Thomassen (1929); **12.** *Contr.* Nos. 387a, 3081a; **39.** *Rutchys.* No. 247a
- v. Victory Land & Timber Co. (Can.); **1.** *Agcy.* p. 60
- Kenneth Staples Drug Co., *Ex p.*, *Ex p.* Crowley (Can.); **16.** *Cr. Pract.* p. 570; **30.** *Intox.* p. 881
- Kenney v. R. (Can.); **16.** *Cr. Pract.* p. 558
- Kenny v. Kenny (Can.); **35.** *Mtgc.* p. 1023
- Kensington, *Ex p.* (1862); **16.** *Courts.* No. 373
- Kent v. Abrahams (1928); **26.** *Guar.* No. 1115a
- v. Ellis (Can.); **12.** *Contr.* p. 448
- v. Mercer (Can.); **26.** *Guar.* p. 768
- v. R. (Can.); **28.** *Inc. T.* p. 816
- Kenzie v. Hart (Can.); **36.** *Negl.* p. 1031
- Keogh (Doe d.) v. Calhoun (Can.); **21.** *Exon.* p. 690
- Keogh v. Dalgety & Co. (Aus.); **1.** *Agcy.* p. 56
- v. Edinburgh Magistrates (Scot.); **26.** *Hghys.* p. 777
- Keough v. Price (Can.); **7.** *B. of Sale.* p. 290
- Keppel v. Wheeler (1927); **1.** *Agcy.* No. 1263a; **12.** *Contr.* No. 540a
- Ker's Trustees v. Ker (Scot.); **28.** *Infls.* p. 848
- Keratos, S.S. v. Fabian, S.S. (S. Af.); **1.** *Adm.* p. 24
- Kerley v. London & Lake Erie Ry. & Transportation Co. (Can.); **17.** *Dep.* p. 598
- Kerr, *Re, Ex p.* Martin (Can.); **7.** *B. of Sale.* p. 291
- v. Atlantic & North-West Ry. Co. (Can.); **32.** *Limit. of A.* p. 934
- v. Bradford (Can.); **36.** *Prtors.* p. 1013
- v. Bradley, *Re* King (1923); **8.** *Char.* Nos. 3a, 238a, 1444a
- v. Capital Grocery, Ltd. (Can.); **5.** *Bkpcy.* p. 256
- v. Connell (Can.); **2.** *Agric.* p. 97
- v. Louisson (N.Z.); **35.** *Money.* p. 1015
- v. Marine Products, Ltd. (1928); **9.** *Coys.* No. 2965a
- v. Scovil (Can.); **21.** *Exon.* p. 689
- Kershaw v. United Artists (Can.); **1.** *Agcy.* p. 43

- Kersten v. Tane, *Re* White (Can.); **12. Contr.** p. 144
- Keslering v. Keslering (otherwise Neverka) & Neverka (Can.); **27. H. & W.** p. 797
- Kessoram, Poddar & Co. v. Secretary of State for India (Ind.); **38. Pub. Auth.** p. 1069
- Keswick v. Wright (Scot.); **2. Agric.** p. 89
- Ketchen v. R. (Can.); **16. Cr. Pract.** p. 558
- Kettle v. Dunster & Wakefield (1927); **6. B. of Exch.** No. 763b; **10. Coys.** No. 5036a
- Kewene v. Buckland & Sons (N.Z.); **18. Distr.** p. 622
- Keyes Estate, *Re*, Keyes v. Grant (Can.); **43. Trusts.** p. 1168
- Khan Gul v. Lakha Singh (Ind.); **28. Infts.** p. 846
- Khattar, *Re*, *Re* Thebault (Can.); **30. Inter.** p. 885
- Khitish Chandra Deb Roy v. R. (Ind.); **15. Crim.** p. 542
- Khoo Hooi Leong v. Khoo Hean Kwee (1926); **3. Bastly.** p. 196; **16. Courts.** No. 585a
- Kibblewhite v. Garland (N.Z.); **40. S. Land.** p. 1108
- Kidd v. Harden (Can.); **8. Chos.** p. 347
- v. R. (Can.); **39. Revenue.** p. 1100
- v. Rawlinson (1800); **25. Fraud. Conv.** No. 339a
- v. Tallentire (1877); **21. Eron.** No. 1552a
- Kiddie v. Port of London Authority (1929); **34. Metrop.** No. 29a
- Kidman v. Commonwealth of Australia (Aus.); **2. Arbn.** p. 158
- Kidner, *Re*, Kidner v. Kidner (1929); **9. Coys.** No. 2221a; **10. Coys.** No. 4829a
- Kiehl v. Fussel (Can.); **5. Bkpey.** p. 216
- Kijko v. Baczyski (Can.); **3. Bastly.** p. 197; **12. Contr.** p. 453
- Kilborn v. Forester (Can.); **12. Contr.** p. 144
- Kilbride v. Cameron (Can.); **21. Eron.** p. 691
- Kilgren v. Browning Rural Municipality (Can.); **34. Mast. & S.** p. 968
- Kimber, *Re*, Vale v. Rockman (1928); **3. Bank.** No. 112c; **39. Revenue.** No. 843a
- Kimber v. Press Assocn. (1893); **16. Courts.** No. 289a
- Kimber Coal Co. v. Stone & Rolfe, Ltd. (1926); **1. Agcy.** No. 2174a
- Kime v. Hamilton Radial Electric Ry. Co. (Can.); **8. Carr.** p. 318
- Kimmut v. R. (Can.); **11. Const. L.** p. 131
- Kin Tye Loong v. Seth (1920); **4. Bkpey.** No. 3261a
- Kinch v. Walcott (1929); **21. Estpl.** No. 101a
- King, *Re* (Can.); **38. Real Prop.** p. 1088
- , *Re*, Kerr v. Bradley (1923); **8. Char.** Nos. 3a, 238a, 1444a
- , *Re*, Public Trustee v. Aldridge (1928); **40. Is.** No. 1059a
- v. Bird (1909); **35. Mge.** No. 772a
- v. British Steel Corp., Ltd. (1928); **34. Mast. & S.** No. 3715a
- v. Dominion Bank (Can.); **7. B. of Sale.** p. 290
- v. King (Can.); **17. Dep.** p. 598
- v. Kuhn (Can.); **7. B. of Sale.** p. 292
- v. Price (1816); **2. Animals.** No. 390b
- v. Riley (Can.); **26. Hghys.** p. 778
- v. Schon (Can.); **1. Agcy.** pp. 39, 60
- v. Terry, *Re* Burke (1919); **5. Bkpey.** No. 6115a
- v. Turner (1821); **40. S. Land.** No. 228a
- King & Boyd v. Porter (Ir.); **6. B. of Exch.** p. —
- King Lumber Mills v. Canadian Pacific Ry. Co. (Can.); **18. Discy.** p. 616
- King's Theatre, Sunderland, *Re*, Denman Picture Houses v. Thompson & Collins Enterprises (1929); **13. Cohlds.** Nos. 2032b, 2032c; **43. Trusts.** No. 1131a
- Kingsley v. Adler (1929); **31. L. & T.** No. 7359b
- Kingston v. Highland (Can.); **7. Bounds. & F.** p. 296
- Kingston Light, Heat & Power Co. & Kingston Corp., *Re* (Can.); **11. Comp. Pche.** p. 109
- Kingston Mill, Stockport, Ltd. v. Owen (1928); **38. Rules.** No. 1181a
- Kinlan v. Ulster Bank, Ltd. (Ir.); **3. Bank.** p. —
- Kinney v. Dudman (Can.); **17. Dep.** p. 593
- Kinniburgh, *Re* (Can.); **5. Bkpey.** p. 219
- Kinning v. Buchanan (1819); **42. Solrs.** No. 1177a
- Kipp v. Simpson (Can.); **17. Deeds.** p. 589
- Kippan v. McCaw (Can.); **7. B. of Sale.** pp. 290, 291
- Kirby v. Palmer (Can.); **36. Negl.** p. 1029
- v. Wilkins (1929); **9. Coys.** No. 2452a
- Kirchhoffer v. Clement (Can.); **21. Eron.** p. 689
- Kirk v. Greaves (N.Z.); **17. Deeds.** p. 588
- v. Harvey (Can.); **35. Mge.** p. 1021
- v. Kirk (Can.); **2. Arbn.** p. 158
- Kirk (Doe d.) v. Roe (1838); **19. Eccl.** No. 1033a
- Kirkby v. Minty (1929); **39. Revenue.** No. 811a; **42. Str. Tral.** No. 117b
- Kirke's Trustees v. Inland Revenue Comrs. (1926); **28. Inc. T.** No. 99b
- Kirkpatrick v. Canadian Pacific Ry. Co. (Can.); **18. Discy.** p. 618
- Kirkpatrick & Moroughan, *Re* (Can.); **3. Bastly.** p. 200
- Kirlew v. Butts (1831); **21. Eron.** No. 1914
- Kirpa Singh v. Arupal Singh (Ind.); **1. I.** p. 2; **42. Stats.** p. 1117
- Kishan Singh v. R. (Ind.); **14. Crim.** pp. 512, 528, **17. Dep.** p. 607
- Kitchen v. Boon (Can.); **40. S. Land.** p. 1108
- Kitsilano Indian Reserve, *Re*, Vancouver Harbour Comrs. v. R. (Can.); **11. Comp. Pche.** p. 107
- Kivenko v. Yagod (Can.); **28. Infts.** p. 819
- Klein v. Sanderson (Can.); **12. Contr.** p. 159
- Kleinhaus v. Usmar (S. Af.); **32. Libel.** p. 925
- Klemsang, *Re* (Aus.); **44. B'alls.** p. 1180
- , *Re* (No. 2) (Aus.); **23. Errors.** p. 720
- Klenman v. Isman (Can.); **18. Distr.** p. 620
- Kloynhaus Brothers v. Wessels' Trustee (S. Af.); **35. Miscp.** p. 1010
- Kline, *Re* (Can.); **21. Estpl.** p. 678
- Klock v. Varin, *Re* Nipissing Dominion Election (Can.); **20. Elect.** p. 653
- Klotz v. Jouan (Can.); **6. B. of Exch.** p. 276
- Knaggs v. Ledyard (Can.); **21. Eron.** p. 691
- Knapp, *Re*, Spreckley v. A.-G. (1929); **8. Char.** No. 1116a
- v. Farmers' Milking Machine Co., Ltd. (N.Z.); **36. Puls.** p. 1051
- v. McLeod (Can.); **32. Libel.** p. 925
- Knechtel Motor Co., Ltd. v. Worden (Can.); **9. Coys.** p. 377
- Kneeshaw v. Clay & Horsfall (1929); **28. Inc. T.** No. 212a
- Knevit v. Poole (1601); **2. Agric.** No. 332a
- Knight v. Grand Trunk Pacific Development Co. (Can.); **29. Inns.** p. 859
- v. Knight & Owens (Can.); **27. H. & W.** pp. 802, 803
- v. Legh (1828); **21. Estpl.** No. 382a
- v. Skinner (1928); **34. Mast. & S.** No. 4042a
- v. T. S. Pattillo Co. (Can.); **7. B. of Sale.** p. 292
- Knight, Frank & Rutley v. Gordon (1923); **1. Agcy.** No. 1776a

# TABLE OF CASES.

**Knight-Watson Ranching Co. v. Canadian Pacific Ry. Co. (Can.); 2. Animals, p. 134; 8. Carr. p. 322**  
**Knott v. Cline & Beckwith (Can.); 32. Lien, p. 931**  
**Knowles v. Jenkins (Can.); 39. Recrs. p. 1093**  
**Knowlton v. Hydro Electric Power Commission of Ontario (Can.); 8. Carr. p. 319**  
**Knox, Re (Aus.); 21. E. D. p. 676**  
**— v. Shaw (Can.); 25. Fraud. Conv. p. 750; 29. Intpr. p. 877**  
**Knox & Lewis v. Hall (Can.); 17. Dams, p. 580**  
**Knust v. Abbot (N.Z.); 6. B. of Erch. p. 271**  
**Knyvett & Pratt v. Suisted (N.Z.); 1. Agcy. p. 59**  
**Koch v. Grand Trunk Pacific Branch Lines Co. (Can.); 2. Animals, p. 127**  
**Koechlin et Cie. v. Kestenbaum Brothers (1927); 6. B. of Erch. No. 2791a**  
**Koehmstedt v. Rural Municipality of Eye Hill, No. 382 (Can.); 11. Comp. Pche. p. 406**  
**Koerner's Patent, Re (1928); 36. Pals. No. 2251a**  
**Kojo Pon v. Atta Fua (1927); 16. Courts. No. 578a**  
**Kok v. R. (S. Af.); 14. Crim. p. 503**  
**Kolega v. Genser (Can.); 21. Eron. p. 698**  
**Konkin v. Canadian Bank of Commerce (Can.); 35. Mtge. p. 1020**  
**Konskier v. Goodman (B.), Ltd. (1928); 36. Negl. No. 59a**  
**Kooperman, Re (1928); 5. Bkpcy. No. 6115c**  
**Koskas v. Standard Marine Insurance Co., Ltd. (1926); 29. Insee. No. 18a**  
**— v. Standard Marine Insurance Co., Ltd. (1927); 29. Insee. No. 18a**  
**Kotze v. Johnson (S. Af.); 21. Eron. p. 691**  
**Kotzias v. Tyser (1920); 11. Const. L. No. 487a**  
**Kouame v. Maplecourt S.S. (Can.); 1. Adm. p. 36**  
**Kouri v. Nemerovsky (Can.); 22. Evid. p. 713**  
**Kozak v. Misiura (Can.); 8. Char. p. 316**  
**Kramer v. A.-G. (1922); 2. Aliens, Nos. 49d, 215i, 215j, 538a**  
**— v. — (1923); 2. Aliens, Nos. 49e, 215j**  
**Kraus v. Arnold (1822); 12. Contr. No. 2693a**  
**Krause v. Inland Revenue Comrs. (S. Af.); 28. Inc. T. p. 834**  
**Krauss (otherwise Des Salles D'Epinoix) v. Krauss (otherwise Des Salles D'Epinoix) & Orbach (1919); 2. Aliens, No. 261a**  
**Krauss v. Luciak (Can.); 6. B. of Erch. p. 277**  
**Kreditbank Cassel G.m.b.H. v. Schenkens (1927); 9. Coys. No. 3603a**  
**Kreitman v. Vidofsky (1927); 31. L. & T. No. 7027a**  
**Krienke v. Schafter (Can.); 5. Bkpcy. p. 259**  
**Krige v. Van Dijk's Executors (S. Af.); 1. Agcy. p. 53**  
**Krishna Chandra Jagati v. R. (Ind.); 14. Crim. p. 503**  
**Krishna Lal Sadhu v. Pramila Bala Dasi (Ind.); 27. H. & W. p. 789**  
**Krishnaswami Naidu v. Andi Chetti (Ind.); 10. Coys. pp. 386, 390**  
**Kristo v. Hollinger Consolidated Gold Mines, Ltd. (Can.); 2. Aliens, p. 113**  
**Kroesing Estate, Re (Can.); 18. Descr. p. 611**  
**Krogman v. Dickson (Can.); 24. Exors. p. 734**  
**Kronprinz Olav, The (1921); 1. Adm. Nos. 1493a, 1551a**  
**Krumm v. Shepard (Can.); 38. Rates, p. 1083**  
**Kumar Ganganand Singh v. Maharajah Sir Rameshwar Singh Bahadur (Ind.); 21. Estpl. p. 679; 28. Infts. pp. 846, 851**  
**Kunja Subudhi v. R. (Ind.); 14. Crim. pp. 509, 517**  
**Kuntz & Hodgins, Re (Can.); 38. Real Prop. p. 1087**

**Kuproski v. Royal Bank of Canada (Can.); 4. Bkpcy. p. 223**  
**Kursell v. Timber Operators & Contractors, Ltd. (1923); 2. Arbn. No. 817a**  
**— v. Timber Operators & Contractors (1927); 2. Agric. No. 810a; 12. Contr. No. 3225a**  
**Kurylo Estate, Re (Can.); 23. Exors. p. 723**  
**Kusch v. Peat (Can.); 1. Agcy. p. 41; 3. Bank. p. 175**  
**Kushner v. Yasinka (Can.); 25. Fraud. Conv. p. 750**  
**Kutner, Re, Ex p. Debtor v. Official Receiver (1921); 4. Bkpcy. No. 5264a**  
**Kwik-Hoo-Tong Trading Society v. Royal Commission on Sugar Supply (1923); 2. Arbn. No. 949c**  
**Kwong Tai Chong Co.'s Assignment, Re (Can.); 4. Bkpcy. p. 231; 5. Bkpcy. p. 258**  
**Kyle v. Barnes (Can.); 5. Bkpcy. p. 241**  
**— v. Sim (Scot.); 2. Animals, p. 133**  
**Kynaston, Ex p. R. v. General Medical Council (1929); 34. Med. No. 21a**  
**Kyone Hoe Tsee v. Kyon Soon Sun (Ind.); 3. Barr. p. 194; 23. Exors. pp. 720, 721**

## L.

**L. (otherwise B.) v. L. (1919); 22. Evid. No. 3437a**  
**L. A. & B. F. M., Re, Ex p. Official Receiver v. Debtors (1926); 4. Bkpcy. No. 226a**  
**Labor Papers, Ltd. & Buttons Contract, Re (Aus.); 40. S. Land, p. 1109**  
**Labour & Industry Minister (N. S. W.) v. Mutual Life & Citizens Assurance Co., Ltd. (Aus.); 16. Cr. Pract. p. 566**  
**Lachance v. Rochon (Can.); 27. H. & W. p. 799**  
**Lachman v. Jarbandhan (Ind.); 21. Eron. p. 697**  
**Lachman Das v. Ram Prasad (Ind.); 17. Deeds, p. 586**  
**Lachmandas Khandelwal v. Raghunull (Ind.); 1. Agcy. p. 70**  
**Lachmi Narain v. Sheonath Ponde (Ind.); 2. Arbn. p. 117**  
**Lacoste v. Cedars Rapids Manufacturing & Power Co. (Can.); 2. Arbn. p. 155**  
**Lacourse v. McLellan & De Graw (Can.); 19. Educ. p. 643**  
**La Croix Brothers & Co. v. Cook (Can.); 7. Bldg. Contrs. p. 301**  
**Ladd v. Banque Canadienne Nationale (Can.); 1. Agcy. p. 61**  
**Lade, In the Estate of (Aus.); 44. Wills, p. 1184**  
**Ladies' Hosiery & Underwear, Ltd. v. Parker (1929); 31. L. & T. No. 2115a**  
**Lady Jane, The (1749); 2. Aliens, No. 419a**  
**Lafayette v. Vignon (Can.); 27. H. & W. p. 787**  
**Laffer v. Gillen (1927); 17. Dep. No. 390b**  
**— v. Gillen (Aus.); 11. Const. L. p. 438**  
**Lafferty v. Dargavil Coal Co., Ltd. (Scot.); 34. Mast. & S. p. 991**  
**La Flora (1805); 2. Aliens, No. 440a**  
**Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co. (1927); 13. Corpns. No. 1235a**  
**Laine v. Kennedy (Can.); 17. Deeds, p. 587**  
**Laing, Re (Can.); 4. Bkpcy. p. 219**  
**— v. Laing (1839); 40. Stillms. No. 17a**  
**— v. Toronto General Trusts Corp'n. (Can.); 16. Courts, p. 554**  
**Laing Estate, Re (Can.); 8. Char. p. 334**  
**Lainiere de Roubaix v. Glen Glove & Hosiery Co., Ltd. (Scot.); 10. Coys. p. 393**  
**Laird v. Laird (Can.); 27. H. & W. p. 799**  
**Lake v. Cronin (1929); 39. Revenue, No. 93b**  
**— v. Crosbie (Nfld.); 12. Contr. p. 464**



- Lake Erie & Northern Ry. Co. v. Brantford Golf & Country Club (Can.); **2. Arbn.** p. 154  
 — v. Muir (Can.); **2. Arbn.** p. 155  
 Lake of the Wood Milling Co. v. Vincent (Can.); **17. Deeds.** p. 586  
 Lake St. Joseph Hotel v. Grosseau (Can.); **4. Bkpcy.** p. 217  
 Lake's Patents, *Re* (1928); **36. Pats.** No. 1883a  
 Lakefield Lumber & Manufacturing Co. v. Shairp (Can.); **2. Agric.** p. 97  
 Lakeview Mining Co. v. Moore (Can.); **38. Real Prop.** p. 1091  
 Lal Chand Marwari v. Mahant Ramrup Gir (1925); **22. Evid.** Nos. 1421a, 1445a  
 — v. Ramrup Gir (Ind.); **22. Evid.** p. 703  
 Lal Singh v. R. (Ind.); **14. Crim.** p. 514  
 Lala Hira Lal v. Munshi Jagatpati Sahai (Ind.); **35. Misrep.** p. 1009  
 Lalubhai Pragji v. Blumbhai Dajibhai (Ind.); **17. Dep.** p. 605  
 Lalman v. Chintamani (Ind.); **1. Agcy.** p. 55  
 Lalonde, *Re* (Can.); **4. Bkpcy.** p. 213  
 Lamarre & Co. v. R. (Can.); **11. Const. L.** p. 430; **12. Contr.** p. 146  
 Lamb, *Re* (Can.); **33. Mays.** p. 952  
 —, *Re*, Vipond v. Lamb (1929); **23. Errors.** No. 5917a  
 — v. Evans (1895); **13. Coprt.** Nos. 516a, 547a  
 — v. Lamb (Can.); **17. Dep.** p. 603  
 — v. Walters (S. Af.); **35. Misrep.** p. 1009  
 — v. Wilson (Can.); **12. Contr.** pp. 465, 467  
 — v. Wright & Co. (1924); **5. Bkpcy.** Nos. 6745a, 6751a  
 Lambard v. Grote (1832); **37. Powers.** No. 830a  
 Lambert v. Clement (Can.); **21. Exon.** p. 692  
 — v. Colbourn, *Re* Jones (1928); **21. E. D.** No. 238a  
 — v. R. (Can.); **33. Mags.** p. 952  
 Lambertson v. Thorpe (1929); **8. Clubs.** No. 46a  
 Lamkin v. Babb (1752); **23. Errors.** No. 1247a  
 Lamony v. Foulds, Ltd. (Scot.); **32. Lien.** p. 929  
 Lampard v. West (Aus.); **25. Gaming.** p. 759  
 Lampel v. Berger (Can.); **2. Aliens.** p. 104  
 Lampert v. Lampert (1789); **40. Stillmts.** No. 938a  
 Lamplough (Clarkson), *Re*, *Ex p.* Harding (1835); **5. Bkpcy.** No. 9034a  
 Lamplugh Iron Ore Co., *Re* (1927); **9. Coys.** No. 3105a; **10. Coys.** Nos. 6465a, 6936b  
 Lanarkshire Assessor v. Distillers Co., Ltd. (Scot.); **38. Rates.** p. 1083  
 — v. O'Hara (Scot.); **38. Rates.** p. 1084  
 Lancashire & Yorkshire Ry. Co. v. Great Northern Ry. Co. & Great Central Ry. Co. (1914); **8. Carr.** Nos. 1051a, 1058a  
 Lancaster, *Ex p.*, *Re* Jacob's Estate, Lancaster v. Gaselee (1851); **29. Inacc.** No. 3050  
 — v. Lloyd (Aus.); **19. Easmt.** p. 626  
 — v. Vaughan (Can.); **18. Discy.** p. 616  
 — v. Vaughan (No. 2) (Can.); **3. Bastly.** p. 200  
 Lancaster County Palatine Council v. Crowe (No. 1) (1929); **19. Educ.** No. 32a  
 — v. — (No. 2) (1929); **33. L. G.** Nos. 77a, 77b  
 Lancaster (Parish), St. John, N.B. v. Dominion Express Co. & Canadian National Express Co. (Can.); **38. Rys.** p. 1078  
 Land Registry Act & Higginson, *Re*, Minister of Finance v. Caledonian Insurance Co. (Can.); **21. E. D.** p. 676  
 Land Tax Acts, *Re*, Wilson's Case (Aus.); **30. Land Tax.** p. 897  
 Land Titles Act, *Re* (Can.); **35. Mtge.** pp. 1017, 1018; **38. Real Prop.** p. 1090  
 —, *Re*, *Re* City Garage & Machine Co., Ltd. (Can.); **5. Bkpcy.** p. 264  
 Land Titles Act, *Re*, *Re* Fielding & North of Scotland Mortgage Co. (Can.); **35. Mtge.** p. 1021  
 —, *Re*, *Re* McCraney Rural Municipality Caveat (Can.); **38. Pub. Hlth.** p. 1074  
 —, *Re*, *Re* Registration of a Power of Attorney (Can.); **1. Agcy.** p. 41  
 —, *Re*, *Re* Smith (Can.); **38. Rates.** p. 1086  
 —, *Re*, Avelsguard's Case (Can.); **38. Real Prop.** p. 1089  
 —, *Re*, Canada Life Assurance Co.'s Case (Can.); **35. Mtge.** p. 1017; **38. Real Prop.** p. 1090  
 —, *Re*, Royal Trust Co.'s Case (Can.); **1. Agcy.** p. 42  
 —, *Re*, Saskatchewan General Trust Corp., Ltd.'s Case (Can.); **5. Bkpcy.** p. 245  
 Landry Pulpwood Co., Ltd. v. La Banque Canadienne Nationale (Can.); **3. Bank.** p. 190  
 Landsberg v. Mendel (1924); **5. Bkpcy.** No. 8782c  
 Lane v. Kingsmill (Can.); **16. Contmpt.** p. 548  
 — v. Norton (Aus.); **42. Str. Truf.** p. 1153  
 — v. Williams (1692); **6. B. of Exch.** No. 694c  
 — v. — (1693); **6. B. of Exch.** No. 691c  
 Lane (E. J.), Ltd., *Re*, *Ex p.* Milligan (Can.); **9. Coys.** p. 377  
 Lang Propeller, Ltd., *Re* (1927); **10. Coys.** No. 6936a  
 Lang Shirt Co.'s Trustees v. London L. Insurance Co. (Can.); **29. Insec.** p. 869  
 Langdale, The (1907); **41. Ship.** No. 8121a  
 Langdon v. Blake (1865); **43. Trusts.** No. 2273a  
 — v. King (Can.); **32. Lien.** p. 931  
 Langley, *Ex p.*, *Re* Bryant, Isard & Co. (Can.); **16. Contmpt.** p. 547  
 Langley v. Power (Ir.); **31. L. & T.** pp. 917, 918  
 Langley Estate, *Re*, *Re* Sherwin Estate (Can.); **28. Infs.** p. 850  
 Langlois v. Lemire, *Re* Gardner (Can.); **4. Bkpcy.** p. 218  
 Langmaid v. Mickle (Can.); **2. Agric.** p. 97  
 Langstaff v. Squirrel (Can.); **21. Exon.** p. 698  
 Langton v. Bacon (Can.); **18. Distr.** p. 620  
 — v. Nicholson (Can.); **1. Agcy.** p. 59  
 Lanham v. Prie (1857); **27. H. & H.** No. 1897a  
 Lanin v. Zawislak & Demosky (Can.); **21. Exon.** p. 696  
 Lansdown's (Lord) Case (*circa* 1786); **42. Sp. Pfce.** No. 314a  
 Lapierre v. Twin City Gravel & Concrete Co., Ltd. & Terwilliger (Can.); **7. B. of Sale.** p. 291  
 Laporte v. Wilson (Can.); **38. Real Prop.** p. 1091  
 Lapp v. Lapp (Can.); **23. Errors.** p. 727  
 Lapwing, The (1839); **1. Adm.** No. 595a  
 Larbonne v. Shore (Can.); **39. Recrs.** p. 1093  
 Larcher v. Sudbury (Town) (Can.); **26. Highys.** p. 782  
 Large v. Perkins (Can.); **22. Evid.** p. 701  
 Largo Law, The (1920); **1. Adm.** No. 700a  
 Larkins v. Summerside (Can.); **33. L. G.** p. 941; **38. Pub. Auth.** p. 1071  
 Larochelle v. Marchand (Can.); **38. Rates.** p. 1087; **40. S. Land.** p. 1111  
 Larose v. R. (Can.); **11. Const. L.** p. 431  
 Larrinaga & Co. v. Societe Franco-Americaine des Phosphates de Medulla (1922); **2. Arbn.** Nos. 1067a, 1357b  
 Larry v. Baker (Can.); **23. Errors.** p. 716  
 Larsen, *Ex p.*, *Re* v. Hertfordshire J.J. (1926); **14. Crim.** No. 1704a  
 — v. Nelson & Fort Sheppard Ry. Co. (Can.); **32. Lien.** p. 931  
 Larson v. Coates (Can.); **23. Errors.** p. 716  
 La Salle Extension University v. Freeman (Can.); **10. Coys.** p. 397

- Lashby v. Johnson & Sigmeth (Can.); **25. Fraud.**  
*Conv.* p. 750; **35. Misrep.** p. 1010
- Lascelles v. Rathbun (1919); **1. Agcy.** Nos. 704a,  
2742a
- Lasell v. Hannah (Can.); **9. Coys.** p. 373
- Lasham, *Re* (Can.); **23. Exors.** p. 724
- Laussen v. Inland Revenue Comrs. (1927); **28.**  
*Inc. T.* No. 671d
- Latham v. Foster's Australian Fibres, Ltd. (Aus.);  
**2. Arbn.** pp. 148, 154
- Latimer v. Foster Tobacco Co., Ltd. (Can.); **1.**  
*Agcy.* p. 10; **21. Estpl.** p. 679
- Latter v. Jukes & Page (1927); **5. Bkpcy.** No.  
6965a
- Lauder v. Barr & Stroud (Scot.); **24. Fact.** p.  
738
- Lauer v. Briggs (Aus.); **34. Mast. & S.** pp. 989, 999
- Laurance, *Re* (Can.); **4. Bkpcy.** p. 227
- Laurence, *Ex p.*, *Re* Debtor (1928); **4. Bkpcy.**  
No. 1077a
- Laurenson v. Wellington (City) Corpn. (N.Z.);  
**18. Discy.** p. 615
- Laurie & Morewood v. Dudin (John) & Sons (1925);  
**21. Estpl.** Nos. 1148a, 1435a
- v. Dudin (John) & Sons (1926); **3. Bailmt.** No.  
304a; **21. Estpl.** Nos. 1148a, 1435a
- Laurin, *Re* (Can.); **28. Infts.** p. 850
- Lavallee v. Istar, The (Can.); **1. Adm.** p. 21
- Lavey, *Re. Ex p.* Cohen & Cohen (1920); **5.**  
*Bkpcy.* No. 8101a
- , *Re. Ex p.* Cohen & Cohen (1921); **4. Bkpcy.**  
No. 2028a; **5. Bkpcy.** No. 8101a
- , *Re. Ex p.* Trustee (1920); **5. Bkpcy.** No. 7603a
- Lavine, *Re* (Can.); **5. Bkpcy.** p. 250
- Law v. Garrett (1878); **2. Arbn.** No. 350a
- v. Newnes, Ltd. (Scot.); **29. Insee.** p. 871
- v. Ottawa City Public School Board (Can.); **28.**  
*Injon.* p. 853
- v. Toronto (City) (Can.); **2. Arbn.** pp. 141,  
143
- Law & Maclean v. Sawyer Massey Co. (Can.);  
**1. Agcy.** pp. 66, 68
- Lawlor v. Murchison (Can.); **18. Discy.** p. 614
- Lawrance v. Galsworthy (1857); **35. Mlge.** No.  
2312a
- Lawrence (No. 21 of 1928), *Ex p.*, *Re* Debtor  
(1928); **4. Bkpcy.** No. 1077a
- v. Errington (Can.); **12. Contr.** p. 458
- v. Hall (1928); **32. Libel** No. 1591a
- v. Hayes (1927); **8. Chos.** No. 607a
- v. Judge (Can.); **2. Agric.** p. 98
- v. Martin (1928); **33. Maqs.** No. 1229a
- v. Matthews (George) (1924), Ltd. (1929); **34.**  
*Mast. & S.* No. 2619a
- v. Pomeroy (Can.); **11. Const. L.** p. 437
- Laws v. Rutherford (S. Af.); **12. Contr.** p. 411
- Lawson, *Re. Ex p.* Shankey (Can.); **7. B. of Sale.**  
p. 290
- v. Farley (Can.); **12. Contr.** pp. 453, 454, 468
- v. Intestate Estates Curator, *Re* McMahon  
(Aus.); **23. Exors.** p. 723
- v. Whitman (Can.); **32. Limit. of A.** p. 936
- Lawton v. Winnipeg & Interurban Services, Ltd.  
(Can.); **42. Str. Traf.** p. 1153
- Layzell v. Thompson (1926); **24. Ferries.** Nos. 13a,  
35a, 151a
- v. Thompson (1927); **24. Ferries.** Nos. 13a,  
35a, 151a
- Lazard Brothers & Co. v. Union Bank of Canada  
(Can.); **3. Bank.** p. 190
- Lazier v. McCullough (Can.); **9. Coys.** p. 362
- Leach, *Re. Milne v. Daubeny* (1923); **23. Exors.**  
Nos. 4895a, 5442b
- v. Haultain (Aus.); **5. Bkpcy.** p. 265
- v. Mantario Rural Municipality No. 262 &  
Moir (Can.); **18. Distr.** p. 624
- Leader v. Moxon (1773); **16. Courts.** No. 137a
- Leadley, *Ex p.* (Can.); **16. Cr. Pract.** p. 562
- Leaman v. Lawton (Can.); **1. Agcy.** pp. 64, 65
- Lean v. Inland Revenue (Scot.); **28. Inc. T.** pp.  
816, 819
- Leary v. Armstrong (Can.); **25. Hghys.** p. 774
- Leather v. Doolittle Co., Ltd. (Can.); **38. Pub.**  
*Hlth.* p. 1072
- Leavens v. Great West Permanent Loan Co.  
(Can.); **9. Coys.** pp. 375, 376, 379
- Leavens & Canada National Fire Insurance Co. v.  
Great West Permanent Loan Co. (No. 2)  
(Can.); **9. Coys.** p. 375
- Le Blanc, *Re* (Can.); **4. Bkpcy.** p. 226
- v. Emilien Burke, The (Can.); **1. Adm.** p. 26
- Leblanc v. R. (Can.); **14. Crim.** p. 512
- Leboeuf v. Leboguf & Germain (Can.); **27. H. & W.**  
p. 802
- Le Cain v. Wieland (Can.); **31. L. & T.** p. 914
- Leckenby v. Wolman (1921); **1. Agcy.** Nos. 308a,  
883a
- Leclerc v. Perigord School District No. 850, Board  
of Trustees (Can.); **19. Educ.** p. 647
- v. R. (Can.); **8. Carr.** p. 315; **11. Cons. L.**  
p. 131
- Leduc v. Banque D'Hochelaga (Can.); **3. Bank.**  
p. 175; **6. B. of Exch.** p. 268
- v. Canadian Pacific Ry. Co. (Can.); **38. Rys.**  
p. 1076
- Lee, *Re. Ex p.* Grunwaldt (1920); **5. Bkpcy.** Nos  
8778a, 9032a, 9109a, 9198a
- v. Blake (Can.); **6. B. of Exch.** p. 279
- v. Branscombe (Can.); **18. Descl.** p. 609
- v. Breckman (S. & L.) & Co. (1928); **34.**  
*Mast. & S.* No. 2589a
- v. Canadian Mutual Loan Co. (Can.); **7. Bldg.**  
*Soc.* p. 307
- v. Hill (Can.); **32. Licn.** p. 931
- v. Lee (Can.); **27. H. & W.** p. 797
- v. Morrow (Can.); **1. Agcy.** p. 41
- v. Munro (1928); **34. Mast. & S.** No. 2127a
- Lee Cheong, *Re* (Can.); **11. Confl.** p. 420; **21.**  
*E. D.* p. 678
- Lee Lim Ma Hock v. Saw Ma Hone (Ind.); **24.**  
*Exors.* p. 735
- Lee (Joe), Ltd. v. Dalmeny (Lord) (1927); **25.**  
*Gaming.* No. 15b
- (Sidney) (Exeter), Ltd. v. James (1928); **34.**  
*Mast. & S.* Nos. 3515a, 4012a
- (Joe), Ltd. v. Tattersall's Committee (1927);  
**25. Gaming.** No. 15b
- Leech v. Leader Publishing Co., Ltd. (Can.); **32.**  
*Libel.* p. 926
- Leeds Industrial Co-operative Society, Ltd. v.  
Slack (1924); **19. Easmt.** No. 1399
- Leeming v. Jones (Inspector of Taxes) (1929); **28.**  
*Inc. T.* Nos. 114b, 452a, 459a
- Leen v. Executive Council (President) (Ir.); **11.**  
*Const. L.* p. 429; **18. Discy.** p. 619
- Lees (Doc d.) v. Ford (1853); **40. Stillts.** Nos. 134a,  
1786a
- Leeson, *In the Goods of* (Ir.); **23. Exors.** p. 715
- Lefavre & Gagnon v. De Lisle (Can.); **5. Bkpcy.**  
p. 265
- & Carlisle v. Pacific Great Eastern Ry.  
Co. (Can.); **11. Comp. Pche.** p. 404
- Lefebvre v. Moreau (Can.); **12. Contr.** p. 441
- Legace & Lepinay, *Re* (Can.); **4. Bkpcy.** p. 205
- Legacy v. Davison (Can.); **1. Agcy.** p. 43
- Legal Professions Act, *Re. Re* Constitutional  
Questions Determination Act (Can.); **17.**  
*Dep.* p. 597
- Legault v. Dufresne (Can.); **5. Bkpcy.** p. 234
- Legg, *In the Goods of* (1848); **23. Exors.** No. 1031b
- Legg & Co. v. Premier Tobacco Co. (S. Af.); **9.**  
*Coy.* p. 371

- Legge v. Legge (1928); **27. H. & W.** No. 5487a  
 Leggo v. Brown (Aus.); **1. Agcy.** p. 80  
 Leggott (W. G.) & Son v. Normanton (C. H.) & Son (1928); **34. Mast. & S.** No. 25a  
 Legh v. Legh (1846); **40. Sttlmts.** No. 1526a  
 Leibrock v. Adams (Can.); **32. Lien.** p. 932  
 Leicester Guardians v. Trollope (1911); **13. Corpns.** No. 1134a  
 Leicestershire & Warwickshire Electric Power Co., *Ex p.*, R. v. Transport Minister (1928); **20. Electric.** No. 3a  
 Leigh v. Inland Revenue Comrs. (1927); **28. Inc. T.** No. 672a  
 Leighton v. Hughes & A.-G. (1889); **32. Lit. Inst.** No. 10a  
 Leitch v. Emmott (1929); **28. Inc. T.** No. 570a  
 Leitch Collieries, Ltd., *Re* (Can.); **10. Coys.** p. 389  
 Lektophone Corpn. v. Brown (S. G.), Ltd. (1929); **36. Pats.** No. 2606a  
 Lelaire, *Re* (Can.); **23. Exors.** p. 719  
 Lemaire v. Smith's Newspapers, Ltd. (Aus.); **32. Libel.** p. 927  
 Lemay v. R. (Can.); **11. Const. L.** p. 435  
 Lemcke v. Newlove (Can.); **24. Exors.** p. 731  
 Le Mesurier v. Connor (Aus.); **20. Eqp.** p. 659  
 Lemieux & Copping Motor Distributories, *Re* (Can.); **4. Bkpey.** p. 217  
 Lemm v. Mitchell (Hong Kong); **42. Stats.** p. 1117  
 Lemon v. Austin Friars Investment Trust, Ltd. (1926); **10. Coys.** Nos. 4637a, 4825a  
 Leng v. Smith (Can.); **38. Real Prop.** p. 1090  
 Leng (J.) & Co., Ltd. v. Dundee Assessor (Scot.); **38. Rules.** p. 1083  
 Leng (Sir W. C.) & Co. (Sheffield Telegraph), Ltd. v. Sillitoe (1929); **25. Gaming.** No. 415c  
 Lennards Perfect Skill Control Co., Ltd. v. Holloway & Sampson Novelty Co., Ltd. (1929); **36. Pats.** No. 222a  
 Lennon, *Re, Re* Local Registration of Title (Ireland) Act, 1891 (Ir.); **38. Real Prop.** p. 1089  
 Iennox & Toronto Board of Education, *Re* (Can.); **11. Comp. Pche.** p. 402, 403  
 Leno v. Simpson-Hepworth Co., Ltd. (Can.); **1. Agcy.** p. 74  
 Leonard v. Baker (1813); **5. Bkpey.** No. 8933a  
 — v. Kellett (Ir.); **24. Exors.** p. 736  
 — v. St. Patrick's Parish (Can.); **19. Eccl.** p. 610  
 — v. Young (Can.); **22. Evid.** p. 701  
 Leopold Walford (London) v. Affreteurs Réunis Société Anonyme (1918); **1. Agcy.** No. 1786a  
 Lepine v. Laurent (Can.); **17. Dep.** p. 597  
 Leroux v. R. (Can.); **33. Mags.** p. 952  
 Lesiuk v. Schneider (Can.); **40. S. Land.** p. 1108  
 Leslie, *Re* (Can.); **32. Limit. of A.** p. 937  
 — v. Calvin (Can.); **24. Exors.** p. 733  
 — v. Canadian Credit Corpn., Ltd. (Can.); **30. Jdgmts.** p. 886  
 — v. Morrison (Can.); **1. Agcy.** p. 51  
 Lesperance, *Re* (Can.); **38. Real Prop.** p. 1087  
 Lesser v. Jones (Can.); **3. Bailmt.** p. 115  
 Lester v. Porter, *Re* Fox (Can.); **4. Bkpey.** p. 193; **5. Bkpey.** p. 248  
 L'Estrange v. Brisbane Gas Co. (Aus.); **36. Nuis.** p. 1036  
 Letang v. Ottawa Electric Ry. Co. (1926); **8. Curr.** No. 598a  
 Letbe v. Letbe & Whitehead (1928); **27. H. & W.** No. 3183a  
 Lethbridge Northern Irrigation District Board Trustees v. Munsell (Can.); **17. Damgs.** p. 576  
 Letros & Toronto Corpn., *Re* (Can.); **11. Comp. Pche.** pp. 403, 407  
 Letteney v. Dillon (Can.); **33. L. G.** p. 912  
 Letters Patent No. 139,207, *Re, Re* Carbonit Akt. (1924); **11. Const. L.** No. 318a  
 Levasseur, *Ex p.* (Can.); **30. Infor.** p. 884  
 Level Estate, *Re* (Can.); **24. Exors.** p. 733  
 Leven Magistrates v. London & North Eastern Ry. Co. (Scot.); **26. Hahys.** p. 786  
 Levene v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 131b  
 — v. Maton (1907); **21. Eron.** No. 2210a  
 Lever v. Maguire (Aus.); **3. Bank.** p. 191; **18. Discp.** p. 614  
 Levin v. Berg, etc. (S. Af.); **2. Arbn.** p. 139  
 — v. Levy (S. Af.); **1. Agcy.** pp. 56, 68  
 Levine v. Wanless (Can.); **14. Crim.** p. 523  
 Levine & Pyzer, *Re*, R. v. Holtzer (Can.); **14. Crim.** p. 525  
 Levinstein, *Re*, Levinstein v. Levinstein (1921); **2. Aliens.** No. 215e  
 Levy, *Re, Ex p.* Official Receiver (1924); **5. Bkpey.** No. 5175a  
 Levy v. Metropolitan Cab Co. (1851); **9. Coys.** No. 3568a  
 — v. Norton-Cuthane (Aus.); **42. Sp. Pfee.** p. 1115  
 Levy & Jacobs, *Re* (Can.); **16. Courts.** p. 550  
 Lew v. Wing Lee (Can.); **16. Courts.** p. 554  
 Lewcock v. Bromley (1920); **1. Agcy.** No. 831a  
 Lewis, *Ex p.* (Can.); **20. Electric.** p. 657  
 — *Re, Ex p.* Electrolux, Ltd. (Aus.); **16. Courts.** p. 559; **33. Mags.** p. 951  
 —, *Re*, Meriden Britannia Co., Ltd. v. Walters (Can.); **16. Culmpl.** p. 517  
 — v. Dobson Steam Fishing Co., Ltd. (1929); **34. Mast. & S.** No. 3172a  
 — v. Elgy (1927); **28. Inc. T.** No. 25d  
 — v. Godson (Can.); **31. L. & T.** p. 910  
 — v. Guest, Keen & Nettelfolds, Ltd. (1928); **34. Mast. & S.** No. 3213a  
 — v. King (1789); **20. Eqp.** No. 1613a  
 — v. Lewis (1928); **27. H. & W.** Nos. 6085a, 6217a  
 — v. Tredegar Iron & Coal Co. (1929); **34. Mast. & S.** No. 3061a  
 — v. Wakeling (Can.); **19. Easmt.** p. 630  
 Lewis & Lewis v. Howson (Can.); **12. Contr.** p. 157  
 Lewis & Phalen, *Re* (Can.); **38. Rules.** p. 1086  
 Lewis & Sills v. Hughes (Can.); **17. Deeds.** p. 587  
 Lewis Merthyr Consolidated Collieries, Ltd., Lloyds Bank, Ltd. v. Lewis Merthyr Consolidated Collieries, Ltd. (1929); **10. Coys.** No. 4982a  
 — v. — (No. 2) (1929); **34. Mast. & S.** No. 1137a  
 Leyland v. Tancred (1859); **18. Distr.** No. 731  
 Jays v. Hollinghead (Can.); **35. Mlge.** p. 1017  
 — v. Toronto General Trusts Co. (Can.); **38. Real Prop.** p. 1087  
 Lézete v. Methral (Can.); **34. Mast. & S.** p. 962  
 L'Hirondelle v. R. (Can.); **28. Infls.** p. 847  
 Lichfield (Bp.) v. Lambert (1929); **19. Eccl.** No. 185a  
 Lichfield Cathedral Grant, *Re*, Chapel-en-le-Frith Church Council v. Bagshawe (1929); **19. Eccl.** No. 1981a  
 Liddell v. Strathern (Scot.); **14. Crim.** p. 503  
 Lieb v. Deacon (Can.); **34. Mast. & S.** p. 982  
 Liebenberg Estate v. Standard Bank of South Africa, Ltd. (S. Af.); **6. B. of Exch.** p. 282  
 Liggett (B.) (Liverpool), Ltd. v. Barclays Bank, Ltd. (1928); **3. Bank.** No. 516a; **9. Coys.** No. 4095a  
 Liggins v. Buckingham, *Re* Howell, *Re* Buckingham (1915); **30. Jdgmts.** No. 789a  
 Light v. West (William) & Sons, Ltd. (1926); **2. Arbn.** No. 2611a  
 Lighthouse v. Lighthouse (Can.); **27. H. & W.** pp. 788, 802

- Lillie v. Lillie (Can.); **27. H. & W.** p. 809  
 Lilly v. Pittman (Nfld.); **17. Deeds**, p. 586  
 Limbert v. Grote (1832); **37. Powers**, No. 830a  
 Limerick S.S. Co. v. Commonwealth of Australia (Aus.); **17. Dep.** pp. 600, 606  
 Limited Co., A. Re (Aus.); **10. Coys.** p. 383  
 Limprecht v. Franklin (Can.); **26. Hghys.** p. 778  
 Lincoln (County) v. South Grimsby (Township) (Can.); **26. Hghys.** p. 783  
 Lind v. Mitchell (1928); **29. Insee.** No. 1660a  
 — v. Spicer Brothers (Africa), Ltd. (S. Af.); **1. Agcy.** p. 10  
 Lindners, Ltd., Re (Can.); **10. Coys.** p. 393  
 Lindsay, Ex p., R. v. Barry (Can.); **16. Cr. Pract.** p. 569  
 —, Re (Ir.); **4. Bkpey.** p. 228  
 — v. Attfield (1929); **6. B. of Exch.** Nos. 568a, 2455a, 2462a, 3121a; **11. Confl.** No. 732a; **39. S. Goods**, No. 1376a  
 — v. Craig (Scot.); **1. Agcy.** p. 78  
 Driscoll (1929); **6. B. of Exch.** Nos. 568a, 2455a, 2462a, 3121a; **11. Confl.** No. 732a; **39. S. Goods**, No. 1376a  
 Empty (Can.); **8. Char.** p. 343  
 — v. Hyams, Ex p., Re Hyams (1923); **5. Bkpey.** No. 7778a  
 — v. Taxation Comr. (Aus.); **28. Inc. T.** p. 823  
 Linet, Re (Can.); **32. Limit. of A.** p. 936  
 Ling, Re (Can.); **32. Limit. of A.** p. 935  
 Lingangowda v. Basangowda (Ind.); **16. Courts**, p. 553  
 Lingrell v. Stocks Mun. Dist. (Can.); **26. Hghys.** p. 778  
 Linkhart v. Linkhart (Can.); **27. H. & W.** p. 797  
 Linney (H.) & Co., Ltd., Re (N.Z.); **5. Bkpey.** pp. 249, 250; **10. Coys.** p. 387  
 Linstead v. Simpson (Scot.); **34. Med.** p. 1003  
 Linton v. Guderian (Ind.); **11. Confl.** p. 413; **27. H. & W.** p. 798  
 — v. Inland Revenue Comrs. (Scot.); **25. Gifts**, p. 764  
 — v. Michie (Can.); **5. Bkpey.** p. 257  
 — v. Newcastle-upon-Tyne Corpn. (1929); **26. Hghys.** Nos. 1891a, 1894b  
 Lippard v. Ricketts (1872); **30. Jdgmts.** No. 419a  
 Lipson, Re (Can.); **4. Bkpey.** p. 211; **5. Bkpey.** pp. 240, 263  
 Lipstein, Re (Can.); **2. Aliens**, p. 119  
 Lipton, Ex p., Re Armstrong (1926); **4. Bkpey.** Nos. 3105a, 3173a  
 Lipton (B.), Ltd. v. Bell (1924); **5. Bkpey.** No. 8782b  
 Liquid Carbonic Co. v. Rountree (Can.); **7. B. of Sale**, p. 291  
 Liscombe v. Maughan (Can.); **19. Easmt.** p. 629  
 Lister, Re, Ex p. Bradford Overseers & Bradford Corpn. (1926); **5. Bkpey.** No. 7764a  
 —, Re, Bradford Overseers & Corpn. v. Durrance (1925); **5. Bkpey.** No. 7764a  
 — v. Humphries (Aus.); **38. Pub. Hlth.** p. 1073  
 Litchfield v. Saskatchewan & Battle River Land & Development Co. (Can.); **1. Agcy.** p. 77  
 Littauer Glove Corpn. v. F. W. Millington (1920), Ltd. (1928); **9. Coys.** No. 26b  
 Little, Re (Can.); **4. Bkpey.** p. 211  
 — v. A.-G. for British Columbia (Can.); **17. Dep.** p. 597  
 — v. Little (1927); **27. H. & W.** No. 2763a  
 — v. — (Aus.); **27. H. & W.** p. 797  
 — v. Moylett (Ir.); **25. Fish.** p. 714  
 Little & Campbellford Lake Ontario & Western Ry. Co., Re (Can.); **11. Comp. Pche.** p. 406  
 Little Hallingbury, Essex, Re (1837); **5. Bkpey.** No. 5807a  
 Littledale v. Dixon (1805); **29. Insee.** No. 1203a  
 —, Re (Can.); **21. E. D.** p. 674  
 Livergant v. Capital Jobbers, Ltd. (Can.); **21. Exon.** p. 697  
 Livergood v. Home (Can.); **7. B. of Sale**, pp. 290, 291  
 — v. Taylor (Can.); **7. B. of Sale**, p. 290  
 Liverpool & London & Globe Insurance Co., Ltd. v. Hartley & Ford (Aus.); **8. Chos.** p. 347; **39. Revenue**, p. 1099  
 Liverpool Electric Cable Co. Ltd.'s Applications to Register Trade Marks, Re (1928); **43. Trade Mks.** No. 77a  
 Liverpool Grain Storage & Transit Co., Ltd. v. Charlton & Bagshaw (1918); **3. Bailmt.** No. 163a  
 Livesey v. Harding (1830); **30. Jdgmts.** No. 753a  
 Livingstone, Re (Can.); **32. Limit. of A.** p. 937  
 — v. Evans (Can.); **12. Contr.** p. 440  
 Livingstonia S.S. Co., Ltd. v. Clyde Navigation Trustees (Scot.); **38. Pub. Auth.** p. 1070  
 Livock v. Pearson Brothers (1928); **12. Contr.** No. 5041a  
 Llandovery Castle, The (1920); **1. Adm.** No. 766a  
 Lloyd v. Bowring (1920); **11. Const. L.** No. 487b  
 — v. Chune (1860); **6. B. of Exch.** No. 1254a  
 — v. Clark (Can.); **25. Gaming**, p. 759  
 — v. Cook (1929); **31. L. & T.** Nos. 7037a, 7351a, 7352d, 7359a  
 — v. Sandilands (1818); **21. Exon.** No. 1584b  
 — v. Stoddart (1752); **23. Errors.** 5110a  
 — v. Tardy, Re Harman (1894); **11. Confl.** No. 626a  
 — v. Wallace (Can.); **21. Exon.** p. 691  
 Lloyd & Ancient Order of United Workmen, Re (Can.); **29. Insee.** p. 869  
 Lloyd's Furniture Palace, Ltd., Re, Evans v. Lloyd's Furniture Palace, Ltd. (1925); **10. Coys.** No. 4783a; **25. Fraud. Conv.** Nos. 422a, 428a  
 Lloyds Bank v. Chartered Bank of India, Australia & China (1929); **3. Bank.** Nos. 687a, 930a  
 Lloyds Bank, Ltd. v. Fenwick, Re Fenwick (1922); **21. E. D.** No. 234a  
 Lloyds Bank v. Guzdar & Co. (Ind.); **35. Mtge.** p. 1021  
 — v. Lewis Merthyr Consolidated Collieries, Ltd., Re Lewis Merthyr Consolidated Collieries, Ltd. (1929); **10. Coys.** No. 4982a  
 — v. Lewis Merthyr Consolidated Collieries, Re Lewis Merthyr Consolidated Collieries (No. 2) (1929); **34. Mast. & S.** No. 4137a  
 — v. Morrison & Son, Ltd. (Scot.); **9. Coys.** p. 355  
 Loane v. Black (Can.); **2. Arbn.** pp. 137, 138  
 Lobb v. Rockwood Rural Credits Society (Can.); **30. Jdgmts.** pp. 890, 891; **32. Lien.** p. 930  
 Local Option Provision of Government Liquor Control Act of Alberta, Re, Re Hardisty & Ribstone (Can.); **30. Intox.** p. 884  
 Local Registration of Title (Ireland) Act, 1891, Re, Re Lennon (Ir.); **38. Real Prop.** p. 1089  
 Loch v. Blackwood (John), Ltd. (1924); **10. Coys.** Nos. 5357a, 5397a  
 Lochgelly Iron & Coal Co., Ltd. v. Lindores (1929); **34. Mast. & S.** No. 2734a  
 Lock v. Lock (1710); **18. Descr.** No. 133a  
 — v. Purdon (Can.); **12. Contr.** p. 471  
 Locke, Lancaster & Johnson (W. W. & R.) & Sons, Ltd., Ex p., R. v. London County JJ. (1929); **38. Rates**, No. 1616a  
 Lockett v. Norman-Wright (1925); **12. Contr.** No. 546a  
 Lockhart v. Harrison (1928); **32. Libel**, No. 1045b  
 Loczka v. Ruthenian Farmers' Co-operative Co., Ltd. (Can.); **6. B. of Exch.** p. 273  
 Loder v. Chesleyn (1664); **1. Action**, No. 637b  
 Loders & Nucoline v. Bank of New Zealand (1929); **39. S. Goods**, No. 2699a

- Loeppky v. Lang (Can.); **8. Chos.** p. 348  
 Loewe Radio Co. Ltd.'s Applications for Grant of Compulsory Licences, *Re* (1929); **36. Pats.** Nos. 1656a, 1665a  
 Logan, *Re* (Can.) (1927); **24. Errors.** p. 731  
 — v. Colchester County Hospital (Can.); **34. Mast. & S.** p. 960; *Med.* p. 1001  
 — (H. J.) Co., *Re* (Can.) (1926); **9. Coys.** p. 370; **12. Contr.** p. 464  
 Loggie v. Chatham Municipality (Can.); **16. Cr. Pract.** p. 571  
 Lohmann v. Rougemont (1840); **6. B. of Erch.** No. 508a  
 Loisburg Land Co. v. Tutty (Can.); **21. Eron.** p. 693  
 Lomer, *Re*, Public Trustee v. Victoria Hospital for Children (1929); **21. E. D.** No. 265a  
 Londesborough (Earl), *Re*, Spicer v. Londesborough (Earl) (1923); **2. Agric.** Nos. 652a, 661a  
 London (Bp.) v. Web (1718); **2. Agric.** No. 891a  
 London & Canadian Loan & Agency Co. v. Everett (Can.); **28. Tufts.** p. 851  
 London & Lancashire Insurance Co., Ltd. v. Fisher (N.Z.); **5. Bkpey.** p. 238  
 London & Montrose Shipbuilding & Repairing Co., Ltd. v. Barclays Bank (1926); **3. Bank.** No. 691c  
 London & North Eastern Ry. Co. v. Glasgow Assessor (Scot.); **38. Rules.** p. 1083  
 London & North Western Ry. Co. v. Neilson (1922); **8. Carr.** No. 454  
 London & South American Investment Trust, Ltd. v. British Tobacco Co. (Australia), Ltd. (1927); **9. Coys.** No. 3934a; **17. Dep.** No. 184a  
 London Bank of Australia, Ltd. v. Kendall (Aus.); **3. Bank.** p. 185  
 London Bridge Acts, *Re*, *Ex p.* Tatham (1838); **11. Comp. Pchc.** No. 1614a  
 London Bridge Works, Ltd., *Re* (Can.); **4. Bkpey.** p. 216  
 London City & Midland Executor & Trustee Co., Ltd. v. Daniels, *Re* Daniels (1918); **24. Errors.** No. 6281a  
 London (City) Corp'n. v. Associated Newspapers, Ltd. (1915); **36. Parl.** No. 2b  
 London County Council, *Ex p.*, R. v. Central Criminal Court JJ. (1925); **14. Crim.** No. 1016a; **16. Cr. Pract.** No. 2149a  
 —, *Ex p.*, R. v. Poplar Borough Council (1922); **16. Cr. Pract.** No. 1066  
 — v. East London Waterworks Co. (1900); **43. Wtr. Sply.** No. 176a  
 — v. Greenwich Corp'n. (1929); **7. Burial.** No. 294a  
 — v. Hackney Borough Council (1928); **18. Distr.** No. 1413a; **38. Rates.** Nos. 37a, 1177a  
 — v. Maher (1929); **19. Educ.** No. 96a  
 — v. Owner of 14, Lee-street, Stepney (1926); **26. Hghys.** No. 2204a  
 — v. Wiltshire County Council (1927); **19. Educ.** No. 137a  
 London Electricity Joint Committee Co. (1920), Ltd., *Ex p.*, R. v. Electricity Comrs. (1924); **16. Cr. Pract.** No. 2303  
 London Finance & Discount Co., Ltd. v. Butler (Ir.); **35. Money.** p. 1015  
 London Finance Corp'n. v. Banking Service Corp'n. (Can.); **9. Coys.** p. 373  
 London General Omnibus Co., Ltd. v. Pope (1922); **1. Agcy.** No. 2523a  
 London Guarantee & Accident Co., *Ex p.*, *Re* Davidson & Smith (Can.); **21. Eron.** p. 698  
 London Guarantee & Accident Co. v. Abrams & Kovsky (Can.); **1. Agcy.** p. 43  
 London Guarantee & Accident Co. v. Davidson (Can.); **21. Estpl.** p. 680  
 London Guarantee & Accident Co., Ltd. v. Gibson (Can.); **17. Damgs.** p. 578  
 — v. Halifax (City) (Can.); **26. Guar.** p. 770; **29. Insee.** p. 871  
 London Holeproof Hosiery Co., Ltd. v. Padmore (1928); **30. L. & T.** No. 1372a  
 London Loan & Savings Co. v. Osborn (Can.); **21. Estpl.** p. 680  
 London Loan Co. v. Smyth (Can.); **35. Mtge.** p. 1022  
 London, Midland & Scottish Ry. Co. v. Ince Wagon & Ironworks Co., Ltd. (1924); **8. Carr.** No. 1245a  
 London, Midland & Scottish Ry. Co. v. McDonald (Scot.); **24. Ferrics.** p. 713  
 London Steamship & Trading Corp'n., Ltd. v. Russian Volunteer Fleet (1926); **2. Arbn.** No. 2580b  
 Londonderry County Council v. McGlade (Ir.); **17. Deeds.** p. 592; **19. Educ.** p. 611  
 Long, *Re*, *Ex p.* Moore (Can.); **21. Eron.** p. 689  
 — v. Byers (Can.); **2. Animals.** p. 131  
 — v. R. (Can.); **3. Bailmt.** p. 165  
 — v. Smithson (1918); **1. Action.** No. 257a  
 — v. Zlatnick (Can.); **2. Animals.** p. 136  
 Longmore, *Re* (Can.); **5. Bkpey.** pp. 218, 252, 260  
 —, *Re*, *Ex p.* Royal Bank & Rider (Can.); **5. Bkpey.** p. 235  
 Longobardi v. Larkin (Aus.); **40. S. Land.** p. 1111  
 Lonnem Caveat, *Re* (Can.); **27. H. & W.** p. 801  
 Lonsdale v. A.-G. (Ir.); **17. Dep.** p. 608  
 Lonsdale Estate, *Re* (Can.); **26. Hghys.** p. 785  
 Loo Len, *Re* (No. 1) (Can.); **2. Aliens.** pp. 120, 121  
 —, *Re* (No. 2) (Can.); **16. Cr. Pract.** p. 561  
 Looker v. Law Union & Rock Insurance Co., Ltd. (1928); **29. Insee.** No. 2907a  
 Lorch v. Olson (Can.); **16. Courts.** pp. 550, 555  
 Lord (Owners) v. Newsum, Sons & Co., Ltd. (1920); **2. Arbn.** No. 1058a  
 Lord v. Wardle (1837); **21. Estpl.** No. 1297a  
 Lord Advocate, Petitioner (Scot.); **22. Evid.** p. 713  
 Lord Advocate v. Warrender's Trustees (Scot.); **21. E. D.** p. 669  
 Lord Strathcona, The (1925); **1. Adm.** No. 251a  
 Lord Strathcona, The (No. 2) (1926); **1. Adm.** No. 1492a  
 Lord Strathcona, The (No. 3) (1926); **1. Adm.** No. 1519a; **22. Evid.** No. 4591a  
 Lord's Day Alliance of Canada v. A.-G. for Manitoba (1925); **17. Dep.** No. 164a  
 Lorden v. Brooke-Hitching (1927); **31. L. & T.** No. 2943a  
 Lore Yip, *Ex p.*, *Ex p.* Wakabayashi (Can.); **17. Dep.** p. 595  
 Lorrimer, *Re* (1851); **40. Stillmts.** 2209a  
 Lotbiniere Lbr. Co. v. Fortin (Can.); **36. Prturs.** p. 1011  
 Lothian v. Epworth Press (1926); **36. Negl.** No. 421b  
 Lothian Chemical Co., Ltd. v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 825  
 — v. Rogers (Scot.); **28. Inc. T.** p. 825  
 Louch v. Pape Avenue Land Co., Ltd. (Can.); **40. S. Land.** p. 1108  
 Loughborough Highway Board v. Curzon (1886); **14. Crim.** No. 6293a  
 Loughrey v. Doherty (Ir.); **33. Mkts.** p. 959  
 Lounsbury, *Re* (Can.); **5. Bkpey.** p. 210  
 Lount v. Smith (Can.); **38. Real Prop.** p. 1091  
 — v. Walkington (Can.); **38. Rates.** p. 1085  
 Loupides v. The Schooner Caluneris (Can.); **1. Adm.** p. 14  
 Love & Knudson, *Re*, *Re* Irma Co-operative Co., Ltd. (Can.); **10. Coys.** pp. 385, 387, 388

**Loverock v. Webb** (Can.); **2. Agric.** p. 95  
**Lovibond (John) & Sons, Ltd. v. Vincent** (1929); **31. L. & T. No. 7254a**  
**Low v. Hicks** (Can.); **21. Exon.** p. 694  
 — **v. Morrison** (Can.); **38. Real Prop.** pp. 1088, 1089  
 — **v. Sparks** (Can.); **38. Real Prop.** p. 1087  
**Low & Bonar, Ltd., Ex p., Re Fairley** (1922); **5. Bkpcy.** No. 6918a  
**Low Hong Iling, Re** (Can.); **2. Aliens**, p. 120  
**Lowe, Ex p.** (1872); **33. Lunat.** No. 1670a  
 —, **Re, Stewart v. Lowe** (1929); **3. Busty.** No. 152a  
 — **v. Bentley** (1928); **32. Limit. of A.** No. 1976a  
 — **v. Bruce** (S. Af.); **34. Mast. & S.** pp. 965, 966  
 — **v. Essex County Council** (1927); **34. Mast. & S.** No. 3701b  
**Lowe King, Ex p., Re Ghee, Public Trustee v. Lowe King** (N.Z.); **24. Errors.** p. 735  
**Lowery v. Hull Corp.** (1929); **38. Rates.** No. 1525a  
 — **v. Kingston-upon-Hull Corp.** (1929); **38. Rates.** No. 1525a  
 — **v. Lamont** (Can.); **30. Jdgmts.** p. 891; **32. Limit. of A.** p. 935  
**Lowndes' Patent, Re** (1927); **36. Pats.** No. 2174a  
**Lowry v. Reid** (Ir.); **12. Contr.** p. 148  
 — **v. Williams** (Ir.); **30. Jdgmts.** p. 888  
**Lowther v. Clifford** (1927); **2. Agric.** No. 267c  
 — **v. Harris** (1927); **1. Agcy.** No. 485a  
**Loxton District Council v. Bruce** (Aus.); **26. Hghys.** p. 775; **38. Pub. Hlth.** p. 1074  
**Loyst v. General Accident Fire & Life Assurance Corp., Ltd.** (1928); **29. Insec.** No. 3217a  
**Lucas, Ex p., Re Speal** (Can.); **5. Bkpcy.** p. 249  
 —, **Re, Rhys v. A.-G.** (1922); **8. Char.** No. 23b  
 — **v. Hall** (1899); **12. Contr.** No. 513a  
**Lucas v. Premier Motors, Ltd.** (Can.); **34. Mast. & S.** p. 961  
**Lucas & Co. v. Moncton Supply Co.** (Can.); **11. Confl.** p. 418  
**Lucier v. Oullette** (Can.); **3. Busty.** p. 201  
**Luck v. Meyer** (1928); **42. Sales.** No. 904a  
**Lucks, Ltd., Re** (Aus.); **31. L. & T.** p. 907; **35. Misrep.** p. 1011  
 —, **Ltd., Re, Serpell's Case** (Aus.); **9. Coys.** p. 362  
**Lucullite, The v. R. Mackay, The** (Scot.); **41. Ship.** p. 1138  
**Lucy v. Moore** (1730); **28. Infts.** No. 685a  
**Ludlow, Re, Bence-Jones v. A.-G.** (1923); **8. Char.** No. 755a  
**Luipaards Vlei Estate & Gold Mining Co., Ltd. v. Inland Revenue Comrs.** (1929); **28. Inc. T.** No. 369c  
**Lukey & A.-G. for Saskatchewan v. Ruthenian Farmers Elevator Co., Ltd.** (Can.); **17. Dep.** p. 598  
**Lumbers v. Fretz** (Can.); **9. Coys.** pp. 368, 375  
 — **v. Montgomery, Re Montgomery** (Can.); **23. Errors.** p. 721  
**Lumley v. Desborough, Re Keane** (1871); **28. Infts.** No. 42a  
**Luna Advertising Co., Ltd. v. Burnham & Co.** (1928); **36. Pats.** No. 3343a  
**Lund v. Thames & Mersey Marine Insurance Co., Ltd.** (1901); **29. Insec.** No. 1471a  
**Lundquist v. Puls** (Can.); **25. Fraud. Conv.** p. 750  
**Lundy v. Henderson** (Can.); **32. Lien.** p. 931  
**Lundy & McLeod v. Powell** (Can.); **17. Dams.** p. 575  
**Lung v. Lee** (Can.); **11. Confl.** p. 424; **30. Jdgmts.** p. 888  
**Lunn Estate, Re** (Can.); **21. E. D.** p. 674  
**Luscar Collieries v. McDonald** (1927); **17. Dep.** No. 125a

**Lussier, Re** (Can.); **4. Bkpcy.** p. 225; **5. Bkpcy.** p. 240  
**Lustre, The** (1834); **39. Royal. F. No. 33a**  
**Lutz, Re** (Can.); **22. Evid.** p. 711  
**Luxardo v. Public Trustee** (1924); **2. Aliens**, No. 2151  
**Lye v. British Argentine & Meat Co.** (1923), Ltd. (1927); **34. Mast. & S.** No. 2384a  
**Lyell v. Cormack** (Can.); **42. Sp. Pfee.** p. 1115  
**Lyman's Trust & Trustee Relief Amendment Act, 1860, Re** (1860); **23. Errors.** No. 4763a  
**Lynch v. Limerick County Council** (Ir.); **34. Mast. & S.** p. 965  
 — **v. Turney** (Can.); **7. B. of Sale**, p. 288  
**Lynde v. Nash** (1929); **9. Coys.** No. 439a  
**Lyne's Settlement Trusts, Re, Re Gibbs, Lyne v. Gibbs** (1919); **11. Confl.** No. 511  
**Lyon v. Taylor Brothers** (1928); **34. Mast. & S.** No. 3235a  
**Lyon (J. L.) & Co., Ltd. v. Haddock, Parker & Co.** (1919); **2. Arbn.** No. 1361a  
**Lyons, Ex p.** (Can.); **25. Fraud. Conv.** p. 748; **38. Real Prop.** p. 1089  
 —, **Ex p., R. v. Muirhead** (Aus.); **30. Intor.** p. 885  
 — **v. Cowcher** (1926); **28. Inc. T.** No. 457a  
 — (Doe d.) **v. Crawford** (Can.); **32. Limit. of A.** p. 936  
 — **v. Ottawa (City)** (Can.); **26. Hghys.** p. 777  
 — **v. Smith** (Can.); **6. B. of Exch.** p. 281  
**Lysaght v. Inland Revenue Comrs.** (1928); **28. Inc. T.** No. 131c  
 — **v. Lysaght** (1928); **27. H. & W.** No. 5393a  
**Lyshar v. Gisborne Harbour Board** (N.Z.); **13. Coprt.** p. 476  
**Lyte v. Currey** (Aus.); **18. Discy.** p. 617  
**Lytton (Earl) v. A.-G., Re Shakespeare Memorial Trust** (1923); **8. Char.** Nos. 73a, 195a, 2146a  
**Lytton v. Great Northern Ry. Co.** (1856); **39. Rys.** No. 197a

M.

**M., Re** (1899); **33. Lunat.** No. 1336c  
 — **v. M.** (1928); **27. H. & W.** No. 4189a  
 — **v. —** (Scot.); **28. Infts.** p. 849  
**M. B. Rail Anchor, Ltd. v. Victorian Rys. Comrs.** (Aus.); **38. Rys.** p. 1079  
**M. Banerjee v. Anukul Chandra Mitra** (Ind.); **3. Barr.** p. 195; **32. Libel.** p. 925  
**M. E. Moolla v. Collector of Rangoon** (Ind.); **11. Comp. Pche.** p. 404  
**M. J. O'Brien, Ltd. v. Seaman Keni Co.** (Can.); **2. Arbn.** pp. 143, 144  
**M. Jacobs Young & Co., Ltd. v. Harris** (1926); **28. Inc. T.** No. 236a  
 — **Wheeler & Co., Ltd. v. Warren** (1928); **10. Coys.** No. 5067b  
**Ma Mi v. Maung Mung Dun** (Ind.); **17. Deeds.** p. 588  
**Ma Mya v. Ma Thein** (Ind.); **30. Jdgmts.** pp. 889, 891, 892  
**Ma Ngwe Naing v. Maung Tha Maung** (Ind.); **25. Fraud. Conv.** p. 748  
**Ma Pan Nyun v. Maung Sit Phaung** (Ind.); **21. Estpl.** p. 680  
**Ma Sin v. Rangoon Collector** (Ind.); **11. Comp. Pche.** p. 410  
**Maas v. McIntosh** (Aus.); **9. Coys.** p. 379  
**Maber, Re, Ward v. Maber** (1928); **28. Infts.** No. 831a; **37. Perps.** No. 652a  
**Mac Fisheries, Ltd. v. Harrison** (1924); **1. Agcy.** No. 608a  
**McAdam v. Dublin United Tramways Co., Ltd.** (Ir.); **42. Str. Traf.** p. 1152

- McAlpine v. How (Can.); **17. Deeds**, p. 586  
 McAndrew v. Gray (Aus.), **1. Agcy.** p. 62  
 McArdle v. Howie (J. & R.), Ltd. (Scot.); **34. Mast. & S.** p. 998  
 McArthur & Co. v. Fagan (Can.); **32. Lien**, p. 931  
 Macartney, *Re*, Macfarlane v. Macartney (1921), **3. Bastly**, Nos. 241a, 274a  
 McAskill v. North Western Trust Co., *Re* North Western Trust Co. (Can.); **9. Coys.** p. 363  
 Macaulay v. Guaranty Trust Co. of New York (1927); **11. Confl.** No. 1285a  
 — v. William Baird & Co. (Scot.); **34. Mast. & S.** p. 991  
 Macaura v. Northern Assurance Co. (1925); **2. Arbn.** No. 1850a  
 McAvery (T.) & Sons, Ltd. v. Walsh (Can.); **32. Lien**, p. 931  
 MacBain v. MacBain (Scot.); **32. Limit. of A.** p. 934  
 McBain v. Mitchell (Scot.); **30. Intor.** p. 882  
 McBean v. Kinnear (Can.); **32. Lien**, p. 931; **42. Time**, p. 1156  
 McBerne (Doe d.) v. Lundy (Can.); **35. Mtgc.** p. 1019  
 McBratney v. McBratney (Can.); **18. Descl.** p. 610  
 McBride, *Re* (Can.); **38. Rates**, p. 1083  
 — v. Darrell (Can.); **1. Adm.** p. 11  
 — v. Ontario Jockey Club, Ltd. (Can.); **8. Chos.** p. 349; **17. Dep.** pp. 605, 607  
 McCabe v. Coste (Can.); **7. B. of Sale**, p. 291  
 McCafferty v. MacAndrews & Co. (Scot.); **34. Mast. & S.** p. 999  
 McCaffrey v. McCaffrey (Can.); **25. Fraud. Contr.** p. 751  
 McCallum v. Brooks (Scot.); **25. Food**, p. 747  
 McCallum v. Central Manitoba Mines, Ltd. (Can.); **34. Mines**, p. 1005  
 — v. Cohoe (Can.); **1. Agcy.** p. 50  
 — v. Sagar & Lusty (Official Assignee) (N.Z.); **19. Educ.** p. 612  
 — v. Urchak (Can.); **28. Infts.** p. 847  
 McCandlish v. Services' Club Estate, *Re* Services' Club Estate Syndicate, Ltd. (1929); **10. Coys.** No. 5127a  
 McCannell v. Mabce McLaren Motors, Ltd. (Can.) **12. Contr.** p. 140  
 — v. Tyreman (Can.); **12. Contr.** p. 169  
 McCartney v. Belfast Harbour Comrs. (Ir.); **34. Mast. & S.** p. 964  
 McCartney v. Miller (Can.); **36. Nuis.** p. 1035  
 McCarty, *Re* (Can.); **1. Agcy.** p. 82  
 — v. McMurray (Can.); **25. Fraud. Contr.** p. 748  
 McCauley v. Huber (Can.); **2. Animals**, pp. 131, 132  
 McCausland v. McCausland (1927); **27. H. & W.** No. 3859a  
 McCawley v. R. (Aus.); **3. Barr.** p. 193  
 McClanaghan v. St. Ann's Mutual Building Society (Can.); **17. Dep.** p. 593  
 McClintock v. Winnipeg Electric Co. (Can.); **36. Negl.** p. 1029  
 McClusky v. McClusky (Can.); **27. H. & W.** p. 809  
 McClymonts Trustees v. Ross (Scot.); **31. L. & T.** p. 916  
 McColl, *Re*, McColl v. McColl (Can.); **3. Auct.** p. 163  
 McColl v. Hyndman (Scot.); **39. Revenue**, p. 1098  
 McConkey's Arbitration, *Re* (Can.); **2. Arbn.** pp. 149, 156  
 McConnell v. Harden (Can.); **8. Chos.** p. 374  
 McConnell v. McCormick (N.Z.); **40. S. Land**, p. 1112  
 McCormac v. Bradford (Aus.); **1. Agcy.** p. 77  
 McCormack, *Re* (Can.); **4. Bkpcy.** p. 232  
 — v. Robinson (Can.); **12. Contr.** p. 457  
 McCormick v. Park (Can.); **21. Eron.** p. 696  
 McCormick Harvesting Machine Co. v. Hunt (Can.); **21. Eron.** p. 694  
 McCorquindale v. Cambroie Coal Co., Ltd. (Scot.); **34. Mast. & S.** p. 972  
 McCoubrey, *Re* (Can.); **4. Bkpcy.** p. 216  
 —, *Re*, *Re* Stratton & Greenshields, Ltd. (Can.); **4. Bkpcy.** pp. 220, 221; **5. Bkpcy.** pp. 262, 263  
 McCowan v. McCulloch (Can.); **3. Bailmt.** p. 166  
 McCraney Rural Municipality Caveat, *Re*, *Re* Land Titles Act (Can.); **38. Pub. Hlth.** p. 1074  
 McCreadie v. Doulton & Co. (Scot.); **34. Mast. & S.** p. 980  
 McCreagh v. Frearson (1921); **2. Agric.** No. 266w  
 McCreanney v. McCreanney (1928); **27. H. & W.** No. 6121b  
 McCrindle v. London Scottish Canadian Investment Syndicate (Can.); **1. Agcy.** pp. 71, 75  
 McCrohan v. Edwards (Can.); **31. L. & T.** p. 911  
 McCuang v. Barber (Can.); **35. Mtgc.** p. 1022  
 McCuang & Bray, *Re* (Can.); **5. Bkpcy.** p. 249  
 McCulloch v. Star Construction Co. (Can.); **34. Mast. & S.** p. 963; **36. Negl.** pp. 1026, 1032  
 McCullough v. Samuel Marshall, The (Can.); **1. Adm.** pp. 19, 37  
 McCullough & Graham, *Re* (Can.); **38. Real Prop.** p. 1090  
 McCullum, *Ex p.*, *Re* Macdonald (1920); **5. Bkpcy.** No. 7122  
 McCully v. Maritime United Farmers Co-operative (Can.); **12. Contr.** p. 469  
 McCurdy v. McDaniel (Can.); **24. Eron.** p. 731  
 — v. Neve (Can.); **5. Bkpcy.** p. 216  
 McCutcheon v. Lighthood (Can.); **38. Rules**, p. 1085; *Real Prop.* p. 1087; **40. S. Land**, p. 1111  
 — v. Registrar of Titles (Aus.); **1. Agcy.** p. 11  
 McCutcheon & Toronto Corp., *Re* (Can.); **38. Pub. Hlth.** p. 1072  
 McCutcheon Brick Co. v. Gardner (Can.); **12. Contr.** p. 155  
 McDermott v. Hudson (Aus.); **2. Animals**, p. 128  
 McDonagh, *Re* (Can.); **7. B. of Sale**, p. 290  
 McDonald, *Ex p.*, *Re* v. Le Blanc (Can.); **16. Cr. Pract.** p. 568  
 Macdonald, *Re* (Can.); **35. Mtgc.** p. 1022; **38. Real Prop.** p. 1090  
 —, *Re*, *Ex p.* McCullum (1920); **5. Bkpcy.** No. 7122  
 McDonald v. Arbuckles (Can.); **30. L. & T.** p. 898  
 — v. Burr (Can.); **2. Animals**, p. 128  
 MacDonald v. Canadian Pacific Ry. Co. (Can.); **38. Ryss.** p. 1077  
 McDonald v. Carey (Can.); **7. B. of Sale**, p. 291  
 Macdonald v. Casein, Ltd. (Can.); **1. Agcy.** p. 70  
 — v. Chisholm (Can.); **38. Real Prop.** p. 1091  
 — v. Consolidated Gold Lake Co. (Can.); **32. Lien**, p. 932  
 — v. Creer, *Re* McRae (Aus.); **44. Wills**, p. 1182  
 — v. Cummings (Can.); **18. Distr.** p. 621  
 — v. Denoon (Scot.); **3. Bastly**, p. 202  
 — v. Georgiades (Can.); **38. Real Prop.** p. 1092  
 McDonald v. H.M. Advocate (Scot.); **14. Crim.** p. 523  
 McDonald v. Halifax Corp., (Can.); **17. Deeds**, p. 585  
 — v. Knudsen (Can.); **38. Real Prop.** p. 1091; **40. S. Land**, p. 1111  
 — v. Lester (Can.); **27. H. & W.** p. 792  
 — v. Linton (Can.); **25. Fish.** p. 741  
 Macdonald v. McArthur (Can.); **18. Discy.** p. 617  
 McDonald v. McIsaac (Can.); **38. Real Prop.** p. 1091  
 — v. McKenzie (Can.); **32. Lien**, p. 931

- McDonald v. Mitchell (Can.); **21. Exon.** p. 689  
 Macdonald v. Normanby Co-operative Dairy Factory Co., Ltd. (N.Z.); **9. Coys.** p. 374  
 MacDonald v. North West Biscuit Co. (Can.); **7. Bldg. Contrs.** p. 303  
 McDonald v. Outram (George) & Co., Ltd. (Scot.); **34. Mast. & S.** p. 988  
 Macdonald v. Peddle (N.Z.); **8. Chos.** p. 346; **12. Contr.** p. 468; **19. Easmt.** p. 628  
 McDonald v. Robillard (Can.); **38. Rates.** p. 1086  
 Macdonald v. Soulis (Can.); **9. Coys.** p. 365  
 — v. Wairakei Ltd. (N.Z.); **9. Coys.** p. 362  
 McDonald & Cattanach, *Re* (Can.); **41. Sewers.** p. 1125  
 McDonald (Gerald) & Co. v. Nash & Co. (1924); **6. B. of Exch. Nos.** 567b, 2096b  
 Macdonald & Co. v. Teasdale (Can.); **21. Eon.** p. 693  
 McDonald & Listowel, *Re* (Can.); **16. Courts** p. 550  
 Macdonald & Toronto Corpn., *Re* (Can.); **26. Hghys.** p. 783  
 Macdonald Estate, *Re* (Can.); **24. Exors.** p. 733  
 MacDonald's (Lord) Curator (Scot.); **10. Coys.** p. 392  
 MacDonald's Settlement, *Re*, O'Callaghan v. O'Callaghan (Aus.); **40. Sllmts.** p. 1114  
 McDonnell v. Stenson (Ir.); **18. Descr.** p. 609  
 MacDougall, *Re* (Can.); **17. Dep.** p. 603; **23. Exors.** p. 728  
 McDougall v. A.-G. (N.Z.); **30. Jdgmts.** p. 887  
 — v. McDougall (Can.); **27. H. & W.** p. 789  
 — v. Summerlee Iron Co., Ltd. (1927); **34. Mast. & S. No.** 3843a  
 McDougall & Secord, Ltd. v. Merchants Bank of Canada (Can.); **7. B. of Sale.** p. 290  
 McEachern v. Somerville (Can.); **25. Fraud. Conv.** p. 751  
 — v. White (Can.); **25. Fraud. Conv.** p. 751  
 McElland's Estate, *Re* (Can.); **5. Bkpcy.** pp. 238, 246  
 McEwan v. Edinburgh & District Tramways Co. (Scot.); **34. Mast. & S.** p. 964  
 McEwan v. Johnstone (N.Z.); **1. Agcy.** p. 51  
 — v. Milne (Can.); **25. Fraud. Conv.** p. 750  
 — v. Speckt (Can.); **24. Exors.** p. 734  
 MacEwan v. Toronto General Trusts Corpn. (Can.); **43. Trade.** p. 1158  
 McEwen v. Arnour (Can.); **36. Negl.** p. 1029  
 — v. Bouck (Can.); **32. Lien.** p. 932  
 — v. McEwen (Can.); **27. H. & W.** p. 798  
 McFarland v. London & Lancashire Guarantee & Accident Co. (Can.); **10. Coys.** p. 389  
 Macfarlane v. Davis (Can.); **35. Misrep.** p. 1009  
 Macfarlane v. Franklin (Can.); **21. Exon.** p. 698  
 — v. Hutton Brothers (Stevedores), Ltd. (1926); **34. Mast. & S. No.** 2317b  
 Macfarlane v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 835  
 — v. Macartney, *Re* Macartney (1921); **3. Basty. Nos.** 241a, 274a  
 MacFarlane v. Norris (1862); **11. Confl. Nos.** 1277a, 1306a  
 McFee v. Dundar (Can.); **19. Educ.** p. 644  
 Macfie v. Cater (Can.); **5. Bkpcy.** p. 251  
 — v. Hunter (Can.); **21. Exon.** p. 692  
 McGarrity v. Condy (Aus.); **30. L. & T.** p. 900  
 McGee v. Clarke (Can.); **17. Damgs.** pp. 575, 580; **34. Mines.** p. 1006  
 — v. Muir (William) & Co., Ltd. (1929); **34. Mast. & S. No.** 3423b  
 MacGill v. Holmes (Can.); **36. Negl.** p. 1028  
 McGill v. McGlashan (Can.); **17. Decds.** p. 586  
 — (Doe d.) v. Shea (Can.); **21. Estpl.** p. 684  
 McGillis v. McDonald (Can.); **21. Exon.** p. 694  
 McGinley v. Farme Coal Co. (Scot.); **34. Mast. & S.** p. 989  
 — v. Gallagher (Ir.); **24. Exors.** p. 731  
 McGinn v. Ellerton (Can.); **27. H. & W.** p. 787  
 MacGinn v. Fidelity & Casualty Co. of New York (Can.); **29. Insee.** p. 871  
 McGlone v. Smith (Ir.); **17. Damgs.** p. 575  
 McGoldrick v. Eastern Express Co. (Can.); **12. Contr.** p. 440  
 McGowan, *Ex p.*, *Re* Rosedale Produce Co. (Can.); **5. Bkpcy.** p. 249  
 McGowan v. Barr & Co., Ltd. (Scot.); **36. Negl.** p. 1026  
 MacGowan v. St. Kilda (City) (Aus.); **26. Hghys.** p. 785  
 MacGrath v. Black (1926); **32. Libel.** No. 951  
 McGregor, *Re* (Can.); **34. Mines.** p. 1006  
 McGregor v. Board of Agriculture for Scotland (Scot.); **2. Agric.** pp. 88, 89  
 McGregor (Doe d.) v. Crow (Can.); **32. Limit. of A.** p. 937  
 McGregor v. Esquimalt & Nanaimo Ry. Co. (Can.); **17. Dep.** p. 598  
 — v. Gaulin (Can.); **12. Contr.** p. 464  
 McGregor (Doe d.) v. Hawke (Can.); **32. Limit. of A.** p. 937  
 Macgregor v. Lord Advocate (Scot.); **11. Const. L.** p. 431  
 McGregor v. R. (Can.); **38. Pub. Auth.** p. 1071  
 McGuinness v. McGuinness (N.Z.); **28. Infts.** p. 848  
 McGuinness v. Hollingshead, *Re* Mackay (Ir.); **4. Bkpcy.** p. 217  
 McGuinty & Co., *Ex p.*, *Re* Hamar (Can.); **11. Confl.** p. 425  
 McGuire, *Ex p.*, *Re* Calcutt Co., Ltd. (Can.); **4. Bkpcy.** p. 227  
 — v. Prosser (Can.); **20. Eqq.** p. 658  
 Machanjeeri Ahmed v. K. Govinda Prabhu (Ind.); **32. Limit. of A.** p. 933  
 M'Harg v. Speirs (Scot.); **2. Agric.** p. 88  
 Machon v. McLoughlin (1926); **28. Inc. T. Nos.** 507a, 526a  
 McIlmurray & Jenkins, *Re* (Can.); **38. Real Prop.** p. 1090  
 McInnes v. Bird (N.Z.); **20. Elect.** p. 652  
 McInnis, *Re* (Can.); **38. Real Prop.** p. 1090  
 McIntosh v. Cameron (Scot.); **34. Mast. & S.** p. 963  
 — v. Carmichael (Scot.); **34. Mast. & S.** p. 970  
 McIntosh v. Hastings (Can.); **5. Bkpcy.** p. 231  
 — v. Layfield (Can.); **2. Arbn.** p. 111  
 MacIntosh v. MacIntosh (Can.); **27. H. & W.** p. 804  
 McIntosh v. Parent (Can.); **21. Estpl.** pp. 682, 684  
 McIntyre, *Re* (Can.); **5. Bkpcy.** p. 239  
 —, *Re*, Trustee v. Canada Metal Co., Ltd. (Can.); **7. B. of Sale.** p. 286; **21. Estpl.** p. 687  
 — v. McIntyre (Can.); **22. Evid.** p. 710  
 MacIntyre v. Miller (Can.); **1. Agcy.** p. 60  
 McIntyre v. Shaw (Can.); **21. Exon.** p. 693  
 — v. Silcox (Can.); **29. Insee.** p. 869  
 — v. Thompson (Can.); **31. L. & T.** p. 903  
 — v. Union Bank (Can.); **7. B. of Sale.** p. 290  
 McIntyre & Co. v. Law (Can.); **1. Agcy.** pp. 58, 61  
 McIsaac v. McDonald (Can.); **38. Real Prop.** p. 1091  
 McIver v. Crown Point Mining Co. (Can.); **32. Lien.** p. 932  
 Mack v. McLeod (Can.); **1. Agcy.** p. 68  
 Mackaness v. Percival, *Re* Cockerill (1929); **21. E. D. No.** 265b; **44. Wills.** No. 2732a  
 Mackay, *Re* (Aus.); **3. Basty.** p. 198  
 McKay, *Re* (Can.); **4. Bkpcy.** pp. 204, 218, 219; **5. Bkpcy.** p. 254; **18. Descr.** p. 611  
 —, *Re*, *Ex p.* Mason (Can.); **4. Bkpcy.** p. 232



- Mackay, *Re*, McGuinness v. Hollingshead (Ir.); **4. Bkpcy.** p. 217
- McKay (Doe d.) v. Allen (Can.); **38. Real Prop.** p. 1087
- Mackay v. A.-G. for British Columbia (Can.); **11. Comp. Pche.** p. 401
- McKay v. Campbell (Can.); **35. Misrep.** p. 1009
- v. Carey (Can.); **32. Lien.** p. 932
- Mackay v. Elias (Aus.); **22. Erid.** p. 708
- Mackay v. Lamb (Scot.); **14. Crim.** pp. 522, 525
- McKay v. Loucks (Can.); **2. Animals**, pp. 127, 128
- v. McDougall (Can.); **38. Real Prop.** p. 1090
- v. McKay (Aus.); **27. H. & W.** p. 800
- Mackay v. R. (Can.); **1. Adm.** p. 23; **41. Ship.** p. 1139
- McKay (Doe d.) v. Rykert (Can.); **11. Const. L.** p. 438
- v. Sexsmith (Can.); **31. L. & T.** p. 914
- v. Tudhope Anderson Co., Ltd. (Can.); **1. Agcy.** p. 51
- v. Turgeon (Can.); **5. Bkpcy.** p. 239
- MacKay (Gordon) & Co., Ltd. v. Capital Trust Co., Ltd. (Can.); **7. B. of Sale**, p. 287
- McKee v. Weir (Scot.); **42. Str. Traf.** p. 1152
- McKee v. Winnipeg (City) (Can.); **26. Hghys.** p. 777
- McKeen v. McKay (Can.); **32. Limit. of A.** p. 937
- (Can.); **24. Fish.** p. 711; **31. L. & T.** p. 910
- M'Kellar v. M'Master (Scot.); **31. L. & T.** pp. 917, 918
- McKelvey v. Invercargill Milk Supply Co., Ltd. (N. Z.); **36. Nuis.** p. 1035
- McKenna v. Haslett, *Re* Haslett (Aus.); **24. Errors**, p. 734
- McKenny v. Drummond & Dvoretzky (Aus.); **17. Dams.** p. 580; **39. S. Goods**, p. 1103
- McKenzie, *Re* (Can.); **4. Bkpcy.** pp. 227, 231; **18. Desct.** p. 609
- Mackenzie v. Abbott (1926); **26. Hghys.** No. 2592a
- McKenzie v. Grant (Can.); **24. Errors**, p. 731
- McKenzie v. Lamont (Can.); **17. Deeds**, p. 584
- v. McDonald (Can.); **6. B. of Exch.** p. 280
- Mackenzie v. Macgillivray (Scot.); **2. Agric.** p. 87
- v. Mackenzie (1928); **27. H. & W.** No. 5068a
- McKenzie (Doe d.) v. Mosher (Can.); **32. Limit. of A.** p. 936
- v. Smith (Scot.); **19. Educ.** p. 644
- Mackenzie Brothers v. The Admiralty (Scot.); **11. Const. L.** pp. 384, 435
- McKenzie (H. D.) Co., *Re* (Can.); **32. Lien**, p. 930; **38. Rates**, p. 1086
- Mackenzie's Trustees v. Mackenzie (Scot.); **37. Powers**, p. 1063
- Mackenzie-Kennedy v. Air Council (1927); **11. Const. L.** No. 157a; **21. Estpl.** Nos. 498a, 508a
- M'Keogh v. O'Brien Moran (Ir.); **32. Libel**, p. 925
- M'Kcown v. Roe (Ir.); **28. Inc. T.** p. 835
- Mackie v. Crombie (Scot.); **25. Gaming**, p. 758
- Mackie v. Dumbartonshire County Council, Western District Committee (1927); **26. Hghys.** No. 1164a
- McKiernan v. McKiernan (Can.); **27. H. & W.** p. 811
- McKillop (Township) Corp. v. Logan (Township) Corp. (Can.); **41. Sewers**, p. 1125
- McKinlay (Doe d.) v. Elliott (Can.); **23. Errors**, p. 716
- McKinlay v. Jenkins (H. T.) & Son, Ltd. (1926); **28. Inc. T.** No. 93a
- McKinnon v. Glen Afton Collieries, Ltd. (N.Z.); **34. Mines**, p. 1005
- McKinnon v. McDonald (Can.); **40. S. Land**, p. 1110
- Mackinnon v. Mackinnon (Can.); **27. H. & W.** p. 801
- McKinnon v. R. (Aus.); **14. Crim.** p. 523
- Mackintosh, *Re*, Munley v. O'Brien (Can.); **21. Estpl.** p. 686
- v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 670a
- McKissick Alcorn, Magnus & Co. v. Hall (Can.); **12. Contr.** p. 165
- McKittrick Properties, Ltd., *Re* (Can.); **20. Electric**, p. 657
- Macklin v. Newbury Sanitary Laundry (1919); **2. Animals**, No. 390a
- McLachlan, *Re* (Scot.); **43. Trade Mks.** p. 1161
- v. Peveril S.S. Co., Ltd. & Macgregor & Ferguson (Scot.); **34. Mast. & S.** p. 965
- McLaren v. Smith (Scot.); **2. Animals**, p. 135
- MacLaren v. Stainton (1867); **40. Stillms.** No. 2157a
- MacLaren Co. v. Elec. Reduction Co. (Can.); **30. L. & T.** p. 901
- McLachue v. McLeod (Can.); **21. Eron.** p. 691
- McLauchlan & College of Physicians & Surgeons, *Re* (Can.); **34. Med.** p. 1001
- McLaughlin v. Gentles (Can.); **1. Agcy.** p. 46
- v. Long (Can.); **36. Negl.** p. 1031
- McLaughlin & Co. v. Birks (Can.); **1. Agcy.** p. 58
- McLean v. Ballantyne (Can.); **19. Eccl.** p. 610
- McLean v. Brett (Can.); **2. Animals**, pp. 127, 128
- v. Dun (Can.); **26. Guar.** p. 767
- McLean v. Hardie (Scot.); **28. Infts.** p. 819
- McLean v. Johnson (Can.); **17. Deeds**, p. 588
- v. R. (Can.); **14. Crim.** p. 513
- v. Rakekin (Can.); **25. Fraud. Contr.** pp. 749, 750; **42. Solrs.** p. 1142
- v. Watson (Can.); **21. Eron.** p. 690
- McLean & Graham v. Smith & Mackintosh (Ir.); **18. Descl.** p. 609
- McLean (J. J. H.) Estate Co. v. Newton, *Re* Kaplan (Can.); **4. Bkpcy.** p. 222
- McLean Gold Mines, Ltd. v. A.-G. (Can.); **17. Dep.** pp. 598, 602
- McLellan, *Re* (Can.); **21. Eron.** p. 689
- McLellan v. Thorburn & Son (Scot.); **34. Mast. & S.** p. 980
- McLennan v. Carter (Can.); **4. Bkpcy.** p. 229
- v. Grant (Can.); **38. Real Prop.** p. 1087
- v. McLennan (Can.); **27. H. & W.** p. 793
- v. Newton (Can.); **43. Trusts**, p. 1170
- McLennan v. H.M. Advocate (Scot.); **14. Crim.**
- McLeod v. Black (1927); **34. Mast. & S.** Nos. 3315a, 3531b
- v. Brazilian Traction Light & Power Co., Ltd. (Can.); **9. Coys.** p. 365
- v. Customs & Excise Minister (Can.); **28. Inc. T.** p. 817
- v. Dowling (1927); **36. Ptnrs.** Nos. 1654a, 1670a
- v. Girvin Central Telephone Assocn. (Can.); **21. Eron.** p. 690
- v. Mercer (Can.); **35. Mtgc.** p. 1020
- v. United Cannors, Ltd. (Can.); **9. Coys.** p. 373
- McLeod & Windsor Corp., *Re* (Can.); **28. Inc. T.** p. 837
- McLintock, *Ex p.*, *Re* Thomson (Scot.); **2. Aliens**, p. 110
- McLoughlan v. Martin (Can.); **36. Nuis.** p. 1036
- McMackin (Doe d.) v. Devine (Can.); **38. Real Prop.** p. 1092
- McMahon, *Re*, Lawson v. Intestate Estates Curator (Aus.); **23. Errors**, p. 723

- McManus v. Gravelbourg (Can.); **7. Bldg. Conts.** p. 301
- McMaster v. McPherson (Can.); **21. Exon.** p. 692
- McMichael v. Goderich (Town) (Can.); **26. Hghys.** p. 779
- McMillan, *Ex p.*, *Re* Aylward (Can.); **4. Bkpcy.** p. 222; **35. Mtgc.** p. 1007
- McMillan, *Re* (Can.); **23. Exors.** p. 715
- v. Canadian Northern Ry. Co. (Can.); **11. Confl.** p. 420
- McMillan v. Mackinlay (Scot.); **27. H. & W.** p. 794
- MacMillan v. Mooney (Can.); **12. Contr.** p. 452
- McMillan v. Southwest Boom Co. (Can.); **17. Dep.** p. 598
- McMillan v. Williams (Can.); **12. Contr.** p. 448
- Macmillan & Co. v. Cooper (1923); **13. Coprt.** Nos. 92a, 426a, 635a
- McMillan Grain Co. & Winding-Up Act, *Re* (Can.); **10. Coys.** p. 386
- McMonagle v. Orton (Can.); **17. Dams.** p. 583
- McMorris v. Empress Theatre Co., Ltd. (Can.); **12. Contr.** p. 463
- McMurehy v. Stewart (Can.); **25. Gifts.** p. 764
- McMurdo, *Re* Penfield v. McMurdo (1902); **9. Coys.** No. 2689a
- McMurtry & Co., *Re*, *Ex p.* James (M. A.) & Sons (Can.); **4. Bkpcy.** p. 224
- McNab, *Re* (Can.); **8. Char.** p. 341
- v. Coward (Can.); **22. Evid.** p. 711
- McNally v. McNally (Can.); **27. H. & W.** p. 799
- McNamara v. Scottish Catholic Insurance Society (Scot.); **44. Work.** p. 1185
- Macnaught v. Stevwright (Scot.); **4. Bkpcy.** p. 218; **5. Bkpcy.** p. 262
- McNaught v. Stokes-Stephens Oil Co., Ltd. (Can.); **2. Arbn.** pp. 152, 153
- McNaught & Stokes-Stephens Oil Co., *Re* (No. 2) (Can.); **2. Arbn.** pp. 116, 158
- McNaught & Stokes-Stephens Oil Co., Ltd., *Re* (No. 3) (Can.); **2. Arbn.** p. 153
- Macnaughton v. Wigg (Can.); **31. L. & T.** p. 908
- McNeil v. Howe (Can.); **17. Dep.** p. 600
- McNeil & Hingley, Ltd. v. Hull (Can.); **7. Bounds. & F.** p. 298
- McNeill v. H.M. Advocate (Scot.); **14.** p. 510
- McNeill v. Short (Can.); **26. Guar.** p. 769
- McNish v. Munro (Can.); **32. Limit. of A.** p. 936
- McNutt v. Cree (Can.); **11. Confl.** p. 422
- McParland v. Seymour (Can.); **21. Exon.** p. 697
- v. Sparks (N.Z.); **30. Intor.** p. 881
- McPhail v. McKinnon (Can.); **21. Exon.** p. 692
- McPherson v. Forlong (Can.); **26. Guar.** p. 767
- v. Gedge (Can.); **32. Lun.** p. 932
- v. Lees (Andrew), Ltd. (N.Z.); **8. Chos.** p. 349
- v. McPherson (Can.); **21. Exon.** p. 693
- Macpherson v. Taxation Comr. (Aus.); **28. Inc. T.** p. 817
- MacPherson Estate, *Ex p.*, *Re* Hingston-Smith (Can.); **18. Distr.** pp. 622, 623
- McQuade v. Morgan (Aus.); **5. Bkpcy.** p. 235
- McQuaid v. Cooper (Can.); **16. Courts.** p. 550
- McQuarrie v. Eastern Trust Co. (Can.); **44. Wills.** p. 1181
- McQueen v. Vancouver Island Power Co., Ltd. (Can.); **2. Arbn.** p. 158
- McQuillan, *Re*, *Ex p.* Royal Bank (Can.); **5. Bkpcy.** p. 218
- McQuillan v. Ryan (Can.); **7. Bounds. & F.** p. 298
- McRae, *Re*, McDonald v. Cree (Aus.); **44. Wills.** p. 1182
- v. Corbett (Can.); **38. Rates.** pp. 1085, 1086
- v. McLaughlin Motor Car Co., Ltd. (Can.); **30. Intor.** p. 883; **33. Mal. Pros.** p. 958
- Macrae v. Walsh (Aus.); **22. Evid.** p. 704
- **1. Adm.** No. 897a
- McRury v. Dominion Coal Co., Ltd. (Can.); **36. Negl.** p. 1027
- McSorley v. Murphy (Can.); **30. L. & T.** p. 700; **42. Sp. Pfce.** p. 1144
- v. St. John Corp'n. (Can.); **38. Pub. Auth.** p. 1069
- McTaggart v. Powers (Can.); **34. Med.** p. 1002; **36. Negl.** p. 1029
- McVittie v. Bolton JJ. (1924); **14. Crim.** No. 6298c
- McWey, *Re*, Ryan v. Cashin & Costello (Ir.); **25. Gifts.** p. 766
- MacWilliams v. Higgins (Can.); **6. B. of Exch.** p. 275
- Macy v. Cork Manufacturing Co., Ltd. (1928); **34. Mast. & S.** Nos. 3818a, 3834a
- Maczewski, *Re* (Can.); **19. Educ.** p. 643
- Madame Tussaud & Sons, Ltd., *Re* (1927); **10. Coys.** No. 6989a
- Mader v. Jones (Can.); **39. S. Goods.** p. 1103
- Madge, *Re*, Pridie (or Pudée) v. Bellamy (1928) **23. Exors.** No. 3517a
- Madhavji Visram v. Ramniklal Vadilal (Ind.); **17. Dams.** p. 582
- Madhoram Hurdeo Das v. Sett (Ind.); **2. Aliens.** p. 116
- Madras Income Tax Comr. v. T. S. Firm, Tanjore at Negapatam (Ind.); **28. Inc. T.** p. 820
- Madrid Bank, Ltd., *Re*, *Ex p.* Holder, *Ex p.* Williams (1866); **10. Coys.** No. 6368a
- Macburn v. Leckie (1922); **29. Insec.** No. 2110a
- Magadi Soda Co., Ltd., *Re* (1925); **10 Coys.** Nos. 4688a, 7409a
- Magee v. Storey (Ir.); **21. Estpl.** p. 684
- Maggi, *Ex p.* (Aus.); **2. Aliens.** p. 122
- Maggie A., The (1922); **1. Adm.** No. 328a
- (1923); **1. Adm.** No. 1497b
- Magnay v. Burt (1843); **33. Mal. Pros.** No. 14
- Maguire, *Ex p.*, R. v. Maidstone Prison (Governor) (1925); **16. Cr. Pract.** Nos. 660a, 797a
- , *Re* (Can.); **4. Bkpcy.** pp. 209, 212
- , *Re* (Ir.); **4. Bkpcy.** p. 228
- v. Day (Ir.); **31. L. & T.** p. 903
- v. Maguire (Can.); **11. Confl.** p. 124
- Magurn v. Magurn (Can.); **32. Lun.** p. 931
- Mah Shin Shong, *Re*, *Re* Sing Yim Hong (Can.); **2. Aliens.** p. 121
- Mahammad Raza Saheb Belgami v. Sadasiva Rao (Ind.); **16. Cr. Pract.** p. 568
- Mahan v. Manness (Can.); **1. Agcy.** p. 43
- Maharajadhiraja Sir Rameshwar Singh Bahadur v. Secretary of State for India in Council (Ind.); **11. Comp. Pche.** p. 403
- Mahendra Nath Srimani v. Kailash Nath Das (Ind.); **28. Infts.** p. 847
- Mahler v. Barker (Can.); **12. Contr.** p. 446
- Mahomed v. Principal Immigration Officer (S. Af.); **2. Aliens.** p. 121
- Mahomed Abdul Cader v. Kaufman (1928); **17. Dep.** No. 462a
- Mahomed & Son v. Immigrants' Appeal Board (S. Af.); **2. Aliens.** p. 100
- Mahomed Azum Ismail v. Jaganath Jamnadas (Ind.); **19. Easmt.** p. 633
- Mahomedalli Allabux v. Ismailji Abdulali & Sardar Syedna Taher Saifuddin Mullaji Saheb (Ind.); **16. Cr. Pract.** p. 561
- Mahon v. Crowe (Can.); **21. Exon.** p. 692
- v. McLean (Can.); **35. Mistake.** p. 1012
- Mahood v. Geange (N.Z.); **1. Agcy.** p. 83
- Mailman, *Re* (Can.); **28. Infts.** p. 850
- Main Cloak Co., *Re* (Can.); **4. Bkpcy.** p. 213
- Maine & New Brunswick Electrical Power Co. v. Hart (Can.); **35. Money.** p. 1014
- Mainfroid v. Mainfroid (Can.); **2. Arbn.** p. 159; **21. Estpl.** p. 686

- Mainland Portland Cement Co., *Re* (Can.); 32.**  
*Lien*, p. 932
- Mair v. Duncan Lumber Co. (Can.); 30. *Jdgmts.***  
 p. 886
- *v.* — (No. 2) (Can.); **42. *Solrs.*** p. 1142
- Maitland v. Pembroke (Can.); 26. *Hghys.*** p. 777
- *v.* **Public Trustee (N.Z.); 24. *Exors.*** p. 736
- Major v. Canadian Pacific Ry. Co. (Can.); 8.**  
*Carr.* p. 315
- Makin v. Needham, Veall & Tyzack, Ltd. (1929);**  
**34. *Mast. & S.*** No. 3801a
- Makins v. Robinson (Can.); 32. *Lien*,** p. 931
- Makower, McBeath & Co., Proprietary, Ltd. v.**  
**Dalgety & Co., Ltd. (Aus.); 3. *Bailmt.***  
 pp. 165, 167
- Malatsky, *Ex p.* (Can.); 14. *Crim.*** p. 501
- Malcolm v. Barber, Walker & Co., Ltd. (1927);**  
**34. *Mast. & S.*** Nos. 3359d, 3891a, 3954b
- Malcomess v. Durban Town Council (S. Af.); 2.**  
*Aliens*, p. 101
- Maleverer v. Spinke (1537); 21. *Exon.*** No. 1578a
- Malkin (W. H.) Co., Ltd. v. Sherman (Can.);**  
**26. *Guar.*** p. 770
- Malkowich v. Genik (Can.); 35. *Mlge.*** p. 1020
- Mallett v. Kovar (Can.); 32. *Lien*,** p. 931
- *v.* **Lumbermen's Mutual Casualty Co.**  
 (Can.); **29. *Insee.*** p. 872
- *v.* **Staveley Coal & Iron Co., Ltd. (1928);**  
**28. *Inc. T.*** No. 248a
- Mallough v. Dick (Can.); 6. *B. of Exch.*** p. 284
- Mallows, *Re*, Fletcher v. Intestate Estates Curator**  
 (Aus.); **22. *Erid.*** p. 711
- Maloney, *Re* (Ir.); 4. *Bkpcy.*** pp. 228, 230; **17.**  
*Dep.* p. 608
- Maloof v. Bickell (Can.); 1. *Agcy.*** p. 48
- Malowany v. Pasenko (Can.); 1. *Agcy.*** p. 70
- Malumiar & Co. v. Finlay & Co. (Ind.); 43. *Trade***  
*Mks.* p. 1161
- Mama v. Sassoon (Ind.); 42. *Sp. Pfcc.*** p. 1115
- Manchersha Soragji v. Virjivallabhdas Jekisondas**  
 (Ind.); **19. *Easmt.*** p. 630
- Manchester & County Bank, Ltd. v. Monk (1929);**  
**35. *Mlge.*** No. 2019a
- Manchester & Liverpool District Banking Co.,**  
*Ex p.*, ***Re* Dutton, Massey & Co. (1924); 4.**  
*Bkpcy.*, Nos. 3375a, 3383a, 4102a
- Manchester Corp'n. v. Audenshaw Urban Council**  
 & Denton Urban Council (1928); **26. *Hghys.***  
 No. 786a
- Manchester Corp'n. v. Buttle (1929); 43. *Wtr.***  
*Sply.* No. 165
- *v.* **Farnworth (1929); 30. *Electric*,** No. 65a;  
**42. *Stats.*** No. 1452a
- Manchester Ship Canal Co.'s & Dock & Harbour**  
**Authorities Assocn.'s Applications (1927);**  
**38. *Rys.*** No. 756a
- Mancho v. South African Rys. & Harbours (S. Af.);**  
**38. *Rys.*** p. 1077
- Mancomunidad Del Vapor Frumiz v. Royal**  
**Exchange Assurance (1927); 29. *Insee.***  
 No. 1708a
- Mangena v. Moyatusi (S. Af.); 1. *Agcy.*** p. 54
- Manghi v. Dial Chand (Ind.); 35. *Mlge.*** p. 1024
- Manihot Rubber Plantations, Ltd., *Re* (1919);**  
**2. *Aliens*,** No. 239a
- Mani Ram v. R. (Ind.); 14. *Crim.*** p. 500
- Manisty v. Jameson (Ind.); 12. *Contr.*** p. 464
- Manitoba Election Act, *Re*, *Re* Winnipeg Electoral**  
**District (Can.); 20. *Elect.*** p. 652
- Manitoba Institute of Chartered Accountants v.**  
**Bellamy (Can.); 28. *Injon.*** p. 856
- Manitoba Oil Products, Ltd. v. Langenburg**  
**Village (Can.); 18. *Dist.*** p. 623
- Manley (Owners) v. Hector (Owners) & Northern**  
**Construction Co. (Can.); 41. *Ship*,** p. 1136
- *v.* **O'Brien, *Re* Mackintosh (Can.); 21. *Estpl.*** p. 686
- J.S.**
- Mann, *Ex p.*, Mungall v. Mann (Aus.); 35. *Mtge.***  
 p. 1021
- , *Ex p.*, ***R. v. Ely JJ.* (1928); 33. *Mags.***  
 No. 811a
- *v.* **Rasmussen (Can.); 43. *Tresp.*** p. 1166
- Mann & Harvey, *Re* (1920); 2. *Agric.*** No. 268b
- Manners v. Cain (Can.); 32. *Lien*,** p. 932
- Manning v. Carrique (Can.); 12. *Contr.*** p. 440
- *v.* **Federal Commr. of Taxation (Aus.); 28.**  
*Inc. T.* p. 837
- *v.* **Nickerson (Can.); 33. *Mal. Pros.*** p. 957
- *v.* **Wadale (1836); 19. *Easmt.*** No. 997a
- Mannington v. Clifford (Aus.); 12. *Contr.*** p. 457
- Mannix & Walgren & McLellan School District,**  
*Re*, ***Re* Edmonton Dunvegan & British**  
**Columbia Ry. Co. & McLellan School**  
**District (Can.); 19. *Educ.*** p. 615; **38.**  
*Rates*, p. 1081
- Manseau v. R. (Can.); 11. *Const. L.*** p. 430
- Manstfield v. Robinson (1928); 2. *Agric.*** No. 266aa
- Mausookhlal Dolatchand & Co. v. Nagardass**  
**Moolchand (Ind.); 5. *Bkpcy.*** p. 250
- Mantei v. Humour (Can.); 44. *Wfork*,** p. 1185
- Mantle Lamp Co. of America v. Nixon (Can.); 21**  
*Estpl.* p. 687
- Manton v. Brocklebank (1923); 2. *Animals*,** Nos.  
 156a, 258a, 270a
- Manton's (Lord) Trustees v. Steele (1927); 28.**  
*Inc. T.* Nos. 430a, 444a
- Manufacturers Life Insurance Co. v. Flowery**  
**Plains (No. 33) (Can.); 38. *Pub. Hlth.***  
 p. 1071
- Manufacturers Life Insurance Co. v. Swinney**  
 (Can.); **17. *Dreds.*** p. 585
- Manufacturing Confectioners' Alliance, Incor-**  
**porated v. Caledonian Ry. Co. (1922); 8.**  
*Carr.* No. 1377b
- Maple City Oil & Gas Co. v. Tilbury Town Gas Co.**  
 (Can.); **34. *Mines*,** p. 1006
- Maple Leaf Mill Co., *Ex p.*, *Re* Blair (Can.); 7.**  
*B. of Sale*, p. 290
- Maple Ridge Corp'n. v. Western Power Co. of**  
**Canada (Can.); 20. *Electric*,** p. 655
- Maple Valley Case (Can.); 20. *Elect.*** p. 651
- Maple Valley Presbyterian Church, *Re* (Can.);**  
**19. *Ecel.*** p. 641
- Marb  v. George Edwardes (Daly's Theatre), Ltd.**  
 (1928); **17. *Dangs.*** No. 181a; **32. *Label*,**  
 No. 1948a
- March (Lady) v. Fowke (1679); 23. *Exors.*** No.  
 5641a
- Marchant v. Char Steam Trawling Co., Ltd. (1929);**  
**34. *Mast. & S.*** No. 3493a
- Marchesseault v. Canadian National Rys. (Can.);**  
**8. *Carr.*** p. 318
- Marcell v. Donnelly (Can.); 31. *L. & T.*** p. 910
- Marconi's Wireless Telegraph Co., Ltd. v. David**  
**Jones, Ltd. (Aus.); 36. *Pals.*** p. 1052
- Marcq v. Bertholet (Can.); 7. *B. of Exch.*** p. 291;  
**39. *S. Goods*,** p. 1104
- Marcus Clark (Australia), Ltd. v. Brown (Aus.);**  
**3. *Bailmt.*** p. 170; **39. *S. Goods*,** p. 1104
- Margerison, *Ex p.*, *R. v.* Haslewood (1926); 13.**  
*Crnrs.* No. 156a
- Mariam & Mahomed v. Immigrants' Appeal Board**  
 (S. Af.); **2. *Aliens*,** p. 121
- Marie Celeste Samaritan Society of London**  
**Hospital v. Inland Revenue Comrs. (1926);**  
**28. *Inc. T.*** No. 483a
- Marie Gartz, The (1920); 2. *Aliens*,** No. 215a
- Marine Insurance Club, *Ex p.*, *Re* Tucker (Nfld.);**  
**29. *Insee.*** p. 875
- Maritime Radio Corp'n., Ltd., *Re* (Can.); 5.**  
*Bkpcy.* p. 219
- Maritime United Farmers Co-operative, Ltd. v.**  
**Dickie (Can.); 9. *Coys.*** p. 362

- Markle v. Thomas (Sheriff) (Can.); **21. Exon.** p. 694  
 Marks, *Re* (Can.); **20. Eqp.** p. 664  
 — *Re, Ex p. Vann* (1923); **5. Bkpcy.** No. 8104b  
 Markwald v. A.-G. (1920); **2. Aliens**, No. 520a  
 Markweth v. Reynolds (1733); **34. Mast. & S.** No. 1539  
 Marlborough (Duke) v. Osborn (1864); **2. Agric.** No. 166a  
 Marlborough Hill, Ship v. Cowan & Sons (1921); **1. Adm.** Nos. 541a, 1644a  
 Marmora Foundry Co. v. Murney (Can.); **10. Coys.** p. 398  
 Marnell v. Pickmore (1796); **28. Infts.** No. 1961a  
 Marquardt v. Gorr (Can.); **17. Dep.** p. 600  
 Marriaggi v. Marriaggi (Can.); **11. Confl.** p. 421  
 Marriott v. Kinkham (1862); **35. Mtge.** No. 2928a  
 Marsden, *Re, Ex p. Sellers* (E. H.) & Sons, Ltd. (1921); **4. Bkpcy.** No. 1253a  
 — v. Edward Heyes, Ltd. (1927); **31. L. & T.** No. 1975a  
 Marsh, *Ex p., R. v. Markham* (1923); **3. Basty.** No. 403a  
 — v. Great Eastern & Great Western Ry. Cos. (1922); **8. Carr.** No. 1377d  
 — v. Kavenford (1587); **12. Contr.** No. 1740a  
 — v. Robinson (1802); **22. Evid.** No. 3483a  
 — v. Royal Bank of Canada (Can.); **3. Bank.** p. 188  
 Marsh v. Simpson (Can.); **39. S. Goods**, p. 1106  
 Marsh & Ramsford's Case (1587); **12. Contr.** No. 1740a  
 Marshal v. Tweedy (Scot.); **28. Inc. T.** p. 818  
 Marshal Shipping Co. v. Board of Trade (1923); **11. Const. L.** No. 526d  
 Marshal Shipping Co. (In Liquidation) v. R. (1925); **11. Const. L.** No. 526c  
 Marshall v. Fournelle (Can.); **28. Infts.** p. 849  
 — v. Grinbaum (1921); **3. Bank.** No. 230a  
 — v. Houghton (Can.); **11. Confl.** p. 426  
 — v. Hutton (Can.); **36. Negl.** p. 1027  
 — v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 826  
 — v. Kiddle (1927); **34. Mast. & S.** No. 3969a  
 — v. Rogers (Can.); **6. B. of Exch.** p. 275  
 — v. Wigtownshire Assessor (Scot.); **38. Rates**, p. 1083  
 Marshall & Lace Web Spring Co. v. Crown Bedding Co. (1929); **36. Pals.** No. 2848a  
 Marshall & Snelgrove, Ltd. v. Gower (1923); **7. B. of Sale**, No. 830a  
 Marshman v. McDowell (Aus.); **36. Negl.** p. 1029  
 Marstrand v. Taggart (1928); **33. Mays.** No. 1236a  
 Marston v. Roe d. Fox (1838); **17. Deeds**, No. 1329a  
 Mart v. Mart (1926); **3. Basty.** No. 22b  
 Martell v. Pringle (Can.); **2. Animals**, p. 133  
 — v. Whitem (Nfld.); **12. Contr.** p. 465  
 Martin, *Ex p.* (Can.); **16. Cr. Pract.** p. 561  
 —, *Ex p., Re Kerr* (Can.); **7. B. of Sale**, p. 291  
 —, *Ex p., Re Matthews Sheet Metal & Roofing Co., Ltd.* (Can.); **8. Chos.** p. 347  
 —, *Re* (No. 2) (Can.); **24. Extrdn.** p. 737  
 — v. Benson (1927); **32. Libel**, Nos. 2198a, 2203a  
 — v. Carpenter (Aus.); **2. Animals**, p. 135  
 — v. Clarkson (Can.); **10. Coys.** pp. 380, 384  
 — v. Currie (S. Af.); **1. Agcy.** p. 60  
 — v. Fowler (Can.); **5. Bkpcy.** p. 244  
 — v. Green (1664); **1. Adm.** No. 12b  
 — v. Kennedy (Can.); **16. Courts**, p. 555  
 — v. Martin (Aus.); **27. H. & W.** p. 800  
 — v. Martin & May (1928); **11. Confl.** No. 861a  
 — v. Passarini (Can.); **18. Distr.** p. 622  
 — v. Powell (Can.); **36. Negl.** p. 1027  
 Martin v. R. (Aus.); **37. Police**, p. 1058  
 — v. Russell & Jobson & British Columbia Paper Manufacturing Co., Ltd. (Can.); **32. Lien**, p. 932  
 — v. Sea Foam, The (Can.); **1. Adm.** p. 18  
 — v. Stout (1925); **16. Courts**, No. 956b  
 — v. Woodgate (1691); **23. Exors.** No. 4080a  
 Martin Mnk Products, *Re* (Can.); **4. Bkpcy.** p. 223  
 Martins v. Fowler (Nigeria); **18. Descl.** p. 609  
 Martins, Ltd., *Re* (Can.); **4. Bkpcy.** p. 218  
 Marvin v. Curtis (Can.); **22. Evid.** p. 705  
 — v. Maynard (1595); **32. Libel**, No. 2536a  
 Masecar v. McKenzie & Son (Can.); **9. Coys.** p. 362; **10. Coys.** p. 387  
 Mason, *Ex p., Re McKay* (Can.); **4. Bkpcy.** p. 232  
 —, *Re* (1875); **33. Lunat.** No. 1336a  
 —, *Re* (1928); **16. Cr. Pract.** Nos. 363a, 374b; **18. Descl.** No. 336a  
 —, *Re* (1929); **16. Cr. Pract.** Nos. 363a, 374b; **18. Descl.** No. 336a; **32. Lunat. of A.** No. 1761a  
 — v. Coffin (Can.); **39. Revenue**, p. 1097  
 — v. Lack (1929); **6. B. of Exch.** No. 240a  
 — v. Livingstone (Can.); **9. Coys.** p. 379  
 — v. McLeod & Foster (Can.); **21. Exon.** p. 696  
 — v. Mason (1721); **28. Infts.** No. 538a  
 — v. Peterborough (Town) (Can.); **23. Exors.** p. 722  
 — v. Savings Bank of South Australia (Aus.); **3. Bank.** p. 185  
 — v. South Norfolk Ry. Co. (Can.); **17. Dams.** p. 583  
 — (Donald) & Co., *Re* (Can.); **28. Inc. T.** p. 882; **38. Rates**, p. 1080  
 Mason & Davy v. Dixon (1627); **23. Exors.** No. 3617  
 Mason & Dean, Ltd. v. Udovin (Can.); **1. Agcy.** p. 43  
 Mason & Risch Piano Co. v. Canadian Pacific Ry. Co. (Can.); **8. Carr.** p. 317  
 Massey v. McClelland (Can.); **21. Exon.** p. 690  
 Massey Manufacturing Co. v. Hunt (Can.); **21. Exon.** p. 694  
 Massey-Harris v. Moore (Can.); **21. Exon.** pp. 690, 691  
 Massey-Harris Co. v. Manley (Can.); **35. Mtge.** pp. 1019, 1021  
 — v. Schram (Can.); **21. Exon.** p. 690  
 Massina, The (1926); **1. Adm.** No. 1520b  
 Masson Seely & Co., Ltd. v. Embosotype Manufacturing Co. (1924); **13. Coprt.** No. 77a  
 Master v. Phipps (Can.); **35. Mistake**, p. 1012  
 Masters v. Crouch (1927); **35. Mtge.** No. 2578a  
 Masters v. McLellan (Can.); **35. Mtge.** p. 1021  
 Masters & Duveen, *Re* (1923); **2. Agric.** Nos. 242a, 267a  
 Masters & McDougall v. Stephen (Can.); **2. Arbn.** pp. 138, 151  
 Matergio v. Canada Accident & Fire Assurance Co. (Can.); **29. Insee.** p. 869  
 Mathein Nwe v. Maung Kha (Ind.); **27. H. & W.** pp. 795, 796  
 Mathers, *Re* (Can.); **38. Rates**, p. 1081  
 — v. Royal Bank of Canada (Can.); **9. Coys.** p. 365  
 Matheson, *Re, Ex p. Prince Albert (City)* (Can.); **4. Bkpcy.** p. 226  
 — v. Stuckey (Aus.); **2. Animals**, p. 130  
 Mathews v. Donegan & Cooke (Ir.); **18. Descl.** p. 610  
 — v. National Trust Co. (Can.); **27. H. & W.** p. 790  
 — v. Williams, Brown & Co. (1894); **3. Bank.** No. 671  
 Mathewson v. Mitchell (Can.); **8. Carr.** p. 314  
 Mathieson, *Re, Ex p. Trustee* (1927); **5. Bkpcy.** No. 7096a

- Mathieson, *Re*, Moore (Trustee) v. Mathieson (1927); **5. Bkpcy.** No. 7096a
- Mathieson v. Gronon (1929); **9. Coys.** No. 2183a
- v. Hall (N.Z.); **35. Mtge.** p. 1021
- v. Wahlen (Aus.); **10. Coys.** p. 382; **28. Injon.** p. 853
- Mathieson's Trustee v. Burrup, Mathieson & Co. (1927); **4. Bkpcy.** No. 3637a
- Mathra Das-Jagan Nath v. Jiwan Mal-Gian Chand (Ind.); **1. Agcy.** pp. 56, 57
- Mathura, Kurmi v. Jagdeo Singh (Ind.); **17. Dep.** p. 607
- Mathurdas Canji Matani v. Ebrahim Fazalbhoy (Ind.); **36. Ptnrs.** p. 1042
- Matson & Co. v. Fisher (N.Z.); **2. Arbn.** pp. 152, 155
- Matsoukis v. Priestman & Co. (1915); **7. Bldg. Conts.** No. 65a
- Matte v. Vancouver (City) (Can.); **2. Arbn.** p. 145
- Matthew v. Crasse (1613); **2. Agric.** No. 884a
- Matthews v. Dickinson (1817); **5. Bkpcy.** No. 8168a
- v. Forgie (N.Z.); **2. Agric.** p. 95
- v. Goode (Can.); **7. Bounds. & F.** p. 298
- Matthews Sheet Metal & Roofing Co., Ltd., *Re*, *Ex p.* Martin (Can.); **8. Chos.** p. 317
- Matthewson v. Stredicke (Can.); **21. Exon.** p. 698
- v. Thompson (Can.); **12. Contr.** p. 461
- Matthewson Brothers & Mather v. Good (Can.); **35. Mtge.** p. 1019
- Mattin v. Currie (Aus.); **25. Gaming.** p. 758
- Matura Subbarao v. Surendranath Sahu (Ind.); **35. Mtge.** p. 1020
- Maughan v. Casci (Can.); **19. Easmt.** p. 627
- Maulson v. Moore (Can.); **35. Mtge.** p. 1022
- Maunder v. Wanganui Sash & Door Factory & Timber Co., Ltd. (N.Z.); **36. Pats.** p. 1046
- Maung Ba. Oh v. Motor House Co. (Ind.); **3. Bailmt.** p. 170; **20. Eqp.** p. 660
- Maung Ba. Than v. Pegu District Council (Ind.); **17. Dep.** p. 607
- Maung Po Thauing v. Ma Gyi (Ind.); **2. Agric.** p. 95
- Maung Shwe An v. Ma The Mu (Ind.); **16. Courts.** p. 553
- Maung Shwe Phoo v. Maung Tun Shin (Ind.); **17. Deeds.** p. 586; **35. Mtge.** p. 1017
- Maung Tha Nyo v. Ma Un Ma Pru (Ind.); **43. Trade Mks.** p. 1161
- Maung Thein Pe v. Desouza (Ind.); **19. Educ.** p. 648
- Maunsell v. Campbell Security Fireproof Storage & Moving Co., Ltd. (Can.); **3. Bailmt.** p. 168
- v. R. (Can.); **16. Cr. Pract.** p. 558
- Maurat Estate, *Re* (Can.); **23. Exors.** pp. 715, 718
- Maurig Shwe Hpu v. U Min Nyun (Ind.); **2. Arbn.** p. 155
- Maxwell, *Re* (1929); **23. Exors.** No. 1369a
- Maxwell v. Keun (1928); **30. Jdgmts.** No. 30a
- v. Union Bank of Canada (Can.); **3. Bank.** pp. 175, 180
- Maxwell (E. J.), Ltd. v. Bank of Nova Scotia (Can.); **35. Mistake.** p. 1013
- May v. Daly (Aus.); **17. Dep.** p. 604; **38. Real Prop.** p. 1089
- v. Howland, Fitch & Webb (Can.); **21.** p. 692
- v. May (1929); **27. H. & W.** No. 2039a
- Maybelle, *Re*, Fox v. Equity Trustees, Executors & Agency Co., Ltd. (Aus.); **44. Wills.** p. 1183
- Mayer & Lage Inc. v. Atlantic Sugar Refineries, Ltd. (Can.); **12. Contr.** p. 461
- Mayes Case v. Prescott (Can.); **30. Juries.** p. 895
- Mayfield Rural Municipality No. 406 v. London & Lancashire Guaranty & Accident Co. of Canada (Can.); **22. Evid.** p. 710; **26. Guar.** p. 771
- Mayne, *Re* (Aus.); **43. Trusts.** p. 1169
- Mayo v. Leitovski (Can.); **38. Rates.** p. 1085
- Mayville Local Administration & Health Board v. Gielink (S. Af.); **33. L. G.** p. 942; **38. Pub. Hlth.** p. 1072
- Maywald v. Riedel (Aus.); **21. Exon.** p. 696
- Meacham v. Draper (Can.); **24. Exors.** p. 733
- Mead v. Clarke (S. At.); **1. Agcy.** p. 53
- Mead v. Marquis Rural Municipality (Can.); **34. Mast. & S.** p. 960; **38. Pub. Auth.** p. 1069
- Meade v. Deschene (Can.); **7. B. of Sale.** p. 290
- Meade-King v. Usher's Wiltshire Brewery, Ltd. (1928); **10. Coys.** No. 4872a
- Meagher v. Aetna Insurance Co. & Home Insurance Co. (Can.); **29. Insee.** p. 866
- v. Canadian Pacific Ry. Co. (Can.); **19. Easmt.** p. 627
- Meakin v. Samson (Can.); **21. Exon.** p. 691
- Meandros, The (1925); **1. Adm.** No. 147a
- Mears Brothers v. Davies (1929); **34. Mast. & S.** No. 3881a
- Measner v. Bengert (Can.); **38. Rates.** p. 1085
- Measrock v. New Scotland Land Co., Ltd., Liquidator (S. Af.); **1. Agcy.** pp. 41, 42
- Mecklenburg v. Canadian Pacific Ry. Co. (Can.); **33. Mal. Pros.** p. 958
- Medaini Estate, *Re* (Can.); **18. Descr.** p. 609
- Medway Oil & Storage Co. v. Continental Contractors (1929); **40. Set-off.** No. 562
- Medway Oil & Storage Co., Ltd. v. Silica Gel Corp'n. (1928); **39. S. Goods.** No. 744a
- Meghiraj v. Krishna Chandra Bhattacharji (Ind.); **23. Exors.** p. 716
- Meier v. Franklin (Can.); **26. Hghys.** p. 778
- v. Klotz (Can.); **32. Libel.** p. 921
- Meiklejohn v. Hugo (Can.); **20. Eqp.** p. 666
- Meister Lucius & Bruning, Ltd., *Re* (1921); **2. Aliens.** Nos. 195a, 405a
- Melanie (Owners) v. San Onofre (Owners) (1919); **1. Adm.** No. 1620a
- Melanie (Owners) v. San Onofre (Owners) (1925); **1. Adm.** No. 1620a
- Melbourne Harbour Trust Comrs. v. Hancock (Aus.); **2. Arbn.** p. 152
- Mellen v. Dobenko (Can.); **27. H. & W.** p. 787
- Mellersh v. Bridger (1853); **23. Exors.** No. 5540
- Mellinger's Patent, *Re*, *Re* Automatic Telephone Manufacturing Co., Ltd. (1928); **36. Pats.** No. 2127a
- Mellish, *Re* Clark v. Buchanan (1927); **21. E. D.** Nos. 209a, 271a
- v. Motteux (1792); **39. S. Goods.** No. 643a
- Mellor, *Re* (Can.); **27. H. & W.** p. 791
- , *Re*, Porter v. Hindsley (1929); **44. Wills.** No. 5708a
- Men's Attire Registered v. Hart (Can.); **4. Bkpcy.** p. 217
- Menzies v. Tyndall Quarries Co. (Can.); **9. Coys.** p. 373
- Mercantile Bank of India v. Mascarenhas (Ind.); **6. B. of Exch.** p. 283
- Mercer, *Re*, Drewe-Mercer v. Drewe-Mercer (1889); **35. Name.** No. 62a
- v. Homuth (Can.); **20. Elect.** pp. 650, 651, 652
- Merchant Traders' Ship, Loan & Insurance Asscn., *Re*, *Ex p.* Chappell (1852); **4. Bkpcy.** No. 5367
- Merchant's Bank v. Moffatt (Can.); **18. Discy.** p. 614
- Merchants Bank of Canada v. Angers (Can.); **5. Bkpcy.** p. 260
- v. Brett (Can.); **6. B. of Exch.** p. 277
- v. Bush (Can.); **3. Bank.** p. 191
- v. Greenlees (Can.); **8. Chos.** pp. 347, 348, 349
- v. Hancock (Can.); **10. Coys.** p. 380
- v. Ken McClary & Co. (Can.); **5. Bkpcy.** p. 253

- Merchants Bank of Halifax v. Winter (Can.); **6. B. of Exch.** p. 275
- Merchants' Marine Insurance Co. v. Liverpool Marine & General Insurance Co. (1928); **29. Insee.** No. 720c
- Merchants' Marine Insurance Co., Ltd. v. North of England Protecting & Indemnity Assn. (1926); **29. Insee.** No. 507
- Merchants' Trust & New British Iron Co., *Re* (1894); **34. Mines.** No. 335a
- Meredith, *Ex p.*, R. v. Joyce (Aus.); **16. Cr. Pract.** p. 567
- v. Abdulla (Sahib) (Ind.); **1. Agcy.** p. 69
- Meriden Britannia Co., Ltd. v. Walters, *Re* Lewis (Can.); **16. Ctmpl.** p. 547
- Merkel v. McKendry (Can.); **12. Contr.** p. 453
- Merrifield, Ziegler & Co. v. Liverpool Cotton Assn., Ltd. (1911); **2. Arbn.** No. 1981
- Merritt v. Doherty (Can.); **1. Agcy.** p. 61
- Merry v. Machin (S. Af.); **22. Evid.** p. 707
- Mersey Ry. Co., *Re*, Gibbs v. Mersey Ry. Co. (1895); **10. Coys.** No. 8412a
- Mertens v. Home Freeholds Co. (1921); **7. Bldg. Conls.** Nos. 230a, 285a
- Merz v. South Wales Equitable Money Society, Ltd. (1927); **35. Money.** No. 346a
- Messenger v. British Broadcasting Co. (1927); **13. Coprl.** No. 483b
- v. British Broadcasting Co., Ltd. (1928); **13. Coprl.** No. 483b
- British Broadcasting Co., Ltd. (1929); **12. Contr.** No. 4922a; **13. Coprl.** Nos. 305a, 483b
- Messenger v. Parker (Can.); **33. Mags.** p. 953
- Messer v. Barrett Co. (Can.); **34. Mast. & S.** p. 961
- Messervy v. Central Canada Canning Co. (Can.); **2. Agric.** p. 91
- Messerveys, Ltd., *Re* (Can.); **4. Bkpcy.** p. 217
- Meston, *Re*, Meston v. Gray (Can.); **12. Contr.** p. 448
- Metcalf v. Adair (Can.); **6. B. of Exch.** p. 283
- v. Boyce (1927); **31. L. & T.** No. 6674a
- v. Wiseman (1888); **15. Crim.** No. 8236a
- Metropolitan Abattoirs Board v. Schole (Aus.); **16. Courts.** p. 552; **42. Stats.** p. 1147
- Metropolitan Asylums Board, *Ex p.*, R. v. Poplar Borough Council (1922); **16. Cr. Pract.** No. 1066
- Metropolitan Gas Co. v. Melbourne Corp. (Aus.); **25. Gas.** p. 762
- Metropolitan Life Assurance Co. v. McQueen (Can.); **19. Easmt.** pp. 631, 632
- Metropolitan Meat Industry Board v. Sheedy (Aus.); **10. Coys.** p. 389
- Metropolitan Ry. Co. v. Great Western Ry. Co. (1886); **8. Carr.** No. 703a
- Metropolitan Reversions, Ltd. (Scot.); **9.** pp. 378, 379
- Metropolitan Tunnel & Public Works v. London Electric Ry. Co. (1926); **2. Arbn.** No. 372a
- Metropolitan Water Board v. Minister of Transport (1925); **20. Electric.** No. 6a
- Metropolitan-Vickers Electrical Co., Ltd. v. British Thomson-Houston Co., Ltd. (1925); **36. Pats.** No. 172a
- Metters, Ltd. & Lever Brothers, Ltd. v. Pickard (Aus.); **17. Dep.** p. 601
- Metx v. Marshall (Can.); **2. Animals.** p. 132
- Meunier v. Doray (Can.); **21. Exon.** p. 691; **25. Fraud. Contr.** p. 691
- Meux's Brewery Co., Ltd. v. Newington Licensing JJ. (1926); **30. Intox.** No. 141a
- Mexican & South American Co., *Re*, Grisewood & Smith's Case, De Pass' Case (1859); **9. Coys.** No. 2344a
- Meyer v. Poynton (Aus.); **2. Aliens.** pp. 119, 122
- Meyer & Co. v. Elder (1923); **2. Aliens.** No. 223d
- v. Faber (1921); **2. Aliens.** No. 223b
- v. Faber (No. 2) (1923); **2. Aliens.** No. 223d
- Meyer (Montague), Ltd. v. Kivisto (1929); **39. S. Goods.** No. 527a
- Meyers & Paddington Motor Service, Ltd. v. Dalgety & Co., Ltd. (Aus.); **29. Insee.** p. 874
- Meynell v. Garraway (1662); **20. Eqq.** No. 760b
- Meyrick v. Dyson (1925); **12. Contr.** No. 2899a
- Mezzine v. Mezzine (Aus.); **27. H. & W.** p. 793
- Micas v. A.-G. of Saskatchewan (Can.); **17. Dep.** p. 598
- Michael Hrushevsky Ukrainian Institute v. Edmonton Corp., *Re* Edmonton Charter (Can.); **11. Comp. Pche.** p. 401
- Michaelis v. Ryan Motors (Can.); **32. Lien.** p. 931
- Michaelson v. Crisp (1927); **23. Exors.** No. 3518a
- Michalek v. McGregor (N.Z.); **34. Mast. & S.** p. 967
- Michalinski v. Canadian Pacific Ry. Co. (Can.); **36. Negl.** p. 1031; **38. Rys.** p. 1077
- Michaud v. Montreal (City) (1923); **25. Gifts.** No. 26a
- Michell, *Re*, Thomas v. Hoskins (1929); **44. Wills.** No. 8698a
- v. Booth (Aus.); **10. Coys.** p. 389
- Mickelson v. Nash-Simington Co. (Can.); **7. B. of Sale.** p. 291
- Mid-Lakes Timber Co. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 1077
- Mid-North Electricity Co., Ltd. v. Rutherford (Aus.); **22. Evid.** p. 705
- Mid-West Collieries, Ltd. v. McEwen (Can.); **9. Coys.** pp. 370, 373
- Middlesex County Council v. Hall (1929); **31. L. & T.** No. 7322a
- Middleton & Young's Contract, *Re* (1929); **40. S. Land.** No. 1016a
- Middleton Estate & Colliery Co., Ltd. v. Finan (1926); **34. Mast. & S.** No. 4014a
- Midland Bank, Ltd. v. Inland Revenue Comrs. (1927); **6. B. of Exch.** No. 3146a
- Midland Counties Institution of Engineers v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 476c
- Midland Motor Showrooms, Ltd. v. Newman (1929). **26. Guar.** Nos. 1200a, 1315a, 1379a
- Midland Ry. Co. & Kettering, Thrapston & Huntingdon Ry. Co. v. Robinson (1889); **11. Comp. Pche.** No. 336a
- Midland Ry. of Canada v. Young (Can.); **38. Rys.** p. 1076
- Midnapore Zamindari Co., Ltd. v. Muktakeshi Patrani (Ind.); **17. Deeds.** p. 585
- Midnapur Zamindari Co., Ltd. v. Ram Kanai Singh Deo Darpa Saha (Ind.); **28. Injon.** p. 857
- Mildmay v. Standish (1584); **17. Deeds.** No. 1471; **32. Libel.** No. 2560a
- Mildmay's Case (1584); **17. Deeds.** No. 1471; **32. Libel.** No. 2560a
- Mildura Co-operative Fruit Co., Ltd. v. Noyce, *Re* Noyce, *Ex p.* Minister of Agriculture (Aus.); **21. Exon.** p. 697; **38. Pub. Auth.** p. 1069
- Miles, *Ex p.*, *Re* Davies (1921); **5. Bkpcy.** No. 7339a
- Miles' Claim, *Re* Adamsonia Fibre Co. (1874); **6. B. of Exch.** No. 691a
- Miles' Will, *Re* (1859); **35. Mtge.** No. 389a
- Miley v. Carty & Miley (Ir.); **20. Eqq.** p. 662
- Milk Rate Case, National Dairy Council v. Grand Trunk & Canadian Pacific Ry. Cos. (Can.); **8. Carr.** p. 326
- Millane v. Heidelberg Shire (President, etc.) (Aus.); **5. Bkpcy.** p. 260

- Millar, *Re* (Can.); **23. Exors.** p. 724  
 Millar v. B. C. Rapid Transit Co., Ltd. (Can.); **22. Epid.** p. 710  
 — v. Coltness Iron Co., Ltd. (Scot.); **34. Mast. & S.** p. 907  
 — v. Ellard (Can.); **12. Contr.** p. 443  
 — v. R. (Can.); **1. Action.** p. 2  
 Millard v. Bevan Lumber & Shingle Co., Ltd. (Can.); **27. H. & W.** p. 788  
 Miller, *Ex p.*, R. v. Foley (Aus.); **16. Cr. Pract.** p. 565  
 —, *Re* (Can.); **16. Contmpt.** p. 546; **27. H. & W.** p. 789; **38. Real Prop.** p. 1089  
 — v. Aikins (Can.); **16. Courts.** p. 550  
 — v. Brighton (City) (Aus.); **13. Corpus.** p. 486; **38. Pub. Hlth.** p. 1072  
 — v. Corkum (Can.); **23. Exors.** p. 729  
 — v. Great West Natural Gas Corp'n. (Can.); **18. Discy.** p. 616  
     Inland Revenue (Scot.); **28. Inc. T.** p. 812  
     McDonnell (Can.); **2. Arbm.** pp. 157, 158  
     Miller (1928); **27. H. & W.** Nos. 5271a, 5271b  
 — v. — (Ind.); **11. Confl.** p. 421  
 — v. Osier (Can.); **25. Fraud. Conv.** p. 719  
 — v. R. (Can.); **21. Estpl.** p. 687; **32. Limit. of A.** p. 933  
 — v. Smith (Can.); **11. Const. L.** p. 437  
 Miller & Co. v. Halifax Power Co. (Can.); **43. Trusts.** p. 1168  
 Miller & Mutch v. Loreburn & Kelly Rural Municipality (Can.); **18. Distr.** p. 624  
 Milligan, *Ex p.*, *Re* E. J. Lane, Ltd. (Can.); **9. Coys.** p. 377  
 Milligan, Petitioner (Scot.); **19. Eccl.** p. 639  
 Milligan v. Thorn (Can.); **34. Mast. & S.** p. 961  
 Milligan Estate, *Re*, Campbell v. Gallant, Crockett & Royal Bank of Canada (Can.); **5. Bkpcy.** p. 252  
 Milliken v. Young (Can.); **40. S. Land.** p. 1112  
 Millin v. Inland Revenue Comr. (S. Af.); **28. Inc. T.** p. 838  
 Millman v. Pratt (1824); **32. Libel.** No. 2560b  
 Mills, *Re* (N.Z.); **28. Infts.** p. 849  
 —, *Re*, Owen v. Campbell (Can.); **28. Infts.** p. 647  
 Mills v. Brooker (1919); **2. Agric.** No. 406a  
 — v. Canadian Pacific Steamships, Ltd. (Can.); **8. Carr.** p. 318  
     v. Davis (Can.); **28. Infts.** p. 847  
 — v. Glace Bay Housing Commission (Can.); **12. Contr.** p. 459  
     v. Graham (1801); **43. Tror.** No. 653a  
 — v. Jones (1929); **28. Inc. T.** No. 97a  
 — v. Lethbridge (City) (Can.); **38. Pub. Auth.** p. 1071  
 — v. Mercer Co., Ltd. (Can.); **18. Discy.** p. 615  
 — v. Rose (1923); **2. Agric.** No. 266f  
 Mills (E. W.), Ltd., *Re* (N.Z.); **9. Coys.** p. 360  
 Mills' Estate, *Re* (Can.); **21. E. D.** p. 668  
 Milltown (Town), *Ex p.*, R. v. Public Utilities Board of Comrs. (Can.); **12. Contr.** p. 471  
 Milne v. Daubeny, *Re* Leach (1923); **23. Exors.** Nos. 4895a, 5142b  
 — v. Durham Hosiery Mills, Ltd. (Can.); **9. Coys.** p. 362  
 — v. Peterson (Can.); **12. Contr.** p. 453  
 — v. Yorkshire Guarantee & Securities Corp'n. (Can.); **26. Guar.** p. 771  
 Milne (William), Ltd. v. Glasgow Assessor (Scot.); **38. Rates.** p. 1083  
 Milner, *Re*, *Ex p.* Forbes (Can.); **4. Bkpcy.** p. 227  
 — v. Ringwood (Can.); **38. Real Prop.** p. 1091  
 Milnes v. Cowley (1817); **32. Limit. of A.** No. 1588a  
 Milo Wheat Co., Ltd., *Re* (Can.); **10. Coys.** p. 385  
 Milsted (W. H.) & Son, Ltd. v. Hamp & Ross & Glendinning, Ltd. (1927); **34. Mast. & S.** No. 262a  
 Milvain v. Mather (1850); **10. Coys.** No. 7462a  
 Milward v. Lysons (1836); **29. Insec.** No. 3052b  
 Minaker v. Hadden (Can.); **2. Animals.** p. 125  
 — v. Sanderson, *Re* Rural Municipality Act, *Re* Carrot River Rural Municipality (Can.); **20. Elect.** p. 653  
 Mineral Products Co. v. Continental Trust Co. (Can.); **21. Exon.** p. 693; **30. Jdgmts.** p. 888  
 Mining Assocn. of Great Britain v. London, Midland & Scottish, London & North Eastern, Great Western, & Southern Ry. Cos., & Cheshire Lines Committee (1924); **8. Carr.** Nos. 1377f, 1377j  
 Minister for Labour & Industry (N.S.W.) v. Mutual Life & Citizens Assurance Co., Ltd. (Aus.); **16. Cr. Pract.** p. 566  
 Minister of Agriculture, *Ex p.*, *Re* Noyce, Mildura Co-operative Fruit Co., Ltd. v. Noyce (Aus.); **21. Exon.** p. 697; **38. Pub. Auth.** p. 1069  
 Minister of Defence for Union Government v. Van Zyl (S. Af.); **18. Discy.** p. 613  
 Minister of Education Petition, *Re* (Can.); **19. Educ.** p. 614  
 Minister of Finance v. Burke-Roche, *Re* Clapham (Can.); **21. E. D.** p. 676  
 — v. Caledonian Insurance Co., *Re* Land Registry Act & Higginson (Can.); **21. E. D.** p. 676  
 — v. Smith (1926); **28. Inc. T.** No. 99c  
 Minister of Interior for Canada v. Nelson (Can.); **7. Bounds. & F.** p. 297  
 Minister of Railways, Union Government v. Lee (S. Af.); **36. Negl.** p. 1033  
 Ministry of Labour for Northern Ireland v. Cowdy & Sons (Ir.); **24. Fact.** p. 738  
 Minneapolis Steel & Machinery Co. v. Paulerrou (No. 2) (Can.); **39. S. Goods.** p. 1106  
 Minnedosa (Town) By-Law No. 304, *Re*, Wong Sing v. Minnedosa (Can.); **38. Pub. Hlth.** p. 1072  
 Minter v. Priest (1929); **22. Evid.** No. 4213a  
 Mir Anwarudin v. Fathim Bai Abidin (Ind.); **32. Libel.** p. 925  
 Miss, *Re* (Ind.); **17. Dep.** p. 607  
 Missiquoi & Rouville Mutual Fire Insurance Co. v. Eastern Townships Telephone Co. (Can.); **29. Insec.** p. 868  
 Mitchell v. Davis (1920); **3. Bailmt.** No. 319a  
 — v. Gard (1863); **23. Exors.** No. 1301a  
 — v. Gormley (Can.); **36. Ptnrs.** p. 1042  
 — v. Greenwood (Can.); **21. Exon.** p. 693  
 — v. Noble (B. W.), Ltd. (1927); **28. Inc. T.** No. 222a  
 — v. Saylor (Can.); **12. Contr.** p. 461  
 — v. Smith, *Re* Patterson (1864); **25. Gifts.** No. 337a  
 — v. Tennent (Ind.); **25. Gaming.** p. 758  
 Mitchell & Union Bank of Canada, *Re* (Can.); **6. B. of Exch.** p. 268  
 Mitchell-Gill v. Buchan (Scot.); **2. Agric.** p. 92  
 Mitchner, *Re* (Aus.); **2. Aliens.** p. 108; **8. Char.** p. 341  
 Mitchner, *Re*, Union Trustee Co. of Australia, Ltd. v. A.-G. for Commonwealth of Australia (Aus.); **2. Aliens.** p. 108  
 Mitford v. Mitford & Von Kuhlmann (1923); **11. Confl.** No. 944a  
 Moberly v. Baines & Shortis (Can.); **12. Contr.** p. 449  
 Mockbill v. Homer City S.S. Owners (1929); **34. Mast. & S.** No. 3927a  
 Modern Construction Co. v. Shaw (Can.); **7. Bldg. Conts.** p. 301  
 Modern Realty Co. v. Shantz (Can.); **32. Limit. of A.** p. 937; **35. Mlty.** p. 1020  
 Modica, The (1926); **1. Adm.** No. 1284a

- Moffat v. Grover (Can.); **21. Exon.** p. 694  
Moffat Hydropathic Co., Ltd. v. Secretary of State for War (1924); **11. Const. L.** No. 499b  
Moffatt, *Ex p.*, *Re* Blackburn (Can.); **7. B. of Sale.** p. 291  
— v. Hangar (N.Z.); **18. Discy.** p. 615  
Moffatt (Doe d.) v. Thompson (Can.); **38. Real Prop.** p. 1091  
Mogileff, The (1921); **1. Adm. Nos.** 338a, 352c  
Mohabbat Ali Khan v. Mahomed Ibrahim Khan (Ind.); **3. Basty.** p. 196  
Mohamet Ali, *Ex p.* (Can.); **16. Cr. Pract.** p. 561  
Mohammad Farid-Mohammad Shafi v. Lahore Income Tax Comr. (Ind.); **16. Cr. Pract.** p. 561; **28. Inc. T.** p. 839  
Mohan Lal Mehta, *Re*, *Re* Sri Yogashram Pharmacy, Ltd. (In Liquidation) (Ind.); **10. Coys.** p. 347  
Moiler v. Forge (Aus.); **1. Agcy.** p. 68  
Moir v. Hill (Aus.); **36. Negl.** p. 1028  
Molaiappa Goundan, *Re* (Ind.); **26. Hghys.** p. 780  
Mold v. Wheatcroft (1859); **11. Comp.** No. 2017a  
Molière, The (1925); **1. Adm. Nos.** 518a, 518b, 523a  
Moller, *Ex p.*, *Ex p.* Hanson, R. v. Bannstead (Can.); **2. Aliens.** pp. 119, 120  
Molloy, *Re* (Aus.); **44. Wills.** p. 1181  
— v. Molloy (Aus.); **27. H. & W.** p. 806  
Mombroquette, *Re* (Can.); **16. Courts.** p. 550  
Momphe v. Momphe (S. Af.); **36. Ptnrs.** p. 1042  
Monaghan, *Re* (Can.); **16. Cr. Pract.** p. 565  
Monarch Lumber Co. v. Garrison (Can.); **32. Lien.** p. 931  
Monarch Lumber Co., Ltd. v. Perry (Can.); **22.** p. 704  
Moncrieff v. Official Receiver, *Ex p.*, *Re* Boulton Brothers & Co. (1927); **4. Bkpcy.** Nos. 1657a, 5093a  
Moncton Tramway Electricity & Gas Co., *Ex p.* (Can.); **13. Corps.** p. 488; **33. L. G.** p. 942  
Mondor v. Willets (Can.); **17. Damgs.** p. 578  
Money v. Money & Turner (1927); **22. Evid.** No. 3419a  
Monk, *Re*, Giffen v. Wedd (1927); **8. Char. Nos.** 34a, 1098a  
Monks v. Fox's Executors (1928); **28. Inc. T.** No. 321a  
Monmouthshire & South Wales Coal Owner's Asscn. v. Great Western Ry. Co. (1923); **8. Carr.** No. 1377e  
Monmouthshire & South Wales Coke Ovens & Bye-Products Works Asscn. v. Great Western Ry. Co. (1923); **8. Carr.** No. 1377e  
Monroe, *Ex p.*, *Re* Daum & Plaetzer (Can.); **4. Bkpcy.** p. 225  
Montague L. Meyer, Ltd. v. Kivisto (1929); **39. S. Goods.** No. 527a  
Montesanto v. Di Ubaldo (Can.); **28. Infts.** p. 847  
Montgomery, *Re*, Lumbers v. Montgomery (Can.); **23. Errors.** p. 721  
Montgomery v. Diamond (Can.); **21. Estpl.** p. 685  
— v. General Steam Navigation Co., Ltd. (1929); **34. Mast. & S.** No. 3051c  
— v. Lee Steere (Aus.); **8. Clubs.** p. 351; **25. Gaming.** p. 761  
Monticello State Bank v. Guest (Can.); **2. Animals.** pp. 133, 134  
— v. Killoran (Can.); **6. B. of Exch.** p. 276  
Montjoy v. Heward School District Corp'n. (Can.); **32. Lien.** p. 931  
Montreal (City), *Ex p.*, *Re* Fairweathers (Can.); **4. Bkpcy.** p. 211  
Montreal (City) v. McAnulty Realty Co. (Can.); **11. Comp. Pche.** p. 404  
Montreal Corp'n. v. Canadian National Rys. (Can.); **38. Rys.** p. 1077  
— v. Canadian Pacific Ry. Co. (Gouin Boulevard Crossing Case) (Can.); **38. Rys.** p. 1077  
— v. Montreal Harbour Comrs. (1926); **17. Dep.** No. 378a  
Montreal Dry Docks & Ship Repairing Co., Ltd. v. Halifax Shipyards, Ltd. (Can.); **1. Adm.** pp. 23, 24  
Montreal Light, Heat & Power Co. v. Montreal (City) (1924); **16. Courts.** No. 483a  
Montreal Tramways Co. v. Montréal-Nord Ville (Can.); **19. Easmt.** p. 625  
Montreal Transportation Co. v. Buckeye State, The (Can.); **1. Adm.** p. 26  
— v. R. (Can.); **16. Courts.** p. 554; **Cr. Pract.** p. 560  
Montreal Trust Co. v. Canadian Lumber Yards, Ltd. (Can.); **32. Lien.** p. 931  
— v. Canadian Pacific Ry. Co. (Can.); **22. Evid.** p. 700  
— v. R. (Can.); **11. Const. L.** p. 431  
Montrose (Duke) v. Hart (Scot.); **2. Agric.** p. 92  
Moodie v. Mackenzie (Can.); **12. Contr.** p. 464  
Moodley v. R. (S. Af.); **25. Food.** p. 744  
Moolla (M. E.) v. Collector of Rangoon (Ind.); **11. Comp. Pche.** p. 404  
Moolla v. Official Liquidator (Ind.); **10. Coys.** p. 390  
Moore, *Ex p.*, *Re* Long (Can.); **21. Exon.** p. 689  
A.-G. (Ir.); **25. Fish.** p. 741  
— v. Beaumont (1795); **21. Exon.** No. 417b  
— v. Davy (Ir.); **31. L. & T.** p. 917  
— v. Irwin (Can.); **17. Deeds.** p. 584  
— v. Lambeth Waterworks Co. (1886); **26. Hghys.** No. 1369a  
— v. McLaren (Can.); **10. Coys.** p. 396  
— (Trustee) v. Mathieson, *Re* Mathieson (1927); **5. Bkpcy.** No. 7096a  
— v. National Cash Register Co. (Can.); **7. B. of Sale.** p. 285  
— v. Nimmo (Scot.); **34. Mast. & S.** p. 983  
— v. R. (Aus.); **15. Crim.** p. 538  
— v. Shimmers (Can.); **35. Mtge.** p. 1022  
— v. Terrell (1833); **32. Libel.** No. 1302a  
— v. Todd (1903); **26. Hghys.** No. 2285a  
— v. Williams (A. R.) Machinery Co., Ltd. (Can.); **4. Bkpcy.** p. 223  
Moore (D.) Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 228  
Moore, etc. v. A.-G. (Ir.); **28. Injon.** p. 853  
Moore's Claim, *Re* Unity Manufacturing Co. (Can.); **5. Bkpcy.** p. 248  
Moorhouse v. Linney (1885); **20. Elect.** No. 1025a  
Moorwood v. Dickens (1616); **7. Bonds.** No. 413  
Moosbrugger v. Moosbrugger & Martin (1913); **16. Courts.** No. 277a  
Moose Jaw v. Taylor (Can.); **3. Auct.** p. 161  
Moquin v. Fong (Can.); **17. Dep.** p. 600  
Moran v. Patton (Can.); **21. Exon.** p. 694  
— v. Schermerhorn (Can.); **42. Solrs.** p. 1142  
— v. Vancouver (City) (Can.); **26. Hghys.** p. 778  
Morant, *Re*, *Ex p.* Trustees (1924); **5. Bkpcy.** Nos. 7183a, 7414a  
Morarji v. Madras Administrator General (Ind.); **17. Dep.** p. 603  
Morden, *Re* (Can.); **4. Bkpcy.** p. 231  
More v. Weaver (1928); **32. Libel.** No. 1579a  
Moreau v. Federal Taxation Comr. (Aus.); **28. Inc. T.** pp. 838, 839  
Morelli v. Fitch & Gibbons (1928); **39. S. Goods.** Nos. 619a, 780a  
Moren, *Re* (Can.); **23. Errors.** p. 721  
Morency v. R. (Can.); **16. Cr. Pract.** p. 560  
Morey v. Totten (Can.); **25. Fraud. Conv.** p. 751



- Morff's Patent, *Re* (1929); **36. Pats.** No. 2029a  
Morgan, *Re*, Brown v. Jones (1927); **3. Barr.** No. 191a  
— v. Baker (1838); **5. Bkpcy.** No. 7323  
— v. Hardy (1886); **4. Bkpcy.** Nos. 2385, 2463  
— v. — (1887); **4. Bkpcy.** Nos. 2385, 2463  
— v. Liverpool Corpn. (1927); **31. L. & T.** Nos. 3160a, 4569a, 4588a  
— v. Morgan (Aus.); **27. H. & W.** p. 811  
— v. Rutson (1848); **40. Stillmts.** No. 2399b  
— v. Shaw (Can.); **6. B. of Exch.** p. 278  
Morgan (J. R.), Ltd., *Re*, *Ex p.* J. & G. Garment Mfg. Co. (Can.); **9. Coys.** p. 378  
in Lumber Co. v. Scott, *Re* Mount Royal Lumber & Flooring Co. (Can.); **5. Bkpcy.** p. 259  
Morgana, The (1920); **39. Royal F.** No. 56a  
Morie & Campbell, Wilson & Horne, Ltd. v. World Fire & Marine Insurance Co. (Can.); **29. Inscr.** p. 869  
Morin v. Perron (Can.); **16. Cr. Pract.** p. 564  
— v. R. (Can.); **39. Revenue.** p. 1097  
Morland v. Chitty (1833); **29. Intpr.** No. 503a  
Morley v. Lawford & Co. (1928); **28. Inc. T.** No. 224b  
Moroney, *In the Will of* (Aus.); **44. Wills.** p. 1178  
Moroschan v. Moroschan (Can.); **5. Bkpcy.** p. 245  
Morpeth v. Williamson (N.Z.); **23. Exors.** p. 725  
Morris, *Re* (Can.); **4. Bkpcy.** p. 228  
—, *Re*, Coneys v. Morris (Ir.); **3. Bank.** p. 190  
—, *Re*, Hatter v. Bowman's Bldrs. Supplies (Can.); **29. Inscr.** p. 869  
—, *Re*, Skinner v. Sanders (1927); **21. E. D.** No. 209b  
— v. Cameron (Can.); **16. Courts.** p. 550  
— v. Dunstone (Aus.); **31. L. & T.** p. 902  
— v. Harris (1927); **10. Coys.** No. 7177a  
— v. Kline, Demers, Garnishee (Can.); **5. Bkpcy.** pp. 235, 257  
— v. Mynyddislwyn Urban District Council (1917); **41. Severs.** No. 197a  
— v. Sandford (1851); **33. Lunat.** No. 498a  
— v. Walton (Can.); **1. Agcy.** p. 58  
— v. Whiting (Can.); **40. S. Land.** p. 1108  
Morrison v. Aboukir (Owners) (1928); **34. Mast. & S.** No. 2552b  
— v. Bentall (No. 2) (Can.); **32. Limit. of A.** p. 939  
— v. Cassell Hill School District Trustees (Can.); **19. Educ.** p. 649  
— v. Customs & Excise (Minister) (Can.); **28. Inc. T.** p. 817  
— v. Gale (Can.); **12. Contr.** p. 469  
— v. London Midland & Scottish Ry. Co. (Scot.); **7. Bounds & P.** p. 296; **26. Hghys.** p. 777  
— v. Taylor (Aus.); **3. Bastly.** p. 201  
— v. Thompson (Can.); **8. Carr.** p. 316  
Morriss v. Winter (1929); **15. Crim.** No. 9151a; **37. Prsns.** Nos. 8a, 34a, 31b, 402a  
Mort v. Barnes (Aus.); **21. Estpl.** p. 688; **21. Exon.** p. 693; **43. Trou.** p. 1167  
Mortleman v. Public Trustee (N.Z.); **35. Mtge.** pp. 1022, 1024  
Morton v. Bartlett (Can.); **38. Pub. Auth.** p. 1069  
— v. Brighthouse (Can.); **25. Gifts.** p. 765  
— v. McLeod (Can.); **12. Contr.** p. 466  
Morton & Cowell v. Hoffert (Can.); **21. Exon.** pp. 693, 694  
Morwick v. Provincial Contracting Co., Ltd. (Can.); **36. Negl.** p. 1029  
Moss, *Ex p.*, R. v. Registrar of Titles (Aus.); **16. Cr. Pract.** pp. 563, 565; **38. Real Prop.** p. 1090  
—, *Re*, *Ex p.* Everitt (1923); **4. Bkpcy.** No. 3945a  
— v. Christchurch Rural District Council (1925); **17. Damgs.** No. 29a  
Moss v. Salford Corpn. (1908); **38. Pub. Auth.** No. 739a  
Mostyn, The, Great Western Ry. Co. v. Mostyn (Owners) (1928); **30. Idgmts.** Nos. 498a, 569c, 588b; **36. Negl.** No. 706  
Motchall v. Massoud (Aus.); **22. Evid.** p. 700  
Moti & Co. v. Cassim's Trustee (S. Af.); **6. B. of Exch.** p. 279  
Motishaw & Co. v. Mercantile Bank of India (Ind.); **2. Aliens.** p. 115  
Motor Car Loan Co. v. Bonser (Can.); **39. S. Goods.** p. 1107  
Motor Farming & Development Co. & Davidson v. Smith (Can.); **1. Agcy.** p. 64  
Motor Fuels Corpn., etc. (In Liquidation) v. Linder Brothers (S. Af.); **9. Coys.** p. 364  
Motor Manufacturers' & Traders' Society v. Motor Manufacturers' & Traders' Mutual Insurance Co. (1925); **9. Coys.** No. 228b  
Mott & Roemer, *Re*, *Re* Roemer Estate (Can.); **24. Exors.** p. 733; **42. Solrs.** p. 1112  
Moubray's Trustees v. Moubray (Scot.); **37. Powers.** p. 1063  
Moule v. Marmite Food Extract Co. (1927); **34. Mast. & S.** No. 2384b  
Mounson v. Lyster (1632); **11. Const. L.** No. 785a  
Mount Hope Rural Municipality v. Findlay (Can.); **1. Agcy.** p. 76; **25. Fraud. Conv.** p. 749  
Mount Royal Lumber & Flooring Co., *Re*, Morgan Lumber Co. v. Scott (Can.); **5. Bkpcy.** p. 259  
Mountain v. Bates, *Re* Bates (1928); **40. Stillmts.** No. 2009a  
— v. Edmonton (City) (Can.); **36. Negl.** p. 1029  
Mountain's Will, *Re* (Can.); **8. Char.** p. 340  
Mountjoy v. R. (Can.); **26. Hghys.** p. 773  
Mowat v. Clement (Can.); **7. B. of Sale.** p. 288  
Mowbray (Lord) v. Weld-Blundell, *Re* Weld-Blundell Estate (1929); **30. Land. Imp.** No. 79c; **40. Stillmts.** No. 2950a  
Mowchenko, *Re* (Can.); **24. Exors.** p. 734  
Moyes v. Magnus Motors, Ltd. (N.Z.); **32. Lien.** p. 929  
Mozelle, *Re* (Can.); **33. Mags.** p. 953  
Mudge, *Re* (1914); **8. Chos.** No. 110a  
Muffatt v. Parsons (1814); **12. Contr.** No. 2652  
Muhammad Khan v. R. (Ind.); **25. Gaming.** p. 758  
Muhammad Moideen v. Chinthamani Chettar (Ind.); **8. Chos.** p. 345; **11. Confl.** p. 424  
Muhammad Zafar v. Zahur Husain (Ind.); **7. Bonds.** p. 295  
Muirhead v. Borland (Scot.); **10. Coys.** p. 395  
— v. Spruce Creek Power Co., Ltd. (Can.); **16. Courts.** p. 550  
Mujibar Rahman v. Isub Surati (Ind.); **30. L. & T.** p. 898  
Muldoon v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 1078  
Mulgrave v. Clancey (Can.); **3. Bastly.** p. 202  
Mulholland v. Williamson (Can.); **25. Fraud. Conv.** p. 748  
Mullen v. Barr & Co., Ltd. (Scot.); **36. Negl.** p. 1026  
— v. Kerr (Can.); **12. Contr.** p. 451  
— v. Millar (Can.); **9. Coys.** p. 372  
Mullens v. Mullens (Aus.); **27. H. & W.** p. 810  
Muller v. Chennells (S. Af.); **1. Agcy.** p. 71  
— v. Shibley (Can.); **32. Lien.** p. 930  
Muller (W. H.) & Co. (London) v. Inland Revenue Comrs. (1928); **28. Inc. T.** Nos. 168a, 186a, 193a, 567, 632c, 632c  
— v. Lethem (1928); **28. Inc. T.** Nos. 168a, 186a, 193a, 567, 632c, 632c

- Muller & Williams, *Re* (Aus.); **43. Trade**, p. 1159  
 Mullin & Mullin v. Annable, *Re* Grant Estate (Can.); **8. Chos**, p. 346  
 Mulliner v. Florence (1878); **32. Lien**, No. 27a  
 Multiple Utilities Co., Ltd. v. Souch (1929); **36. Pals**, No. 3312a  
 Mulvenna v. The Admiralty (Scot.); **21. Exon.** p. 696  
 Mulvey v. The Barge Neosho (Can.); **1. Adm.** pp. 20, 24  
 Muma v. Niagara District Mutual Insurance Co. (Can.); **29. Insee**, p. 860  
 Mumby v. Volp (1929); **34. Fact.** Nos. 36a, 98a  
 Mumford, *Re*, Debtor v. Petitioning Creditor, *Ex p.* Official Receiver (1927); **4. Bkpcy.** No. 3740a; **10. Coys.** No. 6442a  
 Mumford v. Northern Trusts Co. (Can.); **3. Bailmt.** pp. 165, 166  
 Munday v. Mauden (1875); **15. Crim.** No. 9364a  
 Mungall v. Mann, *Ex p.* Mann (Aus.); **35. Mlge.** p. 1021  
 Municipal Act, *Re*, Heather v. Maddock (Can.); **20. Elect.** p. 653  
 Municipal Elections Act & Tomsett, *Re* (Can.); **20. Elect.** p. 652  
 Munn v. Haahli (Can.); **27. H. & IV.** p. 787  
 Munro (Doe d.) v. Hanson (Can.); **38. Real Prop.** p. 1091  
 Munro v. Leedham (Can.); **3. Bastj.** p. 200  
 --- v. Pinder Lumber & Milling Co. (Can.); **43. Tresp.** p. 1165  
 Münster, *Re* (1920); **2. Aliens**, No. 237d  
 Murat Singh v. Phetu Singh (Ind.); **20. Eqq.** p. 658  
 Murdoch v. Consolidated Mining Smelting & Power Co. (Can.); **34. Mast. & S.** p. 963  
 --- v. West (Can.); **23. Errors**, p. 732  
 --- v. Windsor & Annapolis Ry. Co. (Can.); **17. Dep.** p. 595  
 Murdock v. Lawson (Can.); **35. Mlge.** p. 1023  
 Murli Manohar Prasad, *Re* (Ind.); **15. Crim.** p. 516  
 Murrie v. Morrison (Can.); **17. Dep.** p. 598  
 Murphy, *Re* (Aus.); **21. Exon.** p. 692; **23. Errors**, p. 725  
 --- *Re* (Can.); **29. Insee**, p. 870  
 --- *Re* (H.); **38. Real Prop.** pp. 1089, 1090  
 --- v. Hart (Can.); **3. Bailmt.** p. 167  
 --- v. Murphy (Ind.); **11. Confl.** p. 421  
 --- v. R. (Can.); **17. Dep.** p. 601  
 --- v. Synnott (Ir.); **8. Clubs**, p. 351  
 Murray v. Collins (Can.); **2. Animals**, p. 132  
 --- v. Dalton (1920); **2. Agric.** No. 260r  
 --- v. Dawson (Can.); **41. Sewers**, p. 1125  
 --- v. Delta Copper Co., Ltd. (Can.); **1. Agcy.** p. 73; **12. Contr.** p. 457  
 --- v. Duff (Can.); **22. Evid.** p. 708  
 --- v. Haylow (Can.); **23. Errors**, p. 718  
 --- v. Hopkins (N.Z.); **1. Agcy.** p. 77  
 --- v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 835  
 --- v. Jenkins (Can.); **1. Agcy.** p. 75  
 --- v. McGuire (Scot.); **35. Money**, p. 1015  
 --- v. Macmillan (Scot.); **14. Crim.** p. 499  
 --- v. Nova Scotia Marine Insurance Co. (Can.); **29. Insee**, p. 865  
 --- v. Reeves (1828); **4. Bkpcy.** No. 5035a  
 --- v. Reeves Supply Co. (Can.); **39. S. Goods**, p. 1103  
 --- v. Reid (1828); **4. Bkpcy.** No. 5035a  
 --- v. Robertson (Scot.); **14. Crim.** p. 199  
 --- v. Scottish Automobile & General Insurance Co., Ltd. (Scot.); **29. Insee**, p. 875  
 --- v. Thompson (Can.); **26. Guar.** p. 768  
 Murray's Estate, *Re* (Can.); **11. Confl.** pp. 412, 413  
 Murshidabad Nawab v. Bilas Roy Choudhuri (Ind.); **12. Contr.** p. 453; **21. Estpl.** p. 684; **42. Stats.** p. 1146  
 Murton v. Aldis (1929); **31. L. & T.** Nos. 7235b, 7318b  
 Murugappa Chettiar, *Re* (Ind.); **28. Inc. T.** p. 818  
 Muscroft v. Stewarts & Lloyds, Ltd. (1928); **34. Mast. & S.** No. 2710a  
 Musgrove, *In the Estate of*, Davis v. Mayhew (1927); **23. Errors**, No. 2979a  
 Musmann v. Engelke (1928); **11. Const. L.** No. 418a  
 Mussammat Guljania v. R. (Ind.); **15. Crim.** p. 514  
 Musselman v. Zimmerman (Can.); **2. Animals**, p. 126  
 Musson v. Head (Can.); **1. Agcy.** p. 40  
 Mustard, *Re* (Can.); **4. Bkpcy.** p. 222; **7. B. of Sale**, p. 291  
 Muthiah Chettiar v. Muthu K. R. A. Karoppan Chetti (Ind.); **3. Barr.** p. 194  
 Muthiah Chetty v. Alagappa Chetty (Ind.); **1. Agcy.** p. 55  
 Mutual Investments, Ltd., *Re* (Can.); **9. Coys.** p. 377  
 Mutual Life Assurance Co. v. Douglas (Can.); **35. Mlge.** p. 1022  
 Mutual Property Insurance Co., Ltd. v. Inland Revenue Comrs. (1926); **35. Mlge.** No. 625a  
 Myers v. Union Natural Gas Co. (Can.); **9. Coys.** p. 373; **11. Confl.** p. 419; **17. Deeds**, p. 587; **21. Estpl.** p. 686  
 Myerson v. Green & Homes (Can.); **4. Bkpcy.** p. 228  
 Myklebust v. Galey (Can.); **2. Animals**, p. 134  
 Mylius v. Royal Insurance Co., Ltd. (Aus.); **29. Insee**, p. 869  
 Myttenaere, *Ex p.*, *Re* Ellis (1925); **5. Bkpcy.** Nos. 8645a, 9311a

## N.

- N. v. N. (1928); **27. H. & W.** Nos. 5382b, 5114a  
 N. P. A. Chettiar, Firm v. Sharma (Ind.); **7. Bldg. Contr.** p. 301  
 Nada Shah v. Sleeman (Aus.); **2. Animals**, p. 125  
 Nadan v. R. (1926); **17. Dep.** Nos. 91a, 526a, 549a  
 Naganna v. Venkatappayya (Ind.); **12. Contr.** p. 467  
 Nagel, *Re* (Can.); **23. Errors**, p. 728  
 --- v. Hough (Aus.); **23. Errors**, p. 716  
 Nagoremull v. Triton Insurance Co., Ltd. (1924); **12. Contr.** Nos. 2084a, 2292a  
 Nagy, *Re*, Nagy v. Gall (Can.); **16. Cr. Pract.** p. 571  
 Naish v. Tatlock (1794); **5. Bkpcy.** No. 7801a  
 Nakauchi Estate, *Re* (Can.); **23. Errors**, p. 725; **28. Infts.** p. 850  
 Nance v. Naylor (1928); **31. L. & T.** No. 6307a  
 Nandkishore Lal v. Pasupati Nath Sahu (Ind.); **23. Errors**, p. 716  
 Nantais v. Pazner (Can.); **19. Easmt.** pp. 626, 629  
 Nanton v. Villeneuve (Can.); **38. Rates**, pp. 1085, 1086  
 Napper v. Lambton, Hetton & Joicey Collieries, Ltd. (1929); **34. Mast. & S.** Nos. 2512a, 3885a  
 Narainsamy v. Principal Immigration Officer (S. Af.); **2. Aliens**, p. 121  
 Narendra Nath Dutta v. Abdul Hakim (Ind.); **16. Courts**, p. 551  
 Nariman Rustumji Mehta v. Hasham Ismayal valad Haji Khamisa (Ind.); **16. Courts**, p. 552; **17. Dep.** p. 605  
 Nash v. Giles (1926); **26. Hqhs.** No. 2282a  
 --- v. Lynde (1929); **9. Coys.** No. 439a

- Nash & Williams v. Edmonton, Dunvegan & British Columbia Ry. Co. (Can.); **11. Comp. Pchc.** p. 407
- Nash-Simington Co., Ltd. v. Thomas (Can.); **26. Guar.** p. 769
- Natesa Vanniyar v. Gopolaswami Mudaliar (Ind.); **40. S. Land.** p. 1112
- Nathan Crystal, Re, Ex p. Hawthorne (Can.); **7. B. of Sale.** p. 291
- Nathoo v. Immigrants' Appeal Board (S. Af.); **2. Aliens.** p. 121
- Nathu Ram v. Chand Kuar (Ind.); **36. Negl.** p. 1033
- National Asscn. of Coke & Bye-Product Plant (Owners) v. London, Midland & Scottish. London & North Eastern, Great Western & Southern Ry. Cos. & Cheshire Lines Committee (1924); **8. Carr. Nos.** 1377f, 1377j
- National Asscn. of Corn & Agricultural Merchants v. London, Midland & Scottish Ry. Co. (1925); **8. Carr. No.** 1377h
- National Bank für Deutschland, Re, Re Anglo-Austrian Bank (1921); **2. Aliens.** No. 236b
- National Bank of Australasia, Ltd. v. Joseph (Can.); **20. Eqq.** p. 660
- National Bank of New Zealand v. Dalgety & Co. (N.Z.); **7. B. of Sale.** p. 289
- National Benefit Assurance Co., Ltd., Re (1924); **10. Coys.** No. 7627a
- , Re, Ex p. English Insurance Co. (1928); **10. Coys.** No. 7612a
- , Re, Ex p. English Insurance Co., Ltd. (1929); **29. Insee.** No. 252a
- , Re, Pacific Great Eastern Ry. Co.'s Case (Can.); **10. Coys.** pp. 394, 397
- National Breweries v. Paradis (Can.); **13. Coprt.** p. 483
- National Cash Register Co. v. Lovett (Can.); **7. B. of Sale.** p. 285
- v. Stanley (1921); **3. Bailmt.** No. 252a
- National Dairy Council v. Grand Trunk & Canadian Pacific Ry. Cos. (Milk Rate Case) (Can.); **8. Carr.** p. 326
- National Discount Corpn. v. Frech & Jackson (Can.); **39. S. Goods.** p. 1106
- National Employers' Mutual General Insurance Asscn., Ltd. v. Elphinstone (1929); **1. Agcy.** No. 980a
- National Gas Council of Great Britain & Ireland's Appeal, Re (1927); **8. Carr.** No. 1245c
- National Insurance Co., Ltd. v. Nissim Abraham Gubbay (Ind.); **24. Errors.** p. 736
- National Life Insurance Co. v. McCoubay (Can.); **29. Insee.** p. 871; **30. Idgmts.** p. 886
- National Manufacturing Co. v. Stepa (Can.); **6. B. of Exch.** p. 272
- National Mortgage & Agency Co., Ltd. v. Braid & Co. (N.Z.); **2. Arbn.** p. 153
- National Provincial & Union Bank of England v. Charley (1924); **10. Coys.** No. 4933
- v. Lindsell (1922); **7. B. of Sale.** No. 98a
- National Provincial & Union Bank of England, Ltd. v. Tetley, Re Tetley (1923); **8. Char.** No. 740b
- National Securities, Ltd. v. Darling (Can.); **27. H. & W.** p. 791
- National Stadium, Ltd., Re (Can.); **9. Coys.** pp. 361, 362; **10. Coys.** p. 387
- National Stores, Ltd., Re (1898); **10. Coys.** No. 7044a
- National Trust Co., Ltd., Ex p., Re Humberstone Coal Co., Ltd. (Can.); **4. Bkpcy.** p. 227
- National Trust Co. v. Battell (Can.); **32. Lien.** p. 932
- v. Bell (Can.); **27. H. & W.** p. 793
- v. Dominion Iron & Steel Co. (Can.); **10. Coys.** p. 384; **39. Recrs.** p. 1093
- v. Holowaychuk (Can.); **27. H. & W.** p. 790
- National Trust Co., Ltd. v. Larson (Can.); **23. Errors.** p. 716; **39. S. Goods.** p. 1107
- v. Palace Theatre, Ltd. (Can.); **31. L. & T.** p. 906
- v. Western Trust Co. (Can.); **19. Easmt.** p. 627
- National Trust Co. & Municipal District of Vale, Re (Can.); **2. Arbn.** p. 151
- National Trust Co.'s Case, Re Home Bank of Canada (Can.); **3. Bank.** p. 175
- National Union Fire Insurance Co. of Pittsburg v. Martin (Can.); **1. Agcy.** pp. 73, 74
- Naugler v. Jenkins (Can.); **21. Estpl.** p. 686
- Navy League of Canada (Assessment of Halifax Branch of), Re (Can.); **38. Rates.** p. 1080
- Nazzareno v. Algoma Eastern Ry. Co. (Can.); **8. Carr.** p. 316
- Neal v. Hanbury (1701); **39. Rutchgs.** No. 292a
- Neare v. Walker (1812); **18. Distr.** No. 1582
- Neave v. Barnardo's Homes National Incorporated Asscn., Re Husband (1923); **8. Char.** No. 891a
- Nedenes, The (1924); **1. Adm.** No. 1047a; **18. Discy.** No. 1462a
- Needham v. Ace Mill, Ltd. (1928); **34. Mast. & S.** No. 3821c
- Needles v. Slovark (Can.); **6. B. of Exch.** p. 284
- Nees v. Botting (N.Z.); **6. B. of Exch.** p. 278
- Neff & College of Dental Surgeons, Re, Re Dentistry Act (Can.); **34. Med.** p. 1002
- Neilson, Ex p., Re Edmond (1853); **9. Coys.** No. 2299a
- v. Neilson (Can.); **27. H. & W.** p. 811
- Neilson & Craig v. Adamson (Trustee), Ex p., Re Cumming (1929); **5. Bkpcy.** No. 7155a
- v. Trustee, Ex p., Re Cumming & West (1929); **4. Bkpcy.** No. 3832a; **5. Bkpcy.** No. 7155a
- Neilson Magann Lumber Co. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 1076
- Nelson v. Band & Botterell (Can.); **17. Damgs.** p. 582
- v. Brewster (Can.); **32. Lien.** p. 932
- v. Campbell (Aus.); **22. Evld.** p. 701; **35. Money.** p. 1015
- v. Crosby (N.Z.); **1. Agcy.** p. 67
- v. Grand Trunk Pacific Ry. Co. (Can.); **2. Animals.** p. 126
- v. Hirschborn (S. Af.); **1. Agcy.** p. 61
- v. National Trustees, Executors & Agency Co. of Australasia, Ltd., Re Gibbs (Aus.); **32. Limit. of A.** p. 937
- v. Nelson (Can.); **11. Confl.** p. 411
- v. Nelson & Andrews (Can.); **11. Confl.** p. 421
- v. Pacific Great Eastern Ry. Co. (Can.); **11. Comp. Pchc.** p. 401
- v. Person (Can.); **32. Lien.** p. 931
- v. Prudential Assurance Co., Ltd. (Ir.); **25. Gifts.** p. 766
- v. R. (1928); **17. Dep.** No. 662a
- v. Union Bank of Canada (Can.); **3. Bank.** p. 178
- Nelson Murdoch & Co. v. Wood (1921); **3. Bailmt.** No. 262a
- v. — (1922); **3. Bailmt.** No. 262a
- Nelson's Estate, Re (Can.); **30. Idgmts.** p. 888
- Nemerovsky v. McBride (No. 2) (Can.); **18. Discy.** p. 617
- Neptune, The (1919); **1. Adm.** No. 1027a
- Neptune Meter Co. v. Halifax (City) (Can.); **33. L. G.** p. 914

- Nesbitt v. McCartney (Can.): **9. Coys.** p. 364  
 Nesbitt (A. & W.), Ltd. v. Mitchell (1926); **23. Inc. T. No. 99d**  
 Nesmith (Doe d.) v. Williston (Can.); **21. Exon.** p. 693  
 Nesom v. Metcalfe (1921); **5. Bkpcy.** No. 8496a  
 Netherlands Investment Co. v. Des Brisay (Can.); **24. Errors.** p. 731  
 Nettleton, *Re* (Can.); **16. Cr. Pract.** p. 562  
 Neuburger's Settlement, *Re*, *Foreshe v. Public Trustee* (1923); **2. Aliens**, No. 215g  
 Neugebauer & Co., Ltd. v. Hermann (S. Af.); **3. Auct.** p. 162  
 Neuman v. Bradshaw (Can.); **2. Aliens**, p. 113  
 Neuschild v. British Equatorial Oil Co. (1925); **9. Coys.** No. 3874a  
 Neve v. Leeson (Can.); **1. Agcy.** p. 61  
 Never-Stop Ry. (Wembley) v. British Empire Exhibition (1924) Incorporated (1926); **12. Contr. No. 2832a**  
 Neville v. London "Express" Newspaper, Ltd. (1919); **1. Action**, Nos. 556, 560, 561a, 719a 725  
 — v. Ross (Township) Corp'n. (Can.); **38. Pub. Auth.** p. 1069  
 Neville & Green, *Re* (Can.); **4. Bkpcy.** p. 230  
 Neville Canneries, Ltd. v. Santa Maria (Can.); **1. Adm.** p. 15  
 New Brilliant Freehold Gold Mining Co., Ltd. v. Mills (Aus.); **10. Coys.** p. 386  
 New Brunswick (Receiver General of) v. Rosborough (Can.); **21. E. D.** pp. 675, 676  
 New Brunswick & Nova Scotia Land Co. v. Kirk (Can.); **30. L. & T.** p. 900  
 New Brunswick Electric Power Commission v. Quinton (Can.); **2. Arbn.** p. 159  
 New Brunswick Gas & Oilfields, Ltd. & New Brunswick Electric Power Committee, *Re* (Can.); **2. Arbn.** p. 157  
 New Brunswick Land & Investment Co. v. Sime (Can.); **38. Rules.** p. 1086  
 New Brunswick Power Commission & Inglewood Pulp & Paper Co., *Re* (Can.); **11. Comp. Pchc.** pp. 102, 103  
 New Brunswick Power Co., *Ex p.* (Can.); **20. Electric**, p. 655; **43. Tram.** p. 1164  
 —, *Re* (Can.); **12. Contr.** p. 110  
 — v. Price Hatt (Can.); **17. Deeds**, p. 584  
 New England Dressed Meat & Wool Co. v. Patrick Brothers (Can.); **1. Agcy.** p. 64  
 New Nimrod Co., Ltd. v. Peruvian Pacific Ry., Ltd., International Construction & Finance Syndicate, Ltd. & Crankshaw (1907); **28. Injon.** Nos. 113a, 835a  
 New South Wales (State of) v. Commonwealth (Aus.); **16. Courts**, p. 555; **17. Dep.** p. 604  
 New South Wales Public Trustee v. Gavel (Aus.); **42. Sp. Pfc.** p. 1114  
 New South Wales Stamp Duties Comr. v. Thomson (Aus.); **39. Revenue**, p. 1099  
 New Westminster City Corp'n. v. Brighthouse (Can.); **26. Hghys.** p. 775  
 New York Central Ry. Co. v. Elliott (Can.); **8. Carr.** p. 329  
 New York Life Insurance Co., *Re* (Can.); **10. Coys.** p. 397  
 — v. Public Trustee (1924); **2. Aliens**, No. 215m; **9. Coys.** No. 27a; **11. Confl.** No. 703a  
 New Zealand Electrical Appliance & Engineering Co., Ltd., *Re* (N.Z.); **10. Coys.** p. 389  
 New Zealand Gun Machine Co., Ltd. (In Liquidation), *Re* (N.Z.); **10. Coys.** p. 387  
 New Zealand Hardware Co., Ltd., *Re* (N.Z.); **9. Coys.** p. 376  
 New Zealand Serpentine Co., Ltd. v. Hoon Hay Quarries, Ltd. (N.Z.); **10. Coys.** p. 383  
 Newburys, Ltd., *Ex p.*, *Re A Debtor* (1926); **4. Bkpcy.** No. 1177a  
 Newby v. Brownlee (Can.); **33. L. G.** p. 944  
 Newcastle Breweries, Ltd. v. Inland Revenue Comrs. (1927); **30. Jdgmts.** No. 714  
 Newenham v. Mountcashel (Can.); **7. Bonds**, p. 295  
 Newman (or Neuman) v. Bradshaw (Can.); **2. Aliens**, p. 119  
 Newman v. Browne (W. R.) & Son (Can.); **6. B. of Exch.** p. 278  
 — v. Goff (Can.); **31. L. & T.** p. 910  
 — v. Overington, Harris & Ash, Ltd. (1928); **15. Crim.** No. 9190a; **42. Str. Traf.** No. 207a  
 — v. Whitehead (Can.); **29. Inns**, p. 859  
 Newport Corp'n. v. Isle of Wight Farmers' Trading Society, Ltd. (1928); **41. Ship.** No. 8564a  
 Newport Industrial Development Co. v. Heughan (Can.); **31. L. & T.** p. 907  
 Newsholme Brothers v. Road Transport & General Insurance Co., Ltd. (1929); **29. Insce.** Nos. 171a, 193a  
 Newsome, *Re* (Can.); **4. Bkpcy.** p. 232  
 Newsom, Sons & Co., Ltd. v. James (1909); **13. Cty. Cts.** No. 648a  
 Newton v. Brandon (Can.); **29. Insce.** p. 861  
 — v. Finesilver, *Re Black & White Hat Shop, Ltd.* (Can.); **5. Bkpcy.** p. 250  
 — v. Guest, Keen & Nettletolds, Ltd. (1926); **30. Jdgmts.** No. 569a  
 — v. Hamilton, *Re Thompson, Sons & Co.* (Can.); **5. Bkpcy.** p. 235  
 — v. Harland (1840); **17. Damgs.** No. 574a  
 — v. Newton (Can.); **27. H. & W.** p. 804  
 Ngcobo v. Ngcobo (S. Af.); **22. Evid.** p. 703  
 Niagara Hats, Ltd., *Re Trustee v. Bank of Montreal* (Can.); **5. Bkpcy.** p. 219  
 Niagara Public School Board v. Queenston Women's Institute (Can.); **19. Educ.** p. 615; **20. Eqq.** p. 658  
 Nichol v. Sugarman (Can.); **29. Intor.** p. 876  
 Nicholas v. Dumoulin (Can.); **1. Agcy.** p. 59  
 Nicholl v. Llantwit Major Parish Council (1924); **7. Burial**, Nos. 228a, 291a  
 Nicholle v. Paddock (Aus.); **3. Bastly.** p. 201  
 Nichols v. North Metropolitan Railway & Canal Co. (1894); **12. Contr.** No. 3520  
 — v. T. T. C. (Can.); **18. Discy.** p. 612  
 Nicholson v. Black & White Cabs, Ltd. (N.Z.); **17. Dep.** pp. 605, 606; **21. Estpl.** pp. 687, 688  
 — v. Cooper (1858); **4. Bkpcy.** No. 160a  
 — v. Debusse (Can.); **1. Agcy.** p. 60  
 — v. Southern Star Fire Insurance Co., Ltd. (Aus.); **29. Insce.** p. 868  
 Nicholson Sales & Service Corp'n., *Re* (Can.); **4. Bkpcy.** p. 227  
 Nickell v. Windsor (City) (Can.); **13. Corpns.** p. 490; **36. Negl.** p. 1027  
 Nickerson v. Manning (Can.); **33. Mal. Pros.** p. 957  
 Nieblo Manufacturing Co. v. Standard Co. (Can.); **36. Pats.** pp. 1045, 1051  
 Nielsen v. Doraty (Can.); **34. Mast. & S.** p. 965  
 Nielsen, Andersen & Co. v. Collins (1928); **28. Inc. T.** Nos. 168a, 186a, 193a, 567, 632c, 632e  
 Nierhaus, *Re* (1921); **2. Aliens**, No. 236a  
 Nightingale, *Re Hargreaves v. Shuttleworth* (1927); **22. Evid.** No. 1489a  
 Nightingale v. Hiffen (1925); **22. Evid.** No. 5407a  
 — v. Ferrers (Earl) (1733); **28. Infts.** No. 669a  
 Nigro v. Wilson (N.Z.); **1. Agcy.** p. 62

- Nilkanth Balwant Nattu v. Shri Satchidanand Vidya Narsinha Bharati (Ind.); **16. Courts**, p. 553  
 Nilmone Chaudhuri v. Kedar Nath Daga (Ind.); **3. Barr.** p. 194  
 90th Battalion, Winnipeg Rifles, *Re* (Can.); **11. Const. L.** p. 434  
 Ningappa Marbasappa Arleshvar v. Gyanaji Pouraji Marwadi (Ind.); **30. Jdgmts.** p. 891  
 Nipissing Dominion Election, *Re*, Klock v. Varin (Can.); **20. Elect.** p. 653  
 Nippon Kinyn Sha. Ltd., *Re*, *Ex p.* Totaro Fujino (Can.); **10. Coys.** p. 394  
 Nirso Narayan Singh v. R. (Ind.); **32. Libel**, p. 925  
 Nixon v. Ashenhurst (Can.); **38. Real Prop.** p. 1088  
 — v. A.-G. (1929); **39. Revenue**, No. 841a  
 — v. Erith Urban Council (1924); **13. Corpns.** No. 1127a  
 — v. O'Callaghan (Can.); **32. Libel**, p. 925  
 Noble, *Re* (Can.); **17. Dep.** p. 603; **22. Evid.** p. 706; **23. Exors.** p. 719  
 — v. Bromiley (Can.); **42. Solrs.** p. 1142  
 — v. Campbellford, Lake Ontario & Western Ry. Co. (Can.); **2. Arbn.** p. 152  
 — v. Cass (1828); **23. Errors**, No. 3572a  
 — v. Cline (Can.); **16. Courts**, p. 550  
 — v. Esquesing (Township) (Can.); **2. Animals**, p. 127  
 — v. Harrison (1926); **2. Agric.** No. 970b  
 — v. Newfoundland Government (Nfld.); **11. Const. L.** p. 429  
 — v. Noble (Can.); **32. Limit. of A.** p. 936  
 Noble & Province of Ontario, *Re*, *Re* Parkdale Boulevard, Ltd., & Province of Ontario, *Re* Torrance & Province of Ontario (Can.); **11. Comp. Pche.** p. 403  
 Noble (B. W.). Ltd. v. Mitchell (1926); **28. Inc. T.** No. 142a  
 Noble (B. W.). Ltd. v. Mitchell (1927); **28. Inc. T.** No. 222a  
 Noden, Hallett & Johnston, *Re*, *Ex p.* Johnston (Can.); **4. Bkpcy.** p. 219  
 Noel, *Re*, *Ex p.* Gravelbourg (Town) (Can.); **4. Bkpcy.** p. 226  
 — v. Isaac (1835); **41. Shffs.** No. 639a  
 Nokes v. Strong (1909); **38. Rates**, No. 675c  
 Nolan v. Graves (Ir.); **31. L. & T.** p. 918  
 — v. Russel Haveride, S.S. (S. Af.); **1. Adm.** pp. 14, 20, 37  
 — v. Thompson (Aus.); **38. Real Prop.** p. 1088  
 Nomeracsky v. Canterbury Dressing Works (1928); **34. Mast. & S.** No. 3140a  
 Nordtunne Estate, *Re* (Can.); **24. Errors**, p. 733  
 Norfolk v. Gifford (1690); **20. Eqq.** No. 2367a  
 Norfolk Coast, The (1922); **1. Adm.** No. 1723a  
 Norfolk Co-operative Dairy Co., Ltd. v. Allen (N.Z.); **2. Animals**, p. 132  
 Norfolk Ry. Co., *Ex p.* (1860); **11. Comp. Pche.** No. 1686a  
 — v. Bayes (1849); **11. Comp. Pche.** No. 2035a  
 Norfor v. Aberdeenshire Education Authority (Scot.); **19. Educ.** p. 643  
 Norris v. Meadows (Can.); **35. Mtge.** p. 1021  
 Norske Atlas Insurance Co., Ltd. v. London General Insurance Co., Ltd. (1927); **2. Arbn.** No. 1981a  
 Norske Lloyd Insurance Co., Ltd., *Re* (1928); **10. Coys.** No. 7612b  
 North v. Lauweryssen (Can.); **40. S. Land.** p. 1112  
 — v. Martin (1833); **38. Real Prop.** No. 502a  
 North American Finance Co. v. Western Elevator Co. (Can.); **1. Agcy.** p. 76  
 North American Lumber Co., Ltd. v. Bank of Montreal (Can.); **3. Bank.** p. 189; **7. B. of Sale**, pp. 287, 290  
 North British & Mercantile Insurance Co. v. McLellan (Can.); **29. Insec.** p. 868  
 North British Ry. Co. v. Steel Co. of Scotland, Ltd. (Scot.); **8. Carr.** p. 325  
 North Bruce Provincial Election, *Re*, Fenton v. Mewbinney (Can.); **20. Elect.** p. 651  
 North Cowichan Corp'n. v. Gore-Langton (Can.); **11. Comp. Pche.** pp. 102, 407  
 North Eastern Ry. Co. v. Spark (1877); **5. Bkpcy.** No. 8933c  
 North Huron Election, *Re* (Can.); **20. Elect.** p. 653  
 North of England Protecting & Indemnity Assn., *Re* (1929); **9. Coys.** No. 4297a  
 North Pacific Lumber Co. v. British American Trust Co. (Can.); **38. Real Prop.** p. 1091  
 North Pacific Lumber Co., Ltd. v. National Revenue Minister (Can.); **28. Inc. T.** p. 836  
 North Pacific Lumber Co. v. Sayward (Can.); **17. Deeds**, p. 585  
 North Pole Ice Co., Ltd., & Reduced, *Re* (1924); **9. Coys.** Nos. 1019a, 1036a  
 North Shore Trading Co., *Re*, Providence Washington Assurance Co. v. Gagnon & Cloutier (Can.); **4. Bkpcy.** p. 231  
 North Vancouver v. Stewart (F. R.) & Co. (Can.); **38. Pub. Hlth.** p. 1072; **39. Revenue**, p. 1098; **42. Str. Traf.** p. 1152  
 North Wales Produce & Supply Society, *Re* (1922); **7. B. of Sale**, Nos. 141a, 302a  
 North Western Trust Co., *Re*, *Ex p.* Pure Oil Co., Ltd. (Can.); **10. Coys.** p. 397  
 North Western Trust Co., *Re*, McAskill v. North Western Trust Co. (Can.); **9. Coys.** p. 363  
 Northard & Lowe Co. v. Durno (Can.); **35. Mtge.** p. 1022  
 Northcliffe, *Re*, Arnholz v. Hudson (1929); **21. E. D.** No. 137a  
 Northern Assurance Co. v. Manitoba Pool Elevators (Can.); **29. Insec.** p. 860  
 Northern Banking Co., Ltd. v. Newman & Calton (Ir.); **26. Guar.** p. 770  
 Northern Construction Co. v. R. (Can.); **7. Bldg. Contrs.** p. 301; **16. Cr. Pract.** p. 550  
 Northern Crown Bank v. Woodcrafts, Ltd. (Can.); **3. Bank.** p. 191  
 Northern Electric & Manufacturing Co., Ltd. v. Cordova Mines, Ltd. (Can.); **9. Coys.** p. 371  
 Northern Electric Co., Ltd. v. Canadian Pacific Ry. Co. & Fillmore Rural Telephone Co., Ltd. & Wiberg (Can.); **8. Carr.** p. 316  
 Northern Grain Co. v. Canadian National Rys. & Grand Trunk Pacific Ry. (Can.); **8. Carr.** p. 315  
 Northern Grain Co., Ltd. v. Goderich Elevator & Transit Co., Ltd. (Can.); **3. Bailmt.** p. 168  
 Northern Ireland Ministry of Labour v. Cowdy & Sons (Ir.); **24. Fact.** p. 738  
 Northern Life Assurance Co. of Canada v. McMaster (Can.); **9. Coys.** p. 379; **42. Solrs.** p. 1124  
 Northern Pipe Line Co. v. Canadian Gas Co. (Can.); **12. Contr.** p. 462  
 Northern Ry. Co. v. Lister (Can.); **12. Contr.** p. 444  
 Northern Trust Co. v. Turner (Can.), **11. Const. L.** p. 437  
 Northern Trusts Co. v. McLean (Can.); **22. Evid.** p. 707  
 Northern Trusts Co. v. Rasmussen (Can.); **17. Damqs.** p. 582  
 Northwest Thresher Co. v. Boundin (Can.); **35. Mtge.** p. 1024

- Northwood v. London County Council (1926); **11. Comp. Pche.** No. 2222a  
 Northwood v. London County Council (No. 2) (1927); **11. Comp. Pche.** Nos. 761a, 2222a  
 Norton, *Re*. Pinney v. Beauchamp (1929); **40. Stillmts.** No. 3047a  
 -- v. Fitzgerald (Can.); **2. Animals**, p. 130  
 Norwich Union Life Insurance Society v. Embleton (1927); **28. Inc. T.** Nos. 25b, 50a  
 Notes of Official Rulings 1928 (B) (1928); **36. Puls.** No. 700a  
 Notes of Official Rulings 1929 (A) (1929); **36. Puls.** No. 1505a  
 Notes of Official Rulings 1929 (B) (1929); **43. Trade Mks.** No. 285a  
 Nott Brothers & Co., Ltd. v. Barkley (Aus.); **17. Dep.** p. 600  
 Nottingham Corp'n. v. Midland Ry. Co. (1922); **8. Carr.** No. 954a  
 Nouvelles Huileries Anversoises S.A. v. Mann (H. C.) & Co. (1924); **1. Agcy.** No. 127a  
 Nova Sales Co. v. Canadian Pacific Ry. (Can.); **8. Carr.** p. 316  
 Nova Scotia Dredging Co., Ltd. v. Musgrave & Co. (Can.); **1. Agcy.** p. 77  
 Nova Scotia Legislative Council, *Re* (No. 2) (Can.); **17. Dep.** p. 606  
 Nova Scotia Mining Co. v. Greener (Can.); **21. Eron.** p. 698  
 Nova Scotia Steel & Coal Co., Ltd. v. Finance & Customs Minister (Can.); **28. Inc. T.** p. 833  
 Nova Scotia Trust Co., *Ex p.*, *Re* Excel Footwear Co. (Can.); **9. Coys.** p. 375  
 Nova Scotia Trust Co. v. Bishop, *Re* Steeves (Can.); **5. Bkpcy.** p. 249  
 Nowlin v. Anderson (Can.); **21. Eron.** p. 692  
 Nowroji Rustonji Wadia v. Bombay Government (Ind.); **17. Dep.** p. 607  
 Noyce, *Re*. *Ex p.* Minister of Agriculture, Mildura Co-operative Fruit Co., Ltd. v. Noyce (Aus.); **21. Eron.** p. 697; **38. Pub. Auth.** p. 1069  
 Nugent v. Davies (Can.); **12. Contr.** p. 458  
 v. Londonderry Collieries (1929); **34. Mast. & S.** No. 2128a  
 v. McLellan (Can.); **31. L. & T.** p. 902  
 Nunan v. Southern Ry. Co. (1924); **8. Carr.** No. 685a  
 Nunn v. Hancock (1871); **39. S. Goods.** No. 334a  
 Nunneley v. Blatt (Can.); **1. Agcy.** p. 58  
 Nunnely v. Onsum (Can.); **1. Agcy.** p. 60  
 Nur Ali v. R. (Ind.); **14. Crim.** p. 516  
 Nurse v. Pounford (1929); **32. Libel.** No. 2555a  
 Nyberg v. Provost Municipal Hospital Board (Can.); **13. Corpsms.** p. 490; **34. Mast. & S.** pp. 960, 963; **Med.** p. 1001; **36. Negl.** p. 1030  
 Nyokana v. Nyokana (S. Af.); **27. H. & W.** p. 787
- O.
- Oakes v. Chalfont (1674); **37. Persps.** No. 166a  
 -- v. Hollday (N.Z.); **34. Mast. & S.** p. 975  
 Oakeshott v. Hawkins, *Re* Acklom (1929); **40. Stillmts.** No. 2739a  
 Oakey, *Ex p.*, R. v. North (1927); **19. Eccl.** No. 1280a  
 Oakley v. Whitehouse & Co. (Aus.); **8. Carr.** p. 316  
 -- v. Wilson (1927); **31. L. & T.** No. 7352a  
 Oakshott v. Hawkins, *Re* Adelon (1928); **40. Stillmts.** No. 2739a  
 Oamaru (Mayor) v. Clarke (N.Z.); **26. Hghys.** p. 777  
 Oath before Justices Case (1611); **33. Mags.** No. 148a  
 Oblate Order of Mary Immaculate v. Pacific Great Eastern Ry. Co. (Can.); **11. Comp. Pche.** p. 404  
 O'Brien, *Ex p.*, R. v. Secretary of State for Home Affairs (1923); **16. Cr. Pract.** Nos. 601, 801  
 -- v. Irving (Can.); **16. Courts.** p. 551  
 -- v. Mackintosh (Can.); **2. Agric.** p. 97  
 -- v. O'Brien (Can.); **22. Evid.** p. 710  
 -- v. R. (Can.); **30. L. & T.** p. 900  
 -- v. Royal George Co., Ltd. (Can.); **17. Dep.** p. 595  
 -- v. Secretary of State for Home Affairs (1923); **16. Cr. Pract.** No. 470  
 -- v. Stebbins & Mullen (Can.); **7. B. of Salc.** p. 287; **12. Contr.** p. 449  
 -- v. Wellington (City) Corp'n. (N.Z.); **38. Pub. Auth.** p. 1069  
 O'Brien & Doheny v. R. (Can.); **16. Cr. Pract.** p. 559  
 O'Brien (M. J.), Ltd. v. Seaman Keni Co. (Can.); **2. Arbn.** pp. 143, 114  
 O'Callaghan v. O'Callaghan, *Re* MacDonald's Settlement (Aus.); **40. Stillmts.** p. 1114  
 -- v. O'Sullivan (Ir.); **17. Dep.** p. 607; **19. Eccl.** p. 640; **22. Evid.** p. 711  
 -- v. Thomas (D. C.) & Co. (Scot.); **32. Libel.** p. 924  
 Ocean Coal Co. v. Davies (1926); **34. Mast. & S.** No. 3701  
 -- v. Davies (1927); **34. Mast. & S.** No. 3701  
 O' Cedar, Ltd. v. Slough Trading Co. (1927); **31. L. & T.** Nos. 3035a, 5070a  
 Ockerby & Co., Ltd., *Re* (Aus.); **10. Coys.** p. 389  
 -- v. Watson (Aus.); **1. Agcy.** pp. 66, 67  
 O'Connell v. Clausen (N.Z.); **30. Intox.** p. 882  
 -- v. Culley (Aus.); **34. Med.** p. 1001  
 -- v. Harrison (Ir.); **33. Lunat.** p. 948; **37. Pers. Prop.** p. 1057  
 O'Connor, *Re* (Can.); **16. Cr. Pract.** pp. 560, 562; **24. Extradn.** p. 737  
 -- v. Lemieux (Can.); **38. Pub. Auth.** p. 1070  
 -- v. State Taxation Comm. (Aus.); **28. Inc. T.** p. 838  
 -- v. Waldegrave (N.Z.); **12. Conls.** p. 450  
 O'Connor & Whitlaw's Arbitration, *Re* (1919); **2. Arbn.** Nos. 949a, 1415a  
 O'Dea v. Midwives Registration Board (Aus.); **14. Crim.** p. 499  
 Odegaard v. Winnipeg Electric Co. (Can.); **8. Carr.** p. 318  
 Odhams Press, Ltd., *Re* (1925); **10. Coys.** No. 7371a  
 O'Donnell v. North American Life Assurance Co. (Can.); **22. Evid.** p. 703  
 O'Donoghue v. Redmond Roche (1) (Ir.); **20. Elect.** p. 651  
 O'Donoghue v. Hembroff (Can.); **6. B. of Erch.** p. 277  
 Odynak v. Feschuk (Can.); **23. Errors.** p. 720  
 Official Assignee v. Narasimha Mudahar (Ind.); **5. Bkpcy.** p. 258  
 -- v. R. (N.Z.); **5. Bkpcy.** p. 252; **16. Cr. Pract.** p. 559  
 -- v. Sharpe (N.Z.); **5. Bkpcy.** p. 239  
 -- v. Wairarapa Farmers Co-operative Society, Ltd. (N.Z.); **5. Bkpcy.** p. 250  
 Official Receiver, *Ex p.*, *Re* Fairley (1922); **5. Bkpcy.** No. 6918a  
 --, *Ex p.*, *Re* Levy (1924); **5. Bkpcy.** No. 5475a  
 --, *Ex p.*, *Re* Mumford, Debtor v. Petitioning Creditor (1927); **4. Bkpcy.** No. 3740a; **10. Coys.** No. 6442a  
 --, *Ex p.*, *Re* Paget (1927); **5. Bkpcy.** No. 5495a

- Official Receiver, *Ex p., Re Pitchford*(1924); **4. Bkpcy.** No. 2978a  
 —, *Ex p., Re Sarjeant* (1923); **4. Bkpcy.** Nos. 1808a, 4559a  
 —, *Ex p., Re Scott* (1921); **5. Bkpcy.** No. 8435a  
 —, *Ex p., Re Shaw* (1920); **4. Bkpcy.** No. 434a; **5. Bkpcy.** No. 8771a  
 —, *Ex p., Re Whaley* (1921); **5. Bkpcy.** No. 8435a  
 — *v. Debtors, Ex p., Re L. A. & B. F. M.* (1926); **4. Bkpcy.** No. 226a  
 — *v. Hall, Ex p., Re Pitchford* (1924); **4. Bkpcy.** No. 2978a  
 Offman, *Ex p., R. v. Lantalum* (Can.); **2. Aliens**, p. 120  
 Ogilvie *v. Barron* (1925); **28. Inc. T.** No. 200a  
 — *v. McLeod* (Can.); **26. Guar.** p. 768  
 Ogilvie Flour Mills Co., Ltd. *v. Canadian Credit Men's Trust Asscn., Ltd.* (Can.); **5. Bkpcy.** p. 240  
 Ogilvie Flour Mills Co., Ltd. & Winnipeg (City). *Re* (Can.); **11. Comp. Peche.** p. 404  
 O'Grady *v. McCafray* (Can.); **38. Rates**, p. 1081  
 Ohlson *v. Weiss* (Can.); **34. Mines**, p. 1006  
 O'Kane *v. Mullan* (Ir.); **22. Evid.** p. 705  
 O'Keefe *v. London & Edinburgh Insurance Co., Ltd.* (Ir.); **29. Insee.** p. 862  
 O'Keefe & Lynch of Canada, Ltd. *v. Toronto Insurance & Vessel Agency, Ltd.* (Can.); **17. Dep.** p. 603; **29. Insee.** p. 862  
 Okell Morris & Co. *v. Dickson* (Can.); **8. Chos.** p. 348  
 Okrey *v. Spangler* (Can.); **16. Cr. Pract.** p. 570  
 Old Kilpatrick Parish Council *v. Kilnarnock Parish Council* (Scot.); **37. Poor L.** p. 1059  
 Oldfield Estate, *Re, Re Succession Duty Act* (Can.); **21. E. D.** p. 676  
 Oldham, *Re, Oldham v. Myles* (1927); **23. Exors.** No. 5363a  
 — *v. Sheffield Corpn.* (1927); **26. Hghys.** No. 1191a  
 Oldright *v. Grand Trunk Ry. Co. of Canada* (Can.); **8. Carr.** p. 318  
 O'Leary *v. Smith* (Can.); **7. Bounds. & P.** p. 298  
 Olivant's Claim, *Haslam v. Cron* (1871); **3. Basty.** No. 24a  
 Olive, *Re* (1863); **28. Infts.** No. 2167a  
 Olive & Partington, Ltd. *v. Rose* (1929); **28. Inc. T.** No. 99c  
 Oliver, *Re* (Can.); **21. E. D.** p. 676  
 —, *Re, Theobald v. Oliver* (1927); **32. Limit. of A.** Nos. 1568a, 1584a  
 — *v. Dickinson* (N.Z.); **1. Agcy.** p. 39  
 — *v. Oliver* (Can.); **27. H. & W.** p. 803  
 — *v. Saddler & Co.* (1929); **36. Negl.** No. 662a  
 Olmstead *v. Scott* (Can.); **1. Action**, p. 2  
 —, *Re, Ex p. O'Loughlen* (1871); **16. Courts.** No. 22c  
 O'Loughlin *v. Grandjean* (Can.); **33. Mat. Pros.** p. 958  
 Olsen *v. Pearson* (Can.); **1. Agcy.** p. 60  
 Olstead *v. Coal Valley School District* No. 1053 (Can.); **19. Educ.** p. 645  
 Olympia Cafe Co., Ltd., *Re, Ex p. Bedali* (Can.); **4. Bkpcy.** pp. 218, 227  
 Olympic Reinsurance Co., *Re, Pole's Case* (1920); **1. Agcy.** No. 3040a  
 O'Mealey *v. Swartz* (Can.); **2. Animals**, p. 136  
 O'Neil *v. Dominion Coal Co.* (Can.); **17.** p. 575  
 O'Neill, *Re, Ex p. Goulding* (1829); **6. B. of Exch.** No. 701b  
 — *v. Bradley* (Ir.); **36. Pats.** p. 1052  
 — *v. Great Western Ry. Co.* (Can.); **8. Carr.** p. 316  
 — *v. Lye* (N.Z.); **6. B. of Exch.** p. 280  
 O'Neill, etc., *Re* (N.Z.); **11. Confl.** p. 415  
 Ontario Co-operative Stone Cutters' Asscn. *v. Clarke* (Can.); **13. Corpn.** p. 489  
 Ontario Equitable Law & Accident Insurance Co. *v. Baker* (Can.); **12. Contr.** p. 464; **21. Estpl.** p. 685  
 Ontario Jockey Club, Ltd. *v. McBride* (Can.); **9. Coys.** p. 361  
 Ontario Wind Engine & Pump Co. *v. Bobo* (Can.); **25. Fraud. Conv.** p. 749  
 Oppenheim & Co. *v. Mahomed Haneef* (1922); **2. Arbn.** Nos. 1857a, 1912a, 1950a, 1960b, 2056a  
 — *v. Mahomed Haneef* (Ind.); **2. Arbn.** p. 158; **11. Confl.** p. 121  
 Oppenheimer *v. Moola* (Ind.); **10. Coys.** p. 389  
 Orange Crush (Australia), Ltd. *v. Gartrell* (Aus.); **43. Trade Mks.** p. 1160  
 Orchiston *v. Schlaepfer* (N.Z.); **26. Guar.** p. 771  
 Ord *v. Burkus* (1813); **34. Mast. & S.** No. 212a  
 O'Reilly *v. Canadian Accident & Fire Assurance Co.* (Can.); **29. Insee.** p. 875  
 O'Reilly *v. Doherty* (Ir.); **31. L. & T.** p. 910  
 — *v. O'Reilly* (Can.); **23. Exors.** p. 723  
 O'Reilly & Belanger, Ltd. *v. Minister of National Revenue* (Can.); **28. Inc. T.** p. 823  
 O'Reilly (T. E.), Ltd. *Re* (Can.); **9. Coys.** p. 357  
 O'Reilly's Will, *Re* (Aus.); **23. Exors.** p. 718  
 Orenczuk *v. Dolinsky* (Can.); **25. Gifts.** p. 765  
 Ormond Investment Co. *v. Betts* (1928); **28. Inc. T.** No. 450a  
 Ormrod's Settled Estate, *Re* (1892); **40. Stillms.** No. 2243b  
 Orpen, *Re, Re British Provident Life & Fire Assurance Society* (1863); **9. Coys.** No. 2299b  
 Orpen's Case, *Re British Provident Life & Fire Assurance Co.* (1863); **9. Coys.** No. 2299b  
 Orpheum Theatrical Co. *v. Vulcan Engineering Construction Co.* (Can.); **12. Contr.** p. 450  
 Orr, *Re* (Ir.); **4. Bkpcy.** p. 226  
 — *v. Krepsky* (Can.); **16. Cr. Pract.** p. 568  
 — *v. Strathern* (Scot.); **42. Str. Traf.** p. 1152  
 Orzy, *Re* (Can.); **4. Bkpcy.** p. 223  
 Osadchuk *v. Russniak* (Can.); **2. Animals**, pp. 128, 129  
 Osborn *v. Osborn* (otherwise 1vil) (1926); **27. H. & W.** No. 6026a  
 Osborne, *In the Goods of* (1855); **11. Confl.** No. 587a  
 —, *Re* (Aus.); **44. Wills**, p. 1183  
 — *v. Automatic Bottle Makers, Re Automatic Bottle Makers* (1926); **10. Coys.** No. 4730a  
 — *v. Martin* (1927); **19. Educ.** No. 88a  
 — *v. Osborne* (circa 1814); **2. Agric.** No. 816a  
 Osbourne *v. Dent* (J. M.) & Sons, Ltd. (1925); **13. Coprt.** No. 325b  
 Ose Gesellschaft, etc. *v. Jewish Colonial Trust* (1927); **3. Bank.** No. 298a  
 O'Shaughnessy *v. Quick Service Stations, Ltd.* (Aus.); **2. Arbn.** p. 144  
 Osman, *Re* (S. Af.); **1. Agcy.** p. 41; **4. Bkpcy.** p. 209  
 Osman Jamal & Sons *v. Gopal Purshattam* (Ind.); **5. Bkpcy.** p. 238; **26. Guar.** p. 772  
 Osmond *v. Woolley* (1917); **2. Arbn.** Nos. 1825a, 1839a  
 Osram Lamp Works *v. Pope's Electric Lamp Co., Ltd.* (1914); **18. Dosey.** No. 1631b  
 Osry *v. Hirsch* (S. Af.); **1. Agcy.** p. 56  
 Ostrom *v. Benjamin* (Can.); **16. Courts.** p. 550  
 — *v. Miyako, The* (Can.); **1. Adm.** p. 19  
 O'Sullivan *v. Harty* (Can.); **24. Exors.** p. 734  
 — *v. Limerick County Council* (Ir.); **38. Pub. Auth.** p. 1071  
 — *v. Loughnan* (Ir.); **35. Mtge.** p. 1018

Oswalt v. King (Can.); **1. Agcy.** p. 54  
 Osway v. Bristow (1711); **18. Distr.** No. 1732b  
 Otago Farmers Co-operative Assocn. of New Zealand, Ltd. v. McGowan (N.Z.); **7. B. of Sale.** p. 290  
 O'Toole v. O'Toole (1926); **27. H. & W.** No. 2765a  
 Ottawa (City) v. Canadian National Rys. (Can.); **38. Rates.** p. 1082  
 — v. Grand Trunk Ry. Co. (Can.); **17. Dep.** p. 604  
 — v. Ottawa & New York Ry. Co. (Can.); **17. Dep.** p. 604  
 Ottawa & Gloucester Road Co. & County of Carleton, *Re* (Can.); **11. Comp. Pche.** p. 402  
 Ottawa Corp'n. v. Ottawa Public School Board (Can.); **38. Rates.** p. 1080  
 Ottawa Valley Ry. Co. v. Central Ry. Co., Ltd. (Can.); **38. Rys.** p. 1076  
 Otte v. R. (1924); **17. Dep.** No. 108a  
 Ottokar, The (1921); **1. Adm.** No. 1613a  
 Ottoman Bank v. Jebara (1928); **1. Agcy.** No. 215c; **2. Aliens.** No. 402a  
 Otway v. Braithwaite (1679); **40. Sthmts.** 386a  
 Outerbridge v. Outerbridge (1927); **27. H. & W.** Nos. 6230a, 6242a  
 Overby v. McLean (Can.); **21. Eron.** p. 692  
 Overseers of the Poor v. Marryatt (Can.); **14. Crim.** p. 504  
 Overton v. Gerrity (Can.); **21. Eron.** p. 691  
 Owen v. Beecher (Aus.); **31. L. & T.** p. 907  
 — v. Campbell, *Re* Mills (Can.); **28. Infsts.** p. 647  
 — v. Lavery (1900); **5. Bkpcy.** No. 8172a  
 — v. Lynch (Can.); **21. Eron.** p. 693  
 — v. Owen (1831); **21. Eron.** No. 1576e  
 — v. Pritchard (1876); **16. Cntmpl.** No. 406a  
 — v. Robinson (otherwise Owen) (N.Z.); **11. Confl.** p. 423  
 Owen Sound Building & Savings Society v. Meur (Can.); **32. Libel.** p. 923  
 Owen's Patent, *Re* (1928); **36. Pats.** No. 1687c  
 Owens v. Martindale (Can.); **30. Jdgmts.** p. 895; **33. Mal. Pros.** p. 958  
 Oxenham, *Re* (Can.); **24. Errors.** p. 731  
 Oxford (Bp.), *Ex p.*, *Re* Sneyd (1883); **30. Jdgmts.** No. —  
 Oxford & Worcester Extension & Chester Junction Ry. Co., *Re*, Potter's Case (1849); **10. Coys.** No. 6137a

P

P., *Re* (Can.); **3. Basty.** p. 199  
 —, *Re* (Ir.); **33. Lunat.** p. 918  
 — v. P. (1927); **27. H. & W.** No. 4354b  
 — v. P. (1929); **27. H. & W.** No. 4873a  
 P. L. T. A. R. Chettyar Firm Maung Kyaing (Ind.); **38. Real Prop.** p. 1090  
 Pacey, *Re* (Can.); **38. Real Prop.** p. 1089  
 Pachal v. Markham (Can.); **25. Fraud. Contr.** p. 748  
 Pacific Coast Coal Freighters, Ltd. v. Westchester Fire Insurance Co. of New York (Can.); **29. Insee.** pp. 865, 868  
 — v. Western Assurance Co. (Can.); **29. Insee.** pp. 865, 868  
 Pacific Coast Coal Mines, Ltd. v. Arbuthnot (Can.); **9. Coys.** p. 374  
 Pacific Coast Coal Mines, Ltd. & Hodges, *Re* (Can.); **9. Coys.** pp. 370, 377  
 Pacific Great Eastern Ry. Co. v. Clinton, The (Can.); **1. Adm.** p. 17  
 Pacific Great Eastern Ry. Co.'s Case, *Re* National Benefit Assurance Co., Ltd. (Can.); **10. Coys.** pp. 394, 397

Pacific Stages, Ltd. v. Jones (Can.); **36. Negl.** p. 1026  
 Pacific Steam Navigation Co. (Bogota (Owners)) v. Anglo Newfoundland Development Co., Ltd. (Alconda (Owners)) (Scot.); **1. Adm.** p. 29  
 Pacifico, The v. Winslow Marine Railway & Shipbuilding Co. (Can.); **1. Adm.** pp. 18, 31  
 Packer, *Re* (Can.); **5. Bkpcy.** p. 258  
 Paddington Borough Council v. Finucane (1928); **38. Pub. Hlth.** No. 502b  
 Paffard v. Cavotti (Can.); **17. Damgs.** pp. 575, 581  
 Page v. Godden (1818); **5. Bkpcy.** No. 7653a  
 — v. Liverpool Victoria Friendly Society (1927); **25. Fr. Soc.** No. 109a  
 — v. Proctor (Can.); **39. S. Goods.** p. 1102  
 — v. St. John's Corp'n. (Can.); **3. Auct.** p. 161  
 — v. Scottish Insurance Corp'n. (1929); **29. Insee.** No. 3217b  
 — v. Sully (1918); **3. Auct.** Nos. 293a, 301a  
 Page Hersey Iron Tube & Lead Co. v. Great West Natural Gas Corp'n. (Can.); **18. Discy.** p. 616  
 Paget, *Re*, *Ex p.* Official Receiver (1927); **5. Bkpcy.** No. 5495a  
 Painter v. City & South London Ry. Co. (1926); **34. Mast. & S.** No. 2448a  
 Painter v. McCabe (Can.); **28. Infsts.** p. 850  
 — v. O'Connell (Aus.); **38. Pub. Hlth.** p. 1075  
 Painter's Case, *Re* Great North Insurance Co. (Can.); **9. Coys.** p. 363  
 Paisley, *Re* (Can.); **16. Cr. Pract.** p. 562; **28. Infsts.** p. 849  
 Pakenham Upper Fruit Co., Ltd. v. Crosby (Aus.); **28. Injon.** p. 855  
 Palaniandi Chetti v. Adaikalam Chetti (Ind.); **2. Arbn.** p. 138  
 Palembang, The (1929); **41. Ship.** No. 5618c  
 Paley (Princess Olga) v. Weisz (1929); **11. Const. L.** No. 387a; **38. Pub. Auth.** No. 66a  
 Palfrey v. Brown (Can.); **32. Lun.** p. 932  
 Palmer v. Carey (1926); **8. Chos.** No. 258a  
 — v. Christie (Can.); **1. Agcy.** p. 56  
 — v. Crone (1927); **18. Distr.** No. 1419a  
 — v. Harvey (Can.); **1. Agcy.** p. 63  
 Palmer & Co., Ltd. v. Pilot Trading Co., Ltd. (1929); **2. Arbn.** No. 1722a; **17. Custom.** No. 703a  
 Palmer & Roberts v. Knight, *Re* Drage (J.) & Sons (1926); **5. Bkpcy.** Nos. 7166a, 7237a  
 Paludina, The (1925); **1. Adm.** No. 1114a  
 Pandit Durgamissa v. Baljnathsaran (Ind.); **35. Mtge.** p. 1024  
 Panicali & Brenni's Patent, *Re* (1927); **36. Pats.** No. 1997a  
 Panna Lal, *Re*, *Re* Dehra Dun-Mussoorie Electric Tramway Co., Ltd. (Ind.); **10. Coys.** p. 387  
 Papadopoulos v. Papadopoulos (1929); **11. Confl.** Nos. 916a, 1122a  
 Papineau v. Guard (Can.); **17. Deeds.** p. 586  
 Pappas, *Re* (Can.); **2. Aliens.** p. 120  
 Paquet Co., *Ex p.*, *Re* Vogue Fur Shop, Ltd. (Can.); **5. Bkpcy.** p. 248  
 Paquet Co., Ltd. v. Wiese & Krant (Can.); **21. Eron.** p. 698  
 Paradis v. Federal Grain Co., Ltd. (Can.); **17. Damgs.** p. 580  
 Parak v. R. (S. Af.); **5. Bkpcy.** p. 261  
 Paramount Theatres, Ltd. v. Brandenberger (Can.); **20. Eqp.** p. 658; **30. L. & T.** p. 899; **38. Real Prop.** p. 1090  
 Parashuram Dattaram Sham-Dasani v. Tata Industrial Bank, Ltd. (Ind.); **10. Coys.** p. 390  
 Parbati Charanmukherjee v. Anarendra Nath Bhattacharjee (Ind.); **12. Contr.** p. 458



- Parenteau v. Harris (Can.); **21. Exon.** p. 690  
 Park, *Re*, Bott v. Chester (1921); **3. Barr.** No. 220a  
 — v. Austin, *Re* Saunders (N.Z.); **22. Evid.** p. 704  
 — v. Wilsons & Clyde Coal Co. (Scot.); **34. Mast. & S.** p. 960; *Mines*, p. 1007  
 Park & Percival v. Evans (1615); **21. Exon.** No. 582a  
 Park Ward & Co., Ltd., *Re* (1926); **10. Coys.** Nos. 5186a, 5841a, 6823a  
 Parkdale Boulevard, Ltd. & Province of Ontario, *Re*, *Re* Torrance & Province of Ontario, *Re* Noble & Province of Ontario (Can.); **11. Comp. Pche.** p. 403  
 Parke v. Riley (Can.); **21. Exon.** p. 693  
 Parke & Percival v. Evans (1615); **21. Exon.** No. 1579a  
 Parker, *Re* (Can.); **21. E. D.** p. 675  
 — v. Bloxam (1855); **24. Errors.** No. 7311a  
 — v. Chapman (1928); **28. Inc. T.** No. 501a  
 — v. Glover, *Re* Cozier (Can.); **24. Errors.** p. 735  
 — v. London Brick Co. & Forders, Ltd. (1927); **34. Mast. & S.** No. 3098a  
 — v. McIlwain (Can.); **21. Exon.** p. 696  
 — v. Maxwell (Can.); **2. Agric.** p. 97  
 — v. Parker (Scot.); **27. H. & W.** p. 797  
 — v. R (Can.); **39. Revenue.** p. 1097  
 — v. Wilcox (1723); **23. Errors.** No. 5697c  
 Parker & Cooper, Ltd. v. Reading (1926); **9. Coys.** Nos. 3160a, 4037a, 4117a  
 Parker & Son v. Amalgamated Society of Engineers (Aus.); **44. Work.** p. 1185  
 Parker, Gaines & Co. v. Turpin (1918); **2. Arbn.** No. 402a  
 Parker Wood & Co., Ltd. v. Richards (S. Af.); **6. B. of Each.** p. 279  
 Parker-Eakins Co. v. Royal Bank of Canada (Can.); **4. Bkpcy.** p. 222  
 Parkes & Co., Ltd. v. Cocker Brothers, Ltd. (1929); **36. Puts.** No. 680c  
 Parkes Garage (Swadlincote), Ltd., *Re* (1929); **10. Coys.** Nos. 4699a, 6756a  
 Parkinson v. College of Ambulance, Ltd., & Harrison (1925); **12. Contr.** Nos. 2011a, 2329a, 2350a  
 — v. Noel (1923); **5. Bkpcy.** Nos. 7681a, 7782b  
 Parkman v. Benoit (Can.); **30. Intox.** p. 885  
 Parlov v. Lozina & Raolovich (Can.); **36. Negl.** p. 1026  
 Parr v. A.-G. (1926); **21. E. D.** No. 131  
 Parry v. Duncan (Can.); **11. Const. L.** p. 434  
 — v. Parry (Can.); **22. Evid.** p. 708; **27. H. & W.** p. 798  
 — v. Roberts (1835); **3. Bailmt.** No. 103a  
 Parsharam Yeshwantshet v. Laxmibai (Ind.); **35. Mtgc.** p. 1019  
 Parsons, *Ex p.*, *Re* Till (1871); **22. Evid.** No. 4472a  
 —, *Re* (Aus.); **5. Bkpcy.** p. 258; **17. Dep.** p. 601  
 — v. Brixham Fishing Smack Insurance Co., Ltd. (1918); **2. Arbn.** No. 1598a  
 — v. Burgess (1927); **13. Cty. Cts.** No. 70a  
 — v. Parsons (N.Z.); **28. Infts.** p. 849  
 — v. Queen Insurance Co. (Can.); **29. Insee.** p. 862  
 Partab Narain v. Jute Mills (Ind.); **1. Agcy.** p. 74  
 Partington v. Partington (Can.); **27. H. & W.** p. 800  
 Partridge, Jones & John Paton, Ltd. v. Sulway (1928); **34. Mast. & S.** No. 3734a  
 Paschena, *The v. Griff*, *The* (Can.); **1. Adm.** pp. 27, 29, 32  
 Pasickniak v. Dojacek (Can.); **13. Coprt.** pp. 475, 476  
 Pass v. British Tobacco Co. (Australia), Ltd. (1926); **9. Coys.** No. 3934a; **17. Dep.** No. 184a  
 Passarini v. Martin (Can.); **18. Distr.** p. 622  
 Passey v. Oxford Local Board (1879); **36. Nuis.** No. 134b  
 Patel v. Keeler & Co. (S. Af.); **1. Agcy.** p. 69; **8. Carr.** p. 316  
 Paterson, *Re* (N.Z.); **23. Exors.** p. 721  
 — v. McCallum (N.Z.); **1. Agcy.** pp. 48, 68  
 — v. McKay (Can.); **16. Cr. Pract.** p. 560  
 — v. MacPherson (Scot.); **25. Gaming.** p. 759  
 — v. Miller (Aus.); **3. Bailmt.** p. 171  
 Paterson & Barr, Ltd. v. Otago University (N.Z.); **19. Easmt.** p. 63  
 Paterson (A. & G.), Ltd. v. Highland Ry. Co. (Scot.); **12. Contr.** p. 411  
 Pathe Freres Phonograph Co. of Canada, *Re* (Can.); **4. Bkpcy.** p. 228  
 Pathescope Union of South Africa, Ltd. v. Malinick (S. Af.); **9. Coys.** p. 362  
 Patricia Appliance Shops, Ltd., *Re* (Can.); **10. Coys.** p. 386  
 Patrick & Co. v. Russo-British Grain Export Co., Ltd. (1927); **2. Arbn.** No. 1071a  
 Patriquin, *Re* (Can.); **8. Char.** p. 339  
 Patten, *Re*, Westminster Bank v. Carlyon (1929); **8. Char.** Nos. 267a, 267b; **40. Stillmts.** Nos. 2738a, 2747a  
 — v. Laidlaw (Can.); **32. Lien.** p. 931  
 Patterson, *Re* (Can.); **23. Errors.** p. 715  
 — *Re*, Mitchell v. Smith (1864); **25. Gifts.** No. 337a  
 — v. Bowmaster (Can.); **32. Lien.** p. 930  
 — v. Continental Insurance Co. (Can.); **11. Confl.** p. 418  
 — v. Findlay (Scot.); **25. Food.** p. 746  
 Gooderham (Can.); **36. Negl.** p. 1032  
 McPherson (Can.); **32. Limit. of A.** p. 936  
 Patterson (Can.); **27. H. & W.** p. 801  
 Robinson (1929); **41. Ship.** No. 935a  
 Saskatchewan Creamery Co., Ltd. (Can.); **30. Juries.** p. 895  
 — Smith (Can.); **21. Estpl.** p. 686  
 Patton, *Re*, Caughey v. Copeland (Ir.); **23. Exors.** p. 727  
 Paul v. Amy Turner, *The* (Aus.); **1. Adm.** pp. 19, 28  
 Paul (R. & W.), Ltd. v. London & North Eastern Ry. Co. (1927); **8. Carr.** No. 1237c  
 Pauley v. Custodian (S. Af.); **2. Aliens.** pp. 100, 102  
 Paulson v. Clements (Can.); **33. Mat. Pros.** p. 957  
 Pawle v. Gunn (1838); **9. Coys.** No. 2211a  
 Payn v. Payn (Can.); **11. Confl.** p. 421  
 Payne v. Esdaile (1888); **19. Eccl.** No. 3455c  
 — v. Fredericton Ry. Co. (Can.); **34. Mast. & S.** p. 963  
 — v. Gammon, *Re* Gammon Estate (Can.); **23. Exors.** p. 715  
 — v. New South Wales Coal & Intercolonial Steam Navigation Co. (1854); **12. Contr.** No. 1285b  
 Peabody (Doe d.) v. McKnight (Can.); **21. Exon.** p. 691  
 Peachy v. Young (1929); **30. L. & T.** No. 1526a  
 Peacock, *Re*, Public Trustee v. Birchenough (1929); **44. Wills.** No. 7637a  
 — v. Griffiths (1927); **8. Clubs.** No. 111b  
 — v. Lucas, *Re* Whitehead (1894); **23. Exors.** No. 5360a; **40. Stillmts.** Nos. 1960a, 2297a  
 — v. Stephens (Can.); **36. Negl.** p. 1031  
 — v. Tarleton (Aus.); **1. Agcy.** pp. 63, 64  
 Peagram v. Peagram (1926); **27. H. & W.** Nos. 6233a, 6275a  
 Peakin v. Peakin (Ir.); **32. Limit. of A.** p. 937  
 Pearce, *Re*, Pearce v. Pearce (Aus.); **44. Wills.** p. 1182  
 — v. Brain (1929); **28. Infts.** No. 160a; **37. Pers. Prop.** No. 121a

- Pearce v. Pearce (1929); **27. H. & W.** Nos. 6192a, 6283a  
 — v. —, *Re* Pearce (Aus.); **44. Wills**, p. 1182  
 — v. Wright (Aus.); **39. Rntchqs.** p. 1095  
 Pearen v. Black & Armstrong (Can.); **27. H. & W.** p. 790  
 Pearnan v. Charlton (1928); **3. Bank.** No. 112b  
 Pearn v. Miller (1927); **28. Inc. T.** No. 460a  
 Pearson v. Carpenter & Son (Can.); **25. Gaming.** p. 756  
 — v. Whitfield (1888); **33. Mags.** No. 503a  
 — v. Wilson (Aus.); **1. Agcy.** p. 46  
 Pearson, Kingsland Estate, *Ex p.*, R. v. Kingsland Parish Inspector of Taxes (1922); **16. Cr. Pract.** Nos. 1141a, 2132a, 2422a  
 Pease v. How (1922); **8. Char.** No. 691a  
 Pêcheries Ostendaises (Soc. Anon.) v. Merchants' Marine Insurance Co. (1928); **18. Discy.** No. 462a  
 Peck v. Parrot (1749); **40. Stillmts.** No. 1071a  
 — v. R. (Can.); **11. Const. L.** p. 430  
 — (Doe d.) v. Roe (Can.); **21. Exors.** p. 694  
 Pederson v. Paterson (Can.); **26. Hghys.** p. 780  
 Pedley, *Re*, Wallace v. Wallace (1927); **24. Exors.** No. 6311a  
 Pedlow v. Canadian National Ry. Co. (Can.); **36. Negl.** p. 1029  
 Peck v. Shields (Can.); **17. Dep.** p. 593  
 Peel v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 833  
 Pegler, *Ex p.*, R. v. Customs & Excise Comrs. (1928); **31. L. & T.** No. 4531a  
 Peile, *Re*, Shea v. Boschetta (1858); **4. Bkpcy.** No. 4772b  
 Pelletier v. Minneapolis Threshing Machine Co. (Can.); **39. S. Goods.** p. 1107  
 — v. Opal Municipal District (Can.); **38. Rates.** p. 1085  
 Penarth Harbour, Dock & Ry. Co. v. Cardiff Waterworks Co. (1860); **18. Discy.** No. 1087a  
 Pendleton v. Pendleton (Can.); **27. H. & W.** p. 789; **38. Real Prop.** p. 1090  
 Pendred v. Chambers (1591); **16. Courts.** No. 1024a  
 Penedo (Baron) v. Johnson (1873); **1. Action.** No. 366b  
 Penell v. Elzin (Scot.); **5. Bkpcy.** p. 240  
 Penelope, The (1928); **12. Contr.** No. 3178b  
 Penetanguishene Town, *Ex p.*, *Re* Adams Shoe Co. (Can.); **4. Bkpcy.** pp. 217, 226  
 Penfield v. McMurdo, *Re* McMurdo (1902); **9. Coys.** No. 2639a  
 Penlington v. Brownlee (Can.); **38. Real Prop.** p. 1091  
 Penman v. Winnipeg Electric Ry. Co. (Can.); **17. Damgs.** p. 577  
 Penman Manufacturing Co. v. Broadhead (Can.); **12. Contr.** p. 455  
 Pennell's Trustee (Scot.); **5. Bkpcy.** p. 256  
 Penney v. Clyde (Scot.); **2. Aliens.** p. 111  
 Pennington & Owen, Ltd., *Re* (1925); **10. Coys.** No. 6455a  
 Penrose v. Barr (Can.); **36. Negl.** p. 1031  
 Penticton Corpn. v. Sutherland (Can.); **43. Wtr. Sply.** p. 1173  
 Penwarden v. Ching (1829); **19. Easmt.** No. 1330a  
 People of California State v. Skinner (Can.); **15. Crim.** p. 540  
 People's Bank v. Marrow (Can.); **24. Exors.** p. 735  
 Peppard v. Cameron (Can.); **21. Estpl.** p. 687  
 — v. Wood (Can.); **21. Estpl.** p. 687  
 Pepper v. Butler (Can.); **31. L. & T.** p. 906  
 — v. Pepper & Baker (1926); **27. H. & W.** Nos. 3783a, 4848a  
 Percy v. Glasgow Corpn. (1922); **8. Carr.** No. 781a  
 Percy's Case (1609); **2. Agric.** No. 944a  
 Perdrian Rubber Co., Ltd. v. Sadek (Aus.); **18. Distr.** p. 620  
 Perera v. Perera (1901); **33. Lunat.** No. 261a  
 Perfect v. Poynter (1884); **1. Adm.** No. 1717  
 Performing Right Society, Ltd. v. Bray Urban District Council (Ir.); **13. Coprt.** p. 480  
 Performing Right Society v. Caryl Theatrical Syndicate (1924); **13. Coprt.** No. 489a  
 Performing Right Society, Ltd. v. Mitchell & Booker (Palais de Danse), Ltd. (1924); **13. Coprt.** No. 489b  
 — v. Thompson (1918); **1. Action.** No. 637a  
 Perkins, *Ex p.*, R. v. Essex J.J. (1927); **33. Mags.** Nos. 97a, 150a  
 Perkins' Executor v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 687a  
 Perlman v. Piche (Can.); **2. Aliens.** p. 114  
 Perpetual Trustee Co., Ltd. v. Shelley (Aus.); **8. Char.** p. 330  
 Perpetual Trustee Co. v. Union Trustee Co. (Aus.); **8. Char.** p. 347; **23. Exors.** p. 722; **40. S. Land.** p. 1110  
 — v. Watson (No. 1) (Aus.); **43. Trusts.** p. 1171  
 — v. — (No. 2) (Aus.); **43. Trusts.** p. 1171  
 Perpetual Trustees, Estate & Agency Co., Ltd. of New Zealand v. Stamp Duties Comr. (N.Z.); **21. E. D.** p. 674  
 Perrett & Bennett-Stanford, *Re* (1922); **2. Agric.** No. 266e  
 Perrin v. Dickson (1929); **28. Inc. T.** No. 315a  
 Perron v. Corporation du Village du Sacre-Cœur de Jesus (Can.); **16. Cr. Pract.** p. 563  
 Perry, *Re* (Can.); **23. Exors.** p. 717  
 — v. Downs (Can.); **35. Miscp.** p. 1010  
 — v. Equitable Life Assurance Society of U.S.A. (1929); **11. Confl.** Nos. 640a, 709a  
 — v. Espley (Can.); **17. Deeds.** p. 588  
 — v. Feilding Club (N.Z.); **8. Clubs.** p. 351  
 — v. Kidd (Can.); **2. Animals.** p. 133  
 — v. Perry (Can.); **11. Confl.** p. 424  
 — v. Piquott (Can.); **38. Real Prop.** p. 1091  
 Pestonji (H.) & Co. v. Cox & Co. (Ind.); **6. B. of Erch.** p. 281  
 Peters v. Devimney (Can.); **1. Action.** p. 4  
 — v. Perry & Co. (1894); **22. Evid.** No. 55c  
 Peterson, *Re* (1909); **36. Part.** No. 261  
 —, *Re*, *Re* Holloway (Can.); **4. Bkpcy.** p. 222  
 — v. Cushman Motor Works (Can.); **1. Agcy.** p. 77  
 — v. Flack (Can.); **12. Contr.** p. 463  
 — v. Homes (Aus.); **42. Str. Traf.** p. 1153  
 — v. Millard Packing Co. (Can.); **41. Ship.** p. 1129  
 — v. Montreal (Can.); **16. Cr. Pract.** p. 563  
 — v. Youngstown School District Trustees (Can.); **19. Educ.** p. 617  
 Petipas v. Myette (Can.); **19. Easmt.** p. 628  
 Petit (Doe d.) v. Remard (Can.); **22. Evid.** p. 594  
 Petitioning Creditor, *Ex p.*, *Re* A Debtor (1920); **4. Bkpcy.** No. 1347a  
 —, *Ex p.*, *Re* A Debtor (No. 4 of 1922) (1922); **4. Bkpcy.** No. 1110a  
 — v. Debtor, *Re* Debtor (No. 21 of 1928) (1928); **4. Bkpcy.** No. 1077a  
 Petitioning Creditors (No. 24 of 1924), *Ex p.*, *Re* A Debtor (1924); **4. Bkpcy.** No. 1179a  
 Petitioning Creditors v. Debtor, *Ex p.*, *Re* A Bankruptcy Notice (No. 62 of 1924) (1924); **4. Bkpcy.** No. 797a; **12. Contr.** No. 1178a  
 Petreas & Co. v. London Guarantee & Accident Co., Ltd. (S. Af.); **29. Insee.** pp. 861, 862  
 Petrie v. Rideout (Can.); **18. Distr.** p. 622  
 Petrie (L.), Ltd. v. Frizzle (Can.); **12. Contr.** p. 464  
 Petrie Manufacturing Co., *Re*, *Ex p.* Hughes (Can.); **9. Coys.** p. 373  
 Petropolis v. Clarke (Can.); **31. L. & T.** p. 914

- Petrotite & Challenge Heaters, Ltd. v. Bodley** (N.Z.); **9. Coys.** pp. 357, 362
- Petschl v. Buchi** (Can.); **27. H. & W.** p. 787
- Pett v. Sims Paving & Road Construction Co., Pty., Ltd.** (Aus.); **36. Nuis.** p. 1036
- Pettigrew v. Doyle** (Can.); **38. Real Prop.** p. 1091
- **v. Thomas** (Can.); **21. Exon.** p. 691
- Petty, Re, Holliday v. Petty** (1929); **23. Exors.** No. 5917b
- Pettypiece v. Holden** (Can.); **1. Agcy.** p. 61
- Peuchen Co. v. City Mutual Fire Insurance Co.** (Can.); **36. Prtnrs.** p. 1041
- Peyrae v. Wilkinson** (1924); **17. Damgs.** No. 612
- Phair v. Venning** (Can.); **24. Fish.** pp. 744 745
- Phaninda Krishna Doll v. Pramatha Nath Malia** (Ind.); **22. Evid.** p. 713
- Pheasey v. Edmonton** (Can.); **26. Hghys.** p. 777
- Phelan v. Main Roads Board** (Aus.); **34. Mast. & S.** p. 960
- Pherrill v. Pherrill** (Can.); **36. Partn.** p. 1010
- Phillipps & Scarth v. London Guarantee & Accident Co., Ltd.** (Can.); **21. Exon.** p. 690
- Phillips, Re, Ex p. Phillips** (1900); **4. Bkpcy.** No. 428
- **v. Canham** (No. 1) (1872); **33. Mags.** No. 503b
- **v. Reid** (Nfld.); **2. Agric.** p. 97
- **v. Ross** (Can.); **19. Easmt.** p. 627
- Phillips & La Paloma Sweets, Ltd., Re** (Can.); **9. Coys.** p. 366
- Phillipson v. Gatty** (1848); **35. Mtgc.** No. 389b
- **v. Kerry** (1863); **25. Fraud.** Conv. No. 831a
- Phillpotts v. Phillpotts** (1850); **18. Desct.** No. 102a
- Philpotts d. Philpotts v. James** (1784); **18. Desct.** No. 113a
- Phoenix Insurance Co. of Hartford v. De Monchy** (1929); **29. Insee.** Nos. 1611a, 2404a
- Phul Singh v. Bhograj** (Ind.); **32. Limk. of A.** p. 943
- Pianta v. Macrow & Sons Pty., Ltd.** (Aus.); **27. H. & W.** p. 791
- Pickering v. Appleby** (1720); **9. Coys.** No. 2210a
- Pickerings, Ltd's Application, Re Athey** (1926); **34. Mast. & S.** No. 8359a
- Pickett v. Butler** (1844); **2. Agric.** No. 310a
- Pickford v. Inland Revenue Comrs.** (1927); **28. Inc. T. Nos.** 114a, 591a
- **v. Quirke** (1927); **28. Inc. T. Nos.** 114a, 591a
- **v. Thompson** (Can.); **35. Misrep.** p. 1009
- Pickup v. Dental Board of the United Kingdom** (1928); **34. Med.** No. 205b
- Picton, The** (Can.); **17. Dep.** p. 595
- Pidgeon v. Holman** (Can.); **33. Mal. Pros.** p. 958
- **v. Milligan** (Can.); **7. B. of Sale,** p. 293
- Pieper v. Zinkann** (Can.); **22. Evid.** p. 711
- Piers v. Whiting** (Can.); **7. Bounds. & F.** p. 296
- Piesse v Tasmanian, etc. Co-operative Assocn., Ltd.** (Aus.); **1. Agcy.** p. 38
- Pietrzak v. Rocheleau** (Can.); **38. Pub. Hlth.** p. 1074
- Piggott v. Middlesex County Council** (1908); **38. Pub. Auth.** No. 84a
- **v. Townsend** (Aus.); **7. Bldg. Conts.** p. 301
- Pike v. Walker** (Can.); **16. Courts,** p. 550
- Pike's Will, Re** (Can.); **22. Evid.** p. 705
- Pince v. Beattie** (1863); **35. Mtgc.** No. 385a
- Pinchbeck v. Gleeson** (Aus.); **25. Gaming,** p. 759
- Pincke v. Curteis** (1793); **40. S. Land.** No. 1597a
- Pinder v. Coqui** (1866); **5. Bkpcy.** No. 9181a
- Pink, Re, Elvin v. Nightingale** (1927); **24. Exors.** No. 8484a
- Pinkas & Pinkas v. Canadian Pacific Ry. Co.** (Can.); **36. Negl.** p. 1028
- Pinney v. Beauchamp, Re Norton** (1929); **40. Sttlmts.** No. 3047a
- Pinnock Brothers v. Lewis & Peat, Ltd.** (1923); **2. Arbn.** No. 165c
- Pinsent v. Boyd & McDougall** (Nfld.); **16. Cr. Pract.** p. 569
- Pinto Leite & Nephews, Re, Ex p. Des Oliveira** (1929); **4. Bkpcy.** No. 4353a; **8. Chos.** No. 601a
- Pioneer Alkali Works, Ltd. v. Amiruddin Shalebhoy Tyebji** (Ind.); **9. Coys.** p. 364
- Pioneer Bank v. Canadian Bank of Commerce** (Can.); **12. Contr.** p. 469
- Pioneer Savings & Loan Society, Re, Re Registrar of Companies** (Can.); **16. Cr. Pract.** p. 563; **32. Loan Soc.** p. 911
- Piper, Re** (Can.); **33. Lunat.** p. 948
- **v. Canadian Bank of Commerce** (Can.); **3. Bank.** p. 189
- **v. De'ath Brothers** (1929); **34. Mast. & S.** No. 2618a
- **v. St. Marylebone Licensing JJ.** (1928); **30. Intox.** No. 553a
- **v. Stevenson** (Can.); **32. Limk. of A.** p. 936
- Pirie v. Richardson** (1927); **12. Contr.** No. 163a
- Pirrie v. McFarlane** (Aus.); **17. Dep.** p. 600
- Pisani v. A.-G. for Gibraltar** (1874); **2. Arbn.** No. 44a
- Pitchford, Re, Ex p. Official Receiver v. Hall** (1924); **4. Bkpcy.** No. 2978a
- Pitman v. Brown** (Can.); **2. Animals,** p. 126
- **v. Nickerson** (Can.); **38. Real Prop.** p. 1087
- **v. White, Re White** (1929); **43. Trusts,** No. 3489a
- Pitt, Ex p.** (1923); **1. Agcy.** No. 2205a
- **Ltd. v. Glenelg (Town) Corpn.** (Aus.); **32. Lien.** p. 931
- Pittman v. Byrne** (Aus.); **3. Bastly.** p. 201
- **v. Prudential Deposit Bank, Ltd.** (1896); **1. Acton.** No. 713a
- Pittsburg Coal Co. v. Belchers S.S.** (Can.); **1. Adm.** p. 18
- Pittzen v. Shokluk** (Can.); **2. Animals,** p. 126
- Pixley v. Bedford** (Can.); **2. Animals,** p. 128
- Place v. Spawn** (Can.); **35. Mtgc.** p. 1018
- Plaetzer v. Raymond** (Can.); **25. Fraud. Conv.** p. 750
- Plant, In the Estate of, Wild v. Plant** (1926); **23. Exors.** No. 3127a
- **Re, Wild v. Plant** (1926); **23. Exors.** No. 3127a
- Platman v. Frohman** (1929); **31. L. & T.** No. 7188a
- Platt v. McFaul** (Can.); **12. Contr.** p. 463
- Pleasants, Re, Pleasants v. A.-G.** (1923); **8. Char.** Nos. 73b, 213a
- Plein & Co. v. Jacobson & Son** (S. Af.); **1. Agcy.** p. 59
- Plimmer, Re, Ex p. Speller** (1853); **5. Bkpcy.** Nos. 6449, 6647
- Plowden v. Lawrence, Re Grove-Grady** (1929); **8. Char.** Nos. 4b, 208a
- Plowman Tractor Co. v. Andrews** (Can.); **32. Lien.** p. 931; **39. S. Goods,** p. 1107
- Plows v. Plows** (1928); **27. H. & W.** No. 3436a
- Plumb, Re** (Can.); **40. Sttlmts.** p. 1119
- **v. Raleigh Cycle Co.** (1928); **34. Mast. & S.** No. 3904a
- **v. W. C. MacDonald** Registered (Can.); **1. Agcy.** p. 40; **21. Estpl.** p. 679
- Plumb & Orr v. Fermanagh County Council** (Ir.); **17. Dep.** p. 602
- Plumer v. Simonton** (Can.); **7. Bonds,** p. 291
- Plummer, Re, Ex p. Trustee** (1900); **5. Bkpcy.** No. 7079
- Plummer Wagon Co. v. Wilson** (Can.); **17. Dep.** p. 596
- Plunket v. Gilmore** (1725); **32. Libel,** No. 672a

- Plymouth Election Case (1929); **20. Elect. Nos.** 361a, 624a, 1627a
- Pockney v. Atkinson (1929); **44. Work, Nos.** 63a, 64a
- Point Abino Ass'n. v. Bertie (Township) (Can.); **26. Hghys.** p. 773
- Point Anne Quarries v. M. F. Whalen S.S. (Can.); **1. Adm.** p. 27
- Point Breeze, The (1928); **1. Adm. Nos.** 706b, 781h
- Pointing v. Wilson (1926); **15. Crim. No.** 7685a
- Pointon v. Cox (1926); **25. Gaming, No.** 424a
- Poisson & Woods v. Robertson & Turvey (1902); **18. Discy. No.** 254a
- Polakoff v. Winters Garment Co. (Can.); **43. Trade,** p. 1159
- Polar Aerated Water Works v. Winnikoff (Can.); **17. Dep.** p. 602
- Pole's Case, *Re* Olympic Reinsurance Co. (1920); **1. Agcy. No.** 3040a
- Pollard, *Re* (Can.); **4. Bkpcy.** p. 225
- v. Gibson (Can.); **1. Agcy.** p. 82; **12. Contr.** p. 470
- Pollock v. Williamson (J. C.), Ltd. (Aus.); **13. Coprt.** p. 475
- Pollok v. Fisher (Can.); **2. Agric.** p. 97
- Polson, *Re*, Trustee v. Thompson & Sutherland, Ltd. (Can.); **5. Bkpcy.** p. 265
- v. Parrott, *Re* Belliss (1929); **33. Lunat.** No. 204a
- Pong v. Quong (Can.); **31. L. & T.** p. 902
- Pong Fook Wing, *Re*, *Re* Immigration Act (Can.); **2. Aliens.** p. 120
- Ponomoroff v. Ponomoroff (Can.); **22. Evid.** p. 710
- Pontardawe Rural District Council v. Moore-Gwyn (1929); **36. Nuis. Nos.** 232a, 364a
- Pontius v. Smith & Connaughtly (Can.); **21. Exon.** p. 697, 698
- Pontypridd Union v. Drew (1927); **1. Agcy. No.** 215b; **12. Contr. No.** 743a; **26. Guar.** No. 1790a; **30. Jdgmts.** No. 525a
- Poole v. Poole (1871); **23. Exors. No.** 4687a
- Pooley v. Mitchell (Can.); **8. Carr.** p. 314
- Pope v. Fraser (Can.); **6. B. of Exch.** p. 272
- v. Pictou Steamboat Co. (Can.); **1. Agcy.** p. 74
- Pope Alliance Corp., Ltd., *Re* (Can.); **28. Inc. T.** p. 821
- Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, Ltd. (1929); **17. Dep. No.** 466a; **36. Pats.** p. 1046
- Popham v. Bertrand, *Re* Skaleski (Can.); **28. Infts.** p. 850
- Port Adelaide (City) Corp. v. South Australian Railways Comr. (Aus.); **38. Rys.** p. 1076
- Port Huon Fruitgrowers' Co-operative Assocn., Ltd. v. Larkinson (Samuel), Ltd. (Aus.); **13. Corps.** p. 491
- Port of Manchester Warehouses, Ltd. v. Cheshire Lines Committee, Great Central Ry. Co. & Great Northern Ry. Co. (1922), 17 Ry. & Can. Tr. Cas. 54; **8. Carr. Nos.** 1096a, 1219a
- v. — (1922), 17 Ry. & Can. Tr. Cas. 95; **8. Carr. Nos.** 1175a, 1377a, 1377c
- Port of Manchester Warehouses v. London, Midland & Scottish Ry. Co. (1925); **8. Carr. No.** 1377g
- Port Rowan High School Trustees & Walsingham (Township) Corp., *Re* (Can.); **19. Educ.** p. 645
- Portage la Prairie Rural Municipality v. Cartier Rural Municipality (Can.); **26. Hghys.** p. 786
- Portage Milling & Transfer Co. v. Grand Trunk Pacific Ry. Co. (Can.); **8. Carr.** p. 316
- Portarlington Electric Light & Power Co., Ltd., *Re* (Ir.); **17. Dep.** p. 608
- Porter, *Ex p.*, *R. v. Norfolk JJ.* (1926); **18. Distr. No.** 1588a
- , *Ex p.*, *R. v. Smith* (1927); **18. Distr. No.** 1588a
- , *Re*, Porter v. Porter (1925); **8. Char. No.** 769b
- v. Fleming School District (Can.); **19. Educ.** p. 617
- Hindsley, *Re* Mellor (1929); **44. Wills,** No. 5708a
- Porter (1928); **27. H. & W. No.** 4028a
- v. — (Ir.); **2. Arbn.** p. 151
- v. R., *Ex p.* Chin Man Yee (Aus.); **16. Cntmpt.** p. 546; **17. Dep.** p. 601
- v. Whitbys, Ltd. (1926); **34. Mast. & S. No.** 3530a
- Porter (J. P.) & Sons, Ltd. v. Warren (Can.); **41. Ship.** p. 1135
- Porter & Toronto (City), *Re*, *Re* Stewart & Toronto (City), *Re* Harman, Ltd. & Toronto (City) (Can.); **11. Comp. Pchc.** p. 406
- Portland (Duke) v. Wood's Trustees (Scot.); **36. Parl.** p. 1038
- Portman (Viscount), *Re* (No. 2) (1925); **21. E. D. No.** 161a
- Porto Alexandre, The (1920); **1. Adm. Nos.** 141c, 142a
- Portstewart Urban District Council v. Hamill (Ir.); **38. Pub. Hlth.** p. 1073
- Post v. Jones (Can.); **32. Licn.** p. 932
- Potratz v. Potratz (Can.); **11. Confl.** p. 442
- Potter v. Landen (Can.); **1. Agcy.** p. 58
- Potter's Case, *Re* Oxford & Worcester Extension & Chester Junction Ry. Co. (1849); **10. Coys.** No. 6137a
- Potticary, *In the Estate of* (1927); **23. Exors.** Nos. 924a, 931a
- Potts, *Ex p.*, *Re* Ayre (1840); **4. Bkpcy.** No. 1007a
- , *Re*, Hooley v. Fountain (1884); **24. Exors.** No. 8811a
- v. Smail (Can.); **2. Animals,** p. 132
- Powell v. Cauldon Potteries, Ltd. (1926); **34. Mast. & S. No.** 3819a
- v. Edmunds (1810); **22. Evid.** No. 2544a
- v. Jessopp (1856); **9. Coys.** No. 2269a
- v. Martin (Can.); **36. Negl.** p. 1027
- Powell & Toronto Corp., *Re* (Can.); **11. Comp. Pchc.** pp. 402, 403
- Powell's Case, *Re* Ford, *Ex p.* Trustee (1929); **5. Bkpcy.** No. 6882b
- Power v. Canniff (Can.); **25. Gaming,** p. 759
- v. Edmonton Lumber Exchange (Can.); **9. Coys.** p. 378
- v. Nova Scotia Trust Co. (Can.); **35. Mtge.** p. 1022
- v. R. (N.Z.); **37. Police,** p. 1058
- Powers v. R. (Can.); **11. Const. L.** p. 431
- Powers of Advocates, *Re* (Ind.); **3. Barr.** p. 193
- Powis v. Butler (1858); **3. Bank.** No. 215a
- v. Vancouver (City) (Can.); **2. Arbn.** p. 156
- Powys v. Blagrave (1851); **40. Stillms.** No. 2243a
- Practice Note (1920); **3. Barr.** No. 408a
- , [1925] W. N. 164; **16. Courts,** No. 352a
- (1925), 159 L. T. Jo. 95; **27. H. & W. No.** 4447a
- , [1926] W. N. 8; **27. H. & W. No.** 2189a; **28. Infts.** No. 1563a
- , [1926] W. N. 250; **28. Inc. T. Nos.** 632b, 632d
- , [1926] W. N. 308; **13. Cty. Cts.** No. 928a; **16. Cr. Pract.** Nos. 1433a, 2046a, 2326a, 3142a, 3209a, 3456a
- (1927); **2. Arbn.** No. 1069a
- , [1928] W. N. 209; **21. Exon.** No. 2547a
- (1928); **20. Cr. App. Rep.** 185; **30. Jdgmts.** No. 629a
- , [1929] W. N. 66; **10. Coys.** No. 5590a

- Practice Note (1929), 45 T. L. R. 476; **35. Money**, No. 353c
- Pragdas Budhsen, *Ex p.*, Hurnandrai Fulchand v. Pragdas Budhsen (1924); **16. Courts**, No. 535a
- Prager v. Blatspiel, Stamp & Heacock, Ltd. (1924); **1. Agcy.** No. 215a
- Pramatha Nath Sanyal v. Kali Kumar Dutt (Ind.); **9. Coys.** p. 358
- Prat v. Hitchcock (Can.); **21. Exon.** p. 698
- Pratt, *Ex p.*, *Re* Gent One (Aus.); **42. Solrs.** p. 1142
- v. British Medical Assocn. (1919); **1. Action**, No. 249a
- v. Grand Trunk Ry. Co. (Can.); **38. Rys.** p. 1076
- v. Patrick (1924); **1. Agcy.** No. 2318a
- v. Pratt (1927); **27. H. & W.** Nos. 6251a, 6255a
- v. Scheveck (Can.); **28. Injon.** pp. 853, 854
- Pratt's Case (1875); **12. Contr.** No. 4985
- Pratten v. Labour Daily, Ltd. (Aus.); **32. Libel**, p. 923
- Premchand Hira v. Bai Galal (Ind.); **27. H. & W.** p. 798
- Premier Dairies v. Garlick (1920); **2. Agric.** No. 268a
- Premier Lumber Co. v. Grand Trunk Pacific Ry. Co. (Can.); **8. Carr.** p. 316
- Prentice v. Dominion Rubber Co., Ltd. (Can.); **36. Pats.** p. 1016
- Prentice v. Merrick (Can.); **1. Agcy.** p. 63
- v. Sault Ste. Marie (Can.); **38. Pub. Auth.** p. 1071
- Prentice Brothers, Ltd. v. London & North Eastern Ry. Co. (1925); **8. Carr.** Nos. 1166a, 1337a
- Prescott, Ltd. v. Perpetual Trustee Co., Ltd. (Aus.); **16. Courts.** p. 551
- Press v. Mathers (Aus.); **21. Estpl.** p. 686
- Preston v. Preston & Moxley (Can.); **27. H. & W.** p. 803
- v. Raphael Tuck & Sons (1926); **13. Coprt.** No. 691a
- v. Strutton (1792); **12. Contr.** No. 4770a
- Preston Corp'n. v. Pyke (1929); **7. Burial**, Nos. 237a, 237c, 237d, 237e
- Prete v. Lauzon & Fensom (Can.); **7. B. of Sale**, p. 287
- Prevedoros v. Prevedoros (Can.); **28. Injon.** p. 853
- Price, *Ex p.*, *Re* Gorfett's Trust (1850); **35. Mtge.** No. 1324a
- , *Re* (1928); **13. Cohlds.** No. 2032a; **18. Descl.** No. 150a
- , *Re* (Can.); **21. Exon.** p. 694
- , *Re*, Price v. Price (1879); **23. Exors.** No. 165a
- , *Re*, Price v. Price (1929); **40. Sttlmts.** Nos. 3143a, 3143b
- v. Groom (1848); **3. Bailmt.** No. 125a
- v. Indiana-Alberta Oil Co. (Can.); **9. Coys.** p. 378
- v. Price (1927); **27. H. & W.** No. 6164a
- v. —, *Re* Price (1879); **23. Exors.** No. 165a
- v. —, *Re* Price (1929); **40. Sttlmts.** Nos. 3143a, 3143b
- v. R. (1925); **16. Cr. Pract.** No. 353a
- Price Brothers & Co., Ltd. v. R. (Can.); **17. Deeds**, p. 585
- Price, Davies & Co. v. Smith (1929); **1. Agcy.** Nos. 1746b, 1780a
- Price's Trust Deed, *Re* (1868); **5. Bkpcy.** No. 8965a
- Prichard & Constance (Wholesale), Ltd. v. Amata, Ltd. (1924); **9. Coys.** No. 3327b
- Pridie v. Bellamy, *Re*, Madge (1928); **23. Exors.** No. 3517a
- Priest v. Uppleby, *Re* Salmon (1889); **35. Mtge.** No. 415a
- Primeau & Imperial Lumber Yards, Ltd. v. Meagher (Can.); **12. Contr.** p. 458
- Prince v. Moore (Can.); **31. L. & T.** p. 901
- Prince Albert (City), *Ex p.*, *Re* Matheson (Can.); **4. Bkpcy.** p. 226
- Princess, The (1929); **41. Ship.** Nos. 5608b, 6377a
- Principal Immigration Officer v. Purshotam (S. Af.); **2. Aliens.** p. 121
- Principal Secretary of State for War v. Toronto Corp'n. (Can.); **38. Rates.** p. 1081
- Pringle v. Hales (1925); **13. Cty. Cts.** Nos. 139a, 327a
- v. McKay (N.Z.); **1. Agcy.** pp. 47, 51
- Prinsep v. Prinsep (1929); **27. H. & W.** Nos. 5580a, 5625b, 5718a
- Prior, *Re*, *Ex p.* Prior (1921); **4. Bkpcy.** Nos. 40a, 1548a
- , *Re*, *Ex p.* Trustee (1922); **4. Bkpcy.** No. 454a
- Pritchard v. James Clay (Wellington), Ltd. (1926); **24. Fact.** No. 264a
- v. Pritchard (1920); **22. Evid.** No. 3422a
- Procter Shotton, *Ex p.*, *Re* Gowland Brothers (1928); **4. Bkpcy.** No. 1451a
- Proctor v. Anderson & Northern Elevator Co., Ltd., Ekman & Proctor & Mallery (Can.); **7. B. of Sale**, pp. 287, 290
- v. Graham (Can.); **27. H. & W.** p. 789
- v. Parker (Can.); **21. Exon.** p. 691
- v. Ryall (1928); **28. Inc. T.** Nos. 489a, 516a
- Proctor & Gamble Co.'s Petition, *Re*, Proctor & Gamble Co. v. Pugsley Dingman & Co., Ltd. (Can.); **43. Trade Mks.** p. 1160
- Produce Brokers, Ltd. v. Blyth, Greene, Jourdain & Co., Ltd. (1918); **2. Arbn.** Nos. 1799a, 1960a
- Profits & Income Insurance Co., *Re* (1929); **10. Coys.** No. 7611a
- Progressive Agency v. Bennett (N.Z.); **1. Agcy.** p. 61
- Progressive Farmers, *Re*, *Re* Holden National Co.'s Claim (Can.); **5. Bkpcy.** p. 241
- Progressive Farmers Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 212
- Progressive Farmers Co., Ltd., *Re*, *Ex p.* Brown Brothers & Burnstad, Ltd. (Can.); **5. Bkpcy.** p. 250
- Pronek v. Winnipeg Selkirk & Lake Winnipeg Ry. Co. (Can.); **43. Tram.** p. 1161
- Prospect District Council Bye-law, *Re*, *Ex p.* Hill (Aus.); **22. Evid.** p. 703
- Prosperity, Ltd. v. Lloyds Bank, Ltd. (1923); **3. Bank.** No. 342a
- Prosser, *Re*, Prosser v. Griffith (1929); **44. Wills.** No. 8553a
- Proudfoot (Doe) v. McCrac (Can.); **25. Fraud.** *Conv.* p. 750
- Proudlock v. Canadian Bank of Commerce (Can.); **3. Bank.** p. 191
- Providence Washington Assce. Co. v. Gagnon & Cloutier, *Re* North Shore Trading Co. (Can.); **4. Bkpcy.** p. 231
- Provincial Elections Act, *Re*, Smith v. Catherwood (Can.); **20. Elect.** p. 651
- Provincial Insurance Co. of Canada v. Connolly (Can.); **29. Inscr.** p. 865
- Provincial Secretary-Treasurer v. Schofield (Can.); **21. E. D.** p. 675
- Pruce v. Davey (1926); **34. Mast. & S.** Nos. 2340a, 2460b
- Pruden v. Foxon (Can.); **36. Negl.** p. 1031
- Public Health Commission, *Ex p.*, R. v. Rochester-shire Council (Aus.); **16. Cr. Pract.** p. 565

Public Highways Dept., Ontario v. Canadian Pacific Ry. Co. (Clappison Bridge Case) (Can.); **26. Hghys.** p. 786  
 Public Property Trustees v. Gillis (Can.); **21. Estpl.** p. 688  
 Public Prosecutions Director, *Ex p.*, R. v. Daily Express (1924); **16. Cntmpt.** No. 179a  
 —, *Ex p.*, R. v. Devon J.J. (1924); **14. Crim.** Nos. 1022a, 1138  
 —, *Ex p.*, R. v. Evening Standard (1924); **16. Cntmpt.** No. 179a  
 —, *Ex p.*, R. v. Manchester Guardian (1924); **16. Cntmpt.** No. 179a  
 —, *Ex p.*, R. v. New Statesman (Editor) (1928); **16. Cntmpt.** Nos. 164a, 165a  
 Public Schools Act, *Re*, *Re* Beausejour School District (Can.); **19. Educ.** p. 645; **38. Rates**, p. 1084  
 Public Trustee v. Aldridge, *Re* King (1928); **40. Stlmts.** No. 1059a  
 — v. A.-G., *Re* Cammell (1925); **8. Char.** No. 657a  
 — v. A.-G., *Re* Gwyon (1929); **8. Char.** Nos. 260a, 1089a  
 — v. Birchenough, *Re* Peacock (1929); **44. Wills**, No. 7637a  
 — v. Bowyen (N.Z.); **44. Wills**, p. 1183  
 — v. Clarendon (Earl), *Re* Jones (1929); **8. Char.** No. 217a  
 — v. Davidson (Scot.); **2. Aliens**, p. 106  
 — v. Elder (1926); **2. Aliens**, No. 235a  
 — v. Evans, *Re* Evans (1920); **5. Bkpcy.** Nos. 5932b, 5936a  
 — v. Gladstone (N.Z.); **6. B. of Exch.** p. 280  
 — v. Goldsmid, *Re* De Jong (1929); **8. Char.** No. 881a  
 — v. Gray, *Re* Westerton (1919); **3. Bank.** No. 409a  
 — v. Hood, *Re* Caire (Aus.); **29. Insee.** p. 871  
 — v. Horton (N.Z.); **44. Wills**, p. 1180  
 — v. Ingle, *Re* Binns (1929); **20. Eqq.** No. 2006a  
 — v. Lancaster Duchy (1927); **19. Eccl.** No. 3465a  
 — v. Leitch (Aus.); **23. Errors.** p. 723; **44. Wills**, p. 1181  
 — v. Lowe King, *Re* Ghee, *Ex p.* Lowe King (N.Z.); **24. Errors.** p. 735  
 — v. Mordeman (N.Z.); **35. Mtac.** p. 1022  
 — v. Mountbatten, *Re* Cassel (1927); **21. E. D.** Nos. 22a, 136b, 254a  
 — v. Registrar-General of Land (N.Z.); **23. Errors.** p. 715; **38. Real Prop.** p. 1089  
 — v. Ross, *Re* Bain (1929); **8. Char.** No. 717a  
 — v. Saunders, *Re* Saunders (1929); **18. Desc.** Nos. 188a, 202a  
 — v. Silber, *Re* Silber's Settlement (1920); **5. Bkpcy.** Nos. 5821a, 6295a  
 — v. Stamp Duties Comr., *Re* Gilmer (N.Z.); **21. E. D.** p. 668  
 — v. Steele, *Re* Vosz (Aus.); **8. Char.** pp. 335, 339  
 — v. Taylor, *Re* Taylor's Settlement Trusts (1929); **5. Bkpcy.** No. 6401a  
 — v. Trollope, *Re* Trollope's Will Trusts (1927); **24. Errors.** Nos. 6053a, 6138a  
 — v. Victoria Hospital for Children, *Re* Lomer (1929); **21. E. D.** No. 265a  
 — v. Villar, *Re* Villar (1929); **37. Perps.** No. 60a  
 — v. Weir (N.Z.); **44. Wills**, p. 1182  
 — v. Wellington Society for Prevention of Cruelty to Animals Inc., *Re* Buckley (N.Z.); **8. Char.** p. 339  
 — v. Williams, *Re* Williams (1927); **8. Char.** Nos. 75a, 718a  
 — v. Wolf (1923); **2. Aliens**, No. 215k; **27. H. & W.** No. 906

Puddicombe v. Bythesea (1823); **40. S. Land**, No. 1509a  
 Pudoc v. Bellamy, *Re* Madge (1928); **23. Exors.** No. 3517a  
 Pugh v. Ashutosh Sen (Ind.); **32. Limit. of A.** p. 938  
 Pugsley v. Garson (Can.); **11. Const. L.** pp. 429, 434  
 Pulkabrek, *Re*, *Re* Domestic Relations Act, 1927 (Can.); **28. Infls.** pp. 847, 850  
 Pulker v. Evans (Can.); **38. Real Prop.** p. 1088  
 Pulkrabek v. Pulkrabek (Can.); **22. Evid.** p. 712  
 Pullen v. Enthoven & Son (1927); **34. Mast. & S.** Nos. 3056a, 3701a  
 Pulling v. Liddbetter, Ltd. (1924); **2. Agric.** No. 971a  
 Pulsifer v. King (Can.); **32. Limit. of A.** p. 939  
 Punjab Cotton Press Co. v. Secretary of State (Ind.); **38. Rys.** p. 1079  
 Puran Das v. East Indian Ry. Co. (Ind.); **8. Carr.** p. 317  
 Puran Mal v. Ford, Macdonald & Co., Ltd. (Ind.); **1. Agcy.** p. 54  
 Purcell v. Deputy Federal Taxation Comr. (Aus.); **7. B. of Sale**, p. 285  
 — v. Hendricks & Marks (Can.); **11. Confl.** p. 416  
 Purdom v. Northern Life Assurance Co. of Canada (Can.); **20. Eqq.** p. 664; **35. Mtgc.** p. 1018  
 Purdy v. Colton (Can.); **21. Exon.** p. 690  
 — (Doc d.) v. Peters (Can.); **31. L. & T.** p. 901  
 — v. Purdy (Can.); **11. Confl.** p. 422  
 Pure Oil Co., Ltd., *Ex p.*, *Re* North Western Trust Co. (Can.); **10. Coys.** p. 397  
 Purity Ice Cream Co. v. O'Connell (Can.); **22. Evid.** p. 709  
 Purna Chandra Dutt v. Indra Chandra Roy (Ind.); **1. Agcy.** p. 48  
 Purnell v. Roche (1927); **32. Limit. of A.** Nos. 1286a, 1369a  
 Putner, *Re*, Putner v. Brooke (1929); **44. Wills**, No. 5696a  
 Putsman v. Taylor (1927); **12. Contr.** No. 2391a  
 Puttock v. Daintry (1894); **5. Bkpcy.** No. 8276a  
 Putz v. Registrar of Titles (Aus.); **35. Mtgc.** p. 1017; **38. Real Prop.** p. 1090  
 Pyatt v. McKee (Can.); **38. Real Prop.** p. 1088  
 Pyda Satyarazu v. Guntur Cotton & Paper Mills Co., Ltd. (Ind.); **10. Coys.** p. 385

Q.

Q. (An Arranging Debtor), *Re* (Ir.); **5. Bkpcy.** p. 265  
 Quallev v. Day (Can.); **44. Water**, p. 1174  
 Quance v. Brown (Can.); **26. Guar.** p. 767  
 Quarrell v. Lamport & Holt (1928); **34. Mast. & S.** No. 3659a  
 Quay v. Sculthorpe (Can.); **26. Guar.** p. 768  
 Quebec (Province of) v. Canada (Dominion of), *Re* Canada (Dominion of) & Provinces of Ontario & Quebec, *Re* Indian Claims (Can.); **17. Dep.** p. 604  
 Quebec Bank v. Phillips (Can.); **3. Bank.** p. 189  
 — v. Royal Bank (Can.); **38. Real Prop.** p. 1089  
 Quebec Federated Co-op. Co. v. Farmers Fence Co. (Can.); **1. Agcy.** p. 76  
 Quebec Liquor Commission v. Dubois (Can.); **14. Crim.** p. 513  
 — v. Thibaudeau (Can.); **30. Intar.** p. 884  
 Quebec, Montreal & Southern Ry. Co. v. R. (Can.); **11. Const. L.** p. 430  
 Quebec North Shore Turnpike Road Trustees v. Vezina (Can.); **26. Hghys.** p. 776

- Quebec Railway, Light & Power Co. v. Montcalm Land Co. (Can.); **38. Rys.** p. 1078; **43. Tram.** p. 1164
- Quebec Timber Co., *Re* (Can.); **18. Dep.** p. 591
- Queen, *Ex p.*, *R. v. Henderson* (Can.); **17. Dep.** p. 598
- Queen Insurance Co. of America v. British Traders Insurance Co. (Can.); **29. Insee.** p. 860
- Queen of the Thames, *The* (1872); **11. Confl.** No. 1205a
- Queen Victoria Memorial Hospital v. Booth, Ltd. (Can.); **38. Pub. Hlth.** p. 1073
- Queen Victoria Niagara Falls Park Comrs. v. International Ry. Co. (Can.); **38. Rys.** p. 1076
- Queen's College, Oxford v. Sutton (1842); **13. Corps.** No. 133a
- Queensland Deposit Bank, Ltd. v. Brisbane City Council (Aus.); **38. Rules.** p. 1083
- Queensland Insurance Co., Ltd. v. Subiaco Municipality (Aus.); **33. L. G.** p. 911; **38. Pub. Auth.** p. 1069
- Queensland Mercantile & Agency Co., *Re, Ex p.* Australasian Investment Co., *Ex p.* Union Bank of Australia (1892); **11. Confl.** No. 417a
- Quick v. Winter (N.Z.); **1. Agey.** p.
- Qumlan, *Re* (Ir.); **28. Inc. T.** p. 839
- v. Wellington Corpn. (N.Z.); **11. Comp. Pchc.** p. 410; **38. Pub. Auth.** p. 1069
- Quinn v. Guernsey, *Re* Hotel Dunlop, Ltd. (Can.); **4. Bkpcy.** p. 231
- v. Huel (Can.); **30. Intox.** p. 881
- Quirk v. Sydney Mines Town (Can.); **7. Conts.** p. 306
- Qun v. R. (Can.); **14. Crim.** p. 504
- Quon v. British & European Insurance Co., Ltd. (Can.); **29. Insee.** p. 869
- R.
- R., *Ex p.*, *Re* International Metal Works, Ltd. (Can.); **4. Bkpcy.** p. 226; **10. Coys.** p. 389
- R. *ex rel* Royal Trust Co. R. *ex rel* Freeman, *Re* Winnipeg Charter (Can.); **38. Rates.** p. 1085
- R., *Re* (No. 2) (Aus.); **42. Solrs.** p. 1143
- v. A. D. Murray Tailoring, Ltd. (Can.); **25. Gaming.** p. 760
- v. Abdy (1884); **1. Adm.** No. 1717
- v. Abrahams & Gerstein (1928); **14. Crim.** No. 3283a
- v. Abrahamson (S. Af.); **5. Bkpcy.** p. 261
- v. Adams (Can.); **16. Cr. Pract.** p. 566
- v. Adventurers of England, Governor & Co. (Can.); **44. Waters.** p. 1174
- v. Ah Tom (Can.); **14. Crim.** p. 508
- v. Ahilya (Ind.); **22. Evid.** p. 706
- v. Ainoko, *The* (Can.); **1. Adm.** p. 28
- v. Alamazoff (Can.); **2. Aliens.** p. 120
- v. Alberts (Can.); **14. Crim.** p. 504
- v. Alexander (1924); **14. Crim.** No. 3151a
- v. Allen (Can.); **15. Crim.** p. 531
- v. Altomare (Can.); **15. Crim.** p. 531
- v. Anderson (1924); **14. Crim.** No. 5870a
- v. — (Can.); **9. Coys.** p. 358
- v. Andrews (1927); **14. Crim.** Nos. 5028a, 5065a
- v. — (Can.); **15. Crim.** pp. 542, 544
- v. Archer (Can.); **11. Comp. Pchc.** p. 402
- v. Argyllshire, *The* (Aus.); **1. Adm.** p. 30
- (Greenaway) v. Armagh J.J. (Ir.) (1921); **16. Cr. Pract.** p. 570
- v. Armagh J.J. (Ir.) (1929); **30. Intox.** p. 883
- v. Armstrong (Can.); **16. Cr. Pract.** p. 509
- R. (McDougall) v. Army & Navy Veterans Assocn. of Regina (Can.); **30. Intox.** p. 884
- v. Arnold (Can.); **25. Gaming.** p. 757
- v. Artu Rantra (Ind.); **2. Animals.** p. 125
- v. Ascoli (1927); **14. Crim.** No. 5211a
- v. Aseruddin (Ind.); **14. Crim.** p. 530
- v. Atkinson (1929); **14. Crim.** No. 5024b
- v. — (Can.); **14. Crim.** p. 526
- v. A.-G. of British Columbia (1924); **17. Dep.** No. 98
- v. Aune (Can.); **33. Mkts.** p. 959
- Averill (Can.); **14. Crim.** p. 529
- Axler (Can.); **30. Intox.** p. 883
- Bachuu (Can.); **14. Crim.** p. 530
- v. Baggott (1927); **14. Crim.** No. 3090a
- Bagley (Can.); **14. Crim.** p. 514
- Baguley (1925); **15. Crim.** No. 10, 906a
- Baig (Can.); **30. Intox.** pp. 722, 881
- Bailey (1924); **14. Crim.** No. 3156b
- Baldwin (1925); **14. Crim.** Nos. 3820b, 4711a
- v. Ball (1921); **14. Crim.** No. 3174a
- v. Bandel (Can.); **14. Crim.** p. 519
- v. Banks (1821); **15. Crim.** No. 9702a
- v. Banniti (Can.); **16. Cr. Pract.** p. 561
- v. Bannstead, *Ex p.* Hanson, *Ex p.* Moller (Can.); **2. Aliens.** pp. 119, 120
- v. Barilko (Can.); **14. Crim.** pp. 503, 504
- v. Barker (1927); **14. Crim.** No. 3120a
- v. Barlin (S. Af.); **14. Crim.** p. 517
- v. Barmania (S. Af.); **17. Dep.** p. 602
- v. Barnard (Can.); **3. Bank.** p. 171; **14. Crim.** p. 503
- v. Barry (Can.); **33. Mags.** p. 953
- v. —, *Ex p.* Lindsay (Can.); **16. Cr. Pract.** p. 569
- v. Basire (1926); **14. Crim.** No. 5217b
- (Metcalf) v. Bat (Can.); **30. Intox.** p. 884
- v. Bateman (1925); **15. Crim.** No. 8672a
- v. Bath Compensation Authority (1925); **30. Intox.** No. 381
- v. Batters (Can.); **28. Inc. T.** p. 810
- v. Baum (Aus.); **30. Juries.** p. 891
- v. Baxter (1924); **14. Crim.** No. 5303a
- v. Baxter (Aus.); **22. Evid.** p. 711
- v. Beacall (1824); **15. Crim.** No. 10,200a
- v. Beale (Can.); **14. Crim.** pp. 519, 520; **30. Intox.** p. 881
- v. Beard (1927); **14. Crim.** No. 5385a
- v. Beattie (1924); **14. Crim.** No. 5607a
- v. Becker (S. Af.); **14. Crim.** p. 517; **22. Evid.** p. 708
- v. Beebe (1925); **14. Crim.** Nos. 4972b, 6066b
- v. Beech, Pollitt & Strudwick (1928); **11. Confl.** No. 1033a
- v. Beckman (Can.); **25. Food.** p. 747
- v. Begin, *Ex p.* Caron (Can.); **16. Cr. Pract.** p. 570; **30. Intox.** p. 881
- v. Bell (Can.); **28. Inc. T.** p. 810
- v. Bellman (Can.); **33. Mags.** p. 956
- v. Bellos (Can.); **14. Crim.** p. 517
- v. Bennett (Can.) (1825); **26. Hghys.** p. 778
- (Harding) v. Bennett (Can.) (1896); **33. L. G.** p. 944
- Bennett (1928); **33. Mags.** No. 1002a
- Benson (Can.); **15. Crim.** p. 534; **37. Poor L.** p. 1060
- v. Berelovitch (Can.); **15. Crim.** p. 544
- v. Berg, Britt, Carré & Lummins (1927); **14. Crim.** No. 4222a; **15. Crim.** No. 8128a
- v. Berger (Can.); **14. Crim.** p. 528
- v. Berry (1924); **15. Crim.** No. 9320a
- v. — (1926); **14. Crim.** No. 5856c
- v. — (1928); **14. Crim.** No. 5016b
- v. Bevis (Can.); **15. Crim.** p. 538
- v. Birch (1924); **14. Crim.** No. 2730a

- R. v. Black (Can.); **26. Guar.** p. 767  
 -- v. Blackall Police Magistrate & Hart, *Ex p.*  
     Hart (Aus.); **7. Bounds & F.** p. 297  
 -- v. Blackman (1929); **14. Crim.** No. 5012b  
 -- v. Blank (Can.); **30. Intox.** p. 884  
 -- v. Blunt (1828); **21. Exon.** No. 1281a  
 -- v. Boak (Can.); **14. Crim.** pp. 511, 526, 531  
 -- v. Boltolph (1928); **15. Crim.** No. 6209c  
 -- v. Bonnis (Can.); **33. Mags.** p. 952  
 -- v. Bonter (Can.); **16. Cr. Pract.** p. 558  
 -- v. Booher (Can.); **14. Crim.** p. 517  
 -- v. Booker (1924); **14. Crim.** No. 4351a; **15.**  
     *Crim.* No. 8793a  
 -- v. Bookhalter & Lanin (Can.); **14. Crim.** p. 501  
 -- v. Boone (Can.); **30. Intox.** p. 885  
 -- v. Boreham (1928); **14. Crim.** No. 4998c  
 -- v. Boulton (1871); **14. Crim.** Nos. 1513a, 1536a  
 -- (Minister of Agriculture for Saskatchewan) v.  
     Bourke (Can.); **2. Animals**, p. 133; **11.**  
     *Const. L.* p. 431  
 -- v. Bourne (1925); **14. Crim.** No. 5049b  
 -- v. Boutilier (Can.); **14. Crim.** p. 527; **33.**  
     *Mags.* pp. 952, 956; **39. Revenue**, p. 1100  
 -- v. Brady (Can.); **2. Animals**, p. 128  
 -- v. Brand (Can.); **14. Crim.** p. 511  
 -- v. Brandelina (Can.); **16. Cr. Pract.** p. 571  
 -- v. Braun (Can.); **14. Crim.** p. 507  
 -- v. Brayden (Can.); **14. Crim.** p. 512  
 -- v. Brennan & Newlands (Can.); **25. Gaming.**  
     p. 758  
 -- v. Brewin (1926); **5. Bkpcy.** No. 8633a  
 -- v. Briery (1924); **14. Crim.** No. 5932c  
 -- v. Briggs (Can.); **14. Crim.** p. 503  
 -- v. Brinda (Can.); **16. Cr. Pract.** p. 564  
 -- v. Bristol (Can.); **14. Crim.** p. 515  
 -- v. British American Bank Note Co. (Can.); **11.**  
     *Const. L.* p. 431  
 -- v. Brixton Prison (Governor), *Ex p.* Bloom  
     (1920); **2. Aliens**, No. 553a  
 -- v. Brixton Prison (Governor), *Ex p.* Shure  
     (1926); **5. Bkpcy.** No. 8534a; **16. Cr. Pract.**  
     No. 585a  
 -- v. Brixton Prison (Governor), *Ex p.* Sugarman  
     (1922); **2. Aliens**, No. 553b  
 -- v. Brogan (N.Z.); **14. Crim.** p. 512  
 -- v. Brooks (1929); **14. Crim.** No. 3165c  
 -- v. Brown (Can.) (1920); **11. Const. L.** p. 431  
 -- (Nuttall) v. Brown (Can.) (1923); **16. Cr. Pract.**  
     p. 566  
 -- v. Brown (Can.) (1925); **30. Intox.** pp. 883, 884  
 -- (Aldridge) v. Brown (Can.) (1927); **14. Crim.**  
     p. 516; **33. Mags.** p. 953  
 -- v. Brown (Can.) (1928); **15. Crim.** p. 510  
 -- v. Brownell (1834); **16. Contmpt.** No. 46  
 -- v. Brownlee (Can.); **33. Mags.** p. 954  
 -- v. Buggs (1910); **14. Crim.** No. 4974c  
 -- v. Bunting (Can.); **15. Crim.** p. 541  
 -- v. Burdon (1927); **30. Intox.** No. 764b  
 -- v. Burgess & McKenzie (Can.); **14. Crim.**  
     p. 511; **15. Crim.** p. 537  
 -- v. Burke (Can.); **14. Crim.** pp. 499, 527  
 -- v. Burke-Roche (Can.); **21. E. D.** p. 676  
 -- (Clarke) v. Bury, *Re* Edmonton Charter (Can.);  
     **33. L. G.** p. 944  
 -- (Johnston) v. Busikiewicz (Can.); **30. Intox.**  
     p. 878  
 -- v. Butelezi (S. Af.); **15. Crim.** p. 537  
 -- v. Butler (1926); **14. Crim.** No. 1810c  
 -- v. Cadwell (1927); **14. Crim.** No. 5536b  
 -- v. Cairns (1927); **14. Crim.** No. 5577a  
 -- v. Caledonian Collieries (1928); **17. Dep.** No.  
     135d  
 -- v. Caledonian Insurance Co. (Can.); **24. Exors.**  
     p. 730  
 -- v. Calgary 1500 Club (Can. **29. Insce.** p.  
     875  
 R. v. Camane (S. Af.); **14. Crim.** p. 517  
 -- v. Campbell (Can.); **15. Crim.** p. 542; **16. Cr.**  
     *Pract.* p. 561  
 -- v. Canada Mint Co. (Can.); **25. Gaming**, p. 757  
 -- v. Canada Steamship Lines, Ltd. (Can.); **16.**  
     *Cr. Pract.* p. 558  
 -- v. Canadian Allis-Chalmers, Ltd. (Can.); **14.**  
     *Crim.* pp. 499, 506  
 -- v. Canadian Northern Ry. Co. (Can.); **32.**  
     *Limit. of A.* p. 939  
 -- v. Canadian Pacific Ry. Co. & Canadian National  
     Ry. (Can.); **37. Police**, p. 1058; **38. Rys.**  
     p. 1076  
 -- v. Canadian Robert Dollar Co., Ltd. (Can.);  
     **33. Mags.** p. 956  
 -- v. Cancilla (Can.); **14. Crim.** p. 518  
 -- v. Canham (1925); **14. Crim.** No. 5673a  
 -- v. Canterbury Farmers Co-operative Assocn.,  
     Ltd. (N.Z.); **7. B. of Sale**, p. 293  
 -- v. Carswell (N.Z.); **15. Crim.** p. 536  
 -- (Johannesson) v. Cartier Rural Municipality  
     (Can.); **16. Cr. Pract.** p. 563  
 -- v. Carver (1927); **14. Crim.** No. 1913e  
 -- v. Carvery, *Ex p.* Howe (Can.); **14. Crim.**  
     p. 505  
 -- v. Caskie (Can.); **11. Const. L.** p. 432  
 -- v. Cassidy (Can.); **14. Crim.** p. 507  
 -- v. Caton (Can.); **33. Mkts.** p. 959  
 -- v. Central Criminal Court JJ., *Ex p.* London  
     County Council (1925); **14. Crim.** No.  
     1016a; **16. Cr. Pract.** No. 2449a  
 -- v. Chang Song (Can.); **2. Aliens**, pp. 120, 121  
 -- v. Chapman (Can.); **30. Intox.** p. 883  
 -- v. —, *Ex p.* Arlidge (1918); **1. Agcy.** No.  
     1033a  
 -- v. Charles (1927); **14. Crim.** No. 4994h  
 -- v. Charleville Town Council, *Ex p.* Corones  
     (Aus.); **33. L. G.** p. 941; **42. Theatres**,  
     p. 1155  
 -- v. Charlie Sam (Can.); **25. Gaming**, p. 758  
 -- v. Chateau Restigouche (Can.); **30. Intox.**  
     p. 884  
 -- v. Cheng Tong Seng (Can.); **33. Mags.** p. 953;  
     **39. Revenue**, p. 1100  
 -- v. Cherry (Can.); **30. Intox.** p. 883  
 -- v. Chesshire, Lucas & Bottom (1927); **14.**  
     *Crim.* No. 4216a  
 -- v. Chew (1926); **14. Crim.** No. 5927c  
 -- v. Chew Deb (Can.); **14. Crim.** p. 514  
 -- v. Chick (1925); **14. Crim.** Nos. 5125d, 5148b  
 -- v. Chin Chong (Can.); **14. Crim.** p. 529  
 -- v. Chin Sack (Can.); **2. Aliens**, p. 120  
 -- v. Chotem (Can.); **15. Crim.** p. 538  
 -- v. Chow Ben (Can.); **33. Mags.** p. 952  
 -- v. Chow Tong (Can.); **2. Aliens**, p. 121  
 -- v. Christian (S. Af.); **15. Crim.** p. 534  
 -- v. Chue (Can.); **14. Crim.** p. 506  
 -- v. Chung Chuck (Can.); **17. Dep.** p. 598  
 -- v. Chung Yi Miao (1928); **14. Crim.** No. 5595a  
 -- v. Church Assembly Legislative Committee &  
     Church Assembly, *Ex p.* Haynes Smith  
     (1928); **19. Eccl.** No. 1a  
 -- v. Cieslenski (Can.); **14. Crim.** pp. 517, 529  
 -- v. Cippola (Can.); **14. Crim.** p. 509  
 -- v. Clark (1929); **15. Crim.** No. 6097a  
 -- v. — (Can.); **30. Intox.** pp. 878, 885  
 -- v. Clarke (1925); **14. Crim.** Nos. 1913b, 2115a  
 -- v. — (Aus.); **12. Contr.** p. 441  
 -- v. Claydon (1859); **3. Basty.** No. 210a  
 -- v. Clue (1928); **15. Crim.** No. 6190a  
 -- v. Coates (Can.); **8. Clubs**, p. 353  
 -- v. Cole (1698); **4. Bkpcy.** No. 218a  
 -- v. Coleman (1925); **14. Crim.** No. 5049b  
 -- v. — (Can.); **11. Comp. Pche.** p. 403; **14. Crim.**  
     p. 522  
 -- v. Collins (Can.); **17. Dep.** p. 595



- R. v. Connors (Can.); **15. Crim.** p. 543  
 — v. Cooke (Can.); **14. Crim.** p. 526  
 — v. Cooper (Can.); **14. Crim.** p. 529  
 — v. — (N.Z.); **14. Crim.** p. 515  
 — v. Cooperbloom (Can.); **14. Crim.** p. 503  
 — v. Cope (1925); **14. Crim.** No. 1798a  
 — v. Copestake, *Ex p.* Wilkinson (1927); **3. Basty.** No. 366b  
 — v. Cornet (Can.); **39. Revenue.** p. 1097  
 — v. Cory Brothers & Co. (1927); **13. Corps.** Nos. 1292a, 1303a  
 — v. Cosby (Can.); **7. Bounds & F.** p. 296  
 — v. Cosgrave Export Brewing Co., Ltd. (Can.); **16. Cr. Pract.** p. 571; **40. Set-off.** p. 1113  
 — v. Coulman (1927); **14. Crim.** No. 3156e, 4712a  
 — v. Cowell (Can.); **14. Crim.** p. 526; **33. Mags.** p. 955  
 — v. Cox (1924); **14. Crim.** No. 5125a  
 — v. — (Can.); **17. Dep.** p. 598  
 — v. Coy (Can.); **25. Gaming,** p. 758  
 — v. Coyle (Ir.); **14. Crim.** p. 519  
 — v. Crawford (Can.); **14. Crim.** p. 499; **30. Intox.** p. 885  
 — v. Crew (Can.); **5. Bkpcy.** p. 261  
 — v. Cronan (Can.); **14. Crim.** p. 528  
 — v. Crosby (*alias* Philips) (1695); **11. Const. L.** No. 214a  
 — v. Crosby (Can.); **7. Bounds. & F.** p. 296  
 — v. Cross (Can.); **14. Crim.** pp. 507, 520  
 — v. Crovi (Can.); **14. Crim.** p. 507  
 — v. Cruik (Can.); **15. Crim.** p. 531; **29. Intpr.** p. 878; **30. Intox.** p. 884  
 — v. Cuddihy (Nfld.); **17. Dep.** p. 604  
 — v. Cummins (Can.); **14. Crim.** p. 502  
 — v. Cumyow (Can.); **33. Mags.** p. 956  
 — v. Curtiss (1925); **14. Crim.** No. 3180b  
 — v. Customs & Excise Comrs., *Ex p.* Pegler (1928); **31. L. & T.** No. 4531a  
 — v. Cutler (Can.); **8. Char.** p. 341  
 — v. Cyr (Can.); **30. Intox.** p. 884  
 — v. Daily Express, *Ex p.* Public Prosecutions Director (1924); **16. Cntmpt.** No. 179a  
 — v. Daily Mail (Editor), *Ex p.* Factor (1928); **16. Cntmpt.** No. 192a  
 — v. "Daily Mail" (Editor & Proprietors), *Ex p.* Smith (1927); **16. Cntmpt.** No. 283a  
 — v. "Daily Mirror" (Editor & Proprietors) (1927); **16. Cntmpt.** No. 283a  
 — v. Daily Mirror, *Ex p.* Smith (1927); **16. Cntmpt.** No. 283a  
 — v. Dalby Licensing Authority, *Ex p.* Kelly (Aus.); **16. Cr. Pract.** p. 570; **30. Intox.** p. 881  
 — v. Dale (otherwise Manders) (1929); **15. Crim.** No. 6187d  
 — v. D'Angelo (Can.); **15. Crim.** p. 538  
 — v. Daniels (1927); **14. Crim.** No. 5840a  
 — v. D'Arcy (1926); **14. Crim.** No. 4994g  
 — v. Darling (Can.); **14. Crim.** p. 526  
 — v. Davenport (Can.); **2. Animals,** p. 134; **16. Cr. Pract.** p. 571  
 — v. Davidson (1927); **14. Crim.** Nos. 1446a, 3129b, 5850b  
 — v. — (Can.); **14. Crim.** pp. 519, 528  
 — v. Davies (Can.); **14. Crim.** p. 528  
 — v. Davis (S. Af.); **14. Crim.** p. 516  
 — v. Dawson (1926); **15. Crim.** No. 10,878a  
 — v. Dean (1924); **14. Crim.** Nos. 3165a, 5261a, 5536a  
 — v. De Bertoli (Can.); **14. Crim.** pp. 526, 531  
 — v. De Bruge (Can.); **14. Crim.** pp. 502, 527  
 — v. De Caux (1815); **16. Cr. Pract.** No. 246a  
 — v. Dee (Can.); **16. Cr. Pract.** p. 567; **30. Intox.** p. 883  
 — v. Demetrio (Can.); **14. Crim.** p. 514  
 R. v. Denis (Can.); **14. Crim.** p. 508; **33. Mags.** p. 952  
 — v. Dennis (1924); **14. Crim.** No. 2365a  
 — v. Denny (Can.); **16. Cr. Pract.** p. 568  
 — v. Dent (1925); **14. Crim.** No. 4994e  
 — v. Denyer (1926); **15. Crim.** No. 10,487a  
 — v. Deo Dat (Ind.); **14. Crim.** p. 517  
 — v. Derby (Can.); **14. Crim.** p. 518  
 — v. Desjarlais (Can.); **14. Crim.** p. 503  
 — v. Deverell (1854); **38. Pub. Hlth.** No. 531  
 — v. Devon JJ., *Ex p.* Public Prosecutions Director (1924); **14. Crim.** Nos. 1022a, 1138  
 — v. D'Eyncourt (1888); **15. Crim.** No. 6496a  
 — v. De Young (Can.); **14. Crim.** p. 526  
 — v. Dhanjibhai Edulji (Ind.); **15. Crim.** p. 513  
 — v. Diamond (Can.); **14. Crim.** pp. 504, 513; **15. Crim.** p. 535  
 — v. Dietsch (Can.); **30. Intox.** p. 878  
 — v. Digerness (Can.); **30. Intox.** p. 878  
 — v. Dinsdale (1926); **14. Crim.** No. 5290c  
 — v. Dipenta (Can.); **14. Crim.** p. 505  
 — v. Dixon (1925); **14. Crim.** No. 6069a  
 — v. Dominion Coal Co. (Can.); **34. Mines,** p. 1007  
 — v. Dominion Distillery Products Co. (Can.); **39. Revenue,** p. 1098  
 — v. Dominion General Jobbers, Ltd. (Can.); **33. Mkts.** p. 959  
 — v. Dominion Press Co. (Can.); **39. Revenue,** p. 1098  
 — v. Donegal (Marchioness) (Can.); **17. Dep.** p. 596  
 — v. Donen (Can.); **28. Inc. T.** p. 840  
 — v. Donovan (1925); **14. Crim.** No. 5290a  
 — v. Dorgan (Can.); **8. Clubs,** p. 353  
 — v. Dorrington (1927); **5. Bkpcy.** No. 8565a  
 — (McArthur) v. Doucet (Can.); **16. Cr. Pract.** p. 566  
 — v. Douglas (1926); **14. Crim.** No. 1978a  
 — v. Doyle (Can.); **14. Crim.** p. 419; **42. Str. Traf.** p. 1153  
 — v. Dragani (Can.); **30. Intox.** p. 884  
 — v. Drake (1850); **14. Crim.** No. 1992a  
 — v. Draper (1929); **15. Crim.** Nos. 6068b, 9361a  
 — v. Drashcovich (Can.); **30. Intox.** p. 878  
 — v. Driscoll (1925); **14. Crim.** No. 5312a  
 — v. Driscoll & Rowlands (1928); **14. Crim.** Nos. 2839c, 5802c  
 — v. Driver (1926); **14. Crim.** No. 5046a  
 — v. Druz (Can.); **30. Intox.** p. 885  
 — v. Duff (Can.); **14. Crim.** pp. 502, 506, 514  
 — v. Du Guay (Can.); **14. Crim.** p. 505  
 — v. Dunbar (1928); **14. Crim.** No. 6169a  
 — v. Dunkley (1927); **14. Crim.** Nos. 4705b, 4734a  
 — v. Dunn (Can.); **16. Cr. Pract.** p. 562; **33. Mags.** p. 953  
 — v. Dupras, Ltd. (Can.); **33. Mags.** p. 953  
 — v. Durand (1924); **14. Crim.** No. 4994c  
 — v. Durand (Can.); **42. Str. Traf.** p. 1153  
 — v. Dutchak (Can.); **14. Crim.** p. 529  
 — v. Dwyer (1925); **14. Crim.** Nos. 3801a, 3801c  
 — v. Dziwra (Can.); **14. Crim.** p. 515; **30. Intox.** p. 881  
 — v. Eastern Terminal Elevator Co. (Can.); **17. Dep.** p. 595  
 — v. Ed (Can.); **28. Inc. T.** p. 840  
 — v. Edmonton Income Tax Comrs., *Ex p.* Thompson (1929); **28. Inc. T.** No. 631a  
 — v. Edmundson (1859); **15. Crim.** No. 10,815a  
 — v. Edwards (1853); **5. Bkpcy.** p. 7030  
 — v. — (1924); **14. Crim.** No. 3318a  
 — v. Elasz (Can.); **25. Gaming,** p. 758  
 — v. Elchuk (Hallchuk) (Can.); **14. Crim.** p. 505; **33. Mags.** p. 953

- R. v. Elder* (Can.); **15. Crim.** p. 538; **22. Evid.** p. 710  
 — *v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.* (1920), Ltd. (1924); **16. Cr. Pract.** No. 2303  
 — *v. Electricity Comrs., Ex p. Yorkshire Electric Power Co.* (1927); **20. Electric**, No. 111a  
 — *v. Ellerton* (Can.); **14. Crim.** p. 530  
 — *v. Elliot, Hollis & Valentine* (1630); **14. Crim.** No. 989  
 — *v. Elliot, Hollis & Valentine* (1668); **14. Crim.** No. 989  
 — *v. Elliott* (Can.); **15. Crim.** p. 536  
 — *v. Ellison* (Can.); **33. Mags.** p. 955  
 — *v. Ely J.J.* (1855); **33. Mags.** No. 958d  
 — *v. Ely J.J., Ex p. Mann* (1928); **33. Mags.** No. 811a  
 — *v. Emmelt* (1925); **14. Crim.** No. 5148a  
 — *v. Emmott* (1928); **14. Crim.** No. 5198a  
 — *v. Endler* (Can.); **22. Evid.** p. 710  
 — *v. England* (Can.); **14. Crim.** p. 522, 523; **15. Crim.** p. 545  
 — *v. Epstein* (Can.); **14. Crim.** p. 528  
 — *v. Erasmus* (S. Af.); **15. Crim.** p. 534  
 — *(Hanna) v. Ernst* (Can.); **30. Intox.** p. 884  
 — *v. Errington* (1926); **15. Crim.** No. 10,754b  
 — *v. Essex County Court Judge* (1884); **1. Adm.** No. 1717  
 — *v. Essex J.J., Ex p. Perkins* (1927); **33. Mags.** Nos. 97a, 150a  
 — *v. Ettridge* (1927); **14. Crim.** No. 5049d  
 — *v. Evans* (1924); **14. Crim.** No. 4826a  
 — *v. Evening News, Ex p. Hobbs* (1925); **16. Crimpt.** No. 180a  
 — *v. Evening Standard, Ex p. Public Prosecutions Director* (1924); **16. Crimpt.** No. 179a  
 — *v. Exeter* (Mayor) (1838); **20. Elect.** No. 1089  
 — *v. Fairbank* (1850); **2. Animals**, No. 328a  
 — *v. Faulds* (Can.); **15. Crim.** p. 542  
 — *v. Ferguson* (1925); **14. Crim.** Nos. 3801a, 3801c  
 — *v. Ferguson* (Can.); **17. Dep.** p. 597  
 — *v. Ferrish & De Vasse* (Can.); **15. Crim.** p. 534  
 — *v. Fidelity Insurance Co.* (Can.); **7. Bonds**, p. 294  
 — *v. Field* (Can.); **15. Crim.** p. 538  
 — *v. Fielder* (1926); **14. Crim.** No. 6177a  
 — *v. Fiesel* (Can.); **14. Crim.** p. 509  
 — *v. 1500 Club of Calgary* (Can.); **29. Insce.** p. 875  
 — *v. Finden* (1926); **14. Crim.** No. 4129a  
 — *v. Finlay* (Can.); **14. Crim.** p. 531  
 — *v. Finney* (1924); **14. Crim.** No. 2879a  
 — *v. Fisher* (1926); **14. Crim.** No. 3180c  
 — *v. Fitt* (1928); **14. Crim.** No. 5208b  
 — *v. Fitzgerald* (Can.); **26. Hghys.** p. 781  
 — *v. Fitzpatrick* (1926); **14. Crim.** Nos. 40a, 708a, 732a  
 — *v. Flavell* (1926); **14. Crim.** No. 230a  
 — *v. Fleming* (1929); **14. Crim.** Nos. 5870c, 6106a  
 — *v. Flood* (Ir.); **14. Crim.** pp. 510, 512, 517  
 — *v. Foley, Ex p. Miller* (Aus.); **16. Cr. Pract.** p. 565  
 — *v. Fong Soon* (Can.); **2. Aliens**, p. 119  
 — *v. Fordham* (1873); **18. Distr.** No. 1870  
 — *v. Forhan* (Can.); **17. Dep.** p. 597  
 — *v. Foulkes* (Can.); **14. Crim.** p. 508  
 — *v. Fox* (1925); **14. Crim.** No. 5194a  
 — *v. —* (Can.); **14. Crim.** p. 464  
 — *v. Frampton* (1928); **14. Crim.** No. 2988a  
 — *v. Frank A. Gillis Co., Ltd.* (Can.); **8. Carr.** p. 325  
 — *v. Franklin* (1704); **32. Limit. of A. No.** 1837a  
 — *v. Fraser* (Can.); **14. Crim.** p. 527; **33. Mags.** p. 956  
 — *v. Fray* (Can.); **33. Mags.** p. 951  
 — *v. Friederiksen* (1927); **14. Crim.** No. 2585a  
 — *v. Friedman* (Can.); **15. Crim.** p. 536  
 — *v. Friend* (1924); **14. Crim.** No. 5607a  
 — *R. v. Frier* (1927); **14. Crim.** No. 5246b  
 — *v. Galbraith* (Can.); **30. Intox.** p. 884  
 — *v. Gallagher* (Can.); **14. Crim.** pp. 501, 519, 520, 528, 530, 531  
 — *v. Gan* (Can.); **2. Aliens**, p. 120  
 — *v. Ganesh Chandra Goldar* (Ind.); **14. Crim.** p. 518  
 — *v. Gans* (1928); **14. Crim.** No. 6203a  
 — *v. Gardner* (Can.); **17. Dep.** p. 597; **27. H. & W.** p. 811  
 — *v. Gasco* (Can.); **14. Crim.** pp. 531, 532  
 — *v. Gaskell* (1929); **15. Crim.** No. 6144a  
 — *v. Gaspard* (Can.); **30. Intox.** p. 883  
 — *(Sinclair) v. Gebhardt* (Can.); **17. Dep.** p. 596  
 — *v. Gee Dew* (No. 1) (Can.); **16. Cr. Pract.** p. 561  
 — *v. Gee Dew* (No. 3) (Can.); **2. Aliens**, p. 121  
 — *v. Geiger* (Can.); **14. Crim.** p. 513  
 — *v. Gemmill* (Can.); **14. Crim.** p. 519  
 — *v. General Medical Council, Ex p. Kynaston* (1929); **34. Med.** No. 21a  
 — *v. Gething* (1926); **14. Crim.** No. 5148d  
 — *v. Gibb* (Can.); **33. Mkts.** p. 959  
 — *v. Gilbert* (1921); **2. Aliens**, No. 543b  
 — *v. Gilchrist* (Ir.); **14. Crim.** p. 509  
 — *v. Gillis* (Frank A.) Co., Ltd. (Can.); **8. Carr.** p. 325  
 — *v. Ging* (Can.); **14. Crim.** p. 528  
 — *v. Girone* (Can.); **14. Crim.** pp. 528, 532  
 — *v. Gloucester* (Mayor) (1838); **20. Elect.** No. 1090  
 — *v. Glover* (Aus.); **14. Crim.** pp. 509, 520  
 — *v. Gobind Singh* (Ind.); **15. Crim.** p. 545  
 — *v. Gold Comr. of Victoria District* (Can.); **17. Dep.** p. 598  
 — *v. Goldhammer* (Can.); **4. Bkpey.** p. 205  
 — *v. Goldstein* (Can.); **11. Comp. Pche.** p. 403  
 — *(Mackay) v. Good* (Can.); **16. Cr. Pract.** p. 566  
 — *v. Gooderham & Worts, Ltd.* (Can.); **39. Revenue**, p. 1098  
 — *v. Goodfellow* (Can.); **14. Crim.** p. 532  
 — *v. Gordon* (1925); **14. Crim.** No. 3318b  
 — *v. —* (Can.); **14. Crim.** p. 499; **17. Dep.** p. 595; **34. Med.** p. 1003  
 — *v. Gosling* (Can.); **15. Crim.** p. 540  
 — *v. Gosper* (Aus.); **14. Crim.** p. 532  
 — *v. Gosselin* (Can.); **14. Crim.** p. 513; **15. Crim.** p. 540; **21. Estpt.** p. 683  
 — *v. Gough* (Can.); **3. Bank.** p. 174  
 — *v. Graham* (1924); **14. Crim.** No. 5870a  
 — *v. Graham Campbell, Ex p. Ahmed Hamid Moussa* (1921); **2. Aliens**, Nos. 553d, 558h, 558i  
 — *v. Grant* (Can.); **16. Cr. Pract.** p. 569; **30. Intox.** p. 884  
 — *v. Gratton* (Can.); **25. Gaming.** p. 760  
 — *v. Gregoire* (Can.); **14. Crim.** p. 510  
 — *v. Gregory* (1928); **14. Crim.** No. 1411a  
 — *v. Greisman* (Can.); **15. Crim.** p. 538  
 — *v. Greville* (1929); **14. Crim.** No. 5570b; **42. Time**, No. 330a  
 — *v. Grigg* (N.Z.); **14. Crim.** p. 516  
 — *(Eddie) v. Grosney* (Can.); **30. Intox.** p. 878  
 — *v. Gumbs* (1926); **14. Crim.** No. 4994f  
 — *v. Guntrip* (1925); **14. Crim.** No. 5057c  
 — *v. Gurditta* (Can.); **15. Crim.** p. 534  
 — *v. Gurski* (Can.); **18. Distr.** p. 624  
 — *v. Guyot* (Can.); **22. Evid.** p. 712  
 — *v. Hackman* (Can.); **2. Aliens**, p. 122  
 — *v. Haddad* (Can.); **14. Crim.** p. 528  
 — *v. Hagerup* (Can.); **14. Crim.** p. 517; **30. Intox.** p. 884  
 — *v. Hailwood, R. v. Hailwood & Ackroyd, Ltd.* (1928); **20. Elect.** No. 774a  
 — *v. Hale* (Can.); **15. Crim.** p. 532; **30. Intox.** p. 883

- R. v. Halifax Electric Tramway Co. (Can.); **17. Dep.** p. 598
- v. Hall (1928); **14. Crim. No.** 3179b; **15. Crim. No.** 8338a
- v. — (Can.); **14. Crim.** p. 530; **30. Intox.** p. 885
- v. Hallehuk (Elchuk) (Can.); **14. Crim.** p. 505; **33. Mags.** p. 953
- v. Halpin (Can.); **22. Evid.** p. 709
- v. Hamilton (Can.); **14. Crim.** p. 522
- (Thompson) v. Hammatt (Can.); **11. Const. L.** p. 430; **30. Intox.** p. 883
- v. Hancock (1839); **16. Cr. Pract. No.** 1486a
- v. Handsbee (Can.); **15. Crim.** p. 542
- v. Hanel (Can.); **17. Dep.** p. 593
- v. Haney (Can.); **14. Crim.** p. 507
- v. Harding (1929); **15. Crim. No.** 10,060a
- v. Hardy (alias Emmett) (1925); **14. Crim. No.** 5148a
- (O'Connell) v. Hare Park Camp (Military Governor) (Ir.); **17. Dep.** p. 608
- v. Harkness (Can.); **25. Gaming.** p. 757
- v. Harman (Can.); **25. Fish.** p. 745
- v. Harris (1924); **14. Crim. No.** 5478a; **15. Crim. Nos.** 10,725a, 10,731a
- v. Harris (1927); **14. Crim. Nos.** 2731a, 3172a
- v. Harrison (Can.); **14. Crim.** p. 511
- v. Harross (1856); **33. Mags. No.** 1015
- v. Hary (1928); **14. Crim. No.** 5355b
- v. Hart (Can.); **14. Crim.** p. 518
- v. Hartie (1863); **7. Bldg. Soc. No.** 65a
- v. Hartlepool Corp., *Ex p.* Dobing (1851); **20. Elect. No.** 146a
- v. Harvey (1927); **14. Crim. No.** 5190a
- v. Haskins (Can.); **14. Crim.** p. 532
- v. Haslam (1925); **14. Crim. Nos.** 2839a, 5194b, 5873a
- v. — (1928); **14. Crim. No.** 2995a
- v. Haslewood, *Ex p.* Margerison (1926); **13. Crnrs. No.** 156a
- v. Hastie (1863); **7. Bldg. Soc. No.** 65a
- v. Hastings Poor Law Union Guardians (1865); **30. L. & T. No.** 1295
- v. Hatch & Smith (1928); **14. Crim. No.** 5739a
- v. Hatton (1925); **15. Crim. No.** 9023a
- v. Hay Halkett, *Ex p.* Rush (1929); **33. Mags. No.** 433a
- v. Hayes (1926); **14. Crim. No.** 5352a
- v. Hayton (1925); **14. Crim. No.** 3129a
- v. Hayward (1927); **14. Crim. Nos.** 5308a, 5319a
- v. Healey (Can.); **30. Intox.** p. 883
- v. Heighton (1) (Can.); **2. Aliens**, p. 103
- v. Heighton (2) (Can.); **2. Aliens**, p. 103
- v. Heise (Can.); **25. Gaming.** p. 760
- v. Heisler (Can.); **14. Crim.** p. 502; **17. Dep.** p. 604; **33. Mags.** p. 951
- v. Henderson (Can.); **30. Intox.** p. 878
- v. Henderson, *Ex p.* Brindle (Can.); **33. Mags.** p. 953
- v. Henderson, *Ex p.* Queen (Can.); **17. Dep.** p. 598
- v. Henneberry (Can.); **30. Intox.** p. 885
- v. Henry (1927); **14. Crim. No.** 5373b
- v. Hepworth (S. Af.); **14. Crim.** p. 509
- v. Hertfordshire JJ., *Ex p.* Larsen (1926); **14. Crim. No.** 1704a
- v. Hewitt (1925); **14. Crim. No.** 4009a
- v. Hicks (1924); **14. Crim. No.** 5092a
- v. — (Can.); **14. Crim.** p. 531; **33. Mags.** p. 956
- v. Higgins (Can.); **14. Crim.** p. 528; **42. Str. Traf.** p. 1153
- v. Hilder (1924); **14. Crim. No.** 2102a
- v. Hill (1818); **16. Cr. Pract. No.** 246b
- v. Hill (1928); **14. Crim. No.** 5049f
- v. — (Can.); **14. Crim.** p. 516; **16. Cr. Pract.** p. 562; **33. Mags.** p. 956
- R. (Gagan) v. Hillmer (Can.); **2. Animals**, p. 127
- v. Hills (Can.); **14. Crim.** p. 504
- v. Hing Hop (Can.); **16. Cr. Pract.** p. 570
- v. Hinks (1927); **14. Crim. No.** 5049c
- v. Hirsch (Can.); **14. Crim.** pp. 522, 523
- v. Hislop (Can.); **14. Crim.** p. 510
- v. Hitchcock (1926); **14. Crim. No.** 5802a
- v. Hobbs (1928); **14. Crim. No.** 5238a
- v. Hodges (Can.); **5. Bkpcy.** p. 259
- v. Hodgson (1924); **14. Crim. No.** 5574a
- v. — (Can.); **30. Intox.** p. 885
- v. Hodson (1927); **14. Crim. No.** 5116a
- v. Holborn Licensing JJ., *Ex p.* Stratford Catering Co., Ltd. (1926); **30. Intox. No.** 299a
- v. Holowaskawe (Can.); **43. Trade.** p. 1159
- v. Holt (Can.); **33. Mags.** p. 956
- v. Holtzer, *Re* Levine & Pyner (Can.); **14. Crim.** p. 525
- v. Holz (Can.); **20. Elect.** pp. 650, 654
- v. Home Secretary, *Ex p.* Bressler (1924); **2. Aliens**, No. 553c
- v. Homer (1926); **14. Crim. No.** 5877a
- v. Hopper & Glaveen (Can.); **14. Crim.** p. 522
- v. How (Can.); **2. Aliens**, p. 120
- v. Howarth (1926); **14. Crim. Nos.** 5856b, 5926a
- v. Howe (Can.); **17. Dep.** p. 600
- (Matheson) v. Huber (Can.); **16. Cr. Pract.** pp. 565, 566
- v. Hubin (Can.); **30. Intox.** p. 878
- v. Hubley (Can.); **14. Crim.** p. 528; **22. Evid.** p. 709
- v. Hudson's Bay Co. (Can.); **11. Comp. Pche.** pp. 406, 409
- v. Hughes (1927); **14. Crim. Nos.** 2219a, 3391a; **15. Crim. No.** 9614a
- v. Hughes (Can.); **14. Crim.** pp. 513, 522
- v. Hull J.J. (1850); **2. Animals**, No. 328a
- v. Hum King (Can.); **14. Crim.** p. 529
- v. Hunt (1847); **14. Crim. No.** 2895a
- v. Hunter (1817); **16. Cr. Pract. No.** 240a
- v. Huntingdon Confirming Authority, *Ex p.* George & Stamford Hotels (1929); **30. Intox. No.** 368a, 368b
- v. Hurrell (1926); **14. Crim. Nos.** 5125b, 5155a
- v. Hurt (Can.); **14. Crim.** p. 499; **15. Crim.** p. 538
- v. Hussey (1924); **15. Crim. No.** 9103a
- (Jackson) v. Hutchinson (Can.); **14. Crim.** p. 499
- v. Hyde (Can.); **14. Crim.** p. 499; **30. Intox.** p. 885; **39. Revenue**, p. 1098
- v. Ilye (Can.); **1. Action**, p. 12; **8. Chos.** p. 346; **11. Comp. Pche.** p. 402
- v. Hyman (1926); **15. Crim. No.** 10,754a
- v. Iaci (Can.); **14. Crim.** p. 503; **16. Cr. Pract.** p. 561
- v. Ibrahim Meer Shikar (Ind.); **2. Animals**, p. 135
- v. Imperial Bank of Canada (Can.); **11. Comp. Pche.** pp. 401, 403
- v. Income Tax General Comrs., *Ex p.* English Crown Spelter Co., Ltd. (1925); **16. Cr. Pract. No.** 2149a
- v. Ing Yick Ing (Can.); **14. Crim.** p. 513
- v. Investors' Review, Ltd., *Ex p.* Wheeler (1928); **22. Evid.** No. 4428a
- v. Irving (1920); **2. Aliens**, No. 548a
- v. — (1927); **14. Crim. No.** 6187b
- v. Irwin (Can.); **25. Gaming.** p. 760
- v. Isbell (Can.); **33. Mags.** pp. 952, 955
- v. Ismail (S. Af.); **5. Bkpcy.** p. 261
- v. Ivan (Can.); **30. Intox.** p. 883
- v. Iwanchuk (Can.); **14. Crim.** pp. 508, 517

- R. v. Jack Pine Lumber Co., Ltd. & Canadian Bank of Commerce (Can.); **32. Lien**, p. 930; **39. Revenue**, p. 1098
- v. Jackson (1926); **14. Crim.** No. 6187a
- v. — (1927); **14. Crim.** No. 6209a
- v. — (Can.); **16. Cr. Pract.** p. 571; **20. Elect.** p. 652
- v. Jacobs (Can.); **30. Intox.** p. 883
- v. Jaeger Co. (Can.); **16. Cr. Pract.** p. 567
- v. Jen Jang How, *Re* Immigration Act (Can.); **2. Aliens**, pp. 119, 120
- v. Jobes (Can.); **14. Crim.** p. 532; **15. Crim.** p. 535
- v. Joe (Can.); **15. Crim.** p. 541
- v. Johansick (Can.); **20. Elect.** p. 650
- v. John Labatt, Ltd. (Can.); **16. Cr. Pract.** p. 571; **40. Set-off**, p. 1113
- v. Johnson (1928); **14. Crim.** No. 5816a
- v. — (Can.); **14. Crim.** pp. 505, 521; **15. Crim.** p. 531
- v. — McKenzie (Can.); **33. Mags.** pp. 952, 953
- (Boudrot) v. Johnston (Can.) (1923); **16. Cr. Pract.** p. 565
- v. Johnston (Can.) (1926); **30. Intox.** p. 855; **38. Pub. Hlth.** p. 1072
- v. Jones (1924); **14. Crim.** No. 4974a
- v. — (1925); **14. Crim.** Nos. 5929a, 6007a
- v. — (1928); **14. Crim.** No. 2986a
- v. — (1929); **14. Crim.** No. 5554a; **15. Crim.** No. 6446a
- v. — (Can.); **14. Crim.** p. 509; **15. Crim.** pp. 542, 544
- v. —, *Ex p.* Thomas (1921); **15. Crim.** No. 9180a
- v. Joyce, *Ex p.* Meredith (Aus.); **16. Cr. Pract.** p. 567
- v. Jungo Lee (Can.); **2. Aliens**, p. 121
- v. — (No. 2) (Can.); **16. Cr. Pract.** p. 561
- v. Jwala (Ind.); **15. Crim.** p. 535
- v. Kakelo (1923); **2. Aliens**, Nos. 558e, 558f, 558g
- v. Kalwa (Ind.); **14. Crim.** p. 520
- v. Kay (1925); **14. Crim.** No. 5938b
- v. Keech (1929); **14. Crim.** 5012a
- v. Kelly (Can.); **11. Comp. Pche.** p. 403
- v. — (Ir.); **14. Crim.** pp. 510, 512, 517
- v. Kennedy (Aus.); **14. Crim.** p. 529; **15. Crim.** p. 530
- v. — (Can.); **17. Dep.** p. 595
- v. Kennewell (Aus.); **14. Crim.** pp. 519, 520; **15. Crim.** p. 530
- v. Kenny (1929); **15. Crim.** No. 6209a
- v. Kent JJ. (Can.); **11. Comp. Pche.** p. 404
- v. — *Ex p.* Smith (1928); **16. Cr. Pract.** Nos. 1466a, 3433a
- v. — *Ex p.* Triplow (1927); **33. Mags.** No. 1393a
- v. Kessler (Can.); **8. Clubs**, p. 353
- v. Ketteringham (1926); **15. Crim.** No. 10,878b
- v. King (1925); **14. Crim.** No. 4764a
- v. — (1927); **14. Crim.** No. 5870b
- v. Kingsland Parish Income Tax Comrs. & Inspector of Taxes (1922); **16. Cr. Pract.** Nos. 1141a, 2132a, 2422a
- v. Kingsland Parish, Inspector of Taxes, *Ex p.* Pearson, Kingsland Estate (1922); **16. Cr. Pract.** Nos. 1141a, 2132a, 2422a
- v. Kirby, Parker & Patrick (1927); **25. Gaming**, No. 255a
- v. Kitchener (1873); **42. Str. Traf.** No. 180a
- v. Kitching (1929); **14. Crim.** Nos. 2295a, 3647a
- v. Klein (1926); **14. Crim.** No. 3407a
- v. Knapp (Can.); **14. Crim.** p. 513
- v. Knell (1926); **14. Crim.** No. 5208a
- v. Knight (1929); **14. Crim.** No. 5312b
- v. Knighton (1927); **14. Crim.** No. 6249a
- R. v. Knyvett, *Ex p.* Weber (Aus.); **16. Cr. Pract.** p. 568; **30. Intox.** p. 879
- v. Kobold (Can.); **15. Crim.** p. 534
- v. Kohel (Can.); **15. Crim.** p. 534
- v. Kolomrjyc (Can.); **14. Crim.** p. 510
- v. Kooten (Can.); **14. Crim.** p. 517
- v. Kopsch (1925); **14. Crim.** No. 244a
- v. Kostyniuk (Can.); **30. Intox.** p. 884
- v. Kough (Can.); **32. Limit. of A.** p. 936
- v. Kruschkovski (Can.); **15. Crim.** p. 534
- v. Krutzel (Can.); **15. Crim.** p. 545
- v. Kumera (Ind.); **14. Crim.** p. 515
- v. Kuzyck (Can.); **16. Cr. Pract.** p. 561
- v. Kynaston (1926); **34. Med.** No. 242a
- v. Labatt (John), Ltd. (Can.); **16. Cr. Pract.** p. 571; **40. Set-off**, p. 1113
- v. Lafond (Can.); **11. Comp. Pche.** pp. 403, 404
- v. Lahay (Can.); **33. Mags.** p. 953
- v. Lambassi (Aus.); **15. Crim.** p. 544
- v. Lambert (1926), 19 Cr. App. Rep. 131; **14. Crim.** No. 5549a
- v. — (Can.), [1926] 2 D. L. R. 362; **30. Intox.** p. 883
- v. Lambton (Can.); **16. Cr. Pract.** p. 567; **26. Hghys.** p. 776
- v. Lamond (Can.); **14. Crim.** p. 519
- v. Lancashire JJ., *Ex p.* Tyrer (1925); **3. Basty.** Nos. 278a, 372a
- v. Langley (Can.); **14. Crim.** p. 506; **33. Mkts.** p. 959
- v. Lantalum, *Ex p.* Offman (Can.); **2. Aliens**, p. 120
- v. Lapham (Can.); **15. Crim.** p. 543
- v. Latraverse (Can.); **33. Mags.** p. 953
- v. Laubscher (S. Af.); **14. Crim.** p. 510
- v. Laurente (Can.); **14. Crim.** p. 526; **33. Mags.** p. 956
- v. Lavender (1927); **14. Crim.** No. 5355c
- v. Lawrence (1927); **14. Crim.** No. 5308a
- v. Laws (1928); **15. Crim.** No. 9367a
- v. Leaf (Can.); **14. Crim.** p. 520
- v. Leatherland (1926); **14. Crim.** No. 5148c
- v. LeBlanc (Can.); **14. Crim.** p. 527; **15. Crim.** p. 535; **25. Gaming**, p. 760; **30. Intox.** p. 884
- v. —, *Ex p.* McDonald (Can.); **16. Cr. Pract.** p. 568
- v. Lee (1927); **14. Crim.** No. 3157a
- v. — (Can.); **16. Cr. Pract.** p. 561; **17. Dep.** p. 595; **30. Intox.** p. 881; **33. Mags.** p. 953
- v. Lee Chow Ying (Can.); **2. Aliens**, p. 120
- v. Lee Poon (Can.); **14. Crim.** p. 532
- v. Lee Kam Way (Can.); **30. Intox.** p. 884
- v. Lee Park (Can.); **2. Aliens**, p. 120
- v. Lee Sow (Can.); **33. Mags.** p. 952
- v. Lee Wah Dai (Can.); **16. Cr. Pract.** p. 569
- v. Leicester, Deputies of Freeman (1850); **16. Cr. Pract.** No. 1228
- v. Leicester JJ., *Ex p.* Allbrighton (1927); **30. Intox.** No. 381a
- v. Leinster (Duke) (1924); **5. Bkpcy.** No. 8587a
- v. Leman Street Police Station Inspector, *Ex p.* Venicoff (1920); **2. Aliens**, No. 551a
- v. Leonard (1927); **15. Crim.** No. 10,505a
- v. — (Can.); **16. Cr. Pract.** p. 568
- v. Lepicki (Can.); **14. Crim.** p. 605
- v. Leresche (1887); **27. H. & W.** No. 6081a
- v. Leroux (Can.); **14. Crim.** p. 528; **15. Crim.** p. 542
- v. Lester (1927); **14. Crim.** No. 3855a
- v. Letendre (Can.); **33. Mags.** p. 951
- v. Lever (1746); **34. Mast. & S.** Nos. 970a, 1173a
- v. Levine (Can.); **30. Intox.** p. 878
- v. Levy (S. Af.); **14. Crim.** pp. 501, 518

- R. v. Lew Hing Loy (Can.)**; **33. Mags.** p. 952  
 — **v. Lewisham Corpn., Ex p. Jackson (1929)**; **26. Hghys.** Nos. 1435a, 1435b, 1435c  
 — **v. Lichtman (Can.)**; **17. Dep.** p. 600  
 — **v. Liddiard (Can.)**; **14. Crim.** p. 526  
 — **v. Little (1928)**; **14. Crim.** No. 2731b  
 — **v. Lim Gim (Can.)**; **14. Crim.** p. 532  
 — **v. Lincolnshire JJ., Ex p. Brett (1926)**; **3. Bast.** No. 403b  
 — **v. Linder (Can.)**; **14. Crim.** p. 504  
 — **v. Liptrot (Can.)**; **25. Gaming.** p. 757  
 — **v. Lithwick & Cole (Can.)**; **4. Bkpcy.** p. 226  
 — **v. Little (Can.)**; **34. Mines.** p. 1007  
 — **v. Little, R. v. Miller (Can.)**; **13. Crnrs.** p. 484  
 — (Glover) **v. Little & Armstrong (Can.)**; **20. Elect.** p. 652  
 — **v. Lizowyj (Can.)**; **15. Crim.** p. 540  
 — **v. Llewellyn (1924)**; **14. Crim.** No. 5607a  
 — **v. Lloyd (1923)**; **14. Crim.** Nos. 2567a, 5074a, 6237a  
 — **v. — (1924)**; **14. Crim.** Nos. 2839b, 3158a, 5932b  
 — **v. — (1927)**; **14. Crim.** Nos. 3398a, 6219a  
 — **v. Loftus (Can.)**; **14. Crim.** pp. 502, 507  
 — **v. London & Lancashire Guarantee & Accident Co. (Can.)**; **21. E. D.** p. 676  
 — **v. London County Council, Ex p. Swan & Edgar (1927), Ltd. (1929)**; **38. Pub. Auth.** No. 882a  
 — **v. London County JJ., Ex p. Locke, Lancaster & Johnson (W. W. & R.) & Sons, Ltd. (1929)**; **38. Rules.** No. 1616a  
 — (A.-G. of Canada) **v. London Guarantee & Accident Co., Ltd. (Can.)**; **17. Damgs.** pp. 581, 582  
 — **v. Long (1927)**; **14. Crim.** No. 5201a  
 — **v. — (Can.)**; **25. Gaming.** p. 760  
 — **v. Long Branch Racing Assocn. (Can.)**; **25. Gaming.** p. 758  
 — **v. Loonan (Can.)**; **11. Comp. Pche.** p. 403  
 — **v. Lopen (Inhabitants) (1788)**; **12. Contr.** No. 1822a  
 — **v. Lore Yip (Can.)**; **17. Dep.** p. 595  
 — **v. Lount (Can.)**; **20. Elect.** p. 652  
 — **v. Low Quong (Can.)**; **14. Crim.** p. 531  
 — **v. Luberg (1926)**; **14. Crim.** Nos. 2155a, 3156d  
 — **v. Luciuk (Can.)**; **15. Crim.** pp. 542, 543  
 — **v. Lyle (1924)**; **14. Crim.** No. 1079a  
 — **v. Lynch (Can.)**; **30. Intox.** p. 884  
 — **v. Lynch's Ltd & Cozzolino (Can.)**; **11. Comp. Pche.** p. 403  
 — **v. M. (Can.)**; **14. Crim.** p. 528  
 — **v. McAdam (Can.)**; **16. Cr. Pract.** pp. 562, 570; **22. Evid.** p. 709  
 — **v. McArthur's Bail (Can.)**; **14. Crim.** p. 505  
 — **v. McBeth (Can.)**; **15. Crim.** p. 535  
 — **v. McCaffrey (Can.)**; **15. Crim.** p. 542  
 — **v. McCarthy (1910)**; **14. Crim.** No. 5373a  
 — **v. McCartney & Hansen (1928)**; **14. Crim.** No. 3790a; **22. Evid.** No. 1664a  
 — **v. McCathern (Can.)**; **14. Crim.** p. 531  
 — **v. McCorrison (Can.)**; **24. Exors.** p. 732  
 — **v. McCoskey (Can.)**; **14. Crim.** pp. 500, 508  
 — **v. McCoy & Brown (Can.)**; **14. Crim.** p. 505  
 — **v. McCraig (1925)**; **14. Crim.** No. 3850a  
 — **v. MacDonald (1928)**; **14. Crim.** Nos. 1445a, 3165d  
 — **v. — (Can.)**; **14. Crim.** pp. 503, 505, 506; **30. Intox.** p. 884; **33. Mags.** p. 952  
 — **v. McDonald (S. Af.)**; **14. Crim.** p. 509  
 — **v. McDonnell (1928)**; **14. Crim.** No. 2365b  
 — (Kingsett) **v. McElhinney (Can.)**; **33. Mags.** p. 951  
 — **v. McFarlane (Can.)**; **30. Intox.** p. 884  
 — **v. McHale (Can.)**; **30. Intox.** p. 883  
 — **v. McIlwain (Can.)**; **30. Intox.** p. 883  
 — **R. v. McInroy, Re Whiteside (Can.)**; **16. Crimpt.** p. 547  
 — **v. McIntyre (Can.)**; **14. Crim.** p. 500; **22. Evid.** p. 709  
 — **v. McIver (Aus.)**; **15. Crim.** p. 539  
 — **v. McKeehie (N.Z.)**; **14. Crim.** p. 501  
 — **v. McKenzie (Can.)**; **11. Comp. Pche.** p. 408; **14. Crim.** p. 528; **15. Crim.** p. 535; **16. Cr. Pract.** p. 566; **30. Intox.** pp. 878, 883, 884  
 — **v. Macklin (Can.)**; **30. Intox.** p. 878  
 — **v. McLachlan (Can.)**; **14. Crim.** pp. 506, 510, 516, 518, 530, 531; **17. Dep.** p. 606  
 — **v. McLane (Can.)**; **11. Const. L.** p. 432  
 — **v. McLatchey, Ex p. Stewart (Can.)**; **33. Mags.** p. 956  
 — **v. McLaughlin (Aus.)**; **14. Crim.** p. 532  
 — **v. McLean (1926)**; **14. Crim.** No. 1705a  
 — **v. MacLennan (1925)**; **14. Crim.** No. 3156c  
 — **v. McManus (Can.)**; **14. Crim.** p. 532; **15. Crim.** p. 544  
 — **v. McMaster (Can.)**; **17. Dep.** p. 604  
 — **v. McMillan (Can.)**; **17. Dep.** p. 597; **30. Intox.** 881  
 — **v. McNamara (Can.)**; **14. Crim.** p. 531  
 — **v. McNeil (Aus.)**; **35. Money.** p. 1014  
 — **v. McPherson (Can.)**; **11. Comp. Pche.** p. 103; **22. Evid.** p. 703  
 — **v. McPherson & Quigley & Union Bank of Canada (Can.)**; **20. Eqq.** p. 660  
 — **v. McTavish, Ex p. Brown (Can.)**; **14. Crim.** p. 505  
 — **v. MacWilliam (1928)**; **14. Crim.** No. 5570a  
 — (Wilbur) **v. Magee (Can.)**; **17. Dep.** p. 597  
 — **v. Magistrates' Court & Esmond, Ex p. Beagley (Aus.)**; **7. Bounds & F.** p. 297; **16. Cr. Pract.** p. 567  
 — (Kelly) **v. Maguire & O'Sheil (Ir.)**; **16. Cr. Pract.** pp. 567, 568  
 — **v. Maidstone Prison (Governor), Ex p. Maguire (1925)**; **16. Cr. Pract.** Nos. 660a, 797a  
 — **v. Mainfroid (Can.)**; **30. Intox.** p. 884  
 — **v. Manchester Guardian, Ex p. Public Prosecutions Director (1924)**; **16. Crimpt.** No. 179a  
 — **v. Mangold (S. Af.)**; **14. Crim.** p. 514  
 — **v. Manson (Can.)**; **15. Crim.** p. 540  
 — **v. Manuel (Can.)**; **33. Mags.** p. 951; **39. Revenuc.** p. 1100  
 — **v. Maples (1927)**; **15. Crim.** No. 10,505a  
 — **v. Marchant (Can.)**; **20. Elect.** p. 652  
 — **v. Marek (1928)**; **14. Crim.** No. 3180a  
 — (Leslie) **v. Marcovich (Can.)**; **16. Cr. Pract.** p. 570  
 — **v. Marino & Crisoli (Can.)**; **14. Crim.** p. 501  
 — **v. Mark (Can.)**; **25. Gaming.** p. 758  
 — **v. Markham, Ex p. Marsh (1923)**; **3. Bast.** No. 403a  
 — **v. Markuss (1864)**; **15. Crim.** Nos. 8660a, 8667a  
 — **v. Marriott (1924)**; **14. Crim.** No. 3145a  
 — **v. — (Can.)**; **14. Crim.** p. 505  
 — **v. Marsh (1925)**; **15. Crim.** No. 9320b  
 — **v. Marshall (1925)**; **14. Crim.** Nos. 3136a, 6072a  
 — **v. — (Can.)**; **22. Evid.** p. 703  
 — **v. Marteh (Can.)**; **30. Intox.** p. 883  
 — **v. Martin (1927)**; **14. Crim.** No. 5596a  
 — **v. — (1928)**; **14. Crim.** No. 6215b  
 — **v. Masharign (S. Af.)**; **14. Crim.** p. 518; **15. Crim.** p. 544  
 — **v. Mason (1924)**; **14. Crim.** No. 3133a  
 — **v. Matsqui (Can.)**; **38. Rules.** p. 1081  
 — **v. Mattens (Can.)**; **33. Mags.** p. 952  
 — **v. Maung Ba Thaung (Ind.)**; **19. Educ.** p. 647  
 — **v. Maung Tin Saw (Ind.)**; **16. Crimpt.** p. 547  
 — **v. May (Can.)**; **14. Crim.** p. 529

- R. v. Mayall (Can.)*; **15. Crim.** p. 535  
 — (*McArthur v. Maycock (Can.)*); **16. Cr. Pract.** p. 566  
 — *v. Mechan (Can.)*; **16. Cr. Pract.** p. 569; **28. Inc. T.** p. 840  
 — *v. Meibach (Can.)*; **21. E. D.** p. 676  
 — *v. Meiring (S. Af.)*; **15. Crim.** p. 538  
 — *v. Melany (1924)*; **14. Crim.** No. 3801b  
 — *v. Merritt (Can.)*; **30. Intox.** p. 884  
 — *v. Metcalfe (Can.)*; **15. Crim.** p. 539; **19. Educ.** p. 647  
     *v. Meyrick (1929)*; **14. Crim.** Nos. 933a, 5629b  
 — *v. Middleton Church Trustees (Can.)*; **7. Burial.** p. 311  
 — *v. Midland, etc. Ry. Co., Ex p. Brown (1867)*; **11. Comp. Pche.** No. 160  
 — *v. Miller (1823)*; **1. Adm.** No. 612a  
     *v. — (1926)*; **14. Crim.** No. 3122a  
 — *v. —, R. v. Little (Can.)*; **13. Crurs.** p. 481  
 — *v. Millichamp (1929)*; **14. Crim.** Nos. 5356a, 6187c  
 — *v. Minister of Health, Ex p. Davis (1929)*; **38. Pub. Hlth.** No. 506a  
     *v. Missell (1926)*; **15. Crim.** No. 10,754b  
 — (*Jacques v. Mitchell (Can.)*); **20. Elect.** pp. 653, 654  
 — *v. Mlaker (Can.)*; **14. Crim.** p. 504; **16. Cr. Pract.** pp. 569, 571  
 — *v. Mofokeng (S. Af.)*; **14. Crim.** p. 510  
 — *v. Mohr (Can.)*; **17. Dep.** p. 598  
 — *v. Mokbul Khan (Ind.)*; **14. Crim.** p. 509  
 — *v. Moldon (1926)*; **14. Crim.** No. 5036a  
 — *v. Mondsheim (Can.)*; **14. Crim.** p. 523  
 — *v. Montemurro (Can.)*; **16. Cr. Pract.** p. 562  
 — *v. Montreal Telegraph Co. & Great North Western Telegraph Co. of Canada (Can.)*; **28. Inc. T.** p. 838  
 — *v. Moore (1924)*; **14. Crim.** Nos. 3007a, 5932a  
 — *v. — (Can.)*; **3. Basty.** p. 201; **14. Crim.** p. 503; **16. Cr. Pract.** p. 561  
 — *v. Moreau (Can.)*; **11. Comp. Pche.** p. 403  
 — *v. Morelle (Can.)*; **14. Crim.** p. 533  
 — *v. Morgan (1925)*; **14. Crim.** No. 1910a; **22. Evid.** No. 2129a  
     *v. Morris (Can.)*; **33. Mags.** p. 956  
 — *v. Morrison (1911)*; **14. Crim.** No. 5802b  
 — *v. — (Can.)*; **14. Crim.** p. 515  
 — *v. Morris (1926)*; **14. Crim.** No. 5175a  
 — *v. Morter (1927)*; **15. Crim.** No. 10,315c  
 — *v. Moscovitch (1924)*; **22. Evid.** No. 3975a  
 — *v. — (1927)*; **15. Crim.** No. 7989a  
 — *v. Mosley (1924)*; **14. Crim.** No. 1937a  
 — *v. Mould (Can.)*; **2. Animals.** p. 136  
 — *v. Moxley (Can.)*; **30. Intox.** p. 881  
 — *v. Moyle (Can.)*; **14. Crim.** p. 527; **15. Crim.** p. 535; **39. Revenue.** p. 1100  
 — *v. Muirhead, Ex p. Lyons (Aus.)*; **30. Intox.** p. 885  
 — *v. Murray (Can.)*; **14. Crim.** p. 503; **33. Mkts.** p. 959  
 — *v. —, Ex p. Copp (Can.)*; **33. Mags.** p. 952  
 — *v. — (A. D.) Tailoring, Ltd. (Can.)*; **25. Gaming.** p. 700  
 — *v. Murrell (Can.)*; **16. Cr. Pract.** p. 561  
 — *v. Musgrave (Can.)*; **11. Comp. Pche.** p. 409; **14. Crim.** p. 528  
 — *v. Mutual Fire Asscn. of Canada, Ltd. (Can.)*; **39. Revenue.** p. 1100  
 — *v. Myers (Can.)*; **14. Crim.** p. 518  
 — *v. Nadon (Can.)*; **30. Intox.** p. 885  
 — *v. Nall (1927)*; **14. Crim.** No. 5190b  
 — *v. Nash (1927)*; **14. Crim.** No. 5285a  
 — (*Butler v. Navan Urban District Council (Ir.)*); **16. Cr. Pract.** p. 563  
 — *v. Nazir Wazir (Ind.)*; **2. Animals.** p. 135  
 — *v. Nelson (Can.)*; **2. Animals.** p. 136; **33. Mags.** p. 952  
 — *R. v. Nepp (Can.)*; **30. Intox.** p. 883  
 — *v. New Dominion Club (Can.)*; **30. Intox.** p. 884  
 — *v. New England Co. (Can.)*; **11. Const. L.** p. 437  
 — *v. New Statesman (Editor), Ex p. Public Prosecutions Director (1928)*; **16. Contempt.** Nos. 164a, 165a  
 — *v. Newcastle J.J. (Can.)*; **33. L. G.** p. 944  
     *v. Newport (Salop) J.J., Ex p. Wright (1929)*; **15. Crim.** No. 9042a; **19. Educ.** No. 275a; **33. Mags.** No. 1175a  
     *v. Ba Shein (Ind.)*; **14. Crim.** p. 521  
 — *v. Nga San Htwa (Ind.)*; **14. Crim.** p. 503  
 — *v. Nga Tin Gyi (Ind.)*; **14. Crim.** p. 510  
 — *v. Ngcobo (S. Af.)*; **15. Crim.** p. 539  
 — *v. Nicholson (Can.)*; **14. Crim.** pp. 528, 529  
 — *v. Nickerson, Ex p. Weston (Can.)*; **14. Crim.** p. 504  
     *v. Ninos (Can.)*; **42. Time.** p. 1156  
 — *v. Noble (1928)*; **14. Crim.** No. 3834a  
 — *v. Nolte (S. Af.)*; **17. Dep.** p. 601  
 — *v. Noon (Can.)*; **11. Const. L.** p. 432  
 — *v. Norfolk J.J., Ex p. Davidson (1925)*; **16. Cr. Pract.** No. 2142a  
 — *v. —, Ex p. Porter (1926)*; **18. Distr.** No. 1588a  
 — *v. Norman (1924)*; **14. Crim.** No. 5359a  
 — *v. Norman (Can.)*; **14. Crim.** p. 527; **33. Mags.** p. 956  
 — *v. North, Ex p. Oakley (1927)*; **19. Eccl.** No. 1280a  
 — *v. North Worcestershire Assessment Committee, Ex p. Hadley (1929)*; **16. Cr. Pract.** No. 2287a; **38. Rules.** Nos. 1146a, 1146b  
 — *v. Northumberland & Durham Counties (Can.)*; **38. Real Prop.** p. 1090  
 — *v. Northup (Can.)*; **14. Crim.** p. 532  
 — *v. Nozaki (Can.)*; **14. Crim.** p. 517  
 — *v. O.K. Social & Whist Club (1929)*; **8. Clubs.** No. 140a  
     *Oakes (Can.)*; **16. Cr. Pract.** p. 571  
     *O'Brien (Can.)*; **14. Crim.** p. 512; **21. Exon.** p. 691  
 — *v. —, Ex p. Theriault (Can.)*; **16. Cr. Pract.** p. 494  
 — *v. O'Dare, Davis & Morton (1927)*; **14. Crim.** No. 5111a  
 — *v. O'Donnell (Can.)*; **3. Basty.** p. 200  
 — *v. O'Donoghue (1927)*; **14. Crim.** No. 4357a; **15. Crim.** No. 8266a  
 — *v. Ogil (Can.)*; **15. Crim.** p. 539  
 — *v. Ogden (1702)*; **26. Hghys.** No. 1330a  
 — *v. Ogle (Can.)*; **33. Mkts.** p. 959  
 — (*Moore v. O'Hanrahan (Ir.)*); **25. Fish.** p. 745  
 — *v. O'Hara (Can.)*; **22. Evid.** p. 704; **33. Mags.** p. 952  
 — *v. O'Keefe's Beverages, Ltd. (Can.)*; **30. Intox.** p. 883  
 — *v. Olholm & McPherson (Aus.)*; **14. Crim.** pp. 510, 519  
 — *v. Olney (Can.)*; **33. Mags.** p. 956  
 — *v. Olsen (Can.)*; **16. Cr. Pract.** p. 568  
 — *v. On Sing (Can.)*; **16. Cr. Pract.** p. 570  
 — *v. O'Rourke (Can.)*; **17. Dep.** p. 595  
 — *v. Ortynsky (Can.)*; **14. Crim.** p. 529  
 — *v. Osjorm (Can.)*; **30. Intox.** p. 883  
 — *v. O'Sullivan (Aus.)*; **14. Crim.** p. 512; **15. Crim.** p. 544  
     *v. Otty, Ex p. Roberts (Can.)*; **16. Contempt.** p. 457  
 — *v. Page (Can.)*; **16. Cr. Pract.** p. 562  
 — *v. Palangio (Can.)*; **2. Aliens.** p. 120  
 — *v. Papiiah (S. Af.)*; **14. Crim.** p. 512  
 — *v. Paris (Town) (Can.)*; **26. Hghys.** p. 776  
 — *v. Parker (1924)*; **14. Crim.** No. 3820a  
 — *v. Parker. R. v. Dennis (1924)*; **14. Crim.** No. 2365a  
 — *v. Parkin (1928)*; **14. Crim.** No. 5528a

- R. v. Patenaude (Can.)*; **30. Intox.** p. 881  
*v. Pattison (1929)*; **14. Crim.** No. 4317a  
*v. Paul (1925)*; **14. Crim.** Nos. 5361a, 5372a  
*v. Pawlett (Can.)*; **15. Crim.** pp. 543, 544  
*v. Payette (Can.)*; **14. Crim.** pp. 526, 528, 530; **15. Crim.** p. 538  
*v. Peace (1925)*; **14. Crim.** No. 5097a  
*v. Pearce (1929)*; **25. Game.** No. 247a  
*v. Peckham (1927)*; **14. Crim.** No. 3165c; **15. Crim.** No. 10,927a  
*v. Pelissiers, Ltd. (Can.)*; **13. Corpns.** p. 485  
*v. Pelkey (Can.)*; **15. Crim.** p. 534  
*(Read) v. Pembina Municipal District No. 552 (Can.)*; **13. Corpns.** p. 491; **16. Cr. Pract.** p. 565  
*v. Penny (Can.)*; **15. Crim.** p. 544  
*v. Perreault (Can.)*; **1. Adm.** p. 37; **11. Const. L.** p. 431  
*(Anderson) v. Perri (Can.)*; **30. Intox.** p. 884  
*v. Petch (Can.)*; **14. Crim.** p. 531  
*v. Peters (Can.)*; **17. Dep.** p. 595  
*v. Peterson (Can.)*; **2. Animals**, p. 128; **15. Crim.** p. 545  
*v. Phillips (1695)*; **11. Const. L.** No. 214a  
*v. Phillips (1891)*; **41. Ship.** No. 932b  
*v. — (1921)*; **5. Bkpey.** No. 5499a  
*v. — (1924)*; **14. Crim.** No. 5927a  
*v. — (Can.)*; **20. Elect.** p. 653  
*v. Pidgeon (Can.)*; **25. Gaming.** p. 758  
*v. Pilley (1926)*; **14. Crim.** No. 6186a  
*v. Pinno (Can.)*; **22. Evid.** p. 704  
*v. Pocock (Can.)*; **33. Mags.** p. 955; **34. Med.** p. 1002  
*v. Police Magistrates at Blackall & Hart, Ex p. Hart (Aus.)*; **7. Bounds. & F.** p. 297  
*v. Pollard (Can.)*; **14. Crim.** p. 525; **30. Intox.** p. 881  
*v. Ponsford (Can.)*; **16. Cr. Pract.** p. 566  
*v. Poole (1924)*; **14. Crim.** No. 4974a  
*v. Poplar Borough Council, Ex p. London County Council (1922)*; **16. Cr. Pract.** No. 1066  
*v. —, Ex p. Metropolitan Asylums Board (1922)*; **16. Cr. Pract.** No. 1066  
*v. Portage la Prairie Rural Municipality (Can.)*; **26. Hghys.** p. 776  
*v. Porter (1926)*; **14. Crim.** No. 5057b  
*v. — (1927)*; **14. Crim.** Nos. 3137a, 5577b  
*v. Porter & Marks (Can.)*; **14. Crim.** p. 501  
*v. Postmaster-General, Ex p. Carmichael (1928)*; **16. Cr. Pract.** No. 2736a  
*v. Poulin (Can.)*; **17. Dep.** p. 595  
*v. Powell (1928)*; **14. Crim.** No. 5024a  
*v. —, Ex p. Camden (Marquis) (1925)*; **2. Agric.** Nos. 29b, 29c  
*v. Powers (Can.)*; **17. Dep.** p. 595  
*v. Prairie Drug Co., Ltd. (Can.)*; **17. Dep.** p. 597  
*v. Preep (Can.)*; **22. Evid.** p. 712  
*v. Presdee (1927)*; **30. Intox.** No. 764a  
*v. Preston (Can.)*; **20. Elect.** p. 652  
*v. Price (1924)*; **14. Crim.** No. 4994b  
*v. Price Brothers & Co. (Can.)*; **22. Evid.** p. 708  
*v. Pritchard (1929)*; **14. Crim.** No. 5170a  
*v. Proteau (Can.)*; **14. Crim.** p. 516  
*v. Proud (Can.)*; **27. H. & W.** p. 787  
*v. Public Utilities Board of Comrs., Ex p. Milltown (Town) (Can.)*; **12. Contr.** p. 471  
*v. Punch (1927)*; **14. Crim.** No. 751a  
*v. Purdy (Can.)*; **30. Intox.** p. 884  
*v. Pyke (Can.)*; **30. Intox.** p. 883; **33. Mags.** p. 955; **39. Revenue.** p. 1100  
*v. R. (Can.)*; **17. Dep.** p. 607  
*v. Rabiuk (Can.)*; **16. Cr. Pract.** p. 562; **33. Mags.** p. 954  
*v. Railway Comrs. (1881)*; **8. Carr.** No. 1025  
*R. v. Rankin (Can.)*; **20. Elect.** p. 652  
*v. Rash (Can.)*; **15. Crim.** p. 544  
*v. Rasmussen & Spiegel-Glass (Aus.)*; **15. Crim.** p. 513  
*v. Rasool (S. Af.)*; **14. Crim.** p. 500  
*v. Rathmines Urban District Council (Ir.)*; **16. Cr. Pract.** p. 565  
*v. Reade (1927)*; **14. Crim.** No. 6215a  
*v. Rees (1928)*; **14. Crim.** No. 3129c  
*v. Regina Wine & Spirit, Ltd. (Can.)*; **17. Dep.** p. 597  
*v. Regina Wine & Spirit, Ltd. (No. 2) (Can.)*; **17. Dep.** p. 605  
*v. Registrar of Titles, Ex p. Moss (Aus.)*; **16. Cr. Pract.** pp. 563, 565; **38. Real Prop.** p. 1090  
*v. Reid (Can.)*; **20. Elect.** p. 652  
*v. Relf (Can.)*; **14. Crim.** p. 508  
*v. Renton (1925)*; **14. Crim.** No. 5938a  
*v. Revill (1925)*; **14. Crim.** No. 5246a  
*v. Reynolds (1927)*; **15. Crim.** No. 10,905a  
*v. — (Aus.)*; **14. Crim.** p. 516; **15. Crim.** p. 511  
*v. Ribuffi (1929)*; **14. Crim.** Nos. 933a, 5629b  
*v. Ricard (Can.)*; **30. Intox.** p. 883  
*v. Rice (1927)*; **14. Crim.** No. 5850a  
*v. Riceberg (Can.)*; **14. Crim.** p. 525; **30. Intox.** p. 884  
*v. Richards (1924)*; **14. Crim.** Nos. 5856a, 6230a  
*v. Richardson (1861)*; **14. Crim.** No. 3943a  
*v. — (Can.)*; **30. Intox.** p. 882  
*v. Riley (Can.) (1905)*; **18. Distr.** p. 624  
*(Lithgoe) v. Riley (Can.) (1926)*; **30. Intox.** p. 884  
*v. Ringle (1926)*; **15. Crim.** No. 10,754b  
*(Chutskoff) v. Riwny & Peschnick, Re School Act (Can.)*; **19. Educ.** p. 613  
*v. Roath (1927)*; **14. Crim.** No. 4998a  
*v. Roberts (1929)*; **14. Crim.** No. 5629a; **38. Rates.** No. 675f  
*v. — (Can.)*; **14. Crim.** p. 502; **33. Mags.** p. 952  
*v. —, Ex p. Battersea Borough Council (1911)*; **38. Rates.** No. 675f  
*v. Roberts & Morriss (1926)*; **14. Crim.** No. 5175a  
*v. Robertson (Can.)*; **15. Crim.** p. 544  
*v. — (S. Af.)*; **34. Med.** p. 1002  
*v. Robinson (1840)*; **15. Crim.** No. 9773a  
*v. Rocco (Can.)*; **14. Crim.** p. 506  
*v. Roche (Can.)*; **30. Intox.** p. 884  
*v. Rochestershire Council, Ex p. Public Health Commission (Aus.)*; **16. Cr. Pract.** p. 565  
*v. Rock (Can.)*; **8. Clubs.** p. 352  
*v. Roderick (Can.)*; **25. Gaming.** p. 760  
*v. Rodgers (Can.)*; **14. Crim.** pp. 505, 519; **33. Mags.** p. 953  
*v. Rogoff (1924)*; **2. Aliens.** No. 544a  
*v. Romanchuk (Can.)*; **16. Cr. Pract.** pp. 561, 562  
*v. Ronan (Can.)*; **17. Dep.** p. 597  
*v. Rookwood (1696)*; **11. Const. L.** No. 175a  
*v. Roop (Can.)*; **14. Crim.** p. 505; **15. Crim.** p. 536  
*v. Rose (1928)*; **15. Crim.** No. 8610a  
*v. Rosenfeld (Can.)*; **37. Poor L.** p. 1060  
*v. Ross (1924)*; **14. Crim.** Nos. 3156a, 5607a  
*v. — (Can.)*; **14. Crim.** p. 506; **15. Crim.** p. 543  
*v. Rotterman (Can.)*; **30. Intox.** p. 878  
*v. Rovonelli (Can.)*; **14. Crim.** p. 508  
*v. Roy (Can.)*; [1923] 2 D. L. R. 1182; **5. Bkpey.** p. 261  
*(Emery) v. Roy (Can.)*; [1923] 2 W. W. R. 400; **5. Bkpey.** p. 262  
*v. Royal Bank of Canada (Can.)*; **1. Agcy.** p. 47; **3. Bank.** p. 181

- R. v. Royal Nova Scotia Yacht Squadron (Can.); **11. Comp. Pche.** p. 403  
 — v. Rozonowski (Can.); **15. Crim.** p. 536; **16. Cr. Pract.** p. 570  
 — v. Ruddick (Can.); **17. Dep.** p. 597; **42. Stats.** p. 1149  
 — v. Rumsey & Morthen No. 551 Municipal District (Can.); **38. Real Prop.** p. 1089  
 — v. Runner (Can.); **14. Crim.** p. 525  
 — v. Russell (1925); **14. Crim.** No. 4994d  
 — v. Rutherford (Can.); **33. Mags.** p. 952  
 — v. Rutt (1928); **14. Crim.** No. 5285b  
 — v. Ryall (Can.); **30. Intox.** p. 878  
 — v. Ryan (Can.); **16. Cr. Pract.** p. 570  
 — v. — (Nfld.); **17. Dep.** p. 604  
 — v. Rye (Mayor) (1759); **13. Corpsus.** No. 866  
 — v. Sacco (Can.); **14. Crim.** p. 513  
 — v. Sairuk (Can.); **16. Cr. Pract.** p. 570  
 — v. St. Elmo Hotel Co., Ltd. (Can.); **30. Intox.** p. 884  
 — v. St. Eloi (Can.); **30. Intox.** p. 885  
 — v. St. Mary, Newington (Governors) (1848); **20. Elect.** No. 1154a  
 — v. St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928); **28. Inc. T.** No. 625a  
 — v. St. Peters (Can.); **19. Educ.** p. 616  
 — v. Salman (1924); **14. Crim.** No. 6068a  
 — v. Sam Chin (Can.); **14. Crim.** p. 532  
 — v. Sam Hing (Can.); **33. Mags.** p. 952  
 — v. Sankey (1836); **13. Corpsus.** No. 865  
 — v. — (Can.); **14. Crim.** p. 502  
 — v. Sansome (Can.); **14. Crim.** p. 531  
 — v. Satish Chandra Singha (Ind.); **14. Crim.** p. 519  
 — v. Saunders (1924); **14. Crim.** Nos. 1913a, 5081a  
 — v. Savich (Can.); **14. Crim.** p. 499; **30. Intox.** p. 885  
 — v. Sayward Trading & Ranching Co., Ltd. (Can.); **11. Const. L.** p. 431  
 — v. Sayyad Habib (Ind.); **16. Cntmpt.** p. 546  
 — v. Scharf (Can.); **16. Cr. Pract.** p. 561  
 — v. Schenmer (Can.); **15. Crim.** p. 540  
 — v. Schneider (Can.); **14. Crim.** pp. 499, 503  
 — v. Schoppelrei (Can.); **2. Aliens.** p. 120  
 — v. Schram (Can.); **14. Crim.** p. 505  
 — v. Schwarz (Aus.); **22. Evid.** pp. 701, 702  
 — v. Schweller (1924); **14. Crim.** No. 1900a  
 — v. Scott (Can.); **15. Crim.** p. 511; **16. Cr. Pract.** p. 566  
 — v. Scott (No. 2) (Can.); **17. Dep.** p. 606  
 — v. —, *Ex p.* Scott (Aus.); **25. Gaming.** p. 758  
 — v. Scott & Williamson (Can.); **14. Crim.** p. 526  
 — v. Seaman (Can.); **11. Const. L.** p. 437  
 — v. Seaton & Flanagan (1928); **14. Crim.** No. 5119a  
 — v. Secretary of State for Home Affairs, *Ex p.* O'Brien (1923); **16. Cr. Pract.** Nos. 601, 801  
 — v. Secretary of State for Home Affairs, *Ex p.* Venicoff (1920); **2. Aliens.** No. 551a  
 — v. Seely (1928); **15. Crim.** No. 11,038a  
 — v. Segal (Can.); **14. Crim.** p. 501  
 — v. Seguire (Can.); **14. Crim.** p. 501  
 — v. Selkirk (1925); **14. Crim.** No. 1436a  
 — v. Servetnyk (Can.); **33. Mags.** p. 954  
 — v. Seymour (1927); **14. Crim.** No. 2105a  
 — v. Shaffner (1920); **2. Aliens.** No. 543a  
 — v. Shaid (Can.); **14. Crim.** p. 500  
 — v. Sharman (1925); **14. Crim.** No. 6183a  
 — (Lamson) v. Sharpe & Inglis (Can.); **16. Cr. Pract.** p. 567  
 — v. Shea's Winnipeg Brewery, Ltd. (Can.); **30. Intox.** p. 883  
 — v. Sheaf (1925); **15. Crim.** Nos. 10,315a, 10,326a  
 — v. Sheffield J.J., *Ex p.* Rawson (T.) & Co., Ltd. (1927); **30. Intox.** Nos. 202a, 381b  
 — v. Shellman (Can.); **30. Intox.** p. 881  
 — v. Shemit (Can.); **14. Crim.** p. 520  
 — v. Shendan (Can.); **17. Dep.** p. 593  
 — v. Shirland (1314); **11. Comms.** No. 349a  
 — v. Short, Grealey & Plint (Aus.); **14. Crim.** p. 529  
 — v. Shumarin (Can.); **14. Crim.** p. 528  
 — v. Simington (Can.); **14. Crim.** p. 501  
 — v. Simms (Can.); **14. Crim.** p. 530  
 — v. Simon (Can.); **30. Intox.** p. 885  
 — v. Simovitch (Can.); **30. Intox.** p. 883  
 — v. Sinclair (Can.); **11. Const. L.** p. 437  
 — v. Sipes (Can.); **14. Crim.** p. 503  
 — v. Skelly (Can.); **14. Crim.** p. 519  
 — v. Slee (Can.); **14. Crim.** p. 530  
 — v. Slinn (Can.); **14. Crim.** p. 525  
 — v. Sluggett (Can.); **20. Elect.** p. 653  
 — v. Smart (Can.); **14. Crim.** p. 518; **15. Crim.** p. 539  
 — v. Smee (1928); **14. Crim.** No. 5243a  
 — v. Smethwick Confirming Authority, *Ex p.* Holt Brewery Co., Ltd. (1929); **30. Intox.** Nos. 55a, 366a  
 — v. Smith (1886); **3. Basty.** No. 384  
 — v. — (1924); **14. Crim.** Nos. 4878a, 4972a, 5927b, 6066a; **15. Crim.** No. 10,315b  
 — v. — (1925); **14. Crim.** Nos. 1810b, 5550a  
 — v. — (1926); **14. Crim.** No. 1913d  
 — v. — (1929); **14. Crim.** No. 4994k  
 — v. — (Can.); **3. Bank.** p. 174; **14. Crim.** pp. 503, 504; **25. Gaming.** p. 759; **30. Intox.** pp. 883, 884; **34. Med.** p. 1003  
 — (Parker) v. Smith (Can.); **33. Mags.** p. 953  
 — (Provincial Treasurer of Alberta) v. Smith (Can.); **18. Discy.** p. 616  
 — v. Smith, *Ex p.* Porter (1927); **18. Distr.** No. 1588a  
 — v. Smothers (Can.); **14. Crim.** p. 506  
 — v. Snare (Can.); **30. Intox.** p. 883  
 — v. Somerville Cannery Co., Ltd. (Can.); **17. Dep.** p. 594  
 — v. Soo Gong (Can.); **34. Med.** p. 1103  
 — v. Southampton County Confirming Committee *Ex p.* Slade (1929); **30. Intox.** Nos. 292a, 293a  
 — v. Speirs (Can.); **16. Cr. Pract.** p. 564  
 — v. Speron (Can.); **14. Crim.** p. 528  
 — v. Stagg (Can.); **14. Crim.** p. 503  
 — (Canadian Pacific Ry. Co. & Miller) v. Standell (Can.); **8. Carr.** p. 323  
 — v. Stanley (1927); **14. Crim.** No. 4826b  
 — v. Stark (Can.); **15. Crim.** p. 539  
 — v. Stasiuk (Can.); **14. Crim.** p. 520  
 — v. Steele (Can.); **30. Intox.** p. 883  
 — v. Stephens (Can.); **33. Mags.** p. 953  
 — v. Stephenson (Can.); **16. Cr. Pract.** p. 566; **20. Elect.** p. 650  
 — v. Stevens (1913); **14. Crim.** No. 4826a  
 — (Morris) v. Stimmel (Can.); **3. Auct.** p. 161  
 — v. Stokell (1924); **14. Crim.** No. 5303b  
 — v. Stokes (1925); **14. Crim.** No. 3362a  
 — v. Stone (Can.); **17. Dep.** p. 593  
 — v. Stonehouse & Pasquale (Can.); **14. Crim.** p. 516  
 — v. Stroud, *Ex p.* Stroud (1928); **14. Crim.** No. 1790a  
 — v. Stuart (1927); **15. Crim.** No. 10,505a  
 — v. — (Can.); **17. Dep.** p. 595  
 — v. Sullivan (Can.); **14. Crim.** p. 505; **18. Distr.** p. 620  
 — v. Sunderland & Sunderland (Aus.); **14. Crim.** p. 527  
 — v. Sussex J.J. (1850); **4. Bkpcy.** No. 3001  
 — v. Sutherland (S. Af.); **14. Crim.** p. 510  
 — v. Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co. (1925); **16. Cr. Pract.** No. 2149a



- R. v. Swanstrom** (Can.); **2. Agric.** p. 99  
 — **v. Swityk** (Can.); **15. Crim.** p. 513  
 — **v. Switzer** (Can.); **14. Crim.** p. 519  
 — **v. Sydorik & Zowatski** (Can.); **14. Crim.** p. 532  
 — **v. Syliboy** (Can.); **25. Game.** p. 754  
 — **v. Symonds** (1924); **14. Crim.** No. 3010a  
 — **v. Tannen** (1927); **15. Crim.** No. 10,505a  
 — **v. Tanner** (1910); **14. Crim.** No. 5156a  
 — **v. Tarchuk** (Can.); **37. Prans.** p. 1067  
 — **v. Tavener & Tobitt** (1928); **14. Crim.** No. 5992a  
 — **v. Taylor** (1924); **14. Crim.** Nos. 3165b, 4994a, 5806a  
 — **v. — (alias Saunders, alias Wallace)** (1924); **14. Crim.** Nos. 1913a, 5081a  
 — **v. —** (1926); **14. Crim.** Nos. 5092b, 5314a  
 — **v. —** (1927); **15. Crim.** No. 10,505a  
 — **v. Taylor & Young** (Can.); **14. Crim.** p. 526  
 — **v. Taylor, Weaver & Donovan** (1928); **14. Crim.** No. 3792a  
 — **v. Tebbitt** (1912); **14. Crim.** No. 2571a  
 — **v. Teesdale** (1927); **14. Crim.** No. 1031a  
 — **v. Ten Chinamen** (Can.); **16. Cr. Pract.** p. 563  
 — **v. Terry** (1924); **14. Crim.** No. 4974a  
 — **v. Tessier** (Can.); **4. Bkpcy** p. 206; **11. Const.** L. p. 431  
 — **v. Tews** (Can.); **14. Crim.** p. 526  
 — **v. Thavarimal Rupchand** (Ind.); **25. Gaming.** p. 758  
 — **v. Theirlyock** (Can.); **14. Crim.** p. 508  
 — **v. Thibault** (Can.); **16. Cr. Pract.** p. 565  
 — **v. Thomas** (otherwise Williams) (1928); **14. Crim.** No. 5369b  
 — **v. —** (Aus.); **14. Crim.** p. 528  
 — **v. —** (Can.); **15. Crim.** p. 541  
 — **v. Thompson** (1925); **14. Crim.** No. 5585a  
 — **v. —** (Can.); **14. Crim.** pp. 506, 528; **33. Mags.** p. 952  
 — **v. —, R. v. Foulkes** (Can.); **14. Crim.** p. 508  
 — **v. Thornbert** (Can.); **33. Mkts.** p. 959  
 — **v. Thorne** (1925); **14. Crim.** No. 5800a  
 — **v. Thorne** (Can.) (1926); **19. Educ.** p. 649  
 — **v. Thornton** (Can.); **14. Crim.** p. 501  
 — **v. Thorpe** (1925); **14. Crim.** Nos. 3146a, 3179a  
 — **v. Tilbury** (Can.); **30. Intox.** p. 885  
 — **(Eustace) v. Tipperary County District Justice** (Ir.); **16. Cr. Pract.** p. 570  
 — **v. Titles Registrar, Ex p. Moss** (Aus.); **16. Cr. Pract.** pp. 563, 565; **38. Real Prop.** p. 1090  
 — **v. Towers** (1929); **14. Crim.** 5616a  
 — **v. Townsend** (1924); **14. Crim.** Nos. 2102a, 5049a, 5217a  
 — **v. Trainmen's Club** (Can.); **25. Gaming.** p. 757  
 — **v. Transport Minister, Ex p. Leicestershire & Warwickshire Electric Power Co.** (1928); **20. Electric.** No. 3a  
 — **v. Treanor** (Ir.); **14. Crim.** pp. 510, 512, 517  
 — **v. Treseigne** (Can.); **15. Crim.** p. 539  
 — **v. Trott** (1927); **14. Crim.** No. 5049c  
 — **v. Tulshi Das** (Ind.); **25. Gaming.** p. 758  
 — **v. Turcotte** (Can.); **30. Intox.** p. 883  
 — **v. Turnbull** (1926); **14. Crim.** No. 5369a  
 — **v. Turner** (1924); **14. Crim.** No. 5039a  
 — **v. —** (1926); **14. Crim.** Nos. 4129b, 4351b  
 — **v. Tuttle** (1929); **4. Bkpcy.** No. 4337a; **14. Crim.** Nos. 2201a, 4275a; **15. Crim.** Nos. 10345a, 10345b  
 — **v. Tymko** (Can.); **14. Crim.** p. 514  
 — **v. Tyreman** (1925); **14. Crim.** Nos. 1913b, 5283a, 5303c, 5359b  
 — **v. Tyrone County JJ.** (Ir.); **38. Pub. Hlth.** p. 1073  
 — **(Brooks) v. Ulmer** (Can.); **17. Dep.** pp. 593, 598  
 — **v. Umed** (Ind.); **14. Crim.** p. 500  
 — **R. v. United Profit Sharing System, Ltd.** (Can.); **25. Gaming.** p. 760  
 — **v. Upton** (1929); **14. Crim.** No. 5003a  
 — **v. Usher** (1927); **14. Crim.** No. 6209b  
 — **v. Vancouver Breweries, Ltd.** (Can.); **7. Bonds.** p. 294  
 — **v. Vaquier** (1924); **14. Crim.** No. 6234a  
 — **v. Varbeff** (Can.); **15. Crim.** p. 543  
 — **v. Vayle** (1844); **16. Cr. Pract.** No. 1749a  
 — **v. Vazirally** (Ind.); **25. Gaming.** p. 760  
 — **v. Victoria District Gold Comr.** (Can.); **17. Dep.** p. 598  
 — **v. Victoria Unit (Army & Navy Veterans)** (Can.); **13. Corps.** p. 487  
 — **v. Villars** (1927); **14. Crim.** No. 3120b  
 — **v. Vinegratsky (alias Vinc)** (Can.); **15. Crim.** p. 531  
 — **v. Vye** (Can.); **14. Crim.** p. 528  
 — **v. Wah Lung (alias Wong Wa)** (Can.); **14. Crim.** p. 525  
 — **v. Wah Sing Chow** (Can.); **14. Crim.** p. 528  
 — **v. Wainwright** (1925); **14. Crim.** No. 3817a  
 — **v. Walker** (1927); **14. Crim.** No. 3820c  
 — **v. —** (Can.); **14. Crim.** p. 528  
 — **v. Wall** (1890); **41. Ship.** No. 932a  
 — **v. —** (Ir.); **15. Crim.** p. 537  
 — **v. Wallace** (1924); **14. Crim.** Nos. 1913a, 5081a  
 — **v. —** (1929); **14. Crim.** No. 5290b  
 — **v. Walls (alias Russell)** (1925); **14. Crim.** No. 4994d  
 — **v. Walsh** (Can.); **17. Dep.** p. 600  
 — **v. Walters** (Can.); **14. Crim.** pp. 512, 513  
 — **v. Warblington Overseers** (1854); **38. Pub. Hlth.** No. 533  
 — **v. Ward** (1926); **14. Crim.** No. 5125c  
 — **v. —** (1928); **14. Crim.** No. 3180d  
 — **—** (Can.); **14. Crim.** pp. 504, 517  
 — **v. Washington** (Can.); **33. Mags.** p. 955  
 — **v. Wason** (Can.); **17. Dep.** p. 599  
 — **v. Watford Licensing JJ., Ex p. Trust Houses, Ltd.** (1929); **30. Intox.** No. 310a  
 — **v. Watson** (1927); **14. Crim.** No. 4998b  
 — **v. —** (Can.); **16. Cr. Pract.** p. 558  
 — **v. Wayne** (1928); **14. Crim.** No. 5049g  
 — **v. Wealdstone News & Harrow News (Editor, Printer & Publisher)** (1925); **16. Cntmpt.** Nos. 182a, 709a  
 — **v. Weale** (1927); **14. Crim.** No. 5290d  
 — **v. Weedmark** (Can.); **33. Mags.** p. 953  
 — **v. Weeks** (1928); **14. Crim.** No. 6112a  
 — **v. Wellings** (1824); **15. Crim.** No. 10,200a  
 — **v. Wenn** (Can.); **14. Crim.** p. 527; **32. Mags.** p. 956  
 — **v. West** (Can.); **14. Crim.** p. 510  
 — **v. West Riding of Yorkshire JJ., Ex p. Thornton** (1837); **33. Mags.** No. 958c  
 — **v. —, Re Thornton** (1837); **33. Mags.** No. 958c  
 — **v. Western Trust Co., A-G of Province of Saskatchewan & Shulze** (Can.); **17. Dep.** pp. 592, 593  
 — **v. Western Wine & Liqueur Co.** (Can.); **30. Intox.** p. 884  
 — **v. Westfall** (1928); **14. Crim.** No. 5481a  
 — **v. Weston** (Aus.); **15. Crim.** p. 512  
 — **v. Whelan** (Can.); **25. Gaming.** p. 758  
 — **v. Whepdale** (Can.); **14. Crim.** pp. 509, 520, 522  
 — **v. Whitby** (1926); **14. Crim.** No. 5057d  
 — **v. White** (Can.); **14. Crim.** p. 514; **30. Intox.** p. 878  
 — **—, Ex p. Roberts** (Can.); **16. Cntmpt.** p. 547  
 — **v. White & Shelton** (1927); **14. Crim.** Nos. 5331a, 5341a  
 — **v. Whitehead** (1929); **15. Crim.** No. 9307a  
 — **v. Whittaker** (Aus.); **14. Crim.** p. 532  
 — **v. —** (Can.); **14. Crim.** p. 518

- R. v. Whittal (Can.); **30. Intox.** p. 882  
 — v. Wicklow County Court Judge (Ir.); **17. Dep.** p. 608  
 — v. Wiggins (Can.); **14. Crim.** p. 526; **33. Mags.** p. 955  
 — v. Williams (1925); **14. Crim.** No. 6234b  
 — v. — (1928); **14. Crim.** No. 5369b  
 — v. — (1929); **14. Crim.** No. 5304a  
 — v. — (Aus.); **14. Crim.** p. 532  
 — v. — (Can.); **14. Crim.** p. 527  
 — v. Wilson (1924); **14. Crim.** No. 3011a; **22. Evid.** No. 4729a  
 — v. — (Can.) (1888); **20. Elect.** p. 650  
 — v. — (Can.) (1924); **15. Crim.** p. 542  
 — v. —, *Ex p.* Harrington (Can.); **14. Crim.** p. 504  
 — v. Wing (1825); **26. Hghys.** No. 1979a  
 — v. Winn (1925); **14. Crim.** Nos. 5304b, 5355a  
 — v. Winter (1924); **14. Crim.** No. 5057a  
 — v. Witsiewicz (Can.); **14. Crim.** p. 514; **39. Revenue.** p. 1100  
 — v. Wolfe (Can.); **25. Gaming.** p. 757  
 — v. Wong Kit (Can.); **17. Dep.** p. 598  
 — (Waugh) v. Wong Mah (Can.); **33. Mags.** p. 953  
 — v. Wong O. Sang (Can.); **14. Crim.** p. 513  
 — v. Wong Sim (Can.); **25. Gaming.** p. 760  
 — v. Wong Yuen (Can.); **16. Cr. Pract.** p. 561  
 — v. Woo Fong Toy (Can.); **2. Aliens.** p. 120  
 — v. Wood (Can.) (1924); **16. Cr. Pract.** p. 568  
 — v. —, *Ex p.* Anderson (1928); **13. Crms.** No. 308a  
 — v. Woods (Can.) (1926); **30. Intox.** p. 885  
 — v. Woodstock Town Assessors, *Ex p.* Bank of Nova Scotia (Can.); **16. Cr. Pract.** p. 568  
 — v. Woodward (1929); **14. Crim.** No. 4994j  
 — v. Wootten (Can.); **30. Intox.** p. 884  
 — v. Wright (1925); **14. Crim.** No. 4974b  
 — v. — (Can.); **42. Stats.** p. 1149  
 — (Williams) v. Yarish (Can.); **30. Intox.** pp. 883, 884  
 — v. Yarwood (1928); **14. Crim.** No. 5303d  
 — v. Yeaman (Can.); **15. Crim.** p. 543  
 — (Eley) v. Yee Chun & Yee Low (Can.); **22. Evid.** p. 706  
 — v. Yee Jam Hong (Can.); **14. Crim.** pp. 501, 502  
 Yelds (N.Z.); **15. Crim.** p. 540  
 — v. Yelle (Can.); **17. Dep.** p. 593  
 — v. Young (1924); **14. Crim.** No. 5607a  
 — v. — (Aus.); **14. Crim.** p. 510  
 — v. — (Can.); **14. Crim.** p. 506  
 — v. Zauphler (Can.); **30. Intox.** p. 883  
 — v. Zemek (Can.); **14. Crim.** p. 504; **30. Intox.** p. 883  
 — v. Zerebko (Can.); **14. Crim.** p. 528  
 — v. Zimmerman (Can.); **14. Crim.** p. 532  
 — v. Zizu Natanson (Can.); **15. Crim.** p. 421  
 — v. — (No. 1) (Can.); **22. Evid.** p. 701  
 — v. — (No. 2) (Can.); **14. Crim.** pp. 521, 531  
 R. & W. Paul, Ltd. v. London & North Eastern Ry. Co. (1927); **8. Carr.** No. 1237c  
 R. M. Buchanan Co., Ltd. v. Eby (Can.); **1. Agcy.** p. 60  
 R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of) (1926); **21. Estpl.** Nos. 575a, 577a  
 R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty (1926); **21. Estpl.** No. 575a  
 Rabbidge v. Eagle Star Dominions Insurance Co., *Re* Houlder (1929); **4. Bkpey.** No. 2514a  
 Rabenfels, The (Ind.); **41. Ship.** p. 1136  
 Rabett v. Stamp Duties Comr. (1929); **21. E. D.** p. 608  
 Rabia v. Great India Peninsular Ry. Agent (Ind.); **34. Mast. & S.** p. 967  
 Rabindra Nath Das v. Jogendra Nath Deb (Ind.); **33. Mal. Pros.** pp. 957, 958  
 Rabinovitch v. Feist (Can.); **21. Exon.** p. 697  
 Race v. Wardsend Steel Co. (1927); **34. Mast. & S.** No. 2079a  
 Radcliffe v. Bank of Montreal (Can.); **3. Bank.** p. 170  
 — v. Holt (1927); **28. Inc. T.** No. 496a  
 — v. Readett (1852); **28. Infls.** No. 1272a  
 Radha Kanta Das v. Baerlien Brothers (Ind.); **2. Arbn.** p. 137  
 Radha Kishan v. Kedar Nath (Ind.); **22. Evid.** p. 701  
 Radhanath Sugracharji v. Baidonath Seal (Ind.); **19. Easmt.** p. 630  
 Radio Taxicab Co., Ltd. v. Averbach (Can.); **42. Str. Traf.** p. 1151  
 Radisson Town v. Amson (Can.); **11. Comp. Pche.** p. 407  
 Rae v. Rankin (Can.); **2. Agric.** p. 97  
 Raeburn v. Lochgelly Iron & Coal Co., Ltd. (Scot.); **34. Mast. & S.** p. 908  
 — v. Raeburn (1928); **11. Confl.** No. 918b  
 Rafael v. Verelst (1776); **1. Agcy.** No. 2337a  
 Rafelman v. Kiproff (Can.); **35. Mtge.** p. 1023  
 Raghunandan Nanu Kothare v. Hornasjee Bezoonjee Bamjee (Ind.); **36. Ptnrs.** p. 1041  
 Raghunath Prasad v. Sarju Prasad (Ind.); **12. Contr.** pp. 443, 444  
 Raghunath Prasad Singh v. Partabgash Deputy Comrs. (Ind.); **17. Dep.** p. 607  
 Ragusz v. Montreal Harbour Comrs. (Can.); **2. Aliens.** p. 104  
 Rahim v. Low (Ind.); **1. Agcy.** p. 54; **20. Egy.** p. 659  
 Rahim Bakhsh v. Bachcha Lal (Ind.); **32. Libel.** p. 922  
 Rai Bahadur Bansilal Abirchand v. Ghulan Mah-bub Khan (1925); **17. Dep.** No. 234a  
 Railway Act, *Re* Arbitration under, British Columbia Permanent Loan Co. v. Canadian Northern Ry. Co. (No. 1) (Can.); **11. Comp. Pche.** p. 404  
 Railway Assocn. of Canada & Slow Orders, *Re* (Can.); **38. Rys.** p. 1077  
 Railway Debenture & General Trust Co., *Re, Re* Glyncorwg Colliery Co. (1926); **10. Coys.** No. 5149a  
 Railway Debenture & General Trust Co. v. Glyncorwg Colliery Co., *Re* Glyncorwg Colliery Co. (1926); **10. Coys.** No. 5149a  
 Railways Comr. v. Skinner (Aus.); **36. Negl.** p. 1031  
 Raine, *Re, Tyerman v. Stansfield* (1929); **23. Exors.** No. 5251a  
 Raines v. British Columbia Electric Ry. Co. (Can.); **8. Carr.** p. 320  
 Raitblat, *Re* (Can.); **4. Bkpey.** p. 208  
 Rajah v. Suliman (S. Af.); **12. Contr.** p. 462  
 Raja Joyti Prasad Singh Des Bahadur v. Chota Nagpur Banking Assocn. (Ind.); **3. Bank.** p. 182  
 Ralli Brothers v. Perumal (Ind.); **34. Mast. & S.** p. 968  
 Ralston v. HUGHSON (Can.); **38. Real Prop.** p. 1091  
 Ram Bahadur Sen v. Mahanath Ganesh Bhagat (Ind.); **2. Arbn.** p. 137  
 Ram Dutt Ramkissendass v. Sassoon (F. D.) & Co. (Ind.); **2. Arbn.** No. 254b; **32. Limit. of A.** p. 933  
 Ram Gopal v. Tulshi Ram (Ind.); **24. Fact.** p. 741  
 Ram Saran Das v. Bhagwat Prasad (Ind.); **42. Stats.** p. 1147  
 Ram Sarup v. Hardho Prasad (Ind.); **6. B. of Exch.** p. 277  
 Rama Row v. Somasundaram Asary (Ind.); **33. Mal. Pros.** p. 957

- Ramage v. Vancouver (City) (Can.)**; **2. Arbn.** p. 146  
**Ramanatham v. R. (Ind.)**; **24. Fact.** p. 738  
**Ramathan Chettiar v. Muthiah Chetty (Ind.)**; **1. Agcy.** p. 53  
**Ramauandi Kuer v. Kalawati Kuer (Ind.)**; **23. Errors.** p. 720  
**Ramgopal, etc. v. Dhanji Jadhavji Bhatia (Ind.)**; **17. Damgs.** p. 576  
**Ramji v. Rao Kishoresingh (Ind.)**; **42. Sp. Pfec.** p. 1144  
**Ramlal Hargopal v. Kishanchand (1923)**; **17. Dep.** No. 640b  
**Rampton v. Morley (1928)**; **42. Sp. Pfec.** No. 1519a  
**Ramsay v. Ramsay (Scot.)**; **11. Confl.** p. 422  
**Ramsden (W.) & Co. v. Jacobs (1922)**; **2. Arbn.** No. 949b  
**Randall, Re (Aus.)**; **23. Errors.** p. 719  
**Randfontein Estates Gold Mining Co., Ltd. v. Custodian of Enemy Property (S. Af.)**; **2. Aliens.** p. 107  
**Randir Singh v. R. (Ind.)**; **17. Dep.** p. 606  
**Randall v. Bell (1813)**; **12. Contr.** No. 4569a  
**Randwick Municipal Council, Re, Ex p. Bowser & Co. (Aus.)**; **16. Cr. Pract.** p. 565  
**Ranee Gunge Coal Assn., Ltd. v. Tata Iron & Steel Co., Ltd. (Ind.)**; **2. Arbn.** pp. 143, 144  
**Ranga v. R. (Ind.)**; **15. Crim.** p. 538  
**Rangoon (City) Corpn. v. Dawoodjee (Ind.)**; **38. Rates.** p. 1083  
**Rangoon Turf Club v. Rangoon Corpn. (Ind.)**; **38. Rates.** p. 1083  
**Ranjit Singh (Prince) v. Jhori Singh (Ind.)**; **38. Real Prop.** p. 1091  
**Ranken v. Pearce (Aus.)**; **22. Evid.** p. 713  
**Rankin (Doe d.) v. Andrews (Can.)**; **5. Bkpcy.** p. 257  
**Rankin v. Mitchell (Can.)**; **43. Tror.** p. 1167  
**Rankin & Shilday, Re (Ir.)**; **3. Bailmt.** p. 171  
**Ransom v. Boyd (1877)**; **16. Cntmpt.** No. 106b  
 — **v. Fulham Football & Athletic Co., Ltd. (1928)**; **34. Must. & S. No.** 3901a  
**Ranson v. Burgess (1927)**; **25. Gaming.** No. 464a  
**Rapelje (Sheriff) v. Finch (Can.)**; **21. Exon.** p. 691  
**Raper, Re, Ex p. Jamieson (Can.)**; **7. B. of Sale.** p. 290  
**Raphael's Trust Estate, Re (1870)**; **14. Bkpcy.** No. 1961a  
**Raport, Re, Denison v. Union Bank of Canada (Can.)**; **8. Chos.** p. 350  
**Rarewell, The (Can.)**; **17. Dep.** p. 592  
**Raspberry v. Canadian National Ry. Co. (Can.)**; **38. Rys.** p. 1077  
**Rat Portage Lumber Co., Ltd. v. Watson & Rogers (Can.)**; **32. Lien.** p. 931  
**Ratcliff v. Davis (1610)**; **35. Mtge.** No. 72a  
**Rathbone, In the Estate of (N.Z.)**; **24. Errors.** p. 731  
**Rathbun v. Culbertson (Can.)**; **21. Exon.** pp. 690, 694  
**Ratkinsky v. Jacobs (1929)**; **30. Jdgmts.** No. 642b; **31. L. & T.** No. 7358a  
**Rattenbury v. Land Settlement Board (Can.)**; **11. Const. L.** p. 430; **38. Pub. Auth.** p. 1069  
**Rattigan v. Regan (Ir.)**; **38. Real Prop.** p. 1090  
**Raulin v. Fischer (1911)**; **11. Confl.** No. 1241a  
**Ravene Plantations, Ltd. v. Estate Abrey (S. Af.)**; **1. Agcy.** p. 49; **9. Coys.** p. 374  
**Rawlings v. General Trading Co. (1921)**; **3. Auct.** No. 151a  
**Rawlinson v. Montague (Duchess) (1710)**; **18. Descr.** No. 132a  
**Rawson (T.) & Co., Ltd., Ex p., R. v. Sheffield JJ. (1927)**; **30. Intor.** Nos. 202a, 381b  
**Ray, In the Goods of (1926)**; **23. Errors.** No. 931b  
**Ray & Hou, Re (Can.)**; **31. L. & T.** p. 915  
**Raymond (Willis C.), Ltd. (In Liquidation), Re (N.Z.)**; **10. Coys.** p. 391  
**Rayner, Re, Cloutman v. Regnart (1920)**; **8. Char.** No. 27a  
**Raynes v. Crowder (Can.)**; **3. Auct.** p. 162  
**Razansoff v. Brounstein (Can.)**; **21. Estpl.** p. 685  
**Rea v. Minto Municipality (Can.)**; **26. Hghys.** pp. 775, 778  
**Read, Re, Galloway v. Harris (1892)**; **7. Burial.** No. 56a  
 — **v. Kent County (Can.)**; **38. Real Prop.** p. 1090  
 — **v. McLean (Can.)**; **26. Guar.** p. 768  
 — **v. Wedge (Can.)**; **16. Courts.** p. 550  
**Reade, Re (Ir.)**; **4. Bkpcy.** p. 221  
 — **v. Royal Bank of Ireland, Ltd. (Ir.)**; **3. Bank.** p. 182  
**Reade-Revell, Re, Crellin v. Mellng (1929)**; **24. Errors.** No. 6267a  
**Reader v. Moose Jaw Cartage Co. (Can.)**; **34. Must. & S.** p. 965  
**Reading Trust, Ltd. v. Spero (1929)**; **35. Money.** No. 353a  
**Ready & Cass, Re (Can.)**; **5. Bkpcy.** p. 248  
**Real Estate Institute of N.S.W. v. Wood (Aus.)**; **13. Coprt.** p. 475  
**Rear v. McCullough (Can.)**; **39. S. Goods.** p. 1107  
**Reavis v. Clan Line Steamers, Ltd. & Laird Line, Ltd. (Scot.)**; **17. Damgs.** p. 577  
**Rebati Mohan Chakravarty v. R. (Ind.)**; **14. Crim.** p. 519; **30. Jdgmts.** p. 895  
**Reberio v. Reberio (Ind.)**; **27. H. & W.** p. 799  
**Receiver General of New Brunswick v. Rosborough (Can.)**; **21. E. D.** pp. 675, 676  
**Recher & Co. v. North British & Mercantile Insurance Co. (1915)**; **2. Arbn.** No. 1701a  
**Reckitt v. Barnett, Pembroke & Slater, Ltd. (1929)**; **1. Agcy.** No. 332a  
 — **v. Nunburnholme (1929)**; **1. Agcy.** No. 332b  
**Record Foundry & Machine Co. v. Garson (Can.)**; **17. Damgs.** p. 580  
**Reesey v. Reiche (S. At.)**; **35. Mistake.** p. 1012  
**Red Deer (City) v. Western General Electric Co. (Can.)**; **20. Electric.** p. 657  
**Red Deer Milling & Elevator Co., Re, Stratford Mill Building Co.'s Claim (Can.)**; **9. Coys.** p. 378  
**Reddaway (F.) & Co. v. Hartley (1928)**; **18. Discy.** No. 405a  
**Reddiar & San Chien v. Secretary of State for India in Council & Collector of Rangoon (Ind.)**; **11. Comp. Pche.** p. 402  
**Reddy v. Johnson (S. Af.)**; **18. Distr.** p. 621  
**Rederi Akt. Acolus v. Hillas & Co., Ltd. (1926)**; **17. Custom.** No. 544a  
**Rederiakt. Argonaut v. Ilani (1918)**; **1. Agcy.** No. 2609  
**Rederi Akt. Transatlantic v. Drughorn (1918)**; **1. Agcy.** No. 2609a  
**Redhead v. Redhead & Crothers (N.Z.)**; **11. Confl.** p. 426  
**Redmond v. Bouey (Can.)**; **25. Fraud. Contr.** p. 751  
**Rednall v. Beamish (1926)**; **19. Educ.** No. 79a  
**Reed v. Renton & Pettinger (Can.)**; **21. Exon.** p. 696  
 — **v. Smith (Can.)**; **38. Rates.** p. 1086  
 — **v. Thiel (Can.)**; **32. Limit. of A.** p. 931, **40. Set-off.** p. 1113  
**Reed & Keast v. McKenzie Co., Ltd. (Can.)**; **1. Agcy.** pp. 45, 46  
**Reed & Roberts (alias McLean) v. R. (Can.)**; **14. Crim.** p. 513  
**Reeman v. Knapp (1925)**; **25. Food.** No. 218a  
**Rees, Re, Jones v. Evans (1920)**; **8. Char.** No. 702a  
 — **v. A.-G. (Can.)**; **11. Const. L.** p. 438

- Rees v. Imperial Navigation Coal Co., Ltd. (1927); **34. Mast. & S. No. 3571a**
- Rees Roturbo Development Syndicate, Ltd. v. Ducker (1928); **28. Inc. T. No. 96a**
- v. Inland Revenue Comrs. (1928); **28. Inc. T. No. 96a**
- Reeve Dobie Mines, *Re*, Wage-Earners Claim (Can.); **4. Bkpcy. p. 222**
- Reeves v. Davies (1921); **5. Bkpcy. No. 7782a**
- v. Hawkes (1862); **4. Bkpcy. No. 5038a**
- Regal Phonograph Co., *Re*, *Ex p.* Trustee (Can.); **5. Bkpcy. p. 252; 20. Eqq. p. 658**
- Regina Brokerage & Investment Co. v. Kistner (Can.); **1. Agcy. p. 63**
- Registered Title No. 213,437, *Re* (1927); **38. Real Prop. No. 902**
- Registrar of Companies, *Re*, *Re* Pioneer Savings & Loan Society (Can.); **16. Cr. Pract. p. 563; 32. Loan Soc. p. 941**
- Registration of a Power of Attorney, *Re*, *Re* Land Titles Act (Can.); **1. Agcy. p. 41**
- Reid v. Drake (Can.); **16. Cr. Pract. p. 560**
- v. Galbraith (Can.); **35. Mtge. p. 1019**
- v. Inland Revenue (Scot.); **28. Inc. T. p. 833**
- v. Miller (Can.); **21. Eron. p. 693**
- v. — (Ir.); **21. Eron. p. 693**
- v. Mimico (Can.); **31. L. & T. p. 901; 36. Negl. p. 1030**
- v. Stevenson (or Stevenson) (Scot.); **34. Mast. & S. p. 999**
- v. Vancouver Tug Boat Co., Ltd. (Can.); **18. Discy. p. 613**
- Reid's Trustees v. Inland Revenue Comrs. (Scot.); **28. Inc. T. p. 837**
- Reid-Welch Furniture Co. v. Macdonald (Can.); **27. H. & W. p. 791**
- Reigate v. Union Manufacturing Co. (Ramsbottom) (1918); **1. Agcy. No. 1951a**
- Reigate Corpn. v. Surrey County Council (1928); **26. Hgkys. No. 1002a**
- Reilly v. Woodworth (Can.); **25. Gifts, p. 765**
- Reilly Brothers v. Mercantile Mutual Insurance Co., Ltd. (Aus.); **29. Inacc. p. 875**
- Reily v. London Corpn. (Can.); **22. Evid. p. 704**
- Reimer v. Rosen (Can.); **1. Agcy. p. 50**
- Reinhart v. Shutt (Can.); **32. Lien, p. 932**
- Reinseth v. Campbell (Can.); **2. Animals, p. 132**
- v. Nicola Pine Mills, Ltd. & McDougall (Can.); **2. Agric. p. 97**
- Reitzes De Marienwert v. Austrian Property Administrator (1924); **2. Aliens, No. 49k**
- Reliable Trading Co., *Ex p.*, *Re* Dumfermline Trading Co. (Can.); **4. Bkpcy. pp. 221, 222**
- Reloomal v. Receiver of Revenue (S. Af.); **17. Dep. p. 601**
- Relu Mal v. Ahmad (Ind.); **12. Contr. p. 464**
- Rene v. Carling Export Brew. & Malt Co. (Can.); **22. Evid. p. 713**
- Renewal of Execution, *Re* (Can.); **21. Eron. p. 689**
- Renfrew Flour Mills v. Sanschagrin (Can.); **11. Confl. p. 418**
- Rennie v. Fremantle Municipal Tramways & Electric Light Board (Aus.); **42. Str. Traf. p. 1151**
- Renton v. Renton (Can.); **12. Contr. p. 444**
- Republica de Guatemala v. Nunez (1927); **8. Chos. No. 27a; 29. Intpr. No. 462a**
- Reser v. Bewley (Can.); **7. B. of Sale, p. 290**
- Restall (otherwise Love) v. Restall (1929); **27. H. & W. No. 217a**
- Restall, Brown & Clennell's Case, *Ex p.* Trustee, *Re* Ford (1929); **5. Bkpcy. No. 6882a**
- Reuter's Telegram Co., Ltd. v. International Guide Syndicate & International Express, Ltd. (1893); **13. Coprt. No. 135a**
- Revelstoke Sawmill Co., Ltd. v. Stratford (Can.); **25. Fraud. Conv. p. 748**
- Reventlow-Criminil v. Streamstown Rural Municipality, No. 511 (Can.); **2. Aliens, pp. 104, 113, 114**
- Revillon Wholesale. Ltd. v. Nemirsky (Can.); **26. Guar. p. 768**
- Rex Co. & Rex Research Corpn. v. Muirhead & Comptroller-General of Patents (1926); **28. Injon. Nos. 585a, 842a; 36. Pats. No. 727**
- Rex Grocery v. Higgs & Keen (Can.); **1. Agcy. pp. 38, 52**
- Reynolds, *Re* (Can.); **4. Bkpcy. pp. 205, 232**
- v. Brown (1852); **43. Trusts, No. 3118a**
- Rhodenizer Estate & Nova Scotia Trust Co., *Re* (Can.); **5. Bkpcy. p. 234**
- Rhodes v. Macalister (1923); **1. Agcy. No. 1852a**
- Rhodesia Rys. v. Taxes Comr. (S. Af.); **17. Dep. p. 602; 28. Inc. T. pp. 821, 825, 826**
- Rhodesian Manufacturing Co., Ltd., *Re* (Aus.); **9. Coys, p. 375**
- Rhuda Baksh v. R. (Ind.); **17. Dep. p. 606**
- Rhys v. A.-G., *Re* Lucas (1922); **8. Char. No. 23b**
- Rice, *Re* (Can.); **25. Fraud. Conv. p. 749**
- Rice v. Burekhardt (Can.); **12. Contr. p. 444**
- v. Fletcher (Can.); **11. Confl. p. 426**
- v. Gunn (Can.); **25. Gaming, p. 755**
- Rich v. Forman (Aus.); **33. Mal. Pros. p. 957**
- v. Sydenham (1871); **20. Eqq. No. 140a**
- Richards v. Chamberlain (Can.); **32. Lien, p. 932**
- v. Davies (1921); **2. Agric. No. 164a; Animals, No. 342a**
- v. Hayward (1841); **12. Contr. No. 487a**
- v. Johnston (1859); **29. Intpr. No. 433b**
- v. Pryse (1927); **2. Agric. No. 2661**
- v. Syms (1740); **35. Mtge. No. 3453a**
- v. Taylor (Can.); **12. Contr. p. 467**
- v. Trotter (Can.); **16. Courts, p. 550**
- v. United National Collieries, Ltd. (1927); **34. Mast. & S. No. 4032a**
- Richardson, *Re*, *Ex p.* Richardson (1839); **5. Bkpcy. No. 6708a**
- v. Abertillery Urban District Council (1928); **19. Educ. Nos. 14a, 302c**
- v. Army, Navy & General Assurance Assocn., Ltd. (Ir.); **2. Arbn. p. 144**
- v. Canadian National Rys. (Can.); **7. Bounds. & P. p. 296; 36. Negl. pp. 1028, 1029**
- v. Hardie (Can.); **31. L. & T. p. 906; 38. Real Prop. p. 1087**
- v. Moncrieffe (1926); **25. Gaming, No. 205a**
- v. Richardson (1927); **3. Bank. No. 276a; 21. Eron. Nos. 2084a, 2124a**
- v. Stormont, Todd & Co. (1900); **1. Agcy. No. 2147a**
- v. Sturton (1844); **20. Eqq. No. 292a**
- Richardson's Estate, *Re* (Can.); **24. Exors. p. 735**
- Richardsons & Bradley & Co. v. Bernhard (1925); **2. Arbn. No. 630a**
- Richert Co. v. Larkin (Can.); **32. Lien, p. 931**
- Riches v. Moose Jaw (City) (Can.); **17. Dep. p. 605; 21. Estpl. p. 688**
- Richland Farm, Ltd. v. Vermette (Can.); **7. B. of Sale, p. 287**
- Richmond Hill Presbyterian Church, *Re* (Can.); **19. Eccl. p. 641**
- Richter, *Re* (N.Z.); **5. Bkpcy. p. 258**
- v. Bartley & Mikelson (Can.); **6. B. of Exch. p. 280**
- Rici Lake Fur Co., Ltd. v. McAllister (Can.); **19. Easmt. p. 627**
- Ricker v. Ricker (Can.); **23. Exors. p. 727**
- Ricketts v. Gurney (1819); **2. Arbn. No. 830a**

- Riddiford, etc. v. Lysaght (N.Z.); **31. L. & T.** p. 909
- Riddle v. Playle (1929); **13. Cty. Cts.** No. 750b
- Rider v. Rider (Can.); **27. H. & W.** p. 802
- Ridgway Co. v. Hutchinson (1923); **13. Coprt.** No. 513a
- Ridings v. Elmhurst School District No. 3665 Board of Trustees (No. 2) (Can.); **19. Educ.** p. 645
- v. Elmhurst School Trustees (Can.); **16. Cr. Pract.** p. 565
- Ridley v. Taylor (1810); **6. B. of Exch.** Nos. 691a, 713b
- v. Whipp (Aus.); **3. Bastly.** p. 201
- Ridley & Ridley v. Barclay (Can.); **2. Agric.** p. 97
- Riedle Brewery, Ltd. v. Merchants Fire Assurance Corp'n. of New York (Can.); **29. Insce.** p. 868
- Rignuelle v. Hebert (Can.); **18. Distr.** p. 622
- Riley v. Brown (1929); **24. Exors.** No. 6713a; **27. H. & W.** No. 40a
- v. Niagara District Bank (Can.); **21. Exon.** p. 693
- v. Reed (Can.); **6. B. of Exch.** p. 277
- Riley Brothers (Halifax), Ltd. v. Hallimond (1927); **25. Food.** No. 243a
- Rimalt v. Cartwright (1924); **6. B. of Exch.** No. 2416a
- Rinfret v. Canadian S.S. Lines, Ltd. (Can.); **41. Ship.** p. 1134
- Ring v. Hyde (1850); **21. Exon.** No. 1581a
- Ringende Jacob, The (1750); **2. Aliens**, No. 419a
- Ringstad v. Gollin & Co. Proprietary, Ltd. (Aus.); **12. Contr.** p. 461
- Rink v. Milos (Can.); **2. Agric.** pp. 84, 85
- Rinn, Re (Can.); **7. B. of Sale**, p. 289
- Ripstein Estate, Re (Can.); **38. Real Prop.** p. 1087
- Rise v. Canadian Pacific Ry. Co. (Can.); **2. Animals.** pp. 131, 135
- Rithet (R. P.) & Co. v. Scarff (Can.); **7. B. of Sale**, p. 285
- River Dec Drainage Board v. Hooson, Re Ellwood (1927); **4. Bkpcy.** No. 4281a
- River Fisher, The (1923); **1. Adm.** Nos. 1152b, 1200a
- Riversdale Mill Co., Ltd. v. Hart (1927); **24. Fact.** No. 264b; **30. Jdgmts.** No. 679a
- Rjukan, The (1866); **1. Adm.** No. 1112a
- Roach v. Hough (Aus.); **1. Agcy.** p. 39
- v. Lappas (Can.); **18. Distr.** p. 620
- v. Wright (1841); **29. Intpr.** No. 178a
- Roan v. Kronsbein (Can.); **32. Limit. of A.** p. 936
- Robbins, Re, Ex p. Root (Can.); **5. Bkpcy.** p. 253
- Robert Bell Engine & Thresher Co. v. Farquharson (Can.); **1. Agcy.** p. 49
- Robert Dollar Co. v. Walker (Can.); **21. Exon.** p. 690
- Robert Koeppen, The (1926); **1. Adm.** No. 1284b
- Roberts, Ex p., R. v. Otty (Can.); **16. Cntmpt.** p. 457
- , Ex p., R. v. White (Can.); **16. Cntmpt.** p. 547
- , Re (Can.); **5. Bkpcy.** p. 242
- v. Anglo-Saxon Insurance Assocn. (1927); **29. Insce.** No. 3279a
- v. Bank of Toronto (Can.); **32. Lien**, p. 930
- v. Battersea Metropolitan Borough (1914); **38. Rates.** No. 675f
- v. Gardner (William) & Sons (1928); **34. Mast. & S.** No. 3423a
- v. Hanks (1926); **28. Inc. T.** No. 545a
- v. Jones (Aus.); **34. Mast. & S.** p. 996
- v. Potts, Jones v. Cooke, Re Tithe Act, 1891 (1894); **12. Contr.** No. 4358a
- Roberts v. Roberts (Can.); **12. Contr.** p. 448; **27. H. & W.** p. 796
- (Doe d.) v. Watson (Can.); **21. Exon.** p. 691
- Roberts & Cooper, Ltd., Re (1929); **10. Coys.** No. 6988a
- Robertson v. Amazon Tug & Lighterage Co. (1881); **3. Bailmt.** No. 216a
- v. Appalachee (Owners) (1926); **34. Mast. & S.** Nos. 2370a, 2552a
- v. Daley (Can.); **21. Estpl.** p. 684
- v. Duthie Steel Casement Co., Ltd. (N.Z.); **36. Nuis.** p. 1036
- v. Holland (Can.); **5. Bkpcy.** p. 252
- v. Laroque (Can.); **27. H. & W.** p. 791
- v. Robertson & Butt, Robertson v. Robertson (1928); **27. H. & W.** No. 5760a
- v. Robertson's Executors (Scot.); **23. Exors.** p. 726
- v. Robinson (Can.); **21. Exon.** p. 691
- Robertson (John) & Son, Ltd. v. Canadian Bank of Commerce (Can.); **3. Bank.** p. 190
- Robertson's Application, Re (1929); **36. Pats.** No. 721
- Robillard v. McCullough (Can.); **7. B. of Sale**, p. 290
- v. St. Roch, The, & Charland (Can.); **1. Adm.** p. 36
- Robin, Collas & Co., Ltd. v. Theriault (Can.); **38. Real Prop.** p. 1090
- Robin Line S.S. Co. v. Canadian Stevedoring Co. (Can.); **1. Agcy.** p. 40; **41. Ship.** p. 1130
- Robinet v. Pickering (Can.); **38. Real Prop.** p. 1088
- Robins, Re, Holland v. Gillam (1928); **40. Sttlmts.** No. 1873
- v. Andrews (Can.); **2. Arbn.** p. 157
- v. National Trust Co. (1927); **16. Courts.** No. 653a; **30. Jdgmts.** Nos. 588a, 614a, 631a
- Robinson, Re, Wright v. Tugwell (1923); **8. Char.** No. 1041a
- v. Assiniboia (Town) (Can.); **22. Evid.** p. 700; **26. Hghys.** p. 777
- v. Burns (R.) & Co., Ltd. & Church (Can.); **22. Evid.** p. 708
- v. Eves (Aus.); **1. Agcy.** pp. 62, 63
- v. Hall (Can.); **17. Dams.** p. 583
- v. Long (Can.); **1. Agcy.** p. 49; **2. Agric.** p. 94
- v. McCauley (Can.); **5. Bkpcy.** p. 249
- v. McIntosh (Can.); **21. Exon.** p. 692
- v. Midland Bank, Ltd. (1925); **3. Bank.** No. 282a
- v. Nesbitt (1920); **2. Agric.** Nos. 30a, 30b
- v. Peters (Can.); **5. Bkpcy.** p. 248; **7. B. of Sale**, p. 290; **12. Contr.** p. 456
- v. Randfontein Estates Gold Mining Co., Ltd. (S. Af.); **1. Agcy.** p. 56; **9. Coys.** p. 372
- v. South Australia State (Aus.); **11. Const. L.** p. 431; **38. Pub. Auth.** p. 1068
- v. Sugarman (Can.); **32. Libel**, p. 924
- v. Vickers-Armstrong, Ltd. (1929); **34. Mast. & S.** No. 3701c
- v. Waters (Aus.); **2. Animals**, p. 131
- Robinson (J.) & Co. v. R. (1921); **1. Action.** No. 90a
- Robinson (R. S.) & Son, Ltd., Re (Can.); **4. Bkpcy.** p. 209
- Robinson Brothers v. Henderson (S. Af.); **36. Negl.** p. 1031
- Robinson, Fisher & Harding v. Behar (1927); **3. Auct.** No. 280a
- Robinson, Little & Co., Ex p., Re Allan Grain Growers' Co-operative Assocn. (Can.); **4. Bkpcy.** p. 221
- Roblin Rural Credits Society v. Newton (Can.); **28. Ind. Soc.** p. 845

- Robson, *Ex p.*, *Re Saffron Walden Election* (1886); **20. Elect.** No. 1075
- Robson, *Ex p.*, *Re Sun Ray Manufacturing Co.* (Can.); **9. Coys.** p. 373
- *v. Waddell* (Can.); **35. Mtge.** p. 1021
- Roch *v. Roch* (1926); **27. H. & W.** No. 6042a
- Roche *v. Roche* (Aus.); **11. Confl.** p. 421
- Rochester & Chatham Joint Sewerage Board *v. Clinch* (1925); **2. Agric.** No. 30e
- Rockingham Sisters of Charity *v. R.* (1922); **11. Comp. Pche.** Nos. 216a, 323a
- Rockland Cocoa & Chocolate Co., *Re* (Can.); **4. Bkpey.** p. 218
- Rodda *v. Godfrey* (1926); **2. Aliens**, No. 558a
- Rodden *v. Goodman* (Can.); **4. Bkpey.** pp. 227, 228
- Rodger *v. Moran* (Can.); **24. Exors.** p. 732
- Rodney Case (Can.); **19. Eccl.** p. 641
- Rodrigue *v. Dostie & Vachon* (Can.); **27. H. & W.** p. 789
- Rodriguez *v. Speyer Brothers* (1919); **2. Aliens**, No. 306
- Roe *v. McNeil* (Can.); **21. Exon.** p. 694
- *v. Russell* (1928); **31. L. & T.** No. 7254a
- Roebank Printing Co., Ltd. *v. Inland Revenue Comrs.* (Scot.); **28. Inc. T.** p. 826
- Roemer, *Re* (Can.); **24. Exors.** p. 733
- Roemer Estate, *Re, Re Mott & Roemer* (Can.); **24. Exors.** p. 733; **42. Solrs.** p. 1142
- Rofe *v. Smith's Newspapers, Ltd.* (Aus.); **32. Libel.** p. 921
- Roff *v. British & French Chemical Manufacturing Co. & Gibson* (1918); **2. Arbn.** No. 841a
- *v. Kreeker* (Can.); **7. B. of Sale.** p. 292
- Roger *v. Hutcheson* (Scot.); **2. Agric.** pp. 87, 88
- Rogers, *Re* (Aus.); **5. Bkpey.** p. 254; **28. Infts.** p. 849
- *Re* (Can.); **24. Exors.** p. 735
- *v. Bathurst School District No. 2* (Trustees) (Can.); **19. Educ.** p. 613
- *v. Beley* (Can.); **18. Discy.** p. 618
- *v. Christchurch Rural District Council* (1925); **17. Damgs.** No. 29a
- *v. Kingston* (1825); **4. Bkpey.** No. 5039a
- *v. Lowthian* (Can.); **11. Const. L.** p. 137
- *v. Nanamo Motors, Ltd.* (Can.); **3. Bailmt.** p. 171
- *v. Ontario Bank* (Can.); **31. L. & T.** p. 906
- *v. Weir* (Can.); **22. Evid.** p. 701
- Rogers (J. B.), Ltd. *v. Harry Lesnie, Ltd.* (Aus.); **39. S. Goods.** p. 1102
- Rogers Hardware Co. *v. Rogers* (Can.); **9. Coys.** p. 368
- Rogers Lumber Co. *v. Gray & Hosmer* (Can.); **32. Lien.** p. 932
- Rogers Lumber Yards, Ltd. *v. Jacobs* (Can.); **32. Lien.** p. 931
- Rogerson *v. Reid* (1830); **32. Lien.** No. 208a
- Rohl *v. Pfaffenroth* (Can.); **32. Lien.** p. 931
- Roman Catholic Archbp. of Sydney *v. Metropolitan Water Sewerage & Drainage Board* (Aus.); **38. Rates.** p. 1081
- Roman Catholic Separate School Trustees *v. R.* (1928); **17. Dep.** Nos. 177a, 177c
- Ronald Frankau Productions, Ltd. *v. Bell* (1927); **12. Contr.** No. 546c; **42. Theatres.** No. 64a
- Ronalds' Trustees *v. Lyle* (Scot.); **44. Walls.** p. 1178
- Rondo Co., Ltd. *v. Gramophone Co., Ltd.* (1929); **36. Pats.** No. 210a
- Rooke *v. Whitaker, Re Whitaker* (1929); **40. Stillmts.** No. 1878a
- Rookwood's Case (1696); **11. Const. L.** No. 175a
- Root, *Ex p.*, *Re Robbins* (Can.); **5. Bkpey.** p. 253
- Roper, *Re* (N.Z.); **11. Confl.** p. 416
- Roray *v. Nimpkish Lake Logging Co., Ltd. & Garland* (Can.); **1. Agcy.** p. 62
- Rosa *v. Kellington* (Can.); **42. Time.** p. 1156
- Rosalind, The (1920); **1. Adm.** No. 1483a; **3. Bailmt.** No. 374b
- Rosamund *v. Forgie* (Can.); **40. S. Land.** p. 1111
- Rosborough *v. St. Andrew's Church, Trustees* (Can.); **20. Eqq.** p. 664
- Rose, *Ex p.*, *Re Goodman Brothers Auto & Service Co., Ltd.* (Aus.); **9. Coys.** p. 364
- *v. Dilke Village* (Can.); **16. Courts.** p. 550
- *v. Sydenham Local Administration & Health Board* (S. Af.); **26. Hghys.** p. 785; **38. Pub. Hlth.** p. 1072
- Rose & Frank Co. *v. Crompton (J. R.) & Brothers, Ltd.* (1925); **12. Contr.** Nos. 4, 297a, 2829a
- Rose & Laflamme, Ltd. *v. Campbell, Wilson & Strathdee, Ltd. & Grand Trunk Pacific Ry. Co.* (Can.); **8. Carr.** p. 316
- Rose Street Foundry & Engineering Co., Ltd. *v. India Rubber Gutta Percha & Telegraph Works Co., Ltd.* (1929); **36. Pats.** Nos. 688a, 796a
- Roseberry-Surprise Mining Co. *v. R.* (Can.); **28. Inc. T.** p. 825
- Rosendale Produce Co., *Re, Ex p. McGowan* (Can.); **5. Bkpey.** p. 219
- Rosenberg, *Ex p.*, *Re Cohen & Sweigman* (Can.); **4. Bkpey.** p. 205
- *v. The Maccabees* (Can.); **16. Cr. Pract.** pp. 567, 568
- Rosenblum, *Re, Rosenblum v. Rosenblum* (1924); **8. Char.** Nos. 215a, 265a
- Rosenhain & Co. *v. Commonwealth Bank of Australia* (Aus.); **6. B. of Exch.** p. 268
- Rosenthal *v. Hess* (Can.); **2. Animals.** p. 129
- *v. Hope & Hart* (Can.); **5. Bkpey.** p. 265
- *v. London County Council* (1924); **8. Carr.** No. 14a
- Roshko *v. Winnipeg School District No. 1, Re, Re Arbitration Act* (Can.); **11. Comp. Pche.** p. 408
- Ross, *Re, Ross v. McNeill & McNeill* (Can.); **28. Infts.** p. 849
- *Re, Ross v. Waterfield* (1929); **11. Confl.** No. 457a
- *v. Bank of New South Wales* (Aus.); **3. Bank.** p. 191
- *v. Canadian Bank of Commerce* (Can.); **1. Agcy.** p. 41
- *v. Canadian National Rys.* (Can.); **28. Injoun.** p. 855
- *v. Creighton* (Can.); **21. Exon.** p. 692
- *v. Ellison* (or Ross) (1929); **11. Confl.** No. 68a; **27. H. & W.** No. 2737a
- *v. Fiset* (Can.); **21. Exon.** p. 692; **30. Jdgmts.** p. 892
- *v. Gorman* (Can.); **32. Lien.** pp. 931, 932
- *v. Imperial Life Assurance Co., Ltd.* (Can.); **29. Insec.** p. 869
- *v. Kobold* (Can.); **1. Agcy.** p. 72
- *v. Laughton* (1813); **18. Discy.** No. 650a
- *v. London County, Westminster & Parr's Bank* (1919); **3. Bank.** No. 691a
- *v. McNeill & McNeill, Re Ross* (Can.); **28. Infts.** p. 819
- *v. Mason* (Can.); **24. Exors.** p. 735
- *v. Orr* (Can.); **25. Gaming.** p. 761
- *v. Perrault* (Can.); **12. Contr.** p. 464
- *v. Rogers & Canadian National Rys.* (Can.); **21. Exon.** p. 696
- *v. Ross* (1929); **11. Confl.** No. 68a; **27. H. & W.** No. 2737a
- *v. —* (Can.); **23. Exors.** p. 724
- *v. —* (Scot.); **11. Confl.** p. 413; **36. Parl.** p. 1038
- *v. Scott* (Can.); **1. Agcy.** p. 55
- *v. Simpson* (Can.); **21. Exon.** p. 691

- Ross v. Waterfield, *Re* Ross (1929); **11. Conf.** No. 457a
- v. Willards Chocolates, Ltd. (Can.); **34. Mast. & S.** p. 961
- Ross (James) & Co. (Lime Wharf), Ltd. v. Stirlingshire Assessor (Scot.); **38. Rates**, p. 1083
- Ross Leaf Tobacco Co., Ltd. v. Canadian Freight Asscn. (Can.); **38. Rys.** p. 1078
- Rossetti (Owners) v. Dampskibsselskabet Magnus (Scot.); **1. Adm.** pp. 27, 28
- Rossouw, etc. v. Hodgson (S. Af.); **4. Bkpcy.** p. 219
- Rosyth Canadian Fund Trustees (Scot.); **8. Char.** p. 342
- Roth (L.) & Co., Ltd. v. Taysen, Townsend & Co. & Grant & Grahame (1896); **12. Contr.** No. 467a
- Roths Parish Council v. Elgin Parish Council (Scot.); **37. Poor L.** p. 1059
- Rothschild v. Austrian Property Administrator (1923); **2. Aliens**, No. 49f
- Rothwell v. Attwood (Can.); **1. Agcy.** p. 74
- Rouch v. Wright (1841); **29. Intpr.** No. 178a
- Rouleau v. Aledo S.S. (Can.); **1. Adm.** p. 20
- Rountree v. Wood (Can.); **12. Contr.** p. 455
- Roupell v. Haws (1863); **22. Evul.** No. 1933a
- Rourke v. McCullough (Can.); **21. Estpl.** p. 682
- Rouse, *Re*, *Re* Ware, Ware v. Rouse (1926); **20. Eqp.** Nos. 1873b, 2030a
- Rousseau v. Rousseau (Can.); **27. H. & W.** p. 801
- Routley v. Gorman & Coran (Can.); **6. B. of Exch.** p. 282
- Rovira v. Appalachee (Owners) (1926); **34. Mast. & S.** Nos. 2370a, 2552a
- Rowan v. Atlas Assurance Co., Ltd. (1928); **29. Insec.** No. 2937a
- v. Costello (Can.); **18. Distr.** pp. 621, 622
- & Eaton, *Re* (Can.); **38. Real Prop.** p. 1090
- Rowan S.S. v. Clan Malcolm S.S. (Scot.); **1. Adm.** p. 29
- Rowe, *Ex p.*, *Re* Atkinson (Aus.); **34. Mast. & S.** p. 982
- v. Butler (N.Z.); **1. Agcy.** p. 61
- v. Johnson (Aus.); **35. Alqc.** p. 1023
- Rowe & Brown v. Public Trustee (N.Z.); **8. Char.** p. 342
- Rowe Brothers & Co., Ltd. v. Lindgens (1920); **2. Aliens**, No. 409a
- Rowland v. Air Council (1923); **11. Const. L.** No. 348b; **30. Jdgmts.** No. 187a
- Rowland & Mackenzie-Kennedy v. Air Council (1927); **30. Jdgmts.** No. 187b; **36. Pats.** No. 1673a
- Rowlands & Johnstone v. Holland (Can.); **1. Agcy.** p. 58
- Rowlatt v. Garment (J. & G.) Manufacturing Co. (Can.); **5. Bkpcy.** p. 251; **6. B. of Exch.** p. 278
- Rowley v. Cook (Can.); **7. Bldg. Conts.** p. 306
- Rowlls v. Bebb, *Re* Rowlls, Walters v. Treasury Solicitor (1900); **20. Eqp.** No. 1068a
- Rownson, Drew & Clydesdale v. Great Western, London, Midland & Scottish, London & North Eastern & Southern Ry. Cos. (1928); **8. Carr.** No. 1245b
- Roxburgh v. Crosby & Co. (Aus.); **1. Agcy.** p. 61
- Roy v. Canadian Bank of Commerce (Can.); **3. Bank.** p. 190
- v. St John Lumber Co. (Can.); **1. Agcy.** p. 51
- Roy Wolf Brewing Co., *Re* (Can.); **31. L. & T.** p. 906
- Royal Agricultural Hall Co. v. Islington Assessment Committee (1918); **1. Action**, No. 11
- Royal Antediluvian Order of Buffaloes v. Owens (1928); **28. Inc. T.** No. 58a
- Royal Bank, *Ex p.*, *Re* J. Stanley Wedlock, Ltd. (Can.); **9. Coys.** p. 375
- , *Ex p.*, *Re* McQuillan (Can.); **5. Bkpcy.** p. 248
- v. Pope (Can.); **3. Bank.** p. 189
- Royal Bank & Rider, *Ex p.*, *Re* Longmore (Can.); **5. Bkpcy.** p. 235
- Royal Bank of Canada, *Ex p.*, *Re* Gaudreau (Can.); **7. B. of Sale**, pp. 288, 290
- , *Ex p.*, *Re* Hamer (Can.); **5. Bkpcy.** p. 265
- v. Allen (Can.); **6. B. of Exch.** p. 277
- v. Bendiksen & Ireland (Can.); **43. Tresp.** p. 1165
- v. Dofen (Can.); **3. Bank.** p. 188
- v. Eastern Trust Co. (Can.); **5. Bkpcy.** p. 239
- v. Frank (Can.); **12. Contr.** p. 458
- v. Gold (Can.); **3. Bank.** p. 189
- v. Grobe & Walbridge (Can.); **6. B. of Exch.** pp. 274, 275
- v. Gustafson (Can.); **8. Chos.** p. 349
- v. Izen (Can.); **20. Eqp.** p. 666
- v. Kenward (Can.); **21. Exon.** p. 696
- v. Larue (Can.); **5. Bkpcy.** p. 263; **17. Dep.** p. 593
- v. McBride (Can.); **3. Bank.** p. 188
- , *Re* (Can.); **30. L. & T.** p. 900
- v. Talbot (Can.); **3. Bank.** p. 189; **37. Pawns.** p. 1053
- v. Van Buren & McKay (Can.); **21. Exon.** p. 696
- v. Wye (Can.); **3. Bank.** p. 189
- Royal Commission of Wheat Supplies v. Usher & Co., Ltd. (Ir.); **2. Arbn.** p. 155
- Royal Commission on Sugar Supplies v. Kwik-Hoo-Tong Trading Society (1922); **2. Arbn.** No. 949c
- Royal Dress Co., *Ex p.*, *Re* Hudson Fashion Shoppe, Ltd. (Can.); **4. Bkpcy.** p. 231
- Royal Exchange Assurance v. Conquest, *Re* Conquest (1929); **40. Sttlmts.** No. 1873a
- v. Hope (1928); **29. Insec.** No. 2993a
- Royal Exchange Assurance Co. v. Grimsbaw Brothers, Ltd. (Can.); **8. Chos.** p. 346; **29. Insec.** p. 868
- Royal Insurance Co., Ltd. v. Mylius (Aus.); **29. Insec.** p. 869
- v. Stephen (1928); **28. Inc. T.** No. 309a
- Royal London Mutual Insurance Society v. Barrett (1928); **29. Insec.** No. 2962a
- Royal Star, The (1928); **1. Adm.** No. 1597a
- Royal Star, The (No. 2) (1928); **1. Adm.** Nos. 1597a, 1604a
- Royal Trust Co., *Re*, *ex rel.* R. *ex rel.* Freeman, *Re* Winnipeg Charter (Can.); **38. Rates**, p. 1085
- v. A.-G. for Alberta (Can.); **21. E. D.** p. 675
- v. Bonsall (Can.); **28. Infts.** p. 851
- v. Canadian Pacific Ry. Co. (Can.); **18. Discy.** p. 614
- v. Great Northern Elevator Co. (Can.); **10. Coys.** p. 380
- v. Kritzwiser (Can.); **21. Exon.** p. 698
- v. Provincial Secretary, Treasurer of New Brunswick (Can.); **21. E. D.** p. 675
- Royal Trust Co.'s Case, *Re* Land Titles Act (Can.); **1. Agcy.** p. 42
- Royston v. Hankey (1833); **25. Gifts** No. 264
- Royxel v. Royal Bank of Canada (Can.); **3. Bank.** pp. 176, 190
- Rozecki, *Re*, *Re* Dzycz (Can.); **28. Infts.** p. 349
- Ruapehu, The (1927); **1. Adm.** No. 579b
- (No. 2) (1929); **1. Adm.** No. 579b; **41. Ship.** No. 8104a
- Ruapehu (Owners) v. Green (R. & H.) & Silley Weir, Ltd., The Ruapehu (1927); **1. Adm.** No. 579b

- Ruchcha Saithwar v. Hansrani (Ind.); **17. Dep.** p. 605  
 Ruckmaboye v. Lulloobhoy Mottichund (1853); **17. Dep.** No. 315b  
 — v. Lulloobhoy Mottichund (Ind.); **17. Dep.** p. 603  
 Rudd v. Rudd (1924); **11. Confl.** Nos. 55a, 903a, 935a, 1090a  
 Ruddell v. Georgeson (Can.); **38. Rates**, p. 1081  
 Ruddell Grain Growers Assoc., Ltd. v. Saskatchewan Co-operative Elevator Co., Ltd. (Can.); **21. Exon.** p. 696  
 Rudder v. Lundin, *Re Extra-Judicial Seizures Act* (Can.); **7. B. of Sale**, p. 292  
 Ruddy v. London, Midland & Scottish Ry. Co. (1929); **34. Mast. & S. No.** 2823a  
 Rudge v. Winnall (1849); **23. Exors.** No. 5273b  
 Rudyard's Case (1670); **16. Cr. Pract.** No. 656a  
 Ruf (T. A.) & Co. v. Pauwels (1919); **2. Arbn.** No. 1152a  
 Rule v. Bradner (Can.); **12. Contr.** p. 450  
 — v. Puls (Can.); **35. Misrep.** p. 1009  
 Rumble v. Wilson (Can.); **16. Courts**, p. 551  
 Rumney's Estate, *Re* (Aus.); **44. Wills**, p. 1180  
 Rumsey v. Hare (Can.); **17. Dep.** p. 593  
 Rundel, *Re* (Can.); **38. Real Prop.** p. 1089  
 Rung, *Re* (Can.); **5. Bkcy.** p. 240  
 Rungasamy Chetty, *Re* (S. Af.); **2. Aliens**, p. 121  
 Runner, *Re* (Can.); **5. Bkcy.** p. 232  
 Rural Municipality Act, *Re*, *Re* Carrot River Rural Municipality, Minaker v. Sanderson (Can.); **20. Elect.** p. 653  
 Rush, *Ex p.*, *Re* v. Hay Halkett (1929); **33. Mags.** No. 433a  
 —, *Re* (1870); **21. Exon.** No. 1882a  
 —, *Re*, Warre v. Rush (1923); **2. Aliens**, No. 215k  
 — v. Pembina (Can.); **38. Rates**, p. 1085, 1086  
 Rushbrooke v. O'Sullivan & Hibernian Fire Insurance Co., Ltd. (Ir.); **18. Discy.** p. 613  
 Ruskin v. Wasserman (S. Af.); **1. Agcy.** p. 54  
 Russ, *Re* (Aus.); **42. Solrs.** p. 1142  
 Russel v. Prat (1584); **23. Exors.** No. 427  
 — v. — (1589); **23. Exors.** No. 427  
 Russell v. Bates (Aus.); **33. Mags.** p. 953  
 — v. Canada West Grain Co. (Can.); **1. Agcy.** p. 42  
 — v. Davey (Can.); **35. Mtgc.** p. 1023  
 — v. Gale (Aus.); **29. Intpr.** p. 878  
 — v. Ontario Foundation & Engineering Co. (Can.); **32. Lien**, p. 931  
 — v. Reid (Can.); **21. Exon.** p. 691; **39. S. Goods**, p. 1107  
 — v. Russell (Can.) (1881); **21. Exon.** p. 693  
 — v. — (1924); **3. Bastly.** No. 70a  
 — v. Russell & McKenna (Can.) (1927); **27. H. & W.** p. 801  
 — v. Smith (1848); **13. Coprt.** Nos. 09a, 506a  
 Russell & Harding, *Re* (1922); **2. Agric.** No. 266s  
 Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse (1925); **10. Coys.** No. 8523  
 Russian Mercantile Co., Ltd. v. Sloboda & Sloboda (Can.); **25. Fraud. Conv.** p. 748  
 Russland, The (1924); **1. Adm.** No. 781f  
 Rust v. Rust (Can.); **27. H. & W.** p. 793  
 Rustin v. Bradley (Can.); **16. Courts**, p. 550  
 Rustom v. R. (Ind.); **17. Dep.** p. 606  
 Ruth & Estevan (Town), *Re* (Can.); **38. Pub. Auth.** p. 1071  
 Ruthenian Catholic Mission of the Order of St. Basil the Great in Canada v. Mundare School District No. 1603 (Can.); **38. Rates**, p. 1080  
 Ruthenian Farmers Elevator Co. v. Gniazdoski (Can.); **6. B. of Exch.** p. 272  
 Rutherford v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 843  
 — v. Stovel (Can.); **26. Guar.** p. 772  
 — v. Trust Houses, Ltd. (1926); **24. Fact.** No. 206a  
 Rutledge v. Anderson (Can.); **35. Misrep.** p. 1011  
 v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 817  
 Ruttan v. Weller (Can.); **21. Exon.** p. 692  
 Rutter v. Orde (Can.); **30. L. & T.** p. 900  
 — v. Palmer (1922); **3. Bailmt.** No. 140a  
 Ryall v. Proctor (1928); **28. Inc. T.** Nos. 489a, 516a  
 Ryan v. Cashin & Costello, *Re* McWey (Ir.); **25. Gifts.** p. 766  
 — v. Trask (Can.); **28. Infts.** p. 851  
 — & Vancouver District Registrar of Titles, *Re* (Can.); **38. Real Prop.** p. 1090  
 Rye Farm Co. v. British Oak Insurance Co., Ltd. (Can.); **2. Arbn.** p. 151  
 Rygus v. Zawitkowski & Ross (Can.); **29. Intpr.** pp. 876, 887; **35. Mistake**, p. 1012
- S.
- S., *Re* (Can.); **3. Bastly.** p. 199  
 —, *Re*, *Re* Equal Guardianship of Infants Act (Can.); **3. Bastly.** p. 199  
 — v. S. (Aus.); **27. H. & W.** pp. 794, 800  
 — v. S. & P. (1928); **27. H. & W.** No. 4280a  
 Sabatier v. Trading Co. (1927); **13. Corpns.** No. 1544a  
 Sabine v. Wood (Can.); **38. Real Prop.** p. 1087  
 Sabjun Bibi v. Ashanulla Bepari (Ind.); **36. Partn.** p. 1040  
 Sack v. Jones (1925); **7. Bounds. & F.** No. 251a; **19. Easmt.** No. 1226a  
 Sadar Ali v. Dalimuddin (Ind.); **17. Dep.** p. 607  
 Sadler v. Auckland Co-operative Society, Ltd. (N.Z.); **28. Ind. Soc.** p. 845  
 Sadler (A. L.) & Son v. Thorpe (1927); **34. Mast. & S.** No. 3702a  
 Saffron Walden Election, *Re*, *Ex p.* Robson (1886); **20. Elect.** No. 1075  
 Sagaporack, The, The Hontestroom (1927); **1. Adm.** No. 1642a  
 Saheebolay v. Woolfson (S. Af.); **31. L. & T.** p. 904  
 Said v. Butt (1920); **35. Misrep.** No. 445a  
 Saint v. Hockley (1925); **39. Revenue**, Nos. 302a, 302b  
 St. Andrew's Church Trustees & Great Western Ry. Co., *Re* (Can.); **38. Rys.** p. 1076  
 St. Andrew's College Trustees v. Griffin (Can.); **13. Corpns.** p. 489  
 St. Anne's Well Brewery Co. v. Roberts (1928); **30. Jdgmts.** No. 506b; **31. L. & T.** No. 4882a; **36. Nuis.** No. 316a  
 St. Bartholomew's Hospital (Governors), *Ex p.* (1928); **8. Char.** No. 2353a  
 St. Boniface School District v. Macdonald (Can.); **2. Arbn.** p. 146  
 St. Brigids (Parish), Iberville (County), P. Q. v. Canadian National Rys. (Can.); **38. Rys.** p. 1078  
 St. Catherines Corp'n. v. Ontario Hydro-Electric Power Commission (Can.); **33. L. G.** p. 943; **44. Stats.** p. 1147  
 St. Charles, The (1927); **1. Adm.** Nos. 1406a, 1422a  
 St. Clair v. Audney (Scot.); **1. Adm.** p. 30  
 St. Denis v. Western Products, Ltd. (Can.); **12. Contr.** p. 442  
 St. Elroi v. Eno (Can.); **27. H. & W.** p. 790  
 St. Gregor Mercantile Co. v. Halbach & Bank of Montreal (Can.); **25. Fraud. Conv.** p. 750



- St. Helens Tramways Co. v. Wood (1891); **13. Corpsns.** No. 907a
- St. Hyacinthe (Œuvre du Patronage de) v. St. Hyacinthe (City) (Can.); **38. Rates**, p. 1084
- St. John (Doe d.) v. Hore (1799); **22. Evid.** No. 2475a
- St. John & Quebec Ry. Co. v. Bank of British North America & Hibbard Co. (Can.); **8. Chos.** p. 348
- St. John Corp'n. (Doe d.) v. Roo (Can.); **38. Real Prop.** p. 1091
- St. John County Hospital v. Peck (Can.); **21. Estpl.** p. 685
- St. John Power Commission v. New System Laundry, Ltd. (Can.); **13. Corpsns.** p. 485
- St. John River Log Driving Co., *Re* (Can.); **10. Coys.** p. 389
- St. John's Church, *Re* (Can.); **19. Eccl.** p. 640
- St. Julian Shrewsbury (Parish) (Doe d.) v. Cowley (1823); **26. Hghys.** No. 1717a
- St. Ledger v. Brennan (Aus.); **32. Libel**, p. 924
- St. Louis Rural Municipality v. Markham (Can.); **1. Action**, p. 2
- St. Magnus the Martyr, London Bridge (1925); **19. Eccl.** No. 2831
- St. Michaels College v. Toronto City Corp'n. (Can.); **11. Comp. Pche.** p. 403
- St. Michaels College & Toronto, *Re* (Can.); **38. Pub. Ilth.** p. 1073
- St. Nedeport (Prior) v. Weston (1443); **1. Action**, No. 243a
- St. Nicholas Acons (Rector & Churchwardens) v. London County Council (1928); **7. Burial**, Nos. 300c, 309a
- St. Paul's Warden, etc. v. Kettle (1813); **19. Eccl.** No. 3455b
- St. Philip, The (1747); **2. Aliens**, No. 419a
- St. Rose Rural Municipality v. Royal Bank of Canada (Can.); **35. Mistake**, p. 1013
- St. Stephen (Rector) v. Tortelott (Can.); **19. Eccl.** p. 639
- St. Tudno, The (1918); **1. Adm.** Nos. 648a, 650b
- Salaman (Trustee), *Ex p.*, *Re* Collins (1925); **5. Bkpcy.** No. 6659a
- Salaman, *Ex p.*, *Re* Wilson (1920); **4. Bkpcy.** No. 1894b
- Salaman's Trustee, *Ex p.*, *Re* Wethered, Trustee v. Bance (1926); **5. Bkpcy.** Nos. 6858a, 7483a; **12. Contr.** No. 1459a
- Sale of Shares Act, *Re*, United Grain Growers, Ltd.'s Case (Can.); **10. Coys.** p. 382
- Sale of Shares Act & Municipal & Public Utility Board Act, *Re* (Can.); **17. Dep.** p. 598
- Saleh Mahomed Umer Doosal v. Nathoomal Kessamal (Ind.); **2. Arbn.** p. 153
- Salisbury House Estates, Ltd. v. Fry (Inspector of Taxes) (1929); **28. Inc. T.** No. 116a
- Salle Extension University, *La v.* Freeman (Can.); **10. Coys.** p. 397
- Salles' Application, *Re* (1927); **36. Pats.** No. 709a
- Salmon, *Re*, Priest v. Uppley (1889); **35. Mtge.** No. 415a
- Saloway v. Strawbridge (1855); **35. Mtge.** No. 2299a
- Salsbury v. Bagott (1677); **28. Infts.** No. 451a
- Salsette (Assistant Collector) v. Damodardas Trithuvandas (Ind.); **11. Comp. Pche.** p. 407
- Salter v. Farey (1843); **8. Char.** No. 843a
- Salter & Arnold, Ltd. v. Dillman (Can.); **21. Exon.** p. 691
- v. Dominion Bank (Can.); **1. Agcy.** p. 71; **5. Bkpcy.** pp. 235, 240, 248, 249, 257, 258
- Salters (Joseph) Sons, Ltd. v. Bank of Nova Scotia (Can.); **3. Bank.** p. 189
- Salti et Fils v. Procurator-General (1919); **2. Aliens**, No. 392a
- Salvesen (or von Lorange) v. Austrian Property Administrator (1927); **11. Confl.** Nos. 926a, 944b
- Salway v. Salway (1770); **8. Chos.** No. 12a
- Sammel v. Jacobs & Co. (S. Af.); **1. Agcy.** p. 62
- Sammon v. Byrne (Ir.); **31. L. & T.** pp. 746, 917
- Sampson v. Robertson (Can.); **26. Hghys.** p. 780
- v. Thomas (Can.); **27. H. & W.** p. 793
- Samson v. Baird (W.) & Co. (Scot.); **34. Must. & S.** p. 977
- v. Butt (N.Z.); **35. Mistake**, p. 1012
- v. McKay (N.Z.); **1. Agcy.** p. 66
- v. Raynor (Scot.); **44. Wills**, p. 1181
- Samuelson v. Schwandt (Can.); **24. Errors**, p. 731
- San Onofre, The (1917); **1. Adm.** Nos. 780a, 780b
- Sanborn v. Sanborn (Can.); **27. H. & W.** pp. 796, 798
- Sanchar's (Lord) Case (1612); **14. Crim.** No. 961a
- Sanders v. Miller (1858); **24. Errors**, No. 8790a
- Sanderson v. Heap (Can.); **17. Dep.** p. 604
- Sanderson & Son v. Armour & Co., Ltd. (Scot.); **2. Arbn.** pp. 138, 139
- Sandgate, The (1929); **41. Ship**, No. 2920a
- Sandgate Urban District Council v. Kent County Council (1898); **26. Hghys.** No. 1228a
- Sandison v. Order of Elks (Can.); **31. L. & T.** p. 912
- Sandringham Corp'n. v. Rayment (Aus.); **21. Estpl.** p. 688; **26. Hghys.** p. 785
- Sandusk Creek Bridge, *Re* (Can.); **26. Hghys.** p. 785
- Sandwell Park Colliery Co., *Re*, Field v. Sandwell Park Colliery Co. (1929); **10. Coys.** No. 5036b
- Sandwich v. Union Natural Gas Co. (Can.); **25. Gas**, p. 762
- Sandwich (Town) School Trustees & Sandwich (Town) Corp'n., *Re* (Can.); **19. Educ.** p. 615
- Sanford v. Sanford (Can.); **2. Arbn.** p. 151
- Sangster, *Re*, Green v. Mockett (1894); **3. Bank**, No. 380a
- Sangster v. Eaton (T.) & Co., Ltd. (Can.); **36. Negl.** p. 1028
- Sankey v. R. (Can.); **14. Crim.** p. 517; **22. Evid.** p. 708
- Sanquire's (Lord) Case (1612); **14. Crim.** No. 961a
- Sansar Chand v. Karam Chand (Ind.); **10. Coys.** p. 393
- Santa Singh, *Re* (Can.); **2. Aliens**, p. 120
- Sap v. Picard (Can.); **2. Aliens**, p. 113
- Sapera Tobacco Co. v. Royal Bank of Canada (Can.); **5. Bkpcy.** p. 239
- Sapiro v. Leader Publishing Co. (Can.); **32. Libel**, pp. 925, 926
- Sarat Chandra Chakravarti v. Tarah Chandra Chatterjee (Ind.); **9. Coys.** p. 368
- Sarat Kumar Ray v. Nabin Chandra Ram Chandra Shaka (Ind.); **4. Bkpcy.** pp. 229, 230
- Sarat Kumari Debi v. Sakhi Chand (Ind.); **23. Exors.** p. 716
- Sargant (W. J.) & Sons v. Paterson (Eric) & Co. (1923); **12. Contr.** Nos. 3090a, 3094a
- Sarjeant, *Re*, *Ex p.* Official Receiver (1923); **4. Bkpcy.** Nos. 1808a, 4559a
- Sartori v. Reynolds, Ltd. (Aus.); **2. Animals**, p. 129
- Sasha, Ltd. v. Stoenesco (1929); **13. Coprt.** No. 206a
- Saskatchewan Co-Operative Elevator Co., Ltd., *Re*, *Re* Companies Winding Up Act (Can.); **2. Agric.** p. 84
- , *Re*, Davidson v. Swanson (Can.); **10. Coys.** p. 390; **21. Exon.** p. 698

- Saskatchewan Co-operative Elevator Co., Ltd. v. Canadian Pacific Ry. Co. (Can.); **7. B. of Sale**, p. 292
- Saskatchewan Co-Operative Wheat Producers, Ltd., *Re*, *Re* Senger & Houck (Can.); **2. Agric.** p. 94
- Saskatchewan Co-operative Wheat Producers, Ltd. v. Zurowski (Can.); **17. Dams.** p. 581
- Saskatchewan Elbow Wheat Land Co. v. Gombar (Can.); **2. Agric.** p. 93
- Saskatchewan General Trust Corp., Ltd.'s Case, *Re* Land Titles Act (Can.); **5. Bkpcy.** p. 245
- Saskatchewan Highways Department v. Canadian National Rys. (Can.); **38. Rys.** p. 1079
- Saskatoon Hardware Co. v. McManus (Can.); **21. Exon.** p. 699
- Sasson v. Sasson (1924); **16. Courts**, No. 956a
- Sassoon (M. A.) & Sons, Ltd. v. International Banking Corp. (1927); **6. B. of Exch.** No. 2049a; **17. Deeds**, No. 1678a
- Satchidinanda Dutt v. Nriya Nath Mitter (Ind.); **1. Agcy.** p. 62
- Saudry v. Hampton (N. Z.); **24. Exors.** p. 731
- Saunders, *Re*, Park v. Austin (N. Z.); **22. Evid.** p. 704
- , *Re*, Public Trustee v. Saunders (1929); **18. Descl.** Nos. 188a, 202a
- Saunders Alberta Collieries, Ltd., *Re* (Can.); **4. Bkpcy.** p. 214
- Saunderson v. Gregg (1821); **5. Bkpcy.** No. 5776a
- Sausage Manufacturers' Assocn. v. London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Great Western Ry. Co., Southern Ry. Co., & Cheshire Lines Committee (1924); **8. Carr.** No. 1323c
- Savage South Africa, Ltd. v. London Exhibitions, Ltd. (1899); **28. Injon.** No. 638a
- Savard v. Tremblay (Can.); **6. B. of Exch.** p. 275
- Savidan v. Laplante (Can.); **12. Contr.** p. 444
- Savignac, *Re* (Can.); **42. Solrs.** p. 1124
- Savord v. Desjardins (Can.); **21. Exon.** p. 697
- Sawozuk v. Padgett (Can.); **30. Intox.** p. 883
- Sawyer-Massey v. Schley (Can.); **36. Prrs.** p. 1042
- Sawyer-Massey Co., Ltd. v. Sturgill (Can.); **39. S. Goods.** p. 1107
- Saxicava, The (1924); **1. Adm.** No. 969a
- Saxone Shoe Co., Ltd. v. Somers (Scot.); **26. Hghys.** p. 780
- Sayers v. Sayers (1929); **27. H. & W.** No. 2999a
- Sayre v. Gilfoy (Can.); **21. Exon.** p. 690
- Scuife v. Public Trustee, *Re* Bradford City Premises (1928); **36. Open Sp.** No. 24a
- Scales v. Thompson (George) & Co., Ltd. (1927); **28. Inc. T.** No. 112a
- Scammell (G.) & Nephew, Ltd. v. Attlee (1929); **38. Pub. Auth.** No. 854a
- v. Hurley (1929); **20. Electric.** No. 38a; **38. Pub. Auth.** No. 851a
- Scanlon v. Hartlepool Seatonia S.S. Co., Ltd. (No. 1) (Ir.); **34. Mast. & S.** pp. 967, 982
- Sceptre Hardware Co., *Re* (Can.); **4. Bkpcy.** pp. 231, 232
- Schaffer v. Tubby, Smith & Co., Ltd. (Can.); **6. B. of Exch.** p. 273
- Schaverien v. Morris (1921); **6. B. of Exch.** No. 441a
- Schechter v. Schmier (Can.); **17. Deeds**, p. 587
- Scheerer v. Scheerer (Can.); **27. H. & W.** p. 799; **40. Set-off**, p. 1113
- Schierhout v. Union Government (S. Af.); **11. Const. L.** p. 429; **17. Dep.** p. 590
- Schilling v. Melbourne (City) (Aus.); **38. Pub. Hlth.** p. 1072; **42. Str. Traf.** p. 1151
- Schlesinger, *Ex p.*, R. v. St. Marylebone Income Tax Comrs. (1928); **28. Inc. T.** No. 625a
- Schmidt v. Stuckey & Pearse (Can.); **32. Lien**, p. 930
- Schnapper, *Re* (1928); **11. Confl.** No. 548a
- Schneider v. Heath (1813); **39. S. Goods**, No. 643c
- Schnier v. Schechter (Can.); **17. Deeds**, p. 587
- Schofield v. Glenn & Babb (Can.); **2. Animals**, p. 126
- v. Tummonds (Can.); **12. Contr.** p. 443
- Schohl v. Kay (Can.); **1. Action**, p. 9
- Schonberger v. Barron (Can.); **36. Negl.** p. 1027
- School Act, *Re*, R. (Chutskoff) v. Riwny & Peschnick (Can.); **19. Educ.** p. 643
- School Section 16 Trustees v. Cameron (Can.); **13. Corps.** p. 486; **19. Educ.** p. 643
- School Trustees of Fredericton v. School Trustees of Kingsclear (Can.); **19. Educ.** p. 645
- Schostall v. Johnson (1919); **1. Agcy.** No. 3027a
- Schroder v. Ward (1863); **3. Bailmt.** No. 224
- Schubert v. Koch (Can.); **25. Fraud. Contr.** p. 748
- Schultz v. Alloway (Can.); **38. Rates**, pp. 1085, 1086
- v. Can. Surety Co. (Can.); **26. Guar.** p. 768
- Schurr, *Re* (Aus.); **2. Aliens**, p. 111
- Soble v. Woodward (Can.); **17. Dams.** p. 578
- Scollick v. Scollick (1927); **27. H. & W.** No. 5588b
- Scotia Flour & Feed Co. v. Strong (Can.); **39. S. Goods**, p. 1105
- Scotland Woollen Mills Co., *Re* (Can.); **4. Bkpcy.** p. 218
- Scott, *Ex p.*, R. v. Scott (Aus.); **25. Gaming**, p. 758
- , *Re* (Aus.); **4. Bkpcy.** p. 205
- , *Re*, *Ex p.* Official Receiver (1921); **5. Bkpcy.** No. 8435a
- , *Re*, Scott v. Scott (1926); **24. Exors.** No. 8270a
- v. Angus (Can.); **21. Exon.** p. 692
- A-G. for Canada (1923); **17. Dep.** No. 200b
- v. Berkeley (1817); **10. Coys.** No. 8595a
- v. Calgary & Riddock (Can.); **26. Hghys.** p. 780
- v. Imperial Loan Co. (Can.); **38. Rates**, p. 1086
- v. McCabe (Can.); **18. Distr.** p. 622
- v. McCarthy (Ir.); **39. Revenue**, p. 1098
- v. McDonald (Can.); **26. Guar.** p. 768
- v. Montgomery (Can.); **17. Deeds**, p. 585
- v. Moose Jaw Motors, Ltd. & J. Hanna, Ltd. (Can.); **7. B. of Sale**, p. 293
- v. Rogers Fruit Co. (Can.); **39. S. Goods**, p. 1105
- v. Scott (Ir.); **20. Eqq.** p. 660
- v. Scott, *Re* Scott (1926); **24. Exors.** No. 8270a
- v. Supple (Can.); **23. Exors.** p. 727
- v. Watkins (N.Z.); **34. Med.** p. 1002
- v. Winnipeg Electric Co. (Can.); **38. Rys.** p. 1077
- v. Woodford Municipal District (Can.); **18. Distr.** p. 623
- Scott & Beard's Patent, *Re*, *Re* Beard & Scott's Patent (1927); **36. Pats.** Nos. 1557b, 1687a, 1706a
- Scott (Donald H.) & Co., Ltd. v. Barclays Bank, Ltd. (1923); **3. Bank.** No. 756a
- Scott & Oshawa Town, *Re* (Can.); **2. Arbn.** p. 154; **11. Comp. Pche.** p. 407
- Scott & Peden v. Elliott (Can.); **12. Contr.** p. 464
- Scott & Sons v. Del Sel (Scot.); **2. Arbn.** p. 139
- Scott Estate, *Re* (Can.); **18. Descl.** p. 610; **28. Inft.** p. 850
- Scott Paper Co. v. Drayton Paper Works, Ltd. (1927); **22. Evid.** No. 535a
- Scottish American Investment Co. v. Hope (Can.); **43. Vtrs.** p. 1172

- Scottish Canadian Asbestos Co., *Re*, Allen v. Hanson (Can.); **10. Coys.** p. 397
- Scottish Cinema & Variety Theatres, Ltd. v. Ritchie (Scot.); **42. Theatres.** p. 1155
- Scottish Greyhound Racing Co., Ltd. v. Glasgow Assessor (Scot.); **38. Rates.** p. 1083
- Scottish Life Co. v. Donald (Scot.); **27. H. & W.** p. 789
- Scottish Motor Traction Co., Ltd. v. Lanarkshire County Council (Scot.); **38. Pub. Hlth.** p. 1072; **42. Str. Traf.** p. 1152
- Scottish National Trust Co., *Re* (Scot.); **9. Coys.** p. 361
- Scottish Stamping & Engineering Co., Ltd. (Scot.); **9. Coys.** p. 360
- Scottish Woollen Technical College v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 815
- Scotton v. Bridge & Co., Ltd. (Aus.); **3. Bailmt.** p. 172
- Scragg, *Re* (Can.); **7. B. of Sale.** p. 291
- Scranton's Trustee v. Pearse (1922); **4. Bkpcy.** No. 1894a
- Scrimaglio v. Thornett & Fehr (1924); **2. Arbn.** Nos. 135a, 1857b, 1912b
- Scuilli v. Planta (Can.); **21. Exon.** p. 689
- Sculthorpe, *Re* (Can.); **23. Exors.** p. 723
- Seythes v. Gibsons, Ltd. (Can.); **31. L. & T.** p. 903
- Seythes & Co., *Ex p.*, *Re* Gold Medal Furn. Mfg. Co. (Can.); **35. Mistake.** p. 1012
- Seabourne v. Powell (1686); **21. Estpl.** No. 993a
- Seabrook & Sons v. Jones (1929); **44. Work.** No. 64
- Seager v. Seager (1925); **16. Courts.** No. 969a
- Seaman, *Re* (1808); **33. Limit.** No. 827b
- Searle v. Alliance Insurance Co. (Can.); **2. Arbn.** pp. 137, 138
- v. Alliance Insurance Co. (No. 3) (Can.); **29. Insee.** p. 875
- Searle, Hoare & Co., *Re*, *Ex p.* Trustee (1924); **4. Bkpcy.** Nos. 3210a, 4484a
- Seas Shipping Co. v. Canadian Stevedoring Co. (Can.); **1. Agcy.** p. 40; **41. Ship.** p. 1130
- Seaton, *Re* (1928); **33. Limit.** No. 1882a
- Seay v. Somerville Hardware Co., Ltd. **21. Exon.** p. 690
- Secret. The, The Innisfail (1876); **1. Adm.** No. 1280a
- Secretary of State v. Ghanaya Lal-Sri Kishan (Ind.); **7. Carr.** p. 317; **36. Negl.** p. 1029
- v. Har Kishan Das-Kura Mal (Ind.); **8. Carr.** p. 316
- v. Madho Ram (Ind.); **12. Contr.** p. 171
- Secretary of State for Home Affairs v. O'Brien (1923); **16. Cr. Pract.** Nos. 470, 601, 682a, 801
- Secretary of State for India v. Raja Parthasarathy Appa Rao (Ind.); **17. Dep.** pp. 602, 604
- v. Ramanujachariar (Ind.); **38. Rules.** p. 1083
- Secretary of State for India in Council v. Alladin (Ind.); **38. Pub. Auth.** p. 1068
- v. Murti Manohar (Ind.); **8. Carr.** p. 320
- Secretary of State for India in Council v. Raja Jyoti Prashad Singh (Ind.); **16. Courts.** p. 553
- Secretary of State for India in Council v. Volkart Brothers (Ind.); **30. L. & T.** p. 902
- Secretary of State for War v. Middlesex County Council (1923); **11. Const. L.** No. 515a
- v. Midland Great Western Ry. Co. of Ireland (Ir.); **8. Carr.** p. 315
- Secretary of State of Canada v. Greenshields, Ltd. (Can.); **2. Aliens.** p. 108
- v. Neitzke (Can.); **2. Aliens.** p. 106
- v. Wiehmayer (Can.); **2. Aliens.** p. 106
- Sect. 24 of British North America Act, *Re* (Can.); **42. Stats.** p. 1146
- Security Lumber Co. v. Anaka (Can.); **32. Lien.** p. 931
- Security Lumber Co., Ltd. v. Koskie (Can.); **32. Limit. of A.** p. 935
- Security Trust Co., Ltd. v. Sayre & Gilfoy (Can.); **35. Mtge.** p. 1021
- Seddon v. Commercial Salt Co., Ltd. (1925); **18. Discy.** No. 127a
- Sedgwick Collins & Co. v. Rossia Insurance Co. of Petrograd (1926); **10. Coys.** No. 8527a; **11. Confl.** No. 1307b; **21. Exon.** No. 2170a
- Sedgwick Collins & Co., Ltd. v. Rossia Insurance Co. of Petrograd (1927); **10. Coys.** No. 8527a
- Seeley & Co. v. Brown (Can.); **28. Inc. T.** p. 834
- Seethayya v. Subramanya Somayajula (Ind.); **22. Evid.** p. 705
- Seguier v. Dufresne (Can.); **5. Bkpcy.** pp. 254, 256
- Seignior & Wolmer's Case (1623); **34. Mast. & S.** No. 962a
- Seiler, *Ex p.*, Dixon v. Seiler (Aus.); **25. Food.** p. 746
- Selby v. Bannigan (Aus.); **24. Fact.** p. 738
- Seldou v. Zambawski (Can.); **27. H. & W.** p. 791
- Selleck v. Hellens (1928); **2. Agric.** No. 266, n
- Seller v. Work (1801); **1. Agcy.** No. 981a
- Sellers (E. H.) & Sons, Ltd., *Ex p.*, *Re* Marsden (1921); **4. Bkpcy.** No. 1253a
- Semet-Solvay Co. v. Comr. of Patents (Can.); **36. Pats.** pp. 1046, 1048
- Semple v. Holland (1863); **35. Name.** No. 61a
- v. Sawyer-Massey Co. (Can.); **32. Lien.** p. 930
- v. Sharp (Can.); **1. Agcy.** p. 68; **27. H. & W.** p. 789
- Seneca, Ship v. Macdonald (Can.); **1. Adm.** p. 35
- Seng Djit Hin v. Nagurdas Purshotumdas & Co. (1923); **12. Contr.** No. 3101a
- Senger & Houck, *Re*, *Re* Saskatchewan Co-operative Wheat Producers, Ltd. (Can.); **2. Agric.** p. 94
- Senior v. Wilson, *Re* Whitwell (1890); **20. Eqq.** No. 1552a
- v. Wolmer (1623); **34. Mast. & S.** No. 962a
- Sentinel-Review Co. v. Robinson (Can.); **32. Libel.** pp. 921, 926
- Serediuk v. Posner (Can.); **36. Negl.** p. 1029
- Sergeant, *In the Goods of* (1872); **22. Evid.** No. 1418a; **23. Exors.** No. 734a
- Serjeant, *In the Goods of* (1872); **22. Evid.** No. 1418a; **23. Exors.** No. 734a
- Serpell's Case, *Re* Luicks, Ltd. (Aus.); **9. Coys.** p. 362
- Servais v. Shear (Can.); **32. Limit. of A.** p. 935
- Service v. Sundell (1929); **36. Negl.** No. 736a
- Services' Club Estate Syndicate, Ltd., *Re* McCandlish v. Services' Club Estate (1929); **10. Coys.** No. 5127a
- Seshgiri Shambhulingam v. Manjayya (Ind.); **17. Dep.** p. 605
- Sessions, *Ex p.* (Can.); **36. Prturs.** p. 1043
- Sethu v. Palain (Ind.); **3. Basty.** p. 196
- Sevenoaks Urban District Council v. Twynnam (1929); **42. Str. Traf.** No. 5a
- Severn v. R. (Can.); **17. Dep.** p. 600
- Sewell v. Hnatiw & Hnatiw (Can.); **35. Mtge.** p. 1022
- Sewell v. Woodfield, *Re* Tanqueray (1921); **21. E. D.** No. 576a
- Sexsmith, *Re* (Can.); **20. Eqq.** p. 664
- Seymour v. Pratt (Can.); **23. Exors.** p. 724
- v. Reed (1927); **28. Inc. T.** No. 502
- Shafto, *Re*, Pawcett v. Shafto (1903); **20. Eqq.** No. 2075a
- Shaik Abdul Karim v. Thakurdas Thakur (Ind.); **28. Infts.** p. 851

- Shakespeare Memorial Trust, *Re*, Lytton (Earl) v. A.-G. (1923); **8. Char.** Nos. 73a, 195a, 2146a
- Shakool & Co. v. Finlay Fleming & Co. (Ind.); **17. Damgs.** p. 582
- Shales v. Seignoret (1699); **12. Contr.** No. 3103a
- v. Shales (1701); **25. Gifts.** No. 73b
- Shanagan v. Shanagan (Can.); **25. Fraud. Conv.** p. 750
- Shand, *Re* (Can.); **28. Infsts.** p. 850
- Shankey, *Ex p.*, *Re* Lawson (Can.); **7. B. of Sale,** p. 290
- Shanks v. Inland Revenue Comrs. (1929); **28. Inc. T.** Nos. 11a, 24a, 674c; **30. Jdgmts.** No. 705a
- Shantz & Hallman, *Re* (Can.); **32. Limit. of A.** p. 937; **35. Mtge.** p. 1020
- Shapiro v. Inland Revenue Comr. (S. Af.); **28. Inc. T.** p. 820
- Sharp v. Sparkes (1926); **30. Intox.** Nos. 9a, 607a
- Sharp (John) & Sons, Ltd. v. Katherine Mackall, The (Aus.); **1. Adm.** p. 37
- Sharpe v. Southern Ry. Co. (1925); **8. Carr.** No. 560a
- Sharpe & Dohme Incorporated v. Boots Pure Drug Co., Ltd. (1927); **18. Discy.** No. 1631a
- Shatford v. B. C. Wine Growers, Ltd. (Can.); **12. Contr.** p. 441
- Shatilla v. Feinstein (Can.); **17. Damgs.** p. 581
- Shaver v. Goldhar (Can.); **25. Fraud. Conv.** p. 749
- v. Great Western Ry. Co. (Can.); **17. Damgs.** p. 582
- Shaw, *Re* (Can.); **3. Bank.** p. 190; **5. Bkpcy.** p. 265
- , *Re*, *Ex p.* Official Receiver (1920); **4. Bkpcy.** No. 434a; **5. Bkpcy.** No. 8771a
- v. Jones (N.Z.); **12. Contr.** p. 440
- v. Neale (1855); **30. Jdgmts.** No. 368a
- v. — (1858); **30. Jdgmts.** No. 368a
- v. Pope (1831); **13. Corpus.** No. 707a
- v. Public Trustee (1929); **44. H'ills.** No. 5520
- v. Robinson (Can.); **34. Mines,** p. 1006
- v. Shaw (Can.); **37. Powers,** p. 1062
- v. Youngstown (Can.); **38. Real Prop.** p. 1089
- Shaw (Walter W.) Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 216
- Shaw Wallace & Co. v. Amritsar National Bank (In Liquidation) (Ind.); **3. Bank.** p. 191
- Shawra, *Re* (Can.); **13. Corpus.** p. 486; **38. Pub. Hlth.** p. 1072
- Shea v. Boschetti, *Re* Peile (1858); **4. Bkpcy.** No. 4772b
- Sheaf Brook, The (1926); **1. Adm.** Nos. 565a, 874a, 876a
- Shearer v. Smoky Lake Municipal District (Can.); **38. Rates,** p. 1085
- Shears v. Mendeloff (1914); **22. Evid.** No. 55d
- Shears & Sons, Ltd. v. Jones (1922); **7. B. of Sale,** No. 110a
- Sheaser v. Sheaser (Can.); **11. Confl.** p. 422
- Sheay v. Tite (B. W.) & Sons (1927); **34. Mast. & S.** No. 3530b
- Shecomb v. Hawkins (1612); **30. L. & T.** No. 1197a
- Shee v. Baker (1927); **28. Inc. T.** No. 442
- Sheehan v. Shaw (Can.); **17. Dep.** p. 597; **30. Intox.** p. 884
- Sheepwash v. Deer Mountain Lumber Co. (Can.); **32. Lien,** p. 930
- Sheffield Corp'n. v. Kitson (1929); **38. Pub. Hlth.** No. 137a; **42. Str. Traf.** No. 34a
- v. Luxford (1929); **13. Cty. Cts.** Nos. 198a, 198b; **42. Stats.** No. 1364a
- v. Morrell (1929); **13. Cty. Cts.** Nos. 198a, 198b; **42. Stats.** No. 1364a
- Shell-Mex, Ltd. v. Elton Cop Dyeing Co., Ltd. (1928); **39. S. Goods,** No. 1089a
- Shenstone v. Hewson (Aus.); **40. S. Land,** p. 1108
- Sheo Narain v. East Indian Ry. (Ind.); **8. Carr.** p. 317
- Sheonarain Singh v. R. (Ind.); **14. Crim.** p. 517
- Shepard v. Bruner (Can.); **28. Infsts.** p. 846
- Shepard & Morse Lumber Co. Incorporated v. Mathers (I. H.) & Son (Can.); **1. Agcy.** p. 79
- Shephard v. Shephard (Can.); **25. Fraud. Conv.** p. 749
- Shepherd, *Re*, Smithem v. Shepherd (1921); **8. Char.** No. 12a
- v. Houston (Aus.); **35. Mtge.** p. 1021; **38. Real Prop.** p. 1090
- v. Livingston (Can.); **8. Chos.** p. 349
- v. Robinson (1919); **3. Barr.** No. 323a
- Sheppard v. Dry (1840); **6. B. of Exch.** No. 709a
- v. First International Bank of Sweet Grass (Can.); **3. Bank.** p. 176
- v. McCabe (Can.); **28. Infsts.** p. 850
- v. Robinson (Can.); **25. Gifts,** p. 764; **28. Infsts.** p. 851
- Sherborne's (Lord) Settled Estate, *Re* (1929); **30. Land Imp.** Nos. 72a, 79a, 79b
- Sherbrooke Corp'n. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 1077
- Sherbrooke Machinery Co., Ltd. v. Hydraulic Co., Ltd. (Can.); **36. Pats.** p. 1044
- Sheriff v. McKeen (Can.); **7. B. of Sale,** p. 291
- v. Sheriff (Aus.); **27. H. & W.** p. 800
- Sherlock v. Powell (Can.); **32. Lien,** p. 932; **44. Work,** p. 1185
- Sherrard v. Barron (Ir.); **1. Agcy.** p. 57
- Sherrin v. Pearson (Can.); **32. Limit. of A.** p. 936
- Sherrin v. Wiggins (Can.); **40. S. Land,** p. 1109
- Sherritt v. McCallum (Can.); **32. Lien,** p. 931
- Sheru & Gama v. R. (Ind.); **14. Crim.** p. 500
- Sherwin Estate, *Re*, *Re* Langley Estate (Can.); **28. Infsts.** p. 850
- Sherwood v. Sherwood (1929); **27. H. & W.** Nos. 5396a, 5497a, 5498a, 5499a
- Shewchuk v. Seafred (Can.); **2. Agric.** p. 94; **38. Rates,** p. 1086
- Shiach v. Farquhar (Scot.); **24. Fish.** p. 745
- Shinbane v. Minuk (Can.); **38. Real Prop.** p. 1090
- Shipway Iron Bell & Wire Manufacturing Co., Ltd., *Re* (Can.); **10. Coys.** pp. 385, 386
- Shirley, *Re* (Can.); **4. Bkpcy.** p. 208
- Shirlcliffe v. Lemon (Can.); **32. Limit. of A.** p. 936
- Shore (Doe d.) v. Saunders (Can.); **20. Eqp.** p. 665
- Short v. Edwards (1795); **22. Evid.** No. 301a
- v. Lambe (Ir.); **1. Agcy.** p. 54
- v. Poole Corp'n. (1926); **19. Educ.** No. 302a
- v. Taylor (1709); **36. Nuis.** No. 567a
- Shortal v. Buchanan (N.Z.); **1. Agcy.** pp. 47, 48
- Shotts Iron Co., Ltd. v. Curran (1929); **34. Mast. & S.** No. 3359a
- Shrives & McKenzie Pty., Ltd., *Re* (Aus.); **10. Coys.** p. 389
- Shtitz v. Canadian National Rys. (Can.); **1. Action,** p. 2; **36. Negl.** pp. 1032, 1033
- Shubrati v. Shams-Uddin (Ind.); **33. Mal. Pros.** p. 958
- Shukin v. Demosky (Can.); **17. Deeds,** p. 585
- Shulman, *Re*, *Re* Grocery Specialty Co. (Can.); **5. Bkpcy.** p. 254
- Shupe v. Langenburg Rural Municipality (Can.); **7. Bounds. & F.** p. 298
- Shure, *Ex p.*, R. v. Brixton Prison (Governor) (1926); **5. Bkpcy.** No. 8534a; **16. Cr. Pract.** No. 585a
- Shuter v. Graham (Can.); **21. Exon.** p. 692
- v. Ridgway (S. Af.); **6. B. of Exch.** p. 279
- Shuttleworth v. Cox Brothers & Co. (Maidenhead), Ltd. (1927); **9. Coys.** No. 3704a
- v. Vancouver General Hospital (Can.); **36. Nuis.** pp. 1035, 1036

- Sibbald v. Grand Trunk Ry. Co. (Can.); **17. Dams.** p. 583
- Sibisi v. Hermansberg Mission Society (S. Af.); **2. Aliens**, pp. 104, 113
- Sickles v. Asselstine (Can.); **23. Exors.** p. 723
- Sidebotham v. Barrington (1841); **5. Bkpcy.** No. 7931a
- Sidh Gopal v. Bihari Lal (Ind.); **24. Fam. Arr.** p. 741
- Sidney Lee (Exeter), Ltd. v. James (1928); **34. Mast. & S. Nos.** 3545a, 4012a
- Sigerseth v. Pedersen (Can.); **34. Mast. & S.** p. 964
- Signal Hill Oils Co., Ltd. v. London Oil Securities, Ltd. (Can.); **9. Coys.** p. 363
- Sigurdson v. Robinson (William) Co., Ltd. (Can.); **2. Arbn.** p. 142
- Silber's Settlement, *Re*, Public Trustee v. Silber (1920); **5. Bkpcy.** Nos. 5821a, 6295a
- Sills v. Bickford (Can.); **32. Lien**, p. 930
- Silva, *Re*, Silva v. Silva (1920); **20. Egy.** No. 1007a
- Silver v. Ocean S.S. Co., Ltd. (1929); **41. Ship.** Nos. 2257b, 2777b
- Silverman v. Imperial London Hotels, Ltd. (1927); **12. Contr.** No. 5168a; **36. Negl.** No. 267a
- v. Legree (Can.); **1. Agcy.** pp. 46, 58
- Silvester v. Jarman (1822); **35. Mtge.** No. 1326a
- Simback v. Saga, The (Can.); **1. Adm.** pp. 29, 30
- Simbro Trading Co. v. Posograph (Parent) Corp., (1929); **2. Arbn.** No. 523a
- Simcoe (County) v. Sanderson (Can.); **38. Real Prop.** p. 1090
- Simeons (C.) & Co. v. Durand's Trustee (1928); **5. Bkpcy.** No. 6507a
- Simms v. Chernenkoff (Can.); **11. Confl.** p. 419
- v. Cox (1824); **25. Gifts.** No. 399a
- v. Hodder (Nfld.); **1. Adm.** p. 26
- Simon-Carves, Ltd. & Robinson's Patent, *Re* (1928); **36. Pats.** No. 412a
- Simonin v. Pillion (Can.); **6. B. of Exch.** pp. 277, 278
- Simonson, *Re*, Simonson v. Slaaten (Can.); **28. Infts.** p. 899
- v. Simonson (Can.); **21. Eron.** p. 679
- Simplex Machine Co. v. McLellan, McFeeley & Co. (Can.); **44. Work.** p. 1185
- Simpson, *Re* (Can.); **23. Exors.** p. 727
- v. Batey (1924); **2. Agric.** No. 29a
- v. Chamberlain (Can.); **29. Insce.** p. 870
- v. Finlayson (Aus.); **34. Mast. & S.** p. 968
- v. Maurice's Executors (1929); **28. Inc. T.** No. 428a
- v. Oakes (Can.); **32. Lien**, p. 930
- v. O'Sullivan (1840); **35. Mtge.** No. 1279a
- (Doe d.) v. Privat (Can.); **21. Exon.** p. 690
- v. Weber (1925); **19. Easmt.** Nos. 204a, 1322a, 1322b
- Simpson & Ors v. Cousins (Can.); **12. Contr.** p. 469
- Simpson Estate, *Re* (Can.); **17. Dep.** p. 603
- Simpson (D.), Ltd. (Scot.); **9. Coys.** p. 360
- Sims v. Seller (Can.); **2. Arbn.** p. 145
- Simson v. Miatt (1929); **31. L. & T.** Nos. 7037a, 7351a, 7352d, 7359a
- Sinanide v. Maison Kosmeo (1928); **13. Coprt.** Nos. 43b, 91a, 408a
- Sincennes-McNaughton Line, Ltd. v. Brulin S.S. (Can.); **41. Ship.** p. 1135
- Sincennes-McNaughton Lines v. Steel Chemist (Can.); **41. Ship.** p. 1135
- Sinclair v. Land Settlement Board (Can.); **7. Bldg. Conts.** p. 306
- v. Rankin (Scot.); **3. Basty.** p. 201
- v. Walker (Can.); **2. Animals**, pp. 132, 136
- Sing Yim Hong, *Re*, *Re* Mah Shin Shong (Can.); **2. Aliens**, p. 121
- Singha (Dr. R. N.) v. Secretary of State for India in Council (Ind.); **17. Dep.** p. 602; **28. Inc. T.** p. 839
- Singleton, *Re*, *Ex p.* Williams (Aus.); **33. Mags.** p. 953
- Singleton Abbey, S.S. v. Paludina, S.S. (1927); **1. Adm.** No. 1114a
- Sinwick v. Elfros (Can.); **18. Distr.** p. 624
- Sir G. B. Hunter (1922) "C." Trust (Trustees), Trustees v. Inland Revenue Comrs. (1929); **28. Inc. T.** No. 172f
- Sir W. C. Leng & Co. (Sheffield Telegraph), Ltd. v. Sillitoe (1929); **25. Gaming.** No. 415c
- Sissons v. Hassard (Can.); **9. Coys.** p. 365
- Sisters of the Holy Names of Jesus & Mary Community, *Re*, *Re* Winnipeg Charter (Can.); **16. Courts.** p. 552
- Sitaram Krishna Padhye v. Chinandas Fatehchand (Ind.); **6. B. of Exch.** p. 274
- Sivier v. Harris (1876); **18. Discy.** No. 1677a
- Skale v. Becker (Can.); **6. B. of Exch.** p. 275
- Skaleski, *Re*, Popham v. Bertrand (Can.); **28. Infts.** p. 850
- Skeahon v. Whelan (Can.); **38. Real Prop.** p. 1091
- Skeate v. Slaters, Ltd. (1914); **22. Evid.** No. 55e
- Skeele, *Re* (Can.); **5. Bkpcy.** p. 240
- Skidmore v. Bullock, Lade & Co., Ltd. (1928); **34. Mast. & S.** No. 2179a
- Skinner v. James Syphonic Visible Measures, Ltd. (Aus.); **40. S. Land.** p. 1110
- v. Naunihal Singh (Ind.); **32. Limit. of A.** p. 937
- Skinner v. Sanders, *Re* Morris (1927); **21. E. D.** No. 209b
- Skipp v. Kelly (1926); **12. Contr.** No. 2190a
- Skipper v. Symmis (Aus.); **1. Agcy.** p. 39
- Skipwith v. Skipwith (1929); **27. H. & W.** Nos. 5531a, 5537a
- Slack v. Leeds Industrial Co-operative Society, Ltd. (1923); **19. Easmt.** No. 1399
- v. Leeds Industrial Co-operative Society, Ltd. (1924); **19. Easmt.** Nos. 1399, 1399a, 1444a
- Sladden, *Ex p.*, *Re* Gordean Furniture Co. (Can.); **4. Bkpcy.** p. 227
- Slade, *Ex p.*, *Re* v. Southampton County Confirming Committee (1929); **30. Intox.** Nos. 292a, 293a
- Slade, *Re*, Crewkerne United Breweries, Ltd. v. Slade (1921); **4. Bkpcy.** No. 4335a
- v. Pattison (1835); **38. Real Prop.** No. 159a
- Slater v. Advocate, H.M. (Scot.); **14. Crim.** p. 528
- Slavonski v. Pelletterie de Roubaix Societe Anonyme (1927); **17. Dams.** No. 227a
- Sleeman, *Re*, Cragoe v. Sleeman (1929); **44. Wills.** No. 7911a
- Sletto v. Adams (Can.); **1. Agcy.** p. 68
- Slingerland v. Massey Manufacturing Co. (Can.); **21. Eron.** p. 690
- Sloan v. Ottawa Car Manufacturing Co. (Can.); **7. B. of Sale.** p. 291
- Sloane v. Cadogan (1808); **8. Chos.** No. 624a
- Slocan Municipal Election, *Re* (Can.); **20. Elect.** p. 654
- Sloccock v. Official Receiver, *Re* Walter (1929); **4. Bkpcy.** No. 4555a; **5. Bkpcy.** No. 6353a
- Slocomb v. Hawkins (1612); **30. L. & T.** No. 1197a
- Sloggett v. Sloggett (1928); **27. H. & W.** No. 5076a
- Small v. Packard (Can.); **23. Errors.** p. 715
- Small & Sons, Ltd. v. Middlesex Real Estates, Ltd. (1921); **7. Bldg. Conts.** Nos. 129a, 147a
- Smalley, *Re*, Smalley v. Scotton (1929); **44. Wills.** No. 7307a

- Smart, *Re* (Can.); **16. Cr. Pract.** p. 562  
 Smart v. Perthshire Education Authority (Scot.); **19. Educ.** p. 647  
 — v. Smart (Scot.); **23. Exors.** p. 715  
 — v. South African Rys. & Harbours (S. Af.); **36. Negl.** p. 1033; **38. Rys.** p. 1077  
 — v. Wilkinson (Scot.); **35. Misrep.** p. 1011; **40. Set-off**, p. 1113  
 Smart Brothers, Ltd. v. Holt (1929); **18. Distr.** No. 424a  
 Smectons, Ltd. (In Liquidation), *Re* (N.Z.); **10. Coys.** p. 389  
 Smiles v. Belford (Can.); **17. Dep.** p. 593  
 Smiley v. Evans (Can.); **20. Elect.** p. 652  
 Smith, *Ex p.*, *Re* Smith (1812); **5. Bkpcy.** No. 7089a  
 —, *Ex p.*, R. v. "Daily Mail" (Editor & Proprietors) (1927); **16. Cntmpt.** No. 283a  
 —, *Ex p.*, R. v. Daily Mirror (1927); **16. Cntmpt.** No. 283a  
 —, *Ex p.*, R. v. Kent J.J. (1928); **16. Cr. Pract.** Nos. 1466a, 3433a  
 —, *Re* (Can.); **8. Char.** p. 339; **44. Wills.** p. 1183  
 —, *Re, Ex p.* Smith (1812); **5. Bkpcy.** No. 7089a  
 —, *Re, Re* Land Titles Act (Can.); **38. Rates.** p. 1086  
 —, *Re, Blyth v. A.-G.* (1920); **8. Char.** Nos. 703a, 841a  
 —, *Re, Vincent v. Smith* (1929); **40. Sttlmts.** No. 1878b  
 — v. Adam (Scot.); **39. Revenue**, p. 1097  
 — v. Bailly (1727); **6. B. of Exch.** No. 694d  
 — v. Bason (N.Z.); **1. Agcy.** pp. 54, 59  
 — v. Benor (Can.); **12. Contr.** p. 118; **43.** p. 1168  
 — v. Benton (Can.); **12. Contr.** p. 453  
 — v. Bernhart (Can.); **32. Lien**, p. 931  
 — v. Birch (1840); **24. Exors.** No. 8342a  
 — v. Bird (S. Af.); **23. Exors.** p. 716  
 — v. Blenheim Borough Council (N.Z.); **38. Pub. Hlth.** p. 1075  
 — v. Bridger (1853); **23. Exors.** No. 5540  
 — v. Burn (Can.); **26. Guar.** p. 768  
 — v. Canadian National Rys. (Can.); **18. Discy.** p. 615  
 — v. Catherwood, *Re* Dewdney Election Appeal (Can.); **20. Elect.** p. 651  
 — v. —, *Re* Provincial Elections Act (Can.); **20. Elect.** p. 651  
 — v. Comtois (Can.); **1. Agcy.** p. 57  
 — v. Curry (Can.); **7. Bounds. & F.** p. 298  
 — v. Dawson (Can.); **12. Contr.** p. 450  
 — v. Dickinson (1844); **21. Exon.** No. 146a  
 — v. Elrose Rural Telephone Co., Ltd. (Can.); **10. Coys.** p. 380  
 — v. Everett (1792); **8. Chos.** No. 214a  
 — v. Federal Comr. of Taxation (Aus.); **20. E. D.** p. 671  
 — v. Finch (Can.); **43. Trade Mks.** p. 1161  
 — v. Fralick (Can.); **6. B. of Exch.** p. 275  
 — v. Gautsche (Can.); **3. Bank.** p. 178  
 — v. Gibson (1871); **33. Jdgmts.** No. 176a  
 — v. Gordon (Can.); **16. Courts.** p. 551  
 — v. Henderson (Can.); **9. Coys.** p. 372  
 — v. Jerves & Bailly (1727); **6. B. of Exch.** No. 694d  
 — v. McCutcheon (Can.); **7. Bldg. Conts.** p. 301  
 — v. McLean (Can.); **22. Evid.** p. 704  
 — v. Martin (1925); **7. Bldg. Conts.** No. 388a  
 — v. Moats (Can.); **3. Bailmt.** p. 167  
 — v. Nevilles (Can.); **22. Evid.** p. 704  
 — v. O'Grady (1870); **24. Exors.** No. 7492a  
 — v. Pawson (1855); **35. Mistake**, No. 414a  
 — v. R. (Ind.); **15. Crim.** p. 538  
 — (Judge) v. Renfrey (Aus.); **1. Agcy.** p. 66  
 — v. Risley (1639); **38. Real Prop.** No. 761a  
 Smith (Doe d.) v. Roe (1840); **19. Eccl.** No. 4034a  
 — v. Schilling (1928); **17. Damgs.** Nos. 721a, 751a, 784a, 832a; **30. Jdgmts.** No. 628c  
 — v. Smith (1854); **24. Exors.** No. 6388a  
 — v. — (Can.) (1915); **21. Estpl.** p. 686; **25. Gifts.** p. 765  
 — v. — (Can.) (1923); **11. Confl.** p. 424  
 — v. — (1925); **13. Cty. Cts.** No. 147a  
 — v. — (Scot.); **27. H. & W.** p. 795  
 — (Doe d.) v. Snarr (Can.); **38. Real Prop.** p. 1091  
 — v. Stevens (1929); **15. Crim.** No. 7657a  
 — v. Torr (1862); **3. Bailmt.** No. 131a  
 — v. Trocadero Dansant, Ltd. (Aus.); **13. Corpns.** p. 487  
 — v. Trustee, *Re* Allied Oil & Gas Co. (Can.); **4. Bkpcy.** p. 218  
 — v. Tsakyris (1929); **21. Exon.** No. 1334a  
 — v. Union S.S. Co. (Can.); **8. Carr.** p. 321  
 — v. Upper Canada College (Can.); **1. Agcy.** pp. 58, 64  
 — v. Ward (Can.); **1. Action**, p. 1; **39. S. Goods.** p. 1103  
 — v. Weguelin (1869); **11. Confl.** No. 650a  
 — v. Wemyss Coal Co., Ltd. (Scot.); **34. Mast. & S.** p. 972  
 — v. Wilkins (1833); **22. Evid.** No. 421a  
 — v. Winter (1838); **18. Discy.** No. 528a  
 — v. Wood (1929); **26. Guar.** No. 1223a  
 — v. Wright (Can.); **1. Agcy.** p. 63  
 Smith & Dale, *Re* (Can.); **38. Real Prop.** p. 1089  
 Smith & Plympton (Township), *Re* (Can.); **2. Arbn.** p. 147  
 Smith & Smith v. Dingle & Holmes (Can.); **1. Agcy.** p. 63  
 Smith (John) & Son v. Moore (1921); **30. Jdgmts.** No. 559a  
 Smith & Tatchell v. Hanson Tire & Supply Co., Ltd. (Can.); **9. Coys.** p. 363  
 Smith, etc. v. Sunday Times (Aus.); **18. Discy.** p. 613  
 Smith, Ltd. v. Vancouver Cremation Society (Can.); **21. Exon.** p. 691  
 Smith Lumber Co., Ltd., *Ex p.* (Can.); **16. Cr. Pract.** p. 569  
 Smith Transportation Co., *Re* (Can.); **10. Coys.** p. 383  
 Smith's Estate, *Re*, Canadian Guarantee Trust Co. v. Delisle (Can.); **21. Exon.** p. 691  
 Smith's Newspapers, Ltd., *Re, Ex p.* Higgs (Aus.); **15. Crim.** p. 546; **22. Evid.** p. 712  
 Smith's (H. E.) Patent, *Re* (1929); **36. Pats.** No. 1522a  
 Smith's (E. J.) Patents, *Re* (1928); **36. Pats.** No. 1687c  
 Smith's Settlement, *Re*, Wilkins v. Smith (1902); **30. Jdgmts.** No. 787a  
 Smith's Trustees v. Macpherson (Scot.); **11. Confl.** p. 416  
 Smithem v. Shepherd, *Re* Shepherd (1921); **8. Char.** No. 12a  
 Smithfield Cold Storage & Export Co. of South Africa, Ltd. v. Lever (S. Af.); **10. Coys.** p. 385  
 Smitle v. Slattard (Aus.); **1. Agcy.** pp. 38, 56  
 Smythe (Doe d.) v. Roe (1840); **19. Eccl.** No. 4034a  
 Snare v. Baker (1849); **39. Reers.** No. 233b  
 Snarr v. Waddell (Can.); **21. Exon.** p. 689  
 Sneyd, *Re, Ex p.* Oxford (Bp.) (1883); **30. Jdgmts.** No. 337  
 — v. Sneyd & Burgess (1926); **27. H. & W.** Nos. 3179a, 3182a  
 Snia Viscosa Societa, etc. v. S.S. Yuri Maru (1927); **1. Adm.** No. 1794a  
 Snider v. Miller (Can.); **2. Arbn.** pp. 146, 155  
 Snider & Miller's Arbitration, *Re* (Can.); **2. Arbn.** p. 147

- Snook v. Brantford Town Council (Can.); **26. Hghys.** p. 778
- Snow v. Firebrass (1700); **12. Contr.** No. 5a
- v. Leatham (1826); **3. Bank**, No. 67a
- v. R. (Can.); **25. Fish.** p. 745
- Snow & Toronto, *Re* (Can.); **11. Comp. Pche.** p. 404
- Snowball v. Ritchie (Can.); **7 Bounds. & F.** p. 296
- Snowden v. Baker, *Re* Drought Area Relief Act (Can.); **16. Cntmpt.** p. 548
- Snowdon v. Snowdon (1928); **27. H. & W.** Nos. 595a, 2040a, 6124a
- Snyder, *Re*, Snyder v. Snyder (Can.); **11. Confl.** p. 423
- Sobhuza II v. Miller (1926); **17. Dep.** No. 10a
- Société Anonyme des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927); **11. Confl.** No. 752a; **25. Gaming**, No. 245a
- Société Anonyme Des Manufactures De Glaces v. Tilghman's Patent Sand Blast Co. (1883); **32. Libel**, No. 2591a
- Société Belge d'Enterprises Industrielles Immobilières v. Webster & Mill (Can.); **32. Limit. of A.** p. 935
- Société de la caisse de retraite de la Banque Nationale, *Re*, Trudel v. Lemoine (Can.); **3. Bank.** p. 175
- Société du Gaz de Paris v. Société Anonyme de Navigation "Les Armateurs Français" (Scot.); **1. Adm.** p. 36
- Société La Parfumerie Nildé v. Ernaldé, Ltd. Fryer (1929); **43. Trade Mks.** Nos. 629a, 1215a
- Société Les Affréteurs Réunis & Shipping Controller, *Re* (1921); **2. Arbn.** No. 816a
- Society for Promoting Employment of Women, *Re* (1927); **9. Coys.** No. 4321a
- Society of Accountants & Auditors v. Goodway & London Asscn. of Accountants, Ltd. (1907); **28. Injon.** No. 906b
- Society of Architects v. Kendrick (1910); **28. Injon.** No. 906a
- Society of Motor Manufacturers & Traders v. Motor Manufacturers' & Traders' Mutual Insurance Co. (1925); **9. Coys.** No. 228b
- Sohan Bibi v. Baijnath Das (Ind.); **16. Courts.** p. 551
- Sohan Lal v. Mohan Lal (Ind.); **38. Real Prop.** p. 1091
- Sokoloski v. Winiski (Can.); **21. Estpl.** p. 682
- Solicitor, A. *Re* (1892); **15. Cntmpt.** No. 776a
- , *Re* (1895); **16. Cntmpt.** No. 1039a
- , A. *Re* (1928); **42. Solrs.** No. 4437a
- Sollas v. Stamp Duties Commr. (Aus.); **21. E. D.** p. 671
- Solomon v. Mussett & Bright, Ltd. (S. Af.); **36. Negl.** p. 1027
- v. Robinson & Co., Ltd. (S. Af.); **32. Libel**, p. 927
- Solomons v. Medex (1816); **32. Libel**, No. 53a
- Solomons Bochner Fur Co., *Re* (Can.); **4. Bkpcy.** p. 227
- Solvang, *Re* (Can.); **2. Aliens**, p. 118
- Somers v. Liberty School District (Can.); **19. Educ.** pp. 642, 647
- Somerset (Duke), *Re*, Thynne v. St. Maur (1886); **23. Errors**, No. 5654a
- Somerset Estate, *Re* (Can.); **23. Errors**, p. 715
- Somerset's (Duke) Case (1551); **14. Crim.** No. 975a
- Somerville *Re*, *Er p.* Southon (Aus.); **30. Intor.** p. 879
- v. Chapman (1779); **8. Char.** No. 1609a
- v. Oldham, *Re* Forster (1929); **40. Stillmts.** No. 3143c
- Somerville & Barr, Ltd. v. Chalmers (Scot.); **25. Food**, p. 747
- Somes, *Re*, Stewart v. Somes (1895); **5. Bkpcy.** No. 830b
- Sonachalam Pillai v. Kumaravelu Chettiar (Ind.); **21. Estpl.** p. 681
- Sonaton Pal v. Galstaun (1927); **16. Courts**, No. 427a
- Sons of Temperance Friendly Society (Scot.); **25. Fr. Soc.** p. 753
- Sopwith Aviation & Engineering Co., Ltd. v. Magnus Motors, Ltd. (N.Z.); **21. Estpl.** p. 687; **22. Evid.** p. 713
- Sorby v. Parker (Can.); **24. Errors**, p. 735
- Sorlie v. McKee (Can.); **2. Animals**, p. 127
- Sorrell v. Carpenter (1728); **20. Eqq.** No. 193a
- Souchette, Ltd. v. London County, Westminster & Parr's Bank, Ltd. (1920); **3. Bank.** No. 668a
- Soulis v. Armstrong (Can.); **32. Limit. of A.** p. 936
- South African Rys. v. Conradie (S. Af.); **8. Carr.** p. 317
- South African Republic v. Compagnie Franco-Belge du Chemin de Fer du Nord (1898); **1. Action**, No. 376a
- South American Stores (Gath & Chaves), Ltd. v. Inland Revenue Comrs. (1926); **28. Inc. T.** No. 416a
- South Australian Railways Comrs. v. Barnes (Aus.); **43. Tram.** p. 1164
- South British Insurance Co., Ltd. v. Barclay Nicol (Aus.); **29. Insee.** p. 871
- South British Insurance Co. v. Gauci Brothers & Co. (1928); **2. Arbn.** No. 316a & p. 146
- South British Insurance Co., Ltd. v. Stenson (Ind.); **29. Insee.** p. 874
- South Bruce Provincial Election, *Re*, Johnston v. McCallum (Can.); **20. Elect.** pp. 651, 652, 654; **42. Stats.** p. 1148
- South Carolina Bank v. Case (1828); **6. B. of Ech.** Nos. 696a, 713c
- South Grimsby (Township) v. Lincoln (County) & North Grimsby (Township) (Can.); **26. Hghys.** p. 783
- South Metropolitan Gas Co. v. Dadd (1927); **28. Inc. T.** No. 276a
- South Rhondda Colliery Co. (1898), Ltd., *Re* (1928); **10. Coys.** No. 7043a
- South Sarnia Properties, Ltd. v. Baird & Baird (Can.); **7. Bldg. Contrs.** p. 306
- South Wales Patent Fuel Manufacturers' Asscn. v. Great Western Ry. Co. (1923); **8. Curr.** No. 1377e
- Southby v. Southby (Can.); **27. H. & W.** p. 790
- Southend Corp'n. v. London Midland & Scottish Ry. Co. (1927); **8. Curr.** Nos. 683b, 1237a, 1237d
- Southern Cross Motor Fuels, Ltd., *Re*, *Er p.* Kelleway (Aus.); **10. Coys.** p. 387
- Southern Ry. Co. v. Gosport Corp'n. (1926); **26. Hghys.** No. 2719a
- v. — (1927); **26. Hghys.** No. 2719a
- Southland Woollen Mills, Ltd., *Re* (N.Z.); **10. Coys.** p. 385
- Southon, *Er p.*, *Re* Somerville (Aus.); **30. Intor.** p. 879
- Southport Corp'n. v. Birkdale District Electric Supply Co. (1925); **20. Electric**, No. 52
- Soviet Republics Union v. Belaiew (1925); **1. Action**, No. 376b
- Soviet Socialist Republics Union v. Onou (1925); **1. Action**, No. 360a
- Sowash v. R. (Can.); **14. Crim.** p. 515
- Sowerby v. Lindsay (1928); **31. L. & T.** No. 4457a
- Sowton v. Cutler & Clerke (1675); **16. Cr. Pract.** Nos. 3131a, 3168a
- Soyer v. Johnson, Matthey & Co. (1927); **34. Mast. & S.** No. 3033a

- Sparkes v. Sparkes (N.Z.); **27. H. & W.** p. 800  
 Spark v. Hamilton (Can.); **6. B. of Exch.** p. 278  
 — v. Joseph (Can.); **43. Tresp.** p. 1166  
 Sparling v. Ward (Can.); **2. Animals**, p. 132  
 Spat v. Hogson (Can.); **2. Animals**, p. 129  
 Speak v. Powell (1873); **4. Bkpcy.** Nos. 79b, 190a  
 Speal, *Re*, *Ex p.* Lucas (Can.); **5. Bkpcy.** p. 249  
 Spear v. Rowlatt (N.Z.); **19. Easmt.** p. 630  
 Spears v. Miller (Can.); **38. Real Prop.** p. 1080  
 Speciality Bags, Ltd., *Re* (Can.); **4. Bkpcy.** p. 227  
 Speedway, The (Can.); **1. Adm.** p. 32  
 Speirs, Ltd. v. Petersen (Scot.); **7. Bldg. Conts.** p. 301  
 Speller, *Ex p.*, *Re* Plimmer (1853); **5. Bkpcy.** Nos. 6449, 6647  
 Spence Estate, *Re*, *Re* Succession Duties Act (Can.); **20. E. D.** p. 676  
 Spencer v. Ashworth Partington & Co. (1925); **9. Coys.** Nos. 2070a, 2087a, 2343a  
 — v. Grant (Can.); **17. Dams.** p. 580; **43. Tres.** p. 1166  
 — v. Kennedy (1926); **9. Coys.** Nos. 2879a, 2895a, 3455a, 3882a  
 — v. McKenzie (Aus.); **43. Trade**, p. 1158  
 — v. Vancouver (City) (Can.); **2. Arbn.** p. 145  
 Spencer & Hauser's Contract, *Re* (1928); **40. S. Land**, No. 1104a  
 Spengler's Patent, *Re* (1928); **36. Pats.** No. 2105a  
 Speppard v. Kennedy (Can.); **38. Real Prop.** p. 1089  
 Spicer v. Londesborough (Earl), *Re* Londesborough (Earl) (1923); **2. Agric.** Nos. 652a, 661a  
 Spiller v. Mayo (Rhodesia) Development Co. (1908), Ltd. (1926); **9. Coys.** Nos. 3841a, 3881a  
 Spooner v. Taylor (Aus.); **22. Evid.** p. 708  
 Sporle v. Great Northern Ry. Co. (Can.); **8. Carr.** pp. 316, 317  
 Spray v. St. Clair (Can.); **41. Ship.** p. 1136  
 Spreckley v. A.-G., *Re* Knapp (1929); **8. Char.** No. 1116a  
 Spring v. Kinnee (Can.); **27. H. & W.** p. 788  
 — v. Spring (Can.); **27. H. & W.** p. 799  
 — v. Young (Aus.); **2. Animals**, p. 131  
 Springbank Municipality v. Walker (Can.); **18. Distr.** p. 623  
 Springfield (Village) v. Michigan Central Ry. Co. (Can.); **38. Rys.** p. 1077  
 Sproule v. Clements (Can.); **38. Real Prop.** p. 1088  
 Squires Brothers, *Re* (Can.); **5. Bkpcy.** p. 263  
 Sri Yogashram Pharmacy, Ltd. (In Liquidation), *Re*, *Re* Mohan Lal Mehta (Ind.); **10. Coys.** p. 392  
 Srimati Jugal Kishore Debi v. Deva Prasanna Mukherji (Ind.); **39. Reers.** p. 1093  
 Stacey v. Stacey (Can.); **27. H. & W.** p. 795  
 Stack v. The Barge Leopold (Can.); **1. Adm.** pp. 18, 19, 22, 36  
 Stadacona Fire & Life Insurance Co. v. Mackenzie (Can.); **10. Coys.** p. 396  
 Stadnick v. Bifrost Municipality (Can.); **26. Hghys.** p. 778  
 Stahn v. Peutert (Can.); **18. Distr.** p. 621  
 Staines v. Wainwright (1839); **4. Bkpcy.** No. 4366a  
 Staines Reservoirs Joint Committee, *Ex p.*, *Ex p.* Sunbury-on-Thames Urban District Council (1922); **11. Comp. Pche.** No. 1997a  
 Stainsleigh v. Fisher (Can.); **12. Contr.** p. 466  
 Stamford & Warrington's (Earl) Trusts, *Re*, *Re* Trustee Act, 1893 (1896); **34. Mines**, No. 335c  
 Stamp Duties Comr. (Queensland) v. Donaldson (Aus.); **21. E. D.** p. 674  
 — v. Lansdowne (Aus.); **21. E. D.** p. 675  
 Stamp Duties Comr. for New South Wales v. Thomson (Aus.); **20. E. D.** p. 668  
 Stamper v. Sunderland Overseers (1868); **38. Rates**, No. 675a  
 Stamps Comr. v. Skinner (Aus.); **21. E. D.** p. 676  
 — v. Todd (N.Z.); **9. Coys.** p. 367  
 Standard Bank, *Ex p.*, *Re* Gordon Store, Ltd. (Can.); **5. Bkpcy.** p. 239  
 — v. Boulton (Can.); **27. H. & W.** p. 788  
 — v. Van Rhyn Estate (S. Af.); **3. Bank.** p. 179  
 Standard Bank of Canada v. Alberta Engineering Co., Ltd. (Can.); **3. Bank.** pp. 188, 191  
 — v. Shuen Wah (Can.); **1. Action**, p. 9  
 Standard Charges (Collection & Delivery—Warehousing) (1925); **38. Rys.** No. 756b  
 Standard Charges (Docks, Harbours & Piers) (1927); **38. Rys.** No. 756a  
 Standard Charges Schedules, *Re* (1923); **8. Carr.** Nos. 683a, 1015a, 1323a  
 Standard Cooperage Co., *Re* (Can.); **4. Bkpcy.** p. 206  
 Standard Hardwood Lumber Co. v. Canadian Pacific Ry. Co. & Canadian National Rys. (Coal & Coke Rates Case) (Can.); **38. Rys.** p. 1078  
 Standard Imports, Ltd., *Re*, *Ex p.* Canadian Express Co. (Can.); **5. Bkpcy.** p. 239  
 Standard Insurance Co. v. Scandrett (Aus.); **2. Arbn.** p. 139  
 Standard Pharmacy, Ltd., *Re*, *Re* Alberta Province's Claim (Can.); **4. Bkpcy.** pp. 226, 227  
 Standard Telephones & Cables, Ltd.'s Patent, *Re* (1928); **36. Pats.** No. 894a  
 Standard Trust Co. v. Little (Can.); **21. Estpl.** p. 687  
 Standard Trust Co. v. Stewart (Can.); **38. Rates.** p. 1086  
 — v. Walter (Can.); **21. Exon.** p. 699  
 Standard Trusts Co. v. Briggs (Can.); **21. Exon.** p. 690  
 Standard Trusts Co. v. Hiram Municipality (Can.); **18. Distr.** p. 623  
 Standen v. Smith (1927); **34. Mast. & S.** No. 2460a  
 Stander v. Stander (S. Af.); **27. H. & W.** p. 794  
 Stanfield v. Gibbon (1925); **9. Coys.** No. 4104a  
 — v. Staffe (1849); **5. Bkpcy.** No. 8040a  
 Stanford, *Re*, Cambridge University v. A.-G. (1924); **8. Char.** No. 1457a  
 Stanlake v. Ringhand (Can.); **12. Contr.** p. 458  
 Stanley & Bunting, *Re* (Can.); **20. Eqq.** p. 666  
 Stanley (G.) & Co., *Re* (1925); **5. Bkpcy.** No. 7361a; **10. Coys.** No. 6746a  
 Stanley Mills Co., *Re* (Can.); **4. Bkpcy.** p. 227  
 Stanton, *Ex p.* (Aus.); **33. Mays.** p. 956  
 — v. Allport (S. Af.); **1. Agcy.** p. 42  
 — v. Humphrey (S. Af.); **1. Agcy.** p. 57  
 — v. Johnston (Can.); **18. Distr.** p. 621; **21. Exon.** p. 692  
 — v. Newton (Aus.); **27. H. & W.** p. 806  
 — v. Windcat (Can.); **7. Bounds. & F.** p. 296  
 Stanton & Gordon, *Re* (Can.); **38. Pub. Auth.** p. 1070  
 Stanton (F. & E.), Ltd., *Re* (1928); **10. Coys.** No. 5316a  
 Stanton (F. & E.), Ltd., *Re* (1929); **10. Coys.** No. 4709a  
 Stanforth v. Inland Revenue Comrs. (1929); **39. Revenue**, No. 669a  
 Staples v. Miloff (Can.); **22. Evid.** p. 713  
 Staples & Co. v. Berryman (N.Z.); **31. L. & T.** p. 909  
 Staples Bell Inc., *Ex p.*, *Re* Canadian Coal Supply (Can.); **4. Bkpcy.** p. 215  
 Stapley v. Read Brothers, Ltd. (1924); **9. Coys.** No. 4023a  
 Star Flooring Co., *Re* (Can.); **4. Bkpcy.** p. 205  
 Stark v. Batchelor (Can.); **40. Set-Off**, p. 1113



- Stark v. Shepherd (Can.)**; **7. Bldg. Soc.** p. 307  
**Starley v. New McDougall-Segur Oil Co. (Can.)**; **11. Const. L.** p. 430  
 — **v. New McDougall-Segur Oil Co. (No. 2) (Can.)**; **11. Const. L.** p. 437  
**Starr v. Muncey (Can.)**; **21. Exon.** p. 691  
**Starr Co. of Canada, Ltd. v. Merrill (Can.)**; **8. Chos.** p. 348  
**State, The v. Purcell (Ir.)**; **14. Crim.** p. 503  
**State of New South Wales v. Commonwealth (Aus.)**; **16. Courts.** p. 555; **17. Dep.** p. 604  
**State of Victoria v. Commonwealth (Aus.)**; **17. Dep.** p. 601  
**Statham v. Oxeroff Colliery Co., Ltd. (1929)**; **34. Mast. & S. No.** 3269a  
**Statham v. Statham (1929)**; **27. H. & W. Nos.** 1518a, 2830a, 2833a, 2833b, 3163a  
**Staviss & Greenwood & Kahn, Ltd. & Charette & Labelle, Re (Can.)**; **31. L. & T.** p. 914  
**Stawell v. Austin (1677)**; **40. Sttlmts.** No. 1601a  
**Stead v. Gascoigne (1818)**; **5. Bkpcy.** No. 7006a  
 — **v. Stead (1927)**; **27. H. & W. No.** 2718a  
**Steadfast, The (1922)**; **1. Adm. No.** 1405a  
**Steam Saw Mills Co. v. Baring Brothers & Co. (1922)**; **1. Agcy.** No. 2814a  
**Stearn v. Prentice Brothers, Ltd. (1919)**; **1. Action, No.** 259a; **2. Animals, No.** 325a  
**Steedsmann v. Chrunik (Can.)**; **32. Lien.** p. 930  
**Steel v. Glendinning, Re Glendinning (1918)**; **3. Bank. No.** 402a  
**Steel (Doe d.) v. McGill (Can.)**; **25. Fraud. Conv.** p. 748  
**Steele v. Belfast Corpn. (Ir.)**; **3. Barr.** p. 195  
 — **v. Manton's (Lord) Trustees (1927)**; **28. Inc. T. Nos.** 430a, 444a  
 — **v. R. (Can.)**; **14. Crim.** pp. 503, 530; **15. Crim.** p. 510  
**Steeves, Re, Nova Scotia Trust Co. v. Bishop (Can.)**; **5. Bkpcy.** p. 249  
**Steffes v. Smith (Can.)**; **2. Agric.** p. 86  
**Stein v. Hauser (Can.)**; **19. Eccl.** p. 640  
 — **v. R. (Can.)**; **14. Crim.** p. 510  
**Stein (John G.) & Co., Ltd. v. Stirling County Council Eastern District Committee (1927)**; **38. Pub. Hlth.** No. 509a  
**Steine v. Mathieu (Can.)**; **17. Deeds.** p. 586  
**Steinhoff v. Kent Corpn. (Can.)**; **26. Hghys.** p. 777  
**Steinkopff, Re, Favorke v. Steinkopff (1922)**; **2. Aliens.** No. 215f; **8. Chos.** No. 21  
**Stephen v. Black (Can.)**; **26. Guar.** p. 770  
 — **v. Cooper (1929)**; **34. Mast. & S. No.** 2439a  
 — **v. McNeill (Can.)**; **36. Negl.** p. 1026  
 — **v. Masters & McDougall (Can.)**; **2. Arbn.** pp. 138, 151  
**Stephens, Ex p. (1848)**; **22. Evid.** Nos. 5676a, 6081b  
 — **v. Gem Consolidated School District No. 60, Trustees (Can.)**; **19. Educ.** p. 647  
 — **v. Reynolds (1860)**; **6. B. of Each.** No. 702a  
**Stephenson v. Bromley (Can.)**; **40. S. Land.** p. 1110  
 — **v. E. D. & B. C. R. (Can.)**; **18. Discy.** p. 615  
 — **v. Thompson (1924)**; **7. B. of Sale,** Nos. 138b, 196a  
 — **v. Waller (1927)**; **28. Inc. T. No.** 79b  
**Stepney Borough Council & Smart's Contract, Re (1902)**; **11. Comp. Pche.** No. 558a  
**Sterling Clothing Co. v. Men's Attire Registered (Can.)**; **4. Bkpcy.** p. 222  
**Sterling Securities Corpn. v. Hicks Motor Co. (Can.)**; **32. Lien.** p. 930  
**Sterling Trusts Corpn. v. Melnychuk (Can.)**; **22. Evid.** p. 710  
**Sternberg, Re (Can.)**; **5. Bkpcy.** p. 253  
 — **Re, Ex p. Triefus & Stripp, Ltd. (Can.)**; **5. Bkpcy.** pp. 252, 253  
**Steuart v. Barclay, Gardner v. Barclay, Re Barclay (1929)**; **8. Char.** Nos. 79a, 128a, 991a  
**Steven v. Broady Norman & Co. (Scot.)**; **21. Estpl.** p. 682  
**Stevens, Re (1912)**; **20. Eqq.** No. 1581a  
 — **Re, Imperial Canadian Trust Co., Ltd. v. North American Lumber & Supply Co., Ltd. (Can.)**; **5. Bkpcy.** p. 252  
 — **v. Abbotsford Lumber Co. (Can.)**; **17. Damgs.** p. 575  
 — **v. Birmingham Corpn. (1929)**; **34. Mast. & S. Nos.** 3269b, 3371a, 3455a, 3455b  
 — **v. Downham, Isle of Ely (Feoffees of Poor Lands) (1926)**; **2. Agric.** Nos. 266x, 266y  
 — **v. Hampstead Borough Council (1929)**; **34. Mast. & S. No.** 628c  
 — **v. Lawton (1588)**; **31. L. & T. No.** 2150a  
 — **v. Merchants Bank of Canada (Can.)**; **1. Agcy.** p. 40; **3. Bank.** p. 175  
 — **v. Robinson (William) Co., Ltd. (Can.)**; **2. Arbn.** p. 142  
 — **v. Stevens (1929)**; **27. H. & W. No.** 6099a; **33. Mags.** No. 82a  
 — **v. Willing & Co. (1929)**; **40. S. Land.** No. 2683a  
**Stevens & Dunsby's Contract, Re (1928)**; **40. Sttlmts.** No. 2679a  
**Stevens & Mitchell, Re (Can.)**; **6. B. of Exch.** p. 268  
**Stevenson v. Florant (Can.)**; **17. Dep.** pp. 526, 607; **28. Infts.** p. 849  
 — **v. Green (Can.)**; **32. Lien.** p. 932  
 — **v. Taylor, Re Canadian Cap Co., Ltd. (Can.)**; **5. Bkpcy.** p. 248  
 — **v. Toronto Board of Education (Can.)**; **3. Bailmt.** p. 165  
**Stevenson & Sons v. Maule & Son (Scot.)**; **3. Bailmt.** p. 171  
**Stevenson (Hugh) & Sons, Ltd. v. Akt. fur Cartonagen-Industrie (1918)**; **1. Agcy.** Nos. 1833, 3028  
**Stewards & Co., Ltd. v. R. (1900)**; **7. Bldg. Conts.** No. 9  
**Stewart, Ex p., R. v. McLatchey (Can.)**; **33. Mags.** p. 956  
 — **Re (Can.)**; **5. Bkpcy.** p. 246  
 — **v. Adams (Scot.)**; **2. Animals.** p. 126  
 — **v. Boulton, Re Boulton's Settlement Trust (1928)**; **37. Powers.** Nos. 187a, 872a  
 — **v. Braun (Can.)**; **26. Guar.** p. 769  
 — **v. Clark (Can.)**; **26. Guar.** p. 771  
 — **v. Currie (Can.)**; **21. Exon.** p. 691  
 — **v. Grand Trunk Pacific Ry. Co. (Can.)**; **8. Carr.** p. 319  
 — **v. Hodge (Scot.)**; **27. H. & W.** p. 789  
 — **v. Jones (Can.)**; **11. Const. L.** p. 430  
 — **v. Lowe, Re Lowe (1929)**; **3. Basty.** No. 152a  
 — **v. O'Brien (N.Z.)**; **17. Damgs.** p. 583  
 — **v. Richardson Sons & Co., Ltd. (Can.)**; **1. Agcy.** p. 46  
 — **v. Somes, Re Somes (1895)**; **5. Bkpcy.** No. 8306  
 — **v. Springfield & Tache Rural Municipalities (Can.)**; **38. Pub. Auth.** p. 1068  
 — **v. Stewart (Can.)**; **17. Dep.** p. 600  
 — **v. Wetherdair, Ltd. (Scot.)**; **4. Bkpcy.** p. 211  
**Stewart (Alexander) & Son of Dundee, Ltd. v. Westminster Bank, Ltd. (1926)**; **9. Coys.** No. 3506a  
**Stewart & Toronto (City), Re, Re Harman, Ltd. & Toronto (City), Re Porter & Toronto (City) (Can.)**; **11. Comp. Pche.** p. 406  
**Stewart & Young v. Inland Revenue Comrs. (Scot.)**; **28. Inc. T.** pp. 680, 823  
**Stewart Mercantile Co., Ltd., Re (Can.)**; **4. Bkpcy.** p. 209  
**Stewart Municipal District v. Bliesner (Can.)**; **11. Comp. Pche.** p. 407

- Stewkley v. Butler** (1615); **2. Agric.** No. 736  
**Stillwater Lumber & Shingle Co. v. Canada Lumber & Timber Co.** (Can.); **5. Bkpcy.** p. 258  
**Stinson v. Gray** (1929); **42. Sp. Pfce.** Nos. 282a, 285a  
**Stinson v. Moore** (Can.); **35. Mistake.** p. 1012  
**Stirling & Schmidt's Superheating Co.** (1910) Ltd.'s Patent, *Re, Re Stirling's Patent* (1928); **36. Pats.** No. 1684a  
**Stirling Collieries, Ltd. v. Jones** (Can.); **8. Chos.** p. 347  
**Stirling's Patent, Re, Re Stirling & Schmidt's Superheating Co.** (1940), Ltd.'s Patent (1928); **36. Pats.** No. 1684a  
**Stock v. Great Western Ry. Co.** (Can.); **17. Damgs.** p. 583; **21. Exptl.** p. 687  
**Stockbridge & Co., Ltd., Re** (N.Z.); **10. Coys.** p. 393  
**Stocking** (Doc d.) *v. Watts* (Can.); **22. Evid.** p. 599  
**Stocksbridge Ry. Co. v. Great Central Ry. Co.** (1909); **8. Carr.** No. 1049a  
**Stoddart v. Stoddart** (Can.); **35. Mtge.** pp. 1017, 1023  
**Stoeck v. Public Trustee** (1921); **2. Aliens,** Nos. 49a, 49i  
**Stoke Newington Corp'n. v. Richards** (1929); **34. Metrop.** No. 29b  
**Stokes, Re, Bowen v. Davidson** (1928); **23. Exors.** No. 5273a  
*— v. Stokes* (Aus.); **27. H. & W.** p. 806  
**Stokes-Stephens Oil Co. v. McNaught** (Can.); **2. Arbn.** p. 144  
**Stokoe v. Mickley Coal Co., Ltd.** (1928); **34. Mast. & S.** No. 2506a  
**Stollery, Re, Weir v. Treasury Solicitor** (1926); **22. Evid.** Nos. 3165a, 3177a  
**Stone, Re** (Can.); **4. Bkpcy.** pp. 205, 212  
*— v. Knapp* (Can.); **27. H. & W.** p. 792  
*Theed* (1787); **31. L. & T.** No. 2282  
*— v. Walter* (1649); **27. H. & W.** No. 1576a  
**Stone (J. B.) & Co., Ltd. v. Steelace Manufacturing Co., Ltd.** (1929); **43. Trade Mks.** No. 684a  
**Stoneberg, Re** (Can.); **4. Bkpcy.** p. 217  
**Stonehouse v. Masson** (1921); **15. Crim.** No. 12,169a  
**Stoney v. Eastbourne Rural Council** (1927); **26. Hghys.** No. 355a  
*— v. Stoney* (Ind.); **23. Exors.** p. 718  
**Stopp v. Hill & Sons** (1928); **39. S. Goods.** No. 539a  
**Storaker v. Southouse & Long, Ltd.** (Aus.); **1. Agcy.** p. 76  
**Storer v. Morris** (1929); **34. Mast. & S.** No. 3927b  
**Story v. Dunlop** (Can.); **24. Exors.** p. 731  
**Stott v. Inland Revenue Commr.** (S. Af.); **28. Inc. T.** p. 818  
*— v. Shaw & Lee, Ltd.* (1928); **7. B. of Sale,** Nos. 228a, 439a  
**Stout & Toronto (City), Re** (Can.); **28. Inc. T.** p. 628; **38. Rates,** p. 1080  
**Stover v. Drysdale** (Can.); **19. Eccl.** p. 635  
*— v. Marchand* (Can.); **32. Limit. of A.** p. 937  
**Stracey v. Urquhart** (1929); **17. Damgs.** No. 1a  
**Strandhill v. Walter W. Hodder Co.** (Can.); **1. Adm.** p. 18  
**Strang v. Beal** (Can.); **21. Eron.** p. 698  
**Stratford Baptist Church Property, Re** (Can.); **8. Char.** p. 336  
**Stratford Catering Co., Ltd., Ex p., R. v. Holborn Licensing J.J.** (1926); **30. Intor.** No. 299a  
**Stratford Mill Building Co.'s Claim, Re Red Deer Milling & Elevator Co.** (Can.); **9. Coys.** p. 378  
**Strathcona Cemetery Co. v. Taylor** (Can.); **7. Burial,** p. 311  
**Strathern v. Benson** (Scot.); **25. Gaming,** p. 759  
*— v. Padden* (Scot.); **14. Crim.** p. 499  
**Strathern v. Ross** (Scot.); **34. Med.** p. 1002  
*— v. Stuart* (Scot.); **19. Eccl.** p. 641  
**Strathfillan (Owners) v. Ikala (Owners), The Ikala** (1929); **41. Ship.** No. 6677  
**Stratton & Greenshields, Ltd., Re, Re McCoubrey** (Can.); **4. Bkpcy.** p. 220; **5. Bkpcy.** pp. 262, 263  
**Stream Fisher, The** (1927); **1. Adm.** No. 1497c  
**Street, Re** (1845); **22. Evid.** No. 6081a  
*— v. Craig* (Can.); **2. Animals,** p. 129  
*— v. Glass* (Can.); **21. Eron.** p. 692  
**Streich v. Franklin** (Can.); **26. Hghys.** p. 778  
**Strelloff v. First National Bank of Joliet** (Can.); **24. Exors.** p. 734  
**Strelitz Brothers v. Britnall** (Aus.); **1. Action,** p. 2  
**Strohmeier v. Attenborough** (1894); **1. Agcy.** No. 481a  
**Stronach, Re** (Can.); **38. Pub. Hlth.** p. 1072  
**Strong, Re, Strong v. Meissner** (1925); **11. Confl.** No. 621a  
*Arran* (Can.); **26. Hghys.** p. 776  
*— v. Taylor, The Enterprise* (1853); **34. Mast. & S.** No. 1145a  
**Stroud, Ex p., R. v. Stroud** (1928); **14. Crim.** No. 1790a  
*— v. Bath Gas Light & Coke Co.* (1927); **34. Mast. & S.** No. 2653a  
*— v. Stroud* (otherwise Grantham) (1929); **27. H. & W.** No. 4342a  
**Stuart v. Andrews** (Can.); **22. Evid.** p. 706  
*v. Calgary & Edmonton Ry. Co.* (Can.); **34. Mines,** p. 1006  
*— v. Columbia River* (Aus.); **1. Adm.** p. 30  
*— v. Pennant School District* (Can.); **13. Carpm.** p. 489  
*— v. R.* (Can.); **11. Comp. Pche.** p. 405  
*— v. Stuart* (Ind.); **27. H. & W.** p. 795  
**Studdy v. Sanders** (1826); **12. Contr.** No. 2310a  
**Stumbles v. Whitley** (1929); **25. Fish.** No. 176a; **31. L. & T.** No. 2306a  
**Sturdee v. Merritt** (Can.); **31. L. & T.** p. 901  
**Sturge v. Philpotts** (1839); **39. S. Goods,** No. 2493a  
**Sturion v. Painter** (1608); **12. Contr.** No. 504a  
**Sturt, Re, De Bunsen v. Harding** (1922); **20. Eqq.** No. 1316a  
**Sturton v. Richardson** (1844); **20. Eqq.** No. 292a  
**Suart & Steamship Alleghany of London, Ltd. v. Merchants' Marine Insurance Co., Ltd.** (1898); **29. Insec.** No. 2341a  
**Subbaraju v. Venkatramaraju** (Ind.); **2. Arbn.** p. 158  
**Subba Rao v. Lakshmana Rao** (Ind.); **19. Easmt.** p. 628  
**Subhas Chandra Bose v. Knight & Sons** (Ind.); **32. Libel,** p. 924  
**Subodh Chandra Roy Chowdhry v. R.** (Ind.); **14. Crim.** p. 504  
**Succession Duties Act, Re, Re Spence Estate** (Can.); **20. E. D.** p. 676  
**Succession Duty Act, Re, Re Hecht** (Can.); **21. E. D.** p. 675  
**Succession Duty Act, Re, Re Oldfield Estate** (Can.); **21. E. D.** p. 676  
**Succession Duty Act, Re, A.-G. for British Columbia v. Wilson** (Can.); **21. E. D.** p. 675  
**Succession Duty Act & Sproule, Re** (Can.); **21. E. D.** p. 676  
**Sugar Supply, Royal Commission on v. Kwik-Hoo-Tong Trading Society** (1922); **2. Arbn.** No. 949c  
**Sugarman, Ex p., R. v. Brixton Prison** (Governor) (1922); **2. Aliens,** No. 553b  
**Sugden v. Lolley** (1812); **11. Confl.** No. 947; **15. Crim.** No. 8035

- Sukhamal Bansidhar v. Babn Lal Kedin & Co. (Ind.); **2. Arbn.** p. 137
- Sulhag Chamar v. Naud Lal Sahu (Ind.); **33. Mal. Pros.** p. 957
- Sulis v. Ferguson (Can.); **21. Estpl.** p. 680
- Sullivan, *Re*, Dunkley v. Sullivan (1929); **44. Wills**, No. 299a
- (Doe d.) v. Currey (Can.); **24. Errors.** p. 731
- v. Home Bank of Canada (Can.); **3. Bank.** p. 191
- v. Sullivan (1860); **39. Intchgs.** No. 254a
- Sullivan & Bertie (Township), *Re* (Can.); **11. Comp. Pche.** p. 407
- Summerland Development Co., Ltd. v. Summerland (Can.); **38. Rates**, p. 1086
- Summers v. Cocks (Aus.); **42. Sp. Pfee.** p. 1141
- v. Hamilton (Can.); **26. Guar.** p. 768
- Summers & Co., Ltd. v. Boyce & Kimmond & Co. (1907); **28. Injon.** No. 829a
- Sun Building Society v. Western Suburban & Harrow Road Building Society (1921); **7. Bldg. Soc.** Nos. 110a, 187a, 230a
- Sun Insurance Office v. Roy (Can.); **29. Insec.** p. 868
- Sun Life Assurance Co., *Re* (Can.); **10. Coys.** p. 394
- Sun Newspapers, Ltd. v. Whippie (Aus.); **13. Coprt.** p. 178
- Sun Ray Manufacturing Co., *Re*, *Ex p.* Birkett & Sons, Ltd. (Can.); **9. Coys.** p. 363
- , *Re*, *Ex p.* Robson (Can.); **9. Coys.** p. 373
- Sunbury-on-Thames Urban District Council, *Ex p.*, *Ex p.* Staines Reservoirs Joint Committee (1922); **11. Comp. Pche.** No. 1997a
- Sunderland Corpn. v. Gray (1928); **26. Hghys.** Nos. 2244a, 2252a, 2254a
- v. Priestman (1927); **21. Estpl.** No. 1228a; **26. Hghys.** No. 2367a
- Sunder Mull v. Satya Kinker Sahana (1927); **16. Courts.** No. 611a; **35. Money**, p. 1011
- Supplies, Ltd., *Re*, Canadian Credit Men's Trust Asscn. v. Caldwell (Can.); **9. Coys.** p. 363
- Suraj Narain v. Sukhu Ahir (Ind.); **7. Bonds**, p. 291
- Suratee Bara Bazaar Co., Ltd. v. Rangoon Municipal Corpn. (Ind.); **38. Pub. Auth.** p. 1069
- Surendra Kumar Roy Chowdhury v. Sushil Kumar Roy Chowdhury (Ind.); **2. Arbn.** pp. 138, 143
- Surendra Nath Chatterji v. Jahnavi Charan Mukherji (Ind.); **23. Exors.** p. 717; **33. Lunat.** p. 945
- Surmon v. Surmon (S. Af.); **3. Basty.** p. 197
- Surrey District Corpn. v. Caine (Can.); **11. Comp. Pche.** p. 101
- Surtees v. Jister (1861); **12. Contr.** No. 1421a
- Susil Kumar Biswas v. Rasani Kanta Chakravarti (Ind.); **31. L. & T.** p. 907
- Sussex (Countess) v. Wroth (1582); **30. L. & T.** No. 1195a
- Sussex (Countess) & Worthy Case (1582); **30. L. & T.** No. 1195a
- Sutcliffe, *Re*, Sutcliffe v. Robertshaw (1929); **44. Wills**, No. 7347
- v. Robertshaw, *Re* Sutcliffe (1929); **44. Wills**, No. 7347
- Sutcliffe (Lionel), Ltd. v. Inland Revenue Comrs. (1928); **23. Inc. T.** No. 671e
- Sutherland (Duchess), *Re*, Beehoff & Co. v. Bubna (1921); **2. Aliens**, Nos. 156b, 166
- Sutherland (Duke) v. British Dominions Land Settlement Corpn., Ltd. (1926); **18. Discy.** No. 1705a
- Sutherland v. Dévereux (N.Z.); **31. L. & T.** p. 905
- v. Shiach (Scot.); **33. Mags.** p. 956
- Sutherland v. Young (Can.); **22. Evid.** p. 707; **23. Exors.** p. 720
- Sutherland & Co. v. Hannevig Brothers, Ltd. (1921); **2. Arbn.** No. 1668a
- Sutherland-Innes Co. v. Grand Trunk Ry. Co. (Can.); **8. Carr.** p. 324
- Sutter v. Brown (S. Af.); **32. Libel**, p. 923
- Suttle v. Cresswell (1926); **25. Gaming**, No. 415a
- Sutton, *Re* (Can.); **4. Bkpey.** p. 209
- v. Featherley, *Re* Swinburne (1926); **3. Bank.** No. 538a; **6. B. of Exch.** No. 14a; **25. Gifts**, No. 228
- v. Forst (Can.); **1. Agcy.** p. 38
- v. Gregory (1797); **6. B. of Exch.** No. 693a
- v. Hinch (Can.); **26. Guar.** p. 768
- v. Inland Revenue Comrs. (1929); **28. Inc. T.** No. 674f
- v. Smith (Can.); **30. Juries**, p. 895
- Sutton Harbour Improvement Co. v. Hitchens (1851); **11. Comp. Pche.** No. 702b
- Suwalksy, *Re*, Suwalksy v. Trustee & Official Receiver (1928); **5. Bkpey.** No. 5738a; **11. Const. L.** No. 474a
- Svein Jarl, The (1923); **1. Adm.** Nos. 1237a, 1298a
- Svendborg v. London, Midland & Scottish Ry. Co. (1929); **41. Ship.** No. 3631a
- Swabey v. Palmer (Can.); **34. Mast. & S.** p. 963
- Swaits v. Entwistle (1929); **42. Str. Traf.** No. 55a
- Swaizie v. Swaizie (Can.); **11. Confl.** p. 121
- Swan v. Coltness Iron Co., Ltd. (Scot.); **34. Mast. & S.** p. 987
- v. Miller (Ir.); **1. Agcy.** p. 76
- v. Sinclair (1925); **19. Easmt.** Nos. 147a, 515
- Swan & Edgar (1927), Ltd., *Ex p.*, R. v. London County Council (1929); **38. Pub. Auth.** No. 882a
- Swanepoel v. Van Heerden (S. Af.); **5. Bkpey.** p. 266
- Swanson v. Board of Land & Works (Aus.); **2. Arbn.** p. 145
- Swarna Manjuri Dassi v. Secretary of State for India (Ind.); **11. Comp. Pche.** p. 103
- Swart v. R. (S. Af.); **14. Crim.** p. 503
- Sweeney v. Gallagher (Ir.); **24. Exors.** p. 735
- v. Lisnaskea Rural District Council (Ir.); **41. Sewers**, p. 1124
- Sweeny v. Manufacturers Holding Corpn. (Can.); **18. Discy.** p. 616
- Sweet & Toronto Corpn., *Re*, *Re* Howard & Toronto Corpn. (Can.); **33. L. G.** p. 941; **38. Pub. Hlth.** p. 1072
- Sweetland v. Smith (1833); **35. Money**, No. 101a
- Sweetnam v. Sweetnam (Can.); **35. Mlge.** p. 1017
- Sweinsson v. Charleswood Rural Municipality (Can.), [1917] 3 W. W. R. 201; **2. Arbn.** p. 157
- Sweinsson & Charleswood Municipality, *Re* (Can.), [1917] 1 W. W. R. 293; **2. Arbn.** pp. 151, 158
- Sweitzer v. Granger (Can.); **12. Contr.** p. 416
- Swift v. New Zealand Insurance Co., Ltd. (Aus.); **29. Insec.** p. 869
- Swift & Co. v. Board of Trade (1925); **25. Food**, No. 558a
- v. — (1926); **11. Const. L.** No. 373a; **25. Food**, No. 558a
- Swift Current (City) v. Leslie (Can.); **2. Arbn.** p. 153
- Swim, *Ex p.* (Can.); **16. Cr. Pract.** p. 563
- Swinburne, *Re*, Sutton v. Featherley (1926); **3. Bank.** No. 538a; **6. B. of Exch.** No. 14a; **25. Gifts**, No. 228
- v. Andrews (1923); **2. Agric.** No. 266h

# TABLE OF CASES.

- Swindell v. Northern Elevator Co., Ltd. (Can.); **36. Negl.** p. 1033
- Swinson (John) Co., Ltd. v. Crystal Palace, Ltd. (N.Z.); **12. Contr.** pp. 468, 469
- Swiss Bank Corpn. v. Boehmische Industriale Bank (1923); **11. Confl.** Nos. 1272a, 1307a
- Switzer v. Ottawa (Can.); **34. Mast. & S.** p. 961
- Swyripa v. Vaculchik (Can.); **27. H. & W.** p. 787
- Sydney (City) v. Glace Bay (Town) (Can.); **38. Pub. Hlth.** p. 1073
- Sydney, Cape Breton & Montreal S.S. Co. v. Montreal Harbour Comrs. (Can.); **38. Pub. Auth.** p. 1071
- Sydney Cheese & Butter Factory Assn. v. Brower (Can.); **18. Discy.** p. 615
- Sydney Ferries, Ltd. v. Tahiti S.S. (Aus.); **22. Evid.** p. 713
- Sydney Municipal Council v. Australian Metal Co., Ltd. (Aus.); **2. Aliens.** p. 117
- v. Campbell (1925); **11. Comp. Pche.** No. 116a
- v. Hughes Motor Service, Ltd. (1925); **11. Comp. Pche.** No. 116a
- v. Troy (Aus.); **11. Comp. Pche.** p. 408
- Sydney Roman Catholic Archbp. v. Metropolitan Water Sewerage & Drainage Board (Aus.); **38. Rules.** p. 1081
- Syed Khan v. Syed Ebrahim (Ind.); **17. Dep.** p. 607
- Syer, *Re, Ex p.* Workmen's Compensation Board (Can.); **4. Bkpcy.** p. 226
- Sykes v. Geck (Can.); **6. B. of Exch.** p. 284
- Sylvan Arrow, The (1923); **1. Adm.** Nos. 141d, 668b
- Symington & Co. v. Union Insurance Society of Canton (1927); **2. Arbn.** No. 1071b
- v. — (1928); **29. Insee.** Nos. 237a, 855a, 1719a
- Symons v. Callil (Aus.); **1. Agcy.** p. 60
- v. Winnipeg Electric Co. (Can.); **36. Negl.** p. 1028; **43. Trans.** p. 1161
- Synod of Huron v. Ferguson (Can.); **2. Arbn.** p. 145
- Synthetic Drug Co., *Re* (Can.); **2. Aliens.** p. 106
- T. E. O'Reilly, Ltd., *Re* (Can.); **9. Coys.** p. 357
- T. McAvity & Sons, Ltd. v. Walsh (Can.); **32. Lcn.** p. 931
- Taba Singh v. R. (Ind.); **17. Dep.** p. 606
- Tabor, *Re, Ex p.* Cork (1920); **5. Bkpcy.** Nos. 6516a, 6881a, 6890a
- , *Re, Ex p.* Trustee (1920); **5. Bkpcy.** No. 6516a
- Tabrian v. Freeman (1834); **4. Bkpcy.** No. 5352a
- Tagalon v. Police Inspector (N.Z.); **17. Dep.** p. 601
- Tallack v. Tallack & Brockema (1927); **11. Confl.** No. 873a; **27. H. & W.** Nos. 5542a, 5543a, 5543b, 5543c
- Talmage v. Talmage (Can.); **27. H. & W.** p. 788
- Tamara Te Angiangi v. Treadwell (N.Z.); **22. Evid.** p. 711
- Tamboli v. Great Indian Peninsula Ry. Co. (Ind.); **8. Carr.** p. 317
- Tamson v. Palatine Insurance Co. (Can.); **29. Insee.** p. 868
- Tamvaco v. Lucas (1859); **39. S. Goods.** No. 1686a
- Tan Chew Hooe Noc v. Chee Swee Cheng (Ind.); **38. Real Prop.** p. 1088
- Tangney v. County of Kerry District Justice (Ir.); **14. Crim.** p. 528; **22. Evid.** p. 706; **25. Fish.** p. 745; **33. Mays.** p. 953
- Tannas v. Bank of Montreal (Can.); **21. Exon.** p. 691
- Tanner v. Carter (1856); **23. Exors.** No. 4154a
- Tannock v. Brownieside Coal Co., Ltd. (1929); **34. Mast. & S.** No. 3289a
- Tanqueray, *Re, Sewell v.* Woodfield (1924); **21. E. D.** No. 576a
- Tanakeswar Das Gupta v. Ambica Charan Bhattocharjee (Ind.); **24. Exors.** p. 731
- Tarasoff v. Zielinsky (Can.); **2. Animals.** p. 130
- Tarn v. Scanlan (1928); **28. Inc. T.** Nos. 168a, 186a, 193a, 567, 632c, 632e
- Tasker v. Algar (N.Z.); **18. Discy.** p. 612
- Tasman Fruit Packing Assn., Ltd. v. R. (N.Z.); **10. Coys.** p. 391
- Tasmania Deputy Federal Comr. of Taxation v. Thomas (Aus.); **16. Courts.** p. 550
- Tata Iron & Steel Co. v. Bombay Chief Revenue Authority (1923); **17. Dep.** No. 640a
- Tataurangi, Tairuakena v. Mua Carr (N.Z.); **13. Corps.** p. 488
- Tate v. Barry (Aus.); **36. Ptlurs.** p. 1042
- Tate & Lyle, Ltd. v. London & North Eastern Ry. Co. & London Midland & Scottish Ry. Co. (1926); **8. Carr.** No. 13771
- Tatham, *Ex p., Re* London Bridge Acts (1838); **11. Comp. Pche.** No. 1614a
- Tattersall v. Sladen (1928); **34. Med.** No. 205a
- Taubman v. Pacific Steam Navigation Co. (1872); **8. Carr.** No. 851b
- Tauranga Borough Corpn. v. A.-G. (N.Z.); **13. Corps.** p. 488
- Taxation Comr. v. Commercial Banking Co. of Sydney (Aus.); **28. Inc. T.** p. 825
- Taxation Comrs. v. English, Scottish & Australian Bank (1920); **3. Bank.** Nos. 292a, 692a
- Taxation Federal Comr. v. Clarke (Aus.); **28. Inc. T.** p. 839
- v. Reid (Aus.); **28. Inc. T.** p. 838
- Tay Salmon Co. v. Speedie (Scot.); **30. L. & T.** p. 900
- Taylder v. Lambton, Hutton & Joicey Collieries, Ltd. (1928); **34. Mast. & S.** No. 3056c
- Taylor, *In the Estate of* (1929); **23. Exors.** No. 3819d
- , *Re* (Can.); **5. Bkpcy.** p. 252
- v. Allen (1741); **39. Recrs.** No. 233a
- v. British Legal Life Assurance Co. (1925); **31. L. & T.** No. 1810a
- v. Brodie (Can.); **24. Exors.** p. 736
- v. Burpee (Can.); **18. Distr.** p. 621
- v. Leveys (Can.); **4. Bkpcy.** p. 225; **5. Bkpcy.** p. 259
- v. Mackintosh (Can.); **1. Action.** p. 13; **17. Dep.** pp. 597, 599
- Minister of Health (1928); **37. Poor L.** No. 1672b
- People's Loan & Savings Corpn. (Can.); **31. L. & T.** p. 905
- Rabbitts (Can.); **1. Agcy.** p. 59
- Reed (1815); **7. Bounds. & F.** No. 271a
- Regis (Can.); **24. Exors.** p. 734
- v. Smith (Aus.); **1. Agcy.** p. 66
- v. Taylor (1926); **27. H. & W.** No. 5730a
- v. — (Can.); **11. Confl.** p. 412
- v. Taylor, *Re* Wilford's Estate (1879); **37. Pers. Prop.** No. 94a
- v. Turner (Can.); **17. Damgs.** p. 580
- Taylor's Settlement Trusts, *Re*, Public Trustee v. Taylor (1929); **5. Bkpcy.** No. 6101a
- Tayside Floorecloth Co., Ltd., *Re* (Scot.); **9. Coys.** pp. 378, 379
- Tea Financing Syndicate, Ltd. v. Chandra Kamal Bezboruete (Ind.); **32. Limit. of A.** p. 933
- Teahon v. Leamey (Can.); **24. Exors.** p. 731
- Teasdale v. Sun Life Assurance Co. of Canada (Can.); **29. Insee.** p. 869

- Tecalemit, Ltd. v. Ewarts, Ltd.** (1927); **36. Pals.** Nos. 3120b, 3212a  
 — **v. Wakefield (C. C.) & Co., Ltd.** (1927); **36. Pals.** No. 3120a  
**Telephone Manufacturing Co., Ltd. v. Abel** (1928); **34. Mast. & S.** No. 2968a  
 — **v. —** (No. 2) (1929); **34. Mast. & S.** Nos. 2968a, 2968b  
**Temperance Loan Fund v. Erwood** (1927); **35. Money.** No. 442a  
**Tempest v. Kilner** (1846); **9. Coys.** No. 2274a  
**Temple, Re, Ex p. Temple** (1814); **5. Bkpcy.** No. 5482  
 — **v. Elvery (Can.); 2. Animals.** p. 129  
**Templeton v. Parkin (William) & Co., Ltd.** (1929); **34. Mast. & S.** No. 2220a  
 — **v. Waddington (Can.); 3. Bailmt.** p. 167  
**Tempus Shipping Co., Ltd. v. Trott** (1929); **34. Mast. & S.** No. 3698c  
**Tenenbein, Re, Re Bankruptcy Act (Can.); 4. Bkpcy.** p. 208  
**Tennent v. Moore (A.-G.) & Co., Ltd. (Scot.); 34. Mast. & S.** p. 995  
**Tenold & Tannas v. Canadian Pacific Ry. Co. (Can.); 22. Evid.** p. 708  
**Terninal Grain Co. v. Soderberg (Can.); 21. Eron.** p. 692  
**Terry, Re, Terry v. Terry** (1929); **24.** No. 8280a  
 — **v. Automobile Owners Assocn. (Can.); 8. Carr.** pp. 314, 329  
 — **v. Terry, Re Terry** (1929); **24. Errors.** No. 8280a  
**Tervaele, The** (1922); **1. Adm.** No. 142c  
**Tesoski, Re (Can.); 30. Intor.** p. 883  
**Tetley, Re, A.-G. v. National Provincial & Union Bank of England** (1924); **8. Char.** No. 740b  
 —, **Re, National Provincial & Union Bank of England, Ltd. v. Tetley** (1923); **8. Char.** No. 740b  
**Tetrault v. Vaughan (Can.); 38. Rules.** p. 1085, 1086  
**Tetreault v. Montreal Harbour Comrs.** (1926); **17. Dep.** No. 378a  
**Tevlin v. Gilsenan (Ir.); 24. Errors.** p. 735  
**Texas Co. v. Bombay Banking Co., Ltd. (Ind.); 1. Agcy.** p. 76  
**Texas Co. (S. A.) Ltd. v. Webb & Tomlinson (S. Af.); 26. Guar.** p. 769  
**Thacker v. Smoky Lake Municipal District (Can.); 38. Rules.** p. 1085  
**Thain, Re, Thain v. Taylor** (1926); **28. Infls.** No. 1156a  
**Thakarsingh v. Uttamkaur (Ind.); 1. Action.** p. 10; **21. Estpl.** p. 681  
**Thames Steam Tug & Lighterage Co. v. Ingram** (1927); **34. Mast. & S.** No. 3766a  
**Thanmul Sowcar v. Lattu Ramadoss Reddial (Ind.); 35. Mtge.** p. 1022  
**Thatcher v. Bowman (Can.); 30. L. & T.** p. 898  
**Thebault, Re, Re Khattar (Can.); 30. Intor.** p. 885  
**Theobridge v. Kilburne** (1751); **40. Stillmts.** No. 74a  
**Thellusson v. Woodford** (1799); **18. Descr.** No. 165c  
 — **v. Woodford** (1805); **18. Descr.** No. 165c  
**Theobald v. Oliver, Re Oliver** (1927); **32. Limit.** of A. Nos. 1568a, 1584a  
 — **v. Winnipeg Musicians Assocn. (Can.); 25. Fr. Soc.** p. 752  
**Theriault, Ex p., R. v. O'Brien (Can.); 16. Cr. Pract.** p. 568  
 — **v. R. (Can.); 11. Const. L.** p. 430  
**Thiessen, Re (Can.); 4. Bkpcy.** p. 232  
**Thiselton v. Commercial Union Assurance Co.** (1926); **10. Coys.** No. 7482a  
**Thomas, Ex p., R. v. Jones** (1921); **15. Crim.** No. 9480a  
 — **v. Abertillery Urban District Council** (1928); **19. Educ.** Nos. 14a, 302c  
**Thomas v. Alderton, Ltd.** (1928); **16. Courts.** No. 840a  
 — **v. Bolton (Thomas) & Son, Ltd.** (1928); **24. Fact.** No. 68a  
 — **v. Davis, Re Davis** (1923); **8. Char.** No. 724a  
 — **v. Day (Can.); 1. Action.** pp. 2, 3  
 — **v. Evans (Richard) & Co.** (1927); **28. Inc. T.** No. 307a; **30. Jdgmts.** No. 569b  
 — **v. Gale (Can.); 1. Agcy.** p. 62; **9. Coys.** p. 372  
 — **v. Great Mountain Collieries Co., Ltd.** (1921); **1. Action.** No. 116a  
 — **v. Guay (Can.); 38. Real Prop.** p. 1090  
 — **v. Haliburton (Can.); 17. Dep.** p. 598  
 — **v. Hoskins, Re Michell** (1929); **44. Wills.** No. 8698a  
 — **v. Hughes** (1929); **19. Educ.** No. 78a  
 — **v. Jones** (1921); **3. Bastj.** No. 325a  
 — **v. Jones** (1928); **23. Errors.** No. 3127b; **33. Lunat.** No. 206a  
 — **v. —, In the Estate of Jones** (1928); **23. Errors.** No. 3127b  
**Thomas v. Lawson, Re Alberni Pacific Lumber Co. (Can.); 10. Coys.** p. 390  
 — **v. Marine Insurance Co. (Nfld.); 17. Deeds.** p. 587  
 — **v. Morgan** (1835); **2. Animals.** No. 301a  
 — **v. Newington Licensing J.I.** (1926); **30. Intor.** No. 141a  
 — **v. Pemberton** (1816); **5. Bkpcy.** No. 7648a  
 — **v. R. (Can.); 39. Royal F.** p. 1104  
 — **v. Thomas (Aus.); 27. H. & W.** pp. 799, 800  
 — **v. — (No. 2) (Aus.); 27. H. & W.** p. 799  
 — **v. —, Re Evans** (1908); **39. Rutchqs.** No. 336a  
 — **v. Todd** (1926); **10. Coys.** Nos. 4979a, 5184a, 6904a  
 — **v. Worden (Can.); 40. Set-Off.** p. 1113  
**Thomas Withers & Sons, Ltd. v. Samuel Withers & Co., Ltd.** (1926); **32. Libel.** No. 1638a  
**Thomas' Trusts, Re** (1895); **34. Muns.** No. 335b  
**Thompson, Ex p., R. v. Edmonton Income Tax Comrs.** (1929); **28. Inc. T.** No. 631a  
 —, **Re (Can.); 24. Errors.** p. 734  
 —, **Re, Ex p. Trustees (Can.); 5. Bkpcy.** pp. 248, 253  
 — **v. Barclay** (1828); **11. Const. L.** No. 388  
 — **v. —** (1831); **11. Const. L.** No. 388  
 — **v. Bettinger** (No. 2) (1928); **36. Pals.** No. 3442a  
 — **v. Bruce** (1927); **28. Inc. T.** No. 539a  
 — **v. Canadian Pacific Ry. Co. (Can.); 8. Carr.** p. 317  
 — **v. Ellis (Can.); 21. Eron.** p. 691  
 — **v. Fraser (Can.); 21. Eron.** p. 696  
 — **v. Jefferson** (1928); **36. Pals.** No. 1534a  
 — **v. London, Midland & Scottish Ry. Co. (1929); 8. Carr.** No. 695a  
 — **v. Lynne (Can.); 1. Agcy.** pp. 43, 51  
 — **v. Milliken (Can.); 35. Mtge.** p. 1022  
 — **v. North Battleford (Can.); 17. Deeds.** p. 586  
 — **v. Pearson (Can.); 16. Courts.** p. 550  
 — **v. Reynolds (Ir.); 1. Agcy.** p. 75  
 — **v. Ryall & Cunningham (Can.); 1. Action.** p. 5  
 — **v. Sholinder (Can.); 39. S. Goods.** p. 1107  
 — **v. Ward** (1858); **7. B. of Sale.** No. 761a  
 — **v. Warner Brothers, Pictures, Ltd.** (1929); **13. Coprt.** No. 290a  
**Thompson & Jenkins, Re (Can.); 40. S. Land.** p. 1109  
**Thompson, Meggitt & Co., Ltd. v. Moody (Aus.); 2. Arbn.** pp. 152, 153  
**Thompson Powder Co., Re, Re Winding-up Act (Can.); 4. Bkpcy.** p. 205  
**Thompson Sons & Co., Re, Newton v. Hamilton (Can.); 5. Bkpcy.** p. 235

- Thomson, *Re* (Can.); **26. Guar.** pp. 767, 768  
 —, *Re, Ex p. M'Lintock* (Scot.); **2. Aliens**, p. 110  
 — *v. Bruty, Re Thomson's Mortgage Trusts* (1920); **1. Action**, Nos. 48a, 64a  
 — *v. Cushing* (Can.); **21. Exon.** p. 698  
 — *v. Drysdale* (Scot.); **10. Coys.** p. 385  
 — *v. Galloway* (Scot.); **2. Agric.** p. 88  
 — *v. Hamilton* (N.Z.); **34. Mast. & S.** p. 963  
 — *v. Harrison* (Can.); **32. Lien**, p. 931; **35. Mtge.** p. 1021  
 — *v. Stamp Duties Comr.* (1929); **20. E. D.** p. 668  
 — *v. Thomson* (Can.); **27. H. & W.** p. 792  
 — *v. Walsh* (Can.); **35. Mtge.** p. 1019  
 Thomson & Co. *v. McNulty* (Scot.); **32. Libel**, p. 922  
 Thomson's Mortgage Trusts, *Re, Thomson v. Bruty* (1920); **1. Action**, Nos. 48a, 64a  
 Thoreson *v. Blairmore School District Board of Trustees* (Can.); **12. Contr.** p. 443; **19. Educ.** p. 648; **21. Exon.** pp. 696, 697  
 Thorndyke-Trenholme Realty Co. *v. Lyall Ship-building Co.* (Can.); **1. Agcy.** p. 66  
 Thorne *v. Canadian Steering Wheel Co.* (Can.); **5. Bkpcy.** p. 258  
 — *v. Williams* (Can.); **12. Contr.** p. 458  
 Thornton, *Ex p., R. v. West Riding of Yorkshire J.J.* (1837); **33. Mags.** No. 958c  
 —, *Re, R. v. West Riding of Yorkshire J.J.* (1837); **33. Mags.** No. 958c  
 — *v. Fisher* (S. Af.); **36. Negl.** p. 1032  
 Thornton Davidson & Co., *Re, Finlayson v. Balfour, White & Co.* (Can.); **5. Bkpcy.** p. 258  
 Thornycroft (J. I.) & Co., Ltd. *v. Thornycroft* (1927); **9. Coys.** No. 3988a  
 Thorpe *v. Gisbourne* (1825); **16. Cntmpt.** No. 698  
 — *v. Linney* (1885); **20. Elect.** No. 1025a  
 — *v. Sadler* (A. L.) & Son (1927); **34. Mast. & S.** No. 3702a  
 Thorpe's Case (1918); **14. Crim.** No. 5211a  
 Thoun, *Re* (Can.); **5. Bkpcy.** p. 266  
 Throstlegarth, *The* (1899); **1. Adm.** No. 1003a  
 Thurrock, Grays & Tilbury Joint Sewerage Board *v. Thames Land Co., Ltd.* (1925); **11. Comp. Pche.** Nos. 650a, 2203a  
 Thynne *v. St. Maur, Re Somerset* (Duke) (1886); **23. Exors.** No. 5654a  
 Tibo Products Co., Ltd. *v. Salt* (1929); **36. Pals.** No. 3343a  
 Tickner *v. Clifton* (1929); **31. L. & T.** Nos. 7107a,  
 Ticonderoga Pulp & Paper Co. *v. Cowans* (Can.) **9. Coys.** p. 373  
 Tieman *v. McKenzie* (Can.); **17. Damgs.** p. 577  
 Tierney, *Re* (1855); **22. Evid.** Nos. 5873a, 5880a, 6561a  
 —, *Re* (Can.); **38. Real Prop.** p. 1087  
 Tiffany (Doe d.) *v. McKwan* (Can.); **21. Estpl.** p. 684  
 Tilbury Town Gas Co. *v. Maple City Oil & Gas Co.* (Can.); **34. Mines**, p. 1006  
 Tildesley *v. Lodge* (1857); **20. Eqty.** No. 760a  
 Till, *Re, Ex p. Parsons* (1871); **22. Evid.** No. 4472a  
 Tillard *v. Taxes Comr.* (N.Z.); **28. Inc. T.** p. 836  
 Tilley *v. Cleary & Henderson* (Nfld.); **12. Contr.** p. 448  
 Tillicum Athletic Club *v. Burick* (Can.); **21. Exon.** p. 697  
 Tilling-Stevens Motors *v. Kent County Council* (1929); **39. Revenue**, No. 140a  
 Tilmanstone (Kent) Collieries, Ltd., *Re* (1928); **34. Mines**, No. 327a  
 Tilton *v. McKay* (Can.); **22. Evid.** p. 714  
 Timaru Borough Council *v. Boulton* (N.Z.); **3. Bailmt.** p. 165  
 Timmings *v. Treadgold* (N.Z.); **5. Bkpcy.** p. 259  
 Timmins *v. Surples* (Can.); **12. Contr.** p. 449  
 Timms *v. Williams* (1842); **25. Fr. Soc.** No. 224a-  
 Timoney *v. Timoney* (Ir.); **27. H. & W.** p. 811  
 Tinant *v. Simon* (Can.); **7. B. of Sale**, p. 293  
 Tindall *v. Barnetts & Hoare* (1887); **3. Bank**, No. 846a  
 — *v. Wright* (1922); **16. Courts**, No. 33b  
 Tinkler's Estate, *Re* (1875); **40. Stillmts.** No. 2157b  
 Tinkowri, etc. *v. Ram, etc.* (Ind.); **19. Easmt.** pp. 627, 628, 629, 631  
 Tiny Separate School Trustees *v. R.* (Can.); **17. Dep.** p. 593  
 Tisdale *v. Tisdale* (Can.); **31. L. & T.** p. 901  
 Tithe Act, 1891, *Re, Roberts v. Potts, Jones v. Cooke* (1894); **12. Contr.** No. 4358a  
 Tjerstrom, *Re* (Can.); **22. Evid.** p. 703  
 Toates *v. Toates* (1926); **23. Exors.** No. 3818a  
 Tobin's Estate, *Re* (Can.); **23. Exors.** p. 715  
 Tocher *v. Johnson* (Can.); **2. Agric.** pp. 86, 94  
 Toccock *v. Honynan* (1602); **21. Exon.** No. 817a  
 Todd, *In the Estate of* (1926); **23. Exors.** Nos. 1388a, 1398a, 1410a  
 — *v. Egyptian Delta Land & Investment Co., Ltd.* (1929); **28. Inc. T.** No. 144a  
 — *v. Potvin* (Can.); **1. Agcy.** p. 58  
 — *v. Taylor, Re Gray* (1925); **8. Char.** No. 199a  
 Todd & North Riding of Yorkshire Agricultural Executive Committee, *Re* (1921); **2. Agric.** Nos. 266a, 266p, 266q  
 Todrick *v. Halliday* (Scot.); **34. Mines**, p. 1007  
 Tola Ram *v. R.* (Ind.); **14. Crim.** p. 500  
 Tolerton *v. Cunard S.S. Co.* (Can.); **8. Carr.** p. 321  
 Tollemache *v. Inland Revenue Comrs.* (1926); **28. Inc. T.** No. 674a  
 Tolley *v. Fry* (J. S.) & Sons, Ltd. (1929); **32. Libel**, No. 167a  
 — *v. Guerin* (Can.); **32. Lien**, p. 932  
 Tolley & Co. *v. Skuce* (Can.); **1. Agcy.** p. 59  
 Tom *v. Everett, Re Christensen* (Hans C.), Ltd. (Can.); **35. Mtge.** p. 1017  
 Tombs *v. Turvey* (1923); **2. Agric.** No. 266t  
 Tomes, *Re* (Can.); **22. Evid.** p. 703  
 Tomson *v. Judge* (1851); **23. Exors.** No. 2777a  
 Tone's (Wolfe) Case (1798); **11. Const. L.** No. 384a  
 Tong Street Local Board *v. Seed* (1874); **2. Animals**, No. 332a  
 Tonner *v. William Baird & Co., Ltd.* (Scot.); **34. Mast. & S.** p. 990  
 Toohey *v. Gunther* (Aus.); **35. Mtge.** p. 1019  
 Tookey, *In the Goods of* (1847); **23. Exors.** No. 17b  
 Toole *v. Henneberry* (Can.); **21. Exon.** p. 695  
 Toomey *v. Bhupendra Nath Bose* (Ind.); **21. Exon.** p. 694; **24. Exors.** p. 731; **35. Mtge.** p. 1017  
 Toomy, *In the Goods of* (1864); **25. Gifts**, No. 294a  
 Toovey *v. Brock & Brock* (Can.); **26. Guar.** p. 769  
 Topham *v. Constantine* (1829); **32. Lien**, No. 553a  
 — *v. Motor Securities Co.* (Can.); **7. B. of Exch.** p. 292  
 Topper Grain Co. *v. Mantz* (Can.); **1. Agcy.** p. 69  
 Toronto (City) *v. Consumers' Gas Co.* (Can.); **9. Coys.** p. 359  
 Toronto & Hamilton Navigation Co. *v. Silcox* (Can.); **12. Contr.** p. 439  
 Toronto Corp'n. *v. Roman Catholic Separate Schools Trustees* (1926); **17. Dep.** No. 177d; **19. Educ.** p. 645  
 Toronto (City) Corp'n. *v. Toronto Railway Corp'n.* (Can.); **2. Arbn.** p. 152; **11. Comp. Pche.** p. 403  
 Toronto Electric Comrs. *v. Snider* (1925); **17. Dep.** Nos. 130a, 179a  
 Toronto General Trusts Corp'n. & Crowley, *Re* (Can.); **40. S. Land**, p. 1111

- Toronto General Trusts Corp'n. & McConkey, *Re* (Can.); **2. Arbn.** p. 149
- Toronto Hamilton & Buffalo Ry. Co. v. Steel Co. of Canada (Can.); **8. Carr.** p. 325
- Toronto Hockey Club v. Arena Gardens, Ltd. (Can.); **17. Damgs.** pp. 575, 576
- Toronto Incorporated Synod v. Frisken (Can.); **38. Real Prop.** p. 1091
- Toronto Metal & Waste Co., *Re* (Can.); **4. Bkpcy.** pp. 217, 218, 226, 228
- Toronto Radiator Manufacturing Co. v. Alexander (Can.); **7. Bldg. Conts.** p. 301
- Toronto Ry. Co. v. Grinstead (Can.); **17. Damgs.** p. 577
- *v. King* (1908); **36. Negl.** No. 765a
- Torrance & Province of Ontario, *Re*, *Re* Noble & Province of Ontario, *Re* Parkdale Boulevard, Ltd. & Province of Ontario (Can.); **11. Comp. Pchc.** p. 403
- Torrens, *Re* (Ir.); **5. Bkpcy.** pp. 243, 244
- Totaro Fujino, *Ex p.*, *Re* Nippon Kinyn Sha, Ltd. (Can.); **10. Coys.** pp. 349, 394
- Toth & J. I. Case Threshing Machine Co., *Re* (Can.); **35. Mige.** p. 1021
- Totten v. Truax (Can.); **38. Rates.** p. 1085
- Tourangeau v. Sandwich West Township (Can.); **2. Arbn.** p. 158
- Tournier v. National Provincial & Union Bank of England (1924); **3. Bank.** Nos. 986a, 990a
- Tovarisch, The (1929); **41. Ship.** No. 5630a
- Tower, *Ex p.* (Can.); **16. Courts.** p. 550
- Tower's Contract, *Re* (1924); **2. Agric.** No. 352a
- Towers v. Collins, *Re* Collins (1929); **40. Stillmts.** No. 3138b
- *v. Solomon* (Can.); **5. Bkpcy.** pp. 245, 263
- Towler v. Chatterton (1829); **32. Limit. of A.** No. 400a
- Townend v. Townend (1928); **27. H. & W.** No. 3124a
- Towner, *Re*, Eastbourne Corp'n. v. A.-G. (1923); **8. Char.** No. 432a
- Townsend v. Elliott (Can.); **38. Rates.** p. 1086
- *v. Moon Motor Co.* (Can.); **12. Contr.** p. 456
- Townslay v. Baldwin (Can.); **32. Lien.** p. 932
- Traders' Trust Co. v. Cohen (Can.); **5. Bkpcy.** pp. 240, 246
- *v. Crawford* (Can.); **7. B. of Sale.** p. 293
- Trafford v. Thrower (1929); **44. Waters.** No. 479
- Trainor v. Holcombe (Can.); **16. Courts.** p. 550
- Transferred Civil Servants (Ireland) Compensation, *Re* (1929); **16. Courts.** No. 690b; **17. Dep.** No. 714c
- Transvaal Provincial Administration v. Coley (S. Af.); **19. Educ.** p. 643
- Transvaal United Trust & Finance Co., Ltd., *Re*, *Re* Empire Builders, Ltd. (1919); **10. Coys.** No. 7014a
- Tranter v. Tranter & Lamb (N.Z.); **27. H. & W.** p. 802
- Travis v. Breckenbridge-Lund Lumber & Coal Co. (Can.); **32. Lien.** p. 931
- *v. Glasier* (Can.); **6. B. of Exch.** p. 284
- Travis Investment Co. v. Power (Can.); **19. Easmt.** p. 630
- Travis-Barker v. Reed (Can.); **38. Real Prop.** p. 1087
- Treasure Trove Diamonds, Ltd. v. Hyman (S. Af.); **9. Coys.** p. 363
- Treasury, The v. Hanf (S. Af.); **2. Aliens.** p. 104
- Treaty of Versailles, *Re*, *Re* Hours of Labour (Can.); **17. Dep.** p. 600
- Tredegar v. Harwood (1929); **31. L. & T.** No. 5069a
- Tregaskes v. Meikle (S. Af.); **1. Agcy.** pp. 60, 61
- Tremain v. Manawatee Drainage Board (N.Z.); **17. Dep.** p. 607
- Tremayne v. Grand Trunk Ry. Co. (Can.); **17. Damgs.** p. 583
- Tremblay v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 1077
- Trenton School Trustees & Trenton Village Corp'n., *Re* (Can.); **19. Educ.** p. 645
- Trenwith, *Re* (Can.); **5. Bkpcy.** p. 240
- *v. International Harvester Co.* (Can.); **1. Agcy.** p. 61
- Treuttel v. Barandon (1817); **43. Tror.** No. 200a
- Trevelyan v. Trevelyan (1810); **23. Exors.** No. 1031f
- Trevor-Smith v. Walters (S. Af.); **36. Negl.** p. 1031
- Triefus & Stripp, Ltd., *Ex p.*, *Re* Sternberg (Can.); **5. Bkpcy.** p. 252
- Triggs v. English (Can.); **6. B. of Exch.** p. 279
- Trimble v. Capling (Can.); **17. Dep.** p. 595
- Trinder v. Great Western Ry. Co. (1919); **2. Agric.** No. 970a
- Trinea v. Duleba (Can.); **1. Action.** p. 3
- Trinity College v. Levinter (Can.); **18. Discy.** pp. 616, 618
- Triplow, *Ex p.*, *R. v. Kent JJ.* (1927); **33. Mags.** No. 1393a
- Trollope's Will Trusts, *Re*, Public Trustee v. Trollope (1927); **24. Exors.** Nos. 6053a, 6138a
- Troner v. Hassold (1670); **11. Const. L.** No. 487c
- Troop & Lewis v. Merchants' Marine Insurance Co. (Can.); **29. Insee.** p. 867
- Trotter v. Pedlar (Can.); **5. Bkpcy.** p. 250
- Trout's Case, *Re* Essex Land & Timber Co. (Can.); **10. Coys.** p. 384
- Trower v. The Commonwealth (Aus.); **11. Const. L.** p. 429
- Trudel v. Lemoine, *Re* Societe de la caisse de retraite de la Banque Nationale (Can.); **3. Bank.** p. 175
- Truen v. Bozynski (Can.); **28. Infls.** p. 851
- Truman v. Ford Motor Co. of Canada, Ltd. (Can.); **12. Contr.** p. 462
- Trust & Loan Co. v. Clarke (Can.); **38. Real Prop.** p. 1087
- *v. Monk* (Can.); **13. Corpm.** p. 489
- Trust Houses, Ltd., *Ex p.*, *R. v. Watford Licensing JJ.* (1929); **30. Infor.** No. 310a
- Trustee, *Ex p.*, *Re* Bower Williams (1927); **5. Bkpcy.** No. 7096b
- , *Ex p.*, *Re* Rueb (1927); **4. Bkpcy.** No. 3365a
- , *Ex p.*, *Re* Canadian Cap Co. (Can.); **4. Bkpcy.** p. 208
- , *Ex p.*, *Re* Charters (1923); **5. Bkpcy.** No. 7119a
- , *Ex p.*, *Re* Chiangetti (1921); **5. Bkpcy.** Nos. 6912a, 6916a, 7113a
- , *Ex p.*, *Re* Cohen (1924); **4. Bkpcy.** No. 4665a; **5. Bkpcy.** No. 7225a
- , *Ex p.*, *Re* Davies (1921); **5. Bkpcy.** No. 7339a
- , *Ex p.*, *Re* Dent (1923); **4. Bkpcy.** No. 2902a; **5. Bkpcy.** Nos. 7153a, 7161a
- , *Ex p.*, *Re* Dollar Taxi Co. (Can.); **5. Bkpcy.** p. 238
- , *Ex p.*, *Re* Dombrowski (1923); **5. Bkpcy.** No. 5775b
- , *Ex p.*, *Re* Early, Smith & Pavey (1928); **5. Bkpcy.** No. 8645b
- , *Ex p.*, *Re* Gunsbourg (1920); **5. Bkpcy.** No. 5775a
- , *Ex p.*, *Re* Hoyle (1924); **5. Bkpcy.** Nos. 7172a, 7267a
- , *Ex p.*, *Re* Kaufman Segal & Domb (1923); **5. Bkpcy.** Nos. 6802a, 6879a
- , *Ex p.*, *Re* Lavey (1920); **5. Bkpcy.** No. 7603a

- Trustee, *Ex p., Re Mathieson* (1927); **5. Bkpcy.** No. 7096a  
 —, *Ex p., Re Plummer* (1900); **5. Bkpcy.** No. 7079  
 —, *Ex p., Re Prior* (1922); **4. Bkpcy.** No. 454a  
 —, *Ex p., Re Regal Phonograph Co. (Can.)*; **5. Bkpcy.** p. 252; **20. Eqp.** p. 658  
 —, *Ex p., Re Searle, Hoare & Co.* (1924); **4. Bkpcy.** Nos. 3210a, 4484a  
 —, *Ex p., Re Tabor* (1920); **5. Bkpcy.** No. 6516a  
 —, *Ex p., Re Wigzell* (1921); **4. Bkpcy.** No. 1893a  
 —, *Ex p., Re Wiskemann* (1923); **2. Aliens.** No. 237a  
 —, *Ex p., Re Wombwell* (1921); **5. Bkpcy.** No. 5859a  
 —, *Ex p., Powell's Case, Re Ford* (1929); **5. Bkpcy.** No. 6882b  
 —, *Ex p., Restall, Brown & Clennell's Case, Re Ford* (1929); **5. Bkpcy.** No. 6882a  
 — *v. Bance, Re Wethered, Ex p. Salaman's Trustee* (1926); **5. Bkpcy.** No. 6858a; **12. Contr.** No. 1459a  
 — *v. Bank of Montreal, Re Niagara Hats, Ltd. (Can.)*; **5. Bkpcy.** p. 249  
 — *v. Barclays Bank, Ltd., Ex p., Re Wigzell* (1921); **4. Bkpcy.** No. 1893a  
 — *v. Canada Metal Co., Ltd., Re McIntyre (Can.)*; **7. B. of Sale.** p. 261; **21. Estpl.** p. 687  
 — *v. Halland, Re Demry & Demry (Can.)*; **4. Bkpcy.** p. 222; **5. Bkpcy.** p. 249  
 — *v. Powell, Re Ford* (1929); **5. Bkpcy.** No. 6882b  
 — *v. Restall, Brown & Co., Re Ford* (1929); **5. Bkpcy.** No. 6882a  
 — *v. Snow (W. R.) & Co., Ex p., Re Cohen* (1924); **4. Bkpcy.** No. 4065a; **5. Bkpcy.** No. 7225a  
 — *v. Thompson & Sutherland, Ltd., Re Polson (Can.)*; **5. Bkpcy.** p. 265  
 Trustee Act, 1893, *Re, Re Stamford & Warrington (Earl) Trusts* (1896); **34. Mines.** No. 335c  
 Trustee, etc. *v. Paruk (S. Af.)*; **5. Bkpcy.** p. 258  
 Trustees, *Ex p., Re Morant* (1924); **5. Bkpcy.** Nos. 7183a, 7414a  
 —, *Ex p., Re Thompson (Can.)*; **5. Bkpcy.** pp. 248, 253  
 — *v. Inland Revenue Comrs., Sir G. B. Hunter* (1922) "C." Trust (Trustees) (1929); **28. Inc. T.** No. 472f  
 Trusts & Guarantee Co., Ltd. *v. Drumheller Power Co. (Can.)*; **10. Coys.** p. 383, 384  
 — *v. McLeod & Buxton (Can.)*; **32. Limit. of A.** p. 935  
 Trusts & Guarantee Co. *v. Smith (Can.)*; **9. Coys.** p. 362  
 Tryon *v. Peer (Can.)*; **18. Desct.** p. 609  
 Tshabalala *v. Van Der Merwe (S. Af.)*; **31. L. & T.** p. 912  
 Tshoba Colliery (Natal), Ltd. *v. Tshoba Coal Syndicate, Ltd. (S. Af.)*; **35. Mistake.** p. 1012  
 Tubantia, The (1924); **1. Adm.** Nos. 82a, 594a, 650a  
 Tucker, *Re, Ex p. Marine Insurance Club (Nfld.)*; **29. Insec.** p. 875  
 — *v. Bennett (Can.)*; **26. Guar.** p. 769  
 — *v. Guest, Keen & Nettelfolds, Ltd.* (1928); **34. Mast. & S.** No. 3243a  
 — *v. Hennessey (Aus.)*; **2. Animals.** p. 129  
 — *v. Powell (Can.)*; **19. Educ.** p. 647  
 Tudor, *Re (Aus.)*; **23. Errors.** p. 726  
 Tufts *v. Thomson (Can.)*; **31. L. & T.** p. 915  
 Tully *v. Andrews (Can.)*; **7. B. of Sale.** p. 292  
 — *v. Bradbury (Can.)*; **35. Mige.** p. 1022  
 Tunley *v. Federal Comr. of Taxation (Aus.)*; **8. Char.** p. 336  
 Tunnell, Ltd., *Re (Can.)*; **4. Bkpcy.** p. 220  
 —, *Re, Ex p. Wills & Anderson (Can.)*; **4. Bkpcy.** p. 209  
 Tupper *v. Crowe (Can.)*; **26. Guar.** p. 767  
 — *v. Newton* (1853); **33. L. G.** No. 27a  
 Turf Publishers, Ltd. *v. Davies* (1927); **25. Gaming.** No. 415b  
 Turgeon *v. Quebec (Can.)*; **32. Limit. of A.** p. 934  
 Turid, The (1921); **17. Custom.** No. 543  
 Turketine's Estate, *Re (Ir.)*; **4. Bkpcy.** p. 223  
 Turnbull's Estate (Official Assignee) *v. Goldstein (Aus.)*; **5. Bkpcy.** p. 325  
 Turner, *Re (Can.)*; **4. Bkpcy.** p. 222  
 — *v. Beaton (Can.)*; **1. Agcy.** p. 40  
 — *v. British Columbia Mutual Benefit Assocn. (Can.)*; **29. Insec.** p. 869  
 — *v. Cameron's Coalbrook Steam Coal Co.* (1850); **35. Mige.** No. 1362a  
 — *v. Canadian Pacific Ry. Co. (Can.)*; **2. Animals.** p. 134; **8. Carr.** p. 322  
 — *v. Civil Service Supply Assocn., Ltd.* (1926); **8. Carr.** Nos. 4a, 12a  
 — *v. Richardson* (1806); **5. Bkpcy.** No. 7649a  
 — *v. Schomberg* (1745); **4. Bkpcy.** No. 5424a  
 — *v. Waterloo Manufacturing Co. (Can.)*; **21. Exon.** p. 696  
 — *v. Watts* (1927); **31. L. & T.** Nos. 4167a, 6636a, 7037c  
 Turner & Canadian Order of Foresters, *Re (Can.)*; **29. Insec.** p. 871  
 Turner & Jones *v. Curran (Can.)*; **12. Contr.** p. 453  
 Turner, Meakin & Co. *v. Caledonia & British Columbia Mortgage Co., Ltd. (Can.)*; **1. Agcy.** p. 63  
 Turner, Meakin & Co. *v. Field (Can.)*; **1. Agcy.** p. 61  
 Turner Morrison & Co., Ltd., *Re (Ind.)*; **28. Inc. T.** p. 818  
 Turrill *v. Turrill (Can.)*; **38. Rates.** pp. 854, 1086  
 Turlton *v. Mitchell* (1927); **28. Inc. T.** No. 317a  
 Tussaud (Madame) & Sons, Ltd., *Re* (1927); **10. Coys.** No. 6989a  
 Tutt *v. Tutt & Wood* (1928); **27. H. & W.** No. 4406a  
 Tuttle, *Ex p. (Can.)*; **20. Elect.** p. 653  
 Twaites *v. Morrison (Can.)*; **2. Animals.** p. 133  
 251 Bars of Silver *v. Canadian Salvage Assocn. (No. 2) (Can.)*; **1. Adm.** p. 24  
 251 Bars of Silver & Sea Insurance Co. *v. Canadian Salvage Assocn. (Can.)*; **1. Adm.** p. 37  
 Tyerman *v. Stansfield, Re Raine* (1929); **23. Errors.** No. 5251a  
 Tyler, *Re* (1901); **8. Char.** No. 981a  
 — *v. Cork County Council (Ir.)*; **1. Action.** p. 9  
 Tylors (Australia), Ltd. *v. Macgroarty (Aus.)*; **2. Arbn.** p. 159  
 Tynan *v. A'Beckett (Aus.)*; **1. Agcy.** pp. 65, 82  
 — *v. Forbes (N.Z.)*; **2. Arbn.** p. 158  
 Tyrer, *Ex p., Re v. Lancashire JJ.* (1925); **3. Busty.** Nos. 278a, 372a  
 Tyrer Co. *v. Eureka Lumber Co. (Can.)*; **6. B. of Exch.** p. 280  
 Tyrrell *v. Tyrrell* (1928); **27. H. & W.** Nos. 6085b, 6188a  
 Tyson *v. Abercrombie (Can.)*; **17. Deeds.** p. 586  

U.

 U Gunawa *v. U Pyinnyadipa (Ind.)*; **2. Arbn.** p. 156  
 U. K. Advertising Co. *v. Glasgow Bag-Wash Laundry (Scot.)*; **30. L. & T.** p. 901  
 U Po Naing *v. Burma Oil Co., Ltd. (Ind.)*; **34. Mines.** p. 1006



- U Po U v. Matok Gyi (Ind.); **27. H. & W.** p. 789  
 U.S.A. v. Mammoth Oil Co. (Can.); **18. Discy.** p. 619  
 — v. Motor Trucks, Ltd. (1924); **12. Contr.** No. 900b  
 Udaichand Panna Lall v. Debibux Jewanram (Ind.); **2. Arbn.** p. 147  
 Udoychand Pannalal v. Guzdar (P. E.) & Co. (1925); **17. Dep.** No. 485a  
 Uhle v. Kroeker (Can.); **39. S. Goods.** p. 1103  
 Ulivi v. Miller (Scot.); **25. Gaming.** p. 757  
 Umar Hajee v. R. (Ind.); **14. Crim.** p. 512  
 Umra v. R. (1924); **17. Dep.** No. 549b  
 Underhills, Ltd. v. Barber, Re Davies Footwear Co. (Can.); **4. Bkpcy.** p. 217  
 Underwood v. Cox (Can.); **12. Contr.** p. 444  
 Underwood (A. L.), Ltd. v. Bank of Liverpool (1924); **3. Bank.** Nos. 387a, 479b, 691b  
 — v. Barclays Bank (1924); **3. Bank.** Nos. 387a, 479b, 691b  
 Union, The (1928); **41. Ship.** No. 5748a  
 Union, Re, Indian Sugar Mills Co., Ltd. v. Brij Lal, Jagannath (Ind.); **4. Bkpcy.** p. 221  
 Union Bank v. Benedict (Can.); **27. H. & W.** p. 789  
 — v. Farmer (Can.); **3. Bank.** pp. 188, 190  
 — v. Lohmann (Aus.); **2. Aliens.** p. 111  
 Union Bank of Australia, Ex p., Re Queensland Mercantile & Agency Co., Ex p. Australasian Investment Co. (1892); **11. Confl.** No. 417a  
 — v. McClintock (1922); **1. Agcy.** No. 989a  
 Union Bank of Canada v. Antoniou (Can.); **6. B. of Exch.** p. 275  
 — v. Dutczak (Can.); **8. Chos.** p. 349  
 — v. Makepeace (Can.); **5. Bkpcy.** p. 267  
 — v. Nettleton (Can.); **3. Bank.** p. 180  
 — v. Tattersall (Can.); **6. B. of Exch.** pp. 276, 277  
 — v. Wood (Can.); **3. Bank.** p. 186  
 Union Bank of Scotland v. Campbell (Scot.); **37. Perps.** p. 1056; **39. Rulchqs.** p. 1096  
 — v. Taylor (Scot.); **3. Bank.** p. 175  
 Union Cold Storage Co., Ltd. v. Glasgow Assessor (Scot.); **38. Rates.** p. 1083  
 Union Government (Minister of Justice) v. Bolam (S. Af.); **21. Exon.** p. 693  
 Union Government v. Chappell (S. Af.); **1. Agcy.** p. 57  
 — v. Fakir (S. Af.); **2. Aliens.** p. 121  
 Union Government (Minister of Railways) v. Lee (S. Af.); **36. Negl.** p. 1033  
 Union Government (Minister of Defence) v. Van Zyl (S. Af.); **18. Discy.** p. 613  
 Union Share Agency (Liquidators) v. Hatton (S. Af.); **9. Coys.** p. 366  
 Union Share Agency & Investment, Ltd. (Liquidators) v. Spain (S. Af.); **12. Contr.** p. 462  
 Union S.S. Co. of New Zealand, Ltd. v. Federal Comr. of Taxation (Aus.); **28. Inc. T.** p. 822  
 Union Trustee Co. of Australia, Ltd. v. A.-G. for Commonwealth of Australia, Re Mitchner (Aus.); **2. Aliens.** p. 108  
 Unique Properties, Ltd. v. Endean (N.Z.); **10. Coys.** p. 380  
 Unite, Re, Edwards v. Smith (1906); **8. Char.** No. 1382a  
 United British Insurance Co., Re (1929); **10. Coys.** No. 7526a  
 United Church, Re (Can.); **19. Eccl.** p. 641  
 United Exhibitors, Re (Can.); **5. Bkpcy.** p. 238  
 United General Commercial Insurance Corp., Re (1927); **10. Coys.** No. 7485a  
 United Grain Growers, Ltd. v. Mabey (Can.); **1. Agcy.** p. 53  
 United Grain Growers, Ltd.'s Case, Re Sale of Shares Act (Can.); **10. Coys.** p. 382  
 United Insurance Co. v. Arthur (N.Z.); **2. Arbn.** p. 142  
 United Manufacturing Co. v. St. Maurice Power Co. (1926); **17. Dep.** No. 24a  
 United States v. Snyder (Can.); **15. Crim.** p. 535  
 United States Shipping Board v. St. Albans, Ship (Aus.); **41. Ship.** p. 1135  
 Unity Manufacturing Co., Re, Moore's Claim (Can.); **5. Bkpcy.** p. 248  
 Universal Film Manufacturing Co. (Australasia), Ltd. v. New South Wales State (Aus.); **28. Inc. T.** p. 837  
 Universal Negro Improvement Asscn. Incorporated v. Morter (1928); **8. Char.** No. 272a  
 Universal Steam Navigation Co. v. McKelvie (J.) & Co. (1923); **1. Agcy.** No. 2549a  
 University College, Oxford (Master & Fellows) v. Garton (1847); **19. Eccl.** No. 3175a  
 Untermeyer Estate v. A.-G. for British Columbia (Can.); **21. E. D.** p. 676  
 Upham v. Bardebs (N.Z.); **40. S. Land.** p. 1110  
 — v. Goulstone (1843); **3. Bailmt.** No. 329a  
 Upper (Doe d.) v. Edwards (Can.); **38. Rates.** p. 1085  
 Upton, Re (Can.); **8. Char.** p. 340  
 — (Doe d.) v. Witherwick (1825); **21. Exon.** No. 1658a  
 Urnila Dasi v. Tata Iron Co. (Ind.); **34. Masl. & S.** p. 977  
 Urquhart v. Butterfield (1887); **25. Fr. Soc.** No. 155a  
 — v. Stracey (Ir.); **9. Coys.** pp. 358, 359  
 Urquhart Lindsay & Co. v. Eastern Bank, Ltd. (1922); **3. Bank.** No. 756b  
 Ussan Kasim Sait v. Secretary of State for India (Ind.); **19. Easml.** pp. 625, 627, 633  
 Utah State v. Jones (Can.); **24. Extrad.** p. 737  
 Uttam Chand Saligram v. Jewa Mamooji (Ind.); **2. Arbn.** p. 139  
 Uys v. Uys (S. Af.); **36. Negl.** p. 1028

## V.

- Vacuum Oil Co. v. Union Insurance Society of Canton, Ltd. (1926); **29. Insee.** No. 2286a  
 Vahey & Carleton County, Re (Can.); **2. Arbn.** p. 157  
 Vaillancourt v. R. (Can.); **34. Masl. & S.** p. 961  
 Vajesingji Joravarsingji v. Secretary of State for India (1924); **17. Dep.** No. 265a  
 Vakil of Azamgarh, A, Re (Ind.); **3. Barr.** p. 193  
 Vale v. Rockman, Re Kimber (1928); **3. Bank.** No. 112c; **39. Revenue.** No. 843a  
 Vale (J.) & Co. v. Van Oppen & Co., Ltd. (1921); **1. Agcy.** No. 1208a  
 Valencourt v. R. (Can.); **11. Comp. Pche.** p. 109  
 Valiantes v. Bell (Can.); **20. Elect.** p. 653  
 Vallabhdas Nanaraji v. Bandra Development Officer (Ind.); **11. Comp. Pche.** p. 403  
 Valli Mahomed Abu v. Berthold Reif (Ind.); **2. Aliens.** p. 116  
 Valois v. Boucherville (Can.); **16. Cr. Pract.** p. 571  
 Vancouver (City) v. Richmond (Can.); **42. Stats.** p. 1148  
 Vancouver Harbour Comrs. v. R., Re Kitsilano Indian Reserve (Can.); **11. Comp. Pche.** p. 407  
 Vancouver Ice & Storage Co. v. British Columbia Electric Ry. Co. (Can.); **36. Negl.** p. 1027  
 Vanderburgh v. Vanalstine (Can.); **40. S. Land.** p. 1112  
 Van Der Byl Estate v. Swanepoel (S. Af.); **34.**

- Vanderpant v. Mayfair Hotel Co. (1929); **26.** *Hghys.* No. 1680a; **36.** *Nuis.* Nos. 98a, 121a
- Van der Walt v. Hofmeyr (S. Af.); **1.** *Agcy.* p. 61
- Vanevery v. Buffalo & Lake Huron Ry. Co. (Can.); **1.** *Agcy.* p. 53
- Van Every v. Grant (Can.); **21.** *Exon.* p. 690
- Van Geel v. Warrington (Can.); **3.** *Bailmt.* p. 171; **34.** *Mast. & S.* p. 963
- Van Hemelryck v. New Westminster Construction & Engineering Co. (Can.); **1.** *Agcy.* p. 71
- v. New Westminster Construction & Engineering Co. (No. 2) (Can.); **16.** *Courts.* p. 553
- v. Northern Construction Co. (Can.); **1.** *Agcy.* p. 71
- v. Pacific Construction Co. (Can.); **1.** *Agcy.* p. 71
- Vann, *Ex p.*, *Re Marks* (1923); **5.** *Bkpcy.* No. 8104b
- Vansickle v. Kelly (Can.); **19.** *Easmt.* p. 625
- Van Volkenberg v. Western Canada Ranching Co. (Can.); **35.** *Mtgc.* p. 1024
- Van Wassenae v. Adams (Can.); **21.** *Exon.* p. 697
- Van Zijl v. Pienaar (S. Af.); **2.** *Aliens.* pp. 106, 115
- Varey v. Muirhead (Can.); **21.** *Exon.* p. 694
- Varshno Ditti v. Rameshri (Ind.); **17.** *Custom.* p. 573
- Varson v. Vegreville (Town) (Can.); **38.** *Itates.* p. 1083
- Vasauji Moolji v. Karsondas Tejpal (Ind.); **1.** *Agcy.* p. 62
- Vaselenak v. Vaselenak (Can.); **1.** *Agcy.* p. 40
- Vasiliatos v. Victoria Corp'n. (Can.); **39.** *Revenue.* p. 1098
- Vatsavaya Venkata Jagapati v. Poosapati Venkata-pati (Ind.); **8.** *Chos.* p. 346
- Vaughan v. Grindell (1921); **2.** *Agric.* No. 975a
- Vaughn v. A.-G. for Alberta (Can.); **21.** *E. D.* p. 675
- Veetis, The (1929); **41.** *Ship.* No. 6133a
- Veerabadra Pillai, *Re* (Ind.); **15.** *Crim.* p. 534
- Veerappa Chetty v. Muthiah Chetty (Ind.); **35.** *Money.* p. 1011; **36.** *Pdrns.* p. 1042
- Vellasawmy Servai v. L. Sivaraman Servai (Ind.); **17.** *Dep.* p. 607
- Venicoff, *Ex p.*, *R. v. Leman Street Police Station Inspector* (1920); **2.** *Aliens.* No. 551a
- , *Ex p.*, *R. v. Secretary of State for Home Affairs* (1920); **2.** *Aliens.* No. 551a
- Venkatappayya v. Venkata Ranga Rao (Ind.); **28.** *Infsts.* p. 850
- Venkataseswara Rao v. Lakshmanaswami (Ind.); **28.** *Infsts.* p. 851
- Venkatrama Ayyar v. Gopalakrishna Pillai (Ind.); **12.** *Contr.* p. 455
- Verge v. Somerville (1924); **8.** *Char.* Nos. 1a, 199b, 1252a
- Verney v. Verney (1920); **22.** *Evid.* No. 2757a
- Vernon Hardware Co. v. Reid & Reinhard (Can.); **8.** *Chos.* p. 350; **21.** *Exon.* p. 698
- Vernon-Jeffreys v. Pinto (1929); **35.** *Money.* Nos. 381a, 410a, 156a
- Verratt v. McAulay (Can.); **26.** *Guar.* p. 768
- Verron v. Anglo-Dutch Brick Co. (1927); *Id.* (1929); **41.** *Ship.* No. 3665a
- Versailles Treaty, *Re. Re Hours of Labour* (Can.); **17.** *Dep.* p. 600
- Vertannes v. Robinson (Ind.); **30.** *L. & T.* p. 898
- Viau v. Otis (Can.); **33.** *Mags.* p. 952; **34.** *Med.* p. 1103
- Vickers, Ltd. v. Miners (1927); **34.** *Mast. & S.* No. 3766a
- Victoria (State of) v. Commonwealth (Aus.); **17.** *Dep.* p. 601
- Victoria Dental Board v. Denison (Aus.); **34.** *Med.* p. 1002
- Victoria Lumber & Manufacturing Co., Ltd. v. Thomsen & Clark (Can.); **21.** *Espl.* p. 684
- Victoria School Trustees v. Muirhead & Mann (Can.); **1.** *Agcy.* p. 69
- Victoria Street Properties, Ltd. (In Voluntary Liquidation), *Re* (N.Z.); **10.** *Coys.* p. 391
- Victorian Railways Comrs. v. Speed (Aus.); **38.** *Rys.* p. 1077
- Victors, Ltd. v. Lingard (1927); **9.** *Coys.* No. 3419a
- Victory v. Saskatchewan Guarantee & Fidelity Co., Ltd. (Can.); **29.** *Insce.* p. 874
- Victory Rural Municipality v. Saskatchewan Guarantee & Fidelity Co., Ltd. (Can.); **29.** *Insce.* p. 874
- Vidal v. Robinson (William) Co., Ltd. (Can.); **2.** *Arbn.* p. 142
- Vignerou-Dahl (British & Colonial), Ltd. v. Pettit (1925); **18.** *Discy.* No. 805a
- Vignitch v. Bond & Canadian Pacific Ry. Co. (Can.); **10.** *Coys.* p. 378; **15.** *Crim.* p. 535; **34.** *Mast. & S.* p. 963
- Vigon v. Vigon & Kuttner (1929); **27.** *H. & W.* Nos. 5781d, 5781e, 5802a
- Viking Municipal Hospital District No. 10, *Re* (Can.); **16.** *Cr. Pract.* p. 503
- Villar, *Re. Public Trustee v. Villar* (1929); **37.** *Perps.* No. 66a
- Villiers v. A.-G., *Re Child Villiers' Application* (1922); **8.** *Char.* No. 2137
- Vince v. Abel & Imray (1928); **34.** *Mast. & S.* No. 2768a
- Vincent v. St. Magnus the Martyr, etc. (Rector & Churchwardens) (1925); **19.** *Ecel.* Nos. 2764a, 2825, 2831, 2873, 2896, 2906, 2916, 3113a
- v. Smith, *Re Smith* (1929); **40.** *StHmts.* No. 1878b
- v. Southern Ry. Co. (1927); **38.** *Rys.* No. 598a
- Vipond v. Lamb, *Re Lamb* (1929); **23.** *Errors.* No. 5917a
- v. Sisco (Can.); **39.** *S. Goods.* p. 1106
- Viscount Grain Growers Co-Operative Asscn.'s Trustee v. Brumwell & Royal Bank (Can.); **5.** *Bkpcy.* p. 258
- Vishnu Jagannath Joshi v. Vasudep Raghunath Oka (Ind.); **2.** *Agric.* p. 95
- Vishwanath v. Rankrishua (Ind.); **31.** *L. & T.* p. 907
- Visser, *Re. Queen of Holland v. Drukker* (1928) **11.** *Confl.* No. 6a
- Vitaly v. Bryan (Can.); **12.** *Contr.* p. 443
- Vitomen Cereal, Ltd. v. Manitoba Grain Co. (Can.) **9.** *Coys.* p. 355
- Vivian v. Cochrane (1855); **19.** *Ecel.* No. 3455a
- Vlassopoulos v. British & Foreign Marine Insurance Co., Ltd. (1929); **41.** *Ship.* Nos. 4248a, 4253a, 4260a, 4283a
- Voge v. Kerr (Aus.); **1.** *Agcy.* pp. 43, 44
- Vogue Fur Shop, Ltd., *Re. Ex p. Paquet Co.* (Can.); **5.** *Bkpcy.* p. 248
- Vokes Hardware Co. v. Grand Trunk Ry. Co. (Can.); **32.** *Lien.* p. 931
- Vollhoffer v. Vollhoffer (Can.); **27.** *H. & W.* p. 800
- Von Lorang v. Austrian Property Administrator (1927); **11.** *Confl.* Nos. 926a, 914b
- Vosper v. Great Western Ry. Co. (1928); **8.** *Carr.* No. 827a
- Vosz, *Re. Public Trustee v. Steele* (Aus.); **8.** *Char.* pp. 335, 339
- Vrouw Dorothea, The (1754); **1.** *Adm.* No. 1799a
- Vrouw Henrietta, The (1803); **37.** *Prize L.* No. 1189a
- Vulcaan Coal Co., *Re. Harrison v. Harbottle* (1922); **2.** *Aliens.* Nos. 223c, 223f

## W.

- W., *Re* (Can.); **3. Basty.** p. 199  
 — v. W. (1926); **27. H. & W.** No. 5792a  
 — v. W. (Aus.); **27. H. & W.** p. 802  
 W. H. Randall, *The* (1928); **1. Adm.** No. 672a  
 Wackrow v. Takapuna Jockey Club (N.Z.); **2. Animals**, p. 126  
 Waddell v. Howat (Scot.); **2. Agric.** p. 87  
 Waddell's Trustees v. Crawford (Scot.); **23. Exors.** pp. 724, 725  
 Waddington v. Esquimalt & Nanaimo Ry. Co. (Can.); **11. Const. L.** p. 438  
 Wade v. Hardley (No. 2) (N.Z.); **2. Arbn.** p. 157  
 Wade's Patent, *Re*, *Re* Douglas' Patent (1929); **36. Pats.** No. 2044a  
 Wadgery v. Fall (Can.); **12. Contr.** pp. 451, 452  
 Wadia v. Secretary of State for India (Ind.); **17. Deeds**, p. 588  
 Wadsley, *Re*, Bettinson's Representative v. Trustee (1925); **2. Agric.** No. 226a; **5. Bkpcy.** No. 7756a  
 Wadsworth v. Minister of Health (1927); **37. Poor L.** No. 1672a  
 Wadsworth Lighterage & Coaling Co., Ltd. v. Sea Insee. Co., Ltd. (1929); **29. Insee.** No. 1608a  
 Wage-Earners Claim, *Re* Reeve Dobie Mines (Can.); **4. Bkpcy.** p. 222  
 Wagner, *Re* (Can.); **24. Exrdn.** p. 737  
 — v. Hartows (Can.); **5. Bkpcy.** p. 248  
 — v. O'Donnell (Can.); **32. Lien**, p. 932  
 Wagstaff v. Clinton (1883); **2. Agric.** No. 175a  
 — v. Gutta Percha Co. (1927); **34. Mast. & S.** No. 3226a  
 Wahl v. Nugent (Can.); **21. Estpl.** p. 682  
 Wahl Estate, *Re* (Can.); **32. Limit. of A.** p. 934  
 Wainio v. Beaudreault (Can.); **1. Agcy.** p. 75; **3. Bailmt.** p. 173  
 Wainwright v. Clement (1838); **5. Bkpcy.** No. 7220a  
 Wairakei, Ltd. v. Cleave (N.Z.); **9. Coys.** pp. 366, 371  
 Wait & James v. Midland Bank (1926); **3. Bailmt.** No. 304b  
 Waite's Auto Transfer, Ltd. v. Waite (Can.); **28. Injon.** p. 856  
 Waitomo County Council v. Miles (N.Z.); **38. Rates**, p. 1081  
 Wakabayashi, *Ex p.*, *Ex p.* Lore Yip (Can.); **17. Dep.** p. 595  
 Wakaruk v. Wakaruk (Can.); **27. H. & W.** p. 793  
 Wakefield & Co., Ltd. v. Board (trading as J. P. Board & Co.) (1928); **18. Discy.** No. 87a  
 Wakely v. Triumph Cycle Co. (1924); **11. Confl.** No. 1243a  
 Waker v. Snowe (1622); **38. Real Prop.** No. 628a  
 Walch v. Nordquist (Can.); **24. Exors.** p. 733  
 Walden v. Gramophone Co., Ltd. (1927); **34. Mast. & S.** No. 3954a  
 — v. Haney Garage, Ltd. (Can.); **3. Bailmt.** p. 171  
 Wales v. Iron Trades Employers' Assocn., Ltd. (1928); **29. Insee.** Nos. 3205a, 3213a  
 Walford (Leopold) (London) v. Affrèteurs Réunis Société Anonyme (1918); **1. Agcy.** No. 1786a  
 Walkem, *Re* (Can.); **4. Bkpcy.** p. 226  
 Walker, *Re* (Can.); **2. Aliens**, p. 111  
 —, *Re*, *Ex p.* Hinkley (N.Z.); **4. Bkpcy.** p. 205  
 —, *Re*, Croker v. Penny (Aus.); **44. Wills**, p. 1183  
 — v. Brander (Sect.); **2. Animals**, p. 131  
 — v. Cornell (Can.); **36. Priors.** p. 1042  
 — v. Hendry (Scot.); **1. Agcy.** p. 40  
 — v. Howard (1927); **28. Inc. T.** No. 317b  
 — v. Hyman (Can.); **21. Estpl.** p. 686  
 — v. Kelly (Can.); **30. L. & T.** p. 899  
 Walker (John) & Sons, Ltd. v. Kilmarnock Assessor (Scot.); **38. Rates**, p. 1083  
 Walkerville Brewing Co. v. Mayrand (Can.); **12. Contr.** p. 453  
 Wall v. Exchange Investment Corpn. (1926); **9. Coys.** Nos. 3787a, 3811a, 3847a  
 — v. Southern Cross Assurance Co., Ltd. (N.Z.); **29. Insee.** p. 869  
 Wallace v. Fogarty (Ir.); **31. L. & T.** p. 915  
 — v. Wallace, *Re* Pedley (1927); **24. Exors.** No. 6341a  
 — v. Westerman (Can.); **1. Agcy.** p. 61  
 Wallace Huestis Grey Stone Co., *Re* (Can.); **17. Dep.** p. 595  
 Wallbridge v. Brown (Can.); **16. Courts.** p. 550  
 — v. Follett (Can.); **6. B. of Arch.** p. 275  
 — v. Gilmour (Can.); **32. Limit. of A.** p. 936  
 Wallen, *Re* (N.Z.); **23. Exors.** p. 716  
 Waller v. Drakeford (1816); **12. Contr.** No. 4725a  
 — v. Waller (1927); **27. H. & W.** No. 6250b  
 Waller & Petty v. Sands (1632); **2. Agric.** No. 633a  
 Wallinder v. Imperial Bank of Canada (Can.); **3. Bank.** p. 177  
 Wallis v. Burton (Can.); **27. H. & W.** p. 789  
 — v. Hodson (1740); **18. Descr.** No. 165b  
 — v. United French Polishers (1905); **36. A** No. 223a  
 Walliss v. Broadbent (1836); **22. Evid.** No. 2476a  
 Walpole v. Canadian Northern Ry. Co. (Can.); **11. Confl.** p. 420  
 — v. Conway (Lord) (1710); **20. Eqq.** No. 1772a  
 Walpool's Case (1349); **8. Chan.** No. 110a  
 Walsh, *Ex p.*, *Re* Yates (Aus.); **17. Dep.** pp. 600, 601  
 — v. Balhna Urban District Council (Ir.); **36. Negl.** p. 1033  
 — v. Brown (Can.); **12. Contr.** p. 462  
 — v. Local Government & Public Health Minister (Ir.); **33. L. G.** p. 943  
 — v. Mackerras (Aus.); **30. Intox.** p. —  
 — v. McMichael (Aus.); **17. Dams.** —  
 — v. Peat (Can.); **36. Negl.** p. 1032  
 — v. R. (Aus.); **19. Educ.** p. 648  
 Walsh & Kirkland (Can.); **27. H. & W.** p. 797  
 — v. Wightman (Ir.); **31. L. & T.** p. 913  
 Walstead v. Canadian Pacific Ry. Co. (Can.); **8. Carr.** p. 320  
 Walter, *Re*, Slocock v. Official Receiver (1929); **4. Agcy.** No. 4555a; **5. Bkpcy.** No. 617  
 — v. Culbertson (Scot.); **3. Basty.** p. 199  
 — v. Davies, *Ex p.* Glamorgan (former Sh (1858); **21. Eron.** No. 380  
 — v. Maunde (1815); **37. Powers.** No. 1135  
 — v. Seibel (Can.); **17. Dams.** p. 578  
 — v. Walter (Ind.); **28. Infls.** pp. 848, 849, 85  
 Walters, *Re* (Can.); **23. Exors.** p. 723  
 — v. Allison (S. Af.); **2. Arbn.** p. 111  
 — v. Mitton (Aus.); **25. Food.** p. 746  
 — v. Treasury Solicitor. Rowlls v. Bebb, *Re* Rowlls (1900); **20. Eqq.** No. 1068a  
 Walters (Stephen) & Sons, Ltd., *Re* (1926); **9. Coys.** Nos. 839a, 1080a; **10. Coys.** No. 7382a  
 Walton, *Re* (Can.); **5. Bkpcy.** p. 239  
 — v. Vancouver Board of School Trustees (Can.) **19. Educ.** p. 643  
 — v. York County Corpn. (Can.); **26. Hghys.** p. 778  
 Walton (Isaac) & Co., Ltd. v. Vanguard Motor Bus Co., Ltd. (1908); **26. Hghys.** No. 1513a  
 Walwyn v. Awberry (1677); **19. Eccl.** Nos. 472a, 2599a  
 Wanek v. Thols (Can.); **38. Real Prop.** p. 1090; **40. S. Land**, p. 1111  
 Wanganni Herald Newspaper Co. v. Coastal Shipping Co. (N.Z.); **41. Ship.** p. 1120

- Wanty v. Robins (Can.); **32. Lien**, p. 931  
 Warblington Overseers, *Ex p.* (1854); **38. Pub. Hlth.** No. 533  
 Ward v. Archer (Can.); **21. Exon.** p. 693  
 — v. British American Oil Co., Ltd. (Can.); **11. Confl.** p. 420  
 — v. Devlin (Ir.); **34. Mast. & S.** p. 909  
 — v. Griffiths Brothers, Ltd. (Aus.); **12. Contr.** p. 448; **34. Mast. & S.** p. 961; **44. Work.** p. 1185  
 — v. Maher, *Re* Maher (1928); **28. Infts.** No. 831a; **37. Perps.** No. 652a  
 — v. Paterson (1929); **40. S. Land**, No. 2701a  
 — v. Rosser (Can.); **2. Animals**, p. 134  
 — v. Snelman (1925); **13. Cty. Cts.** No. 770a  
 — v. Stocking (Can.); **21. Exon.** p. 694  
 Ward (Robert) & Co., Ltd. v. Wilson (Can.); **21. Exon.** p. 698  
 Wardfold Manufacturing Co., *Re* (Can.); **4. Bkpcy.** p. 222  
 Ware, *Re*, *Re* Rouse, Ware v. Rouse (1926); **20. Eqty.** Nos. 1873b, 2030a  
 Warman v. Seaman (1675); **40. Stillmts.** No. 1779a  
 — v. — (1677); **38. Real Prop.** No. 584a  
 Warner v. Linahan (Can.); **2. Agric.** p. 85  
 Warner Quinlan Asphalt Co. v. R. (Can.); **11. Const. L.** p. 435  
 Warre v. Rush, *Re* Rush (1923); **2. Aliens**, No. 215k  
 Warren v. Heslop (S. Af.); **12. Contr.** p. 455  
 — v. National Surety Co. (Can.); **26. Guar.** p. 768  
 — v. Warren (1925); **3. Bastly.** No. 65c  
 Warren & Co. v. Agdeshman (1922); **1. Agcy.** No. 1947a  
 Warren Gzowski & Co. v. Forst & Co. (Can.); **22. Evid.** p. 704  
 Warren Tea Co., Ltd. v. Reinglass (Aus.); **28. Injon.** p. 858; **43. Trade**, p. 1158  
 Warren's Trustees v. Inland Revenue (Scot.); **21. E. D.** p. 670  
 Warsawa v. Watsons (Owners) (1921); **34. Mast. & S.** No. 2690a  
 Warling Tithe Redemption, *Re* (1924); **19. Eccl.** Nos. 3513a, 3513b  
 Wartnaby v. Shuttleworth & Taylor (1837); **36. Plurs.** No. 915a  
 Warwick v. Butler & Lauritzen (1925); **13. Cty. Cts.** Nos. 750a, 763a  
 — v. Warwick (1928); **27. H. & W.** No. 5493a  
 Waryam Singh v. R. (Ind.); **14. Crim.** p. 500  
 Washington & Great Northern Townsite Co. v. Holbrook (Can.); **38. Real Prop.** p. 1089  
 Washington State v. Fletcher (Can.); **24. Extrdn.** p. 737  
 Wasserman v. Blackburn (1926); **29. Insee.** No. 3260a  
 Waterhouse v. Barker (1924); **3. Bank.** No. 1012a  
 — v. Clout, *Ex p.* Booker (1871); **23. Exors.** No. 5864a  
 Waterhouse (Thomas) & Co., *Re* (Can.); **4. Bkpcy.** p. 212  
 Waterloo v. Barnard (Can.); **38. Real Prop.** p. 1089  
 Waterloo Insurance Co. v. Hind (1862); **24. Exors.** No. 6074a  
 Waterloo Manufacturing Co., Ltd. v. Woepell (Can.); **39. S. Goods**, p. 1107  
 Waterman-Waterbury Manufacturing Co., Ltd. v. Slavanka School District Trustees (Can.); **19. Educ.** pp. 642, 645  
 — v. South Arcola School District (Can.); **19. Educ.** p. 643  
 Waters v. Groom (1814); **43. Trusts**, No. 769a  
 Waterside Workers' Federation of Australia v. Gilchrist, Watt & Sanderson, Ltd. (Aus.); **16. Cr. Pract.** p. 567  
 Waterson v. Low (N.Z.); **30. Intox.** p. 882  
 Watkins v. Coombes (Aus.); **25. Fraud. Conv.** p. 750  
 — v. Guest, Keen & Nettlefolds, Ltd. (1928); **34. Mast. & S.** No. 3243a  
 — v. Jones (1928); **28. Inc. T.** No. 548a  
 — v. Washburn (Can.); **23. Exors.** p. 724  
 Watkins (J. R.) Co. v. Caffierky (Can.); **22. Evid.** p. 713  
 — v. Hannah (Can.); **26. Guar.** p. 771  
 Watkins (J. R.) Co. v. Minke (Can.); **26. Guar.** p. 771; **35. Misrep.** p. 1009  
 — v. Nobert (Can.); **26. Guar.** p. 767; **27. H. & W.** p. 791  
 — v. Robertson (Can.); **26. Guar.** p. 768  
 Watkins Garage, Ltd. v. McKoryk (Can.); **39. S. Goods**, p. 1107  
 Watkyns v. Watkyns (1740); **7. Bonds**, No. 950a  
 Watson, *Re* (Can.); **4. Bkpcy.** p. 218  
 —, *Re*, Brand v. Culme-Seymour (1928); **40. Stillmts.** Nos. 3032a, 3032b, 3032c  
 — v. Aleppo (Owners) (1927); **34. Mast. & S.** No. 2602a  
 — v. Birmingham Government Instructional Centre (1926); **34. Mast. & S.** No. 2057a  
 — v. Cadillac Motor Sales Co., Ltd. (Can.); **1. Agcy.** p. 47  
 — v. Cully (1926); **8. Clubs**, No. 111a  
 — v. Dowser (Can.); **35. Mtge.** p. 1021  
 — v. Government Instructional Centre, Birmingham (1926); **34. Mast. & S.** No. 2057a  
 — v. Guillaume (Can.); **2. Animals**, p. 126  
 — v. Haggitt (1928); **17. Deeds**, No. 815a; **36. Plurs.** No. 1841a  
 — v. Howard (Can.); **11. Const. L.** p. 432  
 — v. Ketchum (Can.); **38. Real Prop.** p. 1092  
 — v. Motor Livery Co. (Can.); **18. Discy.** p. 616  
 — v. Powell (Can.); **1. Agcy.** p. 76  
 — v. Severn (Can.); **16. Courts**, p. 550  
 Watson & Cobourg Town, *Re* (Can.); **16. Cr. Pract.** p. 563  
 Watson & Godfrey v. Cameron (Aus.); **17. Dep.** p. 602  
 Watt v. Adams Brothers Harness Manufacturing Co. (Can.); **31. L. & T.** p. 903  
 — v. Longsdon (1929); **32. Label**, Nos. 1453a, 1457a, 1466a  
 — v. MacLaughlin (Ir.); **8. Clubs**, p. 351  
 Watters v. Hunter (Scot.); **2. Agric.** p. 84  
 Watts v. Battersea Corp'n. (1929); **38. Pub. Hlth.** No. 502a  
 Way, *In the Goods of* (1901); **23. Exors.** No. 63a  
 — v. Leland Hotel Co., Ltd. (Can.); **22. Evid.** p. 701; **29. Inns.** p. 859  
 — v. Way (Aus.); **30. Idgmts.** p. 895  
 Wearne Brothers v. Russa Engineering Works (Ind.); **1. Agcy.** p. 79; **8. Chos.** p. 346  
 Weathered v. Fitzgibbon (N.Z.); **25. Gaming**, p. 758  
 Weatherell v. Watson (1822); **14. Crim.** No. 1678b  
 Weatherley v. Weatherley (1929); **27. H. & W.** No. 6147a  
 Weaver, *Ex p.*, *Re* Cobourg Felt Co. (Can.); **5. Bkpcy.** p. 265  
 — v. Dixon (Can.); **1. Agcy.** p. 63  
 Webb, *Re* (1846); **33. Lunat.** No. 778a  
 —, *Re* (Can.); **5. Bkpcy.** pp. 232, 250  
 — v. H.M. Advocate (Scot.); **14. Crim.** p. 528  
 — v. Queensland Insurance Co., Ltd. (N.Z.); **2. Arbn.** p. 142  
 — v. Webb (1929); **27. H. & W.** No. 5688a  
 Webb (H. J.) & Co. (Smithfield, London), Ltd., *Re* (1922); **10. Coys.** Nos. 6460, 6936  
 Webb & Henderson v. Cupples (Aus.); **39. S. Goods**, p. 1104  
 Webber v. Copeman (Can.); **12. Contr.** p. 455

- Weber, *Ex p.*, *R. v. Knyvett* (Aus.); **16. Cr. Pract.** p. 566; **30. Intor.** p. 879
- Webster v. McIntosh (Can.); **7. Bldg. Conts.** pp. 301, 302
- v. Toronto Corp'n. (Can.); **18. Discy.** p. 616
- v. Walter, *Re Atkinson* (1929); **23. Exors.** No. 5919a
- v. Webster & Williamson (1926); **27. H. & W.** No. 5588a
- v. Western Australia Taxation Deputy Comr. (Aus.); **28. Inc. T.** p. 825
- Webster (A. G.) & Sons, Ltd. v. Cotton (Aus.); **1. Agcy.** p. 61
- Weddall v. Nixon (1853); **18. Eccl.** No. 2105a
- Wedin v. Pobertson (Can.); **18. Discy.** p. 617
- Wedley v. Wedley (Can.); **27. H. & W.** p. 804
- Wedlock (J. Stanley), Ltd., *Re* (Can.); **3. Bank.** p. 189; **4. Bkpcy.** p. 217
- , *Re, Ex p. Royal Bank* (Can.); **9. Coys.** p. 373
- Weeden v. Turner (Can.); **1. Agcy.** pp. 58, 66
- Weegan v. McDiarmid (Can.); **38. Rates.** p. 1085
- Wegg, *Re, Ex p. Banbury* (1843); **5. Bkpcy.** No. 7735
- , *Re, Ex p. Hanbury* (1843); **5 Bkpcy.** No. 7735
- Weicker v. Mortimer (Can.); **6. B. of Exch.** p. 275
- Weidman v. McClary (Can.); **21. Exon.** p. 690
- Weiler Brothers & Victoria (City) Corp'n., *Re* (Can.); **2. Arbn.** p. 145
- Weinberger v. Inglis (1919); **2. Aliens.** No. 140a
- Weingarden, *Re* (Can.); **22. Evid.** p. 713
- Weir v. Treasury Solicitor, *Re Stollery* (1926); **22. Evid.** Nos. 3165a, 3177a
- v. Weir (Can.); **12. Contr.** p. 444
- Weiss v. R. (Can.); **15. Crim.** p. 535; **39. Revenue.** p. 1100
- v. Schieschel (Can.); **18. Discy.** p. 616
- Weist v. Smith (Can.); **2. Agric.** p. 85
- Weitzel v. Weitzel (Can.); **27. H. & W.** p. 788
- Wekusko Mines, Ltd. v. May (Can.); **34. Mines.** p. 1005
- Welch v. Ernewein (Can.); **31. L. & T.** p. 915
- v. Myers (1816); **5. Bkpcy.** No. 7648b
- Weld v. Petre (1929); **32. Limit. of A.** No. 1709a; **35. Mtgc.** No. 1091a
- Weld-Blundell v. Stephens (1920); **1. Agcy.** No. 1243a
- Weld-Blundell Estate, *Re, Mowbray (Lord) v. Weld-Blundell* (1929); **40. Stillmts.** No. 2950a
- Welden v. Smith (Aus.); **11. Const. L.** p. 431
- Welland (City) v. Electric Steel & Metals Co., Ltd. (Can.); **20. Electric.** p. 657
- Wellaway v. Courtier (1918); **2. Agric.** No. 311b
- Wellband v. Walker (Can.); **21. Estpl.** p. 687
- Weller v. Shupe (Can.); **32. Lien.** p. 931
- Wellington Corp'n. v. Dealy (N.Z.); **26.** p. 783; **38. Pub. Auth.** p. 1069
- Wellington County Corp'n. v. Wilson (Can.); **33. L. G.** p. 944
- Wellington Racing Club v. Symons (N.Z.); **3. Bailmt.** p. 165
- Wells, *Re* (1929); **5. Bkpcy.** No. 7869a; **24. Exors.** No. 8520a
- v. Blain (Can.); **12. Contr.** p. 470
- v. Masterman (1799); **6. B. of Exch.** No. 707a
- v. Morgan (Can.); **34. Mast. & S.** p. 968
- Wellwood v. King (Alexander), Ltd. (Ir.); **3. Bailmt.** p. 172
- Welsh Navigation Steam Coal Co. v. Evans (1927); **34. Mast. & S.** No. 2120a
- Welton v. Welton (1927); **27. H. & W.** Nos. 4063a, 4098a
- Welzel v. Kain (Aus.); **36. Prtnrs.** p. 1042
- Wemyss Coal Co., Ltd. v. Walker (1929); **34. Mast. & S.** No. 3290a
- Wenchita, The v. Beechbay, The (Can.); **41. Ship.** p. 1135
- Wentworth Orchard Co., Ltd. v. Merchants Consolidated, Ltd. (Can.); **39. S. Goods.** p. 1105
- Wentzell v. Perks (Can.); **2. Animals.** p. 126
- Wernham v. McLean, Baird & Neilson (Scot.); **1. Agcy.** p. 53
- Werrin v. United National Collieries, Ltd. (1926); **34. Mast. & S.** No. 2331a
- Wessels v. Carscallen (Can.); **24. Exors.** p. 731; **43. Trusts.** p. 1170
- West, *Re* (Can.); **35. Mtgc.** p. 1023; **38. Real Prop.** p. 1090
- v. Accidental Fire Insurance Co. (Can.); **12. Contr.** p. 463; **35. Mtgc.** p. 1024
- v. Conway (Aus.); **18. Discy.** pp. 617, 618
- v. Dillican (N.Z.); **1. Agcy.** pp. 51, 77
- v. O'Leary (Can.); **21. Estpl.** p. 686
- v. Rotherham (1836); **29. Intpr.** No. 503c
- West (F. E.) & Co., *Re* (Can.); **4. Bkpcy.** pp. 226, 227
- West Friesland, The (1859); **1. Adm.** No. 352a
- (1860); **1. Adm.** Nos. 336, 352a
- West Ham Union v. Edmonton Union (1908); **30. Jdqmts.** No. 526a
- West Rand Estates, Ltd. v. New Zealand Insurance Co., Ltd. (S. Af.); **29. Insee.** p. 868
- West Riding of Yorkshire County Council v. Middleton Parish Council (1906); **38. Rates.** No. 1392a
- West Wales Joint Board for Mentally Defective v. Evans (1928); **31. L. & T.** Nos. 7103b, 7301a
- Westen v. Fairbridge (1923); **7. B. of Sale.** Nos. 708a, 723a
- Westerman v. Pantlin (1900); **40. S. Land.** No. 1944a
- Western Assurance Co. v. Taylor (Can.); **13. Corpms.** p. 487
- Western Australian Insurance Co., Ltd. v. A.-G. & Minister for Industry & Commerce (Ir.); **10. Coys.** p. 394
- Western Canada Auto Tractor Co., Ltd. v. Bjarnason (Can.); **1. Action.** p. 2
- Western Canada Flour Mills Co., Ltd. v. White Bakery (Can.); **5. Bkpcy.** p. 265
- Western Canada Loan & Savings Co. v. Court (Can.); **29. Intpr.** p. 876
- Western Canada Loan Co. v. Garrison (Can.); **32. Limit. of A.** p. 936
- Western Dominion Investment Co. v. McMillan (Can.); **7. Bonds.** p. 295
- Western Electric Co., Ltd.'s Patents, *Re* (1927); **36. Pats.** No. 2062b
- Western Finance Corp'n., Ltd. v. London & Lancashire Guarantee & Accident Co. of Canada (Can.); **29. Insee.** pp. 860, 871
- Western Life Assurance Co. v. Armstrong (Can.); **28. Infts.** p. 846
- Western Producers Mutual Hail Insurance Co. v. Stewart (Can.); **9. Coys.** p. 379
- Westerton, *Re, Public Trustee v. Gray* (1919); **3. Bank.** No. 409a
- Westfal Larsen & Co. Akt. v. Vacuum Oil Co. Proprietary, Ltd. (Aus.); **41. Ship.** p. 1131
- Westhill Crossing Case, Canadian National Rys. v. Hydro Electric Power Commission & Department of Highways for Ontario (Can.); **38. Rys.** p. 1077

- Westlake v. Adams (1858); **22. Evid.** No. 2583a  
 Westlake v. Page (1926); **2. Agric.** Nos. 260j, 266k  
 Westminster Bank v. Carlyon, *Re* Patten (1929); **8. Char.** Nos. 267a, 267b; **40. Stillmts.** Nos. 2738a, 2747a  
 — v. Everett, *Re* House (1929); **40. Stillmts.** No. 3151a; **43. Trusts.** No. 3475b  
 Westminster Bank, Ltd. v. Hilton (1926); **3. Bank.** No. 589a  
 Westminster Corpn. v. Armstrong (1929); **26. Hghys.** No. 1435d  
 Weston, *Ex p.*, *Re* v. Nickerson (Can.); **14. Crim.** p. 504  
 Westwood v. Barnett (Scot.); **2. Agric.** p. 86  
 — v. McMillan (Can.); **2. Animals**, p. 134  
 Wethered, *Re, Ex p.* Salaman's Trustee, Trustee v. Bance (1926); **5. Bkpcy.** Nos. 6858a, 7483a; **12. Contr.** No. 1459a  
 Wetmon v. Bayne (Can.); **19. Eccl.** p. 610  
 Wetmore, *Re, Ex p.* Baird & Peters (Can.); **5. Bkpcy.** p. 250  
 Weymberg v. Touch (1669); **11. Const. L.** No. 487d  
 Whaley, *Re, Ex p.* Official Receiver (1921); **5. Bkpcy.** No. 8435a  
 — v. Kelsey (Can.); **26. Hghys.** p. 780  
 Whalley v. Vandergrand (Can.); **2. Animals**, pp. 127, 128  
 — v. Whalley (1860); **20. Eqq.** No. 2480a  
 — v. Williamson (1836); **21. Exon.** No. 1580a (1843); **4. Bkpcy.** No. 4772a  
 Wharton v. Wharton & Young (Aus.); **27. H. & W.** p. 803  
 Wheat Supplies Royal Commission v. Usher & Co., Ltd. (Ir.); **2. Arbn.** p. 155  
 Wheeler, *Re* (1928); **33. Lunat.** Nos. 1378a, 1391a  
 Wheatley v. Anderson & Miller (Scot.); **32. Libel**, p. 926  
 — v. Howard (Can.); **3. Bastj.** p. 202  
 Wheeler, *Ex p.*, *Re* v. Investors' Review, Ltd. (1928); **22. Evid.** No. 4428a  
 —, *Re*, Jameson v. Cotter (1929); **21. E. D.** Nos. 147a, 209a, 271b  
 — v. Atkinson (Aus.); **35. Misrep.** p. 1010  
 — v. Bramah (1813); **5. Bkpcy.** Nos. 7649c, 7652a  
 — v. Hisey (Can.); **1. Agcy.** p. 51  
 Wheeler (M.) & Co., Ltd. v. Warren (1928); **10. Coys.** No. 5067b  
 Wheton, *Re* (Can.); **33. Mags.** p. 953  
 White, *Re*, Wilford v. White (1928); **25. Gifts**, No. 330a  
 Whimby v. Hyde (Can.); **38. Real Prop.** p. 1088  
 Whimster v. Crow's Nest Pass Coal Co. (Can.); **32. Lien**, p. 931  
 Whipp v. Mackey (Ir.); **19. Easmt.** p. 625  
 Whistle Co., *Re* (Can.); **4. Bkpcy.** p. 209  
 Whitaker, *Re*, Rooke v. Whitaker (1929); **40. Stillmts.** No. 1878a  
 Whitbread & Co., Ltd. v. Edinburgh Assessor (Scot.); **38. Rates**, p. 1083  
 Whitechurch v. Hyde (1742); **1. Action**, No. 187a  
 White, *Re* (1928); **23. Exors.** No. 1431b  
 —, *Re* (Can.); **4. Bkpcy.** p. 218; **38. Real** p. 1088  
 —, *Re*, Kersten v. Tune (Can.); **12. Contr.** p. 414  
 —, *Re*, Pitman v. White (1929); **43. Trusts**, No. 3489a  
 — v. Cubitt (1929); **42. Str. Traf.** No. 94a  
 — v. Gardner (1835); **1. Action**, No. 617a  
 — v. Inga Municipal District & Pidgeon (Can.); **38. Rates**, p. 1086  
 — v. Miller (Can.); **22. Evid.** p. 707  
 — (Doe d.) v. Roe (Can.); **38. Real Prop.** p. 1091  
 — v. Royal Bank of Canada (Can.); **3. Bank**, pp. 177, 181  
 — v. Smith (1927); **35. Money**, No. 434a  
 White v. Taylor (1801); **14. Crim.** No. 1555a  
 — v. Todd Oil Burners, Ltd. (1929); **36. Pats.** No. 459a  
 — v. Whitcher (1928); **28. Inc. T.** No. 545c  
 White & Co., Ltd. v. Ionia, The (Can.); **4. Bkpcy.** p. 223; **5. Bkpcy.** pp. 234, 258  
 White & Elliott, *Ex p.*, *Re* Gadsby (Can.); **5. Bkpcy.** p. 240  
 White & Gray's Patent, *Re* (1927); **36. Pats.** No. 1681a  
 White & Hales v. Islington Corpn. (1909); **38. Rates**, No. 675d  
 White & Toronto (City), *Re* (Can.); **2. Arbn.** p. 154  
 White, Child & Beney, Ltd. v. Eagle Star & British Dominions Insurance Co. (1922); **11. Confl.** No. 17a  
 — v. Simmons (1922); **11. Confl.** No. 17a  
 Whiteford v. McLeod (Can.); **12. Contr.** p. 463  
 Whitehead, *Re*, Peacock v. Lucas (1894); **23. No. 5360a**; **40. Stillmts.** Nos. 1960a, 2297a  
 — v. Whitehead (Can.); **27. H. & W.** p. 790  
 Whitehouse v. Midland Ry. Co. (1866); **8. Carr.** No. 579a  
 Whitehurst, Appellant, *Re* Kearney's Estate (Aus.) **21. Espl.** p. 687  
 Whiteside, *Re*, *Re* v. McInroy (Can.); **16. Ctmtpt.** p. 547  
 — v. Wallace Shipyards, Ltd. (Can.); **1. Agcy.** p. 64  
 Whiting v. Cavendish, *Re* Baillie (Aus.); **43. Trusts**, p. 1169  
 Whitla v. Phair (Can.); **12. Contr.** p. 464  
 Whitlock v. Whitlock (1924); **18. Descr.** No. 134a  
 Whitlock's Case (1725); **4. Bkpcy.** No. 223a  
 Whitman v. Harvey (Can.); **32. Lien**, p. 932  
 Whitmore v. Inland Revenue Comrs. (1925); **28. Inc. T.** No. 664a  
 Whitrod, *Re*, Burrows v. Base (1926); **23. Exors.** No. 5340a  
 Whittaker v. Taylor (Can.); **1. Agcy.** p. 40  
 Whittle v. Henley (S. Af.); **9. Coys.** p. 363  
 Whitwell, *Re*, Senior v. Wilson (1890); **20. Eqq.** No. 1552a  
 Whitworth, *Re* (1928); **33. Lunat.** No. 529b  
 Whitworth (Herbert), Ltd. v. Jannadas Lenchand Mehta (Ind.); **43. Trade Mks.** p. 1162  
 Wholesale Grocers, Ltd., *Re* (Can.); **5. Bkpcy.** p. 262  
 Whyatt v. Marsh (Can.); **24. Exors.** p. 732  
 Whynot, *Ex p.* (Can.); **16. Cr. Pract.** p. 562  
 Whytall v. Kay (1833); **20. Eqq.** No. 817a  
 Wiarton Lumber Co., *Re, Ex p.* Bank of Commerce (Can.); **3. Bank.** p. 190  
 Wick Case (Can.); **19. Eccl.** p. 641  
 Wickes v. Tanner (1848); **22. Evid.** No. 2513a  
 Wickett v. Port of London Authority (1929); **41. Ship.** No. 8715a  
 Wicks & Armstrong, *Re* (Can.); **3. Bastj.** p. 201; **42. Stats.** p. 1147  
 Wigg v. A.-G. of Irish Free State (1927); **17. Dep.** No. 714b; **38. Pub. Auth.** p. 1071  
 Wiggins v. Lavy (1928); **1. Action**, No. 689a  
 Wight & Best's Brewery Co.'s Contract, *Re* (1929); **40. S. Land**, No. 2530a  
 Wigzell, *Re, Ex p.* Hart (1921); **4. Bkpcy.** Nos. 1579a, 1893a  
 —, *Re, Ex p.* Trustee v. Barclays Bank, Ltd. (1921); **4. Bkpcy.** No. 1893a  
 —, *Re*, Hart v. Barclays Bank (1921); **4. Bkpcy.** No. 1893a  
 Wijeyewardene v. Jayawardene (1924); **17. Dep.** No. 271a  
 Wilberforce Educational Institute v. Holden (Can.) **19. Educ.** p. 643

- Wilcock v. Pinto & Co. (in the name of Kummer) (1925); **28. Inc. T.** No. 633a
- Wild v. Plant, *In the Estate of Plant* (1920); **23. Exors.** No. 3127a
- v. Plant, *Re Plant* (1926); **23. Exors.** No. 3127a
- v. Simpson (1919); **1. Action**, No. 598a
- Wilde v. Crow (Can.); **22. Evid.** p. 712
- Wilderman v. Berk (F. W.) & Co. (1925); **2. Aliens**, No. 280a
- Wiles v. Elletman's Wilson Line (1928); **34. Mast. & S.** Nos. 2849a, 2949a
- Wiley, *Re* Anthony Salt Co., *Re* Crown's Customs Duties Claim (Can.); **4. Bkpcy.** p. 228
- v. Booker (Can.) **18. Distr.** p. 624
- Wilford v. While, *Re* While (1928); **25. Gifts**, No. 330a
- Wilford's Estate, *Re*, Taylor v. Taylor (1879); **37. Pers. Prop.** No. 94a
- Wilgress v. Ritchie (Can.); **2. Animals**, p. 127
- Wilhelm Schmidt, *The* (1871); **11. Confl.** No. 615a
- Wilkie v. Wilkie (N.Z.) **27. H. & W.** p. 796
- Wilkin v. Brown (Can.); **40. S. Land**, p. 1110
- Wilkins v. Miner (Can.); **21. Exon.** p. 691; **32. Limit. of A.** p. 935
- v. New Saville Securities, Ltd. & Hawkings (G. F.) & Son (1922); **7. B. of Sale**, No. 283a
- Wilkins v. Reeves (1855); **35. Mtge.** No. 2897b
- v. Smith, *Re* Smith's Settlement (1902); **30. Jdgmts.** No. 787a
- Wilkinson, *Ex p.*, R. v. Copestake (1927); **3. Busly.** No. 366b
- v. Oshawa Corp'n. (Can.); **17. Damgs.** p. 582
- v. Thomas (Can.) **19. Lduc.** pp. 642, 644
- Willan v. Lancaster (1826) **23. Exors.** No. 5697d
- Willard v. McNab (Can.); **17. Deeds**, p. 586
- Willasey v. Mashiter (1834); **4. Bkpcy.** No. 4771a
- Willcocks v. New Zealand Insurance Co. (N.Z.); **29. Insee.** p. 874
- Willcox, *Re* (N.Z.); **23. Exors.** p. 720
- Willetts v. Chaplin & Co. (1923); **3. Bailmt.** No. 339a
- Willey, *Ex p.*, *Re* Wright (1883) **30. Jdgmts.** p. 685a
- , *Re*, Goulding v. Shirtcliffe (1929) **44. Wills**, No. 5625a
- William, *The* (1795); **2. Aliens**, No. 419a
- William Baird & Co., Ltd. v. Campbell (Scot.); **21. Exon.** p. 696; **34. Mast. & S.** p. 990
- William Bean & Sons, Ltd. v. Flaxton Rural District Council (1929); **38. Pub. Hlth** Nos. 121a, 333a, 509b
- William Hamilton Manufacturing Co. v. Victoria Lumbering & Manufacturing Co. (Can.); **22. Evid.** p. 712
- William Milne, Ltd. v. Glasgow Assessor (Scot.); **38. Rules**, p. 1083
- Williams, *Ex p.*, *Ex p.* Holder, *Re* Madrid Bank, Ltd. (1866); **10. Coys.** No. 6368a
- , *Ex p.*, *Re* Singleton (Aus.) **33. Mays.** p. 953
- , *Ex p.*, *Re* Winter (1927); **5. Bkpcy.** No. 8448a
- , *Re* (Can.); **24. Exors.** p. 731; **38. Real Prop.** p. 1087
- , *Re*, Public Trustee v. Williams (1927); **8. Char.** Nos. 75a, 718a
- v. Brown (Can.); **32. Label**, p. 923
- v. Cadbury (1867); **5. Bkpcy.** No. 7867a
- v. Clark (Aus.) **28. Infts.** p. 848
- v. Crawshay Brothers (Cyfarthfa), Ltd. (1929); **34. Mast. & S.** No. 3710a
- v. Curzon Syndicate, Ltd. (1919); **3. Bailmt.** No. 50a
- v. Cwmaman Coal Co., Ltd. (1927); **34. Mast. & S.** No. 3239a
- Williams v. Gesse (1837) **3. Bailmt.** No. 69a
- v. Hughes (1857); **23. Exors.** No. 5723a
- v. Jones (1928); **2. Aliens**, No. 558b
- v. Jones (Stanley) & Co. (1926); **2. Arbn.** No. 2355a
- v. Larsen, Ltd. (1928); **34. Mast. & S.** No. 2213a
- (Doe d.) v. Leavitt (Can.) **38. Real Prop.** p. 1091
- v. London Guarantee & Accident Co., Ltd. (Can.); **18. Discy.** p. 614
- v. Manissalian Frères (1923); **2. Arbn.** No. 1039a
- p. Rapelje (Can.); **25. Fraud. Conv.** p. 749
- v. Rice (Can.); **5. Bkpcy.** p. 239
- v. Richards (Can.); **13. Crnrs.** p. 481
- v. Rodgers (Can.); **21. Estpl.** p. 683
- v. Sanders (1927); **28. Inc. T.** No. 25a
- v. Snowden (1880); **34. May. Ct.** No. 21a
- v. Stewart & Cameron, Ltd. (Can.); **7. Bldg. Conts.** p. 301
- v. Tredegar Iron & Coal Co., Ltd. (1927); **34. Mast. & S.** No. 3531a
- v. Waters (1845); **38. Real Prop.** No. 509a
- v. West (S. Af.); **1. Agcy.** p. 76
- v. Williams (1817); **28. Injon.** No. 730a
- v. — (1929) **27. H. & W.** Nos. 1278a, 6191a
- Williams & Mordey v. Muller (W. H.) & Co. (London), Ltd. (1921); **2. Arbn.** No. 302a
- Williams & Sears v. Richards (Can.); **21. Estpl.** p. 681
- Williams & Wignmore Steamship Corp'n. v. R., *Re* Gaston, Williams & Wignmore & Gaston (Can.); **11. Const. L.** p. 435
- Williams & Williams v. Fraser (Can.); **22. Evid.** p. 713
- Williams Machine Co. of Winnipeg, Ltd. v. Winnipeg Storage, Ltd. (Can.); **30. L. & T.** p. 899
- Williams (A. R.) Machinery Co., Ltd. v. Moore (Can.); **8. Chos.** p. 318
- Williams' Settlement, *Re* Greenwell v. Humphries (1929); **40. Stllmts.** No. 116b
- Williamson, *Re* (Can.); **5. Bkpcy.** p. 256
- v. Ah On (Aus.); **17. Dep.** p. 601
- v. North of Scotland, etc. Navigation Co. (Scot.); **8. Carr.** p. 320
- Willie v. Delisle (Can.); **32. Lien**, p. 932
- Willis v. Baggs & Salt (1925); **12. Contr.** Nos. 418a, 448a
- v. Willis (1928); **27. H. & W.** No. 2061a
- Willis C. Raymond, Ltd. (In Liquidation), *Re* (N.Z.); **10. Coys.** p. 391
- Wills & Anderson, *Ex p.*, *Re* Tunnell, Ltd. (Can.); **4. Bkpcy.** p. 209
- Wills (George) & Sons, Ltd. v. Cunningham (R. S.) Son & Co. (1924); **12. Contr.** No. 2505a
- Wilmot v. Maitland (Can.); **28. Injon.** p. 857
- v. Wilkinson (1827); **19. Echl.** No. 2104a
- Wilneff, *Re* (Can.); **14. Crim.** p. 513; **30. Intox.** p. 883
- Wilner, *Re* (Can.); **4. Bkpcy.** p. 218; **29. Insee.** p. 869; **32. Lien**, p. 930; **39. Revenue.** p. 1098
- Wilson, *Re* (Can.); **5. Bkpcy.** p. 239
- , *Re*, *Ex p.* Salaman (1926); **4. Bkpcy.** No. 1894b
- v. Atlas Coal Co., Ltd. (Can.); **1. Agcy.** p. 67
- v. Balfour (1929); **12. Contr.** No. 539a
- v. Cameron (Can.); **21. Estpl.** p. 679
- v. Codyre (Can.) (1866); **17. Dep.** p. 595; **21. Estpl.** p. 683
- v. Codyre & Allingham (Can.) (1888); **25. Fish.** p. 744
- v. Fleming (Can.); **13. Corpns.** p. 491; **21. Exon.** p. 607

- Wilson v. Hogarth (N.Z.); **25. Gaming**, p. 755  
 — v. Kemp (1815); **4. Bkpcy.** No. 5424b  
 — v. Kent (George) & Sons, Ltd. (N.Z.); **36. Negl.** p. 1032  
 — v. Leslie (1857); **23. Errors**. No. 5160a  
 — v. Maritime United Farmers Co-Op., Ltd. (Can.); **10. Coys.** p. 380  
 — v. Mason (Can.); **12. Contr.** pp. 465, 467  
 — v. Matthewson Brothers & Magernin (Can.) **21. Exon.** p. 692  
 — v. Minister of Finance (Can.); **21. E. D.** p. 676  
 — v. New Zealand Express Co., Ltd. (N.Z.), [1923] N. Z. L. R. 201; **8. Carr.** p. 314  
 — v. New Zealand Express Co., Ltd. (No. 2) (N.Z.), [1924] N. Z. L. R. 465; **8. Carr.** p. 315  
 — v. New Zealand Express Co., Ltd. (No. 3) (N.Z.), [1924] N. Z. L. R. 890; **8. Carr.** p. 315  
 — v. Pelletier (Can.); **6. B. of Exch.** p. 268  
 — v. R. (Can.); **17. Deeds**, p. 585  
 — v. Simpson (1926); **28. Inc. T.** No. 549a  
 v. Ucelli (1929); **34. Mast. & S.** No. 414a  
 — v. Wilson (1895); **11. Confl.** No. 1348a  
 — v. — (Can.); **38. Real Prop.** p. 1088  
 v. Winn (W.) & Co., Ltd. (Aus.); **34. Mast. & S.** p. 977  
 — v. Winnipeg Electric Ry. Co. (Can.); **8. Carr.** p. 318  
 v. Woollatt (Can.); **9. Coys.** p. 373  
 — v. Yates (1927); **2. Animals**, No. 705a  
 — v. York (Can.); **33. L. G.** p. 944  
 Wilson & Co., Ltd. v. Farquharson (Can.); **12. Contr.** p. 441  
 Wilson & Sarnia, *Re*, *Re* Bright & Sarnia (Can.); **41. Sewers**, p. 1125  
 Wilson Co. v. Mayflower Bottling Co. (Can.); **6. B. of Exch.** p. 275  
 Wilson's & Mathieson's, Ltd. v. Meynell & Sons, Ltd., *Re* Wilson's & Mathieson's, Ltd. Application (1929); **43. Trade Mks.** Nos. 1350a  
 Wilson's Case, *Re* Land Tax Acts (Aus.); **30. Land Tax**, p. 897  
 Wilsons & Clyde Coal Co., Ltd. v. Burrows (1929); **34. Mast. & S.** No. 3056d  
 Wilt (Doc. d.) v. Jardine (Can.); **38. Real Prop.** p. 1089  
 Wilton Farmers' Co-operative Assocn. v. Burgess (Can.); **16. Cr. Pract.** p. 567  
 Wilts & Somerset Farmers, Ltd., *Re* (1929); **28. Ind. Soc.** No. 45a  
 Wimble (F. T.) & Co., Ltd. v. Guillester (Aus.); **42. Str. Traf.** p. 1151  
 Winding-up Act, *Re*, *Re* Great West Permanent Loan Co. (Can.); **10. Coys.** p. 386  
 —, *Re*, *Re* Thompson Powder Co. (Can.); **4. Bkpcy.** p. 205  
 Winding-up Act & Franco-Canadian Mortgage Co., Ltd., *Re*, *Re* Bank of Montreal (Can.); **26. Guar.** p. 771  
 Windover & Great West Life Assurance Co., *Re* (Can.); **35. Mlge.** p. 1021  
 Windsor v. Commercial Bank of Windsor (Can.); **17. Dep.** p. 598  
 — v. Turner (Can.); **19. Educ.** p. 645  
 Windsor & Annapolis Ry. Co., *Re* (Can.); **17. Dep.** p. 597  
 Windsor Auto Sales Agency v. Martin (Can.); **25. Fraud. Contr.** p. 748  
 Windsor Corpn. v. Canadian Pacific Ry. Co. (Wyandotte Street Bridge Case) (Can.); **38. Rys.** p. 1076  
 Windsor (City) Corpn. v. McLeod (Can.); **17. Dep.** p. 596  
 Windsor Steam Coal Co. (1901), Ltd., *Re* (1928); **10. Coys.** No. 6857a  
 Windsor Steam Coal Co. (1901), Ltd., *Re* (1929); **39. Revenue**, No. 55a; **43. Trusts**, Nos. 2033a, 3996a  
 Wing v. Burn (1928); **8. Clubs**, No. 39a; **28. Injon.** No. 808a  
 Wing v. O'Connell (Ir.); **28. Inc. T.** p. 818  
 Wing Kee v. Butt (Can.); **34. Mast. & S.** p. 903  
 Winkler & Martin v. Hutton (Can.); **12. Contr.** p. 444  
 Winmill & Thomas v. Collins (Can.) **2. Animals**, p. 126  
 Winn v. London County Council (1923); **13. Cty. Cts.** No. 497a  
 Winning v. Torrance (Scot.); **14. Crim.** p. 529  
 Winnipeg v. Cross (Can.); **11. Comp. Pche.** pp. 402, 403, 407; **17. Dep.** p. 595  
 Winnipeg Charter, *Re*, *Re* ex rel Royal Trust Co., *Re* ex rel Freeman (Can.); **38. Rules**, p. 1085  
 —, *Re*, *Re* Community of Sisters of the Holy Names of Jesus & Mary (Can.); **16. Courts**, p. 552  
 Winnipeg Charter, *Re*, *Re* Fraser's Appeal (Can.); **2. Arbn.** p. 138; **38. Rates**, p. 1085  
 Winnipeg Corpn. v. Toronto General Trusts Corpn. (Can.); **11. Comp. Pche.** p. 410  
 Winnipeg Electoral District, *Re*, *Re* Manitoba Election Act (Can.); **20. Elect.** p. 652  
 Winnipeg Electric Co. v. Odegaard (Can.); **43. Tram.** p. 1164  
 — v. Scott (Can.); **43. Tram.** p. 1164  
 Winnipeg Golf Club & Hutchings, *Re* (Can.); **2. Arbn.** pp. 145, 148, 151  
 Winnipeg Laundry v. Caverley (Can.); **28. Injon.** p. 858  
 Winnipeg Rifles, 90th Battalion, *Re* (Can.); **11. Const. L.** p. 134  
 Winnipeg Savings Bank (Trustee) v. Konny (Can.); **3. Bank.** p. 182  
 Winsley Brothers v. Woodfield Importing Co. (N.Z.); **39. S. Goods**, p. 1103  
 Winslow v. Verner (Can.); **26. Guar.** p. 769  
 Winslow Marine Railway & Shipbuilding Co. v. Pacifico, The (Can.); **1. Adm.** pp. 18, 31  
 Winston v. Pinkney (1672); **31. L. & T.** No. 3590  
 Wintemute v. Taylor (Can.); **5. Bkpcy.** p. 255  
 Winter, *Re*, *Ex* p. Williams (1927); **5. Bkpcy.** No. 8448a  
 — v. Capilano Timber Co. (Can.); **4. Bkpcy.** p. 231; **31. L. & T.** p. 912  
 Charter (1829); **1. Agcy.** No. 2339a  
 Dewar & Co. (Can.); **21. Estpl.** p. 682  
 Dibdin (1844); **11. Const. L.** No. 266a  
 — v. South African Rys. & Harbours (S. Af.); **31. L. & T.** p. 912; **41. Ship.** p. 1138  
 — v. Toronto (City) (Can.); **11. Comp. Pche.** p. 360  
 Wintemute v. Moulton (Can.); **1. Agcy.** pp. 74, 81  
 Winthrop v. Winthrop (1845); **33. Lunat.** No. 26a  
 Wirral Highway Board v. Newell (1895); **26. Hghys.** No. 1852a  
 Wisbech Rural District Council v. Ward (1928); **7. Bldg. Comts.** No. 425a  
 Wise v. Kerr (Can.); **1. Agcy.** p. 76  
 — v. Lansdell (1921); **5. Bkpcy.** Nos. 7689a, 7789a  
 — v. Toronto Transportation Commission (Can.); **26. Hghys.** p. 777  
 Wiskemann, *Re*, *Ex* p. Trustee (1923); **2. Aliens**, No. 237a  
 Wiskin v. Terdich Brothers Pty, Ltd. (Aus.); **39. S. Goods**, p. 102  
 Withers (Thomas) & Sons, Ltd. v. Samuel Withers & Co., Ltd. (1926); **32. Libel**, No. 1638a  
 Withers, Bensons, Currie, Williams & Co. v. Cawston (1928); **27. H. & W.** No. 1803a



- Witts v. Mackay** (1927); **19. Educ.** No. 288a  
**Wix, Re, Ex p. Chatterby** (1881); **5. Bkpcy.** No. 7601  
**Woffington v. Sparks** (1754); **7. Bonds.** No. 706a  
**Woking Urban District Council** (Basingstoke Canal) Act, 1911, *Re* (1911); **2. Arbn.** No. 1049  
**Wolf v. Dadyba** (Ind.); **2. Aliens.** p. 110  
**Wolfe v. Clearpool, S.S.** (Can.); **1. Adm.** p. 36  
 — *v. Croft* (Can.); **17. Deeds.** p. 589  
 — *v. Smith & Bruer* (Can.); **5. Bkpcy.** p. 218  
**Wolfe Co. v. R.** (Can.); **11. Const. L.** p. 434  
**Wolfe Tone's Trial** (1798); **11. Const. L.** No. 381a  
**Wolff, Ex p.** (1863); **14. Crim.** No. 3751a  
**Wolff v. The Treasury** (S. Af.); **2. Aliens.** p. 100  
**Wollaston v. Hlakewill** (1841); **38. Real Prop.** No. 885a  
**Wolsely Tool & Motor Car Co. v. Jackson Potts & Co.** (Can.); **1. Agcy.** p. 53  
**Wolsey v. Pethick Brothers** (1927); **34. Mast. & S.** No. 3129b  
**Wolverhampton, Chester & Birkenhead Junction Rly. Co., Re, Ex p. Cottle** (1850); **1. Agcy.** No. 646  
**Wombwell, Re, Ex p. Trustee** (1921); **5. Bkpcy.** No. 5859a  
**Wong v. Hou** (Can.); **12. Contr.** p. 445; **36. Plurs.** p. 1012  
**Wong Sing v. Minnedosa, Re By-law No. 304 of Minnedosa (Town)** (Can.); **38. Pub. Hlth.** p. 1072  
**Wong Sit Kit, Re** (Can.); **2. Aliens.** p. 120  
**Wong Suey Mong, Re** (Can.); **2. Aliens.** pp. 119, 120  
**Wood, Re** (1928); **33. Lunat.** No. 529b  
 —, *Re* (Can.); **16. Cr. Pract.** p. 562  
 — *v. Allan* (Can.); **8. Carr.** p. 321  
 — *v. Birtle* (Can.); **38. Rules.** p. 1086  
 — *v. Corrigan* (Aus.); **28. Injon.** p. 845; **39. S. Goods.** p. 1106  
 — *v. Garscube Colliery Co., Ltd.* (Scot.); **34. Mast. & S.** p. 972  
 — *v. Leeming* (Can.); **21. Econ.** p. 691  
 — *v. Little* (Aus.); **1. Agcy.** p. 67; **12. Contr.** p. 452  
 — *v. Richmond* (Can.); **32. Limit. of A.** p. 934  
 — *v. Taranaki Electric-Power Board* (N.Z.); **20. Electric.** p. 657  
 — *v. Vaughan* (Can.); **2. Animals.** p. 130  
**Wood & Malkin Co., Ltd., Re** (Can.); **2. Arbn.** pp. 153, 155  
**Wood, Weiller & McCarthy, Ltd. v. Valcour** (Can.); **2. Animals.** p. 136  
**Wood's Trusts, Re** (1870); **40. Stillmts.** No. 2222  
**Woodall v. Pearl Assurance Co.** (1919); **2. Arbn.** No. 147a  
**Woodarra, The** (1921); **1. Adm.** No. 1152a  
**Woodcock v. Eames** (1925); **6. B. of Exch.** No. 2318a  
 — *v. Vancouver (City)* (Can.); **26. Hghys.** p. 778  
**Wooderman v. Baldock** (1819); **5. Bkpcy.** No. 8933b; **21. Econ.** No. 718a  
**Woodforde v. Burn** (1834); **33. Lunat.** No. 469a  
**Woodham v. Baldock** (1819); **5. Bkpcy.** No. 8933b  
**Woodland v. Woodland** (otherwise Belin or Barton) (1928); **27. H. & W.** No. 4767a  
**Woodlands v. Woodlands** (Aus.); **27. H. & W.** p. 794  
**Woodroof, Re** (Can.); **16. Cr. Pract.** p. 567  
**Woodrow v. Trawlers** (White Sea & Grimsby), Ltd. (1929); **34. Mast. & S.** No. 3702c  
**Woods, Ex p.** (Can.); **14. Crim.** p. 525; **30. Intox.** p. 883  
 —, *Re, Re Arbitration Act* (Can.); **11. Comp Pche.** p. 407  
 — *v. Aboukir* (Owners) (1928); **34. Mast. & S.** No. 2552b  
**Woods v. Woods** (Can.); **27. H. & W.** p. 792  
**Woodside's Estate, Re** (Ir.); **34. Mines.** p. 1005  
**Woodstock Electric Railway, Light & Power Co. v. Dominion Tanneries, Ltd.** (Can.); **8. Chos.** p. 318  
**Woodward v. Cummings** (Can.); **38. Real Prop.** p. 1091  
 — *v. Oldfield* (1928); **19. Educ.** No. 99a  
**Woodward & Co., Ltd. v. Koetod** (Can.); **25. Gaming.** p. 756  
**Woodward's, Ltd. v. United States Fidelity & Guarantee Co.** (Can.); **29. Insec.** p. 874  
**Wool Trading Co., Ltd., Re** (No. 2) (Aus.); **10. Coys.** p. 387  
**Woollard's Trust, Re** (1851); **23. Errors.** No. 5737a  
**Woollatt v. Stanley** (1928); **6. B. of Exch.** No. 2513a  
**Woolley v. Idle** (1766); **13. Corpus.** No. 700a  
**Woolliscroft v. Stoke-on-Trent Corpn.** (1928); **38. Pub. Hlth.** No. 556a  
**Woolwich Borough Council v. Roberts** (1927); **33. L. G. No.** 84  
**Woolworth (F. W.) Co., Ltd. v. Pooley** (Can.); **1. Agcy.** p. 57; **18. Dusey.** p. 616  
**Worddington v. Bush** (Can.); **12. Contr.** p. 147  
**Work & Day Estate, Re** (Can.); **5. Bkpcy.** p. —  
**Workmen's Compensation Board, Ex p., Re Syer** (Can.); **4. Bkpcy.** p. 226  
 — *v. Bathurst Lumber Co.* (Can.); **16. Cr. Pract.** p. 569  
 — *v. Edgar* (Can.); **4. Bkpcy.** p. 226  
**Woron, The, The Yuri Maru** (1927); **1. Adm.** Nos. 1794a, 1811a  
**Worrell v. Johns, Re Johns** (1928); **5. Bkpcy.** No. 5861a  
**Worth v. Davie** (Can.); **21. Econ.** p. 689  
**Worthington v. Tipperary County Council** (Ir.); **2. Animals.** p. 132  
**Wrangell v. Steel Scientist, The** (Can.); **1. Adm.** p. 27  
**Wray v. Morrison** (Can.); **28. Injon.** p. 857  
**Wrench v. Lord** (1837); **19. Eccl.** No. 3579a  
**Wright, Ex p.** (Can.); **25. Fraud. Contr.** p. 748  
 — *Ex p., R. v. Newport* (Salop) J.J. (1929); **15. Crim.** No. 9012a; **19. Educ.** No. 275a; **33. Magis.** No. 1175a  
 —, *Re* (Can.); **8. Char.** p. 341  
 —, *Re, Ex p. Willey* (1883); **30. Idqmts.** No. 685a  
 — *v. Battley* (Can.); **8. Chos.** p. 317  
 — *v. Bell Telephone Co.* (Can.); **36. Pals.** p. 1050  
 — *v. Curless* (Can.); **12. Contr.** p. 466  
 — *v. Deputy Commr. of Taxes* (Aus.); **28. Inc. T.** p. 819  
 — *v. Garden* (Can.); **27. H. & W.** p. 791  
 — *v. Greenroyd* (1861); **34. Med.** No. 103a  
 — *v. Pulham* (1816); **6. B. of Exch.** No. 698a  
 — *v. Ritchie* (Can.); **9. Coys.** p. 373  
 — *v. Simpson* (1802); **11. Confl.** No. 1292a  
 — *v. Tugwell, Re Robinson* (1923); **8. Char.** No. 1041a  
 — *v. Wright* (Can.); **27. H. & W.** pp. 796, 799  
 — *v. —* (N.Z.); **23. Errors.** p. 729  
**Wright (John) & Eagle Range, Ltd. v. General Gas Appliances, Ltd.** (1929); **36. Pals.** No. 308c  
**Wrighton, Re** (N.Z.); **23. Errors.** p. 715  
**Wrightson v. McArthur & Hutchisons** (1921); **7. B. of Sale.** No. 93a  
**Wrightson v. Pullan** (1816); **6. B. of Exch.** No. 698a  
**Wroblewski v. McLaren** (Aus.); **38. Pub. Hlth.** p. 1073  
**Wrubleski v. Loff** (Can.); **2. Animals.** p. 126

Wyandotte Street Bridge Case, Windsor Corpn. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 1076  
 Wyatt v. Metropolitan Board of Works (1862); **36. Parl. Nos.** 256a, 263a  
 — v. Rochfort (1837); **22. Evid.** No. 1633a  
 Wythe, *Re* (Can.); **29. Insce.** p. 869

## X.

X., *Re* (Can.); **4. Bkpcy.** p. 211

## Y.

Y. P. Barley Producers, Ltd. v. E. C. Robertson Pty., Ltd. (Aus.); **12. Contr.** p. 456  
 Yamike Kweku v. Annor Adjaye (Gold Coast); **2. Arbn.** p. 155  
 Yarnie v. Yarnie (Can.); **28. Injon.** p. 857  
 Yates, *Re. Ex p.* Johnson (Aus.); **17. Dep.** pp. 600, 601  
 —, *Re. Ex p.* Walsh (Aus.); **17. Dep.** pp. 600, 601  
 — v. R. (Can.); **11. Comp. Pche.** p. 404; **Const. L.** p. 430  
 — v. Yates (Can.); **11. Confl.** p. 122  
 Yawoski, *Re* (Can.); **4. Bkpcy.** p. 228  
 Yeates v. Barrett (Can.); **17. Custom.** p. 573  
 Yee Chun v. Regina Corpn. (Can.); **17. Dep.** p. 598  
 Yee Foo, *Re* (Can.); **2. Aliens.** p. 120  
 Yeo v. Clemow, *Re* Clemow (1900); **23. Errors.** No. 5158a  
 Yeok Kuk v. R. (Ind.); **14. Crim.** p. 513  
 Yershemsky v. Moquin (Can.); **2. Aliens.** p. 120  
 Yeudall v. McQuillie (Scot.); **25. Gaming.** p. 761  
 Yew v. A.-G. for British Columbia (Can.); **11. Confl.** p. 420; **21. E. D.** p. 675  
 York, The (1929); **41. Ship.** No. 6628a  
 York (Township) & North York (Township), *Re* (Can.); **33. L. G.** p. 913  
 York Corpn. v. Leatham (Henry) & Sons, Ltd. (1924); **13. Corpns.** No. 935a  
 York County Registrar, *Re* (Can.); **17. Deeds.** p. 584  
 York Public School Board v. Toronto Board of Education (Can.); **19. Educ.** p. 645  
 Yorkshire, East Riding, County Council v. Selby Bridge Co. of Proprietors (1925); **24. No. 8**  
 Yorkshire Electric Power Co., *Ex p.*, R. v. Electricity Comrs. (1927); **20. Electric.** No. 111a  
 Yorkshire Guarantee & Securities Corpn. v. Edmonds (Can.); **30. Idgmts.** p. 888  
 Yost v. Adams (Can.); **24. Errors.** p. 731

You, *Ex p.*, *Ex p.* Chalifoux, *Ex p.* Fong (Can.); **16. Cr. Pract.** p. 560; **17. Dep.** p. 600  
 Young, *Re* (Can.); **28. Infts.** p. 849; **44. Wills.** p. 1181  
 — v. Allchurch (Aus.); **30. Intor.** p. 881  
 — v. Baby (Sheriff) (Can.); **21. Eron.** p. 693  
 — v. Campbell (Scot.); **31. L. & T.** p. 903  
 — v. Canadian Pacific Ry. Co. (No. 2) (Can.); **36. Negl.** p. 1033  
 — v. Darrah (Scot.); **25. Gaming.** p. 758  
 — v. Dencher (Can.); **3. Bank.** p. 189  
 — v. Denton (Can.); **22. Evid.** p. 710  
 — v. Dougherty (Scot.); **41. Ship.** p. 1133  
 — v. Keeble, Ltd. (1928); **34. Mast. & S.** No. 3821b  
 — v. Kyle (Scot.); **41. Ship.** p. 1133  
 — v. Magee (Can.); **7. B. of Sale.** p. 291  
 — v. Tassell (N.Z.); **1. Agcy.** p. 52  
 — v. Tregear (1873); **39. S. Goods.** No. 420a  
 — v. Vickars (Can.); **35. Miscp.** p. 1009  
 Young Men's Christian Assocn. of Melbourne v. Federal Comr. of Taxation (Aus.); **23. Inc. T.** p. 832  
 Young Sid, The (1928); **1. Adm. Nos.** 1611a, 1696a  
 Young Sue Hing, *Re* (Can.); **2. Aliens.** p. 120  
 Youngs, Crawshaw & Youngs, Ltd. v. Brooke (1912); **28. Inc. T.** No. 292a  
 Yukon Gold Co. & Moreau, *Re* (Can.); **2. Arbn.** p. 148  
 Yukon Hardware Co. v. McLennan (Can.); **7. B. of Sale.** p. 293  
 Yuri Maru, The, The Woron (1927); **1. Adm. Nos.** 1794a, 1811a

## Z.

Zambaco v. Cassavetti (1871); **28. Infts.** No. 731a  
 Zawojowska v. Zawojowska (Can.); **14. Crim.**  
 Zeidel v. Winnipeg Electric Co. (Can.); **36. Negl.** p. 1026; **43. Tram.** p. 1161  
 Zeidman & Lamarre v. American Furniture Co. & Livery (Can.); **5. Bkpcy.** p. 244  
 Zeigler v. Victoria (City) (Can.); **33. L. G.** p. 911  
 Zerebesky v. Powell (Can.); **1. Agcy.** p. 51  
 Zetland (Earl) v. Tennents' Trustees (Scot.); **25. Fish.** p. 741  
 Zillah, The (1929); **41. Ship.** Nos. 6050a, 6061a  
 Zimmerman v. Andrew Motherwell of Can., Ltd. (Trustee) (Can.); **10. Coys.** p. 380  
 — v. Archer (Can.); **2. Animals.** p. 132  
 Zodiack, The (Can.); **37. Prize L.** p. 1067  
 Zornes v. R. (Can.); **11. Const. L.** p. 431  
 Zululand Motor Co. v. Boswell (Liquidator) (S. Af.); **9. Coys.** p. 374  
 — v. Short (Liquidator) (S. Af.); **9. Coys.** p. 373  
 Zurouviski v. Duke (Can.); **18. Distr.** pp. 621, 622  
 Zurovski, *Re* (Can.); **44. Wills.** p. 1180

## ACTION.

## Part I.—Definitions.

11. *Add. Citation* :—on appeal, sub nom. ROYAL AGRICULTURAL HALL CO. v. ISLINGTON ASSESSMENT COMMITTEE, [1918] A. C. 525, H. L.
27. *Add. Annotation* :—**Consd.** R. v. L. C. C., *Ex p.* Swan & Edgar (1927), Ltd. (1929), 141 L. T. 590.
29. *Add. Annotation* :—**Apprvd.** Graigola Merthyr Co. v. Swansea Corp., [1929] A. C. 344.
30. *Add. Annotations* :—**Apprvd.** Craigola Merthyr Co. v. Swansea Corp., [1929] A. C. 344. **Refd.** Farnworth v. Manchester Corp., [1929] 1 K. B. 533. **Mentd.** The Wilhelmina, [1923] P. 112; Bhagchand Dagdusa Gujrathi v. Secretary of State for India in Council (1927), 43 T. L. R. 617.
31. *Add. Annotations* :—**Consd.** Ware & De Freville v. Motor Trade Assocn., [1921] 3 K. B. 40. **Apprvd.** Graigola Merthyr Co. v. Swansea Corp., [1929] A. C. 344. **Mentd.** Bhagchand Dagdusa Gujrathi v. Secretary of State for India in Council (1927), 43 T. L. R. 617.
36. *Add. Annotation* :—*As to* (1) **Apld.** *Re* Debtor, [1929] 2 Ch. 146.
38. *Add. Annotations* :—**Mentd.** Banbury v. Bank of Montreal, [1918] A. C. 626; Neville v. London Express Newspaper (1918), 88 L. J. K. B. 282.
41. *Add. Annotation* :—**Mentd.** Civil Service Cop. Soc. v. McGrigor's Trustee, [1923] 2 Ch. 347.
42. *Add. Annotation* :—**Dbtd.** *Re* Thomson's Mortgage Trusts, Thomson v. Bruty, [1920] 1 Ch. 508.
45. *Annotation* :—**Mentd.** McCreagh v. Cox & Ford (1923), 92 L. J. K. B. 855.
- 48a. **Summons—Real Property Limitation Act, 1833 (c. 27).**—A summons by a second mtgee. against the first mtgee. & other persons interested in the surplus proceeds of sale to have it determined whether he is entitled to repayment of the principal moneys owing on the second mtgee. & all arrears of interest & costs, & to obtain payment accordingly, is in substance an action by a beneficiary for execution of the trusts of the surplus proceeds & is not an "action or suit" for the recovery of "interest in respect of money charged upon or payable out of land" within sect. 42 of the above Act.—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON v. BRUTY, [1920] 1 Ch. 508; 89 L. J. Ch. 213; 123 L. T. 138; 64 Sol. Jo. 375.
64. *Add. Annotation* :—**Refd.** Thomson's Mortgage Trusts, Thomson v. Bruty, [1920] 1 Ch. 508.
- 64a. **Summons—Real Property Limitation Act, 1833 (c. 27).**—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON v. BRUTY, No. 48a, ante.
71. *Add. Annotation* :—**Consd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.
74. *Add. Annotation* :—**Consd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.
82. *Add. Annotations* :—**Consd.** *Re* Jauncey, Bird v. Arnold, [1926] Ch. 471. **Refd.** Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602; Weld v. Petre, [1929] 1 Ch. 33. **Mentd.** *Re* Jordison, Raine v. Jordison, [1922] 1 Ch. 440.
87. *Annotations* :—**Consd.** Robinson v. R., [1921] 3 K. B. 183. **Refd.** Chester v. Bateson, [1920] 1 K. B. 829; R. v. Hammer, [1923] 2 K. B. 786. **Mentd.** R. v. Cannon Row Police Station, Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98.
89. *Annotations* :—**Refd.** First National Reinsurance v. Greenfield, [1921] 2 K. B. 260. **Mentd.** The Saxicava (1924), 40 T. L. R. 284.
90. For "under the above sect." read "under Married Women's Property Act, 1893 (c. 63), s. 2."  
*Add. Annotation* :—**Apld.** *Re* Emery, Emery v. Emery, [1923] P. 184.
- 90a. ———.]—The Food Controller requisitioned certain cattle feeding stuffs under Defence of the Realm Regulations, but whether under reg. 2 B. or reg. 2 F. was doubtful. By reg. 2 B. the price to be paid for goods taken thereunder was to be determined by the tribunal by which claims for compensation under Defence of the Realm Regulations were determined, but was not to exceed a certain maximum price fixed by an Ord. in Council. By reg. 2 F. compensation for goods taken thereunder was to be paid as determined by an arbitrator, taking into account the cost of production of the goods & a reasonable profit. The maximum price fixed by the Ord. in Council has been paid. The Defence of the Realm Losses Commission having refused to entertain a claim for compensation, the owners of the goods presented a petition of right, claiming that the Food Controller had acted under reg. 2 F., & that they were entitled to compensation fixed by arbn. thereunder. At the trial the judge held that the Controller had acted under reg. 2 B., & dismissed the petition. On July 22, 1920, suppliants gave notice of appeal. On Aug. 16, 1920, Indemnity Act, 1920 (c. 48), was passed :—**Held** : (1) the appeal was not a "proceeding instituted" within sect. 1 of the Act; (2) those words do not include a final judgment given before the passing of the Act, & therefore the appeal well lay.—ROBINSON (J.) & Co. v. R., [1921] 3 K. B. 183; 90 L. J. K. B. 1177; 125 L. T. 675; 37 T. L. R. 698, C. A.
- Annotations* :—*As to* (1) **Refd.** Bowling v. Camp (1922), 123 L. T. 342. **Generally, Mentd.** Fort Frances Pulp & Power Co. v. Manitoba Free Press Co., [1923] A. C. 695; Swift v. Board of Trade (1924), 93 L. J. K. B. 529; Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271; France Fenwick v. R., [1927] 1 K. B. 458.
- 90b. ———.]—A person who has lodged a caveat against probate of a will is not, though his action compels the exors. to take proceedings, so much the actor in the proceedings as to be liable to give security for costs.—*Re* EMERY, EMERY v. EMERY, [1923] P. 184;

92 L. J. P. 138; 39 T. L. R. 713; *sub nom.* *In the Goods of EMERY, EMERY v. EMERY*, 130 L. T. 127.

104. *Add. Annotation*:—*Refd.* Goldrei, Foucard *v. Sinclair & Russian Chamber of Commerce* in London, [1918] 1 K. B. 180.

106. *Add. Annotations*:—*Refd.* Goldrei, Foucard *v. Sinclair & Russian Chamber of Commerce* in London, [1918] 1 K. B. 180; Cheshire County Council *v. Hopley* (1923), 130 L. T. 123; *The Koursk*, [1924] P. 140; *Venn v. Tedesco*, [1926] 2 K. B. 227.

107. *Add. Annotations*:—*Apld.* Cheshire County Council *v. Hopley* (1923), 130 L. T. 123. *Refd.* Goldrei, Foucard *v. Sinclair & Russian Chamber of Commerce* in London, [1918] 1 K. B. 180; *The Koursk*, [1924] P. 140; *Venn v. Tedesco*, [1926] 2 K. B. 227. *Mentd. Re Pain, Gustavson v. Haviland*, [1919] 1 Ch. 38.

114. *Add. Annotation*:—*Refd.* Huyton & Roby Gas Co. *v. Liverpool Corpn.*, [1926] 1 K. B. 146.

116a. — *Claim for damages—Right to prior general declaration.*—Where the substantial

object of an action is damages & not the ascertainment of a common right for future guidance, *plfts.* ought not to be allowed to split up a cause of action & first obtain a declaration, & then in a second action work out its result.—*JONES v. CORY BROTHERS & Co., LTD., THOMAS v. GREAT MOUNTAIN COLLIERIES Co., LTD.* (1921), as reported in 152 L. T. Jo. 70, C. A.

117. For "new subsidence" read "recurring tort."

118. *Add. Annotations*:—*As to* (1) *Refd.* Boynton *v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213; *Kennard v. Cory*, [1922] 1 Ch. 265; *Huyton & Roby Gas Co. v. Liverpool Corpn.* (1925), 42 T. L. R. 116. *Generally, Refd.* *Conquer v. Boot*, [1928] 2 K. B. 336.

122. *Add. Annotations*:—*Apld.* *Wilson v. United Counties Bank*, [1920] A. C. 102. *Consd. Ord v. Ord*, [1923] 2 K. B. 432. *Apld.* *The Koursk*, [1924] P. 140. *Consd.* *Conquer v. Boot*, [1928] 2 K. B. 336. *Refd.* Goldrei, Foucard *v. Sinclair & Russian Chamber of Commerce* in London, [1918] 1 K. B. 180; *Debenham v. Perkins* (1925), 133 L. T. 252.

#### PART I. SECT. 1, SUB-SECT. 5.

sa. *Action—Claim for damages & injunction—Transfer of Land Act, 1893 (No. 14), s. 117.*—The term "action at law" in the above sect. embraces an action of the nature of a suit in equity, e.g. a claim for an injunction & damages in respect of trespass & interference with a right of way.—*STREITZ BROTHERS v. BRITNALL* (1912), 15 W. A. L. R. 12.—AUS.

sb. — *Divorce petition—Insolvency Act, 1915 (No. 2671), s. 174.*—The word "action" in the above sect. does not include a proceeding by petition in divorce.—*Re HARVEY*, [1920] V. L. R. 142.—AUS.

sc. — *Petition of right.*—A petition of right is not an "action." The definitions of "actions" in *Judicature Act & rules* are merely a conventional method of interpreting the statute & rules, adopted for the sake of brevity & simplicity, & not for the purpose of changing the true nature of things.—*MILLAR v. R.*, [1921] 49 O. L. R. 93; 19 O. W. N. 458; 58 D. L. R. 585.—CAN.

sd. *Proceeding in action—Application for relief against distraint—War Relief Act.*—The above Act empowers a judge of the Supreme Ct. to dispense with the restrictions therein contained. *Apld.* *distraint against resp.* under a mtge. notwithstanding that resp. was within the protection of the Act. *Resp.* applied to a county ct. judge as "local judge" of the Supreme Ct. for relief, who made an order against resp. dispensing with the restrictions of the Act:—*Held*: the local judge had no jurisdiction, as the proceeding was not a proceeding in an "action," as required under the wording of the Ord. in Council, June 16, 1906. *Resp.'s* proper remedy against *applt.* was by injunction to restrain *applt.* from invading his rights under the Act.—*HANNA v. CONERTON*, [1919] 1 W. W. R. 930; 44 D. L. R. 478.—CAN.

se. *Suit or proceeding—Meaning dependent on context of statute.*—The words "suits" & "proceedings" have different meanings in different statutes, & it is not possible to lay down a general rule which would be applicable to all cases. In each particular case the question has to be examined in reference to the context, & that meaning is to be preferred which will best fit in with it.—*KIRPA SINGH v. AJAJPAL SINGH* (1928), 1 L. R. 10 Lah. 165.—IND.

#### PART I. SECT. 2, SUB-SECT. 1.

104 ii. —]—The expression "a cause of action" in *Supreme Ct. Act, 1916 (No. 2733), s. 141*, means the particular act or omission occasioning the injury complained of, & so giving rise to *pltf.'s* claim, not every fact material to be proved in order to entitle *pltf.* to succeed.—*CHIDZEY v. BRECKLER*, [1920] V. L. R. 558.—AUS.

104 iii. —]—The "cause of action" in *District Cts. Act, R. S. S., 1920 (c. 40), s. 29*, means the whole cause of action, including every material fact which *pltf.* must allege & prove to give him a right to judgment, & therefore if the whole cause of a district ct. action did not arise in one judicial district the action should be brought in that district where *deft.* or one of several *defts.* resides or carries on business. Notwithstanding sect. 2, sub-sect. 2 (2), of the Act providing that in the Act unless there is something in the subject or context repugnant thereto the expressions "cause" & "action" shall respectively have the same meaning as the same expressions have in *King's Bench Act*, the words "the cause of action" in sect. 29 should not be construed in the same way as in *King's Bench Act*, s. 35, because in sect. 29 "there is something in the subject or context repugnant thereto," namely, the fact that sect. 29 confers jurisdiction on an inferior ct. & therefore must be strictly construed, jurisdiction not being assumed beyond what is clearly conferred, whereas a different principle applies in sect. 35 which does not affect to deal with jurisdiction but simply deals with practice & procedure in a superior ct.—*HOWELL v. WARNER*, [1921] 3 W. W. R. 587.—CAN.

106 iii. *S. P. SHITZ v. CANADIAN NATIONAL Ry. Co.*, [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—CAN.

#### PART I. SECT. 2, SUB-SECT. 2.—A.

st. *Sale of goods—To be delivered at place named—Payment to be made elsewhere.*—*Deft.*, in Perth, gave to *B.*, who was agent for *pltf.*, a written order for certain goods at a price. This order *B.* transmitted to his principal in Melbourne, who declined it, but authorised *B.* to inform *deft.* that *pltf.* would accept the order at increased prices, added in ink on the original order. These new prices were

subsequently submitted by *B.* to *deft.*, who agreed to take certain of the good at the increased prices. By the contract the goods were to be delivered f.o.b. Melbourne, payment to be by draft payable at Perth, cost of exchange to be added. *Pltf.* shipped the goods to *deft.* in Perth, who refused to accept the draft, alleging inferiority of the goods:—*Held*: the contract was made in Perth; & the only breach of the contract took place in Perth; & although delivery had to be made f.o.b. Melbourne, there was not a cause of action arising within Victoria.—*CHIDZEY v. BRECKLER*, [1920] V. L. R. 558.—AUS.

sg. —]—A "cause of action" on a breach of contract includes the contract & its breach. If a purchaser of machinery promises to pay the purchase price to the vendor at *M.* but signs the agreement & receives the machinery at *W.* the vendor's cause of action for the purchaser's failure to pay cannot be said to arise at *M.*—*WESTERN CANADA AUTO TRACTOR Co. LTD. v. BJARNASON*, [1920] 1 W. W. R. 621.—CAN.

sk. —]—*Pltf.* sold & delivered a motor car to *deft.* at *Prince Albert*, & *deft.* gave him notes therefor signed at *Prince Albert* but payable at *Saskatoon*:—*Held*: the suit for balance due thereon was properly entered in the *Saskatoon* judicial district as the "cause of action" arose there.—*OLMSTEAD v. SCOTT*, [1921] 1 W. W. R. 1033.—CAN.

sl. *Contract—Where act or omission giving cause of complaint occurs.*—A "cause of action" as applied to actions in the Ct. of *King's Bench* & for the purposes of *King's Bench Act, R. S. S., 1920 (c. 39), s. 35*, arises where, with regard to a contract, the act or omission of *deft.* occurs which gives *pltf.* his cause of complaint, although the term may have a different construction in cases involving the local jurisdiction of inferior cts.—*ST. LOUIS RURAL MUNICIPALITY v. MARKHAM*, [1921] 1 W. W. R. 950.—CAN.

#### PART I. SECT. 2, SUB-SECT. 4.—B.

sm. *Breach of trust—Failure to account.*—The wrong of a sale of land in breach of trust & the wrong of a failure to account are entirely different things; & in this case there was a joinder of different causes of action, in which the different *defts.* were not

125. *Add. Annotation* :—*Generally*, *Refd.* *Conquer v. Boot*, [1928] 2 K. B. 336.
129. *Add. Annotations* :—*As to* (1) *Refd.* *Ord v. Ord*, [1923] 2 K. B. 432. *As to* (2) *Refd.* *Mackenzie Kennedy v. Air Council*, [1927] 2 K. B. 517.
136. *Add. Annotation* :—*Refd.* *Ord v. Ord* (1923), 92 L. J. K. B. 859.
144. *Add. Annotation* :—*Consd.* *Fishwick v. Gyani*, [1925] 1 K. B. 617.
145. *Add. Annotation* :—*Refd.* *Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London*, [1918] 1 K. B. 180.
147. *Add. Annotation* :—*As to* (1) *Expld.* *Courtenay v. Earle* (1850), 10 C. B. 73.
- 153a. ———.]—In the ordinary case of possible controversy between parties, but where no specific right has been asserted & no claim formulated, it is not open to one of the parties, because he apprehends a claim against him, to serve a writ or other process upon the other party in order to obtain a determination that such claim cannot be made.
- Where the sole exor. under a will never made any claim against the beneficiaries for repayment of certain costs which he had

- been ordered to pay to them, all he did having been to reserve his right to claim such repayment under a deed of indemnity that the beneficiaries had executed in his favour :—*Held* : the ct. had no jurisdiction to make a declaratory judgment under R. S. C., Ord. 25, r. 5, & Ord. 54A, r. 1, on the application of the beneficiaries, their duty being to wait until they were attacked & then to raise their defence.—*Re* *CLAY, CLAY v. BOOTH, Re A DEED OF INDEMNITY*, [1919] 1 Ch. 66; 88 L. J. Ch. 40; 119 L. T. 754; 63 Sol. Jo. 23, C. A.
- Annotation* :—*Consd.* *Jaeger v. Jaeger Co.* (1927), 41 R. P. C. 437.
- Declaratory judgments generally, *see* JUDGMENTS.
176. *Add. Annotation* :—*Refd.* *Aksionairnoye Obshchestvo, A. M. Luther v. Sagor*, [1921] 1 K. B. 456.
179. *Add. Annotations* :—*Consd.* *Lowe v. Bentley* (1928), 44 T. L. R. 388. *Mentd.* *Gill v. Carson* (1917), 25 Cox, C. C. 774; *Vanderpant v. Mayfair Hotel Co.* (1929), 27 L. G. R. 752.
180. *Add. Annotations* :—*Consd.* *Lowe v. Bentley* (1928), 44 T. L. R. 388. *Mentd.* *Hemmings v. Stoke Poges Golf Club*, [1920] 1 K. B. 720.

## Part II.—In respect of what Acts and Omissions an Action will Lie.

187. *Add. Annotations* :—*Consd.* *Neville v. London "Express" Newspaper*, [1919] A. C. 368. *Distd.* *Everett v. Ryder* (1926), 135 L. T. 302. *Refd.* *Weld-Blundell v. Stephens*, [1920] A. C. 956; *Simmonds v. Newport Abercarn Black Vein Steam Coal Co.*, [1921] 1 K. B. 616; *Manton v. Brocklebank*, [1923] 2 K. B. 212.
- 187a. ———.]—Where a person has a sole exclusive right, which is infringed upon, if an action of trespass will not lie, he may have an action of the case, for the law will not permit a man who has a right to be without a remedy.—*WHITCHURCH v. HIDE* (1742), 2 Atk. 391; 26 E. R. 636, L. C.
- Annotation* :—*Mentd.* *A.-G. to Prince of Wales v. St. Aubyn* (1811), Wight. 167.
191. *Add. Annotations* :—*Refd.* *Manton v. Brocklebank*, [1923] 1 K. B. 406. *Mentd.* *Butterworth v. Butterworth & Englefield*, *Collins v. Collins & Harrison*, *Barratt v. Barratt & Fox*, *Howell v. Howell & Walker*, *Adams v. Adams & Ward*, *Ellworthy v. Ellworthy & Ledgard*, [1920] P. 126.
193. *Annotation* :—*Refd.* *Manton v. Brocklebank*, [1923] 1 K. B. 406.
194. *Add. Annotations* :—*Consd.* *Banbury v. Bank of Montreal*, [1918] A. C. 626. *Refd.* *Janvier v. Sweeney*, [1919] 2 K. B. 316. *Mentd.* *Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.
197. *Add. Annotation* :—*Apld.* *R. v. Poplar B. C.* (No. 1), [1922] 1 K. B. 72.
198. *Add. Annotations* :—*Refd.* *Winsford Entertainments v. Winsford U. D. C.* (1924), 23 L. G. R. 254; *Layzell v. Thompson* (1926), 43 T. L. R. 58.
205. *Add. Annotations* :—*Folld.* *Janvier v. Sweeney*, [1919] 2 K. B. 316. *Consd.* *Hambrook v. Stokes* (1924), 41 T. L. R. 125. *Refd.* *Shapiro v. La Motta* (1923), 130 L. T. 622.
- 205a. *Injury to health caused by false statement.*]—The wilful making of a false statement with the knowledge that it is calculated to cause injury to the health of the person to whom it is made constitutes a good cause of action, if in fact such injury is thereby caused.—*JANVIER v. SWEENEY*, [1919] 2 K. B. 316; 88 L. J. K. B. 1231; 121 L. T. 179; 35 T. L. R. 360; 63 Sol. Jo. 430, C. A.
- Annotation* :—*Consd.* *Hambrook v. Stokes*, [1925] 1 K. B. 141.
- 205b. *Mental shock caused by negligence.*]—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife :—*Held* : pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the

all interested. An order was made requiring pltf. to elect upon which cause of action he would proceed.—*THOMAS v. DAY (Alta.)* (1912), 21 W. L. R. 244; 2 W. W. R. 133; 4 D. L. R. 238.—CAN.

PART I. SECT. 2, SUB-SECT. 5.—B. 141 li. ———.]—Though deft-on conviction for a common assault, instead of being fined or imprisoned, was merely bound over to keep the peace, under the magistrates' powers

under Criminal Code, s. 748 :—*Held* : deft. was under s. 734 of the Code released from any subsequent civil proceedings for the same cause.—*TRINEA v. DULEBA*, [1924] 3 D. L. R. 636; 2 W. W. R. 1177; 20 Alta. L. R. 493.—CAN.

running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—*HAMBROOK v. STOKES BROTHERS*, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

206a. ————]—If the law casts any public duty upon a person which he refuses or fails to perform, he is answerable in damages to those whom his refusal or failure injures.—*FERGUSON v. KINNOULL (EARL)* (1842), 9 Cl. & Fin. 251; 4 State Tr. N. S. 785; 8 E. R. 412, H. L.

*Annotations*:—*Refd.* *Heriots Hospital, Feoffees v. Ross* (1846), 12 Cl. & Fin. 507; *Rogers v. Rajendro Dutt* (1860), 8 Moo. Ind. App. 103; *Sinclair v. Broughton & Government of India* (1882), 47 L. T. 170; *Allen v. Flood*, [1898] A. C. 1. *Mentd.* *A.-G. v. Murdoch* (1850), 14 Jur. 588; *Everett v. Griffiths*, [1921] 1 A. C. 631.

215. *Add. Annotations*:—*Refd.* *Turpin v. Victoria Palace*, [1918] 2 K. B. 539; *Neville v. London "Express" Newspaper*, [1919] A. C. 368; *Wilson v. United Counties Bank*, [1920] A. C. 102. *Mentd.* *Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735.

217. *Add. Annotation*:—*Consd.* *Neville v. London "Express" Newspaper Ltd.*, [1919] A. C. 368.

223. *Add. Annotations*:—*Mentd.* *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Said v. Butt*, [1920] 3 K. B. 497.

224. *Add. Annotations*:—*Refd.* *Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213; *Kennard v. Cory*, [1922] 1 Ch. 265; *Huyton & Roby Gas Co. v. Liverpool Corpn.*, [1926] 1 K. B. 146.

231. *Annotation*:—*Distd.* *The Zelo*, [1922] P. 9.

232. *Add. Annotations*:—*Mentd.* *Weinberger v. Inglis*, [1919] A. C. 606; *R. v. Housing Appeal Tribunal*, [1920] 3 K. B. 334; *R. v. Leman Street Police Station, Inspector, Ex p. Vinicoff, R. v. Secretary of State for Home Affairs, Ex p. Same* (1920), 89 L. J. K. B. 1200.

235. *Add. Annotation*:—*Apld.* *Sorrell v. Smith*, [1925] A. C. 700.

238. *Add. Annotations*:—*Refd.* *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey*, [1929] 1 Ch. 686. *Mentd.* *Yorkshire East Riding County Council v. Selby Bridge Co.*, [1925] Ch. 841; *Layzell v. Thompson* (1926), 43 T. L. R. 58.

239. *Add. Annotations*:—*Refd.* *Everett v. Griffiths*, [1920] 3 K. B. 163; *More v. Weaver*, [1928] 2 K. B. 520.

## PART II. SECT. 1, SUB-SECT. 2.

*sn. Act per se injurious—Lawful act on own land.*]—Where the unavoidable consequence of a lawful act done by a person on his own land, such as the erection of a mill dam, is to injure his neighbour, an action lies for such injury: but not if such act *per se* would not be necessarily or probably injurious, but becomes so from a cause not under the control of either party.—*PETERS v. DEVINNEY* (1857), 6 C. P. 389.—*CAN.*

## PART II. SECT. 1, SUB-SECT. 4.

216 iii. ————]—An action for damages for a misrepresentation on a sale of goods was dismissed on the ground that there was no evidence on

which damages could be assessed. On appeal the trial judge's view, as to the absence of evidence of damages, was sustained, but it was held that as a breach of warranty had been shown pltf. was entitled to a judgment for nominal damages, but that since the action was one for the recovery of substantial damages & not merely to assert a legal right there should be no costs of the trial or appeal to either party.—*SMITH v. WARD*, [1928] 4 D. L. R. 850; [1928] 3 W. W. R. 311; 37 Man. L. R. 528.—*CAN.*

## PART II. SECT. 3, SUB-SECT. 1.

237 iii. ————]—Pltfs. complained that defts. dug holes in the beach upon

240. *Add. Annotation*:—*Refd.* *Ilford U. D. C. v. Beal*, [1925] 1 K. B. 671.

241. *Add. Annotation*:—*Refd.* *Valentine v. Hyde*, [1919] 2 Ch. 129, *Sorrell v. Smith*, [1925] A. C. 700.

242. *Add. Annotations*:—*Refd.* *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40.

243a. ————]—*ST. NEDEPORT (PRIOR) v. WESTON* (1443), Y. B. 22 Hen. 6, fo. 14, pl. 23.

*Annotations*:—*Consd.* *Huzzey v. Field* (1835), 5 Tyr. 855; *Hammerton v. Dysart*, [1916] 1 A. C. 57. *Refd.* *Churchman v. Tunstal* (1659), Hard. 162; *Pain v. Partridge* (1691), Holt, K. B. 6; *Newton v. Cubitt* (1862), 12 C. B. N. S. 32; *Hopkins v. G. N. Ry.* (1877), 2 Q. B. D. 224; *Cowes U. C. v. Southampton Isle of Wight & South of England Royal Mail Steam Packet Co.*, [1905] 2 K. B. 287; *General Estates Co. v. Beaver*, [1914] 3 K. B. 918. *Mentd.* *Godfrey's Case* (1614), 11 Co. Rep. 42a.

246. *Add. Annotations*:—*Consd.* *Winsford Entertainments v. Winsford U. D. C.* (1924), 23 L. G. R. 254. *Refd.* *Yorkshire East Riding County Council v. Selby Bridge Co.*, [1925] Ch. 841; *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey*, [1929] 1 Ch. 686. *Mentd.* *Layzell v. Thompson* (1926), 43 T. L. R. 58; *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437.

247. *Add. Annotation*:—*Refd.* *Goddard v. Watford Co-op. Soc.* (1924), 41 R. P. C. 218.

248. *Add. Annotation*:—*Mentd.* *Hemmings v. Stoke Poges Golf Club*, [1920] 1 K. B. 720.

249. *Add. Annotations*:—*Consd.* *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Valentine v. Hyde*, [1919] 2 Ch. 129; *Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40; *Sorrell v. Smith*, [1924] 1 Ch. 506. *Apld.* *Reynolds v. Shipping Federation*, [1924] 1 Ch. 28; *Thompson v. British Medical Assocn. (N.S.W. Branch)*, [1924] A. C. 764. *Apld.* *Sorrell v. Smith*, [1925] A. C. 700. *Refd.* *Evans v. Heathcote*, [1918] 1 K. B. 418; *Thomas v. Moore*, [1918] 1 K. B. 555; *Davies v. Thomas*, [1920] 2 Ch. 189; *Rawlings v. General Trading Co.*, [1921] 1 K. B. 635; *Brimelow v. Casson*, [1924] 1 Ch. 302; *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383. *Mentd.* *Montefiore v. Menday Motor Components Co.*, [1918] 2 K. B. 241; *Re Wallace, Champion v. Wallace*, [1920] 2 Ch. 274.

249a. ————]—*Unlawful means used.*]—A single person or a body of persons commits an actionable wrong if he or they inflict actual pecuniary damage upon another by the intentional employment of unlawful means, such as threats of coercive action, to injure that person's business, even though the un-

their lands on the shore of a lake, where the sand met the grass-covered bank, that sand swept from pltf.'s lands by storms was carried by the wind across defts.' beach, & came to rest in these holes, & that, when the next storm came, the sand remained in the holes & was not blown back to pltf.'s lands. Pltfs. contended that it was wrongfully detained by defts.:—*Held*: pltfs. had no cause of action, as the sand could not be considered a chattel upon its severance by the wind from its original situs, if shifting sand could be said to have a situs.—*BREMNER v. BLEAKLEY*, [1924] 2 D. L. R. 202; 54 O. L. R. 243; *revers.*, [1923] 2 D. L. R. 576; 52 O. L. R. 124.—*CAN.*

lawful means may not comprise any specific act which is *per se* actionable & actual malice is not proved. The element of conspiracy in a case of this kind is of importance only in considering the weight of the acts alleged & the extent of the damage resulting therefrom.

Defts., the British Medical Association, a body incorporated for the purpose of maintaining "the honour & interests of the medical profession," & other defts., who were members of the Association, instituted & pursued a system of professional & social ostracism or boycott against plffs., who were medical men, by means of threats & widely extended coercive action. Defts. sought to justify the boycott on the ground that the conduct of plffs. in acting as the medical officers of a certain medical dispensary was detrimental to the honour & interests of the profession. As a result of the boycott plffs. suffered pecuniary loss in the exercise of their profession :—**Held** : plffs. had a good cause of action against all defts. for damages.—**PRATT v. BRITISH MEDICAL ASSOCN.**, [1919] 1 K. B. 244 ; 88 L. J. K. B. 628 ; 120 L. T. 41 ; 35 T. L. R. 14 ; 63 Sol. Jo. 84.

**Annotations** :—**Consd.** Ware & De Freville v. Motor Trade Asscn., [1921] 3 K. B. 40. **Refd.** Valentine v. Hyde, [1919] 2 Ch. 129 ; Davies v. Thomas, [1920] 1 Ch. 217 ; Hodges v. Webb, [1920] 2 Ch. 70 ; Said v. Butt, [1920] 3 K. B. 497 ; Sorrell v. Smith, [1925] A. C. 700. **Mentd.** British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. C., [1922] 2 K. B. 260.

**250. Annotations** :—**Consd.** Valentine v. Hyde, [1919] 2 Ch. 129. **Refd.** Pratt v. British Medical Asscn., [1919] 1 K. B. 244 ; Ware & De Freville v. Motor Trade Asscn., [1921] 3 K. B. 40.

**251. Add. Annotation** :—**Refd.** Spalding v. Gamage (1918), 35 R. P. C. 101.

**253. Add. Annotations** :—**Consd.** Pratt v. British Medical Asscn., [1919] 1 K. B. 244 ; Valentine v. Hyde, [1919] 2 Ch. 129. **Apld.** Davies v. Thomas, [1920] 2 Ch. 189. **Consd.** Hodges v. Webb, [1920] 2 Ch. 70 ; Ware & De Freville v. Motor Trade Asscn., [1921] 3 K. B. 40 ; White v. Riley, [1921] 1 Ch. 1 ; Sorrell v. Smith, [1923] 2 Ch. 32. **Apld.** Sorrell v. Smith, [1925] A. C. 700. **Consd.** Hardie & Lane v. Chilton, [1928] 2 K. B. 306. **Refd.** Wolstenholme v. Ariss, [1920] 2 Ch. 403 ; Sorrell v. Smith, [1924] 1 Ch. 506.

**255. Annotation** :—**Refd.** Conron v. L. C. C., [1922] 2 Ch. 283.

**256. Add. Annotations** :—**Distd.** The Zelo, [1922] P. 9. **Apld.** Federated Coal & Shipping Co. v. R., [1922] 2 K. B. 42. **Consd.** McColl v. Canadian Pacific Ry., [1923] A. C. 126.

## PART II. SECT. 3, SUB-SECT. 2.—B.

**253 ii. —.**—If a person who, by virtue of his position or influence, has power to carry out his design, attempts, without justification, to prevent, & succeeds in preventing by threats to or special influence upon a workman's employers, or would-be employers, such workman from obtaining or holding employment in his calling, & such workman suffers damage thereby, then that person is liable to the workman for such damage.—**THOMPSON v. RYALL & CUNNINGHAM**, [1924] 4 D. L. R. 778 ; 3 W. W. R. 524.—**CAN.**

**256 ii. —.**—Plff. co., a manufacturer of newsprint, brought this action against other manufacturers of the same articles for a declaration

that such of defts. as supplied less than their proper share of newsprint to Canadian publishers during the years 1918 & 1919, were liable to pay to plff. co. the loss suffered by it in supplying more than its proper share during the two years & asked for an account & payment. The claim was based upon an alleged agreement between the parties & also upon orders alleged to have been made by the Paper Comptroller appointed by the Canadian Government in Nov. 1917 :—**Held** : although plff. co. sustained a substantial loss of profit by reason of its having been compelled by the Government to supply the Western Canadian publishers with newsprint at prices fixed by the Comptroller when it could have been sold to limited states ens-

**Refd.** Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127.

**257a. —.**—A number of discharged sailors entered into a partnership according to the terms of which the sailors were to perform together at certain music halls & were not to appear during the terms of the partnership in any other theatre or music hall. Plffs., who were members of the co., complained that the deft. had induced certain of the sailors to break the contract by promising to get them employment & by obtaining other engagements for them. By amendment it was further alleged that deft. had wrongfully continued persons in her employment with the knowledge that by being in her employment those persons were breaking a contract with plffs. :—**Held** : assuming an action lies to recover damages on the latter ground, the foundation of this action is that there shall be notice to deft. of a subsisting contract which one party, at all events, is still willing & able to perform ; & there being sufficient evidence before the county ct. judge that the partnership had for all practical purposes come to an end, no action lay.—**LONG v. SMITHSON** (1918), 88 L. J. K. B. 223 ; 118 L. T. 678 ; 62 Sol. Jo. 472, D. C.

**Annotation** :—**Refd.** Said v. Butt, [1920] 3 K. B. 497.

**258. Annotations** :—**Consd.** Pontardawe R.D.C. v. Moore-Gwyn, [1929] 1 Ch. 656. **Refd.** Stearn v. Prentice, [1919] 1 K. B. 394 ; Edwards v. Birmingham Navigations, [1924] 1 K. B. 341.

**259a. — Damage by rats.**—A firm of artificial manure manufacturers had on their premises, for the purposes of their business, a heap of bones which attracted rats. The occupier of adjoining premises was a farmer. The rats made runs between the factory & the fields & entered the farmer's land, & damaged his crops. The business had been carried on for at least thirty years, & there was no evidence to show that the bone heap had been increased beyond what it had been in past years, or anything to show that an increase which had actually taken place in the numbers of the rats was due to anything done by the manufacturers. In an action by the farmer against the manufacturers :—**Held** : in the absence of evidence showing that there had been an unusual & excessive collection of bones on the factory premises, or of anything unusual or excessive done by defts., or of any duty neglected by defts., plff. could not maintain an action for damages.—**STEARNS v. PRENTICE BROTHERS, LTD.**, [1919] 1 K. B. 394 ; 88 L. J. K. B. 422 ; 120 L. T.

tomers at higher prices, & was thus compelled to bear the burden, which should have been shared by some of defts. the ct. had no jurisdiction to compel an adjustment of plff. co.'s claim by those defts. who shirked their fair share of the burden.—**FORT FRANCES PULP CO. v. SPANISH RIVER PULP CO.**, [1928] 1 D. L. R. 753 ; 61 O. L. R. 512.—**CAN.**

**257 i. —.**—Where a workman who has been suspended by his employers suffers damage as a result of two or more persons conspiring without justification, to induce the employers not to reinstate him, he has a right of action against them.—**THOMPSON v. RYALL & CUNNINGHAM**, [1924] 4 D. L. R. 778 ; 3 W. W. R. 524.—**CAN.**

- 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142, D. C.
261. *Add. Annotation* :—**Refd.** Ware & De Freville v. Motor Trade Assocn., [1921] 3 K. B. 40.
262. *Add. Annotations* :—**Apld.** The Molière (1924), 41 T. L. R. 154. **Refd.** Kent v. Atkinson, [1923] P. 142.
263. *Add. Annotation* :—**Refd.** Kent v. Atkinson, [1923] P. 142.
264. *Add. Annotations* :—**Refd.** Barnett v. Cohen, [1921] 2 K. B. 461; Kent v. Atkinson, [1923] P. 142.
265. *Add. Annotations* :—**Refd.** Nunan v. Southern Ry., [1924] 1 K. B. 223. **Mentd.** Flannagan v. Shaw, [1920] 3 K. B. 96; Starr Estate Co. v. Blackpool Corpn. (1920), 19 L. G. R. 9; Nicolle v. Nicolle, [1922] 1 A. C. 284; Harper v. Hedges, [1923] 2 K. B. 314; Parry v. Harding (1924), 88 J. P. 194; Venn v. Tedesco, [1926] 2 K. B. 227.
266. *Add. Annotations* :—**Consd.** Bradford Corpn. v. Webster, [1920] 2 K. B. 135. **Apld.** The Molière (1924), 41 T. L. R. 154. **Refd.** Baker v. Dalgleish S.S. Co., [1922] 1 K. B. 36.
268. *Annotation* :—**Consd.** Weld-Blundell v. Stephens, [1919] 1 K. B. 520.
270. *Add. Annotation* :—**Mentd.** Pryce v. Pioneer Press (1925), 42 T. L. R. 29.
283. *Add. Annotation* :—**Refd.** Friern Barnet U. C. v. Adams, [1927] 2 Ch. 25.
296. *Annotation* :—**Apld.** Webster v. Harrison, Townsend (1920), 89 L. J. K. B. 1077.
304. *Add. Annotation* :—**Refd.** Everett v. Ryder (1926), 135 L. T. 302.
310. *Annotations* :—**Generally, Refd.** A.-G. v. Sewell (1918), 88 L. J. K. B. 425; Boulwood v. Paignton U. D. C. (1928), 92 J. P. 98.
320. *Add. Annotations* :—**Refd.** James v. British General Insee., [1927] 2 K. B. 311; Royal Exchange Assce. v. Hope, [1928] Ch. 179. **Mentd.** Re Engelbach's Estate, Tibbetts v. Engelbach, [1924] 2 Ch. 348; Perrin v. Dickson (1929), 98 L. J. K. B. 683.
325. *Add. Annotation* :—**Refd.** Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.
326. *Add. Annotations* :—**Apld.** Wild v. Simpson, [1919] 2 K. B. 544. **Consd.** Lipton v. Powell, [1921] 2 K. B. 51.
328. *Add. Annotation* :—**Refd.** British Oxygen Co. v. Liquid Air, [1925] Ch. 383.
332. *Add. Annotation* :—**Refd.** Weld-Blundell v. Stephens, [1920] A. C. 956.
333. *Add. Annotation* :—**Refd.** Weld-Blundell v. Stephens, [1920] A. C. 956.

### Part III.—Who may Sue and be Sued.

338. *Add. Annotation* :—**Refd.** Rex Co. & Rex Research Corpn. v. Muirhead & Comptroller-General of Patents (1926), 44 R. P. C. 38.
340. *Add. Annotations* :—**Refd.** The Coaster (1922), 91 L. J. P. 145; Page v. Scottish Insee. Corpn. (1929), 98 L. J. K. B. 308. **Mentd.** Edwards v. Motor Union Insee., [1922] 2 K. B. 249; Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; McColl v. Canadian Pacific Ry., [1923] A. C. 126; A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn. (1929), 34 Com. Cas. 309.
345. *Add. Annotation* :—**Mentd.** Johnson v. Stephens & Carter & Golding, [1923] 2 K. B. 857.
354. *Add. Annotation* :—**Refd.** Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.
360. *Add. Annotations* :—**Refd.** Aksionairnoye Obshchestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456. **Mentd.** Commonwealth Shipping Representative v. P. & O. Branch Service, [1923] A. C. 191.
- 360a. **Recognised, if acknowledged here.**—Where a revolution has taken place in a foreign country & the new Govt. has been recognised as the *de jure* Sovereign of that country by our Govt., that new Govt. is entitled to the possession & custody in England of records & State archives deposited here before the revolution by the old Govt.—**SOVIET SOCIALIST REPUBLICS UNION v. ONOU** (1925), 69 Sol. Jo. 676.
362. *Add. Annotation* :—**Mentd.** Slack v. Leeds Industrial Co-op. Soc., [1923] 1 Ch. 431.
363. *Add. Annotation* :—**Refd.** Aksionairnoye Obshchestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.
- 366a. — **Action by procurator—Validity of appointment.**—**Pltf.**, the Spanish ambassador, brought an action, as procurator for all the King of Spain's subjects, to recover two ships & other goods seized by deft. :—**Held** : (1) no man can make a procurator for another; therefore the King could not make a procurator for all or any of his subjects; (2) the office of ambassador did not include a procurator private, but public for the King, nor for any several subject, otherwise than as it concerned the King.—**ACUNA v. BINGLEY** (1616), Hob. 78, 113; 80 E. R. 263.
- Annotations* :—As to (2) **Consd.** Hullett v. Spain (1828), 2 Bil. N. S. 31. **Fold.** Penado v. Johnson (1873), 22 W. R. 103. **Generally, Refd.** Brunswick v. Hanover (1844), 13 L. J. Ch. 107. **Mentd.** Radley v. Egglefield (1870), 2 Saund. 259; The Hercules (1819), 2 Dods. 353.
- 366b. — **Claim under unregistered bill of sale.**—To a bill filed by the Chargé d'Affaires of the Brazilian Govt. in this country, in his own name, to restrain judgment creditors from issuing execution against certain furniture, etc., upon which a sum of money had been advanced, as was alleged, by the Brazilian Govt. secured by an unregistered bill of sale of the furniture, etc., a demurrer on the ground that the minister could not sue in his own name was allowed.—**PENEDO (BARON) v. JOHNSON** (1873), 29 L. T. 452; 22 W. R. 103.
368. *Annotation* :—**Consd.** Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385.



372. *Add. Annotation* :—*Refd.* Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

375. *Annotations* :—*Refd.* The Tervaele (1922), 128 L. T. 176; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

376. *Add. Annotation* :—*As to* (2) *Folld.* Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.

376a. ———.]—A foreign Sovereign suing in the cts. of this country submits to the jurisdiction to the extent only that he must give discovery, & cross proceedings in mitigation of the relief claimed by him can be taken against him.

A foreign State sued to restrain dealing with, & for the appointment of a new trustee of, funds lodged in England in the names of a trustee for plffs. & a trustee for defts. who held a concession from plffs. for the construction of a railway in their territory. A counterclaim for damages in respect of alleged breaches of the terms of the concession was struck out.—*SOUTH AFRICAN REPUBLIC v. COMPAGNIE FRANCO-BELGE DU CHEMIN DE FER DU NORD*, [1898] 1 Ch. 190; 77 L. T. 555; 46 W. R. 151; 14 T. L. R. 65; 42 Sol. Jo. 66.

*Annotations* :—*Consd.* Duff Development Co. v. Kelantan Government, [1924] A. C. 797. *Refd.* *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176; The Tervaele, [1922] P. 259; Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.

376b. ———.]—In 1916 a Russian Govt. Committee, of which deft. was a member, was set up in London by the Imperial Russian Govt. & continued by its successor, the Russian Provisional Govt., & the committee, which incurred large financial obligations, had possession of certain documents, which related to those obligations & were the property of those Govts. The committee ceased to operate in 1918, & the documents were handed over to a board of trustees appointed by the *Chargé d'Affaires* of the Russian Provincial Govt., & deft. became president of the board. The documents had become the property of plffs., the present Russian Govt., whose sovereignty had been recognised by the British Govt., but they were still in the possession of deft. Certain actions were pending against deft. as a member of the Russian Govt. Committee with regard to the transactions to which the documents related. Plffs. claimed the delivery up of the documents, & deft. contended that he was entitled to a lien on the documents until he had received an indemnity in respect of the other actions, & he set up the contention by way of defence & counterclaim :—*Held* : although where a sovereign state was a pltf. a counterclaim could be maintained against it, yet the counterclaim must be in respect of matters immediately connected with the claim, & as the indemnity sought by deft. was not in respect of any liability incurred by him in & about the custody of the documents, & was not in respect of matters immediately connected with the claim, the action succeeded & the counterclaim failed.—*SOVIET REPUBLICS UNION v. BELAIEW* (1925), 134 L. T. 64; 42 T. L. R. 21.

383. *Add. Annotation* :—*Refd.* Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.

387. *Add. Annotations* :—*Consd.* Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816. *Refd.* *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. v. Kelantan Government & Colonies Crown Agents (1922), 39 T. L. R. 96; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

387a. ——— *Notwithstanding restrictions on exercise of sovereign rights.*—(1) It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State; & the information so received is conclusive.

(2) A Govt. recognised as sovereign by His Majesty's Govt. is not the less exempt from the jurisdiction of our cts. because it has agreed to restrictions on the exercise of its sovereign rights.

By a deed dated in July, 1912, the Govt. of Kelantan granted to applt. co. certain mining & other rights to be exercised in that State, & the deed contained an arbn. clause, which incorporated Arbn. Act, 1889 (c. 40), so far as applicable. Disputes having arisen as to the effect of the deed, they were referred to an arbitrator, who made an award in favour of the co. & directed the Govt. to pay the costs of the arbn. In Dec. 1921, the Govt. applied to the Ch. Div., under Arbn. Act, 1889, s. 11, to set aside the award, but the application was refused. In June, 1922, the co. obtained from the K. B. Div., under sect. 12 of the Act, an order giving leave to enforce the award, but the order was set aside, on the application of the Govt., on the ground that Kelantan was a sovereign independent State. Before setting aside the order the master asked the Secretary of State for the Colonies for information as to the status of Kelantan, & received in reply an official letter stating that Kelantan was an independent State & its Sultan the sovereign ruler thereof, & that the King did not exercise or claim any rights of sovereignty over Kelantan, & enclosing an agreement regulating the relations between the Sultan & the King. By this agreement the Sultan agreed to have no political relations with any foreign power except through the medium of the King, & in all matters of administration, other than those touching the Mohammedan religion & Malay custom, to follow the advice of an adviser appointed by the King :—*Held* : (1) the statement in the letter as to the sovereignty of Kelantan & its rulers was not intended to be qualified by the terms of the agreement, & the letter was conclusive; (3) the Govt. of Kelantan had not submitted to the jurisdiction of the ct. for the purpose of the proceedings to enforce the award, either by assenting to the arbn. clause or by applying to the ct. to set aside the award.—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

*Annotations* :—*As to* (1) *Appld.* Engolke v. Musmann, [1928] A. C. 433. *Refd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824. *As to* (3) *Refd.* Dickinson v. Del Solar (1929), 45 T. L. R. 637.

388. *Annotation* :—**Refd.** Duff Development Co. v. Kelantan Government, [1924] A. C. 797.
389. *Add. Annotation* :—**Consd.** Soviet Republic Union v. Belaiew (1925), 42 T. L. R. 21.
390. *Add. Annotations* :—**Refd.** The Tervae, [1922] P. 259; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385. **Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532.
392. *Add. Annotations* :—**Refd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532; The Tervae, [1922] P. 259; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333.
- 392a. ———.—(1) In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown & therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.  
In an arbn. in this country between pltf. co. & the Govt. of Kelantan an award was made in favour of the co. with costs. The Govt. of Kelantan then moved to set aside the award & this motion was dismissed with costs. An appeal from this decision was also dismissed with costs. No portion of these costs had been paid. The co. obtained a garnishee order *nisi* to attach money in the hands of the Crown agents of the Colonies on behalf of the Govt. of Kelantan. Upon an application by the co. for payment by the garnishees the Govt. of Kelantan & the Crown agents appeared together & contended that Kelantan was an independent sovereign State & the ct. had no jurisdiction to execute the orders for costs by a levy on the property of that State :—**Held** : (2) although the Govt. of Kelantan had, by initiating proceedings to set aside the award of the arbitrator, submitted to the jurisdiction of the ct., (3) that submission had not the effect of rendering liable to execution any property belonging to the Govt. within the jurisdiction. —**DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT**, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.
393. *Add. Annotations* :—**Refd.** The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816.
- Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.
- 393a. ———.—A sovereign independent State does not, by entering into a trading contract with a foreigner, lose its immunity from process in foreign cts. as regards matters arising out of the contract; nor does a sovereign independent State, by making a submission to arbn. in a foreign country, lose its immunity from being impleaded in the cts. of the foreign country.—**COMPANIA MERCANTIL ARGENTINA v. UNITED STATES SHIPPING BOARD** (1924), 93 L. J. K. B. 816; 131 L. T. 388; 40 T. L. R. 601; 68 Sol. Jo. 666, C. A.
- 393b. ———.—**DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT**, No. 392a, *ante*.
- 393c. ———.—**DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT**, No. 387a, *ante*.
394. *Add. Annotations* :—**Refd.** *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. v. Kelantan Government (1922), 39 T. L. R. 96; Duff Development Co. v. Kelantan Government, [1924] A. C. 797; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816. **Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532.
403. *Add. Annotation* :—**Generally, Refd.** Soviet Republics Union v. Belaiew (1925), 134 L. T. 64.
406. *Add. Annotations* :—**Consd.** Duff Development Co. v. Kelantan Government, [1924] A. C. 797. **Refd.** *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. v. Kelantan Government (1922), 39 T. L. R. 96; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816.
407. *Add. Annotation* :—**Mentd.** The Fagernes, [1927] P. 311.
- 407a. ———.—**DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT**, No. 392a, *ante*.
- 407b. ———.—**DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT**, No. 387a, *ante*.
409. *Add. Annotations* :—**Refd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

## Part IV.—Conditions Precedent to Action.

411. *Add. Annotation* :—**Mentd.** Ellesmere v. Wallace, [1929] 2 Ch. 1.
412. *Add. Annotation* :—**Generally, Mentd.** Ellesmere v. Wallace, [1929] 2 Ch. 1.
413. *Add. Annotation* :—**Mentd.** R. v. Canadian N. Ry., [1923] A. C. 714.
425. *Add. Annotations* :—**Consd.** Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank v. Sutcliffe, [1918] 2 K. B. 833.
428. *Add. Annotation* :—**Refd.** Bradford Old Bank, Ltd. v. Sutcliffe (1918), 84 T. L. R. 619.
430. *Add. Annotations* :—**Consd.** Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank v. Sutcliffe, [1918] 2 K. B. 833.
434. *Add. Annotations* :—**Refd.** Bradford Old Bank v. Sutcliffe, [1918] 2 K. B. 833; Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.
436. *Add. Citation* :—11 L. J. Q. B. 87.

448. *Add. Annotations* :—**Refd.** *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833. **Mentd.** *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.
457. *Add. Annotation* :—**Mentd.** *Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221.
461. *Add. Annotations* :—**Consd.** *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.
- Refd.** *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.
462. *Add. Annotation* :—*As to* (1) **Refd.** *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.
463. *Add. Annotation* :—**Consd.** *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.
480. *Add* "For full anns., see S. C., No. 176, ante."

## Part V.—Suspension of Right of Action.

496. *Add. Annotation* :—**Refd.** *Admiralty Comrs. v. S.S. Amerika*, [1917] A. C. 38.
- 497a. ————]—If the party know that he has been robbed of the goods, he must, in order to obtain restitution, first prosecute the felon.—**HARRIS v. SHAW** (1736), *Lee temp. Hard.* 349; 95 E. R. 226.
- Annotation* :—**Refd.** *Wells v. Abrahams* (1872), L. R. 7 Q. B. 554.
507. *Add. Annotation* :—**Refd.** *Admiralty Comrs. v. S.S. Amerika*, [1917] A. C. 38.
516. *Add. Annotation* :—**Refd.** *Canvey Island Comrs. v. Freedy* (1921), 91 L. J. Ch. 203.
540. *Add. Annotations* :—**Refd.** *Weld-Blundell v. Stephens*, [1919] 1 K. B. 520; *Samuel v. Dumas*, [1924] A. C. 431; *Pailin v. Northern Employers Mutual Indemnity Co.*, [1925] 2 K. B. 73.

## Part VIII.—Maintenance and Champerty.

549. *Add. Annotations* :—**Expld.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368. **Refd.** *Ford v. Radford* (1920), 36 T. L. R. 658.
551. *Add. Annotation* :—**Consd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
552. *Add. Annotation* :—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
556. *Add. Citation* :—After "[1917] 2 K. B. 564, C. A." add "*On appeal*, [1919] A. C. 368, H. L.," & after "560" add "561a, 719a." *Add Annotation* :—**Refd.** *Wiggins v. Lavy* (1928), 44 T. L. R. 721.
557. *Add. Annotation* :—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
558. *Add. Annotation* :—**Consd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
559. *Add. Annotations* :—**Consd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368. **Refd.** *Weld-Blundell v. Stephens*, [1919] 1 K. B. 520; *Hickman v. Kent or Romney Marsh Sheepbreeders' Assoc.* (1920), 36 T. L. R. 528.
560. For the existing paragraph substitute the following paragraph :—  
———]—(1) The success of the maintained litigation, whether an action or a defence, is not a bar to the right of action for maintenance.  
(2) An action for damages for maintenance

### PART V. SECT. 4, SUB-SECT. 1.

498 ii. ————]—*Claim under Criminal Injuries Code of Ireland.*—The rule or doctrine that no civil remedy will lie against the perpetrators of a felonious act until they have been prosecuted to conviction is not applicable to a claim for compensation under Criminal Injuries Code of Ireland for goods stolen in the course of rioting.—**TYLER v. CORK COUNTY COUNCIL**, [1921] 2 I. R. 8.—**IR.**

499 i. ————]—A criminal charge was laid by pltf. bank against deft. in respect of \$1,800 which the bank alleged it had overpaid deft. Before decision in the criminal trial had been given, pltf. instituted an action to recover the money. It was contended on behalf of deft. that immediately the evidence disclosed a criminal offence on the part of deft., which had not been prosecuted to conviction or acquittal, pltf. should not have been allowed to proceed with the action, but should have been non-suited :—**Held** : as a criminal prosecution had actually been carried through, even though the decision was under advisement, the action could be maintained.—**STANDARD BANK OF CANADA v. SIUEN WAH**, [1919] 1 W. W. R. 586; 26 B. C. R. 441.—**CAN.**

499 ii. ————]—Where, in an action for assault & battery, pltf. proves that the injury caused grievous

bodily harm, pltf. will be nonsuited unless it appears that proceedings have been taken against deft. for the criminal offence.—**SCHOTT v. KAY** (1862), 10 N. B. R. (5 A.L.) 211.—**CAN.**

504 iii. ————]—The rule that where pltf. sues in respect of a wrong which is a tort & also a felony, deft. should be prosecuted in respect of the felony before the civil action is heard, does not make such criminal prosecution an indispensable condition precedent to the right to maintain the civil action. In its modern application the rule is merely suspensory of the civil rights, & is subject to the exercise of judicial discretion. In exercising such discretion the ct. may consider circumstances, such as the infancy, ignorance, or poverty of pltf., which may afford excuse for the failure to prosecute in respect of the felony. Where pltf. has obtained a verdict in the civil action, the ct., on motion for a new trial or for judgment, may consider the circumstance that between verdict & motion deft. has been prosecuted in respect of the felony.—**CARLISLE v. ORR** (No. 2), [1918] 2 I. R. 442.—**IR.**

504 iv. ————]—On Aug. 12, 1920, an information for theft was laid by defts. against pltf. On Aug. 23, 1920, pltf. began an action in a division ct. against defts. to recover \$99 for wages; on Aug. 30, defts. counter-claimed in the division ct. action for

money & tickets amounting to \$202.74, "fraudulently & without colour of right" converted by pltf. to his own use, the subject of conversion being the same as that in respect of which the criminal charge was made; on Sept. 22 pltf. was committed for trial on the criminal charge, & on Sept. 30, a true bill was found against him in the sessions. On a subsequent day the judge of the division ct. heard argument as to whether the action should be proceeded with before the criminal charge was taken up; he decided that it should, & fixed a day for trial, but on Dec. 10, 1920, neither the action nor the criminal proceeding having been tried, an order was made by a judge of the Supreme Ct. of Ontario, upon the application of defts., prohibiting the judge of the division court from proceeding in the action until after the final disposition of the criminal prosecution. Pltf. appealed from this order, & before the completion of the argument of the appeal pltf. was tried upon the criminal charge & acquitted :—**Held** : the division ct. judge had the right, the claim & counterclaim being within the jurisdiction of the ct., to stay proceedings or otherwise deal with the case; & prohibition did not lie, even if the judge erred in the conclusion to which he came.—**RE BRYANT v. CITY DAIRY CO.** (1921), 41 D. L. R. 283; 37 Can. Crim. Cas. 405; 50 O. L. R. 40.—**CAN.**

will not lie in the absence of proof of special damage.—*NEVILLE v. LONDON "EXPRESS" NEWSPAPER, LTD.*, [1919] A. C. 368; 88 L. J. K. B. 282; 120 L. T. 299; 35 T. L. R. 167; 63 Sol. Jo. 213, H. L.

*Annotations* :—As to (2) *Folld. Hickman v. Kent or Romney Marsh Sheepbreeders' Asscn.* (1920), 37 T. L. R. 163. *Apld. Wiggins v. Lavy* (1928), 44 T. L. R. 721. *Generally, Refd. Wild v. Simpson*, [1919] 2 K. B. 544; *Ellis v. Torrington*, [1920] 1 K. B. 399. *Mentd. Weld-Blundell v. Stephens*, [1920] A. C. 956.

561. *Annotations* :—As to (2) *Refd. Mackey v. Monks* (Preston), [1918] A. C. 59. *Generally, Mentd. Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.

561a. *Special damage—Necessity to prove.*—*NEVILLE v. LONDON "EXPRESS" NEWSPAPER, LTD.*, No. 560, *ante*.

561b. ———.]—*Pltf.*, a member of deft. assocn., brought an action against C., the secretary, & W., the president, of the assocn., for libel in the conduct of the business of the assocn., & in the same action C. counterclaimed against *pltf.* for damages for libel in respect of the same business. The action resulted in judgment for defts. on the claim, with damages for £75 for C. on the counterclaim. The assocn. before the hearing of the action had passed resolutions to indemnify C. & W. against any liability or costs arising from the action against them, & that the indemnity should extend to the costs of any counterclaim that counsel might advise should be made, provided that any costs of the action for which the assocn. would be liable should be paid *pro tanto* out of any moneys recovered in the action. *Pltf.* then brought an action against the assocn. for maintenance & champerty, & other relief :—*Held* : (1) champerty being a form of maintenance, a decision which applies to the *genus* must also apply to the *species*; (2) *pltf.* had not proved any special damage, & his claim in champerty failed equally with his claim in maintenance.—*HICKMAN v. KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSCN.* (1920), as reported in 151 L. T. Jo. 5, C. A.

566. *Add. Annotation* :—*Refd. Neville v. London "Express" Newspaper*, [1919] A. C. 368.

567. *Add. Annotation* :—*Mentd. Weld-Blundell v. Stephens*, [1920] A. C. 956.

569. *Add. Annotation* :—*Consd. Neville v. London "Express" Newspaper*, [1919] A. C. 368.

576. *Annotations* :—For "For full anns., see" read "*Mentd. Williams v. Page* (No. 4) (1859), 28 Beav. 148."

577. *Add. Annotation* :—*Consd. Neville v. London "Express" Newspaper*, [1919] A. C. 368.

583. *Add. Annotations* :—*Refd. County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251; *Ford v. Radford* (1920), 36 T. L. R. 658.

#### PART VIII. SECT. 1, SUB-SECT. 3.

581 ix. ———.]—One, D., died sonless in 1843, leaving him surviving three widows, the last of whom died in 1894. The widows had from time to time made numerous alienations of portions of their husband's estate to defts., most of the transactions being evidenced by registered deeds. In 1906, the present suit for possession was brought by A., a collateral of D. & certain assignees from A., to whom he, after the death of the last surviving widow, had transferred a share in the property in consideration of

their agreeing to supply funds for the litigation to recover back the land from the alienees :—*Held* : the English rules against champerty & maintenance are not in force in India, & agreements to finance litigation on condition of a promise to share in its fruits are not against public policy or void & can be enforced, unless they are extortionate or otherwise inequitable.—*THAKAR SINGH v. UTTAM KAUR* (1929), 1 L. R. 10 Lah. 613.—*IND.*

594 vii. ———.]—The English law of champerty is not in force in India & fair agreements to

584a. *Special damage—Necessity to prove.*—*HICKMAN v. KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSCN.*, No. 561b, *ante*.

585. *Add. Annotation* :—*Refd. Ford v. Radford* (1920), 36 T. L. R. 658.

589. *Add. Annotation* :—*Refd. Parkinson v. College of Ambulance & Harrison*, [1925] 2 K. B. 1.

590. *Add. Annotations* :—*Apld. Ford v. Radford* (1920), 36 T. L. R. 658. *Refd. Neville v. London "Express" Newspaper*, [1919] A. C. 368.

592. *Add. Annotation* :—*Refd. Ford v. Radford* (1920), 36 T. L. R. 658.

594. *Add. Annotation* :—*Refd. Wild v. Simpson*, [1919] 2 K. B. 544.

598a. ———.]—*Percentage.*—*Pltf.* was retained by deft. to act as his solr. in an action brought against him. Deft. had a counterclaim, & while the action was proceeding, an agreement was made that in the event of deft.'s recovering more than sufficient to pay his creditors in full & all legal expenses he would pay his solr. a percentage on the amount, the solr. agreeing to conduct the counterclaim on the above terms, & not to look to deft. for any costs of the counterclaim except out-of-pocket expenses in the event of the success of *pltf.* in that action. Deft. lost the action, & his solr. sued him for the costs :—*Held* : *pltf.* could not recover as (1) (*BANKES, L.J.*) the agreement was champertous, & its effect was to make it an essential part of *pltf.*'s cause of action on his original retainer that he should negative the event in which he was to get no costs, namely, the event of the success of *pltf.* in the previous action; (2) (*ATKIN, L.J.*) the champertous nature of the agreement prevented *pltf.* from completing his services lawfully, & consequently he could not recover on a *quantum meruit*.—*WILD v. SIMPSON*, [1919] 2 K. B. 544; 88 L. J. K. B. 1085; 121 L. T. 326; 35 T. L. R. 576; 63 Sol. Jo. 625, C. A.

599a. ———.]—*Pltf.* carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amount recovered, he undertook to collect for the subscribers betting debts which, under the provisions of Gaming Acts, were not recoverable. It was agreed between him & deft. in the terms of the prospectus, that in consideration of *pltf.* "putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly is to be equally divided between claimant & the society." *Pltf.* brought an action to

share property in litigation with others in consideration of their supplying the funds for carrying on suits are not opposed to public policy, & such agreements should receive effect except when extortionate or inequitable.—*INDAR SINGH v. MUNSHI* (1919), 1 L. R. 1 Lah. 124.—*IND.*

594 viii. ———.]—An agreement to contribute towards the costs of a law suit in consideration of receiving a share in the result of the suit :—*Held* : on the facts to be champertous.—*FELLOWS-SMITH v. SHANKS* (1925), 46 N. L. R. 168.—*S. AF.*

recover the amounts of debts alleged to have been wrongfully collected by defts. in breach of the agreement:—*Held*: the agreement was illegal & void, being contrary to public policy, & champertous, as there was no community of interest between the parties, except such as was created by the agreement itself, & pltf. could not recover.—*FORD v. RADFORD* (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

601. *Add. Annotations*:—*Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; *Neville v. London "Express" Newspaper*, [1919] A. C. 388; *Ellis v. Torrington*, [1920] 1 K. B. 399.

602. *Add. Annotations*:—*Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; *Ellis v. Torrington*, [1920] 1 K. B. 399.

603. *Annotation*:—*As to* (1) *Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251.

604. *Annotations*:—*Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; *Marsden v. Heyes*, [1927] 2 K. B. 1.

604a. ——— *Assignment of option to take lease.*—In 1853 the L. & C. Ry. Co., the predecessors of deft. co., leased land adjacent to the station at Carlisle to H. for 999 years, for the purpose of erecting an hotel thereon. The lease contained a covenant by the co. with H., his exors., administrators & limited assigns that "the co. & their successors & assigns shall permit the tenant or occupier of the hotel for the time being & his servants to have access to the platforms of the station & that the tenant or occupier of the hotel shall have the option of renting the refreshment rooms" at a rent to be fixed as there mentioned, "in preference to any other party." In 1860 H. granted a sub-lease of the hotel premises to B. for 21 years, & the co. also granted to B. a lease of the refreshment rooms for 21 years. In 1866 pltf. co. obtained an assignment from B. of his interest under these two documents, & an assignment from H. of the land comprised in the lease of 1853 & "All & singular other premises comprised in & demised by the said recited indenture of lease of Aug. 1, 1853." From 1866 onwards pltf. managed & conducted both hotel & refreshment rooms, & after the expiration of the 21 years' term granted by the sub-lease of 1860 to B., they continued in occupation of the rooms upon such terms of that sub-lease as were applicable. In 1879 defts. succeeded by statute to the contracts of the L. & C. Ry. Co. On April 2, 1891, defts. & the Caledonian Ry. Co. demised to pltf. a plot of land adjacent to the hotel for 962 years. The deed recited the lease of 1853, & referred to it as the "principal indenture"; & it also provided that "these presents are without prejudice to any of the covenants conditions & agreements contained in the principal indenture," which were to remain & be in full force. On Mar. 24, 1916, defts. gave six months' notice to pltf. to determine their occupation of the refreshment rooms. Pltf. gave up possession, & then served a written notice on defts.

stating their desire to exercise the option contained in the lease of 1853, & requesting to be informed as to terms. Defts. having ignored the notice, pltf., on Oct. 16, 1916, obtained an express assignment from the personal representatives of H., who had died in 1876, of "all that the benefit right title & interest, if any, now remaining outstanding of or otherwise vested in them or any or either of them of & in the railway obligations." Pltf. claimed (a) a declaration that defts. by the lease of 1853 were under an obligation to put & keep the occupier of pltf.' hotel in occupation of the refreshment rooms, upon the terms of paying therefor a fixed market rent; (b) to have such rent fixed under the direction of the ct.; (c) damages for the breach of such obligation by defts.:—*Held*: (1) the option clause did not run with the land, & pass *ipso facto* by the assignment of the lease of 1853, as it did not touch or concern the thing demised; (2) the option clause was assignable, & was not a covenant merely personal to the covenantor; (3) the benefit of this clause was not assigned by the deed of 1866, inasmuch as the word "premises" therein referred to the land & buildings demised, & not to the option clause; (4) the deed of 1891 was not a fresh grant of the option rights to pltf., & did not constitute a binding recognition of pltf. as the assignees of the option clause; (5) the assignment of Oct. 16, 1916, by the personal representatives of H., of the option clause in the lease of 1853, being an assignment of a right of property, was not invalid for champerty; (6) the option clause was void for uncertainty; (7) the option clause was *ultra vires* of the railway co., as it fettered injuriously & gravely their obligations of performing efficiently their public duties.—*COUNTY HOTEL & WINE CO. v. LONDON & NORTH WESTERN RY. CO.*, [1918] 2 K. B. 251; 87 L. J. K. B. 849; 119 L. T. 38; 34 T. L. R. 393; 17 L. G. R. 274; *affd.* on other grounds, [1921] 1 A. C. 85, H. 1.

607. *Add. Annotations*:—*As to* (1) *Distd.* *Ford v. Radford* (1920), 36 T. L. R. 658. *Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251.

615. *Annotation*:—*Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251.

617. *Add. Annotations*:—*Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; *Ellis v. Torrington*, [1920] 1 K. B. 399.

617a. *Lease of tithes—With covenant to take legal proceedings for recovery of tithes.*—Agreement to lease the rectorial tithes of a parish, including the tithes of ninety acres supposed to be within the parish, but which had not paid tithes to the lessor during his incumbency with a stipulation that the intended lessee would, within a given time, take such legal proceedings for the recovery of the tithes of the ninety acres as his counsel should advise:—*Held*: not to be within Statute of Maintenance, 1540 (c. 9).—*WHITE v. GARDNER* (1835), 1 Y. & C. Ex. 385; 160 E. R. 157.

#### PART VIII. SECT. 2, SUB SECT. 1.

601 II. ——— *Payment of consideration dependent on success of action—Assignment void.*—*FIRST MORTGAGE CO. v. NOUD*, [1925] 4 D. L. R. 221.—CAN.

**621. Add. Annotations:—***Consd. County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251. *Apld. Ellis v. Torrington*, [1920] 1 K. B. 399.

**621a. ——— Dilapidations.]—**A freehold mesu-  
age & tenement were the subject of the  
following leases: (a) a head lease which ex-  
pired on Dec. 25, 1917; (b) an underlease  
which expired on Dec. 18, 1917; (c) a  
sub-underlease which expired on Dec. 15,  
1917. All three leases contained onerous  
covenants to repair the premises & to keep  
them & yield them up in good repair. The  
sub-underlease became vested by assignment  
in deft. On Dec. 18, 1917, plff. who had been  
a tenant to deft. of the same premises, & was  
liable to him under a covenant to repair less  
onerous than those in the three leases above  
mentioned, agreed to purchase, & on May 1,  
1918, took a conveyance of the fee simple of  
the premises together with the benefit of the  
covenants in the head lease. At the ex-  
piration of all the leases the premises were  
out of repair & deft. was threatening plff.  
with an action on his covenant. Thereupon  
plff. obtained an assignment of the full  
benefit of the lessee's covenants to repair  
contained in the sub-underlease, & com-  
menced an action against deft. as assignee  
of the sub-underlease for breaches of the  
lessee's covenants therein:—*Held*: the as-  
signment was free from objection on the  
ground of maintenance or champerty, the  
right of action on the covenants being so  
connected with the enjoyment of property  
as to be more than a bare right to litigate.—  
*ELLIS v. TORRINGTON*, [1920] 1 K. B. 399;  
89 L. J. K. B. 369; 122 L. T. 361; 36  
T. L. R. 82, C. A.

*Annotations:—**Refd. Iye v. Purcell*, [1926] 1 K. B. 446.  
*Mentd. Cole v. Kelly*, [1920] 2 K. B. 106.

**626. Add. Annotation:—***Generally, Mentd. Re*  
*Jordison, Raine v. Jordison*, [1922] 1 Ch. 440

**634. Add. Annotation:—***Consd. Ellis v. Torrington*,  
[1920] 1 K. B. 399.

**635. Add. Annotations:—***As to (1) Refd. Ellis v.*  
*Torrington*, [1920] 1 K. B. 399. *As to (2)*  
*Consd. County Hotel & Wine Co. v. L. &*  
*N. W. Ry.*, [1918] 2 K. B. 251. *Refd. Earle*  
*(1925), Ltd. v. Hemsworth R. D. C.* (1928),  
110 L. T. 69. *Generally, Refd. Earle v.*  
*Hemsworth R. D. C.* (1928), 44 T. L. R. 758.  
*Mentd. Re Pain, Gustavson v. Haviland*, [1919]  
1 Ch. 38.

**636. Add. Annotations:—***Apld. Ellis v. Torrington*,  
[1920] 1 K. B. 399. *Refd. County Hotel &*  
*Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251.

**637. Add. Annotations:—***As to (1) Apld. Ellis*  
*Torrington*, [1920] 1 K. B. 399. *Refd.*

*County Hotel & Wine Co. v. L. & N. W. Ry.*,  
[1918] 2 K. B. 251.

**637a. ——— Actions for infringement of copyright—**  
*Society for protection of copyright interests of*  
*members.]—*Plff. society was formed as a  
limited co. to protect the copyright interests  
of members, who assigned their copyrights  
to the society. By the rules of the society  
fees & damages recovered were pooled, &  
the fund so formed was divided among the  
members after the deduction of expenses.  
The assignments were real & substantial  
transactions, & the provision as to the  
division of the damages was only subsidiary.  
In an action by the society for the infringe-  
ment of copyrights which had been assigned  
to the society by two members:—*Held*:  
the arrangement between the society & its  
members was made for legitimate busi-  
ness reasons & was not champertous, &  
plffs. were entitled to succeed.—*PERFORMING*  
*RIGHTS SOCIETY, LTD. v. THOMPSON* (1918),  
34 T. L. R. 351.

**637b. Assignment of judgment.]—**In an action  
of assumpsit to pay money in consideration  
of the assignment of a judgment:—*Held*:  
this was good consideration & might be  
assigned without maintenance.—*LODER v.*  
*CHESLEYN* (1664), 1 Sid. 212; 82 E. R. 1063.

*Annotations:—**Mentd. Master v. Miller* (1791), 4 Term Rep.  
320; *Price v. Seaman* (1825), 7 Dow. & Ry. K. B. 14.

**640. Add. Annotation:—***Consd. Neville v. London*  
"Express" Newspaper, [1919] A. C. 368.

**641. Add. Annotation:—***Refd. Neville v. London*  
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**642. Add. Annotation:—***Refd. Neville v. London*  
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**644. Add. Annotations:—***Consd. Neville v. London*  
"Express" Newspaper, [1919] A. C. 368.  
*Distd. Ford v. Radford* (1920), 36 T. L. R. 658.

**645. Add. Annotation:—***Refd. Neville v. London*  
"Express" Newspaper, [1919] A. C. 368.

**646. Add. Annotations:—***Refd. Neville v. London*  
"Express" Newspaper, [1919] A. C. 368;  
*Weld-Blundell v. Stephens*, [1919] 1 K. B.  
520; *Hickman v. Kent or Romney Marsh*  
*Sheepbreeders' Assocn.* (1920), 36 T. L. R. 528.

**648. Add. Annotations:—***As to (1) Apld. Ford v.*  
*Radford* (1920), 36 T. L. R. 658. *Generally,*  
*Refd. Neville v. London* "Express" News-  
paper, [1919] A. C. 368.

**655. Add. Annotations:—***Refd. Neville v. London*  
"Express" Newspaper, [1919] A. C. 368;  
*Ford v. Radford* (1920), 36 T. L. R. 658.

**661. Add. Annotations:—***Distd. Ford v. Radford*  
(1920), 36 T. L. R. 658. *Refd. Neville v.*  
*London* "Express" Newspaper, [1919] A. C.  
368.

#### PART VIII. SECT. 2, SUB-SECT. 3.

**620 i. Purchase of lands in litigation—**  
*Pending actions relating to property*  
*purchased—Specific performance.]—*  
Plffs. having filed a bill for specific  
performance of a contract by one R.  
to sell a certain mine to them, it was  
agreed between plffs. & T., one of the  
now defts., pending such suit, that  
certain persons should purchase said  
mine from plffs.; that they should  
deposit the money required for the  
security for costs which plffs. had been  
ordered to give in said suit & pay all  
costs incurred or to be incurred therein,  
or in any other suit brought or defended  
by them respecting said mine, & pay  
all moneys due for the purchase thereof,

& allot to each of plffs. a twentieth  
share therein, if they should succeed  
in getting a title through the suit;  
& that they would settle all claims of  
Messrs. R. & G. against plffs. Plffs.  
having sued defts. on the last-mentioned  
covenant:—*Held*: the agreement was  
void for champerty & maintenance, &  
they therefore could not recover.—  
*CARR v. TANNABILL* (1870), 30 U. C. R.  
217.—*CAN.*

#### PART VIII. SECT. 2, SUB-SECT. 4.

**634 ii. ——— Subject to litigation—**  
*Conveyance valid.]—*By reason of the  
erection of the Quinze Lake Dam, & the  
consequent raising of the level of the  
water in the lake, parts of certain

properties in the neighbourhood were  
flooded. The Crown expropriated the  
right so to flood these properties in-  
cluding the one in question herein,  
which at the time of the expropriation  
belonged to V. Subsequently V. sold  
the property to H. together with V.'s  
right to recover the compensation from  
the Crown for all damages caused  
him by the flooding & expropriation.  
The Crown exhibited an information  
acknowledging liability & seeking to  
have the amount of the compensation  
fixed, & made H. deft.:—*Held*: the  
assignment from V. to H. was not an  
assignment of litigious rights.—*It. v.*  
C. R. 76.—

665. *Add. Annotation* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.
669. *Add. Annotations* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368; *Ford v. Radford* (1920), 36 T. L. R. 658.
671. *Add. Annotation* :—**Consd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.
679. *Add. Annotation* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.
681. *Add. Annotation* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.
683. *Add. Annotations* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368; *Weld-Blundell v. Stephens*, [1919] 1 K. B. 520; *Hickman v. Kent or Romney Marsh Sheepbreeders' Assocn.* (1920), 36 T. L. R. 528.
685. *Add. Annotations* :—*As to* (1) **Distd.** *Ford v. Radford* (1920), 36 T. L. R. 658. **Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368. *Generally*, **Refd.** *Wiggins v. Lavy* (1928), 44 T. L. R. 721.
687. *Add. Annotation* :—*As to* (2) **Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
- 689a. ———.]—Observations as to the circumstances in which a solr. may take up a speculative case on behalf of a poor client, & as to the terms on which he may do so.—*WIGGINS v. LAVY* (1928), 44 T. L. R. 721, C. A.
692. *Add. Annotations* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368; *Ford v. Radford* (1920), 36 T. L. R. 658.
695. *Annotation* :—**Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
696. *Add. Annotation* :—**Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
699. *Add. Annotation* :—*As to* (2) **Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
702. *Add. Annotation* :—**Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
707. *Annotation* :—**Mentd.** *Re A Solicitor* (No. 2) (1924), 93 L. J. K. B. 761.
- 711a. ———.]—A solr. will never be permitted to deal with his client for the property in question in the cause.—*DOWLIN v. —* (1823), as reported in 1 L. J. O. S. Ch. 169.
- 713a. ———.]—**PITTMAN v. PRUDENTIAL DEPOSIT BANK, LTD.** (1896), 13 T. L. R. 110; 41 Sol. Jo. 129, C. A.
716. *Add. Annotation* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.
719. *Add. Annotation* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.
- 719a. ——— **Necessity of proving special damage.**]—*NEVILLE v. LONDON "EXPRESS" NEWSPAPER, LTD.*, No. 560, *ante*.
720. *Add. Annotation* :—**Consd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.
725. This paragraph was in effect reversed by the House of Lords, *see NEVILLE v. LONDON "EXPRESS" NEWSPAPER, LTD.*, No. 560, *ante*.
726. *Annotation* :—**Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.
731. *Add. Annotations* :—**Apld.** *Ford v. Radford* (1920), 36 T. L. R. 658. **Refd.** *Neville v. London* "Express" Newspaper, [1919] A. C. 368.

**PART VIII. SECT. 4, SUB-SECT. 2.—A.**

695 iii. ——— *Legal Professions Act*, 1911 (c. 136), s. 97.]—An agreement between pltf. & deft. made under the above sect., as to payment for deft.'s services as solr., was rescinded on the ground that the provincial statute authorising such an agreement was *ultra vires*.—*TAYLOR v. MACKINTOSH*, [1924] 3 D. L. R. 926; 3 W. W. R.

97; 34 B. C. R. 56; *affg.*, [1924] 1 D. L. R. 877; 1 W. W. R. 859; 33 B. C. R. 383.—**CAN.**

**PART VIII. SECT. 5, SUB-SECT. 2.—B.**

sa. *Defence of champerty—Action must be based on agreement.*]—Where a statement of claim shows a good cause of action which if established at the

trial will entitle the pltf. to succeed, deft. cannot by settling up champertous agreement between pltf. & strangers to the action deprive pltf. of his right to prosecute the action. The defence of champerty & maintenance is confined to actions on the champertous contracts themselves.—*DAVEY v. TALLON* (Man.), [1928] W. W. R. 215.—**CAN.**



## ADMIRALTY.

## Part I.—Origin and General Characteristics of the Jurisdiction of the Admiralty Division of the High Court of Justice.

1. *Add. Annotation*:—**Consd.** *The Fagernes*, [1926] P. 185.
- 12a. ———.]—**DORRINGTON'S CASE** (1615), Moore, K. B. 916; 72 E. R. 995.
- 12b. ———.]—**MARTIN v. GREEN** (1664), 1 Keb. 730; 83 E. R. 1210.
25. *Citations*:—For "**THE LORD COCHRANE**" read "**DUNCAN v. M'CALMONT**."
36. *Add. Annotation*:—**Mentd.** *The Regina d'Italia*, [1925] P. 123.
37. *Add. Annotation*:—**Mentd.** *The Sheaf Brook*, [1926] P. 61.
38. *Annotations*:—For "For full anns., see **SHIPPING & NAVIGATION**" read "**Mentd.** *The Hanna* (1866), L. R. 1 A. & E. 283; *General Steam Navigation Co. v. British & Colonial Navigation Co.* (1869), L. R. 4 Exch. 238; *The Warsaw*, [1898] P. 127."
39. *Add. Citations*:—(1862), 15 Moo. P. C. C. (1875), L. R. 10 Exch. 65; *The Alina* (1880), 5 Ex. D. 227; *Allen v. Garbutt* (1880), 6 Q. B. D. 165, *The Rona* (1882), 7 P. D. 247; *R. v. Southend County Court Judge* (1884), 13 Q. B. D. 142; *The County of Durham*, [1891] P. 1; *R. v. City of London Court Judge*, [1892] 1 Q. B. 273; *The Theodora*, [1897] P. 279; *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470."
41. *Add. Annotations*:—**Refd.** *Ellerman Lines v. Grayson*, [1919] 2 K. B. 514; *Admiralty Comrs. v. S.S. Volute*, [1922] 1 A. C. 129; *Dew v. United British S.S. Co.* (1928), 98 L. J. K. B. 88; *Service v. Sundell* (1929), 45 T. L. R. 569.
46. *Add. Annotation*:—**Refd.** *The Fagernes*, [1926] P. 185.
51. *Add. Annotation*:—**Mentd.** *The Koursk*, [1924] P. 140.
53. *Add. Annotation*:—**Mentd.** *The Rosalind* (1920), 90 L. J. P. 126.
56. *Add. Annotation*:—**Mentd.** *The Mogileff*, [1921] P. 236.
65. *Add. Annotations*:—**Mentd.** *The Mogileff*, [1921] P. 236; *The Ambatielos*, *The Cephalonia*, [1923] P. 68; *The Stream Fisher*, [1927] P. 73.
66. *Add. Annotations*:—**Refd.** *The Llandoverly Castle*, [1920] P. 119; *The Jupiter*, [1924] P. 236.
70. *Add. Annotations*:—**Consd.** *The St. George*, [1926] P. 217. **Refd.** *The Tervaete*, [1922] P. 259; *The Colorado*, [1923] P. 102; *The Sylvan Arrow*, [1923] P. 220. **Mentd.** *Pocahontas Fuel Co. v. Ambatielos* (1922), 27 Com. Cas. 148; *The Gouladriss*, [1927] P. 182; *The Stream Fisher*, [1927] P. 73.
- 82a. ———.]—**THE TUBANTIA**, No. 594a, *post*.

*Annotations*:—For "For full anns., see **SHIPPING & NAVIGATION**" read "**Mentd.** *The Stettin* (1863), Brown. & Lush. 199; *The Hanna* (1866), L. R. 1 A. & E. 283; *General Steam Navigation Co. v. British & Colonial Steam Navigation Co.* (1869), L. R. 4 Exch. 238; *The Moselle* (1874), 32 L. T. 570; *The Vesta* (1882), 7 P. D. 240; *The Bristol City*, [1902] P. 10; *The Cayo Bonito*, [1903] P. 203."

40. *Citations*:—Add after the words "on another point" "*sub nom.* **THE ARGOS (CARGO EX)**, *GAUDET v. BROWN*, *THE HEWSONS*, *GEIPEL v. CORNFORTH*."

*Annotations*:—For "For full anns., see **SHIPPING & NAVIGATION**" read "**Mentd.** *Purkis v. Flower* (1873), 43 L. J. Q. B. 33; *Flower v. Bradley* (1874), 44 L. J. Ex. 1; *G. N. Ry. v. Swaffield* (1874), L. R. 9 Exch. 132; *Gunnestad v. Price*, *Fullmore v. Wait*

not be interfered with.—**MCBRIDE v. DARRELL** (1920), 20 Exch. C. R. 274.—**CAN.**

## PART I. SECT. 5.

*sb. Action in rem—Tort committed by master—Recovery of damages.*—No maritime lien attaches in the case of an assault by the captain on a seaman on board ship, & an action *in rem* does not lie against the vessel to recover damages due to such assault.—**LOUPIDES v. THE SCHOONER CALIMERIS** (1921), 69 D. L. R. 138; 20 Exch. C. R. 331.—**CAN.**

*sc.* ———.]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tortfeasor or his goods, & to try an action based upon the tort; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—**NOLAN v. S.S. RUSSEL HAVERSIDE**, [1921] C. P. D. 136.—**S. AF.**

**PART I. SECT. 4, SUB-SECT. 1.**  
*sa. Equitable jurisdiction.*—M. obtained judgment for wages, etc., against the A., the owners having made default to appear. D. & Co., the owners of the cargo, intervened. The vessel was duly seized, sold at auction by the sheriff, & purchased by D. & Co., who made the necessary deposit. Money had been given by appt. to discharge pltf.'s claim, but arrived too late to stop the sale. D. & Co. afterwards tendered the balance of the price, which was refused on account of an application to set aside the sale, & to redeem the vessel. D. & Co., on purchasing the vessel, made arrangements for repairs thereto, & at the time the application was originally made, they were negotiating for the sale thereof. The application was refused:—**Held**: while the Admty. Ct. exercised an unquestionable equitable jurisdiction, inasmuch as appt. had failed to show a superior equity to those arising in favour of the purchasers, the order refusing the application should

*sd.* — *Master's claim for damages—& interest on wages in arrear—Whether enforceable by action in rem.*—A British ship was attached to satisfy various creditors *in rem*, including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale:—**Held**: (1) the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem*; (2) the master was not entitled to claim *in rem* for interest upon arrear wages.—**Re GWYDYR CASTLE** (1920), 41 N. L. R. 231.—**S. AF.**

## PART I. SECT. 6, SUB-SECT. 1.—B. (b).

**82 1. Torts committed on high seas.**—The Exch. Ct. of Canada in Admty. has jurisdiction to entertain an action against a ship arrested in Canadian waters for a tort committed on the high seas.—**COMMERCIAL PACIFIC CABLE CO.**



87a. —.]—*Held*: barges, fitted with rudders & not propelled by oars, were "ships" within M. S. Act, 1894 (c. 60), ss. 503, 742.—*THE HARLOW*, [1922] P. 175; 91 L. J. P. 119; 126 L. T. 763; 38 T. L. R. 375; 15 Asp. M. L. C. 498.

*Annotations*:—*Consd.* Merchants' Marine Insc. v. North of England Protecting & Indemnity Asscn. (1926), 42 T. L. R. 724. *Mentd.* The Alde, [1926] P. 211.

89. *Add. Annotations*:—*As to* (1) *Apld.* The Harlow, [1922] P. 175. *Distd.* Merchants' Marine Insc. v. North of England Protecting & Indemnity Asscn. (1926), 42 T. L. R. 724.

125. *Add. Annotations*:—*Refd.* The Fagernes, [1926] P. 185. *Mentd.* Johnstone v. Pedlar (1921), 90 L. J. P. C. 181.

126. *Add. Annotation*:—*Refd.* The Fagernes, [1926] P. 185.

130. *Add. Annotation*:—*Apld.* The Porto Alexandre (1919), 89 L. J. P. 97.

130a. *Yacht authorised to fly White Ensign.*—By the Dockyard Port of Dover Order in Council of June 10, 1912, Sched. 1, reg. 9, all vessels other than His Majesty's ships are forbidden to use the eastern entrance to the Admty. Harbour between one hour after sunset & one hour before sunrise, without the special authority of the King's Harbour Master. While using the entrance during the prohibited hours without the authority of the King's Harbour Master pltf.'s yacht ran upon a wreck, which was said to have been unlighted at the time:—*Held*: the fact that a yacht of the Royal Yacht Squadron is authorised to fly the White Ensign does not confer upon her the status of one of His Majesty's ships within reg. 9.—*H.M.S. GLATTON*, [1923] P. 215; 93 L. J. P. 12; 39 T. L. R. 690.

131. *Add. Annotations*:—*Apld.* The Crimdon (1918), 35 T. L. R. 81. *Refd.* The Gagara, [1919] P. 95; The Porto Alexandre (1919), 89 L. J. P. 97; The Tervaete, [1922] P. 197; France Fenwick v. R. (1926), 43 T. L. R. 18.

131a. —.]—A privately owned vessel used by a sovereign State for public purposes is immune from arrest in a collision action.—*THE CRIMDON* (1918), 35 T. L. R. 81.

*Annotation*:—*Consd.* The Porto Alexandre (1919), 89 L. J. P. 97.

134. *Add. Annotation*:—*Refd.* Pyman S.S. Co. v. Admiralty Comrs., [1919] 1 K. B. 49.

135. *Add. Annotation*:—*Refd.* The Tervaete, [1922] P. 197.

140. *Add. Annotations*:—*Apld.* The Crimdon, (1918), 35 T. L. R. 81; The Gagara, [1919] P. 95. *Fold.* The Porto Alexandre, [1920] P. 30. *Apld.* The Tervaete, [1922] P. 259. *Consd.* Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816. *Refd.* Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1923), 93 L. J. P. 156; The Sylvan Arrow, [1923] P. 220; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673; Duff Development Co. v. Kelan-

tan Government, [1924] A. C. 797; The Jupiter (No. 3) (1927), 137 L. T. 333; *Engelke v. Musmann*, [1928] A. C. 433. *Mentd.* *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176; *Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532; The Edna, [1921] 1 A. C. 735; The Mogileff (No. 2), [1922] P. 122.

141. *Add. Annotations*:—*Refd.* The Crimdon (1918), 35 T. L. R. 81; The Porto Alexandre (1919), 89 L. J. P. 97.

141a. —.]—*THE CRIMDON*, No. 131a, *ante*.

141b. — *Government not formally recognised.*—*Pltfs.*, Esthonian subjects, the owners of two sailing vessels, with the approval & support of the Esthonian Govt., issued writs *in rem* claiming possession of the vessels, which had been requisitioned or sequestered by the Provisional Govt. of Northern Russia, & by them hired to a partnership asscn. for the purposes of trading, subject to the control of the director of naval transports. The Provisional Govt. entered appearances under protest, & motions were set down to set aside the writs & all subsequent proceedings on the grounds (*inter alia*) that the vessels were in the service of the Provisional Govt. & therefore immune from arrest; & that the dispute was between foreigners as to the possession of foreign ships, & therefore that, even if the ct. had jurisdiction, it should decline to exercise it. The judge invited the assistance of the Foreign Office as to the status of the Provisional Govt. of Northern Russia, & was informed by the Secretary of State for Foreign Affairs that, while the Allied Powers were co-operating with the Provisional Govt. in the opposition which that Govt. was making to the forces of the Russian Soviet Govt., the Provisional Govt. had not been "formally recognised either by H.M. Govt. or by the Allied Powers as the Govt. of a sovereign independent State:—*Held*: (1) although under the control of an official of the Provisional Govt. the vessels were not in the possession or service of the Govt.; (2) even under the older decisions, the ct. in its discretion would entertain a possession suit between foreigners if the representative of the foreign State to which the vessel belonged requested the intervention of the ct.—*THE ANNETTE*, *THE DORA*, [1919] P. 105; 88 L. J. P. 107; 35 T. L. R. 288.

*Annotations*:—*As to* (2) *Refd.* The Jupiter, [1924] P. 236; The Jupiter (No. 2), [1925] P. 69. *Generally*, *Mentd.* *Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

141c. — *Trading.*—A vessel owned or requisitioned by a sovereign independent State & earning freight for the State, is not deprived of the privilege, decreed by international comity, of immunity from the process of arrest, by reason of the fact that she is being employed in ordinary trading voyages carrying cargoes for private individuals.—*THE PORTO ALEXANDRE*, [1920] P. 30; 89

v. *THE PRINCE ALBERT* (B.C.), [1926] 4 D. L. R. 543; [1926] 3 W. W. R. 309.—*CAN.*

**PART I. SECT. 6, SUB-SECT. 1.—C.**

*af. Vessel built for show.*—A vessel built for show & not for transporta-

tion is a "ship" within admty. law & is subject to seizure for towage.—*NEVILLE CANNERS, LTD. v. SANTA MARIA* (1917), 16 Exch. C. R. 481; 86 D. L. R. 619.—*CAN.*

*ag. Conservatory attachment of barge.*—*Concurrent jurisdictions of Superior Court & Admiralty Court.*—*GIRARD v.*

*GARREY* (1916), Q. R. 49 S. C. 284.—*CAN.*

**PART I. SECT. 6, SUB-SECT. 3.—B.**

141i. *Ship requisitioned by foreign Government.*—*Held*: not liable to arrest.—*THE EULO*, [1918] 2 I. L. 78.—*IR.*

L. J. P. 97; 122 L. T. 661; 36 T. L. R. 66; 15 Asp. M. L. C. 1, C. A.

**Annotations:—***Refd.* The Tervaete, [1922] P. 259; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816.

**141d.** —[—]—While under requisition by, & manned & operated by, the United States Govt., defts.' steamship was in collision with & did damage to pltf's. steamship. After the vessel had been released from requisition pltf's. commenced an action *in rem* for their collision damage. In that action defts. pleaded (*inter alia*) that "at the time when the collision is alleged to have taken place the *Sylvan Arrow* was under requisition by & under the sole control & management of the Govt. of the United States & was being navigated by persons who were the servants of the Govt. & for whose negligence defts. were & are in no wise responsible. . . . Defts. say that the action is not maintainable *in rem* by reason of the facts set out" above. On the hearing of this question as a preliminary point of law:—*Held*: defts. had surrendered their vessel to the United States Govt. under compulsion; in no sense could it be said that the master & crew derived their authority from defts., & in the circumstances no maritime lien attached to the vessel by reason of the collision, & her owners were not, either through their vessel or otherwise, liable to pltf's.—*THE SYLVAN ARROW*, [1923] P. 220; 92 L. J. P. 119; 130 L. T. 157; 39 T. L. R. 655; 16 Asp. M. L. C. 244.

**142.** *Add. Annotations:—**Refd.* The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina v. United States Shipping Board (1924), 92 L. J. K. B. 816. *Mentd.* Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

**142a.** ———[—]—*THE PORTO ALEXANDRE*, No. 141c, *ante*.

**142b.** ———[—]—On a motion to set aside a writ *in rem* claiming possession of a vessel in the possession of the Estonian Govt. the ct. invited the assistance of the Foreign Office as to the status of the Estonian National Council. The A.-G. on behalf of the Foreign Office stated that His Majesty's Govt. had, for the time being, & with all necessary reservations as to the future, recognised the Estonian National Council as a *de facto* independent body & had received an informal diplomatic representative of the Provisional Govt.:—*Held*: to permit the arrest of the vessel would be contrary to principles of international comity, as it would compel the Estonian Govt., whose sovereignty was entitled to be respected, to submit to the jurisdiction of the British cts.; & the writ & all subsequent proceedings must be set aside.—*THE GAGARA*, [1919] P. 95; 88 L. J. P. 101; 122 L. T. 408; 35 T. L. R.

**142i.** *Vessel of foreign Sovereign—Trading.*—The *I.* was the property of the Govt. of Indo-China, a French possession, administered by a Governor-General for & in the name of the French Republic. Her officers & crew were in the service & pay of that Govt., & at the time of the accident

she was on a voyage in the interest of the Govt. of Indo-China:—*Held*: the *I.* could not be lawfully arrested. *Semle*: a sovereign State cannot be implicated indirectly by proceedings *in rem* against its property. That immunity from arrest of a foreign

259; 63 Sol. Jo. 301; 14 Asp. M. L. C. 547; C. A.

**Annotations:—***Fold.* The Jupiter, [1924] P. 236. *Refd.* The Annette, The Dora, [1919] P. 105. *Mentd.* Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797; Musmann v. Engelke (1927), 96 L. J. K. B. 821.

**142c.** ———[—]—*Subsequent sale to private owner.*—Damage occasioned by collision with a foreign state-owned vessel does not impose a maritime lien upon the vessel, & if the vessel be subsequently sold into private ownership she is not then liable to arrest in an action *in rem*.—*THE TERVAETE*, [1922] P. 259; 91 L. J. P. 213; 128 L. T. 176; 38 T. L. R. 825; 67 Sol. Jo. 98; 16 Asp. M. L. C. 48, C. A.

**Annotations:—***Refd.* The Colorado, [1923] P. 102; The Meandros, [1925] P. 61; The Stream Fisher, [1927] P. 73. *Mentd.* The Goulandris, [1927] P. 182.

**142d.** ———[—]—Pltf's., a foreign co., issued a writ *in rem* claiming possession of the steamship *J.* The writ was directed against "the steamship *J.* & all persons claiming any right or interest in the said steamship." The Union of Socialist Soviet Republics entered an appearance under protest & moved to set the writ aside on the ground that the ship was the property of the Union, a recognised independent sovereign State:—*Held*: the issue of a writ *in rem* against a vessel in which a foreign sovereign State claimed an interest was in effect impeaching the sovereign State, & although the right of the sovereign State to possession of the vessel was in dispute, the ct. could not investigate the facts, & the writ must be set aside.—*THE JUPITER*, [1924] P. 236; 93 L. J. P. 156; 132 L. T. 624; 40 T. L. R. 815; 16 Asp. M. L. C. 447, C. A.

**143.** *Add. Annotations:—**Generally, Mentd.* The Porto Alexandre (1919), 89 L. J. P. 97; Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

**143a.** *Vessel alleged to belong to foreign Government under decree of nationalisation.*—*THE JUPITER* (No. 2), No. 171a, *post*.

**147.** *Add. Annotations:—**As to* (1) *Apld.* The Meandros, [1925] P. 61. *Generally, Mentd.* Pyman S.S. Co. v. Admiralty Comrs., [1919] 1 K. B. 49.

**147a.** ———*Owners liable though possession of vessel transferred—Ship requisitioned.*—A Greek steamship owned by defts., a Greek co., was requisitioned by the Greek Govt. during the war in 1922 between Greece & Turkey. Under the terms of requisition the possession or control of the vessel passed to the Greek Govt., & the master & crew ceased to be employed by defts. & were conscripted into the Greek forces. At the end of the period of requisition the vessel had to be returned to defts. in the same condition as at the beginning of the period. While under requisition the vessel stranded, & was saved from possible total loss by the services of

state-owned ship is not affected by the vessel being used for trading purposes & as a cargo carrier, nor does it matter how the vessel is being employed.—*BROWN, JR. v. S.S. INDO-CHINE* (1921), 21 Exch. C. R. 418.—*CAN.*

pltf's. salvage ship. After the vessel had been returned to her owners she was arrested by pltf's. in an action *in rem*:—*Held*: the terms of requisition did not dispossess defts. of their property in the vessel; the services were of benefit to defts., as thereby they had their vessel instead of merely a claim against the Greek Govt.; as the services were not those of the crew of the Greek vessel, it was immaterial that the crew were the servants of the Greek Govt., & defts. were liable to

pltf's. for salvage.—*THE MEANDROS*, [1925] P. 61; 94 L. J. P. 37; 132 L. T. 750; 41 T. L. R. 236; 16 Asp. M. L. C. 476.

*Annotation*:—*Refd.* *France Fenwick v. R.*, [1927] 1 K. B. 458.

149. *Add. Annotations*:—*As to* (1) & (2) *Appld.* *The Meandros*, [1925] P. 61. *Generally, Mentd.* *Pyman S.S. Co. v. Admiralty Comrs.*, [1919] 1 K. B. 49.

150. *Add. Annotation*:—*Refd.* *The Sylvan Arrow*, [1923] P. 220.

## Part II.—Jurisdiction in Particular Cases.

170. *Add. Annotation*:—*Refd.* *The Annette, The Dora*, [1919] P. 105.

170a. ———.]—*THE ANNETTE, THE DORA*, No. 141b, *ante*.

171. *Add. Annotation*:—*Refd.* *The Annette, The Dora*, [1919] P. 105.

171a. ———.]—By a contract of sale made in London, an English co. on behalf of the Soviet Govt. purported to sell the *J.* to defts., an Italian co. The vessel had belonged to a Russian co., but the Soviet Govt. asserted that by a decree of nationalisation all vessels of the Russian mercantile marine had become State property, & that the co. had ceased to exist. The Russian co. had moved its business to France, & an action *in rem* was brought in its French name, & in the name of the persons appointed by the French cts. to administer its affairs, against "the *J.*" claiming possession. The Italian co. entered an appearance & moved to set aside the writ:—*Held*: (1) there is no established rule that the Admty. Ct. will not entertain possession suits in respect of foreign vessels except at the request of both parties or with the consent of the accredited representative of the country to which the vessel belongs; the matter is one for the discretion of the ct.; (2) the proceedings did not implead the Soviet Govt. directly or indirectly; (3) the question of authority to institute the action was a matter which should be referred to the judge at the trial; (4) the motion to set aside the writ failed.—*THE JUPITER* (No. 2), [1925] P. 69; 94 L. J. P. 59; 133 L. T. 85; 16 Asp. M. L. C. 491, C. A.

213. *Add. Annotation*:—*Refd.* *The Annette, The Dora*, [1919] P. 105.

248a. ———.]—(1) The Admty. Ct. has jurisdiction, under sect. 3 of the above Act, to take cognisance of mtge. claims relating to a ship if the ship or proceeds are under arrest of the ct. at the time when the proceedings are instituted, notwithstanding that the mtge. is not a legal mtge.

(2) A party who intervenes in, & defends, an action *in rem* cannot set up defences which

the owners of the ship could not have set up had they appeared & defended.—*THE BYZANTION* (1922), 127 L. T. 756; 38 T. L. R. 744; 16 Asp. M. L. C. 19.

254. *Add. Annotation*:—*As to* (2) *Consd.* *The Lord Strathcona*, [1925] P. 143.

254a. ——— *Right of charterer—To dispute validity of mortgage.*]—Pltf's. were mtgees. of a vessel which had been chartered by her owners, the mtgors., for a succession of seasons with options for a renewal which did not expire until 1932. Pltf's. brought an action *in rem* against the shipowners, claiming judgment for the validity of the mtges. & an order for sale of the vessel by the marshal. No appearance was entered by defts. & judgment was given condemning the vessel & ordering her sale. Thereupon the charterers intervened & claimed (a) a declaration that the charterparty was binding on the mtgees., who had notice of its existence when the mtges. were executed, & (b) an injunction to restrain pltf's. from exercising their right to an order for sale of the vessel except subject to the terms of the charterparty. The interveners also alleged that the mtges. were invalid:—*Held*: the interveners had no *locus standi* to dispute the validity of the mtges., but were only entitled to be heard on the question whether pltf's. ought to be restrained from exercising their rights in such a way as to interfere with the interveners' contractual rights under the charterparty.—*THE LORD STRATHCONA*, [1925] P. 143; 95 L. J. P. 5; 133 L. T. 765; 41 T. L. R. 638; 69 Sol. Jo. 762; 16 Asp. M. L. C. 536.

262. *Add. Annotation*:—*Refd.* *The St. George*, [1926] P. 217.

267. *Add. Annotation*:—*Refd.* *The James W. Elwell*, [1921] P. 351.

269. *Add. Annotation*:—*Consd.* *The St. George*, [1926] P. 217.

276. *Add. Annotation*:—*Refd.* *The James W. Elwell*, [1921] P. 351.

277. *Add. Annotation*:—*Refd.* *The St. George*, [1926] P. 217.

### PART II. SECT. 1, SUB-SECT. 2.

182 i. *Wrongdoer.*]—Where a ship has been wrongfully seized by her crew the ct. will order the marshal to deliver possession of it to the owner upon giving security.—*PACIFIC GREAT EASTERN RY. Co. v. The CLINTON* (1918), 21 Exch. C. R. 169; 27 B. C. R. 400; [1919] 1 W. W. R. 947.—*CAN.*

### PART II. SECT. 3, SUB-SECT. 2.—A.

250 i. *Admiralty Court Act, 1861* (c. 10)—*Mortgage registered abroad.*]—Action *in rem*, to recover the balance due on a deed of mtge., executed at Buffalo & registered there according to the law & regulations of the State of New York. The ship was arrested & released on bail. Deft. moved for an order to set aside the writ of summons, etc., for want of jurisdiction. On the hearing *F.* moved to amend,

which amendment was in substance an allegation that deft. undertook to have the ship placed under Canadian register & to mtge. the ship, which he failed to do. The ship was not under arrest or seizure at the time of the institution of the action:—*Held*: (1) the ct. was without jurisdiction to entertain the claim; (2) the amendment could not be allowed.—*M'INNISGAN v. S.S. NORTHWEST* (1920), 20 Exch. C. R. 180.—*CAN.*

278. *Add. Annotation*:—**Refd.** The James W. Elwell, [1921] P. 351.
279. *Add. Annotations*:—**Mentd.** The Russland. [1924] P. 55; The Stream Fisher, [1927] P. 73.
283. *Add. Annotation*:—**Refd.** The James W. Elwell, [1921] P. 351.
284. *Add. Annotation*:—**Generally, Mentd.** The James W. Elwell, [1921] P. 351.
286. *Add. Annotation*:—**Refd.** The James W. Elwell, [1921] P. 351.
288. *Add. Annotation*:—**Refd.** The James W. Elwell, [1921] P. 351.
289. *Add. Annotation*:—**Refd.** The St. George, [1926] P. 217.
291. *Add. Annotations*:—**Generally, Refd.** The St. George, [1926] P. 217. **Mentd.** The James W. Elwell, [1921] P. 351.
300. *Add. Annotation*:—**Refd.** The St. George, [1926] P. 217.
304. *Add. Citation*:—166 E. R. 973; *on appeal* (1851), 8 Moo. P. C. C. 459, P. C.
- Add. Annotations*:—**Fold.** The Hamburg (1864), 2 Moo. P. C. C. N. S. 289. **Consd.** The Gaetano & Maria (1881), 7 P. D. 1. **Refd.** Segredo (otherwise Eliza Cornish) (1853), 1 Eoc. & Ad. 36; The Rajah of Oochin (1859), Sw. 473; Lloyd v. Guibert (1865), L. R. 1 Q. B. 115; The St. George, [1926] P. 217. **Mentd.** Sieveking v. Maas (1856), 27 L. T. O. S. 264; Sultan (Cargo Ex.) (1859), Sw. 504; The Lizzie (1868), L. R. 2 A. & E. 254; Australasian Steam Navigation Co. v. Morse (1872), 8 Moo. P. C. C. N. S. 482; Acatos v. Burns (1878), 3 Ex. D. 282.
315. *Add. Annotations*:—**Refd.** N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay, [1927] A. C. 604. **Mentd.** Matthey v. Curling, [1922] 2 A. C. 180.
322. *Add. Annotations*:—**Refd.** Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148. **Mentd.** The Mogileff, [1921] P. 236.
- 328a. ——— **Default of appearance.**—A firm of ship repairers commenced an action *in rem* against the owners of a vessel which they had repaired. It appeared from the statement of claim that the ship was registered in an English port. No appearance was entered:—**Held**: it not being shown to the satisfaction of the ct. that at the time of the institution of the cause any owner or part owner of the ship was domiciled in England or Wales, the ct. would not refuse jurisdiction under sect. 5 of the above Act.—**THE MAGGIE A.** (1922), 128 L. T. 480; 16 Asp. M. L. C. 117.
329. *Add. Annotation*:—**Refd.** Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148.
331. *Add. Annotations*:—**Refd.** The Mogileff, [1921] P. 236. **Mentd.** Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148.
333. *Add. Annotation*:—**Mentd.** The Mogileff, [1921] P. 236.
334. *Add. Annotation*:—**Refd.** The Mogileff, [1921] P. 236.
335. *Add. Annotation*:—**Refd.** The Mogileff, [1921] P. 236.
336. *Add. Citation*:—*sub nom.* THE WEST FRIESLAND, Sw. 456, P. C.
- Add. Annotations*:—**Refd.** Laws v. Smith, The Rio Tinto (1884), 9 App. Cas. 356; Northcote v. Henrich Bjorn, The Henrich Bjorn (1886), 11 App. Cas. 270; The Mogileff, [1921] P. 236. **Mentd.** The Riga (1872), L. R. 3 A. & E. 516; The Stream Fisher, [1927] P. 73.
337. *Add. Annotation*:—**As to** (5) **Refd.** The Mogileff, [1921] P. 236.
338. *Add. Annotation*:—**Refd.** The Mogileff, [1921] P. 236.
- 338a. ——— ——— ———]—THE MOGILEFF, No. 352c, *post*.
343. *Add. Annotations*:—**Refd.** The Mogileff, [1921] P. 236; The Ambatielos, The Cephalonia, [1923] P. 68.
346. *Add. Annotation*:—**Refd.** The Colorado, [1923] P. 102.
347. *Add. Annotation*:—**Consd.** The British Trade, [1924] P. 104.

PART II. SECT. 5, SUB-SECT. 1.—A.

327 i a. ——— ———]—A vessel was seized by a mtgee. when it was being repaired by pltt. in pltt.'s yard. Pltt. brought action in the Admiralty Ct. claiming a lien for repairs done at the time the vessel was in possession & repairs previously executed on her last trip:—**Held**: the ct. had no jurisdiction to entertain the action, as the vessel was not "under arrest" at the time the writ was issued.—**MARTIN v. THE SEA FOAM** (1921), 68 D. L. R. 750; 30 B. C. R. 398; [1922] 2 W. W. R. 1181.—**CAN.**

327 i b. ——— ———]—**THE PACIFIC CO. v. WINSLOW MARINE RAILWAY & SHIPBUILDING CO.**, [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affg.* S. C. *sub nom.* WINSLOW MARINE RY. & SHIPBUILDING CO. v. THE PACIFIC, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

327 i c. ——— ———]—**STACK v. THE BARGE LEOPOLD** (1919), 18 Exch. C. R. 325.—**CAN.**

327 iii. ——— ———]—**Held**: work done in making alterations in & addition to the pilot-house, rig, spars, sails, tanks, etc., of a gasoline boat necessitated by her intended new employment in outside waters, was for the "building" or "equipping" of a ship within s. 4 of the above Act.—**ERIKSEN BROTHERS v. THE MAPLE LEAF**, [1923]

4 D. L. R. 1201; [1923] Exch. C. R. 39; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—**CAN.**

327 iv. ——— "Building" any ship.]—**ERIKSEN BROTHERS v. THE MAPLE LEAF**, No. 327 iii., *ante*.—**CAN.**

329 ii. ——— *Ship on colonial register—Actual owner foreigner.*—The C. was registered at Vancouver, B.C., & was owned by a co., having its head office at the same port. The co. was practically A., who was domiciled in San Francisco, U.S.A., being the owner of 995 shares of a total of 1,000 shares, capital stock of the co. In an action for the price of necessaries:—**Held**: as the home port of the C. was really San Francisco where the true owner was domiciled, she was a foreign vessel, & the ct. had jurisdiction.—**HALEY v. S.S. COMOX**, [1920] 3 W. W. R. 325; 20 Exch. C. R. 86.—**CAN.**

a i. ——— ———]—Pltt. claimed \$1,582.99 for work done & materials furnished for the S. while at Amos, P.Q. The vessel was arrested, & J., of Amos, who had an interest therein under an agreement to purchase, filed an appearance under reserve. The vessel was registered at the Port of Montreal, & at the date of institution of the action the registered owner was S., of Smiths Falls, Ont. The vessel was not under arrest of the ct. at the time of the institution of the cause:—

**Held**: the ct. had no jurisdiction to entertain the claim.—**CIE DES BOIS DU NORD v. S.S. ST. LOUIS** (1920), 20 Exch. C. R. 232.—**CAN.**

a ii. ——— ———]—*Ship under arrest.*—**THE PACIFIC CO. v. WINSLOW MARINE RAILWAY & SHIPBUILDING CO.**, [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affg.* [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

a iii. ——— ———]—**Held**: the ship not being a foreign vessel & its owner being domiciled in Canada, the ct. had no jurisdiction on a claim for necessaries.—**PITTSBURG COAL CO. v. S.S. BELCHERS**, [1926] Exch. C. R. 24.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.—B.

343 i. *No maritime lien.*—A claim for the supply of necessaries to a ship does not constitute a maritime lien thereon.—**CIE DES BOIS DU NORD v. S.S. ST. LOUIS** (1920), 20 Exch. C. R. 232.—**CAN.**

348 i. *Maritime lien—Created by foreign law—Whether enforceable in Exchequer Court of Canada.*—**PITTSBURG COAL CO. v. S.S. BELCHERS**, [1926] Exch. C. R. 24.—**CAN.**

348 ii. ——— ———]—**STRANDHILL v. WALTER W. HODDER CO.**, [1926] 4 D. L. R. 801.—**CAN.**

352. *Add. Annotation* :—*Refd.* The Mogileff, [1921] P. 236.

352a. ———.—]—The agent for a foreign ship, being also part owner, may recover against the ship for necessities supplied.—*THE WEST FRIESLAND* (1859), Sw. 454; 5 Jur. N. S. 658; 166 E. R. 1213; *on appeal* (1860), Sw. 456, P. C.

*Annotations* :—*Apld.* The Underwriter (1868), 25 L. T. 279. *Consd.* Laws v. Smith, The Rio Tinto (1884), 9 App. Cas. 356. *Dtd.* Northcote v. The Henrich Björn, The Henrich Björn (1886), 11 App. Cas. 270. *Consd.* The Mogileff, [1921] P. 236. *Refd.* The Idga (1872), L. R. 3 A. & E. 516; The El Salto (1908), 25 T. L. R. 99; Foong Tai v. Buchheister, [1908] A. C. 458; The Stream Fisher, [1927] P. 73.

352b. ———.—]—A person who has made advances in order to supply necessities to a ship on the credit of the ship may sue *in rem* to recover those advances, although the *res* may belong to a person or persons who are not liable *in personam* as debtor or debtors for the sum so sought to be recovered.

An agent may sue for necessities supplied under Admty. Ct. Act, 1861 (c. 10), s. 5, & does not lose his right so to sue by giving credit in the account furnished to his principal for sums received.—*FOONG TAI & Co. v. BUCHHEISTER & Co.*, [1908] A. C. 458; 78 L. J. P. C. 31; 99 L. T. 526; 11 Asp. M. L. C. 122, P. C.

*Annotations* :—*Consd.* The Mogileff, [1921] P. 236. *Refd.* El Salto (1908), 25 T. L. R. 99.

352c. ———.—]—*Prima facie*, persons who have advanced money for necessities on behalf of a foreign ship are entitled to sue *in rem*; &, although it may be inferred from the course of business between the principal & agent that the agent has agreed to look to the personal liability of the principal, & that the advances must be treated as items of a mercantile account to be adjusted in accordance with the terms of the agency agreement between the parties, the mere fact that *pltf.* are the shipowners' regular agents does not deprive them of their rights *in rem* under Admty. Ct. Acts, 1840 (c. 65), & 1861 (c. 10). The test to apply in each case is whether at the date of the suit *pltf.* could maintain an independent action *in assumptil* in the subject-matter of the claim.—*THE MOGILEFF*, [1921] P. 236; 90 L. J. P. 329; 37 T. L. R. 549; 65 Sol. Jo. 581.

*Annotation* :—*Refd.* Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148.

348 iii. ———.—]—*BAKER, CARVER & MORELL INC. v. ASTORIA*, [1927] 4 D. L. R. 1022.—CAN.

#### PART II. SECT. 5, SUB-SECT. 2.

357 i. *Action by default—Proof of claim—Right to proceed ex parte.*—*PAUL v. THE AMY TURNER*, [1922] V. L. R. 740.—AUS.

#### PART II. SECT. 6.

358 i. *Extent of jurisdiction—T performed in connection with repairs—Not at owner's special request.*—Towage performed in connection with repairs, not at the owner's special request, is not within the purview of "claims & demands for services in the nature of towage" within Admty. Ct. Act, 1840 (c. 65), s. 6, as would give the ct. jurisdiction over the claim; neither a claim for towage nor for necessities is the subject of a maritime lien.—*STACK v. THE BARGE LEOPOLD* (1919), 18 Exch. C. R. 325.—CAN.

PART II. SECT. 7, SUB-SECT. 1.—C. 386 ii. ———.—]—*Claim by master for*

*wages & damages—Payable pari passu.* ]  
—A British ship was attached to satisfy various creditors *in rem* including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale :—*Held* : the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem*.—*Re GWYDYR CASTLE* (1920), 41 N. L. R. 231.—S. AF.

#### PART II. SECT. 7, SUB-SECT. 2.—A (b).

*sk. Shipping Act, 1906, s. 191—Limits of jurisdiction.* ]—A seaman sued for \$134 :—*Held* : this being under \$200, the action must be dismissed under the above sect., with costs.—*OSTROM v. THE MIYAKO*, [1924] 2 D. L. R. 200; [1924] Exch. C. R. 96; 1 W. W. R. 1098; 34 B. C. R. 4.—CAN.

PART II. SECT. 7, SUB-SECT. 2.—B. *Assignee of wages.* ]—The maritime

357. *Add. Annotation* :—*Mentd.* The Mogileff, [1921] P. 236.

368a. *Wrongful dismissal.* ]—(1) A shipmaster or seaman suing under Admty. Ct. Act, 1861 (c. 10), on a special contract of service has no maritime lien in respect of damages for wrongful dismissal, inasmuch as such a suit could not have been brought under the ancient jurisdiction of the High Ct. of Admty.

(2) *Seemle* : the maritime lien which a seaman suing under the ordinary mariner's contract has in respect of wages is not limited to the wages earned while actually on board the ship, but extends to wages due after a wrongful determination of the contract of service.—*THE BRITISH TRADE*, [1924] P. 104; 93 L. J. P. 33; 130 L. T. 827; 40 T. L. R. 292; 16 Asp. M. L. C. 296.

398. *Add. Annotation* :—*Refd.* *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

401. *Add. Annotation* :—*Refd.* The British Trade, [1924] P. 104.

415. *Add. Annotation* :—*Refd.* The British Trade, [1924] P. 104.

417a. ———.—]—*THE BRITISH TRADE*, No. 368a, *ante*.

429. *Add. Annotation* :—*Refd.* The Ambatielos, The Cephalonia, [1923] P. 68.

430. *Add. Annotation* :—*Refd.* The Ambatielos, The Cephalonia, [1923] P. 68.

430a. ———.—]—*Pilotage Act, 1913 (c. 31), s. 49.* ]—The High Ct. of Admty. & its successor, the present Admty. Div. of the High Ct., have always had jurisdiction to entertain an action *in rem* for pilotage dues, & the pilot is not restricted to his right under the above sect. of taking proceedings in a ct. of summary jurisdiction. *Qu.* : whether there is a maritime lien in respect of pilotage dues.—*THE AMBATELOS, THE CEPHALONIA*, [1923] P. 68; 92 L. J. P. 45; 128 L. T. 699; 39 T. L. R. 183; 16 Asp. M. L. C. 120.

433. *Add. Annotation* :—*Refd.* The Ambatielos, The Cephalonia, [1923] P. 68.

435. *Add. Annotation* :—*Refd.* *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

437. *Add. Annotation* :—*Refd.* *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

449. *Add. Annotation* :—*Refd.* The Stream Fisher, [1927] P. 73.

lien attaching to a seaman's wages is personal to the seaman & not transferable.—*McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.)*, [1924] Exch. C. R. 53; *affu.*, [1923] Exch. C. R. 110.—CAN.

*sm. Person not having signed articles—Nor having lived on board.* ]—*Held* : claimant not having signed the ship's articles, not having lived on board, & the sum sued for not having been earned on board, he was not a seaman.—*McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.)*, [1924] Exch. C. R. 53; *affu.*, [1923] Exch. C. R. 110.—CAN.

*sn. Person voluntarily paying wages.* ]—No one voluntarily paying the wages of one or more of the crew can claim a lien against the ship for the amount so paid.—*McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.)*, [1924] Exch. C. R. 53; *affu.*, [1923] Exch. C. R. 110.—CAN.

459. *Add. Annotation* :—*As to* (1) **Consd.** The Colorado, [1923] P. 102.
460. *Add. Annotation* :—*As to* (1) **Refd.** The Colorado, [1923] P. 102.
469. *Add. Annotation* :—**Mentd.** Weld-Blundell v. Stephens, [1920] A. C. 956.
470. *Add. Annotation* :—**Refd.** The Sylvan Arrow, [1923] P. 220.
471. *Add. Annotation* :—**Refd.** The Sylvan Arrow, [1923] P. 220.
483. *Add. Annotations* :—**Consd.** The Rosalind (1920), 90 L. J. P. 126; The Joannis Vatis, [1922] P. 92. **Refd.** Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9. **Mentd.** Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.
489. *Add. Annotations* :—**Consd.** Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345. **Refd.** The Stream Fisher, [1927] P. 73.
490. *Add. Annotation* :—**Generally, Refd.** The Carlgarth, The Otarama, [1927] P. 93.
491. *Add. Annotation* :—**Refd.** G. W. Ry. v. S.S. Mostyn, [1928] A. C. 57.
494. *Add. Annotations* :—**Refd.** The Sylvan Arrow, [1923] P. 220. **Mentd.** The Penrith Castle, [1918] P. 142.
504. *Add. Annotation* :—**Refd.** The Tervaeete, [1922] P. 259.
508. *Add. Annotation* :—**Mentd.** Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.
510. *Add. Annotation* :—*As to* (2) **Apld.** The Goulondris, [1927] P. 182.
511. *Add. Annotation* :—**Mentd.** Gore-Booth v. Manchester (Bp.), [1920] 2 K. B. 412.
516. *Add. Annotation* :—**Mentd.** Gore-Booth v. Manchester (Bp.), [1920] 2 K. B. 412.
518. *Add. Annotations* :—**Refd.** McColl v. Canadian Pacific Ry., [1923] A. C. 126; The Molière (1924), 41 T. L. R. 154. **Mentd.** Parry v. Harding, [1925] 1 K. B. 111.
- 518a. ————]—In a collision between Swedish & British steamships, for which both ships were held to blame, a seaman on the former vessel was drowned. Under Swedish law the Swedish shipowners paid compensation to the relatives of the seaman. At the reference to assess the collision damage the Swedish shipowners claimed to recover from the owners of the British vessel a moiety of the compensation so paid. The registrar allowed the item. On appeal :—**Held** : the decision of the registrar was wrong for apart from Maritime Conventions Act, 1911 (c. 57), the Ct. of Admty. had no jurisdiction to entertain an action *in rem* for loss of life, & the Admty. rules as to division of loss had no application to such a claim, & sect. 3 of that Act, which provided for contribution between the owners of wrongdoing vessels in respect of (*inter alia*) damages for loss of life or personal injuries, only applied to damages recoverable by action, & not to claims for compensation arising out of some statute & independently of fault on the part of the shipowner.—**THE MOLIÈRE**, [1925] P. 27; 94 L. J. P. 28; 132 L. T. 733; 41 T. L. R. 154; 16 Asp. M. L. C. 470.
- 518b. *Application of Maritime Conventions Act, 1911 (c. 57).*—**THE MOLIÈRE**, No. 518a, *ante*.
519. *Add. Annotations* :—*As to* (1) **Refd.** The Koursk, [1924] P. 140. *As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154. **Generally, Refd.** The Vectis, [1929] P. 204. **Mentd.** Ellerman Lines v. Grayson, [1919] 2 K. B. 514; Weld-Blundell v. Stephens, [1920] A. C. 956; Anchor Line v. Dundee Harbour Trustees, Ellerman Lines v. Same, Thomson, Shepherd v. Same (1922), 38 T. L. R. 299.
521. *Add. Citation* :—[1909] P. 176. *Add. Annotation* :—*As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154.
523. *Add. Annotation* :—*As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154.
- 523a. ————]—**THE MOLIÈRE**, No. 518a, *ante*.
528. *Add. Annotation* :—**Refd.** The Sheaf Brook, [1926] P. 61.
536. *Add. Annotations* :—**Generally, Refd.** Ireland v. Southdown S.S. Co. (1926), 136 L. T. 412; Lewis v. Dreyfus (1926), 31 Com. Cas. 239. **Mentd.** Michalinos v. Dreyfus (1924), 131 L. T. 177; Van Nievelt Goudrian, Stoomvaart Maatschappij v. Forshnd (1925), 133 L. T. 457.
541. *Add. Annotation* :—**Mentd.** Australia (Owners) v. Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.
- 541a. ————]—**Indorsee of document acknowledging receipt of goods for shipment.**—A document whereby the receipt of goods is acknowledged for shipment on board a named ship, or on some other ship for carriage by sea & delivery to the shipper's order, the document being signed on behalf of the master, is a bill of lading for the purposes of Bills of Lading Act, 1855 (c. 111), & the above sect.
- Parcels of goods were accepted in N. for delivery at S. to the shippers' order, there being given to each shipper a document of the above-mentioned character. Upon the named ship arriving at S. the goods were not delivered. Resps., twenty firms, each being indorsees of one of the documents, issued a joint writ *in rem* claiming severally to recover damages. The writ stated that pltf. claimed as consignees or indorsees of bills of lading

## PART II. SECT. 7, SUB-SECT. 3.—A

452 iii. ————]—**Contract made abroad.**—The ct. will not interfere in a dispute as to wages arising out of a contract made abroad between the master of a foreign ship & the members of his crew.—**NOLAN v. S.S. RUSSEL HAVERSIDE**, [1921] C. P. D. 136.—**S. AF.**

454 vi. ————]—A seaman who had signed on an American ship instituted an action in Quebec against the ship for wages. No notice of the institution of the action was given by him to the United States consul, & the affidavit to lead to warrant omitted to state the national character of the

ship. Deft. moved to dismiss for defects in the affidavit, & the consul filed a protest against the action being allowed to proceed :—**Held** : (1) the protest of the American consul did not deprive the ct. of its jurisdiction; (2) the ct., in proper circumstances, might exercise its discretion to decline to proceed with such an action.—**ROULEAU v. S.S. ALEDO**, [1923] Exch. C. R. 10.—**CAN.**

## PART II. SECT. 7, SUB-SECT. 3.—B

458 i. **Conflict of laws—Application of law of litigants' country.**—Admty. Ct. Act, 1861 (c. 10), s. 10, permits the application by the ct. of the law of the

country of the litigants.—**JACOBSON v. FORT MORGAN** (1919), 19 Exch. C. R. 165; 49 D. L. R. 123.—**CAN.**

## PART II. SECT. 8, SUB-SECT. 2.—A

512 v. ————]—Pltf., a seaman, brought an action *in rem* for damages against a barge for bodily injuries sustained by him in an accident alleged to have been occasioned by negligence for which the ship was liable :—**Held** : the damage done was not "by" the barge, but "on" the barge, & was not such damage as gave pltf. a remedy *in rem*.—**MULVEY v. THE BARGE NEBSHO** (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—**CAN.**

for non-delivery of goods agreed to be carried by the named ship, or agreed to be shipped within a reasonable time by some other vessel of the same line. On affidavits sworn separately by pltf's., alleging that the goods were either lost or not shipped on any other vessel within a reasonable time, the ship was arrested. The owners of the ship took out a summons to set aside the writ & all proceedings thereunder:—*Held*: (1) the documents in question were bills of lading within the above sect., & the proceedings being to set aside the writ & it not being denied that some of the goods were received on board, the action should proceed; (2) the action being *in rem* & the joinder of pltf's. convenient, the view of the full Bench of the Supreme Ct. that pltf's. could properly be joined under the rules locally applicable should not be interfered with.—*MARLBOROUGH HILL, SHIP v. COWAN & SONS*, [1921] 1 A. C. 444; 90 L. J. P. C. 87; 124 L. T. 645; 37 T. L. R. 190; 15 Asp. M. L. C. 163; 26 Com. Cas. 121, P. C.

*Annotation*:—*As to* (1) *Distd. Diamond Alkali Export Corp'n. v. Bourgeois*, [1921] 3 K. B. 443.

546. *Add. Annotation*:—*Refd. Marlborough Hill, Ship v. Cowan*, [1921] 1 A. C. 444.

562. *Add. Annotation*:—*Refd. The Sheaf Brook*, [1926] P. 61.

565a. *Judicature (Consolidation) Act, 1925 (c. 49), ss. 22, 58 (2)*—*Owner domiciled in England—Application to transfer action to King's Bench Division.*—(1) Pltf's., as owners of cargo on board defts.' ship, brought an action *in personam* in the Admlty. Div. for damages for breach of the contract of carriage. Defts. were domiciled in England. On an application by them to transfer the cause to the King's Bench Div., the judge held that he had a discretion to retain it in the Admlty. Div.:—*Held*: s. 58 (2) of the above Act did not give the ct. discretion to retain a cause in respect of which the Act expressly provided that the Div. had no jurisdiction, & the action must be transferred to the King's Bench Div.

(2) The note to R. S. C., Ord. 49, r. 3, that the Ct. of Appeal cannot order a transfer without the consent of the presidents of both the Divs. from & to which the transfer is proposed to be made, does not apply to cases where the Ct. of Appeal has held that the one Div. has no discretion to retain the cause in that Div. In such cases the transfer is made subject only to the consent of the president of the Div. to which the cause is to be transferred (*ATKIN, L.J.*).—*THE SHEAF BROOK*, [1926] P. 61, 95 L. J. P. 113; 134 L. T. 534; 17 Asp. M. L. C. 14, C. A.

1. *Add. Annotation*:—*Mentd. The Rosalind* (1920), 90 L. J. P. 126

578. *Add. Annotation*:—*Refd. The Wilhelmina*, [1923] P. 112.

## PART II. SECT. 9, SUB-SECT. 1.—B.

564 i. *Admiralty Court Act, 1861 (c. 10), s. 6—No breach of duty—Contract with shippers imposing no obligation on ship.*—Pltf's. agreed to purchase goods, the shippers to deliver same at an agreed point. The contract did not purport to be made by or on behalf of the ship, but by the shippers, with pltf's., who claimed damages for breach of contract for non-delivery, & at their request a

warrant to arrest the ship & her cargo was issued:—*Held*: (1) pltf's. not having been shown to be the owners, or consignees or assignees of the bill of lading of the cargo, the ct. had no jurisdiction in the matter, & the warrant of arrest should be set aside; (2) the contract referred to in the above sect. contemplated an obligation on the part of the ship, & the contract sued on imposed no such obligation.—*LAVALLEE v. THE ISTAR*,

579a. *Ship injured in dock—Dockowners repairing ship—In dock belonging to others.*—By the negligence of pltf's.' servants while engaged on work on a steamship in the Hornby Dock, belonging to the Mersey Docks & Harbour Board, the vessel & her cargo were damaged by fire, & pltf's. were held liable in damages. Pltf's. sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, on the ground that they were the owners of a dry dock at Garston:—*Held*: the liability being in no way connected with the fact that pltf's. were dockowners, they were not entitled to a decree of limitation of liability.—*THE CITY OF EDINBURGH*, [1921] P. 274; 90 L. J. P. 304; 125 L. T. 375; 37 T. L. R. 468; 15 Asp. M. L. C. 234, C. A.

*Annotations*:—*Distd. The Ruapehu* (1926), 42 T. L. R. 708. *Expid. S.S. Ruapehu v. Green & Silley Weir*, [1927] A. C. 523.

579b. ————Pltf's., owners of a dry dock, sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, in respect of damage caused by a fire which broke out on defts.' vessel owing to the negligence of pltf's.' servants while the vessel was being repaired by them in the dry dock:—*Held*: while some limitation must be put upon the general language of the sect., which, if applied in its strict literal sense would lead to an absurdity, the limitation to be put was not in respect of the nature of the act done but in respect of area, i.e., the damage must be in some way connected with the ownership of the dock.—*THE RUAPEHU*, [1927] P. 47; 96 L. J. P. 18; 136 L. T. 146; 42 T. L. R. 708; 17 Asp. M. L. C. 138, C. A.; *affd. sub nom. RUAPEHU (OWNERS) v. GREEN (R. & H.) & SILLEY WEIR, LTD., THE RUAPEHU*, [1927] A. C. 523; 96 L. J. P. 99; 137 L. T. 353; 43 T. L. R. 402; 71 Sol. Jo. 330; 32 Com. Cas. 323; 17 Asp. M. L. C. 270, H. L.; *subsequent proceedings* (1929), 45 T. L. R. 657.

*Annotations*:—*Refd. Gossie Millard v. Canadian Government Merchant Marine, American Can Co. v. Same* (1927), 97 L. J. K. B. 193; *The Ruapehu* (No. 2), [1929] P. 305. *Mentd. Buerger v. New York Life Assoc.* (1927), 96 L. J. K. B. 930.

593. *Citations*:—For "36 L. T. 361" read "6 L. T. 361."

594a. ————*Rival salvors—Injunction to restrain act on high seas.*—In 1922 pltf's. fitted out an expedition to salvage cargo from the wreck of a Dutch steamship which had sunk in 1916 in the North Sea in over one hundred feet of water. Pltf's. worked at the scene of the wreck whenever the weather & tides permitted during the summer of 1922 & from Apr. to July, 1923. During that time they had succeeded in cutting a hole into No. 4 hold, had buoyed the wreck, & had extracted some portions of cargo of little value at a cost of over £40,000. In July, 1923, defts., British subjects & partners in a rival salvage co., arrived on the scene in a British registered ship, & by sending down their own divers & interfering with pltf's.'

[1923] Exch. C. R. 212.—CAN.

564 ii. ————*Goods shipped from Canadian port.*—The jurisdiction the above sect. confers upon the ct. is clearly confined to cases of damage to goods carried by ships into a Canadian port, & does not extend to the case of goods shipped from Canada to foreign ports.—*HARRIS ABATTON CO. v. ALDO (OWNERS)*, [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—CAN.



diving operations, tried to secure possession of the wreck & cargo, & either prevent further work on the part of plffs. or establish themselves with plffs. in concurrent occupation:—*Held*: (1) an action in respect of injurious acts done on the high seas had always been within the jurisdiction of the High Ct. of Admty.; (2) plffs. were sufficiently in occupation of the wreck to exclude third parties from interfering with the property; (3) as defts.' interference was high-handed & deliberate they would be restrained until further order from doing any acts at or near the wreck whereby plffs. might be prevented

93 L. J. P. 148; 131 L. T. 570; 40 T. L. R. 335; 16 Asp. M. L. C. 346.

595a. ——— [Services on land.] — THE LAPWING (1839), 8 L. T. 440.

596a. ———.]—Two causes of salvage against a vessel were consolidated upon motion by defts., & with the consent of all parties. On a petition being subsequently filed, defts. moved for its dismissal, with costs & damages, on the ground that the value of the property salvaged was under £1,000:—*Held*: the proceedings of defts. in reference to the consolidation must be construed as an agreement which gave the ct. jurisdiction under Admty. Jurisdiction Act, 1868 (c. 71), s. 9.

*Scmble*: under Admty. Jurisdiction Act, 1868 (c. 71), s. 8, the ct. of Admty. has discretion to take cognisance of cases of salvage, though the value of the property salvaged be under £1,000.—THE HERMAN WEDDEL (1870), 39 L. J. Adm. 30; 23 L. T. 876; 3 Mar. L. C. 530.

598. After this case insert, "Prize salvage, *see* PRIZE LAW."

603. *Add. Annotation*:—*Refd.* Pyman S.S. Co. v. Admiralty Comrs., [1919] 1 K. B. 49.

606. *Add. Annotations*:—*Consd.* The Meandros, [1925] P. 61. *Refd.* Pyman S.S. Co. v. Admiralty Comrs., [1919] 1 K. B. 49.

611. *Add. Annotation*:—*Refd.* Pyman S.S. Co. v. Admiralty Comrs., [1919] 1 K. B. 49.

618. *Add. Annotations*:—*Consd.* The Meandros, [1925] P. 61. *Refd.* Pyman S.S. Co. v. Admiralty Comrs., [1919] 1 K. B. 49.

617. *Add. Annotation*:—*Consd.* Bradley v. Newsom, [1919] A. C. 16.

619. *Add. Annotation*:—*As to* (1) *Refd.* Bradley v. Newsom, [1919] A. C. 16.

622. *Add. Annotation*:—*Refd.* The Fagernes, [1926] P. 185.

642a. ———.]—*R. v. MILLER* (1823), 1 Hag. Adm. 197; 166 E. R. 71.

648a. Ship not entitled to be registered as British ship—Ship under jurisdiction of Prize Court.]—A ship registered as a British ship, & nominally owned by a duly registered British co., was in fact owned & controlled by the Hamburg-Amerika Line, of Hamburg, which, in the person of its nominees, owned all the shares in the British co. & appointed its directors. Accordingly, after the outbreak of war with Germany, the ship was seized as prize, & on July 28, 1916, the Prize Ct. pronounced her to have belonged at the time of seizure to enemies of the Crown, & ordered her to be detained by the marshal until further order. Meanwhile on Jan. 11, 1916, under Prize Ct. Rules, Ord. 29, the ship had been requisitioned by the Lords Comrs. of the Admty., & she remained in their possession. On Apr. 5, 1917, the writ in the present action was issued claiming a declaration under M. S. Acts, 1894 (c. 60), & 1906 (c. 48), that the ship was forfeited to the Crown on the ground that she was not entitled to be registered as a British ship:—*Held*: as the Lords Comrs. of the Admty. had merely temporary possession of the ship & had to return her into the custody of the Prize Ct. which had at some time to make a final decree either of condemnation or release, the Admty. Ct. had no jurisdiction to entertain the forfeiture action & to make the usual order for appraisement & sale, & the action must be dismissed.—THE S<sup>1</sup> 34 L. J. P. 148, 131 L. T. 570, 40 T. L. R. 335.

650. *Add. Annotation*:—*Generally*, *Mentd.* The Stream Fisher, [1927] P. 73.

650a. ——— *Injunction*.]—THE TUBANTIA, No. 594a, *ante*.

650b. *Res* under jurisdiction of Prize Court.]—THE ST. TUDNO, No. 648a, *ante*.

## Part III.—Present and Former Practice of the Admiralty Division of the High Court of Justice and of Courts other than English County and local Courts.

668a. ——— *Issue*—*Res* not within jurisdiction.]—(1) It is not necessary that, at the time of the issue of a writ *in rem*, the *res* should be

within the jurisdiction of the ct.; & Maritime Conventions Act, 1911 (c. 57), s. 8, which provides that in the case of collision or

### PART II. SECT. 11, SUB-SECT. 2.—B.

608 i. *Action in rem*—Or *in personam*.]—The first & most proper remedy for the recovery of salvage is *in rem*.—HATTON v. AKT, DURBAN HANSEN, [1919] S. C. 154; 66 Sc. L. R. 100.—SCOT.

### PART II. SECT. 16.

654 i. *Exception to jurisdiction*—Made after trial.]—An objection to the

jurisdiction will hold good even if made after the trial.—STACK v. THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—CAN.

### PART III. SECT. 1, SUB-SECT. 1.—A. (a).

668 i. ——— *Amendment*—Increase of amount.]—Plffs. claimed \$4,000 damages, by reason of a collision between one of their barges & the B. The B. was arrested & the bail fixed at \$4,000,

the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to \$5,512.94. Plffs. moved to amend their writ by adding to the amount claimed:—*Held*: the ct. might direct measures to be taken to do full justice to plffs., & to that end permit the amendment.—HALL COAL CO. v. THE BAYUSONA, [1923] Exch. C. R. 128.—CAN.



salvage actions the proceedings must be commenced within two years of the cause of action, is complied with if the writ is issued within two years; the sect. does not contemplate that the arrest of the *res* constitutes the commencement of the proceedings.

(2) In general, the ct. will not grant an extension of time for the renewal of an unserved writ, which has not been renewed within the period of one year as provided by R. S. C., Ord. 8, r. 1, if, but for the extension of time, the claim would be barred by a statute of limitation. But, inasmuch as Maritime Conventions Act, 1911 (c. 57), s. 8, contains provisos for extension of time unknown to any other statutes of limitation, the application to renew a writ in an action which comes within the operation of sect. 8 must be considered on its merits, & if, under the circumstances, the ct. would give leave to issue a writ notwithstanding the lapse of two years, the ct. will allow an extension of time for the renewal of a writ, the time for the renewal of which has expired.—*THE ESPANOLETO*, [1920] P. 223; 90 L. J. P. 32; 125 L. T. 121; 36 T. L. R. 554; 15 Asp. M. L. C. 287.

**668b. — Motion to set aside—Facts in dispute.]**

—In an action *in rem* for damage by collision *defts.* moved to set aside the writ & all subsequent proceedings on the ground that their vessel at the time of the collision was under requisition to, & in the sole control & possession of, the United States Navy Department, & that accordingly no maritime lien attached to her. *Pltfs.* did not admit the facts set out in *defts.*' affidavit in support of the motion:—*Held*: the facts being in dispute the ct. could not try the issue on motion by affidavit & the motion must be dismissed, but without prejudice to the right of *defts.* to apply, when the issues were defined by pleadings, for the question of law to be tried as a preliminary point.—*THE SYLVAN ARROW*, [1923] P. 14; 92 L. J. P. 23; 128 L. T. 448; 39 T. L. R. 25; 1 Asp. M. L. C. 115.

**669. Add. Annotation:—As to (1) *Consd.* The Joannis Vatis, [1922] P. 92.**

**672a. — Defendant blaming another ship.]**

—*Pltfs.* claimed damages from *defts.*, owners of the *W.*, in respect of a collision between the *W.* & barges belonging to *pltf.* The owners of the *W.* denied liability, alleging by letter to *pltf.* that the collision was caused by the negligence of the *A.* An action was commenced between the owners of the *W.* & the owners of the *A.*, in which the owners of the *A.* admitted liability for the collision. The

owners of the *A.* agreed *pltf.*' damages, but refused to pay the costs of the action by *pltf.* against the *W.*, which had then been prosecuted to the stage of filing *pltf.*' preliminary act:—*Held*: *pltf.* were entitled to amend their writ by adding the owners of the *A.* as *defts.* The case came within the principle of R. S. C., Ord. 16, r. 11, that no cause should be defeated by the non-joinder of parties, & in the circumstances it would have been a misuse of the discretion of the ct. to refuse to allow a party to exercise that right. The proper course would have been for *pltf.* to have added both parties as *defts.* in the alternative.—*THE W. H. RANDALL*, [1928] P. 41; 97 L. J. P. 42; 134 L. T. 459; 17 Asp. M. L. C. 397, C. A.

**673. Add. Annotations:—Consd. The Creteforest, [1920] P. 111; Marlborough Hill, Ship v. Cowan, [1921] 1 A. C. 444.**

**682a. — Motion to set aside acceptance & undertaking to appear & put in bail—Mistake as to authority.]—Motion dismissed.—THE GERTRUD (1927), 138 L. T. 239; 44 T. L. R. 1; 17 Asp. M. L. C. 343.**

**683a. Renewal of writ—Extension of time for—Maritime Conventions Act, 1911 (c. 57), s. 8.]—THE ESPANOLETO, No. 668a, ante.**

**697. Add. Annotation:—Refd. The Point Breeze, [1928] P. 135.**

**700a. Right to arrest—Ship under requisition.]—Pltfs.' steamship & *defts.*' steamship, the *L.L.*, collided in Sept. 1917. The *L.L.* was at the time under requisition:—*Held*: there could be no effective arrest of the vessel while she was under requisition.—*THE LARGO LAW* (1920), 123 L. T. 560; 15 Asp. M. L. C. 104.**

**700b. — Ship seized under writ of fieri facias.]—**

A foreign ship was seized under a sheriff's writ of *fi. fa.* in execution of a judgment obtained by the charterers of the ship against the owners of fifty-six sixty-fourth shares in the ship. Subsequently the ship was arrested by the Admty. marshal in an action *in rem* for necessities. Various other writs *in rem* were issued against the ship, including a writ by the master in respect of wages. The sheriff was unable to effect a sale, & the ship was sold by the marshal without prejudice to the rights of the various claimants:—*Held*: the fact that the sheriff was in possession did not deprive the marshal of his power to arrest the ship in actions *in rem*.—*THE JAMES W. ELWELL*, [1921] P. 351; 90 L. J. P. 132; 37 T. L. R. 178.

**701. Add. Annotation:—Consd. The James W. Elwell, [1921] P. 351.**

**6731. Parties—Joinder of plaintiffs—After judgment.]—In the course of a trial in the Admty. Ct. *pltf.* was allowed to amend by adding a party *pltf.*, but failed to amend formally pursuant to the order & entered the formal judgment with only the original *pltf.* named therein, & proceeded to assess damages before the registrar:—*Held*: in the circumstances *pltf.* had not elected to abandon the order for amendment & should be allowed to have the judgment & prior proceedings amended in accordance therewith.—*EVANS, COLEMAN & EVANS, LTD. v. THE ROMAN PRINCE*, [1924] 3 D. L. R. 95; [1924] Exch. C. R. 133; 2 W. W. R. 465; 34 B. C. R. 155.—CAN.**

**673 ii. — Nonjoinder.]—There**

being no special rule in this Ct. dealing with the joinder of parties, the practice & procedure of the High Court of Justice, in England, obtains, & the claimant herein was entitled to bring the present action in his own name alone, without joining his co-owners or their assignees. Misjoinder or nonjoinder cannot now defeat a claim.—*MACKAY v. R.*, [1928] Exch. C. R. 149.—CAN.

**PART III. SECT. 1, SUB-SECT.**

**A. (a).**

**701 iii. — Creditor's action—Claim for building, equipping or repairing.]—As soon as a creditor finds a ship under arrest of the ct., he may bring his action for, & the Admty. Ct. acquires immediate & irrevocable jurisdiction**

over, any claim for building, equipping or repairing the ship. That jurisdiction is established without the litigant having to show that the original action under which the ship was arrested must eventually succeed, & notwithstanding that the arrest was made without particulars being given to prove without doubt the status of *pltf.* in that original action.—*ELIKSEN BROTHERS v. THE MAPLE LEAF* (1922), 67 D. L. R. 261; [1922] 3 W. W. R. 41.—CAN.

**701 iv. — Repairs continued after arrest.]—Resp. contracted with the owner of a ship to do certain repairs, & it was delivered to them for the purpose. When the repairs were going on the ship was arrested at the suit of *appls.*, who claimed for earlier repairs**

**706. Add. Annotations:—Generally, Mentd.** The Crimdon (1918), 35 T. L. R. 81; The Porto Alexandre (1919), 89 L. J. P. 97.

**706a. Re-arrest—Damage in excess of bail—Second action—Right to bring action in personam.]—**In an action *in rem* in respect of damage by collision defts. gave bail in the sum of £100,000 as representing the full value of their vessel & the limit of their liability according to French law. In the Admty. Ct. both pltf's. & defts.' vessels were held to blame, but the Ct. of Appeal held defts.' vessel alone to blame & this decision was upheld by the House of Lords. The £100,000 being insufficient to satisfy pltf's. judgment, pltf's. who admitted that *quā* damages they could not recover more than the £100,000, threatened to arrest defts.' vessel in respect of interest & costs; & under protest, defts. provided bail in a further sum to avoid arrest:—**Held:** having received bail in the full value of defts.' vessel, pltf's. could not arrest her *in rem*, but could proceed *in personam*, & were entitled to a declaration that the amounts due in respect of interest & costs were enforceable by seizure & sale of the vessel by a sheriff under a writ of *fi. fa.*—**THE JOANNIS VATIS** (No. 2), [1922] P. 213; 91 L. J. P. 196; 127 L. T. 494; 38 T. L. R. 566; 16 Asp. M. L. C. 13.

**Annotation:—Refd.** The Point Breeze, [1928] P. 135.

**706b. ———.]—**In a damage action *in rem* pltf's. demanded & obtained bail from defts. in the sum of £3,500. After judgment had been given pronouncing defts.' ship alone to blame, pltf's. demanded further bail in the sum of £3,000, on the ground that the original sum demanded was insufficient to cover their damages. On the refusal of defts.' solrs. to give an undertaking to provide additional bail, pltf's. extracted a warrant of arrest from the Admty. registry under which defts.' ship was arrested. On a motion to set aside

the warrant of arrest:—**Held:** the effect of taking bail was to release the ship altogether, & the warrant of arrest must be set aside.—**THE POINT BREEZE**, [1928] P. 135; 97 L. J. P. 88; 139 L. T. 48; 44 T. L. R. 390; 17 Asp. M. L. C. 462.

**715. Add. Annotation:—Mentd.** The St. George, [1926] P. 217.

**742. Add. Annotations:—Consd.** The Point Breeze, [1928] P. 135. **Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

**746. Add. Annotation:—Consd.** The Joannis Vatis (No. 2), [1922] P. 213.

**747. Add. Annotation:—Apld.** The Point Breeze, [1928] P. 135.

**760. Add. Annotation:—Refd.** Melanie S.S. v. San Onofre S.S., [1925] A. C. 246.

**764. Add. Annotation:—Refd.** The Annette, The Dora, [1919] P. 105.

**766. Add. Annotation:—Mentd.** The Joannis Vatis (No. 2), [1922] P. 213.

**766a. ——— Walver of right to plead Maritime Conventions Act, 1911 (c. 57), s. 8.]—**By entering an unconditional appearance to a writ issued more than two years after the date of salvage services, defts. do not waive the right of pleading the protection of the above Act in their defence & raising it at the trial of the action.—**THE LLANDOVERY CASTLE**, [1920] P. 119; 89 L. J. P. 141; 124 L. T. 383; 15 Asp. M. L. C. 153.

Effect of Maritime Conventions Act, 1911 (c. 57), *see, generally*, SHIPPING.

**768a. Appearance by person interested—Position of intervener.]—**THE BYZANTION, No. 248a, ante.

**780. Add. Annotation:—Refd.** The Consul Olsson, [1920] P. 43.

**780a. ———.]—**THE SAN ONOFRE, No. 780b, *post*.

& necessities. After the arrest the ship was left in the actual possession of resp's., who continued to do the repair work contracted for without the sanction of the ct. but in good faith.—**Held:** resp's. should have priority for repairs made after the arrest so far as the selling value of the ship was thereby increased.—**MONTREAL DRY DOCKS & SHIP REPAIRING CO., LTD. v. HALIFAX SHIPYARDS, LTD.**, [1920] 3 W. W. R. 25; 54 D. L. R. 185; 60 S. C. R. 359.—CAN.

d. Read now "706a i."

**706a ii. ——— Mistake in sum claimed—Cost of repairs exceeding estimate.]—**Pltf's. claimed \$4,000 damages, by reason of a collision between one of their barges & the B. The B. was arrested & the bail fixed at \$4,000, the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to \$5,512.94. Pltf's. moved to amend their writ by adding to the amount claimed & for the issue of a warrant to re-arrest the B.:—**Held:** the ct. might direct measures to be taken to do full justice to pltf's., & to that end permit the issue of a warrant for the re-arrest of the ship, but with costs of the motion & of the re-arrest against pltf's.—**HALL COAL CO. v. THE BAYUSONA**, [1923] Exch. C. R. 128.—CAN.

**706a iii. ——— Dismissal of claim for salvage—Appeal.]—**Where a claim for salvage against a ship has been dismissed, there is no general right, in case of appeal, to hold the bail bond or after its cancellation to re-arrest the

ship, nor will such right be granted without good reason therefor, such as that it appears to the ct. that the ship will not be within the jurisdiction to answer the appeal should it go against it.—**THE FREIYA v. THE R. S.** (1921), 63 D. L. R. 687; 21 Exch. C. R. 147; 30 B. C. R. 132; [1921] 2 W. W. R. 749.—CAN.

**sp. Attachment to found jurisdiction—Both parties domiciled outside jurisdiction—Res within jurisdiction.]—**

Where a ct. alleged that it intended to bring an Admiralty action *in rem* for damage occasioned to its vessel through the negligent handling of resp. co. whilst in the territorial waters of the Union, & it appeared that both the cos. were domiciled outside the Union, the attachment of the vessel was ordered, such order to be suspended on security being provided in an amount greater than the sum claimed as damages.—**S.S. KERATOS v. S.S. FABIAN**, [1921] C. P. D. 148.—S. AF.

**PART III. SECT. 1, SUB-SECT. 2.—A. (b).**

**st. Mala fide arrest—Abuse of process of court—Rights of other claimants.]—**A ship was arrested at the suit of a member of a firm. His independent claim for wages as a "ship's carpenter on board the ship," was in fact only a part of his firm's claim, & immediately after the ship was arrested his firm's action was instituted:—**Held:** those facts so obviously disclosed *mala fides* & an abuse of the process of the ct. that the arrest could be viewed as a sham proceeding & as not having any legal existence as regards the firm, but other

claimants could support their suits on its existence in fact, because in good faith they instituted their suits relying upon the records of the ct. which on their face showed that its jurisdiction could be invoked.—**ERIKSEN BROTHERS v. THE MAPLE LEAF**, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 39; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—CAN.

**PART III. SECT. 1, SUB-SECT. 3.—A.**

**a i. ——— Court without jurisdiction.]—**In the absence of jurisdiction existing by law, the filing of an appearance & the giving of bail by deft. do not give jurisdiction to the ct. in a proceeding *in rem*. Jurisdiction is not a matter of procedure & cannot be derived from the consent of parties.—**MULVEY v. THE BARGE NIOSHO** (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—CAN.

**a ii. ———.]—**A mere technical objection to an informality or irregularity in procedure may be waived by appearance, by the giving of bail or by taking a step in the action; but if, in fact, the ct. has no jurisdiction over the subject-matter of the claim, no delay on the part of deft. & no step in the action taken by him can give the ct. jurisdiction.—**HARRIS ABATTOIR Co. v. ALEDO (OWNERS)**, [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—CAN.

**PART III. SECT. 1, SUB-SECT. 4.—A.**

**sw. Bail—Who accepted as bail—Company carrying on business of suretyship.]—**Re 251 BARS OF SILVER v. CANADIAN SALVAGE ASSOCN. (No. 2) (1915), 15 Exch. C. R. 370.—CAN.

**780b.** ——— **Effect of contractual arrangement between owner & charterer.]**—(1) The Admty. marshal appraised a salved steamship at the sum of £369,841. On an application to vary or set aside the appraisal on the ground that the ship had been appraised at her market value instead of at her value to her owners, which, owing to the fact that she had been chartered to time charterers at a low rate of hire in 1914 for a period which did not expire until 1930, was less than £160,000 :—*Held*: for purposes of appraisal of a salved vessel contractual arrangements between the owners & charterers are immaterial, & the marshal's valuation was properly arrived at & was based on the right principle.

(2) The general rule is that an appraisal by the marshal is conclusive, & it is only in very exceptional cases that an application to vary or set aside the appraisal will be allowed.—*THE SAN ONOFRE*, [1917] P. 96; 86 L. J. P. 103; 116 L. T. 800; 14 Asp. M. L. C. 74.

*Annotation*:—As to (2) *Consd.* *The Consul Olsson*, [1920] P. 43.

**781a.** **Nature of bail.]**—*THE BORRE*, No. 781b, *post*.

**781b.** **Undertaking to put in bail—Afterwards withdrawn—Effect of subsequent arrest of vessel.]**—On June 22, 1920, defts.' solrs. gave an undertaking to enter an appearance & put in bail in respect of a writ *in rem* claiming damages in respect of loss by collision. In consequence defts.' vessel was not arrested. On Feb. 17, 1921, defts.' solrs. wrote to plffs.' solrs. that their clients were unable to make arrangements for bail, that accordingly the undertaking for bail was withdrawn, & that, as the vessel was within the jurisdiction of the ct., plffs. could arrest her. Plffs.' solrs. arrested the vessel, but wrote to defts.' solrs. that they reserved all their clients' rights under the undertaking for bail. On Mar. 16, 1921, the vessel was appraised as being at that time of a value of £600. Defts. provided bail in that sum & the vessel was released. On Apr. 12, plffs. applied for an order that defts.' solrs. should forthwith provide good & sufficient bail, pursuant to their undertaking. It appeared that in June, 1920, the value of the vessel was much in excess of £600, & plffs. estimated her value at £4,500 :—*Held*: (1) the undertaking to give bail could not be withdrawn by substituting the vessel for the bail; (2) plffs. had not waived their rights under the undertaking by arresting the vessel; (3) defts.' solrs. must complete their undertaking by putting in bail to the value of the vessel as on June 22, 1920; (4) nature of bail discussed.—*THE BORRE*, [1921] P. 390; 91 L. J. P. 1; 125 L. T. 576; 37 T. L. R. 668; 55 Sol. Jo. 715; 15 Asp. M. L. C. 334.

**781c.** ——— **When value of ship ascertained.]**—*THE BORRE*, No. 781b, *ante*.

**781d.** **Liability limited to amount of bail—No second action if bail insufficient—Action in personam—For interest & costs.]**—*THE JOANNIS VATIS* (No. 2). No. 706a, *ante*.

**781e.** **Benefit of bail—Action in name of cargo owners—Some owners not joining in proceedings.]**—The steamships *W.* & *J.* came into collision & the *W.* & her cargo were damaged. Before the issue of the writ an

undertaking to put in bail to the amount of £100,000, had been given on behalf of the owners of the *J.* The writ was in the names of "The owners of the steamship *W.* & cargo v. the owners of the steamship *J.*," but at that time no authority from any of the cargo owners had been received. While the litigation was proceeding the owners of the *W.* asked the various underwriters on the cargo, subrogated to the rights of the respective cargo owners, to join in the proceedings or share in the costs. Some assented & some declined. The litigation proceeded to the House of Lords, where the *J.* was held alone to blame. The sum of £100,000 being insufficient to satisfy all the claims, the owners of the *W.* contended that having sued as owners of the ship & bailees of the cargo they were entitled to receive the whole of the bail for which the undertaking had been given, pay themselves the amount of their own damage as shipowners in priority to all other claimants, & that the non-assenting cargo owners had no right to share in the fund :—*Held*: (1) although, as bailees of the cargo, the shipowners were entitled to recover the full value of the damage to the cargo, represented by the bail, they must account to all the owners of the damaged parcels of cargo for their share; (2) it was the duty of the ct., when the bail was recovered, to see that all persons having a claim on the fund, including the non-assenting cargo owners, shared in the distribution.—*THE JOANNIS VATIS*, [1922] P. 92; 91 L. J. P. 182; 126 L. T. 718; 15 Asp. M. L. C. 506, C. A.

**781f.** ——— **Several salvage actions.]**—A vessel which had stranded on rocks & sustained heavy damage got off with the assistance of various salvors & was placed in dock for temporary repairs. In respect of these services various salvage actions & an action by the ship repairers for salvage &/or necessaries were instituted. No defence was put in, but in the first action an appearance was entered & an undertaking given to put in bail for ship, cargo & freight in the sum of £1,000. The cargo & freight were valued at £327. Before the other actions were instituted the cargo had been landed & dispersed. After some temporary repairs had been effected the vessel was sold by the marshal. She only realised £839 :—*Held*: the bail for cargo & freight did not constitute a fund in which all the salvors could share; the undertaking was given in one action only, & plffs. in that action, in which the total values were £1,217, could treat <sup>327</sup><sub>1217</sub> of £1,000 as bail representing

the cargo & freight.—*THE RUSSLAND*, [1924] P. 55; 93 L. J. P. 18; 130 L. T. 763; 40 T. L. R. 232; 68 Sol. Jo. 324; 16 Asp. M. L. C. 288.

**781g.** **Amount of bail—Value of ship & freight—Limit of liability—Facts disputed by plaintiffs.]**—It, in an action of damage by collision, the amount for which the action is brought exceeds the statutory limit provided by M. S. Act, 1894 (c. 60), s. 503, deft. shipowners on filing an affidavit in the damage action stating the tonnage of their ship & that the collision happened without their actual fault or privity, will, if these facts are not denied by plff. shipowners, be

entitled to have the ship released on bail being given to an amount sufficient to cover the statutory limit, together with interest & costs. But if plffs. dispute the facts on which the right to limit liability depends, bail must be given to the full value of defts.' ship.—*THE CHARLOTTE*, [1920] P. 78; 89 L. J. P. 62; 123 L. T. 685; 36 T. L. R. 204; 64 Sol. Jo. 276; 15 Asp. M. L. C. 98.

781h. Effect of bail—Release of ship.]—*THE POINT BREEZE*, No. 706b, *ante*.

796. *Add. Annotation*:—*Refd.* *The Consul Olsson*, [1920] P. 43.

806. *Add. Annotation*:—*Refd.* *The Joannis Vatis* (No. 2), [1922] P. 213.

808. *Add. Annotation*:—*Consd.* *The Joannis Vatis* (No. 2), [1922] P. 213.

810. *Add. Annotations*:—*Refd.* *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369. *Mentd.* *The San Onofre*, [1922] P. 243.

829. *Add. Annotation*:—*As to* (1) *Distd.* *Bradley v. Newsom*, [1919] A. C. 16.

834. *Add. Annotation*:—*As to* (1) *Refd.* *The Joannis Vatis* (1921), 91 L. J. P. 182.

837. *Add. Annotations*:—*As to* (1) *Refd.* *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255. *As to* (2) *Refd.* *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101.

839. *Add. Annotations*:—*Refd.* *The Fagernes*, [1926] P. 185. *Mentd.* *The Clan Sutherland* (1918), 88 L. J. P. 26.

840. *Add. Annotation*:—*Refd.* *The Fagernes*, [1926] P. 185.

842. *Add. Annotation*:—*Refd.* *The Fagernes*, [1926] P. 185.

843. *Add. Annotation*:—*As to* (2) *Refd.* *Johnson v. Taylor*, [1920] A. C. 144.

855. *Add. Annotation*:—*Refd.* *The Creteforest*, [1920] P. 111.

856a. —[1] In a consolidated salvage action the tender by defts. of a lump sum to answer several claims of salvors is a valid tender; but, where defts. have adopted this course, they run the risk that the ct. may hold that it was reasonable for plffs. to proceed to trial although the tender is upheld.

In a consolidated salvage suit where the owners of two tugs, separately owned, joined in one writ, & the masters & crews in another, defts. tendered a lump sum which the ct. upheld, but as defts.' affidavit of values was only handed to plffs. on the day of the trial:—*Held*: (2) plffs., the tug owners, who had been given the conduct of the consolidated action, were entitled to their costs; (3) the interests of the masters & crews being identical with those of the owners, the masters & crews were not entitled to be separately represented at the expense of defts. Observations on the desirability, except in very special circumstances, of masters & crews joining in one action with the owners.—*THE CRETEFOREST*, [1920] P. 111; 89 L. J. P. 136; 123 L. T. 591; 36 T. L. R. 367; 15 Asp. M. L. C. 48.

#### PART III. SECT. 1, SUB-SECT. 5.—B.

828 i. *Property deteriorating—Appearance by absent defendant.*—*SIMMS v. HODDERN* (1818), 1 Nfld. L. R. 93.—Nfld.

#### PART III. SECT. 3, SUB-SECT. 1.

82. *Joinder of actions in rem & in*

*personam—Propriety of.*—*ATLANTIC COAST S.S. Co. v. MONTREAL TRANSPORTATION Co. & THE MARY ELLEN, MONTREAL TRANSPORTATION Co. v. THE BUCKEYE STATE* (1909), 12 Exch. C. R. 429.—Can.

#### PART III. SECT. 5, SUB-SECT. 1.

82. *Object.*—The object of a prelimi-

857. *Add. Annotation*:—*Refd.* *The Creteforest*, [1920] P. 111.

864. *Add. Annotation*—*Refd.* *The Creteforest*, [1920] P. 111.

874a. — — — — —.]—*THE SHEAF BROOK*, No. 565a, *ante*.

878a. *Transfer by Court of Appeal—Necessity for consent of presidents of both Divisions.*—*THE SHEAF BROOK*,

885. *Add. Annotations*:—*Mentd.* *The James W. Elwell*, [1921] P. 351; *Mersey Docks & Harbour Board v. Hay*, [1923] A. C. 345; *The Stream Fisher*, [1927] P. 73.

890. *Add. Annotation*:—*As to* (1) & (2) *Consd.* *The El Oso* (1925), 133 L. T. 269.

892. *Add. Annotation*:—*As to* (1) & (2) *Expld.* *The El Oso* (1925), 133 L. T. 269.

893. *Add. Annotation*:—*Refd.* *The El Oso* (1925), 133 L. T. 269.

894a. — Action between parties whose vessels have not been in collision with each other.]—Where the parties to a damage action are the owners of vessels which have not been in collision with each other the practice as to requiring preliminary acts under R. S. C., Ord. 19, r. 28, is a matter for the discretion of the ct. In such cases the proper course is that there should be the communication between the solrs. which commonly takes place in admty. cases, & that the solrs. should ascertain whether the parties are ready to file preliminary acts under Ord. 19, r. 28. If both parties are not ready to deliver preliminary acts, or one of them declares himself unable or unwilling, then the matter should be raised by summons. If in such a case an order is made for preliminary acts to be filed, such order is not properly complied with by the party whose vessel has not been in collision filing a blank preliminary act.—*THE EL Oso* (1925), 133 L. T. 269; 16 Asp. M. L. C. 530.

*Annotation*:—*Consd.* *The Carlston & The Balcombe*, [1926] P. 82.

894b. *Who entitled to—Co-defendant.*]—A collision took place between the *C.* & the *B.*, & subsequently the *C.* collided with plffs.' vessel. Plffs. issued a writ *in rem* against the owners of the *C.*, & the usual preliminary acts were filed by both parties. In their defence the owners of the *C.* blamed the *B.*, & plffs. added the owners of the *B.* as second defts. Thereupon the owners of the *C.* obtained an order that the owners of the *B.* should forthwith file a preliminary act:—*Held*: (1) the only parties entitled as against second defts. to a preliminary act were plffs., & they would be so entitled when they had filed a preliminary act against second defts.; first defts. were not entitled to require second defts. to file a preliminary act unless they chose to become plffs. & issue a writ against second defts., & the order must be set aside; (2) if it were a matter of discretion, the guiding principle, that of mutuality,

nary act is to obtain a statement *reento facto* of the circumstances, to prevent parties shaping their case to meet the one put forward by the other at trial.—*LE BLANC v. THE EMILIE BURKE* (1919), 19 Exch. C. R. 24; 46 D. L. R. 59.—Can.

would be infringed by the order made, as second defts. would be bound by a preliminary act which they had filed, & the parties at whose instance it had been filed would not be bound, as against second defts., by the judgment in the present action.—**THE CARLSTON. THE BALCOMBE**, [1926] P. 82; 95 L. J. P. 51; 134 L. T. 766; 42 T. L. R. 312; 17 Asp. M. L. C. 33.

**897a.** — **Course & speed of vessel.**—In cases of collisions between ships at anchor it is not sufficient in answer to par. 7 of the preliminary act, which asks the course & speed of the vessel when the other was first seen, to reply "at anchor." The heading of the vessel should also be given.—**THE MACROOM** (1927). 137 L. T. 418; 71 Sol. Jo. 472; 17 Asp. M. L. C. 288.

**908.** **Add. Annotation:**—As to (1) **Distd.** **The Woodarra v. Admiralty** (1921), 66 Sol. Jo. 182.

**914a.** — **Raising new claim—Effect of.**—**THE HIGHLAND GLEN** (1927), 164 L. T. Jo. 480, C. A.

**916.** **Add. Annotation:**—**Distd.** **The Woodarra v. Admiralty** (1921), 66 Sol. Jo. 183

**936.** **Add. Citation—on appeal** (1853), 8 Moo P. C. C. 482 P. C.

**939.** **Add. Annotation:**—**Mentd.** **The Refrigerant**, [1925] P. 130

**952.** **Add. Annotation:**—**Refd.** **The San Onofre** (1922). 92 L. J. P. 17

**969.** **Add. Annotation:**—**Refd.** **The Saxicava**, [1924] P. 131.

**969a.** — **Action stayed, discontinued or dismissed—Counterclaim raised in correspondence.**—A notice of counterclaim contained in correspondence passing between pltf.'s & def't.'s solrs. is not sufficient to "set up" a counterclaim within R. S. C., Ord 21, r. 16, so that the counterclaim may be proceeded with if pltf.'s action is stayed, discontinued or dismissed.

The counterclaim must at least be set up by some proceeding which is either directed by or recognised by the rules & in respect of which there is a record on the files of the ct.—**THE SAXICAVA**, [1924] P. 131; 93 L. J. P. 66; 131 L. T. 342; 40 T. L. R. 334; 68 Sol. Jo. 666; 16 Asp. M. L. C. 324, C. A.

**970a.** — **Two foreign vessels, a barque & a ship, came into collision, when the barque was sunk. The ship was arrested in a cause of damage by the owners of the barque, & when the cause was ready for hearing, the owners of the ship commenced a cross action against them, to which they gave no appearance. On a motion to dismiss the original**

action unless an appearance & bail were given by the owners of the barque:—**Held:** the barque being sunk, the ct. had no jurisdiction to compel the owners to give bail, & must reject the motion.—**THE CARLYLE** (1858), 30 L. T. O. S. 278; 6 W. R. 197.

**Annotation:**—**Refd.** **Chapman v. Royal Netherlands Steam Navigation Co.** (1879), 4 P. D. 157.

**979a.** — **Consolidated salvage action.**—**THE CRETEFOREST**, No. 856a, *ante*.

**1001.** **Add. Annotation:**—**Refd.** **The Creteforest**, [1920] P. 111.

**1001a.** — **Tender of lump sum—Consolidated salvage action.**—**THE CRETEFOREST**, No. 856a, *ante*.

**1023.** **Add. Annotations:**—**Apld.** **Re Bjornstad & Ouse Shipping Co.**, [1924] 2 K. B. 673. **Refd.** **The Tervaele** (1922), 128 L. T. 176; **Duff Development Co. v. Kelantan Government**, [1923] 1 Ch. 385; **Duff Development Co. v. Kelantan Government**, [1924] A. C. 797.

**1027a.** — **Pltfs.' & defts.' vessels came into collision & both received damage. Pltfs. brought an action in rem against defts., "the owners of the steamship N." Defts. counterclaimed, & applied to pltfs. for security to answer the counterclaim. Security was given, but on pltfs. making a similar application defts. refused to give security on the ground that the N. was owned by the French Govt., & was not subject to arrest:—**Held:** the ct. had no power to order security to be given or, in default thereof, to stay defts.' counterclaim.—**THE NEPTUNE**, [1919] P. 17; 88 L. J. P. 94.**

**1029.** **Add. Annotation:**—**Mentd.** **The Sylvan Arrow**, [1923] P. 220.

**1032.** **Add. Annotation:**—**Refd.** **The Joannis Vatis** (No. 2), [1922] P. 213

**1042.** **Add. Annotations:**—**Mentd.** **The Porto Alexandre** (1919), 89 L. J. P. 97; **Aksionairnoye Obschestvo A. M. Luther v. Sagor**, [1921] 1 K. B. 456; **Duff Development Co. v. Kelantan Government**, [1923] 1 Ch. 385; **Compania Mercantil Argentina v. United States Shipping Board** (1924), 93 L. J. K. B. 816; **Duff Development Co. v. Kelantan Government**, [1924] A. C. 797.

**1046.** **Add. Annotation:**—**Refd.** **The Shropshire** (1922), 127 L. T.

**1047a.** — **For disposing fairly of cause—For saving costs.**—The owners of the steamship N., one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the N. & the owners of the other ship, the

### PART III. SECT. 8, SUB-SECT. 2.—A.

**998 ii.** — **Rejection of tender—Acceptance of increased tender after amendment of claim at trial.**—In an action for salvage services, pltf. claimed \$20,000 & in his statement of claim such amount of salvage remuneration as to the ct. might seem meet. The defence was delivered on Mar. 17, when def't. paid into ct. \$2,000 & tendered to pltf., who rejected it. Pltf. at the trial applied for leave to amend to set up an additional claim. The amendment was made, & def't. increased his tender to \$4,000, which was accepted:—**Held:** (1) def't. should in any event have the costs of & consequent upon the amendment granted at the trial; (2) as to the accepted tender, the in-

creased tender must be regarded as having been made & accepted on Mar. 17, & all the costs subsequent to that tender should be borne by pltf.; (3) the circumstances were not quite sufficient to deprive pltf. of costs before tender.—**THE PASCHENA v. THE GRIFF**, [1925] 2 W. W. R. 676.—CAN.

### PART III. SECT. 9, SUB-SECT. 1.

**ab. Plaintiff resident out of jurisdiction—Foreign ship.**—Where pltf. is resident out of the jurisdiction & his ship is a foreign one, security for costs may be ordered, even at an advanced stage of the action & though the delaying in applying therefor is unaccounted for, in the absence of any prejudice to the other side occasioned by such delay.—

**WRANGELL v. THE STEEL SCIENTIST**, [1924] 2 D. L. R. 49; [1924] Exch. C. R. 136; 2 W. W. R. 493; 34 B. C. R. 114.—CAN.

### PART III. SECT. 10, SUB-SECT. 1.—A. (a).

**sc. Examination for discovery—In lieu of interrogatories—When ordered—Use of.**—While an examination for discovery may be ordered by the judge as a matter of convenience, in place of the delivery of interrogatories, especially where the opposite party is in ignorance of the facts, such examination cannot be read as evidence at the trial.—**POINT ANNE QUARRIES v. S.S. M. F. WHALEN** (1921), 68 D. L. R. 627; 20 Exch. C. R. 483.—CAN.

S., & also by the owners of cargo on the S. The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the S., who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the S. Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the S.; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the S. The registrar allowed Nos. 1 & 2, but disallowed Nos. 3 & 4. On appeal by both sides:—*Held*: the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2. & must be allowed. No. 4 was not pressed.—THE NEDENES (1924), 41 T. L. R. 243.

**1082a. — Confidential report by master.]**—Defts., the Port of London Authority, arranged with their underwriters that, in all cases of claims for collision in which their vessels were concerned, the management of the claim should be put in the hands of certain solrs. Defts. directed that a report on a printed form headed "Confidential report for the information of the Authority's solr." should be made by the master of the vessel. The report was subsequently passed through various departments in defts.' offices until it reached the solr.'s hands. It was then dealt with by the solr. in the course of his professional conduct. A report was made in these circumstances by the master of a vessel belonging to defts. in respect of a collision with pltf.'s vessel. Pltfs. claimed to have this report produced to them:—*Held*: the report having been obtained for the solr., in the sense of being procured as materials upon which professional advice should be taken in proceedings pending or threatened or anticipated, it was privileged from production.—THE HOPPER No. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

*Annotation.*—*Distd.* The City of Baroda (1926), 134 L. T. 576.

**1062b. — Officers' reports.]**—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery:—*Held*: (1) the reports were not privileged.

(2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—THE CITY OF BARODA (1926), 134 L. T. 576; 70 Sol. Jo. 1044; 17 Asp. M. L. C. 27.

**1078a. Taking evidence on commission—Discouraged.]**—THE AUGUSTA (1909), 26 T. L. R. 98.

**1112a. Right of reply.]**—Allowed in all cases.—THE RJUKAN (1866), 14 W. R. 973.

**1114. Add. Annotation: — Mentd.** Australia (Owners) v. Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

**1114a. — Damage due to collision.]**—In an action of damage by collision the *onus* of proving that damage directly flows from deft.'s negligence causing the collision is on pltf.; & the dicta in *The Mellona* (1847), 3 Wm. Rob. 7, 13; *The Pensher* (1857), Sw. 211, & similar cases, to the effect that where damage follows a collision the presumption is that the damage is the result of the collision, unless deft. proves the contrary, must not be taken as laying down a principle, but as having reference only to the particular circumstances of those cases, where the damage, stranding, so obviously followed on the collision that it *prima facie* was to be regarded as a consequence of the negligence causing the collision.—THE PALUDINA, [1925] P. 40; 132 L. T. 724; 16 Asp. M. L. C. 453, C. A.; *affd. sub nom.* S.S. SINGLETON ABBEY v. S.S. PALUDINA, [1927] A. C. 16; 17 Asp. M. L. C. 117, H. L.

*Annotation.*—*Refd.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.

**1119. Add. Annotation: — Mentd.** Melanie S.S. v. San Onofre S.S., [1925] A. C. 246.

**1152a. Log of defendants' vessel—Right of plaintiffs to put in—After admission of facts by defendants.]**—Defts. to an action of salvage by their defence admitted that all pltfs. had rendered salvage services & that the allegations of the facts of such services set out in the respective statements of claim were in substance correct, but they denied that the various inferences sought to be drawn from those facts were accurate or well founded, & that their vessel was ever in any real danger. They also pleaded certain soundings which differed from those pleaded by certain of pltfs. Pltfs. by their reply joined issue upon the defence save in so far as the same consisted of admissions:—*Held*: pltfs. were entitled to put in the logs of defts.' vessel with a view to proving that the ship was in real danger, & also a graphic representation of the soundings based on sketches in defts.' log, but not to call evidence as to the facts, e.g. the displacement of certain tugs.—THE WOODARRA (1921), 38 T. L. R. 160; 66 Sol. Jo.

**1152b. Oral evidence dispensed with—Salvage—Amount in dispute small—Discretion of court.]**—In a case where salvage services had been requisitioned & the amount in

**PART III. SECT. 11, SUB-SECT. 1.**  
*ad. Proof of claim—Right to proceed ex parte—Order for sale of res.]*—PAUL v. THE AMY TURNER, [1922] V. L. R. 740.—AUS.

**PART III. SECT. 14, SUB-SECT. 3.—A.**  
*se. Log books—Independent log kept*

*by mate.]*—*Held*: not admissible.—R. v. THE AINOKO (1891), 4 Exch. C. R. 195.—CAN.

*st. Manuscript notes made by master.]*—In the circumstances rejected as evidence as part of the ship's log.—THE ANDREW KELLY v. THE COMMODORE, [1919] 1 W. W. R.

1059; 19 Exch. C. R. 70; 48 D. L. R. 213.—CAN.

*sk. Salvage action—Attendance of master & crew.]*—It is proper to have the master & crew before the ct. in an action for salvage.—JOHNSON & MAC-KAY v. S.S. CHARLES S. NEFF (1918), 18 Exch. C. R. 168.—CAN.

dispute was small, by agreement the case was tried on the pleadings & statements of the witnesses, no oral evidence being called & the attendance of the Elder Brethren being dispensed with:—*Held*: the course taken was a mode of procedure useful to the shipping world, & one for which the ct. would endeavour to give proper facilities, the power of the ct. being, of course, discretionary.—*THE RIVER FISHER* (1923), 39 T. L. R. 233.

1167. Before this case insert “*See, further, EVIDENCE, Vol. XXII., p. 94.*”

1196. *Add. Annotations*: — *Refd.* Australia (Owners) v. Nautilus (Owners), *The Australia* (1926), 95 L. J. P. 145. *Mentd.* S.S. Mendip Range v. Radcliffe, [1921] 1 A. C. 556.

1198a. — Between assessors advising lower court & appellate court—*Duty of appellate court.*—In a case in which there has been a difference of opinion between the nautical assessors advising the respective cts., the Ct. of Appeal is not bound to pay more attention to the opinion of its own assessors than to that of those who advised the ct. below. The assessors occupy much the same position as do skilled witnesses, & if they differ the ct. must make its own choice. In every case the responsibility is with the ct., which has to make up its mind alike on questions of nautical skill & on the value of the advice given upon them.—*AUSTRALIA (OWNERS) v. NAUTILUS (OWNERS), THE AUSTRALIA*, [1927] A. C. 145; 95 L. J. P. 145; 135 L. T. 576; 42 T. L. R. 614; 32 Com. Cas. 82; 17 Asp. M. L. C. 86, H. L.

1198b. — — — — —.] — *ARTEMISIA (OWNERS) v. DOUGLAS (OWNERS)* (1925), [1927] A. C. 164, H. L.

*Annotation*:—*Consd.* Australia (Owners) v. Nautilus (Cargo Owners), [1927] A. C. 145.

1199. *Add. Annotation*: — *Consd.* Australia (Owners) v. Nautilus (Owners), *The Australia* (1926), 95 L. J. P. 145.

1200a. Presence of — Dispensed with — *Salvage action* — Amount in dispute small.] — *THE RIVER FISHER*, No. 1152b, *ante*.

#### PART III. SECT. 14, SUB-SECT. 4.—A.

1196 iii. — — — — —.]—Two ships collided on a very bad night. The collision was caused by the *M.* which was light, dragging her anchors, & coming down on the *R.*, which was holding to her moorings. When the *M.* was dragging her anchors she had steam up but did not use it, by which failure she omitted to take a reasonable measure which might have avoided the accident. In an action for damages by the *R.* against the *M.* there was uncontradicted evidence to the effect that the steam had not been used because those in charge of the *M.* did not & could not know owing to the darkness & the weather that they were dragging their anchors. The Lord Ordinary, without expressing any opinion as to whether he credited that evidence or not, accepted an opinion expressed by the nautical assessor to the effect that it would not have been difficult for those on the *M.* to know that they were dragging their anchors:—*Held*: it was for the Lord Ordinary & not for the nautical assessor to pronounce upon the trustworthiness of that evidence, & to say whether or not the master of the *M.* ought to have known when his anchor began to drag, &, on the ground that the

evidence did not establish the fault, the *M.* absolved.—*CAMBO SHIPPING CO., LTD. (ROSSETTI (OWNERS)) v. DAMPSKIRSELSKABET MAGNUS*, [1920] S. C. 96; 57 Sc. T. R. 59.—*SCOT*

1201 iii. — — — — —.]—*Held*: evidence of experiments with water in a lock without any steamer being in it was of the nature of expert evidence, & as the ct. had the assistance of a nautical assessor to advise upon any matters requiring nautical or other professional knowledge, such expert evidence was inadmissible.—*FRASER S.S. AZTEC* (1920), 20 Exch. C. R.

1201 iv. — — — — —.]—In Admlty. cases where the ct. has the assistance of nautical assessors, evidence involving questions of nautical skill & experience is not admissible.—*PACIFIC STEAM NAVIGATION CO. (BOGOTA (OWNERS)) v. ANGLO-NEWFOUNDLAND DEVELOPMENT CO., LTD. (ALCONDA (OWNERS))*, [1923] S. C. 526; 60 Sc. L. R. 333.—*SCOT*.

sl. *Duty of judge to keep note of questions submitted to & answers given by nautical assessor*—*Nautical Assessors (Scotland) Act*, 1894 (c. 40), s. 3.—*S S ROWAN v. S.S. CLAN MALCOLM*, [1923] S. C. 317.—*SCOT*.

1201. *Add. Annotations*:—*Refd.* Australia (Owners) v. Nautilus (Owners), [1927] A. C. 145. *Mentd.* Hontestroom (Owners) v. Sagaporack (Owners), Hontestroom (Owners) v. Durham Castle (Owners) (1926), 95 L. J. P. 153.

1204. *Add. Annotation*:—*Refd.* Australia (Owners) v. Nautilus (Owners), *The Australia* (1926), 95 L. J. P. 145.

1206. *Add. Annotation*:—*Refd.* Australia (Owners) v. Nautilus (Owners), *The Australia* (1926), 95 L. J. P. 145.

1224. *Add. Annotation*:—*As to* (2) *Refd.* The Disperser, [1920] P. 228.

1231. *Add. Annotation*:—*Mentd.* The Oranje Nassau, [1921] P. 190.

1237a. — Action against two separate parties — One party only held to blame—Costs of plaintiff.]—(1) A pltf. who, being in reasonable doubt as to which of two parties has been negligent, sues both parties & fails against one, is entitled to add the costs which he has to pay to the successful deft. to his costs against the unsuccessful deft., notwithstanding that the unsuccessful deft. has not put the blame upon the other. But if he brings separate actions, unless he acts reasonably in so doing, he will not be allowed the costs of two actions. (2) Similarly, if one of defts. sets up a counterclaim against pltf. & the other deft. & fails against pltf., he is entitled to recover from deft. against whom he succeeds the costs which he has to pay pltf.—*THE SVEIN JARL* (1923), 129 L. T. 255; 16 Asp. M. L. C. 159.

*Annotation*:—*Distd.* The W. H. Randall, [1928] P. 41.

1258. *Add. Annotation*:—*Refd.* The Joannis Vatis (No. 2), [1922] P. 213.

1261. *Add. Annotation*:—*Refd.* *Re* Letters Patent No. 139,207, *Re Carbonit Akt.*, [1924] 2 Ch. 53.

1262. For “*see* S. C. No. 1266, *post*,” read “*see* S. C. No. 131, *ante*.”

1265. *Add. Annotation*:—*Mentd.* The Disperser, [1920] P. 228.

1277. *Add. Citation*:—*sub nom.* *The Commodore*, 1 Ecc. & Ad. 175, n.

#### PART III. SECT. 16, SUB-SECT. 3.—A.

bi. — — — — —.]—*GRAND TRUNK PACIFIC COAST S.S. CO. v. THE B.B. (1914)*, 17 D. L. R. 757; 15 Exch. C. R. 389; 6 W. W. R. 711.—*CAN.*

sm. *Expenses of bail bond*—*Not recoverable as costs.*—The expense of procuring a bail bond incurred by an arrestee in order to liberate his ship, which had been arrested as a preliminary to an unsuccessful action *in rem*, cannot be charged against the opposite party, such expense not being part of the expenses of process.—*ELTERMANS WILSON LINE, LTD. v. NORTHERN LIGHTHOUSES COMRS.* (1920), 58 Sc. L. R. 29.—*SCOT*.

sn. *Awarded to salvors.*—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—*HATTON v. AKR. DURBAN HANSEN*, [1919] S. C. 154; 56 Sc. L. R. 100.—*SCOT*.

so. *Fees of appraiser acting as marshal's substitute*—*Special arrangement.*—*THE PASCHENA v. THE GRIFF* (1925), 36 B. C. R. 30.

sb. *Possession fees*—*Marshal in possession under special warrants.*—Where a marshal is in possession of



1280a. ———.]—THE INNISFAIL, THE SECRET (1876), 35 L. T. 819; 3 Asp. M. L. C. 337.

1283. *Add. Annotation* :—*Refd.* The Modica, [1926] P. 72.

1284. *Add. Annotation* :—*Consd.* The Modica, [1926] P. 72.

1284a. ———.]—Although it has been the practice since the above Act to make no order as to costs in collision cases in which both vessels have been held to blame in unequal degrees, the ct. must be guided by the circumstances in each case. In a proper case it will feel itself at liberty to give to the party which is held to blame in the smaller degree such a proportion of that party's costs as on the particular facts appears just.—THE MODICA, [1926] P. 72; 95 L. J. P. 100; 135 L. T. 61; 17 Asp. M. L. C. 30.

*Annotation* : *Refd.* The Young Sid, [1929] P. 109.

1284b. ———.]—Where defts. were three-fourths to blame & pltf's. one-fourth to blame, the ct. ordered defts. to pay one-half of pltf's. costs.—THE ROBERT KOEPPEN, [1926] P. 81, n.

*Annotation* :—*Refd.* The Modica, [1926] P. 72.

1286. *Add. Annotations* :—*Refd.* The Modica, [1926] P. 72. *Mentd.* Campbell v. Pollak, [1927] A. C. 732.

1286a. Neither to blame—Delay in commencing proceedings—Costs of claim to defendants—Costs of counterclaim to plaintiffs.]—Pltf's. & defts.' vessels, navigating without lights in accordance with Admty. directions, came into collision & both received damage. The ct. held that there was no negligence on the part of either vessel, & gave judgment for defts. on the claim & for pltf's. on the counterclaim. On the question of costs :—*Held* : as nearly eighteen months had elapsed before pltf's. commenced proceedings, during which time defts. had taken no steps to recover their damages from pltf's., it appeared that there would have been no litigation if pltf's. had not issued their writ, & therefore, there must be judgment for defts. on the claim with costs, & for pltf's. with costs on the counterclaim, & not, as contended by pltf's., no costs on either side.—THE CARDIFF HALL, [1918] P. 56; 87 L. J. P. 113; 119 L. T. 156; 14 Asp. M. L. C. 328.

1297. *Add. Annotation* :—*Mentd.* The Penrith Castle, [1918] P. 142.

a ship simultaneously under warrants issued in different actions, more than one set of possession fees will not be allowed.—SIMBARK v. THE SAGA, CARLSON v. THE SAGA (1899), 6 B. C. R., 522.—CAN.

**PART III. SECT. 16, SUB-SECT. 4.—A.**

1279 i. *Inevitable accident—Costs follow event.*]—The rule as to costs is the same in the Exchequer Ct. of Canada in Admty. as it is in the Admty. Div. of the High Ct. in England, & costs follow the event, even in cases of inevitable accident, where no special circumstances require a departure from such rule.—THE JESSIE MAC v. THE SEA LION, [1919] 2 W. W. R. 411.—CAN.

1283 iii. ———.]—Where two vessels came into collision & both vessels were held to blame, no costs were granted to either party.—R. v. THE ARGYLLSHIRE, [1922] St. R. Qd. 186.—AUS.

1283 iv. ———.]—Where the ct. found that both parties were to blame :—*Held* : each delinquent should bear his own costs.—B. W. B. NAVIGATION CO. v. THE KILTUSH, BARNET LIGHTERAGE CO. v. THE KILTUSH (1922), 67 D. L. R. 525; [1922] 2 W. W. R. 959.—CAN.

**PART III. SECT. 16, SUB-SECT. 5.—A. (a).**

1322 i. *General costs—Excessive claim.*]—In a suit claiming remuneration for salvage services rendered, the claim was excessive & the case was such as to warrant a small award only. The ct. made an award of £25 in favour of pltf's., & ordered defts. to pay the costs of the suit. On a subsequent application for directions, the ct. refused to exercise its discretion & to make a special order for costs.—STUART v. COLUMBIA RIVER (1921), 21 S. R. N. S. W. 674.—AUS.

1297a. ———.]—THE HOPPER No. 21, [1903] W. N. 114.

1298a. ———. *Unsuccessful counterclaim.*]—THE SVEIN JARL, No: 1237a, ante.

1299. *Add. Annotation* :—*Refd.* The Modica, [1926]

1300a. S. P. THE ELEANOR & NANCY (1837), 5 L. T. 241.

1304a. S. P. THE ARGO v. THE EMMA HEYN (1856), 5 L. T. 122.

1309. *Add. Annotation* :—*Refd.* The Modica, [1926] P. 72.

1332. *Add. Annotation* :—*Mentd.* Melanie S.S. v. San Onofre S.S., [1925] A. C. 240.

1351a. ———. *Judgment for less than amount of offer refused by salvors.*]—THE HEDWIG (1853), 1 Ecc. & Ad. 19; 104 E. R. 11; *sub nom.* THE HEDWIG, 17 Jur. 977. *Annotation* :—*Mentd.* The Racer (1874), 30 L. T. 904.

1379. *Add. Annotation* :—*Mentd.* Bradley v. Newson, [1919] A. C. 16.

1405a. ———. *Expert evidence.*]—On a reference to assess the damage arising out of a collision the registrar & merchants are not bound to accept the opinions of experts, even though they be all one way, but are entitled to test those opinions by their own experience & bring their own judgment to bear upon the evidence.—THE STEADFAST (1922), 39 T. L. R. 96.

1406a. *Reasons should be stated.*]—(1) In cases of collisions in which foreign ships are involved, the report of the registrar should state the reasons which have actuated the tribunal in allowing or disallowing large amounts, in order that the foreign interests concerned may appreciate what has been done.

(2) The registrar & merchants are in very much the same position as a jury except that they give their reasons. So far as their reasons involve legal considerations they can be questioned. So far as they are findings of fact it takes a strong case to disturb them, but where it is clear that they have made mistakes or that the evidence does not support their conclusions, the ct. has always retained the power to alter their report, & it is obviously right that the ct. should maintain such a control (SCRUTTON, L.J.).—THE ST. CHARLES (1927), 138 L. T. 456; 17 Asp. M. L. C. 399, C. A.

1413. *Add. Annotation* :—*Refd.* The Kingsway, [1918] P. 344.

1323 iii. ———.]—Salvors arrested a ship against which they were claiming salvage amounting to £47,500, & they refused to release the ship except upon obtaining security to the extent of £37,500. The arresters ultimately obtained decree for £4,800 as salvage, with modified expenses against defenders, but they were found liable in the expense incurred by defenders in obtaining security in excess of £8,000.—*Held* : the arresters were rightly found liable for the expense of obtaining security in excess of £8,000.—ST. CLAIR v. AUDREY, [1922] S. C. 85.—SCOT.

*Costs of arrest.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—HATTON v. ART. DURBAN HANSEN, [1919] S. C. 154; 56 Sc. L. R. 100.—SCOT.



1418. *Add. Annotation*:—**Mentd.** Sheppy Glue & Chemical Works v. Medway (River) Conservators (1926), 24 L. G. R. 457.

1422a. ———.]—**THE ST. CHARLES**, No. 1406a, ante.

1423. *Add. Annotation*:—**Mentd.** Australia (Owners) v. Nautilus (Owners), *The Australia* (1926), 95 L. J. P. 145.

1428. *Add. Citations*:—**Brown. & Lush.** 436; 34 L. J. P. M. & A. 113; 12 L. T. 619; 2 Mar. L. C. 221.

*Add. Annotations*:—**Consd.** *The Thuringia* (1871), 41 L. J. Adm. 20. **Refd.** *The Kingsway*, [1918] P. 344; *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.

1433. *Add. Annotations*:—**Refd.** *The Kingsway*, [1918] P. 344; *Re Mersey Docks & Admiralty Comrs.*, [1920] 3 K. B. 223; *Admiralty Comrs. v. S.S. Valeria*, [1922] 2 A. C. 242; *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637; *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655. **Mentd.** *The Chekiang*, [1926] P. 80.

1439. *Citation*:—For "[1916] A. C. 38," read "[1917] A. C. 38."

*Add. Annotations*:—**Mentd.** *Bradford Corpn. v. Webster*, [1920] 2 K. B. 135; *Baker v. Dalgleish S.S. Co.*, [1922] 1 K. B. 361; *The Molière* (1924), 41 T. L. R. 154.

1447. *Add. Annotation*:—**Apld.** *The Young Sid.*, [1929] P. 190.

1452. *Add. Annotation*:—**As to** (1) **Refd.** *Mersey Docks & Harbour Board v. Hay*, [1923] A. C. 345.

1471. *Add. Annotation*:—**Refd.** *The Young Sid.*, [1929] P. 190.

1472. *Add. Annotation*:—**Mentd.** *The Kingsway*, [1918] P. 344.

1478. *Add. Annotation*:—**Refd.** *The Glenfinlas*, [1918] P. 363, n.

1482. *Add. Annotations*:—**Refd.** *The Rosalind* (1920), 90 L. J. P. 126. **Mentd.** *The Joannis Vatis* (No. 2), [1922] P. 213.

1483a. ———.]—While on hire by the Admty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admty. claimed, as bailee in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admty. paid the value of the trawler to her owners:—**Held**: under the Admty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but, inasmuch as there was an agreement between the parties that defts. should pay what the Admty. had to pay to

the owners of the trawler, interest on that payment only ran from the date of payment.—**THE ROSALIND** (1920), 90 L. J. P. 126; 37 T. L. R. 116.

1484. *Add. Annotation*:—**Refd.** *The Joannis Vatis* (No. 2), [1922] P. 213.

1489. *Add. Annotation*:—**Generally, Mentd.** *The Joannis Vatis* (No. 2), [1922] P. 213.

1489a. ——— **Claim by foreign Government.**]—(1) By Finnish law  $2\frac{1}{2}$  per cent. of the sale price of a Finnish vessel sold out of Finnish nationality is taken by the Finnish Govt.:—**Held**: the Finnish Govt. had no claim upon the proceeds of sale of a Finnish ship sold by the marshal under the powers of the ct. in a default action *in rem*.

(2) A party moving for payment out in a default action *in rem* must give notice to all persons who have intervened or entered *caveats*, & if persons wish to resist an application for payment out they must intervene or enter *caveats*, otherwise they are not entitled to be heard.—**THE EVA**, [1921] P. 454; 91 L. J. P. 17; 126 L. T. 223; 37 T. L. R. 920; 15 Asp. M. L. C. 424.

1492. *Add. Annotation*:—**Generally, Refd.** *The Stream Fisher*, [1927] P. 73.

1492a. ——— **After postponement—Decrease in value of ship—Liability of intervener causing postponement to give further security.**]—In a mtg. action *in rem* plffs., mtgees., in Jan., 1925, recovered judgment by default condemning the ship & ordering her sale by the marshal. Thereupon certain charterers, to whom the mtgors. had chartered the ship for a term of years, intervened, claiming a declaration that the charterparty was binding on the mtgees.; & by an order of Mar. 3 the sale of the ship stood over pending the trial of the issue, upon the interveners giving security in an amount satisfactory to the registrar for loss arising from delay & any loss on sale due to a fall in shipping values. On July 15 the ct. gave judgment that plffs. were not bound by the charterparty, that they were entitled to the judgment they had obtained, & that the costs of & occasioned by the intervention should be paid by the interveners. On Oct. 14 the ship was sold by the marshal for £20,000 less than she had been valued at nine months previously. Plffs. took out a summons for further security:—**Held**: although judgment had been given against the interveners & they were not appealing against that decision, the matter was still at large, as they were contesting plffs.' claims before the registrar, & the interveners could be ordered to give further security in respect of possible loss of capital & interest & for the marshal's expenses; the case must be referred to the registrar to find what amount should be

PART III. SECT. 17, SUB-SECT. 2.—C. (c).

1437i. *Correction of report—Registrar proceeding on wrong principle.*—**CANADIAN VIOKERS CO., LTD. v. THE SUSQUEHANNA** (1919), 18 Exch. C. R. 210; 44 D. L. R. 716.—**CAN.**

PART III. SECT. 18, SUB-SECT. 2.

1480i. *Awarded from date of loss.*]—Interest in Admty. cases will be calculated on the damages allowed from the date of the collision; & on payments made in respect of wages, & payments made by reason of the

collision, from the dates of such payments.—**CANADIAN DREDGING CO. v. NORTHERN NAVIGATION CO. (ONT.)**, [1924] Exch. C. R. 163.—**CAN.**

*sq. Work done—From date of rendering bill.*]—In the Admty. Ct., in an action to recover for work done & material supplied, the ct. will allow interest from the time of rendering of the bill after completion, in the absence of legal excuse for non-payment.—**WINSLOW MARINE RY. & SHIP-BUILDING CO. v. THE PACIFIC**, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; 1 W. W. R. 930; 34 B. C. R. 1; on

*appeal, sub nom. THE PACIFIC v. WINSLOW MARINE RAILWAY & SHIP-BUILDING CO.*, [1925] 2 D. L. R. 162.—**CAN.**

PART III. SECT. 18, SUB-SECT. 3.

*st. Sale of ship—By marshal—Not licensed as auctioneer—Right to fees.*]—The marshal, though not licensed as an auctioneer, is entitled to a double fee on the gross proceeds in selling a vessel at auction by order of ct.—**HERNANDEZ v. THE BAMFIELD** (1921), 21 Exch. C. R. 166; 30 B. C. R. 161; [1921] 3 W. W. R. 69.—**CAN.**

- given & what was the amount of pl'tfs.' damages under each head.—THE LORD STRATHCONA (No. 2), [1926] P. 18; 95 L. J. P. 168; 134 L. T. 511; 17 Asp. M. L. C. 24.
1493. *Add. Annotations*:—**Consd.** The Kronprinz Olav, [1921] P. 52. **Refd.** Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.
- 1493a. — **Unascertained liability—Right of court to delay distribution.**—THE KRONPRINZ OLAV, No. 1551a, *post*.
1495. *Add. Annotation*:—**Mentd.** The Mogileff, [1921] P. 236.
1496. *Add. Annotation*:—**Consd.** The Stream Fisher, [1927] P. 73.
- 1497a. — **Motion for payment in default action—Necessity for notice.**—THE EVA, No. 1489a, *ante*.
- 1497b. — **Damage to ship whilst under arrest—Payment of damages into court—Cross-claim for damages for breach of charterparty.**—A vessel whilst under arrest in a necessities action was damaged by the negligent navigation of another vessel belonging to a party who had recovered judgment for damages for breach of charterparty in an action in the county ct. Liability for the damage to the extent of £21 12s. was admitted. On a motion by pl'tfs. in the necessities action for payment out of the proceeds, the owners of the vessel which had caused the damage claimed to deduct £21 12s. by way of set-off for such damage from their claim in respect of the judgment recovered in the county ct.:—**Held**: claimants could not credit themselves with £21 12s., but must pay that sum into the fund in ct.—THE MAGGIE A (1923), 155 L. T. Jo. 191.
- 1497c. — **Priorities—Several collisions.**—Where there has been more than one collision with the same vessel the maritime liens arising thereout, apart from laches, rank *pari passu* & not in the order of the dates of the respective collisions.—THE STREAM FISHER, [1927] P. 73; 96 L. J. P. 29; 136 L. T. 189; 17 Asp. M. L. C. 159.  
Maritime liens generally, *see* SHIPPING.
- *Add. Annotations*:—**As to (2) Refd.** The Joannis Vatis (No. 2), [1922] P. 213; The Point Breeze, [1928] P. 135. **Generally, Mentd.** The Llandovery Castle, [1920] P. 119; The Tervacte, [1922] P. 259; The Jupiter, [1924] P. 236.
1500. *Add. Annotations*:—**As to (2) Refd.** The Joannis Vatis (No. 2), [1922] P. 213; The Point Breeze, [1928] P. 135. **Generally, Mentd.** The Llandovery Castle, [1920] P. 119; The Jupiter, [1924] P. 236.
1501. *Add. Annotation*:—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.
1502. *Add. Annotation*:—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.
1503. *Add. Annotation*:—**Mentd.** The Joannis Vatis (No. 2), [1922] P. 213.
1504. *Add. Annotations*:—**N.F.** The Volant (1842), 1 Wm. Rob. 383. **Consd.** The Mary Caroline (1848), 6 Notes of Cases, 536. **Refd.** The Mellona (1848), 3 Wm. Rob. 16; The Benares (1850), 14 Jur. 581; The Milan (1861), 5 L. T. 590.
1505. *Add. Annotation*:—**Refd.** The Point Breeze, [1928] P. 135.
1507. *Add. Annotation*:—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.
1508. *Add. Annotation*:—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.
- 1519a. **Expenses of witnesses—Though not called.**—Where a charge for the attendance of such a witness was allowed, because counsel in advising on evidence thought that the witness was necessary:—**Held**: that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.
- 1520a. — **Measure of compensation.**—While it has always been the practice, owing to the nature of their calling, to allow seafaring witnesses to be detained on shore to give evidence, & to allow them reasonable compensation for their detention, it is a question for the taxing master whether a party who seeks to charge his opponent with the cost of detaining an expensive witness has acted reasonably in incurring the expense or whether he ought not to have examined the witness on commission.  
A taxing master should bear in mind that a witness duly summoned is bound to attend, & the witness is not entitled to receive, as the measure of his compensation, the exact sum he may prove he has lost by reason of the detention. He is, however, entitled to some compensation, & not merely to the conduct money given him with his *subpoena*; & the wages he is earning may afford an important indication of what is fair compensation. But although this is correct in the case of seamen, as regards captains & other officers, as in the case of professional witnesses, their earnings cannot be taken as a fair criterion on which to base the allowance.—THE IBIS VI, [1921] P. 255; 90 L. J. P. 289; 125 L. T. 378; 37 T. L. R. 557; 65 Sol. Jo. 514; 15 Asp. M. L. C. 237, C. A.
- 1520b. **Substitute for witness.**—The expenses of a substitute to join a vessel from which a witness is necessarily taken are not allowable on taxation as a matter of course.—THE MASSILIA, [1926] P. 180; 95 L. J. P. 109; 135 L. T. 671; 42 T. L. R. 551; 17 Asp. M. L. C. 109.
- 1521a. **Costs of obtaining statements from independent witnesses—Discontinuance of action.**—In a collision action, before pl'tfs. had filed their preliminary act or statement of claim, defts. took statements from independent witnesses on other vessels. Pl'tfs. shortly afterwards discontinued the action. On the

PART III. SECT. 18, SUB-SECT. 4.

1495 iv. — **Claim by assignee of foreign shipowner.**—After sale of a ship & payment of all costs & charges there remained in ct. a balance to the credit of the ship. On an application for payment out by a resident of Vancouver, who claimed to be the assignee

of the reputed owner who lived in California:—**Held**: the application should be adjourned & published in Victoria & Vancouver by notice & advertisement for one month, the notice to be posted in the registry & served upon the collector of customs & the American Consul at Vancouver.—THE SPEEDWAY (1925), 35 B. C. R.

319.—CAN.

PART III. SECT. 19, SUB-SECT. 1.

sw. **Allowance of items not in Table of Fees.**—THE PASCHENA v. THE GRIFF, [1927] 2 D. L. R. 757; [1927] Exch. C. R. 92; [1927] 1 W. W. R. 515; 38 B. C. R. 240.—CAN.

taxation of debts.' bill of costs the assistant registrar disallowed the costs of obtaining these statements, on the ground that there was "a well-settled principle of taxation that a party is only entitled as against his opponent to incur such costs or expenses as will enable him to conduct his case at the stage which the proceedings have reached, & not incur expenses in anticipation of matter, which, as events turn out, never arise":—*Held*: R. S. C., Ord. 65, r. 27 (20), was not limited in the way stated by the assistant registrar; if solrs. could compel the discontinuance of an action by collecting the necessary evidence, they were entitled to do so, & the costs in question were not prematurely incurred, & debts. were entitled to recover them from pltfs. on taxation.—*THE CHANNEL QUEEN*, [1928] P. 157; 97 L. J. P. 97; 139 L. T. 336; 44 T. L. R. 505; 17 Asp. M. L. C. 484.

1526. *Add. Annotation*:—*Expld.* The Ibis VI, [1921] P. 255.

1527. *Add. Annotation*:—*Expld.* The Ibis VI, [1921] P. 255.

1536a. — "To persons claiming to have sustained damage"—*Appearance at trial—Right to be heard.*—In an action of limitation of liability pltfs., the owners of the steam tug *H.*, addressed their writ in the usual manner: "To the owners of the steamship *D.* & all other persons claiming to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.* on the morning of Jan. 2, 1921." Notice of the action was inserted in the press. At the trial the owners of the steamship *T.*, who claimed to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.*, appeared by counsel & claimed to be heard. The owners of the *T.* had commenced an action against pltfs., but had taken no step other than appearance at the trial in the limitation suit:—*Held*: the writ made the owners of the *T.* parties to the action, & was served upon them by insertion in the press.—*CORY LIGHTERAGE, LTD. v. DALTON (OWNERS), THE HARLOW* (1922), 153 L. T. Jo. 121.

1538. *Add. Citation*:—4 Asp. M. L. C. 27, n.

*Add. Annotation*:—*Refd.* The Vigilant, [1921] P. 312.

1541a. — *Waiver of.*—In an action of limitation of liability under M. S. Act, 1894 (c. 60), s. 503, pltfs. did not file the usual affidavit verifying their statement of claim. The owners & crew of the vessel injured in the collision, in respect of which judgment had been given against pltfs. in the previous action, & some cargo owners appeared by counsel at the trial & consented to a decree of limitation:—*Held*: a decree might be granted without requiring pltf. to file the usual affidavit.—*THE COIMBRA* (1923), 130 L. T. 512; 16 Asp. M. L. C. 288.

1542. *Add. Annotation*:—*Mentd.* Brierley v. Brierley & Williams (1918), 34 T. L. R. 458.

1544. *Add. Annotations*:—*As to* (2) *Refd.* Mersey Docks & Harbour Board v. Hay, [1923] A. C. 315. *Mentd.* The Kronprinz Olav, [1921] P. 52; The Coaster (1922), 91 L. J. P. 145.

1546. *Add. Annotation*:—*Mentd.* Weld-Blundell v. Stephens, [1920] A. C. 950.

1547. *Add. Annotation*:—*As to* (2) *Refd.* Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.

1548. *Add. Annotations*:—*As to* (2) *Consd.* The Coaster (1922), 91 L. J. P. 145. *Generally, Mentd.* The Kronprinz Olav, [1921] P. 52.

1548a. — — — — — *Pltf.* in an action of limitation of liability, who has paid to claimants a sum in satisfaction of a liability arising out of the collision, is under M. S. Act, 1894 (c. 60), s. 503, entitled, in respect of such payment, to share ratably with other claimants in the distribution of the limitation fund, even though such payment has been enforced by action in a foreign ct.—*THE COASTER* (1922), 91 L. J. P. 145; 127 L. T. 153; 38 T. L. R. 511; 15 Asp. M. L. C. 560.

1551a. — *Unascertained liability—Right of plaintiffs in limitation suit to claim against fund.*—In Feb. 1917, two Norwegian vessels, the *C.* & the *O.*, came into collision & the *C.* sank. In Mar. 1917, the owners of the cargo laden on board the *C.* began an action against the owners of the *O.* in the Admty. Ct. The action was heard in May, 1919, when both vessels were pronounced to blame, & accordingly it was adjudged that pltfs. were entitled to receive a moiety of the amount of their damage from debts. Thereupon debts., the owners of the *O.*, commenced a limitation action against the owners of the *C.*, the owners of her cargo, & all persons claiming to have received damage by reason of the collision. This action was heard in Feb. 1920, when a decree was pronounced limiting the liability of the owners of the *O.* to £8 per ton on the registered tonnage of the *O.* calculated in accordance with M. S. Act, 1894 (c. 60). The decree provided that all claims were to be brought in within three months & that claims not so brought in would be excluded from sharing in the limitation fund. Claims were filed by the owners of the cargo on the *C.*, but although the owners of the *C.* entered an appearance they took no further steps in the limitation proceedings. Meanwhile, however, in Feb. 1919, the owners of the *C.* had commenced an action in Norway against the owners of the *O.* & in June, 1920, when the reference was held in the limitation proceedings & the registrar made his report, the trial of the Norwegian action was still pending. The owners of the *O.* accordingly took out a summons asking that the report be not confirmed & that they might have leave to file a claim against the fund in respect of any liability they might incur under the Norwegian proceedings. The judge declined to postpone the distribution of the fund & dismissed the summons. Pltfs., the owners of the *O.*, appealed:—*Held*: (1) pltfs. had no absolute right under the limitation sects. of M. S. Act, 1894 (c. 60), to have the distribution of the fund stayed & to bring forward a claim when ascertained; (2) limitation proceedings do not contemplate claims by pltfs., & the owners of the *O.* could not file a claim against the fund in their own right; (3) had an application been made in proper form the ct. would have had a discretion to extend the time before distributing the fund, in order to allow pltfs. to ascertain their liability under the pending Norwegian judgment & to apply to the ct. to adjust

the distribution of the fund so that plffs. might obtain credit for the amount payable under the Norwegian judgment; but, having regard to the lapse of time & to the fact that limitation proceedings contemplate that claims shall be brought in promptly & the distribution of the fund not be unreasonably delayed, the ct. had rightly exercised its discretion in refusing to postpone the distribution of the fund.—*THE KRONPRINZ OLAV*, [1921] P. 52; 90 L. J. P. 398; 125 L. T. 684; 15 Asp. M. L. C. 312, C. A.

*Annotation*:—*As to* (3) *Consd.* *The Coaster* (1922), 91 L. J. P. 145.

1553a. ———.]—The usual rule by which the successful plffs. in a limitation suit are required to pay the costs should not be departed from, notwithstanding that the litigation has been much more expensive than is usual in limitation actions by reason of the issues raised by defts. Nor ought plffs. to recover their costs of giving bail in excess of the amount of their statutory liability.—*CHARLOTTE (OWNERS) v. THEORY (LATE) (OWNERS), THE CHARLOTTE* (1921), 153 L. T. Jo. 69.

1553b. *S. P. THE KATHLEEN* (1925), [1927] P. 63, n.; 69 Sol. Jo. 574.

## Part IV.—Appeals.

1581. *Citations*:—For “(1878)” read “(1877).” *Add. Annotation*:—*Mentd.* *Wickins v. Wickins*, [1918] P. 205.

1596. For “No appeal” read “Right of appeal.” *Add. Annotation*:—*Consd.* *The Royal Star* (1927), 97 L. J. P. 49.

1597a. ——— Master censured but certificate not dealt with.]—A master, who has been censured in respect of a casualty to his ship by a colonial ct. of inquiry, but has not had his certificate (British) cancelled or suspended, probably has a right of appeal under M. S. Act, 1894 (c. 60), s. 478, but certainly has the right under M. S. Act, 1906 (c. 48), s. 66, as being “a person having an interest” in the inquiry, who has appeared at the hearing, & is “affected by the decision of the ct.”—*THE ROYAL STAR*, [1928] P. 48; 97 L. J. P. 49; 138 L. T. 558; 44 T. L. R. 163; 17 Asp. M. L. C. 417, D. C.; *subsequent proceedings*, [1928] P. 144, D. C.

1600a. ———.]—A British master holding a Board of Trade certificate received a notice of investigation calling upon him to appear before a Wreck Comr.'s Ct. appointed “to inquire into the causes which led to the casualty [the stranding of his vessel] & into all the facts connected therewith.” The notice contained no other statement of the questions intended to be raised, & no charges were specifically formulated against the master before or at the inquiry that he was in fault in connection with any of the matters on which he was examined. The ct. found the master guilty of an error of judgment in taking wrong helm action & in failing to stop & take soundings, & suspended his certificate for three months. The master appealed:—*Held*: the master, having had no notice of the charges on which he had been found in fault, had not had an opportunity of making his defence, & the decision of the Wreck Comr.'s Ct. must be quashed & the certificate restored free from suspension.—*THE CHELSTON*, [1920] P. 400; 90 L. J. P. 77; 124 L. T. 223; 36 T. L. R. 688; 15 Asp. M. L. C. 158, D. C.

1603a. ———.]—*THE THROSTLEGARTH* (1899), cited, [1906] P. at p. 312.

*Annotation*:—*Consd.* *The Carlisle*, [1906] P. 301.

1603b. ———.]—*THE GRECIAN* (1902), [1928] P. 146, n., D. C.

1604a. ——— Preliminary motion—As to right of appeal.]—The governor of a colony ordered an inquiry to be held into the stranding of a British ship. The ct. found the master guilty of negligence & severely censured him, but did not deem it necessary to deal with his

took the view that no appeal lay unless the officer's certificate had been suspended or cancelled. A motion to determine, as a preliminary point, the question of the right to appeal was decided by the Div. Ct. in the master's favour, & at the subsequent hearing of the appeal the master was held not to have been guilty of the acts of negligence attributed to him:—*Held*: (1) as a matter of principle, as the Board of Trade had not ordered the inquiry, & merely appeared on the appeal in discharge of a public duty, costs ought not to be awarded against the Board; (2) the question of the right to appeal, contested by the Board, raised a matter of public interest, & the master was entitled to the costs of the preliminary motion.—*THE ROYAL STAR* (No. 2), [1928] P. 144; 97 L. J. P. 107; 44 T. L. R. 408; 17 Asp. M. L. C. 417, D. C.

1610. *Add. Annotation*:—*Refd.* *Campbell v. Pollak*, [1927] A. C. 732.

1611a. ——— Costs.]—*THE YOUNG SID*, No. 1696a, *post*.

1613a. ——— Appeal out of time—Discretion of court to extend time—Objection that appeal out of time not taken promptly.]—Where an appeal from a decision confirming the report of the registrar & merchants in an action of damage by collision was out of time:—*Held*: as the objection that the appeal was out of time had not been taken at the earliest possible moment, the ct. would, in its discretion, hear the appeal.—*THE OTTO-KAR*, [1921] W. N. 266, O. A.

*Annotation*:—*Apld.* *London S.S. & Trading Corp'n. v. Russian Volunteer Fleet* (1926), 135 L. T. 607.

1619. *Add. Annotation*:—*Mentd.* *Australia (Owners) v. Nautilus (Owners), The Australia* (1926), 95 L. J. P. 145.

1620a. ——— Advice to be in writing.]—Where the Ct. of Appeal sits with nautical assessors it is convenient that the advice of the assessors should be elicited by written questions, so that these questions & the answers may

be available in the House of Lords.—**MELANIE (OWNERS) v. SAN ONOFRE (OWNERS)** (1919), 35 T. L. R. 507; 63 Sol. Jo. 552; [1927] A. C. 162, n.; *subsequent proceedings*, [1925] A. C. 246, H. L.

*Annotations*:—**Mentd.** *S.S. Artemisia v. S.S. Douglas* (1925), [1927] A. C. 161, n.; *S.S. Australia v. S.S. Nautilus*, [1927] A. C. 145.

**1622. Add. Annotation**:—**Refd.** *Australia (Owners) v. Nautilus (Owners)*, *The Australia* (1926), 95 L. J. P. 145.

**1627. Add. Annotations**:—**Mentd.** *The Kingsway*, [1918] P. 344; *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655.

**1630. Add. Annotation**:—**Mentd.** *The Joannis Vatis* (No. 2), [1922] P. 213.

**1635. Add. Annotations**:—**Consd.** *Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57; *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.

**1638. Add. Annotations**:—**Mentd.** *The Clan Sutherland*, [1918] P. 332; *The Kenora*, [1921] P. 90.

**1640. Add. Annotation**:—**Refd.** *Hontestroom (Owners) v. Sagaporack (Owners)*, *Hontestroom (Owners) v. Durham Castle (Owners)* (1926), 95 L. J. P. 153.

**1642. Add. Annotation**:—**Refd.** *Hontestroom (Owners) v. Sagaporack (Owners)*, *Hontestroom (Owners) v. Durham Castle (Owners)* (1926), 95 L. J. P. 153.

**1642a. ————**—*Observations of LORD SUMNER on the practice of the Ct. of Appeal in reviewing decisions of the Admty. Ct. depending on the credibility of witnesses.*—*S.S. HONTSTROOM v. S.S. SAGAPORACK, S.S. HONTSTROOM v. S.S. DURHAM CASTLE*, [1927] A. C. 37; 95 L. J. P. 153; 136 L. T. 33; 17 Asp. M. L. C. 123; *sub nom.* *THE SAGAPORACK, THE HONTSTROOM*, 42 T. L. R. 741, H. L.

*Annotations*:—**Consd.** *Hoff Trading Co. v. De Rougemont* (1929), 34 Com. Cas. 291. **Refd.** *The Backworth*, [1927] P. 256.

**1644a. Decision of court below not interfered with**—*Joinder of plaintiffs convenient—& within rules locally applicable—Action in rem.*—*MARLBOROUGH HILL, SHIP v. COWAN & SONS*, No. 541a, *ante*.

**1646. Add. Annotations**:—**Apld.** *The Kingsway*, [1918] P. 344. **Refd.** *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637; *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655.

**1648. Add. Annotations**:—**Refd.** *Hontestroom (Owners) v. Sagaporack (Owners)*, *Hontestroom (Owners) v. Durham Castle (Owners)* (1926), 95 L. J. P. 153. **Mentd.** *Australia (Owners) v. Nautilus (Owners)*, *The Australia* (1926), 95 L. J. P. 145.

**1649. Add. Annotation**:—**Consd.** *S.S. Hontestroom v. S.S. Sagaporack, S.S. Hontestroom v. S.S. Durham Castle*, [1927] A. C. 37.

**1655a. ————** **Failure to consider important matter**

#### PART IV. SECT. 4, SUB-SECT. 1.

**aa. In estimating weight of evidence—Witnesses not heard in court below.**—Where the trial judge did not hear or see the witnesses, an appellate ct. is as competent to appreciate the facts & estimate the credibility of the evidence as the ct. of first instance.—*CANADIAN VICKERS CO., LTD. v. THE SUSQUEHANNA* (1919), 19 Exch. C. R. 116; 48 D. L. R. 461.—CAN.

**sb. ————** *Witnesses heard in court below.*—Where the local judge in Admty. has seen & heard the witnesses & was assisted by two assessors, the Exchequer Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is firmly of the opinion that such decision is clearly erroneous.—*FRASER v. S.S. AZTEO* (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921),

—*Maritime Conventions Act, 1911* (c. 57).—Where a judge sitting in Admty. has apportioned the blame between two wrongdoing vessels in accordance with sect. 1 of the above Act, the Ct. of Appeal, if it finds that he has not taken into consideration at all an obviously important matter, is bound to review his decision as to the apportionment of blame in the same way as it would if it had differed with him on the facts & had found that one of the vessels was more blameworthy as regards matters in respect of which she was not held to blame in the ct. below.—*THE CLARA CAMUS* (1925), 134 L. T. 50; 16 Asp. M. L. C. 570, C. A.; *revid.* on other grounds (1926), 136 L. T. 291; 17 Asp. M. L. C. 171, H. L.

**1666. Add. Annotation**:—**Mentd.** *Bradley v. New som*, [1919] A. C. 16.

**1674. Add. Annotations**:—**Mentd.** *The Clan Sutherland*, [1918] P. 332; *The Kenora*, [1921] P. 90.

**1682. Add. Annotation**:—**Refd.** *The Modica*, [1926] P. 72.

*Add. Annotation*:—*As to* (1) **Refd.** *The Modica*, [1926] P. 72.

**1694. Citations**:—For “P. D. 218” read “S P. D. 218.”

*Add. Annotation*:—**Refd.** *The Modica*, [1926] P. 72.

**1695. Citation**:—For “27 T. L. R. 1” read “27 T. L. R. 398.”

*Add. Citation*:—*on appeal, sub nom.* *HERO (OWNERS) v. LORD HIGH ADMIRAL OF UNITED KINGDOM (COMRS. FOR EXECUTING THE OFFICE OF)*, [1912] A. C. 300, H. L.

*Add. Annotation*:—**Mentd.** *The Vectis*, [1929] P. 204.

**1695a. ————**—*CANTON (OWNERS) v. RHESUS (OWNERS)*, [1928] W. N. 214; 31 Lloyd, L. R. 289, H. L.

*Annotation*:—**Expld.** *The Young Sid*, [1929] P. 190.

**1696. Add. Annotation**:—**Consd.** *S.S. Canton v. S.S. Rhesus*, [1928] W. N. 214.

**1696a. ————**—*On appeal from a judgment in a collision action in which the judge of the county ct. had found both vessels to blame in the proportions of two-thirds & one-third, the Div. Ct. reversed the judgment to the extent of holding the vessels to blame in equal degrees, & appts. were given the costs of the appeal. Resps. in the Div. Ct. appealed on the question of costs:—Held: by R. S. C., 1883, Ord. 65, r. 1, the question of costs is left in the unfettered discretion of the ct. or judge, & unless the judge can be shown to have taken into consideration matters which are immaterial to the issue his decision is unappealable.—THE YOUNG SID, [1929] P. 190; 98 L. J. P. 97; 141 L. T. 234; 45 T. L. R. 389, C. A.*

**1708. Add. Annotation**:—**Apld.** *The Young Sid* (1928), 45 T. L. R. 138. **Refd.** *The Young Sid*, [1929] P. 190.

20 Exch. C. R. 450; 63 D. L. R. 543.—CAN.

**PART IV. SECT. 4, SUB-SECT. 3.—A. 1660 ff. ————**—*The amount of salvage reward is in the discretion of the ct., & unless the same is excessive, an appellate tribunal ought not to interfere.—SHIP SENECA v. MACDONALD*, [1923] Exch. C. R. 177; *affg.*, [1923] Exch. C. R. 13.—CAN.

## Part V.—Jurisdiction and Practice of other Courts having Admiralty Jurisdiction.

1710. *Add. Citation*:—14 Asp. M. L. C. 21.
1717. *Add. Citations*:—*sub nom. Re PERFECT v. POYNTER, R. v. ESSEX COUNTY COURT JUDGE*, 53 L. J. Q. B. 423; *sub nom. R. v. AB DY*, 32 W. R. 754.
1719. *Add. Annotation*:—*Mentd. Leopold Walford (London) v. Les Affreteurs Reunis Soc. Anon.*, [1918] 2 K. B. 498.
1722. *Add. Annotation*:—*Apld. The Norfolk Coast (1922)*, 153 L. T. Jo. 450.
- 1723a. ———.]—A collision took place in the Thames between the dumb barge *H.* & the steamer *C.* Proceedings were commenced by the owners of *H.* in the High Ct., but the action was subsequently settled, the owners of the *H.* accepting £48 10s. in satisfaction of their claim. Defts. objected to payment of plffs.' costs on the High Ct. scale, on the ground that the matter was within the Admty. jurisdiction of the county ct., where the action should have been commenced:—*Held*: plffs. were warranted in commencing proceedings in the High Ct. & were entitled to have their costs taxed on the High Ct. scale.—*THE NORFOLK COAST (1922)*, 153 L. T. Jo. 450.
1729. *Add. Annotation*:—*Mentd. Mancomunidad Vapor Frumiz v. Royal Exchange* [1927] 1 K. B. 567.
1732. *Add. Annotation*:—*Apld. The Norfolk Coast (1922)*, 153 L. T. Jo. 450.
1740. *Add. Annotation*:—*Mentd. Hontestroom (Owners) v. Sagaporack (Owners), Hontestroom (Owners) v. Durham Castle (Owners) (1926)*, 95 L. J. P. 153.
1745. *Add. Annotation*:—*Mentd. Hontestroom (Owners) v. Sagaporack (Owners), Hontestroom (Owners) v. Durham Castle (Owners) (1926)*, 95 L. J. P. 153.
1750. *Add. Annotation*:—*Refd. The British Trade*, [1924] P. 104.
1751. *Add. Annotation*:—*As to (2) Refd. The Ambatielos, The Cephalonia*, [1923] P. 68.
1752. *Add. Annotation*:—*Refd. The Ambatielos, The Cephalonia*, [1923] P. 68.
1766. *Add. Annotation*:—*Refd. Australia (Owners) v. Nautilus (Owners), The Australia (1926)*, 95 L. J. P. 145.
1769. *Add. Annotation*:—*Generally, Mentd. The Ambatielos, The Cephalonia*, [1923] P. 68.
1793. *Add. Annotation*:—*Mentd. The Tervacte*, [1922] P. 259.
- *Add. Citi*  
E. R. 50.  
*Add. Annotation*:—*Refd. The Yuri Maru, The Woron* [1927] A. C. 906.
- 1794a. ———. *That of High Court before 1890.*—(1) The effect of Colonial Cts. of Admty. Act, 1890 (c. 27), s. 2 (2), is to limit the jurisdiction of colonial cts. of admty. established under the Act to the admty. jurisdiction of the High Ct. of England as it existed at the passing of the Act; the extension of the admty. jurisdiction of the High Ct. by Jud. (Consolidation) Act, 1925 (c. 49), s. 22, does not apply to colonial cts. of admty.
- (2) The Exch. Ct. of Canada has not, under sect. 22 (1) (xii) of the above Act of 1925, jurisdiction *in rem* to try an action for damages for breach of a charterparty.—*THE YURI MARU, THE WORON*, [1927] A. C. 906. 43 T. L. R. 699, *sub nom. SNIA VISCOSA SOCIETA, ETC. v. S.S. YURI MARU, CANADIAN AMERICAN SHIPPING CO. v. S.S. WORAN*, L. J. P. C. 137; 137 L. T. 747; 71 Sol. Jo. 649; 17 Asp. M. L. C. 322, P. C.
1795. *Add. Annotation*:—*Refd. The Yuri Maru, The Woron*, [1927] A. C. 906.
1796. *Add. Annotation*:—*Generally, Mentd. The British Trade*, [1924] P. 104.
- 1799a. ———.]—*THE VROUW DOROTHEA (1754)*, cited 2 Ch. Rob. at p. 246; 165 E. R. at p. 304.
- 1811a. ———. *Action in rem for damages for breach of charterparty.*—*THE YURI MARU, THE WORON*, No. 1794a, *ante*.

### PART V. SECT. 5.

a i. ———. *Plea of forum non conveniens.*—Circumstances in which plea sustained.—*LA SOCIÉTÉ DU GAZ DE PARIS v. LA SOCIÉTÉ ANONYME DE NAVIGATION "LES ARMATEURS FRANÇAIS"*, [1926] S. C. (H. L.) 13.—SCOT.

### PART V. SECT. 7, SUB-SECT. 1.

c i. ———. *Necessaries.*—A claim for necessities can be enforced in a colonial admiralty ct. by a suit *in rem*.—*THE HEIWA MARU v. BIRD & Co. (1923)*, L. R. 1 Ran. 78.—IND.

### PART V. SECT. 7, SUB-SECT. 2.

c (p. 253) i. ———.]—Although the Exch. Ct. of Canada on its Admty. side sits in Canada, it administers the maritime law of England in like manner as if the cause of action were being tried & disposed of in the English Ct. of Admty.—*ROBILLARD v. THE ST. ROCH & CHARLAND (1921)*, 62 D. L. R. 145; 21 Exch. C. R. 132.—CAN.

c (p. 253) ii. ———. *Necessaries—Ship not "under arrest."*—Where a ship is not under arrest & its owner is domiciled in Canada, the Exch. Ct. of Canada has no jurisdiction over an action for

repairs or necessities supplied to the ship.—*STACK v. THE BARGE LEOPOLD (1919)*, 18 Exch. C. R. 325.—CAN.

c (p. 253) iii. ———. *Claim for damages for death of husband—Effect of Maritime Conventions Act, 1914.*—Plff.'s husband was killed in a collision between the *C.* & a boat in which he, with another man, was engaged in fishing. Plff. took action *in rem* in the Exchequer Ct. in Admiralty to recover damages:—*Held*: the Exchequer Ct. had no jurisdiction to hear & determine the present action, & the Maritime Conventions Act, 1914, did not so enlarge the jurisdiction of the Exchequer Ct. in Admiralty, as existing under the Admiralty Court Act, 1861, as to give jurisdiction in actions like the present.—*THE CATALA v. DAGSLAND (B. C.)*, [1928] 3 D. L. R. 334; [1928] Exch. C. R. 83.—CAN.

f (p. 253) i. ———.]—Subject to the exceptions mentioned in Canada Shipping Act, 1906 (c. 113), s. 191, in an action for seaman's wages earned on a ship registered in Canada, where the amount of recovery is less, although the amount sued on is more than \$200, the Exch. Ct. in Admty. is without jurisdiction.—*KOUAME v. S.S.*

*MAPLECOURT (1921)*, 21 Exch. C. R. 226.—CAN.

so. ———. *Stevedores' claims.*—Plffs., stevedores, entered into a contract to load a vessel on its arrival at Montreal. The captain of the ship refused to allow them to load the vessel, & thereupon the ship was arrested on a claim for damages arising out of breach of the contract:—*Held*: (1) the admty. jurisdiction of the ct. was no greater than the admty. jurisdiction of the High Ct. of England; (2) upon the facts the ct. had no jurisdiction to entertain the action.—*WOLFE v. S.S. CLEARPOOL (1920)*, 20 Exch. C. R. 153.—CAN.

sd. ———.]—The Exch. Ct. of Canada has jurisdiction over stevedores' claims.—*J. P. FERNS v. THE INGLEBY*, [1923] Exch. C. R. 208.—CAN.

*Maritime lien—Created by foreign law.*—See Nos. 348 i–iii, *ante*.

st. ———. *Appellate jurisdiction—Necessity for leave to appeal—Interlocutory judgment.*—The Exch. Ct., sitting in appeal, cannot entertain an appeal from an interlocutory decree without leave having previously been obtained from either the local judge in admty. or from the Judge of the

Exch. Ct.—*JOHNSON & MACKAY v. S.S. CHARLES S. NEFF* (No. 1) (1918), 17 Exch. C. R. 155.—CAN.

sg. *S. P. Re 251 BARS OF SILVER & SEA INSURANCE CO. v. CANADIAN SALVAGE ASSOCN.* (1915), 15 Exch. C. R. 367.—CAN.

sk. ————.]—  
(1) Where by statute an appeal is given to the Exch. Ct. of Canada from an interlocutory judgment or order, upon permission so to appeal having been previously obtained, & when no such permission has been obtained, the ct. has no jurisdiction to hear the appeal.

(2) The judgment of a local judge of admty. confirming a taxation by the district registrar of the marshal's bill for services, etc., relating to the care of the ship whilst in his custody is an interlocutory judgment.—*McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.)* (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—CAN.

sl. ———— *Appeal as to costs.*]  
—*Semble*: appeals involving merely a question of costs should not be entertained, more particularly when the appeal is from the decision of the trial judge confirming the findings of the taxing master, or when the matter is only one of *quantum* involving the exercise of his discretion.—*McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.)* (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—CAN.

sm. ———— *No jurisdiction to hear appeal from Commissioner's Court under Canada Shipping Act.*—*R. v. PERREAULT* (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—CAN.

——— *Transfer of action from one*

*admiralty district to another.*—See cases ti, wi, post.

sn. ———— *Exercise of jurisdiction—Appellate jurisdiction—Questions of fact.*—Where the local judge in admty. has seen & heard the witnesses & was assisted by two assessors, the Exch. Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is firmly of opinion that such decision is erroneous.—*FRASER v. S.S. AZTEC* (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 450; 63 D. L. R. 543.—CAN.

sp. ———— *Dismissal of appeal for want of prosecution.*—There is no distinction in principle to be drawn between the inherent authority of the ct. to order the dismissal of a case on appeal for want of prosecution, & the dismissal of one at first instance.—*McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.)* (1922), 70 D. L. R. 16; 21 Exch. C. R. 426.—CAN.

st. ———— *Application for retention of bail bond in court or for re-arrest of ship.*—Application dismissed.—*EMPIRE STEVEDORING CO., LTD. v. THE EMPRESS OF JAPAN*, [1927] 2 D. L. R. 985; 38 B. C. R. 438.—CAN.

ti. ———— *Transfer of action—Convenience.*—(1) It is in the discretion of the ct. to order the removal of a suit from one district to another upon cause shown.

(2) The determining factor in granting such an order is that of general convenience to the parties.—*JOHNSON v. THE CHARLES S. NEFF* (1918), 21 Exch. C. R. 171.—CAN.

wi. ————.]—On the ground of comity, the Exch. Ct. will not entertain an application for the transfer of a cause from one admty. district to

another without the application having first been made before the local judge.—*JOHNSON & MACKAY v. S.S. CHARLES S. NEFF* (No. 2) (1918), 17 Exch. C. R. 158.—CAN.

#### PART V. SECT. 7, SUB-SECT. 3.

sw. *High Court.*—The High Ct. is a colonial ct. of Admty. & has jurisdiction in an action by consignees against a ship, the owner of which is not domiciled in Australia, for delivery in a damaged condition of goods for which the consignees hold a bill of lading issued by the master of the ship.—*SHARP (JOHN) & SONS, LTD. v. THE KATHERINE MACKALL* (1924), 34 C. L. R. 420.—AUS.

#### PART V. SECT. 7, SUB-SECT. 5.

ri. ———— *Tort of master within jurisdiction.*—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tortfeasor or his goods, & to try an action based upon the tort; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—*NOLAN v. S.S. RUSSEL HAVERSIDE*, [1921] C. P. D. 136.—S. AF.

sz. ———— *Action in rem—Necessaries—What law applicable.*—In a claim *in rem* against the proceeds of a vessel for a sum of money alleged to have been expended for repairs & necessaries in priority to prior mortgages of the vessel the law to be applied is English admty. law & not Roman-Dutch Law.—*CROOKS & CO. v. AGRICULTURAL CO-OPERATIVE UNION, LTD.*, [1922] App D. 423; 42 N. L. R. 216.—S. AF.

## AGENCY.

## Part I.—The Relation of Agency.

1. *Add. Annotation* :—**Consd.** Clayton-Greene v. De Courville (1920), 36 T. L. R. 790.
3. *Add. Annotations* :—**Mentd.** Keen v. Mear, [1920] 2 Ch. 574; Jones (Holloway) v. Woodhouse, [1923] 2 K. B. 117; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 58.
5. *Add. Annotation* :—**Consd.** Verner-Jeffreys v. Pinto, [1929] 1 Ch. 401.
7. *Add. Annotations* :—**Mentd.** London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777; Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.
8. *Add. Annotations* :—**Mentd.** *Re* Richardson, Pole v. Pattenden, [1920] 1 Ch. 423; Taylor v. Davies, [1920] A. C. 636; Dominion Coal Co. v. Maskinonge S.S. Co., [1922] 2 K. B. 132.
14. *Add. Annotation* :—**Mentd.** Boynton v. Richardson (1924), 69 Sol. Jo. 107.
15. *Add. Annotation* :—**Refd.** Wisbech R. C. v. Ward, [1927] 2 K. B. 556.
16. *Add. Annotations* :—**Consd.** Wisbech R. D. C. v. Ward (1927), 91 J. P. 200. **Refd.** Brightman v. Tate, [1919] 1 K. B. 463; Boynton v. Richardson (1924), 69 Sol. Jo. 107; Wisbech R. C. v. Ward, [1928] 2 K. B. 1.
17. *Add. Annotations* :—**Mentd.** Folkes v. King, [1923] 1 K. B. 282; Lowther v. Harris, [1927] 1 K. B. 393.
19. *Add. Annotations* :—**As to** (2) **Refd.** A.-G. v. De Keyser's Royal Hotel, [1920] A. C. 508. **Generally, Mentd.** Oakley v. Wilson, [1927] 2 K. B. 279.
21. *Add. Citation* :—8 T. L. R. 194. *Add. Annotations* :—**Refd.** Taylor v. Davies, [1920] A. C. 636. **Mentd.** Weld v. Petre, [1929] 1 Ch. 33.
23. *Annotation* :—**Mentd.** Williams v. Page (No. 4) (1859), 28 Beav. 148.
28. *Add. Annotations* :—**Refd.** Simeons v. Durand's Trustee, [1928] 2 K. B. 66. **Mentd.** Lamb v. Wright, [1924] 1 K. B. 857.
29. *Add. Annotations* :—**Consd.** Simeons v. Durand's Trustee, [1928] 2 K. B. 66. **Refd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89. **Mentd.** Lamb v. Wright, [1924] 1 K. B. 857.
31. *Add. Annotations* :—**Mentd.** Robinson v. Marsh, [1921] 2 K. B. 640; Bradford v. Price (1923), 92 L. J. K. B. 871.
34. *Add. Annotation* :—**Mentd.** Templeton v. Parkin (1929), 140 L. T. 619.
35. *Add. Annotation* :—**Mentd.** Akt. Dampskibs Steinstad v. Pearson (1927), 137 L. T. 533.

## Part II.—Competency of Parties—Acts which can be done by an Agent.

37. *Add. Annotation* :—**Refd.** Dodd v. Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.
40. *Add. Annotation* :—**Refd.** Dodd v. Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.
53. *Add. Annotation* :—**Mentd.** L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.
68. *Add. Annotations* :—**Generally, Refd.** *Re* Ellis, [1925] 1 Ch. 564; Huddersfield Fine Worsteds v. Todd (1925), 42 T. L. R. 52. **Mentd.** *Re* Lee, *Ex p.* Grunwaldt (1919), 89 L. J. K. B. 364; *Re* Bankruptcy Notice, [1924] 2 Ch. 76.
69. For "Dramatic Copyright Act, 1888," read "Dramatic Copyright Act, 1833."
87. *Add. Annotation* :—**Mentd.** Banbury v. Bank of Montreal, [1918] A. C. 626.
88. *Add. Annotation* :—**Refd.** Banbury v. Bank of Montreal, [1918] A. C. 626.
90. *Add. Annotations* :—**Refd.** R. v. North Worcestershire Assmt. Com., *Ex p.* Hadley, [1929] 2 K. B. 397. **Mentd.** Veasey v. Beardsley (1924), 23 L. G. R. 118.
91. *Add. Annotations* :—**Refd.** Wigg v. A.-G. of the Irish Free State (1927), 96 L. J. P. C. 88. **Mentd.** Cayzer, Irvine v. Board of Trade (1925), 95 L. J. K. B. 134; *Re* Mason, [1929] 1 Ch. 1.

## PART I.

1 ii. —.—.—.]—The relation of principal & agent only arises when the person called the agent has authority expressed or implied to act on behalf of the other called the principal, & consents so to act.—SMITHE v. SLATTARD (1919), 21 W. A. L. R. 19.—**AUS.**

21. —.—.—.]—**Held**: in the circumstances despite the designation of deft. as agent by pltf., the real relationship between the parties was that of purchaser & seller.—BRIDGEMOND v. DIXON, [1918] E. D. L. 156.—**S. AF.**

51. For "AUS." read "S. AF."  
*sa. Agent distinguished from Joint adventurer.*—The distinction between

the position of a joint adventurer & an ordinary agent buying for his principal with the understanding that he is to be remunerated for his services, pointed out.—SUTTON v. FORST (1924), 55 O. L. R. 281.—**CAN.**

ai. —.—.—.]—Where a consignee of goods for sale is authorised to sell them at a certain minimum price & told that whatever amount he obtains above that price will be his commission, the relationship between consignor & consignee is that of principal & agent.—REX GROCERY v. HIGGS & KECK, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—**CAN.**

26 iv. —.—.—.]—GIER v. VAN

AALST (Alta.) (1914), 28 W. L. R. 876.—**CAN.**

27 viii. For "AUS." read "S. AF."

27 xii. —.—.—.]—Defts. gave to pltf. a written order to ship goods from England on account of debts, & pltf. ordered goods from a manufacturer in England to be shipped in performance of this order.—**Held**: the relationship between the parties was that of principal & agent, not of vendor & purchaser.—BULTERS v. ROOPK, [1922] N. Z. L. R. 549.—**N.Z.**

27 xiii. —.—.—.]—PIESSE v. TASMANNIAN, ETC. CO-OPERATIVE ASSOCIATION, LTD. (1919), 15 Tas. L. R. 67.—**AUS.**



## Part III.—Classes of Agents.

105. *Add. Annotation*:—*Mentd.* Collins v. Hopkins, [1923] 2 K. B. 617.

127a. —.]—Pltfs. bought from the first defts. a quantity of seed under a written contract, which stated that the first defts., through the agency of the second defts., acting as *del credere* agents, sold the seed to pltfs. The second defts. were paid a commission by the first defts., & received nothing from pltfs. The first defts. were unable to deliver the

goods. In an action for damages:—*Held*: as the second defts. were not in fact the agents of pltfs. but only of the first defts., & as the mere description of the second defts. as *del credere* agents, without any further words making them *del credere* agents of either party in particular, did not make them agents of pltfs., the action failed as against the second defts.—*NOUVELLES LUIERIES ANVERSOISES S. A. v. MANN* (H. C.) & Co. (1924), 40 T. L. R. 804.

## Part IV.—Formation and Evidence of the Contract of Agency.

143. *Add. Annotation*:—*Generally, Mentd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.

156. *Add. Annotation*:—*Refd.* Thirkell v. Cambi, [1919] 2 K. B. 590.

157. *Add. Annotations*:—*Apld.* Grindell v. Bass, [1920] 2 Ch. 487. *Refd.* Thirkell v. Cambi, [1919] 2 K. B. 590. *Mentd.* North v. Loomes, [1919] 1 Ch. 378.

### PART III.

*sb. Mercantile agent—Automobile dealer.*]—*HARE & CHASE, LTD. v. COMMERCIAL FINANCE CORPN., LTD.* (1925), 62 O. L. R. 601.—*CAN.*

108 i. *Broker.*]—A broker is an agent of a special kind. A broker who approaches a buyer or seller acts in the first instance as agent of the person who employs him, but directly the other party is aware of the fact that he is a broker, he becomes the agent of both parties, not with a plenary power to bind both parties as he chooses, but to communicate between them until they are *ad idem*.—*JACOBS LEVITATZ & BRAUDE v. KROONSTAD ROLLER MILLS*, [1921] O. P. D. 38.—*S. AF.*

### PART IV. SECT. 2, SUB-SECT. 1.

149 iii. —.]—*Statute of Alberta*, 1906 (c. 27).]—It is merely the terms of the agency agreement, whether they may be meagre or detailed, that must be in writing under the above Act. The price & the other terms of the proposed sale may or may not be mentioned. If they are, in the circumstances, an essential part of the agency agreement they ought to be in writing. But it is a question of interpretation, even since the statute, whether the terms mentioned as those of the proposed sale are intended merely as a basis on which the agent may negotiate or are intended to bind the agent strictly to a sale on the named terms before he can claim his commission.—*KING v. SCHON*, [1918] 3 W. W. R. 892; 44 D. L. R. 111.—*CAN.*

149 iv. —.]—*Real Estate Commission Act, R.S.A., 1922* (c. 139), s. 2.]—The fact that a written instrument evidencing an agreement for the sale of land does not contain all the terms of the agreement does not prevent it being sufficient to satisfy the proviso to the above sect., if it is one which the ct. will order to be rectified to include the terms agreed on but omitted by mutual mistake, & which when so rectified will be enforceable by

the parties thereto subject to such legal or equitable defences available to either of them as the agent who effected the agreement cannot be held accountable for.—*HANTON v. STEDMAN*, [1925] 1 W. W. R. 642.—*CAN.*

149 v. —.]—*Auctioneers & Commission Agents' Act, 1922*, s. 23.—*Sufficiency of agency contract.*]—So long as the relationship of principal & agent in respect of the transaction is evidenced in writing, the mischief aimed at by the above sect. has been duly met & the requirements of the sect. satisfied, & the other terms of the agency contract may be effectively made & effectively varied verbally.—*CANNIFFE v. HOWIE*, [1925] S. R. Q. 121; 19 Q. J. P. 57.—*AUS.*

149 vi. —.]—So long as the relation of principal & agent in respect of the transaction in question has been evidenced in writing, the requirements of the above sect. have been complied with, & any document signed by pltf. at any time before action brought, which evidences the essential fact, the existence of the relationship in respect of the transaction in question, is sufficient to comply with the Act. It is sufficient if the writing manifests a present intention of engaging or appointing the agent in respect of a transaction by any suitable words, whether contained in one document signed by deft., or in several documents, sufficiently interconnected by internal reference, either direct or inferential, one or more of which are signed by deft., manifesting such intention on his part.—*SKIPPER v. SYRMS*, [1925] S. R. Q. 129; 19 Q. J. P. 47.—*AUS.*

149 vii. —.]—*ROACH v. HOUGH*, [1926] S. R. Q. 24; 20 Q. J. P. 113.—*AUS.*

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1664 xiva—1664 xivl, *post*.

g i. *Land Agents Act, 1912—When applicable.*]—Dft. intimated to pltf. that he had been instructed to

sell a property by private sale. Pltf., an accountant, told deft. that he could introduce a probable purchaser, & would do so if deft. would pay pltf. half the commission payable by the owner of the property to deft. in the event of a sale being effected. Dft. agreed, & on the same day pltf. introduced B. to deft. with whom a sale was arranged. Pltf. in his evidence stated that he was not a land agent, & for the preceding five years had had no transactions for the sale of land except the one in question.—*Held*: the arrangement between the parties was not one of a series nor the commencement of a series of transactions, but a solitary transaction, & pltf. was not a land agent within the above Act.—*COOKE v. WALLACE* (1914), 33 N. Z. L. R. 1054.—*N.Z.*

g ii. —.]—Land Agents Act, 1912, s. 13, applies only to persons carrying on land agency as a business, & does not extend to casual agency outside the scope of the agent's business.—*CLIFTON v. JOHNSTONE*, [1921] N. Z. L. R. 35.—*N.Z.*

g iii. —.]—*Effect of.*]—The effect of Land Agents Act, 1912, s. 13, is not to make the contract of agency illegal by reason of the want of written authority, but merely to prevent the agent from recovering his commission by action.—*GLASGOW v. HOOD*, [1920] N. Z. L. R. 586.—*N.Z.*

g iv. —.]—*Form of appointment.*]—An appointment of a land agent under s. 13 of the above Act must be signed by the principal himself & is not sufficient if signed by an agent on his behalf.—*BUCHANAN v. SAMSON*, [1922] N. Z. L. R. 553.—*N.Z.*

g v. —.]—*Land Agents Act, 1921—Form of appointment—Need not be in writing.*]—*OLIVER v. DICKINSON*, [1927] N. Z. L. R. 411.—*N.Z.*

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1664 xiva—1664 xivl, *post*.

E. in terms that made the pleading a valid memorandum within the statute. G. added E. as a deft. to the action; & E., by a counterclaim, claimed specific performance of his agreement:—*Held*: counsel was the duly authorised agent of B. to sign the pleading & to plead the contract with E., & although the signing of a memorandum within Stat. Frauds was not in the minds of either counsel or client, the pleading, as signed by counsel before E. was a party to the action, was a valid memorandum to satisfy the statute, & E. was entitled to judgment on his counterclaim, & G.'s action against B. must be dismissed.—*GRINDELL v. BASS*, [1920] 2 Ch. 487; 89 L. J. Ch. 591; 124 L. T. 211; 30 T. L. R. 867.

*Annotation*:—*Consd.* *Farr, Smith v. Messers* (1927), 44 T. L. R. 48.

165. *Add. Annotations*:—*Consd.* *Keen v. Mear*, [1920] 2 Ch. 574. *Distd.* *Lewcock v. Bromley* (1920), 127 L. T. 116.

166. *Add. Annotation*:—*Refd.* *Cohen v. Roche* (1926), 95 L. J. K. B. 945.

171. *Add. Annotation*:—*Mentd.* *Clayton-Greene v. De Courville* (1920), 36 T. L. R. 790.

182. *Add. Annotations*:—*As to* (1) *Refd.* *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91. *Generally*, *Mentd.* *Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762.

189. *Add. Citation*:—21 J. P. 4.

*Add. Annotations*:—*As to* (1) *Consd.* *Kemp v. Elisha*, [1918] 1 K. B. 228. *As to* (2) *Refd.* *Bygraves v. Dicker*, [1923] 2 K. B. 585.

190. *Add. Annotation*:—*Generally*, *Mentd.* *Cohen v. Rothfield*, [1919] 1 K. B. 410.

192. *Add. Annotations*:—*As to* (1) *Consd.* *Performing Right Soc. v. Caryl Theatrical Syndicate*, [1924] 1 K. B. 1. *Refd.* *Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762.

196. *Add. Annotations*:—*Distd.* *Keeling v. Pearl Assee.* (1923), 129 L. T. 573. *Consd.* *Paxman v. Union Assee. Soc.* (1923), 39 T. L. R. 421. *Apprvd.* *Newsholme v. Road Transport & General Insee.*, [1929] 2 K. B. 356.

203. *Add. Annotations*:—*Consd.* *Brooke v. Bool*, [1928] 2 K. B. 578. *Refd.* *Pratt v. Patrick*, [1924] 1 K. B. 488.

#### PART IV. SECT. 3, SUB-SECT. 1.

171 iv. —. —.]—The *onus* of establishing the authority of an agent is upon the person who seeks to bind the principal.—*STEVENS v. MERCHANTS BANK OF CANADA*, [1920] 1 W. W. R. 49 D. L. R. 528; 30 Man. L. R. 46.—*CAN.*

176 iv. For "AUS." read "S. AF."

176 v. —.]—*Claim to goods of principal—In possession of third party.*—If a person other than the owner makes a demand for return of goods in possession of a third party, he should present credentials or some written authority to show that he is acting as agent of the owner.—*CRAIG v. MC-CREATH*, [1922] 2 W. W. R. 1276.—*CAN.*

176 vi. —.]—*PLUMB v. W. C. MACDONALD REGISTERED, LATIMER v. FOSTER TOBACCO CO., LTD.* (1924), 27 O. W. N. 365.—*CAN.*

176 vii. —.]—When actual authority of an alleged agent has been negatived, a ptt. seeking to hold the alleged principal liable on the basis of ostensible authority either must show a holding out by the principal of the

alleged agent as such or must give proof of some custom on which ostensible agency can be predicated.—*ROBIN LINE S.S. CO. v. CANADIAN STEVEDORING CO., SEAS SHIPPING CO. v. CANADIAN STEVEDORING CO.*, [1928] 3 D. L. R. 856; [1928] S. C. R. 423.—*CAN.*

pl. —. —.]—Possession solely cannot be evidence of both agency & authority, & the fact that one man is with another does not necessarily make one the agent for the other.—*TURNER v. BEATON (P. E. I.)* (1908), 4 E. L. R. 325.—*CAN.*

177 v. —.]—If A has entered into a contract to purchase land it is open to B. to show by parol evidence that A. did so as his agent & to ask for a declaration of that agency.—*VASELENAK v. VASELENAK*, [1921] 1 W. W. R. 889; 57 D. L. R. 37; 16 Alta. L. R. 256.—*CAN.*

177 vi. —.]—A husband obtained from his wife authority to act on her behalf:—*Held*: it was competent to prove the authority by parol evidence.—*WALKER v. HENDRY*, [1925] S. C. 835.—*SCOT.*

210. *Add. Annotation*:—*Mentd.* *Yorke v. Yorkshire Insee.*, [1918] 1 K. B. 662.

#### SECT. 4.—AGENCY OF NECESSITY (Vol. I., p. 293).

For "*See HUSBAND & WIFE: SHIPPING & NAVIGATION*," substitute as follows:—

215a. *Extent of doctrine.*—An agency of necessity can arise in other cases than that of carriers by land or sea or the acceptor of a bill of exchange for the honour of the drawer. Extraordinary circumstances, such as war conditions, which make it impossible for a buyer of goods on behalf of a principal abroad either to despatch them or to communicate with him, would entitle the buyer to sell the goods as an agent of necessity. But in order to establish an agency of necessity the agent must prove that there was an actual & definite commercial necessity for the sale, & that the transaction was *bond fide* in the interest of the principal.

Where an agent in London bought skins in 1915 & 1916 to be forwarded to his principal in Roumania as the principal might direct, & in consequence of the occupation of Roumania by the Germans in 1916, the agent was unable to send the skins to his principal or communicate with him, & the agent thereupon sold the skins without authority:—*Held*: the agent had failed to establish agency of necessity because (a) the deterioration of the furs might have been prevented by putting them in cold storage at a comparatively small expense, & moreover, they had steadily increased in value, & (b) the agent had not acted *bond fide* in selling the skins.—*PRAGER v. BLATSPIEL, STAMP & HEACOCK, LTD.*, [1924] 1 K. B. 566; 93 L. J. K. B. 410; 130 L. T. 672; 40 T. L. R. 287; 68 Sol. Jo. 400.

*Annotation*:—*Consd.* *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.

*See, also*, original volume, p. 319, No. 390.

215b. —. —. *Repayment to agent of necessity.*—*PONTYPRIDD UNION v. DREW*, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405. C. A.

177 vii. —. —.]—Where a contract is entered into by a person in his own name, but as agent of another, if in the contract itself there is no special description or assertion of property the agency may be proved by parol.—*MUSSON v. HEAD*, [1926] 1 D. L. R. 965; 58 O. L. R. 210.—*CAN.*

qi. —. —.]—*ANDERSON v. CAMERON* (1857), 6 Gr. 285.—*CAN.*

qii. —. —.]—*WHITTAKER v. TAYLOR (Alta.)* (1911), 19 W. L. R. 662; 1 W. W. R. 259.—*CAN.*

qiii. —. —.]—*CROWN LUMBER CO. v. SAULSBERRY (Alta.)* (1913), 23 W. L. R. 877; 11 D. L. R. 17; 4 W. W. R. 168.—*CAN.*

#### PART IV. SECT. 3, SUB-SECT. 2.

so. *Person entering into contract "acting on behalf of another."*—To say that a man entered into a contract "acting on behalf of another" is to allege in the absence of any qualifying statement, that he entered into it as the agent of that other.—*LIND v. SPICER BROTHERS (AFRICA), LTD.*, [1917] App. D. 147. S. AF.

215c. ———.]—Observations by SCRUTTON, L.J., on the limits of the doctrine.—*JEBARA v. OTTOMAN BANK*, [1927] 2 K. B. 254; 96 L. J. K. B. 581; 137 L. T. 101; 43 T. L. R. 369; 32 Com. Cas. 228, C. A.; on appeal, *sub nom. OTTOMAN BANK v. JEBARA*, [1923] A. C. 269, H. L.

Power to delegate in cases of supervening necessity.]—See original volume, pp. 390, 391, Nos. 939-942.

Authority of carrier of goods—Land carrier.]—See *CARRIERS*, Vol. VIII., pp. 20, 35, Nos. 151, 201.

—Master of ship.]—See *SHIPPING & NAVIGATION*.

Authority of wife to pledge husband's credit.]—See *HUSBAND & WIFE*.

Acceptance of bill of exchange for honour of drawer.]—See *BILLS OF EXCHANGE*, Vol. VI., pp. 415, 416.

## Part V.—Authority of the Agent.

246. *Add. Annotation*:—*Refd. Ralli v. Compañia Naviera Sota y Aznar*, [1920] 2 K. B. 287.

272. *Add. Annotation*:—*Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

281. *Add. Annotations*:—*Consd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd.*

*Underwood v. Bank of Liverpool, Same v. Barclays Bank*, [1924] 1 K. B. 775.

288. *Add. Annotation*:—*Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

294. *Add. Annotation*:—*Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

### PART V. SECT. 2, SUB-SECT. 1.

240 v. ———.]—*Effect of ratification clause*.]—Where the whole object of a ratification clause is to carry on business in the principal's name, & the acts to be ratified, even when excessive, are specifically said to be acts done in the principal's name, the clause cannot be construed to change the whole nature of the power by making the attorney the universal agent of his principal.—*BANK OF TORONTO v. MATHESON*, [1927] 3 W. W. R. 10.—CAN.

247 i. *General powers—Limited by recital*.]—A power of attorney enabling an agent to grant a lease is not revoked by the return of the landlord to the United Kingdom, even though the document containing the power of attorney states that it is granted owing to the grantor being about to depart from the United Kingdom.—*GRAHAM v. MANDERS* (1919), 53 L. T. 5.—IR.

258 iii. ———.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re OSMAN* (1919), 40 N. L. R. 17.—S. AF.

t. (p. 301) For “(1886)” read “(1873).”

277 iv. ———.]—Power to borrow money & secure its repayment by mtge. is not to be inferred merely from general powers added to an enumeration of specific powers in a power of attorney, unless the exercise of such a power is strictly necessary to carry out the express purpose of the instrument or the acts specifically authorised thereby.—*ANDREWS v. SINCLAIR*, [1923] 2 D. L. R. 903; 2 W. W. R. 166.—CAN.

277 v. ———.]—A bare power of attorney to make & indorse notes, cheques, etc., does not authorise the attorney to raise loans on his principal's credit for the principal himself or for the attorney's own accommodation or for a third party; nor is such authority conferred by a general power given the attorney to do all “other acts & things for the purpose of carrying on any business in my name.” The power to borrow money must be conferred in express terms, & when this power is alleged to be based on a power of attorney, the document must be read strictly.—*BANK OF TORONTO v. MATHESON* (Sask.), [1927] 4 D. L. R. 328; [1927] 3 W. W. R. 10.—CAN.

283 ii. ———.]—*Applt. co.*

gave to H., customs broker, a power of attorney “to transact all business which” applt. co. “may have with the Collector of the Port of Montreal or relating to the Department of the Customs of the said Port . . . ratifying & confirming all that . . . said attorney & agent shall do . . .” Cheques to the order of the collector of Customs were given to H. on his requisition for the payment of duties on goods imported by applt. co., these cheques being made by the latter for fixed amounts corresponding to the invoices. Afterwards, through fraudulent devices, H., having succeeded in passing entries for much smaller sums than the quantity of goods required, induced the Customs House cashier to take the cheques thus issued by applt. co. for a higher amount than the one apparently due, & either to apply the surplus in payment of duties owing by third parties or to reimburse him in cash.—*Held*: (1) it was within the scope of the power of attorney given to H. by applt. co. that he should receive, in cash from the custom officials, balances of cheques delivered by him to them, after deducting the duties payable in respect of entries made by H. on behalf of applt. co.; (2) it was not within the scope of the power of attorney that he should direct the application of balances of applt. co.'s cheques in payment of duties owing by H.'s other customers.—*CANADIAN PACIFIC RY. CO. v. R.* (1917), 55 S. C. R. 374; 37 D. L. R. 719.—CAN.

283 iii. ———.]—*Power to withdraw from bank*.]—A joint savings account with a bank was opened in the names of pltf. & her husband. After the death of the husband pltf. gave her solr. a power of attorney, by which he was authorised to withdraw money from banks or individuals & to deposit same in any other bank or other place. In pursuance of the oral instructions of the solr., & on production of the power of attorney & a certified copy of letters probate of the husband's will, the bank paid over the balance of the account to the husband's exors.—*Held*: the bank had acted rightly.—*ROSS v. CANADIAN BANK OF COMMERCE (Alta.)*, [1927] 3 D. L. R. 1056; [1927] 3 W. W. R. 182.—CAN.

287 i. *See, also*, No. 287 vi., *post*.

287 iv. ———.]—*Power to discharge*.]—A power of attorney appointed the grantor's wife his agent for the purpose of all dealings with his property, real or personal, in Canada. In the specific clause granting the power to execute instruments in connection

with his real property, a discharge of mtge. was not named as one of the instruments.—*Held*: the very general words used in the power of attorney covered the right of the agent to execute a discharge of mtge.—*RE LAND TITLES ACT, its REGISTRATION OF A POWER OF ATTORNEY*, [1918] 2 W. W. R. 947.—CAN.

287 v. ———.]—The discharge of a mtge. was executed under a power which, after authorising the attorney to sell the principal's lands & give receipts for the consideration money, gave power, upon payment of all or any debts, to give proper & sufficient acquittances & discharges for same.—*Held*: sufficient authority to sign the statutory certificate.—*LEE v. MORROW* (1866), 25 U. C. R. 604.—CAN.

287 vi. ———.]—*Power to give—To secure unpaid purchase-money*.]—A transaction whereby an agent purchased land for cash on behalf of his principal & subsequently gave a mtge. on the land & a conveyance of other lands in satisfaction of the amount remaining unpaid.—*Held*: authorised by the agent's power of attorney.—*DYMSMORE v. PHILIP*, [1918] 3 W. W. R. 457.—CAN.

287 vii. ———.]—*Power to invest on second mortgage*.]—A power of attorney authorised the attorney “to lend on mtge., charge or lien of real estate any money belonging to” the principal.—*Held*: the attorney was authorised by the power to lend money on the security of a second mtge.—*MCUTCHEON v. REGISTRAR OF TITLES*, [1927] V. L. R. 93; 48 A. L. J. 137.—AUS.

sd. ———.]—*Property—Power to transfer to himself*.]—A husband had certain property put in his wife's name. He held a general power of attorney from her. Subsequently the husband, as his wife's attorney, had the property transferred into his own name.—*Held*: the wife was entitled to have the transfer to her husband set aside.—*ELFORD v. ELFORD* (1922), 69 D. L. R. 284; 61 S. C. R. 125; [1922] 3 W. W. R. 339; *aff. 61 D. L. R. 40*, 14 Sask. L. R. 363.—CAN.

295 vii. ———.]—*Power to sign contract*.]—Resp. co. having sold land to applt. gave to its agent in the Transvaal a general power of attorney conferring upon him “full power to act on our behalf in all matters & things that do or may affect or concern us in S. Africa.” The power then proceeded in the following words “& in particular but without prejudice to

296a. ——— Property held on trust for sale.]—

The two plffs. having, as joint tenants, bought land which by Law of Property Act, 1925 (c. 20), s. 36, became vested in them on the statutory trusts for sale, agreed to sell it to deft., & the conveyance was executed by one pltf. in person & by an attorney on behalf of the other pltf. The power of attorney was expressed to give "the sole & absolute control of all my property real & personal of every description situate & being at Bury & elsewhere in the County of Lancaster & whether owned by me solely or jointly with any other person or persons." Deft. declined to accept the conveyance on the ground that a trustee for sale could not delegate the execution of the trust to his attorney. In an action for specific performance!—*Held*: the words used in the power of attorney applied only to property held in beneficial ownership & not to property held on a trust for sale, & the action failed.—*GREEN v. WHITEHEAD* (1929), 46 T. L. R. 11, C. A.

297. *Add. Annotation*:—Generally, *Mentd.* North v. Loomes, [1919] 1 Ch. 378.

307. *Add. Annotation*:—*Mentd.* London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777.

308a. *Salesman—Authority to cancel sale.*]—A salesman employed at a salary of £3 a week & 1½ per cent. on sales effected by him is not authorised to cancel sales made on behalf of his principal.—*LECKENBY v. WOLMAN*, [1921] W. N. 100.

313. *Add. Annotation*:—*Mentd.* Bradford v. Price (1923), 92 L. J. K. B. 871.

315. *Add. Annotation*:—*Mentd.* Lowther v. Harris, [1927] 1 K. B. 393.

324. *Add. Annotations*:—*Mentd.* Weigall v. Runciman (1916), 85 L. J. K. B. 1187; *Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Gould v. S. E. & C. Ry.*, [1920] 2 K. B. 186; *Johnson v. Taylor*, [1920] A. C. 144; *Wilson, Holgate v. Belgian Grain & Produce Co.*, [1920] 2 K. B. 1; *Diamond Alkali Export Corp. v. Bourgeois*, [1921] 3 K. B. 443; *Weiss, Biheller & Brooks v. Farmer*, [1923] 1 K. B. 226; *Finn v. Shelton Iron, Steel & Coal Co.* (1924), 131 L. T. 213; *Westminster Bank v. Hilton* (1926), 136 L. T. 315; *Sassoon v. International Banking Corp.*, [1927] A. C. 711.

332a. ———.]—Pltf. gave a power of attorney to T. & authorised him, in relation to pltf.'s affairs, to draw cheques on pltf.'s account at the bank without restriction. T. in fraud of pltf. drew a cheque on pltf.'s account, in favour of defts. in part-payment for a motor-car which T. had obtained from them for his own

purposes on the hire-purchase system. Defts. knew that the cheque was drawn by T. as agent for pltf. In an action by pltf. to recover from defts. the proceeds of the cheque:—*Held*: as defts. knew that T. was paying his own debt to them with pltf.'s money, & as T. had no authority to pay his own debts therewith, pltf. was entitled to recover.—*RECKITT v. BARNETT, PEMBROKE & SLATER, LTD.*, [1929] A. C. 176; 98 L. J. K. B. 136; 140 L. T. 208; 45 T. L. R. 36; 34 Com. Cas. 126, H. L.

*Annotation*:—*Reid*. *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.

332b. ———.]—Pltf. gave to one T., who was a solr., a power of attorney & authorised him to draw cheques on his, pltf.'s, behalf. T. was also acting as solr. for deft. & obtained from her a cheque for nearly £5,000 for the discharge of certain liabilities of which T. had informed her. At that time deft.'s banking account was, though deft. was not aware of it, about £1,500 short of the amount of the cheque & T. drew a bearer cheque for £1,500 on pltf.'s account & paid it into deft.'s account, the cheque showing on its face that it was drawn by T. as attorney for pltf. T. was thus enabled to cash deft.'s cheque. Pltf., on ascertaining the facts, brought this action against deft. for a declaration that he was entitled to recover from her the proceeds of the £1,500 cheque:—*Held*: as deft.'s bank had notice on the face of the £1,500 cheque that it represented money belonging to pltf., & as they had received it as agents for deft. & had credited it to her account, pltf. was entitled to succeed.—*RECKITT v. NUNBURNHOLME* (1929), 45 T. L. R. 629.

338. *Add. Annotation*:—*Reid*. *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

338a. ——— Authority to sign for business purposes.]—Resps. had two accounts with applt. bank at Sydney in connection with a business which they there carried on. They informed the bank in writing that the two managers of their business had authority together to sign & indorse cheques, to draw & indorse promissory notes & bills of exchange, & to transact on their behalf all business connected with the accounts. Banks in Australia frequently issue to a customer, in exchange for a cheque in favour of the bank, a cheque, described as a "bank cheque," drawn by the bank on itself in favour of a person designated by him, or to bearer. In exchange for cheques drawn in favour of applt. bank by the managers, the bank issued to one of the managers bank cheques payable to a name designated by him; these cheques he fraudulently appropriated:—*Held*: applt. bank was not entitled to debit the bank

the foregoing generality" to give particular instances of acts that the agent was empowered to perform:—*Held*: under the power the agent was authorised to sign the written contract of sale.—*MEAROCK v. NEW SCOTLAND LAND CO., LTD., LIQUIDATOR*, [1922] App. D. 237.—S. AF.

*se.*—*Trading licence—Power to apply for.*]—A., a storekeeper, by general power of attorney appointed H. to manage & transact his business in Natal. At the date of appointment A. was trading under a licence *ex facie* good, but which later was declared void. H. applied for a new licence, but it was objected that he had no

authority to make the application:—*Held*: the power of attorney was sufficient authority to H. for the purpose.—*HAFFIZE v. JACOBSON* (1919), 40 N. L. R. 322.—S. AF.

*st.* *Power granted by corporation to officials for time being—Registrar entitled to require proof that persons executing power hold office.*]—*Re LAND TITLES ACT, ROYAL TRUST CO.'S CASE*, [1921] 3 W. W. R. 246.—CAN.

PART V. SECT. 3, SUB-SECT. 1.

*sg.* *Agent obtaining transfer of property to principal—Authority to transfer property to third party*]—Applt. sold to D. land, a portion of which he had not

obtained transfer. Applt. instructed resp., an attorney, to put the matter through; resp. thereupon obtained transfer of the piece of land in question into applt.'s name, & then gave transfer of the whole to D.:—*Held*: resp.'s authority was wide enough to cover the costs incurred by him in obtaining transfer of the piece of land into applt.'s name.—*STANTON v. ALLPORT*, [1933] E. D. L. 155.—S. AF.

PART V. SECT. 3, SUB-SECT. 2.

*sj.* *Grain market usage—Right of broker to close out customer.*]—*RUSSELL v. CANADA WEST GRAIN CO.*, [1925] 3 W. W. R. 508.—CAN.

cheques against resps. The manager had not implied authority to receive bank cheques, & the circumstances in which on certain previous occasions the manager had been allowed to give instructions as to the application of the amount of cheques drawn, made the evidence fall far short of the strong case needed to show an ostensible authority prevailing over written instructions.—*AUSTRALIAN BANK OF COMMERCE v. PEREL*, [1926] A. C. 737; 95 L. J. P. C. 185; 135 L. T. 586. P. C.

341. *Add. Annotation*:—*Mentd.* *Bradford v. Price* (1923), 92 L. J. K. B. 871.

369. *Add. Annotation*:—*Mentd.* *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777.

370. *Add. Annotations*:—*As to* (1) *Consd.* *Jones v. Waring & Gillow*, [1926] A. C. 670. *Refd.* *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777.

371. *Add. Annotations*:—*As to* (1) *Refd.* *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777; *Guildford Trust v. Goss* (1927), 136 L. T. 725.

373. *Add. Annotation*:—*As to* (1) *Consd.* *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777.

379. *Add. Annotation*:—*Consd.* *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777.

#### PART V. SECT. 3, SUB-SECT. 4.—A.

340 iii. — *Authority to draw cheques in principal's name—Agent drawing cheques to repay personal losses.*—If a co.'s branch manager, whose powers include receiving money, depositing it in a bank in the co.'s name, & drawing cheques against such funds in the co.'s name for the purposes of its business but not for his own personal business, misappropriates its funds by drawing cheques in the co.'s name to repay his own personal loans, the co. can recover the sums thus paid from those to whom they were paid, although the latter received them honestly & believing, as told them by the person paying them, that he had money coming to him from the co. for commission & that he was authorised to draw cheques for these commissions.—*LONDON GUARANTEE, ETC., CO. v. ABRAMS & KOVSKY*, [1923] 2 W. W. R. 1006.—*CAN.*

#### PART V. SECT. 3, SUB-SECT. 5.

379 ii. — — — — —.]—Where a principal entrusts an agent with indicia of title & a signed transfer, the transferee's name being left blank, for the purpose of raising a certain sum on such securities, & the agent borrows a larger sum & fraudulently appropriates the difference, the lender being in ignorance of the amount specified by the principal, the principal cannot redeem the securities without paying the lender the amount lent. The fact that the transfer states a certain sum as consideration does not necessarily impose upon the lender the duty of inquiring as to the limitations of the agent's authority.—*MAHAN v. MANNESS*, [1918] 2 W. W. R. 191; 28 *Man. L. R.* 470; 40 *D. L. R.* 136.—*CAN.*

#### PART V. SECT. 3, SUB-SECT. 6.—A.

397 ii. — *Authority as such—Contract not completed.*—*KERSHAW v. UNITED ARTISTS (Man.)*, [1926] 1 *D. L. R.* 738.—*CAN.*

398 ii. — *Authority to sign contract—Contract providing for payment*

*of price by instalments.*—*Defts.* signed & gave to an agent a document in the following terms:—"We hereby agree to sell the property for £6,700 nett, provided a sale takes place within fourteen days from date hereof. The above price to be clear of all commission charges." The agent, within the fourteen days, signed a contract of sale by which the property was sold to *pltf.* for £6,700, payable £1,000 deposit (£50 preliminary deposit, to be increased to £1,000 within one month), £2,250 within three months, & £3,450 within six months, possession to be given after the second payment £2,250 at the end of the three months. There was no provision for interest on the balance:—*Held*: the document signed by *defts.* was not an authority to the agent to sign a contract containing the above terms as to payment.—*BOYD v. O'CONNOR*, [1923] V. L. R. 603.—*AUS.*

398 iii. — *Contract containing penalty clause.*—*Held*: the existence of the penalty clause, which was not covered by the agent's instructions, & was not separable from the remainder of the contract, justified the principal in repudiating the agent's action, & the contract must be set aside.—*DUPREZ v. LAIRD*, [1927] App. D. 21.—*S. AF.*

q. i. — *General authority.*—*Pltf.* contracted with *defts.* to purchase & deliver potatoes at an agreed price per bushel. The farmers from whom the potatoes were to be purchased required cash payments, & *defts.* agreed to make advances to put *pltf.* in funds for this purpose. *Defts.* were not prompt in providing funds, & *pltf.* complained of the delay which hampered him in buying, & in order to induce him to carry out the contract, *defts.* agent offered an advance of 25 cents per bushel on the contract price for four cartloads of potatoes:—*Held*: the agent on the spot, looking after *defts.* interests, had a general authority sufficiently broad to cover the making of the contract for the advanced price.—*LEGACY v. DAVISON* (1919), 52 N. S. R. 543.—*CAN.*

382. *Add. Annotation*:—*Refd.* *Underwood v. Liverpool Bank, Same v. Barclays Bank*, [1924] 1 K. B. 775.

386. *Add. Annotations*:—*As to* (2) *Distd.* *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *As to* (3) *Refd.* *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48. *Generally, Mentd.* *Underwood v. Bank of Liverpool, Same v. Barclays Bank*, [1924] 1 K. B. 775.

387. *Add. Annotations*:—*Distd.* *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Refd.* *Underwood v. Bank of Liverpool, Same v. Barclay's Bank*, [1924] 1 K. B. 775; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

388. *Add. Annotations*:—*Distd.* *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Refd.* *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

390. *Add. Annotations*:—*Consd.* *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566; *Refd.* *Jebara v. Ottoman Bank*, [1927] 2 K. B. 251.

399. For "bought note" in catchwords read "sold note."

406. *Add. Annotation*:—*As to* (1) *Apprvd.* *News-holme v. Road Transport & General Insee.*, [1929] 2 K. B. 356.

407. *Add. Annotation*:—*Generally, Mentd.* *Isaacs v. Cook* (1925), 134 L. T. 286.

r. This case was reversed (1916), 22 C. L. R. 307. Delete the words "no actual or apparent" in the sentence, "*Held*: O. had no actual or apparent authority to vary the written contract by substituting a later date for delivery."

sk. *Agent agreeing to payment of compensation to purchaser if transaction not completed—Authority to sell.*—A claim by a proposed purchaser for damages on the ground of an agreement by the vendor's agent for compensation to the purchaser should the contract not be made by the vendor, disallowed in the absence of any authority from the vendor to make such an agreement.—*THOMPSON v. LYNNE*, [1921] 1 W. W. R. 238; 56 *D. L. R.* 729.—*CAN.*

sl. *Salesman making reduction in price.*—*Held*: principal not bound.—*MASON & DEAN, LTD. v. UDWIN*, [1925] 1 D. L. R. 353; 57 N. S. R. 445.—*CAN.*

sm. *Solicitor's clerk giving undertaking as to withdrawal of Registrar-General's caveat—Authority as such.*—*Held*: the solr. was personally bound by the undertaking.—*HAWKINS v. GADEN* (1925), 37 C. L. R. 183; 26 S. R. N. S. W. 382; [1926] *Argus L. R.* 109.—*AUS.*

#### PART V. SECT. 3, SUB-SECT. 8.—A.

423 iv. — *Express authority to let on weekly tenancy—Lease granted for long term.*—*Pltf.* was the owner of premises let to a weekly tenant. When the tenant left she recommended *deft.* to *pltf.* as a tenant. *Pltf.* never saw *deft.*, but *pltf.*'s husband arranged some form of lease with him, & thereafter collected the rent, which was paid monthly, on behalf of *pltf.* & with her authority. In an action of ejectment *deft.* alleged that *pltf.*'s husband had given him a lease for four years from Dec. 1913, & that he was a tenant from year to year. *Pltf.* denied any knowledge of a lease for a term, or that she had given authority to her husband to make such a lease:—*Held*: the

426. *Add. Annotations*:—**Consd.** *Keen v. Mear*, [1920] 2 Ch. 574. **Apld.** *Lewcock v. Bromley* (1920), 127 L. T. 116.
427. *Add. Annotation*:—**Refd.** *Thirkell v. Cambi*, [1919] 2 K. B. 590.
432. *Add. Annotation*:—**Mentd.** *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.
433. *Add. Annotation*:—**Consd.** *Re Bebington's Tenancy*, *Bebington v. Wildman*, [1921] 1 Ch. 559.
434. *Add. Annotation*:—**Refd.** *Re Bebington's Tenancy*, *Bebington v. Wildman*, [1921] 1 Ch. 559.
436. *Add. Annotation*:—**Refd.** *Re Bebington's Tenancy*, *Bebington v. Wildman*, [1921] 1 Ch. 559.
442. *Add. Annotation*:—**Refd.** *Re Knight & Hubbard's Underlease*, *Hubbard v. Highton*, [1923] 1 Ch. 130.
464. *Add. Annotations*:—*As to* (1) **Refd.** *Poland v. Parr*, [1927] 1 K. B. 236. **Generally, Mentd.** *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 241; *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.
465. *Add. Annotation*:—*As to* (1) **Refd.** *Savill v. Harben* (1919), 89 L. J. K. B. 47.
467. *Add. Annotation*:—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
468. *Add. Annotation*:—**Refd.** *Lowther v. Harris* (1926), 43 T. L. R. 24.
469. *Add. Annotations*:—*As to* (1) **Consd.** *Folkes v. King*, [1923] 1 K. B. 282. **Refd.** *Lowther v. Harris* (1926), 43 T. L. R. 24.
472. *Add. Annotation*:—*As to* (1) **Refd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
474. *Add. Annotation*:—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
475. *Add. Annotation*:—**Mentd.** *The Parchim*, [1918] A. C. 157.
477. *Add. Annotations*:—**Consd.** *Folkes v. King*, [1923] 1 K. B. 282; *Lowther v. Harris* (1926), 43 T. L. R. 24.
478. *Add. Annotation*:—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
480. *Add. Annotation*:—**Mentd.** *Re Wait*, [1927] 1 Ch. 606.
- 481a. — **Person living in house of hirer of goods.**—*STROHMENGER v. ATTENBOROUGH* (1894), 11 T. L. R. 7, D. C.
482. *Add. Annotation*:—**Generally, Mentd.** *Lake v. Simmons* (1926), 95 L. J. K. B. 586.
- 483a. — **Agent intrusted with motor car—To sell to specified person.**—*HEAP v. MOTORISTS' ADVISORY AGENCY, LTD.*, No. 495b, *post*.
484. *Add. Annotation*:—*As to* (1) **Refd.** *Lowther v. Harris* (1926), 43 T. L. R. 24.
485. *Add. Annotation*:—*As to* (2) **Consd.** *Lowther v. Harris* (1926), 43 T. L. R. 24.
- 485a. — **Improper sale.**—**Pltf.** was the owner of the A. tapestry & the L. tapestry, & he gave to P., a dealer in antiques, a limited authority to obtain & submit offers from possible purchasers. P. falsely represented to pltf. that he could the A. tapestry, & pltf. allowed him to take it away for delivery to a purchaser, who in fact did not exist. P. then sold the A. tapestry to deft. for £250. Subsequently P., who never had authority to sell the L. tapestry, stole it from pltf. & sold it to deft. In an action for conversion deft. contended that P. had been in possession of the tapestries as a mercantile agent within the Act of 1889, & that as he had bought them from P. in good faith he had acquired the property in them. He also contended that pltf. had held out P. as a person with authority to sell & was estopped from saying that P. had no such authority in fact:—**Held**: (1) although P.'s authority was limited, & although he was not acting for any principal other than pltf., yet these facts did not prevent him from being a mercantile agent & in the circumstances he was a mercantile agent & in possession of the A. tapestry with the consent of pltf., & as to that tapestry the defence under the Act of 1889 was established; (2) as to the L. tapestry, as P. was never in possession of it with pltf.'s consent, the defence under the Act failed, & as pltf. had never represented to deft. that P. had authority to sell it, there was no estoppel, & pltf. was entitled to recover the value of the L. tapestry alone.—*LOWTHER v. HARRIS*, [1927] 1 K. B. 393; 96 L. J. K. B. 170; 136 L. T. 377; 43 T. L. R. 24.
487. *Add. Annotations*:—*As to* (1) **Distd.** *Kempler v. Bravingtons* (1925), 133 L. T. 680. **Refd.** *Lowther v. Harris* (1926), 43 T. L. R. 24. *As to* (2) **Distd.** *Kempler v. Bravingtons* (1925), 133 L. T. 680.
488. *Add. Annotation*:—**Refd.** *Lowther v. Harris* (1926), 43 T. L. R. 24.
492. *Add. Annotation*:—*As to* (1) **Distd.** *Laurie & Morewood v. Dudin*, [1925] 2 K. B. 383.
495. *Add. Annotations*:—*As to* (1) **Consd.** *Folkes v. King*, [1923] 1 K. B. 282; *Lake v. Simmons*, [1926] 2 K. B. 51. **Refd.** *Heap v. Motorists' Advisory Agency*, [1923] 1 K. B. 577; *Lowther v. Harris* (1926), 43 T. L. R. 24.
- 495a. — **Agent obtaining possession by trick—Authority to sell—At specified price.**—The owner of a motor car delivered it to a mercantile agent for sale. The owner stipulated

656.—SCOT.

fact that pltf.'s husband had collected her rent was no evidence that he had authority to make a lease for four years on her behalf.—*VOGG v. KERN*, S. W. L. R. 34; 36 N. S. W. W. N. 19.—AUS.

427 ii. — **Authority to find purchaser or tenant.**—Deft. wrote to a land agent as follows:—"Re sale of hotel. I will take £2,500 for the freehold, & stock & furniture at valuation, or will lease for a term of five years, rent £5 per week. £1,000 walk in, walk out." The agent submitted the property to pltf., who elected to take a lease. The agent drew up an agreement to lease the property upon the

terms mentioned by deft., & signed it on deft.'s behalf.—**Held**: deft.'s letter did not authorise the agent to bind him by a concluded contract, but merely amounted to an authority to find a purchaser.—*QUICK v. WINTER*, [1920] N. Z. L. R. 98.—N.Z.

an. **Law agent—Authority to collect rents & manage property.**—A law agent, even though he may be employed to collect the rents & attend to the repairs of a property has no general authority to grant leases on behalf of his employer. The existence of such an authority must be proved by the person who requires to found upon it.—*DANISH v. GILLESPIE*, [1922] S. C.

**PART V. SECT. 3, SUB-SECT. 9.**  
so. **Bank manager consenting to addition of bank as plaintiff—General authority as such.**—A local manager of a bank has authority to give consent in writing for the adding of pltf. If there be any reasonable doubt whether the signature to the consent is in reality his signature, the order should be that the bank be added as a party pltf. on filing the necessary consent.—*KUSCH v. FEAR* (1922), 43 D. L. R. 408; 15 Sask. L. R. at p. 326; [1922] 2 W. W. R. 174; *revers.* 15 Sask. L. R. 324.—CAN.

& the agent agreed that the car should not be sold at less than a specified price without the owner's permission. The agent intended from the beginning to sell the car immediately for the best price he could get & to use the proceeds for his own purposes. On the day on which he got the car he sold it for less than the specified price to a purchaser who bought it in good faith & without notice of the agent's fraud. The agent misappropriated the proceeds. The car was subsequently purchased by deft. In an action of detinue by the owner of the car against deft.:—*Held*: (1) deft. acquired a good title by virtue of 1889 Act, s. 2; (2) the mercantile agent had not rendered himself liable to be convicted of larceny by a trick, inasmuch as he was authorised by pltf. to pass the property in the car to a purchaser; (3) as pltf. in fact consented to the mercantile agent having possession of the car, it was immaterial whether the latter committed larceny by a trick.—*FOLKES v. KING*, [1923] 1 K. B. 282; 92 L. J. K. B. 125; 128 L. T. 405; 39 T. L. R. 77; 67 Sol. Jo. 227; 28 Com. Cas. 110; 86 J. P. Jo. 552, C. A.

*Annotations*:—As to (2) *Distd. Heap v. Motorists' Advisory Agency*, [1923] 1 K. B. 577. *Consd. Lake v. Simmons*, [1926] 2 K. B. 51; *Lowther v. Harris*, [1927] 1 K. B. 393.

**495b.** ——— **To specified person—Sale to third party.**—Pltf., desiring to sell his motor car for £210, & being informed by N. that he had a friend H., who would probably buy it for that price, allowed N. to have possession of the car for the sole purpose of showing it & endeavouring to sell it to H. There was no such person as H., & N. represented that there was with the intention of obtaining the car for his own benefit. N. afterwards through an intermediary sold the car to defts. for £110. Before N. got possession of the car he had been convicted of theft & other offences, but that was not known to any of the parties. While N. was in possession of the car he obtained an appointment as car salesman to a firm of motor engineers. In an action by pltf. against defts. for the return of the car or its value & damages for its detention:—*Held*: (1) N. had obtained the car from pltf. by larceny by a trick, pltf. never having given any real consent to his having or passing the property therein, & pltf. should succeed in the action unless defts. had some valid defence thereto; (2) defts. could not rely upon the defence that under 1889 Act, s. 2 (1), the sale to them was as valid as if the seller had been expressly authorised by pltf. to make the same, inasmuch as N. was not a "mercantile agent," & if he was, the sale by him was not a sale

in the ordinary course of his business as a mercantile agent, within that sub-section; & further, because defts. had failed to satisfy the proviso to that sub-section by showing that they had not at the time of the disposition notice that N. had not authority to sell the car; & defts. had no defence to the action.

(3) Under 1889 Act, s. 2 (1), proviso, the *onus* is on the person taking under the disposition of the goods made by the mercantile agent of proving that he acted in good faith & without notice of the agent's want of authority, & is not upon the person whose goods have been disposed of by the agent of proving the contrary.—*HEAP v. MOTORISTS' ADVISORY AGENCY, LTD.*, [1923] 1 K. B. 577; 92 L. J. K. B. 553; 129 L. T. 146; 39 T. L. R. 150; 67 Sol. Jo. 300.

*Annotation*.—As to (1) *Consd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.

**498.** *Add. Annotations*:—As to (1) *Refd. Lake v. Simmons*, [1926] 2 K. B. 51. *Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**500.** *Add. Annotations*:—*Consd. Folkes v. King*, [1923] 1 K. B. 282. *Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**505a.** ——— **Agent intrusted with motor car to sell to specified person—Sale to third party.**—*HEAP v. MOTORISTS' ADVISORY AGENCY, LTD.*, No. 495b, *ante*.

**507a.** ——— **Onus of proof.**—*HEAP v. MOTORISTS' ADVISORY AGENCY, LTD.*, No. 495b, *ante*.

**510.** *Add. Annotation*:—*Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**515.** *Add. Annotation*:—*Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**516.** *Add. Annotation*:—*Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**517.** *Add. Annotation*:—*Generally, Refd. Lake v. Simmons*, [1926] 2 K. B. 51.

**520.** *Add. Annotations*:—As to (1) *Refd. Folkes v. King*, [1923] 1 K. B. 282. *Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**523.** *Add. Annotation*:—*Generally, Mentd. Muller (London) v. Lethem, Same v. I. R. Comrs.*, [1927] 1 K. B. 780.

**529.** *Add. Annotation*:—*Refd. Lake v. Simmons*, [1926] 2 K. B. 51.

**530.** *Add. Annotations*:—*Consd. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**538.** *Add. Annotation*:—*Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**PART V. SECT. 3, SUB-SECT. 10.—**  
**A. (a) vii.**

*sp. Act of 1889—"When acting in ordinary course of business" defined.*—The expression "when acting in the ordinary course of business of a mercantile agent," means when acting within business hours, at a proper place of business, & in other respects in the ordinary way in which a mercantile agent would act, so that there is nothing to lead the pledgee to suppose that anything wrong is being done, or to give him notice that the disposition is one which the mercantile agent had no authority to make.—*ACME STEEL GOODS CO. OF CANADA, LTD. v. WALSH CONSTRUCTION CO., LTD.*, [1922] 1 W. W. R. 689; 63

D. L. R. 529; 30 B. C. R. 539.—**CAN.**

**PART V. SECT. 3, SUB-SECT. 10.—**  
**A. (a) viii.**

*st. Act of 1889—Necessity for proof of mala fides of purchaser.*—Where an owner of goods, who has placed them with a mercantile agent, sues an alleged purchaser thereof from the agent for wrongful conversion, & deft. relies on [the above Act] the actual payment of money by deft. to the agent will not destroy the fact of *mala fides*, but the fact that the transaction is found not to have been an ordinary sale, i.e. a sale to one desirous of either using the goods or disposing of them to advantage, can of itself have a bearing

only on the question of good faith, & proof of the dishonesty of the agent is not sufficient; it must be shown that deft. acted in bad faith, & the evidence should be such as to prove to the hilt the *mala fides* of the alleged sale.—*ACME STEEL GOODS CO. OF CANADA, LTD. v. WALSH CONSTRUCTION CO., LTD.*, [1922] 1 W. W. R. 689; 63 D. L. R. 529; 30 B. C. R. 539.—**CAN.**

**PART V. SECT. 3, SUB-SECT. 11.**  
**573 i. Agent—Authority to buy at discretion—Secret limitations.**—If a person desiring to buy grain arms his agent with contract forms for the purpose & sends him out to have these forms executed by vendors & with



582. *Add. Annotation*:—*Refd.* Pearl Mill Co. v. Ivy Tannery Co., [1919] 1 K. B. 78.

586. *Add. Annotation*:—*As to* (1) *Refd.* Clayton-Greene v. De Courville (1920), 36 T. L. R. 790.

590. *Add. Annotation*:—*Refd.* Coldingham Parish Council v. Smith, [1918] 2 K. B. 90.

591. *Add. Annotation*:—*Refd.* Bradford v. Price (1923), 92 L. J. K. B. 871.

605. *Add. Annotation*:—*Refd.* Miss Gray, Ltd. v. Cathcart (1922), 38 T. L. R. 562.

608a. **Tenant of public-house—Not being licensee—Holding out.**—Deft. was the licensee of a public-house at which meals were served. In 1917, an agreement was entered into between deft. & the general manager of the owners & a third person, whereby the latter became the tenant of the licensed premises & deft. was released from all obligations under the tenancy. The licence, however, was not transferred, & deft.'s name remained painted up over the doorway. During the continuance of the new tenancy liquor as well as food was sold on the premises. Pltfs., during this period, supplied fish, fruit & vegetables to the tenant. The accounts were not fully met, & pltfs., on discovering that deft. was the licensee, which discovery was made after the goods had been supplied, sought to make him liable for the price on the ground that the tenant was either the agent of deft. by operation of law, or that deft. was estopped from denying such agency:—*Held*: where two people agreed that one should illegally & improperly occupy a position which could only be lawfully occupied by the other, that did not necessarily make the person occupying the position the agent for all purposes of the person who ought to be occupying it; the tenant was not in fact deft.'s agent; & as between himself & pltfs., deft. was not estopped from setting up the true state of affairs, because, whatever misrepresentations were made, they did not reach pltfs. nor cause them to

act to their detriment.—*MACFISHERIES, LTD. v. HARRISON* (1924), 93 L. J. K. B. 811; 132 L. T. 22; 88 J. P. 154; 40 T. L. R. 709; 69 Sol. Jo. 89.

627. *Add. Annotation*:—*Refd.* Pennington v. Reliance Motor Works, [1923] 1 K. B. 127.

645a.—.]—*BEALE v. MOULS* (1847), 10 Q. B. 976; 5 Ry. & Can. Cas. 105; 16 L. J. Q. B. 410; 11 Jur. 845; 116 E. R. 370.

*Annotation*:—*Refd.* Newton v. Belcher (1818), 6 Ry. & Can. Cas. 38.

646. *Add. Citation*:—*sub nom. Re WOLVERHAMPTON, CHESTER & BIRKENHEAD JUNCTION RY. CO., Ex p. COTTE*, 14 Jur. 708.

*Add. Annotation*:—*Apld.* *Re* Direct Exeter, Plymouth & Devonport Ry. Co., *Ex p. Roberts* (1850), 2 H. & Tw. 392.

656. After this case insert "See, also, COMPANIES, Vol. IX., p. 53, Nos. 116 *et seq.*"

664. After this case insert "See, also, COMPANIES, Vol. IX., pp. 44, 53, Nos. 61–63, 110."

665. *Add. Annotation*:—*Mentd.* Nichol v. Fearby, Nichol v. Robinson, [1923] 1 K. B. 480.

704a. **Mess committee—Goods ordered by secretary.**—Pltf. supplied goods to the officers' mess of a brigade of which deft. was at the time commanding officer, the orders for the goods being given by the secretary of the mess committee. Pltf. sued deft. for the price, alleging that under the King's Regulations deft. was liable or that he was liable as principal for the acts of the mess secretary:—*Held*: the Regulations did not create any liability between the commanding officer & tradesmen, & as deft. neither gave nor authorised the orders, & pltf. did not give deft. credit, the action failed.—*LASCELLES v. RATHBUN* (1919), 35 T. L. R. 347; 63 Sol. Jo. 410, C. A.

710a. *S.P.* *BONHAM v. MAYCOCK* (1928), 138 L. T. 736; 44 T. L. R. 387; 72 Sol. Jo. 254.

711. *Add. Annotation*:—*Dbtd.* Butwick v. Grant, [1924] 2 K. B. 483.

authority to sign them on his behalf subject to the verbal condition that the agent must stipulate that the contracts are not to come into effect until his principal has approved of the samples, this is a holding out that the agent has authority to make the contracts, & the principal is bound thereby though no such stipulation is made therein & no samples approved by the principal, if the vendors have no notice of such limitation of the agent's authority.—*REED & KEAST v. MCKENZIE CO., LTD.*, [1921] 3 W. W. R. 72.—*CAN.*

sa. **Manager of branch office—Authority as such.**—When a co. so conducts its business that a person who sells & delivers goods to a branch office thereof on an order received from such office is reasonably led to suppose that the branch has authority to give the order, the co. will not be permitted to escape liability for the purchase price on the ground that such branch office had no authority to buy the goods.—*FARM PRODUCTS, LTD. v. MACLEOD FLOURING MILLS, LTD.*, [1918] 3 W. W. R. 1035; 14 Alta. L. R. 128; 43 D. L. R. 770.—*CAN.*

PART V. SECT. 3, SUB-SECT. 12.—A.

sa. **Member of syndicate acting for syndicate.**—Pltf. sought to recover from defts., members of a syndicate formed for the purpose of exploring & testing certain mining properties, the price of goods supplied upon the order of

one of the defts., C., & upon his credit. At the time the goods were supplied, pltf. did not know that C. was a member of a syndicate or was acting for others:—*Held*: defts. other than C. were not liable to pltf.—*MCLAUGHLIN v. GENTLES* (1920), 46 O. L. R. 477; 51 D. L. R. 383; 17 O. W. N. 245.—*CAN.*

PART V. SECT. 3, SUB-SECT. 12.—B. (c).

sa. **Committee of unincorporated association—Employment by.**—*Held*: the committee were under no personal liability to the employee for his salary.—*GRAHAM v. CARPENTER* (1926), 28 W. A. L. R. 66.—*AUS.*

PART V. SECT. 3, SUB-SECT. 13.—A.

sa. **Agent—Holding out.**—If a debtor gives money to another to pay to his, the debtor's, creditor, but the third party fails to pay the same over, the debtor is liable for the amount, unless the third party was the creditor's agent. The onus is on the debtor to prove either that there was an express agency, or to show, by the acts of the creditor, that these were sufficient to establish agency by holding out or estoppel.—*CARR v. FREY & P* [1924] 4 D. L. R. 735.—*CAN.*

711 v. — *Right to receive deposit.*—An agent for sale has no implied authority as such to receive a deposit.—*PEARSON v. WILSON* (1917), Q. W. N. 49; 11 Q. J. P. 105.—*AUS.*

711 vi. — *Pltf. made an offer to D., as agent for L., to purchase land of L. for \$5,000, & with the offer paid \$200 to D. as a deposit. In an action for return of the \$200, the offer not having been accepted, the trial judge found that L. when approached by pltf. sent him to D. & told him to make an offer through D.; that D. procured from pltf. a written offer to purchase at \$5,000, paying part only in cash, & that offer was refused by L.; that D. obtained from pltf. a second offer to pay all cash, & this L. also refused:—*Held*: D. had authority to receive an offer, & as the making of a deposit was a part of that offer, D. was not going beyond his authority in receiving it.—*SILVERMAN v. LEGGEE* (1919), 45 O. L. R. 107; 47 D. L. R. 713; 15 O. W. N. 278.—*CAN.**

sa. **Person obtaining possession of bill of lading—Intervention between shipper & consignee.**—Mere possession of a bill of lading in the hands of a person who has intervened between the original shipper & the consignee & is in no way identified with the transaction except by possession of the document, does not give him any authority to give a valid discharge of the money payable by the consignee.—*STEWART v. RICHARDSON SONS & CO., LTD.*, [1920] 3 W. W. R. 134; 53 D. L. R. 625; 30 Man. L. R. 481.—*CAN.*



712. *Add. Annotation*:—**Expld.** Butwick v. Grant, [1924] 2 K. B. 483.
714. *Add. Annotation*:—**Consd.** Butwick v. Grant, [1924] 2 K. B. 483.
- 714a. ———. ———. ———.]—Authority to an agent to sell goods does not of necessity imply authority to receive payment of the price.—**Butwick v. GRANT**, [1924] 2 K. B. 483; 93 L. J. K. B. 972; 131 L. T. 476, D. C.
718. *Add. Annotation*:—**Apld.** Bonham v. Maycock (1928), 138 L. T. 736.
738. *Add. Annotation*:—**Refd.** Bonham v. Maycock (1928), 138 L. T. 736.
740. *Add. Annotation*:—**Refd.** Bonham v. Maycock (1928), 138 L. T. 736.
741. *Add. Annotation*:—**Refd.** Bonham v. Maycock (1928), 138 L. T. 736.
744. *Add. Annotations*:—**Apld.** Bradford v. Price (1923), 92 L. J. K. B. 871. **Refd.** Australian Bank of Commerce v. Perel, [1926] A. C. 737.
747. *Add. Annotation*:—**Generally**, **Mentd.** Bradford v. Price (1923), 92 L. J. K. B. 871.
- 747a. ———. **Authority to receive cash for goods—Notice to purchaser to draw cheques to seller's order**.—Pltfs., who were coal factors, engaged W. to manage a branch business for them. W. was authorised to receive payment in cash for coal supplied by pltfs. to their customers. Pltfs. had notified their customers, including defts., that all cheques must be made payable to pltfs.' order, & not to that of W. Defts. nevertheless paid for coal supplied to them by pltfs. by cheques made payable to W. or order. All these cheques were duly honoured on presentation. W. paid seven of defts.' cheques into his own private account & embezzled the proceeds:—**Held**: as W. was authorised by pltfs. to receive payment in cash for coal supplied, & defts. had paid W. by cheques payable to his order, & the cheques were duly honoured, defts. were discharged, notwith-
- standing that pltfs. had notified them that all cheques must be made payable to pltfs.' order.—**BRADFORD & SONS v. PRICE BROTHERS** (1923), 92 L. J. K. B. 871; 129 L. T. 408; 39 T. L. R. 272.
750. *Add. Annotation*:—**Consd.** Bradford v. Price (1923), 92 L. J. K. B. 871.
751. *Add. Annotation*:—**Refd.** Bradford v. Price (1923), 92 L. J. K. B. 871.
752. *Add. Annotations*:—**As to (3)** **Refd.** Robinson v. Marsh, [1921] 2 K. B. 640; Bradford v. Price (1923), 92 L. J. K. B. 871.
754. *Add. Annotation*:—**Refd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
768. *Add. Annotation*:—**Refd.** Bradford v. Price (1923), 92 L. J. K. B. 871.
769. *Add. Annotation*:—**Refd.** Bradford v. Price (1923), 92 L. J. K. B. 871.
773. *Add. Annotation*:—**As to (1)** **Refd.** Bradford v. Price (1923), 92 L. J. K. B. 871.
778. *Add. Annotation*:—**As to (2)** **Refd.** Bradford v. Price (1923), 92 L. J. K. B. 871.
781. *Add. Annotations*:—**Refd.** Bradford v. Price (1923), 92 L. J. K. B. 871; Butwick v. Grant, [1924] 2 K. B. 483.
786. *Add. Annotations*:—**Refd.** Fettes v. Robertson (1921), 37 T. L. R. 581. **Mentd.** Spencer v. Hemmerde (1922), 128 L. T. 33.
798. *Add. Annotations*:—**Consd.** Cheshire v. Vaughan, [1920] 3 K. B. 240; Maskell v. Hill, [1921] 3 K. B. 157. **Mentd.** Cohen v. Hall, [1922] 2 K. B. 37.
807. *Add. Annotation*:—**Mentd.** Lowther v. Harris, [1927] 1 K. B. 393.
809. *Annotations*: For "For full anns., see LANDLORD & TENANT," read "For full anns., see SALE OF LAND." *Add. Annotation*:—**As to (3)** **Refd.** Chillingworth v. Esche (1923), 92 L. J. Ch. 461.
810. *Annotations*:—For full anns., see S. C. No. 1192, post.

## PART V. SECT. 3, SUB-SECT. 13.—B.

746 i. *Agent*.—An agent authorised to receive money for his principal may not receive anything but money. "ut, if he receives a cheque on a bank, & the amount of the cheque is paid to the agent before his authority is revoked, that is a good payment to his principal.—**DELOREY v. GUYETT** (1920), 47 O. L. R. 137; 52 D. L. R. 506; 17 O. W. N. 471.—CAN.

746 ii. ———. ———.]—If one is authorised to sell anything for another, the presumption is that he is to sell for cash, unless there is something to show to the contrary.—**WATSON v. CADILLAC MOTOR SALES CO., LTD.**, [1920] 3 W. W. R. 107.—CAN.

st. ———. **Authority to collect debts—Cashing cheques received**.—A clerk employed in the business of the Canadian Govt. elevators, whose express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all money collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business, & which charges were almost always paid to him by accepted cheque, although they might have been received in cash if so tendered:—**Held**: to have no authority to cash any cheques paid to him or any ostensible authority justifying any bank giving him the cash for any such

cheque.—**R. v. ROYAL BANK OF CANADA**, [1920] 1 W. W. R. 198; 50 D. L. R. 293; 30 Man. L. R. 104.—CAN.

## PART V. SECT.

804 i. *Agent*.—**Implied authority from circumstances—Husband authorised to purchase stock for wife**.—The fact that a husband was authorised to act, & has acted, as his wife's agent in the purchase of stock through brokers does not in itself justify the brokers in assuming that he is her agent to direct a sale of it; & even assuming that the rules of the stock exchange subject to which the order to purchase was placed confer on the husband authority to direct such sale, the brokers' responsibility to the wife for the proceeds of the sale is not discharged by payment to the husband unless they show that he had authority, either express or implied, to receive the money.—**AIKMAN v. BURDICK BROTHERS**, [1923] 4 D. L. R. 852; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 31 B. C. R. 478.—CAN.

808 v. ———. **Break in market**.—Instructions by an owner of wheat to his agent to "sell" without more means "sell as soon as possible," unless there is something in the circumstances or the custom of a particular trade known to both parties to give the words a different meaning. Where instructions to sell, without stipulating any price, were given after the close of the market on May 3.—**Held**: the agent was justified in selling without further

instructions at the opening of the market on May 4, though the market had broken by reason of the Grain Exchange having withdrawn option trading & the possibility of the Govt. fixing the price.—**GRIERHART v. QUAKER OATS CO.**, [1919] 3 W. W. R. 888.—CAN.

809 iia. ———. ———. ———.]—Deft. wired to S., a land agent: "Bed-rock, £13,250 net, £400 down, stock & furniture at valuation." S. replied, "Your wire says £100 down; suppose you mean £1,000, wire us giving authority to sell if we can get your net price." Deft. then wired, "Four thousand down. Sell if you can get my net price." S. replied, "Have sold in accordance with your wire, freehold for £13,750, stock & furniture at valuation, showing you £13,250 net, £4,000 to be paid down, balance to be arranged on mtge. by you. Possession as soon as license granted, not later than Aug. 20, £500 deposit paid":—**Held**: S. had no authority to sell on the terms on which he did sell.—**PRINGLE v. MCKAY**, [1922] N. Z. L. R. 818.—N.Z.

815 iia. ———. ———. ———. ———.]—**GRIERHART v. QUAKER OATS CO.** (1918), 12 D. L. R. 791.—CAN.

815 iib. ———. ———. ———. ———.]—A land agent, whom pltf. had informed of his willingness to sell a property for £900, obtained an offer of £825 & telegraphed it to pltf., but through a mistake in transmission the message as delivered to pltf. mentioned £925 as the amount of offer. Pltf. telegraphed his acceptance without naming

822. *Add. Annotation*:—Generally, *Mentd.* Lowther v. Harris, [1927] 1 K. B. 393.

828. *Add. Annotations*:—As to (1) *Distd.* Common wealth Trust v. Akotey (1925), 94 L. J. P. C. 167. *Refd.* Bradford v. Price (1923), 92 L. J. K. B. 871. *Generally, Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.

829. *Add. Annotation*:—*Refd.* Lowther v. Harris (1926), 43 T. L. R. 24.

833. *Add. Annotations*:—*Consd.* Keen v. Mear, [1920] 2 Ch. 574. *Apld.* Lewcock v. Bromley (1920), 127 L. T. 116.

834. *Add. Annotation*:—As to (1) *Consd.* Keen v. Mear, [1920] 2 Ch. 574.

834a. ———.]—A general authority to an agent to find a purchaser of a house does not authorise the agent to sign a contract binding on the vendor. There must, to justify such a signing, be a special & express authority to sign.—LEWCOCK v. BROMLEY (1920), 127 L. T. 116; 37 T. L. R. 48; 65 Sol. Jo. 75.

834b. ———.]—The mere employment of an estate agent by an owner to dispose of a house confers no authority to make a contract. The agent is solely employed to find some one to negotiate with the owner. But if the agent is definitely instructed to sell at a certain price, those instructions involve authority to make a binding contract & to sign an agreement.

But the authority is limited to signing an open contract & does not authorise the agent to sign a contract with special conditions, e.g. as to title with which it is no part of an estate agent's duty to deal.—KEEN v. MEAR, [1920] 2 Ch. 574; 89 L. J. Ch. 513; 124 L. T. 19.

836. *Add. Annotations*:—*Consd.* Keen v. Mear,

an amount. The offer having been withdrawn, the agent agreed to sell the property to deft. for £825, & let him into possession. On the tender of the formal contract to pltf. for execution a month later he learned about the mistake in the telegram for the first time & refused to complete:—*Held*: the specific authority originally given to the agent did not authorise the sale of pltf.'s property for less than £900, & no land agent as such is held out as having a general authority on behalf of his client to sell on any terms or at any price.—SHORTAL v. BUCHANAN, [1920] N. Z. L. R. 103.—N.Z.

815 v. ———.]—Pltfs., an incorporated co., owning lots of land, appointed C. their general manager to supervise the sale of the lots. In the agreement between pltf. & C. it was provided that he had no authority to make any representation as to pltf.'s properties other than those contained in their printed matter, & that he should have authority to accept offers for the purchase of lots according to pltf.'s price-list. Pltfs. employed G. to sell their lots. G., in Mar. 1914, telephoned to deft. from pltf.'s office & induced deft. to buy two of the lots, upon the express agreement that pltf. would resell the lots not later than Aug. 1914, at a profit of \$100 on each lot; G. informed deft. that he was authorised by C. to make this arrangement. C. was present when G. was telephoning & heard what G. said; C. told G. that he should not have said that pltf. would resell the lots; but, according to the testimony of G., C. himself was not called as a witness. C. ratified the representation made in his name & ostensibly by his authority:—*Held*: C., as general manager, had ostensible autho-

riety to make or ratify the collateral agreement, & any secret restriction of his authority would not affect deft., who relied upon his being the general manager.—CANADIAN GENERAL SECURITIES CO., LTD. v. GEORGE (1918), 42 O. L. R. 560; 13 O. W. N. 355; 14 O. W. N. 71; 43 D. L. R. 20.—CAN.

817 ii. ———.]—*Implied authority*.—A broker who had purchased corn on margin for a customer:—*Held*: justified in selling on the customer failing to forward margin money when a slump occurred in the market-price, a general condition of the broker transacting such business being that he reserved the right to close transactions without further notice when margins were unsatisfactory, which condition the ct. inferred must have been known to the customer who had been for some time a "room trader" & dealer on a larger scale in the broker's office.—MALOOF v. BICKELL, [1920] 1 W. W. R. 407; 50 D. L. R. 590; 17 O. W. N. 294; 59 S. C. R. 429.—CAN.

817 iii. ———.]—*Authority to find purchaser*.—On Jan. 20, 1920, deft. handed to his brokers a letter in these terms: "I authorise you to procure a buyer of the above premises for Rs. 45,000 & on your sending same, I shall pay you as remuneration at 1 per cent. on the purchase-money. The same will be paid at the registration of the conveyance, otherwise not." The offer contained in the letter was accepted by pltf. & thereupon the fact of such acceptance was communicated on the same day to deft.:—*Held*: the offer contained in the letter amounted only to an offer to be put into touch with intending buyers of the premises & it was in no sense an authority to the brokers to sell deft.'s property or an offer on

[1920] 2 Ch. 574. *Distd.* Lewcock v. Bromley (1920), 127 L. T. 116.

836a. ———.]—KEEN v. MEAR, No. 834b, *ante*.

836b. ———.]—*Authority alleged to be limited to state price*.—Action for specific performance of a contract alleged to have been entered into by letters between pltf. & H. & R., estate agents, whom pltf. alleged were agents for the first deft. for the sale to pltf. of freehold premises. The defence was that the agents had a limited authority to state a price only. The premises had been offered for sale by auction by order of the mtgees. under particulars & conditions of sale referred to in the correspondence on Jan. 18. H. & R. inclosed plan & auction particulars to pltf. stating in their letter that their client would be willing to sell the freehold at £550. On Jan. 27, pltf. offered £400. On the 28th H. & R. submitted that offer to the first deft., & asked for her instructions. On Feb. 8, the first deft.'s husband communicated with H. & R. over the telephone, & on Feb. 10, they wrote to pltf. stating that their client would not accept £400, & that "we are now authorised to close with you if you will increase your offer to £450." Pltf., on Feb. 14, wrote to H. & R. referring to the letter of Feb. 10, & stating "we are prepared to accept your offer of this property agreeing to the price of £450. Kindly forward the contract in due course." On Feb. 17, H. & R. wrote informing the first deft. that, as instructed by her husband, they had offered the property to pltf. for £450, & that pltf. had agreed to buy. The second deft. was prepared to purchase the property from the mtgees. at a price more than £450:—*Held*: the agents had authority to conclude

the part of the vendor to sell the premises to whoever might be brought in touch with the vendor by the brokers.—PURNA CHANDRA DUTT v. INDRA CHANDRA ROY (1921), 1 L. R. 49 Calc. 389.—IND.

821 i. ———.]—*General authority*.—Sale in own name.—*Held*: position of pltf. being that of brokers, in selling in their own name they acted beyond the scope of their authority.—PATERSON v. MCCALLUM, [1921] N. Z. L. R. 869.—N.Z.

833 xiii. ———.]—*Instructions to procure purchaser at specified sum*.—In negotiations for the sale of property a notification by a principal to his agent that he will accept a purchaser at a specified sum will not authorise the agent to conclude a contract.—CARNEY v. FAIR (1920), 54 L. T. 61.—IR.

8k. *Solicitor*.—*Authority to receive tenders*.—Tenders to be sent either to agent or principal.—Exors. gave instructions to solrs. to advertise for tenders for a property & they told the solrs. to insert in the advertisement a notice to the effect that tenders might be sent either to the solrs. or to either of the exors.; this latter the solrs. did not do. A tender was received by the solrs. & forwarded by them to the exors. & they wrote acknowledging the receipt thereof. Some days later the tenant of the property forwarded a tender to one of the exors., who did not communicate with his co-exor. or the solrs. about it. The solrs., having heard no more from the exors. entered into a contract to sell the property to the person who made the first tender:—*Held*: the solrs. had no authority to give notice to the person making the first offer that his tender was accepted.—DEANS v. ORR (1922), 63 D. L. R. 720.—CAN.

- the contract, & plffs. were entitled to judgment for specific performance of it.—**ALLEN & Co., LTD. v. WHITEMAN** (1920), 89 L. J. Ch. 534; 123 L. T. 773; 64 Sol. Jo. 727.
837. *Add. Annotation*:—**Refd. Banque Belge Pour l'Etranger v. Hambrouck** (1920), 37 T. L. R. 76.
- 845a. — **Authority to discount bill.**—If an agent employed by the indorsees of a bill to get it discounted warrant it to be a good one, his employers are bound by his act, & are liable to refund if the bill be afterwards dishonoured by the acceptor.—**FENN v. HARRISON** (1791), 4 Term Rep. 177; 100 E. R. 959.
- Annotations*:—**Refd. Fyde v. Clark** (1796), 1 Esp. 447; **Lyon v. Mells** (1804), 1 Smith, K. B. 478; *Re Acraman, Ex p. Bushell* (1844), 3 Mont. D. & De G. 615; **Royal Albert Hall Corp. v. Winchelsea** (1891), 7 T. L. R. 362.
850. *Add. Annotation*:—**Refd. Collins v. Hopkins**, [1923] 2 K. B. 617.
860. *Add. Annotation*:—**Refd. Collins v. Hopkins**, [1923] 2 K. B. 617.
872. *Add. Citations*:—*affd.*, [1918] A. C. 626; 87 L. J. K. B. 1158; 119 L. T. 446; 34 T. L. R. 518; 62 Sol. Jo. 665, H. L.
- Add. Annotations*:—**Mentd. Calmenson v. Merchants' Warehousing Co.** (1920), 125 L. T. 129; **Dey v. Mayo**, [1920] 2 K. B. 346; **Everett v. Griffiths**, [1921] 1 A. C. 631. **Hearn v. Southern Ry.** (1925), 41 T. L. R. 305.
- 883a. **Salesman—Authority to cancel sale.**—**LECKENBY v. WOLMAN**, No. 308a, *ante*.
897. For "For full anns., see **ESTOPPEL**," read "For full anns., see **DEEDS**, Vol. XVII., p. 216, No. 285."

## Part VI.—Delegation.

906. *Add. Annotations*:—**Apld. Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller** (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53. **Refd. Prager v. Blatspiel, Stamp & Heacock**, [1924] 1 K. B. 566.
922. *Add. Annotations*:—**Apld. Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller** (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53. **Refd. Prager v. Blatspiel, Stamp & Heacock**, [1924] 1 K. B. 566.
926. *Add. Annotations*:—**Refd. Prager v. Blatspiel, Stamp & Heacock**, [1924] 1 K. B. 566; **Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller** (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53.
941. *Add. Annotations*:—*As to* (1) **Refd. Prager v. Blatspiel, Stamp & Heacock**, [1924] 1 K. B. 566. *Generally. Mentd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 251.
942. *Add. Annotation*:—**Refd. Prager v. Blatspiel, Stamp & Heacock**, [1924] 1 K. B. 566.
944. *Add. Annotations*:—**Refd. Prager v. Blatspiel, Stamp & Heacock**, [1924] 1 K. B. 566; **Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller** (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53.
955. *Add. Annotation*:—*Generally. Refd. Muller* (London) v. Lethem, Same v. I. R. Comrs., [1927] 1 K. B. 780.
966. *Add. Annotation*:—**Consd. Howard Houlder v. Manx Isles S.S. Co.**, [1923] 1 K. B. 110.
975. *Add. Annotation*:—**Consd. Belvedere Fish Guano Co. v. Rainham Chemical Works, Feldman & Partridge, Ind, Coope v. Same**, [1920] 2 K. B. 487.
- 980a. — — — — — **NATIONAL EMPLOYERS' MUTUAL GENERAL INSURANCE ASSOCN., LTD. v. ELPHINSTONE**, [1929] W. N. 135.
- 981a. — **Failure to give proper instructions to sub-agent.**—**SELLER v. WORK** (1801), Marshall on Marine Insurance, 4th ed., p. 243.

### PART V. SECT. 3, SUB-SECT. 16.

a. Transpose lines 5 & 6 of this paragraph.

### PART V. SECT. 3, SUB-SECT. 17.

5l. *Agent forbidding purchaser to use machinery only partly paid for.*—*Authority as such.*—Where a letter, sent to a buyer of a farm machine under a conditional sale contract before he is in default, forbidding him, under a threat of serious consequences, to use the machine, is written by an agent of the seller, with authority to sell & collect the purchase-money & make settlements therefor, as an assertion of a right which is to continue until the buyer makes a settlement, it will be held to be written within the apparent scope of such agent's authority.—**ROBERT BELL ENGINE & THRESHING CO. v. FARQUHARSON**, [1918] 1 W. W. R. 924; 11 Sask. L. R. 81; 39 D. L. R. 625.—**CAN.**

5m. *Real estate agent.—Authority to describe property.*—A real estate agent employed to find a purchaser has implied authority to describe to an intending purchaser the property offered for sale & to state any facts or circumstances which may affect its value.—**HUGH v. LOW** (Sask.), [1928] 4 D. L. R. 315; [1928] 2 W. W. R.

### 710.—CAN.

5n. *Manager of farm.—Authority to engage labour & sell produce.*—A manager of a farm or estate may engage labour to do the necessary work thereon, or he may sell the produce, & then the owner will be bound by the representations made by the manager as to such produce.—**RAVENE PLANTATIONS, LTD. v. ESTATE ABBEY**, [1928] App. D. 143. — **S. AF.**

### PART VI. SECT. 1.

906 iii. — *Mother managing daughter's property.*—Where a person employs another relying upon his peculiar aptitude for the work entrusted to him, it is not competent for that person to delegate the trust to another. Where the authority which a mother had to manage her daughter's property involved a certain trust or discretion for the exercise of which she was selected:—*Held*: she could not delegate that trust & appoint her husband to perform the duties of her agency.—**ROBINSON v. LONG**, [1923] 3 D. L. R. 918.—**CAN.**

906 iv. — *Manager of property.*—A lease is invalid if it is granted by a person as attorney for one who is a manager of the property leased, & who did not negotiate or consider the lease or know of it until after its execu-

tion.—**BONNERJI v. SITANATH DAS** (1921), 49 L. R. Ind. App. 46; 1 L. R. 49 Calc 325.—**IND.**

### PART VI. SECT. 2, SUB-SECT. 1.

943 iii. — — — — — *If an agent for sale of grain to whom the goods are consigned or delivered, consigns the same to a sub-agent for sale, & the bill of lading & such other documents & circumstances as there are support the inference of the agent's right to deal with the goods, then in the absence of anything showing a contrary intention the sub-agent has only to account in respect of the proceeds to the first agent & not to the original principal.*—**HINCHCLIFFE v. BAIRD & BOTTERELL**, [1920] 3 W. W. R. 159; 53 D. L. R. 451; 30 Man. L. R. 520.—**CAN.**

### PART VI. SECT. 3, SUB-SECT. 2.

964 v. — — — — — *Contract with sub-agent approved by principal.*—Where a co. had engaged an agent to sell its shares, had intended him to employ sub-agents, & had approved of the contract made by the agent on its behalf with a sub-agent:—*Held*: the co. was liable to the sub-agent for commission due under his contract.—**BERGMAN v. CANADIAN FARM IMP. CO.**, [1924] 1 D. L. R. 350.—**CAN.**

## Part VII.—Ratification.

987. *Add. Annotation* :—*Consd. Re Becket, Purnell v. Paine*, [1918] 2 Ch. 72.
- 989a. ——.]—*Resps.' manager*, without their authority & fraudulently, obtained from their bankers, in exchange for cheques drawn by resps. upon the bankers, drafts for equivalent amounts drawn by the bankers upon themselves, payable to bearer, & crossed "not negotiable." These drafts the manager paid to an account which he had with appls., & they collected the amounts. *Resps. sued appls. for damages for conversion of the drafts* :—*Held* : the action failed, since resps. could not ratify the act of their manager in obtaining the drafts, so as to have a title to sue, without also ratifying his subsequent dealing with the drafts, the form of which made collection through a bank necessary.—*UNION BANK OF AUSTRALIA v. MCCLINTOCK*, [1922] 1 A. C. 240; 91 L. J. P. C. 108; 126 L. T. 588, P. C.
- Annotation* :—*Refd. Australian Bank of Commerce v. Perel*, [1926] A. C. 737.  
*Compare* No. 338a, *ante*.
995. *Add. Annotation* :—*Refd. Bow's Emporium v. Brett* (1927), 44 T. L. R. 194.
998. *Add. Annotation* :—*Refd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
1002. *Add. Annotations* :—*Mentd. McMillan v. Canadian Northern Ry.*, [1923] A. C. 120; *Walpole v. Canadian Northern Ry.*, [1923] A. C. 113.
1005. *Add. Annotation* :—*Refd. The Joannis Vatis* (1921), 91 L. J. P. 182.
1009. *Add. Annotations* :—*Refd. Drughorn v. Rederiaktiebolaget Trans-Atlantic*, [1919] A. C. 203; *The Joannis Vatis* (1921), 91 L. J. P. 182; *Underwood v. Bank of Liverpool*, *Same v. Barclays Bank*, [1924] 1 K. B. 775; *Robinson v. Midland Bank* (1925), 41 T. L. R. 402.
1022. *Add. Annotation* :—*Consd. Reynolds v. Atherton* (1921), 125 L. T. 690.
1026. *Add. Annotation* :—*Refd. Reynolds v. Atherton* (1921), 125 L. T. 690.
1027. *Add. Annotation* :—*Refd. Re Bebington's Tenancy, Bebington v. Wildman*, [1921] 1 Ch. 559.
1028. *Add. Annotation* :—*Refd. Re Bebington's Tenancy, Bebington v. Wildman*, [1921] 1 Ch. 559.
1029. *Add. Annotation* :—*Refd. Re Bebington's Tenancy, Bebington v. Wildman*, [1921] 1 Ch. 559.
1033. *Add. Annotation* :—*Refd. Bowyer, Philpott & Payne v. Mather*, [1919] 1 K. B. 419.
- 1033a. ——. *After issue of notice to abate—Before institution of proceedings.*]—By a bye-law of the city council of W., which was the sanitary authority of W., it was provided that whenever the council was in vacation the mayor & the chairmen of the respective committees of the council might give such instructions as were requisite with respect to any matter of an urgent nature, provided that all such acts were in due course reported to the council. The council of W. held no meeting between July 26, 1917, & Oct. 18, 1917—the summer vacation, & the public health committee of the council did not sit between July 17, 1917, & Oct. 9, 1917. On July 17, 1917, the public health committee passed a resolution appointing its chairman, & in his absence the acting vice-chairman, to deal with all urgent matters on behalf of the committee during the summer vacation. This resolution was reported to the council & approved by them on July 26, 1917. About the middle of Sept. 1917, the medical officer of health, being satisfied that a nuisance existed upon certain premises in the district of the council & city of W., caused a written notice of the fact of its existence to be served on the owner of the premises under Public Health London Act, 1891 (c. 70), s. 3. As the nuisance was not abated, the matter was reported by the medical officer to the chairman of the public health committee, & the latter, considering that the matter was urgent, & acting under the authority conferred upon him by the resolution of the public health committee, which had been confirmed by the council, as before stated, directed that a notice should be served upon the owner of the premises requiring him to abate the nuisance in accordance with the provisions of sect. 4 of the Act. This notice, which was issued in due form, was served upon the owner on Sept. 25, 1917. This action of the chairman was reported to the public health committee at their first meeting after the summer vacation, on Oct. 9, 1917, & approved by them, & the matter was later on, on Oct. 18, 1917, reported to & approved by the council. As the nuisance still continued, proceedings were taken against the owner by the sanitary inspector, & on Dec. 5, 1917, an order was made for its abatement by the magistrate who heard the complaint. The owner thereupon applied for & was granted a rule *nisi* for *certiorari* to quash the order of the magistrate on the ground that the same was made without jurisdiction, the notice of Sept. 25, 1917, not having been given by the authority

## PART VII. SECT. 3.

1006 v. a. ——.]—A contract made on behalf of a person, but without his authority, by a person who does not profess to be acting for a principal cannot be ratified.—*REIMER v. ROSEN*, [1918] 1 W. W. R. 425.—CAN.

1006 v. b. ——.]—A person does not become a principal by any act of so-called ratification, unless at the time of the contract the so-called agent was not acting for himself but was intending to bind an ascertainable principal; even if it is intended that some un-

named principal shall benefit, if the so-called agent purports to be acting for himself & not for another, the rule applies.—*MCCALLUM v. COHOB* (1918), 44 O. L. R. 497; 46 D. L. R. 733; 15 O. W. N. 262.—CAN.

1006 v. c. ——.]—Pltf. & F. were customers of defts.' bank & F. was unknown to pltf., largely indebted to the bank. K., a branch manager, drew up a promissory note for \$2,500 which was signed by F. & made payable to the order of pltf. on demand. Pltf. was induced to advance the \$2,500 before the undertaking by K.,

written on the note, "this note will be paid when demanded," but K. did not sign this statement as branch manager. The bank received the money by pltf.'s cheque payable to order of F. & indorsed by him, which sum was then used to liquidate F.'s debt to the bank. Pltf. claimed that deft. bank had ratified the acts of K. & were liable :—*Held* : it was not the intention of K. as shown by the evidence to act as agent of defts. in the transactions.—*BRASSETT v. ROYAL BANK OF CANADA* (1922), 67 D. L. R. 740.—CAN.

or direction of the council or of the public health committee, or after consideration by them in pursuance of Public Health London Act, 1891 (c. 76), s. 4 (1):—*Held*: as the act of the duly authorised agent of the council, namely, the chairman of the public health committee, appointed to act in urgent matters during the vacation under the bye-law & in pursuance of the resolution of the committee subsequently ratified by the council, was reported to & approved & ratified by the council prior to the institution of proceedings against the owner of the premises, the ratification related back to the time of the doing of the act in question, namely, the serving of the notice of Sept. 25, 1917, & the magistrate had jurisdiction to make the order of Dec. 5, 1917.—*R. v. CHAPMAN, Ex p. ARLIDGE*, [1918] 2 K. B. 298; 87 L. J. K. B. 1142; 119 L. T. 59; 82 J. P. 229; 16 L. G. R. 525, D. C.

*Annotation*:—*Reid*. Bowyer, Philpott & Payne v. Mather, [1919] 1 K. B. 419.

1040. *Add. Annotations*:—*Reid*. Prager v. Blat-spiel, Stamp & Heacock, [1924] 1 K. B. 586; Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53.

1079. *Add. Annotation*:—*As to* (1) *Reid*. *Re* Bebington's Tenancy, Bebington v. Wildman, [1921] 1 Ch. 559.

1080. *Add. Annotation*:—*Mentd*. *Re* Witham, Chadburn v. Winfield, [1922] 2 Ch. 413.

#### PART VII. SECT. 5.

1037 *vid.* —.]—In order that a person may be deemed to have ratified an act done without his authority, it is necessary that at the time of the ratification he should have full knowledge of all the material circumstances in which the act was done, unless he intends to ratify the act & take the risk whatever the circumstances may have been.—*WHEELER v. HIGBY* (1918), 42 O. L. R. 654; 14 O. W. N. 150; 43 D. L. R. 92.—*CAN.*

1037 *viii.* —.]—The agent of debts hired *plfts.*, but exceeded his authority in regard to the terms of hire.—*Held*: *defts.* were not estopped, by accepting *plfts.* services, from disputing *plfts.* claim for wages, *defts.* having repudiated the agent's authority as soon as the terms of the contract were brought to their attention.—*ROY v. ST. JOHN LUMBER CO., FISHER v. ST. JOHN LUMBER CO.* (1919), 46 N. B. R. 120.—*CAN.*

1037 *ix.* —.]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—*THOMPSON v. LYNNE*, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—*CAN.*

#### PART VII. SECT. 6, SUB-SECT. 1.

1044 *vii.* —.]—In considering whether a person is bound by the acts of an ostensible agent which are alleged to have been ratified, the distinction is to be observed between a ratification to be implied from conduct showing an intention to ratify & an estoppel to deny ratification, the case, that is, where, without a conscious intention to ratify, the so-called principal is estopped from denying that his conduct must be treated as a ratification.—*MCKAY v. TUDHOPE ANDERSON CO., LTD.*, [1918] 3 W. W. R. 994; 44 D. L. R. 100; 14 Alta. L. R. 131.—*CAN.*

1044 *viii.* —.]—Ratification by a principal of the acts of an alleged agent must be evidenced either by clear

adoptive acts or by acquiescence equivalent thereto, & the act or acts of adoption or acquiescence must be accompanied by full knowledge of all the essential facts.—*THOMPSON v. LYNNE*, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—*CAN.*

1044 *ix.* —.]—If an agent executes on behalf of a former principal a contract for the sale of land, although his authority to execute such contracts has terminated, then if the purchaser seeks to hold the principal liable thereunder he must show that the principal has placed himself by some act or omission of his own in a position which compels him to accept the contract & carry out its terms; & this is not shown where there does not appear to have been any holding out of such agent by the principal either to the purchaser directly or by circumstances of publicity which reached him & upon which he acted.—*ZEREBESKY v. POWELL*, [1921] 3 W. W. R. 528.—*CAN.*

1044 *x.* —.]—*ABBOTT v. McDougall & Cowans (Man.)*, [1928] 1 D. L. R. 295; [1927] 3 W. W. R. 816.—*CAN.*

#### PART VII. SECT. 6, SUB-SECT. 2.

1086 *i. Purchase — Acceptance of goods bought.* —]—Where an agent, authorised to buy goods of a certain kind, buys goods of a different kind, if the principal for whom they are bought, though repudiating the contract & returning most of the goods, keeps part of them, he thereby does an act in relation to the goods which is inconsistent with the ownership of the seller, & so accepts them, & in so doing ratifies the purchase.—*BONTREX IMPORTING CO. v. PANAR* (1922), 63 D. L. R. 200; [1922] 1 W. W. R. 128.—*CAN.*

1100 *iv.* —.]—*Paid by cheque of unauthorised agent.* —]—S. took part in the negotiations for the sale of an engine by agent either to effect the sale or to collect the purchase-money. After the sale resp. paid the money to S.,

1098. *Add. Annotation*:—*Apld.* Bonham v. Maycock (1928), 138 L. T. 736.

1102. *Add. Annotations*:—*Consd. Re* Bankruptcy Notice, [1924] 2 Ch. 76. *Reid*. Edwards v. Motor Union Insee., [1922] 2 K. B. 249. *Mentd.* Huddersfield Fine Worsteds v. Todd (1925), 42 T. L. R. 52.

1104a. ———.]—If goods in the city of London are sold by a broker, to be paid by a bill of exchange, the vendor has a right, within a reasonable time, if he is not satisfied with the sufficiency of the purchaser, to annul the contract. But the vendor must intimate his dissent as soon as he has had an opportunity to inquire into the solvency of the purchaser. Five days considered too long a period for this purpose.—*HODGSON v. DAVIES* (1810), 2 Camp. 530; 170 E. R. 1241, N. P.

*Annotations*:—*Reid*. Maxwell v. Doare (1854), 23 L. T. O. S. 1; Humfrey v. Dale (1857), 7 E. & B. 266. *Mentd.* Trueman v. Loder (1840), 11 Ad. & El. 589; Scott v. Barclays Bank, [1923] 2 K. B. 1.

1105. *Add. Annotation*:—*Reid*. The Yuri Maru, The Woron, [1927] A. C. 906.

1109. *Add. Annotation*:—*As to* (2) *Reid*. Koenigsblatt v. Sweet, [1923] 2 Ch. 314

1128. *Add. Annotation*:—*Reid*. Koenigsblatt v. Sweet, [1923] 2 Ch. 314.

1129. *Add. Annotation*:—*Reid*. Robinson v. Midland Bank (1925), 41 T. L. R. 402.

1131. *Add. Annotation*:—*Mentd.* Mason v. Lack (1929), 140 L. T. 696.

thinking that he was applt.'s agent, & a few days later S. told applt. that he had received the money but could not pay it over then, & offered to pay interest on it, to which applt. agreed. After several applications from applt. S. handed him a cheque for the balance shown to be due in an accompanying statement, in which S. debited himself with interest & took credit for commission. Applt. accepted the cheque & paid it into his account, but it was dishonoured & he then sued resp. for the purchase-money.—*Held*: applt.'s acceptance of the cheque was a clear adoptive act evidencing his ratification of S.'s unauthorised act in receiving the money.—*McEwan v. JOHNSTONE*, [1918] N. Z. L. J. 49.—*N.Z.*

so. —.]—*Demand for payment over of deposit.* —]—Where an agent had no authority to sell on the terms on which he did sell.—*Held*: a letter of the principal, demanding payment of the money received by the agent as a deposit, did not ratify the action of the agent in selling.—*PRINGLE v. M'KAY*, [1922] N. Z. L. R. 818.—*N.Z.*

1104 *iii a.* ———.]—Where a principal, knowing the full circumstances of the signing of an agreement for sale & purchase of land by an agent on his behalf, does not notify the purchaser of his repudiation for nearly three years he is estopped by his acts & conduct from objecting to the agreement.—*WEST v. DILLICAN*, [1921] N. Z. L. R. 417.—*N.Z.*

#### PART VII. SECT. 6, SUB-SECT. 3.

1127 *i. On person alleging ratification.* —]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—*THOMPSON v. LYNNE*, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—*CAN.*

#### PART VII. SECT. 7, SUB-SECT. 1.

1132 *iii.* —.]—An act done by a person on behalf of another person, but without that other person's authority or knowledge, & subsequently

1137. *Add. Annotation*:—Generally, *Mentd. Hartley v. Hymans*, [1920] 3 K. B. 475.
1138. *Add. Annotation*:—As to (2) *Refd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.
1153. *Add. Annotation*:—*Refd. Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.
1160. *Add. Annotations*:—As to (1) *Refd. The Joannis Vatis* (1921), 91 L. J. P. 182. Generally, *Mentd. Sutters v. Briggs*, [1922] 1 A. C. 1.
1168. *Add. Annotation*:—*Mentd. Goldrei, Foucard v. Sinclair & the Russian Chamber of Commerce in London* (1917), 87 L. J. K. B. 261.

## Part VIII.—Relations between Principal and Agent.

1175. *Add. Annotation*:—*Refd. Cheshire v. Vaughan*, [1920] 3 K. B. 240.
1176. *Add. Annotations*:—*Refd. Cheshire v. Vaughan*, [1920] 3 K. B. 240; *Maskell v. Hill*, [1921] 3 K. B. 157. *Mentd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
1186. *Add. Annotation*:—Generally, *Mentd. Bradford v. Price* (1923), 92 L. J. K. B. 871.
1196. *Add. Annotation*:—*Refd. Re City Equitable Fire Insce.*, [1925] Ch. 407.
1206. *Add. Annotations*:—*Consd. Gould v. S. E. & C. Ry.*, [1920] 2 K. B. 186. *Apld. Finn v. Shelton Iron, Steel & Coal Co.* (1924), 131 L. T. 213; *Westminster Bank v. Hilton* (1926), 136 L. T. 315. *Refd. Weigall v. Runciman* (1916), 85 L. J. K. B. 1187; *Weiss, Biheller & Brooks v. Farmer*, [1923] 1 K. B. 226. *Mentd. Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Johnson v. Taylor*, [1920] A. C. 144; *Wilson, Holgate v. Belgian Grain & Produce Co.*, [1920] 2 K. B. 1; *Diamond Alkali Export Corp'n. v. Bourgeois*, [1921] 3 K. B. 443; *Sassoon v. International Banking Corp'n.*, [1927] A. C. 711.
1208. *Add. Citation*:—13 Asp. M. L. C. 463.
- 1208a. ———.]—*VALE (J.) & Co. v. VAN OPPEN & Co., LTD.* (1921), 37 T. L. R. 367.
1211. *Add. Annotations*:—*Apld. Weigall v. Runciman* (1916), 13 Asp. M. L. C. 463. *Refd. Finn v. Shelton Iron, Steel & Coal Co.* (1921), 131 L. T. 213. *Mentd. Spencer v. Ashworth, Partington* (1925), 94 L. J. K. B. 447.
- 1243a. ———.]—*Extent of liability*.—Pltf. employed deft., a chartered accountant, to investigate the affairs of a co. in which he was interested. In a letter of instructions to deft. pltf. inserted libellous statements concerning two officials of the co. -Dft. handed the letter to his partner, who negligently left it at the co.'s office. The manager found it, read it, & communicated its contents to the two persons defamed, each of whom sued pltf. for libel & obtained judgment against him for damages & costs. Pltf. then sought to recover from deft. the amount which he had paid for damages & costs in the libel actions as damages for breach of an implied duty to keep secret the letter of instructions:—*Held*: pltf.'s liability for damages in the libel actions did not result from deft.'s breach of duty, & deft. was liable for nominal damages only.—*WELD-BLUNDELL v. STEPHENS*, [1920] A. C. 956; 89 L. J. K. B. 705; 123 L. T. 593; 36 T. L. R. 640; 64 Sol. Jo. 529, H. L.
- Annotations*:—*Consd. Re Polemis & Furness Withy*, [1921] 3 K. B. 560; *A. & B. Taxis v. Secretary of State for Air*, [1922] 2 K. B. 328; *Harnett v. Bond*, [1924] 2 K. B. 517. *Refd. Proops v. Chaplin* (1920), 37 T. L. R. 112; *Elliott Steam Tug Co. v. Shipping Controller*, [1922] 1 K. B. 127; *The San Onofre*, [1922] P. 243; *Adelaide S.S. Co. v. IL*, [1923] 1 K. B. 59; *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461; *Ham-brook v. Stokes*, [1925] 1 K. B. 141; *Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83; *Singleton Abbey (Owners) v. Paludina (Owners)*, *The Paludina* (1926), 95 L. J. P. 135.
- 1243b. ———.]—Accountants, employed to prepare balance-sheets from the books of a

ratified by that other creates the relationship of principal & agent between the parties in respect of that act.—*GREAT WEST FARMS, LTD. v. HANSBERGER*, [1924] 1 D. L. R. 185.—CAN.

### PART VII. SECT. 7, SUB-SECT. 2.

*st. Trading goods—Agent for sale*.—If an agent for sale of goods trades them for other goods & the principal ratifies the transaction, the goods received in exchange become the principal's property.—*REX GROCERY v. HIGGS & KEEN*, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—CAN.

### PART VIII. SECT. 2, SUB-SECT. 1.—A.

1184 v. ———.]—*Goods not in accordance with order*.—Defts. gave to pltf. a written order to ship from England on account of defts. one thousand three-gallon & two hundred & fifty three-gallon stoneware jars. Pltf. ordered jars from a manufacturer in England to be shipped in performance of this order. Two lots were shipped & delivered to defts. who paid for them. Delivery of the last

lot, which comprised thirty-nine three-gallon & three hundred & forty-two two-gallon jars, was refused by defts. on the ground that there were twenty-three more of the three-gallon jars & twenty-five less of the two-gallon jars than had been ordered, & also that the mouths of a large number of the jars were not of the specified size:—*Held*: pltf. was under a duty to purchase goods for defts. of the description ordered, & his failure to do so amounted to a breach of duty.—*BULTERS v. ROORE*, [1922] N. Z. L. R. 549.—N.Z.

1188 ii. ———.]—Wheat held by defts. for pltf. was on pltf.'s order shipped by defts. from M. to A. Pltf. telegraphed instructing defts. to sell at once. Defts. wrote saying that until the cars arrived at A. they were unable to sell. They at once, however, tried to sell & after ten days did so:—*Held*: they were justified in selling at the price then obtainable & without receiving further instructions.—*JACKSON v. SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD.*, [1919] 3 W. W. R. 572.—CAN.

### PART VIII. SECT. 2, SUB-SECT. 2.—A. (a).

1214 iv. ———.]—*Negligent misrepresentation*.—An agent who in breach of his duty to his principal induces him by negligent misrepresentation to enter into a contract is liable to make good to his principal the loss arising therefrom.

In such a case the principal may recover either in tort or in contract, & it is no answer to his claim that he is also entitled to recover from the other party to the contract induced by his agent.—*YOUNG v. TASSELL*, [1918] N. Z. L. R. 924.—N.Z.

1214 v. ———.]—The duty of a paid agent to his principal is to exercise care, skill, & honesty, & if he takes on himself to convey information which he considers it material that his principal should know, & which he recommends & intends his principal to adopt, it is his duty to use reasonable care & skill in ensuring the accuracy of that information.—*BROWN v. THORNES*, [1920] N. Z. L. R. 306.—N.Z.

firm, stated the amount of "cash at the bank" as it appeared in the books, without examining the bank pass-book, or obtaining any statement in reference thereto from the bank, or informing the firm that they had not done so. The entries in the books were falsely made by a fraudulent clerk, whose defalcations were not discovered, as they would have been if the entries in the books had been checked by reference to the pass-book.—*Held*: (1) the accountants were negligent; (2) they were liable in damages for the amount of the defalcations of each year which would have been discovered if the proper steps had been taken as to the pass-book.—*Fox & Son v. MORRISH, GRANT & Co.* (1918), 35 T. L. R. 126; 63 Sol. Jo. 193.

**1250. Add. Annotation:—***Apld. Re City Equitable Fire Insce.*, [1925] Ch. 407.

**1251. Add. Annotation:—***Apld. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

After this case add "*See, generally, COMPANIES, Vol. IX., pp. 553 et seq.*"

**1263a. —**—*J*—Agents employed to sell land are

generally employed to obtain the best purchase price reasonably obtainable. Their duty to their principal does not cease when they have procured an offer to purchase which he accepts subject to contract. It is still their duty to inform him of any offer which they receive at a higher price than that so accepted, & they remain subject to this duty until final contracts of sale & purchase have been signed & exchanged.—*KEPPEL v. WHEELER*, [1927] 1 K. B. 577; 96 L. J. K. B. 433; 136 L. T. 203, C. A.

**1265. Add. Annotation:—***Refd. Re City Equitable Fire Insce.*, [1925] Ch. 407.

**1267. Add. Annotations:—***Refd. Banbury v. Bank of Montreal*, [1918] A. C. 626; *Everett v. Griffiths*, [1920] 3 K. B. 163.

**1269. Add. Annotations:—***Refd. Banbury v. Bank of Montreal*, [1918] A. C. 626; *Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42; *Pratt v. Patrick*, [1924] 1 K. B. 488. *Mentd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

#### PART VIII. SECT. 2, SUB-SECT. 2. — B. (b).

**1245 iv. —**—*J*—A law-agent, to whom a client entrusted money for investment on heritable security to yield 5 per cent., invested £1,000 of the amount in 1903 on a heritable bond which bore to be secured over tenement property, & £200 on a postponed bond over other subjects. These properties both belonged to another client of the agent's firm, who, in 1905, died insolvent, & heavily indebted to the firm. He had granted an *ex facie* absolute disposition of the tenement property in favour of the firm prior in date to the bond for £1,000, which loan was accordingly not validly secured; & the postponed bond for £200 was worthless, as the prior bond exhausted the value of the security subjects. None of these facts were communicated to the lender.—*Held*: while the agents were not guilty of negligence in investing the money as they did in 1903, in view of the fact that they were called upon to obtain a 5 per cent. investment, they were guilty of negligence upon the death of the borrower in 1905, in respect that, a conflict of interest having then arisen between them & the lender in connection with the £1,000 bond, they failed to inform their client of the position, failed to realise her investments, & failed to advise her to seek independent legal advice.—*WERNHAM v. McLEAN, BAIRD & NEILSON*, [1925] S. C. 407.—*SCOT*.

*sv. Customs broker.*—*WOLSELY TOOL & MOTOR CAR Co. v. JACKSON POTTS & Co.* (1915), 7 O. W. N. 617; 8 O. W. N. 311; 33 O. L. R. 96, 587.—*CAN.*

**1280 f. Factor.**—Where advances are made by a factor on the security of a world commodity, such as grain, consigned to him for sale, it is his duty to deal with the goods in such a way as to guard, not only himself, but the principal also, against loss. There is implied in every such transaction a right on the part of the factor to realise on his security whenever the exigency of the case demands it.—*UNITED GRAIN GROWERS, LTD. v. MABEY*, [1925] 1 D. L. R. 301; [1925] 1 W. W. R. 19.—*CAN.*

**1282 ii. —**—*Extent of duties.*—If a local agent is entrusted by an absent owner with looking after & renting a furnished house, then, although he is not an insurer of the safety of the property, he must use reasonable care & diligence in its

protection & preservation, & if he fails to do so he will be liable for the resulting loss. If furniture disappears or is damaged beyond reasonable wear & tear, he is *prima facie* liable to account for it. Evidence sufficient to excuse him from liability would in some instances be quite light, in others more burdensome, depending on such questions as the checking over or not of the articles of the furniture, the character of the tenants & the constituents of the tenant's family, the value & nature of the missing articles, etc.

When the owner claims damages against the agent for lost or damaged articles the question of liability may be directly involved in regard to each article, & that liability is a question for the judge, & in such case the value of any article or the damage done to it can be most conveniently determined by the judge when deciding the question of liability, rather than by a referee.—*CARLILE v. NORTHERN TRUSTS Co.*, [1924] 2 W. W. R. 961.—*CAN.*

**1262 iii. —**—*J*—A house agent, employed to look after the renting of a furnished house, must keep a proper inventory of the furniture & check it over carefully with each incoming & outgoing tenant, & he must exercise care in seeing that tenants to whom he rents the house are the proper sort of persons to occupy it; but, in the absence of a special contract, the agent is not a guarantor of the rent, or bound to pay the taxes, or to notify the owner so as to prevent a sale of the house for non-payment thereof.—*HYLAND v. COSTERTON* (R. C.), [1927] 1 D. L. R. 1166; [1927] 1 W. W. R. 340.—*CAN.*

**1264 ii. —**—*Acting for vendor & purchaser.—Payment of rents to vendor after notice of claim by purchaser.*—Where an agent who acted for both parties in connection with a sale of immovable property on the terms of "cash against transfer," received the rents & after notice that they were claimed by the purchaser, paid them over to the seller as having, in his opinion, the better title thereto.—*Held*: he was personally liable to the purchaser therefor.—*DE KOCK v. FINCHAM* (1902), 19 S. C. 136.—*S. AF.*

*sw. Wool broker.*—A wool broker, in cases where he receives wool from a customer upon which a limit has been placed, is not in law bound to indicate to the customer the state of the market from time to time, so as to be

liable in damages if he fails to do so.—*FERRERA v. GINGELL*, [1921] E. D. L. 374.—*S. AF.*

#### PART VIII. SECT. 2, SUB-SECT. 2. — C.

**1269 vii. —**—*J*—Doft., an insurance broker, gratuitously procured policies from American cos.—*Held*: as it was not shown that doft. was in any way negligent, or that he knew or ought to have known of the invalidity of the policies, doft. was not liable.—*DIMITROFF v. GONDER* (1924), 56 O. L. R. 119.—*CAN.*

#### PART VIII. SECT. 2, SUB-SECT. 3. — A. (a).

*ti. — Purser employed on ship by railway company.—Money advanced by company to enable ship to be procured.*—*Held*: the co. were not liable to account to the shipowner for money received by the purser & not paid over, for he was accountable to the shipowner.—*VANEVRY v. BUFFALO & LAKE HURON RY. Co.* (1861), 20 U. C. R. 630.—*CAN.*

**1276 i. Failure to keep accounts.—Liability for charges of accountant preparing accounts.**—Doft., employed by ptff. to administer his affairs, exhibited gross negligence in carrying out his trust. He failed to keep proper books or records of ptff.'s affairs or to render accounts. Ptff. was compelled to employ accountants to prepare accounts between the parties.—*Held*: ptff. was entitled to claim the charges of two accountants for preparing accounts between the parties as damages due to doft.'s negligence, which doft. should have contemplated as the natural result of such negligence.—*MEAD v. CLARKE*, [1922] E. D. L. 49.—*S. AF.*

**ix. No duty to account to minor.—Agent appointed by guardian.**—An agent appointed by the guardian of a minor is not liable to account to the minor for his acts, even though he received properties belonging to the minor.—*RAMATHIAN CHETTIAR v. MUTHIAH CHETTI* (1919), 1 L. L. R. 43 Mad. 429.—*IND.*

**xy. Accounts framed on wrong basis & containing incorrect items.**—Doft. was employed by ptffs., the exors. of an estate, to administer the estate on their behalf. Ptffs. having sued doft. for an account.—*Held*: as the accounts rendered by doft. were framed on a wrong basis as between principal & agent & were incorrect in certain particulars, doft. must render an account within fourteen days.—*KRIEGER v. VAN DIJK'S EXECUTORS*, App. D. 110.—*S. AF.*



1288. Delete "For full anns., see *Equiry.*"
1304. *Add. Annotation* :—*Refd.* A.-G. v. Goddard (1929), 98 L. J. K. B. 743.
1311. *Add. Annotations* :—*Apld.* Holt v. Markham, [1923] 1 K. B. 504. *Distd.* Jones v. Waring & Gillow, [1926] A. C. 670. *Refd.* British & North European Bank v. Zalstein, [1927] 2 K. B. 92.
1315. *Add. Annotation* :—*Refd.* Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.
1316. *Add. Annotations* :—*Consd.* The Mogiliff, [1921] P. 236. *Mentd.* Laws v. Smith, The Rio Tinto (1884), 9 App. Cas. 356; The Stream Fisher, [1927] P. 73.
1318. *Add. Annotation* :—*As to* (1) *Refd.* Anderson v. Equitable Assce. Soc. of United States (1926), 134 L. T. 557.
1346. *Add. Annotation* :—*Consd.* A.-G. v. Goddard (1929). 98 L. J. K. B. 743.
1352. *Add. Annotation* :—*Mentd.* Yourell v. Hibernian Bank, [1918] A. C. 372.
1356. *Add. Annotation* :—*As to* (1) *Refd.* Yourell v. Hibernian Bank, [1918] A. C. 372.
1363. *Add. Annotation* :—*Generally*, *Mentd.* Yourell v. Hibernian Bank, [1918] A. C. 372.
- 1385a. —. ]—*FIELD v. ALLEN* (1842), 9 M. & W. 694; 152 E. R. 294.
1396. *Annotations* :—For "Bridger v. Savage (1885), 12 Q. B. D. 363" read "Bridger v. Savage (1885), 15 Q. B. D. 363."
- Add. Annotation* :—*Refd.* Rawlings v. General Trading Co., [1921] 1 K. B. 635.
1409. *Add. Annotation* :—*Mentd.* Spencer v. Hemmerde, [1922] 2 A. C. 507.
1422. *Add. Annotation* :—*As to* (1) *Refd.* Baker v. Lloyd's Bank, [1920] 8 K. B. 322.
1425. *Add. Annotation* :—*As to* (2) *Refd.* Lawrence v. Hayes, [1927] 2 K. B. 111.
- 1426a. *Proceeds of sale of goods*—*Goods consigned by commission agents for principal*—*Right of agent to set off claims against consignors.*]—In 1917 *ptf.* & *F.*, merchants at Odessa in the Russian Ukraine, consigned large quantities of pigs' bristles to a Russian bank at Odessa, as commission agents, to send the goods to England for sale & remit the proceeds to the consignors. The bank, as principals, sent the goods to *defts.*, as their agents, who knew that *ptf.* & *F.* were the original consignors. Afterwards the revolution broke out in Russia, & in Dec. 1917, all private banks in Russia were abolished by decree of the Govt., & in 1918 their assets & liabilities were taken over by the People's Bank of the Russian Socialist Federal Soviet Republic. In 1920 the People's Bank was by further decree abolished & its assets & liabilities were transferred to the Central Budget & Accounts Administration of the Russian Socialist Federal Soviet Republic. One result of this legislation was that the head office of the Odessa bank in Petrograd was raided & its shares were confiscated, but the Odessa bank was allowed to carry on its business as usual until 1920, when it was closed by a local soviet. This permission was the result of the establishment of an independent republican Govt. over the

**PART VIII. SECT. 2. SUB-SECT. 3.—**  
**A. (e).**

1828 i. *Agent for sale—Principal's intention to defraud creditors known to agent.*—Where goods were delivered to agents for sale, & the principal, to the knowledge of the agents, intended to defraud his creditors by making away with the proceeds of the sale:—*Held:* (1) the principal in suing the agents for an account of the goods so delivered to them was not relying on an illegal contract & was entitled to succeed; (2) the agents were not absolved from the duty of accounting to the principal by the fact that the goods had been delivered to the agents on a Sunday.—*RUSKIN v. WASSERMAN*, [1917] W. L. D. 174.—S. AF.

1826 ii. — *Goods delivered to agent on Sunday.*]—*RUSKIN v. WASSERMAN*, No. 1326 i., ante.—S. AF.

1326 iii. —.]—**LESLIE v. MORRISON**  
(1858), 16 U. C. R. 318.—**CAN.**

**PART VIII. SECT. 2, SUB-SECT. 3.—**  
**A. (f).**

**g1. — Particulars.]**—In an action which was substantially one claiming a general account in reality on the basis of agency:—*Held*: an application by the agent for particulars of sums alleged to have been converted should be refused.—**SHORT v. LAMBE**, [1925] 1 I. R. 135.—**IR.**

**PART VIII. SECT. 2, SUB-SECT. 3.—**  
**B. (b).**

1352 H. ———.—Where fiduciary relations have subsisted between the parties, a ct. will not re-open accounts which have long been settled between the parties, unless plff. can show definitely at least one fraudulent omission or insertion in the accounts.—PURAN MAL v. FORP, MACDONALD & Co., LTD. (1919), I. L. R. 41 All. 635.—IND.

1352 iii. ———.—RAHIM v. LOW  
(1924), I. L. R. 3 Ran. 1.—IND.

**PART VIII. SECT. 2, SUB-SECT. 3.—C.**

1861 i. *Circumstances in which right arises.*—*RAHIM v. LOW* (1924), I. L. R. 3 Ran. 1.—*IND.*

**PART VIII. SECT. 2, SUB-SECT. 4.—**  
**A. (2).**

1879) *Deposit on purchase paid to and agent*, a licensed land agent who does not hold from his principal a written authority to sell, and who having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission, but must account to his principal for the whole of such deposit. —SMITH v. BASON, [1921] N. Z. L. R. 467. —N.Z.

1879 U. —.]—Where a deposit on a sale of land is paid to a land agent, he holds it, unless otherwise stipulated as agreed, for the vendor, & must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale; but the commission does not include commission which is made irrecoverable by law.—BUCHANAN v. SAMSON, [1922] N. Z. L. R. 558.—N.Z.

**sz. Money paid to agent by members of syndicate for purchase of land—Claimant by one member of syndicate for return of subscription on rescission of sale.**—Pltf., who had joined with a number of other persons in the purchase of a farm, subscribed \$50 which was, with other subscriptions, deposited with deft. to be by him paid out in reduction of the purchase-price. The sale of the farm having been cancelled, to a claim by pltf. for the return of his subscription deft. raised the defence that he had been instructed by the syndicate not to pay over the money

received by him but to hold it for another purpose:—*Held*: the defence raised could not succeed.—*MANGENA v. MOYATUJI*, [1918] App. D. 650.—S. AF.

58. *Profits received in foreign currency—Rate of exchange in favour of principal.*—CUTTEN v. BICKEL. (1925), 57 O. L. R. 113; *affd.*, [1926] 1 D. L. R. 353.—CAN.

**ab.** *Commission received by sub-agent from principal—Right of agent to recover from sub-agent.*—**PLTF.** listed with def. as a sub-agent the lands of a certain principal, agreeing to pay def. 25 cents an acre for finding a purchaser. Def. unknown to pltf. communicated directly with the principal, obtained a listing of the lands from him & effected a sale thereof, deducting the commission.—**HOLD:** pltf. was entitled to recover from def. the commission less the sum of 25 cents per acre.—**OSWALT v. KING, [1918] 3 W. W. R. 72.—CAN.**

(*sc. Venue*.)—It is settled law that a writ by a principal against a commission agent who has agreed to execute an order placed with him by correspondence must be instituted at the place where the commission agent carries on his business & that a principal cannot sue him at the place from where he sent his order.—**BHAMBOO MAL v. RAM NARAIN** (1928), I. L. R. 9 Lah. 455.—**IND.**

**PART VIII. SECT. 2, SUB-SECT. 4.—**  
**A. (c).**

1396 U. —. — Assuming a transaction between brokers & their principal was an illegal one, & the brokers paid the proceeds to a person as being the agent of their principal to receive it:—*Held*: the principal could recover such proceeds from the agent.—*ALTMAN v. BURDICK BROTHERS*, [1923] 4 D. L. R. 862; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 3 B. C. R. 478.—*CAN.*



Ukraine—the Ukrainian Soviet Govt., over which the Russian Soviet Govt. claimed neither a *de facto* nor *de jure* jurisdiction, & which was also recognised by foreign powers as an independent Govt. Later on a full federation was entered into between the Ukraine Republic & the Russian Soviet Republic & recognised as a *de facto* & recently, as a *de jure* Govt. by the Govt. of this country. During transit of the goods to England some of the goods respectively consigned by pltf. & by F. became inextricably mixed, with the result that F. assigned all his rights in his consignment to pltf., & notice of the assignment was given to defts. Before the closing of the bank at Odessa the bank ceded all their rights in the bristles consigned to them to pltf. & F. The bristles consigned to defts. were sold by them in 1920, & pltf. demanded payment of the amount of the proceeds, less the amount of defts.' commission, but defts. refused payment, alleging (*inter alia*) that the goods belonged to the bank at Odessa & that defts. were entitled to set off against pltf.'s claim a debt due to them from the People's Bank in Russia & the Russian Soviet Govt., & pltf. in 1923 brought this action:—*Held*: (1) assuming that the bank at Odessa was an effective bank up to the time when the bank was closed, the bank's instructions to defts., followed by the transfer of the bank's rights to pltf. & F. & the transfer of F.'s rights to pltf., made it clear that the bank's title to the bristles had gone; (2) assuming that the bank was non-existent & that some other person or persons had given the instructions to sell, the sale by defts. was without the authority of the bank, & in that case the bank's title had gone. In either case pltf. as a disclosed or undisclosed principal was entitled to the proceeds, less defts.' commission with interest from the date of the demand.—*DORF v. NEUMANN, LUEBECK & Co.* (1924), 40 T. L. R. 405.

1437. *Add. Annotation*:—*Refd. Re Achilopoulos, Johnson v. Mavromichali*, [1928] Ch. 433.

1438a. ——— *Unless jus tertii set up*.—An agent entrusted with money or goods by a principal to be applied on his principal's account cannot dispute his principal's title, unless he proves a better title in a third person & that he is defending on behalf, & with the authority, of that third person.—*BHAWANI SINGH (RAJA) v. MAULVI MISBAH-UD-DIN* (1929), 56 L. R. Ind. App. 170, P. C.

1452. *Add. Annotation*:—*Refd. A.-G. v. Goddard* (1929), 98 L. J. K. B. 743.

1459. *Add. Annotations*:—*Generally, Refd. Dominion Coal Co. v. Maskinonge S.S. Co.* [1922] 2 K. B. 132. *Mentd. Re Richardson,*

*Pole v. Pattenden*, [1920] 1 Ch. 423; *Taylor v. Davies*, [1920] A. C. 636.

1460. *Add. Annotation*:—*Refd. Dominion Coal Co. v. Maskinonge S.S. Co.*, [1922] 2 K. B. 132.

1467. *Add. Annotation*:—*Refd. Rawlings v. General Trading Co.*, [1920] 3 K. B. 30.

1482. *Add. Annotations*:—*Apld. Mortimer v. Beckett*, [1920] 1 Ch. 571; *Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372. *Consd. Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609.

1484. *Add. Annotation*:—*Refd. Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372.

1486. *Add. Annotation*:—*Consd. Davey v. Robinson*, [1923] 1 K. B. 563.

1490. *Add. Annotations*:—*Refd. Dutton, Massey (Liverpool) v. Dutton, Massey* (1923), 40 R. P. C. 413; *Harrods v. Harrod* (1924), 40 T. L. R. 195; *Motor Manufacturers' & Traders' Soc. v. Motor Manufacturers' & Traders' Mutual Insee.*, [1925] Ch. 675.

1491. *Add. Annotation*:—*Mentd. Macmillan v. Cooper* (1923), 93 L. J. P. O. 113.

1500. *Add. Annotation*:—*Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

1501a. *Agent wrongfully acting for other principals*—*Liability of party inducing agent to commit breach of duty*.—*Resps.* employed D. as their agent to buy tobacco from growers, the total bought not to exceed 300,000 lbs., & supplied him with forms of contract bearing their firm name as buyers. D. agreed not to act as buying agent for anybody except *resps.* & another firm. *Applt.*, who knew the position as between D. & *resps.*, induced him to buy in the names of the two firms a total of 1,100,000 lbs., arranging with him to take over the surplus not required for them. Out of that total weight D. handed 300,000 lbs. to *resps.*, & tendered the balance to *applt.*, but he repudiated the arrangement, the market having fallen heavily. *Resps.* having also repudiated liability, one of the vendors, with whom D. had contracted upon *resps.*' form, was held to be entitled to damages from *resps.* as having held out D. as their agent. *Resps.* claimed to recover over from *applt.*:—*Held*: *resps.* were so entitled, *applt.* having knowingly induced D. to commit a breach of his duty to them, whereby they had suffered the damage.—*JASPERSON v. DOMINION TOBACCO Co.*, [1923] A. C. 709; 92 L. J. P. C. 190; 129 L. T. 771, P. C.

1505. *Add. Annotation*:—*As to (1) Refd. Spencer v. Hemmerde*, [1922] 2 A. C. 507.

1508. *Add. Annotations*:—*Refd. Re Richardson, Pole v. Pattenden*, [1920] 1 Ch. 423; *Taylor v. Davies*, [1920] A. C. 636.

#### PART VIII. SECT. 2, SUB-SECT. 5.

*sd. General rule*.—Where money is recoverable by a principal from an agent as having been received by the agent on the principal's behalf, the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage.—*CHINTAMANI* (1918), I. L. R. 41 All. 254.—*IND.*

#### PART VIII. SECT. 2, SUB-SECT. 7.—A.

1463 i. *Agent purchasing for himself—Specific performance granted*.—Where it was shown by evidence that deft. had agreed to attend & buy in a property offered for sale by auction, as

the agent of pltf. & for his benefit.—*Held*: notwithstanding that the Statute of Frauds had been set up as a defence, & there was not any writing evidencing the agreement, pltf. was entitled to a decree to carry out the agreement.—*ROSS v. SCOTT* (1875), 22 Gr. 29.—*CAN.*

1464 v a. ———.—*Pltf.* supplied money for the purchase of land of which deft. took the deed in his own name. In an action to have deft. declared a trustee & for the recovery of mesne profits the defence was that the purchase price was furnished by pltf. with the intention that the land should be deft.'s & that pltf. should have a home

with deft. during her lifetime:—*Held*: pltf. was entitled to judgment.—*ENROS v. McLEAN* (1919), 52 N. S. R. 485.—*CAN.*

#### PART VIII. SECT. 2, SUB-SECT. 9.—A.

ii. *Agent lending money to persons to whom agent not authorised to lend*.—A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorised to lend, is a suit for an ordinary money account & is governed by art. 89 & not art. 90 of Limitation Act (ix. of 1908).—*MUTHIAH CHETTY v. ALAGAPPA CHETTY* (1917), I. L. R. 41 Mad. 1.—*IND.*

**1509. Add. Annotations:—***Refd.* Taylor v. Davies, [1920] A. C. 636; *Re* Claridge's Patent Asphalt Co., [1921] 1 Ch. 543. *Mentd.* Weld v. Petre, [1929] 1 Ch. 33.

**1513. Add. Annotations:—***Refd.* *Re* Richardson, Pole v. Pattenden, [1920] 1 Ch. 423; Taylor v. Davies, [1920] A. C. 636.

—For " [1894] 1 Ch. 416 " read Ch. 616."

*Add. Annotation:—**Refd.* *Re* Windsor Steam Coal Co. (1901), Ltd., [1928] Ch. 609.

**1518. Add. Annotation:—***Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.

**1526. Add. Annotation:—***As to* (2) *Refd.* Wright v. Morgan, [1926] A. C. 788.

**1529a. — Unless full disclosure—Sufficiency of disclosure.]—**Deft. bought shares in the B. Co. on the recommendation of T., who was in the office of E. & Co., stockbrokers. E. & Co. carried through the transaction & sent deft. two contract notes, on which were the words "bought of ourselves as principals," & no commission was charged. By arrangement deft. paid 25 per cent. of the price of the shares, the balance being carried over. E. & Co. subsequently became bkpt. & their trustee in bkpy. claimed the balance then due on the account from deft. —*Held*: E. & Co. had made a sufficiently full & accurate disclosure to deft. that they were selling as principals & deft. with full knowledge gave his assent to their position, & the trustee's claim succeeded. —*ELLIS & Co.'s TRUSTEE v.* ), 155 L. T. Jo. 363.

**1532. Add. Annotation:—***Mentd.* Collins v. Hopkins, [1923] 2 K. B. 617.

**1533. Add. Annotations:—***Refd.* *Re* Jubilee Cotton Mills, [1922] 1 Ch. 100; *Re* Etic, [1928] Ch. 861. *Mentd.* *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

#### PART VIII. SECT. 2, SUB-SECT. 10.

**1530 i. — Remedies of principal—Principal may repudiate or adopt transaction.]—**A principal who discovers that he has purchased his agent's own property may elect either to repudiate the contract or to affirm it. If he wishes it to stand & also claims the resulting profit, he must show that such profit arises from transactions completely covered by the prohibitive operation of the relationship between him & the agent. —*ROBINSON v. RANDPONTIN, ETC.*, [1921] App. D. 168. —*S. AF.*

#### PART VIII. SECT. 2, SUB-SECT. 11.

**1542 vi. —.]—**An agent employed to sell goods cannot himself purchase such goods at a sale by public auction. —*OSRY v. HIRSCH*, [1922] C. P. D. 531. —*S. AF.*

**1542 vii. —.]—***JARVIS v. JARVIS*, [1926] 3 D. L. R. 897. —*CAN.*

**1550 ii. — — —.]—***PALMER CHRISTIE (Y. T.)* (1905), 2 W. L. 561. —*CAN.*

**1565 i. — — — — —]—**No confirmation without knowledge.]—In order to establish acquiescence or ratification on the part of pltf. it must be shown that he has, either by word or deed, & with a full knowledge of the circumstances abandoned his rights. —*OSRY v. HIRSCH*, [1922] C. P. D. 531. —*S. AF.*

#### PART VIII. SECT. 2, SUB-SECT. 13.

**1572 ii. —.]—**In pursuance of an agreement defts. obtained for pltf. a mtge. of £100,000 at 5 per cent., but without pltf.'s knowledge entered

into an agreement with the mtgee. by which, in consideration of a commission of 1 per cent. per annum to be paid to them by the mtgee. out of the interest payable by pltf., they agreed to guarantee the payment of principal & interest, & under that agreement defts. were paid by the mtgee. £2,500, being £250 each half-year during the term of the mtge. In an action by pltf. against defts. to recover the £2,500 as being a secret profit made by them while acting as his agent: —*Held*: pltf. was entitled to payment to him of the £2,500. —*KEOGH v. DALGETY & Co.* (1916), 22 C. L. R. 402. —*AUS.*

**1572 iii. —.]—**An agent has no right to receive remuneration other than from his principal, unless there is a contract express or implied to that effect. —*SMITH v. SLATTARD* (1919), 21 W. A. L. R. 19. —*AUS.*

**1572 iv. —.]—**Where one man stands to another in a position of confidence involving a duty to protect the interests of that other, he is not permitted to make a secret profit at the other's expense or to place himself in a position where his interests conflict with his duty. —*ROBINSON v. RANDPONTIN, ETC.*, [1921] App. D. 168. —*S. AF.*

**1572 v. —.]—**A. authorised B., his agent, to sell property for a certain sum, A. agreeing to take a portion of the purchase price in cash & a mtge. bond on the property for the balance. B. sold the property for the stipulated amount, but without the knowledge or consent of A. obtained & retained

**1550a. — Broker.]—**Applt. employed a broker to make speculative purchases of cotton for him, & became heavily indebted to him owing to the fall of prices in the cotton market. The broker, as he was entitled to do by the terms of his agency, closed the account by selling the cotton which he had bought for applt. He sold (*inter alia*) two lots of foreign cotton to different jobbers at the respective market prices of the day & immediately bought back from the same jobbers at the same prices equivalent amounts

broker having assigned his property for the benefit of his creditors, resp. as trustee of the deed of assignment, sued applt. to enforce the broker's claim to be indemnified. The trial judge found that there was a real sale & a real purchase of the cottons in question, & the Ct. of Appeal accepted this finding: —*Held*: the simultaneous re-sale to the broker did not vitiate the sale by the broker & the account was effectually closed. —*CHRISTOFORIDES v. TERRY*, [1924] A. C. 566: 93 L. J. K. B. 481; 131 L. T. 84; 40 T. L. R. 485, H. L.

**1552. Add. Annotation:—***Generally, Refd.* *Christoforides v. Terry*, [1924] A. C. 566.

**1553. Add. Annotation:—***Appld.* *Christoforides v. Terry*, [1924] A. C. 566.

**1558a. — — —.]—***IMESON v. LISTER* (1920), 149 L. T. Jo. 446.

**1561. Add. Annotations:—***As to* (1) *Refd.* *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566. *Generally, Refd.* *Tarn v. sen, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs.* (1927), 44 T. L. R. 53. *Mentd.* *Keen v. Mear*, [1920] 2 Ch. 574; *Jones (Holloway) v. Woodhouse*, [1923] 2 K. B. 117.

**1571. Add. Annotation:—***Refd.* *Inche Noriah v. Shaik Allie Bin Omar*, [1929] A. C. 127.

a commission from the purchaser for raising the bond: —*Held*: such commission was a secret profit, & B. in concealing it had acted dishonestly towards A. —*LEVIN v. LEVY*, [1917] T. P. D. 702. —*S. AF.*

**se. — Agent receiving present.]—**Disclosure, after completion of a sale of land, by the vendor to certain directors of a purchasing co., who were concerned in the negotiations for the purchase, of his intention, afterwards carried out, to make a money present to the purchaser's manager & agent, who took the principal part in the negotiations, & assent thereto by such directors, is not effective to prevent rescission on the basis of secret profit to the agent if the vendor has, prior to the completion, secretly led the agent to expect that he would receive a substantial sum in the event of the sale being completed, & it is immaterial that the vendor's motive was to a large extent to recoup the agent for out-of-pocket expenses. —*BENDIGO, ETC. Co. v. CUNNINGHAM*, [1919] V. L. R. 387. —*AUS.*

**st. — Agent entering into contract with principal.]—**If an agent, without disclosing that he is the person dealing, himself enters into a contract with his principal, the latter on discovering the fact can have the transaction set aside, & it is immaterial whether there has been fraud or not, or whether the transaction is advantageous or otherwise to the principal. —*ACHUTHA, NAIDU v. OAKLEY, BOWDEN & Co.* (1922), 1 L. R. 45 Mad. 1005. —*IND.*

**sg. — Agent for sale artificially**

1580. *Add. Annotation*:—**Refd.** *Hocker v. Waller* (1924), 29 Com. Cas. 296.

1584. *Add. Annotations*:—**Generally, Mentd.** *London County & Westminster Bank v. Tompkins*, [1918] 1 K. B. 515; *Ellis' Trustee v. Dixon-Johnson*, [1924] 1 Ch. 342.

1598. *Add. Annotation*:—**Mentd.** *Glicksman v. Lancashire & General Assoe.*, [1925] 2 K. B. 593.

1600. *Add. Annotation*:—**Generally, Mentd.** *Ford v. Radford* (1920), 36 T. L. R. 658.

1603. *Add. Annotation*:—**Apld. Re A Debtor**, [1927] 2 Ch. 367.

1607. *Add. Annotation*:—**Apld. Re A Debtor**, [1927] 2 Ch. 367.

1608a. ———. ]—A hotel broker, who is acting as the vendor's agent for reward, is not entitled to enter into a second agency of the like kind on behalf of the purchaser, unless this arrangement is assented to with full knowledge by the original principal.—**FULLWOOD v. HURLEY**, [1928] 1 K. B. 498; 96 L. J. K. B. 976; 138 L. T. 49; 43 T. L. R. 745, C. A.

1608b. ———. ]—**Although no pecuniary loss to employer.**—(1) An English information will lie against a servant employed by the Crown in making confidential inquiries, in respect to secret profits alleged to have been made in the course of his employment. (2) The rule

*inflating rates.*—An agent for sale of goods cannot, while actually selling or making settlements on foot of such transactions, make any secret profit for himself, or for persons with whom he is associated, by artificially inflating the rates & then settling on the basis of those rates.—**MATHURA DAS-JAGAN NATH v. JIWAN MAL-GIAN CHAND** (1927), 1 L. R. 9 Lah. 7.—**IND.**

1581iii. ———. ]—There are cases where an agent is entitled to retain profits, such as (1) where the connection between the agency & the profit is accidental, (2) where the transaction producing the profits is outside the scope of the agency & no conflict between duty & interest arises, (3) where the principal on account of his

right to profits by his implied consent.—**UNION GOVERNMENT v. CHAPPELL**, [1918] C. P. D. 462.—**S. AF.**

1581iv. ———. ]—Pltf. signed a written agreement by which he agreed to pay deft. 2½ per cent. on £2,500 if deft. sold property for that sum, & authorised deft. to keep any amount paid for the property in excess of that sum. Pltf. claimed a refund of the commission retained by the agent on the ground that he had secretly obtained a commission from the purchaser. The commission obtained by deft. from the purchaser, who had to pay cash to pltf., was for raising loans to enable her to pay the seller.—**Held**: as the commission obtained from the purchaser by deft. was not a commission on the price, but in respect of an entirely different transaction, his conduct was perfectly honest, & he had not forfeited his right to be paid a commission by pltf.—**STANTON v. HUMPHREY**, [1923] E. D. L. 419.—**S. AF.**

——— *Remedies of principal—incipia.*—**Not after affirming transaction.**—**UNION GOVERNMENT v. CHAPPELL**, [1918] C. P. D. 462.—**S. AF.**

**PART VIII. SECT. 2, SUB-SECT. 14.**

1594iii. ———. ]—**Held**: pltf. could not recover any commission, because he was in a position where his interest

was opposed to that of his principal, so that he had a temptation not to perform faithfully his duty, & failed to disclose the facts.—**D'ARCY v. LAND** (1920), 47 N. B. R. 203; 52 D. L. R. 660.—**CAN.**

ai. ———. ]—**Agent to raise money advancing sum himself.**—Under a contract between a principal & a financial agent, by which the agent agrees to raise sums of money for the principal upon first & second mortgages, at stated rates of interest, of the principal's land, it is not illegal for the agent to find the money himself, unless there is a special stipulation to the contrary; the fact of the rates of interest being specified prevents a conflict of interest & duty—the agent.—**DALGETY v. GRAY**, [1917] V. L. R. 586.—**AUS.**

mi. ———. ]—The rules applicable to agents for the sale of land do not apply to a middleman employed merely to bring the vendor & purchaser together to enable them to make their own bargain; neither such a middleman nor the vendor is obliged to inform the purchaser of the payment by the vendor of a commission for introducing the purchaser.—**CLARK v. HERWORTH**, [1918] 1 W. W. R. 147; 39 D. L. R. 395; 55 S. C. R. 614.—**CAN.**

mii. ———. ]—**SMITH v. COMTOIS**, [1927] 4 D. L. R. 832; [1927] S. C. R. 690.—**CAN.**

miii. ———. ]—The fact that an agent employed by one person to effect an exchange of properties is, after bringing it about, rewarded by the other party for doing so does not in itself constitute him the agent of the latter, though it may be some evidence that he was.—**BROVEY v. BULL (Alta.)**, [1927] 4 D. L. R. 992; [1927] 3 W. W. R. 513.—**CAN.**

chase. ]—**GUNNING v. LUSBY (Ino. I)** (1922), 68 D. L. R. 89; 55 N. S. R.

sl. *Partner of agent to buy one of trustee vendors—Purchaser suffering no damage.*—**WOOLWORTH (F. W.) Co., LTD. v. POOLEY** (1925), 35 B. C. R. 386.—**CAN.**

as to secret profits is applicable in spite of the fact that no pecuniary interest of the employer is involved.—**A.-G. v. GODDARD** (1929), 98 L. J. K. B. 743; 45 T. L. R. 609; 73 Sol. Jo. 514.

1621. *Add. Annotations*:—**Generally, Consd. A.-G. v. Goddard** (1929), 98 L. J. K. B. 743. **Mentd.** *Clarkson v. Davies*, [1923] A. C. 100.

1623. *Add. Annotation*:—**As to (2) Apld. A.-G. v. Goddard** (1929), 98 L. J. K. B. 743.

1626. *Add. Annotations*:—**Consd.** *Rhodes v. Macalister* (1923), 29 Com. Cas. 19; *Fenton Textile Assocn. v. Thomas* (1929), 45 T. L. R. 264. **Refd. Re Hall & Pim** (1927), 137 L. T. 585. **Mentd.** *Slater v. Hoyle & Smith*, [1920] 2 K. B. 11.

1626a. ———. **Crown servant.** ]—**A.-G. v. GOODARD**, No. 1608b, *ante*.

1632. *Add. Annotations*:—**As to (1) Consd.** *Rhodes v. Macalister* (1923), 29 Com. Cas. 19. **Refd.** *Taylor v. Oakes*, *Roncoroni* (1922), 127 L. T. 267. **As to (2) Consd. A.-G. v. Goddard** (1929), 98 L. J. K. B. 743. **Refd.** *Adams v. Morgan*, [1923] 2 K. B. 234.

1635. *Add. Annotations*:—**Apld.** *Alexander v. Webber*, [1922] 1 K. B. 642; *Re A Debtor*, [1927] 2 Ch. 367.

1636. *Add. Annotation*:—**Apld. Re A Debtor**, [1927] 2 Ch. 367.

**PART VIII. SECT. 2, SUB-SECT. 15.—A.**

1601ia. ———. ]—If the agent for the vendor in a sale of real property receives commission from the purchaser also, the vendor is entitled to recover the amount of such commission from the agent, notwithstanding that the sale of the property has been completed.—**FOSTER v. LEEAUME**, [1924] 2 D. L. R. 951; *revers.*, [1923] 4 D. L. R. 51; 54 O. L. R. 245.—**CAN.**

**PART VIII. SECT. 2, SUB-SECT. 15.—B.**

sm. *Agent to do repairs—Agent doing work himself.* ]—Defts., house-agents, acted as agents for pltf. to collect the rents & to do the necessary repairs to her property. Defts. were originally appointed in 1908, & up to 1911 had the repairs executed by outside contractors. In 1911 defts. opened their own repairs yard, did the repairs themselves, & charged the "usual trade prices," which included a profit. Quarterly statements of account were regularly furnished by defts. to pltf. from the commencement of the agency. Pltf. claimed to have the accounts reopened on the ground that she had been charged a secret profit by defts. on the repairs executed by them in addition to their commission.—**Held**: as pltf. knew & approved of the repair work being executed by defts., & defts. had made sufficient disclosure to pltf. that they were charging a profit, & the charges were not shown to have been unfair or unusual, pltf. was not entitled to have the accounts reopened.—**SHERARD v. BARRON**, [1923] 1 I. R. 21.—**IR.**

**PART VIII. SECT. 2, SUB-SECT. 15.—D.**

1635iii. ———. ]—Any secret benefit given by one contracting party to the agent of another with the intention of influencing his mind in favour of the donor is a bribe, which entitles the other contracting party to claim to set aside the contract.—**DAVIES v. DONALD**, [1923] C. P. D. 295.—**S. AF.**

1638. *Add. Annotation:—Generally, Rehd. Re A Debtor*, [1927] 2 Ch. 367.

1638a. ———.]—Pltf. agreed to purchase a motor car from deft., & in accordance with the agreement he paid a deposit. Pltf. afterwards purported to repudiate the contract, wrongfully, as the judge found. During the pendency of an action by him for the recovery of the deposit pltf. died, & his exors. were substituted as pltf., & they then discovered that at the time the contract was entered into deft. had promised, without the knowledge of pltf., to give pltf.'s chauffeur a share of the profit on the sale of the car if pltf. bought it. On the ground of that secret arrangement the exors. now sought to avoid the contract & to recover the deposit:—*Held*: the surreptitious dealing between deft. & pltf.'s chauffeur was a fraud on pltf.; the fact that pltf., when he purported to repudiate the contract, was not aware of the fraud, did not prevent his exors. from now relying upon it; & they were entitled on the ground of the fraud to avoid the contract & to recover the deposit.—ALEXANDER v. WEBBER, [1922] 1 K. B. 642; 91 L. J. K. B. 320; 126 L. T. 512; 38 T. L. R. 42.

1640. *Add. Annotation:—Generally, Rehd. Re A Debtor*, [1927] 2 Ch. 367.

PART VIII. SECT. 3, SUB-SECT. 1.—A.

1664 xiv a. ———.]—Pltf. not allowed to recover commission on exchange of deft.'s land, as there was no agreement in writing to pay such commission as required by Alberta Stat. 1906, c. 27.—NUNNLEY v. BLATT, [1919] 2 W. W. R. 699; 47 D. L. R. 254.—CAN.

1664 xiv b. ———.]—Alberta Stat. 1906, c. 27, applies only to the case of a vendor's agent & does not apply to a commission or other remuneration claimed by a purchaser's agent.—POTTER v. LANDEN, [1920] 3 W. W. R. 1075.—CAN.

1664 xiv c. ———.]—Under an oral agency agreement an agent claimed commission for selling at a lump sum certain property. Shortly before the trial, Alberta Stat. 1906, c. 27, was amended:—*Held*: (1) the amending Act did not apply to an agreement made before its passing; (2) the agent was entitled to compensation, fixed at the commission rate on the fair proportionate value of the goods, for sale of the chattels.—FILTEAU & DR ROUSSEY v. NEBHITT, [1920] 2 W. W. R. 892; 53 D. L. R. 514; 15 Alta. L. R. 522.—CAN.

1664 xiv d. ———.]—An agreement for the exchange of lands was on a principal form on one side of a sheet of paper, but in two parts, the one called the offer & the other the acceptance, the one being placed immediately above the other; the lower part only was signed by deft., & the upper was signed only by the person with whom deft. was making the exchange. The upper part contained a clause by which the person signing was to pay "the regular commission"; & the lower part, signed by deft., contained the words: "I agree to pay a commission on \$26,000 at 2½ per cent." on execution of the agreement to pltf.:—*Held*: the agreement to pay pltf. a commission did not satisfy Stat. Frauds, s. 13, as enacted by 6 Geo. 5, c. 24, s. 19, & amended by 8 Geo. 5, c. 20, s. 58, for the agreement was not in writing separate from the sale agreement, & an action for the commission could not be maintained.—DAVIS v. BEGGS (1919), 46 O. L. R. 169; 17 O. W. N. 63.—CAN.

1664 xiv e. ———.]—*Held*: the agreement to pay a commission, in order to be separate from the sale-agreement, need not be on a separate piece of paper.—HAYGARTH v. WEBB (1923), 54 O. L. R. 172.—CAN.

1664 xiv f. ———.]—SILVERMAN v. LEGREE (1919), 45 O. L. R. 107; 47 D. L. R. 713; 15 O. W. N. 278.—CAN.

1664 xiv g. ———.]—*Held*: an addition to Stat. Frauds was not retrospective, & was no bar to an action based upon an agreement not in writing entered into before its enactment.

An Act which is a bar to an action to recover an agent's commission unless the agreement therefor be in writing is also a bar, where such agreement is not in writing, to an action by him to recover damages from his principal for preventing him from earning the commission.—SMITH v. UPPER CANADA COLLEGE, [1921] 1 W. W. R. 1154; 57 D. L. R. 648; 61 S. C. R. 413.—CAN.

1664 xiv h. ———.]—*Construction of agreement*.—MCINTYRE & CO. v. LAW, [1918] 2 W. W. R. 359; 13 Alta. L. R. 273; 40 D. L. R. 231.—CAN.

1664 xiv i. ———.]—Land Agents Act, 1912, s. 13, prevents a land agent from recovering commission under an oral agreement extending the period fixed for his authority by the document creating it.—HOOPER v. ANDERSON (EDWARD) & CO., LTD., [1918] N. Z. L. R. 119.—N.Z.

1664 xiv k. ———.]—Land Agents Act, 1912, s. 13, covers every action for remuneration for or in respect of the sale of land; & the fact that an agent is not employed to sell land but only to find a purchaser does not exclude the operation of the sect.—HOOPER v. ANDERSON (EDWARD) & CO., LTD. (No. 2), [1919] N. Z. L. R. 65.—N.Z.

1664 xiv l. ———.]—The effect of Land Agents Act, 1912, s. 13, is to prevent the agent from recovering his commission by action.—GLASGOW v. HOOD, [1920] N. Z. L. R. 586.—N.Z.

1664 xvi a. ———.]—McLAUGHLIN & CO. v. BRISKE, [1925] 3 D. L. R. 968; [1925] S. L. R. 690.—CAN.

1664 xxi. ———.]—*Agent acting for syndicate—Also member of syndicate.*—

1640a. ———.]—A. employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £60 on his promissory note for £100, & without the knowledge or consent of A., paid L. a commission:—*Held*: the payment of the commission to L. by B. rendered the contract voidable, if not void, against A.—*Re A DEBTOR* (No. 229 of 1927), [1927] 2 Ch. 367; 96 L. J. Ch. 381; 137 L. T. 507; [1927] B. & C. R. 127, C. A.

1643. *Add. Annotations:—Consd. Rhodes v. Macalister* (1923), 29 Com. Cas. 19. *Rehd. Re Hall & Pim* (1927), 137 L. T. 585. *Mentd. Slater v. Hoyle & Smith*, [1920] 2 K. B. 11.

1649. *Add. Annotation:—As to* (1) *Rehd. Weiss, Biheller & Brooks v. Farmer*, [1923] 1 K. B. 226.

1656. *Add. Annotation:—Generally, Mentd. Ruffy-Arnell, etc., Co. v. R.*, [1922] 1 K. B. 599.

1662. *Add. Annotation:—Rehd. Bradford v. Price* (1923), 92 L. J. K. B. 871.

1664. *Add. Annotation:—Rehd. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1669. *Add. Annotation:—Rehd. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1670. *Add. Annotation:—Rehd. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

—Where an agent is interested himself, along with others, in a transaction which is being carried through by him, he *prima facie* is not entitled to charge his co-adventurers any commission.—GLASGOW v. HOOD, [1920] N. Z. L. R. 586.—N.Z.

1664 xxii. ———.]—*Soldier Settlement Act*, 1919 (c. 71), s. 61.—A real estate agent entitled to his commission on a sale made before the coming into operation of the above Act.—ROWLANDS & JOHNSTONE v. HOLLAND (1920), 53 D. L. R. 652.—CAN.

1664 xxiii. ———.]—Deft. listed lands with pltf. for sale, & pltf. negotiated with three soldiers, although, apparently, pltf. did not get into touch with the soldiers until after July 7, 1919, when the above Act came into force. Eventually the land was sold direct by the Soldier Settlement Board to the soldiers & pltf. claimed commission from deft.:—*Held*: pltf. not entitled to commission.—TODD v. POTVIN, [1922] 1 W. W. R. 479; 63 D. L. R. 233; 17 Alta. L. R. 226.—CAN.

1664 xxiv. ———.]—Lands were listed with the Soldier Settlement Board at the specified price of \$3,800. Deft. agreed to purchase at \$3,800. The Board refused to pay more than \$3,200. Deft. then arranged with the owner that the latter should transfer the lands to the Board for \$3,200, which was subsequently done, & he agreed to give, & did give, his promissory notes for the difference as part of the consideration & as an increase in price:—*Held*: the above sect. did not apply.—FLOWER v. SANDERSON, [1922] 3 W. W. R. 464.—CAN.

1664 xxv. ———.]—In order to found a legal claim for commission there must not only be a causal, but also a contractual, relation between the introduction & the ultimate transaction of sale. Where there is no employment to sell express or implied, there can be no claim to remuneration.—WEEDEN v. TURNER (1922), 68 D. L. R. 748; [1922] 3 W. W. R. 623.—CAN.

1664 xxvi. ———.]—MORRIS v. WALTON (1914), 28 W. L. R. 547; 18 D. L. R. 655. 24 Man. L. R. 361.—CAN.

1683. *Add. Annotation:—Expld. & Dlst. Patent Castings Syndicate v. Etherington*, [1919] 2 Ch. 254.

1687. *Add. Annotations:—Mentd. Lebeaupin v. Crispin*, [1920] 2 K. B. 714; *S.S. Celia v. S.S. Volturmo*, [1921] 2 A. C. 544; *Soc. des Hotels Le Touquet-Paris-Plage v. Cummings* (1921). 126 L. 513.

1671 viii. ———.—]—In the absence of an express contract as to the commission which a real estate agent is to receive, he is entitled to a reasonable remuneration having regard to the circumstances of the particular case. The fact that the agents in a certain town have established a custom among themselves as to the rate of commission, does not render such custom binding upon those who do business with them in the absence of notice, express or implied, that the charges for their services are to be based on such custom.—*GAHLAND v. NEWMAN* (1922), 66 D. L. R. 770; 32 Man. L. R. 1; [1922] 1 W. W. R. 867.—CAN.

1671 ix. ———.—]—*When implied contract negatived.*—Def't. advertised his business for sale in a local newspaper. The following day, pltf., having seen the advertisement, called on def't. & inquired the price. Pltf. then entered into communication with A., who ultimately bought the business:—*Held*: def't. had never considered that he was employing pltf. to act as his agents, & pltf. had failed to prove any implied contract by def't. to remunerate them.—*CHAPPLE v. MOSS*, [1920] 22 W. A. L. R. 74.—AUS.

1671 x. ———.—]—Pltf. was asked by def'ts. to find a purchaser for a wagon, & he succeeded in introducing to def'ts. H., who bought the wagon from them. Def'ts. denied that it was agreed that pltf. should be paid a commission, but it was admitted that they knew that he received commission for wagons sold by him. H. stated that he was sent to def'ts. by pltf. & would not have bought the wagon if he had not been persuaded by pltf. to do so:—*Held*: an agreement to pay commission was implied.—*NICHOLAS v. DUMOULIN* (1919), 46 D. L. R. 687.—CAN.

1671 xi. ———.—]—An implied contract to pay a real estate agent a commission for his services if he found a purchaser for a property is negatived by the fact that the owner refused to list the property with him, although she gave him the terms upon which she was willing to sell.—*TOLLEY & Co. v. SKYOR* (1922), 63 D. L. R. 602.—CAN.

1671 xii. ———.—]—It is not a general principle of law that whenever a man, having found out from the owner of property the terms upon which it can be sold or leased, produces a third party who will buy or lease on those terms, he thereby & without more entitles himself to payment of a commission by such owner. There must be, in addition to this, an intimation to the owner that a commission would be expected from him in the event of a sale or lease being effected upon the terms stated. The intimation of expectancy of a commission not negatived by the owner who permits the other to go to the trouble of finding a customer in the expectation of earning a commission, may well be a fact from which a promise to pay a commission may be inferred. A mere volunteer who acts as a go-between between buyer & seller & ultimately produces a sale cannot upon that fact alone found a legal claim for commission, nor can a third party, who acting for a possible purchaser, obtains from a property owner terms of sale or lease, & thus brings about a completed transaction upon those identical terms, legally claim a com-

mission from the owner in the absence of some promise to pay a commission, either express or implied.—*CHAMBERLIN v. MAW* (1922), 68 D. L. R. 754; [1922] 1 W. W. R. 299.—CAN.

1679 iv. ———.—]—*Out of what fund payable.*—The agent is entitled to pay himself his commission out of any money paid to him by his principal, without any appropriation by the latter. The right, however, does not extend to any sum paid to the agent by some third person on behalf of the principal.—*GLASGOW v. HOOD*, [1920] N. Z. L. R. 586.—N.Z.

1679 v. ———.—]—*Deposit on sale of land.*—A licensed land agent, who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission.—*SMITH v. BASON*, [1921] N. Z. L. R. 467.—N.Z.

1679 vi. ———.—]—When a deposit on a sale of land is paid to a land agent he must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale; but commission which is made irrecoverable by law is not a just allowance deductible by the agent.—*BUCHANAN v. SAMSON*, [1922] N. Z. L. R. 558.—N.Z.

sn. *Amount of remuneration.—Sale of mortgaged property.—As if free from incumbrances.*—Resp. placed a farm in the hands of appls. for sale or exchange & undertook, should a sale or exchange be effected by them, to pay commission at specified rates. Appls. found a purchaser for the property & an agreement was executed whereby resp. agreed to sell the property "as if free from incumbrances." Appls. sued for commission on the full value of resp.'s property unincumbered, but the magistrate held them entitled only to commission on the value of the equity of redemption:—*Held*: commission was payable on the gross price of the property sold.—*KNYVETT & PRATT v. STURTEAD*, [1918] N. Z. L. R. 53.—N.Z.

so. *Necessity for compliance with Land Agents Act, 1922.*—Pltf., who was a land agent, received instructions from def't. to sell def't.'s property, & obtained a buyer at the price authorised, who paid pltf. a deposit of £200. On the same day that pltf. sold the property def't. sold it to another buyer & in effect repudiated the contract of sale effected by pltf. on his behalf. On the repudiation of the contract pltf. utilised the deposit of £200 received from his purchaser in the purchase of another property by the first buyer. Pltf. notwithstanding that he did not forward the deposit, with the signed contract to def't., less his commission, sued def't. for commission on the sale. Def't. applied for a nonsuit on the ground that pltf. had not complied with the provisions of Land Agents Act, 1922, s. 8, deducting his commission from the deposit, & handing the balance to def't. The magistrate having nonsuited pltf.:—*Held*: sect. 8 deals with the application of trust moneys & if the deal was going through it was the duty of pltf. as agent to act in compliance with it, but if the deal was not going through, if there had been repudiation as the magistrate found sect. 8 had no

1687a. ———.—]—*Commission on sale.*—(1) Although commissions on sales are usually paid by the vendor, an express bargain may throw the commission upon the purchaser.

(2) Where an agent is employed to make inquiries about a particular business with a view to his employer's acquiring it, on the terms of his being paid by the purchaser a

application. Pltf. was accordingly entitled to payment of his commission.—*BALLANTYNE v. CLOUTT* (1927), 29 W. A. L. R. 93.—AUS.

1684ia. ———.—]—*HAMEL v. PATENAUDE*, [1925] 4 D. L. R. 1071; [1925] S. C. R. 493; *rearg.*, [1925] 4 D. L. R. 577; Q. R. 35 K. B. 333.—CAN.

sp. *Action for commission on sale.—Defence denying sale.—Effect.*—When in an action for commission on a sale the principal's pleadings deny the agreement for sale, such denial indicates his repudiation of the agreement to pay the agent, & under the doctrine of anticipatory breach, the latter, on proving his right to the commission, is entitled to judgment for the whole amount thereof, even though under the agreement it was to be paid in instalments at dates which are yet in futuro.—*HANTON v. STEDMAN*, [1925] 1 W. W. R. 642.—CAN.

sq. ———.—]—*Tariff rate of Estate Agents Institute.*—*PLEIN & Co. v. JACOBSON & SON*, [1928] App. D. 25.—S. AF.

#### PART VIII. SECT. 3, SUB-SECT. 1.—B. (a).

1693 vii. ———.—]—A sale of land directly by the owner, after it had been listed for sale with a broker, does not entitle the latter to his commission, merely because it happened to be sold to a purchaser with whom he had negotiated in a previous transaction.—*GILBERT BROTHERS v. McDILL* (1917), 36 D. L. R. 324.—CAN.

1693 viii. ———.—]—Where a person discovers that another is considering the purchase of a piece of land & then ascertains from the owner that he will sell & pay a commission, but does not afterwards communicate with the prospective buyer, & the latter & the owner complete the sale themselves, there is no commission payable by the owner.—*LANGTON v. NICHOLSON*, [1918] 1 W. W. R. 908.—CAN.

1693 ix. ———.—]—An agent for the sale of coal who had merely interviewed a customer & notified his principal that he had done so:—*Held*: not entitled to a commission on an order given about two months later direct to the principal, & after an inspection of the coal by the customer.—*BOND v. STURGEON CONSOLIDATED COLLIERIES, LTD.*, [1918] 2 W. W. R. 912; 41 D. L. R. 147.—CAN.

1693 x. ———.—]—In the absence of a special agreement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to a commission where the owner sells to a purchaser whom he himself has found. Where the owner found the person who subsequently purchased, although the agent subsequently spoke to the same person, the agent was not allowed the commission.—*BARAGER v. WALLACE*, [1919] 2 W. W. R. 858; 43 D. L. R. 158; 12 Sask. L. R. 301.—CAN.

1693 xi. ———.—]—Where an agent spoke to one about certain land & the latter refused to buy, but some time afterwards, hearing through another channel that the land could be rented, went to the owner's place for the purpose of renting it & was induced by the owner to buy it:—*Held*: the agent was not entitled to commission.—*TAYLOR v. RABBITS*, [1920] 1 W. W. R. 1024; 53 D. L. R. 59; 13 Sask. L. R. 198.—CAN.

commission on the purchase price if business is transacted, & where the parties are brought together through his agency, he is entitled to commission, even where the actual purchase is ultimately effected through the inter-

vention of another agent, provided that his services are really instrumental in bringing about the transaction. — *Bow's EMPORIUM LTD. v. BRETT (A. R.) & Co., LTD.* (1927). 44 T. L. R. 104, H. L.

1693 xii. —.]—Deft. desired to acquire or gain control of certain shares in a co. Pltf. outlined to him a plan, & for carrying out the arrangement one-third of the shares were to be given to pltf. Pltf. worked on the undertaking & made considerable progress, but before the scheme was carried out deft. obtained what he wanted in other ways & without making use of pltf.'s services. — *Held*: pltf. could not recover the agreed commission. — *MACINTYRE v. MILLER* (1922), 70 D. L. R. 218; [1922] 3 W. W. R. 529. — CAN.

1693 xiii. —.]—As a general rule & in the absence of any stipulation to the contrary a principal, who employs a house agent on commission to find a purchaser for a house, retains the right as against the house agent of selling the house to a third party, who has not been introduced by the house agent directly or through another agent at any time before a proper offer is brought to him by the house agent. If by so selling he prevents the house agent from earning his proper commission he is not liable in damages, for the act of selling is a rightful act as against the house agent. — *BOOSE v. ZREDEBERG & DUNCAN*, [1918] C. P. D. 283. — S. AF.

1693 xiv. —.]—An auctioneer was employed to sell property by auction on condition that if the reserve price was not reached no commission was to be charged. The reserve price not being reached, the property was not sold. A prospective purchaser, who was present at the auction & who knew who the owner of the property was, was about to approach the owner after the conclusion of the auction with a view to negotiating for the purchase of the property when the auctioneer formally introduced them. After protracted negotiations the prospective purchaser bought the property. — *Held*: the auctioneer's agency terminated the moment he failed to sell by auction. — *MARTIN v. CURRIE*, [1921] T. P. D. 50. — S. AF.

1693 xv. —.]—Deft. listed his property with pltf.s, real estate agents, for sale at a fixed price & on named terms. Pltf.s mentioned the property to one F., who thereafter negotiated with deft. for the purchase of the property, & concealed from him the fact that pltf.s had sent him. Deft., then, without any knowledge of pltf.s, intervention, sold to F., on terms less advantageous to himself than those contemplated in the agreement between pltf.s & himself. There was nothing in the circumstances to put deft. upon his inquiry as to whether pltf.s had sent F. to him. — *Held*: pltf.s could recover neither a commission on the sale nor anything for their services by way of *quantum meruit*. — *ELVIN v. CLOUGH* (1908), 7 W. L. R. 762; 8 W. L. R. 590. — CAN.

1700 iv. —.]—If the seller has opened negotiations with a proposed buyer, but the negotiations are broken off, & later the buyer renews the same through an agent, the agent is entitled to commission. — *FITZGERALD v. BUCKLEY*, [1924] 4 D. L. R. 38; *affg.* 25 O. W. N. 538. — CAN.

1702 xxxix. —.]—H. agreed with S., who had certain properties in his hands for sale, that he should receive half of the commission if he effected a sale. At the time a likely purchaser, C., was known to both parties. H. pressed C. to purchase, but after a

time, as a matter of policy, let the matter drop, intending to approach C. again on a fitting occasion. In the meantime a member of S.'s staff indirectly approached C., who decided to purchase. — *Held*: H. had established a chain of causation between his efforts & the result, & he was entitled to half the commission. — *HEALY v. SAUNDERS* (1921), 17 Tas. L. R. 32. — AUS.

1702 xi. —.]—Pltf. as agent for the owner of certain property introduced it to A. The owner was asking £17 17s. per week. Pltf. gave A. the key, on which was a label bearing only the name of the owner. A. told pltf. the property was unsuitable, & returned the key. About a fortnight later A., through seeing the owner's name on the label & consulting the telephone directory, discovered the owner's address, & met him to discuss the letting of the property, but did not tell him that she had seen pltf. After negotiations between A. & the owner extending over some days the owner agreed to let the property to A. for twelve months at £13 13s. per week. — *Held*: pltf. was entitled to commission. — *SYMONS v. CALLIN*, [1923] V. L. R. 49. — AUS.

1702 xii. —.]—Deft. gave to pltf.s, written authority to sell her land on terms, one of which was "price, very lowest, £10,000." Pltf.s brought the property under the notice of A., who got into personal communication with deft. & decided that it would suit him in every way, except as to price. After a delay of some weeks deft. & A. resumed negotiations, which led to a sale of the property to A. for £7,300. — *Held*: the relation of buyer & seller was really brought about by pltf.s, who were entitled to commission. — *BIRCHINELL v. MORRIS*, [1913] V. L. R. 201. — AUS.

1702 xlii. —.]—Agent. — *Held*: — *GAMBLE v. EXCELSIOR LIFE ASSURANCE CO.* (1917), 36 D. L. R. 592. — CAN.

1702 xliii. —.]—In 1913, deft. co. employed pltf.s, brokers, to sell its lumber property at a minimum price of \$110,000.00, & agreed to pay a commission on the purchase price. During the remainder of that year & the whole of 1914, pltf.s were working on this proposition, but failed to effect a sale. In 1915 the selling price was reduced to \$75,000.00. In 1916, deft. co. sold to a purchaser introduced by pltf.s for \$65,000.00. — *Held*: pltf.s were entitled to commission on the purchase price. — *JARDINE v. PRES-COTT LUMBER CO., LTD.* (1917), 44 N. B. R. 505. — CAN.

1702 xlii. —.]—Where land is listed with a real estate agent for sale & is afterwards sold by the vendor directly to a purchaser introduced by the agent, the latter is entitled to his commission, even though the terms of sale given in the listing as the basis on which the agent is to negotiate are not strictly adhered to. — *KING v. SCHON*, [1918] 3 W. W. R. 892; 44 D. L. R. 111. — CAN.

1702 xlv. —.]—*NUNNELLY v. OSUM*, [1921] 1 W. W. R. 506; 56 D. L. R. 599; 16 Alta. L. R. 455. — CAN.

1702 xlii. —.]—Deft. agreed to pay pltf.s commission on the sale of certain land, & agreed that it was an exclusive listing, subject to notice of withdrawal, which was not given. Pltf.s submitted the land to P. on terms of the listing & introduced P. to deft., who later, without pltf.s,

knowledge or consent, entered into an agreement with P. for sale of the land & of certain chattels used in farming it. The price of the land was somewhat less, & the cash payment considerably less, than as given in the listing. — *Held*: pltf. was wrongfully deprived of the right which the listing gave him to earn his commission. — *GILBERT BROTHERS, LTD. v. KEISER* (1922), 69 D. L. R. 713; [1922] 2 W. W. R. 1228. — CAN.

1702 xlvii. —.]—Agent. — *Held*: not entitled to recover commission. — *KENNEDY v. VICTORY LAND & TIMBER CO.*, [1922] 3 W. W. R. 145; 68 D. L. R. 201; *reversd.*, [1922] 3 W. W. R. 683; 70 D. L. R. 868. — CAN.

1702 xlviii. —.]—If the relation of buyer & seller is really brought about by the act of the agent, he is entitled to a commission although the actual sale has not been effected by him, but he must show that some act of his was the *causa causans* or the efficient cause of the sale. — *BUNTING v. HOWLAND & WATKINS* (1923), 33 B. C. R. 291. — CAN.

1702 xlix. —.]—Deft. wishing to sell his house placed it in an agent's hands, fixing a net price. The agent introduced P. but negotiations failing, deft. cancelled the agent's instruction to sell. Some time later deft. & P. agreed upon terms & a sale resulted. — *Held*: commission was payable on the amount P. first offered through the agent. — *FRASER v. HARRISON*, [1924] 1 D. L. R. 765; 56 N. S. R. 431. — CAN.

1702 i. —.]—Pltf. procured A., B., & C. to enter into an agreement to purchase deft.'s mineral claims on certain terms of payment, upon which pltf. was to receive a commission as payments were made from time to time. Under this agreement a portion of the purchase price was paid & pltf. got his commission, but the agreement was afterwards cancelled. Subsequently E., who had advanced to A. a considerable part of the money paid by him under the agreement, entered into an agreement direct with deft. to purchase the claims paying \$10,000 down, & pltf. sought to recover commission on that sum. — *Held*: pltf. was not the effective cause of the sale. — *OLSEN v. PEARSON*, [1924] 1 D. L. R. 1097. — CAN.

1702 ii. —.]—R. M. BUCHANAN CO., LTD. v. EBY, [1927] 2 D. L. R. 819; [1927] 1 W. W. R. 929; 21 Sask. L. R. 438. — CAN.

1702 iii. —.]—*NICHOLSON v. DE-BUSE (Alta.)*, [1927] 3 W. W. R. 799. — CAN.

1702 liii. —.]—An agent gave G. a card to view certain property. After inspection G. decided not to buy as the price was too high. Some months later G. saw a "for sale" notice on the property which reminded him that he had previously inspected the property. He then, without further communication with the agent, negotiated with the owner direct & purchased for a smaller amount. — *Held*: the *causa causans* of the sale was the previous introduction through the agent who was entitled to his commission on the lower purchase price. — *DOYLE v. GIBBON*, [1919] T. P. D. 220. — S. AF.

1702 liv. —.]—Certain property given for sale by the owner to an auctioneer at a fixed commission was not sold, the reserve not being reached, & was thereafter given to the auctioneer for sale privately. L., on passing the property, saw a notice up referring intending purchasers to R., but being



1706a. ———.]—Bow's EMPORIUM, LTD. v. BRETT (A. R.) & Co., LTD., No. 1687a, ante.

1711. Add. Annotation:—As to (1) Consd. Price, Davis v. Smith (1929), 141 L. T. 490.

aware of the fact that the auctioneer had been selling the property went to the auctioneer, who referred him to the owner. L. thereupon went direct to the owner & bought the property after having told him that he came on his own behalf & not at the instance of any agent:—*Held*: the auctioneer was entitled to his commission.—TREGASKES v. MEIKLE, [1922] T. P. D. 317.—S. AF.

1702 lv. ———.]—Where a vendor concludes a contract of sale with a party with whom his real estate agent has been negotiating in ignorance that he is such a party, the agent is entitled to his commission if the circumstances are such that the vendor ought to have made inquiries which would at once have revealed the facts.—GRIFFITHS v. ANDERSON, [1925] 4 D. L. R. 976.—CAN.

1702 lvi. ———.]—NELSON v. HIRSCHBORN, [1927] App. D. 190.—S. AF.

1702 lvii. ———.]—TRENWITH v. INTERNATIONAL HARVESTER CO. (B. C.), [1928] 2 D. L. R. 121.—CAN.

1702 lviii. ———.]—A real estate agent who brings his principal into relations with the actual purchaser is the effective cause of the sale & entitled to his commission, although the principal sells behind his back & the price paid by the purchaser is less than the sum at first demanded by the principal. In the present case wherein the purchase-money was paid into deft. bank, a creditor of the vendors, under an arrangement under which it undertook to pay the agent his commission out of the sums paid in, held that the fact that the property was first transferred to the bank's manager who afterwards transferred it to the purchaser introduced by the agent did not take away the agent's right to the commission, since the transfer to the manager was taken merely to secure, in the interests of the bank & the other creditors of the vendors, a sale to said purchaser; & moreover, the agent was entitled to succeed against the bank on the ground that, whether the sale originally contemplated *i.e.*, that from the vendors direct to said purchaser, was or was not called off, the bank's manager had agreed that the bank would pay the agent the commission if the transfer from the manager to said purchaser went through.—LADD v. BANQUE CANADIENNE NATIONALE (Man.), [1928] 2 W. W. R. 272.—CAN.

1702 lix. ———.]—The agent is entitled to commission if he has been the means of bringing the parties together, although he may not actually have introduced them to each other, & although the actual sale has not been effected by him.—BRETT & Co., LTD. v. Bow's EMPORIUM, LTD., [1928] S. C. (H. L.) 19.—SCOT.

sr. —Purchaser acting behind agent's back.]—*Held*: principal liable to pay full commission on conclusion of a contract of sale with the purchaser.—MERRITT v. DOHERTY, [1925] 3 D. L. R. 797.—CAN.

#### PART VIII. SECT. 3, SUB-SECT. 1.—B. (b).

1703 x. ———.]—One of two real estate agents with whom property was listed for sale:—*Held*: entitled to commission on a sale initiated by him but completed by the other agent, to whom the purchaser made known his wish to buy the property after it had been brought to his attention by pltf.—GRIFFITHS v. ANDERSON, [1926] 2 D. L. R. 657; [1926] 1 W. W. R. 956; 35 Man. L. R. 480.—CAN.

1703 xi. ———.]—Deft. placed a

property in the hands of several agents, including pltf., for sale. Pltf. found a purchaser who was willing to pay the price as ultimately fixed for the property, & despatched a telegram stating that fact to deft. Before deft. received the telegram however, he had in fact sold the property to another person through another agent. In an action by pltf. for commission:—*Held*: he had not complied with the implied condition attached to the promise to pay commission, namely, that he should find an able & willing purchaser & introduce him to the vendor before the vendor had in fact sold the property to some other person, & was therefore not entitled to recover commission.—DANTON v. CHIVERS, [1928] V. L. R. 555; 49 A. L. T. 299; [1928] Argus L. R. 394.—AUS.

1706 ix. Delete the words "& entitled to commission."

1706 xiii. ———.]—Pltf. introduced to deft. A., who wished to purchase a property for his son, B. Deft.'s house was eventually transferred to the trustees of C.'s estate, in which A.'s family was interested, & the purchase-money was paid by the trustees at the instance of A. Deft. alleged that another agent, though aware of A.'s inspection of the house, obtained B.'s signature to the contract of sale:—*Held*: the verdict should be entered for pltf.—WEBSTER (A. G.) & SONS, LTD. v. COTTON (1919), 15 Tas. L. R. 17.—AUS.

1706 xiv. ———.]—An agent is entitled to commission on a sale brought about by his action in putting the purchaser in touch with the principal, even though the purchase is subsequently completed through another agent.—PETTYPIECE v. HOLDEN (1920), 40 D. L. R. 386.—CAN.

1706 xv. ———.]—The commission on a sale of real estate was given by the cl. to the agent who found the purchaser & put the vendor in motion to meet him, rather than to another who performed services in connection with the effecting & carrying out of the sale.—BATEMAN v. SNELOROVE & GARDEN, [1921] 1 W. W. R. 305; 14 Sask. L. R. 69; 57 D. L. R. 283.—CAN.

1706 xvi. ———.]—A. promised B. a commission if B. sold a ship. B. employed a broker as sub-agent, who mentioned the matter to another agent, & it was passed on through others until, about nine months after the agreement with B., a broker to whom the matter was mentioned came to A. & made an arrangement directly with him resulting in a purchaser being obtained. B. continued his services, which were accepted by A., up to the time of sale, & was of assistance in procuring the Govt.'s consent to a transfer of the ship to a foreign registry:—*Held*: B. entitled to commission.—GREER v. GODSON, [1921] 2 W. W. R. 209; 60 S. C. R. 653; 56 D. L. R. 696.—CAN.

1706 xvii. ———.]—Pltf. endeavoured to effect a sale of deft.'s land to a co., of which H. was a director, & introduced H. to deft. The parties agreed to agree upon terms & the negotiations ended, & pltf. made no further effort to sell the land. Subsequently deft. through another agent sold the land to H., who purchased it on behalf of another co.:—*Held*: pltf. was not entitled to commission.—NEVE v. LERSON, [1921] 1 W. W. R. 904.—CAN.

1706 xviii. ———.]—After pltf., with whom a house had been listed, introduced a prospective purchaser to the vendor, the purchaser endeavoured

to induce the vendor to reduce the price. The vendor was unwilling to fix a figure agreeable to the purchaser, & the latter then negotiated through other agents, with whom the house had also been listed, & finally bought it:—*Held*: pltf. were entitled to commission.—BROOK & ALLISON v. HENDRICKS (1922), 66 D. L. R. 825; 15 Sask. L. R. 439; [1922] 2 W. W. R. 580.—CAN.

1706 xix. ———.]—Deft. listed a property with pltf. with instructions to find a purchaser at the price of \$5,000. A month later deft. listed the property with another broker at \$4,750, the second broker having his offices across the hall from pltf.'s offices in the same building. Pltf. interested S. in the property & brought her to view it. Shortly after S. went to pltf.'s offices with a view to purchasing, & when about to enter the offices saw a picture of the property in the window across the hall marked for sale at \$4,750. She went into pltf.'s offices, discussed the sale but went out without making the purchase, crossed the hall & purchased the property from the second broker at \$4,750:—*Held*: pltf. were entitled to their commission.—TURNER MEAKIN & Co. v. FIELD (1923), 33 B. C. R. 56.—CAN.

1706 xx. ———.]—CARR v. LA DRECHE, [1927] 2 D. L. R. 480; [1927] 1 W. W. R. 674; 38 B. C. R. 97.—CAN.

1706 xxi. ———.]—Pltf. received written authority from deft. to enter into a contract with a purchaser for the sale of his farm & stock. The rate of remuneration was stated to be a certain percentage on the value of the land sold. Pltf. introduced the property to a prospective buyer, who ultimately purchased the property, but through the instrumentality of another agent. Pltf. claimed from deft. £171 19s. in respect of the land sold, & £65 in respect of the stock & implements. The jury found that the sale had resulted from the introduction of the purchaser from pltf.:—*Held*: pltf.'s right to commission depended on the terms of his authority, & this did not authorise any commission on the sale of the stock.—ROWE v. BUTLER, [1921] N. Z. L. R. 437.—N.Z.

1706 xxii. ———.]—Deft. agreed to pay pltf. commission if a sale of deft.'s house to X., who was introduced by pltf., went through. Deft. also agreed to let pltf. know should he be prepared to sell his house for a smaller amount than he had mentioned to pltf. Deft. subsequently instructed another attorney to offer the house to X. at a reduced price, & a sale was thereupon concluded:—*Held*: pltf. was entitled to the commission agreed upon.—VAN DER WALT v. HOFMEYER, [1920] C. P. D. 50.—S. AF.

1706 xxiii. ———.]—A agreed to give B. a commission in case of a sale of certain premises. B. introduced C., but no sale resulted. C., of his own motion & not as an agent of B., subsequently introduced D., & A. sold the premises to D.:—*Held*: B. was not entitled to commission.—GODDARD v. ARNOLD, [1922] T. P. D. 167.—S. AF.

1706 xxiv. ———.]—WALLACE v. WESTERMAN (B. C.), [1928] 3 D. L. R. 939.—CAN.

1707 ii. ———.]—In a dispute as to which of two real-estate agents was entitled to the commission on a sale:—*Held*: the one who first through his advertisement attracted & interviewed the purchaser & directed him to the owner was the efficient cause of the sale

1718. *Add. Annotation*:—*As to* (2) *Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1726. *Add. Annotation*:—*Refd.* Houlder Howard v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1738. *Add. Annotation*:—*Consd.* Bow's Emporium v. Brett (1927), 44 T. L. R. 194.

1739. *Citations*:—For the existing citations substitute as follows:—  
(1887), as reported in 58 L. T. 96; 3 T. L. R. 836, H. L.

*Annotations*:—For "*Mentd.* Barnett v. Isaac-

son (1888), 4 T. L. R. 595," read "*Refd.* Barnett v. Isaacson (1888), 4 T. L. R. 595."

*Add. Annotations*:—*As to* (2) *Consd.* Price, Davies v. Smith (1929), 141 L. T. 490. *Generally, Refd.* Keppel v. Wheeler, [1927] 1 K. B. 577. *Mentd.* Banbury v. Bank of Montreal, [1918] A. C. 626; Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1740. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1741. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1746. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

& entitled to the commission, rather than the other who subsequently discussed the property with the purchaser & whose agent first showed it to him.—*BUFFET v. WALLER & LAZARNICK*, [1920] 2 W. W. R. 404; 52 D. L. R. 499; 30 Man. L. R. 437.—*CAN.*

1707 iii. — *Loan broker.*—The office of a loan broker is to bring together the borrower & the lender who is willing to open negotiations on a reasonable basis, & when he has done that, he has done all that is necessary for him to do & earn his commission.—*VAHAUJI MOOLJI v. KARSONDAS TRIPAL* (1927), 1 L. R. 52 Bom. 627.—*IND.*

# PART VIII. SECT. 3, SUB-SECT. 1.— B. (c).

i. *S. P. SATCHIDINANDA DUTT v. NRITYA NATH MITTER* (1923), 1 L. R. 50 Calc. 878.—*IND.*

ii. —.—Where a land agent is employed to sell or exchange the property of his client, & commission is to be paid to him when he has "effected" a sale or exchange of such property, his right to commission accrues when he procures a valid contract for the sale or exchange of such property.—*NIRO v. WILSON*, [1924] N. Z. L. R. 834.—*N.Z.*

1722 i. *Completion of entire contract.*—*GREER v. GODSON* (1918), 40 D. L. R. 218.—*CAN.*

ci. —.—Pltf. found a purchaser for deft.'s land, the amount of commission was agreed on, & an agreement of sale executed. The purchaser subsequently refused to carry out the sale:—*Held*: pltf. was entitled to the commission.—*DONER v. LOOSE*, [1920] 2 W. W. R. 388; 53 D. L. R. 39; 30 Man. L. R. 350.—*CAN.*

st. —.—*Commission payable on receipt of purchase-money*—*Payment by promissory notes.*—An agreement provided that commission was "to become due & payable when the purchase-money or any part thereof has been paid":—*Held*: defts. having accepted promissory notes in lieu of a cash payment, the promissory notes must be treated as a cash payment so far as pltf. was concerned.—*CROSS v. WOOD* (1921), 64 D. L. R. 105; 50 O. L. R. 15.—*CAN.*

sa. —.—*Commission payable for services already rendered.*—When it has been definitely agreed to pay an agent commission for his services in negotiating a sale, & the payment was to be made for services already rendered & was not to be dependent upon the payment of the purchase price, the agent can recover the commission under the agreement, although the purchaser has failed to make any payment after the first one.—*CARMICHAEL v. BOWERS* (1922), 67 D. L. R. 515.—*CAN.*

# PART VIII. SECT. 3, SUB-SECT. 1.— C. (a).

1729 iii. —.—*Sale of remainder of land.*—Pltf. employed deft. to sell a house & portion of the block of land on which it stood. Deft. found a

purchaser & a contract of sale was signed under which pltf. gave the purchaser certain provisional rights over the unsold portion. Afterwards pltf. endeavoured to obtain from the purchaser a modification of the contract with regard to the rights over the unsold portion, & deft. did considerable work in trying to induce the purchaser to vary the contract in this respect. During the negotiations left. repeatedly urged pltf. to sell the whole of the land. Negotiations having failed pltf. behind the back of deft. sold the remainder of the land to the original purchaser & the whole was included in a single transfer:—*Held*: deft. was not entitled to commission on the sale.—*MCANDREW v. GRAY* (1920), 20 S. R. N. S. W. 635.—*AUS.*

# PART VIII. SECT. 3, SUB-SECT. 1.— C. (b).

sw. *Transaction similar*—*Further sale.*—A. in 1911 employed pltf. to sell a Crown lease, & an agreement was entered into which provided that if pltf. sold the lease for £25,000 he was to receive £5,000. In 1914 through the instrumentality of pltf. the lease was transferred to S. & on payment by S. of £5,000, pltf. received £1,000 as commission. In 1919 A. & S. sold the lease to T. for £14,000. Some years prior to this sale pltf. had submitted full particulars of the lease to T., who would not then buy. L., who was employed for that purpose by A. & S., had brought about the sale to T. Pltf. claimed commission in respect of the sale to T.:—*Held*: pltf. was not entitled to commission.—*DREWNEY v. MATHESON*, [1923] S. A. S. R. 105.—*AUS.*

# PART VIII. SECT. 3, SUB-SECT. 1.—D.

sa. *Agent to obtain money for project—Expansion & modification of proposal.*—*Held*: the agent was entitled to recover commission.—*THOMAS v. GALE*, [1927] 1 D. L. R. 593; S. C. R. 314; varying, [1925] 3 D. L. R. 757.—*CAN.*

sb. *Agent to procure loan to third party—Loan raised by third party.*—Pltf. claimed a commission of 1 per cent. from deft. on the ground that the latter had requested him to raise a loan of £27,500, subsequently increased to £35,000, not on behalf of deft. but on behalf of one F. It was admitted that deft. had sold a certain property to F. for a sum of £45,000, £10,000 to be paid in cash & the balance to be secured by a bond over the property; through pltf.'s efforts the manager of a certain insurance co. was prepared to advance £27,500 to F. on a first mtge. over the property & that thereafter a sum of £35,000 was in fact advanced by the insurance co. upon that security, together with certain additional securities. Deft. denied that he had made the contract alleged with pltf. & stated that the real arrangement between them was that pltf. should raise a loan of £27,500 on behalf of deft. himself & not for F., & further, that if F. paid off the whole amount of the purchase price in cash pltf. was

not entitled to any commission whatever, & that F. had personally raised on his own behalf a loan of £35,000 not on the security of the property alone but on additional securities belonging to him. At the trial pltf. applied for leave to amend his declaration so as to base his claim on a mandate to raise a loan of £27,000 only. The trial ct. refused to grant the amendment & hold pltf. had earned commission on £35,000, the sum actually advanced to F., but as pltf. had declared himself satisfied with £275 awarded the latter amount. Deft. having appealed:—*Held*: commission of 1 per cent. was promised pltf. by deft. if the former was instrumental in obtaining a loan of £27,500 from the insurance co. to F.; further, in view of application for amendment, which should have been granted, it was unnecessary to consider whether pltf. was entitled to commission on the whole sum advanced, & as on the facts, it was clear that £27,500 would have been advanced on the property alone, the fact that £35,000 had been lent upon the property, together with additional security, did not debar pltf. from recovering commission on £27,500.—*SAMMEL v. JACOBS & Co.*, [1928] App. D. 353.—*S. AF.*

so. *Agent to sell—Third party entering into partnership with principal.*—A., an agent employed by P. to obtain a purchaser for a mill, introduced M. to P. The sale did not go through. P. eventually entered into a contract of partnership to work the mill, the partners being P., M. & C.:—*Held*: as the transaction resulting from the agency differed substantially from that which A. had been employed to procure, he was not entitled to any remuneration.—*BORDER v. EDLEY*, [1920] O. P. D. 19.—*S. AF.*

pi. —.—Pltf. claimed for commission on sale of timber holdings of deft. co. The shareholders had passed a resolution authorising a sale at a fixed minimum price upon terms agreeable to the directors, & a letter from the co.'s managing director to pltf. offered £35,000 commission should pltf. make a sale at a certain named price, which price would net the co. such minimum price. A sale was made through other agents, not for a lump sum, but for a price based on board measurement to be paid for as the timber was taken, with an additional sum to be paid when the timber had been logged:—*Held*: the sale was not a sale within the contract.—*ROBAY v. NIMPKISH LAKE LOGGING CO., LTD., & GARLAND*, [1919] 2 W. W. R. 105.—*CAN.*

yi. —.—E. requested S., a servant of pltf., to obtain a buyer for his property. E. told S. that he wanted £850, & would pay commission. S. then asked E. if he would consider an offer. E. replied he wanted £800 clear. S. introduced K. to E., but the price offered was too low, & after various negotiations no sale took place. Six months later E. sold the property to K. for £800:—



**1746a. Agent to sell property—Agent himself buying property—With consent of principal.]—**Where an agent has been instructed to sell property on commission &, after failing to find a purchaser, agrees with his principal to buy the property himself, he is not entitled to commission on the purchase by himself unless his principal has expressly agreed that such commission shall be payable.—*HOCKER v. WALLER* (1924), 29 Com. Cas. 296.

**1746b. — At stated price.—Sale at lower price—With consent of principal.]—***PRICE, DAVIES & Co. v. SMITH*, No. 1780a, *post*.

**1751. Add. Annotation:—As to (2) Refd.** *Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

**1751a. —J.]—**Pltfs., who were shipbrokers, negotiated on behalf of defts., the owners of a steamship, a charterparty of the steamship which was to be in force from Oct. 1920 for five years, & which contained a clause providing that the charterers should have the option of purchasing the steamship at any time between the signing of the charter & the completion of the charter period for £125,000. On the day when the charterparty was signed defts. signed & gave to

pltfs. a commission note in these terms: "We hereby agree to pay you . . . 5 per cent. brokerage on hire. . . . Should the option of purchase contained in the charter be availed of, the brokerage on purchase to be 3½ per cent. . . ." The charterparty was acted upon until June, 1921, when defts. sold the steamship to the charterers for £65,000. Pltfs. brought an action against defts., claiming (*inter alia*) 3½ per cent. commission on £65,000, the price paid by the charterers for the steamship, &, in the alternative, a *quantum meruit* for their alleged services in effecting the same:—*Held*: (1) the former of these claims failed, the option of purchase mentioned in the commission note never having been exercised, & the sale effected being a sale at a different price from that upon which alone the brokerage of 3½ per cent. was to become payable; (2) the latter claim also failed inasmuch as the parties having reduced their bargain into writing in the commission note, there was no scope for the operation of the principle of *quantum meruit*.—*HOWARD-HOULDER & PARTNERS, LTD. v. MANX ISLES S.S. Co.*, [1923] 1 K. B. 110; 92 L. J. K. B. 233; 128 L. T. 347; 38 T. L. R. 757; 66 Sol. Jo. 682; 16 Asp. M. L. C. 95; 28 Com. Cas. 15.

*Held*: as the buyer offered less than £800, pltf. was not entitled to commission.—*ROBINSON v. EVES*, [1917] S. A. L. R. 71.—*AUS*.

**y ii. — — —.]—***Held*: as the employment was a general one, the price mentioned being intended not as a hard & fast one, but as a basis of negotiations, pltf. was entitled to the agreed commission on the price obtained.—*PRENTICE v. MERRICK*, [1917] 3 W. W. R. 1060; 24 B. C. R. 432; 38 D. L. R. 388.—*CAN*.

**y iii. — — —.]—**An owner in Apr. listed with an agent certain land for sale at \$35 an acre with a fixed cash payment, the price to include the crop. In Nov., after the owner had taken off & sold the crop, the agent sold the land for \$30 an acre on a small cash payment.—*Held*: in order to earn his commission the agent had to obtain a purchaser for the land & crop at \$35 per acre.—*FITCHELL v. LAWTON*, [1919] 3 W. W. R. 728; 49 D. L. R. 185.—*CAN*.

**y iv. — — —.]—**Deft. listed his farm with pltfs. for sale at \$38 an acre. Deft. sold the land at \$37 an acre to one introduced by pltfs.:—*Held*: pltfs. were entitled to commission.—*SMITH v. WRIGHT*, [1919] 3 W. W. R. 1094; 49 D. L. R. 408; 12 Sask. L. R. 491.—*CAN*.

**y v. — — —.]—**When a proprietor goes to an agent & requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a general employment, & should the estate be eventually sold to a purchaser introduced by the agent, the latter will be entitled to his commission, although the price paid should be less than the sum named at the time the employment was given. The mention of a specific sum prevents the agent from selling at a lower price without the consent of his employer, but it is given merely as the basis of future negotiations, leaving the actual price to be settled in the course of those negotiations.—*PALMER v. HARVEY* (1922), 65 D. L. R. 769; 15 Sask. L. R. 152; 1 W. W. R. 231; *affo*. (1920), 65 D. L. R. 703; 14 Sask. L. R. 19.—*CAN*.

**y vi. — — —.]—**Where the contract is that the agent is not to be paid a commission unless he procures a pur-

chaser at a specified figure, the fact that a sale is made by the owner at a lower price does not entitle the agent to remuneration by way of *quantum meruit*.—*GRIFFITH v. FREDERICKSON*, [1926] 4 D. L. R. 50; [1926] 2 W. W. R. 680; 36 Man. L. R. 64.—*CAN*.

**y vii. — — —.]—***WEAVER v. DIXSON*, [1928] 4 D. L. R. 226; 62 O. L. R. 419.—*CAN*.

**sd. — Third party taking land in a trade.]—**Agents who had been promised a commission should they obtain a purchaser for land at a certain price:—*Held*: not entitled to commission, as they only introduced a party who took the land in a trade & with whom the principal had previously discussed a trade.—*BROWN v. PATCHELL*, [1919] 3 W. W. R. 701; 49 D. L. R. 158.—*CAN*.

**se. Agent to exchange—Exchange of other properties.]—**A real estate agent is entitled to his commission on an exchange of properties where he brings the parties together & engages actively in negotiating the exchange, which eventually falls through owing to the objection of his principal to include certain stock & implements in the transaction, the principal soon afterwards completing the exchange without the stock & implements but with the same purchaser for other property owned by him.—*DUNN v. SINCLAIR*, [1923] 1 D. L. R. 426.—*CAN*.

**sf. Agent to obtain signature of wife—Obtaining signature of husband.]—**Defts. agreed with pltfs. that if the latter obtained Mrs. M. to sign a building contract for a house they would pay pltfs. the usual commission as on a sale of land. Pltfs. obtained the signature of the husband:—*Held*: as it was immaterial to defts. whether the contract was signed by Mrs. M. or by the husband, pltfs. were entitled to the commission agreed to.—*SMITH & SMITH v. DINGLE & HOLMES*, [1923] 3 D. L. R. 68; 3 W. W. R. 49.—*CAN*.

#### PART VIII. SECT. 3, SUB-SECT. 1.— E. (a).

**1754 xix. — Principal altering date for giving possession.]—**An agent with whom land has been listed for sale has earned his commission when he has introduced to the owner a purchaser who is ready, willing & able

to buy at the price & terms stated by the owner, though the sale does not go through by reason of the owner insisting on a date for giving of possession later than that at first stated.—*HIGGINS v. MITCHELL*, [1921] 1 W. W. R. 252; 57 D. L. R. 288; 31 Man. L. R. 60.—*CAN*.

**1754 xx. —.]—**Deft.:—*Held*: liable to pltf. for an agreed commission for a sale of land procured by pltf. & which was not carried out because of deft.'s refusal, without sufficient reason, to carry it out.—*BALLS v. MCGREGOR* (1922), 68 D. L. R. 718; 32 Man. L. R. 196; [1922] 2 W. W. R. 1247; *affo*. 66 D. L. R. 696.—*CAN*.

**1754 xxi. —.]—**Where a real-estate agent had found a purchaser who had accepted the seller's proposition for the sale or exchange of his land, & the acceptance was made within the time limited by the seller, but the seller refused to complete the transaction & alleged that the purchaser was not ready, willing or able to complete the transaction:—*Held*: the onus of proof was on the agent suing for commission.—*REGINA BROKERAGE & INVESTMENT Co. v. KISTNER* (1922), 70 D. L. R. 75; [1922] 3 W. W. R. 657.—*CAN*.

**1754 xxii. — Agent taking undue advantage of principal.]—**A real estate dealer, who acted for a foreigner with an imperfect knowledge of English, took an undue advantage of his principal in representing an improvident transaction to be a very desirable one, which he should enter into in substitution for an exchange which had fallen through. The principal having repudiated the second transaction, the ct. refused to allow the agent the commission he would have obtained thereunder had it been completed, but allowed him commission on a *quantum meruit* based on the amount of commission contemplated by the first transaction.—*BURNS v. MINCHAU* (Alta.), [1928] 3 W. W. R. 791.—*CAN*.

**1754 xxiii. —.]—***TURNER MEAKIN & Co. v. CALEDONIA & BRITISH COLUMBIA MORTGAGE Co., LTD.*, [1927] 2 D. L. R. 395; 38 B. C. R. 103.—*CAN*.

**1758 viii. —.]—**Deft., having a property for sale, gave an authority to pltf. in the following terms: "I hereby authorise you to sell my property, for the price of \$2,600 nett.

1755. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.
1759. *Add. Annotation*:—*Consd.* Price, Davies v. Smith (1929), 141 L. T. 490.
1763. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.
- 1768a. *Principal selling ship to charterers*—During currency of charter.]—Shipbrokers employed to effect a charter of a steamship procured a charter for eighteen months, but after four months of the charter had run the owner sold the vessel to the charterers & the charterparty was cancelled. The charterparty provided for payment of a commission of 2½ per cent. on the hire paid & earned

under the charterparty & on any continuation thereof. In an action by the brokers to recover commission for the remainder of the charter period:—*Held*: it was not an implied term of the contract that the shipowners should not agree to put an end to the charterparty by the sale of the ship to the charterers, & the action failed.—*FRENCH (L.) & Co. v. LEESTON SHIPPING CO.*, [1922] A. C. 451; 91 L. J. K. B. 655; 127 L. T. 169; 38 T. L. R. 459; 15 Asp. M. L. C. 544; 27 Com. Cas. 257, H. L.

*Annotations*:—*Folld.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110. *Mentd.* Gaze v. Port Talbot Corpn., (1929), 93 J. P. 89.

Any amount over & above this figure to be paid to you as commission on the sale." Pltf. found a purchaser who entered into a contract to purchase for £2,750. The bargain went off, however, owing to the purchaser's insistence on the removal of some restrictive covenants, which deft. was unable to effect.—*Held*: pltf. having found a purchaser, & having brought about a contract for sale at a price of £2,750, was entitled to the sum of £150 by way of commission, & the subsequent failure of the transaction, through no default on his part, did not deprive him of his right to recover that amount from deft.—*PEACOCK v. TARTLETON* (1928), 28 S. R. N. S. W. 561; 45 N. S. W. W. N. 164.—*AUS.*

*sk. Principal refusing to compete with other buyers.*—Pltfs. engaged deft. to purchase lambs in a large specified area. He was to receive a commission on all lambs bought by him, the price to be the highest market price at the time of delivery. Deft. proceeded to canvass farmers & secure options on the lambs they had for sale. When the time for taking the delivery was at hand pltf. advanced deft. \$2,000 to buy lambs. When the time for taking delivery of the lambs arrived, pltf. refused to advance the price to the level of that of competing buyers & deft. was unable to procure the lambs which he had agreed for.—*Held*: pltf. had defaulted & were estopped from saying that deft. did not complete his contract.—*NEW ENGLAND DRESSED MEAT & WOOL CO. v. PATRICK BROTHERS*, [1923] 1 D. L. R. 153.—*CAN.*

1763 i. *Principal declining to accept loan.*—Where an agent performed his part in obtaining a loan, & was in no way responsible for the non-payment of the money under the loan:—*Held*: he was entitled to his commission.—*WHITESIDE v. WALLACE SHIPYARDS, LTD.* (1919), 27 B. C. R. 40; 45 O. L. R. 434.—*CAN.*

1766 v. — *SMITH v. UPPER CANADA COLLEGE* (1920), 48 O. L. R. 120; 54 D. L. R. 548; 18 O. W. N. 370.—*CAN.*

1766 vi. — *Pltf., a ship & general broker, sold to N. a ship on deft.'s behalf. The purchase price was £140,000 payable by N. to deft. in instalments, & deft. agreed to pay pltf. £20,000 of the purchase price when he received the second instalment. Before that instalment was paid N., with deft.'s consent, cancelled the contract:—Held: upon the cancellation of the contract of sale, pltf.'s right under his special contract with deft. was determined & his claim for commission failed.*—*GOWAN v. BOWERN*, [1924] App. D. 550.—*S. AF.*

*sl. Principal not negotiating in good faith.*—Where under an agreement to pay an agent commission on a sale of real estate, the agent is to be entitled to the commission only when the principal concludes a sale to a purchaser found by the agent, the law

implies an agreement by the principal to negotiate in good faith with the purchaser proposed & to demand only such terms as, considering all the circumstances, might be conceivably demanded in perfect good faith. Where the principal does not negotiate in good faith & the sale is thereby prevented, the agent is entitled to damages.—*MCINTYRE & CO. v. LAW*, [1918] 2 W. W. R. 359; 13 Alta. L. R. 273; 40 D. L. R. 231.—*CAN.*

*sm. Principal selling ship to charterers—Commission payable under charter.*—Pltfs. negotiated a charterparty, which contained a clause providing for payment of commission on the estimated gross amount of hire as earned & paid. Subsequently the owners & the charterers entered into a contract of sale, which contained a clause cancelling the charter & so cancelling the clause therein providing for the commission:—*Held*: pltfs. were entitled to the amount of commission which would have been payable if the charterparty had not been cancelled, but, especially having regard to the fact that the action was brought before the period of hiring under the charterparty had expired, subject to a fair deduction in view of the risk of the hire ceasing apart from any voluntary action by the owners.—*ROXBURGH v. CROSBY & CO.*, [1918] V L. R. 118.—*AUS.*

#### PART VIII. SECT. 3, SUB-SECT. 1.— E. (b).

*bi. —*—*Held*: the agent was not entitled to commission.—*FLANAGAN v. CHAPMAN*, [1920] 1 D. L. R. 159; 58 O. L. R. 94.—*CAN.*

*ci. —*—*Deft., who was authorised to procure a purchaser & accept a deposit & retain from the deposit his commission for procuring a purchaser, then ready & willing & apparently able to fulfil his obligations to the extent at least of making the down payment, procured a purchaser, who made the agent a deposit of \$250, & the vendor entered into a written memorandum to sell to him. The principals afterwards by arrangements between themselves cancelled the contract on the ground that the purchaser found himself unable to make the first payment, & the purchaser agreed to forfeit the \$250:—Held: deft. was entitled to retain the \$250, but was not entitled to anything further.*—*DE WOLF v. DELMAGRE* (1922), 65 D. L. R. 42; 17 Alta. L. R. 441; [1922] 1 W. W. R. 1129.—*CAN.*

*ci. —*—*A broker, commissioned to obtain a purchaser for a piece of land, found a purchaser, who failed to complete the sale within a fixed period owing to his inability to pay ready money. The principal entered into a new arrangement direct with the purchaser, & such new arrangement was subsequently rescinded by the principal:—Held: the broker was not entitled to commission.*—*FOUCAR &*

*CO. v. MUDALIAR* (1923), 1 L. R. 2 Ran 45.—*IND.*

*fi. —*—*J. W., having agreed to sell shares to a co., entered into a contract to pay C. a commission for services in effecting the sale. The purchase price of the shares was to be paid by instalments & the commission was to be paid out of the respective instalments. The contract provided that if the payments were not made by the purchasers W. would be under no liability to pay the commission. The initial payment was made & the commission thereon paid to C. When the next payment fell due the purchasers defaulted & shortly after the co. was placed in liquidation. The liquidator offered the assets for sale & accepted the tender of W. & H. The successful tenderers received all the assets of the estate including the stock sold by C. There was no evidence that the assets had a cash value equivalent to the amount of the unpaid purchase price of the shares:—Held: W. had not received payment for the shares, & the commission was not earned.*—*Cecil v. WETTLAUFER*, [1923] S. C. R. 69; 1 D. L. R. 352; *affu.* 20 O. W. N. 260.—*CAN.*

*li. —*—*PROGRESSIVE AGENCY v. BENNETT*, [1928] N. Z. L. R. 100.—*N.Z.*

*sn. Third party repudiating contract.*—Where a contract for sale was entered into between A. & B., & A. accepted B. as the purchaser, but B. did not pay any portion of the purchase-money, & subsequently repudiated the contract:—*Held*: the agent who negotiated the contract was entitled to commission on the sale.—*BOND v. DAWSON*, [1923] St. R. Qd. 63.—*AUS.*

*sp. —*—*Where a purchaser repudiated the agreement of sale, the vendor acquiescing:—Held: pltf. as agents were not entitled to commission.*—*MOTOR FARMING & DEVELOPMENT CO. & DAVIDSON v. SMITH*, [1923] 2 D. L. R. 1178; 1 W. W. R. 1409.—*CAN.*

*st. —*—*Pltf. employed and a purchaser for certain land, & agreed to pay him commission if he succeeded. Deft. found persons willing to take an option, & he prepared an option agreement which was entered into by the parties. The purchase price was \$3,000, & the cash payment was \$300 which was to be forfeited if the purchasers failed to go further in the purchase. They paid this \$300 to deft., who paid pltf. \$150, retaining the balance, \$150, as his commission on the whole purchase price. The purchasers refused to carry out the purchase:—Held: pltf. was entitled to the \$150 retained by deft. as commission.*—*CARLSON v. THOMPSON*, [1923] 3 W. W. R. 869.—*CAN.*

*sa. —*—*Pltf. entered into the following sale agreement with deft.: "I hereby authorise you to negotiate a sale, & agree to pay you commission provided you sell or furnish*

1771. *Add. Annotation*.—**Refd.** Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1775. *Add. Annotation*.—**Refd.** Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1776a. — "Private treaty" sale.]—Where an estate agent is employed to find a purchaser of an estate, the terms of the agent's employment being that commission is payable to him on the purchase price on sales by "private treaty," his principals are liable for his remuneration only when a sale has been completed & the purchase price has been paid on completion, except where the non-completion is due to some default or omission on the part of his principals. When, therefore, the agent has been employed simply on the above terms, he is not entitled to commission on the purchase price if he has merely brought about a purchase agreement which, without default or omission on the part of his principals, has not been

39 T. L. R. 399.

1780a. —.]—Pltfs. D. & Co., who were partnership agents, claimed to recover from deft. the sum of £92 10s., being the balance of commission on the sale of deft.'s business premises at T., effected by pltfs. Deft. had advertised the property for sale, & pltfs. had sent him a "particular form" which was in blank, except the words: "I hereby instruct you to sell my business premises as per particulars above, which I declare to be correct, & agree to pay you a commission 5 per cent. on the total price paid by the purchaser & appoint you agents," which, as pltfs. alleged, they had inserted on the form before sending it to deft. On July 8, 1928, deft. filled in the form & returned it to pltfs., but he subsequently denied that the above words were on the form when he signed it. A firm of G. & Co., estate agents, believing that they had secured a likely customer for the property, communicated with pltfs. & sent their representative, P., to them, & pltfs. introduced P. to deft. Deft. alleged that P. had been introduced to him as a purchaser, but pltfs. contended that he had been introduced to deft. as another agent

who would be likely to find a purchaser. Ultimately P. found a purchaser in one T., who agreed to pay £4,000 for deft.'s property. In the "particulars form" deft. had stated: "Lowest price for goodwill, fixtures, & fittings, £4,500," but he eventually accepted £4,000. Meanwhile pltfs. & G. & Co. had agreed to share the commission. Deft. subsequently paid commission amounting to £107 10s. to G. & Co. As this amount was £92 10s. short of £200, the 5 per cent. commission on £4,000, pltfs. on Nov. 2, 1928, issued a writ claiming the balance from deft. The completion of the purchase did not take place until Nov. 15, 1928, & deft. contended (*inter alia*) that he was not liable to pay commission until he had received the purchase price. The jury found (a) that the words in relation to the 5 per cent. commission were in the particulars form of July 8, 1928, when deft. signed it, (b) that the property was

sub-agents for pltfs.:—**Held**: (1) pltfs. were not to be deprived of their commission by reason of the fact that the property was ultimately sold for £4,000 instead of the £4,500 asked by deft. in the particulars form; (2) the jury's findings that the words about 5 per cent. commissions were in the document when deft. signed it, the property was sold through the instrumentality of the pltfs., & that G. & Co. were acting as sub-agents for pltfs., could not be interfered with; & (3) although pltfs. had done all the work required to entitle them to their commission, they were not in a position to claim payment of their commission until the purchase was completed, & as the writ was issued thirteen days before the date of the actual completion of the purchase, it was issued too soon & the action failed.—**PRICE, DAVIES & Co. v. SMITH** (1929), 141 L. T. 490; 45 T. L. R. 542; 73 Sol. Jo. 401, C. A.

1782. *Add. Annotation*.—**Generally, Mentd.** Hughes v. Satchell (1925), 134 L. T. 93.

1783. *Add. Annotation*.—**Refd.** Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

me either directly or indirectly with the name of a party to whom I may sell. Commission to be due & payable when sale is made." Deft. found a purchaser, entered into an agreement of sale with him, & a deposit of \$200 was paid by the purchaser to deft. The purchaser subsequently refused to complete the purchase, & the sale was never completed.—**Held**: the sale never having been completed, deft. was not entitled to any commission.—**LEAMAN v. LAWTON** (1923), 51 N. B. R. 110.—**CAN.**

#### PART VIII. SECT. 3, SUB-SECT. 1.—**E. (o).**

sb. *Agent himself paying deposit*—To prevent sale of land until definite purchaser secured.]—Where an agent for sale of land paid his principal \$200, leading the principal to believe it was paid as a deposit on behalf of P., whereas it was really paid to hold the land until a definite purchaser could be secured.—**Held**: the agent was not entitled to any commission.—**CHERER & PATTERSON v. BRAYBROOK**, [1919] 3 W. W. R. 422.—**CAN.**

1780 ix. — *Agreement to pay commission on work done.*]—Pltf., who was

employed by deft. to sell a station property & to find a lease for another, found A., who was ready & willing to purchase the one & to lease the other, & with him deft. entered into a contract. Subsequently the contract having fallen through, pltf. was employed by deft. to raise money for him which it was hoped would enable the purchase & lease by A. to be carried through, & a written agreement was entered into between pltf. & deft., by which it was provided that in the event of the completion of the sale & lease deft. should pay to pltf. a certain sum "representing commission due to" pltf. "on these transactions." The sale & leasing were never completed. In an action to recover the sum mentioned in the agreement, the trial judge found that when the agreement was entered into pltf. had a right to recover a reasonable sum for commission in respect of the work he had then done, & that the contract did not deprive him of that right.—**Held**: pltf. was entitled to recover a sum made up of 1 per cent. of the purchase-money & 5 per cent. of a year's rent.—**FRY v. BYRNE** (1917), 23 C. L. R. 589.—**AUS.**

1784 iv. —.]—Deft. placed a pro-

perty in the hands of pltf., a commission agent, for sale upon prescribed conditions. Pltf. found A., who was ready & willing to purchase upon all the prescribed conditions except two, to which at all material times he expressed his unwillingness to agree. Deft. thinking that A. had agreed to all the prescribed conditions, submitted to A.'s solr. a contract of sale containing all the prescribed conditions. A. refused to sign the contract unless the two prescribed conditions were struck out.—**Held**: pltf. was not entitled to any commission or other remuneration from deft.—**TYNAN v. A'BRECKETT**, [1923] V. L. R. 412.—**AUS.**

1784 v. —.]—In the absence of an exclusive listing, or of a special arrangement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to anything if he does not find the purchaser.—**GREENWOOD & GREENWOOD v. WELFORD** (1922), 70 D. C. R. 107; [1922] 3 W. W. R. 388.—**CAN.**

so. *Agent abandoning negotiations.*]—**Held**: not entitled to commission.—**HALES v. THOMSON (Man.)**, [1927] 3 W. W. R. 156; *affd*, [1928] 1 W. W. R. 127.—**CAN.**

1785. *Add. Annotation*:—*Apprvd. & Apld. French v. Leeston Shipping Co.*, [1922] 1 A. C. 451.

1786. *Add. Citation*:—23 Com. Cas. 121.

*Add. Annotation*:—*Consd. Affrèteurs Réunis Soc. Anon. v. Leopold Walford (London)*, [1919] A. C. 801.

1786a. — No hire earned—Special clause in charterparty.]—A clause in a time charterparty provided that "a commission of 3 per cent. on the estimated gross amount of hire is due to L. on signing this charter ship lost or not lost." No hire was in fact earned under the charterparty:—*Held*: (1) the charterers, as trustees for the brokers, could enforce the clause against the shipowners; (2) a custom by which commission was payable only if hire was earned under the

charterparty could not be set up by the shipowners as an answer to the brokers' claim, inasmuch as it was inconsistent with the terms of the clause.—*AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME v. LEOPOLD WALFORD (LONDON), LTD.*, [1919] A. C. 801; 88 L. J. K. B. 861; 121 L. T. 393; 35 T. L. R. 542; 14 Asp. M. L. C. 451; 24 Com. Cas. 268, H. L.; *affg. S. C. sub nom. LEOPOLD WALFORD (LONDON) v. AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME*, [1918] 2 K. B. 498, C. A.

*Annotation*:—*As to* (1) *Consd. French v. Leeston Shipping Co.* (1921), 37 T. L. R. 453.

1790. *Add. Annotation*:—*Refd. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1791a. —.]—*HOWARD HOULDER & PARTNERS, LTD. v. MANX ISLES S.S. Co.*, No. 1751a, *ante*.

1793. *Add. Annotation*:—*Refd. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

# PART VIII. SECT. 3, SUB-SECT. 1.— E. (d).

1787 ii. —.]—A claim upon a quantum meruit for services as agent in respect of certain properties, disallowed on the ground that it was not the understanding of the parties that payment should be made except as commission on a sale being effected; in suing upon a quantum meruit, in order to rely upon the acceptance by deft. of something pltf. has done he must have done it in circumstances which led deft. to know that if he accepted what had been done it was on the terms he must pay for it.—*WEDDEN v. TURNER* (1922), 68 D. L. R. 748; [1922] 3 W. W. R. 623.—CAN.

1789 i. No right where express contract.]—Where a contract of agency stipulates the circumstances in which the agent will be entitled to a commission, compensation by way of quantum meruit will not be allowed in circumstances where no commission can be claimed; so to allow it would be to declare a contract existing between the parties different from the one they have made themselves.—*LAW & MACLEAN v. SAWYER MASSEY Co.*, [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—CAN.

1789 ii. — Claim based on usage.]—Where an agent's claim was based on a usage:—*Held*: a special contract arose between the parties, & a quantum meruit was excluded.—*SAMSON v. MCKAY*, [1923] N. Z. L. R. 40.—N.Z.

1789 iii. —.]—*ELLIOTT v. WARBURTON*, [1925] 4 D. L. R. 1070.—CAN.

1793 ii. —.]—Deft. employed pltf. as agent to sell land & equipment of cattle, horses, implements, etc., & furniture, at a price on a basis of \$80 an acre with a certain cash payment. Pltf. found a purchaser who wanted the land alone, but could not make a cash payment. Deft. & the purchaser came to an agreement for sale on crop payments at \$60 an acre, & signed an agreement prepared by pltf., which was crude & improvident but one from which the rights of the parties could be defined. Subsequently a more elaborate agreement was drawn by deft.'s solr., which because of certain onerous additions therein for the protection of deft. the purchaser refused to sign, & the transaction was broken off:—*Held*: there was in effect a sale of which pltf. was the *causa causans*, & he was entitled to payment for his services, on a quantum meruit basis.—*BANNERMAN v. BRADLEY*, [1919] 3 W. W. R. 952.—CAN.

# PART VIII. SECT. 3, SUB-SECT. 1.—F.

w i. —.]—Where an agreement as to commission is that the agent is to receive all over & above a certain figure, but nothing is said as to when the commission is to be paid, the

agent is not entitled to his commission until the vendor has received in full the amount stipulated, & a promise made by the principal after the sale to pay the commission at once does not render him liable to make immediate payment.—*CLAVELLE v. RUSSELL*, [1918] 1 W. W. R. 900; 40 D. L. R. 61; 11 Sask. L. R. 111.—CAN.

w ii. — Agreement as to payment of commission obtained by agent by misrepresentation as to nature of document.]—*Held*: the principal was not bound by such agreement.—*TAYLOR v. SMITH*, [1926] V. L. R. 100; 47 A. L. T. 122; *affd.*, [1926] V. L. R. 271.—AUS.

sd. Commission payable out of purchase-money — Total purchase-money paid into bank.—*Disclaimer by seller of interest in sum agreed to be paid to agent.*—An agent for the sale of goods was authorised to ask a price which would give him a certain amount for his own benefit. The buyer paid the total purchase price into a bank to be paid over to the seller, & the latter disclaimed any interest in the amount which he had agreed to let the agent have. The buyer then claimed that amount as his:—*Held*: the money belonged to the agent.—*DEVALLE v. GORMAN*, [1918] 3 W. W. R. 221; 42 D. L. R. 573.—CAN.

se. — No purchase-money paid.]—Where a principal incurred no contractual obligation to pay commission except out of the purchase-money as received, & no part of the purchase-money had been received:—*Held*: the principal was not liable.—*THORNDYKE-TRENHOLME REALTY Co. v. LYALL SHIPBUILDING Co.*, [1921] 3 W. W. R. 333; 59 D. L. R. 490.—CAN.

st. Commission payable out of profit on resale.—*Resale at large nominal profit*.—No part of purchase-money paid.]—B. & C. through pltf. purchased certain land, agreeing to pay pltf. a commission of \$1 per acre, which was to be paid, however, only out of a profit on a resale. B. & C. assumed to make a sale at a purchase price showing a large nominal profit, which purchase price was to be paid by crop payments. The purchasers had three crop failures, paid nothing on account of principal, interest or taxes, & finally abandoned the agreement of purchase & went out of possession of the land:—*Held*: the sale was a resale at a profit within the contemplation of the parties, & pltf. was entitled to commission.—*HANTON v. ROYAL TRUST Co.*, [1923] 3 D. L. R. 809; 2 W. W. R. 1046.—CAN.

sk. Commission payable out of specified instalment.—*Instalment not paid.*—Where it was an express stipulation of a contract as to commission that the balance of commission due was to be paid out of a specified instalment of the

purchase price payable on a specified date:—*Held*: the instalment not having been paid by the purchaser, who had abandoned the land, no commission was payable.—*BILDEAU v. MCLEAN*, [1924] 3 D. L. R. 410; 2 W. W. R. 631; 34 Man. L. R. 239.—CAN.

# PART VIII. SECT. 3, SUB-SECT. 1.—G.

1808 ix. — Option to purchase.]—A. held an option for the sale of land, his remuneration to be the excess of the price obtained over \$29,000. After the option had lapsed he introduced to the owner a purchaser of the land at \$35,000:—*Held*: A. was not entitled to the excess over \$29,000, but could only recover quantum meruit.—*ACKLES v. BEATTY* (1919), 59 S. C. R. 640; 52 D. L. R. 691.—CAN.

# PART VIII. SECT. 3, SUB-SECT. 1.—K.

1 i. —.]—An agent has no right to remuneration unless he succeeds in obtaining a tenant or purchaser, as the case may be, on the appointed terms, for the property put in his hands for the purpose of being sold or let. The contract is revocable at the will of the principal at any time before the agent has actually procured a person ready to take or to purchase on the terms arranged.—*SMITH (JUDGE) v. RENFREY*, [1920] 22 W. A. L. R. 61.—AUS.

1 ii. —.]—Where a real estate agent receives an exclusive listing of land it may be revoked by the sale of the property by the owner, in which case the real estate agent will only be entitled to recover on a quantum meruit.—*GREENWOOD & GREENWOOD v. WELFORD* (1922), 70 D. L. R. 107; [1922] 3 W. W. R. 388.—CAN.

n i. —.]—Pltf., by writing signed by deft. on Sept. 16, 1919, was authorised "from this date until withdrawn by me in writing," to offer for sale land for \$7,500, & deft. thereby agreed to pay pltf. a commission "on this or the selling price, should you effect a sale." Later on the same day, deft. himself sold the property to M. for \$7,000. On Sept. 18, pltf. obtained a written offer under seal from B. to buy the property for \$7,500 cash, & the offer was accompanied by a cheque for \$1,000; the offer & cheque reached deft. on Sept. 19. No notice in writing of the sale to M. was given to pltf. until Sept. 20, when deft. wrote advising pltf. of that sale & returning the B. offer & cheque:—*Held*: pltf. was entitled to recover the agreed payment for his services.—*GORMAN v. YOUNG* (1921), 64 D. L. R. 51; 49 O. L. R. 162.—CAN.

sp. Sub-agent—Appointed by person expecting appointment as agent.]—A co. which expected to be appointed agents for the Govt. of Western Australia,

**1820. Add. Annotation:—**Consd. *Cramb v. Goodwin* (1919), 35 T. L. R. 314.

**1829. Add. Annotation:—**As to (2) *Folld. Cramb v. Goodwin* (1919), 35 T. L. R. 314.

**1829a. ———.**—*Deflt. engaged pltf. as a commercial traveller on a salary & commission on all business obtained by pltf., including repeat orders from all firms in the ground allotted to pltf., it being stipulated that pltf. was to have the commission on all accounts that he opened, including all repeat orders, whether they were actually handed to pltf. or posted direct to deflt.:—Held: the intention of the parties was that commission should be paid only on orders obtained during the engagement, & pltf. was not entitled to commission on repeat orders received after the termination of his engagements.*—*CRAMB v. GOODWIN* (1919), 35 T. L. R. 477; 63 Sol. Jo. 496, C. A.

**1832. Add. Annotation:—***Folld. Schostall v. Johnson* (1919), 36 T. L. R. 75.

agreed to employ W. as sub-agent. The co. failed to secure the appointment & terminated W.'s employment:—*Held: the co. warranted that they would be appointed govt agents, they were liable to W.*—*OOKERRY & CO., LTD v. WATSON* (1918), 25 C. L. R. 431.—AUS.

#### PART VIII. SECT. 3, SUB-SECT. 1.— L. (a).

**1818 i. Insurance agent—***Commission on premiums paid after termination of agency.*—In the absence of a definite agreement to that effect, an agent of an insurance co., who has secured policy-holders for the co. & whose duties as agent do not cease with the first introduction of the customer, has no right to commission on subsequent premiums paid in by such policy-holders, after he ceased to be agent.—*EMPIRE OF INDIA LIFE ASSURANCE CO., BOMBAY v. NANU AYYAR* (1920), 1 L. R. 44 Mad. 170.—IND.

**1818 ii. ———.**—The question whether an insurance agent, who is compensated by commissions on renewal premiums, is entitled to commissions on such premiums paid after the termination of his agency, depends to a great extent on the language of his contract with his employer. If such contract contains no provisions on the subject & the agency is terminated without his fault, the agent is entitled to commissions on renewal premiums paid thereafter; if, however, the agent voluntarily resigns his agency, or is discharged for good cause, the rule seems to be otherwise.—*BERRY v. CONFEDERATION LIFE ASSOCN. (CAN.)*, [1927] 3 D. L. R. 945.—CAN.

**u i. —**Commission on sales made before termination of agency—*Deliveries & payments made after termination.*—Under an agreement pltf. was appointed defts.' sole & exclusive salesman for the sale of coal, at a commission "on the gross amount of all sales made by" defts. "under this agreement":—*Held: pltf. was entitled to commission upon sales contracted before termination of the agreement, but in respect of which deliveries of coal were made & paid for after it.*—*WILSON v. ATLAS COAL CO., LTD.*, [1923] 2 W. W. R. 890.—CAN.

**sq. Agent to obtain permit to sell beer in certain area—***Entitled to commission on subsequent sales in area.*—*JOHNSON v. MEDICINE HAT BREWING CO., LTD.*, [1927] 2 D. L. R. 231; [1927] 1 W. W. R. 486; 29 Alta. L. R. 476.—CAN.

#### PART VIII. SECT. 3, SUB-SECT. 1.— M. (a).

**st. Land agent—***Land Agents Act, 1912.*—A person who, not being licensed as a land agent, obtains an appointment from a vendor to act as such is guilty of an offence under s. 14 of the above Act, & cannot maintain an action against his principal for commission; & the defect is not cured either by the expiry of the period of limitation or by the fact that the agent has obtained a licence before performing the services in respect of which the commission is claimed.—*NELSON v. CROSBY*, [1919] N. Z. L. R. 369.—N.Z.

**sa. ———.**—*Land Agents Act, 1912, s. 13 (a),* ought to be construed as meaning that the land agent must possess a licence at the time the work is done, & the fact that after the work is done the land agent fails to take out a further licence does not destroy a right to bring an action for commission, where the cause of action arose at the time the agent was in possession of a licence.—*JOHNSONE v. GOODSON*, [1920] N. Z. L. R. 883.—N.Z.

**xi. —***Real Estate Agents Licensing Act.*—Pltf., a store-keeper, brought about the sale of defts.' land to another person. In an action for commission:—*Held: s. 21 of the above Act did not apply to individual transactions.*—*GOODALL v. COUSINS*, [1923] 3 D. L. R. 718; 32 B. C. R. 440.—CAN.

**xii. —***Licence obtained before completion of sale.*—Agent entitled to commission.—*CUDWORTH v. EDDY*, [1927] 1 W. W. R. 583; 37 B. C. R. 407.—CAN.

**xiii. —***Unlicensed employee.*—Pltf., a real estate agent, sued for a commission on a sale, which had resulted from the introduction of the buyer to the seller by pltf.'s employee, who was found to be the efficient cause of the sale, although deft. completed it through agent. Pltf. had been duly licensed under above Act, at & from the time of the listing; his employee, however, was not licensed under above Act when he introduced the buyer & conducted the negotiations although he obtained his licence before the sale was made:—*Held: under above Act his employee's lack of a licence while he was doing the work rendered the work illegal & prevented pltf. from recovering the commission.*—*ANDERSON v. LAKE* (B. C.), [1928] 4 D. L. R. 220; [1928] 3 W. W. R. 136.—CAN.

#### PART VIII. SECT. 3, SUB-SECT. 1.— M. (b).

**ab. Member of Parliament effecting**

**1833. Add. Citations:—***Affd.*, [1918] A. C. 239; 87 L. J. K. B. 416; 118 L. T. 126; 34 T. L. R. 206; 62 Sol. Jo. 290, H. L.

**Add. Annotations:—***Refd. Ertel Bieber v. Rio Tinto Co.*, [1918] A. C. 260; *Naylor, Benzon v. Krainische Industrie Gesellschaft*, [1918] 1 K. B. 331; *Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 88 L. J. Ch. 304; *Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Re Munster*, [1920] 1 Ch. 268; *Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

**1834. Add. Annotation:—***Distd. Schostall v. Johnson* (1919), 36 T. L. R. 75.

**1835. Add. Annotations:—***Refd. Anderson v. Daniel*, [1924] 1 K. B. 138. *Mentd. Cornelius v. Phillips*, [1918] A. C. 199; *Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting Co.* (1918), 87 L. J. K. B. 565; *Re Mahmond & Ispahani*, [1921] 2 K. B. 716.

**sale—Sale to Government.**—Pltfs., land agents, were employed by deft. to bring about a sale of defts.' property to the Govt. of Victoria. Services were to be rendered by D., a member of the Parliament of Victoria, who was employed by pltfs. as their representative on the terms that he should receive a share of their commission on the sale. D.'s services were an effective cause of the sale. In an action by pltfs. against deft. to recover commission on the sale:—*Held: the transaction was contrary to public policy, & pltfs.' action failed.*—*HORNE v. BARBER* (1920), 27 C. L. R. 493.—AUS.

**sc. —***Consent of Government necessary.*—A member of the Dominion Parliament brought about a sale, it being his duty under agreement with the vendor to use his influence with the minister in charge to secure the Govt.'s consent which was necessary to complete the sale:—*Held: he was not entitled to a commission for his services, the agreement being void on the ground of public policy.*—*CLEMENTS v. COUGHLAN* (1924), 34 B. C. R. 401.—CAN.

**sd. Sale under Discharged Soldiers Settlement Act, 1919 (No. 3039)—***Member of advisory committee agent of vendor.*—A land agent, who was also a member of an advisory committee, constituted under s. 35 of the above Act, to the Lands Purchase & Management Board, entered into a contract with the owner for effecting the sale to the board of certain land, as to which the committee had certain powers & duties to advise the board. The contract did not refer to the use by the agent of any influence as a member of the committee in effectuating the sale; the agent took no part in the discussion by the committee of the report of a sub-committee as to the expediency of the purchase by the board of such land, & acted throughout *bona fide* & without concealment of the fact of his agency, & he was not at any time a member of any valuation sub-committee:—*Held: the contract was void as being against public policy, & the agent's claim for commission failed.*—*WOOD v. LITTLE*, [1922] V. L. R. 11.—AUS.

#### PART VIII. SECT. 3, SUB-SECT. 1.— M. (c).

**se. Agent returning deposit to purchaser.**—Resps. were employed as agents to sell property belonging to applt. They found a purchaser but applt. failed to complete the sale on the day fixed, & resps., on the application

**1848a.** —.]—Pltf. was employed by deft., a music seller, to find a purchaser of the lease of deft.'s business premises, which were held under a covenant against carrying on any other business. Several tailors expressed to deft. their willingness to buy the lease for £2,500, but deft., believing that the landlords would not consent to the carrying on of a tailoring business, did not approach the landlords. Pltf., however, having found a tailoring co. who wanted to purchase the lease, received an assurance from the landlords that they would consent to a tailoring business, & he, by concealing this fact from deft., induced him to agree to sell the lease to the tailoring co. for £2,250 in ignorance of the fact that the proposed purchasers carried on a tailoring business. In an action for commission for finding a purchaser:—*Held*: as pltf. had taken advantage of the false position to persuade deft. to agree to take a lower price than deft. could have got elsewhere, the action failed.—*HEATH v. PARKINSON* (1926), 136 L. T. 128; 42 T. L. R. 693; 70 Sol. Jo. 798.

**1849.** *Add. Annotation*:—*Mentd. Re Morris, Mayhew v. Halton*, [1921] 1 Ch. 172.

**1852.** *Add. Annotation*:—*Consd. Rhodes v. Macalister* (1923), 29 Com. Cas. 19.

**1852a.** —.]—Pltfs., a firm of mining engineers, were employed by defts. to negotiate the purchase of mining properties. Defts. were willing to give £9,000 for the properties, &

agreed with pltfs. that if they made a bargain for less than £9,000, the difference between the £9,000 & the lesser sum could be taken by pltfs. as remuneration. Before the purchase was effected, pltfs. had arranged with the vendors to take commission from them on the sale:—*Held*: pltfs. had committed a breach of duty as agents for defts. & were not entitled to any remuneration from defts.—*RHODES v. MACALISTER* (1923), 29 Com. Cas. 19, C. A.

**1862.** *Add. Annotation*:—*Apld. Adams v. Morgan*, [1923] 2 K. B. 234.

**1872a.** *Promise to indemnify vendor of business to company—Vendor retained as agent for limited period—Assessment of vendor to on profits made within period.*—

Pltf., who was the owner of a stationery business, sold it in Aug. 1919, to defts., a limited co. One of the terms on which the business was sold was that as from Dec. 31, 1918, until Sept. 15, 1919, pltf. should be deemed to have been carrying on the business on account of & for the benefit of the purchasers, & that pltf. should account & be entitled to be indemnified accordingly. For his services until the date of completion pltf. was to be paid a fixed sum monthly. Pltf. was assessed for super-tax on the profits of the business from Apr. 6, 1919, to Aug. 22, 1919. He paid the amount demanded & claimed to recover an indemnity from defts.:—*Held*: pltf., as agent of defts., was entitled

of purchaser, paid him back the deposit without communicating with applt.:—*Held*: resps. had been guilty of a wilful breach of the duty which, under Land Agents Act, 1912, s. 8, they owed to applt., & such breach deprived them of their right to recover any commission at all.—*BUCHANAN v. NEALE*, [1920] N. Z. L. R. 889.—N.Z.

*sf. Failure to make binding contract* ]—Where pltfs., acting as brokers, failed to make a contract binding on both parties:—*Held*: they were not entitled to commission.—*PATERSON v. MCCALLUM*, [1921] N. Z. L. R. 869.—N.Z.

**1841** *iva.* — — —.]—*MACK v. McLEOD* [1925] 2 D. L. R. 1201.—CAN.

**1841** *vi.* — — —.]—*Secret agreement to pool commissions.*—On a proposed exchange of properties, if the agents, unknown to either of the principals, agree to pool their respective commissions & to divide equally, so that under such pooling agreement one agent receives more than the commission payable by his principal, that agent cannot recover any commission from his principal, as such an agreement gave him an interest adverse to the interest of his principal.—*DALY v. KELNER*, [1921] 2 W. W. R. 192.—CAN.

**1841** *vii.* — — —.]—*Agent acting for both Rules of Real Estate Exchange.*—Where the owner of property listed with a real estate agent for sale exchanged the property with the assistance of the agent for other property listed, to the knowledge of the owner, with the agent for exchange, but had not agreed to pay him a commission on the exchange & had not been informed by him that he still intended to act as her agent & to charge her a commission:—*Held*: (1) she was not liable for commission; (2) a rule of a Real Estate Exchange to which the agent belonged, that an agent who acted for both parties in an exchange could collect from each one-half the

usual commission on a sale, did not legally entitle the agent to recover such half from her.—*HACKNEY LYNE*, [1925] 4 D. L. R. 861; [1925] 3 W. W. R. 614.—CAN.

**1841** *viii.* — — —.]—If a vendor with full knowledge of the facts agrees to pay commission to a purchaser's agent, he will be bound by his contract, but the *onus* is on the agent to show clearly that the vendor knew that he was acting in a dual capacity & assented to that state of affairs.—*MOILER v. FORBES* (1927), 27 S. R. N. S. W. 69; 44 N. S. W. W. N. 42.—AUS.

**1850** *iiia.* — — —.]—*Fraudulent representations inducing listing.*—Agent not entitled to commission.—*SELTRO ADAMS*, [1927] 1 D. L. R. 547; [1927] 1 W. W. R. 12; 22 Alta. L. R. 333.—CAN.

**1850** *vii.* — — —.]—*Agent to sell acting for other principals—Breach of contract.*—A contract, entered into in Feb. 1914, between a firm & a commission agent, whereby the latter was appointed agent for the sale of certain cotton goods dealt in by the firm, contained a clause prohibiting the agent from selling such goods supplied by others than his principals. From July 10, 1916, onwards the agent regularly sold goods of that class on behalf of another firm, & he also bought sold such goods on his own account:—*Held*: the agent was not entitled to an accounting for the period subsequent to July 10, 1916, as he was then in material breach of his contract, but he was entitled to an accounting for the period prior to that date during which he had duly obeyed the contract.—*GRAHAM & Co. v. UNITED TURKEY RED., ETC. CO., LTD.*, [1922] S. C. 533; 59 Sc. L. R. 420.—SCOT.

**1852** *vii.* — — —.]—Where an agent acts improperly & unfaithfully in the performance of his duties towards his principal, he forfeits any remuneration or commission to which he would otherwise have been entitled if his improper or unfaithful conduct is

connected with the duty he had to perform. The mere fact of an agent receiving & retaining a secret profit or commission arising out of & in connection with the performance of his duty constitutes unfaithfulness & dishonesty, & disentitles him to any remuneration or commission.—*LEVIN v. LEVY*, [1917] T. P. D. 702.—S. AF.

#### PART VIII. SECT. 3, SUB-SECT. 1.—M. (d).

*sj. Agent selling at less than listed price.*—An agent for the sale of goods is not entitled to a commission for introducing a purchaser where the goods are sold at a reduction from the listed price greater than the commission, & the agency contract provides that if any goods are sold for less than the current price list by the agent, the acceptance of such sale shall not entitle the agent to the commissions set forth, but such reduction in price shall be deducted from the agent's commission.—*LAW & MACLEAN v. SAWYER MASSEY CO.*, [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—CAN.

*sk. No commission on land not sold.*—Deft.'s land having been listed with pltf., an estate agent, the latter claimed commission on the proceeds of a subsequent sale, but failed to show that he brought about a sale of deft.'s land, or that deft. made a sale thereof to a person introduced to him by pltf.:—*Held*: pltf. had not shown the performance of any services which entitled him to commission.—*DUNN v. GRAF* (1922), 66 D. L. R. 713.—CAN.

*sl. No commission on goods "taken back."*—*Held*: goods "taken back" included goods "repossessed" on default.—*COWIE v. SAWYER-MASSEY CO.* (1916), 34 W. L. R. 274; 10 W. W. R. 254.—CAN.

*sm. Sale of homestead—Necessity for wife's consent.*—*SEMPLE v. SHARP*, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—CAN.



to be indemnified by them in respect of the amount of super-tax paid by him, although debts. as a limited co. would not be liable to pay super-tax.—*ADAMS v. MORGAN & Co.*, [1924] 1 K. B. 751; 93 L. J. K. B. 382; 130 L. T. 792; 40 T. L. R. 70; 68 Sol. Jo. 348, C. A.

1875. *Add. Annotations*:—*Consd. Weddle, Beck v. Hackett*, [1929] 1 K. B. 321. *Mentd. Ellesmere v. Wallace*, [1929] 2 Ch. 1.

1878. *Add. Annotation*:—*As to (2) Refd. Weld-Blundell v. Stephens*, [1919] 1 K. B. 520.

1886. *Add. Annotation*:—*Refd. Adams v. Morgan*, [1923] 2 K. B. 234; *Britannia Hygienic Laundry Co. v. Thornycroft* (1925), 94 L. J. K. B. 858.

1908. *Add. Annotation*:—*Mentd. Weld-Blundell v. Stephens*, [1920] A. C. 956.

1941. *Add. Annotation*:—*Refd. Christoforides v. Terry*, [1924] A. C. 566.

1944. *Add. Annotations*:—*Distd. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592. *Consd. Warren v. Agdesman* (1922), 38 T. L. R. 588. *Refd. Re Windsor Steam Coal Co. (1901), Ltd. (1928)*, 140 I. T. 80.

1945. *Add. Annotations*:—*Apld. French v. Leeston Shipping Co. (1921)*, 37 T. L. R. 453. *Refd. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592.

1946. *Add. Annotations*:—*As to (2) Consd. Warren v. Agdesman* (1922), 38 T. L. R. 588. *Refd. Turpin v. Victoria Palace*, [1918] 2 K. B. 530. *Generally, Refd. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592; *Re Rubel Bronze & Metal Co. & Vos*, [1918] 1 K. B. 315; *Re Windsor Steam Coal Co. (1901), Ltd. (1928)*, 140 L. T. 80. *Mentd. Blackburn Bobbin Co. v. Allen*, [1918] 2 K. B. 467; *Re Comptoir Commercial Anversois & Power*, [1920] 1 K. B. 868; *Sweet v. Williams* (1922), 128 L. T. 379.

1947. *Add. Annotation*:—*Refd. Warren v. Agdesman* (1922), 38 T. L. R. 588.

1947a. —.]—By a contract in writing debt.

PART VIII. SECT. 3, SUB-SECT. 2.—C. (a).

1873 i. *In general*.—Where an act is innocently done under the express direction of another, which occasions an injury to the rights of a third party, the principal must indemnify the innocent agent.—*VICTORIA SCHOOL TRUSTEES v. MUIRHEAD & MANN* (1895), 4 B. C. R. 148.—CAN.

b i. — *Loss through delay in delivery*.—E. & Co., commission agents, entered into a contract with debts, under which they undertook to purchase & ship goods "on account & risk" of debts, & E. & Co. shipped the goods under a c.i.f. contract on board a German ship. Owing to the outbreak of war during transit the goods did not arrive at their destination until long after due time. On debts' refusal to accept the goods they were sold.—*Held*: E. & Co. were entitled to recover damages for breach of contract.—*MEREDITH v. ABDULLA (SAHIB)* (1918), 1 L. L. R. 41 Mad. 1060.—IND.

sn. *Broker buying wheat to meet deliveries*.—Brokers were instructed by their principal to sell wheat for future delivery.—*Held*: when the principal could not deliver the wheat he instructed the brokers to buy the wheat necessary to cover his contracts, which they did, & he must repay to them the amount so expended.—*CANADIAN GRAIN CO., LTD. v. NICHOL*, [1920]

3 W. W. R. 127; 53 D. L. R. 375; 13 Sask. L. R. 30.—CAN.

so. *Dealings in grain futures—Broker with knowledge of illegality of transactions—Broker not entitled to recover balance due from customer*.—*TOPPER GRAIN CO. v. MANTZ (Alta.)*, [1926] 2 D. L. R. 712; [1926] 2 W. W. R. 140.—CAN.

PART VIII. SECT. 3, SUB-SECT. 2.—C. (b).

1905 ii. —.]—*JONES v. BURGESS* (1914), 43 N. B. R. 126.—CAN.

sp. *Forwarding agent acting in accordance with ordinary duty*.—Debts, forwarding agents in Durban, who acted as the agents of pltf. in clearing & forwarding goods consigned to him from India, on Oct. 21, received a letter from a firm in India informing them that they had shipped a consignment of goods on behalf of pltf. The goods arrived on Oct. 20, & on Oct. 22 debts cleared & trucked the goods to Johannesburg & sent pltf. a consignment note which he received on Oct. 26. Immediately on receipt of the note pltf. telegraphed to debts, instructing them to keep the goods for sale in Durban. Debts, on the instructions of pltf. had the trucks stopped & returned to Durban. Debts, in order to obtain delivery of the goods paid the railway charges & upon pltf.'s

appointed pltf. to be sole agents for the United Kingdom, with certain exceptions, for a period of three years. Pltf. were to be paid a commission at the rate of 22 per cent. on all goods sold throughout the United Kingdom, with the exceptions above referred to, whether the goods were sold through the instrumentality of pltf. or not, & debt. agreed with pltf. that he would keep them fully supplied with samples, & would execute all orders with due diligence, & would not, directly or indirectly, canvass orders or in any manner approach or solicit any of the customers, or potential customers, of pltf. in respect of the sales of his goods. Before the expiry of the three years debt. broke these undertakings & then wrote to pltf. cancelling the agreement.—*Held*: as it was a necessary implication from the terms of the contract that pltf. would not decline reasonably to introduce customers, the agreement was not void for lack of mutuality, & although the mere appointment of an agent on commission for a term of years does not carry with it the necessary implication that the business shall be carried on for that term, yet, as debt. had undertaken certain obligations to facilitate the earning of the commission & had broken his undertakings, he could not, by a purported cancellation of the contract, limit his liability for damages to the period prior to such purported cancellation.—*WARREN & Co. v. AGDESHMAN* (1922), 38 T. L. R. 588.

1949. *Add. Annotation*:—*Mentd. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592.

1950. *Add. Annotation*:—*As to (2) Refd. Payzu v. Saunders*, [1919] 2 K. B. 581.

1951a. —.]—By an agreement made between pltf. & a limited co., which carried on business in Lancashire, in consideration of pltf. subscribing for £1,000 in shares of the co., & of introducing to the co. certain new classes of goods to be manufactured by them, the co. appointed him their sole agent in the United Kingdom, India, & the Colonies for the sale

refusal to reimburse them declined to hand the goods over to pltf.:—*Held*: debts, in routing the goods without awaiting special instructions had acted in accordance with their ordinary duty as forwarding agents, & in the absence of special instructions to the contrary debts. were justified in so routing the goods.—*PATEL v. KEELER & Co.*, [1923] App. D. 506.—S. AF.

PART VIII. SECT. 3, SUB-SECT. 2.—C. (c).

sq. *Contract for delivery of grain—Actual delivery necessary—Duty of broker to prove contract not illegal*.—*HANSEN v. LECHTZIER*, [1925] 4 D. L. R. 1008.—CAN.

PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

sr. *Agent assuming liability to third party*.—Where a superintendent of road construction for a municipality ordered supplies on its behalf, & which were charged to it.—*Held*: as he was not legally liable on the accounts he had no cause of action against the municipality in respect thereof whether for payment or indemnity, although he had paid one of the accounts & judgment had been obtained against him for another.—*DICKINSON v. RURAL MUNICIPALITY OF STONEHAGUE*, [1920] 1 W. W. R. 235; 50 D. L. R. 383, 13 Sask. L. R. 1.—CAN.

of those goods for the term of seven years, if the agent should so long live, & thereafter until the agreement should be determined by six months' notice on either side. The agent was to use his best endeavours to obtain orders for the co.'s goods at prices to be from time to time agreed upon, & all orders obtained by the agent were at once to be communicated to the co., who upon approving or rejecting the same were to inform the agent thereof & who were to carry out such orders as were accepted without undue delay; & the agent was not definitely to accept orders for the co., but only subject to confirmation or acceptance by the co., such confirmation or acceptance not to be unreasonably withheld. The co. were to pay the agent a commission upon the invoiced prices of all goods delivered by the co., & duly paid for by the respective purchasers. A few months afterwards the co. required fresh capital, & they applied to pltf. to assist them in finding it, telling him that otherwise they would have to close down. Pltf. tried to do so, but failed. The co. then asked pltf. to give up the agency for the Manchester district, telling him that he would have to stand down so far as that district was concerned, in which case they thought that they could find the necessary capital, but he refused. The co. thereupon being insolvent passed resolutions for voluntary winding up & ceased to do business through pltf. & eventually sold their business. In an action to recover damages for breach of the agreement to employ pltf. as their agent for the seven years:—*Held*: the agreement was to employ pltf. as agent for the seven years & a term could not be implied to the effect that the co. could terminate the agency at any time by ceasing to carry on their business; & the circumstances coupled with the voluntary winding up showed a repudiation by the co. of the agreement, & they were therefore liable in damages for the breach.—*REIGATE v. UNION MANUFACTURING CO. (RAMSBOTTOM)*, [1918] 1 K. B.

- 592; 87 L. J. K. B. 724; 118 L. T. 479, C. A.  
*Annotations*:—*Refd.* Thomas v. Todd, [1926] 2 K. B. 511; Livock v. Pearson (1928), 33 Com. Cas. 188.  
**1952.** *Add. Annotation*:—*Refd.* Warren v. Agdeshman (1922), 38 T. L. R. 588.  
**1953.** *Add. Annotations*:—*Refd.* Reigate v. Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592; Warren v. Agdeshman (1922), 38 T. L. R. 588.  
**1957.** *Add. Annotations*:—*Refd.* Reigate v. Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592; Warren v. Agdeshman (1922), 38 T. L. R. 588.  
**1961.** *Add. Annotations*:—*Refd.* Taylor v. Oakes, Roncoroni (1922), 127 L. T. 267. *Mentd.* Moriarty v. Regent's Garage Co., [1921] 1 K. B. 423.  
**1968.** *Add. Annotation*:—*Generally*, *Mentd.* Re Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315.  
**1974.** *Add. Annotations*:—*As to* (1) *Consd.* Mortimer v. Beckett, [1920] 1 Ch. 571. *As to* (2) *Appld.* Mortimer v. Beckett, [1920] 1 Ch. 571.  
**1979.** *Add. Annotation*:—*Mentd.* Hamilton v. Caldwell (1919), 88 L. J. P. C. 173.  
**1980.** *Add. Annotation*:—*As to* (2) *Consd.* Martin v. Stout, [1925] A. C. 359.  
**1999.** *Add. Annotation*:—*Generally*, *Mentd.* Lowther v. Harris, [1927] 1 K. B. 393.  
**2005.** *Add. Annotation*:—*As to* (2) *Refd.* Wrightson v. McArthur & Hutchisons, [1921] 2 K. B. 807.  
**2025.** *Add. Annotations*:—*Refd.* Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. *Mentd.* Lowther v. Harris, [1927] 1 K. B. 393.  
**2029.** *Add. Annotation*:—*Refd.* Re Gunsbourg, *Ex p.* Trustee (1920), 89 L. J. K. B. 725.  
**2056.** *Add. Annotation*:—*Refd.* Booth S.S. Co. v. Cargo Fleet Iron Co. (1916), 13 Asp. M. L. C. 451.  
**2092.** *Add. Annotation*:—*Generally*, *Mentd.* Re Eyre-Williams, Williams v. Williams, [1923] 2 Ch. 533.

PART VIII. SECT. 3, SUB-SECT. 3.

—B.

1959 ii. For this number read "1967 i."

1967 ii. ———.—In a five years' agreement between a selling agent & a firm of merchants it was provided that, if at the end of the first three years the agent had not realised a certain turnover, the merchants should be entitled to terminate the agreement. The agreement further provided that the merchants undertook to supply goods to the agent, who was bound to buy exclusively from them. At the end of the three years the value of the goods sold & delivered by the agent failed to reach the stipulated turnover, & the merchants terminated the agreement. The value of the sales effected by the agent had in fact materially exceeded the stipulated figure, but the value of the goods actually delivered by him fell short of it, owing to the failure of the merchants to supply him with the full amount of goods ordered by him. The merchants, who were not manufacturers, were dependent on delivery to themselves by the manufacturers, & owing to war conditions, they were themselves unable to obtain the full supplies they required. They had,

however, obtained sufficient goods to have implemented the agent's orders, but they preferred to distribute these goods ratably among all their agents & customers, the agent in question receiving his full share. In an action by the agent against the merchants concluding for damages for unjustifiable termination of the agreement:—*Held*: debts were not entitled to terminate the agreement.—*DOWLING v. METHVEN, SONS & CO., LTD.*, [1921] S. C. 948; 59 Sc. L. R. 7.—*SCOT.*

1978 iii. ———.—Pltf. & debts., an English business house, entered into an agreement by correspondence by which pltf. was to be the selling agent of debts' goods in British Columbia. In the letter from debts. setting out the proposed terms of agreement were the words, "this offer to be firm for one year." Debts. broke the agency agreement during the first year:—*Held*: pltf. was entitled to damages on the basis of loss of profits on two years' contract, as being reasonable in all the circumstances.—*MACDONALD v. CASEIN, LTD.*, [1919] 1 W. W. R. 293.—*CAN.*

1978 iv. ———.—In 1911 resps. agreed to employ applts. as under-brokers for the business of a co. during

the subsistence of an agreement which they themselves had as brokers to the co.; the latter agreement was for five years. In Aug. 1912, resps. wrongfully determined the agreement with applts. On Dec. 2, 1912, resps., *bond fide* & not as a means of limiting the damages, made a new agreement with the co., the terms of which were inconsistent with, & thus put an end to, the original agreement between resps. & the co. In Jan. 1913, applts. sued resps. for damages:—*Held*: the damages recoverable were limited to the amount which applts. would have earned as under-brokers down to Dec. 2, 1912.—*LACHMANDAS, KHANDELWAL v. RAGHUMULL* (1919), L. R. 46 Ind. App. 314; 24 C. W. N. 577.—*IND.*

PART VIII. SECT. 4, SUB-SECT. 2.

*st. Liability of principals to indemnify agent—Release of co-principal.*—The release of one co-principal does not release another co-principal from his obligation to exonerate & contribute to the extent to which he would have been ultimately liable had the one co-principal not been released.—*MALOWANY v. PASEMKO*, [1919] 1 W. W. R. 553.—*CAN.*



## Part IX.—Relations between Principal and Third Parties.

- 2094. Add. Annotation:—Mentd.** *Banque Belge Pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321.
- 2095. Add. Annotation:—Mentd.** *Banque Belge Pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321.
- 2096. Add. Annotation:—Refd.** *Banque Belge Pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321.
- 2098. Add. Annotation:—Consd.** *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.
- 2106. Add. Annotations:—Refd.** *Re Hodgson's Trusts*, *Public Trustee v. Milne*, [1919] 2 Ch. 189; *Banque Belge Pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321; *Re Wait*, [1927] 1 Ch. 606.
- 2109. Add. Annotation:—As to (1) Refd.** *Underwood v. Bank of Liverpool*, *Same v. Barclays Bank*, [1924] 1 K. B. 775.
- 2113. Add. Annotation:—Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
- 2118. Add. Annotation:—Refd.** *Muller (London) v. Lethem*, *Same v. I. R. Comrs.*, [1927] 1 K. B. 780.
- 2120. Add. Annotation:—Consd.** *Rederi Akt. Transatlantic v. Drughorn*, [1918] 1 K. B. 394.
- 2125a. Action for specific performance—Effect of non-disclosure of principal.]—Pltf.** procured C. to enter into an agreement to purchase land from defts. C. never disclosed to defts. that he was acting as the agent of pltf. Subsequently C. explained to defts. that he was acting as agent for pltf., & at his request the agreement was cancelled. In an action for specific performance:—*Held*: the agreement not being one in which any personal qualification by C. was a material factor, the mere non-disclosure of the person actually entitled to the benefit of the contract for the sale of real estate did not amount to misrepresentation.—*DYSTER v. RANDALL & SONS*, [1926] Ch. 932; 95 L. J. Ch. 504; 135 L. T. 596; 70 Sol. Jo. 797; [1926] B. & C. R. 113, C. A.
- 2126a. — Sold by agent—Effect of misrepresentation as to being principal.]—G.**, employed as a traveller by a firm of builders, owed debt £17 for goods sold. He asked debt. to buy timber from him, telling him that he had left the employment of the builders & had set up as a timber merchant on his own account, & debt. agreed to order timber from him on the terms that G.'s debt of £17 should be set off against the price. G. had not set up in business on his own account, but was employed by pltf. as an agent for sale on commission. Timber was delivered to debt. with invoices & letters bearing the name, address, & description of pltf., which G. told debt. were his own trade name, address, & description. Pltf. brought an action in the county ct. for the price of the timber, & the county ct. judge found that debt. honestly believed that the name, address, & description on the invoices & letters were those of G., but that debt. was put upon inquiry by the invoices & letters, & had notice that G. was not selling as a principal but only as an agent for pltf., & he gave judgment for pltf. for the price of the timber:—*Held*: debt. had no more than constructive notice that pltf. was the principal of G., & in the circumstances constructive notice was not equivalent to actual notice; debt. had made no contract with pltf., & was entitled to judgment.—*GREER v. DOWNS SUPPLY CO.*, [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.
- 2130a. — Sub-underwriting agreement.]—Pltf.**, at the suggestion of M., who was a director of E. co. in Nov. 1927, was minded to underwrite shares in debt. co. about to be offered for public subscription. It had not then been started, but its object was to acquire & carry on as going concerns eight greyhound racecourses. An underwriting agreement was entered into by trustees for debt. co. & B. co.

### PART IX. SECT. 2, SUB-SECT. 1.

**b1. — Goods sold—Knowledge of purchaser.]—M.** left two hundred & fifty cattle with B., a cattle dealer. He gave B. written authority to sell forty-eight, & B. was to graze the rest. B. sold one hundred cattle to C., purporting to act as M.'s agent, showing the written authority & alleging further oral authority. At B.'s request C. made a cheque for the purchase price payable to him. C. bought in good faith & for value. M. repudiated the sale & sued to vindicate the cattle sold without authority:—*Held*: the written authority & the request for personal payment should have put the purchaser upon inquiry.—*MULLER v. CHENNELL* (1923), 44 N. L. R. 69.—S. AF.

**2106 i. Agent holding principal's funds—Money paid into agent's banking account—Agent in fiduciary character.]—Money** received by a commission agent from sales of his customers' property, is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he becomes bkpt., the money can be followed if it is still traceable.—*SALTER & ARNOLD*,

*LTD. v. DOMINION BANK* (1923), 4 C. B. R. 379; [1923] 3 W. W. R. 257.—CAN.

### PART IX. SECT. 3, SUB-SECT. 1.—A.

**2120 viii. —.]—J.**, as agent of pltf., advanced sums to debt. in consideration of debt.'s going to work on a sugar estate, on behalf of K., who supplied money for the advance, to whom J. had to account, & to whom J. stated that he had accounted. Debt. stated that J. had recruited him to work for some person whose name was not given. Debt. contended in an action for refund of the advance that pltf. could not sue without cession of action from K.:—*Held*: pltf. had a right of action against debt.—*GADLELA v. MOUNTJOY*, [1921] E. D. L. 151.—S. AF.

**aa. Action for money paid under contract.]—Pltf.**, desiring to have ten vessels constructed in Canada, entered into a preliminary agreement with A., whereby A. was to enter into contracts with three builders for the construction of the vessels, called "building contracts," & at the same time into contracts with pltf., called the "vessel contracts," providing for the payment for vessels, the nature of their construction & due delivery thereof. The

"building contract" & the "vessel contract" each expressly stated that a copy of the other was attached to & made a part of it. By the "building contract" debt. covenanted to build the vessels according to the terms of the "vessel contract," & this contract was expressed to be made with pltf. as well as with A., & debt. also confirmed provisions of the "vessel contract" for payment of the instalments of the purchase price to A. & appointed A. his agent to receive payments. Upon the signing of the contracts a first payment made by pltf. to A. was distributed by A. between the three "builders," who proceeded with the construction of the vessels. Upon pltf.'s failure to make the next deposit as provided for in the "vessel" contract, debt. gave notice terminating the contract. Pltf. having brought action for repayment by debt. of money paid on account of the vessels, less such expenses as debt. had incurred by virtue of the contract:—*Held*: pltf. had no right of action.—*VAN HEMELRYCK v. NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO.*, *VAN HEMELRYCK v. NORTHERN CONSTRUCTION CO.*, *VAN HEMELRYCK v. PACIFIC CONSTRUCTION CO.* (1920), 29 B. C. R. 39; 55 D. L. R. 589.—CAN.

& a draft prospectus was prepared therein referred to. On the following day M. & O. offered to sub-underwrite 12,000 shares, & sent a cheque for £200 to B. co., which was accepted by them on Dec. 8. On Dec. 12, the co. was incorporated, the underwriting agreement ratified, & a similar prospectus signed by the directors, which, on Dec. 19, was issued to the public. The response not being sufficient, the balance of shares was issued to the underwriters or sub-underwriters. One of such allotments was for 8,160 to M. & O. as sub-underwriters. A number of sub-underwriters had repudiated their agreements on Dec. 16, but this was not known to the directors when they went to allotment on Dec. 17. Subsequently these 8,160 were renounced in favour of pltf. The consequence of the failure of some of the underwriting agreements was that two of the racecourses, representing about two-fifths of the estimated profits, could not be acquired. In these circumstances, this action was brought for rescission on the ground of material misrepresentations in the prospectus. Defts. denied these, & claimed for the balance due. They submitted that, the contract having been made with agents for an undisclosed principal, he could not recover:—*Held*: pltf. could not establish his case on the basis of principal & agent, as in such a case as this an undisclosed principal could not be substituted for the persons contracting; all the rights of the agents under the contract with the co. did not pass to pltf. by virtue of the agents' renunciation & nomination of pltf., & though there was a contract between pltf. & the co. it was not a contract based on the prospectus.—*COLLINS v. ASSOCIATED GREYHOUNDS RACECOURSES, LTD.* (1929), 141 L. T. 529; 45 T. L. R. 519.

**2139a. Agent acting in his own interest.**—Where an agent, in contracting on behalf of his principal, has acted within the terms of a written authority given to him by the principal, but the existence of which was not known to the other party to the contract, the principal cannot, if the other party has acted *bona fide*, repudiate liability on the contract on the ground that the agent, in making it, acted in his own interests, & not in those of his principal.—*HAMBRO v. BUINAND*, [1904] 2 K. B. 10; 73 L. J. K. B. 669; 90 L. T. 803; 52 W. R. 583; 20 T. L. R. 398; 48 Sol. Jo. 369; 9 Com. Cas. 251, C. A.; *revisg.*, [1903] 2 K. B. 399.

*Annotations*:—*Consd.* Willis, *Faber v. Joyce* (1911), 104 L. T. 576; *Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank*, [1924] 1 K. B. 775. *Dist.* *Reckitt v. Barnett, Pembroke & Slater*, [1929] A. C. 176. *Refd.* *British Marine Mutual Inco. Assn. v. Draffen, Read & Morgan* (1903), 47 Sol. Jo. 672; *Ituben*

*v. Great Fingall Consolidated*, [1904] 2 K. B. 712; *Malcolm, Brunner v. Waterhouse* (1908), 24 T. L. R. 854; *Lloyd v. Grace, Smith*, [1912] A. C. 716; *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Mentd.* *Cuthbert v. Roberts, Lubbock*, [1909] 2 Ch. 226.

**2139b. Account stated & signed by agent.**—In Mar. 1918, a tank steamer was damaged by fire & her repairs were entrusted to a firm of ship repairers at A. The steamer was insured. The owners sent out an agent from L. to expedite the repairs & authorised him to sign the repair account with the Lloyds' surveyor as "approved subject to adjustment & conditions of insurances." In Jan. 1919, the repairers delivered to the owners an account of the repairs signed by the owners' agent & by Lloyds' surveyor in the above form after a detailed examination of the account. The owners paid part of the amount due on this account but declined to pay the balance on the ground that the charges were excessive. The repairers sued the owners for the balance of amount due for work & labour done by pltf. & materials supplied at the request of defts., & in the alternative, claimed the balance as being the amount found due from defts. to pltf. on accounts stated between them & contained in an account signed by defts. by their agent, less the sums since paid by defts. in respect thereof. Defts. denied that the agent was authorised to agree the amounts due from defts. to pltf., or that he in fact purported to agree such amount, or that the account constituted an account stated:—*Held*: the signature of defts.' agent was an agreement by him, with their authority, that the amount charged for the repairs was correct, & there being no ground for re-opening the account, pltf. were entitled to judgment.—*CAMILLO TANK S.S. CO., LTD. v. ALEXANDRIA ENGINEERING WORKS* (1921), 38 T. L. R. 134, H. L.

**2140. Add. Annotation.**—*Mentd. Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221.

**2147a.** — — — — —]—A member of the Stock Exchange was indebted to defts. He became a defaulter on the Stock Exchange, & the liquidation of his affairs was undertaken by pltf. as official assignee. For the purposes of the liquidation he was authorised by pltf. to sell, & accordingly sold, certain shares standing in his name to defts., who were not members of the Stock Exchange, but who knew his position & that of pltf. as official assignee. Pltf. having sued defts. for the price of the shares:—*Held*: the action was maintainable, & defts. were not entitled to a set-off in respect of their debt.—*RICHARDSON v. STORMONT, TODD & Co.*, [1900] 1

clearing, irrigating & tree-planting. B. acting as their agent in the supervision thereof. B. was to receive commission on sales made, should he not succeed in carrying out the agreement. B. made an approved agreement with pltf. for sale of a lot to be selected by pltf. who sought to recover from defts. the amount of payments made by him:—*Held*: the fact that pltf.'s agreement was with B., in B.'s own name & under seal, did not prevent recovery from defts. as for money had & received.—*HITCHCOCK v. COLUMBIA VALLEY LAND CO., LTD.*, [1919] 2 W. W. R. 969; 48 D. L. R. 737.—*CAN.*

**PART IX. SECT. 3, SUB-SECT. 1.—B.**

**2134 i. General rule.**—*BOLUS & Co., LTD. v. ENGLISH BROTHERS, LTD.*, [1924] N. Z. L. R. 164.—*N.Z.*

**2135 ii.** — — — — —]—*Deft.*, owner of a theatre, entered into a contract with W., an advertising manager, under which W. was to conduct an advertising campaign relative to the theatre. The campaign was to take the form of a contest for prizes to be offered for selling tickets of admission to the theatre. Pltf. was assignee for value of a prize-winner's rights:—*Held*: the agent's promises to the contestants were the promises of deft. as principal, & deft. was liable as principal.—*ROSS v. KOBOLD*, [1924] 1 D. L. R. 750;

1 W. W. R. 428; 34 Man. L. R. 111.—*CAN.*

*sb. Contract in agent's name—Under seal.*—Defts. made an agreement with B. for conditional sale to him of a large quantity of land, the intention of the parties being for its subdivision & sale for fruit-farming purposes. All surveys & sales were to be approved by defts., a minimum price per acre in selling was stipulated, & the proceeds of sales were to be paid into a bank to defts.' credit, & title to be retained by deft. until the full purchase price of the sale to B. was realised. On certain amounts of sales being made, defts. agreed to do certain

Q. B. 701 ; 69 L. J. Q. B. 369 ; 82 L. T. 316 ;  
48 W. R. 451 ; 16 T. L. R. 224 ; 5 Com. Cas.  
134, C. A.

**Annotations:—***Apld.* Lomas v. Graves, [1904] 2 K. B. 557.  
**Refd.** *Re* Halstead, *Ex p.* Richardson, [1917] 1 K. B. 695

**2162. Add. Annotation :—***Generally, Mentd. Muller (London) v. Lethem, Same v. I. R. Comrs., [1927] 1 K. B. 780.*

**2168. Add. Annotation :—***Reid. Bradford v. Price*  
(1923), 92 L. J. K. B. 871.

**2172. Add. Annotations :—***Refd.* Norbury Natziol v. Griffiths, [1918] 2 K. B. 369; Rodriguez v. Speyer, [1919] A. C. 59; Bennett v. Whitehead, [1926] 2 K. B. 380; Pirie v. Richardson (1926), 70 Sol. Jo. 1023; R. M. K. R. M. (Firm of v. M. R. M. V. L. (Firm of), [1926] A. C. 761.

**2176. Add. Annotation :—Mentd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.**

2177. *Add. Annotation* :—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of) R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926) 95 L. J. P. C. 197.

2183. *Add. Annotations* :—*Refd. Bennett v. Whitehead*, [1926] 2 K. B. 380; *R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)*, [1926] A. C. 761.

**2184. Add. Annotation :—**Refd. R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

**2188. Add. Annotation :—***As to (3) Refd. Bennett v. Whitehead, [1926] 2 K. B. 380.*

**2193. Add. Annotation :—**Consd. Bennett v. White head, [1926] 2 K. B. 380.

**2194. Add. Annotation:—***Reid. R. M. K. R. M.*  
(Firm of) *v. M. R. M. V. L.* (Firm of), [1926  
A. C. 781.

**2195. Add. Annotations:—***Apld.* Parr v. Snell  
[1923] 1 K. B. 1; R. M. K. R. M. (Firm of  
v. M. R. M. V. L. (Firm of), [1926] A. C. 761

**Refd.** Goldrei, Foucard v. Sinclair & Russian  
Chamber of Commerce in London, [1918]

K. B. 180; *Moore v. Planagan*, [1920] A. C. 100; *K. B. 919*; *Clarkson v. Davies*, [1923] A. C. 100; *Duffner v. Bowyer* (1924), 40 T. L. R. 700; *The Koursk*, [1924] P 140; *Pirie v. Richardson* (1926), 70 Sol. Jo. 1023. *Mentel v. Norbury Natzio v. Griffiths*, [1918] 2 K. B. 369; *Rodriguez v. Speyer*, [1919] A. C. 59; *Pennington & Owen* (1925), 95 L. J. Ch. 93.

**PART IX. SECT. 3, SUB-SECT. 2.—**  
**F. (a).**

2172 ii. —.]—GLADUE v. WALCH,  
No. 2510 xiv., *post.*—CAN.

**PART IX. SECT. 3, SUB-SECT. 2.—**  
**F. (c).**

2194 v. —.]—M., without disclosing the fact that he was acting as agent for the Crown, purchased hay from A., & was sued for a balance of the purchase price. At the trial that fact became known to A., but he nevertheless proceeded with the case & recovered judgment against M.:—**Held:** A., having elected to proceed to judgment against M., could not afterwards sue the Crown.—**DESROISERS v. R.** (1919), 18 Exch. C. R. 461.—**CAN.**

2194 vi. —.]—Engineers brought an action against shipowners for payment of the balance of the contract price of two boilers for a steamship. The shipowners denied liability, & also brought a counter-action for

damages in respect of breach of contract. The actions were conjoined & a proof was led, in the course of which it transpired that the shipowners were not the registered owners of the steamship, as had up to that time been assumed, but merely acted as managers for a co. which owned her. Both parties thereupon amended their records; the shipowners averring in both actions that they had contracted, & were litigating, as agents for the limited co.; & the engineers, as defenders in the counter-action, pleading "no title to sue":—*Held*—by prosecuting their own action to decree, the engineers had elected to treat debts, as their debtors in the contract.—*CRAIG & Co. v. BLACKATHL*, [1923] S. C. 472.—*SCOT*.

**PART IX. SECT. 3, SUB-SECT. 2.—**  
**F. (d).**

2206 i. *Electum to sue one discharges other.*—MURRAY v. DELTA COPPER

**Bennett v. Whitehead**, [1926] 2 K. B. 380;  
**Hardie & Lane v Chiltern** (1927), 96 L. J.  
K. B. 773.

**2197. Add. Annotations :—**Folld. Moore v. Flanagan & Wife, [1920] 1 K. B. 919. **Apld.** London General Omnibus Co. v. Pope (1922), 38 T. L. R. 270. **Refd.** Duffner v. Bowyer (1924), 40 T. L. R. 700; Debenham v. Perkins (1925), 133 L. T. 252; Bennett v. Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

**2198.** *Add. Annotation:—As to (1) Dlst. Debenham v. Perkins (1925), 133 L. T. 252.*

**2199. Add. Annotations:—**As to (1) **Refd. Moore v. Flanagan & Wife**, [1920] 1 K. B. 919; **Parr v. Snell**, [1923] 1 K. B. 1; **Pirie v. Richardson**, [1927] 1 K. B. 448.

2201. After this case insert "Res judicata generally, *see* ESTOPPEL, Vol. XXI, pp. 159 *et seq.*, 198 *et seq.*"

2205a. — **Acceptance of payment from principal**  
**—After receiving order against agent.**—Resp.  
 was employed by the debtor, who was acting  
 for a co., but who was himself personally  
 liable on the contract. While the contract  
 was running, a receiving order was made  
 against the debtor, but he was not adjudi-  
 cated bkpt., the receiving order being dis-  
 charged & an order being made approving a  
 composition of 20s. in the pound. After the  
 breach of contract by the debtor resp. took  
 the salary offered to him by the co., & a  
 proof put in by resp. for damages for the  
 breach was rejected by the trustee of the  
 composition on the ground that resp. had  
 elected to look to the co. for the fulfilment of  
 the contract:—*Held*: resp. had not, by his  
 conduct, finally elected in law to look to the  
 co. for the fulfilment of the contract, & the  
 proof ought to be allowed.—*Ex p. PITT* (1923),  
 40 T. L. R. 5, C. A.

**2233. Add. Annotation:—***Refd. Allen v. Bank of Canada* (1925), 41 T. L. R.

**2245. Add. Annotations:—***As to* (2) **Refd.** *Janvier v. Sweeney*, [1919] 2 K. B. 316; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244 *Generally*, **Refd.** *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

Co., LTD., [1925] 4 D. L. R. 1061 —  
CAN.

**PART IX. SECT. 3, SUB-SECT. 4.—A**  
**2245 v. —**]—Resp. had taken fire insurance policies in several cases, amongst which were applt. Co. and F. Co., both represented by D. as the agent. The property insured having been destroyed by fire, resp. received from the adjuster a memorandum showing a line entitled to \$2,864.44 as against the F. Co., & to \$1,811.44 as against the applt. Co., making a total of \$2,861.60, as against applt. Co. under two policies. Later on, the F. Co., sent to D. their cheque payable to resp., & D. appropriated its proceeds by forging the signature of resp. The latter, pressing D. for a settlement, accepted as an accommodation D.'s personal cheque for the amount of his claim against the F. Co. On the afternoon of the same day, D. informed resp. that the cheque of the F. Co. had arrived. At that time, D. had also received from applt. Co. two drafts payable to the order of resp. D.

- 2246. Add. Annotations:—**Consd. *Janvier v. Sweeney* (1919), 35 T. L. R. 226; *Rand v. Craig*, [1919] 1 Ch. 1; *Mintz v. Silverton* (1920), 36 T. L. R. 399; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826. **Refd.** *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Percy v. Glasgow Corp.*, [1922] 2 A. C. 299; *Underwood v. Bank of Liverpool*, Same *v. Barclays Bank*, [1924] 1 K. B. 775.
- 2252. Add. Annotation:—**Mentd. *Re Llewellyns' Settlement*, *Official Solicitor v. Evans*, [1921] 2 Ch. 281.
- 2253. Add. Annotation:—**Refd. *Collins v. Hopkins*, [1923] 2 K. B. 617.
- 2267. Add. Annotation:—**Refd. *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.
- 2268. Add. Annotations:—**Consd. *Rand v. Craig*, [1919] 1 Ch. 1; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826.
- 2274. Add. Annotation:—**Mentd. *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1920] 1 K. B. 470.
- 2280. Add. Annotations:—**Distd. *Dyster v. Randall*, [1926] Ch. 932. **Refd.** *Said v. Butt*, [1920] 3 K. B. 497.
- 2282. Add. Annotations:—**Refd. *Janvier v. Sweeney*, [1919] 2 K. B. 316; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826.
- 2284. Add. Annotations:—**Consd. *Janvier v. Sweeney* (1919), 35 T. L. R. 226; *Rand v. Craig*, [1919] 1 Ch. 1; *Mintz v. Silverton* (1920), 36 T. L. R. 399; *Kreditbank Cassel*
- G.M.B.H. v. Schenkers**, [1927] 1 K. B. 826; *Britt v. Galmoye & Nevill* (1928), 44 T. L. R. 294; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. **Refd.** *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Percy v. Glasgow Corp.*, [1922] 2 A. C. 299; *Underwood v. Bank of Liverpool*, Same *v. Barclays Bank*, [1924] 1 K. B. 775; *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1920] 1 K. B. 40.
- 2285. Add. Annotation:—**Mentd. *Kent v. Atkinson*, [1923] P. 142.
- 2286. Add. Annotations:—**Consd. *Rand v. Craig*, [1919] 1 Ch. 1; *Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762. **Refd.** *Janvier v. Sweeney* (1919), 35 T. L. R. 226; *Soanes v. L. & S. W. Ry.* (1919), 88 L. J. K. B. 524.
- 2287. Add. Annotation:—**Refd. *The Sylvan Arrow*, [1923] P. 220.
- 2292. Add. Annotations:—**Consd. *Janvier v. Sweeney* (1919), 35 T. L. R. 226; *Rand v. Craig*, [1919] 1 Ch. 1; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826. **Refd.** *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Mintz v. Silverton* (1920), 36 T. L. R. 399; *Percy v. Glasgow Corp.*, [1922] 2 A. C. 299; *Underwood v. Bank of Liverpool*, Same *v. Barclays Bank*, [1924] 1 K. B. 775.
- 2294. Add. Annotation:—**Refd. *Bonham v. Maycock* (1928), 138 L. T. 736.
- 2295. Add. Annotation:—**Refd. *Admiralty Comrs. v. National Provincial & Union Bank of England* (1922), 127 L. T. 452.

obtained resp.'s indorsement on the larger one of the drafts on the representation that it was the cheque of the F. Co., which he would use to reimburse himself for his personal cheque, & also secured resp.'s signature on the other draft on the representation that it was a receipt, the execution of which was a formality required by the F. Co. D. indorsed both drafts & deposited them to his own credit, & they were later paid & charged to applt. co.'s account by the bank. Resp. having sued applt. co.:—**Held:** in the fraud practised upon resp., D. was acting within the scope of his agency as to make his fraud that of his principals, applt. co.; & the indorsements on the drafts of applt. co. were not binding on resp. in the circumstances in which they were given.—*NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH v. MARTIN*, [1924] 3 D. L. R. 1012; S. C. R. 348; *aff.*, [1923] 4 D. L. R. 574; 3 W. W. R. 897; 19 Alta. L. R. 786; *aff.*, [1923] 3 D. L. R. 220.—**CAN.**

**2245 vi. —.**—**POPE v. PICTOU STEAMBOAT CO.** (1865), 6 N. S. R. (2 Old.) 18.—**CAN.**

**2245 vii. —.**—**PARTAB NARAIN v. JUTE MILLS** (1927), 1 L. R. 50 All. 29.—**IND.**

**2246 ii. —.**—**Pltf.**, believing Z. to be agent of defts., arranged with him for the shipment of two carloads of grain to defts., & signed the bills of lading, on which his name appeared as shipper & defts.' name as consignees. The documents were signed partly in blank, certain particulars being left to be filled in by Z. Z. used the documents for his own purposes, borrowed money upon them from the bank, signed his own name to them, crossed out defts.' name as consignees & substituted that of the bank. Defts., being notified of shipment, paid the bank, procured the bills of

lading, disposed of the grain & settled with Z. for the proceeds:—**Held:** defts. were liable to pltf. for conversion for the value of the grain.—*LENO v. SIMPSON-HEPWORTH CO., LTD.*, [1919] 1 W. W. R. 721; 45 D. L. R. 285.—**CAN.**

**2246 iii. —.**—**A principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent.**—*DINABANDHU SAHA v. ABDUL LATIF MOLLA* (1912), 1 L. R. 50 Cal. 258.—**IND.**

**2253 iv. —.**—**Pltfs.**, who resided in England, were the owners of a sub-division in Calgary & were represented there by agents. L. obtained from the agents a listing of parcels of lots & authority to obtain purchasers. L. induced deft. to purchase lots for \$3,400 under an agreement made by a fictitious person as vendor, which L. delivered to deft. & received from him \$1,500 as the cash payment. L. brought in to pltfs.' agents an agreement for sale of the lots to a fictitious person for \$3,000 of which \$1,000 was payable in cash, which sum only he paid in. He also subsequently collected from deft., but never paid in, the deferred payments under deft.'s agreement. Pltfs. had no knowledge of L.'s fraud until after all the money had been paid to him:—**Held:** pltfs. were liable for the additional \$500 of cash payment fraudulently contracted for & received by L.—*DENTON v. GOODMAN*, [1922] 1 W. W. R. 117; 62 D. L. R. 559.—**CAN.**

**2253 v. —.**—**Agent added as co-defendant.**—The agent of pltf., the vendor, made false representations without the knowledge of his principal in order to induce deft. to purchase property belonging to pltf. Dft., on discovering that the representations were false, refused to complete the transaction &, on being sued by pltf.

for such non-performance, brought a counterclaim for rescission & damage, & joined the agent as co-defendant:—**Held:** the agent was rightly made co-defendant.—*ROTHWELL v. ATTWOOD*, [1923] 4 D. L. R. 734; *revers.*, [1924] 1 D. L. R. 43.—**CAN.**

#### PART IX. SECT. 4, SUB-SECT. 1.—A.

**2282 vii. —.**—**Negligence of agent's employee.**—An agent is not personally responsible for damage done by the negligence of those employed by him in the service of his principal, but the principal or those actually employed only are liable.—*WINTERMUTE v. MOULTON* (1922), 65 D. L. R. 653.—**CAN.**

**2282 viii. —.**—**Deft. agreed to provide teams & men to cart goods for pltf., & in performing such contract caused damage to certain roads. The county council took proceedings, & obtained judgment against pltf. for recovery of the expenses incurred by the council by reason of the damage caused by the extraordinary traffic carried on by deft. On a claim by pltf. to be indemnified by deft. for the amount of the judgment:—****Held:** deft. was pltf.'s agent to do the carting, & the liability to pay for the damage rested on pltf.—*BEGG v. HAGAN*, [1921] N. Z. L. R. 220.—**N.Z.**

#### PART IX. SECT. 4, SUB-SECT. 1.—B.

**2299 i. Funds received for investment.—By local manager of bank.—Improvident investment.**—Two persons who formed the local advisory board of deft. co. purchased on defts.' behalf for \$7,000 the balance unpaid under an agreement for sale of subdivided property, which amounted to about \$7,500 taking the assignment in their own name "as trustees." One of these persons, the local manager of deft. co., had an individual private client, pltf., for whom he had invested

**2305. Add. Annotations:—Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532; The Tervaele, [1922] P. 259; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385.

**2309. Add. Annotation:—As to (1) Refd.** London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777.

**2317. Add. Annotations:—Apld.** Pratt v. Patrick, [1924] 1 K. B. 488. **Consd.** Parker v. Miller (1926), 42 T. L. R. 408; Brooke v. Bool, [1928] 2 K. B. 578.

**2318. Add. Annotations:—As to (1) Refd.** Pratt v. Patrick, [1924] 1 K. B. 488. **As to (2) Consd.** Brooke v. Bool, [1928] 2 K. B. 578.

**2318a. ———.]—Deft.** was in his motor car, with him, on his invitation, being two friends, E. & P. E. drove the car, & owing to his negligence it collided with another vehicle, & P. sustained injuries from which he died. P.'s widow sued deft. under Fatal Accidents Act, 1846 (c. 93), for damages:—**Held:** as deft. was in the car, & there was no evidence that he had abandoned his right of control, he was liable notwithstanding that by a casual delegation he had entrusted its actual physical management & mechanical control to E.—**PRATT v. PATRICK**, [1924] 1 K. B. 488; 93 L. J. K. B. 174; 130 L. T. 735; 40 T. L. R. 227; 68 Sol. Jo. 387; 22 L. G. R. 185.

**2318b. — Search for escape of gas.]—A** landlord of a lock-up shop, occupied by a tenant, had the tenant's authority to visit the premises at night. The landlord occupied the adjoining premises, & a lodger, who had no authority to enter the shop himself, complained to him of a smell of escaping gas coming from the shop. The landlord & the lodger went into the shop together, & the landlord commenced a search for the escape of gas with a naked light, which the lodger continued. Owing to the lodger's negligent conduct, an explosion was caused, resulting in damage to the tenant's goods on the premises:—**Held:** the landlord was liable

for the damage on the ground (*inter alia*) of agency.—**BROOKE v. BOOL**, [1928] 2 K. B. 578; 97 L. J. K. B. 511; 139 L. T. 376; 41 T. L. R. 531; 72 Sol. Jo. 354, D. C.

**2326. Add. Annotations:—Generally, Refd.** Poland v. Parr, [1927] 1 K. B. 236. **Mentd.** Pratt v. British Medical Assocn., [1919] 1 K. B. 244; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

**2331. Add. Annotation:—Distd.** Goh Choon Seng v. Lee Kim Soo, [1925] A. C. 550.

**2336. Add. Annotations:—As to (1) Refd.** Britt v. Galmoye & Nevill (1928), 44 T. L. R. 294. **Generally, Refd.** Poland v. Parr, [1927] 1 K. B. 236. **Mentd.** Jefferies & Atkey v. Derbyshire Farmers (1920), 36 T. L. R. 825.

**2337a. Imprisonment by foreign sovereign—Procured by principal.]—Trespass** lies for procuring by awe, fear, & influence, & contrary to his own inclination, a sovereign independent absolute prince to imprison pltf.—**RAFAEL v. VERELST** (1776), 2 Wm. Bl. 1055; 96 E. R. 621.

**Annotations:—Refd.** West v. Smallwood (1838), 6 Dowl. 580; Companhia de Mocambique v. British South Africa Co., De Sousa v. Same, [1892] 2 Q. B. 358.

**2339. Add. Annotations:—As to (1) Consd.** Performing Right Soc. v. Caryl Theatrical Syndicate, [1924] 1 K. B. 1; Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.

**2339a. Fence—Omission to.]—Where, upon the** diversion of a turnpike road after the new road had been completed, but before the old road was stopped up, the trustees, by the permission of B., broke down his fence to make a passage from the new road to the close of A., but did not put up a gate or fence to protect the latter close:—**Held:** the trustees were wrong-doers, & B. was responsible for their acts.—**WINTER v. CHARTER** (1829), 3 Y. & J. 308; 2 Man. & Ry. M. C. 177; 148 E. R. 1197.

**2345. Add. Annotation:—Mentd.** Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.

money. Having \$5,000 of pltf.'s money on hand he invested it by buying a part interest in the assignment of agreement for sale, & a declaration of trust was made by the trustees in pltf.'s favour to the extent of \$5,000 & interest. The investment turned out badly & pltf. sued deft. co. for recovery of his money:—**Held:** pltf. was entitled to recover.—**MCGRINDLE v. LONDON SCOTTISH CANADIAN INVESTMENT SYNDICATE**, [1922] 3 W. W. R. 977; 70 D. L. R. 612.—**CAN.**

#### PART IX. SECT. 4, SUB-SECT. 1.—C.

**2317 ii a. ———.]—A** motor bicycle, the property of deft., which was ridden by R., deft.'s brother, injured pltf's. Def't.'s brother had general permission to ride the motor bicycle for himself or for def't., but he was never in def't.'s employment. The jury found that the rider was acting as the agent or servant of def't. in the management of the motor bicycle at the time of the accident:—**Held:** the jury's findings & verdict must stand.—**THOMPSON v. REYNOLDS**, GIBSON v. REYNOLDS, [1926] N. 131.—**IR.**

**2317 ii b. ———.]—DRISCOLL v. COLLETTI**, [1926] 2 D. L. R. 428; 58 O. L. R. 444.—**CAN.**

**2317 ii c. ———.]—A** man was knocked down & killed by a motor car owned by def't. whilst it was being driven by his son. The car was kept in a garage on def't.'s property which adjoined the son's home. Def't. was not licensed to drive & had never been seen driving the car, which on many occasions was driven by the son, who worked with his father. The accident took place whilst the car was proceeding in the direction of the homes of def't. & his son:—**Held:** the evidence was not sufficient to establish as between def't. & his son the relationship of principal & agent.—**GOLDMAN v. BARNFIELD** (1927), 27 S. R. N. S. W. 405; 44 N. S. W. W. N. 147.—**AUS.**

**2317 ii d. ———.]—Pltf.** collided with def't.'s motor car, which was driven by J., a son of def't., & sustained serious injuries. In answers to interrogatories def't. admitted that she was the registered owner of the motor car; that her son C. & her daughter H. were licensed drivers; that she had purchased the car for pleasure; that she paid for all the petrol & oil; that her son J. resided with her; that she paid the rent for a lock-up garage, the key of which was kept by her son C. A witness stated that he saw J. driving his mother's car more than once prior to the day of the accident. Def't.

denied that she knew that J. had a key of the garage in his possession on the day of the accident, or that she knew he had access to the key, & stated that she never at any time gave J. permission to drive her car, & that he never drove it to her knowledge:—**Held:** if the answer of the jury that J. at the time of the accident was driving the car with the implied authority of def't., amounted to a finding of agency, it must be set aside, on the ground that there was no evidence to support it.—**GIBSON v. O'KEENEY**, [1928] N. I. 66.—**IR.**

**2317 ii e. ———.]—A** motor car owned by def't. was, at the time of an accident, being driven by a person to whom it had been lent by him.—**Held:** the mere proof of def't.'s ownership of the car was not of itself sufficient to establish a *prima facie* case of liability on his part.—**FERGUSON v. WAGNER** (1926), 27 S. R. N. S. W. 9; 44 N. S. W. W. N. 22.—**AUS.**

**2317 ii f. ———.]—Allowing third party to drive contrary to instructions—Principal not liable.]—WAINIO v. BEAUDREAUT** (Ont.), [1927] 4 D. L. R. 1131.—**CAN.**

**2319 i. Add "revsd., sub nom. MURRAY v. JENKINS** (1898), 28 S. C. R. 565—**CAN.**," and delete the word "AUS."

2348. *Add. Annotation* :—**Mentd.** *Akt. Reidar v. Arcos* (1928), 42 T. L. R. 737.
2396. *Add. Annotation* :—**Mentd.** *Public Trustee v. Duchy of Lancaster*, [1927] 1 K. B. 516.
2409. *Add. Annotation* :—**Mentd.** *North Staffordshire Ry. v. Edge* (1919), 89 L. J. K. B. 78.
2415. *Add. Annotation* :—**Refd.** *Newsholme v. Road Transport & General Insce.* (1928), 45 T. L. R. 123.
2436. *Add. Annotation* :—**Generally, Refd.** *Sassoon v. International Banking Corp.,* [1927] A. C. 711.
2446. *Add. Annotation* :—**Refd.** *Clayton-Greene v. De Courville* (1920), 36 T. L. R. 790.
2448. *Add. Annotation* :—**Refd.** *Edwards v. Porter, McNeill v. Hawes*, [1923] 2 K. B. 538.
2449. *Add. Annotation* :—**Mentd. Re** *Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735.
2455. *Add. Annotations* :—**Refd. Re** *City Equitable Fire Insce.,* [1925] Ch. 407. **Mentd.** *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266; *Piercy v. Mills*, [1920] 1 Ch. 77.

## Part X.—Relations between Agent and Third Parties.

2473. *Add. Annotation* :—**Refd.** *Edwards v. Porter* (1924), 41 T. L. R. 57.
- 2474a. —.]—The owners of a chartered ship sued the K. Coal Co. for demurrage at the port of loading under a charterparty expressed to be entered into "between G. T. G. Co., owners' agents, & A. B. Co., Copenhagen, charterers." The charterparty, which was on a printed form, provided for payment of demurrage by "the charterers," & at the end of the charterparty the following stipulation was added in writing: "Freight & demurrage (if any in loading) to be paid in Glasgow by the K. Coal Co., Ltd." The charterparty was signed as follows: "For the A. B. Co., Copenhagen, J. B. J., of the K. Coal Co., Ltd. For & by telegraphic authority of owners, for G. T. G. & Co., J. M., as agents only." It was admitted that J. B. J. signed on behalf of the K. Coal Co. :—**Held** : (1) the K. Coal Co. were not by reason of the form of the signature made liable upon

**PART IX. SECT. 5, SUB-SECT. 2.—B.**

2384 i. ---.]-A letter from an agent to his principal which is merely a narrative of an interview between the agent & a third party, if admissible in evidence at all, is not evidence against the principal of a parol acceptance by the third party of an offer made to him.-SWAN v. MILLER, [1919] 1 I. R. 151.-IR.

**PART IX. SECT. 6, SUB-SECT. 1.—B.**

2396 ii. — *Not to agent's interest to disclose.*—Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose & which he did not disclose to the principal cannot be imputed to the principal.—TEXAS Co. v. BOMBAY BANKING Co., LTD. (1919), 24 C. W. N. 469.—IND.

2408 ii. — — —.]—MOUNT HOPE  
RURAL MUNICIPALITY v. FINDLAY,  
[1921] 3 W. W. R. 658.—CAN.

**PART IX. SECT. 6, SUB-SECT. 2.—B.**

2428 iv. —.]—QUEBEC FEDERATED CO-OP. CO. v. FARMERS FENCE CO., [1925] 2 D. L. R. 574; *affy.* Q. R. 37 K. B. 345.—CAN.

**PART IX. SECT. 6, SUB-SECT. 3.**

80. *In general.* — By conferring authority upon his agent the principal gives third persons the right to assume that they can deal with the agent in the matters connected by that authority until they receive notice of his authority having been revoked, or at least until some circumstance arises which in all reason should put them upon inquiry, & this rule applies especially in favour of third parties who began to deal with the agent while his authority did in fact exist. — WATSON v. POWELL, [1921] 2 W. W. R. 128; 14 Sask. L. R. 424; 58 D. L. R. 615. — CAN.

**ad. Owner leasing farm to former manager.**—When an owner of land has permitted his employee to manage a farm & to dispose of the crop, from year to year, to an elevator co. & account for the proceeds, & the owner changes his course of dealing, & leases the land to the former employee on a crop-payment rental, the owner

is not entitled to relief against the elevator co. for the loss of his share by the lessee, unless notice of the change of relationship has been given to the co.—NORTH AMERICAN FINANCE CO. v. WESTERN ELEVATOR CO. (1922), 66 D. L. R. 467; 32 Mun. L. R. 76; [1922] 2 W. W. R. 162.—CAN.

*st. Agent accepting goods after revocation.*—Appls., a Durban firm, entered through V. into contracts with farmers in Alexandria for the supply of chicory. In 1917 V. had authority to accept chicory on behalf of appls., but when appls. entered into a contract with resps. for the 1918-1919 crop of chicory, this authority of V. had been withdrawn. Resps. tendered a consignment of chicory, which was accepted at Alexandria after examination by V., & sent to appls. at Durban; but it was rejected by appls. as being unsound inasmuch as the contract was for the sending of "tip-top" chicory. Whereby the sending of this inferior consignment, appls. had notified all the farmers by circular that they would reject any chicory not "tip-top," & charge railage & storage to the senders :—*Held*: the circulars should have put resps. on inquiry as to V.'s authority.—**ELLIS BROWN v. VAN**

**Ag. Agent contracting after revocation.**—Def't. authorised his wife to sell land, but before the contract with pl'tf. was concluded he revoked his wife's authority. The revocation was not communicated to pl'tf. :—**Held** : def't. was bound by the contract entered into by his agent with pl'tf.—**WILKINS v. WEST**, [1921] E. D. L. 359—**S. AF.**

**PART X. SECT. 1, SUB-SECT. 1.—**  
**A. (a) i.**

**2457 i.** *Agent cannot sue.*].—Pltt. sent to defts. a quotation for goods, written on paper headed, "Nils Storaker, Representative for Alliance Export & Import Co., Christiania, Norway. All orders & contracts are subject to the suppliers' terms of contract. No order or contract is firmly accepted until the suppliers have consented to book it." In the letter he wrote: "All orders are booked on the understanding that my principals are given the option of shipping by steamer or

sailing vessel." Defts. gave plff. an order. Plff. wrote to defts. saying: "I have cabled the order over to-day, & I hope soon to be able to give upon cable acceptance." Subsequently he wrote: "I am glad in being able to inform you that the above-mentioned order has been booked by my principals & will send you official confirmation in due course." Plff.'s letter, were all signed "Niels Storaker", without any qualification:—*Held*: plff. was contracting merely as agent, not as principal, & was not entitled to sue on the contract.—*STORAKER v. SOUTHSIDE & LONG, LTD.* (1920), 20 S. R. N. S. W. 190.—*AUS.*

**2457 ii. —.—.]**—An order for books, addressed to the publishers on a form apparently supplied by them, requested delivery through “your distributors,” contained an agreement to pay them (the distributors) at their office & provided that “this order to be binding shall be accepted by them.” The distributors supplied the books, & sued for the price. —*Held*: the action was not maintainable. —*WISE v. KERR*, [1925] 1 W. W. R. 849; 35 B. C. R. 161.—**CAN.**

2457 iii. —.]—BARKLEY v. WINNYCHUK (Alta.), [1926] 4 D. L. R. 538; [1926] 3 W. W. R. 327.—CAN.

2487 i. *Agent real principal.*].—Where an agent names his principal & makes the contract as agent on his behalf, he cannot enforce it, even though he is the real principal, unless the party has affirmed the knowledge of the fact.—*GLASGOW v. HOOD*, [1920] N. Z. L. R. 586.—N.Z.

**PART X. SECT. 1, SUB-SECT. 1.—**  
**A. (a) ii.**

2471 vi. — *Father & son.*—A person acting for a disclosed principal in a contract is not liable thereon, unless there be circumstances to show that he intended to render himself liable. The fact that a son residing with his father telephones for a physician to come & attend his father's servant who is ill, raises no presumption that the son agrees to pay for such services. —BLECKER v. STUTSMAN, [1920] 3 W. W. R. 644; 54 D. L. R. 662.—CAN.

the charterparty; (2) the clause in writing did not import a promise of liability sufficient to rebut any inference to the contrary from the form of the signature.—*KIMBER COAL CO. v. STONE & ROLFE, LTD.*, [1926] A. C. 414; 95 L. J. K. B. 601; 135 L. T. 161; 42 T. L. R. 430; 31 Com. Cas. 333; 17 Asp. M. L. C. 37, H. L.

2475. *Add. Annotation*:—Generally, **Mentd.** Winterbotham, Gurney v. Sibthorp & Cox, [1918] 1 K. B. 625.

2487a. —.]—Pltf., a builder, did work on the order of H., a director of a co. for which pltf. had previously done work on H.'s order. As the work proceeded pltf. prepared estimates & addressed them to the co. whose name he had entered in his books. When the work was finished he was paid a sum on account, but when trying to get payment of the balance he was told that the work had not been ordered on behalf of the co., but for other principals. Thereupon he sued H. The judge found that H. impliedly undertook personal liability for the work, that pltf. gave credit to the co. up to a certain date, but did so under a mistaken impression, & that he never gave exclusive credit to them in such a way as to bind himself to look to them, & that he never gave credit to H. before the work was completed :—*Held* : H. was liable for the balance.—*GARDINER v. HEAD-ING*, [1928] 2 K. B. 284 ; 97 L. J. K. B. 766 ; 139 L. T. 449, C. A.

**2501. Add. Annotations :—** **Refd.** *Phillips v. Brooks*, [1919] 2 K. B. 243; *Said v. Butt*, [1920] 3 K. B. 497; *Lake v. Simmons*, [1927] A. C. 487. **Mentd.** *Berners v. Fleming*, [1925] Ch. 264.

**2483 i. Agent real principal.**—Pltf. signed an order for the purchase of a tractor addressed to a co., for whom deft. claimed to have made the sale as agent only:—**Held:** deft. was liable as the real vendor.—**PETERSON v. CUSHMAN MOTOR WORKS, [1922] 2 W. W. R. 1041: 67 D. L. R. 38.—CAN.**

**sk. Contract for work & labour.]**—After judgment by default on common counts for work & labour, etc., debt. may show on the execution of writ of inquiry that he contracted merely as agent of the person to whom the credit was given.—**FALLS v. SARGENT** (1846), 3 Kerr, 218.—**CAN.**

**PART X. SECT. 1, SUB-SECT. 1.—**  
**A. (b) ii.**

e. i. —.].—Every person who in making a contract discloses the existence, but not the name, of the principal on whose behalf he is acting, is personally liable on the contract to the other contracting party.—GLADUE v. WALCH, [1918] 3 W. W. R. 975; 43 D. L. R. 757.—CAN.

e ii. *Name disclosed by third party.*—Under Indian Contract Act, s. 230, plfts. as agents for an undisclosed principal, could personally enforce the contract. The expression “where the agent does not disclose the name of the principal” does not apply to a case where the name of the principal is disclosed not by the agent, but by a third party.—*KAPURJI MAGNAN v. PANAJI DERICHAND* (1928), I. L. II. 53 Bom. 110.—**IND.**

**2492 i. Agent real principal.]—**Where the owner in equity signs a contract for the sale of land "as agent for the owner" evidence is admissible to show that the person so contracting is the owner, & he is entitled to sue the

purchaser without having given him notice prior to action brought that he was the principal, & not the agent.—*MACCORMAC v. BRADFORD*, [1927] S. A. S. R. 152.—**AUS.**

sl. *Person contracting for "buyer."*  
—In pursuance of authority given by  
def't. his agents purchased sheep for  
plff. In none of the telegrams between  
plff. & def't.'s agents by which the  
purchase was arranged was def't.  
named, but the last telegram from the  
agents contained the words "Buyer  
confirms sale":—*Held*: the words  
"Buyer confirms sale" showed that  
def't.'s agents were contracting as  
agents, & relieved them from personal  
liability on the contract.—*MURRAY v.*  
*HOPKINS*, [1919] N. Z. L. R. 689.—  
N.Z.

**PART X. SECT. 1, SUB-SECT. 1.—**  
**A. (c) i.**

**2497 v.** —.]—Where an agent for an undisclosed principal contracts on such terms as import that he is the real & only principal, the undisclosed principal cannot sue or be sued on the contract.—**WEST v. DILLICAN**, [1921] N. Z. L. R. 617.—**N 7**

**2497 vi.** — *Agent real principal.* — Where a person who purports to contract as agent for an undisclosed principal is in fact the principal in the transaction, it is not clear whether or not he is entitled to sue on the contract as principal. — *GLASGOW v. HOOD*, [1920] N. Z. L. R. 586. — **N.Z.**

2497 vii. — *Damage suffered by principal.*—In an action against ship-owners for payment of the balance of the contract price of goods for a ship, the shipowners counterclaimed for damages for breach of contract. In the course of the action it appeared that the shipowners were not the registered

**2502. Add. Annotation:—**Consd. *Dyster v. Randall*, [1926] Ch. 932.

**2504. Add. Annotation :—**Consd. Rederi Akt.  
Transatlantic v. Drughorn, [1918] 1 K. B. 394.

**2516. Add. Annotations:—Generally, Mentd. Stokes**  
*v. Whicher*, [1920] 1 Ch. 411; *Reading Trust*  
*v. Spero* (1929), 46 T. L. R. 117.

**2518. Add. Annotation:—**Mentd. United States Shipping Board v. Strick, [1926] A. C. 545.

**2523a. Judgment obtained against undisclosed principal — Judgment unsatisfied.] —** A person making a contract with an agent, who is acting on behalf of an undisclosed principal, cannot sue the agent on the contract after having obtained judgment upon it against the undisclosed principal, even though such judgment is still unsatisfied. — **LONDON GENERAL OMNIBUS CO., LTD. v. POPE** (1922), 38 T. L. R. 270.

2530. *Add. Annotation*:—**Mentd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

2531. *Add. Annotations*:—*As to* (1) **Refd.** *Ariadne S.S. Co. v. KcKelvie*, [1922] 1 K. B. 518. *As to* (2) **Refd.** *Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 402.

2537. *Add. Annotations* :—**Refd.** *Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518; *Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492.

**2542. Add. Annotations :—****Refd.** *Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518. **Mentd.** *Brightman v. Tate*, [1919] 1 K. B. 463.

**2543. Add. Annotations :—***Consd. Kimber Coal Co. v. Stone & Rolfe*, [1928] A. C. 414. **Refd.** *Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518; *Universal Steam Navigation Co v. McKelvie*, [1923] A. C. 492.

owners of the ship, but merely acted as managers for a co. which owned her:—*Held*: as plffs. had in the circumstances elected to treat defts. as their debtors, defts. were entitled to counterclaim for damages although the damages had been suffered by the principals whom they represented, & not by themselves—*Craig & Co. v. Blacketer*, [1923] S C. 472.—*SCC.*.

**PART X. SECT. 1, SUB-SECT. 1.—**  
**A. (c) ii.**

2510 xiv. —.]—Where a person makes a contract in his own name without disclosing either the name or existence of a principal, he is primarily liable on the contract to the other contracting party.—*GLADUE v. WALCH*, [1918] 3 W. W. R. 975; 43 D. L. R. 757.—**CAN.**

2510 xv. —. —In an action for the hire of a dredge obtained by deft. M from plff., relief was sought against deft. J. as undisclosed principal: —*Held*: suspicious circumstances in the relations between M. & J. were not sufficient to support the judgment against J., in the face of the denial of defts. that any such relation existed. —NOVA SCOTIA DREDGING CO., LTD. v. MUSGRAVE & CO. (1918), 52 N. S. R. 71; 40 D. L. R. 589. —CAN.

2510 xvi. —.]—An agent, who does not clearly indicate to the third party that he is acting as an agent, is personally liable.—HILLS v. SWIFT CANADIAN CO., [1923] 3 D. L. R. 997.—CAN.

2510 xvii. —.—.]—LITCHFIELD v. SASKATCHEWAN & BATTLE RIVER LAND & DEVELOPING CO. (Sask.) (1908), 7 W. L. R. 475.—CAN.

2510 xviii. ———.]—WEST v. DILLI-  
CAN, No. 2497 v., *ante*.—N.Z.



- 2544. Add. Annotation:—**Consd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.
- 2545. Add. Annotations:—**Refd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.
- 2546. Add. Annotations:—**As to (1) Consd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 5118; Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492; Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414. As to (2) Apprvd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492. Generally, Mentd. Rederi Akt. Transatlantic v. Drughorn, [1918] 1 K. B. 394.
- 2549. Add. Annotation:—**As to (2) Refd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.
- 2549a. — Agents also described as charterers.]—**A charterparty was expressed to be made "between T. H. S. & Co., agents for the owners" of a steamer, "& J. McK. & Co., charterers," & was signed "For & on behalf of J. McK. & Co. (as agents), J. A. McK." The steamer was to load a cargo of coal on the Tyne & proceed to a foreign port, & provision was made for the payment by the charterers of demurrage in the event of the steamer being detained beyond the stipulated time either at the port of loading or at the port of discharge. The charterparty contained numerous other provisions imposing obligations on the charterers. The owners were aware at the time when the charterparty was signed that J. McK. & Co. were acting for other persons. In an action by the owners against J. McK. & Co. for demurrage at the port of discharge:—**Held:** defts. having signed as agents were not liable as principals to pay demurrage, notwithstanding that they were described as charterers in the body of the charterparty.—UNIVERSAL STEAM NAVIGATION Co. v. MCKELVIE (J.) & Co., [1923] A. C. 492; 92 L. J. K. B. 647; 129 L. T. 395; 39 T. L. R. 480; 67 Sol. Jo. 593; 16 Asp. M. L. C. 184; 28 Com. Cas. 353, H. L.; affg. S. C. sub nom. ARIADNE S.S. Co., LTD. v. MCKELVIE (J.) & Co., [1922] 1 K. B. 518, C. A.
- Annotation:—**Refd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.
- 2550. Add. Annotation:—**Mentd. Arnour v. Leopold Walford (London), [1921] 3 K. B. 473.
- 2553. Add. Annotation:—**Refd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.
- 2559. For "2 C. & P. 145" read "2 C. & P. 124."**
- 2563. Add. Annotations:—**As to (1) Consd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414. As to (3) Refd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.
- 2564. Add. Annotation:—**As to (1) Refd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.
- 2566. Add. Annotations:—**Consd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.
- 2567. Add. Annotations:—**Consd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414. Refd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518. Mentd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.
- 2571. Add. Annotations:—**Overd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492. Refd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.
- 2575. Add. Annotation:—**Consd. Benton v. Campbell, Parker, [1925] 2 K. B. 410.
- 2576. Add. Annotation:—**Expld. Akt. Ocean v. Harding, [1928] 2 K. B. 371.
- 2577. Add. Annotations:—**As to (1) Refd. Westcott v. Hahn, [1918] 1 K. B. 495. Generally, Mentd. Sutro v. Heilbut, Symons (1917), 14 Asp. M. L. C. 34; Rederi Akt. Acolus v. Hillas (1925), 42 T. L. R. 69.
- 2581. Add. Annotation:—**Generally, Mentd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.
- 2583. Add. Annotations:—**As to (2) Refd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492. Generally, Mentd. Palgrave, Brown v. Turid S.S., [1922] 1 A. C. 397.
- 2584. Add. Annotation:—**Refd. The Lizzie, [1919] P. 22.
- 2585. Add. Annotation:—**As to (1) Refd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.
- 2591. Add. Annotation:—**Refd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.
- 2593. Add. Annotation:—**Generally, Mentd. Rederiakt. Argonaut v. Hani, [1918] 2 K. B. 247.
- 2594. Add. Annotation:—**As to (2) Refd. Bennett v. Whitehead, [1926] 2 K. B. 380.
- 2595. Add. Annotations:—**Distd. Drughorn v. Rederiakt. Trans-Atlantic, [1919] A. C. 203. Mentd. Rederiakt. Argonaut v. Hani, [1918] 2 K. B. 247.
- 2597. Add. Annotation:—**As to (1) Consd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.
- 2599. Add. Annotation:—**Refd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.
- 2606. Add. Annotations:—**Distd. Drughorn v. Rederiakt. Trans-Atlantic, [1919] A. C. 203. Refd. Rederiakt. Argonaut v. Hani, [1918] 2 K. B. 247.

**PART X. SECT. 1, SUB-SECT. 1.—**  
**B. (c) i.**

**2591 iii. —**Where a wife contracting for the sale of a house signed a document in her own name without any indication that she was acting as agent for her husband, & expressly purported as owner to contract for payment to pltf. of the commission on the sale thereof:—**Held:** parol evidence was not admissible in an action against the husband to show that she was in fact acting as agent.—KATZMAN v. OWNATOME REALTY CO., [1924] 1 D. L. R. 201; 25 O. W. N. 333.—CAN.

**PART X. SECT. 1, SUB-SECT. 1.—**  
**B. (c) ii.**

**2598 ii. —**Where a contract is

entered into by an agent in his own name & the terms thereof clearly indicate personal liability the agent is personally bound by the contract, regardless of his intention, unless it can be shown by extrinsic evidence that there was an express agreement that the agent should not be liable & that the contract rendering him liable was so drawn by mistake.—CURRIE v. RURAL MUNICIPALITY OF WREPFORD, No. 280, & LASHER, [1918] 1 W. W. R. 315; 39 D. L. R. 516; 11 Sask. L. R. 22.—CAN.

**sm. — Sale of shares.]—**An investor purchased from a chartered accountant 150 shares in a co., paid the price therefor, & received from the chartered accountant a receipt, which ac-

knowledgeed payment of the price of 150 shares & concluded with these words: "the transfer for which will be sent you for signature in due course." In an action at the instance of the purchaser against the chartered accountant for transfer of the shares or repayment of the price deft. denied liability, averring that his position in the transaction was merely that of an agent for a disclosed principal:—**Held:** on the terms of the receipt deft. was personally liable to implement the contract of sale, & it was incompetent for him to adduce parol evidence to show, in contradiction of its terms, that he was merely an agent.—LINDSAY v. CRAIG, [1919] S. C. 139; 56 So. L. R. 93; [1918] 2 S. L. T. 321.—SCOT.



- 2608. Add. Annotations:—***Generally*; *Mentd.* Barker v. Stickney, [1919] 1 K. B. 121; *The Lord Strathcona*, [1925] P. 143; *Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86.
- 2609. Add. Citations:—***REDERIAKTIEBOLAGET ARGONAUT v. HANI*, [1918] 2 K. B. 247; 87 L. J. K. B. 999; *sub nom.* ARGONAUT v. HANI, 14 Asp. M. L. C. 310.  
*Add. Annotation:—**Refd.* Drughorn v. Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203.
- 2609a. —**.]—The description in a charterparty of one of the contracting parties as “charterer” does not, of itself, designate him as the only person to fill that position.  
An action for breach of charterparty was brought by persons claiming to be the undisclosed principals of a party described in the contract as “charterer,” & objection was taken to the admission of evidence that plffs. were in fact the charterers, on the ground that such evidence would contradict the written contract:—*Held*: the evidence was admissible.—*DRUGHORN (F.), LTD. v. REDERIAKTIEBOLAGET TRANS-ATLANTIC*, [1919] A. C. 203; 88 L. J. K. B. 233; 120 L. T. 70; 35 T. L. R. 73; 63 Sol. Jo. 99; 14 Asp. M. L. C. 400; 24 Com. Cas. 45, H. L.; *affg.* S. C. *sub nom.* REDERI AKT. TRANS-ATLANTIC v. DRUGHORN, [1918] 1 K. B. 394, C. A.
- Annotation:—**Consd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.
- 2610. Add. Annotation:—*As to* (2) *Refd.* Keen v. Mear (1920), 124 L. T. 19.**
- 2613. Add. Annotation:—*Refd.* Wilson v. United Counties Bank, [1920] A. C. 102.**
- 2620. Add. Annotation:—*Refd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.**
- 2634.** Before this case, after “*See, now*, Bills of Exchange Act, 1882 (c. 61), s. 26,” add “& generally, *BILLS OF EXCHANGE*, Vol. VI., pp. 112–114.”
- 2635. Add. Annotations:—*Refd.* Elliott v. Bax-Ironside, [1925] 2 K. B. 301; *Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414; *Kettle v. Dunster & Wakefield* (1927), 43 T. L. R. 770.**
- 2639. Add. Annotations:—*Refd.* Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148. *Mentd.* The Terracte, [1922] P. 259; *The Colorado*, [1923] P. 102; *The Sylvan Arrow*, [1923] P. 220; *The St. George*, [1926] P. 217; *The Goulondris*, [1927] P. 182; *The Stream Fisher*, [1927] P. 73.**
- 2655. Add. Annotations:—*Refd.* Elliott v. Bax-Ironside, [1925] 2 K. B. 301; *Kettle v. Dunster & Wakefield* (1927), 43 T. L. R. 770.**
- 2658. Add. Citation:—*sub nom.* CREW v. PETIT, 3 Nev. & M. K. B. 456; 2 Nev. & M. M. C. 309. *Add. Annotation:—**Refd.* Elliott v. Bax-Ironside, [1925] 2 K. B. 301.**
- 2664. Add. Annotation:—*As to* (1) *Refd.* Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.**
- 2665. Add. Annotations:—*Consd.* Elliott v. Bax-Ironside, [1925] 2 K. B. 301; *Kettle v. Dunster & Wakefield* (1927), 43 T. L. R. 770.**
- 2666. Add. Annotation:—*Generally*. *Refd.* Kettle v. Dunster & Wakefield (1927), 43 T. L. R. 770.**
- 2680. Add. Annotations:—*Mentd.* London General Omnibus Co. v. Pope (1922), 38 T. L. R. 270; R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. F. C. 197.**
- 2686. Add. Annotations:—*Refd.* Weiss, Biheller & Brooks v. Farmer, [1923] 1 K. B. 226; *Westminster Bank v. Hilton* (1926), 136 L. T. 315. *Mentd.* Weigall v. Runciman (1916), 85 L. J. K. B. 1187; *Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Gould v. S. E. & C. Ry. Co.*, [1920] 2 K. B. 186; *Johnson v. Taylor*, [1920] A. C. 144; *Wilson, Holgate v. Belgian Grain & Produce Co.*, [1920] 2 K. B. 1; *Diamond Alkali Export Corp. v. Bourgeois*, [1921] 3 K. B. 443; *Finn v. Shelton Iron, Steel & Coal Co.* (1924), 131 L. T. 213; *Sassoon v. International Banking Corp.*, [1927] A. C. 711.**
- 2695. Add. Annotations:—*As to* (1) *Overd.* Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492; *Generally*, *Refd.* Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.**
- 2701. Add. Annotation:—*Consd.* Akt. Ocean v. Harding, [1928] 2 K. B. 371.**

## PART X. SECT. 1, SUB-SECT. 2.—C.

*bi. —*—.]—A clause in a document under seal purporting to bind a person as principal of one of the parties, cannot so bind him where the deed was not executed by him or executed in his name.—*BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.*, [1923] 4 D. L. R. 543.—CAN.

## PART X. SECT. 1, SUB-SECT. 4.—B. (a).

*sn. Failure of foreign principal to perform contract.*—*Defts.*, acting on behalf of a foreign shipowner, who proposed to establish a service from Halifax to Havana & other southern ports, contracted in their own name with pltf. to provide space on the ship for a shipment of timber to be carried from Halifax to Buenos Ayres. The proposed service was abandoned by the shipowner, so that the contract entered into by *defts.* could not be performed:—*Held*: there having been failure on *defts.* part to disclose that they were merely acting in the capacity of agents for a foreign principal, they were liable to pltf. for damages resulting from cancellation of the ship's sailing.—*SHEPARD & MORSE LUMBER CO. INCORPORATED v. MATHERS (I. H.)*

& SON, [1926] 2 D. L. R. 457; 58 N. S. R. 466.—CAN.

## PART X. SECT. 1, SUB-SECT. 5.

*2712 ii. —*— *On behalf of unincorporated body.*—An officer of a brotherhood lodge, an unincorporated body, who as such officer on behalf of the lodge borrows money & signs documents purporting to obligate it to repayment, is personally liable for repayment, having contracted for a principal who had no existence in law.—*FINLAY v. BLACK*, [1921] 2 W. W. R. 907.—CAN.

*2712 iii. —*—.]—A person cannot be the agent of a projected but actually as yet non-existent co., & the co. when formed cannot take advantage of any contract entered into by a person purporting to act as its agent, whether by attempted ratification or otherwise; but a person may make a provisional contract not to become binding—i.e. not to be a contract at all—unless & until the co. becomes entitled to commence business.—*HUDSON-MATTAGAMI EXPLORATION MINING CO. v. WETTLAUER BROTHERS, LTD.*, [1928] 3 D. L. R. 661; 62 O. L. R. 387.—CAN.

*2712 iv. —*—.]—A co. cannot

be bound by any contract made on its behalf before it comes into existence, nor can it, subsequent to its formation, ratify such a contract.—*WEARNE BROTHERS v. RUSSA ENGINEERING WORKS* (1928), 1 L. R. 7 Ran. 144.—IND.

*sp. Bill of exchange accepted.—In name of non-existent company.*—*Deft.*, a member of a firm, H. & S., represented & warranted to pltf. that H. & S. Co., Ltd., were an incorporated co. & that he was authorised by it to accept a bill of exchange as its agent. He accepted a draft in the name of the co. & pltf. upon the faith of such assertion & warranty discounted the draft. H. & S. Co., Ltd., were not then an incorporated co.:—*Held*: *deft.*, by his acceptance of the draft in the name of a non-existing corp., warranted & represented that there was such a corp. in existence & that he had authority to accept the draft for that co., & not having any such authority, he was personally liable for the amount of the draft & the costs & expenses incurred by pltf. in endeavouring to collect same from H. & S. Co., Ltd.—*BANK OF NOVA SCOTIA v. HATFIELD* (1920), 48 N. B. R. 13; 58 D. L. R. 136.—CAN.

- 2726. Add. Annotations:—***As to (2) Refd.* Public Works Comrs v. Pontypridd Masonic Hall Co., [1920] 2 K. B. 233. *Generally, Refd.* Rowland v. Air Council (1923), 39 T. L. R. 228.
- 2727. Add. Annotations:—***Refd.* Public Works Comrs. v. Pontypridd Masonic Hall Co., [1920] 2 K. B. 233. *Mentd.* Mackenzie-Kennedy v. Air Council, [1927] 2 K. B. 517.
- 2728. Add. Annotation:—***Mentd.* Public Works Comrs. v. Pontypridd Masonic Hall Co., [1920] 2 K. B. 233.
- 2729. Add. Annotation:—***Folld.* Hosier v. Derby (Earl), [1918] 2 K. B. 671.
- 2731. Add. Annotation:—***Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 202.
- 2733a. —** For declaration as to meaning of contract.]—By a contract made between plffs. & the Secretary of State for War the Secretary of State hired from plffs. a steam engine & hay press upon the terms that the engine should be used only for the purpose of working the press. Plffs. brought an action against deft., who was Secretary of State for War at the date of the writ, but at the date of the contract did not nor did he now hold that office, alleging that deft. had improperly used the engine for other than the specified purposes, & claiming a declaration that plffs. were entitled to compensation for the improper use of the engine, & certain other declarations as to the construction & meaning of the contract:—*Held*: the action was not maintainable. It could no more be brought against a servant of the Crown for a declaration as to what the contract meant than for substantive relief upon the contract itself.—*HOSIER BROTHERS v. DERBY (EARL)*, [1918] 2 K. B. 671; 87 L. J. K. B. 1009; 119 L. T. 351; 34 T. L. R. 477, C. A.
- 2734. Add. Annotation:—***Consd.* R. v. Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26.
- 2740a. —** To mess.]—*BROWN v. DOYLE* (1788), 3 Camp. 51, n.; 170 E. R. 1302.
- 2742a. —** On order of secretary of mess committee.]—*LASCELLES v. RATIBUN*, No. 704a, *ante*.
- 2748. Add. Annotations:—***Consd.* Edwards v. Porter (1924), 41 T. L. R. 57.
- 2749. Add. Annotations:—***Consd.* Edwards v. Porter, McNeill v. Hawes, [1923] 2 K. B.
- 538; *Edwards v. Porter* (1924), 41 T. L. R. 57.
- 2751. Add. Annotation:—***Refd.* Edwards v. Porter, McNeill v. Hawes, [1923] 2 K. B. 538.
- 2752. Add. Annotation:—***Refd.* Edwards v. Porter, McNeill v. Hawes, [1923] 2 K. B. 538.
- 2753. Citations:—**For "P. C." read "H. L." *Add. Annotation:—**Mentd.* Ruffy-Arnell, etc., Co. v. R., [1922] 1 K. B. 599.
- 2753a. —** Sale of goods—Principal not entitled to sell.]—Where an agent purports to make a contract for a principal to buy goods, whether ascertained or not, or to sell unascertained goods, disclosing the fact that he is acting as agent, but not disclosing the name of his principal, he is personally liable to the purchaser if it afterwards appear that the principal had no right to sell, it being presumed that the purchaser would be unwilling to contract solely with an unknown man. But this presumption does not exist where a specific chattel is so sold, it being impossible to suppose that a purchaser would impose or an agent accept such a liability.—*BENTON v. CAMPBELL, PARKER & CO.*, [1925] 2 K. B. 410; 94 L. J. K. B. 881; 134 L. T. 60; 89 J. P. 187; 41 T. L. R. 662; 69 Sol. Jo. 842, D. C.
- 2757. Add. Annotation:—***As to (1) Consd.* Edwards v. Porter (1924), 41 T. L. R. 57.
- 2761. Add. Annotation:—***As to (3) Refd.* Edwards v. Porter, McNeill v. Hawes, [1923] 2 K. B. 538.
- 2763. Add. Annotations:—***As to (1) Refd.* Edwards v. Porter, McNeill v. Hawes, [1923] 2 K. B. 538; *Edwards v. Porter* (1924), 41 T. L. R. 57. *As to (2) Refd.* *Re Wingfields*, [1923] 2 K. B. 112.
- 2769. Add. Citation:—**13 Asp. M. L. C. 403.
- 2777. Add. Annotation:—***Consd.* Edwards v. Porter, McNeill v. Hawes, [1923] 2 K. B. 538.
- 2778. Add. Annotation:—***Mentd.* Brandon v. Michelham (1919), 35 T. L. R. 617.
- 2780. Add. Annotation:—***Consd.* Edwards v. Porter (1924), 41 T. L. R. 57.
- 2786. Add. Annotation:—***Generally, Mentd.* Sun Bldg. Soc. v. Western Suburban & Harrow Road Bldg. Soc., [1920] 2 Ch. 144.
- 2788. Add. Annotation:—***Refd.* Smith v. Buskell, Buskell v. Smith & G. W. Ry., [1919] 2 K. B. 362.

*sq. Purchase of goods on behalf of firm.—Firm having disposed of business.*—Plffs., owners of an apple orchard, were visited by C. acting for deft. co., who represented to plffs. that he was buying on behalf of N. & L., a firm which had been well-known to plffs. in previous years as buyers of apples, & was represented to plffs. by C. as all right, solid as a rock & "had running since 1847." A paper was produced to plffs. containing the proposed sale & to N. & L., or their agents, buyers. Plffs. delivered their apples to deft., & received payment on account in cheques of deft. co. At the time of the transaction N. & L. had gone out of business, having disposed of the same to another co., which, after changing its name several times had gone into liquidation:—*Held*: deft. co. was liable to plffs. for the balance remaining unpaid on account of the sale.—*BRENNAN v. BERWICK*

FRUIT CO., [1928] 1 D. L. R. 548; 59 N. S. R. 510.—*CAN.*

#### PART X. SECT. 1, SUB-SECT. 7.—A.

**2743 v. —**—In an action for breach of warranty of authority, the cause of action is the breach of the express or implied promise of the person who assumes to act as agent that he has authority so to act, the consideration necessary to make that promise binding being found in the action of the other party in entering into the contract. Pltf. in such an action need not establish that he believed deft.'s representation that he had authority, though it must appear that he acted in reliance upon it.—*LEGG v. BROWN*, [1923] V. L. R. 440.—*AUS.*

*sr. Liability for return of deposit.*—Where a person, falsely representing himself to be the agent for the owner of certain land, entered into a contract for the sale thereof, & received a deposit

on account of the purchase money, but the vendee could not obtain specific performance of the contract:—*Held*: his remedy against the agent for the return of the deposit was at law, & that a bill for that purpose would not lie.—*GRAHAM v. POWELL* (1868), 15 Gr. 327.—*CAN.*

#### PART X. SECT. 1, SUB-SECT. 7.—B.

**2765 i. Third party in error as to actual scope of agent's authority.**—Deft., as agent of absentee landlords, instructed pltf., a solr., to distrain for rent on certain goods. A claim was made to the goods by a chattel mtgee., whose right was contested by pltf. under instructions from deft., whose authority for such proceedings was later repudiated by the landlords:—*Held*: pltf. could recover from deft. his costs of the interpleader proceedings upon a warranty of authority.—*CONLIFF v. PLANTA*, [1920] 3 W. W. R. 998; 54 D. L. R. 196.—*CAN.*

- 2795. Add. Annotation :—***Refd. Edwards v. Porter, McNeill v. Hawes*, [1923] 2 K. B. 538; *Edwards v. Porter* (1924), 41 T. L. R. 57.
- 2807. Add. Annotation :—***Refd. Holt v. Markham*, [1923] 1 K. B. 504.
- 2812. Add. Annotation :—***As to (2) Refd. Archangel Saw Mills v. Baring & A.-G., Steam Saw Mills v. Baring & A.-G.* (1921), 37 T. L. R. 857.
- 2814a. Agent receiving proceeds of sale of goods for credit of foreign Government.]—**In 1917 *pltf.s.*, under licence from the Russian Imperial Govt. exported timber to this country, &, in accordance with the conditions of the licence, paid the purchase-money received by them for the timber to *deft. bankers* for the credit of the Russian Govt. They then became entitled to receive from the Govt. in Russia an equivalent amount in roubles at a fixed rate of exchange. In Mar. 1917, the Imperial Govt. was overthrown by a revolution, & was succeeded by a Provisional Govt., which in its turn, was, on Nov. 7, 1917, displaced by the Bolsheviks, who on Dec. 12, forcibly dissolved the
- British Bank for Foreign Trade, [1926] 1 K. B. 328.
- 2825. Add. Annotation :—***Refd. Re A Debtor*, [1928] Ch. 199.
- 2826. Add. Annotations :—***Apld. Admiralty Comrs. v. National Provincial & Union Bank of England* (1922), 127 L. T. 452. *Distd. Steam Saw Mills Co. v. Baring, Archangel Saw Mills Co. v. Baring*, [1922] 1 Ch. 244. **Consd.** *British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328. **Refd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.
- 2828. Add. Annotations :—****Consd.** *Scottish Metropolitan Assee. v. Samuel*, [1923] 1 K. B. 348. **Refd.** *British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328.
- 2831. Add. Annotation :—****Consd.** *Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.
- 2834. Add. Annotation :—***As to (1) Refd. British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328.

Republic. Pltfs. having received no roubles in Russia, brought actions against the bankers to recover two sums of money, one of which was paid to them by pltfs. in the second action before Nov. 7, & the other by pltfs. in the first action on Nov. 9, at which date they did not know of the Bolshevik revolution. Pltfs. in both actions alleged that the bankers & the Russian Govt. were merely trustees for them, & the money having been paid under a contract, the consideration for which had entirely failed, they were entitled to recover. Pltfs. in the first action further contended that they had paid the money under a mistake of fact, & on that ground also they were entitled to recover it :—*Held* : (1) this money had been paid to the bank as agents for the Russian Govt., & the ct. would not order payment of it in the absence of that Govt. or its representatives ; (2) the bank were entitled to keep the money in their hands, but must undertake not to part with it without notice to pltfs. & an order of the ct.—*STEAM SAW MILLS Co. v. BARING BROTHERS & Co., ARCHANGEL SAW MILLS Co. v. BARING BROTHERS & Co.,* [1922] 1 Ch. 244 ; 91 L. J. Ch. 325 ; 126 L. T. 403 ; 38 T. L. R. 200 ; 66 Sol. Jo. 170, C. A.

*Annotation:—***Refd.** Home & Colonial Insee. n. London  
Guarantee & Accident Co. (1928), 45 T. L. R. 131.

2818. *Add. Annotations* :—**Consd.** Scottish Metropolitan Asce. v. Samuel, [1923] 1 K. B. 348. **Refd.** British American Continental Bank v. Guano Co. v. Rainham Chemical Works, Feldman & Partridge, Ind Coope v. Same, [1920] 2 K. B. 487.

**PART X. SECT. 1, SUB-SECT. 8.—**  
**A. (a).**

2808 iii. — *Subject to special terms.* — Pltt. listed land with debts, for sale. Defts. secured a prospective purchaser, receiving from him \$1,000 as deposit & gave a receipt setting out the terms of sale & concluding thus: "Money to be refunded if Gray Estate fail to deliver, as per agreement." The purchaser refused to complete: — *Held:* defts. in their receipt undertook an obligation to the purchaser to hold the deposit on his behalf, & pltt. could not recover the money from defts. as if it had been received by them simply & solely on her behalf. — GRAY v. MURCHISON (1922), 70 D. L. R. 7; [1922] 3 W. W. R. 645. — CAN.

2809 i a. \_\_\_\_\_.]—Where a vendor has agreed to pay a commission to his agent & has agreed that the amount received by the agent as a deposit from the purchaser should be retained by the agent in part payment of such commission & has given security for the balance, the deposit must be treated as paid over to the vendor, & in an action for money had & received it is only from the vendor that it can be recovered.—BRUNSTETTER v ZUSHING. [1918] 3 W. W. R. 546.—CAN.

**PART X. SECT. 1, SUB-SECT. 8.—**  
**A. (b) ii.**

2828 v. —.]—If a bank pays money on a forged cheque to an innocent agent who at the time informs the bank that he is an agent & not a

British Bank for Foreign Trade, [1926] 1  
K. B. 328.

2825. *Add. Annotation* :—**Refd. Re** A Debtor, [1928] Ch. 199.
2826. *Add. Annotations* :—**Apld.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452. **Dstd.** *Steam Saw Mills Co. v. Baring*, [1922] 1 Ch. 244. **Consd.** *British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328. **Refd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.
2828. *Add. Annotations* :—**Consd.** *Scottish Metropolitan Assee. v. Samuel*, [1923] 1 K. B. 348. **Refd.** *British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328.
2831. *Add. Annotation* :—**Consd.** *Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.
2834. *Add. Annotation* :—**As to** (1) **Refd.** *British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328.

brook, [1924] 1 K. B. 879.

2841. *Add. Annotation* :—**Refd.** *Holt v. Markham*, [1923] 1 K. B. 501; *Jones v. Waring & Gillow*, [1926] A. C. 670. **Mentd.** *Chillingworth v. Esche*, [1924] 1 Ch. 97.
2866. *Add. Annotation* :—**Folld.** *Hosier v. Derby (Earl)*, [1918] 2 K. B. 671.
2867. *Add. Annotation* :—**Consd.** *R. v. Income Tax Special Purposes Comrs.*, *Ex p. Dr. Barnado's Homes National Incorporated Assocn.*, [1920] 1 K. B. 26.
2888. *Add. Annotations* :—**Consd.** *British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328; *Jones v. Waring & Gillow*, [1926] A. C. 670.
2895. *Add. Annotation* :—**Refd.** *Lawrence v. Hayes*, [1927] 2 K. B. 111.
2899. *Add. Annotation* :—**Refd.** *McCreagh v. Judd*, [1923] W. N. 174.
2916. *Add. Annotation* :—**Generally**, **Mentd.** *Jordy v. Vanderpump* (1920), 64 Sol. Jo. 324.
2917. *Add. Annotation* :—**Mentd.** *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
2924. *Add. Annotation* :—**Refd.** *Belvedere Fish Guano Co. v. Rainham Chemical Works, Feldman & Partridge, Ind Coope v. Same*, [1920] 2 K. B. 487.

principal, & who before discovery of the forgery pays the money over in accordance with instructions received from his principal, the bank cannot recover the amount from such agent.—*BANQUE D'HOCHELAGA v. MARSHALL*, [1921] 2 W. W. R. 496; 31 Man. L. R. 242.—CAN.

**PART X. SECT. 2, SUB-SECT. 2.—**  
**A. (b).**

**2918 i. General rule.]**—Where a third party has suffered loss or injury he has no right of action against an agent personally unless the agent has been guilty of a wrong or a breach of trust.—**WINTERMUTE v. MOULTON (1922)**, 65 D. L. R. 653.—**CAN.**

2926. *Add. Annotation*:—**Consd.** Weld-Blundell v. Stephens, [1920] A. C. 956.
2940. *Add. Annotations*:—**Consd.** Fenton Textile Assocn. v. Thomas (1929), 45 T. L. R. 264. **Refd.** Underwood v. Bank of Liverpool, Same v. Barclays Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.
2943. *Add. Annotation*:—**Refd.** Jones v. Waring & Gillow, [1925] 2 K. B. 612.
2951. *Add. Annotation*:—**Refd.** Banbury v. Bank of Montreal, [1918] A. C. 626.
2953. *Add. Annotation*:—**Consd.** Edwards v. Porter (1924), 41 T. L. R. 57.
2955. *Add. Annotation*:—**Mentd.** Glicksman v. Lancashire & General Assce., [1925] 2 K. B. 593.

## Part XI.—Duration and Termination of Agency.

3005. *Add. Annotation*:—**Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
3012. *Add. Annotation*:—**Mentd.** Hamilton v. Caldwell (1919), 88 L. J. P. C. 173.
3014. *Add. Annotation*:—**Refd.** Payzu v. Saunders, [1919] 2 K. B. 581.  
*Add. Annotation*:—**Mentd.** Edwards v. Porter, McNeill v. Hawes, [1923] 2 K. B. 538.
3025. *Add. Annotation*:—**Refd.** *Re* Vulcan Coal Co., Harrison v. Harbottle, [1922] 2 Ch. 60.
3027. *Add. Annotation*:—*As to* (1) **Fold.** Schostall v. Johnson (1919), 36 T. L. R. 75.
- 3027a. ——— **Agent not interned.**—In Aug. 1912, pltf., who was an Austrian subject residing in this country, made with defts., who were sugar brokers in L., a contract whereby for three years he was to have a share of the commissions & profits on certain business introduced by him & was to assist in defts.' general business in return for a share of the profits. War broke out between England & Austria in Aug. 1914, but pltf. was exempted from internment & was allowed to travel between his house & defts.' place of business. In Sept. 1914, defts. wrote to pltf. that in the circumstances the agreement was null & void, & gave him to understand that it was of no use for him to attempt to do business for them any longer. In an action for breach of the contract:—**Held**: the status of pltf. as the subject of an enemy State did not in the circumstances make the contract impossible of performance, & pltf. was entitled to damages.—**SCHOSTALL v. JOHNSON** (1919), 36 T. L. R. 75.
3028. *Add. Citations*:—*affd.*, [1918] A. C. 239; 87 L. J. K. B. 416; 118 L. T. 126; 34 T. L. R. 206; 62 Sol. Jo. 290. H. L.  
*Add. Annotations*:—*As to* (1) **Refd.** Ertel Bieber v. Rio Tinto Co., [1918] A. C. 260. *As to* (2) **Distd.** Fried Krupp Akt. v. Orconera
- Iron Ore Co. (1919), 88 L. J. Ch. 304. **Refd.** Naylor, Benzon v. Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Rodriguez v. Speyer, [1919] A. C. 59. **Generally, Mentd.** *Re* Munster, [1920] 1 Ch. 268; *Re* Ferdinand. Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *in* Rush, Warre v. Rush, [1923] 1 Ch. 86.
3029. *Add. Annotations*:—*As to* (2) **Refd.** Naylor, Benzon v. Krainische Industrie Gesellschaft, [1918] 1 K. B. 331. **Generally, Mentd.** Rodriguez v. Speyer, [1919] A. C. 59; *Re* Sutherland Duchess, Bechoff v. Bubna (1921), 65 Sol. Jo. 513.
3030. *Add. Annotation*:—**Refd.** Schostall v. Johnson (1919), 36 T. L. R. 75.
- 3040a. ——— ————]—By an underwriting contract dated Dec. 3, 1919, a syndicate agreed with a co. in consideration of a commission to subscribe for 150,000 of 350,000 shares to be offered to the public by a prospectus then about to be issued, & all allotments to the public were to be applied in relief of the syndicate's obligation to take up the 150,000 shares. By a sub-underwriting letter applt. agreed with the syndicate to subscribe 10,000 of the 150,000 shares underwritten by them & stated: "We now hand you application for the shares hereby underwritten by us together with cheque for £1,256, being deposit of 2s. 6d. per share." The letter also provided that applt. was only to be allotted & pay for so many of the 10,000 shares as should be his due proportion of the shares not taken up by the public, & that he was to receive a commission on the shares sub-underwritten by him. The letter also contained this clause: "This contract & our said application shall, notwithstanding any withdrawal on our part &/or any repudiation of our responsibility hereunder, or under the said application form, be sufficient to authorise & empower the directors to allot

### PART X. SECT. 2, SUB-SECT. 2.— B. (a).

2944 i. *Agent holding goods or principal—Absolute refusal to true owner.*—A servant or agent can be sued for conversion of a chattel mtge. claimed by pltf. from the master or principal, where the refusal by such servant or agent to deliver it to the pltf. is absolute.—**ADVANCE RUMELY THRESHER CO., INCORPORATED v. SERVICE**, [1919] 2 W. W. R. 647; 12 Sask. L. R. 294.—**CAN.**

### PART X. SECT. 2, SUB-SECT. 2.— B. (b).

2950 i. *Misrepresentations—Reckless.*—Def't., as agent for the owner, induced pltf. to purchase a grocery business. Pltf. claimed damages from

def't. on the ground that he had induced her to purchase the business by misrepresentations. The jury found that the representations made were untrue, that they had been made by def't. recklessly & without regard to their truth or falsehood, & that they had induced pltf. to purchase the business:—**Held**: the jury was justified in treating def't.'s statements as definite representations & in concluding that they were made to induce & did induce, pltf. to buy the business.—**EASTERBROOK v. HOPKINS**, [1918] N. Z. L. R. 428.—**N.Z.**

PART XI. SECT. 2, SUB-SECT. 1.—A.  
2965 vii. ————]—In an ordinary house agent's agreement the principal may revoke the agent's authority at

any time before the agent has fully performed what he was authorised to do.—**TYNAN v. A'BECKETT**, [1923] V. L. R. 412.—**AU.**

2965 viii. ————]—A contract of agency can in the absence of a term, express or implied to the contrary, be terminated at the will of either party.—**POLLARD v. GIBSON**, [1924] 4 D. L. R. 354; 55 O. L. R. 424; *varying* 54 O. L. R. 419.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.  
*st. Death of principal—Power to convey land.*—**Held**: under a power of attorney executed by M., who died in 1919, her attorney could execute a valid transfer of her land, after her death.—**Re MCCARTY** (1920), 53 D. L. R. 249; 47 O. L. R. 285.—**CAN.**

to us the above-mentioned shares & enter our name in the register of members in respect thereof." Applt. did not in fact sign or hand to the syndicate any written application to the co. for the 10,000 shares as contemplated by the sub-underwriting letter, but he handed to the syndicate the letter together with his cheque for £1,250 in their favour. On the issue of the prospectus only 55,000 shares were applied for by the public. On Dec. 12 the syndicate verbally applied in their own name & in the names of several sub-underwriters including applt. for an allotment of the total amount of the shares which they were bound to take up & paid with their own cheque for the total amount of the application money. On the same day the co. allotted to applt. 6,334, being his proportion of the 10,000 shares under his sub-underwriting letter. On Dec. 22, applt. wrote to the co. withdrawing his application for shares, meaning his sub-underwriting letter, but on Dec. 29 the co. sent him the usual formal notice of the allotment to him

of 6,334 shares. On motion by applt. to rectify the register by removing his name therefrom as the holder of the 6,334 shares:—*Held*: the authority given by applt. to the syndicate to apply for shares was a continuing & irrevocable authority coupled with an interest which he was not entitled to withdraw.—*Re OLYMPIC REINSURANCE Co., POLE'S CASE*, [1920] 2 Ch. 341; 89 L. J. Ch. 544; 123 L. T. 786; 36 T. L. R. 691, C. A.

*Annotation*:—*Mentd. Re Greater Britain Insce. Corpn. Ex p. Brockdorff* (1920), 124 L. T. 194.

*See, generally, COMPANIES, Vol. IX., pp. 182 et seq.*

3041. *Add. Annotation*:—*Mentd. Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372.

3051. *Add. Annotation*:—*Refd. Smith v. Wood* (1928), 139 L. T. 250.

3057. *Add. Annotations*:—*Refd. Cheshire v. Vaughan*, [1920] 3 K. B. 240; *Maskell v. Hill*, [1921] 3 K. B. 157. *Mentd. Cohen v. Hill*, [1922] 2 K. B. 37.

PART XI. SECT. 4, SUB-SECT. 3.

3045 iii. ———.—*Held*: a mere authority to sell was not rendered irrevocable, either by reason of its express terms or from valuable consideration having been given.—*MAHOOD v. GEANGE*, [1927] N. Z. L. R. 780.—N.Z.

## AGRICULTURE.

NOTE.—The Act now in force in England is "Agricultural Holdings Act, 1923 (c. 9)," herein referred to as A. H. Act, 1923. The Act repealed (*inter alia*) A. H. Act of 1908 (c. 28).

Owing to the statutory extensions in the law since the original volume was published the following new sub-sections have been added to Part V., Sect. 3 :—

SUB-SECT. 1a.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING (*see* p. 88, *post*).

SUB-SECT. 3a.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION (*see* p. 91, *post*).

SUB-SECT. 3b.—ASCERTAINMENT OF COMPENSATION (*see* p. 91, *post*).

### Part I.—Definitions.

Add the following cross-reference :—"Market garden."—*See* Nos. 267b, 267c, *post*.

## Part II.—Commencement, Duration, and Termination of Agricultural Tenancy.

4. *Add. Annotations* :—*Refd.* Croft v. Blay, [1919] 1 Ch. 277; Simmons v. Crossley, [1922] 2 K. B. 95.

19. *Add. Annotation* :—*As to* (2) *Refd.* *Re* Bebington's Tenancy, *Bebington v. Wildman*, [1921] 1 Ch. 559.

24a. *Agriculture Act, 1920 (c. 76), s. 28*—To what tenancies applicable.]—The above sect., which renders a notice to quit a holding invalid if it purports to determine the tenancy before the expiration of twelve months from the end of the then current year of tenancy, applies not only to the case of a yearly tenancy but to all contracts of tenancy in which a notice to quit is required to determine the tenancy, including a lease for twenty-one years with an option to either party to determine it on six months' notice at the end of the first seven or fourteen years of the term. A notice to quit includes a notice to determine the tenancy.—*EDEL v. DULIEU*, [1924] A. C. 38; 93 L. J. K. B. 286; 130 L. T. 390; 40 T. L. R. 84; 68 Sol. Jo. 183, H. L.

24b. *Agricultural Holdings Act, 1923 (c. 9), s. 25 (1)*.]—The above sub-sect. applies to a notice to quit given by a tenant, as well as to a notice to quit given by a landlord.—*FLATHER v. HOOD* (1928), 44 T. L. R. 698; 72 Sol. Jo. 468.

29a. *Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings Act,*

1923 (c. 9), s. 16.]—A question whether a tenancy has terminated or not is not a "question or difference arising out of the termination of the tenancy" within the above sect.—*SIMPSON v. BATEY*, [1924] 2 K. B. 666; 93 L. J. K. B. 919; 131 L. T. 724; 68 Sol. Jo. 754, C. A.

*Annotations* :—*Expld.* *R. v. Powell, Ex p. Camden*, [1925] 1 K. B. 641. *Consd.* *Lowther v. Clifford*, [1927] 1 K. B. 130. *Refd.* *Harrison v. Ridgway* (1925), 133 L. T. 238.

29b. *S. P. R. v. POWELL, Ex p. CAMDEN (MARQUIS)*, [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

*Annotations* :—*Consd.* *Lowther v. Clifford*, [1927] 1 K. B. 130. *Refd.* *Harrison v. Ridgway* (1925), 133 L. T. 238.

29c. — *Whether condition precedent to arbitration—Under Agricultural Holdings Act, 1923 (c. 9), s. 16*.]—The words "arising out of the termination of the tenancy of the holding" in the above sect. apply to the whole of the preceding part of sub-sect. 1 of the sect., & the determination of the tenancy is a condition precedent to the right to demand the appointment of an arbitrator.—*R. v. POWELL, Ex p. CAMDEN (MARQUIS)*, [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

*Annotations* :—*Fold.* *Harrison v. Ridgway* (1925), 133 L. T. 238. *Consd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.

29d. *S. P. HARRISON v. RIDGWAY* (1925), 133 L. T. 238; 23 L. G. R. 434, D. C.

*Annotation* :—*Consd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.

#### PART I.

sa. "Agriculturist"—*Saskatchewan Co-operative Elevator Company Acts*.]—*Re* COMPANIES WINDING UP ACT, *Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. (Sask.), [1927] 4 D. L. L. 804; [1927] 3 W. W. R. 269.—CAN.

sd. "Market garden."—*Not experimental bulb growing establishment*.]—*WATTERS v. HUNTER*, [1927] S. C. 310.—SCOT.

PART II. SECT. 3, SUB-SECT. 2.—A.

sk. *Joint tenants in possession by tacit relocation—Notice to terminate given by one tenant*.]—Two brothers were partners & joint tenants under a lease renewable by tacit relocation. The elder brother, the active partner, gave notice in writing to the landlord that he intended to leave the farm. Subsequently they declined to remove

from the farm, on the ground that the notice being in the name of one of the joint tenants only, was insufficient to prevent renewal of the lease by tacit relocation :—*Held* : (1) the notice necessary, under A. H. (Scotland) Act, 1908 (c. 64), s. 18 (1), to prevent tacit relocation, might be given by a duly authorised agent for the tenant; (2) as the evidence showed that the elder brother had sufficient authority to terminate the lease on behalf of the partners, the notice given by him was effectual to prevent tacit relocation, although the fact that he was acting both for himself & as agent for his brother did not appear *ex facie* of the notice.—*GRAHAM v. STIRLING*, [1922] S. C. 90.—SCOT.

PART II. SECT. 3, SUB-SECT. 2.—B.

sp. *Statutory provisions—Contracting out*.]—Parties to a lease of agri-

cultural subjects cannot contract out of the statutory provisions with regard to notice of termination of the tenancy.—*DUGUID v. MUIRHEAD*, [1926] S. C. 1078.—SCOT.

#### PART II. SECT. 3, SUB-SECT. 6.

29ai. *Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15*.]—*Held* : not one of the matters remitted to the exclusive jurisdiction of the arbitrator.—*DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES v. ESSLEMONT*, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—SCOT.

st. *Lessor selling farm under power in lease—Purchaser put in possession—Sale not completed*.]—*Held* : *pltf.* having sold the farm, & put purchaser in possession to the knowledge of *def.*, the latter might conclude that *pltf.*

**30a. Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (c. 63)—Application of Act.**—Sect. 1 of the above Act, rendering null & void notices to quit in the event of sales, applies (1) where the sale is a sub-sale of an interest under a previous contract; (2) to equitable as well as legal owners; (3) where notice is by one person & sale by another; (4) to the whole holding, although the sale is only as to a part.—*ROBINSON v. NESBITT* (1920), 64 Sol. Jo. 291.

*Annotation:—Generally, Apprvd. Blay v. Dadswell, [1922] 1 K. B. 632.*

**30b. — Contract for sale after passing of Act—Notice by one person—Sale by another.**—*ROBINSON v. NESBITT*, No. 30a, *ante*.

**30c. — Sale requiring consent of several parties—Consent of some parties given after passing of Act.**—A contract to sell to pltf. land under Church Building Act, 1839 (c. 49), was entered into before the passing of the Act of 1919, by several, but not all, of the persons whose consent was necessary to the sale. At the time of the contract deft. was in occupation of the land as yearly tenant, but was under a notice to quit which had been served upon him by the vendors. All the persons whose consents were necessary for the sale subsequently joined in the conveyance to pltf., which was executed after the passing of the Act of 1919:—*Held*: the contract of sale was entered into with pltf. before the passing of the Act of 1919, & the notice to quit, therefore, was valid, & pltf. was entitled to possession.—*BROOKS v. BLOOR* (1920), 90 L. J. K. B. 577; 124 L. T. 316; 36 T. L. R. 826; 64 Sol. Jo. 685, D. C.

**30d. — Sale to tenant.**—(1) Sect. 1 of the above Act applies not only to contracts of sale of holdings to third persons, but also to contracts of sale to the tenants themselves. (2) Agriculture Act, 1920 (c. 76), s. 29 & sched. 1. are amending & not merely declara-

tory, & are not retrospective as to notices which would, if valid, have expired before the commencement of that Act.—*BLAY v. DADSWELL*, [1922] 1 K. B. 632; 91 L. J. K. B. 739; 127 L. T. 6; 66 Sol. Jo. 439; 20 L. G. R. 221; 86 J. P. Jo. 65, C. A.

**30e. Agricultural Holdings Act, 1923 (c. 9)—Farm held under two landlords—Notice to quit given by both—Contract for sale by one for part of farm.**—On May 20, 1912, T. let a farm to C. from year to year from Oct. 11, 1911, at an annual rent of £150. On Dec. 23, 1914, T. conveyed about half the farm to pltf.s, subject to & with the benefit of the tenancy agreement. T. died on Jan. 4, 1919, & C. continued to pay the whole rent to her exors., as he had since the conveyance paid it to T. After Oct. 11, 1922, the rent fell into arrear. By a notice to quit dated Oct. 10, 1923, the agents of T.'s exors. & the agent of pltf.s jointly gave C. notice to quit the whole holding on Oct. 11, 1924. By an agreement dated Oct. 1, 1924, T.'s exors. agreed to sell their part of the farm to C., & it was conveyed to him on Apr. 17, 1925. C. refused to give up possession to pltf.s. of their part of the holding, contending that under sect. 26 of the above Act the contract by T.'s exors. to sell to him rendered the notice to quit null & void. Pltf.s. brought an action for a declaration that the notice to quit was effective, & to recover possession of their land:—*Held*: as the contract to sell a part was not made by the persons who gave notice to quit the entire holding, but only by some of them, sect. 26 of the above Act did not apply; the tenancy had been duly determined as regards pltf.s.' land, & pltf.s. were entitled to the declaration which they asked & to an order for possession of their land.—*ROCHESTER & CHATIAM JOINT SEWERAGE BOARD v. CLINCH*, [1925] Ch. 753; 95 L. J. Ch. 49; 134 L. T. 139.

## Part III.—Covenants and Customs of the Country.

**32. Add. Annotation:—Refd. Richmond v. Savill, [1926] 2 K. B. 530.**

**36. Add. Annotations:—Apld. Cheater v. Cater, [1918] 1 K. B. 247. Mentd. Michael v. Phillips (1923), 130 L. T. 142; Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.**

**39. Add. Annotations:—Refd. Horlick v. Scully, [1927] 2 Ch. 150. Mentd. Lloyd-Jones v. Clark-Lloyd, [1919] 1 Ch. 424.**

**56a. — Grass land laid down by tenant.**—By a tenancy agreement made in 1894 the trustees of an estate, of which pltf. was the present tenant for life in possession, agreed to let to deft. certain farm lands & house

buildings comprising 138 acres more or less, as described in a schedule attached to the agreement, on a yearly tenancy, at the rent of £48. The tenant covenanted to manage & cultivate the land in a husbandlike manner, & that he would not plough or otherwise break up "any grass land" without the consent of the landlord. In the schedule to the agreement the premises were described as consisting of 130 acres 1 r. 31 p. of arable & 8 acres of grass land. In 1898 the tenant laid down 40 acres more to permanent grass. On notice being given to him to determine the tenancy on Sept. 29, 1919, he claimed the right to plough up this 40 acres of permanent grass which had been arable at the commence-

had exercised the right to sell given the lessor under the lease & that his lease was therefore at an end; pltf.'s allowing the purchaser to withdraw from the agreement to purchase did not affect deft.'s rights or reinstate the lease.—*RINK v. MILOS*, [1918] 2 W. W. R. 1021; 11 Sask. L. R. 271; 42 D. L. R. 782.—CAN.

**sz. Contract for share farming—No provision as to duration.**—Deft. cropped pltf.'s land on shares in 1917, & in 1918 agreed to do so again. Pltf. was

trying to sell the land, as deft. knew, & during the summer sold it. No time had been fixed for deft. to give up possession:—*Held*: deft. was entitled to such occupation as was necessary to put in & harvest the crop for 1918.—*FLETCHER v. LYONS*, [1919] 3 W. W. R. 381; 48 D. L. R. 365.—CAN.

### PART III. SECT. 1, SUB-SECT. 1.

**sa. In crop-payment agreement—Essence of contract.**—The covenants to cultivate under a crop-payment pur-

chase are of the essence of the contract, & go to the root of the performance of the contract by the purchaser.—*WEIST v. SMITH* (Sask.), [1927] 1 D. L. R. 448; [1927] 1 W. W. R. 280.—CAN.

### PART III. SECT. 2, SUB-SECT. 1.—B.

**so. Covenant to rid land of weeds—Breach—Relief from forfeiture.**—Relief was granted due to exceptional weather conditions, etc.—*WARNER v. LINAHAN*, [1919] 2 W. W. R. 94.—CAN.

ment of his tenancy. In an action by plff. to restrain him from so doing in breach of his covenants an *interim* order was made granting the injunction on the usual undertaking as to damages. Deft. counterclaimed for damages by reason of the *interim* order:—*Held*: (1) on the true construction of the agreement, the covenant not to plough up any grass land was not restricted to the 8 acres of grass at the date of the demise but extended to the grass land in dispute & plff. was entitled to the relief claimed; (2) on the evidence, the proposed dealing with the land would have been a breach of the covenant to cultivate in a husbandlike manner; (3) deft. had suffered no damage from the granting of the *interim* injunction.—*CLARKE-JERVOISE v. SCUTT*, [1920] 1 Ch. 382; 89 L. J. Ch. 218; 122 L. T. 581.

68. *Add. Annotations*:—*Consd.* *Cole v. Kelly*, [1920] 2 K. B. 106. *Mentd.* *Rye v. Purcell*, [1926] 1 K. B. 446.

69. For “that relation existing between him & the other tenants in common” read “that relation not existing between him & the other tenants in common.”

80. *Add. Annotations*:—*Refd.* *Horlick v. Scully*, [1927] 2 Ch. 150. *Mentd.* *Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424.

103. *Add. Annotation*:—*Refd.* *Melzak v. Lilienfeld*, [1926] Ch. 480.

106. *Add. Annotation*:—*As to* (1) *Refd.* *Clarke-Jervoise v. Scutt*, [1920] 1 Ch. 382.

107a. *S. P. AYLET v. DODD* (1741), 2 Atk. 238; 26 E. R. 547.

*Annotation*:—*Refd.* *Denton v. Richmond* (1833), 3 Tyr. 630.

117. *Add. Annotation*:—*Refd.* *Matthey v. Curling*, [1922] 2 A. C. 180.

117a. — Grass land laid down by tenant.]—*CLARKE-JERVOISE v. SCUTT*, No. 56a, *ante*.

125. *Add. Annotations*:—*Mentd.* *A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.

140. *Add. Annotations*:—*Refd.* *Raikes v. Ogle*, [1921] 1 K. B. 576; *Brakspear v. Barton*, [1924] 2 K. B. 88.

147. *Add. Annotation*:—*Generally*, *Mentd.* *Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518.

164a. Against sub-letting—Letting of grass keep in last year of tenancy—Agistment.]—Where the tenant of a farm covenants not to underlet

or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep, *i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country. *Semble*: agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—*RICHARDS v. DAVIES*, [1921] 1 Ch. 90; 89 L. J. Ch. 601; 124 L. T. 238; 65 Sol. Jo. 44.

#### SUB-SECT. 16.—OTHER MATTERS (Vol. II., p. 28).

Add the following case:—

166a. Tenant to perform “team-work” for landlord.]—An agreement for an agricultural lease contained a stipulation that the tenant should perform each year for the landlord, “at the rate of one day’s team-work with two horses & one proper person for every £50 of rent when required, except at hay & corn harvest, without being paid for the same.” In ejectment for a forfeiture:—*Held*: (1) the work thus to be performed meant any work for which teams are generally used, & therefore included drawing coals to B. Palace; (2) the tenant was not bound to supply a car or other vehicle for the purpose of the work.—*MARLBOROUGH (DUKE) v. OSBORN* (1864), 5 B. & S. 67; 3 New Rep. 568; 33 L. J. Q. B. 148; 10 L. T. 28; 28 J. P. 532; 12 W. R. 418; 122 E. R. 758.

173. *Add. Annotation*:—*Mentd.* *Richmond v. Savill*, [1926] 2 K. B. 530.

175a. Agreement to pay interest on amount of incoming valuation & on quitting to leave equal value of tenant rights.]—*Held*: not to create a personal debt to the lessor, but to enure for the benefit of a subsequent landlord.—*WAGSTAFF v. OLINTON* (1883), 1 Cab. & El. 45.

194. *Add. Annotations*:—*Consd.* *Bradbury v. Grimble* (1920), 124 L. T. 189. *Refd.* *Lowther v. Clifford* (1926), 95 L. J. K. B. 576.

#### PART III. SECT. 2, SUB-SECT. 3.—B.

i. — — —.]—Applt. alleged that he was prevented from summer-fallowing by an excessive quantity of water being on the land:—*Held* resp. was entitled to \$133 damages.—*HUNT v. WEIBERG* (1921), 67 D. L. R. 777.—*CAN.*

ii. — Or to crop—Breach.]—A lessee agreed each year either to crop or summer-fallow every portion of the demised premises brought under cultivation. The lessee failed to crop or summer-fallow 30 acres brought under cultivation, owing to the land being covered with water. The lessor gave evidence that a crop of green feed could have been grown on the 30 acres:—*Held*: if the lessee could not, or did not choose to crop, he must summer-fallow; “crop” within the covenant in the lease included a green crop.—*STEFFES v. SMITH* (1921), 66

D. L. R. 452; 17 Alta. L. R. 366; [1922] 1 W. W. R. 70.—*CAN.*

iii. — & to break land—Breach—Measure of damages.]—The measure of damages is the value of the additional work necessary to do the summer-fallowing & breaking.—*TOCHER v. JOHNSON* (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—*CAN.*

#### PART III. SECT. 2, SUB-SECT. 4.

120 iv. — — —.]—*AINLEY v. LOWEY* (Sask.), [1926] 1 D. L. R. 73.—*CAN.*

sd. Miscropping—Claim for damages during tenancy—How determined.]—*Agricultural Holdings* (Scotland) Act, 1923 (c. 10), s. 15 (1), is, except as regards disputes relating to the construction of the lease, applicable only to disputes arising out of the termination of the tenancy; & a claim for

damages for miscropping made by a landlord against a tenant under s. 35 (2) during the currency of the lease cannot be referred to arb., but falls to be determined by the ct. in an ordinary action.—*WESTWOOD v. BARNETT*, [1925] S. C. 624.—*SCOT.*

#### PART III. SECT. 2, SUB-SECT. 16

se. Covenant to deliver to landlord share of crop or pay its value—Option of tenant—Time for exercising.]—The lessee of a farm agreed to deliver to the lessor a fixed share of the crops, or pay the value thereof, all crops to remain the property of the lessor until the settlement of accounts at the termination of the contract:—*Held*: the time for the exercise of the option was upon the settlement of accounts when the contract was terminated.—*DICKIE v. SPARE* (1921), 62 D. L. R. 551.—*CAN.*



## Part V.—Compensation.

226. *Add. Annotation*:—*Mentd. Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

226a. ———.—[Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom of statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re WADSLEY, BETTINGSON'S REPRESENTATIVE v. TRUSTEE* (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76.

229. *Add. Annotations*:—*Refd. Bradshaw v. Bird*, [1920] 3 K. B. 144; *Dale v. Hatfield Chase Corpn.*, [1922] 2 K. B. 282.

229a. Incoming tenant agreeing to repay compensation paid by landlord—Action by landlord on agreement—When cause of action arises.—[By an agreement dated Dec. 24, 1915, made under seal, plffs. let to deft. a small-holding from year to year from Feb. 2, 1916, at a rent of £132 10s. a year payable by half-yearly payments on Feb. 2, & Aug. 2, each year. The tenant agreed "to pay on entry any allowance or compensation which may be due from the council to the outgoing tenant in respect of feeding stuffs or manures or any improvements mentioned in A. H. Act, 1908, Sched. 1, Part III." Deft. entered into occupation of the small-holding on Feb. 2, 1916. At that date the amount of the compensation payable to the outgoing tenant had not been fixed, & it was not until Feb. 11, 1918, that the amount of compensation was agreed to. It was then agreed that the council should pay the outgoing tenant £30 17s. 6d., & that sum was paid by the council to the outgoing tenant on Mar. 17, 1921. On Jan. 13, 1923, pltf. council brought an action in the county ct. claiming to recover from deft. the sum of £30 17s. 6d. under the agreement of Dec. 24, 1915. Deft. pleaded that plffs.' cause of action had

arisen on Feb. 2, 1916, the date of his entry on the holding, & that therefore the claim was barred by Stat. Limitations, s. 3, because the action was not brought "within six years next after the cause of such action or suit":—*Held*: plffs.' cause of action against deft. did not arise on Feb. 2, 1916, when deft. entered on the holding but only on Feb. 11, 1918, when the amount of the compensation was ascertained by agreement; therefore the time only began to run from Feb. 11, 1918, & the action was not barred.—*CHESHIRE COUNTY COUNCIL v. HOPLEY* (1923), 130 L. T. 123; 21 L. G. R. 524.

*Annotation*:—*Refd. Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.

232. *Add. Annotation*:—*Consd. Re Russell & Harding* (1922), 128 L. T. 476.

233. *Add. Annotations*:—*Refd. Re Masters & Duveen*, [1923] 2 K. B. 729. *Mentd. Bowling v. Camp* (1922), 128 L. T. 342; *Ingle v. Farrand*, [1927] A. C. 417.

234. *Add. Annotation*:—*Generally, Mentd. Premier Dairies v. Garlick*, [1920] 2 Ch. 17.

237a. *Agricultural Holdings Act, 1908, s. 1 (1)*—Improvements required to be made under tenancy agreement—Agreement made before January 1, 1921.—[A contract of tenancy made in 1906 for a term of fifteen years contained an agreement by the tenant to plant half the land with fruit trees & fruit bushes within the first four years, & the rest with fruit trees within the first ten years of letting. The tenant planted trees & bushes in accordance with the agreement. At the end of the tenancy he claimed compensation for the improvement thus made:—*Held*: he was not entitled to compensation, the improvement being one which he was required to make by the terms of his tenancy & the contract of tenancy having been made before Jan. 1, 1921.—*HUCKELL v. SAINTEY*, [1923] 1 K. B. 150; 92 L. J. K. B. 313; 128 L. T. 299, C. A.

239. *Add. Annotation*:—*As to (2) Refd. Premier Dairies v. Garlick*, [1920] 2 Ch. 17.

242a. *Agricultural Holdings Act, 1908*—Attempted exclusion of statutory compensation.—*Re MASTERS & DUVEEN*, No. 267a, *post*.

## PART V. SECT. 3, SUB-SECT. 1.—B.

229 i. *Purchaser*.—[An estate was sold with entry to the purchaser at Martinmas 1922, & on the same date an existing lease of the lands terminated, & the tenant gave up possession. Less than two months later, he intimated a claim for compensation for improvements to the purchaser, & applied to the Board of Agriculture, who appointed an arbitrator:—*Held*: the "landlord" liable to make payment of compensation to the tenant was the selling owner, in respect that he alone was the "landlord" at the termination of the tenancy when the tenant quitted the holding & the claim for compensation emerged, & the obligation so incurred did not transmit to the purchaser, & interdict against the arbn. proceedings granted.—*WADDELL v. HOWAT*, [1925] S. C. 484.—SCOT.

## PART V. SECT. 3, SUB-SECT. 1.—D.

227 vii a. ———.—[Where a

landlord abstains from terminating a tenancy, he gives no benefit to the tenant under s. 1 (2) (a) of the above Act where it is not proved that the tenancy was continued in consideration of the tenant executing the improvement.—*MACKENZIE v. MACGILLIVRAY*, [1921] S. C. 722 58 Sc. L. R. 488.—SCOT.

237 ix. ———.—*Tenant laying down temporary pasture*.—[The fact that an arbitrator finds that in laying down temporary pasture the tenant is complying with the rules of good husbandry, which he was bound to observe, does not preclude him from also finding that the temporary pasture is an improvement for which the tenant is entitled to compensation under the above Act.—*MACKENZIE v. MACGILLIVRAY*, [1921] S. C. 722; 58 Sc. L. R. 488.—SCOT.

st. *Agricultural Holdings (Scotland) Act, 1923 (c. 10)*, s. 1 (1)—*Lease entered into before Jan. 1, 1921*—*Adoption of one of alternative obligations in lease*.—

A lease entered into before Jan. 1, 1921, bound the tenant to adopt one of two rotations of cropping. The tenant adopted one of the prescribed rotations, with the result that he made an improvement upon his holding within Sched. 1. of above Act. On quitting the holding at the termination of his tenancy he claimed compensation for the improvement from the landlords:—*Held*: he was entitled to compensation as for a voluntary improvement, in respect that he was not required by the lease to execute the particular improvement, but was merely bound to adopt one or other of two prescribed methods of cultivation.—*GIBSON v. SHERRETT*, [1925] S. C. 493.—SCOT.

## PART V. SECT. 3, SUB-SECT. 1.—G.

sg. *Agricultural Holdings (Scotland) Act, 1908 (c. 61)*—*Sufficiency of notice*.—[A tenant who has, before the determination of his tenancy, made it clear to the landlord that he proposes to claim for unexhausted manures &

252. *Add. Annotation*:—**Mentd.** *Re Lister, Bradford Overseers & Corp'n. v. Durrance* (1925), 42 T. L. R. 143.
255. *Add. Annotations*:—**Consd.** *Simpson v. Crowle*, [1921] 3 K. B. 243; *Smythe v. Wiles*, [1921] 2 K. B. 66. **Refd.** *St. Magnus, etc., Parochial Church Council v. London Diocese* (Chancellor), [1923] P. 38; *Mansfield v. Robinson*, [1928] 2 K. B. 353. **Mentd.** *Hunter v. Stadtische Hochseefischerei Gemeinnutzige Gesellschaft* (1925), 133 L. T. 488.
259. *Add. Annotations*:—**Apld.** *Bradshaw v. Air Council*, [1926] Ch. 329. **Refd.** *Ellesmere v. I. R. Comrs.* (1918), 88 L. J. K. B. 337; *Haynes v. Aldridge Colliery Co.* (1923), 130 L. T. 282; *Mansfield v. Robinson*, [1928] 2 K. B. 353.
264. After this case add as follows:—  
*See, further, Sect. 3, sub-sect. 3b, post.*

**SUB-SECT. 1a.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.**

**A. Compensation to Tenant.**

*See A. H. Act, 1923, s. 9.*

**B. Compensation to Landlord.**

*See A. H. Act, 1923, s. 10.*

- 264a. **Notice of claim—Time for giving—Agriculture Act, 1920 (c. 76).**—**Held**: the meaning of sect. 19 of the above Act taken as a whole was that the landlord should have a right of compensation for deterioration under the sect. if he gave a notice before the termination of the tenancy & not otherwise; but if he had a right under contract to claim for deterioration apart from the sect., nothing in the sect. should interfere with that right.

A tenant held a farm as a yearly tenant under the landlord upon the terms, as the arbitrator found, of an agreement in writing under which the father of the tenant had originally held the farm. On Aug. 20, 1920, the landlord served a notice to quit upon the tenant, which expired as to the land, other than the boozy pasture, on Feb. 2, 1922. The tenant gave up possession of the land except the boozy pasture, the tenancy of which did not expire until May 1, 1922, upon that date. On Mar. 28, 1922, the landlord gave notice of & particulars of a counterclaim against the tenant for waste wrongly committed or permitted by the

tenant & for breach of contract or otherwise, whereby he claimed for neglect in the care of hedges & ditches on the land & dirty land:—**Held**: (1) the landlord's claim was not barred by sect. 19 of the above Act; (2) the boozy pasture & the rest of the farm were held under one contract of tenancy; the contract did not finally cease under sect. 10 (7) of the above Act until May 1, 1922, the date of the termination of the boozy tenancy, & the landlord's notice was therefore in time.—*Re ARDEN & RUTTER*, [1923] 2 K. B. 865; 130 L. T. 51; *sub nom.* ARDEN v. RUTTER, 92 L. J. K. B. 894, C. A.

*Annotation*:—*As to* (1) *Refd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.

- 265a. — **Right to compensation—Tenant holding over after notice to quit.**—A tenancy was determined by notice to quit on a certain day. The tenant remained on in possession for about nine months, & was finally ejected. Two days before his ejection he furnished details of his claim for compensation:—**Held**: the tenant, from the date when his notice expired, was not holding under a contract of tenancy, & the land which he persisted in occupying unlawfully was not a holding within sect. 11 of the above Act, & he, therefore, was not within the benefit of the Act.—*CAVE v. PAGE* (1923), 67 Sol. Jo. 659, C. A.

- 265b. — **Liability to pay compensation—"Landlord"—Purchaser entitled to rents—Purchase not completed till after claim.**—Certain landowners let a farm to tenants. In 1917 they gave notice to the tenants to quit at Michaelmas, 1918, with a view to the sale of the farm. In Oct. 1917, they agreed to sell the farm to a purchaser. On July 5, 1918, the tenants gave to the purchaser, who was then entitled to the rents & profits, notice in writing under sect. 1 (1) of the Act of 1914 of their intention to claim compensation in terms of sect. 11 of the Act of 1908. On July 18, 1918, the sale of the farm was completed:—**Held**: (1) the purchaser was the "landlord" within the Acts; (2) the notice of intention to claim compensation was rightly given to him; (3) he was liable to pay compensation.—*BRADSHAW v. BIRD*, [1920] 3 K. B. 144; 90 L. J. K. B. 221; 123 L. T. 703, C. A.

*Annotations*:—*As to* (1) *Expld.* *Richards v. Pryse*, [1927] 2 K. B. 76. *Generally, Consd.* *Dale v. Hatfield Chase Corp'n.*, [1922] 2 K. B. 282; *Tombs v. Turvey* (1923), 93 L. J. K. B. 785.

**PART V. SECT. 3, SUB-SECT. 2.**

sl. *Agricultural Holdings (Scotland) Act, 1908 (c. 64)*—*What questions arbitrator must determine.*—Under s. 10 of the above Act it falls to the arbitrator to determine questions connected with the time & validity of notices to quit & notices to claim compensation. *COWDRAY v. FERRIES*, [1919] S. C. (H. T.) 27.—**SCOT.**

sl. *Agriculture Act, 1920 (c. 76)*—**Claim**

*rent.*—**Held**: the tenant was still entitled to one year's rent.—*M'HARG v. SPEIRS*, [1921] S. C. 272.—**SCOT.**

sn. — **Loss from error in valuation of waygoing grain crop.**—Under the lease of a farm the landlord took over the waygoing crop of grain from the outgoing tenant at farm prices, the quantity of the growing crop being

feeding stuffs, but without furnishing the particulars or amounts, has sufficiently complied with s. 6 (2) of the above Act.—*ROGER v. HUTCHERSON*, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

**PART V. SECT. 3, SUB-SECT. 1.—H. (b).**

sb. *What questions arbitrator may determine—Termination of tenancy—Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15.*—In a note of suspension & interdict brought by the landlords of a farm, craving the ct. to interdict proceedings in an arbn. under the above Act upon a claim by the tenant, who had vacated the farm in favour of a new occupier, for compensation for improvements, the complainants maintained that the tenancy had not terminated, & that the appointment of an arbitrator under the Act was illegal:—**Held**: the question of the claimant's title to present a claim was

not one of the matters remitted by the Act to the exclusive jurisdiction of the arbiter, but was a question precedent to the existence of a statutory claim, the ct. had jurisdiction to entertain the action of interdict.—*DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES v. ESSLEMONT*, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—**SCOT.**

sk. *Form of arbitration—Arbitration between outgoing & incoming tenants—Agricultural Holdings (Scotland) Act, 1908 (c. 64).*—There is nothing illegal

common law arbn.—*ROGER v. HUTCHERSON*, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

257 ii. — — — — — Charges for preparing & adjusting a special case fall to be dealt with by the arbitrator.—*THOMSON v. GALLOWAY*, [1919] S. C. 611; 56 Sc. L. R. 521.—**SCOT.**

**265c.** ——— **Person entitled to rents at end of tenancy.]**—(1) Where the tenant of an agricultural holding, who has been disturbed in his tenancy, becomes entitled under sect. 11 of the above Act to compensation for loss in connection with the sale or removal of his household goods, implements, or stock on the condition, among others, of giving to the landlord a reasonable opportunity of making a valuation of such goods, etc., the question whether he has given such a reasonable opportunity is in each case a question of fact depending on the circumstances. The mere lapse of an interval of several months between notice of intention to claim compensation & sale or removal is not of itself sufficient to satisfy the condition.

(2) Where the tenant of an agricultural holding has given notice to his landlord under sect. 11, proviso (b), of his intention to claim compensation for disturbance, & the landlord before the appointment of an arbitrator under that sect. assigns the reversion, the person who is liable to pay such compensation as may be awarded is the person who is entitled to receive the rents at the termination of the tenancy, & the notice of intention to claim so given to the original landlord will enure for the benefit of the tenant as against such last-named person.

(3) Assuming sect. 48 (2) of the above Act to apply to proceedings for compensation for disturbance as well as for improvements, the commencement of the "proceedings" is not the service of notice of intention to claim compensation, but the appointment of the arbitrator.—*DALE v. HATFIELD CHASE CORPN.*, [1922] 2 K. B. 282; 92 L. J. K. B. 237; 128 L. T. 194; 87 J. P. 11; 20 L. G. R. 765, C. A.

*Annotations* :—As to (2) *Consd. Tombs v. Turvey* (1923), 93 L. J. K. B. 785. *Reid. Richards v. Pryse*, [1927] 2 K. B. 76.

**266a.** ——— **Notice of claim—To whom given—Purchaser entitled to rents.]**—*BRADSHAW v. BIRD*, No. 265b, *ante*.

**266b.** ——— **Landlord—Subsequent alienation of reversion.]**—*DALE v. HATFIELD CHASE CORPN.*, No. 265c, *ante*.

**266c.** ——— **Reasonable opportunity of making valuation—What amounts to.]**—*DALE v. HATFIELD CHASE CORPN.*, No. 265c, *ante*.

**Commencement of "proceedings"—What amounts to.]**—*DALE v. HATFIELD CHASE CORPN.*, No. 265c, *ante*.

**266e.** **Agriculture Act, 1920 (c. 76)—Right to compensation—Withdrawal of notice to quit—What amounts to.]**—In Sept. 1920, a landlord gave to the tenant notice to quit his tenancy of a farm for which he was paying a yearly rental of £506 2s. On Dec. 31, 1920, the landlord wrote to the tenant: "I have received an offer of £670 *per annum* for your holding. If you choose to give me the same, you are most welcome to continue the tenancy."—*Held*: having regard to sect. 10

ascertained by arbn. After threshing it was found that the quantity had been underestimated by the arbiters. The outgoing tenant claimed, under the above sect., as compensation for loss in connection with the sale of the farm produce, a sum representing the difference between the price he had received & the price of the actual quantity threshed.—*Held*: the loss was not "directly attributable to the

quitting of the holding," but had arisen from an error of the arbiters.—*MCGREGOR v. BOARD OF AGRICULTURE FOR SCOTLAND*, [1925] S. C. 613.—*SCOT*.

*sp. Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 12 (6)—Refusal of landlord to take over stock—Claim for loss on sale.]*—The tenant of a farm received notice to quit. Having taken over

of the above Act, the letter of Dec. 31, 1920, did not constitute an offer in writing to withdraw the notice to quit within the proviso to sect. 10 (1) of that Act.—*Re PERRETT & BENNETT-STANFORD*, [1922] 2 K. B. 592; 91 L. J. K. B. 930; 128 L. T. 57; 38 T. L. R. 849; *sub nom. PERRETT v. BENNETT-STANFORD*, 66 Sol. Jo. 680, C. A.

**266f.** ——— **Ejectment proceedings following notice to quit.]**—The landlord of a farm served on the tenant a notice to quit on Mar. 25, 1923. Owing to the illness of his wife, the tenant did not quit the farmhouse at the expiry of the notice, but he quitted the land, save as under the custom of the country, immediately after the expiry of the notice. Ejectment proceedings were brought by the landlord & judgment was obtained by default of appearance. On being served with the notice to quit, the tenant duly served on the landlord a notice of intention to claim compensation for disturbance under sect. 10 of the above Act.—*Held*: if the tenant was ejected, the ejectment was in consequence of the notice to quit, & therefore, the tenant had quitted the farm in consequence of the notice to quit terminating the tenancy, & the tenant was accordingly entitled to compensation under sect. 10 of the Act.—*MILLS v. ROSE* (1923), 68 Sol. Jo. 420, C. A.

**266g.** ——— **Necessity for proof of loss or expense—Entire holding in occupation of sub-tenants.]**—The effect of sect. 10 (6) of the above Act is that as a condition precedent to his right to compensation for disturbance a tenant must prove that he has incurred some loss or some expense of the kind indicated in the sub-sect.; that on proof of that he is entitled as a minimum to one year's rent of the holding; but that unless he proves some loss or some expense of the kind indicated he does not bring himself within sub-sect. 6 & is not entitled to compensation. Therefore where a lease of a holding under the Act was duly determined by notice to quit & the holding was entirely in the occupation of sub-tenants whose sub-tenancies terminated without notice on the termination of the lease, & the lessee did not sell or remove any household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding.—*Held*: he was not entitled to compensation for disturbance under sect. 10.—*AGRICULTURE & FISHERIES MINISTER v. DEAN*, [1924] 1 K. B. 851; 93 L. J. K. B. 374; 130 L. T. 709; 40 T. L. R. 285; 68 Sol. Jo. 401, C. A.

*Annotations* :—*Consd. Westlake v. Page*, [1926] 1 K. B. 298. *Reid. Scleek v. McIlenns* (1928), 98 L. J. K. B. 214.

**266h.** ——— **Notice of claim—Time for giving—"Termination of tenancy"—Tenancy of different parts of holding expiring at different times.]**—A landlord let a farm, according to the custom of the country, upon a yearly

another farm with a bound stock, he sold his sheep at a displensing sale, the landlord refusing to take them over. In a claim for compensation for the difference between the price realised & the "going concern" value.—*Held*: the loss was directly attributable to the quitting of the holding under the above sub-sect.—*KESWICK v. WRIGHT*, [1924] S. C. 766.—*SCOT*.

tenancy on the terms that the tenant should enter into occupation of the main portion of the land on Apr. 6, & of the farmhouse, farm buildings, & the remainder of the land on May 13, & that "on the termination of the tenancy" he should give up possession of the different portions of the farm on the respective dates, there being one rent reserved for the whole farm:—*Held*: the "termination of the tenancy" for the purposes of sect. 10 (7) of the above Act took place on May 13, notwithstanding that the main portion of the premises had to be surrendered at the earlier date.—*Semble*: the proviso to sect. 18 (2) of the above Act applies only to a case where the tenant has been allowed by a landlord to remain on, after the ceasing of the agreement of tenancy, under a new agreement.—*SWINBURNE v. ANDREWS*, [1923] 2 K. B. 483; 92 L. J. K. B. 889; 129 L. T. 650; 39 T. L. R. 545; 67 Sol. Jo. 726, C. A.

*Annotation*:—*Consd. Re Arden & Rutter*, [1923] 2 K. B. 865.

**266i.** ——— **Given under Act subsequently repealed—Necessity for notice under repealing Act.**—A tenant who had on Sept. 29, 1920, received notice to quit his farm on Sept. 29, 1921, gave notice on Nov. 17, 1920, to his landlord of his intention to claim compensation for disturbance under A. H. Act, 1908, s. 11. That sect. was repealed by the Act of 1920, which came into force on Jan. 1, 1921, & by sect. 10 substituted a new right to compensation for disturbance. The tenant gave no notice of his intention to claim compensation under that sect. as required by sub-sect. 7 (b) thereof:—*Held*: not having given notice under sect. 10 of the Act of 1920, he had no right of claim under that sect., but his right of making a claim under A. H. Act, 1908, s. 11, was preserved by Interpretation Act, 1889 (c. 63), s. 38, notwithstanding the repeal of sect. 11.—*HAMILTON-GELL v. WHITE*, [1922] 2 K. B. 422; 91 L. J. K. B. 875; 127 L. T. 728; 38 T. L. R. 829; 67 Sol. Jo. 80, C. A.

*Annotation*:—*Consd. Briggs v. Dryden, Talbot v. Vickers*, [1925] 2 K. B. 687.

*Sec, now*, A. H. Act, 1923, s. 12.

**266j.** **Agricultural Holdings Act, 1923 (c. 9)—Right to compensation—Refusal or failure to agree to arbitration.**—(1) A landlord of a holding gave the tenant notice to quit, & in the same document stated that he had no desire to terminate the tenancy if the tenant would agree to his demand that the rent should be fixed by arbn. The tenant did not agree to arbn.:—*Held*: the tenant did not thereby disentitle himself to compensation, for the refusal or failure to agree to arbn. dealt with by sect. 12 (1) (e) of the above Act is a refusal or failure which has taken place before the date of the notice.

(2) It cannot be laid down as a matter of law, that in no case can the minimum compensation of one year's rent provided by sect. 12 (6) be reduced under the provisions of sect. 12 (8) if the tenant, having held two or more holdings as tenant, remains in possession of one of them. But the provisions of sect. 12 (8) have no application to a case in which the tenant remains in possession of the other holding or holdings, not as tenant, but as owner.—*WESTLAKE v. PAGE*, [1926] 1 K. B. 299; 95 L. J. K. B. 456; 134 L. T. 612, C. A.

**266k.** ——— **Amount of compensation—Tenant holding two or more holdings.**—*WESTLAKE v. PAGE*, No. 266j, *ante*.

**266l.** ——— **Liability to pay compensation—"Landlord"—Agreement for sale—Whether purchaser entitled to rents.**—In July, 1924, the owner of an estate, which included a farm in the occupation of tenants, agreed to sell the farm to a purchaser, who agreed to pay the purchase money in Oct. 1924. The agreement was subject to conditions of sale, by one of which the purchaser agreed to pay the balance of the purchase money on the day named in the contract, & in that respect time was to be of the essence of the contract; & it was further agreed that "all rents & periodical outgoings" should be "apportioned up to the completion," & added to or deducted from the purchase money as the case might require. On Sept. 23, 1924, notice was given to the tenants to quit the farm on Sept. 29, 1925. The purchase was not in fact completed until Oct. 1925:—*Held*: (1) "completion" in the condition of sale meant actual completion, & not the date named for completion; (2) on Sept. 29, 1925, the vendor was the "person entitled to receive the rents & profits" of the farm within sect. 57, & he, & not the purchaser, was the "landlord" within sect. 12 & the person to pay compensation to the tenants.—*RICHARDS v. PRYSE*, [1927] 2 K. B. 76; 96 L. J. K. B. 743; 137 L. T. 170, C. A.

**266m.** ——— **Notice of claim—By whom given—Joint tenancy.**—W., who had been tenant of a farm for many years, entered into negotiations with his landlord to have his tenancy agreement, upon the termination thereof, transferred to himself & B., & as the result of those negotiations W. became joint tenant of the farm with B. at the request of, & for the protection of, the landlord. Upon the termination of W.'s tenancy B. paid W. for the tenant right & also provided the whole of the finance necessary for carrying on the farm. On Feb. 21, 1924, W. alone gave notice to quit. On Mar. 21, 1924, the landlord served notice to quit upon both tenants, upon the ground that they were not cultivating the farm according to the rules of good husbandry. Thereupon B. gave notice to the landlord of his intention to claim compensation:—*Held*: (1) the notice given by B., being the one of the joint tenants who owned the household goods & agricultural implements & had suffered loss by their removal or sale upon the expiration of the joint tenancy, was sufficient to give the arbitrator jurisdiction; (2) it being the object of sect. 12 (7) (b) of the above Act that the landlord should have notice of what compensation was claimed against him, it would, in the case of a joint tenancy, be a great hardship upon the tenant who had a proper & valid claim for compensation which was to be defeated because his joint tenant, who had no such claim, had not joined in the notice.—*HOWSON v. BUXTON* (1928), 97 L. J. K. B. 749; 139 L. T. 504, C. A.

**266n.** ——— **Notice to quit—Reason must be stated—Effect of notice giving alternative reasons.**—A tenant in giving a notice to quit under sect. 12 (3) of above Act, on account of the landlord's refusal or failure to agree to the tenant's demand for arbn. as to the rent of

the holding, is, as a condition precedent to his right to compensation for disturbance, bound to state correctly the reason for the notice which in fact exists, but he may put himself right by putting his notice in the alternative by stating that the notice given was either for the reason that the landlord had refused or that he had within a reasonable time failed to agree to the demand made on him by the tenant for arbn.

Where the landlord had within a reasonable time failed to agree to such a demand but had not refused to do so & the notice to quit wrongly stated that it was given by reason of the landlord's refusal to agree:—*Held*: the tenant could not succeed in his claim for compensation for disturbance.—*SELLECK v. HELLENS* (1928), 98 L. J. K. B. 214; 140 L. T. 353; 45 T. L. R. 179; 73 Sol. Jo. 76, C. A.

**SUB-SECT. 3a.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.**

**266o. Corn Production Act, 1917 (c. 46), s. 9 (9)—**

**Who is person interested—Tenant.]—**(1) A notice to convert certain land into tillage, made under sub-sect. 1 of the above sect. & Defence of the Realm Regulations, 1914, reg. 2 M, was served on the owner of land who was in occupation. After the service of the notice the owner agreed to let the land to a tenant who entered into occupation & carried out the requirements of the notice. The notice had not been served on the tenant. The tenant claimed compensation for loss alleged to have been suffered by him by reason of his having carried out the requirements of the notice, & the claim was referred to arbn. under the Act, & the arbitrator stated a case in which he asked the ct. certain questions:—*Held*: the tenant was a "person who was interested in the land in respect of which the notice was served," within sub-sect. 9 of the above sect., inasmuch as he was interested at the time when the loss was alleged to have occurred; & the tenant came within the words of the sub-sect. "who suffers any loss by reason of the exercise of the powers conferred by this sect." & was entitled to compensation for the loss, if any, though the notice had not been served on him, as he had carried out the requirements of the notice.

(2) Two notices were served, each in respect of a different field in a separate farm occupied by the same tenant:—*Held*: in the circumstances, the loss, if any, in respect of each field should be assessed separately.

(3) The tenant of certain land in respect of which a notice to plough had been served under the Act sent in a claim for compensation on Sept. 28, 1918, for the year 1918, & in 1919 he sent in a claim for compensation for 1919. The arbn. to assess compensation was held after both claims had been sent in:—*Held*: the assessment should not be based on the loss, if any, in each year separately; (*BANKES, L.J.*) the arbitrator should take the experience of the two years, setting off

any profit in one year against any loss in the other; (*SCRUTTON & ATKIN, L.J.J.*) the whole effect of the exercise of the powers conferred by the sect. had to be considered by the arbitrator, including an estimate of the probable loss or profit in the future.—*Re TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE*, [1921] 1 K. B. 281; 90 L. J. K. B. 228; 124 L. T. 407; 85 J. P. 89; 18 L. G. R. 790, C. A.

**266p. — Separate notices as to parts of two farms—Occupied by one tenant—Method of assessment.]—***Re TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE*, No. 266n, *ante*.

**266q. — Separate claims by tenant for two successive years—Method of assessment.]—***Re TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE*, No. 266o, *ante*.

**266r. — Award—Jurisdiction of court to remit—Award bad on face for ambiguity or uncertainty.]—**In an arbn. for the purpose of awarding compensation under the above Act, the High Ct. may remit to the arbitrator an award bad on the face of it for ambiguity or uncertainty, in accordance with Arbitration Act, 1889 (c. 49), although by sect. 11, sub-sect. 1, of the above Act, it is provided that arbn. thereunder shall be in accordance with A. H. Act, 1908, Sched. 2, which excludes Arbitration Act, 1889.—*MURRAY v. DALTON* (1920), 90 L. J. K. B. 401; 124 L. T. 762; 37 T. L. R. 234; 65 Sol. Jo. 155, D. C.

*Annotation*:—*Reid. Re Jones & Carter*, [1922] 2 Ch. 599.

Control of food in wartime generally, *see* *FOOD & DRUGS*, Vol. XXV., pp. 132 *et seq.*

**SUB-SECT. 3b.—ASCERTAINMENT OF COMPENSATION.**

**266s. In respect of what holdings compensation payable—Tenant sub-letting farmhouse.]—**By an agreement of tenancy a landlord demised to the tenant a farm of 1,000 acres together with a farmhouse & some cottages. There was a provision that the tenant should use the demised premises for farming purposes.

permission of the landlord, sub-let the farmhouse to a lady who used it as a house for paying guests. Upon the determination of the lease, the tenant made a claim for compensation under A. H. Act, 1908:—*Held*: the ct. must have regard to the substance of what had been done; by the lease the holding was an agricultural one, & the fact that the farmhouse had been let to a sub-tenant did not cause it to cease to be a "holding" within the Act.—*Re RUSSELL & HARDING* (1922), 128 L. T. 476; 39 T. L. R. 92; 67 Sol. Jo. 123, C. A.

— **Compensation for improvements—Under Agricultural Holdings Act, 1908.]—***See* original volume, p. 42, Nos. 230–232.

**266t. Notice of claim—To whom given—Purchaser—Taking subject to existing tenancies.]—**Appl. was the tenant of an agricultural holding under a tenancy expiring on Sept. 29,

1922. In May, 1922, the landlord contracted to sell the holding, subject to the tenancy, to resp., completion to take place on Sept. 29, 1922. The completion in fact took place on Nov. 2. The contract of sale contained a general condition that the rents, profits or possession of the property should be received or retained & the outgoings discharged by the vendor up to the time appointed for completion, & that current rents should be apportioned. By a special condition it was provided that for the purpose of this general condition any rent payable on Sept. 29 was to be deemed "current rent," & was to be payable by the purchaser on completion. After the determination of the tenancy the purchaser as "landlord" made a claim against the tenant for dilapidations, & the tenant counterclaimed for compensation:—*Held*: the purchaser was not at the date of the termination of the tenancy the "landlord" within A. H. Act, 1908, s. 48, & Agriculture Act, 1920 (c. 76), s. 18.—*TOMBS v. TURVEY* (1923), 93 L. J. K. B. 785; 131 L. T. 330; 68 Sol. Jo. 385, C. A.

— For compensation for improvements—*Under Agricultural Holdings Act, 1908.*—*See* original volume, p. 46, Nos. 245–250.

— For compensation to landlord for deterioration.]—*See* No. 264a, *ante*.

— For compensation for disturbance—*Under Agricultural Holdings Act, 1908.*—*See* original volume, p. 48, No. 266; & Nos. 265b, 265c, *ante*.

— Under Agriculture Act, 1920 (c. 76).]—*See* Nos. 266h, 266i, *ante*.

266u. Particulars of claim—Sufficiency.]—*Held*: having regard to the severity of the penalty attached to non-compliance with Agriculture Act, 1920 (c. 76), s. 18 (2), namely, total extinguishment of the claim, the presumption was that the requirement of "particulars" was not intended to be construed strictly, & for the purpose of keeping the claim alive & enabling the parties to get before the arbitrator, a less degree of particularity was required to satisfy the sect. than would be required of particulars of a statement of claim in an action, notwithstanding that when the parties get before the arbitrator he might be of opinion that the particulars were insufficient, & might order further & better particulars to be given.—*JONES v. EVANS*, [1923] 1 K. B. 12; 92 L. J. K. B. 35; 128 L. T. 228, C. A.

266v. Award—Setting aside—Jurisdiction of court—Error on face of award.]—The inherent jurisdiction of the High Ct. to set aside an award under A. H. Act, 1908, on the ground of error appearing on the face of it where there has been no misconduct on the part of the arbitrator is not taken away by that

Act. That jurisdiction was not excluded by Arbitration Act, 1889 (c. 49), & when the jurisdiction under that Act with reference to arbn. proceedings under the A. H. Act, 1908, was transferred to the county ct. by that Act, the inherent jurisdiction of the High Ct. in those matters was neither expressly nor by implication transferred to it.—*Re JONES & CARTER*, [1922] 2 Ch. 599; 91 L. J. Ch. 824; 127 L. T. 622; 38 T. L. R. 779; 66 Sol. Jo. 611, C. A.

*Annotation*:—*Consd. Horrell v. St. John of Bletso*, [1928] 2 K. B. 616.

266w. — Time for notice of motion to set aside.]—In an arbn. under the A. H. Act, 1908, the award was made on Apr. 8, 1921, & on June 3 applt. gave notice of motion to set aside the award on various grounds. There was no rule either under County Cts. Act, 1888 (c. 43), or under A. H. Act, 1908, dealing with the time within which a notice of motion to set aside an award must be given:—*Held*: the words "principles of practice" in County Cts. Act, 1888 (c. 43), s. 164, did not refer to specific rules of the High Ct., & the time limit of six weeks under R. S. C., Ord. 64, r. 14, was not a "principle of practice" within that sect. of the Act; therefore the only time limit applicable in the present case was under Stat. Limitations & under the doctrine of laches, & the motion to set aside the award was made in time.—*MCCREAGH v. FREARSON* (1921), 91 L. J. K. B. 365; 126 L. T. 601, D. C.

266x. — Order directing arbitrator to state special case—Appeal lies to Divisional Court.]—*STEVENS v. DOWNHAM, ISLE OF ELY (FEOFFEEES OF POOR LANDS)*, [1926] W. N. 168.

266y. — No power to order arbitrator to state special case on question not within submission to arbitration.]—*STEVENS v. DOWNHAM, ISLE OF ELY (FEOFFEEES OF POOR LANDS)*, [1926] W. N. 168.

Of compensation for improvements—*Under Agricultural Holdings Act, 1908.*—*See* original volume, p. 47, No. 254–256.

266z. Recovery of compensation agreed or awarded—In what court.]—A. H. Act, 1923, s. 19, does not give exclusive jurisdiction to the county ct. in all cases & prevent an action from being brought to recover the sum in the High Ct., when it is in excess of the amount ordinarily recoverable in the county ct.—*HORRELL v. ST. JOHN OF BLETSO (LORD)*, [1928] 2 K. B. 616; *sub nom. HORRELL v. BLETSO*, 97 L. J. K. B. 655; 139 L. T. 400.

266aa. Costs—Agreement as to—Validity.]—The parties to an arbn. under A. H. Act, 1923, agreed beforehand that the successful party should have costs on the High Ct. scale. The agreement was not communicated to the arbitrator, who gave his award in favour

PART V. SECT. 3, SUB-SECT. 3b.  
266t i. Particulars of claim—Sufficiency—*Agricultural Holdings (Scotland) Act, 1923* (c. 10), s. 15 (2).]—By a letter, written on receipt of a notice from the tenant of his intention to terminate his tenancy of a sheep farm, the landlord intimated that he reserved his claim in respect of depletion of the sheep stock; & by a second letter, written within two months after the termination of the tenancy, in which he referred to his former

letter, he stated that only 51 per cent. of the sheep stock had been delivered to the incoming tenant, & that the amount of the claim would be intimated when the exact shortage was determined:—*Held*: (1) in view of the severity of the penalty attached to non-compliance, the requirements of the above sub-sect. were sufficiently complied with if fair notice was given to the opposite party of the nature of the claim against him & of the case he had to meet; (2) the letters

gave such notice, although they did not state the legal basis of the claim or its actual amount.—*MONTROSE (SCOTE) v. HART*, [1925] S. C. 160.—*Duke*.

sa. *Agricultural Holdings (Scotland) Act, 1908* (c. 64)—*Appeal—Decision of court on case stated—Binding on arbitrator.*—*MITCHELL-GILL v. BUCHAN*, [1921] S. C. 390; 53 Sc. L. R. 371.—*SCOT*.

of the landlord, & awarded that each party should pay his own costs. In an action by the landlord to enforce the agreement the judge gave judgment for the tenants, on the ground that the Act gave discretion to the arbitrator as to costs:—*Held*: the agreement was valid & enforceable.—*MANSFIELD v. ROBINSON*, [1928] 2 K. B. 353; 97 L. J. K. B. 466; 139 L. T. 319; 92 J. P. 126; 44 T. L. R. 518, D. C.

**267a. — “Treated as a market garden.”**—

(1) *Held*: the word “treated” in sect. 42 (1) of the above Act, in the collocation in which it was there used did not mean simply that the holding should be in use or cultivation as a market garden, but that it should be let by one person as landlord & occupied by the other as tenant as a market garden, & so treated as between them for the purpose of governing their rights in respect of the holding as a market garden.

By an agreement in writing dated Dec. 31, 1919, & made between the landlord of the one part & the tenant therein described as “market gardener” of the other part, it was agreed (clause 1): that the landlord should let & the tenant should take the farm therein described for the term of one year from Sept. 10, 1919, & so on from year to year at the yearly rent of £185 by half-yearly payments on Mar. 25 & Sept. 29 in each year, & that the tenant should pay to the landlord as a further rent at the rate of £6 per cent. *per annum* on all sums of money expended by the landlord in the supply of any fruit trees during the tenancy. By clause 7 the tenant was to cultivate the land on the best & most approved system of gardening in general practice in the neighbourhood, & was not to cut down, grub up, or destroy any fruit trees growing in or upon the land, or at any time to be planted thereon, under the provisions of the agreement, without the consent in writing of the landlord or his agent first had & obtained. By clause 9 the landlord was during the term to supply the tenant at his own expense with all fruit trees which might at any time be agreed between the landlord & tenant to be necessary, & the tenant was to pay a certain additional rent in respect of the fruit trees so supplied.

Clause 11 contained the following proviso: “That nothing herein contained shall be deemed to be an agreement by the landlord that the premises hereby demised or any part thereof shall be let or treated as a market garden or give rise to a claim for compensation for fruit trees or bushes under A. H. Act, 1908, or any statutory modification thereof”:—*Held*: (2) clause 11 of the agreement contained the clearest possible expression of the intention of the parties that the holding was not to be treated as a market garden; there was therefore no agreement in writing within sect. 42 (1) of the Act, by which it was agreed that it should be let or treated as a market garden, & therefore no claim to compensation on that basis arose, because the existence of such an agreement was a condition precedent to such a claim; (3) the agreement was not one which was avoided by sect. 5 of the Act, because the condition precedent to the tenant having the right to claim compensation had not been satisfied.—*Re MASTERS & DUVEEN*, [1923] 2 K. B. 729; 68 Sol. Jo. 11; *sub nom.* *MASTERS v. DUVEEN*, 93 L. J. K. B. 57; 130 L. T. 13, C. A.

**267b. Market garden—What is—Garden of country house—Sale of produce.**—The fact that the occupier of a country house sells regularly one-half of the produce of the gardens occupied therewith does not constitute the gardens a market garden.—*BICKERDIKE v. LUCY*, [1920] 1 K. B. 707; 89 L. J. K. B. 558; 84 J. P. 61; 36 T. L. R. 210; 64 Sol. Jo. 257; 18 L. G. R. 207, D. C.

*Annotation* —*Reid*. *Lowther v. Clifford* (1925), 90 J. P. 55.

**267c. — — —**—Land was cultivated in order that the crops might be sold, & the crops included fruit & rhubarb:—*Held*: (1) the land was a market garden within A. H. Act, 1923, s. 57; (2) having regard to sect. 54 & other sects. of that Act, sect. 16 should not be read with an unrestricted meaning, & the landlord's right of action to recover the expense of making up a road had not been affected by the provision for reference to arb. in that sect. (3) *Semble*: sect. 16 deals with procedure.—*LOWTHER v. CLIFFORD*, [1927] 1 K. B. 130, 95 L. J. K. B. 576, 135 L. T. 200; 90 J. P. 113; 42 T. L. R. 432; 70 Sol. Jo. 544; 24 L. G. R. 231, C. A.

*Annotation* —*As to* (3) *Reid*. *Mansfield v. Robinson*, [1928] 2 K. B. 353.

## Part VI.—Fixtures.

**268. Add. Annotations:—***Consd. Re Mann & Harvey* (1920), 123 L. T. 242. *Reid*. *Pole-Carew v. Western Counties & General Manure Co.*, [1920] 2 Ch. 97.

**268a. — Removal by tenant—Agricultural Holdings Act, 1908, s. 21—Power to contract out**

### PART VI.

**m i. —**—Where a lease of farm land provides that the lessee shall have the right, within a specified time after the expiration of the term, to remove any fence which he may have erected during his occupancy, & he erects a fence consisting of strands of wire carried on wooden pickets, the pickets & wire become part of the land, subject to the lessee's contractual

right to sever them, thereby restoring them to the condition of chattels, & to remove them.—*CHERRY v. BREDIN* (Sask.), [1927] 3 D. L. R. 326; [1927] 2 W. W. R. 314.—*CAN.*

**n. (p. 49)** For “*SASKATCHEWAN v. GOMBAR*” read “*SASKATCHEWAN FL-ND CO.*”

**n i. —** *Windmill & stable windows.*—A windmill, wire fencing & windows

in a stable, erected or furnished by a tenant of agricultural land.—*Held*: in view of the degree of annexation & the object of the annexation, to be removable by the tenant.—*CARSCALLEN v. LEESEON* (Alta.), [1927] 4 D. L. R. 797; [1927] 3 W. W. R. 425.—*CAN.*

*GOMBAR* read “*SASKATCHEWAN R. BOW WHEAT LAND CO. v. GOMBAR.*”



the lessee to deliver up at the end of the term all the demised premises & all new & other buildings & erections thereon & all such fixtures as were in anywise affixed or fastened to the freehold of the premises:—*Held*: the covenant effectually excluded the provisions of sect. 21 of the Act, & the tenant was not entitled to remove certain buildings & fixtures erected & affixed by him during the term.—*PREMIER DAIRIES v. GARLICK*, [1920] 2 Ch. 17; 89 L. J. Ch. 332; 123 L. T. 44; 64 Sol. Jo. 375.

268b. ——— No notice by tenant of intention to remove—Claim by tenant for loss on removal.—An agricultural tenant who at the expiration of his tenancy omits to give to the landlord, under A. H. Act, 1908, s. 21, notice of his intention to remove a fixture or building, whereby the landlord is prevented from exercising the option given to

him by the Act to purchase the same, cannot afterwards claim compensation for expenses or loss suffered through the removal under A. H. Act, 1914, s. 1, & A. H. Act, 1908, s. 11.—*Re HARVEY & MANN* (1920), 89 L. J. K. B. 687; *sub nom. Re MANN & HARVEY*, 123 L. T. 242, C. A.

271. *Add. Annotation*:—*Refd. Pole-Carew v. Western Counties & General Manure Co.*, [1920] 2 Ch. 97.

273. *Add. Annotation*:—*As to* (3) *Refd. Vaudeville Electric Cinema v. Muriset*, [1923] 2 Ch. 74.

275. *Add. Annotation*:—*Consd. Re Mann & Harvey* (1920), 123 L. T. 242.

276. *Add. Annotation*:—*As to* (4) *Refd. Premier Dairies v. Garlick*, [1920] 2 Ch. 17.

277. *Add. Annotation*:—*As to* (1) *Refd. Re Rogerstone Brick & Stone Co., Southall v. Wescomb*, [1919] 1 Ch. 110.

## Part VIII.—Growing Crops and Crops, Emblements, and Gleaning.

280. *Add. Annotations*:—*Refd. Richards v. Davies*, [1921] 1 Ch. 90; *Back v. Daniels* (1924), 69 Sol. Jo. 160.

284. *Add. Annotations*:—*Mentd. Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Chaney v. Maclow*, [1929] 1 Ch. 461.

286. *Add. Annotation*:—*Consd. Stephenson v. Thompson*, [1924] 2 K. B. 240.

288. *Add. Annotation*:—*Refd. English Hop Growers v. Dering*, [1928] 2 K. B. 174.

296. *Add. Annotations*:—*Consd. Stephenson v. Thompson*, [1924] 2 K. B. 240. *Refd. English Hop Growers v. Dering*, [1928] 2 K. B. 174.

298. *Add. Annotation*:—*Refd. Back v. Daniels* (1924), 69 Sol. Jo. 160.

304. *Add. Annotations*:—*Consd. Lebeaupin v. Crispin*, [1920] 2 K. B. 714. *Expld. & Distd. Re Wait*, [1927] 1 Ch. 606.

310a. ————]—The owner of the herbage may maintain trespass *quare clausum fregit*.—*PICKETT v. BUTLER* (1844), 3 L. T. O. S. 39, 183.

311a. *S. P. ARCHER v. SADLER* (1859), 1 F. & F. 481, N. P.

311b. ————]—At an auction sale of grass & crops held at a farm pltf. purchased the crop of swedes in one of the fields, & deft. purchased the grass on an adjoining field. One of the conditions upon which pltf. purchased the crop of swedes was that he should not remove from the field more than one-half of the crop of swedes, the other half having to be consumed on the field. Deft. put a number of sheep into his field of grass, & the sheep got into pltf.'s field of swedes & did considerable damage to the swedes:—*Held*: the fact that the right of pltf. to remove the swedes from the field was limited to one-half of the crop did not prevent him from main-

### PART VIII. SECT. 1.

280 i. *Sale—Interest in land—Passing before severance—Statute of Frauds—(Grass)*.—*ROBINSON v. LONG*, [1923] 3 D. L. R. 918.—CAN.

286 ii. ————]—*As a general rule a contract for the sale of standing timber which is not to be severed immediately is a sale of an interest in land.*—*HANDY v. CAR-RUTHERS* (1893), 25 O. R. 279.—CAN.

h i. ————]—*MESSERVEY v. CENTRAL CANADA CANNING CO.*, [1923] 4 D. L. R. 1202; 3 W. W. R. 365.—CAN.

e i. ————]—*Crops growing at the completion of a sale of land pass to the purchaser, unless there be a stipulation to the contrary.*—*ANDERSON v. STASUK*, [1926] 1 D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 289.—CAN.

e ii. ————]—*Sale by mortgagee.*—*A conveyance by a mtgee. under a power of sale entitles the purchaser to the growing crops.*—*DYCK v. DYCK*, [1926] 3 W. W. R. 762; [1927] 1 L. R. 458; 36 Man. L. R. 210.—CAN.

e iii. ————]—*Growing crops are "goods" within Sale of Goods Act when there is an agreement that they are to be severed under the contract of sale; but, otherwise, they are part of the land & pass with it.*—*SHEWCHUK v. SEAFRED*, [1927] 3 D. L. R. 280; [1927] 2 W. W. R. 207; 36 Man. L. R. 469.—CAN.

e iv. ————]—*Right of vendor to crop on cancellation of contract—Who entitled to cut crops.*—*A provision in an agreement for the sale of land that the vendor, on becoming entitled to cancel the contract, shall have the right to enter into possession & to possess "the growing crop," does not give him any right to crops that have been cut & which thereby became chattels.*—*CANADIAN PACIFIC RY. CO. v. STEWART* (Sask.), [1927] 3 D. L. R. 555; [1927] 2 W. W. R. 385.—CAN.

g i. *Permit to cut hay—Cancellation if land leased.*—*Held*: the permit was not cancelled by only a part of the land being leased.—*DECOCK v. BARRAGER* (1909), 19 Man. L. R. 34.—CAN.

p i. ————]—*Right of devisee to crops sown by share tenant & growing at*

*testator's death.*—*Held*: as testator's interest in the wheat while growing arose out of the agreement, which amounted to a severance of the crop from the land, the money payable for testator's share in the crop fell into the residue of the estate.—*Re BURGIN*, [1922] V. L. R. 686.—AUS.

p ii. ————]—*Cost of threshing.*—*A lessor on the crop-payment plan agreed to pay one-half the cost of threshing:—Held*: he was liable for one-half of the cost of hauling the sheaves from the stack to the thrasher.—*TOCHER v. JOHNSON* (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—CAN.

p iii. ————]—*Failure of lessor to supply seed—Measure of damages.*—*BEAMAN v. TULLY* (Sask.), [1927] 4 D. L. R. 143; [1927] 2 W. W. R. 953.—CAN.

p iv. ————]—*Crop-payment covenant—On whom binding.*—*Held*: binding only on the purchaser & his successors in interest under the covenant.—*Re SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD., Re SENGGER & HOUCK* (Sask.), [1927] 4 D. L. R. 1090; [1927] 3 W. W. R. 547.—CAN.



taining an action of trespass in respect of the damage done by deft.'s sheep, as pltf. had such an exclusive right of possession in the crop as would entitle him to maintain an action of trespass.—*WELLAWAY v. COURTIER*, [1918] 1 K. B. 200; 87 L. J. K. B. 299; 118 L. T. 256; 34 T. L. R. 115; 62 Sol. Jo. 161, D. C.

*Annotation*:—*Richards v. Davies*, [1921] 1 Ch. 90.

315. *Add. Annotations*:—*As to* (1) *Refd. Bright-*

*man v. Tate* (1919), 35 T. L. R. 209; *Gurney v. Houghton* (1920), 123 L. T. 706; *Hudson's Bay Co. v. Maclay* (1920), 36 T. L. R. 469; *Newcastle Breweries v. R.*, [1920] 1 K. B. 854; *Shutler v. Rolfe* (1920), 36 T. L. R. 828.

317. *Add. Annotation*:—*Refd. English Hop Growers v. Dering*, [1928] 2 K. B. 174.

332a. — *Not lessee for life*.—*KNEVIT v. POOLE* (1601), *Gouldsb.* 143; *Cro. Eliz.* 463; 75 E. R. 1053.

## Part IX.—Trees and Timber.

352a. — — — — —.]—*Re TOWER'S CONTRACT*, [1924] W. N. 331.

362. *Add. Annotation*:—*Mentd. Re Terry, Terry v. Terry* (1918), 87 L. J. Ch. 577.

366. *Add. Annotations*:—*Refd. Horlick v. Scully*, [1927] 2 Ch. 150. *Mentd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424.

392. *Add. Annotations*:—*Refd. Horlick v. Scully*, [1927] 2 Ch. 150. *Mentd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424.

395. *Add. Citation*:—15 W. R. 640.

396. *Add. Annotations*:—*Refd. De Silva v. Korossa* (Ceylon) *Rubber Co.* (1919), 88 L. J. P. C. 54; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341; *Brooke v. Bool*, [1928] 2 K. B. 578.

404. *Add. Annotations*:—*Distd. Noble v. Harrison*, [1926] 2 K. B. 332. *Refd. Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.

405. *Add. Annotations*:—*As to* (1) *Refd. Noble v. Harrison*, [1926] 2 K. B. 332. *As to* (2) *Refd. Collis v. Amphlett* (1919), 89 L. J. Ch. 101; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341. *As to* (3) *Refd. Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341. *As to* (4) *Consd. Collis v. Amphlett* (1919), 89 L. J. Ch. 101. *Refd. Mills v. Brooker*, [1919] 1 K. B. 555; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.

406. *Add. Annotations*:—*Consd. Collis v. Amphlett* (1919), 89 L. J. Ch. 101. *Refd. Mills v. Brooker*, [1919] 1 K. B. 555; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341; *Noble v. Harrison*, [1926] 2 K. B. 332.

406a. — — — — — *Right to appropriate fruit*.—Where the branches of fruit trees growing near their owner's boundary overhang the

land of the adjoining owner, the right of the adjoining owner to lop the branches does not carry with it the right to pick & appropriate the fruit, & if he does so he is guilty of conversion & liable to the owner for its value.—*MILLS v. BROOKER*, [1919] 1 K. B. 555; 88 L. J. K. B. 950; 121 L. T. 254; 35 T. L. R. 261; 63 Sol. Jo. 431; 17 L. G. R. 238, D. C.

407. *Add. Annotation*:—*Refd. Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.

409. *Add. Annotation*:—*Mentd. Hines v. Tousley* (1926), 95 L. J. K. B. 773.

412. *Add. Annotation*:—*Refd. Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.

416. *Add. Annotations*:—*Generally, Mentd. Michael v. Phillips* (1923), 130 L. T. 142; *Jacobs v. Batavia & General Plantations Trust* (1924), 93 L. J. Ch. 520.

418. *Add. Annotation*:—*Refd. Musgrove v. Pandelis*, [1919] 2 K. B. 43.

419. *Add. Annotations*:—*Refd. Derry v. Sanders*, [1919] 1 K. B. 223. *Mentd. Thomson v. St. Catharine's College, Cambridge, etc.*, [1919] A. C. 468.

428. *Add. Annotation*:—*Generally, Mentd. Weber v. Birkett*, [1925] 1 K. B. 720.

479a. — — — — —.]—A tenant in fee simple in possession of real estates, with an executory gift over, is not impeachable for waste.—*Re HANBURY'S SETTLED ESTATES*, [1913] 2 Ch. 357; 82 L. J. Ch. 428; 109 L. T. 358; 29 T. J. R. 621; 57 Sol. Jo. 646.

484. Before this case add "*See, also, ECCLESIASTICAL LAW*, Vol. XIX., p. 511."

*Add. Annotation*:—*Refd. Stockman v. Whither* (1614), 1 Roll. Rep. 86.

### PART IX. SECT. 2, SUB-SECT. 1.

403 iii. — — — — —.]—*Property in severed portion*.—Where W. cuts off that portion of a tree overhanging his lot, the trunk of which is on L.'s lot, although the ownership of the fallen portion is in L. & he has the right to enter on W.'s lot & take it away, there is no obligation on the part of W. to deliver the cut portion to L.—*LOVEROCK v. WEBB* (1921), 70 D. L. R. 748; 30 B. C. R. 327.—CAN.

403 iv. — — — — —.]—The owner of land may lop branches overhanging his land without previous notice to the owner of the tree, but may not keep the branches so lopped down for himself.—*DE VILLIERS v. O'SULLIVAN* (1883), 2 S. C. 251.—S. AF.

403 v. — — — — —.]—A person is entitled to cut off those portions of

trees growing on his neighbour's land which overhang his land.—*VISHNU JAGANNATH JOSHI v. VASUDEP RAGHUNATH OKA* (1918), 1 L. R. 43 Bom. 164.—IND.

403 vi. *S. P. MAUNG PO THAUNG v. MA GYI* (1923), 1 L. R. 1 Ran. 281.—IND.

407 ia. — — — — —.]—Where the soil & freehold of a highway is in the Crown & the possession of the highway in the municipality, an action is not maintainable by an adjoining land-owner for damages for the cutting by the municipality of trees on the highway.—*A.-G. FOR BRITISH COLUMBIA & WATT v. SAANICH CORPN.*, [1921] 1 W. W. R. 471; 56 D. L. R. 482.—CAN.

407 iia. — — — — —.]—A person can obtain an injunction to remove the

overhanging portions of trees though he may not be able to prove any damage.—*VISHNU JAGANNATH JOSHI v. VASUDEP RAGHUNATH OKA* (1918), 1 L. R. 43 Bom. 164.—IND.

sb. *Leaves blown on to neighbour's land*—*Polluting water*.—*Trees not noxious & planted for shelter*.—*Held*: the rule in *Rylands v. Fletcher* (1868), L. J. 3 H. L. 330, did not apply.—*MATTHEWS v. FORGIE*, [1917] N. Z. L. R. 921.—N.Z.

### PART IX. SECT. 2, SUB-SECT. 7.

510 i. *Mortgagee*.—The mtgee. of a term for years being in possession will, at the suit of the mtgor., be restrained from felling timber, although he may have obtained the consent of the reversioner.—*CHISHOLM v. SHELDON* (1850), 1 Gr. 318.—CAN.

- 518a. —.]—BILLINGSLEY (LADY) v. HERSEY (1612), 2 Bulst. 5; 80 E. R. 912.
519. *Add. Annotations*:—*Apld. Re* Londesborough, Spicer v. Londesborough, [1923] 1 Ch. 500. *Refd. Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569.
527. *Add. Annotation*:—*Mentd. Sack v. Jones*, [1925] Ch. 235.
591. *Add. Annotation*:—*Refd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.
602. *Add. Annotations*:—*Refd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424; *Horlick v. Scully*, [1927] 2 Ch. 150.
615. *Add. Annotations*:—*Distd. Horlick v. Scully*, [1927] 2 Ch. 150. *Refd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424.
624. *Add. Annotation*:—*Mentd. Re Gardner, Ellis v. Ellis*, [1924] 2 Ch. 243.
- 633a. No right to sell timber during life of tenant for life unimpeachable for waste.]—WALLER & PETTY v. SANDS (1632), Cro. Car. 274; 79 E. R. 839.
649. *Add. Annotation*:—*Mentd. Re Gardner, Ellis v. Ellis*, [1924] 2 Ch. 243.
652. *Add. Annotation*:—*Consd. Re* Londesborough, Spicer v. Londesborough, [1923] Ch. 500.
- 652a. — — —.]—(1) By a settlement certain hereditaments were settled to the use of certain trustees during the life of A. without impeachment of waste upon the trusts, & with & subject to the powers therein mentioned, & it was declared that the hereditaments were thereby limited to the trustees upon trust, during the life of A., that if at the time of such limitation taking effect in possession A. should not be or have been bkpt. the trustees should allow him to enter into & remain in the possession or receipt of the rents & profits of the settled estates during his life or until he should become bkpt. By an agreement, dated Dec. 7, 1920, A. agreed to sell all the timber standing in certain portions of the settled estates. On Jan. 18, 1922, a contract was entered into by A. for sale of part of the settled land, subject to the agreement of Dec. 7, 1920, & on Mar. 14, 1922, such land was conveyed to the purchaser, subject to the agreement:—*Held*: the proceeds of sale of the timber belonged to A.
- (2) At the date of the contract for the sale of land & at the date of the conveyance, part

of the timber, to the value of about £500, remained uncut:—*Held*: although as regards the purchaser of the land the timber was divided from the freehold, yet nevertheless it remained part of the inheritance & subject to the limitations of the settlement; accordingly, it did not vest in A., but being however part of the inheritance & still remaining subject to the limitations of the settlement, on severance it became the property of A., & therefore the £500 belonged to him.—*Re LONDESBOROUGH (EARL), SPICER v. LONDESBOROUGH (EARL)*, [1923] 1 Ch. 500; 92 L. J. Ch. 423; 128 L. T. 792; 67 Sol. Jo. 439.

656. *Add. Annotation*:—*As to* (4) *Refd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.
- 661a. — — —.]—*Re LONDESBOROUGH (EARL), SPICER v. LONDESBOROUGH (EARL)*, No. 652a, *ante*.
671. *Add. Annotation*:—*Refd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.
680. *Add. Annotation*:—*Refd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.
696. *Add. Annotation*:—*Apld. Re* Londesborough, Spicer v. Londesborough, [1923] 1 Ch. 500. *Refd. Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569.
711. *Add. Annotation*:—*Consd. Re* Londesborough, Spicer v. Londesborough, [1923] 1 Ch. 500.
712. *Add. Annotations*:—*Distd. Horlick v. Scully*, [1927] 2 Ch. 150. *Refd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424.
736. *Add. Citation*:—*sub nom. STEWKLEY v. BUTLER* (1615), Moore, K. B. 880; 72 E. R. 970.
- Add. Annotations*:—*Mentd. Ward v. Everard* (1695), Comb. 329; *Bridgwater v. Bolton* (1704), 1 Salk. 236; *Ambatielos v. Anton Jurgens Margarine Works*, [1922] 2 K. B. 185.
739. *Add. Annotations*:—*As to* (1) *Refd. Joel v. International Circus & Christmas Fair* (1920), 124 L. T. 459; *Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569; *Re Wait*, [1926] Ch. 962. *As to* (2) *Refd. Waimiha Sawmilling Co. v. Waione Timber Co.*, [1926] A. C. 101. *Generally, Mentd. Thames Sack & Bag Co. v. Knowles* (1918), 88 L. J. K. B. 585.

PART IX. SECT. 2, SUB-SECT. 9.—A.  
518 i. *General rules*.]—GOULIN v. CALDWELL (1867), 13 Gr. 493.—CAN.

PART IX. SECT. 2, SUB-SECT. 9.—C.  
so. *Right to cut trees for securing profitable enjoyment of land*.]—A tenant may have an implied right to cut or destroy bush in order to obtain in a reasonable way the profitable enjoyment of the land, & in lieu of burning or destroying the timber, may save it & sell it for his own benefit. Where, however, the cutting down of the timber is done for the purpose of making an immediate profit out of the timber, & without any regard to the improvement of the land, there is no implied grant to the tenant to cut & sell the timber.

In the absence of any such grant, the property in the timber when cut

vests immediately in the person entitled to the first estate of inheritance in fee or in tail.—*HIRAWANU v. GARDNER*, [1926] N. Z. L. R. 48; *reusd. on the facts, sub nom. GARDNER v. HIRAWANU*, [1927] A. C. 388; 96 L. J. P. C. 53; 136 L. T. 613; 43 T. L. R. 198—N.Z.

PART IX. SECT. 2, SUB-SECT. 10.—E. (a).

649 i. *Tenant for life unimpeachable—Trees taken compulsorily by overruling authority*.]—*Held*: the money given by way of compensation ..... be applied by the trustees as part of the corpus of the estate.—*GAGE & ROPER v. PIGOTT & JENNER*, [1919] 1 I. R. 23.—IR.

PART IX. SECT. 2, SUB-SECT. 11.

682 i. *Rights inter se—Cutting down*

*trees*.]—If one joint owner of land cuts timber on it adversely to his co-tenant, they become joint owners of the timber. The wrongful act of cutting does not divest the tenant of his interest in the property.—*GODARD v. TUCK* (1866), 6 All. 370.—CAN.

PART IX. SECT. 2, SUB-SECT. 16.

sk. *Purchaser under covenant to erect frame dwelling*.]—*Held*: entitled, under the agreement for purchase, to take standing trees to complete the building.—*GIBBONS v. RIDDLE*, [1926] 3 D. L. 11. 76; 58 O. L. R. 627.—CAN.

PART IX. SECT. 3, SUB-SECT. 3.

736 ii. —.]—The owner of real estate sold all the hemlock bark thereon:—*Held*: the purchaser had a right to take the trees.—*HATCH v. FICK* (1857), 5 Gr. 651.—CAN.

745. *Add. Annotation* :—*Appld. Re Londresborough, Spicer v. Londresborough*, [1923] 1 Ch. 500.  
*Refd. Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569.
789. *Add. Annotation* :—*As to (2) Refd. Ambatielos v. Anton Jurgens Margarine Works*, [1922] 2 K. B. 185.
808. *Add. Annotation* :—*As to (1) Refd. Re Theilussop, Ex p. Abdy*, [1919] 2 K. B. 735.
810. *Add. Annotations* :—*As to (2) Refd. Joel v. International Circus & Christmas Fair* (1920), 124 L. T. 459; *Waimiha Sawmilling Co. v. Waione Timber Co.*, [1926] A. C. 101. *Generally, Mentd. Thames Sack & Bag Co. v. Knowles* (1918), 88 L. J. K. B. 535; *Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569; *Re Wait*, [1926] Ch. 962.
- 810a. — *Confiscation by foreign State—Frustration.*—By a contract the vendors agreed to sell & the purchasers to purchase the timber

then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. Merchantable timber was to mean & include all trunks & branches of trees not less than six inches in diameter at a height of four feet from the ground. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated:—*Held*: the contract was not an executed contract on the part of the vendors at the date when it was signed, & the property in the timber had not passed, to the purchaser; the performance

## PART IX. SECT. 4, SUB-SECT. 5.

804 i. *Contract to take timber by valuation—Valuation by joint valuers—Subsequent valuation by valuers of vendor.*—Def't. agreed to purchase all merchantable timber whether "standing or down" on four lots belonging to pltf. at \$7 per M., def't. to do his own logging & take the timber off. After logging for two years, def't. decided to cease work & as some merchantable timber remained the parties agreed that two cruisers, one appointed by each party, should estimate the quantity left & def't. should pay pltf. \$7 per M. for what remained. The cruisers reported, but pltf. being dissatisfied with their finding, had two of his own cruisers to make an estimate & they found that more than double the amount of merchantable timber remained. On examination, the joint cruisers admitted they did not cruise two of the lots, as these lots had been logged by def't. & they concluded, without examination, there was no merchantable timber there. Pltf.'s own cruisers reported that there were 80,000 feet of "down" timber on these two lots which were merchantable. Pltf.'s action to recover the value of the remaining timber as found by his own cruisers was dismissed:—*Held*: the joint cruise was such a partial estimate of the remaining timber that it could not be regarded as a cruise contemplated by the parties, & it was not binding.—*REINSETH v. NICOLA PINE MILLS, LTP. & McDougall*, [1928] 1 D. L. R. 93; 39 B. C. R. 151.—CAN.

807 ii. — *Construction—Time for removal of timber.*—M. conveyed to B. all the timber on his land, with a right for B. at all reasonable times during years to enter & cut & remove same:—*Held*: the instrument did not convey to B. the fee simple in the standing timber, but only gave him the right to cut & remove it within a reasonable time.—*BRATY v. MATHEWSON* (1908), 40 S. C. R. 557.—CAN.

807 iii. — *Terms of payment.*—*O'BRIEN v. MACKINTOSH* (1903), 34 S. C. R. 169.—CAN.

81. *Sale of timber—On land sold to third party—Failure to remove timber.*—*Held*: no action lay at the instance of the purchaser of the land against the purchaser of the timber for any supposed breach of duty in not removing the timber, as the only ground of action was on the contract, which did not vest in the purchaser of the land.—*RAE v. RANKIN* (1844), 2 Kerr, 453.—CAN.

8m. — *Subsequent verbal agreement J.S.*

*to let made timber remain on land—Validity.*—*HEDLEY v. SCISSONS* (1873), 33 U. C. R. 215.—CAN.

8n. — *By locatee—Subsequent patent to third party—No reservation of timber.*—*LANGMUIR v. MICKLE* (1888), 16 O. R. 111.—CAN.

8p. — *Before issue of patent.*—*Held*: the locatee was not, nor anyone claiming under him, after its issue, estopped from denying the validity of the sale.—*CHAPIEWSKI v. CAMPBELL* (1898), 29 O. R. 343.—CAN.

8t. — *Effect of 31 Vict. c. 8 & 37 Vict. c. 23 (O.).*—*HUTCHINSON v. BEATTY* (1876), 40 U. C. R. 135.—CAN.

8w. — *On limit—Duty of vendor to maintain title for reasonable time for removal of timber.*—*CAINE v. SCHULTZ*, [1927] 1 W. W. R. 600; 38 B. C. R. 332.—CAN.

8x. *Sale of timber—Accepted order for timber—Whether property passes.*—B. drew an order on def't., a pond-keeper, in favour of R. for five hundred tons of pine timber, which def't. accepted & credited R. with the timber in account. R. afterwards assigned all his property to pltf.:—*Held*: in the absence of any proof of title to the timber in B., or that he had delivered it to def't., or of any usage in the timber trade relative to such acceptances, no property vested in R. by the acceptance in any specific five hundred tons of timber, & the action could not be maintained.—*POLLAK v. FISHER* (1849), 6 N. B. R. (1 All.) 515.—CAN.

8y. — *Non-payment of Crown dues—Right to damages.*—*EDSEALL v. HAMMILL* (1865), 16 C. P. 93.—CAN.

8z. — *Right to cut timber during specified period—Time for removal extended—Interference by vendor.*—Doff, having sold to pltfs. the right to cut & remove within two years the fir timber on a certain section of land, & the time for the removal of the timber having been extended by a subsequent agreement:—*Held*: pltfs. were entitled to an injunction restraining def't. from interfering, within said extended period, with the removal of the timber which pltfs. had cut prior to the expiration of the two years from the date of the original agreement.—*IRIDLEY & IRIDLEY v. BARCLAY (H.C.)*, [1928] 4 D. L. R. 79; [1928] 3 W. W. R. 12.—CAN.

8a. — *Value fixed on estimate of vendor's agent—Deficiency in quantity—Rescission.*—Where an agreement for the purchase of timber licences for a certain sum was found to have been arrived at on the basis that the timber was being sold & bought at so much per thousand feet, & it was found that the purchaser had entered into the

agreement relying on estimates, exhibited by the vendors' agent, & made up by a firm of timber-cruisers employed by them, showing the total number of feet of timber covered by the licences, & it was, afterwards, established, by a cruise made for the purchaser, that there was a shortage of about one-third as between the actual quantity of timber & said estimates:—*Held*: the purchaser was entitled, even though there was no fraud, to rescission of the agreement.—*FUKUKAWA & QUEEN CHARLOTTE TIMBER HOLDING CO., LTD. v. AMERICAN TIMBER HOLDING CO., AMERICAN TIMBER HOLDING CO. v. FUKUKAWA (B.C.)*, [1928] 3 D. L. R. 44; [1928] 2 W. W. R. 37.—CAN.

8b. — *Ascertainment of quantity.*—*DOUCET v. SYDNEY LUMBERING CO. (N.B.)*, [1928] 2 D. L. R. 513.—CAN.

8c. *Licence to cut timber—Whether interest in land—Statute of Frauds.*—A licence to cut a quantity of timber within certain prescribed limits, & to remove the same, does not convey any interest in lands under Stat. Frauds, or give any property in the standing trees.—*KERR v. CONNELL* (1836), Ber. 233.—CAN.

8d. — *Trees reserved in clearing land.*—Where a locatee of lands, in clearing a portion thereof, reserved twenty-six pine trees thereon, thinking that they would be useful for building, but had previously erected a permanent house & stable, & put up fences, & had enough timber left for building a barn without reserving these trees:—*Held*: by thus reserving these trees, the locatee left them the property of the Crown, & a licensee of timber under the Crown had a right to cut & remove them.—*PARKER v. MAXWELL* (1887), 14 O. R. 239.—CAN.

8e. — *Land subject of free grant—Interference with rights of patentee.*—*LAKEFIELD LUMBER & MANUFACTURING CO. v. SHARP* (1891), 19 S. C. R. 657.—CAN.

8f. — *Reservation of right to cut timber for public works—Railway.*—Pltf. held a licence from the Crown under the Crown Lands Act for the purpose of cutting timber on certain lands defined in the licence. In the said licence was a reservation to the public, with the permission of the Crown, to go in at any time on the said lands & cut down timber for public works:—*Held*: the interpretation of the words "public works" or "public purposes" in the Crown Lands Act, or the instruments issued under that Act, cannot be so construed as to be applicable to the building of a "railroad".—*PHILLIPS v. REID* (1899), 8 Nfld. L. R. 241.—NFLD.

- of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—*KURSELL v. TIMBER OPERATORS & CONTRACTORS*, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.
814. *Add. Annotations*:—*Refd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424; *Horlick v. Scully*, [1927] 2 Ch. 150.
828. *Add. Annotation*:—*As to (1) Refd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.
- D. *Add. Annotations*:—*Generally, Mentd. Re Crosse, Oldham v. Crosse*, [1920] 1 Ch. 240; *Rotunda Hospital, Dublin v. Coman* (1920), 7 Tax Cas. 517; *Re Shrewsbury Estate Acts, Shrewsbury v. Shrewsbury*, [1924] 1 Ch. 315.
842. *Add. Citations*:—119 L. T. 596; 62 Sol. Jo. 716, C. A.
- 846a. *S. P. OSBORNE v. OSBORNE* (circa 1814), cited in 19 Ves. at p. 422; 34 E. R. at p. 574, L. C.
- Annotations*:—*Folld. Wickham v. Wickham* (1815), 19 Ves. 419. *Refd. Tooker v. Annesley* (1832), 5 Sim. 235.
851. *Add. Annotations*:—*Refd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424; *Horlick v. Scully*, [1927] 2 Ch. 150.
856. *Add. Annotation*:—*Refd. Horlick v. Scully*, [1927] 2 Ch. 150.
874. *Add. Annotation*:—*Refd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.
- 884a. *S. P. MATTHEW v. CRASSE* (1613), as reported in 2 Bulst. 89; 80 E. R. 983.
- Annotation*:—*Mentd. Harrison v. Cage* (1698), 1 Ld. Raym. 386.
- 894a. ——— *Tenant for years unimpeachable for waste.*—Lessee for years *sans waste* cannot pull down trees that are a defence or ornament to the house.—*LONDON (BP.) v. WEB* (1718), as reported in 1 P. Wms. 527; 24 E. R. 501.
- Annotation*:—*Refd. Chamberlayne v. Dummer* (1792), 3 Bro. C. C. 549.
921. *Add. Annotation*:—*Mentd. Burrell v. Leven* (1926), 42 T. L. R. 407.
928. *Add. Annotation*:—*As to (1) & (2) Consd. Wheeler v. Keeble* (1914), Ltd., [1920] 1 Ch. 57.
939. *Add. Annotation*:—*Mentd. A.-G. v. London & Home Counties Joint Electricity Authority*, [1929] 1 Ch. 513.
- 944a. ——— *Trees excepted.*—If a lessee cuts down the trees excepted out of his lease, the lessor shall have trespass *vi et armis* against him.—*PERCY'S CASE* (1609), 13 Co. Rep. 60; Ley, 20; 77 E. R. 1470.
949. *Add. Annotation*:—*Refd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.
953. *Add. Annotations*:—*Mentd. Osborne v. Bradley*, [1903] 2 Ch. 446; *Sharp v. Harrison*, [1922] 1 Ch. 502; *Kelly v. Barrett*, [1924] 2 Ch. 379; *Price v. Corpn. d'Energie de Montmagny*, [1927] A. C. 363.
- 964a. ——— *ALDERMAN v. BANNISTER* (1826), 4 L. J. O. S. Ch. 126.
970. *Add. Annotations*:—*Consd. Baldock v. Westminster City Council* (1918), 88 L. J. K. B. 502; *Sheppard v. Glossop Corpn.*, [1921] 3 K. B. 132. *Refd. Oldham v. Sheffield Corpn.* (1927), 136 L. T. 881.
- 970a. ——— *Omnibus company with right to cut trees—Injury to passenger.*—Where the route of an omnibus lies along a road lined by trees, which by permission of the owner the omnibus co. have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the co. liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging.—*TRINDER v. GREAT WESTERN Ry. Co.* (1919), 35 T. L. R. 291.
- 970b. ——— *Overhanging trees.*—Deft. was possessed of land on which there was growing a beech tree, a bough of which overhung a highway. This bough suddenly broke in fine weather, fell upon pltf.'s vehicle then passing, & caused damage. Neither deft. nor his servants knew that the bough was dangerous, & the fracture was due to a latent defect not discoverable by any reasonably careful inspection:—*Held*: deft. was not liable, as the mere fact that the tree overhung the highway did not make the tree a nuisance, & as he neither knew nor ought to have known of the actual danger, & there was no absolute obligation on him to support a tree overhanging the road unless it appeared, or would appear on a proper inspection, that nature could no longer be relied upon to support it.—*NOBLE v. HARRISON*, [1926] 2 K. B. 332; 95 L. J. K. B. 813; 135 L. T. 325; 90 J. P. 188; 42 T. L. R. 518; 70 Sol. Jo. 691, D. C.

## Part X.—Fertilisers, Feeding Stuffs and Seeds.

971a. *Feeding stuffs—Act of 1906, s. 1 (4).*—In Sept. 1922. pltf., a pig-keeper, saw defts.' managing director, who offered to sell him the bakery sweepings as pig food at 2s. 6d. a bag. Pltf. accepted the offer & purchased the sweepings from defts. & fed five pigs with it successfully from Sept. 1922 to Jan. 1923, when the pigs became ill & four of them died. The sweepings consisted of ingredients used in making bread, together

with dust & dirt & other odds & ends & string:—*Held*: the words "on the sale of any article" in the above sub-sect. were wide enough to cover the sale of these bakery sweepings; the effect of the sub-sect. was to put the risk upon the seller, who, knowing the constituents of the article which he chose to sell as food for cattle, was made responsible if in fact it contained some article deleterious; if the seller desired to protect himself against

PART IX. SECT. 9, SUB-SECT. 1.  
922 vi. ——— *J.—LAWRENCE v. JUDGE*  
(1851), 2 Gr. 301.—CAN.

PART IX. SECT. 10.  
970 i. Read now "970b i."  
970 ii. Read now "970b ii."

the stringent provisions of the Act, it was competent to him to do so by a special contract made for that purpose.—*PULLING v. LIDBETTER, LTD.*, [1924] 2 K. B. 114; 93 L. J. K. B. 542; 131 L. T. 119; 88 J. P. 83; 68 Sol. Jo. 615; 22 L. G. R. 456, C. A.

973. *Add. Annotation*:—*Refd. Anderson v. Daniel* (1923), 130 L. T. 418.

974a. ————.]—A seller who in fact delivers a false invoice commits an offence under sect. 6 (1) (b) of the above Act, whether the nature of the article is such as to make it obligatory on him under sect. 1 to deliver an invoice or not.—*HARVEY & CO. v. HEREFORDSHIRE COUNTY COUNCIL*, [1920] 2 K. B. 395; 89 L. J. K. B. 601; 123 L. T. 428; 84 J. P. 195; 18 L. G. R. 470, D. C.

975a. — *Sending of sample to seller*—*Act of 1906, s. 3 (3)*.]—It is a condition precedent to a prosecution of the seller under sect. 6 (1) (a) of the above Act, on a charge of not sending an invoice on the sale of a fertiliser of the soil according to the provisions of sect. 1 (1), that a prescribed portion of the sample thereof taken with a view to the proceedings under sect. 3 (3) shall have been sent to the seller.—*VAUGHAN v. GRINDELL*, [1921] 3 K. B. 412; 91 L. J. K. B. 141; 125 L. T. 315; 85 J. P. 199; 19 L. G. R. 416; 27 Cox, C. C. 5, D. C.

977. *Add. Annotation*:—*As to* (2) *Refd. Harvey v. Herefordshire County Council*, [1920] 2 K. B. 395.

978a. — *Effect of*—“*Reasonable excuse*.”]—

(1) As the object of the Act of 1906 in requiring the vendor to give the statutory invoice & imposing on him a penalty in the event of his default is to protect the purchasers of fertilisers, the effect of non-compliance with the requirement is not merely to render the vendor liable to the penalty, but also to make the sale illegal & preclude the vendor from suing for the price. (2) The fact that, owing to the nature of the article sold as a fertiliser, an analysis of it would necessitate so expensive a process as to make it impossible to sell it after analysis at a profit, affords no “reasonable excuse” within sect. 6 (1), for omitting to give the invoice required by the Act. *Semble*: neither will impossibility of analysis afford any excuse, the intention of the statute in that event being to prohibit the sale of the article altogether. (3) The expression “without prejudice to any civil liability” in sect. 6 (1) refers to the civil liability of the vendor, not to that of the purchaser.—*ANDERSON, LTD. v. DANIEL*, [1924] 1 K. B. 138; 93 L. J. K. B. 97; 130 L. T. 418; 88 J. P. 53; 40 T. L. R. 61; 68 Sol. Jo. 274; 22 L. G. R. 49, C. A.

*Annotation*:—*As to* (2) *Consd. Pulling v. Lidbetter* (1924), 93 L. J. K. B. 542.

979. *Add. Annotations*:—*Consd. Pontardawe R. C. v. Moore Gwyn*, [1929] 1 Ch. 656. *Refd. Stearn v. Prentice* (1918), 88 L. J. K. B. 422; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.

#### PART XI. SECT. 10.

i. — *Under licence*—*Under Forest Act*.]—*A-G. FOR B. C. v. ROBERTSON*, [1924] 1 D. L. R. 1090; [1924] 1 W. W. R. 1155; 33 B. C. R. 325.—*CAN.*

hi. — *Right of Crown to sue for expenses*.]—The Crown in the right of the Dominion may sue under Forest Act, R.S.B.C., 1924 (c. 93), s. 114, to recover expenses incurred by officials

of the Dominion Forest Branch in controlling & extinguishing a fire on deft.'s property.—*R. v. SWANSTROM*, [1925] 3 D. L. R. 79; [1925] 1 W. W. R. 713.—*CAN*

## ALIENS.

## Part I.—What Constitutes Alienage.

1. *Add. Annotations*:—*Consd. Markwald v. A.-G.*, [1920] 1 Ch. 348. *Refd. Johnstone v. Pedlar*, [1921] 2 A. C. 262. *Mentd. The Tervaete* (1922), 128 L. T. 176.
3. *Add. Annotation*:—*Mentd. Fasbender v. A.-G.*, *Kramer v. A.-G.*, [1922] 2 Ch. 850
13. *Add. Annotation*:—*As to* (2) *Refd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.
- 13a. ———.]—By an Order in Council made on Nov. 5, 1914, Cyprus was annexed, & by a Proclamation made thereunder on Mar. 3, 1915, revoking an earlier Proclamation, it was provided that "all Ottoman subjects, resident in Cyprus on Nov. 5, 1914, have become British subjects." An amending Order in Council made on Nov. 27, 1917, after reciting that doubts had arisen as to the effect of the Order & the proper interpretation of the Proclamation, ordered that the following persons (*inter alios*) should be deemed to have become British subjects by virtue thereof: "any Ottoman subject who was ordinarily resident & actually present in Cyprus on Nov. 5, 1914." *I*resp., an Ottoman subject by birth, carried on business in Cairo from 1893 to 1913. In Dec. 1913, he went to Cyprus, & after three or four months brought his family there. He rented a house in Cyprus monthly, & while there discontinued his business in Cairo. He was present in Cyprus on Nov. 5, 1914, & remained there until Oct. 1915, when he returned to Cairo, his family following in December. He received a passport describing him as a British subject, & was so registered at the British Consulate at Cairo, but after annual renewals registration was refused in 1919. He sued for a declaration that he was entitled to registration:—*Held*: if there were any difference between "resident" & "ordinarily resident" the latter became the test by virtue of the interpretative Order of 1917; but on the facts resp. was both "resident" & "ordinarily resident" in Cyprus on Nov. 5, 1914, whether or not Cyprus was then his domicile; & whatever may have been his motive for going there, he was a British subject by virtue of the Order in Council.—*GOUT v. CIMITIAN*, [1922] 1 A. C. 105; 91 L. J. P. C. 18; 38 T. L. R. 100; *sub nom. GOUT v. CIMITIAN*, *CIMITIAN v. GOUT*, 126 L. T. 293, P. C.
14. *Add. Annotations*:—*Refd. Markwald v. A.-G.*, [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262. *Mentd. The Tervaete* (1922), 128 L. T. 176.
18. *Add. Annotation*:—*Generally*, *Mentd. Wigg v. A.-G. of the Irish Free State* (1927), 96 L. J. P. C. 88.
20. *Annotations*:—*For* "*Re Goodman's Trust* (1881), 7 Ch. D. 266" read "*Re Goodman's Trust* (1881), 17 Ch. D. 266."
29. *Add. Citation*:—25 Cox, C. C. 622, D. C.
35. *Add. Annotations*:—*Mentd. Markwald v. A.-G.*, [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *The Tervaete* (1922), 128 L. T. 176.
36. *Add. Annotations*:—*Mentd. Markwald v. A.-G.*, [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *The Tervaete* (1922), 128 L. T. 176.
39. *Add. Annotations*:—*Mentd. Markwald v. A.-G.*, [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *The Tervaete* (1922), 128 L. T. 176.
41. *Add. Annotations*:—*Mentd. Markwald v. A.-G.*, [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *The Tervaete* (1922), 128 L. T. 176.
43. *Add. Annotations*:—*Refd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
49. *Add. Annotations*:—*Mentd. Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
- 49a. *Under Treaties of Peace & consequent Orders—Who is foreign national—"Stateless person"—Denationalised German.*—(1) *Pltf.* having lost Prussian nationality in 1896, & not acquired nationality of a German State or other nationality:—*Held*: he was not a German national within Peace Treaty of Versailles, Part X., s. 4, or Treaty of Peace Order, 1919.  
(2) Statelessness is not unrecognised by the municipal law of this country.  
(3) Whether a man is a German national or not must be decided by German municipal law & not by English municipal law.—*STOECK v. PUBLIC TRUSTEE*, [1921] 2 Ch. 67; 90 L. J. Ch. 386; 125 L. T. 851; 37 T. L. R. 606; 65 Sol. Jo. 605.
- Annotations*:—*As to* (3) *Fold. Re Chamberlain's Settltm.*, *Chamberlain v. Chamberlain*, [1921] 2 Ch. 533. *Generally*, *Refd. Kramer v. A.-G.*, [1923] A. C. 528.
- 49b. ——— *Burden of proof.*—(1) In 1893 *pltf.* were admittedly German nationals; & on the *bonâ fide* assumption that they were still German nationals on Jan. 10, 1920, when the charge under Treaty of Peace Order, 1919, s. 1 (xvi) attached, *deft.* was in possession of their London property as

## PART I. SECT. 1.

1 iii. — *Birth in Native Indian State.*—The subject of a Native Indian State is an alien.—*MAHOMED & SON v. IMMIGRANTS' APPEAL BOARD* (1918), 38 N. L. R. 7.—*S. AF.*

10 iv. — ———.]—*Appl.*, who was by birth a Bavarian subject, in 1881 became a burgher of the Orange Free State, but in 1883 left the Free State &

did not return before 1902, at which date he was resident in, but not a burgher of, the Transvaal. Under the Orange Free State Constitution of 1878 Free State burghership was lost by residence abroad for more than two years.—*Held*: as at the time of the annexation of the Orange Free State & Transvaal in 1902 *appl.* did not become a British subject either as being a burgher of the Orange Free

State or as a resident in the Transvaal, he was by inference still a Bavarian subject.—*WOLFF v. THE TREASURY*, [1919] App. D., 336.—*S. AF.*

## PART I. SECT. 3.

49a i. *Under Treaties of Peace & consequent Orders—Who is foreign national—"Stateless person"—Denationalised German.*—*FATLEY v. CUSTODIAN*, [1922] App. D. 161.—*S. AF.*

custodian. In an action to obtain release of their property:—*Held*: the *onus* was on plffs. to show that they had lost their original German nationality before Jan. 10, 1920, & not on deft. to disprove it.

Plffs. had left their birthplace, Idar, in the district of Birkenfeld, about 1893, & with the exception of short annual visits to their mother, & in the case of one, six weeks' military training in 1896, they had resided uninterruptedly out of Germany from 1893 to 1917 or 1918, when they were repatriated, after war internment, to Idar, where according to the police register entries, if genuine, they were registered as stateless on their arrival, & also on their departure for Amsterdam in 1920. On Jan. 29, 1923, the Birkenfeld Govt. after inquiry as to the period of plffs.' absence from Germany, & as to their German visits during that period, granted them certificates to the effect that during that period they had forfeited their German nationality by ten years' "uninterrupted" residence abroad within North German Nationality Law, 1870, s. 21, & were therefore stateless on Jan. 10, 1920. These certificates were based on the view of the Administrative Cts. which, in considering whether German visits break the ten years' period, look to the number, length, purpose & intent of those visits. They were, however directly contrary to the view of the Leipzig Reichsgericht, which holds that the smallest visit, accidental or otherwise, breaks the period:—*Held*: (2) the certificates, which were admittedly only *prima facie* evidence & open to review in any German ct., were not conclusive in an English ct., & the *onus* was on plffs. to substantiate them; (3) if the Leipzig ct. view was right, the certificates were invalid; (4) even if the Administrative Ct. view was right, plffs. had failed to satisfy the English ct. that an Administrative Ct. on being informed of all the circumstances, including fraudulent conduct by plffs., applications as German nationals in 1915 & 1921, & previous false statements as to their German visits, would necessarily uphold the certificates; (5) having regard to the conflict of opinion in the German cts., plffs. had failed to discharge the *onus* of proving that by unquestionable & undoubted German law they had lost their nationality on Jan. 10, 1920.—*HAHN v. PUBLIC TRUSTEE*, [1925] Ch. 715; 95 L. J. Ch. 9; 133 L. T. 713; 14 T. L. R. 586; 69 Sol. Jo. 824

- 49c. ——— British subject marrying German & naturalised as German during war.]—By a settlement dated in 1902 a fund of £5,000 was vested in trustees on trust to invest & pay the income of the trust funds to H. during his life or until he should become bkpt. or charge it, "or until some event shall happen . . . whereby the income or any part thereof if belonging absolutely to him would become vested or charged in favour of some other person or persons or corpn.," & in the event of the determination during the life of H., of the above trust in his favour the trustees were given a discretion to apply the income for the benefit of all or any the said H., & his present or any other after-taken wife & his issue & the persons interested for the time being under the ulterior trusts,

& subject thereto, were directed to hold the capital & income of the trust funds upon trust for the benefit of the issue of H. & in default of issue upon trust for H.'s nephews & nieces. H. was born in England of English parents but had resided in Germany since 1906 & had been twice married there to German wives. During the war, on Aug. 8, 1916, he obtained a certificate of naturalisation as a German. In these circumstances a summons was taken out by the trustees to have it determined whether the life interest of H. in the funds was forfeited by the charge imposed on property of German nationals in this country on Jan. 10, 1920, by the Treaty of Peace with Germany, art. 297, or Treaty of Peace Order, 1919, & how the income accrued since Aug. 4, 1914, ought to be disposed of. It was admitted at the hearing on behalf of H. that in a German ct. applying German law he would be recognised as a German citizen. No question arose as to the income before Nov. 4, 1915, which had been paid over to H.'s agent:—*Held*: (1) the decision whether a person was a German national within the Treaty & Order fell to be determined exclusively by German municipal law, & accordingly H. was a German national; (2) H.'s interest under the settlement was forfeited as on Jan. 10, 1920, & subject to the payment of costs the accumulations of income in the trustees' hands from Nov. 4, 1915, to Jan. 10, 1920, must be paid to the custodian.—*Re CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN v. CHAMBERLAIN*, [1921] 2 Ch. 533; 91 L. J. Ch. 34; 126 L. T. 52; 37 T. L. R. 966; 66 Sol. Jo. (W. R.) 3.

Annotation:—As to (1) *Apprvd. Fasbender v. A.-G., Kramer v. A.-G.*, [1922] 2 Ch. 850.

- 49d. ——— ———.]—A British-born woman, between the date of the signing of the Peace Treaty between England & Germany & the date of its coming into force, went to Germany & there married a German subject. At the date of her marriage & on Jan. 10, 1920, when the Treaty came into force, she was the registered holder of shares in an English limited co.:—*Held*: under British Nationality & Status of Aliens Act, 1914 (c. 17), s. 10, she must be deemed to be an alien, & by her marriage, which was not invalid, she had lost her British nationality & became a German national, so that her shares were subject to the charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi).—*FASBENDER v. A.-G., KRAMER v. A.-G.*, [1922] 2 Ch. 850; 91 L. J. Ch. 791; 128 L. T. 85; 38 T. L. R. 852; 66 Sol. Jo. 709, C. A.

Annotation:—*Reid. Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

- 49e. ——— Dual nationality.]—*KRAMER v. A.-G.*, No. 215j, *post*.

- 49f. ——— Austrian acquiring new nationality.]—An Austrian granted citizenship of the Czechoslovakian Republic after the disruption of the Austrian Empire, but before July 16, 1920, the date when the Treaty of Peace between the Allied & Associated Powers & Austria came into force, remains subject to the charge created by art. 249 (b) of the Treaty & Treaty of Peace (Austria) Order, 1920, s. 1 (ix), notwithstanding the provisions of art. 230 of the Treaty.—*ROTHSCHILD v. AUSTRIAN PRO-*



PERTY ADMINISTRATOR, [1923] 2 Ch. 542; 93 L. J. Ch. 508; 130 L. T. 175; 68 Sol. Jo. 40

Annotations:—*Fold. Bohemian Union Bank v. Austrian Property Administrator*, [1927] 2 Ch. 175. *Consd. Groedel v. Hungarian Property Administrator* (1927), 44 T. L. R. 65.

— *Czechoslovakian corporation*.]—Under the Treaty of St. Germain, which came into force on July 16, 1920, a Czechoslovakian corp., as well as an individual, can acquire *ipso facto* Czechoslovakian nationality, & the property of such a corp. within the territory of Great Britain at that date is entitled to the benefit of the exemption provided by art. 249 (b) of the Treaty from liability to the charge in favour of the administrator of Austrian property created by that art. & Treaty of Peace (Austria) Order, 1920, s. 1 (ix).—*BOHEMIAN UNION BANK v. AUSTRIAN PROPERTY ADMINISTRATOR*, [1927] 2 Ch. 175; 96 L. J. Ch. 365; 137 L. T. 271; 43 T. L. R. 356; 71 Sol. Jo. 431.

49h. — *Hungarian*.]—(1) The expression “nationals of the former Kingdom of Hungary” in Treaty of Peace (Hungary) Order, 1921, s. 1 (ix), means persons who were Hungarian nationals on Oct. 28, 1918, when the Austrian Empire ceased to exist by the deposition of the Emperor.

(2) Where the administrator of Hungarian property has determined that he is not satisfied that a national of the former Kingdom of Hungary has acquired *ipso facto* in accordance with the Treaty the nationality of an Allied or Associated Power, the ct. cannot go behind the decision of the administrator & investigate the question anew.—*GROEDEL v. HUNGARIAN PROPERTY ADMINISTRATOR* (1927), 44 T. L. R. 65.

49i. — *By what law decided*.]—*STOECK v. PUBLIC TRUSTEE*, No. 49a, *ante*.

49j. — *Re CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN v. CHAMBERLAIN*, No. 49c, *ante*.

— *Decision of administrator—Whether final*.]—By the Treaty of Peace with Austria, art. 249 (b), the Allied & Associated Powers reserved the right to retain & liquidate all property, rights & interests which belonged at the date of the coming into force of the Treaty to nationals of the former Austrian Empire, but it was provided that “persons who within six months of the coming into

force of the present Treaty show that they have acquired *ipso facto* in accordance with its provisions the nationality of an Allied or Associated Power . . . will not be considered as nationals of the former Austrian Empire within the meaning of this paragraph.” The annex to arts. 249 & 250 sanctioned the imposition of a charge on such property, rights or interests. Arts. 248 to 262 with their annexes were scheduled to Treaty of Peace (Austria) Order, 1920, & by art. 1 (i) of the Order given full effect as law. By art. 1 (ix), the charge was imposed on all property, rights & interests within His Majesty's Dominions belonging to nationals of the former Austrian Empire at the date when the Treaty came into force. Art. 2 provided that “for the purposes of the foregoing provisions of this Order but not including the schedule therein referred to . . . the expression ‘national of the former Austrian Empire,’ does not include persons who within six months of the coming into force of the Treaty show to the satisfaction of the administrator that they have acquired *ipso facto* in accordance with its provisions nationality of an Allied or Associated Power”:—*Held*: where the administrator had decided that he was not satisfied that pltf., who was originally a national of the former Austrian Empire, had acquired *ipso facto* the nationality of an Allied or Associated Power, the ct. would not, in an action by him for a declaration that he has “shown that he has acquired *ipso facto* in accordance with the Treaty the nationality of the Republic of Poland & that he is not a national of the former Austrian Empire within the Treaty & the Treaty of Peace Order, & that his property, rights & interests in His Majesty's Dominions are not subject to be charged under the Treaty & the Treaty of Peace Order,” go behind the decision of the administrator & investigate independently the question of nationality.—*REITZES DE MARIENWERT v. AUSTRIAN PROPERTY ADMINISTRATOR*, [1924] 2 Ch. 282; 93 L. J. Ch. 587; 132 L. T. 42; 40 T. L. R. 698; 68 Sol. Jo. 644, C. A.

Annotations:—*Fold. Groedel v. Hungarian Property Administrator* (1927), 44 T. L. R. 65. *Refd. Groedel v. Hungarian Property Administrator* (1925), 70 Sol. Jo. 345.

49l. — *GROEDEL v. HUNGARIAN PROPERTY ADMINISTRATOR*, No. 49h, *ante*.

## Part II.—Rights, Liabilities, and Disabilities of Aliens in Time of Peace.

50. *Add. Annotation*:—*Refd. The Wilhelmina*, [1923] P. 112.

61. *Add. Annotation*:—*Refd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

63. *Add. Annotations*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.

49l i. — *By what law decided*.]—Questions of nationality must be determined by the municipal law of the country concerned.—*PAULEY v. CUSTODIAN*, [1922] App. D. 161.—S. AF.

PART II. SECT. 2, SUB-SECT. 1.  
aa. *Non-resident alien—Leave to sue in forma pauperis*.]—The Supreme Ct. of Alberta has jurisdiction to grant

65a. — *Detention of property—Ratification by Crown—Citizen of friendly State personally hostile to Crown*.]—(1) It is not a good defence to an action of tort brought by a friendly alien resident in the United Kingdom against an officer of the Crown in respect of the wrongful seizure & detention of the alien's property that the seizure & detention have

leave to a non-resident alien to sue in *forma pauperis*.—*AUGUSTINO v. CANADIAN NORTH-WESTERN RY. CO. (ALTA.)*, [1927] 4 D. L. R. 609; [1927] 3 W. W. R. 321.—CAN.



been adopted & ratified by the Crown as an act of State.

*Pltf.*, who was born in Ireland, having become a naturalised American citizen, returned to Ireland in 1916 & took part in the rebellion of Easter, 1916, & was interned. On his release he took part in illegal drilling, &, on being arrested in Ireland, a sum of money was found upon him, which was taken & detained by the police authorities, the seizure & detention being subsequently ratified by the Chief Secretary for Ireland. In an action by *pltf.* against the Chief Comr. of the Police for the recovery of the money, *deft.* pleaded that *pltf.* was an alien & that the money was detained by direction of the Crown as an act of State:—*Held*: the plea was bad & *pltf.* was entitled to judgment.

(2) *Semle*: the fact that a subject of a friendly State residing within the realm under an implied licence from the Crown violates the local allegiance which he owes to the Crown does not disentitle him to the rights of an alien *amv* until the Crown withdraws its protection.—*JOHNSTONE v. PEDLAR*, [1921] 2 A. C. 262; 90 L. J. P. C. 181; 125 L. T. 809; 37 T. L. R. 870; 65 Sol. Jo. 679; 27 Cox, O. C. 68, P. C.

*Annotation*:—As to (1) *Refd.* Commercial & Estates Co. of Egypt v. Board of Trade, [1926] 1 K. B. 271.

66. *Add. Annotation*:—*Mentd.* Rodriguez v. Speyer, [1919] A. C. 59.
69. *Add. Annotation*:—*Mentd.* Weld-Blundell v. Stephens, [1919] 1 K. B. 520.
70. *Add. Annotation*:—*Refd.* Rodriguez v. Speyer, [1919] A. C. 59.
79. *Add. Annotation*:—*Folld.* Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.
82. *Add. Annotation*:—*Refd.* Behnke v. Bede Shipping Co., [1927] 1 K. B. 649.
85. *Add. Annotations*:—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262. *Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; The Tervacte (1922), 128 L. T. 176.
94. *Add. Annotation*:—*Dbtd.* Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.
96. To the cross-reference after this case to Copyright Act, 1911 (c. 46), add "&, generally, COPYRIGHT, Vol. XIII., pp. 180–182."
97. *Add. Annotations*:—*Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervacte (1922), 128 L. T. 176.
105. *Add. Annotation*:—*Mentd.* Seddon v. Commercial Salt Co., [1925] Ch. 187.
106. *Add. Annotation*:—*Mentd.* Fasbender v. A.-G., Kramer v. A.-G., [1922] 2 Ch. 850.
114. *Add. Annotations*:—*Consd.* Re Lyne's Settlement Trusts, Re Gibbs, Lyne v. Gibbs,

[1919] 1 Ch. 80. *Refd.* Re Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.

116. *Add. Citations*:—*Sty.* 20, 40, 75; 1 Roll. Abr. 19b.

*Add. Annotations*:—As to (1) *Consd.* Du Hourmelin v. Sheldon (1838), 1 Beav. 79; Barrow v. Wadkin (1858), 27 L. J. Ch. 129. *Refd.* A.-G. v. Sands (1870), Freem. Ch. 129; A.-G. v. Duplessis (1752), Park. 144; Burgess v. Wheate, A.-G. v. Wheate (1759), 1 Eden. 177; Rittson v. Sturdy (1855), 3 Sm. & G. 230; Sharp v. St. Sauveur (1871), 7 Ch. App. 343. As to (2) *Refd.* Burgess v. Wheate, A.-G. v. Wheate (1759), 1 Eden. 177. *Generally, Mentd.* Cage v. Acton (1699), 12 Mod. Rep. 288.

- 119a. ————]—A devise of land to trustees, upon trust to sell & invest the proceeds in the public funds upon trust for persons some of whom were aliens:—*Held*: the aliens did not take any interest or estate which the Crown could lay claim to.—*DE HOURMELIN v. SHELDON*, *DE HOURMELIN v. A.-G.* (1839), 4 Jur. 116.

- 140a. *Member of Stock Exchange*.]—By the rules of the London Stock Exchange each member is elected for one year only, & must come up for re-election annually under rule 21, which provides that the committee shall on the first Monday in March proceed (*inter alia*) to elect such members as they shall deem eligible to be members of the Stock Exchange during the following year commencing on Mar. 25 then instant. In 1917 an objection was lodged against the re-election of *applt.*, who was a British subject naturalised in this country & denationalised in Germany, at the election to be held in March of that year, on the ground of his enemy birth. Upon the invitation of the committee *applt.*, first in a letter & afterwards at an interview, set forth various facts in proof of his loyalty to the country of his adoption, but eventually the committee refused to re-elect him. *Applt.* impeached this decision on the ground that the committee had acted arbitrarily & capriciously & had been influenced by irrelevant considerations:—*Held*: the decision of the committee had proceeded solely upon the ground of *applt.*'s enemy birth, & before deeming him ineligible for re-election on that ground he had been given an opportunity of being heard. The committee having acted honestly & fairly in the exercise of their discretion & within their competence, it was not open to any ct. to review their decision.—*WEINBERGER v. INGLIS*, [1919] A. C. 606; 88 L. J. Ch. 287; 121 L. T. 65; 35 T. L. R. 399; 63 Sol. Jo. 461, H. L. See, further, STOCK EXCHANGE.

## Part III.—Aliens in Time of War.

144. *Add. Annotation*:—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.

146. *Add. Annotation*:—*Refd.* Central India Min-

ing Co. v. Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

147. *Add. Annotations*:—*Mentd.* Markwald v.

### PART II. SECT. 7, SUB-SECT. 2.

129 i. *Right to hold & dispose*—Law 3 of 1885—Act 35 of 1908—Company with Asiatic shareholders.]—Law 3 of 1885 & Act 35 of 1908 do not apply to joint stock cos., even though their shares are held by Asiatics.—*DADOO v. KRUGERS-*

*DORP*, [1920] App. D. 530.—S. AF.

### PART II. SECT. 8.

132 i. *Civil office of trust—Town inspector*.]—The office of town inspector is one of trust which an alien

is ineligible to hold—*R. v. HEIGHTON* (1) (1922), 69 D. L. R. 386; 55 N. S. R. (G. & R.) 512.—CAN.

132 ii. *S. P. R. v. HEIGHTON* (2) (1922), 69 D. L. R. 396; 55 N. S. R. (G. & R.) 527.—CAN.

- A.-G., [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *The Tervaete* (1922), 128 L. T. 176.
149. *Add. Annotation*:—*Mentd. Lala Indar Prasad v. Lala Jagmohan Das* (1927), 43 T. L. R. 536.
154. *Add. Annotation*:—*Mentd. Rodriguez v. Speyer*, [1919] A. C. 59.
155. *Add. Annotations*:—*Apld. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513. *Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
- 156a. ———.—[A man who, having a business & commercial domicile in a neutral country, returns to his enemy country of origin & engages in active hostilities against this country, leaving his business under the care of a manager, but controlling it himself from his domicile of residence so far as he is able, cannot be considered anything but an enemy, & his business is an enemy firm & the assets are enemy property.—*THE ANTWERPEN*, [1919] P. 252, n.; 89 L. J. P. 26, n.
- Annotation*:—*Mentd. The Parana*, [1919] P. 249.
- 156b. ———.—[An action was brought to recover a debt by a firm consisting of two French subjects & a German subject, & a sequestrator was subsequently appointed in respect of the property of the German plff.:—*Held*: as the German subject was not residing nor carrying on business in an enemy State, the action was maintainable, & the sequestrator was not a necessary party.—*Re SUTHERLAND (DUCHESS), BECHOFF & Co. v. BUBNA* (1921), 65 Sol. Jo. 513.
157. *Add. Annotations*:—*Refd. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513. *Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
160. *Add. Annotations*:—*Generally, Mentd. The Dirigo* (1919), 88 L. J. P. 192; *The Noordam* (No. 2), [1919] P. 255; *The Edna*, [1921] 1 A. C. 735; *The Kronprinsessan Margareta, The Parana, etc.*, [1921] 1 A. C. 486; *The Vesta, etc.*, [1921] 1 A. C. 774.
161. *Citation*:—For "[1916] A. C. 421" read "[1916] 1 A. C. 421."
- Add. Annotation*:—*As to* (1) *Consd. Stoeck v. Public Trustee*, [1921] 2 Ch. 67.
162. *Add. Annotations*:—*As to* (1) *Consd. Stoeck*
- v. Public Trustee*, [1921] 2 Ch. 67. *As to* (2) *Refd. Stoeck v. Public Trustee*, [1921] 2 Ch. 67.
163. *Add. Annotation*:—*Refd. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.
166. *Add. Citation*:—*subsequent proceedings* (1921), 65 Sol. Jo. 513.
168. *Add. Citation*:—1 Br. & Col. Pr. Cas. 605.
- Add. Annotation*:—*Generally, Mentd. Casdagli v. Casdagli*, [1919] A. C. 145.
178. *Add. Annotations*:—*Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
181. *Add. Annotations*:—*Mentd. The Dirigo* (1919), 88 L. J. P. 192; *The Noordam* (No. 2), [1919] P. 255; *The Edna*, [1921] 1 A. C. 735; *The Kronprinsessan Margareta, The Parana, etc.*, [1921] 1 A. C. 486; *The Vesta, etc.*, [1921] 1 A. C. 774.
183. *Add. Annotation*:—*Refd. The Lützow*, [1918] A. C. 435.
187. *Add. Annotations*:—*Consd. Rodriguez v. Speyer*, [1919] A. C. 59. *Refd. Ertel Bieber v. Rio Tinto Co., etc.*, [1918] A. C. 260; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.
189. *Add. Annotations*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
192. *Add. Annotation*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59.
195. *Add. Annotations*:—*As to* (1) *Consd. The Poona* (1915), 84 L. J. P. 150; *The St. Tudno*, [1916] P. 291; *Re Hilckes, Ex p. Muhesa Rubber Plantations*, [1917] 1 K. B. 48; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, [1923] 2 K. B. 630. *Refd. R. v. L. C. C., Ex p. London & Provincial Electric Theatres*, [1915] 2 K. B. 466; *Clapham S.S. Co. v. Handels-en-Transport-Maatschappij Vulcan of Rotterdam*, [1917] 2 K. B. 639; *Continho Caro v. Vermont*, [1917] 2 K. B. 587; *Elders & Fyffes v. Hamburg Amerikanische Packet-fahrt Act., Elders & Fyffes v. Hamburg Columbian Bananen Act.* (1918), 34 T. L. R. 275; *Re British Incandescent Mantle Works* (1923), 129 L. T. 126; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, [1925] A. C. 112;

## PART III. SECT. 1, SUB-SECT. 1.

151 II. ———.—[The subject of an alien State at war with His Majesty, who resides in the province of Quebec & has submitted to the laws of that country, is not an alien enemy.—*RAGUSZ v. MONTREAL HARBOUR COMRS.* (1916), 18 Q. P. R. 98; Q. R. 26 K. B. 87.—*CAN.*

155 I. ———.—*Place of residence & carrying on trade*.—"Enemy" means a person, of whatever nationality, who resides or carries on business in enemy territory.—*LAMPEL v. BERGER* (1917), 40 O. L. R. 165; 38 D. L. R. 47.—*CAN.*

155 II. ———.—[The question whether a person is an alien enemy is determined not by his nationality, but by the place where he resides or carries on business.—*REVENLOW-CRIMMIL v. STREAMSTOWN JURAL MUNICIPALITY*, No. 511, [1917] 3 W. W. R. 546; 37 D. L. R. 394; *affd.*, [1920] 1 W. W. R. 578; 52

D. L. R. 266; 15 Alta. L. R. 204.—*CAN.*

155 III. ———.—[A Mission Society, the headquarters of which were in Germany, held property in Natal & had an agent there for the management of its property & interests:—*Held*: (1) the society was resident in Germany & was an alien enemy; (2) a person's place of business, though one test, is not the sole test of his enemy character.—*SIBISI v. HERMANS-BERG MISSION SOCIETY* (1916), 37 N. L. R. 409.—*S. AF.*

155 IV. ———.—[An "alien enemy" does not mean a subject of a State at war with this country but a person of any nationality who resides or carries on business in an enemy country.—*MALCOMESSE v. DURBAN TOWN COUNCIL* (1917), 38 N. L. R. 275.—*S. AF.*

*st. Who is an "enemy" within Treaty of Peace (Germany) Order*, 1920, s. 32].—*BAUMFELDER v. SECRETARY*

OF STATE OF CANADA, [1927] Exch. C. R. 86.—*CAN.*

## PART III. SECT. 1, SUB-SECT. 2.

193 II. ———.—[*Widow of naturalised British subject—Return to foreign country after death of husband*.]—*Resp.*, a German subject by birth, married a naturalised British subject in Cape Colony. After the death of her husband in 1901 *resp.* returned to Germany where she resided until 1915, & then removed to Switzerland:—*Held*: *resp.* was not an enemy under Act 39 of 1916.—*THE TREASURY v. HANF*, [1919] App. D. 50.—*S. AF.*

## PART III. SECT. 1, SUB-SECT. 4.

193 III. ———.—[A person who voluntarily resides in a hostile country for a substantial period of time acquires the disability attaching to an enemy during that period even if he is a British subject, unless such residence is with the consent of the Crown.—*Haji Ali Jon v. Abdul Jallil Khan* (1920), 1 L. R. 1 Lah. 276.—*IND.*

Bohemian Union Bank v. Austrian Property Administrator, [1927] 2 Ch. 175. *As to* (2) *Consd.* The St. Tudno, [1916] P. 291. *Apld.* The Hamborn, [1919] A. C. 993. *Consd.* The Noordam (No. 2), [1919] P. 255; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *Refd.* The Vesta, [1920] P. 385; *I. R. Comrs. v. Sansom* (1921), 8 Tax Cas. 20. *As to* (3) *Consd.* *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48. *Refd.* *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (4) *Consd.* *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48. *As to* (5) *Consd.* Rio Tinto Co. v. Ertel Bieber (1917), 116 L. T. 810; Tingley v. Müller, [1917] 2 Ch. 144; Naylor, Benzon v. Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Stevenson v. Akt. für Cartonnagen Industrie, [1918] A. C. 239. *Refd.* *Re* Aramayo Francke Mines, [1917] 1 Ch. 451; Ertel Bieber v. Rio Tinto Co., [1918] A. C. 260; Rodriguez v. Speyer, [1919] A. C. 59; *Re* Munster, [1920] 1 Ch. 268; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre v. Rush, [1923] 1 Ch. 56. *Generally, Mentd.* Russian Commercial & Industrial Bank v. British Bank for Foreign Trade, [1921] 2 A. C. 438; Bradbury v. English Sewing Cotton Co., [1922] 2 K. B. 569; Todd v. Egyptian Delta Land & Investment Co., [1928] 1 K. B. 152.

195a. ———. *Re* BADISCHE CO., LTD., *Re* BAYER CO., LTD., *Re* GRIESHEIM ELEKTRON, LTD., *Re* KALE & CO., LTD., *Re* BERLIN ANILINE CO., LTD., *Re* MEISTER LUCIUS & BRUNING, LTD., No. 405a, *post*.

198. *Add. Annotations* :—*Consd.* Central India Mining Co. v. Soc. Coloniale Anversoise, [1920] 1 K. B. 753; *Re* Deutsche Bank (London Agency), [1921] 2 Ch. 291. *Refd.* Jebara v. Ottoman Bank, [1927] 2 K. B. 254.

198a. ———. *In* Jan. 1914, pltf. entered into a contract with defts., who were a co. incorporated under the laws of Belgium & had their registered office at Antwerp, to sell to them manganese ore deliverable in certain quantities during the second half of 1914 & the three following years alongside steamer in Bombay. *In* Sept. 1914, when the German armies were threatening Antwerp, the managing director of deft. co. removed all the co.'s goods & the money in bank to London & came himself to London, & there, without any formal authority from the co., carried on business in his own name, but for the benefit of the co. After the German occupation of Antwerp the German authorities placed the co. under compulsory administration. During the German occupation, meetings of the directors & shareholders were held at which formal business was transacted. These meetings were held so as to comply with Belgian law & to keep the co. in existence. The co. also collected & paid debts due to & owing by it in order to prevent the German authorities from winding up the co. & investing the uncalled capital in German War Loan, & with the like object it created a debt against its uncalled capital in favour of its bankers for the purpose of paying arrears of dividend on its preference shares. Pltfs. contended that the co. was an enemy, & they claimed a declaration that the contract was dissolved & was no longer binding

on them :—*Held* : pltfs. were entitled to the declaration claimed; though acts which were necessary merely for the purpose of keeping the co. in existence might not amount to "carrying on business" within the Proclamation of Sept. 14, 1915, the collection of debts & discharge of liabilities with the intention of continuing the business amounted to a "carrying on business," & constituted the co. an "enemy" within the Proclamation.—CENTRAL INDIA MINING CO. v. SOCIÉTÉ COLONIALE ANVERSOISE, [1920] 1 K. B. 753; 89 L. J. K. B. 769; 122 L. T. 451; 36 T. L. R. 88, C. A.

198b. ———. *Germany was in effective military occupation of Brussels & the greater part of Belgium at the date of an order for winding up the business carried on in this country by a German bank, of which a Belgian bank carrying on business in Brussels was an unsecured creditor* :—*Held* : the Belgian bank was a creditor who was not an enemy within Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1 (3).—*Re* DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 291; 90 L. J. Ch. 449; 126 L. T. 20; 37 T. L. R. 912; 65 Sol. Jo. 781.

198c. *Registered in allied country—Government overthrown—Non-recognition of usurping Government.*—Pltfs., an insurance co. with its registered office at Petrograd & a branch office in England, in Apr. 1917, entered into a reinsurance treaty with defts., an English insurance co., whereby pltfs. reinsured part of the risks of defts. At the end of the first year there was a balance in favour of pltfs. In an action to recover the amount of the balance defts. pleaded that as the Bolsheviks had in Nov. 1917, usurped supreme power in Russia, & as the British Govt. was carrying on warlike operations against them pltfs. were alien enemies, & that owing to the entire suspension of business in Petrograd by reason of the usurpation the basis of the contract had been destroyed :—*Held* : as the Bolshevik Govt. had not been recognised by this country as the Russian Govt., & as pltfs. had not adhered to the Bolsheviks pltfs. were not alien enemies; & as defts. with knowledge of the facts had continued to treat the contract as alive by crediting pltfs. with premiums & debiting them with losses, the Bolshevik revolution had not so destroyed the basis of the contract as to put an end to it, & pltfs. were entitled to recover.—EASTERN CARRYING INSURANCE CO. v. NATIONAL BENEFIT LIFE & PROPERTY ASSURANCE CO., LTD. (1919), 35 T. L. R. 292.

199. *Add. Citation* :—1 P. Cas. 75. *Add. Annotations* :—*Mentd.* The Abonema, The Hillerod, The Florida, The Albania, The Adjutant, [1919] P. 41; The Achilles, [1919] P. 340; *Re* Certain Craft Captured on Victoria Nyanza, [1919] P. 83; The Orteric, [1920] A. C. 724; The Vesta, etc., [1921] 1 A. C. 774; The Anichab, etc., [1922] 1 A. C. 235; Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81.

201. *Add. Annotation* :—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.

202. *Add. Annotation* :—*Consd.* Rodriguez v. Speyer, [1919] A. C. 59.

204. *Add. Annotation*:—*Consd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.

205. *Add. Annotation*:—*Consd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.

207. *Add. Annotations*:—*Refd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.

208. *Add. Citation*:—1 P. Cas. 75.

*Add. Annotations*:—*Refd. The Achilles*, [1919] P. 340; *Re Certain Craft Captured on Victoria Nyanza*, [1919] P. 83; *The Orteric*, [1920] A. C. 724; *The Vesta*, etc., [1921] 1 A. C. 774; *The Anichab*, etc., [1922] 1 A. C. 235. *Mentd. The Abonema, The Hillerod, The Florida, The Albania, The Adjutant*, [1919] P. 41; *Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81.

208a. ——— *Effect of Trading with Enemy Acts, 1914-1916*.—(1) Under the common law of England the Crown has always had &, subject to the effect of the above Acts, still has the right to seize & forfeit private property, including choses in action & equitable interests therein, found in this Kingdom belonging to subjects of an enemy State. That right has not been abandoned by desuetude. The powers conferred by the above Acts, however, are so inconsistent with the exercise of the common law right of forfeiture that that right must be treated as being thereby, at least temporarily, superseded.

(2) In order to complete the title of the Crown to property so seized an inquisition of office must be held before the conclusion of peace.—*Re FERDINAND, EX-TSAR OF BULGARIA*, [1921] 1 Ch. 107; 90 L. J. Ch. 1, C. A.

*Annotation*:—*Generally, Mentd. Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81.

209. *Add. Annotation*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59.

215a. *Treaties of Peace & consequent Orders*—What property subject to charge under—

*Right to assessment of damages in collision action*.—Before the outbreak of war, defts., the German owners of the steamship *M.*, recovered judgment against the British owners of the steamship *K.* for the amount of the damage arising out of a collision between the two vessels, & the damages were referred to the registrar & merchants for assessment. Before defts. had filed their claim in the registry the war had broken out. A few days before the Peace Treaty was ratified the claim & vouchers were filed, but by consent they were treated as having been filed after the ratification. Thereupon plffs. took out a summons for an order to set aside the filing & service of the claim & vouchers on the ground that under arts. 296 & 297 of the Treaty & Treaty of Peace Order, 1919, s. 1 (xvi & xvii), the parties had no right to litigate the claim in the registry, inasmuch as, being a debt owing to German nationals, it had to be settled through the intervention of clearing houses:—*Held*: (1) defts.' claim was not a debt but a right, which by the Peace Treaty, art. 297, was subject to the right to be retained & liquidated "in accordance with the law of the allied State . . . concerned," namely, Great Britain; (2) not being a debt, art. 296 did not apply; (3) although defts. would not be able to handle the sum awarded, there was nothing in art. 297 or in Treaty of Peace Order, s. 1 (xvii) to deprive defts. of their right to proceed to a reference, or to prevent plffs. paying money into ct. with a notice that it was in satisfaction of the claim of German subjects.—*THE MARIE GARTZ*, [1920] P. 172; 89 L. J. P. 206; 123 L. T. 680; 36 T. L. R. 417; 15 Asp. M. L. C. 98.

215b. ——— *Debt—Due to German*.—Clause 14 of the annex contained in the Sched. to Treaty of Peace Order, 1919, does not affect the rights of an individual British national to resist a claim by the Controller of the British Clearing Office to recover a debt which is admitted to be due to a German

### PART III. SECT. 2, SUB-SECT. 2.—A.

206 ii. (p. 147) For "*VAN ZYH v. PIENMAN*" read "*VAN ZIJL v. PIENMAN*."

sb. *Shares held by enemy subject—Vested in Public Trustee—Power to sell*.—*Held*: War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11 (2), which empowered the A.-G. to authorise the Public Trustee to sell shares in a co. transferred to him as being held by an alien enemy, was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4, & was within the defence power of the Commonwealth.—*BURKARD v. OAKLEY* (1918), 25 C. L. R. 422.—AUS.

so. ———— *Held*: War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11, authorised the sale of shares transferred to the Public Trustee, notwithstanding that some beneficial interest in the shares was held by a person not an enemy subject, & was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4.—*BURKARD v. OAKLEY* (1920), 27 C. L. R. 520.—AUS.

212 i. *Patent in name of alien enemy—Royalties paid by licensee during suspension of patent—Who entitled to*.—*Held*: (1) royalties paid by the licensee from the date of his licence up to the expiration of six months from the ending of the war, i.e., to Jan. 10,

1920, were not sums belonging to an enemy, & were not properly in the hands of the custodian; (2) royalties paid or to be paid after June 10, 1920, were properly paid or payable in the hands of the custodian as a debt due to an enemy.—*Re SYNTHETIC DRUG CO.*, [1925] Exch. C. R. 196.—CAN.

215 i. *Licensed to trade for limited purposes—Banking transactions*.—The London agency of a German bank, which at the outbreak of war in 1914 became an enemy, held a bill, drawn by a German subject & accepted by a Scotsman, which had been sent from Germany for collection. It had been the practice of the bank that, if bills so sent were dishonoured, no legal proceedings were taken against acceptors in Great Britain, but the bills were retransmitted to the German office so that proceedings might be taken in the German cts. against the German indorsers. Licences covering the whole period of the war were issued to the London agency, empowering it to carry on banking business under supervision, to the extent of completing current transactions, so as to make its realisable assets available to its creditors, "so far as those transactions would in ordinary course have been carried out through" the London establishment. The bill having been dishonoured on presentation, was retained by the London agency, which debited the German office with the

amount, & filed a letter, which owing to war conditions could not be sent, to the German office intimating the circumstances. In an action on the bill brought in 1922 by the Public Trustee against the Scottish acceptor:—*Held*: as an action on the bill was not a transaction that would in ordinary course have been carried out through the London agency, the licences conferred no right to sue.—*PUBLIC TRUSTEE v. DAVIDSON*, [1925] S. C. 451.—SCOT.

215 ii. Substitute this number for 215 i. in original volume.

215bi. *Treaty of Peace & consequent Orders—What property subject to charge under—"Debts"—What area*.—(1) Deposits of money with the National Trust Co. for investment in securities, repayment of which was guaranteed on dates which fell during the war; (2) not deposits in a savings bank & moneys invested with a loan co. to be withdrawn on notice & from the bank on presentment of the bank book; (3) not moneys deposited with a trust co. with instructions that all sums of capital & interest so received should be held by the co. to the credit of the owner until further advice.—*SECRETARY OF STATE OF CANADA v. NEITZKE, SECRETARY OF STATE OF CANADA v. WIEHMAYER* (1921), 68 D. L. R. 443; 62 S. C. R. 262; *varying*, 20 Exch. C. R. 219.—CAN

national, & is therefore an "enemy debt" within Treaty of Versailles & Treaty of Peace Order, 1919.—*CLEARING OFFICE CONTROLLER v. EDWARDS & CO. (BREAD STREET), LTD.*, [1923] W. N. 245.

**215c.** ———— **Trust estate—Accumulations of interest.**—*Re CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN v. CHAMBERLAIN*, No. 49c, *ante*.

**215d.** ———— *Re HALLENSTEIN HALSTED v. BLANK*, No. 237c, *post*.

**215e.** ———— **Accumulations of annuities.**—By his will a testator, who died on Jan. 14, 1916, directed his exors. to pay annuities to an Austrian & two German nationals "until he or she shall die or mortgage or otherwise charge the same . . . or until the happening of any event whereupon the same if given to him or her absolutely would no longer be received by him or her for his or her benefit." No part of the annuities could be paid to the annuitants during the war by reason of Trading with the Enemy Amendment Act, 1914 (c. 12), but accumulations were retained by the exors., as no order was made under sect. 4 of the Act vesting the annuitants' interests in the custodian:—*Held*: (1) as the Act of 1914 only suspended payments to the alien enemies & did not determine the ownership & ultimate destination of their annuities, those annuities were not forfeited *ab initio*; (2) the annuities were forfeited & determined in the case of the German nationals as from Jan. 10, 1920, by the charge imposed by the Treaty of Peace with Germany & Treaty of Peace Order, 1919, & in the case of the Austrian national as from July 16, 1920, by the charge imposed by the Treaty of Peace with Austria & Treaty of Peace (Austria) Order, 1920; (3) the accumulations of the annuities until those respective dates became subject to the charges & payable therefore to the custodian or the administrator of Austrian property as the case might be.—*Re LEVINSTEIN, LEVINSTEIN v. LEVINSTEIN*, [1921] 2 Ch. 251; 91 L. J. Ch. 32; 126 L. T. 177; 65 Sol. Jo. 767.

*Annotations*:—As to (3) *Folld. Re Chamberlain's Settlement, Chamberlain v. Chamberlain*, [1921] 2 Ch. 533; *Re Biedermann, Best v. Wertheim*, [1922] 1 Ch. 31.

**215f.** ———— *Re A testator, whose domicile was English, by his will directed his trustees to invest a certain sum in the Hamburg State Loan & from the income thereof to pay a number of annuities, &, as & when the annuities fell in, to apply the income & the capital so set free in accumulating a trust fund. That trust fund was also invested in the Hamburg State Loan. The annuitants. & those interested under the will in the trust fund, were German nationals:—Held: the interests of the beneficiaries under the will were charged under Treaty of Peace Order, 1919, as being "property, rights & interests" in the United Kingdom.—FAVORKE v. STEINKOPFF, [1922] 1 Ch. 174; sub nom. *Re STEINKOPFF, FAVORKE v. STEINKOPFF*, 91 L. J. Ch. 165; 126 L. T. 597.*

**215i.** ———— *Bearer shares & debentures in Transvaal mining company.*—*RANDFONTEIN ESTATES GOLD MINING CO., LTD. v. CUSTODIAN OF ENEMY PROPERTY*, [1923] App. D. 576.—S. AF.

**215j.** ———— *Property in Australia—Subject to restraint on anticipation.*—The words "all property, rights & interests" appearing in cl. 4 of the annex to art. 297 of the Treaty of Peace between the Allied Powers

**215g.** ———— *Under the trusts of a marriage settlement of 1903 & in the events that had happened certain infant children, German nationals, were on Jan. 10, 1920, when the Peace Treaty came into operation, entitled contingently on attaining twenty-one or marrying to an annuity of £150 a year. If neither infant attained a vested interest the annuity passed to the husband, also a German national. The annuity was secured by the covenant of the wife's parents with the trustees, all British subjects, & was payable during the lives of the surviving covenantor & the surviving child, but the trustees were not to be liable for any loss occasioned by their neglect to enforce the covenant. The infants' contingent title accrued in possession on the wife's death on July 17, 1918, but the trustees had not enforced the payment of any instalment since then. The custodian having claimed the annuity, the trustees submitted the matter to the ct. The custodian had not obtained a vesting order:—Held: both the arrears & the contingent future instalments payable after Jan. 10, 1920, were property rights or interests within Peace Treaty Order, 1919, s. 1 (xvi), &, notwithstanding the infants' personal incapacity, were caught by the charge.—*Re NEUBURGER'S SETTLEMENT, FORESHEW v. PUBLIC TRUSTEE*, [1923] 1 Ch. 508; 92 L. J. Ch. 442; 129 L. T. 735; 67 Sol. Jo. 500.*

**215h.** ———— **Accumulations of annuities.**—By his will dated Mar. 31, 1911, a testator bequeathed an annuity of £250 to an Austrian national "until he shall die or voluntarily or involuntarily alienate or encumber . . . the same." Testator died on Aug. 22, 1914, during the war. The annuity was therefore accumulated in the hands of his legal personal representative, who made the proper returns to the custodian under Trading with the Enemy Amendment Act, 1914 (c. 12), s. 3, but no vesting order was made under sect. 4. By Treaty of Peace (Austria) Order, 1920, the annuity & its accumulations were, as from July 16, 1920, charged in favour of the administrator of Austrian Property, to secure (*inter alia*) payment of debts owing by Austrian to British nationals:—*Held*: (1) the accumulations up to July 16, 1920, passed to the administrator of Austrian property; (2) the charge created by Treaty of Peace Order was not an involuntary alienation or encumbrance within the meaning of the will, so that the current annuity since July 16, 1920, was not forfeited, but was payable to the administrator of Austrian property.—*Re BIEDERMANN, BEST v. WERTHEIM*, [1922] 1 Ch. 31, 91 L. J. Ch. 105; 38 T. L. R. 37; 66 Sol. Jo. 107; on appeal, [1922] 2 Ch. 771, C. A.

**Trust estate.**—*See* Nos. 215c—

215g, *ante*.

**215i.** ———— **Shares in English company.**—*FASBENDER v. A.-G., KRAMER v. A.-G.*, No. 49d, *ante*.

**215j.** ———— **Property in England.**—A person

& Germany are wide enough to include an estate for life of a married woman, being a German national, still under coverture subject to a restraint on anticipation.—*COWPER v. FRANKENBERG* (1921), 21 S. R. N. S. W. 388.—AUS.

of dual nationality, who is a British subject by British law, having been born in England, & also a German subject by German law, is a "German national" within the Treaty of Peace with Germany, art. 297, & Treaty of Peace Order, 1919, giving effect to it, & is not entitled to have property in England belonging to him exempted from the charge created by sect. 1 (xvi) of that Order.—*KRAMER v. A.-G.*, [1923] A. C. 528; 92 L. J. Ch. 333; 129 L. T. 390; 39 T. L. R. 462; 67 Sol. Jo. 552, H. L.; *affg.* S. C. *sub nom.* *FASBENDER v. A.-G.*, *KRAMER v. A.-G.*, [1922] 2 Ch. 850, C. A.

*Annotation*:—*Refd.* *Re* Rush, *Warre v. Rush*, [1923] 1 Ch. 56.

**215k. ——— Subject to restraint on anticipation.]**—The charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi), upon all property, rights & interests in this country belonging to German nationals at the date of the coming into force of the Treaty of Versailles attaches to the interest of a married woman, who is a German national, in property in England settled upon her for life without power of anticipation, notwithstanding the restraint upon anticipation.—*PUBLIC TRUSTEE v. WOLF*, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.; *revsq.* S. C. *sub nom.* *Re RUSH, WARRE v. RUSH*, [1923] 1 Ch. 56, C. A.

*Annotations*:—*Refd.* *Re* Neuburger's Settlement, *Foreshev v. Public Trustee*, [1923] 1 Ch. 508. *Mentd.* *Morgan v. Morgan & Kirby*, [1923] P. 1; *Parr v. A. G.*, [1926] A. C. 239.

**215l. ——— Belonging to foreign bank in liquidation.]**—Pltfs. were the receivers of the Austro-Hungarian Bank appointed by the Reparations Commission under Treaty of Peace with Austria, art. 206, & entrusted with the duty of liquidating the bank for the purpose of distributing the liability on the currency notes of the bank among the several States among which the territory of the former Austro-Hungarian monarchy had been divided. Art. 249 of that Treaty provided that "subject to any contrary stipulation" in the Treaty, the British Govt. might retain & liquidate the property in this country of "nationals of the former Austrian Empire" which expression, as the ct. found, included the Austro-Hungarian Bank, & charge it with the payment of claims by British nationals in respect of (*inter alia*) debts due to them by Austrian nationals. By the same article Austria undertook to compensate her own nationals for the retention of & charge upon their property. Defts. were the custodian of enemy property in this country & the administrator appointed by Order in Council to liquidate the property of Austrian nationals in this country & administer the above-mentioned charge. Pltfs. claimed that art. 206 was a "contrary stipulation" within art. 249, that the property of the bank in this country was consequently not subject to the charge, & that they & not defts. were entitled to administer that property:—*Held*: there was no inconsistency between the two articles, which dealt with different subject matters, the only effect of art. 249 upon the liquidation

under art. 206 being to replace the assets of Austrian nationals in this country by assets of equal value in Austria if the Austrian Govt. carried out its undertaking, & the action must be dismissed.—*LUXARDO v. PUBLIC TRUSTEE*, [1924] 2 Ch. 147; 93 L. J. Ch. 425; 131 L. T. 200; 40 T. L. R. 546; 68 Sol. Jo. 737, C. A.

**215m. ——— Policy money—Payable in England.]**—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London, & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law. In an action to determine whether the policy moneys payable under the policies in question, which had matured on or before Jan. 10, 1920, the date when the Treaty of Peace with Germany came into force, were "property, rights & interests within His Majesty's Dominions" belonging to German nationals, & as such were subject to the charge created by Treaty of Peace Order, 1919, s. 1 (xvi):—*Held*: (1) there was nothing in art. 299 of s. V. of the Peace Treaty, or in par. 11 of the annex thereto, to indicate that the property, rights, & interests of the assured under such contracts were to be excluded from the general charge under par. 4 of the annex to s. IV.; (2) inasmuch as a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places being subject to the jurisdiction of the cts., it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable. Applying that test in the present case, the debts were recoverable in London where they were expressed to be payable, & that being so, they were situate within His Majesty's Dominions & became subject to the charge.—*NEW YORK LIFE INSURANCE CO. v. PUBLIC TRUSTEE*, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

*Annotations*:—*As to* (2) *Refd.* *Svedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**215n. ——— Share of enemy partner in firm.]**—So far as English law is concerned one partner in a firm who purchases the share of an enemy partner therein during hostilities

*sd.* ——— *Rights of German nationals in testator's undisposed of property.]*—The rights of German nationals in testator's property undisposed of by his will are subject to the charge created by Regulations of Jan.

28, 1920, par. 20 (1).—*Re MITCHNER*, [1922] St. R. Qd. 39.—*AUS.*

*se.* ——— *Administration of trusts in Germany.]*—*Re MITCHNER, UNION TRUSTEE CO. OF AUSTRALIA, LTD. v. A.-G. FOR COMMONWEALTH OF*

*AUSTRALIA*, [1927] S. R. Q. 279.—*AUS.*  
*sf.* ——— *Rights acquired under vesting orders made under Trading with Enemy Acts not affected.]*—*SECRETARY OF STATE OF CANADA v. GREENSHIELDS, LTD.*, [1925] Exch. C. B. 29.—*CAN.*

acquires no fresh right & has no fresh remedy as a result of such purchase. Such enemy's interest in the concern still falls within the category of "property, rights, & interests" subject to the charge created by Treaty of Peace Order, s. 1 (xvi) for the purpose of giving effect to art. 297, & by Treaty of Peace Orders, s. 1 (xvii) (ccc) is payable to the administrator of German property.—*FRIED v. GERMAN PROPERTY ADMINISTRATOR*, [1925] Ch. 757; 95 L. J. Ch. 4; 134 L. T. 376; 69 Sol. Jo. 707.

**215o. — Joint decisions of Clearing Offices—Effect.]**—In 1913 defts. had entered into contracts with German sellers for the purchase of a quantity of nitrate, delivery of which was to be made to defts.' agent alongside the vessel at Iquique, & payment for which was to be made in London after presentation of bills of lading. Several cargoes were shipped, but war broke out before the vessels arrived at their destination & before the bills of lading, which were made out to order, could be presented. In these circumstances defts. procured delivery to their sub-purchasers by giving an indemnity to the ships, & presumably received payment for the nitrate from their sub-purchasers. After an interval the German sellers duly notified their claim for the price of the nitrate & for interest to the German clearing office, which in turn passed it on to the British clearing office. Defts. were prepared to pay what the Germans claimed as the price of the goods, though they disputed the existence of any debt, either in the strict legal sense or in the sense in which the expression is used in Treaty of Peace, art. 296, & they disputed the claim for interest. As the Treaty only contemplated the admission of debts, & defts. were prepared to pay the amount claimed as the price of the goods, the British clearing office admitted the debt, & the principal money was cleared in 1923. At a later period the claim for interest was again put forward. This claim defts. still disputed, but the two clearing offices arrived at a joint decision that interest was payable upon the principal sum admitted by the British clearing office. Notice of the decision was conveyed to defts. in a letter dated Sept. 13, 1923. The decision took the form of an intimation that the British & German clearing offices had jointly agreed that interest in accordance with par. 22 of the annex to sect. III. of Part X. of the Treaty was payable upon the admitted debt at the rate of 5 per cent. *per annum* calculated from dates specified. The notice then continued as follows: "In default of a notice of appeal under r. 22 of the Rules of Procedure of the Anglo-German Mixed Arbitral Tribunal, the interest on the said sum of . . . at the rate of 5 per cent. from (the date named) to the date of crediting & advice to the German clearing office will be credited by the British clearing office to the German clearing office." No appeal was brought, & after the expiry of the time for appealing, *pltf.*, the controller of the British clearing office, sought to enforce this joint decision by action on the ground that a joint decision unappealed from should, on a true construction of the Peace Treaty, be regarded in the same light as if it was a foreign judgment, or the award of an arbitrator, & should, therefore, be enforced by the

cts. of this country on the same principle as either a foreign judgment or an award is enforced:—*Held*: under Treaty of Peace, art. 296, as carried out by Treaty of Peace Act, 1919, & Treaty of Peace Order, 1919, the joint decisions of the clearing offices were not in the nature of judgments or of awards under an *arbitr.*, so as themselves to be enforceable by action, & therefore the action failed.—*CLEARING OFFICE CONTROLLER v. WEIR & Co.* (1925), 95 L. J. K. B. 88; 133 L. T. 701; 41 T. L. R. 603; 69 Sol. Jo. 809; 22 Lloyd, L. R. 280, C. A.; *affd.* (1926), 135 L. T. 705; 42 T. L. R. 697, H. L.

**215p. — Action against administrator—Whether Attorney-General necessary party.]**—The A.-G. is not a necessary party to an action against the administrator of Hungarian property in which the substantial claim was against the fund, & a subsidiary claim for a declaration as to nationality was added.—*GROEBEL v. HUNGARIAN PROPERTY ADMINISTRATOR* (1925), 70 Sol. Jo. 345.

**219. Citations:—**For "*Re HEGELBERG*" read "*Re HAGEBERG*."

**219a. — — — — —.]**—The controller of the London agency of an enemy bank appointed under the above Act ought not in the absence of special circumstances to pay (1) non-enemy holders of cheques drawn before or after the outbreak of war by enemy customers; (2) non-enemy holders of cheques drawn before or after the outbreak of war by non-enemy customers; (3) pre-war acceptances of customers, whether enemy or non-enemy, of the London branch, or of other persons domiciled for payment at the London branch.

(4) Where cheques are drawn by the head office or any enemy branch on the London branch payable to non-enemy persons, claims in respect thereof must not be met without the direction of the judge.—*Re DRESNER BANK (LONDON AGENCY)* (1920), 64 Sol. Jo. 426.

**219b. — — — — — Effect of Treaty of Peace.]**—(1) The provision contained in sect. 1 (3) of the above Act continues in force after the coming into operation of the Treaty of Peace of June 28, 1919.

(2) The date at which the enemy or non-enemy character of creditors is to be determined is the date of the winding-up order.—*Re DEUTSCHE BANK (LONDON AGENCY)*, [1921] 2 Ch. 30; 90 L. J. Ch. 406; 126 L. T. 20; 37 T. L. R. 559; 65 Sol. Jo. 492; *subsequent proceedings*, [1921] 2 Ch. 291.

**219c. — — — — — Who are creditors.]**—On the outbreak of war three enemy banks in the City were closed, but were afterwards reopened under licence. Ultimately the Board of Trade made orders under the above Act winding up the businesses, & a controller was appointed for that purpose. The controller gave the managers notice purporting to terminate their contracts under which they were entitled to a year's notice, & the contracts being subject to German law were not determined by the outbreak of war. The managers took out summonses claiming payment of their salary monthly after the date of the notice, or damages for wrongful dismissal:—*Held*: the claims for salary & for damages were not debts of a London business payable under the above Act, & the applica-



tions failed.—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, [1920] 1 Ch. 69; 89 L. J. Ch. 86; 121 L. T. 640; 35 T. L. R. 736.

*Annotation*.—*Consd.* *Re* Vulcaan Coal Co., *Harrison v. Harbottle*, [1922] 2 Ch. 60.

220. *Add. Annotations*.—*Consd.* *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421. *Refd.* *Re* Vulcaan Coal Co., *Harrison v. Harbottle*, [1922] 2 Ch. 60.

221. *Add. Annotations*.—*Refd.* *Re* Dieckmann (1917), 117 L. T. 713; *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

221a. ——— *Liability of third party to put business in funds to meet bills.*—In June, 1914, debts, by their Paris branch, drew ten bills of exchange, payable in London three months after date, on the Dresdner Bank. The Dresdner Bank accepted the bills at their London branch & received as security Russian promissory notes. Debts, provided no funds to meet the bills when they fell due &, under an arrangement between the Treasury & the Bank of England, the amount payable was discharged by the Bank of England. By 1917 the Dresdner Bank in London had repaid the sum due for principal & interest to the Bank of England. In 1918 the Board of Trade, under the above Act, ordered the business carried on by the Dresdner Bank in London to be wound up, & appointed a controller to wind up the business, with power to collect all moneys owing to the bank & to bring actions in the name of the bank.—*Held*: (1) the transaction was part of the "business" of the London branch of the Dresdner Bank; debts' liability to put the Dresdner Bank in funds to meet the bills was an asset of the London branch within the above sect., even if the London branch accepted the bills on the instructions of the head office in Berlin & debited the current account of the head office with the amount paid on the bills, & debts, were liable to repay pliffs. the money paid by them to the Bank of England in respect of the bills with simple interest at 5 per cent. on each instalment from the date of payment; (2) the action by the controller in the name of the Dresdner Bank (London Agency) was not an action in the name of a branch of that bank but an action in the name of the Dresdner Bank, & the addition of the words "London Agency," being merely descriptive, did not change pliffs. from being the Dresdner Bank into something unknown to the law as a legal person.—*DRESDNER BANK v. RUSSO-ASIATIC BANK*, [1923] 1 Ch. 209; 92 L. J. Ch. 204; 128 L. T. 633; 67 Sol. Jo. 277.

*Annotation*.—*Generally*, *Mentd.* *Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse*, [1923] 2 K. B. 630.

222. *Add. Annotation*.—*Refd.* *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

PART III. SECT. 2, SUB-SECT. 2.—  
B. (a).

223 i. *Amending Act of 1916, s. 1*—*Business ordered to be wound up*—*Sale of stock*—*Rights of consignors of stock supplied on sale or return.*—The business of an alien enemy bookseller was ordered to be wound up, upon application by the controller under the above sect.:—*Held*: he was entitled to sell the whole stock, but if there were identifiable consignments of unsold

stock on sale or return from persons with whom he could communicate, he must return or store them at consignors' expense.—*Re* THOMSON, *Ex p. McINTOCK*, [1918] 1 S. L. T. 137.—SCOT.

*sj. Trading with Enemy Acts, 1914*—*1916*—*Business ordered to be wound up*—*Power of controller to apply.*—*Held*: s. 9H of the 1914-16 Acts authorised the Minister for Trade & Customs to confer upon a controller

223. *Add. Annotations*.—*Refd.* *Re* Vulcaan Coal Co., *Harrison v. Harbottle*, [1922] 2 Ch. 60; *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

223a. ——— *Action in name of business*—*Addition of words "London Agency."*—*DRESDNER BANK v. RUSSO-ASIATIC BANK*, No. 221a, *ante*.

223b. ——— *After Treaty of Peace.*—The Treaty of Peace with Germany, art. 296, which declared that enemy debts as therein defined were to be settled through clearing offices to be established after the treaty came into operation, & the annex to that article, are qualified by art. 297, & the latter article & its annex cannot be construed as limited to a confirmation of what has been done under "exceptional war measures" prior to the coming into force of the Treaty, but must be held to validate all acts & procedure done thereafter in the execution of such exceptional war measures.

Where an action was brought four months after the coming into force of the Treaty of Peace by the controller with the sanction of the Board of Trade, in the name of enemy subjects formerly carrying on business in London, to recover assets of the business alleged to be in the hands of debt.:—*Held*: the action was properly brought; & a motion by debt. to stay the proceeding on the ground that it was prohibited by the Treaty of Peace was dismissed.—*MEYER & Co. v. FABER*, [1921] 2 Ch. 226; 91 L. J. Ch. 233; 125 L. T. 531.

223c. ——— *General position of controller.*—*Re* VULCAAN COAL CO., *HARRISON v. HARBOTTLE*, No. 223f, *post*.

223d. ——— *]*—At the outbreak of war in 1914, a British subject, resident in England, & three German subjects, resident in Germany, were carrying on business in partnership in London. The outbreak of war having dissolved the partnership, the British partner with the sanction of the Home Office proceeded to wind up the business. He got in a large sum of money, representing assets of the business, & discharged nearly all the liabilities, & had a balance in hand. The controller, appointed in 1918 under Trading with the Enemy Acts, 1916 (c. 105) & 1918 the name of the

British partner for the balance. Debt. contended that he had himself claims against the business, & that he was entitled to the taking of partnership accounts to ascertain those claims before paying over the assets:—*Held*: under the Acts, the controller had not the powers of a trustee in bkpcy., his outside powers being those of a liquidator in a voluntary winding up, & he could not therefore override the ordinary law of partnership which entitled debt. to the taking of accounts between himself & the other partners.—*MEYER & Co. v. FABER*

powers under which the right of that controller to apply to the High Ct. was not to be measured by the standard laid down with regard to similar applications by a liquidator.—*BROKEN HILL v. WARNOCK* (1922), 30 C. L. R. 362.—AUS.

*sk. Enemy Trading Act, X of 1916*—*Business ordered to be wound up*—*Powers of controller.*—*WOLF v. DADYBA* (1919), 1 L. R. 44 Bom. 631.—IND.



(No. 2), [1923] 2 Ch. 421; 93 L. J. Ch. 17; 129 L. T. 490; 39 T. L. R. 550; *sub nom.* MEYER & Co. v. FABER, MEYER & Co. v. ELDER, 67 Sol. Jo. 576, C. A.

**223e.** ——— Dismissal of manager by controller.—**Claim by manager for salary & damages for wrongful dismissal.**—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, No. 219c, *ante*.

**223f.** ——— Claim by manager to retain money as against controller.—A controller appointed by the Board of Trade under sect. 1 (1) of the above Act to wind up the English business of an enemy co. or firm, does not represent the co. or firm. His duties are to get in the assets & discharge the liabilities of the business.

By an agreement, dated Mar. 28, 1913, H. was engaged as manager of the Newcastle branch of a German co. registered in Holland until June 30, 1918, at a salary of not less than £1,000 *per annum*. On Aug. 14, 1916, the Board of Trade made an order to wind up the business & appointed a controller under sect. 1 (1) of the above Act. On Aug. 31, 1916, the controller dispensed with the services of H. At that date H. had in his possession certain moneys of the business, which he claimed to retain, as against the controller, to satisfy his claim for damages for breach by the co. of the agreement:—*Held*: the claim was against the co., & not against the business, & H. was not entitled to retain the moneys as against the controller.—*Re* VULCAAN COAL CO., HARRISON v. HARBOTTLE, [1922] 2 Ch. 60; 91 L. J. Ch. 491; 127 L. T. 274; 66 Sol. Jo. 423.

*Annotation*:—*Dbtd.* *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

**223g.** ——— Sale of business by controller—

#### PART III. SECT. 2, SUB-SECT. 2.— B. (b).

**230 ii.** ——— *Proof of enemy's interest in property.*—A British subject applied to the ct. to make a vesting order vesting in the custodian for Scotland a ship & £20,000, the freight earned by the ship while under requisition of the Admirty. He averred that the enemy firm, & the two partners thereof, were "the owners or at least part-owners of the" ship:—*Held*: appct. had failed to aver a sufficient interest of the enemy firm & its partners in the ship to make s. 4 (1) of the above Act applicable.—BURRELL v. MAASHAVEN S.S. CO., LTD. (1919), 56 Sc. L. R. 434.—SCOT.

**230 iii.** ——— *Instalments of purchase price of ship—Paid to builder by enemy—Ship requisitioned by Admiralty.*—Scottish shipbuilders contracted to build a ship for Austrian shipowners. On the declaration of war between Great Britain & Austria the vessel was nearing completion, & the purchasers had paid instalments of the price amounting to £79,732. On Feb. 17, 1915, the Admirty. requisitioned the ship as she then stood at the price of £86,000, but it was not until July 30, 1917, that the Admirty. paid the builders that sum, & they refused to pay any interest from the date of requisition. On Dec. 1, 1917, the Board of Trade pronounced an order vesting the sum of £79,732, with interest from the date of receipt of the instalments, in the custodian for Scotland under the above Act:—*Held*: the custodian was entitled to decree for £79,732 with interest from the date of the interlocutor of the First Division.—PENNEY v. CLYDE,

[1923] S. C. (H. L.) 68.—SCOT.

**31. War Measures Act, 1914 (c. 2)**—*What property can be vested—Trust funds—Agreement by beneficiaries as to disposition of fund.*—By the will of W., a citizen of the United States, who died in 1916 resident there, the residue of his estate was given to a trustee for the sole use & benefit of the wife & daughter, share & share alike. His daughter was married to a German national, & was residing in Germany at the time of her father's death. W.'s widow was a citizen of the United States. Early in 1917, an agreement was made by the trustee & the wife & daughter, pursuant to clause 11 of the will, by which, in effect, it was agreed that the whole of the assets in Ontario should be allocated to the widow. In May, 1919, an application was made to the ct., by the Secretary of State for Canada, for an order vesting in the custodian appointed under Consolidated Orders respecting Trading with the Enemy, 1916, one-half of the assets situated in Ontario of the estate of W., on the ground that the said half belonged to or was held or managed for or on behalf of W.'s daughter, who was an enemy. The motion was made under Consolidated Order 28, which was passed pursuant to the above Act:—*Held*: it was appropriate & expedient to make the order asked for.—*Re* WALKER (1919), 46 O. L. R. 86; 16 O. W. N. 328.—CAN.

**234 i.** For "234 i" read "236 i."

**32. Trading with Enemy Acts, 1914–1916—Powers & duties of custodian—Payment of mortgage debt—Form of order—Costs.**—Where, under

**Damages for breach of contract.**—At the outbreak of war the majority of the shares in M. Co., carrying on business in the United Kingdom, were held by, & the majority of the directors were, alien enemies. A controller of the co. was appointed. By the appointment of new directors the co. came under British management. In Dec. 1915, M. Co. agreed to sell, & F. Co. to buy, the whole output of M. Co. until six months after the declaration of peace between England & Germany. In 1919 the Board of Trade, under the above Act, ordered the business of M. Co. to be wound up & the controller sold the business:—*Held*: although at the outbreak of war M. Co. became an alien enemy, yet its business could be lawfully carried on under new non-enemy management even if enemy shareholders might after the war benefit by such trading, & although it was in consequence of the winding-up order that M. Co. was unable to carry out its contract, it was liable in damages to F. Co. for breach of contract.—*Re* BRITISH INCANDESCENT MANTLE WORKS, LTD. (1923), 129 L. T. 126; 39 T. L. R. 244; 67 Sol. Jo. 517.

**224. Add. Annotations:**—*Re* *Id.* *Re* Vulcaan Coal Co., Harrison v. Harbottle, [1922] 2 Ch. 60; Meyer v. Faber (No. 2), [1923] 2 Ch. 421.

**226. Add. Citation:**—[1917] H. B. R. 243.

**235a.** ——— To wind up partnership—**Parties.**—At the outbreak of war three German subjects were carrying on business in London in co-partnership with F., their English partner. Under the partnership articles F. was the managing partner in London, & on the dissolution by the declaration of war he carried on the business & collected the assets with the view of liquidation. No accounts had been taken between

s. 9 D (2) of the 1914–16 Acts the Public Trustee is authorised to pay out of the property paid to him in respect of an enemy subject a mtge. debt & interest due by him, the order should provide that the mtgee. should execute a proper discharge of the mtge. & deliver up upon oath to the Public Trustee all titles & other documents relating to the land mortgaged. The costs of a motion for an order under sect. 9 D (2), of the Public Trustee & of the enemy subject were allowed out of the property in the hands of the Public Trustee. Form of order stated.—*Re* SCHURR (1920), 27 C. L. R. 442.—AUS.

**33. Recovery of enemy debt—Effect of Treaty of Peace & subsequent Orders.**—Before the war, F., a German firm, sent to W. Co. in Canada goods on consignment for sale on commission. During the war W. Co. sold the goods & shortly afterwards, sold its assets to C. Co. which assumed W. Co.'s liabilities, including the liability to F. In June, 1920, C. Co., having notice of competing claims by F. & its sequestrator in France, for the amount of said liability, applied for & obtained from the master in chambers, in the Supreme Ct. of Ontario, an order for the payment of the amount into ct. In November, 1925, P., as attorney for F., & the Custodian of Alien Enemy Property each applied for payment to himself of the money in ct.:—*Held*: the Custodian was entitled to the money; it represented an enemy "debt" owing by a debtor in Canada & recoverable by the Custodian under the regulations of Treaty of Peace (Germany) Order, 1920, Part I.—CUSTODIAN OF ALIEN ENEMY PROPERTY v. PAS-SAVANT, [1925] 3 D. L. R. 5; [1928] S. C. R. 242.—CAN.

the partners since Dec. 31, 1913. F. died in 1920, & deft. was his legal personal representative. By an order of the Board of Trade it was ordered that all the property, rights, & interests of the three German partners in the assets of the firm in respect of any claim against the English partner, or his estate, should vest in pltf., who should take all necessary proceedings to collect what might be due to the German partners. In an action by pltf. as custodian of enemy property with the object of winding up the partnership he claimed an account against deft. of all dealings between the German partners & the English partner, including all dealings with the partnership assets since the dissolution, payment of what should be found due, & an inquiry of what the partnership property consisted. The German partners were not added as pltf. in the action:—*Held*: in the absence of the German partners as parties to the action no such relief as was asked could be granted, & the action failed.—*PUBLIC TRUSTEE v. ELDER*, [1926] Ch. 776; 95 L. J. Ch. 519; 135 L. T. 589, C. A.

236. *Add. Annotation*:—*Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

236a. ——— *Effect of Treaty of Peace & consequent Orders*.—By Treaty of Peace Act, 1919 (c. 33), Treaty of Peace Order, & the Treaty of Peace with Germany, the power conferred by Trading with the Enemy Amendment Act, 1914 (c. 12), s. 5 (2), on the ct. to authorise the custodian to pay out of property paid to him in respect of an enemy debts due by that enemy, has, so far as concerns pre-war debts due by German nationals to British nationals, come to an end. Payment of such debts can now be made only through the clearing office established under s. III. of Part X. of the Treaty.—*Re NIERHAUS*, [1921] 1 Ch. 269; 91 L. J. Ch. 107; 36 T. L. R. 425; 64 Sol. Jo. 426.

*Annotation*:—*Re* National Bank für Deutschland, *Re* Anglo-Austrian Bank, [1921] 1 Ch. 284.

236b. ——— *At the outbreak of war a debt was due from a German bank to the London agency of an Austrian bank. Vesting orders were made, under which the property in England of the German bank was vested in the custodian. An order had been made, under which the business of the London agency was wound up & a controller appointed. The controller applied to the ct. to give directions under the powers conferred by sect. 5 (1) or (2) of the above Act that the debt should be paid out of the property vested in the custodian:—Held*: even if the power still subsisted under those subjects. to direct such payment to persons who were not British nationals under the Treaty of Peace, such power was discretionary & the ct. would not exercise it, except in very special circumstances, but would leave such debts to be dealt with under the Order in Council to be made at the termination of the war under sect. 5 (1) of the Act.—*Re NATIONAL BANK FÜR DEUTSCHLAND, Re ANGLO-AUSTRIAN BANK*, [1921] 1 Ch. 284; 90 L. J. Ch. 15; 123 L. T. 647.

237. *Add. Annotation*:—*Folld. Dresdner Bank v. Russo-Asiatic Bank*, [1923] 1 Ch. 209.

237a. ——— *Release of funds in favour of British creditors—Mode of distribution*.—

Funds were released by the custodian of enemy assets in this country from his charge upon them under the Treaty of Peace Orders, the release being expressly limited in favour of creditors of British nationality. There were no German creditors, but there were some foreign creditors. Upon the trustee's application for directions:—*Held*: the ct. would direct the funds to be distributed according to Bkpcy. Act, 1914 (c. 59), but would give the custodian an opportunity of being heard, if he so wished, before the order was drawn up.—*Re WISEMANN, Ex p. TRUSTEE* (1923), 92 L. J. Ch. 349; [1923] B. & C. R. 28.

237b. ——— *Right to dividends—On shares held by alien enemies*.—An English co. had certain alien enemy shareholders & certain assets in Germany. From time to time after the outbreak of the war with Germany, resolutions were passed by the directors & by the co. in general meeting declaring *interim* & final dividends respectively, subject in each case to a condition that as regards members of the co. resident in Germany, Austria & Turkey, the dividend should be payable only out of assets in Germany, & as regards members resident elsewhere out of assets in England. By an order made on Aug. 24, 1916, under sect. 4 (1) of the above Act, it was ordered that the right to transfer the shares held by alien enemies & to receive any dividends "now due & to accrue due thereon" vested in the custodian, & the shares were transferred into his name in due course:—*Held*: the resolutions, so far as they provided for payment only out of assets in Germany, were void as against the custodian, & the co. was liable out of any assets in its hands to pay him the amounts of the dividends, whether declared before or after the vesting order.—*ARAMAYO FRANCKE MINES, LTD. v. PUBLIC TRUSTEE*, [1922] 2 A. C. 406; 91 L. J. Ch. 643; 127 L. T. 861; 38 T. L. R. 756; 66 Sol. Jo. 611, H. L.; *affg.* S. C. *sub nom. Re ARAMAYO FRANCKE MINES, LTD.*, [1921] 1 Ch. 675, C. A.

237c. ——— *Part of trust income—Payable to enemy*.—(1) *Held*: sect. 2 (1) of the above Act related only to moneys payable under contractual obligations arising out of loans, partnership or membership of a co., & not to trust income payable by trustees to an enemy even when the income was derived from dividends on shares.

(2) By his will a testator, who died in 1904, bequeathed his estate upon trusts whereby the residue & the proceeds of sale thereof were to go in equal shares to his children; & he directed his trustees to retain the share of each of his daughters upon trust during the life of the daughter to pay the annual income to her for her separate use without power of anticipation & until she should do or suffer any act or thing whereby the same, if payable to her absolutely or any part thereof, might have become payable or forfeited to or vested in any other person. In the event of a forfeiture under this provision the income was given upon a discretionary trust during the remainder of the life of the daughter, & subject thereto the daughter's share was to be held in trust for her children & issue as therein mentioned.

One of the testator's daughters had intermarried with a German in 1908, & had since resided in Germany. Since the coming into force of the above Act, the trustees had accumulated the income of her share, which amounted on Jan. 10, 1920, the date of the ratification of the Treaty of Peace with Germany, to about £4,000:—*Held*: the daughter's life interest was not determined on the coming into force of the above Act, but ceased on Jan. 10, 1920, by reason of the Treaty of Peace charge, & the accumulations of income up to that date were subject to the charge.—*Re HALLENSTEIN, HALSTED v. BLANK*, [1922] 1 Ch. 355; 91 L. J. Ch. 420; 127 L. T. 58; 38 T. L. R. 313; 66 Sol. Jo. 299.

**237d. — Liability of custodian for super tax.**—Property belonging to an enemy which is paid to or vested in the custodian under the above Act is, pending its disposition by Order in Council after the termination of the war, removed from the control & beneficial ownership of the enemy. During the interval the beneficial ownership is in statutory suspense or abeyance, the custodian having meanwhile limited powers of dealing with the property.

When war broke out in 1914, M., an enemy within the Act, owned real estate in England & shares & securities in British cos. By orders under sect. 4 of the Act the real estate, shares & securities were vested in the custodian. The Special Comrs. for Income Tax assessed the custodian to super tax as agent or receiver for M. The custodian disputed the legality of the assessment:—*Held*: (1) M.'s beneficial ownership of the property having ceased on the making of the vesting orders, the profits & gains received by the custodian were received by him in respect of M., but did not in his hands belong to M.; he did not receive or hold them as agent or receiver or trustee for M. within 5 & 6 Vict. c. 35, s. 41, & therefore, he was not liable to be assessed to super tax; (2) as M. could not, after the war, ask to receive back the property except on the footing that a sum equal to the amount of super tax which, but for the war, he would have been liable to pay was paid, the custodian must, under the discretion given to the ct. by sect. 5 (1) of the Act of 1914, pay that sum to the Comrs. as analogous to payment of a debt sect. 5 (2).—*Re MUNSTER*, [1920] 1 Ch. 208; 89 L. J. Ch. 138; 36 T. L. R. 173; 64 Sol. Jo. 309.

*Annotation*:—As to (1) *Refd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.

### PART III. SECT. 2, SUB-SECT. 3.—A.

**250 vii. — Plaintiff compelled to sue to establish caveat.**—An alien enemy, unless he be within the realm by the licence of the King, cannot sue in our cts. either by himself or by any person on his behalf until peace is restored.

Where a municipality, having sold land for taxes, serves notice on the owner to take proceedings on a caveat, thereby compelling him to proceed to establish it, the owner, if an alien enemy, should be treated, to some extent at least, as in the position of an alien enemy who is left to an action. Therefore the action should not be dismissed on the ground that plff. is an alien enemy, for therefrom a discharge of an order continuing the

caveat & a discharge of the caveat would follow.—*REVENTLOW-CRIMMIL v. STREAMSTOWN RURAL MUNICIPALITY*, No. 511, [1917] 3 W. W. R. 546; 37 D. L. R. 394; *affd.*, [1920] 1 W. W. R. 578; 52 D. L. R. 266; 15 Alta. L. R. 204.—CAN.

**250 viii. —**—[An alien enemy cannot enforce civil rights in a British ct. during the period of hostilities.—*SIBISI v. HERMANSBERG MISSION SOCIETY* (1916), 37 N. L. R. 409.—S. AF.

**256 i.** For "Proclamation of August 13, 1914" read "Proclamation of August 15, 1914."

**256 iv. —**—[An alien resident in Ontario, although his country is at war with ours, so long as he conducts himself peaceably, & is

**239a. — Application to court—Rectification of register of shareholders.**—Shares belonging to an alien enemy were after the declaration of war vested in the Public Trustee & sold by him. A four-day order was obtained, directing the co. to rectify the register of members, but that order was not complied with. The solrs. to the co. stated in correspondence they had the books of the co., but that all the directors & secretary had resigned:—*Held*: the Public Trustee was entitled to an order to carry out the transfer of the shares.—*Re MANIHOT RUBBER PLANTATIONS, LTD.* (1919), 63 Sol. Jo. 827.

**240. Add. Citation**:—[1918–19] B. & C. R. 171. *Add. Annotations*:—*Refd. Meyer v. Faber* (No. 2), [1923] 2 Ch. 421. *Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.

**241. Add. Annotations**:—*Consd. Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Re Deutsche Bank (London Agency)*, [1921] 2 Ch. 291. *Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.

**250. Add. Annotations**:—*Mentd. Markwald v. A.-G.*, [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *The Tervaele* (1922), 128 L. T. 176.

**253. Add. Annotations**:—*Consd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

**254. Add. Annotations**:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59; *Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107. *Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262; *Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.

**256. Add. Annotations**:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.

**257. Add. Annotation**:—As to (2) *Refd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

**259. Add. Annotations**:—*Folld. Krauss v. Krauss & Orbach* (1919), 35 T. L. R. 637. *Refd. Procurator in Egypt v. Deutsches Kohlen Depot Gesellschaft*, [1919] A. C. 291.

**260. Add. Annotations**:—*Refd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513. *Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

**261. Add. Annotation**:—*Refd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

**261a. — Suit for dissolution of marriage.**—An alien enemy, who has been registered as such & is domiciled in England, has a right

within the above Proclamation, is entitled to bring & maintain an action in any ct. in Ontario.—*KRISTO v. HOLLINGER CONSOLIDATED GOLD MINES, LTD.* (1918), 41 O. L. R. 51; 13 O. W. N. 206.—CAN.

**256 v. —**—[*Christian Armenian*.]—The cts. of the province of Quebec are open to a Christian Armenian specially exempted under Order in Council of Nov. 20, 1914.—*SAP v. L'ICARD* (1919), 20 Q. P. R. 179.—CAN.

**1 i. Action under Families Compensation Act.**—An action brought under the above Act, for the benefit of the mother of deceased, she being an alien enemy, cannot be maintained.—*CREMIDAS v. BRITISH COLUMBIA ELECTRIC RY. CO.*, [1919] 2 W. W. R. 549.—CAN.

**3041. Proceedings by partnership—Enemy partners.]**—If one of the partners in a firm is an alien enemy, neither he nor his partner, who does not bear an enemy character, can recover money owing to the firm.—**Haji Ah Jon v. Abdul Jalil Khan (1920).** I. L. R. 1 Lah. 276.—**IND.**

316. *Add. Annotations*:—*As to* (1) *Refd. Rodriguez v. Speyer*, [1919] A. C. 59. *As to* (2) *Consd. Rodriguez v. Speyer*, [1919] A. C. 59.
318. *Add. Annotation*:—*Refd. Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753.
320. *Add. Annotation*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59.
322. *Add. Annotation*:—*As to* (1) *Refd. Rodriguez v. Speyer*, [1919] A. C. 59.
329. *Add. Annotation*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59.

## Part IV.—Trading and Communicating with the Enemy.

332. *Add. Annotations*:—*Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *Mentd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Sargant v. Paterson* (1923), 129 L. T. 471; *Akt. Reidar v. Arcos* (1926), 42 T. L. R. 737.
337. *Add. Annotation*:—*Mentd. The Prins der Nederlanden*, [1921] 1 A. C. 754.
346. *Add. Annotation*:—*Mentd. The Regina d'Italia*, [1925] P. 123.
347. *Add. Annotation*:—*Consd. Casdagli v. Casdagli*, [1919] A. C. 145.
351. After the words "was void" at the end of the paragraph in original volume add "*; (2) in the circumstances the indorsement to pltf. conveyed to him a legal title in the bills, on which he might sue after the return of peace.*"  
*Add. Annotation*:—*Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.
357. *Add. Annotation*:—*Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.
359. *Add. Annotations*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
360. *Add. Annotations*:—*Mentd. Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
363. *Add. Annotation*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59.
370. *Add. Annotation*:—*Refd. Casdagli v. Casdagli*, [1919] A. C. 145.
371. *Add. Annotations*:—*Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *Mentd. Sargant v. Paterson* (1923), 129 L. T. 471; *Akt. Reidar v. Arcos* (1926), 42 T. L. R. 737.
374. *Add. Citation*:—13 Asp. M. L. C. 484.
376. *Add. Annotation*:—*As to* (1) *Refd. The Ambatielos, The Cephalonia*, [1923] P. 68.
379. *Add. Annotation*:—*Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
383. *Add. Annotation*:—*Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
386. *Add. Annotation*:—*Generally. Mentd. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.
391. *Add. Annotation*:—*Mentd. Rodriguez v. Speyer*, [1919] A. C. 59.
392. *Add. Citation*:—1 Br. & Col. Pr. Cas. 605.  
*Add. Annotation*:—*Mentd. Casdagli v. Casdagli*, [1919] A. C. 145.
- 392a. "Proc. A," par. 7—Goods sent to enemy agent for sale.—Applicants, who were Ottoman subjects carrying on business in England, in Sept. & Nov. 1915 posted to their agent, an Austrian subject, at Shanghai packets of diamonds for sale on their behalf. The diamonds were returned to England by the postal authorities & were seized in the Postal Censor's office in Nov. 1917. They were condemned on the ground that the transaction was a trading with the enemy:—*Held*: the diamonds were properly condemned, since under Trading with the Enemy (China, Siam, Persia & Morocco) Proclamation, 1915, applicants' agent was for the purpose of "Proc. A," an "enemy" & the transaction was a supplying with goods contrary to cl. 5 (7) of the latter Proclamation.—*SALTI ET FILS v. PROCURATOR-GENERAL*, [1919] A. C. 968; 88 L. J. P. 209; 121 L. T. 459; 35 T. L. R. 679; 14 Asp. M. L. C. 460, P. C.
395. *Add. Annotation*:—*Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
396. *Add. Annotation*:—*Generally. Mentd. Rodriguez v. Speyer*, [1919] A. C. 59.
397. *Add. Annotation*:—*Mentd. Re Vulcaan Coal Co., Harrison v. Harbottle* (1922), 91 L. J. Ch. 491.
402. *Add. Annotations*:—*As to* (1) *Refd. Lebeaupin v. Crispin*, [1920] 2 K. B. 714. *As to* (2) *Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331. *As to* (3) *Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.

### PART IV. SECT. 2.

365 I. For "VAN ZYL v. PRENAAR" read "VAN ZIJL v. PIENAAR."

### PART IV. SECT. 3, SUB-SECT. 1.

390 I. "Act B," s. 6—Assignment of chose in action to British firm.—In payment of debt.—An Austrian firm was indebted to a London firm at the commencement of the war. On Sept. 25, 1914, the Austrian firm wrote a letter purporting to be an assignment to the London firm of a debt due to them by B. The letter contained an enclosure signed by the Austrian firm addressed to B. amounting to a notice of assignment of the debt. In the following December the London firm forwarded it to B.—*Held*: as the transaction of Sept. 25 amounted to a valid equitable assignment of a

chose in action for valuable consideration, it was not illegal as contravening the above sect.—*GRUNDY v. BROADBENT*, [1918] 1 I. R. 433.—IR.

sn. Proclamation of December 12, 1914—Taking delivery of goods from enemy ships in neutral ports.—Pltfs. were a British bank carrying on business in London & Bombay. Defts. were a firm of merchants, British subjects, carrying on business in Bombay. On June 24, 1914, A., a German subject, drew a bill of exchange upon defts in favour of pltfs. The bill purported to be drawn upon defts. against fifty bales of goods per a German steamer. The bill was accepted by defts. on July 20, 1914, payable at the office of pltfs. in Bombay. The steamer reached Bombay just before the outbreak of war, & in

order to evade capture left Bombay & took shelter in a neutral port. The bill was presented for payment on the due date with the shipping documents attached but was dishonoured by non-payment. Pltfs. filed a suit on Sept. 30, 1915, to recover the amount due on the bill.—*Held*: pltfs. were entitled to succeed, as by the above Proclamation the consignees were permitted to take delivery of goods from enemy ships in neutral ports.—*MOTISHAW & CO. v. MERCANTILE BANK OF INDIA* (1916), 1 L. R. 41 Bom. 566.—IND.

### PART IV. SECT. 4.

402 IV. ——— Repayment of instalments.—In Apr., 1914, the A. co. contracted to construct machinery for the B. co. by Dec. 31, 1914. Pro-

402a. ———.]—Pltf. was a British subject carrying on business as an exporter of Manchester goods to Turkey. At the outbreak of war between Great Britain & Turkey deft. bank, a Turkish subject, was the holder of sight bills for the invoice amount in sterling of goods consigned by pltf. to Beyrout, which had arrived there shortly before the outbreak of war, & were subsequently delivered to the customers by deft. bank against payment in piastres. At the conclusion of the war deft. bank claimed the right to pay to pltf. an amount in sterling representing the then value of the piastres which they had received in payment for the goods. Pltf. claimed to be paid the sterling amount of the bills, or, in the alternative, damages for their conversion:—*Held*: (1) as the bank in Beyrout accepted the payment in lawful money from the Syrian merchant & handed over the goods, it constituted itself, as in a question with the drawer, debtor for the sterling amount on the face of the bill; (2) it was not every contract that was abrogated by the war; it was only a contract which was still executory & which for its execution required intercourse between the British subject & the enemy, & as the contract had been partially carried out, the bills had been indorsed, & the bank had been handed them together with the indorsed bills of lading, from that a subsidiary contract arose, namely, that on payment of the bills the shipping documents should be handed over, to execute which no intercourse between a British subject & the enemy was necessary; & the bank was entitled to do what it did, & there could be no question of conversion, & having constituted themselves debtors in sterling, in sterling they must pay.—*OTTOMAN BANK v. JEBARA*, [1928] A. C. 269; 97 L. J. K. B. 502; 139 L. T. 194; 44 T. L. R. 525; 72 Sol. Jo. 516; 33 Com.

gress payments were made by the B. co., but none of the machinery was ever delivered. After the commencement of the war, an order was, on Nov. 13, 1914, made under Trading with the Enemy Act, 1914, s. 8, appointing C. controller of the B. co., & on June 13, 1918, under Trading with the Enemy Act, 1914–1916, s. 9H, requiring the B. co. to be wound up, & appointing C. controller. The contract was never completed:—*Held*: the contract became null & void as from the commencement of the war, & neither the B. co. nor C. was entitled to recover from the A. co. any portion of the sum paid as progress payments.—*Re CONTINENTAL* (1919), 27 C. L. R. 194.—*AUS.*

402 v. ———.]—A contract between a British firm & an Austrian firm, for the purchase by the latter of goods to be manufactured, provided for an extension of time for delivery if delay should occur owing to causes beyond the control of the sellers. The price was payable by instalments, of which £4,620 was paid to account of the whole when war broke out & it became illegal to implement the contract. None of the goods had at that time been delivered. Thereafter the goods were completed & sold in Great Britain at an enhanced price. Third parties having obtained a decree against the purchasers of the goods arrested money in the hands of the sellers of the goods:—*Held*: (1) the contract was dissolved by the outbreak of war; (2) the sum paid to account of the price of the goods belonged to the buyers & was validly arrested in

the hands of the sellers.—*DAVIS & PRIMROSE, LTD. v. CLYDE SHIP-BUILDING & ENGINEERING CO., LTD.* (1918), 56 Sc. L. R. 24.—*SCOT.*

402 vi. ———.]—In May, 1914, Scottish engineers contracted with Austrian shipbuilders to build a set of marine engines, payment to be by instalments. The first instalment had been paid, but no part of the engines had been built when war broke out & further performance of the contract became legally impossible. After the war on action brought for repetition of the instalment paid:—*Held*: as the instalment had been paid as part of the price of the engines, & as the engines had not been delivered owing to a cause for which neither of the parties was responsible, defenders were bound to make restitution of the instalment.—*CANTIERE v. CLYDE*, [1923] S. C. (H. L.) 105; 60 Sc. L. R. 635.—*SCOT.*

402 vii. ———.]—*Enemy Contracts Annulment Act, 1915*.—A contract was made in 1911 for the sale by the C. co. to the B. co. of the whole of the output of the C. co. In Sept. 1914, an agreement was entered into between the parties by which the terms of payment were varied:—*Held*: the agreement of Sept. 1914, was not rendered null & void by s. 3 (6) of the above Act, nor by Trading with the Enemy Act, 1914.—*BROKEN HILL v. WARNOCK* (1922), 30 C. L. R. 362.—*AUS.*

402 viii. ———.]—On Feb. 2, 1914, deft. firm agreed to sell to pltf. bars under a c.i.f. contract free Hooghly. The goods were shipped on

Cas. 260, H. L.; *revsg. S. C. sub nom. JEBARA v. OTTOMAN BANK*, [1927] 2 K. B. 254, C. A.

403. *Add. Annotation*:—*Refd. Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1923), 92 L. J. K. B. 455.

405a. ———.]—For many years there existed in Germany works for the manufacture of dyestuffs (Farbenfabriken), belonging to a German concern which carried on business in England through agents. In 1878 the agents were a partnership firm consisting of A. & two other persons. In 1895 A. was the sole partner. In that year a limited co. was formed & registered in England, & in 1898 its name was changed to B. Co. Its original capital was £5,000, divided into 500 shares of £10 each of which A. held five shares & the German concern 470. In 1905 the capital was increased to £25,000 by the issue of 2,000 new shares fully paid, & in 1909 it was increased to £100,000, by the issue of 7,500 like shares. At the times material the German concern held 9,912 shares & A. twenty shares. By an agreement dated in 1910 between the German concern & B. Co., the district of the German concern was defined as the whole world outside the United Kingdom with the Channel Islands & the Isle of Man, & the district of B. Co. as the United Kingdom, the Channel Islands & the Isle of Man. The German concern bound itself not to import goods into B. Co.'s district except for the purposes of B. Co., & B. Co. bound itself not to import into the German concern's district except for the purposes of the German concern. By an agreement, dated in 1912, between the same parties & operative for seven years, the German concern bound itself to sell to B. Co. & to no one else in the United Kingdom for sale in the United Kingdom anilines & chemicals manufactured by the German concern, & B. Co. bound itself

July 2, 1914, per a German steamer, which was subsequently captured with her cargo & condemned by the Prize Ct.:—*Held*: the contract under which the goods would be delivered in the Hooghly became impossible by the outbreak of war within Indian Contract Act, s. 56, & was void.—*MADHORAM HURDGO DAS v. SETT* (1917), I. L. R. 45 Cal. 28.—*IND.*

405 i. ———.]—*Effect of suspensory clause*.—By a contract made after the outbreak of war with Germany to supply German dyes, deft. was not to be liable in case of non-arrival of the steamers at certain ports on account of the state of war. The ship & the dyes therein were seized & condemned by a Prize Ct.:—*Held*: (1) the contract was unenforceable; (2) the Royal Proclamation of Sept. 8, 1914, put an end to the contract.—*ABDUL RAZACK v. KHANDI ROW* (1918), I. L. R. 41 Mad. 225.—*IND.*

sp. *Debtor of alien enemy*.—*Payment of interest in respect of transaction entered into before outbreak of war—Right to repayment*.—Where a person indebted to an alien enemy had paid interest in respect of a transaction entered into before the outbreak of hostilities & sought a refund of the amount paid for the period between the outbreak of hostilities & the date of a licence to trade obtained by the enemy firm:—*Held*: he was not entitled to such refund, as there was no suspension of interest in respect of such transactions during that period.—*VALLI, MAHOMED ARU v. BERTHOLD REIF* (1919), I. L. R. 44 Bom. 1.—*IND.*

to buy from the German concern & from no other manufacturer such dyestuffs. By unwritten agreement B. Co. was bound from its inception to import only from the German concern. From the time of the registration of B. Co. A.'s firm ceased to act as agents for the German concern. B. Co. sold not in the name of the German concern, but in its own name, & as a principal; but it announced to the world on its office windows, & to its customers on notepaper & other documents & by books, catalogues & samples, that it was the sole importer in England of the manufactures of the German concern. It was thus brought home to the customers that they were buying the produce of the German concern as before. The new *régime* was in effect a continuation of the agency though legally the agency had ceased. The business of B. Co. was conducted by A. & another director, both resident in England. The German concern supplied them with lists of prices to be charged by the German concern to B. Co., B. Co. making a profit by selling to customers at a price higher than the list. If an English customer offered to buy at a price lower than the list, the German concern would reduce its price to B. Co. accordingly. The overwhelming shareholding of the German concern in B. Co. caused it to be vitally interested, as seller & buyer, in the contract between itself & B. Co. & as seller in the contract between B. Co. & its customer. Down to the outbreak of war between England & Germany on Aug. 4, 1914, the control of B. Co., its business, affairs & acts, were in the hands of the German concern. On Apr. 1, 1914, B. Co. entered into a contract with a British firm for a supply to the firm of dyestuffs, identified by letters & numbers as the manufacture of the German concern or of other German manufacturers, of which samples from Germany were in the possession of the British firm. It was provided that any duties imposed by the British Govt. on the goods should be paid by the British firm or the price should be advanced accordingly. It was further provided that deliveries or orders off the contract might be suspended by either party if any contingency should arise beyond the control of the parties, such as fire, accidents, war, strikes, or the like. The contract covered a period unexpired at the outbreak of war. At that date quantities of dyestuffs remained undelivered & were never afterwards delivered. An order was made by the Board of Trade, under Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1, for the winding up of the business of B. Co., & a controller appointed. In the winding up the British firm claimed damages for breach of contract in the non-fulfilment of deliveries. The controller resisted the claim on the grounds: (a) that the contract was dissolved at the outbreak of war, because B. Co. was an enemy or of enemy character, because the parties contracted on the footing that the goods should come from Germany, &

because continued existence or performance of the contract would involve intercourse with, or tend to assist the enemy; (b) that owing to the suspension clause no right to damages had yet arisen; (c) that the object of the contract had been frustrated, because the period of suspension was indefinite & beyond the contemplation of the parties, because performance of the contract was prevented by Govt. action or embargo, & because the basis of the contract was that the importation of the goods to be supplied should continue to be possible & by reason of war it was rendered impossible. On application to the Ct. by the controller for directions whether the claim should be admitted as a debt due from B. Co.:—*Held*: (1) at the date of the outbreak of war B. Co. assumed enemy character, & accordingly, the contract became dissolved by the outbreak of war as being a current contract entered into with a co. which *eo instanti* assumed enemy character; (2) the abrogation of the contract by outbreak of war being founded on public policy, the presence of a suspension clause in the event of war did not assist the claimant, & if "war" in the clause included war between England & Germany the clause was void as against public policy, & the claim must be rejected; (3) assuming that B. Co. had not assumed enemy character at the outbreak of war, the claim must fail on the following grounds: that, the contract being for the supply of goods to be obtained from Germany, further performance on the outbreak of war involved intercourse with the enemy & became illegal accordingly; that, the contracts having been made on the basis that the existing commercial conditions would continue & that the basis having ceased to exist by outbreak of war between England & Germany, the commercial object of the contract had been frustrated, & the contract was dissolved at the outbreak of war; (4) the suspension clause was not intended by the parties to apply to war between England & Germany; (5) the doctrine of frustration applied to contracts for the sale of unascertained goods.—*Re BADISCHE CO. LTD., Re BAYER CO., LTD., Re GRIESHEIM ELEKTRO, LTD., Re KALLE & CO., LTD., Re BERLIN ANILINE CO., LTD., Re MEISTER LUCIUS & BRUNING, LTD.*, [1921] 2 Ch. 331; 91 L. J. Ch. 133; 126 L. T. 466.

406. *Add. Citations*:—*affd. sub nom. FRIED KRUPP AKT. v. ORCONERA IRON ORE CO., LTD.* (1919), 88 L. J. Ch. 304; 120 L. T. 386; 35 T. L. R. 234, H. L.

*Add. Annotation*:—*Mentd. Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

408. *Add. Annotations*:—*As to* (1) *Folld. Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 88 L. J. Ch. 304. *Refd. Central India Mining Co. v. Soc. Colonial Anversoise*, [1920] 1 K. B. 753; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla*

sq. *Erection of machinery—Replacement of defective parts.*—In Mar. 1913, resps. contracted to supply & erect certain machinery for applt. In Mar. 1914, the machinery was erected, & in June, 1914, it broke down. By an agreement made in Jan. 1915, resps. agreed to replace the defective parts,

& did so in Apr. 1915. Shortly afterwards the machinery again broke down. In July, 1915, resps. were declared to be a co. "managed or controlled, directly or indirectly, by or under the influence of, or carried on wholly or mainly for the benefit or on behalf of, persons of enemy nationality"—

*Held*: the agreement of Jan. 1915, & subject to the exception in Enemy Contracts Amendment Act, 1915, s. 3 (5), the agreement of Mar. 1913, were null & void.—*SYDNEY MUNICIPAL COUNCIL v. AUSTRALIAN METAL CO., LTD.* (1926), 37 C. L. R. 550.—*AUS.*



- (1922), 38 T. L. R. 739; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *As to* (2) *Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331. *As to* (3) *Refd. Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.
409. *Add. Annotation*:—*Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.
- 409a. ——— *Effect of Treaties of Peace & consequent Orders.*—*Rowe Brothers & Co., Ltd. v. Lindgens* (1920), 36 T. L. R. 247.
411. *Add. Annotation*:—*As to* (1) *Refd. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.
412. *Add. Annotation*:—*Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.
- 412a. *Insurance policy—Effect of Treaties of Peace & consequent Orders.*—*Excess Insurance Co., Ltd. v. Mathews* (1925), 31 Com. Cas. 43.
413. *Add. Annotation*:—*As to* (2) *Refd. Matthey v. Curling*, [1922] 2 A. C. 180.
414. *Add. Annotation*:—*Mentd. Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 120 L. T. 386.
416. *Add. Annotations*:—*Refd. Naylor, Benzon v. Krainische Industrie Gesellschaft*, [1918] 1 K. B. 331; *Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 88 L. J. Ch. 304; *Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.
418. *Add. Annotations*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.
- 419a. ——— *Property otherwise subject to confiscation.*—*The Dieergarden* (1747), cited in 1 Ch. Rob. at p. 202; *The St. Philip* (1747), cited in 8 Term Rep. at p. 556; *The Elizabeth* (1749), cited in 1 Ch. Rob. at p. 202; *The Lady Jane* (1749), cited in 1 Ch. Rob. at p. 202; *The Ringende Jacob* (1750), cited in 1 Ch. Rob. at p. 202; *The Juffrouw Louisa Margaretha* (1781), cited in 1 Ch. Rob. at p. 203; *The Compie de Wohronzoff* (1781), cited in 1 Ch. Rob. at p. 205; *The Expeditie van Rotterdam* (1782), cited in 1 Ch. Rob. at p. 206; *The Bella Guidita* (1785), cited in 1 Ch. Rob. at p. 207; *The Eenighheid* (1795), cited in 1 Ch. Rob. at p. 210; *The Fortuna* (1795), cited in 1 Ch. Rob. at p. 212; *The Freedden* (1795), cited in 1 Ch. Rob. at p. 213; *The William* (1795), cited in 1 Ch. Rob. at p. 214.
- *See, also*, Nos. 369–371, *ante*.
424. *Add. Annotations*:—*Refd. Johnstone v. Pedlar*, [1921] 2 A. C. 262. *Mentd. Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753.
425. *Add. Annotation*:—*Refd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.
429. *Add. Annotation*:—*As to* (1) & (2) *Refd. Casdagli v. Casdagli*, [1919] A. C. 145.
- 440a. ——— *La Flora* (1805), 6 Ch. Rob. 1; 1 Eng. Pr. Cas. 515; 165 E. R. 828.
445. *Add. Annotation*:—*As to* (1) *Refd. The Rannveig*, [1922] 1 A. C. 97.
449. *Add. Annotations*:—*Mentd. Produce Brokers Co. v. Weis* (1918), 87 L. J. K. B. 472; *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij* (1928), 98 L. J. K. B. 251.
451. *Add. Annotation*:—*Generally, Mentd. Royal Exchange Assee. v. Hope*, [1928] Ch. 179.
452. *Add. Annotation*:—*Mentd. Williams v. Baltic Insee. Assocn. of London*, [1924] 2 K. B. 282.
460. *Add. Annotations*:—*Refd. Casdagli v. Casdagli*, [1919] A. C. 145. *Mentd. Rodriguez v. Speyer*, [1919] A. C. 59.
- 493a. ——— *Where a licence is granted for a voyage to a hostile country, to continue in force till a given day, if the voyage is bona fide begun before that day, it continues to be protected by the licence, though delayed beyond the day by stress of weather or other accident over which the assured have no control.*—*Groning v. Crockett* (1811), 3 Camp. 83; 170 E. R. 1313, N. P.

## Part V.—Acquisition of British Nationality.

513. *Add. Annotations*:—*Mentd. Markwald v. A.-G.*, [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *The Tervaele* (1922), 128 L. T. 176.
520. *Add. Citation*:—28 Cox, C. C. 211, D. C. *Add. Annotation*:—*Consd. Markwald v. A.-G.*, [1920] 1 Ch. 348.
- 520a. ——— *Where a natural-born German subject left Germany in 1878 & went to Australia, where, in 1908, he took the oath of allegiance to His Majesty & was granted under the powers of the Naturalisation Act, 1903, a certificate of naturalisation by which he became entitled to all political & other rights,*

### PART IV. SECT. 5, SUB-SECT. 1.

420 1. *Necessity for licence—How given—Approval of contract by officer entrusted to grant licence.*—*Held*: the fact that a contract had been approved by the officer who was *de facto* entrusted by the Crown with the exercise of the prerogative to grant licences to trade with the enemy was an answer to prosecutions for trading with the enemy.—*Donohoe v. Schroeder* (1916), 22 C. L. R. 362.—AUS.

### PART V. SECT. 3.

518 ii. ——— *Child of mother naturalised by subsequent marriage.*—Sect. 10 (5) of the above Act does not

apply to an infant whose mother by her subsequent marriage to a naturalised British subject has herself become a British subject but has not, while a widow, obtained a certificate of naturalisation in the United Kingdom.—*Jerger v. Pearce* (1920), 27 C. L. R. 526.—AUS.

st. *Commonwealth Naturalisation Acts, 1903–1917, s. 10—Effect—Step-child of man naturalised under Naturalisation Act, 1870 (c. 14).*—The above sect. does not apply to a child whose mother has married a man who was naturalised under *Naturalisation Act, 1870 (c. 14)*.—*Jerger v. Pearce* (1920), 27 C. L. R. 526.—AUS.

ss. *Naturalisation Act, R. S. C., 1906 (c. 77)—Status of naturalised persons.*—An alien naturalised in Canada under the above Act acquires the status of a British subject.—*Re Solvang*, [1913] 3 W. W. R. 876; 43 D. L. R. 549.—CAN.

vi. *Naturalisation Act—Fitness of applicant—Previous conviction.*—The fact that appt. had several years before undergone a sentence of imprisonment in default of paying a fine for supplying intoxicating liquor to an Indian is not a bar to his claim for naturalisation under the above Act.—*Re Bessnik* (1920), 58 D. L. R. 233; 34 Can. Crim. Cas. 167.—CAN.



wers, & privileges to which a natural-born British subject is entitled in the Commonwealth. He subsequently became a resident in London & was charged & convicted for that, being an alien, he had failed to furnish to a registration officer the particulars required by Aliens Restriction (Consolidated) Order, 1916, & his conviction was afterwards upheld by a Div. Ct. In an action brought by pltf. against the A.-G. for a declaration that he was no alien in England, but a liege subject of His Majesty the King, & entitled to the protection of His Majesty the King in all parts of His Majesty's Kingdom & Dominions:—*Held*: neither the taking of the oath of allegiance alone, nor the taking of the oath coupled with the grant of the certificate in Australia, made pltf. a British

subject in the United Kingdom, & he was, therefore, an alien when in the United Kingdom, & the declaration must be refused. Pltf. was at least to this extent to be regarded as an alien, that he was a person so described in British Nationality & Status of Aliens Act, 1914 (c. 17), & for the purposes of that Act. He was a person entitled under that Act to apply as an alien for & to have granted to him in the United Kingdom a certificate of naturalisation.—*MARKWALD v. A.-G.*, [1920] 1 Ch. 348; 89 L. J. Ch. 225; 122 L. T. 603; 36 T. L. R. 197; 64 Sol. Jo. 239, O. A.

*Annotation*:—*Mentd.* Russian Commercial & Industrial Bank v. British Bank for Foreign Trade, [1921] 2 A. C. 438.

## Part VI.—Loss of British Nationality.

526. *Add. Annotations*:—*Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.
532. *Add. Annotation*:—*As to* (2) *Consd. Re* Ross, Ross v. Waterfield (1920), 46 T. L. R. 61.
533. *Add. Annotations*:—*Consd.* Fasbender v. A.-G., [1922] 1 Ch. 232. *Refd. Re* Chamberlain's Settlement, [1921] 2 Ch. 523; Fasbender v. A.-G., Kramer v. A.-G., [1922] 2 Ch. 850.
536. *Add. Citation*:—26 Cox, C. C. 177, D. C.
537. *Add. Citations*:—16 L. G. R. 764; 26 Cox, C. C. 244, D. C.
538. *Add. Annotations*:—*Consd.* Fasbender v. A.-G., [1922] 1 Ch. 232. *Refd. Re* Chamberlain's Settlement, [1921] 2 Ch. 533; Fasbender v. A.-G., Kramer v. A.-G., [1922] 2 Ch. 850; Kramer v. A.-G., [1923] A. C. 528.
- 538a. — *British woman marrying alien—In time of war.*—*FASBENDER v. A.-G., KRAMER v. A.-G.*, No. 49d, *ante*.

## Part VIII.—Immigration and Expulsion of Aliens.

540. *Add. Annotation*:—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.
541. *Add. Annotation*:—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.

### PART VI.

sb. *Revocation*.—*Whether reasons need be stated.*—A revocation of a certificate of naturalisation need not state the reasons of the Governor-General.—*MEYER v. POYNTON* (1920), 27 C. L. R. 436.—*AUS.*

sc. — *Effect of Treaty of Peace with Germany.*—Art. 278 of the above Treaty does not affect the right of the Governor-General to revoke the certificate of naturalisation of a natural-born German subject.—*MEYER v. POYNTON* (1920), 27 C. L. R. 436.—*AUS.*

sd. *Declaration of intention to become citizen of foreign State.*—By going to the United States & there making a declaration of intention to become a citizen of that country, a person of German birth naturalised in Canada does not cease to be a British citizen.—*NEWMAN (or NEWMAN) v. BRADSHAW*, [1917] 1 W. W. R. 1223; 23 B. C. R. 492.—*CAN.*

534i. *British Nationality & Status of Aliens Act, 1914 (c. 17)*.—*Declaration of alienage—Effect on liability under Military Service Acts.*—A natural-born British subject who is also an American subject, & has been duly called up under Military Service Act, 1916, ss. 3, 11, is not relieved from his obligation to serve by a declaration of alienage under British Nationality & Status of Aliens Act, 1914 (c. 17).—*Re HORNE*, [1919] N. Z. L. R. 190.—*N.Z.*

### PART VIII.

540 ix. — *Son of domiciled Chinaman.*—The domicile gained by a Chinaman in Canada was held not available for the benefit of his son, twelve years of age, who had lived his lifetime in China, so as to give the son Canadian domicile.—*Re WONG SUEY MONG*, [1921] 3 W. W. R. 122.—*CAN.*

540 x. — *Son of naturalised Russian.*—A Russian, an insane person, was held for deportation under Immigration Act (Consolidation), s. 3. His release was applied for on the ground that his father had been resident in Canada for a number of years & had been naturalised there, & that the domicile of the father applied to the son:—*Held*: the son had no domicile in Canada & was expressly prohibited from landing under the Immigration Act.—*Re LIPSTEIN*, [1923] 2 D. L. R. 1055; 56 N. S. R. (G. & R.) 292.—*CAN.*

e (p. 193) i. — — — — —. — *A deportation order made by an immigration officer, when there is no Board of Inquiry in the vicinity of the port of entry, must show on the face of it that there was no such Board there.*—*R. v. BANNSTEAD, Ex p. HIANSON, Ex p. MOLLER* (1920), 55 D. L. R. 237.—*CAN.*

sf. *Immigration Act, 1901-1920—Prohibited immigrant—Onus of proof—Evidence of prosecution incomplete.*—Where, on a prosecution under sect. 5 (2) of the above Act, the prosecution

proves some only of the relevant facts & does not complete them so as to enable the tribunal to come to a conclusion one way or the other, the averment that deft. is an immigrant & has entered the Commonwealth within three years before failing to pass the dictation test is, under sect. 5 (3), to be deemed to be proved in the absence of proof to the contrary by the personal evidence of deft.—*GABRIEL v. AH MOOK* (1924), 34 C. L. R. 591; 31 Argus L. R. 84.—*AUS.*

sj. — *Person born in Australia returning from abroad.*—Where a person born in Australia has left the Commonwealth, the question whether, when he attempts to re-enter the Commonwealth, he is an immigrant within the above Act depends on whether he is as a fact coming back to Australia as to his home.—*DONOHUE v. WONG SAU* (1925), 36 C. L. R. 404.—*AUS.*

e (p. 194) i. — — — — —. — *"Landing"*.—*What is.*—"Landing" is the original act of landing & not the return of a certificated Chinese resident of Canada from a short visit to an adjacent city in the United States.—*R. v. FONG SOON*, [1919] 1 W. W. R. 486; 45 D. L. R. 78; 31 Can. Crim. Cas. 78.—*CAN.*

— *Whether repugnant to Immigration Act, 1910 (c. 27).*—The powers & mode of procedure of the Board of Inquiry as to deportation under the latter Act are repugnant to the former Act, & do not apply.—

543a. ————.]—In making a recommendation for expulsion part of a sentence regard must be had to the period of the alien's residence in this country.—*R. v.*

SHAFFNER (1920), 14 Cr. App. Rep. 131, C. C. A.

543b. ————.]—*R. v. GILBERT* (1921), 16 Cr. App. Rep. 34, C. C. A.

*Re* IMMIGRATION ACT, *R. v. JEN JANG HOW*, [1919] 3 W. W. R. 271; 47 D. L. R. 538.—CAN.

sm. ————.]—Sect. 18 of the former Act is not repugnant to s. 3 of the latter Act.—*Re JUNG YIN*, [1921] 3 W. W. R. 194.—CAN.

sn. *Chinese Immigration Act*, 1923 (c. 38).—*Deportation order—Appeal from—Person not Canadian citizen or having no Canadian domicile.*—*Held:* the ct. had no jurisdiction to interfere.—*Re YEE FOO*, [1925] 2 D. L. R. 1131; 44 Can. Crim. Cas. 17; 56 O. L. R. 669.—CAN.

sp. *S.P. Re YOUNG SUE HING* (1926), 37 B. C. R. 227; [1926] 2 W. W. R. 374.—CAN.

—.]—*Certiorari* in general lies with respect to an order for deportation made under sect. 26 of the above Act; & sect. 38 is no bar to its application to such orders when made without or in excess of jurisdiction or in violation of the essentials of justice.—*Re LOW HONG HING*, [1926] 3 D. L. R. 692; [1926] 2 W. W. R. 597; 46 Can. Crim. Cas. 65; 37 B. C. R. 295.—CAN.

sr. ————*Alien allowed to land pending inquiry—Omission to obtain deposit as security.*—*Held:* not equivalent to an assent to the alien being landed.—*Re v. LEE CHOW YING*, [1927] 1 W. W. R. 527; 47 Can. Crim. Cas. 203; 38 B. C. R. 241.—CAN.

st. ————*Certificate obtained by fraud—Conclusive.*—When the Controller of Chinese Immigration has concluded after inquiry that a Chinaman is entitled to enter Canada & has permitted him to land & given him the certificate provided for in sect. 17 of above Act, the Controller has exhausted his jurisdiction & even though it is afterwards discovered that a fraud has been committed on him, the Chinaman's right to be in Canada can be contested only before a Judge as provided in sect. 17 of above Act.—*Re v. CHIN SACK*, [1928] 1 D. L. R. 779; [1928] 1 W. W. R. 618; 49 Can. Crim. Cas. 43; 39 B. C. R. 223.—CAN.

sv. ————*Habeas corpus—Right of person claiming Canadian birth.*—Chinese Immigration Act, 1923, c. 38, s. 38, enacts inferentially that anyone claiming Canadian birth has a right to apply for relief by way of *habeas corpus* from the Comptroller's decision.—*Re CHINESE IMMIGRATION ACT & LEE CHOW YING* (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—CAN.

sw. *Chinese Immigration Act*, 1927 (c. 95).—*Decision as to validity of certificate—No appeal.*—*Ex p. CHIN SHACK* (B. C.) (1928), 50 Can. Crim. Cas. 137.—CAN.

q (p. 195) i. ————*Detention for return to country not specified in order—After admittance refused by country specified in order.*—An order had been made under the above Act for deportation of a native of India to the United States. On the refusal of the United States immigration officials to allow him to enter he was held for deportation to India.—*Held:* he was illegally detained & was entitled to his discharge.—*Re SANTA SINGH*, [1924] 3 D. L. R. 1088; 3 W. W. R. 164; 34 B. C. R. 190.—CAN.

q (p. 195) ii. ————*Attempting to land forbidden person.*—*R. v. PALANGIO* (1912), 22 O. W. R. 540; 3 O. W. N. 1440; 4 D. L. R. 611.—CAN.

sz. ————*Whether repugnant to Chinese Immigration Act, R. S. C., 1906 (c. 95).*—*Re IMMIGRATION ACT, R. v. JEN JANG HOW*, [1919] 3 W. W. R. 271.—CAN.

sa. ————*Proceedings under—Not criminal proceedings.*—*R. v. ALAMAZOFF*, [1919] 3 W. W. R. 281; 47 D. L. R. 533.—CAN.

sb. ————.]—*Re IMMIGRATION ACT & WONG SHEE* (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—CAN.

sc. ————.]—*Re PONG FOOK WING, Re IMMIGRATION ACT*, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—CAN.

t (p. 195) i. ————*Person not Canadian citizen or having Canadian domicile.*—The ct. cannot interfere with what is done by the Immigration officers looking to the deportation of aliens who have not acquired Canadian domicile.—*Re GOTTESMAN* (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—CAN.

t (p. 195) ii. ————.]—*Motion for release from custody of one held for deportation under an order of a Board of Inquiry, was dismissed for want of jurisdiction in the ct. under s. 23 of the above Act. Appet. had not shown that he was a Canadian citizen or had Canadian domicile.*—*Re v. SCHOPPELREI*, [1919] 3 W. W. R. 322.—CAN.

The ct. has no power to interfere with an order of deportation made by the Board of Inquiry unless the person ordered to be deported be a Canadian citizen or have Canadian domicile.—*Re IMMIGRATION ACT & WONG SHEE* (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156; *reuss.* 59 D. L. R. 626; 36 Can. Crim. Cas. 405; 30 B. C. R. 70.—CAN.

t (p. 195) iv. ————.]—*Habeas corpus* will lie in respect of a deportation order made by an immigration officer whose jurisdiction so to act in the stead of a Board of Inquiry is not shown on the face of the order, although an appeal by appet. to the Minister of the Interior under s. 19 of the above Act has been unsuccessful.—*Re v. BANNSTEAD, Ex p. HANSON, Ex p. MOLLER* (1920), 55 D. L. R. 287.—CAN.

t (p. 195) v. ————.]—If it be proved that the Board of Inquiry has not acted judicially, but merely on instructions from Ottawa, in ordering the deportation of a Chinaman, the ct. would be bound to grant an application for a writ of *habeas corpus*.—*Re JUNG YIN*, [1921] 3 W. W. R. 194.—CAN.

t (p. 195) vi. ————.]—An appeal lies in *habeas corpus* proceedings where a person is detained under the above Act.—*Re IMMIGRATION ACT & WONG SHEE* (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—CAN.

t (p. 195) vii. ————.]—An appeal lies to the Ct. of Appeal from an order made in *habeas corpus* proceedings releasing a person detained under the above Act.—*Re PONG FOOK WING, Re IMMIGRATION ACT*, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—CAN.

v (p. 195) i. ————*Chinese immigrant.*—Under s. 23 of the above Act the ct. is prevented from interfering with the decision of a Board of Inquiry concerning the admission of a Chinaman to Canada.—*Re WONG SIT KIT*, [1921] 3 W. W. R. 116.—CAN.

v (p. 195) ii. ————.]—The decision of a Board of Inquiry as to the admission of a Chinaman is not subject to review by the ct.—*Re WONG SUEY MONG*, [1921] 3 W. W. R. 129.—CAN.

sd. *Immigration Amendment Act*,

1919 (c. 25).—*Not retrospective.*—*Re IMMIGRATION ACT & SANTA SINGH*, [1920] 2 W. W. R. 999.—CAN.

se. ————*Appointment of immigration officer—Sufficiency.*—The signature of the Acting Deputy Minister of Immigration & Colonisation is sufficient.—*Re PAPPAS*, [1921] 1 W. W. R. 949.—CAN.

sf. ————*Deportation order—Form of order.*—Where an order only stated "P. C. 23" as the reason for deportation.—*Held:* such an order was defective.—*Re v. LANTALUM, Ex p. OFFMAN* (1921), 62 D. L. R. 223; 35 Can. Crim. Cas. 295; 48 N. B. R. 448.—CAN.

sg. ————*Amendment of order.*—An order of deportation, insufficient in form as not showing jurisdiction, may be amended by the immigration officer.—*Re PAPPAS*, [1921] 1 W. W. R. 949.—CAN.

sh. *Immigration Law* (R. S. C., 1927, c. 93).—*Right to annul expulsion order.*—The tribunals have not power or jurisdiction to annul an expulsion order made against an immigrant on the strength of the immigration law even if they think the officials charged with administering the said law have not applied their orders correctly.—*YERSHENSKY v. MOQUIN* (1928), Q. R. 45 K. B. 166.—CAN.

sj. *Opium & Narcotic Drugs Acts—Proceedings under—Not criminal proceedings.*—*Re LOO LEN* (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—CAN.

sk. ————*Conviction under—No order against deportation—Power to make subsequent order.*—There is no power to make an order except at the time of conviction.—*Re JOE FONG* (1923), 53 O. L. R. 493; 24 O. W. N. 39.—CAN.

sl. ————.]—An order against deportation made subsequently is invalid.—*Re v. LEE PARK*, [1921] 4 D. L. R. 883; 3 W. W. R. 490.—CAN.

sn. ————*Necessity for order.*—Since under Opium & Narcotic Drug Act, 1923, s. 25, deportation follows automatically in the case of the conviction of an alien under sect. 4 (d), it is not necessary for a formal order for deportation to be made in such a case.—*Re v. WOO FONG TOY* (B.C.), [1926] 3 W. W. R. 703.—CAN.

so. ————*Validity of warrant.*—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—*Re v. GAN*, [1925] 3 W. W. R. 783.—CAN.

sp. ————*Subsequent detention for deportation—Validity.*—Accused was convicted under s. 5a (2) of the 1911 Act & fined with imprisonment in default of payment. The fine was not paid, & on the termination of the imprisonment prisoner was held for deportation under s. 10b.—*Held:* the purpose of s. 10b was to superadd the penalty of deportation as a consequence of a conviction for the commission of any of the statutory offences created by s. 5a.—*Re v. HOW*, [1923] 4 D. L. R. 1007; 56 N. S. R. (G. & R.) 372.—CAN.

sq. ————*Application for release.*—Where an alien has been convicted under s. 5a (2) of the 1911 Act & upon termination of the imprisonment imposed is detained for deportation under s. 10b, he is not entitled to release on *habeas corpus* on the ground of having Canadian domicile within Immigration Act, s. 43.—*Re v. CHANG SONG*, [1924] 1 D. L. R.

544. *Add. Annotations* :—As to (2) *Folld. R. v. Shaffner* (1920), 14 Cr. App. Rep. 131; *R. v. Rogoff* (1924), 18 Cr. App. Rep. 1.
- 544a. ———— *Family domiciled in England*.]—*R. v. ROGOFF* (1924), 18 Cr. App. Rep. 1, C. C. A.
547. *Add. Annotation* :—*Folld. R. v. Gilbert* (1921), 16 Cr. App. Rep. 34.
- 548a. ———— *Unnecessary aggravation of sentence involved*.]—*R. v. IRVING* (1920), 15 Cr. App. Rep. 61, C. C. A.
551. *Add. Annotations* :—*Refd. Brightman v. Tate*

1161; 1 W. W. R. 778; 42 Can. Crim. Cas. 8; 33 B. C. R. 176.—CAN.

sr. ————.]—A warrant of deportation regular on its face having issued after prisoner had served his sentence on conviction under the 1911 Act, the ct., on an application in *habeas corpus* proceedings, can only inquire into the truth of the statements made in the warrant, & cannot interfere by reason on the unlawful imposition of hard labour by the sentence & conviction.—*R. v. CHOW TONG* (1924), 34 B. C. R. 12.—CAN.

st. ————.]—Where a prisoner has been convicted of an infraction of the 1923 Act & is held for deportation, the mere fact that the warrant committing him for deportation, although stating him to be an alien, does not show or recite that a Board of Inquiry was held as provided by Immigration Act, is not a ground for granting a writ of *habeas corpus*.—*R. v. GEE DEW* (No. 3), [1924] 3 D. L. R. 186; 2 W. W. R. 793; 42 Can. Crim. Cas. 213; 33 B. C. R. 548.—CAN.

sv. ————.]—*Held*: *habeas corpus* proceedings were proceedings "arising out of a criminal charge," & within the exception to the jurisdiction of the Supreme Ct. of Canada under Supreme Ct. Act, R. S. C., 1906, s. 36.—*JUNGO LEE v. R.*, [1927] 1 D. L. R. 721; 46 Can. Crim. Cas. 329; [1926] S. C. R. 652.—CAN.

sw. ————.]—*Appeal*.]—Accused was convicted under s. 5a (2) of the 1911 Act, & condemned to pay a fine, & in default of payment to imprisonment. Upon termination of the imprisonment he was kept in custody for deportation under s. 10b. A writ of *habeas corpus* was granted & accused ordered to be discharged from custody. On appeal the order was sustained.—*RE MAH SHIN SHONG, RE SING YIM HONG*, [1923] 4 D. L. R. 844; 39 Can. Crim. Cas. 401; 32 B. C. R. 176; [1923] 1 W. W. R. 1365.—CAN.

sx. ————.]—Where an alien on the termination of his imprisonment, imposed on conviction under the 1911 Act, is detained pending deportation & he applies for *habeas corpus*, but is refused release, an appeal from such refusal lies to the Ct. of Appeal.—*RE LOO LEN* (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—CAN.

sy. ————.]—*Validity of warrant of deportation*.]—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—*R. v. JUNGO LEE* (1926), 46 Can. Crim. Cas. 92; 37 B. C. R. 318; [1926] 2 W. W. R. 734.—CAN.

sz. *Chinese Exclusion Act*, 1904 (c. 37) (*Cape*).]—*Deportation after conviction—Effect of exemption certificate*.]—Applicants, being Chinamen & holders of exemption certificates under the above Act, having each been convicted at least twice for offences against the gambling laws, but none of them having served two terms of imprisonment.—*Held*: not to be exempted under s. 2 (c) of the Act from s. 34, & liable under the terms of the latter sect. to be deported.—*AN YET v. UNION GOVERNMENT*, [1921] App. D. 97.—S. AF.

sa. *Act 22 of 1913—Prohibited immigrant—Asiatic—Holding qualifications for residence*.]—The entry of

applt., an Asiatic, into Natal was not discovered until Apr. 1916, when he was arrested as a prohibited immigrant under s. 4 (1) (a) of the above Act.—*Held*: he had obtained no title to reside in the Union until he had successfully presented himself as an immigrant no matter how well qualified he might be to obtain a title to reside in the Union.—*DESAI v. IMMIGRANTS' APPEAL BOARD* (1916), 37 N. L. R. 277.—S. AF.

sb. ————.]—*Indian returning after temporary residence in India—Domicil certificate not acquired before departure to India*.]—Applt., a resident in Natal from 1897, in 1911 went to India with the object of seeking a wife there from among his own relations. Prior to leaving for India he applied to the authorities for a certificate of domicile, but that certificate was illegally refused. Applt.'s visit to India was extended to a period of four years, & he returned to Natal in Apr. 1915.—*Held*: applt.'s visit to India was for a special or temporary purpose; the home in Natal continued to be his place of permanent abode, & he was domiciled in Natal within s. 30 of the above Act.—*KAJES v. IMMIGRANTS' APPEAL BOARD* (1916), 37 N. L. R. 42.—S. AF.

sc. ————.]—*Domicil certificate acquired before departure to India*.]—Immigrant, an Indian, first came to Natal in 1893, where he continued to reside. In 1899 he obtained a certificate of domicile. In 1902 immigrant went back to India. Recently he returned to Natal but was refused admission as being a prohibited immigrant under the above Act.—*Held*: the certificate conferred upon him rights, which were not restricted by the above Act, & there was no intention on the part of immigrant to abandon his domicile in Natal.—*RE RUNGASAMY CHETTY* (1917), 38 N. L. R. 42.—S. AF.

sd. ————.]—*Domicil certificate acquired by deceased parent*.]—K., the possessor of a certificate of domicile under the above Act, brought his wife & son, N., to Natal from India in 1911. In 1914 they returned to India & lived there till after K.'s death in Natal in 1917. On a question as to whether N. could of right enter Natal in 1920.—*Held*: N. had no such right under s. 5 (g) of the above Act, as he had no father domiciled in Natal.—*NATHOO v. IMMIGRANTS' APPEAL BOARD* (1921), 42 N. L. R. 30.—S. AF.

se. ————.]—*Second wife of Mohammedan*.]—Where a Mohammedan's daughter & her mother have returned to India & both are residing there, another wife of such Mohammedan is not a prohibited immigrant.—*MARIAM & MAHOMED v. IMMIGRANTS' APPEAL BOARD* (1918), 39 N. L. R. 382.—S. AF.

st. ————.]—*Sons of domiciled parents—Resident in another province*.]—M. & Y., Asiatics, & the minor sons of parents resident in the Transvaal, but formerly resident in Natal, & holding certificates of domicile under the above Act, were declared prohibited immigrants in Natal, neither M. or Y. having ever been resident in Natal save for temporary purposes during which periods their parents remained in the Transvaal.—*MAHOMED v. PRINCIPAL IMMIGRATION OFFICER*

(1921), 42 N. L. R. 337.—S. AF.

sg. ————.]—*Parent resident in India*.]—Applt. was born in India, in 1913, of a woman who was recognised as the wife of an Indian, S., but who had never been in the Union. S. had entered the Transvaal in 1907 & had, thereafter, acquired a domicile of choice in the Transvaal, but in 1919 had returned to India, & had since not been in the Union. Save that there was evidence that S. was undergoing medical treatment in India, there was no explanation of his long stay there. He had shares to the value of £4,000 in a business in the Transvaal but had apparently never taken any active part in the business. Applt., aged 12, arrived in the Union & claimed a right to enter the Union under Act 22 of 1913, s. 5 (g). On appeal from a judgment of a Provincial Div. in a case stated by the Immigrants Appeal Board.—*Held*: assuming the onus rested upon the immigration officer, the Board was entitled to find that S. had abandoned his Transvaal domicile, & therefore, applt. was a prohibited immigrant.—*MAHOMED v. PRINCIPAL IMMIGRATION OFFICER*, [1929] App. D. 190.—S. AF.

sh. ————.]—*Deportation under—Conviction obtained without Union*.]—A person not born in the Union of South Africa who is convicted of an offence under s. 4 (1) (b) of the above Act is liable to be deported under s. 22, whether the conviction took place within or without the Union.—*COLLINGWOOD v. UNION GOVERNMENT*, [1917] App. D. 550.—S. AF.

sj. ————.]—*Boarding ship before examination of immigrants completed*.]—Where a person was convicted of being on board a ship before the general examination of immigrants had been completed, & stated in defence that notice to the master of the ship had been given.—*Held*: he was rightly convicted.—*ANGLIA v. R.* (1918), 39 N. L. R. 147.—S. AF.

sk. ————.]—*Decision of immigration authority—Jurisdiction of court to interfere*.]—The ct. may interfere where there is a manifest absence of jurisdiction or if an order is made or obtained fraudulently.—*UNION GOVERNMENT v. FAKIR*, [1923] App. D. 466.—S. AF.

sl. ————.]—Appet., an Asiatic, had been declared by the immigration officer of Natal to be a prohibited immigrant. On application to the ct. for an order restraining his deportation.—*Held*: as the immigration officer had not acted outside his jurisdiction or *malá fide*, the ct. had no jurisdiction to make the order prayed.—*NARAINAM v. PRINCIPAL IMMIGRATION OFFICER*, [1923] App. D. 673.—S. AF.

sm. *Immigration & Indian Relief Act*, 37 of 1927, s. 5.—*Retrospective*.]—*PRINCIPAL IMMIGRATION OFFICER v. PUNSHOTAM*, [1928] App. D. 435.—S. AF.

sn. *Indian Immigration Act*, 1891 (Natal).]—*Liability of employers for medical attendance on Indian immigrants*.]—Employers were held liable under the above Act for medical attendance on Indian immigrants, who, after being free, had not re-indentured, themselves & for their descendants.—*INDIAN IMMIGRATION TRUST BOARD OF NATAL v. GOVIND-SAMY* (1920), 37 T. L. R. 128.—S. AF.

(1919), 35 T. L. R. 209; *R. v. Brixton Prison, Ex p. Bloom* (1920), 90 L. J. K. B. 574; *R. v. Home Secretary, Ex p. Bressler* (1924), 131 L. T. 386.

- 551a. ————.]—Aliens Order, 1919, art. 12, par. 1, which empowers the Secretary of State "if he deems it to be conducive to the public good" to make a deportation order against an alien, is not *ultra vires*. In acting under the article the Secretary of State is not a judicial, but is an executive officer, & is therefore not bound to hold an inquiry or give the person against whom he proposes to make a deportation order the opportunity of being heard.—*R. v. LEMAN STREET POLICE STATION INSPECTOR, Ex p. VENICOFF, R. v. SECRETARY OF STATE FOR HOME AFFAIRS, Ex p. VENICOFF*, [1920] 3 K. B. 72; 89 L. J. K. B. 1200; 23 L. T. 573; 84 J. P. 222; 36 T. L. R. 677, D. C.

*Annotation*:—*Reid. R. v. Home Secretary, Ex p. Bressler* (1924), 131 L. T. 386.

553. *Add. Annotations*:—As to (1) *Consd. R. v. Home Secretary, Ex p. Bressler* (1924), 131 L. T. 386. *Reid. Brightman v. Tate* (1919), 35 T. L. R. 209.

- 553a. ———— *Aliens Restriction (Amendment) Act, 1919 (c. 92)*—Power of expulsion in time of peace.]—Appct. was charged before a metropolitan police magistrate with four offences under the above Acts. He pleaded guilty to the charges, & was sentenced to fourteen days' imprisonment & recommended for deportation. After having served his sentence, he was detained in prison awaiting deportation. The Secretary of State had on the day after the expiration of the sentence made an order for the deportation of appct.

Upon an application for a writ of *habeas corpus*:—*Held*: the order of the Secretary of State was not *ultra vires*, but was within the powers conferred upon him by the above Acts, & Aliens Order, 1920, art. 12.—*R. v. BRIXTON PRISON (GOVERNOR), Ex p. BLOOM* (1920), 90 L. J. K. B. 574; 124 L. T. 375; 85 J. P. 87; 19 L. G. R. 62; 26 Cox, C. C. 687, D. C.

- 553b. ————.]—The Order in Council made as to the deportation of aliens on Mar. 25, 1920, under sect. 1 (1) of each of the above Acts, did not expire when the power to make such an order would, but for further legislation, have expired, namely on Dec. 23, 1920, inasmuch as the Act of 1919 has been continued by the Expiring Laws Continuance Acts, 1920 (c. 73), & 1921 (c. 53).—*R. v. BRIXTON PRISON (GOVERNOR), Ex p. SUGARMAN* (1922), 127 L. T. 27; 86 J. P. 75; 38 T. L. R. 325; 27 Cox, C. C. 208, D. C.

- 553c. ———— *Form of order by Secretary of State.*]—The making of an order for the deportation of an alien under Aliens' Order, 1920, art. 12 (6), lies within the discretion of the Home Secretary. It is desirable that an order made under the article should state on the face of it that the Home Secretary deems it to be conducive to the public good to make the order.—*R. v. HOME SECRETARY, Ex p. BRESSLER* (1924), 131 L. T. 386; 88 J. P. 89; 68 Sol. Jo. 646; 22 L. G. R. 460; 27 Cox, C. C. 655, C. A.

- 553d. ———— *Recommendation for deportation*—*Right of appeal.*]—*R. v. GRAHAM CAMPBELL, Ex p. AHMED HAMID MOUSSA*, No. 558h, *post*.

## Part IX.—Registration, Internment, and other Restrictions.

557. *Add. Citation*:—26 Cox, C. C. 16, D. C.

- 558a. ———— *Aliens Order, 1920.*]—(1) The word "keeper" in the above Order of 1920, art. 20 (2), includes the lessee of a house who lets unfurnished rooms in the house in separate lettings to tenants at weekly rentals & employs another person to manage the house for him.

(2) A flat let on a seven years' lease would not constitute "premises" within the above

Order of 1920, art. 6, but that art. does not apply to rooms in a leasehold house let unfurnished on weekly tenancies, there being a manager of the house employed by the lessee whose duties include cleaning the common stairs, ways & places, the maintenance of electric light, & so on.—*RODDA v. GODFREY* (1926), 95 L. J. K. B. 704; 90 J. P. 111; 42 T. L. R. 473; 24 L. G. R. 311; 28 Cox, C. C. 209, D. C.

552i. *Aliens Restriction Order, 1915*—Power of expulsion in war time—*Validity of Order*—Power to specify destination.]—*Heid*: par. 25 of the above Order was within the authority conferred by War Precautions Act, 1914–1916, s. 6; it conferred a discretion upon the Minister to make an order for the deportation of any particular alien, & authorised his subsequent arrest & detention & the placing him on board a ship chosen by the Minister, & his detention there whilst the ship was in the territorial limits of the Commonwealth; & such an order was not rendered invalid by the fact that the Minister made it for the purpose of carrying out an agreement by which the Commonwealth Govt. was under an obligation to the country of which the particular alien was a

subject to assist as far as possible in enforcing the return to that country of persons liable to military service there.—*FERRANDO v. PEARCE* (1918), 25 C. L. R. 241.—AUS.

so. ———— *Necessity of communication of deportation order to alien.*]—Par. 23 of the above Order does not require communication to the alien of a deportation order made under it by the Minister of Defence.—*MEYER v. POYNTON* (1920), 27 C. L. R. 436.—AUS.

sp. ———— *Form of deportation order.*]—Such order need not be in any particular form.—*JERGER v. PEARCE* (1920), 28 C. L. R. 588.—AUS.

sw. *Aliens Restriction Order, 1916*—Power of expulsion in war time—

*Subject of allied State liable for military service.*]—The Minister having ordered the deportation of an Italian subject for military service, the ct. refused an application for a rule nisi for *habeas corpus*, the matter being in the Minister's discretion under the above Order.—*Ex p. MAORI* (1918), 18 S. R. N. S. W. 150.—AUS.

### PART IX.

xx. *Registration*—No proof of no permanent place of residence.]—Def't. was convicted for neglect to register as an enemy alien. There was no evidence that def't. had no permanent place of residence in Canada:—*Held*: the charge could not succeed.—*R. v. HACKMAN* (1919), 44 O. L. R. 224; 15 O. W. N. 190.—CAN.

- 558b.** ————.]—The fact that the keeper of any premises to which the above Order of 1920, art. 7, applies knows that a person staying at such premises is a British subject, does not excuse compliance with the obligation to require such person to sign a statement as to his nationality.—*WILLIAMS v. JONES*, [1928] 2 K. B. 227; 97 L. J. K. B. 606; 139 L. T. 167; 92 J. P. 79; 44 T. L. R. 511; 26 L. G. R. 318; 28 Cox, C. C. 505, D. C.
- 558c.** ———— **Allens Restriction (Amendment) Act, 1919 (c. 92)—Restrictions as to change of name—Carrying on business under pre-war name.**—*Resp.*, who was an alien, & whose real name was Karel Kollross, purchased in 1921, & continued to carry on, a business under the name of the Widmore Laundry, which business had been carried on under the same name by his predecessors for many years before Aug. 4, 1914. Apart from the laundry business *resp.* continued to be known as Karel Kollross, & he was registered in that name as the proprietor of the Widmore Laundry under Registration of Business Names Act, 1916 (c. 58). An information having been preferred against *resp.* for using the name Widmore Laundry, being a name other than that by which he was ordinarily known on Aug. 4, 1914, contrary to sect. 7 of the Act of 1919, the justices dismissed the information:—*Held*: the justices were right, as *resp.* had committed no offence against sect. 7 (1), by taking over an old-established business with a pre-war name & continuing to carry it on under that name.—*BRUNNING v. KOLLROSS*, [1923] 1 K. B. 311; 92 L. J. K. B. 323; 128 L. T. 600; 87 J. P. 41; 39 T. L. R. 129; 67 Sol. Jo. 278; 21 L. G. R. 108; 27 Cox, C. C. 383, D. C.
- 558d.** ———— **Addition of “& Co.”**—An alien uses a name “other than that by which he was ordinarily known” on Aug. 4, 1914, contrary to sect. 7 (1) of the Act of 1919, if he adds to the name by which he was ordinarily known on that date the words “& Co.”—*EVANS v. PIAUNEAU*, [1927] 2 K. B. 374; 96 L. J. K. B. 734; 137 L. T. 482; 91 J. P. 97; 43 T. L. R. 524; 25 L. G. R. 321; 28 Cox, C. C. 410, D. C.
- 558e.** ———— **Prosecution under—Whether offences triable on indictment.**—(1) On a prosecution for an offence against a statutory Order, an objection that the Order has not been proved must be taken before the ct. at the trial. It is too late to take the point for the first time on appeal.  
(2) In cases under the Act of 1914, s. 1 (4), & the Act of 1919, s. 13, when any question arises whether the person charged is an alien or not the *onus* lies upon him to prove that he is not an alien.  
(3) Offences against the Act of 1914 & the Act of 1919 are punishable only in the manner prescribed by the statutes, namely on summary conviction, unless the person charged with the offence claims the right under Summary Jurisdiction Act, 1879 (c. 49), s. 17, to be tried with a jury. Where, therefore, an offence under those Acts was treated by the magistrate as an indictable one & the case sent for trial before quarter sessions without any claim for trial with a jury having been put forward by prisoner, the conviction at the sessions was quashed.—*R. v. KAKELO*, [1923] 2 K. B. 793; 92 L. J. K. B. 997; 129 L. T. 477; 87 J. P. 184; 39 T. L. R. 671; 68 Sol. Jo. 41; 27 Cox, C. C. 454; 17 Cr. App. Rep. 150, C. C. A.
- 558f.** ———— **Proof of Order.**—*R. v. KAKELO*, No. 558e, *ante*.
- 558g.** ———— **Proof of alienage.**—*R. v. KAKELO*, No. 558e, *ante*.
- 558h.** ———— **Appeal—Effect of ambiguous plea.**—*Appct.* was charged under Aliens Order, 1920, with, being an alien, having failed to notify his change of address. When before the magistrate he was asked “Are you an Egyptian?” to which he answered “Yes.” He was then asked “Did you tell the registration officer that you intended to change your residence, & tell him when & where you were going?” to which he answered “No.” Thereupon the magistrate entered a plea of guilty & sentenced *appct.* to imprisonment for one month & recommended the making of a deportation order against him:—*Held*: *appct.* had not pleaded guilty or admitted the truth of the charge within Summary Jurisdiction Act, 1879 (c. 49), s. 19, or Criminal Justice Administration Act, 1914 (c. 58), s. 37, & therefore, he had a right of appeal to quarter sessions by virtue of those sections.—*R. v. GRAHAM CAMPBELL, Ex p. AHMED HAMID MOUSSA*, [1921] 2 K. B. 473; 90 L. J. K. B. 818; 125 L. T. 310; 85 J. P. 189; 37 T. L. R. 611; 19 L. G. R. 461; 26 Cox, C. C. 747, D. C.
- 558i.** ———— **From recommendation for deportation.**—*R. v. GRAHAM CAMPBELL, Ex p. AHMED HAMID MOUSSA*, No. 558h, *ante*.
- 559.** *Add. Annotations*:—*Refd. Ronnfeldt v. Phillips* (1918), 35 T. L. R. 46.
- 560.** *Add. Annotations*:—*Consd. Ernest v. Metropolitan Police Comr.* (1919), 89 L. J. K. B. 42. *Refd. Brightman v. Tate* (1919), 35 T. L. R. 209; *Re De Keyser's Royal Hotel, De Keyser's Royal Hotel v. R.*, [1919] 2 Ch. 197; *Chester v. Bateson*, [1920] 1 K. B. 829; *Fowle v. Monsell* (1920), 90 L. J. K. B. 105; *Gurney v. Houghton* (1920), 123 L. T. 706; *Hudsons' Bay Co. v. Maclay* (1920), 36 T. L. R. 469; *R. v. Leman Street Police Station Inspector, Ex p. Venicoff*, [1920] 3 K. B. 72; *R. v. Wormwood Scrubs Prison*, [1920] 2 K. B. 305; *Shutler v. Rolfe* (1920), 36 T. L. R. 828; *R. v. Cannon Row Police Station Inspector, Ex p. Brady* (1921), 91 L. J. K. B. 98. *Mentd. Brown v. Dagenham U. C.* (1929), 98 L. J. K. B. 565.
- 561.** *Add. Annotations*:—*Refd. R. v. Secretary of State for Home Affairs, Ex p. O'Brien*, [1923] 2 K. B. 361. *Mentd. Re Clifford & O'Sullivan*, [1921] 2 A. C. 470; *Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.
- 561a.** ———— **Restrictions as to change of name—Validity.**—*Applt.*, a foreigner by birth, became a naturalised British subject in 1912, & changed his name by deed poll in 1915 from Ernst to Ernest. In 1919 he was convicted under reg. 14h of the above regulations, for that, not being a natural-born British subject, he used a name other than that by which he was ordinarily known at the beginning of the war. He contended

that reg. 14h was *ultra vires*, on the ground that it was not competent by Order in Council, issued under Defence of the Realm Act, 1914 (c. 8), to deprive him of any rights, powers, or privileges which were not at the same time taken away from all British subjects; & that the regulations purported to override an Act of Parliament, although there was no power under the Act of 1914 to do so:—*Held*: reg. 14h was not *ultra vires* because it discriminated between naturalised & natural-born British subjects.

Regulations made by the King in Council under Defence of the Realm Act, 1914 (c. 8), have all the force of a statute & may take away a statutory privilege or impose a statutory duty.—*ERNEST v. METROPOLITAN POLICE COMR.* (1919), 89 L. J. K. B. 42; 121 L. T. 222; 83 J. P. 182; 35 T. L. R. 512; 17 L. G. R. 448; 26 Cox, C. C. 458, D. C.

563. *Add. Citation*:—26 Cox, C. C. 58, D. C.

## ANIMALS.

## Part II.—Property in Animals.

3. *Add. Annotation*:—**Mentd.** *Jebara v. Otto-man Bank*, [1927] 2 K. B. 251.
34. *Add. Annotation*:—*As to* (3) **Refd.** *Granby v. Bakewell U. D. C.* (1923), 87 J. P. 105.
43. *Add. Annotation*:—**Refd.** *Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178.
44. *Add. Annotations*:—*As to* (1) **Refd.** *Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178. *As to* (2) **Consd.** *Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178.
45. *Add. Annotations*:—**Refd.** *The Tubantia*, [1924] P. 78. **Mentd.** *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244.
46. *Add. Annotation*:—**Refd.** *The Tubantia*, P. 78.
47. *Add. Annotation*:—**Mentd.** *The Fagernes*, [1926] P. 185.
64. *Add. Annotation*:—**Mentd.** *Nye v. Niblett* (1917), 16 L. G. R. 57.
- 67a. — **Unlawful taking—Larceny Act, 1861 (c. 96), s. 23—Necessity for mens rea.**—*Held*: above sect. applies the general law of larceny to pigeons so far as it does not apply to them already: & consequently, a taker who honestly believed the pigeons taken to be his own was not within the sect.—**FAREY v. WELCH**, [1929] 1 K. B. 388; 98 L. J. K. B. 318; 140 L. T. 560; 93 J. P. 70; 45 T. L. R. 277; 27 L. G. R. 153, D. C.
73. *Add. Annotation*:—**Refd.** *The Tubantia*, [1924] P. 78.
80. *Add. Annotation*:—**Refd.** *Farey v. Welch*, [1929] 1 K. B.
90. *Add. Annotations*:—*As to* (1) **Consd.** *Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178. *As to* (2) **Refd.** *Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178.

## Part III.—Rights and Liabilities of Owners of Animals.

101. *Add. Annotation*:—**Apld.** *Barnard v. Evans*, [1925] 2 K. B. 794.
107. *Add. Annotation*:—**Refd.** *Stearn v. Prentice*, [1919] 1 K. B. 394.
109. *Add. Annotation*:—**Consd.** *Hines v. Tousley* (1926), 95 L. J. K. B. 773.
113. *Add. Annotation*:—**Generally, Mentd.** *Hardy v. C. L. Ry.*, [1920] 3 K. B. 459.
116. *Add. Annotation*:—**Consd.** *Barnard v. Evans*, [1925] 2 K. B. 794.
117. *Add. Annotation*:—**Refd.** *Nye v. Niblett* (1917), 87 L. J. K. B. 590.
119. *Add. Annotations*:—**Consd.** *Horton v. Gwynne*, [1921] 2 K. B. 661. **Apld.** *Farey v. Welch*, [1929] 1 K. B. 388.
130. *Add. Annotation*:—**Mentd.** *Ilford U. D. C. v. Beal*, [1925] 1 K. B. 671.

## PART II. SECT. 1, SUB-SECT. 1.

*sa. Camel.*—Under the condition of affairs which has existed in Western Australia for many years, camels are to be regarded as belonging to the class of domestic animals.—**NADA SHAH v. SLEEMAN** (1917), 19 W. A. L. R. 119.—**AUS.**

## PART II. SECT. 2, SUB-SECT. 1.—A.

19 ii. — — — — —.]—A fox born & reared in captivity escaped & was killed by debts. upon a stranger's land a week later:—*Held*: the fox was an animal *feræ naturæ*; *pltf.*'s qualified property therein came to an end when the animal escaped & was reduced into actual possession by debts.; there was no immediate pursuit, nor was there *animus revertendi*.—**CAMPBELL v. HERDLEY** (1917), 39 O. L. R. 528; 37 D. L. R. 289.—**CAN.**

## PART II. SECT. 2, SUB-SECT. 2.

74 ii. — — — — —.]—*Animal killed by trespasser.*—When a person kills a wild animal on the property of another the carcass does not belong to the killer but to the proprietor of the property, & the latter, either himself or by his duly authorised agent, is entitled to demand & if refused, seize the carcass, & such persons as help him to exercise his right are doing no wrong; but as against any other person, the killer has a right to retain possession of the carcass.—**R. v. ARTHUR RANTRA** (1924), 1 L. R. 3 Pat. 549.—**IND.**

## PART II. SECT. 3.

*sb. As between husband & wife—Wife's cattle on husband's farm.*—Where cattle belonging to a wife are placed on her husband's farm, fed from the crops grown thereon & looked after by him in carrying on farming operations, not as her agent or manager, but as his own business, & the offspring of the original stock are treated in the same way & sold from time to time & the proceeds invested in other stock, the increase of the original animals & the animals bought from the proceeds of the sale cannot be claimed by the wife.—**MINAKER v. HADDEN**, [1917] 3 W. W. R. 774.—**CAN.**

*so. Brood of tame & domestic animals—Belongs to owner of dam or mother.*—**CATHOUN v. REID** (Sask.), [1927] 4 D. L. R. 808; [1927] W. W. R. 429.—

## PART III. SECT. 1, SUB-SECT. 1.—B.

*sd. Straying bull tied up during night—Released & driven away next day—Subsequently found dying.*—*Def.* tied up over night a bull which had strayed on his premises, to prevent it damaging his cows, & released it next day & drove it away. In the evening it was found castrated near the boundary of *def.*'s farm & died the next day. In an action for damages:—*Held*: *def.*'s actions were justified, & in the absence of evidence as to when or how or by whom the animal was injured, *pltf.* could not succeed.—**FICOWICH v. MALESCHIAK**, [1924] 4

D. L. R. 585; 3 W. W. R. 308.—**CAN.**

## PART III. SECT. 1, SUB-SECT. 1.—E.

*so. Claim against custodian of animal—Onus of proof as to absence of negligence.*—The onus is upon the custodian to show that the injury did not occur through his act or negligence only where it is shown that the injury occurred when the animal was or should have been in his custody or control, or that he was under an obligation to account for it to the owner.—**FICOWICH v. MALESCHIAK**, [1924] 4 D. L. R. 585; 3 W. W. R. 308.—**CAN.**

132 ii a. — — — — —.]—*Animal falling in well—Animal lawfully at large.*—*Pltf.*'s horse while lawfully running at large was killed by falling into an open well on *def.*'s land. *Def.*, who knew of the open well, was residing outside the province, the land being occupied by a tenant:—*Held*: *def.*'s breach of Open Wells Act gave *pltf.* a right of action "on a tort committed within the jurisdiction," justifying allowance of the issue of a writ for service on *def.* *ex juris*.—**BROTHERSON v. KENNEDY**, [1919] 2 W. W. R. 803; 47 D. L. R. 131; 12 Sask. L. R. 304.—**CAN.**

132 ii b. — — — — —.]—*What is an "open well."*—Whether a well is an "open well" or not is a question of fact to be proved at the trial. While it might be an "open well" if insecurely covered, the fact that an animal falls into it without any evidence of how it occurred does not prove it such, nor



184. *Add. Annotation:—Refd. British Petroleum Co. v. A.-G. for Ceylon*, [1926] A. C. 147.

136a. *Negligent driving by farrier—Measure of damages.*—*HUGHES v. QUENTIN* (1838), 8 C. & P. 703; 173 E. R. 681, N. P.

*Annotations:—Appld. Greenbirt v. Smce* (1876), 135 L. T. 168. *Refd. The Mediana* (1900), 69 L. J. P. 35.

139. *Add. Annotations:—Consd. Dunster v. Hollis*,

[1918] 2 K. B. 795. *Mentd. Fairman v. Perpetual Investment Bldg. Soc.*, [1923] A. C. 74; *Mersey Docks & Harbour Board v. Procter*, [1923] A. C. 253.

145. *Add. Annotation:—As to (1) Refd. British & Foreign Marine Insee. v. Gaunt*, [1921] 2 A. C. 41.

does the fact that the material of the covering was seven years old.—*DRYSDALE v. REID*, [1920] 3 W. W. R. 832.—CAN.

132 ii e. ———. *Animal unlawfully at large.*—Owners of such animals have no right of action where they are killed or injured by falling into an open well.—*DILLE v. GREAT WEST LIFE ASSURANCE CO.*, [1926] 3 D. L. R. 339; [1926] 2 W. W. R. 342; 20 Sask. L. R. 545.—CAN.

132 i d. ———. *Where* *pltf.* proves that his stock strayed on to *def't.*'s premises & there fell into a well & was killed, he has established a *prima facie* violation of the Act, & where *def't.*'s only explanation is that he erected a protection reasonably sufficient to keep animals away from the well, but that the animal in question somehow or other got into the well, he has not rebutted the *prima facie* case, especially where the circumstances justify the inference that the animal got through the protection by doing that which animals are wont to do.—*PITMAN v. BROWN*, [1925] 3 D. L. R. 61; [1925] 2 W. W. R. 36; 19 Sask. L. R. 362.—CAN.

132 ii e. ———. *Ignorance of owner as to existence of well.*—An owner of land on which there is an open well contrary to statute cannot rid himself of liability for damages caused thereby by pleading that he did not know it was there.—*HUDSON v. SILZER* (Sask.), [1919] 3 W. W. R. 575; 49 D. L. R. 125.—CAN.

132 iii a. ———. *The digging by a municipality of a ditch dangerous to animals alongside the travelled portion of a highway & the leaving of it unprotected, was held to be a misfeasance which rendered the municipality liable for the loss of a horse which plunged into the ditch & was killed.*—*HOWELL v. WILTON RURAL MUNICIPALITY NO. 472* (1922), 66 D. L. R. 321; 15 Sask. L. R. 427; [1922] 2 W. W. R. 168.—CAN.

132 iv. ———. *Animal falling in excavation.*—*Def't.* & *pltf.* were neighbours. *Pltf.*'s cow while running at large fell into an excavation on *def't.*'s land.—*Held:* *pltf.* could not recover damages.—*PITZEN v. SHOKLUR*, [1921] 2 W. W. R. 686; 16 Alta. L. R. 482.—CAN.

132 v. ———. *The owner or occupier of land will be liable in damages for any loss of stock resulting from failure to guard against access to an excavation.*—*KELLOGG v. DAPPEN* (1922), 60 D. L. R. 528; [1922] 3 W. W. R. 573.—CAN.

132 vi. ———. *Cellar of unused house.*—*Def't.* owned unfenced land on which was an unused open house with a cellar beneath. *Pltf.*'s horse, running at large, got into the house, & while there, one of its feet broke through the floor above the cellar & being unable to withdraw it, it died.—*Held:* the animals must take the land as they find it, & Open Wells Act did not apply.—*WRUBLESKI v. LOFF*, [1923] 2 W. W. R. 764.—CAN.

zi. ———. *Where there is a bye-law permitting cattle to run at large & such cattle are injured by the barbed wire of a fence which has fallen down through the rottenness of its posts, the owner of the fence is liable for the injury to cattle lawfully on the highway, & injured thereon.*—*CHASX v.*

*COLERIDGE*, [1917] 2 W. W. R. 736.—CAN.

z ii. ———. *On racecourse—Injury to racehorse.*—*Appl't.*'s racehorse was injured on *resp.*'s racecourse by a splinter from a stake used to flag off a portion of the regular course, which had become dangerous owing to heavy rain.—*Held:* *resp.* having taken proper steps to ensure that the course was as safe as reasonable care & skill could make it, & the risk not being in the nature of a "trap," no liability attached for the injury.—*WACKROW v. TAKAPUNA JOCKEY CLUB*, [1928] N. Z. L. R. 249.—N.Z.

137 xiii. ———. *Negligence of owner.*—An action will not lie for damages for the loss of cattle killed by a train when the cattle were on the railway line through the negligence of *pltf.*—*NELSON v. GRAND TRUNK PACIFIC RY. CO.* (1920), 51 D. L. R. 141.—CAN.

ki. *Grain left accessible to stock—Injury from eating—Grain escaping from granary.*—Where animals straying upon the premises were injured by consuming grain which had escaped from a granary through no fault of the grower.—*Held:* *def't.* was not liable under Open Wells Act, R. S. S. (c 124), s. 3.—*HILL v. MALLACH*, [1918] 1 W. W. R. 10; 10 Sask. L. R. 419; 37 D. L. R. 709.—CAN.

k ii. ———. *Animal lawfully at large.*—Where the non-observance by a proprietor of land of Open Wells Act, R. S. S., 1909 (c. 124), s. 3, results in injury to animals lawfully at large which have strayed upon his land, he is liable in damages to their owner.—*WATSON v. GUILLAUME*, [1918] 2 W. W. R. 1047; 11 Sask. L. R. 348; 42 D. L. R. 380.—CAN.

k iii. ———. *Granary reasonably fit for grain.*—*Held:* *def'ts.* were not liable for damages for injury to *pltf's.* horses while lawfully running at large, caused by eating wheat which had run from a granary on *def'ts.* premises, in view of the jury's finding that the granary was reasonably fit for storing the wheat as against animals running at large.—*GLENN & BAUB v. SCHOFIELD*, [1928] 2 D. L. R. 319; [1928] S. C. R. 208.—CAN.

k iv. ———. *Animal trespassing.*—If grain be left in such an unguarded condition as to permit of horses being attracted by it & eating it to their injury, the owner of the grain will be liable for the resulting damage, even though the horses are trespassers.—*FULTON v. RANDALL, GEE & MITCHELL, LTD.*, [1918] 3 W. W. R. 331.—CAN.

k v. ———. ———. *—A person who allows threshed grain to be accessible to stock, is liable in damages for the death of an animal resulting therefrom, even though the animal was unlawfully at large, unless the owner of the animal when turning it at large knew that such grain was accessible to stock.*—*HAWORTH v. WEBB* (1922), 65 D. L. R. 174; 15 Sask. L. R. 276; [1922] 1 W. W. R. 1070.—CAN.

k vi. ———. ———. *—Pltf. alleged that def't. while engaged in seeding left out in his unfenced ploughed field an unprotected waggon box which contained wheat & that pltf.'s horse while lawfully running at large gorged itself with the wheat & died.—Held:*

*def't.* was not liable.—*MUSSELMAN v. ZIMMERMAN* (1922), 66 D. L. R. 350; [1922] 2 W. W. R. 640.—CAN.

k vii. ———. ———. *—The result of an action under Open Wells Act, R. S. S., 1920 (c. 160), does not depend upon whether or not the animals injured were unlawfully at large under Stray Animals Act, R. S. S., 1920 (c. 124).*—*WENTZALL v. PERKS* [1924] 3 W. W. R. 876.—CAN.

k viii. ———. *Grain mixed with poisonous substance.*—No liability attaches to a railway co. for damages for the loss of cattle which die from eating grain which has become mixed with lead ore, where the grain was dropped upon the ground among the particles of lead ore by a customer of the railway co. while unloading grain from the company's cars.—*DAWSON v. PARADISE MINE & CANADIAN PACIFIC RY. CO.*, [1919] 1 W. W. R. 499.—CAN.

k ix. ———. *—The obligation imposed by Open Wells, etc., Act, R. S. S., 1920 (c. 160), s. 4, is an absolute one, & where another's animals have been injured as the result of threshed grain being accessible to them, the fact that the granary in question was reasonably fit for the storage of grain as against animals running at large is no defence.*—*SCHOFIELD v. GLENN & BAUB*, [1927] 3 D. L. R. 188; [1927] 2 W. W. R. 183; 21 Sask. L. R. 494.—CAN.

ni. ———. *Running into animal using highway.*—*Def't.*, while driving his automobile at dusk at twenty-five miles an hour with his lights on, ran into *pltf.'s* cow which he had not seen until very close to it. He was held liable in damages.—*JOHNSON v. GIFFEN* (1921), 62 D. L. R. 635; [1921] 3 W. W. R. 596.—CAN.

w i. ———. *Liability of boatowner for act of repairer.*—A boatowner employed a joiner to repair his boats. The paint scrapings were left lying on the ground, & poisoned a cow that was grazing on the pasture.—*Held:* it was the boatowner's duty to see that the paint scrapings were removed, & he was liable in damages for the cow's death.—*STEWART v. ADAMS*, [1920] S. C. 129; 57 Sc. L. R. 83.—SCOT.

w ii. ———. *Animals lawfully at large—Whether poison hidden trap.*—Poison which *def't.* had put in bags on his unfenced land & carefully covered with manure, & which, without his knowledge, became exposed & caused the death of *pltf.'s* cattle lawfully at large, which entered on the land.—*Held:* not to constitute a hidden trap.—*WINMILL & THOMAS v. COLLINS* (Sask.), [1927] 3 W. W. R. 325; *revid.*, [1928] 2 D. L. R. 353; 1 W. W. R. 705; 22 S. L. R. 422.—CAN.

141 i. *Wrong quantity in poisonous dip—Animals poisoned.*—*Pltf.* alleged that the death of his sheep was due to the presence of an excess of arsenic in powder manufactured & sold by *def'ts.* which he had added, together with more than the quantity of water specified in *def'ts.* printed instructions, to a solution through which the sheep had already been passed without injury.—*Held:* *pltf.* had not proved that the death of the sheep was due to an excess of arsenic in the powder.—*COOPER v. VISEER*, [1920] App. D. 111.—S. AF.



**145a. Animal killed—Meaning of “external & visible injury.”**—A policy of insurance provided that an insurance co. should indemnify the insured against death solely attributable to accidental external & visible injury to any horse the property of the insured, duly certified by a veterinary surgeon, & further provided that the due observance & fulfilment of the conditions of the policy should be a condition precedent to any liability of the co. under the policy. The insured's horse, drawing a loaded van, got out of the driver's control, bolted, & fell into a ditch with the van on top of it, & died in consequence of the pressure of a shaft upon its windpipe. There was no mark visible on the skin of the horse, & no certificate of a veterinary surgeon was obtained:—*Held*: (1) it was not necessary that there should have been any mark visible on the skin of the horse, & the injury was external & visible; & (2) it was a condition precedent to the insured's right to recover that the death of the horse should be duly certified by a veterinary surgeon, but, on the facts of the case, the co. had waived compliance with such condition.—*BURRIDGE & SON v. HAINES (F. H.) & SONS, LTD.* (1918), 87 L. J. K. B. 641; 118 L. T. 681; 62 Sol. Jo. 521, D. C.

**146. Add. Annotation:—***Generally, Mentd. Firemen's Fund Insc. v. Western Australian Insc. & Atlantic Insc.* (1927), 138 L. T. 108.

**151. After this case add “***See, also, CONSTITUTIONAL LAW, Vol. XI., p. 589; COPYHOLDS, Vol. XIII., pp. 21 et seq.*

**154. Add. Citation:—**17 C. B. N. S. 251, n.  
*Add. Annotations:—Refd. Read v. Edwards* (1864), 17 C. B. N. S. 245; *Gayler & Pope v. Davies* (1924), 93 L. J. K. B. 702.

**PART III. SECT. 1, SUB-SECT. 1.—G.**

**i.** ———.—*—*—A claimant has a right of action to compel council & valuer to comply with the Acts as far as may be necessary to give effect to a valid claim for compensation; but he has no right of action in the nature of appeal against the determination of the council or the valuation of the valuer.—*HOGLE v. ERNSTSTOWN TOWNSHIP* (1918), 41 O. L. R. 394; 13 O. W. N. 347; 41 D. L. R. 123.—*CAN.*

**ii.** ———.—*Mandamus.*—The direction to the municipal council to award compensation under the Act of 1914 is mandatory; & they may by *mandamus* be required to obey the statute.—*NOBLE v. ESQUISING TOWNSHIP* (1918), 41 O. L. R. 400; 13 O. W. N. 339; 41 D. L. R. 99.—*CAN.*

**iii.** ———.—*—*—If a township council fail to perform the duties imposed upon it by s. 18 of the Act of 1914, a *mandamus* may be granted to compel the council to make the inquiry directed by the sect. & award compensation.—*HUDSON & HARDY v. BIDDULPH TOWNSHIP* (1920), 46 O. L. R. 216.—*CAN.*

**iv.** ———.—*Wanton killing of unlicensed dog.*—Notwithstanding the Act of 1917, B. C. s. 3, one is liable in damages for causing death or injury to an unlicensed dog in a sheep-protection district, if the injury is inflicted wantonly.—*WILGESS v. RITCHIE*, [1920] 2 W. W. R. 421; 52 D. L. R. 543.—*CAN.*

**PART III. SECT. 1, SUB-SECT. 2.**

**sg. Stray Animals Act, 1920 (c. 124)—Meaning of animal—Turkey.**—Since turkeys are not included under the words “animal” or “animals” in above Act an owner of a turkey, who

enters upon another's land to get the turkey after it has strayed thereon commits a trespass.—*SORLIE v. MCKEE*, [1927] 1 D. L. R. 249; [1927] 1 W. W. R. 56; 21 Sask. L. R. 330.—*CAN.*

**PART III. SECT. 2, SUB-SECT. 1.—A.**

**154 ix.** ———.—*—*—The owner of an animal in which by law the rule of property can exist is bound to take care that it does not stray into the land of his neighbour, & he is liable for any trespass it may commit, & for the ordinary consequences of that trespass. Whether or not the escape of the animal is due to the owner's negligence is immaterial.—*WHALLEY v. VANDERGRAND* [1919] 1 W. W. R. 87; 44 D. L. R. 319.—*CAN.*

**154 x.** ———.—*To remove cattle—Under Domestic Animals Act, R. S. A., 1922 (c. 67), s. 64.*—If lands of A. adjoin lands of B. without a fence between them, & the lands are within an extra-municipal area which has not been closed under s. 8 of the above Act, & none of the lands have ever been within a municipal or pound district, & if A.'s cattle stray on to B.'s lands & B. gives notice to remove them, A. sufficiently complies with s. 64 of the above Act by removing them a reasonable distance on to his own land, even though this does not effect a permanent removal.—*R. (GAGAN) v. HILLMER*, [1923] 3 W. W. R. 660.—*CAN.*

**176 iii.** ———.—*—*—Where a fence erected by one of two adjoining owners becomes by agreement, express or implied, the line fence & the other adjoining owner fences three sides of his land & joins on to the line fence, he must pay a just proportion of the then value thereof & thereafter bear an equal share of the costs of maintenance

**156a.** ———.—*—*—*MANTON v. BROCKLEBANK*, No. 258a, *post*.

**156b.** ———.—(1) For injury caused by horses or cattle to property on or adjoining a highway the owner is not liable in the absence of negligence or of wilful intention on his part.

(2) The bolting of a horse which has been left unattended in a public street is *prima facie* evidence of negligence on the part of the owner.—*GAYLER & POPE, LTD. v. DAVIES (B.) & SON, LTD.*, [1924] 2 K. B. 75; 93 L. J. K. B. 702; 131 L. T. 507; 40 T. L. R. 591; 68 Sol. Jo. 685.

**159. Add. Citation:—**62 Sol. Jo. 161.

*Add. Annotation:—As to* (1) *Refd. Richards v. Davies*, [1921] 1 Ch. 90.

**162.** After this case add “*See, now, Dogs Act, 1906 (c. 32), s. 1 (1) (3).*”

**163a. Cat killing pigeons.**—In the case of a cat attacking pigeons it is necessary to prove *scienter* before the owner of the cat can be made responsible in law.—*BUCKLE v. HOLMES*, [1926] 2 K. B. 125; 95 L. J. K. B. 547; 134 L. T. 743; 90 J. P. 109; 42 T. L. R. 369; 70 Sol. Jo. 464, O. A.

**166. Add. Annotation:—***Consd. Hines v. Tousley* (1926), 95 L. J. K. B. 773.

**167. Add. Annotation:—***Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212.

**168. Add. Annotation:—***Refd. Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762.

**174a.** ———.—*—*—*ANON.* (1470), Y. B. 10 Edw. 4, fo. 7, pl. 19.

*Annotations:—Refd. Right v. Barnard* (1674), *Froom. K. B.* 379; *Ricketts v. East & West India Docks, etc., Ry.* (1852), 12 C. B. 160.

& repair, but it also vests in him all the rights of an owner in respect of the line fence. He is entitled to strengthen & repair it by adding strands of wire to prevent his cattle getting upon the land of his neighbour, & the latter has no right to remove the strands. If he does so, & the cattle get upon his land by his act, he cannot claim against the adjoining owner for resulting damages.—*ARMSTRONG v. THOMPSON*, [1923] 3 D. L. R. 74; 2 W. W. R. 609.—*CAN.*

**ii.** ———.—*—*—A horse belonging to applt. was being grazed in a field which adjoined resp.'s farm, upon which he kept cattle, including a bull. The cattle were continually breaking through the dividing fence, & on one occasion the bull gored the horse. The fence between the properties was not a sufficient fence within Fencing Act, 1908.—*Held*: there was no evidence of negligence by resp. towards applt. & without proof of *scienter* damages were not recoverable.—*EDWARDS v. RAWLINS*, [1924] N. Z. L. R. 333.—*N.Z.*

**11.** ———.—*—*—Where there exists a valid bye-law permitting animals to run at large in a municipality, an owner cannot be held to be guilty of negligence in allowing his animals so to run.—*KOCH v. GRAND TRUNK PACIFIC BRANCH LINES CO.*, [1917] 1 W. W. R. 1120; 10 Sask. L. R. 35.—*CAN.*

**1ii.** ———.—*—*—Damage caused by a bull running at large contrary to *Entire Animals Ordinance, s. 4*, is recoverable though the property damaged is not surrounded by a lawful fence.—*MOLEAN v. BRETT*, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—*CAN.*

**1iii.** ———.—*—*—The owner of cattle rightfully running at large is not liable

180. *Add. Annotations*:—As to (1) *Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212. As to (2) *Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212.
181. After this case add “*See, also*, BOUNDARIES, Vol. VII., pp. 281, 282.”
183. *Add. Annotations*:—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212; *Gayler & Pope v. Davies*, [1924] 2 K. B. 75. *Refd. Theyer v. Purnell*, [1918] 2 K. B. 333.
187. *Add. Annotations*:—*Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212. *Mentd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75.
194. *Add. Annotation*:—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212.
195. *Add. Annotations*:—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212; *Hines v. Tousley* (1926), 95 L. J. K. B. 773. *Refd. Mansel v. Webb* (1918), 88 L. J. K. B. 323; *Musgrove v. Pandelis*, [1919] 2 K. B. 43; *A.-G. v. Cory, Kennard v. Cory*, [1921] 1 A. C. 521; *Rainham Chemical Works v. Belvedere Fish Guano Co.*, [1921] 2 A. C. 465; *Hoare v.*

*McAlpine*, [1923] 1 Ch. 167; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341; *Gayler & Pope v. Davies*, [1924] 2 K. B. 75; *Glanville v. Sutton* (1927), 44 T. L. R. 98; *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1; *Pontardawe R. C. v. Moore-Gwyn*, [1929] 1 Ch. 656. *Mentd. De Silva v. Korossa* (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; *Quebec Ry. Light, Heat & Power Co. v. Vandry*, [1920] A. C. 662; *Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213; *Jefferson v. Derbyshire Farmers*, [1921] 2 K. B. 281; *Postmaster-General v. Liverpool Corpn.* (1922), 92 L. J. K. B. 382; *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539; *Cockburn v. Smith*, [1924] 2 K. B. 119; *Performing Right Soc. v. Ciry! Theatrical Syndicate*, [1924] 1 K. B. 1; *Booth v. Thomas* (1925), 42 T. L. R. 114; *Ilford U. D. C. v. Beal*, [1925] 1 K. B. 671; *Noble v. Harrison*, [1926] 2 K. B. 332; *Smith v. G. W. Ry.* (1926), 135 L. T. 112; *G. W. Ry. v. S.S. Mostyn, The Mostyn*, [1928] A. C. 57.

for damage to crops done by them on unfenced land.—*McKAY v. LOUCKS*, [1920] 2 W. W. R. 1007; 53 D. L. R. 394.—CAN.

1 iv. —.—.—]—Animals are not running at large when in charge of a herdsman.—*R. v. PETERSON*, [1920] 1 W. W. R. 506; 51 D. L. R. 104; 32 Can. Crim. Cas. 218.—CAN.

1 v. —.—.—]—*CLEARY v. HITE*, [1921] 3 W. W. R. 130.—CAN.

1 vi. —.—.—]—Pltf. & deft. owned adjoining farms, & the line between the farms was unfenced. Deft. turned his cattle loose & they went on to pltf.'s land & ate up his grain which was, to deft.'s knowledge, lying in stocks thereon.—*Held*: deft. was liable in damages.—*DOBROLOWSKI v. DANYLUK*, [1921] 2 W. W. R. 729.—CAN.

1 vii. —.—.—]—A bull, which has broken through from its owner's enclosed land on to adjoining enclosed land of another person & is without a herder, is running at large within *Stray Animals Act*.—*R. v. BRADY*, [1921] 3 W. W. R. 396.—CAN.

1 viii. —.—.—]—Under *Animals Act*, R. S. B. C., 1924 (c. 11), s. 11, the owner of an animal unlawfully at large is liable for personal injuries committed by it when running at large, as well as for injury to property.—*JACOBSON v. SCHNEIDER*, [1927] 1 D. L. R. 1006; [1927] 2 W. W. R. 257; 38 B. C. R. 83.—CAN.

n i. —.—.—]—Where a municipal bye-law is passed pursuant to *Stray Animals Act*, R. S. S. 1920 (c. 124), to prohibit the permitting of horses to run at large, the duty imposed thereby is one towards the proprietors of cultivated land as defined in s. 2 (14) of the Act, & not towards the public at large.—*OSADCHUK v. RUSSNAK* (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—CAN.

n ii. —.—.—]—A municipality passed a bye-law providing that all animals should be allowed to run at large in the municipality with certain exceptions & except between certain dates. Another bye-law prescribed what should constitute a lawful fence. Nothing was said as to what should be the effect of a lawful fence, & no bye-law was passed for the purposes of *Municipal Act*, Man., s. 602 (d).—*Held*: the effect of the first-mentioned bye-law was to permit cattle, other than those excepted in it, to run at large between certain dates, & in this it ousted the common law liability of the owner of the cattle for damages

caused by them when so running at large, & such damages were not recoverable even if the land where the damage was done was surrounded by a lawful fence.

(2) The bye-law also provided that nothing therein contained should prevent the owner of any lands trespassed upon or of any property destroyed from waiving rights created by that bye-law & bringing his action in any competent ct. in consequence of any trespass.—*Held*: that provision gave no right of action taken away by the other bye-law provision.—*JUKES v. MISKELLY*, [1923] 2 D. L. R. 561; 33 Man. L. R. 67; [1923] 1 W. W. R. 1057.—CAN.

194 i. —.—.—]—*Remoteness of damage*.—Damages for personal injuries suffered by the rider of a horse from a kick by a neighbour's trespassing horse are not too remote where the trespassing horse's owner knows that the neighbour frequently rides on horseback, & where it is customary in the country to ride horses when bringing home horses or cattle.—*WHALLEY v. VANDERGRAND*, [1919] 1 W. W. R. 87; 44 D. L. R. 319.—CAN.

194 ii. —.—.—]—Where a heifer was thoroughbred & registered & its owner intended to breed it to a certain thoroughbred registered bull, the owner of the heifer was given damages for the difference in value between the calf anticipated as the result of such breeding & the calf that was born as the result of a bull's trespass. Damage by reason of the possible influence upon the strain of subsequent offspring was held too remote & uncertain to be considered.—*MCLEAN v. BRETT*, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—CAN.

194 iii. —.—.—]—Deft.'s trespassing “scrub” bull served pltf.'s young purebred heifer.—*Held*: pltf. was entitled to damages for the decreased value of the heifer caused by her growth being stunted & shape being affected by being bred at an early age, but not to damages based on a consideration of the effects on the minds of others of an erroneous theory that the heifer was liable to “throw back” to the first bull in future breeding.—*COUSINS v. GREAVES*, [1920] 3 W. W. R. 702; 54 D. L. R. 650.—CAN.

194 iv. —.—.—]—Deft. negligently allowed his mare to escape & trespass in another's field where she kicked & injured a farm boy while she was being ejected.—*Held*: the injury was not too remote.—*HARRISON*

*v. ARMSTRONG* (1917), 51 I. L. T. 38.—IR.

195 iii. —.—.—]—The owner of a bull at large contrary to law must be held to have known that he would naturally seek to cover any heifer or cow which he can reach, & his covering the heifer of another owner on that owner's property & against his will is a trespass for which the owner of the bull is liable.—*MCLEAN v. BRETT*, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—CAN.

195 iv. —.—.—]—Deft.'s cattle trespassed on pltf.'s land which was not enclosed by a lawful fence. Pltf.'s son on horseback was chasing the cattle out when pltf. proceeded on foot to drive a steer through a gateway & was charged by the steer & injured. Deft. had no knowledge that the steer was of a vicious nature or liable to attack persons.—*Held*: pltf. could not recover damages, as the injury was not an ordinary consequence of the trespass; the damages claimed were too remote, & the proximate cause of the injury was pltf.'s action in approaching the animal on foot which he should not have done.—*HATTON v. MORRISON*, [1921] 2 W. W. R. 803.—CAN.

197 i. a. —.—.—]—A sheep owner cannot join the owners of trespassing dogs as defts. in one action for damages for the loss of his sheep.—*McDERMOTT v. HUDSON* (1920), 16 Tas. L. R. 21.—AUS.

197 iv. —.—.—]—Where damage is done by animals belonging to several owners the fact that the injured party cannot specify the amount of damage done by the animals of each owner does not disentitle him to substantial damages.—*PITKLEY v. BEDFORD*, [1918] 2 W. W. R. 1055; 11 Sask. L. R. 345; 42 D. L. R. 560.—CAN.

197 v. —.—.—]—The owners of different animals were held liable as joint tortfeasors for destruction of grain.—*ALHOUSE v. BESANA*, [1919] 3 W. W. R. 725; 49 D. L. R. 158.—CAN.

PART III. SECT. 2, SUB-SECT. 1.—C.

200 i. a. —.—.—]—Where by deft.'s negligence his four-horse team ran away & pltf. ran out to stop them & received injuries.—*Held*: pltf. could not recover damages as he failed to show that any person was in danger when he tried to stop the horses.—*McDONALD v. BURR*, [1919] 3 W. W. R. 825.—CAN.

201. *Add. Annotation*:—**Consd.** Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.
202. *Add. Annotation*:—**Refd.** Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.
203. *Add. Annotations*:—**Consd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75. **Refd.** Manton v. Brocklebank, [1923] 2 K. B. 212; Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.
204. *Add. Annotations*:—*As to* (1) **Consd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75. **Refd.** Manton v. Brocklebank, [1923] 2 K. B. 212.
205. *Add. Annotation*:—**Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.
- 206a. ———. ———.]—**GAYLER & POPE, LTD. v. DAVIES (B.) & SON, LTD.**, No. 156b, *ante*.
208. *Add. Annotations*:—**Consd.** Glasgow Corp'n. v. Taylor, [1922] 1 A. C. 44. **Refd.** Hardy v. C. L. Ry., [1920] 3 K. B. 459; Weld-Blundell v. Stephens, [1920] A. C. 956.
214. *Add. Annotations*:—**Consd.** Paul v. G. E. Ry. (1920), 36 T. L. R. 344; Hargrove v. Burn (1929), 46 T. L. R. 59. **Apprvd.** Cooper v. Swadling (1929), 46 T. L. R. 73. **Refd.** Ellerman Lines v. Grayson, [1919] 2 K. B. 514; Saics v. Bristol Petroleum Co. v. G. W. Ry. (1920), 90 L. J. K. B. 1289; Admiralty Comrs. v. S.S. Volute, [1922] 1 A. C. 129; Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co., [1924] A. C. 406; The Vectis, [1929] P. 204. **Mentd.** The Manorbier Castle (1922), 129 L. T. 31.
216. *Add. Annotations*:—**Refd.** Manton v. Brocklebank, [1923] 2 K. B. 212; Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Gayler & Pope v. Davies, [1924] 2 K. B. 75.
218. *Add. Annotations*:—**Consd.** Manton v. Brocklebank, [1923] 2 K. B. 212; Buckle

v. Holmes, [1926] 2 K. B. 125. **Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.

220. *Add. Annotation*:—**Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.

222. *Add. Annotation*:—*As to* (1) **Refd.** Manton v. Brocklebank, [1923] 2 K. B. 212.

226. *Add. Annotation*:—*As to* (1) **Refd.** Manton v. Brocklebank, [1923] 2 K. B. 212.

234. *Add. Annotation*:—**Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.

235. *Add. Annotation*:—*As to* (1) **Refd.** Manton v. Brocklebank, [1923] 2 K. B. 212.

238. *Add. Annotation*:—**Refd.** Manton v. Brocklebank, [1923] 1 K. B. 406.

239. *Add. Annotations*:—**Consd.** Manton v. Brocklebank, [1923] 2 K. B. 212; Hines v. Tousley (1926), 95 L. J. K. B. 773. **Refd.** Mansel v. Webb (1918), 88 L. J. K. B. 323; Musgrove v. Pandelis, [1919] 2 K. B. 43; A-G. v. Cory, Kennard v. Cory, [1921] 1 A. C. 521; Rainham Chemical Works v. Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare v. McAlpine, [1923] 1 Ch. 167; Cockburn v. Smith, [1924] 2 K. B. 119; Edwards v. Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope v. Davies, [1924] 2 K. B. 75; Booth v. Thomas (1925), 42 T. L. R. 114; Noble v. Harrison, [1926] 2 K. B. 332; Smith v. G. W. Ry. (1926), 135 L. T. 112; Glanville v. Sutton (1927), 44 T. L. R. 98; St. Anne's Well Brewery Co. v. Roberts (1928), 140 L. T. 1; Pontardawo R. Co. v. Moore-Gwyn, [1929] 1 Ch. 656. **Mentd.** De Silva v. Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Quebec Ry. Light, Heat & Power Co. v. Vandry, [1920] A. C. 662; Boynton v. Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Jefferson v. Derbyshire Farmers, [1921] 2 K. B. 281; Postmaster-General v. Liverpool Corp'n. (1922), 92 L. J. K. B. 382; Phillips

206 x. ———. ———. *Mechanical precautions for control of horse.*—TUCKETT v. HENNESSY, [1918] V. L. R. 56.—**AUS.**

w i. ———. ———.]—It is negligence for a man mounted on a bicycle to drive loose horses at 6.15 a.m. along the streets of a populated district, urging them round corners at a fast trot.—**BARKETT v. HARRIS & THOMPSON, LTD.**, [1924] N. Z. L. R. 228.—**N.Z.**

y i. *Restive horse — Negligence.*—Pltf. was driving a motor car when he was held up by the traffic police. Deft.'s driver pulled up his horse & cart between the car & the footpath, & the horse became restive & backed into the motor car, occasioning damage to it. The horse had not previously been known to be restive, & was usually quiet, & the driver was unable to say what had frightened the horse. The driver was not in any way negligent in the manner in which he looked after the horse.—**Held**: there was no evidence of negligence on the part of the driver of the horse or of deft.—**SARTORI v. REYNOLDS, LTD.** (1927), 29 W. A. L. R. 32.—**AUS.**

215 iii. ———. *Liability of dog owner.*—Deft.'s dog, to his knowledge, had for long had a habit of running after & barking at horses & carriages travelling upon highways.—**Held**: deft. was liable in damages for injury caused by the running away of horses frightened by the dog so acting.—**BIRDSALL v. MERRITT** (1917), 38 O. L. R. 587; 35 D. L. R. 260.—**CAN.**

215 iv. ———. *Scienter.*—Deft.'s dog jumped from an automobile & ran

at pltf.'s horses & barked causing the horses to jump sideways, the pole strap to break, & the team to run away, causing loss & bodily injuries. The ct. found that the dog had, to deft.'s knowledge, the mischievous propensity of doing such acts, & deft. was held liable in damages.—**SPIT v. HOGSON**, [1919] 3 W. W. R. 210.—**CAN.**

225 iii. ———. ———.]—Pltf.'s motor car collided with a dark brown heifer belonging to deft. which had strayed from deft.'s unfenced land & came suddenly out on to the highway from the land of an adjoining owner; the car was overturned & pltf. sustained injury. There was no negligence in the driving or management of the car.—**Held**: deft. was not liable to pltf.—**HALL v. WIGHTMAN**, [1926] N. 92.—**IR.**

226 i. ———. *Sheep—Defective fence—Natural propensity.*—A motor cyclist was injured by a collision in daylight with a sheep upon a public road. Pursuer averred that defender was negligent in knowingly failing to keep his fences in such repair as would prevent his sheep from straying on to the road, & in any event, in allowing his sheep to graze upon the road.—**Held**: the accident was not the natural & probable result of the negligence alleged.—**FRAZER v. PATE**, [1923] S. C. 748; 60 Sc. L. R. 470.—**SCOT.**

sk. *Animals running "at large."*—*Dog—Biting pedestrian.*—The owner is liable in damages only if he knew that the dog was viciously disposed.—**BOWEN v. LIGHTFOOT**, [1920] 2 W. W. R. 153; 32 D. L. R. 305; 30 Man. L. R. 337.—**CAN.**

sl. ———. *Horses — Collision with motor car.*—The owner is *prima facie* liable only for such damages as a horse is likely to commit if allowed to stray. The doctrine of *scienter* applies, & the case is in the same class as that of a horse biting or kicking a person on the highway.—**OSADCHUK v. RUSSIAK** (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—**CAN.**

#### PART III. SECT. 2, SUB-SECT. 1.—D.

sm. *Person in unfenced garden—Cow escaping from railway yard.*—The animal knocked down & injured pltf., but was not vicious, but nervous & excitable.—**Held**: pltf.'s action to recover damages for her injuries failed.—**STREET v. CRAIG** (1920), 48 O. L. R. 324; 56 D. L. R. 105.—**CAN.**

#### PART III. SECT. 2, SUB-SECT. 2.—A.

sn. *Husky.*—An animal which is the result of a cross between a dog & a wolf must be considered as essentially a wild animal, & a person in charge thereof will be responsible for injury done by it to a human being.—**TEMPLE v. ELVEKY** (Sask.), [1926] 3 W. W. R. 652.—**CAN.**

sp. *Steer.*—The rule that an owner of an animal of an ordinarily quiet nature is liable for the vicious acts thereof only if he knew that the animal was accustomed or likely to commit such acts, applies to an action for damages for personal injuries caused by an attack by a steer.—**ROSENTHAL v. HESS** (Sask.), [1927] 1 D. L. R. 493; [1927] 1 W. W. R. 15.—**CAN.**

*v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539; *Performing Right Soc. v. Cyril Theatrical Syndicate*, [1924] 1 K. B. 1; *Ifford U. D. C. v. Beal*, [1925] 1 K. B. 671; *G. W. Ry. v. S. S. Mostyn, The Mostyn*, [1928] A. C. 57.

243. *Add. Annotations*:—*Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212; *Buckle v. Holmes* (1925), 95 L. J. K. B. 158.

246a. *Bull attacking cow—Bull in auction yard.*—In an action for damages arising out of an attack on a cow in an auction yard by a bull which was in charge of deft.'s servants, but otherwise unsecured:—*Held*: there was no presumption in law that a bull would attack a cow in such circumstances, & for pltf. to succeed it was necessary for him to prove negligence in not having anticipated a probable danger; further, if such negligence were proved, it would be no answer for deft. to set up absence of *scienter*.—*HINCKES v. HARRIS* (1921), 65 Sol. Jo. 781.

258a. *Mare attacking horse—Strange mare turned into field with horse.*—Trespass to person or goods by an animal in which there is at common law a valuable property, such as horses & cattle, does not generally render its owner liable.

Deft. put a mare into a field in which there was a horse belonging to pltf. without notifying pltf. The mare kicked the horse, which had to be destroyed. No *scienter* was proved in deft., but it was found by the deputy county ct. judge that the propensity of horses running loose to injure one another in sport or quarrel was common knowledge:—*Held*: (1) the mare was not within the class of dangerous animals which the owner must keep at his peril according to the rule in *Fletcher v. Rylands* (see No. 195); (2) deft. was entitled to assume that the mare, being *mansuetæ naturæ*, was an innocent animal, & having no notice of any fact indicating the contrary, was not under any duty towards pltf. to give notice of his intention to place the mare in the field, or to have a person on the watch or in charge of her, & on the whole deft. was not liable either for breach of an absolute duty or for negligence.—*MANTON v. BROCKLEBANK*, [1923] 2 K. B. 212; 92 L. J. K. B. 624; 129

L. T. 135; 39 T. L. R. 344; 67 Sol. Jo. 455, C. A.

*Annotations*:—*As to* (2) *Apld. Buckle v. Holmes*, [1926] 2 K. B. 125. *Refd. Gayler & Pope v. Davies* [1924] 2 K. B. 75; *Glanville v. Sutton* (1927), 44 T. L. R. 98.

260. *Add. Citations*:—6 Exch. 697; 17 L. T. O. S. 158; 155 E. R. 724.

*Add. Annotation*:—*Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212.

261. *Add. Annotations*:—*As to* (1) *Expld. Addie (Collieries) v. Dumbreck*, [1929] A. C. 358. *Refd. Hardy v. C. L. Ry.*, [1920] 3 K. B. 459. *As to* (2) *Consd. Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776. *Refd. Fairman v. Perpetual Investment Bldg. Soc.*, [1923] A. C. 74; *Manton v. Brocklebank*, [1923] 1 K. B. 406. *Generally, Mentd. Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.

264. *Add. Annotations*:—*As to* (1) *Refd. National Provincial & Union Bank of England v. Charnley*, [1924] 1 K. B. 431. *As to* (2) *Refd. Baker v. James*, [1921] 2 K. B. 674; *Letang v. Ottawa Electric Ry.*, [1926] A. C. 725.

267. *Add. Annotation*:—*Mentd. Manton v. Brocklebank*, [1923] 2 K. B. 212.

270a. — *Mare kicking horse.*—*MANTON v. BROCKLEBANK*, No. 258a, *ante*.

274. *Add. Annotations*:—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212. *Apld. Buckle v. Holmes* (1925), 95 L. J. K. B. 158. *Consd. Hines v. Tousley* (1926), 95 L. J. K. B. 773.

274a. — — —.]—The owner of a dog, which was a well-behaved dog, & against whose character nothing was known:—*Held*: not liable to indemnify an employer in respect of compensation which the employer had to pay under Workmen's Compensation Acts to the employee, who had been injured by an accident caused by the dog.—*HINES v. TOUSLEY* (1926), 95 L. J. K. B. 773; 135 L. T. 296; 70 Sol. Jo. 732; 19 B. W. C. C. 216, C. A.

275. *Add. Annotations*:—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212; *Buckle v. Holmes*, [1926] 2 K. B. 125. *Refd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75.

277. *Add. Annotation*:—*Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212.

301a. *Dog biting cattle—Furious disposition—Previous biting of cattle.*—*Held*: no evi-

benefit of the doctrine of the *prima facie* harmlessness of domestic animals as frequenters of the highway, & the duty of controlling it as though it belonged to the class of animals *feræ naturæ* had fallen on deft. & his servants.—*HOWARD v. BERNIN, O'CONNOR & Co.*, [1925] 2 I. R. 110, 118.—IR.

250 i. — *Failure to keep same off premises.*—If a party harbours a dog, or allows it to remain about his premises, with a knowledge of its vicious character, he is liable for injuries caused by it, though he is not the owner.—*WOOD v. VAUGHAN* (1889), 28 N. B. R. 472.—CAN.

o. i. —.]—It is negligence on the part of the owner of a stallion, whose disposition towards mares is known to him to be dangerous, not to take reasonable care to prevent the stallion from being in an enclosure in which, as he is aware, mares belonging to other persons are or may be running, & he will be liable in damages if injury ensues.—*MATHESON v. STUCKEY*, [1921] V. L. R. 637.—AUS.

### PART III. SECT. 2, SUB-SECT. 2.—B. (a).

*Duty to keep under control.*—If an owner of a dangerous animal knows it to be dangerous & neglects to keep it safe, he is liable in damages for injuries or death caused by it.—*TARASOFF v. ZIELINSKY*, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—CAN.

245 ii. — — —.]—In an action for damages for the death of a person killed by a bull known to be dangerous allowed to be at large on the farm where deceased lived, a defence of contributory negligence cannot be supported by the fact that deceased, though knowing of the possible danger, went about her ordinary business on the farm, in the course of which she was killed.—*TARASOFF v. ZIELINSKY*, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—CAN.

245 iii. — — —.]—Liability attaches to the owner if, knowing of the mischievous tendencies of his dog,

he neglects reasonable precautions to prevent such tendencies causing damage.

in the street was passing deft.'s house, when his dog rushed out, knocked her down, & injured her. At the trial of an action for damages for her injury, the jury found that deft. knew that the dog was of a vicious disposition & assessed damages to pltf. — *Held*: there was evidence to sustain the jury's finding, deft.'s wife, who was in control of the dog, having knowledge of its propensity to rush out & jump at persons passing.—*NORTON v. FITZGERALD*, [1928] 3 D. L. R. 474; 62 O. L. R. 314.—CAN.

246 iii. — — —.]—While deft.'s servants were unloading cattle at a railway station a bullock "got wild" on the platform, rushed upon adjoining ground, was driven back, escaped through a gate, ran through the streets of the city, & injured pltf. — *Held*: the bullock on emerging from the railway wagon had displayed its wild condition to deft.'s servants in such a way as to deprive them of the

- dence of *scienter*.—THOMAS v. MORGAN (1835), 2 Cr. M. & R. 496; 1 Gale, 172; 5 Tyr. 1085; 5 L. J. Ex. 64; 150 E. R. 214.
- Annotations*:—*Refd.* Owen v. Knight (1837), 5 Scott, 307; May v. Burdett (1846), 9 Q. B. 101.
- 305a. Horse biting man—Previous biting of horses.**—The fact that the owner of a horse knew that it was accustomed to bite other horses is not sufficient to establish his liability for its biting a human being.—GLANVILLE v. SUTTON & Co., LTD., [1928] 1 K. B. 571; 97 L. J. K. B. 166; 138 L. T. 336; 44 T. L. R. 98, D. C.
- 306. Add. Annotation**:—*Refd.* Wakefield v. Board (1928), 45 R. P. C. 261.
- 325. Add. Annotation**:—*As to* (2) *Apld.* Stearn v. Prentice, [1919] 1 K. B. 394.
- 325a. Rats—Damage to crops.**—Defts. carried on the business of bone manure manufacturers on premises near pltf.'s farm. For the purpose of their business they had on their premises a heap of bones, which caused large numbers of rats to assemble there. The rats made their way from defts.' premises on to pltf.'s land, & ate his corn, causing substantial loss, in respect of which pltf. claimed damages from defts. It was not proved that the bones kept by defts. were excessive or unusual in quantity:—*Held*: no cause of action had been established against defts.—STEARN v. PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394; 88 L. J. K. B. 422; 120 L. T. 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142, D. C.
- 328a.** ————]—*R. v.* FAIRBANK (1850), 15 L. T. O. S. 259; *sub nom.* *R. v. HULL JJ.*, 14 J. P. Jo. 384.
- 332. Add. Annotation**:—*Refd.* A.-G. v. Hodgson. [1922] 2 Ch. 429.
- 332a.** ————]—*Proof that infraction of bye-law caused nuisance not necessary.*—TONG STREET LOCAL BOARD v. SEED (1874), 39 J. P. 278.
- .]—*See, also*, No. 331, *ante*.
- 333a.** ————]—*Metropolis Management Act, 1862* (c. 102), s. 73—*Proof of actual nuisance necessary.*—CHELSEA VESTRY v. KING (1864), 17 C. B. N. S. 625; 5 New Rep. 85; 34 L. J. M. C. 9; 11 L. T. 419; 29 J. P. 39; 10 Jur. N. S. 1150; 13 W. R. 157; 144 E. R. 250.
- 338. Add. Annotations**:—*Refd.* Sack v. Jones, [1925] Ch. 235. *Mentd.* Edwards v. Birmingham Navigations, [1924] 1 K. B. 341.
- 339. Add. Annotation**:—*Consd.* Vanderpant v. Mayfair Hotel Co. (1929), 27 L. G. R. 752.

## Part IV.—Agistment.

- 342. Add. Annotation**:—*Refd.* Back v. Daniels (1924), 69 Sol. Jo. 160.
- 342a.** ————]—*Whether breach of covenant not to underlet.*—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep—*i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country.
- Semble*: agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS v. DAVIES, [1921] 1 Ch. 90; 89 L. J. Ch. 601; 124 L. T. 238; 65 Sol. Jo. 44.
- 343. Add. Annotation**:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.
- 344. Add. Annotation**:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.

### PART III. SECT. 2, SUB-SECT. 3.

**p. i.** ————]—*To order dog to be kept under control—Person in charge of dog.*—WALKER v. BRANDER, [1920] S. C. (J.) 20; 57 Sc. L. R. 651.—SCOT.

**sq. Registration of Dogs Act, 1914—Presumption as to keeping.**—There is no presumption raised by sect. 9 of above Act, that a dog has been kept at a particular place within a district. Evidence of such keeping must be given.—FOREMAN v. SMITH, [1927] S. A. S. R. 366.—AUS.

### PART III. SECT. 2, SUB-SECT. 4.

**337 i. Horses—Noise from stables.**—Though a lively stable is constructed with all modern improvements for drainage & ventilation, if offensive odour therefrom, & the noise made by the horses, are a source of annoyance & inconvenience to the neighbouring residents, the proprietor is liable in damages for the injury caused thereby.—DRYSDALE v. DUGAS (1896), 26 S. C. R. 20.—CAN.

**340 i.** ————]—*Smell from stables.*—DRYSDALE v. DUGAS, No. 337 i, *ante*.—CAN.

### PART IV.

**b. i.** ————]—*Construction.*—By a contract for agistment pltf. agreed to make available certain properties for the agistment of deft.'s sheep. The terms of payment were 11d. per head per week, £500 to be paid when the sheep arrived, £500 in six months, & the balance when the sheep were removed:—*Held*: the payment contemplated by the contract was 11d. per head per week, according to the number of sheep on the properties from time to time; the contract was one for making available the area of land agreed on for the sheep, & included the taking care of the sheep agisted at the above remuneration while they were in pltf.'s custody.—SPRING v. YOUNG, [1923] S. A. S. R. 116.—AUS.

**344 xii.** ————]—*Loss of animals.*—Pltf. was the owner of a mare which he delivered to deft. for agistment in his paddock of 6,000 acres, which paddock was heavily timbered & covered with blackboys. After the mare had remained in the paddock for some time, pltf. requested the delivery of the mare in two months' time. Deft. made endeavours to find the mare, but only saw it on one occasion, &

thereafter made many attempts to locate the mare, but without success:—*Held*: deft. was not liable to pltf. for the value of the mare, there being no evidence of negligence.—ROBINSON v. WATERS (1920), 22 W. A. L. R. 66.—AUS.

**344 xiii.** ————]—*Failure to detect loss within reasonable time.*—A large number of sheep were lost, & there was evidence rendering it probable that these had been driven off the run:—*Held*: an agister of sheep must show that he took reasonable care to see the sheep were on the agistment area, & failure to detect this loss within a reasonable time was clear evidence of negligence.—SPRING v. YOUNG, [1923] S. A. S. R. 116.—AUS.

**344 xiv.** ————]—*An agister is bound to take reasonable care of the animal entrusted to him, & when the owner comes for it, if he cannot produce it he must show that he took all reasonable precautions against its disappearance.*—COMSTOCK v. ASHCROFT ESTATES, LTD., [1917] 1 W. W. R. 1412; 23 B. C. R. 4761.—CAN.

**344 xv.** ————]—*Onus of negativing negligence.*—In case of loss of animals while in the care of an agister, the

346. *Add. Annotation*:—**Refd.** Weld-Blundell v. Stephens, [1920] A. C. 956.

346a. — **Animal stolen**—**Duty of agister.**]—An agister of cattle does not discharge himself of his duty as a bailee for reward by proving that they were stolen without his default, if by using reasonable diligence he could have recovered them.

If, having failed to use such diligence, he is sued for loss of the cattle, he must prove, in order to discharge himself, that such diligence would have been unavailing; it is not for the bailor to prove that it would have retrieved the loss.

A farmer accepted certain cattle for agistment. Some of them were stolen without his default. After learning that they were missing he made no effort, whether by informing the owner or the police, or otherwise, to recover them. It was doubtful whether any reasonable attempt on his part would have led to their recovery:—**Held**: he was liable for their loss.—**COLDMAN v. HILL**, [1919] 1 K. B. 443; 88 L. J. K. B. 491; 120 L. T. 412; 35 T. L. R. 146; 63 Sol. Jo. 166, C. A.

347. *Add. Annotation*:—**Consd.** White v. Smith (1927), 96 L. J. K. B. 397.

## Part V.—Hiring.

371. *Add. Annotation*:—**Refd.** Edwards v. Porter (1924), 41 T. L. R. 57.

377. *Add. Annotation*:—**As to** (4) **Refd.** Kemp v.

Elisha, [1918] 1 K. B. 228.

380. *Add. Annotation*:—**Mentd.** Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 783.

*onus* is on him to show circumstances negativing negligence on his part.—**MCCAULEY v. HUBER**, [1920] 3 W. W. R. 123; 54 D. L. R. 150.—**CAN.**

344 xvi. — **Agister not insurer**—**What amounts to negligence.**]—**POTTS v. SMITH** (Alta.), [1928] 1 D. L. R. 208; [1927] 3 W. W. R. 619.—**CAN.**

**sr.** — **Failure to provide food & water.**]—Where horses have been delivered into the custody of an owner of pasture lands to be kept & pastured by him in return for a money payment, it is his duty to see that the horses are provided with sufficient food & water, & if he neglects these duties & a loss through death or a loss through depreciation is thereby incurred he is liable in damages.—**METX v. MARSHALL** (1922), 70 D. L. R. 14; [1922] 3 W. W. R. 660.—**CAN.**

356 iii. —.]—An agister has no lien, in the absence of special agreement, upon the animals he agists.—**RE JORGENSEN**, [1923] 2 W. W. R. 600.—**CAN.**

356 iv. — **Or statute.**]—An agister has a lien on the pastured animals under the Possessory Liens Act, R.S.A., 1922 (c. 104), but not under Livery Stable-Keepers Act, R.S.A., 1922 (c. 107).—**SPARLING v. WARD**, [1925] 2 D. L. R. 922; [1925] 2 W. W. R. 181.—**CAN.**

362 i. — **For malicious injury.**]—Appet. had cattle on his land under grazing contracts with the owners. These cattle were maliciously driven off the lands & injured.—**Held**: appet. as bailee in possession could claim compensation for the cattle entrusted to his care.—**WORTHINGTON v. TIPHERARY COUNTY COUNCIL**, [1920] 2 I. R. 233; 54 L. L. R. 77.—**IR.**

### PART V.

369 xv. —.]—If a hired horse is in a sound condition when taken out, & it is brought back injured, the *onus* of proof in a claim for damages for negligence is on deft. The hirer is bound to treat the horse with the degree of care which a person of ordinary discretion would use towards his own, but if the horse is so treated & nevertheless receives an injury the hirer is not liable in damages for such

injury.—**REINSETH v. CAMPBELL** (1920), 52 D. L. R. 357.—**CAN.**

369 xvi. —.]—Where a person hires an animal & it dies while in his custody, the *onus* is upon him to establish that he took care of it. That care is the care which a prudent man would take of his own animal under the circumstances.—**MURRAY v. COLLINS**, [1920] 2 W. W. R. 845; 53 D. L. R. 120.—**CAN.**

369 xvii. —.]—**Deft.** hired a horse from **pltf.** to drive from T. to L. & return. At a distance of between six & eight miles from S., the horse fell lame in the right hind leg. **Deft.** drove it to S., put it in a livery stable & gave instructions to have the hoof of the right hind leg re-shod. **Deft.** hired another horse & continued his journey to L., a distance of over eight miles. He returned next day, took the horse out, & finding that it was not then lame, started with it on the return journey. After travelling about three miles, the horse again fell lame & kept getting a little lammer all the way to T. The journey from S. to T., a distance of twenty-two miles, took seven & one-half hours. There was no evidence as to what caused the horse's lameness. There was no evidence that there was, between the place where the horse fell lame & T. any suitable place in which the horse could have been placed & cared for, or where **deft.** could have hired another horse to continue the return journey.—**Held**: as the lameness when it first developed on the return journey was not shown to have been of a more serious nature than often happens to a horse which may nevertheless walk, or even trot slowly, fifteen to twenty miles without serious distress, **deft.** could not be held guilty of negligence until he had travelled a sufficient distance to satisfy himself that the lameness was increasing so as to make it dangerous to the welfare of the horse to continue the journey.—**GAGNON v. LANGIS** (1920), 48 N. B. R. 76.—**CAN.**

374 ii. — **Bill of sale granted by bailee—Rights of grantee.**]—A., the owner of twenty-seven cows depasturing on his farm, agreed to lease his farm & cows to G. for a term of years, & it was agreed that G. should have

the right to purchase the farm & stock at any time during the term. G. was given possession of the stock & farm. G. gave to **applt.** a bill of sale over the cows. A. recovered possession of his farm & cows from G., & shortly thereafter **applt.** seized & sold the cows under his bill of sale. Thirty-four cows were seized & sold, only nine of which were of the original herd, the balance having been bought by G. during the time he had possession of the farm. A. claimed damages for the seizure.—**Held**: it had not been shown that the cattle substituted by G. for those originally bailed to him had become the property of A., who was entitled to damages only in respect of the cows originally bailed.—**NORFOLK CO-OPERATIVE DAIRY CO., LTD. v. ALLEN**, [1924] N. Z. L. R. 136.—**N.Z.**

374 iii. — **Loss by bailee—Negligence.**]—In an action for the value of a horse which was lost after it had been hired to **deft.** under an agreement whereby the latter undertook to take "good care in every way" thereof, it appeared that the horse, which was unbroken, was received by **deft.** & put into a pasture belonging to a neighbour of **deft.**, & **deft.** went to see it every other day. The pasture was surrounded by a fence of two strands of wire, & the horse got out twice during the winter but was put back. It disappeared about the end of the following April. The fence was down in one place, & the evidence showed a custom among the farmers in the neighbourhood to allow horses not in use to run at large during the winter. While **deft.** was given the right to work the horse, it was shown that it was not customary in that locality to break horses until the spring.—**Held**: **deft.** had taken sufficiently good care of the horse & was not liable for its loss.—**ZIMMERMAN v. ARCHER** (1922), 63 D. L. R. 399; [1922] 2 W. W. R. 524.—**CAN.**

380 i. **Contract—Covering mare—Damages for breach.**]—Breach of a contract to breed mares to a stallion is not a ground for damages, in the absence of evidence upon which such damages may be estimated with reasonable certainty.—**SINCLAIR v. WALKER**, [1917] 2 W. W. R. 321.—**CAN.**

## Part VI.—Sale and Exchange of Animals.

- 384. Add. Annotation:—***Refd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
- 390a. ——— Resale of horse at loss—Form of action.**—A vendor gave a warranty of sound workable condition on the sale of a horse. The warranty was fulfilled, but the purchaser wrongfully refused delivery, & returned the horse. The vendor then put it up at auction as "in dispute," & without a warranty, when it was sold for about £40 less than the contract price. In an action for the difference between the price realised at the auction & the contract price:—*Held*: (1) this was not the proper form of action; (2) the action must be for damages; (3) the conditions of the auction sale were not a test of the value of the horse, the auction being of a horse "in dispute," & without warranty, & quite different from the original contract conditions; (4) *pltf.* was not entitled to more than nominal damages, as he had failed to prove his damages to be the difference between the contract price & the price realised at the auction.—*MACKLIN v. NEWBURY SANITARY LAUNDRY* (1919), 63 Sol. Jo. 337, D. C.
- 390b. ——— Rescission by vendor—Vendor liable for keep during period animal kept by purchaser.**—*KING v. PRICE* (1816), 2 Chit. 416.
- 391. Add. Annotation:—***Consd. Re A Debtor*, [1927] 2 Ch. 307.
- 401. Add. Annotation:—***Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
- 409. Add. Annotation:—***Refd. Manchester Liners v. Rea*, [1922] 2 A. C. 74.
- 410. Add. Annotations:—***Refd. Manchester Liners v. Rea*, [1922] 2 A. C. 74; *Baldry v. Marshall*, [1925] 1 K. B. 200.
- 416. Add. Annotation:—***Refd. Said v. Butt*, [1920] 3
- 416a. As to pedigree of horse.**—A receipt described a horse as "got by Cheshire Cheese, warranted sound":—*Held*: the statement that the horse was got by Cheshire Cheese was a mere representation.—*DICKENSON v. GAPP* (1821), cited in 1 Moo. & S. at p. 78.
- Annotation:—**Folld. Budd v. Fairman* (1831), 1 Moo. & S. 74.
- 430. Add. Citations:—**171 E. R. 90; *sub nom. ELTON v. JORDAN*, 1 Stark. 127, N. P.
- 453. Add. Annotation:—***Mentd. Barber v. Deutsche Bank* (Berlin) London Agency, [1919] A. C. 304.
- 467. For "99 E. R. 136" read "99 E. R. 1016."**
- 476a. ———.**—A., as agent of B., sold a mare to C., & having no express authority from B. to warrant her, refused to do so, but, at the time of the sale, told C. that "if the mare was not all right she was not his." C. thereupon paid the price, which was

## PART VI. SECT. 1.

**t i. ——— Action by purchaser for damages—What damages recoverable.**—*PETREY v. KIDD* (1909), 12 W. L. R. 9.—CAN.

**t ii. ——— Sale of bull—Bull sterile.**—At an auction sale advertised "as pedigree stock sale" resp. purchased from *applt.* a bull described in the sale catalogue under the heading "Jersey Bulls" as "Lot 78, Bull Harbour Light." The conditions of sale expressly negatived the existence of any warranties on the vendor's part. At the time of the sale the bull had not been used, but subsequently was found to be sterile. This condition was shown to be a latent defect not discoverable upon examination. In an action by resp. claiming damages:—*Held*: as the capacity for procreation was not, by implication, a part of the description, & as the bull complied in all other respects with the description, resp. was without remedy.—*DELL v. QUILTY*, [1924] N. Z. L. R. 1270.—N.Z.

**t iii. ——— Sale of horse as gelding—Horse in fact a "rigot"—Whether failure of implied condition on sale of goods by description.**—*TWATERS v. MORRISON* (Alta.), [1918] 3 W. W. R. 349; 43 D. L. R. 73.—CAN.

**t iv. ——— Default by purchaser—Resale by vendor.**—*Held*: (1) money paid, not as a deposit, but on account of the purchase-price, must be returned to the purchaser; (2) having elected to treat the contract as at an end, instead of suing for damages for breach, the vendor was not entitled to recover anything for the care of the animals from the time fixed by the contract for delivery until he resold.—*BALDWIN v. BRIANGER*, [1920] 1 W. W. R. 216; 50 D. L. R. 540; 13 Alta. L. R. 27.—CAN.

**zi. ———.**—*Held*: oral evidence that it was part of the agreement for sale of a stallion that the pedigree

papers should be delivered to the purchaser within a few days of the sale, being in contradiction of the written agreement, was not admissible.—*KASTER v. COWAN*, [1925] 2 D. L. R. 742; [1925] 2 W. W. R. 186; 21 Alta. L. R. 366; *revers.*, [1923] 4 D. L. R. 491; [1923] 3 W. W. R. 610.—CAN.

## PART VI. SECT. 2, SUB-SECT. 1.

**396 vi. ———.**—An auctioneer in selling a horse said: "Here is a horse about nine years old" in presence of the vendor who did not contradict it. A note given for the balance of the price had indorsed thereon: "Given for one bay mare nine years old." The purchaser believed the horse was of that age:—*Held*: the statement amounted to a warranty, & the vendor was bound thereby.—*ALLEN v. SMITH*, [1920] 3 W. W. R. 645.—CAN.

**410 iv. ———.**—*Pltf.* purchased a horse from *deft.* which *deft.* warranted to be suitable for the general purposes of a farmer & sound in every respect. The trial judge found that there was a defect in the horse which could not be discovered by an ordinary examination at the time of the sale & that the horse was not suitable for the purpose for which it was required:—*Held*: the findings of the trial judge must be accepted.—*MARTELL v. PRINGLE* (1920), 53 N. S. R. 502.—CAN.

**sr. Sale of male animal—Under Livestock Purchase & Sale Act, R.S.S., 1920 (c. 125)—No implied warranty that animal capable of reproducing type & colour.**—*R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) v. BOURKE*, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—CAN.

## PART VI. SECT. 2, SUB-SECT. 2.

**420 ii. ———.**—*EISENHAEUER v.*

*MACKAY* (N. S.) (1911), 9 E. L. R. 301.—CAN.

## PART VI. SECT. 2, SUB-SECT. 3.—A.

**438 i. Sound—Meaning of term—Seeds of disease at date of sale.**—At an auction sale the auctioneer said "Would you let this good sound mare go for that money?" The mare was diseased at the time. No fraud was proved:—*Held*: one who was induced by the statement to bid for & purchase the mare was entitled to rescission on the ground of misrepresentation.—*ANDERSON v. KENNEDY*, [1920] 1 W. W. R. 25; 50 D. L. R. 105; 13 Sask. L. R. 38.—CAN.

**459 i. Warranty relating to future—Dairy cattle warranted "to calve at proper time & correct in teats only."**—A dairy cow, due to calve within a fortnight, was bought at a cattle market under the following warranty: "Dairy cattle are warranted to calve at their proper time & correct in their teats only." The cow calved at her proper time, but, owing to disease which appeared in her teats, her milk supply was defective:—*Held*: (1) the warranty applied to the period of calving, & guaranteed, against the ordinary risks of that period, that the cow's teats would then be capable of performing their function of giving milk; (2) as the disease from which the cow suffered had not been proved to be due either to negligence on pursuer's part or to external accident, the guarantee applied.—*KYLE v. SIM*, [1925] S. C. 425.—SCOT.

## PART VI. SECT. 2, SUB-SECT. 4.—A.

**st. Rescission—Affirmance of contract after notice of misrepresentation.**—A purchaser of a mare was not allowed rescission on the ground of what the *ct.* found was an innocent misrepresentation as to her being in foal to a celebrated stallion, because after discovery that the mare was not in foal he repeatedly attempted to get her in



received by B. The mare proving unsound, C. returned her to A., & sued B. for a return of the money:—*Held*: the proper question to leave to the jury was whether it was part of the contract that the mare should be returned if she proved unsound.—*FOSTER v.*

*SMITH* (1856), 18 C. B. 156; 20 J. P. 438; 139 E. R. 1326.

*Annotation*:—*Mentd.* *Schroderv. Ward* (1863), 13 C. B. N. S. 410.

486a. —.]—*HARE v. TAYLOR* (1837), 1 Jur. 261.

## Part VII.—Carriage of Animals.

517. *Add. Annotations*:—*Consd.* *Gould v. S. E. & C. Ry.*, [1920] 2 K. B. 186. *Refd.* *L. & N. W. Ry. v. Hudson*, [1920] A. C. 324.

518. *Add. Annotation*:—*As to* (2) *Refd.* *L. & N. W. Ry. v. Hudson*, [1920] A. C. 324.

522. *Add. Annotations*:—*Refd.* *Gould v. S. E. & C. Ry.*, [1920] 2 K. B. 186; *L. & N. W. Ry. v. Hudson*, [1920] A. C. 324.

523. *Add. Annotations*:—*Mentd.* *Denholm v. Shipping Controller* (1920), 124 L. T. 378; *Bradley v. Federal Steam Navigation Co.* (1927), 137 L. T. 266.

526. *Add. Annotations*:—*Refd.* *Hemmings v. Stoke Poges Golf Club*, [1920] 1 K. B. 720. *Mentd.*

*Phillips v. Britannia Hygienic Laundry Co.* (1923), 93 L. J. K. B. 5.

530. For “Expenses reasonably—Incurred in disinfecting,” etc., read “Expenses reasonably incurred—In disinfecting,” etc.

531. *Add. Annotations*:—*Refd.* *Coldman v. Hill*, [1919] 1 K. B. 443; *Transoceanica Soc. Italiana Di Navigazione v. Shipton*, [1923] 1 K. B. 31; *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.

535. *Add. Annotation*:—*As to* (1) *Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.

542. *Add. Annotation*:—*As to* (1) *Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.

foal by breeding her to another stallion, this being held to amount to an affirmation of the contract.—

[1920] 3 W. W. R. 14.—*CAN.*

### PART VI. SECT. 2, SUB-SECT. 4.—B.

g i. —.]—In an action on promissory notes given for the price of a stallion, an alleged breach of warranty does not justify a defence of failure of consideration. Deft. must claim under the breach of warranty setting it up in diminution of the price, or in an action for damages.—*EDWARDS v. PEARSON* (Alta.), [1919] 3 W. W. R. 505.—*CAN.*

sv. *Cheque given for price—Whether breach of warranty a defence.*—*MYKLEHUST v. GALEY* (Sask.) (1919), 46 D. L. R. 699.—*CAN.*

### PART VI. SECT. 2, SUB-SECT. 4.—C.

484 ii. —.]—*Effect of—On other remedies of purchaser.*—A condition for return of a horse in as good condition as when sold & the substitution of another horse of equal value prevents the purchaser from resorting to any other form of remedy, unless he can show that he returned the horse in good condition & the vendor failed to substitute as agreed.—*EDWARDS v. PEARSON* (Alta.), [1919] 3 W. W. R. 505.—*CAN.*

485 ii. —.]—*Purchaser not liable for cost of keep after repudiation of contract.*—*LONG v. BYERS* (Sask.), [1927] 4 D. L. R. 223.—*CAN.*

### PART VI. SECT. 2, SUB-SECT. 4.—D.

486 ix. —.]—The measure of damage in an action for breach of warranty of a bull is the difference between the value at the time of delivery to the buyer & the value it would have had if it had answered to the warranty.—*WARD v. ROSSER* (1920), 54 D. L. R. 531.—*CAN.*

### PART VI. SECT. 2, SUB-SECT. 4.—E.

sw. *Proof of breach at time of sale necessary—Sufficiency of evidence.*—*WESTWOOD v. McMILLAN* (Sask.), [1920] 2 W. W. R. 857; 53 D. L. R. 317.—*CAN.*

sx. —.]—*AHEIR v. CAPLETTE*

[1926] 3 D. L. R. 346; [1926] 2 W. W. R. 346; 20 Sask. L. R. 549.—*CAN.*

sv. —.]—*LONG v. BYERS* (Sask.), [1927] 4 D. L. R. 223.—*CAN.*

### PART VI. SECT. 3.

sz. *Live Stock Pedigree Act, 1927* (c. 121)—*False registration of animal—What amounts to.*—An application for registration of a transfer of ownership of an animal is not an application for the registration of the animal. Moreover, where the statements made in

respect to the animal mentioned therein there is no offence under sect. 17 of above Act although the animal which was in fact sold was not the animal named in said application.—*R. v. DAVENPORT* (Alta.), [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—*CAN.*

### PART VII. SECT. 1, SUB-SECT. 1.—A.

528 i. —.]—*Animals poisoned—No*

horses by defts.' railway. On arrival at destination, some of the horses had died & others were sick & died soon after. It was subsequently established that they died of arsenic poison. An action against defts. railway co. for negligence was dismissed, as there was no evidence connecting the cause of injury with any alleged negligence. The cause of the damage was purely a matter of speculation, & certain provisions of the contract were a complete answer to pltf.'s claim that the damages arose from defts.' negligence.—*TURNER v. CANADIAN PACIFIC RY. CO.* (1922), 66 D. L. R. 31; [1922] 2 W. W. R. 858.—*CAN.*

### PART VII. SECT. 1, SUB-SECT. 2.

532 i. *Declaration of value—Requisites of.*—*FOX v. LONDON, MIDLAND & SCOTTISH RY. CO.*, No. 541 i, post.—*IR.*

541 i. *Carrier exempted from liability “in any case” above declared value.*—A railway co. made conditions limiting their liability for loss of or damage to any live stock delivered to them for transit beyond the value, in the case of horses, of £50, unless a higher value was declared in writing at the time of

delivery, & a percentage of 1½ per cent. paid on the value, so declared, in excess of the above-named sum. A race horse, exceeding £50 in value, was delivered to the co. for transit by the sender's groom, who informed the booking clerk that he had got “a very valuable ‘chaser, worth about £1,000,” a figure arrived at by the groom himself from casual gossip. The clerk gave the groom the co.'s form of “consignment note & waybill” for live stock, & the groom filled it in for carriage at the ordinary rate, & signed it, with full knowledge of its contents. The horse

*Held*: (1) the above conditions were not unreasonable; (2) the contract of carriage, which was signed by the groom under a direction by his employer that the horse was to be carried at the ordinary rate, exempted the co. from liability for any greater amount than £50; (3) in order to make the co. liable for the full value of the horse, the declaration of value must have been made with the intention of paying the higher rate, & the statement of value made by the groom to the booking clerk was insufficient.—*FOX v. LONDON, MIDLAND & SCOTTISH RY. CO.*, [1926] 1 R. 106.—*IR.*

ss. *Shipper undertaking obligation to “feed” & “water” animals—Obligation of supplying feed & water.*—The obligation to furnish the feed & water is upon the shipper.—*KNIGHT-WATSON RANCHING CO. v. CANADIAN PACIFIC RY. CO.* (1921), 62 D. L. R. 601; 15 Sask. L. R. 1; [1921] 3 W. W. R. 788; *reversg.*, 14 Sask. L. R. 5.—*CAN.*

sb. *Carrier under no liability “unless written notice delivered at point of delivery”—Sufficiency of notice.*—*KNIGHT-WATSON RANCHING CO. v. CANADIAN PACIFIC RY. CO.* (1921), 62 D. L. R. 601; 15 Sask. L. R. 1; [1921] 3 W. W. R. 788; *reversg.*, 14 Sask. L. R. 5.—*CAN.*

### PART VII. SECT. 2.

si. —.]—*Train run in contravention of Lord's Day Act.*—Pltf. shipped goods, including horses, by defts.' line, & signed a special contract providing that defts. should not be liable for any loss or damages in respect



## Part VIII.—Wild Birds.

**563a.** ——— **Birds lawfully taken elsewhere.**—Applt. was charged under Wild Birds Protection Act, 1880 (c. 35), s. 3, as extended under s. 8 in the county of London by the Wild Birds Protection (Administrative County of London) Order, 1909, par. 4, with having in his possession some goldfinches recently taken. The magistrate found that the charge was proved & dismissed it under the Probation of Offenders Act, 1907 (c. 17), ordering applt. to pay the costs. The birds were lawfully caught in Ireland on or immediately before Dec. 3, 1918, & after being kept there for upwards of a month to enable them to recover their condition, & travel safely, were sent to applt. in London by post.

They were found in applt.'s possession in a wild & terrified state on Jan. 15, 1919:—*Held*: the magistrate was justified in taking into consideration all the circumstances of the case, including the condition of the birds when exposed for sale & the fact that they had to be kept in Ireland for some time in order to endure the journey & arrive alive, & also the length of the journey, in order to arrive at the conclusion that the birds were recently taken.—*HARRIS v. LUCAS*, [1919] 2 K. B. 291; 88 L. J. K. B. 1082; 121 L. T. 317; 83 J. P. 208; 35 T. L. R. 486; 17 L. G. R. 421; 26 Cox, C. C. 468, D. C.

**564.** *Add. Annotation*:—*Apld.* *Harris v. Lucas*, [1919] 2 K. B. 291.

## Part X.—Cruelty to and Killing, Maiming, and Wounding Animals.

**NOTE.**—The Act now in force in England is Protection of Animals Act, 1911 (c. 27), as amended by Protection of Animals Act (1911) Amendment Acts, 1912 (c. 17), & 1921 (c. 14). In considering the cases in Sect. 1 of this Part, regard should be had to their dates & the Act under which they were decided.

**568.** *Add. Annotation*:—*Mentd.* *Gould v. Houghton*, [1921] 1 K. B. 509.

**572a.** **Shooting trespassing dog—No attempt to drive dog away before shooting.**—A farm labourer shot at a dog which was trespassing on his master's land, & wounded it. The dog was not doing damage & deft. made no effort to drive it away before he shot it, & the justices found that shooting was not necessary:—*Held*: he was guilty of "cruelly ill-treating" the dog within Protection of Animals Act, 1911 (c. 27), s. 1.—*BARNARD v. EVANS*, [1925] 2 K. B. 794; 94 L. J. K. B. 932; 133 L. T. 829; 89 J. P. 165; 41 T. L. R. 682; 28 Cox, C. C. 69, D. C.

**574.** *Add. Annotation*:—*Distd.* *Barnard v. Evans*, [1925] 2 K. B. 794.

**576.** *Add. Annotation*:—*Distd.* *Barnard v. Evans*, [1925] 2 K. B. 794.

**587.** *Add. Annotation*:—*As to* (1) & (2) *Refd.* *Jenkins v. Ash* (1929), 45 T. L. R. 479.

**587a.** ——— **Liberation in exhausted condition.**—On a prosecution of A. & G. for cruelly ill-treating a live wild rabbit contrary to Protection of Animals Act, 1911 (c. 27), s. 1, it appeared that A. had dangled the rabbit by its hind legs three or four yards away from two greyhounds, held in leash by G., & that the greyhounds having been taken thirty or forty yards away, the rabbit had been thrown on the ground, where it had remained, only hopping a couple of yards when flicked by a hat. The magistrate held that there was no cruel ill-treatment within the sect.; that what had been done by resps. was ordinary coursing & so protected by sect. 1 (3) (b), & that there was no evidence of the rabbit having been liberated in an injured, mutilated, or exhausted condition. On appeal:—*Held*: all the evidence showed that there had been cruel ill-treatment of the

of the live stock by reason of injury except such as might arise from a collision, & should in no case be responsible for any amount exceeding certain small sums named. Pltf. accompanied his goods, & the train was lawfully proceeding on a Sunday, notwithstanding the Lord's Day Act, when a collision occurred with one of defts.' trains, which was being run unlawfully because in contravention of that Act, & some of the horses & other goods of pltf. were destroyed or damaged. Pltf. sued in tort for the amount of his loss, claiming much more than the limited amounts stated in the special contract. Defts. set up the special contract:—*Held*: the provision of the contract limiting the liability of defts. in the case of a collision to a stated sum did not sustain the defence, because that provision must be taken not to have contemplated a collision occurring by reason of the breach of a statute distinctly prohibiting & making unlawful the act which caused the collision.—*RISE v.*

*CANADIAN PACIFIC RY. CO.* (1910), 14 W. L. R. 635.—*CAN.*

## PART X. SECT. 1, SUB-SECT. 1.

**574 ii.** ——— *Failure to remove from animal broken pieces of instrument.*—Resp. undertook to treat a horse, & inserted into the animal's urethra a catheter, which broke, & the horse was returned to its owner with the broken pieces left in the urethra:—*Held*: (1) If resp. allowed the broken pieces of the catheter to remain in the urethra for an unreasonable time, without taking any steps to alleviate the pain or without taking any steps to secure their removal, he unreasonably caused unnecessary pain; (2) resp. was under a duty to inform the owner of the horse within a reasonable time that the fragments were in the animal's urethra.—*MARTIN v. CARPENTER*, [1925] S. A. S. R. 421.—*AUS.*

*sc. Abandoning horse in street—Horse found starving—Whether owner exercising control.*—*Held*: accused

could not be convicted of ill-treatment under Prevention of Cruelty to Animals Act, 1890, s. 3 (a), as he was not in a position to exercise control over the animal at the time of the ill-treatment.—*R. v. NAZIR WAZIR* (1919), 1 L. L. R. 44 Bom. 159.—*IND.*

*sd. Permitting animal injured on ship to land—Master of ship ignorant of animal's condition.*—*Held*: the master's want of knowledge was no defence.—*M'LAREN v. SMITH*, [1923] S. C. (J.) 91.—*SCOT.*

## PART X. SECT. 1, SUB-SECT. 2.

*sc. Carrying cranes by train—With eyes stitched up.*—*Held*: accused had committed no offence under Prevention of Cruelty to Animals Act, 1890, s. 3, cl. (b), for the cruelty was caused by the persons who stitched up the eyes & not by the manner or position in which the birds were carried in the train.—*R. v. IBRAHIM MEER SHIKAR* (1917), 1 L. R. 41 Bom. 654.—*IND.*

rabbit & that the rabbit had been liberated in an exhausted condition. On this ground & also on the ground that the cruel ill-treatment occurred before the rabbit was liberated for the purpose of being coursed or hunted, resps. had not brought themselves within the protection given by the sect. to the coursing or hunting of any captive animal.—**JENKINS v. ASH** (1929), 141 L. T. 591; 93 J. P. 229; 45 T. L. R. 479; 27 L. G. R. 537, D. C.

587b. — **Ill-treatment before liberation.**—**JENKINS v. ASH**, No. 587a, *ante*.

595. *Add. Annotation*:—**Plowden v. Lawrence**, [1929] 1 Ch. 307.  
613. *Add. Annotation*:—**Refd. R. v. Wood, Ex p. Farwell** (1918), 87 L. J. K. B. 913.  
651. *Add. Citation*:—26 Cox, C. C. 113.  
653. *Add. Annotation*:—**Refd. Nye v. Niblett** (1918), 87 L. J. K. B. 590.  
654. *Add. Annotations*:—**Consd. Horton v. Gwynne**, [1921] 2 K. B. 661. **Apld. Farey v. Welch**, [1929] 1 K. B. 388.  
656. *Add. Annotation*:—**Refd. Nye v. Niblett** (1918), 87 L. J. K. B. 590.

## Part XI.—Diseased Animals.

657. *Add. Annotation*:—**Refd. Theyer v. Purnell**, [1918] 2 K. B. 333.  
659. *Add. Citation*:—88 L. J. K. B. 263.  
664. *Add. Annotation*:—**Refd. Phillips v. Britannia Hygienic Laundry Co.**, [1923] 1 K. B. 539.  
690a. — **“Double dipping”**—**Meaning.**—**Held**: the words “double dipped” meant twice dipped & not dipped for a second time after the first prescribed dipping.—**ADAMS v. GALLOWAY** (1925), 23 L. G. R. 588, D. C.  
697. *Add. Annotations*:—**Generally, Mentd. Everett v. Griffiths**, [1924] 1 K. B. 941; **Aylott v. West Ham Corp.**, [1927] 1 Ch. 30.  
699. *Add. Annotation*:—**As to (1) Refd. R. v. North Worcestershire Assmt. Com.**, *Ex p. Hadley*, [1929] 2 K. B. 397.  
705a. — **Burden of proof—Diseases of Animals Act, 1894 (c. 57), ss. 4 (1), 57 (1).**—**WILSON v. YATES** (1927), 91 J. P. 188; 44 T. L. R. 25; 25 L. G. R. 514, D. C.

NOTE.—It has been found desirable to add the following Part:—

## Part XII.—Breeding of Animals.

**Statutory control—Horse breeding.**—*See* Horse Breeding Act, 1918 (c. 13).

**Hire of stallion's services—Right of lien on mare**

—**For expense of covering.**—*See* original volume, p. 257, No. 380.

**Increase in animals—Who entitled to.**—*See* original volume, pp. 212, 213.

**PART X. SECT. 1, SUB-SECT. 3.**  
**sl. Commitment for trial for over-driving—Jurisdiction of one justice.**—**R. v. NELSON** (1916), 28 Can. Crim. Cas. 276—CAN.

### PART XI. SECT. 1.

662 vi. —.]—A contract for the sale of animals affected with a contagious or infectious disease is an offence against R. S. C. 1906 (c. 75), s. 38, whether or not the seller knows that the animals are so affected.—**RALDWIN v. SNOOK**, [1918] 2 W. W. R. 314; 40 D. L. R. 433.—CAN.

662 vii. —.]—On a sale without warranty of an animal known to the seller to be affected with a certain contagious disease there is no common-law duty upon the seller to warn the buyer of the disease, where the latter is reputed to be possessed of more than ordinary skill & knowledge in the treatment of animals, the disease in question is fairly common in the neighbourhood, the buyer knows that the animal is suffering from some complaint, although not the particular nature of it, & the buyer refuses to complete the sale until he has had the animal in his possession a certain time.

The Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), does not give a right of action to a buyer of animals who suffers damage from a sale which is illegal under that Act.—**O'MEALY v. SWARTZ**, [1918] 3 W. W. R. 98.—CAN.

662 viii. —.]—In view of Orders in Council authorised under s. 38k exempting tuberculous from the effect of Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), s. 38, **Baldwin v. Snook**, No. 662 vi., *ante*, was held not

applicable to support a defence of illegal sale of cattle.—**WOOD, WRIGLER & MCCARTHY, LTD. v. VALCOUR**, [1921] 2 W. W. R. 32.—CAN.

662 ix. —.]—Where animals are exposed for sale by a vendor & he knows that they are infected with a contagious disease he is liable to a penalty under Animal Contagious Diseases Act, & if he effects a sale of the animals under such circumstances the sale is illegal & void. If in addition to the breach of his statutory duty the vendor makes false representations as to the condition of the animals & thereby induces a person to purchase them, the latter is entitled to succeed in an action for any resulting damages sustained by him, & in any event he is entitled to recover any money paid by him to the vendor on the illegal contract, he not being in *part delicto* with the vendor.—**LONG v. ZLATNICK** (1922), 70 D. L. R. 88; [1922] 3 W. W. R. 687.—CAN.

### PART XI. SECT. 2, SUB-SECT. 3.

**sl. Hogs fed on garbage—Under licence waiving compensation—Disease necessitating slaughter—Onus of proof of cause of disease.**—A. obtained a licence to feed his hogs on garbage obtained from outside, which licence contained the following words: “In consideration of the granting of a licence to me I hereby agree . . . (4) to forfeit all claim to compensation, in case it is necessary to destroy any of my hogs, as a result of hog cholera, unless it can be shown that the infection came from some other source than garbage feeding.”—**Held**: the onus of proving that the cholera in question came from some other source

than garbage feeding was upon suppliant.—**ALDERSON v. R.** (1922), 65 D. L. R. 398; 21 Exch. C. R. 359.—CAN.

### PART XI. SECT. 2, SUB-SECT. 5.

**sl. Power to make bye-law—Prohibiting admission of infected animals into municipality.**—To provide in a bye-law that no animal affected with any infectious or contagious disease shall be brought into the municipality was held to be beyond the powers of a municipal council under Municipal Act.—**R. v. MOULDER**, [1920] 2 W. W. R. 540; 52 D. L. R. 302.—CAN.

### PART XII.

**sm. Statutory control—Horse breeding—Refusal of certificate of registration of stallion—Registration of Stallions Act, 1916**—At the trial of an action by a person, who was the owner of a stallion, against the members of the Board of Control & Appeal under the above Act for wrongful refusal to consider an appeal against the refusal of a certificate of registration, it appeared that plff. was not actual owner but had control & management of the animal:—**Held**: he was entitled to maintain the action.—**DUTTON v. EVANS** (1920), 16 Tas. L. R. 45.—AUS.

**Hire of stallion's services—Liability of owner of stallion—Injury to mare.**—*See* Vol. II., p. 220, cases q, r.

—**Mare improperly served by stallion.**—*See* Vol. II., p. 220, cases s, t, u.

**sp. — Breach of contract.**—**SINCLAIR v. WALKER**, No. 380 l., *ante*.—CAN.

## ARBITRATION.

## Part I.—The Submission.

3. *Add. Annotation*:—*Refd. Charles v. Cardiff Collicries* (1928), 44 T. L. R. 448.
24. *Add. Annotation*:—*Refd. Anglo-Newfoundland Development Co. v. R.*, [1920] 2 K. B. 214.
26. *Add. Annotations*:—*Refd. Anglo-Newfoundland Development Co. v. R.*, [1920] 2 K. B. 214. *Mentd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.
- 26a. — *Verbal agreement to grant royalties—Amount to be settled by arbitration—Refusal of grantee to arbitrate.*—In 1913 a patent was granted for “Improvements in winches for operating the rope of a duplex derrick.” Between the times of the filing of the provisional & complete specifications, the patentee, under a verbal agreement, entered the service of a co. engaged in making windlasses as technical adviser & engineer draughtsman; & the co., while the patentee was in their employment, made & sold the patented windlasses. In 1919 the patentee commenced an action against the co., alleging that it was a term of the verbal agreement that, during pltf.’s service, the co. should have pltf.’s licence to make & sell windlasses under the patent, at a reasonable royalty, & failing agreement between the parties, at such royalty as might be settled by arbn. He contended that he would have received at least 5 per cent. on the selling price of the windlasses. Defts. denied that they had agreed to accept a licence from pltf.:—*Held*: pltf. had proved that the agreement for a licence had been made; he was entitled to a reasonable royalty; & as the agreement was verbal, & defts. refused to refer the matter to arbn., the matter could not go to arbn. It was directed that the matter should be referred to an official referee for inquiry & report under sect. 13 of the above Act.—*FLEMING v. DOIG* (J. S.) (*GRIMSBY*), LTD. (1921), 38 R. P. C. 57.
- 36a. *Reference under National Health Insurance Regulations of Insurance Commissioners.*—By an agreement between a medical practitioner on the panel & the insurance committee of a county, the practitioner agreed to give medical treatment to insured persons, & by clause 1 the National Health Insurance (Medical Benefit) Regulations (England), 1913, were incorporated. By clause 14, “any dispute or question arising between the committee & the practitioner . . . relating to the construction of this agreement or the rights & liabilities of the committee or the practitioner . . . hereunder shall be referred to the Comrs.” By reg. 51 of the regulations, “Where under the provision of these regulations or of any agreement made between the committee & a practitioner . . . is referred, or any appeal from a decision of the committee is made to the Comrs. the Comrs. shall determine such questions or appeal in such manner as they think fit, & if in the opinion of the Comrs. a hearing is required they may authorise any two or more of the Comrs. to hear & determine such question or appeal, & any decision of the Comrs. or any of them made under this article shall be final & conclusive.” A dispute having arisen under the agreement, the practitioner brought an action against the committee in respect thereof, & the committee applied under the Act of 1889, s. 4, to stay the action:—*Held*: the action must be stayed (*PICKFORD, L.J. & SARGANT, J.*) upon the ground that there was a “submission” to arbn. within the Act of 1889, s. 27 (*BANKES, L.J.*), upon the ground that under reg. 51 a special tribunal was constituted with special powers for determining disputes between practitioners & the committee.—*CLEMENTS v. COUNTY OF DEVON INSURANCE COMMITTEE*, [1918] 1 K. B. 94; 87 L. J. K. B. 203; 118 L. T. 89; 82 J. P. 71, C. A.
41. *Add. Annotation*:—*Consd. O’Rourke v. Darrishire*, [1920] A. C. 581

## PART I. SECT. 2.

d.i. — *Informal extension of written submission amounting to new parol submission.*—An award was not made within the time fixed by the written submission to arbn. nor was the time extended. The arbitrators proceeded after the expiry of the time, both parties appearing before them & taking part in the proceedings, & the award was made & not appealed from or moved against, & had ever since been acted upon:—*Held*: a parol submission must be taken to have been made & to include the terms contained in the written one, & the award to have been made pursuant to the parol submission.—*HARRISON v. HARRISON* (1918), 41 O. L. R. 195; 13 O. W. N. 245.—CAN.

10 v. — *Signature of one of series of documents—Forming part of agreement.*—A submission or written agreement to submit differences to

arbn. may be collected from a series of documents, even though connected by parol evidence, & signature of any document forming part of the agreement is sufficient to bind the person so signing to the submission contained in the agreement.—*SUKHAMAL BANSIDHAR v. BARN LAL KEDIN & CO.* (1920), 1 L. R. 42 All. 525.—IND.

11. — *General requisites.*—An award made by arbitrators is not invalid on the ground that in the reference to arbn. the actual dispute is stated merely in general terms, when the award itself shows that the nature of the dispute was properly explained to the arbitrators.—*RAM BAHADUR SEN v. MAHANATH GANESH BHAGAT* (1923), 1 L. R. 2 Pat. 554.—IND.

12. — *Submission to arbn. according to the above sect. is a submission which provides that either party in case of a dispute arising on the contract is at liberty to take the necessary steps to get the dispute*

decided by arbn.—*BULLOR v. FILLERMAN CITY LINES, LTD.* (1925), 1 L. R. 49 Bom. 854.—IND.

13. — *Written agreement to submit.*—A submission to arbn. under Indian Arbn. Act need not be signed by both parties. All that is required is a written agreement to submit, & acting upon it.—*RAJHA KANTA DAS v. BAERLEN BROTHERS* (1928), 1 L. R. 56 Cal. 118.—IND.

## PART I. SECT. 3, SUB-SECT. 1.

sa. *Appointment of appraisers—Under arrangement separate from policy.*—*Held*: not to constitute a submission to arbn., but a provision for appraisement.—*SEARLE v. ALLIANCE INSURANCE CO.*, [1925] 4 D. L. R. 378; [1925] 3 W. W. R. 729.—CAN.

## PART I. SECT. 3, SUB-SECT. 2.

42. — *Submission to arbn. in an action of slander the parties agreed to trial before a Judge & seven jurymen instead of the requisite eight. A verdict was given*

- 44a. ——— Appeal.]—Where proceedings are taken out of the ordinary *cursus curiæ*, with the assent of the parties, the decree of the ct. below cannot be regarded as the award of an arbitrator, so as to deprive either party of the right of appeal, unless there has been an attempt to give the ct. a jurisdiction which it does not possess, or unless the procedure has been so violently strained as to be put entirely out of its course.—*PISANI v. A.-G. FOR GIBRALTAR* (1874), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900, P. C.
- Annotations*:—*Mentd.* *Readdy v. Pendergast* (1886), 55 L. T. 767; *Moody v. Cox & Hatt* (1917), 116 L. T. 740; *Ware v. Whitlock*, [1923] 2 K. B. 418.
53. *Add. Annotations*:—*Consd.* *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.
- 53a. ———.]—*BOYNTON v. RICHARDSON*, No. 71a, *post*.
66. *Add. Annotations*:—*Consd.* *Richardsons & Bradley v. Bernhard*, [1925] 2 K. B. 121; *Simbro Trading Co. v. Posograph (Parent) Corp.*, [1929] 2 K. B. 266.
68. *Add. Annotations*:—*Consd.* *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448. *Mentd.* *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.
70. *Add. Annotation*:—*Consd.* *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.
71. *Add. Annotations*:—*Apld.* *Boynton v. Richardson* (1924), 69 Sol. Jo. 107. *Consd.* *Wisbech R. D. Co. v. Ward* (1927), 91 J. P. 200. *Refd.* *Brightman v. Tate*, [1919] 1 K. B. 463; *Wisbech R. Co. v. Ward*, [1928] 2 K. B. 1.
- 71a. *Surveyor's certificate—Valuation of timber—Liability for negligence.*]—A firm of surveyors was appointed jointly by the parties to a contract for the sale of certain growing timber, to value the timber. The vendor subsequently commenced proceedings against the surveyors for damages for negligence in respect of their valuation of the timber:—*Held*: the surveyors were in the position of quasi-arbitrators, & the action failed.—*BOYNTON v. RICHARDSON* (1924), 69 Sol. Jo. 107.
78. *Add. Annotation*:—*Refd.* *L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council* (1925), 95 L. J. K. B. 255.
79. *Add. Annotations*:—*Refd.* *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331. *Mentd.* *Lebeauvin v. Crispin*, [1920] 2 K. B. 714.
80. *Add. Annotations*:—*Refd.* *Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 88 L. J. Ch. 304; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *Mentd.* *Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623; *Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 38 T. L. R. 739.
- 135a. ———.]—By a contract made between an Italian buyer & English sellers it was provided as follows: "Any dispute arising out of this contract to be settled by arbn. in London in the usual way." A dispute having arisen between the parties, defts. appointed M. as their arbitrator. Pltf. having failed to appoint an arbitrator after due notice given, M. made an award in favour of defts., & defts. thereupon counter-claimed to enforce the award:—*Held*: (1) the words "to be settled by arbn. in London in the usual way" meant the way in which disputes arising as to the particular commodity were settled in London, & there was ample evidence that the dispute had been settled "in the usual way"; (2) any objection to the award upon the ground of irregularity or misconduct on the part of the arbitrator could only be taken by motion to set aside or remit the award, & pltf. having failed to move within the limited time, his remedy in that respect had lapsed.—*SCRIMAGLIO v. THORNETT & FREH* (1924), 131 L. T. 174; 40 T. L. R. 320; 68 Sol. Jo. 630; 29 Com. Cas. 175, C. A.
141. *Add. Annotation*:—*Refd.* *Phoenix Insee. of Hartford v. De Monchy* (1929), 141 L. T. 439.

for pltf. Dft. appealed:—*Held*: the ct. had acted as an arbitrator, & no appeal lay.—*LOANE v. BLACK*, [1925] 3 D. L. R. 940.—CAN.

42 iv. ———.]—*Re FRASER'S APPEAL, Re WINNIPEG CHARTER*, [1927] 4 D. L. R. 213; [1927] 2 W. W. R. 600; 36 Man. L. R. 597.—CAN.

#### PART I. SECT. 3, SUB-SECT. 6.

51 ii. ———.]—Where land was expropriated for railway purposes the railway co. & the owner agreed to have the compensation determined by reference to three named persons called "valuers" in the submission: their decision was to be binding & conclusive on both parties & not subject to appeal; they could view the property & call such witnesses & take such evidence, on oath or otherwise, as they, or a majority of them, might think proper; & either party could have a representative present at the view or taking of evidence, but his failure to attend for any reason would not affect the validity of the decision:—*Held*: this agreement did not provide for a judicial arbn. but for a valuation merely.—*CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. Co. v. MASSIE* (1914), 50 S. C. R. 409.—CAN.

mi. *Assessing loss by theft & fire—Appointment of appraisers under arrangement separate from policy.*]—*Held*: a provision for appraisement, & not a submission to arbn.—*SEARLE*

*v. ALLIANCE INSURANCE CO.*, [1925] 4 D. L. R. 378; [1925] 3 W. W. R. 729.—CAN.

ni. *S. P. IRWIN v. CAMPBELL* (1914), 32 O. L. R. 48.—CAN.

#### PART I. SECT. 4.

ti. *S. P. JNAUENDRA NATH BAGCHI v. SURES CHANDRA ROY* (1927), 1 L. R. 6 Pat. 556.—IND.

vi. ———.]—The selection of a guardian cannot be referred to arbn., as it is not a matter of private interest between parties.—*PALANIANDI CHETTI v. ADAIKALAM CHETTI* (1923), 1 L. R. 47 Mad. 459.—IND.

sm. *Liability for & amount of alimony.*]—*Held*: proper subjects for arbn.—*HARRISON v. HARRISON* (1918), 41 O. L. R. 195; 130 W. N. 245.—CAN.

sp. *Right to receiver & injunction.*]—*Held*: not a matter to refer.—*SURENDRA KUMAR ROY CHOWDHURY v. SUSHIL KUMAR ROY CHOWDHURY* (1927), 1 L. R. 55 Calc. 249.—IND.

#### PART I. SECT. 5.

st. *Reference by Crown—By whom signed.*]—*DOMINION BUILDING CORPN., LTD. v. R.*, [1927] 2 D. L. R. 510; [1927] Exch. C. R. 79.—CAN.

#### PART I. SECT. 6, SUB-SECT. 1.

137 ii. ———.]—Where a submission

to arbn. is made subject to Arbn. Act, R.S.A., 1922 (c. 98), the provisions of that Act must be held to be applicable in so far as they can reasonably be applied.—*MASTERS & McDUGALL v. STEPHEN, STEPHEN v. MASTERS & McDUGALL*, [1925] 4 D. L. R. 684; [1925] 3 W. W. R. 493.—CAN.

#### PART I. SECT. 6, SUB-SECT. 3.

145 v. ———.]—A policy of fire insurance provided that if a claim be rejected & an action be not commenced within three months after such rejection, all benefits under the policy should be forfeited, & further any question of amount of loss should be referred to arbn., such arbn. to be a condition precedent to any action. To a claim sent in, the co. answered that they did not agree upon the amount claimed & that under the conditions of the policy they did not admit their liability:—*Held*: the right of action was that it might be decided whether such rejection was right or wrong, & it was only in the event of that question being decided against the co. that it would become necessary to ascertain the amount of the loss by arbn.—*EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. v. DINANATH* (1922), 1 L. R. 47 Bom. 509.—IND.

xi. ———.]—The parties in framing a contract may insert a clause

146. *Add. Annotations*:—*Consd. Woodall v. Pearl Asse.*, [1919] 1 K. B. 593. *Distd. Macaura v. Northern Asse.*, [1925] A. C. 619. *Refd. Sanderson v. Armour* (1922), 91 L. J. P. C. 167; *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

147. *Add. Annotation*:—*Consd. Macaura v. Northern Asse.*, [1925] A. C. 619.

147a. ———.]—In a proposal for insurance against accident the intending assured stated his occupation & signed a declaration that the answers to the questions therein were true, & that he agreed that the declaration should be the basis of the contract between him & the insurance co. whose policy, subject to the terms & conditions thereof, he agreed to accept. The policy recited the proposal & declaration "which proposal & declaration warranted to be true it is agreed shall be the basis of this contract . . . & be considered as incorporated herein, & any suppression, misrepresentation, or misstatement of fact in such written proposal & declaration shall *ipso facto* render this policy null & void"; & it provided that it was a condition precedent to the recovery of any sum under the policy that the conditions indorsed thereon should be strictly observed. Condition 8 provided that the policy might be renewed from year to year but only upon condition that nothing had happened to increase the risk, & if the risk was increased by (*inter alia*) the assured engaging in some other occupation, then "unless notice in writing of such increased risk is given to the co. . . & any extra premium that may be required paid . . . the policy is void & no claim can be made." By condition 11, "If any question shall arise touching this policy or the liability of the co. thereunder or the extent or nature of such liability or otherwise howsoever in connection herewith then the assured & all persons claiming through the assured may

refer & shall be bound, if the co. shall so require, to refer the same to arbn. by one arbitrator to be agreed on or in default of agreement by two arbitrators & their umpire under the Act of 1889 . . . & no person shall be entitled to bring or to maintain any action or proceeding on this policy except for the sum awarded under such arbn." During the currency of the policy the assured was killed by an accident. The co. denied liability on the policy on the ground that the assured either had misstated his occupation in the proposal, or, if not, had changed his occupation for one involving increased risk of which notice as required by condition 8 had not been given to the co., & contended that the policy was therefore void, & they required the dispute to be referred to arbn. under condition 11. In an action on the policy:—*Held*: (1) upon the co. requiring arbn. condition 11 made the obtaining of an award a condition precedent to a right of action; (2) the co. by relying on the terms of the policy which rendered it void in certain events did not thereby repudiate the policy as a binding contract between the parties, & were entitled to rely upon the arbn. clause as a defence to the action.—*WOODALL v. PEARL ASSURANCE CO.*, [1919] 1 K. B. 593; 88 L. J. K. B. 706; 120 L. T. 556; 83 J. P. 125; 63 Sol. Jo. 352; 24 Com. Cas. 237, C. A.

*Annotation*:—*As to* (2) *Refd. Macaura v. Northern Asse.*, [1925] A. C. 619.

*Compare original volume, p. 356, No. 293.*

153. *Add. Annotations*:—*Refd. Lowther v. Clifford* (1926), 95 L. J. K. B. 576. *Mentd. Croft v. Blay*, [1919] 2 Ch. 343; *Cole v. Kelly*, [1920] 2 K. B. 106; *Re Leeds & Batley Breweries & Bradbury's Lease*, *Bradbury v. Grimble*, [1920] 2 Ch. 548.

155. *Add. Annotations*:—*As to* (1) *Refd. Jones v. Oceanic Steam Navigation Co.*, [1924] 2 K. B.

binding them to refer all future disputes, either in the carrying out of the contract or in respect of a breach of it, to arbn., & one party to such a contract cannot, by averring that the other party has repudiated the contract, get rid of the arbn. clause.—*SANDERSON & SON v. ARMOUR & CO., LTD.* (1922), 91 L. J. P. C. 167; 127 L. T. 597; [1922] S. C. (H. L.) 117; 59 Sc. L. R. 268.—*SCOT.*

• ii. ———.]—Where there is a repudiation which goes to the substance of the whole contract, the person setting up that repudiation cannot insist on a subordinate term of the contract still being enforced.—*GRAHAM v. PROVIDENT LIFE ASSURANCE CO.*, [1922] N. Z. L. R. 718.—*N.Z.*

• iii. ———.]—Where a contract contains an arbn. clause, & one of the parties seeks to avoid the contract, the dispute is referable to arbn. if the avoidance of the contract arises out of the terms of the contract itself. Where, however, a party seeks to avoid the contract for reasons *dehors* it, the arbn. clause cannot be resorted to as it, together with the other terms of the contract, is set aside. In other words, a party cannot rely on a term of the contract to repudiate it, & still say the arbn. clause should not apply. If he relies on a contract he must rely on it for all purposes.—*INDIA ELECTRIC CO. v. GENERAL ELECTRIC TRADING CO.* (1929), 1 L. R. 53 Bom. 573.—*IND.*

• i. ——— *Performance of contract*

*prevented by Government*.]—A firm agreed to sell & to ship from Calcutta to Buenos Ayres bales of jute goods. The contracts contained provisions exempting the sellers from liability for late & short shipment attributable (*inter alia*) to Govt. commandeering of ships, war, "or any other unforeseen circumstances" & included provisions for the shipment of delayed cargoes as soon as possible, subject to a right of refusal on the part of the purchasers. Each contract contained an arbn. clause in these terms: "Any dispute that may arise under this contract to be settled by arbn." Before all the bales had been shipped, the further export of jute from India to the Argentine was prohibited. A controversy having arisen between the parties as to whether, in the circumstances, the contracts had been rendered void & unenforceable *quoad* the shipment of the remainder of the bales:—*Held*: on a construction of the contracts, the controversy was a dispute arising under the contracts, & accordingly, fell to be determined by arbn.—*SCOTT & SONS v. DEL SEL*, [1923] S. C. (H. L.) 37.—*SCOT.*

• ii. ——— *Contract cancelled*.]—If a contract is cancelled, an arbn. clause falls with such cancellation.—*COX TOWING LINE v. BUNFIELD & Co.* (1922), 68 D. L. J. 133.—*CAN.*

• iii. ——— *Existence of dispute*.]—The right of one party to a contract to insist upon a term in it providing for reference to arbn. depends in the first place on the existence of a dispute.—

*STANDARD INSURANCE CO. v. SCANDRETT* (1923), 23 S. L. N. S. W. 254; 40 N. S. W. W. N. 22.—*AUS.*

• iv. ———.]—The existence of a dispute is an essential condition for the jurisdiction of arbitrators.—*UTTAM CHAND SALIGRAM v. JAWA MAMOOJI* (1919), 1 L. R. 46 Cal. 534.—*IND.*

153 iv. ——— *Lease in dispute*.]—A lease contained a clause referring to arbn. certain specific matters & "any other questions in reference to this lease which may arise between the parties." In arbn. proceedings the issue between the parties was not the validity of a notice to quit but the question whether the tenant was possessing under the lease or under a new bargain:—*Held*: as the lease itself was in dispute, the arbn. clause in the lease did not apply.—*HOTII v. COWAN*, [1926] S. C. 58.—*SCOT.*

• v. ——— *Clause in broker's note—Rules applicable to members only*.]—Flour was sold by debts. to pltf. under contracts in broker's notes which contained a condition that the rules & regulations of the S. Assocn. should apply. The rules of the assocn. provided that every dispute or difference arising out of any contract or dealing should be referred to arbn. Pltf., who was not a member of the assocn., having sued debts. for damages for breach of contract:—*Held*: as the rules referring to arbn. were applicable only to disputes between members of the assocn., an application for a stay of proceedings must be dismissed.—*LEVIN v. BERG, ETC.*, [1921] App. D. 78.—*S. AF.*

730; *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604. *As to* (2) *Reid. Sanderson v. Armour* (1922), 91 L. J. P. C. 167.

156. *Add. Annotation*:—*Consd. Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610.

164. *Add. Annotation*:—*Consd. Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690.

164a. —[—]By two contracts made in 1919, applt. bought from resps. a large quantity of "American Fresh Eggs." The contracts provided that in case of any dispute as to the quality or condition of the goods, the question should be referred to arbn., provided that, "such reference shall be claimed in writing within three days after the goods have been landed." It was also provided that the award in writing of any two arbitrators should be conclusive & binding on all parties, subject to the right of appeal. The goods arrived in England, & were not examined at the port of landing, but were sold by applt. to sub-purchasers. More than three days after the goods had been landed applt. wrote to resps. complaining that the goods were of inferior quality, & some time later he wrote a letter claiming a reference to arbn. Resps. did not then take the objection that the claim was out of time, but signed a submission to arbn. in respect of each contract. At the reference resps. took the points that applt.'s claim was out of time, & that the goods should have been examined at the port of landing. The arbitrators awarded "that the buyer was out of time in examining & making claim on the goods, & also in claiming arbn., that therefore his case fails." The buyer took no steps to set aside the awards, but nearly two years later brought an action claiming damages for breach of contract:—*Held*: the awards were a bar to the action.—*AYSCOUGH v. SHEED THOMSON & CO.* (1924), 93 L. J. K. B. 924; 131 L. T. 610; 40 T. L. R. 707; 30 Com. Cas. 23, H. L.; *affg.* (1923), 92 L. J. K. B. 878, C. A.

*Annotation*:—*Distd. Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690.

165a. *Arbitrator to be appointed within limited time.*—A ship was chartered for a voyage from R. to H. with a full cargo of linseed. The charterparty provided for the reference of all disputes to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power to appoint an umpire, & the clause continued: "Any claim must be made in writing & claimants' arbitrator appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." After the arrival of the ship at H. the charterers brought an action against the shipowners in respect of damage alleged to have been occasioned to a part of the linseed during the voyage by reason of the unseaworthiness of the ship at the commencement of the voyage. The shipowners pleaded that the charterers failed to appoint their arbitrator within three months of the discharge of the ship & that by reason thereof the action was not maintainable, & by order of the ct., the question whether the claim in the action was barred by the arbn. clause was tried as a preliminary question of law:—*Held*: (1) the

ground that it ousted the jurisdiction of the ct., (2) inasmuch as the claim in the action was founded upon a breach of the implied condition of seaworthiness, there being in the charterparty no express provision relating to unseaworthiness, the shipowners were not entitled to the benefit of the term in the clause restricting the time within which the action could be brought, & consequently the claim was not barred by the arbn. clause.—*ATLANTIC SHIPPING & TRADING CO. v. DREYFUS (L.) & CO.*, [1922] 2 A. C. 250; 91 L. J. K. B. 513; 127 L. T. 411; 38 T. L. R. 534; 66 Sol. Jo. 437; 15 Asp. M. L. C. 566; 27 Com. Cas. 311, H. L.; *varying* S. C. *sub nom.* *DREYFUS & CO. v. ATLANTIC SHIPPING & TRADING CO.* (1921), 37 T. L. R. 417, C. A.

*Annotations*:—*As to* (1) *Distd. & Expld. Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478. *As to* (2) *Distd. Ford v. Compagnie Furness (France)*, [1922] 2 K. B. 797; *Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690. *Generally, Mendt. The Christel Vinnen*, [1924] P. 61; *Reed v. Page & East*, [1927] 1 K. B. 743.

165b. —[—]A charterparty contained a clause providing that all disputes arising out of the contract should be referred to arbn., the claimants' arbitrator to be appointed within a time therein limited, & if he was not so appointed the claim was to be deemed to be waived & absolutely barred. Loss to cargo was suffered owing to the ship's unseaworthiness. The cargo owners claimed damages & went to arbn., but did not appoint their arbitrator within the time limited. An award was made in their favour, the shipowners not appearing:—*Held*: although the loss was caused by unseaworthiness, & consequently, the above clause could not have been set up by the shipowners, the cargo owners were entitled in virtue of the clause to go to arbn., but only in accordance with its terms, & as they had not complied with those terms the arbitrator had no jurisdiction to make the award.—*FORD (H.) & CO. v. COMPAGNIE FURNESS (FRANCE)*, [1922] 2 K. B. 797; 92 L. J. K. B. 88; 128 L. T. 286; 16 Asp. M. L. C. 102, D. C.

165c. —[—]Pltfs. bought from defts. a quantity of East African copra cake to be of fair average quality, sound delivered. The contract provided that "the goods are not warranted free from defect rendering same unmerchantable, which would not be apparent on reasonable examination"; that any disputes arising out of the contract should be settled by arbn.; & that notice of arbn. should be given & the arbitrator nominated in writing not later than fourteen days after the final discharge of the vessel. Pltfs. resold the copra cake to B. & Co., who resold it to dealers, & they in turn resold it to farmers, who used it for feeding cattle. The cattle fed on the cake became ill, & it was then found on analysis that the cake contained an admixture of castor beans in so large a proportion as to make it poisonous. Claims were then made by the various buyers against their sellers & by pltfs. against defts. as soon as the mischief was discovered, but this was after the expiration of fourteen days from the final discharge of the vessel. Pltfs. claimed arbn., but the arbitrator before whom the matter came held that he had no jurisdiction, as notice of arbn. was not given nor the arbitrator nominated in time. In an action by pltfs. claiming damages, it was

found that it was within the contemplation of the parties that the copra cake would be used for cattle food & nothing else:—*Held*: the presence of the arbn. clause was not in itself a bar to the action, nor was the award, which dealt merely with the arbitrator's jurisdiction & not with the claim.—*PINNOCK BROTHERS v. LEWIS & PEAT, LTD.*, [1923] 1 K. B. 690; 92 L. J. K. B. 695; 129 L. T. 320; 39 T. L. R. 212; 67 Sol. Jo. 501; 28 Com. Cas. 210.

*Annotation*:—*Distd.* *Ayscough v. Sheed Thomson* (1924), 93 L. J. K. B. 924.

165d. —.]—Pltfs. chartered their ship to defts. to carry grain, the charterparty providing that all disputes should be referred to arbn. & that claimant's arbitrator must be "appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." Before completion of discharge defts. made various payments to pltfs. on account of freight, & on final discharge pltfs. claimed that £568 was still owing for freight. Defts. admitted that £416 was still owing for freight, but they set up a counterclaim for £581 for short delivery & refused to pay the £416 until their counterclaim was met. Neither party referred the matter to arbn., & more than three months after final discharge pltfs. brought an action for £568 balance of freight & defts. counterclaimed £581 for short delivery:—*Held*: though pltfs. could not recover the £568, as the claim for it ought to have been taken to arbn., yet they could recover the £416 about which there had never been any dispute, but the counterclaim, as it was always in dispute, was barred by the arbn. clause.—*BEDE STEAM SHIPPING CO., LTD. v. BUNGE Y BORN LIMITADA S.A.* (1927), 43 T. L. R. 371.

167. *Add. Annotation*:—*Distd.* *Crediton Gas Co. v. Crediton U. D. C.*, [1928] 1 Ch. 447.

168. *Add. Annotation*:—*Consd.* *Metropolitan Tunnel & Public Works v. L. Elec. Ry.*, [1926] Ch. 371.

172. *Add. Annotation*:—*Consd.* *Hirji Mulji v.*

*Add. Citation*:—2 Hudson's B. C. 4th ed. 100.  
*Add. Annotations*:—*Consd.* *Re Nott & Cardiff*

237a. "If any dispute as to the agreement or any matter or thing therein or intention or construction thereof."—Where a dispute arose on a contract as to the meaning of a clause therein which dealt with tests that the purchaser was making, the purchaser contending that the tests were unsatisfactory, & the vendor that they signed the contract on the faith of an assurance by the purchaser that the tests were proving satisfactory, & the contract contained a clause that if any dis-

pute should arise between the parties as to the agreement or any clause, matter or thing therein contained, or the intention or construction thereof, or in anywise relating thereto, the same should be referred to arbn.:—*Held*: such dispute came within the clause, & was not a dispute dehors the contract.—*DE LA GARDE v. WORSNOP & Co.*, [1928] Ch. 17; 96 L. J. Ch. 446; 137 L. T. 475; 71 Sol. Jo. 604.

238a. "All loss."—In an action in Manitoba against building contractors to recover sums improperly paid to them under a contract, & for damages, a judgment by consent was entered whereby it was provided (*inter alia*) that pltf. should recover, among other sums, "all loss to pltf. by reason of defective workmanship & materials," & that there should be set off against the sums recovered by pltf. the fair value of the work done & materials provided at fair contractor's prices. The judgment provided further that the sums to be debited & credited were to be determined by two appraisers, & that any matter upon which they differed was to be referred to a named umpire whose decision thereon was to be final; & that the Manitoba Arbn. Act should not apply. Defts. moved to set aside or vary an award made:—*Held*: (1) under the words "all loss" there was jurisdiction to award to pltf. not only sums actually expended at the date of the award, but also a sum estimated as being necessary to make good the defects; (2) the award being within the jurisdiction conferred by the submission, & there being no error apparent on its face, it could not be questioned either on the facts or on the law.—*A.-G. FOR MANITOBA v. KELLY*, [1922] 1 A. C. 268; 91 L. J. P. C. 101; 126 L. T. 711; 38 T. L. R. 281, P. C.

*Annotations*:—As to (2) *Consd.* *Kelantan Government v. Huff Development Co.*, [1923] A. C. 395; *Refd.* *Hirji Mulji Cheong Yue S S Co.*, [1926] A. C. 497.

240. *Add. Annotation*:—*Refd.* *Re Boks & Peters, Rushton*, [1919] 1 K. B. 491.

254. *Add. Annotations*:—*Consd.* *Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610. *Apprvd.* *Ramdutt Ramkissen Das v. Sassoon* (1929), 98 L. J. P. C. 58.

254a. —.]—Unless the submission otherwise

provided, to rely upon the absence of the above Act.—*CAYZER, IRVINE & CO. v. BOARD OF TRADE* (1925), 95 L. J. K. B. 134; 136 L. T. 7; 42 T. L. R. 163; 70 Sol. Jo. 347; *reversd.* on other grounds, *sub nom.* *BOARD OF TRADE v. CAYZER, IRVINE & CO.*, [1927] A. C. 610, H. L.

*Annotation*:—*Refd.* *Hyman, v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

254b. —.]—Although above Act does not in terms apply to arbn. it is an implied term of a contract which contains an arbn. clause

#### PART I. SECT. 6, SUB-SECT. 7.—A.

166 iv. —.]—An arbitrator cannot, by an erroneous construction of the contract, give himself jurisdiction over matters not covered by it; he cannot go beyond the matters as to which the parties agreed to give him jurisdiction, nor can he deprive the ct. of the right & duty of determining the limits of the jurisdiction.—*LAW v. CITY OF TORONTO* (1920), 47 O. L. R. 251; 18 O. W. N. 58.—CAN.

#### PART I. SECT. 6, SUB-SECT. 7.—D.

a (p.343) i. "Any difference"—*Partnership dispute—Claim for damages.*—A clause in a deed of partnership provided that any difference between the partners in regard to any matter relating to the partnership affairs should be submitted to arbn. Pltf. sued deft. for damages suffered through the fraudulent acts of deft. in breach of his duty as a partner:—*Held*: such a claim fell within the terms of the arbn. clause.—*WALTERS v. ALLISON* (1922), 43 N. L. R. 238.—S. AF.

#### PART I. SECT. 7.

ri. —.]—*GROTHE v. MONTREAL CORPN.*, [1924] 4 D. L. R. 401.—CAN.

sc. *Faiver of right to immediate appraisal—Repossession by vendor of farm implement—Farm Implement Act, R.S.S. 1920 (c. 128), s. 24.*—*Re GRAY TRACTOR CO. OF CANADA & VAN TROYEN*, [1925] 1 D. L. R. 718; [1925] 1 W. W. R. 513; 19 Sask. L. R. 202.—CAN.



- that the arbitrator must decide the dispute according to the existing law of contract, & every defence open in a ct. of law can be equally proposed for the arbitrator's decision, & consequently in an arbn. above Act can be pleaded.—**RAMDUTT RAMKISSAN DAS v. SASSOON (E. D.) & Co. (1929)**, 98 L. J. P. C. 58; 140 L. T. 542; 45 T. L. R. 205, P. C.
255. *Add. Annotation* :—**Consd. Czarnikow v. Roth, Schmidt**, [1922] 2 K. B. 478.
263. *Add. Annotations* :—**Consd. Czarnikow v. Roth, Schmidt**, [1922] 2 K. B. 478; **Hallen v. Spaeth**, [1923] A. C. 684. **Expld. Caven v. Canadian Pacific Ry. (1925)**, 133 L. T. 774. **Refd. Woodall v. Pearl Assee.**, [1919] 1 K. B. 593; **Atlantic Shipping & Trading Co. v. Dreyfus**, [1922] 2 A. C. 250; **Board of Trade v. Cayzer, Irvine**, [1927] A. C. 610; **Gowar v. Hales (1927)**, 96 L. J. K. B. 1088; **Wales v. Iron Trades Employers' Asscn. (1928)**, 21 B. W. C. C. 316; **Hyman v. Hyman, Hughes v. Hughes**, [1929] P. 1. **Mentd. Hill v. South Staffordshire Ry. (1865)**, 12 L. T. 63; **Lothian v. Epworth Press (1927)**, 137 L. T. 582.
265. *Add. Annotation* :—**Mentd. Cayzer, Irvine v. Board of Trade (1926)**, 95 L. J. K. B. 1054.
- 265a. ——— *Action on charterparty.*—**ATLANTIC SHIPPING & TRADING CO. v. DREYFUS (L.) & Co.**, No. 165a, *ante*.
269. *Add. Annotation* :—**Refd. Board of Trade v. Cayzer, Irvine**, [1927] A. C. 610.
273. *Add. Annotation* :—**Refd. Kerr v. Marine Products (1928)**, 44 T. L. R. 292.
278. *Add. Annotation* :—**Refd. Czarnikow v. Roth, Schmidt**, [1922] 2 K. B. 478.
288. *Add. Annotation* :—**Refd. Sanderson v. Armour (1922)**, 91 L. J. P. C. 167.
290. *Add. Annotations* :—**Apld. Woodall v. Pearl Assee.**, [1919] 1 K. B. 593. **Consd. Czarnikow v. Roth, Schmidt**, [1922] 2 K. B. 478. **Apld. Hallen v. Spaeth**, [1923] A. C. 684. **Expld. Caven v. Canadian Pacific Ry. (1925)**, 133 L. T. 774. **Apld. Board of Trade v. Cayzer, Irvine**, [1927] A. C. 610. **Refd. Hill v. South Staffordshire Ry. (1865)**, 12 L. T. 63; **Atlantic Shipping & Trading Co. v. Dreyfus**, [1922] 2 A. C. 250; **Gowar v. Hales (1927)**, 96 L. J. K. B. 1088; **Wales v. Iron Trades Employers' Asscn. (1928)**, 21 B. W. C. C. 316; **Hyman v. Hyman, Hughes v. Hughes**, [1929] P. 1. **Mentd. Lothian v. Epworth Press (1927)**, 137 L. T. 582.
291. *Add. Annotation* :—**Mentd. Tredegar v. Harwood (1927)**, 44 T. L. R. 17.
293. *Add. Annotation* :—**Refd. Board of Trade v. Cayzer, Irvine**, [1927] A. C. 610.
299. *Add. Annotation* :—**Refd. Board of Trade v. Cayzer, Irvine**, [1927] A. C. 610.
300. *Add. Annotation* :—**Consd. Board of Trade v. Cayzer, Irvine**, [1927] A. C. 610.
301. *Add. Annotation* :—**Consd. Board of Trade v. Cayzer, Irvine**, [1927] A. C. 610.
302. *Add. Annotations* :—*As to* (1) **Folld. Pailin v. Northern Employers Mutual Indemnity Co.**, [1925] 2 K. B. 73. **Apld. Wales v. Iron Trades Employers' Asscn. (1928)**, 21 B. W. C. C. 316.
- 302a. *Reference of disputes under charterparty—No action maintainable till after arbitration.*—**WILLIAMS & MORDEY v. MULLER (W. H.) & Co. (LONDON), LTD. (1924)**, 18 Lloyd, L. R. 50.
303. *Add. Annotation* :—**Refd. Charles v. Cardiff Collieries (1928)**, 44 T. L. R. 448.
305. *Add. Annotation* :—*As to* (2) **Consd. Re Nott & Cardiff Corpn.**, [1918] 2 K. B. 146.
- 305a. *Provision for fixing valuation of buildings by reference to arbitration.*—**Apld.** let an estate to resp. for a term of ten years, & covenanted that at the end of the term he would purchase "by valuation buildings erected by the lessee," with a reference to arbn. if the parties were unable to agree the valuation. Resp. covenanted not to transfer the demised premises without the written consent of applt.; but, in breach of that covenant, he sub-leased for the entire term, there being similar covenants in the sub-lease. At the end of the term applt. having resumed possession, resp. sued him to recover the value of buildings erected by the sub-lessee. There had been no agreement as to the amount of the valuation, & no arbn. :—**Held** : the action failed, since upon the true construction of applt.'s covenant resp. could not recover in the absence of an agreement, or an award, as to the amount of the valuation.—**HALLEN v. SPAETH**, [1923] A. C. 684; 92 L. J. P. C. 181; 129 L. T. 803, P. C.
306. *Add. Annotations* :—**Consd. Ramdutt Ramkissen Das v. Sassoon (1929)**, 98 L. J. P. C. 58. **Refd. Cayzer, Irvine v. Board of Trade (1926)**, 95 L. J. K. B. 1054. **Mentd. Blackburn Bobbin Co. v. Allen**, [1918] 1 K. B. 540.
307. *Add. Annotation* :—*Generally*, **Mentd. Moriarty v. Regents' Garage Co.**, [1921] 1 K. B. 423.

## PART I. SECT. 8.

263 vii. ———.—[An agreement to refer a dispute to arbn. does not oust the jurisdiction of the ct.—**BHOWANIDAS RAMGOBIND v. PANNACHAND LUCHIMPAT (1924)**, 1 L. L. R. 52 Calc. 453.—**IND.**

## PART I. SECT. 9, SUB-SECT. 1.

290 v. ———.—*Reference of disputed claim under policy.*—Conditions in an insurance policy requiring the reference of any disputed claim to arbn. & the making of an award a condition precedent to any right of action on the policy, & requiring the action to be brought within three months after such award, are valid.—**WEBB v. QUEENSLAND INSURANCE CO., LTD.**, [1920] N. Z. L. R. 118.—**N.Z.**

290 vi. ———.—[On an applica-

restrain deft. from proceeding with his action, which by agreement was dealt with as if made by originating summons for the construction of the policy, removed into the Ct. of Appeal for argument :—**Held** : pltf. co. was entitled to a declaration that it was a condition precedent to the liability of the co. to pay, & of deft. to recover any sum under the policy that the amount payable by the co. in respect to the accident should be determined by arbn.—**UNITED INSURANCE CO. v. ARTHUR**, [1929] N. Z. L. R. 33.—**N.Z.**

## PART I. SECT. 9, SUB-SECT. 2.

295 v. ———.—**BRYLINSKI v. INKOL (1924)**, 55 O. L. R. 369.—**CAN.**

*sd. Reference of disputes at port of loading—No action "elsewhere" till after arbitration.*—**Held** : the clause prohibited the bringing of an action on such a dispute outside the province

in which the port of loading was situated.—**COX TOWING LINE v. BUNFIELD & Co. (1922)**, 68 D. L. R. 133.—**CAN.**

*se. Provision for fixing price of goods.*—[Pltf. agreed to sell, & deft. agreed to purchase, all fish caught by pltf. The price was to be "hereafter agreed upon, failing which the price shall be arrived at by the decision of three arbitrators." Provision was made for appointment of the arbitrators who were to "determine the price for the winter fish & the price so determined shall be paid" by deft. to pltf. :—**Held** : the fixing of the price by agreement or arbn. was a condition precedent to the right of pltf. to sue to recover the price.—**VIDAL v. ROBINSON (WILLIAM) CO., LTD.; STEVENS v. ROBINSON (WILLIAM) CO., LTD.; SIGURDSON v. ROBINSON (WILLIAM) CO., LTD.**, [1925] 1 D. L. R. 1001.—**CAN.**



**310a. Jurisdiction of arbitrator—Dismissal of action on ground that award is condition precedent.]**

—When an action on a contract has been dismissed upon a contention by deft. that an award is a condition precedent to the right to sue, & the claim is then submitted to arbn., deft. is precluded from contending that the award is bad in that the arbitrators had not jurisdiction to construe the contract, but only to determine the sum, if any, due.—*SOUTH BRITISH INSURANCE CO. v. GAUCI BROTHERS & Co.*, [1928] A. C. 352; 97 L. J. P. C. 101; 139 L. T. 362, P. C.

**316a. Petition of right.]—**(1) Where a petition of right, founded on a contract with the Crown which contains a written agreement to submit differences to arbn., has been filed in the High Ct. of Justice, proceedings in the petition may in a proper case be stayed under the Act of 1889, s. 4. (2) The granting of the King's fiat is not a step in the proceedings within that sect.

*Held:* (3) as the matters in dispute included an important constitutional question the proceedings in the petition ought not to be stayed.—*ANGLO-NEWFOUNDLAND DEVELOPMENT CO. v. R.*, [1920] 2 K. B. 214; 89 L. J. K. B. 570; 122 L. T. 731; 84 J. P. 121; 14 Asp. M. L. C. 584, C. A.

*Annotation:—As to (1) Refd. Ruffy-Arnell, etc. Co. v. R.*, [1922] 1 K. B. 599.

**324. To the existing paragraph, after the last words "being known" add as follows:—**; (4) although the ct. had jurisdiction to appoint a receiver pending a reference to arbn., it was not proper to do so unless a special case was made, as the course of liquidation before the tribunal chosen by the parties themselves would thereby be interfered with.

**330. Add. Annotations:—Mentd. Mortimer Beckett**, [1920] 1 Ch. 571; *Prosperity v. Lloyds' Bank* (1923), 39 T. L. R. 372.

**332. Add. Annotation:—Mentd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.**, [1926] Ch. 371.

**PART I. SECT. 10, SUB-SECT. 3.—C.**

**31. —.]—**A clause in a policy of fire insurance whereby the parties agreed that, if any difference should arise as to the amount of loss, it should be submitted to arbn., but which did not provide that the determination of the insurer's liability should be postponed until the loss had been ascertained:—*Held:* not to be a reason for staying an action by the insured on the policy.—*GRANCHUK v. SPRINGFIELD FIRE & MARINE INSURANCE CO.*, [1925] 1 D. L. R. 857; [1925] 1 W. W. R. 272; 35 Man. L. R. 139.—*CAN.*

**31. Arbitration Act, R. S. M. 1913 (c. 9).—Agreement to refer to foreign court.]—**Sect. 6 of the above Act enables deft. to take advantage of an agreement to refer disputes to arbn. by an application to stay proceedings in the action. A clause in an agreement providing for the reference of any disputes which may arise to the decision of a foreign ct. is a submission within s. 6.—*BRAND v. NATIONAL LIFE ASSURANCE CO. OF CANADA*, [1918] 3 W. W. R. 858.—*CAN.*

**31. Arbitration abortive.]—**Where an arbn. proves abortive & an action is brought with respect to the matter arbitrated, the objection that the parties should be compelled to resort to arbn. should be taken at the commencement of the action.—*BERGE v. GRHW (Alta.)*, [1927] 3 W. W. R. 811.—*CAN.*

**PART I. SECT. 10, SUB-SECT. 5.**

**339 iii. —.]—**When the ct. has been apprised that a suit has been instituted in contravention of an arbn. agreement, the ct. has a discretion to stay the suit. The burden lies on pltf. to show that some sufficient reason exists why the matter should not be referred to arbn.—*DINABANDHU JANA v. DURGAPRASAD JANA* (1919), 1 L. R. 46 Calc. 1041.—*IND.*

**m (p. 366) i. —Arbitrator unable to enforce discovery—& attendance of witnesses.]—**A mere possibility that the arbitrators may not be able to enforce discovery & the attendance of witnesses is no ground for refusing the order of stay.—*RANEE GUNGE COAL ASSOCN., LTD. v. TATA IRON & STEEL CO., LTD.* (1928), 1 L. R. 53 Bom. 271.—*IND.*

**349 i. Power to appoint receiver.]—**Where on account of an arbn. clause the ct. stays proceedings pending before itself, it retains jurisdiction to deal with a prayer for an injunction or for a receiver.—*SURENDRA KUMAR ROY CHOWDHURY v. SUSHIL KUMAR ROY CHOWDHURY* (1927), 1 L. R. 55 Calc. 219.—*IND.*

**PART I. SECT. 10, SUB-SECT. 6.—C.**

**361 i. Surveyor of one party.]—**A contract provided that every dispute which might arise between the parties touching the construction of the contract, or as to the rights or liabilities

**336a. —Assignees of contract.]—***ASPELL v. SEYMOUR*, [1929] W. N. 152, C. A.

**338. Add. Annotation:—Consd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.**, [1926] Ch. 371.

**339. Add. Annotation:—Folld. Metropolitan Tunnel & Public Works v. L. Elec. Ry.**, [1926] Ch. 371.

**343. Add. Annotations:—Refd. Hirji Mulji v. Cheong Yue S.S. Co.**, [1926] A. C. 497. **Mentd. Blackburn Bobbin Co. v. Allen**, [1918] 1 K. B. 540.

**350a. —.]—***LAW v. GARRETT*, No. 324, *anlc.*

**355. Add. Annotations:—Refd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.**, [1926] Ch. 371. **Mentd. R. v. Leman Street Police Station Inspector, Ex p. Venicoff**, [1920] 3 K. B. 72.

**362. Add. Annotation:—Refd. Maclean v. Workers' Union**, [1929] 1 Ch. 602.

**367. Add. Annotation:—Consd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.**, [1926] Ch. 371.

**372. Add. Annotation:—As to (1) Apld. Metropolitan Tunnel & Public Works v. L. Elec. Ry.**, [1926] Ch. 371.

**372a. —.]—**Pltfs. agreed with defts. to execute railway works at prices contained in schedules amounting to £359,383 0s. 10d., & with the addition thereto of 10 per cent. for "general contingencies," amounting in the aggregate to £395,321 6s. 11d., & there was incorporated in the contract a letter from defts. accepting pltfs.' tender for that sum. The contract provided for the payment by monthly instalments on the certificate of defts.' engineer at the rate of 90 per cent. of the value of the work actually executed, the remaining 10 per cent. to be treated as a retention fund, & further provided that any question arising between the parties in connection with the contract, or as to the construction or meaning of the contract, should be referred to the decision of an engineer to be agreed upon, or, failing agreement, to be nominated by the

of either party thereunder, should be referred to defts.' surveyor, whose decision should be final:—*Held:* if questions would come before him for decision in which he would be a necessary witness defts.' surveyor would be disqualified from acting as arbitrator, but as, in the circumstances, he would not be a necessary witness, he was not disqualified, although he had already expressed an opinion in favour of defts.—*HOGO v. BELFAST CORPN.*, [1919] 2 I. R. 305.—*IR.*

**363 ii. —.]—**When a personal interest which may conflict with duty exists, an arbitrator is disqualified; & the inference necessary to disqualify is more easily drawn by reason of the relationship between the arbitrator & one of the contracting parties.—*LAW v. CITY OF TORONTO* (1920), 47 O. L. R. 251; 18 O. W. N. 58.—*CAN.*

**PART I. SECT. 10, SUB-SECT. 6.—D.**

**369 i. Only question one of law.]—***Held:* the question should be determined in the course of the action itself.—*GIAHAM v. PROVIDENT LIFE ASSURANCE CO.*, [1922] N. Z. L. R. 718.—*N.Z.*

**373 i. Questions of law inter alia.]—**An agreement for the supply of electric energy by pltf. co. to deft. co. provided that the adjustment of all disputes should be submitted to three arbitrators. Disputes having arisen,

President for the time being of the Institute of Civil Engineers, & such submission should be deemed a submission to arbn. within the Act of 1889. An originating summons having been taken out by plffs. for the determination of the question whether upon the true construction of the contract, for the purpose of the monthly payments to be made to plffs. thereunder, the value of the work executed was to be ascertained by adding to the prices contained in the schedules a proportionate amount of the sum therein provided for "general contingencies," defts. moved for a stay of proceedings under the summons:—*Held*: there was a clear & definite contract between the parties that the matter in dispute should be referred to an arbitrator as being a person who possessed the necessary technical knowledge for dealing with the subject-matter of the contract; if the ct. allowed the action to proceed evidence would be necessary in order to put the ct. in a position to determine the technical meaning of the expression "general contingencies" & a number of other expressions used in the contract; the meaning of those expressions in an engineering contract would be perfectly familiar & would present no difficulty to the engineer to whom the parties had agreed to refer the decision of their disputes; the case was not one which involved a simple question of law, & plffs. had not discharged the *onus* of showing that the dispute was one which ought not to be referred to arbn., & the arbn. ought to proceed.—*METROPOLITAN TUNNEL & PUBLIC WORKS v. LONDON ELECTRIC RY. CO.*, [1926] Ch. 371; 95 L. J. Ch. 246; 135 L. T. 35, C. A.

there was an arbitration & an award. Further disputes subsequently arising, this action was brought to recover a sum of money alleged to be due under the agreement: & deft. co. moved under Arbn. Act, 1927 (c. 97), s. 7, to stay proceedings:—*Held*: as the questions which had to be determined were mixed questions of law & fact, the ct.'s discretion should be exercised by refusing the motion & allowing the action to proceed.—*M. J. O'BRIEN, LTD. v. SHAMAN KENI CO.*, [1928] 3 D. L. R. 43; 62 O. L. R. 160.—CAN.

373 ii. —.—[Arbitrators are competent to determine points of law as well as questions of the construction of an agreement. It is erroneous to apply English decisions subsequent to the English Arbn. Act of 1889, without qualification, to cases of stay under the Indian Arbn. Act, 1899. The principles of decisions in England which, since the English Arbn. Act of 1889, make the cts. there reluctant to stay the suit where the main point in dispute is a question of law, because such a question must ultimately return by way of a case stated to the ct. for decision, should not be applied for refusing a stay under Indian Arbn. Act, 1899, s. 19.—*RANEE GUNGE COAL ASSOCIATION, LTD. v. TATA IRON & STEEL CO., LTD.* (1928), 1 L. R. 53 Bom. 271.—IND.

374 iii. —.—[An important question of law being involved, the ct. in the exercise of its discretion, refused to stay the action.—*RICHARDSON v. ARMY, NAVY & GENERAL ASSURANCE ASSOCIATION, LTD.*, [1924] 2 L. R. 96.—IR.

374 iv. —.—[ANGLO-PERSIAN OIL CO., LTD. (MADRAS) v. PANCHAPAKSA AYYAR (1923), 1 L. R. 47 Mad. 161—

379a. Matters in dispute including important constitutional question.]—*ANGLO-NEWFOUNDLAND DEVELOPMENT CO. v. R.*, No. 316a, ante.

380. *Add. Annotation*:—*Consd. Smith v. Martin*, [1925] 1 K. B. 745.

383. *Add. Annotation*:—*As to* (1) *Refd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.*, [1926] Ch. 371.

391. *Add. Annotation*:—*Refd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.*, [1926] Ch. 371.

394. *Add. Annotation*:—*Mentd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.*, [1926] Ch. 371.

400. *Add. Annotation*:—*Refd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.*, [1926] Ch. 371.

402a. Summons for discovery.]—A party to a written contract containing an agreement to refer disputes to arbn. was sued for breach of the contract. He was unaware that the contract contained an agreement to refer. Plffs. in the action took out a summons for discovery. Deft. asked for discovery also, & an order for mutual discovery was made. He then became aware of the agreement to refer & applied for a stay of proceedings in the action:—*Held*: he had taken a step in the proceedings within the Act of 1889, s. 4, & therefore was not entitled to a stay.—*PARKER, GAINES & CO. v. TURPIN*, [1918] 1 K. B. 358; 87 L. J. K. B. 357; 118 L. T. 346; 62 Sol. Jo. 331, D. C.

408a. Granting of fiat—Petition of right.]—*ANGLO-NEWFOUNDLAND DEVELOPMENT CO. v. R.*, No. 316a, ante.

sk. *Fundamental questions of law.*]—On motion by defts. to stay the proceedings, & to refer the matters in dispute to defts.' surveyor:—*Held*: fundamental questions of law were involved which should be tried in an action. Motion refused.—*HOGG v. BELFAST CORPN.*, [1919] 2 I. R. 305.—IR.

#### PART I. SECT. 10, SUB-SECT. 6.—E.

376 vi. —.—[In an action for specific performance of a contract, deft. applied for stay of proceedings under an arbn. clause:—*Held*: the dispute going to the making of the contract was not within the arbn. clause, & stay refused.—*MCINTOSH v. LAYFIELD*, [1919] 1 W. W. R. 590.—CAN.

376 vii. —.—[On a motion by defts. to stay proceedings & to refer the matters in dispute to arbn.:—*Held*: the matters in dispute were outside the arbn. clause, & motion refused.—*HOGG v. BELFAST CORPN.*, [1919] 2 I. R. 305.—IR.

383 i a. —.—[The cts. should be reluctant to permit an appeal to them by one of the parties to an agreement to refer questions that may arise between them to a domestic forum rather than the ordinary cts., when the agreement is couched in wide terms.—*STOKES-STEPHENS OIL CO. v. MCNAUGHT*, [1918] 2 W. W. R. 124.—CAN.

#### PART I. SECT. 10, SUB-SECT. 7.

sl. *After appearance.*]—An application must be made after appearance, & where appearance is not requisite the application may be made at any time before taking any other step in

the proceedings.—*HARRISON, ETC. v. CRESPIN*, [1921] V. L. R. 643.—AUS.

ei. —.—[The application for a stay is too late if made after delivery of the defence.—*BRAND v. NATIONAL LIFE ASSURANCE CO. OF CANADA*, [1918] 3 W. W. R. 858.—CAN.

fi. —.—[An application for stay of proceedings before deft. has filed his written statement or taken any other step in the suit does not constitute taking a step in the proceedings within Arbn. Act, s. 19, so as to operate as a bar.—*JOYALL & CO. v. GOPURAM BHOTICA* (1920), 1 L. R. 47 Calc. 611.—IND.

396 i. *Security for costs.*]—Defts. were held to be precluded from moving for an order staying proceedings in an action, by having previously issued & served an order for security for costs.—*HEISTEIN & SONS v. POLSON IRON WORKS, LTD.*, [1920] 46 O. L. R. 285.—CAN.

398 i. *Summons for directions.*]—If a party on a summons for directions takes objection, this is a "step in the action" & prevents him applying for a stay of the action, although he may say at the time he intends to apply for a stay.—*BUCKLEY v. QUEEN INSURANCE CO.*, [1923] 3 D. L. R. 163.—CAN.

sm. *Application for adjournment.*]—*Held*: the mere application for an adjournment of the summons was not a "step in the proceedings" sufficient in itself to disentitle the lessors to apply to have the matters in dispute referred to arbn.—*O'SHAUGHNESSY v. QUICK SERVICE STATIONS, LTD.*, [1928] V. L. R. 405; 49 A. L. T. 279.—AUS.

410. *Add. Annotation* :—**Mentd.** Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.
413. *Add. Annotation* :—**Mentd.** Prosperity v. Lloyds Bank (1923), 39 T. L. R. 372.
419. *Add. Annotations* :—**Mentd.** Hogarth Shipping Co. v. Blyth, Greene, Jourdain, [1917] 2 K. B. 534; North Shipping Co. v. Rank (1926), 43 T. L. R. 82.
420. *Add. Annotation* :—**Mentd.** Blackburn Bobbin Co. v. Allen, [1918] 1 K. B. 540.
424. *Add. Annotation* :—**Refd.** Maclean v. Workers' Union, [1929] 1 Ch. 602.
442. *Add. Annotation* :—**Mentd.** Samuel v. Dumas, [1924] A. C. 431.
456. *Add. Annotation* :—**Generally, Mentd.** Ellesmere v. Wallace, [1929] 2 Ch. 1.
472. *Add. Annotation* :—**Consd.** Simbro Trading Co. v. Posograph (Parent) Corp., [1929] 2 K. B. 266.
498. *Add. Annotation* :—**Refd.** Simbro Trading Co. v. Posograph (Parent) Corp., [1929] 2 K. B. 266.
503. *Add. Annotation* :—**Refd.** Re Cogstad & Newsum, [1921] 1 K. B. 87.
521. *Add. Annotations* :—**Mentd.** Hogarth Shipping Co. v. Blyth, Greene, Jourdain, [1917] 2 K. B. 534; North Shipping Co. v. Rank (1926), 43 T. L. R. 82.
523. *Add. Annotation* :—**Apprvd.** Simbro Trading Co. v. Posograph (Parent) Corp., [1929] 2 K. B. 266.
- 523a. *Appeal from refusal to revoke.*—An appeal from a judge at chambers refusing to

revoke a submission to arbn. is in a matter of practice & procedure & therefore lies to the Ct. of Appeal & not to a Div. Ct.—**SIMBRO TRADING CO. v. POSOGRAPH (PARENT) CORPN.**, [1929] 2 K. B. 266; 98 L. J. K. B. 631; 141 L. T. 395; 73 Sol. Jo. 384, C. A.

565. After this case, following "*D. By Lunacy.*"—*See case infra*," add as follows:—

*E. Other Cases.*

- 565a. **Frustration of adventure—Charterparty containing arbitration clause.**—Resps. agreed to place their steamship at the disposal of appls. on Mar. 1, 1917, & appls. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The charterparty contained a clause by which all disputes arising out of the contract were submitted to arbn. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Appls. then refused to take delivery of her. An arbitrator awarded resps. damages for breach of contract, & they brought an action upon the award :—**Held** : there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract, including the submission to arbn., & the contract being executory the arbitrator had not jurisdiction.—**HIRJI MULJI v. CHEONG YUE S.S. Co.**, [1926] A. O. 497; 95 L. J. P. C. 121; 134 L. T. 737; 42 T. L. R. 359; 31 Com. Cas. 199; 17 Asp. M. L. C. 8, P. C.

*Annotation* :—**Distd.** De la Garde v. Worsnop (1927), 96 L. J. Ch. 446.

## Part II.—The Arbitrators and Umpire.

582. *Add. Annotation* :—**Mentd.** Macaulay v. Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

*B. Under Arbitration Act, 1889 (c. 49), s. 5.*

- 626a. Who may apply—Only party to submission.]

### PART I. SECT. 11.

- 424 viii. For "BELLOR YOUNG OR FARRELL v. ARNOTT" read "BELLOR YOUNG OR FARRELL v. ARNOTT."

### PART I. SECT. 12, SUB-SECT. 2.

- 441 i. *Powers & duty of court.*—An arbn. as to the value of property became abortive because of the failure of the persons appointed to act as arbitrators to agree :—**Held** : it was the duty of the ct. in working out a contract which provided for such arbn. to receive evidence of such value & to decide the question.—**CALGARY CITY v. BLOW**, [1925] 3 D. L. R. 1165; 1925] 3 W. W. R. 225.—**CAN.**

### PART I. SECT. 13, SUB-SECT. 1.—B.

- 494 ii. — *Submission by Crown in right of Dominion.*—**Ontario. Arbn. Act**, s. 5, making a submission to arbn. irrevocable except by leave of the ct., does not apply to a submission by the Crown in right of the Dominion.—**GAUTHIER v. R.** (1916), 56 S. C. R. 176; 40 D. L. R. 353.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 1.

- 579 x a. —.—.—**FINO v. SOUTH AFRICAN RAILWAYS & HARBOURS** (1927), 48 N. L. R. 369.—**S. AF.**

- 579 xii a. —.—.—**SWANSON v. BOARD OF LAND & WORKS**, [1928] V. L. R. 283; 49 A. L. T. 217; [1928] Argus L. R. 186.—**AUS.**

- 579 xxvii. —.—.—**SIMS v. SELLER** (P. E. I.), [1927] 2 D. L. R. 51.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 2.—A.

- n. Add as follows :—**Revsd. sub nom.** **INVERNESS RY. & COAL CO. v. MCISAAC** (1905), 37 S. C. R. 134.

o i. — *Objection to—Whether maintainable.*—Where an agreement with an incorporated club provides that it shall be compensated for damage from the acts which the agreement authorises the other party to perform, it is not open to such party to object that notice of the appointment, in pursuance of the agreement, of the club's arbitrator is not properly signed.—**Re WINNIPEG GOLF CLUB v. HUTCHINGS (Man.)**, [1926] 4 D. L. R. 1188; [1926] 3 W. W. R. 443.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 2.—B

y ii. —.—.—**A motion to appoint an arbitrator under s. 8 of the above Act on the refusal of the municipality to appoint its arbitrator, refused on the ground of lack of juris-**

—A deed of partnership provided that each original partner could, by will or codicil, nominate a qualified person as a new general partner; that the admission to the partnership was to be subject to the consent, not to be unreasonably withheld, of the general

- diction.—**GOLD v. SOUTH VANCOUVER**, [1918] 3 W. W. R. 585.—**CAN.**

*See, also*, Vol. II., p. 409, case n.

### PART II. SECT. 1, SUB-SECT. 4.

- 618 i. *Time for appointment.*—**SYNOD OF HURON v. FERGUSON** (1924), 56 O. L. R. 161.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 5.

- an. *Original nominee incapable of acting.*—A party to an arbn. has power to appoint another arbitrator in place of a first who has rendered himself incapable of acting.—**Re WEILER BROTHERS & CITY OF VICTORIA CORPN.** (1917), 24 B. C. R. 148.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 6.—C.

- d (p. 408) i. — *Vancouver Incorporation Act.*—**SPENCER v. CITY OF VANCOUVER** (1922), 68 D. L. R. 747; 30 B. C. R. 382; [1922] 1 W. W. R. 779.—**CAN.**

- d (p. 408) ii. — *Costs of application.*—A Supreme Ct. judge in appointing an arbitrator is acting as *persona designata*, & has no jurisdiction under s. 133 (9) of the above Act to award costs.—**MATTE v. VANCOUVER (CITY)**, [1917] 2 W. W. R. 53.—**CAN.**

- n i. —.—.—**BUTLER v. HOWE**

partners; & that a general partner or the qualified nominee, if of opinion that the consent to admission had been unreasonably withheld, could require the matter to be referred to arbn. An original partner nominated by will F., a qualified person, as a new general partner. After the death of the nominator the general partners refused to admit F. into the partnership. F. made an application under Arbn. Act, 1889, s. 5, asking that some fit & proper person might be appointed to act as arbitrator:—*Held*: only a party to the submission could make an application under sect. 5, & F. was not such a party.—*Re FRANKLIN & SWATHLING'S ARBITRATION*, [1929] 1 Ch. 238; 98 L. J. Ch. 101; 140 L. T. 403.

627. *Add. Annotation*:—*Mentd.* Simbro Trading Co. v. Posograph (Parent) Corp., [1929] 2 K. B. 266.

After this case insert, "See, now, Administration of Justice Act, 1920 (c. 81), s. 16."

629. *Add. Annotation*:—*As to* (3) *Distd.* *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

- 629a. — *Discretion of court to refuse to appoint except upon terms.*—On an application under the Act of 1889, s. 5, to appoint an arbitrator the ct. has a discretion & may in a proper case refuse to make an appointment except upon terms.

A contract between British shipbuilders & foreign shipowners for the building & purchase of certain ships contained a clause referring disputes & differences to the decision of a single arbitrator in accordance with the Arbn. Act. Disputes having arisen the foreign firm duly gave notice to the British shipbuilders to appoint an arbitrator, & on their refusal to do so, applied to the ct. under sect. 5 of the Act to appoint an arbitrator:—*Held*: in the case of an application for arbn. by a foreigner residing out of the jurisdiction the ct. had an absolute discretion in assenting to or refusing the application, & in the former case the ct. could attach any reasonable condition, such as making an order for security for the costs of the proceedings, to the granting of the application.—*Re BJORNSTAD & OUSE SHIPPING CO.*, [1924] 2 K. B. 673; *sub nom.* BJORNSTAD v. OUSE SHIPPING CO., 93 L. J. K. B. 977; 131 L. T. 663; 40 T. L. R. 636; 68 Sol. Jo. 754; 30 Com. Cas. 14, C. A.

630. *Add. Annotations*:—*As to* (1) *Folld.* *Richardsons & Bradley v. Bernhard*, [1925] 2 K. B.

121. *Expld.* Simbro Trading Co. v. Posograph (Parent) Corp., [1929] 2 K. B. 266.

- 630a. — — — — —.]—A contract for the sale of goods was entered into between B., the seller, & R., who, so far as appeared from the contract, were the buyers. The contract contained an arbn. clause. The goods delivered in pursuance of the contract were despatched to a foreign firm, who complained of their quality. Thereupon the foreign firm & R., who said they had merely acted as agents for that firm, claimed to have the dispute as to the quality of the goods submitted to arbn. B., while willing to go to arbn. as between himself & R., refused to assent to an arbn. to which the foreign firm were parties, maintaining that he had sold to R. as principals. R. & the foreign firm then took out a summons for the appointment of an arbitrator pursuant to the Act of 1889, s. 5:—*Held*: it being in dispute whether there was a submission between B. on the one hand & R. & the foreign firm on the other, there was no "matter" pending in the High Ct. as between those parties; therefore an appeal from an order for the appointment of an arbitrator was not in a matter of practice & procedure within R. S. O. Ord. 54, r. 23, & consequently, it lay not to the Ct. of Appeal, but to the Div. Ct.—*RICHARDSONS & BRADLEY & CO. v. BERNHARD*, [1925] 2 K. B. 121; 94 L. J. K. B. 691; 133 L. T. 234, D. C.

633. *Add. Annotation*:—*Mentd.* Dibble v. Wilts & Somerset Farmers, [1923] 1 Ch. 342.

639. *Add. Annotations*:—*Mentd.* A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268; Kelantan Government v. Duff Development Co., [1923] A. C. 395.

686. *Add. Annotation*:—*Mentd.* Samuel v. Dumas, [1924] A. C. 431.

696. *Add. Annotation*:—*Refd.* Paterson v. Ardrosan Harbour Co. (1926), 19 B. W. C. O. 621.

704. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

791. *Add. Annotation*:—*Refd.* Boynton v. Richardson (1924), 69 Sol. Jo. 107.

793. *Add. Annotation*:—*Refd.* Wisbech R. C. v. Ward (1927), 138 L. T. 308.

794. *Add. Annotations*:—*As to* (1) *Consd.* Wisbech R. D. C. v. Ward (1927), 91 J. P. 200. *Refd.* Brightman v. Tate, [1919] 1 K. B. 463. *As to* (2) *Folld.* Boynton v. Richardson (1924), 69 Sol. Jo. 107.

INSURANCE CO., [1927] 2 D. L. R. 585; [1927] 2 W. W. R. 456; 38 B. C. R. 270; *reversd.* [1929] 1 D. L. R. 47; [1928] S. C. R. 433.—CAN.

*Party declining to appoint*—, 1910, arts. 90, 99, 129.—*SOUTH BRITISH INSURANCE CO. LTD. v. GAUCI BROTHERS & CO.*, [1928] A. C. 352; 97 L. J. P. C. 101; 139 L. T. 382, P. C.—EGYPT.

*so. Arbitrator incapable of acting—Removal of residence to United States of America—Arbitration Act, 1909.*—Where an arbitrator had removed his residence to Buffalo, N.Y., & was not expected to return:—*Held*: the appointment of a new arbitrator was justified as the first was "incapable of acting" within s. 7 of the above Act.

—*Re* McNAUGHT & STOKES-STEPHENS OH. CO. (No. 2), [1918] 3 W. W. R. 337; 43 D. L. R. 7.—CAN.

**PART II. SECT. 5, SUB-SECT. 1.**  
*sp. Arbitrator a barrister.*—*SCHOOL DISTRICT ST. ROBERT v. MADDON*, [1927] 2 D. L. R. 735.—CAN.

**PART II. SECT. 5, SUB-SECT. 4.**  
*sq. Action for return of excess paid—Payment by one cheque to arbitrators jointly—Form of judgment.*—The judgment should be against each def. for the sum received by him in excess of the amount to which he was entitled.—*CANADIAN NORTHERN RY. CO. v. OUSLEY*, [1918] 2 W. W. R. 1005; 11 Sask. L. R. 282; 42 D. L. R. 772.—CAN.

## PART II. SECT. 7.

t (p. 431) i. — *Right of court to stay action.*—On an application to stay a suit instituted in respect of a dispute which was previously referred to the arbn. of two gentlemen chosen by both parties, but one of whom refused to act, it was held by the original ct. that the ct. had no power to appoint an arbitrator in place of the arbitrator who refused & staying the suit would lead the parties to an infructuous arbn.—*Held*: the ct. had such power, but the application for stay should be dismissed on the merits of the case.—*GENERAL ELECTRIC TRADING CO. v. SIEMANS (INDIA) LTD.* (1928), 1 L. R. 56 Calc. 848.—IND.

## Part III.—The Hearing.

**816a. — Act of 1889, s. 2, Sched. I. (f)—Against Crown—"Subject to any legal objection."**—

(1) In an arbn. for the determination of disputes under a contract between the Shipping Controller on behalf of His Majesty & another party, the arbitrators or umpire have no jurisdiction under Sched. 1 (f), incorporated in sect. 2 of the above Act, or otherwise, to require the Shipping Controller to make discovery of the documents in his possession or power relating to the matters in question. (2) In Sched. 1 (f), incorporated in sect. 2 of the above Act, the words "subject to any legal objection" apply to all the subsequent provisions of the clause, including not only the provision that the parties shall produce before the arbitrators or umpire all books, etc., within their possession or power, but also the provision that the parties shall "do all other things which . . . the arbitrators or umpire may require."—*Re SOCIÉTÉ LES AFFRÈTEURS RÉUNIS & SHIPPING CONTROLLER*, [1921] 3 K. B. 1; *sub nom. SOCIÉTÉ LES AFFRÈTEURS RÉUNIS v. SHIPPING CONTROLLER*, 90 L. J. K. B. 812; 124 L. T. 727; 37 T. L. R. 460, D. C.

*Annotation*.—As to (2) *Refd. Kursell v. Timber Operators & Contractors*, [1923] 2 K. B. 202.

Discovery against the Crown generally, *see* DISCOVERY, Vol. XVIII., p. 60.

**817. Add. Annotations** :—*Consd. Re Soc. Les Affrèteurs Réunis & Shipping Controller*, [1921] 3 K. B. 1; *Kursell v. Timber Operators & Contractors*, [1923] 2 K. B. 202. *Mentd. Light v. West*, [1926] 2 K. B. 238.

**817a. — Power of arbitrator to order—Reference by consent out of court.**—In a reference by consent out of ct. under the Act of 1889, the arbitrator has jurisdiction to order either party to make discovery of documents or to answer interrogatories on oath, by virtue of Sched. 1 (f) of the Act.—*KURSELL v. TIMBER OPERATORS & CONTRACTORS, LTD.*, [1923] 2 K. B. 202; 92 L. J. K. B. 607; 129 L. T. 21; 87 J. P. 79; 39 T. L. R. 419; 67 Sol. Jo. 557; 28 Com. Cas. 376, D. C.

**830. Add. Annotation** :—*Refd. Ricketts v. Gurney* (1819), 7 Price. 699.

**830a. — — — — —**—On an application to the Ct.

**PART III. SECT. 2, SUB-SECT. 2.**

**t i. — — — — —**—*Re SMITH & PLYMPTON (TOWNSHIP)* (1886), 12 O. R. 20.—CAN.

**PART III. SECT. 2, SUB-SECT. 4.**

**883 iii. — — — — —**—There is no statutory rule that if an arbitrator proceeds *ex parte* without giving notice of his intention to proceed in that manner, the award made by him must be set aside.—*UDAICHAND PANNA LAUL v. DEBIBUX JEWANRAM* (1920), 1 L. R. 47 Cal. 951.—IND.

**PART III. SECT. 2, SUB-SECT. 8.—A.**

**g i. — — — — —**—An arbitrator cannot decide the case submitted to him on his own knowledge & without taking evidence, unless the terms of the reference especially permit him to do so.—*LACHMI NARAIN v. SHEONATH PONDE* (1919), 1 L. R. 42 All. 165.—IND.

**p i. — — — — —**—In an agricultural reference when the general question submitted was a matter depending upon opinion.—*Held*: the oversman, himself a farmer & skilled valuer, was able to form a just & conscientious opinion without the necessity of hearing evidence.—*FLETCHER v. ROBERTSON* (1919), 56 Sc. L. R. 305; [1919] 1 S. L. T. 260.—SCOT.

**PART III. SECT. 2, SUB-SECT. 8.—B.**

**938 v. — — — — —**—An award was set aside for the taking of evidence by the arbitrator in the absence of the other arbitrators & of one of the parties.—*Re SNIDER & MILLER'S ARBITRATION*, [1924] 4 D. L. R. 313; 3 W. W. R. 226.—CAN.

**938 vi. — — — — —**—One of the parties to an arbn. sought reduction of the arbiter's award on the ground that the arbiter had examined witnesses without that party being present or

of Exch. on the same facts as set out in No. 830 :—*Held*: the party was privileged during the journey, including his stay at Clifton, on the ground of the deviation being for a necessary purpose, & the delay no more than reasonable for the accomplishment of it.—*RICKETTS v. GURNEY* (1819), 7 Price, 699; 1 Chit. 682; 146 E. R. 1106.

*Annotations* :—*Refd. Spencer v. Newton* (1837), 1 Nev. & P. K. B. 818. *Mentd. Selby v. Hills* (1832), 1 Moo. & S. 253.

**835. Add. Annotations** :—*Refd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.

**836. Add. Annotation** :—*Consd. Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054.

**840. Add. Annotation** :—*Refd. R. v. Sullivan*, [1923] 1 K. B. 47; *R. v. Harris*, [1927] 2 K. B. 587.

**841a. Whether entitled to act as advocate for part-appointing him.**—An arbitrator appointed to act for one of the parties to a commercial dispute is not justified in taking up the position of an advocate for the party appointing him, but should act impartially.—*ROFF v. BRITISH & FRENCH CHEMICAL MANUFACTURING CO. & GIBSON*, [1918] 2 K. B. 677; 87 L. J. K. B. 996; 119 L. T. 436; 34 T. L. R. 485; 62 Sol. Jo. 620, C. A.

**841b. — — — — —**—*FRENCH GOVERNMENT v. TSURUSHIMA MARU (OWNERS)*, No. 1022a, *post*.

**862. Add. Annotation** :—*Refd. Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc.* (1922), 38 T. L. R. 684.

**874. Add. Annotation** :—*Refd. Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc.* (1922), 38 T. L. R. 684.

**888a. — — — — —**—*Agreement to dispense with notice.*—*FRENCH GOVERNMENT v. TSURUSHIMA MARU (OWNERS)*, No. 1022a, *post*.

**906. Add. Annotations** :—As to (1) *Apprvd. & Folld. Oppenheim v. Mahomed Haneef*, [1922] 1 A. C. 482. *Refd. Scrimaglio v. Thornett & Fehr* (1924), 131 L. T. 174. As to (2) *Apprvd. & Folld. Oppenheim v. Mahomed Haneef*, [1922] 1 A. C. 482. *Refd. Scrimaglio v. Thornett & Fehr* (1924), 131 L. T. 174.

*being represented* :—*Held*: as the arbiter had decided the question in that party's favour, he had suffered no injustice, & reduction refused.—*BLACK v. WILLIAMS & CO. (WISHAW) LTD.*, [1924] S. C. (H. L.) 22.—SCOT.

**938 vii. — — — — —**—An arbitrator heard evidence from one party in the absence of his opponent, & also took evidence in the absence of both parties. The award was consequently set aside by the Ct.—*BURNS v. BURNS* (1922), 43 N. L. R. 461.—S. AF.

**938 viii. — — — — —**—*By umpire.*—Arbitrators having differed, the matter was submitted to an umpire, who made inquiries in the absence of deff., but denied that he had recorded any evidence at the time.—*Held*: in making these inquiries the umpire was guilty of misconduct.—*ABDUL HAMID v. MOHAMMAD AFZAL* (1927), 1 L. R. 8 Lah. 329.—IND.

939. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
941. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
943. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
- 949a. —.—.]—An arbitrator appointed under Agricultural Holdings Act, 1908 (c. 28), for the purpose of determining claims & compensation payable in respect of (*inter alia*) certain fixtures, hay & straw left by the tenant on his farms, & hay & straw removed by him after the determination of the tenancy, held two sittings & then gave notice that he had been waiting to be supplied with information as to the hay & straw sold off & warned the parties that if it was not supplied promptly he would have to hold another sitting. After an interval of less than a fortnight he gave further notice that he would go to the farms on a specified date "to value the hay & straw & to receive an account of the hay & straw removed." The tenant not having such an account ready & thinking that the only question to be dealt with was a valuation of the stacks of hay & straw remaining on the farm did not attend by himself or his representative, but his foreman was present to point out & give information about the stacks on the farms. While there the arbitrator, besides valuing the stacks, questioned the foreman as to the hay & straw removed. Immediately afterwards he closed the hearing & made an award in which he dealt with the claim for hay & straw removed on the basis of the foreman's evidence, which had not been tendered by either party, & was taken in the presence only of the landlord's representative. He did not deal with the question of the fixtures, but purported to reserve power to deal with them, if required:—*Held*: the award must be set aside as the arbitrator had been guilty of legal misconduct in taking evidence in the absence of, & without previous notice to, the tenant.—*Re* O'CONOR & WHITLAW'S ARBITRATION (1919), 88 L. J. K. B. 1242, C. A.
- 949b. —.—.]—In an arbn. between sellers & buyer arising out of the rejection by the latter of certain goods which he alleged did not correspond to the contract description, the arbitrators heard the evidence of each of the parties in the absence of the other. No objection was made at the time to this procedure. An award having been made in favour of the sellers, the buyer moved to set it aside:—*Held*: the award must be set aside, as the arbitrators had acted improperly in hearing the evidence on behalf of one party in the absence of the other.—
- 959 v. —.—.]—An award was set aside because, in considering the same after the hearing, an arbitrator, in the absence of & without notice to the parties, interviewed & got information from one who had been a witness on the hearing.—*Re* YUKON GOLD CO. & MOREAU, [1921] 1 W. W. R. 760; 57 D. L. R. 229.—CAN.
- 959 vi. —.—.]—Where the arbitrator had taken evidence in the absence of both parties:—*Held*: the award should be set aside.—*BURNS v. BURNE* (1922), 43 N. L. R. 461.—S. AF.
- PART III. SECT. 2, SUB-SECT. 8.—C.  
968 x. S. P. LATHAM *v.* FOSTER'S AUSTRALIAN FIBRES, LTD., [1926] V. L. R. 427.—AUS.
- PART III. SECT. 2, SUB-SECT. 8.—D.  
975 v. —.—.]—*Waiver*.—The award in question herein was also objected to on the ground that the arbitrators permitted expert testimony to be given on behalf of one of the parties by more than three expert witnesses, contrary to Manitoba Evidence Act, s. 7:—*Held*: it was not shown that more than three witnesses called by said party were experts; & even if more than three of them were experts, the other party by failing to object to their evidence at the hearing & by himself calling more than three experts had waived the right to raise the objection.—*Re* WINNIPEG GOLF CLUB & HUTCHINGS, [1928] 3 D. L. R. 522; [1928] 2 W. W. R. 224; 37 Man. L. R. 341.—CAN.
- RAMSDEN (W.) & Co. *v.* JACOBS, [1922] 1 K. B. 640; 91 L. J. K. B. 432; 126 L. T. 409; 26 Com. Cas. 287, D. C.
- 949c. —.— Evidence immaterial.]—It is misconduct which may justify the setting aside of an award if the arbitrators hear evidence in the absence of the parties, even though the evidence so received is immaterial. It makes no difference that the arbitrators could not properly have made any other award than that which they did make, & it is quite immaterial whether the evidence wrongly admitted helped the arbitrators to a right conclusion or a wrong conclusion, & the ct. cannot inquire to what extent their minds were affected by such evidence.—ROYAL COMMISSION ON SUGAR SUPPLY *v.* KWIK-HOO-TONG TRADING SOCIETY (1922), 38 T. L. R. 684, D. C.; *subsequent proceedings*, *sub nom.* KWIK-HOO-TONG TRADING SOCIETY *v.* ROYAL COMMISSION ON SUGAR SUPPLY (1923), 129 L. T. 500.
952. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
955. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
956. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
960. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
964. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
969. *Add. Annotation*:—*Folld.* Caven *v.* Canadian Ry. (1925), 133 L. T. 774.
1000. *Add. Annotation*:—*Refd.* Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.
- 1022a. —.— —.—.]—In commercial arbn. the practice is that, unless the parties give notice that they desire to attend personally or by their solr. or counsel, the arbitrators present the evidence & arguments to the umpire & have full power to act as advocates. In an arbn. on a charterparty the umpire without hearing the parties made his award on the case as presented by the arbitrators. On a motion to set aside the award on the ground of misconduct by the umpire:—*Held*: there was no evidence of misconduct by the umpire, & the motion failed.
- In arbn. proceedings *prima facie* the common law rule applies that the parties should have notice of the proceedings so that they could attend them, if desirous of so doing, & the only way in which the rule can be departed from is by agreement, & the ct.

would give effect to their agreement (ATKIN, L.J.).—*FRENCH GOVERNMENT v. TSURUSHIMA MARU (OWNERS)* (1921), 37 T. L. R. 961, C. A.

*Annotation*:—*Refd. Bourgeois v. Weddell*, [1924] 1 K. B. 539.

**1023a. Right to call arbitrator as witness.**—A dispute arose between the buyer & sellers of a quantity of meat as to its quality. The buyer sent K. to inspect & report upon the meat. The dispute having been referred to arbn., the buyer appointed K. as his arbitrator. The arbitrators having failed to agree upon their award the matter was referred to an umpire, & the buyer then proposed to call K. as a witness before the umpire to prove the state of the meat. The sellers objected to the competency of K. as a witness on the general principle that an arbitrator was disqualified from giving evidence in the arbn. proceedings.—*Held*: as it was a commercial arbn. K. was not disqualified from giving evidence before the umpire, notwithstanding that he had acted as arbitrator.—*BOURGEOIS v. WEDDELL & Co.*, [1924] 1 K. B. 539; 93 L. J. K. B. 232; 130 L. T. 635; 40 T. L. R. 261; 68 Sol. Jo. 421; 29 Com. Cas. 152; 88 J. P. Jo. 25, D. C.

**1034. Add. Annotation**:—*Refd. Re Cogstad & Newsum*, [1921] 1 K. B. 87.

**1035. Add. Annotation**:—*Refd. Czarnikow v. Roth, Schmidt* (1922), 127 L. T. 824.

**1036. Add. Annotation**:—*Refd. Czarnikow v. Roth, Schmidt* (1922), 127 L. T. 824.

**1036a.** — — — — —]—A contract for the sale of sugar provided that the contract was subject to the rules of the Refined Sugar Asscn. The rules required that all members of the asscn. making contracts subject to those rules should refer any disputes arising out of such contracts, including any questions of law, to the arbn. of the council of the asscn.; & by r. 19: "Neither buyer, seller, trustee in bkpcy., nor any other person as aforesaid shall require, nor shall they apply to the ct. to require, any arbitrators to state in the form of a special case for the opinion of the ct. any question of law arising in the reference, but such question of law shall be determined in the arbn. in manner herein directed." A dispute between the buyers & sellers was referred to the arbn. of the council. The buyers requested the arbitrators either to state their award in the form of a special case under the Act of 1889, s. 7, or alternatively to state a case for the opinion of the ct. under sect. 19 upon certain points of law arising in the reference, or to give them an opportunity of applying to the ct. for an order directing them to state a case. The arbitrators, thinking themselves precluded by r. 19, refused to comply with that request, & made their award without giving the buyers an opportunity of applying to the ct. for an order. The buyers move to set aside the award on the ground of misconduct of the arbitrators in so refusing:—*Held*: r. 19 & the agreement embodying it were contrary to public policy & invalid, as involving an

oustery of the statutory jurisdiction of the cts. under the Arbn. Act, & the award must be set aside.—*CZARNIKOW v. ROTH, SCHMIDT & Co.*, [1922] 2 K. B. 478; 92 L. J. K. B. 81; 127 L. T. 824; 38 T. L. R. 797; 28 Com. Cas. 29, C. A.

**1037. Add. Annotations**:—*Refd. Buerger v. Barnett* (1919), 89 L. J. K. B. 161; *Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478.

**1039. Add. Annotations**:—*Mentd. Cornelius v. Phillips*, [1918] A. C. 199; *Anderson v. Daniel*, [1924] 1 K. B. 138.

**1039a.** — — — — — **Well-defined question of law must be formulated.**—An arbitrator should not state a special case except upon some well-defined questions of law & should insist that the party asking him to state a case should formulate the questions upon which he desires it to be stated. It is improper for an arbitrator to state a case merely asking generally for the opinion of the ct. on any questions of law involved.—*WILLIAMS v. MANISSALIAN FRÈRES* (1923), 29 Com. Cas. 42, C. A.

**1043. Add. Annotation**:—*Mentd. Re Cogstad & Newsum*, [1921] 1 K. B. 87.

**1047. Add. Annotation**:—*Refd. Czarnikow v. Roth, Schmidt* (1922), 127 L. T. 824.

**1049. Add. Citation**:—*On appeal*, [1914] 1 Ch. 300, C. A.

*Add. Annotations*:—*Mentd. R. v. Bedfordshire County Council, Ex p. Sear*, [1920] 2 K. B. 465; *Morris v. Harris*, [1927] A. C. 252.

**1051a.** — — — — — **Application to stay proceedings—Until security for costs given.**—The Govt. of an independent State made with a co. a contract containing an arbn. clause. An arbn. took place & was divided into two parts, the first being as to whether the Govt. had committed a breach of contract. The result of this part of the arbn. was that an award was given in favour of the co. & the Govt. was ordered to pay costs. The second part of the arbn. as to the amount of damage then began, & when the evidence had been closed the Govt. asked the arbitrator to state an advisory case for the opinion of the ct., but the arbitrator refused to do so. The Govt. then issued a summons asking that the arbitrator might be ordered to state a case, & thereupon the co., applied that all further proceedings might be stayed until the Govt. (1) had paid the costs which it had been ordered to pay, & (2) had given security to answer the costs of the matter & of the arbn.:—*Held*: so far as concerned the summons for a case to be stated the Govt. was in the position of a plff., & it could not rely on its foreign sovereignty, & being out of the jurisdiction must give security for the costs of the summons, but the rest of the co.'s application must stand over to be dealt with on the hearing of the summons.—*DUFF DEVELOPMENT CO., LTD. v. KELANTAN GOVERNMENT* (1925), 41 T. L. R. 375; *sub nom. Re Duff Development Co., Ltd. & Kelantan Government*, 69 S. Jo. 491.

**1052. Add. Annotation**:—*N.F. Simbro Trading Co.*

**PART III. SECT. 3, SUB-SECT. 1.**  
**1034 v.** — — — — — *Arbitration Act, R. S. O.*, 1914 (c. 65).—A case may be stated by the arbitrators under s. 29 of the above Act.—*Re TORONTO GENERAL*

*TRUSTS CORPN. & McCONKEY* (1918), 41 O. L. R. 314; 13 O. W. N. 281.—*CAN.*

*m i.* — — — — —]—A case stated by arbitrators, under Arbn. Act, R. S. O.,

1914 (c. 65), s. 22, for the determination of the ct., is now to be heard by a judge in the Weekly Ct.—*Re McCONKEY'S ARBITRATION* (1918), 42 O. L. R. 380; 14 O. W. N. 31; 43 D. L. R. 732.—*CAN.*



*v. Posograph (Parent) Corp.*, [1929] 2 K. B. 266.

**1053. Add. Annotations:—**Consd. Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375. Refd. *Northwood v. L. C. C.* (1927), 137 L. T. 49. Mentd. *Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Cogstad v. Newsum*, [1921] 2 A. C. 528.

**1054. Add. Annotation:—**Refd. *Cogstad v. Newsum*, [1921] 2 A. C. 528.

**1055. Add. Annotations:—**As to (1) Consd. *Cogstad v. Newsum*, [1921] 2 A. C. 528. As to (2) Refd. *Cogstad v. Newsum*, [1921] 2 A. C. 528.

**1056. Add. Annotations:—**Consd. *Northwood v. L. C. C.* (1927), 137 L. T. 49. Refd. *Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Cogstad v. Newsum*, [1921] 2 A. C. 528; *Duff Development Co. v. Kelantan Government* (1925), 41 T. L. R. 375.

**1057. Add. Annotations:—**Consd. *Cogstad v. Newsum*, [1921] 2 A. C. 528. Refd. *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45.

**1058a. ————**—]—A special case stated by an arbitrator for the opinion of the ct. is stated under the Act of 1889, s. 19, or s. 7, according as the arbitrator does or does not retain jurisdiction in the reference. If he retains jurisdiction the case is stated under sect. 19, & no appeal lies to the Ct. of Appeal from the decision of the High Ct. upon the special case; but if he makes his award finally, & retains no further jurisdiction in the reference, the case is stated under sect. 7 & an appeal lies from the decision of the ct.

By a submission contained in a charterparty disputes were referred to two arbitrators &, if they could not agree, to an umpire. The umpire stated for the opinion of the High Ct. a special case in which he set out the facts, decided that there had been a breach of the charterparty, & assessed damages for the breach. The award concluded with these words: "The question for the opinion of the ct. is whether upon the true construction of the charterparty & the facts stated by me the decisions at which I have arrived are correct in law. If they be correct my award is to stand, but if incorrect in any particulars I desire that the award may be referred back to me for reassessment of the damages due in accordance with the decision of the ct."—*Held*: this was not a final award; the case was, therefore, stated under sect. 19 & no appeal lay to the Ct. of Appeal.—*COGSTAD (C. T.) & Co. v. NEWSUM (H.), SONS & Co.*, [1921] 2 A. C. 528. 90 L. J. K. B. 1293; 85 J. P. 253; 37 T. L. R. 995; 19 L. G. R. 581; 27 Com. Cas. 11; *sub nom. Re COGSTAD (C. T.) & Co. & NEWSUM (H.), SONS & Co., LTD.*, 126 L. T. 65; 15 Asp. M. L. C. 369, H. L.; *affg. S. C. sub nom. Re COGSTAD & Co. & NEWSUM, SONS & Co.*, [1921] 1 K. B. 87, C. A.; *previous proceedings, sub nom. LORD (OWNERS) v. NEWSUM, SONS & Co., LTD.*, [1920] 1 K. B. 846.

*Annotation:—*Expld. & Distd. *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45.

**1059 i. ————**—Where erroneous award can be set aside.—Although an appeal cannot be brought upon an opinion of the ct. given to arbitrators, who have consulted the ct. on a point

of law arising in the course of the arbn. proceedings, yet the award expressed to be based upon such opinion & incorporating same, if the opinion is erroneous, may be set aside

**1059. Add. Annotations:—**Consd. *Re Wulff & Dreyfus* (1917), 117 L. T. 583; *Re Cogstad & Newsum*, [1921] 1 K. B. 87; A.-G. for Manitoba *v. Kelly*, [1922] 1 A. C. 268; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395. Refd. *Re Olympia Oil & Cake Co. & MacAndrew Moreland*, [1918] 2 K. B. 771; *Re Parsons & Brixham Fishing Smack Insc. Soc.* (1918), 62 Sol. Jo. 384; *Westacott v. Hahn*, [1918] 1 K. B. 495; *Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co.*, [1923] A. C. 480; *Northwood v. L. C. C.* (1927), 137 L. T. 49; *Roberts v. Anglo-Saxon Insc. Assocn.* (1927), 96 L. J. K. B. 590. Mentd. *Hill v. Showell* (1918), 87 L. J. K. B. 1106; *Payzu v. Saunders*, [1919] 2 K. B. 581; *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.

**1062. Add. Annotation:—**Mentd. *Harnett v. Bond*, [1924] 2 K. B. 517.

**1067. Add. Annotations:—**As to (1) Refd. *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45. Generally, Mentd. *Metropolitan Water Board v. Kingston Union Assmt. Com.*, [1925] 2 K. B. 509.

**1067a. Finality—Request to court to vary if award wrong in law.]—**Disputes which had arisen under a charterparty were referred to arbn. & the arbitrator made his award in the form of a special case in which, after setting out the facts, & holding that the owners had committed a breach of the charterparty, he made an award in favour of the charterers & assessed the damages & costs payable by the owners to the charterers. The case proceeded as follows: "The question for the opinion of the ct. is whether upon the facts as stated by me my award is right in law. If my award be correct then it shall stand; but should the ct. find that it be wrong in law then I request that the ct. shall vary my award as in their discretion they may think fit, both as to the damages & as to the costs . . . except that if the ct. shall only vary my award on the subject of the amount of the damages, my discretion as to the costs of the reference & the costs of my award shall stand"—*Held*: the award was a complete & final award under sect. 7 of the Act of 1889.—*LARRINAGA & Co. v. SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA* (1922), 92 L. J. K. B. 45; 27 Com. Cas. 160.

*Annotation:—*Mentd. *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

**1069a. Subject-matter of commercial nature—**May be transferred to & heard in Commercial Court.]—PRACTICE NOTE, [1927] W. N. 258.

**1070. For "Burden of proof on party disputing award" read "Right to begin—Burden of proof on party disputing award."**

**1071. For "——" read**

**1071a. — Award in alternative form—Party claiming damages entitled to begin.]—**PATRICK & Co. *v. RUSSO-BRITISH GRAIN EXPORT CO., LTD.* (1927), 43 T. L. R. 724.

& referred back to the arbitrators as being based on an error of law apparent upon the face of the award.—*Re BRECHIN & DRAFFRY IMPORTING CO., LTD.*, [1928] N. Z. L. R. 241.—N.Z.



- 1071b. Case stated on unstamped document—**Struck out.**—*SYMINGTON & Co. v. UNION INSURANCE SOCIETY OF CANTON* (1927), 164 L. T. Jo. 390.
1073. *Add. Annotation*:—*Refd. Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 31.
1075. *Add. Annotations*:—*Mentd. County Hotel & Wine Co. v. L. & N. W. Ry.* (1918), 17 L. G. R. 274; *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211; *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.
1077. *Citation*:—For existing citations read “as reported in [1915] 2 K. B. 393, n.”  
*Add. Annotation*:—*Mentd. Finlay v. Kwik Hoo Tong Handel Maatschappij* (1928), 98 L. J. K. B. 251.
1082. *Add. Annotation*:—*Refd. Re Cogstad & Newsum*, [1921] 1 K. B. 87.
1083. *Add. Annotation*:—*Refd. Ruf v. Pauwels*, [1919] 1 K. B. 660.
- 1083a. Act of 1889, s. 7—*Appeal lies to Court of Appeal.*—*COGSTAD (C. T.) & Co. v. NEWSUM (H.), SONS & Co.*, No. 1058a, *ante*.
- 1083b. Loss of right to appeal—*Acceptance of award.*—In an arbn. concerning a contract of sale of goods the umpire stated a special case in which he made three different awards, leaving the ct. to decide which was right. The judge having decided that the first award was right, applts. demanded & obtained payment of the amount of that award & gave a receipt therefor. They then appealed from the decision of the judge & contended that the second award was the right one:—*Held*: having demanded & accepted payment under the first award applts. were precluded from contending that it was wrong.—*DEXTERS, LTD. v. HILL CREST OIL Co. (BRADFORD)*, [1926] 1 K. B. 348; 95 L. J. K. B. 386; 134 L. T. 494; 42 T. L. R. 212; 31 Com. Cas. 161, C. A.

## Part IV.—The Award.

1086. *Add. Annotations*:—*Mentd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45; *Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.
1100. *Add. Annotation*:—*Mentd. Ellesmere v. Wallace*, [1929] 2 Ch. 1.
- 1107a. — *Award signed by all three as arbitrators.*—Under a submission to arbn. each of the two parties could appoint an arbitrator, & the arbitrators could appoint an umpire. The parties duly appointed arbitrators & the arbitrators appointed an umpire. An award was then made & was signed by these three persons, who added to their signatures the word “arbitrators”:—*Held*: the third person who signed the award was properly appointed as umpire, he acted as umpire, & he really intended to sign as umpire, & the fact that he signed as arbitrator was only a matter to require a purely formal amendment.—*BENABU & Co. v. PRODUCE BROKERS Co., LTD.* (1921), 37 T. L. R. 609; *on appeal*, 37 T. L. R. 851, C. A.
- 1152a. — *Existence of written contract—Signature by one party only.*—To constitute a contract in writing it is not necessary that such contract should be signed by both parties, & the recital in an award of the existence of a contract in writing between the parties when in fact the contract has been signed by one of them only does not constitute an error in law on the face of the award sufficient to justify the ct. in setting it aside.—*RUF (T. A.) & Co. v. PAUWELS*, [1919] 1 K. B. 660; 88 L. J. K. B. 674; 121 L. T. 30; 83 J. P. 150; 35 T. L. R. 322; 63 Sol. Jo. 372, C. A.
1165. *Add. Annotations*:—*Mentd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45; *Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.

### PART IV. SECT. 2.

1082 ii a. — *Other dissenting.*—Where a submission to arbn. before three arbitrators provides that any two of them can make an award, & after discussion & the taking of his opinion, one of the three refuses to concur in the award, the other two have the right to sign it in his absence.—*Re WINNIPEG GOLF CLUB & HUTCHINGS*, [1925] 3 D. L. R. 522; [1928] 2 W. W. R. 224; 37 Man. L. R. 341.—CAN.

ki. — *Majority award valid—Alberta Insurance Act, R. S. A., 1922 (c. 171).*—On a submission to an arbn. of three persons under statutory condition No. 22 in Sched. C. to the above Act, to determine the amount of loss, the decision of a majority of the arbitrators is binding.—*GLASGOW UNDERWRITERS v. SMITH*, [1924] 4 D. L. R. 801; [1924] 3 C. R. 531; *affd.*, [1928] 1 D. L. R. 187; 1 W. W. R. 155; 20 Alta. L. R. 114.—CAN.

wi. — *Held*: the award was valid.—*Re BALDWIN &*

WILLINSKY, [1925] 1 D. L. R. 1177; 56 O. L. R. 296.—CAN.

1100 v. — *Award by one.*—*Held*: valid.—*Re NATIONAL TRUST CO. & MUNICIPAL DISTRICT OF VALE*, [1925] 3 D. L. R. 459.—CAN.

1106 ia. — *Held*: binding.—*MASTERS & McDUGALL v. STEPHEN, STEPHEN & MASTERS & McDUGALL*, [1925] 4 D. L. R. 684; [1925] 3 W. W. R. 493.—CAN.

1109 viii. — *Where the arbitrators did not meet together & sign the formal document in the presence of each other:—Sembly: the award was invalid.*—*HARRISON v. HARRISON* (1918), 41 O. L. R. 195; 13 O. W. N. 245.—CAN.

1109 ix. — *RYE FARM Co. v. BRITISH OAK INSURANCE Co., LTD.*, [1924] 3 D. L. R. 706; 3 W. W. R. 16.—CAN.

### PART IV. SECT. 5.

1125 x. — *An award made upon an arbn. under Municipal Act is*

published when notice thereof is given by the arbitrators to the municipality.—*Re SWEINSON & MUNICIPALITY OF CHARLESWOOD*, [1917] 1 W. W. R. 293; 27 Man. L. R. 231.—CAN.

### PART IV. SECT. 8, SUB-SECT. 1.

1155 i. *Must conform to submission* 1—The awards in these cases, making special provision with regard to the repairing & keeping up a mill-dam, etc. were held bad as beyond the submission & power of the arbitrators.—*Re HALEY & ENNIS* (1851), 1 P. R. 173.—CAN.

### PART IV. SECT. 8, SUB-SECT. 2.—A.

1161 xi. — *The umpire is bound by the terms of the submission, & he cannot make an award not within its scope.*—*PORTER v. PORTER* (1921), 55 I. L. T. 206.—IR.

### PART IV. SECT. 8, SUB-SECT. 2.—B.

si. — *Held*: the arbitrators had no power to include in their award interest on the amount found to be the value of the property from the date

1172. *Add. Annotation*:—**Mentd.** Cayzer, Irvine v. Board of Trade (1926), 95 L. J. K. B. 1054.
1182. *Add. Annotation*:—**Refd.** *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315.
1187. *Add. Annotations*:—**Consd.** Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497. **Mentd.** Manbre Saccharine Co. v. Corn Products Co., [1919] 1 K. B. 198; Clark v. Cox, McEuen, [1921] 1 K. B. 139; A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268.
1188. *Add. Annotations*:—**Refd.** Lebeaupin v. Crispin (1920), 124 L. T. 124; Sheikh Mohamad Habib Ullah v. Bird (1921), 37 T. L. R. 405. **Mentd.** Montevideo Gas & Drydock Co. v. Clan Line Steamers (1921), 37 T. L. R. 544; Taylor v. Bank of Athens, Pinnock v. Bank of Athens (1922), 128 L. T. 795; Finlay v. Kwik Hoo Tong Handel Maatschappij, [1929] 1 K. B. 400; Kaufmann v. British Surety Insce. (1929), 45 T. L. R. 399.
1263. *Add. Annotation*:—**Refd.** Weber v. Birkett, [1925] 1 K. B. 720.
1281. *Add. Annotation*:—**Mentd.** Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.
1288. *Add. Annotation*:—**Refd.** Weber v. Birkett, [1925] 1 K. B. 720.
1291. *Add. Citation*:—7 Mod. Rep. 345.
1307. *Add. Annotation*:—**Mentd.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.
- 1357a. ————]—**COGSTAD** (C. T.) & Co. v. **NEWSUM** (H.) **SONS & CO.**, No. 1058a, *ante*.
- 1357b. ————]—**LARRINAGA & CO. v. SOCIÉTÉ FRANCO-AMÉRICAIN DES PHOSPHATES DE MÉDULLA**, No. 1067a, *ante*.
1361. *Add. Citations*:—88 L. J. K. B. 227; 119 L. T. 553; 83 J. P. 9.
- Add. Annotation*:—**Refd.** *Re* Fiscel & Mann & Cook, [1919] 2 K. B. 431.
- 1361a. ————]—Arbitrators made their award in an alternative form stating a special case & giving to the parties the option of taking the opinion of the ct. upon the points of law

involved in it if notice of intention to apply to the ct. was given before a date specified; & in the alternative making an award in favour of one of the parties if, as was the case, no such notice was given. The case was set down for argument in the special paper:—**Held**: the condition was reasonable & the award was good, so that there was nothing for the ct. to deal with.—**LYON** (J. L.) & Co., LTD. v. **HADDOCK, PARKER & Co.**, [1919] W. N. 11.

1398. *Add. Annotation*:—**Mentd.** Ayscough v. Sheed Thomson (1923), 92 L. J. K. B. 878.

1415a. ———— **Reserved for consideration if required.**—*Re* **O'CONNOR & WHITLAW'S ARBITRATION**, No. 949a, *ante*.

1435a. ————]—(1) Where parties submitted all matters in difference to arbn., & the award, after reciting the submission, awarded that a certain sum was due & owing from one party to the other:—**Held**: the award must be intended to be made on all the matters referred.

(2) It appeared by affidavit that the claims of one of the parties consisted of items for money due, & also for prospective damages, in consequence of a contract between the parties being put an end to by the other side, but as it also appeared that each of the claims was investigated before the arbitrators:—**Held**: a general finding was sufficient that a balance was due to one of the parties.

(3) Where on a reference one of the parties admits the claim of the other, but seeks to reduce the balance by a set-off, it is sufficient for the award to state that a sum is owing to one side or the other, without further noticing the set-off.—*Re* **CROYDON CANAL CO.** (1839), 1 Per. & Dav. 391.

1439. *Add. Annotation*:—**Mentd.** Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.

1461. *Add. Annotation*:—**Refd.** Weber v. Birkett, [1925] 1 K. B. 720.

1467. *Add. Annotation*:—**Refd.** Weber v. Birkett, [1925] 1 K. B. 720.

of taking possession.—**TORONTO CITY CORPN. v. TORONTO RY. CORPN.**, [1925] A. C. 177, P. C.—**CAN.**

**ss. Reference of "accuracy" & "justice" of accounts.**—**Held**: the arbitrator was appointed to adjust the accounts between the parties on a fair & equitable basis, & had a discretion whether any interest should be allowed to either party, & in the exercise of that discretion was not bound to apply any rule of law.—**FISHER v. MATSON & CO., MATSON & CO. v. FISHER**, [1918] N. Z. L. R. 1.—**N.Z.**

#### PART IV. SECT. 8, SUB-SECT. 2.—C.

1185 ii. ———— **Award dismissing claim for short delivery.**—**Held**: words "any claim or dispute arising in connection with this contract" in the arbn. clause included a claim for short delivery of goods.—**GHAMANDI LAL-NARAIN DAS v. CHURANJI LAL-POKHARI MAL** (1923), 1 L. R. 4 Lah. 168.—**IND.**

1188 i. **Submission of any question arising under contract—Award giving damages for non-delivery.**—Where a contract provided for a reference to arbn. of any question arising under it:—**Held**: the proper conclusion upon the evidence was that the parties, by their course of conduct before the arbitrators, established that the question as to the damages was a matter in dispute & a subject of the reference.—*Re* **BEAVER WOOD FIBRE CO., LTD.**,

& **AMERICAN FOREST PRODUCTS CORPN.**, [1920] 47 O. L. R. 590; 54 D. L. R. 672; 18 O. W. N. 281.—**CAN.**

#### PART IV. SECT. 8, SUB-SECT. 2.—G.

**g** (p. 479) i. ———— **Valuation to be fixed as in open market—Absence of any market.**—**CANADIAN PACIFIC RY. CO. v. WINDEBANK**, [1917] 3 W. W. R. 99.—**CAN.**

**qi.** ————]—The points for decision on a submission to arbn. were on which partner rested the responsibility for the causes necessitating dissolution, & on which condition the partnership should be dissolved:—**Held**: this did not give jurisdiction to the arbitrator to award payment by one partner of damages because of premature dissolution of the partnership.—*Re* **ARBITRATION ACT, RE GUYOT & VIGOURET & AWARD MADE BY GOSSELIN**, [1919] 3 W. W. R. 957.—**CAN.**

#### PART IV. SECT. 8, SUB-SECT. 3.—D.

1286 iv. ———— **Delivery of goods "in fair proportion to all imports."**—**Held**: the direction to deliver goods "in fair proportion to all imports" was uncertain & lacking in finality & therefore not enforceable.—**THOMPSON, MEGGITT & CO., LTD. v. MOODY** (1920), 21 S. R. N. S. W. 125. 37 N. S. W. W. N. 267.—**AUS.**

#### PART IV. SECT. 8, SUB-SECT. 3.—E.

**sb.** **Award of sum subject to varia-**

**tion—"Good & special reasons."**—**NOBLE v. CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO.** (1918), 21 Can. Ry. Cas. 380.—**CAN.**

**ss. Award for payment for working to "estimated" depth.**—An award stated that a contractor was entitled to payment at the contract-price for the drilling to an estimated depth of 2,400 feet, saying nothing about the amount to which the contractor was thus entitled:—**Held**: the amount of the contract-price & credits allowed could be ascertained by evidence, & the use of the word "estimated" in the award was definite & amounted to a fixing of the depth at 2,400 feet.—**MCAUGHT V. STOKES-STREPHENS OIL CO., LTD.**, [1919] 1 W. W. R. 952.—**CAN.**

#### PART IV. SECT. 8, SUB-SECT. 3.—L.

1356 i. **Award settling dispute—Alternative if court should decide differently.**—An arbitrator awarded a certain sum, & in the event of the Supreme Ct. determining that certain views expressed by him in his reasons were erroneous, a certain larger sum:—**Held**: in the absence of any such determination the alternative award did not come into operation, & the award was not thereby rendered uncertain.—**MELBOURNE HARBOUR TRUST COMRS. v. HANCOCK**, [1927] V. L. R. 418; 39 C. L. R. 570; [1927] L. R. 245.—**AUS.**

1468. *Add. Annotation*:—*Refd.* Weber v. Birkett, [1925] 1 K. B. 720.

1472. *Add. Annotation*:—*Refd.* Weber v. Birkett, [1925] 1 K. B. 720.

1473. *Add. Annotation*:—*Refd.* Weber v. Birkett, [1925] 1 K. B. 720.

1477. *Add. Annotation*:—*Refd.* Weber v. Birkett, [1925] 1 K. B. 720.

1497. *Add. Annotation*:—*Consd.* Weber v. Birkett, [1925] 1 K. B. 720.

1506. *Add. Annotation*:—*Refd.* Weber v. Birkett, [1925] 1 K. B. 720.

1511. *Add. Annotation*:—*Refd.* Caven v. Canadian Pacific Ry. (1925), 133 L. T. 774.

1516a. ———.]—*Re* CROYDON CANAL CO., No. 1435a, *ante*.

1593a. ———.]—A.-G. FOR MANITOBA v. KELLY, No. 238a, *ante*.

1598. *Add. Annotations*:—*Distd.* Champsey Bhara Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. *Consd.* Kelantan Government v. Duff Development Co., [1923] A. C. 395.

1598a. ———.]—Certain trawlers were insured as to three-quarters of their value in the B. Insurance Co. To save their vessels from destruction by enemy submarine, the owners cut away the trawls, which were not insured, & claimed a general average contribution against the co., of which the owners were members. The rules provided that all disputes should be settled in the first instance by a general meeting of the co., or, on appeal, by two arbitrators & an umpire, none of whom should be lawyers. The general meeting having refused the claim, the owners proceeded to arbn. under a submission which provided that "all matters in difference in reference to the said claim for a general average contribution are referred," etc. The umpire by his award ignored the claim for general average. On a motion to set aside the award:—*Held*: it was bad as disclosing an error in law on the face of it; &, having regard to the general terms of the submission, it was not open to resps. to say that a definite point of law had been submitted to arbn., as to which the decision of the arbitrator was final, & the award must be set aside.—

#### PART IV. SECT. 8, SUB-SECT. 9.—D.

1517 i. *Reference of two separate matters—One award.*—*Held*: the award must be referred to the arbitrator to draw up two awards.—*Re* DREYFUS & S. A. MILLING & TRADING CO., [1923] S. A. S. R. 75.—AUS.

#### PART IV. SECT. 10.

1520 v. ———.]—Where an arbn. award is valid as to a part thereof & void as to another part, the valid portion, if severable from the rest, is enforceable.—*CITY OF SWIFT CURRENT v. LESLIE*, [1920] 1 W. W. R. 467; 52 D. L. R. 532.—CAN.

1541 ii. ———.]—An award contained two directions:—*Held*: the two directions could not be severed, &, although the first direction was valid, the second direction being invalid judgment must be entered for deft.—*THOMPSON, MCGILL & CO., LTD. v. MOODY* (1920), 21 S. L. N. S. W. 125; 37 N. S. W. W. N. 267.—AUS.

#### PART IV. SECT. 13, SUB-SECT. 1.

1594 ii. ———.]—The ct. has

jurisdiction to set aside an award where an error of law appears on the face of it.—*Re* CANSWELL & CO., LTD. & DONALD & JACOBS, LTD., [1921] N. Z. L. R. 368.—N.Z.

1594 iii. ———.]—*SALEH MAHOMED UMER DOOSAL v. NATHOOMAL KESSAMAL* (1927), 54 L. R. Ind. App. 427; 1 L. R. 55 Calc. 126.—IND.

1594 iv. ———.]—In determining whether an agreement to abide by the result of an arbn. is binding, a distinction is to be drawn between the case where parties to a contract generally refer their "differences" arising therefrom & the case where a specific question of fact or law is submitted. In the former case the fact that the arbitrator was wrong in point of law is ground for setting the award aside.—*Re* WOOD & MALKIN CO., LTD. (B. C.), [1928] 4 D. L. R. 511; [1928] 2 W. W. R. 674.—CAN.

1599 i. ———.]—*In special case submitted to High Court.*—*Re* BRECHIN & DRAPERY IMPORTING CO., LTD., No. 1059 i, *ante*.—N.Z.

1604 ii. ———.]—*Apparent on face of award.*—*Held*: the mistake rendered

PARSONS v. BRIKHAM FISHING SMACK INSURANCE CO., LTD. (1918), 118 L. T. 600; 14 Asp. M. L. C. 307; *sub nom.* *Re* PARSONS & BRIKHAM FISHING SMACK INSURANCE CO., LTD., 62 Sol. Jo. 384, D. C.

1598b. ———.]—An error in law on the face of an award means that one can find in the award or in a document actually incorporated, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award & which is erroneous. Where it is impossible to say, from what is shown on the face of the award, what mistake, if any, the arbitrator has made, or that the arbitrator has tied himself down, on the face of his award, to some special legal proposition which is unsound, the award will stand.—*CHAMPSEY BHARA & CO. v. JIVRAJ BALLOO SPINNING & WEAVING CO.*, [1923] A. C. 480; 92 L. J. P. C. 163; 129 L. T. 166; 39 T. L. R. 253, P. C.

*Annotation.*—*Mentd.* Hirji Mulji v Cheong Yue S.S. Co., [1926] A. C. 497.

1599. *Add. Annotations*:—*Consd.* *Re* Cogstad & Newsum, [1921] 1 K. B. 87; A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268; Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Kelantan Government v. Duff Development Co., [1923] A. C. 395; Northwood v. L. C. C. (1927), 137 L. T. 49; Roberts v. Anglo-Saxon Insee. Assocn. (1927), 96 L. J. K. B. 590. *Mentd.* Payzu v. Saunders, [1919] 2 K. B. 581; Taylor v. Bank of Athens, Pinnock v. Bank of Athens (1922), 91 L. J. K. B. 776; Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.

1603a. ———.]—*Immaterial to decision.*—*BUERGER & CO. v. BARNETT*, No. 1822a, *post*.

1614. *Add. Annotation*:—*Consd.* A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268.

1622. *Add. Annotation*:—*Refd.* *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

1624. *Add. Annotations*:—*Expld.* *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391. *Refd.* *Lar-rinaga v. Soc. Franco-Americaine des Phos-phates de Medulla* (1922), 92 L. J. K. B. 45.

1643. *Add. Annotations*:—*Refd.* A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268; Kelantan

the award invalid.—*BEACH v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO*, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—CAN.

1606 vii. ———.]—*Omission to mention agreed disposition of property.*—*Held*: the arbitrator was entitled to supply the omission by an addition to the award.—*DEBRET v. DEBRET*, [1917] 3 W. W. R. 503; 10 Sask. L. R. 366.—CAN.

#### PART IV. SECT. 13, SUB-SECT. 2.—B. (a).

1626 i. *General reference of all matters in dispute.*—*Held*: the parties were bound by the arbitrator's award however erroneous in law it might be.—*NATIONAL MORTGAGE & AGENCY CO., LTD. v. BRAID & CO.*, [1923] N. Z. L. R. 933.—N.Z.

1630 vi. ———.]—Where a question of law has been submitted to the arbitrators their decision is not open to review.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO., LTD. (No. 3) (1919), 14 Alta. L. R. 148.—CAN.

Government v. Duff Development Co., [1923] A. C. 395.

1644. *Add. Annotation* :—*Refd.* Kelantan Government v. Duff Development Co., [1923] A. C. 395.

1644a. —.]—Though an award may be set aside for an error of law appearing on the face of it, & though a question of construction is, generally speaking, a question of law, yet, where a question of construction is the very thing referred for arbn., then the decision of the arbitrator upon that point cannot be set aside by the ct. only because the ct. would itself have come to a different conclusion. If it appears by the award that the arbitrator has proceeded illegally, for instance, that he decided on evidence which in law is not admissible or on principles of construction which the law does not countenance, then there is error in law which may be ground for setting aside the award; but the mere dissent of the ct. from the arbitrator's conclusion on construction is not enough for that purpose.—*KELANTAN GOVERNMENT v. DUFF DEVELOPMENT CO.*, [1923] A. C. 395; 129 L. T. 356; 39 T. L. R. 337; 67 Sol. Jo. 437, H. L.; *previous proceedings*, *sub nom.* *DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, [1923] 1 Ch. 385, C. A.

1645. *Add. Annotations* :—*As to* (1) *Apprvd.* Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. *Consd.* Roberts v. Anglo-Saxon Insc. Assocn. (1927), 96 L. J. K. B. 590. *Refd.* A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268; Kelantan Government v. Duff Development Co., [1923] A. C. 395.

1647. *Add. Annotation* :—*Consd.* Kelantan Government v. Duff Development Co., [1923] A. C. 395.

1667. *Add. Annotation* :—*Consd.* Sutherland v. Hannevig, [1921] 1 K. B. 336.

1668a. — — — Act of 1889, s. 7 (c).]—An arbitrator in making his award gave two sets of costs to one of the parties in terms which were not sufficiently explicit, & subsequently on the request of one party added explanatory words & issued an amended award :—*Held* : inasmuch as the original award was in the language intended by the arbitrator & neither contained words which he had meant to omit, nor omitted words which he had intended to insert, the fact that he had failed to choose apt words to convey his meaning was not an "accidental slip or omission" entitling him to amend his award under the above sect., & the amended award must be set aside.—*SUTHERLAND & CO. v. HANNEVIG BROTHERS, LTD.*, [1921] 1 K. B. 336; 90 L. J. K. B. 225; 37 T. L. R. 102;

*sub nom.* *Re SUTHERLAND & CO. & HANNEVIG BROTHERS, LTD.*, 125 L. T. 281; 15 Asp. M. L. C. 203, D. C.

1669. *Add. Annotation* :—*Refd.* Sutherland v. Hannevig, [1921] 1 K. B. 336.

1698. *Add. Annotations* :—*Refd.* A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268. *Mentd.* Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45; Rockingham Sisters of Charity v. R., [1922] 2 A. C. 315.

1701a. — Liability to cross-examination.]—In June, 1913, claimants, R. & Co., effected an insurance with resps., an insurance co., whereby the insurance co. agreed that, if at any time during the period covered by the policy the premises of claimants should be destroyed by fire, & their business should be thereby interfered with or interrupted, they would pay to claimants monthly until such time as the reduction in turnover in consequence of the fire should have ceased, but not exceeding in all nine months, on account of annual net profit & charges as therein set forth, the same percentage on the amount by which the turnover in each month should in consequence of the fire be less than the turnover for the corresponding month of the year preceding the fire as the sum or sums thereby insured should bear to the total of the turnover for the last financial year. It was provided that the amount of the losses under the policy should be assessed by claimants' auditors, L. & G. A condition on the back of the policy provided for reference to arbn. of all differences arising out of the policy. The premises of claimants were destroyed by fire on July 22, 1913, a date within the period covered by the policy. J., a member of the firm of L. & G., duly assessed the amount of the loss suffered by claimants in respect of profits for the period of nine months succeeding the fire. Differences having arisen in regard to the payments under the policy, the parties went to arbn. G. was called as a witness by claimants at the arbn. proceedings, & stated that although it did not so appear on the face of the assessments he was at the time of signing the same satisfied that the losses of the turnover respectively therein stated were in fact sustained in consequence of the fire. There was no suggestion of any fraud on the part of the assessor :—*Held* : as G., whether regarded as an arbitrator or an assessor, had been called to give oral testimony he could be cross-examined on all relevant issues & consequently could be cross-examined to show that he had failed to take into account certain considerations necessary for

PART IV. SECT. 13. SUB-SECT. 2.—  
B. (b).

1649 vii. —.]—It is no ground for setting aside an award that an examination of the materials before the arbitrator discloses that his findings are unsupported by, or against, the weight of evidence.—*LATHAM v. FOSTER'S AUSTRALIAN FIBRES, LTD.*, [1926] V. L. R. 427.—AUS.

PART IV. SECT. 13. SUB-SECT. 3.

1665 iii. For "SANDFORD v. SANDFORD" read "SANFORD v. SANFORD."

1665 iv a. — — —.]—Where an

arbitrator has made an award in respect of a claim involving the proof of a number of items, an affidavit of the arbitrator setting out the items in respect of which he has made his award, & the amount he awarded in respect of each item of the claim, is inadmissible in evidence.—*HALLIGAN v. LAWSON* (1922), 22 S. R., N. S. W. 501; 39 N. S. W. W. N. 204.—AUS.

1666 iii. — — — *Effect of statute*—*Arbitration Act, 1914* (c. 65).]—*Held* : the arbitrator had power to amend his award under s. 10 (c) of the above Act.—*Re WHITE & CITY OF TORONTO* (1917), 38 O. L. R. 337.—CAN.

1671 vii. — — — *Unless award not*

*truly stating arbitrator's opinion*.]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award did not truly represent the honest opinion of the arbitrators as to damages, or that their basis of valuation was erroneous.—*Re SCOTT & OSHAWA TOWN* (1922), 52 O. L. R. 504.—CAN.

1671 viii. — — — *Power to increase amount*.]—The amount awarded by an arbitrator may, upon consideration of the evidence, be increased by the appellate ct.—*LAKE ERIE & NORTHERN RY. CO. v. BRANTFORD GOLF & COUNTRY CLUB* (1918), 21 Can. Ry. Cas. 360; 32 D. L. R. 219.—CAN.

arriving at the reduction in the turnover of claimants due solely to the fire.—*RECHER & Co. v. NORTH BRITISH & MERCANTILE INSURANCE CO.*, [1915] 3 K. B. 277; 84 L. J. K. B. 1813; 113 L. T. 827, D. C.

1706. *Add. Annotations*:—*Mentd. Stollmeyer v. Trinidad Lake Petroleum Co.*, [1918] A. C. 498, n.; *Slack v. Leeds Industrial Co-operative Soc.*, [1923] 1 Ch. 431.

1715. *Add. Annotation*:—*Mentd. Spencer v. Hemmerde* (1922), 128 L. T. 33.

1722a. — *Reference to umpire by arbitrators—Custom of the tallow trade.*—Pltfs. sold to defts. a quantity of paraffin wax under a contract providing, “any dispute arising under this contract to be settled by arbitrators in London in the usual way.” A claim was made by defts. against pltfs., & the arbitrators, being unable to agree, appointed an umpire by a document headed, “the use of this form constitutes a submission to the rules of the assocn.,” i.e., the London Oil & Tallow Trades Assocn. The umpire awarded that defts.’ claim failed & that they were to pay the costs of the arbn. The rules of the assocn. provided for an appeal to an appeal committee, & defts. claimed a right of appeal. Pltfs. thereupon brought an action against defts. to recover the costs of the arbn., & the evidence was that in the trade in paraffin wax the usual way of settling a dispute by arbn. was to appoint arbitrators who could appoint an umpire whose decision would be final:—*Held*: the heading did not apply & the umpire

was really appointed in pursuance of the original agreement as to arbn. & not under the rules of the assocn., & pltfs. were entitled to recover.—*PALMER & Co., LTD. v. PILOT TRADING CO., LTD.* (1920), 45 T. L. R. 214.

1735. *Add. Annotation*:—*Refd. Conquer v. Boot*, [1928] 2 K. B. 336.

1738. After this case add “Personal representative.”—*See* Vol. XXIV., p. 621, Nos. 6508, 6509, & compare original volume, pp. 393 *et seq.*”

1751. *Add. Annotation*:—*Refd. Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478.

1758. *Add. Annotation*:—*Refd. Ayscough v. Sheed Thomson* (1923), 92 L. J. K. B. 878.

1761. *Add. Annotation*:—*Refd. Ayscough v. Sheed Thomson* (1923), 92 L. J. K. B. 878.

1762. *Add. Annotation*:—*Refd. Ayscough v. Sheed Thomson* (1923), 92 L. J. K. B. 878.

1799a. — *Single judge of High Court.*—*PRODUCE BROKERS, LTD. v. BLYTH, GREENE, JOURDAIN & Co., LTD.*, No. 1960a, *post*.

1822. *Add. Annotations*:—*Refd. Buerger v. Barnett* (1919), 89 L. J. K. B. 161; *Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478.

1822a. — *Question to be raised immaterial.*—(1) It is not misconduct on the part of an arbitrator or umpire, within the Act of 1889, s. 11, to refuse to state a case, under sect. 7 (b) or 19 of the Act, for the opinion of the ct. on a point of law, if his finding on a question of fact makes the question which would be raised by the case immaterial.

#### PART IV. SECT. 15, SUB-SECT. 2.—A. (b).

1723 xi. — *Damages—Unless wrong principle followed.*—*LAKE ERIK & NORTHERN RY. CO. v. MUIR* (1918), 21 Can. Ry. Cas. 350.—CAN.

#### PART IV. SECT. 15, SUB-SECT. 2.—A. (c).

n.i. — *Where arbn. proceedings are initiated by a provincial railway co. & much of the evidence is received before an amalgamation of the co. with a Dominion railway co. is effected & the proceedings are allowed to proceed after the amalgamation, until practically all that remained to be done is the making of the award, the Dominion co. is bound by the award made as a result of such proceedings.*—*HANEY v. CANADIAN NORTHERN RY. CO.*, [1917] 3 W. W. R. 105; 36 D. L. R. 674.—CAN.

#### PART IV. SECT. 15, SUB-SECT. 2.—D.

sd. *Jurisdiction of court ordering reference.*—Where an order for a reference is made with the consent of the solrs. on both sides, & arbitrators are appointed in pursuance of such order, & the arbitrators take evidence & file their award, counsel for both parties taking no objection to the regularity of the proceedings, the parties will not be permitted, afterwards, to attack the award or the subsequent proceedings on the ground that the ct. by which the order for reference was made had no jurisdiction to do so.—*HALL v. ELECTRIC COMRS. OF LAWRENCETOWN*, [1921] 54 N. S. R. 283; 57 D. L. R. 535.—CAN.

#### PART IV. SECT. 16, SUB-SECT. 1.

a.i. — *Compulsory reference—Subsequent voluntary submission.*—*Held*: the award of the arbitrator was not open to review by the ct.—*ROYAL COMMISSION OF WHEAT SUPPLIES v. USHER & Co., LTD.*, [1920] 2 I. R. 483.—IR.

a ii. — *Under its inherent jurisdiction, the power of the ct. to set aside an award depends on whether it is “had on its face” or on some ground which is more or less an extension of the same principle.*—*Re WOOD & MALKIN CO., LTD. (R. C.)*, [1928] 4 D. L. R. 511; [1928] 2 W. W. R. 674.—CAN.

1786 i.a. — *Appellate Division of Supreme Court.*—An appeal from or a motion to set aside or remit an award must be to the Appellate Div. of the Supreme Ct.—*STNDER v. MILLER*, [1924] 2 D. L. R. 617; 1 W. W. R. 1163; 20 Alta. L. R. 237; *affg.*, [1924] 1 D. L. R. 198; [1923] 3 W. W. R. 1376.—CAN.

1802 iii. — *In a submission to arbn. the parties thereto agreed that the Arbn. Act should not apply therein, & that the decision of the arbitrator should be final & binding upon both parties:—Held*: this agreement was void as against public policy.—*BEACH v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO*, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—CAN.

#### PART IV. SECT. 16, SUB-SECT. 2.—A.

a.i. — *Unless in the procedure adopted by the arbitrators there has been something radically wrong or vicious an award cannot be impeached on the ground that the technical web of judicial procedure & rules of evidence which surround judicial procedure were not strictly adhered to.*—*MAURIG SAWYER v. U MIN NYUN* (1925), 1 L. R. 3 Kan. 387.—IND.

1 (p. 547). For “IND.” read “CEYLON.”

so. *Award reciting order of reference not fixing time for delivery of award.*—*Held*: an award which recited an order of reference not fixing a time for delivery of the award was *prima facie* liable to be set aside, but Supreme Ct. Ordinance, 1876, of the Gold Coast, Ord. 52, rr. 12 (c) & 13, prevented the

omission from having that effect.—*YAMIKI KWIEKU v. ANNOIR ADJAYE*, [1926] A. C. 755; 95 L. J. P. C. 157; 135 L. T. 642.—GOLD COAST.

#### PART IV. SECT. 16, SUB-SECT. 2.—B.

w (p. 548) i. — *“The misconduct referred to in Arbn. Act, s. 11 (2) is “local misconduct.” In determining whether there was “local misconduct” on the part of the arbitrator which would justify the setting the award aside, the ct. may look at the evidence adduced before him, in order to ascertain whether he acted on evidence which was wholly inadmissible & which went to the root of the question before him.*

While in the present case, an arbn. as to the loss suffered by the seller of goods because of their non-acceptance by the buyer, the arbitrator was held to have erred in allowing the seller to “split” his case, yet, as he had exercised a discretion in the matter & no substantial injustice was occasioned thereby, the course adopted did not invalidate the award.—*Re WOOD & MALKIN CO., LTD. (R. C.)*, [1928] 4 D. L. R. 511; [1928] 2 W. W. R. 674.—CAN.

y (p. 548) For “IND.” read “CAN.”

a.i. — *Refusal to state case*—Neglect by an arbitrator to state a case for the opinion of the ct. after being definitely asked by either of the parties to do so is *prima facie* technical misconduct for which his award may be set aside.—*FISHER v. MATSON & Co., MATSON & Co. v. FISHER*, [1915] N. Z. L. R. 1.—N.Z.

1811 i.a. — *Where in a paving contract with a city the city’s engineer is made arbitrator, he must guard against being unduly influenced by his employers; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.*—*BLOME v. CITY OF REGINA*, [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—CAN.

(2) An award is not vitiated by an error in law on the face of it, if the error is not material to the decision.—*BUERGER & Co. v. RAINETT* (1919), 89 L. J. K. B. 161; 120 L. T. 570; 35 T. L. R. 260; 63 Sol. Jo. 391, D. C.

**1822b.** —.]—When questions of law arise in an arbn. it is of the greatest importance that the right of the parties to obtain the assistance of the ct. at any period of the proceedings should be fully enforced, though the arbn. tribunal has not passed through all the stages of its own procedure providing for an appeal from the award. If the umpire by refusing to make his award in the form of a special case deprives the parties of the right to have questions of law, which are neither frivolous nor vexatious but are substantial, decided by the ct., he is guilty of misconduct & his award will be set aside.—*Re FISCHER & Co. & MANN & COOK*, [1919] 2 K. B. 431; 121 L. T. 275; *sub nom. FISCHER & Co. v. MANN & COOK*, 88 L. J. K. B. 1173, D. C.

**1825a.** Disregarding statute passed after hearing but before issue of award.]—(1) Resps. to an arbn. had hired of claimant, for a certain period, a number of horses which, on the outbreak of war & before the expiry of the period, were commandeered by the War Office. He then refused to pay the hire for the full period on the ground of frustration of the adventure. At the hearing of the arbn. on June 19, 1917, claimant did not press for hire after the seizure of the horses, & on July 31, 1917, the arbitrator issued his award, giving claimant the amount due up to the date of the seizure, but not afterwards. On July 10, 1917, Courts Emergency Powers Act, 1917 (c. 25), had come into operation, but there was nothing to show whether the arbitrator was or was not aware of the Act. On a motion to set aside the award on the ground of the technical misconduct of the arbitrator in not taking the statute into consideration:—*Held*: whether or not the arbitrator was aware of the Act, he had applied its principles, & consequently, there was no misconduct; the parties were not taken by surprise, & the award was good.

(2) It has been contended that the fact that the arbitrator did not know or take cognizance of the Act, which was passed after the hearing of the arbn. & before the issue of the award, constituted misconduct. I doubt very much whether that would amount to misconduct, although possibly it might amount to surprise (A. T. LAWRENCE, J.).—*OSMOND v. WOOLLEY* (1917), 87 L. J. K. B. 822; 118 L. T. 29; 34 T. L. R. 133, D. C.

**1826.** *Add. Annotations*:—*Refd. Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054; *Ramdutt Ramkissen Das v. Sassoon* (1929), 98 L. J. P. C. 58.

#### PART IV. SECT. 16, SUB-SECT. 3.

**1852 xi.** —.]—*Consent to extension of time for making award*—*Held*: the act of consent to extension of time, & recognition of the propriety of the arbitrators making the award, precluded objection to the award on the ground of misconduct.—*POWIS v. VANCOUVER (CITY), RAMAGE v. VANCOUVER (CITY)* (1917), 23 B. C. L. 180.—CAN.

**1852 xii.** —.]—Where applts. went on with an arbn. without objection

after an irregularity had occurred:—*Held*: they were precluded from seeking to set aside the award on the ground of the irregularity.—*U GUNAWA v. U PYINNYADIPA* (1923), 1 L. R. 1 Kan. 15.—IND.

**1852 xiii.** —.]—A reference was made to arbiters to determine the amount payable by a landlord to his tenant in respect of sheep stock:—*Held*: pursuer having full knowledge of the nature of the stock that was tendered to him, & having accepted

**1827.** *Add. Annotation*:—*Refd. Re Boks & Peters, Rushton*, [1919] 1 K. B. 491.

**1839a.** Surprise—What amounts to.]—*OSMOND v. WOOLLEY*, No. 1825a, *ante*.

**1846.** *Add. Annotation*:—*Refd. Delahunt v. Moody* (1927), 21 B. W. C. C. 588.

**1850a.** —.]—*Objection to authority of arbitrator to determine dispute*.]—The owner of a timber estate sold the whole of the timber thereon to a timber co. in consideration of fully paid up shares in the co. Subsequently by policies effected in his own name with several insurance cos. he insured this timber against fire. The greater part of the timber having been destroyed by fire, he sued the insurance cos. to recover the loss, but the actions were stayed & the matter was referred to arbn. in pursuance of the conditions contained in the policies. Claimant was the sole shareholder in the co. & was also a creditor of the co. to a large extent. The arbitrator held that claimant had no insurable interest in the goods insured & disallowed the claim:—*Held*: claimant having allowed the point of want of insurable interest to be raised before the arbitrator without objection, it was not open to him to call in question the authority of the arbitrator to entertain it.—*MACAURA v. NORTHERN ASSURANCE CO.*, [1925] A. C. 619; 94 L. J. P. C. 154; 133 T. T. 152; 41 T. T. P. 117. 60 Sol Jo 777; 31 Com. Cas. 10, H. L.

*Annotation*:—*Mentd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

**1851a.** —.]—*DEXTERS, LTD. v. HILL CREST OIL CO. (BRADFORD)*, No. 1083b, *ante*.

**1857a.** By motion.]—Any objection to an award on the ground of misconduct or irregularity on the part of an arbitrator must be taken by motion to set aside or remit the award, & if not so taken [within the time limited by R. S. C., Ord. 64, r. 14] cannot be pleaded in answer to an action on the award (*per CUR.*).—*OPPENHEIM & Co. v. MAHOMED HANEEF*, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196, P. C.

*Annotation*:—*Apld. Scrimaglio v. Thornett & Fehr* (1924), 131 L. T. 174.

**1857b.** —.]—*SCRIMAGLIO v. THORNETT & FEHR*, No. 135a, *ante*.

**1857c.** —.]—*Entered in special paper*.]—A motion to set aside an award which has been stated in the form of a special case should be entered in the special paper, & both the motion & the special case should be argued before the judge who takes the special paper. Where a special case has been set down in the special paper & subsequently notice of motion is given to set aside the award, the motion should be set down also in the special paper.—*Re COWAN BROTHERS, LTD. & RYMER (HENRY) & Co.*, [1919] W. N. 140, D. C.

the stock & dealt with it as if it was his own, was barred from objecting to the award of the oversman.—*FLETCHER v. ROBERTSON* (1919), 56 Sc. L. R. 305; [1919] 1 S. L. T. 260.—SCOT.

*sf. Award following opinion of court on case stated*.]—*Held*: the award might be set aside notwithstanding that it followed the opinion of the ct. upon a case stated under Arbn. Act, s. 29.—*Re MCCONKEY'S ARBITRATION* (1920), 17 O. W. N. 329; 47 O. L. R. 411.—CAN.

1869. *Add. Annotation* :—*Refd. Re Campbell* (1919), 88 L. J. Ch. 519.

1912a. ——— *Failure to apply within time limit.*—*OPPENHEIM & Co. v. MAHOMED HANEEF*, No. 1857a, *ante*.

1912b. ——— *—*—*SCRIMAGLIO v. THORNETT & FEHR*, No. 135a, *ante*.

1925. *Add. Annotations* :—*Refd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.

1943. *Add. Annotations* :—*Refd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co.*, [1923] A. C. 480; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395; *Roberts v. Anglo-Saxon Insce. Assocn.* (1927), 96 L. J. K. B. 590.

1950a. *Misconduct.*—*OPPENHEIM & Co. v. MAHOMED HANEEF*, No. 1857a, *ante*.

1954a. ——— *—*—Where an arbitrator in making his award deals with the costs of the award & his own personal costs, but does not mention the costs of the parties in the reference, the ct. will not presume that he has exercised his discretion to make no order as to costs, or to leave each side to pay their own costs, but will remit the award to the arbitrator to exercise his discretion in express terms.—*Re BECKER, SHILLAN & Co. & BARRY BROTHERS*, [1921] 1 K. B. 391; 90 L. J. K. B. 316; 124 L. T. 604; *sub nom. BECKER, SHILLAN & Co. v. BARRY BROTHERS*, 37 T. L. R. 101, D. C.

*Annotations* :—*Consd. Bradshaw v. Air Council*, [1926] Ch. 329. *Refd. Larnaga v. Soc. Franco-Américaine des Phosphates de Médulla* (1922), 92 L. J. K. B. 45.

1960a. ——— *By motion—Before single judge of High Court.*—A judge of the High Ct. sitting alone may entertain a motion to set aside or remit for further statement an award stated in the form of a special case.—*PRODUCE BROKERS, LTD. v. BLYTH, GREENE, JOURDAIN & Co., LTD.* (1918), 88 L. J. K. B. 597; 119 L. T. 311; 34 T. L. R. 419.  
: *Cowan & Rymer*, [1919] W. N. 110.

1960b. ——— *—*—*OPPENHEIM & Co. v. MAHOMED HANEEF*, No. 1857a, *ante*.

1981. For the paragraph in original volume substitute the following paragraph :—

**Foreign award—Whether enforceable as judgment of foreign court.**—An award in a

foreign arbn. [unenforceable in the foreign country without an enforcement order] is not a decision which a ct. here ought to recognise as a foreign judgment, & cannot be enforced.—*MERRIFIELD, ZIEGLER & Co. v. LIVERPOOL COTTON ASSOCN., LTD.* (1911), 105 L. T. 97; 55 Sol. Jo. 581.

*Annotation* :—*Refd. Harrop v. Harrop*, [1920] 3 K. B. 386.

1981a. ——— **Action on—By what law contract governed.**—*Pltfs.*, an insurance co. in London, & *defts.*, an insurance co. in Norway, entered into a written contract headed "Reinsurance contract—Marine Insurance." The contract was not stamped as a policy, but it contained the usual terms of a reinsurance treaty, *plts.* being the reinsured & *defts.* the reinsurers, & there was a clause providing that in the event of disputes an arbn. should take place in Norway. The contract was signed by *plts.* in Norway & by *defts.* in London & was stamped with an English six-penny stamp, but not in accordance with the English law as to contracts of marine insurance, but it was valid by the law of Norway. An arbn. under the contract was held in Norway & an award was issued in favour of *plts.* In an action on the award *defts.* submitted that the law applicable to the whole contract must be the law of England, & that, since the contract neither was a policy as required by English law nor was properly stamped as such a policy, *plts.* could not recover on the award :—*Held* : as the action was brought on the award, & as the proper inference from the provision as to the arbn. being held in Norway was that the parties intended the law of Norway to govern the contract, *plts.* were entitled to recover the sum awarded.—*NORSKE ATLAS INSURANCE Co., LTD. v. LONDON GENERAL INSURANCE Co., LTD.* (1927), 43 T. L. R. 541.

1985. *Add. Annotation* :—*Mentd. Re Campbell*, [1920] 1 Ch. 35.

After this case add " *Sec, now, R. S. C., Ord. 11, r. 8a.*"

1985a. **Grounds for granting or refusing order—Objection to award.**—Where there is no objection to an award or where the objection raised is one which can easily be disposed of, the summary procedure provided by the Act of 1889, s. 12, is prompt & convenient; but where there are matters which may

**PART IV. SECT. 16, SUB-SECT. 4.—C.**

1898i. *Grounds for extension—Not mistake of counsel on question of law or practice.*—On a motion to extend the time for making an application to set aside an award :—*Held* : where the rules require special circumstances to be shown upon an application for extension of time, the mistake of counsel or solr. upon a question of law or practice does not constitute a special circumstance justifying the intervention of the ct.—*Re SWEINSON & MUNICIPALITY OF CHARLEWOOD*, [1917] 1 W. W. R. 293; 27 Man. L. R. 234.—CAN.

sg. *Within term following publication.*—An award must be moved against within the term following its publication, or within the period which such term formerly occupied.—*KEAN v. EDWARDS* (1888), 12 P. R. 625.—CAN.

sj. *Under Consolidated Municipal Act, 1922, ss. 333, 345 (1).*—*Re VAHEY & CARLETON COUNTY*, [1924] 4 D. L. R. 1055; 56 O. L. R. 129.—CAN.

**PART IV. SECT. 16, SUB-SECT. 4.—D.**

sk. *Limited to evidence taken down in writing by arbitrator.*—*Re NEW BRUNSWICK GAS & OILFIELDS, LTD. & NEW BRUNSWICK ELECTRIC POWER COMMITTEE (N.B.)*, [1926] 2 D. L. R. 102.—CAN.

**PART IV. SECT. 16, SUB-SECT. 4.—F.**

y (p. 561). For "WADE AND OTHERS (No. 2) (1909)" read "WADE v. HARDLEY (No. 2) (1910)."

**PART IV. SECT. 17, SUB-SECT. 1.**

sl. *Under Arbitration Act, 1927 (c. 97), s. 11.*—The power conferred by above sect. is conferred upon "the ct." & may be exercised by a judge sitting in ct.; that does not necessarily mean the weekly ct.; & a judge having the parties before him at a trial may, of his own motion, in a proper case, remit the matter to the arbitrators.—*MILLER v. McDONNELL*, [1928] 4 D. L. R. 728; 62 O. L. R. 484.—CAN.

**PART IV. SECT. 17, SUB-SECT. 2.**

sm. *Under 2 Edw. 7, c. 107, ss. 12, 21—Grounds for remitting.*—*Re COLEMAN & TORONTO & NIAGARA POWER Co.* (1917), 40 O. L. R. 130; 38 D. L. R. 65.—CAN.

**PART IV. SECT. 17, SUB-SECT. 3.**

ri. ——— *—*—Unless there is a mistake in law or fact evident on the face of the award itself, or the arbitrator admits that he has made a mistake in law or fact, or there has been fraud or corruption, the award will not be referred back.—*Re FOX & CONSOLIDATED MINING & SWEETING Co. OF CANADA*, [1925] 1 D. L. R. 245; [1924] 3 W. W. R. 861.—CAN.

rii. ——— *Arbitrators alleging mistake.*—The ct. will not remit an award because the arbitrators allege a mistake involving an impeachment of their award.—*ROBINS v. ANDREWS*, [1923] 2 D. L. R. 353; 1 W. W. R. 963.—CAN.



gravely affect the validity of the award or the right to proceed under it, it is proper that they should be dealt with by an action in which the facts can be fully ascertained, & no order under the sect. should be made giving leave to proceed summarily under the award.—*Re Boks & Co. & PETERS, RUSHTON & Co.*, [1919] 1 K. B. 491; 88 L. J. K. B. 351; 120 L. T. 516, C. A.

1985b. — Award against Crown.]—An award against the Crown in an arbn. under the Act of 1889 cannot, for the purpose of enforcement, be treated as a judgment or decree on a petition of right, & under sect. 12 of that Act leave to enforce the award as a judgment or order will be refused.—*GRECH v. BOARD OF TRADE* (1923), 92 L. J. K. B. 956; 130 L. T. 15; 39 T. L. R. 630; 67 Sol. Jo. 725, C. A.

1986. *Add. Annotations*:—*Dlstd. Richardsons & Bradley v. Bernhard*, [1925] 2 K. B. 121; *Folld. Simbro Trading Co. v. Posograph (Parent) Corp.*, [1929] 2 K. B. 266.

2043. *Add. Annotation*:—*Mentd. Spencer v. Hemmerde* (1922), 128 L. T. 33.

2048. *Add. Annotation*:—*Mentd. Weber v. Birkett*, [1925] 1 K. B. 720.

2053. *Add. Annotation*:—*Mentd. L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council* (1925), 95 L. J. K. B. 255.

2056a. —.]—*OPPENHEIM & Co. v. MAHOMED HANEEF*, No. 1857a, *ante*.

2059. *Add. Annotation*:—*Refd. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.

2141. *Add. Annotation*:—*Mentd. Re Boks & Peters, Rushton*, [1919] 1 K. B. 491.

2187. *Add. Annotations*:—*Apld. Bradshaw v. Air Council*, [1926] Ch. 329. *Refd. Haynes v. Aldridge Colliery Co.* (1923), 130 L. T. 282; *Mansfield v. Robinson*, [1928] 2 K. B. 353.

2213. *Add. Annotation*:—*Consd. Kursell v. Timber Operators & Contractors*, [1923] 2 K. B. 202.

2226. *Add. Annotation*:—*Mentd. Sutherland v. Hannevig*, [1921] 1 K. B. 336.

2244. *Add. Annotation*:—*Refd. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

2326. *Add. Annotation*:—*As to (1) Refd. Reid, Hewitt v. Joseph*, [1918] A. C. 717.

2331. *Add. Annotation*:—*Refd. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

2332. *Add. Annotations*:—*Consd. Reid, Hewitt v. Joseph*, [1918] A. C. 717. *Refd. Terry v. Gould* (No. 2) (1924), 69 Sol. Jo. 212; *Weber v. Birkett*, [1925] 1 K. B. 720.

2336. *Add. Annotation*:—*Consd. Reid, Hewitt v. Joseph*, [1918] A. C. 717.

2340. *Add. Annotations*:—*Consd. Keen v Towler* (1924), 41 T. L. R. 86. *Apld. King v. Sunday Pictorial Newspapers* (1920) (1924), 133 L. T. 397.

#### PART IV. SECT. 19, SUB-SECT. 4.—C.

2050 iii a. —.]—*B.*, an arbitrator, in the absence of & without notice to one of the parties, made an award:—*Held*: although the award might have been set aside for misconduct of the arbitrator if moved against in time, yet, the award being final, the misconduct could not be set up as an answer to an action upon the award.—*TOURANGEAU v. SANDWICH WEST TOWNSHIP*, [1920] 48 O. L. R. 306; 56 D. L. R. 83.—CAN.

2050 iii b. —.]—In a suit in India upon an award made upon a submission to arbn. in England, irregularity or misconduct in arriving at the award is not a defence.—*OPPENHEIM & Co. v. MAHOMED HANEEF* [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196; 49 L. R. Ind. App. 174.—IND.

2050 iii c. —.]—An award duly made in England under the English Act of 1889 can be enforced by a suit in an Indian ct., & cannot be set aside by an Indian ct. on any ground of misconduct or irregularity on the part of the arbitrator.—*JOHN BATT & Co. (LONDON) v. KANOOAL & Co.* (1925), 1 L. L. 53 Cal. 65.—IND.

2056 i. *Not irregularity in conduct of arbitrators*.]—Arbitrators appointed, but not in writing for the purpose of winding up the affairs of a partnership between pltf. & deft. met & went over such papers as were available at the moment, heard what each of the partners had to say & reached a conclusion which they stated at the meeting. The arbitrators took no oath of office, & two witnesses were sworn. A day or two after the meeting, one of the arbitrators prepared & signed a memorandum headed "Report of Arbitrators," stating the conclusion that the balance due to pltf. was a certain sum. This memo-

to the other arbitrators, each of whom signed it. This action was brought upon the memorandum as upon an award. Dft. pleaded the award was irregular & illegal, in that no evidence was taken

under oath, the arbitrators were not sworn, or legally appointed, deft. was not permitted to give his evidence, & although he objected, the award was given without his being heard. Dft. also counterclaimed for moneys paid to pltf., etc.:—*Held*: the objections pleaded ought to have been taken on a motion to set aside the award, & were not available as a defence to the action.—*MILLER v. McDONNELL*, [1928] 4 D. L. R. 728; 62 O. L. R. 484.—CAN.

#### PART IV. SECT. 19, SUB-SECT. 8.

sn. *What defences available*.]—Appits. brought an action against the Commonwealth to recover money due under two contracts. While the action was pending the A.-G. of the Commonwealth agreed to submit to arbn. the matters in dispute between the parties. This agreement recited the making of the two contracts. The arbitrator having made his award in favour of the Commonwealth, appits. moved to set aside the award or to remit it to the arbitrator on certain grounds, none of which related to the validity of either of the contracts. That motion was dismissed. On an application by the Commonwealth for leave to enforce the award:—*Held*: appits. were not entitled to challenge the validity of the two contracts or the authority of the A.-G. to make the agreement for arbn.—*KIDMAN v. COMMONWEALTH OF AUSTRALIA* (1925), 37 O. L. R. 233; 26 S. R. N. & W. 379; 43 N. S. W. W. N. 11; [1926] Argus L. R. 118.—AUS.

so. *Arbitration Act, 1909, s. 13—Award merely determining rights*.]—The above sect. does not authorise a judge to give leave to issue execution directly on an award which merely determines rights, but says nothing as to the amount to which the successful party is entitled.—*Re MCNAUGHT & Sons, General Car Co. (No. 2)*, [1919] 3 W. W. R. 387; 43 D. L. R. 1.

sp. *Arbitration Act, R. S. M., 1913 (c. 9)—Award under Municipal Act*.]—*Arbn. Act, R. S. M., 1913 (c. 9)*, applies to awards under Municipal Act unless

expressly conflicting with the latter Act. Where an award on an arbn. under Municipal Act is made on a written submission & fixes not only the amount but also the liability, it may be entered on application as a judgment of the Ct. of King's Bench & enforced accordingly.—*SWEINSON v. RURAL MUNICIPALITY OF CHARLESWOOD*, [1917], 3 W. W. R. 201; 36 D. L. R. 32.—CAN.

sq. *Decree—Failure to accept award*.]—Where in a suit parties have referred their difference to arbn. without an order of the ct. & an award is made, a decree in terms of the award can be passed by the ct. under Civil Procedure Code, Ord. XVIII., r. 3, although the parties do not accept the award.—*SUBBARAJU v. VENKATRAMARAJU* (1928), 1 L. L. R. 51 Mad. 800.—IND.

#### PART IV. SECT. 20, SUB-SECT. 1.—D. (b).

li. — *Arbitration Act, R. S. M., 1913 (c. 9)—Greater Winnipeg Water District Act, 1913 (c. 22)*.]—*Re IVERSON & GREATER WINNIPEG WATER DISTRICT*, [1921] 1 W. W. R. 621; 57 D. L. R. 184; 30 Man. L. R. 98.—CAN.

lii. — *Arbitration Act, 1908*.]—An order provided that the costs of the reference & award should be within the discretion of the arbitrator under & subject to the above Act:—*Held*: the discretion of arbitrators with regard to costs was not limited by the principles which the cts. apply.—*TYNAN v. FORBES*, [1921] N. Z. L. R. 738.—N.Z.

#### PART IV. SECT. 20, SUB-SECT. 3.

z i. — *Includes costs of counter-claim*.]—*KIRK v. KIRK* (1897), 40 N. S. R. 600.—CAN.

sr. — *"Costs of attendance of" party—Party attending with several witnesses—Costs of witnesses not included*.]—*MCQUEEN v. VANCOUVER ISLAND POWER CO., LTD.* (1925), 35 B. C. R. 558.—CAN.



2344. *Add. Annotation* :—*Apld. Re Becker, Shillan & Barry*, [1921] 1 K. B. 391.
2352. *Add. Annotation* :—*Refd. Re Becker, Shillan & Barry*, [1921] 1 K. B. 391.
2353. *Add. Annotation* :—*Consd. Williams v. Jones*, [1926] 1 K. B. 255.
2354. *Add. Annotation* :—*As to (1) Consd. Williams v. Jones*, [1926] 2 K. B. 37.
- 2355a. — *Whether more than one issue*—*R. S. C.*, Ord. 65, r. 2.]—*WILLIAMS v. JONES (STANLEY) & Co.*, [1926] 2 K. B. 37; 95 L. J. K. B. 471; 134 L. T. 652; 70 Sol. Jo. 463, C. A.
2358. *Add. Annotation* :—*Apld. Re Becker, Shillan & Barry*, [1921] 1 K. B. 391.
- 2361a. — *Award not providing for costs of parties.*—*Re BECKER, SHILLAN & Co. & BARRY BROTHERS*, No. 1954a, *ante*.
2400. *Add. Annotation* :—*Mentd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 758.
2406. *Add. Annotation* :—*Mentd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 758.
2418. *Add. Annotation* :—*Mentd. Re Barker's Settlement, Knockor v. Vernon Jones*, [1920] 1 Ch. 527.

## Part V.—References by Order of Court.

2439. *Add. Annotation* :—*Mentd. Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
2443. *Add. Annotations* :—*Mentd. Countess Warwick S.S. Co. v. Nickel Soc. Anon., Anglo-Northern Trading Co. v. Emllyn, Jones & Williams* (1917), 87 L. J. K. B. 309; *Robinson v. R.*, [1921] 3 K. B. 183.
2447. *Add. Annotation* :—*Mentd. Sack v. Jones* [1925] Ch. 235.
2448. *Add. Annotation* :—*Refd. Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.
2455. *Add. Annotations* :—*Refd. Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48. *Mentd. Deuchar v. Gas Light & Coke Co.*, [1925] A. C. 691.
2456. *Add. Annotation* :—*Mentd. Robinson v. R.*, [1921] 3 K. B. 183.
2459. *Add. Annotations* :—*Refd. Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48. *Mentd. Deuchar v. Gas Light & Coke Co.*, [1925] A. C. 691.
2474. *Add. Annotation* :—*Mentd. Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1927), 44 R. P. C. 367.
2523. *Add. Annotation* :—*Mentd. Taylor v. Davies*, [1920] A. C. 636.
2557. *Add. Annotations* :—*As to (1) Consd. Re Soc. les Affréteurs Réunis & Shipping Controller*, [1921] 3 K. B. 1; *Kursell v. Timber Operators & Contractors*, [1923] 2 K. B. 202. *As to (2) Consd. Re Soc. les Affréteurs Réunis & Shipping Controller*, [1921] 3 K. B. 1; *Kursell v. Timber Operators & Contractors*, [1923] 2 K. B. 202; *Light v. West*, [1926] 2 K. B. 238.
- 2580a. *No power to alter his own order.*—Where a referee acts deliberately, even though he may not realise that what he is doing does not carry out his full intention, he has no jurisdiction under R. S. C., Ord. 28, r. 11, to alter his report subsequently.—*BENTLEY v. O'SULLIVAN* (1925), 133 L. T. 189; 41 T. L. R. 374; 69 Sol. Jo. 509, D. C.
- 2580b. *Power to set aside his own order.*—In an action tried by an official referee judgment was given against defts. by default. Defts. applied to the judge in chambers to set aside the judgment of the official referee & to order a new trial. The application was not made within six days after the trial before the official referee, but no objection in regard to time was taken by plffs. before the judge in chambers. The judge referred to the official referee the application to set aside his own

### PART IV. SECT. 20, SUB-SECT. 6.

*st. Power of arbitrator to fix counsel's fees.*—On an arbn. as to costs in an action, the arbitrator has power to fix the counsel's fees.—*CHATTERSON v. DUTTON*, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—CAN.

*sv. Power of arbitrator to postpone taxation.*—An arbitrator on making his award may reserve the question of the costs of the arbn. & tax them subsequently.—*CHATTERSON v. DUTTON*, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—CAN.

2395 vii. —.—.—The taxing officer having disallowed the fees for senior counsel on the taxation of a bill of costs in an arbn. case on the ground that two counsel were in no way necessary:—*Held*: as the arbn. involved a sum of nearly £6,000 & the evidence was of a highly technical nature, the services of a senior counsel were properly employed, & his fees & the accessory charges should have been allowed.—*GARLICK & Co. v. POYNTON* (1917), 38 N. L. R. 59.—S. AF.

2414 viii. —.—.—*New BRUNSWICK ELECTRIC POWER COMMISSION v. QUINTON*, [1924] 4 D. L. R. 345.—CAN.

### PART V. SECT. 1, SUB-SECT. 4.

*a i. — "Acting" Deputy Registrar of Supreme Court.*—*Held*: while the validity of the appointment was doubtful, yet as the above officer had acted since his appointment, a judge of first instance should uphold the appointment unless fully satisfied that there was no power of making it, especially where, as in this case, the reference had proceeded without objection on the point.—*FUSARELLI v. LOCO TOWNSITE Co.*, [1922] 1 W. W. R. 1238.—CAN.

### PART V. SECT. 1, SUB-SECT. 5.

*p (p. 616) i. — — — — Alberta Rules, r. 312.*—*MAINFROID v. MAINFROID (Alta.)*, [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—CAN.

*z i. — — — — Re COCHRAN'S TRUSTS*, No. 2 (1919), 52 N. S. R. 278.—CAN.

### PART V. SECT. 1, SUB-SECT. 6.

2474 ii. —.—.—*AVORY & SON v. PARKS* (1917), 12 O. W. N. 4; 39 O. L. R. 74; 35 D. L. R. 71.—CAN.

### PART V. SECT. 2, SUB-SECT. 1.—D.

*sw. Under Alberta Rules.*—*MAIN-*

*FROID v. MAINFROID (Alta.)*, [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—CAN.

*Action on building contract.*—*HOUSE REPAIR & SERVICE Co. MILLER* (1921), 64 D. L. R. 115; 49 O. L. R. 205.—CAN.

### PART V. SECT. 2, SUB-SECT. 1.—E.

*i i. —.*—An order made by a judge in the exercise of his discretion, referring an action to arbn. under Ord. 97, will not be interfered with by the Ct. of Appeal, unless it is manifest that the order will operate to defeat the rights of, or cause injustice to, one or other of the parties.—*TYRONS (AUSTRALIA), LTD. v. MACGROARTY*, [1928] St. R. Qd. 371.—AUS.

### PART V. SECT. 2, SUB-SECT. 6.

*sy. Time for appeal Extension of time—When granted.*—An application was refused for extension of time for appeal from a matter in a referee's report, the report, although not finally confirmed, having been dealt with nearly two months before, & the reason for extension & merits of appeal being, in the circumstances, insufficient.—*JAMIESON v. JAMIESON*, [1921] 1 W. W. R. 63.—CAN.

judgment. At the hearing of the application the official referee himself took the point that the application to set aside his judgment had not been made within six days after the trial; & he further held that, having regard to the concluding words of R. S. C., Ord. 59a, r. 3 (b), he had no jurisdiction to set aside his own judgment:—*Held*: (1) the objection in regard to time, not having been taken at the earliest opportunity, could not be relied upon by plffs. on the appeal; (2) as under R. S. C., Ord. 38, r. 50, the official referee had "the same authority in the conduct of any reference or trial as a judge of the High Ct.," he had jurisdiction to set aside his own judgment, & the words "save as herein provided, no application for a new trial before a referee shall be made" at the conclusion of Ord. 59a, r. 3 (b), referred only to the procedure to be followed in appeals from referees to the Divisional Ct.—*LONDON STEAMSHIP & TRADING CORPN., LTD. v. RUSSIAN VOLUNTEER FLEET* (1926), 135 L. T. 607; 42 T. L. R. 632; 70 Sol. Jo. 838, D. C.

2591. *Add. Annotations*:—*Mentd. Evans v. Shotton* (1918), 87 L. J. Ch. 527; *Citron v. Cohen* (1920), 36 T. L. R. 560; *Woodfield v. Bond*, [1922] 2 Ch. 40; *Anstruther-Gough-Calthorpe v. McOscar*, [1924] 1 K. B. 716; *Hewitt v. Rowlands* (1924), 131 L. T. 757.

2593. *Add. Annotation*:—*Refd. Ruf v. Pauwels*, [1919] 1 K. B. 660.

2595. *Add. Annotation*:—*Mentd. Williams v. Jones*, [1926] 1 K. B. 255.

2598. *Add. Annotations*:—*Mentd. Ellis v. Tarring-*

*ton* (1919), 35 T. L. R. 531; *S.S. Celia v. S.S. Volturmo*, [1921] 2 A. C. 544; *Calthorpe v. McOscar*, [1923] 2 K. B. 573.

2599. *Add. Citation*:—46 L. J. Q. B. 136.

2603. *Add. Annotations*:—*As to* (1) *Consd. Cogstad v. Newsum*, [1921] 2 A. C. 528. *As to* (2) *N.F. Cogstad v. Newsum*, [1921] 2 A. C. 528.

2610. *Add. Annotation*:—*Mentd. Re Jewell's Settlement, Watts v. Public Trustee*, [1919] 2 Ch. 161.

2611a. — *Costs*.—In an action upon a contract in the High Ct. judgment was given for plff. for an amount to be ascertained on taking an account between the parties, with costs of the action. This judgment was dated & entered on Apr. 8. The referee took the account & ascertained the amount to be £83 10s. & on Nov. 29 indorsed the order accordingly. On the next day & before final entry of the completed order, the judge, upon plff.'s application, ordered the costs to be taxed on the High Ct. scale:—*Held*: in the circumstances the judge had jurisdiction under County Cts. Act, 1919 (c. 73), s. 11, to award costs on the High Ct. scale, for until the result of the account was ascertained the question of costs could not be finally determined.—*LIGHT v. WEST (WILLIAM) & SONS, LTD.*, [1926] 2 K. B. 238; 95 L. J. K. B. 501; 134 L. T. 680; 42 T. L. R. 511; Sol. Jo. 404, C. A.

2612. *Add. Annotations*:—*Mentd. Joachimson Swiss Bank Corpn.*, [1921] 3 K. B. 110; *Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221.

## Part VI.—Application of Arbitration Act, 1889, to References under Statute.

2614. *Add. Annotation*:—*Mentd. Re Cogstad & Newsum*, [1921] 1 K. B. 87.

2618. *Add. Annotations*:—*Consd. Re Becker*,

*Shillan & Barry*, [1921] 1 K. B. 391. *Mentd. Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45.

### PART V. SECT. 3.

82. *Scope of reference—Not facts in issue & determined by court.*—*FOSTER v. REAUME*, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—CAN.

# AUCTION AND AUCTIONEERS.

## Part I.—Definitions.

1. *Citations* :—For “1 Dav. 111” read “1 Dow. 111, H. L.”

## Part II.—Auctioneer's Licence.

15a. *Use of initials “A.A.I.”*—Pltf. Bowler & his co-pltf. Blake carried on in partnership the business of auctioneers & estate agents at P. & G., & in May, 1920, deft. entered their employment as an outside canvassing & negotiating clerk under a written agreement of service which provided (*inter alia*) that either party could terminate the employment on giving seven days' notice in writing & (clause 5) “after the termination from any cause of the employment aforesaid the clerk shall not for the term of one year carry on or be interested in carrying on the business of auctioneers & estate agents after such termination directly or indirectly assist as clerk manager or in any other capacity in the

carrying on of such business within the borough of P. or in the town of G.” In Sept. 1920, pltf.s. duly terminated deft.'s employment, & on leaving their service he at once commenced business on his own account as an estate agent within the prohibited area, describing himself as “O. Lovegrove, A.A.I., Estate Agent,” the initials A.A.I. meaning Associate of the Auctioneers' Institute, but he did not take out an auctioneer's licence nor do any business as an auctioneer :—*Held* : deft. had not by the use of the initials A.A.I. held himself out to be an auctioneer.—*BOWLER v. LOVEGROVE*, [1921] 1 Ch. 642; 90 L. J. Ch. 356; 124 L. T. 695; 37 T. L. R. 424; 65 Sol. Jo. 397.

## Part III.—Authority of Auctioneer.

21. *Add. Annotations* :—*Mentd.* Chillingworth v. Esche (1923), 129 L. T. 808; Monnickendam v. Leanse (1923), 39 T. L. R. 445.

43. *Add. Annotation* :—*Refd.* Chaney v. Maclow, [1929] 1 Ch. 461.

56. *Add. Annotation* :—*Consd.* Chaney v. Maclow, [1929] 1 Ch. 461.

57. *Add. Annotations* :—*Consd.* Cohen v. Roche (1926), 95 L. J. K. B. 945; Chaney v. Maclow, [1929] 1 Ch. 461.

58. *Add. Annotation* :—*Refd.* Chaney v. Maclow, [1929] 1 Ch. 461.

59. *Add. Annotation* :—*Refd.* Cohen v. Roche (1926), 95 L. J. K. B. 945.

63. *Add. Annotation* :—*Apld.* Chaney v. Maclow, [1929] 1 Ch. 461.

63a. ————]—A freehold house was knocked down to deft. as the highest bidder, but he afterwards refused to sign the contract because one of the conditions of sale required the purchaser to pay certain road-making charges. On the same day the auctioneer, as soon as he was informed of deft.'s refusal, signed the contract as deft.'s agent. In an action by the vendor for specific performance, the judge held in the circumstances the auctioneer's signature could fairly be said to be part of the transaction of sale, & there

was a memorandum in writing sufficient to satisfy Law of Property Act, 1925 (c. 20), s. 40 :—*Held* : an auctioneer had authority to sign a memorandum sufficient to satisfy the Act, provided he signed it at such a time & in such circumstances that the signature could fairly be said to be part of the transaction of sale, & as the question whether this condition was satisfied was a question of fact, the judge's decision that there was a valid memorandum must be affirmed.—*CHANNEY v. MACLOW*, [1929] 1 Ch. 461; 98 L. J. Ch. 345; 140 L. T. 312; 45 T. L. R. 135; 73 Sol. Jo. 26, C. A.

65. *Add. Annotation* :—*Distd.* Chaney v. Maclow, [1929] 1 Ch. 461.

66. *Add. Annotation* :—*Consd.* Chaney v. Maclow, [1929] 1 Ch. 461.

67. *Add. Annotation* :—*Consd.* Chaney v. Maclow, [1929] 1 Ch. 461.

68. *Add. Annotation* :—*Refd.* Cohen v. Roche (1926), 95 L. J. K. B. 945.

71. *Add. Annotation* :—*Consd.* Chaney v. Maclow, [1929] 1 Ch. 461.

73. *Add. Annotations* :—*Mentd.* Chillingworth v. Esche (1923), 129 L. T. 808; Monnickendam v. Leanse (1923), 39 T. L. R. 445.

### PART II.

a. *Acquisition of provincial licence*—*Necessity for municipal licence.*—A person who has obtained a provincial licence as auctioneer under Auctioneers & Pedlars' Act, R. S. A., 1922 (c. 39), may be compelled to take out a municipal licence.—*R. (MORRIS) v. STIMMEL*, [1923] 4 D. L. R. 955; 3

J.S.

W. W. R. 1185.—*CAN.*

ab. ———— *Power of city—Cannot arbitrarily refuse licence.*—*MOOSE JAW v. TAYLOR*, [1924] 1 W. W. R. 1063.—*CAN.*

so. ———— *Cannot arbitrarily revoke licence.*—*MOOSE JAW v. TAYLOR*, [1924] 1 W. W. R. 1063.—*CAN.*

ci. ———— *Auctioneer licensed by province.*—*MOOSE JAW v. TAYLOR*, [1924] 1 W. W. R. 1063.—*CAN.*

sd. *Licensing & Bankrupt Sales in City of St. John Act, N. B., 1924 (c. 75)—When fee of \$500 payable.*—*PAGE v. ST. JOHN'S CORPN. (N. B.)*, [1926] 2 D. L. R. 411.—*CAN.*

75. *Add. Annotation* :—*Consd. Chaney v. Maclow*, [1929] 1 Ch. 461.
- 76a. ——— *Entry of purchaser's name—Auctioneer's name printed on catalogue.*—*Pltf. bought for £60 at an auction one of the lots, which was the property of deft., who was the auctioneer. The lot was included in the printed catalogue, the whole of which was pasted into the auctioneer's book, & after the lot in question was knocked down to pltf. deft. wrote against its description in the book the price & pltf.'s trade name. Deft.'s name was nowhere written by him in the book, but his printed name appeared on the front page of the catalogue pasted in the book. Deft. refused to hand over the goods on the ground*

that the lot in question had been the subject of a "knock-out" to which pltf. had been a party. In an action for breach of contract deft. pleaded that there was no memorandum signed by him within Sale of Goods Act, 1893 (c. 71), s. 4 (1):—*Held*: (1) the existence of a "knock-out" did not afford any defence to the action; (2) deft.'s printed name, having been authenticated by his writing down the price & the purchaser's name, was a sufficient signature, & there was a sufficient note or memorandum of the contract, & pltf. was entitled to recover.—*COHEN v. ROCHE*, [1927] 1 K. B. 169, 95 L. J. K. B. 945; 136 L. T. 219; 42 T. L. R. 674; 70 Sol. Jo. 942.

## Part IV.—Conduct of the Sale.

93. *Add. Annotation* :—*Mentd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
95. *Add. Annotation* :—*Mentd. Yandle v. Sutton Young v. Yandle*, [1922] 2 Ch. 199.
107. *Add. Annotation* :—*Mentd. Said v. Butt*, [1920] 3 K. B. 497.
120. *Add. Annotation* :—*Generally, Mentd. Said v. Butt*, [1920] 3 K. B. 497.
126. *Add. Annotation* :—*Mentd. Auerbach v. Nelson*, [1919] 2 Ch. 383.
131. *Add. Annotation* :—*Mentd. Re Clayton, Smith v. Clayton*, [1920] 1 Ch. 257.
134. *Add. Annotations* :—*Refd. Beyfus v. Lodge*, [1925] Ch. 350. *Mentd. Simpson v. Gilley* (1922), 92 L. J. Ch. 194.
147. *Add. Annotations* :—*Mentd. Re Lavey, Ex p. Trustee*, [1919] B. & C. R. 116; *French v. Gething*, [1922] 1 K. B. 236.
148. *Add. Annotation* :—*Apld. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
149. *Add. Annotation* :—*Refd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
150. *Add. Annotation* :—*Consd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
- After this case add :—  
———.]—*See, non, Auctions (Bidding Agreements) Act*, 1927 (c. 12).

- 151a. ———.]—At a sale by public auction of surplus property belonging to the Ministry of Munitions pltf. & deft. agreed, in order to avoid competition, that deft. alone should bid for certain goods, & that the goods, if purchased, should be divided equally between them. In pursuance of that agreement pltf. abstained from bidding & the goods were knocked down to deft. Deft. subsequently repudiated the agreement. In an action by pltf. to recover one moiety of the goods purchased or the value thereof over & above the price paid at the auction.—*Held*: the agreement was not illegal, & judgment should be entered for pltf.—*RAWLINGS v. GENERAL TRADING CO.*, [1921] 1 K. B. 635; 90 L. J. K. B. 404; 124 L. T. 562; 37 T. L. R. 252; 65 Sol. Jo. 220; 26 Com. Cas. 171, C. A.

*Annotation* :—*Apld. Cohen v. Roche*, [1927] 1 K. B. 169.

- 151b. ———.]—*COHEN v. ROCHE*, No. 76a, ante.
152. *Add. Annotation* :—*Refd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
153. *Add. Annotation* :—*Refd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
- 155a. ———.]—*BENNETT v. SMITH* (1852), 20 L. T. O. S. 28; 16 Jur. 421.
159. *Add. Annotation* :—*Mentd. Christoforides v. Terry*, [1924] A. C. 586.

### PART IV. SECT. 3, SUB-SECT. 2.

*se. Sale "without reserve"—Burden of proof.*—The onus of proving that a sale by auction was "without reserve" is upon the person alleging it. In case of doubt the presumption is that the auction was one with reserve. *NEUGEBAUER & CO., LTD. v. HERMANN*, [1923] App. D. 564.—S. AF.

### PART IV. SECT. 5.

a i. ——— *Sale for cash—Bidder unable to pay cash.*—*Held*: no sale had been effected.—*DENIS v. MORINILL CORPN. (Alta.)*, [1917] 2 W. W. R. 323; 34 D. L. R. 724.—CAN.

c i. ——— *Not affected by verbal statements made by vendor's clerk at sale.*—

*CURRIER v. CROSBY* (1877), 17 N. B. R. (1 P. & B.) 464.—CAN.

### PART IV. SECT. 7.

*st. Refusal of bidder to pay—Sale of goods seized under execution—Sheriff entitled to sell goods again.*—*HALIFAX AUTOMOBILE CO. v. DREW*, [1924] 1 D. L. R. 891; 57 N. S. R. 1.—CAN.

### PART IV. SECT. 9.

148 vi. ———.]—A combination among intending purchasers at an unreserved auction sale to stifle competition by not bidding against one another is a fraud against the seller, & the auctioneer is not bound to recognise a bid by a member of such a combination.—*NEUGEBAUER & CO., LTD. v. HERMANN*, [1923] App. D. 564.—S. AF.

151 i. *Knock-out sale—Enforcement of agreement between parties.*—*GRANT v. WHITZMAN* (1921), 55 N. S. R. 16.—CAN.

n i. ———.]—Sale declared void.—*FOY v. MERRICK* (1860), 8 Gr. 323.—CAN.

n ii. ———.]—*Held*: the legal estate passed by the conveyance, & if it was sought to impeach it, the case must be taken into equity.—*RAYNES v. CROWDER* (1864), 14 C. P. 111.—CAN.

n iii. ———.]—A sale will not be set aside on the ground that a party was prevented from bidding by promises made to him by the purchaser. Such fact, if established, would constitute the purchaser a trustee for him, & would be subject for a suit.—*BROCK v. SAUL* (1867), 2 Ch. Ch. 145.—CAN.

## Part V.—Deposit.

184. *Add. Annotations* :—*Mentd.* Chillingworth v. Esche (1923), 129 L. T. 808; Monnickendam v. Leanse (1923), 39 T. L. R. 445.
192. *Add. Annotation* :—*Refd.* Beyfus v. Lodge, [1925] Ch. 350.
194. *Add. Annotation* :—*Mentd.* Akt. Reidar v. Arcos (1926), 42 T. L. R. 737.

## Part VII.—Rights and Duties in Relation to Vendor.

213. *Add. Annotation* :—*Refd.* Cohen v. Roche (1926), 95 L. J. K. B. 945.
219. *Add. Annotation* :—*Mentd.* The Jupiter (No. 3) (1927), 137 L. T. 333.
226. *Add. Annotation* :—*Mentd.* Schiller v. Petersen (1924), 130 L. T. 810.
246. *Add. Annotation* :—*Consd.* Bow's Emporium v. Brett (1927), 44 T. L. R. 194.
255. *Add. Annotations* :—*Refd.* Page v. Sully (1919), 63 Sol. Jo. 55; Benton v. Campbell, Parker, [1925] 2 K. B. 410.
257. *Add. Annotation* :—*Refd.* Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 783.
260. *Add. Annotation* :—*Mentd.* Weld-Blundell v. Stephens, [1920] A. C. 956.
263. *Add. Annotations* :—*Consd.* Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83. *Mentd.* Adams v. Morgan, [1923] 2 K. B. 234.
268. *Add. Annotation* :—*Refd.* Adams v. Morgan, [1923] 2 K. B. 234.

## Part VIII.—Rights and Liabilities in Relation to Purchaser.

273. *Add. Annotations* :—*Consd.* Benton v. Campbell, Parker, [1925] 2 K. B. 410. *Refd.* Page v. Sully (1918), 63 Sol. Jo. 55.
- 280a. ——— *Option to resell on purchaser's default.*]  
—Goods were put up for sale by auction, the conditions of sale printed on the auctioneers' catalogue providing: "The lot to be taken away & paid for the day after sale," & "upon failure of complying with the above conditions all lots uncleared within the time aforesaid shall be resold." A purchaser, through his own negligence, bid for a lot for which he had not intended to bid, & the lot was knocked down to him. He afterwards endeavoured to persuade the auctioneers to put up the lot for sale again, but they declined. Upon his refusing to pay, an action for the purchase price was brought by the auctioneers, & the purchaser contended that under the conditions of sale it was obligatory upon the auctioneers to resell the lot in question, & that he could be charged only with any deficiency upon resale :—*Held* : the words "all lots uncleared shall be resold" did not impose any obligation upon the auctioneers, but merely conferred upon them an option of reselling at their discretion, & the auctioneers were entitled to recover the full price at which the lot was knocked down to the purchaser.—*ROBINSON, FISHER & HARDING v. BEHAR*, [1927] 1 K. B. 513; 96 L. J. K. B. 150; 136 L. T. 284; 91 J. P. 59; 43 T. L. R. 66, D. C.
282. *Add. Annotation* :—*Consd.* Benton v. Campbell, Parker, [1925] 2 K. B. 410.
289. *Add. Annotation* :—*Consd.* Benton v. Campbell, Parker, [1925] 2 K. B. 410.
293. *Add. Annotation* :—*Consd.* Benton v. Campbell, Parker, [1925] 2 K. B. 410.
- 293a. ——— ———.]—*PAGE v. SULLY*, No. 301a, *post*.
295. *Add. Annotation* :—*Distd.* Benton v. Campbell, Parker, [1925] 2 K. B. 410.
296. *Add. Annotation* :—*Consd.* Benton v. Campbell, Parker, [1925] 2 K. B. 410.
- 301a. *Non-delivery* — Goods included in lot by mistake.]—In the catalogue of a sale by auction a lot marked 103 to 109\* was included, being various bundles of paper. Item 109\* was a bundle which the auctioneer did not intend to be in the catalogue, & he purposed to sell it separately. It was, however, knocked down to *pltf.*, & he paid for it, but the auctioneer refused to deliver it to him. The catalogue announced the sale as being "By order of J. S. & others." The buyer brought an action for damages against the auctioneer :—*Held* : the various owners of the lots not being disclosed as the principals, & there being no disclaimer by the auctioneer of personal liability, the auctioneer was personally liable for non-delivery; & the fact that the buyer accidentally learned of the ownership of lot 109\* was not material.—*PAGE v. SULLY* (1918), 63 Sol. Jo. 55, D. C.
307. *Add. Annotation* :—*Refd.* Page v. Sully (1918), 63 Sol. Jo. 55.

PART VII. SECT. 6, SUB-SECT. 2.  
240 II. ———.]—*Re McCOLL, McCOLL v. McCOLL* (1881), 8 P. R. 480.—*CAN.*

PART VIII. SECT. 2, SUB-SECT. 1.  
296 III. ——— ———.]—*PITF. & C.*

entered into a hire-purchase agreement in respect of a motor car. After making his first payment C. delivered the car to W. to sell at public auction. K. bought the car at an auction conducted by W. :—*Held* : the name of

the vendor having been disclosed to the purchaser at the sale W. was not responsible to the buyer.—*ARCHIBALD v. WASHBURN & CO. & KINNERNEY*, [1923] N. Z. L. R. 165.—*N.Z.*

311. *Add. Annotation* :—**Consd.** *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.

312a. ———.]—An auctioneer who sells a chattel on behalf of a principal does not by the mere

fact of sale warrant his principal's right to sell.—**BENTON v. CAMPBELL, PARKER & Co.**, [1925] 2 K. B. 410; 94 L. J. K. B. 881; 134 L. T. 60; 89 J. P. 187; 41 T. L. R. 662; 69 Sol. Jo. 842, D. C.

## Part IX.—Rights and Liabilities in Relation to Third Parties.

313. *Add. Annotations* :—**Consd.** *Benton v. Campbell, Parker*, [1925] 2 K. B. 410. **Mentd.** *Page v. Sully* (1918), 63 Sol. Jo. 55.

324. *Add. Annotation* :—**Mentd.** *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

326. *Add. Annotation* :—**Mentd.** *Underwood v.*

*Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

329. *Add. Annotations* :—**Mentd.** *Phillips v. Brooks*, [1919] 2 K. B. 243; *Folkes v. King*, [1923] 1 K. B. 282; *Lake v. Simmons* (1926), 95 L. J. K. B. 586; *Lowther v. Harris*, [1927] 1 K. B. 393.

337. *Add. Annotation* :—**Refd.** *Vanderpant v. Mayfair Hotel Co.* (1929), 27 L. G. R. 752.

## BAILMENT.

## Part I.—In General.

1. *Add. Annotations*:—*Mentd.* *Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.
3. *Add. Annotations*:—*Mentd.* *Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735; *Re Comptoir Commercial Anversois & Power*, [1920] 1 K. B. 868; *Lebeaupin v. Crispin*, [1920] 2 K. B. 714; *Mertens v. Home Freeholds Co.*, [1921] 2 K. B. 526; *Larrinaga v. Soc. Franco-Americaine des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Re Wait*, [1926] Ch. 962; *Kursell v. Timber Operators & Contractors*, [1927] 1 K. B. 298; *First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922; *The Penelope*, [1928] P. 180; *May v. May*, [1929] 2 K. B. 386.
6. *Add. Annotation*:—*Refd.* *Folkes v. King*, [1923] 1 K. B. 282.
13. *Add. Annotation*:—*Mentd.* *Jefferson v. Derbyshire Farmers*, [1921] 2 K. B. 281.
17. *Add. Annotation*:—*Mentd.* *Edwards v. Porter* (1924), 41 T. L. R. 57.
38. *Add. Annotation*:—*Refd.* *Van Oppen v. Tredegars* (1921), 37 T. L. R. 504.

## Part II.—Gratuitous Bailment.

43. *Add. Citation*:—*Palm*, 381. *Annotation*:—*Refd.* *Hill v. Vaux*, 1 *Ld. Raym.* 227.
46. *Add. Annotation*:—*Refd.* *Coldman v. Hill*, [1919] 1 K. B. 443.
47. *Add. Annotations*:—*Refd.* *Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42. *Mentd.* *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.

## PART I. SECT. 1.

*sk. Person obtaining possession & control of goods without owner's consent.*—To constitute a bailment it is sufficient if the bailee, having obtained possession & control of the bailor's goods without the latter's knowledge or consent, afterwards acknowledges to the bailor that he holds them for him, & thereupon retains possession & control for him with his consent.—*MAKOWER, McBEATH & Co., PROPRIETARY, LTD. v. DALGETY & Co., LTD.*, [1921] V. L. R. 365.—*AUS.*

13 i. — *Licence to occupy floor space.*—Deft. was owner of a private garage, & rented to pltf. the right to store his motor car therein. The garage had no dividing partitions or stalls, & no particular space was assigned to pltf. Pltf. was given a key of this garage & was able to enter at any time he saw fit to do so & remove & return his car as he chose.—*Held*: deft. was not bailee of pltf.'s car.—*LESSER v. JONES*, [1920] 47 N. B. R. 318.—*CAN.*

14 i. — *Goods left at cloak-room—Ball organised by committee.*—The committee hired a hall, & tickets were sold. A room was provided for a cloak-room, & a caretaker of this room hired at a remuneration paid by the committee. When resp. presented his numbered ticket corresponding to the number placed on his coat it was found that another coat had been substituted for his.—*Held*: as regards the caretaker, there was no implied contract between him & resp. As regards the members of the committee, any contract they might make was a contract on behalf of the whole body, including resp.—*CORBETT v. JAMESON*, [1923] N. Z. L. R. 374.—*N.Z.*

sl. — *Delivery of mineral-water bottles—Charge for detention of empties.*—Pltfs. sold mineral-water in bottles branded with their name. The course of dealing with customers was to invoice the bottles at a deposit rate of two shillings per dozen & when bottles

were returned the customers were credited in full. Where bottles were not returned the customers were debited with a charge for them, pltfs. usually accepting half the deposit rate for missing bottles where a deficiency was found to exist.—*Held*: the transaction was in law a bailment in which bare possession of the bottles vested in the borrower, the true ownership remaining in the lender.—*CANTRELL & COCHRANE v. NEESON*, [1926] N. 107.—*IR.*

## PART I. SECT. 2.

38 ii. — *Long v. R.* (1922), 63 D. L. R. 134; 21 *Exch. C. R.* 261.—*CAN.*

## PART II. SECT. 1, SUB-SECT. 1.

sm. *Timber sold remaining in mill yards—Warehouse receipt given to buyer.*—*Held*: seller gratuitous bailee for buyer.—*FERGUSON v. EYER* (1918), 43 O. L. R. 190.—*CAN.*

40 in. — *Valuables of bathers left with caretaker of bathing-shed.*—Appls. were sued by resp. for the value of a gold watch & other articles left by resp. in the custody of the caretaker of a bathing-shed conducted by applts. & which were lost, presumably stolen.—*Held*: the fact by undertaking the care of valuables belonging to bathers the use of the bathing-shed was rendered more attractive would constitute a consideration.—*TIMARU BOROUGH COUNCIL v. BOULTON*, [1924] N. Z. L. R. 365.—*N.Z.*

40 iv. — *Pltf. hired a locker at deft.'s bathing sheds in which to place his clothes & effects & which was securely locked before he proceeded to bathe. Subsequently on opening the locker it was found to be empty. In an action based upon a contract of bailment the judge expressly found that there was no one continuously employed on duty in the locker room during the absence of pltf. & returned a verdict for pltf. for the value of the articles placed in the locker.*—*Held*:

inasmuch as there had been no finding of facts from which any duty owed by deft. to pltf. would arise there must be a new trial.—*GREENWOOD v. WAVERLEY MUNICIPALITY COUNCIL* (1928), 28 S. R. N. S. W. 219; 45 N. S. W. N. 59.—*AUS.*

## PART II. SECT. 1, SUB-SECT. 2.

47 ii. — *Pltf. on leaving a hotel was allowed to leave a locked bag in the baggage room, which was kept locked except when opened for taking luggage in or out. On calling for the bag he found contents had been stolen.*—*Held*: the hotelkeeper was a gratuitous bailee & had exercised the reasonable care of a prudent man.—*BREWER v. CALORI* (1921), 29 B. C. R. 457.—*CAN.*

47 iii. — *GIBSON v. WILSON & DOWNER* (1922), 67 D. L. R. 110.—*CAN.*

47 iv. — *The duty of a gratuitous bailee is to take the same care of the goods deposited with him as a reasonably prudent & careful man might fairly be expected to take of his own property.*—*MUMFORD v. NORTHERN TRUSTS Co.*, [1924] 2 W. W. R. 745.—*CAN.*

47 v. — *Cloak-room—Of school.*—Boards of Education are not insurers of school children's clothing; they are responsible for its loss or injury only when it is caused by their negligence.—*STEVENSON v. TORONTO BOARD OF EDUCATION* (1919), 46 O. L. R. 146; 17 O. W. N. 52.—*CAN.*

47 vi. — *Of racing club.*—Resp. sued applts. a racing club, for the value of a coat which she had left at applts.' cloak-room at the racecourse, & which disappeared from there. Resp. was holder of a ticket for the race meeting, but paid nothing for the deposit of the coat. There were hung on the walls of the waiting-room notices stating that while every care would be taken of deposited articles the club accepted no responsibility for same.—*Held*: there was a

50. *Add. Annotations*:—*Refd.* The Santa Catharina (1919), 88 L. J. P. 170; The Cairnsmore, The Gunda, [1921] 1 A. C. 439; The Canadia (1922), 127 L. T. 499. *Mentd.* The Bernisse & The Elve, [1920] P. 1; The Oscar II, The Bernisse, The Elve, [1921] P. 173.
- 50a. ———.]—Pltf., who was a member of a residential club, of which defts. were the proprietors, gave the manager certain jewellery to lock up in a safe in the manager's office. The rules provided that "No claim in respect of any property alleged to have been left or lost in the club-house will be entertained, & neither the club nor the proprietors shall be responsible for any article of value so left or lost in the club, but small articles of value may, on application to the secretary, be deposited in the safe, but neither the club nor the proprietors shall be under any liability in respect of such deposits." The jewellery was stolen from the safe by the night porter employed by defts., who before engaging him had obtained references from two persons by whom he had been employed, but apparently had made no inquiry as to his previous career. After the theft it was discovered that he was an old & dangerous criminal:—*Held*: defts. had not used due care in engaging the night porter, & as the above rule did not negative defts.' liability for damage due to their neglect to take such care, they were liable for the loss.—*WILLIAMS v. CURZON SYNDICATE, LTD.* (1919), 35 T. L. R. 475, C. A.
52. *Add. Annotation*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.
64. *Add. Annotation*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.
65. *Add. Annotation*:—*Refd.* Layton v. General Steam Navigation Co. (1923), 130 L. T. 662.
67. *Add. Annotations*:—*Consd.* Coldman v. Hill, [1919] 1 K. B. 443. *Distd.* City of Baroda (Cargo Owners) v. Hall Line (1926), 42 T. L. R. 717.
- 69a. *Loss of goods.*]—An innkeeper is not liable in trover for the loss of articles deposited in his house for the purpose of being forwarded by a carrier.—*WILLIAMS v. GESSE* (1837), 3 Bing. N. C. 849; 7 C. & P. 777; 3 Hodg. 131; 5 Scott, 56, 57; 132 E. R. 637.
- Annotation*:—*Refd.* Wilkinson v. Verity (1871), L. R. 6 C. P. 206.
70. *Add. Annotations*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443; G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742, *Mentd.* Pratt v. Patrick, [1924] 1 K. B. 488.
75. *Add. Annotations*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443; Smith v. G. W. Ry. (1920), 37 T. L. R. 117.
88. *Add. Annotation*:—*Refd.* Jebara v. Ottoman Bank, [1927] 2 K. B. 254.
89. *Add. Annotations*:—*Mentd.* Prager v. Blat-spiel, Stamp & Heacock, [1924] 1 K. B. 566; Jebara v. Ottoman Bank, [1927] 2 K. B. 254.
- 90a. ——— *Liability where goods recovered by owner.*]—Trover & conversion lies for goods found & converted although they come afterwards to the hands of the party that lost them (*ROLL, C.J.*).—*Gowr v. ———* (1651), Sty. 261; 82 E. R. 695.
91. *Add. Annotations*:—*Mentd.* Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67; Fenton Textile Assocn. v. Thomas (1929), 45 T. L. R. 264.
96. *Add. Annotations*:—*Refd.* The Empress (1922), 92 L. J. P. 42. *Mentd.* Coldman v. Hill, [1919] 1 K. B. 443; Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.
101. *Add. Annotations*:—*Mentd.* Banbury v. Bank of Montreal, [1918] A. C. 626; Everett v. Griffiths, [1920] 3 K. B. 163.
- 103a. *S. P. PARRY v. ROBERTS* (1835), 3 Ad. & El. 118; 5 Nev. & M. K. B. 669; 4 L. J. K. B. 189; 111 E. R. 358; *sub nom.* BARRY v. ROBERTS, 1 H. & W. 242.
106. *Add. Citation*:—*sub nom.* ANON., Cary, 9.
108. *Add. Annotations*:—*Mentd.* Coldman v. Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.

want of care on the part of applts. in discharging the duty they had accepted.—*WELLINGTON RACING CLUB v. SYMONS*, [1923] N. Z. L. R. 1.—N. Z. g. i.

g. i. ———.]—The exhibiting of a dog at a dog show constitutes a bailment for the benefit of both the exhibitor & the club or assocn. holding the exhibition, & the latter are liable for their own carelessness notwithstanding a provision in the entry form signed by the exhibitor that "it shall be a condition of entry that the club shall not be liable for loss or damage to any exhibit occasioned by fire, accident, condition of structure, or negligence of other exhibitors or of the officials or servants of the club or otherwise."—*ANDREW v. GRIFFIN*, [1918] 1 W. W. R. 274.—CAN.

59 iii. ———.]—Defts. having by mistake removed a suit case from a railway carriage, took the most speedy means of restoring the suit case to the owner by placing it on a steamer about to leave for a point on the railway:—*Held*: (1) defts. as bailees without reward were bound to use as much diligence in dealing with the goods in their possession as they would in dealing with their own; (2) in delivering the suit case to a fireman on the steamer to be delivered to the mate,

defts. failed to acquit themselves of the responsibility resting upon them.—*McCOWAN v. MCCULLOCH*, [1926] 1 D. L. R. 312; 58 N. S. R. 320.—CAN.

65 iv. ———.]—The fact that a chattel has been lost or injured in the hands of a gratuitous bailee raises a *prima facie* presumption against him. That presumption, however, may be rebutted by his proving that he was not to blame for the loss or injury.—*MUMFORD v. NORTHERN TRUSTS CO.*, [1924] 2 W. W. R. 745.—CAN.

#### PART II. SECT. 1, SUB-SECT. 4.

77 i. *Rights of finder against all but true owner—Money found in shop.*—Def't. was a shopkeeper, & pl'tf., a salesman in the shop, picked up from the floor a roll of banknotes, & handed it to def't., who caused inquiry to be made for the owner. No claim was made, & def't. kept the notes:—*Held*: the property was "lost," & as against all other persons than the owner, the finder became the substantial owner of the thing found by him, & pl'tf. was not, by reason of being in the employment of def't., deprived of his rights as a finder.—*HAYDEN v. MUNDLE*, 22 C. L. T. 162.—CAN.

77 ii. ——— *Or in bank.*]—A clerk in a bank noticed lying on a desk, used by patrons of the bank in the public portion of the premises, a wallet containing money, & handed it over to the manager for the rightful owner, who never was discovered or appeared to claim it:—*Held*: the money was not "lost."—*HEDDLE v. BANK OF HAMILTON* (1912), 17 B. C. R. 306.—CAN.

#### PART II. SECT. 3.

108 i. *Duties of borrower—Measure of diligence.*]—Where an owner of a motor car leaves it at a garage to be repaired & is given, without charge, a motor therefrom for use in the meantime, he is a bailee from the garage proprietor without reward unless it be that the work of repairing is the consideration for the loan of the car. He is therefore bound to take reasonable care of the car hired, & if it be received by him in good condition & he returns it damaged & fails to give any account of the time, place & manner of the injury, the law will presume that he has been negligent.—*BIRCH MOTOR PARLOURS v. KEEL*, [1918] 1 W. W. R. 706; 39 D. L. R. 410.—CAN.



110. *Add. Annotation* :—*Mentd. Musgrove v. Pandelis*, [1919] 2 K. B. 43.
118. *Add. Annotation* :—*Refd. Sack v. Jones*, [1925] Ch. 235.
122. *Add. Annotations* :—*Refd. Smith v. Wood* (1928), 139 L. T. 250. *Mentd. Re Stokes, Ex p. Mellish*, [1919] 2 K. B. 256; *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
- 123a. ———.]—If I have a load of hay, & another will come & mingle his hay with mine, in this case I may well take & detain the whole (*CROKE, J.*).—*DOWGLAS v. KENDALL* (1610), as reported in 1 Bulst. 93; 80 E. R. 792.
- Annotations* :—*Mentd. Wilson v. Mackreth* (1766), 3 Burr.
- 1824; *Berriman v. Peacock* (1832), 9 Bing. 384; *Bailey v. Stephens* (1862), 12 C. B. N. S. 91; *Chesterfield v. Harris*, [1908] 2 Ch. 397.
- 125a. *S. P. PRICE v. GROOM* (1848), 11 L. T. O. S. 475, N. P.; *on appeal*, 2 Exch. 542.
- Annotation* :—*Mentd. Re Whiteley, Ex p. Smith* (1892), 67 L. T. 69.
131. *Add. Annotation* :—*Consd. Lambert v. I. R. Comrs.* (1927), 12 Tax. Cas. 1053.
- 131a. ——— *Distinct chattels.*]—The doctrine of confusion of property does not apply to distinct chattels like chairs & tables, but to commodities such as corn, wine, oil & the like, of which there can be a commingling of substance (*BRAMWELL, B.*).—*SMITH v. TORR* (1862), 3 F. & F. 505.

## Part III.—Bailment for Valuable Consideration.

133. *Add. Annotations* :—*Refd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42. *Mentd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.
136. *Add. Annotation* :—*Refd. Coldman v. Hill*, [1919] 1 K. B. 443.
137. *Add. Annotations* :—*Refd. Coldman v. Hill* (1918), 88 L. J. K. B. 491; *Welden v. Smith*, [1924] A. C. 484.
140. *Add. Annotations* :—*Consd. Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50. *Refd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Santa Catharina* (1919), 88 L. J. P. 170; *Williams v. Curzon Syndicate* (1919), 35 T. L. R. 475; *Gibaud v. G. E. Ry.*, [1921] 2 K. B. 426; *Reynolds v. Boston Deep Sea Fishing & Ice Co.* (1921), 38 T. L. R. 22; *Rutter v. Palmer*, [1922] 2 K. B. 87; *Layton v. General Steam Navigation Co.* (1923), 130 L. T. 662; *Fagan v. Green & Edwards* (1925), 70 Sol. Jo. 185; *Gosse Millard v. Canadian Government Merchant Marine, American Can Co v. Canadian*
- Government Merchant Marine*, [1927] 2 K. B. 432. *Mentd. Diamond Alkali Export Corp. v. Bourgeois*, [1921] 3 K. B. 443; *Wasserman v. Blackburn* (1926), 43 T. L. R. 95.
- 140a. ——— *Car driven "at customer's sole risk."*]—The owner of a motor car deposited the car for sale on commission with deft., the keeper of a garage, upon the terms of a printed document containing the clause: "Customers' cars are driven by your staff at customers' sole risk." The car was sent out by deft. in charge of one of his drivers to be shown to a prospective purchaser, & was injured owing to the negligence of the driver:—*Held*: the above clause protected deft. from liability for the negligence of his servants.—*UTTER v. PALMER*, [1922] 2 K. B. 87; 91 L. J. K. B. 657; 127 L. T. 419; 38 T. L. R. 555; 66 Sol. Jo. 576, C. A.
- Annotations* :—*Appl. Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 138 T. L. 286. *Refd. Durnford v. G. W. Ry.* (1927), 43 T. L. R. 527.
141. *Add. Annotation* :—*Refd. Coldman v. Hill*, [1919] 1 K. B. 443.

108 ii. ———.]—*Onus to negative negligence.*]—*Pltf. loaned deft. his traction engine to be used for hauling a gasoline engine to start same. While being used for hauling a separator over rough ground the crankshaft broke:—Held*: the onus was on deft. to negative negligence on his part, & not having discharged this onus, he was liable in damages.—*SMITH v. MOATS*, [1921] 1 W. W. R. 268; 56 D. L. R. 415; 14 Sask. L. R. 37.—*CAN.*

108 iii. ———.]—*ANDERSON v. ROYER* (Sask.), [1928] 3 D. L. R. 248.—*CAN.*

### PART III. SECT. 1, SUB-SECT. 1.

133 ii. ———.]—*Not liable for theft.—Motor car left at garage—Garage under repair.*]—*FOURNIER v. MCKENNA* (1921), 57 D. L. R. 725; 54 N. S. R. 479.—*CAN.*

135 ii. ———.]—A restaurant keeper who invites customers to deposit articles of clothing temporarily in a place provided by him for that purpose is a bailee for hire & not a gratuitous bailee. It is part of the accommodation for which the keeper of the restaurant receives his recompense from his customers. The bailee in such a case is bound to exercise

ordinary diligence in caring for the articles entrusted to him & is liable in case of failure to do so.—*MURPHY v. HART* (1919), 52 N. S. R. 79.—*CAN.*

136 iii. ———.]—*Stable keeper.*]—*Pltf.'s mare, kept for him in an open stall in deft.'s stable, was kicked by a horse, which was kept in the adjoining open stall, & had broken his halter shank during the night & got loose:—Held*: as it was not proved that the horse had ever broken a halter shank before, or that the shank was not as strong as halter shanks usually were, deft. was not liable.—*TEMPLETON v. WADDINGTON* (1904), 24 C. L. T. Occ. N. 151; 14 Man. L. R. 495.—*CAN.*

sn. ———.]—*Liability for acts of servants.*]—A motor car was entrusted by its owners to garage proprietors for safe custody over night. During the night the night watchman in charge of the garage took the car out for his own purposes, contrary to his employers' instructions & without their knowledge. While being driven by the night watchman the car collided with another car & was damaged:—*Held*: as the defenders had delegated their duty of keeping the car safely secured in the garage to their servant, they were liable to pursuers for the servant's failure in performance.—

*CENTRAL MOTORS, GLASGOW, LTD. v. CRASSNOCK GARAGE & MOTOR CO.*, [1925] S. C. 796.—*SCOT.*

141 iv. ———.]—Where a bailee for reward, or a person who is under the same legal obligations as such a bailee, is sued for the loss of goods, the onus of proving that the loss did not occur through any want of reasonable care on the part of deft. or his employees is upon deft.—*MAKOWITZ, McBEATH & Co., PROPRIETARY, LTD. v. DALGETY & Co., LTD.*, [1921] V. L. R. 365.—*AUS.*

141 v. ———.]—The burden is on pltf. in the first instance to establish negligence, but where the loss is established or the goods are not returned, a sufficient case is raised against the bailee to put him upon his defence. The law in such case presumes negligence to be the cause of the loss or non-return. Where there is no explanation of the cause of loss & deft. fails to meet the *prima facie* case against him he will be held liable for the consequences of his neglect.—*MURPHY v. HART* (1919), 52 N. S. R. 79.—*CAN.*

141 vi. ———.]—*CAMMAERT v. GRASSWOLD* (Alta.), [1926] 2 D. L. L. 1062.—*CAN.*

142. *Add. Annotation*:—*Refd.* Layton v. General Steam Navigation Co. (1923), 130 L. T. 662.
143. *Add. Annotation*:—*Refd.* Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Canadian Government Merchant Marine, [1927] 2 K. B. 432.
144. *Add. Annotations*:—*Consd.* Layton v. General Steam Navigation Co. (1923), 130 L. T. 662; Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Canadian Government Merchant Marine, [1927] 2 K. B. 432. *Refd.* Coldman v. Hill, [1919] 1 K. B. 443; The Santa Catharina (1919), 88 L. J. P. 170; Williams v. Curzon Syndicate (1919), 35 T. L. R. 475; Fagan v. Green & Edwards (1925), 70 Sol. Jo. 185; Turner v. Civil Service Supply Assocn., [1926] 1 K. B. 50. *Mentd.* Diamond Alkali Export Corpn. v. Bourgeois, [1921] 3 K. B. 443; Gibaud v. G. E. Ry., [1921] 2 K. B. 426; Reynolds v. Boston Deep Sea Fishing & Ice Co. (1921), 38 T. L. R. 22; Rutter v. Palmer, [1922] 2 K. B. 87; Wasserman v. Blackburn (1926), 43 T. L. R. 95.
145. *Add. Annotation*:—*Consd.* Pennington v. Reliance Motor Works, [1923] 1 K. B. 127.
146. *Add. Annotation*:—*Mentd.* Rye v. Purcell, [1926] 1 K. B. 446.
149. *Add. Citation*:—88 L. J. K. B. 55.
- Annotations*:—*Refd.* Auchteroni v. Midland Bank, [1928] 2 K. B. 294. *Mentd.* Joachimson v. Swiss Bank Corpn., [1921] 3 K. B. 110; *Re* Polemis & Furness, Withy, [1921] 3 K. B. 560; Jones v. Waring & Gillow, [1926] A. C. 670.
163. *Add. Annotations*:—*Consd.* Gibaud v. G. E. Ry., [1921] 2 K. B. 426. *Apld.* Buerger v. Cunard S.S. Co., [1925] 2 K. B. 646. *Refd.* The Cap Palos, [1921] P. 458; L. & N. W. Ry. v. Neilson, [1922] 2 A. C. 263; The Refrigerant, [1925] P. 130.
- 163a. — Evidence of negligence—Failure to examine goods periodically.]—*Resps.* wheat was stored at *applt.* warehouse, which was allowed to become congested with grain of various kinds, including maize, which

had a special tendency to heat, & *appls.* were in consequence unable to fulfil the obligation they were under to *resps.* to execute their orders to turn & cool as expeditiously as they were bound to do. *Resp.* wheat was moist, & there was evidence that even a small rise in the surrounding temperature might, unless it was expeditiously turned, cause it to heat:—*Held*: *appls.* were liable.—*LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD. v. CHARLTON & BAGSHAW* (1918), 146 L. T. Jo. 20, H. L.

164. *Add. Annotation*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.
168. *Add. Annotations*:—*Generally*, *Refd.* Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. *Mentd.* Reader v. S. E. & C. Ry. & L. & N. W. Ry., Van Den Berghs v. G. W. Ry. (1921), 38 T. L. R. 14.
171. *Add. Annotations*:—*Consd.* Engel v. Lancashire & General Assce. (1925), 41 T. L. R. 408. *Mentd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
190. *Add. Annotation*:—*Refd.* L. & N. W. Ry. v. Hudson, [1920] A. C. 324.
190. For "Company not responsible for package over £10," read "Company not responsible for package over stated value."
- Add. Annotation*:—*Refd.* Gibaud v. G. E. Ry. (1921), 125 L. T. 76.
192. *Add. Annotation*:—*Consd.* Gibaud v. G. E. Ry., [1921] 2 K. B. 426.
- 192a. — Loss of luggage left outside cloak-room.]—A condition in a railway cloak-room ticket purporting to exempt the railway co. from responsibility for articles above a specified value deposited in the cloak-room except on certain terms, & assented to by the person taking the ticket, is not prevented from being part of the contract & from protecting the co. merely because it is unreasonable, provided that it be not so extravagant as to imply, & there is no other evidence to show, that that person's assent to it has been obtained by fraud, or so irrelevant as to be foreign to the contract.

## PART III. SECT. 1, SUB-SECT. 2.

- 161 vi. Read now "163a i."
- 161 vii. Read now "163a ii."
- 163a iii. — — — — —.]—*Pltf.* placed apples in the cool stores of deft. The apples were in good order & condition when they were placed in the store. Several months later the apples were taken out of the store considerably damaged & deteriorated:—*Held*: it was the duty of deft. being a bailee for reward to provide a cool store fit for the purpose intended, & to maintain the proper temperature & proper circulation of cold air in the store by efficient means, & to store the apples in such manner as would ensure access of the cold air to the fruit; & as fruit was liable to be injuriously affected by failure to perform any of these duties, & might become affected at any time, it was the duty of deft. to inspect the fruit in the store at reasonable times, & if indications of deterioration were observed, to notify *pltf.*, & if necessary & practicable, to take steps to protect the goods from further damage.—*AURORA TRADING CO., LTD. & JACKSON v. NELSON FREEZING CO., LTD.*, [1922] N. Z. L. R. 662.—N.Z.
- 163a iv. — — — — — Failure to inspect premises—Defective whar —*Held* the

collapse of the wharf was due to failure of worm-eaten piles supporting it, & such defect should have been known if proper diligence had been used in inspection.—*FURNESS WITHY CO., LTD. v. AHLIN* (1918), 42 D. L. R. 97.—CAN.

*sp. Delivery to purchaser without production of lake-bills of lading.*—*Held*: *defts.*, an elevator co., to whom the goods had been shipped for storage, were liable.—*NORTHERN GRAIN CO., LTD. v. GODEFRICH ELEVATOR & TRANSIT CO., LTD.*, [1926] 1 D. L. R. 297; [1926] S. C. R. 120.—CAN.

172 ii. — — — — —.]—*Pltf.* delivered goods to *defts.*, a warehouse co., for storage. The warehouse contract provided that the responsibility of the co. "for the contents of any piece or package is limited to the sum of \$50, unless the value thereof is made known at the time of storage & receipted for in the schedule; an additional charge will be made for higher valuation." The goods, which were in several packages, were stored without a declaration of value & without any additional charge for a higher valuation. Through the negligence of *defts.* servants, the goods were included in a shipment of other goods & sent to England. Some of *pltf.*'s goods were lost, & others

damaged:—*Held*: the amount which *pltf.* was entitled to recover was limited by the clause of the warehouse contract.—*MAUNSELL v. CAMPBELL SECURITY FIREPROOF STORAGE & MOVING CO., LTD.*, [1921] 2 W. W. R. 348; [1921] 2 W. W. R. 579.—CAN.

172 iii. — — — — —.]—A cold storage co. gave a receipt for hops stored with them which bore, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for any damage whatsoever. . . . All goods are received subject to the conditions on the back of this receipt." The first condition on the back was, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings or plant fire, or any other cause whatsoever other than theft."—*Held*: the contract meant that defenders promised to do their utmost to take care of the hops, but that, if their efforts were unsuccessful for any cause other than theft, they were not to be liable in damages.—*BALLINGALL & SON v. DUNDRE ICK & COLD STORAGE CO.*, [1924] S. C. 238.—SCOT.

Pltf. took his bicycle to the cloak-room at a station of deft. co. for the purpose of depositing it there, paid to the official the charge demanded, & received a ticket purporting to be a cloak-room ticket upon the face of which was legibly printed the following condition: "The co. will not be in any way responsible in respect of any article deposited the value whereof exceeds £5, unless at the time of deposit the true value & nature of the article shall have been declared, & 1d. per £1 sterling of the declared value be paid for each day or part of a day in addition to the ordinary cloak-room charges." The value of the bicycle exceeded £5, but pltf. made no declaration of value or additional payment. The bicycle was standing at the open door of the cloak-room, but the official told pltf. to leave it there as he would put it away. When pltf. returned to claim the bicycle it could not be found. In an action by pltf. against defts. for the value of the bicycle defts. relied upon the above condition. It was found in effect that pltf. knew that there was printing on the ticket, that he believed it contained a condition, & that defts. had done sufficient to give pltf. notice of the condition; & it was not found & there was no evidence to show that pltf.'s assent to the condition had been obtained by fraud. It was further found that owing to the negligence of the official in leaving the bicycle at the door of the cloak-room it had been stolen:—*Held*: (1) assuming that the condition was unreasonable which, *semble*, it was not, defts. were not, merely on that ground, prevented from relying upon it, inasmuch as it was not so extravagant as to imply that pltf.'s assent to it had been obtained by fraud, or so irrelevant as to be foreign to the contract; (2) defts. were protected by the condition, although the bicycle had not been deposited within the cloak-room; (3) on the above facts & findings judgment should be entered for defts.—*GIBAUD v. GREAT EASTERN RY. Co.*, [1921] 2 K. B. 426; 90 L. J. K. B. 535; 125 L. T. 76; 37 T. L. R. 422; 65 Sol. Jo. 454, C. A.

*Annotations*:—*As to* (2) *Consd. L. & N. W. Ry. v. Neilson*, [1922] 2 A. C. 263. *Refd. Armour v. Walford* (London). [1921] 3 K. B. 473; *The Cap Palos*, [1921] P. 458; *Nunan v. Southern Ry.* (1923), 130 L. T. 131; *Buerger v. Cunard S. S. Co.*, [1925] 2 K. B. 646; *The Refrigerant*, [1925] P. 130.

194. *Add. Annotations*:—*Consd. Gibaud v. G. E. Ry.* (1921), 125 L. T. 76.

195a. — — — — —.]—*DOVER v. MILLS* (1831), 5 C. & P. 175; 172 E. R. 928, N. P.

*Annotations*:—*Refd. Colepeppre v. Good* (1832), 5 C. & P. 380.

197. *Add. Annotations*:—*Consd. Gibaud v. G. E. Ry.* (1921), 125 L. T. 76. *Apld. Ehinger v. S. E. & C. Ry. & The Pullman Car Co.* (1922), 38 T. L. R. 678; *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305. *Consd. Thompson v. L. M. & S. Ry.* (1929), 98 L. J. K. B. 615. *Mentd. Nunan v. Southern Ry.* (1923), 130 L. T. 131.

198. *Add. Annotations*:—*Apld. Thompson v. L. M. & S. Ry.* (1929), 98 L. J. K. B. 615. *Refd. Gibaud v. G. E. Ry.* (1921), 125 L. T. 76. *Mentd. Walls v. Centaur Co.* (1921), 126 L. T. 242; *Nunan v. Southern Ry.* (1923), 130 L. T. 131.

199. *Add. Annotations*:—*Mentd. Coldman v. Hill*,

[1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.

201. *Add. Annotations*:—*Refd. Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470. *Mentd. Brightman v. Tate*, [1919] 1 K. B. 463.

207. *Add. Annotation*:—*As to* (2) *Refd. Franco-British Ship Store Co. v. Compagnie des Chargeurs Française* (1926), 42 T. L. R. 735.

211. *Add. Annotation*:—*Refd. Gedding v. Marsh*, [1920] 1 K. B. 668.

212. *Add. Annotation*:—*Apld. Point Anne Quarries v. The M. F. Whalen* (1922), 39 T. L. R. 37.

215. *Add. Annotation*:—*Refd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.

216a. *Duty to keep in repair.*—Where a person hires a specific thing for the purpose of using it, there is an implied contract on the part of the letter that he will in the meantime keep the thing, as I should say, in repair, that is, he will not by want of reasonable care after the contract is made allow it to

*SON v. AMAZON TUG & LIGHTERAGE CO.* (1881), as reported in 7 Q. B. D., at p. 606, C. A.

*Annotations*:—*Refd. The West Cock*, [1911] P. 208; *The Glenmorven*, [1913] P. 141. *Mentd. Point Anne Quarries v. The M. F. Whalen* (1922), 39 T. L. R. 37.

218. *Add. Annotations*:—*Follid. Mintz v. Silverton* (1920), 36 T. L. R. 399. *Refd. Williams v. Curzon Syndicate* (1919), 35 T. L. R. 475.

218a. *Agreement to insure chattel—Against "all risks."*—Defts. hired a crane-barge from pltf., one of the terms of the contract being that pltf. would insure the crane against all risks, defts. paying the premium. Pltf. took out a policy covering, as they thought, all risks. The crane, when proceeding to lift a load, broke away from its bedplate & fell over & was damaged. It was then found that the accident was not covered by the policy, & defts. refused to pay for the damage. In an action for breach of contract:—*Held*: though defts. had failed to discharge the *onus* which was upon them, of proving that what happened was not the result of negligence by their servants, yet, as the agreement in regard to insurance was intended to be an arrangement for the benefit of both parties, & as the accident came within the description "all risks" & defts. had stipulated that they were not to bear those risks, the action failed.—*BRICE & SONS v. CHRISTIANI & NIELSEN* (1928), 44 T. L. R. 335; 72 Sol. Jo. 172.

219. *Add. Annotations*:—*Mentd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.

223. *Add. Annotation*:—*As to* (1) *Refd. Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Canadian Government Merchant Marine*, [1927] 2 K. B. 432.

224. For the existing paragraph substitute as

follows:—Obligation to keep in repair—Agreement for redelivery in good working order.]—SCHRODER v. WARD, No. 237, *post*.

226. *Add. Annotations*:—*Refd.* Mertens v. Home Freeholds Co., [1921] 2 K. B. 526; Kurell v. Timber Operators & Contractors, [1927] 1 K. B. 298; First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922; The Penelope, [1928] P. 180; May v. May, [1929] 2 K. B. 386. *Mentd.* Re Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735; Re Comptoir Commercial Anversoise & Power, [1920] 1 K. B. 868; Lebeaupin v. Crispin, [1920] 2 K. B. 714; Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455; Re Wait, [1926] Ch. 962.
227. *Add. Annotations*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42. *Mentd.* Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.
240. *Add. Annotation*:—*Mentd.* Schiller v. Petersen, [1924] 1 Ch. 394.
241. *Add. Annotation*:—*Mentd.* British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. C., [1922] 2 K. B. 260.
245. *Add. Annotations*:—*Consd.* Lewis v. Thomas, [1919] 1 K. B. 319. *Mentd.* British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. C., [1922] 2 K. B. 260; Lamb v. Wright, [1924] 1 K. B. 857.
247. *Add. Annotation*:—*Mentd.* British Ry. C. Co. & L. C. C.
252. *Add. Annotation*:—*Mentd.* Dominion Coal Co. v. Maskinonge S.S. Co., [1922] 2 K. B. 132.
- 252a. *Delivery—Refusal of hirer to take delivery—Remedy of owner.*]—Under a hire-purchase agreement deft. agreed to hire from plffs. a cash register for ten months certain at an agreed monthly rental payable in advance with an option to purchase on payment of a fixed sum within one month after payment of all the rent for the agreed period of hiring. Deft. in breach of his contract refused to

accept delivery of the register. Plffs. issued a default summons in the county ct. for rent accrued due up to the date of the summons:—*Held*: no actual debt had been incurred & the action was not maintainable, plffs.' remedy being in damages only.—NATIONAL CASH REGISTER Co. v. STANLEY, [1921] 3 K. B. 292; 90 L. J. K. B. 1220; 125 L. T. 765; 37 T. L. R. 776; 65 Sol. Jo. 643, D. C.

254. *Add. Annotations*:—*Refd.* Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 783. *Mentd.* Pennington v. Reliance Motor Works, [1923] 1 K. B. 127.
255. *Add. Annotations*:—*Refd.* Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 783. *Mentd.* Pennington v. Reliance Motor Works, [1923] 1 K. B. 127.
257. *Add. Annotation*:—*Appld.* A.-G. v. Pritchard (1928), 97 L. J. K. B. 561.
258. *Add. Annotation*:—*Distd.* A.-G. v. Pritchard (1928), 97 L. J. K. B. 561.
- 258a. ——— *Recovery of unpaid instalments.*]—On a claim by the owner of furniture for unpaid instalments:—*Held*: as the agreement with the hirer was for the sale of the furniture, the property not to pass to him until all the instalments had been paid, & the owner had resumed possession of it & dealt with it in such a way as to put it out of his power to return it to the hirer, he was disentitled from claiming part of the purchase price, & the proper remedy was to sue for damages for breach of contract.—A.-G. v. PRITCHARD (1928), 97 L. J. K. B. 561; 44 T. L. R. 490.
261. *Add. Annotation*:—*Mentd.* Re North Wales Produce & Supply Soc., [1922] 2 Ch. 340.
262. *Add. Citation*:—119 L. T. 632.
- Add. Annotations*:—*As to* (1) *Consd.* Nelson Murdoch v. Wood (1922), 126 L. T. 745. *As to* (2) *Appld.* Cohen v. Roche, [1927] 1 K. B. 169.
- 262a. ——— ——— ———.]—Plffs. let a piano on a hire-purchase agreement which provided that until all the instalments were paid the hirer should have no property in the goods otherwise than as hirer, & that in case of any breach of the agreement plffs. might, without

PART III. SECT. 3, SUB-SECT. 1.

241 vi. ———.]—Plff. handed over nine motor lorries to deft., receiving from him Rs.5,000 upon the terms of a written agreement, the material parts of which were as follows:—"I have to-day agreed to sell to you on the hire-purchase system for Rs.25,000 my nine lorries . . . in consideration of payment as under. In case of failure to pay any of the instalments on due date, previous payments will be considered null & void, & the lorries are not considered as sold until the final payment has been received. The purchaser has no right to mortgage or dispose of any lorries until the full amount has been paid & [plff.] or his nominee has the right to seize the lorries wherever they may be. The consideration money is to be paid as under. As against the payment of Rs.5,000 I have to-day given to you delivery of all the nine lorries, & also a letter addressed to the Commissioner of Police to transfer the lorries to your name."—*Held*: the agreement was an agreement for sale.—COLE v. NANAL MORARI DARE (1924), I. L. R. 49 Bom. 172.—*IND.*

241 vii. ———.]—Appl., which was a co. carrying on the business of selling new & secondhand motor cars, accepted

an order from resp. for a motor car, which was written upon one of applt.'s order forms, the order describing the same but not stating in the description whether it was to be a new or a second-hand car. In the order resp. agreed to pay a deposit & the balance of the purchase money by instalments & to execute applt.'s usual form of hire-purchase agreement. On the order form it was stated that all new cars were sold subject to a guarantee which was set out, which did not include a guarantee that the car was new; & that no guarantee was given with second-hand cars. Resp. also signed applt.'s usual form of hire-purchase agreement, by which the co. agreed to let & the hirer to take the car described therein, the description being similar to that in the order form, & repeated the provisions as to guarantee above referred to; & this agreement excluded any implied "warranty undertaking or agreement other than is herein set forth." The car delivered by applt. to resp. was not new:—*Held*: the contract between the parties was constituted by the order & the hire-purchase agreement; & that, when read together, they constituted an agreement for the sale, & not merely for the hire, of the car.—MARCUS

CLARK (VICTORIA), LTD. v. BROWN (1928), 40 C. L. R. 540; [1928] V. L. R. 293; [1928] Argus L. R. 189.—*AUS.*

241 viii. ———.]—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract:—*Held*: the agreement though in form is one of hire, its object is to provide for a contract of sale in which security to the seller is provided for due payment of the purchase price.—MAUNG BA OH v. MOTOR HOUSE CO. (1929), I. L. R. 7 Ban. 431.—*IND.*

248 vi. ———.]—*What is payment.*]—Under a hire-purchase agreement the hirers made an initial payment & gave to the owners bills of exchange for the total amount of the monthly payments as collateral security. These bills were subsequently discounted by the owners:—*Held*: no conditional pay-

any formal notice, put an end to the hiring & retake possession of the piano, & that the hirer should keep the piano in his own custody. At a date when the hirer had paid all the instalments then due, but before he had paid the total price, he sold the piano to deft., who *bond fide* believed that the hirer was the absolute owner. The hirer having subsequently got the piano back into his own possession & having again disposed of it, but having, in the meantime, kept up the payment of the instalments, *pltf.*s, on ascertaining the facts, claimed damages from deft. for conversion:—*Held*: the sale by the hirer to deft. was not *ipso facto* a repudiation of the hire-purchase agreement, as *pltf.*s had never accepted the repudiation, but it transferred whatever interest the hirer had at the time of the sale, & as *pltf.*s were not entitled to the possession of the piano until they

elected to put an end to the agreement there was no conversion by deft.—*NELSON MURDOCH & Co. v. Wood* (1921), 126 L. T. 745; 38 T. L. R. 23; 66 Sol. Jo. (W. R.) 6 D. C.; *reversd.* on other grounds (1922), 38 T. L. R. 393, O. A.

264. After "the owner can maintain an action for conversion against the purchaser" add "as the hirer has not 'agreed to buy' the goods within Factors Act, 1889 (c. 45), s. 9."

267. *Add. Annotation*:—*Mentd.* British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. Co., [1922] 2 K. B. 260.

271a. ———.]—*DASH v. FAULKNER* (1886), 2 T. L. R. 255.

272a. ———.]—*Breach of agreement as to method of redelivery*—*Goods stolen*—*Measure of damages*.]—*BOOTH v. WELBY* (1928), 165 L. T. Jo. 213, C. A.

## Part IV.—Considerations Common to all Classes of Bailment.

278. *Add. Annotations*:—*Refd.* *Mertens v. Home Freeholds Co.*, [1921] 2 K. B. 526; *Kursell v. Timber Operators & Contractors*, [1927] 1 K. B. 298; *First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922; *The Penelope*, [1928] P. 180; *May v. May*, [1929] 2 K. B. 386. *Mentd.* *Re Wait*, [1926] Ch. 902.

280. *Add. Annotations*:—*Consd.* *Kempler v. Bravingtons* (1925), 133 L. T. 680. *Refd.* *Lake v. Simmons* (1926), 95 L. J. K. B. 586.

285. *Add. Annotations*:—*Refd.* *Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse* (1924), 93 L. J. K. B. 1098; *The Jupiter* (No. 3) (1927), 137 L. T. 333.

287. *Add. Annotation*:—*Mentd.* *The Jupiter* (No. 3) (1927), 137 L. T. 333.

296. *Add. Annotations*:—*Distd.* *Laurie & Morewood v. Dudin*, [1926] 1 K. B. 223; *Wait & James v. Midland Bank* (1926), 31 Com. Cas. 172. *Mentd.* *Sterns v. Vickers*, [1923] 1 K. B. 78.

298. *Add. Citation*:—19 Q. B. D. 68.

*Add. Annotations*:—*Consd.* *Flatau v. Sawyer* (1892), 8 T. L. R. 656. *Refd.* *Sarat Chunder Dey v. Chunder Lala* (1892), 56 J. P. 741; *H. v. H.*, [1928] P. 206. *Mentd.* *L. & Y. Ry., L. & N. W. Ry. & Graesser v. MacNicol* (1918), 88 L. J. K. B. 601.

299. *Add. Annotation*:—*Consd.* *Laurie & Morewood v. Dudin* (1925), 134 L. T. 309.

300. *Add. Annotations*:—*Consd.* *Laurie & Morewood v. Dudin*, [1926] 1 K. B. 223. *Mentd.* *Colley v. Overseas Exporters*, [1921] 3 K. B. 302.

304a. ———.]—*Defts.*, warehousemen, held 618 quarters of maize belonging to A., who sold 200 quarters thereof to W., who sold them to *pltf.*s, giving to the latter a delivery order which they lodged with *defts.* *Defts.* did not object to the order, nor did they make any acknowledgment to *pltf.*s of their title:—*Held*: the mere receipt of the delivery order by *defts.* without objection did not estop

ment, & the property in the goods remained in the owners.—*Re RANKIN & SHILDAY*, [1927] N. 162.—*IR.*

### PART III. SECT. 3, SUB-SECT. 2.

259 ii. ———.]—*ROGERS v. NANAIMO MOTORS, LTD.* (1926), 37 B. C. R. 326.—*CAN.*

264 v. ———.]—*Pltf. & C.* entered into a hire-purchase agreement in the usual form in respect of a motor car. After making his first payment C. delivered the car to deft. W. to sell. Deft. K. bought the car at an auction conducted by W.:—*Held*: both *defts.* were liable to *pltf.*—*ARCHBOLD v. WASHER & Co. & KINNERNEY*, [1923] N. Z. L. R. 165.—*N.Z.*

### PART III. SECT. 4.

269 i a. ———.]—*Held*: a firm of upholsterers who had contracted to remove, beat, & relay a carpet, were not liable for its accidental destruction while in the premises of a firm of carpet-beaters with whom they had sub-contracted to beat it, there being no *delectus personæ* in such a contract as to bar them from employing a sub-contractor, & no negligence

in the selection of the sub-contractor.—*STEVENSON & SONS v. MAULE & SON*, [1920] S. C. 335; 57 Sc. L. R. 284.—*SCOT.*

269 iv. ———.]—On leaving his motor car at deft.'s garage for the purpose of having it repaired *pltf.* signed a "work order," at the end of which there appeared in small type the following: "this co. does not assume in any way any liability whatever either for cars left with us for repair, storage or other purposes, or while being driven by our employees." *Pltf.* did not call for his car as soon as it was repaired & deft. put it in storage, but failed to remove the water from the radiator with the consequence that it froze & damaged the car:—*Held*: the above special clause in the work order exonerated deft. from liability whether *pltf.* had read it or not.—*WALDEN v. HANEY GARAGE, LTD.*, [1928] 1 D. L. R. 688; [1928] 1 W. W. R. 371; 39 B. C. R. 413.—*CAN.*

270 i. ———.]—*Liability for acts of servant*.]—A master is liable for the conduct of his servant whom he selects & puts in his place to discharge the duty he has undertaken, & this law is

applicable in a case of bailment. The conduct of the servant is then the conduct of the master, & the master is liable to the bailor.

*Pltf.*, a customer of deft., left his motor car at deft.'s service station to be supplied with gas & oil & washed. There were no facilities at the station for washing the car, & deft.'s servant, as was his duty, took out the car to drive it to a garage to be washed. On the way to the garage the servant changed his mind & drove the car in another direction "upon a frolic of his own." In doing so he ran the car into a telephone pole & damaged the car:—*Held*: deft. as master was liable in damages for the wrongful act of his servant.—*VAN GEEL v. WARRINGTON*, [1929] 1 D. L. R. 94; 63 O. L. R. 143.—*CAN.*

### PART IV. SECT. 1, SUB-SECT. 1.

275 ii. ———.]—The law imposes an obligation upon a bailee to restore the article bailed to the bailor, subject to this, that the bailee is excused from restoring it if his inability to do so is due to no want of reasonable care on his part.—*PATERSON v. MILLER*, [1923] V. L. R. 36.—*AUS.*

them from denying that plffs. were the owners of the 200 quarters.—**LAURIE & MOREWOOD v. DUDIN & SONS**, [1926] 1 K. B. 223; 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.

*Annotations*.—**Consd.** Wait & James v. Midland Bank (1926), 31 Com. Cas. 172; *Re* Wait, [1927] 1 Ch. 606.

304b. —.]—**WAIT & JAMES v. MIDLAND BANK** (1926), 31 Com. Cas. 172.

306. *Add. Annotation*.—**Consd.** Laurie & Morewood v. Dudin, [1926] 1 K. B. 223.

309. *Add. Annotations*.—**Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126. **Mentd.** Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. v. L. E. P. Transport Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9; Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.

312. *Add. Annotations*.—**Consd.** Lake v. Simmons (1926), 95 L. J. K. B. 586. **Mentd.** Williams v. Baltic Insce. Assocn. of London, [1924] 2 K. B. 282.

313. *Add. Annotation*.—**Refd.** Lake v. Simmons (1926), 95 L. J. K. B. 586.

317. *Add. Annotation*.—**Refd.** Whiteley v. Hilt, [1918] 2 K. B. 808.

319a. **Completion of work—Goods sent to tradesman for work to be done.**—Where goods are sent to a tradesman to exercise his skill upon them, his duties as bailee do not cease as soon as his work is done. Until the parties have shown, either by express words or by conduct, that they intend to alter the original relationship between them, that relationship continues.—**MITCHELL v. DAVIS** (1920), 37 T. L. R. 68.

322. *Add. Annotation*.—**Refd.** Whiteley v. Hilt, [1918] 2 K. B. 808.

324. *Add. Annotation*.—**Mentd.** Belvedere Fish Guano Co. v. Rainham Chemical Works, Feldman & Partridge, Ind, Coope v. Same, [1920] 2 K. B. 487.

325. *Add. Citation*.—119 L. T. 632.

*Add. Annotations*.—**Consd.** Nelson Murdoch v. Wood (1922), 126 L. T. 745. **Refd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.

329a. ——— **After termination of bailment.**—*Semble*: a bailor cannot maintain trover against his bailee until after the term of the bailment has expired.—**UPHAM v. GOUSTONE** (1813), 2 L. T. O. S. 166.

336. *Add. Annotations*.—**Consd.** Coldman v. Hill, [1919] 1 K. B. 443. **Refd.** City of Baroda (Cargo Owners) v. Hall Line (1926), 42 T. L. R. 717.

338. *Add. Annotation*.—**Consd.** Coldman v. Hill, [1919] 1 K. B. 443.

339. *Add. Annotation*.—**Consd.** White v. Smith (1927), 96 L. J. K. B. 397.

339a. **Right of sale—On non-payment of charges**

**PART IV. SECT. 1, SUB-SECT. 7.**  
316 ii. ———.]—**S.** sold certain sheep to **D.** Under the contract of sale, on a fixed date, a count & *pro forma* delivery was to be given, & such delivery was to be taken only upon payment in cash of the full amount of the purchase-money & not before. Until such payment in cash, or until all cheques, etc., given in payment were met & satisfied, the sheep were to remain the sole & absolute property of **S.** During the period between the *pro forma* delivery &

payment the sheep were to be in charge of **D.** **D.** sold the sheep though payment to **S.** in accordance with the terms of the contract had not been made.—*Held*: under the terms of the contract, **S.** had a right to immediate possession of the sheep.—**SCOTTON v. BURDEX & CO., LTD.** (1919), 19 N. S. W. L. R. 70.—**AUS.**

**PART IV. SECT. 2, SUB-SECT. 1.**

354 iii. ——— **Joint negligence of bailee & third party.**—**A.** entrusted

—**Storage of goods.**—**Defts.**, a firm of warehousemen, received a quantity of furniture from plff. to be stored by them at an agreed rental. An express condition of the contract stipulated that if the rent or other charges due to defts. should be two years in arrear defts., on giving proper notice in the terms of the contract to plff., should be entitled to sell the whole or any part of the goods & pay themselves out of the proceeds.—*Held*: defts. were entitled to sell the whole of the & it was not unreasonable that they should do so, & they had done nothing actionable in selling.—**WILLETTS v. CHAPLIN & CO.** (1923), 39 T. L. R. 222.

340. *Add. Annotation*.—**Apld.** Parkinson v. Collego of Ambulance & Harrison (1924), 40 T. L. R. 886.

357. *Add. Annotations*.—**Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126. **Mentd.** Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. v. L. E. P. Transport Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9; Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.

371. *Add. Annotation*.—**Consd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.

372. *Add. Annotation*.—**Refd.** The Joannis Vatis (1921), 15 Asp. M. L. C. 506.

373. *Add. Annotations*.—**Consd.** The Rosalind (1920), 90 L. J. P. 126. **Apld.** The Joannis Vatis, [1922] P. 92; The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127. **Mentd.** G. N. Ry. v. L. E. P. Transport Depository, [1922] 2 K. B. 742; Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.

374a. **S. P. BROWN v. HAND-IN-HAND FIRE INSURANCE SOCIETY** (1895), 11 T. L. R. 538; 39 Sol. Jo. 672.

374b. ——— **With interest from date of loss.**—While on hire by the Admty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admty. paid the value of the trawler to her owners.—*Held*: under the Admty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but inasmuch as there was an agreement between the parties that defts. should pay what the Admty. had to pay to the owners of the trawler, interest on the payment only ran from the date of payment.—**THE ROSALIND** (1920), 90 L. J. P. 126; 37 T. L. R. 116.

his motor car to **C.** for repairs. While the car was being tested by **C.** it came into collision with a lorry belonging to **B.** In an action for damages brought by **A.** against **B.**, the jury found that the driver of the lorry had driven at an excessive speed, & that the driver of the motor car was negligent in not keeping a proper look-out.—*Held*: the doctrine of identification of bailor & bailee was not applicable in relation to liability for negligence.—**WELLWOOD v. KING (ALEXANDER), LTD.**, [1921] 2 I. R. 274.—**IR.**

379. *Add. Annotations* :—**Apld.** *The Zelo*, [1922] P. 9. **Refd.** *Elliott Steam Tug Co. v. Shipping Controller*, [1922] 1 K. B. 127; *Wilston S.S. Co. v. Andrew Weir* (1925), 31 Com. Cas. 111
392. *Add. Annotations* :—**Consd.** *Brooke v. Bool*, [1928] 2 K. B. 578. **Refd.** *Pratt v. Patrick*, [1924] 1 K. B. 488.

**PART IV. SECT. 2, SUB-SECT. 2.**

376 ii. — *Proceeds of sale paid to fictitious owner.*—The owner of furniture entrusted it to pltf. for storage. Pltf. was fraudulently induced to send the furniture for sale by deft., who was to account to the owner for it. Def.

sold the furniture & paid the purchase-money to the person who had falsely represented himself to be the owner :—*Held* : pltf. could not maintain an action against deft. either for conversion or for money had & received.—*GRACE BROTHERS, LTD. v. LAWSON* (1922), 31 C. L. R. 130.—**AUS.**

**PART IV. SECT. 2, SUB-SECT. 3.**

383 i. *Negligence of hirer in use of chattel.*—*WAINIO v. BEAUDREAU* (Ont.), [1927] 4 D. L. R. 1131.—**CAN.**

383 ii. —.]—A bailor is not responsible for the negligence of his bailee.—*GIBSON v. O'KEENEY*, [1928] N. I. 66.—**IR.**

## BANKERS AND BANKING.

## Part I.—Constitution and General Position of Banks.

23. *Add. Annotation*:—*Mentd. Edwards v. Porter, McNeill v. Hawes*, [1923] 2 K. B. 538.
- 38a. ——— *Court of Chancery Act, 1841 (c. 5), s. 4.*—*CHAMBERLAIN & SPROAT v. WALL & LLOYD* (1920), 150 L. T. Jo. 387.
40. *Add. Annotation*:—*Mentd. Esquimault & Nanaimo Ry. v. Wilson*, [1920] A. C. 358.
56. *Add. Annotation*:—*Distd. Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.
57. *Add. Annotations*:—*As to (2) Consd. Woollatt v. Stanley* (1928), 138 L. T. 620. *Generally. Mentd. Bowling v. Camp* (1922), 128 L. T. 342.
61. *Add. Annotation*:—*Mentd. Banque Belge v. Hambrouck*, [1921] 1 K. B. 321.
- 67a. ———.]—*SNOW v. LEATHAM* (1826), 2 C. & P. 314; 172 E. R. 141, N. P.
- Annotation*:—*Refd. Slater v. West* (1828), 3 C. & P. 325.
73. *Add. Annotation*:—*Mentd. South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476.
75. *Add. Annotation*:—*Mentd. South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476.
98. *Add. Annotation*:—*Consd. Bailey v. Bailey*, [1926] Ch. 758.
106. *Citations*:—For “3 L. T. M. C. 84” read “3 L. J. M. C. 84.”
- 112a. “Dispute”—*Conflicting claims to deposit—Jurisdiction of Registrar of Friendly Societies.*—*Held*: (1) the words “any person claiming to be entitled to any money deposited in such savings bank” in Savings Bank Act, 1844 (c. 83), s. 14, were not limited to persons claiming through a depositor; (2) a dispute between a depositor & a person claiming adversely to him was a dispute within the sect.; (3) the Registrar of Friendly Societies now has jurisdiction over disputes between rival claimants to a deposit.—*BAILEY v. BAILEY*, [1926] Ch. 758; 95 L. J. Ch. 470; 135 L. T. 431; 42 T. L. R. 502, C. A.
- 112b. *Nomination to deposit—Invalid nomination—Recovery of money paid under.*—*P.*, who had money to his credit in the Post Office Savings Bank, signed a nomination form by which he left the money to deft. The name of a witness appeared on the form, but *P.* had not signed the form in his presence as required by the regulations. After *P.*’s death, as the form appeared on the face of it to be valid, the Postmaster-General paid the money to deft. *Pltf.*, having taken out letters of administration of *P.*’s estate, claimed the money from deft., as money received by him to the use of *pltf.*:—*Held*: the form was invalid, & the position of deft. was the same as if he had received payment under a will afterwards held invalid, & *pltf.* was entitled to recover.—*PEARMAN v. CHARLTON* (1928), 44 T. L. R. 517; 72 Sol. Jo. 368.
- SECT. 6a.—MUNICIPAL SAVINGS BANKS.
- 112c. *Nomination to deposit—Regulations—Power of bank to alter.*—*A.* had a sum of money on deposit at a municipal savings bank, which he purported to nominate to his two daughters under the regulations relating to deposits in savings banks. *A.* died intestate, & an application was made by one of his next of kin for a declaration that the nomination was void, on the ground that there was a limit as to nominations by depositors under the special Act of the corp. whose bank it was, & that, even though by later regulations the corp. had purported to abandon this limitation, such a nomination was *ultra vires* the special Act & void:—*Held*: regulations as to nominations could be made by the corp. under their special Act similar to those indicated in Savings Banks Act, 1887 (c. 40), with such modifications, including abolition of the maximum, as might be considered necessary; the limit laid down could be abolished under these regulations & such abolition need not abrogate the whole matter, & the nomination by deceased was good.—*Re KIMBER, VALE v. ROCKMAN*, [1928] Ch. 749; 97 L. J. Ch. 430; 139 L. T. 550; 72 Sol. Jo. 545.
128. *Add. Annotation*:—*Mentd. Evans v. Brunner, Mond*, [1921] 1 Ch. 359.
- 128a. ——— *To act as sole judicial trustee with remuneration.*—*A* bank may be appointed a sole judicial trustee, with remuneration, under the sect. dealing with the appointment of “a person” under Judicial Trustee Act, 1896 (c. 35).—*Re COHEN, COHEN v. COHEN* (1918), 62 Sol. Jo. 682.
131. *Add. Annotation*:—*Mentd. Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.
156. *Add. Citation*:—*sub nom. BANK OF AUSTRAL-ASIA v. BANK OF AUSTRALIA*, 12 Jur. 189.
157. *Add. Annotations*:—*Mentd. Atherton v. British Insulated & Helsby Cables*, [1925] 1 K. B. 421; *Re City Equitable Fire Insce.*, [1925] Ch. 407.
159. *Add. Citation*:—18 Jur. 885.
166. *Add. Annotations*:—*Refd. Wright v. Morgan*, [1926] A. C. 768; *A.-G. v. Goddard* (1929), 98 L. J. K. B. 743.
169. *Add. Annotations*:—*Consd. Atherton v. British Insulated & Helsby Cables*, [1925] 1 K. B. 421. *Appld. Re City Equitable Fire Insce.*, [1925] Ch. 407.
203. *Add. Annotation*:—*Refd. Employers’ Liability Assoe. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

## PART I. SECT. 6.

t. Read now “112a 1.”

## PART I. SECT. 7, SUB-SECT. 3.

y i. ———.]—*R. v. BARNARD* (1925), 44 Can. Crim. Cas. 137; 57

O. L. R. 397.—CAN.

y ii. ———.]—*R. v. SMITH* (1925), 44 Can. Crim. Cas. 361; 57 O. L. R. 383.—CAN.y iii. ———.]—*R. v. GOUGH* (1925), 44 Can. Crim. Cas. 122; 57

O. L. R. 426.—CAN.

PART I. SECT. 7, SUB-SECT. 4.—B. 214 ix. ——— *By administrator to next of kin.*—*CLARKSON v. McLEAN* (1918), 42 O. L. R. 1; 13 O. W. N. 373.—CAN.



215a. *S. P. FRY v. RUSSELL* (1858), 3 C. B. N. S. 665; 140 E. R. 902; *sub nom.* *FRY v. RUSSELL*, *POWIS v. BUTLER*, 27 L. J. C. P. 153; 4 Jur. N. S. 193.

*Annotation*:—*Mentd.* Wolverhampton New Waterworks v. Hawkesford (1859), 29 L. J. C. P. 121.

SECT. 8.—FOREIGN AND BRITISH OVERSEAS BANKS (Vol. III., p. 159).

For "See COMPANIES" read as follows:—

230a. *Credit notes of Russian State Bank—Rights of holders.*—*MARSHALL v. GRINBAUM* (1921), 37 T. L. R. 913.

*Foreign companies.*—*See COMPANIES*, Vol. X., pp. 1198–1209.

231. *Add. Annotations*:—*As to* (4) *Refd.* *Banque Belge v. Hambrouck*, [1921] 1 K. B. 321; *Anchor Donaldson v. Crossland*, [1929] A. C. 297. *Generally*, *Mentd.* *Dominion Coal Co. v. Maskinonge S.S. Co.*, [1922] 2 K. B. 132; *Boston Corpn. v. Fenwick* (1923), 129 L. T. 766; *Holt v. Markham*, [1923] 1 K. B. 504; *Cantiare San Rocco, S.A. v. Clyde Ship-building & Engineering Co.*, [1924] A. C. 226; *Bowling v. Cox*, [1926] A. C. 751.

PART I. SECT. 7, SUB-SECT. 4.—C.  
ss. *Dividends payable after shareholder's death—Belong to legatees.*—*BYRSON v. BYRSON* (1927), Q. R. 65 S. C. 112.—CAN.

PART I. SECT. 7, SUB-SECT. 5.  
u i. — *Appointment of interim liquidator—Notwithstanding curator appointed.*—*Re HOME BANK OF CANADA* (Ont.), [1923] 4 D. L. R. 891.—CAN.

x i. *Pensions fund society—Right of members to fund.*—Where the merger or winding up of a bank constitutes a cessation of employment & a pensions fund society has been founded in accordance with Pension Fund Societies Act, R. S. C., 1906 (c. 123), members, ex-members & pensioners rank for distribution of the funds of the society according to the by-laws of the society regardless of the general law unless the by-laws make no provision for the case in question.—*Re SOCIÉTÉ DE LA CAISSE DE RETRAITE DE LA BANQUE NATIONALE, TRUDEL v. LEMOINE*, [1925] 4 D. L. R. 97; [1925] S. C. R. 698; *affd.*, [1926] 3 D. L. R. 988.—CAN.

b (p. 157) i. — *Bank not properly incorporated—Effect upon position of shareholders.*—*Re HOME BANK OF CANADA*, [1927] 1 D. L. R. 871; 59 D. L. R. 654; 8 C. B. R. 143.—CAN.

j i. — *Debt to party liable as surety.*—In the winding up of a bank a person liable to the bank as surety may set off his personal right against the bank as a depositor, where both debts exist at the time of the winding up.—*CLARKSON v. ROBINET*, [1925] 4 D. L. R. 778; *varying*, 26 O. W. N.

j ii. — *Debt to party liable as partner.*—A partner, with his co-partner, was sued by the liquidators of an insolvent bank for a partnership debt, for which he had pledged his individual deposit in the bank:—*Held*: he was entitled to have his separate deposit applied, either as a set-off in the action, or against the partnership debt.—*CLARKSON v. SMITH & GOLDBERG*, [1926] 1 D. L. R. 509; 58 O. L. R. 241.—CAN.

j iii. —.—*CLARKSON & HOME*

*BANK OF CANADA v. LANCASTER* (1927), 38 B. C. R. 217.—CAN.

223 i. *Liability to contribute—Trustee.*—*Held*: not personally liable, as the will was sufficiently "named" in the books of the bank in connection with the actual holding.—*Re HOME BANK OF CANADA, NATIONAL TRUST CO.'S CASE* (1925), 57 O. L. R. 27; 5 C. B. R. 644; *affg.* 5 C. B. R. 318.—CAN.

sb. *Action by bank—Security for costs.*—*Order made.*—*HOME BANK v. HAMONA FARMERS ASSOCN.*, [1927] 1 W. W. R. 528; 21 Sask. L. R. 420.—CAN.

PART I. SECT. 10, SUB-SECT. 1.  
a (p. 159) i. —.—*CUNNINGHAM v. NORTHERN BANKING CO. LTD.*, [1928] N. I. 112.—IR.

so. *Right to give consent for adding bank as party.*—A local manager of a bank has authority to give the consent in writing required by Rules of Ct., r. 41, for the adding of a plff.—*KURCH v. PEAT*, [1922] 2 W. W. R. 174; 63 D. L. R. 408; 15 Sask. L. R. 324.—CAN.

f (p. 160) i. —.—*The local manager of a bank, in answer to the inquiry of a customer, informed him that a cheque held by him was good, & the customer indorsed the cheque & left it with the manager to be applied against his debt to the bank, & relying on such assurance, permitted his position as against the maker of the cheque to be altered to his prejudice. On the failure of the maker to provide funds to meet the cheque:—Held*: the bank was estopped from denying that the customer paid in the amount represented by the cheque.—*BANQUE D'HOCHELAGA v. BRUNET*, [1925] 2 W. W. R. 447.—CAN.

f (p. 160) ii. —.—*The acceptance of a cheque by a local bank manager is binding on the bank, although at the time the drawer has insufficient funds to meet it.*—*LEDUC v. LA BANQUE D'HOCHELAGA*, [1926] 1 D. L. R. 433; [1926] S. C. R. 76.—CAN.

237. *Add. Annotation*:—*Refd.* *Sutters v. Briggs*, [1922] 1 A. C. 1.

238. *Add. Annotations*:—*Mentd.* *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566; *Poland v. Parr*, [1927] 1 K. B. 236.

239. *Add. Annotations*:—*As to* (2) *Refd.* *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826. *Generally*, *Refd.* *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Mentd.* *Janvier v. Sweeney*, [1919] 2 K. B. 316; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244.

247. *Add. Annotation*:—*Consd.* *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.

254. *Add. Annotations*:—*Generally*, *Mentd.* *Cal-menson v. Merchants' Warehousing Co.* (1920), 125 L. T. 129; *Dey v. Mayo*, [1920] 2 K. B. 346; *Everett v. Griffiths*, [1921] 1 A. C. 631; *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305.

263. *Add. Annotation*:—*Apld.* *Re City Equitable Fire Insee.*, [1925] Ch. 407.

245 i. *Guaranteeing repayment of loan—Made by third party to customer.*—*Held*: not within the ostensible authority of a local branch manager of a bank.—*STEVENS v. MERCHANTS BANK OF CANADA*, [1920] 1 W. W. R. 52; 49 D. L. R. 528; 30 Man. L. R. 46.—CAN.

248 ii. — *Delivery up of keys to purchaser from customer without getting cheque.*—*Plff.* sold his business & agreed to assign to the purchasers the lease of the premises upon which the business was carried on. *Plff.* sent the keys of the premises to deft. C., manager of a branch of deft. bank, in a letter, in which he requested C. to hand the keys to W., one of the purchasers, upon receiving from W. a cheque for a named sum. C., without getting the cheque, gave up the keys to the landlord of the premises, who handed them to W.:—*Held*: (1) C. had failed to carry out the terms of his instructions; (2) the keys were sent to C. in his capacity as manager, & the transaction was within the scope of his authority as such; (3) the onus of proving damage was on *plff.*, & he had not satisfied it.—*GARBER v. UNION BANK OF CANADA* (1919), 46 O. L. R. 129; 17 O. W. N. 16.—CAN.

250 ii a. —.—*As the terms of Mercantile Law (Scotland) Amendment Act, 1856 (c. 60), s. 6, are unequivocal & unambiguous, they cannot be construed as relating only to the case where the representations are founded on as the basis of a substantive action, but must equally apply where they are founded on in defence.*—*UNION BANK OF SCOTLAND v. TAYLOR*, [1925] S. C. 835.—SCOT.

sd. *Agreeing to forward bankers' draft.*—*Held*: as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—*MAXWELL v. UNION BANK OF CANADA*, [1922] 1 W. W. R. 7; 69 D. L. R. 130.—CAN.

## Part II.—Business of Banking.

264. *Add. Citation* :—*sub nom.* BANK OF AUSTRALASIA v. BANK OF AUSTRALIA, 12 Jur. 189.
270. *Add. Annotation* :—*Mentd.* Ipswich Permanent Money Club v. Arthy, [1920] 2 Ch. 257.
- 270a. *Cheque presented after business hours—Right of bank to deal with cheque.*—Pltf. had an account with defts.' branch, the closing hour of which was 3 p.m. Pltf. drew a cheque in favour of W., & handed it to W. at such an hour that it was impossible for him to present it for payment before 3 p.m. He did, in fact, present it for payment shortly after 3 o'clock, & received payment. Later in the day pltf. decided to stop payment of the cheque, & sent his son to the bank at the hour of opening on the following morning, but he then found that the money had already been paid :—*Held* : a bank is entitled to deal with a cheque within a reasonable business margin after their advertised time of closing, & in cashing the cheque defts. had acted within their rights.—*BAINES v. NATIONAL PROVINCIAL BANK, LTD.* (1927), 96 L. J. K. B. 801; 137 L. T. 631; 32 Com. Cas. 216.
272. *Add. Annotations* :—*Consd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110. *Refd.* London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777. *Mentd.* *Re* Richardson, Pole v. Pattenden, [1920] 1 Ch. 423.
274. *Add. Annotation* :—*Consd.* *Re* Farrow's Bank, [1923] 1 Ch. 41.
- 274a. — Bank stopping payment before final clearance of cheque received for collection.]—*Re* FARROW'S BANK, LTD., No. 479a, *post*.
275. *Add. Annotation* :—*Refd.* Garrard v. James, [1925] Ch. 616.
276. *Add. Annotation* :—*Consd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.
- 276a. — — — — — At branch where account kept.]—In the absence of special agreement, it is an implied term of the contract between a bank & its customer that the promise of the bank to repay a balance is a promise to repay it at the branch of the bank where the account is kept & not till after demand at that branch. The obligation of the bank is local, although after local demand & refusal to pay the bank is liable to be sued wherever it can be served. When local demand must be met by payment in a foreign currency the remedy available in an English ct. for refusal to pay is a cause of action in damages for breach of contract & not for debt.—*RICHARDSON v. RICHARDSON*, [1927] P. 228;
- 96 L. J. P. 125; 137 L. T. 402; 43 T. L. R. 631; 71 Sol. Jo. 695.
278. *Add. Annotation* :—*Mentd.* Rederi Akt. Transatlantic v. Drughorn, [1918] 1 K. B. 394.
279. *Add. Annotation* :—*Mentd.* The Tervaeete, [1922] P. 250.
281. *Add. Annotations* :—*Consd.* Auchteroni v. Midland Bank, [1928] 2 K. B. 294. *Mentd.* Quebec Ry. Light, Heat & Power Co. v. Vandry, [1920] A. C. 662; McDonald v. Nash, [1924] A. C. 625; Samuel v. Dumas, [1924] A. C. 431; Ouellette v. Canadian Pacific Ry., [1925] A. C. 569; Gilbert v. Gilbert & Bougher (1927), 96 L. J. P. 137; Shotts Iron Co. v. Curran, [1929] A. C. 409; Tilling-Stevens Motors v. Kent County Council & Transport Minister, [1929] 1 Ch. 66.
282. *Add. Annotations* :—*Apld.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328. *Refd.* Admiralty Comrs. v. National Provincial & Union Bank of England (1922), 127 L. T. 452; Jones v. Waring & Gillow, [1926] A. C. 670. *Mentd.* Steam Saw Mills Co. v. Baring, [1922] 1 Ch. 244.
- 282a. *Account opened in assumed name—Payment in of cheque obtained by duress—Payment out on forged cheques—Action by party whose name assumed.*—Pltf. brought an action against deft. bank for £125,000, money had & received by defts. to his use. Pltf.'s case was that an account was opened in his name at a branch of deft. bank by some one other than himself, that a cheque for £150,000 payable to his order was paid into the account, & that on the following day a forged cheque, purporting to be drawn by pltf., for £130,000 was cashed by one H., the balance being afterwards withdrawn by H., by means of other forged cheques. Defts. alleged that the cheque for £150,000 was obtained by a blackmailing conspiracy from one A., who was discovered by one N. with pltf.'s wife in compromising circumstances, & that the proceeds were shared between the conspirators, whom defts. alleged to include, among others, pltf., pltf.'s wife, & H. & N. Pltf. & his wife denied that they took part in any conspiracy, & pltf. said that, when he heard of the relations between his wife & A., he instructed H., who represented himself to be a solr., to take divorce proceedings, & that, when the sum of £25,000 was handed to him by H., he, pltf., passed the amount on to his wife & said that he would have nothing more to do with her, & that he learned later that A. had paid £150,000. It

## PART II. SECT. 1, SUB-SECT. 2.

b i. —.]—*BRANDON v. BANK OF MONTREAL*, [1926] 4 D. L. R. 182; 59 O. L. R. 268.—*CAN.*

275 va. — — — — —.]—A deposit of money in a bank to meet a draft is not payment of the draft. The money so deposited must be appropriated by the depositor thereof to the draft. Where the bank is authorised so to appropriate the money it acts in doing so as agent of the depositor, & if it fails to carry out its duties as such agent, the loss falls on its principal. It is possible for a bank while acting as agent of the drawer of a draft for

the purpose of collecting it to act also as agent of the drawee in appropriating the money.—*BRANTFORD CORDAGE CO. v. MILNE*, [1925] 1 D. L. R. 862; [1925] 1 W. W. R. 911; 35 Man. L. R. 17; *affo.*, [1925] 1 D. L. R. 92; [1925] 1 W. W. R. 442.—*CAN.*

275 vii. — — — — — *In Canadian paper in American bank—In what currency payable by bank.*—*Held* : pltf.'s deposits created merely the relation of debtor & creditor, & the bank's obligation under that relationship was to repay the exact amount of money which was received on deposit. Whether amounts of deposits repayable

in Canadian or American currency discussed.—*SHEPPARD v. FIRST INTERNATIONAL BANK OF SWEET GRASS*, [1924] 1 D. L. R. 582; 1 W. W. R. 290.—*CAN.*

275 viii. — — — — — *Cheque delivered to bank to be cashed.*—The fact that the holder of a cheque delivers it to a bank to be cashed does not constitute a deposit nor render the bank his debtor, & the bank has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—*ROYXEL v. ROYAL BANK OF CANADA*, [1918] 2 W. W. R. 791; 11 Sask. L. R. 218.—*CAN.*

was to recover the difference between these two amounts that the action was brought. The jury found that there was a conspiracy to get money from A. by catching him with pltf.'s wife, but that pltf. & his wife were not parties to the conspiracy, that A. was induced to part with the money through fear, & that his parting with it was not free & voluntary:—*Held*: pltf. never got the property in the cheque for £150,000 & could not sue in conversion, & he had no right to sue in contract because the dealings with deft. bank were not on his behalf, & therefore he had no title to the cheque, & the action failed.—*ROBINSON v. MIDLAND BANK, LTD.* (1925), 41 T. L. R. 402; 69 Sol. Jo. 428, 792, C. A.

**284a.** — *Effect of mere book entries.*—In dealings between banker & customer, where it is sought to treat a mere book entry as a payment, some other circumstances must be present & relied upon to enable the customer in whose favour it is made to succeed, either some express previous authority to pay, or a communication of the making of the entry to the customer & an acting upon it by him; there must be, in effect, both a payment by one party & a receipt by the other, or an alteration in the position of the customer in whose favour the book entry was made.—*BRITISH & NORTH EUROPEAN BANK, LTD. v. ZALZSTEIN*, [1927] 2 K. B. 92; 96 L. J. K. B. 539; 137 L. T. 127; 43 T. L. R. 299.

**289a.** — *Bills specifically appropriated to one account.—Payment of proceeds to other account.*—A banker who has agreed with a customer to open two accounts in his name, & who holds bills which the customer has specifically appropriated to one account, is not entitled, without the customer's consent, to transfer the proceeds of such bills to the other account.—*GREENHALGH (W. P.) & SONS v. UNION BANK OF MANCHESTER*, [1924] 2 K. B. 153; 93 L. J. K. B. 844; 131 L. T. 637.

**292.** *Add. Annotation*:—*Refd. Taxation Comrs. v. English, Scottish & Australian Bank*, [1920] A. C. 683.

**292a.** — ———.]—(1) The word "customer" in Bills of Exchange Act, 1909 (No. 27 of 1909, Commonwealth), s. 83 (1), which is in the same terms as the above sect. signifies a relationship in which duration is not of the essence, & includes a person who has opened an account on the day before paying in a cheque to which he has no title.

(2) The negligence referred to in the sub-sect. is negligence in collecting the cheque, not in opening the account. The test is whether the paying in of any given cheque, coupled with the circumstances antecedent & present, was so out of the ordinary course that it ought to have aroused doubt in the banker's mind, & caused him to make inquiries. The standard of care required

is that derived from the practice of bankers.—*TAXATION COMRS. v. ENGLISH, SCOTTISH & AUSTRALIAN BANK* [1920] A. C. 683; 89 L. J. P. C. 181; 123 L. T. 34; 30 T. L. R. 305, P. C.

*Annotations*:—*As to* (2) *Apld. Hampstead Grdns. v. Barclays Bank* (1923), 39 T. L. R. 229. *Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Apld. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Refd. Underwood v. Bank of Liverpool*, Same *v. Barclays Bank*, [1924] 1 K. B. 775; *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67.

**292b.** — *Another bank for whom cheque collected.—Bills of Exchange Act, 1882 (c. 61), s. 82.*—(1) The word "customer" in the above sect. applies to another bank for whom the bank, which relies on the protection of the sect., collects a cheque.

(2) The words "receives payment" in the sect. apply to a bank which receives payment as a collecting bank.—*IMPORTERS CO. v. WESTMINSTER BANK*, [1927] 2 K. B. 297; 96 L. J. K. B. 919; 137 L. T. 693; 43 T. L. R. 639; 32 Com. Cas. 369, C. A.

**293.** *Add. Citation*:—88 L. J. K. B. 55.

*Add. Annotations*:—*Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110; *Re Polemis & Furness, Withy*, [1921] 3 K. B. 560; *Jones v. Waring & Gillow*, [1926] A. C. 670.

**294.** *Add. Annotation*:—*Mentd. Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.

**297.** *Add. Annotations*:—*Mentd. Calmenson v. Merchant's Warehousing Co.* (1920), 125 L. T. 129; *Everett v. Griffiths*, [1921] 1 A. C. 631; *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305.

**298a.** *Remittance sent abroad on request.—Obligation of bank.*—Pltfs., customers of defts., bankers in London, instructed them to transmit money to a person in Rumania, & defts. sent a cheque by registered post to him personally. The cheque never reached him, but someone apparently put on it a forged indorsement of his name, & it was eventually cleared through a bank in Poland, & defts. debited pltfs. with the amount. In an action for negligence pltfs. alleged that defts. should have sent the cheque by a letter which was insured in addition to being registered:—*Held*: as the loss of a cheque was a rare occurrence, & as the standard of defts.' duty should not be measured by a consideration of all the precautions which subsequent events might suggest, the action failed.—*OSE GESELLSCHAFT, ETC. v. JEWISH COLONIAL TRUST* (1927), 43 T. L. R. 398.

**300.** *Add. Annotations*:—*Apld. London Provincial & South Western Bank v. Buszard* (1918), 35 T. L. R. 142. *Refd. Brown v. Swan* (1921), 37 T. L. R. 787.

**301.** *Add. Annotation*:—*Consd. Brown v. Swan* (1921), 37 T. L. R. 787.

**289 ii.** — ———.]—In the absence of any special contract to keep a customer's accounts separate a bank may combine his accounts in different departments of the bank for the purpose of meeting his indebtedness to the bank without notifying him or obtaining his consent thereto.—*WALLINDER v. IMPERIAL BANK OF CANADA*, [1925] 4 D. L. R. 390; [1925] 3 W. W. R. 409.—*CAN.*

**PART II. SECT. 1, SUB-SECT. 3.—A.**

**301 ii.** — ———.]—For certain limited purposes a branch bank may be treated as a separate organisation, but for all purposes of liability a bank is a unit & indivisible.—*WHITE v. ROYAL BANK OF CANADA*, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—*CAN.*

*See Forwarding to another branch documents for collection.—Negligence.*—

Where a branch office of a bank, in the usual course of banking business for reward, sends to another office of the bank for collection on behalf of a customer negotiable documents of debts, such as participation certificates issued by the Canadian Wheat Board, which, having been indorsed by the producer, are, in effect, made payable to bearer on surrender thereof, & whose terms deny responsibility in the Wheat

302. *Add. Annotations*:—*Refd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669; Richardson v. Richardson, [1927] P. 228.
303. *Add. Citation*:—63 Sol. Jo. 246.
304. *Add. Annotations*:—*Consd.* Elliott v. Bax-Ironside, [1925] 2 K. B. 301. *Refd.* Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414; Kettle v. Dunster & Wakefield (1927), 43 T. L. R. 770.
310. *Add. Annotations*:—*Refd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110. *Mentd.* Re Gunsbourg, *Ex p.* Trustee, [1919] B. & C. R. 99.
312. *Add. Annotations*:—*Generally*, *Refd.* Earle v. Hemsworth R. D. C. (1928), 140 L. T. 69. *Mentd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.
317. *Add. Annotations*:—*As to* (1) *Refd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110. *Generally*, *Refd.* Richardson v. Richardson, [1927] P. 228.
330. *Add. Citation*:—40 L. T. 404.
331. *Add. Annotations*:—*Refd.* Jones v. Waring & Gillow, [1926] A. C. 670. *Mentd.* Holt v. Markham (1922), 128 L. T. 719.
332. *Add. Annotations*:—*Refd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones v. Waring & Gillow, [1926] A. C. 670.
333. *Add. Annotations*:—*Consd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones v. Waring & Gillow, [1926] A. C. 670.
- 333a. — *Payment into account under belief that customer alive—Liability to refund.*—Where money has been paid into the current account of the customer of a bank under a mistake of fact, such as the belief that the customer is still alive & entitled to the money, the money can be recovered back from the bank without joining the customer's legal personal representatives as defts. to the action.—*ADMIRALTY COMRS. v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD.* (1922), 127 L. T. 452; 38 T. L. R. 492; 66 Sol. Jo. 422.
334. *Add. Annotations*:—*Consd.* *Re* Hodgson's Trusts, Public Trustee v. Milne, [1919] 2 Ch. 189. *Refd.* Bradford Old Bank v. Sutcliffe (1918), 88 L. J. K. B. 85; Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 652.
- 338a. — *Joint account—Including proceeds of theft.*—*THE ADMIRALTY v. MILLS* (1908), *Times*, Oct. 29.
- 338b. *Necessity for demand—Whether condition precedent to action against banker on account.*—Where money is standing to the credit of a customer on current account with a banker, in the absence of a special agreement a demand by the customer is a necessary ingredient in the cause of action against the banker for money lent.—*JOACHIMSON v. SWISS BANK CORPN.*, [1921] 3 K. B. 110; 90 L. J. K. B. 973; 125 L. T. 338; 37 T. L. R. 534; 65 Sol. Jo. 434; 26 Com. Cas. 196, C. A.
- Annotations*:—*Consd.* Admiralty Comrs. v. National Provincial & Union Bank of England (1922), 38 T. L. R. 492; Richardson v. Richardson, [1927] P. 228; Douglas v. Lloyds Bank (1929), 34 Com. Cas. 263. *Refd.* Re British American Continental Bank, Credit General Leigouls' Claim, [1922] 2 Ch. 589; Prosperity v. Lloyds Bank (1923), 39 T. L. R. 372; Tourneur v. National Provincial & Union Bank of England, [1924] 1 K. B. 461.
- 342a. — *Account in credit—Reasonable notice.*—In the absence of special stipulation a banker can close his customer's banking account in credit only on giving him a reasonable notice, dependent on the nature of the account & the facts & circumstances of the case. When a banking account, opened by plffs. with defts., & having a credit balance of some £7,000, was so interwoven with a "snowball" scheme of insurance devised by plffs. that it became in respect to subscriptions to the scheme a part thereof:—*Held*: a month's notice by defts. to discontinue the account was not, in the circumstances of the case, sufficient, but an injunction restraining defts. from closing the account must be refused.—*PROSPERITY, LTD. v. LLOYDS BANK, LTD.* (1923), 39 T. L. R. 372.
- 342b. *Existence of account—Proof of—Effect of non-existence of entry in material books.*—*DOUGLASS v. LLOYDS BANK, No. 403a, post.*
347. *Add. Citation*:—*affg.* S. C. *sub nom.* *Re* GROSS, *Ex p.* ADAIR (1871), 24 L. T. 198.
358. *Add. Annotations*:—*Mentd.* Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532; The Tervaeete, [1922] P. 259; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385.
363. *Add. Annotations*:—*Consd.* Banque Belge v. Hambrouck, [1921] 1 K. B. 321. *Refd.* *Re* Hodgson's Trusts, Public Trustee v. Milne, [1919] 2 Ch. 189. *Mentd.* *Re* Wait, [1927] 1 Ch. 606.

Board with respect to indorsements, & falling to receive a return letter of acknowledgment, the sending office makes no inquiry of the receiving office as to the safety of the documents until after the lapse of six weeks, it is guilty of negligence. The bank is still more guilty of negligence, when, having made the belated inquiry & learned that the documents have not been received at the other office it fails to take immediate steps in the quickest manner available to warn the debtor liable under the documents of the loss thereof, & thus stop payment to any unauthorised person.—*NELSON v. UNION BANK OF CANADA*, [1923] 3 W. W. R. 1330.—CAN.

303 f. — — — — — *GARRIOCH v. CANADIAN BANK OF COMMERCE*, [1919] 3 W. W. R. 185.—CAN.

#### PART II. SECT. 1, SUB-SECT. 4.

317 xi. — *Account in trade name.*—Where an individual keeps his bank

account under a trade name & is sued & his banker is garnisheed, it is for the bankers to satisfy themselves that the judgment debtor named is the person keeping such account, & if satisfied beyond reasonable doubt that the right fund is being garnisheed to pay it into ct.—*SMITH v. GAUTSCHE*, [1917] 2 W. W. R. 225; 23 B. C. R. 455.—CAN.

#### PART II. SECT. 2, SUB-SECT. 1.

334 v. — — — — — *Pltf.* made a promissory note in favour of S., which was dishonoured on presentment. Both banked with defts., to whom S. was indebted on overdraft for a greater sum than the amount of the note. Subsequently *pltf.* paid £100 into his account, & defts. immediately, without reference to *pltf.*, paid the note for £119 19s. 10d. & debited *pltf.*'s account with the amount by which his funds in the hands of defts. were insufficient to meet the note:—*Held*: defts. were

at liberty to apply whatever funds of *pltf.* they had in hand in satisfaction. *pro tanto*, of the note of which they were the holders for value.—*BELL v. UNION BANK*, [1923] N. Z. L. R. 379.—N.Z.

#### PART II. SECT. 2, SUB-SECT. 2.—B.

st. *Right of bank to refuse to pay.*—In order to hold a banker justified in refusing to pay a demand of his customer the customer being an exor., & drawing a cheque as exor., there must in the first place be some misapplication, some breach of trust intended by the exor., & there must in the second place be proof that the bankers are privy to the intent to make their misapplication of the trust funds. If it be shown that any personal benefit to the bankers themselves is designed or stipulated for, that circumstance above all others will most readily establish the fact that the bankers are in privy with the breach of trust that is about to be committed.

378. *Add. Annotation*:—*Mentd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

380a. *Payment of principal's money to own account—Bank without notice—Retention against overdraft.*—*Re SANGSTER, GREEN v. MOCKETT* (1894), 10 T. L. R. 184.

387a. ————]—For some years before 1919 one U., a merchant, had a banking account at defts.' bank. In that year he converted himself into a limited co., all the shares being allotted to himself except one, which was held by his wife. A debenture in the form of a floating charge over the assets of the co. was issued to a creditor of U. as a security for his debt. The arts. of assocn. of the co. incorporated Table A. by par. 71 of which the business of the co. is to be managed by the directors. By the arts. U. was appointed sole director. After the formation of the co. U. kept on his private banking account with defts. as before, they having notice that his business had been transferred to the co. The co. had a separate account, which was kept at another bank, but defts. had no knowledge of that fact. U., as sole director, became possessed of a number of cheques, some crossed & others uncrossed, drawn in favour of the co. He indorsed them "A.L.U., Ltd.—A.L.U. sole director," & paid them into his own account with defts. instead of paying them in to the co.'s account with the other bank. Defts., without inquiring whether the co. had a separate banking account, collected the cheques & credited U. with the proceeds, which he misappropriated. When doing so they treated him as being identical with the co., as he owned all the shares, & overlooked the materiality of the cheques being drawn in the co.'s favour & not in his. In an action brought by the co. on behalf of the debentureholder for conversion of the cheques:—*Held*: (1) defts. were precluded from setting up that U., when paying the cheques in to his own account, was acting within the scope of his apparent authority as agent of the co., upon two grounds: first, that the act of an agent paying his principal's cheques into his own account was so unusual as to put them on inquiry, that they ought to have inquired whether the co. had a separate banking account, & if it had, why the cheques were not paid in to that account, & that their failure to make that inquiry amounted to negligence; & secondly, that U. when paying in the cheques did not purport to act as the co.'s agent, but as being himself the co., & that defts. so treated him; (2) with respect to the cheques which were crossed the omission to inquire about the co.'s banking account disentitled defts. as collecting bankers to the protection afforded by Bills of Exchange Act, 1882 (c. 61), s. 82.

—STANDARD BANK v. ESTATE VAN RHYN, [1925] App. D. 266.—S. AF.

#### PART II. SECT. 2, SUB-SECT. 3.—A.

371 i. *Joint account of persons not partners—Cheque drawn & countermanded by one after decease of other—Payment by bank—No right of action in survivor.*—*RADCLIFFE v. BANK OF MONTREAL*, [1919] 2 W. W. R. 887.—CAN.

371 ii. ———— *Subsequent claim by one*

*to whole account—Position of bank.*—Where a bank deposit is made in the name of either of two persons it is a notification that either one may deal with the funds & that the account will be subject to the control of either of them in the absence of special directions. But upon a subsequent notice to the bank by one of such persons that he claims it all, the bank in dealing with the money thereafter in any way affecting such claim acts at its own risk.—*HILL v. HOCHRELAGA BANK*, [1921] 3 W. W. R. 430.—CAN.

A customer of a bank paid into his account some cheques to which he had no title. Immediately on his so paying them in the bank credited him with the amounts of the cheques in their ledger, but there was no agreement between the bank & the customer that he should be allowed to draw against the cheques before they were cleared, nor did he in fact draw against them until after the bank had received the proceeds:—*Held*: (3) apart from any question whether the bank had notice of any defect in the customer's title, they were not holders in due course, there being no evidence that they took the cheques for value. The mere fact that bankers credit a customer with the amounts of cheques before they are cleared does not make them holders for value; in order to entitle them to that character there must have been an agreement, express or implied, that the customer should be allowed to draw against the cheques before clearance, & that agreement must have been acted upon.—*UNDERWOOD (A. L.) LTD. v. BANK OF LIVERPOOL, SAME v. BARCLAYS BANK*, [1924] 1 K. B. 775; 93 L. J. K. B. 690; 131 L. T. 271; 40 T. L. R. 302; 68 Sol. Jo. 716; 29 Com. Cas. 182, C. A.

*Annotations*:—As to (1) *Apld. London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443. *Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Apld. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450; *Houghton v. Notherd, Lowe & Wills*, [1927] 1 K. B. 246; *Fenton Textile Assocn. v. Thomas* (1929), 45 T. L. R. 264; *Rekitt v. Barnett, Pembroke & Slater*, [1929] A. C. 176. As to (2) *Consd. London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67. *Refd. Robinson v. Midland Bank* (1925), 41 T. L. R. 402.

389. *Add. Annotations*:—*Consd. Jones v. Waring & Gillow*, [1925] 2 K. B. 612. *Refd. Banque Belge pour l'Etranger (Soc. Anon.) v. Hambrouck, Spanoghe* (1920), 123 L. T. 495. *Mentd. Brocklebank v. R.*, [1925] 1 K. B. 52.

391. *Add. Annotation*:—*Distd. Re Harrison, Day v. Harrison* (1920), 90 L. J. Ch. 186.

391a. ———— *Cheques drawn by wife on bank manager's advice—Title of wife to balance.*—A husband, in 1908, transferred the money standing to a current account at his bank in his own name into the joint names of himself & his wife. He did not inform his wife of the joint account, & always drew cheques on the account himself. He died in Nov. 1919. The wife never drew any cheque on the account until shortly before his death, when he was in failing health & unable to attend to business. The bank manager then informed her of the joint account, & advised her to draw a cheque, which she did. The husband had also from time to time made deposits in the joint names of himself & his wife, & in Aug. 1919, con-

#### PART II. SECT. 2, SUB-SECT. 3.—B.

g. *Add "on appeal.* [1919] A. C. 658; 88 L. J. P. C. 118; 121 L. T. 100, P. C."

#### PART II. SECT. 2, SUB-SECT. 3.—E.

390 i. *Joint account of husband & wife—Subsequent claim by wife to whole account—Bank entitled to set off sums advanced for husband's benefit before notice of claim.*—*HILL v. HOCHRELAGA BANK*, [1921] 3 W. W. R. 430.—CAN.

solidated them into one deposit in the joint names. The wife never knew of this deposit until after her husband's death. There was then found among his papers an envelope indorsed with the wife's initials & containing the deposit receipt & a document in which he said: "I would like this paying away at once if possible as under," with a list of names with amounts against them:—*Held*: the money standing to the credit of both the current account & the deposit account belonged to the wife as survivor, & the document did not raise any presumption that the husband regarded the deposit as his own property.—*Re HARRISON, DAY v. HARRISON* (1920), 90 L. J. Ch. 186.

402. *Add. Annotations*:—*Refd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110; *Douglass v. Lloyds Bank* (1929), 34 Com. Cas. 263.

402a. *Effect of need for notice of withdrawal*.—There is no difference in principle in the nature of a deposit requiring notice of withdrawal & a deposit not requiring notice of withdrawal.—*Re GLENDINNING, STEEL v. GLENDINNING* (1918), 88 L. J. Ch. 87; 120 L. T. 222; 63 Sol. Jo. 156.

403a. *Loss of right to repayment—Laches*.—In May, 1866, one F. deposited £6,000 with a Birmingham branch of deft. bank, upon the terms that he could withdraw the money at any time on giving fourteen days' notice, & that interest should be paid on it at the rate of 6 per cent. for the first three months, & thereafter at the current bank rate for the time being. In Aug. 1866, the bank repaid £2,500 of the £6,000 with interest due to that date, & a note of the payment was indorsed on the deposit receipt. In Nov. 1866, a further indorsement was made showing that all interest then due had been paid, but after that date there was no record of any further payment by the bank of either principal or interest & no record of any demand by F. for payment. F. died in 1893. In 1927 a relative of F. discovered the deposit receipt amongst some old papers, & sent it to the surviving exor. & trustee of F.'s will. He gave deft. bank formal notice to pay the £3,500, balance of the principal £6,000, together with interest, in fourteen days. The bank refused to pay, on the ground that it must be presumed that the deposit must have been repaid long ago. The exor. then brought this action to enforce payment, & the bank pleaded presumption of payment; & although they refused to plead Stat. Limitations, they claimed relief on the ground that F. & his representatives had been guilty of laches:—*Held*: although defts. could not produce evidence of repayment, the proper inference from all the circumstances was that that money must have been repaid, & the action therefore failed. Bankers' Books Evidence Act, 1879 (c. 11), s. 3, makes an entry in bankers' books *prima facie* evidence of an account.

*Qu.*: whether the non-existence of any entry in material books is *prima facie* evidence of the non-existence of an alleged account.—*DOUGLASS v. LLOYDS BANK, LTD.* (1929), 34 Com. Cas. 263.

409. *Add. Annotation*:—*Apld. Re Westerton, Public Trustee v. Gray* (1919), 122 L. T. 264.

409a. *Assignment by order in writing to bank to pay third party sum on deposit—Unindorsed deposit receipt—Letter to assignee*.—About a year before his death, which happened in 1917, testator handed to his landlady, G., an envelope addressed to her describing it as a present to her. She was about to open it, when he took it from her hand & said he would keep it for her & locked it up in his despatch box. After testator's death there was found in his despatch box an envelope containing: (1) A deposit receipt for £500 deposited with his bank in 1914; (2) an order in writing signed by testator directing the bank to pay to G. the sum of £500 then on deposit; & (3) a letter addressed to G.: "You have been very kind to me & I desire to make some return by giving you the amount £500 now on deposit at the . . . bank as per receipt enclosed." The deposit receipt was not indorsed by testator & no notice was given to the bank of any assignment till after his death, the interest on the sum on deposit having been carried by the bank to his current account:—*Held*: there was a valid & complete gift to G. of the sum on deposit by way of assignment under Jud. Act, 1873, s. 25 (6).—*Re WESTERTON, PUBLIC TRUSTEE v. GRAY*, [1919] 2 Ch. 104; 88 L. J. Ch. 392; 122 L. T. 264; 63 Sol. Jo. 410.

*Annotation*:—*Apprvd. & Apld. Republica de Guatemala v. Nuncz*, [1927] 1 K. B. 669.

410. *Add. Annotations*:—*Mentd. Re Westerton, Public Trustee v. Gray*, [1919] 2 Ch. 104; *Re Richards, Jones v. Rebbeck*, [1921] 1 Ch. 513.

411. *Add. Annotations*:—*Mentd. Re Westerton, Public Trustee v. Gray*, [1919] 2 Ch. 104; *Re Richards, Jones v. Rebbeck*, [1921] 1 Ch. 513.

431. *Add. Annotation*:—*Refd. Cohen v. Roche* (1923), 95 L. J. K. B. 945.

432. *Add. Annotation*:—*Mentd. Re City Life Assce.* (1925), 42 T. L. R. 45.

453. *Add. Annotation*:—*Refd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 825.

454. *Add. Annotations*:—*Mentd. Dey v. Mayo*, [1920] 2 K. B. 346; *Brown v. Swan* (1921), 37 T. L. R. 787; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.

456. *Add. Annotation*:—*Mentd. Brown v. Swan* (1921), 37 T. L. R. 787.

479. *Add. Annotation*:—*Refd. Sutters v. Briggs*, [1922] 1 A. C. 1.

479a. *Cheque credited before clearance—Whether bank holders for value—Bank stopping payment before final clearance*.—(1) Where a customer pays a crossed cheque into his bank,

BANK OF CANADA, [1922] 1 W. W. R. 7; 69 D. L. R. 130.—CAN.

#### PART II. SECT. 5, SUB-SECT. 1.

463 i. — *Stoppage of bank-cheque for debt—Debt not paid*.—UNION BANK OF CANADA v. NETTLETON (1924), 55 O. L. R. 643.—CAN.

#### PART II. SECT. 4, SUB-SECT. 3.

eg. Money paid to retire draft—*Failure of purpose for which draft paid—Liability of bank to refund*.—*Held*: plffs. could recover from the bank the amount paid by them to retire the draft.—*GIBBONS & CARRIES v. ROYAL BANK OF CANADA*, [1921] 2 W. W. R. 370.—CAN.

aj. *Delay in transmitting draft—Transaction not part of manager's duty—Liability of bank*.—*Held*: as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—*MAXWELL v. UNION*

the question whether the bank receive it as holders for value or as agents for collection is a pure question of fact. The fact that the cheque is immediately credited in the ledger does not necessarily make the bank holders for value. That inference may be rebutted by notices in the pass-book & paying-in slip or other evidence showing that the customer could not draw before clearance.

(2) If the bank receive the cheque as agents for collection & stop payment before it is finally cleared at the clearing house, they can only receive & hold the proceeds as collecting agents for their customer, & not on the ordinary bank relationship of debtor & creditor. Consequently, in a winding up following on the stoppage the liquidator must pay the full proceeds of a cheque cleared after the stoppage to the customer, although it was cleared shortly before the actual winding up.—*Re FARROW'S BANK, LTD.*, [1923] 1 Ch. 41; 92 L. J. Ch. 153; 128 L. T. 332; 67 Sol. Jo. 78; [1925] B. & C. R. 8, C. A.

479b. ———.—]—*UNDERWOOD (A. L.), LTD. v. BANK OF LIVERPOOL, SAME v. BARCLAYS BANK, No. 387a, ante.*

484. *Add. Annotation*:—*Refd. Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.

487. *Add. Annotations*:—*Refd. Jones v. Waring & Gillow*, [1926] A. C. 670. *Mentd. Holt v. Markham*, [1923] 1 K. B. 504.

489. *Add. Annotation*:—*Mentd. The Sheaf Brook*, [1926] P. 61.

493. *Add. Annotations*:—*Apld. London Provincial & South Western Bank v. Buszard* (1918), 35 T. L. R. 142. *Refd. Brown v. Swan* (1921), 37 T. L. R. 787.

500. *Add. Annotation*:—*Generally, Mentd. Brown v. Swan* (1921), 37 T. L. R. 787.

528. *Add. Annotation*:—*Generally, Mentd. Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

537. *Add. Annotations*:—*Consd. Barclay v. Malcolm* (1925), 133 L. T. 512; *Jones v. Waring & Gillow*, [1925] 2 K. B. 612. *Mentd. Soc. Des Hôtels Le Touquet Paris Plage v. Cummings*, [1922] 1 K. B. 451.

538. *Add. Annotation*:—*Consd. Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

538a. ———.—]—A. drew a cheque for £700 in favour of B. & gave it to B., who presented it forthwith. A. had current & deposit accounts at the bank, but her money on current account was not sufficient to meet the cheque without resort to the money on

deposit. It had been the practice of the bank to allow A. to overdraw her current account so long as the overdraft was covered by her money on deposit. The bank refused payment of the cheque, not because of the state of A.'s current account, but because they doubted A.'s signature on the cheque. A. died before anything further was done:—*Held*: in the circumstances there had not been any appropriation or dedication of the money in the bank, or any constructive payment of the cheque; & there had been an incomplete gift *inter vivos* of the amount of the cheque, which gift would not be perfected by the assistance of equity.—*Re SWINBURNE, SUTTON v. FEATHERLEY*, [1926] Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

540. *Add. Annotation*:—*Refd. Australian Bank of Commerce v. Perel*, [1926] A. C. 737.

544. *Add. Annotations*:—*Apld. Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank*, [1924] 1 K. B. 775. *Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450; *Houghton v. Notherd, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443. *Mentd. Dey v. Pullinger Engineering Co.*, [1921] 1 K. B. 77.

544a. ———.—]—A bye-law of applts. co. authorised its secretary-treasurer jointly with any director to sign cheques drawn upon its bank account. A series of cheques payable to one of the directors were fraudulently signed by the director jointly with the secretary-treasurer, & after indorsement were placed by resp. bank to the credit of an account which the director had with them. Resps. collected the cheques from applts.' bank in the usual course of business. In order that there should be to the credit of applts.' account sufficient to meet each of the cheques, the director in each case fraudulently drew a cheque upon one of various other accounts upon which he had authority to draw, & paid it into applts.' account. Applts. sued resps. to recover the aggregate amount of the cheques collected by them:—*Held*: the action failed, because (1) resps. had not knowledge, either by the form of the cheques collected or otherwise, that they were improperly drawn on applts.' account, & could not recover the money as having been held by their bankers in trust for them, & (2) applts. had suffered no loss, & the ct. could not investigate applts.' liability to persons not parties to the action in respect

**PART II. SECT. 6, SUB-SECT. 1.**  
ol. ———.—]—A co. drew bills of exchange upon customers to whom they had supplied goods & who accepted the bills. The co. indorsed the bills in blank, & delivered them to a bank for collection. The co. went into liquidation. Its current account with the bank was overdrawn to a large amount. In the liquidation the bank claimed that they were owners of the bills, & that they were not bound to value & deduct the obligations in the bills for the purpose of a ranking. The bank's lien over the proceeds of the bills was admitted:—*Held*: the bills, having been indorsed & delivered to the bank for the limited purpose of collection, remained assets of the co., over which the bank held a mere right in security in virtue of their lien, & the obligations under the bills must be valued &

deducted for the purposes of a ranking.—*CLYDESDALE BANK, LTD. v. SENIOR (JAMES ALLAN) & SON LIQUIDATORS*, [1926] S. C. 235.—*SCOT.*

**PART II. SECT. 8, SUB-SECT. 2.—A.**

538 i. *Constructive payment—Cheque & credit slip stamped "paid."*—*WHITE v. ROYAL BANK OF CANADA*, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—*CAN.*

**PART II. SECT. 8, SUB-SECT. 2.—B.**

545 i. *To clerk—Notice of limitation of authority.*—A clerk's express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all moneys collected to the credit of the Receiver-General in a designated bank & at

certain intervals to remit by draft to the head office of the business. Such charges were almost always paid to him by accepted cheque & deft. bank cashed such a cheque on it, paying the clerk the proceeds:—*Held*: the bank was negligent as inquiry should have been made as to the clerk's authority & the unusual act of a business firm cashing such a cheque, especially of a large amount, & a certain discrepancy between the name of the payee in the cheque & the name in the indorsement should have aroused suspicion.—*R. v. ROYAL BANK OF CANADA* (1920), 1 W. W. R. 198; 50 D. J. R. 293; 30 Man. L. R. 104.—*CAN.*

545 ii. ———.—]—*HAYES v. STANDARD BANK*, [1927] 3 D. L. R. 336; 60 O. L. R. 461; *revers.*, [1928] 2 D. L. R. 898; 62 O. L. R. 186.—*CAN.*



of the cheques placed to applts.' credit.—*CORPORATION AGENCIES v. HOME BANK OF CANADA*, [1927] A. C. 318; 96 L. J. P. C. 63, P. C.

*Annotations*:—*As to* (1) *Consd. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Reid. Reckitt v. Barnett, Pembroke & Slater*, [1929] A. C. 176.

546a. — *Cheques paid to customer's creditors.*—Deft. bank negligently, & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only. All the cheques were paid to the co.'s trade creditors:—*Held*: (1) the bank being put on inquiry & being negligent, as the jury found, were not entitled to assume that a signature purporting to be that of a new director was that of a person duly appointed; (2) whether pltf. co.'s account was in credit or in debit at the time of the payments to trade creditors, the bank were, on the equitable doctrine under which a person who has in fact paid the debts of another without authority is allowed to take advantage of his payment, entitled to credit for the cheques paid in discharge of the debts of pltf. co.; (3) an inquiry should be ordered into the circumstances of payment of each cheque.—*LIGGETT (B.) (LIVERPOOL), LTD. v. BARCLAYS BANK, LTD.*, [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 443; 43 T. L. R. 449.

*Annotation*:—*As to* (2) & (3) *Reid. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.

548. *Add. Annotation*:—*Reid. Brown v. Swan* (1921), 37 T. L. R. 787.

549. *Add. Annotations*:—*Reid. Wilson v. United Counties Bank*, [1920] A. C. 102. *Mentd. Neville v. London Express Newspaper*, [1919] A. C. 368; *Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735.

550. *Add. Annotation*:—*Reid. Wilson v. United Counties Bank*, [1920] A. C. 102.

554. *Add. Annotation*:—*Reid. Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372.

557. *Add. Annotations*:—*Consd. Re Farrow's Bank*, [1923] 1 Ch. 41. *Reid. British & North European Bank v. Zalstein*, [1927] 2 K. B.

92. *Mentd. Dey v. Mayo*, [1920] 2 K. B. 346; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.

560. *Add. Annotation*:—*Mentd. Re Southerden, Adams v. Southerden*, [1925] P. 177.

561. *Add. Annotation*:—*Mentd. Goldfarb v. Bartlett & Kremer*, [1920] 1 K. B. 639.

565. *Add. Annotation*:—*As to* (1) *Reid. Tolley v. Fry* (1929), 46 T. L. R. 108.

569. *Add. Annotations*:—*Reid. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110; *Richardson v. Richardson*, [1927] P. 228.

574. *Add. Annotations*:—*Reid. Brown v. Swan* (1921), 37 T. L. R. 787. *Mentd. Pocahontas Fuel Co. v. Ambatielos* (1922), 27 Com. Cas. 148.

577. *Add. Annotation*:—*Mentd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

582. *Add. Annotations*:—*Mentd. Re Gunsbourg, Ex p. Trustee*, [1919] B. & C. R. 99; *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.

585. *Add. Annotation*:—*Reid. Jones v. Waring & Gillow*, [1926] A. C. 670.

586. *Add. Annotations*:—*Mentd. Dey v. Mayo*, [1920] 2 K. B. 346; *Robinson v. Marsh*, [1921] 2 K. B. 640; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41.

589. *Add. Annotation*:—*Consd. Westminster Bank v. Hilton* (1926), 136 L. T. 315.

589a. — *Mistake in telegram—Duty of bank to make inquiry.*—Pltf., who had an account with defts., on July 31, 1924, drew a cheque, No. 117,285, & post-dated it Aug. 2. On Aug. 1 he telegraphed to defts. to stop payment of cheque No. 117,283, mentioning the date, the payee, & the amount. These particulars were correct as to cheque No. 117,285, but the number of the cheque was wrong. Cheque No. 117,285 was presented on Aug. 6, & the bank officials paid it, supposing that it had been drawn in place of the one that had been stopped. If they had searched, they would have seen that a

## PART II. SECT. 8, SUB-SECT. 2.—C.

548 l. *Cheque drawn on one branch—Payment at another—Dishonour on presentation.*—A bank, which pays a cheque at any branch except that at which the customer keeps his account, must be assumed to have paid it not on the credit of the customer but on the indorsement itself.

A. drew a cheque in favour of B. upon the Bank C., D. branch, & B. indorsed it for collection in favour of L., who received payment from the P. branch of the bank, which sent the cheque on to the D. branch. The latter dishonoured the cheque, whereon the P. branch gave notice of dishonour & instituted a suit against B. & L. for the recovery of the sum paid. The defence was (*inter alia*) that the cheque having been discharged by payment there was no power left in the P. branch to give notice of dishonour:—*Held*: the payment by the P. branch did not operate as a discharge of the cheque, the payment having been made not on the credit of A. but on the credit of B. & L., therefore, pltf. was entitled to recover the sum from defts.—*RAJA JOYTI PRASAD SINGH DES BAHADUR v. CHOTA NAGPUR BANKING ASSOCN.* (1928), 1 L. R. 8 Pat. 413.—**IND.**

*sk. Effect of confirmation by telephone.*—The accountant of a bank called up defts.' office by telephone, an auto-

matic telephone, which rang number required direct without the necessity of calling a "central" operator. A woman's voice answered & the accountant asking for the manager, a man's voice answered. The accountant then stated that it was the bank speaking & that the bank had a certain amount of money to pay over for the F. Co. "under protest," & the man at the other end of the wire said "All right":—*Held*: this constituted a notice to defts. that the money was available at the bank, & that it was not necessary the person spoken to should be identified.—*FIDELITY OIL & GAS CO. v. JANSE DRILLING CO. (Alta.)* (1916), 34 W. L. R. 370; 10 W. W. R. 533.—**CAN.**

## PART II. SECT. 8, SUB-SECT. 3.—A.

549 III. — *Money advanced on agreed terms—Bank holding security.*—*FINUCANE v. STANDARD BANK OF CANADA*, [1921] 3 W. W. R. 814; 62 S. C. R. 110; 59 D. L. R. 465.—**CAN.**

y I. — *Dishonour of cheques payable to self.*—A demand made personally by a customer upon his banker for payment is a two-party transaction. The refusal of payment cannot give rise to the implication of defamation of the customer to a third party, which necessarily arises when a trader's cheque, drawn or indorsed in favour of a third party, is presented by the

holder & dishonoured by the banker. Judgment for pltf. for £250 set aside, & judgment entered for defts., defts. having admitted liability to pay pltf. nominal damages & having paid £10 into ct.—*KINLAN v. ULSTER BANK, LTD.*, [1928] 1 L. R. 171.—**IR.**

## PART II. SECT. 8, SUB-SECT. 4.

sl. *Payment after notice of countermand—Liability of bank.*—*GARRIOCH v. CANADIAN BANK OF COMMERCE*, [1919] 3 W. W. R. 185.—**CAN.**

589 l. *By telegram—Payment after notice of countermand—Negligence.*—*Held*: defts. were guilty of a breach of duty as bankers.—*KEADE v. ROYAL BANK OF IRELAND, LTD.*, [1922] 2 I. R. 22.—**IR.**

am. *By notice of death.*—The duty & authority of a bank to pay a cheque cease on notice of the drawer's death.—*CURLEY v. BRIGGS (ADMINISTRATOR OF DRURY ESTATE)*, [1920] 2 W. W. R. 1025; 53 D. L. R. 351.—**CAN.**

sn. —It is not the death of the customer, but notice of his death, that operates as a revocation of the authority of a bank to pay the customer's cheque.—*KENDRICK v. DOMINION BANK & BOWNAS* (1920), 47 O. L. R. 372; 18 O. W. N. 138.—**CAN.**

so. —*WINNIPEG SAVINGS BANK (TRUSTEE) v. KENNY*, [1924] 1 D. L. R. 952.—**CAN.**



cheque numbered 117,283 had already been presented & honoured. In an action for negligence:—*Held*: the view of the bank officials, that the cheque presented, being subsequent to the date of the stop instructions, might be a duplicate cheque which they were bound to cash, was correct, & pltf. was not entitled to recover.—*WESTMINSTER BANK, LTD. v. HILTON* (1926), 136 L. T. 315; 43 T. L. R. 124; 70 Sol. Jo. 1196; *sub nom. HILTON v. WESTMINSTER BANK, LTD.*, 162 L. T. Jo. 450, H. L.

592. *Add. Annotation*:—*Refd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

594. *Add. Annotation*:—*Refd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

595. *Add. Annotation*:—*As to* (2) *Refd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

600a. *Presentment over counter—Duty of bank to pay.*—Pltfs., a partnership firm at Liverpool, sold goods to the P. Co. & drew upon the co. a bill for a large amount payable in three months in payment for the goods. The P. Co. accepted the bill payable at deft. bank at Liverpool, where they kept their account. Shortly before the bill became payable the co., who were then overdrawn at deft. bank, asked that bank to order payment of the bill & charge to the account of the co. Defts. were willing to act upon this advice, because they had an arrangement for a running overdraft with the co., & the bill was within the limits of that overdraft. When the bill became due it was brought by W., a servant of pltfs., to a partner of pltf. firm, who, at W.'s request, indorsed the bill in blank. W., instead of taking the bill to pltfs.' bank for the purpose of collection through the clearing house, presented the bill for payment over the counter to deft. bank & received the money, which he then fraudulently converted & stole. Pltfs. sued defts. to recover the amount of the bill on the grounds of negligence, money had & received, & conversion of the bill. Evidence was given at the trial that there is an almost universal custom at Liverpool that trade bills should be presented through the clearing house for payment to the bank at which they were accepted payable, but evidence was also given that presentation of such bills over the counter, though most unusual, was not irregular:—*Held*: deft. bank were not liable to pltfs. (1) on the ground of negligence, because no privity of contract existed between defts. & pltfs., & defts. owed no duty to pltfs.; (2) on the ground of money had & received, because the drawing of the bill did not amount to an assignment in favour of the payee of funds of the drawee, as the acceptors had no funds to meet the bill, which was paid out of a loan by defts., & the advice to pay the bill sent by the acceptors to defts. gave no rights to pltfs. as against defts.; (3) defts. were not

liable to pltfs. for the conversion of the bill, because the bill was a negotiable instrument, & they paid it in good faith without notice of any defect in title & in accordance with the law merchant. A bank was not bound to make inquiries merely because a bill indorsed in blank or an open cheque was presented for payment over the counter. According to the law merchant such presentation, although unusual, was always recognised as due presentation, sufficient to require the bankers to pay, in the absence of very special circumstances of suspicion.—*AUCHTERONI & Co. v. MIDLAND BANK, LTD.*, [1928] 2 K. B. 294; 97 L. J. K. B. 625; 139 L. T. 344; 44 T. L. R. 441; 72 Sol. Jo. 337; 33 Com. Cas. 345.

603. *Add. Annotation*:—*Refd. Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221.

615. *Add. Annotations*:—*Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd. Quebec Ry., Light, Heat & Power Co. v. Vandry*, [1920] A. C. 662; *McDonald v. Nash*, [1924] A. C. 625; *Samuel v. Dumas*, [1924] A. C. 431; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Gilbert v. Gilbert & Boucher* (1927), 96 L. J. P. 137; *Shotts Iron Co. v. Curran*, [1929] A. C. 409; *Tilling-Stevens Motors v. Kent County Council & Transport Minister*, [1929] 1 Ch. 66.

617. *Add. Annotation*:—*Refd. Wilson v. United Counties Bank*, [1920] A. C. 102.

625. *Add. Annotation*:—*Mentd. Brown v. Swan* (1921), 37 T. L. R. 787.

627. *Add. Annotation*:—*Consd. Garrard v. James*, [1925] Ch. 616.

628. *Add. Annotation*:—*Mentd. British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.

629. *Add. Citation*:—88 I. J. K. B. 55.

*Add. Annotations*:—*Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110; *Re Polemis & Furness, Withy*, [1921] 3 K. B. 560; *Jones v. Waring & Gillow*, [1926] A. C. 670.

631. *Add. Annotations*:—*Consd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Mentd. Taxation Comrs. v. English Scottish & Australian Bank*, [1920] A. C. 683; *Goldman v. Cox* (1924), 40 T. L. R. 423; *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Australian Bank of Commerce v. Perel*, [1926] A. C. 737; *Jones v. Waring & Gillow*, [1926] A. C. 670; *Fenton Textile Assocn. v. Thomas* (1929), 45 T. L. R. 264.

636. *Add. Annotation*:—*Mentd. British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.

639a. *Payment to third party without valuable consideration—Right of bank to recover.*—*Deft. H. having possessed himself of crossed*

## PART II. SECT. 10.

635 ii a. — — — — —.]—In an action by a customer of deft. bank to recover the aggregate amount of a number of cheques forged by a confidential clerk employed by the customer, which were paid by the bank & charged to the customer's account, the fraud being skilfully concealed from

both customer & bank:—*Held*: with the exception of certain cheques bearing genuine signatures, the amounts of which were raised by the clerk, there was no negligence on the part of either the customer or the bank in failing to discover the frauds.—*COLUMBIA GRAPHOPHONE Co. v. UNION BANK OF CANADA* (1916), 38 O. L. R. 326; 34 D. L. R. 743.—*CAN.*

635 ii b. — — — — —.]—A customer of a bank was estopped from denying that certain forged cheques were signed by him or by his authority, by reason of his conduct in not having notified the bank when he learned of the forgery of previous cheques on his account by the same person.—*CABANA v. BANK OF MONTREAL*, [1919] 3 W. W. R. 969.—*CAN.*

cheques which were drawn on pltf. bank in his favour & which purported to be drawn by his employer's authority defrauded his employer by paying them into a bank, which collected them & credited H. with the amounts. H. drew out these amounts & paid some of the money without valuable consideration to deft. S., who in turn paid into her account with deft. bank a portion of what she so received. S. had no notice of any defect in H.'s title, & she never paid into her account with deft. bank any money except money which was part of the proceeds of H.'s frauds. In an action for a declaration that the money standing to the credit of S. with deft. bank was the property of pltf. bank:—*Held*: on the assumption that H. obtained a voidable title to the proceeds of the cheques, yet pltf. bank had established their right to the money claimed, as it was capable of being traced.—*BANQUE BELGE POUR L'ETRANGER v. HAMBROUCK*, [1921] 1 K. B. 321; 90 L. J. K. B. 322; 37 T. L. R. 76; 65 Sol. Jo. 74; 26 Com. Cas. 72, C. A.

*Annotation*:—*Expld.* Jones v. Waring & Gillow, [1925] 2 K. B. 612.

640. *Add. Annotation*:—*Mentd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.

644. *Add. Citation*:—88 L. J. K. B. 55.

*Add. Annotations*:—*Consd.* Auchteroni v. Midland Bank, [1928] 2 K. B. 294. *Mentd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110; *Re Polemis & Furness, Withy*, [1921] 3 K. B. 560; Jones v. Waring & Gillow, [1926] A. C. 670.

646. *Add. Annotation*:—*As to* (2) *Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.

649. *Add. Annotations*:—*Consd.* Koechlin v. Kestenbaum, [1927] 1 K. B. 889. *Refd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

652. *Add. Annotations*:—*Refd.* Goldman v. Cox (1924), 40 T. L. R. 744. *Mentd.* Jones v. Waring & Gillow, [1926] A. C. 670.

658. *Add. Annotation*:—*Refd.* Bow's Emporium v. Brett (1927), 44 T. L. R. 194.

662. *Add. Annotation*:—*Generally*, *Mentd.* Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

663. *Add. Annotations*:—*Refd.* Auchteroni v. Midland Bank, [1928] 2 K. B. 294. *Mentd.* Quebec Ry., Light, Heat & Power Co. v. Vandry, [1920] A. C. 662; McDonald v. Nash, [1924] A. C. 625; Samuel v. Dumas, [1924] A. C. 431; Ouellette v. Canadian Pacific Ry., [1925] A. C. 569; Gilbert v. Gilbert & Bougher (1927), 96 L. J. P. 137; Shotts Iron Co. v. Curran, [1929] A. C. 409; Tilling-Stevens Motors v. Kent County Council & Transport Minister, [1929] 1 Ch. 66.

666. In paragraph for "protected by Bills of Exchange Act, 1882 (c. 61), s. 19," read "protected by Stamp Act, 1853 (c. 59), s. 19." *Add. Annotations*:—*Refd.* Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. *Mentd.* Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

667. *Add. Annotation*:—*Refd.* Lloyds Bank v. Chartered Bank of India (1927), 44 T. L. R. 165.

668a. ——— ——— ——— ——— ———] — M., who was secretary & managing director of pltf. co.,

represented that he had bought goods for them from W., & the co. drew cheques to the aggregate amount of £762 in payment on a South African bank, making them payable to W., & handing them to M. as manager that he might hand them to W. M., instead of doing so, paid the cheques with forged indorsements into his own account with deft. bank which credited him with the amounts & obtained payment from the South African bank. The cheques were signed by two directors, including M., of pltf. co. M. applied the money received from the cheques with the exception of about £272 for W., paying out of the proceeds of five cheques "to order" for £62 10s. each four sums of £60 from his private account to W. One cheque, dated May 27, 1918, for £97 10s., which was payable to "self or order" & signed by M. & a co-director, was refused by the bank, & came back to them after such refusal with M.'s name written in after the word "self," but the alteration was not initialed by both directors, & the addition was in M.'s writing. Pltf. co. repudiated the transactions & sued the bank for damages for conversion of the cheques, or alternatively for money had & received. Deft. bank claimed protection under Bills of Exchange Act, 1882 (c. 61), s. 82, & also as holders for value:—*Held*: (1) the onus of proving that there was no negligence had been discharged by the bank, except as to the five cheques for £62 10s. each; (2) the bank's duty with regard to these five cheques was to have made inquiries, & they were negligent in paying them into M.'s account; (3) the bank was negligent in cashing the cheque of May 27, 1918, as it should have seen that the alteration in it was made without the concurrence of both directors; (4) the evidence was not sufficient to show that M. paid anything out of his private account to W. in respect of the fifth cheque for £62 10s.; (5) there must be judgment for pltf. co. for £2 10s. on four of the cheques "to order" for £62 10s., £62 10s. on the fifth cheque for the same amount, & £97 10s. on the cheque of May 27, 1918, making an aggregate amount of £170.—*SOUCLETTE, LTD. v. LONDON COUNTY, WESTMINSTER & PARR'S BANK, LTD.* (1920). 36 T. L. R. 195.

670. *Add. Annotations*:—*Refd.* Importers Co. v. Westminster Bank, [1927] 2 K. B. 297. *Mentd.* Dey v. Mayo, [1920] 2 K. B. 346; Brown v. Swan (1921), 37 T. L. R. 787; Sutters v. Briggs, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

671. *Add. Citations*:—*sub nom.* MATHEWS v. WILLIAMS, BROWN & Co., 10 R. 210.

672a. ——— Collection for another bank.] — IMPORTERS CO. v. WESTMINSTER BANK, No. 292b, *ante*.

673. *Add. Annotation*:—*Refd.* Taxation Comrs. v. English, Scottish & Australian Bank, [1920] A. C. 683.

674. *Add. Annotations*:—*As to* (2) *Consd.* Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. *Refd.* London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

676. *Add. Annotations*:—*Apld. Brown v. Swan* (1921), 37 T. L. R. 787. *Consd. Re Farrows' Bank*, [1923] 1 Ch. 41. *Refd. Dey v. Mayo*, [1920] 2 K. B. 346; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.
677. *Add. Annotations*:—*Refd. Dey v. Mayo*, [1920] 2 K. B. 346; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297. *Mentd. British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
678. *Add. Annotation*:—*Mentd. Souchette v. London County Westminster & Parr's Bank* (1920), 36 T. L. R. 195.
679. *Add. Annotation*:—*Distd. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.
680. *Add. Annotation*:—*Consd. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.
- 680a. "Receives payment"—*Collecting bank.*—*IMPORTERS CO. v. WESTMINSTER BANK*, No. 292b, *ante*.
681. Before this case add "See, also, Nos. 674—680."
684. *Add. Annotations*:—*Apld. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Refd. Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.
685. *Add. Annotation*:—*Apld. Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.
687. *Add. Annotations*:—*Consd. Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Refd. Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.
- 687a. ————*J.*—*L.*, who was the chief accountant at the Bombay branch of pltf. bank, & was authorised to sign cheques on their behalf, had by a system of fraud procured the signature by another official of the branch of cheques payable to deft. bank. Those cheques were then sent to deft. bank for collection, with instructions written by *L.* on the bank's letter paper requesting deft. bank to place the proceeds of the cheques to the credit of a joint account which *L.* had opened at deft. bank in the name of himself & his wife. Those instructions having been carried out, the proceeds of the cheques were then collected by *L.* promptly after they had been paid in. It appeared from the account itself that it was generally in small credit until the arrival of each fraudulent cheque, & there was a failure on the part of deft. bank to make inquiries of pltf. bank as to the regularity of the transactions:—*Held*: (1) each cheque taken by

itself was "issued," being signed & dealt with by persons having ostensible authority to sign & issue it, but the accompanying instructions, signed by *L.* alone, gave notice of irregularity which destroyed the "holding in due course"; (2) deft. bank were not entitled to rely on Indian Negotiable Instruments Act, s. 131, as their title as holders was defective through notice, so that they were not "true owners" within the sect.; (3) deft. bank had failed to discharge the burden of showing that they had collected without negligence. Examination of *L.*'s account should have put them on inquiry as to the source from which these payments were made, & pltf. were entitled to succeed in their claim for conversion; (4) defts. could not set off the amount of the cheques repaid to pltf. against the amount of the converted cheques.—*LLOYDS BANK v. CHARTERED BANK OF INDIA, AUSTRALIA & CHINA*, [1929] 1 K. B. 40; 97 L. J. K. B. 609; 139 L. T. 126; 44 T. L. R. 534; 33 Com. Cas. 306, C. A.

*Annotations*:—*As to* (3) *Refd. Fenton Textile Assocn. v. Thomas* (1929), 45 T. L. R. 264.

690. *Add. Annotations*:—*As to* (1) *Consd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd. Taxation Comrs. v. English, Scottish & Australian Bank*, [1920] A. C. 683; *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Australian Bank of Commerce v. Perel*, [1926] A. C. 737. *Generally, Refd. Goldman v. Cox*, (1924), 40 T. L. R. 423. *Mentd. Jones v. Waring & Gillow*, [1926] A. C. 670.

691. *Add. Annotation*:—*As to* (2) *Refd. Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

691a. ———— *Cheque payable to & indorsed by public official.*—*A banker to whom a private customer hands, for collection on his account, a cheque payable to & indorsed by a public official is put upon inquiry whether the customer is entitled to the cheque, & acts negligently if he credits the customer with the proceeds of the cheque without having made any such inquiry.*

The Overseas Military Forces of Canada engaged in the European war had an estates office in England authorised by the Secretary of State for the Colonies to perform in accordance with statutory conditions the duties of collecting & distributing the estates of members of these forces dying in Europe. A sergeant employed at the office misappropriated during a period of ten months thirty-two cheques of the aggregate value of about £3,900, representing money belonging to the estates of deceased soldiers. Each of the cheques was drawn payable to "The Officer in Charge, Estates Office, Canadian Overseas Military Forces," & was indorsed

## PART II. SECT. 12, SUB-SECT. 3.

691i. *What is negligence—Defective title of customer—Collection for stranger.*—*A man unknown to a banker was permitted to open an account with the bank by paying in a deposit of £5 in notes & four crossed cheques for collection, such cheques being made payable to a number or bearer & marked "bank," or "not negotiable," or "bank not negotiable."* Without

making any inquiry as to the man's title to the cheques the bank collected them. On the following day the man, by an open cheque, drew out almost the whole of the amount to the credit of his account, & paid in for collection four other crossed cheques, including one drawn by pltf. payable to a number or bearer to which the man who paid it in had no title. Those four cheques were collected by the bank almost without inquiry:—*Held*: the cir-

cumstances in which the account was opened was such as to put the bank upon inquiry: the duty of inquiry extended to the transactions of the next day & in the absence of reasonable inquiry the bank was guilty of negligence.—*LONDON BANK OF AUSTRALIA, LTD. v. KENDALL* (1920), 28 C. L. R. 401.—*AUS.*

691 ii. ————*J.*—*MASON v. SAVINGS BANK OF SOUTH AUSTRALIA*, [1925] S. A. S. R. 198.—*AUS.*

generally by that officer under the same description with a view to its being sent to the Paymaster-General of these forces for payment of the amount to the beneficiaries, or in some cases directly to the beneficiary, & each cheque was crossed generally. The sergeant paid the first two cheques into a branch of debts' bank at which he had a small private account of his own & the rest of them into another branch of the bank which passed them on to the former branch. No inquiry was made at either branch whether he was entitled to the cheques, & at the former branch they were credited to his account & payment of them was received for him. In an action by the Paymaster-General against debts. for damages for conversion of the cheques:—*Held*: the fact that the cheques were drawn payable to & indorsed by a public official should have put the cashiers of debts. upon inquiry whether their private customer was entitled to the cheques; in crediting the cheques to him without any inquiry the cashiers of both the branches had been guilty of negligence; & therefore debts. were not protected by Bills of Exchange Act, 1882 (c. 61), s. 82, from liability to pltf.—*Ross v. LONDON COUNTY, WESTMINSTER & PAR'S BANK*, [1919] 1 K. B. 678; 88 L. J. K. B. 927; 120 L. T. 636; 35 T. L. R. 315; 63 Sol. Jo. 411.

*Annotations*:—*Consd.* *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. *Refd.* *Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

691b. ——— *Cheque payable to company.*—*UNDERWOOD (A. L.), LTD. v. BANK OF LIVERPOOL, SAME v. BARCLAYS BANK*, No. 387a, *ante*

691c. ——— *In 1922 pltf. were building ships for a firm, L. M. & P., & in connection with that business L. M. & P. sent pltf. a crossed cheque for £8,000. That cheque was duly received at pltf.' office & B., a director, signed a receipt form on the back of the cheque as follows: "L. & M. Shipbuilding Co. T. B. director." Another director of pltf., J., then indorsed the cheque to the order of another co. of which B. was a director, B. & Co. Ltd. The cheque was then indorsed by B. "for & on behalf of B. & Co. T. B. director," & was paid into the account of B. & Co. at a branch of debts.; & subsequently by arrangement between debts. & himself B. drew £2,000 out of the £8,000 thus credited to B. & Co. Ltd. for his own private purposes. J. had no right to indorse the cheque to the order of B. & Co., & B. & Co. had no right to the proceeds of the cheque. In 1923 pltf. went into liquidation, & the liquidator on examining the accounts found that the cheque for £8,000 had been misapplied, & also that other sums were owing by B. to pltf. The liquidator thereupon proceeded by a misfeasance summons against J. & B., & upon that summons an order was made for £450 against J. &*

£10,450 against B. The money was not paid, & pltf. brought an action against debts. for conversion of the £8,000 cheque:—*Held*: there was clear evidence of negligence on the part of debts., & Bills of Exchange Act, 1882 (c. 61), s. 81, gave no defence to the claim.—*LONDON & MONTROSE SHIPBUILDING & REPAIRING CO., LTD. v. BARCLAYS BANK* (1926), 31 Com. Cas. 182, C. A.

692a. ——— *TAXATION COMRS. v. ENGLISH, SCOTISH & AUSTRALIAN BANK*, No. 292a, *ante*.

692b. ——— *Question of fact.*—The question whether a banker in receiving payment of a cheque for a customer has acted without negligence, so as to be protected by Bills of Exchange Act, 1882 (c. 61), s. 82, if the customer has no title thereto, is a question of fact. Where there was a missing link in the chain of identification of the customer:—*Held*: that fact ought to have put the bank upon inquiry, & the bank was not protected by the sect.—*HAMPSTEAD GUARDIANS v. BARCLAYS BANK, LTD.* (1923), 39 T. L. R. 229; 67 Sol. Jo. 440.

693. *Add. Annotation*:—*Refd.* *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67.

694. For "forgot" in the seventh line of the paragraph read "forged."

*Add. Annotations*:—*Refd.* *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297. *Mentd.* *Dey v. Mayo*, [1920] 2 K. B. 346; *Brown v. Swan* (1921), 37 T. L. R. 787; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

696. *Add. Annotations*:—*Mentd.* *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443; *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.

697. *Add. Annotation*:—*Mentd.* *Sun Bldg. Soc. v. Western Suburban Bldg. Soc.*, [1921] 2 Ch. 83.

703. *Add. Annotations*:—*Refd.* *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd.* *Quebec Ry. Light, Heat & Power Co. v. Vandry*, [1920] A. C. 662; *McDonald v. Nash*, [1924] A. C. 625; *Samuel v. Dumas*, [1924] A. C. 431; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Shotts Iron Co. v. Curran*, [1929] A. C. 409; *Tilling-Stevens Motors v. Kent County Council & Transport Minister*, [1929] 1 Ch. 66.

704. *Add. Annotation*:—*As to (2) Refd.* *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.

710. *Add. Annotation*:—*Mentd.* *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.

713. *Add. Annotation*:—*Consd.* *Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

## PART II. SECT. 13, SUB-SECT. 1.

699 III. ——— *BHARAT NATIONAL BANK v. BANARJE DAS* (1923), 1 L. R. 5 Lah. 129.—*IND.*

*sp. Signing vouchers as to correctness of account in pass-book—Estoppel.*—*COLUMBIA GRAPHOPHONE CO. v. UNION BANK OF CANADA* (1916), 38 O. L. R. 326; 34 D. L. R. 743.—*CAN.*

*st. ———.*—Monthly vouchers regularly signed by a bank's customer as to the correctness of his account as it stood from time to time & given in exchange for cancelled cheques, were held to be fatal to his contention that certain cheques had not been credited to him.—*UNION BANK OF CANADA v. WOOD*, [1920] 3 W. W. R. 173.—*CAN.*

*sw. ———.*—*CAMPBELL v. IMPERIAL BANK*, [1924] 4 D. L. R. 289; 55 O. L. R. 318.—*CAN.*

713 II. ——— *The delivery of a pass-book cannot constitute a donatio mortis causa so as to give the donee title to the money represented by it.*—*CUSAOK v. DAY*, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—*CAN.*

717. *Add. Annotation* :—*Mentd. Souchette v. London County Westminster & Parr's Bank* (1920), 38 T. L. R. 195.

728. *Add. Annotation* :—*Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294.

734. *Add. Annotations* :—*Apld. British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328. *Refd. Admiralty Comrs. v. National Provincial & Union Bank of England* (1922), 127 L. T. 452; *Steam Saw Mills Co. v. Baring, Archangel Saw Mills Co. v. Baring*, [1922] 1 Ch. 244; *Jones v. Waring & Gillow*, [1926] A. C. 670.

748. *Add. Annotation* :—*Refd. Sassoon v. International Banking Corp.*, [1927] A. C. 711.

752. *Add. Annotations* :—*Refd. Sassoon v. International Banking Corp.*, [1927] A. C. 711. *Mentd. Wilson v. United Counties Bank*, [1920] A. C. 102.

753. *Add. Annotations* :—*Consd. Sassoon v. International Banking Corp.*, [1927] A. C. 711. *Mentd. Re Dresdner Bank (London Agency)* (1920), 64 Sol. Jo. 426.

756. *Add. Annotations* :—*Mentd. Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532; *The Tervaele*, [1922] P. 259; *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385.

756a. *Credit conditional on tender of approved insurance policy*.—What is approved insurance policy.]—Bankers issued a letter of credit to English sellers of 100 tons of steel plates to Dutch buyers. By the terms of the letter of credit the bankers agreed to honour the sellers' draft for the amount of the purchase-money, which included freight & insurance to R., provided the draft were accompanied by an approved insurance policy covering the shipment of the goods. The sellers presented their draft accompanied by a certificate of insurance which did not contain & did not offer any means of ascertaining the full terms of the insurance. In an action by the sellers against the bankers for not honouring the draft :—*Held* : the certificate was not an "approved insurance policy" within the meaning of the letter of credit, & the bankers were justified in refusing to honour the draft. An approved insurance policy is one to which no reasonable objection can be made.—*SCOTT (DONALD H.) & Co., LTD. v. BARCLAYS BANK, LTD.*, [1923] 2 K. B. 1; 92 L. J. K. B. 772; 129 L. T. 108; 39 T. L. R. 198; 67 Sol. Jo. 456; 28 Com. Cas. 253, C. A.

*Annotations* :—*Refd. Harper v. Mackenzie*, [1925] 2 K. B. 423; *Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692; *Sassoon v. International Banking Corp.*, [1927] A. C. 711; *De Monchy v. Phoenix Insce. Co. of Hartford* (1928), 138 L. T. 703. *Mentd. Malmberg v. Evans* (1924), 41 T. L. R. 38; *Tredegar v. Harwood*, [1928] Ch. 59.

756b. *Irrevocable letter of credit—Payment for goods—Refusal of bank to pay invoices—Liability of bank to seller*.—Pltfs. entered into a contract with buyers in C. to manufacture & ship machinery by instalments over several months at agreed prices, but

subject to a stipulation that should the cost of labour or wages increase, there should be a corresponding increase in the purchase price. The buyers were also to open a "confirmed irrevocable credit" in favour of pltfs. with a bank in this country, & to pay for each shipment as it took place. In pursuance of this arrangement defts., who were the buyers' bankers in L., wrote to pltfs. stating that they would pay bills drawn on the buyers to the extent of £70,000, the bills to be accompanied by documents & to be received before Apr. 14, 1921, "this to be considered a confirmed irrevocable credit." Pltfs. shipped two instalments under the contract & received payment under the letter of credit. The buyers then found that the invoices included an increase in the purchase price on account of wages & material, & instructed defts. only to pay so much of the next invoices as represented the original prices. Defts. accordingly refused to pay the bill presented on the next shipment & pltfs. then cancelled the contract, claiming damages from defts. as on a repudiation by the buyers :—*Held* : the credit being irrevocable, the refusal of defts. to take & pay for the particular bills on presentation of the proper documents constituted a repudiation of the contract as a whole, & pltfs. were entitled to damages so reckoned. The basis of this form of banking facility is that the buyer is taken, as between himself & the banker, to accept the seller's invoices as correct. Any adjustment must be made by way of refund by the seller & not by way of retention by the buyer.—*URQUHART LINDSAY & Co. v. EASTERN BANK, LTD.*, [1922] 1 K. B. 318; 91 L. J. K. B. 274; 126 L. T. 534; 27 Com. Cas. 124.

*Annotation* :—*Refd. Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372.

756c. *Revocable letter of credit—Duty of bank to give notice of withdrawal*.—A firm in W., who wished to buy a quantity of asbestos sheets from pltfs., a firm in L., instructed defts. to open a credit in favour of pltfs. Defts. accordingly wrote a letter dated June 14, 1920, to pltfs. informing them of their instructions & adding that their letter "is merely an advice of the opening of the above-mentioned credit, & is not a confirmation of the same." On July 20, 1920, pltfs. shipped part of the goods to the buyers & were paid the agreed price by defts. on presentation of the stipulated documents which included bills of lading & a draft on defts. On Aug. 4, 1920, defts. were instructed by cable that the credit was withdrawn. On Sept. 30, 1920, pltfs., not having had notice of the withdrawal of the credit, shipped the balance of the goods to the buyers, but defts. refused payment of a draft for the price. Pltfs. brought an action against defts. for recovery of the balance of the credit, alleging (*inter alia*) that it was the

## PART II. SECT. 16.

a i. —.]—A document in the form of a letter written by a bank was as follows :—"We beg to inform you that we are in receipt of advice by wire from our London office that a confirmed irrevocable credit has been opened under which we are authorised to negotiate your bills, as offered on G. & Co., of London, to the extent of

£16,875 on the following conditions : bills to be drawn payable three months after sight & to be accompanied by proper shipping documents representing shipment of two thousand bales of jute of a particular mark from Calcutta to Antwerp, during Nov., Dec. 1920." Among the conditions, the two following were the most important :—(a) "Please note that this advice does not release you from

the liability attaching to the drawer of a bill of exchange"; (b) "Under present conditions we can give no undertaking to negotiate bills drawn under this credit".—*Held* : the document was not an ordinary banker's letter of credit.—*CHANDANMULL BENGANEY v. NATIONAL BANK OF INDIA, LTD.* (1923), 1 L. R. 51 Calc. 43.—IND.

duty of debts. to give to plffs. reasonable notice that the credit had been withdrawn. There was evidence that it was the practice of debts. at once to inform persons to whom revocable credit was given of the withdrawal of the credit, but that in this instance, owing to pressure of business, they had forgotten to do so. Among the documents tendered to debts. on the application for payment on the second occasion was a bill of lading which debts. alleged was out of order, but which, according to plffs., was in exactly the same terms as the former bill of lading accepted by debts. without objection:—*Held*: (1) a letter in the form of that written by debts. on June 14, 1920, intimated to the person in whose favour the credit was opened that he might find that the credit was revoked at any time; (2) there was no legal obligation on debts. to give notice of the revocation of the credit; (3) the giving of notice was an act of courtesy which it was very desirable should be performed, but it was not founded upon any legal obligation.—*CAPE ASBESTOS CO., LTD. v. LLOYDS BANK, LTD.*, [1921] W. N. 274.

760. *Add. Annotations*:—*Refd.* Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244. *Mentd.* Janvier v. Sweeney (1919), 35 T. L. R. 226; Pratt v. British Medical Assocn., [1919] 1 K. B. 244; Rand v. Craig, [1919] 1 Ch. 1; Percy v. Glasgow Corp., [1922] 2 A. C. 299; Underwood v. Bank of Liverpool & Martins,

Underwood v. Barclays Bank, [1924] 1 K. B. 775; Kreditbank Cassel G.M.B.H. v. Schenkens, [1927] 1 K. B. 826; Britt v. Galmoye & Nevill (1928), 44 T. L. R. 294; Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

767. *Add. Annotation*:—*Refd.* National Provident Institution v. Brown, Brown v. National Provident Institution, Provident Mutual Life Assce. Assocn. v. Ogston, Ogston v. Provident Mutual Life Assce. Assocn. (1921), 8 Tax. Cas. 57.
779. *Add. Annotation*:—*Refd.* Humphrey & Denman v. Kavanagh (1925), 41 T. L. R. 378.
785. *Add. Annotation*:—*Mentd.* Omnium Insce. Corp. v. United London & Scottish Insce. (1920), 36 T. L. R. 386.
798. *Add. Annotations*:—*Refd.* Humphrey v. Wilson (1929), 141 L. T. 469. *Mentd.* Maskell v. Hill, [1921] 3 K. B. 157.
805. *Add. Annotations*:—*As to* (1) *Refd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. *As to* (2) *Refd.* Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48.
806. *Add. Annotation*:—*Mentd.* Prosperity v. Lloyds Bank (1923), 39 T. L. R. 372.
809. *Add. Citations*:—88 L. J. K. B. 85; 119 L. T. 727.
- Add. Annotation*:—*Mentd.* Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.

## PART II. SECT. 19.

82. *Unauthorised application of proceeds*—*In payment of borrower's debts to other customers—Right to damages*.—After crediting plff. with the proceeds of a note which it discounted for him, debt. bank, without authority from him, applied nearly all of such proceeds to pay off debts which he owed to other customers of the same bank, & paid itself the amount of the note out of the proceeds of promissory notes which it held as collateral securities for advances made by it to him:—*Held*: plff. was entitled to nominal damages & costs for the breach of the contract to lend him the money, & to judgment for the amount of the proceeds of his note which the bank had so applied, together with interest.—*MARSH v. ROYAL BANK OF CANADA*, [1922] 1 W. W. R. 436; 63 D. L. R. 659; 15 Sask. L. R. 201.—*CAN.*

## PART II. SECT. 20, SUB-SECT. 1.

803 i. *Joint loan—Several liability*.—Three shareholders in a shipbuilding co., which was heavily indebted to a bank, agreed to purchase certain shares which belonged to the co. & were held by the bank as security. The price of the shares was £69,750, & the bank agreed to advance £39,750 "on joint loan" to the three purchasers, the balance being provided by them in equal portions. The shares were thereafter held by the bank in security of the sum advanced. The purchasers paid for the shares by granting their individual cheques to the sellers for £10,000 each, & by drawing joint cheques, signed by them all, on the bank for the £39,750 advanced. The bank paid this amount to the sellers, & opened a joint overdraft account in name of the three purchasers. The purchasers were not customers of the bank. The value of the shares having fallen, the bank intimated to one of the three purchasers that they held him liable for the whole amount of the loan. He thereupon brought an action concluding for declarator that he was liable only for one-third of the amount

of the loan, & that, on payment thereof, he was entitled to receive a transfer of the shares held in security by the bank:—*Held*: (1) the purchasers were not jointly & severally liable, as drawers of the joint cheques, to the bank as a holder in due course, in respect that the cheques had been paid by the bank as drawee & were thus no longer subsisting documents of debt; (2) the loan was constituted by the agreement to advance it, which imposed only a joint liability, & not by the cheques; (3) the transfer of the shares to the bank in security of the loan, being merely a part of the contract to advance to the borrowers jointly, the pursuer was entitled, on payment of his *pro rata* liability, to receive a transfer of his proportion of the shares.—*COATS v. UNION BANK OF SCOTLAND, LTD.*, [1928] S. C. 711.—*SCOT.*

809 i. *Discharge of overdraft—Tender of cheque—It had amounts to acceptance*.—*Held*: the action of the bank in retaining & clearing the cheque was not conclusive on the question of acceptance, & as the bank had not accepted the proceeds of the cheque in full settlement, judgment had been rightly entered for the bank.—*BURT v. NATIONAL BANK OF SOUTH AFRICA, LTD.*, [1921] App. D. 59.—*S. AF.*

## PART II. SECT. 20, SUB-SECT. 2.

y i. — — — — —.]—Where there is an agreement between a bank & its customer, that he shall pay interest at the rate of 8 per cent. upon a promissory note, the agreement is not entirely void, & the customer remains liable to pay interest at the rate of 5 per cent.—*STANDARD BANK OF CANADA v. ALBERTA ENGINEERING CO., LTD.* (1917), 1 W. W. R. 1177; 33 D. L. R. 542; 11 Alta. L. R. 96.—*CAN.*

y ii. — — — — —.]—The stipulation by a bank for an illegal rate of interest merely avoids the rate & not the entire contract for interest.—*UNION BANK v. FARMER*, [1917] 1 W. W. R. 1361.—*CAN.*

y iii. — — — — —.]—Plff. was

indebted to debt. bank for which debt they took his note charged with interest at 9 per cent. Order made for reduction of interest to 5 per cent.—*DREGE v. UNION BANK OF CANADA* (1922), 63 D. L. R. 688.—*CAN.*

y iv. — — — — —.]—Where 'a bank contracts for 8 per cent. interest it can only collect the legal rate of 5 per cent.—*BANK OF MONTREAL v. HOLBOFF*, [1923] 3 W. W. R. 645.—*CAN.*

—.]—A provision in a guarantee given a bank that any account settled or stated by or between the bank & its customer may be adduced by the bank as conclusive evidence against the guarantor, cannot be held binding on the guarantor, when there is included in the amount so stated interest charges at a rate in excess of the maximum legal rate allowed under Bank Act.—*ROYAL BANK OF CANADA v. MCHIRDE*, [1927] 1 D. L. R. 909; [1927] 1 W. W. R. 245; 21 Sask. L. R. 417.—*CAN.*

y vi. — — — — —.]—Where interest on a loan has been charged up to a borrower's current account at a rate in excess of 7 per cent. & such charges have been included in the statements furnished him from month to month, & without making any objection thereto, he has signed & returned such statements as satisfactory, he cannot complain, in an action to recover the loan & interest, that the charges for interest at that rate were illegal.—*ROYAL BANK OF CANADA v. DOTEN (Alta.)*, [1927] 3 D. L. R. 305; [1927] 2 W. W. R. 670.—*CAN.*

y vii. — — — — —.]—*Whether charged*.—Upon the return of a dishonoured bill, the drawer would again draw for the same amount, & plff. bank would discount the bill as before, & if the second bill came back dishonoured it would again be charged in full to the drawer's account:—*Held*: there was no breach of Bank Act, s. 91.—*IMPERIAL BANK OF CANADA v. ALLEY*, [1926] 3 D. L. R. 85; 59 O. L. R. 1.—*CAN.*



820. *Add. Annotation*:—*Mentd. Re Morris*, May-hew v. Halton, [1921] 1 Ch. 172.

844. *Citations*:—For "61 L. J. Ch. 732" read "61 L. J. Ch. 723."

*Add. Annotations*:—*Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

846a. ——— *Bank entitled to hold securities not merely for specific advance but for balance of whole account between broker & bank.*—*TINDALL v. BARNETTS & HOARE* (1887), 3 T. L. R. 476.

859. *Add. Annotation*:—*Mentd. Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.

8a. *Raising rate of interest—Whether customer bound.*—The mere sending of a notice that the interest charged on overdrafts against security held by the bank has been raised, is not of itself sufficient to render a customer liable to pay the enhanced rate, but where, after receiving such a notice, the customer borrows more money from the bank, the bank is justified in charging him interest at the enhanced rate. *GADDAR MAL v. TATA INDUSTRIAL BANK, LTD., BOMBAY* (1927), 1 L. R. 49 All. 674.—*IND.*

**PART II. SECT. 21, SUB-SECT. 1.**

d i. *Liability contracted after execution of mortgage.*—A mtge. to a bank cannot be a valid security for a liability contracted subsequently to its execution. *Re EDMONTON BREWING & MALTING CO., LTD.* (No. 2), [1918] 3 W. W. R. 988; 43 D. L. R. 748.—*CAN.*

n. *Add "affd."*, 58 S. C. R. 448."

**PART II. SECT. 21, SUB-SECT. 2.**

—*QUEBEC BANK v. PHILLIPS*, [1917] 2 W. W. R. 365; 10 Sask. L. R. 190; 36 D. L. R. 440.—*CAN.*

**PART II. SECT. 21, SUB-SECT. 3.**

837i. *Promissory note—Bank parting with possession—Right to recover.*—Where a promissory note which had been pledged by the holder thereof to his bank as collateral security was lost by the bank:—*Held*: the bank was liable to him for the value thereof, which was *prima facie* its face value. *ROYAL BANK OF CANADA v. TALBOT*, [1928] 3 D. L. R. 157; [1928] 2 W. W. R. 190; 34 Alta. L. R. 395.—*CAN.*

ri. *Money advanced partly on security of land.*—A bank may recover upon a promissory note notwithstanding that the moneys were advanced upon the security in part of lands. *ROYAL BANK OF CANADA v. GOLD*, [1918] 2 W. W. R. 745; 21 B. C. R. 145; 41 D. L. R. 276.—*CAN.*

ai. *New note given by maker—Rights of bank.*—*Held*: the bank was entitled to recover on the note. *BANK OF MONTREAL v. WEISDEPP*, [1917] 2 W. W. R. 615; 24 B. C. R. 73; 34 D. L. R. 36.—*CAN.*

aii. *Conversion of specific security into general security.*—*Held*: as the bank knew that debtor had no right to hypothecate generally the notes they could not recover, not being holders in due course. *BANK OF MONTREAL v. NORMANDIN*, [1925] 3 D. L. R. 975; [1925] S. C. R. 687.—*CAN.*

fi. *Obtained to cover overdraft—Alleged fraud of manager.*—*Pltf.* alleged that a bank manager obtained a note from him without disclosing that the note was for payment of an overdraft then due to the bank. Application for judgment dismissed for want of any evidence of fraud on the bank manager's part. *BRASSETT v. ROYAL*

*BANK OF CANADA* (1921), 67 D. L. R. 740.—*CAN.*

f ii. *Renewal—Effect of.*—The renewal by defts. of a promissory note given to *pltf.* bank as security for a loan:—*Held*: not to estop them from setting up the defence that the bank had received & misapplied the proceeds of goods covered by a lien note which they had assigned to the bank as collateral security, such proceeds having been paid into the bank by the maker of the lien note. *CANADIAN BANK OF COMMERCE v. REID*, [1925] 3 D. L. R. 509; [1925] 1 W. W. R. 1060; 21 Alta. L. R. 337.—*CAN.*

**PART II. SECT. 21, SUB-SECT. 4.**

mi. *Stock registered in name of bank's nominee—Identity of shares not preserved—Rights of owner.*—A customer, who had a secured loan account with a bank which was operated upon in accordance with the above practice, averred that the bank had sold her shares without her authority, in breach of their obligation to retain the specific shares unless realised for reduction of the loan & to retransfer the identical shares on repayment of the loan:—*Held*: defenders had acted according to their usual practice, which was known to & approved by the firm of stockbrokers whom pursuer had employed as her agents in the transactions, & she was barred from insisting in the action. *CRIEGR v. BANK OF SCOTLAND*, [1922] S. C. (H. L.) 137; 59 S. C. L. R. 312.—*SCOT.*

pi. *Shares of company—Sale by bank before default—Measure of damages.*—*GEORGESON v. DOMINION BANK*, [1924] 3 D. L. R. 607; 2 W. W. R. 931.—*CAN.*

861 i. *Bearer securities—Presumed to belong to depositing customer.*—*BANK OF MONTREAL v. ISBELL*, [1925] 2 D. L. R. 30; *revg.* 26 O. W. N. 263.—*CAN.*

sb. *Advance to son—Representation by father that son entitled to shares.*—Upon the representation of a father that his son was entitled to an interest in certain shares in a co. standing in the name of another son, a bank lent money to the son:—*Held*: the bank was entitled to a declaration of its debtor's right to certain of such shares over which the father had control. *ROYAL BANK v. POPE*, [1917] 2 W. W. R. 1; 11 Alta. L. R. 68.—*CAN.*

**PART II. SECT. 21, SUB-SECT. 6.**

h (p. 277) i. *Indorsed by shipper to bank—Bank to apply part of proceeds to payment of promissory note.*—*Held*: no violation of Bank Act, s. 90. *ROYAL BANK OF CANADA v. WYE*, [1926] 4 D. L. R. 262; [1926] 2 W. W. R. 780; 36 Man. L. R. 14.—*CAN.*

h (p. 277) ii. *Bank taking barlee's receipt from parties for whom goods shipped—Duty of bank not to impair security.*—*SALTERS (JOSEPH)*

*Add. Annotations*:—*Mentd. Brandon v. Michelham* (1919), 35 T. L. R. 617; *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.

865. *Add. Annotations*:—*Apld. Re Allester*, [1922] 2 Ch. 211. *Refd. Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669. *Mentd. Pennington v. Reliance Motor Works*, [1923] 1 K. B. 127.

865a. *Bills of lading pledged—Authorised sale by pledgor—Title of bank to proceeds.*—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice ob-

*SONS, LTD. v. BANK OF NOVA SCOTIA*, [1926] 1 D. L. R. 581; 58 N. S. R. 389.—*CAN.*

q (p. 280) i. *Chattel mortgage to secure past debt—Subsequent mortgage of land—Right to enforce chattel mortgage.*—*Held*: (1) the mtge. was not contrary to Bank Act; (2) the fact that a mtge. on land was afterwards given to the bank did not prevent it from realising first on the chattel mtge. *PIPER v. CANADIAN BANK OF COMMERCE*, [1922] 1 W. W. R. 121.—*CAN.*

q (p. 280) ii. ———. *A. obtained advances & delivered to the bank storage tickets for wheat in elevators.*—*Held*: the security of the warehouse receipts would not cover past advances. *YOUNG v. DENCHER, BANK OF TORONTO v. ADAMES*, [1923] 1 D. L. R. 432; 18 Alta. L. R. 496; [1923] 1 W. W. R. 136.—*CAN.*

q (p. 280) iii. *Chattel mortgage as security for loan—Whether crops of following year chargeable.*—Security on grain given to a bank in Oct. 1921, in respect of advances made in the spring of 1920, held invalid in respect of the 1921 crop. *NORTH AMERICAN LUMBER CO., LTD. v. BANK OF MONTREAL*, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—*CAN.*

q (p. 280) iv. *Lease of chattels to secure advances.*—*Held*: the lease was invalid, the bank not having the power under Bank Act to take a lease of chattels as security. *BANK OF MONTREAL v. HUESTON* (1922), 69 D. L. R. 208; 51 O. L. R. 584.—*CAN.*

q (p. 280) v. *Lien agreements on goods—Valid.*—*Re CANADIAN HART PRODUCTS, LTD. (TRUSTEE) v. ROYAL BANK*, [1924] 4 D. L. R. 225; 54 O. L. R. 293; 4 C. B. R. 211.—*CAN.*

q (p. 280) vi. *Warehouse receipt for goods on leased premises—Valid.*—*Re J. STANLEY WEDLOCK, LTD. (P. E. I.)*, [1926] 2 D. L. R. 263; 7 C. B. R. 147.—*CAN.*

e (p. 281) i. *S. P. BANQUE CANADIENNE NATIONALE v. SAWCHUK*, [1926] 3 D. L. R. 964; [1926] 2 W. W. R. 771; 36 Man. L. R. 1.—*CAN.*

sc. *Security on crop to be grown—Priority over claim by vendor under crop-payment agreement.*—*GOEBEL v. CANADIAN BANK OF COMMERCE*, [1921] 3 W. W. R. 81; 14 Sask. L. R. 451.—*CAN.*

sd. *Security invalid under Bank Acts—Sale of goods to third party—Bank not entitled to follow goods or proceeds.*—*HAWKER v. ROYAL BANK OF CANADA* (1921), 59 D. L. R. 674.—*CAN.*

so. *Title of bank as against municipal lien for taxes.*—*Re ELECTRICAL FITTING & FOUNDRY CO., LTD. (Ont.)*, [1926] D. L. R. 752; 58 O. L. R. 364.—*CAN.*

tained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees to remit the entire net proceeds as realised:—*Held*: the bank's previous rights as pledgee remained unaffected by this common & convenient mode of realisation.—*Re ALLESTER (D.), LTD.*, [1922] 2 Ch. 211; 91 L. J. Ch. 797; 127 L. T. 484; 38 T. L. R. 611; 66 Sol. Jo. 486; [1922] B. & C. R. 190.

883. *Add. Annotation*:—*Generally, Refd. Lawrence v. Hayes*, [1927] 2 K. B. 111.

908. *Add. Annotations*:—*Mentd. Dey v. Mayo*, [1920] 2 K. B. 346; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.

916. *Add. Annotation*:—*Mentd. Ord v. Ord*, [1923] 2 K. B. 432.

921. *Add. Annotation*:—*Folld. Baker v. Lloyds Bank*, [1920] 2 K. B. 322.

921a. ————]—*Defts. acted as bankers for a firm up to Feb. 3, 1914, when the firm being insolvent by deed assigned all their property to pltf. as trustee for their creditors. The deed provided that payments to the creditors should be made upon the basis of a bkpcy. distribution of the property & that secured creditors should have the same rights as under a bkpcy. At the date of the deed the firm had £2,934 to the credit of their current account in deft. bank, & the bank held certain shares as security for an advance to the firm. These shares were subsequently sold by the bank & realised £812 in excess of the amount of the advance to the firm. Before Feb. 3, 1914, the firm had discounted with the bank a number of bills of exchange, which matured after that date, & in respect thereof the firm became the debtors of the bank to the amount of*

£19,941. In an action by pltf. as trustee under the deed to recover from the bank the two sums of £2,934 & £812, the bank claimed a lien on those sums & also to set off a sufficient portion of £19,941 against those sums:—*Held*: the bank's claim was right on both points.—*BAKER v. LLOYDS BANK*, [1920] 2 K. B. 322; 89 L. J. K. B. 912; 123 L. T. 330; [1920] B. & C. R. 128.

921b. ————]—*Balance of proceeds of sale of shares—Held as security for advances.*—*BAKER v. LLOYDS BANK*, No. 921a, *ante*.

923. *Add. Annotations*:—*Consd. Baker v. Lloyds Bank*, [1920] 2 K. B. 322; *Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221.

925. *Add. Annotation*:—*Refd. Re Southerden, Adams v. Southerden*, [1925] P. 177.

926. *Add. Annotation*:—*Consd. Baker v. Lloyds Bank*, [1920] 2 K. B. 322.

930a. ————]—*Liability for negligent payment of cheque—No right to set off sums recovered from customer by party defrauded.*—*LLOYDS BANK v. CHARTERED BANK OF INDIA, AUSTRALIA & CHINA*, No. 687a, *ante*.

932. *Add. Annotations*:—*Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179. *Mentd. Barker v. Stickney*, [1918] 2 K. B. 356.

932a. ————]—*Joint & several guarantee—Termination.*—By an agreement the six signatories thereto jointly & severally agreed with a Canadian bank to guarantee repayment up to a fixed sum of all liabilities, including interest, which a customer had or should incur to the bank: it was provided that the agreement should be a continuing guarantee "until the undersigned, or the exor. or administrator of the undersigned, shall have given the bank notice in writing to make no further advances on the security of this guarantee." In 1913, the bank, without notice to the guarantors but with the assent of the debtor, increased the rate of interest upon the advances to 8 per cent., though, by Bank Act (R. S. Can. c. 29), s. 91, it was illegal for a bank to charge more than 7 per cent. Subsequently one of the signatories

## PART II. SECT. 21, SUB-SECT. 7.

sf. *Assignment of mortgage—Or of agreement for sale of land—As additional security—Valid.*—*Re WIARTON LUMBER CO., Ex p. BANK OF COMMERCE*, [1924] 2 D. L. R. 160; 4 C. B. R. 477.—CAN.

sg. *Assignment of debts present & future & all contracts & securities—Valid.*—*Re WIARTON LUMBER CO., Ex p. BANK OF COMMERCE*, [1924] 2 D. L. R. 160; 4 C. B. R. 477.—CAN.

di. ————]—*Subsequent assignment to creditor—Duty of bank to account—Interest.*—Book debts were assigned as security to deft. bank. Subsequently they were assigned to pltf. subject to the assignment to the bank. The bank realised under its assignment:—*Held*: pltf. was entitled to an accounting from the bank in detail, & the bank could not, as against pltf., charge a higher rate of interest than permitted under Bank Act.—*ROBERTSON (JOHN) & SON, LTD. v. CANADIAN BANK OF COMMERCE*, [1920] 2 W. W. R. 1003.—CAN.

sh. *Assignment of money due under agreement for sale of land—Valid.*—*Re SHAW*, [1925] 3 D. L. R. 1205; 5 C. B. R. 825.—CAN.

sj. *Common law assignment of money—Subsequent security under*

*Bank Act—Property passed by assignment—Validity of security immaterial.*—*IMPERIAL BANK v. WESTERN SUPPLY & EQUIPMENT CO.* (1918), 39 D. L. R. 803.—CAN.

## PART II. SECT. 21, SUB-SECT. 8.

sk. *Prohibited security—Money lent thereunder recoverable.*—A bank may recover money lent upon a prohibited security although it cannot enforce the security.—*UNION BANK v. FARMER*, [1917] 1 W. W. R. 1361.—CAN.

## PART II. SECT. 22, SUB-SECT. 1.—A.

ni. ————]—A bank has not a lien in respect of a deposit or balance to the credit of a customer, as there is no specific property on which a lien can operate.—*Re MORRIS, CONEYS v. MORRIS*, [1922] 1 I. R. 81.—IR.

sl. *Lien on goods not in existence—Bank Act, s. 88.*—The owner of a timber licence, who proposes to go into the forest to cut down the trees & transform them into what is commercially known as pulpwood & who may require financial assistance from a bank before the pulpwood is produced in its commercial form, can give the bank which assists him a valid lien on the finished product, although not in existence as such at the time of the loan.—*LANDRY PULPWOOD CO., LTD. v. LA BANQUE CANADIENNE*

*NATIONALE*, [1928] 1 D. L. R. 493; [1927] S. C. R. 605.—CAN.

## PART II. SECT. 22, SUB-SECT. 1.—F.

sm. *Pledged to third party—Duty of bank to disclose lien.*—*Held*: such a duty existed.—*LAZARD BROTHERS & CO. v. UNION BANK OF CANADA* (1920), 47 O. L. R. 608; 18 O. W. N. 290; 51 D. L. R. 636.—CAN.

## PART II. SECT. 22, SUB-SECT. 2.

mi. ————]—*Held*: money to the credit of the customer not shown to be trust funds, might be retained & set off by the bank as against the indebtedness of the customer on the note.—*ROY v. CANADIAN BANK OF COMMERCE* (1918), 24 B. C. R. 397; 38 D. L. R. 742.—CAN.

sp. *Bank cashing cheque—Holder indebted to bank.*—A bank, to which a cheque has been delivered to be cashed, has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—*ROYXEL v. ROYAL BANK OF CANADA*, [1918] 2 W. W. R. 791; 11 Sask. L. R. 218.—CAN.

st. *Debt not recoverable—Statute-barred.*—A bank's right of set-off cannot be exercised where a debt is statute-barred & not recoverable.—*Re MORRIS, CONEYS v. MORRIS*, [1922] 1 I. R. 136.—IR.



died, & his exors. gave notice purporting to terminate the liability of the estate of the deceased under the guarantee:—*Held*: (1) the guarantee remained in force against all the guarantors until each & all of them or their respective exors. or administrators gave notice to determine it; (2) the increase in the rate of interest did not discharge the guarantors, but they were liable for the principal sum advanced & for such interest as the debtor was legally to pay.—*EGBERT v. NATIONAL CROWN BANK*, [1918] A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659; 35 T. L. R. 1, P. C.

*Annotation*.—*As to* (2) *Refd. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

961. *Add. Annotations*:—*Refd. Re Wait*, [1927] 1 Ch. 606. *Mentd. Ratner v. London Joint City & Midland Bank* (1922), 38 T. L. R. 253.

974. *Add. Annotation*:—*Consd. British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.

978. *Add. Annotations*:—*Mentd. Bradford Old Bank v. Sutcliffe* (1918), 88 L. J. K. B. 85; *Re Hodgson's Trusts, Public Trustee v. Milne*, [1919] 2 Ch. 189; *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652.

985. *Add. Annotation*:—*Consd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

986. *Add. Annotation*:—*Refd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

986a. ——— *Without consent of customer.*—It is an implied term of the contract between a banker & his customer that the bank will not divulge to third persons, without the consent of the customer express or implied,

either the state of the customer's account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a ct., or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it.

*Pltf.* was a customer of deft. bank. A cheque was drawn by another customer of defts. in favour of *pltf.*, who instead of paying it in to his own account indorsed it to a third person who had an account at another bank. On the return of the cheque to defts. their manager inquired of the last-named bank who the person was to whom it had been paid, & was told it was a bookmaker. That information defts. disclosed to third persons:—*Held*: that disclosure constituted a breach of defts.' duty to *pltf.*, for though the information was acquired not through *pltf.*'s account but through that of the drawer of the cheque, it was acquired by defts. during the currency of *pltf.*'s account & in their character as bankers.—*TOURNIER v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND*, [1924] 1 K. B. 461; 93 L. J. K. B. 449; 130 L. T. 682; 40 T. L. R. 214; 68 Sol. Jo. 441; 29 Com. Cas. 129, C. A.

*Annotation*.—*Refd. Waterhouse v. Barker*, [1924] 2 K. B. 759.

987. *Add. Annotation*:—*Refd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

990a. *Disclosing any other information relating to customer.*—*TOURNIER v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND*, No. 986a, *ante*.

## PART II. SECT. 23.

935 i. *Whether surety released.—Increase in rate of interest.*—*Held*: an increase in the rate of interest charged by the bank to an amount in excess of that authorised by Canadian Bank Act, without intimation to the guarantors, did not discharge them from their liability.—*EGBERT v. NATIONAL CROWN BANK*, [1918] A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659.—*CAN.*

935 ii. *S. P. MERCHANTS BANK OF CANADA v. BUSH*, [1918] 2 W. W. R. 574, 631.—*CAN.*

935 iii. ——— *Taking new security from principal debtor.*—*BANK OF NEW ZEALAND v. BAKER*, [1926] N. Z. L. R. 462.—*N.Z.*

935 iv. ——— *Note indorsed as security for specific purpose.—General hypothecation of note by creditor to bank.*—*Held*: surety released.—*GORDON v. HEBBLEWHITE*, [1927] 1 D. L. R. 817; [1927] S. C. R. 29.—*CAN.*

*sw. Account settled between bank & customer.—How far binding on surety of customer.*—Even if a certificate given by a customer of a bank of the correctness of the condition of his account as stated therein constitutes an account stated between the bank & its customer, yet such certificate cannot be conclusive as against the surety of the customer.—*STANDARD BANK OF CANADA v. ALBERTA ENGINEERING CO., LTD.*, [1917] 1 W. W. R. 1177.—*CAN.*

*sw. ——— Special agreement to accept account.*—An express provision in the guarantee given to the bank that the stating, settling or admission of an account between the creditor & the bank should be conclusive evidence against the sureties cannot be effective to prevent the

sureties from objecting to illegal charges, nor to charges, which though not illegal, were improper to the knowledge of the bank.—*NORTHERN CROWN BANK v. WOODCRAFTS, LTD.*, [1917] 1 W. W. R. 1205; 33 D. L. R. 367.—*CAN.*

*sz. Advance also secured by crop to be grown.—Right of surety to proceeds of crop.*—Where a bank advances money for the purchase of seed grain on the security of the crop to be grown therefrom & also procures the signature of a surety to the borrower's note, the surety has a right to have any money realised out of the crop appropriated to the reduction of the debt for which he became surety in priority to all other claims of the bank against the borrower.—*PROUDLOCK v. CANADIAN BANK OF COMMERCE*, [1925] 2 W. W. R. 150; 19 Sask. L. R. 413.—*CAN.*

## PART II. SECT. 25.

957 ii. ——— *Rights of bank.*—A cheque on the S. Bank, which was indorsed by the payee to the H. Bank, was deposited & applied against his overdraft after the H. Bank had suspended payment at its head office, but before notice thereof reached the local branch in which the cheque was deposited:—*Held*: the H. Bank was entitled to enforce payment of the cheque from the drawer.—*SULLIVAN v. HOME BANK OF CANADA*, [1927] 1 D. L. R. 1097; 3 S. C. R. 115.—*CAN.*

957 iii. *Collection of bills for customer.—Money received.—Rights of customer.*—Where a branch of resp. bank had received bills from appls. for collection & remittance of the proceeds, & after collection but prior to remitting the bank suspended payment:—*Held*: (1) appls., having employed the bank as a whole in a fiduciary capacity, were

entitled to a prior charge on the balances held by the bank as a whole at the date of suspension of payment; (2) appls. were not entitled to a prior charge on the bank's general assets.—*SHAW WALLACE & CO. v. AMRITSAR NATIONAL BANK (IN LIQUIDATION)* (1926), 1 L. R. 7 Loh. 155.—*IND.*

## PART II. SECT. 26.

985 ii. ——— *Neither the assignee of the equity of redemption of property mortgaged to a bank, nor a surety who has mortgaged property by way of collateral security to a bank is entitled to obtain from the bank the same full account that the bank is obliged to give its customer. A guarantor of a customer's account with a bank is not entitled to demand from the bank a copy of the account but is entitled to demand from the bank information as to the balance then owing, the rate of interest charged, & the amount, if any, realised by the bank in respect of collateral securities.*—*ROSS v. BANK OF NEW SOUTH WALES* (1928), 28 S. R. N. S. W. 539; 45 N. S. W. W. N. 117.—*AUS.*

## PART II. SECT. 28, SUB-SECT. 2.

*sa. Pay-in slips.*—A bank retaining pay-in slips which have accompanied payments into a customer's account does not hold them as the agen of the customer, who, consequently, will not be ordered in an action to which he is a party to produce them as documents in his possession or power. In such an action the ct. also declined to make any order relating to those documents under Evidence Act, 1915, s. 89.—*LEVER v. MACVIE*, [1928] V. L. R. 262; 49 A. L. J. 194; [1928] Argus L. R. 169.—*AUS.*

- 1008a. ——— *Prima facie* evidence of account.]—  
DOUGLASS *v.* LLOYDS BANK, LTD., No. 403a,  
*ante*.
1010. *Add. Annotation*:—*Refd.* Waterhouse *v.*  
Barker, [1924] 2 K. B. 759.
1011. *Add. Annotation*:—*Refd.* Ironmonger *v.*  
Dyne (1928), 44 T. L. R. 579.
1012. *Add. Annotation*:—*Refd.* Waterhouse *v.*  
Barker, [1924] 2 K. B. 759.
- 1012a. ——— *Entries tending to incriminate*.]—  
On an application under Bankers' Books  
Evidence Act, 1879 (c. 11), s. 7, for leave to  
inspect & take copies of entries in a banker's  
books before the trial of an action, the ct.  
is guided by the general rules regulating the  
inspection of documents before trial. There-  
fore if resp. to the application, being a party  
to the action, objects in proper form that  
the entries tend to incriminate him, the ct.  
will not grant the leave applied for.—WATER-  
HOUSE *v.* BARKER, [1924] 2 K. B. 759; 93  
L. J. K. B. 897; 132 L. T. 15; 40 T. L. R.  
805; 69 Sol. Jo. 51, C. A.
- 1012b. ————]—Where, under Bankers'  
Books Evidence Act, 1879 (c. 11), s. 7, an  
order is made for the inspection of a judgment  
debtor's account with a banker, the ct. has  
power to make the order extend to the  
banking account of a person other than  
debtor, if the account of that other person  
was controlled by debtor & was used by  
debtor for his or her own purposes.—  
IRONMONGER & CO. *v.* DYNE (1928), 44 T. L. R.  
579, C. A.
1013. For "ss. 2 & 5" read "ss. 2-5."  
*Add. Annotation*:—*Refd.* Waterhouse *v.*  
Barker, [1924] 2 K. B. 759.
1016. *Add. Annotation*:—*Refd.* Waterhouse *v.*  
Barker, [1924] 2 K. B. 759.
1017. *Add. Annotation*:—*As to* (1) *Apld.* Water-  
house *v.* Barker, [1924] 2 K. B. 759.
1018. *Add. Annotations*:—*Apld.* Waterhouse *v.*  
Barker, [1924] 2 K. B. 759. *Consd.* Iron-  
monger *v.* Dyne (1928), 44 T. L. R. 579.
1019. *Add. Annotation*:—*Refd.* Waterhouse *v.*  
Barker (1924), 132 L. T. 15.
1022. *Add. Annotation*:—*Refd.* Waterhouse *v.*  
Barker, [1924] 2 K. B. 759.

## BARRISTERS.

9. *Add. Annotations* :—**Mentd.** *Re Tetley, National Provincial & Union Bank of England v. Tetley* (1922), 39 T. L. R. 45; *Geologists' Assocn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271.
- 66a. **Before parliamentary commission.**—**BEFAST RIOTS COMMISSION CASE** (1886), 21 L. Jo. 556.
71. *Add. Annotation* :—**Refd.** *Marson v. Unmack* [1923] P. 163.
84. *Add. Annotations* :—**Mentd.** *Lexden & Winstreet Union v. Windsor Union*, [1921] 2 K. B. 143; *Wycombe Grdns. v. Barton-upon-Irwell Grdns.* (1926), 43 T. L. R. 89.  
After this case add the following cross-reference : *See, further, JUDGMENTS, Vol. XXX., pp. 203 et seq.*
123. *Add. Annotations* :—**Mentd.** *Ashhurst v. Mason, Ashhurst v. Fowler* (1875), L. R. 20 Eq. 225; *Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll* (1928), 98 L. J. K. B. 282.
- 162a. — **Right of junior counsel settling pleadings to lead another junior counsel.**—A member of the Outer Bar settled pleadings & led at trial. Another member of the Outer Bar was briefed to attend trial as his junior. On party & party taxation the taxing master disallowed the fees paid to the second counsel on the ground that the junior who settled the pleadings could not lead, but could be led by a senior either of the Outer or Inner Bar :—**Held** : junior counsel who settled pleadings could lead another junior counsel, & fees of both counsel should be allowed.—**DOUGLAS v. ASSOCIATED NEWSPAPERS, LTD.** (1922), 67 Sol. Jo. 48.
184. *Add. Annotation* :—**Mentd.** *Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.
191. *Add. Annotation* :—**Apld.** *Re Morgan, Brown v. Jones* (1927), 71 Sol. Jo. 650.
- 191a. — — — — —]—Where trustees are represented by the same firm of solrs. & one of them is interested in the trust fund beneficially. it is *prima facie* the solrs.' duty to employ separate counsel to represent the independent trustee, in order that the ct. may have the assistance of such separate counsel.—**Re MORGAN, BROWN v. JONES** (1927), 71 Sol. Jo. 650.
202. *Add. Annotation* :—**Mentd.** *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.
207. *Add. Annotation* :—**Mentd.** *A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508.
216. *Add. Annotation* :—**Mentd.** *Smith v. Smith & Rutherford*, [1920] P. 206.
- 220a. — **Of junior counsel—Proportionate to fee of leader.**—A junior counsel is entitled to be allowed two-thirds of the fee allowed to his leader & the taxing master has no power to direct that the amount of the fee of junior counsel on the hearing before the master in chambers should be deducted from the amount of the fee allowed on the adjourned

## SECT. 1, SUB-SECT. 1.

b i. — *Nature of duties devolving upon.*—The discharge of the duties under Law Society Act, now R. S. O., 1914, c. 157 is not a matter of mere private concern, but one affecting the public, having to do with the well-being of the society in maintaining the standards which should prevail in the legal profession; & unless in a case of manifest wrong, there should be no interference with the society's exercise of its statutory powers.—**HALL v. BALL** (1923), 54 O. L. R. 147.—**CAN.**

## SECT. 1, SUB-SECT. 2.—A.

11 ii. For " (1905), S. C. 221 " read "[1905] T. S. 221."

11 iii. — *Without examination—Managing clerk to solicitor.*—In Law Practitioners Act, 1908, s. 5, the words "managing clerk to a solr." must be taken in the strict sense to mean one who has control & supervision of other clerks in the solr.'s employ.—**Re CHALMERS**, [1918] N. Z. L. R. 561.—**N.Z.**

15 iia. — — — — —]—The ct. will not grant *mandamus* to compel Benchers of a Law Society to admit an individual as member with a view to his qualifying himself to be called to the Bar.—**Re HAGEL & LAW SOCIETY OF BRITISH COLUMBIA** (1922), 31 B. C. R. 75.—**CAN.**

## SECT. 2, SUB-SECT. 1.—D.

u i. *Before High Court of Madras—Exercising insolvency jurisdiction—Right to "act."*—Advocates, enrolled in the High Ct. of Madras, under Indian Bar Councils Act (I of 1926) are, by virtue of sects. 2 (a), 8 & 14 of the Act, entitled not only to appear & plead, but also to "act" in the insolvency jurisdiction of the High

Ct. Insolvency Rules of the High Ct., r. 128, which allowed advocates only to appear & plead in that jurisdiction, is no longer in force.—**Re POWERS OF ADVOCATES** (1928), 1 L. R. 52 Mad. 92.—**IND.**

## SECT. 2, SUB-SECT. 7.—A.

sa. *Barrister of five years' standing—What constitutes.*—**Held** : appl., who had been called to the Bar more than five years, but had never practised as a barrister, was a "barrister of not less than five years' standing" within the meaning of Industrial Arbn. Act, s. 6 (7).—**McCawley v. R.** (1918), 26 C. L. R. 9.—**AUS.**

## SECT. 3, SUB-SECT. 1.—A.

g. For "IR." at the end of this case read "**SIERRA LEONE.**"

sb. *For conviction for perjury in England—Disbarment in England—How far binding on Indian court.*—**Held** : (1) the loss of the privilege of being a barrister in England, though the only qualification for admission in India as an advocate, did not necessarily entail disbarment in the High Ct. (2) Suspension for one year ordered in this case.—**Re AN ADVOCATE** (1923), 1 L. R. 46 Mad. 903.—**IND.**

sc. *Professional misconduct—Under Pleaders' Act—Cavassing for work.*—S., a district pleader, holding a Sanad for the Surat District, sent circular postcards to the public under his signature as a High Ct. pleader stating that he had been authorised by the District Ct. to examine Wakf properties & to issue certificates. In fact all that he had been authorised to do was to examine accounts for certain specific Wakf properties on his separate application in each case, but was not

authorised to audit the accounts of Wakf properties generally :—**Held** : it was improper conduct on the part of S. to issue such postcards & to canvass for the auditing work in the way that he did & accordingly he was guilty of an offence under Pleaders' Act, s. 26.—**GOVERNMENT PLEADER v. SIDDICK** (1929), 1 L. R. 53 Bom. 640.—**IND.**

sd. *Procedure of High Court—Under Bar Councils Act, 1926.*—As from June 1, 1928, the procedure by which an advocate can be called upon to answer for misconduct is governed by Bar Councils Act, 1926, ss. 10 *et seq.* To proceed under sect. 10, the High Ct. is required, by sub-sect. (2) of that sect., if it does not summarily reject the complaint, either to refer the case for inquiry to the Bar Council, or, after consultation with the Bar Council, to refer it to the ct. of a District Judge. Similar powers of reference are given where the ct., instead of acting on a complaint, acts on its own motion. But in either event, it is necessary for the case to be either referred to the Bar Council, or at any rate for the Bar Council to be consulted.—**Re A WAKIL OF AZAMGARH** (1928), 1 L. R. 51 All. 76.—**IND.**

## SECT. 5, SUB-SECT. 2.

221 xi. — — — — —]—**ARMOUR v. DINNER** (1899), 4 Terr. L. R. 30.—**CAN.**

so. *"Normal" fees—Fees in big & difficult cases.*—**Held** : both are just such fees as a practising law-agent finds sufficient in order to command the services of competent counsel in cases of a similar character.—**CALIFORNIA RY. CO. v. GREENOCK CORPN., GLASGOW & SOUTH WESTERN RY. CO. v. SAME**, [1922] S. C. 299.—**SCOT.**

- hearing before the judge in ct., on the ground that the brief was practically the same on each occasion.—*Re PARK, BOTT v. CHESTER* (1921), 66 Sol. Jo. (W. R.) 2.
230. *Add. Annotation* :—*Mentd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.
234. *Add. Annotation* :—*Mentd. Wild v. Simpson*, [1919] 2 K. B. 544.
242. *Add. Annotation* :—*Refd. Minter v. Priest*, [1929] 1 K. B. 655.
251. *Add. Annotation* :—*Mentd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.
281. *Add. Annotation* :—*Mentd. Shepherd v. Robinson*, [1919] 1 K. B. 474.
291. *Add. Annotation* :—*Apld. Shepherd v. Robinson*, [1919] 1 K. B. 474.
300. *Add. Annotation* :—*Refd. Shepherd v. Robinson*, [1919] 1 K. B. 474.
312. *Add. Annotation* :—*Mentd. Bosworthick v. Bosworthick*, [1926] P. 159.
313. *Add. Annotation* :—*Mentd. Butterworth v. Butterworth & Englefield, Collins v. Collins & Harrison, Barratt v. Barratt & Fox, Howell v. Howell & Walker, Adams v. Adams & Ward, Ellworthy v. Ellworthy & Ledgard*, [1920] P. 126.
- 323a. *Express instructions given to solicitor*.—At the hearing of an action for debt counsel for deft. consented to judgment against his client for part only of the claim, pltf. abandoning the balance. Without the knowledge of counsel on either side, or of the solrs. for pltf., deft. had given instructions to her solrs. that the case was not to be settled. Upon an application made before the judgment was drawn up :—*Held* : the case must be restored to the list for hearing.—*SHEPHERD v. ROBINSON*, [1919] 1 K. B. 474 ; 88 L. J. K. B. 873 ; 120 L. T. 492 ; 35 T. L. R. 220, C. A.
324. *Add. Annotation* :—*Distd. Shepherd v. Robinson*, [1919] 1 K. B. 474.
326. *Add. Annotation* :—*Apld. Shepherd v. Robinson*, [1919] 1 K. B. 474.
331. *Add. Annotation* :—*Apld. Shepherd v. Robinson*, [1919] 1 K. B. 474.
335. *Add. Annotation* :—*Refd. Shepherd v. Robinson*, [1919] 1 K. B. 474.
- 356a. *Whether binding at second trial*.—A man was employed by a railway co. to sweep their yard & goods warehouse. Several lines of rails ran through the yard, & it was his duty to sweep between the lines, but to stand clear of them when trucks were being run over them. On June 10, 1918, a capstan man in the employ of defts. gave notice to the man that he was going to run trucks into the yard, which notice the man acknowledged. The first truck was sent in, & the capstan man stated that he saw the man apply the brake to it, which was not a part of his duty, & then leave the yard. A second truck was then sent down on another line, & shortly afterwards the man was found sitting on the ground, having sustained injuries from which he died. Upon a claim by his widow for compensation under Workmen's Compensation Act, 1906 (c. 58), an admission was made by counsel at the trial that "deceased was crushed between two waggons & sustained abdominal injury from which he died." A new trial having been ordered :—*Held* : the above admission was not to be binding at the second trial.—*DAWSON v. GREAT CENTRAL RY. CO.* (1919), 88 L. J. K. B. 1177 ; 121 L. T. 263 ; 12 B. W. O. C. 163, C. A.
375. *Add. Annotation* :—*Mentd. Eastern Shipping Co. v. Quah Beng Kee*, [1924] A. C. 177.
381. *Add. Annotation* :—*Mentd. R. v. Minister of Labour*, [1924] 2 K. B. 210.
382. *Add. Annotation* :—*Mentd. Rhondda's Claim*, [1922] 2 A. C. 339.
- 383a. *Duty to assist court—By citing all relevant authorities*.—Upon the hearing of an appeal in the House of Lords, it is the duty of counsel to bring to the attention of the House any authority, statutory or other, within their knowledge which bears one way or the other upon the matters under debate, irrespectively of whether or not the particular authority assists the case of the party who is aware of it. It is likewise the duty of those who instruct counsel, if they are aware of any such authority, to bring it to the attention of counsel, in order that they in turn may bring it to the attention of the

#### SECT. 5, SUB-SECT. 4.

238 ii. —.—There is no hard & fast rule rendering counsel in a cause incompetent as a witness in that cause.—*R. v. BECKER*, [1929] App. D. 167.—S. AF.

#### SECT. 5, SUB-SECT. 6.

274 i. *Misconduct—Inserting libel on judge in notice of appeal—On instructions of client*.—*Held* : this conduct was highly improper.—*JACOB & CO. v. RASH BEHARI GHOSH* (1920), 1 L. R. 47 Cal. 828.—IND.

#### SECT. 5, SUB-SECT. 7.—C. (b) i.

291 i. *General rule*.—Rules regarding competency of counsel to compromise suits, make admissions, or confess judgment, so as to bind their clients, discussed.—*MUTHIAN CHETTIAR v. MUTHU K. R. A. KAROPAN CHETTI* (1927), 1 L. R. 50 Mad. 786.—IND.

294 i. *Power presumed—Counsel apparently properly instructed—Party's agent present without protest*.—*NILMONE CHAUDHURI v. KEDAR NATH DAGA* (1922), 1 L. R. 1 Pat. 489.—IND.

300 iv. —.—A settlement within

the apparent general authority of counsel :—*Held* : binding.—*B. N. SEN & BROTHERS v. CHUNI LAL DUTT & CO.* (1923), 1 L. R. 51 Cal. 385.—IND.

301 i. *Authority to compromise out of court*.—A compromise effected by counsel on behalf of his client out of ct., & not assented to by his client, is only binding upon the client if it is expressly authorised or subsequently ratified by the client or by his agent authorised in that behalf.—*ASKARAU CHOUMTAL v. EAST INDIAN RY. CO.* (1925), 1 L. R. 52 Cal. 386.—IND.

301 ii. —.—The fact that negotiations for compromise between counsel took place before the hearing of the suit commenced, or were carried on outside the ct., does not vitiate the agreement.—*JOHURMULL BHUTRA v. KEDAR NATH BHUTRA* (1927), 1 L. R. 55 Cal. 113.—IND.

#### SECT. 5, SUB-SECT. 7.—C. (b) iii.

t i. —.—The general authority of counsel to compromise a suit does not extend beyond matters in the suit.—*JOHURMULL BHUTRA v. KEDAR NATH BHUTRA* (1927), 1 L. R. 55 Cal. 113.—IND.

#### SECT. 5, SUB-SECT. 7.—C. (b) iv.

334 ii. —.—Where the advocate for one of the parties in a proceeding for the grant of letters of administration under a misapprehension consented to the other party being granted the letters :—*Held* : if such consent was given without instructions the client might withdraw the consent at any time prior to the actual issue of letters.—*KYONE HOE TSEE v. KYON SOON SUN* (1925), 1 L. R. 3 Ran. 261.—IND.

#### SECT. 5, SUB-SECT. 10.

i. —.—In an action for damages for breach of contract, certain admissions were made by counsel for both parties & put in at the trial by consent :—*Held* : deft. was bound by the admissions made by counsel on his behalf.—*DOMINION ART CO., LTD. v. MURPHY* (1923), 54 O. L. R. 332.—CAN.

#### SECT. 6, SUB-SECT. 1.

383 i. —.—*Should not make scandalous charges*.—Members of the legal profession are under no duty to their

House.—GLEBE SUGAR REFINING CO., LTD. v. GREENOCK PORT & HARBOURS TRUSTEES, [1921] 2 A. C. 66; 125 L. T. 578; 37 T. L. R. 436; 65 Sol. Jo. 551, H. L.

**383b. Duty to disclose adultery of petitioner in suit for dissolution of marriage.**—Where a petitioner has committed adultery it is the duty of his counsel & solr. to disclose the fact to the ct. if they are aware of it.—ABRAHAM v. ABRAHAM & HARDING (1919), 120 L. T. 672; 35 T. L. R. 371; 63 Sol. Jo. 411.

Disclosure of petitioner's adultery in suits for dissolution of marriage generally, *see* HUSBAND & WIFE.

**389. Add. Annotation:—Apld.** Grinham v. Davies, [1929] 2 K. B. 249.

After this case add, *Sec, also*, NEGLIGENCE, Nos. 842, 842a.

**408a. — — —.]—PRACTICE NOTE**, [1920] W. N. 34.

**421. Add. Annotations:—Mentd.** Sage v. Eicholz, [1919] 2 K. B. 171; Valentine v. Hyde, [1919] 2 Ch. 129; The Ruapehu (1926), 136 L. T. 146; Hardie & Lane v. Chilton (1927), 96 L. J. K. B. 1040.

clients to make grave & scandalous charges against either judges or the opposite parties on their client's mere wish. They are responsible to the ct. for the fair & honest conduct of the case. They are not mere agents of the man who pays them, but are acting in the administration of justice.—*Re* DIVARKA PRASAD MITHAL (1923),

I. L. R. 46 All. 121.—IND.

**383 ii. — — —.]—Duty as regards offensive questions.**—An advocate should exercise his own discretion before putting an offensive question.—M. BANERJEE v. ANUKUL CHANDRA MITRA (1927), I. L. R. 55 Calc. 85.—IND.

*st. May criticise questions submitted to jury—After asking for direction*

**421a. — — —.]—The House of Lords has a prior claim to the attendance of counsel over other cts., & before absents himself counsel ought to have made an application for leave to be absent.**—ABRAM S.S. Co. v. WESTVILLE SHIPPING Co. (1923), as reported in 67 Sol. Jo. 535, H. L.

**446. Add. Annotations:—Mentd.** The Christel Vinnen, [1924] P. 61; Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis, [1924] A. C. 522; Reed v. Page & East (1926), 42 T. L. R. 744; Silver v. Ocean S.S. Co. (1929), 46 T. L. R. 78.

**453. Add. Annotations:—Refd.** Banbury v. Bank of Montreal, [1918] A. C. 626; Wilson v. United Counties Bank, [1920] A. C. 102. **Mentd.** Yorke v. Yorkshire Insce., [1918] 1 K. B. 662; Yorkshire Insce. v. Craine, [1922] 2 A. C. 541.

**465. Add. Annotation:—Consd.** De Preville v. Dill (1927), 43 T. L. R. 431.

**467. Add. Annotation:—Mentd.** Evans v. Heathcote, [1918] 1 K. B. 418.

*& calling no evidence.*—STEELE v. BELFAST CORPN., [1920] 2 I. R. 125, 133.—IR.

#### SECT. 6, SUB-SECT. 5.

**429 ii. — — —.]—*Re* DIVARKA PRASAD MITHAL**, No 383 i., *antc.*—IND.

## BASTARDY.

## Part I.—The Presumption of Legitimacy.

2. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Warren v. Warren*, [1925] P. 107.
3. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Farman v. Farman* (1924), 40 T. L. R. 823.
4. *Add. Annotations*:—*Consd. Mart v. Mart*, [1926] P. 24. *Mentd. Russell v. Russell*, [1924] A. C. 687.
5. *Add. Annotations*:—*Mentd. Brown v. Leech* (1924), 88 J. P. 208.
6. *Add. Annotation*:—*Mentd. Russell v. Russell*, [1924] A. C. 687.
10. *Add. Annotation*:—*Mentd. Re Wright, Hegan v. Bloor*, [1920] 1 Ch. 108.
11. *Add. Annotation*:—*Refd. Gaskill v. Gaskill*, [1921] P. 425.
12. *Add. Annotations*:—*Refd. Gaskill v. Gaskill*, [1921] P. 425; *Russell v. Russell*, [1924] A. C. 687.
17. *Add. Annotations*:—*Apld. Warren v. Warren*, [1925] P. 107. *Refd. Russell v. Russell*, [1924] A. C. 687.
18. *Add. Annotation*:—*Mentd. Brown v. Leech* (1924), 88 J. P. 208.
20. *Add. Annotation*:—*Refd. Andrews v. Andrews & Chalmers* (1924), 40 T. L. R. 873.
21. *Add. Annotations*:—*Mentd. Hensley v. Hensley & Nevin* (1920), 122 L. T. 814; *Pullen v. Pullen & Holding* (1920), 123 L. T. 203.
22. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687; *Mart v. Mart*, [1926] P. 24. *Refd. Andrews v. Andrews & Chalmers* (1924), 132 L. T. 400.
- 22a. ————]—In the absence of evidence to the contrary the presumption of legitimacy does not arise in the case of a child born to a resp. more than nine months after she has obtained, under Summary Jurisdiction Married Women's Act, 1895 (c. 39), an order that she be no longer bound to cohabit with petitioner.—*ANDREWS v. ANDREWS & CHALMERS*, [1924] P. 255; 93 L. J. P. 137; 132 L. T. 400; 40 T. L. R. 873.
- Annotation*.—*Refd. Mart v. Mart*, [1926] P. 24.
- 22b. *Deed of separation—Presumption of non-access*.]—The legal presumption of access, & of the legitimacy of a child born during marriage, is rebutted by its conception during a period when the spouses are living apart under a deed of separation. For this purpose a deed of separation has the same effect as an order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that the wife shall not be bound to cohabit with her husband, or a judicial separation.—*MART v. MART*, [1926] P. 24; 95 L. J. P. 29; 134 L. T. 446; 42 T. L. R. 253.
- 24a. ————]—*HASLAM v. CRON, OLIVANT'S CLAIM* (1871), 19 W. R. 968.
25. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Farman v. Farman* (1924), 40 T. L. R. 823.
28. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
35. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Warren v. Warren*, [1925] P. 107.
36. *Add. Annotations*:—*Apld. Best v. Best & McKinley*, [1920] P. 75; *Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
40. *Add. Annotations*:—*Mentd. Brown v. Leech* (1924), 88 J. P. 208; *Russell v. Russell*, [1924] A. C. 687.
42. *Add.* (1921), 126 L. T. 115. *Mentd. Farman v. Farman* (1924), 40 T. L. R. 823.
43. *Add. Annotation*:—*Refd. Gaskill v. Gaskill*, [1921] P. 425.
- 43a. ————]—When adultery is to be inferred solely from the length of gestation of a child *in utero*, & evidence adverse to the wife, its mother, as regards her conduct, is absent, the same considerations apply as in a case of legitimacy & the presumption thereof. In such a case the evidence to negative lawful access as the cause of pregnancy must be strong, distinct, satisfactory, & conclusive, & must not consist of a mere balance of probability. If on medical evidence there is no distinct & inherent impossibility of access by the husband which could account for the birth of a child, the wife cannot be found guilty of adultery.—*GASKILL v. GASKILL*, [1921] P. 425; 90 L. J. P. 339; 126 L. T. 115; 38 T. L. R. 1.
- Annotations*.—*Refd. Russell v. Russell*, [1924] A. C. 687. *Mentd. Sloggett v. Sloggett*, [1928] P. 148.

## PART I. SECT. 2.

7 v. ————]—*Held*: "born out of wedlock" within Children of Unmarried Parents Act, 1921 (c. 54), s. 13, & the husband may show by his own evidence & that of his wife that they had in fact no intercourse at such time as would make his parentage possible.—*Re DUCKWORTH & SKINKLE* (1924), 55 O. L. R. 272.—CAN.

7 vi. ————]—*Wife divorced woman*.]—Where a Hindu woman was married to S. in Oct. 1903, was divorced by him in June 1904, married T. in July 1904, & gave birth to a son in Sept. 1904:—*Held*: there was no proof that T. could not have had access to her at any time when the son could have been begotten, & the son should

be held to be the legitimate son of T.—*SETHU v. PALAIN* (1925), 1. L. R. 49 Mad. 553.—IND.

14 i. ————]—*Even where wife adulteress*.]—*Re BROWN & ARGUE*, [1925] 3 D. L. R. 873; 57 O. L. R. 297.—CAN.

sd. *Child of Chinese resident in Straits Settlements & "t'sip" (secondary wife)*.]—Regarded as legitimate & entitled to inherit equally with children by the "t'sai" (primary wife).—*KHOO HOOI LEONG v. KHOO HEAN KWEE*, [1926] A. C. 529; 95 L. J. P. C. 94; 135 L. T. 170.—STRAITS SETTLEMENTS.

se. *Child of Mahomedan & his servant*.]—*Acknowledgment of child by father as his son*.]—The son of a Mahomedan by a female servant in his house claimed

a declaration of his legitimacy. The parents had continuously cohabited for many years, & the father on several occasions had acknowledged plff. as his son. There was some evidence of a *nikah* marriage:—*Held*: evidence that other members of the father's class had illegitimate children by servants was inadmissible to rebut the presumption of legitimacy arising from the acknowledgments, & though the fact that the mother unlike the father's other wives was not *parda-nishin* was one to be considered, it was insufficient to interfere with the presumption of law or the balance of proof of the fact of legitimacy.—*MOHABBAT ALI KHAN v. MAHOMED IBRAHIM KHAN* (1929), 56 L. R. Ind. App. 201.—IND.

44. *Add. Annotation*:—*Mentd. Russell v. Russell*, [1924] A. C. 687.
46. *Add. Annotation*:—*Refd. Warren v. Warren*, [1925] P. 107.
49. *Add. Annotations*:—*Apld. Gaskill v. Gaskill*, [1921] P. 425. *Refd. Russell v. Russell*, [1924] A. C. 687.
54. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Warren v. Warren*, [1925] P. 107.
56. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
57. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
58. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687. *Distd. Holland v. Holland*, [1925] P. 101. *Refd. Warren v. Warren*, [1925] P. 107.
59. *Add. Annotation*:—*Refd. Warren v. Warren*, [1925] P. 107.
60. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687. *Refd. Brown v. Leech* (1924), 88 J. P. 208.
61. *Add. Annotation*:—*Refd. Brown v. Leech* (1924), 88 J. P. 208.
63. *Add. Annotation*:—*Consd. Russell v. Russell*, [1924] A. C. 687.
64. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
- 65a. ————.]—*Resp., A. L., a married woman, living at all material times in London apart from her husband, preferred a complaint against applt. alleging that he was the father of her bastard child. Evidence was given by two independent witnesses that at all material times one F. L., was living in Cardiff. Resp. alone identified F. L. as her husband:—Held: apart from resp.'s identification, there was no evidence of non-access by the husband, & since Russell v. Russell, No. 70a, post, such evidence could not be given by the wife.—BROWN v. LEECH (1924), 94 L. J. K. B. 48; 132 L. T. 205; 88 J. P. 208; 41 T. L. R. 89, D. C.*
- 65b. ———— *Child still-born.*]—The rule laid down by the House of Lords in *Russell v. Russell*, No. 70a, *post*, that evidence of non-access by the husband or wife cannot be admitted where the result may be to bastardise a child, does not include a still-born child.—*HOLLAND v. HOLLAND*, [1925] P. 101; 94 L. J. P. 64; 133 L. T. 318; 41 T. L. R. 431.
- 65c. ————.]—A wife's admission that she had committed adultery, even if accompanied by a statement of her belief that a child subsequently born, was the result of the adultery, cannot bastardise the child without evidence of the non-access of the husband. The confession of the wife, therefore, that she had committed adultery is admissible as evidence in a suit for divorce so long as she does not assert that the husband could have had no access at the time of conception.—*WARREN v. WARREN*, [1925] P. 107; 94 L. J. P. 68; 133 L. T. 352; 41 T. L. R. 599; 69 Sol. Jo. 725.
- 65d. ————.]—Where a husband took out a summons asking that an order for maintenance should be discharged, on the ground that the wife had committed adultery:—*Held: evidence of the husband of non-access to bastardise his child was not admissible.—BOSTON v. BOSTON (1928), 138 L. T. 647; 92 J. P. 44; 26 L. G. R. 183, D. C.*
66. *Add. Annotation*:—*Consd. Russell v. Russell*, [1924] A. C. 687.
67. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
68. *Add. Annotations*:—*Refd. Russell v. Russell*, [1924] A. C. 687. *Mentd. Hensley v. Hensley & Nevin (1920), 122 L. T. 814.*
70. *Add. Annotations*:—*Mentd. Hensley v. Hensley & Nevin (1920), 122 L. T. 814; Gaskill v. Gaskill, [1921] P. 425.*
- 70a. ————.]—The rule of law that neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage to bastardise a child born in wedlock applies to proceedings instituted in consequence of adultery, & is not affected by the above sect., which makes the parties to such proceedings, & the husbands & wives of such parties, competent witnesses.—*RUSSELL v. RUSSELL*, [1924] A. C. 687; 93 L. J. P. 97; 131 L. T. 482; 40 T. L. R. 713; 68 Sol. Jo. 682, H. L.
- Annotations*:—*Apld. Brown v. Leech (1924), 94 L. J. K. B. 48. Consd. Farman v. Farman (1924), 40 T. L. R. 823. Distd. Warren v. Warren, [1925] P. 107. Consd. Mart v. Mart, [1926] P. 24; Re A. B.'s Petn., [1928] P. 25. Refd. Andrews v. Andrews & Chalmers (1924), 132 L. T. 400; Holland v. Holland, [1925] P. 101; Selby v. Atkins (1926), 135 L. T. 45; S. v. S. & P. (1927), 44 T. L. R. 52.*
- Evidence in matrimonial suits generally, see HUSBAND & WIFE.*
71. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687; *Mart v. Mart*, [1926] P. 24. *Refd. Andrews v. Andrews & Chalmers (1924), 132 L. T. 400.*
72. *Add. Annotation*:—*Refd. Brown v. Leech (1924), 88 J. P. 208.*
73. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
- 73a. ————.]—Although, as decided in *Russell v. Russell*, No. 70a, *ante*, neither husband nor wife can give evidence of non-access, with a view of showing that a child born in wedlock was not a child of the marriage, yet the fact of non-access can be proved by evidence *aliunde*.—*FARMAN v. FARMAN (1924), 40 T. L. R. 823.*

## PART I. SECT. 3.

49 iii. ———— *Illicit intercourse with paramour.*—*Held: evidence of pltf. should not have been received to bastardise her child, & as there was no admissible evidence that the child was illegitimate, it must be taken that pltf.'s husband was the father.—KIVKO v. BACYZSKI (1921), 67 D. L. R. 46; 51 O. L. R. 225.—CAN.*

## PART I. SECT. 4.

56 vii. ————.]—The evidence of a man & his wife, given for the purpose of bastardising a child born during

wedlock, & at a time consistent with lawful conception, is not admissible.—*Re Brown & Angus, [1925] 3 D. L. R. 873; 57 O. L. R. 297.—CAN.*

56 viii. ————.]—A husband sued his wife for divorce on the ground of adultery, which she denied. The wife had given birth to a child, of which the husband alleged that he was not the father. The husband gave evidence of non-access. The birth had been registered by the wife, who gave the name of a man other than her husband as its father:—*Held: (1) the husband's evidence as to non-access*

was inadmissible; (2) the registration of the child's birth by the wife did not throw the *onus* upon her of proving that the child was not an adulterine child, but the *onus* of proof remained upon the husband.—*SURMON v. SURMON, [1926] App. D 47.—S. AF.*

56 ix. ————.]—Evidence of adultery does not bastardise issue, unless it amounts to evidence of non-access by the husband at about the time when the child might have been begotten.—*JUSTICE v. JUSTICE, [1925] S. A. S. R. 278.—AUS.*

75. *Add. Annotation* :—**Mentd.** *Russell v. Russell*, [1924] A. C. 687.
76. *Add. Annotations* :—**Consd.** *Russell v. Russell*, [1924] A. C. 687; *Mart v. Mart*, [1926] P. 24
79. *Add. Annotation* :—**Mentd.** *Russell v. Russell*, [1924] A. C. 687.
80. *Add. Annotations* :—**Consd.** *Russell v. Russell*, [1924] A. C. 687; *Mart v. Mart*, [1926] P. 24.
81. *Add. Annotations* :—**Mentd.** *Hensley v. Hensley & Nevin* (1920), 122 L. T. 814; *Gaskill v. Gaskill*, [1921] P. 425.
82. *Add. Annotations* :—**Mentd.** *Hensley v. Hensley & Nevin* (1920), 122 L. T. 814;
- Pullen v. Pullen & Holding* (1920), 123 L. T. 203.
83. *Add. Annotations* :—**Refd.** *Holland v. Holland*, [1925] P. 101; *Warren v. Warren*, [1925] P. 107. **Mentd.** *Russell v. Russell*, [1924] A. C. 687.
85. *Add. Annotation* :—**Consd.** *Re Stollery, Weir v. Treasury Solicitor* (1926), 134 L. T. 430.
- 90a. — **Allegation of bigamous marriage**—**Conclusive evidence required.**—*HAYWARD v. HAYWARD* (1928), 72 Sol. Jo. 469.
96. *Add. Citation* :—*previous proceedings* (1861), 2 Sw. & Tr. 465.

## Part II.—Mode of Determining Question of Legitimacy.

111. For "a person who has no interest in opposing a petition will not be cited," read "a person not cited, who has no real interest in opposing a petition for a declaration of legitimacy, will not be allowed to intervene."
- Add. Citation* :—1 New Rep. 107, 378.
114. *Add. Annotations* :—**Mentd.** *Young v. Grier-son, Oldham* (1924), 41 R. P. C. 548; *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.
118. *Add. Annotations* :—**Mentd.** *Re Letters Patent No. 139207, Re Carbonit Akt.*, [1924] 2 Ch. 53; *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.
120. *Add. Annotations* :—**Mentd.** *A.-G. v. Cory, Kennard v. Cory* (1919), 88 L. J. Ch. 410; *Compania Martiartu v. Royal Exchange Assce. Corpn.* (1923), 92 L. J. K. B. 546; *Re Clayton's Petn.* (1927), 43 T. L. R. 659.
121. *Add. Annotations* :—**Apld.** *Rutter v. Rutter*, [1921] P. 136. **Mentd.** *Re Clayton's Petn.* (1927), 43 T. L. R. 659.
129. *Add. Annotations* :—**Mentd.** *Hensley v. Hensley & Nevin* (1920), 122 L. T. 814; *Pullen v. Pullen & Holding* (1920), 123 L. T. 203.
130. *Add. Annotation* :—**Mentd.** *Keyes v. Keyes & Gray*, [1921] P. 204.
- 130a. **Under Legitimacy Act, 1926 (c. 60)—Parties.**—*Held*: in a suit, to which only a husband & wife were parties, the ct. was not competent to find the facts necessary to make the child a legitimated child by virtue of the above Act.—**BEDNALL v. BEDNALL & SHIVUSSAWA**, [1927] P. 225; 96 L. J. P. 150; 137 L. T. 632; 43 T. L. R. 599; 71 Sol. Jo. 453.
- Annotations* :—**Apld.** *Green v. Green*, [1929] P. 101. **Refd.** *Jones v. Jones* (1929), 98 L. J. P. 74.
- 130b. — — — — — *J.*—The ct. has no jurisdiction to make an order for custody in divorce proceedings in the case of a child of the parties who was born before their marriage & had not been declared legitimate in accordance with Legitimacy Act, 1926 (c. 60). Such an order for custody would imply a declaration of legitimacy, which cannot be made by the ct. in proceedings in which the child & other persons interested are not represented.—**GREEN v. GREEN**, [1929] P. 101; 98 L. J. P. 58; 140 L. T. 93; *sub nom.* *G. v. G.*, 45 T. L. R. 7; 73 Sol. Jo. 111.
- Annotation* :—**Fold.** *Jones v. Jones* (1929), 98 L. J. P. 74.
- 130c. *S. P. JONES v. JONES* (1929), 98 L. J. P. 74; 140 L. T. 647; 45 T. L. R. 292; 73 Sol. Jo. 192.
- 130d. — **Petition on behalf of several persons—Procedure.**—A petition for legitimation can only be presented by the party to be legitimated. Persons having a common interest must proceed by separate petitions, but leave may be obtained for them to be heard together with one set of affidavits & one body of evidence. Interested parties must be brought before the ct. Notice of the proposed petition must be given to the A.-G. one month before filing.—*Re A. B.'s PETITION* (1927), 96 L. J. P. 155; 138 L. T. 64; *sub nom.* *Re CLAYTON'S PETITION*, 43 T. L. R. 659; 71 Sol. Jo. 543.
- 130e. — **Hearing—Whether in camerâ.**—A petition filed under the above Act for the legitimation of a person who was born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camerâ*.—**GREENWAY v. A.-G.** (1927), 44 T. L. R. 124; 71 Sol. Jo. 882; *sub nom.* *Re A. B.'s PETITION*, 97 L. J. P. 104; *sub nom.* *Re C. D.'s PETITION*, 138 L. T. 208.
- Annotation* :—**Refd.** *Re Lowe, Stewart v. Lowe*, [1929] 2 Ch. 210.

92 i. *Evidence as to legitimacy—Declaration in matter of pedigree—By deceased member of family—By father.*—A husband or wife is entitled to give evidence as to events prior to their marriage even though such evidence may have the effect of bastardising a child born in wedlock. Upon an application by A. for maintenance under Testator's Family Maintenance & Guardianship of Infants Act, 1916, it appeared that A. was born about

seven weeks after the marriage of his mother with M. Declarations by M., who was deceased, were tendered in evidence to show that, although M. had been intimate with his wife about four months before their marriage, A. was not his son, & that his wife had admitted that fact.—*Held*: the evidence was not rendered inadmissible by reason of the rule laid down in *Russell v. Russell*, No. 70a, & the declarations of M. were admissible as

evidence to prove matters of pedigree.—*Re MACKAY* (1928), 28 S. R. N. S. W. 404; 45 N. S. W. N. 106.—**AUS.**

### PART II. SECT. 2, SUB-SECT. 1.

a). *Jurisdiction of court.*—*Held*: Legitimacy Declaration Act, 1858 (Imp.), gives the ct. jurisdiction to make a declaration of legitimacy upon a direct application for that purpose.—*Re G.*, [1922] 1 W. W. R. 978; 63 D. L. R. 365; 17 Alta. L. R. 473.—**CAN.**



## Part III.—Legitimation by Subsequent Marriage.

132. *Add. Annotations* :—**Mentd.** *Casdagli v. Casdagli*, [1919] A. C. 145; *Eustace v. Eustace*, [1924] P. 45; *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; A.-G. for Alberta *v. Cook*, [1926] A. C. 444.
- 152a. Under Legitimacy Act, 1926 (c. 60) —Death after marriage of parents —Before operative date of Act —Rights of issue.] —M. had two illegitimate children, a son & a daughter, by L., whom she subsequently married in 1905. The son died in 1919 leaving issue. L. died in 1919. M. died in 1928 intestate :—**Held** : the son having died before above Act came into force, his issue took no share of M.'s estate.—*Re LOWIE, STEWART v. LOWIE*, [1929] 2 Ch. 210; 98 L. J. Ch. 410; 141 L. T. 428; 15 T. L. R. 184.
153. *Add. Annotation* :—**Mentd.** *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.
- SECT. 3.—UNDER LEGITIMACY ACT, 1926 (c. 60).  
**Mode of determining legitimacy.]—See Nos. 130a–130e, ante.**  
**Effect of Act—On rights of succession to intestate.]—See No. 152a, ante.**

## Part IV.—Legal Position of Bastard.

157. *Add. Annotation* :—**Consd.** *Re Phillips, Re Howard, Charter v. Ferguson*, [1919] 1 Ch. 128.
161. *Add. Annotations* :—**Mentd.** *Casdagli v. Casdagli*, [1919] A. C. 145; *Eustace v. Eustace*, [1924] P. 45; *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; A.-G. for Alberta *v. Cook*, [1926] A. C. 444.
162. *Add. Annotations* :—**Mentd.** *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
166. *Add. Annotation* :—**Mentd.** *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
168. *Add. Annotation* :—**Mentd.** *R. v. A.-G. of British Columbia*, [1924] A. C. 213.
183. *Add. Annotation* :—**Mentd.** *Boyce v. Wasbrough*, [1922] 1 A. C. 425.
195. *Add. Annotation* :—**Mentd.** *Re Dawson, Swainson v. Dawson*, [1919] 1 Ch. 102.

## Part V.—Rights and Liabilities towards the Bastard.

- 204a. *S. P. Ex p. EMERSON* (1895), 11 T. L. R. 218, D. C.
206. *Add. Annotation* :—**Consd.** *Green v. Green*, [1929] P. 101.
207. *Add. Annotations* :—**Consd.** *Green v. Green*, [1929] P. 101. **Mentd.** *Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.
- 210a. *S. P. R. v. CLAYDON* (1859), 34 L. T. O. S. 46.
225. *Add. Annotation* :—**Refd.** *Green v. Green*, [1929] P. 101.
226. *Add. Annotations* :—**Refd.** *Green v. Green*, [1929] P. 101. **Mentd.** *Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.

### PART III. SECT. 1.

**uk.** *Subsequent marriage of parents in England—Child acquiring domicile in Ontario—Ontario Legitimation Act, 1921 (c. 53).*—W. was born out of wedlock in England; his parents subsequently married in England; & W. went to Ontario when twenty-four years of age, & acquired a domicile in Ontario :—**Held** : W. was legitimate.—*Re W.*, [1925] 2 D. L. R. 1177; 56 O. L. R. 611.—CAN.

### PART IV. SECT. 1.

154 i. *Nullius filius—Extent of rule.*—**Held** : does not prevail in a ct. of eq.—*Re CONNOR*, [1919] 1 I. R. 361.—IR.

### PART IV. SECT. 2, SUB-SECT. 2.—A. (b).

167 iii. — *Right of Crown to escheat not affected—Although intestate legitimated per subsequent matrimonium.*—*Re W.*, [1925] 2 D. L. R. 1177; 56 O. L. R. 611.—CAN.

### PART V. SECT. 1.

198 i. *Father's right to custody—Father maintaining child.*—**Held** : 1 & 2 Vict. c. 56, s. 53, imposed an obligation on the father to support & maintain an infant illegitimate son, which obligation the father was willing to fulfil, & had fulfilled until prevented by the mother, & the father was *prima facie* entitled to the custody of the child.—*Re GAYAGAN*, [1922] 1 I. R. 148.—IR.

205 vi a. — *WALTER v. CULBERTSON*, [1921] S. C. 490; 58 Sc. L. R. 401.—SCOT.

205 ix a. — — — — —.] —**Held** : a parent should not be deprived of the custody of an infant unless it is shown that the parent has abandoned or deserted it, or that his conduct has been such as to disentitle him to its custody, or that he has allowed it to be brought up by another person at that person's expense.—*Re P.*, [1922] 1 W. W. R. 853; 63 D. L. R. 430; 17 Alta. L. R. 493.—CAN.

sl. *"Neglected child"—Who is.*—An illegitimate child whose mother is unable to maintain it is a "neglected

child" within Children's Protection Act (Ontario), although cared & provided for by a third party.—*Re S.* (1919), 45 O. L. R. 46.—CAN.

sm. *Equal Guardianship of Infants Act, R. S. B. C., 1924 (c. 101)—Not applicable to illegitimate child.*—*Re S.*, *Re EQUAL GUARDIANSHIP OF INFANTS ACT*, [1927] 2 D. L. R. 91; [1927] 1 W. W. R. 441; 38 B. C. R. 285.—CAN.

### PART V. SECT. 3.

227 ii. — — — — —.] —In the case of the father of a legitimate child, if he has not waived or forfeited his right by conduct, the ct. will allow his wishes on religion to control the faith of the child, even after his death, but, in the case of the mother of an illegitimate child, will only do so so long as she is living, & the obligation to support the child remains. Where special facts nullify or negative the application of any rule of law or practice compelling the ct. to yield to the wishes of a parent as to the religion of a child, the ct. is bound solely to pay regard to the

241a. — Permanent maintenance.]—(1) A judgment recognising the right of an illegitimate child to perpetual maintenance against the putative father & his estate, is contrary to public policy.

(2) The right to a posthumous affiliation order is a cause of action unknown in England.

—*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, [1921] 1 Ch. 522; 90 L. J. Ch. 314; 124 L. T. 658; 65 Sol. Jo. 435.

Annotation:—*Generally*, *Mentd.* Beatty *v.* Beatty, [1924] 1 K. B. 807.

251. *Add. Annotation*:—*Mentd.* Scott *v.* Pattison, [1923] 2 K. B. 723.

## Part VI.—Affiliation Proceedings and Kindred Proceedings under Colonial Statutes.

259. *Add. Annotations*:—*Distd.* Boyce *v.* Cox, [1922] 1 K. B. 149. *Mentd.* Grocock *v.* Grocock, [1920] 1 K. B. 1.

262. *Add. Annotation*:—*Distd.* Boyce *v.* Cox, [1922] 1 K. B. 149.

262a. — Under separation order.]—An unmarried woman was delivered of a child. The putative father made payments for its maintenance within twelve months. Subsequently the mother married another man, who maintained the illegitimate child till the mother obtained a separation order on the ground of his cruelty. No provision was made in the order for maintenance of the illegitimate child:—*Held*: the mother was a "single woman" within 1872 Act, s. 3, the effect of a separation order being to confer on her the status of a *feme sole*.—BOYCE *v.* COX, [1922] 1 K. B. 149; 91 L. J. K. B. 122; 126 L. T. 254; 85 J. P. 279; 38 T. L. R. 51; 66 Sol. Jo. 142; 20 L. G. R. 686; 27 Cox, C. C. 139, D. C.

263. *Annotations*:—For "R. *v.* Suffolk JJ. (1884), 12 J. P. 426" read "R. *v.* Suffolk JJ. (1848), 12 J. P. 426."

*Add. Annotations*:—*Refd.* Brown *v.* Leech (1924), 88 J. P. 208. *Mentd.* Russell *v.* Russell, [1924] A. C. 687.

264. *Add. Annotation*:—*Refd.* Brown *v.* Leech (1924), 88 J. P. 208.

267. *Add. Citation*:—26 Cox, C. C. 129.

274a. — After death of father.]—*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, No. 241a, *ante*.

278a. — —.]—(1) A woman who was with child went to stay at the house of her sister, who lived in a different petty sessional division from that in which the woman usually resided. The woman went home to

be confined, & fourteen days after the birth of her child she went back to her sister & stayed with her for a month. Eight days after the commencement of this visit the woman applied to a justice of the peace acting for the petty sessional division of the place where her sister resided for a summons against the man alleged by her to be the father of her child:—*Held*: the woman resided in that petty sessional division within 1872 Act, s. 3, so as to give the justices of that petty sessional division jurisdiction to make an affiliation order against the putative father, as that sect. did not require that the application should be made to a justice of the peace acting for the petty sessional division of the place where the woman usually or permanently resided.

(2) Where an affiliation order has been made which is not appealed against, or where there has been an appeal to quarter sessions against the order & the appeal has been dismissed, & subsequently an application is made to justices to enforce the order by the issue of a distress warrant, the justices have no jurisdiction to enter into any inquiry as to the validity of the original order.—R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, [1925] 1 K. B. 200; 94 L. J. K. B. 331; 132 L. T. 382; 89 J. P. 17; 41 T. L. R. 103; 69 Sol. Jo. 194; 23 L. G. R. 32; 27 Cox, C. C. 711, D. C.

280. *Add. Annotation*:—*Refd.* R. *v.* Lancashire JJ., *Ex p.* Tyrer (1924), 88 J. P. Jo. 701.

285. *Add. Annotation*:—*Refd.* Kenney *v.* Kenney (1925), 133 L. T. 400.

293. *Add. Annotation*:—*Apld.* Williams *v.* Letheren, [1919] 2 K. B. 262.

306a. S. P. DELOMBRE *v.* FOUQUAULT (1909), 44 L. Jo. 263.

welfare of the child.—*Re* CONNOR, [1919] 1 I. R. 361.—IR.

### PART V. SECT. 4.

p. i. — Child born before Unmarried Parents Act, 1921 (Ont.).—*Held*: the father is not liable to be prosecuted.—R. *v.* O'DONNELL (1923), 39 Can. Crim. Cas. 94.—CAN.

### PART VI. SECT. 1.

253 H. —.]—Under Children of Unmarried Parents Act, 1921, the father of an illegitimate child is liable for the maintenance & care of the mother before, at, & after the birth of the child, notwithstanding that the child is still-born.—*Re* KIRKPATRICK & MOROUGHAN, [1927] 3 D. L. R. 546;

60 O. L. R. 495.—CAN.

sn. Birth before passing of Children of Unmarried Parents Act, 1923 (c. 50) (*Alta.*).—The above Act applies, where its conditions are complied with, to a child born before the Act was passed or came into operation.—ANDERTON *v.* SEROKA, [1925] 2 D. L. R. 488; [1925] 1 W. W. R. 1019; 21 *Alta.* L. R. 100; *affg.* [1925] 1 W. W. R. 543.—CAN.

sp. Birth outside Alberta—Children of Unmarried Parents Act, 1923 (c. 50) (*Alta.*) applicable.—MUNRO *v.* LEEDHAM, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 *Alta.* L. R. 75.—CAN.

### PART VI. SECT. 2.

st Who may lay complaint—Children of Unmarried Parents Act, 1923,

(c. 50) (*Alta.*).—The deputy A.-G. of Alberta may authorise another person to act for the Superintendent of Neglected & Dependent Children in laying a complaint under the above Act. Such authorisation may be sufficiently given by telegram.—MUNRO *v.* LEEDHAM, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 *Alta.* L. R. 75.—CAN.

a i. — —.]—Where the affidavit filed by the mother stated that deft. was the father of the child, not "really the father" as required by Children of Unmarried Parents Act, s. 26:—*Held*: the omission of the word "really" was fatal, & the action should be dismissed.—LANCASTER *v.* VAUGHAN (No. 2) (1924), 33 B. C. R. 440.—CAN.

318. *Add. Annotation*:—*Refd. Thomas v. Jones*, [1920] 2 K. B. 399.
321. *Add. Annotation*:—*Refd. Thomas v. Jones*, [1920] 2 K. B. 399.
322. *Add. Annotation*:—*Generally, Refd. Thomas v. Jones*, [1921] 1 K. B. 22.
323. *Add. Annotation*:—*Consd. Thomas v. Jones*, [1921] 1 K. B. 22.
- 325a. ————]—Applt. was charged on complaint preferred by resp. with being the father of a bastard child of resp. Applt. was a farmer & a bachelor. Resp. was his house-keeper. On the morning of the birth when resp. was in labour, applt., who had no other female servant, lit a fire for her & took her some tea & brandy. He also sent for the doctor. After the birth he allowed her & the child to remain for five weeks & two days, until June 17, in his house. There was no evidence whether she was sufficiently recovered to have left at an earlier date. Applt. admitted that during those five weeks & two days he never asked resp. who was the father of her child. Resp. in her evidence said that during that time, though she did

not fix the date except that it was before June 16, she asked applt. what he was going to do about the child, & he said that there was nothing for him to do but to pay. After resp. had left his house she wrote him a letter charging him with being the father of the child, & asking him if he meant to pay for its maintenance. To that letter he made no reply:—*Held*: the above facts did not afford any evidence corroborating the evidence of resp. in some material particular, as required by 1872 Act, s. 4.—*THOMAS v. JONES*, [1921] 1 K. B. 22; 90 L. J. K. B. 49; 124 L. T. 179; 85 J. P. 38; 36 T. L. R. 872, C. A.

334. *Add. Annotation*:—*Refd. Kenney v. Kenney* (1925), 133 L. T. 400.

345. *Add. Citation*:—2 L. M. & P. 130.

- 366a. *Variation of order—Adjudication of paternity—"Fresh evidence."*—On the application of resp., justices made an order adjudging that applt. was the father of her illegitimate child, & ordered him to make her a periodical payment. On a subsequent application by applt. under Criminal Justice Administration

#### PART VI. SECT. 4.

g (p. 394) l. ———— *Children of Unmarried Parents Act, 1927, s. 21—Whether retrospective.*]—A proceeding to obtain an affiliation order against A. as the father of an illegitimate child borne by W. on Oct. 13, 1925, was commenced under the provisions of Children of Unmarried Parents Act, 1927, & continued after Children of Unmarried Parents Act, 1927, came into force upon receiving the royal assent on Apr. 5, 1927. Some evidence was taken in June, 1927, & on June 29 an order was pronounced by a county ct. judge declaring A. to be the father of the child:—*Held*: above sect. which was different in terms from sect. 25 of the earlier statute, was applicable to the proceeding though not in force when it was commenced. Above sect. providing that no order of affiliation shall be made upon the evidence of the mother of the child unless her evidence is corroborated by some other material evidence, is an enactment governing procedure only, & had effect from the time of its coming into force with respect to any order made thereafter, & whether or not the proceeding was commenced before or after the enactment came into force. *Re WICKS & ARMSTRONG*, [1928] 2 D. L. R. 210; 49 Can. Crim. Cas. 281; 61 O. L. R. 667.—CAN.

317 xii. *Add "reced. sub nom. RIDLEY v. WHIPP*, 22 C. L. R. 381."

317 xii a. ————]—An isolated instance of familiarity in the presence of a third person & a statement by the putative father when taxed with the paternity of the child that other men besides him could be the father of it, do not amount to corroboration under Infant Life Protection Act, 1907, s. 19, of the evidence of complainant that deft. was the father of her child.—*FROST v. ALLEN* (1919), 15 Tas. L. R. 12.—AUS.

317 xxxiii a. ————]—In an action by P. against L. for lying-in & medical expenses & alimony for her illegitimate child, L. denied on oath P.'s allegation of seduction:—*Held*: the corroborative evidence in regard to seduction required must be evidence *aliunde* which was inconsistent with deft.'s innocence.—*DU PLESSIS v. LEVY* (1925), 46 N. L. R. 249.—S. AF.

317 xxxiii b. ————]—A denial of a conversation testified to by independent evidence:—*Held*: an implied admission which vested the evidence with a quality it did not

previously possess, & corroboration of the mother's evidence in a material particular.—*PITTMAN v. BYRNE*, [1926] S. A. S. R. 207.—AUS.

317 xxxiii c. ————]—Evidence of a false denial by deft. is not corroboration, where such denial is not of facts establishing, or connected with, opportunities for intercourse at the critical time, & there is no evidence of opportunity, on the occasions referred to, which can cause the denial to give any particular colour to facts which have no suggestive significance.—*MORRISON v. TAYLOR*, [1927] V. L. R. 62; [1927] Argus L. R. 30.—AUS.

317 xxxiii d. ————]—*R. v. MOORE* (1927), 38 B. C. R. 425.—CAN.

317 xxxiii e. ————]—*LUCIER v. OULLETTE* (Sask.), [1928] 3 W. W. R. 587.—CAN.

317 xxxviii a. ————]—On a complaint that deft. had left his illegitimate child without adequate means of support, evidence was given by the complainant that deft. was the father of the child. Letters which pltf. swore she had received from deft., & which pointed to sexual intercourse at a relevant period, were admitted without objection. In one of these letters reference was made to the enclosure of £2. In another the writer acknowledged the receipt of letters from the complainant. Deft.'s solr. tendered letters written by the complainant to deft. in one of which reference was made to the receipt of money from deft. Complainant's solr. also rendered a letter written to him by deft.'s solr., in which it was admitted, though paternity was denied, that deft. had contributed towards the support of a prior illegitimate child of which the complainant was also the mother:—*Held*: there was sufficient corroboration of the mother's oath that deft. was the father of her child.—*CALLAN v. HARTY*, *Ex p. HARTY* (1928), 22 Q. J. P. 78.—AUS.

317 xiv a. ————]—Where reliance is placed upon opportunity of intercourse, that evidence must be supplemented by evidence of circumstances which lead to the inference that it was probable that advantage would be taken of the opportunity.—*RIDLEY v. WHIPP* (1916), 22 C. L. R. 381.—AUS.

317 xiv b. ————]—On the hearing of a complaint under Illegitimate Children's Act, R.S.M.,

1913 (c. 92), the corroboration of the mother's evidence required to support a finding order may be supplied, not by mere proof of opportunity of intercourse, but by such proof coupled with the fact that deft. devised circumstances with respect to it which are otherwise proved & innocent in themselves & thereby gives to the proved opportunity a different complexion from what it would have borne had such false statements not been made.—*HARTLEY v. GALL*, [1925] 3 D. L. R. 583; [1925] 2 W. W. R. 669; 35 Man. L. R. 200.—CAN.

317 xiv c. ————]—*Failure of defendant to call evidence evidence himself.*—*Held*: deft.'s conduct did not afford corroboration of pltf.'s case.—*FADDES v. McNEISH*, [1923] S. C. 443.—SCOT.

317 xlix a. ————]—*SINCLAIR v. RANKIN*, [1921] S. C. 933; 58 Sc. L. R. 624.—SCOT.

317 xlix b. ————]—Mere promissory of sexual intercourse without evidence that such intercourse takes place as a means of gain does not justify a finding that a woman is a common prostitute.—*NICHOLLE v. PAD-DICK*, [1927] S. A. S. R. 595.—AUS.

#### PART VI. SECT. 5.

g i. ————]—*No evidence of means & expenses.*—An order made under Children of Unmarried Parents Act, 1927 (c. 50) (Alta.), fixing amounts to be paid by the putative father set aside, where it was made without evidence being adduced as to his means, the expenses incurred by the mother, or the respective abilities of the parents to provide for the child.—*ANDERTON v. SEROKA*, [1925] 2 D. L. R. 912; [1925] 2 W. W. R. 433 21 Alta. L. R. 362.—CAN.

g i. ————]—*Variation of order.*—Where the mother craved an increase because of the cost of living due to the war:—*Held*: the amount of inlying expenses be unaltered, but decree granted for 4s. 6d. per week, in name of alimony, permission being granted to apply to the ct. ————]—*CIRCUMSTANCES ARISE.*—*FORBES v. MAJ-THREW*, [1919] S. C. 242; 56 Sc. L. R. 137.—SCOT.

g iii. ————]—The true criterion in Scotland is, not the rank or financial position of the parties, but the support beyond what which must be accorded to an illegitimate child.—*FRASER v. CAMPBELL*, [1927] S. C. 589.—SCOT.

Act, 1914 (c. 58), s. 30 (3), to revoke the whole order, he tendered fresh evidence, which went only to show that he was not the father of the child. The justices refused to hear it, holding that they had no power to deal with that part of the order which adjudged the paternity:—*Held*: (1) the justices were right; (2) (AVORY & SHEARMAN, JJ.) there being nothing to show that the evidence tendered was of facts which had occurred since the original hearing, or had come to the knowledge of applt. since the hearing, that evidence was not "fresh evidence" within sect. 30 (3).—*COLCHESTER v. PECK*, [1926] 2 K. B. 366; 95 L. J. K. B. 1038; 135 L. T. 32; 90 J. P. 130; 42 T. L. R. 535; 28 Cox, C. C. 225, D. C.

*Annotation*:—As to (1) *Folld. R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

366b. ————.]—(1) Criminal Justice Administration Act, 1914 (c. 38), s. 30 (3), while empowering justices to deal generally with an existing bastardy order, does not enable them to revoke that part of the order which consists of the adjudication of paternity.

(2) "Fresh evidence" must be of such a character that not merely is it relevant, but of such importance that it would have affected the judgment of any one if they had had the opportunity of hearing it at the original hearing of the case.—*R. v. COPESTAKE, Ex p. WILKINSON*, [1927] 1 K. B. 468, 96 L. J. K. B. 65; 136 L. T. 100; 90 J. P. 191; 24 L. G. R. 562, C. A.

367. *Add. Annotations*:—*Refd. Grocock v. Grocock*, [1920] 1 K. B. 1. *Mentd. Jones v. Jones*, [1924] P. 203.

367a. ———— *Justices discretion*.]—Under 1914

Act, s. 4, the magistrate has a discretion as to whether he will grant or refuse an order for payment of arrears due under an affiliation order, but he has no discretion to grant an order for payment of a portion only of the arrears enforceable by law.—*GROCOCK v. GROCOCK*, [1920] 1 K. B. 1; 88 L. J. K. B. 1068; 121 L. T. 466; 83 J. P. 185; 35 T. L. R. 509; 63 Sol. Jo. 627; 17 L. G. R. 623; 26 Cox, C. C. 485, D. C.

*Annotation*:—*Refd. Colchester v. Peck*, [1926] 2 K. B. 366.

372. *Add. Annotation*:—*Mentd. Marshall v. Malcolm* (1917), 87 L. J. K. B. 491.

372a. ———— *Application for warrant—Jurisdiction of justices to question validity of affiliation order*.]—*R. v. LANCASHIRE JJ., Ex p. TYRER*, No. 278a, *ante*.

375. *Add. Annotation*:—*Consd. Firman v. Royal*, [1925] 1 K. B. 681.

379. *Add. Annotations*:—As to (1) *Apld. Grocock v. Grocock*, [1920] 1 K. B. 1. *Expld. Colchester v. Peck*, [1926] 2 K. B. 366.

384. *Add. Citation*:—*sub nom. R. v. SMITH*, 55 L. J. M. C. 147.

395. *Add. Annotation*:—*Refd. Marsland v. Taggart*, [1928] 2 K. B. 447.

398. After this case add:—

—————.]—*Sec. now, Summary Jurisdiction Act, 1879 (c. 49), ss. 35, 47.*

403a. ———— *New evidence*.]—Complainant in an affiliation summons was a married woman who was not living apart from her husband at the material date, & an order on the evidence & on his own admission was made against one M. After the time for appealing against this order had expired, the rule in the present case was obtained on an affidavit by

## PART VI. SECT. 6.

*sw. Imprisonment—Failure to pay aliment—Offer by father to maintain child in his home*.]—In an application under Civil Imprisonment (Scotland) Act, 1882, s. 4, by the mother of two illegitimate daughters for warrant to imprison the father, in respect of his failure to obtemper a charge proceeding upon a decree for payment of aliment until the children respectively attained fourteen years of age, the Sheriff, notwithstanding an offer by the father, a married man, to maintain the children, who were then over ten years of age, in his own home, granted warrant of imprisonment. The father, having sought to suspend the charge & warrant, the mother contended that his offer of maintenance should not be entertained, in respect that, under the decree for aliment which was still current, his obligation could only be discharged by money payments:—*Held*: (1) a father's option at common law to maintain his illegitimate child in his home, if a boy after the age of seven, & if a girl after the age of ten, was not excluded by the fact that at the date of such an offer of maintenance a decree against him for aliment was still current; (2) in view of the *bona fide* offer of maintenance here made, the complainant was not a person wilfully refusing to pay aliment within Civil Imprisonment (Scotland) Act, 1882, s. 4, & charge & warrant suspended.—*MACDONALD v. DENOUN* [1929] S. C. 172.—*SCOT.*

## PART VI. SECT. 7, SUB-SECT. 2.

400 ii. ———— *Irregularity or illegality in proceedings*.]—Illegitimate Children's Act, R. S. S. 1920 (c. 156), s. 10, gives the ct. power at the instance of a putative father to rescind or vary an order. He thus has a means of relief, & *certiorari* may in the discretion of the

superior ct. be refused.—*DWYER v. BULBECK*, [1923] 1 D. L. R. 597; 39 Can. Crim. Cas. 162; 16 Sask. L. R. 13; [1922] 3 W. W. R. 391.—*CAN.*

*vi. ———— Refusal to vary or rescind order*.]—The magistrate has no discretion to refuse to hear an application, but after hearing it he may refuse to rescind or vary his order. If the magistrate refuses to hear the application, applt. is entitled to a prerogative writ of *mandamus* to compel him to do so.—*WHEATLEY v. HOWARD*, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—*CAN.*

*yi. ———— Grounds for allowing appeal*.]—On appeal to a county ct. judge from an order of filiation made against deft. in a bastardy case by a stipendiary magistrate, the judge, after rehearing the case, disbelieved the evidence of the mother, who was contradicted in important particulars by independent witnesses, & contradicted her evidence before the magistrate, as to the paternity of the child:—*Held*: the appeal from the county ct. judge must be dismissed.—*MULGRAVE v. CLANCEY* (1925), 58 N. S. R. 105.—*CAN.*

*yii. ———— At what place*.]—In a complaint under Children of Unmarried Parents Act, R. S. B. C., 1924 (c. 34), s. 7 (1), "the cause" of the complaint within Summary Convictions Act, R. S. B. C., 1924 (c. 245), s. 77, is the seduction & not the birth of the child; & an appeal from the dismissal of the complaint is properly taken to the county ct. nearest the place where the seduction occurred.—*FERGUSON v. TAYLOR* (B. C.), [1926] 3 W. W. R. 203; 46 Can. Crim. Cas. 149.—*CAN.*

*d. i. ———— Under Illegitimate Children's Act, R. S. S., 1920 (c. 156)*.]—An order made by a magistrate under s. 5 of the above Act may be varied by him on the application of either of the parties under s. 9, & may be rescinded or

varied by him on the application of the putative father under s. 10.—*WHEATLEY v. HOWARD*, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—*CAN.*

*ix. Compliance with order—Whether condition precedent to appeal*.]—It is not a condition precedent to the bringing of an appeal by a deft. from an order under Children of Unmarried Parents Act, 1924 (c. 34), as amended, that proof be furnished that he has complied with the terms of the order.—*HYNES v. ALTON* (B. C.), [1928] 3 W. W. R. 261.—*CAN.*

*sy. To Supreme Court—What court may consider*.]—In an appeal on a point of law under Destitute Persons Act, 1910, from an affiliation order, on the ground that complainant's evidence was not corroborated in a material particular as required by sect. 10 of that Act, the magistrate's notes of evidence should be incorporated in & form part of the case on appeal, & the discretion to admit evidence under sect. 68 of the Act not strictly legally admissible belongs solely to the magistrate & is not controllable by the Supreme Ct. The latter ct., however, is entitled to have regard to the nature of such evidence, once admitted, when considering whether the evidence submitted as corroborative may be regarded as such, its proper function on an appeal on a point of law being to determine whether there was evidence which was corroborative; & if there was such evidence, it is not for the Appellate Ct. but for the magistrate to determine whether or not the evidence satisfied him. *Qv.*: whether the Appellate Ct. on appeal on a point of law is entitled to treat as corroborative evidence not relied on by the magistrate as corroborative.—*ANSON v. PARKER*, [1928] N. Z. L. R. 490.—*N.Z.*

complainant's husband that he had cohabited with complainant at the material date & could have been the father of the child :—*Held* : the question of access or non-access was a question of fact for the justices, from which they were entitled to find that M. was the child's father ; the ct. would not, in support of a rule for a *certiorari*, rehear a case upon further evidence on a disputed question of fact, & perform the functions of quarter sessions, to which, owing to lapse of time, an appeal could not be made.—*R. v. MARKHAM*, *Ex p. MARSH* (1923), 67 Sol. Jo. 518.

403b. ——— **Sufficiency of corroboration.**—  
On a bastardy summons justices, having heard the evidence of the mother & such other evidence as was produced by her & other evidence tendered by the person alleged to be the father, made an order in these terms :

“ On hearing the complaint & the evidence of complainant & other evidence satisfactorily corroborating in a material particular her evidence & also the evidence tendered by deft., & being satisfied of the truth of the complaint, it is adjudged that deft. is the putative father of the child ” :—*Held* : the question whether the evidence of the mother was corroborated in some material particular by other evidence to the satisfaction of the justices, was a matter to be decided by the justices &, even if the other evidence did not corroborate the evidence of the mother, the justices had acted within their jurisdiction, & a writ of *certiorari* should not issue to quash their order.—*R. v. LINCOLNSHIRE JJ.*, *Ex p. BRETT*, [1926] 2 K. B. 192 ; 95 J. J. K. B. 827 ; 135 L. T. 141 ; 90 J. P. 149 ; 28 Cox, C. C. 178, C. A.

## Part I.—Bankruptcy Jurisdiction.

- 4.** *Add. Annotations :—***Refd.** *Re Lister, Ex p. Bradford Overseers & Bradford Corpn., [1926] Ch. 149. Mentd. Victoria City v. Vancouver Island (Bp.), [1921] 2 A. C. 384 ; Wise v. Lansdell, [1921] 1 Ch. 420 ; Leitch v. Emmott, [1929] 2 K. B. 236.*
- 11.** *Add. Annotation :—Mentd. Re Debtor, [1929] 1 Ch. 362.*
- 19.** *Add. Annotation :—Mentd. R. v. Norman, [1924] 2 K. B. 315.*
- 26.** *Add. Annotation :—Mentd. R. v. Customs & Excise Comrs., [1928] A. C. 402.*
- 27.** *Add. Annotation :—Refd. Bowling v. Camp (1922), 128 L. T. 342.*
- 29.** *Add. Annotation :—Mentd. Re Moss, Ex p. Everitt (1923), 93 L. J. Ch. 98.*
- 40a.** ——— **How derived.]—***Re PRIOR, Ex p. PRIOR, No. 1548a, post.*
- 60.** *Add. Annotations :—Consd. Scranton's Trustee v. Pearce, [1922] 2 Ch. 87. Refd. Re Wigzell, Ex p. Hart, [1921] 2 K. B. 835 ; Re London County Commercial Reinsurance Office, [1922] 2 Ch. 67 ; Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse (1925), 133 L. T. 814 ; Re Wait, [1927] 1 Ch. 606. Mentd. Re Harrington Motor Co., Ex p. Chaplin, [1928] Ch. 105.*
- 69.** *Add. Annotation :—Refd. R. v. Customs & Excise Comrs., [1928], A. C. 402.*
- 79a.** ——— **Dependent on intention.]—***Ex p. BLACKMORE (1801), 6 Ves. 3 ; 31 E. R. 909, L. C.*
- Annotation :—Refd. Re Bryant, Ex p. Paterson (1813), 1 Rose, 402.*
- 79b.** ——— **Actor.]—**It is certain that no actor, nor any person exhibiting gymnastic feats in public, nor even the proprietor of a theatre, would be a trader within the meaning of the Bkcy. Act (**KELLY, C.B.**).—**SPEAK v. POWELL** (1873), L. R. 9 Exch. 25 ; 43 L. J. M. C. 19 ; 29 L. T. 434.
- 134.** *Add. Annotation :—Mentd. Bickerdike v. Lucy, [1920] 1 K. B. 707.*
- 160a.** ——— **—]**A surgeon dispensing his own medicines :—**Held :** a trader within the bkpt. law.—**NICHOLSON v. COOPER** (1858), 31 L. T. O. S. 184.
- 161.** *Add. Annotation :—Mentd. Re Charters, Ex p. Trustee, [1923] B. & C. R. 94.*
- 163.** *Add. Annotation :—Mentd. The Joannis Vatis (1921), 15 Asp. M. L. C. 506.*
- 177.** *Add. Annotation :—Refd. Bonham v. Maycock (1928), 138 L. T. 736.*
- 190a.** *Theatrical proprietor.]—SPEAK v. POWELL. No. 79b, ante.*
- 197.** *Add. Annotation :—Mentd. Whitney v. I. R. Comrs. (1925), 42 T. L. R. 58.*
- 199.** *Add. Annotation :—Mentd. Victoria City v. Vancouver Island (Bp.), [1921] 2 A. C. 384.*
- 218a.** *S. P. R. v. COLE* (1698), 12 Mod. Rep. 243 ; 1 Ld. Rayn. 443 ; Holt, K. B. 360 ; 88 E. R. 1293.
- Annotation :—Refd. Belton v. Hodges* (1832), 9 Bing. 365.
- 218b.** *S. P. Re COOKE, Ex p. ADAM* (1813), as reported in 1 Ves. & B. 493 ; 2 Rose, 36 ; 35 E. R. 191.
- Annotations :—Refd. Re Smedley* (1864), 10 L. T. 432. **Mentd.** *Re Barrow, Ex p. Moulst* (1832), 1 Deac. & Ch. 44 ; *Belton v. Hodges* (1832), 9 Bing. 365 ; *Wickham v. Wickham* (1855), 2 K. & J. 478 ; *Re Deane, Ex p. Goldsmid* (1857), 1 De G. & J. 257.
- 223a.** ——— **—]**A person who buys goods under age cannot, when he comes of age, be bkpt. in respect of them.—**WHITLOCK'S CASE** (1725), Cas. temp. King, 46 ; 25 E. R. 215.
- 224.** *Add. Annotation :—Apld. Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.
- 226.** *Add. Annotation :—Apld. Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.
- 226a.** ——— **—]**In the absence of debts actually enforceable against them infants cannot be made bkpt., even on their own petition.—*Re A. & M., [1926] Ch. 274 ; 70 Sol. Jo. 607 ; nom. Re L. A. & B. F. M., Ex p. OFFICIAL RECEIVER v. THE DEBTORS, 95 L. J. Ch. 258 ; 134 L. T. 539 ; [1926] B. & C. R. 19, D. C.*
- 230.** *Add. Annotations :—Apld. Re A. & M., [1926] Ch. 274. Refd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913 ; *Re Debtors, Ex p. Debtor* (1922), 92 L. J. Ch. 120. **Mentd. Re A Debtor, [1922] 2 K. B. 109.**
- 235.** *Add. Annotation :—Apld. Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.
- 263.** For "**Held :** she was subject . . . under 1883 Act, s. 24 " read, "**Held :** such power of appointment was not separate property within Married Women's Property Act, 1882, s. 1 (5), & she could not be directed to appoint to her trustee in bkpy. under 1883 Act, s. 24."
- Add. Annotations :—Apld. Re Mathieson, [1927] 1 Ch. 283. Refd. Re Armstrong, Ex p. Boyd* (1888), 21 Q. B. D. 264.

20 Ill. ——.]—Bkpcy. Act applies to debts & contracts, including leases, existing when it came into force.—*Re McKAY* (1921). 51 O. L. R.

121 li. ——— Debts of former business unpaid. 1.—A person who ceases to carry on his business & becomes a farmer is not a person "engaged

solely in farming," etc., so long as his debts in connection with his former business remain unpaid. He must be deemed to be still carrying on that business until all the debts are paid, & he is not protected by Bkcy. Act, s. 8 (1).—*Re GARTRELL, Ex p. KEARNS*. [1923] 3 D. L. R. 406; [1923] 2 W. W. R. 855; 4 C. B. R. 103.—CAN.

267. *Add. Annotations*:—As to (1) *Appl. Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689. *Refd. South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476.
- 274a. — *What is—Professional artiste producing scenae.*—*Re A Debtor* (No. 3 of 1926), [1927] 1 Ch. 97; 135 L. T. 689; [1926] B. & C. R. 86, C. A.
- Annotation*:—*Refd. Re Bankruptcy Notice* (No. 292 of 1928) (1928), 44 T. L. R. 533.
- 274b. — *Engaging in speculative transactions.*—A series of speculative transactions by a married woman, if they involve the making of genuine commercial contracts extending over a long period of time, may amount to carrying on a "business" within 1914 Act, s. 125 (1), so as to make her subject to the bkpcy. laws.—*Re BANKRUPTCY NOTICE* (No. 292 of 1928) (1928), 44 T. L. R. 533, C. A.
276. *Add. Annotations*:—*Refd. Engelke v. Musmann*, [1928] A. C. 433. *Mentd. Musmann v. Engelke* (1927), 96 L. J. K. B. 824.
285. *Add. Annotation*:—*Consd. Food Controller v. Cork*, [1923] A. C. 647.
286. *Add. Annotations*:—*Consd. Re Webb* (Smithfield, London), [1922] 2 Ch. 369. *Refd. A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508.
297. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.
312. *Add. Annotations*:—*Consd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. *Mentd. Re Stanton*, [1928] 1 K. B. 464.

321. *Add. Annotation*:—*Mentd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
331. *Add. Annotation*:—*Refd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
333. *Add. Annotation*:—*Appl. R. v. Central Criminal Court JJ.*, *Ex p. L. C. C.*, [1925] 2 K. B. 43.
336. *Add. Annotation*:—*Mentd. Re Whaley, Ex p. Official Receiver*, [1921] 2 K. B. 623.
385. *Add. Annotation*:—*Mentd. Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58.
388. *Add. Annotation*:—*Appl. Re A Debtor*, [1922] 2 Ch. 470.
389. *Add. Annotation*:—*Consd. Re A Debtor*, [1922] 2 Ch. 470.
- 389a. — — — — —.]—A debtor cannot avoid the operation of a bkpcy. notice, served upon him in England, by himself during the currency of the notice petitioning for & obtaining an award of sequestration of his estate under Bkpcy. (Scotland) Act, 1913 (c. 20). A receiving order made in pursuance of the bkpcy. notice in England will, therefore, be valid, & cannot be set aside on the ground of the sequestration.—*Re A Debtor* (No. 199 of 1922), [1922] 2 Ch. 470; 91 L. J. Ch. 577; 127 L. T. 832; 38 T. L. R. 683; 66 Sol. Jo. 521; [1922] B. & C. R. 151, C. A.
- 390a. — — — — —.]—*Re A Debtor* (No. 737 of 1928), No. 957a, *post*.

**PART I. SECT. 3, SUB-SECT. 6.**

266 i. *Judgment debt—Bankruptcy Act*, 1908, s. 26 (f).—A bkpcy. notice under the above sub-sect. cannot be issued against a married woman against whom a creditor has recovered a judgment.—*Re WALKER, Ex p. HINKEY*, [1927] N. Z. L. R. 81.—N.Z.

267 i. *Carrying on business.*—It is only in cases where a married woman carries on a trade or business that she is subject to Bkpcy. Act, 1919 (c. 36) (Can.).—*Re STONE*, [1925] 4 D. L. R. 518.—CAN.

267 ii. — *In partnership with husband.*—*Held*: debtor was not carrying on business separately from her husband, & her adjudication in bkpcy. was irregular.—*Re SCOTT* (1924), 20 Tas. L. R. 43.—AUS.

**PART I. SECT. 3, SUB-SECT. 7.**

26a. *Assignee of debt—Assigned by debtor with consent of creditor.*—*Re STAR FLOORING CO.*, [1924] 3 D. L. R. 269; 4 C. B. R. 679.—CAN.

**PART I. SECT. 4, SUB-SECT. 1.**

oi. *To deal with prosecution of fraudulent debtors.*—Under Bkpcy. Act, s. 93, the prosecution may be ordered & proceeded with in the ordinary way before the existing criminal cts. It does not require the judge in bkpcy. to hear evidence & if he thinks fit, to commit accused to stand trial although under sect. 95 the judge in bkpcy. has a right to do so.—*R. v. GOLDHAMMER*, [1924] 3 D. L. R. 1007; Q. R. 36 K. B. 507; 5 C. B. R. 127.—CAN.

sb. *Under Bankruptcy Act*, 1919 (c. 36)—*To order stay of execution—Until receiving order dealt with.*—*Held*: the ct. had such power.—*Re THOMPSON POWDER CO., Re WINDING-UP ACT*, [1923] 1 D. L. R. 496; 3 C. B. R. 481.—CAN.

sc. *Under Bankruptcy Act*, s. 63.—The jurisdiction conferred by Bkpcy. Act, s. 63, is confined to the administration of the bkpt.'s estate, & does not extend to persons or matters outside the Act.

The trustee in bkpcy. of R.'s estate moved for an order declaring that T. was a general partner of R. or that T. had wrongfully obtained from the firm of R. Bros. of which R. had been a member a certain sum of money:—*Held*: the trustee did not represent the firm of R. Bros., the authorised assignment having been executed by R. only, & the Bkpcy. Ct. had no jurisdiction to try the questions raised by the trustee's motion.—*Re REYNOLDS*, [1928] 3 D. L. R. 562, 62 O. L. R. 360; 10 C. B. R. 127.—CAN.

sd. *To order repayment of money—Paid by assignee to creditor—Mistake of law.*—*Held*: jurisdiction could not be excluded by a plea of payment by mistake of law.—*DEMPSEY v. PIPER*, [1921] N. Z. L. R. 753.—N.Z.

**PART I. SECT. 4, SUB-SECT. 2.**

se. — *Superior Court.*—The Superior Ct. sitting in any provincial judicial district has jurisdiction to hear a petition in bkpcy. served upon a debtor residing & doing business in any part of the province.—*BOLLY v. MCNULTY*, [1928] 1 D. L. R. 926; [1928] S. C. R. 182; 8 C. B. R. 565.—CAN.

**PART I. SECT. 4, SUB-SECT. 4.**

363 i. — *With intent to defalc creditors.*—If debtor before his bkpcy. pays money fraudulently, with a view to concealing from his creditors his assets, the ct. will order repayment of such money.—*Re COHEN & SWEIGMAN, Ex p. ROSENBERG*, [1925] 1 D. L. R. 248; 5 C. B. R. 346.—CAN.

**PART I. SECT. 5.**

388 xiv. — *Power of Scottish Court to confirm foreign sequestration & to authorise sale of property in Scotland.*—A petition was presented by the official receiver appointed by the Ct. of Chilo in the sequestration of the estates of a deceased person resident there, craving the ct. to confirm the Chilian sequestration, to authorise petitioner to

sell Scottish heritage belonging to deceased's estate & to authorise petitioner to uplift the proceeds of certain Scottish policies of assurance on the life of deceased. The ct. granted authority to petitioner to sell the Scottish heritage on certain terms, under a declaration that such sale should not operate conversion, & on condition that petitioner should consign the balance of the proceeds in the name of the accountant of ct. to abide the orders of the ct., but refused, as unnecessary, the crave of the petition for authority to uplift the proceeds of the policies of assurance.—*ARAYA v. COCHILL*, [1921] S. C. 462, 58 Sc. L. R. 395.—SCOT.

**PART I. SECT. 7.**

392 iii a. — *Whether enforceable in Saskatchewan—Necessity for notice to interested parties.*—*Qu.*: whether the words "British Ct." in Imperial Bkpcy. Act, 1914 (c. 59), s. 122, include a Canadian Ct. exercising bkpcy. jurisdiction, & whether the provisions of said Act apply to immovables in Canada. Even if said words & provisions do so apply, an application to the Saskatchewan Ct. of K. B., by a trustee in bkpcy. appointed in England, for an order giving effect to a judgment made there under sect. 122 will not be heard if due & proper notice of the application has not been given to all persons interested in the relief sought thereby.—*Re GRAHAM (Sask.)*, [1928] 4 D. L. R. 375; [1928] 3 W. W. R. 8; 10 C. B. R. 171.—CAN.

o. For "Order of Canadian Provincial Court—Where good throughout Canada," read "Order of provincial court—Good throughout Union."

oi. — *No request of other provincial court—Subsequent motion to remedy omission.*—Where a motion was made without such request, the ct. granted a similar motion, made after such request had been obtained, to remedy the omission.—*Re LEGACE & LEFAY*, [1922] 3 W. W. R. 284; 70 D. L. R. 867.—CAN.

## Part II.—Acts of Bankruptcy.

397. *Add. Annotation*:—*Mentd. Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58.
409. *Add. Annotation*:—*Consd. Lipton v. Bell*, [1924] 1 K. B. 701.
410. *Add. Annotation*:—*Consd. Lipton v. Bell*, [1924] 1 K. B. 701.
419. *Add. Annotation*:—*Mentd. The Joannis Vatis* (1921), 15 Asp. M. L. C. 506.
421. *Add. Annotation*:—*Refd. Lipton v. Bell*, [1924] 1 K. B. 701.
428. *Add. Citations*:—*sub nom. Re PHILLIPS, Ex p. PHILLIPS*, 69 L. J. Q. B. 604; 82 L. T. 691; 44 Sol. Jo. 469; 7 Mans. 277, D. C.
- 434a. ————]—An unstamped deed of arrangement, although admissible in evidence to prove an act of bkpcy., cannot, after it has ceased to be available as an act of bkpcy., be put in evidence without a stamp where the fact that the deed is void for want of registration is relied upon by the trustee in a subsequent bkpcy. of the debtor to establish a title to the property comprised in the deed.—*Re SHAW, Ex p. OFFICIAL RECEIVER* (1920), 90 L. J. K. B. 204; [1920] B. & C. R. 156.
451. *Add. Citation*:—1 Sm. & G. 246, n.; 65 E. R. 106.
- 454a. ————]—By indenture dated Feb. 21, 1921, made between bkpt., a retired produce broker, of the first part, & B., his solr., of the second part, & S. of the third part, after reciting that a receiving order had been made against bkpt. on Oct. 7, 1920, & B. had lodged a proof for £470 9s. 2d. for moneys expended & advanced as bkpt.'s solr. up to the date of the receiving order, & that since that date B. had continued to act as bkpt.'s solr., & his bill of costs amounted to £217 10s. 1d., & that B. had undertaken to pay to a bank certain moneys due to them by bkpt. on realising his securities, & that there was lodged on behalf of bkpt. the sum of £1,350 with the official receiver to enable him to discharge the provable debts in the bkpcy., debtor assigned to B. so much of the £1,350 as should be payable to bkpt. & £2,050 payable to bkpt. under a certain agreement. B. was to hold the sums assigned to him upon trust, in the first place to pay & discharge all moneys due, or thenceforth becoming due to himself for costs, advances or otherwise, & in the next place to pay & discharge certain alleged debts of bkpt. at X., & lastly to apply the balance for the benefit of S. & her children. On Feb. 3, 1921, the above-mentioned receiving order was rescinded. At the date of the assignment bkpt. was living apart from his wife, to whom he had agreed to pay maintenance at the rate of £10 per week, & judgment had been recovered by H. for £58 6s. 11d. for the board & lodging of bkpt.'s wife. On Feb. 8, 1921, a writ had been issued by bkpt.'s wife for arrears of maintenance due to her from bkpt. On Feb. 11, 1921, H. issued a bkpcy. notice in respect of her judgment & a petition was filed on Apr. 30, 1921. A receiving order was made on June 3, 1921, & debtor was adjudged bkpt. on June 20, 1921:—*Held*: on the facts the assignment was executed with the intent to defeat & delay creditors, & was therefore fraudulent & void as an act of bkpcy. under 1914 Act, s. 1 (1) (b).—*Re PRIOR, Ex p. TRUSTEE*, [1922] B. & C. R. 1, C. A.
468. *Add. Annotations*:—*Expld. Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253. *Refd. Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9.
469. *Add. Annotation*:—*Consd. Lipton v. Bell*, [1924] 1 K. B. 701.
471. *Add. Annotations*:—*Consd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515. *Refd. Re Moyle, Ex p. Trustee*, [1924] B. & C. R. 22; *Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T. 765.
479. *Add. Annotation*:—*Refd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.
487. *Add. Annotation*:—*Mentd. Sevenoaks U. D. C. v. Twynam*, [1929] 2 K. B. 440.
488. *Add. Annotation*:—*Refd. Re Prior, Ex p. Trustee*, [1922] B. & C. R. 1.
489. *Add. Annotations*:—*Refd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. *Mentd. Re Stanton*, [1928] 1 K. B. 464.
501. *Add. Annotation*:—*Refd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.
523. *Add. Annotation*:—*Mentd. Re Mellor. Alvarez v. Dodgson*, [1922] 1 Ch. 312.
533. *Add. Annotation*:—*Refd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.
544. *Add. Annotation*:—*Refd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.
550. *Add. Annotation*:—*Refd. Re Stanton*, [1929] 1 Ch. 180.
552. *Add. Annotation*:—*Mentd. Sevenoaks U. D. C. v. Twynam*, [1929] 2 K. B. 440.
583. *Add. Annotation*:—*Mentd. Pole-Carew v.*

## PART II. SECT. 1.

1. *Partner—Retirement more than six months before bankruptcy—Debt incurred during partnership.*—*Held*: such partner could not be joined as a party in bkpcy. proceedings against the partnership.—*Re STANDARD COOPERAGE CO.*, [1924] 2 D. L. R. 703; 4 C. B. R. 673.—*CAN.*

## PART II. SECT. 2, SUB-SECT. 2.—A.

457 i. ———— *Transfer of property to near relatives—In return for promissory notes—Not included in statement of affairs.*—An intent to defraud creditors presumed from the above transfer which took place within six months of

the bkpcy.—*R. v. TESSIER* (1921), 62 D. L. R. 479; 37 Can. Crim. Cas. 375.—*CAN.*

## PART II. SECT. 2, SUB-SECT. 8.

q. i. ————]—In a judgment by default recovered against a husband & wife it was declared plff. should be entitled to recover against debts jointly & severally the sums therein specified; but it was ordered that execution be limited to the free separate property of the wife. Notwithstanding the precise & restricted terms of the judgment, a *præcipe* was lodged for a writ of sale directed against the real & personal property of both debts. The writ of

sale followed the language of the *præcipe*, & a return of *nulla bona* was later made against both debts. On a petition to have the husband adjudged bkpt. upon the ground of his having committed an available act of bkpcy. within Bkpcy. Act, 1908, s. 26 (j):—*Held*: the writ of sale & the return thereto were irregular & ineffectual as against the husband, the ct. had no power in the present proceedings to amend the judgment as entered, & no act of bkpcy. had been established as against the husband upon which an order of adjudication could properly be made.—*Re GREEN, A DEBTOR*, [1928] N. Z. L. R. 531.—*N.Z.*



Western Counties & General Manure Co., [1920] 2 Ch. 97.

590. *Citations*:—For “21 W. R. 422” read “21 W. R. 402.”

595. *Add. Annotation*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426.

598. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

600. *Add. Annotations*:—*As to (1) Refd. Re Gunsbourg*, [1920] 2 K. B. 426. *As to (2) Refd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

675. *Add. Annotation*:—*Mentd. Minter v. Priest*, [1929] 1 K. B. 655.

763. *Add. Annotations*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426. *Mentd. Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87.

766. *Add. Annotation*:—*Mentd. R. v. Norman*, [1924] 2 K. B. 315.

779. *Add. Annotation*:—*Distd. Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

787. *Add. Annotation*:—*Consd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

788. *Add. Annotation*:—*Consd. Re Debtor*, [1929] 1 Ch. 170.

797a. **Creditor who has assented to deed of arrangement—Deed void for want of registration.**—On June 11, 1921, applt. co. recovered judgment against debtor for a certain sum & costs. On Apr. 18, 1922, debtor executed a document in the form of a memorandum of agreement by which he assigned his property to trustees for the benefit of his creditors. The agreement provided (*inter alia*) that it should not be registered either as a composition or deed of arrangement or otherwise & contained a schedule of creditors & their debts. At the date of the agreement there were five bkpcy. petitions pending against debtor by creditors other than applt. co. As a result of negotiations between debtor & the five creditors & in consideration of his entering into the agreement of Apr. 18, 1922, the five creditors agreed to the dismissal of their petitions & signed letters dated Apr. 17, 1922, which were all in the same form, & contained a statement that it was understood that it was not intended to register the agreement as a deed of arrangement, by which they respectively agreed that so long as debtor complied with the terms of the agreement of Apr. 18, 1922, they would not bring any action against him in respect of their scheduled debts or attempt to set aside the agreement. On July 18, 1922, applt. co. signed a letter of assent in the same terms, which was also dated Apr. 17, 1922, & agreed to hand it over to debtor on receiving from him a promissory note or bill of exchange of a third party for £300. This condition debtor performed. The letter was not, however, handed over to debtor owing to the refusal by him to pay to applt. co. an agreed sum for costs, a term which the ct. held formed no part of the original bargain.

Applt. co. subsequently issued a bkpcy. notice against debtor founded on its judgment debt. The registrar set the bkpcy. notice aside on the ground that applt. co. was bound by the agreement contained in the letter signed by it. On appeal:—*Held*: (1) the agreement of Apr. 18, 1922, being a deed of arrangement, was void for want of registration under 1914 (Deeds) Act, & the letter of assent, being an assent to a void instrument, was also itself void; (2) as debtor & all the creditors who assented to the agreement knew from the terms of the instrument itself & from the statement contained in the letters signed by them that the agreement was void, & there was no representation that the agreement was valid, there was no question of estoppel, & applt. co. was not estopped from issuing the bkpcy. notice.—*Re A BANKRUPTCY NOTICE*, [1924] 2 Ch. 76; 93 L. J. Ch. 497; 68 Sol. Jo. 458; [1924] B. & C. R. 188; *sub nom. Re A BANKRUPTCY NOTICE (No. 62 of 1924), Ex p. PETITIONING CREDITORS v. DEBTOR*, 131 L. T. 307, C. A.

*Annotation*:—*As to (2) Consd. Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.

*Compare* Nos. 8778a, 8782d, *post*, & original volume, p. 160, No. 1498.

800. *Add. Annotation*:—*Folld. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

800a. **Change in judgment creditor—Judgment obtained by firm—No leave to issue execution.**—Where a firm consisting of several members has recovered in the firm name judgment against a debtor, the fact that a member has since retired from the firm does not render it necessary that the firm should obtain leave of the ct. under R. S. C., Ord. 42, r. 23, in order that a bkpcy. notice may be issued in the name of the firm, & a bkpcy. petition presented in that name.—*Re HILL, Ex p. HOLT & Co.*, [1921] 2 K. B. 831; 90 L. J. K. B. 734; 125 L. T. 736; [1921] B. & C. R. 12.

804a. — — — **Notice not good against partners not served.**—*Re DEBTORS (No. 807 of 1922), Ex p. DEBTOR*, No. 887a, *post*.

811. *Add. Annotation*:—*Consd. Re Debtor (1920)*, 90 L. J. K. B. 513.

828. *Add. Annotation*:—*Expld. Re A Debtor*, [1929] 2 Ch. 146.

830. *Add. Annotation*:—*Apld. Re A Debtor*, [1929] 2 Ch. 146.

830a. — — — Where a bkpcy. notice was issued against the co-resp. in a divorce suit for failure to comply with an order, made before decree absolute, requiring him to pay the costs of the petitioner to the latter's solrs., for lodgment of the money in ct.:—*Held*: the bkpcy. notice was bad & the receiving order made thereon ought to be discharged because (1) it was not issued in the name of petitioner, the real creditor, but in that of his solrs.; (2) the decree not having been made absolute at the date of the order, the incidence of the costs was still open to revision, & the creditor, therefore, had not

PART II. SECT. 2, SUB-SECT. 10.—A. (g).

n. For “*Held*” the objection was sustainable” read “*Held*: the objection was not sustainable.”

sg. *Costs of unsuccessful execution not*

*included.*—*Re EVA*, [1927] N. Z. L. R. 652.—N. Z.

PART II. SECT. 2, SUB-SECT. 10.—C.

sh. *Time of service—Service out of time.*—A debtor summons was per-

sonally served on bkpt. two days too late:—*Held*: the condition of bkpcy. prior to the filing of a petition necessarily involved an act of bkpcy. which the ct. would assume was a proper ground for the adjudication.—*Re GORHAM*, [1924] 2 I. R. 46.—IR.

obtained a "final" judgment or order within 1914 Act, s. 1 (1) (g).—*Re A Debtor* (No. 76 of 1929), [1929] 2 Ch. 146; 98 L. J. Ch. 334; 141 L. T. 250; 45 T. L. R. 403; 73 Sol. Jo. 299; [1929] B. & C. R. 48, C. A.

857. *Add. Annotation*:—*Refd. Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.

866. *Add. Annotation*:—*Consd. Re A Debtor, Ex p. Debtor* (1922), 92 L. J. Ch. 410.

870. *Add. Annotation*:—*Refd. Re A Debtor*, [1929] 2 Ch. 146.

875. *Add. Citation*:—15 Mans. 304.

*Add. Annotation*:—*Consd. Re A Debtor, Ex p. Debtor* (1922), 92 L. J. Ch. 410.

875a. — Judgment to pay creditor—Notice to pay registrar of county court.]—Where a county ct. judgment in form or effect directs payment to be made to the creditor the bkpcy. notice founded on it properly requires payment to be made to the creditor instead of to the registrar.—*Re A Debtor* (No. 16 of 1922), *Ex p. THE DEBTOR* (1922), 92 L. J. Ch. 410; [1922] B. & C. R. 264, D. C.

887a. — Partner—Not at principal place of business.]—Where a judgment has been recovered against a firm, & a bkpcy. notice following the judgment has been served on one member of the firm, but not at the principal place of business of the firm, & a petition presented against the firm, a receiving order cannot be made against the firm other than the partner who was not served.—*Re Debtors* (No. 807 of 1922), *Ex p. Debtor* (1922), 92 L. J. Ch. 120; [1922] B. & C. R. 119, C. A.

898. *Add. Annotation*:—*Consd. Re Debtor, Ex p. Debtor*, [1918–19] B. & C. R. 221.

923a. — Issue of second notice by same creditor.]—Creditors having obtained judgment issued a bkpcy. notice for £945 & served it on debtors. Debtors paid a sum of £100, including £5 for costs, nine days later, but in the belief that the notice would be disputed the creditors issued & served a fresh bkpcy. notice about two months later for £857, & that notice not having been complied with within seven days, a petition based on the fresh bkpcy. notice was presented & served. Debtors gave notice of an application to set aside service of the petition, but the registrar refused to do so, & made a receiving order on the fresh bkpcy. notice:—*Held*: (1) debtors could not refuse to comply with the fresh bkpcy. notice on the ground that as the previous notice had resulted in an act of bkpcy. this had put it out of the power of

debtors to make any payment in compliance with the fresh notice or otherwise deal with their property; (2) if they did make a payment in compliance with the fresh notice it might be that if a trustee were appointed under the previous bkpcy. notice the payment might be set aside, & the money made available for the general body of creditors.—*Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9; 70 Sol. Jo. 1089; *sub nom. Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253; 96 L. J. Ch. 70; 136 L. T. 268; [1926] B. & C. R. 156, C. A.

938. *Add. Annotations*:—*Refd. Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9; *Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

942. *Add. Annotation*:—*Consd. Re A Debtor*, [1929] 1 Ch. 362.

953. *Add. Annotation*:—*Consd. Re A Debtor*, [1929] 1 Ch. 362.

954. *Add. Annotation*:—*Refd. Re A Debtor*, [1929] 1 Ch. 362.

957. *Add. Annotation*:—*Consd. Re A Debtor*, [1929] 1 Ch. 362.

957a. Statement to agent of creditors of insolvency in foreign country.]—A debtor informed a person acting for some creditors in England (a) that he owed debts to a very much larger amount in Switzerland; (b) that bkpcy. proceedings had been initiated against him there; (c) that he intended to offer his Swiss creditors £1,000, which was all the money he had; (d) that if the Swiss creditors accepted that, he intended to offer his English creditors 5s. in the £1, payment to be spread over a number of years. The creditors proceeded against the debtor, alleging that he had committed an act of bkpcy. under 1914 Act, s. 1 (1) (h). A receiving order having been made, the debtor appealed:—*Held*: (1) the statements made by the debtor were not a mere discussion of his affairs, but a "notice" to his creditors that he had suspended or was about to suspend payment within the sect.; (2) the debtor being in England, there being creditors in England, & the jurisdiction here being undoubted, it was not necessary to suspend the making of a receiving order here. The Swiss proceedings could be considered from time to time, & a stay in the proceedings here ordered, if advisable.—*Re A Debtor* (No. 737 of 1928), [1929] 1 Ch. 362; 98 L. J. Ch. 38; 140 L. T. 266; [1928] B. & C. R. 130, C. A.

959. *Add. Annotation*:—*Consd. & Apld. Re A Debtor*, [1929] 1 Ch. 362.

## PART II. SECT. 2, SUB-SECT. 10.—G. (b).

939 i. *Must be mutual & in same right*.—*Re ANDERSON, Ex p. ALEXANDER* (1927), 27 S. L. N. S. W. 296; 44 N. S. W. N. 69.—AUS.

## PART II. SECT. 2, SUB-SECT. 12.

aj. *Defaults*.]—Defaults more than six months before presentation of a bkpcy. petition followed by demands for payment are not *per se* an act of bkpcy., but when further defaults take place within six months of the petition the whole form one continuing act of bkpcy.—*Re RAIBLAT*, [1925] 31 L. J. R. 446; 5 C. B. R. 765; *affg.*, [1925] 2

sk. *Failure to meet series of promissory notes*.]—*Held*: an act of bkpcy.—*Re FOX, LESTER v. PORTER*, [1925] 1 D. L. R. 198; 5 C. B. R. 328.—CAN.

sl. *Failure to meet liabilities as they become due*.]—The words "ceases to meet his liabilities as they become due" do not mean that when in any single case debtor makes default in payment of a debt & when due he commits an act of bkpcy., but a failure "to meet his liabilities as they become due" in some wider sense.—*Re CANADIAN CAP CO., Ex p. TRUSTEE*, [1924] 1 D. L. R. 817; 53 O. L. R. 506; 4 C. B. R. 185.—CAN.

sm. —.]—The words "ceases to

meet, his liabilities as they become due" do not include a continuing default.—*BROWN v. KELLY-DOUGLAS & Co.*, [1923] 1 W. W. R. 1340; [1923] 2 D. L. R. 738; 32 B. C. R. 143.—CAN.

## PART II. SECT. 4.

m i. — *Not statement showing insolvency prepared by creditors' agent*.]—*Re TENENBEIN, Re BANKRUPTCY ACT (Man.)*, [1927] 4 D. L. R. 270; [1927] 2 W. W. R. 374.—CAN.

m ii. —.]—*Re SHIRLEY (N. B.)*, [1927] 2 D. L. R. 969; 8 C. B. R. 235; *affd.*, [1928] 1 D. L. R. 350; 8 C. B. R. 612.—CAN.

963. *Add. Annotations*:—*Re*fd. *Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689; *Re A Debtor*, [1927] 1 Ch. 97. *Mentd.* *South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476.

971. *Add. Annotation*:—*Expld. Re A Debtor*, [1929] 1 Ch. 362.

972. *Add. Annotation*:—*Re*fd. *Re A Debtor*, [1929] 1 Ch. 362.

## Part III.—Petition.

1007a. ———.]—*Re* *AYRE, Ex p. POTTS* (1840), 10 L. J. Bcy. 26.

1011. *Add. Annotation*:—*Mentd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.

1016a. ——— *Exercising powers under Law of Distress Amendment Act, 1908 (c. 53).*]—A landlord obtained judgment against his tenant for £204 in respect of rent & fire insurance, & served on him a bkpcy. notice. The notice was not complied with, & a petition for a receiving order was presented. While the petition was pending, the landlord, as the premises were sublet, served on the subtenants a notice, under sect. 6 of the above Act, to pay their rents directly to him, & from one subtenant he received £62, the debt being thus reduced by that amount. A receiving order was afterwards made:—*Held*: as the claim still amounted to more than £50 the landlord had not, by exercising his powers under the above Act, precluded himself from proceeding under the bkpcy. notice in the normal way.—*Re A DEBTOR* (No. 549 of 1928), [1929] 1 Ch. 170; 98 L. J. Ch. 35; 140 L. T. 165, 45 T. L. R. 10; 72 Sol. Jo. 727; [1928] B. & C. R. 125, C. A.

1019a. *Solicitor—Petition based on order for payment of costs to client.*]—*Re A DEBTOR* (No. 76 of 1929), No. 830a, *ante*.

1043. *Add. Annotation*:—*Re*fd. *Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.

1047a. ——— *Under voidable contract.*]—A. employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £80 on his promissory note for £100, & without the knowledge or consent of A. paid L. a commission. B. recovered judgment against A. for the amount of the promissory note in default of appear-

ance, & issued a bkpcy. notice based on the judgment, & A. having failed to comply with the bkpcy. notice, B. presented a bkpcy. petition against him. On the hearing of the petition before the registrar it appeared for the first time that a commission had been paid by B. to L.:—*Held*: the act of bkpcy. was founded on a contract which was voidable by A., & the ct. ought not, within 1914 Act, s. 5 (3), to be satisfied with the proof of B.'s debt, & the receiving order must be rescinded.—*Re A DEBTOR* (No. 229 of 1927), [1927] 2 Ch. 367; 96 L. J. Ch. 381; 137 L. T. 507; [1927] B. & C. R. 127, C. A.

1048. *Add. Annotations*:—*As to* (1) *Re*fd. *Humphery v. Wilson* (1929), 141 L. T. 469. *Generally, Mentd. Maskell v. Hill*, [1921] 3 K. B. 157.

1050. *Add. Annotation*:—*Folld. Re Debtors*, [1927] 1 Ch. 19.

1051. *Add. Annotation*:—*Mentd. McDonald v. Nash*, [1924] A. C. 625.

1051a. ———.]—A debt to be a good petitioning creditor's debt must be a liquidated sum, payable either immediately or at some certain future time at the date of the act of bkpcy. It is not sufficient that the debt should have become a liquidated sum in the interval between the act of bkpcy. & the presentation of the petition.—*Re DEBTORS* (No. 669 of 1926), [1927] 1 Ch. 19; 96 L. J. Ch. 33; 136 L. T. 182, C. A.

1065. *Add. Annotation*:—*Consd. Re Debtors*, [1927] 1 Ch. 19.

1066. *Add. Annotation*:—*Re*fd. *Re Debtors*, [1927] 1 Ch. 19.

1067. *Add. Annotation*:—*Apld. Re Debtor, Ex p. Lawrence*, [1928] Ch. 665.

### PART III. SECT. 1, SUB-SECT. 1.—A.

b i. ———.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re OSMAN* (1919), 40 N. L. R. 17.—S. AF.

b ii. *S.P. Ex p. GARBUTT* (1925), 46 N. L. R. 57.—S. AF.

998 ii. ——— *No evidence when debt accrued—Motion unopposed.*]—*Held*: petitioners were entitled to the relief which they claimed.—*FISHER v. WILKIE, LTD.*, [1920] 19 O. W. N. 251; 59 D. L. R. 502; 1 C. B. R. 376.—CAN.

### PART III. SECT. 1, SUB-SECT. 2.—A.

1026 ii. ———.]—Where there is no privity of contract between the insolvent & the alleged creditor, no debt can exist which may be made the ground for a bkpcy. petition.—*Re CANADIAN CHOCOLATE CO.*, [1924] 2 D. L. R. 508.—CAN.

1026 iii. ———.]—A bkpcy. ct. should not proceed with a petition on a disputed debt until the ordinary cts. have settled the disputed question.—*Re WHISTLER CO.*, [1925] 1 D. L. R. 1110; 5 C. B. R. 495.—CAN.

s i. *Debt contracted before Bankruptcy Act, 1919, in operation.*]—A receiving order against a co. under the above Act may be based upon a debt owing to the co. by reason of its having undertaken, after the Act came into operation, the liabilities incurred by a firm before the Act came into operation.—*Re STEWART MERCANTILE CO., LTD.*, [1921] 1 W. W. R. 740; 59 D. L. R. 412; 1 C. B. R. 367.—CAN.

s ii. ——— *Judgment founded on cause of action partly arising before Act in operation.*]—*Held*: such judgment was sufficient either as an available act of bkpcy., or as constituting a debt upon which to found a bkpcy. petition.—*Re MAGUIRE*, [1923] 1 D. L. R. 1186; 51 O. L. R. 63; 3 C. B. R. 880.—CAN.

s iii. ———.]—Such a debt cannot be used as a ground for a bkpcy. petition.—*Re SUTTON*, [1924] 4 D. L. R. 315; 5 C. B. R. 75.—CAN.

sn. *Debt contracted in province in which company not licensed to trade—No residential qualification.*]—When a co. is not licensed to trade in a province & has no assets in that province, the mere fact that members of the co. have purchased raw furs when in that province does not confer on it a sufficient residential qualification to enable a bkpcy. petition to be presented against it in that province.—*Re ROBINSON (R. S.) & SON, LTD.*, [1923] 1 D. L. R. 691; 3 C. B. R. 537.—CAN.

### PART III. SECT. 1, SUB-SECT. 2.—C. (a).

1050 iv. ———.]—It is sufficient if the debt is actually owing, though not actually due or payable.—*Re TUNNELL, LTD., Ex p. WILLS & ANDERSON*, [1923] 4 D. L. R. 1018.—CAN.

**1077a. Tender before bankruptcy notice—Whether creditor bound to accept.**—On Jan. 3, 1928, a creditor obtained judgment for £47, in respect of two overdue instalments of a debt, leaving the remaining £23 instalment, which only became due between the date of the writ & the judgment, untouched by the judgment. On Jan. 9, in response to the creditor's invitation, debtor tendered the £23 in cash, but the tender was refused. On Jan. 27 the creditor filed a bkpcy. notice in respect of the £47 judgment debt, & on Feb. 16 he filed a petition based on the two debts, & on non-compliance with the bkpcy. notice:—*Held*: though the two debts were still owing & amounted to over £50, so that the creditor was formally entitled to present a petition under 1914 Act, s. 4 (1), nevertheless the refusal before the bkpcy. notice of the £23 offered at his invitation, & refused only in order to keep the total debt over £50, was "sufficient cause" within sect. 5 (3) for making no order on the petition.—*Re* DEBTOR, *Ex p.* LAWRENCE (No. 21 OF 1928), [1928] Ch. 665; *sub nom.* *Re* DEBTOR (No. 21 OF 1928), *Ex p.* PETITIONING CREDITOR *v.* DEBTOR, 97 L. J. Ch. 255; *sub nom.* *Re* DEBTOR, *Ex p.* LAWRENCE, 139 L. T. 519, D. C.

Giles v. Kruyer,

[1921] 3 K. B. 23

**1110a. ——— Note given for illegal consideration—Bonâ fide holder without notice.**—Where evidence has been given by a petitioner in support of his claim on a promissory note given for illegal consideration, showing his *bona fides* & want of notice of the illegality of the consideration, & there is no ground for disbelieving him, the ct. will not hold that he has not discharged the *onus* of proof which falls on him to prove the claim, & a receiving order should be made.—*Re* A DEBTOR (No. 4 OF 1922), *Ex p.* PETITIONING CREDITOR, [1922] B. & C. R. 116, C. A.

**1115. Add. Annotation:—Mentd.** McDonald v. Nash, [1924] A. C. 628.

**1127. Add. Annotations:—Consd.** *Re* A Debtor, [1929] 2 Ch. 146. *Refd.* *Re* A Debtor, [1927] 1 Ch. 19.

**1135. Add. Annotation:—Refd.** *Re* Debtors, [1927] 1 Ch. 19.

**1175. Add. Annotation:—Dbtd.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

**1177a. ———**—Where the agent of certain creditors asked the trustee of a deed of assignment by debtor to furnish particulars of the deed, & later on, wrote to the trustee enclosing the creditors' account, & asking for an acknowledgment of the claim, & after receipt of particulars of the deed, including information that certain of debtor's property was to be sold, stood by for fourteen days, but subsequently presented a petition founded on the deed of assignment:—*Held*: there

was sufficient acquiescence by the creditors to preclude them from relying on the deed as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* NEWBURYS, LTD. (1926), 95 L. J. Ch. 199; [1926] B. & C. R. 23.

**1178. Add. Annotation:—Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditors, [1924] B. & C. R. 105.

**1179. Add. Annotation:—Refd.** *Re* A Debtor, [1928] Ch. 199.

**1179a. ——— Attendance at meeting of committee of inspection.**—About the end of 1922 debtor made an arrangement to pay his creditors in full by instalments, a committee being appointed to watch over his affairs. His trading was not prosperous & new debts were incurred. On Feb. 21, 1924, he executed a deed of assignment for the benefit of his creditors generally & a circular letter with a form of assent was sent to & received by petitioning creditors, who were new creditors. On Feb. 25, 1924, their director with their accountant attended the office of one of the trustees under the deed & suggested that they or some other new creditor should be represented on the committee of inspection. Petitioning creditors were then invited to attend the meeting of the committee on Mar. 26, 1924, & their director & their solr. attended accordingly, discussing & advising on certain matters. Petitioning creditors, however, refused to assent to the deed & presented a petition in bkpcy. grounded upon the execution of the deed as an act of bkpcy.:—*Held*: on the facts, petitioning creditors had so far recognised the deed as to preclude them from availing themselves of its execution as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITORS (No. 24 OF 1924), (1924), 94 L. J. Ch. 42; [1924] B. & C. R. 105, D. C.

**1182. Add. Annotation:—Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

**1210. Add. Annotation:—Refd.** *Re* A Debtor, [1928] Ch.

**1211. Add. Citation:—**39 L. J. Bcy. 46.

**1217. Add. Citation:—**29 W. R. 268.

**1253a. ——— Secretary duly authorised to present petition.**—The secretary of a limited co. was authorised under seal of the co. to present a bkpcy. petition, & at the commencement of the petition had so described himself, but had signed the petition in his own name without any description either before or after his name. Objection being taken on behalf of debtor that the petition was wrongly signed & attested & the consideration for the debt not truly stated, the county ct. registrar dismissed the petition:—*Held*: the petition amply informed debtor who petitioners were, & what the debt was in respect of which they were petitioning; there was no defect or irregularity & even if there were, it would come within 1914

### PART III. SECT. 1, SUB-SECT. 2.—G.

**so. Order for alimony.**—Upon a petition by a woman for a receiving order against her husband, based upon a failure to pay alimony:—*Held*: the order did not create a debt within Bkpcy. Act, s. 44.—*Re* FREEDMAN, [1924] 3 D. L. R. 517; 55 O. L. R. 206; 5 C. B. R. 47.—CAN.

### PART III. SECT. 1, SUB-SECT. 4.

**1202 i. Within six months—When time begins to run—Ceasing to meet liabilities.**—Where A. had failed to pay liabilities on their due dates eighteen months prior to the presentation of the bkpcy. petition against him:—*Held*: the mere continuance of the failure to pay the same liabilities could not be said to be an act of bkpcy. occurring within six months

before the presentation of the petition.—*BROWN v. KELLY-DOUGLAS & CO.*, [1923] 2 D. L. R. 738; 32 B. C. R. 143; [1923] 1 W. W. R. 1340.—CAN.

### PART III. SECT. 3, SUB-SECT. 1.—B.

**u i. ———**—All members of the firm must be named in a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—CAN.

Act, s. 147 (1), & the appeal must be allowed & a receiving order made & dated as of the date on which it should have been made in the county ct.—*Re MARSDEN, Ex p. SELLERS (E. H.) & SONS, LTD.* (1921), 91 L. J. Ch. 318; 126 L. T. 408; [1921] B. & C. R. 188, D. C.

**1236a.** — — — **Details of debt—Petition by money-lender.]—**Money-lenders' Act, 1927 (c. 21), s. 9 (2), applies to loans made before, as well as to those made after, the Act.—*Re DEBTOR* (No. 99 of 1928) (1928), 97 L. J. Ch. 250; 139 L. T. 234; 72 Sol. Jo. 335; [1928] B. & C. R. 40, C. A.

**1313.** *Add. Citation* :—68 L. T. 589.

**1326.** *Add. Annotation* :—*Refd. Re Debtors*, [1927] 1 Ch. 19.

**1332.** *Add. Annotation* :—*Refd. Douglass v. Lloyd's Bank* (1929), 34 Com. Cas. 263.

**1345.** *Add. Annotation* :—*Consd. Re A Debtor*, [1929] 1 Ch. 170.

**1347.** *Add. Annotation* :—*Consd. Re A Debtor, Ex p. Petitioning Creditor* (1920), 89 L. J. K. B. 432.

**1347a.** — — — *]*—The registrar in bkpcy. possesses the widest discretion in respect of granting adjournments of the hearing of petitions, the only limit that the law imposes upon him being that he should exercise a judicial discretion.—*Re A DEBTOR, Ex p. PETITIONING CREDITOR* (1920), 89 L. J. K. B. 432; [1920] B. & C. R. 1, D. C.

**1357.** *Add. Annotation* :—*Refd. Re A Debtor, Ex p. Petitioning Creditor* (1920), 89 L. J. K. B. 432.

**1357a.** — — — **Reasonable prospect of satisfaction of debts.]—**Where a debtor applies for the adjournment of a petition, the ct. should

be satisfied that there is a reasonable prospect of the debts being satisfied, & the ct. should be put in possession of every possible information as to the position of debtor, & as to the position of the negotiations which, it is said, will result in obtaining funds for the payment of his debts.—*Re BOWEN, Ex p. THE DEBTOR*, [1924] B. & C. R. 32, C. A.

**1366.** *Add. Annotation* :—*Refd. Re Debtor*, [1928] Ch. 199.

**1366a.** **Agreement to withdraw—Bill of exchange given in consideration of—***Void.*—*DAVIS v. HOLDING* (1836), 1 M. & W. 159; 1 Gale 380; Tyr. & Gr. 371; 5 L. J. Ex. 102; 150 E. R. 388.

*Annotations* :—*Refd. Belcher v. Sambourne* (1844), 6 Q. B. 414; *Smith v. Salzmann* (1854), 9 Exch. 535; *Whitmore v. Farley* (1881), 14 Cox. C. C. 617.

**1367a.** — — — **After receiving order made.]—**A creditor who presented a petition in bkpcy. against debtor failed to disclose a charge which had been given him by debtor some years previously. The registrar allowed the creditor to amend his petition after a receiving order had been made :—*Held* : apart from amending the petition, it was doubtful whether the receiving order could be set aside on the ground of the omission to state the security; but there was power to amend the petition even after the making of the receiving order.—*Re A DEBTOR* (No. 1507 of 1921), [1922] 2 K. B. 109; 91 L. J. Ch. 471; 127 L. T. 344; 38 T. L. R. 574; 66 Sol. Jo. 472; [1922] B. & C. R. 9, C. A.

**1378a.** — — — **To remove name of debtor—Proceedings against partnership—One partner a company—***Winding up.*—*Re DOBREE & Co.*, No. 3793a, *post*.

## Part IV.—Receiving Order.

**1451a.** — — — **To make order against partners—Act of bankruptcy by other partners.]—***Re GOWLAND BROTHERS, Ex p. PROCTER SLOTTON* (1928), 65 L. Jo. 378, D. C.

**1453.** *Add. Annotation* :—*Refd. Re A Debtor*, [1927] 2 Ch. 367.

**1454.** *Add. Annotation* :—*Consd. Re A Debtor*,

### PART III. SECT. 3, SUB-SECT. 2.

**1261 i.** — — — *On partners.]—*All members of the firm must be served with a petition for a receiving order against a partnership.—*Re CLUFF BROTHERS*, [1925] 4 D. L. R. 721.—CAN.

**1275 ii.** — — — *By whom—Solicitor.]—**Re X.* (1920), 59 D. L. R. 617; 1 C. B. R. 459.—CAN.

### PART III. SECT. 3, SUB-SECT. 7.—B.

**1334 iii.** — — — *Position of sisted creditor.]—*A creditor who had petitioned for sequestration of the estates of his debtor proposed to abandon his petition before sequestration had been awarded. Another creditor thereupon lodged a minute craving to be sisted as a party to the petition. The Lord Ordinary sisted him, & six weeks later, on his petition, granted sequestration. Vouchers, admittedly sufficient to substantiate the creditor's debt, were exhibited to the Lord Ordinary before he granted sequestration, & were subsequently lodged in process, but these particular vouchers had not been produced when

the creditor was sisted. Thereafter the debtor presented a petition for recall of the sequestration on the ground that the proceedings were *ab initio* void, in respect that the sisted creditor had not fulfilled the statutory procedure for obtaining sequestration laid down in Bkpcy. (Scotland) Act, 1913, s. 20, in that he had failed timeously to lodge in process the necessary evidence of his debt :—*Held* : a creditor craving to be sisted in terms of Bkpcy. (Scotland) Act, 1913, s. 33, as petitioner to a petition for sequestration did not need to follow out the statutory procedure prescribed by sect. 20 as essential in the case of an original petitioner, it being sufficient if such sisted creditor, before the award of sequestration was made, satisfied the Lord Ordinary as to the existence of his debt.—*STEWART v. WETHERDAIR, LTD.*, [1928] S. C. 577.—SCOT.

### PART III. SECT. 3, SUB-SECT. 12.

**1379 iii.** — — — *]*—*Re LITTLE*, [1925] 1 D. L. R. 395; 56 O. L. R. 196; 5 C. B. R. 244; *revisg.*, [1924] 2 D. L. R. 1172.—CAN.

### PART III. SECT. 3, SUB-SECT. 13.—B.

**1408 ii.** — — — *]*—Where a judge before whom a bkpcy. petition was being tried had no knowledge of the law of another province, & a question arose concerning that law & he sent the case over to be tried in a competent ct. in that province :—*Held* : this was a reasonable course to pursue.—*Re FAIRWEATHERS, Ex p. MONTREAL (CITY)* (1921), 2 C. B. R. 342.—CAN.

### PART IV. SECT. 1.

**1459 ii.** — — — *Authorised assignment made before conditions of composition deed fulfilled.]—**Re LIPSON*, [1923] 3 D. L. R. 1171; (1922), 52 O. L. R. 352; 2 C. B. R. 488.—CAN.

### PART IV. SECT. 2, SUB-SECT. 1.

**e.** Read now "1461 i."

**1461 ii.** *Authorised assignment—Between service & hearing of bankruptcy petition.]—*Bkpcy. Act, s. 4 (6), does not apply where debtor, with the palpable intention of choosing his own trustee, makes an assignment after he has been served with a petition in bkpcy. & before the return of the notice

- Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.
1462. *Add. Annotation*:—*Expld. & Dlst. Re A Debtor, Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.
1467. *Add. Annotations*:—*Consd. Re Forder, Forder v. Forder* (1927), 96 L. J. Ch. 314. *Refd. Re Debtor*, [1928] Ch. 199.
1482. *Citations*:—For “54 L. Jo. 444; 148 L. T. Jo. 178” read “89 L. J. K. B. 40.”
- 1483a. *Debtor claiming indemnity—As surety for contingent liability of petitioning creditor.*—Petitioning co., of which debtor was formerly chairman, had lent debtor a large sum of money, & recovered judgment against him (on balance of account) for £2,065. A receiving order was made in the county ct. from which debtor appealed, alleging that he had become surety for the co. for their bank overdraft with a limit of £5,000, & that he was entitled to be indemnified against this liability. No payment had been made by debtor on account of the bank overdraft. At a creditors’ meeting the creditors were of opinion that debtor was insolvent & there was no alternative but bkpcy.:—*Held*: on the facts, petitioning creditors’ obligation to indemnify debtor as surety in respect of his contingent liability for a debt due from petitioning creditors to a bank did not constitute “sufficient cause” for the dismissal of the petition.—*Re A Debtor* (No. 13 of 1922), *Ex p.* THE DEBTOR, [1923] B. & C. R. 54, C. A.
1488. *Add. Annotation*:—*Refd. Re Debtor*, [1928] Ch. 199.
1489. *Add. Annotations*:—*Consd. Re Forder, Forder v. Forder* (1927), 96 L. J. Ch. 314. *Refd. Re Debtor*, [1928] Ch. 199.
1490. *Add. Annotation*:—*Consd. Re Debtor*, [1928] Ch. 199.
1491. *Add. Annotation*:—*Refd. Re Debtor*, [1928] Ch. 199.
- 1491a. ———.]—Debtor furnished a friend with a cheque for £500 as a deposit in connection with the underwriting of shares by a co. in which the friend was interested. The cheque was dishonoured & judgment obtained against debtor for £500 & £14 6s. costs. In Dec. 1926, the judgment creditors petitioned for a receiving order against debtor in respect of the judgment debt. From time to time arrangements were made for adjourning the petition, but in Mar. 1927, the petitioning creditors intimated that the conditions on which they would agree to the petition being dismissed were that debtor should pay £100 & provide a guarantee for payment of the balance of the debt & also agree to pay to them the costs of their proceedings against the underwriters as between solr. & client, & the costs of their proceedings against debtor, also as between solr. & client. Payment of the costs of proceedings against the underwriters was refused, but payment by debtor of solr. & client costs was agreed to, & sums of £50 & £144 were paid & the petition dismissed. In July petitioners again commenced proceedings for a receiving order in respect of a sum ascertained by deducting from the original debt & interest & costs as between solr. & client the payments of £50 & £144. A receiving order having been made:—*Held*: the acts of petitioners in seeking to obtain payment of their costs in the proceedings against the underwriters & in obtaining payment by debtor of their solr. & client costs amounted to extortion & an abuse of the process of the ct., & the case fell within 1914 Act, s. 5 (3), as being one where the ct. was satisfied that for sufficient cause no receiving order ought to be made, & the receiving order must be discharged.—*Re Debtor* (No. 883 of 1927), [1928] Ch. 199; 97 L. J. Ch. 120; 138 L. T. 440; 72 Sol. Jo. 85; [1928] B. & C. R. 1, C. A.
1492. *Add. Annotation*:—*Refd. Re Debtor*, [1928] Ch. 199.
1493. *Add. Annotation*:—*Refd. Re Debtor*, [1928] Ch.
1494. *Add. Annotation*:—*Apld. Re A Debtor, Ex p.* Newburys (1926), 95 L. J. Ch. 199.
1495. *Add. Annotation*:—*Refd. Re Debtor*, [1928] Ch. 199.
1496. *Add. Annotation*:—*Refd. Re Debtor, Ex p.* Debtor, [1918–19] B. & C. R. 221.
1498. *Add. Annotation*:—*Generally, Mentd. Re Lee, Ex p.* Grunwaldt, [1920] 2 K. B. 200. After this case add “Compare No. 797a, ante.”
- 1498a. *Exercising powers under Law of Distress Amendment Act, 1908* (c. 53).—*Re A Debtor*, No. 1016a, ante.
1500. *Add. Annotations*:—*Dlst. Re Debtors, Ex p.* Debtor (1922), 92 L. J. Ch. 120. *Refd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913; *Re A. & M.*, [1926] Ch. 274. *Mentd. Re A Debtor*, [1922] 2 K. B. 109.
- 1500a. *Order against firm “other than” partner not served with bankruptcy notice.*—*Re Debtors* (No. 807 of 1922), *Ex p.* Debtor, No. 887a, ante.
1508. *Add. Annotations*:—*Apld. Re A Debtor*, [1922] 2 K. B. 109. *Consd. Re Debtors, Ex p.* Debtor (1922), 92 L. J. Ch. 120; *Refd. Re A. & M.*, [1926] Ch. 274. *Mentd.*

[1925] 4 D. L. R. 518.—CAN.

*sp. Debtor in position to pay.*—If debtor is in a position to pay petitioning creditor, no receiving order ought to be made against him without giving him some opportunity of paying or securing the debt.—*Re Maguire*, [1923] 1 D. L. R. 1186; 51 O. L. R. 63; 3 C. B. R. 880.—CAN.

II. ———.]—The ct. refused an order sequestrating a debtor’s estate when it was clear that the sequestration would not be for the benefit of the creditors.—*Findlay v. Bretar* (1921), 42 N. L. R. 19.—S. AF.

of hearing.—*Re CROTEAU & CLARK CO., LTD.*, [1920] 43 O. L. R. 359; 55 D. L. R. 413; 1 C. B. R. 364.—CAN.

1461 III. ——— After but on same day as presentation of petition & appointment of interim receiver. — Although after the presentation of a petition in bkpcy. & appointment of an interim receiver debtor on the same day makes an assignment for the general benefit of his creditors to an authorised trustee other than the one asked for in the petition, the ct. will hear the petition on its return & may grant the same & appoint as trustee the person named therein.—*Re Progressive Farmers Co., LTD.*, [1921] 3 W. W. R.

265; 1 C. B. R. 551.—CAN.

1461 IV. ———.]—Motion by a creditor for a receiving order, after debtor had made an authorised assignment, dismissed as unnecessary, but without prejudice to its being renewed if any necessity should arise.—*Re Waterhouse (Thomas) & Co.* (1921), 64 D. L. R. 518; 50 O. L. R. 476.—CAN.

1464 I. *No other creditor—Other facilities for realising debt.*—It is a sufficient cause for refusing a receiving order that the judgment creditor has equally good facilities for realising under the judgment itself, & that there is no other creditor.—*Re Stone*,

Hawkins & Sunderland v. Duché (1921), 90 L. J. K. B. 913.

1513. *Add. Annotation*:—*Re* A Debtor, [1920] 1 K. B. 461.

1515a. — *Application opposed by official receiver.*—Where debtor applies to the registrar in bkpcy. to rescind a receiving order made against him, on the ground that all his debts have, since the making of the order, been paid in full, & the official receiver states that in his opinion the receiving order should not be rescinded until debtor has undergone a public examination, the registrar is not bound by that opinion, though in the independent exercise of his discretion he ought to give proper weight thereto.—*Re* A DEBTOR (No. 446 of 1918), [1920] 1 K. B. 461; 89 L. J. K. B. 113; 84 Sol. Jo. 147; [1920] B. & C. R. 31; *sub nom.* *Re* A DEBTOR, *Ex p.* THE DEBTOR v. PETITIONING CREDITORS & OFFICIAL RECEIVER, 122 L. T. 354, C. A.

1519a. — *All debts paid in full.*—*Re* A DEBTOR (No. 446 of 1918), No. 1515a, *ante*.

1520. *Add. Citations*:—[1920] 1 K. B. 461; 89 L. J. K. B. 113; 122 L. T. 354; [1920] B. & C. R. 31.

1541a. — *Failure to disclose security.*—*Re* A DEBTOR (No. 1507 of 1921), No. 1367a, *ante*.

1545a. — *Sequestration in Scotland.*—*Re* A DEBTOR (No. 199 of 1922), No. 389a, *ante*.

1548a. — *Power to make charging order on balance of funds in court.*—A debtor, against whom a receiving order had been made, paid money into ct. to satisfy his debts in full. The receiving order was then rescinded by an order which directed the official receiver, after paying the debts & deducting his costs, charges & expenses, to pay the balance in his hands to debtor. A subsequent unsatisfied judgment creditor applied to the registrar in bkpcy. for a charging order upon the balance of the funds in the hands of the official receiver:—*Held*: (1) the registrar had jurisdiction to make the order; (2) the registrar's jurisdiction was derived through the jurisdiction of the judge of the High Ct. to whom for the time being bkpcy. matters were assigned exercising his bkpcy. jurisdiction.—*Re* PRIOR, *Ex p.* PRIOR, [1921] 3 K. B. 333; 90 L. J. K. B. 1222; *sub nom.* *Re* DEBTOR, *Ex p.* DEBTOR (No. 718 of 1920), 125 L. T. 727; [1921] B. & C. R. 124, C. A.

#### PART IV. SECT. 6.

1554 i. *In general*—*Debtor consenting to order.*—Where a petition for a receiving order has been filed & served, debtor should not make an authorised assignment, but should notify petitioning creditor, or his solr., that he, the debtor, consents to a receiving order.—*Re* LALONDE, [1924] 1 D. L. R. 1018;

55 O. L. R. 279; 4 C. B. R. 416.—CAN

*st. On person holding himself out as member of partnership.*—A receiving order made against a partnership will include a person who has held himself out as a member thereof.—*Re* MAIN CLOAK Co., [1925] 1 D. L. R. 290.—CAN.

1552a. — *Receiving order discharged subject to condition—Condition not fulfilled—Rescission of discharging order.*—Debtor, a barrister, was entitled on the death of his mother to a vested remainder in tail of considerable value. His mother was seventy-five. The petition was filed on July 19, 1923. His present indebtedness amounted to about £6,000 & negotiations for a loan for that amount with an insurance co. had been going on since July 16, 1923. Owing to a delay in raising this loan, the registrar had made a receiving order on Nov. 21, 1923, from which debtor appealed; & upon debtor undertaking during the interval necessary to raise the loan, to insure his life immediately, i.e. from Dec. 1, 1923, to Jan. 1, 1924, in order that, in the event of his death during that period, the unsecured creditors might be safeguarded, the Ct. of Appeal allowed the appeal, discharged the receiving order & dismissed the petition without prejudice to another petition being presented if the loan was not carried through & petitioning creditors' debt not paid on or before Jan. 1, 1924. Up to Dec. 20, debtor had not insured his life pursuant to his undertaking & petitioning creditors then moved to commit debtor for contempt. The Ct. of Appeal allowed debtor three hours within which to insure his life, & a certificate being produced showing that this had been done, the ct. made no order except that debtor should pay the creditors' costs. Subsequently debtor having again broken his undertaking by not completing the insurance on his life, the Ct. of Appeal rescinded their order, with the result that the receiving order stood as originally made by the registrar.—*Re* A DEBTOR, *Ex p.* THE DEBTOR (No. 1088 of 1923), [1924] B. & C. R. 1, C. A.

1554. *Add. Annotations*:—*Mentd.* Maatschappij voor Fondsenbezit v. Shell Transport & Trading Co., [1923] 2 K. B. 166; Knight v. Ponsonby, [1925] 1 K. B. 545.

1569. *Add. Annotation*:—*Consd.* *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.

1570. *Add. Annotation*:—*Appld.* *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

1579a. — *Effect of—On transactions pending appeal from receiving order.*—*Re* WIGZELL, *Ex p.* HART, No. 1893a, *post*.

#### PART IV. SECT. 7.

1575 ii. — *To enable debtor to pay* ] —A receiving order directed not to issue for seven days & not then to issue if petitioner's claim, including the costs of the petition, satisfied.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186; 51 O. L. R. 63; 3 C. B. R. 880.—CAN.



## Part V.—Adjudication Order.

1603. *Add. Annotations*:—*Refd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814; *Re Wait*, [1927] 1 Ch. 606. *Mentd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Re London County Commercial Reinsurance Office*, [1922] 2 Ch. 67; *Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87; *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.
1619. *Add. Citation*:—11 Cox, C. C. 360.
1620. *Add. Annotation*:—*Refd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
1624. *Add. Annotation*:—*Consd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
1625. *Add. Annotation*:—*Refd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
1627. *Add. Annotation*:—*Mentd. Re Cooke, Winckley v. Winterton*, [1922] 1 Ch. 292.
1636. *Add. Annotation*:—*Consd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.
1637. *Add. Annotation*:—*Dbtd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.
1638. After this case add "On duty to maintain wife."—*See HUSBAND & WIFE*, No. 595a."
1642. *Add. Citation*:—39 L. J. Bcy. 46.
1646. *Add. Annotation*:—*Mentd. R. v. Customs & Excise Comrs.*, [1928] A. C. 402.
1647. *Add. Annotation*:—*Refd. Holden v. Southwark Corp.*, [1921] 1 Ch. 550.
1656. *Add. Annotation*:—*Consd. Re Boulton, Ex p. Moncrieff v. Official Receiver* (1926), 135 L. T. 461.
- 1657a. ————]—The partners of a firm, which was heavily indebted to the firm's bankers, formed a limited co. to take over the debt. They then, with the consent of the principal creditors of the firm, gave the bank a joint & several guarantee for payment of the transferred debt & of any sums due to the bank from the co. Upon the subsequent bkpcy. of the firm & the individual partners:—*Held*: (1) bkpts. had by the guarantee contracted a "debt provable in the bkpcy. without having at the time of contracting it any reasonable or probable ground of expectation of being able to pay it" within 1914 Act, s. 26 (3) (d), which covered not only a new & original debt, but also a debt in renewal of or in substitution for a previously existing debt, & their discharge must be suspended

for a period of two years; (2) the et., upon the particular facts of the case, granted each partner a certificate that his bkpcy. was "caused by misfortune without any misconduct on his part," the certificate to operate when the discharge took effect. Circumstances which may constitute "misfortune without any misconduct" within sect. 26 (4), discussed.—*Re BOULTON BROTHERS & Co.*, [1927] 1 Ch. 79; *sub nom. Re BOULTON BROTHERS & Co., Ex p. MONCRIEFF v. OFFICIAL RECEIVER*, 96 L. J. Ch. 90; [1927] B. & C. R. 1, C. A.

1666. *Add. Annotation*:—*Refd. Sevenoaks U. D. C. v. Twynam*, [1929] 2 K. B. 440.
1667. *Add. Annotation*:—*Refd. Re Debtors*, [1927] 1 Ch. 19.
1669. *Add. Annotation*:—*Refd. Sevenoaks U. D. C. v. Twynam* (1929), 98 L. J. K. B. 537.
1670. *Citation*:—For "28 L. J. Bcy. 29" read "36 L. J. Bcy. 29."
1679. *Add. Annotation*:—*Mentd. McDonald v. Nash*, [1924] A. C. 625.
1731. *Add. Annotation*:—*Refd. Re Debtors*, [1927] 1 Ch. 19.
1735. *Add. Annotation*:—*Refd. McDonald v. Nash*, [1924] A. C. 625.
1766. *Add. Annotation*:—*Refd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
1771. *Add. Annotation*:—*Refd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
- 1775a. ———— **Surplus assets after payment of composition.**—Bkpt. made a composition with his creditors, which was approved, & the cash required to satisfy the composition having been deposited with the official receiver, the adjudication was annulled, but the order annulling the adjudication contained no reference to the vesting of surplus assets:—*Held*: although the order of annulment contained no express provision as to the vesting of any surplus assets, on payment of the composition the estate of debtor, i.e. the surplus after satisfying the composition, would, by necessary implication, revert in debtor.—*FLOWER v. LYME REGIS CORPN.*, [1921] 1 K. B. 488; 90 L. J. K. B. 355; 124 L. T. 463; 37 T. L. R. 145; 65 Sol. Jo. 133; [1920] B. & C. R. 138, C. A.
1781. *Add. Annotation*:—*Refd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

## PART V. SECT. 1.

d1. ———— *Want of assts.*—Where there are no assets the making of an order for adjudication is in the discretion of the ct.—*Re BARAKAT*, [1920] N. Z. L. 134.—N.Z.

1598 iii. ————]—Sequestration of the estates of a debtor was pronounced in the sheriff ct. of L. in 1900. The trustee was subsequently discharged, but bkpt. never obtained his discharge. He, however, continued to

carry on business & incurred new debts. In 1922 one of the new creditors presented a petition in the same ct. for sequestration of debtor's estates:—*Held*: in the circumstances Bkpcy. (Scotland) Act, 1913 (c. 20), s. 16, did not make incompetent a new award of sequestration.—*COOK v. M'DOUGALL*, [1923] S. C. 86.—SCOT.

## PART V. SECT. 2, SUB-SECT. 1.

sv. *On chattel mortgage by debtor.*—

The validity of a chattel mtge. given by debtor who is subsequently adjudicated bkpt must be determined as at the time of such adjudication.—*Re SAUNDERS ALBERTA COLLIERIES, LTD.*, [1925] 3 D. L. R. 323; [1925] 2 W. W. R. 122 5 C. B. R. 727.—CAN.

## PART V. SECT. 3, SUB-SECT. 3.

s (p. 188) 1. ———— *In filing petition—Creditor prejudiced.*—*Re HASTIE*, [1926] N. Z. L. R. 428.—N.Z.



## Part VI.—Official Receiver, Special Manager, and Interim Receiver.

**1808a. On grant of administration—Estate of undischarged bankrupt—Whether estate of trustee divested—After-acquired property.]—**An order under 1914 Act, s. 130, for the administration of the estate of a deceased undischarged bkpt. according to the law of bkpcy. is not a second or subsequent receiving order or adjudication within s. 39 so as to divest the estate of the trustee in bkpcy. in favour of the official receiver under the administration order; but bkpt.'s estate, including any after-acquired property, remains vested in his trustee in bkpcy.—*Re*

SARJEANT, [1923] 2 Ch. 302; 129 L. T. 825;  
*sub nom. Re SARJEANT, Ex p. OFFICIAL*  
RECEIVER, 92 L. J. Ch. 626; [1923] B. &  
C. R. 63.

.....].— *See, now*, Bkpcy.  
(Amendment) Act, 1926 (c. 7), s. 3.

1826. *Add. Annotation:—*Refd. *Re A Debtor*,  
[1920] 1 K. B. 461.

**1853. Add. Annotations: —** Refd. Everett v. Griffiths, [1920] 3 K. B. 163. Mentd. More v. Weaver, [1928] 2 K. B. 520.

## Part VII.—The Trustee and Committee of Inspection.

**1889.** *Add. Annotations* :—*Consd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87. *Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. *Refd. Re London County Commercial Reinsurance Office*, [1922] 2 Ch. 67; *Re Wait*, [1927] 1 Ch. 606. *Mentd. Re Harrington Motor Co., Ex v. Chaplin*, [1929] Ch. 105.

**1890. Add. Annotations :—** *Consd.* Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. *Distd. Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. *Refd.* *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

1892. *Add. Annotation*:—*Mentd. Lipton v. Bell*,  
[1924] 1 K. B. 701.

1893. *Add. Citations* :—122 L. T. 35 ; [1918-19]  
B. & C. R. 249.

**Add. Annotations:**—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; *Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, *The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. **Mentd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.

1893a. — Duty not to take advantage of mistake of fact.]—A receiving order was made against a debtor, who thereupon applied for & obtained a stay of the advertisement of the receiving order & all proceedings thereunder pending an appeal therefrom. The appeal was subsequently dismissed & an order was made adjudicating him bkpt. At the date of the receiving order bkpt. had an account at a bank. After the making of the receiving order & pending the hearing of the appeal bkpt. paid into the bank £165 which

he had collected from his debtors. & drew out of his account £199. The bank acted in good faith & received & paid those sums in the ordinary course of business without knowing that a receiving order had been made against bkpt. The trustee in bkpy. claimed a declaration that the sums paid into the bank after the date of the receiving order vested in him as trustee:—*Held*: (1) the sums paid into the bank by bkpt. after the date of the receiving order became by virtue of 1914 Act, ss. 18 (1), 37 (1), 38 (a), the property of his trustee in bkpy.; (2) the bank were not entitled to credit themselves with the payments out to bkpt., as those transactions took place after the date of the receiving order & were therefore not protected by sects. 45 & 46; (3) there was nothing dishonest in the trustee enforcing the rights given to him by the Act, & the action of the ct. in staying the advertisement & proceedings could not operate in any way in derogation of the rights of the trustee.—*Re WIGZELL, Ex p. HART*, [1921] 2 K. B. 835; *sub nom. Re WIGZELL, Ex p. TRUSTEE*, 90 L. J. K. B. 897; [1921] B. & C. R. 42; *sub nom. Re WIGZELL, Ex p. TRUSTEE* v. BARCLAYS BANK, LTD., 125 L. T. 361; *sub nom. Re WIGZELL, HART v. BARCLAYS BANK*, 37 T. L. R. 526; 65 Sol. Jo. 493. C. A.

*Annotations:—As to (2) Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse (1925), 133 L. T. 814. As to (3) Consd. Scranton's Trustee v. Pearse, [1922] 2 Ch. 87. Refd. Re London County Commercial Reinsurance Office, [1922] 2 Ch. 67.*

1894a. — Duty to recover statutory debt.—  
In 1919 debtor paid debt., a bookmaker,  
various cheques for bets lost on horse racing,  
& these cheques were cleared through various  
banks, as holders. On Aug. 30, 1920, debtor  
was adjudicated bkpt. & on Mar. 30, 1921,

**PART VI. SECT. 8.**

sw. When court will appoint.].—  
Petitioner must convince the ct. that  
an interim receiver is necessary to  
protect the creditors' interests.—*Re*  
*CANADIAN COAL SUPPLY, Ex p.*  
*STAPLES BELL INC., [1924] 2 D. L. R.*  
*831; 4 O. B. R. 577.—CAN.*

m i. ———.]—Re CANADIAN COAL  
SUPPLY, *Ex p.* STAPLES BELL INC.,  
[1924] 2 D. L. R. 831; 4 C. B. R. 577.  
—CAN.

82. Order of appointment containing undertaking as to damages by petitioning creditor—Undertaking not discharged on termination of appointment.]—*Re JACK-*

SON, [1926] 1 D. L. R. 1189; 58  
O. L. R. 182.—CAN.

**PART VII. SECT. 1.**

sa. Representative of creditors.—To enforce rights.]—*Re* **HERSH, Ex p. GOLDSTEIN**, [1923] 3 D. L. R. 101; 4 C. B. R. 84—CAN.

his trustee in bkpcy. by the direction of his committee of inspection, commenced an action to recover £955, the amount admitted to be due, if recoverable. The action was transferred to the judge in bkpcy. under Bkpcy. Rules, 1915, r. 123. Deft. took the point that such an action ought not to be brought by an officer of the ct., as the claim, however legal, was practically dishonest, & that all ct.s. must apply the rule in *Re Condon, Ex p. James*, No. 60, ante:—*Held*: the claim the trustee in bkpcy. was seeking to enforce was in respect of a debt which under Gaming Act, 1835 (c. 41), s. 2, & the decision of the House of Lords in *Sutlers v. Briggs* (see GAMING & WAGERING, Vol. XXV., p. 418, No. 213), was a statutory debt, & there was nothing in *Re Condon, Ex p. James*, or in any of the cases in which the rule in that case had been followed, which entitled the ct. to say that if & when a right of action in respect of such a debt vested in a trustee in bkpcy., it was a dishonest or dishonourable thing for him as an officer of the ct. to enforce it, & judgment for the trustee in bkpcy. must be entered in the action for the amount claimed.—*SCRANTON'S TRUSTEE v. PEARSE*, [1922] 2 Ch. 87; 91 L. J. Ch. 579; 127 L. T. 698; 38 T. L. R. 629; 66 Sol. Jo. 503; [1922] B. & C. R. 52, C. A.

*Annotation*:—*Refd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814.

**1894b.** — **Duty to act equitably—Recovery of money paid to bankrupt with approval of official receiver.**—On June 26, 1924, a receiving order was made against W. on a petition presented on May 25, 1924, in respect of an act of bkpcy. on May 1, 1924. W. was a promoter of boxing contests & had in view at the date of the presentation of the petition boxing competitions, one of which was held at the Stadium, Wembley, on Aug. 9, 1924. He appealed against the receiving order, & pending that appeal the receiving order was not gazetted. His appeal having failed it was then gazetted on July 29, 1924. At an interview between W., his solr., the solr. for the Wembley authorities & A., the assistant official receiver, who under Bkpcy. Rules, 1915, r. 316, represented the official receiver, A. was told of the proposed boxing contest & the judge held on the evidence that at the interview W. told A. he desired notwithstanding the receiving order to be allowed to stage the contest as the only hope of providing assets to meet the claims of his creditors, & that it was arranged he could do so without any interference by the official receiver, on W. undertaking not to use the proceeds of the sale of tickets for his private purposes but only for discharging the expenses of the staging of the contest & to hand over any balance to the official

receiver. On that arrangement being made W. proceeded with the negotiations for the contest & an agreement was executed by which he gave the Wembley authorities the right to collect all moneys paid for tickets at the turnstiles, & they were to have those moneys as a security for the payment by W. for the use of the Stadium. Various ticket agents paid W. for blocks of tickets to be sold by them to the public. The contest, which was held at the Stadium on Aug. 9, 1924, only realised after payment of all expenses £730 which W. paid to the official receiver. On Sept. 6, 1924, W. was adjudicated bkpt., & on Sept. 9, S. was appointed trustee in the bkpcy. On a motion by S. to recover from the various ticket agents all sums paid by them since the date of the receiving order to W. for tickets they had bought from him & to recover the money collected by the Wembley authorities at the turnstiles:—*Held*: A. had power to give his sanction to W.'s receipt of the proceeds of the sale of tickets to be applied by him in discharging expenses & the trustee in bkpcy. was bound by the sanction so given, but even if he were not so bound & even if A. exceeded his powers the trustee could not take the benefit of W.'s activities without accepting their burden, & the payment to W. of the moneys which the trustee claimed, being the direct result of the leave obtained by W. from A. to stage the boxing contests, it would be inequitable & unjust to make resps. pay these moneys over again for the benefit of W.'s creditors & to hold that the charge given to the Wembley authorities was nugatory.—*Re WILSON, Ex p. SALAMAN*, [1926] Ch. 21; 95 L. J. Ch. 58; 133 L. T. 814; 70 Sol. Jo. 65; [1925] B. & C. R. 96.

**1895.** *Add. Annotations*:—*Consd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87. *Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814.

**1896.** *Add. Annotations*:—*Consd. Re Stokes, Ex p. Mellish*, [1919] 2 K. B. 256; *Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735.

**1901.** *Add. Annotation*:—*Mentd. Christoforides v. Terry*, [1924] A. C. 566.

**1903.** *Add. Annotation*:—*Mentd. Douglass v. Lloyds Bank* (1929), 34 Com. Cas. 263.

**1961a.** — **Suspension of bankruptcy—Death of trustee.**—Where proceedings in a bkpcy. have been suspended by a resolution of the creditors, passed under 1861 Act, s. 110, & the trustee appointed by the creditors to wind up the estate & effects of the bkpt. has died, the Ct. of Ch. has jurisdiction, under the Trustee Acts, to appoint new trustees.—*Re RAPHAEL'S TRUST ESTATE* (1870), L. R. 9 Eq. 233; 39 L. J. Ch. 200; 18 W. R. 247.

**PART VII. SECT. 2, SUB-SECT. 2.**

**1911 ii.** — — —.—*Re LONDON BRIDGE WORKS, LTD. (Ont.)*, [1926] 4 D. L. R. 1121.—*CAN.*

*k i.* — *Not secured creditor who has not valued security.*—*Re LONDON BRIDGE WORKS, LTD. (Ont.)*, [1926] 4 D. L. R. 1121.—*CAN.*

**1943 i.** *Who may appeal against decision on election—Custodian not being creditor.*—*The custodian ap-*

*pointed by the official receiver after an authorised assignment under Bkpcy. Act, if he is not a creditor of the assignor, is not entitled to appeal from the decision of the official receiver as chairman of the first meeting of creditors who, after passing on the admission or rejection of proofs of claim for the purpose of voting, has declared a certain person elected as trustee.*—*Re MCCOUBREY*, [1924] 2 D. L. R. 1123; [1924] 2 W. W. R. 348; 4 C. B. R. 642.—*CAN.*

**PART VII. SECT. 2, SUB-SECT. 6.**

**1959 ii.** — *Conflict of interest & duty.*—Where a trust co. was an authorised trustee in the bkpcy. of a limited co., & certain directors & shareholders of the latter, having large claims against debtors' estate, were also shareholders of the trust co., one being also a director, it was considered undesirable that the trust co. should continue to act, & another trustee was appointed.—*Re SHAW (WALTER W.)*

2007. *Add. Annotation*:—*Mentd. Toronto Ry. v. Toronto City*, [1920] A. C. 446.

2028a. ———.]—Where a trustee in bkpcy. with the sanction of the committee of inspection employs a solr. to do particular business, the principle on which the solr.'s bill of costs against the trustee is to be taxed is that of solr. & client, not as between solr. & his own client but that of "where the client & others are interested in a common fund," i.e. bkpt.'s estate, & on such a taxation the taxing master is not bound to allow copies of documents supplied to counsel at his request, nor the whole amount of the fees paid to counsel on the written authority of the trustee. But where the trustee has honestly sanctioned an expenditure which is

not excessive, the taxing master should take a liberal view as far as possible in allowing the amounts against the estate which have honestly been incurred on behalf of such trustee.—*Re LAVEY, Ex p. COHEN & COHEN*, [1921] 1 K. B. 344; 90 L. J. K. B. 246; 124 L. T. 572; [1920] B. & C. R. 171.

Terry, [1924] A. C. 566.

2071. *Add. Annotation*:—*Mentd. Christoforides v. Terry*, [1924] A. C. 566.

2101. *Add. Annotation*:—*Mentd. Christoforides v. Terry*, [1924] A. C. 566.

2114. *Add. Annotation*:—*Refd. Sevenoaks U. D. C. v. Twynam*, [1929] 2 K. B. 440.

Co., LTD., [1922] 3 W. W. R. 119; 68 D. L. R. 616.—CAN.

**PART VII. SECT. 4, SUB-SECT. 2.**

sb. *To employ bankrupt at remuneration*—[*Approval of court*]—*Held*: the employment of bkpt. & the terms of his employment, including his remuneration, must have the approval of the ct.; the subsequent approval is unauthorised by Bkpt. & Insolvent Act, 1857, s. 276.—*Re MACKAY, MCGUINNESS v. HOLLINGSHEAD* (1921), 55 L. T. 89.—IR.

sc. *To accept tenders*.—When the trustee is accepting tenders, he must have the written authority of the inspectors to do so.—*Re BROWN TAXI CO. & DETROIT RADIATOR CO.* (1922), 65 D. L. R. 136.—CAN.

sd. *To dispose of property*.—When the trustee is selling stock or transferring property he must have the written authority of the inspectors to do so.—*Re BROWN TAXI CO. & DETROIT RADIATOR CO.* (1922), 65 D. L. R. 136.—CAN.

1983 i. *Payment—Power to make—To complete contract*.—Debtor agreed to purchase goods on condition that should he fail to complete payment he should lose all the money paid. When all the payments had been made save the last one debtor became bkpt.:—*Held*: the trustee might pay the last instalment & retain the goods.—*Re LEMIEUX & COPPING MOTOR DISTRIBUTORIES* (1922), 69 D. L. R. 105; 1 C. B. R. 464.—CAN.

**PART VII. SECT. 5, SUB-SECT. 1.—A**

ji. ———. *Some creditors not notified*.—If the trustee discovers that he has failed to send to some of the creditors a notice intended to be sent to all, he should notify those who have been overlooked to file their proofs & should advise them of what has taken place; it is not necessary to call a new meeting.—*Re CANADIAN CEREAL & FLOUR MILLS CO.* (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—CAN.

2001 i. *To realise to best advantage—Acceptance of tenders*.—The trustee must be governed by the advice of the inspectors & by ordinary business judgment in delaying the acceptance of any tender for the purchase of debtor's assets.—*Re CANADIAN CEREAL & FLOUR MILLS CO.* (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—CAN.

**PART VII. SECT. 5, SUB-SECT. 1.—B. (b).**

2008 ii a. ———. *Accountant—Charge for clerk's time*.—Where an accountant's work is indispensable a trustee under Bkpcy. Act may be allowed to charge against the estate, as a disbursement subject to taxation, a fee for his partner's work as accountant provided the trustee renounces any profit thereby accruing to him. But pay-

ments made to the trustee's firm for the work of its employees must be disallowed as disbursements.—*Re BRYANT, ISARD & CO.*, [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799.—CAN.

st. *Costs incurred before appointment of inspectors*.—Solrs.' costs for services rendered prior to the appointment of inspectors are not taxable against the estate.—*Re STONKBERG* (1922), 69 D. L. R. 728; [1922] 2 W. W. R. 1323.—CAN.

sg. *Salaries of regular employees*.—A custodian or trustee in bkpcy. cannot recover as disbursements, the salaries paid its regular employees.—*Re CHEVRIER & SONS, LTD.*, [1928] 2 W. W. R. 111; 37 Man. L. R. 444; 10 C. B. R. 27.—CAN.

**PART VII. SECT. 5, SUB-SECT. 1.—B. (c).**

gi. ———.]—The taxation of a trustee in bkpcy.'s bill of fees & disbursements will be reopened when it appears *prima facie* that improper items have been included. Proof that the taxing master did not understand how far the inspectors had approved the accounts will establish such a *prima facie* case.—*Re J. STANLEY WEDLOCK, LTD.*, [1925] 2 D. L. R. 566; 5 C. B. R. 662.—CAN.

2031 i. *Basis of taxation of solicitor's charges—Amount of costs limited*.—*Re MESSERVEYS, LTD.*, [1924] 1 D. L. R. 1037; 4 C. B. R. 493.—CAN.

**PART VII. SECT. 5, SUB-SECT. 1.—C. (a).**

2035 i. *Order for payment—When granted—Proceeds of sale handed over to debtor*.—Where debtor parts with property to a trustee who, in fraud of creditors, disposes of it & hands over the proceeds of the sale to debtor, such a fraudulent trustee may be compelled to pay to the creditors the money which he received as a result of such sale.—*CAMERON v. MOSELEY*, [1923] 3 D. L. R. 267.—CAN.

**PART VII. SECT. 5, SUB-SECT. 1.—H.**

sk. *Trustee giving secret information to purchaser of part of estate—Right to set aside sale*.—*Re DAVIES FOOTWEAR CO., UNDERHILLS, LTD. v. BARBER* (1923), 53 O. L. R. 467; 4 C. B. R. 131.—CAN.

**PART VII. SECT. 5, SUB-SECT. 2.—A.**

2125 iv a. ———. *"Cash receipts"*.—The trustee is to be confined to five per cent. of the cash receipts in all circumstances, unless the inspectors in writing increase the amount & the ct. approves.—*Re BRYANT ISARD & CO.*, [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799; *varying* [1925] 1 D. L. R. 847; 5 C. B. R. 393.—CAN.

2125 iv b. ———. *Meaning*.]

—*Re JOHNSTON*, [1925] 4 D. L. R. 226.—CAN.

2125 iv c. ———.]—Bkpcy. Act, 1927 (c. 11), s. 85, does not recognise 5 per cent. of the cash receipts as the ordinary commission allowable to a trustee in bkpcy.; but merely fixes 5 per cent. as the limit of the charge to be allowed, except with the approval in writing of the inspectors & of the ct. Under the circumstances in the present case a commission of 3 per cent. on both the receipts & on the cash received by the trustee under a composition agreement was held to be reasonable.—*Re CHEVRIER & SONS, LTD.*, [1928] 2 W. W. R. 111; 37 Man. L. R. 444; 10 C. B. R. 27.—CAN.

sl. *Right to priority—Over Crown debts*.—The trustee is entitled to be paid his fees & expenses in priority to the Crown.—*Re CANADIAN CARPET & COMFORTER MANUFACTURING CO., Ex p. A.-G. FOR CANADA*, [1924] 4 D. L. R. 1307; 5 C. B. R. 51.—CAN.

sm. ———. *Over claims for taxes*.—A trustee in bkpcy. is entitled to retain his fees & expenses out of the estate in priority to the Crown's claim for sales taxes.—*Re TORONTO METAL & WASTE CO.* (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—CAN.

sn. ———.]—The claim of the trustee in bkpcy. for his expenses is payable in priority to the taxes owing by debtor to a municipality.—*Re ADAMS SHOE CO., Ex p. TOWN OF PLENTANGUISHERNE*, [1923] 4 D. L. R. 927.—CAN.

sp. ———.]—The trustee in bkpcy.'s claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act.—*Re DAVIS*, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—CAN.

st. ———. *Over claims by landlord*.—If the landlord's claim arose anterior to that of the Crown's claim for taxes, the trustee's claim for his fees & expenses will count after the landlord's claim.—*Re DAVIS*, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—CAN.

Priority of debts generally, *see* cases in Part XII., *post*.

q. *Power of court to enforce payment*.—The ct. will not dispose of a petition for an order for immediate payment of the trustee's costs.—*MEN'S ATTIRE REGISTERED v. HART* (1922), 68 D. L. R. 193; 2 C. B. R. 534.—CAN.

sv. *Non-payment of fees—Whether ground for setting aside composition*.—*LAKE ST. JOSEPH HOTEL v. GROBLEAU* (1928), Q. R. 45 K. B. 118; 10 C. B. R. 14.—CAN.

**PART VII. SECT. 5, SUB-SECT. 2.—B. (b).**

sw. *Duty to obtain indemnity—Value of estate uncertain*.—Where there is any doubt as to the value of the estate an authorised trustee should.

- 2163. Add. Annotation: — Mentd. Johnson v. Stephens & Carter & Golding, [1923] 2 K. B. 857.**

- 2176. Add. Annotation:—***Refd.* *Spencer v. Ashworth*, *Partington*, [1925] 1 K. B. 589.

## Part VIII.—Proof of Debts.

2344. *Add. Annotation* :—**Consd.** *Re Moss, Ex p.*  
Everitt (1923), 93 L. J. Ch. 98.

2429. *Add. Citation* :—15 L. J. Bcy. 9.  
2455. *Add. Annotation* :—**Mentd.** Richmond v.  
Savill, [1926] 2 K. B. 530.

2353. *Citations* :—Delete “ 1 L. J. Bcy. 44.”  
2383. *Add. Annotation* :—**Mentd.** Steinberg v.  
Scala (Leeds), [1923] 2 Ch. 452.

- 2458.** *Add. Annotation:—Consd. Re Houlder, [1929]*  
1 Ch. 205.

2385. *Add. Citations:—affg. S. C. sub nom.*  
MORGAN v. HARDY (1887), 18 Q. B. D. 646,  
C. A.; *revsg.* (1886), 17 Q. B. D. 770.

- 2459.** *Add. Annotation:—Mentd. Re Farrow's Bank, [1921] 2 Ch. 164.*

- Add. Annotations:—***Refd.** *Baker v. Lloyd's Bank*, [1920] 2 K. B. 322. **Mentd.** *Joyner v. Weeks*, [1891] 2 Q. B. 31; *Anstruther-Gough-Calthorpe v. McOscar*, [1924] 1 K. B. 718.

2463. *Add. Citations:—affg. S. C. sub nom.*  
MORGAN v. HARDY (1887), 18 Q. B. D. 646,  
C. A.; *revsq.* (1886), 17 Q. B. D. 770.

- 2411. Add. Annotation :—Mentd.** *Burrell v. Leven* (1926), 42 T. L. R. 407.

- Add. Annotations*.—**Refd.** *Baker v. Lloyd's Bank*, [1920] 2 K. B. 322. **Mentd.** *Joyner v. Weeks*, [1891] 2 Q. B. 31; *Anstruther-Gough-Calthorpe v. McOscar*, [1924] 1 K. B. 716.

- 2415.** *Add. Citation* :—1 Ves. & B. 112.

- 2467. Add. Annotations :—***Refd. Re Lister, Ex p.*

before proceeding with its administration, obtain an indemnity from the creditors.—*Re GUMP* (1921), 69 D. L. R. 202; 51 O. L. R. 118; 2 C. B. R. 56.—**CAN.**

more than a step in the procedure for electing a new trustee.—MACNAUGHT v. SIEVWRIGHT, [1928] S. C. 687.--SCOT.

ASSOCN., [1924] 1 D. L. R. 249.—  
CAN.

**PART VIII. SECT. 4, SUB-SECT. 3.—B.**

24271 *1. Bankruptcy of purchaser—Part delivery before bankruptcy—Cancellation of contract.*—The insolvent co. agreed to buy sugar to be delivered in fixed monthly instalments. After certain deliveries had been made the sugar co. intimated that there would be no more deliveries until the outstanding account for previous deliveries was settled. The insolvent co. made no demand for deliveries & the sugar co. made no tender. *Held*: the sugar co. could not be permitted to lie by until the whole period of the contract was up & then claim damages for the failure to call for delivery during each of the preceding months. *Re ROCKLAND COCOA & CHOCOLATE CO. (1921), 64 D. L. R. 644; 51 O. L. R. 19; 2 C. C. B. R. 43.—CAN.*

**2428 i.** — *Resale by vendor—Proof for loss on resale.*—*Held:* the vendors could prove for such damages as they would have been entitled to recover against the insolvent for the breach of the contract.—*Re HACHBORN* (1922), 67 D. L. R. 227; 51 O. L. R. 312; 2 C. B. R. 224.—**CAN.**

**2438 i.** — *Payment in foreign currency.*—*Held*: the vendor entitled to prove for an amount equivalent in value to the amount payable in foreign currency.—*Re MCKAY* (1922), 52 O. L. R. 466; 3 C. B. R. 462.—**CAN.**

2438 ii. — Goods not reasonably fit for required purpose.]—Held: the value of the goods should be estimated, the damages incurred by the purchaser deducted, & the balance proved for.—*Re SCOTLAND WOOLLEN MILLS Co.*, [1923] 2 D. L. R. 274; 3 C. B. R. 636.—CAN.

so. *Sale & purchase in bulk.*—Claim of purchaser to rank on estate of vendor disallowed.—*Re WHITE*, [1925] 1 D. L. R. 1189; 58 N. S. R. 1; 5 C. B. R. 511.—CAN.

**PART VIII. SECT. 4, SUB-SECT. 3.—C.**

**2448 iv.** ——— For full amount of rent due—Notwithstanding agreement for reduction of rent in consideration of compromise—Compromise not carried out. —Re **MARTINS, LTD.** (N. S.), [1926] 2 D. L. R. 685; 7 C. B. R. 485. —**CAN.**

**PART VII. SECT. 6, SUB-SECT. 1.—B.**

**2159 i. Receiver handing over assets to trustee—Whether lien for charges—Whether locus standi to impeach management of trustee.**—*Held*: (1) the interim receiver's fees & expenses were a first charge upon the assets, & should be paid in priority to other fees & expenses, in the administration thereof; (2) no one except the creditors can attack the trustee upon the ground that he has mismanaged the estate.—*Re Gump* (1921), 69 D. L. 1202: 51 O. L. 118: 2 C. B. L. 56.—**CAN.**

2159 ii. ———.j—Before the making of the receiving order debtor co. made an assignment to T., an authorised trustee, who had no knowledge that a bkcy. petition had been filed before the assignment (*—Held:—* T. having acted innocently, ought to receive remuneration for his services, which must be treated as an expenditure of the trustee, ranking ahead of the claim of the Crown. *—Re TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—CAN.*

SA. Bankrupt insured for benefit of creditor—Policy moneys held in trust for creditor.]-Re WILNER (Ont), [1928] 2 D. L. R. 396; 8 C. B. R. 616.  
-CAN.

**sy. Trustee carrying on business—**  
*Liability for goods supplied.*—**Re**  
**ALLIED OIL & GAS CO., SMITH v.**  
**TRUSTEE (Ont.), [1928] 2 D. L. R.**  
**986; 10 C. B. R. 69.—CAN.**

**PART VII. SECT. 9, SUB-SECT. 1.—B.**

52. *Who may vote—Wife of bankrupt.*—1846. (Scotland) Act, 1813, s. 60, enacts that the wife of the bkpt. shall not be entitled to vote in the election of the trustee, but that in all other respects she may be ranked as a creditor. Sect. 71 enacts that a majority in number & value of the creditors, present at any meeting duly called for the purpose, may remove the trustee:—*Held*: the wife of the bkpt. was not entitled to vote for the removal of the trustee in respect that the removal of the trustee was nothing

**PART VII. SECT. 9, SUB-SECT. 1.—**  
**C. (a).**

sa. For good cause.]—If a trustee in bkpy. acts throughout with the consent of the creditors, & if his appointment as trustee is confirmed at a general meeting of creditors, there can be no grounds for dismissing him from office.—LANGLOIS v. LEMIRE, *Re GARDNER* (1922), 65 D. L. R. 128.—CAN.

**PART VII. SECT. 9, SUB-SECT. 3.**

**2285 i. Revocation of order of release—**  
*To enable trustee to administer after-*  
*acquired property—Estate administered*  
*in ignorance of existence of property.]—*  
**RE WATSON (1927), 61 O. L. R. 173.—**  
**CAN.**

**PART VII. SECT. 10.**

sb. *Power—To override creditors' instructions to trustee.*—Where at a creditors' first meeting they instruct the trustee to give priority to certain claims:—*Semble*: It is not competent for the inspectors to override such instructions.—*Re OLYMPIA CAFE CO., LTD., Ex p. BEDALI, [1927] 1 D. L. R. 907; [1927] 1 W. W. R. 131.—CAN.*

*sc. Exercise of powers—Must act personally.*—*Re BROWN TAXI CO. & DETROIT RADIATOR CO.* (1922), 65 D. L. R. 136.—**CAN.**

**2298 1.**—*To consent to appointment of solicitor—No particular form necessary—Must be specific.*—*Re* BRYANT, ISARD & Co. (Ont.), [1926] 4 D. L. R. 440; 7 C. B. R. 594; *varying*, [1925] 1 D. L. R. 34; 7 C. B. R. 93.—**CAN.**

**PART VIII. SECT. 4, SUB-SECT. 1.**

2385 ii. — *Bankruptcy Act*, s. 44.] — The above sect. does not give persons not otherwise entitled to recover from bkpt. a right to prove against his estate because of an obligation to a third person. — *Re EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD.*, [1923] 3 D. L. R. 1176; (1922), 52 O. L. R. 225; 2 C. B. R. 599. — CAN.

sd. Debt due from association prohibited from dealing on credit system.]—*Held*: not provable.—*Re* KELVINGTON GRAIN GROWERS' CO-OPERATIVE

Bradford Overseers & Bradford Corp., [1926] Ch. 149. **Mentd.** *Victoria City v. Vancouver Island (Bp.)*, [1921] 2 A. C. 384; *Wise v. Lansdell*, [1921] 1 Ch. 420; *Leitch v. Emmott*, [1929] 2 K. B. 236.

2491. *Add. Annotation*:—**Mentd.** *Re Debtor*, [1929] 1 Ch. 362.

2508. *Add. Annotation*:—**Expld.** *Re Houlder*, [1929] 1 Ch. 205.

2509. *Add. Annotation*:—**Distd.** *Re Houlder*, [1929] 1 Ch. 205.

2514a. — **Payments received from other sureties.**—In Aug. 1921, two borrowers with three sureties borrowed £20,000 from an insurance co. The loan was secured by the joint & several covenant of the borrowers & the sureties & by a mtge. & further charge on the borrowers' life policies. The loan was repayable by instalments spread over five years, but, if a borrower or surety became bkpt., it was immediately repayable. On Jan. 10, 1924, a receiving order was made against one surety, H., on his own petition, & on Jan. 25 he was adjudicated bkpt. At the date of the receiving order the amount due to the insurance co. as creditors was £8,000 principal & £249 interest, & on Jan. 13, 1926, they put in a proof for that amount in H.'s bkpcy. Between the date of the receiving order & the proof, however, the creditors had received some £5,372 made up of £4,910 payments of principal & interest by the other sureties & £462 credited *ex gratia* as the surrender value of the policies which had really lapsed. The trustee in bkpcy. applied to reduce the proof by £5372:—**Held**: as each surety was liable for the whole debt due at the date of the receiving order, the creditors were entitled to prove for the full amount in the surety H.'s bkpcy. without giving credit for any sums received from the other co-sureties since that date, provided that they did not in the whole recover more than 20s. in the pound.—*Re HOULDER*, [1929] 1 Ch. 205; *sub nom. Re HOULDER, Ex p. RABBIDGE v. EAGLE STAR DOMINIONS INSURANCE CO.*, 98 L. J. Ch. 12; 140 L. T. 325; [1928] B. & C. R. 114.

2568. *Add. Annotation*:—**Mentd.** *Perrin v. Dickson* (1929), 98 L. J. K. B. 683.

2591. *Add. Annotation*:—**Consd.** *Spencer v. Ashworth*, Partington, [1925] 1 K. B. 589.

2597. *Add. Citation*:—15 L. J. Bcy. 9.

2639. *Add. Annotations*:—**Mentd.** *Falcon v.*

*Famous Players Film Co.* (1925), 42 T. L. R. 91; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

2646. *Add. Annotation*:—**Distd.** *Re Houlder*, [1929] 1 Ch. 205.

2647. *Add. Annotation*:—**Refd.** *Re Houlder*, [1929] 1 Ch. 205.

2649. *Add. Annotation*:—**Consd.** *Re Houlder*, [1929] 1 Ch. 205.

2650. *Add. Annotation*:—**Refd.** *Re Houlder*, [1929] 1 Ch. 205.

2689. *Add. Annotation*:—**Mentd.** *Omnium Insc. Corp. v. United London & Scottish Insc.* (1920), 36 T. L. R. 386.

2770. *Add. Annotation*:—**Refd.** *Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.

2771. *Add. Annotation*:—**Refd.** *Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.

2790. *Add. Annotation*:—**Mentd.** *Perrin v. Dickson* (1929), 98 L. J. K. B. 683.

2806. *Add. Annotation*:—**Refd.** *Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.

2812. *Add. Annotations*:—**Consd.** *Firman v. Royal*, [1925] 1 K. B. 681. **Mentd.** *Re Naters, Ainger v. Naters* (1919), 122 L. T. 154.

2815. *Add. Annotation*:—**Refd.** *Campbell v. Campbell*, [1922] P. 187.

2875. *Add. Annotation*:—**Mentd.** *Bowling v. Camp* (1922), 128 L. T. 342.

2901. *Add. Annotations*:—**Refd.** *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1; *Re Wait*, [1927] 1 Ch. 606.

2902. *Add. Annotations*:—**Refd.** *Re Dent, Ex p. Trustee*, [1923] 1 Ch. 113; *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.

2902a. — — — — —]—By marriage articles in 1914, made between husband & wife & three trustees, it was agreed that, after the intended marriage, an indenture of settlement should be executed & that the husband would bring into settlement all property to which he then was or thereafter might become entitled, to be held, subject to life interests in favour of husband & wife, upon trusts to be mutually agreed between the trustees of the settlement. It was further agreed that the first trustees of the settlement should be the three trustees of the articles therein named, & that if they or either of them should fail to accept the trusteeship of the settlement, then such other person or persons

#### PART VIII. SECT. 4, SUB-SECT. 3.— D. (a).

2481 iv. — *Contingent on survivorship of wife.*—*Re LAING* (1921), 64 D. L. R. 637; 51 O. L. R. 11; 2 C. B. R. 38.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 3.— D. (b) iii.

2526 H. — — — — —]—*Re ANDREW MOTHERWELL ESTATE*, [1923] 4 D. L. R. 986; *affd.* 25 O. W. N. 359.—CAN.

11. — — — — —]—*Held*: the surety could not rank on the estate before the creditor had been paid in full.—*Re COUGHLIN & CO., Ex p. GUARANTEE CO. OF NORTH AMERICA*, [1923] 4 D. L. R. 971; 3 W. W. R. 1177.—CAN.

2545 iii. — — — — —]—The contingent liability of a surety who has not been called on to pay is a debt provable on the bkpcy. of the principal debtor.—

*Re FROMENT, ALBERTA LUMBER CO. v. ALBERTA DEPARTMENT OF AGRICULTURE*, [1925] 3 D. L. R. 377; [1925] 2 W. W. R. 415; 5 C. B. R. 765.—CAN.

2545 iv. — — — — —]—A surety who has not paid or been excused becomes on the insolvency of the principal debtor a conditional creditor, & may as such prove his claim against the insolvent estate.—*ROSSOUW, ETC. v. HODGSON*, [1925] App. D. 97.—S. AF.

11. *Creditor agreeing to pay off debt due to another creditor.*—*Agreement not carried out.*—*Held*: the creditor was entitled to rank as a creditor for the amount which he had agreed to pay off.—*Re BENSON-JOHNSTON, LTD.*, [1924] 4 D. L. R. 575; 5 C. B. R. 196; *affd.* [1925] 1 D. L. R. 999; 5 C. B. R. 414.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 3.— D. (b) iv.

2560 i. *Co-surety's liability to con-*

*tribution.*—A surety can prove in the bkpcy. of a co-surety for contribution, although the proving surety has not paid the creditor anything.—*Re FROMENT, ALBERTA LUMBER CO. v. ALBERTA DEPARTMENT OF AGRICULTURE*, [1925] 3 D. L. R. 377; [1925] 2 W. W. R. 415; 5 C. B. R. 765.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 3.—L.

2903 i. *Continuing contra ts generally.*—*Debtor failing to complete.*—*Held*: the creditors were entitled to be paid the damages sustained in respect of the unexpired portions of the contract.—*Re MCKAY* (1922), 52 O. L. R. 466; 3 C. B. R. 462.—CAN.

2905 i. *Loan.*—*Re NODEN, HALLETT & JOHNSTON, Ex p. JOHNSTON (Ont.)*, [1927] 3 D. L. R. 700; 8 C. B. R. 295; *affd.* [1928] 2 D. L. R. 686; 10 C. B. R. 211.—CAN.

as the spouses should nominate; & that in the meantime until the execution of the settlement the persons in whom such property should be vested should hold the same upon the trusts of the settlement. The marriage was solemnised on the day of the execution of the articles. On the death of his father on Feb. 22, 1918, the husband, under his will, became entitled in reversion, subject to the life interest of testator's widow, to a share in his residuary estate. On June 13, 1919, the trustees of the articles gave notice to the will trustees of the execution of the articles. On Oct. 21, 1920, the husband, in pursuance of his contract contained in the articles, executed a settlement by which he assigned to the trustees thereof, of whom there were three & of whom one was also a trustee under the articles, but the other two were not, his interest under his father's will upon trusts for the benefit of his wife & children. On Dec. 5, 1921, the settlor was adjudicated bkpt. The trustee in bkpcy. moved for a declaration that the settlement & the transfer of the property purported to be made thereunder were void as against him:—*Held*: (1) the acquisition by bkpt. on his father's death of the property which was non-existent at the date of the articles did not operate under the well settled doctrine as a complete equitable assignment of that property, as the persons to whom the property was contracted to be assigned & the trusts upon which such persons were to hold it were not ascertained at the date of such acquisition; (2) even if there had been an equitable assignment within that doctrine, it would not have operated as a transfer of property within the true meaning of 1914 Act, s. 42 (3); (3) the assignment contained in the settlement of Oct. 1920, operated as a transfer of property within that sub-sect. & was void by reason of its execution within two years of the commencement of the bkpcy.—*Re DENT, Ex p. TRUSTEE*, [1923] 1 Ch. 113; 92 L. J. Ch. 106; 67 Sol. Jo. 32; [1922] B. & C. R. 137.

2934. *Add. Annotation*:—*Distd. Re Houlder*, [1929] 1 Ch. 205.

2955. *Add. Annotation*:—*Distd. Re Pitchford*, [1924] 2 Ch. 260.

2978a. Proof by plaintiff against bankrupt defendant—Stay of action after bankruptcy—Proof in bankruptcy for amount claimed in action.—On Oct. 25, 1920, resp., a mtge. broker, hereinafter called pltf., issued a writ against

debtor in the K. B. Div. to recover a sum of £650 for commission earned. On June 20, 1921, the action was set down for trial. On July 19, 1921, a receiving order was made against debtor. On Feb. 2, 1922, on the application of pltf. made in the action the action was stayed with liberty to pltf. to restore. On Mar. 6, 1922, pltf., instead of applying to restore the action, lodged his proof in the bkpcy. of debtor for £650. The official receiver rejected his proof, but on Jan. 17, 1923, the county ct. judge reversed the decision of the official receiver & admitted the proof. On Sept. 29, 1923, pltf. lodged a further proof for £46 17s. 9d. for his untaxed costs of the action, all of which were incurred before the date of the receiving order. On Oct. 31, 1923, the official receiver rejected that proof. Pltf. appealed, & on Feb. 11, 1924, the county ct. judge reversed his decision & ordered that the proof of the costs, amounting to £46 17s. 9d., should be admitted subject to taxation. On the appeal of the official receiver:—*Held*: (1) as pltf. had obtained no judgment dealing either with his claim in the action or the costs thereof, but had elected to stay his action & to prove in bkpcy. for the amount claimed in the action, he was not entitled to prove for his untaxed costs of the action; (2) (*ASTBURY, J.*) the sum for which pltf. sought to prove in respect of his costs was not a debt or liability certain or contingent to which debtor was subject at the date of the receiving order or to which he might become subject before his discharge by reason of any obligation incurred before that date, within 1914 Act, s. 30 (3), & therefore was not provable.—*Re PITCHFORD*, [1924] 2 Ch. 260; *sub nom. Re PITCHFORD, Ex p. OFFICIAL RECEIVER*, 93 L. J. Ch. 541; [1924] B. & C. R. 118; *sub nom. Re PITCHFORD, Ex p. OFFICIAL RECEIVER v. HALL*, 131 L. T. 669, D. C.

2983. *Add. Annotations*:—*Refd. Re Pitchford*, [1924] 2 Ch. 260. *Mentd. London Steamship & Trading Corp. v. Russian Volunteer Fleet* (1926), 135 L. T. 607.

2989. *Add. Annotation*:—*Consd. Re Pitchford*, [1924] 2 Ch. 260.

2991. *Add. Annotation*:—*As to* (1) *Refd. Abraham v. Buckley*, [1924] 1 K. B. 903.

2993. *Add. Annotation*:—*Consd. Re Pitchford*, [1924] 2 Ch. 260.

3001. *Add. Citation*:—*sub nom. R. v. SUSSEX JJ.*, 14 J. P. Jo. 224.

#### PART VIII. SECT. 4, SUB-SECT. 7.

sg. *Costs of solicitors retained to oppose granting of receiving order.*—*Held*: the solrs. were entitled to rank upon the estate of debtor for the amount of their costs so incurred.—*Re TUNNELL, LTD.*, [1924] 4 D. L. R. 862; 56 O. L. R. 110; 5 C. B. R. 73.—*CAN.*

#### PART VIII. SECT. 6, SUB-SECT. 1.

3018 v. — *Name & description of declarant.*—It is sufficient if the initials of the christian names & the full surname be given, & words setting forth the occupation or station in life of the declarant.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—*CAN.*

3018 vi. — *Omission of "make oath & say"*—*Effect of substitution of words having same meaning.*—The declaration should not be rejected for

such variance.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—*CAN.*

3018 vii. — *Statement of account—Sufficiency of statement.*—The statement of account is *prima facie* properly referred to in a declaration only when it is "annexed & marked 'A.'" If, however, the statement is a proper one & is annexed to the declaration, though not so marked, & from an examination thereof in conjunction with the declaration or from other circumstances, it may reasonably be concluded that the statement is that referred to, it may be admitted.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—*CAN.*

3020 i. — *Proof on behalf of corporation.*—(1) The declarant need not expressly describe himself as one of the

classes authorised to make the declaration.

(2) Where the declaration does not state that the deponent has knowledge of the facts deposed to it is objectionable & should be rejected.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—*CAN.*

sj. *Interlineations & erasures.*—Although the declaration contains interlineations & erasures not duly initialed, it may be received, in the discretion of the official receiver, chairman, or trustee, if he is satisfied that the change was made before the declaration was sworn.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—*CAN.*

3024 ii. —]—It is sufficient if made before a person authorised to take affidavits under Canada Evidence

- 3038.** *Add. Annotation*:—*Consd. Re A Debtor*, [1927] 2 Ch. 367.  
**3049.** *Add. Annotation*:—*Refd. Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 268.  
**3050.** *Add. Annotation*:—*Refd. Re Debtor*, [1928] Ch. 199.  
**3052a.** ——— *Parties represented by independent counsel.*]—Although the ct. has power to go behind a judgment or compromise, in order to ascertain whether a petition founded thereon has been properly presented, it will not do so where the parties were represented by independent counsel at the time of such judgment or compromise, unless there is evidence that counsel acted improperly or without full knowledge of the facts.—*Re DEBTOR*, [1929] 1 Ch. 125 ; 140 L. T. 136 ; *sub nom. Re DEBTOR* (No. 27 OF 1927), *Ex p. DEBTOR v. PETITIONING CREDITOR* (1928), 97 L. J. Ch. 167 ; [1928] B. & C. R. 34, D. C.  
**3054.** *Add. Annotation*:—*Refd. Re A Debtor*, [1927] 2 Ch. 367.  
**3105a.** *Creditor money-lender—Contract harsh & unconscionable.*]—A trustee in bkpcy. has no power to reject or reduce a proof by a money-lender, on the ground that the contract is harsh & unconscionable, such power being vested in the ct. alone.—*Re ARMSTRONG, Ex p. LIPTON* (1926), 95 L. J. Ch. 184 ; [1926] B. & C. R. 21.  
**3134.** *Add. Citations*:—*sub nom. Re BYROM, Ex p. ECKERSLEY*, 22 L. J. Bcy. 27 ; 17 Jur. 198.  
**3137.** *Add. Annotation*:—*Mentd. Re Jubilee Cotton Mills*, [1922] 1 Ch. 100.  
**3140.** *Add. Annotations*:—*Refd. Re Debtors*, [1927] 1 Ch. 19. *Mentd. Re A Debtor*, [1929] 2 Ch. 146.  
**3152a.** ——— ———.]—The effect of Bkpcy. Rules, 1915, r. 262 read with rr. 26, 27, 28, is that subject to the ct.'s power to extend the time, which will only be exercised in very special circumstances, no application to reverse or vary the trustee's decision in rejecting a proof can be entertained unless it is made by notice of motion supported by affidavit & set down within 21 days of the decision, so that there is an effective application before the ct. within that period.—*Re BARLEY*, [1923] 1 Ch. 177 ; *sub nom. Re BARLEY, Ex p. HARRISON*, 92 L. J. Ch. 419 ; [1922] B. & C. R. 258.  
**3167.** *Add. Annotation*:—*Mentd. Re Pitchford*, [1924] 2 Ch. 260.  
**3172.** *Add. Annotation*:—*Consd. Re Searle, Hoare*, [1924] 2 Ch. 325.  
**3173a.** *Debt arising out of harsh & unconscionable contract—Creditor money-lender.*]—*Re ARMSTRONG, Ex p. LIPTON*, No. 3105a, *ante*.  
**3200.** *Add. Annotation*:—*Apld. Re Home & Colonial Insee.* (1928), 44 T. L. R. 718.  
**3210.** *Add. Annotation*:—*Consd. Re Searle, Hoare*, [1924] 2 Ch. 325.  
**3210a.** ———.]—Where, after the admission by the trustee of a creditor's proof against bkpt.'s estate & that creditor's participation in a first dividend, it was ascertained that he had proved for & received more than he was entitled to, & upon an application to the ct. his proof was reduced:—*Held*: in the absence of any rule in bkpcy., the well-known principle of equity, that a beneficiary who has been overpaid is not entitled to receive any further payment out of the common fund, until the payments to the other beneficiaries are levelled up to the amount received by the overpaid beneficiary, was applicable with the result that the overpaid creditor was not entitled to participate in any future dividends in respect of his reduced proof without giving credit for the overpayment in respect of his original proof.  
 The mere fact that the trustee cannot recover either payments made to a creditor whose proof is subsequently expunged or overpayments made to a creditor whose proof is subsequently reduced, does not prevent the operation of that equitable principle in the case of a proof in bkpcy. Nor does the judgment of JESSER, M.R., in *Re Tail, Ex p. Harper* (see No. 3210), contain any statement inconsistent with that application of the principle.—*Re SEARLE, HOARE & CO.*, [1924] 2 Ch. 325 ; 68 Sol. Jo. 755 ; *sub nom. Re SEARLE, HOARE & CO., Ex p. TRUSTEE*, 93 L. J. Ch. 571 ; 132 L. T. 21 ; [1924] B. & C. R. 114.  
**3214.** *Add. Annotation*:—*Mentd. Re Maxson. Ex p. Trustee*, [1919] 2 K. B. 330.

Act, R. S. C., 1906 (c. 145), s. 36.—*Re McCoubrey, Re Stratton & Green-Shields, Ltd.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

**PART VIII. SECT. 6, SUB-SECT. 2.**

**sk. Necessity for filing claim.]**—Neither the ct. nor the trustee will consider a creditor's claim against bkpt.'s estate until it has been filed.—*Re CONTINENTAL PUBLISHING Co., Ex p. DAVIS & SIMMONS*, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—**CAN.**

**PART VIII. SECT. 7. SUB-SECT. 1.**

3035 iv a. — — — —.]—*Re*  
UNION, INDIAN SUGAR MILLS CO.,  
LTD. v. BIRU LAL, JAGANNATH (1927),  
I. L. R. 49 All. 728.—IND.

3035 vs. ----.]—The judge has power to inquire into the consideration for the judgment debt.—*Re ALIAN GRAIN GROWERS' CO-OPERATIVE ASSOC., Ex p. ROBINSON, LITTLE & Co.* (1922), 65 D. L. R. 347; 15 Sask. L. R. 296; [1922] 2 W. W. R. 142.—**CAN.**

8057 i. ——— Except in regard to

*assessed taxes.*—Judgment was recovered by the A.-G. of the Irish Free State against R. for excess profits duty in respect of the four accounting periods ending Dec. 31, 1917, 1918, 1919, 1920. The assessments were made by the revenue officials of the Irish Free State subsequent to Mar. 31, 1923. On the petition of the A.-G., R. was adjudged bkpt. :—*Held*: the position behind the judgment could be examined to determine the question whether the A.-G. was a competent petitioning creditor in respect of the amount of the duties.—*Re* READE, [1927] 1. R. 31.—**IR.**

**PART VIII. SECT. 7. SUB-SECT. 2.**

3071 H. — After commencement of proceedings.]—The mother of a bkpt. claimed to be ranked in his sequestration in respect of two loans alleged to have been made by her to him before his insolvency. At the date of sequestration no writ existed establishing the loans, but in support of her claim for a ranking the claimant produced, among other evidence, a holograph acknowledgment of the loans granted

by the bkpt. after sequestration. The other evidence was by itself insufficient to prove the loans:—*Held*: bkpt.'s holograph acknowledgment, having been granted after sequestration, could not be used as evidence establishing the loans; & claim rejected.—*CARMICHAEL'S TRUSTEE v. CARMICHAEL*, [1929] S. C. 265.—*SCOT*.

**PART VIII. SECT. 8, SUB-SECT. 5.**

3147 ii. ——— *To direct issue.*—*Held:* the bkpey. judge had power to direct an issue to be tried.—INTER-PROVINCIAL FLOUR MILLS, LTD. v. WESTERN TRUST CO., [1923] 2 D. L. R. 361; 16 Sask. L. R. 401; [1923] 1 W. W. R. 1068.—CAN.

**3157 l. — Evidence.**—The authorised trustee, or claimant, may use as evidence the whole or any part of examinations of directors of debtor corp'n. taken under Bkcy. Act, s. 56.—*Re CHRISTIE GRANT, LTD.*, [1921] 3 W. W. R. 264; 1 C. B. R. 489.—**CAN.**

3157 ii. S. P. *Re*. DUMFERMLINE TRADING CO., *Ex* p. RELIABLE TRADING CO. (1922), 66 D. L. R. 813; [1922] 2 W. W. R. 1274.—CAN.



3222. *Add. Citation*:—[1918-19] B. & C. R. 276.

3224. *Add. Annotation*:—*Refd. Re Maxson, Ex p. Trustee* (1919), 88 L. J. K. B. 54.

3264a. ——— *Dividend received.*—Applts. sold a quantity of rice to a purchaser. The purchase-money was not paid, & the vendors brought an action claiming the return of the goods on the ground that they had been obtained by the fraud of the purchaser. The purchaser became bkpt., & resps., who were

the trustees in the bkpcy., were added as defts. The vendors afterwards proved for the price of the goods sold in the bkpcy. & received a dividend:—*Held*: they had elected to affirm the contract of sale, & the action could not be maintained.—*KIN TYE LOONG v. SETH* (1920), 89 L. J. P. C. 113; 123 L. T. 639; [1920] B. & C. R. 89, P. C.

3267. *Add. Annotations*:—*Mentd. The Joannis Vatis* (No. 2), [1922] P. 213; *The Goulandris*, [1927] P. 182.

## Part IX.—Secured Creditors.

3334. *Add. Annotation*:—*Refd. Benton v. Campbell, Parker*, [1925] 2 K. B. 410.

3360. *Add. Annotation*:—*Refd. Re Bueb*, [1927] W. N. 299.

3363. *Add. Annotation*:—*Mentd. Giles v. Kruyer*, [1921] 3 K. B. 23.

3365. *Add. Annotation*:—*Mentd. Re Chiandetti, Ex p. Trustee* (1921), 91 L. J. K. B. 70.

3365a. ———.]—*Re BUER, Ex p. TRUSTEE* (1927), 64 L. Jo. 476; 164 L. T. Jo. 408.

3375a. *Deposit of securities*—To secure joint debt of firm—*Debts due under separate personal guarantees of partners.*—The general rule in bkpcy., that, when a creditor seeks to prove against his debtor's estate, he must give up or value any security which if not retained

### PART VIII. SECT. 10.

3218 ii. ———.]—The creditor was allowed to amend his claim & set out the security which he held.—*STERLING CLOTHING CO. v. MEN'S ATTIRE REGISTERED* (1922), 66 D. L. R. 358; 2 C. B. R. 535.—*CAN.*

3218 iii. ——— *Proof made on footing of holding security*—*Security invalid.*—Claimant was allowed to amend his claim.—*Re DUMPERLINE TRADING CO., Ex p. RELIABLE TRADING CO.* (1922), 66 D. L. R. 813; [1922] 2 W. W. R. 1274.—*CAN.*

3236 ii. ———.]—J., who was adjudicated bkpt. on Sept. 16, 1927, was indebted to the U. Bank. Prior to the adjudication the bank had registered judgment mtgs. against two farms belonging to the bkpt. The bank estimated the value of such security & proved as unsecured creditors for the balance of their debt. Subsequently as a result of the bkpt.'s criminal acts the value of the farms was so depreciated that they failed to realise the amount at which they had been assessed by the bank. The Official Assignee had recovered sufficient assets to pay all the unsecured creditors twenty shillings in the pound:—*Held*: the U. Bank were entitled to amend their proof of debt by increasing the amount thereof.—*Re JOHNSTON*, [1929] N. J. 103.—*IR.*

### PART VIII. SECT. 12.

sl. *Claim rejected in part*—*Right of creditor to appeal.*—A creditor received a notice from the trustee disallowing part of his claim & enclosing a cheque for the balance. The creditor clearly showed that he had no intention of accepting the cheque in full accord & satisfaction of his claim, but he cashed the cheque:—*Held*: the creditor was not thereby debarred from appealing from the disallowance by the trustee.—*Re COHEN & SWIGMAN, Ex p. GELMAN*, [1925] 4 D. L. R. 359.—*CAN.*

sm. *Claim of Crown rejected*—*Position of Crown.*—*Re WARDFOLD MANUFACTURING CO.*, [1926] 3 D. L. R. 333; 59 O. L. R. 195.—*CAN.*

### PART IX. SECT. 1.

3332 iv. ——— *Appeal from decision of referee*—*Forbidding creditor to enforce*

*security.*—*Re CANADIAN WESTERN STEEL CORP'N.* (1922), 69 D. L. R. 689; 2 C. B. R. 494.—*CAN.*

bi. *To advise as to validity of lien.*—A judge of the Ct. of K. B. has jurisdiction to advise an assignee for the benefit of creditors on whether certain creditors have a mechanics' lien on the assets of the estate.—*Re BECK*, [1921] 3 W. W. R. 150.—*CAN.*

### PART IX. SECT. 2.

an. *Assignment of unpaid purchase-money under farm sale agreement to secure balance of purchase price of other property.*—*Held*: pltf. was a secured creditor.—*ANDERSON v. SERGE*, [1924] 2 D. L. R. 1018; [1924] 1 W. W. R. 1260; 18 Sask. L. R. 255.—*CAN.*

so. *Lease of property on crop-payment plan.*—Lessor held a secured creditor in respect of rent.—*Re TURNER* (1922), 65 D. L. R. 130; 15 Sask. L. R. 381; [1922] 2 W. W. R. 414.—*CAN.*

sp. ———.]—*Held*: the lessor to the extent of his share of the crop reserved as rent was protected against the creditors of the lessee, notwithstanding a provision in the lease whereby the lessee's share of the crop was to be applied in payment of debts owing by the lessee to the lessor outside of the lease.—*Re DEMRY & DEMRY, TRUSTEE v. HALLAND*, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708.—*CAN.*

sq. *Purchase of property by third party*—*Agreement to transfer on repayment.*—*Held*: the purchaser was a secured creditor.—*Re BOURGEOIS*, [1923] 2 W. W. R. 204; 3 C. B. R. 841.—*CAN.*

st. *Judgment recovered before assignment*—*After passing of Bankruptcy Act, 1919.*—*Held*: the assignment took precedence over the judgment.—*PARKER-EAKINS CO. v. ROYAL BANK OF CANADA* (1922), 65 D. L. R. 679.—*CAN.*

sv. ———.]—*Re ATYWARD, Ex p. McMILLAN* (P. E. I.), [1927] 4 D. L. R. 305; 8 C. B. R. 352.—*CAN.*

3347 ii. *Seizure of goods under lien notes*—*Acquired with knowledge of insolvency*—*By holder of unregistered bill of sale.*—*Re MUSTARD*, [1923] 2 D. L. R. 922; 4 C. B. R. 140; *affd.* 24 O. W. N. 513.—*CAN.*

3347 iii. ———.]—Where by a provincial statute certain creditors are given a right of distress similar to that

of a landlord for rent, & an actual distraint is made thereunder before the making by the debtor of an assignment in bkpcy., the creditor is a secured creditor within Bkpcy. Act.—*Re GARRY CAFETERIA (Man.)*, [1928] 1 W. W. R. 139; 8 C. B. R. 604.—*CAN.*

t (p. 358) i. ———.]—The term "secured creditor" in Bkpcy. Act, s. 9, includes a creditor who has obtained a charging order against a fund in ct.—*Re KAPLAN, McLEAN (J. J. H.) ESTATE CO. v. NEWTON (Man.)*, [1926] 3 W. W. R. 593.—*CAN.*

t (p. 358) ii. *S. P. BORTOLUZZI v. KAPLAN (Man.)*, [1927] 1 D. L. R. 183.—*CAN.*

sw. *Distress.*—When a landlord distrains he becomes a secured creditor under Bkpcy. Act, but, in Alberta, his rights & priorities are not governed by that Act, but are subject to Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3.—*Re HAMILTON & OAKES*, [1925] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—*CAN.*

3360 i. *Appointment of receiver.*—An order appointing a receiver:—*Held*: not to be a charge, & a judgment creditor of bkpt. not by virtue of the order a secured creditor.—*Re PETERSON, Re HOLLOWAY*, [1925] 4 D. L. R. 1042; [1925] 3 W. W. R. 708.—*CAN.*

sx. *Judgment for tolls for water supplied by municipality.*—*Held*: the city of K. was, by virtue of the charge given it by Water Act, B.C., 1914, s. 151, a secured creditor.—*Re KAMLOOPS COPPER CO., Ex p. KAMLOOPS*, [1925] 3 D. L. R. 896; [1925] 2 W. W. R. 733; 35 B. C. R. 243.—*CAN.*

e (p. 360) i. ——— *Joint & several note.*—*Held*: the holder of the notes was not a secured creditor.—*HODGE v. McLEAN & UNION BANK OF CANADA*, [1919] 3 W. W. R. 1108; 50 D. L. R. 125; 13 Sask. L. R. 85.—*CAN.*

t (p. 362) i. *Lien upon mining lands for wages.*—*Held*: claimants were not secured creditors.—*Re REEVE DOBIE MINES, WAGE-EARNERS CLAIM* (1921), 64 D. L. R. 534; 60 O. L. R. 499; 1 C. B. R. 540.—*CAN.*

sy. *Wife taking security for money advanced to husband for business purposes.*—*HAW v. HAW'S OFFICIAL ASSIGNEE*, [1927] N. Z. L. R. 366.—*N.Z.*



by him would go to augment that estate, presupposes that the security is for the particular debt for which he seeks to prove, & does not apply to a case where the security is for a different debt.

Where, therefore, two of the partners of a firm deposited with the bankers of the firm securities which belonged to them individually to secure a joint debt of the firm, & also gave the bankers their separate personal guarantees up to a limited amount to pay the joint debt of the firm, & the firm subsequently, as debtors, executed a deed of assignment for the benefit of their creditors, which provided that in the administration of the joint & separate estates of the debtors the rules prevailing in bkpcy. should be followed:—*Held*: as the bankers did not hold a charge on the securities so deposited for the debts due under the separate guarantees given by the two partners, & therefore, were not "secured creditors" within the definition in 1914 Act, s. 167, in respect of those debts, they were entitled to prove for them under the trusts of the deed of assignment against the estates of the two partners without giving credit for the value of those securities.—*Re DUTTON, MASSEY & Co., Ex p. MANCHESTER & LIVERPOOL DISTRICT BANKING Co.*, [1924] 2 Ch. 199; 93 L. J. Ch.

#### PART IX. SECT. 3

**h i.** —.—.]—An assignment under Bkpcy. Act does not interfere with or lessen the rights of a secured creditor to enforce or retain his security.—*WHITE & Co. v. THE IONIA* (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—**CAN.**

**h ii.** —.—.]—In bkpcy. the rule of equality is absolute except where Bkpcy. Act itself gives priority to some debts over others.—*Re ORZY*, [1924] 1 D. L. R. 250; 53 O. L. R. 323; 3 C. B. R. 737.—**CAN.**

**h iii.** —.—.]—The rights of secured creditors remain unimpaired in the event of a receiving order or authorised assignment being made, & any proceedings taken to constitute a creditor a secured creditor or to realise on his security shall not, if legal, be interfered with or vacated.—*Re HAMILTON & OAKES*, [1925] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—**CAN.**

**h iv.** —.—.]—*Re DUMAIS* (1927), Q. R. 44 K. B. 79.—**CAN.**

**3383 xxi.** —.— *Mortgage on vessel—Right to enforce security in admiralty court.*—*Held*: an assignment under Bkpcy. Act did not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in Admiralty.—*WHITE & Co., Ltd. v. THE IONIA*, [1921] 20 Exch. C. R. 327; 1 C. B. R. 415.—**CAN.**

**3383 xxii.** —.— *Security not realising sufficient to satisfy debt—Right to prove for balance.*—If a creditor fails to file his claim in accordance with Bkpcy. Act, s. 46, he cannot proceed against the insolvent, after a composition has been confirmed, for payment of the composition dividend on the unrealised portion of his secured debt.—*DALEY & MORIN v. FOGEL* (1922), 68 D. L. R. 772.—**CAN.**

**3386 iv.** —.—.]—*Held*: a vendor secured by a lien note might seize the goods & obtain an order for sale, though he had not proved in the bkpcy.—*Re EMPIRE TRACTION Co., Ltd.*, [1920] 3 W. W. R. 515.—**CAN.**

**3386 v.** —.—.]—A secured creditor may proceed to realise his security inde-

pently of any bkpcy. or winding-up proceedings.—*Re CANADIAN WESTERN STEEL CORPN.* (1922), 69 D. L. R. 689; 2 C. B. R. 494.—**CAN.**

**sz. Right to sue under Fraudulent Preferences Act, R. S. S., 1920 (c. 204).**—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under the above Act.—*BARRETT v. BAKON*, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—**CAN.**

**sa. Settlement of claim by trustee & secured creditor.**—*Held*: a creditor estopped from setting up a preference in respect of part of his claim, unless the settlement contains an express stipulation to the contrary.—*Re MARTIN MILK PRODUCTS*, [1925] 1 D. L. R. 533; 5 C. B. R. 281.—**CAN.**

**sb. Sufficiency of security—Presumption.**—In the absence of evidence to the contrary, it is presumed that the security of a secured creditor is sufficient to realise his claim.—*ANDERSON v. SERGE*, [1924] 1 W. W. R. 1260; [1924] 2 D. L. R. 1018; 18 Sask. L. R. 255.—**CAN.**

#### PART IX. SECT. 4, SUB-SECT. 2.

**qi.** —.— *Guarantee by third party.*—A guarantee by a third party or a charge on the property of a third party is outside Bkpcy. Act, s. 46 (3), & the creditor is not called upon to value the security.—*Re COUGHLIN & Co., Ex p. GUARANTEE Co. OF NORTH AMERICA*, [1923] 3 W. W. R. 1177; 4 D. L. R. 971.—**CAN.**

**sc. Effect of—On creditor's rights against sureties.**—Where a creditor on filing a claim against bkpt. values his security, & such valuation is accepted, he is not thereby paid to the extent of the valuation so as to relieve the sureties from liability therefor.—*KUPROSKI v. ROYAL BANK OF CANADA*, [1926] 3 D. L. R. 801; [1926] S. C. R. 532; 7 C. B. R. 499.—**CAN.**

#### PART IX. SECT. 4, SUB-SECT. 3.

**ei.** —.—.]—Where a trustee took possession of goods upon which liens were held by virtue of an oral

547; 131 L. T. 622; 68 Sol. Jo. 536; [1924] B. & C. R. 129, C. A.

**3378. Add. Annotation:—Mentd.** *Re Gunsbourg*, [1920] 2 K. B. 426.

**3383. Add. Annotation:—Mentd.** *Re A Debtor*, [1922] 2 K. B. 109.

**3383a.** —.—.]—*Re DUTTON, MASSEY & Co., Ex p. MANCHESTER & LIVERPOOL DISTRICT BANKING Co.*, No. 3375a, ante.

**3412. Add. Annotations:—Consd.** *Re A Debtor*, [1922] 2 K. B. 109.

**3505. Add. Annotations:—Consd.** *Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735; *Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Refd. Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87. **Mentd.** *Re Stokes, Ex p. Mellish*, [1919] 2 K. B. 256.

**3532. Add. Annotation:—Apld.** *Re Houlder*, [1929] 1 Ch. 205.

**3534. Add. Annotation:—Apld.** *Re Houlder*, [1929] 1 Ch. 205.

**3535. Add. Annotation:—Apld.** *Re Houlder*, [1929] 1 Ch. 205.

**3558. Add. Citation:—sub nom.** *Re FMETT, Ex p. ANDREWS*, 1 Madd. 573.

**Add. Annotations:—Refd.** *Dalby v. India & London Life Assce.* (1854), 18 Jur. 1024; *Crompton v. Huber* (1855), 25 L. T. O. S. 43.

election to redeem at a valuation:—*Held*: he could not contend that it was invalid because not in writing.—*Re GUARANTEED BATTERIES, LTD.*, [1923] 3 D. L. R. 743; 53 O. L. R. 45; 3 C. B. R. 695.—**CAN.**

#### PART IX. SECT. 4, SUB-SECT. 4.—B.

**sd. Necessity for.**—Under Bkpcy. Act, s. 6, no leave is necessary for a secured creditor to proceed to realise on his security.—*IMPERIAL LUMBER Co. v. JOHNSON*, [1923] 1 D. L. R. 1125; 1 W. W. R. 920; 3 C. B. R. 707.—**CAN.**

#### PART IX. SECT. 4, SUB-SECT. 5.—D.

**3500 v.** —.—.]—A bank held liens upon bkpt. co.'s personal property which it valued in pursuance of Bkpcy. Act. The goods were sold for a greater sum than the valuation:—*Held*: the bank was entitled to receive all moneys realised from the sale of the goods under lien, subject only to a claim for wages & the charges of local agents.—*Re GUARANTEED BATTERIES, LTD.*, [1923] 3 D. L. R. 743; 53 O. L. R. 45; 3 C. B. R. 695.—**CAN.**

**3500 vi.** —.—.]—A bank paid over to the trustee in bkpcy. the amount realised in excess of its claim, & subsequently it was found that payment of its claim fell short by the amount realised under a forged bill of lading:—*Held*: the bank was entitled to be repaid such shortage by the trustee.—*Re ADANAC GRAIN Co., LTD.*, [1922] 1 W. W. R. 849; 66 D. L. R. 772; 31 Man. L. R. 480.—**CAN.**

**3500 vii.** —.— *Right to payment in full.*—A. & B. valued their securities in bkpcy. proceedings at amounts less than the principal sums covenanted to be paid. The trustee in bkpcy. having sold the mortgaged lands:—*Held*: A. & B. were entitled on allocation to payment of the full amount of their claims with interest.—*Re TURKETINE'S ESTATE*, [1920] 1 I. R. 23.—**IR.**

**se. Claim partly unsecured—Appropriation of payments to unsecured claim not permissible.**—*MOORE v. WILLIAMS (A. R.) MACHINERY Co., LTD.*, [1925] 2 D. L. R. 1009.—**CAN.**

## Part X.—Mutual Credit and Set-off in Bankruptcy.

3562. *Add. Annotations*:—*Consd. Re National Benefit Assce.*, [1924] 2 Ch. 539. *Refd. Paddy v. Clutton*, [1920] 2 Ch. 554; *Re City Life Assce.* (1925), 42 T. L. R. 45. *Mentd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.
- 3566a. ————*Ex p. EDWARDS* (1745), 1 Atk. 100; 26 E. R. 66, 1. C. *Annotation*:—*Refd. Ex p. Quinter* (1796), 3 Ves. 248.
3580. *Add. Annotation*:—*Refd. Re Lloyd's Furniture Palace, Evans v. The Co.*, [1925] Ch. 853.
3598. *Add. Annotation*:—*Refd. Re City Life Assce.* (1925), 42 T. L. R. 45.
3599. *Add. Annotation*:—*Expld. Giles v. Kruyer*, [1921] 3 K. B. 23.
3612. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.
3621. *Add. Annotations*:—*Mentd. The Countess*, [1921] P. 279; *Fooks v. Smith*, [1924] 2 K. B. 508.
3625. *Add. Annotation*:—*Consd. Re City Life Assce.* (1925), 42 T. L. R. 45.
- 3637a. *Equitable debt—Against legal debt.*—*Bkpcy. jurisdiction proceeds upon equitable principles & draws no distinction between equitable & legal rights for the purposes of administration; & debt. is entitled under 1914 Act, s. 31, to set off against a legal debt claimed by a trustee in bkpcy. an equitable debt due to him from bkpt., both debts being in existence before the date of the receiving order.*—*MATHIESON'S TRUSTEE v. BURRUP, MATHIESON & Co.*, [1927] 1 Ch. 562; 96 L. J. Ch. 148; 136 L. T. 796; [1927] B. & C. R. 47.
3645. *Add. Annotation*:—*Mentd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.
3648. *Add. Annotation*:—*Refd. Paddy v. Clutton*, [1920] 2 Ch. 554.
3653. *Add. Annotations*:—*Folld. Paddy v. Clutton*, [1920] 2 Ch. 554. *Distd. Re National Benefit Assce.*, [1924] 2 Ch. 339. *N.F. Re City Life Assce.* (1925), 42 T. L. R. 45.
3654. *Add. Annotations*:—*Consd. Re City Life Assce.* (1925), 42 T. L. R. 45. *Mentd. Paddy v. Clutton*, [1920] 2 Ch. 554.
3655. *Add. Annotation*:—*Consd. Re A Debtor*, [1927] 1 Ch. 410.
3660. *Add. Annotation*:—*Refd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.
3661. *Add. Annotation*:—*Refd. Ellis' Trustee v. Dixon-Johnson* (1924), 131 L. T. 652.
3662. *Add. Annotation*:—*Refd. Re A Debtor*, [1927] 1 Ch. 410.
3678. *Add. Annotations*:—*Consd. Paddy v. Clutton*, [1920] 2 Ch. 554; *Re National Benefit Assce.*, [1924] 2 Ch. 339. *Appld. Re City Life Assce.* (1925), 42 T. L. R. 45. *Refd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.
3679. *Add. Annotation*:—*Refd. Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
3680. *Add. Annotations*:—*Consd. Re City Life Assce.* (1925), 42 T. L. R. 45. *Refd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.
3681. *Add. Annotations*:—*Mentd. A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 505; *Verschures Creameries v. Hull & Netherlands S.S. Co.*, [1921] 2 K. B. 608; *Edwards v. Motor Union Insee.*, [1922] 2 K. B. 249; *Anderson v. Equitable Life Assce. Soc. of United States* (1926), 134 L. T. 557.
3695. *Add. Annotation*:—*Refd. Baker v. Lloyd's Bank*, [1920] 2 K. B. 322.
- 3696a. *Shares deposited as security for debit balance owing to bankrupt—Unauthorised sale by bankrupt.*—*Deft. opened a speculative account with a firm of stockbrokers & deposited with them as security for any debit balance which might from time to time be owing by him on that account the indicia of title to various bonds & shares. including certain rubber shares. In 1920 the firm sold the rubber shares without the knowledge or authority of deft., who was kept in ignorance of the sale till after the bkpcy. of the firm. On Feb. 16, 1922, a receiving order was made against the firm & they were adjudicated bkpt. In Feb. 1923, the trustee in bkpcy. of the firm rendered deft. a final account, which, after giving credit to deft. for the proceeds of the sale of the shares, showed a balance due from deft. In an action to recover that balance the trustee claimed that the rights of the parties ought*

clause of 1914 Act, as at the date of the receiving order. The judge, in ordering an account to be taken, directed that the value of the shares, to be ascertained when the account was certified, that being the date when the shares ought to have been returned to deft., should be set off against the claim of the trustee:—*Held*: the brokers could not have maintained an action for their debt if

### PART X. SECT. 1, SUB-SECT. 2.—B. (c).

3600 v. ———— *Rebates on insurance premiums.*—*Debtor co. were indebted to a broker upon accepted drafts for insurance premiums paid by him on their behalf, & arranged with the broker to cancel the insurance policies upon which he had paid the premiums represented by the unpaid drafts, & to have the amounts allowed by way of rebate for the unearned premiums paid by the insurance cos. to the broker. Held: the broker was entitled to apply the sum paid to him for rebates in reduction of the co.'s indebtedness, or by way of set-off against his claim for the amount of the premiums paid by him.*—*Re FAIRWEATHERS, LTD.* (1921), 67 D. L. R.

590: 51 O. L. R. 438; 2 C. B. R. 202.—CAN.

3600 vi. ———— *Creditor for services rendered—Debtor for goods delivered by bankrupt—Agreement for services to be paid for by supply of goods.*—*Held*: there was a right of set-off.—*Re MCMURTRY & Co., Ex p. JAMES (M. A.) & SONS*, [1924] 1 D. L. R. 737.—CAN.

### PART X. SECT. 1, SUB-SECT. 3.

3646 i. *Arrears of rent—Against sum due for grass seed.*—*Held*: the landlord could exercise the right of set-off.—*Re GRANTHAM, Ex p. DOYLE*, [1923] 3 D. L. R. 94; 4 C. B. R. 168.—CAN.

3648 iii. ————*—If shares in a*

co. are disclaimed by the official assignee upon the bkpcy. of a shareholder, & if for purposes of proof an estimate is made under Bkpcy. Act, 1908, s. 111, of the amount claimable in respect of future calls thereon, the co. may set off against such amount a sum due by the co. to bkpt. for goods supplied by him.—*Re ANDERSON*, [1924] N. Z. L. R. 1163.—N.Z.

### PART X. SECT. 1, SUB-SECT. 4.

sm. *Claim by creditor to share of profits in business—Claim by insolvent for damages for breach of contract to purchase business.*—*Held*: the case was one of mutual dealings.—*JEFFERY v. RANGOON OFFICIAL ASSIGNEE* (1927), 1 L. R. 6 Ran. 46.—IND.

they were not in a position to hand over the shares against payment, & the trustee in bkpcy. had no higher right; no question of set-off arose under the mutual credits clause of 1914 Act, the right of debt. being to a return of the shares *in specie*; & in the special circumstances of the case the order of the judge was correct.—*ELLIS & Co.'s TRUSTEE v. DIXON-JOHNSON*, [1925] A. C. 489; 94 L. J. Ch. 221; 133 L. T. 60; 41 T. L. R. 336; 69 Sol. Jo. 395; [1925] B. & C. R. 54, H. L.

3697. *Add. Annotation*:—*Re*d. *Baker v. Lloyd's Bank*, [1920] 2 K. B. 322.

3702. *Add. Annotation*:—*Re*d. *Baker v. Lloyd's Bank*, [1920] 2 K. B. 322.

3707. *Add. Annotation*:—*Re*d. *Re City Life Assce.* (1925), 42 T. L. R. 45.

3714. *Add. Annotations*:—*As to* (2) *Consd. Re City Life Assce.*, [1926] Ch. 191. *Re*d. *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

3719. *Add. Annotations*:—*Consd. Paddy v. Clutton*, [1920] 2 Ch. 554; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451. *Re*d. *Re National Benefit Assce.*, [1924] 2 Ch. 339; *Re City Life Assce.* (1925), 42 T. L. R. 45.

3739. *Add. Annotations*:—*Consd. Paddy v. Clutton*, [1920] 2 Ch. 554; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451. *Re*d. *Re National Benefit Assce.*, [1924] 2 Ch. 339; *Re City Life Assce.* (1925), 42 T. L. R. 45.

3740. *Add. Annotations*:—*Consd. Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9. *Re*d. *Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

3740a. —.—.]—Appl., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co.:—*Held*: applt. had not, at the date of the receiving order, any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator.—*Re A DEBTOR* (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re MUMFORD, DEBTOR v. PETITIONING CREDITOR, Ex p. OFFICIAL RECEIVER*, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

3741. *Add. Annotation*:—*Re*d. *Re A Debtor*, [1927] 1 Ch. 410.

3750a. —.—.]—*GROOM v. WEST* (1838), 8 Ad. & El. 758; 1 Per. & Dav. 19; 1 Will. Woll. & H. 638; 8 L. J. Q. B. 25; 112 E. R. 1025; *sub nom. GOOM v. WEST*, 2 Jur. 940.

3769. *Add. Annotations*:—*Distd. Re Pennington & Owen*, [1925] Ch. 825. *Consd. Re Binns, Public Trustee v. Ingle*, [1929] 1 Ch. 677.

## Part XI.—Joint and Separate Estates—Bankruptcy of Firm or Partner.

3793a. *One partner a company—Compulsory winding up—Rights of trustee.*]—Where a receiving order was made against a firm consisting of an individual & a co., & subsequently an order was made for the compulsory winding up of the co., & liquidators were appointed, the ct. directed that the administration of the bkpcy. should be conducted by the trustee in bkpcy. & that assets collected by the special manager who had been appointed in the bkpcy. should be handed over to the trustee in bkpcy. Leave was given to amend the proceedings by making the petition & receiving order against the partners "other than the co."—*Re DOBREE & Co.*, [1929] B. & C. R. 1.

3832a. *Claim under covenant void against creditors—Postponed to claims of joint creditors of*

*partnership—& of creditors against separate estate.*]—*Re CUMMING & WEST, Ex p. NEILSON & CRAIG v. TRUSTEE*, No. 7155a, *post*.

3900. *Add. Annotations*:—*Re*d. *Re Biddulph, Ex p. Burton* (1843), 3 Mont. D. & De G. 364; *Stroud v. Gwyer* (1860), 28 Beav. 130.

3945a. *Estate of undischarged bankrupt partner—Second bankruptcy of partner—Unsatisfied balance of joint liabilities in first bankruptcy.*]—T. & M., partners in a firm, had been adjudged bkpt.; bkpt. M.'s discharge had been refused, & there were unsatisfied joint debts in the bkpcy. of the firm; & a subsequent receiving order was made against M. under which he was again adjudged bkpt.:—*Held*: under 1914 Act, s. 33 (6) & s. 39 (1), the unsatisfied balance of the joint liabilities of the firm could be proved in the subsequent

PART X. SECT. 5, SUB-SECT. 1.  
3784 i. *How right to retain lost—Proof against bankrupt.*—*Re LUSIER*, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—CAN.

### PART XI. SECT. 1.

3788 v. —.—.]—The separate creditors must be satisfied in full before the partnership creditors can rank, & as to partnership assets, the partnership creditors must first be satisfied in full before the separate creditors can rank.—*Re TAYLOR v. LEVEYS*, [1923] 3

D. L. R. 1134; 52 O. L. R. 201; 2 C. B. R. 390.—CAN.

3788 vi. —.—.]—*Re DAUM & PLAETZER, Ex p. MONROE* (Ont.), [1927] 4 D. L. R. 744; 8 C. B. R. 446.—CAN.

*sp. Effect of authorised assignment by firm.*]—An authorised assignment by a firm operates as an assignment also of the separate estate of each partner.—*Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOC., LTD. v. SPIVAK*, [1927] 1 D. L. R. 577; [1927]

1 W. W. R. 162; 22 Alta. L. R. 487.—CAN.

*st. Motion by trustee to have debtor declared partner in bankrupt firm—Debtor entitled to be heard*—*Re POLLARD*, [1925] 4 D. L. R. 370.—CAN.

PART XI. SECT. 3, SUB-SECT. 2.—C.  
3788. *Money paid by partner under partnership agreement on death of bankrupt partner to deceased's estate.*—*Re ENGELAND* (Ont.), [1926] 4 D. L. R. 1029.—CAN.

- bkpcy. of M. by the trustee in the first bkpcy.  
—*Re Moss, Ex p. EVERITT* (1923), 93 L. J. Ch.  
98; [1923] B. & C. R. 135.
4019. *Add. Annotation*:—**Mentd.** The Kin Tye  
Loong v. Seth (1920), 89 L. J. P. C. 113.
4068. *Add. Annotation*:—**Mentd.** The Kin Tye  
Loong v. Seth (1920), 89 L. J. P. C. 113.
4069. *Add. Annotations*:—**Refd.** *Re* Gunsbourg,  
[1920] 2 K. B. 426; *Moore v. Flanagan*,  
[1920] 1 K. B. 919. **Mentd.** *R. v. Paulson*,  
[1921] 1 A. C. 271; *Anderson v. Equitable*  
*Life Assee. Soc. of United States* (1926), 131  
L. T. 557; *Bennett v. Whitehead*, [1926] 2  
K. B. 380.
4080. *Add. Annotation*:—**Mentd.** The Kin Tye  
Loong v. Seth (1920), 89 L. J. P. C. 113.
- 4102a. ——— **Separate personal guarantees of**  
**partners.]—***Re* DUTTON, MASSEY & CO., *Ex p.*  
*MANCHESTER & LIVERPOOL DISTRICT BANK-*  
*ING CO.*, No. 3375a, *ante*.
4108. *Add. Annotation*:—**Consd.** *Re* Dutton,  
Massey, *Ex p. Manchester & Liverpool*  
*District Banking Co.*, [1924] 2 Ch. 199.
- 4116a. **Right to administration of partnership**  
**assets.** (1) Where a partnership has been  
isolated by the bkpcy. of one partner, the  
general rule that the solvent partner is entitled  
to have the administration of the partner-  
ship assets does not apply when such solvent  
partner is an infant, but, *semble*, such solvent  
infant partner may apply to the ct. by an  
adult next friend to have such administration.  
(2) Whoever the liquidating person is, whether  
the solvent partner or the trustee as repre-  
senting the bkpt. partner, he holds the  
partnership assets in trust for discharging the  
partnership liabilities, & if, to the know-  
ledge of any one dealing with the liquidating  
person, there has been any misapplication of  
such assets, the person so dealing is account-  
able for any part of the assets which he may  
have received.—*Re* BEAUCHAMP BROTHERS,  
*Ex p. CARR* (1896), 75 L. T. 315; 3 Mans.  
207.
4133. *Add. Annotation*:—**Mentd.** *Brocklebank v.*  
*R.*, [1925] 1 K. B. 52.
- 4152a. **Right to follow assets misapplied—Against**  
**party with notice of breach of trust.]—***Re*  
*BROTHERS, Ex p. CARR*, No.  
4116a, *ante*.
4217. *Add. Annotations*:—**Apld.** *Houghton v.*  
*Nothard, Lowe & Wills*, [1928] A. C. 1. **Refd.**  
*Houghton v. Nothard, Lowe & Wills* (1927),  
44 T. L. R. 76.

## Part XII.—Priority of Debts.

4279. *Add. Annotation*:—**Refd.** *Re Webb* (Smith-  
field, London), [1922] 2 Ch. 369.
- 4281a. ——— **“Local rate”—Land drainage rate.]**  
—A land drainage rate levied by a drainage  
board constituted under Land Drainage Acts,  
1861 (c. 133), & 1918 (c. 17), is a local rate  
entitled to preferential payment within 1914  
Act, s. 33 (1) (a).—*Re* ELLWOOD. [1927]

**PART XI. SECT. 6, SUB-SECT. 1.**  
sa. **Right to claim for money ad-**  
**vanced to partner after ineffective dis-**  
**solution.]—***Re* WALKER, [1926] 1  
D. L. R. 274; 58 O. L. R. 141; 7 C. B. R.  
4.—CAN.

**PART XII. SECT. 1, SUB-SECT. 3.**  
sb. **Claim by Workmen's Compensa-**  
**tion Board—For arrears of payment of**  
**assessments.]—**Claim refused.—*WORK-*  
*MEN'S COMPENSATION BOARD v. EDGAR*,  
[1924] 3 D. L. R. 273; [1924] 2  
W. W. R. 566; 20 Alta. L. R. 385.—  
CAN.

— **Extent of priority.]—***Re*  
—, *Ex p. WORKMEN'S COMPENSA-*  
*TION BOARD* (Ont.), [1927] 3 D. L. R.  
802; 8 C. B. R. 275.—CAN.

**PART XII. SECT. 1, SUB-SECT. 4.**  
sd. **General rule.]—**The Crown has  
a prerogative right to be paid upon a  
distribution in bkpcy. in priority to  
other unsecured creditors, but it is  
merely a right of preference in the  
administration of the estate.—*Re*  
*TORONTO METAL & WASTE CO.* (1921),  
67 D. L. R. 111; 51 O. L. R. 287;  
2 C. B. R. 138.—CAN.

sf. ———.]—Where the Crown is  
an unsecured creditor for taxes owing  
by bkpt., the Crown will take prefer-  
ence over all other secured creditors  
in respect of those taxes.—*Re* NOEL,  
*Ex p. GRAVELBOURG TOWN* (1922), 65  
D. L. R. 754; 2 C. B. R. 545.—CAN.

sj. ———.]—*Re* STANDARD PHARMACY,  
LTD., *Re* ALBERTA PROVINCE'S CLAIM  
(Alta.), [1926] 2 D. L. R. 300; [1926]  
1 W. W. R. 773.—CAN.

sk. **Trustee entitled to set of**

**for arrears of rent.]—***Re* GRANTHAM,  
*Ex p. DOYLE*, [1923] 3 D. L. R. 94;  
4 C. B. R. 168.—CAN.

4280 ii. ——— **Water rate.]—***Re*  
*AN ARRANGING DEBTOR*, [1921] 2  
I. R. 1.—IR.

4280 iii. ——— **Light rates.]—***Re*  
*MATHESON, Ex p. PRINCE ALBERT*  
*(CITY)*, [1924] 1 W. W. R. 129; [1924]  
1 D. L. R. 260; 18 Sask. L. R.—CAN.

4280 iv. ——— **Electric power rates.]—**  
*Re* DECKER'S DELICATESSEN, [1925] 1  
D. L. R. 652; 56 O. L. R. 140; 5  
C. B. R. 208.—CAN.

4280 v. ——— **Crown Timber Act,**  
1927 (c. 38), s. 2 (1).—The word  
“rates” in above sub-sect. means the  
price which any licensee is required  
to pay for the timber to be cut under  
his licence, & does not mean the “taxes,  
rates, or assessments” which under  
Bkpcy. Act, 1927 (c. 11), s. 125, may  
be levied or imposed upon the debtor  
or upon any property of a bkpt. under  
any law, Dominion or of the Provin-  
ce.—*Re* HARDY, [1929] 1 D. L. R.  
300.—CAN.

bi. ———.]—*Re* INTERNATIONAL  
METAL WORKS, LTD., *Ex p. R.*, [1925]  
1 D. L. R. 309; 5 C. B. R. 378.—CAN.

b ii. ———.]—CANADIAN CREDIT  
MEN'S TRUST ASSOC. v. EDMONTON  
CITY, [1925] 2 D. L. R. 525; [1925] 1  
W. W. R. 747; 21 Alta. L. R. 160; 5  
C. B. R. 587.—CAN.

b iii. ——— **Municipal taxes.]—***Re*  
*CANADA PRESERVING CO. (Ont.)*, [1928]  
2 D. L. R. 529; 10 C. B. R. 63.—CAN.

ci. ——— **Business taxes.]—***Re* WEST  
(F. E.) & CO. (1921), 62 D. L. R. 207;  
50 O. L. R. 631; 2 C. B. R. 3.—CAN.

ci. ———.]—Where a township  
or municipality is, by a provincial  
statute, made a preferred creditor in

respect of business taxes, this prefer-  
ence disappears when the statute is  
repealed by a dominion statute.—*Re*  
*NOEL, Ex p. GRAVELBOURG TOWN*  
(1922), 65 D. L. R. 754; 2 C. B. R.  
545.—CAN.

c iii. ———.]—A municipal  
corp'n. is not entitled by Bkpcy. Act,  
s. 51 (6), to priority over other creditors  
of bkpt., for business taxes in respect  
of which no distress has been made.—  
*Re* CHELTAN CO. (1922), 69 D. L. R.  
679; 51 O. L. R. 649; 2 C. B. R. 510.  
—CAN.

c iv. ———.]—A city is in  
respect of business tax a secured  
creditor.—*Re* MATHESON, *Ex p. PRINCE*  
*ALBERT (CITY)*, [1924] 1 D. L. R. 260;  
[1924] 1 W. W. R. 129; 18 Sask. L. R.  
3.—CAN.

c v. ———.]—*Re* STANDARD  
PHARMACY, LTD., *Re* ALBERTA PRO-  
VINCE'S CLAIM (Alta.), [1926] 2 D. L. R.  
300; [1926] 1 W. W. R. 773.—CAN.

c vi. ——— **Dominion taxes—Over**  
**taxes due to municipality.]—***Held*:  
Dominion taxes preferred.—*Re* ADAMS  
SHOE CO., *Ex p. TOWN OF PENE-*  
*TANGUSHENE*, [1923] 4 D. L. R. 927.—  
CAN.

c vii. ——— **Income tax.]—***Re* LE  
BLANC, [1924] 3 D. L. R. 256.—CAN.

c viii. ———.]—*Held*: balance of  
income tax entitled to priority.—*Re*  
*ORR*, [1924] 2 I. R. 120.—IR.

c ix. ———.]—*R. v. LITHWICK*  
& COLE (1921), 20 Exch. C. R. 293.—  
CAN.

c x. ——— **Poll tax.]—***Re* LE BLANC,  
[1924] 3 D. L. R. 256.—CAN.

c xi. ——— **Sales taxes.]—***Held*: the  
Crown was entitled to priority over all  
other unsecured creditors in respect of  
sales taxes.—*Re* WEST (F. E.) & CO.

1 Ch. 455; *sub nom. Re ELLWOOD, Ex p. RIVER DEE DRAINAGE BOARD v. HOOSON*. 96 L. J. Ch. 170; 136 L. T. 696; [1927] B. & C. R. 53, D. C.

**4284. Add. Annotation:—***Reid. Re Webb* (Smithfield, London), [1922] 2 Ch. 369.

**4295a. ——— Helping employer to perfect invention.—Under agreement for payment out of profits.**—Where a clerk assisted his master in perfecting an invention, for which a patent had been obtained, upon an agree-

ment to be paid out of the profits, but which agreement had no reference to his duties as clerk:—*Held*: he was not precluded from proving for his remuneration as a clerk, or from receiving three months' salary in full.—*Re ELLINS, Ex p. HICKIN* (1850), 3 De G. & Sm. 662; 19 L. J. Bcy. 8; 14 L. T. O. S. 469; 14 Jur. 405; 64 E. R. 651.

**4298. Add. Annotation:—***Consd. Moriarty v. Regent's Garage & Engineering Co.* (1920), 90 L. J. K. B. 783.

(1921), 68 D. L. R. 772; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

**c xii. ———.**—*Held*: a creditor could not rank as a secured creditor in priority to the claim of the Crown for taxes on sales of goods to debtor.—*Re NICHOLSON SALES & SERVICE CORPN.*, [1924] 3 D. L. R. 593; 4 C. B. R. 692.—**CAN.**

**War revenue taxes.**—See cases in Part XII., Sect. 1, sub-sect. 6, post.

**c xiii. ——— Taxes assessed prior to assignment.**—*Held*: the city had a preferential lien on the goods of the assignor for the above taxes.—*Re MCKENZIE*, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

**d i. ———.**—*Held*: debtor's chattels subject to seizure for arrears of taxes by the municipality even in the hands of the trustee.—*Re HARRISON* (1922), 69 D. L. R. 638; 51 O. L. R. 634; 2 C. B. R. 360.—**CAN.**

**d ii. ———.**—*Re LAURANCE* (1923), 55 O. L. R. 196; 4 C. B. R. 349.—**CAN.**

**sl. Claim of inspector of taxation.**—*Re MCKENZIE*, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

## PART XII. SECT. 1, SUB-SECT. 5.

**sm. Bias of court in favour of creditor.**—The right of a creditor for arrears of wages to stand as a preferred creditor will be construed by the ct. with a bias in favour of the creditor.—*Re CORSON SHOE CO.*, [1924] 1 D. L. R. 555.—**CAN.**

**4285 ix. ——— After judgment recovered.**—The claim of a wage-earner to priority for his wages remains a claim for wages even after judgment has been recovered.—*BALL v. THORNE* (1920), 46 O. L. R. 261; 50 D. L. R. 85.—**CAN.**

**4285 x. ——— Earned within three months of bankruptcy.**—*Held*: a workman could only rank as a preferred creditor for wages earned within three months of the bkpy.—*RODDEN v. GOODMAN* (1922), 67 D. L. R. 635.—**CAN.**

**4285 xi. ———.**—*Held*: the director & president & the director & secretary-treasurer of bkpt. co. were entitled to priority for wages or salaries in respect of services rendered to bkpt. co. during the three months before the date of the assignment.—*Re EASTERN ONTARIO MILK PRODUCTS CO.*, [1923] 1 D. L. R. 591; 52 O. L. R. 67; 21 O. W. N. 483.—**CAN.**

**4285 xii. ———.**—*Held*: a claim for wages was not entitled to priority not being earned within three months immediately preceding the receiving order.—*Re CONTINENTAL PUBLISHING CO.*, *Ex p. DAVIS & SIMMONS*, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—**CAN.**

**4285 xiii. S. P. Re OLYMPIA CAFE CO., LTD., Ex p. BEDALI (Man.).** [1927] 1 D. L. R. 907; [1927] 1 W. W. R. 131.—**CAN.**

**4285 xiv. ——— Commission payable when goods shipped.—Services rendered more than three months before bankruptcy.—Goods shipped within three months of bankruptcy.**—*Held*: the salesman could not rank as a preferred creditor in respect of such commission.—*Re HERCULES RUBBER CO.*, *Ex p.*

*ALLAN*, [1924] 1 D. L. R. 999; 4 C. B. R. 555.—**CAN.**

**4285 xv. ——— Allowance for expenses.**—Where a person is employed as a travelling salesman & is given his expenses in addition to his salary, he may claim to stand as a preferred creditor as regards both his salary & his expenses.—*Re CORSON SHOE CO.*, [1924] 1 D. L. R. 555.—**CAN.**

**4289 ia. ———.**—*A travelling salesman, selling goods on commission, was allowed by debtor co. to sell their goods at specified prices, any goods sold by him to be invoiced to the customer at the price at which he sold, & he to be allowed the difference between the net price & his selling price.*—*Held*: not entitled to priority.—*Re SPECIALITY BAGS, LTD.*, [1923] 1 D. L. R. 827; 53 O. L. R. 355; 3 C. B. R. 617.—**CAN.**

**4292 i. ——— Accountant.—Monthly salary.—Part time employment.**—*Held*: he was a servant & entitled to rank as a preferred creditor.—*Re GORDEAN FURNITURE CO.*, *Ex p. SLADDEN*, [1923] 4 D. L. R. 1198; [1923] 3 W. W. R. 630.—**CAN.**

**4298 i. ——— Company official.—Director.**—The mere fact that a director who claims priority for wages is a superior officer of a co. does not of itself deprive him of priority. The real question is whether the person making the claim has contracted to render service to the co. beyond what would come within the scope of his duties as a statutory officer.—*Re EASTERN ONTARIO MILK PRODUCTS CO.*, [1923] 1 D. L. R. 591; 21 O. W. N. 483; 52 O. L. R. 67.—**CAN.**

## PART XII. SECT. 1, SUB-SECT. 6.

**h i. ———.**—The preferential rights of a landlord are restricted as provided by Landlord & Tenant Act, s. 38, & a landlord cannot claim to rank as a preferred creditor in respect of sums voluntarily paid by him for taxes owing by bkpt.—*Re CHYSTAL*, [1926] 2 D. L. R. 840; 59 O. L. R. 44.—**CAN.**

**h ii. ——— Under Landlord's Rights (Bankruptcy) Act, 1924 (c. 12) (Alta.).** s. 3.—The above sect. entitles a landlord to priority to the extent of the amount limited thereby over all bkpt.'s secured creditors, including the Crown.—*Re STANDARD PHARMACY, LTD., Re ALBERTA PROVINCE'S CLAIM (Alta.)*, [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—**CAN.**

**h iii. ——— Cannot be deprived of preferential lien.—Except by agreement.**—*Re MILNER, Ex p. FORBES (Ont.)*, [1926] 2 D. L. R. 988; 7 C. B. R. 319.—**CAN.**

**si. ——— Special covenant.**—*Held*: notwithstanding a clause in a lease as to acceleration rent, the landlord was only entitled to rent for the time the premises were occupied by the trustee.—*CANADIAN CREDIT MEN'S TRUST ASSOC. v. MONKA* (1924), 34 B. C. R. 99.—**CAN.**

**sn. Arrears of rent.—Priority over.—War revenue taxes.**—*Re SOLOMONS BOCHNER FUR CO.*, [1924] 1 D. L. R. 685; 53 O. L. R. 497; 24 O. W. N. 42.—**CAN.**

**sp. ———.**—The Crown

claiming under War Revenue Tax Act & a landlord for arrears of rent rank *inter se* according to their priority in time.—*Re DAVIS*, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—**CAN.**

**sq. ——— Sales tax.**—*Re CALCUS CO., LTD., Ex p. MCGUIRE*, [1925] 3 D. L. R. 809; 57 O. L. R. 272; 5 C. B. R. 763; *revisg.*, [1925] 2 D. L. R. 246.—**CAN.**

**sr. ——— Taxes due under Income War Tax Act, 1917.**—*Re HUMBERSTONE COAL CO., LTD., Ex p. NATIONAL TRUST CO., LTD.*, [1925] 3 D. L. R. 154; [1925] 2 W. W. R. 68; 5 C. B. R. 719; *revisg.*, [1925] 1 W. W. R. 964; 5 C. B. R. 639.—**CAN.**

**st. ——— Fees & expenses of trustee.**—The trustee's claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act, but if the landlord's claim arose anterior to that of the Crown, then the trustee's claim will count after the landlord's & will precede the Crown's claim.—*Re DAVIS*, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—**CAN.**

**sw. Covenant by tenant to pay taxes & other expenses.**—A landlord can only rank as a preferred creditor in respect of arrears of rent, & this is so even where the lease stipulates that the tenant shall make other payments, namely a portion of the taxes & costs of heating the premises.—*Re STANLEY MILLS CO.* (1924), 27 O. W. N. 123; *affg.*, [1924] 3 D. L. R. 40; 4 C. B. R. 655.—**CAN.**

**sx. Costs of distress.**—*Re MCKENZIE*, [1924] 1 W. W. R. 159; 4 G. B. R. 492.—**CAN.**

## PART XII. SECT. 1, SUB-SECT. 9.

**f i. ——— Debt not being debt for taxes, rates or assessments.**—The Crown in the right of a province has no priority over other creditors of bkpt. with respect to a debt due to it which is not a debt for taxes, rates or assessments.—*Re CARSTON U. F. A. CO-OPERATIVE ASSOCN., LTD., Re PROVINCE OF ALBERTA*, [1925] 4 D. L. R. 897; [1925] 3 W. W. R. 651.—**CAN.**

**f ii. ———.**—*Re STANDARD PHARMACY, LTD., Re ALBERTA PROVINCE'S CLAIM (Alta.)*, [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—**CAN.**

**r i. ——— Sales taxes.**—Sales taxes due to the Dominion Govt. under Special War Revenue Act (Dom.), 1915 (c. 8), as enacted by 10 & 11 Geo. 5, c. 71, are merely debts due to the Crown, not expressly charged upon the assets of debtor.—*Re WEST (F. E.) & CO.* (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

**r ia. ———.**—12 & 13 Geo. V. (c. 47), amending Special War Revenue Act, 1915, & by sect. 17 making the taxes to which it refers a lien or charge upon the property of a debtor in favour of the Crown, & directing that this lien shall prevail, notwithstanding the provisions of the Bkpy. Act, does not in terms repeal the Bkpy. Act; & the repeal of sect. 17, in 1925, by 15 & 16 Geo. V. (c. 26), s. 9, leaves the prerogative right to prior payment in a case of bkpy. untouched. By sects. 86 & 51 of the Bkpy. Act, the Crown has surrendered its prerogative

**4334a. Wife**—In respect of annuity for maintenance of husband's household.]—Where an annuity is secured to a wife by an antenuptial settlement to be expended in maintaining the husband's household, the wife cannot, on the husband's bkpcy., claim to be paid the amount in preference to the other creditors.—*BIRKETT v. PURDOM*, [1895] A. C. 371; 11 R. 184, H. L.

**4335a. ——— Bond to secure annuity taken in payment.**]—Where a woman lends money to her husband [to help him in his business] & then accepts from him, in lieu of the money lent, a bond to secure an annuity payable by him for her life, & he subsequently is adjudicated bkpt. or dies insolvent, she may claim in the bkpcy., or in the administration by the ct. of his estate, for the value of the annuity in competition with the creditors of the husband.—*Re SLADE, CREWKERNE UNITED BREWERIES, LTD. v. SLADE*, [1921] 1 Ch. 160; 89 L. J. Ch. 556; 124 L. T. 232; 64 Sol. Jo. 668.

**4336. Add. Annotations:—Consd. *Re Slade, Crewkerne United Breweries v. Slade*, [1921] 1 Ch. 160. Distd. *Re Cumming & West, Ex p. Neilson & Craig v. The Trustee*, [1929] 1 Ch. 534.**

**4338. Add. Annotation:—Refd. *Re Wombwell* (1921), 37 T. L. R. 625.**

**4342. Add. Annotations:—Refd. *Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. Mentd. *Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87.**

**4345. Add. Annotation:—Refd. *Dennistoun v. Dennistoun* (1925), 69 Sol. Jo. 477.**

**4353. Add. Annotation:—Refd. *Re Slade, Crewkerne United Breweries v. Slade*, [1921] 1 Ch. 160.**

**4353a. ——— Debt left on deposit with debtors.**]—A creditor for a sum of £100,000 of a firm of merchant bankers in May, 1918, agreed with the debtors to leave the debt on deposit with them until Jan. 1932, at interest, with

commission to be paid to nominees of the creditor—namely, O. & his family; & it was further agreed that O. should be credited with a share of the firm's profits, which in fact he subsequently drew from the firm. In July, 1920, the debt was, by the direction of the creditor, transferred in the books of the debtors to F., who agreed with the debtors to leave the debt on deposit with them until Jan. 1932, upon the conditions expressed in the former agreement, as if F.'s name had been inserted therein instead of the name of the original creditor. On Feb. 24, 1926, F. transferred the debt in equity to O., & on Mar. 2, 1926, the debtors had notice of that assignment. On Mar. 15, 1926, a receiving order was made against the debtors on their own petition, & shortly afterwards they were adjudicated bkpts. Between Mar. 2, 1926, & the date of that order F. became indebted to the firm in the sum of £15,000 for moneys expended by the firm between those dates in taking up accommodation bills drawn by F. on & accepted by the firm for which, as between F. & the firm, F. through not having supplied the necessary funds, was liable, F.'s liability arising in every case from contractual liabilities undertaken by F. towards the firm at dates earlier than Mar. 2, 1926:—*Held*: upon the proper construction of the agreement of May, 1918, the creditor did not advance money to the debtors on a contract that she should receive a share of the profits of their business within Partnership Act, 1890 (c. 39), s. 2 (3) (d), with the result that O.'s proof for the £100,000 was not liable to be postponed to the claims of the other creditors.—*Re PINTO LEITE & NEPHEWS, Ex p. DES OLIVEAS (VISCONTI)*, [1929] 1 Ch. 221; 98 L. J. Ch. 211; 140 587; [1928] B. & C. R. 188.

**4357. Add. Annotations:—Consd. *Re Cumming & West, Ex p. Neilson & Craig v. The Trustee*, [1929] 1 Ch. 534. Refd. *Re Slade, Crewkerne United Breweries v. Slade*, [1921] 1 Ch. 160.**

to be paid debts due to it in priority to debts due to a subject, save only debts that fall within sect. 51, sub-sect. 6.—*Re MOORE (D.) CO., LTD.*, [1928] 1 D. L. R. 383; 61 O. L. R. 434; 8 C. B. R. 338, 479.—CAN.

**r. ib. ———.**]—*Re WILNER (Ont.)*, [1928] 2 D. L. R. 396; 8 C. B. R. 616.—CAN.

**r. ii. ——— Charge against goods admitted as settler's effects.**]—*Held*: to take priority over the lien for costs given an execution creditor.—*Re WILEY, Re ANTHONY SALT CO., Re CROWN'S CUSTOMS DUTIES CLAIM*, [1925] 4 D. L. R. 790; [1925] 3 W. W. R. 683.—CAN.

**r. iii. ——— Health Insurance contributions.**]—On a claim for arrears due in respect of Health Insurance contributions, alleged to be recoverable as Crown debts ranking next after the usual preferential payments:—*Held*: Health Insurance contributions were recoverable only as a civil debt.—*Re LINDSAY*, [1926] N. 128.—IR.

**r. iv. ——— Debt due to Land Commission.**]—*Held*: a preferential debt.—*Re MALONEY*, [1926] I. R. 202.—IR.

**ss. Surety paying Crown debt.**]—A surety who has paid the indebtedness of the principal debtor to the Crown is entitled to stand in the same position as the Crown & to exercise its remedies for the recovery of the debt.—*Re PATRICK*

*FRERES PHONOGRAPH CO. OF CANADA* (1921), 64 D. L. R. 628; 50 O. L. R. 644; 2 C. B. R. 21.—CAN.

## PART XII. SECT. 1, SUB-SECT. 10.

**Fees & expenses of trustee.**]—See cases in Part VII., Sect. 5, sub-sect. 2, A., ante.

**t. i. ———.**]—*CRAWFORD & CO. v. HUNTERS & CO.* (1817), 1 Nfld. L. R. 43.—NFLD.

**t. ii. ———.**]—*FERGUS & GLEN INSOLVENT ESTATE* (1831) 2 Nfld. L. R. 27.—NFLD.

**4331 i. Judgment creditor—Registered certificate of judgment.**]—A judgment creditor of a bkpt., who has registered a certificate of judgment with the district registrar, is not entitled to a lien against the estate for the costs incurred in obtaining the judgment.—*Re YAWOSKI* (1922), 66 D. L. R. 570; [1922] 1 W. W. R. 296; 2 C. B. R. 181.—CAN.

**d. i. ———.**]—*Held*: the trustee must pay the sheriff's fees & charges, including poundage & the costs of the execution creditor in priority to all other charges or claims.—*Re TORONTO METAL & WASTE CO.* (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—CAN.

**sb. Costs of action continued by trustee—With authority of court.**]—*Held*: costs incurred after the insol-

veny preferred.—*MYERSON v. GREEN & HOMER* (1922), 68 D. L. R. 209.—CAN.

**m. i. Price of goods supplied to debtor—With approval of trustee—For continuation of business after bankruptcy.**]—*Held*: accounts for such goods preferred.—*Re MORRIS*, [1923] 3 D. L. R. 848; 53 O. L. R. 36.—CAN.

**so. Money-lender.**]—In no case can a person who lends money to another before the latter's bkpcy. rank as a preferred creditor for the money so loaned.—*RODDEN v. GOODMAN* (1922), 67 D. L. R. 635.—CAN.

**sd. Solicitor—Costs of preparing authorised assignment.**]—*Re JACOBSON, Ex p. GOLDBERG (N. B.)*, [1927] 2 D. L. R. 363; 8 C. B. R. 258.—CAN.

**ss. Arrears of maintenance of lunatic.**]—A person of unsound mind having died insolvent, arrears due for maintenance to the institution where he had been kept were allowed after debts due to the Crown, & in priority to the taxed costs of his committee.—*Re MAGUIRE*, [1923] 1 I. R. 108.—IR.

## SECT. 2, SUB-SECT. 1.

**— Payment of debt by wife as surety for husband.**]—*Held*: wife not a deferred creditor.—*Re BARRON, Ex p. BARRON*, [1924] 4 D. L. R. 1307; 4 C. B. R. 624.—CAN.

### Part XIII.—Distribution of Estate and Payment of Dividends.

- 4386a. Agreement for distribution contrary to bankruptcy laws.—*VOID*.—*STAINES v. WAINWRIGHT* (1839), 6 Bing. N. C. 174; 8 Scott, 280; 9 L. J. C. P. 107; 133 E. R. 68.  
*Annotation*.—*DISTD.* Prince v. Haworth, [1905] 2 K. B. 768.
4373. *Add. Annotation*.—*MENTD.* The Kin Tye Loong v. Seth (1920), 89 L. J. P. C. 113.
4403. *Add. Annotations*.—*APLD. RE* Home & Colonial Insee. (1928), 44 T. L. R. 718. *REFD.* *Re Gurwicz, Exp. Trustee* (1919), 88 L. J. K. B. 740.
4424. *Add. Annotations*.—*MENTD.* Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.
4433. *Add. Annotation*.—*DISTD. RE* Houlder, [1929] 1 Ch. 205.
- 4484a. — *PROOF* subsequently reduced. — *RE* SEARLE, HOARE & Co., No. 3210a, *ante*.
4487. *Add. Annotation*.—*REFD.* Dewe v. Dewe, *Snowdon v. Snowdon*, [1928] P. 113.
4494. *Add. Annotation*.—*REFD.* *Re* Home & Colonial Insee. (1928), 44 T. L. R. 718.

## Part XIV.—Administration in Bankruptcy of Estates of deceased Insolvents.

- 4545.** *Add. Annotation*:—**N.F.** *Latter v. Juckes* (1926), 42 T. L. R. 723.
- [1920] 2 Ch. 308.
- 4549.** *Add. Annotation*:—**Mentd. Re Wigzell, Ex p. Hart**, [1921] 2 K. B. 835
- 4555a.** ——— **Adjudication before death.**]—Debts incurred for necessities by a bkpt. to a reasonable amount, may properly be paid out of money accumulated by the bkpt. since the adjudication.  
The sect. does not deprive the bkpt. of those fruits of his personal exertions which are necessary to enable him to live; in other words it is only the surplus over & above that which vests in the trustee (**TOMLIN, J.**).—*Re WALTER, SLOOOCK & COY., Ltd.* [1929] 1 Ch. 647; 98 L. J. Ch. 403; 141 L. T. 319.
- 4556.** *Add. Annotation*:—**Refd. Re Webb** (Smithfield, London), [1922] 2 Ch. 369.
- **Sect. 109 of undischarged bankrupting to after-acquired property.**]—*Re SARJEANT*. No. 1808a, ante  
—————. ]—*See, now, Bkpcy. (Amendment) Act, 1926* (c. 7), s. 3.

## Part XVI.—Miscellaneous Practice and Procedure.

- 4602. Add. Annotation :—Mentd. Re Foster, Barnato v. Foster, [1920] 3 K. B. 306.**
- 4627. Add. Annotation :—Mentd. Scott v. North-umberland & Durham Miners' Permanent Relief Fund Friendly & Approved Soc., [1920] 1 K. B. 174.**
- 4633. Add. Annotations :—Refd. Re Drage, Palmer & Roberts v. Knight (1926), 134 L. T. 765. Mentd. Re Cohen, Ex p. Trustee, [1924] 2 Ch. 515 ; Re Hoyle, Ex p. Trustee, [1924] B. & C. R. 22.**
- 4637. Add. Annotation :—Apld. R. v. Tuttle (1929), 140 L. T. 701.**
- 4637a. Admission at preliminary examination—On criminal charge of misappropriating funds.]—The accused, who was a trustee under a will, was charged with having in Mar. 1916, fraudulently converted to his own use certain shares deposited with him by a co-trustee. In an affidavit filed by the accused in defence to proceedings for an account commenced against him by the co-trustee in the Ch. Div. the accused swore that he had, with the approval of his co-trustee, invested the capital in his own business. Subsequently, in his preliminary examination in bkpcy., he made admissions to the Official Receiver in regard to the disposition of the capital by him. He was indicted for fraudulent conversion as a trustee under Larceny Act, 1916 (c. 50), s. 21, but the judge, on his notice being brought to the fact that that Act was not in force at the time when the offence was alleged to have been committed, allowed the indictment to be amended by the substitution of Larceny Act, 1861 (c. 96), s. 80, for the later statute. The two statutes define the offence in almost precisely the same**

**PART XIII. SECT. 6.**

sf. *Refund*.—*Action in county court to recover money paid in error.*—*Held*: not maintainable, it not being open to the judge to go behind the declared dividend.—*McLENNAN v. CARTER*, [1927] 1 D. L. R. 375; 59 N. S. R. 64.—*CAN.*

**PART XVI, SECT. 3, SUB-SECT. 1.**

4806 i. Part of examination. — A portion merely of an examination under

property of debtor in his possession cannot be admitted in evidence in collateral proceedings.—**HOULDING v. CANADIAN CREDIT MEN'S TRUST ASSOC., LTD.**, [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—**CAN.**

d. i. --- -- -- Powers under Presidency Towns Insolvency Act, s. 36, are not to be used when parties are in litigation, as an extra method of discovery in addition to the ample

IND.

PART XVI. SECT. 3, SUB-SECT. 2.

sj. Motion for trial of bankruptcy action.—Adjournment to take oral evidence.—*Re FULTON*, [1925] 4 D. L. R. 1.—CAN.



words:—*Held*: the admissions in the preliminary examination in bkpcy. were not admissions made "in any compulsory examination or deposition before any court on the hearing of any matter in bkpcy.," & could, therefore, be given in evidence at the trial without infringing Larceny Act, 1916 (c. 50), s. 43 (3).—*R. v. TUTTLE* (1929), 140 L. T. 701; 45 T. L. R. 357; 21 Cr. App. Rep. 85, C. C. A.

**4638. Add. Annotations:—***Refd. Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T. 765. *Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515; *Re Hoyle, Ex p. Trustee*, [1924] B. & C. R. 22.

**4661. Add. Annotation:—***Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

**4665. Add. Annotation:—***Consd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

**4665a. — Necessary before other side entitled to refer to contents.**—On June 29, 1923, resps., having received from bkpt. an order for goods, on the same day delivered them to bkpt. together with an invoice bearing the same date, which subsequently at bkpt.'s request was post-dated to July 10. On July 20, bkpt., although fully realising his insolvency, sent to resps. & to 107 other creditors cheques which were all post-dated to July 31 in settlement of their several accounts. On July 31 bkpt. gave notice to his creditors that he was about to suspend payment. Not one of those post-dated cheques was paid on presentation; but on July 30, the day preceding the act of bkpcy., bkpt. paid in cash to resps., who had no knowledge of bkpt.'s financial difficulties, the amount he owed them less discount. On Aug. 30, 1923, on a creditor's petition presented on Aug. 3, an order of adjudication was made against bkpt. Upon a motion by the trustee in bkpcy. for a declaration that the payment to resps. was a fraudulent preference under 1914 Act, s. 44 (1), resps. filed an affidavit in opposition, which contained statements which revealed a voluntary offer on July 30 on the part of bkpt. to resps. to pay the amount due to them in cash; & the question was then raised whether the trustee had the right, which he claimed, to

read those statements as admissions by resps. of the absence of pressure & of the entirely voluntary nature of the payment:—*Held*: (1) the practice in the Bkpcy. Ct., differing in this respect from the practice in the Ch. Div., was that where an affidavit had been filed by a resp. to an application, applt. was only entitled to refer to the contents thereof after resp. on opening his case had elected to read it; (2) where a bkpt. in imminent expectation of bkpcy. voluntarily pays a particular creditor with the result of giving him a preference in fact, & the reason for such payment is unexplained, a *prima facie* case of fraudulent preference is established; therefore, the trustee having proved a *prima facie* case of fraudulent preference & the creditors having withdrawn their affidavit in opposition, & there being therefore no evidence to the contrary, the trustee was entitled to succeed on his application.—*Re COHEN, Ex p. TRUSTEE*, [1924] 2 Ch. 515; 94 L. J. Ch. 73; [1924] B. & C. R. 143; *sub nom. Re COHEN, Ex p. TRUSTEE v. SNOW* (W. R.) & Co., 69 Sol. Jo. 35, C. A.

*Annotation*—As to (2) *Distd. Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T. 765.

**4671. Add. Annotation:—***Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

**4704a. — — — — — Whether barred by lapse of time.**—In the circumstances: *Held*: a solr.'s petition that his bill might be paid was not barred by the fact that the items occurred more than six years before the demand for payment.—*Re FASHER, Ex p. BRUTTON* (1845), De G. 116; 1 New Pract. Cas. 159; 14 L. J. Bcy. 15; 4 L. T. O. S. 321; 9 Jur. 96.

**4705. Add. Annotation:—***Refd. Knight v. Knight*, [1925] Ch. 835.

**4753. Add. Annotation:—***Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

**4771a. — — — — —**—*WILLASEY v. MASHITER* (1834), 3 My. & K. 293; 40 E. R. 112.

**4772a. — — — — —**—*WHALLEY v. WILLIAMSON* (1843), 6 Man. & G. 269; 6 Scott, N. R. 948; 134 E. R. 894.

**4772b. — — — — —**—*J. SHEA v. BOSCHETTI, Re PETTE* (1858), 25 Beav. 561; 53 E. R. 751.

## Part XVII.—Appeals.

**4794. Add. Annotation:—***Refd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

### PART XVI. SECT. 4

*sk. Ex parte order. Rescission—Non-disclosure of true state of affairs.*—*Re GORDON BROTHERS, LTD.*, (Ont.), [1926] 3 D. L. R. 131; 7 C. B. R. 576.—*CAN.*

### PART XVI. SECT. 5, SUB-SECT. 1.

*—Held*: as the work done by the solr. in collecting the debts due to debtor was of real benefit to his estate, & was done with the tacit sanction of the ct., the costs of the solr. should be paid to him out of the money lodged by him with the official assignee.—*Re MALONEY*, [1928] 1. R. 155.—*IR.*

*sn. Of successful application for*

*recovery of property intrusted to bankrupt—Payable out of estate.*—*NEVILLE & GREEN* (Ont.), [1926] 3 D. L. R. 407; 7 C. B. R. 631; *varying*, [1926] 2 D. L. R. 1025.—*CAN.*

*sp. Rights of solicitor—Amount of fees—Estate not realised by trustee.*—*Re CAPLAN*, [1925] 3 D. L. R. 964; 5 C. B. R. 826.—*CAN.*

### PART XVII. SECT. 1.

*sr. From registrar in insolvency To judge exercising insolvency jurisdiction—Order for attendance of witness.*—*SARAT KUMAR RAY v. NABIN CHANDRA RAM CHANDRA SHAKA* (1928), 1. L. R. 56 Calc. 667.—*IND.*

*st. From judge in insolvency—To*

*Divisional Bench.*—*SARAT KUMAR RAY v. NABIN CHANDRA RAM CHANDRA SHAKA* (1928), 1. L. R. 56 Calc. 667.—*IND.*

*sv. From Divisional Bench—To Full Bench.*—*SARAT KUMAR RAY v. NABIN CHANDRA RAM CHANDRA SHAKA* (1928), 1. L. R. 56 Calc. 667.—*IND.*

### PART XVII. SECT. 2.

*sz. Order involving amount exceeding \$500.*—An appeal lies on the question whether a creditor for an amount over \$500 shall be entitled to rank on bkpt.'s estate as a secured creditor or merely as an ordinary creditor, being an appeal involving an amount exceeding \$500.—*APEX LUMBER CO. v.*



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| <p><b>4819.</b> <i>Add. Annotation :—Refd. Re Mathieson</i> (1926), 70 Sol. Jo. 1161.</p> <p><b>4831.</b> <i>Add. Annotation :—Mentd. Re Cohen, Ex p. Trustee, [1924]</i> 2 Ch. 515.</p> <p><b>4835.</b> <i>Add. Annotation :—Mentd. Richmond v. Savill, [1926]</i> 2 K. B. 530.</p> <p><b>4836.</b> <i>Add. Annotation :—Refd. Re A Debtor, [1928]</i> Ch. 199.</p> <p><b>4840.</b> <i>Add. Annotation :—Mentd. Hawkins &amp; Sunderland v. Duché (1921), 90 L. J. K. B. 913.</i></p> <p><b>4857.</b> <i>Add. Annotation :—Refd. Re Barley, [1923]</i> 1 Ch. 177.</p> | <p><b>4860.</b> <i>Add. Annotation :—Consd. Re Barley, [1923]</i> 1 Ch. 177.</p> <p><b>4869.</b> <i>Add. Annotation :—Consd. Re Barley, [1923]</i> 1 Ch. 177.</p> <p><b>4873.</b> <i>Add. Annotation :—Consd. Re Barley, [1923]</i> 1 Ch. 177.</p> <p><b>4876.</b> <i>Add. Annotation :—Refd. Re Barley, [1923]</i> 1 Ch. 177.</p> <p><b>4884.</b> <i>Add. Annotation :—Mentd. Re Mellor, Alvarez v. Dodgson, [1922]</i> 1 Ch. 312.</p> <p><b>4888.</b> <i>Add. Annotation :—Consd. Re Barley, [1923]</i> 1 Ch. 177.</p> <p><b>4894.</b> <i>Add. Annotation :—Refd. Re Barley, [1923]</i> 1 Ch. 177.</p> |
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## Part XVIII.—Order of Discharge.

5023. *Add. Annotation* :—**Consd. Re Kutner**, [1921] 3 K. B. 93.
- 5035a. *Payment of money in consideration of—Void.*—**MURRAY v. REEVES** (1828), 8 B. & C. 421; 2 Man. & Ry. K. B. 423; Dan. & Ll. 161; 108 E. R. 1099; *sub nom.* **MURRAY v. REID**, 6 L. J. O. S. K. B. 348.
- Annotations* :—**Apld.** Hall v. Dyson (1852), 17 Q. B. 785. **Consd.** Levita's Claim, [1894] 3 Ch. 365. **Refd.** Gilmour v. King (1833), 3 Tyr. 581.
- 5035b. *S. P. HALL v. DYSON* (1852), 17 Q. B. 785; 21 L. J. Q. B. 224; 18 L. T. O. S. 63, 223; 16 Jur. 270; 117 E. R. 1481.
- Annotations* :—**Consd.** McKewan v. Sanderson (1873), L. R. 15 Eq. 229; McKewan v. Sanderson, [1875] L. R. 20 Eq. 65; Levita's Claim, [1894] 3 Ch. 365. **Refd.** Hills v. Mitson (1858), 8 Exch. 751; Lound v. Grimwade (1888), 39 Ch. D. 605; Kearley v. Thomson (1890), 24 Q. B. D. 742; Windhill L. B. of Health v. Vint (1890), 63 L. T. 366.
- 5038a. —.]—A bill of exchange given to buy off opposition to bkpt.'s last examination & the allowance of the certificate :—**Held** : void *ab initio*.—**REEVES v. HAWKES** (1862), 6 L. T. 53.
- 5039a. —.]—**Held** : a fraud on other creditors.—**ROGERS v. KINGSTON** (1825), 2 Bing. 441; 10 Moore, C. P. 97; 3 L. J. O. S. C. P. 77; 130 E. R. 376.
- Annotation* :—**Refd.** Sweeney v. Sharp (1826), 12 Moore C. P. 163.
- 5039b. —.]—**Held** : the agreement was illegal.—**HILLS v. MITSON** (1853), 8 Exch. 751; 22 L. J. Ex. 273; 155 E. R. 1555.
- Annotation* :—**Refd.** Lound v. Grimwade (1888), 39 Ch. D. 605.
- 5039c. *S. P. HUMPHREYS v. WELLING* (1862), 1 H. & C. 7; 32 L. J. Ex. 33; 6 L. T. 250; 158 E. R. 780.
5043. *Add. Annotation* :—**Refd.** Anderson v. Daniel (1923), 93 L. J. K. B. 97.
5050. *Add. Annotation* :—**Consd. Re Kutner**, [1921] 3 K. B. 93.
5052. After this case add “*Sec, also, Nos. 1654–1657a, ante.*”

JOHNSTONE, [1925] 3 D L. R. 1050;  
[1925] 3 W. W. R. 360.—CAN.

**sa. Order on question of procedure.]—**No appeal lies from a decision on a question of procedure.—**WINTER v. CAPILANO TIMBER Co.** (1926), 37 B. C. R. 91; [1926] 2 W. W. R. 536.—**CAN.**

**PART XVII, SECT. 3.**

**4815 i. Application for leave—Within what time—Extension of time—Leave to appeal to Supreme Court of Canada.]—Re HUDSON FASHION SHOPPE, LTD., Ex p. ROYAL DRESS CO., [1926] 1 D. L. R. 315 ; 58 O. L. R. 298.—CAN.**

sc. Grounds for granting leave—  
Landlord's preferential claim for rent  
endangered—By claim of Crown—Under  
War Revenue Act, 1915 ]—Re CALCUS  
Co., LTD., [1925] 2 D L R. 228, 5  
C. B. R. 514 —CAN.

sd. — *Question of great importance & general interest.*]—**BOILY v. McNULTY**, [1927] 2 D. L. R. 1010; [1927] S. C. R. 275.—**CAN.**

sg. — *Whether hotel-keeper "trader" within Landlord & Tenant Act, C. S. N. B., 1903 (c. 153), s. 47.*—*Re HOTEL DUNLOP, LTD., QUINN v. GUERNSEY, [1927] 1 D. L. R. 810; [1927] S. C. R. 134.—CAN.*

sj. — Question of construction.]—  
Held: leave to appeal should be  
granted. Among other questions, the

meaning of the word "settlements" in Bkpey. Act. s. 60, appears to be involved in this appeal, the point being whether this word should receive the same construction as that given to it under the English Bkpey. Act, 1914 (c. 59), s. 42.—**GARSON v. CANADIAN CREDIT MEN'S TRUST ASSOC'N., LTD.**, [1928] 3 D. L. R. 937; [1928] S. C. R. 419; 10 C. B. R. 203.—**CAN.**

**PART XVII. SECT. 4. SUB-SECT. 3.**

**4855 ii.** ---.]—Where an application to a judge of this ct. for leave to appeal from a judgment of a provincial ct. of appeal in a matter arising under the Bkpcy. Act is made within the thirty days specified by Bkpcy. Rule 72, or where the specified fourteen days notice has not been given to the adverse party, the application must be dismissed; the judge has no power to extend the time.—*Re* NORTH SHORE TRADING CO., PROVIDENCE WASHINGTON ASSCE. C. v. GAGNON & CLOUTIER, [1928] 2 D. L. R. 136. [1928] S. C. R. 180; 10 C. B. R. 181.—**CAN.**

**PART XVII. SECT. 9.**

**sk. Jurisdiction of Court of Appeal of British Columbia.]**—The above ct. when acting as an appeal ct. in bkpcy. has complete jurisdiction over costs. — **Re KWONG TAI CHONG CO. (ASSIGNMENT OF)** (1922), 65 D. L. R. 132; [1922] 2 W. W. R. 229; *sub nom.* **CANADIAN**

**5039a.** —.]—*Held*: a fraud on other creditors.  
—*ROGERS v. KINGSTON* (1825), 2 Bing. 441;  
10 Moore, C. P. 97; 3 L. J. O. S. C. P. 77;  
130 E. R. 376.

*Annotation* :—**Refd.** *Sweenie v. Sharp* (1826), 12 Moore C. P. 163.

**5039b.** —.]—*Held*: the agreement was illegal.—*HILLS v. MITSON* (1853), 8 Exch. 751; 22 L. J. Ex. 273; 155 E. R. 1555.

**Annotation :—***Reid. Lound v. Grimwade* (1888), 39 Ch. D. 605.

**5039c.** *S. P. HUMPHREYS v. WELLING* (1862). 1 H. & C. 7; 32 L. J. Ex. 33; 6 L. T. 250; 158 E. R. 780.

5043. *Add. Annotation*:—**Refd.** Anderson v. Daniel (1923), 93 L. J. K. B. 97.

**5050.** *Add. Annotation :—*Consd. *Re* Kutner, [1921]  
3 K. B. 93.

**5052.** After this case add "*Sec, also, Nos. 1654-1657a, ante.*"

CREDIT MEN'S TRUST ASSOCN., LTD. v.  
JANG BOW KEE & YIN SHEE, 31  
B. C. R. 40.--CAN.

**PART XVIII. SECT. 3, SUB-SECT. 1.**

5013 i. *Whose interests court must consider—Public interests.*—On considering the application of a debtor for his discharge under Bkpcy. Act, regard must be had not only to the interests of bkpt. & his creditors, but also to the interests of the public.—*Re SCERTHE HARDWARE CO.*, [1923] 1 D. L. R. 1201; [1923] 1 W. W. R. 966; 3 C. B. R. 734.—**CAN.**

5014 i. --- *Bankrupt* }—*Re* JONES,  
[1926] N Z L R 318 —N.Z.

d 1. — *Reasons of trustee's report.* —  
*Re* McKENZIE (Man.), [1926] 4 D. L. R.  
 210. — CAN.

**PART XVIII. SECT. 5, SUB-SECT. 1.—**  
C. (b) 11.

5073 ii. ———.]—The test as to whether a debtor's book-keeping methods are those usual & proper in the business carried on by him is whether debtor can at any time tell therefrom just how he stands to his assets & liabilities. —*Re MORDEN* (1922), 66 D. L. R. 332, [1922] 1 W. W. R. 519; 2 C. B. L. 189 — **CAN.**

5081 ii. - - - Even when a debtor pays less than fifty cents in the dollar to unsecured creditors & has not kept

- 5093a. — Meaning of "debt."—*Re BOULTON BROTHERS & CO.*, No. 1057a, ante.
5262. *Add. Annotation*:—*As to* (2) *Refd. Re Kutner*, [1921] 3 K. B. 93.
- 5264a. — Condition suspending discharge until larger dividend than ten shillings in the pound paid.]—The Ct. of Bkpcy. is not empowered by 1914 Act, s. 26, to suspend the discharge of a bkpt. until a dividend higher than 10s. in the pound—in this case 15s. in the pound—has been paid to his creditors.—*Re KUTNER*, [1921] 3 K. B. 93; 90 L. J. K. B. 1264; 125 L. T. 458; 37 T. L. R. 667; [1921] B. & C. R. 113; *sub nom. Re KUTNER, Ex p. DEBTOR v. OFFICIAL RECEIVER*, 65 Sol. Jo. 604, C. A.
5277. *Add. Annotations*:—*Mentd. Re Taylor, Ex p. Bolton*, [1909] 1 K. B. 103; *Re Barley*, [1923] 1 Ch. 177.
5283. *Add. Annotations*:—*Refd. Re Barley*, [1923] 1 Ch. 177. *Mentd. Re Walmsley, Ex p. The Bankrupt* (1907), 98 L. T. 55.
5328. *Add. Annotations*:—*Mentd. Re Dent, Ex p. Trustee*, [1923] 1 Ch. 113; *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
- 5352a. — Illegal agreement with creditor—Debt not revived.]—*TABRAM v. FREEMAN* (1834), 4 B. & Ad. 887; 2 Cr. & M. 451; 4 Tyr. 180; 3 L. J. Ex. 135; 110 E. R. 690.
- Annotation*:—*Refd. Wilkin v. Manning* (1854), 9 Exch. 575.
- 5364a. *Liability under annuity deed*.]—*DOUGLAS v. SMITH* (1849), 13 Jur. 294.
5367. *Add. Citation*:—*sub nom. Re MERCHANT TRADERS' SHIP, LOAN & INSURANCE ASSOCN., Ex p. CHAPPELL*, 19 L. T. O. S. 29.
5387. *Add. Annotation*:—*Refd. Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.
- 5387a. *On forfeiture clause—Conditional discharge*.]—(1) The discharge from bkpcy. of a life tenant with the common form protected life interest, such discharge being conditional on his paying a sum of money, does not have the effect of putting an end to the operation of the forfeiture clause if the money has not in fact been paid.
- (2) Where there is a trust of a fund under the terms of which the trustees are bound to apply the income of the fund in a particular manner, the trustee is not bound to do so but for the forfeiture clause, is capable of vesting in his trustee in bkpcy.—*Re CLARK, CLARK v. CLARK*, [1926] Ch. 833; 95 L. J. Ch. 325; 135 L. T. 666; 70 Sol. Jo. 344; [1926] B. & C. R. 77.
5397. *Add. Citations*:—*Bail Ct. Cas.* 151; 17 Jur. 165.
5399. *Add. Annotation*:—*Mentd. Spencer v. Hemmerde*, [1922] 2 A. C. 507.
- 399a. *Revives debt*.]—*HATT v. VERDIER* (1770), 2 Wm. Bl. 724; 96 E. R. 425.
- 5399b. *S. P. BEST v. BARKER* (1782), 8 Price, 533, n.; 146 E. R. 1286; *sub nom. BEST v. BARBER*, 3 Doug. K. B. 188.
- Annotations*:—*Consd. Wilson v. Kemp* (1815), 3 M. & S. 595. *Apld. Sweeney v. Sharp* (1826), 12 Moore C. P. 163. *Refd. Blackburn v. Ogle* (1820), 8 Price, 526; *Drew v. Jefferies* (1820), 8 Price, 531.
- 5402a. *S. P. HORTON v. MOGGRIDGE* (1816), 6 Taunt. 563; 128 E. R. 1154.
- 5424a. *S. P. TURNER v. SCHOMBERG* (1745), 2 Stra. 1233; 93 E. R. 1152.
- Annotation*:—*Fold. Bailey v. Dillon* (1759), 2 Burr. 736.
- 5424b. *S. P. WILSON v. KEMP* (1815), 3 M. & S. 595; 105 E. R. 733.
- Annotations*:—*N.F. Blackburn v. Ogle* (1820), 8 Price 526. *Consd. Jtc Gauderer* (1822), 1 L. J. O. S. K. B. 16; *Peers v. Gauderer* (1822), 1 B. & C. 116.
5455. *Add. Annotation*:—*Refd. Indian & General Investment Trust v. Borax Consolidated*, [1920] 1 K. B. 539.

## Part XIX.—Statement of Affairs and Discovery of Property.

5460. *Add. Annotation*:—*Apld. R. v. Tuttle* (1929), 140 L. T. 701.
5475. *Citations*:—For "24 Q. B. D. 406" read "24 Q. B. D. 466."

proper books of account, he may obtain his discharge if the bkpcy. appears to have been an honest one & he produces reasonable excuses for his failure to keep account books.—*Re COVINGTON*, [1923] 4 D. L. R. 946.—CAN.

5081 iii. —.]—*Re NEWSOME* (Ont.), [1927] 3 D. L. R. 828; 8 C. B. R. 279.—CAN.

### PART XVIII. SECT. 5, SUB-SECT. 2.

r i. — Until payment of specified dividend.]—On an application by a bkpt. for an order of discharge the ct. found that the conduct of the debtor prior to & leading up to the assignment had been characterised by various facts of the kind enumerated in sect. 143 of the Bkpcy. Act, & refused an immediate or unconditional discharge; but, while entertaining grave doubts whether appt. was entitled to any discharge at all, made an order suspending the discharge until a dividend of not less than 50 cents on the dollar had been paid to the creditors.—*Re RUNNER* (Man.), [1928] 1 W. W. R. 930.—CAN.

5238 i. *For what period—Not less than minimum period—Misconduct*.]—*Re McCORMACK* (Ont.), [1927] 2 D. L. R. 492; 8 C. B. R. 211.—CAN.

z i. —.]—Debtor had misrepresented his financial position for the purpose of obtaining credit. The ct. fixed the time for discharge at three years from the date of the order.—*Re THIESSEN*, [1924] 1 D. L. R. 588; [1924] 1 W. W. R. 197; 34 Man. L. R. 125.—CAN.

### PART XVIII. SECT. 5, SUB-SECT. 3.

5269 iii. —.]—Where the assets of the assignors, a partnership were not equal to fifty cents in the dollar on their unsecured liabilities, & the ct. was not fully satisfied with explanations on certain matters given by a partner asking for his discharge, an order was made for his discharge on his consenting to judgment against him.—*Re SCITRE HARDWARE CO.*, [1923] 1 D. L. R. 1201; [1923] 1 W. W. R. 960; 3 C. B. R. 734.—CAN.

### PART XVIII. SECT. 6.

r i. — Creditor without notice of insolvency.]—The ct., on the application of a creditor, annulled the composition order & the discharge & made a receiving order.—*Re MCKAY, Ex p. MASON*, [1924] 4 D. L. R. 307; 5 C. B. R. 81.—CAN.

### PART XVIII. SECT. 7, SUB-SECT. 2—D.

sl. *Liability for necessities—Medical expenses*.]—*Held*: debtor's discharge did not free him from liability to pay for necessities which included medical expenses.—*Re REYNOLDS*, [1924] 4 D. L. R. 104; 5 C. B. R. 69.—CAN.

sm. *Liability to reimburse surety*.]—K. was surety for payment of a debt due by G. to D. G. applied to be declared insolvent & in due course G. was discharged. D. then sued K. & got a decree against him. Thereafter K. sued G. for recovery of the amount which he had been compelled to pay:—*Held*: the order of discharge was a

in Bkpcy. Rules, to, say that a registered letter which does not reach debtor is not good service. Where, therefore, a copy of an order that bkpt. should attend at a specified time & place for his adjourned public examination, had been sent by registered letter & returned through the post, marked "gone away," a warrant was ordered to be issued for his arrest.—*Re LEVY* (1924), 68 Sol. Jo. 419; *sub nom. Re LEVY, Ex p. OFFICIAL RECEIVER*, [1924] B. & C. R. 19, D. C.

5482. *Add. Citation*:—*sub nom. Re TEMPLE, Ex p. TEMPLE*, 2 Rose, 22.

5495a. ————.—[The object of the public examination of debtor is not merely to obtain a full & complete disclosure of his assets & the facts relating to the bkpcy. in the interests of his creditors, but is also for the protection of the public; & debtor is not entitled to refuse to answer questions put to him at his public examination on the ground that by so doing he may incriminate himself.

In the course of his public examination debtor refused to answer a question on the ground that he might thereby incriminate himself. On the case coming on before the judge he interviewed debtor in his private room & on his return into ct. stated (1) that he was not satisfied that an answer to the question would result in further assets or secure rights for the creditors, & (2) that he was satisfied that there were serious personal reasons why it would be to debtor's detriment to answer the question in public:—*Held*: neither of the reasons given by the judge for declining to order debtor to answer the question was a sufficient reason.—*Re PAGET, Ex p. OFFICIAL RECEIVER*, [1927] 2 Ch. 85; 96 L. J. Ch. 377; 137 L. T. 369; 43 T. L. R. 455; 71 Sol. Jo. 489; [1927] B. & C. R. 118, C. A.

*Annotation*:—*Apld. Re Jawett*, [1929] 1 Ch. 108.

5495b. ————.—**Answers disclosing secret formulas for manufacturing proprietary articles.**—*Re KEENE*, No. 5811a, *post*.

5496. For "——— All matters considered on application for discharge" read "——— All matters considered on application for discharge."

*Add. Annotations*:—*Folld. Re Paget, Ex p. Official Receiver*, [1927] 2 Ch. 85. *Apld. Re Jawett*, [1929] 1 Ch. 108.

5499a. ————.—**Questions as to loss of property.**—*Held*: though the words "with intent to deceive or to defraud" were absent from 1914 Act, s. 157 (1) (c), the jury had still to consider whether deft. knowingly & with intent to deceive or to evade the Act either

made statements that were unsatisfactory in the sense that they were untrue or grossly exaggerated or intentionally evasive, or made statements without caring whether they were true or not.—*R. v. PHILLIPS* (1921), 85 J. P. 120.

5499b. ————.—**Questions in the public interest.**—In Nov. 1927, the debtor, who had practically no capital of his own, suffered judgment for an injunction & costs for selling lamps in infringement of a patent. In Aug. 1928, the debtor was adjudicated bkpt. on the patentees' petition for non-payment of those costs. At his public examination on Oct. 19, the bkpt., who was admittedly still dealing in electrical goods, on being asked by the registrar where he had obtained the lamps that he sold when he was in business, refused to answer the question:—*Held*: as it was not clear that the disclosure of the source of supply might not lead to the disclosure of further assets, *e.g.* claims to commission or otherwise, or might not be in the public interest, by enabling the supply of infringing lamps to be stopped at its source, the bkpt. must answer the question.—*Re JAWETT*, [1929] 1 Ch. 108; 98 L. J. Ch. 7; 140 L. T. 176; [1928] B. & C. R. 78.

5500. *Add. Annotation*:—*Mentd. Eshugbayi Eleko v. Nigeria Government Administering Officer*, [1928] A. C. 459.

5505. *Add. Annotations*:—*Refd. Re Paget, Ex p. Official Receiver*, [1927] 2 Ch. 85; *Re Jawett*, [1929] 1 Ch. 108.

5512. *Add. Annotation*:—*Mentd. Anderson v. Daniel* (1923), 93 L. J. K. B. 97.

5519. For existing paragraph read—

"The jurisdiction conferred on the ct. by 1883 Act, s. 27, to order that any person, who if in England would be liable to be brought before it under the sect. shall be examined in Scotland or Ireland, "or in any other place out of England," must be read with some limitation & does not extend to places abroad which are not within the jurisdiction of the British Crown."

5569. *Add. Annotation*:—*Mentd. R. v. Southampton County Confirming Committee, Ex p. Slade*, [1929] 1 K. B. 263.

5594. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.

5631. *Add. Annotation*:—*Mentd. Eshugbayi Eleko v. Nigeria Government Administering Officer*, [1928] A. C. 459.

5647. *Add. Annotation*:—*Mentd. Eshugbayi Eleko v. Nigeria Government Administering Officer*, [1928] A. C. 459.

## Part XX.—Property Available for Distribution amongst Creditors.

5684. For the words "**Admission or rejection of proofs.**"—*See, generally*, Part VIII., *ante*," following this case, read "Admission or

rejection of proofs, *sec. generally*, Part VIII., *ante*."

bar to the suit.—*GANGADHAR v. KANHAI* (1928), 1 L. R. 50 All. 606.—*IND.*

**PART XX. SECT. 2.**  
b i. ———— *Trustee ignorant of existence of property.*—Deft. in replevin pleaded

property in himself. He had assigned all his property to trustees for the benefit of his creditors, but kept

5686. *Add. Annotation*:—**Mentd.** *Ord v. Ord*, [1923] 2 K. B. 432.

5696. *Add. Annotation*:—**Refd.** *Re Wethered, Ex p. Salaman*, [1926] Ch. 167.

5738a. **Definition of property—1914 Act, s. 167**—**What included**—**Passport.**—A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within above sect., & where a bkpt. has passed his public examination & has not been guilty of any misconduct & desires to go abroad to earn his living the ct. will, in a proper case, direct the passport to be handed to the bkpt.—*Re SUWALSKY, SUWALSKY v. TRUSTEE & OFFICIAL RECEIVER*, [1928] B. & C. R. 142.

5747. *Add. Annotations*:—**Refd.** *Re Webb* (Smithfield, London), [1922] 2 Ch. 369. **Mentd.** *A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508.

5749. *Add. Annotations*:—**Consd.** *Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9. **Expld.** *Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

5754. *Add. Annotations*:—**Apld.** *Re Collins*, [1925] Ch. 556. **Distd.** *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.

5760. *Add. Annotations*:—**Consd.** *Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9. **Expld.** *Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

5760a. — **Money paid in compliance with subsequent bankruptcy notice.**—*Re DEBTORS* (No. 771 of 1926), No. 923a, *ante*.

5761. *Add. Annotation*:—**Refd.** *Re A Debtor*, [1928] Ch. 199.

5766. *Add. Annotation*:—**Consd.** *Lipton v. Bell*, [1924] 1 K. B. 701.

5769. *Add. Annotation*:—**Refd.** *Re Gunsbourg*, [1920] 2 K. B. 426.

5775a. — **On Sept. 20, 1917, debtor transferred his assets, including certain furniture, to a co. formed by him. On Sept. 27 he committed an act of bkpcy. upon which a petition was presented on Oct. 8, & a receiving order was made against him on Oct. 24, followed by an adjudication on Dec. 12. After the date of the receiving order part of the furniture was sold by the co. to a *bond fide* purchaser for value without notice, by whom it was resold to another purchaser in the same position. On Feb. 3, 1919, the transfer of Sept. 20, 1917, was held to be fraudulent & void & an act of bkpcy., & the co. was ordered to deliver to the trustee all the property comprised in that sale. The value of**

the property having been found by the registrar, a further order was made against the co. to pay the amount of that value to the trustee. No payment having been made under that order the trustee claimed to recover the furniture or its value from the ultimate purchaser:—**Held**: the title of the trustee related back to the act of bkpcy. of Sept. 20, 1917, & neither the original nor any subsequent transferee could establish any title as against the trustee.—*Re GUNSBURG*, [1920] 2 K. B. 426; *sub nom. Re GUNSBURG, Ex p. TRUSTEE*, 89 L. J. K. B. 725; [1920] B. & C. R. 50; *sub nom. Re GUNSBURG, Ex p. COOK*, 123 L. T. 353; 36 T. L. R. 485. 64 Sol. Jo. 498, C. A.

*Annotations*:—**Apld.** *Re Dombrowski, Ex p. Trustee* (1923), 92 L. J. Ch. 415. **Mentd.** *Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.

5775b. — **]**—**Bkpt.**, when he was hopelessly insolvent, transferred his business to a one man co., which was an act of bkpcy. Subsequently the two resps. advanced £1,000 each & received four debentures of £250 each respectively containing a charge on the undertaking & assets of the co. Resps. had no notice of the fact that the transfer to the co. was a fraudulent conveyance within 1914 Act:—**Held**: although resps. were *bond fide* purchasers for value without notice, as the transfer was an act of bkpcy. to which the title of the trustee related back, the trustee was entitled to the assets so transferred as property divisible amongst the creditors of bkpt.—*Re DOMBROWSKI, Ex p. TRUSTEE* (1923), 92 L. J. Ch. 415; [1923] B. & C. R. 32.

5776. *Add. Annotations*:—**Refd.** *Re Gunsbourg* [1920] 2 K. B. 426. **Mentd.** *Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87.

5776a. — **Whether fraction of day regarded.**—In order to make out an act of bkpcy. by lying in prison for two months, the whole of the day of arrest may be taken into the account. But a portion of the day may be considered for the purpose of showing a valid act to have been done by the bkpt. before the bkpcy. Goods of the bkpt. having been delivered to a purchaser on the day on which the bkpt. went to prison, & paid for the next day, the payment will be defeated by the relation of the act of bkpcy., by lying in prison for two months, to the day of the arrest.—*SAUNDERSON v. GREGG* (1821), 3 Stark. 72; 171 E. R. 771, N. P.

*Annotations*:—**Consd.** *Hill v. Farnell* (1829), 9 B. & C. 45. **Refd.** *Cannan v. Denew* (1833), 3 L. J. C. P. 65.

5783. *Add. Annotation*:—**Mentd.** *Sorrell v. Smith*, [1925] A. C. 700.

5786. *Add. Annotation*:—**Consd.** *Re Gunsbourg*, [1920] 2 K. B. 426.

possession of the goods in question, & the trustees did not know of their existence:—**Held**: the general property in the goods passed to the trustees.—*McINTOSH v. HASTINGS* (1865), 11 N. B. R. (6 All.) 234.—**CAN.**

5689 iv. — **Registered judgment as security for loan.**—A judgment by confession given by a person who is at the time solvent as security for a present advance of money & recorded to bind lands under Nova Scotia Registry Act, R. S., 1900 (c. 137), s. 16, is a valid security as against the authorised assignee under an assignment in bkpcy. subsequently made.—*Re RHODENIZER ESTATE & NOVA SCOTIA TRUST CO.*, [1923] 1 D. L. R. 1055; 56 N. S. R. 179.—**CAN.**

5713 v. — **]**—The authorised trustee is not entitled to possession control of any property by lien agreements for store fixtures & fittings purchased by debtor, especially if nothing has been paid on account of such purchases, & bkpt. has no official interest in the property.—*Re ALIOTIS & CLIBIS* (1921), 63 D. L. R. 346; 55 N. S. R. 64.—**CAN.**

5713 vi. — **Lease granted to bankrupt free of rent—Stipulation that lease not seizable by creditors.**—**Held**: the property could not be used for the benefit of bkpt.'s creditors.—*LEGAULT v. DUFRESNE* (1922), 66 D. L. R. 136.—**CAN.**

ti. — **]**—**As an assignment only vests the property of debtor in**

the assignee subject to the rights of secured creditors, it can only affect the equity of redemption in the property.—*WHITE & CO. v. THE IONTA* (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—**CAN.**

#### PART XX. SECT. 3, SUB-SECT. 2.

sn. *Under Canadian Bankruptcy Act.*—The English Act & the Canadian Act distinguished as to the time to which the trustee's title relates back.—*Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOC., LTD. v. SPIVAK* (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *reversd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

5791. *Add. Annotations*:—**Mentd.** *Burchell v Thompson*, [1920] 2 K. B. 80; *Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.
5798. To the cross-reference before this case add "*see, also, COUNTY COURTS, Vol. XIII., p. 498, No. 488.*"
5805. *Add. Annotation*:—**Refd.** *Lipton v. Bell*, [1924] 1 K. B. 701.
- 5807a. *Balance of sequestrator's account in registry.*—*Re LITTLE HALLINGBURY, ESSEX* (1837), 1 Curt. 556; 163 E. R. 195.
- 5811a. — **Secret formulas for manufacturing proprietary articles.**—Debtor, against whom a receiving order had been made, had carried on business in the manufacture & sale in England, France & America of certain proprietary articles made according to secret formulas invented by him & his brother with whom he was in partnership. In his public examination he was required to disclose these formulas in writing to his trustee. The debtor & his brother had each of them agreed not to disclose the secret. Upon the dissolution of the partnership bkpt. retained the assets & goodwill of the business in England & America, while his brother continued to carry it on in France. The formulas had never been committed to writing. Bkpt. refused to disclose them on the ground that they existed only in his brain as the result of his skill & capacity, & that to disclose them would be a breach of his agreement with his brother:—**Held**: the formulas were part of the goodwill & assets of his business, & he was bound to communicate them to his trustee.—*Re KEENE*, [1922] 2 Ch. 475; 91 L. J. Ch. 484; 127 L. T. 831; 38 T. L. R. 663; 66 Sol. Jo. 503; [1922] B. & C. R. 103, C. A.
5819. *Add. Annotation*:—**Mentd.** *Re Rush, Warre v. Rush*, [1922] 1 Ch. 302.
- 5821a. *Life interest in remainder.*—*Re SILBER'S SETTLEMENT, PUBLIC TRUSTEE v. SILBER*, [1920] W. N. 77.
- 5826a. — *Re CLARK, CLARK v. CLARK*, No. 5387a, *ante*.
5827. *Add. Annotations*:—**Apld.** *Re Nelson, Norris v. Nelson* (1918), [1928] Ch. 920, n. **Refd.** *Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304; *Re Smith, Public Trustee v. Aspinall*, [1928] Ch. 915.
5831. *Add. Annotations*:—**Apld.** *Re Nelson, Norris v. Nelson* (1918), [1928] Ch. 920, n. **Refd.** *Re*

*Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304; *Re Smith, Public Trustee v. Aspinall*, [1928] Ch. 915.

5835. *Add. Annotation*:—**Refd.** *Re Clark, Clark v. Clark*, [1926] Ch. 833.
5845. *Add. Annotations*:—**Refd.** *Re Nelson, Norris v. Nelson* (1918), [1928] Ch. 920, n.; *Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304; *Re Smith, Public Trustee v. Aspinall*, [1928] Ch. 915.
5850. *Add. Annotations*:—**Consd.** *Re Forder, Forder v. Forder*, [1927] 2 Ch. 291. **Refd.** *Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304.
5851. *Add. Annotation*:—**Distd.** *Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
5858. *Add. Annotation*:—**Consd.** *Re Wombwell* (1921), 37 T. L. R. 625.
- 5859a. — **Of property partly of bankrupt & partly of third party.**—Good to extent of third party's property.]—Bkpt. was entitled to reversionary interests in certain property subject to mtges. then vested in his father, & before his bkpcy. he joined with his father in executing a settlement in which provision was made that the son's interest should determine in the event of his bkpcy.:—**Held**: bkpt. was to be treated as settlor of the equity of redemption & therefore the provision for forfeiture on bkpcy. was void to that extent, but as to the father's mtges. bkpt. was not the settlor, & therefore the provision for forfeiture was valid to that extent.—*Re WOMBWELL* (1921), 125 L. T. 437; 37 T. L. R. 625; *sub nom. Re WOMBWELL, Ex p. TRUSTEE*, [1921] B. & C. R. 17.
- 5861a. *In mortgage—Whether void as against bankruptcy laws.*—A provision in a mtge. to the effect that, if the mtgor. is made bkpt., a larger sum shall be paid to the mtgee. than would have been paid had the mtgor. not been made bkpt., is void, as being in contravention of the bkpcy. laws, & the security held by the mtgee. will be, notwithstanding such provision, a security for the amount actually advanced & no more.—*Re JOHNS, WORRELL v. JOHNS*, [1928] 1 Ch. 737; 97 L. J. Ch. 346; 139 L. T. 333; 72 Sol. Jo. 486; [1928] B. & C. R. 50.
5865. *Add. Annotation*:—**Consd.** *Re Wombwell* (1921), 37 T. L. R. 625.
5870. *Add. Annotation*:—**Apld.** *Re Johns, Worrell v. Johns*, [1928] Ch. 737.

PART XX. SECT. 4, SUB-SECT. 1.—E.

so. *Money placed in bank to credit of bankrupt.*—**Held**: the bank could not apply the moneys to satisfy debtor's liability to the bank, it being a fraudulent preference.—*Re LONGMORE, Ex p. ROYAL BANK & RIDER*, [1923] 2 D. L. R. 873; 3 C. B. R. 818.—**CAN.**

gi. *Money from sale of chattels—Sold under void bills of sale.*—The ct. made an order for payment to the official assignee of the value of the chattels seized & sold by the money-lender.—*TURNBULL'S ESTATE (OFFICIAL ASSIGNEE OF) v. GOLDSTEIN* (1921), 29 C. L. R. 377; 21 S. R. N. S. W. 695; 38 N. S. W. W. N. 170.—**AUS.**

sa. *Money paid in circumstances giving bankrupt no right of recovery.*—**Held**: the assignment did not vest the moneys so paid in the trustee.—*SALTER & ARNOLD, LTD. v. DOMINION BANK* (1922), 68 D. L. R. 757; [1922] 2 W. W. R. 280.—**CAN.**

sd. *Money supplied to provide bail for bankrupt.*—**Held**: the money never was the property of bkpt.—*MORRIS v. KILNE, DEMERS, GARNISHEE* (1922), 68 D. L. R. 222; 2 C. B. R. 521.—**CAN.**

ji. *Money illegally paid to solicitors by former trustee.*—The ct. ordered the solrs.' bill to be retaxed & a reference to be made to inquire into the validity of the solrs.' retainer.—*Re BRYANT ISARD & Co.*, [1924] 3 D. L. R. 487; 5 C. B. R. 6.—**CAN.**

st. *Money from sale by lender of securities for loan—Customer's securities wrongfully deposited with lender by bankrupt.*—Circumstances in which:—**Held**: the money so paid to the trustee belonged to the customer.—*Re THOMPSON, SONS & Co., NEWTON v. HAMILTON*, [1927] 1 D. L. R. 943; [1927] 1 W. W. R. 308; 36 Man. L. R. 312.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 2.—D. (a).

5846 iii. — *—*—A., by will, inherited property which was declared by the will to be unseizable, but he was given power to dispose of it:—**Held**: A. could not assert the unseizable quality of his property in bkpcy. proceedings.—*CRAIG v. KENNEDY* (1922), 68 D. L. R. 78; 2 C. B. R. 528.—**CAN.**

ci. — *Clause forfeiting deposit on lessee's bankruptcy.*—*Re ABRAHAM* (1925), 59 O. L. R. 164; [1926] 3 D. L. R. 971.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 2.—D. (b).

vi. — *Charge as collateral security for advance on mortgage.*—**Held**: on the charge being given by applt. the interest appointed to him became forfeited.—*McQUADE v. MORGAN* (1927), 39 C. L. R. 222; [1927] Argus L. R. 258, 1 A. L. T. 61.—**AUS.**

5872. *Add. Annotation* :—**Consd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.
5884. *Add. Annotation* :—**Consd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.
5885. *Add. Annotation* :—**Refd.** *Re* Clark, Clark v. Clark, [1926] Ch. 833.
5890. *Add. Annotation* :—**Consd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.
5897. *Add. Annotation* :—**Distd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
5898. *Add. Annotations* :—**Consd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee v. Evans, [1920] 2 Ch. 304.
5899. *Add. Annotation* :—**Consd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.
- 5902a. “On bankruptcy or until he suffered any act or thing or any event happened whereby he would be deprived of right to receive income”—**Order of Probate Court setting apart whole income for children of beneficiary.**—In 1887, C. settled the proceeds of property as to the income upon himself for life determinable on his bkpcy. or until he suffered any act or thing or any event happened whereby, if payable to him absolutely, he would be deprived of the right to receive the income or any part thereof. By an order in 1895 after the dissolution of C.’s marriage, it was ordered that the trustees should set apart the whole of the income of the settled funds which was then payable to him, & apply it for the children of the marriage until majority. C. became bkpt. in 1904, & his youngest child attained twenty-one in 1910:—**Held**: the above order was an act or event antecedent to his bkpcy. by which C.’s interest in the whole income was determined for a substantial period, & a forfeiture took place at the time the order was made, & nothing passed to the trustee in bkpcy.—*Re* CAREW’S TRUSTS, GELLIBRAND v. CAREW (1910), 103 L. T. 658; 55 Sol. Jo. 140.
5905. *Add. Annotation* :—**Consd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
5908. *Add. Annotation* :—**Consd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.
- 5909a. “Shall do some act” whereby income would be assigned—**Authority to pay income to trustee of composition scheme—No notification of authority to trustee.**—B. was entitled to the income of one-third share of the residuary estate of testatrix unless & until he should be or become bkpt. or should do or suffer some act or thing whereby such share of income should be wholly or partially assigned, charged or incumbered or until he should die, whichever event should first happen, & from & after his death or bkpcy. or the doing or suffering such act as aforesaid such share & the income thereof should be held upon trust for his issue. Shortly after the death of testatrix B. entered into a scheme for composition with his creditors, & he then signed an authority to the trustees of testatrix’s will “until further notice” to pay to the trustee under the scheme “the income now due or to accrue due” to B. from her estate. It appeared that there had been no communication by B. to the trustee of the scheme for composition concerning the authority given to the trustees of the will until after these proceedings had been taken in the matter:—**Held**: in these circumstances the authority given to the trustees of the will did not operate as a good equitable assignment of B.’s interest in testatrix’s estate & did not work a forfeiture thereof, inasmuch as in the absence of communication concerning the authority, the same remained simply a bare authority which was revocable.—*Re* HAMILTON, FITZGEORGE v. FITZGEORGE (1921), 124 L. T. 737, C. A.
5913. *Add. Annotation* :—**Refd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
5916. *Add. Annotation* :—**Consd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
5920. *Add. Annotation* :—**Consd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.
5922. *Add. Annotation* :—**Distd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.
- 5922a. “By any deed or document anticipate, charge, assign, or otherwise dispose of”—**Debtor presenting bankruptcy petition.**—**Held**: the forfeiture clause had not taken effect.—*Re* GRIFFITHS, JONES v. JENKINS, [1926] Ch. 1007; 95 L. J. Ch. 429; 136 L. T. 57; 70 Sol. Jo. 735; [1926] B. & C. R. 56.
5924. *Add. Annotation* :—**Expld.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
5925. *Add. Annotation* :—**Consd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
5931. *Add. Annotations* :—**Consd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee v. Evans, [1920] 2 Ch. 304.
5932. *Add. Annotation* :—**Apld.** *Re* Evans, Public Trustee v. Evans, [1920] 2 Ch. 304.
- 5932a. — **Bankruptcy before death of testator.**—Testator directed that if an annuitant should become bkpt. or insolvent he should forfeit the annuity:—**Semble**: such a direction applied only to future events, & no forfeiture would be incurred by an insolvency during testator’s lifetime.—*Re* DRAPER (1888), 57 L. J. Ch. 942; 58 L. T. 942; 36 W. R. 783.
- Annotation* :—**Foll.** *Re* Strange, Lamb v. Bossi Leu (1916), 60 Sol. Jo. 640.
- 5932b. “Until he shall forfeit same in case of bankruptcy”—**Existing bankruptcy known to testator.**—*Re* EVANS, PUBLIC TRUSTEE v. EVANS, No. 5936a, *post*.
5933. *Add. Annotation* :—**Refd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
5934. *Add. Annotation* :—**Refd.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
5935. *Add. Annotation* :—**Apld.** *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.
- 5935a. — **Bankruptcy at & after determination of prior life interest—Annulled after income payable.**—B. was bequeathed an interest during his life in the income of testator’s residuary estate, & by his will testator directed that, if any beneficiary thereunder should become bkpt., such beneficiary should forfeit his share which should thereupon devolve as provided for in the event of his death. Testator died in 1910 & on Apr. 16, 1914, B. was adjudicated bkpt. On Dec. 14, 1925, B.’s life interest fell into possession, & on Apr. 7, 1926, he procured the annulment of his bkpcy. Between Dec. 14, 1925, & the date of the annulment the trustees received income in respect of the residuary estate, but dealt only with such part as did not include the income in respect of B.’s

interest, no payment being made in respect of that by them:—*Held*: as after Dec. 14, 1925, the trustees received sums in respect of the income of testator's estate which they could have been asked to hand over to the trustee in the bkpcy. of B. before the annulment of his bkpcy., there existed something upon which the forfeiture could operate, the test being whether there was any actual income of the share which could be treated by the trustees as payable to, or retained for, or appropriated for, the residuary legatee, & the annulment was not in time to prevent the operation of the forfeiture clause.—*Re FORDER, FORDER v. FORDER*, [1927] 2 Ch. 291; 96 L. J. Ch. 314; 137 L. T. 538; [1927] B. & C. R. 84, C. A.

5936. *Add. Annotations*:—*Appld. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291. *Refd. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304.

5936a. “Unless he attempts to become bankrupt”—*Whether applicable to bankruptcy in invitum or generally.*—Testator, by his will dated Dec. 21, 1911, devised & bequeathed his real & personal estate to his trustees upon trust to sell & convert with power to postpone, & proceeded: “Out of my estate I desire my trustees to pay to my son H. an annuity of £156 to be paid monthly, unless he attempts to assign it or to become bkpt. In these events it shall be entirely optional with my trustees to pay him the annuity, my wish & intention being that the money is to be for his personal use to keep him from want. If they think his conduct or circumstances deserves or requires it, I authorise them to increase the annuity to £260 per annum, payable as & on the condition stated.” Testator then directed that the residue of the income of his estate should be paid to his wife during her life or widowhood, & that after her death or remarriage it should be applied for the maintenance of his daughter until she attained the age of twenty-five years, & that upon her attaining that age the whole of the residue of his property should be given to her. By a codicil to his will, dated Sept. 10, 1918, testator devised two freehold farms to his son H. for the term of his life or “until he shall do some act to effectuate a sale or mtge. thereof or which shall forfeit the same in the case of bkpcy.,” in either of which events the farms were to fall back into & form part of his residuary estate. Testator died on Sept. 13, 1918, leaving his widow, his daughter, & his son H. surviving. On Nov. 3, 1911, a receiving order had been made against H. on a creditor's petition, the act of bkpcy. being the failure to comply with a bkpcy. notice, & on Nov. 24, 1911, he was adjudged bkpt. Testator made his will & codicil with knowledge of these facts. On Jan. 22, 1919, H. obtained his discharge, but his creditors had not been paid in full, & the bkpcy. had not been annulled. On a summons taken out by the trustees for the determination of the questions whether the legacy given to H. by the will had become forfeited by his bkpcy., & whether the freeholds devised to him by the codicil belonged to him or formed part of the residuary estate:—*Held*: (1) the words “unless he attempts to become bkpt.” in the will must be read in their strict grammatical sense & as so read did not apply to

a bkpcy. *in invitum* or bkpcy. generally, & therefore no forfeiture of the annuity had occurred on which the discretionary trust arose, & consequently the annuity was payable to the trustee in H.'s bkpcy.; (2) the words of devise in the codicil though phrased in words of futurity applied under the doctrine of *Trappes v. Meredith*, No. 5932, ante, to the past bkpcy. of H., & there was no principle upon which the ct. would be justified in holding that the doctrine was not applicable to legal estates, & consequently the devised freeholds had ever since the death of testator formed part of his residuary estate.—*Re EVANS, PUBLIC TRUSTEE v. EVANS*, [1920] 2 Ch. 304; 89 L. J. Ch. 525; 123 L. T. 735; 30 T. L. R. 674, C. A.

5946. *Add. Annotation*:—*Generally, Mentd. Re Conyngham, Conyngham v. Conyngham*, [1920] 2 Ch. 495.

5953. *Add. Annotation*:—*Refd. Re Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.

5958. *Add. Annotations*:—*Consd. Anglo-Baltic & Mediterranean Bank v. Barber*, [1924] 2 K. B. 410; *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105. *Distd. Hood's Trustees v. Southern Union General Inscc. Co. of Australasia*, [1928] Ch. 793. *Refd. Re Harrington Motor Co.* (1927), 44 T. L. R. 58.

5958a. —[H., who had taken out a policy of insurance in deft. co. against third party risks, was involved in an accident whereby C. was seriously injured by H.'s motor car. C. commenced proceedings against H. for damages, but before obtaining judgment H. was adjudicated bkpt. & the official receiver was appointed the trustee in the bkpcy. The trustee informed the co., in reply to a question put by them, that he did not propose to take any part in C.'s action against H. H. subsequently purported for an agreed sum to release the co. from their liability under the policy to indemnify him in respect of any judgment obtained against him by C. Shortly afterwards C. obtained judgment against H. for damages for the injuries sustained by him. Subsequently H. committed a second act of bkpcy. & was adjudicated bkpt. for the second time, & a trustee was appointed. In an action brought by the two trustees jointly for a declaration (*inter alia*) that deft. co. were liable to indemnify H. & or plffs. against the damages awarded to C. & that the agreement by which H. purported to release the co. was null & void:—*Held*: (1) the benefit of the indemnity vested in the trustee under the first bkpcy., notwithstanding that C.'s claim, being one in respect of a tort for which judgment was not obtained till after the commencement of the first bkpcy., was not provable in such bkpcy.; (2) the benefit of the indemnity having vested in the trustee in the first bkpcy., his right thereto could not be affected by any subsequent agreement between deft. co. & H.; (3) the trustee in the first bkpcy. was not estopped by his refusal to take part in C.'s action against H. from asserting his claim against deft. co.—*HOOD'S TRUSTEES v. SOUTHERN UNION GENERAL INSURANCE CO. OF AUSTRALASIA*, [1928] Ch. 793; 97 L. J. Ch. 467; 139 L. T. 536; [1928] B. & C. R. 95, C. A.



5963. *Add. Annotation* :—**Mentd.** *Re* Blyth Shipbuilding & Dry Docks Co., *Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.

5965. *Add. Annotations* :—**Mentd.** *Maatschappij voor Fondsenbezit v. Shell Transport & Trading Co.*, [1923] 2 K. B. 166; *Knight v. Ponsonby*, [1925] 1 K. B. 545.

6052. *Add. Annotation* :—**Refd.** *Re* Pennington & Owen, [1925] Ch. 825.

6074. *Add. Annotation* :—**Distd.** *Re* Wilson, *Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814.

6092. *Add. Annotation* :—**Mentd.** *Re* Rush, *Warre v. Rush*, [1923] 1 Ch. 56.

6111. *Add. Annotation* :—**Consd.** *Bergerem v. Marsh* (1921), 91 L. J. K. B. 80.

6113. *Add. Annotation* :—**Apld.** *Bergerem v. Marsh* (1921), 91 L. J. K. B. 80.

6115a. — **Bankruptcy abroad.**—Testator by his will declared himself to be residing in London, & domiciled in England. He subsequently resided in Algiers & carried on business as a coal merchant there until his death. On a petition presented by him in his lifetime to the ct. in Algiers he was declared bkpt. by the French ct. after his death, & a "syndic" was appointed there to whom creditors' claims might be sent. The effect of the order on the evidence was to vest in the French "syndic" the whole of bkpt.'s estate, including assets accruing after the commencement of the bkpcy. In a subsequent creditor's administration action in England, K., an English creditor, was appointed administrator & after a grant of administration with the will annexed, proceeded to advertise for creditors. The French "syndic" now claimed that the assets in this country should be transferred to him, admitting that if his application was

successful the costs of administration here would have to be deducted :—**Held** : a bkpcy. order having been made by a French ct. of competent jurisdiction the "syndic" was entitled to the whole of the assets wheresoever situate, & these must be handed to him after deducting the costs, charges & expenses of the administration proceedings here.—*Re* BURKE, KING *v.* TERRY (1919), 54 L. Jo. 430; 148 L. T. Jo. 175.

*Annotation* :—**Refd.** *Bergerem v. Marsh* (1921), 91 L. J. K. B. 80.

6115b. — — — ]—In 1913 deft., a domiciled Englishman, entered into an hotel partnership with other persons in Belgium in connection with the Ghent Exhibition. Deft. became tenant of a house in Ghent for a period of eight months from Apr. employed clerks & other persons. The partnership incurred heavy liabilities, & by a decree of the Commercial Ct. at Ghent, dated Aug. 9, 1913, the partnership & its members were declared to be insolvent pursuant to an article of the Belgian Civil Code. The decree was pronounced by the ct. without notice to deft., but subsequently, in accordance with the recognised procedure, he was notified of the decree & appeared by solr. to show cause why it should be dissolved. It was, however, affirmed by the Ct. of Appeal. Pltf., trustee in the bkpcy., brought an action in England alleging that deft. was possessed of assets within the jurisdiction of the English cts. & claiming a declaration that all deft.'s assets had become vested in pltf. as trustee :—**Held** : (1) the decree of the Belgian ct. was valid inasmuch as deft. had submitted to the jurisdiction, (2) the proceedings were not contrary to natural justice, inasmuch as deft. had been afforded an opportunity of being heard; (3) subject to the decision of

#### PART XX. SECT. 4, SUB-SECT. 2.—E.

5961 ii. — **Premium paid by bankrupt**—Where payments due to a co. issuing a policy were not by the policy itself expressed to be payable during the lifetime of the assured or for seven years at least :—**Held** : the policy was not within the protection afforded by Life Insurance Act, 1908, s. 65, & the policy-moneys passed to the official assignee of the deceased policy-holder.—*LONDON & LANCASHIRE INSURANCE CO., LTD. v. FISHER*, [1924] N. Z. L. R. 1286.—N.Z.

5961 iii. — **Property transferred before assignment in bankruptcy.**—A trustee in bkpcy. is not entitled to recover insurance on a building burned after the assignment in bkpcy., but which stood on land transferred prior to the assignment.—*CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. WINNIPEG FIRE UNDERWRITERS' AGENCY* (Alta.), [1926] 3 D. L. R. 528; [1926] 2 W. W. R. 541.—CAN.

5961 iv. — **In action of tort.**—Damages for personal injuries do not vest in the trustee in bkpcy.—*Re HOLLISTER* (Ont.), [1926] 3 D. L. R. 707; 7 C. B. R. 629.—CAN.

h i. **Sums due by way of differences**—Transactions closed by special resolution of Stock Exchange.—Sums which have become due, in the ordinary course of business from one certified broker to another, by way of differences in respect of Stock Exchange transactions entered into between the parties, as members of the Bombay Native Share & Stock Brokers' Association, form part of the estate of the creditor broker, which passes to his assignee in the case

of his insolvency, under Presidency Towns Insolvency Act (III. of 1909), ss. 17 & 52.—*KAIKUSHIROO TALIYAK, SHAN v. BAI GULAB* (1928), 1 L. R. 53 Bom. 508.—IND.

h ii. **Sums due from bankrupt commission agent**—Right to recover from principals—Subject to rights of third party.—Where commission agents had incurred liability on behalf of their principals, who had agreed to indemnify them, & the agents having subsequently gone into liquidation, official liquidator sued the principals for the amount of liability :—**Held** : he could recover the said amount even though the agents, having gone into liquidation, had not actually paid their vendor.—*OSMAN JAMAL & SONS v. GOPAT, PURSHATTAM* (1928), 1 L. R. 56 Cal. 262. IND.

sq. **Rights under contract**—Cancellation before receiving order.—**Held** : the trustee in bkpcy. had no rights under the contract in the name of bkpt., it having been rightly cancelled.—*Re DOLLAR TAXI CO., Ex p. TRUSTEE*, [1924] 3 D. L. R. 97; 4 C. B. R. 667.—CAN.

st. **Proceeds of company's assets**—Sold by directors—To discharge personal guarantees of directors.—**Held** : the transaction was not fraudulent.—*Re UNITED EXHIBITORS*, [1925] 3 D. L. R. 446; 5 C. B. R. 779.—CAN.

#### PART XX. SECT. 4, SUB-SECT. 3.—B

sv. **Proceeds of sale**—Bill of sale given by husband to wife—To secure loan by wife.—**Held** : the proceeds derived from realisation of the security effected after an act of bkpcy. but

before actual adjudication, were money lent to the husband by the wife for the purpose of his trade or business at the date of bkpcy., & as such, assets in the husband's estate.—*Re HAW*, [1926] N. Z. L. R. 558.—N.Z.

sw. **Chattels in ostensible possession of husband**—Onus of proof.—**Held** : the onus was on the wife to prove that they were her property.—*Re MCCELLAND'S ESTATE*, [1923] 4 D. L. R. 395; 3 C. B. R. 849.—CAN.

#### PART XX. SECT. 4, SUB-SECT. 6.—A.

1 i. — — — **Property part of estate of lunatic under care of court.**—Lands being real estate, situate in the Irish Free State, devolved upon a person as heir-at-law who had been an undischarged bkpt. in England since the year 1924. The person who died possessed of the property had been a lunatic under the care of the ct. in the Irish Free State. In the winding up of the lunatic's estate by the Chief Justice in Lunacy the rents of the real estate of the lunatic which had accrued after her death were claimed respectively by the Official Receiver in England & the Official Assignee in the Irish Free State for the benefit of the creditors in the respective bkpcies. — **Held** : the only effective vesting order before the ct. was that made in the Irish bkpcy. matter, the land in question had not become vested in the Official Receiver in England merely by the operation of the English vesting declaration, but it was competent for the Irish ct., exercising bkpcy. jurisdiction, if requested to do so, to make that vesting declaration effective.—*Re CORBALLIS*, [1929] 1 R. 266.—IR.



other issues not before the ct., there should be a declaration that pltf. was entitled to all the movable assets of deft., wherever situate, & to the appointment of a receiver.—*BERGEREM v. MARSH* (1921), 91 L. J. K. B. 80; 125 L. T. 630; [1921] B. & C. R. 195.

**6115c.** ———.—*Re KOOPERMAN* (1928), 72 Sol. Jo. 400; [1928] B. & C. R. 49.

**6121.** *Add. Annotations:—Refd. Re Wait*, [1927] 1 Ch. 606. *Mentd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.

**6123.** *Add. Annotation:—Refd. Earle v. Hemsworth R. D. C.* (1928), 140 L. T. 69.

**6124.** *Add. Annotation:—Refd. Earle v. Hemsworth R. D. C.* (1928), 140 L. T. 69.

**6126.** *Add. Annotations:—Apld. Re Collins*, [1925] Ch. 556. *Distd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.

**6128.** *Add. Annotations:—Consd. Re Wait*, [1927] 1 Ch. 606. *Mentd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1; *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569; *Re Smith, Franklin v. Smith*, [1928] Ch. 10.

**6129.** *Add. Annotations:—Apld. Re Collins*, [1925] Ch. 556. *Distd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.

**6129a.** ———.—*Re COLLINS*, No. 6659a, *post*.

**6135.** *Add. Annotation:—Apld. Re Caines Mortgage Trusts*, [1918–19] B. & C. R. 297.

#### PART XX. SECT. 4, SUB-SECT. 6.— B. (b).

**r i.** ———.—*Although a foreign Bkpcy. Act cannot, of its own force, operate beyond the country which enacted it, yet private international law & the comity of nations operating on the general principles relating to movable property will recognise its extra-territorial effect, so far at least as it deals with personal property, especially where, as in the case of the U.S. Bkpcy. Act, the Act does not expressly confine itself to property within the United States, but extends to "all property" of bkpt.; & the fact that the U.S. Bkpcy. Act is given effect in Canada only by comity of nations is not a ground for holding that it should be given no greater effect in Canada than would be given to the Canadian Bkpcy. Act in the United States.*—*WILLIAMS v. RICE* (Man.), [1926] 3 D. L. R. 225; [1926] 2 W. W. R. 192.—*CAN.*

**sa. Insolvency in South Africa—Property in Ireland.**—*By an order of the Supreme Ct. of the Union of South Africa the estate of an insolvent was sequestrated for the benefit of his creditors; subsequently a trustee of the estate was elected, & was declared entitled to administer the estate in accordance with Insolvency Act, 1916. The insolvent was entitled to certain freehold & leasehold property in Ireland. Under the law of the Union of South Africa the trustee was entitled to the immovable property of the insolvent situate in Ireland, so far as such right did not conflict with the law in Ireland. The Supreme Ct. of South Africa having requested the Irish ct. to act in its aid, the trustee applied for an order vesting the property in him:—*Held*: he was entitled to such order.—*Re BOLTON*, [1920] 2 I. R. 324.—*IR.**

#### PART XX. SECT. 4, SUB-SECT. 7.

**6124 i.** *Payments to accrue under building contract—Retention money.*—*Held*: moneys already earned by the

assignor, although not already due & payable to him, could be assigned by him, & their assignment was not invalidated by bkpcy. intervening before such moneys became due & payable, & this principle was applicable to retention money kept back in respect of progress payments under a building contract.—*OFFICIAL ASSIGNER v. SHARPE*, [1921] N. Z. L. R. 460.—*N.Z.*

**6128 i.** *Book debts—Assignment to incorporated bank.*—*Held*: the assignment of all book debts then due or accruing due or thereafter to become due was a general assignment of book debts within Bkpcy. Act, s. 30, but was valid.—*SAPERA TOBACCO CO. v. ROYAL BANK OF CANADA* (1922), 63 D. L. R. 58; 2 C. B. R. 309; 52 O. L. R. 131.—*CAN.*

**6128 ii.** ———.—*Assignment not registered—No provincial legislation providing for registration.*—*Held*: assignment void as against trustee in bkpcy.—*ROYAL BANK OF CANADA v. EASTERN TRUST CO.*, [1923] 1 D. L. R. 498; [1923] S. C. R. 177.—*CAN.*

**6128 iii.** *Future book debts.*—*Re GORDON STORE, LTD., Ex p. STANDARD BANK*, [1923] 4 D. L. R. 279; 3 C. B. R. 816.—*CAN.*

**6128 iv.** ———.—*To be valid against a trustee in bkpcy. any assignment of future book debts must be rigidly according to Bkpcy. Act, s. 30.*—*Re WALTON*, [1924] 4 D. L. R. 706; 5 C. B. R. 112.—*CAN.*

#### PART XX. SECT. 5, SUB-SECT. 1.

**6133 iv.** ———.—*Re STANDARD IMPORTS, LTD., Ex p. CANADIAN EXPRESS CO.* (1922), 68 D. L. R. 396; 2 C. B. R. 206.—*CAN.*

**6133 v.** ———.—*Re WILSON* (Ont.), [1926] 1 D. L. R. 584; 7 C. B. R. 437.—*CAN.*

#### PART XX. SECT. 5, SUB-SECT. 2.—A.

**6139 iv.** ———.—*As against an assignee in bkpcy. one who has as*

**6136.** *Add. Annotation:—Mentd. Re Caines Mortgage Trusts*, [1918–19] B. & C. R. 297.

**6146.** *Add. Annotation:—Mentd. Banque Belge v. Harnbrouck*, [1921] 1 K. B. 321.

**6150a.** ———.—*Transfer of shares bought for client.*—*A. instructed his broker to purchase on his behalf two hundred shares in a co. The broker instructed a firm of brokers to effect the purchase. The firm duly purchased the shares & sent a transfer of the shares to the broker, prepared in the name of A. The broker had in the meantime filed his petition in bkpcy. & the transfer passed to the official receiver & from him to the trustee in bkpcy. of the broker. It was claimed by the firm & also by A.:—*Held*: it was "property held by bkpt. on trust" within the exception contained in 1914 Act, s. 38, & it must be handed over to A.—*BARBER & SONS v. RIGLEY* (1922), 38 T. L. R. 650; 66 Sol. Jo. 577.*

**6208a.** ———.—*In the circumstances (see No. 6208):—Held*: C. had a lien on the goods for his debt.—*BURN v. CARVALHO* (1834), 7 Sim. 109; 58 E. R. 777, *subsequent proceedings* (1839), 4 My. & Cr. 690, 1 L. C.

*Annotations:—Consd. Frith v. Forbes* (1862), 31 L. J. Ch. 793. *Refd. Hutchinson v. Heyworth* (1838), 9 Ad. & El. 375.

**6249.** *Add. Annotation:—Mentd. The Kronprinsessan Margareta, The Parana, etc.*, [1921] 1 A. C. 486.

principal consigned goods to bkpt. under an agency contract by which the property did not pass to bkpt. may recover the goods or the proceeds thereof, provided & so far as they can be identified.—*Re COCKS ESTATE & CONSORT TRADING CO.* (1922), 65 D. L. R. 778; [1921] 3 W. W. R. 434.—*CAN.*

**6139 v.** ———.—*Money entrusted to.*—*Held*: the payer could only rank as a preferred creditor if the trust money could be traced to a particular fund.—*Re DOMINION TICKET, ETC. CORPN., Ex p. AKER*, [1924] 2 D. L. R. 807.—*CAN.*

**6150 i.** *Broker—Securities sold for client—Proceeds paid into broker's general account.*—*Held*: as the money could not be distinguished in any way from other moneys in the general account of the brokers the client could not claim it only sue for breach of contract.—*DALPHE v. FAIRBANKS, GOSSETT & CO.* (1922), 66 D. L. R. 335; 2 C. B. R. 524.—*CAN.*

**sb. Sole beneficiary—Widow's claim to share of estate.**—*Where a widow claims under Widows Relief Act, R. S. A., 1922 (c. 145), s. 10, to the unadministered portion of her husband's estate, such portion does not vest in the trustee in bkpcy. of the sole beneficiary under the husband's will.*—*Re MCINTYRE*, [1925] 4 D. L. R. 127; [1925] 3 W. W. R. 172.—*CAN.*

#### PART XX. SECT. 5, SUB-SECT. 2.—B.

**sa. Specific purpose—Stock certificate deposited with agent—For sale.**—*Bkpt. sold a portion of the shares & had the remainder fraudulently transferred into his own name:—Held*: the trustee must return the shares.—*DENMAN v. TOUSAW, HART & ANDERSON & BELL TELEPHONE CO.* (1922), 66 D. L. R. 572.—*CAN.*

**sd.** ———.—*Held*: it was necessary for petitioner accurately to identify the certificate which he claimed from the insolvent.—*MCKAY v. TURGEON* (1922), 67 D. L. R. 607.—*CAN.*

6263. *Add. Annotation*:—*Mentd. Banque Belge v. Hambrouck*, [1921] 1 K. B. 321.
6270. *Add. Annotation*:—*Refd. Banque Belge v. Hambrouck*, [1921] 1 K. B. 321.
6272. *Add. Annotations*:—*As to (1) Refd. Banque Belge v. Hambrouck*, [1921] 1 K. B. 321. *As to (2) Refd. Banque Belge v. Hambrouck*, [1921] 1 K. B. 321; *Re Wait*, [1927] 1 Ch. 606.
- 6295a. *Life interest falling into possession—During third bankruptcy—Right of trustee under previous bankruptcies.*—*Re SILBER'S SETTLEMENT, PUBLIC TRUSTEE v. SILBER*, [1920] W. N. 77.
6298. *Citations*:—*For "CHIPPENDALE v. TOMLINSON (1752), 1 Cooke's Bankrupt Laws, 7th ed., p. 406" read "CHIPPENDALE v. TOMLINSON (1785), 4 Doug. K. B. 318; 1 Cooke's Bankrupt Laws, 8th ed., p. 428; 99 E. R. 900."*
- Add. Annotations*:—*Distd. Beckham v. Drake (1849), 2 H. L. Cas. 579. Consd. Re Roberts*, [1900] 1 Q. B. 122. *Refd. Re Elswood (1855), 26 L. T. O. S. 96; Wadling v. Oliphant (1875), 1 Q. B. D. 145.*
6308. *Add. Annotation*:—*Mentd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.
6312. *Add. Annotation*:—*Mentd. Ellesmere v. Wallace*, [1929] 2 Ch. 1.
6313. *Add. Annotation*:—*Mentd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.
6315. *Add. Annotation*:—*Apld. Re Walter, Slocock v. Official Receiver*, [1929] 1 Ch. 647.

- 6316a. — *Application of 1914 Act, s. 38.*—*Re WALTER, SLOCOCK v. OFFICIAL RECEIVER*, No. 4555a, *ante*.
6317. *Add. Annotation*:—*Mentd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.
6324. *Add. Annotation*:—*Refd. Dyster v. Randall*, [1926] Ch. 932.
6331. *Add. Citation*:—*sub nom. Re CLAYTON & BEAUMONTS' CONTRACT*, 2 Mans. 345.
6334. *Citations*:—*For "[1918] 2 Ch. 389" read "[1918] 2 Ch. 339."*
6347. *Add. Annotation*:—*Refd. Chillingworth v. Esche*, [1923] 1 Ch. 576.
6348. *Add. Annotation*:—*Refd. Dyster v. Randall*, [1926] Ch. 932.
6349. *Add. Annotation*:—*Mentd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.
6352. *Add. Annotation*:—*Consd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.
- 6353a. *Liability of after-acquired property for necessities.*—*Re WALTER, SLOCOCK v. OFFICIAL RECEIVER*, No. 4555a, *ante*.
6366. *Add. Annotations*:—*Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse (1925), 133 L. T. 814. Refd. Re Cohen, Ex p. Official Receiver*, [1919] 2 K. B. 271; *Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.
- 6390a. *Property acquired between two insolvencies—Assignees under second insolvency entitled.*—*CURTIS v. SHEFFIELD (1836), 8 Sim. 176; 5 L. J. Ch. 377; 59 E. R. 70.*
- Annotation—Consd. Re Clagett's Estate, Fordham v. Clagett (1882), 20 Ch. D. 637.*

PART XX. SECT. 5, SUB-SECT. 4.—A.

6261 i. *General rule—Fund undistinguishable.*—In order to give rise to a right to follow moneys as trust moneys mixed with the trustee's personal moneys there must have existed a trust fund capable of being identified & followed.—*Re CHRISTIE GRANT, LTD., Ex p. CANADIAN EXPRESS CO.*, [1923] 1 D. L. R. 505; 32 Man. L. R. 375; [1922] 3 W. W. R. 1161.—CAN.

6261 ii. *S.P. OGILVIE FLOUR MILLS CO., LTD. v. CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD.*, [1925] 4 D. L. R. 969; [1925] 3 W. W. R. 586.—CAN.

6267 i. *Agent to sell goods—Right to proceeds of sale.*—Money received by a commission agent from sales of his customers' property is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he become bkpt., the money can be followed by the *cestui que trust* if it is still traceable; otherwise they have no recourse other than proving their claims in the bkpcy.—*SALTER & ARNOLD, LTD. v. DOMINION BANK*, [1923] 3 W. W. R. 257.—CAN.

PART XX. SECT. 6.

6283 i. "Working tools"—*Law agent's library.*—*Held*: law reports, statutes, & legal text-books, forming the professional library of a practising law-agent, were not necessary "working tools."—*PENELL v. ELGIN*, [1926] S. C. 9.—SCOT.

hi. — *Re TRENWITH*, [1922] 3 W. W. R. 1205.—CAN.

hii. — *Effect of mortgage.*—Where the owner of an urban homestead mortgaged it, the exemption rights of the owner are confined to the equity of redemption.—*Re BELL*, [1922] 1

W. W. R. 1015; 67 D. L. R. 66; 32 Man. L. R. 9 at p. 13.—CAN.

hiii. — "Building occupied"—*By debtor.*—Debtor was the registered owner of a lot on which was a two-storey building, in the upper storey of which he & his wife had dwelt continuously since his purchase of the lot. The lower storey was used mainly as a store, in which debtor's wife carried on a business, but in the rear part was stored some coal, wood & household furniture. The store & dwelling had an outside entrance as well as an inside one. A lean-to had been erected by debtor, which had an outside entrance only.—*Held*: the property was within Exemptions Act, s. 2, cl. 10, & was under Bkpcy. Act, s. 10, excepted from an assignment under that Act.—*Re SKEELE*, [1923] 1 D. L. R. 589; [1923] 1 W. W. R. 117; 3 C. B. R. 589.—CAN.

hiv. — *By partner—Partnership property.*—Under Bkpcy. Act a lot & building belonging to a partnership passes to the authorised assignee under an assignment by the partnership, although part of the building is occupied as a home by one of the partners.—*Re DOBROVITCH, DOBROVITCH v. CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD.*, [1925] 1 D. L. R. 21; [1924] 3 W. W. R. 681.—CAN.

h v. — *Exempt from seizure under execution.*—*Held*: not property divisible amongst bkpt.'s creditors.—*TRADERS TRUST CO. v. COHEN (Man.)*, [1927] 3 W. W. R. 473.—CAN.

PART XX. SECT. 7, SUB-SECT. 1.—A. (a).

6286 iii. — *The after-acquired property of a debtor is available among creditors under a receiving order but not under an authorised assignment.*—*Re LIPSON*, [1923] 3 D. L. R. 1171; 52 O. L. R. 352; 2 C. B. R. 488.—CAN.

6291 iv a. — *Under intestacy.*—*Held*: to vest in the trustee.—*Re*

LUSSIER, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—CAN.

6293 v. — *An insolvent has power to dispose of any property he may acquire after being declared insolvent, & all persons dealing with him bona fide & for a consideration will be discharged from making a further payment to the official assignee, provided the transactions took place before the official assignee intervened & claimed the property on behalf of insolvent's estate.*—*CHHOTK LAL v. KEDAR NATH (1924), 1 L. R. 46 All. 565.*—IND.

PART XX. SECT. 7, SUB-SECT. 1.—A. (b).

6298 iii. — *The evidence of a bkpt. was that he was employed in selling goods for a co., that he was, when examined in Oct. 1927, special representative of the co. on the basis that he was to receive a salary & a guarantee of a certain amount together with a bonus on anything over that amount; but this arrangement was to cease on Nov. 1, 1927, & he expected to make arrangements to sell on a commission basis.*—*Held*: applying the English law without deciding whether, under Canadian Bkpcy. Act, subsequent salary, income, or compensation is over assets for the trustee, the bkpt.'s future earnings, not being a fixed salary, could not be applied for the benefit of his creditors.—*Re RUNG*, [1929] 1 D. L. R. 300; 62 O. L. R. 567; 10 C. B. R. 1.—CAN.

vi. — *Agreement between trustee, bankrupt & employer—Interference by court.*—*Re LOUNSBURY (N. B.)*, [1927] 4 D. L. R. 1040.—CAN.

PART XX. SECT. 7, SUB-SECT. 1.—B. (a).

vi. — *Application to bankruptcy by authorised assignment.*—*Re GADSBY, Ex p. WHITE & ELLIOTT*, [1925] 3 D. L. R. 1159.—CAN.

6395. *Add. Annotation*:—*Refd. Re Mathieson* (1926), 70 Sol. Jo. 1161.
6398. *Add. Annotation*:—*Refd. Re Mathieson* (1926), 70 Sol. Jo. 1161.
6399. *Add. Annotation*:—*Mentd. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200.
- 6401a. — *To husband & wife jointly.*]—A settlor by a voluntary settlement made in 1913 directed the trustees to whom he had transferred certain securities to accumulate & invest the income thereof subject to a proviso under which the settlor reserved to himself power, by notice given to the trustees, to require the income of any year or the residue of such income remaining uninvested to be paid as to one moiety to himself & as to the other moiety to a lady who afterwards became his wife, or if she should then be dead to require the whole income of such year or of the residue of such year to be paid to the settlor, with trusts after the death of the survivor of them in favour of the settlor's children therein named. In Jan. 1927, the settlor gave notice to pltf. as trustee that he required the whole income for that year to be paid as to one moiety to himself & as to the other moiety to his wife. In Aug. 1927, the settlor was adjudicated bkpt.:—*Held*: the power was indivisible, & could not be exercised by the settlor "for his own benefit" within 1914 Act, s. 38 (b), but only for the joint benefit of himself & his wife, & therefore did not vest in his trustee in bkpcy.—*Re TAYLOR'S SETTLEMENT TRUSTS, PUBLIC TRUSTEE v. TAYLOR*, [1929] 1 Ch. 435; 98 L. J. Ch. 142; 140 L. T. 553; [1929] B. & C. R. 15.
6409. *Add. Annotation*:—*Mentd. Parr v. A.-G.*, [1926] A. C. 239.
6410. *Add. Annotation*:—*Mentd. Parr v. A.-G.*, [1926] A. C. 239.
6414. *Add. Annotation*:—*Mentd. Re Austen, Collins v. Margetts*, [1929] 2 Ch. 155.
6415. *Add. Annotation*:—*As to (2) Refd. Watson v. Haggitt* (1927), 44 T. L. R. 90.
6449. *Add. Citation*:—*sub nom. Re PLIMMER, Ex p. SPELLER*, 14 C. B. 159, n.  
*Add. Annotation*:—*Refd. Graham v. Furber* (1853), 2 C. L. R. 10.
6464. *Add. Annotation*:—*Mentd. Lamb v. Wright*, [1924] 1 K. B. 857.
6477. *Add. Annotations*:—*Refd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808; *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.
6483. *Add. Annotation*:—*Refd. Lamb v. Wright*, [1924] 1 K. B. 857.
- 6507a. — *In name of agent—Delivery orders in hands of buyers.*]—Bkpt., who carried on business as a merchant, had for some years dealt with pltf. in vacuum flasks, which came from Germany. The bills of lading in respect of the goods were made out "to order" & the charges were paid by S., a forwarding agent employed by bkpt. The goods on arrival were stored at a wharf in the name, & for the account, of S. When a sale had taken place S. signed a delivery order which bkpt. handed to the buyers

against payment for the goods. Between Aug. 3 & Sept. 7, 1927, pltf. purchased a number of cases of vacuum flasks & paid bkpt. for them prior to the commencement of the bkpcy., the receiving order being made on Sept. 24. Bkpt., upon payment being made for the goods, handed to pltf. delivery orders for the goods signed by S. & addressed to the wharfingers. These delivery orders had not been presented at the wharf at the date of the bkpcy., & when they were presented shortly afterwards the wharfingers, acting on S.'s instructions, refused to deliver the goods. The trustee in bkpcy. claimed that the goods were in the possession, order or disposition of bkpt. at the date of the receiving order & formed part of bkpt.'s estate under 1914 Act, s. 38 (c):—*Held*: pltf. had not by their conduct in any way induced a belief that the goods were in the possession, order or disposition of bkpt. in such circumstances that he was the reputed owner thereof, & the trustee was not entitled to the goods as forming part of bkpt.'s estate.—*SIMEONS (C.) & Co. v. DURAND'S TRUSTEE*, [1928] 2 K. B. 66; 97 L. J. K. B. 537; 138 L. T. 612; [1928] B. & C. R. 19.

6514. *Add. Annotation*:—*Consd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.
6515. *Add. Annotations*:—*Consd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808; *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.
- 6516a. — *On business premises.*]—The custom of hiring furniture which exists in the case of hotel proprietors, & is so notorious as to exclude the doctrine of reputed ownership in the event of the bkpcy. of the hotel proprietor whether the particular furniture was hired or not, does not extend to furniture in the possession of traders generally, e.g. a wholesale grocer.—*Re TABOR, Ex p. CORK*, [1920] 1 K. B. 808; *sub nom. Re TABOR, Ex p. TRUSTEE*, 89 L. J. K. B. 352; 122 L. T. 799; 36 T. L. R. 191; [1919] B. & C. R. 299.
- Annotations*:—*Folld. Re Kaufman Segal & Domb, Ex p. Trustee*, [1923] 2 Ch. 89. *Refd. French v. Gething*, [1922] 1 K. B. 236.
6519. *Add. Annotations*:—*Consd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808. *Folld. Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.
6523. *Add. Annotation*:—*Refd. Re Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.
6524. *Add. Annotation*:—*Mentd. Re Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.
6525. *Add. Annotations*:—*Refd. Lamb v. Wright*, [1924] 1 K. B. 857; *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.
6552. *Add. Annotation*:—*Mentd. Douglass v. Lloyds Bank* (1929), 34 Com. Cas. 263.
6561. *Add. Annotation*:—*Refd. French v. Gething*, [1922] 1 K. B. 236.

PART XX. SECT. 9, SUB-SECT. 1.

6416 i. "Goods," "goods & chattels"—*Goods of third party—Inter-*

*mingled with bankrupt's property by third party.*—*Held*: the entire property became assets to satisfy the creditors.—*Re PROGRESSIVE FARMERS,*

*Re HOLDEN NATIONAL CO.'S CLAIM* (1921), 62 D. L. R. 631; 2 C. B. R. 551.—*CAN.*

6584. *Add. Annotation*:—**Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.
6613. *Add. Annotation*:—**Refd.** *Lamb v. Wright*, [1924] 1 K. B. 857.
6614. *Add. Annotation*:—**Mentd.** *Re Allester* [1922] 2 Ch. 211.
6625. *Add. Annotation*:—**Refd.** *Re Wethered*, *Ex p. Salaman*, [1926] Ch. 167.
6647. *Add. Citations*:—*sub nom.* *Re PLIMMER*, *Ex p. SPELLER*, 14 C. B. 159, n.  
*Add. Annotation*:—**Refd.** *Graham v. Furber* (1853), 2 C. L. R. 10.
6657. *Add. Annotation*:—**Consd.** *Re Collins*, [1925] Ch. 556.
6659. *Add. Annotation*:—**Apld.** *Re Collins*, [1925] Ch. 556.
- 6659a. ———.]—For some years before his bkpcy. a surveyor & assessment specialist with a staff of clerks had entered into contracts with clients for personal service in the latter capacity. Under these contracts he had to value his clients' properties for rating purposes & give expert evidence on their appeals, his remuneration being a percentage of the reduction of their assessments when obtained. He mortgaged these contracts & the sums to become due on completion thereof to a mtgee., who by special arrangement with the mtgor. gave no notice to the clients so as not to imperil the mtgor.'s business position, the mtgor. being allowed to collect the fees when due in his own name & hand them over to the mtgee. At the date of the mtgor.'s bkpcy., some fees (a) were due on completed contracts, but some fees (b) were still unearned. The trustee employed bkpt. & some of his staff to carry out the uncompleted contracts & earn fees (b):—**Held**: (1) though the work to be done under the contracts required a certain amount of technical skill on which bkpt.'s clients relied, it was nevertheless part of bkpt.'s business, so that the fees (a) due at the date of the bkpcy. were due to him "in the course of his trade or business" & being in his order & disposition by the consent of the mtgee. belonged to the trustee under 1914 Act, s. 38 (c); (2) the mtge. of fees (b) earned since the bkpcy. was inoperative against the trustee.—*Re COLLINS*, [1925] 1 Ch. 556; 133 L. T. 479; *sub nom.* *Re COLLINS*, *Ex p. SALAMAN* (TRUSTEE), 95 L. J. Ch. 55; [1925] B. & C. R. 90.
6689. *Add. Annotation*:—**Refd.** *Re Wethered*, *Ex p. Salaman*, [1926] Ch. 167.
6701. *Add. Annotations*:—**Folld.** *Birmingham Banking Co. (Official Liquidators) v. Carter* (1872), 20 W. R. 354. **Refd.** *Semphill v. Queensland Sheep Investment Co.* (1873), 29 L. T. 737; *Re Pooley*, *Ex p. Rabbinge* (1878), 38 L. T. 663.
6706. *Add. Annotation*:—**Refd.** *Simeons Durand's Trustee*, [1928] 2 K. B. 66.
- 6708a. ——— **Same day as act of bankruptcy.**]—Though a bkpt. may be up to the ears in insolvency, notice at any fractional period of the day on which the act of bkpcy. is committed, is sufficient to take the case out of the clause of reputed ownership; if the notice be given before the act of bkpcy. is in fact committed (*SIR GEORGE ROSE*).—*Re RICHARDSON*, *Ex p. RICHARDSON* (1839), 3 Deac. 496; *Mont. & Ch. 43*, C. of R.  
*Annotations*:—**Refd.** *Re Worcester*, *Ex p. Agra Bank* (1868), 3 Ch. App. 555; *Colonial Bank v. Whitney* (1886), 11 App. Cas. 426.
6735. *Add. Annotation*:—**Refd.** *English Inscc. v. National Benefit Assec.*, [1929] A. C. 114.
6740. *Add. Annotation*:—**Mentd.** *Bickerdike v. Lucy*, [1920] 1 K. B. 707.
6742. *Add. Annotation*:—**Refd.** *Lamb v. Wright*, [1924] 1 K. B. 857.
6744. *Add. Annotation*:—**Distd.** *Lamb v. Wright*, [1924] 1 K. B. 857.
6745. *Add. Annotation*:—**Refd.** *Lamb v. Wright*, [1924] 1 K. B. 857.
- 6745a. **Whether mere visible employment of goods in trade or business sufficient.**]—(1) In order that goods may come within 1914 Act, s. 38 (c), the consent or permission of the true owner must be given not only to their being in the possession, order or disposition of bkpt., but also to their being used in his trade or business. (2) In order that goods may be in the possession, order or disposition of bkpt. in his trade or business within the clause they must be not merely visibly employed in his trade or business, but acquired & used for the purposes of the business.—*LAMB v. WRIGHT & CO.*, [1924] 1 K. B. 857; 93 L. J. K. B. 366; 130 L. T. 703; 40 T. L. R. 290; 68 Sol. Jo. 479; [1924] B. & C. R. 97.
- 6745b. **Fees due on completed contracts to surveyor & assessment specialist.**]—*Re COLLINS*, No. 6659a, *ante*.
6746. *Add. Annotations*:—**Refd.** *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66. **Mentd.** *Re Kaufman Segal & Domb*, *Ex p. The Trustee*, [1923] 2 Ch. 89; *Lamb v. Wright*, [1924] 1 K. B. 857.
- 6751a. **Must be given both to possession & to use in trade or business.**]—*LAMB v. WRIGHT & CO.*, No. 6745a, *ante*.
6762. *Add. Annotation*:—**Refd.** *Lamb v. Wright*, [1924] 1 K. B. 857.
6777. *Add. Annotation*:—**Refd.** *Re Wethered*, *Ex p. Trustee* (1925), 134 L. T. 264.
6794. *Add. Annotation*:—**Refd.** *Lamb v. Wright*, [1924] 1 K. B. 857.
6798. *Add. Annotation*:—**Refd.** *Lamb v. Wright*, [1924] 1 K. B. 857.

PART XX. SECT. 9, SUB-SECT. 3.—  
B. (b) i.

6621 ii. ——— **Second mortgage of.**]—In 1905, C. the owner of a life policy of assurance, mortgaged it to the insurance co. In Apr. 1907, C. mortgaged the policy & the lands to B., who gave no notice to the co. till Nov. 1920. In June, 1907, C. was adjudicated bkpt. In 1915 the insurance co. were paid the amount due on their mtge. & handed the policy to the assignees. In 1920 the assignees surrendered the policy to the insurance co., & received its surrender value, & B. applied for pay-

ment of the amount due to him on his mtge.:—**Held**: the equity of redemption in the mtge. was "goods & chattels" within Irish Bkpt. & Insolvent Act, 1857 (c. 60), s. 313, & was at the date of the bkpcy. "in the possession, order, or disposition of bkpt." by the consent & permission of the true owner.—*Re OLANCARTY*, [1921] 2 L. R. 377.—**IR.**

## PART XX. SECT. 9, SUB-SECT. 5.—A.

6752 i. **Delivery of goods to trustee—After notice stopping goods in transit—Withdrawal of notice on innocent mis-**

**representation of trustee.**]—**Held**: the trustee could not rely on a withdrawal so induced.—*Re ROBERTS*, [1924] 1 D. L. R. 386.—**CAN.**

## PART XX. SECT. 9, SUB-SECT. 6.—A.

6790 ii. ———.]—Where there was no immediate delivery of a car to the purchaser nor any change of possession:—**Held**: the sale & transfer were void as against the trustees.—*FITZGERALD v. MCMORROW*, [1923] 4 D. L. R. 619; 52 O. L. R. 383; 3 C. B. R. 29.—**CAN.**

**6802a.** — — — — —.]—In Jan. 1922, G. purchased from bkpts. certain chattels used by them in their business as clothiers, & subsequently in consideration of the option to purchase & the hire-rent agreed upon let them on hire to bkpts. at a monthly rental. The chattels consisted of cutting tables, work tables, machines, stools, etc. The agreement was determinable in the event (*inter alia*) of a receiving order in bkpcy. being made against the hirers, upon which all payments made by the hirers were forfeitable & the chattels were to be delivered to the owner. On Sept. 6, 1922, a receiving order was made against the hirers; on Sept. 21 they were adjudicated bkpt., & on Sept. 25 a trustee in the bkpcy. was appointed. On motion by the trustee for a declaration that the chattels formed part of the estate of bkpts. as being in their order & disposition with the consent of the true owner:—*Held*: there was no proof of a general custom of hiring out chattels such as were specified in the agreement, nor was such a custom recognised by the cts. The inference of ownership was inevitable that by reason of the possession & user of the goods in the trade or business of the trader they “must” be the property of bkpts.—*Re KAUFMAN SEGAL & DOMB, Ex p. TRUSTEE*, [1923] 2 Ch. 89; 92 L. J. Ch. 218; 128 L. T. 650; 67 Sol. Jo. 333; [1923] B. & C. R. 1.

**6818.** *Add. Annotation*:—*Refd. Lamb v. Wright*, [1924] 1 K. B. 857.

**6819.** *Add. Annotations*:—*Distd. Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89. *Refd. Lamb v. Wright*, [1924] 1 K. B. 857; *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.

**6821.** *Add. Annotations*:—*Refd. Lamb v. Wright*, [1924] 1 K. B. 857; *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.

**6824.** *Add. Annotation*:—*Refd. Lamb v. Wright*, [1924] 1 K. B. 857.

**6853.** *Add. Annotation*:—*Refd. English Insee. v. National Benefit Assee.*, [1929] A. C. 111.

**6858a.** *Judgment debt.*—S., a customer of bkpt., a stockbroker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. On Feb. 27, 1924, bkpt. committed an act of bkpcy. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the pay-

ment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. & as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled. At that time neither J. nor W. nor S. had notice of any available act of bkpcy. On Sept. 18, 1924, a receiving order was made, at which date S. had paid & W. had received from J. sums amounting to £90 in respect of the later debt. Upon receiving notice of the receiving order, J. gave notice to S. of the assignment. On Sept. 25, 1924, an order of adjudication was made, & on Oct. 7, 1924, appct. was appointed trustee. In Apr. 1925, W. died, & his exor. was made resp. to the motion by which a declaration was sought that the two debts were at the commencement of the bkpcy. in the order & disposition of bkpt. & property of bkpt. divisible amongst his creditors:—*Held*: (1) the earlier debt, which, admittedly, arose in the course of bkpt.'s business, was, notwithstanding its conversion into a judgment debt, none the less at the commencement of the bkpcy. a debt due in the course of his business & in the order & disposition of bkpt. & divisible amongst his creditors; (2) the agreement between bkpt. & S. & the deposit of the notes by bkpt. with W. having been effected after the commencement of the bkpcy., in the absence of knowledge on the part of either S. or W. of an available act of bkpcy., & the ct. inferring an agreement by W. with bkpt., in consideration of the deposit of the notes, not to enforce payment of the advance so long as S. paid the amounts as & when they fell due, constituted valid transactions for valuable consideration within 1914 Act, s. 45, & apart from such inference, the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes: (3) even if the trustee was entitled to recover the instalments paid after the date of the receiving order, the amount paid before that date was a payment protected by sect. 45 (b); & the judgment debt formed part of the property of bkpt. divisible amongst his creditors, while the claim in respect of the other debt should be dismissed.—*Re WETHERED, Ex p. SALAMAN*, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re WETHERED, Ex p. SALAMAN'S TRUSTEE, TRUSTEE v. BANCE*, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

**6859.** *Add. Annotations*:—*N.F. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808; *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.

**6863.** *Citations*:—For “5 Ch. App. 520” read “3 Ch. App. 520.”

*Add. Annotation*:—*Mentd. French v. Gething*, [1922] 1 K. B. 236.

#### PART XX. SECT. 9, SUB-SECT. 8.—A.

**6859 i.** *Duty of court*—To take notice of alleged custom.—Where it is proved that no less than 57 funeral cars & hearses were supplied in Ireland under

hire-purchase agreement by one firm between Nov. 23, 1912, & Mar. 8, 1923, the ct. will draw the conclusion that the custom of hiring funeral hearses on the hire-purchase system is sufficiently notorious. The test in such

cases is what is the state of knowledge of persons who have made themselves acquainted with the nature & custom of the particular situation.—*Re TORRENS*, [1924] 2 I. R. 1, 4; 58 I. L. T. 30.—*IR.*

6867. *Add. Annotation*:—*Refd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.
6868. *Add. Annotation*:—*Folld. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.
6869. *Add. Annotation*:—*Consd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.
6873. *Add. Annotations*:—*Refd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808; *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.
6879. *Add. Annotation*:—*Refd. Lamb v. Wright*, [1924] 1 K. B. 857.
- 6879a. *Clothiers—Custom to hire machines.*—*Re KAUFMAN SEGAL & DOMB, Ex p. TRUSTEE*, No. 6802a, *ante*.
6881. *Add. Annotations*:—*Apld. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808. *Folld. Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.
- 6881a. ————*Re Tabor, Ex p. Cork*, No. 6516a, *ante*.
- 6882a. ———— *Antique furniture.*—A custom exists in the antique furniture trade to deliver goods to a dealer on approval. In the event of the bkpcy. of such dealer, goods upon his premises are not in his order & disposition within 1914 Act, s. 38.—*Re FORD, Ex p. TRUSTEE, RESTALL, BROWN & CLENNELL'S CASE*, [1929] 1 Ch. 134; 140 L. T. 275; 72 Sol. Jo. 517; *sub nom. Re FORD, Ex p. TRUSTEE v. RESTALL, BROWN & CO.*, 97 L. J. Ch. 334; [1928] B. & C. R. 55; *sub nom. Re FORD, Ex p. HAWKINS*, 44 T. L. R. 643.
- Annotation*:—*Apld. Re Ford, Ex p. Trustee, Powell's Case*, [1929] 1 Ch. 137.
- 6882b. ———— *Sent by private customer.*—No trade custom exists of private customers sending articles of furniture to retail dealers for sale on commission or otherwise so notorious as to exempt such articles from the operation of the doctrine of reputed ownership in the event of the bkpcy. of the dealer. But, where such a customer left a table with a retail dealer to be sold on the terms that the dealer should retain the surplus, if any, over an agreed minimum price & upon the bkpcy. of the dealer the table was exposed on his premises with other furniture for sale:—*Held*: as the effect of the custom which was established in *Re Ford, Ex p. Trustee, Restall, Brown & Clennell's Case*, No. 6882a, *ante*, was to prevent the reputation of ownership from attaching to any of the furniture so exposed, the table, which was not distinguished from the other articles of furniture, was not in the bkpt.'s possession in such circumstances that he was the reputed owner thereof.—*Re FORD, Ex p. TRUSTEE, POWELL'S CASE*, [1929] 1 Ch. 137; 140 L. T. 276; 72 Sol. Jo. 517; *sub nom. Re FORD, TRUSTEE v. POWELL*, 98 L. J. Ch. 144; [1928] B. & C. R. 56.
6885. *Add. Annotations*:—*Refd. Lamb v. Wright*, [1924] 1 K. B. 857; *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.
6888. *Add. Annotation*:—*Consd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.
6889. *Add. Annotations*:—*Apld. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808. *Refd. French v. Gething*, [1922] 1 K. B. 236.
6890. *Add. Annotation*:—*Refd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.
- 6890a. ————*Re Tabor, Ex p. Cork*, No. 6516a, *ante*.
6892. *Add. Annotation*:—*Mentd. Re Morris, Mayhew v. Halton*, [1921] 1 Ch. 172.
6898. *Add. Annotation*:—*Refd. French v. Gething*, [1922] 1 K. B. 236.
6911. *Add. Annotation*:—*Refd. Re Chiandetti, Ex p. Trustee* (1921), 91 L. J. K. B. 70.
6912. *Add. Annotation*:—*Refd. Re Chiandetti, Ex p. Trustee* (1921), 91 L. J. K. B. 70.
- 6912a. ———— *Goods sold in interpleader action—Proceeds in court.*—*Re CHIANDETTI, Ex p. TRUSTEE*, No. 7113a, *post*.
6915. *Add. Annotations*:—*Consd. Re Chiandetti* (1921), 91 L. J. K. B. 70. *Mentd. Re Fairley*, [1922] 2 Ch. 791.
6916. *Add. Annotation*:—*Mentd. Re Fairley*, [1922] 2 Ch. 791.
- 6916a. ————*Re CHIANDETTI, Ex p. TRUSTEE*, No. 7113a, *post*.
6918. *Add. Annotation*:—*Consd. Re Fairley*, [1922] 2 Ch. 791.
- 6918a. ———— *Subsequent withdrawal & return of nulla bona.*—On Jan. 14, 1921, the sheriff, in executing a writ of *fi. fa.* for £144, levied on debtor's goods, but on Jan. 29 being paid £72, on account of the debt in addition to costs, fees, & possession money, he withdrew by arrangement reserving a right of re-entry for £72 balance. He retained the £72 received on account for fourteen days & then paid it to the execution creditors. On Mar. 16 the sheriff made a second levy, but on being paid £53 on account of the debt in addition to fees & possession money, he again withdrew reserving a right of re-entry for the £19 balance. After retaining the £53 for fourteen days he paid it to the execution creditors. On Apr. 26 the sheriff made a third levy, but the goods seized being found on interpleader to belong to a third party, he finally withdrew & made a return of *nulla bona* on May 2. On Sept. 8 a petition in bkpcy. based on an act of bkpcy. of Aug. 19 was presented. A receiving order was made on Sept. 29 followed by an adjudication on Oct. 1 & an order for summary administration on Oct. 3:—*Held*: the execution was completed within 1914 Act, ss. 40, 41, by the return of *nulla bona* on May 2, & the trustee had no title to the £72 & £53 realised by that completed execution.
- Qu*: whether the trustee would in any case have been entitled to the moneys paid before June 8, the earliest possible date to which his title could relate back under sect. 37.—*Re FAIRLEY*, [1922] 2 Ch. 791; *sub nom. Re FAIRLEY, Ex p. OFFICIAL RECEIVER*, 92 L. J. Ch. 140; [1922] B. & C. R. 127; *sub nom. Re FAIRLEY, Ex p. LOW & BONAR, LTD.*, 38 T. L. R. 893, D. C.
6919. *Add. Annotation*:—*Consd. Re Fairley*, [1922] 2 Ch. 791.

PART XX. SECT. 9, SUB-SECT. 8.—B.

aa. *Undertaker—Custom to hire hearses & funeral carriages.*—*Re TORRENS*, No. 6859 I., *ante*.—IR.

PART XX. SECT. 10, SUB-SECT. 3.—B.

b (p. 810). *Add "affd. sub nom. MARTIN v. FOWLER*, 46 S. C. R. 119."  
fi. ————*Payment of pro-*

ceeds of sale:—*Held*: a preferential payment & void.—*ZEIDMAN & LAMARRE v. AMERICAN FURNITURE CO. & LAVEREY* (1922), 66 D. L. R. 99; 2 C. B. R. 547.—CAN.

6920. *Add. Annotations*:—As to (1) *Consd. Re Fairley*, [1922] 2 Ch. 791. *Refd. Re Chian-detti* (1921), 91 L. J. K. B. 70.
6921. *Add. Annotation*:—*Consd. Re Fairley*, [1922] 2 Ch. 791.
6931. *Add. Annotation*:—*Mentd. Ideal Films v. Richards*, [1927] 1 K. B. 374.
6954. *Add. Annotation*:—*Refd. Re Chiandetti* (1921), 91 L. J. K. B. 70.
6955. *Add. Annotation*:—*Refd. Re Fairley*, [1922] 2 Ch. 791.
6961. *Add. Annotations*:—*Refd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814; *Re Wait*, [1927] 1 Ch. 606. *Mentd. Re London County Commercial Reinsurance Office*, [1922] 2 Ch. 67; *Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87; *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.
6962. *Add. Annotations*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426; *Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87.
6964. *Add. Annotation*:—*N.F. Latter v. Juckes* (1926), 42 T. L. R. 723.
6965. *Add. Annotation*:—*Consd. Re Sarjeant*, [1923] 2 Ch. 302.
- 6965a. "Any other petition"—Notice not given within fourteen days.]—A sheriff, on behalf of an execution creditor, levied an execution against debtor for more than £20, & received the money from debtor to avoid a sale. Within fourteen days of the payment the sheriff received notice of a bkpcy. petition on which an order would have been made had not debtor in the meanwhile filed his own petition on which a receiving order was made as a matter of course. Notice of this second petition was given to the sheriff more than fourteen days after the payment, but while the money was still in his hands pending the result of the first petition. The trustee in bkpcy. & the execution creditor both claimed the money:—*Held*: the words in 1914 Act, s. 41 (2), "or on any other petition of which the sheriff has notice," were not to be qualified by the addition of the words "within the said fourteen days" so as to permit the sheriff to pay the proceeds of the execution to the execution creditor because notice of the second petition on which the receiving order was made was not given within fourteen days of the receipt of such

proceeds. The sheriff must hold, in the first instance, to see whether a receiving order would be made, & if he had notice of another petition, even after the lapse of fourteen days, then he must hold to see whether an order would be made on that other petition, or on any petition.—*LATTER v. JUCKES & PAGE*, [1927] 1 K. B. 17; 96 L. J. K. B. 137; 136 L. T. 177; 42 T. L. R. 723; 70 Sol. Jo. 905; [1926] B. & C. R. 133, C. A.

6966. *Add. Annotation*:—*Refd. Re British Sali-cylates*, [1918–19] B. & C. R. 160.
6979. *Add. Annotations*:—*Refd. Latter v. Juckes & Page*, [1927] 1 K. B. 17. *Mentd. The James W. Elwell*, [1921] P. 351.
- 6998a. *S. P. BLOXHOLM v. OLDHAM* (1750), cited in 1 Burr. at p. 22; 97 E. R. 168.
- Annotation*:—*Consd. Balme v. Hutton* (1831), 2 Cr. & J. 19.
- 7000a. *S. P. BETCHER v. MAGNAY* (1843), 12 M. & W. 102; 1 Dow. & L. 441; 13 L. J. Ex. 49; 2 L. T. O. S. 124; 7 Jur. 1160; 152 E. R. 1128.
- Annotations*:—*Refd. Cheston v. Gibbs* (1843), 12 M. & W. 111; *Edwards v. Evans* (1843), 2 L. T. O. S. 75.
7006. *Add. Annotation*:—*Mentd. The Joannis Vatis*, [1922] P. 92.
- 7006a. — Sale after bankruptcy—Of goods sufficient to satisfy two executions.—One delivered after bankruptcy.]—*Held*: the assignees might recover in trover for such of the goods as were sold after the sheriff had raised money enough to satisfy the first execution.—*STRAID v. GASCOIGNE* (1818), 8 Taunt. 527; 129 E. R. 488.
- Annotations*:—*Refd. Giles v. Grover* (1832), 9 Bing. 128; *Batchelor v. Vyse* (1834), 4 Moo. & S. 552; *Alfred v. Constable* (1844), 6 Q. B. 370.
- 7008a. — Stay of proceedings—When ordered.]—*GIBSON v. HUMPHREY* (1833), 1 Cr. & M. 544; 2 Dowl. 68; 3 Tyr. 588; 2 L. J. Ex. 234; 149 E. R. 516, Ex. Ch.
- Annotation*:—*Refd. Moon v. Raphael* (1835), 2 Bing. N. C. 310.
7030. *Add. Citation*:—*affg. S. C. sub nom. R. v. EDWARDS* (1853), 9 Exch. 32.
7032. *Add. Annotations*:—*Refd. Re Webb* (Smith-field, London), [1922] 2 Ch. 369. *Mentd. A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508.
- 7042a. — 6 Geo. 4, c. 16, s. 81—Two calendar months—Computation.]—By above sect. all executions, etc., executed or levied more than two calendar months before the issuing of the commission, are valid. *Defl.*, the sheriff,

PART XX. SECT. 10, SUB-SECT. 4.—A.

6934 ii. — *Bankruptcy Act*, s. 11 (3).—Until a sheriff with whom a writ of execution has been placed receives a copy of the assignment by debtor as provided by the above sect. "or publication of notice in the *Gazette* as provided by the Act," he is not safe in not attaching debtor's goods. A statement made by the solr. for the assignee to a sheriff's officer that an assignment has been made, does not amount to notice to the sheriff, & is not a ground for depriving him of the costs of a levy made after such statement.—*TOWERS v. SOLOMON*, [1922] 1 W. W. R. 1077; 2 C. B. R. 579.—CAN.

6934 iii. — *Extra Judicial Seizures Act*, R. S. A., 1922 (c. 96).—Bkpcy. Act, 1919, s. 11 (3), does not apply to property seized under the above Act.—*Re HAMILTON & OAKES*, [1925] 2 D. L. R. 514; [1925] 1 W. W. R. 172;

5 C. B. R. 465.—CAN.

PART XX. SECT. 10, SUB-SECT. 4.—C.

6983 iii. —.]—While a sheriff is not entitled to poundage unless he has obtained some money for the execution creditor, yet r. 495 contemplates that the sheriff is to receive something, even though no money has been realised by him, since it provides that he is to be entitled to poundage "or such less sum as a judge may deem reasonable."—*MOROSCHAN v. MOROSCHAN*, [1921] 2 W. W. R. 147; 14 Sask. L. R. 233; 59 D. L. R. 353; 1 C. B. R. 493.—CAN.

6983 iv. — *Seizure after authorised assignment*.—*TOWERS v. SOLOMON*, [1923] 1 W. W. R. 1184; 3 C. B. R. 806.—CAN.

6990 i. *Possession money—Sheriff continuing in possession—After notice of assignment*.—The costs to which

the execution creditor is entitled are the costs of execution up to the time notice of the assignment is given the sheriff.—*BAKER v. RICHARDS*, [1918] 2 W. W. R. 902; *affd.* 59 S. C. R. 656; 49 D. L. R. 684.—CAN.

PART XX SECT. 10, SUB-SECT. 8.

y (p. 830) i. — *Memorandum that title subject to costs of prior execution*.—On an assignment under Bkpcy. Act, where there are executions recorded against land of the assignor, the registrar of land titles, in making transmission of title to the assignee, should make a memorandum that the title is subject to a lien for costs of the first execution which was lodged with the sheriff & to a lien for costs of registration & sheriff's fees of all the executions.—*Re LAND TITLES ACT, SASKATCHEWAN GENERAL TRUST CORPN., LTD.'S CASE*, [1923] 3 W. W. R. 628.—CAN.



seized the goods of W. on Aug. 13, in execution, upon a judgment on a warrant of attorney at the suit of pltf., at about eleven o'clock, & at about one on Oct. 13 a commission of bkpey. issued against W. :—*Held* : (1) the ct. would take notice of the fraction of a day, in putting a construction upon that part of the clause ; & , therefore, it was clear that more than two calendar months had elapsed ; (2) the day of issuing the commission was to be included in the computation. *GODSON v. SANCTUARY* (1832), 4 B. Ad. 255 ; 1 Nev. & M. K. B. 52 ; 2 L. J. K. B. 19 ; 110 E. R. 451.

*Annotations* :—As to (1) *Refd.* R. v. Middlesex JJ. (1845), 3 Dow. & L. 109. As to (2) *Refd.* Whitmore v. Robertson (1841), 11 L. J. Ex. 43 ; Skey v. Carter (1843), 11 M. & W. 571 ; Whitmore v. Greene (1844), 2 Dow. & L. 174.

7051. *Add. Annotation* :—*Mentd.* The James W. Elwell. [1921] P. 351.

7058. *Add. Annotations* :—*Refd.* Latter v. Juckes & Page, [1927] 1 K. B. 17. *Mentd.* The James W. Elwell, [1921] P. 351.

7079. *Add. Citation* :—*sub nom.* *Re* PLUMMER, *Ex p.* TRUSTEE, 69 L. J. Q. B. 936 ; 48 W. R. 634 ; 44 Sol. Jo. 572 ; 7 Mans. 367, C. A. *Add Annotation* :—*Refd.* *Re* Mathieson, [1927] 1 Ch. 283.

7085. *Add. Annotation* :—*Refd.* *Re* Mathieson, [1927] 1 Ch. 283.

7086. *Add. Annotation* :—*Refd.* *Re* Mathieson, [1927] 1 Ch. 283.

7087. *Add. Citation* :—*subsequent proceedings* (1805), 11 Ves. 377.

7089a. *Declaration of trust without consideration—Credit in account of money to wife.*—*Held* :

7089 i. *Garnishee order.*—A debt was attached by a garnishee order under a judgment which was still subsisting :—*Held* : a receiving order under Bkpey. Act, s. 11, did not rank in priority to such garnishment.—*Re* BLOUNT, GAGNON v. GRAIN & PROVISION CO., [1924] 1 D. L. R. 332 ; Q. R. 35 K. B. 161.—*CAN.*

*st.* *Payment by contractor to prevent removal of sale by sheriff of sub-contractor's plant & materials—Bankruptcy of sub-contractor—Effect of.*—*Re* STEWART (Ont.), [1926] 2 D. L. R. 1043 ; 7 C. B. R. 680.—*CAN.*

#### PART XX. SECT. 11, SUB-SECT. 1.

7078 ii. — *Bankruptcy Act, s. 29.*—“Settlement” in the above sect. discussed.—*Re* COHEN & MAHIAN, CANADIAN CREDIT MEN'S TRUST ASSOC'N., LTD. v. SPIVAK (Alta.), [1926] 3 D. L. R. 942 ; [1926] 3 W. W. R. 34 ; *reversd.* [1927] 1 D. L. R. 577 ; [1927] 1 W. W. R. 162 ; 22 Alta. L. R. 487. 8 C. B. R. 23.—*CAN.*

7078 iii. *S. P. TRADERS TRUST CO. v. COHEN* (Man.), [1927] 3 W. W. R. 473.—*CAN.*

7086 ii a. — — — — — *Held* : a gift not being hedged about with conditions was not a settlement within Bkpey. Act, 1908, s. 75.—*BRAITHWAITE v. BRAITHWAITE*, [1923] N. Z. L. R. 1186.—*N.Z.*

j i. — — — — — *Where* insured, under a policy of life insurance, declares it to be for the benefit of his wife, the trust created is not invalidated by his subsequent insolvency, & creditors of insured have no rights which would interfere with the rights of his wife even though the endowment policy matures during the life of insured.—*BANK OF BRITISH NORTH AMERICA v.*

not binding on bkpt.'s creditors.—*Re* SMITH, *Ex p.* SMITH (1812), 1 Rose, 208.

*Annotation* :—*Consd.* *Parsons v. Coke* (1858), 27 L. J. Ch. 828.

7091. *Add. Annotation* :—*Refd.* *Re* Mathieson, [1927] 1 Ch. 283.

7094. *Add. Annotation* :—*Refd.* *Re* Mathieson, [1927] 1 Ch. 283.

7096a. *Settlement of property in exercise of general power of appointment.*—*Held* : not within 1914 Act, s. 42.—*Re* MATHIESON, [1927] 1 Ch. 283 ; 71 Sol. Jo. 18 ; *sub nom.* *Re* MATHIESON, MOORE (TRUSTEE) v. MATHIESON, 96 L. J. Ch. 104 ; [1927] B. & C. R. 30 ; *sub nom.* *Re* MATHIESON, *Ex p.* TRUSTEE, 136 L. T. 528, C. A.

7096b. *Property accruing “after marriage in right of wife.”*—Property devolving on a husband on the intestacy of his deceased wife is property that has accrued to the husband after marriage in right of his wife within the exception to 1914 Act, s. 42.—*Re* BOWER WILLIAMS, *Ex p.* TRUSTEE, [1927] 1 Ch. 441 ; 96 L. J. Ch. 136 ; 136 L. T. 752 ; 43 T. L. R. 225 ; 71 Sol. Jo. 122 ; [1927] B. & C. R. 21, C. A.

7098. *Add. Annotation* :—*Refd.* *Jagger v. Jagger*, [1926] P. 93.

7104. *Add. Annotations* :—As to (1) *Refd.* *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94. As to (2) *Consd.* *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7105. *Add. Annotation* :—*Refd.* *Re* Wombwell (1921), 37 T. L. R. 625.

7106. *Add. Annotation* :—*Consd.* *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

EDGECOMBE (1919), 46 N. B. R. 105.—*CAN.*

*sg.* *Conveyance of property to wife & sons.*—Where a transfer in the nature of a settlement was made for the purpose of defeating creditors :—*Held* : though it would not be set aside, yet the creditors might seek payment of their claims out of the property transferred.—*KIEHL v. FUSSEL* (1922), 68 D. L. R. 780.—*CAN.*

*ri.* *Purchase of property & investment of money in wife's name.*—Where property had been acquired & money invested by a husband in the name of his wife for the purpose of defeating his creditors :—*Held* : the property belonged to the husband, & the proceeds received by the wife from a sale of furniture owned by the husband should be paid to a receiver.—*MCCURDY v. NEVE* (1923), 51 N. B. R. 123.—*CAN.*

*aj.* *Declaration of trust in favour of wife—In pursuance of alleged antenuptial settlement.*—*Held* : a settlement within Bkpey. Act, s. 29 (1), & null & void.—*Re* ALIOTT & CLIBB, [1923] 1 D. L. R. 348 ; 56 N. S. R. 43 ; 3 C. B. R. 600.—*CAN.*

*sk.* *Settlement on creditor.*—On Jan. 29, 1925, J., being in embarrassed circumstances & indebted, amongst others, to M. for £1,200, settled certain land on M., & another upon trust for herself & her only child during her life & after her death for her child absolutely. A private meeting of J.'s creditors was held on Apr. 22, 1925, & a committee appointed to investigate her affairs, & it was agreed to accept £200 from M. to be distributed among the creditors in full payment of their debts. Some of the creditors, including the R. Co., refused to carry out this arrangement, but on the faith that it would be carried out, J., on Apr. 28,

paid M. £100 on account of his debt. On June 5 the debtor filed a petition for liquidation, but before the meeting on June 24 the R. Co. served a debtor's summons. The R. Co. had notice of the meeting for June 24, but did not attend. This meeting was attended by creditors whose indebtedness was about two-thirds of the total sum. They unanimously passed a resolution for liquidation by arrangement, & appointed a trustee. On the hearing of an application by the debtor & the trustee to dismiss the debtor's summons it was held that the application must be dismissed, but as the creditors who absented themselves from the liquidation meeting should have & could have attended it, they must pay the costs. The bkpey. proceedings were continued, & a trustee appointed. The trustee then applied to have the settlement to M. delivered up to be cancelled & for repayment of the £100 paid to M. on Apr. 28, 1925.—*Held* : the settlement was not made in good faith & must be delivered up. The payment of £100 to M. was a fraudulent preference, & it must be repaid to the trustee.—*Re* JEFFREYS (1925), 21 Tas. L. R. 31.—*AUS.*

#### PART XX. SECT. 11, SUB-SECT. 2.

*h i.* — *Purchased by husband for wife—To trustee during minority of wife—Transfer to wife at majority.*—*Held* : not a settlement on the wife in consideration of marriage & void as against the trustee.—*Re* McLELLAND'S ESTATE, [1923] 4 D. L. R. 395 ; 3 C. B. R. 849.—*CAN.*

#### PART XX. SECT. 11, SUB-SECT. 3.

7107 iii. — *Question of fact.*—*Re* GRANT (N. S.), [1926] 1 D. L. R. 681 7 C. B. R. 254.—*CAN.*



7109. *Add. Annotation*:—*Consd. Re Charters, Ex p. Trustee*, [1923] B. & C. R. 94.

7111. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.

7113. *Add. Annotation*:—*Mentd. Denny (Trustee) v. Denny & Warr*, [1919] 1 K. B. 583.

7113a. — *Gift by brother to sister.*]—By a deed of gift dated Oct. 7, 1919, debtor, who was adjudged bkpt. on Nov. 23, 1920, "in consideration of his natural love & affection for the donee" purported to assign & convey to his sister, resp., "the business carried on by him at 58a, Old Compton Street, Soho, & the stock-in-trade, wine & produce in & about the premises." At the date of the deed petitioning creditors were proceeding to enforce judgment under R. S. C., Ord. 14, & on Mar. 18, 1920, obtained final judgment against debtor for £527 7s. 4d. for goods sold & costs. On Mar. 20, 1920, execution was levied. Upon such levy being made, resp. claimed under the deed of gift the whole of the furniture & stock seized by the sheriff. An interpleader summons was taken out by the sheriff, & upon the hearing thereof, on Mar. 26, 1920, the master ordered claimant to pay into ct. £600 or give security for such amount, & in default the sheriff was authorised to sell the property seized & pay the proceeds into ct. to abide the result of an issue directed to be tried between claimant & the execution creditors. Pursuant to the order the sheriff sold the goods on Apr. 28, 1920, & on May 20, 1920, paid the sum of £202 12s. 2d. into ct. On Nov. 3, 1920, the parties to the interpleader summons agreed to divide the money between them & to withdraw the record; these terms were embodied in an order of the master of that date. In the meantime, however, a receiving order was made on Nov. 1, 1920, & petitioning creditors, the execution creditors, informed the official receiver of the sum of money being in ct. & of the terms of settlement so agreed as aforesaid. Thereupon the official receiver intervened, & on Nov. 1, 1920, gave notice in writing to the Paymaster-General of the Supreme Ct. of the receiving order, & this notice had the effect of preventing the order being acted upon. The trustee moved for a declaration that the deed of gift was void as against him:—*Held*: (1) the deed of gift was a voluntary settlement & being made within two years of the bkpcy., was void; (2) the execution having been completed & the proceeds held by the sheriff for fourteen days, the trustee's title was barred, because, although the execution was not completed before the sheriff had been in possession for twenty-one days, the act of bkpcy. thereby created had not occurred within three months of the presentation of the petition & was not therefore available to establish the trustee's title.—*Re CHIANDETTI, Ex p. TRUSTEE* (1921), 91 L. J. K. B. 70; 37 T. L. R. 984; [1921] B. & C. R. 82.

7118 *Add. Annotation*:—*Consd. Re Charters, Ex p. Trustee*, [1923] B. & C. R. 94.

7119a. — *Donee taking over liability for mortgage debt.*]—By an indenture dated July 19, 1920, a husband assigned his reversionary interest under a will to his wife, subject to a mtge.; & the wife covenanted expressly to pay the mtge. debt & interest & to indemnify

the husband against his liability under the mtge. The husband was adjudged bkpt. on June 20, 1922, within two years of the assignment. On motion by the trustee in the bkpcy. for a declaration that the assignment was void against him as being a voluntary settlement under 1914 Act. s. 42:—*Held*: there was ample consideration in the assignment, & the wife was a "purchaser" for valuable consideration within the sect.—*Re CHARTERS, Ex p. TRUSTEE*, [1923] B. & C. R. 94.

7122. *Add. Citation*:—*sub nom. Re MACDONALD, Ex p. McCULLUM*, [1920] 1 K. B. 205; 122 L. T. 316.

7124. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

7125. *Add. Annotations*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426. *Mentd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.

7127. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

7129. *Add. Annotations*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426; *Re Mathieson*, [1927] 1 Ch. 283.

7133. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

7134. *Add. Annotations*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426. *Refd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.

7135. *Add. Annotation*:—*Refd. Re Mathieson*, [1927] 1 Ch. 283.

7136. *Add. Annotation*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426.

7138. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

7140. *Add. Annotation*:—*Mentd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

7142. *Add. Annotation*:—*Refd. Re Mathieson*, [1927] 1 Ch. 283.

7147. *Add. Annotation*:—*Mentd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

7148. *Add. Annotation*:—*Refd. Re Mathieson*, [1927] 1 Ch. 283.

7153a. —.]—*Re DENT, Ex p. TRUSTEE*, No. 2902a, *ante*.

7155a. *Covenant to pay premiums on life policy.*]—A. & B. were traders in partnership. In 1927 both partners were adjudicated bankrupt. In 1910, A. on his marriage had executed an ante-nuptial settlement, by which he (*inter alia*) covenanted with the trustees of the settlement to keep up a life policy on his life then existing & to pay the premiums, etc. On the bkpcy. of the two partners the trustees of the settlement lodged a proof in the bkpcy. of A. with regard to the covenant to keep up the policy, for a sum that was arrived at by commuting in a single payment the annual premiums payable to keep up the policy & to make it fully paid. The trustee in bkpcy. rejected the proof on the ground that under 1914 Act, s. 42 (2), their claim was postponed until all the other creditors for valuable consideration in money or money's worth had been satisfied, & he alleged that the assets available would not be sufficient:—*Held*: the covenant fell within 1914 Act, s. 42 (2), & the trustee was right in rejecting the proof, as being a claim for something which was only provable after the other creditors for valuable consideration

in money or money's worth had been satisfied; & also having regard to 1914 Act, ss. 33 (6), 42 (2), & 63 (1), the right of the trustees to put in a proof must depend on all the creditors of the partnership between A. & B., the joint creditors of the partnership, as well as the separate creditors of A., being first satisfied.—*Re CUMMING & WEST, Ex p. NEILSON & CRAIG v. TRUSTEE*, [1929] 1 Ch. 534; 141 L. T. 61; *sub nom. Re CUMMING, Ex. p. NEILSON & CRAIG v. ADAMSON (TRUSTEE)*, 98 L. J. Ch. 83; [1929] B. & C. R. 4.

**7156. Add. Annotation :—***Reid. Re Debtor*, [1929]  
1 Ch. 362.

**7158. Add. Annotation :—***Refd. Re Debtor*, [1929]  
1 Ch. 362.

**7159.** *Add. Annotation:—***Refd.** *Re Mathieson,*  
[1927] 1 Ch 283.

7161a. Covenant to settle all property to which settlor might become entitled—Settlement of reversionary interest.]—*Re DENT, Ex p. TRUSTEE, No. 2902a, ante.*

**7164. Add. Annotations:—***Apprvd. Re* Cohen,  
*Ex p. Trustee*, [1924] 2 Ch. D. 515. **Mentd.**  
*Re Prior, Ex p. Trustee*, [1922] B. & C. R. 1.

**7165. Add. Annotations :—***Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515. *Mentd. Re Prior, Ex p. Trustee*, [1922] B. & C. R. 1.

**7168a.** ———.]—To constitute a fraudulent preference three conditions must be fulfilled; (1) that the payment is made by a person unable to pay his debts as they become due from his own money; (2) that it in fact prefers one creditor over others; (3) that the dominant motive with which the payment was made was a desire to prefer that creditor to whom the payment was made. If a voluntary payment in fact gives a creditor a preference & the reason for such payment is unexplained, then a presumption of preference arises. The existence of an explanation ousts the presumption of preference.—*Re DRAGE (J.) & SONS, PALMER & ROBERTS v. KNIGHT* (1926), 134 L. T. 765.

7171. *Add. Annotation*:—**Reid**. *Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7172. *Add. Annotation:—Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7172a. ———.]—(1) Debtor was adjudged  
bkpt. on his own petition on July 6, 1923, &

**PART XX SECT. 12, SUB-SECT. 1.**

**7164 x.** —.—]—A preference & a fraudulent preference are vitally different. Bkpcy. Act prohibits a fraudulent preference only ; & to constitute a fraudulent preference there must be present two circumstances, a preference in fact & an intention on the part of debtor to prefer.—**BURNS v. ROYAL BANK OF CANADA,** **BURNS v. GRAHAM** (1922), 69 D. L. R. 608 : 51 O. L. R. 564 : 2 C. B. R. 241.—CAN.

**7164 xi.** —.]—Where the delivery of goods was not a disposition in the ordinary course of business & the effect was to prefer debts. :—*Held*: it should be set aside.—**JACOBSON, ETC. v. JACOBSON, ETC.** (1920), App. D. 75.—**S. AF.**

**7164 xil.** —,]—The intention to give a preference is an intention in fact, & must be an intention entertained by the debtor. There can be no intention to prefer if the payment is made in the ordinary course of business.—**CANADIAN CREDIT MEN'S ASSN., LTD. v. JENKINS,** [1928] 3 D. L. R. 139; 62 O. L. R. 281; 10 C. B. R. 77.—**CAN.**

7167 xvi. — — —.] — Where a mtgee. knew the mtgor. could not meet his current liabilities but believed he had more than sufficient property to pay his debts, & the conveyances were not made to give the mtgee. an unjust preference, who acted *bona fide* & without intent to delay creditors : — *Held* : the mtge. was valid. — ROBINSON v. PETERS (1919), 47 N. B. R. 1 — CAN.

7167 xvii. — — —.]—Knowledge that debtor has ceased to be able to meet his liabilities as they become due will render payments within three months of the bkpcy. by debtor to a creditor fraudulent & voidable as against the trustee in bkpcy.—STEVENSON v. TAYLOR, *Re* CANADIAN CAP. CO., LTD. (1922), 70 D. L. R. 853.—CAN.

7167 xviii. — [—]—Where certain transactions were impeached as being preferential:—*Held*: the *prima facie* presumption of their invalidity had not been rebutted by showing that they were made as required by Bkpy. Act, s. 32, since they were made with knowledge on the part of the creditor that debtor was "insolvent," as defined by sect. 2 (t), & therefore were not made in good faith.—*Re LONGMORE* (1922), 52 O. L. R. 570; 3 C. B. R. 200.—*CAN.*

7167 xix. — — —.]—Where three partners bought out the fourth & took \$1500 from A. for a quarter share in the partnership, & subsequently A. advanced \$400 on the security of a chattel mtge. knowing the firm was insolvent:—*Held*: the mtge. was void as against creditors.—*Re UNITY MANUFACTURING CO., MOORE'S CLAIM, [1923]* 1 D. L. R. 84; 3 C. B. R. 396.—*CAN.*

7187 xx. — [ ]—A bank is in no different position from that of any other creditor in relation to the provisions of Bkpcy. Act, & where a bank knows its customer to be insolvent, it cannot within the three months limited by sect. 31 accept from him or appropriate any money standing to his credit towards liquidation of a liability by the customer to the bank.—**SALTER & ARNOLD, LTD. v. DOMINION BANK, [1923] 3 W. W. R. 257.—CAN.**

7187 xxi.——.].—To make a security given a creditor a fraudulent preference under Fraudulent Preferences Act, R. S. S. 1920 (c. 204), s. 4, there must be a concurrence of intent on the part of both debtor & creditor. If the person taking the security be innocent of any fraudulent intent, he cannot be affected by the fact that there was such an intent, unknown to him, in the mind of debtor.—WOLFE v. SMITH & BRUER, [1923] 3 D. L. R. 54: [1923] 3 W. W. R. 375.—CAN.

7167 xxii. ———.—]—*Re* THOMPSON, *Ex p.* TRUSTEES, [1923] 4 D. L. R. 1028.—CAN.

7167 xxiii. — — —.]—*Re* Fox,  
LESTER v. PORTER, [1925] 1 D. L. R.  
198 : 5 C. B. R. 328.—CAN.

7167 xxdv. — — —.]—*Re VOGUE*  
FUR SHOP, LTD., *Ex p.* PAQUET CO.,  
[1925] 1 D. L. R. 785; 5 C. B. R. 386.  
—CAN.

7167 xxv. ———.]—*Re* FULTON,  
[1926] 2 D. L. R. 277; 58 O. L. R.  
400.—CAN.

7167 xxvi. — — —.]—*Re* CUDNEY  
(Ont.), [1928] 1 D. L. R. 699; 8  
C. B. R. 559.—CAN.

7167 xxvii. — — — *Circumstances putting creditor on enquiry.*]—*Re McQUILLAN, Ex p. ROYAL BANK (Ont.)*. [1928] 2 D. L. R. 331; 10 C. B. R. 73. —CAN.

**g.i. — Valuable consideration not given.]**—Lack of consideration will usually imply a suggestion that a conveyance was made unduly to prefer one creditor & where the result

of such conveyance is that the grantor's creditors will be defrauded the conveyance will be set aside without proof, apart from the nature of the conveyance itself, of the fraudulent intent of the grantor & the grantee.—DOTY v. MARKS, [1924] 3 D. L. R. 687; 55 O. L. R. 147.—CAN.

7169 iii. — *Transactions between relatives.*]—Where transactions are between near relations, the *onus* is on the parties to those transactions to show that they were not made fraudulently as against creditors, & for this purpose evidence in corroboration is required.—*BROWN v. BULMER* (1922), 65 D. L. R. 180.—**CAN.**

7169 iv. ——.J—In transactions between relatives having the effect of defeating the claims of a seller's creditors, even if the purchaser has full knowledge of the seller's intent to defraud, such knowledge is not of itself sufficient to render the transaction void, if it is found to have been *bona fide* for full value.—WAGNER v. HARTWOS, [1923] 1 D. L. R. 186; [1922] 3 W. W. R. 1050.—CAN.

7169 v. ———.]—*Re* READY &  
CASS, [1924] 2 D. L. R. 528; 33  
B. C. R. 371.—CAN.

7169 vi. —.]—Creditors, knowing of the insolvency of debtor, made a composition of their debts giving an extension of time. Within three months the debtor was made bkpt.:—*Held*: *prima facie* this agreement constituted a fraudulent preference which the creditors preferred must rebut.—*RE DALE & CARROLL*, [1924] 4 D. L. 11, 597; 5 C. B. R. 139.—**CAN.**

7169 vii. —.]—The *onus* of proof of an intention by debtor to prefer a particular creditor lies on the official assignee.—*Re HARDY* (No. 2), [1922] N. Z. L. R. 613.—N.Z.

7172 i. — *What must be proved.*—B., who was in possession of business premises under a lease not in writing from pltf., made an assignment to deft. co. for the benefit of creditors, & on the same day executed a surrender of the lease.—*Held:* as the surrender preceded the assignment, it was not invalid as a fraudulent preference or a fraudulent parting with property in fraud of creditors.—*BELL v. CHARTERED TRUST & EXECUTOR CO., CHARTERED TRUST & EXECUTOR CO. v. BELL & BURSEY* (1919), 46 O. L. R. 192; 49 D. L. R. 113; 17 O. W. N. 88.—*CAN.*

for a long time prior to that date had been hopelessly insolvent. On June 22, 1923, bkpt. paid applt. £146 by a customer's cheque & on June 21 & 23, 1923, he transferred goods to applt. of the value of £378 in discharge of his indebtedness. Debtor was able to pay his creditors 2s. in the pound, but the transfer of the goods to applt. was arranged on a basis that the debt was worth 20s. in the pound & the goods were not of the class with which applt. was in the habit of dealing, & applt. knew that debtor was unable to pay his debts, & the transaction took place on the eve of bkpcy. when debtor must have known he had no chance of pulling round. The threat of applt. to place the matter in other hands, which amounted to consulting a solr., had no terrors for debtor :—*Held* : the payment & transfer were made with a view to prefer applt. & not in consequence of any pressure which applt. brought to bear upon bk

[2] In establishing a case of fraudulent preference in addition to giving evidence of insolvency the trustee must give some evidence of a view to prefer.—*Re HOYLE, Ex p. TRUSTEE*, [1924] B. & C. R. 22, D. C.

**7177. Add. Citation :—**40 L. T. 404.

**7183. Add. Annotation: — Mentd.** Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

**7173 i. "Transfer."—**A mtgo. under Sask. Land Titles Act is a "transfer within the meaning of Bkpey. Act, s. 2 (2), notwithstanding the provision in the former Act that a mtgo. shall have effect as security but shall not operate as a transfer of the land thereby charged.—*Re CARSON*, [1922] 1 W. W. R. 204; 2 C. B. R. 187; 63 D. L. R. 352; 15 Sask. L. R. 94.—**CAN.**

7173 ii. —.]—*Re* MARITIME RADIO CORPN., LTD. (N. B.), [1927] 2 D. L. R. 450 ; 8 C. B. R. 153.—CAN.

**PART XX. SECT. 12, SUB-SECT. 2.**

m 1. *Property conveyed to creditor by registered conveyance—Unregistered re-conveyance to debtor without notice.*—*Held:* property must pass to the trustee in bkpcy.—*Re* McCUAIG & BRAY, [1924] 3 D. L. R. 44; 2 W. W. R. 373; 4 C. B. R. 660.—CAN.

**PART XX. SECT. 12, SUB-SECT. 3.**

7186 vi. —.]—In order to make a payment a fraudulent preference within Bkpcy. Act, 1908, s. 79, it is not necessary that the payment should be made in actual contemplation of bkpcy.—*Re LINNEY (H.) & Co., LTD.*, [1925] N. Z. L. R. 907.—N.Z.

1 (p. 883) 1. — *Creditor having made inquiries.*—Where in fulfillment of an agreement, a lien note was given by debtor by way of collateral security for advances to be made by the creditor, who had made the fullest inquiries into the financial position of debtor & had failed to discover his insolvency:—*Held:* the giving of the lien note could not be construed as a fraudulent preference. —*Re* HUGHES MUSIC SALES Co., *CO-OPERATIVE MUSIC SUPPLY Co. v. GOLD MEDAL FURNITURE MANUFACTURING Co.*, [1924] 2 D. L. R. 708; 4 C. B. R. 565. —*CAN.*

**PART XX. SECT. 12, SUB-SECT. 4.—A.**

(p. 865) l. — *Creditor with knowledge of insolvency.*—Actual intent to defraud creditors necessary, although creditor aware of debtor's insolvency.—*HICKERSON v. PARRINGTON* (1892), 18 A. R. 635.—CAN.

w. i. —. —.]—The *bona fides* of a transaction is negatived if the creditor who receives payments from debtor has knowledge of debtor's insolvency. But if the creditor has no such knowledge & the transaction is one arising out of the ordinary course of business, the fact that debtor was insolvent when he made the payments will not render such payments a fraudulent preference.—*RE SPEAL, Ex p. LUCAS, [1924] 1 D. L. R. 191.*—**CAN.**

c (p. 865) i. —. —.]—To constitute a preference under Bkcy. Act, s. 31, there must be a common or concurrent view, i.e. intent on the part of debtor & the creditor to create a preference.—*Re BELL*, [1922] 1 W. W. R. 1015; 2 C. B. R. 271; 67 D. L. R. 60; 32 Man. L. R. 9.—**CAN.**

o (p. 865) H. ———.]—*Re* GOLDSTEIN,  
[1923] 1 D. L. R. 864; 53 O. L. R. 60.  
—CAN.

c (p. 865) iii. —.]—The intention of debtor to yield to the dictates of his conscience & to fear the consequences of his crime, negatives the intention to prefer. At any rate, the intention of debtor is not enough, the creditor, too, must intend to obtain a preference.—*Re CARSON*. [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683.

(p. 865) iv. —.]—To constitute a fraudulent preference there must be an intention on the part of debtor to prefer the creditor in question & an intention on the part of that creditor to be preferred. Therefore where A. was a creditor of B., bkpt., & C. paid A. what B. owed him, & C. was therefore substituted in the place of A., as creditor of B.:—*Held*: as the money paid by C. never became assets in the hands of B., the transaction could not be set aside.—*Re NIAGARA HATS, LTD., TRUSTEE v. BANK OF MONTREAL*. [1924] 4 D. L. R. 953.—CAN.

(p. 865) v. —.]—If a partner makes a payment to a creditor with intent to prefer him, & there is a like intent on the part of the creditor to be preferred, this will be a fraudulent preference & may be set aside by the trustee.—*Re ROSEDALE PRODUCE CO.*

**7183a. Payment to agent of creditor — Whether payment to “person in trust for creditor.”]**—  
*Re MORANT, Ex p. TRUSTEES*, No. 7414a,  
*post*.

7217. *Add. Annotation*:—*Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

**7220a.** — — —.]—A. being in difficulties, & having been served with writs by several of his creditors, applied to debts., who were attorneys, for their advice & assistance. After several ineffectual attempts to make an arrangement, it was finally resolved, at a meeting of the creditors, that A.'s property should be immediately sold; thereupon A. employed an auctioneer for that purpose, & directed him to pay the balance of the proceeds, after deducting his own charges, to debts., which was accordingly done. Another meeting of the creditors took place, at which 5s. in the pound was offered, which being refused, A. went to prison, & obtained his discharge under the Insolvent Act. Debts. claimed to retain a portion of the money paid to them by the auctioneer in discharge of their bill of costs:—*Held*: this was not a voluntary transfer in favour of a particular creditor, within sect. 32 of above Act.—*WAINWRIGHT v. CLEMENT* (1838), 4 M. & W. 385; 1 Horn. & H. 395; 8 L. J. Ex. 25; 3 Jur. 266; 150 E. R. 1478.

*Ex p.* MCGOWAN. [1924] 1 D. L. R. 321; 4 C. B. R. 277.—CAN.

c (p. 865) vi. —.]—SALTER & ARNOLD, LTD. v. DOMINION BANK, [1926] 3 D. L. R. 684; [1926] S. C. R. 621; 7 C. B. R. 639.—CAN.

c (p. 865) vii. —.]—A payment made by debtor to a creditor within three months of an assignment in bkpy. is not deemed fraudulent, unless both creditor & debtor have a concurrent or mutual view or intent to effect a preference.—*Re DEMRY & DEMRY, TRUSTEE v. HALLAND*, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708; 34 Man. L. R. 534; 5 C. B. R. 293; *revers.*, [1924] 4 D. L. R. 309; [1924] 3 W. W. R. 147; 5 C. B. R. 87.—**CAN.**

o (p. 865) viii. —.]—*Re STEEVES, NOVA SCOTIA TRUST CO. v. BISHOP*, [1925] 2 D. L. R. 233; 5 C. B. R. 554.—**CAN.**

c. (p. 865) ix. —.]—Where the trustee in bkpy. of a partnership seeks to set aside a transfer, charge or payment as a preference, the trustee must show that such transfer, charge or payment was made by the firm to a firm creditor with concurrent intent on the part of both the debtors, & their creditor that, as a result of such transaction, the creditor should obtain a preference over other creditors of the firm.—*Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. SPIVAK (Alta.)*, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—CAN.

c (p. 865) x. —.]—*Re* BOAK  
(GEO. E.) & SON (N. S.). [1926] 1  
D. L. R. 1179: 7 C. B. R. 477.— **CAN.**

c (p. 865) xi. —.]—*Re* DEMERY (Ont.), [1926] 2 D. L. R. 120; 7 C. B. R. 271.—**CAN.**

6 (p. 865) xii. —.]—*Re* KINNI-  
BURGH (Ont.), [1927] 3 D. L. R. 748 ;  
8 C. B. R. 303.—CAN.

c (p. 865) xiii. —.]—ROBINSON v. McCauley (Man.) (1913), 24 W. L. R. 617; 4 W. W. R. 930; 13 D. L. R. 437.—CAN.

7224 viii. —Pre-

7225. *Add. Citation* :—12 L. T. 22.

*Add. Annotation* :—*Consd. Re Stanton*, [1929] 1 Ch. 180.

7225a. ———.]—*Re COHEN, Ex p. TRUSTEE*, No. 4665a, *ante*.

7228. *Add. Annotations* :—*Refd. Re Prior, Ex p. Trustee*, [1922] B. & C. R. 1; *Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7236. *Add. Annotation* :—*Consd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

7237. *Add. Annotation* :—*Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7237a. ——— *Payment in fact giving preference.*]—*Re DRAGE (J.) & SONS, PALMER & ROBERTS v. KNIGHT*, No. 7168a, *ante*.

7238. *Add. Annotations* :—*Refd. Re Hoyle, Ex p. Trustee*, [1924] B. & C. R. 22; *Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T.

765. *Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7239. *Add. Annotation* :—*Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7249. *Add. Citation* :—12 L. T. 22.

*Add. Annotation* :—*Refd. Re Stanton*, [1929] 1 Ch. 180.

7267. *Add. Annotation* :—*Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7267a. ———.]—*Re HOYLE, Ex p. TRUSTEE*, No. 7172a, *ante*.

7268. *Add. Annotation* :—*Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7270. *Add. Annotation* :—*Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7318. *Add. Annotations* :—*Consd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515. *Refd. Re Hoyle*,

ference must be given voluntarily by debtor, & where a creditor demands a transfer or a mtge., such a demand imports pressure & will be sufficient to rebut the suggestion of preferring that creditor.—*COPP v. WILLIAMS* 1922], 65 D. L. R. 377.—*CAN.*

7224 ix. ———.]—Security given by an insolvent debtor to a creditor with intent to give him a preference over other creditors is void: but the existence of the intent may be negatived by showing that the debtor yielded to the importunity of the preferred creditor, & may also be negatived by proof of the existence of some other motive which may not have had its origin in the creditor, *c.p.* when property is conveyed as the result of fear of a criminal prosecution or where the transaction has its origin in the recognition of a moral obligation to restore property improperly converted. When the idea of giving the security originates with the debtor, pressure plays no part in the transaction.—*GOLDMAN v. HARRISON*, [1928] 3 D. L. R. 73; 62 O. L. R. 291.—*CAN.*

p (p. 866) i. ———.]—*Bankruptcy Act*, 1908, s. 79 (3).—"Good faith" in the above sub-sect. means absence of knowledge that a preference was intended.—*Re LINNEY (H.) & Co., LTD*, [1925] N. Z. L. R. 907.—*N.Z.*

7228 x. ———.]—A debtor who was unable to pay a certain creditor obtained from her a further loan secured by a mtge. Shortly after debtor made an authorised assignment. The original debt was not included in the mtge., & at the time the creditor was not aware of any available act of bkpcy. on the part of debtor:—*Held*: there was no intention to prefer, & the creditor might reasonably conclude that the loan would enable debtor to carry on his business, & the mtge. was declared valid.—*Re GOLDSTEIN*, [1923] 1 D. L. R. 864; 53 O. L. R. 60.—*CAN.*

7228 xi. ———.]—There is no fraudulent preference unless bkpt.'s real, dominant, & substantial motive was a desire to prefer the particular creditor over his other creditors. If his real reason was something else, some benefit, to be obtained for himself, the transaction cannot be attacked as a fraudulent preference.—*OFFICIAL ASSIGNEE v. WAIRARAPA FARMERS' CO-OPERATIVE SOCIETY, LTD.*, [1925] N. Z. L. R. 1.—*N.Z.*

7235 ii. ———.]—Where an assignment of a book debt had been made within three months preceding the authorised assignment:—*Held*: the burden of establishing that it was not a preference was cast upon the assignee-creditor, & evidence of pressure would be of no avail to support the transaction.—*Re WEBB* (1921), 64 D. L. R. 633; 51 O. L. R. 5; 2 C. B. R. 16.—*CAN.*

7235 iii. ———.]—*Re PROGRESSIVE FARMERS CO., Ex p. BROWN BROTHERS & BURNSTAD, LTD.*, [1923] 1 W. W. R. 833; 3 C. B. R. 702.—*CAN.*

a (p. 868) i. ———.]—Where a debtor agreed with a creditor that he should have some special advantage if debtor became bkpt., & the result was to avoid a distribution under Bkpcy. Act of bkpt.'s property:—*Held*: the agreement was void.—*Re WETMORE, Ex p. BAIRD & PETERS*, [1924] 4 D. L. R. 66.—*CAN.*

d (p. 868) i. ———.]—Although a previous agreement to give security may serve to rebut the intention to prefer in giving security by one in insolvent circumstances, if the transaction is attacked after sixty days, yet under Assignments Act, ss. 39 & 41, if the giving of security is attacked within sixty days the transaction is utterly void & nothing will rebut such a result.—*HODGE v. McLEAN & UNION BANK OF CANADA*, [1919] 2 W. W. R. 855; 12 Sask. L. R. 298.—*CAN.*

d (p. 868) ii. ———.]—Pltf. co., a creditor of a trading firm, obtained from their debtors a chattel mtge. & an assignment of book-debts. The firm afterwards made an assignment to deft. for the benefit of creditors. Pltf. co. sought to establish its priority over the assignment to deft.:—*Held*: as deft.'s assignment was not made within sixty days after the transaction with pltf. co., & the transaction was not attacked within sixty days, there was no statutory presumption of invalidity under Assignments & Preferences Act, R. S. O. 1914 (c. 134), s. 5.—*CRAIG (W. G.) & Co., LTD. v. GILLERPIE* (1920), 47 O. L. R. 529; 54 D. L. R. 514.—*CAN.*

d (p. 868) iii. ———.]—A conveyance attacked as a preference within sixty days of its execution is void, regardless of the intent in giving it & of the pressure exerted to obtain it, if at the time of its execution debtor was in insolvent circumstances or unable to pay his debts in full & the conveyance had the effect of giving a preference, as defined by Assignments Act, R. S. M., 1913 (c. 12), s. 42, over the execution creditor attacking it.—*TROTTER v. FIEDLAR*, [1921] 1 W. W. R. 233; 56 D. L. R. 717.—*CAN.*

p (p. 869) i. ———.]—*Transaction within three months of insolvency.*]—*BRISCOE v. STANDARD BANK* (1923), 53 O. L. R. 623; 3 C. B. R. 863.—*CAN.*

p (p. 869) ii. ———.]—If a creditor knows debtor is insolvent before he enters into a transaction with him & the effect is to give to that creditor a preference, it makes no difference what was the motive, view,

or interest of debtor if bkpcy. intervenes within three months, as the creditor could not possibly rebut the presumption of undue preference, & the transaction will be deemed fraudulent & set aside.—*Re LAVINE*, [1924] 3 D. L. R. 318; 4 C. B. R. 664.—*CAN.*

p (p. 869) iii. ———.]—*Held*: a creditor to whom bkpt. had made certain payments within three months prior to the assignment had not met the presumption that such payments were preferential, & such payments were fraudulent & void.—*Re BLACK & WHITE HAT SHOP, LTD., NEWTON v. FINESILVER*, [1925] 4 D. L. R. 245; [1925] 2 W. W. R. 782.—*CAN.*

#### PART XX SECT. 12, SUB-SECT. 4.—B.

sk. *Pressure—Must be actual.*]—"Pressure," in Bkpcy. Act, s. 31 (2), means actual pressure in its original sense, the pressure which is brought to bear by a creditor upon his debtor, & not some secret motive under the impulse of which debtor acts, but which is not actual pressure.—*Re BELL*, [1922] 1 W. W. R. 1015; 2 C. B. R. 271; 67 D. L. R. 66; 32 Man. L. R. 4.—*CAN.*

sl. ———.]—The absence of fraudulent intention in the circumstances in which the fund is taken does not constitute "pressure" within Bkpcy. Act, s. 31 (2).—*Re CARSON*, [1924] 4 D. L. R. 492; 55 O. L. R. 619; 4 C. B. R. 683.—*CAN.*

7258 vi. ———.]—*GRANT v. VAN NORMAN* (1882), 7 A. R. 526.—*CAN.*

7258 vii. ———.]—*MANSOOKHLAL DOLATCHAND & Co. v. NAGARASS MOOLCHAND* (1928), 1 L. R. 6 Ran. 536.—*IND.*

7271 viii. ———.]—Evidence disclosing a dominant motive such as fear of prosecution or disgrace, impelling debtor to give the security, is admissible to rebut the *prima facie* presumption raised by Bkpcy. Act, s. 31 (2).—*Re BELL* (1922), 67 D. L. R. 66; 32 Man. L. R. 9; [1922] 1 W. W. R. 1015.—*CAN.*

#### PART XX. SECT. 12, SUB-SECT. 4.—C.

ml. ———.]—Moneys improperly drawn by an exor. from the funds of testator's estate & applied to exor.'s own uses were restored by him within three months before he was declared a bkpt.:—*Held*: the restoration was not a preferential payment within Bkpcy. Act, s. 31. The estate was not a "creditor" of the exor. within the sect., though in some sense a creditor.—*Re CARSON*, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683.—*CAN.*

*Ex p. Trustee*, [1924] B. & C. R. 22; *Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T. 765.

**7323.** *Add. Citation* :—*sub nom.* MORGAN v. BAKER,  
2 Jur. 1068.

**7327. Add. Annotation :—**Mentd. Ellis' Trustee  
v. Dixon-Johnson, [1924] 2 Ch. 451.

**7334.** *Add. Annotation :—Consd. Re Davies, Ex p. Miles, [1921] 3 K. B. 628.*

**7337. Add. Annotation :—***Reid. Re Stanton*, [1929]  
1 Ch. 180.

**7339a. Agreement to assign interests—In consideration of advance—No memorandum of agreement within Statute of Frauds.]—**By a parol agreement between a lender & D., the former agreed to lend & did lend D. £2,000 in consideration of the latter's promise to assign certain interests. About a year later, in pursuance of this agreement, D. assigned these interests to the lender, & became bkpt. immediately afterwards. At the time of the assignment no memorandum of the above agreement within Stat. Frauds, s. 4, was in existence, but it was recited in the assignment:—*Held*: the assignment, notwithstanding the failure of bkpt. to set up the statute in answer to the claim by the lender for the performance of the agreement, did not constitute a fraudulent preference or a fraudulent conveyance under 1914 Act, & was valid as against the trustee in bkpcy.—*Re DAVIES, Ex p. MILES*, [1921] 3 K. B. 628; *sub nom. Re DAVIES, Ex p. TRUSTEE*, 91 L. J. K. B. 81; [1921] B. & C. R. 92.

**7340.** *Add. Annotation :—Apld. Re Davies, Ex p. Miles, [1921] 3 K. B. 628.*

7341. *Add. Annotation* :—**Mentd.** *Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

**PART XX. SECT. 12, SUB-SECT. 4.—E.**  
**r** (p. 889) 1. *Security to cover advance & past debt.*—A security given for such a purpose:—**Held:** to be given for valuable consideration & *bonâ fide*, & under pressure, & an action on behalf of other creditors attacking the security was dismissed with costs.—**BANQUE D'HOCHELAGA v. JEANNOTTE, [1923] 1 W. W. L. 28; 16 Sask. L. R. 523.—CAN.**

**7347 v. —.**—1.—An incorporated co., being in fact insolvent, made in favour of its president, a creditor, as guarantor, a note, on its plant to secure him for moneys paid to the co., & by the co. to its bankers, in reduction of the co.'s liability within two months of the co. being adjudged bkpt.—*Held*: the transaction was free from any taint of fraud; the co. entered into it for the sole object & in the *bona fide* expectation & belief that it would thereby be enabled to carry on its business successfully, & not with the view of preferring either the president or the bank to the co.'s other creditors.—**BURNS v. ROYAL BANK OF CANADA, BURNS v. GRAHAM (1922), 69 D. L. R. 608; 51 O. L. R. 564; 2 C. B. R. 241.—CAN.**

**7347 vi.** —[.]—A debtor gave a creditor a mtge. & the effect of that was to give the mtgee a preference:—**Held:** when the mtge. was created, as debtor had not been sued by his creditors & his sole reason for giving the mtge. was that he might continue his business & pay off his other creditors, this was not a fraudulent preference.—**Re BARTER.** [1923] 1 D. L. R. 919; 3 C. B. R. 631.—**CAN.**

7347 vii. —.]—A preference to be fraudulent must be given with the intention of creating rights additional

**7351. Add. Annotation :—Mentd. Re Cohen, Ex p. Trustee, [1924] 2 Ch. 515.**

7355. *Add. Annotation* :--*Mentd. Re Mellor, Alvarez v. Dodgson, [1922] 1 Ch. 312.*

7359. *Add. Annotation* :—*Consd. Re Stanley* (1924),  
69 Sol. Jo. 36.

**7360.** *Add. Annotation :—Consd. Re Stanley (1924),*  
69 Sol. Jo. 36.

**7361a.** — — —.]—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, 1914 Act, s. 44, enables the trustee in bkcy. to recover payment from the person actually preferred. Circumstances (*see* p. 311, *post*) in which:—*Held*: no case of fraudulent preference had been established.—*Re* STANLEY (G.) & Co.. [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

**7362.** *Add. Annotation :—Mentd. Re Cohen, Ex p. Trustee, [1924] 2 Ch. 515.*

**7391. Add. Annotation :—***Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

**7393.** *Add. Annotation:—Mentd. Re Cohen, Ex p. Trustee, [1924] 2 Ch. 515.*

**7393a. Payment of proceeds of sale of shares—Payment before transfer.]**—Certain stock-brokers within a fortnight of a receiving order being made against them sold shares for a client & paid the proceeds to him before the transfer was executed. The sale was effected by what is called “a put through” by which a jobber lends his name as purchaser, but no money is paid :—*Held* : the payment was made without pressure & was a fraudulent preference.—*Re FELLOWES, O'BRIEN, GORDON & TOOTAL (CARRYING ON BUSINESS AS ELLIS & Co.)* (1924), 68 Sol. Jo. 478.

**7395.** *Add. Annotation :—Mentd. Re Stanton, Hogg v. Maule, [1928] 1 K. B. 464.*

to those possessed by other creditors, & where a preference is given, not to give one creditor an unfair advantage over other creditors, but to enable debtor to extinguish a past debt & to carry on his business & the preferred creditor has no knowledge of any available act of bkpy. on the part of debtor, such a preference is not fraudulent within Bkpy. Act.—*Re BUCHMANN*, [1923] 1 D. L. R. 391; 3 C. B. R. 427.—**CAN.**

7347 viii. —.]—CANADIAN BANK OF COMMERCE v. TREACY, [1924] 2 W. W. R. 193; 2 D. L. R. 759.—CAN.

**PART XX. SECT. 12. SUB-SECT. 4.—F.**

7359 ii. —.}—The trustee in bkpy. of H. under an authorised assignment sought to recover payments made to H. when in a hopeless state of insolvency for the purpose as his creditors' debts, knew, of preferring them so that his guarantors might be as far as possible relieved. The payments were made within a few days of H.'s voluntary assignment, & some were made after the assignment.—*Held*: debts, had not at the times of payment notice of any "available act of bkpy." committed by H.; the transactions were all before Bkpy. Act, 1921 (c. 17), s. 3, but the payments were not made "in good faith." —BRISCOE v. MOLONGS BANK (1922), 69 D. L. R. 675; 51 O. L. R. 644.—CAN.

**PART XX, SECT. 12, SUB-SECT. 4.—G.**

7381 iv. — — —.]—*Re* ASSAF &  
DABOUS (Ont.), [1927] 1 D. L. R. 24;  
7 C. B. R. 689.—**CAN.**

7388 ii. ——— *Conveyance of property*

for past consideration—Creditor with knowledge of existence of other creditors.) —*Re DAVID*, [1925] 4 D. L. R. 1046; *affg.*, [1925] 1 D. L. R. 164; 5 C. B. R. 323.—**CAN.**

**sm. Sale by creditor—Collusive sale**—**Payment of proceeds of sale to creditor.**—**Held:** the transaction must be set aside for it was not really only a "payment of money to a creditor," saved out of the general provisions of **Assignments & Preferences Act**; **R. S. O. 1914 (c. 134),** by sect. 6. The transaction was substantially an appropriation of goods in part payment of a preferred creditor's claim, & the proceeds of the sale could be reached by the assignee under sect. 13.—**MACFIE v. CATTER** (1921), 64 D. L. R. 511; 50 O. L. R. 452.—**CAN.**

**sn. Cheque obtained from debtor—**  
**Three days before bankruptcy—Accepted**  
**by bank on day of bankruptcy.—Held:**  
a cheque does not operate as an assign-  
ment of the funds of drawer in the  
hands of the person on whom it is  
drawn; & unless payment was made  
by the drawee before the assignment  
it was not a payment protected by  
Assignments & Preferences Act, s. 6 (1);  
but if paid before the assignment it  
was a payment in cash at the date  
when the cheque was paid by the  
bank.—**ROWLETT v. GARMENT (J. & G.)**  
**MANUFACTURING CO. (1921), 64**  
**D. L. R. 88: 49 O. L. R. 166.—CAN.**

**7895 iii.**—*Mortgagee party to fraud.*—Debtor granted a mtge. to certain of his creditors. No money changed hands & at the time it was known to debtor & to the creditors, the mtgees., that debtor was insolvent. The mtge. was part of a scheme to give an undue preference:—*Held*:

- 7414a. — Payment to agent of creditor—Agent paying over sum to principal in course of business.]—**A payment by a debtor to an agent who receives the money in the ordinary course of his employment for the use of a creditor is not a payment in favour of a “person in trust for any creditor,” within 1914 Act, s. 44. The effect of that sect. is not to render the personal liability of an agent to repay a debt, payment of which he has

m. (p. 903) i. —.]—The fact that a fraudulent transfer was made in a province other than that in which the authorised assignment was made, does not deprive the ct. of the latter province with original jurisdiction with respect to the authorised assignment of jurisdiction to set aside the fraudulent.

7414 iv. ———.]—In Assignments Act, R. S. S. 1909 (c. 142), s. 39, "sixty days thereafter" means sixty days after the date of the conveyance & not after the date of some prior agreement upon which such conveyance may have been made, & "such

M. being indebted to G. & also to a co. for the price of goods supplied, on Jan. 14, 1921, paid to C. & B., agents of G. & the co. &, to the knowledge of debtor, authorised to receive the payment, the sum of £1,500 in settlement of the amounts respectively owing to G. & the co. The agents in the ordinary course of their employment received that sum for the use of their principals & paid over part thereof to G. & the balance to the co., such payment being made in good faith, in the belief that the payment was a good & valid payment, in ignorance of the impending bkpcy. of debtor & long before any claim by the trustees in the bkpcy. On Feb. 11, 1921.

1 (p. 906) 1. ——— *Bankruptcy Act, s. 35 — Bankruptcy Rules, r. 120.* — *Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOC'N., LTD. v. SPIVAK (Alta.),* [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 341; *reversd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23. — CAN.



debtor committed an act of bkpcy. by assigning his property in favour of his creditors, & on Mar. 12, 1921, a receiving order was made against him on which he was adjudicated bkpt. Upon a motion by the trustees of bkpt. for an order on C. & B. as agents, neither of their principals having been made resps., to repay the £1,500 on the ground that the payment was void against the trustees as a fraudulent preference:—*Held*: (1) C. & B. received the money merely as agents of & for the use of the creditors in the ordinary course of their employment, & not as "persons in trust for any creditor" within 1914 Act, s. 44; (2) the circumstances under which the money was received & paid over precluded appcts. from recovering the money, even though it were proved that the payment, in fact, constituted a fraudulent preference, as to which the ct. did not consider it to be necessary to decide. *Semble*: (3) the personal liability of a person to whom payment has been made "in trust for any creditor" under 1914 Act, s. 44, must depend upon the facts of each case; in particular, whether the trustee had acted in good faith & whether he still held the money or had paid it over to the creditor before having received notice that the payment constituted a fraudulent preference.—*Re MORANT, Ex p. TRUSTEES*, [1924] 1 Ch. 79; 93 L. J. Ch. 104; 130 L. T. 398; [1923] B. & C. R. 145.

7418. *Add. Annotation*:—*Mentd. Sorrell v. Smith*, [1925] A. C. 700.

7420. *Add. Citation*:—10 B. & S. 371.

7428. *Add. Annotations*:—*Consd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76. *Refd. Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52. *Mentd. Edwards v. Motor Union Insee.* (1922), 128 L. T. 276.

7430. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

7438. *Add. Annotations*:—*Refd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835. *Mentd. Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87.

7438a. ———.]—A father, having a power of appointment over a fund in favour of his children, agreed with his son to pay his debts, & then to appoint to him a portion of the fund equal to the amount of his debts, which he was then to hand over to the father. The father paid the debts, & made the appointment, when the son became bkpt.:—*Held*: the trustee had no right to the fund appointed.—*Re ANGERSTEIN, Ex p. ANGERSTEIN* (1874),

9 Ch. App. 479; 43 L. J. Bcy. 131; 30 L. T. 446; 22 W. R. 581, L. J.

*Annotations*:—*Mentd. Re Pettit's Estate* (1876), 1 Ch. D. 478; *Marbella Iron Ore Co. v. Allen* (1878), 47 L. J. Q. B. 601; *Pitts v. La Fontaine* (1880), 6 App. Cas. 482; *Fraser v. Province of Brescia Steam Tram. Co.* (1887), 56 L. T. 771; *Re Branson, Ex p. Trustee*, [1914] 2 K. B. 701.

7439. *Add. Annotation*:—*Mentd. Re Mellor, Alvarez v. Dodgson*, [1922] 1 Ch. 312.

7440. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

7442. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

7463. *Add. Annotation*:—*Mentd. French v. Gething*, [1922] 1 K. B. 236.

7483a. ——— 1914 Act, s. 45.]—*Re WETHERED, Ex p. SALAMAN*, No. 6858a, *ante*.

7490. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

7512. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.

7519. *Add. Annotation*:—*Mentd. The Joannis Vatis*, [1922] P. 92.

7520. *Add. Annotation*:—*Consd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

7543. *Add. Annotation*:—*Consd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

7546a. ——— That bankruptcy notice served on debtor—& of petitioning creditor's intention to take bankruptcy proceedings.]—Deft. to an action, in which the trustee in bkpcy. claimed that certain farm stock in a bill of sale given to deft. by bkpt. was in the reputed ownership of bkpt. & formed part of his estate, had been informed of the service on bkpt. of a bkpcy. notice, & later had been informed by the petitioning creditor that he was going to take bkpcy. proceedings against his debtor:—*Held*: a mere statement of intention to take bkpcy. proceedings amounted at most to a threat to file a petition, & falling short of a notice of the actual presentation of a petition, it was not constructive notice of an available act of bkpcy.—*HERBERT'S TRUSTEE v. HIGGINS*, [1926] Ch. 794; 95 L. J. Ch. 303; 135 L. T. 321; 42 T. L. R. 525; 70 Sol. Jo. 708; [1926] B. & C. R. 26.

7574. *Add. Annotation*:—*Refd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

7577. *Add. Annotations*:—*Refd. Re Chiandetti* (1921), 91 L. J. K. B. 70. *Mentd. Re Fairley*, [1922] 2 Ch. 791.

7578. *Add. Annotation*:—*Mentd. Re Fairley*, [1922] 2 Ch. 791.

#### PART XX. SECT. 13, SUB-SECT. 1.

7430 v. ———.]—*MERCHANTS BANK OF CANADA v. KEN MCCLARY & Co.*, [1921] 1 W. R. 940; 14 Sask. L. R. 187.—CAN.

#### PART XX. SECT. 13, SUB-SECT. 2.—A. (a).

aa. *Failure to make proper inquiries.*]—By Bkpcy. Act a creditor who takes a mtge. & fails to make the proper inquiries will be held to have knowledge of the insolvency of the mtgor. at the time of giving the mtge., & the mtge. will be set aside as a fraudulent preference.—*Re THOMPSON, Ex p. TRUSTEES*, [1923] 4 D. L. R. 1028.—CAN.

sb. ———.]—Where the circumstances under which a debt is paid are such that a strong suspicion would arise in the mind of an ordinary business man as to the *bona fides* of the payment, the

payee ought to inquire closely into all the circumstances. Otherwise, if the payer becomes bkpt., the payment will be construed as a fraudulent preference.—*Re STERNBERG* (1924), 27 O. W. N. 212; *varying*, [1924] 2 D. L. R. 492; 4 C. B. R. 528.—CAN.

#### PART XX. SECT. 13, SUB-SECT. 2.—A. (b).

so. *General rule.*]—When a person knows of an act of bkpcy. or wilfully refrains from making such inquiries as would give him such knowledge, or where the facts are such that an act of bkpcy. had been committed, such a person will be deemed to have notice.—*Re HERSH, Ex p. GOLDSTEIN*, [1923] 3 D. L. R. 101; 4 C. B. R. 84.—CAN.

7537 iv. ——— That debtor financially embarrassed.]—*Held*: not of itself knowledge of insolvency.—*Re WERN* (1921), 64 D. L. R. 633; 51 O. L. R.

5; 2 C. B. R. 16.—CAN.

7537 v. ——— That debtor hard pressed for money.]—*Held*: not sufficient to infer that a creditor had constructive notice of an act of bkpcy.—*Re ROBBINS, Ex p. ROOT*, [1924] 3 D. L. R. 90; 4 C. B. R. 670.—CAN.

#### PART XX. SECT. 13, SUB-SECT. 2.—C.

7581 vi. ———.]—Every payment made by bkpt. within a short time of his bkpcy. is regarded with suspicion by the ct. as likely to be a fraudulent preference. The *onus* is on the payee to show that he had no knowledge of an available act of bkpcy., actual or constructive, that he gave some consideration for the payment & that he was actuated by no fraudulent motive in accepting such payment.—*Re HOWARD GRAHAM & Co.*, *Ex p. GRAHAM*, [1923] 2 D. L. R. 1024; 3 C. B. R. 853.—CAN.

**7601. Add. Citation:—***revsg. S. C. sub nom. Re WIX, Ex p. CHATTERBY*, 29 W. R. 400.

**7603a. — Employee of company—Refusal of company to pay—Termination of employment alleged.]—**Bkpt., after his adjudication, entered into an agreement of service in writing for one year at a salary of £1,000, the agreement being signed in the name of a joint stock co., underneath which was the name of the managing director followed by the words, "managing director." An order was subsequently made by a registrar, under 1914 Act, s. 51 (2), that £300 out of a sum of £416 13s. 4d. due under the agreement from the co. &/or its managing director to bkpt. be forthwith paid by them to the trustee of the estate of bkpt. When the registrar made that order the only parties before the ct. were the trustee & bkpt. Neither the co. nor its managing director paid the £300, but alleged that nothing was due to bkpt. upon the ground that he had broken the agreement by absenting himself from his employment. The trustee then served a notice of motion in the High Ct. upon the co. & its managing director asking for a declaration that he was entitled to the £300 from resps. as forming part of the property of bkpt., & for an order for payment of that amount. The judge found that no dismissal had taken place nor had bkpt., by his conduct, given notice of his intention not to perform the contract which could be treated by resps. as an anticipatory breach. No point was taken as to whether the managing director was properly made a resp.:—*Held*: in the circumstances there must be a declaration & order for payment in terms of the notice of motion.—*Re LAVEY, Ex p. TRUSTEE*, [1920] 1 K. B. 674; 89 L. J. K. B. 24; 122 L. T. 592; [1920] B. & C. R. 43; *subsequent proceedings*, [1920] B. & C. R. 186.

**7626. Add. Annotation:—***Refd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

**7636. Add. Annotation:—***Mentd. Brown v. Gregson*, [1920] A. C. 860.

**7638. Add. Annotations:—***Refd. Re Leeds & Batley Breweries & Bradbury's Lease, Bradbury v. Grimble*, [1920] 2 Ch. 548; *Mellroy v. Clements* (1923), 67 Sol. Jo. 402; *Rider v. Ford*, [1923] 1 Ch. 541.

**7639a. Contract for sale of goods.]—***HUSSEY v. FIDDALL* (1699), 12 Mod. Rep. 324; *Holt*, K. B. 95; 3 Salk. 59; 88 E. R. 1353.

*Annotation:—**Refd. Hitchin v. Campbell* (1772), 2 Wm. Bl. 827.

**7648a. — Assuming management of farm.]—***Held*:—a sufficient election to take the term.—*THOMAS v. PEMBERTON* (1816), 7 Taunt. 206; 129 E. R. 83.

**7648b. — Milking cows.]—***Held*:—assignees, having allowed bkpt.'s cows to remain upon the demised premises for two days & ordered

them to be milked there, thereby became tenants to the lessor.—*WELCH v. MYERS* (1816), 4 Camp. 368; 171 E. R. 117, N. P.

**7649a. — —.]—**Where assignees put a term up to auction, to ascertain whether it was of value, without giving themselves out to be the proprietors, & there being no bidders, interfered no further in the matter, & never received rents:—*Held*: they were not answerable in covenant to the lessor.—*TURNER v. RICHARDSON* (1806), 7 East, 335; 3 Smith, K. B. 330; 103 E. R. 129.

*Annotations:—**Consd. Copeland v. Stephens* (1818), 1 B. & Ald. 593. *Distd. Hanson v. Stevenson* (1818), 1 B. & Ald. 303. *Apld. Lindsay v. Limbert* (1827), 12 Moore, C. P. 209. *Consd. Williams v. Taylor* (1869), 21 L. T. 612; *Titterton v. Cooper* (1882), 9 Q. B. D. 473. *Refd. Hill v. Dobie* (1818), 2 Moore, C. P. 342; *Williams v. Bosanquet* (1819), 1 Brod. & Bing. 238; *Doe d. Palmer v. Andrews* (1827), 4 Bing. 348; *Wollaston v. Hakewill* (1841), 3 Man. & G. 297; *Mackley v. Pattenden* (1861), 30 L. J. Q. B. 225; *Levi v. Ayers* (1878), 3 App. Cas. 842; *Hill v. East & West India Dock Co.* (1884), 9 App. Cas. 448. *Mentd. Clark v. Calvert* (1819), 8 Taunt. 742.

**7649b. S. P. CARTER v. WARNE**, No. 9026a, *post*.

**7649c. — —.]—**Where assignees for the purpose of preventing a distress paid arrears of rent due, at the same time intimating to the landlord that they did not mean to take to the lease unless it could be advantageously disposed of, & the effects were soon after sold & the lease was at the same time put up to sale by order of the assignees, but there were no bidders for it:—*Held*: they were not liable to the landlord as assignees of the lease.—*WHEELER v. BRAMAH* (1813), 3 Camp. 340; 170 E. R. 1404.

*Annotations:—**Consd. Copeland v. Stephens* (1818), 1 B. & Ald. 593. *Distd. Hanson v. Stevenson* (1818), 1 B. & Ald. 303. *Refd. Hancock v. Welsh* (1816), 1 Stark. 347; *Doe d. Palmer v. Andrews* (1827), 4 Bing. 348; *Goodwin v. Noble* (1857), 8 E. & B. 587.

**7650a. — Carrying on business for benefit of creditors.]—**Where the assignee kept bkpt. in the premises, carrying on the business for the benefit of the creditors from Nov. 15, 1823, until Apr. following, but on Dec. 22, 1823, had disclaimed the lease by letter to the landlord:—*Held*: the assignee, notwithstanding such disclaimer, had elected to accept the lease.—*CLARK v. HUME* (1825), Ry. & M. 207; 171 E. R. 995.

**7652a. — — To prevent distress.]—***WHEELER v. BRAMAH*, No. 7649c, *ante*.

**7653a. — —.]—***Held*: to amount to an acceptance of the lease.—*PAGE v. GODDEN* (1818), 2 Stark. 309; 171 E. R. 655.

**7662. Add. Annotation:—***Mentd. Spencer v. Ashworth*, Partington, [1925] 1 K. B. 589.

**7665. Add. Annotation:—***Mentd. Betts v. Price* (1924), 40 T. L. R. 589.

**7670a. — —.]—***CARTWRIGHT v. GLOVER* (1861), 2 Giff. 620; 30 L. J. Ch. 324; 3 L. T. 880; 7 Jur. N. S. 857; 9 W. R. 408; 66 E. R. 260.

*Annotation:—**Refd. Wilson v. Wallani* (1880), 5 Ex. D. 155.

**7581 vii. — —.]—***Re GROCERY SPECIALTY CO., Re SHULMAN*, [1923] 2 D. L. R. 316; 3 C. B. R. 46; *affd.*, 24 O. W. N. 90.—CAN.

#### PART XX. SECT. 16, SUB-SECT. 1.

**11. — Right of trustee to give notice of intention to retain—Acceptance of rent by lessors.]—***Held*:—*Bkpcy. Act*, s. 13 (15), extends sect. 52 (5) to all cases where proceedings are taken under sect. 13 so as to enable either trustee or debtor himself to overcome the forfeiture & elect to retain the

demised premises for the whole or any part of the term. If this construction of the Act was wrong, the lessors had waived their rights by acceptance of rent with full knowledge of the circumstances & notice of election to retain.—*Re MCKAY* (1921), 51 O. L. R. 86; 2 C. B. R. 59; 64 D. L. R. 699.—CAN.

#### PART XX. SECT. 16, SUB-SECT. 5.—A.

**7672 i. Within what time—Extension of time—Power of court to grant.]—***Re ROGERS (DECEASED)* (1926), 26 S. R. N. S. W. 526; 43 N. S. W. N.

#### 143.—AUS.

**7676 i. Sufficiency of disclaimer—Delay in taking decisive steps.]—**By virtue of *Bkpcy. Act*, s. 52, when the trustee does not decide, within a month after the bkpcy., to retain premises held under a tenancy not yet expired, this is taken to be a disclaimer of the premises & puts an end to the tenancy & also to a subtenancy created by the tenant.—*SEGUIER v. DUFFRENE* (1922), Q. R. 60 S. C. 525.—CAN.



**7681. Add. Annotation:—Mentd.** *Gray v. Spyer*, [1922] 2 Ch. 22.

**7681a. — Statutory tenancy—Under Rent Restriction Acts.]—PARKINSON v. NOEL, No. 7782b, *post*.**

**7685. Add. Annotation:—Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.

**7686. Add. Annotation:—Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.

**7689. Add. Citation:—sub nom.** *Re CLAYTON & BEAUMONTS' CONTRACT*, 2 Mans. 345.

**7689a. Shares—Subject to equitable charge.]—**The registered owner of fully paid shares in a private co. charged them in favour of W., & handed him the certificates & a blank transfer. He subsequently gave other equitable charges to other mtgees. On the owner's bkpcy. his trustee disclaimed "all my interest" in the shares under 1914 Act, but, as the blank transfer was not completed & lodged & none of the mtgees. applied for a vesting order, bkpt.'s name remained on the register:—*Held*: (1) as between himself & the co., bkpt., so long as his name remained on the register, was entitled to vote in respect of the shares, though, as between himself & the mtgees., he could only vote as they dictated; (2) the trustee could not have disclaimed more than the equity of redemption in the shares. *Qu.*: whether a trustee can disclaim unincumbered fully paid shares.—*WISE v. LANSDELL*, [1921] 1 Ch. 420; 90 L. J. Ch. 178; 124 L. T. 502; 37 T. L. R. 167; [1920] B. & C. R. 145.

**7692. Add. Annotation:—Refd.** *Re Wait*, [1926] Ch. 962.

**7693a. Sub-contract for sale of land—Contract for purchase of land need not be disclaimed.]—**Where a person, who is subsequently adjudicated bkpt., has entered into a contract for the purchase of land & into a sub-contract to sell the same land with a building thereon to be erected by him, his trustee in bkpcy. is entitled to disclaim the sub-contract of sale without being obliged to disclaim the contract of purchase. If the sub-purchaser has paid a deposit he has a lien upon such interest in the land as bkpt. possessed before his bkpcy., including the right, if any, to specific performance of the contract of purchase of the land; he may also prove in the bkpcy. for any damage for breach of the agreement to build, but he is not entitled to specific performance of the contract to build, & his equity is subject to the overriding equity of the original vendor.—*Re GOUGH, HANING v. LOWE* (1927), 96 L. J. Ch. 239; 71 Sol. Jo. 470; [1927] B. & C. R. 137, D. C.

**7704. Add. Annotations:—Refd.** *Wise v. Lansdell*, [1921] 1 Ch. 420; *Re Lister, Ex p. Bradford Overseers & Bradford Corpn.*, [1926] Ch. 140.

**7767 ii. — Verbal disclaimer—No consent of creditors.]—Held**: the assignee could not make a disclaimer of a debt without the consent of the creditors.—*BROWNE v. SIDNEY MILLS, LTD.*, [1920] 28 B. C. R. 73.—CAN.

**PART XX. SECT. 16, SUB-SECT. 5.—E.**

**7781 i. On trustee—Right to remove fixtures.]—**Where A. purchased a tenant's interest in leased premises including trade fixtures & the last tenant had made an assignment for

the benefit of creditors to deft., who gave a disclaimer:—*Held*: the fixtures belonged to deft., & he had the right to remove them within the three months' delay given by Creditors' Trusts Deeds Act, s. 55 (1).—*WINTERMUTE v. TAYLOR*, [1919] 2 W. W. R. 882.—CAN.

*sd. On creditors—Disclaimer of assets.]—*A secured creditor put in a claim against bkpt.'s estate for certain assets, which assets the trustee disclaimed:—*Held*: the ct. could not

*Mentd.* *Victoria City v. Vancouver Island (Bp.)*, [1921] 2 A. C. 384; *Leitch v. Emmott*, [1929] 2 K. B. 236.

**7735. Add. Citations:—sub nom.** *Re WEGG, Ex p. HANBURY*, 12 L. J. Bcy. 43; *sub nom. Re WEGG, Ex p. BANBURY*, 7 Jur. 660.

**7751. Add. Annotations:—Consd.** *Re Hyams, Ex p. Lindsay v. Hyams* (1923), 93 L. J. Ch. 184. *Refd.* *Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

**7756. Add. Annotation:—Consd.** *Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

**7756a. — Right to compensation.]—**Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom or statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re WADSLEY, BETTINSON'S REPRESENTATIVE v. TRUSTEE* (1925), 91 L. J. Ch. 215; [1925] B. & C. R. 76, D. C.

**7764a. — Liability for rates for period of occupation until disclaimer.]—**Where a trustee in bkpcy. goes into occupation of onerous property & subsequently disclaims the property, he is liable to pay the rates on the property for the period of his occupation.—*Re LISTER, BRADFORD OVERSEERS & CORPN. v. DURRANCE* (1925), 95 L. J. Ch. 145; 42 T. L. R. 143; 89 J. P. Jo. 692, C. A.; *sub nom. Re Lister, Ex p. Bradford Overseers & Bradford Corpn.*, [1926] Ch. 149; *sub nom. Re Lister, Ex p. Bradford Overseers & Corpn. v. Durrance*, 134 L. T. 178; 90 J. P. 33; 24 L. G. R. 67; [1926] B. & C. R. 5.

**7765. Add. Annotation:—Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.

**7766. Add. Annotation:—Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.

**7767. Add. Annotation:—Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.

**7769. Add. Annotations:—Refd.** *Harrison v. Holland*, [1921] 3 K. B. 297; *Chillingworth v. Esche*, [1923] 1 Ch. 576. *Mentd.* *Cohen v. Sellar*, [1926] 1 K. B. 536.

**7775. Add. Annotation:—Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.

**7776. Add. Annotation:—Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.

**7778. Add. Annotations:—Consd.** *Re Hyams, Ex p. Lindsay v. Hyams* (1923), 93 L. J. Ch. 184. *Refd.* *Re Lister, Bradford Overseers*

order the trustee to accept those assets as part of the estate.—*Re CANADIAN CARPET & COMFORTER MANUFACTURING CO., Ex p. A.-G. FOR CANADA*, [1924] 4 D. L. R. 1307; 5 C. B. R. 54.—CAN.

**7770 ii. — Right to possession.]—**A monthly tenant remained in possession after being adjudicated insolvent. The official assignee having disclaimed interest:—*Held*: the landlord was entitled to an order for possession.—*Re ABUBAKER HAJI ABDULLA* (1924), 1 L. R. 48 Bom. 580.—IND.

& *Corpn. v. Durrance* (1925), 42 T. L. R. 143.

**7778a.** ———.]—After a debtor has been adjudicated bkpt. & his trustee has disclaimed a lease belonging to him, the property thereby demised reverts in the landlord under 1914 Act, s. 54 (2), & he may obtain an order for delivery of possession. Neither the subsequent annulment of the bkpcy. nor the acceptance by the landlord from debtor of rent due for a period ending before the disclaimer operates to re-vest any interest in the lease in debtor.—*Re HYAMS, Ex p. LINDSAY v. HYAMS* (1923), 93 L. J. Ch. 184; 130 L. T. 237; [1923] B. & C. R. 173, C. A.

**7782a.** ———. Rights as to statutory tenancy.—*Under Rent Restriction Acts.*]—The effect of a disclaimer by a trustee in bkpcy. of bkpt.'s interest in a quarterly tenancy is to deprive the tenant of any further interest in the demised premises, & consequently, he is debarred from relying on a statutory tenancy therein under the above Acts.—*REEVES v. DAVIES*, [1921] 2 K. B. 486; 90 L. J. K. B. 675; 125 L. T. 354; 37 T. L. R. 431, C. A.

*Annotations:*—*Consd. Roe v. Russell*, [1928] 2 K. B. 117. *Refd. Mellows v. Low*, [1923] 1 K. B. 522, *Parkinson v. Noel*, [1923] 1 K. B. 117.

**7782b.** ———.]—A statutory tenancy under Increase of Rent & Mortgage Interest Restrictions Act, 1920 (c. 17), is "property" of the tenant within 1914 Act, s. 167.

Pltfs. having let to deft. a dwelling-house to which the Act of 1920 applied, deft. retained possession of it after the expiration of the term under the provisions of that Act. Deft. was afterwards adjudicated bkpt., & the trustee in bkpcy. disclaimed any interest in the house. In an action by pltfs. against deft. for possession of the house & mesne profits:—*Held:* (1) the statutory tenancy to which deft. became entitled under the Act of 1920 was "property" within 1914 Act, s. 167, & passed under sect. 53 to his trustee in bkpcy; (2) on disclaimer thereof by the trustee that interest in the premises ceased to exist & was no longer available for the

benefit of deft., & consequently pltfs. were entitled to judgment.—*PARKINSON v. NOEL*, [1923] 1 K. B. 117; 92 L. J. K. B. 361; 128 L. T. 538; 67 Sol. Jo. 184; 21 L. G. R. 130.

*Annotations:*—*As to* (1) *Consd. Keeves v. Dean, Nunn v. Pellegrini*, [1923] 2 K. B. 804. *Expld. Lovibond v. Vincent*, [1929] 1 K. B. 687. *As to* (2) *Refd. Mellows v. Low*, [1923] 1 K. B. 522; *Roe v. Russell*, [1928] 2 K. B. 117.

**7789a.** On mortgage—Of shares—*Bankrupt's name still on register.*]—*WISE v. LANSDELL*, No. 7689a, *ante*.

**7791.** *Add. Annotations:*—*Refd. Wise v. Lansdell*, [1921] 1 Ch. 420; *Re Lister, Ex p. Bradford Overseers & Bradford Corpn.*, [1926] Ch. 149. *Mentd. Victoria City v. Vancouver Island (Bp.)*, [1921] 2 A. C. 384; *Leitch v. Emmott*, [1929] 2 K. B. 236.

**7801a.** ———.]—*NAISH v. TATLOCK* (1794), 2 Hy. Bl. 319; 126 E. R. 573

*Annotations:*—*Consd. Vincent v. Godson* (1853), 1 Sm. & G. 384. *Refd. How v. Kennet* (1835), 3 Ad. & El. 659. *Mentd. Richardson v. Hall* (1819), 1 Brod. & Bing. 50; *Nation v. Tozer* (1834), 1 Cr. M. & R. 172; *Seaton v. Booth* (1836), 4 Ad. & El. 528.

**7801b.** ———.]—*BEARD v. DAVIDSON* (1843), 1 L. T. O. S. 646.

**7811.** *Add. Annotation:*—*Consd. Re Farrow's Bank*, [1921] 2 Ch. 164.

**7821.** *Add. Annotations:*—*Refd. Re Hyams, Ex p. Lindsay v. Hyams* (1923), 93 L. J. Ch. 184; *Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

**7832.** *Add. Annotations:*—*Refd. Re Hyams, Ex p. Lindsay v. Hyams* (1923), 93 L. J. Ch. 184; *Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

**7835.** *Add. Annotations:*—*Refd. Re Hyams, Ex p. Lindsay v. Hyams* (1923), 93 L. J. Ch. 184; *Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

**7836.** *Add. Annotations:*—*Refd. Re Hyams, Ex p. Lindsay v. Hyams* (1923), 93 L. J. Ch. 184; *Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

**7867a.** One year's rent due before registration of composition deed.]—*WILLIAMS v. CADBURY*

**7787 iii.** ———.]—A disclaimer of a lease by an assignee for the benefit of creditors:—*Held:* to operate as a forfeiture & not as a surrender, & to effect the termination of a sub-lease granted by the assignor.—*KERR v. CAPITAL GROCERY, LTD.*, [1921] 1 W. W. R. 1221; 59 D. L. R. 388; 1 C. B. R. 490.—CAN.

**7788 i.** ———. *Liability to ejectment.*]—Where a tenant, who has replaced bkpt. on disclaimer of the lease by the trustee, has begun an action of ejectment against the sub-tenant, who refuses to quit the premises, if the latter does not avail himself of his rights under 11 & 12 Geo. 5, c. 17, s. 43, but contests the action & allows it to proceed to judgment, he cannot then present a petition invoking his rights.—*SEQUIER v. DUFRESNE* (1922), Q. B. 60 S. C. 525.—CAN.

**PART XX. SECT. 16, SUB-SECT. 6.**

**7815 i.** *In what cases—Trustee electing not to take.*]—The order for possession under Bkpt. & Insolvent Act, 1857 (Ir.), s. 271, is consequential upon the order to assignees to elect, & though the judge has a discretion, yet upon the assignees electing not to take the premises, there is a *prima facie* duty upon the judge to make the order for possession unless good reason is shown to the contrary, the object of the sect. being to protect the landlord

from being left with a bkpt. tenant.—*Re KEANE* (1922), 57 L. L. T. 5.—IR.

**PART XX. SECT. 17, SUB-SECT. 3.**

*so. Property claimed by lienholders & mortgagees.*]—*Held:* the prohibition in Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3, as to distress for rent not applicable to above property, the estate having no beneficial interest therein.—*Re HAMILTON & OAKES*, [1928] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—CAN.

**PART XX. SECT. 17, SUB-SECT. 4.**

*ri.* ———.]—A sheriff who has seized & is in possession under a landlord's distress warrant prior to the tenant making an authorised assignment under Bkpcy. Act, is bound to hand over the goods to the trustee in bkpcy. on demand.—*Re WORK & DAY ESTATE*, [1921] 2 W. W. R. 94; 58 D. L. R. 377; 1 C. B. R. 553.—CAN.

**PART XX. SECT. 17, SUB-SECT. 5.**

*di.* ———. *Goods seized by landlord—Liability for costs of seizure.*]—*Held:* the trustee was entitled to the possession of the goods without paying the costs of the seizure.—*GARDNER v. GUY STREET GARAGE* (1922), 70 D. L. R. 57.—CAN.

**PART XX. SECT. 18, SUB-SECT. 1.**

**7907 v.** ———. *Bond—Purchased by*

*bankrupt from trust of which bankrupt sole trustee—Refusal to assign—Person appointed to assign.*]—The estate of bkpt., who was serving a sentence of penal servitude, included an interest amounting to £50 in a bond & disposition in security. He had bought the interest from a trust in which he was sole trustee, but he had never had the title transferred from himself as trustee to himself as an individual. The borrower offered to repay the loan on receipt of a valid discharge, but he would not accept a discharge signed by the trustee in bkpcy. The trustee, therefore, prepared an assignation of the bond by bkpt. to himself, but bkpt. refused to sign it, & persisted in his refusal in spite of an order pronounced upon him in the Sheriff Ct. No pains could follow, as bkpt. was already in prison. The trustee then presented a petition craving the ct. to authorise the clerk of ct. to sign the assignation on bkpt.'s behalf. The parties interested in the execution of the assignation in the manner proposed having lodged in process letters of consent thereto, the ct., in view of the small sum involved, granted the prayer of the petition.—*PENNELLE'S TRUSTEE*, [1928] S. C. 605.—SCOT.

**7868 ii.** ———.]—*Re WILLIAMSON* (1927), 38 B. C. R. 479.—CAN.

- (1867), L. R. 2 C. P. 453; 36 L. J. C. P. 233; 16 L. T. 354; 15 W. R. 905.
- tations**:—*Distd. Solby v. Greaves* (1868), L. R. 3 C. P. **Folld. Re Douglas, Ex p. Ryder** (1871), 6 Ch. App. 413.
- 7868. Add. Annotation**:—**Apld. Re Wells**, [1929] 2 Ch. 269.
- 7869a.** ———.]—The lessee of a farm, in respect of which the rent was payable quarterly, died intestate in 1928, & his administratrix entered into possession. Subsequently an order for administration was made in respect of the estate of the lessee, which was insolvent. At the date of the order one quarter's rent was unpaid. A receiver was appointed, & ultimately the lessor, three quarters' rent being by that time due to him, took out a summons, in the administration action, for the purpose of ascertaining whether, having regard to Administration of Estates Act, 1925 (c. 23), s. 34 (1), which applied the law of bkpey. to the administration of insolvent estates, he was entitled to distrain on the property:—**Held**: there was nothing in 1914 Act which interfered with the landlord's right to distrain, & he was entitled to distrain for the three quarters' rent.—*Re WELLS*, [1929] 2 Ch. 269; 98 L. J. Ch. 407; 141 L. T. 323.
- 7870. Add. Annotation**:—**Mentd. Richmond v. Savill**, [1926] 2 K. B. 530.
- 7878. Add. Annotation**:—**Apld. Re Johns, Worrell v. Johns**, [1928] Ch. 737.
- 7913. Add. Citation**:—12 L. T. 25.
- 7931a.** ———.]—Assignees of a bkpt. agreed to sell a part of his estate, & filed a bill for specific performance. It turned out that the estate was vested in an assignee under a previous insolvency. After the master had made his report, upon a reference as to title, the assignee in insolvency offered to concur in the sale:—**Held**: a good title could be made.—*SIDEBOTHAM v. BARRINGTON* (1811), 4 Beav. 110; 10 L. J. Ch. 302; 5 Jur. 429; 49 E. R. 280.
- Annotation**:—**Refd. Fraser v. Wood** (1845), 8 Beav. 339.
- 7949. Add. Annotations**:—**Apld. Farey v. Cooper**, [1927] 2 K. B. 384. **Refd. Boorne v. Wicker**, [1927] 1 Ch. 667.
- 7950. Add. Annotations**:—**Apld. Farey v. Cooper**, [1927] 2 K. B. 384. **Refd. Boorne v. Wicker**, [1927] 1 Ch. 667.
- 7950a.** ———.]—If bkpt. join with his trustee in selling the goodwill & business previously carried on by bkpt., & agrees with the purchaser not to carry on a similar business within a prescribed district, such agreement is binding on him.—*BUXTON & HIGH PEAK PUBLISHING & GENERAL PRINTING CO. v. MITCHELL* (1885), 1 Cab. & El. 527.
- 7951. Add. Annotation**:—**Mentd. Pirie v. Richardson** (1926), 70 Sol. Jo. 1023.

## Part XXI.—Actions, Arbitrations, and other Legal Proceedings by and against Trustee and Bankrupt.

- 7968a.** ———.]—*Qu.*: whether the assignee of an insolvent can maintain an action against an attorney for negligence in preparing a lease for the insolvent, whereby he failed to obtain possession of the premises demised.—*DELAFIELD v. FREEMAN* (1829), 6 Bing. 294; 3 Moo. & P. 704; 8 L. J. O. S. C. P. 70; 130 E. R. 1293.
- 7971. Add. Annotation**:—**Mentd. Prosperity v. Lloyds Bank** (1923), 39 T. L. R. 372.
- 7974.** Delete the words "the damage suffered, if any . . . claim should be made."
- 7984. Add. Annotation**:—**Consd. Wilson v. United Counties Bank**, [1920] A. C. 102.
- 7987. Add. Annotation**:—**Mentd. Ford v. Radford** (1920), 36 T. L. R. 658.
- 7992. Add. Annotations**:—*As to* (1) **Refd. Ellis v. Torrington** (1919), 89 L. J. K. B. 369. *Generally*, **Mentd. Re Harrington Motor Co., Ex p. Chaplin**, [1928] Ch. 105.

### PART XX. SECT. 18, SUB-SECT. 2.

**h i.** ——— *Nature of trustee's title.*—*DOR d. RANKIN v. ANDREWS* (1883), 22 N. B. R. 425.—**CAN.**

**sf. Interference by court.**—*Re GOLDBERG* (Ont.), [1927] 4 D. L. R. 775; 8 C. B. R. 463.—**CAN.**

### PART XX. SECT. 18, SUB-SECT. 4.

**sg. Inadequacy of price.**—*Whether ground for rescission.*—The ct., under the circumstances of the case, refused, upon the application of a debtor who had assigned all his property in trust for his creditors, to set aside a sale made by the trustees, on the ground of inadequacy of price.—*LINTON v. MICHE* (1859), 7 Gr. 182.—**CAN.**

### PART XXI. SECT. 3, SUB-SECT. 1.

**k (p. 977) i.** ——— *Production of power of attorney.*—A trustee resident in Ontario was replaced by a trustee resident in Quebec, who was authorised to proceed with the action of the former trustee but failed to produce any power of attorney:—**Held**: production not necessary.—*MORRIS v. KLINE, DEMERS, GARNISHEE* (1922), 66 D. L. R. 330.—**CAN.**

**sh. Duty to sue in official name.**—*Plff.*, in his official capacity as trustee in bkpey., used his own name instead of his official title in an action:—**Held**: to avoid any difficulty the action should be treated as an issue directed under Bkpey. Rule 120, as the form of action only affected the question of costs. It was of no real consequence as Bkpey. Act, s. 16, providing that the trustee may sue in his own name, is permissive.—*FITZGERALD v. McMORROW*, [1923] 4 D. L. R. 619; 52 O. L. R. 383; 3 C. B. R. 29.—**CAN.**

**7993 ii.** ———.]—Except in those cases where a creditor is authorised under Bkpey. Act, s. 35, to take proceedings, any proceeding to be taken for the benefit of bkpt.'s or authorised assignor's estate must be taken by the trustee or authorised assignee.—*HOULDING v. CANADIAN CREDIT MEN'S TRUST ASSOCIATION, LTD.*, [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—**CAN.**

**8000 iii.** ——— *Proceedings begun in wrong court.—Transfer of proceedings.*—Where proceedings had been commenced in the wrong ct.:—**Held**: the proceedings should be continued under Bkpey. Act, r. 120; & an order transferring the proceedings to the bkpey.

side should be made if necessary.—*SALTER & ARNOLD, LTD. v. DOMINION BANK*, [1922] 3 W. W. R. 203; 68 D. L. R. 762.—**CAN.**

**8000 iv.** ——— *Application at chambers for declaration.—Matter within jurisdiction of Bankruptcy Court.*—Where there was no question in the action that could not be fully & effectually dealt with by the judge in bkpey. in the summary way provided by r. 120:—**Held**: the application must be referred to the judge in bkpey. to be dealt with by him, an *interim* injunction to stand in the meantime.—*EASTERN TRUST CO. v. LLOYD MANUFACTURING CO.*, [1923] 2 D. L. R. 852; 56 N. S. R. 246; 3 C. B. R. 710.—**CAN.**

**8000 v.** ——— *Action to set aside settlement made by bankrupt.*—A trustee in bkpey. brought action in the Supreme Ct. to set aside a settlement made by bkpt. in favour of debt. & voidable under Bkpey. Act, s. 29:—**Held**: the action was improperly taken; the trustee should have proceeded under r. 120, which provides a summary method of disposing of matters of this kind by a motion in chambers, which may afterwards take

**8002.** After this case add "*See, now, Order of the Lord Chancellor, dated Aug. 15, 1921, [1921] W. N. 362.*"

**8025a.** — *Sale of goods—After making of vesting order.*—*FORD v. DABBS* (1843), 5 Man. & G. 309; 6 Scott, N. R. 192; 12 L. J. C. P. 134; 134 E. R. 583.

*Annotations.*—*Refd. Williams v. Chambers* (1847), 10 Q. B. 337; *Jackson v. Burnham* (1852), 8 Exch. 173.

**8033.** *Add. Annotation.*—*Refd. Anglo-Baltic & Mediterranean Bank v. Barber*, [1924] 2 K. B. 410.

**8034.** *Add. Annotation.*—*Mentd. Ord v. Ord*, [1923] 2 K. B. 432.

**8040.** *Add. Annotation.*—*Mentd. Robinson v. Midland Bank* (1925), 41 T. L. R. 402.

**8040a.** — *—* A. was in possession, on Oct. 23, 1847, of barges which had belonged to the bkpt. On Oct. 29, A. sold to B. A fiat issued Nov. 4 on an act of bkpcy. committed Nov. 3. The barges were demanded

from A. in Mar. 1848:—*Held*: the assignees could not maintain trover against A. upon counts stating the possession of the assignees and a conversion pending their title.—*STANFIELD v. STAFFE* (1849), 13 L. T. O. S. 489.

**8051.** *Add. Annotation.*—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.

**8064.** *Add. Annotation.*—*Refd. Ord v. Ord*, [1923] 2 K. B. 432.

**8069.** *Add. Annotation.*—*Mentd. Howell v. Evans* (1926), 134 L. T. 570.

**8081.** *Add. Annotation.*—*Mentd. Ord v. Ord*, [1923] 2 K. B. 432.

**8092.** *Add. Annotations.*—*Mentd. Bradford v. Price* (1923), 92 L. J. K. B. 871; *Jones (Holloway) v. Woodhouse*, [1923] 2 K. B. 117.

**8097.** *Add. Annotation.*—*Consd. Knight v. Ponsonby*, [1925] 1 K. B. 545.

**8104a.** — *Costs of carrying out order of court.*—Upon a motion by a trustee in bkpcy. to

the form of an issue or trial; the ct. should discountenance costly proceedings when summary & inexpensive proceedings are open to the trustee.—*STILLWATER LUMBER & SHINGLE CO. v. CANADA LUMBER & TIMBER CO.*, [1923] 2 D. L. R. 909; 32 B. C. R. 81; [1923] 1 W. W. R. 1333.—*CAN.*

**8000 vi.** — *Proceedings to set aside sale or transfer by bankrupt.*—An action by a trustee in bkpcy. to set aside a conveyance by debtor must be commenced as prescribed by r. 120, by summary application to the bkpcy. judge in chambers, & not by a writ of summons in the Ct. of K. B.—*Re VISCOUNT GRAIN GROWERS CO-OPERATIVE ASSOCIATION TRUSTEE v. BRUMWELL & LOYAL BANK*, [1924] 3 D. L. R. 803; [1924] 3 W. W. R. 54; 5 C. B. R. 94.—*CAN.*

**8000 vii.** — *Appellate court—Appeal against judgment in favour of bankrupt—Judgment assigned by bankrupt to third party.*—*Held*: the trustee in bkpcy. had a right to resume the action in the interest of the estate.—*FREEDMAN v. HART, Re BAITLE* (1922), 68 D. L. R. 288; 2 C. B. R. 536.—*CAN.*

**sj.** *Assent of inspectors—Whether necessary—Motion for directions.*—*Re JACOBSON, Ex p. GOLDBERG* (N. B.), [1927] 2 D. L. R. 363; 8 C. B. R. 258.—*CAN.*

**sk.** *Application for interim injunction—Undertaking as to damages.*—*Held*: should be made binding on a trustee in bkpcy. personally, when suing in his official capacity, unless the ct. is satisfied that the estate in his hands will be sufficient to answer damages. A trustee is under no obligation to take such a proceeding without proper indemnity from the creditors.—*BRENNER'S TRUSTEE v. BRENNER*, [1923] 3 D. L. R. 1097; 52 O. L. R. 374; 3 C. B. R. 84.—*CAN.*

**sl.** *Right to take proceedings under State Bankruptcy Act—Effect of Federal Act.*—Prior to the date of the commencement of the Bkpcy. Act, 1924–1928, an order for the sequestration of the estate of P. was made in the Bkpcy. Ct. of this State. Subsequently to that date the official assignee had taken out a notice of motion under Bkpcy. Act, 1898, s. 134, claiming against E. certain property as part of the bankrupt's estate.—*Held*: the official assignee had, under the State Bankruptcy Act, prior to the commencement of the Bankruptcy Act, 1921–1928, acquired the right, & had a duty imposed on him, to institute the proceedings under sect. 134 of the State Act.—*Re PARSONS* (1928), 28 S. R. N. S. W. 575; 45 N. S. W. W. N. 168.—*AUS.*

## PART XXI. SECT. 3, SUB-SECT. 2.

**sm.** *Against holder of lien note on chattels—Description of chattels alleged insufficient.*—*Held*: the trustee had no status to attack the lien note & it was valid as against him. The holder of the note must, on demand by the trustee, identify the chattels within ten days.—*Re GAUDREAU, Ex p. CARRUTHERS* (1922), 68 D. L. R. 783.—*CAN.*

**8028 ii.** — *Action already brought by bankrupt.*—*Held*: it might be continued by the trustee.—*BRENNER v. AMERICAN METAL CO.*, [1920] 19 O. W. N. 239; 55 D. L. R. 702; 1 C. B. R. 375.—*CAN.*

**8034 ii.** — *Unpaid purchase price of shares—Sold by broker.*—Where a trustee in bkpcy. gave shares belonging to bkpt.'s estate to a broker to be sold by him & the broker became bkpt.—*Held*: the trustee was entitled to sue the purchaser for the price of the shares.—*FINLAYSON v. BALFOUR, WHITE & CO., Re THORNTON DAVIDSON & CO.* (1922), 70 D. L. R. 66.—*CAN.*

**sn.** *Action to recover money paid by bankrupt in breach of trust.*—The trustee in bkpcy. has no right of action, at least without authority from the cestui que trust, to recover trust money which was held by bkpt. & paid by him in breach of trust to others.—*SALTER & ARNOLD, LTD. v. DOMINION BANK*, [1922] 2 W. W. R. 280; 68 D. L. R. 757.—*CAN.*

**ki.** *Proceedings to recover land acquired collusively by third party.*—*TRUSTEE, ETC. v. PARUK* (1921), 42 N. L. R. 1.—*S. AF.*

**li.** *Proceedings to set aside writ—Issued by mortgagee to enforce security.*—An assignment under Bkpcy. Act does not prevent the holder of a mtgee. upon a vessel from enforcing his security before the Exch. Ct. in Admty., & a motion by the assignee to set aside the writ of summons & warrant of arrest issued in the ct. by the mtgee. against the ship should be dismissed with costs. The only right of the assignee under Bkpcy. Act is to defend the action & he cannot otherwise interfere therein.—*WHITE & CO. v. THE IONIA* (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—*CAN.*

**so.** *Proceedings to impeach sale of goods under Bulk Sales Act, 1917.*—*Re PACKER*, [1927] 3 D. L. R. 330; 60 O. L. R. 402.—*CAN.*

**sp.** *Proceedings to recover debts—Presidency Towns Insolvency Act.*—Presidency Towns Insolvency Act, s. 7, is not limited in its scope to matters in which the official assignee, by the operation of the insolvency law, claims a higher title than what the insolvent himself would have had, & the official

assignee is entitled to proceed by way of motion under sect. 7 in cases where he has a money claim against strangers to the insolvency, the only limitation placed on the jurisdiction of the Insolvency Ct. being that, when once the official assignee has summoned a witness, under sect. 36 of the Act, & that witness disputes his indebtedness, the official assignee has no option but to proceed by way of suit. Where the official assignee, standing in no higher position by reason of the special provisions of the insolvency law than the bkpt. himself, seeks to recover a debt which is not admitted, it is a matter of discretion for the judge sitting in insolvency whether in any given case he should deal with such a claim in the Insolvency Ct. or refer it to the machinery of the ordinary ct.—*OFFICIAL ASSIGNEE v. NARANIMITA MUDALIAR* (1929), 1 L. R. 52 Mad. 717.—*IND.*

**sq.** *Action under Deaths by Accident Compensation Act, 1908.*—The statutory rights of action, given to a person by Deaths by Accident Compensation Act, 1908, does not in the event of such person's bkpcy. pass to the official assignee under Bkpcy. Act, 1908, s. 61.—*Re LICHTER*, [1929] N. Z. L. R. 364.—*N.Z.*

## PART XXI. SECT. 3, SUB-SECT. 6.

**8099 v.** — *—*—*BURNS v. GRAHAM*, [1923] 4 D. L. R. 1111; 53 O. L. R. 226; 4 C. B. R. 190.—*CAN.*

**8099 vi.** — *—*—*Action commenced without obtaining indemnity from creditors.*—*Held*: if it were necessary under Bkpcy. Act, s. 68 (2), & r. 54, that a special reason for awarding costs against the trustee personally should be assigned, it was the failure to arrange an indemnity before indulging in speculative litigation knowing that he had no assets.—*THORNE v. CANADIAN STEERING WHEEL CO.*, [1923] 4 D. L. R. 1127; 52 O. L. R. 460; 2 C. B. R. 445.—*CAN.*

**8099 vii.** — *—*—*Held*: Bkpcy. Act, s. 68 (2), provides that "subject to the provisions of this Act & to General Rules, the costs of & incidental to any proceeding in ct. . . shall be in the discretion of the ct." The word "ct." has impliedly a wider meaning than that given in the interpretation clause, & the sect. applies to the Ct. of Appeal. In the present case the clause making the trustee personally liable should not be struck out.—*Re KWONG TAI CHONG CO.'S ASSIGNMENT* (1922), 65 D. L. R. 132; [1922] 2 W. W. R. 228, *sub nom. CANADIAN CREDIT MEN'S TRUST ASSOC., LTD. v. JANG BOW KEE & YIN SHEE*, (1922), 31 B. C. R. 40.—*CAN.*

which bkpt.'s wife was resp. a declaration was made that certain furniture which was upon premises occupied by bkpt. & his wife formed part of the property of bkpt. divisible among the creditors, & the ct. ordered the wife to account on oath before a registrar for the furniture & to pay the taxed costs of & incident to the motion. At the end of the declaration & order a provision was inserted, at the request of, & by way of indulgence to, the wife that, with a view to the furniture being bought by or on behalf of the wife from the trustee at a valuation by an independent valuer to be appointed by the parties or in case of difference to be appointed by the judge, & the wife undertaking not to part with or dispose of the furniture, execution should not issue except by leave of the judge. The furniture was valued by a firm of valuers selected by the wife out of three firms suggested by the trustee, & bought by or on behalf of the wife at a price based upon the valuation. Upon the taxation of the trustee's solrs.' bill of costs, the taxing master disallowed as against the wife the fee paid by the trustee to the firm of valuers, upon the ground that the costs relating to the purchase of the furniture by or on behalf of the wife under the valuation did not come within the order, & were not costs of carrying it out. On a motion by the solrs. to review the taxation:—*Held*: the taxation must be reviewed & the fee for the valuation allowed as against the wife, inasmuch as it formed part of the costs of carrying out the order & was therefore within the rule that where costs of suit are given generally by decree at the hearing, the subsequent costs of working out the directions of the decree will be *Ex p. COHEN & COHEN*, [1920] 3 K. B. 625; 90 L. J. K. B. 31; [1920] B. & C. R. 182; *subsequent proceedings*, [1921] 1 K. B. 344.

**8104b.** — *Costs of transcript of shorthand notes of evidence.*—The trustee by motion applied against resp. to impeach certain transactions & gave formal notice by letter that he would read in support of the motion the transcript of the shorthand notes of the evidence given by witnesses at a private sitting. This motion was dismissed with costs. On taxing resp.'s bill of costs the taxing master disallowed part of the transcript as irrelevant to the motion & reduced counsel's fees

accordingly. On motion for a review of the taxation:—*Held*: having regard to the terms of the notice to read the transcript resp.'s solr. was justified in bespeaking & paying for the whole of the transcript, & it was his duty to supply the whole transcript to counsel, & accordingly, resp. was entitled to all the costs of & consequential upon so doing.—*Re MARKS, Ex p. VANN*, [1923] B. & C. R. 92.

**8114.** *Add. Annotation*:—*Refd. Re Wait*, [1926] Ch. 962.

**8115.** *Add. Annotation*:—*Mentd. Re Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.

**8138a.** — — — *After-acquired property.*—An undischarged bkpt. can maintain an action in relation to after-acquired property subject to the right of his trustee to intervene & claim it.—*DYSTER v. RANDALL & SONS*, [1926] Ch. 932; 95 L. J. Ch. 504; 135 L. T. 596; 70 Sol. Jo. 797; [1926] B. & C. R. 113, C. A.

**8167.** *Add. Annotation*:—*Mentd. Manton v. Brocklebank*, [1923] 1 K. B. 406.

**8168a.** *S. P. MATTHEWS v. DICKINSON* (1817), 7 Taunt. 399; 1 Moore, C. P. 104; 129 E. R. 160.

*Annotation*:—*Consd. Whitworth v. Hall* (1831), 2 B. & Ad 695.

**8172a.** — — — *OWEN v. LAVERY* (1900), 16 T. L. R. 375, C. A.

**8195.** *Add. Annotations*:—*Distd. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200. *Consd. Huddersfield Fine Worsteds v. Todd* (1925), 134 L. T. 82. *Mentd. Edwards v. Motor Union Insce.*, [1922] 2 K. B. 24.

**8200.** *Add. Annotations*:—*Consd. Knight v. Ponsonby*, [1925] 1 K. B. 545. *Refd. Maatschap Shell Transport & Trading Co.*, [1923] 2 K. B. 166.

**8276a.** — *Action for specific performance of agreement.—Time for disclaiming agreement unexpired.*—*PURTOCK v. DAINTRY* (1891), 38 Sol. Jo. 273.

**8281a.** — *For action for judgment in default of defence.—Draft minutes to be shown to official receiver.*—Where after action brought receiving order in bkpy. was made against deft., on a motion for judgment on minutes in default of defence the ct. made the order in the terms of the minutes, but directed that

#### PART XXI. SECT. 4.

**8105 iv.** — — — *—If a creditor desires to proceed against the trustee in another province he must apply to the ct. having original jurisdiction for an order under Bkpy. Act, s. 71 (2), & the judge possessing discretionary powers would be entitled to consider whether in all the circumstances it was advisable to ask for the assistance of a bkpy. ct. in another province. When the ct. of any one province are seized with the administration of an insolvent estate, they should not permit any other ct. to interfere except with its leave or concurrence.*—*Re BRYANT, ISARD & Co.*, [1924] 1 D. L. R. 217; 4 C. B. R. 317.—CAN.

*sr. Action to recover possession.—Of partly built ship.—For purpose of completion.*—A judge of the Bkpy. Ct. may grant an application for recovery from the trustee in bkpy. of possession of ships partly built & materials in connection therewith, & the necessary

portion of bkpt.'s building yards claimed by appct. under a lien to secure the completion & delivery of ships in accordance with bkpt.'s contract & which prior to the order declaring the bkpy. had been taken possession of by appct. & subsequently by the trustee. Such appct., although not a "creditor" or "secured creditor" under Bkpy. Act, comes within the words "any other person aggrieved by any act or decision of the trustee" in sect. 39.—*Re v. HODGINS*, [1921] 2 W. W. R. 388; 1 C. B. R. 530.—CAN.

*st. Action for goods sold & delivered.*—*Held*: may be brought in the name of the original creditor, notwithstanding that he has made an assignment for the general benefit of his creditors.—*KRIENKE v. SCHAFFER*, [1919] 1 W. W. R. 990.—CAN.

#### PART XXI. SECT. 5, SUB-SECT. 1.—C.

*h i.* — — — *—Held*: bkpt. had

no right of action, such right being vested solely in the official assignee.—*TIMMINGS v. TREADGOLD*, [1923] N. Z. L. R. 73.—N.Z.

#### PART XXI. SECT. 6, SUB-SECT. 1.

*a i.* — — — *For debt due from one member of bankrupt firm.*—*Held*: after an authorised assignment no such action could be brought against bkpt. without leave.—*Re TAYLOR v. LEVEYS*, [1923] 3 D. L. R. 1134; 52 O. L. 201; 2 O. B. R. 390.—CAN.

*ii.* — — — *Bankruptcy Act Amendment Act, 1923 (c. 31), s. 10.*—*Re CANADIAN HART PRODUCTS*, [1927] 2 L. L. R. 359; 60 O. L. R. 219.—CAN.

*ii.* — — — *By Canadian creditor in foreign court.*—*Held*: the Superior Ct. of Quebec sitting in bkpy. had power to stay proceedings instituted in the United States by a Canadian

*FLOORING CO. v. Mc  
v. SCOTT*, [1927] 2  
42 K. B. 277.—CAN.

before it was drawn up the draft minutes should be shown to the official receiver, who was to be at liberty to apply to the ct. with regard thereto if he should think fit.—*HATTON v. DENISON* (1926), 70 Sol. Jo. 565.

**8290a.** — **Defendant making substantial counterclaim.**—An action against a deft. who makes a substantial counterclaim, & against whom a receiving order has been made after writ issued, will be stayed pending the result of an application to adjudicate him bkpt.—*FRANCO v. DUTTO*, [1923] W. N. 40.

**8304.** *Annotations* :—For “*Re* *Somes, Stewart v.*”

*Somes* (1895), 73 L. J. 359” read “*Re* *Somes, Stewart v. Somes* (1895), 73 L. T. 359.”

**8306.** *Add. Citations* :—*previous proceedings, sub nom. Re* *SOMES, STEWART v. SOMES* (1895), 73 L. T. 359, C. A.

**8331.** *Annotation* :—For “*Mentd. Re* *Bagley*, [1911] 1 K. B. 317, C. A.” read “*N.F. Re* *Bagley*, [1911] 1 K. B. 317.”

**8332.** For “*Held* : it was necessary,” etc., read “*Held* : it was not necessary,” etc.

*Add. Annotation* :—*Mentd. Re* *A Bankruptcy Notice*, [1924] 2 Ch. 76.

## Part XXII.—The Debtors Acts and Bankruptcy Offences Generally.

**8346.** *Add. Annotation* :—*Mentd. Rutter v. Rutter* (1921), 124 L. T. 796.

**8378.** *Add. Annotation* :—*Refd. Green v. Weatherill*, [1929] 2 Ch. 213.

**8408.** *Add. Annotation* :—*Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

**8410.** *Add. Annotation* :—*Mentd. Jordy v. Vanderpump* (1920), 64 Sol. Jo. 324.

**8435.** *Add. Annotation* :—*Consd. Re* *Whaley, Ex p. Official Receiver*, [1921] 2 K. B. 623.

**8435a.** *Motion to commit by official receiver acting as trustee—Necessity for affidavit.*—Bkpts. were musical artists, & on Sept. 16, 1920, the registrar made orders for each of them to pay £1 a week out of their respective salaries under 1914 Act, s. 51 (2). On Jan. 13, 1921, upon the application of the official receiver as trustee, under sect. 53 (1) of the Act, no trustee having been appointed, & it appearing to the ct. that bkpts., as partners, were then in receipt of at least £200 a week under a contract with the A. Co., the above orders were varied, & orders were made that during the continuance of the engagement of bkpts. at the A. each should pay weekly £25 out of his salary to the official receiver during the bkpey., the first payment to be made on Jan. 15, 1921, with liberty to bkpts. to apply in the event of the employment with the A. Co. being determined.

Appeals from these orders were dismissed by the Ct. of Appeal. Bkpts. having made default in payment of instalments under the orders, the official receiver as trustee applied for a committal of bkpts. for contempt of ct. under sect. 22 (4) of the Act. It was objected that each application should be supported by affidavit & not by a report of the official receiver :—*Held* : the official receiver's report was sufficient evidence in support of the application in each case, & an order for committal must be made.—*Re* *WHALEY, Ex p. OFFICIAL RECEIVER*, [1921] 2 K. B. 623; 125 L. T. 511; *sub nom. Re* *WHALEY, Ex p. OFFICIAL RECEIVER, Re* *SCOTT, Ex p. OFFICIAL RECEIVER*, 90 L. J. K. B. 892; 37 T. L. R. 645; [1921] B. & C. R. 1.

**8447.** *Add. Annotation* :—*Refd. Smythe v. Wiles*, [1921] 2 K. B. 66.

**8448a.** *Summonses against co-respondent—For damages & for costs—Priority.*—Where damages & costs are awarded against a co-resp. & petitioner takes out two judgment summonses against him, one in respect of the costs & the other in respect of the damages, an order will go in respect of the payment of costs first.—*Re* *WINTER, Ex p. WILLIAMS* (1927), 44 T. L. R. 41; 71 Sol. Jo. 1002.

**8449.** *Add. Annotation* :—*Consd. Re* *A Debtor*, [1929] 2 Ch. 146.

*MERCHANTS BANK OF CANADA v. ANGERS* (1921), 67 D. L. R. 604; 62 S. C. R. 354.—CAN.

**q1.** ——— *To set aside preferential transactions—Rights of creditors not joining in action.*—*Held* : creditors attacking transactions, & taking all the risk, cannot be compelled, in the event of success, to share the fruits of their success with those creditors who declined to share the risk.—*Re* *LONGMORE* (1922), 52 O. L. R. 570; 3 C. B. R. 200.—CAN.

**r1.** ——— *To proceed with appeal—To Privy Council.*—Where one creditor applied for & obtained an order under Bkpey. Act, s. 35, allowing him to proceed, in the name of the trustee, but at his own expense & for his own benefit :—*Held* : an appeal to the Privy Council did not lie.—*Re* *ANDREW MOTHERWELL OF CANADA, LTD.* (1924), 55 O. L. R. 294; 5 C. B. R. 107.—CAN.

### PART XXI. SECT. 7, SUB-SECT. 1.—A.

**8237 vii.** ——— *A trustee to whom an assignment has been made under Bkpey. Act may, with the permission of the inspectors, under sect. 20 (1), proceed with an action begun by debtor before the assignment, without any leave to proceed, so far as bkpey. proceedings are concerned. But the trustee cannot proceed with the action in the name of the insolvent, nor in his own name, but only in the official name of the trustee.*—*Re* *BRENNER (N.) & Co., LTD.*, [1921] 45 O. L. R. 71; 58 D. L. R. 640; 19 O. W. N. 445.—CAN.

### PART XXI. SECT. 7, SUB-SECT. 1.—B.

**m1.** ——— *Where an assignee in insolvency elects, under Insolvency Act, 1915, s. 176, to abandon a common law action commenced by the insolvent prior to his insolvency, the action may be stayed until further order by the*

*ct., but should not be dismissed, as a dismissal of the action might be pleaded in bar as res judicata in a future action by the insolvent, should such an action be commenced by him after he has obtained his certificate of discharge.*—*MILLANE v. PRESIDENT, ETC., OF SHARE OF HEIDELBERG*, [1928] V. L. R. 52; [1928] Argus L. R. 5.—AUS.

### PART XXI. SECT. 8.

**n1.** ——— *Order giving creditor right to bring proceedings—Appeal from.*—A judge sitting in bkpey. having granted a petition by resp., under Bkpey. Act, s. 35, to be authorized to take certain proceedings in the name of the trustee, but at resp.'s own expense & risk, the Ct. of K. B. held it was a mere preparatory judgment & not subject to the control of that ct. :—*Held* : special leave to appeal to the Supreme Ct. of Canada should not be granted.—

- 8459. Add. Annotation:—Mentd. Campbell v. Campbell, [1922] P. 187.**
- 8463. Add. Annotations:—Refd. Edwards v. Porter (1924), 41 T. L. R. 57; Green v. Weatherill, [1929] 2 Ch. 213. Mentd. Sutherland v. Hannevig, [1921] 1 K. B. 336.**
- 8471. Add. Annotation:—Refd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8475. Add. Annotation:—Refd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8479. Add. Annotation:—Refd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8480. Add. Annotation:—Refd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8484. Add. Annotation:—Consd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8485. Add. Annotation:—Consd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8486. Add. Annotation:—Refd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8496a. — Evidence of means—Sufficiency of evidence.]—**Where a county ct. judge has made an order on a judgment summons for payment of the judgment debt by instalments, & a subsequent application is made for a committal order for non-payment of the instalments, the effective "order or judgment" is the instalment order & not the original judgment, & on the application for a committal order the judge cannot make the order unless he has affirmative evidence of means since the date of the instalment order, & is not entitled to rely on the evidence previously given on the hearing of the application for the instalment order, nor on his disbelief of debtor's evidence denying means, unless there is reasonably direct evidence of means since the date of the instalment order.—**NESOM v. METCALFE, [1921]**
- 1 K. B. 400; 90 L. J. K. B. 273; 124 L. T. 606; 37 T. L. R. 111, D. C.**
- 8499a. — Sufficiency of evidence of debtor's means.]—**Prohibition refused.—**EDWARD v. WYVILL (1885), 2 T. L. R. 210, C. A.**
- 8501. Add. Annotation:—Refd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8506. Add. Annotations:—Mentd. Freeborn v. Leeming (1925), 89 J. P. 179; Morriss v. Winter (1929), 45 T. L. R. 643.**
- 8511. Add. Annotation:—Mentd. Gilbert v. Gilbert & Boucher, [1928] P. 1.**
- 8513. Add. Annotation:—Consd. Nesom v. Metcalfe, [1921] 1 K. B. 400.**
- 8521. Add. Annotation:—Consd. R. v. Central Criminal Court JJ., Ex p. L. C. C., [1925] 2 K. B. 43.**
- 8534a. — Intent to defraud—Burden of proof.]—**On the hearing of a charge against bkpt. under 1919 Act, s. 151 (4) (5), proof that deft. has been in possession of property to the value there specified does not throw upon him the burden of showing that he has not concealed or fraudulently removed any part of it after or within six months before the presentation of the petition; but proof that during that period deft. has concealed or removed a part of his property to that value throws upon him the burden of showing that in doing so he had no intent to "defraud".—**R. v. BRIXTON PRISON (GOVERNOR), Ex p. SIUKE, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.**
- 8562. Add. Annotation:—Mentd. R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ity. (1920), 89 L. J. K. B. 1089.**

**PART XXII. SECT. 2.**

**k i.** — — — — —.] —TOOLE v. HENNE-  
BERRY (P. F. I.), [1928] 3 D. L. R. 38.—  
**CAN.**

k ii. —.] — Fraudulent Debtors  
Arrest Act, R. S. O., 1914 (c. 83), enacts  
that before a writ of *ca. sa.* will be  
issued, it must be shown that debtor  
has been guilty of an intent to defraud  
his creditors. Where debtor had  
assigned all his property for the benefit  
of his creditors & then left Ontario &  
had subsequently returned with the  
object of settling plff.'s claim & had  
resided unmolested in Ontario for  
some time :—*Held*: no fraudulent  
intent shown.—CANADA LUMBER Co.  
v. GAFFNEY, [1923] 4 D. L. R. 594.—  
CAN.

**k iii.** — *Under Absconding Debtors' Act, R. S. O., 1877 (c. 68)—Debt must be due when writ issued.*—**KYLE v. BARNES** (1883), 10 P. R. 20.—**CAN.**

**PART XXII. SECT. 3, SUB-SECT. 1.**

8534 iv. — *Prosecution—In what court.*—Upon a motion to quash the orders of a police magistrate on the ground that only a judge in bixpy had power to act in such a case.—*Held:* since the offence was an indictable offence it ought to be prosecuted & carried on under the Criminal Code like any other offence of a criminal nature, & motion dismissed.—*L. r. Roy, [1923] 2 D. L. R. 1182: 39 Can. Crim. Cas. 347: 4 C. B. L. 90.—CAN.*

t i. ————.]—To justify a committal of a judgment debtor under Arrest & Imprisonment for Debt Act for concealing or making away with his

property "in order to defeat, delay, or defraud his creditors or any of them," a fraudulent intent must be shown. Neither due & reasonable appropriation of property or income to the maintenance & health of himself & his family, according to circumstances, nor, of themselves, improvidence or "great carelessness" in expenditure, import a fraudulent intent. Continuous wilful & extravagant squandering of debtor's income in self-indulgence might be carried to such a degree as would manifest a fraudulent intention to contravene the statute.—*CUTLER v. CHIFFEY*, [1921] 1 W. W. R. 686.—**CAN.**

t ii. — — — — —. Affidavits used on an application for a writ of attachment under Absconding Debtors Act, R. S. S., 1920 (c. 58), s. 1.

that debts were "badly involved" & "financially embarrassed," acting out a newspaper advertisement by debts of certain chattels for sale & giving deponents' opinions from their "experience" in dealing with debts, that they were attempting to sell with intent to defraud creditors.—*Held*: insufficient to justify granting the application.—CANADIAN BANK OF COMMERCE v. KENZIE, [1923] 2 W. W. R 993.—**CAN.**

¶ iii. ———. ———.]—*Held*: the affidavit of pltf. stating merely that he had good reason to believe & did verily believe that deft. "has assigned, transferred & disposed of his personal property & effects by a bill of sale with intent & design to defraud his creditors" was insufficient. The affidavit must show "such facts & circumstances as form the grounds of

such beliefs," as required by the K. B. Div. Rules.—*Dow v. DAYMENT*, [1923] 1 D. L. R. 772; 32 Man. L. R. 402; [1922] 3 W. W. R. 1119.—**CAN.**

t iv. ———.]—On a prosecution under the Criminal Code, s. 417, the intent & not the effect is to be looked at, & where the effect of a conveyance is merely to prefer one creditor over another, the intent to prefer not being an intent to defraud, there is no offence. — R. v. CREW, [1926] 4 D. L. R. 841; 46 Can. Crim. Cas. 123; 59 O. L. R.

**C. i. — Giving undue preference.]—**A, convicted of a contravention of Insolvency Act, 32 of 1916, s. 139 (3), had shortly before he surrendered his estate made payments to two creditors, & there was no proof to rebut the inference that he intended to prefer these creditors:—*Held*: the conviction should be sustained.—**R. v. ISMAIL** (1920), App. D. 316.—**S. A.**

**PART XXII. SECT. 3, SUB-SECT. 2.**

**8544 ii**—*Insolvency Act, 32 of 1916, s. 136 (3).*—The offence created by this sect. consists in the disposal by insolvent otherwise than in the ordinary course of business of property which he has obtained on credit, & the jury should be directed to confine their attention to the mode of disposal of the property purchased on credit.—*l. v. ABRAHAMSON (1920), App. D. 283.*—**S. AF.**

**PART XXII. SECT. 3, SUB-SECT. 3**

8555 ii. ———.]—PARAK v. R. (1919).  
40 N. L. R. 328.—S. AF.



- 8565a. ————.] — R. v. DORRINGTON (1927), 20 Cr. App. Rep. 1, C. C. A.
8571. *Add. Annotation*:—*Mentd.* R. v. Manchester Local Profiteering Committee, *Ex p.* L. & Y. Ry. (1920), 89 L. J. K. B. 1089.
8576. *Add. Annotation*:—*Mentd.* R. v. Manchester Local Profiteering Committee, *Ex p.* L. & Y. Ry. (1920), 89 L. J. K. B. 1089.
8583. *Add. Annotation*:—*Mentd.* R. v. Pickering (1921), 15 Cr. App. Rep. 175.
- 8587a. ———— *Obligation to disclose bankruptcy absolute*.]—The obligation imposed by 1914 Act, s. 155 (a), on an undischarged bkpt. to disclose

his position to the person from whom he seeks credit is absolute. It is no defence that he took steps to have such information conveyed or that he had reasonable grounds to believe that it has been conveyed, if in fact it had not.—R. v. LEINSTER (DUKE), [1924] 1 K. B. 311; 93 L. J. K. B. 144; 130 L. T. 318; 87 J. P. 191; 40 T. L. R. 33; 68 Sol. Jo. 211; 27 Cox, C. O. 574; 17 Cr. App. Rep. 176; [1924] B. & C. R. 78, C. C. A.

- 8633a. *Bankrupt guilty of gambling—Severity of sentence*.]—R. v. BREWIN (1926), 19 Cr. App. Rep. 154, C. C. A.

## Part XXIII.—Compositions and Schemes and Deeds of Arrangement.

8645. *Add. Annotations*:—*Appld.* *Re* Ellis, [1925] Ch. 564. *Refd.* Huddersfield Fine Worsteds v. Todd (1925), 42 T. L. R. 52. *Mentd.* *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200; *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.
- 8645a. ———— *To entertain claim to enforce right adverse to deed—Creditor not entitled to benefit of deed*.]—In 1922 applt. entered into the employment of debtor as manageress of his business, & as a condition of such employment she lent him a sum of £500 for the repayment of which he gave her a charge on his share & interest in his business. In 1924 debtor executed a deed of arrangement for the benefit of his creditors generally. The deed was expressed to be made between debtor of the first, the trustee of the second part, three named creditors of the third part, & "the several persons, companies, & partnership firms, being creditors of debtor, whose names & seals are set out & affixed to the schedule hereto, or who shall otherwise in writing assent to these presents, herein-after called 'the creditors' " of the fourth part. Applt., who refused to consent to the deed, applied under the above sect. for a declaration that she was entitled as against the trustee of the deed to a charge on all the share & interest, with the exception of chattels, of debtor in his business, & for an order that the trustee should hand over & execute such documents as might be necessary for the purpose of transferring the share & interest to applt. The registrar in bkpcy. dismissed the application on the ground that

he had no jurisdiction under the sect. to entertain it. On appeal:—*Held*: (1) the object of the sect. was to provide a trustee or *cestui que trust* under a deed of arrangement with a summary means of obtaining a determination of questions arising in the administration of the trusts of the deed similar to that provided by originating summons in the Ch. Div. under R. S. C. Ord. 55, r. 3; (2) applt. was not a creditor entitled to the benefit of the deed; creditors so entitled were those defined as such by the deed, & applt., not having assented to the deed, did not come within that category; (3) applt.'s claim was not for the enforcement of the trusts or the determination of any questions arising under the deed within the above sect., but was a claim to enforce a right adverse & paramount to the deed.—*Re* ELLIS, [1925] Ch. 564; 41 T. L. R. 474; *sub nom.* *Re* ELLIS, *Ex p.* MYTTENAEDE, 94 L. J. Ch. 239; [1925] B. & C. R. 81; *sub nom.* *Re* A DEED OF ARRANGEMENT (No. 9 of 1924), 133 L. T. 306, C. A.

- 8645b. *Under 1914 (Deeds) Act, s. 11—To extend time for giving security by trustee*.]—The registrar has no jurisdiction to extend the period of seven days, allowed by above sect. within which the trustee under a deed of arrangement must give security in the prescribed manner.—*Re* EARLY, SMITH & PAVEY, *Ex p.* TRUSTEE (1928), 98 L. J. Ch. 34; [1928] B. & C. R. 113.
8665. *Add. Annotation*:—*Refd.* *Everett v. Griffiths*, [1924] 1 K. B. 941.

### PART XXII. SECT. 3, SUB-SECT. 6.

*sv. Procedure for commencing & carrying on prosecution*.]—Where bkpt. is charged with indictable offences under Bkpcy. Act, s. 89, & orders to prosecute are made under sect. 93, the prosecution must be commenced & carried on under Criminal Code, & a justice of the peace or police magistrate has jurisdiction to receive the information, hold the preliminary investigation, & commit for trial. Upon a committal if the judge who made the order presides at the trial, he acts not as a judge in bkpcy., but as a judge of the Supreme Ct.—*R. (EMERY) v. Roy*, [1923] 2 W. W. R. 400.—CAN.

### PART XXIII. SECT. 3, SUB-SECT. 1.

*sv. Meeting duly summoned not held*

—*Meeting held on following day—No proper adjournment of first meeting*.]—*Held*: the meeting was irregular & all business done void, because the first proposed meeting was not adjourned according to the rules.—*Re* WHOLESALE GROCERS, LTD., [1923] 2 D. L. R. 491; 3 C. B. R. 650.—CAN.

### PART XXIII. SECT. 3, SUB-SECT. 2.

*m. i. — Wife of bankrupt*.]—The wife of bkpt. is not barred by her status as wife from voting on a resolution to wind up her husband's estate under a deed of arrangement, although the effect of the resolution is to prevent the election of a trustee.—*MAONAUGHT v. STEVWRIGHT*, [1927] S. C. 285.—SCOT.

8677 ii. ———— *Proxy for*

*company*.]—A proxy need not be under the co.'s seal, unless expressly required by the Act of incorporation, or by the articles of assocn.; if it is so required the burden of establishing its necessity is on the person alleging it.

A proxy which purports to be signed by the co., under which is subscribed the name of the person who affixes the signature of the co. & who so describes himself that the chairman can conclude he is an officer or employee of the co., is *prima facie* evidence of authority, & the chairman should receive it & permit the person named therein to vote.—*Re* MCCOBBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

8682 i. ———— *In respect of what debts—Unliquidated damages*.]—Where there



**8703. Add. Annotation :—Mentd.** Sevenoaks U. D. C. v. Twynam, [1929] 2 K. B. 440.

**8706. Add. Annotation :—Mentd.** Sevenoaks U. D. C. v. Twynam, [1929] 2 K. B. 440.

**8716. Add. Annotation :—Mentd.** Sevenoaks U. D. C. v. Twynam, [1929] 2 K. B. 440.

**8751. Add. Annotation :—Mentd.** Sevenoaks J. D. C. v. Twynam, [1929] 2 K. B. 440.

**8758. Add. Annotation :—Refd.** Sevenoaks U. D. C. v. Twynam, [1929] 2 K. B. 440.

**8768. Add. Annotations :—Refd.** *Re Ellis*, [1925] Ch. 564; *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52. **Mentd.** *Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200; *Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

**8771a. Unstamped deed—Admissibility in evidence—To prove non-registration.]—***Re SHAW, Ex p. OFFICIAL RECEIVER*, No. 434a, *ante*.

**8778a. ———.]—**In 1904 debtor who was heavily indebted, & against whom bkpcy. proceedings were pending, signed an instrument under which a trustee was to receive the whole of debtor's income &, after making certain deductions, to distribute the balance among the creditors, & in consideration of the arrangement the creditors agreed that all proceedings in bkpcy. or otherwise were to be stayed & to accept payment of their debts by instalments & to release debtor from all claims or demands in respect of their debts. The instrument provided that no document executed by debtor should be registered under the above Act. A number of the then creditors including appct. assented to the instrument, which was never registered under the Act. The arrangement was carried out until the death of debtor, which occurred in Nov. 1918, appct. receiving *pro rata* amounts on his debt between Aug. 1905 & July 1917. The debt carried interest at 4 per cent. & the payments under the arrangement to appct. were not sufficient to cover the interest so that an amount exceeding the original debt was still owing to appct. In Feb. 1919, an administration order under 1914 Act, s. 130, was made upon a creditor's petition for the administration of deceased

debtor's estate as being a person who had died insolvent, & the estate was being administered by the official receiver. At the time of debtor's death there was in the hands of the trustee under the instrument a sum of £465 8s. 3d. which the official receiver claimed on the ground that it formed part of the general estate of debtor, & the trustee paid the amount to him upon the terms that the official receiver was to be in the same position as he would have been if the money had remained in the trustee's hands. On a motion by appct. for a declaration that the £465 8s. 3d. was held by the trustee on behalf of the assenting creditors, including appct., was divisible amongst them, & that appct. was entitled to prove in the administration of the estate for the balance due to him from debtor after giving credit for all sums received or receivable under the arrangement :—**Held** : (1) the instrument was a deed of arrangement within 1887 Act, s. 4 (2), upon the ground that it was an assignment of property by debtor for the benefit of his creditors generally & also upon the ground that it was an agreement for a composition; (2) not having been registered it was void under sect. 5 of the Act; (3) as the instrument was void it created no trust for the benefit of the creditors, & the trustee under the instrument held the £465 8s. 3d. to the use of the official receiver as the representative of debtor, & was bound to repay it to him; (4) as the only direction to apply the money received by the trustee was contained in the void instrument & all parties knew & acted upon the assumption that it was invalid, deceased debtor would not have been, nor was the official receiver as his representative, estopped from setting up its invalidity & claiming from the trustee any money still in his hands; (5) equally there was no estoppel which prevented appct. from setting up the invalidity of the instrument & proving in the administration for the balance due to him from debtor; (6) as the instrument was void the release of the debts it contained was of no effect; (7) as

is a claim for unliquidated damages, they must be assessed before the claimant can have any right to vote.—*Re ANDREW MOTHERWELL ESTATE*, [1923] 4 D. L. R. 986; *affd.* 25 O. W. N. 359.—CAN.

**8682 ii. ———.]—Held** : valuation by the ct. a condition precedent.—*Re ARTHUR FUEL Co. (Man.)*, [1927] 1 D. L. R. 646; [1927] 1 W. W. R. 158.—CAN.

**8684 iv. ———.]—**Since Bkpcy. Act, 1921 (c. 17), s. 12, Bkpcy. Act, 1919 (c. 36), s. 13 (3) must be construed as meaning that in the calculation of proved debts, the two-thirds in value may be composed partly of debts less than \$25, but as regards voting, creditors whose claims are less than \$25 are to be excluded. Under Bkpcy. Act, 1919, s. 42, no one whose claim is for less than \$25 may vote.—*Re BLUEBIRD FASHION SHOPS, LTD.*, [1921] 59 D. L. R. 549.—CAN.

**sa. Appeal from decision of chairman—Rights of creditor who has not filed proof at time of meeting.]—**A creditor is entitled to exercise his rights provided he has duly proven his claim in accordance with Bkpcy. Act & Rules prior to the hearing of the appeal. The ct. may adjourn the hearing of the appeal to permit of such proof, provided that the creditor

has not delayed unreasonably in making it.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

**sb. ———.]—**On technical grounds—Necessity to raise objection before decision given—Discretion of court.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

**sc. ———.]—**Application by creditor to be added or substituted as appellant.—Not allowed, since the latter creditor had a right of appeal, & the rights of the creditor applying to be added would not be affected by the non-joinder or non-substitution.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

**sd. ———.]—**That creditor entitled to vote—Objection at meeting.—**Held** : not a condition precedent.—*Re ARTHUR FUEL Co. (Man.)*, [1927] 1 D. L. R. 646; [1927] 1 W. W. R. 158.—CAN.

**PART XXIII. SECT. 5, SUB-SECT. 1.**

**sk. Effect of.]—**A composition or scheme of arrangement, though approved by the ct. & by statute binding on all the creditors, is at bottom only a contract between the parties. Creditors' rights are only suspended

during the composition period. There is no obligation, legal or moral, which can debar the composition creditors, if the composition has been annulled, from claiming to rank on the assets of the estate *pari passu* with the creditors whose claims have arisen since the composition.—*Re LIPSON*, [1924] 3 D. L. R. 761; 55 O. L. R. 215; 24 O. W. N. 382.—CAN.

**sm. ———.]—Held** : a judicial hypothesis upon real assets of debtor, resulting from registration, was postponed to an authorised assignment subsequently made by debtor for the benefit of his creditors.—*ROYAL BANK OF CANADA v. LARUE*, [1928] A. C. 187; 97 L. J. P. C. 49; 138 L. T. 562; 44 T. L. R. 267.—CAN.

**sp. Authorised assignment by partner on behalf of firm—No authority by other partner.]—Held** : invalid.—*Re SQUIRES BROTHERS*, [1922] 3 W. W. R. 30; 68 D. L. R. 571.—CAN.

**PART XXIII. SECT. 5, SUB-SECT. 2.—A.**

**st. Under Bankruptcy Act—Deed of assignment.]—**The title of an assignee is not complete as against third persons until registration.—*TOWERS v. SOLOMON*, [1922] 1 W. W. R. 1077; 2 C. B. L. 579.—CAN.

under the instrument there was only a provision for payment to the creditors of debtor's income so long as he lived, no promise to pay the balance of the debts could be implied from the payments which had been made so as to take the debts out of the operation of the statutes of limitation, & appct.'s right to prove in the administration for the balance due to him was therefore barred.—*Re LEE, Ex p. GRUNWALDT*, [1920] 2 K. B. 200; 89 L. J. K. B. 364; 123 L. T. 31; [1919] B. & C. R. 287.

*Annotations*.—As to (3), (4), (5) & (6) *Consd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76. *Refd. Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.

8779. *Add. Annotation*.—*Mentd. Republica de Guatemala v. Nuncz*, [1927] 1 K. B. 669.

8781. *Add. Annotation*.—*Mentd. Lipton v. Bell*, [1924] 1 K. B. 701.

8782a. — *Assignment of property to trustees for benefit of creditors—Assignment not to be registered.*—*Re A BANKRUPTCY NOTICE*, No. 797a, *ante*.

8782b. — *Authority to realise trader's estate & to apply proceeds in payment of creditors.*—A letter signed by debtor in the following form: "I hereby authorise you to realise my estate including stock-in-trade, book debts, furniture, & all other assets & to apply the proceeds first in payment of the costs, charges, & preferential claims, etc., & secondly to pay the balance to my creditors *pro rata*":—*Held*: (1) not an "assignment of property" within sect. 1 (2) (a) of the above Act; (2) not a deed of arrangement within sub-sect. 1.—*LIPTON (B.), LTD. v. BELL*, [1924] 1 K. B. 701; 40 T. L. R. 163; *sub nom. LIPTON (B.), LTD. v. BELL, HAYES v. BELL*, 93 L. J. K. B. 503; 130 L. T. 749; 68 Sol. Jo. 521; [1924] B. & C. R. 82, C. A.

8782c. — *Document discharging debtor—Constituting assignment for benefit of creditors generally.*—Plt.'s claim was for £148, the amount of two bills of exchange drawn by plt., accepted by deft. & dishonoured on presentation. Deft. pleaded in his defence that the cause of action was merged in a deed of arrangement executed by him in favour of creditors. By that document the consenting creditors of deft. accepted the following terms for the settlement of all debts owing by deft. to them: "(1) all the goods which have been removed from M.'s office & given to M. & Co., in trust on behalf of creditors, should be handed over to the creditors . . . (2) M. undertakes to pay to the above trustee for the creditors £80 payable . . . (3) M. also undertakes to pay on his own account (certain creditors named therein) who shall be excluded from the list of the general

creditors. I agree to these terms":—*Held*: the agreement was for the benefit of three or more creditors, made by a debtor who was at the date of the execution of the deed insolvent, & was a deed of arrangement within sect. 1 of the above Act, & was void owing to non-registration.—*LANDSBERG v. MENDEL*, [1924] W. N. 46.

8782d. — *Deed of arrangement made by insolvent debtor.*—A debtor, who was insolvent, under a scheme for the composition of his debts, which amounted to about £150,000, entered into a deed of arrangement with his creditors under which he agreed to pay his trade creditors, including pltfs., a composition of their claim, together with certain profits out of his business up to Apr. 30, 1926, & he covenanted to carry on that business up to that date, the creditors covenanting to release him from the full amount of his liability. Some of his creditors, whose claims amounted to £150 were not parties to the scheme or deed, & acting under legal advice, debtor did not register the deed. After paying his trade creditors, including pltfs., a small portion of the composition, debtor sold his business & entered into another scheme of arrangement with his creditors, to which pltfs. refused to be parties, & they sued for the original debt owing to them, less the amount which they had received under the composition:—*Held*: (1) the deed came within Deeds of Arrangement Act, 1914 (c. 47), s. 1 (1) (b), & not being registered, was void; (2) pltfs., who had assented to the deed, were not estopped by such assent from denying the validity of the deed; (3) assuming that they were so estopped, debtor, by selling his business before Apr. 30, 1926, had not fulfilled the conditions of the deed under which he would be released from his original liability, & therefore pltfs. were relegated to their original rights & were entitled to succeed on their claim. The authorities on the doctrine of estoppel as applicable to deeds of arrangement considered.—*HUDDERSFIELD FINE WORSTEDS, LTD. v. TODD* (1925), 134 L. T. 82; 42 T. L. R. 52.

8787. *Add. Annotations*.—*Refd. Re Ellis*, [1925] Ch. 564; *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52. *Mentd. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200; *Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

8788. *Add. Annotations*.—*Refd. Huddersfield Fine Worsteds v. Todd* (1925), 134 L. T. 82. *Mentd. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200.

8789. *Add. Annotation*.—*Refd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

PART XXIII. SECT. 5, SUB-SECT. 2.—B.

88. *Necessity for.*—An assignment under Bkpy. Act must be accepted for registration though not accompanied by the affidavit provided for by Homesteads Act, 1920, s. 7, & by Assignment Act, s. 7a.—*Re LAND TITLES ACT, Re CITY GARAGE & MACHINE CO., LTD.*, [1921] 1 W. W. R. 371; 59 D. L. R. 416; 1 C. B. R. 412.—CAN.

PART XXIII. SECT. 6, SUB-SECT. 1.—A.

1. — *Non-assenting creditors not opposing.*—*Re HOWE*, [1921] 20

O. W. N. 244; 59 D. L. R. 457; C. B. R. 482.—CAN.

8810 i. — *Reasonable security provided.*—In a composition scheme, if one of the creditors obtains an advantage over the others the ct. will scrutinise the scheme very closely. Where under a scheme all the creditors would receive more than 50 per cent. & it was reasonable & provided for immediate payment of all but one of the creditors, but the creditor who financed the scheme would be entitled to be paid in full, the ct. ratified the composition as the most advantageous that could be proposed.—*Re GARDNER, Ex p. CROFT & SONS, LTD.*, [1921] 19

O. W. N. 25; 59 D. L. R. 555; 1 C. B. R. 424.—CAN.

8811 i. *Whether bound to refuse to approve—Fraudulent conduct.*—The ct. will approve of a compromise between debtor & his creditors which is in the best interests of the creditors, even where debtor has obtained credit by false & fraudulent representations, where debtor by his discharge is not relieved from liability for the full claim of a creditor from whom he obtained credit by false & fraudulent representations, & he is still liable to prosecution.—*Re CHIRLENTSKY*, [1922] 3 W. W. R. 114; 63 D. L. R. 492.—CAN.

**8872. Add. Annotation:—***Refd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

**8882a. —**—*]*—*FLOWER v. LYME REGIS CORPN.*, No. 1775a, ante.

**8923. Add. Annotation:—***Refd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

**8929a. — Debtor expecting execution—Deed valid.**—*BOWEN v. BRANIDGE* (1833), 6 C. & P. 140.

**8929b. — Execution paid out by debtor—Money not recoverable by trustee.**—*BOYLE v. BLACKSTOCK* (1863), 8 L. T. 641.

**8933a. — & sale of effects thereunder by trustees—Property protected—Although purchaser allowing debtor to retain possession.**—*LEONARD v. BAKER* (1813), 1 M. & S. 251; 105 E. R. 94.

*Annotation:—**Refd. Latimer v. Batson* (1825), 4 B. & C. 652.

**8933b. — Although balance unsold remaining in debtor's possession.**—*WOODERMAN v. BALDOCK* (1819), 8 Taunt. 676; 129 E. R. 547; *sub nom. WOODHAM v. BALDOCK*, 3 Moore, C. P. 11.

*Annotations:—**Refd. Aldred v. Constable* (1841), 3 L. T. O. S. 299; *Hickman v. Cox* (1858), 30 L. T. O. S. 279; *Barker v. Furlong*, [1891] 2 Ch. 172.

#### PART XXIII. SECT. 6, SUB-SECT. 1.—B.

**8825 ii. —**—*]*—Where the judge refused to sanction an arrangement on the ground that there was evidence of reckless, not to say dishonest, trading on debtor's part for some years previously, & he adjudged debtor bkpt. *—Held:* on the facts, there was no sufficient ground for overruling the wishes of the majority of the creditors accepting debtor's proposal for an arrangement, & the order of adjudication must be discharged. Principles which should guide the ct. in dealing with arrangements under Irish Bkpt. & Insolvent Act, 1857 (c. 60), considered.—*Re C.*, [1926] 1 I. R. 14.—*IR.*

#### PART XXIII. SECT. 6, SUB-SECT. 2.

**8843 iv. —**—*]*—In special circumstances under Bkpty. Rule, 68 (2), the ct. may set aside a composition, although it has been ratified, & may order bkpt. to make another which will provide greater security for the creditors. But where a composition has been ratified, & is a reasonable & fair attempt to pay creditors as much as possible, there can be no grounds for setting it aside.—*ROSENTHAL v. HOPE & HART* (1922), 67 D. L. R. 628; 24 Q. P. R. 120.—*CAN.*

*st. Absence of information & undervaluation.*—*Held:* the proposal was not "reasonable & proper."—*Re GASTON*, [1922] 2 I. R. 179.—*IR.*

#### PART XXIII. SECT. 6, SUB-SECT. 5.

**8860 ii. —**—*]*—*Re C.*, No. 8825 li, ante.—*IR.*

**8865 i. — Enhanced value of assets.**—An offer of a composition was passed by the requisite majority of creditors, & confirmed by the ct. Later, the property was sold for a price which considerably increased the assets. An opposing creditor then applied for an order setting aside the arrangement:—*Held:* a composition passed by the requisite majority of creditors & confirmed by the ct. cannot be upset except for fraud.—*Re Q., AN ARRANGING DEBTOR*, [1923] 2 I. R. 89.—*IR.*

#### PART XXIII. SECT. 8, SUB-SECT. 3.—A.

**k (p. 1090) i. —**—*]*—*Re COBBOURG*

**8933c. —**—*]*—*Held:* from the date of the deed of assignment the trustee was the legal owner of debtor's property, & the possession taken by him was effectual, so that there was no property of debtor which the sheriff could seize.—*NORTH EASTERN RY. CO. v. SPARK*

**8965a. S. P. Re PRICE'S TRUST DEED** (1868), L. R. 6 Eq. 460; 19 L. T. 113; 16 W. R. 997

*Annotations:—**Apld. Re Raphael's Trust Estate* (1870), L. R. 9 Eq. 233. *Refd. Bell v. Bird* (1868), L. R. 6 Eq. 635.

**8970a. Restraint of trustee from acting—Injunction.**—*IZARD v. COLBORN* (1821), 13 Price, 327; M'Cle. 181; 147 E. R. 1006.

**9023. Add. Annotation:—***Mentd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.

**9026a. — Putting up property for sale.**—Assignees of debtor's property, in trust for the creditors, may put up a lease for sale, to try whether it can be made beneficial, without rendering themselves chargeable as assignees of the lease.—*CARTER v. WARNE* (1830), 4 C. & P. 191; *Mood & M.* 479, N. P.

*Annotations:—**Consd. How v. Kennet* (1835), 3 Ad. & El. 659; *White v. Hunt* (1870), L. R. 6 Exch. 32.

*FELT CO., Ex p. WEAVER*, [1925] 2 D. L. R. 997; 5 C. B. R. 622.—*CAN.*

*t (p. 1090) i. — Homestead lands*  
*Claim of exemption not filed—Sale of homestead lands*—*P.*, in Jan. 1912, executed an assignment for the benefit of his creditors of all his property except two lots of land on which he & his family lived, the value of which did not exceed \$1,500; & this assignment was duly registered by the assignees. By transfer dated in Apr. 1912, *P.* transferred all his right, title & interest in the two homestead lots *plff.* for value; & *P.'s* claim to the lots as exempt from seizure & sale under execution was admitted in writing by his assignees. *P.*, however, did not file a claim of exemption within thirty days of the registration of the assignment; & the registrar refused to register the transfers, on the ground that *P.* had no right to deal with the land, because of his failure to file a claim of exemption within thirty days under Land Titles Act, R. S. Sask. 1909, c. 41, s. 117.—*Held:* this statutory provision was not applicable, in the circumstances stated, the registrar should be directed, under Land Titles Act, s. 150, to register the transfers as if the assignment had not been registered. *LEACH v. HAULTAIN* (1913), 24 W. L. R. 151; 1 W. W. R. 181; 11 D. L. R. 238.—*CAN.*

*st. Judgment*—Under an assignment in trust for the benefit of creditors of all the assignor's property the assignee is entitled to an assignment of a bond which a purchaser under an agreement of sale with the assignor has entered into to protect the assignor against his (the purchaser's) default under the agreement, & if before such assignment of the bond the assignor has obtained judgment on it, the trustee has a right to an assignment of the judgment.—*Re HIRSH v. ALTON, INTERIOR TRUST CO. v. MACKENZIE*, [1925] 4 D. L. R. 695; [1925] 1 W. W. R. 429; 34 Man. L. R. 650; 5 C. B. R. 545.—*CAN.*

*so. Assigned property—Collection Act*, R. S. N. S. 1923 (c. 232).—*Re POLSON, TRUSTEE v. THOMPSON & SUTHERLAND, LTD.*, [1926] 1 D. L. R. 330; 58 N. S. R. 345.—*CAN.*

#### PART XXIII. SECT. 8, SUB-SECT. 3.—B.

*—*—*]*—Payment into

ct. under a garnishee summons, under Alberta practice, is not payment to the garnishing creditor under Bkpty. Act, s. 11 (1), so as to prevent a subsequent authorised assignment taking precedence over the garnishment.—*WESTERN CANADA FLOUR MILLS CO., LTD. v. WHITE BAKERY*, [1921] 1 W. W. R. 828; 59 D. L. R. 621; 1 C. B. R. 390.—*CAN.*

#### PART XXIII. SECT. 9, SUB-SECT. 1.—C.

*sp. To fix date of creditors' meetings.*—When an authorised trustee takes over the estate of bkpt. as though he were sequestrator, he has authority to fix the date of the creditors' meeting & may change the date where it is impossible to give proper notice, & any meeting held on a date not so finally fixed by the trustee is illegal.—*LEFAIVRE & GAGNON v. DE LISLE* (1922), 66 D. L. R. 264.—*CAN.*

*sq. To apply to court—For approval of composition arrangement.*—*Re SHAW* (1920), 59 D. L. R. 619; 1 C. B. R. 368.—*CAN.*

*— For directions.*—A trustee has the right to apply to the ct. for directions in connection with the administration of the estate, but is not entitled, prior to an authorised assignment or receiving order, to bring into ct. persons who may be entitled to certain assets, in order to determine their legal rights.—*Re GELDER BROTHERS*, [1924] 2 D. L. R. 590; 51 O. L. R. 283; 4 C. B. R. 108.—*CAN.*

*sw. To attack chattel mortgage—For non-compliance with Chattel Mortgage Act.*—An authorised assignee or trustee in bkpty. can maintain an action to set aside a transaction for want of compliance with the provisions of Bills of Sale & Chattel Mgt. Act, even although the transaction was complete before Bkpty. Act came into force.—*HOULING v. CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD.*, [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—*CAN.*

*sx. —*—*]*—*Re HAMER, Ex p. ROYAL BANK OF CANADA*, [1922] 1 W. W. R. 1241; 66 D. L. R. 800; 15 Sask. L. R. 165.—*CAN.*

9029. *Add. Annotation*:—**Mentd.** Sun Bldg. Soc. v. Western Suburban Bldg. Soc., [1921] 2 Ch. 83.

9032a. ———.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante*.

9034a. ———.]—*Re* LAMPLOUGH (CLARKSON), *Ex p.* HARDING (1835), 4 Deac. & Ch. 793, Ct. of R.

9074. *Add. Annotation*:—**Refd.** Goldfarb v. Bartlett & Kremer, [1920] 1 K. B. 639.

9081. *Add. Annotation*:—**Mentd.** Conquer v. Boot, [1928] 2 K. B. 336.

9094. *Add. Annotation*:—**Refd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200.

9109a. ———.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante*.

9181a. **Assent by assignor of debt—Not sufficient assent.**—PINDER v. COQUI (1866), 15 W. R. 22.

9198a. ———.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante*.

9198b. ———.]—HUDDERSFIELD FINE WORSTEDS, LTD. v. TODD, No. 8782d, *ante*. Compare No. 797a, *ante*, & original volume, p. 160, No. 1498.

9201. *Add. Annotation*:—**Mentd.** Sevenoaks U. D. C. v. Twynam, [1929] 2 K. B. 440.

9229a. ———.]—HUDDERSFIELD FINE WORSTEDS, LTD. v. TODD, No. 8782d, *ante*.

9253a. *S. P. CECIL v. PLAISTOW* (1794), 1 Anst. 202; 145 E. R. 844.

*Annotation*:—**Apld.** Britten v. Hughes (1829), 5 Bing. 460.

9276. *Add. Annotation*:—**Mentd.** Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.

9311a. **Right to take proceedings under 1914 (Deeds) Act, s. 23—Claim to enforce right adverse to deed.**—*Re* ELLIS, No. 8645a, *ante*.

9486. *Add. Annotation*:—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

9538a. ———.]—A. instituted a suit against B. & C. respecting a sum of £4,000. D. also was made a party to the suit; but, having no

interest, he disclaimed. A., B. & C. afterwards came to a compromise, in pursuance of which they executed a deed, assigning the £4,000 to trustees in trust to pay to D. his costs of the suit, & to divide the rest of the fund amongst A., B. & C. D., though he was not a party, either to the compromise or to the deed, filed a bill against A., B. & C. & the trustees, to compel a performance of the trusts & payment of his costs. A demurrer by C., for want of equity, was allowed.—**GIBBS v. GLAMIS** (1841), 11 Sim. 584; 59 E. R. 999; *sub nom.* **GIBBS v. GIBBON** 5 Jur. 378, L. C.

*Annotations*:—**Consd.** Steele v. Murphy (1841), 3 Moo. P. C. C. 445; Synnot v. Simpson (1854), 5 H. L. Cas. 121.

9538b. ———.]—**Provisions coming into operation after death of debtor.**—The doctrine of *Garrard v. Lauderdale* (Lord), No. 9536, *ante*, does not apply to provisions for creditors which do not come into operation till after the death of the settlor.—*Re* FITZGERALD'S SETTLEMENT, FITZGERALD v. WHITE (1887), 37 Ch. D. 18; 57 L. J. Ch. 594; 57 L. T. 706; 36 W. R. 385, C. A.

*Annotations*:—**Apld.** Priestley v. Ellis, [1897] 1 Ch. 489. **Mentd.** Frewen v. Law Life Assce. Soc., [1896] 2 Ch. 511.

9540a. ———.]—A., on going abroad, granted & assigned to B. freehold & personal property upon trusts for management & realisation, & for payment of A.'s debts & of the surplus to A.; the deed contained full powers for settling demands. B. communicated with the creditors upon the subject of the trust:—**Held**: the creditors did not thereby acquire any right to sue the trustee for the purpose of having the trusts performed.—**CORNTHWAITE v. FRITH** (1851), 4 De G. & Sm. 552; 64 E. R. 954.

9543. *Add. Annotations*:—**Refd.** *Re* Drage, Palmer & Roberts v. Knight (1926), 134 L. T. 765. **Mentd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515; *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22.

9575. *Add. Annotations*:—**Apld.** Farey v. Cooper,

PART XXIII. SECT. 10, SUB-SECT. 2. A.

*sy. Assignment to creditor to secure advances—Retention of amount by assignee in excess of amount paid to other creditors*:—Pltf. having become insolvent, made an assignment for the benefit of creditors, whereupon one of the creditors was appointed assignee. The business was reconveyed to pltf. on his undertaking to pay a composition on the amount of his indebtedness for the payment of which another of debts, became surety, & pltf. subsequently executed several assignments to debts, to secure advances. Debts, having taken possession under the last-mentioned assignments, the matters in difference between pltf. & debts, were referred to a master, with instructions to "take an account & report the sum due from either party to the other of them." The master having reported (*inter alia*) that debts., after paying the other creditors of pltf. their respective claims at the rate of sixty-two & a half cents on the dollar, had paid to themselves the full amount of their claim, & that being of opinion that debts. were not entitled to any greater rate of dividend on their claim than that paid to the other creditors, he had disallowed the surplus with interest, & had credited the same to pltf.:—**Held**: the decision of the Supreme Ct. of Nova Scotia, confirming the

report of the master on the reference must be reversed on the ground that the master had exceeded his authority & reported on matters not referred to him.—**DOULL v. McLEITH** (1886), 19 N. S. R. (7 R. & G.) 341; 7 C. L. T. 106; *reversd.* (1887), 14 S. C. R. 73.—**CAN.**

PART XXIII. SECT. 10, SUB-SECT. 2. —C (a).

§ (p. 1133) i. —As regards priority of subsequent creditors.—*Re* THOUN, [1925] 4 D. L. R. 242.—**CAN.**

9213 ii. —Out of assets in schedule.]—Under a document signed by one A. & three of his creditors, applt. was appointed to take control on A.'s behalf of certain of his assets enumerated in an annexed schedule & to dispose of them for the benefit of the three creditors. The latter portion of the document was as follows: "and we the undersigned creditors of the said A. do hereby agree to accept as full settlement of the claims we have against him such *pro rata* share as may be found due in respect of the sale of the said assets, & we agree to pay the said applt. the usual commission on all assets realised: applt. having taken possession of the assets & having sold some of them, resp., one of the creditors who had signed the document, in an action against applt., complained that applt. had awarded a preference to one M. a creditor who

had signed the document in respect of his claim which was based on two mtgs. bonds referred to in the schedule of assets, & that applt. had failed to award resp. a *pro rata* share of the proceeds of the assets realised. It was common cause that if M. was entitled to the preference, resp., an unsecured creditor, would get nothing. The C. P. D. ordered applt. to amend his account by striking out the preference awarded to M. & distributing the proceeds of the assets among the creditors *pro rata* according to the respective amounts of their claims. Extrinsic evidence showing that the parties never intended that the secured creditors should abandon their preference had been led subject to subsequent decision as to its admissibility, but was held by the cts. below to be inadmissible, on the ground that the document was not ambiguous:—**Held**: the words "*pro rata* share" meant that the three creditors were to look to the proceeds of the assets in the schedule alone for the settlement of their claims, if the assets did not realise the full amount of their debts, & that they had reference not to the respective claims of the creditors but to the proportion that the proceeds bore to the total amount of the debts & that there was nothing in the document to show that preferences were to be given up.—**SWANEPOEL v. VAN HEERDEN**, [1928] App. D. 15.—**S. AF.**

[1927] 2 K. B. 384. **Refd.** *Boorne v. Wicker*,  
[1927] 1 Ch. 667.

**9576.** *Add. Annotations*:—**Apld.** *Farey v. Cooper*,  
[1927] 2 K. B. 384. **Refd.** *Boorne v. Wicker*,  
[1927] 1 Ch. 667.

**9576a.** —.]—A debtor, who has assigned his  
business & goodwill to a trustee for the  
benefit of creditors, is not precluded, in the  
absence of express stipulation to the con-  
trary, from soliciting the customers of the old  
business, notwithstanding that the deed of

assignment contains a covenant by him to  
aid to the utmost of his power the realisation  
of the property assigned & the distribution  
of the proceeds thereof amongst the creditors.  
In such a case debtor cannot be restrained  
from canvassing the customers, nor can a  
third person be restrained from instigating  
debtor to do so.—*FAREY v. COOPER*, [1927]  
2 K. B. 384; 96 L. J. K. B. 1046; 37 L. T.  
720; 43 T. L. R. 803, C. A.

**9619.** *Add. Annotation*:—**Refd.** *Jenkins v. Jenkins*,  
[1928] 2 K. B. 501.

**PART XXIII. SECT. 12, SUB-SECT. 1.**

**9612 iii.** —.]—Where conveyances  
made by the assignee for the benefit

of creditors to pliffs. were made &  
accepted in satisfaction of pliffs.' claim  
against debtor:—*Held*: debt. was  
thereby freed from liability as surety.—

*UNION BANK OF CANADA v. MAKEPEACE*  
(1919), 44 O. L. R. 202; 15 O. W. N.  
179; 46 D. L. R. 193.—**CAN.**

## Part I.—In General.

10. *Add. Annotations* :—**Refd.** Robinson v. Marsh, [1921] 2 K. B. 640. **Mentd.** McDonald v. Nash, [1924] A. C. 625.
13. *Add. Annotations* :—**Refd.** Robinson v. Marsh, [1921] 2 K. B. 640; **Sutters v. Briggs**, [1922] 1 A. C. 1. **Mentd.** *Re Farrow's Bank*, [1923] 1 Ch. 41.
14. *Add. Annotation* :—**Consd.** *Re Swinburne, Sutton v. Featherley*, [1926] Ch. 38.
- 14a. ————. ]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—**Held** : the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—**Re SWINBURNE, SUTTON v. FEATHERLEY**, [1926] Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.
15. *Add. Annotation* :—**Mentd.** *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
22. *Add. Annotation* :—**Mentd.** *Scott v. Barclays Bank*, [1923] 2 K. B. 1.
23. *Add. Annotations* :—**Mentd.** *Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593; *McDonald v. Nash*, [1924] A. C. 625.
28. *Add. Annotation* :—**Mentd.** *Joachimson Swiss Bank Corpn.*, [1921] 3 K. B. 110
37. *Add. Annotations* :—**Refd.** *McDonald v. Nash*, [1924] A. C. 625; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 509; *Auchteroni v. Midland Bank*, [1928] 2 K. B. 291; *Shotts Iron Co. v. Curran*, [1929] A. C. 409. **Mentd.** *Despatie v. Tremblay*, [1921] 1 A. C. 702; *Samuel v. Dumas*, [1924] A. C. 431; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Tilling-Stevens Motors v. Kent County Council & Transport Minister*, [1929] 1 Ch. 66.

## Part II.—Requirements of Form.

81. *Add. Annotation* :—**Refd.** London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.
82. *Add. Annotations* :—**Consd.** London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67. **Mentd.** Brown v. Swan (1921), 37 T. L. R. 787; Sutters v. Briggs, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Importers Co. v. Westminster Bank, [1927] 2 K. B. 297.
95. *Add. Annotation* :—**Refd.** McDonald v. Nash, [1924] A. C. 625.

**14 i.** — *Revocable mandate—Revoked by death.*—The authority of a bank to pay a cheque ceases on notice of the drawer's death.—**CURLEY v. BRIGGS (ADMINISTRATOR OF DRURY ESTATE), [1920] 2 W. W. R. 1025; 53 D. L. R. 351.—CAN.**

14 ii. *S. P. KENDRICK v. DOMINION BANK & BOWNAS* (1920), 47 O. L. R. 372; 18 O. W. N. 138.—**CAN.**

e i. —.])—Its nature & negotiability discussed.—**CHAMPAKLAL GOPALDAS v. KESHURICHAND NAGANMAL** (1925), **I. L. R. 50 Bom. 765.**—**IND.**

**53. Note made by married woman—**  
***Effect of restraint upon anticipation.***—  
Where a promissory note was made  
by a married woman:—***Held:*** the  
promissory note was in fact, as well  
as in form, a valid unconditional  
promise on the part of the maker to  
pay a sum certain in money. ***Effect***  
***of Married Women's Property Act,***  
***R. S. O., 1914 (c 149), ss. 4 (2), 5 (2),***  
***discussed.***—**ANDERSON v. McLEARN,**  
**[1924] 4 D. L. R. 1076; 56 O. L. R.**  
**26.—CAN.**

r. i. — — —.]—An instrument is not a negotiable promissory note where there is not an unconditional promise, as required by Bills of Exchange Act, s. 176.—*Re MITCHELL & UNION BANK OF CANADA*, [1923] 4 D. L. R. 1132; 52 O. L. R. 523. *reusa. sub nom. Re*

STEVENS & MITCHELL, 21 O. W. N.  
331.—CAN.

r ii. ——.}—Where a cheque was drawn & given under the condition that it was not to become effective unless a loan was granted by a certain bank.—*Held*: the cheque could not be detached from the condition, & the condition not having been fulfilled, the cheque could not be recovered on.—JONES v. THOMAS & NORMAN (1922).

r iii. — — — —.—) There is nothing in law to debar the maker of a promissory note from pleading as a defence to a suit thereon that as a matter of fact the note was given for a special purpose & was not payable until the happening of a certain specific event which, so far, had not yet happened.—*BHOOT RAM v. KISHORI LAL* (1928). I. L. R. 55 AL. 751.—*IND.*

60 vii. — *Payment on account of specified contract.*—WILSON v. PELLETIER (N. B.), [1928] 1 D. L. R. 716.—CAN.

79 i. As per memorandum of agreement—Memorandum meaningless.]—*Held*: there was a good promissory note.—**CANADIAN BANK OF COMMERCE v. LIVINGSTON (P. E. I.) (1909), 6 E. L. R. 459.—CAN.**

**h i.** ——— *Alleged maker denying signature.*—Where an expert on handwriting said deft.'s signatures were

genuine, but the judge held, after seeing enlargements of them, that they were forged:—*Held*: the absence of any evidence by pltf. & the uncertain nature of the other evidence justified the judge in dismissing the action.—**EASTERN TOWNSHIPS INVESTMENTS CO. v. McLENNAN** (1919), 29 B. C. R. 1.—**CAN.**

ab. "Sixty days after sight"—[Sum certain with interest for indefinite period.]—Held: the document was not a bill of exchange.—ROSENHAIN & Co. v. COMMONWEALTH BANK OF AUSTRALIA, [1922] V. L. R. 787; 31 C. L. R. 46.—AUS.

80. *Cheque payable to "Ministre de la Voirie"*.—No time for payment stated.—An instrument in the form of a cheque drawn upon B. by A. payable to the order of the "Ministre de la Voirie".—*Held*: not "payable on demand" & not a "cheque" within Bills of Exchange Act, s. 165.—*LEDOUX v. LA BANQUE D'HOCHELAGA*, [1926] 1 D. L. R. 433; [1926] S. C. R. 76.—CAN.

k (p. 25) l. ——— At stated rate for uncertain time,]—Held: the document was not a bill of exchange. —ROSENHAIN & Co. v. COMMONWEALTH BANK OF AUSTRALIA, [1922] V. L. R. 787; 31 C. L. R. 46.—AUS.

161. *Add. Annotations*:—**Mentd.** *Re Chesterman's Trusts, Mott v. Browning*, [1923] 2 Ch. 466; *Uliendahl v. Pankhurst Wright* (1923), 39 T. L. R. 628; *Peyrae v. Wilkinson*, [1924] 2 K. B. 166.
191. *Add. Annotation*:—**Refd.** *McDonald v. Nash*, [1924] A. C. 625.
205. *Add. Annotations*:—**Apld.** *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. **Mentd.** *Despatie v. Tremblay*, [1921] 1 A. C. 702; *McDonald v. Nash*, [1924] A. C. 625; *Samuel v. Dumas*, [1924] A. C. 431; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Gilbert v. Gilbert & Boucher* (1927), 96 L. J. P. 137; *Shotts Iron Co. v. Curran*, [1929] A. C. 409; *Thilling-Stevens Motors v. Kent County Council & Transport Minister*, [1929] 1 Ch. 66.
207. *Add. Annotation*:—**Refd.** *Lloyds Bank v. Chartered Bank of India, etc.* (1927), 44 T. L. R. 165.
208. *Add. Annotation*:—**Apld.** *Goldman v. Cox* (1924), 40 T. L. R. 744.
- 209a. ————]—**Pltf.**, who was a Pole, & could not read English unless it was printed, bought goods from one A. Cohen, & certain cheques were made out in favour of "A. Cohen" by a clerk in the employment of **pltf.** & were signed by **pltf.** The clerk afterwards forged the name of the payee by inserting "S" before "A. Cohen" & forged the indorsement & got the cheques cashed by **deft.**, who obtained payment for the cheques on presentation. In an action for money received by **deft.** to the use of **pltf.**:—**Held**: as the cheques were, before signature, made out to a real creditor & not to a fictitious person **pltf.** was entitled to recover.—**GOLDMAN v. COX** (1924), 40 T. L. R. 744; 69 Sol. Jo. 10, C. A.
215. *Add. Annotations*:—**Refd.** *Robinson v. Marsh*, [1921] 2 K. B. 640; *McDonald v. Nash*, [1924] A. C. 625.
240. *Add. Annotation*:—**Apld.** *Mason v. Lack* (1929), 140 L. T. 696.
- 240a. ————]—An instrument purporting to be a bill of exchange was drawn by **pltf.** At the time when **deft.** accepted it there was no other name upon it, the only indication of a name being that it was payable at a certain bank at which, in fact, **deft.** had no account. On a claim by **pltf.** for the amount of the alleged bill:—**Held**: (1) since the document was not signed by the person giving it & addressed to the person who was to pay it, it was neither upon the authorities nor within 1882 Act, s. 3, a valid bill of exchange; (2) it was a good promissory note upon which, after amendment of the statement of claim, **pltf.** was entitled to recover.—**MASON v. LACK** (1929), 140 L. T. 696; 45 T. L. R. 363; 73 Sol. Jo. 28
241. *Add. Annotations*:—**Consd.** *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67. **Mentd.** *Brown v. Swan* (1921), 37 T. L. R. 787; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.
242. *Add. Annotations*:—**Refd.** *Lloyds Bank Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. **Mentd.** *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.
251. *Add. Annotation*:—**Consd.** *Mason v. Lack* (1929), 140 L. T. 696.
252. *Add. Annotation*:—**Refd.** *Mason v. Lack* (1929), 140 L. T. 696.
254. *Add. Annotation*:—**Refd.** *Mason v. Lack* (1929), 140 L. T. 696.
255. *Add. Annotation*:—**Consd.** *Mason v. Lack* (1929), 140 L. T. 696.
275. *Add. Annotation*:—**Mentd.** *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
292. *Add. Annotation*:—**Mentd.** *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 292a. *Memorandum for purchase of goods.*]—**Held**: an agreement, & not a promissory note.—**ELLIS v. ELLIS** (1820), Gow, 216, N. P.
- 295a. *Statement of sum borrowed & received*—"Which I promise never to repay."—**Held**: **pltf.** was well entitled upon the lending on one side, & the borrowing on the other, notwithstanding the words in the conclusion of the note.—**ANON.** (*circa* 1716), cited in 2 Atk. at p. 32; 26 E. R. 416, N. P.
- Annotation*:—**Refd.** *Simpson v. Vaughan* (1739), 2 Atk. 31.
- 297a. *Acceptance of bill without drawer or drawee.*]—**MASON v. LACK**, No. 210a, *ante*.

### Part III.—Classification of Instruments.

- 341. Add. Annotations :—***Refd. Sutters v. Briggs*, [1922] 1 A. C. 1. **Mentd.** *The Joannis Vatis* (1921), 91 L. J. P. 182.
- 347. Add. Annotation :—****Mentd.** *McDonald v. Nash*, [1924] A. C. 625.
- 363. Add. Annotation :—****Mentd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.

**152 iii.** — *Error in calculation of instalment.*—**CONTINENTAL GUARANTY CORPN. OF CANADA v. VANCE**, [1928] 1 D. L. R. 1134.—**CAN.**

**PART II. SECT. 4, SUB-SECT. 2.**  
**sd. Promissory note for interest in**  
*right--Form of endorsement.*  
 (GALLAGHER v. MURPHY (Ont.),  
 4 D. L. R. 618.—CAN.

**PART III. SECT. 1.**  
*—e. Cheque payable to "cash or order."*  
*—Held: payable to bearer.*—JUDMAIER  
 v. STANDARD BANK OF CANADA (Alta.),  
 [1927] 1 W. W. R. 270.—CAN.

## Part IV.—Date of Instrument.

383. *Add. Annotation* :—*Mentd. Maskell v. Hill*, [1921] 3 K. B. 157.

## Part V.—Computation of Time of Payment.

422. *Add. Annotation* :—*Mentd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.

441a. ——— ——— ———.] — Where a promissory note, repayable by instalments, provides that if any instalment should not be paid "punctually" the whole of the balance is

immediately to become payable, the use of the word "punctually" does not deprive the maker of the note of the three days of grace allowed by 1882 Act, s. 14, "in every case where the bill itself does not otherwise provide."—*SCHAEVERIEN v. MORRIS* (1921), 37 T. L. R. 366.

## Part VI.—Acceptance.

456. *Add. Annotation* :—*Refd. Mason v. Lack* (1929), 140 L. T. 696.468. *Add. Annotations* :—*Refd. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593; *McDonald v. Nash*, [1924] A. C. 625.490. *Add. Annotation* :—*Mentd. McDonald v. Nash*, [1924] A. C. 625.505. *Add. Annotation* :—*Mentd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

508a. ——— ——— ———.] — Defts., merchants in London, were in the habit of purchasing goods for G., a merchant at Petersburg, which they consigned to pltf., his agent at Hamburg, &amp; they drew bills to the amount, pursuant to the credit established for them. In such course of business, they consigned Brazil sugars &amp; indigo to pltf. for G. &amp; other merchants at Petersburg, &amp; transmitted the bills of lading, &amp; drew bills to the amount; upon which pltf. informed them, that he protected their drafts to the amount of all the goods consigned to the merchants at Petersburg, except those consigned to G.; that he accepted the draft for the amount of such goods provisionally, under the guarantee of defts., inasmuch as the sugars against which the bill was drawn were not, as ordered by his principal, Havannah, to the amount of which he was authorised to accept, but

Brazil, respecting which he had no directions; that he would communicate with his principal on the subject, & inform defts. of the result. Such communication being made, G. at Petersburg, confirmed the order for the Brazil sugars, & directed pltf. to accept to their amount, & release defts. from their guarantee. Pltf. also informed defts. of their drafts, drawn on him against goods, being confirmed & acknowledged by other merchants at Petersburg, for whose account they were drawn. Upon the bkpy. of G. & an action by pltf. against defts., for the amount of the bill which he had paid :—*Held* : pltf. was to be considered as having accepted the bill, not for the account of defts. until he, the acceptor, was in funds, but in reference to the confirmation of the order for the Brazil, instead of the Havannah sugars; which confirmation being given, his claim was upon the bkpt. at Petersburg, not upon defts., against whom, consequently, no action could be maintained.—*LOHMANN v. ROUGEMONT* (1840), 6 Bing. N. C. 253; 8 Scott, 520; 9 L. J. C. P. 158; 133 E. R. 100.519. *Add. Annotation* :—*Mentd. Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221.545. *Add. Annotation* :—*Refd. Sassoon v. International Banking Corpn.*, [1927] A. C. 711.

## Part VII.—Inchoate Instruments.

555. *Add. Annotation* :—*Consd. McDonald v. Nash*, [1924] A. C. 625.563. *Add. Annotation* :—*Refd. Smith v. Wood* (1928), 139 L. T. 250.565. *Add. Annotations* :—*Consd. McDonald v. Nash*, [1924] A. C. 625. *Refd. Lickbarrow v. Mason* (1793), 6 East, 20, n.567a. ——— ———.]—*Re GOOCH, Ex p. JUDD*, No. 2096a, *post*.

## PART VI. SECT. 2.

sm. *Acceptance by wife.*—*Held* : not binding on husband.—*ECCLERS v. MERCHANTS BANK OF CANADA*, [1923] 3 D. L. R. 1103; 52 O. L. R. 138.—CAN.

## PART VI. SECT. 3, SUB-SECT. 1.

sp. *Indorsement "will accept on arrival of goods."*—*Held* : the words when applied to a bill on demand meant "will pay," & no further acceptance was necessary.—*HUMPHREYS v. TAYLOR*, [1921] N. Z. L. R.

## 343.—N.Z.

## PART VII. SECT. 1.

566 vi. ——— & *place of payment.*—Where instead of handing over a note, applt.'s solr. filled in a place for payment, & discounted it with resp. & kept the money, & resp. filled in his own



567b. —.]—**MCDONALD (GERALD) & Co. v. NASH & Co.**, No. 2096b, *post*.

568a. — **Effect of 1882 Act, s. 12.**]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565; F. advanced £256 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky at 27s. 6d. a case free on board at Leith or Glasgow to be delivered ex warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L. & a second bill for £1,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26 & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 10 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 10 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000 to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage. In intended pursuance of the agreement two documents undated, & purporting to be bills of exchange, though written upon unstamped paper, were sent to L.; both were headed "London"; one was drawn by F., accepted by A., & indorsed by F., & was for £5,500, payable ninety days after date; the other not signed by any one as drawer; it was accepted by A. & by D. & M., & was for £1,812 payable ninety days after date. Delay having occurred in naming a liner to take delivery of the whisky & in equipping the steamer for the adventure, L. gave to D. & M. a delivery order addressed to the keepers of the bonded warehouse where the whisky was in store. D. & M. immediately pledged the whisky for £500. F. hearing of this paid off the loan & took a transfer of the delivery order. The so-called bills of

exchange for £5,500 & £4,812 were sent to L., who was at Lausanne. He struck out "London" & substituted "Lausanne," added Dec. 3 as the date of each, & signed his name as the drawer of the second, & stamped them both as foreign bills:—**Held**: (1) the so-called bill for £5,500, being drawn, accepted & indorsed in this country on unstamped paper, was void by Stamp Act, 1891 (c. 39), ss. 2, 37 (2), 38 (1); (2) the so-called bill for £4,812 though valid in other respects, as a foreign bill, notwithstanding 1882 Act, s. 64, was invalidated by L. having added a date not in accordance with the contract, & was not protected by 1882 Act, s. 12.—**FOSTER v. DRISCOLL**, **LINDSAY v. ATTEFIELD**, **LINDSAY v. DRISCOLL**, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 110 L. T. 479; 45 T. L. R. 185, C. A.

577a. — — —.]—Where a bill of exchange on duly stamped paper is presented for signature to the acceptor by the drawer, & the former signs at the request of the latter with knowledge that the drawer intends to convert the document into a bill of exchange & negotiate it as such, it is immaterial, as against a holder in due course, whether the document was in blank or fully filled in when presented to the drawer for signature.—**DUNN (M.), LTD. v. JEFFERSON** (1925), 69 Sol. Jo. 695, 725.

584. **Add. Annotation**:—**Reid**. **Guildford Trust v. Goss** (1927), 136 L. T. 725.

585. **Add. Annotation**:—**Mentd**. **Lloyds Bank v. Chartered Bank of India, Australia & China**, [1929] 1 K. B. 10.

587. **Add. Annotation**:—**Dbtd**. **Jones v. Waring & Gillow**, [1926] A. C. 670.

588a. — **Particular purpose**—**Fraudulent use for another purpose.**]—A cheque was signed in blank by one of the partners in a syndicate, in the belief that the stamp of the syndicate would be subsequently affixed & the cheque used for the ordinary business of the syndicate. It was made payable to another partner, & was indorsed by a third partner, who believed the same as the drawer, as well as by the payee. The payee, in fraud of the other two partners, did not affix the stamp of the syndicate & used the cheque for the purpose of raising a loan from money-lenders, for which he gave a promissory note binding him to repay an agreed sum by monthly instalments. When one of the instalments fell due, the cheque was tendered in payment & was dishonoured upon presentation, the money-lenders then sued the drawer & the indorser:—**Held**: the drawer & indorser were liable on the cheque, as there had been nothing to put ptfs. on inquiry whether a fraud was being perpetrated by the payee, & as both defts., when signing the document, had intended that the document should be negotiated as a cheque, the cheque could not be regarded as a document given in escrow.—**GUILDFORD TRUST, LTD. v. GOSS** (1927), 136 L. T. 725; 43 T. L. R. 167.

name as payee, & the note was not paid at maturity & no notice of dishonour was given to applt.:—**Held**: the solr.

had no authority to negotiate the note, & resp. had no authority to fill in his name as payee, & he could not recover

from applt.—**KNUST v. ABBOT**, [1923] N. Z. L. L. 1072.—N.Z.

## Part VIII.—Delivery.

595. *Add. Annotation*:—**Refd.** *McDonald v. Nash*, [1924] A. C. 625.
596. *Add. Annotation*:—**Refd.** *Lloyds Bank v. Chartered Bank of India, etc.* (1927), 44 T. L. R. 165.
635. *Add. Annotation*:—**Mentd.** *Marb  v. George Edwardes (Daly's Theatre)* (1927), 96 L. J. K. B. 980.
639. *Add. Annotations*:—**Mentd.** *Re Chesterman's Trusts, Mott v. Browning*, [1923] 2 Ch. 466; *Uliendahl v. Pankhurst Wright* (1923), 39 T. L. R. 628; *Peyrae v. Wilkinson*, [1924] 2 K. B. 166.
642. *Add. Annotation*:—**Expld & Distd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.
663. *Add. Annotation*:—**Mentd.** *Saunders v. Young's Brewery* (1925), 42 T. L. R. 136.

## Part IX.—Capacity and Authority of Parties.

687. *Add. Annotation*:—**Refd.** *Kreditbank Cassel G.m.b. H. v. Schenkers*, [1926] 2 K. B. 450.
- 691a. ————**Re** *ADANSONIA FIRE CO., MILES' CLAIM* (1874), 9 Ch. App. 635; 43 L. J. Ch. 732; 31 L. T. 9; 22 W. R. 489, L. J.
- Annotation*:—**Consd.** *Yorkshire Banking Co. v. Beatson* (1880), 5 C. P. D. 109.
- 691b. ————**FLEMING v. MCNAIR** (1812), cited in 3 Dow, at p. 229; 3 E. R. 1048, H. L.
- Annotations*:—**Consd.** *Davidson v. Robertson* (1815), 3 Dow, 218. **N.F.** *Yorkshire Banking Co. v. Beatson* (1880), 5 C. P. D. 109.
692. *Add. Annotation*:—**Mentd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
- 692a. ————**In order to take a case out of the principle, that every partner in a mercantile or ordinary trading partnership is liable upon bills, drawn by a partner in the recognised trading business of the firm, for a transaction incident to the business of the firm, although such partner's name does not appear upon the face of the instrument, & although he be a sleeping & secret partner, it must be established that the holder of the bills knew, at the time he received them, that the transaction was a private contract not within the scope of the partnership.**—*BUNARSEE DASS v. GHOLAM HOSSEIN* (1870), 13 Moo. Ind. App. 358; 20 E. R. 585, P. C.
- 693a. ————**SUTTON v. GREGORY** (1797), Peake, *Add. Cas.* 150; 170 E. R. 226, N. P.
- 694a. ————**If one partner draw or indorse a bill in the partnership name, it will prima facie bind the firm, although passed by the partner to a separate creditor in discharge of his own debt, unless there be evidence of connivance between such separate debtor & creditor, or at least of the want of authority, either express or to be implied, in the debtor partner to give the joint security of the firm for his separate debt.**—**RIDLEY v. TAYLOR** (1810), 13 East, 175; 104 E. R. 336.
- Annotations*:—**Consd.** *Frankland v. McGusty* (1830), 1 Knapp, 274; *Re Acraman, Ex p. Bushell* (1844), 3 Mont. D. & De G. 615. **Distd.** *Levenson v. Lane* (1862), 13 C. B. N. S. 278. **Refd.** *Lloyd v. Ashby* (1825), 2 C. & P. 138; *Wintle v. Crowther* (1831), 1 Cr. & J. 316; *Re Riches, Ex p. Darlington District Joint Stock Banking Co.* (1865), 34 L. J. Bcy. 10.
- 694b. ————**Bills drawn by one partner for a separate debt in the partnership name cannot be recovered upon as against the firm, unless pltf. can prove either a direct assent from the other partners, or circumstances from which such assent might have been reasonably presumed.**—**FRANKLAND v. M'GUSTY** (1830), 1 Knapp, 274; 12 E. R. 324, P. C.
- Annotations*:—**Consd.** *Re Wardley & Hodson, Ex p. Thorpe* (1836), 2 Deac. 16. **Refd.** *Levenson v. Lane* (1862), 13 C. B. N. S. 278.
- 694c. ————**Note made for self & partner—Partner bound.**—**LANE v. WILLIAMS** (1692), 2 Vern. 277; 23 E. R. 779; *subsequent proceedings* (1693), 2 Vern. 292.
- Annotations*:—**Consd.** *Devaynes v. Noble, Sleech's Case* (1816), 1 Mer. 539. **Refd.** *Bank of Australasia v. Breillat* (1847), 6 Moo. P. C. C. 152.
- 694d. ————**SMITH v. JERVES & BAILY** (1727), 2 Id. Raym. 1484; 92 E. R. 464; *sub nom.* *SMITH v. BAILY*, 11 Mod. Rep. 401.
- 695a. ————**With addition of partnership name—Firm bound.**—**GALWAY (LORD) v. MATTHEW & SMITHSON** (1808), 1 Camp. 403; 170 E. R. 1000, N. P.; *subsequent proceedings, sub nom.* *GALLWAY (LORD) v. MATHEW & SMITHSON*, 10 East, 264.
- Annotations*:—**Consd.** *Rooth v. Quin & Janney* (1819), 7 Price, 193. **Appld.** *Re Clarke, Ex p. Buckler* (1844), 3 L. T. O. S. 284.
- 696a. ————**In an action against partners, on a bill of exchange, it is no legal objection that the bill has been drawn or indorsed by**

## PART VIII. SECT. 4, SUB-SECT. 1.—A.

611 viii. ————**Oral evidence is not admissible to show an agreement contemporaneous with the making of a note that the liability of the maker is contingent on the happening of some event.**—**RUTHERIAN FARMERS' ELEVATOR CO. v. GNIAZDOSKI**, [1922] 3 W. W. R. 19; 68 D. L. R. 656; 32 Man. L. R. 322.—**CAN.**

628 i. ————**Until death of maker.**—**BONHAM v. BONHAM** (1920), 48 O. L. R.

434; 57 D. L. R. 459; 19 O. W. N. 268.—**CAN.**

637 iv. ————**Evidence of alleged conditions attached to the payment of a promissory note, e.g. payment out of a particular fund, is not admissible, as it would vary the terms of the written document.**—**GUGGISBERG v. WEBER**, [1924] 1 D. L. R. 335; 1 W. W. R. 137; 18 Sask. L. R. 6.—**CAN.**

638 i. **Excluding liability if goods rejected.**—**An action by payee against the maker of a promissory note given**

for the price of goods was dismissed, on the ground that deft. had exercised, as under a contemporaneous oral agreement he was entitled to do, the right of rejecting & returning the goods.—**NATIONAL MANUFACTURING CO. v. STEPA**, [1922] 1 W. W. R. 814; 65 D. L. R. 284; 17 Alta. L. R. 398.—**CAN.**

## PART IX. SECT. 2.

t (p. 96) i. ————**POPE v. FRASER**, [1923] 3 W. W. R. 754.—**CAN.**

one in his own name only. The liability of the parties may be collected from their course of business & other circumstances, showing that the partner who drew or indorsed had authority to bind the partnership by that mode of drawing or indorsing. Nor is it sufficient for the other partners to show that, in the particular instance, the partner who drew or indorsed the bill in question violated his private instructions in so doing.—*SOUTH CAROLINA BANK v. CASE* (1828), 8 B. & C. 427; 2 Man. & Ry. K. B. 459; 108 E. R. 1101; *sub nom.* *SOUTH CAROLINA BANK v. CASE, BECKETT v. SAME*, Dan. & Ll. 103; 6 L. J. O. S. K. B. 361.

*Annotations* :—*Expld.* *Smith v. Craven* (1831), 1 Cr. & J. 500. *Dbtd.* *Nicholson v. Ricketts* (1860), 2 E. & E. 497. *Consd.* *Re Adanson & Fibre Co., Miles' Claim* (1874), 9 Ch. App. 635; *Yorkshire Banking Co. v. Beatson* (1880), 5 C. P. D. 109. *Refd.* *Vere v. Ashby* (1829), 10 B. & C. 288; *Beckham v. Knight* (1838), 4 Buz. N. C. 213; *Trueman v. Loder* (1840), 11 Ad. & Ell. 589.

**698a.** ———— *After dissolution.*—A bill drawn & accepted after dissolution of partnership, though dated before, does not bind the retiring partner.—*WRIGHT v. PULHAM* (1816), 2 Clut. 121; *sub nom.* *WRIGHTSON v. PULLAN*, 1 Stark. 375; 171 E. R. 501.

**701a.** ———— *—*—A bill, though drawn on a partnership, & accepted by one of the partners, if for a separate debt of one of them, shall not bind the partnership, if the party knew the consideration of the bill. *Aliter*, if in the hands of a *bona fide* indorsee without notice.—*WELLS v. MASTERMAN* (1799), 2 Esp. 731; 170 E. R. 512, N. P.

*Annotations* :—*Refd.* *Levenson v. Lane* (1862), 13 C. B. N. S. 278; *Ellston v. Deacon* (1866), 1 L. R. 2 C. P. 20.

**701b.** ———— *—*—A partnership acceptance, given in discharge of the several debt of one of two partners, cannot be proved against the joint estate, by a person who took it in discharge of such several debt, though it was left for acceptance at the house of business of the partnership, & thence returned accepted, unless the holder makes out that it was accepted in the partnership name, with the knowledge & assent of the other partner.—*Re O'NEILL, Ex p. GOULDING* (1829), 8 L. J. O. S. Ch. 19, L. C.

*Annotations* :—*Refd.* *Levenson v. Lane* (1862), 13 C. B. N. S. 278; *Re Riches & Marshall's Trust Decd, Ex p. Darlington, etc., Banking Co.* (1865), 4 De G. J. & Sm. 581.

**702a.** ———— *Bill not addressed to partnership address.*—*Defd.*, a chesemonger at A., carried on at W. the hosiery trade in partnership with C., but in his own name. C. accepted, in the name of *defd.*, a bill of exchange drawn for goods supplied to the partnership, & which was addressed to *defd.* at A.:—*Held*: the acceptance was binding on *defd.*, although the bill was not addressed to the place where the partnership business was carried on.—*STEPHENS v. REYNOLDS* (1860), 5 H. & N. 513; 29 L. J. Ex. 278;

2 L. T. 222; 157 E. R. 1283; *subsequent proceedings*, 2 F. & F. 147.

*Annotations* :—*Consd.* *Yorkshire Banking Co. v. Beatson* (1), Leeds & County Banking Co. v. *Same* (1879), 4 C. P. D. 204. *Refd.* *Yorkshire Banking Co. v. Beatson* (1880), 5 C. P. D. 109.

**709a.** ———— *Not for partnership purposes—Firm not bound.*—*SHEPPARD v. DRY* (1810), cited in *Byles on Bills*, 18th ed., p. 56, n. (l).

**713a.** ———— *For private debt—Firm not bound.*—*ARDEN v. SHARPE & GILSON* (1797), 2 Esp. 524; 170 E. R. 412, N. P.

**713b.** ———— *—*—*—*—*RIDLEY v. TAYLOR*, No. 691a, *ante*.

**713c.** ———— *Bill or note indorsed by partner in own name.*—*SOUTH CAROLINA BANK v. CASE*, No. 696a, *ante*.

**715.** *Add. Annotation* :—*Mentd.* *Brocklebank v. R.*, [1925] 1 K. B. 52.

**722.** *Add. Annotation* :—*Refd.* *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

**726.** *Add. Annotation* :—*Mentd.* *Bow's Emporium v. Brett* (1927), 44 T. L. R. 191.

**734.** *Add. Annotations* :—*Distd.* *Goldman v. Cox* (1924), 40 T. L. R. 744. *Refd.* *Jones v. Waring & Gillow*, [1926] A. C. 670.

**737.** *Add. Annotation* :—*Refd.* *Jones v. Waring & Gillow*, [1926] A. C. 670.

**738.** *Add. Annotation* :—*Mentd.* *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67.

**746.** *Add. Annotations* :—*Consd.* *Goldman v. Cox* (1924), 40 T. L. R. 423; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd.* *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Australian Bank of Commerce v. Perel*, [1926] A. C. 737; *Jones v. Waring & Gillow*, [1926] A. C. 670; *Fenton Textile Assocn. v. Thomas* (1929), 15 T. L. R. 264; *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 10.

**755.** *Add. Annotations* :—*Consd.* *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

**757.** *Add. Annotations* :—*Refd.* *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Liggett (Liverpool) v. Barclays Bank*, [1927] 137 L. T. 443; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.

**759.** *Add. Annotation* :—*Refd.* *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

**763a.** ———— *"Directors" added after signatures—Acceptance by company—Drawer requiring indorsement by directors.*—A bill of exchange addressed to a limited co. was accepted in the following form: "Accepted

## PART IX. SECT. 5.

**763 va.** ———— *"President" & "Mgr." added after signatures.*—*Held*: the individual *defds.* were personally liable on the note.—*LOZKA v. RUTHENIAN FARMERS' CO-OPERATIVE CO., LTD.*, [1922] 2 W. W. R. 782; 68 D. L. R. 535; 32 Man. L. R. 137.—*CAN.*

**763 vb.** ———— *"Pres." & "Secy." added after signatures.*—Whether those signing a promissory note signed it as officials of a limited co. or as individuals, is a question of intent, *J.S.*

& the intent must be gathered from the face of the document itself, & where, on a series of notes made to the same person at one time, a rubber stamp containing the name of the co. & two lines was impressed on the notes & the signers signed on the two lines & added the words "Pres." & "Secy." after their signatures & were in fact the president & secretary of the co. respectively.—*Held*: the notes were made by the co.—*SCHAEFFER v. TURBY, SMITH & CO., LTD.*, [1924] 1 D. L. R. 468; 1 W. W. R. 213.—*CAN.*

**763 vc.** ———— *"Director" & "Secretary" added after signatures.*—A promissory note was granted in the following terms: "Four months after date we promise to pay... (C D) Director, [E. F.] Secretary. The Fraserburgh Empire Ltd." The body of the note & the words appended to the signatures had all been written by the same person, not one of the signatories, before signature:—*Held*: the two signatories were personally liable.—*BRENNER v. HENDERSON*, [1925] S. C. 643.—*SCOT*

**763 vd.** ———— *"Managing Proprietor" added after signature.*—

payable at the W. Bank—A.B. & C.D., directors—Fashions Fair Exhibition, Ltd.” The drawer when sending the bill to the co. for acceptance stated in his letter that as a condition of his doing the work for which the bill was drawn he should require it to be indorsed by the directors as well as accepted by the co. Accordingly the same two directors signed the bill also on the back, “Fashions Fair Exhibition, Ltd. A.B. & C.D., directors,” & one of them when returning the accepted bill drew attention in his letter to the fact that it was “duly indorsed by two directors of the co. as requested by you.” In an action against A.B. & C.D. as indorsers of the bill:—*Held*: (1) they were personally liable, upon the ground that if the indorsement was to be treated as that of the co. it gave no greater validity to the bill than was already contained in the acceptance, & therefore under 1882 Act, s. 26 (2), the construction that it was the personal indorsement of debts. was to be adopted; (2) even if the indorsement stood by itself, as debts’ signature did not in terms say that they were signing on behalf of the co., the addition to their names of the word “directors” must be treated as a word of description only & not as excluding their liability; (3) the ct. were entitled to look at the surrounding circumstances under which the bill was signed, including the letters

which passed between the parties on the subject of the indorsement, from which it was to be inferred that debts, by indorsing intended to guarantee the payment of the bill.—*ELLIOTT v. BAX-IRONSIDE*, [1925] 2 K. B. 301; 94 L. J. K. B. 807; 133 L. T. 624; 41 T. L. R. 631, C. A.

*Annotation*:—As to (1) *Consd. Kettle v. Dunster & Wakefield* (1927), 43 T. L. R. 770.

**763b.** ——— “Receiver” added after signature.]—Pltf., who had been appointed receiver on behalf of the debenture-holders of a co., sued debts, as acceptors of bills of exchange, which were signed by “R., Receiver, F. Ltd.” as drawer. They had been accepted in respect of goods supplied by the co. to debts., & pltf. had stated that it must be “clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves”:—*Held*: (1) the above were not “surrounding circumstances” from which the intention of the parties could be inferred, & such intention must be gathered from the terms of the document alone; (2) the words “Receiver, F. Ltd.” were words of description only, & the bills did not purport to have been drawn on behalf of the co.; (3) pltf. was entitled to recover against debts. upon the bills.—*KETTLE v. DUNSTER & WAKEFIELD* (1927), 138 L. T. 158; 43 T. L. R. 770.

## Part X.—Consideration.

**772.** *Add. Annotation*:—As to (1) *Refd. Jones v. Waring & Gillow*, [1926] A. C. 670.

**773.** *Add. Annotations*:—*Refd. Robinson v. Marsh*, [1921] 2 K. B. 640; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41.

**786.** *Add. Annotation*:—*Mentd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

**801.** *Add. Annotation*:—*Refd. Sutters v. Briggs*, [1922] 1 A. C. 1.

**803.** *Add. Annotations*:—*Distd. Burrell v. Leven* (1926), 42 T. L. R. 107; *Richardson v. Moncrieffe* (1926), 43 T. L. R. 32. *Refd. Robinson*

*v. Marsh*, [1921] 2 K. B. 640; *Sutters v. Briggs*, [1922] 1 A. C. 1. *Mentd. Jeffrey v. Bamford*, [1921] 2 K. B. 351; *Greenhalgh v. Union Bank of Manchester*, [1924] 2 K. B. 153.

**823.** *Add. Annotation*:—*Refd. Stott v. Shaw & Lee*, [1928] 2 K. B. 26.

**826.** *Add. Annotation*:—*Mentd. Fettes v. Robertson* (1921), 37 T. L. R. 581.

**835.** *Add. Annotation*:—*Mentd. Holt v. Markham* (1922), 128 L. T. 719.

**837.** *Add. Annotation*:—*Refd. Sutters v. Briggs*, [1922] 1 A. C. 1.

A suit was brought on three hundis running in the following form: “56 days after date I promise to pay S. C. F., or order the sum of Rs 600, only for value received in cash (signed) G. V. A., Managing Proprietor, G. & B. Friends, S. Rd. Bombay No. 4”:—*Held*: the only person liable on these hundis was G. V. A. who had signed them & not any alleged firm passing under the name of G. & B. Friends, & the words Managing Proprietor, etc., were merely added as a description of his occupation & business address. *SIVARAM KRISHNA PADHYE v. CHINANDAS PATICHAND* (1928), 1 L. R. 52 Bom 619—IND.

### PART X. SECT. 1, SUB-SECT. 3.

**795 i.** *Forbearance to sue—Surety*.—*Held*: the giving of a note to avoid suit contaminated debt, a principal debtor, & his equities as a surety were gone.—*ALLIANCE TRUST CO. v. JOHNSON*, [1928] 2 W. W. R. 800; 15 Alta. L. R. 479.—CAN.

### PART X. SECT. 1, SUB-SECT. 4.

*st. Extension of credit*.—*FULLER & Co. v. HOLLAND* (N. S.) (1910), 9

E. L. R. 110.—CAN.

### PART X. SECT. 1, SUB-SECT. 5.

*st. Sale of improvements by quit-claim deed*.—*DUBÉ v. MORNEAULT* (1920), 48 N. B. R. 200; 55 D. L. R. 512.—CAN.

*st. Giving credit*.—In an action upon promissory notes made by debts, husband & wife, in favour of pltf., wholesale merchants, it appeared that in Mar. 1921, the wife debt. who had been carrying on a retail business, made an assignment under the Bkpy. Act, & shortly afterwards made a proposal to compound her debts at 35 cents in the dollar, to be paid in ten equal monthly instalments. The composition was duly approved by the ct. Pltf. were among the creditors. The debtor did not complete the composition payments within the times proposed, & the final payment was not made until Aug. 1923. After the composition was approved, the debtor continued to do business, & made some purchases from pltf. In Sept. 1922, the debtor proposed to buy a large quantity from pltf. on credit, but

pltf. refused to give credit for the quantity desired unless debts. would make some settlement of the old debt, i.e. the unpaid balance of pltf.’ compound claim. Debts. thereupon signed the promissory notes now sued upon, delivered them to pltf., & received a new supply of goods upon the credit they desired:—*Held*: the notes were not made for the accommodation of pltf.; but, though representing a compromised debt, were in fact made in consideration of the giving of credit in respect of the new sale, & that was sufficient consideration to support the notes & to render debts. liable.—*CHAMANDY BROTHERS, LTD. v. ALBERT*, [1928] 2 D. L. R. 577; 62 O. L. R. 105; 10 C. B. R. 32.—CAN.

*st. Delivery up of void bill*.—Valuable consideration for a bill of exchange may consist in the delivery up of another bill which the person taking the former bill was entitled to keep, even though the bill delivered up was void.—*ROYAL BANK OF CANADA v. GROBE & WALBRIDGE* (Alta.), [1928] 3 D. L. R. 93; [1928] 2 W. W. R. 55.—CAN.

917. *Add. Annotations*:—**Consd.** Auchteroni v. Midland Bank, [1928] 2 K. B. 294; Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.
922. *Add. Annotations*:—**Consd.** Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Mentd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
935. *Add. Annotation*:—**Refd.** Humphrey & Denman v. Kavanagh (1925), 41 T. L. R. 378.
942. *Add. Annotation*:—**Refd.** Sutters v. Briggs, [1922] 1 A. C. 1.
943. *Add. Annotations*:—**Distd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927), 96 L. J. K. B. 789. **Apid.** Carlton Hall Club v. Laurence, [1929] 2 K. B. 153. **Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagar, [1921] 3 K. B. 532; Robinson v. Marsh, [1921] 2 K. B. 640.
945. *Add. Annotations*:—**Refd.** Maskell v. Hill, [1921] 3 K. B. 157; Humphrey v. Wilson (1929), 141 L. T. 469.
- 946a. **Compounding felony**.]—**GUIBORN** v. **FELLOWS** (1717), 2 Eq. Cas. Abr. 160; 5 Vin. Abr. 408, pl. 20; 22 E. R. 136, L. C.
959. *Add. Annotation*:—**Mentd.** Maskell v. Hill, [1921] 3 K. B. 157.
960. *Add. Annotations*:—**Refd.** Robinson v. Marsh, [1921] 2 K. B. 640; Sutters v. Briggs, [1922]

**PART X. SECT. 2.**

844 il. —.]—CANADIAN BANK OF  
COMMERCE v. COLWELL (1923), 56  
N. S. R. 347.—CAN.

**PART X. SECT. 3.**

**855 i. Liability of accommodating party**—Not entitled to notice of dishonour.—**CODVILLE Co. v. JORDAN**, [1922] 1 W. W. R. 1280; 63 D. L. R. 691.—**CAN.**

856 vi. — — — — — Subsequent  
indorser not entitled to benefit of col-  
lateral security.] — SMITH v. FRALICK  
(1856), 5 Gr. 612. — CAN.

**sa. Right of accommodating party.**—*To sue.*—On warehouse receipt indorsed by accommodated party. —*Held:* plff. could not recover, for there was no debt contracted at the time of the indorsement. —*COCKBURN v. SYLVESTER* (1877), 1 A. R. 471. — **CAN.**

**PART X. SECT. 5.**

896 iv. ———.]—UNION BANK  
OF CANADA v. ANTONIOU, [1921] 1  
W. W. R. 649; 56 D. L. R. 338; 61  
S. C. R. 253.—CAN.

896 v. ———.—]—WEICKER v.  
MORTIMER, [1922] 2 W. W. R. 725 ;  
15 Sask. L. R. 436.—CAN.

896 vi. ———.] ALAHABAD BANK, LTD., LAHORE v. RATTAN CHAND CHAWLA (1927), I. L. R. 8 Lah. 702.—  
IND.

897 vi. ———.]—GUNNS, LTD.  
v. WARK, [1924] 1 D. L. R. 377, 51  
N. B. R. 292.—CAN.

897 vii. ———.]—MARSHALL v.  
ROGERS, [1924] 1 D. L. R. 888.—CAN.

897 viii. — — —.]—The original payee of a cheque is not a holder in due course.—JOHNSON v. JOHNSON, [1928] 2 D. L. R. 531, 912; [1928] 1 W. W. R. 774; [1928] 2 W. W. R. 63; 23 Alta. L. R. 388.—CAN.

907 i. "Complete & regular on face of it"—Instrument signed in blank.)—A party who knows that a note has been signed in blank & negotiated to him before being filled out is not a holder in due course.—*SAVARD v. TREMBLAY* (1922), Q. R. 34 K. B. 458.—CAN.

**913 iii.** ———.—J—Pltf. purchased a 1916 model motor-truck from G. A cash payment was made on account & promissory notes given for the balance. G. assigned the agreement & notes to defts. for valuable consideration, of which plif. had due notice. Later plif. found the truck was a 1913 model but continued to use it. He then brought an action for cancellation of the notes.—*Held*: defts. were holders of the notes in due course & had discharged any *onus* for the fraudulent conduct of G. of which they had no notice.—FRASER v. MCGREGGOR, JOHNSTON & THOMAS, LID. (1922), 31 B. C. R. 306.  
—CAN.

913 iv. ———.]—BANK OF AUSTRALASIA v. CURTIS, [1927] N. Z. L. R. 247.—N.Z.

916 vi. ———,]—In order for a person to whom a bill or note is negotiated to be affected with notice of a defect in the title of the person negotiating it he must have knowledge of the facts or a suspicion of something wrong combined with a wilful neglect of the means of knowledge.—  
ROYAL BANK OF CANADA P. GROBE & WATBURN (Alta.), [1928] 3 D. L. R. 93; [1928] 2 W. W. R. 55.—CAN.

k (p. 141) L.—*Private arrangement between parties*—*Not expressed on face of instrument.*—An open letter of credit was granted to W., trader, on the guarantee of T. & M., merchants, upon an agreement, not expressed in the letter, that W. should buy produce & consign bills of lading & policy of insurance endorsed to T. & M., as security. W., in fraud & violation of their agreement, drew bills under the letter, & indorsed for value to the Merchants' Bank of Halifax, who had no notice of the above agreement.—*Hill v. A.* negotiable instrument is not to be affected by any private arrangement which the parties do not choose to put upon the face of the document. If it were intended to limit W. in the use of the letter of credit as between him & the world at large, to a use for mercantile purposes connected with the purchase of the produce, it would have been very easy to have expressed on the face of the letter of credit that it was to be accepted if presented accompanied by bills of lading & policy of

insurance.—MERCHANTS BANK OF  
HALIFAX v. WINTER (1898), 8 Nfld.  
L. R. 30.—NFLD.

**PART X. SECT. 6, SUB-SECT. 2.—A.**

**940 i. Smuggling.**—WALLBRIDGE v. FOLLETT (1816), 2 U. C. R. 280.—CAN.

**942 i. Gaming -Gambling in grain futures.**—Promissory note unenforceable.—BANK OF TORONTO v. SWEENEY, BANK OF TORONTO v. COCHRANE, BANK OF TORONTO v. BORYS. [1927] 2 W. W. R. 597; 21 Sask. L. R. 670.—CAN.

946 iii. - --.] MACWILLIAMS ?.  
HIGGINS, [1927] 2 D. L. R. 781 ; [1927]  
1 W. W. R. 772, 36 Man. L. R. 458. -  
CAN.

**946 iv.** -- -.]—Promissory note unenforceable. The fact that the magistrate consented to the withdrawal of the charge is immaterial.—*Becker v BACHMAN* (Alta.), [1927] 2 D. L. R. 1141; [1927] 2 W. W. R. 32.—**CAN.**

**m. Read now " 946a i."**  
**n1. Transaction in breach of licensing laws.**—*Held*:—*plf's.* could not recover on bills of exchange given in payment for intoxicating liquors sold by their agent in a local option district.—**WILSON CO. v. MAYFLOWER BOTTLING CO. (N. S.) (1913), 13 E. L. R. 489; 14 D. L. R. 711.—CAN.**

n ii. — 1.—*Held*: there was no legal consideration for the cheque on which *plff.* sued, & he could not recover.—*SCALE v. BECKER*, [1926] 1 D. L. R. 723, 59 O. L. R. 551.—**CAN.**

**PART X. SECT. 6, SUB SECT. 2.- B.**

**sb. Amount recoverable.**—Where the consideration for a promissory note as between the maker & payee was illegal & judgment is recovered thereon against the maker by a holder in due course who took it from the payee as collateral security for a debt, the amount of the judgment should be limited to the amount of the transferee's present indebtedness to the holder. The same result follows even though the original transaction was not illegal, where the maker has already paid the amount of the note to the payee.—*ROYAL BANK OF CANADA v. GROHE & WALBRIDGE (Aha.)*, [1928] 3 D. L. R. 93; [1928] 2 W. W. R. 55.—**CAN.**

- 1 A. C. 1. **Mentd.** Maskell v. Hill, [1921] 3 K. B. 157.
964. *Add. Annotation*:—**Apld.** Greenberg v. Cooperstein, [1926] Ch. 657.
971. *Add. Annotation*:—**Refd.** Sutters v. Briggs, [1922] 1 A. C. 1.
995. *Add. Annotation*:—**Consd.** Jones v. Waring & Gillow, [1926] A. C. 670.
1033. *Add. Annotation*:—**Refd.** Bernard v. Williams (1928), 139 L. T. 22.
1037. *Annotations*:—Delete "Barwick v. S. E. & C. Ry. Cos., [1920] 2 K. B. 387; Bombay & Persia Steam Navigation Co. v. MacLay, [1920] 3 K. B. 402; Markwald v. A.-G., [1920] 1 Ch. 348."
- Add. Annotations*:—**Refd.** Maclaine v. Eccott (1924), 132 L. T. 173. **Mentd.** Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930; Jaeger v. Jaeger Co. (1927), 44 R. P. C. 437; Sassoon v. International Banking Corp., [1927] A. C. 711.
1038. *Add. Annotations*:—**Refd.** The Penelope, [1928] P. 180. **Mentd.** French Marine v. Compagnie Napolitaine d'Eclairage et de Chauffage par le Gaz, [1921] 2 A. C. 494.
1052. *Add. Annotation*:—**Refd.** Robinson v. Marsh, [1921] 2 K. B. 640.
1053. *Add. Annotation*:—**Distd.** Guildford Trust v. Pohl & Maritch (1923), 72 Sol. Jo. 171.
1054. *Add. Annotation*:—**Refd.** Jones v. Waring & Gillow, [1926] A. C. 670.
- 1054a. ———. ———. ———. **GUILD FORD TRUST, LTD. v. POHL & MARITCH** (1928), 72 Sol. Jo. 171.
1093. *Add. Annotation*:—**Refd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
1096. *Add. Annotation*:—**Mentd.** R. v. Jenkins, R. v. Evans-Jones (1923), 87 J. P. 115.
1123. *Add. Annotation*:—**Mentd.** Maskell v. Hill, [1921] 3 K. B. 157.
1132. *Add. Annotation*:—**Refd.** Robinson v. Marsh, [1921] 2 K. B. 640.

## Part XI.—Negotiation and Transfer.

1161. *Add. Annotations*:—**Refd.** Sutters v. Briggs, [1922] 1 A. C. 1. **Mentd.** The Joannis Vatis (1921), 91 L. J. P. 182.
1163. *Add. Annotation*:—**Refd.** McDonald v. Nash, [1924] A. C. 625.
1178. *Add. Annotation*:—**Refd.** Sutters v. Briggs, [1922] 1 A. C. 1.
1188. *Add. Annotation*:—**Refd.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
1190. *Add. Annotation*:—**Refd.** Robinson v. Marsh, [1921] 2 K. B. 640.
1196. *Add. Annotation*:—**As to** (2) **Consd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.
1248. *Add. Annotations*:—**Consd.** Re Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Refd.** McDonald v. Nash, [1924] A. C. 625.

### PART X. SECT. 7.

993 v. ———. ———. **Assignment by vendor of rights under contract to third party—Property in goods never passing to purchaser.**—**MONTICELLO STATE BANK v. KILLORAN**, [1920] 3 W. W. R. 542.—**CAN.**

### PART X. SECT. 8, SUB-SECT. 1.

s i. ———. **Verbal agreement that note to be operative only on happening of specified event.**—**DENNIS v. IVFY & BOYCE**, [1920] 3 W. W. R. 744.—**CAN.**

s ii. ———. **Note given to show fictitious assets—Estoppel of maker.**—**HAY v. ALLEN**, [1921] 1 W. W. R. 33.—**CAN.**

s iii. ———. ———. **KLOTZ v. JOUAN**, [1925] 3 D. L. R. 105.—**CAN.**

s iv. ———. ———. **DEVLIN v. MOORE'S MILLS CHEMISTRY, LTD.** (N. B.), [1927] 3 D. L. R. 479.—**CAN.**

### PART X. SECT. 8, SUB-SECT. 2.

1040 ii. ———. ———. ———. **The maker of a post-dated cheque the consideration for which has failed & payment of which he has stopped, is liable thereon to a bank which in good faith & without knowledge of the facts has before its date received it by indorsement from the payee & given credit therefor to the payee.**—**UNION BANK OF CANADA v. TATTERSALL**, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—**CAN.**

q (p. 164) i. ———. ———. **Withdrawal of retainer.**—**Therule that partial failure of consideration for a promissory note is a defence pro tanto, as against an immediate party, only when the amount of the note referable to such partial failure is ascertained & liquidated, was applied herein to an action on a note**

given a solt. on being retained to conduct the defence to a charge which was withdrawn before the date set for trial, but with respect to which the solt. prepared for trial.—**KRAUSS v. LAUCHUK**, [1928] 1 D. L. R. 1132; [1928] 1 W. W. R. 181; 22 Sask. L. R. 374.—**CAN.**

### PART X. SECT. 9, SUB-SECT. 1.

1059 xv. ———. ———. **Where notes were nullities for fraud, & the signer was not estopped by any negligence on her part.**—**Held:** the third party, although a holder in due course, had no right to recover from her.—**DUNSHIEA v. KESTIVEN**, [1922] N. Z. L. R. 1052.—**N.Z.**

1059 xvi. ———. ———. **Where there was a defect in the payee's title, of which the indorsee had notice.**—**Held:** he was not entitled to recover.—**DARROCK v. BURNS** (1927), 48 N. L. R. 320.—**S. AF.**

### PART X. SECT. 9, SUB-SECT. 2.

1073 i. ———. ———. **Husband & wife.**—**FRYERS & CO., LTD. v. STEEVES** (N. B.), [1927] 4 D. L. R. 1077.—**CAN.**

### PART X. SECT. 10, SUB-SECT. 1.

1093 i. *Add* "varied," [1917] 1 W. W. R. 1177."

### PART X. SECT. 10, SUB-SECT. 2.—B (a).

1096 ix. ———. ———. **Fraud is no defence where an action on a note is brought by a holder in due course. It merely shifts the burden to plff. to show that he took the note before maturity, in good faith, for value & with no notice of the fraud.**—**CANADIAN BANK OF COMMERCE v. FREEBLES**, [1924] 1 D. L. R. 225.—**CAN.**

### PART XI. SECT. 4.

g (p. 185) i. ———. ———. **To be the holder of a promissory note & entitled to sue on it in his own name, plff. must be either the payee or the indorsee in possession of the note.**—**BARNLEY v. LAUZON**, [1923] 2 W. W. R. 19.—**CAN.**

m (p. 188) i. ———. ———. **Assignment to evade counterclaim.**—**Deft.** made a note in favour of C., who lost it. C. made an assignment of it to J. in order that J. might bring an action thereon & so prevent deft. bringing a counterclaim against C. Just before trial the note was found & indorsed to J. **Held:** C. must be joined as plff., & deft. allowed to bring in his counterclaim.—**JONES & COLQUHOUN v. FINCH** (1922), 66 D. L. R. 822.—**CAN.**

m (p. 188) ii. ———. ———. **Indorsement in consideration of advances—Advances repaid.**—**Held:** an action might be brought either in the name of the indorser or holder.—**CLOW v. BOULL**, [1920] 1 W. W. R. 1060.—**CAN.**

m (p. 188) iii. ———. ———. **"On account of" payee.**—**An indorsement was not struck out & action was brought on the note in the name of the payee. At the trial the judge allowed plff. to amend by adding the indorsee as co-plff., deft. having objected that plff. had no right of action; & judgment was given for the indorsee, but costs were given deft. against the payee, the original plff. Deft. appealed on the grounds that no amendment should have been allowed, & plff. was not entitled to judgment. Appeal dismissed.**—**JACKSON MACHINES, LTD. v. MICHALUCK**, [1922] 2 W. W. R. 572; 67 D. L. R. 182; 15 Sask. L. R. 467.—**CAN.**

d (p. 189) i. ———. ———. **Payee of cheque.**—**BELCHER v. DIXON**, [1923] N. Z. L. R. 273.—**N.Z.**

1250. *Add. Annotations*:—*Appld. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593. *Apprvd. McDonald v. Nash*, [1924] A. C. 625.

1254a. ———.]—A testator gave a promissory note to G., saying he wished to provide other wise than by will, for pltf. & afterwards made his will, appointing G., with others, his exor., & to whom, after payment of legacies, he bequeathed a moiety of his personal estate. G. having made some payments on account to the pltf. afterwards denied her title:—*Held*: he was a trustee of the note for pltf.—*LLOYD v. CHUNE* (1860), 2 Giff. 441; 3 L. T. 366; 6 Jur. N. S. 1365; 66 E. R. 184.

*Annotation*:—*Expld. Re Whitaker* (1889), 42 Ch. D. 119.

1306. *Add. Annotation*:—*Refd. Re Wethered, Ex p. Salaman*, [1926] Ch. 167.

1312. *Add. Annotation*:—*Consd. Importers Co. v. Westminster Bank*, [1927] 1 K. B. 869.

1318. *Add. Annotation*:—*Refd. Sutters v. Briggs* [1922] 1 A. C. 1.

1319. *Add. Annotation*:—*Refd. Robinson v. Midland Bank* (1925), 41 T. L. R. 402.

1324. *Add. Annotations*:—*Refd. Sutters v. Briggs*, [1922] 1 A. C. 1. *Mentd. The Joannis Vatis* (1921), 91 L. J. P. 182.

1334. *Add. Annotation*:—*Consd. McDonald v. Nash*, [1924] A. C. 625.

## Part XII.—General Duties of Holder.

1388. *Add. Annotation*:—*Mentd. The St. George*, [1926] P. 217.

1397. *Add. Annotations*:—*Refd. Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437; *Sassoon v. International Banking Corp.*, [1927] A. C. 711. *Mentd. MacLaine v. Eccott* (1924), 132 L. T. 173; *Buerger v. New York Life Assce* (1927), 96 L. J. K. B. 930.

1407. *Add. Annotation*:—*Refd. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.

1418. *Add. Annotation*:—*Mentd. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.

1459. *Add. Annotation*:—*Refd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

1461. *Add. Annotation*:—*Refd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

1463. *Add. Annotation*:—*Refd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

1477. After this case add “*Bill accepted payable at bank—Presentment over counter—Validity*.”—*See BANKERS*, No. 600a, *ante*.”

1488. *Add. Annotation*:—*Mentd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

1490. *Add. Annotation*:—*Mentd. Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221.

### PART XI. SECT. 9.

e. i. ———.]—*Bank selling assets to another bank*.]—Where one bank sells its assets to another bank under Bank Act, ss. 99 to 111, & the agreement for sale has been approved by the Governor in Council, the purchasing bank may sue in its own name in respect of a promissory note, part of the assets acquired, notwithstanding that the note has not been indorsed by the selling bank as required by Bills of Exchange Act.—*BANK OF MONTREAL v. IRVINE & FRANKLIN*, [1924] 3 D. L. R. 752; 2 W. W. R. 1047.—*CAN.*

### PART XI. SECT. 15, SUB-SECT. 1.

sg. “*Indorsed*” written opposite signature.]—A promissory note was signed by W. & M. on the face of the note & opposite M.’s signature the word “indorsed” was written by a salesman in the service of pltf. co., to which the note was made payable:—*Held*: M. did not sign the note with the intention of indorsing it, but as maker, though as between him & W. only as a surety, & the word “indorsed” was merely a memorandum intended to show that M. was a surety.—*GORRIS (A. D.) Co., Ltd. v. WHITFIELD & MICHAUD* (1920), 48 O. L. R. 605; 58 D. L. R. 326; 19 O. W. N. 336.—*CAN.*

### PART XI. SECT. 15, SUB-SECT. 2.

k. i. ———.]—*Of company*.]—If a co. authorises that its bank may accept for deposit cheques “purporting to be indorsed by any one director or the secretary or treasurer,” an indorsement is good which is made by one who is a director & secretary though he does not purport to sign as director or secretary.—*UNION BANK OF CANADA v. TATTERSALL*, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—*CAN.*

k. ii. ———.]—*BRECHT v. HEF-*

*FEIL*, [1923] 3 D. L. R. 40; 2 W. W. R. 1135.—*CAN.*

k. iii. ———.]—*IMPERIAL BANK OF CANADA v. DENNIS*, [1925] 3 D. L. R. 488; 57 O. L. R. 203.—*CAN.*

k. iv. ———.]—*FIDELITY TRUST CO. v. TERMINAL LAND & INVESTMENT CO. (Ont.)*, [1927] 1 D. L. R. 532.—*CAN.*

sj. *Member of syndicate*.]—An indorsement by one of the members of a syndicate, carrying on the business of travelling a stallion, in the syndicate’s name of a promissory note made payable to the syndicate or its order:—*Held*: to be a valid indorsement.—*RILEY v. REED*, [1925] 2 D. L. R. 737; [1925] 2 W. W. R. 286; 19 Sask. L. R. 366.—*CAN.*

### PART XI. SECT. 15, SUB-SECT. 3.—A.

1311 i. *Must be written on instrument—Writing on face of note*.]—Where the intention of all parties is that a signature is for the purpose of indorsement, it makes no difference where the signature is placed.—*SIMONIN v. PHILLON*, [1922] 2 W. W. R. 1280; 66 D. L. R. 673.—*CAN.*

sk. ———.]—*Alonge*.]—Before finding that a sheet of paper is an allonge to a promissory note, the ct. should scrutinise the evidence & material with the greatest care, & the evidence in favour of such a finding should be of the strongest character.—*BARNBY v. LAUZON*, [1923] 3 D. L. R. 140; 2 W. W. R. 19.—*CAN.*

1313 i. *Must be signed—Name misspelt—In cheque—Name properly spelt in indorsement*.]—Although the word “limited” be omitted from a payee co.’s name in a cheque, there being no doubt of the co. being the intended payee, an indorsement of the cheque is effective by the proper signature of the payee on the back of it.—*UNION BANK OF CANADA v. TATTERSALL*, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—*CAN.*

### PART XI. SECT. 15, SUB-SECT. 3.—E.

sl. *After advance made—Relation back*.]—*Held*: the indorsement related back to the time when the note was given & the money paid.—*CANADIAN BANK OF COMMERCE v. COLWELL* (1923), 56 N. S. R. 347.—*CAN.*

### PART XI. SECT. 15, SUB-SECT. 4.

1356 i. ———.]—*Pay to order of M. Bank to credit of*.]—*Held*: a restrictive indorsement, & the indorsee & holder is not entitled to recover from the maker, who has paid in good faith the amount of the note to the payee.—*MERCHANTS BANK OF CANADA v. BRETT*, [1923] 2 D. L. R. 264; 32 Man. L. R. 529; [1923] 1 W. W. R. 607.—*CAN.*

r. i. ———.]—*O’DONOGHUE v. HEMBROFF* (1871), 19 Gr. 95.—*CAN.*

### PART XI. SECT. 17.

1367 iii. ———.]—*Apparent cancellation of indorsement*.]—*Held*: it is for the holder to prove in order to establish his title by reason of Bills of Exchange Act, ss. 143, 144, that the apparent cancellation was not intended to be one.—*ROYAL BANK OF CANADA v. ALLEN*, [1919] 3 W. W. R. 1063; 49 D. L. R. 572; 15 Alta. L. R. 171.—*CAN.*

### PART XII. SECT. 2, SUB-SECT. 1.

1405 xiii. ———.]—*RAM SARUP v. HARMHO PRASAD* (1927), 1 L. L. R. 50 All. 309.—*IND.*

### PART XII. SECT. 2, SUB-SECT. 2.—A. (b).

1432 iii. ———.]—*Cheque in circulation six months—Held*: an unreasonable time & not recoverable.—*BALLEN v. FINEB*, [1923] 4 D. L. R. 1203.—*CAN.*

1434 ii. ———.]—*Cheque mislaid—Delay not causing damage*.]—*Held*: the drawer was not discharged by the cheque not having been presented within a reasonable time.—*KING & BOYD v. PORTER*, [1925] N. 107.—*IR.*

1628. *Add. Annotation*:—**Mentd.** *Brown v. Swan* (1921), 37 T. L. R. 787.  
 1629. *Add. Annotation*:—**Mentd.** *Sutlers v. Briggs*, [1922] 1 A. C. 1.  
 1637. *Add. Annotation*:—**Mentd.** *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.  
 1638. *Add. Annotation*:—**Refd.** *Smith v. Wood* (1928), 139 L. T. 250.  
 1664. *Add. Annotation*:—**Mentd.** *Robinson v. Midland Bank* (1925), 41 T. L. R. 402.

1688. *Add. Annotations*:—**Mentd.** *Goldman v. Cox* (1924), 40 T. L. R. 744; *Jones v. Waring & Gillow*, [1920] A. C. 670.  
 1715. *Add. Annotation*:—**Refd.** *Brown v. Swan* (1921), 37 T. L. R. 787.  
 1751. *Add. Annotation*:—**Mentd.** *Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.  
 1851. *Add. Annotation*:—**Mentd.** *The Hayle*, [1929] 1 P. 275.

## Part XIII.—Liability of Parties.

1983. *Add. Annotations*:—**Refd.** *Re Wait*, [1927] 1 Ch. 606. **Mentd.** *Ratner v. London Joint City & Midland Bank* (1922), 38 T. L. R. 253  
 1991. *Add. Annotation*:—**Consd.** *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294.  
 1993. *Add. Annotation*:—**Refd.** *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.  
 1994. *Add. Annotation*:—**Consd.** *Re Swinburne. Sutton v. Featherley* (1925), 70 Sol. Jo. 64.  
 2004. *Add. Annotation*:—**Refd.** *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.  
 2040a. ————**]**—*DUNN (M.), LTD. v. JEFFERSON*, No. 577a, *ante*.  
 2049a. **On bills drawn against confirmed credit—Bills not presented to bank.**—*Applts.*, merchants at Calcutta, sold goods to merchants in London at c.i.f. price, payment by drafts against a confirmed credit, to be opened by the buyers. On shipment of the goods

*applts.* drew on the buyers bills payable to resps., who negotiated them with notice that they were drawn against a confirmed credit opened by the buyers with the E. Bank. *Applts.* handed to resps. with the bills the shipping documents, also a memorandum describing the bills as D/A, *i.e.*, documents against acceptance. drafts. Resps. handed the documents to the buyers against their acceptances, which were dishonoured upon maturity. Resps. sued *applts.* as drawers of the bills:—**Held**: resps. were entitled & bound to treat the description of the bills as D/A drafts as a direction to hand the documents to the drawers on their acceptance, & *applts.* had no defence, set-off or counterclaim in respect of the loss of the rights which they would have had under the confirmed credit, if the documents had been handed to the E. Bank for presentation.—**SASSOON (M. A.)**

### PART XII. SECT. 2, SUB-SECT. 7.—B. (a).

1530 xiv. ————**]**—*Acceleration of date of payment.*—(1) A promissory note in the body of it made payable at a particular place must be presented for payment there, before an action thereon is brought against the maker. (2) The fact that the date of payment has been accelerated by virtue of a collateral agreement does not render presentment unnecessary. —**MORGAN v. SHAW**, [1926] 1 D. L. R. 828; [1926] 1 W. W. R. 483; 36 B. C. R. 451.—**CAN.**

### PART XII. SECT. 2, SUB-SECT. 9.

1563 ii. ————**]**—*Specified place having ceased to exist.*—**SPARKS v. HAMILTON** (1920), 47 O. L. R. 55; 17 O. W. N. 427.—**CAN.**

w i. ————**]**—*Agreement for extension of time.*—**NEWMAN v. BROWNE (W. R.) & SON**, [1925] 1 D. L. R. 676; 56 O. L. R. 148.—**CAN.**

sm. *Payee without funds.*—**Held**: non-presentment of a cheque did not affect the holder's right to recover, there being evidence that the maker had not funds to meet it & no evidence of damage to him through non-presentment.—**CLOW v. DOULL**, [1920] 1 W. W. R. 1060.—**CAN.**

### PART XII. SECT. 2, SUB-SECT. 10.

g i. ————**]**—*GUNSOLLY v. ENGSTROM*, [1924] 2 W. W. R. 382.—**CAN.**

### PART XII. SECT. 2, SUB-SECT. 11.

p i. ————**]**—*Owing to the long period of time before presenting a note for payment, & in the absence of evidence of the circumstances under which it was given & indorsed.*—**Held**: the indorser was discharged.—**BANK OF MONTREAL v. McNEILL & McNEILL**, [1924] 2 W. W. R. 165; 33 B. C. R. 263.—**CAN.**

### PART XII. SECT. 4, SUB-SECT. 1.

sn. *To accommodation maker.*—**Of promissory note.**—**Held**: he is not entitled to notice of dishonour, even though it be known to the payee that he is such a maker.—**CONVILLE CO. v. JORDAN**, [1922] 1 W. W. R. 1280; 63 D. L. R. 694.—**CAN.**

### PART XII. SECT. 4, SUB-SECT. 6.—C.

d i. ————**]**—*A letter in the following terms: "We humbly demand from you £550, being amount owing on a promissory note made by F. & indorsed by you to the C. Co., & of which we are the holders."*—**Held**: a sufficient notice of dishonour.—**NILES v. BOTTING**, [1928] N. Z. L. R. 209.—**N.Z.**

1807 i. ————**]**—*Name of indorser wrongly stated.*—**Held**: under Bills of Exchange Act, s. 106, notice of dishonour was dispensed with.—**BROCK & PATTERSON, LTD. v. CROCKETT**, [1923] 4 D. L. R. 1204; 56 N. S. R. 132.—**CAN.**

### PART XII. SECT. 4, SUB-SECT. 8.—B.

1869 iii. ————**]**—*Express promise.*—**An express promise to pay with full knowledge of the facts & when the indorser is aware that he has had no notice of dishonour is a waiver of his right to notice.—**CANADIAN BANK OF COMMERCE v. BROOKDALE COLLIERIES, LTD.**, [1923] 1 D. L. R. 138; 1 W. W. R. 877.—**CAN.****

1874 i. ————**]**—*Coupled with request for time.*—**Held**: sufficient to hold him liable for payment notwithstanding the previous failure to give the statutory notice of dishonour.—**IMPERIAL BANK v. TRUSTS & GUARANTEE CO.**, [1921] 1 W. W. R. 801; 57 D. L. R. 693; 16 Alta. L. R. 343.—**CAN.**

g i. ————**]**—*If there is no express promise, yet there may be such an admission of liability as to*

warrant the ct. in inferring that notice was actually received, & for this purpose it is not enough to show merely that the indorser did not repudiate his liability.—**CANADIAN BANK OF COMMERCE v. BROOKDALE COLLIERIES, LTD.**, [1923] 1 D. L. R. 138; 1 W. W. R. 877.—**CAN.**

1884 i. ————**]**—*Agreement postponing time of payment.*—**Between maker & indorser.**—**NEWMAN v. BROWNE (W. R.) & SON**, [1925] 1 D. L. R. 676; 56 O. L. R. 148.—**CAN.**

### PART XII. SECT. 4, SUB-SECT. 9.

1937 i. *On liability of—Indorser.*—**If no notice of dishonour is given to the indorser, he is discharged from his liability as against the payee.**—**SIMONIN v. PHILLON**, [1922] 2 W. W. R. 1280; 66 D. L. R. 673.—**CAN.**

1937 ii. ————**]**—**ARMSTRONG-LOGAN AGENCY, LTD. v. ERMANN**, [1923] 3 W. W. R. 806.—**CAN.**

### PART XII. SECT. 5, SUB-SECT. 1.—A.

1946 i. *General rule.*—**Where the notes are "foreign bills" under Bills of Exchange Act, s. 25, protest upon non-payment is necessary to hold the indorser.**—**SPARKS v. HAMILTON** (1920), 47 O. L. R. 55; 17 O. W. N. 427.—**CAN.**

### PART XII. SECT. 5, SUB-SECT. 1.—B.

o i. ————**]**—**BANK OF TORONTO v. BENNETT** (1925), 57 O. L. R. 326.—**CAN.**

### PART XIII. SECT. 1.

1994 i. *Cheque—Not equitable assignment.*—**HOWLATT v. GARMENT (J. & G.) MANUFACTURING CO.** (1921), 64 D. L. R. 88; 49 O. L. R. 166.—**CAN.**

### PART XIII. SECT. 2, SUB-SECT. 1.

1996 v. ————**]**—**CLARKSON v. LAWSON** (1856), 14 U. C. R. 67.—**CAN.**



& SONS, LTD. v. INTERNATIONAL BANKING CORP., [1927] A. C. 711; 96 L. J. P. C. 153; 137 L. T. 501, P. C.

2060. *Add. Annotation*:—*Refd. McDonald v. Nash*, [1924] A. C. 625.

2070. *Add. Annotation*:—*Refd. McDonald v. Nash*, [1924] A. C. 625.

2088. *Add. Annotation*:—*Consd. McDonald v. Nash*, [1924] A. C. 625.

2092. *Add. Annotations*:—*Distd. McDonald v. Nash*, [1924] A. C. 625. *Refd. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593.

2095. *Add. Annotation*:—*Consd. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593.

2096. *Add. Annotations*:—*Distd. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593; *McDonald v. Nash*, [1924] A. C. 625.

2096a. ————]—J. sold certain goods to C., Ltd., of which G. was managing director & in which he was largely interested. In payment for these goods J. drew a bill of exchange to his own order at three months for £450 upon C., Ltd., who accepted it, & it was indorsed by G. before J. had indorsed it as payee, & his name appeared below that of G. The bill was indorsed by G. in order to enable J. to discount it, & for no consideration moving from J. to G., who was to be under no liability to J. The bill was discounted by J.'s bank & was not met at maturity. An arrangement was subsequently made by which C., Ltd., paid £100 in cash to the bank in part satisfaction & the bank received two bills drawn by J. to his own order & accepted by C., Ltd., for £175 each at one month & two months respectively. These bills were indorsed by G. before they were signed by J. either as drawer or payee. They were afterwards indorsed by J., whose name appeared on the bills below that of G. The first bill not having been met at maturity, J. took it up & sued C., Ltd., & G. upon the bill & recovered judgment, & afterwards presented a petition in bkpy. in the county ct. against G., founded on the judgment debt, upon which a receiving order was made against him. On appeal:—*Held*: (1) J. had authority under 1882 Act, s. 20, to fill in his own name as drawer & payee; (2) there was sufficient consideration passing from J. to G. to entitle J. to sue G. on the bill notwithstanding the order in which the signatures appeared on the bill; (3) by reason of the agreement between J. & G., G. could not have set up any defence against J. arising out of his own prior indorsement; (4) the judgment debt was a good petitioning creditor's debt & the receiving order was rightly made.—*Re GOOCH, Ex p. JUDD*,

[1921] 2 K. B. 593; 90 L. J. K. B. 932; 125 L. T. 583; [1921] B. & C. R. 100, C. A.

*Annotation*:—*As to (1) Apld. McDonald v. Nash*, [1924] A. C. 625.

2096b. ————]—In May, 1920, appls. sold to A. & Co. 19,000 cases of tinned soup at the price of 10s. per case, cash against delivery order. A. & Co., being unable to find the money, applied for financial assistance to resps., who undertook as between themselves & A. & Co. to find 75 per cent. of the money, there being then about 16,000 cases which had not been taken up. On Aug. 10, 1920, at a meeting between appls., resps. & A. & Co., it was agreed that resps. should indorse a series of eight bills of exchange, seven for £1,000 each & one for £117 odd, to be drawn by appls. on A. & Co. payable six months after date to appls.' order, & that appls., in consideration of the bills being duly indorsed by resps., should hand to resps. delivery orders for the balance of the cases. These bills were at once drawn by appls. on A. & Co. expressed to be payable to appls.' order, & were accepted by A. & Co. & indorsed by resps. Room was left above the name of resps. for the indorsement of the name of any person to whom appls. should direct payment. Resps. then handed the bills to appls. in exchange for the delivery orders. One bill having been discharged, appls. shortly before the remaining bills became due indorsed their name as payee on the bills above resps.' signature. Appls. duly presented the bills to A. & Co., who dishonoured them. They then gave notice of dishonour & claimed payment from resps., who denied liability. In an action by appls. to recover the amount of the bills against resps. as indorsers:—*Held*: (1) on the facts resps. must be taken to have intended to make themselves liable to appls. on the bills; (2) the bills, when handed to appls., were wanting in a material particular within 1882 Act, s. 20, by reason of the absence of any indorsement by appls. above the signature of resps., & appls. had implied authority to fill in their name as payees, as they did, over the name of resps.; & when so filled up, the bills became retrospectively enforceable.—*MCDONALD (GERALD) & Co. v. NASH & Co.*, [1924] A. C. 625; 93 L. J. K. B. 610; 131 L. T. 428; 40 T. L. R. 530; 68 Sol. Jo. 594; 29 Com. Cas. 313, 11. L.

*Annotations*:—*As to (2) Refd. Elliott v. Bax-Ironside*, [1925] 2 K. B. 301; *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

2097. *Add. Annotations*:—*Apld. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593. *Apprvd. McDonald v. Nash*, [1924] A. C. 625.

#### PART XIII. SECT. 3, SUB-SECT. 1.

2052 ii. ————]—*LEE v. BLAKE*, [1924] 4 D. L. R. 369; 55 O. L. R. 310.—CAN.

#### PART XIII. SECT. 4, SUB-SECT. 1.—A.

2058 v. ————]—An indorsement does not conclusively establish a liability to pay, but indorsement is *prima facie* evidence of an agreement to pay.—*LEE v. BLAKE*, [1924] 4 D. L. R. 339. 55 O. L. R. 310.—CAN.

#### PART XIII. SECT. 4, SUB-SECT. 2.

2085 vi. ————]—*Indorsement obtained by misrepresentation of drawer—Negligence of indorser*.—*HANCOCK & Co., LTD. v. JOHNSTONE*, [1923] N. Z. L. R. 639.—N.Z.

#### PART XIII. SECT. 6.

2098 v. ————]—*PARKER WOOD & Co., LTD. v. RICHARDS* (1925), 46 N. L. R. 277.—S. AF.

2098 vi. ————]—R. signed promissory notes in favour of H. S. also signed the notes below R.'s signature as "surety & co-principal debtor in solidum".—*Held*: S.'s liability was that of a surety & not of a joint maker with R.—*SHUTTER v. RIDGWAY* (1926), 47 N. L. R. 149.—S. AF.

vi. ————]—A person who has placed his signature on a promissory note below that of the maker in the place where the maker usually signs, without adding anything to indicate

that he has signed as indorser only, will be held to be a maker unless there is competent evidence to prove that he was not.—*TRIGGS v. ENGLISH*, [1921] 4 D. L. R. 937; 3 W. W. R. 566.—CAN.

2101 xxi. ————]—A person who has placed his signature on the back of a promissory note, before delivery to or indorsement by the payee, is liable as surety under an *aval*, & is not in the position of an ordinary indorser.—*MOTI & Co. v. CASSIM'S TRUSTEE*, [1924] App. D. 720.—S. AF.

2101 xxiii. ————]—A person who indorses his name on a promissory note before negotiation thereof

2103. *Add. Annotation*:—*Refd. McDonald v. Nash*, [1924] A. C. 625.
2111. *Add. Annotation*:—*Generally, Mentd. Sassoon v. International Banking Corp.*, [1927] A. C. 711.
2116. *Add. Annotation*:—*Mentd. Re Wait*, [1926] Ch. 962.
2118. *Add. Annotations*:—*Refd. The Kronprinsessan Margareta, The Parana, etc.*, [1921] 1 A. C. 486. *Mentd. Folkes v. King*, [1923] 1 K. B. 282; *Laurie & Morewood v. Dudin* (1926), 134 L. T. 309.
2136. *Add. Annotation*:—*Mentd. Brown v. Swan* (1921), 37 T. L. R. 787.
2145. *Add. Annotation*:—*Mentd. Bowling v. Camp* (1922), 128 L. T. 342.
2161. *Add. Annotations*:—*N.F. Uliendahl v. Pankhurst Wright* (1923), 39 T. L. R. 628; *Peyrae v. Wilkinson*, [1924] 2 K. B. 166. *Refd. Re Chesterman's Trusts, Mott v. Browning*, [1923] 2 Ch. 466.
2169. *Add. Annotation*:—*Refd. Robinson v. Marsh*, [1921] 2 K. B. 640.
2176. *Add. Annotation*:—*Mentd. Switt v. Board of Trade* (1924), 93 L. J. K. B. 529.
- 2205a. ———— *Illegality of payment during war.*—*Bills of exchange which were*
- accepted before the war, & which became due after war was declared, were held by the drawer, who was resident in Germany, & was an enemy for the purpose of the Trading with the Enemy Acts. After the declaration of peace the holder sued the acceptors, claiming interest from the dates when the bills respectively matured:—*Held*: as there was no breach of duty in not paying the bills as long as the war continued, & as payment did not become legal until the declaration of peace with Germany on Jan. 10, 1920, interest was only recoverable from that date.—*BIEDERMANN v. ALLHAUSEN & Co.* (1921), 37 T. L. R. 662.
2214. *Add. Annotations*:—*Mentd. Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789; *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.
2225. *Add. Annotation*:—*Folld. Dresdner Bank v. Russo-Asiatic Bank*, [1923] 1 Ch. 209.
2229. *Add. Annotation*:—*Mentd. Sassoon v. International Banking Corp.*, [1927] A. C. 711.
2249. *Add. Annotation*:—*Refd. Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
2256. *Add. Annotation*:—*Mentd. Sassoon v. International Banking Corp.*, [1927] A. C. 711.

## Part XIV.—Discharge.

2269. *Add. Annotation*:—*Mentd. Robinson v. Marsh*, [1921] 2 K. B. 640.
2280. *Add. Annotation*:—*Refd. Société des Hôtels Le Touquet Paris-Plage v. Cummings*, [1922] 1 K. B. 451.
2286. *Add. Annotation*:—*Mentd. Société des Hôtels Le Touquet Paris-Plage v. Cummings*, [1922] 1 K. B. 451.
2308. *Add. Annotation*:—*Refd. Société des Hôtels Le Touquet Paris-Plage v. Cummings*, [1922] 1 K. B. 451.
2314. *Add. Annotation*:—*Refd. Société des Hôtels Le Touquet Paris-Plage v. Cummings*, [1922] 1 K. B. 451.
- 2318a. *Agreement to pay money—Consideration uncertain.*—*A beneficiary under testator's*
- will was a debtor of his who had owed him money under a promissory note given in 1877, & had, in 1882, entered into an agreement with testator to pay him a certain sum of money for which no distinct consideration could be clearly ascertained:—*Held*: (1) there was a presumption of law that the promissory note had been discharged by accord & satisfaction on the entrance into the later agreement: (2) there was no presumption that the money still due under the agreement had been forgone by testator.—*WOODCOCK v. EAMES* (1925), 69 Sol. Jo. 444.
2362. *Add. Annotation*:—*Refd. Jones v. Waring & Gillow*, [1926] A. C. 670.
2364. *Add. Annotations*:—*Distd. Goldman v. Cox*

is not an indorser, but an *aval* or surety for the maker.—*CASSIDINE v. MAHARAJ* (1925), 46 N. L. R. 151.—S. AF.

### PART XIII. SECT. 10.

11. ———— *Note signed by surety before principal—Liable as maker.*—*FRASER v. CUMMINGS & LEOPOLD* (1921), 67 D. L. R. 767.—CAN.

11. ———— *Referred to. BARTLEY & MIKILSON (Sask.)*, [1928] 4 D. L. R. 919; [1928] 3 W. W. R. 513.—CAN.

### PART XIII. SECT. 11, SUB-SECT. 2.—A.

2175 iii. ———— *GANPAT TUKARAM MALI v. SOPANA TUKARAM MALI* (1927), 1 L. R. 52 Bom. 88.—IND.

2177 ii. ———— *PUBLIC TRUSTEE v. GLADSTONE*, [1921] N. Z. L. R. 224.—N.Z.

### PART XIII. SECT. 11, SUB-SECT. 2.—D.

so. *Reasonable rate—Not agreed rate—Promissory note inadmissible for want of stamp.*—*Held*: where a pro-

missory note is inadmissible in evidence for want of stamp, & the creditor sues for the money lent as on the original contract of loan, he may claim a reasonable rate of interest, but he cannot claim at the rate stated in the promissory note.—*ISMAIL HOOSAIN MAMSA v. K. PURBHUBHAI* (1928), 1 L. R. 6 Bom. 415.—IND.

### PART XIII. SECT. 11, SUB-SECT. 3.

2227 iii. ———— *Held*: as debtors, the makers of the note, were bound without protest, the notarial fees could not be recovered from them.—*GOWANS v. CROCKER PRESS CO.* (1920), 46 O. L. R. 24; 50 O. L. R. 58.—CAN.

### PART XIII. SECT. 11, SUB-SECT. 6.

b. *Add "Revsd. on other grounds"*, 56 S. C. R. 165.

### PART XIV. SECT. 2, SUB-SECT. 4.

ii. *Mortgage to secure present & future advances—Given during currency of note.*—*Held*: the mtge. not being

strictly coextensive with the note, the remedy on the note was not merged in the mtge., & debt was liable.—*O'NEILL v. LYE*, [1923] N. Z. L. R. 1039.—N.Z.

sp. *Payment under garnishment proceedings by judgment creditor of payer.*—*Held*: in the circumstances no answer to the indorser's claim.—*CLOW v. DOULL*, [1920] 1 W. W. R. 1060.—CAN.

sr. *Notes given to secure advances—Made on prepayment of purchase-money—Delivery of goods.*—*Held*: the payees were entitled to recover the balance due on the first note given prior to the contract, but as regards the notes given subsequently the goods delivered must be credited against the advances made, & the plea of payment must prevail.—*TYRER CO. v. EUREKA LUMBER CO.* (1922), 55 N. S. R. 441.—CAN.

st. *Note due to deceased—Not sale of goods to executor personally.*—*MCKENZIE v. McDONALD (P. E. I.)*, [1927] 2 D. L. R. 67.—CAN.

- (1924), 40 T. L. R. 744. **Refd.** Jones v. Waring & Gillow, [1926] A. C. 670.
- 2368. Add. Annotations:—****Refd.** Jones v. Waring & Gillow, [1926] A. C. 670. **Mentd.** Holt v. Markham (1922), 128 L. T. 719.
- 2370. Add. Annotations:—****Refd.** Jones v. Waring & Gillow, [1926] A. C. 670. **Mentd.** Holt v. Markham, [1923] 1 K. B. 504.
- 2391. Add. Annotation:—****Consd.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
- 2393. Add. Annotation:—****Refd.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
- 2393a. Joint maker appointed holder's executor.**—During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof:—**Held:** the action was not maintainable, inasmuch as the effect of pltf.'s appointment as exor. was at common law that the debt was discharged by release at the date of the death of testator, & in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action.—**JENKINS v. JENKINS**, [1928] 2 K. B. 501; 97 L. J. K. B. 400; 139 L. T. 119; 44 T. L. R. 483; 72 Sol. Jo. 319, D. C.
- 2396. Add. Annotation:—****Mentd.** Fettes v. Robertson (1921), 37 T. L. R. 581.
- 2416a. — Verbal agreement for acceptance of composition.**—Pltf. was the holder of a bill of exchange accepted by deft. for goods supplied. Before the bill became due deft. had made a verbal offer to his creditors to pay a composition in discharge of his liabilities. At a meeting of the creditors, which was attended by pltf.'s agent, the creditors passed a resolution accepting deft.'s offer. The resolution was reduced to writing & was signed by a number of the creditors, including pltf.'s agent, but not by deft. The creditors subsequently executed a deed assigning their debts to deft.'s solr. in consideration of deft.'s solr. paying the amounts owing to them under the composition. Pltf. was not a party to that deed. In an action by the holder of the bill against the acceptor, for the amount of the bill:—**Held:** upholding a contention of pltf., which was not raised in the cts. below, 1882 Act, s. 62, had not been complied with, as pltf. had neither renounced his rights under the bill in writing, nor delivered the bill up to the acceptor & therefore, pltf. was entitled to recover the full amount of the bill.—**RIMALT v. CARTWRIGHT** (1924), 93 L. J. K. B. 823; 132 L. T. 40; 40 T. L. R. 803; 68 Sol. Jo. 788; [1924] B. & C. R. 239, C. A.
- 2446. Add. Annotation:—****Mentd.** Brown v. Swan (1921), 37 T. L. R. 787.
- 2455a. —**—**FOSTER v. DRISCOLL, LINDSAY v. ATTFIELD, LINDSAY v. DRISCOLL**, No. 568a, ante.
- 2462a. — Invalid inland bill—Alteration resulting in valid foreign bill.** **FOSTER v. DRISCOLL, LINDSAY v. ATTFIELD, LINDSAY v. DRISCOLL**, No. 568a, ante.
- 2473. Add. Annotation:—****Refd.** McDonald v. Nash, [1924] A. C. 625.
- 2484. Add. Annotation:—****Distd.** Hong Kong & Shanghai Bank v. Loo Lee Shi, [1928] A. C. 181.
- 2485. Add. Annotation:—****Mentd.** Bowling v. Camp (1922), 128 L. T. 342.
- 2485a. —**—**A banknote issued by applt. bank, payable to bearer on demand, was accidentally mutilated. The bank declined to pay on presentation of a document which was proved to have been patched together from the fragments. This document, though it did not show the number of the note, showed clearly its other main features:—Held:** as the identity of the document as a note of the bank was established, & it contained all the elements necessary to render it valid & effectual as a negotiable instrument, the bank was liable to pay the holder.—**HONG KONG & SHANGHAI BANK v. LOO LEE SHI**, [1928] A. C. 181; 97 L. J. P. C. 35; 138 L. T. 529; 44 T. L. R. 233; 72 Sol. Jo. 68, P. C.

SUB-SECT. 4.—WHETHER APPARENT (Vol. VI., p. 383).

After "See 1882 Act, s. 61 (1)" add the following case:—

- 2513a. General rule.**—An alteration is "apparent" within 1882 Act, s. 64 (1), if it is of such a kind that it would be observed & noticed by an intending holder scrutinising the document which he contemplates taking with reasonable care.—**WOOLLATT v. STANLEY** (1928), 138 L. T. 620.
- 2518. Add. Annotations:—****Appld.** Auchteroni v. Midland Bank, [1928] 2 K. B. 294. **Mentd.** Joachimson v. Swiss Bank Corpn., [1921] 3 K. B. 110.
- 2552. Add. Annotations:—****Mentd.** New York Life Insce. v. Public Trustee, [1924] 1 Ch. 15; Republica de Guatemala v. Nuncz, [1927] 1 K. B. 669; Royal Trust Co. v. A.-G. for Alberta (1929), 46 T. L. R. 25.
- 2553. Add. Annotation:—****Refd.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
- 2555. Add. Annotation:—****Refd.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
- 2556. Add. Annotation:—****Mentd.** Société des Hôtels Le Touquet Paris-Plage v. Cummings, [1922] 1 K. B. 451.

PART XIV. SECT. 4.

**2401 i. At what time—Before maturity**  
—No necessity for evidence of discharge to be in writing.—**LYONS v. SMITH**, [1922] 3 W. W. R. 684; 70 D. L. R. 101.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.

**2451 v. —**—**Bills of exchange, payable some sixty, some ninety, & some one hundred & twenty days after sight, drawn on applts., were indorsed for value to resps. who duly stamped them, and after acceptance noted in the corner of each bill the date**

for presentation. The parties to the bills having mutually agreed that the dates of payment should be postponed, resps. altered the dates so noted, but without making any alteration in the bills as originally drawn. On presentation for payment at the extended dates the bills were dishonoured by applts. — **Held:** there had been no discharge of the bills by material alteration, nor was a new stamping necessary under Indian Stamp Act, 1899, ss. 14, 35; & applts. remained liable.—**PESTONJI (H.) & Co. v. COX & Co.** (1928), 55 L. R. Ind. App. 353.—**IND.**

**2458 ii. —**—**Decreased.**—**Held:** a material alteration.—**BELLAMY v. POTTER** (1913), 13 D. L. R. 278; 4 O. W. N. 1171; 28 O. L. R. 572.—**CAN.**

PART XIV. SECT. 9.

**2558 i. — Release of one.**—In an action on a promissory note by the original payee against two joint makers, it is no defence for one of the makers, in the absence of any writing or delivery up of the note, to allege that he has been verbally released by the payee.—**GOODMAN v. ARMSTRONG** (1926), 47 N. L. R. 452.—**S. AF**

2559. *Add. Annotation*:—*As to* (2) *Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.
2666. *Add. Annotation*:—*Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.
2677. *Add. Annotation*:—*Refd. Smith v. Wood*, [1929] 1 Ch. 14.
2686. *Add. Annotation*:—*Refd. McDonald v. Nash*, [1924] A. C. 625.

## Part XVIII.—Conflict of Laws.

2775. *Add. Annotations*:—*Generally, Mentd. Mac-laine v. Eccott* (1924), 132 L. T. 173; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930; *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437; *Sassoon v. International Banking Corp.*, [1927] A. C. 711.
2779. *Add. Annotations*:—*Refd. Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789; *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.
2781. *Add. Annotations*:—*Distd. Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. *Consd. Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153. *Mentd. Aksionairnoye Obshchestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532; *Robinson v. Marsh*, [1921] 2 K. B. 640.
2783. *Add. Annotations*:—*Apld. Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. *Consd. Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153. *Mentd. Aksionairnoye Obshchestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532.
2784. *Add. Annotations*:—*Apld. Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. *Refd. Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153. *Mentd. Sutters v. Briggs*, [1922] 1 A. C. 1.
2789. *Add. Annotations*:—*Refd. Koechlin v. Kestenbaum*, [1927] 1 K. B. 889; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
2790. *Add. Annotation*:—*Refd. Koechlin v. Kestenbaum*, [1927] 1 K. B. 889.
- 2791a. — *Validity of indorsement—Liability of acceptor in England*.—A bill of exchange was drawn in France by B. upon resps. in London to the order of M. It was sent to London, was accepted by resps. payable at a London bank, & returned to France, where it was indorsed by E. in his own name, on behalf, & with the authority, of M., to applts. On presentation for payment, resps. refused to meet it on the ground that it did not bear the indorsement of M., the payee, but merely the indorsement of E. In an action on the bill against resps. as acceptors evidence was given that by French law an indorsement might be validly made by a duly authorised agent signing his own name:—*Held*: applts. as indorsees obtained a good title to the bill by virtue of 1882 Act, s. 72, & were entitled to recover the amount thereof from resps. as acceptors.—*Koechlin et Cie v. Kestenbaum Brothers*, [1927] 1 K. B. 889; 96 L. J. K. B. 675; 137 L. T. 216; 43 T. L. R. 352; 32 Com. Cas. 267, C. A.
2792. *Add. Annotation*:—*As to* (2) *Consd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
2794. *Add. Annotations*:—*Apld. Koechlin v. Kestenbaum*, [1927] 1 K. B. 889; *Refd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
2800. *Add. Annotation*:—*Mentd. McDonald v. Nash*, [1924] A. C. 625.
2812. *Add. Annotations*:—*Refd. Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. *Mentd. Periak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111.
2814. *Add. Annotation*:—*Mentd. The Colorado*, [1923] P. 102.
2824. *Add. Annotations*:—*Expld. Re Visser, Holland v. Drukker*, [1928] Ch. 877. *Refd. Republica de Guatemala v. Nuncz*, [1927] 1 K. B. 669.

2559 iii. ———.—*BUECKERT v. FRIESEN*, [1927] 2 D. L. 11, 873; [1927] 1 W. W. R. 825; 36 MAN. L. R. 162.—CAN.

### PART XIV. SECT. 10, SUB-SECT. 2.—A.

2600 viii. ———.—*—*—If the holder of a promissory note has, without the knowledge or consent of an indorser of the note, agreed to give an extension of time for payment to the maker while the note is still current, the indorser is thereupon discharged from liability.—*LIEBENBERG ESTATE v. STANDARD BANK OF SOUTH AFRICA, LTD.*, [1927] App. D. 502.—S. AF.

### PART XIV. SECT. 11.

oi. ———.—*First note destroyed*.—

*Held*: the original indebtedness was discharged & the second note was not a renewal but a satisfaction.—*CRISTAL v. SIMOVITCH* (1922), 70 D. L. R. 861.—CAN.

### PART XIV. SECT. 12, SUB-SECT. 1.

2639 ia. ———.—*—*—The relation of principal & surety is created by indorsement of a bill for accommodation, & if a creditor discharges the principal debtor, the surety is also discharged.—*HARRIS v. LEINER*, [1924] 2 D. L. R. 518; 30 R. L. N. S. 63.—CAN.

### PART XIV. SECT. 12, SUB-SECT. 3.

av. *Deposit with creditor of securities as collateral to notes—Securities entrusted to principal debtor for collec-*

*tion*.—Premium notes, indorsed by G. & F., were deposited with pltf. as security collateral to two notes made by G. & indorsed by F. Pltf. entrusted some of these notes to G. for collection, & G. failed to pay over all that he collected.—*Held*: both G. & F. were liable.—*HOUTLEY v. GORMAN & CORAN* (1920), 47 O. L. R. 420; 18 O. W. N. 173.—CAN.

### PART XVI. SECT. 3.

aw. *Instrument taken in good faith*.—Pltf. bought stolen bearer bonds in good faith.—*Held*: pltf. had acquired a good title.—*GAREY v. DOMINION MANUFACTURERS, LTD.*, [1925] 1 D. L. R. 99; 56 O. L. R. 159.—CAN.

## Part XIX.—Cheques.

2841. *Add. Annotation* :—**Refd.** Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.
2846. *Add. Annotation* :—**Mentd.** Sutters v. Briggs, [1922] 1 A. C. 1.
2847. *Add. Annotations* :—**Generally, Refd.** Sutters v. Briggs, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297. **Mentd.** British & North European Bank v. Zalstein, [1927] 2 K. B. 92.
2849. *Add. Annotations* :—**Consd.** London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.
2850. *Add. Annotation* :—**Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.
2851. *Add. Annotations* :—**Consd.** Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Fenton Textile Assn. v. Thomas (1929), 45 T. L. R. 261. **Mentd.** Goldman v. Cox (1924), 40 T. L. R. 423; Australian Bank of Commerce v. Perel, [1926] A. C. 737; Jones v. Waring & Gillow, [1926] A. C. 670.
2852. *Add. Annotations* :—**Apprvd.** Sutters v. Briggs, [1922] 1 A. C. 1. **Refd.** Brown v. Swan (1921), 37 T. L. R. 787. **Mentd.** Jeffrey v. Bamford, [1921] 2 K. B. 351; Maskell v. Hill, [1921] 3 K. B. 157; Robinson v. Marsh, [1921] 2 K. B. 640; Cohen v. Hall, [1922] 2 K. B. 37; Ford v. Blurton, Ford v. Sauber (1922), 38 T. L. R. 801; Scranton's Trustee v. Pearce, [1922] 2 Ch. 87.

## Part XX.—Negotiable Instruments other than Bills of Exchange, Promissory Notes, and Cheques.

2862. *Add. Annotation* :—**Mentd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.
2866. *Add. Annotations* :—**Refd.** Royal Trust Co. v. A.-G. for Alberta (1929), 46 T. L. R. 25. **Mentd.** New York Life Insco. v. Public Trustee, [1924] 2 Ch. 101.
2873. *Add. Annotations* :—**Consd.** Auchteroni v. Midland Bank, [1928] 2 K. B. 294; Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.
2887. *Add. Annotation* :—**Refd.** Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.
2891. *Add. Annotations* :—*As to* (1) **Refd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669. *As to* (2) **Refd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.
2898. *Add. Annotation* :—**Mentd.** *Re* Richards, Jones v. Rebbeck, [1921] 1 Ch. 513.
2902. *Add. Annotation* :—**Mentd.** Lowther v. Harris, [1927] 1 K. B. 393.
2908. *Add. Annotation* :—**Mentd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
2911. *Add. Annotations* :—**Refd.** Commonwealth Trust v. Akotey (1925), 94 L. J. P. C. 167. **Mentd.** Diamond Alkali Export Corp'n. v. Bourgeois, [1921] 3 K. B. 443; McDonald v. Nash, [1924] A. C. 625; Jones v. Waring & Gillow, [1926] A. C. 670.

## Part XXI.—I.O.U.'s.

2924. *Add. Annotations* :—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927), 96 L. J. K. B. 789. **Mentd.** Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532; Carlton Hall Club v. Laurence, [1929] 2 K. B. 153.
2928. *Add. Annotation* :—**Mentd.** Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.
2929. *Add. Annotation* :—**Mentd.** Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.

## PART XX. SECT. 2, SUB-SECT. 5.

2876 ii. ———.—*Held*: Pltf. who owned thirty-one debentures of the Bombay Improvement Trust entrusted them to his agent, deft. No. 1, for collection of interest. Deft. No. 1 forged pltf.'s signature on the debentures, & indorsed them in his own favour. Subsequently deft. No. 1 pledged them with a bank, deft. No. 2, to secure an overdraft to himself. The bank surrendered the debentures to the Bombay Improvement Trust for renewal. New

debentures were issued payable to the bank or order. These new debentures were subsequently indorsed to another bank (deft. No. 3) for value. Pltf. filed a suit against defts. for a return of the debentures, or in the alternative for their value:—*Held*: the debentures were promissory notes, & therefore, negotiable instruments within Negotiable Instruments Act, ss. 4 & 13.—**MERCANTILE BANK OF INDIA v. MASCARENHAS** (1928), 1 L. R. 52 Bom. 792.—**IND.**

## PART XX. SECT. 2, SUB-SECT. 7.

sx *Loan note.*—*Held*: not a promissory note.—**CANADIAN BANK OF COMMERCE v. JOHN-ON**, [1925] 4 D. L. R. 511; [1925] 3 W. W. R. 328.—**CAN.**

sy. ———.—*Held*: not a promissory note.—**MICALFEE v. ADAIR (Man.)**, [1927] 1 D. L. R. 982; [1927] 1 W. W. R. 331; 36 Man. L. R. 255.—**CAN.**

## Part XXII.—Actions on and in Connection with Negotiable Instruments.

2961. *Add. Annotation*: **Mentd.** *Re Pinto Leite Ex p. Des Oliveira*, [1929] 1 Ch. 221.
2976. *Add. Annotation*:—**Consd.** *Jenkins v. Jenkins*, [1928] 2 K. B. 501.
- 2976a. One joint maker appointed holder's executor—**Action by executor against one of other makers.**—*JENKINS v. JENKINS*, No. 2393a, *ante*.
2978. *Add. Annotation*:—**Mentd.** *Robinson v. Marsh*, [1921] 2 K. B. 640.
2996. *Add. Annotation*:—**Mentd.** *Robinson Marsh*,
3053. *Add. Annotation*:—**Mentd.** *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.
3056. *Add. Annotation*:—**Refd.** *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

## Part XXIII.—Securities for Negotiable Instruments.

3120. *Add. Annotations*:—**As to** (2) **Refd.** *Aman v. Southern Ry.* (1925), 42 T. L. R. 31. **Generally, Mentd.** *Ellis' Trustee v. Dixon, Johnson*, [1924] 2 Ch. 451.

## Part XXV.—Stamp Duties.

SUB-SECT. 1.—BILLS OF EXCHANGE AND OTHER ORDERS ON ONE PERSON TO PAY ANOTHER (Vol. VI., p. 493).

- 3121a. *Bill of exchange.*—**Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, No. 568a, *ante*.**

3125. *Add. Annotation*:—**Refd.** *Midland Bank v. I. R. Comrs.*, [1927] 2 K. B. 465.

3126. *Add. Annotation*:—**Midland Bank v. I. R. Comrs., [1927] 2 K. B. 465.**

3127. *Add. Annotation*:—**Mentd.** *Garrard v. James*, [1925] Ch. 616.

- 3146a. “*Chequelet.*”—A bank issued documents to its customers in the form of receipts for payment by them to the customer of sums under £2. & agreed with its customers that they would pay to persons presenting these documents to them signed by a customer the sums named therein & would debit the customer's account therewith, it being their

avowed intention that the documents should be used for the same purpose as cheques, & the object being to avoid the stamp duty on cheques:—**Held**: the documents were bills of exchange within Stamp Act, 1891 (c. 39), s. 32.—**MIDLAND BANK, LTD. v. INLAND REVENUE COMRS.**, [1927] 2 K. B. 465; 96 L. J. K. B. 1006; 137 L. T. 817; 43 T. L. R. 754; 71 Sol. Jo. 622.

3170. *Add. Annotation*:—**Mentd.** *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

3172. *Add. Annotation*:—**Refd.** *Lemon v. Austin Friars Investment Trust* (1925), 133 L. T. 790.

3173. *Add. Annotation*:—**Refd.** *Midland Bank v. I. R. Comrs.*, [1927] 2 K. B. 465.

3175. *Add. Annotation*:—**Mentd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.

3209. *Add. Annotations*:—**Refd.** *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. **Mentd.** *Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.

3240. *Add. Annotation*:—**Mentd.** *Koechlin v. Kestenbaum*, [1927] 1 K. B. 889.

**PART XXII. SECT. 1.**  
2951 *vis.* ————.—**JOHN-SON v. RICHARDSON, [1922] 3 W. W. R. 433.—**CAN.****

### PART XXII. SECT. 7.

**sa.** *Pleading—Striking out—When ordered.*—**NEEDLES v. SLOVAK**, [1922] 2 W. W. R. 649; 66 D. L. R. 273; 15 Sask. L. R. 448.—**CAN.**

**sd.** *Discovery—Examination for—Action by indorser.*—**EMPIRE FINANCIALS, LTD. v. NANCE**, [1920] 1 W. W. R. 694; 61 D. L. R. 231.—**CAN.**

**PART XXII. SECT. 11, SUB-SECT. 4.**  
**d i.** ————& to prove collateral agreement—*For “working out” of note.*—**MALLOUGH v. DICK**, [1927] 2 D. L. R. 370; [1927] 1 W. W. R. 544; 22 Alta. L. R. 425.—**CAN.**

**d ii.** *To show that note signed as trustee only.*—**Evidence not admissible.**

—**CANADIAN CREDIT MEN'S TRUST ASSOCN. v. ANDERSON** (1917), 37 D. L. R. 805.—**CAN.**

### PART XXV. SECT. 1. SUB-SECT. 1.

3123 *ii.* ————*Issued by one branch on another.*—**Demand drafts, issued by one office of a bank upon another of the same bank, are bills of exchange payable on demand & are exempt from stamp duty.**—**Re DEMAND DRAFTS OF**

**PART XXV. SECT. 2, SUB-SECT. 1.**  
**sk.** *Time for stamping—Whether after acceptance & indorsement.*—**BUTLER v. EVANS** (1873), 9 N. S. R. (3 G. & O.) 171.—**CAN.**

**PART XXV. SECT. 2, SUB-SECT. 2.**  
**sm.** *Time for stamping.*—**HENDER-**

**SON v. GESNER** (1866), 25 U. C. R. 184.—**CAN.**

**sn.** ————.—**Held**: a promissory note before being negotiated could be stamped by the maker on the day of the making thereof, though after it had been signed & indorsed by the payee.—**BANK OF OTTAWA v. McLAUGHLIN** (1883), 8 A. R. 543.—**CAN.**

### PART XXV. SECT. 4, SUB-SECT. 8. —C.

3263 *v.* ————.—**An unstamped cheque is admissible in evidence & may amount to an earnest or part payment.**—**SYKES v. GECK**, [1920] 1 W. W. R. 741.—**CAN.**

**PART XXV. SECT. 6, SUB-SECT. 1.**  
**f i.** ————.—**TRAVIS v. GLASIER** (1870), 2 Har. 215.—**CAN.**  
**f ii.** ————.—**BANK OF NOVA SCOTIA v. CUSHING** (1882), 21 N. B. R. 498.—**CAN.**

## BILLS OF SALE.

### Part I.—Objects and Application of Bills of Sale Acts.

6. *Add. Annotation* :—*Refd.* National Provincial & Union Bank of England v. Lindsell (1921), 91 L. J. K. B. 196.
7. *Add. Annotation* :—*Mentd.* French v. Gething, [1922] 1 K. B. 236.

### Part II.—What Transactions are Bills of Sale and require Registration.

11. *Add. Annotation* :—*Refd.* French v. Gething, [1922] 1 K. B. 236.
12. *Add. Annotation* :—*Mentd.* National Provincial & Union Bank of England v. Lindsell (1921), 91 L. J. K. B. 196.
- 15a. — *Sale—Re-letting to seller.*—*BRITISH, RAILWAY TRAFFIC & ELECTRIC CO. v. KAHN*, [1921] W. N. 52.
35. *Add. Annotation* :—*Refd.* *Re Wait*, [1927] 1 Ch. 606.
41. *Add. Annotation* :—*Refd.* National Provincial & Union Bank of England v. Lindsell (1921), 91 L. J. K. B. 196.
42. *Add. Annotation* :—*Mentd.* French v. Gething, [1922] 1 K. B. 236.
44. *Add. Annotations* :—*Expld. & Apld.* French v. Gething, [1922] 1 K. B. 236. *Mentd.* Canvey Island Comrs. v. Preedy, [1922] 1 Ch. 179.
52. *Add. Annotation* :—*Mentd.* Stephenson v. Thompson, [1924] 2 K. B. 240.
82. *Add. Annotations* :—*As to* (1) *Consd.* Wrightson v. McArthur & Hutchisons, [1921] 2 K. B. 807. *As to* (2) *Refd.* Wrightson v. McArthur & Hutchisons, [1921] 2 K. B. 807.
90. *Add. Annotations* :—*Apld.* *Re Allester*, [1922] 2 Ch. 211. *Mentd.* Wrightson v. McArthur & Hutchisons, [1921] 2 K. B. 807.
93. *Add. Annotation* :—*Refd.* Wrightson v. McArthur & Hutchisons, [1921] 2 K. B. 807.
- 93a. — *Room on borrower's premises.*—*Deft. co.*, in order to secure *pltf.* against loss on a certain contract & in consideration of *pltf.* giving further time within which to pay for the goods, set aside certain specified goods in two rooms on *defts.* premises, which were locked up & the keys handed to *pltf.*, no other goods being in those two rooms. The terms of the transaction were recorded in two letters written by *deft. co.* to *pltf.*, one

#### PART I.

sa. *Bills of Sale & Chattel Mortgage Act, R. S. M., 1913 (c. 17)*—*Not applicable to mortgage of equity in mortgaged goods.*—The above Act does not apply to a chattel mtge. which expressly covers not the goods themselves referred to therein but any interest or equity which mtgor. may have in them after the claim of a prior named mtgee. shall have been satisfied.—*BANQUE D'INDUSTRIE v. BROWNSTONE*, [1925] 3 D. L. R. 176; [1925] 2 W. W. R. 348; 35 Man. L. R. 62.—*CAN.*

sb. *Crop Payments Act, 1924 (c. 147)*, ss. 2, 3—*Effect of—Alienation by landlord, vendor or mortgagee.*—*Re CROP PAYMENTS ACT, Re BILLS OF SALE & CHATTEL MORTGAGE ACT (1926)*, 36 Man. L. R. 34; [1926] 2 W. W. R. 844.—*CAN.*

sd. *Contract made outside jurisdiction—Provincial Act not applicable.*—*NATIONAL CASH REGISTER CO. v. LOVETT, MOORE v. NATIONAL CASH REGISTER CO.* (1906), 1 E. L. R. 321.—*CAN.*

#### PART II. SECT. 1.

10 ii. *Add "revsd."* [1920] 3 W. W. R. 421.

#### PART II. SECT. 2.

sm. *Declaration reserving to maker powers of management & disposition—No power in cestui que trust to seize or take possession.*—*PURCELL v. DEPUTY FEDERAL TAXATION COMR.* (1920), 28 C. L. R. 77.—*AUS.*

#### PART II. SECT. 3, SUB-SECT. 2.

28 i. *Add "revsd."* [1922] 3 W. W. R. 421.

#### PART II. SECT. 4.

t i. — *Goods paid for but not delivered.*—*Held*—registration not required under Bills of Sale Act in order to protect purchaser's right to subsequently manufactured & paid for under the agreement, the property in which had passed to him but which were still on vendor's premises.—*ALLEN-STOLTZE LUMBER CO., LTD. v. SUMMIT LAKE LUMBER CO., LTD.*, [1920] 3 W. W. R. 895.—*CAN.*

sp. "Customer's agreement"—& "trust receipts."—*Re DOMINION SHIP-BUILDING & REPAIR CO., LTD.* (1923), 53 O. L. R. 485; 24 O. W. N. 30.—*CAN.*

#### PART II. SECT. 5, SUB-SECT. 4.

80 i. *Following alleged sale to vendor.*—C. purchased an automobile, paying partly in cash & partly by post-dated cheque. Later requiring money to finance his business, he borrowed \$1,400 from *pltf.*, giving in return a hire-purchase agreement as to the automobile. C. continued in possession of the car.—*Held*—the document was an assurance & came within Bills of Sale Act.—*RITTER (R. P.) & CO. v. SCARFF* (1920), 29 B. C. R. 70.—*CAN.*

80 ii. — ]—A. an employee of *pltf.*

*co.*, being desirous of obtaining a new motor car for the purposes of his work, arranged with an officer of *pltf.* that the *co.* would advance him £200 to enable him to purchase the car. A. selected a car & signed an order for it in his own name, & an invoice addressed to *pltf.* was issued to A. A cheque for the balance of the amount owing on the car was given by the *pltf.* to A., who handed it to the vendor. The *co.*'s ledger showed the amount of the cheque as an advance to A. As security for this advance A. entered into a hire-purchase agreement with the *co.*, whereby the *co.* purported to let the car to A. upon the usual terms of a hire-purchase agreement. The agreement was not registered as a bill of sale, & A. subsequently sold the car to *deft.* In an action for detention—*Held* the *ct.* was not concluded by the form into which the parties had thrown the transaction, but was entitled, & indeed bound, to inquire into its real nature; the transaction between A. & *pltf.* amounted to an advance by *pltf.* to A. on the security of the car; the *pltf.* could not make out its title independently of the hire-purchase agreement, which contained a licence to take possession of a personal chattel, & was consequently a bill of sale within Instruments Act, 1915, s. 127, & the agreement not being registered as a bill of sale was void, & *deft.* was entitled to succeed.—*AUSTRALIAN METROPOLITAN LIFE ASSURANCE CO., LTD. v. LEA*, [1928] V. L. R. 29.—*AUS.*

letter written before the keys were handed over, & the second letter subsequently. The second letter contained the words: "The goods to be locked up, the keys in your possession, & you to have the right to remove same as desired." The co. went into liquidation & the liquidator claimed that the transaction was invalid under Companies Act, 1908 (c. 69), s. 93 (1) (c), as being a charge created or evidenced by an instrument which if executed by an individual would require registration as a bill of sale. Pltf. brought an action claiming a declaration that the goods were in his possession, & that he was entitled to remove them:—*Held*: possession of the goods passed to pltf. by the delivery of the keys of the rooms in which they were locked up, notwithstanding that those rooms were on defts.' premises, inasmuch as defts. had conferred upon pltf. a licence to make the necessary entry in order to use the keys, which licence could not be revoked, & therefore the transaction was valid as against the liquidator, & pltf. was entitled to remove the goods.—*WRIGHTSON v. MCARTHUR & HUTCHISONS*, [1921] 2 K. B. 807; 90 L. J. K. B. 842; 125 L. T. 383; 37 T. L. R. 575; 65 Sol. Jo. 553; [1921] B. & C. R. 136.

95. *Add. Annotation*:—*Mentd. Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.

97. *Add. Annotation*:—*Consd. French v. Gething*, [1922] 1 K. B. 236.

98. *Add. Annotation*:—*Refd. National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.

98a. *Letter assigning chattel in hands of third party—Or proceeds of sale—As security for overdraft.*—The owner of a motor car which was in the hands of deft., a motor engineer, for the purpose of repairs, & which he had instructed deft. to sell on his behalf when repaired, had an account at pltf.' bank, which was overdrawn. Being re-

quested by pltf. to give security for the overdraft he wrote to deft. a letter authorising him "to hold the car to the order of" the bank "or the proceeds when sold," & sent a copy of that letter to pltf. The letter was not registered as a bill of sale. The car having been sold & the price received by deft., pltf. claimed the proceeds:—*Held*: the letter in question created one entire charge upon the car & the proceeds which represented it, & the equitable assignment of the proceeds could not be severed from the assignment of the car itself; the letter was consequently a bill of sale & void for want of registration & for non-compliance with the statutory form.—*NATIONAL PROVINCIAL & UNION BANK OF ENGLAND v. LINDSELL*, [1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; 66 Sol. Jo. (W. R.) 11; [1921] B. & C. R. 209.

*Annotation*:—*Refd. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

99. *Add. Annotation*:—*Mentd. Pearce v. Brain*, [1929] 2 K. B. 310.

101. *Add. Annotation*:—*Mentd. Re Chaplin & Staffordshire Potteries Waterworks Co.'s Contract*, [1922] 2 Ch. 824.

104. *Add. Annotation*:—*Expld. & Apld. Shears v. Jones*, [1922] 2 Ch. 802.

107. *Add. Annotation*:—*Mentd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

108. *Add. Annotation*:—*Consd. Re Johns, Worrell v. Johns*, [1928] Ch. 737.

110a. —[An agreement to execute a bill of sale, to secure payment of a debt, in the event of the debt not being paid by a certain date, is a bill of sale within 1882 Act, & is void unless the requirements of that Act as to registration are complied with.—*SHEARS & SONS, LTD. v. JONES*, [1922] 2 Ch. 802; 92 L. J. Ch. 28; 128 L. T. 218; 66 Sol. Jo. 682; [1922] B. & C. R. 211.

112. *Add. Annotation*:—*Refd. Re Wethered, Ex p. Trustee* (1925), 134 L. T. 264.

## Part III.—Instruments not within the Expression "Bill of Sale."

127. *Add. Annotation*:—*Mentd. Re Debtor*, [1929] 1 Ch. 362.

128. *Add. Annotations*:—*Folld. French v. Gething*, [1922] 1 K. B. 236. *Refd. Canvey Island Comrs. v. Preedy*, [1922] 1 Ch. 179.

131. *Add. Annotation*:—*Mentd. Re Stanton*, [1929] 1 Ch. 180.

132. *Add. Annotation*:—*Mentd. The James W. Elwell*, [1921] P. 351.

133. *Add. Annotations*:—*Refd. The Harlow*, [1922] P. 175; *Merchants' Marine Insee. v. North of England Protecting & Indemnity Assocn.* (1926), 42 T. L. R. 724.

138. *Add. Annotation*:—*Refd. Re Allester*, [1922] 2 Ch. 211.

138a. *Letter of trust on redelivery for realisation of pledged bills of lading.*—A limited co.

pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees & to remit the entire net proceeds as realised:—*Held*: the letter of trust was not a bill of sale at all within the definition of 1878 Act, s. 4. *Semhle*: if it had been so, it would on the evidence have been a document "used in the ordinary course of business" within the exception in that definition.—*Re ALLESTER*

### PART II. SECT. 6.

*st. To give security—Registration necessary.*—*Re McIntyre, Trustee v. Canada Metal Co., Ltd. (Ont.)*, [1925] 2 D. L. R. 889; 5 C. B. R. 629.—CAN.



(D.), LTD., [1922] 2 Ch. 211; 91 L. J. Ch. 797; 127 L. T. 434; 38 T. L. R. 611; 66 Sol. Jo. 486; [1922] B. & C. R. 190.

**138b. Agreement for sale of growing crop.**—An agreement for the sale of a growing crop is a transfer of "goods" within 1878 Act, s. 4, & is therefore excepted from the definition of "bill of sale" in that sect. as being a "transfer of goods in the ordinary course of business of any trade or calling."—*STEPHENSON v. THOMPSON*, [1924] 2 K. B. 240; 93 L. J. K. B. 771; 131 L. T. 279; 88 J. P. 142; 40 T. L. R. 513; 68 Sol. Jo. 536; 22 L. G. R. 359; [1924] B. & C. R. 170, C. A.

**144a.** ——— **Society incorporated under Industrial & Provident Societies Act, 1893 (c. 39).**—Upon a claim by a debenture-holder in the winding up of a society incorporated under the above Act to be declared a secured creditor, the question arose whether the debenture, by which the property of the society present & future was charged to secure the repayment of the principal sum & interest, was void by reason of Bills of Sale Acts, as to all or any of the assets of the society thereby charged:—*Held*: (1) the society was not an incorporated co. within the exception from 1882 Act, mentioned in sect. 17 of that Act; (2) the property charged

by the debenture, although described in general terms, was severable; & accordingly, the debenture was a valid charge upon such of the assets of the society as did not consist of personal chattels within 1878 Act, s. 4.—*Re NORTH WALES PRODUCE & SUPPLY SOCIETY*, [1922] 2 Ch. 340; 91 L. J. Ch. 415; 127 L. T. 288; 38 T. L. R. 518; 66 Sol. Jo. 439; [1922] B. & C. R. 12.

**148. Add. Annotations:—Refd.** *Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340; *National Provincial Bank of England v. Charnley* (1923), 93 L. J. K. B. 241.

**149. Add. Annotations:—Refd.** *Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340; *National Provincial Bank of England v. Charnley* (1923), 93 L. J. K. B. 241.

**151. Add. Annotation:—Apld.** *Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

**155. Add. Annotation:—Apld.** *Lemon v. Austin Friars Investment Trust* (1925), 133 L. T. 790.

**156. Add. Annotations:—Consd.** *Lemon v. Austin Friars Investment Trust*, [1926] Ch. 1. *Refd.* *Dey v. Rubber & Mercantile Corp.*, [1923] 2 Ch. 528.

**158. Add. Annotation:—Refd.** *Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

## Part IV.—Subject-Matter of Bills of Sale—"Personal Chattels."

**160. Add. Annotation:—Refd.** *Herbert's Trustee v. Higgins*, [1926] Ch. 794.

**168. Add. Annotation:—Refd.** *Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 310.

**176. Add. Annotation:—Mentd.** *Vaudeville Electric Cinema v. Muriset*, [1923] 2 Ch. 74.

**190. Add. Annotation:—Distd.** *Stephenson v. Thompson*, [1924] 2 K. B. 240.

**191. Add. Annotation:—Mentd.** *Re Mellor, Alvarez v. Dodgson*, [1922] 1 Ch. 312.

**196a. Growing crops.**—*STEPHENSON v. THOMPSON*, No. 138b, *ante*.

**200. Add. Annotation:—Generally, Mentd.** *Re Chaplin & Staffordshire Potteries Waterworks Co.'s Contract*, [1922] 2 Ch. 824.

### PART III. SECT. 5.

*sw. Lien note—No collateral contract to transfer property in goods back to seller.*—*Held*: not a chattel mtg.—*O'BRIEN v. STEBBINS & MULLEN*, [1927] 3 D. L. R. 274; [1927] 2 W. W. R. 176; 21 Sask. L. R. 478.—CAN.

### PART III. SECT. 6.

**142 iv.** ———— *GORDON MACKAY & CO., LTD. v. CAPITAL TRUST CO., LTD.*, [1927] 2 D. L. R. 1150; S. C. R. 374; 8 C. B. R. 216.—CAN.

### PART IV. SECT. 2.

**a i.** ———— *Goods in possession of third party—Claiming possession on his own behalf.*—*Held*: Bills of Sale Act did not apply.—*PRITE v. LAUDON & FENSON*, [1923] 3 D. L. R. 1152; 52 O. L. R. 334.—CAN.

### PART IV. SECT. 4, SUB-SECT. 3.

**o i.** ———— *When a mtgee. enters into possession, he becomes entitled to any crops growing on the land as against a mtgee. of the crops under a chattel mtg. executed after his mtg. & before possession taken; but, if the crops are cut at the time of possession taken, the holder of the chattel mtg. would have priority.*—

*HARRISON v. CARBERRY ELEVATOR CO. (MAN.)* (1908), 7 W. L. R. 535.—CAN.

**a i.** ———— *Chattel mortgage including cut grain—Amount of cut grain not specified.*—*Held*: mtg. not valid even in part.—*NORTH AMERICAN LUMBER CO. v. BANK OF MONTREAL*, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—CAN.

**a ii.** ———— *Lease by mortgagee in possession to guarantor of mortgagee's debt to bank. Profits from crop to be applied in reduction of debt.*—*Held*: the above arrangement did not violate *Chattel Mtg. Act, R. S. C.*, 1920 (c. 200), s. 20, as an attempt to create a security on a growing crop, since it did not come within any instrument mentioned therein.—*BURNS & BROWN v. ZULAU & DOERF (Sask.)*, [1926] 1 W. W. R. 943.—CAN.

**197 x.** ———— *Security on grain given to a bank in Oct. 1921, in respect to advances made in the spring of 1920.*—*Held*: invalid in respect to 1921 crop as there was no proof that 1921 crop was intended as the security, & if there was such an agreement made in 1920 as to 1921 crop it was bad as covering property not then in existence.—*NORTH AMERICAN LUMBER CO. v. BANK OF MONTREAL*, [1922] 1 W. W. R. 1265; 65 D. L. R. 348;

15 Sask. L. R. 375.—CAN.

**197 xi.** ———— *Held*: an agreement only intended to operate as security for payment, payable when the crop was harvested, was void under *R. S. M.*, 1913 (c. 17), s. 33.—*HASCALL v. ROYAL BANK OF CANADA*, [1923] 2 W. W. R. 504; 33 Man. L. R. 230.—CAN.

**197 xii.** ———— *Held*: a security on crops to be grown in futuro was invalid under *R. S. S.*, 1920 (c. 200), s. 20.—*RICHLAND FARM, LTD. v. VERNETTE*, [1923] 3 W. W. R. 74.—CAN.

**197 xiii.** ———— *DALTON v. EATON*, [1924] 1 D. L. R. 493; 1 W. W. R. 246; 18 Sask. L. R. 92.—CAN.

**g i.** ———— *PROCTOR & ANDERSON & NORTHERN ELEVATOR CO., LTD., ELMAN & PROCTOR & MALLORY*, [1921] 3 W. W. R. 39.—CAN.

**k i.** ———— *Transaction not bona fide.*—*Pltf.* claimed the right to take certain wheat in A's possession. A. wanted some of it for seed. It was agreed that *pltf.* would purchase the wheat from A. at a price which was equal to the amount of A's indebtedness to *pltf.*, & *pltf.* would immediately re-sell it to A. at a price per bushel which made the total price at about the same as on *pltf.*'s purchase. This was carried out,

## Part V.—Statutory Requirements.

207. *Add. Annotation*:—**Mentd.** *Gordon v. Golstein*, [1924] 2 K. B. 779.

209. *Add. Annotation*:—**Mentd.** *Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.

213a. — **Substantial accuracy—Payment of loan by cheque.**—*Pltf.* granted a bill of sale over certain furniture to a money-lender, & as she was unable to pay him the first instalment when it became due, *defts.* agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. *Pltf.* accordingly received a cheque for £1,000 from *defts.*, & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to *pltf.* In an action by *pltf.* to restrain *defts.* from disposing of the furniture comprised in the second bill of sale, *pltf.* relied on 1882 Act, s. 8, & she contended that the real consideration was the payment off of the money-lender & the release of her furniture from the first bill of sale:—**Held**: the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—*D'USEZ v. TRAFFICS & DISCOVERIES, LTD.* (1924), 40 T. L. R. 441.

220. *Add. Annotation*:—**Consd.** *Stott v. Shaw & Lee*, [1928] 2 K. B. 26.

228a. — & grantor's creditors paid by grantee.]—(1) On June 24, 1925, the parties to a bill of sale for £1,000 entered into an agreement that the grantee should pay, as he then did, £600 to creditors of the grantor in satisfaction of their debt, that the existing bill of sale should be cancelled, & that the grantor should give to the grantee a new bill of sale for £1,000. The new bill of sale provided that "in consideration of £1,600 paid to" the grantor "by" the grantee "on June 24, 1925," the grantor assigned the chattels to the grantee:—**Held**: the new bill of sale truly set forth the consideration for which it was given, as required by 1882 Act, s. 8.

(2) A bill of sale provided that the grantor would pay the grantee the principal sum of £1,600 with the interest then due "on

Dec. 24, 1925." A contemporaneous mtge. of other property, given as part of the same transaction & as a collateral security for the principal sum, provided as follows: "The mtgor." (the grantor of the bill of sale) "hereby covenants with the mtgee." (the grantee) "to pay to him on Dec. 24 next £1,600 with interest thereon, & it is hereby agreed & declared that (subject to the right of the mtgee. to require repayment of the principal on Dec. 24 next according to the foregoing covenant by the mtgor. or at any time thereafter) the principal money hereby secured shall be repaid by instalments of not less than £20" on specified dates; these provisions not being contained in the bill of sale:—**Held**: the bill of sale by being made contemporaneously with, & as part of the same transaction as, the mtge. containing that clause for repayment of the principal by instalments, was not made or given subject to a "defeasance or condition" within 1878 Act, s. 10 (3), & the fact that that clause was not contained in the body of the bill of sale or written on the same paper or parchment therewith did not avoid the registration of the bill of sale under that sub-sect.—*STOTT v. SHAW & LEE, LTD.*, [1928] 2 K. B. 26; 97 L. J. K. B. 556; 139 L. T. 302; 44 T. L. R. 493; [1928] B. & C. R. 24, C. A.

230. *Add. Annotation*:—**Mentd.** *Henshall v. Wid-dison* (1923), 120 L. T. 607.

237. *Add. Annotation*:—**Distd.** *Henshall v. Wid-dison* (1923), 130 L. T. 607.

237a. — — — — —]—*Pltf.*, H., had had a number of betting transactions with *deft.*, W., a book-maker, since 1918. *Pltf.* lost various bets & paid his losses by cheques. He won other bets for which he was paid by various cheques. Eventually, *pltf.* obtained judgment against *deft.* for £692 10s. Execution was levied at the instance of the judgment creditor where-upon *deft.*'s wife, claimant in the interpleader proceedings which followed, claimed the goods seized, alleging that they belonged to her because her husband, the judgment debtor, had given her a bill of sale covering them to secure the repayment of a sum of £600 which she had advanced to him. The judgment creditor contended that the bill of sale was bad because it did not truly state the consideration. The bill of sale contained

& to secure the purchase price *pltf.* took from A a seed grain mtge. on the crop to be grown:—**Held**: as A did not require the whole of the wheat for seed, & as the price fixed had no relation to the value of the wheat but was fixed with reference to the debt owing by A to *pltf.*, the actual value being much less than the price agreed on, the transaction could not be considered a *bond fide* sale to A, & *pltf.*'s mtge. was invalid.—*LYNCH v. TURKEY (SASK.)*, [1923] 3 D. L. R. 7; [1923] 2 W. W. R. 876; *reversd*, [1923] 1 D. L. R. 1198.—**CAN.**

k ii. — — — — —]—**Held**: the chattel mtge. in question, which was given on a growing crop for the purchase-price of seed grain, was *bond fide* & valid.—*FRISER v. ROMANIEWICZ*, [1928] 4 D. L. R. 400; [1928] 2 W. W. R. 625.—**CAN.**

sa. *Binder twine chattel mortgage*—*To secure price of twine used in previous year.*—**Held**: may be validly granted in the following year over the crops of that year, & is entitled to priority.—*FENNELL v. UNION BANK OF CANADA*, [1923] 3 W. W. R. 79.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—A.

b i. — — — — —]—*Not amount secured.*—*HENTON v. INTERNATIONAL HARVESTER CO.*, [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—B.

h i. — — — — —]—*Misstatement as to currency.*—*The fact that a bill of sale states that the consideration was paid in "lawful money of Canada," whereas it was in fact paid in United States currency,*

does not invalidate the bill of sale.—*FIRST NATIONAL BANK OF MINNEAPOLIS v. MANN & CONWAY*, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C. (a).

— — — — —]—*MOWAT v. CLEMENT* (1886), 3 Man. L. R. 585.—**CAN.**

227 vii. — — — — —]—*Re GAUDREAU, Ex p. ROYAL BANK OF CANADA*, [1922] 3 W. W. R. 70; 66 D. L. R. 831.—**CAN.**

i i. — — — — —]—*& notes under discount*—*Notes subsequently taken up by grantee.*—**Held**: the chattel mtge. was valid.—*FISH v. HIGGINS* (1884), 2 Man. L. R. 65.—**CAN.**

the words "In consideration of a sum of £600 now paid . . ." & the judgment creditor said that the £600 was not paid at the time of making the bill of sale, & therefore was not "now paid," as therein stated, but was paid some time later. It was therefore contended that the bill of sale was not a good bill of sale because the statement that the money was "now paid" was untrue. According to the evidence, deft.'s wife had borrowed the £600 from her mother to help her husband, & she handed the £600 over to her husband to pay his debts at 6 p.m., on the same day that the bill of sale was executed:—*Held*: there was evidence in the present case on which the county ct. judge could find that the £600 was "now paid" within the meaning of the statement in the bill; the bill of sale was executed, & the money was paid over by claimant at substantially the same time; the bill was therefore valid & the appeal must be dismissed.—*HENSHALL v. WIDDISON* (1923), 130 L. T. 607, D. C.

240. *Add. Annotation*:—*Mentd.* Herbert's Trustee v. Higgins, [1926] Ch. 794.

273. *Add. Annotation*:—*Refd.* Commercial Credit Co. of Canada v. Fulton, [1923] A. C. 798.

279. *Add. Annotations*:—*Refd.* Westen v. Fairbridge, [1923] 1 K. B. 667; Gordon Goldstein, [1924] 2 K. B. 779.

282. *Add. Annotation*:—*Consd.* Wilkins v. New Saville Securities & Hawnings (1922), 39 T. L. R. 85.

283a. — *Rights under preceding oral agreement.*—Where, after oral negotiations, a bill of sale of furniture is granted to secure a loan of money with an agreed sum for interest, & the bill is found to be bad, the lender is entitled to recover the principal money lent & interest by virtue of the contract created by the oral negotiations which preceded the granting of the bill of sale.—*WILKINS v. NEW SAVILLE SECURITIES, LTD. & HAWKINGS (G. F.) & SON* (1922), 39 T. L. R. 85.

*Annotation*:—*Folld.* Bradford Advance Co. v. Ayers, [1924] W. N. 152.

283b. — *When a bill of sale is void under 1882 Act, s. 9, it is void for all purposes, including the covenant to pay interest. But where a loan has been negotiated purporting to be under a bill of sale which turns out in fact to be void, an action will lie for money had & received, with an obligation to repay the loan & interest at a reasonable rate.*—*BRADFORD ADVANCE CO., LTD. v. AYERS*, [1924] W. N. 152.

#### PART V. SECT. 2, SUB-SECT. 1.

ab. *Situation of chattels not properly designated—Description by which premises generally known.*—*Held*: sufficient, if not likely to mislead & chattels capable of being identified.—*Re COMFORTER & CUSHION MANUFACTURING CO., Ex p. HENDERSON (J. B.) & CO. (ONT.)*, [1926] 1 D. L. R. 30.—*CAN.*

ad. *One mortgage form attached to part of another mortgage form.*—*Held*: void for uncertainty.—*HENTON v. INTERNATIONAL HARVESTER CO.*, [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—*CAN.*

#### PART V. SECT. 2, SUB-SECT. 3.

sg. *Sufficiency of Small present payment—Extension of time for payment.*—*Held*: sufficient.—*IMPERIAL*

*LUMBER YARDS, LTD. v. FERGUSON, COCKSHUTT PLOW CO., CLAIMANT*, [1922] 2 W. W. R. 133; 65 D. L. R. 758.—*CAN.*

#### PART V. SECT. 2, SUB-SECT. 4.

293 v. — *Reference to description in another instrument.*—*Held*: goods & chattels must be so set out on the face of the instrument as to be easily identifiable, & a reference to another instrument cannot suffice; & as to subsequently acquired goods the mtge. was null & void.—*Re KINN*, [1923] 3 D. L. R. 986; 33 Man. L. R. 153; [1923] 1 W. W. R. 1190; 3 C. B. R. 928.—*CAN.*

q i. — *When a mtge. of a car was made by H., he was owner of only one undivided half-share in the car.*—*Held*: notwithstanding the consent of his

288. *Add. Annotation*:—*Consd.* Gordon v. Goldstein, [1924] 2 K. B. 779.

288a. *Joint parties—Joint assignment—Of property owned by one party.*—By a bill of sale a husband & wife, who were therein together called "the grantor", purported to assign to the grantee the chattels described in the schedule thereto, which in fact belonged to the wife alone:—*Held*: inasmuch as "the grantor" was not the true owner of the chattels at the time when the bill of sale was executed, except as against the grantor the bill of sale was void under 1882 Act, s. 5.—*GORDON v. GOLDSTEIN*, [1924] 2 K. B. 779; 94 L. J. K. B. 21; 132 L. T. 155; [1924] B. & C. R. 245.

*Annotation*:—*Expld.* Gamage v. Payne (1925), 42 T. L. R. 138.

289. *Add. Annotations*:—*Consd.* Westen v. Fairbridge, [1923] 1 K. B. 667; *Distd.* Gordon v. Goldstein, [1924] 2 K. B. 779.

291. *Add. Annotation*:—*Mentd.* Herbert's Trustee v. Higgins, [1926] Ch. 794.

292. *Add. Annotation*:—*Mentd.* Commercial Credit Co. of Canada v. Fulton, [1923] A. C. 798.

297. *Add. Annotation*:—*Refd.* Commercial Credit Co. of Canada v. Fulton, [1923] A. C. 798.

299. *Add. Annotation*:—*Refd.* Re North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

301. *Add. Annotation*:—*Expld. & Apld.* Re North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

302. *Add. Annotation*:—*Expld.* Re North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

302a. — *Other property of industrial society—Charged by debenture.*—*Re NORTH WALES PRODUCE & SUPPLY SOCIETY*, No. 144a, *ante*.

329. *Add. Annotations*:—*Mentd.* Edwards v. Motor Union Insee., [1922] 2 K. B. 249; *Re A Bankruptcy Notice*, [1924] 2 Ch. 76; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd v. Goukasson* (1924), 40 T. L. R. 837; *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.

346. For "does render the bill of sale void," read "does not render the bill of sale void."

352. *Add. Annotation*:—*Mentd.* Henshall v. Widdison (1923), 130 L. T. 607.

372. *Add. Annotation*:—*Refd.* Commercial Credit Co. of Canada v. Fulton, [1923] A. C. 798.

partner to the mtge., it was valid only to the extent of H.'s half share, the fact that shortly after giving the security H. became the sole owner did not operate retrospectively under Chattels Transfer Act, s. 21.—*BOWDEN v. R.*, [1921] N. Z. L. R. 249.—*N.Z.*

#### PART V. SECT. 2, SUB-SECT. 6.—G.

pi. — *Rights of grantor.*—The covenant implied in instruments by way of security over stock which, while forbidding the removal of stock without the grantee's consent, permits a sale by the grantor in the ordinary course of business, provided that the number of stock is not thereby reduced below the number stated in the security, does not require as a condition of a valid sale that the proceeds be paid to the grantee.—*NATIONAL BANK OF NEW*

thereto as his own, though, in fact, the true owner was pltf., his wife. The bill of sale was given as security for a loan to the grantor from deft., & at the time of its execution the wife made a statutory declaration that the goods were those of her husband. One firm of solrs. acted for all the parties in this transaction. On a claim by the wife to the goods:—*Held*: she was estopped from denying that the goods were those of her husband, & thus showing that the bill of sale was void as against deft. under 1882 Act, s. 5.—*WESTEN v. FAIRBRIDGE*, [1923] 1 K. B. 667; 92 L. J. K. B. 577; 129 L. T. 221; 67 Sol. Jo. 403; [1923] B. & C. R. 86.

709. *Add. Annotation*:—*Mentd. Waller v. Thomas*, [1921] 1 K. B. 541.

710a. ——— **Voluntary deed of gift by husband—Declared void after date of bill.**—A man who was in debt executed a deed of gift of his furniture in favour of his wife, who thereafter granted a bill of sale upon the furniture to a person who took for value & without notice. Subsequently the deed of gift was declared void under 13 Eliz. c. 5 as being in fraud of creditors. The furniture having been taken in execution by a judgment creditor the bill of sale holder claimed the furniture under the bill of sale. Interpleader proceedings were instituted in which the execution creditor alleged that the bill of sale was void under

1882 Act, s. 5, on the ground that the grantor was not the "true owner" of the furniture at the time of the execution of the bill of sale:—*Held*: until the deed of gift was set aside the donee thereunder was the "true owner" of the furniture, & as she had conveyed the furniture to a purchaser for value without notice before the deed of gift was set aside, claimant obtained a good title under the bill of sale.—*HARRODS, LTD. v. STANTON*, [1923] 1 K. B. 516; 92 L. J. K. B. 403; 128 L. T. 685; [1923] B. & C. R. 70, D. C.

718. *Add. Annotation*:—*Refd. Wilkins v. New Saville Securities & Hawkings* (1922), 39 T. L. R. 85.

719. *Add. Annotation*:—*Expld. & Apld. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

722. *Add. Annotations*:—*Consd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76; *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52. *Refd. Edwards v. Motor Union Insce.*, [1922] 2 K. B. 249; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, *Banque Internationale de Commerce de Petrograd v. Goukassow* (1924), 40 T. L. R. 837.

723a. **Owner—Statutory declaration that goods belonged to grantor.**—*WESTEN v. FAIRBRIDGE*, No. 708a, *ante*.

## Part VII.—Rights and Liabilities of Parties.

761a. ——— **Seizure under void bill.**—*THOMPSON v. WARD* (1858), 31 L. T. O. S. 86.

797. *Add. Annotation*:—*Mentd. Re Mellor, Alvarez v. Dodgson*, [1922] 1 Ch. 312.

### PART VI. SECT. 6, SUB-SECT. 2.

740 i. **Second bill to cure invalidity—Second bill valid**—Where goods have been sold *bona fide* & a bill of sale given which is invalid because it was not duly registered, & the seller gives the buyer a new bill of sale, even after the period for registration dating from the execution of the first, which is registered before the seller's creditors are in a position to proceed against the goods, it will entitle the buyer to hold them as against the creditors.—*FIRST NATIONAL BANK OF MINNEAPOLIS v. MANN & CONWAY*, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546; *reversd.*, [1925] 1 W. W. R. 899.—*CAN.*

*sm.* **Second bill invalid—First bill valid only between parties.**—*TOPHAM v. MOTOR SECURITIES CO., FEDERAL MOTOR CO. v. TOPHAM (B. C.)*, [1928] 3 D. L. R. 153.—*CAN.*

### PART VII. SECT. 1, SUB-SECT. 2.

c i. ——— *TULLY v. ANDREWS* (1921), 59 D. L. R. 687.—*CAN.*

### PART VII. SECT. 1, SUB-SECT. 3.

756 x. ——— *DORMAN v. CHAPPER* (1914), 27 W. L. R. 599; 6 W. W. R. 551; 17 D. L. R. 121; 7 Sask. L. R. 229.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 2.—B.

d i. ——— **Proceedings to cancel principal security.**—Where it was the intention that a breach of agreement to purchase land should give a right of distress under a collateral chattel mtge.:

—*Held*: the right to seize under the mtge. was not curtailed by reason of proceedings to cancel the agreement.—*COOK v. ORR*, [1924] 1 D. L. R. 920; 1 W. W. R. 1027.—*CAN.*

d ii. ——— **Principal security satisfied.**—*AMHERST BOOT & SHOE CO. v. CARTER (N. B.)* (1922), 70 D. L. R. 110.—*CAN.*

*sm.* **Exemptions Act, 1920 (c. 51)—Extent of exemption—Not dependent on prior dealings with property.**—A chattel mtgor.'s right under Exemptions Act, 1920 (c. 51), s. 3, to claim that certain of the mortgaged chattels are exempt from seizure under the mtge. does not depend in any way on his dealings with the mortgaged property prior to the seizure. Therefore where a mtge. covered thirty horses the fact that prior to the seizure the mtgor. sold ten of them did not disentitle him to claim four of the remaining twenty as exempt; four being the number allowed him by said Act.—*BURROWS v. JOHNSTON (Sask.)*, [1928] 4 D. L. R. 865; [1928] 3 W. W. R. 337.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 3.

y i. ——— *KNIGHT v. T. S. PATTILLO CO.*, [1927] 3 D. L. R. 13; 59 N. S. R. 357.—*CAN.*

y ii. ——— **Deduction of expenses of realisation.**—*YUKON HARDWARE CO. v. MCLENNAN (Y. T.)* (1905), 2 W. L. R. 294.—*CAN.*

— *Sec. also*,  
(p. 142), *ante*.

*so.* **Necessity to obtain leave of court**

—*Jurisdiction of court on application.*—*RUDDER v. LUNDIN, Re EXTRAJUDICIAL SEIZURES ACT*, [1922] 2 W. W. R. 974; 67 D. L. R. 657.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 4.—A. (b).

802 iii. ——— *KING v. KUHN* (1887), 4 Man. L. R. 413.—*CAN.*

802 iv. ——— *Where a trader gives a chattel mtge. upon his stock-in-trade & it is shown either by the express terms of the mtge., or by necessary implication, that the intention of the parties is that the mtgor. shall remain in possession of the stock-in-trade mortgaged, & carry on business therewith in the ordinary course of trade, a purchaser from him of any of the mortgaged goods, bona fide, & in the ordinary course of business, will obtain title to such goods freed from the mtge.; but if the mtgo. on its true construction does not contemplate that the mtgor. is to be at liberty to dispose of the mortgaged goods in the ordinary course of his trade, a purchaser of such mortgaged goods will hold the same subject to the mtge.*—*SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. v. CANADIAN PACIFIC RY. CO.*, [1924] 3 D. L. R. 525; 2 W. W. R. 910.—*CAN.*

r i. ——— **Prior mortgage.**—The purchaser from a mtgor. in good faith of movables mortgaged without possession takes them free from the mtgor.'s lien.—*BACKER, KLORABANCE v. AHMED ESMAIL JAMAL* (1927), 1 L. R. 5 Kan. 633.—*IND.*

809. *Add. Annotation*:—*Refd. Re Wait*, [1927] 1 Ch. 606.

830a. ———.]—In June, 1921, a bill of sale, which was duly registered, was given to secure £400 with interest at 24 per cent. *per annum*. An agreement was afterwards made by which the present claimant agreed with the grantor of the bill of sale to pay to the grantee £450 then owing thereon & to lend to the grantor a further sum of £550 upon having the payment of these sums, making together £1,000 with interest thereon, secured by a transfer of the £450 then owing on the bill of sale & the securities for the same. Subsequently, in Nov. 1921, a deed was made between the parties to the bill of sale & claimant, by which, in pursuance of the agreement & in consideration of £450 then paid to the grantee of the bill of sale by claimant, the grantee assigned to claimant the principal & interest secured by the bill of sale & all securities therefor, & the grantee also at the request of the grantor assigned to claimant the goods comprised in the bill of sale free from all equity of redemption under the bill of sale, but subject to a proviso for redemp-

tion in the deed, & the grantor covenanted with claimant to pay to her on a specified date the £1,000 with interest at 6 per cent. *per annum*. The latter deed was not registered as a bill of sale under the Bills of Sale Acts:—*Held*: the deed was not a “transfer or assignment” of the registered bill of sale within 1878 Act, s. 10, but was a new bill of sale which itself required to be registered &, therefore, claimant was not entitled to rely upon the registered bill of sale as assignee thereof.—*MARSHALL & SNELGROVE, LTD. v. GOWER*, [1923] 1 K. B. 356; 92 L. J. K. B. 499; 128 L. T. 829; [1923] B. & C. R. 81 D. C.

831. *Add. Annotation*:—*Consd. Marshall & Snelgrove v. Gower*, [1923] 1 K. B. 356.

834. *Add. Annotation*:—*Mentd. French v. Gething* (1921), 91 L. J. K. B. 276.

836. *Add. Annotation*:—*Mentd. Waller v. Thomas*, [1921] 1 K. B. 541.

846. *Add. Annotations*:—*Refd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1 *Re Wait*, [1927] 1 Ch. 606.

807 ii a. ———.]—A second chattel mtge. made in good faith, & for valuable consideration, takes priority over a prior unfiled chattel mtge., even if the second mtgee. has actual notice of the prior mtge.—*ROFF v. KRECKER* (1892), 8 Man. L. R. 230.—CAN.

810 ia. ———.]—*By bill of sale*.]—D. executed a bill of sale, duly registered, assigning to the Crown (*inter alia*) all after-acquired chattels. D. subsequently executed in favour of deft. another bill of sale over certain farm implements acquired since the first bill of sale. Upon the sale of these implements the Crown claimed the proceeds on the ground that upon their acquisition they became subject to the security of the Crown. Dft. was aware that the Crown held a chattel security, but believed it comprised other chattels than those contained in his security:—*Held*: the title acquired by the Crown was equitable only, & since deft. acquired a good title at law for value & without notice of the special provision in the Crown's security, the legal title prevailed over the equitable title; & deft.'s knowledge of the existence of the former bill of sale did not amount to constructive notice of its contents.—*R. v. CANTERBURY FARMERS CO-OPERATIVE ASSOCN., LTD.*, [1924] N. Z. L. R. 513.—N.Z.

PART VII. SECT. 2, SUB-SECT. 4.—B.

r i. ———.]—*Title of chattel mortgages not derived from “tenant” within Distress Act, R. S. A., 1922 (c. 97), s. 5—Mortgages protected from distress.*—*CRYSTALL v. OLSEN* (Alta.), [1927] 3 D. L. R. 85; [1927] 2 W. W. R. 35.—CAN.

814 ii. ———.]—*After removal of goods by grantor.*—Dft. leased a house to P., who gave a bill of sale of goods to plff. & received from him a lease of the goods for two years. Before a quarter's rent came due, P. moved the goods off the premises; deft. followed them & distrained for the rent; plff. gave notice that he was owner of the goods & forbade the sale, but deft., believing the bill of sale to be fraudulent, sold the goods under the distress:—*Held*: deft. was liable.—*PIGEON v. MILLIGAN* (1871), N. B. Dig. 282.—CAN.

PART VII. SECT. 2, SUB-SECT. 4.—C.

819 iii. ———.]—*Irrigation district—Postponed to mortgage to secure price of seed grain.*—By virtue of the amendment of 1923 (c. 26), to Bills of Sale Act, the rights of a mtgee. under a chattel mtge. given to secure the price of seed grain are superior to those of an irrigation district resting on a distress levied on the mortgaged crop for arrears of rates due by the mtgee.—*GUELPH & ONTARIO INVESTMENT*

& SAVINGS SOCIETY v. BOARD OF TRUSTEES OF LETHBRIDGE NORTHERN IRRIGATION DISTRICT, [1925] 4 D. L. R. 522; [1925] 3 W. W. R. 475.—CAN.

PART VII. SECT. 3.

a i. ———.]—In order for an assignee of a chattel mtge. to recover the debt secured thereby in an action by him alone against mtgor., his assignment must be absolute & in writing & notice thereof in writing must have been given to mtgor.—*BELLMARE v. GAMACHE*, [1921] 2 W. W. R. 564.—CAN.

b i. ———.]—The assignee of a bill of sale & lien notes, which are in effect a chattel mtge., can stand in no better position than the original holder thereof, & must hold the same subject to existing equities, & he is liable in damages for any unwarranted sale by him of the chattels covered by the bill of sale & lien notes.—*SCOTT v. MOOSE JAW MOTORS, LTD. & J. HANNA, LTD.*, [1924] 4 D. L. R. 279, 2 W. W. R. 1234.—CAN.

b ii. ———.]—*TRADERS TRUST CO. v. CRAWFORD*, [1926] 1 D. L. R. 1167; 55 O. L. R. 381.—CAN.

PART VII. SECT. 4.

g i. ———.]—*Chattels taken by mortgagee*—*TINANT v. SIMON* (1922), 67 D. L. R. 773.—CAN.

## BONDS.

## Part III.—Validity.

30. *Add. Annotation* :—**Mentd.** *Weld v. Petre*, [1929] 1 Ch. 33.
35. *Add. Annotation* :—**Mentd.** *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470.
105. *Add. Annotation* :—**Mentd.** *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470.
- 119a. — **Warden of fleet—Pleading.**—**HUGGINS** *v. BAMBRIDGE* (1740), *Willes*, 241 ; 125 E. R. 1152.
- 155a. —.]—If a bond to secure an annuity contain a recital of the payment of the consideration, & the annuity has been paid for several years, the actual payment of the consideration will be presumed, though there be no receipt indorsed, & though the subscribing witness have no recollection of the subject.—**HASLAM** *v. DIGGLES* (1824), 1 C. & P. 398 ; 171 E. R. 1247, N. P.

## Part V.—Interpretation.

233. *Add. Annotation* :—**Mentd.** *Weld v. Petre*, [1929] 1 Ch. 33.

## Part VI.—Operation and Incidents.

317. *Add. Annotations* :—**Apld.** *Lawrence v. Hayes*, [1927] 2 K. B. 111. **Refd.** *Humphery v. Wilson* (1929), 141 L. T. 169.
355. *Add. Annotation* :—**Mentd.** *Putsman v. Taylor*, [1927] 1 K. B. 637.

## Part VII.—Performance or Breach of Condition.

413. *Add. Citation* :—*sub nom.* *MOORWOOD v. DICKENS*, 3 Bulst. 148.
456. *Add. Citation* :—*sub nom.* *FOREWOOD v. DICTON*, 1 Roll. Rep. 296.
536. *Citations* :—For “*BROWN'S CASE* (1550), *Benl.* 8 ; *Ben.* & *D.* 35 ; 73 E. R. 937,” read “*BROWN'S CASE* (1500), cited *Benl.* 8 ; *Ben.* & *D.* 35 ; 73 E. R. 937.”
547. *Add. Annotation* :—**Refd.** *Cantiere Navale Triestina v. Russian Soviet Naptha Export Agency*, [1925] 2 K. B. 172.

## Part VIII.—Amount Recoverable on Breach of Condition.

569. *Add. Annotation* :—**Refd.** *Campbell v. Pollak*, [1927] A. C. 732.
577. *Add. Annotation* :—**Mentd.** *Re Eyre-Williams*, *Williams v. Williams*, [1923] 2 Ch. 533.

## PART III. SECT. 3, SUB-SECT. 11.

**sa.** *Loan to infant secured by simple bond—Subsequent bond to cover same loan after majority attained.*—Where a minor borrowed a sum of money, executing a simple bond for it, & after attaining majority executed a second bond in respect of the original loan plus interest thereon : *Held* : a suit upon the second bond was not maintainable, as that bond was without consideration & did not come under Indian Contract Act, s. 25 (2).—**SURAJ NARAIN v. SUKHU AMR** (1928), 1 L. R. 51 All. 161.—**IND.**

## PART III. SECT. 3, SUB-SECT. 13.

**sb.** *Penalty bond—Omission of penal sum in obligatory clause.*—*Held* : this omission did not render the bond uncertain & ineffectual.—**GREAT WEST LIFE ASSURANCE CO. v. CAMPBELL** (Man.), [1928] 1 D. L. R. 263 ; 37 Man. L. R. 164 ; [1927] 3 W. W. R. 645.—**CAN.**

## PART VII. SECT. 1, SUB-SECT. 1.

**366 ii.** — *On both obligors.*—*Held* : not necessary.—**FORTUNE v. COCKBURN** (1863), 22 U. C. R. 359.—**CAN.**

## PART VII. SECT. 2, SUB-SECT. 3.

**1 i.** — *Delivery at specified destination—Failure to re-land in Canada.*—**R. v. VANCOUVER BREWERIES, LTD.**, [1928] 4 D. L. R. 881.—**CAN.**

**1 ii.** — —.—**R. v. FIDELITY INSURANCE CO.**, [1928] 4 D. L. R. 965.—**CAN.**

## PART VII. SECT. 2, SUB-SECT. 5.

**1 i.** — *Selection of land during lifetime of obligor & obligee.*—**BURNHAM v. RAMSAY** (1872), 32 U. C. R. 491.—**CAN.**

**sc.** *To pay over half purchase-money on sale of land—Death of obligor & obligee before sale—Bond not charge on land.*—*J.*, the owner of certain land, executed a bond, which was registered,

whereby, for himself, his heirs, exors. or administrators, he covenanted that, on his effecting a sale of the land, which, however, was to be entirely at his option, he would pay A. half the purchase-money. He died without having effected a sale ; & subsequently A. died. J. by his will devised the land to I. for life with remainder in fee to L. & they both joined in an agreement to sell to D. :—*Held* : without deciding whether the bond was in force as between J. & A.'s representatives, it did not constitute a charge on the land the liability thereunder being merely of a personal character.—**RE EAGAN & DAWSON** (1909), 18 O. L. R. 638 ; 13 O. W. R. 694.—**CAN.**

## PART VIII. SECT. 3.

**q i.** — *Conveyance of land—Failure to obtain title.*—*Held* : the damages were not confined to the purchase-money paid & interest.—**PLUMER v. SIMONTON** (1858), 16 U. C. R. 220.—**CAN.**

## Part IX.—Assignment.

680. *Add. Annotations*:—**Apld.** *Re City Life Assce.*, [1926] Ch. 191. **Mentd.** *Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221.
691. *Add. Annotation*:—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

## Part X.—Discharge.

695. *Add. Annotation*:—**As to** (1) **Refd.** *Berry v. Berry*, [1929] 2 K. B. 316.
700. *Add. Citation*:—Cited 6 Co. Rep. 44 b. *Add. Annotation*:—**Refd.** *Enc's Case* (1627), Litt. 58.
- 701a. *S. P. ENE'S CASE* (1627), Litt. 58; 124 E. R. 135.
712. *Add. Annotation*:—**Refd.** *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
749. *Add. Annotation*:—**Mentd.** *Re A Bankruptcy Notice*, [1924] 2 Ch. 76.
- 796a. ——— **Payment by one—Whether co-obligor released.**—Assignment of bond to co-obligor, who pays it, is of no use.—*Woffington v. Sparks* (1754), 2 Ves. Sen. 569; 28 E. R. 363.
803. *Add. Annotation*:—**Mentd.** *The Koursk*, [1924] P. 140.
814. *Add. Annotation*:—**Mentd.** *Re Eyre-Williams, Williams v. Williams*, [1923] 2 Ch. 533.

## Part XII.—Actions on Bonds.

828. *Add. Annotation*:—**Consd.** *Way v. Bishop*, [1928] Ch. 647.
922. *Add. Annotation*:—**Mentd.** *Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll*, [1929] 1 K. B. 470.
- 947a. ———.—**CANNEL v. BUCKLE** (1724), 2 P. Wms. 243; 2 Eq. Cas. Abr. 23; 24 E. R. 715, L. C.
- Annotations*:—**Refd.** *Harvey v. Ashley* (1748), 3 Atk. 607; *Drury v. Drury* (1761), 2 Eden, 39; *Wright v. Cadogan* (1764), 2 Eden, 239; *Durnford v. Lane* (1781), 1 Bro. C. C. 106; *Caruthers v. Caruthers* (1794), 1 Bro. C. C. 600; *Field v. Moore, Field v. Brown* (1855), 7 De G. M. & G. 691.
- 950a. ———.—**WATKYNs v. WATKYNs** (1740), 2 Atk. 96; 26 E. R. 460.
- Annotations*:—**Refd.** *Sleech v. Thorington* (1754), 2 Ves. Sen. 566. **Mentd.** *Becket v. Becket* (1760), 1 Dick. 340; *Wright v. Morley, Morley v. St. Alban* (1805), 11 Ves. 12; *Duncan v. Duncan* (1815), 19 Ves. 391.
953. *Add. Annotation*:—**Refd.** *Davey v. Robinson*, [1923] 1 K. B. 563

## PART XII. SECT. 2.

860 iii. ——— *Bond in penal sum.*—Summary judgment cannot be obtained in an action on a bond in a penal sum guaranteeing the payment of a smaller sum.—*WESTERN DOMINION INVESTMENT CO. v. McMILLAN*, [1925] 1 W. W. R. 566.—CAN.

## PART XII. SECT. 3, SUB-SECT. 3.

sm. *Extension of time for payment in consideration of higher rate of interest.*—

*Held*: the proper time for applying to amend in order to raise the above defence was at the trial, & not on appeal.—*WESTERN DOMINION INVESTMENT CO. v. McMILLAN*, [1925] 4 D. L. R. 562.—CAN.

## PART XII. SECT. 6.

d i. ——— *Alternative pleas of payment & denial of execution.*—The plea of payment will not amount to an admission of the bond, & will not relieve pltf. from the necessity of

proving the alleged loss of the bond.—*MUHAMMAD ZAFAR v. ZAHIR HUSAIN* (1926), 1 L. L. R. 49 All. 78.—IND

## PART XII. SECT. 8.

a i. ——— *At instance of obligee of earlier bond—Obligor's property insufficient to satisfy both bonds.*—*Held*: there was no equity to restrain proceedings on the judgment obtained by the obligee of the second bond.—*NEWENHAM v. MOUNTCASHEL* (1872), 19 Gr. 530.—CAN.

## BOUNDARIES, FENCES AND PARTY-WALLS.

## Part I.—Boundaries.

8. *Add. Citation* :—109 L. T. 820.
10. *Add. Annotations* :—*Generally, Referred. Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187. **Mentd.** British Controlled Oilfields v. Stagg (1922), 127 L. T. 209.
20. *Add. Annotation* :— **Mentd.** R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee, [1924] 1 K. B. 171.
39. *Add. Annotations* :—*Referred. Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187. **Mentd.** British Controlled Oilfields v. Stagg (1922), 127 L. T. 209.
67. *Add. Annotation* :—**Mentd.** Brighton & Hove General Gas Co. v. Hove Bungalows (1923), 93 L. J. Ch. 197.
94. *Add. Annotations* :— **Consd.** Brighton & Hove General Gas Co. v. Hove Bungalows, [1924] 1 Ch. 372. **Mentd.** Barwick v. S. E. & C. Ry., [1921] 1 K. B. 187.

## Part II.—Fences.

131. *Add. Annotations* :—**Mentd.** Michael v. Phillips (1923), 130 L. T. 142; Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

## PART I. SECT. 1, SUB-SECT. 1.

**c i.** ———.]—A grant of land to within one chain of a river, means to within one chain of the edge of the river, not of the top of the bank. **STANTON v. WINDEAT** (1813), 1 U. C. R. 30.—**CAN.**

**sa** *Boundary in plan running in straight line—Deviation for convenience.*—Lands owned by pld. & defl. were described as bounded in the one case on the north & in the other on the south side of the "C. Rd." The road in the original grant & the plan attached thereto, was shown to run in a straight line between the lands of the two opposite proprietors. The line as laid out ran through a deep gully & for convenience the road at that point was directed to one side, returning to the described straight line further on.—*Held* : the line as shown upon the plan controlled the line by which the parties bounding upon the road had held. **BANKS v. BEALS**, [1928] 1 D. L. R. 459; 59 N. S. R. 503.—**CAN.**

## PART I. SECT. 1, SUB-SECT. 2.—A.

**m** (p. 261) i. ———.]—**PETERS v. WHITING**, [1923] 3 D. L. R. 879.—**CAN.**

**p** (p. 264) i. ———.]—**KINGSTON v. HIGHLAND** (1920), 47 N. B. R. 324.—**CAN.**

**p** (p. 264) ii. **S. P. KANEEN v. MELISH** (1922) 70 D. L. R. 327.—**CAN.**

**q** (p. 261) i. ———.]—*Duty of surveyors.*—R., who held a licence from the Government to cut timber on Crown lands, claimed that S., licensee of the adjoining lot, was cutting timber on his grant, & replevied logs alleged to be so cut by S. The replevin suit was settled by an agreement between the parties to leave the matter to surveyors to establish the line between the two lots, the agreement providing that the lines of the land held under the licence of R. should be surveyed & established by named surveyors & the stumps counted, etc.—*Held* : under this agreement the surveyors were bound to make a formal survey, & could not take a line run by one of them at a

former time as the said boundary line.—**SNOWBALL v. RITCHIE** (N. B.) (1888), 14 S. C. R. 741.—**CAN.**

**b** (p. 264) i. ———.]—**A.-G. FOR ONTARIO v. BOOTH** (1923), 53 O. L. R. 374.—**CAN.**

**sb.** *Fence dividing cleared portions of adjoining lots.*—Whether unenclosed portions divisible by continuation of line of fence.—Pld. & defl. occupied adjoining lots for twenty years by a line & fence extending from the front through the cleared land. *Scmble* : that, in the absence of any actual possession beyond the clearing, it must be considered that the possession from thence to the rear of the lot was intended to be a continuation of the line in the front.—**BELYEA v. BELYEA** (1857), 3 All. 588.—**CAN.**

## PART I. SECT. 1, SUB-SECT. 3.

**e.** (p. 266) i. ———.]—A concession or base line had been run & posts planted on it upon an original survey, but the question was, how the side line of a lot was to be ascertained :—*Held* : the distance between the two nearest ascertained monuments on the base line should be measured & divided proportionately between the lots, making due allowance for roads, & the side line required should be run from the angle of the lot so ascertained.—**CULP v. CULP** (1857), 6 C. P. 466.—**CAN.**

**r** (p. 267) i. ———.]—*Where mound missing.*—**KARNER v. KOVACZ**, [1922] 3 W. W. R. 102; 68 D. L. R. 793.—**CAN.**

**r** (p. 267) ii. ———.]—*Held* : evidence of the existence & location at one time of a certain mound, according to the rules governing surveys, was a proper way of establishing the boundary line.—**CAIN v. COPELAND**, [1922] 2 W. W. R. 1025; 67 D. L. R. 581; 15 Sask. L. R. 529.—**CAN.**

**r** (p. 267) iii. ———.]—*Where posts destroyed by fire.*—**BARRY v. DESROSIERS** (1908), 14 B. O. R. 126; 9 W. L. R. 633.—**CAN.**

**r** (p. 267) iv. ———.]—**ARTLEY**

**v. CURRY** (1823–1900), 3 Ont. Dig. 5323.—**CAN.**

**r** (p. 267) v. ———.]—*Point of commencement.*—**HOOVER v. SABOURIN** (1874), 21 Gr. 333.—**CAN.**

**w** (p. 269) i. ———.]—*Survey not conclusive.*—**R. v. CROSBY** (1892), 21 O. R. 591.—**CAN.**

**sc.** *Monuments.*—*Where placed—Whether position selected conclusive.*—Monuments placed in compliance with R. S. O. 1877, c. 146, ss. 34, 35, 36 & 37, must be placed at the true corners governing points, or off-sets, or at the true ends of concession lines, & there is nothing in these sections making a survey thereunder or the placing of the monuments conclusive, whether right or wrong, & evidence may be received in contradiction.—**R. v. COSBY** (1892), 21 O. R. 591.—**CAN.**

## PART II. SECT. 2, SUB-SECT. 1.—A.

**sd.** *Park adjoining railway—No obligation on municipal corporation to construct fence.*—**RICHARDSON v. CANADIAN NATIONAL RY. CO.**, [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—**CAN.**

## PART II. SECT. 2, SUB-SECT. 1.—C. (a).

**135 ii.** ———.]—A public road crossed a stream by a bridge. There was a fence between the road & the land adjoining it, erected by the proprietor of the latter. At a point immediately adjoining the bridge there was a gap, 15 feet wide, in the fence. A pedestrian, on a dark night, mistaking this gap for the road, walked through it & fell into the stream & was drowned. In an action of damages against the proprietors of the land adjoining the road—*Held* : there was no duty on such proprietors to fence a natural, as opposed to an artificially created, danger on their lands, any such duty, where it existed, falling on the road authorities, & action accordingly dismissed.—**MORRISON v. LONDON MIDLAND & SCOTTISH RY. CO.**, [1929] S. C. 1.—**SCOT.**



138. *Add. Annotations*:—**Consd.** Reigate Corpn. v. Surrey County Council, [1928] Ch. 359.
139. *Add. Annotations*:—**Mentd.** Bromley v. Mercer, [1922] 2 K. B. 126; **Fairman v. Perpetual Investment Bldg. Soc.**, [1923] A. C. 74.
145. *Add. Annotations*:—*As to* (1) **Appld.** Noble v. Harrison, [1926] 2 K. B. 332. **Refd.** Ilford U. C. v. Beal, [1925] 1 K. B. 671; **St. Anne's Well Brewery Co. v. Roberts** (1928), 140 L. T. 1. *Generally*, **Mentd.** Edwards v. Birmingham Navigations, [1924] 1 K. B. 341; **Smith v. G. W. Ry.** (1926), 135 L. T. 112.
146. *Add. Annotation*:—**Refd.** Glasgow Corpn. v. Taylor, [1922] 1 A. C. 44.
148. *Add. Annotation*:—**Distd.** Sack v. Jones, [1925] Ch. 235.
- 154a. **Spiked iron fence—On bank.**—*Held*: not a nuisance.—**GIBSON v. PLUMSTEAD BURIAL BOARD** (1897), 13 T. L. R. 273, C. A.
155. *Add. Annotations*:—**Consd.** Bromley v. Mercer, [1922] 2 K. B. 126. **Refd.** Glasgow Corpn. v. Taylor, [1922] 1 A. C. 44. **Mentd.** Edwards v. Birmingham Navigations, [1924] 1 K. B. 341.
157. *Add. Annotation*:—**Refd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776.
158. *Add. Annotation*:—**Refd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776.
159. *Add. Annotation*:—**Refd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776.
163. *Add. Annotations*:—**Consd.** Hardy v. C. L. Ry. (1920), 124 L. T. 136; **Glasgow Corpn. v. Taylor**, [1922] 1 A. C. 44; **Coleshill v. Manchester Corpn.**, [1928] 1 K. B. 776. **Refd.** Mersey Docks & Harbour Board v. Procter, [1923] A. C. 253; **Addie (Collieries) v. Dumbreck**, [1929] A. C. 358; **Compania Mexicana De Petroleo El Aguila v. Essex Transport & Trading Co.** (1929), 141 L. T. 106. **Mentd.** Fairman v. Perpetual Investment Bldg. Soc., [1923] A. C. 74; **Sutcliffe v. Clients Investments Co.**, [1924] 2 K. B. 746; **Harnett v. Fisher** (1926), 135 L. T. 724; **De Freville v. Dill** (1927), 96 L. J. K. B. 1056.
168. *Add. Annotations*:—**Consd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Sutcliffe v. Clients Investment Co., [1924] 2 K. B. 746. **Mentd.** Fairman v. Perpetual Investment Bldg. Soc., [1923] A. C. 74.
169. *Add. Annotation*:—**Refd.** Ilford U. C. v. Beal, [1925] 1 K. B. 671.
171. *Add. Annotations*:—**Folld.** Canvey Island Comrs. v. Preedy, [1922] 1 Ch. 179. **Refd.** Brighton & Hove Gas Co. v. Hove Bungalows (1923), 88 J. P. 61.
- 171a. ————]—**Pltfs.** were incorporated, under Canvey Island (Sea Defences) Act, 1883, for protecting Canvey Island from inundation by the sea. They succeeded former comrs. appointed by an Act of 1729 (32 Geo. 3, c. 31), which contained a power for these comrs. under s. 13 to erect a new sea wall further inward, on giving compensation to the owner whose land was taken for this purpose. In 1813 the new wall was built, & £150 given as compensation to the owner of the land taken. Under the Act of 1883 the property & rights of the former comrs. were vested in pltfs. who had power under that Act to hold lands. Pltfs. claimed to be owners in possession of the foreshore between the new & the old wall. Deft. claimed under a conveyance of Apr. 1919 to be the freeholder in possession of a strip of land comprising part of this foreshore, & to be entitled as of right to excavate & remove shells & other drift even although, as pltfs. alleged, it deprived the new wall of protection & support, & exposed it to injury by the action of wind & water. The greater risk to the wall in consequence of deft.'s action was established by the evidence. In an action by pltfs. to restrain deft. from so removing the drift, & from trespassing on their land:—*Held*: (1) assuming the strip in question to be deft.'s freehold, pltfs. were still entitled to an injunction restraining him from so removing drift from the strip as to expose their wall & works & the lands protected thereby to greater risk of inundations of the sea; (2) pltfs. had established their statutory title under the Acts of 1792 & 1883 to the whole of the land taken & set out pursuant to s. 13 of the first Act, & had exercised specific acts of ownership over the foreshore; the possession of pltfs. & of deft. being at most doubtful or equivocal the law attached possession to the title; deft., therefore, was a trespasser, & must be restrained from excavating or removing stones, shingle, shell or soil from the particular strip of foreshore & from otherwise trespassing on same.—**CANVEY ISLAND COMRS. v. PREEDY**, [1922] 1 Ch. 179; 91 L. J. Ch. 203; 128 L. T. 415; 86 J. P. 21; 66 Sol. Jo. 182; 20 L. G. It. 125.
172. *Add. Annotation*:—*As to* (1) **Refd.** A.-G. & Public Trustee v. Woolwich Metropolitan B. C. (1929), 93 J. P. 173.
203. After this case add, "Power of commissioners to direct repair of fences, *see* COMMONS, No. 939a."
204. *Add. Annotation*:—**Refd.** Mersey Docks & Harbour Board v. Procter, [1923] A. C. 253.
205. *Add. Annotation*:—**Distd.** Sack v. Jones, [1925] Ch. 235.

**PART II. SECT. 2, SUB-SECT. 3.**

**p. i. Right to interfere with.**—City of Victoria Official Map Act, 1880, & amending Acts, have reference to streets only:—*Held*: nothing in those Acts could justify an interference by private individuals with the boundaries of a lot held by purchase & 20 years' possession.—*CROWTHER v. BEAVEN* (1884), 1 B. C. R. pt. 2, 116.—**CAN.**

**PART II, SECT. 2, SUB-SECT. 4.**

r (p. 294) i. — *Marsupial-proof*—*Question of fact.*]—Whether a fence is or is not marsupial-proof within sect. 171

of Land Acts, 1910-1927, is a question of fact for the adjudicating tribunal.—*R. v. MAGISTRATES' COURT & ESMOND, Ex p. BEAZLEY*, [1928] St. R. Qd. 319; 22 Q. J. P. 97.—AUS.

r (p. 294) ii. — *Material benefit to adjoining lessee. — Determination of value.*— Lessees of a holding erected a fence before Nov. 1, 1924. On June 1, 1927, the lessees filed a plaint in the magistrate's ct., whereby they claimed that the fence "is of material benefit," to deflt., an adjoining holder. The magistrate determined the benefit as from Nov. 1, 1924. — *Held:* the time from which the magistrate must deter-

nine the value of the benefit cannot be earlier than the date of the plaintiff claiming that benefit under the sect.—*R. v. POLICE MAGISTRATE AT BLACKALL & HART, Ex p. HART*, [1928] St. R. Qd. 174; 22 Q. J. P. 47.—AUS.

sn. Forest reserve.)—It is no defence to an action for recovery of a penalty from the owner of stock grazing on a forest reserve without a permit, that the reserve was not enclosed by a "lawful fence" as defined in the Fence Ordinance.—MINISTER OF INTERIOR FOR CANADA v. NELSON, [1920] 1 W. W. R. 129.—CAN.

### Part III.—Party-Walls.

240. *Add. Annotations* :—*As to* (2) *Refd. Sack v. Jones*, [1925] Ch. 235; *Brooke v. Bool*, [1928] 2 K. B. 578.
249. *Add. Annotations* :—*Refd. Sack v. Jones*, [1925] Ch. 235; *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1.
250. *Add. Annotation* :—*Apld. Sack v. Jones*, [1925] Ch. 235.
251. *Add. Annotations* :—*Apld. Sack v. Jones*, [1925] Ch. 235; *Simpson v. Weber* (1925), 133 L. T. 46. *Refd. Aldridge v. Wright*, 2 K. B. 117; *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138. *Mentd. Hansford v. Jago*, [1921] 1 Ch. 322.
- 251a. *Right of support—By adjoining house.*—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house :—*Held* : pltf.'s allegations had not been substantiated by the evidence. *Seemle* : even if they had been substantiated pltf. would have had no cause of action.—*SACK v. JONES*, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.
257. *Add. Annotation* :—*Refd. Ilford U. C. v. Beal*, [1925] 1 K. B. 671.
- 258a. ———.—[If a wall is knocked down, the owner may maintain an action for the trespass, but he cannot, by omitting to rebuild it, hold deft. always responsible for any consequential damage (*POLLOCK, C.B.*).—*FIRMSTONE v. WHEELLEY* (1844), 2 Dow. & L. 203; 13 L. J. Ex. 361.]
- Annotations* :—*Refd. Clegg v. Bearden* (1848), 12 Q. B. 576; *Smith v. Kenrick* (1819), 7 C. B. 515.
- 271a. ———. *No agreement for lease.*—*TAYLOR v. REED* (1815), 6 Taunt. 249; 128 E. R. 1030.
- Annotation* :—*Refd. Collins v. Wilson* (1828), 1 Moo. & P. 454.
309. *Add. Annotation* :—*Refd. Brooke v. Bool*, [1928] 2 K. B. 578.
310. *Add. Annotations* :—*As to* (2) *Refd. Sack v. Jones*, [1925] Ch. 235; *Brooke v. Bool*, [1928] 2 K. B. 578.

## Part IV.—Evidence of Boundaries.

318. *Add. Annotation* :—**Mentd.** *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
320. *Add. Annotation* :—**Mentd.** *Belton v. Bass, Ratcliffe & Gretton*, [1922] 2 Ch. 449.
323. *Add. Annotations* :—**Refd.** *Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 1 K. B. 456. **Mentd.** *Duff Development Co. v. Kelantan Government*, [1924] A. C. 797; *The Fagernes*, [1927] P. 311.
332. *Add. Annotation* :—**Refd.** *British Thomson-Houston Co. v. British Insulated & Helsby Cables*, [1924] 2 Ch. 160.
339. *Add. Annotation* :—**Mentd.** *British Thomson-Houston Co. v. British Insulated & Helsby Cables*, [1924] 2 Ch. 160.
343. *Add. Annotation* :—*As to* (3) **Consd.** *Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. Ch. 312.
355. *Add. Annotation* :—**Mentd.** *British Thomson-Houston Co. v. British Insulated & Helsby Cables*, [1924] 2 Ch. 160.
359. *Add. Annotation* :—**Apld.** *Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. Ch. 312.
402. *Add. Annotation* :—**Consd.** *Stoney v. Eastbourne R. C. & Devonshire* (1926), 135 L. T. 281.
416. *Add. Annotation* :—**Mentd.** *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
417. *Add. Annotation* :—**Mentd.** *Hodgson v. McCraigh* (1923), 92 L. J. Ch. 426.
433. *Add. Annotation* :—**Apld.** *Chowood v. Lyall*, [1929] 2 Ch. 406.
- 436a. ——— **Title deeds—Nature of document misconceived.**—There is no clear authority that in proceedings for the production of

**PART III. SECT. 1, SUB.-SECT. 2.**

**§ 50. Duration** 1.—Where on the erection of a building on each of two adjoining & separately owned lots, the owners agree to plans calling for a party wall & the use by each owner of part of the premises of the other & the buildings are so constructed, the right to such use will, in the absence of a reference to time, be held to continue during the existence of the two buildings as they were constructed.—SMITH v. CURRY (Man.), [1918] 2 W. W. R. 848; 42 D. L. R. 225.—CAN.

**PART III. SECT. 1, SUB-SECT. 3.—**  
C. (b).

e i. — Wall built & used only by adjoining owner.] — *Held*: deft. was answerable, as the injury was the direct result of negligence in the original con-

struction of the wall.—**MCQUILLAN v. RYAN** (1921), 64 D. L. R. 482; 50 O. L. R. 337.—**CAN.**

• ii. — *Party wall undermined—Extent of liability.*]—JEFFREY (F. W.) & SONS, LTD. v. COPELAND FLOUR MILLS, FINLAYSON v. COPELAND FLOUR MILLS, [1923] 4 D. L. R. 1140; 52 O. L. R. 617.—CAN.

**PART III. SECT. 1, SUB-SECT. 3.—D.**

**sp. Remedy—Action for damages.]—**Where a mutual wall has been built so as to encroach on the property of one of the two adjoining owners, but was built in good faith under some mistake as to title & with the knowledge of, but without any protest from, him on whose land it encroaches, the owner of the building should not be compelled

pltf. would have had no cause of action.—  
SACK v. JONES, [1925] Ch. 235; 94 L. J. Ch.  
229; 133 L. T. 129.

**257. Add. Annotation :—***Refd.* Ilford U. C. v. Beal, [1925] 1 K. B. 671.

**258a.** ———.—]—If a wall is knocked down, the owner may maintain an action for the trespass, but he cannot, by omitting to rebuild it, hold deft. always responsible for any consequential damage (POLLOCK, C.B.).—**FIRMSTONE v. WHEELLEY** (1844), 2 Dow. & L. 203; 13 L. J. Ex. 361.

<sup>1</sup> *Annotations* :—**Refd.** *Clegg v. Dearden* (1848), 12 Q. B. 576;  
*Smith v. Kenrick* (1849), 7 C. B. 515.

271a. — No agreement for lease.]—TAYLOR v. REED (1815), 6 Taunt. 249; 128 E. R. 1030. *Annotation*:—**Refd.** Collins v. Wilson (1828), 1 Moo. & P. 454.

**309.** *Add. Annotation:—***Refd.** Brooke v. Bool,  
[1928] 2 K. B. 578.

**310. Add. Annotations :—***As to (2) Refd. Sack v. Jones, [1925] Ch. 235; Brooke v. Bool, [1928] 2 K. B. 578.*

to remove the wall back to the boundary line; the remedy is in damages.—*O'LEARY v. SMITH*, [1924] 2 D. L. R. 521; [1924] 2 W. W. R. 227; 34 Man. L. R. 386.—**CAN.**

**PART IV. SECT. 1.**

h i. — *Surveyors giving conflicting evidence—Duty of court to accept evidence of surveyor making first examination.*—SHUPE v. LANGENBURG RURAL MUNICIPALITY, [1920] 3 W. W. R. 706. —CAN.

sq. Subsequent conveyances — *Act of possession.*—MATTHEWS v. GOODE (1923), 56 N. S. R. 543.—CAN.

**PART IV. SECT. 7.**

426 iii. ————.]—McNEIL &  
HINGLEY, LTD. v. HILL (N. S.), [1928]  
2 D. L. R. 954.—CAN.

documents of title to land, the ct. will differentiate cases where boundaries are in dispute from other cases. Although the ct. is more ready to order production of documents in cases where boundaries are in dispute, it will apply to those cases the same principle which is applied to other cases where the title to land is in dispute, namely, the principle adopted by the Ct. of Appeal in *A.-G. v. Emerson*, No. 133, *ante*, that the

assertion on oath by the party against whom production is sought that the documents which he objects to produce relate solely to his own title & do not tend to prove or support the case of his opponent will not be disregarded, unless the ct. is reasonably certain that the deposing party misconceived the nature or effect of those documents.—*CHOWOOD, LTD. v. LYALL*, [1929] 2 Ch. 406; 98 L. J. Ch. 451.

## BUILDING CONTRACTS, ENGINEERS AND ARCHITECTS.

## Part II.—The Contract.

9. *Add. Citation*:—*reversg.* S. C. *sub nom.* STEWARDS & Co., LTD. v. R. (1900), 17 T. L. R. 111, C. A.
18. *Add. Annotation*:—*Refd.* Boot (London) v. Uttoxeter U. D. C. (1924), 88 J. P. 118.
20. *Add. Annotations*:—*Consd.* *Re* Meyrick's Settlement, Meyrick v. Meyrick, [1921] 1 Ch. 311. *Refd.* Cohen v. Sellar, [1926] 1 K. B. 536.
21. *Add. Annotation*:—*Refd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739.
34. *Add. Annotation*:—*Refd.* Kelantan Government v. Duff Development Co., [1923] A. C. 395.
- 36a. Contract between employer & third party for supply of materials—No liability to builder for delay.]—GAZE (W. H.) & SONS, LTD. v. PORT TALBOT CORPN., No. 58a
38. *Add. Annotation*:—*Refd.* Bean v. Flaxton R. D. C., [1929] 1 K. B. 450.
39. *Add. Annotations*:—*Distd.* A.-G. v. Denby, [1925] Ch. 596. *Apld.* Bean v. Flaxton R. D. C., [1929] 1 K. B. 450.
43. *Add. Annotation*:—*Consd.* Stumbles v. Whitley (1929), 46 T. L. R. 37.
47. *Add. Annotation*:—*Refd.* British & Foreign Marine Insee. v. Gaunt, [1921] 2 A. C. 41.
49. *Add. Annotation*:—*Mentd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.
51. *Add. Annotation*:—*Consd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739.
56. *Add. Annotation*:—*Refd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739.
- 58a. — Contract for supply between employer & third party.]—A. co. carrying on the business of builders & decorators entered into a contract with a corpn. for the erection of two lodges & a park entrance. With the assent of the builders, the corpn. conducted the negotiations with a stone firm for the supply of the stone which was required for the work & fixed the quantity & price. The contract between the builders & the corpn. provided that the corpn. should pay the stone firm the price of the stone, to be deducted from the contract price. Owing to delay in delivering the stone the builders were unable to complete

the work until some months after the date fixed for completion by the contract. In an action by the builders against the corpn. in respect of the loss arising to the builders by reason of such delay:—*Held*: there was no implied obligation on the corpn. under the contract between them & the builders to supply the stone; at the highest there was only an obligation on them to hold the benefit of the contract with the stone firm for the builders; & that "business efficacy" did not require that there should be implied an obligation on the corpn. to make good to the builders any loss which they might suffer by reason of the failure of the stone firm to deliver in time. Accordingly the corpn. were not liable to the builders for such loss.—GAZE (W. H.) & SONS, LTD. v. PORT TALBOT CORPN. (1929), 93 J. P. 89; 27 L. G. R. 200.

59. *Add. Annotation*:—*Refd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739.

65a. — *Re* a contract in writing dated Feb. 21, 1912, defts. agreed to build a steamer for, & deliver her to, pltf. on or before Feb. 28, 1913. The contract contained the following exceptions clause:—"If the steamer is not delivered entirely ready to the purchaser at the above-mentioned time, the builders hereby agree to pay to the purchaser for liquidated damages, & not by way of penalty, the sum of £10 sterling for each day of delay & in deduction of the price stipulated in this contract, being excepted only the cause of force majeure &/or strikes of workmen of the building yard where the vessel is being built, or the workshops where the machinery is being made, or at the works where steel is being manufactured for the steamer, or any works of any sub-contractor." As a result of the universal coal strike of 1912 the works from which defts. obtained their materials for other ships they were building got behindhand; the ship in turn to be built before pltf.'s occupied the berth that was intended to be occupied by pltf.'s much longer than otherwise she should have done, & consequently pltf.'s steamer was late in being laid down. The steamer having been delivered after the contract date, pltf. claimed damages:—*Held*: (1) the general dislocation of the business of defts. & those from whom they obtained materials operating

## PART II. SECT. 1.

11. — *Forfeiture of deposit.*]—BAYNES & HORIE v. VANCOUVER BOARD SCHOOL TRUSTEES (B. C.), [1927] 2 D. L. R. 698.—CAN.

## PART II. SECT. 2, SUB-SECT. 1.

8a. *Repugnant provisions.*]—A provision for payment on the basis of cost plus a percentage if the actual cost is more or less than the contract price is repugnant where the contractor has made an absolute covenant to do the work & furnish the material for a

definite sum.—GIT v. FORBES (1921), 62 S. C. R. 1; 59 D. L. R. 155.—CAN.

## PART II. SECT. 2, SUB-SECT. 3.

8h. *Contract to put old houses "in first class shape."*]—*Held*: the phrase must have reference to their capacity for taking on repairs, which could be only those which their aged condition permitted.—HOUSE REPAIR & SERVICE Co., LTD. v. MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.—C.

52 III. — *Where the*

architect ordered additional work, & at that time it was apparent that the work originally contracted for could not be completed within the time fixed, but there was no application for extension nor intimation from the owner of an intention to enforce a claim for damages for delay:—*Held*: the contract should not be construed so as to impose upon the contractor the obligation of completing the work, including additions, within the time fixed.—GRIER v. GEORGAS (1923), 54 O. L. R. 580.—CAN.

indirectly on the completion of pltf.'s steamer, by preventing the completion of the vessel prior in turn, constituted a case of force majeure within the exceptions clause & excused defts. in respect of the delay so caused; (2) delay due to breakdown of machinery was, but delay due to bad weather was not, covered by the exception of force majeure.—**MATSOUKIS v. PRIESTMAN & Co.**, [1915] 1 K. B. 681; 84 L. J. K. B. 967; 113 L. T. 48; 13 Asp. M. L. C. 68; 20 Com. Cas. 252.

*Annotation*:—**Refd.** Lebeaupin v. Crispin, [1920] 2 K. B. 714.

70. *Add. Annotations*:—**Consd.** Alexander v. Webber, [1922] 1 K. B. 642. **Refd.** *Re A Debtor*, [1927] 2 Ch. 367.

## Part III.—Certificates.

76. *Add. Annotation*:—**Mentd.** Charles v. Cardiff Collieries (1928), 44 T. L. R. 448.

83. *Add. Annotation*:—**Mentd.** Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

87. *Add. Annotation*:—**Mentd.** Putzman v. Taylor, [1927] 1 K. B. 637.

## Part IV.—Price.

129. *Add. Annotations*:—**Refd.** Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455. **Mentd.** Isaacs v. McAllum, [1921] 3 K. B. 377.

129a. ——— **Work abandoned**.]—**SMALL & SONS, LTD. v. MIDDLESEX REAL ESTATES, LTD.**, [1921] W. N. 245.

132. *Add. Annotation*:—**Refd.** Colley v. Overseas Exporters, [1921] 3 K. B. 302.

144. *Annotation*:—For "[1910]" read "[1919]."

145. *Add. Annotation*:—**Refd.** Moriarty v. Regent's Garage Co., [1921] 1 K. B. 423.

147a. ———.]—**SMALL & SONS, LTD. v. MIDDLESEX REAL ESTATES, LTD.**, [1921] W. N. 245.

## Part V.—Payment.

171. *Add. Annotation*:—**Consd.** *Re Mahmoud & Ispahani*, [1921] 2 K. B. 716.

### PART III. SECT. 1.

73 xxvii. ———.]—**DIXON v. SOUTH AUSTRALIAN RAILWAYS COMRS.** (1923), 34 C. L. R. 71.—**AUS.**

84 i. ——— *Certifier improperly influenced*.]—**Held**: the issue of the certifier's certificate was not a condition precedent to the right of the contractor to recover payment.—**NORTHERN CONSTRUCTION Co. v. R.** [1925] 2 D. L. R. 582.—**CAN.**

89. ——— *Alteration of contract in many details*.]—**Held**: a final certificate was not a condition precedent to the bringing of an action by the contractor for the balance due.—**McMANUS v. GRAVELBOURG**, [1925] 1 D. L. R. 995.—**CAN.**

### PART III. SECT. 3, SUB-SECT. 2.—A.

102 iv. ———.]—**D'AMOURS v. TROIS-ÎLES**, [1924] 4 D. L. R. 501.—**CAN.**

### PART III. SECT. 3, SUB-SECT. 2.—C.

108 ii. ———.]—**Held**: as soon as a dispute arose & was notified by either party the architect's certificate was eliminated as determining, or as part of the machinery for determining, the amount due to the contractor.—**PIGGOTT v. TOWNSEND** (1926), 27 S. R. N. S. W. 25; 44 N. S. W. N. 26.—**AUS.**

### PART IV. SECT. 1.

i. ———.]—**MODERN CONSTRUCTION Co. v. SHAW**, [1923] 3 D. L. R. 893; 3 W. W. R. 301.—**CAN.**

r i. ———.]—**TORONTO RADIATOR MANUFACTURING Co. v.**

**ALEXANDER** (1895), 2 Terr. L. R. 120.—**CAN.**

st. *Percentage on cost*.—*How calculated*.]—A contract entered into between plifs. & defts. for the construction of a vessel by plifs. for defts. provided that defts. were to pay plifs. an agreed sum for the use of their plant, consisting of yard, sheds, machinery, etc., & in addition ten per cent. above the cost of all labour & material which entered into the construction of the vessel:—**Held**: the ten per cent. must be restricted to labour & material supplied by plifs. & should not be extended to include engines, tanks, & other articles which were provided by defts. & with the supplying of which plifs. had nothing to do.—**BOEHNER v. BACKMAN** (1922), 55 N. S. R. 325.—**CAN.**

### PART IV. SECT. 2.

135 i. *General rule*.]—**FISHER v. COX** (1921), 54 N. S. R. 226; 57 D. L. R. 567.—**CAN.**

135 ii. ———.]—**LA CROIX BROTHERS & Co. v. COOK** (Sask.), [1926] 4 D. L. R. 747; [1926] 3 W. W. R. 385.—**CAN.**

136 iv. ———.]—**WEBSTER v. MCINTOSH** (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

136 v. ———.]—**EVANS v. DRAPER** (Sask.), [1927] 4 D. L. R. 1079; [1927] 3 W. W. R. 507.—**CAN.**

h (p. 367) i. ———.]—**SPEIRS, LTD. v. PETERSEN**, [1924] S. C. 428.—**SCOT.**

148 iii. ———.]—**WILLIAMS v. STEWART & CAMERON, LTD.**, [1923] 4 D. L. R. 855; 3 W. W. R. 1024.—**CAN.**

sz. *How calculated*.]—The amount to which a contractor is entitled on a *quantum meruit* is the value of the work from the point of view of the value of the services rendered by him, not the benefit to the person for whom the work is done. Meaning of "cost" discussed.—**JAMIESON CONSTRUCTION Co., LTD. v. LACOMBE & NORTH WESTERN RY.**, [1926] 2 D. L. R. 653; [1926] 1 W. W. R. 628; 22 Alta. L. R. 165.—**CAN.**

### PART V.

g (p. 373) i. ——— *Ascertained by intention of parties*.]—**HANSON v. PARKS**, [1925] 3 D. L. R. 1103.—**CAN.**

ri. ———.]—**Held**: to make the 20 per cent. retained by the owner a valid security for completion of the work, the architect in certifying 80 per cent. due should base his estimate on the proportion that the value of the work done bore to the cost of the entire undertaking.—**HOPGOOD v. FERNER** (1921), 62 D. L. R. 419; 62 S. C. R. 534.—**CAN.**

h (p. 374) i. ——— *Owner giving promissory notes in default of cash—Notes discounted with bank & interest paid*.]—**SMITH v. MCCUTCHEON**, [1922] 1 W. W. R. 306; 67 D. L. R. 554; 31 Man. L. R. 413.—**CAN.**

sb. *Under cost plus percentage agreement—Part of material supplied by owner—Right of contractor to percentage on cost of such material*.]—**SMITH v. MCCUTCHEON**, [1922] 1 W. W. R. 306; 67 D. L. R. 554; 31 Man. L. R. 413.—**CAN.**

## Part VI.—Alterations, Additions and Omissions.

213. *Add. Annotation* :—**Mentd.** British & Foreign Marine Insce. v. Gaunt, [1921] 2 A. C. 41. | 215. *Add. Annotation* :—**Refd.** Wisbech R. C. v. Ward, [1927] 2 K. B. 556.

## Part VII.—Maintenance and Defect Clauses.

222. *Add. Annotation* :—**Consd.** Murphy v. Hurly, [1922] 1 A. C. 369.

## Part VIII.—Breach of the Contract.

230. *Add. Annotation* :—**Mentd.** Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83.

- 230a. — **Excess of cost of completion over contract price.**—By a contract in writing dated May 12, 1916, deft. agreed to build for pltf. a house, subject to the conditions set forth in the schedule thereto, for the sum of £1,900. The conditions provided (*inter alia*) that deft. should begin the works immediately after possession of the site was given to him, & should regularly proceed with & complete the same within six months after the date of the plans being passed by the local authority, & that if deft. should suspend the works or should not proceed with them with due diligence, pltf. by his architect should have power to give notice to deft. requiring him to proceed, & on failure of deft. to comply with such notice for thirty days pltf. should be entitled to enter upon & take

possession of the works & site & employ any other person to complete the works. On July 10, 1916, the plans were duly passed. On July 14, 1916, an order was made by the Minister of Munitions under the powers of the Defence of the Realm (Consolidation) Regulations, 1914, which provided that on & after July 20, 1916, no person should without licence from the Minister of Munitions commence or carry on any building or construction work. On July 21 deft. applied for a licence to proceed, & continued to work fairly well until Aug. 12, when he ceased to proceed with due diligence with the deliberate intention, as the ct. held, of ensuring that the licence should be refused & that he should thereby be enabled to put an end to the contract. On Sept. 9 pltf.'s architect gave him thirty days' notice to proceed with the works. On Sept. 30, before the expiration of the notice, the Minister of Munitions

### PART VI. SECT. 2, SUB-SECT. 2.

195 ii. — — — — —.]—Where a contractor chooses to adopt a more expensive method of carrying out his contract than the contract properly interpreted calls for the loss is his own. — **GEORGIA CONSTRUCTION CO. v. PACIFIC GREAT EASTERN RY. CO.** (R. C.), [1929] 1 D. L. R. 77; [1928] 3 W. W. R. 466.—**CAN.**

• (p. 380) i. — — — — —.]—A contract for the execution of road making works for a municipal council provided that no extra works done by the contractor would be paid for unless there were an order in writing & a certificate of the engineer in respect of them. Pltf. alleged that certain extra works were in fact done at the oral request of the engineer & with his knowledge, & that certain of the extra works were actually paid for by progress payments on the work completed, that deft. stood by & took the benefit of the extra works, & that he thereby had been induced to believe that deft. would not require written orders, & had acted to his detriment in the belief so induced :—**Held** : even if these allegations were proved, they did not establish either waiver or estoppel.—**BYSSOUTH v. SHIRE OF BLACKBURN & MITCHAM** (No. 2), [1928] V. L. R. 562; [1928] Argus L. R. 337.—**AUS.**

### PART VII.

• i. — **Defect due to unsuitability of subject-matter of contract**—**Method of repair.**—**Held** : the obligation of the contractor was not affected by the alleged fact that the material was not suitable to the climatic conditions.

If a method of repair as satisfactory but less expensive than that called for by the contract could be secured by the owner, he should be bound to accept it.—**BLOME v. REGINA (City)**, [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

**sd. Liability of contractor for defects—Materials supplied by contractor.**—**WEBSTER v. MCINTOSH** (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

222 i. **Notice to remedy defects—Failure to comply with—Liability of contractor.**—Where a contractor was notified of defects by the owner & wrongly insisted that they were trifling & could be fixed up at slight expense, but the owner refused to accept repairs of that sort & employed a carpenter to do the necessary work :—**Held** : the contractor had all the notice & opportunity to repair properly which he could have claimed, even if the contract had expressly provided for such notice.—**WEBSTER v. MCINTOSH** (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

### PART VIII. SECT. 1.

k i. — **Different contractors for building & joiner work.**—A builder contracted to carry out the building & plastering work in connection with the erection of a house, & another contractor undertook to carry out the joiner work. The builder finished his work, & the owner accepted possession of the house & paid two instalments of the account. Afterwards the outside walls began to crack, & it was discovered that the walls were off the

plumb. In an action by the builder for the balance of his account, the owner averred that the defect in the walls was occasioned by the use of faulty materials in the construction of the concrete floors by the builder. The builder averred that the damage to the walls was caused by the use of unseasoned timber in the construction of the roof by the other contractor. Neither of these averments was established at the proof, but either of them might have been the cause of the cracking of the walls :—**Held** : breach of contract had not been established against pursuer, & he was entitled to decree for the balance of the contract price.—**CARRUTHERS v. MACGREGOR**, [1927] S. C. 816.—**SCOT.**

### PART VIII. SECT. 2, SUB-SECT. 1.

r (p. 389) i. — — — — —.]—Where no time had been set for the completion of a roof, which deft. agreed to build on pltf.'s hotel, & at the expiration of a reasonable time the contractor left it unfinished, & the owner agreed to the contractor undertaking to complete it within a further period :—**Held** : the contractor was not liable in damages where, within that period, the unfinished condition of the roof resulted in its destruction by a storm & consequential damage by rain to the hotel.—**DUMONT v. LANDRY** (Sask.), [1927] 3 D. L. R. 605; [1927] 2 W. W. R. 869.—**CAN.**

• (p. 389) i. — **Right to general damages—Not where no evidence of loss beyond specific damage.**—**EVANS v. DRAPER** (Sask.), [1927] 4 D. L. R. 1079; [1927] 3 W. W. R. 507.—**CAN.**

refused to grant the licence to proceed. In an action by pltf. for damages for breach of contract:—*Held*: deft. could not take advantage of the intervention of the Minister of Munitions, which was brought about by his own act, & the proper measure of damages was what it cost pltf. to complete the house substantially as it was originally intended & in a reasonable manner at the earliest moment he was allowed to proceed with the work, less any amount that would have been due & payable to deft. by pltf., had deft. completed the house to the roofing-in at the time agreed by the terms of his contract.—*MERTENS v. HOME FREEHOLDS Co.*, [1921] 2 K. B. 526; 90 L. J. K. B. 707; 125 L. T. 355, C. A.

238. *Add. Annotation*:—*Mentd.* Admiralty Comrs. v. S.S. Chekiang, [1926] A. C. 637.

265a. —.]—A bill will not lie to compel the performance of an agreement to build an house.—*ERRINGTON v. AYNESLY* (1788), 2 Bro. C. C. 341; 2 Dick. 692; 21 E. R. 440.

*Annotation*:—*Mentd.* Flint v. Brandon (1803), 8 Ves. 159.

270. *Add. Annotation*:—*Mentd.* Abrahams v. Reiach, [1922] 1 K. B. 477.

273a. — *Non-compliance with building regulations.*]—Deft. agreed to erect a house according to a plan to be approved by pltf.s., & according to the regulations of Metropolitan Building Acts. Pltf.s. approved a plan, but it was objected to by the Board of Works:—*Held*: deft. must specifically perform his contract, subject to the plan being modified to conform with the regulations of the Board of Works.—*CUBITT v. SMITH* (1864), 11 L. T. 298; 28 J. P. 820; 10 Jur. N. S. 1123.

*Annotation*:—*Refd.* Wolverhampton Corpn. v. Eimons [1901] 1 K. B. 515.

## Part IX.—Excuses for Non-Performance.

279. *Add. Annotations*:—*Refd.* Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455. *Mentd.* Isaacs v. McAllum, [1921] 3 K. B. 377.

282. *Add. Annotations*:—*As to* (2) *Refd.* Mertens v. Home Freeholds Co., [1921] 2 K. B. 526; Dominion Coal Co. v. Maskinonge S.S. Co., [1922] 2 K. B. 132; Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455; Cantiere Navale Triestina

v. Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579; Kursell v. Timber Operators & Contractors, [1927] 1 K. B. 298; The Penelope, [1928] P. 180; Hyman v. Hyman, Hughes v. Hughes, [1929] P. 1; May v. May (1929), 98 L. J. K. B. 770.

285a. — — Brought about by contractor's own act.]—*MERTENS v. HOME FREEHOLDS Co.*, No. 230a, *ante*.

## Part X.—Forfeiture.

293. *Add. Annotation*:—*Refd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739.

295. *Add. Annotation*:—*Mentd.* Bhagchand Dagdusa Gujrathi v. Secretary of State for India in Council (1927), 43 T. L. R. 617.

## Part XI.—Materials.

312. *Add. Annotation*:—*As to* (1) *Apld.* *Re* Blyth Shipbuilding & Dry Docks Co. Forster v. Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

315. *Add. Annotation*:—*Mentd.* Behnke v. Bede Shipping Co., [1927] 1 K. B. 440.

316. *Add. Annotation*:—*Refd.* *Re* Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 491.

318. *Add. Annotation*:—*Apld.* *Re* Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319. *Add. Annotation*:—*Distd.* *Re* Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319a. — —.]—A shipbuilding contract provided for payment of the price of the vessel by instalments, the first to be paid on the signing of the contract, the next when the keel was laid, & others at various stages in the progress of the ship's construction. She was to be constructed under the inspection of the purchasers' surveyor, to whose approval the quality of the material used & the workmanship were to be subject. Clause 6

provided that from & after payment by the purchasers to the builders of the first instalment on account of the price the vessel & all materials & things appropriated for her should thenceforth, subject to the lien of the builders for unpaid purchase-money including extras, become & remain the absolute property of the purchasers. After the first instalments of the purchase-money had been paid & the vessel had been partly constructed, a receiver was appointed in an action commenced by debenture-holders of the ship-building co. for enforcing their security:—*Held*: certain worked material lying in the yard ready to be incorporated into the hull of the vessel & approved by the purchasers' surveyor, had not been "appropriated for her" within the above clause so as to become the property of the purchasers.—*Re BLYTH SHIPBUILDING & DRY DOCKS CO., FORSTER*

*v. BLYTH SHIPBUILDING & DRY DOCKS CO.*, [1926] Ch. 494; 95 L. J. Ch. 350; 134 L. T. 643, C. A.

*Annotation*:—*Refd. Behnke v. Bede Shipping Co.*, [1927] 1 K. B. 649.

**325a. Erection of temporary building for special purpose—Agreement for return of materials.**—*Pltf.* agreed with *deft.*, who was mayor of H., to erect the hustings for the election for the borough of H., as before with alterations, for £19 10s. by receiving the wood back again. After the election was ended, the mob carried the wood of the hustings away. *In assumpsit* for not returning the wood:—*Held*: *deft.* was bound to return the wood, by putting the hustings safely into the possession of *pltf.*—*FULLER v. PATTRICK* (1849), 18 L. J. Q. B. 236; 13 L. T. O. S. 185; 13 Jur. 561.

## Part XII.—Assignment and Devolution of Rights and Liabilities.

**340. Add. Annotation**:—*Consd. Earle v. Hemsworth R. D. C.* (1928), 140 L. T. 69.

**341. Add. Annotations**:—*As to* (1) *Consd. Re National Benefit Asse.*, [1924] 2 Ch. 339. *As to* (3) *Apld. Re City Life Asse.*, [1926] Ch. 191. *As to* (4) *Consd. Re National Benefit* 2 Ch. 339.

**342. Add. Annotation**:—*Refd. Jones v. Oceanic Steam Navigation Co.*, [1924] 2 K. B. 730.

**342a.** —. ]—*Pltfs.* claimed £1,000 being retention moneys due from *defts.* to a firm of contractors. *Pltfs.* claimed under an assignment dated Apr. 7, 1924. On Nov. 21, 1922, *defts.* entered into a building contract for a lump sum with S., the contractors, for the construction of a number of cottages under a housing scheme. The contract provided for interim payments, but no money was to become payable to the contractors except on the architect's certificate in writing, & certificates were to be issued when work to the value of £1,000 had been executed & thereafter at monthly intervals as certified by the architect in writing. He was to certify the amount from time to time payable to the contractors under the contract. The amount to be certified by the architect on his first & monthly certificates as due to the contractors was to be at the rate of 90 per cent. of the value of the work, including extras. The balance of 10 per cent. of the value of the work was to be retained until the sum so retained, called a retention fund, should amount to £2472 after which the contractors were to be paid monthly to the full value of the work done & the materials supplied. The retention fund was to be deposited in a bank until the final adjustment of accounts. The contract was varied by consent, & in the events which happened

the retention fund amounted to £1,000 at the beginning of 1924. This was never deposited at the bank & remained a merely notional fund, but both parties treated it as a separate sum capable of being earmarked. It was included without distinction in the architect's final certificate for £1,848 10s. 2d. —. ]—*Meanwhile* *pltf.*s, who were supplying cement to the contractors, found that the latter were getting into arrears with their payments & to obtain further credit the contractors, being then indebted to *pltf.*s in the sum of £671 on Apr. 7, 1924, assigned to them the retention fund by a document dated Apr. 7, 1924, in the following terms: "In part reduction of the amount now, or to be, owing from us to you for goods supplied by you, we hereby assign to you all moneys now or hereafter to become due to us from the Hemsworth R. D. C. for retention moneys in respect of the G. housing scheme, & for which your receipt shall be a sufficient discharge. It is understood that we are only to be credited with the amount actually paid to you under this assignment as & when the same is received by you." Due notice of that assignment was given by *pltf.*s to *defts.* on the following day. This was acknowledged by *defts.* on May 26, 1924. By that time the contractors had issued a number of debentures to the M. & C. Bank. These debentures were dated at various periods from Feb. 1, 1900, to Feb. 2, 1924, & they charged the undertaking & property, both present & future, of the contractors, the charge being a specific charge on their freehold & leasehold property, machinery, goodwill, & uncalled capital & a floating charge on all the co.'s other assets, subject to a proviso that the contractors were not to be at liberty to create any mtge. or charge on any of the assets in priority to



the debentures. A receiver for the debenture holders was appointed in Oct. 1924, & he duly entered into possession. Seven days after the appointment of the receiver a resolution was passed for the voluntary winding-up of the co. The receiver refused to recognise the right of plffs. to payment under their assignment in priority to the debenture holders, & on the architect's certificate being given in Jan. 1927, defts. declined to interplead & paid the retention moneys to the receiver for the debenture holders:—*Held*: the assignment in question was a good legal assignment & plffs. were entitled to sue on it. The retention fund in this case arose out of an existing contract, & although it did not become payable until a date later than that of the assignment, it was a debt or other legal thing in action which could be assigned. The assignment was within Jud. Act, 1873, s. 25, & Law of Property Act, 1925 (c. 20), s. 136. It could be sued on by the assignee without joining the assignor as a party. Plffs. were therefore entitled to recover on the assignment.—*EARLE (G. & T.) (1925), LTD. v. HEMSWORTH RURAL DISTRICT COUNCIL (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.*

344. *Add. Annotations*:—*Refd.* Cottage Club Estates v. Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re Wait*, [1927] 1 Ch. 606; *Earle v. Hemsworth R. D. C. (1928), 140 L. T. 69.*

345. *Add. Annotations*:—*Refd.* Lawrence v. Hayes,

[1927] 2 K. B. 111; *Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 605. Mentd. Re Pinto Leite, Ex p. Des Olivares, [1929] 1 Ch. 221.*

345a. *Effect of—On contractor's rights under arbitration clause.*—Building contractors assigned to a bank all money due & to become due to them under a building contract, which contained an arbn. clause, & the proper notice of the assignment was served on the building owners. Disputes having arisen regarding a claim by the contractors for compensation & extra payment, recourse was had to arbn.:—*Held*: (1) the arbitrator had jurisdiction to entertain the arbn., since the contractors' rights under the arbn. clause did not constitute a "legal" or "other remedy" for the debt within Law of Property Act, 1925 (c. 20), s. 136 (1), & were not passed & transferred to the bank by the assignment; (2) the arbitrator had to consider not merely the terms of the contract within the limits of the document, but also the application & enforcement of those terms, having regard to the whole legal position which the parties had created, including the relinquishment by the contractors themselves by the assignment of their right to claim the debt, & he must make his award in favour of the building owners.—*COTTAGE CLUB ESTATES v. WOODSIDE ESTATES CO. (AMERSHAM), [1928] 2 K. B. 463; 97 L. J. K. B. 72; 139 L. T. 353; 44 T. L. R. 20; 33 Com. Cas. 97.*

## Part XV.—Arbitration Clauses.

386. *Add. Annotation*:—*Refd.* Charles v. Cardiff Collieries (1928), 44 T. L. R. 448.

387. *Add. Annotation*:—*Consd.* Czarnikow v. Roth, Schmidt, [1922] 2 K. B. 478.

388. *Add. Annotation*:—*Refd.* Czarnikow v. Roth, Schmidt, [1922] 2 K. B. 478.

388a. *Clause restricting time for opening reference—"Until after completion of works"—Meaning of.*—The form of building contract issued by the Royal Institute of British Architects provides, by condition 31 in the schedule thereto, that should the building owner not pay the builder any sum certified by the architect within the time limited by the contract, the builder is to be at liberty to determine the contract & recover from the building owner payment for all work executed. Condition 32 provides that in case any difference shall arise between the building owner & the builder as to the construction of the

contract or as to any matter arising thereunder, such difference is to be referred to arbn., but that not be opened until after the completion of the works." During the progress of certain works which were being carried out under a building contract in the above form the building owner neglected to pay the builder a sum certified by the architect within the stipulated time, & thereupon the builder determined the contract under condition 31. The builder commenced arbn. proceedings while the contract works were still uncompleted, & the arbitrator made an award in his favour for the money due to him under the contract:—*Held*: the words "until after the completion of the works" in condition 32 meant until after completion of the whole of the works contracted for, & not merely until after completion of so much of the works as the builder was under

### PART XIII. SECT. 2, SUB-SECT. 2.

372 ii. — *Mechanic's lien action pending against sub-contractor—Liability for sales tax.*—*HOPE (HENRY) & SONS, LTD. v. SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—CAN.*

*ci.* — — — — — *Contractors:—Held*: entitled to damages for breach of contract by sub-contractors by reason of materials not being delivered in time.—*HOPE (HENRY) & SONS, LTD. v. SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—CAN.*

J.S.

### PART XV. SECT. 1.

— — — — — *A contract for the construction of a covered way from the mainland to a lighthouse contained an arbn. clause, the first part of which referred all disputes, whenever arising, as to the contract & its execution to the employers' engineer, while the second part referred any dispute or claim arising after, or consequent on, the completion of the contract to another engineer. A dispute having arisen as to the rate payable for the removal of certain rock, the contractors*

*refused to continue the work, & the employers took the work out of their hands. An action having been brought by the contractors for payment of sums alleged to be due under the contract & for damages—Held*: as the work was still in progress, the first part of the arbn. clause applied, it being immaterial that the work had been taken out of the hands of the pursuers, & action sisted to allow the arbn. to proceed.—*CRAWFORD v. NORTHERN LIGHTHOUSES COMRS., [1925] S. C. (H. L.) 22.—SCOT.*

the circumstances bound to perform; consequently the arbn. was premature & the arbitrator had no jurisdiction to make the award; or at all events the validity of the award was sufficiently doubtful to render

it improper to enforce it summarily.—**SMITH v. MARTIN**, [1925] 1 K. B. 745; 94 L. J. K. B. 645; 133 L. T. 196, C. A.

395. *Add. Annotation*:—**Mentd. Hirji Mulji v. Cheong Yue S.S. Co.**, [1926] A. C. 497.

## Part XVI.—Architects and Engineers.

425. *Add. Annotations*:—**Folld. Boynton v. Richardson** (1924), 69 Sol. Jo. 107. **Consd. Wisbech R. D. C. v. Ward** (1927), 91 J. P. 200.

425a. ——— *Interim certificates.*—Pltfs., a local authority, made a contract with builders under which deft. was the architect. The Ministry of Health had the right to require the use of materials which the Disposals Board had for sale. While the houses were in course of erection deft. gave interim certificates, & he also gave documents under which pltfs. paid the Board for articles supplied by the Board. Under these certificates & documents pltfs. had to pay both the builders & the Board for the same material. In an action by pltfs. to recover the amount from deft. on the ground of negligence:—*Held*: as the certificates were only interim certificates, & as deft. on going into the figures with pltfs. had indicated to them that

the amount paid to the Disposals Board was to be deducted from the final balance due to the contractors, deft. had not been guilty of negligence, & the action failed.—**WISBECH RURAL DISTRICT COUNCIL v. WARD**, [1928] 2 K. B. 1; 97 L. J. K. B. 56; 138 L. T. 308; 91 J. P. 200; 44 T. L. R. 62; 26 L. G. R. 10, C. A.

428. *Add. Annotation*:—**Consd. Wisbech R. C. v. Ward**, [1927] 2 K. B. 556.

434. *Add. Annotation*:—**Distd. Nixon v. Erith U.D.C.**, [1924] 1 K. B. 87.

436. *Add. Annotation*:—**Refd. Nixon v. Erith U. D. C.**, [1924] 1 K. B. 819.

452a. ——— *General Housing Memorandum No. 4.*—**ELKINGTON v. WANDSWORTH CORPN.** (1924), 41 T. L. R. 70; 88 J. P. Jo. 702.

458. *Add. Annotation*:—**Apld. Higgins v. Northampton County Borough** (1926), 90 J. P. 82.

### PART XV. SECT. 4.

e i. ———.]—A building contract contained a clause referring all disputes arising under the contract to the arbn. of the employers' engineer, who in fact superintended & directed the work:—*Held*: as the contractors had agreed to the appointment of the engineer as arbiter, they could not object to his acting upon the ground that he was an interested party with a bias.—**CRAWFORD v. NORTHERN LIGHTHOUSES COMRS.**, [1925] S. C. (H. L.) 22.—**SCOT.**

### PART XVI. SECT. 1.

e i. ——— *Unqualified person.*—*Held*: a person illegally employed could not thereby found a claim for admission to the Association of Professional Engineers as being a person "practising as a professional engineer" under Engineering Profession Act, Man. 1920 (c. 38), s. 7.—**Re ENGINEERING PROFESSION ACT, Re JOHNSON**, [1922] 3 W. W. R. 424; 70 D. L. R. 101.—**CAN.**

a i. *Termination of appointment—By verbal cancellation given to architect's assistant—Record of cancellation made by architect.*—*Held*: effective.—**ROWLEY v. COOK**, [1920] 2 W. W. R. 331; 52 D. L. R. 709.—**CAN.**

### PART XVI. SECT. 2, SUB-SECT. 1.—A.

ag. *Whether architect liable for mistakes of surveyor.*—**HARRIES, HALL &**

**KRUSE v. SOUTH SARNIA PROPERTIES, LTD., SOUTH SARNIA PROPERTIES, LTD. v. BAIRD & BAIRD (Ont.)**, [1928] 4 D. L. R. 872.—**CAN.**

### PART XVI. SECT. 2, SUB-SECT. 2.

k i. ——— *In giving decisions.*—Where the owner's engineer is made arbitrator, he must guard against being unduly influenced by his employers; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—**BLOWE v. REGINA (City)**, [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

### PART XVI. SECT. 3, SUB-SECT. 1.

d i. ———.]—Pltf.:—*Held*: entitled to payment for plans adopted & used, although there was no express contract to that effect.—**SINCLAIR v. LAND SETTLEMENT BOARD (B.C.)**, [1925] 2 D. L. R. 1050.—**CAN.**

g i. ——— *Work done before registration as architect.*—A person employed as an architect who is not registered, & whose employment is discontinued before he becomes registered, cannot recover for his services.—**ROWLEY v. COOK**, [1920] 2 W. W. R. 331; 52 D. L. R. 709.—**CAN.**

### PART XVI. SECT. 3, SUB-SECT. 2.

k i. *Plans approved by employer—*

*To be used at future date.*—*Held*: employer bound to pay, even though the building contemplated was never erected.—**QUIRK v. TOWN OF SYDNEY MINES** (1923), 56 N. S. R. 281.—**CAN.**

### PART XVI. SECT. 3, SUB-SECT. 3.

445 ii. ———.]—An architect employed to prepare plans is entitled to be paid a fair remuneration for his work, notwithstanding that the employer does not benefit by the work & does not erect the buildings contemplated by the plans.—**HUTCHINSON v. ZIVE** (1927), 48 N. L. R. 451.—**S. AF.**

445 iii. ———.]—**BRIDGMAN v. VOILANS (Man.)**, [1928] 3 D. L. R. 679.—**CAN.**

### PART XVI. SECT. 3, SUB-SECT. 4.

e (p. 445) i. ———.]—Pltf., an architect, prepared plans for & superintended the erection of a building estimated to cost \$175,000. After \$50,000 had been expended, pltf. rendered a partial account based upon the estimated cost at 3½ per cent., amounting to \$6,125, intimating that the full charge for his services would be 5 per cent. of the estimated cost. Deft. considered the claim excessive, & dispensed with pltf.'s further services:—*Held*: pltf. should be awarded for his services up to the time of his dismissal, including damages for dismissal, the sum of \$8,000.—**COBB v. ROY**, [1921] 54 N. S. R. 135; 57 D. L. R. 212.—**CAN.**

## BUILDING SOCIETIES.

## Part III.—Rules.

17. *Add. Annotation*:—*Appld. Re Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration*, [1921] 2 Ch. 318.
20. *Add. Annotation*:—*Consd. Re Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration*, [1921] 2 Ch. 318.

## Part IV.—Officers.

36. *Add. Annotation*:—*Refd. Deuchar v. Gas Light & Coke Co.*, [1924] 2 Ch. 426.
37. *Add. Annotation*:—*Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438.
41. *Add. Annotation*:—*Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 83.
54. *Add. Annotation*:—*Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 83.
- 65a. *S. P. R. v. HASTIE* (1863), *Le & Ca.* 269; 1 New Rep. 335; 32 L. J. M. C. 63; 7 L. T. 695; 27 J. P. 85; 9 Jur. N. S. 235; 9 Cox, C. C. 264; 169 F. R. 1391; *sub nom. R. v. HARTIE*, 11 W. R. 293, C. C. R.

## Part VII.—Advances.

109. *Add. Annotation*:—*Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.* (1921), 91 L. J. Ch. 74.
110. *Add. Citation*:—*subsequent proceedings*, [1921] 2 Ch. 438, C. A.
- 110a. ——— *Rights & benefits under—Whether transferable.*—*SUN BUILDING SOCIETY v. WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY*, No. 230a, *post*.
111. *Add. Annotation*:—*Generally, Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438.
112. *Add. Annotations*:—*As to (1) Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438. *As to (3) Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438. *As to (4) Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438.
119. *Add. Citation*:—*subsequent proceedings*, [1921] 2 Ch. 438, C. A.
143. *Add. Annotation*:—*Mentd. Campbell v. Pol-lak*, [1927] A. C. 732.
144. *Add. Annotation*:—*Mentd. Campbell v. Pol-lak*, [1927] A. C. 732.
146. *Add. Annotation*:—*Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.* (1921), 91 L. J. Ch. 74.
184. *Add. Annotations*:—*Refd. Sweet v. Mac-diarmid (or Henderson)* (1920), 7 Tax Cas. 640; *Inland Revenue Comrs v. Hay* (1924), 8 Tax Cas. 636.

## Part VIII.—Borrowing and Loans.

- 187a. *For purchase of mortgages—Whether purpose of society.*—*SUN BUILDING SOCIETY v. WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY*, No. 230a, *post*.
190. *Add. Annotation*:—*Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 83.
198. *Add. Annotations*:—*As to (2) Refd. Bowling v. Cox*, [1928] A. C. 751. *Generally, Mentd. Dominion Coal Co. v. Mackinonge S.S. Co.*, [1922] 2 K. B. 132; *Boston Corp'n. v.*

## PART VII. SECT. 2.

n i. ——— *Right to partial release of mortgaged property.*—*ALMON v. FAIRBANKS* (1876), 10 N. S. R. (1 R. & C.) 407.—CAN.

## PART VII. SECT. 3.

ad. *Assumption of mortgage by purchaser—Monthly instalments unpaid—*

*Rights of purchaser.*—*STARK v. SHEPHERD* (1881), 29 Gr. 316.—CAN.

## PART VII. SECT. 4.

124 i. *Determination of amount payable—Liability for losses incurred in management of society.*—*Held*: under the mtge. in question & the bye-laws & rules of the society, the society could not charge against the mtge. a share of

losses incurred in the management of the society.—*LEE v. CANADIAN MUTUAL LOAN CO.* (1908), 23 C. L. T. 165; 5 O. L. R. 471; 2 O. W. R. 370.—CAN.

## PART VII. SECT. 5, SUB-SECT. 2.

t. *For the existing "Held" paragraph read "Held: plff. was entitled to foreclose for the whole amount due, to be computed according to the rules."*

- Fenwick (1923), 129 L. T. 766; Holt v. Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Anchor Donaldson v. Crossland, [1929] A. C. 297.
199. *Add. Annotations*:—**Mentd.** Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443; Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.
202. *Add. Annotation*:—**Refd.** Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.
204. *Add. Annotation*:—**Mentd.** Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.
214. *Add. Annotations*:—**Mentd.** Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443; Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.
220. *Add. Annotations*:—**Refd.** Bowling v. Cox, [1926] A. O. 751. **Mentd.** Dominion Coal Co. v. Mackinonge S.S. Co., [1922] 2 K. B. 132; Boston Corp. v. Fenwick (1923), 129 L. T. 766; Holt v. Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Anchor Donaldson v. Crossland, [1929] A. C. 297.
223. *Add. Annotation*:—**Mentd.** Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

## Part IX.—Investment or Other Application of Surplus Funds.

228. *Add. Annotation*:—**Refd.** Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.
230. *Add. Citation*:—*subsequent proceedings*, [1921] 2 Ch. 438, C. A.
- 230a. ——— **Insufficient surplus funds to carry out purchase.**—Although a building society may transfer its mtges. either to an individual or to another building society, yet if it agrees to sell those securities to a purchaser & makes no stipulation as to what it is that the purchaser is to take under such agreement for sale, the only conclusion that can be drawn is that it agrees to transfer such benefits as it itself enjoys, & that it cannot do. Pltf. society was in liquidation, & in May, 1919, its liquidators entered into a contract with deft. society for the sale to deft. society of thirty-seven of the freehold & leasehold mtges. of pltf. society for £6,400. Deft. society having declined to complete, pltf. society issued a writ for specific performance. Subsequently the parties by agreement stated a special case for the opinion of the ct. as to, amongst other things, whether the contract was *ultra vires* deft. society, because it had not at the date of the contract surplus funds properly available for investment, & whether pltf. society could transfer the mtges. without the consent of the mtgors. Both these points were decided in favour of pltf. society:—**Held**: (1) although

the contract might be *intra vires* in its inception, notwithstanding that deft. society had not sufficient surplus funds to carry it out, yet if at the time when an order was made for its specific performance deft. society had not sufficient surplus funds the effect of the order would be to require the society, which was not an investing society, to invest moneys which were not its surplus funds in a security

(2) a further effect of the order, if made, would be to require deft. society to borrow money to pay for the mtges.; & as its borrowing powers could not be resorted to except for borrowing for the purposes of the society, & as the purchase of the mtges. was not one of those purposes, the order would be an order requiring deft. society to do an *ultra vires* act; therefore no order for specific performance ought in the circumstances to be made; (3) having regard to the fact that the mtges. in question were building society mtges., pltf. society was not in a position to transfer to deft. society all the rights & benefits to which under them it was itself entitled, pltf. society was not ready & willing to perform its part of the contract, & consequently it could not enforce the contract.—**SUN BUILDING SOCIETY v. WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY**, [1921] 2 Ch. 438; 91 L. J. Ch. 74; 125 L. T. 782; 37 T. L. R. 844; 65 Sol. Jo. 734, C. A.

## Part X.—Disputes.

242. *Add. Citation*:—37 J. P. 468.      L. C. C. (1927), 137 L. T. 49.
251. *Add. Annotation*:—**Refd.** Northwood v.      277. *Add. Citation*:—37 J. P. 468.

## Part XII.—Amalgamation and Transfer.

- 285a. **Amalgamation—Effect of 1874 Act, s. 33—Dissolution of constituent societies unnecessary.**—By a contract dated Sept. 15,
- 1928, applt. agreed to sell to resp. two freehold plots of land & a dwelling-house. On Nov. 30, 1925, the property so contracted

to be sold was mtgd. to the H. Equitable B.B. Society, & on Jan. 31, 1928, that society was united in accordance with the provisions of the Building Societies Acts with the H. Permanent B.B. Society under the name of the H. Building Society. On June 28, 1928, the money due on the mtge. was repaid to the H. Building Society, which society gave a receipt endorsed on the mtge. A note was also endorsed that on Jan. 31, 1928, the H. Equitable B.B. Society & the H. Permanent B.B. Society were united & became one society under the name of the H. Building Society, & that the transaction was duly registered as required by the Building Society Acts. The purchaser required an abstract of the documents effecting the transfer of the mtge. to the H. Building Society from the H. Equitable B.B. Society & asserted that resolutions as to union, the notice to the registrar, & consents in writing of the shareholders in the two societies must be abstracted. The purchaser also claimed to be entitled to see the instrument of union to ascertain that the provisions of the Building Societies Acts had been complied with. The vendor contended that this was not necessary as under 1877 Act, s. 5, the registration operated as a conveyance of the property which was then vested in the H. Equitable B.B. Society. The judge held that under the Building Societies Acts the possibility was contemplated of a union with-

out a dissolution of the uniting societies, & 1877 Act, s. 5, which provided that the registration of the union should operate as a conveyance, must be read as subject to 1874 Act, s. 33, under which the instrument of union might provide that certain properties should be excepted & not transferred, & it was therefore necessary for the purchaser to be furnished with an abstract of the instrument of union to enable him to see whether 1877 Act, s. 5, could operate without any qualification:—*Held*: 1874 Act, s. 33, & 1877 Act, s. 5, contemplated that a union of two societies might be made without a dissolution of each society, & it was putting too much on 1874 Act, s. 33, to say it gave complete union so that no inquiry could be made as to the terms of union, & 1877 Act, s. 5, made it clear that only such properties vested in the united society as the instrument of union provided, therefore it was necessary that the vendor should abstract & verify the resolution of union, the notice to be given to the registrar of the union, & the other instrument of union if any, & until he had done so he had not produced to the purchaser a proper title.—*Re FRYER & HAMPSON'S CONTRACT* (1929), 110 L. T. 680, C. A.

**285b. — Property vesting in united society—  
Dependent on terms of instrument of union.**—  
*Re FRYER & HAMPSON'S CONTRACT*, No. 285a,  
*ante*.

## Part XIII.—Dissolution.

**307. Add. Citation** :—*subsequent proceedings*, [1921] 2 Ch. 438, C. A.

**370. Add. Annotations** :—*As to* (2) **Refd.** *Bowling v. Cox*, [1926] A. C. 751. *Generally*, **Mentd.** *Dominion Coal Co. v. Mackinonge S.S. Co.*,

[1922] 2 K. B. 132; *Boston Corp'n. v. Fenwick* (1923), 129 L. T. 766; *Holt v. Markham*, [1923] 1 K. B. 504; *Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co.*, [1924] A. C. 226; *Anchor Donaldson v. Crossland*, [1929] A. C. 297.

## BURIAL AND CREMATION.

### Part I.—Rights and Duties of Executors and Others as to Burial.

- 20a. — **Not freehold estate—No personal estate—** 3 & 4 Will. 4, c. 104.]—*CARTER v. BEARD* (1839), 10 Sim. 7; 3 Jur. 532; 59 E. R. 514.  
*Annotations—Refd. R. Rhodes, Rhodes v. Rhodes* (1890), 41 Ch. D. 94. *Mentd. Wentworth v. Tubb* (1841), 1 Y. & C. Ch. Cas. 171.
45. *Add. Annotation:—As to* (2) *Refd. Kent v. Atkinson*, [1923] P. 142.
47. *Add. Annotation:—Refd. Barnett v. Cohen*, [1921] 2 K. B. 461.
- 56a. — **Verbal instructions by deceased for elaborate funeral.]—***Re READ, GALLOWAY v. HARRIS* (1892), 36 Sol. Jo. 626.

### Part III.—Burial in Churches and Churchyards.

77. *Add. Annotation:—Refd. Preston Corpn. v. Pyke*, [1929] 2 Ch. 338.
81. *Add. Annotation:—Consd. Preston Corpn. v. Pyke*, [1929] 2 Ch. 338.
101. *Add. Annotation:—Refd. Preston Corpn. v. Pyke*, [1929] 2 Ch. 338.
121. *Add. Annotation:—Refd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
138. *Add. Annotation:—Refd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

### Part V.—Fees on Burial in Churchyard or Cemetery.

165. *Add. Citation:—sub nom. ANON.*, 1 Vent. 274.

### Part VII.—Provision of Land for Burial Grounds.

201. *Add. Annotation:—Generally, Refd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.

### Part VIII.—Provision of Burial Grounds under Burial Acts.

204. *Add. Annotations:—Consd. Nicholl v. Llantwit Major Parish Council*, [1924] 2 Ch. 214; *L. C. C. v. Greenwich Corpn.*, [1929] 1 Ch. 305.
223. *Add. Annotation:—Refd. Rotunda Hospital Dublin v. Coman* (1920), 7 Tax. Cas. 517.
- 228a. **Power to acquire land by exchange.]—***NICHOLL v. LLANTWIT MAJOR PARISH COUNCIL*, No. 291a, *post*.
231. *Add. Annotation:—As to* (1) *Apd. Hoskyns-Abrahall v. Paignton U. D. C.*, [1929] 1 Ch. 375.
- 237a. **Allotment of unconsecrated part—For parishioners of particular denomination—Extent of rights.]—**1853 Act, s. 7, upon its true construction, authorised the allotment by a burial board of portions of the unconsecrated part of a new burial ground for burials exclusively of parishioners belonging to the particular religious denomination for whom an allotment is made.

Under the provisions of the Burial Acts such an allotment was in 1854 made by plffs., as the burial board, of a portion of the unconsecrated ground for the burial of the Roman Catholic parishioners. Upon an originating summons under R. S. C., Ord. 54, r. 1, taken out by plffs. to have it determined whether, by virtue of that allotment for the Roman Catholic parishioners, a deceased parishioner not a member of the Roman Catholic denomination could be buried in such allotted portion; & if he could, whether he could be so buried with the rites or ceremonies of any denomination other than those of the Roman Catholic:—*Held*: (1) the portion so allotted for the Roman Catholics was by virtue of its allotment appropriated exclusively for the burial of the Roman Catholics; (2) a Roman Catholic parishioner had, under the Burial Acts, no greater rights in the portion so allotted for their burial than a parishioner, as such, had,

before those Acts, in his old parish burial ground; &, consequently, although he still had, under those Acts, a right of interment in that allotted portion, he had no individual right, as a parishioner, to interfere with the burial therein of a parishioner of a different denomination; (3) the A.-G. was entitled in properly constituted proceedings, if he should think fit to institute them, to an order restraining plffs. from permitting the burial of persons other than Roman Catholics in the portion allotted to Roman Catholics; (4) nothing in 1853 Act enabled any particular rites or ceremonies to be enforced in regard to burials within the portion allotted to Roman Catholics or rendered the performance in regard to such burials of any particular rites or ceremonies unlawful.—PRESTON CORPN. v. PYKE, [1929] 2 Ch. 338; 98 L. J. Ch. 388; 141 L. T. 252; 93 J. P. 181; 45 T. L. R. 398; 27 L. G. R. 740.

237b. ——— Right of parishioners of other denominations to burial.]—PRESTON CORPN. v. PYKE, No. 237a, *ante*.

237c. ——— Restraint of unauthorised burial by Attorney-General.]—PRESTON CORPN. v. PYKE, No. 237a, *ante*.

237d. ——— Performance of particular rites & ceremonies—Whether enforceable.]—PRESTON CORPN. v. PYKE, No. 237a, *ante*.

237e. ——— Whether lawful.]—PRESTON CORPN. v. PYKE, No. 237a, *ante*.

262a. ———.]—The exclusive right of burial in part of a cemetery granted by a local authority under 1879 Act, s. 2, which incorporates 1847 Act, to a grantee who has purchased the right to erect a vault on the space set apart for the purpose of the grant, is a right of interment of the dead therein & of keeping the vault in reasonably good repair subject to such regulations as the local authority think fit. The grantee has no freehold interest in the space or the vault & no right to use them for the purpose of performing private rights or ceremonies, or to open or enter the vault for the purpose of depositing articles therein, without the consent of the local authority.—HOSKINS-ABRAHAM v. PAINGTON URBAN COUNCIL, [1929] 1 Ch. 375; 98 L. J. Ch. 103; 140 L. T. 397; 93 J. P. 93; 45 T. L. R. 161; 27 L. G. R. 129, C. A.

## Part X.—Position of Burial Grounds.

272. *Add. Annotation*:—As to (1) *Refd.* Graigola Merthyr Co. v. Swansea Corp., [1929] A. C. 344.

274. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corp., [1929] A. C. 344.

277. *Add. Annotation*:—*Refd.* A.-G. v. Hodgson, [1922] 2 Ch. 429.

## Part XI.—Closed and Disused Burial Grounds.

284. *Add. Annotation*:—*Refd.* Swift v. Board of Trade, [1925] A. C. 520.

291. *Add. Annotations*:—*Consd.* Nicholl v. Llantwit Major Parish Council, [1924] 2 Ch. 214. *Apld.* L. C. C. v. Greenwich Corp., [1929] 1 Ch. 305.

291a. ———.]—A parish council being the duly constituted burial authority for the parish took from pltf., in consideration of a covenant to redeem the tithe rentcharges charged on the land being conveyed & on adjoining land retained by pltf., a conveyance of land “to hold the same . . . according to the true intent & meaning” of the Burial Acts. The

land proved unfit & was never used for interments, & it was never fenced off or consecrated, nor did it adjoin any burial ground. The council agreed with pltf., with the approval of the parish meeting, to exchange the land for other land suitable for use as a burial ground:—*Held*: (1) the land first acquired by the council had never been “set apart for the purposes of interment” & was not therefore a “disused burial ground,” so as to be subject to the restriction imposed by 1884 Act, s. 3; (2) the council had power to effect the exchange by virtue of the powers to sell land not required for interments & to buy land for the purposes of

### PART III. SECT. 6, SUB-SECT. 2.

136 i. *Removal*—To another part of churchyard.]—Where a proposed extension of the fabric of a Scottish Episcopal church entailed encroachment on part of the graveyard surrounding the church, the ct., in the exercise of the *nobile officium*, authorised the removal, subject to certain conditions, of the gravestones, & their re-erection upon or near the fabric of the new building.—CHRISTIE, ETC. PETITIONERS, [1926] S. C. 750.—SCOT.

Act, R. S. A., 1922 (c. 166), the purchaser of a lot cannot get by a conveyance, even when expressed to be to his heirs & assigns, a title in fee simple without restriction or limitation. The title which he obtains may properly be described as an easement.—STRATHCONA CEMETERY CO. v. TAYLOR, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—CAN.

260 ii. ——— To whom right of burying passes.]—The right of burying in the lot succeeds, speaking generally, to the next-of-kin of deceased.—STRATHCONA CEMETERY CO. v. TAYLOR, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—CAN.

### PART IX. SECT. 1.

ad. *Prohibiting employment of hired labour to improve burial plots.*—*Held*: reasonable & within the directors' powers.—STRATHCONA CEMETERY CO. v. TAYLOR, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—CAN.

### PART XI. SECT. 1, SUB-SECT. 2.—A.

284 i. *Compulsory sale*—Basis of compensation.]—On expropriation of a cemetery, the trustees can only claim value as cemetery & cannot have the value of sand & gravel deposits beneath it, that not being part of the value to the owners.—IT. v. MIDDLETON CHURCH TRUSTEES (1920) 56 D. L. R. 60.—CAN.

### PART VIII. SECT. 5.

260 i. *Extent of right*—To A. “& his heirs & assigns.”—Under Cemetery

interment conferred respectively by 1852 Act, ss. 28 & 26, as extended by 1853 Act, s. 7.—**NICHOLL v. LLANTWIT MAJOR PARISH COUNCIL**, [1924] 2 Ch. 214; 93 L. J. Ch. 602; 131 L. T. 634; 68 Sol. Jo. 718.

*Annotation*: *As to* (1) **Expld. L. C. C. v. Greenwich Corpn.**, [1929] 1 Ch. 305.

292. *Add. Annotations*:—**Consd. Nicholl v. Llantwit Major Parish Council**, [1924] 2 Ch. 214. **Apld. L. C. C. v. Greenwich Corpn.**, [1929] 1 Ch. 305.

294a. **Land set apart for interment—Interments abandoned as to part—Continued as to other part.**—(1) Where a piece of land has been effectually set apart for the purposes of interment it becomes a “burial ground” within the aggregate definition of Metropolitan Open Spaces Act, 1881 (c. 34), 1884 Act, & Open Spaces Act, 1887 (c. 32), & any portion for which the purposes of interment are subsequently abandoned becomes a “disused burial ground” within the similar definition, although interments still go on in other parts of the cemetery.

(2) A sale of a “disused burial ground” by the Admiralty under the general powers of Admiralty Lands & Works Act, 1861 (c. 57), s. 15, is not a sale under the authority of an Act of Parliament within 1884 Act, s. 5, & consequently the disused burial ground still remains subject to the building prohibitions of 1884 Act, s. 3.—**LONDON COUNTY COUNCIL v. GREENWICH CORPN.**, [1929] 1 Ch. 305; 98 L. J. Ch. 49; 140 L. T. 456; 93 J. P. 123; 45 T. L. R. 141; 27 L. G. R. 282.

296. *Add. Annotation*:—**Consd. L. C. C. v. Greenwich Corpn.**, [1929] 1 Ch. 305.

296a. — **Sale by Admiralty.**—**LONDON COUNTY COUNCIL v. GREENWICH CORPN.**, No. 294a, *ante*.

300. *Add. Annotations*:—**Consd. St. Nicholas Acons v. L. C. C.**, [1928] A. C. 469. **Mentd. Hurley v. Stepney B. C.** (1923), 67 Sol. Jo. 767.

300a. **Urinal.**—A borough council petitioned for a faculty to authorise the conversion of a consecrated churchyard, which had been wholly closed for interments by Order in Council, into an open space, & the laying out & maintenance of it as such. Authority was sought for laying out & maintaining part of the churchyard as a playground for children & for the erection upon it of urinals & a small toolshed:—**Held**: (1) the proposed urinals

were “buildings” within 1884 Act, s. 2, & Open Spaces Act, 1887 (c. 32), s. 4, & the ct. had no jurisdiction to authorise their erection; (2) the proposed toolshed was necessary for the laying out & maintaining of the churchyard as an open space, & was not a “building” within the above Acts; (3) the facts proved justified the authorisation of games in the converted churchyard, but organised games, such as cricket & football, the laying out of tennis courts & the erection of swings & other structures should be prohibited. Faculty decreed, but not to issue until the council had made bye-laws embodying the above prohibitions & prescribing the hours during which the churchyard should be open to the public, so as to prevent any nuisance to the occupants of adjoining houses, & had carried a copy thereof into the diocesan registry for approval by the chancellor.—**BERMONDSEY BOROUGH COUNCIL v. MORTIMER**, [1926] P. 87.

300b. **Toolshed.**—**BERMONDSEY BOROUGH COUNCIL v. MORTIMER**, No. 300a, *ante*.

300c. **Underground chamber.**—**ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) v. LONDON COUNTY COUNCIL**, No. 309a, *post*.

309. *Add. Annotation*:—**Distd. St. Nicholas Acons v. L. C. C.**, [1928] A. C. 469.

309a. — — — — — **A brick built chamber intended to contain machinery for transforming electric current, with a roof of asphalt supported by steel girders & reinforced concrete, but so constructed that the roof does not project above the ground level, if erected in a churchyard closed for burials by Order in Council, would constitute a “building” erected “upon a disused burial ground” within 1884 Act, s. 3, & an ecclesiastical ct. has no jurisdiction to grant a faculty authorising the erection of such a building in such a situation.**—**ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) v. LONDON COUNTY COUNCIL**, [1928] A. C. 469; 97 L. J. P. C. 113; 139 L. T. 530; 92 J. P. 185; 44 T. L. R. 656; 26 L. G. R. 583, P. C.

315. *Add. Annotation*:—**Generally, Refd. Bermondsey B. C. v. Mortimer**, [1926] P. 87.

323a. — **Playground for children—Tennis courts & swings.**—**BERMONDSEY BOROUGH COUNCIL v. MORTIMER**, No. 300a, *ante*.

330. *Add. Annotation*:—**Consd. St. Nicholas Acons, London v. L. C. C.**, [1928] P. 102.

## Part XIV.—Burial of Persons Found Drowned.

350. After this case add:

— — — — — *See, now, Burial of Drowned Persons Act, 1886 (c. 20).*

## Part XVI.—Registration of Burials.

375. *Add. Annotations*:—*As to* (1) **Consd. Glamorgan County Council v. Glasbrook**, [1924] 1 K. B. 879. *As to* (2) **Consd. Glamorgan County Council v. Glasbrook**, [1924] 1 K. B.

879. **Refd. Brocklebank v. R.**, [1925] 1 K. B. 52. *As to* (3) **Refd. Marshal Shipping Co. v. Board of Trade**, [1923] 2 K. B. 343.



## Part XIX.—Taxation and Rating of Burial Grounds and Burial Fees.

388. *Add. Annotation* :—**Mentd.** Durham County Council *v.* Tanfield Overseers, [1923] 2 K. B. 333.

389. *Add. Annotations* :—**Refd.** Poplar Assmt. Com. *v.* Roberts, [1922] 2 A. C. 93; Harper *v.* Hedges, [1923] 2 K. B. 314.

### PART XIX.

*n.* Taxes—*Whether land in use for purposes of cemetery.*—**BURNABY DISTRICT CORPN. v. OCEAN VIEW DEVELOPMENT, LTD.**, [1923] 3 D. L. R. 1073;

32 B. C. R. 413.—**CAN.**

**m i.** ———— *Method of valuation.*—**FALKIRK PARISH COUNCIL v. STIRLINGSHIRE ASSESSOR**, [1928] S. C. 405.—**SCOT.**

**m ii.** ————.—**ABERDEEN ASSESSOR v. ABERDEEN CEMETERY CO., LTD.; ABERDEEN ASSESSOR v. MASTER OF TRADES HOSPITAL**, [1929] S. C. (Ct. of Sess.) 275.—**SCOT.**

## CARRIERS.

## Part I.—Who is a Common Carrier.

- 4a. ———.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s furniture from L. to H., the contract being subject to a condition that the contractors would not be responsible for loss or damage caused by fire. Part of the furniture, which was loaded on a motor lorry, was destroyed by fire, occasioned by the negligence of defts.' servants, the remaining portion being damaged by the fire. Pltf. sued defts. for the value of the goods damaged & destroyed:—*Held*: defts. were not liable, inasmuch as the condition that they would not be responsible for fire protected them from liability, since the clause would be of no effect unless it referred to fire caused by the negligence of defts., as, not being common carriers, they would not in any event be liable for loss caused by accidental fire.—*TURNER v. CIVIL SERVICE SUPPLY ASSOCN., LTD.*, [1926] 1 K. B. 50; 95 L. J. K. B. 111; 134 L. T. 189.
- Annotation*:—*Foll.* *Fagan v. Green & Edwards* (1925), 70 Sol. Jo. 185.
- 4b. ———.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s goods from L. to O., the contract being subject to a condition that defts. would not be responsible for fire. The goods, which were loaded on a motor van, were destroyed while in transit by fire, which was occasioned by the negligence of defts.' servants. Pltf. sued defts. for the value of the goods:—*Held*: as defts. were bailees only & not common carriers, &, therefore, not liable for an accidental fire, the condition must be construed as exempting them from liability for fire arising from their own negligence, as otherwise the condition would be of no effect.—*FAGAN v. GREEN & EDWARDS, LTD.*, [1926] 1 K. B. 102; 95 L. J. K. B. 363; 134 L. T. 191; 70 Sol. Jo. 185.
- 5a. ———.]—*Upon terms limiting liability*.—*GREAT NORTHERN RY. CO. v. L. E. P. TRANSPORT & DEPOSITORY, LTD.*, No. 234a, *post*.
6. *Add. Annotation*:—*As to* (3) *Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
- 12a. ———.]—*TURNER v. CIVIL SERVICE SUPPLY ASSOCN., LTD.*, No. 4a, *ante*.
- 12b. ———.]—*FAGAN v. GREEN & EDWARDS, LTD.*, No. 4b, *ante*.
- 14a. ———.]—*Of goods accompanied by passenger*.—By London County Council (*Tramways & Improvements*) Act, 1911, s. 42: "Every passenger travelling upon any of the council's tramways may take with him his personal luggage, not exceeding 28 lbs. in weight, without any charge . . . all such luggage to be carried by hand" under certain conditions. In respect to luggage which did not fulfil these conditions the council were entitled to make such charge as they thought fit. Pltf., wishing to send a parcel of goods weighing some 50 lbs. to a customer, instructed his servant to convey it by one of defts.' tramcars. The servant did so, & in addition to paying his own fare paid 2d. for the parcel. When he arrived at his destination the servant claimed his parcel, but found that it had been lost. In an action brought by pltf. claiming damages:—*Held*: the provisions of sect. 42 of the private Act being inconsistent with one of the peculiar features of a common carrier, who was bound to carry all goods of the class which he proposed to carry, for all & sundry & irrespective of the fact that the goods were accompanied by a passenger, the London County Council were not common carriers of goods so as to be entitled to the benefit of Carriers Act, 1830 (c. 68).—*ROSENTHAL v. LONDON COUNTY COUNCIL* (1924), 131 L. T. 563; 88 J. P. 157; 22 L. G. R. 527.
16. *Add. Annotation*:—*Consd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
17. *Add. Annotation*:—*Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
18. *Add. Annotation*:—*Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
31. *Add. Annotations*:—*Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742; *Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50.

## Part II.—Private Carriers and Forwarding Agents.

43. *Add. Annotation*:—*As to* (1) *Refd.* *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
44. *Add. Annotation*:—*Generally*, *Refd.* *Pratt v. Patrick*, [1924] 1 K. B. 488.
45. *Add. Annotation*:—*Refd.* *Troy v. Eastern Co. of Warehouses Insee. & Transport of Goods, etc. (Petrograd)* (1921), 91 L. J. K. B. 632.
46. *Add. Citation*:—15 Asp. M. L. C. 208.
47. *Add. Citations*:—91 L. J. K. B. 632; 15 Asp. M. L. C. 387.

## PART I. SECT. 1.

4 i. *Carrying on business as carrier*.—*Furniture remover*.]—Def., a carrier & forwarding agent, tendered for the removal of pltf.'s furniture in the following terms: "We beg to quote £120. This price includes all transit charges, including delivery to house & unpacking, also risk of breakage, the value of any one package not to exceed £10." This tender was ac-

cepted:—*Held*: deft. was not in this transaction a common carrier, & Mercantile Law Act, 1918, s. 19, did not apply.—*WILSON v. NEW ZEALAND EXPRESS CO., LTD.*, [1923] N. Z. L. R. 201.—N.Z.

5 i. *Carrier of goods*.—*Of all persons*.—*For hire*.]—*MATHEWSON v. MITCHELL, POOLEY v. MITCHELL*, [1925] 4 D. L. R. 384.—CAN.

## PART I. SECT. 2.

15 i. *Haulage contractor*.—*Person towing damaged motor cars*.]—Persons engaged in the business of towing damaged motor cars are common carriers, & as such are entitled to retain the thing transported until payment for services rendered.—*TERRY v. AUTOMOBILE OWNERS ASSOCN.* (1927), Q. R. 65 S. C. 390.—CAN.

## Part III.—The Contract at Common Law.

51. *Add. Annotation*:—*Refd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
58. *Add. Annotations*:—*As to* (1) *Apld.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369. *As to* (2) *Refd.* Buerger v. Cunard S.S. Co., [1925] 2 K. B. 646.
61. *Add. Annotation*:—*Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
66. *Add. Annotations*:—*As to* (1) *Refd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) *Refd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
82. *Add. Annotation*:—*Refd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
85. *Add. Annotations*:—*Mentd.* The Empress (1923), 92 L. J. P. 42; Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.
- 90a. ———.]—*GREAT NORTHERN RY. CO. v. L. E. P. TRANSPORT & DEPOSITORY, LTD.*, No. 234a, *post*.
- 92a. ———.]—Chests of tea of resps. were delivered to a railway co. for conveyance from A. to C. The railway broke down, & by an arrangement between the railway co. & applts., who were common carriers by water, applts. agreed to convey the tea by a special flotilla by river to a point at which it could be put on the railway again:—*Held*: in so doing, applts. had not so far departed from their usual course of business as to take these journeys out of their usual business as carriers, & they were liable for the loss of the tea which was destroyed by fire while on board one of their boats.—*INDIA GENERAL NAVIGATION & RY. CO. v. DEKHARI TEA CO.* (1923), 93 L. J. P. C. 108; 130 L. T. 554; 10 Asp. M. L. C. 285, P. C.
96. *Add. Annotations*:—*Refd.* Pratt v. Patrick, [1924] 1 K. B. 488. *Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
97. *Add. Annotation*:—*Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
98. *Add. Annotation*:—*Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
114. *Add. Annotations*:—*As to* (1) *Consd.* Frenkel v. McAndrews, [1929] A. C. 545. *Refd.* United States Shipping Board v. Bunge & Born (1924), 41 T. L. R. 73. *As to* (2) *Refd.* Buerger v. Cunard S.S. Co., [1925] 2 K. B. 646.
122. *Add. Annotation*:—*Dlstd.* Silver v. Ocean S.S. Co. (1929), 46 T. L. R. 78.
123. *Add. Annotation*:—*Consd.* Silver v. Ocean S.S. Co. (1929), 46 T. L. R. 78.
149. *Annotations*:—After "*As to* (2)" add "*Refd.*"
151. *Add. Annotation*:—*Refd.* Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

## PART III. SECT. 3, SUB-SECT. 1.—A.

t i. ———.]—The *onus* is on the carrier to prove that the loss is not due wholly or in part to his negligence, & that he took all known means a reasonably prudent carrier should take to preserve goods from damage.—*CANADIAN NORTHERN QUEBEC RY. CO. v. PLEET*, [1923] 4 D. L. R. 1112; 26 Can. Ry. Cas. 238.—*CAN.*

t ii. ———.]—In accordance with a rule of the Canadian freight classification approved by Railway Board, goods were loaded by the owners, pliffs., & under the standard bill of lading, carriers are not liable for any loss or damage caused by the act or default of the shipper or owner. An accident happened through the flooring of a car giving way on account of the weight placed on it by pliffs. The defective flooring was known to both parties, but pliffs. alone knew the use the cars were to be put to:—*Held*: the accident should be attributed to pliffs.' method of loading rather than to any breach of duty on part of defts.—*CANADIAN WESTINGHOUSE CO., LTD. v. CANADIAN PACIFIC RY. CO.* (1923), 54 O. L. R. 238.—*CAN.*

t iii. ———.]—*Default of consignee*.—*HATFIELD & CO. v. CANADIAN PACIFIC RY.* (N. B.), [1926] 2 D. L. R. 93.—*CAN.*

t iv. ———.]—*Position of Indian railways*.—A railway co. in India under Indian Railways Act, 1890, is not an insurer, but is under the duty of taking a certain measure of reasonable care.—*GREAT INDIAN PENINSULA RY. CO., LTD. v. JESRAJ PATWARI* (1927), 1 L. R. 55 Calc. 132.—*IND.*

77 la. ———.]—*NORTHERN GRAIN CO. v. CANADIAN NATIONAL RY. & GRAND TRUNK PACIFIC RY.*, [1922] 3 W. W. R. 733; 70 D. L. R. 281.—*CAN.*

77 v. ———.]—*Through sub-contractor's negligence*.—When a carrier undertakes for reward to carry goods & entrusts the carriage of them to a sub-contractor, & the goods are subsequently lost through the sub-contractor's negligence or that of his servants, the carrier is liable, because there has been a breach of his undertaking that ordinary care will be exercised in the carriage of the goods.—*WILSON v. NEW ZEALAND EXPRESS CO., LTD.* (No. 2), [1924] N. Z. L. R. 465.—*N.Z.*

77 vi. S. P. WILSON v. NEW ZEALAND EXPRESS CO., LTD. (No. 3), [1924] N. Z. L. R. 890.—*N.Z.*

85 iii. ———.]—*Goods were damaged*:—*Held*: defts. were not exonerated from liability by any special contract in the bills of lading issued after delivery taken of the goods, & having failed to show that the damage was not caused by their fault or neglect, they were liable.—*EDGETT, LTD. v. PACIFIC GREAT EASTERN RY. CO.*, [1923] 1 W. W. R. 684; 32 B. C. R. 37.—*CAN.*

91 i. ———.]—*Goods destroyed—No written contract limiting liability*.—*Held*: applts. were common carriers & were liable to owners for goods destroyed by fire without proof of negligence.—*INDIA GENERAL NAVIGATION & RY. CO. v. DEKHARI TEA CO., LTD.* (1923), L. R. 51 Ind. App. 29.—*IND.*

## PART III. SECT. 3, SUB-SECT. 1.—B.

100 i. ———.]—*Goods stolen from carrier's warehouse at destination—Carrier making no warehouse charge*.—*Held*: holding the goods at owner's risk, defts. could not be found liable for the loss unless they were guilty of wilful neglect or misconduct.—*BROWN v. DOMINION EXPRESS CO.* (1921), 67 D. L. R. 325; 51 O. L. R. 359.—*CAN.*

100 ii. ———.]—*Consignee with*

*notice of arrival—Bonded goods—Carrier liable*.—*GEORGE v. CANADIAN NORTHERN RY. CO.*, (1922) 53 O. L. R. 94.—*CAN.*

100 iii. ———.]—*Carrier not liable—Failure of consignee to remove goods within reasonable time*.—*DYAMENT & PZADKAWOLSKI v. CANADIAN EXPRESS CO.*, [1923] 3 D. L. R. 1122; 52 O. L. R. 114.—*CAN.*

## PART III. SECT. 3, SUB-SECT. 1.—D.

105 i. *Illegality as defence*.—*Pltf.* shipped by deft. co. intoxicating liquor, intending to have it sold in Ontario in violation of provincial statute & of Dominion legislation. *Pltf.* in the shipping bill declared "that this shipment is of a class & shipped under conditions permitted by law." Part of the goods were stolen from defts' car at destination.—*Held*: *pltf.* could not recover, as the cause of action was founded upon an illegal contract.—*MAJOR v. CANADIAN PACIFIC RY. CO.*, [1922] 3 W. W. R. 512.—*CAN.*

## PART III. SECT. 3, SUB-SECT. 2.—B.

st. *Who are*.—While there was in Ireland an internal rebellion, with an army employed to support it, armed raiders took goods from a ry. co. who were common carriers.—*Held*: the raiders were "King's Enemies," & the co. was not bound to reimburse the owner.—*SECRETARY OF STATE FOR WAR v. MIDLAND GREAT WESTERN RY. CO. OF IRELAND*, [1923] 2 I. R. 102.—*IR.*

## PART III. SECT. 4.

155 i. *Effect of delay—Consignee may refuse goods—Measure of damages*.—*LECLERC v. R.* (1920), 62 D. L. R. 324; 20 Exch. C. R. 236.—*CAN.*

## PART III. SECT. 5.

—*DEVLIN v.*

201. *Add. Annotation* :—*Refd.* *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.
208. *Add. Annotations* :—*Refd.* *Transoceanica Soc.*

*Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31; *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.

## Part IV.—Modifications of the Common Law Contract.

232. *Add. Annotation* :—*As to* (1) *Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.

234a. —.]—A carrier who regularly receives goods for carriage upon terms limiting his liability may be under the obligations & subject to the liabilities of a common carrier in so far as the limitation of liability does not extend. He does not by limiting his liability assume for all purposes the position of a bailee for reward who is liable only for negligence of himself or his servants, unless the limitation of liability is so extensive as to be inconsistent with the profession or contract of a common carrier.

A consignor who tenders to carriers for carriage goods apparently harmless but in fact dangerous, whether the carriers are common carriers bound by the custom of the realm to carry goods provided they are safe

& fit for carriage or whether they are a railway co. bound by statute to afford reasonable facilities for the receiving, forwarding & delivering of goods, must give warning of the danger; otherwise he impliedly warrants that the goods are safe & fit for carriage.

Forwarding agents delivered to a railway co. for carriage certain carboys containing a corrosive fluid & also certain bales of felt goods on the terms of consignment notes exempting the co. from liability in certain events & stating that they did not undertake to carry dangerous goods except on special conditions. The carboys were insufficient to contain the fluid, which escaped & injured the felt goods. The co. professed to carry the felt goods as common carriers. The owner of the felt goods claimed damages against the co., & the co. paid £437 in settlement of the claim. In an action by the co.

GRAND TRUNK RY. CO. OF CANADA (1870), 30 U. C. R. 537.—CAN.

159 ix. —.]—PORTAGE MILLING & TRANSFER CO. v. GRAND TRUNK PACIFIC RY. CO., [1923] 3 D. L. R. 81; 33 Man. L. R. 91; [1923] 2 W. W. R. 88.—CAN.

159 x. —.]—*Delay in delivery*.—HATFIELD & SCOTT, LTD. v. CANADIAN PACIFIC RY. CO. (1921), 57 D. L. R. 463.—CAN.

159 xi. —.]—INDIA GENERAL NAVIGATION & RY. CO., LTD. v. GIRDHARILAL GOBERPHONE DAS (1927), 1 L. R. 54 Cal. 430.—IND.

165 ii. —.]—*Goods damaged*.—Where goods are damaged in transit & have been in the hands of a number of carriers, the vendor must prove the damage took place while in the custody of the carrier he is suing.—ROSE & LAFLAMME, LTD. v. CAMPBELL, WILSON & STRATHKIRK, LTD. & GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 397.—CAN.

165 iii. —.]—*Short delivery*.—*Held*: debts had discharged the *onus* of showing that they had transferred the goods in good order & condition to another carrier in the usual course for conveyance or delivery, & they thereupon ceased to be liable.—HARRIS v. DUBLIN & SOUTH EASTERN RY. CO., [1927] 1 L. R. 137.—IR.

sg. *What consignee must prove*—That goods in good condition when shipped.—That goods actually passed over line of defendants.—NOVA SALES CO. v. CANADIAN PACIFIC RY., [1925] 3 D. L. R. 919.—CAN.

### PART III. SECT. 6.

ci. —.]—*Goods sent to specified wharf*.—*Held*: evidence of a constructive delivery, which imposed on the carrier the duty of taking the goods on board.—MORRISON v. THOMPSON (1877), 11 N. S. R. (2 R. & C.) 411.—CAN.

### PART III. SECT. 7, SUB-SECT. 1.

di. —.]—*Goods carried by debts for pltf.*—*Held*: at owner's risk while in debts' warehouse at point of destination.—BROWN v. DOMINION EXPRESS CO. (1921), 67 D. L. R. 325; 51 O. L. R. 359.—CAN.

d ii. —.]—When goods entrusted to a shipowner, trading as a common carrier, have reached their destination & been stored pending removal by the consignee, the carrier ceases to be liable as an insurer.—OAKLEY v. WHITEHOUSE & CO. (1921), 17 Tas. L. R. 125.—AUS.

ei. *S. P. O'NEILL v. GREAT WESTERN RY. CO.* (1857), 7 C. P. 203.—CAN.

f ii. —.]—*SECRETARY OF STATE v. HAR KISHAN DAS-KURA MAL* (1925), 1 L. R. 7 Lah. 370.—IND.

### PART III. SECT. 7, SUB-SECT. 2.

182 ii. —.]—PREMIER LUMBER CO. v. GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—CAN.

182 iii. —.]—NORTHFIN ELECTRIC CO., LTD. v. CANADIAN PACIFIC RY. CO. & FULLMORE RURAL TELEPHONE CO., LTD. & WIERG. [1923] 3 D. L. R. 781; 3 W. W. R. 278.—CAN.

### PART III. SECT. 7, SUB-SECT. 3.

p i. —.]—*Delivery without requiring surrender of bills of lading*—*Delivery after indorsement of bills of lading as security*.—*Held*: the carriers were liable.—HICKMAN GRAIN CO. v. CANADIAN PACIFIC RY. CO., [1927] 1 D. L. R. 851; 1 W. W. R. 317; 32 C. R. C. 333; 36 Man. L. R. 322; *reversd. sub nom.* CANADIAN PACIFIC RY. CO. v. HICKMAN GRAIN CO., [1928] 1 D. L. R. 1069; [1928] S. C. R. 170; 34 C. R. C. 238.—CAN.

p ii. —.]—CAMPBELL v. CANADIAN PACIFIC & CANADIAN NATIONAL RY. COS. (1924), 30 Can. Ry. Cas. 380.—CAN.

### PART III. SECT. 7, SUB-SECT. 5.

s i. —.]—*Held*: a consignee by delay in accepting delivery cannot extend the period of the contractor's liability as such.—PORTAGE MILLING & TRANSFER CO. v. GRAND TRUNK PACIFIC RY. CO., [1923] 2 W. W. R. 88.—CAN.

sk. *Rights of carrier*—*To sell*—*Must be exercised with reasonable diligence*.—DAVIS v. ELLIOT (1924), 55 O. L. R. 583.—CAN.

### PART III. SECT. 7, SUB-SECT. 6.

199 i. *When justified—Refusal of consignee to pay charges*.—PATEL v. KEELER & CO., [1923] App. D. 506.—S. AF.

### PART III. SECT. 7, SUB-SECT. 7.

201 i. *Whether agent for sale of necessity—Perishable goods—Sale without communicating with owner*.—Where goods carried by a railway co. are liable to perish while in its possession because of the consignee's delay in taking delivery, the co. has the right to advertise & sell the goods without any notice to the consignor, whether or not there are any tolls payable.—ALBERTA POTATO & VEGETABLE CO. v. CANADIAN PACIFIC RY. CO. (Alta.), [1927] 2 D. L. R. 813; [1927] 2 W. W. R. 65; 32 Can. Ry. Cas. 356.—CAN.

### PART III. SECT. 8.

c. *Add "reversd."* (1921), 64 D. L. R. 316; 50 O. L. R. 223.

ci. —.]—NAZZARENO v. ALGOMA EASTERN RY. CO. (1922), 70 D. L. R. 268.—CAN.

### PART IV. SECT. 1, SUB-SECT. 2.

sl. *Condition requiring notice of loss—Absence of notice bar to right of action*.—PREMIER LUMBER CO. v. GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—CAN.

sm. *S. P. NORTHERN ELECTRIC CO., LTD. v. CANADIAN PACIFIC RY. CO. & FULLMORE RURAL TELEPHONE CO., LTD. & WIERG.* [1923] 3 D. L. R. 781; 3 W. W. R. 278.—CAN.

sn. *United States freight classification*.—A contract of carriage of goods from the United States to Canada made according to a freight classification in use in the United States, whereby the carrier's liability was limited to a certain amount.—*Held*: to be authorised by Railway Act, 1919 (c. 68), s. 322 (4), & such classification & limitation were binding on the shipper.—SPORLE v. GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—CAN.

against the forwarding agents to recover this sum as damages for breach of warranty:—*Held*: (1) the terms of the consignment notes did not prevent the co. from being, as they professed to be, common carriers of the felt goods; (2) the co. were therefore liable as insurers, & without proof of negligence, to the owner of the felt goods; (3) they were entitled to recover from the forwarding agents, as upon an implied warranty that the carboys were fit to be carried, the amount they had paid to the owner of the felt goods for the damage done to his goods.—*GREAT NORTHERN RY. Co. v. L. E. P. TRANSPORT & DEPOSITORY, LTD.*, [1922] 2 K. B. 742; 91 L. J. K. B. 807; 127 L. T. 664; 38 T. L. R. 711, C. A.

241. *Add. Annotation*:—*Refd.* *Dew v. United British S.S. Co.* (1928), 98 L. J. K. B. 88.
262. *Add. Annotations*:—*Refd.* *The Christel Vinnen*, [1924] P. 61; *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.
265. *Add. Annotations*:—*Consd.* *Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50; *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 41 T. L. R. 97. *Refd.* *Fagan v. Green & Edwards*, [1926] 1 K. B. 102.
266. *Add. Annotations*:—*As to* (1) *Apld.* *Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Same*, [1927] 2 K. B. 432. (*See* [1928] 1 K. B. 717.) *Refd.* *Layton v. General Steam Navigation Co.* (1923), 130 L. T. 662. *As to* (2) *Refd.* *Rutter v. Palmer*, [1922] 2 K. B. 87; *Fagan v. Green & Edwards* (1925), 70 Sol. Jo. 185. *Generally, Mentd.* *Wasserman v. Blackburn* (1926), 43 T. L. R. 95.
267. *Add. Annotations*:—*Refd.* *Ambatielos v. Anton Jurgens Margarine Works*, [1922] 2 K. B. 185; *Rutter v. Palmer*, [1922] 2 K. B. 87.
271. *Add. Annotations*:—*As to* (1) *Apprvd. & Apld.* *L. & N. W. Ry. v. Neilson*, [1922] 2 A. C. 263. *As to* (2) *Apprvd. & Apld.* *L. & N. W. Ry. v. Neilson*, [1922] 2 A. C. 203. *Consd.* *Buerger v. Cunard S.S. Co.*, [1925] 2 K. B. 646.
300. *Add. Annotation*:—*As to* (2) *Consd.* *Ehinger v. S. E. & C. Ry. & Pullman Car Co.* (1922), 38 T. L. R. 678.
302. *Add. Annotation*:—*Refd.* *Rosenthal v. L. C. C.* (1924), 131 L. T. 563.
342. *Add. Annotations*:—*As to* (1) *Refd.* *Rosenthal v. L. C. C.* (1924), 131 L. T. 563. *As to* (2) *Consd.* *Rosenthal v. L. C. C.* (1924), 131 L. T. 563.

347. *Add. Annotations*:—*As to* (2) *Apld.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742. *As to* (3) *Apld.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
351. *Add. Annotations*:—*Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742; *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 44 T. L. R. 97.
352. *Add. Annotation*:—*As to* (1) *Refd.* *Brown v. Harrison* (1927), 96 L. J. K. B. 1025.
376. *Add. Annotation*:—*As to* (4) *Refd.* *Nunan v. Southern Ry.*, [1924] 1 K. B. 223.
381. *Add. Annotation*:—*As to* (1) *Consd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
403. *Add. Annotation*:—*As to* (1) *Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
411. *Add. Annotation*:—*As to* (1) *Refd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
416. *Add. Annotation*:—*Generally, Mentd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
426. *Add. Annotations*:—*As to* (2) *Apld.* *Re City Equitable Fire Insce.*, [1925] Ch. 407. *Refd.* *Metropolitan Water Board v. L. & N. E. Ry.* (1921), 131 L. T. 123.
436. *Add. Annotation*:—*As to* (1) *Refd.* *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1921] A. C. 522.
442. *Add. Annotations*:—*As to* (2) *Consd.* *Re City Equitable Fire Insce.* (1921), 40 T. L. R. 853; *Metropolitan Water Board v. L. & N. E. Ry.* (1921), 131 L. T. 123.
452. *Add. Annotations*:—*Overd.* *L. & N. W. Ry. v. Neilson*, [1922] 2 A. C. 263. *Consd.* *Buerger v. Cunard S.S. Co.*, [1925] 2 K. B. 646.
453. *Add. Annotation*:—*Consd.* *Neilson v. L. & N. W. Ry.*, [1922] 1 K. B. 192.
454. *Add. Citations*:—[1922] 1 K. B. 192; *affd. sub nom. LONDON & NORTH WESTERN RY. Co. v. NEILSON*, [1922] 2 A. C. 263; 91 L. J. K. B. 680; 38 T. L. R. 653; 66 Sol. Jo. 502, H. L.
- Add. Annotations*:—*Apld.* *Buerger v. Cunard S.S. Co.*, [1925] 2 K. B. 646. *Refd.* *Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50.
460. *Add. Citations*:—*affd.*, [1922] 1 A. C. 178; 91 L. J. K. B. 423; 127 L. T. 1; 38 T. L. R. 359; 27 Com. Cas. 247, H. L.

## PART IV. SECT. 1, SUB-SECT. 4.—A.

*o i.* —“Goods lost—No proof of misconduct of carrier’s servants—Carrier not liable.”—*SOUTH AFRICAN RYS. v. CONRADIE*, [1922] App. D. 137.—S. AF.

## PART IV. SECT. 1, SUB-SECT. 7.

*si.* —“Value at place & time of shipment.”—*Held*: the value must not be calculated at the cost price to the owner at the place where he bought the goods, but at the market value of the goods at the place & time of shipment.—*THOMPSON v. CANADIAN PACIFIC RY. Co.* (1922), 52 O. L. R. 306.—CAN.

*so.* Goods exceeding declared value—Shipper bound by declared value.—*SPORLE v. GREAT NORTHERN RY. Co.* [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—CAN.

## PART IV. SECT. 2, SUB-SECT. 4.—B.

*p.* —“Must be approved by Railway Commissioners Board—Onus of proof of approval on carrier.”—*SPORLE v. GREAT NORTHERN RY. Co.*, [1924] 4 D. L. R. 184; 3 W. W. R.

136; 34 B. C. R. 140.—CAN.  
1 (p. 69) i. ———.—*PURAN DAS v. EAST INDIAN RY. Co.* (1927), 1 L. R. 6 Pat. 718.—IND.  
1 (p. 69) ii. ———.—*SHEO NARAIN v. EAST INDIAN RY.* (1927), 1 L. R. 50 All. 216.—IND.  
n (p. 69) i. ———.—*MASON & RUSCH MFG. CO. v. CANADIAN PACIFIC RY. Co.* (1908), 8 W. L. R. 951, 1 Sask. L. R. 213; 8 Can. Ry. Cas. 369.—CAN.  
n (p. 69) ii. ———.—*SECRETARY OF STATE v. GHANAYIA LAL-SRI KISHAN* (1928), 1 L. R. 10 Lah. 329.—IND.

## Part V.—Carriage of Persons.

480. *Add. Annotation*:—*Refd.* Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.
492. *Add. Annotation*:—*As to* (2) *Refd.* Manchester Corp'n. v. Farnworth (1929), 46 T. L. R. 85.
516. *Add. Annotations*:—*Consd.* Brandon v. Osborne Garrett, [1924] 1 K. B. 548; *The Paludina*, [1925] P. 40. *Refd.* Singleton Abbey (Owners) v. Paludina (Owners), *The Paludina* (1926), 95 L. J. P. 135.
536. *Add. Annotation*:—*Refd.* Singleton Abbey (Owners) v. Paludina (Owners), *The Paludina* (1926), 95 L. J. P. 135.
560. *Add. Annotation*:—*As to* (2) *Refd.* Sharpe v. Southern Ry. (1925), 133 L. T. 693.
- 560a. — *Warning not heard by passenger—Passenger asleep.*—Pltf. was a passenger on defts.' railway to G. by a train which arrived at that station while it was still daylight. Owing to the train being too long for the platform at G., upon its arrival there the hindmost carriage, in which pltf. was, stopped short of the platform. A porter shouted to the passengers to keep their seats, but pltf., who was asleep, did not hear him. On waking

pltf. realised that he was at G. station, & fearing that he might be carried on, got out in a hurry without looking to see what he was stepping on. There being a drop of five feet from the carriage floor to the ground, he fell & was injured:—*Held*: even if in the circumstances defts. were negligent, of which the ct. thought there was no evidence, pltf.'s act in getting out without looking where he was going was contributory negligence, & defts. were not responsible.—*SHARPE v. SOUTHERN RY. CO.*, [1925] 2 K. B. 311; 94 L. J. K. B. 913; 133 L. T. 693; 69 Sol. Jo. 775, C. A.

571. *Add. Annotation*:—*Distd.* Sharpe v. Southern Ry., [1925] 2 K. B. 311.
572. *Add. Annotation*:—*Refd.* Sharpe v. Southern Ry. (1925), 133 L. T. 693.
573. *Add. Annotation*:—*As to* (1) *Consd.* Sharpe v. Southern Ry., [1925] 2 K. B. 311.
578. *Add. Annotation*:—*Apld.* Broome v. Agar (1928), 138 L. T. 698.
- 579a. *S. P. WHITEHOUSE v. MIDLAND RY. CO.* (1866), 30 J. P. 760.

## PART V. SECT. 2, SUB-SECT. 1.

483 i. *Not liable for mere accident—Apart from negligence or misconduct.*—*MILLS v. CANADIAN PACIFIC STEAMSHIPS, LTD.* (1926), Q. R. 65 S. C. 148.—*CAN.*

483 ii. ————]—*MARCHESSAULT v. CANADIAN NATIONAL RY.* (1926), Q. R. 42 K. B. 355.—*CAN.*

488 i. ————]—*Caused by act of stranger.*—If an accident is due to the train leaving the metals, *prima facie* the railway co. is guilty of negligence. If an accident is caused to a train by evilly-disposed persons over whom the railway co. had no control or any reason to anticipate that they intended to carry out their design in the sector in which the accident occurred, the railway co. will not be liable for negligence or for damages.—*JEWAN RAM KHERETTY v. EAST INDIAN RY. CO.* (1924), 1 L. R. 51 Cal. 861.—*IND.*

490 ii. ————]—*Opening carriage door.*—While a street car was backing up to a platform which it had overrun, a passenger opened one of the rear doors without the knowledge of the conductor or motorman. The door, which opened outwards & projected over the platform, struck pltf., who was standing on the platform waiting for a car. The conductor was inside the car collecting fares, & had left the door unlocked & unguarded, although the motorman had informed him that he was going to back up:—*Held*: defts. were liable.—*ONEGAARD v. WINNIPEG ELECTRIC RY. CO.*, [1927] 4 D. L. R. 387; [1927] 2 W. W. R. 589; 36 Man. L. R. 592.—*CAN.*

497 ii. ————]—*Driver of omnibus stooping down to recover tickets on floor.*—*BRADLEY v. BELL BUS CO.*, [1928] N. Z. L. R. 201.—*N.Z.*

512 i. ————]—*Act done in course of employment.*—Pltf., a passenger upon a south-bound car of an electric street ry. co., got off at a stopping place, & crossing behind the car, attempted to pass over the rails used by the north-bound cars, & was struck by a car & injured. She had followed the directions given her by the conductor of the south-bound car:—*Held*: pltf. was entitled to recover. The way pltf. was directed to take was dangerous & this was known to the conductor.—*FORSTER v. TORONTO RY. CO.* (1921), 67 D. L. R. 441; 51 O. L. R. 136.—*CAN.*

## PART V. SECT. 2, SUB-SECT. 3.

k i. ————]—*Bye-law prohibiting passengers from riding on car platforms.*—Where it was proved that pltf. could not, by exercise of reasonable care, have avoided the accident, that there was standing room inside the car, but standing passengers prevented him from going in:—*Held*: pltf. was entitled to recover.—*KIME v. HAMILTON RADIAL ELECTRIC RY. CO.* (1921), 50 O. L. R. 113; 64 D. L. R. 191.—*CAN.*

## PART V. SECT. 2, SUB-SECT. 5.

p. *Add "rescd."* (1920), 48 O. L. R. 386; 19 O. W. N. 221.

p i. *Train stopping before reaching station—No duty to warn passengers.*—*GRAND TRUNK RY. CO. OF CANADA v. MURPHY*, [1924] 1 D. L. R. 450; [1924] S. C. R. 101; 29 Can. Ry. Cas. 398.—*CAN.*

q i. ————]—*As long as the entrance doors of a street car are open while the car is standing at a passenger landing place there is an implied invitation extended to intending passenger to enter the car, & it is the duty of the conductor in charge of the car to afford them a reasonable opportunity to do so in safety. He is therefore negligent in giving the signal to start the car before the entrance doors are closed & all persons attempting to board the car are safely on.*—*WILSON v. WINNIPEG ELECTRIC RY. CO.*, [1922] 2 W. W. R. 610; 68 D. L. R. 617.—*CAN.*

s i. ————]—*Conductor not on platform.*—A tramway conductor, as the car was approaching a "stop if required" station, went on to the top of the car to change the screens which showed the destination of the car, having satisfied himself that there was no one who wished to board the car, & that an elderly woman inside the car, the only passenger, showed no sign of wishing to get off. The passenger, who thought she had given a signal to stop, stepped on to the footboard & was jolted off after the car had passed the station, & was injured:—*Held*: no blame attached to the conductor, & the accident was due to the fault of the passenger.—*GRAY v. GLASGOW CORPN.*, [1926] S. C. 967.—*SCOT.*

584 v. ————]—*Passenger thrown down.*—*Held*: there was negligence on the

part of defts.' servants, & deft. liable in damages.—*GUILDAY v. WINNIPEG ELECTRIC RY. CO.*, [1922] 3 W. W. R. 498; 70 D. L. R. 517.—*CAN.*

t i. *Passenger stepping from moving car—Accident avoidable by exercise of reasonable care by carrier.*—*GRIFFIN v. CAPE BRETON ELECTRIC CO.* (1921), 63 D. L. R. 251; 55 N. S. R. 19.—*CAN.*

t ii. ————]—*In contravention of bye-law.*—*Held*: a contravention of an absolute statutory provision precluded a claim for damages.—*HILL v. GRAND TRUNK RY. CO.* (1922), 52 O. L. R. 508.—*CAN.*

u i. ————]—*What is dangerous condition.*—*ELLIOTT v. TORONTO TRANSPORTATION COMMISSION*, [1927] 1 D. L. R. 259; 32 Can. Ry. Cas. 200; 59 O. L. R. 609.—*CAN.*

## PART V. SECT. 2, SUB-SECT. 6.

586 ii. ————]—*Deft. co. gratuitously, & for her own convenience, carried pltf. some four hundred yards past a station, where she was allowed to alight. At this place the ground was not level, & a person living along the line had been permitted for his own convenience to lay down on the right of way a platform, one end of which rested on a plank. Pltf. descended safely to the platform, but in passing from it she fell & was injured, owing, as alleged, to some defect in the condition of the plank supporting it.*—*Held*: the co. was not liable.—*BURKE v. BRITISH COLUMBIA ELECTRIC RY. CO., LTD.* (1900), 7 B. C. R. 85.—*CAN.*

592 ii. ————]—*Where a passenger, arriving at a station at night, walked along a platform, not intended but frequently used as a means of exit, but which was not in any way guarded, & after leaving the platform, fell into an excavation in the railway co.'s grounds & was injured.*—*Held*: the co. were liable.—*OLDRIGHT v. GRAND TRUNK RY. CO. OF CANADA* (1895), 22 A. R. 286.—*CAN.*

ss. *Waiting room—Passage leading to "Ladies Toilet."*—*Unlighted & unlocked door opening on to stairs to basement.*—Pltf.'s wife entered a passage leading from a waiting room, above the entrance to which were the words "Ladies Toilet." The passage had three doors leading off it on the left. The first was apparently that of a private office, the second was marked "Ladies Toilet" but was

597. *Add. Annotation*:—*Apprvd. & Apld. Letang v. Ottawa Electric Ry.*, [1926] A. C. 725.

598a. ————]—*Applt. met with an accident on resps.*, property by using some slippery steps giving convenient access to their tramline. She sued resps. for damages. Resps. contended that applt. had been guilty of contributory negligence, & that the maxim "*Volenti non fit injuria*" applied to prevent her from receiving compensation:—*Held*: unless resps., who had invited applt. to use the access & were bound to keep it reasonably safe, established that she understood the extent of the danger which she was incurring & that she resolved to undertake the risk, the defence of "*Volenti non fit injuria*" failed.—*LETANG v. OTTAWA ELECTRIC RY. CO.*, [1926] A. C. 725; 95 L. J. P. C. 153; 135 L. T. 421; 42 T. L. R. 596, P. C.

598b. ———— *Whether escalator dangerous.*]—*ALEXANDER v. CITY & SOUTH LONDON RY. CO.* (1928), 44 T. L. R. 450, D. C.

603. *Add. Annotation*:—*As to (3) Refd. Montreal City v. Watt & Scott* (1922), 128 L. T. 147.

605. *Add. Annotation*:—*Refd. Nunan v. Southern Ry.*, [1923] 2 K. B. 703.

609. *Add. Annotation*:—*As to (2) Consd. Sharpe v. Southern Ry.*, [1925] 2 K. B. 311.

620. *Add. Annotation*:—*As to (1) Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.

629. *Add. Annotation*:—*Refd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75.

638. *Add. Annotation*:—*Refd. Pratt v. Patrick*, [1924] 1 K. B. 488.

645. *Add. Annotation*:—*Refd. Mersey Docks & Harbour Board v. Procter*, [1923] A. C. 253.

652. *Add. Annotation*:—*Refd. Ruffy-Arnell, etc. Co. v. R.*, [1922] 1 K. B. 599.

683a. ———— *Necessity for submission to Rates Tribunal of schedule for standard season tickets.*]—*Re STANDARD CHARGES SCHEDULES*, No. 1323a, *post*.

683b. ———— *Season ticket rates—Continuation of—1921 Act, s. 34.*]—*SOUTHERN CORPN. v. LONDON MIDLAND & SCOTTISH RY. CO.* (1927), 19 Ry. & Can. Tr. Cas. 216.

684. *Add. Annotations*:—*Consd. Pagan v. Green & Edwards* (1925), 70 Sol. Jo. 185. *Refd. Nunan v. Southern Ry.*, [1924] 1 K. B. 223.

685a. ———— *Railway company—Whether applicable—Action under Fatal Accidents Act, 1846 (c. 93).*]—Where a passenger by railway, who has agreed with the railway co. that their liability for personal injury shall not exceed a certain sum, is killed by the negligence of the co.'s servants, the damages recoverable by his dependants in an action under the above Act are not limited to such agreed sum.—*NUNAN v. SOUTHERN RY. CO.*, [1924] 1 K. B. 223; 93 L. J. K. B. 140; 130 L. T. 131; 40 T. L. R. 21; 68 Sol. Jo. 139, C. A.

*Annotations* —*Consd. Thompson v. L. M. & S. Ry.* (1929), 81 L. J. K. B. 615. *Mentd. Venn v. Tedesco*, [1926] 2 K. L. 227.

685b. ———— *Injury on journey by special train.*]—*Pltf. was engaged as a workman by contractors to the Ministry of Health for the construction of a road near H., & the Ministry made with deft. railway co. arrangements for a special train to take pltf. & other men from C. to H., a distance of twenty-six miles. Pltf. received from his employers a voucher which was addressed to the booking clerk & which contained these words: "On surrender of this voucher please supply the bearer with a return workman's ticket to H. by any ordinary workman's train without payment. This voucher is only available by workman's train." The voucher, on presentation at the booking office, was exchanged for a ticket. One side of the ticket had on it (*inter alia*) the words: "See back. Workmen. By special cheap train for the 'working classes.'" On the other side were (*inter alia*) the words: "This ticket is issued subject to the bye-laws, rules & regulations of the Managing Committee," & "This ticket is issued subject to the conditions mentioned in the Managing Committee's Act (62 & 63 Vict. c. clxviii), & its use by the holder is to be taken as evidence of a special contract upon those conditions. The liability of the co. is limited to a sum not exceeding £100." The above-mentioned Act contained provisions as to the running of workmen's trains on the particular railway within twenty miles of London, & limited the co.'s liability to £100, subject to certain conditions. Pltf. was injured by a collision between his train & another train. In an action for damages defts. admitted negligence, but contended that the issue of the ticket created a special*

locked, & the third, a few feet beyond, was standing open. There was no artificial light in the passage, & the daylight was waning. Pltf.'s wife passed through the open doorway & immediately fell down a flight of stairs into the basement below, & was severely injured:—*Held*: the third doorway was a trap or concealed place of danger, & was a place to which pltf.'s wife might reasonably have been expected to go in the belief, reasonably entertained, that she was entitled or invited to do so.—*KNOWLTON v. HYDRO ELECTRIC POWER COMMISSION OF ONTARIO*, [1926] 1 D. L. R. 217; 58 O. L. R. 80.—*CAN.*

*sd.* ———— *Doors leading from—Duty of carrier.*]—The public cannot assume that access is allowed through all the doors opening into or leading into or leading out of a waiting room. When the doors intended for public use are indicated, failure to put on the other doors notices that ingress through them is forbidden does not amount to negligence; on the contrary, the absence of any notice should put the

public upon inquiry whether it should attempt to open these doors & to proceed further into a place where it has no business. But, even if failure to keep such doors locked may amount to negligence, the carrier will not be liable for an accident to a passenger where the cause of the accident was the passenger's own want of caution in proceeding beyond such a door in the dark & in a strange place.—*CANADIAN NATIONAL RYS. CO. v. LEPAGE*, [1927] 3 D. L. R. 1030; [1927] S. C. R. 575.—*CAN.*

#### PART V. SECT. 2, SUB-SECT. 11.

*p i.* ————]—The form of contract or shipping order used by a ry. co. in connection with the transportation of live stock provided that an attendant should accompany the shipment, but should not have the right to travel free or at a rate less than the ordinary fare, unless he had signed the special form of contract printed on the back of the shipping bill, which contained limitations as to

claims for personal injuries sustained while travelling. In an action to recover damages for injuries during transportation, due to the negligence of the ry. co.'s servants:—*Held*: the fact that the attendant had not paid any fare was due to the fact that the ry. co.'s agent made no attempt to collect the fare, & the ry. co. was responsible for the omission; the attendant was a full-fare passenger & not a trespasser & was entitled to recover damages.—*STEWART v. GRAND TRUNK PACIFIC RY. CO.*, [1924] 1 D. L. R. 881; 1 W. W. R. 473.—*CAN.*

#### PART V. SECT. 2, SUB-SECT. 12.

*sm.* *Passenger standing on platform of moving car.*]—A passenger who leaves his seat in a trainway car & goes on to the platform, while the car is in motion, is not necessarily guilty of contributory negligence should he meet with an accident while on the platform, the question depending in each case upon the particular circumstances.—*BUCHANAN v. GLASGOW CORPN.*, [1921] S. C. 658.—*SCOT.*

contract between themselves & pltf. whereby their liability was limited to £100. The ct. found that pltf. must be taken to have been aware of the conditions indorsed on the back of the ticket. On the further question whether the terms of the contract applied to the particular journey:—*Held*: although the ticket & the conditions on it had been drafted as applicable to a journey by a train coming under the co.'s private Act, & contained no reference to such a journey as pltf.'s by a special train to a destination beyond twenty miles from London, yet, in the case of a passenger in the position of pltf., the conditions were a plain intimation that one condition on which the contract was made was that the co.'s liability should be limited to £100, & pltf. could recover no more than that amount.—*HEARN v. SOUTHERN RY. Co.* (1925), 41 T. L. R. 305, C. A.

**685c. Time limit for making claim.**—Pltf. was received by defts. under a contract to be carried in one of their steamships. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held*: (1) the clause relieving defts. from liability for the negligence of their servants was valid & enforceable, but applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury; (2) as pltf. had failed to give any written notice of his claim within the time prescribed by the contract, he was not entitled to recover.—*JONES v. OCEANIC STEAM NAVIGATION Co.*, [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

**689. Add. Annotations:—***Refd.* *Nunan v. Southern Ry.* (1923), 130 L. T. 131; *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305.

**695. Add. Annotations:—***Consd.* *Thompson v. L. M. & S. Ry.* (1929), 98 L. J. K. B. 615. *Refd.* *Nunan v. Southern Ry.* (1923), 130 L. T. 131. *Mentd.* *Anchor Line (Henderson) v. Dundee Harbour Trustees, Ellerman Lines v. Dundee Harbour Trustees, Thomson, Shephard v. Dundee Harbour Trustees* (1922), 38 T. L. R. 209.

**695a. ——— Conditions ascertainable with difficulty.**—Where a railway co. issues a ticket with clear notice that it is subject to certain conditions, the passenger taking the ticket will be bound by those conditions. The mere fact that the ascertaining of those conditions may involve some little difficulty, such as the looking up of time tables, etc., does not nullify the conditions, nor enable a passenger successfully to contend that the co. had not done what was reasonably necessary to bring them to his notice.—*THOMPSON v. LONDON, MIDLAND & SCOTTISH RY. Co.* (1929), 98 L. J. K. B. 615; 141 L. T. 352, C. A.

**696. Add. Annotation:—***Refd.* *Walpole v. Canadian Northern Ry.*, [1923] A. C. 113.

**703a. ———**—*J.*—*METROPOLITAN RY. Co. v. GREAT WESTERN RY. Co.* (1886), 3 T. L. R. 113.

**704. Add. Annotations:—***Refd.* *Paterson Zochonis v. Elder Dempster*, [1923] 1 K. B. 420; *Pratt v. Patrick*, [1924] 1 K. B. 438.

**724. Add. Annotation:—***As to* (1) *Consd.* *Smith v. Schilling*, [1928] 1 K. B. 429.

**725. Add. Annotation:—***Refd.* *Baker v. Dalgleish Steam Shipping Co.* (1921), 126 L. T. 482

**764. Add. Annotation:—***Refd.* *Poland v. Parr*, [1927] 1 K. B. 236.

**765. Add. Annotation:—***Refd.* *Poland v. Parr*, [1927] 1 K. B. 236.

**775. Add. Annotation:—***Refd.* *Percy v. Glasgow Corpn.*, [1922] 2 A. C. 299.

**777. Add. Annotation:—***Refd.* *Percy v. Glasgow Corpn.*, [1922] 2 A. C. 299.

**781a. ———**—*J.*—Where a passenger on a tramcar makes a sufficient & proper tender of his fare & the conductor mistakenly refuses to accept it & has him arrested under a bye-law, which authorises the conductor, if a passenger's name or residence is unknown to him, to have the passenger arrested for evading payment, the conductor's employers are liable for the act of the conductor, whether

#### PART V. SECT. 3, SUB-SECT. 1.

**651 iii. ———**—*Another route adopted—Liability for excess fare.*—A passenger after purchasing a ticket from Agra to M. *via* Aligarh & C. discovered that if he travelled beyond Aligarh & *via* G. he would reach his destination more quickly than by the route indicated on the ticket, although he would be travelling by a longer route. He did travel accordingly & on arrival at M. he was made to pay excess fare. On suit for refund:—*Held*: Indian Railways Coaching Turf, r. 64, applied to a passenger who was found travelling, either intentionally or by mistake, by a route other than that indicated on the ticket & not to a passenger who had arrived at his destination, & the case was governed by r. 63 & the excess fare was justified.—*SECRETARY OF STATE FOR INDIA IN COUNCIL v. MURTI*

MANOHAR (1928), 1 L. R. 51 All. 399.—IND.

#### PART V. SECT. 3, SUB-SECT. 5.

**688 v. ———**—*J.*—*Held*: in view of the smallness of the type in which the condition was printed & the absence of any device to draw attention to it, defts. had not taken reasonable means to bring it to pursuer's notice.—*WILLIAMSON v. NORTH OF SCOTLAND, ETC. NAVIGATION Co.*, [1916] S. C. 554.—SCOT.

**q i. ———**—*J.*—*GRAND TRUNK PACIFIC COAST S.S. Co. v. SIMPSON* (1922), 63 S. C. R. 361; 65 D. L. R. 614; [1922] 2 W. W. R. 320.—CAN.

**s i. S. P. ERICKSON v. CANADIAN PACIFIC RY. Co., WALSTEAD v. CANADIAN PACIFIC RY. Co.** (Sask.), [1928]

1 D. L. R. 29; [1927] 3 W. W. R. 749.—CAN.

#### PART V. SECT. 7.

**b i. ———**—*Refusal to obey conductor—Request unreasonable—Carrier liable.*—*RAINES v. BRITISH COLUMBIA ELECTRIC RY. Co.* (1921), 70 D. L. R. 738; 30 B. C. R. 340.—CAN.

**g i. ———**—*Removal exposing passenger to danger—Carrier liable.*—*HOWE v. NIAGARA ST. CATHARINES & TORONTO RY. Co.*, [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202; *reversq.*, [1924] 4 D. L. R. 339; 55 O. L. R. 387.—CAN.

**m i. ———**—*Removal exposing passenger to danger—Carrier liable.*—*HOWE v. NIAGARA ST. CATHARINES & TORONTO RY. Co.*, [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202.—CAN.



he was or was not aware of the name & residence of the passenger, inasmuch as the conductor's act, although done mistakenly, is an act within the scope of his employ-

ment.—*PERCY v. GLASGOW CORPN.*, [1922] 2 A. C. 299; 91 L. J. P. C. 187; 127 L. T. 501; 86 J. P. 201; 38 T. L. R. 722; 66 Sol. Jo. 555; 20 L. G. R. 605.

## Part VI.—Carriage of Passengers' Luggage.

**804a. Luggage put in luggage van—By order of official.**—*EHINGER v. SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD.*, No. 851a, *post*.

**810. Add. Annotation:—Generally, Mentd.** *Compania Martiarta v. Royal Exchange Assee.*, [1923] 1 K. B. 650.

**811. Add. Annotations:—As to (1) Refd.** *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1921] A. C. 522; *Pratt v. Patrick*, [1924] 1 K. B. 488.

**813. Add. Annotation:—Refd.** *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.

**823. Add. Annotation:—As to (3) Folld.** *Vosper v. G. W. Ry.* (1927), 137 L. T. 520.

**827a. Luggage put in compartment by porter—Passenger travelling in another compartment.**—Pltf., who had a third-class ticket, got a porter to put his suit-case in a first-class compartment & travelled in another part of the train, third class, with some friends whom he found on the train. At the end of the journey pltf.'s suit-case could not be found. In an action against the railway co. for its value:—*Held*: as the railway had failed to discharge the *onus* of proving that the loss of the hand luggage arose by reason of the negligence of the passenger, pltf. was entitled to recover.—*VOSPER v. GREAT WESTERN RY. CO.*, [1928] 1 K. B. 340; 97 L. J. K. B. 51; 137 L. T. 520; 43 T. L. R. 738; 71 Sol. Jo. 605, D. C.

**830. Add. Annotations:—As to (1) Refd.** *Ehinger v. S. E. & C. Ry. & Pullman Car Co.* (1922), 38 T. L. R. 678; *Vosper v. G. W. Ry.* (1927), 137 L. T. 520. *As to (2) Refd.* *Ehinger v. S. E. & C. Ry. & Pullman Car Co.* (1922), 38 T. L. R. 678. *As to (3) Consd.* *Ehinger v. S. E. & C. Ry. & Pullman Car Co.* (1922), 38 T. L. R. 678.

**831. Add. Annotation:—Generally, Refd.** *Vosper v. G. W. Ry.* (1927), 137 L. T. 520.

**833a. S. P. HARRISON v. GREAT WESTERN RY. CO.** (1875), 39 J. P. 312.

**851a. ————Pltf.**, who was a passenger with a ticket from Paris to London via Dover, & thence by the railway of deft. railway co., took an additional ticket from the second defts., the Pullman Car Co., for

a Pullman car forming part of the train between Dover & London. The Pullman car ticket stated that the Pullman Car Co. accepted no liability for passengers' luggage, & that co. did all that was reasonably necessary to bring this condition to pltf.'s notice. At Dover pltf. took a seat in the Pullman car, but an official refused to allow her to take her suit-case with her & directed a porter to put it in the luggage vestibule at the end of the car. There was no evidence in whose employment the official was, or as to the exact relationship between the two deft. cos. On the arrival of the train in London the luggage was unloaded by the Pullman car officials, but pltf.'s suit-case could not be found. In an action against both cos.:—*Held*: as a railway co. contracted as insurers of passengers' luggage except where the loss was caused by the passenger's own default, the railway co. were liable, but as there was no evidence that lack of care, if any, by the Pullman Car Co.'s officials in unloading had contributed to the loss, the Pullman Car Co. were not liable.—*EHINGER v. SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD.* (1922), 38 T. L. R. 678; 66 Sol. Jo. 633.

**851b. ————]**—A special contract, entered into between a shipowner & a passenger by sea, contained a provision that the shipowner would not be answerable for loss of baggage "under any circumstances whatsoever":—*Held*: such a stipulation covered the case of wilful default & misfeasance by the shipowner's servants.—*TAUBMAN v. PACIFIC STEAM NAVIGATION CO.* (1872), 26 L. T. 704; 1 Asp. M. L. C. 336.

*Annotations:—Consd.* *Price v. Union Lighterage Co.* (1904), 73 L. J. K. B. 222; *Travers v. Cooper*, [1915] 1 K. B. 73. *Refd.* *The Pearlmoor*, [1904] P. 286.

**852. Add. Annotation:—Generally, Refd.** *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.

**853. Add. Annotation:—Apld.** *Thompson v. L. M. & S. Ry.* (1929), 98 L. J. K. B. 615.

**857. Add. Annotation:—As to (1) Refd.** *Brown v. Harrison, Hourani v. Same* (1927), 137 L. T. 549.

**858. Add. Annotations:—Consd.** *Werner v. Det Bergenske Dampskibsselschaft* (1926), 134 L. T. 573. *Refd.* *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Naviga-*

**PART VI. SECT. 3, SUB-SECT. 1.**  
o i. — *Sent back by returning steamer after arrival at destination—Carrier liable.*—*SMITH v. UNION S.S. CO.* (1922), 68 D. L. R. 488.—**CAN.**

**PART VI. SECT. 8, SUB-SECT. 4.**  
d i. — *Special contract.*—*Held*: it was a valid answer to pltf.'s action that she had assented to be bound by  
**J.S.**

the contract relieving the carrier from liability.—*FENNEL v. MONTREAL S.S. CO.* (1876), 6 Nfld. L. R. 124.—**NFLD.**  
d ii. — *Construction.*—*DIXON v. RICHELIEU NAVIGATION CO.* (1889), 18 S. C. R. 704.—**CAN.**

e i. — *Held*: pltf. was bound by the conditions.—*WOOD v. ALLAN* (1880), 13 N. S. R. (1 R. & G.) 477; *affd.* (1882), 15 N. S. R. (3 R. & G.) 211.—**CAN.**

855 iii. — *Inexperienced traveller.*—*Held*: pltf., a woman of scant education & unaccustomed to travel, was entitled to recover from deft. co. notwithstanding a clause on her ticket limiting deft.'s liability, as the clause had been waived, & there was a special contract.—*TOLERTON v. CUNARD S.S. CO.*, [1924] 3 D. L. R. 355; 2 W. W. R. 927; 33 B. C. R. 551.—**CAN.**

tion Co. v. Paterson, Zochonis, [1924] A. C. 522.

863. *Add. Annotations*:—**Refd.** L. & N. W. Ry. v. Neilson, [1922] 2 A. C. 263; Nunan v. Southern Ry., [1923] 2 K. B. 703; Buerger v. Cunard S.S. Co., [1925] 2 K. B. 646; The Refrigerant, [1925] P. 130.

866. *Add. Annotations*:—**Consd.** Ehinger v. S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. **Apld.** Hearn v. Southern Ry. (1925), 41 T. L. R. 305. **Consd.** Thompson v. L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Nunan v. Southern Ry., [1923] 2 K. B. 703.

## Part VII.—Carriage of Animals.

885. *Add. Annotation*:—**Refd.** G. N. Ry. v. L. E. P. Transport & Depository, [1923] 2 K. B. 742.

890. *Add. Annotation*:—**Refd.** G. N. Ry. v.

L. E. P. Transport & Depository, [1922] 2 K. B. 742.

893. *Add. Annotation*:—**Refd.** G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.

## Part VIII.—Carriage of Explosives and Dangerous Goods.

895. *Add. Annotation*:—**Consd.** G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.

896. *Add. Annotations*:—**As to** (1) **Consd.** G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742. **As to** (2) **Folld.** G. N. Ry. v. L. E. P. Transport & Depository, [1922]

2 K. B. 742. **As to** (3) **Refd.** Transoceanica Soc. Italiana di Navigazione v. Shipton, [1923] 1 K. B. 31.

- 896a. ———]—**GREAT NORTHERN RY. CO. v. L. E. P. TRANSPORT & DEPOSITORY, LTD.**, No. 234a, *ante*.

## Part IX.—Measure of Damages.

905. *Add. Annotation*:—**Refd.** Patrick v. Russo-British Grain Export Co., [1927] 2 K. B. 535.

910. *Add. Annotations*:—**Consd.** Patrick v. Russo-British Grain Export Co., [1927] 2 K. B. 535. **Apld.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50. **Refd.** Pinnock v. Lewis & Peat, [1923] 1 K. B. 690; Riley v. Brown (1929),

98 L. J. K. B. 739. **Mentd.** Hall v. Pim (1926), 32 Com. Cas. 46.

918. *Add. Annotation*:—**As to** (1) **Refd.** Patrick v. Russo-British Grain Export Co., [1927] 2 K. B. 535.

930. *Add. Annotation*:—**Refd.** Aronson v. Molga Holzindustrie A./G. Leningrad (1927), 32 Com. Cas. 276.

## Part X.—Statutory Control of Carriers' Business.

- 954a. **Side entrance to—Refusal to re-open.**]—In deciding an application for the provision of reasonable facilities under 1854 Act, s. 2, & of reasonable facilities & conveniences under 1921 Act, s. 16 (1), the ct. must be satisfied that in refusing such facilities & conveniences the railway co. are acting without due regard to the proper discharge of their obligations. & the facility or convenience asked for will not be ordered where it is only for the benefit of a special class of persons who form a small proportion of the travelling public. Where it is sought to restore a former convenience & conditions have changed, there is nothing

in the fact that it was afforded before, & the question will be decided on its merits.

Therefore where an application was made for an order for the re-opening of a subsidiary side entrance to the station of the Midland Ry. Co. at N. which had been closed in pursuance of a general policy of "closed" stations adopted by the co., & it was shown that only 16 per cent. of the passengers using the station, who were mainly season & weekly ticket holders, would be likely to use such entrance, & that no general public inconvenience existed, the ct. refused to make any order.—**NOTTINGHAM CORPN. v. MIDLAND**

### PART VII. SECT. 3.

w 1. — *Animals dying of arsenic poisoning.*]—Action against deft. ry. co. dismissed, as there was no evidence connecting the cause of injury with any alleged negligence, & the cause of the damage was purely a matter of

speculation.—**TURNER v. CANADIAN PACIFIC RY. CO.**, [1923] 2 W. W. R. 858; 66 D. L. R. 31.—**CAN.**

b i. — *Unless written notice of claim given at point of delivery.*]—**KNIGHT-WATSON RANCHING CO. v. CANADIAN PACIFIC RY. CO.**, [1921]

3 W. W. R. 788; 62 D. L. R. 601; 15 Sask. L. R. 1.—**CAN.**

### PART X.

For cases decided by the Board of Railway Commissioners for Canada, *see*, generally, **RAILWAYS**, Vol. XXXVIII., pp. 254–256, 375–378.

- Ry. Co. (1922), 128 L. T. 539; 67 Sol. Jo. 404; 21 L. G. R. 71; 17 Ry. & Can. Tr. Cas. 72.
955. *Add. Annotation*.—*Consd.* Nottingham Corpn. v. Mid. Ry. (1922), 128 L. T. 539.
958. *Add. Annotation*.—*As to* (3) *Consd.* Nottingham Corpn. v. Mid. Ry. (1922), 128 L. T. 539.
- 976a. — *Refusal to accept privately owned wagons.*—Where a railway co. is always ready to provide an adequate supply of wagons for the conveyance of coal from stations on their system, their refusal of an application that they should accept privately owned wagons does not constitute a refusal to afford reasonable facilities for the receiving, forwarding, & delivery of traffic on their railway, or the subjection of appcts., or of the traffic in which they are interested, to undue or unreasonable prejudice or disadvantage.—*CHAR- RINGTON, GARDNER, LOCKETT & Co., LTD. v. SOUTHERN RY. CO.* (1926), 42 T. L. R. 758; 19 Ry. & Can. Tr. Cas. 1.
980. *Add. Annotation*.—*As to* (1) *Consd.* Charring- ton, Gardner, Lockett v. Southern Ry. (1926), 42 T. L. R. 758.
- 1010a. — *To continue former facilities—Pending decision as to rights of parties.*—Upon an application for an interlocutory injunction ordering that certain former facilities for receiving & running through passenger coaches should be continued pending a decision as to the rights of the parties:—*Held*: this not being an application to restrain a threatened act, regard should be made to the balance of convenience, & upon the facts, no interlocutory order should be made.—(*GREAT CENTRAL RY. CO. v. LONDON & NORTH WESTERN RY. CO.* (1922), 17 Ry. & Can. Tr. Cas. 89.
- 1015a. — *Necessity for submission to Rates Tribunal of schedule for standard workmen's fares.*—*Re STANDARD CHARGES SCHEDULES.* No. 1323a, *post*.
1025. *Add. Citation*.—*sub nom.* R. v. RAILWAY COMRS., 46 J. P. 35.
- 1043a. *Amount fixed so as to allow rebate to be made.*—Coal was conveyed from two collieries over the lines of three railway cos. at a charge equal to the rate by an alternative route. A through rate was ultimately fixed at a sum of 2d. per ton in excess of the original charge, in order to allow one of the cos. to make a rebate of that amount in accordance with its practice with respect to other coal traffic. The new rate having been with- drawn, an application was made for a through rate equal to the original charge:—*Held*: (1) the question of rebate had been rightly excluded in fixing the amount of the through rate; (2) the Railway Comrs. had power to apportion the rate in such a way that part of it would be finally handed over to the trader.—*GLENAYON GARW COLLIERIES, LTD. v. RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO.* (1915), 16 Ry. & Can. Tr. Cas. 65, C. A.
- 1049a. — *Applicants not performing functions of ordinary railway company.*—*STOCKSBRIDGE RY. CO. v. GREAT CENTRAL RY. CO.* (1909), 13 Ry. & Can. Tr. Cas. 335.
- 1051a. — *Congested route—Alternative route available.*—*Held*: (1) the proposed route was reasonable, & it was not sufficient to show that the receiving of the traffic in question would render a difficult task more difficult, unless such traffic would amount to an obstruction; (2) it was material to consider whether the proposed route was the only available route or whether there were other routes available; (3) although an arrange- ment between railway cos. might be shown to be very widely accepted, it was not open to the ct. to reject evidence as to the proper terminal at any port of shipment.—*DEARNE VALLEY RY. CO. v. GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. v. GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO.* (1914), 15 Ry. & Can. Tr. Cas. 202.
- 1058a. — *Terminal costs.*—*DEARNE VALLEY RY. CO. v. GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. v. GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., No. 1051a, ante.*
- 1060a. — *Payment of rebate to trader.*—*GLENAYON GARW COLLIERIES, LTD. v. RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO., No. 1043a, ante.*
1080. *Add. Annotations*.—*As to* (4) *Refd.* Bourne- mouth-Swanage Motor Road & Ferry Co. v. Harvey, [1929] 1 Ch. 686; *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533. *Generally, Mentd.* Brocklebank v. R., [1924] 1 K. B. 647.
- 1096a. — *Regulation affecting one class of goods only—Lower rate necessary in public interest.*—*PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1219a, post.*
1098. *Add. Annotation*.—*As to* (1) *Refd.* York Corpn. v. Leatham, [1924] 1 Ch. 557.
- 1166a. *Rebate on sidings rate.*—Upon a com- plaint of undue preference it was admitted that appcts., whose works at S. were connected by a private siding with defts.' railway, paid the same rates as if their traffic used that station, while two of their competitors, whose respective works at B., ten miles from S., were also connected by private sidings with defts.' railway, received a rebate of 2½d. per ton off the B. station rates on traffic similar to that of appcts. Appcts. called no evidence. The railway co., while submitting that the *onus* of proof had not shifted on them under 1888 Act, s. 27 (1), called evidence &

PART X. SECT. 3, SUB-SECT. 2—A.

*sa. Classification causing preference— Validity of bye-law.*—By Government Railways Act, 1912, s. 24, the Comrs. are empowered to demand tolls in respect of goods carried upon the rail- ways, but subject to the provisions of the Act, such tolls shall be charged equally to all persons, & after the same

rate in respect of all goods of the same description:—*Held*: certain bye-laws made in pursuance of the Act, which classified imported galvanised iron in a different class to iron of a similar nature manufactured locally, & which prescribed a toll of a higher rate for the imported than for locally manufactured iron of the nature referred to, were not *ultra vires*.—*HARDY & LTD. v. RAILWAY*

COMRS. FOR NEW SOUTH WALES (1928), 28 S. R. N. S. W. 318; 45 N. S. W. W. N. 82—AUS.

PART X. SECT. 3, SUB-SECT. 3.—D.

*h. i.*— *Dominion Railway Act, 1919, s. 316.] —R. (CANADIAN PACIFIC RY. CO. & MILLER) v. STANDELL, [1923] 2 W. W. R. 728.—CAN.*

put in tables based on the Pidcock principle with the object of showing that the value of the private siding services rendered to appets. at S. was in excess of the amounts included in their rates for station terminals at that station & also of the value of the respective private siding services rendered to appets.' competitors at B. after allowing for the rebate :—*Held*: without deciding whether the *onus* had shifted to the railway co., but inclining to the view that it had, the Pidcock principle had been properly applied in the dissection of the respective rates, & there was no preference of appets.' competitors.—PRENTICE BROTHERS, LTD. v. LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 177.

1169. *Add. Annotation* :—*As to* (3) *Refd.* Charrington, Gardner, Lockett v. Southern Ry. (1926), 42 T. L. R. 758

1171. *Add. Annotation* :—*Refd.* Prentice v. L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1175a. — Adoption of exceptional rates.]—PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *post*.

1184. *Add. Annotation* :—*As to* (1) *Consd.* Port of Manchester Warehouses v. Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 51.

1193. *Add. Annotations* :—*As to* (1) *Consd.* Prentice v. L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177. *Refd.* Port of Manchester Warehouses v. Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 51.

1219a. — Injunction—Rate quoted but not actually made.]—Appets. were owners of a bonded warehouse situated in Trafford Park, Manchester, in close proximity to, but not on, the premises of the Manchester Ship Canal Co. The latter co. also owned a similar warehouse within their dock area at Manchester. A large consignment of cigarettes was conveyed over the Ship Canal to appets.' warehouse, & was thence consigned to London over the railways of resp. cos., who charged a rate of 107s. per ton in two-ton lots, this being the ordinary Manchester town rate, whereas for similar traffic consigned from the warehouse of the Ship Canal Co. they quoted a rate of 54s. 6d., the latter being the Liverpool to London rate, which was governed by competitive shipping rates. Upon a complaint that the Manchester Ship Canal Co. were being unduly preferred the above difference in rates was sought to be justified by the railway cos. on the ground that, the ports of Manchester & Liverpool being in competition, the lower rate was necessary in order to secure for Manchester in the public interest traffic which otherwise would go to Liverpool, & that the only practical way in which to distinguish between goods consigned from Manchester Town & Manchester Port respectively was to draw a line between goods on the premises of the Ship Canal Co. & those which had passed out of the control of that co. :—*Held*: (1) both rates were properly charged under the circumstances, & the difference between them was justified; (2) where a railway co. quotes a rate con-

stituting an undue preference & asserts a right & intention of charging the same the ct. has jurisdiction to interfere by injunction without waiting till such charge is actually made.—PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 54.

1236. *Add. Annotation* :—*Refd.* Charrington, Gardner, Lockett v. Southern Ry. (1926), 42 T. L. R. 758.

1237a. Continuance of fixed rate—Under subsisting agreement—What amounts to agreement.]—An undertaking given by a railway co. during parliamentary proceedings in connection with an Act not to disturb existing fares for a limited period :—*Held*: not an agreement fixing those rates within 1921 Act, s. 34.—SOUTHEND CORPN. v. LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237b. — — — — — What is a fixed rate.]—A rate which bears a fixed relation to an ascertainable standard is a fixed rate, though it may vary in actual amount from time to time, & such a rate should be continued after the appointed day, if made under an agreement for valuable consideration, under 1921 Act, s. 34.—CARDIFF COLLIERIES, LTD. v. GREAT WESTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 202.

1237c. — — — — — .]—*Held*: although a fixed quarterly allowance when distributed over a fluctuating quarterly traffic yielded a varying tonnage charge, nevertheless inasmuch as sums payable under an agreement & ascertainable with reference to a fluctuating standard may be considered as fixed by that agreement, the charges payable by appets. under the agreement in question were special charges fixed by a subsisting agreement for valuable consideration & should be continued under 1921 Act, s. 34.—R. & W. PAUL, LTD. v. LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 228.

1237d. — — — — — Under special statutory provision—What amounts to special statutory provision.]—SOUTHEND CORPN. v. LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1243. *Add. Annotation* :—*Refd.* Rowson, Drew & Clydesdale v. G. W., L. M. & S., L. & N. E. & Southern Rys. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245a. "Rolling stock"—Transit of empty wagons needing repair on change of ownership.]—Under the heading "Rolling Stock" of the "General Railway Classification of Goods, 1921," if there is a transit because of a change of ownership or because of a change in the sphere of operations, the full rate for the conveyance of empty wagons is chargeable; if the cause of the transit is repairs only, the half-rate is chargeable; if the repairs are only an accompaniment of the transit due to change of ownership, the full rate is chargeable.—LONDON, MIDLAND & SCOTTISH RY. CO. v. INCE WAGON & IRONWORKS CO., LTD. (1924), 131 L. T. 229; 40 T. L. R. 551, C. A.

1245b. "Pipes, rain water & their connections, cast iron or steel"—Include rain water pipes

adapted for other purposes.]—**ROWNSON, DREW & CLYDESDALE v. GREAT WESTERN, LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & SOUTHERN RY. COS.** (1928), 19 Ry. & Can. Tr. Cas. 235.

**1245c. "Coal"—Coal, coke & patent fuel.**—*Re NATIONAL GAS COUNCIL OF GREAT BRITAIN & IRELAND'S APPEAL* (1927), 19 Ry. & Can. Tr. Cas. 163, C. A.

**1285. Add. Annotations:**—*As to* (1) **Refd.** *G. W. Ry. v. Laing* (1922), 39 T. L. R. 93; *Transoceanica Soc. Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31.

**1286. Add. Annotations:**—*As to* (1) **Refd.** *Transoceanica Soc. Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31; *Re Standard Charges (Collection & Delivery)* (1925), 19 Ry. & Can. Tr. Cas. 53. *As to* (2) **Consd.** *G. W. Ry. v. Laing* (1922), 39 T. L. R. 93.

**1287. Add. Annotations:**—**Consd.** *G. W. Ry. v. Laing* (1922), 39 T. L. R. 93. **Refd.** *Transoceanica Soc. Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31; *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.

**1316. Add. Annotations:**—**Refd.** *Bede Steam Shipping Co. v. Bunge y Born, Limitada S. A.* (1927), 43 T. L. R. 374; *Wales v. Iron Trades Employers' Assocn.* (1928), 21 B. W. C. C. 316.

**1316a.** — — — — — **]**—*GREAT CENTRAL RY. CO. v. SWANN* (1913), 48 L. Jo. 47.

**1323. Add. Annotations:**—**Refd.** *Griffiths v. Studebakers*, [1924] 1 K. B. 102; *R. v. Leicester*, [1924] 1 K. B. 311. **Mentd.** *Allen v. Whitehead* (1929), 15 T. L. R. 655.

#### SECT. 6.—EXCEPTIONAL RATES AND FARES (Vol. VIII., p. 207).

**1323a. Under 1921 Act—Meaning of "standard" & "exceptional."**—The expression "standard" as applied to charges in Part III. of the above Act is the correlative or complementary term to "exceptional," & there being therefore no other alternative, every chargeable rate, fare, or charge for conveyance must necessarily be included in one or other of the above categories. Railway cos. are therefore required, under sect. 30 of the above Act, to submit to the Rates Tribunal forms of schedules for standard season tickets & workmen's fares.—*Re STANDARD CHARGES SCHEDULES* (1923), 17 Ry. & Can. Tr. Cas. 147.

#### SECT. 7.—OWNER'S RISK RATES (Vol. VIII., p. 207).

**1323b. Conveyance of goods by passenger train at owner's risk—Application for reduction of rate—Difference in risk negligible—Whether ground for two scales.]**—Appets. were consignors of gramophone records in the form of flat discs by passenger train. Resps. conveyed these discs at full parcels scale, but under owner's risk conditions. Appets. claimed that since the discs were conveyed at owner's risk, a reduction should be made

from the full parcels scale. It was admitted that when packed by the manufacturers the risk of breakage in transit was negligible. Resps. contended that in the case of goods carried by passenger train the difference between the owner's risk rate & the co.'s risk rate was not intended as a measure of the difference of risk;—*Held*: the difference in the risk to the railway cos. under the two sets of conditions being negligible, on the analogy of 1921 Act, s. 46 (3), there was no ground for directing that there should be two scales, but the discs, when properly packed, should be carried at co.'s risk, & when not properly packed, at owner's risk. "Properly packed" means packed according to reasonable regulations made by the railway cos., the question of reasonableness to be settled by the Tribunal in case of difference.—**BRITISH MUSIC INDUSTRIES FEDERATION v. CALEDONIAN RY. CO.** (1922), 17 Ry. & Can. Tr. Cas. 121.

**1323c.** — — — — — **Grounds for ordering.]**—Revised scales of rates based on the "zone" principle for the carriage of parcels by passenger train at co.'s risk & owner's risk respectively were put into force by resp. cos. in Nov. 1918, & were subsequently twice increased in 1920 by uniform percentage additions in accordance with directions of the Minister of Transport. In May, 1923, new & reduced scales for the above traffic were introduced, whereby the above increases of 1920 were reduced in unequal proportions in order to remove what resp. cos. considered to be anomalies between the co.'s risk & owner's risk scales, with the result that the reductions made in the charges under the owner's risk scale were considerably less than those made in the charges under the co.'s risk scale. Upon an application under 1921 Act, s. 60, to reduce the rates for parcels containing sausages, etc., consigned by passenger train at owner's risk:—*Held*: looking to the circumstances in which the above percentage increases had been recommended & imposed & subsequently continued by 1921 Act, s. 60, the railway cos. were not entrained with them for any purpose connected with the adjustment of relationships between scales of charge but for the purpose of meeting increased expenses, & in the absence of special circumstances the proper practice was to give equal reduction to all; taking the above owner's risk scale of Nov. 1918, & not that of 1914, as sought by appets., as a basis of calculation, the owner's risk rates by passenger train on appets.' above traffic should not exceed those in force in Sept. 1920, as reduced, by 25 per cent.—**SAUSAGE MANUFACTURERS' ASSOCN. v. LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., SOUTHERN RY. CO. & CHESHIRE LINES COMMITTEE** (1921), 18 Ry. & Can. Tr. Cas. 59.

**1326a.** — — — — — **Charges imposed by Ministry of Transport.]**—Appets. claimed reductions in the charges made by resps. for the detention of ordinary wagons & sheets, which were in

**PART X. SECT. 9, SUB-SECT. 1.**  
sq. Right of Minister of Transport to fix free time for detention.—*Under Ministry of Transport Act, 1919* (c. 50), s. 3.—**NORTH BRITISH RY. CO. v. STEEL CO. OF SCOTLAND, LTD.**, [1922]

**S. C. (H. L.) 132; 59 Sc. L. R. 275.—SCOT.**

g i. — — — — — **R. v. FRANK A. GILLIS CO., LTD.**, [1923] Exch. C. R. 1; 70 D. L. R. 635.—**CAN.**

g ii. — — — — — *Cars excepted from Rules—*

*"Cars stored on carrier's or private track."*—*Private cars on private track of car owner.*—**TORONTO HAMILTON & BUFFALO RY. CO. v. STEEL CO. OF CANADA** (1923), 55 O. L. R. 63.—**CAN.**

the case of wagons 3s. per day for the first two days after the expiration of the free periods allowed for loading & unloading & thereafter 5s. per day, & in the case of sheets 6d. & 1s. for the like periods. These charges had been imposed on & after Jan. 1, 1920, by an order of the Minister of Transport, made in accordance with a recommendation of the Rates Advisory Committee, with the object of diminishing wagon detention & causing traders to exercise more diligence in loading & unloading them. The charges in force in 1913 had been 1s. 6d. per day for wagons & 3d. per day for sheets after the free periods then given. Appets. also claimed that in reckoning the above periods Saturday should be treated as half a day. Resps. contended that the charges complained of were reasonable, & also that it was not open to the ct. to reverse the policy of the Minister of Transport in making a differentiation between the first two days following the free periods & subsequent days:—*Held*: (1) the ct. had jurisdiction to modify the charges complained of; (2) having regard to the value of wagons & sheets as compared with 1913, the loss of profit to the railway cos. arising from detention, the standing & overall charges & the extra expenses of shunting & occupation of siding involved, the charges of 3s. per day for wagons & 6d. per day for sheets, while on the high side, were not unreasonable, but the additional charges of 2s. & 6d. per day upon wagons & sheets respectively after the expiration of the first two days beyond the free periods were no longer justified, & should be discontinued, & the existing arrangements with regard to Saturdays should not be interfered with.—*BRITISH HAY TRADERS' ASSOCN. v. LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., SOUTHERN RY. CO., & GREAT WESTERN RY. CO., BRITISH INDUSTRIES FEDERATION v. SAME* (1925), 18 Ry. & Can. Tr. Cas. 169.

1330. *Add. Annotation*:—As to (3) *Consd. G. W. Ry. v. Laing* (1922), 28 Com. Cas. 100.

1331a. — Congestion caused by increased traffic—Insufficiency of unloading sidings.]—Pltf. co. had on their railway system at P. a small junction station, where there was a siding with sufficient accommodation for unloading the normal goods traffic consigned to that station. Defts. were contractors who were interested in one of three local building schemes which were started about the same time, involving a large increase in the goods traffic consigned to P. Owing to the congestion brought about in P. station by this increased traffic, & the fact that the unloading siding could only accommodate a limited number of wagons at a time, a number of the wagons arriving with goods at P. on defts.' account had to be put into storage sidings, to await their turn to be taken into the proper siding to be unloaded. Great delay in the discharge of wagons was caused thereby, but all the delay occurred at the storage sidings before the wagons were put into the unloading siding. Pltf. co. claimed from defts. exceptional charges for the detention of wagons in the storage sidings, under an implied contract or for accommodation or

services provided or rendered by pltf. to defts. within the scope of pltf.' undertaking by the desire of defts.:—*Held*: as, on the facts of the case, the wagons were not put into the storage sidings at the desire of defts. they were not liable to pay the exceptional charges claimed.—*GREAT WESTERN RY. CO. v. LAING (J.) & CO., LTD.* (1922), 39 T. L. R. 93; 28 Com. Cas. 100, C. A.

1337. *Add. Annotation*:—*Generally, Refd. Prentice v. L. & N. E. Ry.* (1925), 18 Ry. & Can. Tr. Cas. 177.

1337a. — — —.]—*PRENTICE BROTHERS, LTD. v. LONDON & NORTH EASTERN RY. CO., No. 1166a, ante.*

1337b. — Terminal charges not in fact made.]—Appets. carried on business as timber merchants at a private siding about half a mile from resps.' station at R. They made no use of the station for their traffic. On an application to reduce the rates on appets.' traffic on the grounds (1) that they were excessive, inasmuch as they were the same as those charged for similar traffic which made use of the station at R., & (2) that the rates in fact included charges for the use of the station, & resps. were not entitled to make any charge over & above the charge for conveyance:—*Held*: (1) the conveyance of appets.' traffic started from or ended at a siding in the R. station, & resps. were entitled to charge for any services prior or subsequent to such conveyance, & such services were in fact rendered & the charges were not excessive.

(2) The ct. will not infer that station terminals are being paid simply because a siding rate & a station rate are the same in amount. It is only open to the ct. to do so when comparable traffics are passing from the station & the siding under such rates.—*DIXON (T. & M.) LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO.* (1924), 18 Ry. & Can. Tr. Cas. 46.

1342. *Add. Annotation*:—As to (1) *Consd. G. W. Ry. v. Laing* (1922), 39 T. L. R. 93.

1349. *Add. Annotation*:—As to (2) *Refd. Dixon v. L. M. & S. Ry.* (1924), 18 Ry. & Can. Tr. Cas. 46.

1349a. — Application for increase—Before "appointed day"—1921 Act, s. 60.]—The Railway Rates Tribunal has jurisdiction under the proviso to the above sect. to entertain, prior to "the appointed day" to be fixed under that Act, an application by a private siding owner for an increase in a rebate allowed him & for a consequent reduction in charge, & that jurisdiction is not qualified or excluded by the provisions of sect. 61 of the above Act, as to charges in connection with private sidings, the expression "charges" in sect. 60 including not only gross charges, but also the net charges payable by a trader after allowing for any rebate to which he may be entitled.—*BRITISH EXTRACTING CO., LTD., BRITISH SOAP CO., LTD., & BRITISH CREAMERIES, LTD. v. LONDON & NORTH EASTERN RY. CO.* (1925), 18 Ry. & Can. Tr. Cas. 102, C. A.

*Annotations*:—*Appld. British Hay Traders' Asscn. v. L. M. & S. Ry., L. & N. E. Ry., Southern Ry. & G. W. Ry., British Industries Federation v. Same* (1925), 18 Ry. & Can. Tr. Cas. 169. *Refd. Paul v. L. & N. E. Ry.* (1927), 19 Ry. & Can. Tr. Cas. 228.

1364. *Add. Annotation*:—*Refd. Tate & Lyle v. L. & N. E. Ry. & L. M. & S. Ry.* (1926), 43 T. L. R. 134.

1373. *Add. Annotation*:—*Consd. Re Standard Charges (Collection & Delivery)* (1925), 19 Ry. & Can. Tr. Cas. 53.

# SECT. 12.—REDUCTION OF RATES (Vol. VIII., p. 217).

1377a. *Who may apply for—Trader “interested” —Warehouseman & forwarding agent.*—Appets., who were warehousemen & forwarding agents at Trafford Park, Manchester, & who had unsuccessfully applied to the Railway Comrs. in respect of an alleged undue preference founded on the same facts, applied for a reduction in a rate of 106s. 7d., formerly 107s., charged upon cigarettes consigned in two-ton lots from their Trafford Park warehouse, which was near to, but outside, the Manchester Docks, to King’s Cross, London, upon the ground that the corresponding rate from Liverpool was 54s. 6d., provisionally reduced to 50s. The lower rate was also charged on similar traffic consigned from Manchester Docks, while the higher rate was the ordinary Manchester town rate. Appets. contended that where traffic as to which the conditions were in all respects alike is sent from two places A. & B. in the same district to the same destination, the same railway co. shall not charge a higher sum from A. than from B., unless the distance of the destination in the case of A. is greater than the distance in the case of B., provided that the rate in the case of A. is a productive rate. They admitted that conditions could not be treated as in all respects alike, if in the one case there was competition which did not exist in the other. Resps. objected that appets. were not interested traders within 1921 Act, s. 60, & that the rate complained of, which was the ordinary Manchester town rate, was reasonable:—*Held*: (1) while something in the nature of a direct interest must be shown, the interest of appets. in the above charges was sufficiently direct to entitle them to prosecute these proceedings; (2) in deciding what was a reasonable rate to be charged to appets., regard should be had to the following considerations: (a) that it was not enough for a trader to show that without a reduction in rate he could not carry on a particular branch of his business; (b) that when railway cos. declared that in their own interests they could not grant facilities or reductions in rates, it would not be right for that ct. to compel them to adopt such a course of business unless appets. showed that the railway cos. were mistaken; (c) that it was not intended by 1921 Act to establish the principle of equal mileage rates for all places & the consequent adoption of exceptional rates based on competition by water or road as the standard for all rates whether such competition existed in other places or not, & therefore that the existence of a low exceptional rate, not being in fact an undue preference, while a fact to be considered, was not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rate; (3) applying the above principles & taking

all the circumstances into account, appets. should be allowed a rate of 72s. 6d. subject to any general revision of rates.—*PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO., & GREAT NORTHERN RY. CO.* (1922), 17 Ry. & Can. Tr. Cas. 95.

1377b. *Grounds for ordering—Necessity for prima facie case.*—Confectionery in bottles & jars was carried by the railway cos. originally at co.’s risk, & subsequently under certain agreed packing conditions. In 1920 the cos., without making any reduction in rates, refused to carry confectionery packed as above except at owner’s risk, owing to the heavy proportion of claims against them for damage. They continued to carry confectionery not contained in bottles & jars at co.’s risk. Upon an application for a reduction in the rates for confectionery when contained in bottles & jars:—*Held*: (1) an appct. for a reduction in rates must make a *prima facie* case for the same; (2) such a case had been made upon the above facts; (3) the cos. were not precluded from making special conditions by reason of the fact that they for some time had carried the above goods without conditions; (4) while certain losses in respect of confectionery not contained in bottles & carried at co.’s risk were borne by the cos., which losses did not arise in the case of confectionery in bottles carried at owner’s risk, the saving to the cos., e.g. 4 or 5 per cent., was not sufficient to justify a reduction in rate.—*MANUFACTURING CONFECTIONERS’ ALLIANCE, INCORPORATED v. CALEDONIAN RY. CO.* (1922), 17 Ry. & Can. Tr. Cas. 135.

1377c. —[*PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO.*, No. 1377a, *ante*.]

1377d. —*Experimental rate.*—Upon an application for an experimental reduced rate of 40s. per ton for flax straw in full train loads for a transit of approximately 200 miles, resp. railway cos. offered for a period of five months a rate of 45s., plus siding haulage charge. The ordinary class rate was 88s. 2d., less 12½ per cent. Similar traffic was being carried to the same destination from places forty or fifty miles away at approximately the same rate as that offered:—*Held*: the rate should be 45s. *Qu.*: whether the Tribunal ought to take into account the possibility that an experimental rate will result in bringing a large future traffic.—*MARSH v. GREAT EASTERN & GREAT WESTERN RY. COS.* (1922), 17 Ry. & Can. Tr. Cas. 129.

1377e. —*Removal of flat-rate additions imposed by Minister of Transport.*—Upon applications to remove certain flat-rate additions to the rates on appets.’ traffic which had been imposed by the Minister of Transport in exercise of his powers under Ministry of Transport Act, 1919 (c. 50), s. 3 (1) (c):—*Held*: (1) the ct. would not assume that the Minister was wrong in imposing such flat-rate additions; (2) it was not competent to the ct. to remove such flat-rate additions on the ground that the reasons given in support of their imposition by the former Rates Advisory Committee were not applicable to appets.’ traffic; (3) the rates

on appets.' traffic were not excessive, notwithstanding that the percentage increase resulting from such flat-rate additions was greater on traffic carried at low mileage rates than on that carried at higher mileage rates, & that larger reductions in rates had been given to blast furnace than to appets., i.e., coal, traffic.

(4) A rate is not necessarily excessive because a railway co. are not handing back on balance to the traders all the savings that they are making in reduced expenses.—*MONMOUTHSHIRE & SOUTH WALES COAL OWNER'S ASSOCN. v. GREAT WESTERN RY. CO., MONMOUTHSHIRE & SOUTH WALES COKE OVENS & BYE-PRODUCTS WORKS ASSOCN. v. SAME, SOUTH WALES PATENT FUEL MANUFACTURERS' ASSOCN. v. SAME* (1923), 18 Ry. & Can. Tr. Cas. 1.

**1377f. — Reductions granted to other interests.]**

—Upon an application for the removal of a flat-rate increase of 2d. per ton, being part of a larger increase which originally had been imposed on appets.' traffic in coal, coke & patent fuel in accordance with a second general revision of rates directed by the Minister of Transport which had since been voluntarily reduced by resps., the following grounds were relied upon by appets. in support of their case: (1) that a greater proportionate reduction in rates had been given to the traffic of certain admittedly necessitous industries than to their traffic; (2) that their traffic, & in particular their short distance traffic, had increased in density since the above increase in rates, thereby producing an exceptional profit for resps.; & (3) that they apprehended in the future an intensive foreign competition which a reduction in railway rates would assist them to meet:—*Held*: (1) the reductions in rates granted by resps. to the traffic of other industries were justified & did not establish a case of hardship or injustice to appets.; (2) while it was doubtful as to how far the increase in coal traffic had resulted in increased profit to resp. cos., the period of prosperity in appets.' trade which was mainly due to the abnormal European political situation was passing away; (3) in an application for a reduction of a rate under 1921 Act, s. 60, the *onus* lay upon an appct. to show the existence of some element of unfairness or of hardship amounting to unfairness, & appets. had not discharged that *onus* by alleging that a reduction in rates would assist.—*MINING ASSOCN. OF GREAT BRITAIN v. LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) v. SAME* (1924), 18 Ry. & Can. Tr. Cas. 14.

*Annotation*:—*Generally*, *Mentd.* *Dixon v. L. M. & S. Ry.* (1924), 18 Ry. & Can. Tr. Cas. 46.

**1377g. — Abolition of free storage facilities.]**

Appets., the owners of a warehouse at Trafford Park, Manchester, claimed that a rate of 10s. 11d. per ton for sugar from Liverpool to their private siding at Trafford Park, being the same amount as the corresponding rate from Liverpool to resp. co.'s Oldham Road station at Manchester, should be reduced by an amount equal to the cost incurred by resps. in providing terminal accommodation & services, including twenty-eight days' free warehousing, at their Manchester

station. No sugar had been consigned by rail to appets.' warehouse, nor was there any evidence that any trader desired to consign sugar to it. Prior to the war resps. had given fourteen days' free storage at Manchester for sugar in view of similar free accommodation provided by competing water-carriers from Liverpool to Manchester. This facility having been withdrawn by resps., they had lost as a result a large part of their sugar traffic from Liverpool to Manchester, & therefore, as from Nov. 1923, had restored the above free storage for an extended period of twenty-eight days:—*Held*: the ct. had no jurisdiction to abolish the facility of free storage, there was no evidence that the 10s. 11d. rate to Trafford Park was unreasonable or excessive, & there was no presumption that the rate when compared with the corresponding rate to Oldham Road station was unreasonable, because the latter included free storage at that station.—*PORT OF MANCHESTER WAREHOUSES, LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO.* (1925), 18 Ry. & Can. Tr. Cas. 81.

**1377h. —.]**—Upon an application that the rates on molasses intended to be used for cattle feeding which, with certain exceptions, was in Class 1 of the 1891–2 classification, should be reduced & placed on the same basis as the rates for oilcake & meals, which were in Class 3 of that classification:—*Held*: there was no evidence that the rates complained of were unjust or unreasonable except by comparing them with the treatment of another article in another class, & the ct. had not power at that stage to alter the classification.—*NATIONAL ASSOCN. OF CORN & AGRICULTURAL MERCHANTS v. LONDON, MIDLAND & SCOTTISH RY. CO., CROSFIELD'S OIL & CAKE CO., LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO.* (1925), 18 Ry. & Can. Tr. Cas. 97.

**1377i. — Group rates.]**—*GOOD (JOHN) SONS, LTD. v. LONDON & NORTH EASTERN RY. CO.* (1927), 19 Ry. & Can. Tr. Cas. 191.

**1377j. Burden of proof—On applicant.]**—*MINING ASSOCN. OF GREAT BRITAIN v. LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) v. SAME*, No. 1377f, *ante*.

**1377k. —.]**—*EBRW VALE STEEL, IRON & COAL CO., LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO.* (1927), 19 Ry. & Can. Tr. Cas. 207.

**1377l. Power of railway company during transitional period until "appointed day"—To raise reduced rates.]**—Under 1921 Act, s. 60, the rates in existence on Aug. 15, 1921, are maximum rates, & the railway cos. are entitled to reduce them, & to raise them again without applying to the Railway Rates Tribunal, if by so doing they do not exceed the maximum.—*TATE & LYLE, LTD. v. LONDON & NORTH EASTERN RY. CO. & LONDON MIDLAND & SCOTTISH RY. CO.* (1926), 43 T. L. R. 134; 71 Sol. Jo. 82, H. L.

**What rates—Owner's risk rates.]**—*See* Nos. 1323b, 1323c, *ante*.

**Charges for detention.]**—*See* No. 1320a, *ante*.



## Part XI.—Remedies of and against Carriers.

1389. *Add. Annotation* :—**Apld.** *R. v. Harding* (1929), 46 T. L. R. 105.
1390. *Add. Annotation* :—**Refd.** *Lake v. Simmons* J. K. B. 586.
1397. *Add. Annotation* :—**Mentd.** *National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.
1398. *Add. Annotation* :—*As to* (1) **Refd.** *Pennington v. Reliance Motor Works*, [1923] 1 K. B. 127.
1449. *Add. Citation* :—91 L. J. K. B. 39.
- Add. Annotations* :—**Refd.** *Anderson v. Equitable Life Assce. Soc. of the United States* (1926), 134 L. T. 557; *Dexters v. Hill Crest Oil Co. (Bradford)*, [1926] 1 K. B. 348.

### PART XI. SECT. 1, SUB-SECT. 2.

**sb.** *Goods carried under approved bill of lading—Action by connecting carrier against shipper—Not maintainable.*—*NEW YORK CENTRAL RY. CO. v. ELLIOTT (N. S.)*, [1928] 2 D. L. R. 973; 34 Can. Ry. Cas. 246.—**CAN.**

### PART XI. SECT. 1, SUB-SECT. 4.— A. (a).

**st.** *Payment for services rendered—*

*Towing damaged motor car.*—**TERRY v. AUTOMOBILE OWNERS** No. 15 i, *ante*.

### PART XI. SECT. 2, SUB-SECT. 1.

**sx.** *Consignee—Damage to goods en route—Owner having paid damage to consignee.*—Where an owner of goods had

indorsed a bill of lading to the buyer:—*Held*, he had parted with all his rights to obtain damages from the carrier. The fact that the owner paid the indorsee the damages suffered by the goods *en route* did not deprive the latter of his right of action against the carrier.—*FORD MOTOR CO. v. UNION S.S. CO.*, [1925] 1 D. L. R. 265; [1924] 3 W. W. R. 718.—**CAN.**

## CHARITIES.

## Part I.—Charitable Purposes.

1. *Add. Annotations* :—As to (1) *Consd.* Jackson's Trustees v. Lord Advocate (1926), 10 Tax Cas. 460. *Folld.* Re Williams, Public Trustee v. Williams, [1927] 2 Ch. 283. *Refd.* R. v. Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; Jackson v. Voss, [1923] 2 K. B. 357; Brighton College v. Marriott (1924), 69 Sol. Jo. 229; I. R. Comrs. v. Glasgow Musical Festival Assocn (1926), 11 Tax Cas. 154; Scottish Woollen Technical College, Galashiels v. I. R. Comrs. (1926), 11 Tax Cas. 139; Adamson v. Melbourne & Metropolitan Board of Works, [1929] A. C. 142. As to (2) *Consd.* A.-G. v. National Provincial Bank, [1924] A. C. 262; Verge v. Somerville, [1924] A. C. 496; Chesterman v. Federal Taxation Comr. (1925), 42 T. L. R. 121; R. v. Income Tax Special Comrs., *Ex p.* Headmasters' Conference, Same v. Same, *Ex p.* Incorporated Assocn. of Preparatory Schools (1925), 41 T. L. R. 651; Jackson's Trustees v. Lord Advocate (1926), 10 Tax Cas. 460; I. R. Comrs. v. Yorkshire Agricultural Soc (1927), 44 T. L. R. 59. *Appld.* General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same (1928), 97 L. J. K. B. 578. *Distd.* Geologists' Assocn. v. I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557. *Refd.* Barber v. Chudley (1922), 92 L. J. K. B. 711; R. v. Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; *Re* Hummeltenberg, Beatty v. London Spiritualistic Alliance, [1923] 1 Ch. 237; *Re* Ludlow, Bence-Jones v. A.-G. (1923), 93 L. J. Ch. 30; *Re* Shakespeare Memorial Trust, Lytton v. A.-G., [1923] 2 Ch. 398; *Re* Gray, Todd v. Taylor, [1925] Ch. 362; I. R. Comrs. v. Falkirk Temperance Café Trust (1926), 11 Tax Cas. 353; I. R. Comrs. v. Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154; I. R. Comrs. v. Peeblesshire Nursing Assocn. (1926), 11 Tax Cas. 335; Scottish Woollen Technical College, Galashiels v. I. R. Comrs. (1926), 11 Tax Cas. 139. *Generally*, *Mentd.* Martin v. Lowry, Martin v. I. R. Comrs., [1926] 1 K. B. 550.

1a. ———.]—VERGE v. SOMERVILLE, No. 199b, *post*.

2. *Add. Annotation* :—*Refd.* Re Tetley, National Provincial & Union Bank of England v. Tetley, [1923] 1 Ch. 258.

3. *Add. Annotation* :—*Refd.* A.-G. v. London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

3a. ——— *Motive immaterial*.]—(1) Motive is immaterial in considering whether a bequest is charitable.

(2) A gift to provide a stained glass window in a church is a good charitable

gift even though the motive may be said to be neither to beautify the church nor benefit the parishioners, but merely to perpetuate the memory of testatrix & her relatives.

(3) Where a gift is made for a particular charitable purpose which is sufficiently provided for without the gift, the gift must be applied *cy præs.*—*Re* KING, KERR v. BRADLEY, [1923] 1 Ch. 243; 92 L. J. Ch. 292; 128 L. T. 790; 67 Sol. Jo. 313.

4a. ——— *Question for court*.]—To be valid a charitable bequest must be for the public benefit, & the trust must be capable of being administered & controlled by the ct. The opinion of the donor of a gift or the creator of a trust that the gift or trust is for the public benefit does not make it so, the matter is one to be determined by the ct. on the evidence before it.—*Re* HUMMELTENBERG, BEATTY v. LONDON SPIRITUALISTIC ALLIANCE, [1923] 1 Ch. 237; 92 L. J. Ch. 326; 129 L. T. 124; 39 T. L. R. 203; 67 Sol. Jo. 313.

*Annotations* :—*Consd.* I. R. Comrs. v. Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27. *Apprvd.* *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.

4b. ———.]—*Re* GROVE-GRADY, PLOWDEN v. LAWRENCE, No. 208a, *post*.

12a. ——— *Beneficiaries formerly helped by testator*.]—*Re* SHEPHERD, SMITH v. SHEPHERD (1921), 152 L. T. Jo. 18.

17. *Add. Annotation* :—*Mentd.* *Re* Southerden, Adams v. Southerden, [1925] P. 177.

22. *Add. Annotation* :—*Folld.* *Re* Lucas, Rhys v. A.-G., [1922] 2 Ch. 52.

23. *Add. Annotation* :—*Refd.* Verge v. Somerville, [1924] A. C. 496.

23a. ——— *Trade union certified to be war charity—Necessity for registration under War Charities Act, 1916 (c. 43)*.]—The National League of the Blind of Great Britain & Ireland, a registered trade union whose funds were derived from subscriptions of members, & gifts by the public, was certified by the Charity Comrs. as a charity for the blind, but had not been registered as a charity under the above Act, nor under Blind Persons Act, 1920 (c. 49). *Appl't.* having been convicted of having solicited & obtained money from members of the public :—*Held* : the League was a charity as well as a trade union, & required to be registered under both those Acts, & the conviction must be affirmed.—BARBER v. CHUDLEY (1922), 92 L. J. K. B. 711; 128 L. T. 766; 87 J. P. 69; 21 L. G. R. 114, D. C.

23b. ——— *"Oldest respectable inhabitants"*—*Valid*.]—Testator gave the income to be derived from all his securities to A., for her life, & after her decease to "the oldest

## PART I. SECT. 1.

1 vi. ——— *Estate Duty Assessment Act, 1914, s. 8 (5)*.]—The word "charitable" in the above sect. is to be construed in its legal & not its popular sense.—CHESTERMAN v. FEDERAL COMR. OF TAXATION, [1926] A. C. 128; 95 L. J.

P. C. 39; 134 L. T. 360; 42 T. L. R. 121. —AUS.

3 ii. ——— *Purpose not source*.]—In determining whether a gift to an assocn. is a gift for charitable purposes, the ct. may inquire into the objects of the

assocn. & if those are found to be charitable within Stat. Eliz. the ct. may hold the gift to be for charitable purposes.—PERPETUAL TRUSTEE CO., LTD. v. SHELLEY (1921), 21 S. R. N. S. W. 426; 38 N. S. W. W. N. 132. —AUS.

- respectable inhabitants in G. to the amount of 5s. per week each":—*Held*: the amount of the gift implied poverty, & coupled with the use of the word "oldest," implying age, was sufficient to render the gift a good charitable bequest.—*Re LUCAS, RHYS v. A.-G.*, [1922] 2 Ch. 52; 91 L. J. Ch. 480; 127 L. T. 272; 66 Sol. Jo. 368.
27. *Add. Annotation*:—*Consd. Re Lucas, Rhys v. A.-G.*, [1922] 2 Ch. 52.
- 27a. ———.—*Testatrix gave the income of certain shares in a public co. for the education of children of employees of the co. & gave the income of further shares in the co. for the benefit of incapacitated employees, the income in each case to be applied by the governors of the co., in their discretion:—Held*: both gifts were good charitable bequests, the first being for promoting education & the second for the alleviation of poverty.—*Re KAYNER, CLOUTMAN v. REGNART* (1920), 89 L. J. Ch. 369; 122 L. T. 577; 84 J. P. 61.
29. *Add. Annotation*:—*Consd. Re Lucas, Rhys v. A.-G.*, [1922] 2 Ch. 52.
- 34a. ———.—*Distributing coal & making loans to poor & deserving inhabitants.*—*Testator, a native of F., a small village, bequeathed his residuary estate to trustees upon trust to set aside £800 as a "Coal Fund," the income whereof was to be used for the purchase of coal to be distributed among such poor & deserving inhabitants of F. as a committee should think fit, & to hold the rest of his residuary estate as a "Loans Fund" & to apply the capital & income thereof, under the direction of the committee, "in making loans to poor & deserving inhabitants of the parish of F. in manner hereinafter provided."* No loan was to exceed £100, repayable within nine years at longest. No interest was to be charged & no borrower to have more than one loan. Only one-sixth part of the fund was to be lent in any one year, & the borrowers were to be inhabitants or residents of F. not above the age of thirty-five years. *Testator directed that "all surplus money forming part of or arising from the 'Loans Fund' over & above £500 & not required for loans shall be invested by the trustees under the direction of the committee, but all investments purchased shall be from time to time sold for the purpose of advancing the produce thereof in loans if & when required":—Held*: (1) the will displayed a general charitable intention & contained an immediate & effective gift of the whole of the residue to charity, displacing the claim of the next of kin; (2) the question of accumulation beyond the period allowed by law did not arise, the possibility of a surplus hereafter not impairing the validity of the immediate gift to charity; (3) the doctrine of *cy-près* could be at once applied, if necessary, to any surplus income after the period allowed by law for accumulation had expired.—*Re MONK, GIFFEN v. WEDD*, [1927] 2 Ch. 197; 96 L. J. Ch. 296; 137 L. T. 4; 43 T. L. R. 256, C. A.
- Annotation*:—*As to (1) Rejd. I. R. Comrs. v. Roberts Marine Mansions Trustees* (1927), 43 T. L. R. 270.
45. *Add. Annotations*:—*Apld. I. R. Comrs. v. Roberts Marine Mansions Trustees* (1927), 43 T. L. R. 270. *Rejd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407.
46. *Add. Annotations*:—*Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Rejd. Blackwell v. Blackwell*, [1929] A. C. 318.
- 47a. *Nursing home—Persons of moderate means—Gift charitable.*—*Testator made the following gift in his will: "I give & bequeath all the residue & remainder of my estate not otherwise disposed of by this my will to: (a) such institution, society or nursing home, or nursing homes, or similar institutions as assist or provide for persons of moderate means such as clerks, governesses & others who may not be able or eligible to benefit under the National Health Insurance Act, Old Age Pensions, or other Act of a like character to have either surgical operations performed together with medical treatment or medical treatment alone on payment of some moderate contribution; (b) the Royal National Lifeboat Institution; (c) the Lister Institute of Preventive Medicine; (d) & such other funds, charities & institutions as my exors. in their absolute discretion shall think fit; & I direct that such residue shall be divided amongst the legatees named in the paragraphs (a), (b), (c), & (d) lastly hereinbefore contained in such shares & proportions as my trustees shall determine."* It was admitted that the objects under (b) & (c) were charitable. On the question whether the residue was validly disposed of by the will or failed in whole or in part for uncertainty:—*Held*: (1) the objects included under paragraph (a) were charitable since the means of the recipients would necessitate their being unable without the bounty of testator to procure the treatment of which they might stand in need; (2) the objects specified under heading (d) being for such indefinite charitable & non-charitable objects as the exors. should think fit were not exclusively charitable, & therefore though a trust for charitable & non-charitable indefinite purposes indiscriminately failed by reason of uncertainty, this trust being of a part of a fund for charitable purposes & another part for non-charitable indefinite purposes the ct. could ascertain what the parts were.—*Re CLARKE, BRACEY v. ROYAL NATIONAL LIFEBOAT INSTITUTION*, [1923] 2 Ch. 407; 92 L. J. Ch. 629; 129 L. T. 310; 39 T. L. R. 433; 67 Sol. Jo. 680.
48. *Add. Annotations*:—*Consd. Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121. *Apld. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283. *Rejd. Geologists' Asscn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271; *Re Barclay, Gardner v. Barclay, Steuart v. Barclay*, [1929] 2 Ch. 173; *Re Patten, Westminster Bank v. Carlyon*, [1929] 2 Ch. 276.
49. *Add. Annotations*:—*Consd. Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121. *Apld. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283. *Rejd. Geologists' Asscn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271; *Re Barclay, Gardner v. Barclay, Steuart v. Barclay*, [1929] 2 Ch. 173; *Re Patten, Westminster Bank v. Carlyon*, [1929] 2 Ch. 276.
50. *Add. Annotations*:—*As to (2) Consd. Geologists' Asscn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271. *Rejd. Re Barclay, Gardner v. Barclay, Steuart v. Barclay*, [1929] 2 Ch. 173.

57. *Add. Annotation*:—*As to (2) Apld. Re Gray, Todd v. Taylor*, [1925] Ch. 362.
62. *Add. Annotation*:—*Refd. Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.
66. *Add. Annotation*:—*Refd. Brighton College v. Marriott* (1924), 69 Sol. Jo. 229.
68. *Add. Annotation*:—*Refd. I. R. Comrs. v. Temperance Council of Christian Churches of England & Wales* (1926), 136 L. T. 27.
69. *Add. Annotations*:—*Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258; *Geologists' Assocn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271.
- 73a. — **Trust to erect national theatre—& revive English classical drama—Valid.**—(1) The Shakespeare Memorial Trust was established to erect & endow a Shakespeare Memorial National Theatre, with the object of performing Shakespeare's plays, reviving English classical drama, & stimulating the art of acting:—*Held*: the trust was a good charitable trust, on the ground either that the objects were for the advancement of education or that they came within the class of purposes beneficial to the community other than by way of the relief of poverty or the advancement of education or religion referred to by LORD MACNAGHTEN in *Income Tax Special Purposes Comrs. v. Pemsel*, [1891] A. C. 531.
- (2) At the time when a donation of £70,000 was made to the charity, part of which was applied by the charity in the purchase of a site for the theatre, no annual subscription had been received, but within only nine days of that time the first annual subscription was received. On the subsequent sale of the site, the question arose whether, in those circumstances, the consent of the Charity Comrs. was required to the sale by the charity:—*Held*: notwithstanding that in the inception of its formation it was contemplated that the charity should be supported by annual subscriptions as well as by income from endowment, & notwithstanding that there was an interval of nine days only between the donation & the first of the annual subscriptions, the charity was not at the time when the donation was received a mixed charity within 1853 Act, s. 62; & as it was, therefore, not exempted from the jurisdiction of the Charity Comrs., their consent to the sale by the charity was required.—*Re SHAKESPEARE MEMORIAL TRUST, LYTON (EARL) v. A.-G.*, [1923] 2 Ch. 389; 92 L. J. Ch. 551; 130 L. T. 56; 39 T. L. R. 610, 676; 67 Sol. Jo. 809.
- 73b. **Bequest to provide sweets—For all children within parish—Not confined to those attending school—Not valid.**—Testator by his will, after leaving money for prizes for the best-conducted school children in the parish, left money to provide “a pennyworth of sweets each for all boys & girls below the age of fourteen resident within the parish,” & he directed that the income of the residue of his estate should be applied in awarding annual prizes to residents for the best-kept gardens & cottages:—*Held*: since there was no provision as to the gift of sweets being confined to children who had attended school, that gift was not charitable & was void, but the gift to provide prizes for the best-kept gardens & cottages was a good charitable gift as it was one for the benefit of the community.—*Re PLEASANTS, PLEASANTS v. A.-G.* (1923), 39 T. L. R. 675.
- Annotation*:—*Refd. I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.
75. *Add. Annotations*:—*Apprvd. Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121. *Apld. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283. *Consd. Geologists' Assocn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271; *Re Barclay, Gardner v. Barclay, Steuart v. Barclay*, [1929] 2 Ch. 173. *Refd. Re Patten, Westminster Bank v. Carlyon*, [1929] 2 Ch. 276.
- 75a. —.]—Testator by his will, wherein he described himself as a Clerk in Holy Orders, gave all his property to the Public Trustee upon trust for investment. He then directed that the income should be paid to the Bishops of the dioceses of St. D. & B., the rector of L. & the vicars of two other parishes & their successors, together with a layman appointed by the conference of each of those dioceses, whom he nominated administrative trustees. After stating that his wife left her interest in certain property to him to be used as he wished, but for preference for Church purposes, testator, in expressed accordance with her wish, by clause 3, devised all he should die possessed of as a fund for assisting the education of candidates for Holy Orders in the Church of England, to be administered by the trustees. Clause 12 contained the following proviso: “If for any sufficient reason, whether disendowment may or may not have taken place, the trustees decide that the interests of the Church could be better served by any changes in the method of administering, or even in the object to which the fund is applied under my will, such change or changes may be made with the several consents expressed by a majority of the Diocesan Conferences of B. & St. D.”:—*Held*: the objects to which the trustees were, by clause 12, empowered to change the application of the fund were not other than charitable objects & were religious objects in the interests of the Church as an organisation existing for the instruction & edification of the public, & the gift in clause 3 was a valid charitable gift.—*Re WILLIAMS, PUBLIC TRUSTEE v. WILLIAMS*, [1927] 2 Ch. 283; 96 L. J. Ch. 449; 137 L. T. 477; 71 Sol. Jo. 605.
78. *Add. Annotations*:—*Refd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407; *Re King, Kerr v. Bradley*, [1923] 1 Ch. 243.
- 79a. **Benefit of Roman Catholic Church—Open to public—Valid.**—(1) A bequest for the benefit of a church belonging to a monastic order of the Roman Catholic Church but open to the public was not rendered invalid by Roman Catholic Relief Act, 1829 (c. 7).
- Testatrix by her will dated Sept. 7, 1903, gave the residue of all her property, after the death of G., to whom she had given a life interest, in the following terms: “To

## PART I. SECT. 8, SUB-SECT. 4.

8a. *Political economy—Furtherance of better relations between employers & employees—Valid.*—*Re CORBETT* (1921), 17 Tas. L. R. 139.—AUS.

- the Superior of the Jesuit Church of the Immaculate Conception, Farm Street, London, to the Superior of that Church at the moment of the legacy falling due, & failing him to any other representative Father of the Order of the Society of Jesus . . . :—*Held*: the gift was to this Superior upon trust for the benefit of the church at Farm Street as he might in his discretion think fit; & this was a valid gift.
- (2) Testatrix died in 1910, & G. died in 1928. The Superior of the Church of the Immaculate Conception, Farm Street, London, was not the same person at the death of testatrix as at the death of G.:—*Held*: the gift was a valid gift to the Superior at the moment of G.'s death absolutely.—*Re* BARCLAY, GARDNER v. BARCLAY, STEUART v. BARCLAY, [1929] 2 Ch. 173; 98 L. J. Ch. 410; 141 L. T. 447; 45 T. L. R. 406. C. A.
82. *Add. Annotation*:—*Re* Tetley, National Provincial & Union Bank of England v. Tetley, [1923] 1 Ch. 258.
89. *Add. Annotations*:—*As to* (1) *Apld.* Geologists' Asscn. v. I. R. Comrs. (1928), 14 Tax Cas. 271. *Consd.* *Re* Bain, Public Trustee v. Ross (1929), 45 T. L. R. 617. *Re* Williams, Public Trustee v. Williams, [1927] 2 Ch. 283.
90. *Add. Annotation*:—*Generally*, *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
94. *Add. Annotation*:—*Re* Hummeltenberg, Beatty v. London Spiritualistic Alliance (1923), 92 L. J. Ch. 326.
106. *Add. Annotations*:—*Consd.* *Re* Barclay, Gardner v. Barclay, Steuart v. Barclay, [1929] 2 Ch. 173. *Re* Blackwell v. Blackwell, [1929] A. C. 318.
- 110a. ——— *Invalid*.—WALPOOL'S CASE (1349), Duke, 95.  
*Annotations*:—*Consd.* Adams & Lambert's Case (1602), 4 Co. Rep. 104b. *Re* Heath v. Chapman (1854), 2 Druw. 417.
114. *Add. Annotation*:—*Consd.* Blackwell v. Blackwell, [1929] A. C. 318.
117. *Add. Annotation*:—*Mentd.* *Re* Manners, Manners v. Manners, [1923] 1 Ch. 220.
119. *Add. Annotations*:—*Re* Blackwell v. Blackwell, [1929] A. C. 318. *Mentd.* Ward v. Van der Loeff, Burnyeat v. Van der Loeff, [1924] A. C. 653.
- 128a. ——— *For benefit of church open to public*—*Valid*.—*Re* BARCLAY, GARDNER v. BARCLAY, STEUART v. BARCLAY, No. 79a, *ante*.
129. *Add. Annotations*:—*Consd.* *Re* Chesterman v. Federal Taxation Comr. (1925), 42 T. L. R. 121; Geologists' Asscn. v. I. R. Comrs. (1928), 14 Tax Cas. 271. *Re* Williams, Public Trustee v. Williams, [1927] 2 Ch. 283; *Re* Barclay, Gardner v. Barclay, Steuart v. Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank v. Carlyon, [1929] 2 Ch. 276.
130. *Add. Annotation*:—*Consd.* *Re* Barclay, Gardner v. Barclay, Steuart v. Barclay, [1929] 2 Ch. 173.
135. *Add. Annotation*:—*Consd.* Blackwell v. Blackwell, [1929] A. C. 318.
137. *Add. Annotation*:—*Mentd.* Nicholson v. England, [1926] 2 K. B. 93.
155. *Add. Annotation*:—*Consd.* Blackwell v. Blackwell, [1929] A. C. 318.
157. *Add. Annotations*:—*As to* (1) *Consd.* *Re* Clarke, Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* Davis, Thomas v. Davis, [1923] 1 Ch. 235. *Re* Tetley, National Provincial & Union Bank of England v. Tetley, [1923] 1 Ch. 258; *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
183. *Add. Annotation*:—*Distd.* *Re* Gwyon, Public Trustee v. A.-G. (1929), 46 T. L. R. 96.
- 195a. *Shakespeare Memorial Trust—Erection of theatre—Revival of English classical drama—Valid*.—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) v. A.-G., No. 73a, *ante*.
196. *Add. Annotation*:—*As to* (1) *Re* Gray, Todd v. Taylor, [1925] Ch. 362.
197. *Add. Annotation*:—*As to* (1) *Folld.* *Re* Gray, Todd v. Taylor, [1925] Ch. 362.
- 199a. *Promotion of physical efficiency of army—Encouragement of sport—Valid*.—By his will testator gave a sum of £3,000 to form the nucleus of a regimental fund for his regiment "for the promotion of sport, including in that term only shooting, fishing, cricket, football, & polo." He also thereby gave directions as to the management of the fund. Later in the will he directed the payment of a further sum of £2,000, in the events which happened, "to the aforesaid Sporting Fund" to be held upon the same terms as the former legacy:—*Held*: the gifts were gifts for the purpose of promoting the physical efficiency of the army, & were valid charitable gifts.—*Re* GRAY, TODD v. TAYLOR, [1925] Ch. 362; 94 L. J. Ch. 430; 133 L. T. 630; 41 T. L. R. 335; 69 Sol. Jo. 398.  
*Annotation*:—*Consd.* I. R. Comrs. v. Yorkshire Agricultural Soc., [1928] 1 K. B. 611.
- 199b. *Repatriation of soldiers—After war service—Valid*.—(1) A valid charitable trust may exist although in its administration the benefit is not confined by the donor to the poor to the exclusion of the rich.  
A resident in New South Wales bequeathed his residuary estate "unto the trustees for the time being of the 'Repatriation Fund' or other similar fund for the benefit of the New South Wales returned soldiers." At the date of the will, & of testator's death, there was established under statutes of the Commonwealth of Australia a repatriation fund for Australian soldiers generally, but there was no repatriation fund, or similar fund, for New South Wales soldiers:—*Held*: (2) the gift created a valid charitable trust; (3) the trustees of the Commonwealth statutory repatriation fund were not trustees of the charity, & the settlement of a scheme had been rightly directed.—*VERGE v. SOMERVILLE*, [1924] A. C. 496; 131 L. T. 107; 40 T. L. R. 279; 68 Sol. Jo. 419; *sub nom* *VERGE v. SOMERVILLE*, A.-G. FOR AUSTRALIA v. SOMERVILLE, 93 L. J. P. C. 173, P. C.  
*Annotation*:—*As to* (2) *Re* General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same (1928), 97 L. J. K. B. 578.
201. *Add. Annotation*:—*Consd.* *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
205. *Add. Annotations*:—*As to* (1) *Consd.* Adamson v. Melbourne & Metropolitan Board of Works, [1929] A. C. 142; *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
206. *Add. Annotations*:—*As to* (1) *Dbtd.* *Re* Hum-

- meltenberg, *Beatty v. London Spiritualistic Alliance*, [1923] 1 Ch. 237. **Consd. I. R. Comrs. v. Yorkshire Agricultural Soc.** (1927), 44 T. L. R. 59; *Re Grove-Grady, Plowden v. Lawrence*, [1927] 1 Ch. 557. **As to (2) Refd. I. R. Comrs. v. Temperance Council of Christian Churches of England & Wales** (1926), 136 L. T. 27.
208. **Add. Annotation:—As to (2) Expld. & Dlst. Re Grove-Grady, Plowden v. Lawrence**, [1929] 1 Ch. 557.
- 208a. ——— **If beneficial to community.**—Testatrix, who died in 1925, by her will gave her residuary estate to her trustees to form a trust for the founding, establishing & maintaining of a charitable institution to be called the "Beaumont Animals' Benevolent Society" under such rules & regulations & under such committee of management not exceeding ten members & otherwise in all respects as her trustees should in their absolute discretion think fit, & having regard to her wish that the expense of management should be kept as low as possible; provided that all members of the committee & of the governing body & all officials of the said society should be & always have been declared anti-vivisectionists & opponents of all sport involving the pursuit or death of any stag, deer, fox, hare, rabbit, bird, fish, or any other animal, & to have for its objects (a) the acquisition of land, permitted by a judge of the Ch. Div. or the Charity Comrs., for the provision of refuges for the preservation of "all animals, birds or other creatures not human"; (b) the distribution of any part of the yearly income of the trust fund amongst such societies or homes for the benefit of animals generally or for the benefit of individual cases British or foreign as the committee of the "Beaumont Animals' Benevolent Society" might think fit; (c) the founding, establishing, endowing, supporting, maintaining or providing of hospitals or homes for animals in Great Britain having no declared vivisectionist upon the governing body or bodies thereof or in any way connected with the management thereof:—**Held:** although a trust in perpetuity for animals might be a good charitable trust if in its execution there was necessarily involved a benefit to the community, yet where that element was wanting, the trust would be bad; therefore, trusts in the present case not having been shown to be for purposes beneficial to the community they were not good & valid charitable trusts.—*Re GROVE-GRADY, PLOWDEN v. LAWRENCE*, [1929] 1 Ch. 557; 98 L. J. Ch. 261; 140 L. T. 659; 45 T. L. R. 261; 73 Sol. Jo. 158, C. A.
210. **Add. Annotation:—Consd. Re Tetley, National Provincial & Union Bank of England v. Tetley**, [1923] 1 Ch. 258.
212. **Add. Annotation:—Mentd. A.-G. v. London & Home Counties Joint Electricity Authority**, [1929] 1 Ch. 513.
213. **Add. Annotation:—Refd. Re Gray, Todd Taylor**, [1925] Ch. 362.
- 213a. **Encouragement of gardening—Charitable.**—*Re PLEASANTS, PLEASANTS v. A.-G.*, No. 73b, *ante*.
215. **Add. Annotation:—As to (2) Refd. Verge v. Somerville**, [1924] A. C. 496.
- 215a. ——— **Of Jews to Palestine—Gift to Jewish National Fund—Valid.**—A summons asked whether deft. co., the Jüdischer Nationalfonds, Ltd., or some other & what co. was referred to in the devise & bequest in the codicil to testator's will of the residuary estate to the Jewish National Fund, & whether the same was a valid charitable gift. By a codicil to his will made in 1919 testator who died shortly after declared: "whereas it is my desire that members of my family shall make their home in Palestine working & living on the land, I give, devise, & bequeath all the residue of my estate subject as aforesaid to the Jüdischer Nationalfonds which is one of the instruments of the Zionist Organisation, for the purpose of purchasing land there, & enabling such members of my family as are in a direct line of descent from my father, who may desire, to settle in Palestine subject generally to the regulations & conditions that may be necessary for the common weal":—**Held:** the co. was beneficially entitled to the fund to be applied by them so far as was necessary for the purpose indicated by testator, & as to the balance for the general purposes of the co.—*Re ROSENBLUM, ROSENBLUM v. ROSENBLUM* (1924), 131 L. T. 21; 68 Sol. Jo. 320.
217. **Add. Annotations:—As to (1) Consd. I. R. Comrs. v. Yorkshire Agricultural Soc.** (1927), 44 T. L. R. 59. **Generally, Refd. General Medical Council v. I. R. Comrs.**, English Branch Council of General Medical Council v. Same (1928), 139 L. T. 225.
- 217a. **Primrose League—Not a charity.**—Testatrix by her will gave a leasehold house "to the Primrose League of the Conservative cause to be used as a habitation in connexion with the league or in a manner which will benefit the cause":—**Held:** as the gift was impressed with a trust & could not be sold, & as the league was not a charity, the gift failed.—*Re JONES, PUBLIC TRUSTEE v. CLARENDON (EARL)* (1929), 45 T. L. R. 259.
225. **Add. Annotations:—Consd. Re King, Kerr v. Bradley**, [1923] 1 Ch. 243. **Refd. Re Clarke, Bracey v. Royal National Lifeboat Institution**, [1923] 2 Ch. 407.
231. **Add. Annotation:—Generally, Mentd. Re Villar, Public Trustee v. Villar**, [1929] 1 Ch. 243.
- 231a. ———]—Testator gave £200 to his trustees, on trust to invest it & to pay the income thereof to a cemetery co. "during such period as they shall continue to maintain & keep" two specified graves "in the cemetery in good order & condition with flowers & plants thereon as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order &

**PART I. SECT. 6, SUB-SECT. 1.**  
218 iv. ———.]—**A direction in a will to the exors. to deposit a sum in a bank or invest it, "the yearly interest to be devoted to the care of my grave," creates, leaving statutory provisions out of considera-**

**tion, a perpetual trust; & as the purpose is not charitable, is void; but legislative sanction is given to this particular form of perpetual trust, by above sect.—Re JONES (1918), O. L. R. 62; 13 O. W. N. 405.—CAN.**

—].—**Bequests made to**

**bodies incapable of contracting, on the condition precedent that they should agree with testator's trustees to care for certain burial lots for all time:—Held: void.—Re LAING ESTATE, [1927] 1 W. W. R. 699; 38 B. C. L. 449.—CAN.**

condition, his trustees should pay & apply the income in manner therein mentioned :—*Held* : the gift was a valid gift.—*Re* CHARDON, JOHNSTON *v.* DAVIES, [1928] Ch. 464; 97 L. J. Ch. 289; 139 L. T. 261.

238a. — In memory of testatrix—Valid.—*Re* KING, KEIR *v.* BRADLEY, No. 3a, *ante*.

240. *Add. Annotation* :—*Apld.* I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

241. *Add. Annotations* :—*Refd.* I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.

242. *Add. Annotation* :—*Refd.* I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

245. *Add. Annotation* :—*Refd.* I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

247. *Add. Annotation* :—*Refd.* I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

249. *Add. Annotations* :—*Apld.* I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60. *Mentd.* Toates *v.* Toates, [1926] 2 K. B. 30.

250. *Add. Annotation* :—*As to* (1) *Refd.* *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

251. *Add. Citation* :—[1912] 1 Ch. 29.

*Add. Annotations* :—*As to* (1) *Apld.* *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) *Refd.* *Re* Kuypers, Kuypers *v.* Kuypers, [1925] Ch. 244. *Generally Refd.* *Re* Bancroft, Bancroft *v.* Bancroft, [1928] Ch. 577. *Mentd.* *Re* Sikes, Moxon *v.* Crossley (1926), 43 T. L. R. 57.

255. *Add. Annotation* :—*As to* (2) *Refd.* Verge *v.* Somerville, [1924] A. C. 496.

259. *Add. Annotation* :—*As to* (1) *Refd.* *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 577.

265. *Add. Annotation* :—*Refd.* *Re* Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

265a. *Gift to Jewish National Fund—To enable testator's relations to settle in Palestine.*—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM, No. 215a, *ante*.

266. *Add. Annotations* :—*As to* (1) *Consd.* *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. *Apld.* *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

266a. *Provision of knickers for all boys of district—Void.*—Testator devised his residuary estate on trust, the income to be applied for ever in providing knickers for boys who resided in the F. district, who were not supported by any charitable institution, & whose parents were not in receipt of parochial relief :—*Held* : as none of the conditions necessarily imported poverty & therefore the object of the benefaction was not the relief of poverty & as the limitation of area did not make the trust a good charitable trust, the bequest was void as offending against the rule against perpetuities.—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G. (1929), 46 T. L. R. 96; 73 Sol. Jo. 833.

267a. *Social club—Staff Christmas fund—Invalid.*—Testator gave three legacies in the following terms : “To the Junior Carlton Club, Pall Mall, S.W. : £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Union Club, Brighton : £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Sussex County Cricket Club : £300 of Funding Loan in trust to pay the interest yearly to the Nursery Fund” :—*Held* : the legacies to the clubs were not charitable, & therefore, invalid.—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, [1929] 2 Ch. 276; 98 L. J. Ch. 419; 141 L. T. 295; 45 T. L. R. 504.

267b. *Cricket club—Nursery fund—Invalid.*—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, No. 267a, *ante*.

270. *Add. Annotation* :—*Refd.* *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

272a. *Gift to Universal Negro Redemption Fund—Valid.*—UNIVERSAL NEGRO IMPROVEMENT ASSOCN. INCORPORATED *v.* MORTER (1928), 44 T. L. R. 331; 72 Sol. Jo. 154, P. C.

## Part II.—Assurances for Charitable Purposes.

295. *Add. Annotation* :—*Refd.* *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

302. *Add. Annotation* :—*Refd.* *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

316. *Add. Annotation* :—*Refd.* *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

350. *Add. Annotation* :—*Refd.* I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

351. *Add. Annotation* :—*Refd.* I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

384. *Add. Annotation* :—*Refd.* Cross *v.* Imperial Continental Gas Assocn., [1923] 2 Ch. 553.

### PART I. SECT. 6, SUB-SECT. 2.

**h 1.** — *Society of St. Vincent de Paul—House of Providence.*—Testator bequeathed £100 to the Society of St. Vincent de Paul, & directed the residue of his estate to be converted into cash,

& paid to the House of Providence. These were voluntary unincorporated associations :—*Held* : so far as they could be paid out of personalty these legacies were good; & should be paid over to the persons having the management of the pecuniary affairs of the

institutions named.—*ELMSLEY v. MADDEN* (1867), 18 Gr. 386. CAN.

**11.** *Fund of Benevolence of Freemasons—Valid.*—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 216.—AUS.

397. *Add. Annotation*:—**Refd.** *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
398. *Add. Annotation*:—**Refd.** *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
421. *Add. Annotation*:—**Mentd.** Harper v. Hedges, [1923] 2 K. B. 314.
429. *Add. Annotation*:—**Refd.** *Re* Porter, Porter v. Porter, [1925] Ch. 746.
- 432a. *Art gallery—Valid—Right of trustees to purchase house & grounds.*—*Re* TOWNER, EASTBOURNE CORPN. v. A.-G. (1923), 40 T. L. R. 3.
464. *Add. Annotation*:—**Refd.** *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
466. *Add. Annotation*:—**Refd.** *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
472. *Add. Annotations*:—**Consd.** *Re* Clarke, Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas v. Davis, [1923] 1 Ch. 225.
480. *Add. Annotation*:—**Refd.** *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
498. *Add. Annotation*:—**Mentd.** *Re* Brooks, Public Trustee v. White, [1928] Ch. 214.
503. *Add. Annotation*:—**Refd.** *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
551. *Add. Annotation*:—**Mentd.** Nicholson v. England, [1926] 2 K. B. 93.
574. *Add. Annotation*:—**Mentd.** Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603.
591. *Add. Annotation*:—**Generally, Mentd.** *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
625. *Add. Annotation*:—**Refd.** *Re* Grove-Grady, Plowden v. Lawrence [1929] 1 Ch. 557.
- 629a. ——— **Under Education Act, 1921 (c. s. 117—Assurance of land for erection of sanatorium—Exempt.)—***Re* HARROW SCHOOL GOVERNORS & MURRAY'S CONTRACT, [1927] 1 Ch. 556; 96 L. J. Ch. 267; 137 L. T. 119; 71 Sol. Jo. 408.
634. *Add. Annotation*:—**Mentd.** *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
638. *Add. Annotation*:—**Mentd.** *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.

## Part III.—Charitable Trusts.

653. *Add. Annotations*:—**Consd.** *Re* Clarke, Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas v. Davis, [1923] 1 Ch. 225.
- 657a. ——— ]—A gift to A. "who will at her death dispose of it in such charitable ways for good to result from my hard work in accumulating the property handed over for her use only & to do as she may wish in her lifetime," gives A. only a life estate, & on her death, whether before or after testator, the fund becomes applicable for charitable purposes & is not distributable as on an intestacy.—*Re* CAMMELL, PUBLIC TRUSTEE v. A.-G. (1925), 69 Sol. Jo. 345.
658. *Add. Annotation*:—**As to (3) Distd.** *Re* Gwyon, Public Trustee v. A.-G. (1929), 46 T. L. R. 96.
661. *Add. Annotation*:—**Refd.** Blackwell v. Blackwell, [1929] A. C. 318.
666. *Add. Annotation*:—**Mentd.** *Re* Davies, Thomas v. Thomas & Davies (1927), 71 Sol. Jo. 880.
673. *Add. Annotation*:—**Refd.** Blackwell v. Blackwell, [1929] A. C. 318.
680. *Add. Annotation*:—**Refd.** Blackwell v. Blackwell, [1929] A. C. 318.
687. *Add. Annotations*:—**As to (1) Consd.** *Re* Clarke, Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* Davis, Thomas v. Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England v. Tetley, [1923] 1 Ch. 258; *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
- 691a. ——— **Fund deposited in names of bishop & two archdeacons—Income not drawn upon—Date of deposit coinciding with creation of new diocese.**—On June 29, 1888, money was deposited in a bank in the names of the Bishop of Wakefield & two archdeacons. In May, 1888, the Diocese of Wakefield was newly formed, & H. was enthroned on June 25, 1888, as first bishop of that diocese. The income of the fund so deposited was not drawn upon, & the fund with £900 accumulated interest was found intact by the exors. of the archdeacon, who was the survivor of the three persons in whose names the money had been deposited. The fund was not contributed to by those in whose names it was deposited:—**Held**: in such circumstances the exors. of the archdeacon who was the survivor were not beneficially entitled to the fund, but the fund was one subject to charitable trusts.—**PEASE v. How** (1922), 91 L. J. Ch. 334; 126 L. T. 629; 66 Sol. Jo. 250.
- 702a. **"Missionary purposes"—Valid—Court entitled to regard missionary work of legatee.**—Testatrix bequeathed her residuary estate "for missionary purposes" to J.:—**Held**: (1) the ct. could admit evidence that testatrix had often met J. at conferences of Christian workers & discussed religious subjects with him, & that before she made her will she had sent him considerable sums

**PART II. SECT. 4, SUB-SECT. 5.**  
**sd.** *Necessity for registration—Under 24 Act, c. 43.*—*Re* STRATFORD BAPTIST CHURCH PROPERTY (1869), 2 Ch. 388.—**CAN.**

**PART II. SECT. 6, SUB-SECT. 4.**  
**t i.** ——— *Not applicable to.*—The above Act is not in force in

Manitoba.—*Re* FENTON ESTATE, [1920] 2 W. W. R. 367; 53 D. L. R. 82; 30 Man. L. R. 246.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 1.**  
**sm.** *By settlement—Settlor divesting himself of income from shares.*—*TUNLEY v. FEDERAL COMR. OF TAXA-*

*TION* (1927), 39 C. L. R. 528.—**AUS.**

**PART III. SECT. 2, SUB-SECT. 2.—**  
**A. (a).**

**sp.** *Gift "for some good public purpose"—Such as emergency hospital, women's home or park with urinary*—*Fald.*—*COX v. HOGAN & VICTORIA CORPN.* (1925), 35 B. C. R. 286.—**CAN.**



of money to aid him in the work in which he was so engaged, which was that of pastor of a church belonging to a body created solely for evangelistic purposes; (2) having regard to that evidence, the gift was not void for uncertainty but was a good charitable gift.—*Re REES, JONES v. EVANS*, [1920] 2 Ch. 59; 89 L. J. Ch. 382; 123 L. T. 567.

**703a.** “Two institutions which I hope to be able to name”—*Valid.*—*Testatrix*, who died in 1919, left her foreign property to “two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors.”—*Held*: the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, and therefore was not too vague but was a good charitable gift.—*Re SMITH, BLYTH v. A.-G.* (1920), 36 T. L. R. 416, C. A.

**705.** *Add. Annotations*:—*Consd. R. v. Income Tax p. Rank's Trustees*

*Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225; *Re Hummeltenberg, Beauty v. London Spiritualistic Alliance*, [1923] 1 Ch. 237; *Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258; *Verge v. Somerville*, [1924] A. C. 496; *General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578; *Geologists' Assn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271; *I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611; *Re Grove-Grady, Plowden v. Lawrence* [1929] 1 Ch. 557.

**708.** *Add. Annotation*:—*Consd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

**716.** *Add. Annotation*:—*Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

**717a.** “For such objects connected with the church as ‘vicar’ shall think fit”—*Valid.*—Where testatrix devised & bequeathed all the residue of her estate to the vicar of a church “for such objects connected with the church as he shall think fit”—*Held*: “objects connected with the church” did not mean parochial objects, but meant objects connected with the fabric & services of the church, & therefore the gift created a valid charitable gift.—*Re BAIN, PUBLIC TRUSTEE v. ROSS* (1929), 45 T. L. R. 617, C. A.

**718.** *Add. Annotations*:—*Consd. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283; *Re Bain, Public Trustee v. Ross* (1929), 45 T. L. R. 617.

**718a.** Trustees empowered to change objects if interests of Church better served.—*Re*

*WILLIAMS, PUBLIC TRUSTEE v. WILLIAMS*, No. 75a, ante.

**720.** *Add. Annotations*:—*Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re Chapman, Hales v. A.-G.* (1922), 91 L. J. Ch. 527; *Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225; *Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

**721.** *Add. Annotations*:—*Consd. A.-G. v. National Provincial Bank*, [1924] A. C. 262. *Refd. Verge v. Somerville*, [1924] A. C. 496.

**723.** *Add. Annotation*:—*Consd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

**724a.** “Charitable or public institutions”—*At discretion of trustees—Void.*—By his will dated May 3, 1918, testator, after making certain specific & pecuniary bequests & giving an annuity to his wife, devised & bequeathed all

wise disposed of upon trust for conversion & investment of the net residue as therein mentioned. He directed his trustees “to hold the residuary moneys & investments upon trust, subject to payment of the wife’s annuity, to pay & apply the same for the benefit of one or more charitable or public institutions in Wales as they may deem advisable in their absolute discretion & in such proportions & shares as they may deem fit”—*Held*: the non-charitable objects of the residuary gift were too vague, & the whole gift failed for uncertainty.—*Re DAVIS, THOMAS v. DAVIS*, [1923] 1 Ch. 225 L. J. Ch. 322; 128 L. T. 735; 39 T. 201; 67 Sol. Jo. 297.

**725.** *Add. Annotation*:—*Refd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407.

**731.** *Add. Annotations*:—*Consd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258. *Distd. I. R. Comrs v. Roberts Marine Mansions Trustees* (1927), 43 T. L. R. 270. *Consd. General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578; *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557. *Refd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407; *Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225; *A.-G. v. National Provincial Bank*, [1924] A. C. 262; *Verge v. Somerville*, [1924] A. C. 496; *I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611; *Midland Counties Institution of Engineers v. I. R. Comrs.* (1928), 14 Tax Cas. 285.

**734.** *Add. Annotation*:—*Refd. Verge v. Somerville*, [1924] A. C. 496.

**735.** *Add. Annotations*:—*As to (1) Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258. *As to*

**PART III. SECT. 2, SUB-SECT. 2.—A. (b).**

st. “To be invested in war charities at trustees’ discretion to be selected by trustees”—*Valid.*—*Re HAMMOND* (1921), 68 D. L. R. 590; 51 O. L. R. 149.—*CAN.*

**PART III. SECT. 2, SUB-SECT. 2.—B.**

i. “Charitable or other deserving

institutions”—*As trustees think fit—Void.*—*CAMPBELL'S TRUSTEES v. CAMPBELL*, [1921] S. C. (H. L.) 12; 58 Sc. L. R. 69.—*SCOT.*

b i. “Benevolent, charitable & religious institutions”—*As trustees think proper—In limited locality—Valid.*—*EDGAR, ETC. v. CASSELLS*, [1922] S. C. 395; 59 Sc. L. R. 304.—*SCOT.*

c i. — [—By the law of Scotland a

trust for “charitable or benevolent” purposes is a trust for “charitable” purposes alone.—*JACKSON'S TRUSTEES v. INLAND REVENUE*, [1926] S. C. 379; 10 Tax Cas. 460.—*SCOT.*

c ii. — *In particular place—As trustees shall think deserving.*—*Re GREAVES* (B. C.), [1917] 1 W. W. R. 997.—*CAN.*

(2) *Consd. Re Bain, Public Trustee v. Ross* (1929), 45 T. L. R. 617.

**735a. "Charities & institutions"—"As executors in their absolute discretion think fit"—Void.]**—*Re CLARKE, BRACEY v. ROYAL NATIONAL LIFEBOAT INSTITUTION*, No. 47a, ante.

**739. Add. Annotations:—***Consd. Caldwell v. Caldwell* (1921), 91 L. J. P. C. 95; *A.-G. v. National Provincial Bank*, [1924] A. C. 262; *Re Gwyon, Public Trustee v. A.-G.* (1929), 46 T. L. R. 96. **Refd.** *Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225.

**740a. "Charitable purposes" directed by testator or for such objects as executor selects—Void.]**—*Re CHAPMAN, HALES v. A.-G.*, No. 1424a, post.

**740b. "Patriotic purposes or charitable institutions or objects"—"At discretion of trustees—Void.]**—Testator by his will directed his trustees to apply one-fifth of his residuary estate "for such patriotic purposes or objects & such charitable institution or institutions or charitable object or objects in the British Empire" as they in their absolute discretion should select:—*Held*: the words of the gift must be read disjunctively, "patriotic purposes" were not necessarily charitable, & the gift was void for uncertainty.—*A.-G. v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND*, [1924] A. C. 262; 40 T. L. R. 191; 68 Sol. Jo. 235; *sub nom. Re TETLEY, A.-G. v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND*, 93 L. J. Ch. 231; 131 L. T. 34, H. L.; *affg. S. C. sub nom. Re TETLEY, NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. v. TETLEY*, [1923] 1 Ch. 258, C. A.

*Annotations:—Consd. Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557. **Refd.** *Verge v. Somerville*, [1924] A. C. 496; *I. R. Comrs. v. Roberts Marine Mansions Trustees* (1927), 43 T. L. R. 270; *General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578; *I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.

**745. Add. Citation:—**91 L. J. P. C. 95.

**748. Add. Annotation:—***As to (1) Consd. Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121.

**751. Add. Annotation:—***Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

**751a. "Objects of charity or any other public objects"—"In parish of F."—Valid.]**—By her will made in 1889 testatrix bequeathed all her residuary estate to trustees upon trust to apply such parts thereof as were applicable by law for charitable legacies, in such manner as her trustees should, in their absolute discretion, think fit, "for the benefit of the schools, & charitable institutions, & poor, & other objects of charity, or any other public objects in the parish of F.":—*Held*: it was a good charitable gift of the whole residuary estate, & was not to be read disjunctively.—*Re BENNETT, GIBSON v. A.-G.*, [1920] 1 Ch. 305; 89 L. J. Ch. 269; 122 L. T. 578; 84 J. P. 78; 64 Sol. Jo. 291.

*Annotation:—Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

**754. Add. Annotations:—***Refd. Adamson v. Melbourne & Metropolitan Board of Works*, [1929] A. C. 142; *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.

**755a. "Hospital or other charitable or benevolent institution"—Valid.]**—By his will, made in

1917, testator gave his residuary estate to trustees upon trust to apply the same & the income thereof in providing or endowing, or assisting in providing or endowing, any hospital wards, beds, or cots, or other like or similar objects, as his trustees should in their absolute discretion think fit, in memory of his late wife, "for, at, or in connection with, any hospital or convalescent home or other charitable or benevolent institution"; & testator expressed the wish, but not so as to impose any legal obligation on his trustees, that such hospital or other charitable or benevolent institution should be in, or connected with, the parish of St. Marylebone, London, or at, or in connection with, the town of Kilmarnock:—*Held*: the word "hospital" where it was first used in the will was used in an adjectival sense, & applied to the following words "wards, beds, or cots"; the primary intention of testator was to provide or endow the same, & the places where they could be provided or endowed must be hospitals or convalescent homes or other charitable institutions, & the words "benevolent institution" must be construed as *ejusdem generis*, with "hospital"; & therefore the bequest constituted a good & valid charitable gift.—*Re LUDLOW, BENGE-JONES v. A.-G.* (1923), 93 L. J. Ch. 30, C. A.

**762. Add. Annotation:—***Mentd. Jackson's Trustees v. Lord Advocate* (1926), 10 Tax Cas. 460.

**763. Add. Annotation:—***Folld. Re Porter, Porter v. Porter*, [1925] Ch. 746.

**765. Add. Annotation:—***As to (2) Consd. Re Porter, Porter v. Porter*, [1925] Ch. 746.

**769. Add. Annotation:—***Consd. Re Porter, Porter v. Porter*, [1925] Ch. 746.

**769a. Invalid gift for maintenance of family graves—Surplus to rector of B.—Void for uncertainty.]**—*FOWLER v. FOWLER* (1864), 33 Beav. 616; 33 L. J. Ch. 674; 10 L. T. 682; 28 J. P. 707; 10 Jur. N. S. 648; 12 W. R. 972; 55 E. R. 507.

*Annotations:—Distd. Re Williams* (1877), 5 Ch. D. 735. **Refd.** *Hoare v. Osborne* (1866), 30 J. P. 309; *Re Rigley's Trusts* (1866), 36 L. J. Ch. 147; *Choa Choon Neoh v. Spottiswoode* (1869), *Wood's Oriental Cases*, App. I.

**769b. Gift for maintenance & upkeep of masonic temple—Residue to masonic charities—Whole gift void.]**—By a codicil to his will testator directed his exors., on the death of his wife, to pay from his estate to the trustees of a masonic temple, erected by him to the memory of his son, £10,000, to be invested & the interest applied by the trustees, in their full & sole discretion, to the maintenance & upkeep of the masonic temple, & the balance, if any, to be applied in favour of any masonic charities which the trustees might select. The masonic temple was to be used for masonic ceremonies, & smaller rooms for lodge meetings, business & meetings of a social but not political character. Upon a summons to ascertain whether the legacy was valid or not:—*Held*: (1) the decisions in the "tomb cases" were inapplicable; (2) the whole income of the fund being charged with a trust, at the discretion of the trustees, for a primary object which was invalid, the ct. was not entitled to control this discretion, & institute an inquiry at chambers as to the amount of income necessary to be applied for maintenance & upkeep of the temple, so that

the gift of the balance would be valid; (3) as the primary gift was not sufficiently defined, the whole legacy was void for uncertainty.—*Re PORTER, PORTER v. PORTER*, [1925] Ch. 746; 95 L. J. Ch. 46; 133 L. T. 812.

771. *Add. Annotations*:—*Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re King, Kerr v. Bradley*, [1923] 1 Ch. 243.

772. *Add. Annotation*:—*Refd. Re Porter, Porter v. Porter*, [1925] Ch. 746.

776. *Add. Annotation*:—*Folld. Re Porter, Porter v. Porter*, [1925] Ch. 746.

786. *Add. Annotations*:—*Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re King, Kerr v. Bradley*, [1923] 1 Ch. 243.

794. *Add. Annotations*:—*Apld. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225.

795. *Add. Annotations*:—*Apld. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225.

810. For "appointment" read "apportionment."

816. *Add. Annotation*:—*Refd. Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.

817. *Add. Annotation*:—*Consd. Re Bain, Public Trustee v. Ross* (1929), 45 T. L. R. 617.

823a. — Description not confined to charitable purposes — Description having particular meaning in religious denomination to which testator belonged.]—*Re How, How v. How*, [1929] W. N. 178.

832. *Add. Annotation*:—As to (1) *Apprvd. Blackwell v. Blackwell*, [1929] A. C. 318.

*B. Names of Charities omitted or left blank* (Vol. VIII., p. 305).

For "See Nos. 1419 *et seq.*, *post.*," read "See, also, Nos. 1419 *et seq.*, *post.*," & add as follows:—

841a. Gift to "two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my executors"—*Valid.*—Testatrix, who died in 1919, left her foreign property to "two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors."—*Held*: the gift ought to be construed, not as a gift to two institutions

which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re SMITH, BLYTH v. A.-G.* (1920), 36 T. L. R. 416, C. A.

843a. — Poor of parish where testator buried—Direction as to place of burial—Subsequent parol direction as to different place.]—Testatrix, by her will, directed that her remains should be deposited in the church nearest which she might chance to die; & in a subsequent part of the will gave a legacy to the poor of the parish where her remains were deposited. Her executrix, in pursuance of parol directions given subsequent to the date of the will, buried her in the neighbouring parish of W. —*Held*: nevertheless, the poor of the parish of B., where testatrix died, were entitled to the legacy.—*SALTER v. FAREY* (1843), 12 L. J. Ch. 411; 1 L. T. O. S. 76; 7 Jur. 831.

856. *Add. Annotation*:—*Refd. Re Lucas, Rhys v. A.-G.*, [1922] 2 Ch. 52.

865. *Add. Citation*:—3 Leon. 18.

875. *Citation*:—For "2 W. R. 154" read "21 W. R. 154."

884a. — — — "Chelsea Hospital"—*Royal Hospital, Chelsea.*—The ct. held that a testamentary gift to "the Chelsea Hospital" went to the Royal Hospital, Chelsea, & not to any other hospital having "Chelsea" as part of its name.—*Re DE JONG, PUBLIC TRUSTEE v. GOLDSMID* (1929), 46 T. L. R. 70; 73 Sol. Jo. 850.

891a. — Gift to "Soldiers' Crippled Homes"—Three claimants—*Legacy divided.*—Testatrix by her will bequeathed part of her estate to "Soldiers' Crippled Homes." In response to advertisements three institutions put in claims:—*Held*: as there was nothing to show that testatrix knew about these institutions, the fairest course would be to divide the bequest equally between the three.—*Re HUSBAND, NEAVE v. BARNARD'S HOMES NATIONAL INCORPORATED ASSOCN.* (1923), 58 L. Jo. 600.

894a. — — — "Diocesan Curates' Aid Society"—Testator resident in Oxford—*Oxford Diocesan Spiritual Help Society entitled.*—*Re JOHNSON, GOODRICH v. OGLE* (1893), 9 T. L. R. 277.

#### PART III. SECT. 4, SUB-SECT. 2.—B.

824 i. *Admitted*—Description applying indifferently to more than one charity—"Old People's Home"—*Old Folks Home or Maison des Vieux.*—*Re SMITH* (1912), 22 W. L. R. 630; 3 W. W. R. 399; 22 Man. L. R. 756; 8 D. L. R. 93.—CAN.

#### PART III. SECT. 4, SUB-SECT. 2.—C.

830 ii. — — — — — Where testator made a bequest to a society, & it was found no society exactly corresponding to the designation given by testator was known.—*Held*: if the society is misdescribed, the ct. will if possible, discover from surrounding circumstances, what society was intended. The ct. will admit extrinsic evidence to determine what testator's words express. Evidence to show that testator subscribed to a particular society will be admitted, to show what was in his mind when he made the bequest.—*Re ALEXANDER'S WILL* (1885), 7 Nfld.

L. R. 42.—NFLD.

#### PART III. SECT. 4, SUB-SECT. 3.—C.

sw. *Advancement of art, science or literature.*—A testator directed his trustees to hold the residue of his estate for behoof of his sister in life, with power to encroach on the capital, & on her death to make certain payments. He further provided: " & if there is still any residue left my trustees shall apply it in whatever manner to them may seem most suitable for the advancement of art, science, or literature in the burgh of C."—*Held*: the bequest was void from uncertainty.—*HARPER'S TRUSTEES v. JACOBS*, [1929] S. C. 345.—SCOT.

xx. *Gift to "missions, Corean & Home"*—Testator contributor to Presbyterian missions.]—Where a legacy was to "the missions, Corean & Home," & testatrix had been in the habit of contributing to the Home & Corean Mission Fund in connection with the Presby-

terian Church in Canada:—*Held*: the legacy in question should go to the latter fund.—*Re HENDERSON ESTATE* (1914), 14 E. L. R. 401.—CAN.

#### PART III. SECT. 4, SUB-SECT. 3.—D.

i. — — — — — "Industrial School for Blind, B. Place"—*Royal Institution for Blind Incorporated* in B. Place entitled.]—*Re VORZ, PUBLIC TRUSTEE v. STEELE*, [1926] S. A. S. R. 218.—AUS.

pi. — — — — — *Gift to Society for Prevention of Cruelty to Animals in New Zealand*—Several local societies for prevention of cruelty to animals—*Legacy divided.*—*Re BUCKLEY, PUBLIC TRUSTEE v. WELLINGTON SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INC.)*, [1928] N. Z. L. R. 148.—N.Z.

#### PART III. SECT. 4, SUB-SECT. 3.—E.

898 ii. — — — — — *Gift to Presbyterian Church—Entry into Union.*—*Re PATRICKSON (N.S.)*, [1928] 2 D. L. R. 791.—CAN.

906. *Add. Annotation*:—**Distd.** *Re* Patten, Westminster Bank v. Carlyon, [1929] 2 Ch. 276.
908. *Add. Annotation*:—**Generally, Refd.** *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
924. *Add. Annotation*:—**Refd.** *Re* Porter, Porter v. Porter, [1925] Ch. 746.
928. *Add. Annotation*:—**Mentd.** *Re* Brooks, Public Trustee v. White, [1928] Ch. 214.
932. *Add. Annotation*:—**Refd.** Brighton College v. Marriott, [1926] A. C. 192.
933. *Add. Annotation*:—**Refd.** *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
945. *Add. Annotation*:—**Refd.** *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
948. *Add. Annotation*:—**Refd.** *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
- 981a. *Gift to "church"—Construed as gift to congregation—Not to edifice.*—*Re* TYLER (1901), 45 Sol. Jo. 204.
- 991a. — *Gift to Superior of Jesuit Church.*—*Re* BARCLAY, GARDNER v. BARCLAY, STEUART v. BARCLAY, No. 79a, *ante*.
994. *Add. Annotation*:—**Mentd.** *Re* Emerson, Morrill v. Nutty, [1929] 1 Ch. 128.
999. *Add. Annotation*:—**Refd.** *Re* Clarke, Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407.
1014. *Add. Annotation*:—**Mentd.** Harper v. Hedges, [1923] 2 K. B. 314.
1026. *Add. Annotation*:—**Mentd.** *Re* Southerden, Adams v. Southerden, [1925] P. 177.
1041. *Add. Annotation*:—**Refd.** *Re* Robinson, Wright v. Tugwell, [1923] 2 Ch. 332.
- 1041a. — **Condition subsidiary to main charitable object—Performance of condition likely to defeat main charitable object—Condition dispensed with.**—Testatrix, who died in 1889, bequeathed £1,500 towards an endowment for a proposed evangelical church at B., provided certain conditions were carried out. An action was commenced for the administration of her estate, & on the further consideration thereof on Nov. 3, 1891, it appeared that amongst other conditions, which mainly related to the conduct of the services, it was made an "abiding condition" that the black gown should be worn in the pulpit, unless there should be an alteration in the law rendering it illegal. It further appeared that in compliance with the conditions a church had been erected at B. & the other conditions laid down by testatrix fulfilled,

except the condition as to wearing a black gown, which condition was held by the judge to be a continuing condition, but not an illegal one; & accordingly, the fund was carried over to the credit of the action, the separate account of "the £1,500 endowment fund for the proposed B. church," with liberty for the incumbent & all persons interested to apply as to the capital or income thereof. This petition was presented by the present incumbent asking that under a scheme or otherwise the fund in ct. might be transferred to the Ecclesiastical Comrs. Evidence was adduced that the use of the black gown in the pulpit was practically unknown in the diocese of the new church, & that its use was calculated to alienate the congregation & to defeat the main objects of testatrix, namely, the teaching & practice of evangelical doctrine & services:—**Held**: the condition requiring the wearing of a black gown in the pulpit was subsidiary to the main charitable object, namely, the endowment of an evangelical church at B., & as the performance thereof had been shown to be impracticable the condition might be dispensed with & the fund be transferred to the Ecclesiastical Comrs. as part of the endowment of the church so erected as aforesaid.—*Re* ROBINSON, WRIGHT v. TUGWELL, [1923] 2 Ch. 332; 92 L. J. Ch. 340; 129 L. T. 527; 39 T. L. R. 509; 67 Sol. Jo. 619.

1061. *Add. Annotation*:—**Consd.** *Re* Quintin Dick, Cloncurry v. Fenton, [1926] Ch. 992.
1078. *Add. Annotation*:—**Refd.** I. R. Comrs. v. Yorkshire Agricultural Soc., [1928] 1 K. B. 611.
1080. *Add. Annotations*:—**Refd.** I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.
1081. *Add. Annotation*:—**Refd.** I. R. Comrs. v. Yorkshire Agricultural Soc., [1928] 1 K. B. 611.
- 1089a. — **Provision of knickers for all boys of district—Void.**—*Re* GNYON, PUBLIC TRUSTEE v. A.-G., No. 266a, *ante*.
1095. *Add. Annotation*:—**Consd.** *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1098. *Add. Annotation*:—**Generally, Refd.** *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.

## PART III, SECT. 4, SUB-SECT. 5.—A.

x i. — *Gift to "that church which is sound & evangelical"*—*Prior gift to Presbyterian Church.*—Testator, a minister of the United Presbyterian Church of North America, after bequeathing \$1,000 to the said church, proceeded as follows: "I give for a Jewish mission \$1,000 to that church which is sound & evangelical in doctrine & pure in worship, using the songs of praise, the inspired book which can unite all nations," etc. The evidence showed that this description applied to the said church:—**Held**: not void, for uncertainty, for that testator clearly intended the said church as the legatee. —GILLIES v. McCONOCHIE (1882), 3 O. R. 203.—CAN.

x ii. — *"Roman Catholic Church in Canada"*—*General Roman Catholic Church.*—**Held**: a bequest to "foreign missions in connection with the Roman Catholic Church in Canada," should

be paid to the general Roman Catholic Church, to be used for foreign missions in connection with that branch of the church which is in Canada, there being no Roman Catholic Church in Canada as a separate entity.—*Re* UPTON (1913), 24 O. W. R. 54; 4 O. W. N. 815; 9 D. L. R. 373.—CAN.

PART III, SECT. 4, SUB-SECT. 5.—B.  
sa. *Fund for maintenance & repair—Repair of fabric—& conduct of services—& provision of furniture, fittings & vessels.*—*Re* BOYD (1924), 55 O. L. R. 627.—CAN.

## PART III, SECT. 4, SUB-SECT. 7.

1007 i. *Discretion of trustees—Gift to war charities—Not confined to Canada.*—*Re* HAMMOND (1921), 68 D. L. R. 590; 51 O. L. R. 149.—CAN.

## PART III, SECT. 6, SUB-SECT. 4.—B.

k i. — — — — —. — Testator left an estate of \$99,000, of which \$44,000

was in real estate & Hudson Bay Co. shares. This latter sum was left in trust to supply an income for a Bishop of Cornwall, or if such a Bishop was not elected within twenty-five years after testator's death, the money was to go to the University of Bishop's College, at Lennoxville, for the endowment of a Professorship of Natural Science:—**Held**: there was an immediate gift for charitable uses delayed as to the actual conveyance till the secured debts were paid, & therefore, vested at the death & effective in law, though the particular application of the gift might be in suspense for twenty-five years, or might never take effect at all, in which contingency there was a valid transfer to another charity at the end of twenty-five years; & the will did not offend against the rule concerning perpetuities.—*Re* MOUNTAIN'S WILL (1912), 21 O. W. R. 866; 3 O. W. N. 1011; 26 O. L. R. 163; 4 D. L. R. 737.—CAN.

- 1098a.** ———.]—*Re* MONK, GIFFEN *v.* WEDD, No. 34a, *ante*.
- 1099.** *Add. Annotations* :—*Consd.* *Verge v. Somerville*, [1924] A. C. 496. *Distd.* *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96.
- 1109.** *Add. Citation* :—127 L. T. 123.
- 1114.** *Add. Annotation* :—*Refd.* *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.
- 1115.** *Add. Annotations* :—*Consd.* *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56. *Apld.* *Re* Knapp, Spreckley *v.* A.-G., [1929] 1 Ch. 341.
- 1116.** *Add. Annotation* :—*Consd.* *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56.
- 1116a.** *Direction for accumulation—Discretion of trustees.*]—The expression in a will of a wish that “the interest upon my investments may be allowed to accumulate . . .” followed by an indication of the charitable objects to which the accumulations are to be devoted does not bind the trustees of the will. But it is a directory provision; & the trustees ought to bear it in mind & generally to use their discretion so as to give effect to it.
- A will, after certain bequests, including a bequest of residue in trust for “the Trustees of the S.M. Charities,” expressed a wish of testator that “the income upon my investments may be allowed to accumulate for a period of twenty-one years or so long as the law will allow,” & then set out various charitable objects in the town of S. which testator desired should thereafter benefit by such income only :—*Held* : the wish as to accumulation was not binding, but was in the circumstances a directory provision to which regard should be had in settling a scheme.—*Re* KNAPP, SPRECKLEY *v.* A.-G., [1929] 1 Ch. 341; 98 L. J. Ch. 95; 140 L. T. 533.
- 1118.** *Add. Annotation* :—*Refd.* *Re* Monk, Giffen *v.* Wedd (1927), 137 L. T. 4.
- 1129.** *Add. Annotation* :—*Mentd.* *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
- 1150.** *Add. Annotation* :—*Refd.* *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.
- 1170.** *Add. Annotation* :—*Mentd.* *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
- 1186a.** ———.]—Testator gave the residue of his estate on trust to pay the income to his wife for life & after her death to pay £3,000 to the Royal National Lifeboat Institution in order to defray the cost of building two lifeboats, & he directed that after payment of certain legacies to hospitals the remainder of the residue should be paid to the aforesaid institution for the purpose of keeping the two lifeboats in repair & of replacing them when necessary, & that if the remainder of the residue should be insufficient for this purpose the institution might apply it to its general purposes. The legacy of £3,000 was inadequate to provide two lifeboats :—*Held* : on the death of the wife the £3,000 legacy failed & fell into residue, & the institution was entitled to take the whole of the residue, after payment of the legacies to hospitals, & to apply it to its general purposes.—*Re* BECK, CROOK *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION (1926), 42 T. L. R. 245.
- 1188.** *Add. Annotation* :—*Refd.* *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.
- 1189.** *Add. Annotations* :—*Distd.* *Re* Beck, Crook *v.* Royal National Lifeboat Institution (1926), 42 T. L. R. 241. *Refd.* *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.
- 1200.** *Add. Annotation* :—*Refd.* *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.
- 1225.** *Add. Annotation* :—*Refd.* *Harper v. Hedges*, [1923] 2 K. B. 314.
- 1227.** *Add. Annotations* :—*Consd.* *Verge v. Somerville*, [1921] A. C. 196. *Refd.* *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 L. T. R. 96.
- 1231.** *Add. Annotation* :—*Mentd.* *Nicholson v. England*, [1926] 2 K. B. 93.

## Part IV.—Effectuation of Charitable Trusts by means of Schemes and the Cy-près Doctrine.

- 1248.** *Add. Annotation* :—*Consd.* *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.
- 1252a.** ——— *No trustees.*]—*VERGE v. SOMERVILLE*, No. 199b, *ante*.
- 1371.** *Add. Citation* :—*previous proceedings* (1912), 106 L. T. 295.
- Add. Annotation* :—*Generally*, *Refd.* *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.
- 1381.** *Add. Annotation* :—*Mentd.* *Re* Taylor, Taylor *v.* Tweedie, [1923] 1 Ch. 99.
- 1382a.** *Gift for rebuilding & equipment of hospital—Hospital partially rebuilt at testator's death.*]—Testatrix gave a legacy “towards the rebuilding & equipment” of a hospital “to the satisfaction & under the direction” of her exors. At the death of testatrix the hospital was almost entirely rebuilt, though not equipped. The directors did not at any time direct the rebuilding or equipment :—*Held* : (1) the exors. could not give directions for works already completed, but if they gave their assent to proposed works of which they had a general knowledge they might apply the legacy towards such works when properly executed; (2) “equipment” meant everything required to convert an empty building into a hospital; (3) no limit of time being

**PART IV. SECT. 1, SUB-SECT. 1.—A.**  
p. l. ——— *Funds insufficient.*]—*Re* MITCHNER, [1922] St. R. Qd. 39.—*AUS.*

—.]—*Re* WRIGHT (1923), 56 N. S. R. 364.—*CAN.*

**PART IV. SECT. 2, SUB-SECT. 2.—A.**  
1372 *v.* ———.]—*Re* McNAB, [1925] 2 D. L. R. 1100; 56 O. L. R. 676; *affg.*, 55 O. L. R. 538.—*CAN.*

1372 *vi.* ———.]—*Re* DEREMORE

ESTATE (Alta.), [1927] 2 D. L. R. 1093 [1927] 2 W. W. R. 113.—*CAN.*

sb. *Purpose unnecessary—Fund to establish free school—Free school established by statute.*]—*R. v. CUTLER* (circa. 1876), R. E. D. 159.—*CAN.*

fixed the discretion of the executors remained exercisable until the hospital was fully rebuilt & fully equipped.—*Re UNITE, EDWARDS v. SMITH* (1906), 75 L. J. Ch. 163; 54 W. R. 358; 22 L. R. 242; 50 Sol. Jo. 239.

1392. *Add. Annotation* :—**Consd. Re** Monk, Giffen v. Wedd, [1927] 2 Ch. 197.  
1394. *Add. Annotation* :—**Refd. Re** Monk, Giffen v. Wedd, [1927] 2 Ch. 197.  
1395. *Add. Annotation* :—**Refd. Re** Monk, Giffen v. Wedd, [1927] 2 Ch. 197.  
1404. *Add. Annotation* :—**Refd. Re** King, Kerr v. Bradley, [1923] 1 Ch. 243.  
1412. *Add. Annotation* :—**Refd. I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire** (1926), 42 T. L. R. 612.  
1424. *Add. Annotation* :—**Refd. Re** Chapman, Hales v. A.-G., [1922] 2 Ch. 479.

**1424a.** — — — **Alternative non-charitable gift.]**—Testatrix by her will appointed an exor., & after giving various pecuniary legacies, including two for charitable purposes, & £100 to her exor., she left in blank the name of her residuary legatee. By a codicil testatrix desired that her residue should be “applied for charitable purposes as I may in writing direct, or to be retained by my exor. for such objects & such purposes as he may in his discretion select, & to be at his own disposal.” She left no written directions as to the charities to be benefited :—*Held* : (1) no good charitable trust was declared, the exor. having a discretion to devote the residue to objects & purposes other than charitable ; (2) the trust for those objects & purposes was too indefinite for the ct. to execute, & there being no direct gift to the exor., the added words “to be at his own disposal” were not sufficient to enable the ct. to hold that the exor. took the residue beneficially, & he held it as trustee for the next of kin.—*Re CHAPMAN, HALES v. A.-G.*, [1922] 2 Ch. 479 ; 91 L. J. Ch. 527 ; 127 L. T. 616 ; 66 Sol. Jo. 522, C. A.  
*See, also*, No. 841b, *ante*.

**PART IV. SECT. 2. SUB-SECT. 2.—**  
C. (b).

ad. Hostel ceasing to exist—Work of hostel undertaken by Government—No general charitable intention.]—**RE FITZGIBBON (1922), 69 D. L. R. 524; 51 O. L. R. 500.—CAN.**

**PART IV. SECT. 2. SUB-SECT. 2.—D.**

c i. —J.—An association, which had managed an institution for the education & training of destitute boys in an industrial training ship, owing to change of circumstances, whereby it was no longer possible to carry on the institution usefully, was wound up. A petition was presented to the ct. craving approval of a scheme for the funds to be transferred to nine trustees, of whom seven should be nominated by the existing executive committee, & the remaining two by two local shipowners' associations, with power to assume the trustees' functions during any vacancy, & four trustees appointed by the shipowners' associations to be filled by persons nominated by these bodies. The ct. sanctioned the scheme, being satisfied that in the particular circumstances of the case

sufficient provision had been made in the constitution of the trust for the due administration of the funds in the future.—CLYDE INDUSTRIAL TRAINING SHIP ASSOC., [1925] S. C. 676.—SCOT.

**ak. Persons eligible to act as administrators no longer available.]**—Trustees presented a petition in which they stated that the administration of a fund had become unworkable through lack of effective machinery for carrying it on, as owing to a change in local conditions, persons eligible to act as administrators were no longer available, & craved the ct. to authorise a transfer of the fund to a general trust having similar objects. The ct. authorised the transfer. — ROSTYH CANADIAN FUND TRUSTEES, [1924] S. C. 352.—**SCOT.**

**PART IV. SECT. 2. SUB-SECT. 2.—E.**

g 1. Surplus applied to such other purposes as should be deemed proper.] Where, after satisfying the prescribed objects of a certain charitable trust, there remained a surplus income of the charitable fund which it was found to be impracticable to spend on the

**1481. Add. Annotation:—***As to (1) Consd. Re Cammell, Public Trustee v. A.-G. (1925), 69 Sol. Jo. 345.*

**1434. Add. Annotation :—***Consd. Re Patten, Westminster Bank v. Carlyon*, [1929] 2 Ch. 276.

1444a. Fund for erection of stained glass window—  
Surplus applied to additional stained glass  
windows.]—*Re* KING, *KERR v. BRADLEY*, No.  
3a, *ante*.

**1449a.** — — — **Alternative non-charitable gift.]**  
—*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a,  
*ante.*

**1453. Add. Annotation:—***Reid. Re Monk, Giffen v. Wedd, [1927] 2 Ch. 197.*

1457a. — Particular purpose completed.—Resulting trust of surplus.]—By his will, made in 1876, testator gave £5,000 Consols to Cambridge University, to be transferred to the University if accepted “upon trust to be applied for the express purpose of carrying on to completion & publication my Etymological Dictionary of Anglicised Foreign Words & Phrases,” should the same be incomplete at the time of his decease, they applying the annual dividends towards the completing & publishing of the dictionary. Testator constituted one of his exors. residuary legatee & died in 1880. The University accepted the bequest on the terms & for the purpose specified, & published the dictionary in 1892. After all payments had been made in connection with the publication there remained over a surplus of £1,151 14s. 10d. Consols & £230 derived from income & sales of the dictionary. Upon a summons by the University asking how this surplus should be applied:—*Held*: in the absence of any general charitable intention to be gathered from the terms of the bequest there was no room for the application of the doctrine of *cy-près*, & there was a resulting trust for testator & those claiming under him of the surplus moneys.—*Re STANFORD, CAMBRIDGE UNIVERSITY v. A.-G.*, [1924] 1 Ch. 73; 93 L. J. Ch. 109; 130 L. T. 309; 40 T. L. R. 3; 68 Sol. Jo. 59.

*Annotation:—***Refd.** *Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197.

objects so prescribed, the ct., at the suit of the Advocate-General of Bengal, at the relation of the Treasurer of the Chamber of Commerce & with the consent of the author of the trust, gave leave for the extension of the objects of the trust so as to apply the surplus to such other purposes as the ct. deemed proper upon the *cy-pres* principle.—ADVOCATE - GENERAL OF BENGAL v. WEBB-JOHNSON (1924), L. R. 52 Cal. 508.—IND.

SD. *Erection of church tower—Surplus applied to building Sunday school.*—*ROWE & BROWN v. PUBLIC TRUSTEE*, [1928] N. Z. L. R. 51.—N.Z.

**PART IV. SECT. 2. SUB-SECT. 3.**

**sp.** *Administration of charity becoming increasingly arduous & discouraging.*—It is not a legitimate ground for the application of the doctrine of *cy pres* merely that the administration of a charity has become increasingly arduous & discouraging in its results.—*Re GLASGOW DOMESTIC TRAINING SCHOOL*, [1923] S. C. 892.—**SCOT.**

## Part V.—Trust Property after Trust created.

1480. *Add. Annotation*:—*As to* (2) **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.
1495. *Add. Annotation*:—**Mentd.** Harper *v.* Hedges, [1923] 2 K. B. 314.
1508. *Add. Annotation*:—**N.F.** Nicholson *v.* England, [1926] 2 K. B. 93.
1511. *Add. Annotations*:—*As to* (2) **Consd.** Toates *v.* Toates, [1926] 2 K. B. 30. *Generally, Refd.* I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.
1516. *Add. Annotation*:—**Mentd.** Harper *v.* Hedges, [1923] 2 K. B. 314.
1519. *Add. Annotation*:—**Mentd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.
- 1532a. — **Settled Land Act, 1925 (c. 18), ss. 29, 94.**—The trust deed of a charity placed the entire management & control of its property, which, whether land or investments, was all revenue, in the hands of a sole trustee, in whom it was vested with full power to sell & give receipts for the purchase-money:—**Held**: (1) the trustee could sell the land under his trust deed & give a receipt for the purchase-money without resorting to his life tenant powers under sect. 29 of the above Act at all; (2) in any case the proceeds of sale would remain revenue & would not become capital money arising under the Act; (3) sect. 94 (1) had no application.—*Re* BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, [1927] 1 Ch. 579; 96 L. J. Ch. 272; 43 T. L. R. 334; *sub nom.* BOOTH *v.* SOUTHEND-ON-SEA ESTATE CO.'S CONTRACT, 137 L. T. 122.
1545. *Add. Annotation*:—*As to* (2) **Consd.** *lic* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394.
1549. *Add. Annotations*:—*As to* (1) **Consd.** I. R. Comrs *v.* Glasgow Musical Festival Asscn. (1926), 11 Tax Cas 154. *As to* (2) **Refd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394; *Re* Booth & Southend-on-Sea Estates Co.'s Contract, [1927] 1 Ch. 579.
- 1609a. — **Not decreed.**—SOMERVILLE *v.* CHAPMAN (1779), 1 Bro. C. C. 61; 28 E. R. 985.
- Annotations*:—**Expld.** A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92. **Refd.** Browne *v.* Tighe (1834), 2 Cl. & Fin. 396.
1670. *Add. Annotation*:—*Generally, Refd.* Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

## Part VII.—Trustees.

- 1870a. **Powers of sale**—**Settled Land Act, 1925 (c. 18), ss. 29, 94.**—*Re* BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT. No. 1532a, *ante*.
1903. *Add. Annotation*:—**Mentd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.
1934. *Add. Annotation*:—**Mentd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651.
1935. *Add. Annotation*:—**Mentd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651.

## Part IX.—Jurisdiction over Charities.

1993. *Add. Annotation*:—**Mentd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.
1998. *Add. Annotation*:—**Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.
2015. *Add. Annotation*:—**Refd.** R. *v.* All Souls College, Oxford (1681), Skin. 13.
2041. *Add. Annotation*:—**Mentd.** Harper *v.* Hedges, [1923] 2 K. B. 314.
- 2111a. *S. P. Ex p.* BULLAR (1857), 28 L. T. O. S. 269; 21 J. P. Jo. 84.
2113. *Add. Annotation*:—**Mentd.** Salter *v.* Lask (1923), 130 L. T. 323.
2131. *Add. Annotation*:—**Mentd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651.
2135. *Add. Annotation*:—**Mentd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651.
2137. For the existing paragraph substitute the following paragraph:—

**PART V. SECT. 1, SUB-SECT. 4.**  
1502 iii. *Whether charities within Real Property Limitation Act, 1833 (c. 27)—Express trust—Charges.*—*Re* DRAKE'S ESTATE, [1909] 1 I. R. 136, 140.—**IR.**

**PART VII. SECT. 2, SUB-SECT. 2.**  
st. *Power of appointing successor—Reasonable apprehension of death—Implied power of revocation.*—Where power is given to a trustee to appoint his successor "at his death" for a

public charitable trust, there should, if the appointment is made *inter vivos* to take effect at once, be proof of circumstances showing that the appointor had reasonable apprehension of his death, & it is always subject to the condition that, if the appointor recovers, the transfer is not to operate; & even if the power of revocation is not expressly reserved in the deed, such a deed should always be deemed to be subject to a power of revocation by implication.—**CHOCKALINGA MUDALIAR**

*v.* DURAISWAMI MUDALIAR (1927), J. L. R. 51 Mad. 720.—**IND.**

**PART IX. SECT. 3, SUB-SECT. 2.**  
sv. *Enforcement of provision for schism.*—When property is given in trust for A., B. & C., etc., forming an association for fraternal & benevolent purposes, if the instrument provides for the case of a schism then the ct. will act upon it.—*LINDSAY v. EMERY* (Alta.) (1915), 32 W. L. R. 246; 9 W. W. R. 32; 23 D. L. R. 877.—**CAN.**

**Not exempt—Gift of land to mixed charity at date of determination of question by commissioner—Not mixed charity at time of donation.]**—In order that a donation or bequest may come within the provision in 1853 Act, s. 62, exempting from the jurisdiction or control of the Charity Comrs. a donation or bequest made to a “mixed charity”—i.e. a charity maintained partly by voluntary subscriptions & partly by income from endowment—it must be a donation or bequest to a charity which is already, at the date of gift, a mixed charity. It is not sufficient to bring the donation or bequest within the exemption for the charity to become a mixed charity between the date of gift & the determination by the ct. of the question of exemption.

Land within the registered area was conveyed to a charity which at the time, although possessed of other income-bearing land, was not also maintained by any voluntary sub-

scriptions. After the application for registration & pending the determination of the question of exemption by the ct., voluntary subscriptions were received & the charity became a mixed charity:—*Held*: the land not having been given to a charity which at the date of gift was a mixed charity, was not exempt from the jurisdiction or control of the Charity Comrs., & a restriction must be entered on the register against a disposition of the land without their consent.—*Re CHILD VILLIERS' APPLICATION, VILLIERS v. A.-G.*, [1922] 1 Ch. 394; 91 L. J. Ch. 473; 126 L. T. 555; 38 T. L. R. 291; 66 Sol. Jo. 266, C. A.

*Annotation*:—*Apld. Re Shakespeare Memorial Trust, Lytton v. A.-G.*, [1923] 2 Ch. 398.

**2146a. — Land purchased out of donation—Donation before first annual subscription.]—***Re SHAKESPEARE MEMORIAL TRUST, LYTON (EARL) v. A.-G.*, No. 73a, *ante*.

## Part X.—Practice.

**2224. Add. Annotation:—***Refd. Key v. Bastin*, [1925] 1 K. B. 650.

**2252. Add. Annotation:—***Refd. Key v. Bastin*, [1925] 1 K. B. 650.

**2283. Add. Annotation:—***Refd. Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197.

**2353a. — Not petition for payment out of funds in court of money for completion of purchase of land.]—***Ex p. ST. BARTHOLOMEW'S HOSPITAL (GOVERNORS)* (1928), 72 Sol. Jo. 225.

**2456. Add. Annotation:—***Mentd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.

**2503. Add. Annotation:—***Mentd. R. v. Income Tax Special Comrs., Ex p. Rank's Trustees* (1922), 127 L. T. 651.

**2537. Add. Annotation:—***Refd. Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197.

**2576. Add. Annotation:—***Refd. Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197.



## CHOSES IN ACTION.

## Part I.—In General.

1. *Add. Annotation* :—**Mentd.** *Lamb v. Wright*, [1924] 1 K. B. 857.
- 12a. **Rentcharge—Arrears of.**—*SALWAY v. SALWAY* (1770), 2 Dick. 434; Amb. 692; 21 E. R. 338.
13. *Add. Annotations* :—**Distd.** *Baker v. Archer-Shee*, [1927] A. C. 844; *A.-G. v. Belillos*, [1928] 1 K. B. 798. **Refd.** *New York Insee. v. Public Trustee*, [1924] 2 Ch. 101; *Brassard v. Smith*, [1925] A. C. 371; *Herbert v. I. R. Comrs.*, 1 R. Comrs. *v. Herbert* (1925), 9 Tax Cas. 593; *Daw v. I. R. Comrs.*, Duff Dunbar *v. I. R. Comrs.* (1928), 14 Tax Cas. 58.
19. After this case add “**Patent.**”—*See PATENTS.*”
20. *Add. Annotations* :—**Dbtd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669. **Refd.** *New York Life Insee. v. Public Trustee*, [1924] 1 Ch. 15.
21. *Add. Citations* :—**FAVORKE v. STEINKOPFF**, [1922] 1 Ch. 174; *sub nom. Re STEINKOPFF*, **FAVORKE v. STEINKOPFF**, 91 L. J. Ch. 165; 126 L. T. 597.
23. *Add. Annotations* :—**Consd.** *Royal Trust Co. v. A.-G. for Alberta* (1929), 46 T. L. R. 25. **Refd.** *New York Life Insee. v. Public Trustee* (1924), 93 L. J. Ch. 449; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
24. *Add. Annotations* :—**Consd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669
- Refd.** *New York Life Insee. v. Public Trustee* (1924), 93 L. J. Ch. 449.
25. *Add. Annotations* :—**Apld.** *New York Life Insee. v. Public Trustee*, [1924] 2 Ch. 101; *Richardson v. Richardson*, [1927] P. 228
27. *Add. Annotations* :—**As to (1) Consd.** *Favorke v. Steinkopff*, [1922] 1 Ch. 174. **As to (2) Refd.** *Favorke v. Steinkopff*, [1922] 1 Ch. 174.
- 27a. **Assignment executed abroad—Of debt payable in England.**—Where an assignment of a debt due from an English debtor & payable on demand in England is made in a foreign country between two citizens of that country domiciled there & subject to its laws but is invalid by the law of that country, it is not to be held valid in this country merely because it is in accordance with the requirements of English law.—**REPUBLICA DE GUATEMALA v. NUNEZ**, [1927] 1 K. B. 669; 96 L. J. K. B. 441; 136 L. T. 713; 43 T. L. R. 187; 71 Sol. Jo. 35, C. A.  
*Annotation.*—**Refd.** *Richardson v. Richardson*, [1927] P. 228.
- 27b. — **Exercise of power of appointment over sum in England.**—*Re ANZIANI, HERBERT v. CHRISTOPHERSON*, [1929] W. N. 226.  
After this case for “**Assignments executed abroad.**”—*See* Nos. 459–462, 504, 505, *post.*, read “—.”—*See, also*, Nos. 459–462, 504, 505, *post.*”

## Part II.—Assignment in General.

29. *Add. Annotation* :—**Refd.** *Public Trustee v. Elder*, [1926] Ch. 776.
33. *Add. Annotation* :—**Mentd.** *Venn v. Tedesco*, [1926] 2 K. B. 227.
40. *Add. Annotation* :—**Refd.** *National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.

## Part III.—What may be Assigned.

53. *Add. Annotation* :—**Refd.** *Re Bower-Williams, Ex p. Trustee*, [1927] 1 Ch. 441.
63. *Add. Annotations* :—**As to (1) Refd.** *Cottage Club Estates v. Woodside Estate Co. (Amersham)* (1927), 97 L. J. K. B. 72; *Re Want*, [1927] 1 Ch. 606; *Earle v. Hemsworth R. D. C.* (1928), 140 L. T. 69.
67. *Add. Annotations* :—**Consd.** *Bank of Liverpool & Martins v. Holland* (1926), 43 T. L. R. 29. **Distd.** *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.
73. *Add. Annotation* :—**As to (2) Apld.** *Earle v. Hemsworth R. D. C.* (1928), 140 L. T. 69.

## PART I. SECT. 1, SUB-SECT. 2.

d Add “*revid.* 17 O. R. 574.”

s. Add “*revid. in part* 4 A. R. 267.”

## PART III. SECT. 2, SUB-SECT. 1.

s i. ———.—The judgment of a foreign ct. creates a debt, & is *prima*

*facie* assignable. — **MUHAMMAD MOIDEEN v. CHINTHAMANI CHETTAR** (1929), 1 L. R. 52 Mad. 503.—**IND.**

**77a.** ——— **Retention money.]—Held:** retention money under a building contract, although not becoming payable until a later date than the assignment, constituted a debt or legal thing in action which could be assigned, & could be sued for in an action without joining the assignors as parties.—*G. & T. EARLE, LTD. v. HEMSWORTH RURAL DISTRICT COUNCIL* (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.

**78.** *Add. Annotations:—Refd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. O. 1; *Re Wait*, [1927] 1 Ch. 606.

**81.** *Add. Annotation:—Apld. Earle v. Hemsworth R. D. C.* (1928), 140 L. T. 69.

**82.** *Add. Annotation:—Refd. Gray v. Spyer*, [1922] 2 Ch. 22.

**84.** *Add. Annotation:—Refd. Norwich Union Fire Insee. Soc. v. Colonial Mutual Fire Insee.*, [1922] 2 K. B. 461.

**86.** *Add. Annotation:—Refd. Rye v. Purcell*, [1926] 1 K. B. 446.

**91.** *Add. Annotation:—Refd. Edwards v. Motor Union Insee.*, [1922] 2 K. B. 249.

**93.** *Add. Annotation:—Mentd. Marsden v. Heyes, Edward*, [1927] 2 K. B. 1.

**94.** *Add. Annotation:—Consd. Re Lloyd's Furniture Palace, Evans v. Lloyd's Furniture Palace*, [1925] Ch. 853.

**106a.** ——— **Grantee bound to attend at specified place to receive payments & give receipts.]—Held:** assuming such condition to be a valid one, there was nothing to prevent the grantee from assigning the annuity to a third person.—*ARDEN v. GOODACHE* (1852), 11 C. B. 883; 21 L. J. C. P. 129; 18 L. T. O. S. 208; 16 Jur. 529; 138 E. R. 723.

### PART III. SECT. 2, SUB-SECT. 3.

**77 ii.** ———.—*M.* who had contracted with debts, to do certain work

plf's. to pay to H. & M. "any moneys due or to become due on my contract . . . in consideration of moneys advanced by them to me for the purpose of financing this contract." Debts, acknowledged the receipt of the order. Afterwards certain payments were made by debts, to sub-contractors on M.'s direction, certain costs in the action were paid to solrs. & execution creditors of M. attached moneys in debts, hands payable upon the contract, whereupon an interpleader issue was directed & tried.—*Held:* the order under which plf's. claimed was not a legal assignment of an existing chose in action nor an assignment of the contract: it was nothing more than an equitable assignment of a fund not yet in existence.—*INTERIOR TRUST CO. v. ESSEX BORDER UTILITIES COMMISSION* (1928), 62 O. L. R. 551.—**CAN.**

**78 i.** *Money accruing to assignor by will.]—An amount which exors. are directed by the will to pay for the maintenance & education of an infant may be assigned by the person to whom they have become liable therefor.—Re GRANT ESTATE, MULLIN & MULLIN v. ANNABLE*, [1928] 1 W. W. R. 894; 22 Sask. L. R. 483.—**CAN.**

### PART III. SECT. 3.

**sa.** *To construct tramway across grantor's land—Assignable.]—McDONALD v. PEDDLE*, [1923] N. Z. L. R. 987.—**N.Z.**

**sb.** *To execute lease.]—A right arising under an agreement with an owner of immovable property to call upon him to execute a lease is a chose in action, and as such movable property.—WEARNE BROTHERS v. RUSSA ENGINEERING WORKS* (1928), 1 L. R. 7 Ran. 144.—**IND.**

### PART III. SECT. 4.

**96 i.** *Claim to compensation—Damage to lands—Assignable.]—By erection of a public work, a dam, the Crown expropriated the right to flood the land of V., who subsequently sold the property to H., with the right to recover compensation from the Crown:—Held: it was not an assignment of litigious rights, & H. was entitled to recover compensation.—R. v. HYE* (1921), 69 D. L. R. 173; 21 Exch. C. R. 76.—**CAN.**

**c i.** ———.—*—A right of action in tort is not assignable. The lessee under a crop payment lease, having been served while threshing with a garnishee summons issued in a suit against the lessor, sold all the crop in his own name & paid the lessor's share of the proceeds into ct., meanwhile notifying the lessor that he would do so. The lessor after receiving said notice & a copy of the garnishee summons assigned to pltf. all his claims & demands against the lessee for "debts or rentals now due or to become due" under the lease, & all his interest in the crops grown thereunder. The lease required the lessee to deliver the lessor's share on the day of threshing, & if required, at a certain elevator in the name of the lessor. The pltf., i.e. the assignee of the lessor, sued the lessee for damages on the ground of conversion.—Held: the*

**110a.** ———.—*Testatrix by her will, dated in 1862, gave a fifth share of her residuary estate to her daughter W. for life, with remainder to her children, but if she should die without issue, which event happened, "her share to go to her next of kin as if she had not been married." In 1866 J., another daughter of testatrix, married, & by her marriage settlement covenanted that any real or personal property to which she then was entitled for any estate or interest whatsoever in reversion, remainder, or expectancy should be settled upon the trusts of the settlement. W. died in 1912 without issue, & leaving J. her sole next of kin:—Held: the interest which J. had at the date of the settlement in the settled share of W. was either a mere spes successionis, or must be treated as such, & was not assignable at law.—Re MUDGE*, [1914] 1 Ch. 115; 83 L. J. Ch. 243; 109 L. T. 781; 58 Sol. Jo. 117, C. A.

*Annotation:—Refd. Re Lind, Industrials Finance Syndicate v. Lind*, [1915] 2 Ch. 345.

**114.** *Add. Annotation:—As to (1) Refd. Re Wait*, [1927] 1 Ch. 606.

**118.** *Add. Annotations:—Refd. Re Dent, Ex p. Trustee*, [1923] 1 Ch. 113; *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. O. 1.

**119.** *Add. Annotation:—Refd. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.

**124.** *Add. Annotations:—Consd. Smith v. Smith*, [1923] P. 191; *Walls v. Legge*, [1923] 2 K. B. 240.

**125.** *Add. Annotations:—Consd. Smith v. Smith*, [1923] P. 191. *Refd. Campbell v. Campbell*, [1928] P. 187; *Re Nelson, Norris v. Nelson* (1918), [1928] Ch. 920, n.

action was not maintainable.—*Kozak v. MISIURA*, [1928] 1 D. L. R. 591; [1928] 1 W. W. R. 1; 22 Sask. L. R. 208.—**CAN.**

**i i.** ———.—*Claim by insurance company—Having paid loss.]—Plf's., insurance cos., had insured premises which were destroyed by a fire which, as they alleged, arose from the negligence of debts. Having paid the owners of the premises the amount of the loss, plf's. claimed to be subrogated to the right of the owners to recover against debts, & also alleged they had taken assignments in writing by way of subrogation to the right of the owners, & they claimed in this action damages for the negligence of debts, causing the fire:—Held: the action was a simple common law action in which the owners' rights were asserted against the alleged wrongdoers, & a motion to strike out a jury notice given by debts, upon the ground that the action was one which, before 1873, was exclusively within the jurisdiction of the Ct. of Chancery, was refused.—ROYAL EXCHANGE ASS'CE. CO. v. GRIMSHAW BROTHERS, LTD.*, [1928] 2 D. L. R. 412; 62 O. L. R. 25.—**CAN.**

### PART III. SECT. 5.

**100 i.** *Promise to pay over proceeds of litigation—Compromise of suit—Effect of agreement.]—Where there was an assignment of part of the fruits of litigation:—Held: even if they were to be regarded as non-existing property at the date of the agreement, the agreement attached upon the money being paid.—VATSAYAYA VENKATA JAGAPATI v. POOSAPATI VENKATAPATI* (1924), L. R. 52 Ind. App. 1.—**IND.**

153. *Add. Annotations*:—**Consd.** *Burrowes v. Burrowes* (1929), 141 L. T. 201. **Refd.** *Capron v. Capron*, [1927] P. 243.
154. *Add. Annotations*:—**Refd.** *Capron v. Capron*, [1927] P. 243; *Burrowes v. Burrowes* (1929), 141 L. T. 201.
160. *Add. Annotation*:—**Refd.** *Capron v. Capron*, [1927] P. 243.
186. *Add. Annotation*:—**Mentd.** *Putsman v. Taylor*, [1927] 1 K. B. 637.

## Part IV.—What amounts to an Assignment.

193. *Add. Annotation*:—*As to* (2) **Appld.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
195. *Add. Annotations*:—**Refd.** *Cottage Club Estates v. Woodside Estate Co. (Amersham)* (1927), 97 L. J. K. B. 72; *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.
200. *Add. Annotation*:—**Consd.** *Bank of Liverpool & Martins v. Holland* (1926), 43 T. L. R.
202. *Add. Annotation*:—**Refd.** *Bank of Liverpool & Martins v. Holland* (1926), 43 T. L. R. 29.
- 204a. **Amount recoverable by assignee limited.**—Deft. owed £285 to W., who owed money to pltf. bank, & W. assigned to the bank the debt owed to him by deft. The assignment, which was in writing, provided that "the amount recoverable under these presents shall not at any time exceed £150." Due notice of the assignment was given to deft. In an action upon the assignment:—**Held**: (1) the assignment was not an assignment of part only of the debt, but an absolute assignment of the whole debt with a proviso that if the bank recovered more than £150 they must hold the balance as trustees for the assignor, & it was a good legal assignment; (2) even if it was an assignment of part only of the debt it would still be a good equitable assignment, & pltf. were entitled to recover.—**BANK OF LIVERPOOL & MARTINS, LTD. v. HOLLAND (1926), 43 T. L. R. 29; 32 Com. Cas. 56.**
- Annotation*:—*As to* (1) **Refd.** *Earle v. Hemsworth R. D. C.* 44 T. L. R. 605.
205. *Add. Annotations*:—*As to* (1) **Refd.** *National Provincial & Union Bank of England v. Lindsell*, [1922] 1 K. B. 21; *Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221. *As to* (3) **Consd.** *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
211. *Add. Annotation*:—*As to* (1) **Refd.** *Palmer v. Carey*, [1926] A. C. 703.
- 214a. —.—]—Order to pay money out of a particular fund gives the party a specific lien thereon.—**SMITH v. EVERETT** (1792), 4 Bro. C. C. 61; 29 E. R. 780.
- Annotations*:—**Refd.** *Crowfoot v. Gurney* (1832), 9 Bing. 372; *Best v. Argles* (1831), 2 Cr. & M. 394.
- 221a. —.— **Part of debt.**—**BANK OF LIVERPOOL & MARTINS, LTD. v. HOLLAND**, No. 204a, *ante*.
236. *Add. Annotation*:—**Apprvd.** *Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.
237. *Add. Annotations*:—**Mentd.** *The Tervaeete* (1922), 128 L. T. 176; *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385.
- 250a. **Directions to pay proceeds of cargo to creditor.**—An order by A. to B., directing the latter to pay over to C., a creditor of A., the proceeds of a cargo consigned by A. to B., creates no lien in favour of C.—**HOLLAND & HUMBLE'S ASSIGNEES v. —** (1815), 1 Stark. 143; 171 E. R. 427; *sub nom.* **HEYWOOD v. WARING**, 4 Camp. 291; *sub nom.* *Re HOLMES, Ex p. HEYWOOD*, 2 Rose, 355, N. P.
- Annotations*:—**Consd.** *Frith v. Forbes* (1862), 31 L. J. Ch. 793. **Refd.** *Giles v. Grover* (1832), 9 Bing. 128; *Malcolm v. Scott* (1843), 3 Harc. 39.
258. *Add. Annotation*:—**Refd.** *National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.
- 258a. **Agreement to pay proceeds into lender's bank—Advances for purchase of goods.**—By a written agreement made in 1917 a trader was to purchase goods from time to time & resp. was to advance money to pay for them; the trader was to sell the goods & to pay the proceeds to the credit of resp. at his bank; resp., after deducting the amount

### PART III. SECT. 14.

a i. —.—]—An option to purchase, contained in a will, is *prima facie* not purely personal but is assignable by the optionee & transmissible by him to his personal representatives.—**PERPETUAL TRUSTEE CO. v. UNION TRUSTEE CO.** (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—**AUS.**

st. **Non-negotiable promissory notes.**—Promissory notes drawn in such form that they are non-negotiable, can be assigned in the same manner as an ordinary chose in action.—**MERCHANTS BANK OF CANADA v. GREENLEES**, [1923] 2 W. W. R. 931.—**CAN.**

sg. **Land scrip.**—**WRIGHT v. BATTLE** (1905), 15 Man. L. R. 322; 1 W. L. R. 563.—**CAN.**

### PART IV. SECT. 1, SUB-SECT. 2.

sk. **General rule.**—An assignment is to be regarded as absolute, although it appears on its face that it is only for the purpose of securing a debt lesser in amount, so long as it does not purport to be by way of charge only.—**RE BLAND & MOHUN** (1913), 25 O. W. R.

419; 30 O. L. R. 100; 5 O. W. N. 522.—**CAN.**

### PART IV. SECT. 2, SUB-SECT. 1.—A.

205 x. —.— **Building contract apportioning price between builder & third party.**—**GRANT v. TRAVIS**, [1924] 2 D. L. R. 1164; 2 W. W. R. 503.—**CAN.**

### PART IV. SECT. 2, SUB-SECT. 1.—B. (c).

sm. **Authorising payment of sum in hands of garnishee—Order giving effect to verbal assignment.**—**CLARKE BROTHERS, LTD. v. GOODIN & PEDERSON**, [1922] 3 W. W. R. 504; 68 D. L. R. 792.—**CAN.**

223 i. **Assigning money due or to come due—Under contract.**—It is no objection to an equitable assignment of a claim against a third person that the work upon which the claim is based has yet to be performed.—**RE MATTHEWS SHEET METAL & ROOFING CO., LTD., Ex p. MARTIN** [1924] 1 D. L. R. 761; 55 O. L. R. 262; 4 C. B. R. 471.—**CAN.**

223 ii. —.— **Under policy.**—**Held**: the assignment was not vitiated by the fact that, at the time, the fund on which the assignment was intended to operate had not yet come into existence.—**LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. v. HARTLEY & FORD**, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] Argus. L. R. 417.—**AUS.**

### PART IV. SECT. 2, SUB-SECT. 2.—A.

246 iv. —.—]—**Held**. In the circumstances, was a good equitable assignment of moneys due from the board of a drainage district to a person who had a contract with it.—**STIRLING COLLIERIES, LTD. v. JONES**, [1924] 4 D. L. R. 1305; 3 W. W. R. 955.—**CAN.**

### PART IV. SECT. 2, SUB-SECT. 2.—B.

256 i. **Directions to agent to sell & pay proceeds into bank—Principal paying for goods by cheques drawn against proceeds.**—**KIDD v. HARDEN, McCONNELL v. HARDEN**, [1924] 4 D. L. R. 516; 3 W. W. R. 293.—**CAN.**

which he had advanced & one-third of the gross profits, was to pay the remaining two-thirds to the trader. In 1921 the trader became bkpt., & applt. was appointed assignee in the bkpcy. At the time of the bkpcy. a large sum advanced under the agreement had not been repaid, & the trader had in his hands goods purchased under the agreement, & the proceeds of other goods so purchased. Resp. claimed a charge on the above assets in respect of the advances not repaid:—*Held*: as the agreement did not, either contractually or otherwise, create any right of the lender in either the goods or their proceeds, it did not amount to an equitable assignment so as to entitle resp. to the charge claimed.—*PALMER v. CAREY*, [1926] A. C.

703; 95 L. J. P. C. 146; 135 L. T. 237; [1926] B. & C. R. 51, P. C.

269. *Add. Annotation*:—*Refd. Re City Life Assee.* (1925), 42 T. L. R. 45.

274. *Add. Annotation*:—*Refd. Re Wait*, [1927] 1 Ch. 606.

274a. *S. P. BRADLEY v. —* (1744), *Ridg. temp.* II. 194; 27 E. R. 801, L. "

303. *Add. Annotation*:—*As to* (1) *Distd. Re Nelson, Norris v. Nelson* (1918), [1928] Ch. 920, n.

307. *Add. Citations*:—[1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; [1921] B. & C. R. 209.

*Add. Annotation*:—*Refd. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

## Part V.—Notice of Assignment.

*See, now*, Law of Property Act, 1925 (c. 20), ss. 136, 137.

313. *Add. Annotation*:—*Refd. National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.

354. *Add. Annotation*:—*Refd. II. v. II.*, [1928] P. 206.

358. *Add. Annotation*:—*Generally. Mentd. McCreagh v. Cox & Ford* (1923), 92 L. J. K. B. 855.

### PART IV. SECT. 2, SUB-SECT. 2.—C.

*o. Add "revsd."*, [1921] 1 W. W. R. 839."

### PART IV. SECT. 2, SUB-SECT. 3.

*sn. Lodging notes as collateral security.*—A document providing that certain notes "are lodged with the bank as a general & continuing collateral security for the due payment of all advances made or to be made to me by the bank":—*Held*: not a proper assignment; there is a distinction between lodging a document as collateral security & an assignment.—*MERCHANTS BANK OF CANADA v. GREENLEES*, [1923] 2 W. W. R. 931.—CAN.

*st. Indorsement of lien note.*—*Held*: to constitute a good equitable assignment thereof.—*CANADIAN BANK OF COMMERCE v. I.A. BRASH*, [1918] 1 W. W. R. 6; 39 D. L. R. 398; 10 Sask. L. R. 408.—CAN.

### PART IV. SECT. 3.

280 *i. Necessity for communication to & assent by assignee.*—*To constitute assignment.*—A letter assigning moneys must be shown to have been communicated to the assignee before it will be held to constitute an equitable assignment.—*STARR CO. OF CANADA, LTD v. MERRILL*, [1922] 3 W. W. R. 926; 70 D. L. R. 557.—CAN.

### PART IV. SECT. 6.

288 *ii. —*—*LOEPKY v. LANG*, [1925] 2 D. L. R. 610; [1925] 1 W. W. R. 1104; 19 Sask. L. R. 337.—CAN.

*sa. Assignment of lien agreement.*—*Whether consideration amount due under lien.*—*A. R. WILLIAMS MACHINERY CO., LTD. v. MOORE*, [1926] 4 D. L. R. 568.—CAN.

### PART V. SECT. 1, SUB-SECT. 1.

311 *i. Assignment.*—*As security.*—*Of debts.*—*OKELL MORRIS & CO. v. DICKSON* (1902), 9 B. C. R. 151.—CAN.

### PART V. SECT. 1, SUB-SECT. 3.

*sb. Assignment of lien.*—*HENDSBERG v. SONORA TIMBER CO., LTD.*, [1928] 1 D. L. R. 612; 59 N. S. R. 457.—CAN.

### PART V. SECT. 3, SUB-SECT. 1.

*sc. To guarantor.*—*Notice not given to debtor.*—*DONALD v. JUKES*, [1921] 2 W. W. R. 208; 56 D. L. R. 692; 60 S. C. R. 652.—CAN.

### PART V. SECT. 3, SUB-SECT. 3.

*sd. Of debtor.*—*Notice to the solr. of debtor that the claim against the latter was to be paid to a third party is notice to debtor himself that such claim had been assigned.*—*ST. JOHN & QUEBEC RY. CO. v. BANK OF BRITISH NORTH AMERICA & HIBBARD CO.* (1921), 67 D. L. R. 650; 62 S. C. R. 346.—CAN.

### PART V. SECT. 4.

*st. Before action.*—*Judicature Act, 1909, s. 10 (6).*—*WOODSTOCK ELECTRIC RAILWAY, LIGHT & POWER CO. v. DOMINION TANNERIES, LTD.* (1918), 45 N. B. R. 408.—CAN.

### PART V. SECT. 5.

*b i. —*—*That alleged assignee had possession of notes*—Although debtors may have known that notes were in the possession of a bank, the alleged assignee:—*Held*: this was insufficient, being a far different thing from having notice of the assignment, & there was no duty in debtors to inquire of the bank.—*MERCHANTS BANK OF CANADA v. GREENLEES*, [1923] 2 W. W. R. 931.—CAN.

### PART V. SECT. 9, SUB-SECT. 1.—A. (a) i.

*o. Add "Revsd."* 47 S. C. R. 313; 10 D. L. R. 232; 23 W. L. R. 445.

*pi. —*—The assignee of an equitable interest in personal estate without notice of an existing earlier assignment will gain priority simply by the act of giving notice to the person who has the legal dominion over the fund before notice is given by an assignee earlier in point of time.—*GORDON v. GORDON*, [1924] 2 D. L. R. 74; 1 W. W. R. 903; 18 Sask. L. R. 187.—CAN.

### PART V. SECT. 9, SUB-SECT. 1.—A. (b).

*sk. Assignments of money payable under commission certificates.*—*Certificates not assignable.*—*Order for payment given to first assignee.*—*Certificates handed to second assignee.*—*J. I. CASE THRESHING MACHINE CO. v. GENERAL MOTORS ACCEPTANCE CORPN.*, [1924] 4 D. L. R. 1297; 3 W. W. R. 694.—CAN.

### PART V. SECT. 10.

*sl. Registered judgment.*—*Notice given against creditor.*—*Of assignment.*—If a vendor of land, in order to secure an indebtedness, assigns all the moneys due or to become due under the agreement of sale, such assignment not being registered, but due notice thereof being given to the purchaser, the assignee will be entitled to the moneys as against one who subsequently obtains & registers judgments against the vendor.—*CANADIAN BANK OF COMMERCE v. ROYAL BANK OF CANADA*, [1921] 2 W. W. R. 482; 60 D. L. R. 275; 29 B. C. R. 407.—CAN.

## Part VI.—Effect of Assignment.

475. *Add. Annotations*:—As to (1) *Refd. Re Bernstein, Barnett v. Bernstein* (1924), 69 Sol. Jo. 88. As to (2) *Refd. Weld v. Petre*, [1929] 1 Ch. 33.
- 483a. ————]—G. & T. EARLE, LTD. v. HEMSWORTH RURAL DISTRICT COUNCIL, No. 77a, ante.
485. *Add. Annotations*:—*Refd. Cheshire County Council v. Hopley* (1923), 130 L. T. 123;
- The Koursk, [1924] P. 140; *Venn v. Tedesco*, [1926] 2 K. B. 227.
504. *Add. Annotation*:—*Refd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
509. *Add. Annotation*:—*Refd. Performing Right Soc. v. London Theatre of Varieties*, [1922] 2 K. B. 433.
519. *Add. Annotation*:—*Refd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

## Part VII.—Assignment subject to Equities.

592. *Add. Annotation*:—As to (2) *Refd. Lawrence v. Hayes*, [1927] 2 K. B. 111.
593. *Add. Annotations*:—*Mentd. Re Webb* (Smithfield, London), [1922] 2 Ch. 369; *Re Pink, Elvin v. Nightingale* (1926), 70 Sol. Jo. 1090.
601. *Add. Annotations*:—*Consd. Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221. *Refd. Re City Life Assoc.* (1925), 42 T. L. R. 45.
- 601a. ———— *Assignment of debt payable in futuro.*]—In 1918, C., a creditor of a firm, agreed to leave the sum constituting her debt on deposit with the firm for fifteen years from Jan. 1, 1917, upon the terms (*inter alia*) that interest & commission thereon should be paid to V. for his own use, & that in certain events, which subsequently happened, V. should receive a share of the firm's profits, which he in fact received during the years 1918–1921. In 1920, by C.'s direction, the debtor firm transferred C.'s debt by a book entry into the name of F., V. continuing to receive interest & commission as before, & on Feb. 24, 1920, made an equitable assignment of the debt to V. Notice of the assignment was given to the debtor firm on Mar. 2, 1920, whereupon the firm transferred the debt by a book entry into the name of V. At the date of the said equitable assignment by F., F. was under a liability to the debtor firm in respect of certain accommodation bills for which, as between F. & the firm, F. was liable, but such liability did not accrue due as a debt until after notice of assignment had been given, namely, when the debtor firm expended £15,000 in taking up the acceptances. On Mar. 15, 1920, the debtor firm presented their petition for a receiving order and were subsequently adjudicated bkpt. In a claim by V. to prove in the firm's bkpty.:—*Held*: the assignment by F. to V. was subject to all rights of set-off which had accrued due on the part of the firm against F. at the date of the notice of assignment but was not subject to any right of set-off in respect of the £15,000 which had not accrued due at that date; nor did the fact that the debt assigned was a debt payable *in futuro*, for which the assignor was not at the date of the notice of assignment in a position to sue, affect the general rule governing the assignment of a chose in action.—*Re PINTO & NEPHEWS, Ex p. DES OLIVEIRA*, [1929] 1 Ch. 221; 98 L. J. Ch. 211; 140 L. T. 587; [1928] B. & C. R. 188.

## PART VI. SECT. 2, SUB-SECT. 2.

476 ii. ———— *Money due under agreement for sale—Power to cancel agreement.*]—Where a vendor of land under agreement for sale assigns the moneys due under the agreement for sale & notice of the assignment, equitable or legal, is given to debtor, it is not open to the vendor & debtor to cancel the agreement without the concurrence of the assignee.—*UNION BANK OF CANADA v. DUTCHAK*, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—CAN.

## PART VI. SECT. 3, SUB-SECT. 1.—A.

ti. ———— *Of contract for sale of land.*]—*INTERSTATE INVESTMENT CO., LTD. v. MOBBES* (1928), 28 S. R. N. S. W. 572, 45 N. S. W. W. N. 176.—AUS.

u. *Add "reversd. in part, 4 A. R. 267."*

ei. ———— *Of lien.*]—Pltf., assignee of three several claims of workmen who had liens under Woodmen's Lien Act, commenced an action in his own name without serving any notice of the assignment upon debtor:—*Held*: pltf. could bring an action in his own name without giving the notice referred to in Jud. Act, s. 19 (5).—*BARNES v. BLACK*, [1925] 3 D. L. R. 65; 58 N. S. R. 69.—CAN.

## PART VI. SECT. 3, SUB-SECT. 1. — B.

mi. ———— *Effect of Land Titles Act, s. 101.*]—*ARMSTRONG v. MARSHALL* (1915), 8 W. W. R. 300; 19 D. L. R. 183, 8 Alta. L. R. 449.—CAN.

## PART VI. SECT. 5, SUB-SECT. 2.

550 iii. ————]—*SHEPHERD v. LIVINGSTON*, [1924] 1 D. L. R. 723 1 W. W. R. 455.—CAN.

550 iv. ————]—*MCPHERSON v. LEES (ANDREW), LTD.*, [1926] N. Z. L. R. 523.—N.Z.

sw. *Payment to assignee—Money due under agreement for sale—Covenant by assignor to convey on payment.*]—Where a vendor has covenanted in writing with an assignee to convey the land to the purchaser on payment of the full amount of the purchase-money, the purchaser is protected as to title & may safely make his payments to the assignee; & the assignee can sue on the purchaser's covenant to pay contained in the agreement.—*UNION BANK OF CANADA v. DUTCHAK*, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—CAN.

## PART VII. SECT. 1.

565 iii. ————]—Even assuming a proper assignment, notes lodged with a bank as a general & continuing

security for the due payment of all advances made, or to be made, must be taken by the assignee subject to any equities existing between the original parties.—*MERCHANTS BANK OF CANADA v. GREENLEES*, [1923] 2 W. W. R. 931.—CAN.

565 iv. ———— *Effect of express contract.*]—Notwithstanding Choses in Action Act, R. S. S., 1920 (c. 202), s. 5, debtor can contract with his creditor, for good consideration, that he will not avail himself of his right to set up against the creditor's assignee any equity existing between the creditor & himself. If the contract which includes the clause not to set up the equities against an assignee was induced by fraud, such clause falls with the contract, except where debtor is estopped as against the assignee from setting up the fraud.—*HAMILTON v. RAITON*, [1925] 3 D. L. R. 1090; [1925] 3 W. W. R. 136; *reversd.* [1925] 2 W. W. R. 195.—CAN.

q i. ———— *Notice of covenant by assignor—Whether assignee bound.*]—*MCBRIDE v. ONTARIO JOCKEY CLUB, LTD.*, [1926] 1 D. L. R. 414; 58 O. L. R. 97.—CAN.

## PART VII. SECT. 2. SUB-SECT. 1.

ti. ————]—*ROYAL BANK OF CANADA*

604. *Add. Annotation* :—*Refd. Lawrence v. Hayes*, [1927] 2 K. B. 111.
605. *Add. Annotations* :—*As to (2) Distd. Re Pinto Leite, Ex p. Des Oliveira*, [1929] 1 Ch. 221. *Refd. Lawrence v. Hayes*, [1927] 2 K. B. 111; *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.
- 607a. *For breach of warranty by assignor—Against claim for instalments due under assigned agreement—Judgment obtained for damages for breach of warranty.*—The owner of a business sold it to deft. on terms of payment by instalments, & then assigned the benefit of the agreement to pltf. Before notice of

assignment was given to deft., the latter obtained judgment against the assignor for damages for breach of warranty on the above sale. In an action by pltf., as assignee, against deft. for payment of instalments due under the assigned agreement, deft. claimed to set off the amount of the judgment. Pltf. contended that deft.'s right to damages in respect of the breach of warranty had merged in the judgment, & that the latter could not be set off against his claim :—*Held* : the set-off was valid.—*LAWRENCE v. HAYES*, [1927] 2 K. B. 111; 96 L. J. K. B. 658; 137 L. T. 149; 91 J. P. 141; 43 T. L. R. 379, D. C.

## Part VIII.—Voluntary Assignments.

613. *Add. Annotation* :—*Consd. Macedo v. Stroud*, [1922] 2 A. C. 330.

- 624a. ————.]—*SLOANE v. CADOGAN* (1808), cited in 12 Sim. at p. 291.

*Annotations* :—*Consd. Edwards v. Jones* (1836), 1 My. & Cr. 220; *Beatson v. Beatson* (1841), 12 Sim. 281. *Distd. Meek v. Kettlewell* (1843), 1 Ph. 342. *Apld. Kekewich v. Manning* (1851), 1 De G. M. & G. 176; *Donaldson v. Donaldson* (1854), Kay, 711. *Refd. Fenner v. Taylor* (1831), 2 Russ. & M. 190; *M'Fadden v. Jenkins* (1842), 1 Hare, 458; *Price v. Price* (1851), 21 L. J. Ch. 53; *Bridge*

*v. Bridge* (1852), 16 Beav. 315; *Voyle v. Hughes* (1854), 2 Sm. & G. 18; *Gilbert v. Overton* (1864), 4 New Rep. 420; *Glegg v. Rees* (1871), 7 Ch. App. 71.

634. For "*Held* : (1) as it was the intention of the settlor," etc., read "*Held* : (1) as it was not the intention of the settlor," etc.

*Add. Annotations* :—*As to (1) Refd. Royal Exchange Assee. v. Hope*, [1928] Ch. 179. *As to (3) Consd. Macedo v. Stroud*, [1922] 2 A. C. 330.

*v. GUSTAFSON*, [1924] 1 W. W. R. 544; 33 B. C. R. 379.—CAN.

OF CANADA *v. GUSTAFSON*, [1924] 1 W. W. R. 544; 33 B. C. R. 379.—CAN.

[1925] 3 D. L. R. 1058; 57 O. L. R. 374; 5 C. B. R. 811.—CAN.

### PART VII. SECT. 2, SUB-SECT. 4.

604 ii. *Add "revsd. in part, 25 A. R. 179."*

604 iv. ————.]—*ROYAL BANK*

### PART IX.

a. ———— *Under Assignment of Book Debts Act, 1923 (c. 29).*—*Re RAPORT, DENISON v. UNION BANK OF CANADA,*

*sp. Book account—Under Assignment of Book Accounts Act, R. S. B. C., 1924 (c. 16).*—*VERNON HARDWARE CO. v. REID & REINHARD (B. C.)*, [1927] 2 W. W. R. 117.—CAN.

## CLUBS AND OTHER VOLUNTARY ASSOCIATIONS.

## Part III.—Constitution and Internal Arrangements.

17. *Add. Annotation* :—*Consd. Morgan v. Driscoll* (1922), 38 T. L. R. 251.
18. *Add. Annotations* :—*As to* (1) *Consd. Lamberton v. Thorpe* (1929), 141 L. T. 638. *Refd. Maclean v. The Workers' Union*, [1929] 1 Ch. 602.
20. *Add. Annotation* :—*As to* (1) *Consd. Morgan v. Driscoll* (1922), 38 T. L. R. 251.
- 20a. — *To alter qualification for membership.*—*v. ALDENHAM* (1928), 72 Sol. Jo. 569.
- 21a. *Notice of general meeting - Who entitled to.*—Pltfs. were the captain & the secretary of the women's section of a golf club, of which deft. co. were the proprietors. At an extraordinary general meeting of the members a resolution was passed deleting from the rules of the club a provision for the election of a women's committee to manage the affairs of the women's section. No woman member of the club received notice of that meeting, as none of the women members held any shares in the co. In an action for a declaration that the resolution was invalid :—*Held* : under the rules women members were not full members & were not entitled to receive notices of general meetings, & the action failed.—*COLE v. MERTON PARK (WIMBLEDON) GOLF CLUB, LTD.* (1927), 43 T. L. R. 400.
35. *Add. Annotation* :—*As to* (2) *Expld. Maclean v. The Workers' Union*, [1929] 1 Ch. 602.
38. *Add. Annotations* :—*Consd. Amalgamated Soc. of Carpenters, Cabinet Makers & Joiners v. Braithwaite, General Union of Operative Carpenters & Joiners v. Ashley*, [1922] 2 A. C. 440. *Folld. Wing v. Burn* (1928), 44 T. L. R. 258. *Refd. A.-G. v. Swan*, [1922] 1 K. B. 682.
39. *Add. Annotation* :—*As to* (1) *Refd. A.-G. v. Swan*, [1922] 1 K. B. 682.
- 39a. — — — — —.]—*WING v. BURN* (1928), 44 T. L. R. 258.
- 46a. — — — — —.]—In an action against the officers of a club for an injunction restraining them from enforcing a resolution by which the council of the club has excluded pltf from membership of the club, the questions for the ct. are, (a) whether the rules of the club have been observed, (b) whether the
- (c) whether the council has acted in good faith.—*LAMBERTON v. THORPE* (1929), 141 L. T. 638; 45 T. L. R. 420.
- 53a. — *Claim by member for proportion of—On winding up of club.*—A limited co. was registered with the object of carrying on a proprietary club, & by the articles H. was appointed governing director for life & the management of the club was vested in her. In 1915 H. granted a lease of premises to the club which was carried on there. In 1918 a subscription of four guineas a year for country members & five guineas for town members was charged, & as from Jan. 1, 1919, an entrance fee of five guineas was imposed. From 1917 to Mar. 25, 1919, a notice stating that the club would be carried on permanently was exhibited by H. On Mar. 11, 1919, H., without notice to the executive committee, issued a writ for arrears of rent, & on recovering summary judgment closed the club. The co. then passed a resolution for voluntary winding up & a liquidator was appointed. A., who was a member of the club, claimed to prove as creditor for general damages & a proportion of her subscription for 1919, B., another member, claimed general damages, the return

## PART II.

so. *Validity of rules.*—Where the rights or privileges of members of a club are not in any way affected, nor the property of the club in any way injured, the ct. has no jurisdiction to consider the legal validity of the rules of the club, nor to grant an injunction against the commission of acts more or less criminal or merely illegal.—*WATT v. MACLAUGHLIN*, [1923] 1 I. R. 112.—IR.

12 ii. — *Majority of members acting illegally.—Injunction.*—*BRYLINSKI v. INKOL* (1924), 55 O. L. R. 369.—CAN.

## PART III. SECT. 1, SUB-SECT. 2.

1 i. — *Necessity for unanimous vote or consent of all members.*—*BRYLINSKI v. INKOL* (1924), 55 O. L. R. 369.—CAN.

1 ii. — — — — —.]—A rule prescribed that no future motion to open the links for play on Sundays should be passed unless by a majority of two-thirds of those present & voting :—*Held* : the repeal of the rule did not itself require a two-thirds majority.—*WATT v. MACLAUGHLIN*, [1923] 1 I. R. 112.—IR.

## PART III. SECT. 2, SUB-SECT. 2.—A.

24 i. *Power to expel after inquiry*

*by committee.—Inadequate inquiry.*—*MONTGOMERY v. LEE STEERE* (1926), 29 W. A. L. R. 70.—AUS.

26 i. *Power to expel for infringing rules.*—Where a club was registered under Cos. Act :—*Held* : the committee were not in law the directors of the co. & had no authority to exercise the powers of directors to exclude pltf. from membership of the club.—*MURPHY v. SYNNOTT*, [1925] N. 14.—IR.

## PART III. SECT. 2, SUB-SECT. 2.—B.

29 iv. — — — — —.]—Resp., being charged with having grossly misconducted himself within the meaning of a rule of applt. club, was summoned before a meeting of the club committee to show cause why he should not be dealt with under the rule. He was aware of the details of the charges preferred against him before attending the meeting, but, having attended as requested, & having failed in the opinion of the committee to justify his conduct, was suspended from membership. He took action against the club to have the suspension removed, & for damages, on the ground that the committee's decision, having been arrived at without affording him an opportunity of cross-examining the

witnesses against him, was contrary to the principles of natural justice :—*Held* : the committee was not bound by the formal rules of evidence, & the inquiry having been conducted in accordance with the club's rules & the decision of the committee arrived at in good faith, in pursuance of an honest desire to protect the interests of the institution, after resp. had been given every facility for

defence, the suspension was not contrary to the principles of natural justice, notwithstanding that no opportunity was given to cross-examine the witnesses.—*PERRY v. FELDING CLUB*, [1929] N. Z. L. R. 529.—N.Z.

## PART III. SECT. 2, SUB-SECT. 2.—E.

49 ii. — — — — —.]—A club incorporated under Incorporated Societies Act, 1908, which acting by its executive committee wrongfully & in breach of the club's rules excludes a member from the use of the club's premises, commits a breach of contract & the member is entitled to recover damages. The members of the committee, acting within the scope of their authority, are not personally liable in tort for inducing or procuring such breach of contract.—*HENDERSON v. KANE & PIONEER CLUB*, [1924] N. Z. L. R. 1073.—N.Z.

of her entrance fee & the proportion of her subscription for the current year:—*Held*: A. & B. were entitled to prove, not only for the proportion of their subscriptions of which they had lost the benefit for the current year, but also in respect of damages for the loss of the amenities of the club, & in the case of B. to a return of the entrance fee; & the damages should be assessed in the case of A. at £7, which included the proportion of her

subscription for 1919, & in the case of B. at £14, which also included the entrance fee & proportion of her subscription.—*Re CURZON SYNDICATE, LTD.* (1920), 149 L. T. Jo. 232.

54. For "Entrance fee payable by instalments" read "Entrance fee—Payable by instalments."

54a. — Claim by member for return of—On winding up of club.—*Re CURZON SYNDICATE, LTD.*, No. 53a, *ante*.

## Part VI.—Debentures.

105. *Add. Citations*:—[1922] 1 Ch. 51; 91 L. J. Ch. 93; 126 L. T. 225.

## Part VII.—Duty Payable by Clubs.

106. *Add. Annotation*:—*As to* (3) *Refd. A.-G. v. Swan*, [1922] 1 K. B. 682.

## Part VIII.—Sale of Intoxicating Liquors in Clubs.

109. *Add. Annotation*:—*Refd. A.-G. v. Swan*, [1922] 1 K. B. 682.

110. *Add. Annotation*:—*Consd. Watson v. Cully*, [1926] 2 K. B. 270.

111a. — Whether in "club"—*Temporary premises*.—The word "club" as used in Licensing Act, 1921 (c. 42), s. 4, means the premises of a registered club, & not the assocn. of persons who are members of the club.

Where, on the occasion of a fête, a registered club engaged a room adjoining the ground on which the fête was to be held, & there supplied intoxicants to members otherwise than in the permitted hours:—*Held*: as the room in question was not habitually used for the purposes of the club, no offence had been committed under the above sect.—*WATSON v. CULLY*, [1926] 2 K. B. 270; 95 L. J. K. B. 551; 135 L. T. 28; 90 J. P. 119; 42 T. L. R. 529; 24 L. G. R. 357; 28 Cox, C. C. 194, D. C.

*Annotation*:—*Refd. Clarke v. Griffiths, Peacock v. Same* (1926), 95 L. J. K. B. 935.

### PART IV. SECT. 1, SUB-SECT. 1.

70 II. — *Money lent to lodge*.—Where a person gives credit to an abstract entity, such as a club or lodge, he can look to those who assumed to act for it & those who authorised or sanctioned that being done, in the

absence of anything indicating the contrary.—*FINLAY v. BLACK*, [1921] 2 W. W. R. 907.—*CAN.*

### PART VIII. SECT. 3.

*sd. Right of members to store beer at club*.—Members of a club on pur-

— — — **Additional unregistered premises**.—Applts. were respectively the steward & one of the members of a club which occupied, besides its registered premises, additional premises which were at a considerable distance & which were not registered. At these additional premises the steward supplied to the other applt. beer, which the latter paid for & there consumed. An information having been preferred against the steward for supplying the beer, for consumption off the club premises, otherwise than on the premises of the club, & against the other applt. for unlawfully obtaining the liquor, contrary to Licensing (Consolidation) Act, 1910 (c. 24), s. 94:—*Held*: as the liquor was not supplied in the registered premises of the club it was not supplied "in a club" within the above sect., & the conviction must be quashed.—*CLARKE v. GRIFFITHS, PEACOCK v. GRIFFITHS*, [1927] 1 K. B. 226; 95 L. J. K. B. 905; 135 L. T. 58; 90 J. P. 151; 42 T. L. R. 541; 24 L. G. R. 466; 28 Cox, C. C. 240, D. C.

chasing beer from a Govt. vendor may store it at the club, & the club is entitled to charge a fee for storage & service.—*R. v. ROCK* (1923), 32 B. C. R. 67.—*CAN.*

*sf. "Distributing" beer by servant of club—What amounts to.*—*R. v. ROCK* (1923), 32 B. C. R. 67.—*CAN.*



## Part IX.—Betting and Gaming in Clubs.

136. *Add. Annotations* :—**Apld.** *R. v. O. K. Social & Whist Club* (1929), 45 T. L. R. 570. **Refd.** *Richardson v. Moncrieffe* (1926), 43 T. L. R. 32; *R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38.
140. *Add. Annotation* :—**Refd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
- 140a. ————.]—There is a sufficient element of chance in the game popularly called a “whist drive” to make a club where it is played for money a “common gaming house.”—*R. v. O. K. Social & Whist Club, Ltd.* (1929), 45 T. L. R. 570; 73 Sol. Jo. 451; 21 Cr. App. Rep. 119, C. C. A.

## Part X.—Dissolution of Clubs.

- 148a. **Claims by members of proprietary club—For damages for loss of club amenities—& for proportion of subscriptions—& return of entrance fee.**—*Re CURZON SYNDICATE, LTD.* No. 53a, *ante*.

### PART IX. SECT. 2.

- 137 i. *Common gaming house—Who are liable as persons assisting in conducting business—Employees.*—*R. v. DORGAN, R. v. KESSLER, R. v. COATES* (Sask.) (1927), 47 Can. Crim. Cas. 344.—CAN.

# COMPANIES.

NOTE.—The Act now in force is the Companies Act, 1929 (c. 23), which repealed (*inter alia*) the Companies (Consolidation) Act, 1908 (c. 69). References to sections of the 1908 Act should therefore be checked with the Comparative Table appended below.

1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.
1	357, 358	54	60	105	76	152	185, 198	202	259	252	323
2	1	55	57	106	77	153	186	203	260, Sch.	253	324
3	2	56	55, 50	107	78	154	194		IX.	254	325
4	2	57	16	108	131	155	195	204	187	255	326
5	2	58	53	109	135	156	193	205	173, 229,	256	359
6	3	59	49	110	137	157	197		258	257	327
7	4	60	146	111	138	158	192	206	261	258	328
8	17, 19	61	147	112	132, 133	159	196	207	262	259	329
9	5	62	92	113	129, 130,	160	199, 200	208	263	260	330
10	6, 7, 8	63	93		134	161	209	209	264	261	331
11	8 (2)	64	112	114	130	162	307	210	265	262	332
12	9	65	113, 171	115	28	163	203	211	174, 258	263	333
13	10, 319	66	114	116	370	164	204	212	266	264	334
14	20	67	115	117	33	165	205	213	270	265	335
15	12	68	116	118	11, 14 (2),	166	206	214	191, 248,	266	336
16	13, 14	69	117		108 (4).	167	207		260	267	337
17	15	70	118		379, 3rd	168	208	215	276	268	338
18	23	71	120		Sch. F.	169	210	216	272	269	339
19	14	72	140	119		170	211	217	277	270	340
20	18	73	141	120	153	171	213	218	303	271	341
21	21	74	143	121	26	172	221	219	288	272	
22	62	75	144	122	156	173	220	220	282	273	342
23	68	76	29	123	157	174	214	221	212	274	343, 344,
24	25	77	30	124	158	175	216	222	283		346, 348,
25	95	78	31	125	159	176	218	223	294		349, 351,
26	108, 110	79	32	126	160	177	219	224	284, 285		352, Sch.
27	101	80	34	127	161	178	163, 373	225	289		X., III.
28	65	81	35, 355,	128	162	179	222	226	290	275	345
29	64		Sch. IV.	129	168	180	223	227	291	276	366
30	98, 110	82	40	130	169	181	224	228	293	277	367
31	99	83	36	131	163	182	225	229	300	278	371
32	100	84	37	132	164	183	227	230	301	279	372
33	102	85	39	133	165	184	228	231	302	280	375
34	103	86	41	134		185	226	232		281	362
35	104	87	94	135		186	232, 241,	233	303	282	364
36	105	88	42	136	167		247, 248,	234		283	376
37	70, 97, 111	89	43	137	170		249	235	304	284	377
38	72	90	44	138	178	187	250	236	378	285	380
39	48	91	54	139	175	188		237	305	286	
40		92	67	140	172	189	233, 242	238	374	287	
41	50	93	79, 80, 82,	141	171	190		239	297	288	
42	51		83, 87	142	177	191	251	240	298	289	
43	95, 108	94	86	143	176	192	234	241	299	290	
44	7, 52	95	310	144	202	193	252	242	295	291	
45		96	85	145	288	194	235, 244,	243	312, 314	292	
46	55	97	84	146	179		248	244	313	293	
47	56	98	82 (4)	147	181	195	236, 245	245	316	294	
48	57	99	80, 83	148	182	196	254	246	317	295	
49	56	100	88	149	183, 184,	197	255	247	318	296	
50	57	101	89		185, 186,	198		248	319		
51	58	102	73		187, 188	199	256	249	321		
52	58	103	74	150	189	200	257	250	322		
53	59	104	75	151	184, 191	201	288	251	360		

## Part I.—Nature, Characteristics, Definitions and Classification.

6. *Add. Annotations*:—*As to* (1) *Refd.* Deuchar v. Gas Light & Coke Co., [1924] 2 Ch. 426. *As to* (2) *Refd.* A.-G. v. Leeds Corpn., [1929] 2 Ch. 291.
11. *Add. Annotations*:—*Consd.* British Thomson-Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn, [1924] 2 Ch. 33; *Refd.* Parker & Cooper v. Reading, [1926] Ch. 975; Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Asscn. (1926), 42 T. L. R. 401. *Mentd.* Howson v. Buxton (1928), 97 L. J. K. B. 749.
15. *Add. Annotations*:—*Refd.* British Thomson-Houston Co. v. Starling Accessories, Same v. Crowther & Osborn, [1924] 2 Ch. 33; Prichard & Constance v. Amata (1924), 42 R. P. C. 63. *Mentd.* Scammell v. Hurley, [1929] 1 K. B. 419.
16. *Add. Annotation*:—*Mentd.* R. v. Morter (1927), 20 Cr. App. Rep. 53.

## Part II.—Domicil, Residence and Nationality of Companies.

- 26a. ——— *Business conducted abroad.*]—A trading corpn. was registered in England under Cos. Acts, but the whole administration of the business of the co. was conducted by directors domiciled & resident in Holland. The register of members was kept at the office in England:—*Held*: the domicil of the co. was not in Holland but in England.—*BAELZ v. PUBLIC TRUSTEE*, [1926] Ch. 863; 95 L. J. Ch. 400; 135 L. T. 763; 42 T. L. R. 696; 70 Sol. Jo. 818.
- 26b. ———.]—To constitute residence by a British co. in a foreign State so as to render the co. subject to the jurisdiction of the cts. of that State, the co. must to some extent carry on business in that State at a definite & reasonably permanent place.—*LITTAUER GLOVE CORPN. v. F. W. MILLINGTON* (1920), LTD. (1928), 44 T. L. R. 746.
27. *Add. Annotations*:—*Consd.* New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101.
- Refd.* Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255; *Re* Bates, Mountain Bates, [1928] Ch. 682; Ellerman Lines v. Read, [1928] 2 K. B. 144.
- 27a. ———.]—A co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe:—*Held*: a corpn. might have a dual residence, & there was evidence that plts. were resident both in New York & in London carrying on business in both places & in both places were subject to the jurisdiction of the cts.—*NEW YORK LIFE INSURANCE CO. v. PUBLIC TRUSTEE*, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.
- Annotations*:—*Refd.* Swedish Central Ry v Thompson, [1924] 2 K. B. 255. *Mentd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

## Part III.—Companies under Companies (Consolidation) Act, 1908, and Similar Acts.

38. *Add. Annotation*:—*As to* (6) *Apld.* *Re* City Equitable Fire Insce., [1925] Ch. 407.
42. *Add. Annotation*:—*Mentd.* Cotter v. National Union of Seamen, [1929] 2 Ch. 58.
44. *Add. Annotations*:—*Mentd.* *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Elic [1928] Ch. 861.
67. *Add. Annotations*:—*Refd.* Weld v. Petre (1928),

### PART I. SECT. 1.

sa. *Under statute*—*Existence apart from members*—*Conveyance of property by originators to company.*]—Defts. contracted with plts. to sell them all the fruit & vegetables to be grown on their land during a specified time. The contract provided that if any transfer should be made by the grower to any corpn., it should be deemed to be made subject to the agreement & the transferee should be bound by the terms thereof. Defts., for the admitted purpose of freeing themselves from the contract, incorporated a joint stock co. for the purpose of holding the land, & transferred the land to it in consideration

of the allotment to them of the whole of its capital stock:—*Held*: the co. could not be declared to be a trust for the growers & bound by the contract.—*ASSOCIATED GROWERS OF B. C. LTD. & KELOWNA GROWERS EXCHANGE v. EDMUNDS & BYZANT ORCHARDS LTD.*, [1926] 1 D. L. R. 1093; [1926] 1 W. W. R. 535; 36 B. C. R. 413.—*CAN.*

### PART I. SECT. 2.

sb. *Companies limited by guarantee*—*Assignment of undertaking by third party*—*Validity.*]—*LYOYD'S BANK v. MORRISON & SON, LTD.*, [1927] S. C. 571.—*SCOT.*

### PART II.

di. ——— *In several places.*]—A co. is to be treated in matters of trade & commerce as resident not only where its principal place of business is, but wherever it has a place of business.—*KIMKA v. BORDER CITIES IMPROVEMENT CO.* (1922), 52 O. L. R. 193.—*CAN.*

### PART III. SECT. 1, SUB-SECT. 5.—A. (a) ii.

sc. *General rule.*]—*VITOMEN CEREAL, LTD. v. MANITOBA GRAIN CO. (B. C.)*, [1928] 4 D. L. R. 440.—*CAN.*

- 97 L. J. Ch. 399. **Mentd.** Anchor Trust Co. v. Bell. [1926] Ch. 805.
69. **Add. Annotations** :—**Mentd.** Anchor Trust Co. v. Bell. [1926] Ch. 805 ; Weld v. Petre, [1929] 1 Ch. 33.
75. For the paragraph “ (9) (WARRINGTON, L.J. . . . 1908 Act, s. 82,) substitute :—“ (9) (LORD SUMNER, LORD DUNEDIN expressing the contrary opinion), an allotment of shares & debentures made before filing a statement in lieu of prospectus as required by 1908 Act, s. 82 (1), is not wholly void.”
- For the paragraph “ (10) (LORD STERNDAL, M.R., . . . was written,” substitute :—“ (10) Observations of LORD SUMNER as to the practice of the Registrar of Joint Stock Companies, in cases where everything is in order, of antedating the incorporation of a co. to the date of the application for registration.”—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS, [1924] A. C. 958 ; 93 L. J. Ch. 414 ; 40 T. L. R. 621 ; 68 Sol. Jo. 663 ; [1925] B. & C. R. 16 ; *sub nom.* *Re JUBILEE COTTON MILLS, LTD.*, 131 L. T. 579, H. L.
- Annotations**.—As to (9) **Consd.** *Re Burton*, [1927] 2 Ch. 132 **Generally**, **Mentd.** *Re City Equitable Fire Insce* (1925), 133 L. T. 529.
82. **Add. Annotation** :—As to (1) **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator v. Lewis, [1924] A. C. 958.
196. **Add. Annotation** :—**Refd.** Harrods v. Harrod (1924), 40 T. L. R. 195.
210. **Add. Citation** :—9 Jur. N. S. 843.
225. **Citation** :—For “ 56 Sol. Jo. 36 ” read “ 56 Sol. Jo. 361.”
- Add. Annotation** :—**Consd.** Harrods v. Harrod (1924), 40 T. L. R. 195.
228. **Add. Citation** :—On appeal, 41 R. P. C. 67, C. A.
- 228a. “ Harrods ” — “ R. Harrod.”—The ct. granted an interlocutory injunction to restrain deft. co. from carrying on business under any name comprising the well-known name of pltf. co. on the ground that defts.’ use of the name was calculated to lead the public erroneously to believe that defts.’ business had some connection with pltf.’ business.—**HARRODS, LTD. v. HARROD (R.)**, LTD. (1924), 40 T. L. R. 195 ; 41 R. P. C. 74, C. A.
- Annotation** :—**Expld.** Motor Manufacturers’ & Traders’ Soc. v. Motor Manufacturers’, etc., Insce., [1925] Ch. 675.
- 228b. “ Society of Motor Manufacturers & Traders ” — “ Motor Manufacturers’ & Traders’ Mutual Insurance Co.”—A co., carrying on the business of insurance against motor risks, adopted as part of its name the ordinary descriptive words “ Motor Manufacturers & Traders,” which had already been adopted as part of its name by a society having for its main objects the promotion, encouragement & protection of the motor trade generally. There was no charge of fraud &, in the opinion of the ct., no tangible risk of injury to the society’s business reputation owing to the similarity of the names; the names being sufficiently distinguishable & deft. co.’s business wholly different from that of pltf. society :—**Held** : pltf. society was not entitled to a monopoly of its descriptive words, or to any relief against deft. co. — **MOTOR MANUFACTURERS’ & TRADERS’ SOCIETY v. MOTOR MANUFACTURERS’ & TRADERS’ MUTUAL INSURANCE CO.**, [1925] Ch. 675 ; 94 L. J. Ch. 410 ; 133 L. T. 330 ; 41 T. L. R. 483 ; 42 R. P. C. 307, C. A.
237. **Add. Annotation** :—As to (1) **Consd.** Motor Manufacturers’ & Traders’ Soc. v. Motor Manufacturers’ & Traders’ Mutual Insce., [1925] Ch. 675.
238. **Add. Annotations** :—**Refd.** Harrods v. Harrod (1924), 40 T. L. R. 195 ; Motor Manufacturers’ & Traders’ Soc. v. Motor Manufacturers’ & Traders’ Mutual Insce. (1925), 94 L. J. Ch. 410.
251. **Add. Annotation** :—**Refd.** Employers’ Liability Asce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.
255. **Add. Annotations** :—As to (1) **Refd.** I. R. Comrs. v. Cornish Mutual Asce. (1924), 41 T. L. R. 70. As to (2) **Refd.** South Behar Ry. v. I. R. Comrs., [1925] A. C. 476 ; **Generally**, **Mentd.** *Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689 ; Dominion Iron & Steel Co. v. Invernairn, [1927] W. N. 277 ; Manchester Corp’n. v. Buttle, [1929] 2 Ch. 390.
256. **Add. Annotation** :—**Mentd.** Dominion Iron & Steel Co. v. Invernairn, [1927] W. N. 277.
257. **Add. Annotation** :—**Refd.** Greenberg v. Cooperstein, [1926] Ch. 657.
- 260a. — What amounts to—Not acquisition of shares of company to promote its amalgamation with another company.] — **DOMINION IRON & STEEL CO., LTD. v. INVERNAIRN**, [1927] W. N. 277.
265. **Add. Annotations** :—**Consd.** I. R. Comrs. v. Cornish Mutual Asce. (1924), 41 T. L. R. 70. **Mentd.** Brighton College v. Marriott, [1925] 1 K. B. 312.
266. **Add. Annotations** :—As to (1) **Apld.** Cornish Mutual Asce. v. I. R. Comrs., [1926] A. C. 281. **Refd.** Greenberg v. Cooperstein, [1926] Ch. 657 ; *Re United General Commercial Insce Corp’n.*, [1927] 2 Ch. 51. As to (2) **Refd.** Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners’ Assocn. (1926), 135 L. T. 673. **Generally**, **Mentd.** Brighton College v. Marriott, [1925] 1 K. B. 312.
270. **Add. Annotation** :—**Refd.** Greenberg v. Cooperstein, [1926] Ch. 657.
271. **Add. Annotation** :—**Folld.** Greenberg v. Cooperstein, [1926] Ch. 657.
- 272a. — — — — —]—An assocn. with four branches was formed to obtain subscriptions from the members of each branch & to lend to members out of the fund so formed money on interest. Each fund, with its accretions of interest, was divided up periodically among the members ratably at a period of the year which differed in each branch. The assocn. & its branches all consisted of more than twenty members. The assocn. was not registered under any Act. Disputes having arisen, a resolution was passed by the members for the dissolution of the assocn., & an action was brought by three members suing on behalf of all members other than defts. against defts., who were the treasurer & secretary of the assocn., claiming administration of the assets of the assocn., an account of the subscriptions received by defts. from members & of their application thereof, payment of the amount found due & other relief. The action was resisted on the ground that the assocn. was illegal & that no relief could therefore be given :—**Held** : (1) the assocn. was rendered illegal by 1908 Act,

- s. 1 (2), as being an unregistered assocn. of more than twenty persons carrying on a business having for its object the acquisition of gain; (2) the ct. was not debarred from affording relief to the members asking for the return of money paid into the hands of agents for application for an illegal purpose by granting an account.—**GREENBERG v. COOPERSTEIN**, [1926] Ch. 657; 95 L. J. Ch. 466; 135 L. T. 663.
- 282. Add. Citation:**—130 L. T. 450.  
**Add. Annotations:**—**Refd.** Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264. **Mentd.** Imperial Tobacco Co. of India *v.* Bonnan, [1924] A. C. 755.
- 298. Add. Annotation:**—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.
- 304. Add. Annotation:**—**Mentd.** Everett *v.* Griffiths. [1924] 1 K. B. 941.
- 335. Add. Annotation:**—**Refd.** *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.
- 341. Add. Annotations:**—**As to** (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Generally, Mentd.** Laphs *v.* Braithwaite (1924), 40 T. L. R. 857.
- 343. Add. Annotation:**—**As to** (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733.
- 351. Add. Annotations:**—**Apld.** Plantations Trust *v.* Bilba (Sumatra) Rubber Lands (1916), 114 L. T. 676. **Mentd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.
- 354. Add. Annotation:**—**As to** (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.
- 379. Add. Annotations:**—**Mentd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26; Watkins *v.* Jones (1928), 14 Tax Cas. 94.
- 398. Add. Annotation:**—**Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.
- 406. Add. Annotations:**—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenckens, [1927] 1 K. B. 826; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 413. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.
- 410. Add. Annotations:**—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.
- 411. Add. Annotation:**—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.
- 415. Add. Annotation:**—**Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.
- 417. Add. Annotation:**—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.
- 427. Add. Annotation:**—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.
- 430. Add. Annotation:**—**Mentd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853
- 431a. —**]—A collateral obligation imposed by the arts. of assocn. of a co. registered under 1908 Act upon a member of the co., which in certain events involves a liability on the part of that member to take further shares in the co., can be enforced notwithstanding that the liability of the member to contribute in a winding up is limited by the Act under which the co. is registered.
- The limitation of liability in respect of shares held is distinct from an obligation collaterally imposed upon a member in certain events to take up further shares which will themselves, when taken up, be entitled to a similar limitation of liability. There is nothing in such a collateral obligation which is *ultra vires* or repugnant to the system of limited liability.—**AGRICULTURAL WHOLESALE SOCIETY v. BIDDULPH & DISTRICT AGRICULTURAL SOCIETY**, [1925] Ch. 769; 94 L. J. Ch. 397; 133 L. T. 274; 41 T. L. R. 470; 69 Sol. Jo. 557, C. A.; *affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY *v.* AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76, H. L.
- Annotation:**—**Apld.** *Re* Wilts & Somerset Farmers, [1929] 1 Ch. 321.
- 432a. —** Unless arising from wilful neglect or

**PART III. SECT. 4, SUB-SECT. 5.**

**sd. Striking off register—Effect.]—**(1) The intention to dissolve a co. should not be read into a statute providing for the striking of the co. off the register because of a short delay in the payment of its annual fee, unless the language of the statute expressly or by necessary implication imposes that penalty. (2) The conduct of deft. shareholders after the co. had been struck off the register held to make them trustees of the co.'s property for the individual shareholders, who made contributions to conserve the property, & not for the co. It was, therefore, not necessary for plff., whose suit was for his share of the assets, to have the co. restored to the register & to have the action brought by the co.—**DADSON v. GREST & GREST, [1923] 1 D. L. R. 479; [1928] 1 W. W. R. 286; 22 Sask. L. R. 253.—CAN.**

**PART III. SECT. 6.**

ki. — *That company duly incorporated.*—The fact that a co. incorporated under Cos. Act includes in its name the word "Co-operative," contrary to Co-operative Assocs. Act,

1920 (c. 19), s. 4 (2), does not render it an illegal co., since Cos. Act, s. 28, makes a certificate of incorporation conclusive evidence that the co. was duly incorporated—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533—CAN.

**PART III. SECT. 7, SUB-SECT. 6.—**  
**A. (a).**

**358 i.** *To take up number subscribed for.*—P. agreed to purchase shares in a co. & subscribed to the memorandum of assocn., but later asked the promoter to cancel his "requirements." P.'s name was never entered in the register of members :—*Held* : P. was liable.—*Re J. H. CHANDLER & CO., LTD.* (1926), 1. L. R. 48 All. 580.—**IND.**

**PART III. SECT. 7, SUB-SECT. 6.—**  
**A. (a).**

388 i. *Where shares subscribed for not allotted.*—Persons signing a memorandum of assocn. of a co. to be incorporated are contributories, although no shares are allotted.—*Re T. E. O'REILLY, LTD.*, [1927] 3

not render it     D. L. R. 797 ; 60 O. L. R. 649.—CAN.

395 1. *By transfer.*]—An original subscriber of a co. can withdraw his subscription & transfer his share at the first meeting of provisional directors, & where a majority of original incorporators are present & vote at the meeting such withdrawal does not invalidate anything done at the meeting.  
—*Re* GEORGE W. GRIFFITHS Co., [1921]  
4 D. L. R. 1031.—CAN.

**PART III. SECT. 7, SUB-SECT. 6.—B.**

400 i. *Misrepresentation by promoter—Not ground for rescission*].—Subscribers to the memorandum of association of a co. cannot repudiate shares for which they have subscribed either on the ground that they were induced to join the co. by fraud or misrepresentation, or on the ground that the truth of the precedent representations made by the promoters of the co. was a condition of the contract; the true remedy of the persons so defrauded is to sue for damages the persons so defrauding them.—*PETROTTI & CHALLENGE HEATERS, LTD. v. BODLEY*, [1924] N. Z. L. R. 102.—N.Z.

default.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, post.*

432b. ———.]—*FENTON TEXTILE ASSOCN., LTD. v. THOMAS & CLARK* (1928), 45 T. L. R. 113; *on appeal* (1929), 45 T. L. R. 264, C. A.

432c. ——— Unless arising from wilful or wrongful act or default.]—One of the arts. of assocn. of a co. provided that "The directors & other officers shall be indemnified by the co. against all costs, losses, & expenses incurred by them in or about the discharge of their respective duties, except such as may happen from their own respective wilful or wrongful act or default":—*Held*: the above art. did not protect a director from liability for negligence resulting in loss to the co.—*Re CITY OF LONDON INSURANCE CO., LTD.* (1925), 41 T. L. R. 521; 69 Sol. Jo. 591.

433. *Add. Annotation*:—*As to* (1) *Consd. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

437. *Add. Annotation*:—*As to* (1) *Refd. Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 576.

439. *Add. Annotation*:—*As to* (1) *Consd. Collins v. Associated Greyhounds Racecourses* (1929), 141 L. T. 529.

439a. "Issued" to the public—What amounts to.]—A co. being in want of further capital, a document was prepared by applt., who was the managing director, & signed by the other directors, stating the position of the co., that it was proposed to issue 20,000 preference shares, & giving an estimate of the profits after the new capital was available. Attached was an application form for preference shares. A second document was also prepared by the applt., written on the co.'s paper & addressed to a fellow director, marked "strictly private & confidential," which, after setting out the amount of nominal & issued capital, stated the purposes for which the additional capital was required, & concluded thus: "I shall be very happy to discuss this proposition in all its details with any one who is really interested." Attached was a form of application for ordinary shares. Several copies of these documents were given to applt.'s fellow director, who sent a copy to a solr., with a request, in substance, that he should find some client willing to provide the capital required. The solr. sent the documents to resp.'s brother-in-law, & he in turn sent them to resp., who, on the faith of the statements they contained, subscribed for 3,000 ordinary shares in the co. Subsequently ascertaining that a considerable part of the issued capital had been issued otherwise than for cash, a fact that was not stated in either of the documents, he sued applt. for damages for the loss he had sustained

through the omission by applt. to comply with the requirements of 1908 Act, s. 81 (1) (e). At the trial the jury found that the two documents were an offer of shares by the co. to the public. In answer to the question, whether they were in fact issued to the public, the jury said: "There is no proof of this." The jury found that resp. sustained damage to the amount of £2,000:—*Held*: the documents were not issued as a prospectus within 1908 Act, s. 81 (1) (e).—*NASH v. LYNDE*, [1929] A. C. 158; 98 L. J. K. B. 127; 45 T. L. R. 42; 72 Sol. Jo. 873; *sub nom. LYNDE v. NASH*, 140 L. T. 146, H. L.

478. *Add. Annotation*:—*Consd. Nash v. Lynde*, [1929] A. C. 158.

491. *Add. Annotation*:—*Appld. Coles v. White City* (Manchester) Greyhound Assocn. (1929), 45 T. L. R. 230.

525a. ———.]—*Held*: pltf. was entitled to the rescission of a contract to take shares, on the ground that the prospectus did not disclose the facts (1) that the land purchased by the co. for its operations had been scheduled to a town-planning resolution, which had been registered as a land charge, & (2) that, unless the consent of the local authority should be obtained before any buildings were erected, the co. would not be entitled to compensation for their possible removal under the town-planning scheme.—*COLES v. WHITE CITY (MANCHESTER) GREYHOUND ASSOCN., LTD.* (1929), 45 T. L. R. 230, C. A.

560. *Add. Annotation*:—*Mentd. Bisset v. Wilkinson* (1926), 42 T. L. R. 727.

562. *Add. Annotation*:—*Apprvd. Collins v. Associated Greyhounds Racecourses* (1929), 141 L. T. 529.

568. *Add. Annotation*:—*Refd. Humphrey & Denman v. Kavanagh* (1925), 41 T. L. R. 378.

570. *Add. Annotation*:—*Mentd. India Rubber Gutta Percha & Telegraph Works v. County Golf Co.* (1925), 42 R. P. C. 225.

635. *Add. Annotation*:—*Mentd. Short v. Poole Corpn.* (1925), 42 T. L. R. 107.

642. *Add. Annotations*:—*Consd. Clark v. Urquhart, Stracey v. Urquhart* (1929), 141 L. T. 641. *Refd. Horwood v. Statesman Publishing Co.* (1929), 141 L. T. 54. *Mentd. Edwards v. Porter* (1924), 41 T. L. R. 57; *Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.

652. *Add. Annotation*:—*Mentd. Bisset v. Wilkinson* (1926), 42 T. L. R. 727.

660. *Add. Annotations*:—*Refd. Clark v. Urquhart, Stracey v. Urquhart* (1929), 141 L. T. 641. *Mentd. Edwards v. Porter* (1924), 41 T. L. R. 57; *Jarvis v. Surrey County Council*, [1925] 1 K. B. 554; *Horwood v. Statesman Publishing Co.* (1929), 141 L. T. 54.

#### PART III. SECT. 8, SUB-SECT. 1.

1 i. ———.]—An advertisement offering the public shares in a co. for sale is a "prospectus" under sect. 2 (14) of Indian Cos. Act (VII. of 1913).—*PRAMATHA NATH SANYAL v. KALI KUMAR DUTT* (1924), 1 L. R. 52 Calc. 440.—IND.

#### PART III. SECT. 8, SUB-SECT. 3.—D. (b).

1 f. *Prospectus must be issued by or on*

*behalf of company.*]—Sect. 84 of 1908 Act is confined to prospectuses issued by or on behalf of the co.—*URQUHART v. STRACEY*, [1928] N. I. 162.—IR.

678 1. *Measure of damages.*]—*URQUHART v. STRACEY*, No. 7471, *post.*—IR.

#### PART III. SECT. 8, SUB-SECT. 3.—D. (c).

1 sm. *Under Criminal Code, s. 414.*]—The above sect. relates to the issuing

of a written prospectus, statement or account by a director with the intention of deceiving shareholders of a co., or of inducing some other person to entrust or advance property to the co.; & where deft. obtained subscriptions for stock of a co., of which he was a promoter, upon false oral statements:—*Held*: a conviction under that sect. was not justified.—*R. v. ANDERSON* (1924), 55 O. L. R. 586.—CAN.

663. *Add. Annotation*:—*Mentd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
666. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.
667. *Add. Annotation*:—*Consd. Clark v. Urquhart, Stracey v. Urquhart* (1929), 141 L. T. 641.
677. *Add. Annotation*:—*Refd. Horwood v. Statesman Publishing Co.* (1929), 98 L. J. K. B. 450.
703. *Add. Annotation*:—*Refd. Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30.
738. *Add. Annotation*:—*Refd. The Saxicava*, [1924] P. 131.

(i) *Other Cases* (Vol. IX., p. 139).

770a. *Acceptance of sum paid into court—Effect on liability under 1908 Act, s. 84.*—*Resp.* applied for & was allotted debenture stock in W., C., & Co., Ltd., relying upon the statements contained in a prospectus. The first-named applt. were directors in W., C., & Co., Ltd.; the second-named applt. carried on business as merchant bankers in the name of S. & Co., who were stated in the prospectus to have purchased the whole of the debenture stock of W., C., & Co., Ltd., but who were alleged by *resp.* to have issued the prospectus as agents for the other applt. *Resp.* by his writ claimed "damages for false & fraudulent misrepresentation against all applt., & against such of applt. as were directors of W., C., & Co., Ltd., compensation under 1908 Act, s. 84, alternatively damages for conspiracy to defraud, the damages claimed in respect of the three claims being £178." The trial judge dismissed the action against the first-named applt. with costs. The action then proceeded against the second-named applt. until they amended their defence by leave & paid £130 into ct. with a denial of liability, which amount the *resp.* accepted in lieu of the £178 claimed, in full satisfaction of the cause of action for fraudulent misrepresentation. The Ct. of Appeal set aside the orders & judgment of the trial judge & ordered a new trial of the action as regards the causes of action under 1908 Act, s. 84, & conspiracy to defraud:—*Held*: (1) both on the issue of conspiracy to defraud & the issue of deceit, after the money had been taken out in satisfaction there was no cause of action & no head of damage remained unsatisfied of which there was any evidence or which could be ordered to be tried anew; (2) on the question of compensation under 1908 Act, s. 84, although the case should have been left to the jury there was nothing left to be tried after *resp.* had taken out in satisfaction money paid in on the issue of conspiracy only. Compensation was not, either as to the amount recover-

able or the mode of measuring it something different from or even greater than damages.—*CLARK v. URQUHART, STRACEY v. URQUHART* (1929), 141 L. T. 641, H. L.

771a. — *Order for new trial—After acceptance of sum paid into court.*—*CLARK v. URQUHART, STRACEY v. URQUHART*, No. 770a, *ante*.

814. *Add. Annotation*:—*As to* (1) *Refd. Jacobs v. Batavia & General Plantations Trust*, [1924] 2 Ch. 329.

814a. *Profit sharing deposit notes redeemable in four years—Company bound to redeem.*—*Pltf.*, in reliance upon a prospectus issued in Sept., 1920, by *deft. co.*, hereinafter called "the Trust," applied for & had allotted to him subject to the terms of the prospectus four £100  $7\frac{1}{2}$  per cent. profit sharing deposit notes of the Trust. It was stated in the prospectus that the notes would be paid off at 105 per cent. by four annual drawings, &, under the heading "Earlier payments," that the Trust retained the right to pay off at 105 per cent. all or any of the outstanding notes at any time on giving three months' previous notice in writing, but that in the event of the sale of the Trusts' R. B. estates, further referred to in that prospectus, which according to the construction placed upon the prospectus by the ct. was not confined to a sale under a certain option of purchase referred to later in the prospectus, but included a sale to anybody whomsoever, the Trust would set aside out of the proceeds of sale a sum sufficient to redeem all the notes then outstanding, & the holders would be given an option of being then paid off in cash at 105 per cent. or of retaining their notes till the date of drawing. Each of the notes, which was in the form of the specimen note referred to in the prospectus, provided that the Trust would, as & when the principal sum of £100 became payable in accordance with the conditions indorsed thereon, pay to *pltf.* the sum of £105, & was expressed to be subject to & with the benefit of those conditions, which repeated the provisions contained in the prospectus for the redemption of the notes by drawings & the option retained by the Trust to pay off the notes on notice, but did not refer to the promise by the Trust contained in the prospectus as to earlier payments in the event of the sale of the Trusts' R. B. estates. The option to purchase referred to in the prospectus having lapsed & the Trust having contracted to sell the R. B. estates without having given notice to *pltf.* that his option to be paid off or to retain his notes had thereby become exercisable, & the Trust having repudiated their liability to perform their promise contained in the prospectus, *pltf.* brought an action to have

PART III. SECT. 8, SUB-SECT. 3.—  
F. (c).

747 i. *Claim for damages against directors—& others—Joined with statutory claim for compensation against directors.*—*Pltf.* bought debentures in a co. on the faith of statements in a prospectus. Some of *defts.* were directors in the co., & some were partners in an issuing house called S. & Co. *Pltf.* claimed against all *defts.* damages for fraudulent misrepresentations in the prospectus & for

conspiracy to defraud, & against such of *defts.* as were directors in the co. claimed compensation under 1908 Act, s. 84:—*Held*: (1) *pltf.* was entitled to have the alternative causes of action for compensation & for misrepresentation & conspiracy submitted to the jury subject to two limitations, (a) that he could not get damages more than once in respect of what was in substance the same cause of action, & (b) that the causes of action could conveniently be tried or disposed of together; (2) if *pltf.* suc-

ceeded on the cause of action under sect. 84, he would be entitled to such compensation as he might prove, in addition to any damages already received in respect of fraudulent misrepresentation.—*URQUHART v. STRACEY*, [1928] N. I. 162, *varied*, 141 L. T. 641, H. L.—*IR.*

PART III. SECT. 10, SUB-SECT. 1.

*sp. Includes premiums on sale of stock.*—*TORONTO P. CONSUMERS' GAS Co.*, [1927] 4 D. L. R. 102.—*CAN.*

the said liability of the Trust established & for an injunction to restrain them from dealing with the proceeds of sale without in the first place setting aside a sum sufficient to pay off the outstanding notes:—*Held*: pltf. was entitled to the relief claimed on either of two grounds, namely, (1) that the entire contract was contained in two written instruments, namely, the deposit notes & the prospectus, the terms of which the ct. could reconcile by construing the promise in the prospectus as if it were inserted in the note as a proviso to come into operation, if & when the R. B. estates were sold, or (2) that the promise was a binding collateral contract, the consideration for which was the contract by pltf. to take up the notes, & that, as the terms of that promise & an *animus contrahendi* on the part of pltf. & the Trust had been clearly proved, the test laid down by LORD Moulton in *Heilbut, Symons & Co. v. Buckleton* (see No. 1565) was satisfied—*JACOBS v. BATAVIA & GENERAL PLANTATIONS TRUST*, [1924] 2 Ch. 329; 93 L. J. Ch. 520; 131 L. T. 617; 40 T. L. R. 616; 68 Sol. Jo. 630, C. A.

818. *Add. Annotations*:—*Consd. Re Burton*, [1927] 2 Ch. 132. *Refd. Jubilee Cotton Mills Official Receiver & Liquidator v. Lewis*, [1924] A. C. 958.

820. *Add. Annotations*:—*As to* (5) *Consd. Atherton v. British Insulated & Helsby Cables*, [1925] 1 K. B. 421. *Generally, Refd. Stapley v. Read* (1924), 131 L. T. 629.

825. *Add. Annotation*:—*Mentd. Eastwood & Holt v. Studer* (1926), 31 Com. Cas. 251.

827. *Add. Annotation*:—*Mentd. Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137.

839a. ——— *Company in voluntary liquidation.*—A reduction, reorganisation & increase of capital with a view to continuing to carry on the business of a co. can be directed by the ct., while the co. is in voluntary liquidation, & all further proceedings in a voluntary winding up stayed.—*Re WALTERS (STEPHEN) & SONS, LTD.* (1926), 70 Sol. Jo. 953.

871. *Add. Annotation*:—*Consd. Kirby v. Wilkins*, [1929] 2 Ch. 414.

1015. *Add. Annotation*:—*Refd. Re North Pole Ice Co. & Reduced*, [1924] W. N. 131.

1017. *Add. Annotations*:—*Refd. Re Dampney & Reduced* (1924), 68 Sol. Jo. 718; *Re North Pole Ice Co. & Reduced*, [1924] W. N. 131.

1018. *Add. Annotations*:—*Mentd. Re Dampney & Reduced* (1924), 68 Sol. Jo. 718; *Re*

*North Pole Ice Co. & Reduced*, [1924] W. N. 131.

1019a. *Passing of special resolution—& confirmation by court.*—(1) The proper form of minute in petitions for reduction of capital is not as set out in *Re Salinas of Mexico*, [1919] W. N. 311, but should state that the capital has been reduced “by a special resolution confirmed by an order of the High Ct. of Justice.” (2) With regard to the form of notice of registration pursuant to 1908 Act, s. 51 (3), it is a sufficient compliance with the statute to give such notice in the short form approved in *Re Oceana Development Co.* (1912), 56 Sol. Jo. 537, which removed the objection to the length of the minute.—*Re NORTH POLE ICE CO., LTD. & REDUCED*, [1924] W. N. 131.

*Annotation*:—*As to* (1) *Expld. Re Dampney & Reduced* (1924), 68 Sol. Jo. 718.

1019b. ————*Where a petition for reduction of capital does not involve & is not followed by any sub-division, consolidation or reorganisation of share capital, the old form of minute used in cases of simple reduction is correct, & it is not necessary to state that the capital has been reduced by virtue of a special resolution, & with the sanction of an order of the High Ct. of Justice.*—*Re DAMPNEY & CO., LTD. & REDUCED* (1924), 68 Sol. Jo. 718.

1029. *Add. Annotation*:—*Refd. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

1036. *Add. Annotation*:—*Refd. Re North Pole Ice Co. & Reduced*, [1924] W. N. 131.

1036a. ————*Re NORTH POLE ICE CO., LTD., & REDUCED*, No. 1019a, *ante*.

1080a. ——— *Company in voluntary liquidation.*—*Re WALTERS (STEPHEN) & SONS, LTD., No. 839a, ante*.

1102. *Add. Annotations*:—*Appld. Parker & Cooper v. Reading & James* (1926), 96 L. J. Ch. 23. *Refd. Kerr v. Marine Products* (1928), 44 T. L. R. 292.

1107. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

1108. *Add. Annotation*:—*Appld. Re City Equitable Fire Insce.*, [1925] Ch. 407.

1114. *Add. Annotation*:—*Mentd. Stapley v. Read* (1924), 131 L. T. 629.

1124. *Add. Annotations*:—*Consd. I. R. Comrs. v. Doncaster* (1924), 93 L. J. K. B. 338; *Re Speir, Holt v. Speir*, [1924] 1 Ch. 359; *I. R. Comrs. v. Fisher's Exors.*, [1926] A. C. 395. *Folld. I. R. Comrs. v. Wright* (1926), 95

### PART III. SECT. 10, SUB-SECT. 3.—B.

g i. ——— *To dispense with remit.*—In a petition for reduction of capital presented by a co. in which it was stated that the proposed reduction did not involve either the diminution of liability in respect of any unpaid share capital or the payment to any shareholder of any paid-up share capital, & that the rights of creditors were not affected in any way, & further, that the leading creditors & all the shareholders had assented to the proposed reduction, the ct. dispensed with a remit to a reporter, & granted the prayer of the petition.—*SCOTTISH STAMPING & ENGINEERING CO., LTD.*, [1928] S. C. 484.—*SCOT.*

g ii. ————*HAY & SONS*, [1928] S. C. 622.—*SCOT.*

### PART III. SECT. 10, SUB-SECT. 3.—G. (b).

f i. ——— *Without remit to reporter—Creditors not affected.*—*FOWLERS (ABERDEEN), LTD.*, [1928] S. C. 186.—*SCOT.*

### PART III. SECT. 10, SUB-SECT. 3.—G. (d) i.

967 i. *Who are creditors—Persons entitled to unclaimed dividends.*—*ARIZONA COPPER CO., PETITIONERS*, [1926] S. C. 315.—*SCOT.*

### PART III. SECT. 10, SUB-SECT. 3.—G. (e).

st. *Function of court—What court must consider.*—*Re MILLS (E. W.), LTD.*, [1925] N. Z. L. R. 227.—*N.Z.*

### PART III. SECT. 10, SUB-SECT. 3.—G. (g) ii.

p i. ——— *Amount after increase by subsequent resolution.*—*Held*: when a co. has passed the necessary resolutions to reduce its capital, subject to the approval of the ct., by writing down the par value of the existing shares, & on such reduction being confirmed by the ct., to increase its capital by the creation of further shares, the minute required to be recorded under Cos. Act, 1908, s. 51, should set forth (a) the state of the co.'s capital after giving effect to the reduction as sanctioned, & (b) the state of its capital as increased by the resolutions passed conditionally upon such reduction taking effect.—*D. SIMPSON, LTD.*, [1929] S. C. 65.—*SCOT.*



- L. J. K. B. 982; *Re Taylor, Waters v. Taylor*, [1926] Ch. 923. **Distd.** *Re Bates, Mountain v. Bates*, [1928] Ch. 682; *Parker v. Chapman* (1928), 138 L. T. 729. **Refd.** I. R. Comrs. v. Burrell, [1924] 2 K. B. 52; *Re Railways Act*, 1921, *Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.
- 1134.** *Add. Annotation* :—*As to* (2) **Refd.** *Lynde v. Nash*, [1928] 2 K. B. 93.
- 1205.** *Add. Annotations* :—**Distd.** *Pailin v. Northern Employers' Mutual Indemnity Co.*, [1925] 2 K. B. 73. **Consd.** *Hindmarch v. Carterthorne Colliery Co.* (1928), 21 B. W. C. C. 44. **Refd.** *Wales v. Iron Trades Employers' Assocn.* (1928), 21 B. W. C. C. 316.
- 1220.** *Add. Annotation* :—**Dbtd.** *Shuttleworth v. Cox (Maidenhead)* (1926), 43 T. L. R. 83.
- 1226.** *Add. Annotations* :—*As to* (2) **Exld.** *Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769. **Apld.** *Re Wilts & Somerset Farmers*, [1928] Ch. 809.
- CULTURAL SOCIETY, No. 431a, *ante*.
- 1230.** *Add. Annotations* :—**Refd.** *Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 576; *Re Wilts & Somerset Farmers*, [1928] Ch. 809.
- 1265.** *Add. Annotation* :—**Refd.** *Spencer v. Ashworth Partington* (1925), 94 L. J. K. B. 447.
- 1265a.** ————]—In the absence of fraud or *mala fides*, a *cestui que trust* cannot be put on the list of contributories, though he may be called upon to indemnify his trustee.—*Re ELECTRIC TELEGRAPH CO. OF IRELAND, BUNN'S CASE* (1860), 2 De G. F. & J. 275; 9 W. R. 43; 45 E. R. 627; *sub nom. Re ELECTRIC TELEGRAPH CO. OF IRELAND, Ex p. BUNN*, 3 L. T. 567; *sub nom. ELECTRIC TELEGRAPH CO. OF IRELAND v. BUNN*, 29 L. J. Ch. 913; 6 Jur. N. S. 1223, 1 J.J.
- Annotation* :—**Mentd.** *Re Richmond Hill Hotel Co.*, *Elkington's Case* (1867), 16 L. T. 84.
- 1268.** *Add. Annotation* :—**Refd.** *Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.
- 1320.** *Add. Annotation* :—**Apld.** *Re Hobson, Houghton*, [1929] 1 Ch. 300.
- 1342.** *Add. Annotation* :—**Mentd.** *Lloyds Banks v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
- 1411a.** ———— **Where further investigation required.]**—On an application under 1908 Act, s. 32, by summons or motion, for the rectification of the register, if there is some question in dispute requiring investigation the practice is for the judge not to make an order for rectification but to make an order dismissing the summons on motion & leaving it open to appet. to bring an action.—*Re GREATER BRITAIN PRODUCTS DEVELOPMENT CORPN., LTD.* (1924), 40 T. L. R. 488, D. C.
- 1435.** *Add. Annotations* :—**Mentd.** *Baker v. Archer-Shee*, [1927] A. C. 844; *Manton's Trustees v. Steele, Steele v. Manton's Trustees* (1927), 11 Tax Cas. 519; *Fry v. Burma Corpn.* (1929), 11 T. L. R. 200.
- Mentd.** *Re Neville, Neville v. First Garden City*, [1925] Ch. 44.
- 1448a.** **Conversion of preference shares into ordinary shares—Whether alteration in status of shareholders.]**—Where preference shareholders had the right to give six months' notice converting their shares into ordinary shares, & some of them gave such notice less than six months before the co. went into voluntary liquidation :—**Held** : such notice was valid & effectual to convert their preference shares into ordinary shares, & did not create an alteration of their status after the commencement of the winding up within 1908 Act, s. 205.—*Re BLAINA COLLIERY CO., LTD.* (1926), 70 Sol. Jo. 404.
- 1461.** *Add. Annotation* :—**Consd.** *Collaroy Co. v. Giffard*, [1928] Ch. 144.
- 1472.** *Add. Annotation* :—**Refd.** *Leeds Industrial Co-operative Soc. v. Slack*, [1924] A. C. 851.
- 1480.** *Add. Annotation* :—**Generally, Refd.** *Humphrey & Denman v. Kavanagh* (1925), 41 T. L. R. 378.

**PART III. SECT. 11, SUB-SECT 3.—B.**

**sw. To account to company for money received before incorporation of company.**—Where a co. brought an action against an underwriter, & recovered a verdict for \$317 108.—**Held:** as deft. by his statement of accounts had not admitted that he held any money for the co.'s use, the verdict should be set aside & judgment entered for him.

—**HARMONIC RESONATOR, LTD. v. WALTON (1927).** 27 S. R. N. S. W. 81; 44 N. S. W. W. N. 50.—**AUS.**

**PART III. SECT. 13, SUB-SECT. 5.—**  
**B. (d) vii.**

1374 1. *Wrong entry of nature of shares—Agreement to take paid-up shares—Shares entered as partly paid.*—*Re* CUSTOM HOUSE MOTOR CO., LTD. (IN VOLUNTARY LIQUIDATION), [1928] St. R. Qd. 338.—AUS.

**PART III. SECT. 15, SUB-SECT. 1.**

1450 li. The memorandum of assocn. of a co. provided, *inter alia*, that the preference stock should rank as to dividend & capital in priority to the ordinary stock & all other stock & shares in the capital for the time being of the co., & that it should be "subject to the other provisions with regard to the same contained in the articles of assocn." The arts. of assocn. set forth that the co. might increase its share

capital by the creation of new shares, with such preference over other shares or stock as it might direct, provided that no shares or stock should be created with a preference over, or ranking *pari passu* with, the existing preference stock without the sanction of the stockholders affected.—*Held*: upon a sound construction of the memorandum of assocn., the co. had not power at its own hand, even with the sanction of the preference stockholders, to create new preference stock ranking *pari passu* with existing preference stock; & that an alteration of the memorandum was necessary for that purpose.—*Re SCOTISH NATIONAL TRUST CO.*, [1928] S. C. 499.—*SCOT.*

**PART III. SECT. 15, SUB-SECT. 2.**

k i. *Power to modify rights by bye-law*—*Validity of bye-law*—*Companies Act, R. S. C., 1906 (c. 79).*—*HOLMSTEDT v. ALBERTA PACIFIC GRAIN CO., LTD. (Alta.).* [1928] 1 D. L. R. 135; [1927] 3 W. W. R. 707.—**CAN.**

**PART III. SECT. 17, SUB-SECT. 1.—**  
**A. (a).**

b i. —. —.]—*Held*: persons, who, intending to become shareholders in a proposed co., had signed & sealed a "subscribers' agreement," were not shareholders.—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484; 58 O. L. R. 486.—*CAN.*

**PART III. SECT. 17, SUB-SECT. 1.—**  
**B. (a) i.**

s i. ———.]—Where the evidence was not conclusive.—*Held*: In the circumstances A.'s agreement for employment stood by itself, & his status as a shareholder, which was established by what he had done & omitted to do, was not affected.—*Re BUFF PRESSED BRICK CO. (1924), 56 Q. L. R. 33.—CAN.*

**o i. — Balance to be paid on commencement of undertaking by company.]** added on the foot of an application for shares the words: "This subscription is given on the understanding that I am to be called upon for the balance of the money when building operations commence".—*Held*: this stipulation had nothing to do with his becoming a shareholder; & failure of the co. to commence building did not entitle A. to rescind his contract.—**RE NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—CAN.**

f 1. ————.]—A. rolled, as entitling him to rescission, upon the non-fulfilment of a condition that a building should be erected on a certain site:—*Held*: his agreement constituted A. a shareholder *in præsenti*, & the condition should be treated merely as a collateral obligation on the part of the co.—*Re NATIONAL STADIUM, LTD.* (1924), 55 O. L. R. 199.—CAN.

1515. *Add. Annotation* :—**Refd.** Kirby v. Wilkins, [1929] 2 Ch. 444.
1552. *Add. Annotations* :—*As to* (2) **Distd.** Collins v. Associated Greyhounds Racecourses (1929), 141 L. T. 529. *As to* (4) **Distd.** Collins v. Associated Greyhounds Racecourses (1929), 141 L. T. 529.
1565. *Add. Annotation* :—**Mentd.** Jacobs v. Batavia & General Plantations Trust, [1924] 2 Ch. 329
1585. *Add. Annotations* :—**Refd.** *Re* Royal British Bank (1859), 3 De G. & J. 387; Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland (1867), L. R. 1 Sc. & Div. 145.
- 1589a. — **Statement by agent**—**That application purely formal.**—**E.**, acting as agent of pltf. co., represented to deft. that the co. owned valuable rights over certain mines in China, & deft. agreed to go to China & investigate & make a report upon the properties, & he signed an application form for 2,000 £1 shares upon a representation by E. that the application was purely formal, & deft. paid £250 on allotment upon a representation by E. that the payment was for an option on 250 shares to be bought by deft., if he so desired, on his return from China. The shares were allotted to deft. at a meeting at which E. was in the chair, but no notice of the allotment was sent to deft. Deft. went to China & pltf. co. alleged that he returned to England without obtaining any information. Deft., on the other hand, alleged that E.'s representations were false & that the

mining rights were valueless. In an action in which pltf. co. in liquidation claimed (*inter alia*) £1,750 for unpaid calls on the shares, the trial judge held that as deft. intended only to take an option on the shares & had never contracted to take them the action failed:—*Held*: although E. was an agent of pltf. co. to come to an agreement with deft., yet by reason of E.'s fraudulent use of the application form signed by deft. the latter could not be treated as having agreed to take the shares, & the decision of the trial judge must be affirmed.—**HUMPHREY & DENMAN, LTD. (IN LIQUIDATION) v. KAVANAGH** (1925), 41 T. L. R. 378, C. A.

- 1645. Add. Annotation :—***Distd. Lynde v. Nash*,  
[1928] 2 K. B. 93.
- 1654a. — What amounts to.]—**In Jan. 1920, K. applied, on a form supplied to him by Y., for 100 shares in a co. about to be formed. On Apr. 14, Y. purported to transfer to K. 100 shares, but the transfer did not specify the denoting numbers of the shares comprised therein. At a meeting of the directors held on Apr. 16, a resolution was passed purporting to allot all the shares of the co. At that date the co. had not issued a prospectus or filed a statement in lieu thereof. On Apr. 20, the statement in lieu of prospectus was filed. At a meeting of the directors held on Apr. 30, the transfer from Y. to K. came before the board, & a resolution was passed approving the transfer & directing that a share certificate should be forwarded to K. Subsequently K. was registered a

**PART III. SECT. 17, SUB-SECT. 1.—**  
**D. (b).**

**58. Abrogation of original agreement—Ascertainment of terms of substituted oral agreement.]—***LAZIER v. McCULLOUGH* (1913), 25 W. L. R. 911; 14 D. L. R. 270; 6 Alta. L. R. 503.—**CAN.**

**PART III, SECT. 17, SUB-SECT. 1.—E.**

d i. — Not after election to retain shares.]—McDONALD v. WAIRAKEI, LTD., [1924] N. Z. L. R. 201.—N.Z.

**PART III. SECT. 17, SUB-SECT. 1.—**  
**G. (a).**

1553 vi. —.—.]—MILNE v. DURHAM  
HOSIERY MILLS, LTD., [1925] 3 D. L. R.  
725, 57 O. L. R. 228.—CAN.

1553 vii. —.]—PATHESCOPE UNION  
OF SOUTH AFRICA, LTD. v. MALLINICK,  
[1927] App. D. 292.—S. AF.

**PART III. SECT. 17, SUB-SECT. 1.—**  
**G. (b).**

**sa. Representation must have induced contract.]—MARITIME UNITED FARMERS CO-OPERATIVE, LTD. v. DICKIE, [1925] 1 D. L. R. 377; 52 N. B. R. 42.—CAN.**

**PART III. SECT. 17, SUB-SECT. 1.—**  
G. (c).

**1568 li.** ———.]—Def't., director of a co., without putting his signature on any written document, made fraudulent misrepresentation as to the financial position of the co., whereby pl'tf. was induced to apply & pay for shares:—*Held*:—Lord Tenterden's Act had no application to the case, & pl'tf. was entitled to recover from def't. the amount paid for the shares.—**DIAMANTI v. MARTELLI**, [1923] N. Z. L. R. 663.—N.Z.

1. Read now "1588 i."

g. Read now "1588 ii."

1588 ili. — — — — —.]—PETROTITE  
& CHALLENGE HEATERS, LTD. v.  
BODLEY, No. 400 l., *ante*.—N.Z.

**PART III. SECT. 17, SUB-SECT. 1.—**  
**G. (d).**

r i. —.])—TRUSTS & GUARANTEE  
Co. v. SMITH, [1924] 2 D. L. R. 211;  
54 O. L. R. 144; 4 C. B. R. 195.—  
CAN.

r ii. —. ]—*Re* NATIONAL STADIUM LTD (1924), 55 O. L. R. 199—CAN.

r lii. —.]—If a shareholder desires to rescind his contract to take shares in a co., then, in order to make the rescission effective, he must before the commencement of the winding-up either have his name removed from the register of members, or institute appropriate legal proceedings to have it removed. Pltf. who had been induced to take shares under circumstances which entitled him to repudiate his contract, duly notified deft. co. of his repudiation. Negotiations were then entered into between pltf. & the director of the co. with reference to the mode of repayment to pltf. of the moneys due to him by the co. No agreement was, however, arrived at between the parties, & after some further delay pltf. commenced an action claiming, *inter alia*, an order directing the removal of his name from the register. A few days prior to the commencement of this action, the directors, without any notice to pltf., passed an effective resolution for the voluntary winding up of the co. —*Held*: the claim for the rectification of the register was, under the circumstances, too late & must be refused. —  
[FLEMING v. ECLIPSE LAUNDRY CO.,  
1928] N. Z. L. R. 598. —N.Z.

**ab. Failure to repudiate before declaration of insolvency.**—Apart from the effect of the commencement of winding up, it is too late for a shareholder in a limited co. to apply for rectification of the register of shareholders, on the ground of misrepresentation, after there has been a definite public declaration of insolvency, & this is so whether the business has in fact been kept

open as a going concern or not.—*Re*  
LUCKS, LTD., SERPELL'S CASE, [1928]  
V. L. R. 466; 49 A. L. T. 270; [1928]  
ARGUS L. R. 288.—AUS.

**PART III. SECT. 17. SUB-SECT. 2.—A**

1606 iii. — *Agreement to subscribe for shares when called upon.*—BEARD-MORE & CO., LTD. v. BARRY, [1928] S. C. 101.—SCOT.

**PART III. SECT. 17, SUB-SECT. 2.—**  
**B. (a).**

**¶ 1. —**]—Where a contract to purchase shares was entered into by one of two partners of a trading firm, without authority express or implied, & owing to a clerical error the firm was not entered on the register of members & the name of the other partner alone was entered:—*Held*:—the latter was never under any liability to the co. & could not be made a contributory.—*MASECAR v. MCKENZIE & SON*, [1924] 2 D. L. R. 1242; 2 W.W.R. 521.—**CAN.**

**PART III. SECT. 17, SUB-SECT. 2.—C.**

80. — *Whether nominee liable.—* *Nominee incapable of contracting.*—Petitioner's father signed her name to a stock subscription book of a bank, paid the calls, & received the dividend cheques, which were indorsed by her at her father's request, the moneys being received by him. The bank was put into liquidation by winding-up proceedings, & the order for call against contributors was made three months before she came of age. A year after the liquidation commenced she took proceedings to have her name removed from the list of contributors. — *Held* : she was not liable as a contributory, & her name must be removed from the list. — *Re CENTRAL BANK & HOGG* (1890), 19 O. R. 7. — **CAN.**

**PART III. SECT. 17. SUB-SECT. 3.—A.**

f i. —.}—Allotment is the acceptance by a co. of an offer to take shares.

member of the co. The certificate, dated May 26, was sent to, & was accepted by, K. On June 8 a bonus, declared at the meeting of Apr. 30, was paid to, & was accepted by, K. K., as purporting to be the owner of the shares, attended a meeting of shareholders on Mar. 24, 1921. Subsequently the co. went into liquidation, & K., on whose shares there was a liability of 10s. per share, then denied being a shareholder, contending that the allotment of shares to Y. was void under 1908 Act, s. 82 :—*Held* : (1) although the allotment to Y. was void, K. was a member of the co. at the commencement of the winding up, there having been no agreement between him & the co. until Apr. 30, when the co. was legally in a position to allot shares ; (2) in any event, in view of his subsequent conduct, he was estopped from denying that he was a member of the co.—*Re BURTON (JAMES) & SONS, LTD.*, [1927] 2 Ch. 132 ; 96 L. J. Ch. 457 ; 137 L. T. 564 ; 71 Sol. Jo. 491.

**1746. Add. Annotation :—***Re* City Equitable Fire Insee., [1925] Ch. 407.

—*IMPERIAL BANK OF CANADA v. DENNIS*, [1926] 3 D. L. R. 168 ; 59 O. L. R. 20 ; *varying*, [1925] 3 D. L. R. 488 ; 57 O. L. R. 203.—*CAN.*

**PART III. SECT. 17, SUB-SECT. 3.—**  
C. (a).

**1654 i. Allotment before statement in lieu of prospectus filed.**—*Held* : ineffective to charge persons who had signed a "subscribers' agreement."—*Re BLUEBIRD CORPN., LTD.*, [1926] 2 D. L. R. 484 ; 58 O. L. R. 486.—*CAN.*

**ad Application before compliance with Sale of Shares Act.**—*Allotment after compliance with Act.*—Before a co. had obtained the certificate required by Sale of Shares Act, & before its agent for the sale of shares had been licensed thereunder, an agent thereof obtained an application for shares. The shares were allotted after the certificate & licence were issued, & the shareholder paid several sums on the notes given for the shares & appointed proxies at different times to vote. The shareholder did not know until after a winding-up order had been made that the Act had not been complied with at the time of his application :—*Held* : he was not entitled to have his name removed from the list of contributories.—*Re GREAT NORTH INSURANCE CO., PAINTER'S CASE*, [1925] 2 D. L. R. 778 ; [1925] 1 W. W. R. 1149 ; 21 Alta L. R. 326 ; *reversg.*, [1925] 1 W. W. R. 752.—*CAN.*

**PART III. SECT. 17, SUB-SECT. 3.—**  
D. (a).

**st. Allotment on terms other than those in application.**—Where an allotment of shares was made on terms differing substantially from those contained in the application :—*Held* : as the allottee so far from accepting the allotment virtually repudiated it, he could not be held liable on the ground that the shares were duly allotted to him.—*WHITTLE v. HENLEY*, [1924] App. D. 138.—*S. AF.*

**sg. Allotment fraud on company.**—*Company not bound to repudiate.*—*Re SUN RAY MANUFACTURING CO., Ex p. BIRKETT & SONS, LTD.*, [1925] 1 D. L. R. 1204 ; 5 C. B. R. 286 ; *affg.*, [1924] 2 D. L. R. 1055 ; 4 C. B. R. 615.—*CAN.*

**PART III. SECT. 17, SUB-SECT. 3.—**  
E. (d).

**1737 i. Receipt by allottee immaterial.**—*Posting sufficient.*—*Howson v. CROW (ONT.)*, [1925] 1 D. L. R. 495.—*CAN.*

**PART III. SECT. 17, SUB-SECT. 3.—G.**

**g i. — Non-compliance with Sale of Shares Act, R. S. M., 1913 (c. 175.)**—Allotment void, & not merely voidable ; & where a purchaser of shares has not done anything from which an agreement to keep & pay for them can be implied, he can, even after a winding-up order, repudiate the purchase & successfully resist being placed on the list of contributories, where he only became aware, after the winding-up order, that the above Act was not complied with.—*Re NORTH WESTERN TRUST CO., Re McASKILL v. NORTH WESTERN TRUST CO.*, [1926] 3 D. L. R. 612 ; [1926] S. C. R. 412.—*CAN.*

**PART III. SECT. 18, SUB-SECT. 3.—C.**

**f i. —**—*J.*—An allottee :—*Held* : entitled to rely upon the certificates showing the stock given him to be fully paid up, whether in fact it was actually paid for or not.—*Re SUPPLIES, LTD., CANADIAN CREDIT MEN'S TRUST ASSOC. v. CALDWELL*, [1926] 1 D. L. R. 821 ; 58 N. S. R. 399.—*CAN.*

**PART III. SECT. 19.**

**1812 i. Issue for improper purpose.**—*Increase of voting power.*—*Restraint* :—Where directors, in exercising their powers to issue & allot shares, do so in order to get control of the voting power, the ct. will declare the issue & allotment invalid.—*SMITH & TATCHELL v. HANSON TIRE & SUPPLY CO., LTD.*, [1927] 3 D. L. R. 786 ; [1927] 2 W. W. R. 529 ; 21 Sask. L. R. 621.—*CAN.*

**1812 ii. —**—*J.*—*TREASURE TROVE DIAMONDS, LTD. v. HYMAN*, [1928] App. D. 464.—*S. AF.*

**PART III. SECT. 20, SUB-SECT. 1.—A.**

**ii. — Issue for future services to be rendered.**—*Defts. procured the incorporation of pltf. co. & made an agreement with the original directors, who were merely the nominees of defts., that, as consideration for services which they promised to perform, defts. should receive practically the whole of the common shares of the capital stock of pltf. co. as fully paid shares.*—*Held* : the transaction was *ultra vires* of pltf. co.—*BANKING SERVICE CORPN., LTD. v. TORONTO FINANCE CORPN. LTD.*, [1928] A. C. 333 ; 97 L. J. P. C. 65 ; 139 L. T. 149, P. C.—*CAN.*

**1 ii. —**—*J.*—*AUDITORIUM, LTD. v. LUMSDEN*, [1926] 4 D. L. R. 976 ; 59

**1778. Citation :—**For "96 L. T. 743" read "92 L. T. 743."

**1794. Add. Annotation :—***Apld.* *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826.

**1814a. "Initial share issue"—Meaning.**—*GAS METER CO., LTD. v. DIAPHRAGM & GENERAL LEATHER CO., LTD.* (1925), 41 T. L. R. 342.

**1817. Add. Annotations :—***As to* (4) *Apld.* *Re Wilts & Somerset Farmers*, [1928] Ch. 809. *Generally, Re* *Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 576.

**1821. Add. Annotations :—***As to* (1) *Consd.* *Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769. *Generally, Re* *Wilts & Somerset Farmers*, [1928] Ch. 809.

**1851. Add. Annotation :—***Mentd.* *Druce v. Railway Clearing House* (1925), 133 L. T. 514.

**1871. Add. Annotations :—***Mentd.* *Stott v. Shaw & Lee*, [1928] 2 K. B. 26 ; *Watkins v. Jones* (1928), 14 Tax Cas. 91.

O. L. R. 496.—*CAN.*

**iii. —**—*J.*—*SIGNAL HILL OILS CO., LTD. v. LONDON OIL SECURITIES, LTD. (Alta.)*, [1927] 3 D. L. R. 981 ; [1927] 2 W. W. R. 392.—*CAN.*

**PART III. SECT. 20, SUB-SECT. 1.—B.**

**aj. Issue of shares as bonus.**—*Held* : a co. agreeing to issue twenty-one preferred shares & seven common shares both fully paid, on receipt of only the par value of the twenty-one preferred shares, was making an agreement to issue shares at a discount, which was *ultra vires* & could not be enforced.—*AUDITORIUM, LTD. v. LUMSDEN*, [1926] 4 D. L. R. 976 ; 59 O. L. R. 496.—*CAN.*

**PART III. SECT. 20, SUB-SECT. 2.—**  
C. (b) i.

**sk. — Credit for accommodation bills met by shareholder.**—An agreement was entered into by a co. with one of its shareholders to credit moneys which he might be called upon to pay in respect of accommodation bills entered into by him for the co.'s assistance, or which might fall due to him for services rendered to the co. against his liability for shares. Although a sufficient sum had accumulated under these heads to extinguish the shareholder's liability on his shares, the co. went into liquidation before an actual credit had been passed for the amount :—*Held* : the transaction did not amount to payment by the shareholder of the amount due by him on his shares within Cos. Act, 1908, & the actual set-off not having been carried into effect prior to the liquidation, the shareholder was precluded by sect. 68 of the Act from having his name removed from the list of contributories.—*HARDING & Co. v. HAMILTON*, [1929] N. Z. L. R. 338.—*N.Z.*

**PART III. SECT. 20, SUB-SECT. 2.—**  
C. (b) ii.

**1856 i. Issue to director.**—*For services rendered.*—*On resolution of shareholders.*—*Application of surplus assets.*—Where there was a surplus available for distribution by way of dividend among shareholders, & it was open to the shareholders if unanimous to deal with it as they might think fit :—*Held* : no creditor could object, & every shareholder would necessarily be estopped by his own conduct.—*Re DORENWEIDS, LTD.*, [1924] 3 D. L. R. 118 ; 55 O. L. R. 413.—*CAN.*

1923. *Add. Annotations* :—**Refd.** *Excess Insee. v. Mathews* (1925), 31 Com. Cas. 43. **Mentd.** *Sowerby v. Lindsay* (1928), 139 L. T. 545.

1964. *Add. Annotation* :—**Mentd.** *R. v. Lancashire J.J., Ex p. Tyrer*, [1925] 1 K. B. 200.

2026. After this case add the following new sub-section :—

SUB-SECT. 3a.—UNDER COMPANIES (CONSOLIDATION) ACT, 1908, s. 88.

*See case infra.*

2060. *Add. Annotation* :—**Refd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

2070. *Add. Annotation* :—**Overd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2070a. —.]—Where the owner of shares in a co. sells them there arises out of the contract of sale an implied promise by the purchaser to indemnify his vendor against all calls that may be made upon him in respect of the shares at any future date, whether made while the purchaser remains entitled to the shares or after he has parted with them to a sub-purchaser; & it makes no difference in that respect that the transfer which the vendor delivers to the purchaser in completion of his contract is executed in blank.—**SPENCER v. ASHWORTH PARTINGTON & Co.**, [1925] 1 K. B. 589; 94 L. J. K. B. 447; 132 L. T. 753, C. A.

2072. *Add. Annotation* :—**Refd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2087a. *Sale by transferee to sub-purchaser.*—**SPENCER v. ASHWORTH PARTINGTON & Co.**, No. 2070a, *ante*.

2100. *Add. Annotation* :—**As to** (1) **Consd.** *Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

2169. *Add. Annotation* :—**Mentd.** *Re City Equitable Fire Insee.*, [1925] Ch. 407.

2174. *Add. Annotation* :—**Refd.** *Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

2178. *Add. Annotation* :—**Mentd.** *Hall v. I. R. Comrs.* (1926), 135 L. T. 759.

2179. *Add. Annotation* :—**As to** (1) **Refd.** *Bank of N. T. Butterfield v. Golinsky*, [1926] A. C. 733.

PART III. SECT. 20, SUB-SECT. 3.—**B. (a).**

**m i.** —.]—Any *bond fide* transaction between a co. & a shareholder which, if the co. brought an action against him for calls, would support a plea of payment, is a "payment in cash."—**MOTOR FUELS CORPN. ETC. (IN LIQUIDATION) v. LINDER BROTHERS** (1927), 48 N. L. L. 279.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 3.—**B. (b).**

1886 **h.** —.]—By an agreement in writing appt. & another agreed to sell & the co. agreed to purchase certain land at the price of £2,610, which price was to be paid & satisfied partly by certain cash instalments & partly by the issue of fully paid shares in the co. Possession of the land was to be given on payment of £10 & the issue of four hundred shares; transfer was to be made after payment of all instalments, the last of which, under the agreement was not payable until Aug. 1928. Possession of the land was given & the shares were issued, but no contract was filed at or before the issue of the shares :—**Held** : under the agreement the shares were

not paid or to be paid in cash.—**Re GOODMAN BROTHERS AUTO & SERVICE CO., LTD., Ex p. ROSE**, [1927] S. A. S. R. 571.—**AUS.**

PART III. SECT. 20, SUB-SECT. 3a.

**sl.** *Filing of contract—Time for filing—Extension of time.*—Where the failure to comply with 1908 Act, s. 88, was due to inadvertence & when the irregularity was discovered the contract was reduced to writing but more than three years after the proper date for filing, & the co. presented a petition for extension of time :—**Held** : merely to grant relief from the prescribed penalty would be an insufficient remedy, & the time for filing was extended.—**Re ANDERSON & MUNRO, LTD.**, [1924] S. C. 222.—**SCOT.**

PART III. SECT. 21 SUB-SECT. 2.  
2053 **i.** *Must state amount of call—& time & place of payment.*—**PIONEER ALKALI WORKS, LTD. v. AMIRUDDIN SHALEBOY TYEBJI** (1925), 1 L. R. 50 Bom. 461.—**IND.**

PART III. SECT. 21, SUB-SECT. 3.  
**1 i.** —.]—**EUROPEAN & NORTH AMERICAN HY. CO. v. DUNN** (1876), 16 N. B. R. (3 Pug.) 320.—**CAN.**

2183a. — **Lien in respect of debt of trustee—Right of trustees to sell shares.**—**Pltfs.** were the trustees of the marriage settlement of one of them, who was also a beneficiary under the settlement. They claimed damages from defts. for breach of an agreement, whereby defts. undertook to purchase shares in a certain company. The **pltf.**, who was a beneficiary under the settlement, was, in his individual capacity, indebted to the co. & the co. had, under its articles, a lien upon shares in respect of the debts of a member. In a previous action it had been held that whatever equitable interest the co. had in these shares under its lien was postponed to the interests of the beneficiaries under the settlement, other than the debtor-trustee & persons claiming under him. Defts. now contended that, as the co. would lose its lien, which was admittedly good against the debtor-trustee & persons claiming under him, if the trustees were to sell, the trustees were not in a position to sell the shares free from encumbrances, & therefore the defts. were not bound to carry out their agreement to purchase :—**Held** : the right of the trustees to sell the shares in execution of their trust was not affected by the co.'s lien against the debtor-trustee's personal interest, & the trustees could give an unencumbered title to a purchaser of the shares, although the co. would lose its lien thereby. Defts. were, therefore, bound to carry out their agreement to purchase.—**MATHIESON v. GRONOW** (1929), 141 L. T. 553; 45 T. L. R. 604.

2210a. —.]—**PICKERING v. APFLEBY** (1720), 1 Com. 354; 92 E. R. 1108.

*Annotation* :—**Refd.** *Watson v. Spratley* (1854), 10 Exch. 222.

2211a. — **Spanish & Portuguese bonds.**—**Qu.** : whether Spanish & Portuguese Bonds are "goods, wares, & merchandizes," within Stat. Frauds, s. 17.—**PAWLE v. GUNN** (1838), as reported in 1 Arn. 200; 6 Scott, 286; 7 L. J. C. P. 206.

2217. *Add. Annotation* :—**Consd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2224a. — **Dividend before exercise of option to purchase—Payment postponed.**—By a con-

PART III. SECT. 21, SUB-SECT. 5.—**A. (b).**

**cl.** — *Estoppel.*—**DOMINION SECURITIES v. DUNCAN**, [1929] N. Z. L. R. 65.—**N.Z.**

PART III. SECT. 23 SUB-SECT. 1.

**§ 1.** — *Agreement binding—Company entitled to refuse to register transfer.*—**ONTARIO JOCKEY CLUB, LTD. v. MCBRIDE**, [1927] A. C. 916; 137 L. T. 751, P. C.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—**A.**

**p i.** — *To comply with provision to furnish statement of company's "liabilities"—Meaning of "liabilities."*—**BUTLER v. FAIRHALL**, [1927] 4 D. L. R. 976; 61 O. L. R. 305.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—**C. (a).**

**cl.** — *On failure of transferee to take up shares.*—**Re COMPANIES ACT, Re BRITISH PETROLEUM, LTD. (B.C.)**, [1925] 1 W. W. R. 236.—**CAN.**

**di.** — *Reputation—Laches of purchaser's nominee.*—**NESBITT v. MCCARTNEY (Alta.)** (1922), 63 D. L. R. 93.—**CAN.**

tract made in Apr. 1922, it was agreed between the persons interested therein that a business forming part of a testator's estate should be converted into a private co. with a capital of £30,000, divided into £20,000 debentures bearing interest at 7 per cent. & 10,000 ordinary shares of £1 each, fully paid, which were to be allotted to the trustees of the will. One of the trustees, F., was appointed manager of the co., & was given the option, so long as he continued to be both trustee & manager, of purchasing the whole of the debentures & shares at par value. In June, 1928, the co. declared a dividend of 57½ per cent. on the ordinary shares for the year ending Mar. 31, 1928, to be paid in three equal instalments on July 1 & Nov. 1, 1928, & Feb. 1, 1929, & the first instalment was paid on July 1, 1928. On July 30, 1928, F. exercised his option to purchase the whole of the shares & debentures for £30,000. At that date there was four months' interest due upon the debentures. The purchase was completed on Nov. 5, 1928. On a summons being taken out to determine the rights of the parties in the unpaid instalments of the dividend, & the debenture interest, as between vendors & purchaser:—*Held*: (1) the four months' accrued interest on the debentures passed to the purchaser; (2) the declaration of the dividend on the shares having created a debt to the trustees as the then registered shareholders, the postponement of the payment did not operate to deprive them of their rights, & therefore the remaining instalments belonged to them & not to the purchaser.—*Re KIDNER, KIDNER v. KIDNER*, [1929] 2 Ch. 121; 98 L. J. Ch. 247; 141 L. T. 195.

**2228. Add. Annotation:—***Re*fd. *Spencer v. Ashworth Partington* (1925), 94 L. J. K. B. 447.

**2269a. ———.**—*]*—Upon the breach of a contract for the sale of shares, the proper measure of damages is, the difference between the contract price & the market price at the time of the breach.—*POWELL v. JESSOPP* (1856), 18 C. B. 336; 139 E. R. 1400.

*Annotations:—***Mentd.** *Hayter v. Tucker* (1858), 4 K. & J. 243; *Webber v. Lee* (1881), 51 L. J. Q. B. 174.

**2269b. ———.**—*]*—Under a contract for the sale of shares in a co. the measure of damages upon a breach by the buyer is the difference between the contract price & the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can upon that date. If the seller retains the shares after the breach, he cannot recover from the

buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises.—*JAMAL v. MOOLLA DAWOOD, SONS & Co.*, [1916] 1 A. C. 175; 85 L. J. P. C. 29; 114 L. T. 1; 32 T. L. R. 79; 60 Sol. Jo. 139, P. C.

*Annotations:—***Refd. *Hill v. Showell* (1918), 87 L. J. K. B. 1106; *Lebeaupin v. Crispin*, [1920] 2 K. B. 714.**

**2274a. ———.**—*]*—The vendee of shares in a projected railway, under a contract to be completed at a future day, may recover, as damages for the non-delivery the difference between the price agreed on & the market price of the day on which the sale should have been completed; but he is not entitled to damages in respect of a further advance of price taking place afterwards at the time of the actual issuing of the scrip.—*TEMPEST v. KILNER* (1846), 3 C. B. 249; 136 E. R. 100.

**2283a. Appointment of new trustee.**—*Re* *HOBSON, HOUGHTON & Co.*, No. 2585a, *post*.

**2299a. ———.**—An allottee of shares in a completely registered joint stock co. but who has not executed the deed of settlement of the co. cannot under 7 & 8 Vict. c. 110, s. 26, enter into a contract for the sale of his shares.—*Re EDMOND, Ex p. NEILSON* (1853), 3 De G. M. & G. 556; 23 L. J. Bcy. 12; 22 L. T. O. S. 190; 18 Jur. 297; 2 W. R. 121; 43 E. R. 218, L. C. & L. J.; *previous proceedings* (1850), 15 L. T. O. S. 435.

**2299b. ———.**—Where a transfer of shares is not returned to the registrar's office the transferor will be liable to the creditor of the company, but not liable to contribute as between himself and the other shareholders.—*Re BRITISH PROVIDENT LIFE & FIRE ASSURANCE Co., ORPEN'S CASE* (1863), 2 New Rep. 225; 9 Jur. N. S. 615; *sub nom. Re BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, Re ORPEN*, 32 L. J. Ch. 633; 8 L. T. 596; 11 W. R. 741; *on appeal*, 33 L. J. Ch. 67, L. JJ.

*Annotation:—***Consd.** *Re General Provident Assce., Cross's Case* (1869), 38 L. J. Ch. 583.

**2332. Add. Annotation:—****Mentd.** *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.

**2332a. ———.**—*]*—*IRVING v. SOUTH EASTERN RY. Co.* (1857), 29 L. T. O. S. 64.

**2334. Add. Annotation:—****Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**2343a. ———.**—*]*—*SPENCER v. ASHWORTH PARTINGTON & Co.*, No. 2070a, *ante*.

**2344. Add. Annotation:—****Consd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

### PART III. SECT. 23, SUB-SECT. 2.— C. (d) iii.

*st. Waiver.*—*DOLL v. HOWARD* (1897), 11 Man. L. R. 577.—CAN.

### PART III. SECT. 23, SUB-SECT. 2.— C. (e) ii.

*m i.* ———.—*]*—*GRICK v. BARTRAM* (1912), 22 O. W. R. 182; 3 O. W. N. 1312; 3 D. L. R. 868.—CAN.

*m ii.* ———.—*Contract between employer & employee.*—In an action claiming specific performance of a contract for the repurchase of shares, in which the contracting parties were employer & employee:—*Held*: (1) employee may prove an agreement on the part of the principal shareholder to repurchase on termination of the employ-

ment; & (2) employee may also prove an agreement by the principal shareholder to pay dividends at a minimum rate, upon the shares.—*MACDONALD v. SOULIS*, [1925] 2 D. L. R. 926.—CAN.

*2260 i.* ———.—*Against purchaser.*—*FRANKLIN v. REARDON* (N. S.) (1917), 55 S. C. R. 613; 39 D. L. R. 176.—CAN.

### PART III. SECT. 23, SUB-SECT. 2.— C. (e) iii.

*2269 i.* *Measure of damages—Misrepresentation as to liabilities of company.*—*SISSONS v. HASSARD* (Alta.), [1923] 4 D. L. R. 186; [1923] 3 W. W. R. 105.—CAN.

### PART III. SECT. 23, SUB-SECT. 3.— D. (b).

*2331 ii.* ———.—*]*—*ABDUL VAHID,*

*ETC. v. HASANALLI ATIBHAI, ETC.* (1925), 1 L. R. 50 Bom. 229.—IND.

*2331 iii.* ———.—*]*—*MCLEOD v. BRAZILIAN TRACTION LIGHT & POWER Co., LTD.*, [1927] 2 D. L. R. 875; 60 O. L. R. 253.—CAN.

*2337 iii.* ———.—*Cancellation of restrictive endorsement by transferee.*—*MATHIES v. ROYAL BANK OF CANADA* (1913), 29 O. L. R. 141; 4 O. W. N. 1481.—CAN.

### PART III. SECT. 23, SUB-SECT. 4.

*2344 i.* *Inter se.—Transfer subject to understanding as to assets of company—Transferee bound.*—*Re HOBRECKER'S ESTATE*, [1926] 1 D. L. R. 655; 58 N. S. R. 378.—CAN.

**2344a. As between transferee & other shareholders.]**—The holders of shares, bought in open market, although they may have been fraudulently issued by the directors, cannot on that ground claim relief against the other shareholders, whatever may be their rights & remedies against the directors.—*Re MEXICAN & SOUTH AMERICAN CO., GRISEWOOD & SMITH'S CASE, DE PASS'S CASE* (1859), 4 De G. & J. 544; 28 L. J. Ch. 769; 33 L. T. O. S. 322; 5 Jur. N. S. 1191; 7 W. R. 681; 45 E. R. 211, 1. J.J.

**Annotations.**—*Consd. Re Athenæum Life Assce. Soc., Chinnock's Case* (1860), John. 714; *Re Phoenix Life Assce., Ex p. Hutton* (1862), 31 L. J. Ch. 340; *Re Discoverers Finance Corp.*, [1908] 1 Ch. 111. **Refd.** *Re Royal British Bank, Mixer's Case* (1859), 4 De G. & J. 575; *Re Mexican & South American Co., Costello's Case* (1860), 2 De G. & J. 302; *Re Esclair Mwyn Mining Co., Alexander's Case* (1861), 3 L. T. 883; *Re Consols Insce. Asscn.*, Benham's Case (1865), 11 Jur. N. S. 381; *Re National & Provincial Marine Insce., Ex p. Parker* (1867), 2 Ch. App. 685. *Re Smith, Knight, Weston's Case* (1868), L. R. 6 Eq. 238; *Spackman v. Evans* (1868), 19 L. T. 151; *Re Asiatic Banking Co., Ex p. Collum* (1869), 21 L. T. 350; *Re Bank of Hindustan, China & Japan, Ex p. Kintrea* (1869), 5 Ch. App. 95; *Re Consols Insce. Asscn., Glanville's Case* (1870), L. R. 10 Eq. 479; *Re Smith, Knight, Battle's Case* (1870), 39 L. J. Ch. 391; *Re European Bank, Masters' Case* (1871), 7 Ch. App. 292; *Re Great Wheel Busy Mining Co., King's Case* (1871), 40 L. J. Ch. 361; *Re r. Lambourn Valley Ky.* (1888) 2 Q. B. D. 463; *Re Discoverers Finance Corp., Lindiar's Case*, [1910] 1 Ch. 312.

**2389. For the paragraph in the original volume substitute the following paragraph:—**

**Board equally divided.]**—Under an art. equivalent to Table A, art. 22, the extrix. of a deceased member of a co. had the right to be registered as a member, subject to the directors' absolute discretionary right to decline such registration. At a board meeting of the two directors to consider the extrix.'s application for registration, one director proposed & the other opposed registration. The board being equally divided, & there being no casting vote, the proposal was not carried, & the secretary was instructed to write to the extrix.'s solrs, accordingly & to return all the documents, namely, a transfer by the extrix. to herself, certificates & registration fee:—**Held:** the board's right of declining registration required to be actively exercised by a vote of the board *ad hoc*, & the mere failure to pass the proposed resolution for registration was not a formal active exercise of the right to decline; the extrix.'s absolute right to registration therefore remained intact, & the register must be rectified accordingly. — *Re HACKNEY PAVILION, LTD.*, [1924] 1 Ch. 276; 93 L. J. Ch. 193; 130 L. T. 658.

**PART III. SECT. 23, SUB-SECT. 5.—**  
**B. (a),**

**b i. —.**—[A provision in the charter of a co. incorporated under Ontario Cos. Act, that "the shares of the co. shall not be transferred without the consent of the board of directors" is valid.—*Re PHILLIPS & LA PALOMA SWEETS, LTD.* (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

**PART III. SECT. 23, SUB-SECT. 5.—**  
**B. (b) ii.**

**2373 ii. —.**—[—*Re PHILLIPS & LA PALOMA SWEETS, LTD.* (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

**PART III. SECT. 23, SUB-SECT. 8.—**  
**A. (b).**

**2428 ii. —.**—[An agreement for the sale of shares does not imply

a further agreement to have the transferee's name registered as the holder.—*DOMINGO v. DE SOUZA* (1928), 1. L. R. 50 All. 695.—**IND.**

**PART III. SECT. 23, SUB-SECT. 12.—**  
**A.**

**2455 i. Loss of right to impeach—**  
**Transfer acted on by parties & company.]**  
—*WAIKAKEI, LTD. v. CLEAVE*, [1925] N. Z. L. R. 624.—**N.Z.**

**PART III. SECT. 23, SUB-SECT. 14.—**  
**A.**

**2521 i. Contract for sale of shares—**  
**Before presentation of petition—Whether void.]**—A share being a *ius in personam*, the mere fact that liquidation has intervened cannot, in the absence of a clear agreement to that effect, prevent enforcement of a purchase of shares concluded at a prior date, the purchaser taking the chance of any

**2452a. —. —. Transfer to director of over-**  
**payments made to vendor by company.]**—

A partnership business was sold to a co. for a sum of money which was satisfied by an allotment to the vendors of a number of fully paid shares in the co. It was subsequently discovered that, owing to mistake in the valuation, the partners had been overpaid by the co., & in order to adjust the matter, two of them, on behalf of themselves & their co-vendors, voluntarily transferred to the chairman of the board of directors of the co. 3,000 shares upon trust to use or sell them for the benefit of the co. An action was commenced against the chairman of the board of directors & the co. in which the ptfs. claimed that he held the shares as trustee for the individual shareholders & in which they sought an injunction restraining him from voting, at any meeting of the co., as the holder of the shares:—**Held:** (1) on the evidence, the chairman of the board of directors held the shares, not for the benefit of the individual shareholders, but for the benefit of the co., & that he held them on trust, at his discretion, to sell them; (2) the transfer did not offend against any principle laid down by any of the decided cases, & that the transaction was not made invalid by reason of the transfer having been made to a nominee on trusts which involved an obligation on the trustee to vote in respect of the shares as the co. might from time to time direct.—*KIRBY v. WILKINS*, [1929] 2 Ch. 444.

**2463. Add. Annotations:—Refd. I. R. Comrs. v. Allan** (1925), 9 Tax Cas. 234; *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

**2523. Add. Annotation:—Distd. Re Park Ward**, [1926] Ch. 828.

**2578. Add. Annotation:—Refd. Shuttleworth v. Cox** (Maidenhead) (1926), 43 T. L. R. 83.

**2580. Add. Annotation:—Dbtd. Shuttleworth v. Cox** (Maidenhead) (1926), 43 T. L. R. 83.

**2585a. Article restricting right of transfer—Construction.]**—Arts. of assocn. restricting transfer of shares must be so construed as not unreasonably to prevent shareholders from fairly & reasonably exercising their powers as members of the co.

Testator appointed his wife, a son, & two other persons exors. & trustees of his will, whereby he bequeathed his residuary estate to the trustees on trust to sell & convert & to hold the proceeds, after the wife's death, upon trust as to one-third thereof for the said

depreciation in market value meanwhile.—*UNION SHARE AGENCY LIQUIDATORS v. HATTON*, [1927] App. D. 240.—**S. AF.**

**PART III. SECT. 23, SUB-SECT. 15.—**  
**A. (b) i.**

**sa. Purchase in name of infant—**  
**Whether complete gift of shares to infant.]**  
—A father purchased, with his own funds, shares in a co. in name of his son, then a pupil. The son's name was entered in the co.'s register as proprietor of the shares, & dividend warrants in respect of them were issued in name of the son.—**Held:** the gift of the shares had been completed by the retention of the son's name in the co.'s register after his attainment of minority.—*INLAND REVENUE COMRS. v. WILSON*, [1927] S. C. 733.—**SCOT.**

son, & as to the remaining two-thirds for the other children of testator alive at testator's death. The residue included shares in the co., some in testator's name, the remainder in the name of another as his nominee or as trustee for him. The will was proved by the widow & the son only. They caused these shares to be registered in their own names without qualification, as the arts. of the co. disqualified transferees from receiving notice of or voting at meetings. Later they appointed an additional trustee of the will; & in order to vest the shares jointly in them & him, all three executed a transfer. This was presented to the co. for registration, but registration was refused on the ground that the restrictions on transfer imposed by the articles applied:—*Held*: the transfer could be justified under the arts.—*Re HOBSON, HOUGHTON & Co.*, [1929] 1 Ch. 300; 98 L. J. Ch. 140; 140 L. T. 496.

**2593. Add. Annotation:—Mentd. Public Trustee v. Elder**, [1926] Ch. 776.

**2637. Add. Annotation:—Refd. Spencer v. Ashworth Partington**, [1925] 1 K. B. 589.

**2646. Add. Annotation:—Refd. Ellis Trustee v. Dixon-Johnson**, [1924] 2 Ch. 451.

**2658. Add. Annotation:—Refd. Weld v. Petre**, [1929] 1 Ch. 33.

**2661. Add. Annotation:—Mentd. Re Mason (1928)**, 97 L. J. Ch. 321.

**2662. Add. Annotation:—Generally, Mentd. Spencer v. Ashworth Partington**, [1925] 1 K. B. 589.

**2667a. — What amounts to sale.**—Stock transferred as a security for a floating balance, & under an agreement to continue it transferred & re-transferred by & to the creditor by way of loan:—*Held*: a sale.—*E. p. DENNISON (1797)*, 3 Ves. 552; 30 E. R. 1152, L. C.

*Annotation:—Apld. Langton v. Waite (1868)*, L. R. 6 Eq. 165.

**2669. Add. Annotation:—Refd. Ellis Trustee v. Dixon-Johnson**, [1924] 2 Ch. 451.

**2689a. — Whether mortgagee bound to obtain best price.**—*Semble*: a mtgee. of shares is not bound to watch the market so as to sell them at the highest price; & he does not by failing to sell at the most favourable opportunity lose his right to prove against the estate of the mtgor.—*Re MCMURDO, PENFIELD v. MCMURDO*, [1902] 2 Ch. 684; 71 L. J. Ch. 691; 86 L. T. 814; 50 W. R. 644, C. A.

**2690. Add. Annotation:—Generally, Mentd. Ellis Trustee v. Dixon-Johnson (1924)**, 131 L. T. 652.

**2694. Add. Annotation:—Apld. Weld v. Petre**, [1929] 1 Ch. 33.

**2703a. — No lien conferred by articles of association.**—Bye-laws of applt. bank, made under its Act of incorporation, provided: (44. "the directors may decline to register any transfer of a share made by a shareholder who is indebted to the bank"; (57.) "the directors may deduct from the dividends payable to any shareholder all sums of money due by him to the bank on account of calls

or otherwise." In Nov. 1924, the registered holder of two shares assigned them in writing to resp. as security for money due; he executed no transfer but deposited the share certificate with resp. In May 1925, the bank, which had no notice of the assignment, obtained judgment against the shareholder for money due from him, & seized the shares in execution. There was no evidence that the shareholder's liability to the bank existed at the date of the assignment:—*Held*: the bye-laws gave the bank no lien on the shares for the debt to them, & resp. was entitled under the assignment to a charge in priority to the bank's rights under the execution.—*BANK OF N. T. BUTTERFIELD & SON, LTD. v. GOLINSKY*, [1926] A. C. 733; 95 L. J. P. C. 162; 135 L. T. 581, P. C.

**2705. Add. Annotation:—Consd. Kirby v. Wilkins**, [1929] 2 Ch. 444.

**2706. Add. Annotation:—As to (1) Distd. Kirby v. Wilkins**, [1929] 2 Ch. 441.

**2707. Add. Annotation:—Consd. Kirby v. Wilkins**, [1929] 2 Ch. 444.

**2715. Add. Annotation:—Expld. Kirby v. Wilkins**, [1929] 2 Ch. 441.

**2793. Add. Annotation:—Refd. Re Darwen & Pearce, Associated Paper Mills v. Barnes (1926)**, 95 L. J. Ch. 487.

**2799. Add. Annotation:—Refd. Re Darwen & Pearce, Associated Paper Mills v. Barnes (1926)**, 95 L. J. Ch. 187.

**2850. Add Citation:—13 Mans. 316.**

**2854. Add. Annotation:—Refd. Neuschild v. British Equatorial Oil Co.**, [1925] Ch. 346.

**2856. Add. Annotation:—As to (3) Refd. Kerr v. Marine Products (1928)**, 41 T. L. R. 292.

**2879a. — — — — —**—(1) A private co. was governed partly by special arts. & partly by Table A. Table A, art. 70, fixed the qualification of a director as "the holding of at least one share." Special art. 20 empowered the directors to appoint any other "qualified person" either to fill a casual vacancy or as an addition to the board. At a full board meeting on Saturday, Nov. 14, transfers of shares to two outsiders were duly passed for registration, after which the transferees were forthwith elected directors. The transfers were registered on the following Monday:—*Held*: though before their appointment the transferees had acquired an absolute right to registration, they were not "qualified persons" before actual registration, & their appointment as directors was invalid.

(2) A director was due to retire by rotation at the annual general meeting on Wednesday, Nov. 11, & part of the business of which notice was given was the election of a director in his place. The retiring director's re-election was moved at the meeting, but the matter, though discussed, was not finally dealt with, & the meeting was adjourned successively to Thursday, Nov. 12, Saturday, Nov. 14, & Tuesday, Nov. 17. At the last adjournment the original motion

#### PART III. SECT. 24, SUB-SECT. 5.

**2645 1. Whether gift complete.**—Gifts of shares:—*Held*: not complete until at least the transfers were handed to the respective transferees.—*COMMISSIONER OF STAMPS v. TODD*, [1924] N. Z. L. R. 345.—N. Z.

#### PART III. SECT. 27, SUB-SECT. 5.—A.

**m 1. — Plea of limitation.**—*HABIB ROUJI v. STANDARD ALUMINIUM & BRASS WORKS, LTD.* (1925), 1 L. R. 49 Bom. 715.—IND.

#### PART III. SECT. 28, SUB-SECT. 1.—D.

**o. Add "varied"**, 38 O. L. R. 414 33 D. L. R. 487."

#### PART III. SECT. 28, SUB-SECT. 2.—A.

**a. Add "varied"**, 9 A. R. 620."



for the retiring director's re-election was put & lost, & another shareholder was proposed & elected in his place:—*Held*: as the adjourned meeting was merely a continuation of the original meeting at which the question of the retiring director's re-election or replacement was considered, the proceedings were in order, & Table A, art. 82, had no application. (3) *Semble*: Table A, art. 82, only applies to a case where the retirement of a director by rotation & the necessity for his re-election or replacement is entirely lost sight of at the annual meeting.—SPENCER v. KENNEDY, [1926] Ch. 125; 95 L. J. Ch. 240; 134 L. T. 591.

2889. *Annotations*:—For “Howard v. Sadler, [1895] 1 Q. B. 1” read “Howard v. Sadler, [1893] 1 Q. B. 1.”

2895a. *Transfers of shares passed before election—Transfers not registered until after election.*—SPENCER v. KENNEDY, No. 2879a, *ante*.

2922. *Add. Annotations*:—*Re*fd. Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576. *Mentd.* Brown v. Dagenham U. C., [1929] 1 K. B. 737.

2944. *Add. Annotations*:—*Re*fd. *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

2965a. *Remuneration not authorised by general meeting.*—*Pltf.* was a director of *deft. co.*, which had adopted Table A with some modifications, & at a meeting of the board a service agreement was approved, signed, & sealed appointing *pltf.* “overseas director” at a salary of £1,800 a year. *Pltf.* proceeded overseas & performed his duties under the agreement till differences arose & he resigned. In an action by *pltf.* for salary due under the agreement:—*Held*: the agreement was *ultra vires* the board, & since *pltf.*'s remuneration had never been determined by the *co.* in general meeting, as required by Table A, art. 69, he could not recover, but must repay to the *co.* on their counterclaim the money

paid to him under the agreement.—KERR v. MARINE PRODUCTS, LTD. (1928), 44 T. L. R. 292.

2977. *Add. Annotation*:—*Re*fd. *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

3005. *Add. Annotation*:—*Generally*, *Mentd.* *Performing Right Soc. v. Mitchell & Booker* (Palais De Danse), [1924] 1 K. B. 762.

3014. *Add. Annotation*:—*Distd.* *Williams v. Barton*, [1927] 2 Ch. 9.

3033. *Add. Annotation*:—*Consd.* *British America Nickel Corp. v. O'Brien*, [1927] A. C. 369.

3037. *Add. Annotation*:—*Mentd.* *Leeds Industrial Co-operative Soc. v. Slack*, [1924] A. C. 851.

3044. *Add. Annotations*:—*Mentd.* *I. R. Comrs. v. Cornish Mutual Assce.* (1924), 41 T. L. R. 70; *South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476; *Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689; *Dominion Iron & Steel Co. v. Invernairn*, [1927] W. N. 277; *Manchester Corp. v. Buttle*, [1929] 2 Ch. 390.

3055a. — *Transfer to director of overpayments made to vendor by company—Discretionary trust for sale.*—KIRBY v. WILKINS, No. 2452a, *ante*.

3059. *Add. Annotation*:—*Apld.* *Re City Equitable Fire Insce.*, [1925] Ch. 407.

3059a. — — — (1) The manner in which the work of a *co.* is to be distributed between the board of directors & the staff is a business matter to be decided on business lines. The larger the business carried on by the *co.* the more numerous & the more important the matters that must of necessity be left to the managers, the accountants, & the rest of the staff.

(2) In ascertaining the duties of a director of a *co.*, it is necessary to consider the nature of the *co.*'s business & the manner in which the work of the *co.* is, reasonably in the circumstances & consistently with the arts. of assocn., distributed between the directors & the other officials of the *co.*

(3) In discharging those duties, a director

### PART III. SECT. 28, SUB-SECT. 2.—B.

sb. *Shares not required to be held in own right—How far beneficial ownership necessary—Effect of bankruptcy.*—An insolvent, who is registered as a member of a *co.* in respect of shares therein, is the holder of the shares & is the person who must be taken to be referred to in an agreement or an art. which declares the tenure of the managing director to depend on his being the “holder of shares.” In this respect there is a distinction between the words “holder” & “holder in his own right.”—*Re CAMBERWELL MOTORS PRY., LTD.*, [1926] V. L. R. 539; [1926] *Argus* L. R. 421.—*AUS.*

### PART III. SECT. 28, SUB-SECT. 3.—A.

2958 ii. — — — *Director acting as secretary-treasurer.*—*Hld*: *Cos. Act*, R. S. A., 1922 (c. 156), Table A, art. 54, did not deal with the remuneration of a secretary-treasurer, performed by one who was also a director.—ANDERSON v. HERBERT PAINT & VARNISH CO., LTD. (Alta.), [1927] 3 W. W. R. 809.—*CAN.*

2958 iii. — — — *Gratuity—Not by way of remuneration for services.*—Bye-laws passed by the directors of *deft. co.*, & said to have been confirmed by the shareholders at a special general meeting, providing for the transfer by *deft. co.* to the three individual *defts.*

of shares in another *co.* as remuneration for past services as directors & officers, were attacked in this action by shareholders in *deft. co.*—*Held*: there was no agreement binding on *deft. co.* to pay for the services rendered by the *co.*-*defts.* & the payments provided for in the bye-laws must be treated as gratuities.—LUMBERS v. FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—*CAN.*

### PART III. SECT. 28, SUB-SECT. 3.—B. (a).

ci. *Services requiring expert & technical knowledge.*—Where the services of a director did not fall within the scope of the ordinary unpaid duties of director, but were of a highly technical character, & the proper conduct of the business required expert & technical knowledge which it was not easy to obtain:—*Held*: he was entitled to a reasonable remuneration for such services.—DUROST v. HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—*CAN.*

### PART III. SECT. 28, SUB-SECT. 3.—C.

3019 i. *Add* “*varied*,” [1902] A. C. 83.”

### PART III. SECT. 28, SUB-SECT. 4.—A.

3028 i. *Right to act as director—Attendance of meetings—Conviction for criminal offence.*—BOAK v. WOODS, [1926] 1 D. L. R. 1186; 36 B. C. R. 456.—*CAN.*

3029 i. *Right to act as director—Right to injunction.*—An injunction may be granted on the application of a director restraining *pltf.*'s co-directors from wrongfully excluding him from acting as a director.—SARAT CHANDRA CHAKRAVARTI v. TARAH CHANDRA CHATTERJEE (1924), 1 L. R. 51 Cal. 916.—*IND.*

### PART III. SECT. 28, SUB-SECT. 4.—B.

3039 ii. — — — *R.*, in his lifetime, while acting in the capacity of managing director of a joint stock *co.*, used moneys of the *co.* in commercial adventures & other investments for his personal gain & profit. After *R.*'s death his exors. paid back to the *co.* the principal money so used, but declined to account for the profits which *R.* had derived from the use thereof:—*Held*: as *R.* was to be regarded as a trustee of the *co.*'s moneys, his executors were liable to the *co.* in respect of such profits, which, or the equivalent interest, must be paid over to the *co.*—ROGERS HARDWARE CO. v. ROGERS (P. E. I.) (1913), 12 E. L. R. 493; 10 D. L. R. 541.—*CAN.*

3039 iii. — — — *Shares acquired in new company by shareholder director—Paid for out of assets of old company in liquidation.*—CHANDLER & MASSEY v. IRISH (1911), 20 O. W. R. 649; 3 O. W. N. 383; 25 O. L. R. 211.—*CAN.*



(a) must act honestly, & (b) must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. But, (c) he need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge & experience; in other words, he is not liable for mere errors of judgment; (d) he is not bound to give continuous attention to the affairs of his co., his duties are of an intermittent nature to be performed at periodical board meetings, & at meetings of any committee to which he is appointed, & though not bound to attend all such meetings he ought to attend them when reasonably able to do so; & (e) in respect of all duties which, having regard to the exigencies of business & the arts. of assocn., may properly be left to some other official, he is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

(4) A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently applied for that purpose, assuming, of course, that the cheque comes before him for signature in the regular way, having regard to the usual practice of the co. A director must of necessity trust to the officials of the co. to perform properly honestly the duties allocated to them.

Before any director signs a cheque, or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board, or committee of the board, as the case may be, authorising the signature of the cheque; & where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently to his signature.

The authority given by the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques, mentioning the payee & the amount of each, should be read out at the board or committee meeting & subsequently transcribed into the minutes of the meeting.

(5) It is the duty of each director to see that the co.'s moneys are from time to time in a proper state of investment, except so far as the arts. of assocn. may justify him in delegating that duty to others.

(6) Before presenting their annual report & balance sheet to their shareholders, & before recommending a dividend, directors should have a complete & detailed list of the co.'s assets & investments prepared for their own use & information, & ought not to be satisfied as to the value of their co.'s assets merely by the assurance of their chairman, however apparently distinguished & honourable, nor with the expression of the belief of their auditors, however competent & trustworthy.

(7) It is not the duty of a director of a big insurance co. to supervise personally the safe custody of the securities of the co. It would be impracticable, on every purchase of securities, for actual delivery thereof to be made to the directors, or, on every sale,

for the delivery to the brokers of the securities sold to await a meeting of the board or of a committee of directors. The duty of seeing that the securities are in safe custody must of necessity be left to some official of the co. in daily attendance at the office of the co., such as the manager, accountant, or secretary.

(8) A co.'s stockbrokers, however respectable & responsible they may be, are not proper persons to have the custody of its securities except on such occasions when, for short periods, securities must of necessity be left with them; but immediately such necessity ceases the securities should be lodged in the co.'s strong room or with its bank, or placed in other proper & usual safe keeping.

(9) A director is not responsible for declaring a dividend unwisely. He is liable if he pays it out of capital, but the *onus* of proving that he has done so lies upon the liquidator who alleges it.

Art. 150 of the co.'s arts. of assocn. provided (*inter alia*) that none of the directors, auditors, secretary or other officers for the time being of the co. should be answerable for any loss, misfortune, or damage which might happen in the execution of their respective offices or trusts, or in relation thereto, unless the same should happen by or through their own wilful neglect or default respectively:—*Head*: (10) an act, or an omission to do an act, is wilful where the person who acts, or omits to act, knows what he is doing & intends to do what he is doing, but if that act or omission amounts to a breach of that person's duty, & therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing, & intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of his duty; (11) the immunity afforded by art. 150 was one of the terms upon which the directors held office in the co., & availed them as much on a misfeasance summons by the Official Receiver under 1908 Act, s. 215, as it would have done in an action by the co. against them for negligence; (12) upon the evidence & in accordance with the principles enunciated above, none of the resp. directors, other than the managing director, was liable.

(13) The measure of the auditor's responsibility depends upon the terms of his engagement. There may be a special contract defining the duties & liabilities of the auditors. If there is, then that contract governs the question. The arts. will, however, be looked at if there is no special agreement, because the auditors will presumably have taken their duties upon the terms, among others, set out in the arts. That is not to say that auditors can set aside a statutory obligation. No agreement or art. of assocn. can remove an imperative or statutory duty.

(14) Sect. 113 does not lay down a rigid code. The duty imposed on the auditors by it is not absolute, but depends upon the information given & explanations furnished to them, so that there is abundant scope for discretion. Art. 150 is not in conflict with the sect. The *onus* lies upon the auditors, who would not be excused for total omission to comply with any of the requirements of

the sect., or for any consequences of deliberate or reckless indifferent failure to ask for information on matters which call for further explanation.

(15) An auditor is not justified in omitting to make personal inspection of securities that are in the custody of a person or co. with whom it is not proper that they should be left, whenever such personal inspection is practicable.

(16) When an auditor discovers that securities of the co. are not in proper custody, it is his duty to require that the matter be put right at once, or, if his requirement is not complied with, to report the fact to the shareholders, & this whether he can or cannot make a personal inspection.

Auditors should not be content with a certificate that securities are in the possession of a particular co., firm, or person unless the co., etc., is trustworthy, or, as it is sometimes put, respectable, & further is one that in the ordinary course of business keeps securities for its customers. In all these cases the auditor must use his judgment.

Where the auditors did not personally inspect the securities of the co. in the hands of the stockbrokers of the co. & accepted from time to time the certificate of the brokers that they held large blocks of such securities, & did not either insist upon those securities being put in proper custody or report the matter to the shareholders:—*Held*: (17) they committed a breach of duty, but, inasmuch as throughout the audit the auditors honestly & carefully discharged what they conceived to be the whole of their duty to the co., such negligence was not wilful, & art. 150 applied to exonerate them from liability.

Where the auditors after a full investigation in which they were misled & deceived, & their reports to the board suppressed, by the chairman of the co., (a) described large sums of money left in the hands of the co.'s stockbrokers & lent to the general manager of the co. as "Loans at call or short notice," "Loans" or "Cash at hand & in bank"; (b) failed to discover that the co.'s stockbrokers, in order to reduce their indebtedness to the co. for the purposes of the audit, made purchases, on behalf of the co., immediately before the close of the co.'s financial year, of Treasury Bills which in fact never came into the possession of the co. & were sold immediately the new financial year had opened:—*Held*: (18) they were not guilty of any breach of duty as auditors.

(19) Sect. 215 is a procedure sect. only & creates no new or additional liability.—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, [1925] 1 Ch. 407; 94 L. J. Ch. 445; 133

L. T. 520; 40 T. L. R. 853; [1925] B. & C. R. 109, C. A.

*Annotations*:—*As to* (10) *Distd. Re City of London Insee.* (1926), 41 T. L. R. 521. *Consd. Re Munton, Munton v. West*, [1927] 1 Ch. 262; *Re Windsor Steam Coal Co.* (1901) Ltd., [1929] 1 Ch. 151.

**3060a.** ————]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**3062.** *Add. Annotation*:—*Apld. Re City Equitable Fire Insee.*, [1925] Ch. 407.

**3063a.** ———— *Proper & honest performance of duties.*]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**3063b.** ———— *Reliance on chairman—Accuracy of balance-sheet.*]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**3066.** *Add. Annotation*:—*Generally, Mentd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

**3068.** For "—— *Signature of cheques to company's prejudice*" read "—— *Signature of cheques—To company's prejudice.*"

**3068a.** ————]—*Re CITY EQUITABLE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**3071.** *Add. Annotation*:—*Refd. Re City Equitable Fire Insee.*, [1925] Ch. 407.

**3077.** *Add. Citation*:—*previous proceedings, sub nom. Re SOUTH ESSEX GAS LIGHT & COKE CO., Ex p. STEARS* (1859), John. 480.

**3105a.** *Payment of rates due from company—Right to stand in place of overseers.*]—The director of a co. in voluntary liquidation guaranteed & paid to the overseers of the poor the rates due from the co. before the date of the liquidation:—*Held*: (1) he was entitled to stand in the place of the creditor, & to use all remedies, &, if need be, the name of the creditor in any action or other proceeding in order to obtain indemnification from the principal debtor for the loss sustained; (2) in so far as the payment by the surety was made in respect of rates that became due & payable within twelve months before the date of the commencement of the liquidation, it would rank in priority of payment to the other debts of the co., by virtue of 1908 Act, s. 209.—*Re LAMPLUGH IRON ORE CO.*, [1927] 1 Ch. 308; 96 L. J. Ch. 177; 136 L. T. 501; [1927] B. & C. R. 61.

**3109.** *Add. Annotation*:—*Refd. British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

**3109a.** ————]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**3127a.** ———— *Delegation of duty.*]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**3128a.** *Safe custody of company's securities—Delegation of duty—Securities with company's stockbrokers.*]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

#### PART III. SECT. 28, SUB-SECT. 4.—C.

**3062 i.** *Standard of diligence—Reliance on company's officials—Here no ground for suspicion—Remuneration of company's books*]—*Re LOGAN (H. J.) CO.* (Ont.), [1926] 2 D. L. R. 946; 7 C. B. R. 325.—CAN.

*e.* *Add "varied"* 38 O. L. R. 414; 33 D. L. R. 487."

#### PART III. SECT. 28, SUB-SECT. 4.—D.

**3075 i.** *Capacity to contract—General rule.*]—A director has a right to contract with the co. subject to certain qualifications involving cases of misrepresentation, bad faith or secret profits, & not where ordinary relation

of employer & employee exist. The ordinary objections to such contracts do not apply where all the shareholders were directors, as no question can arise as to directors prejudicing the rights of the shareholders.—*DUROST v. HOME-MIXED FERTILIZERS, LTD.*, [1924] 4 D. L. R. 241; 51 N. B. R. 357.—CAN.

#### PART III. SECT. 28, SUB-SECT. 5.—A.

**3115 i.** *Exercise of powers—Control by members.*]—The directors of a co. constitute its governing & managing body, & except to the extent that their powers are expressly restricted by statute or the arts. of assocn. or otherwise, they possess authority to exercise all the powers of the co., subject to

the control of the shareholders.—*MID-WEST COLLIERIES, LTD. v. McEWEN*, [1925] 2 D. L. R. 529.—CAN.

#### PART III. SECT. 28, SUB-SECT. 5.—C. (a).

*d i. S. P. Re PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.)*, [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 378.—CAN.

*sl. Contract not authorised by all directors.*]—Where L., a director of deft. co., purporting to act on behalf of the co. agreed with pltf. to enter into a lease, & the directors neither authorised L. to enter into the agreement nor expressly ratified his action:

**3142. Add. Annotation:—Generally, Mentd. Re** City Equitable Fire Insee., [1925] Ch. 407.

**3144. Add. Annotation:—Mentd. The Hayle,** [1929] P. 275.

**3157a. — Presumption of authority.]—**Pltfs. were a firm of fruit brokers. Defts. & the P. Co. were two cos. engaged in the fruit trade. M. was a director of both cos. By art. 28 of the arts. of deft. co. the directors were empowered to "delegate any of the powers for the time being vested in the directors." The arts. also incorporated Table A. M. purported to make on behalf of defts. an agreement with pltfs. that in consideration of pltfs. advancing a sum of money to the P. Co., pltfs. should have the right to sell on commission all the fruit imported both by defts. & the P. Co., & that pltfs. should be entitled to retain the proceeds of sale of defts.' fruit as well as of that of the P. Co. as security for the advance. M. had no authority from defts. to make such a contract. Pltfs. requiring confirmation of the agreement by deft. co., the secretary of defts. wrote a letter purporting to confirm the agreement on behalf of defts., & pltfs., treating that as a sufficient confirmation, made the advance. The secretary had no authority to give such confirmation. Defts. subsequently repudiated the agreement as made without their authority. At the time that they made the advance pltfs. had no knowledge of the terms of defts.' arts. or that they incorporated Table A:—*Held*: whether the agreement was to be treated as having been made by M. as an ordinary "director" of deft. co., or by the secretary as "agent," or by the two combined, pltfs. were not entitled to assume that any authority to make it had been delegated to them by the board, because (1) although a person who contracts with an individual director or servants of a co., knowing that the board of directors has power to delegate its authority to such an individual, may in certain circumstances assume that power of delegation has been exercised & that he may safely deal with the individual in question as representing the co., he cannot rely on the supposed exercise of such power if he did not know of the existence of the power at the time that he made the contract; (2) there was something so unusual in an agreement to apply the money of one

co. in payment of the debt of another that pltfs. were put upon inquiry to ascertain whether the person or persons making the contract had any authority in fact to make it; (3) even if pltfs. had known of the existence of the express power of delegation, they would not have been entitled to assume that it had been exercised in favour of M. or the secretary to any greater extent than was to be inferred from the positions which M. & the secretary respectively occupied or were held out by the co. as occupying.—*HOUGHTON & Co. v. NOTHARD, LOWE & WILLS*, [1928] A. C. 1; 97 L. J. K. B. 70; 138 L. T. 210; 44 T. L. R. 76, H. L.

*Annotations:—As to (1) Consd. Kreditbank Cassel G.m.b.H. v. Schenkers*, [1927] 1 K. B. 826. *Refd. Liggott (Liverpool) v. Barclays Bank* [1927] 137 L. T. 443; *Newsholme v. Road Transport & General Insee.*, [1929] 2 K. B. 356.

**3160. Add. Annotation:—Refd. Cotter v. National Union of Seamen, [1929] 2 Ch. 58.**

**3160a. —.]—**A co. is bound in a matter *intra vires* the co. by the unanimous agreement of all its corporators.

If all the individual corporators in fact assent to a transaction that is *intra vires* the co., though *ultra vires* the board, it is not necessary that they should hold a meeting in one room or one place to express that assent simultaneously.—*PARKER & COOPER, LTD. v. READING*, [1926] Ch. 975; 96 L. J. Ch. 23; 136 L. T. 117.

**3162. Add. Annotation:—Consd. British America Nickel Corpn. v. O'Brien, [1927] A. C. 369.**

**3181. Add. Annotation:—Mentd. Falcon v. Famous Players Film Co.** (1925), 12 T. L. R. 91.

**3201. Add. Annotation:—Refd. Re Etic, [1928] Ch. 861.**

**3216. Add. Annotation:—Refd. Parker & Cooper v. Reading, [1926] Ch. 975.**

**3231. Add. Annotation:—Refd. Kerr v. Marine Products** (1928), 44 T. L. R. 292.

**3240. Add. Annotations:—Refd. A.-G. v. Goddard** (1929), 98 L. J. K. B. 713. *Mentd. Wright v. Morgan*, [1926] A. C. 788.

**3249. Add. Annotation:—Apld. Re Home & Colonial Insee.** (1929), 45 T. L. R. 658.

**3250. Add. Annotation:—As to (2) Refd. Kerr v. Marine Products** (1928), 44 T. L. R. 292.

**3252. Add. Annotation:—Refd. Re Home & Colonial Insee.** (1929), 45 T. L. R. 658.

—*Held*: the co. was not bound by the agreement.—*LEGO & Co. v. PREMIER TOBACCO CO.*, [1926] App. D. 132.—S. AF.

### PART III. SECT. 28, SUB-SECT. 5.—C. (d).

**3132 i. Necessary formalities.]—**Where the directors of a co. had power to borrow & mortgage:—*Held*: the president & managing director were, by virtue of their offices, *prima facie* proper officers to execute mtgs., & the mtgo., which had the common seal of the co. attached, & was executed by the president & managing director, was properly executed.—*CANADIAN BANK OF COMMERCE v. SMITH* (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—CAN.

**3132 ii. —.]—**Where a mtgo by a co. had the seal of the co. affixed in the presence of two directors, one of whom was the secretary, & of M., assistant secretary, there being on appointment proved authorising M. as an assistant secretary, or otherwise, to sign the mtgo., or authenticate the

affixing of the seal:—*Semble*: the execution was bad.—*INNES & GRIFFITH v. CAMERON VALLEY LAND CO. (B. C.)*, [1919] 1 W. W. R. 752.—CAN.

**3133 i. Mortgage to directors.]—**Set aside at instance of simple contract creditors of the co.—*NORTHERN ELECTRIC & MANUFACTURING CO., LTD. v. CORDOVA MINES, LTD.* (1914), 31 O. L. R. 221; 6 O. W. N. 210.—CAN.

**3133 ii. —.]—***GREENSTREET v. PARIS HYDRAULIC CO.* (1874), 21 Gr. 229.—CAN.

### PART III. SECT. 28, SUB-SECT. 5.—C. (e).

f. Add "varied, 9 A. R. 620."

### PART III. SECT. 28, SUB-SECT. 5.—E.

**r i. — Must be with full knowledge of transaction.]—***HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE v. KHALSA BANK, LTD., (GUJRANWALA)* (1927), 1 L. R. 9 Lah. 360.—IND.

d i. —.]—*DAVISON v. VICKERY'S MOTORS, LTD.* (1925), 37 C. L. R. 1.—AUS.

### PART III. SECT. 28, SUB-SECT. 6.—C. (b).

**sm. Commission.]—***Cos. Act. 1908, s. 57*, does not authorise the directors to make presents of the co.'s capital in the guise of commission. Such presents are *ultra vires* of the directors & recoverable by the co.—*WAIRAKI, LTD. v. CLEAVE*, [1925] N. Z. L. R. 624.—N.Z.

### PART III. SECT. 28, SUB-SECT. 6.—D. (d) ii.

**e i. — Extent of liability.]—**Deft., a director of pltf. co., in that he had failed in his duty to hand over to the co. certain shares, was ordered to account to the co. for their value as at the date when he received them:—*Held*: such value was not the intrinsic value at the specified date, but the value in money which pltf. co.

**3257. Add. Annotations:—***Apld. Parker & Cooper v. Reading & James* (1926), 96 L. J. Ch. 23. *Refd. Kerr v. Marine Products* (1928), 44 T. L. R. 292.

**3261. Add. Annotations:—***Generally, Refd. Re Etic*, [1928] Ch. 861. *Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

**3280. Add. Annotation:—***Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

**3280a. — Directors relying on chairman's assurance as to value of assets.**—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**3282a. Dividends paid out of capital.**—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**3284. Add. Annotation:—***As to (3) Apld. Re A Debtor*, [1927] 1 Ch. 410.

**3285. Add. Annotation:—***As to (2) Refd. Re City Equitable Fire Insce.*, [1925] Ch. 407.

**3291. Add. Annotation:—***Apld. Re City Equitable Fire Insce.*, [1925] Ch. 407.

**3305. Add. Annotation:—***As to (2) Consd. Kirby v. Wilkins*, [1929] 2 Ch. 444.

**3327. Add. Annotation:—***Distd. British Thomson-Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn*, [1921] 2 Ch. 33.

**3327a. — — — — —**—The directors of a co. cannot be made liable for an infringement of a patent by the co. merely by reason of their position as directors, even in a case where they are the sole directors & shareholders of the infringing co.—*BRITISH THOMSON-HOUSTON CO. v. STERLING ACCESSORIES, LTD.*, *BRITISH THOMSON-HOUSTON CO. v. CROWTHER & OSBORN, LTD.*, [1921] 2 Ch. 33; 93 L. J. Ch. 335; 131 L. T. 535; 40 T. L. R. 544; 68 Sol. Jo. 595; 41 R. P. C. 311.

*Annotation:—Apld. Prichard & Constance v. Amata* (1924), 42 R. P. C. 63.

**3327b. — — — — —**—Deft. co., incorporated in 1924 for the purpose of carrying on business as manufacturers of toilet preparations & publishers of medical books & publications relating thereto, on letter paper described themselves as "wholesale manufacturers of Amata Toilet Preparations." Pltf. co., who had for many years distinguished their goods by the word "Amami," & in July, 1909, had registered that word as a trade mark to be applied to perfumery, etc., commenced an action against deft. co. & the two only directors thereof who were signatories of their memorandum of assocn. for an injunction:—*Held*: there was no evidence that deft. co. had been formed by the other two defts. for the purpose of doing a wrongful act & no claim had been established

by pltf. against these defts. personally; & the action as against them must be dismissed with costs.—*PRICHARD & CONSTANCE (WHOLESALE), LTD. v. AMATA, LTD.* (1924), 42 R. P. C. 63.

**3335a. — Loan for expenses in connection with promotion.**—*ADAMS (FRANCIS), LTD. v. FISHWICK* (1928), 72 Sol. Jo. 122.

**3347. Add. Annotations:—***As to (4) Apld. Re A Debtor*, [1927] 1 Ch. 410. *Consd. Re Etic*, [1928] Ch. 861.

**3364. Add. Annotation:—***Refd. Horwood v. Statesman Publishing Co.* (1929), 98 L. J. K. B. 450.

**3376. Add. Annotation:—***Refd. A.-G. v. Goddard* (1929), 98 L. J. K. B. 743.

**3377. Add. Annotation:—***As to (1) Refd. Weld v. Petre*, [1929] 1 Ch. 33.

**3398. Add. Annotation:—***As to (2) Refd. Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246.

**3405. Add. Annotations:—***Refd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

**3419a. — — — — —**—The directors of a co. personally guaranteed an overdraft granted to the co. by a bank. They subsequently passed a resolution that, subject to the approval of the bank, debentures be issued to the bank as security for the overdraft, & debentures were issued in accordance with the resolution:—*Held*: the directors were "interested" in the arrangement come to with the bank in regard to the issue of the debentures, & the resolution providing for the issue was a nullity.—*VICTORS, LTD. v. LINGARD*, [1927] 1 Ch. 323; 96 L. J. Ch. 132; 136 L. T. 476; 70 Sol. Jo. 1197.

**3423. Add. Annotation:—***Refd. Parker & Cooper v. Reading*, [1926] Ch. 975.

**3434. Add. Annotation:—***As to (5) Consd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 664.

**3444. Add. Annotation:—***As to (1) Distd. Re Windsor Steam Coal Co.* (1901), Ltd. (1928), 140 L. T. 80.

**3448. Add. Annotation:—***Mentd. Brown v. Dagenham U. D. C.* (1929), 98 L. J. K. B. 565.

**3455a. — Re-election of retiring director—Adjournment of meeting.**—*SPENCER v. KENNEDY*, No. 2879a, *ante*.

**3490. Add. Annotation:—***As to (2) Refd. A.-G. v. Goddard* (1929), 98 L. J. K. B. 713.

**3492. Add. Annotation:—***Refd. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

could reasonably have obtained on the market, & as pltf. co. had discharged the onus of proving that it could have obtained the market price, the value would be fixed at that amount.—*ROBINSON v. RANDFONTEIN ESTATES GOLD MINING CO., LTD.*, [1924] App. D. 151—S. A. F.

**PART III. SECT. 28, SUB-SECT. 6.—E. (I).**

**g i. — — — — —**—The penalty enacted against directors of a co. who participate in the payment of a dividend where the co. is insolvent, & whereby they are made jointly & severally liable

to creditors for debts of the co. then existing, is incurred only when they knew, or were bound to know, the insolvency of the co. at the time the dividend was declared.—*SMITH v. HENDERSON*, [1921] 1 D. L. R. 863; Q. R. 62 S. C. 270.—CAN.

**sn. Dividend disposing of entire assets of company.**—Judgment given against directors.—*THOMAS v. GIFF*, [1927] 1 D. L. R. 593; S. C. R. 314.—CAN.

**PART III. SECT. 28, SUB-SECT. 6.—F. (E).**

**m. For "26 W. L. R. 626" read**

"7 Alta. L. R. 245; 28 W. L. R. 250."

**b (p. 509) i. — — — — —**—Pltf. sued directors of a co., alleging that judgments recovered by them were for "wages due for services performed for the co." The evidence showed that pltf. were hired to prospect for oil when so instructed, & they were not to do anything but hold themselves in readiness:—*Held*: the judgments were not for wages due for services performed, as they did no more than wait for the chance of performing them.—*MULLEN v. MILLAR*, 55 O. L. R. 563.—CAN.

**3502. Add. Annotations :—**Consd. *Underwood v. Bank of Liverpool*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 216. **Refd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

**3506. Add. Annotation :—**Generally. **Refd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

**3506a. ———** **Cheque—Presumption of authority.**—*STEWART (ALEXANDER) & SON, OF DUNDEE, LTD. v. WESTMINSTER BANK, LTD.*, [1926] W. N. 126.

**3526. Add. Annotations :—**As to (2) **Refd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58. **Generally, Refd.** *I. R. Comrs. v. Fisher's Exors.*, [1926] A. C. 395. **Mentd.** *British America Nickel Corp'n. v. O'Brien*, [1927] A. C. 369.

**3532. Add. Annotations :—****Refd.** *Thomas v. Todd*, [1926] 2 K. B. 511. **Mentd.** *Livock v. Pearson* (1928), 33 Com. Cas. 188.

**3540a. ———** **Presumption of authority—Due delegation of authority.**—*HOUGHTON & CO. v. NOTHARD, LOWE & WILLS*, No. 3157 a, ante.

**3553. Add. Annotation :—****Refd.** *The Hayle*, [1929] P. 275.

**3555. Add. Annotation :—**Generally. **Mentd.** *Glanvill Enthoven v. I. R. Comrs.* (1924), 131 L. T. 818.

**PART III. SECT. 28, SUB-SECT. 8.—B.**

**81. ———** *Not during term of appointment.*—*LONDON FINANCE CORP'n. v. BANKING SERVICE CORP'n. (ONT.)*, [1925] 1 D. L. R. 319.—CAN.

**PART III. SECT. 28, SUB-SECT. 9.—C.**

**50 Remuneration voted by directors—Validity—Action by shareholder—Onus of proof.**—When a plff complains of directors voting a salary & travelling expenses to the managing director, he must show that their action was either *ultra vires* or of a fraudulent character, & although it is beyond the powers of directors to vote the salary & travelling expenses, this defect can be remedied at a shareholders' meeting where the managing director is a majority shareholder.—*HOUSTON v. VICTORIA MACHINERY DEPOT, LTD.*, [1924] 2 D. L. R. 657; 33 B. C. R. 425.—CAN.

**PART III. SECT. 28, SUB-SECT. 9.—D.**

**50 Extent of powers.**—Where a general manager is chosen from the directors & is therefore a managing director, there is an implication of further & larger authority than in the case of a general manager who is not a director, but when directors appoint a "managing director," they may be taken to have *ipso facto* delegated to him some of their powers as a board of directors.—*MID-WEST COLLIFRIES, LTD. v. MC EWEN*, [1925] 2 D. L. R. 529.—CAN.

**3501 v. ———**—Persons dealing with a managing director need only satisfy themselves that he has the power to do what he does, even though it be for his personal advantage.—*Re J. STANLEY WEDLOCK, LTD., Ex p. ROYAL BANK*, [1924] 4 D. L. R. 1173; 5 C. B. R. 103.—CAN.

**50. Fraud of managing director—Secret arrangement for sale of property.**—*LABELL v. HANNAH (B. C.)* (1906), 37 S. C. R. 324.—CAN.

**PART III. SECT. 28, SUB-SECT. 10.**

**51. Effect of bye-law.**—The president of a co. has no authority without the authorisation by the board to engage solrs. in the co.'s

business, though there be a bye-law giving him a general oversight over the business of the co.—*Re PETRIE MANUFACTURING CO., Ex p. HUGHES*, [1924] 4 D. L. R. 1308; 4 C. B. R. 311.—CAN.

**51. Cheque—Unauthorised judgment against company—Held.** the creditor, to whom the cheque was paid, was not prevented from proceeding against the president upon it.—*WRIGHT v. PETRIE*, [1925] 4 D. L. R. 1950.—CAN.

**51. Not a trustee—As regards funds & securities in his custody.**—*Ex p. GIBBOUX*, [1926] 2 D. L. R. 900; 45 Can. Crim. Cas. 315; (1925), Q. R. 40 K. B. 362.—CAN.

**PART III. SECT. 29, SUB-SECT. 1.—B.**

**51. By president—Confirmation.**—Where a servant had been orally hired by the president of a co., & his services had been accepted for three & a half years without the president's authority to hire him being questioned.—*Held.* the co. could not repudiate the agreement on the mere ground that it was not formally authorised or adopted by bye-law.—*BLOOMFIELD v. MONARCH OVERALL MANUFACTURING CO., LTD.* (No. 2), [1927] 2 W. W. R. 18; [1927] 3 D. L. R. 146; *affd.*, [1927] 3 W. W. R. 502; [1927] 4 D. L. R. 1137.—CAN.

**PART III. SECT. 29, SUB-SECT. 1.—C.**

**51. By whom fixed—Directors.**—The remuneration of an officer of a co. must be fixed by the directors, & cannot be fixed by the shareholders.—*WILSON v. WOOLLATT*, [1928] 4 D. L. R. 403; 62 O. L. R. 620.—CAN.

**PART III. SECT. 29, SUB-SECT. 1.—D.**

**51. Contracts for purchase of stock.**—*Held.* the co. in order to avoid liability, must show that their officers were, to the knowledge of the brokers, abusing their powers & giving directions they had no power to give.—*TICONDEROGA PULP & PAPER CO. v. COWANS*, [1925] 1 D. L. R. 1.—CAN.

**51. Agreement for non-shareholders to gain advantages of shareholders.**—*Held.* express authority

**3560. Add. Annotations :—**Consd. *Chibbett v. Robinson* (1924), 132 L. T. 26. **Distd.** *Mudd v. Collins* (1925), 133 L. T. 186; *Reed v. Seymour* (1927), 11 Tax Cas. 625. **Refd.** *Bonyon v. Thorpe* (1928), 97 L. J. K. B. 705. **Mentd.** *Reed v. Seymour* (1926), 95 L. J. K. B. 796.

**3565. Add. Annotations :—****Refd.** *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd v. Goukassow* (1924), 40 T. L. R. 837; *Todd v. Egyptian Delta Land & Investment Co.* [1928] 1 K. B. 152. **Mentd.** *Bohemian Union Bank v. Austrian Property Administrator*, [1927] 2 Ch. 175; *Todd v. Egyptian Delta Land & Investment Co.* (1927), 96 L. J. K. B. 554.

**3567a. ———** **Presumption of authority—Due delegation of authority.**—*HOUGHTON & CO. v. NOTHARD, LOWE & WILLS*, No. 3157a, ante.

**3568a. ———** **Purchase of goods for company's benefit.**—*LEVY v. METROPOLITAN CAB CO.* (1854), 23 L. T. O. S. 67.

**3573. Add. Annotation :—****Refd.** *Jones v. Oceanic Steam Navigation Co.*, [1924] 2 K. B. 730.

**3590. Add. Annotation :—****Refd.** *Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 138 L. T. 500.

necessary.—*McLeod v. UNITED CANANIERS, LTD. (P. E. I.)*, [1925] 3 D. L. R. 767.—CAN.

**51. Cancellation of subscription for stock—Held.** express authority necessary.—*Re SUN RAY MANUFACTURING CO., Ex p. ROBSON (ONT.)*, [1925] 1 D. L. R. 175; 5 C. B. R. 303; *affd.* 4 C. B. R. 597.—CAN.

**51. Liability—Investigation into conduct.**—Act 46, 1926, s. 184 (1), is not designed for the purpose of enabling the ct. to hold a general investigation into the conduct of an officer of the co. The examination there intended is for the purpose of fixing liability in respect of a particular claim then before the ct. The sect. does not create any new liability or any new right, but only provides a summary mode of enforcing rights which would otherwise have been enforced by the ordinary procedure of the ct. A person cannot therefore be held liable under the sect. unless he is already liable to pay a sum of money by some principle of ordinary law, or by virtue of a special clause of Cos. Act imposing upon him a particular liability.—*ZULULAND MOTOR CO. v. SHORR, LIQUIDATOR, ETC.* (1928), 49 N. L. R. 368.—S. AF.

**PART III. SECT. 29, SUB-SECT. 2.—C. (b)**

**51. By acts of secretary-treasurer.**—*Held.* (1) a secretary-treasurer, as such, has no authority to bind his co.; (2) on the facts, there was nothing to show that the authority of the secretary-treasurer in this case was other or more extensive than that of any other secretary.—*MYERS v. UNION NATURAL GAS CO.* (1922), 53 O. L. R. 88.—CAN.

**PART III. SECT. 29, SUB-SECT. 3.—B.**

**51. Right to remuneration—Absence of bye-law authorising payment—Action not maintainable—Companies Act, R. S. M., 1913 (c. 35), s. 32.**—*MENZIES v. TENDALL QUARRIES CO. (MAN.)*, [1926] 4 D. L. R. 350; [1926] 2 W. W. R. 861.—CAN.

**3603a.** — — — **Bills of exchange drawn by branch manager.**—The arts. of assocn. of a co. empowered the directors to determine who should be entitled to sign & make, draw, accept & indorse on the co.'s behalf bills, notes, receipts, acceptances, indorsements, cheques, etc. The co., whose business was that of forwarding agents, had a branch at Manchester under a branch manager, C. This branch manager, without having in fact received any authority from the co., acting in fraud of the co., drew seven bills of exchange on behalf of the co. signed "S.C., Manchester manager." The bills were drawn to the order of the co., they were accepted by C. & W. & indorsed on behalf of the co. "S.C., Manchester manager." In an action on the bills by the holders in due course against the co. as drawers:—*Held*: (1) plffs. were not entitled to act on bills drawn by a person in the position of the branch manager; (2) the bills were forgeries under which plffs. could have no title.—*KREDITBANK CASSEL* (G. m. b. H. v. *SCHENKERS*, [1927] 1 K. B. 826; 96 L. J. K. B. 501; 136 L. T. 716; 43 T. L. R. 237; 71 Sol. Jo. 141; 32 Com. Cas. 197, C. A.

*Annotation* :—As to (1) *Refd. Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 18.

**3613.** *Add. Annotation* :—**Mentd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.**, [1925] Ch. 769.

**3652.** *Add. Annotation* :—**Refd. Re Glyncorwg Colliery Co., Railway Debenture & General Trust Co. v. The Co.**, [1926] Ch. 951.

**3656.** *Add. Annotation* :—**Refd. Re City Equitable Fire Insce.**, [1925] Ch. 407.

**3657.** *Add. Annotation* :—**Consd. Re City Equitable Fire Insce.** (1924), 40 T. L. R. 853.

**3661.** *Add. Annotation* :—**Consd. Re City Equitable Fire Insce.** (1924), 40 T. L. R. 853.

**3661a.** — — — *Re City Equitable Fire Insurance Co., LTD.*, No. 3059a, ante.

**3662a.** *Inspection of securities—Whether in proper custody.*—*Re City Equitable Fire Insurance Co., LTD.*, No. 3059a, ante.

**3664.** *Add. Annotation* :—**Refd. Re City Equitable Fire Insce.** (1924), 40 T. L. R. 853.

**3665.** *Add. Annotation* :—**Appld. Re City Equitable Fire Insce.**, [1925] Ch. 407.

**PART III. SECT. 29, SUB-SECT. 3.—C.**

**g i.** — — — — — *Where the manager of a co., acting in good faith under the authority which he thought was vested in him & which could have vested in him under the co.'s arts. of assocn., executes a contract on the co.'s behalf, & the other party accepts him as having authority, the co. is bound by his act.*—*ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA FRUIT LAND, LTD.*, [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—*CAN.*

**3602 i.** — — — — — *By misrepresentation—Question of authority.*—*HAVENE PLANTATIONS, LTD. v. ESTATE H. ABRAY* (1927), 48 N. L. R. 174.—*S. AF.*

**PART III. SECT. 29, SUB-SECT. 3.—D.**

**sl.** *For judgment against company—In action brought on manager's instructions.*—*Held*: the manager was not liable.—*PACIFIC COAST COAL MINES, LTD. v. ARBUTHNOT*, [1926] 1 D. L. R. 670; [1926] 1 W. W. R. 478; 36 B. C. R. 321.—*CAN.*

**sm.** *Undue preference.*—An officer

of a co. who grants an undue preference to himself is guilty of misfeasance & breach of trust within the meaning of Act 46, 1926, s. 184 (1). A part-time secretary is an officer of the co. within the same sect.—*ZULTLAND MOTOR CO. v. BOSWELL, LIQUIDATOR*, ETC. (1928), 49 N. L. R. 376.—*S. AF.*

**PART III. SECT. 29, SUB-SECT. 4.—D.**

**g i.** — — — — — *Re ALPHA MORTGAGE & INVESTMENT CO. (1916)*, 34 W. L. R. 483; 10 W. W. R. 652.—*CAN.*

**PART III. SECT. 30, SUB-SECT. 2.—C. (b) ii.**

**sp.** *Rights of members—Forcing additional shares on dissenting member.*—An art. of assocn. of a co. providing that the directors might require a shareholder to take up additional shares in a certain ratio was altered by a resolution of the majority of the shareholders, applt. (*inter alios*) dissenting. The alteration struck out the words "three shares for every 250 lb. of butter fat" supplied by a member & substituted "one share for every 60 lb. of butter-fat." Applt. was called upon to take

**3668.** *Add. Annotation* :—*As to* (1) *Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 664.

**3670a.** — — — — — *Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, ante.

**3693.** *Add. Annotation* :—*As to* (2) *Consd. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

**3698.** *Add. Annotation* :—*Expld. & Dists. Jacobs v. Batavia & General Plantations Trust*, [1924] 2 Ch. 329.

**3702.** *Add. Annotation* :—*Refd. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

**3703.** *Add. Annotation* :—*Dbtd. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

**3704.** *Add. Annotation* :—*As to* (2) *Refd. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

**3704a.** — — — **Interference by court.**—The power to alter or add to the arts. under 1908 Act, s. 13 (1), must be exercised, not only in the manner required by law, but also *bond fide* for the benefit of the co. as a whole, & the question whether a given alteration of or addition to the arts. is for the benefit of the co. is a question for the shareholders, acting *bond fide*, & not for the ct., & the ct. will not interfere with the action of the shareholders except on grounds on which it would interfere with a verdict of a jury.—*SHUTTLEWORTH v. COX BROTHERS & CO. (MAIDENHEAD)*, LTD., [1927] 2 K. B. 9; 96 L. J. K. B. 104; 136 L. T. 337; 43 T. L. R. 83, C. A.

**3729.** Before this case insert "*Compare CORPORATIONS*, Vol. XIII., pp. 339 *et seq.*"

**3734a.** — — — **Preference shareholders whose dividends "in arrear."**—*Held*: the words "in arrear," in the context in which they appeared in a co.'s arts. of assocn., did not cover the non-payment of a non-cumulative preference dividend payable out of the profits of each year, & not paid because there were no profits available for the dividend.—*COULSON v. AUSTIN MOTOR CO., LTD.* (1927), 43 T. L. R. 493.

**3736.** *Add. Citation* :—13 Mans. 316.

**3753.** *Add. Annotation* :—*Generally, Refd. Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

**3755.** *Add. Annotation* :—**Mentd. Gilbert v. Gilbert & Boucher** (1927), 96 L. J. P. 137.

up additional shares in accordance with the alteration, but refused to do so:—*Held*: the art. was not one that could be amended under Cos. Act, 1908, s. 122, so as to force additional shares on a dissenting member, & applt. was not bound by the alteration objected to.—*MACDONALD v. NORMANBY CO-OPERATIVE DAIRY FACTORY CO., LTD.*, [1923] N. Z. L. R. 122.—*N.Z.*

**3698 i.** *Alteration a breach of contract*—A shareholder in a co. must be taken to know that one of the incidents of membership of a co. is that the co. may, by adopting the proper method, *bond fide* alter its articles in a way which may prejudicially affect his interest, & provided that the alteration in the article is not inconsistent with the objects set out in the memorandum of association, & is *bond fide* made in the interest of the co., the shareholder would be bound by such an alteration.

A co. cannot commit a breach of contract by altering its articles.—*HARI CHANDANA JOGA DEVA v. HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD.* (1924), 1 L. R. 52 Calo. 239.—*IND.*

- 3770. Add. Annotation:—***Refd.* Shuttleworth v. Cox (Maidenhead) (1926), 43 T. L. R. 83.
- 3771. Add. Annotation:—***Refd.* Shuttleworth v. Cox (Maidenhead) (1926), 43 T. L. R. 83.
- 3771a. Shareholder with no registered address—No address in United Kingdom for service of notices.]—**DICKSON v. HALESOWEN STEEL CO., [1928] W. N. 33.
- 3775. Add. Annotation:—***As to* (2) *Apld.* Wall v. Exchange Investment Corp., [1926] Ch. 143.
- 3779. Add. Annotation:—***Expld. & Apld.* Parker & Cooper v. Reading, [1926] Ch. 975.
- 3787a. ————]**—WALL v. EXCHANGE INVESTMENT CORP., No. 3811a, *post*.
- 3802. Add. Annotation:—***Consd.* British America Nickel Corp. v. O'Brien, [1927] A. C. 369.
- 3811. Add. Annotation:—***Apld.* Wall v. Exchange Investment Corp., [1926] Ch. 143.
- 3811a. ———— Whether decision of chairman final.]—**An art. provided that no objection should be made to the validity of any vote except at the meeting at which it was tendered, & that every vote, whether given in person or by proxy, not disallowed at any meeting should be deemed valid for all purposes:—*Held*: the decision of the chairman, who, in the *bonâ fide* exercise of the power conferred upon him by the art., had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final & would not be reviewed by the ct.—WALL v. EXCHANGE INVESTMENT CORP., [1926] Ch. 143; 95 L. J. Ch. 132; 131 L. T. 399, C. A.
- 3826. Add. Annotation:—***Consd.* Neuschild v. British Equatorial Oil Co., [1925] Ch. 346.
- 3841a. ———— Revocation of proxy received after commencement of meeting but before poll taken — Vote valid.]—**SPILLER v. MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.
- 3847a. ———— Vote valid unless disallowed at meeting — Whether decision of chairman final.]—**WALL v. EXCHANGE INVESTMENT CORP., No. 3811a, *ante*.
- 3874. Add. Annotation:—***Refd.* *Re* Darwen &

Pearce, Associated Paper Mills v. Barnes (1926), 95 L. J. Ch. 487.

- 3874a. ———— Adjournment of second meeting to date more than month from date of first meeting.]—**Where a meeting, held for the purpose of confirming as special resolutions resolutions passed as extraordinary resolutions at a meeting held less than a month before, is adjourned, for *bonâ fide* reasons, to a date more than a month from the date of the meeting at which the resolutions were passed, & the resolutions are confirmed at the adjourned meeting, they are valid within 1908 Act, s. 69 (2).—NEUSCHILD v. BRITISH EQUATORIAL OIL CO., [1925] 1 Ch. 346; 94 L. J. Ch. 201; 133 L. T. 227; 41 T. L. R. 414; 69 Sol. Jo. 446.
- 3878. Before this case insert “Compare CORPORATIONS, Vol. XIII., p. 316.”**
- 3880. Add. Annotations:—***As to* (1) *Consd.* Cotter v. National Union of Seamen, [1929] 2 Ch. 58. *Refd.* Cox v. National Union of Foundry Workers of Great Britain & Ireland (1928), 44 T. L. R. 315.
- 3881a. ————]**—SPILLER v. MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.
- 3882. Add. Annotation:—***Refd.* Neuschild v. British Equatorial Oil Co., [1925] Ch. 346.
- 3882a. ———— Re-election of retiring director.]—**SPENCER v. KENNEDY, No. 2879a, *ante*.
- 3890. Add. Annotation:—***Consd.* Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 216.
- 3917. Add. Annotation:—***As to* (2) *Refd.* Glanvill, Enthoven v. I. R. Comrs. (1924), 131 L. T. 818.
- 3925. Add. Annotation:—***Consd.* *It. v.* Cory, [1927] 1 K. B. 810.
- 3934a. Locality of debt created.]—**A British co. held shares in another British co. which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. The co. having declared a dividend:—*Held*: as the co. holding the shares was resident in England & the local

**PART III. SECT. 30, SUB-SECT. 3.—**  
**B. (f).**

**i. ————]**—A shareholder, who is present at a meeting of shareholders, can waive his right to be given notice of the intention to move a special resolution; the giving notice of such intention is only prescribed in order to give shareholders time to consider the matter.—*Re* EXCEL FOOTWEAR CO., *Ex p.* NOVA SCOTIA TRUST CO., [1923] 3 D. L. R. 212; 56 N. S. R. 195; 3 C. B. R. 748.—CAN.

**PART III. SECT. 30, SUB-SECT. 3.—**  
**D. (b).**

**sq. Necessity for quorum at commencement—& at time of voting.]—**At the outset a majority of the issued shares were represented at the meeting, but some of the shareholders withdrew & at the time of the voting there was no longer a quorum:—*Held*: meetings of shareholders are to be governed by the same rules as to quorum & procedure as apply to parliamentary & municipal bodies except where the statute or bye-laws otherwise provide; & the shareholders' meeting therefore was a nullity failing for want of a quorum, & the bye-laws were not properly passed.—LUMBERS v. FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—CAN.

**PART III. SECT. 30, SUB-SECT. 3.—**  
**D. (c).**

**3785 ii. ———— To give casting vote.—***For what purposes to be exercised.]—**Re* CITIZEN'S COAL & FORWARDING CO (Ont.), [1927] 4 D. L. R. 275.—CAN.

**PART III. SECT. 30, SUB-SECT. 3.—**  
**D. (d) i.**

**3801 i. ———— Interested directors & shareholders.]—**Directors & other shareholders, implicated in a breach of trust with respect to the co.'s property, are not entitled to use their votes at a general meeting, called for the purpose of deciding whether the co.'s name be retained as plff. or struck out in an action begun in the name of the co. & in that of a shareholder suing on behalf of himself & all other shareholders with respect to such breach.—LEAVENS & CANADA NATIONAL FIRE INSURANCE CO. v. GREAT WEST PERMANENT LOAN CO (No. 2) (Man.), [1927] 3 W. W. R. 486.—CAN.

**sr. Necessity for concurrence of joint shareholders.]—**Joint holders of shares must concur in voting upon them unless the bye-laws of the co. otherwise provide. Defts. were not entitled to vote upon shares held by them as trustees jointly with other persons, who were

not present or assenting.—LUMBERS v. FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—CAN.

**PART III. SECT. 30, SUB-SECT. 3.—**  
**D. (d) iii.**

**st. No amendment of vote.—***After vote cast.]—*BARBER, ETC. v. NEW ZEALAND SOUNDS HYDRO-ELECTRIC CONCESSIONS, LTD., [1927] N. Z. L. R. 589.—N Z

**sv. How demanded.—***Demand by specified number of members—**Proxies not included.]—*Cons. Act, 1892, s. 48 (3), provides that a demand for a poll of members of a co. must be made by at least two members:—*Held*: a demand by a member personally present & holding proxies for two other members not personally present was not a demand within this sect.—*Re* RHODESIAN MANUFACTURING CO., LTD., [1927] S. A. S. R. 310.—AUS.

**PART III. SECT. 30, SUB-SECT. 3.—G.**

**3897 i. When court will interfere.—***To summon meeting.]* If on an application to strike out the name of a co. which has been used as plff. without authority, there is any reasonable doubt as to the wishes of the shareholders, the ct. has power to order the directors to summon forthwith a general meeting of the shareholders to ascertain their wishes.—LEAVENS



habitation of the shares was in England, the debt created by the declaration of a dividend was situate in England.—*PASS v. BRITISH TOBACCO CO. (AUSTRALIA), LTD.* (1926), 42 T. L. R. 771; *sub nom. LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. v. BRITISH TOBACCO CO. (AUSTRALIA), LTD.*, [1927] 1 Ch. 107; 96 L. J. Ch. 58; 136 L. T. 436; 70 Sol. Jo. 1021.

**3947. Add. Annotation:—Mentd.** *Weld v. Petre*, [1929] 1 Ch. 33.

**3948. Add. Annotation:—Refd.** *Re A Debtor*, [1927] 1 Ch. 410.

**3954. Add. Annotation:—Mentd.** *Re City Equitable Fire Insce.* (1924), 40 T. L. R. 664.

**3959a. Arrears of dividend—Distribution.]—**The memorandum of assocn. of a co. provided for the payment on the ordinary shares of the co. of a cumulative dividend not exceeding 5 per cent. *per annum* & for any balance of profits being applied for the benefit of a garden city or its inhabitants. Art. 129 of the arts. of assocn. provided that, subject to the rights of holders of debentures & preference shares, the net profits of the co., after providing for a reserve fund & for depreciation, "shall be divided by way of dividend among the members in proportion to the amount paid on the ordinary shares held by them respectively, but so that the dividends upon the ordinary shares for any year shall not exceed the aggregate rate of 5 per cent. *per annum*. The surplus of the net profits of the co. after payment of such dividends & the amount necessary to make up dividends for past years to the rate of 5 per cent. *per annum* shall be applied" for the benefit of the town or its inhabitants as therein mentioned. The co. from time to time over a number of years issued ordinary shares. From 1904 to 1917 no dividend was paid on the ordinary shares, & it was only since 1923 that a full dividend of 5 per cent. had been paid. There were now profits available for payment of arrears of dividend, after payment of the dividend for the current year, but not sufficient to pay the whole of the arrears:—*Held*: the fund available should be distributed ratably among the shareholders according to the respective amounts of the arrears of dividend payable on the shares held by them respectively.—*FIRST GARDEN CITY v. BONHAM-CARTER*,

[1928] Ch. 53; 97 L. J. Ch. 52; 138 L. T. 222.

**3984. Add. Annotations:—Consd.** *Re Speir, Holt v. Speir*, [1924] 1 Ch. 359; 1 R. Comrs. v. Fisher's Exors., [1926] A. C. 395. **Fold.** 1 R. Comrs. v. Wright (1926), 95 L. J. K. B. 982; *Re Taylor, Waters v. Taylor*, [1926] Ch. 923. **Distd.** *Re Bates, Mountain v. Bates*, [1928] Ch. 682; *Parker v. Chapman* (1928), 138 L. T. 729. **Refd.** 1 R. Comrs. v. Burrell, [1924] 2 K. B. 52; 1 R. Comrs. v. Doncaster (1924), 93 L. J. K. B. 338; *Re Railways Act*, 1921, *Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.

**3988a. ———.]—THORNYCROFT (J. I.) & Co., LTD. v. THORNYCROFT (1927), 44 T. L. R. 9.**

**3990. Add. Annotation:—Refd.** *Pass v. British Tobacco Co. (Australia)* (1926), 42 T. L. R. 771.

**3991. Add. Annotation:—Consd.** *Collaroy Co. v. Giffard*, [1928] Ch. 144.

**3992. Add. Annotation:—Consd.** *Collaroy Co. v. Giffard*, [1928] Ch. 144.

**3993. Add. Annotation:—Consd.** *Collaroy Co. v. Giffard*, [1928] Ch. 144.

**3994. Add. Annotation:—Consd.** *First Garden City v. Bonham-Carter*, [1928] Ch. 53.

**4007. Add. Annotation:—Mentd.** *Re City Equitable Fire Insce.*, [1925] Ch. 407.

**4019. Add. Citation:—**93 L. J. Ch. 49.

**4020. Add. Annotations:—As to (1) Refd.** 1 R. Comrs. v. Fisher's Exors., [1926] A. C. 395; *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58. **As to (2) Refd.** *British America Nickel Corpn. v. O'Brien*, [1927] A. C. 369.

**4023a. ——— Writing back to profit account—Profits written off in excess of requirements.]—**A co. which applies its profits in writing off a corresponding amount of the value of the goodwill, instead of carrying them to a goodwill depreciation reserve fund, but which has not finally & unreservedly capitalised those profits, may write back to profit account so much of the depreciation written off goodwill as proves to be in excess of proper requirements.—*STAPLEY v. READ BROTHERS, LTD.*, [1924] 2 Ch. 1; 93 L. J. Ch. 513; 131 L. T. 629; 40 T. L. R. 442; 68 Sol. Jo. 519.

**4026. Add. Annotations:—Refd.** *Parker & Cooper v. Reading & James* (1926), 96 L. J. Ch. 23;

*v. GREAT WEST PERMANENT LOAN CO.*, [1927] 2 W. W. R. 606; 36 Man. L. R. 606.—**CAN.**

### PART III. SECT. 30, SUB-SECT. 7.—B.

**3935 ii. ——— Resolution sufficient—*Eye-law unnecessary.*]**—*JAMES v. BEAVER CONSOLIDATED MINES, LTD.*, [1927] 3 D. L. R. 163; 60 O. L. R. 420.—**CAN.**

### PART III. SECT. 30, SUB-SECT. 7.—D. (a).

**sb. General rule.]—**A co. cannot realise its entire assets & having set aside an amount to its nominal capital & discharged its liabilities, divide the surplus as income or profits under the guise of declaring a dividend.—*DAVISON v. KING*, [1926] N. I. 1.—**IR.**

### PART III. SECT. 30, SUB-SECT. 7.—G. (a).

**qi. ——— Valid.]—**A co. purported

to allot unissued shares to a director in consideration of his services to the co.—*Held*: there being a surplus available for distribution by way of dividend among the shareholders, it was open to the co. to deal with the surplus as they thought fit, & the shares were validly issued.—*Re DOREN-WENDS, LTD.*, [1924] 3 D. L. R. 118; 55 O. L. R. 413.—**CAN.**

**sf. Allotment of shares held in another company—Validity.]—***JAMES v. BEAVER CONSOLIDATED MINES, LTD.*, [1927] 3 D. L. R. 163; 60 O. L. R. 420.—**CAN.**

### PART III. SECT. 30, SUB-SECT. 7.—I.

**3991 i. Rights of shareholders of cumulative preference shares—Company in liquidation.]—***Re NEW ZEALAND HARDWARE CO., LTD.*, [1926] N. Z. L. R. 76.—**N.Z.**

**sh. Undeclared dividend—Whether liability of company—Contract for sale of shares.]—**F. gave an option to

purchase a block of common shares of a company, which purchase would give the purchaser control of the co. The optionee required that F. furnish an accountant's statement showing the company's assets & liabilities & profit & loss to Aug. 31, 1926, & an affidavit that the co.'s liabilities would not exceed the amount shown by such statement. A statement & affidavit were furnished, & the acceptance of the option was expressed to be based on said statement. Preference shares had been issued by the co. non-participating & non-assessable, entitling the holders thereof to a first, fixed, cumulative dividend of 8 per cent. *per annum*.—*Held*: cumulative dividends on preference shares, to Aug. 31, 1926, undeclared & unpaid, constituted a liability of the co. within the meaning of the contract, & should have been included as such in the said statement.—*FAIRHALL v. BUTLER*, [1928] 3 D. L. R. 161; [1928] S. C. R. 369.—**CAN.**



**Kerr v. Marine Products** (1928), 44 T. L. R. 292.

**4028. Add. Annotation:—Mentd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.

**4035. Add. Annotation:—Refd.** *Deuchar v. Gas Light & Coke Co.*, [1924] 2 Ch. 426.

**4037. Add. Annotations:—Refd.** *Deuchar v. Gas Light & Coke Co.*, [1924] 2 Ch. 426; *A.-G. v. Leeds Corpn.*, [1929] 2 Ch. 291.

**4037a. —**—*PARKER & COOPER, LTD. v. READING*, No. 3160a, *ante*.

**4046. Add. Annotation:—Consd.** *Kirby v. Wilkins*, [1929] 2 Ch. 444.

**4048. Add. Annotation:—Distd.** *Kirby v. Wilkins*, [1929] 2 Ch. 444.

**4050a. — Under agreement—To repurchase shares—Allotted in consideration of advance to company—Lender requiring repayment of loan.**—*Pltf.*, with the view to assist his son-in-law in obtaining the appointment of business manager of a limited co. of which the two defts. were directors & shareholders, entered into a written agreement with the co. & defts. to advance to the co. a sum of £1,500 by the purchase of 1,500 £1 preference shares of the co., the repayment of that sum being secured by the co.'s undertaking, in the event of *pltf.* or his son-in-law terminating that agreement, to procure the repurchase of the shares at par & to secure the purchase money therefor by accepting bills drawn by *pltf.*; & in that arrangement the two defts. joined as sureties guaranteeing the due performance by the co. of its part of the agreement. *Pltf.*, accordingly, advanced £1,500 to the co., & accepted transfers from the co. of the same number of its preference shares. Upon the son-in-law desiring to withdraw from the managership, *pltf.* in pursuance of a power in that behalf contained therein gave the co. notice to terminate the agreement & required the co. to procure the repurchase of the shares & to accept his bills for £1,500; but the co. refused to comply with those requirements & denied liability under the agreement on the ground that the performance of it would involve a purchase by the co. of its own shares, & would therefore be *ultra vires* & illegal. In an action against defts. under their guarantees:—*Held*: the agreement, having been entered into between the parties in good faith & in the honest belief that it was *intra vires* & legal, the defence that the agreement was, upon the grounds above mentioned, *ultra vires* the co. & therefore unenforceable could

not be maintained; & *pltf.* was entitled to judgment for £1,500 with interest.—*GARRARD v. JAMES*, [1925] 1 Ch. 616; 94 L. J. Ch. 234; 133 L. T. 261; 69 Sol. Jo. 622.

**4072a. — Subscribing towards costs of litigation between members—Company for protection of interests of medical practitioners.**—*BLOXHAM v. MEDICAL DEFENCE UNION, LTD.* (1894), 10 T. L. R. 384; 38 Sol. Jo. 288, C. A.

**4074. After this case for “ — Remuneration of directors.” read “ — Remuneration—Of directors.”**

**4080. Add. Annotation:—Refd.** *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

**4087. Add. Annotation:—Refd.** *British America Nickel Corpn. v. O'Brien*, [1927] A. C. 369.

**4094. Add. Annotations:—Consd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826. *Refd.* *Underwood v. Bank of Liverpool*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Notherd, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

**4095a. —**—*Deft. bank negligently & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only:—Held*: the bank being put on inquiry & being negligent, as the jury found, were not entitled to rely on the rule in *Royal British Bank v. Turquand*, No. 4091, & assume that a signature purporting to be that of a new director was that of a person duly appointed.—*LIGGETT (B.) (LIVERPOOL), LTD. v. BARCLAYS BANK, LTD.*, [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 413; 43 T. L. R. 449.

*Annotation:—Mentd.* *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.

**4100. Add. Annotation:—Consd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

**4104a. — Disputes between directors.**—*STANFIELD v. GIBBON*, [1925] W. N. 11.

**4108. Add. Annotations:—Mentd.** *Schneiders v. Abrahams*, [1925] 1 K. B. 301; *Clark v. Westaway*, [1927] 2 K. B. 597.

**4117a. —**—*PARKER & COOPER, LTD. v. READING*, No. 3160a, *ante*.

**4129. Add. Annotation:—Refd.** *Leyton U. D. C. v. Wilkinson*, [1927] 1 K. B. 853.

**4142. Add. Annotation:—Refd.** *British Thomson-Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn*, [1921] 2 Ch. 33.

**4144. Add. Annotation:—Consd.** *Havana Cigar &*

**PART III. SECT. 31, SUB-SECT. 2.—B.**  
n i. —.—*Re KNUIG SHOE CO.*, [1921] 4 D. L. R. 625; 5 C. B. R. 157.—CAN.

**4051 ii. —**—*It is not ultra vires a co. to receive a transfer of its shares to itself in compromise of an action. At least the co. is estopped from setting up such a plea after taking the benefit of the compromise.*—*Re E. J. LANE, LTD., Exp. MILLIGAN*, [1924] 1 D. L. R. 269; 4 C. B. R. 308.—CAN.

**4051 iii. —**—*KNECHTEL MOTOR CO., LTD. v. WORDEN (Sask.)*, [1923] 2 D. L. R. 839; [1923] 2 W. W. R. 154.—CAN.

**PART III. SECT. 31, SUB-SECT. 2.—I.**  
n i. —.—*Where a co. assigned money to secure payment of a debt owing to the assignee by another co.,*

*with which the assignor co. had no prior or contemporaneous agreement:—Held*: the co.'s memorandum of assocn. gave it no such power.—*ABBOTSFORD LUMBER CO. v. STEVENSON*, [1925] 4 D. L. R. 560; [1925] 3 W. W. R. 451.—CAN.

**PART III. SECT. 31, SUB-SECT. 2.—K.**  
sh. *Power limited to negotiation of investments—No right to registration of mortgage charge.*—*Re MUTUAL INVESTMENTS, LTD.*, [1924] 4 D. L. R. 1070; 56 O. L. R. 29.—CAN.

**PART III. SECT. 31, SUB-SECT. 3.—C.**  
**4083 iii. —**—*Re PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.)*, [1926] 4 D. L. R. 759. [1926] 3 W. W. R. 378.—CAN.

**PART III. SECT. 31, SUB-SECT. 3.—D.**

**4094 i. Presumption that powers properly exercised.**—*The president & manager of a co., who was personally indebted to a bank, informed it that the co. was indebted to him for salary, & the bank induced him to give it the co.'s note made payable to him & endorsed to the bank. In an action on the note the co. contended that there was no debt due to the manager because no resolution authorising payment of a salary to him had been passed. Held*: the passing of such resolution was a matter of internal management, & the bank was not bound to see that it had been passed.—*CANADIAN BANK OF COMMERCE v. PIONEER FARM CO., LTD. & HALL (Sask.)*, [1927] 1 D. L. R. 772; [1927] 3 W. W. R. 312. CAN.

- Tobacco Factories v. Oddenino, [1924] 1 Ch. 179.
4145. *Add. Annotation*:—**Refd.** Wiggins v. Lavy (1928), 44 T. L. R. 721.
4166. *Add. Annotations*:—**Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 216; Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48.
4170. *Add. Annotations*:—**Consd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450.
- 4170a. ————]—**HOUGHTON & CO. v. NOTHARD, LOWE & WILLS**, No. 3157a, *ante*.
4191. *Add. Annotation*:—**Mentd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.
4232. *Add. Annotation*:—**Refd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450.
4236. *Add. Annotation*:—**Refd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450.
4237. *Add. Annotation*:—**Refd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450.
4239. *Add. Annotations*:—**Consd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Kreditbank Cassel G. m. b. H. v. Schenkers, [1927] 1 K. B. 826.
- Refd.** Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48.
4240. *Add. Annotation*:—**Mentd.** British & North European Bank v. Zalstein, [1927] 2 K. B. 92.
4256. *Add. Annotation*:—**Refd.** The Hayle, [1929] P. 275.
4258. *Add. Annotation*:—**Mentd.** Humphrey & Denman v. Kavanagh (1925), 41 T. L. R. 378.
4267. *Add. Annotations*:—**Apld.** Houghton v. Nothard, Lowe & Wills (1927), 44 T. L. R. 76. **Refd.** Newsholme v. Road Transport & General Insce., [1929] 2 K. B. 356.
4272. *Add. Annotation*:—**Refd.** The Hayle, [1929] P. 275.
4278. *Add. Annotations*:—**As to** (1) **Refd.** Watt v. Longsdon (1929), 98 L. J. K. B. 711. **Generally, Mentd.** Cassidy v. Daily Mirror Newspapers, [1929] 2 K. B. 331; Tolley v. Fry (1929), 46 T. L. R. 108.
4282. *Add. Annotation*:—**Refd.** Watt v. Longsdon (1929), 98 L. J. K. B. 711.
4283. *Add. Annotation*:—**Refd.** Isaacs v. Cook, [1925] 2 K. B. 391.
- 4297a. ———— **Compulsory form of document to be used by members.**]—**Re** NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN. (1929), 45 T. L. R. 296.

PART III. SECT. 31, SUB-SECT. 4.—  
B. (b).

**s i.** *Negligence—Arrest by constable employed by company*]—Where a co. has statutory power to employ & practically, to appoint constables & a constable so appointed acts negligently in attempting to effect an arrest in the course of his employment by the co. he renders the co. liable for the damage caused thereby.—**VIGINTY v. BOND & CANADIAN PACIFIC RY. CO.**, [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 135.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—C.

**ki.** — *Agent for sale of bonds—Bonds not issued in compliance with Acts.*]—Where bonds are actually executed by a co. they cannot be said not to exist as bonds even though, because of non-compliance with the requirements of the Cos. Act, they are not legally valid; & therefore, a person who as agent for the co. & without fraudulent intent induces another to buy such bonds from it cannot be liable in damages merely on the ground of an implied representation that the bonds are legally valid, since, even if such representation can be implied & it proves to be false it is a representation in point of law.—**KAYANER v. BOWHIEY (Alta.)**, [1928] 4 D. L. R. 907; [1928] 3 W. W. R. 267.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—D.

4154 i. *Whether valid.*]—**PRICE v. INDIANA-ALBERTA OIL CO. (Alta.)**, [1926] 3 D. L. R. 82.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—  
A. (i).

4176 iv. ————]—**Re** RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—**CAN.**

**b i.** ————]—**Re** RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—**CAN.**

**c.** *Read "4178 i."*

PART III. SECT. 31, SUB-SECT. 5.—  
B. (a).

**s i.** ————]—Before the incorporation of a co. a partner in the name of the partnership entered into an agreement with pltf., under which pltf. undertook the sale of products on a commission basis. The agreement on its face showed that pltf. was to operate on behalf of the co. then in process of incorporation:—**Held**: commissions earned after incorporation of the co. were not recoverable against the partnership; but to recover from the co. pltf. would not be bound to prove an express contract by the co., as the performance & acceptance of his services raised an implied contract to pay.—**POWER v. EDMONTON LUMBER EXCHANGE** (1920), 3 W. W. R. 10; 53 D. L. R. 468.—**CAN.**

**a i.** — *Sale of goods.*]—**Re** J. R. MORGAN, LTD., *Ex p.* J. & G. GARMENT MFG. CO. (Ont.), [1926] 1 D. L. R. 882; 8 C. B. R. 52.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—  
B. (b).

4209 vii. ————]—Prior to the incorporation of pltf. co., a document containing the terms of a proposed contract between it & deft. co. was executed & handed to the organisation committee of pltf. co. as evidence of the fact that defts. were willing to enter into the contract as soon as pltf. co. should have become incorporated. After pltf. co. had become incorporated & received its certificate entitling it to commence business it duly executed the document, & the contract was thereafter acted on:—**Held**: pltf. co. was entitled to sue for damages for breach of such contract.—**ASSOCIATED GROWERS OF BRITISH COLUMBIA LTD. v. BRITISH COLUMBIA FRUIT LAND LTD.**, [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

PART III. SECT. 31, SUB-SECT. 6.—  
A. (c).

**k i.** — *Solicitor.*]—**BANK OF BRITISH NORTH AMERICA v. ST. JOHN**

& QUEBEC RY. CO. (N. B.) (1920), 52 D. L. R. 557.—**CAN.**

PART III. SECT. 31, SUB-SECT. 9.—A.

**p i.** ————]—**Held**: (1) 1908 Act, s. 9, did not limit alteration of the memorandum of assocn. to an alteration of the objects clause, inasmuch as the whole objects of a co. were not necessarily contained in that clause; (2) a proposed alteration being designed for the better attainment of the objects of the co., a petition for confirmation of the alteration should be granted.—**INCORPORATED GLASGOW DENTAL HOSPITAL v. LORD ADVOCATE**, [1927] S. C. 400.—**SCOT.**

**q i.** — *Incorporation abroad.*]—A co., registered under Cos. Acts, presented a petition for an alteration of its memorandum of assocn. by the addition of a power "to procure the co. to be incorporated, registered, or recognised in any foreign country." The ct., while sanctioning the power to procure the registration or recognition of the co. in a foreign country, refused to confirm the power to procure its incorporation there.—**Re** TAYSIDE FLOOR-CLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

4308 iv. ————]—A cemetery co. sought additional power to act as "stone & marble cutters, masons, quarriers & sculptors, florists, gardeners, & undertakers." The ct., in the absence of evidence of any convenience or advantage to the co., restricted the new powers by limiting them to powers to be used in connection with, & as incidental to, the co.'s main business of cemetery owners.—**EDINBURGH SOUTHERN CEMETERY CO., LTD.**, [1923] S. C. 867.—**SCOT.**

4308 v. ————]—A reversionary co. presented a petition for confirmation of a special resolution by which it was proposed to alter its memorandum of assocn. by adding powers to carry on, along with its existing business, that of trust investment, & to sell or otherwise dispose of the whole or any part of its property & assets for

**4321a. Society not for profit.**—A provision in a memorandum of assocn. of a society not for profit, registered under 1867 Act, & authorised by the Board of Trade under sect. 23 of that Act to dispense with the word "limited," that in certain events the liability of members shall be unlimited, is not a provision in the memorandum "with respect to the objects of the co." under 1908 Act, s. 9 (1), & the cancellation of such a provision cannot be confirmed by the ct.—*Re SOCIETY FOR PROMOTING EMPLOYMENT OF WOMEN* (1927), 71 Sol. Jo. 583.

**4377. Add. Annotation:**—*Consd. Kirby v. Wilkins*, [1929] 2 Ch. 414.

**4393. Add. Annotation:**—*As to* (1) *Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 664.

**4403. Add. Annotations:**—*Mentd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769; *Re Wilts & Somerset Farmers* (1928), 98 L. J. Ch. 17.

**4427. Add. Annotation:**—*Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.

**4436. Add. Annotation:**—*Refd. Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

**4458. Add. Annotations:**—*Refd. Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd v. Goukassow* (1924), 40 T. L. R. 837; *Swedish Central Ry v. Thompson*, [1924] 2 K. B. 255; *Todd v. Egyptian Delta Land & Investment Co.*, [1928] 1 K. B. 152. *Mentd. Bohemian Union Bank v. Austrian Property Administrator*, [1927] 2 Ch. 175; *Todd v. Egyptian Delta Land & Investment Co.* (1927), 96 L. J. K. B. 554.

**4488. Add. Annotation:**—*As to* (1) *Refd. Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

**4524. For this number read "4525."**

**4525. For this number read "4524."**

**4526. Add. Annotations:**—*Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 214. *Mentd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294.

such consideration as it might think fit, & in particular, for shares, stock, debentures, debenture stock, or securities of any company purchasing the same. The ct. confirmed the alteration holding, with regard to the proposed power to sell, that it did not involve a sale of the undertaking but merely of assets, & in view of the extension of the co.'s business, was germane to its operations as an investment co.—*METROPOLITAN REVERSIONS, LTD.*, [1928] S. C. 180.—*SCOT.*

**ri.** — *J.*—A co. sought the addition of a power to sell, let on rent, or lease the undertaking of the co., or any branch or part thereof. The ct. restricted the power to any branch or part of the undertaking, being an adjunct to the main undertaking.—*Re TAYSIDE FLOORLOFT CO., LTD.*, [1923] S. C. 590.—*SCOT.*

#### PART III. SECT. 32, SUB-SECT. 1.—C.

**q i.** — *J.*—Deft. co. bought land from plffs., & in payment therefor transferred to plffs. a block of shares in another co., agreeing to re-purchase from plffs. at a fixed price, on or before a fixed day, the shares, or as many of them as should not have been previously sold or transferred by plffs.:—*Held:* the agreement to re-purchase was *ultra vires* deft. co. as *Os. Act*, s. 44, expressly prohibits a purchase of shares in another co.—*GRANT v. DOMINION LOOSE LEAF CO.* (1921), 56 O. L. R. 43.—*CAN.*

#### PART III. SECT. 32, SUB-SECT. 2.—B. (a).

**4401 i.** — *Under power in memorandum. For shares in another company.*—Such sale does not necessarily involve winding up, & where the directors' authority is derived from a vote of the shareholders, a majority vote is sufficient.—*HEMSTREET v. NORTH WEST BISCUIT CO.*, [1926] 2 D. L. R. 829; [1926] 2 W. W. R. 150; 22 Alta. L. R. 233.—*CAN.*

**g i.** — *Land acquired for carrying on company's undertaking—Companies Act, R. S. O., 1914 (c. 178), s. 24.*—*Re ALLAN BROWN'S, LTD. & DRYALL*, [1927] 2 D. L. R. 991; 60 O. L. R. 267.—*CAN.*

#### PART III. SECT. 32, SUB-SECT. 2.—B. (c).

**o i.** — *J.*—*DADSON v. GREST* (Sask.), [1927] 3 D. L. R. 530.—*CAN.*

#### PART III. SECT. 33, SUB-SECT. 1.

**sn.** *Institution of proceedings—Necessity to employ solicitor.*—A co. cannot issue a writ of summons by any one but a solr.—*WESTERN PRODUCERS MUTUAL HAIL INSURANCE CO. v. STEWART* (Sask.), [1928] 1 W. W. R. 320.—*CAN.*

#### PART III. SECT. 33, SUB-SECT. 3.—A.

**s i.** — *J.*—Deft. "as the largest shareholder" of a co. claimed damages for false representations made as to the business of the co., which had the effect of depriving the co. of its clients:—*Held:* the cause of action alleged was not defamation but an *injuria* done merely to the co. for which the co., & not an individual shareholder, was entitled to sue.—*GOODALL v. HOOGENDOORN, LTD.*, [1926] App. D. 11.—*S. AF.*

**k i.** — *J.*—*Refusal unnecessary where no one to authorise use of name*—*MASON v. LIVINGSTONE* (Alta.), [1928] 2 D. L. R. 799.—*CAN.*

**p i.** — *J.*—A shareholder suing on behalf of himself & all other shareholders can maintain an action alleging illegal use of the co.'s money, when it clearly appears that an application to the co. to authorise such an action would be futile.—*HOUSTON v. VICTORIA MACHINERY DEPOT, LTD.*, [1921] 2 D. L. R. 657; 33 B. C. R. 425.—*CAN.*

**q i.** — *J.*—*FARRELL v. MAGIC SILVER-BLACK FOX CO.*, [1921] 3 D. L. R. 132.—*CAN.*

**t i.** *Using company's name as plaintiff—No authority to use name—Doubt as to wishes of shareholders.*—If on an application to strike out the name of a co. which has been used as plff. without authority, there is any reasonable doubt as to the wishes of the shareholders, the name will be allowed to remain until their wishes are ascertained.—*LEAVENS v. GREAT WEST PERMANENT LOAN CO.*, [1927] 2 W. W. R. 606; 36 Man. L. R. 606.—*CAN.*

**so.** *Several groups of shareholders claiming to represent company—Stay of proceedings.*—In company cases where there is an internecine warfare between factions, each claiming to be entitled to represent the co., the practice is to direct the proceedings be stayed until after a meeting of shareholders has been held, & the will of the majority ascertained.—*DUMART PACKING CO., LTD. v. DUMART*, [1928]

1 D. L. R. 610, 61 O. L. R. 478.—*CAN.*

#### PART III. SECT. 33, SUB-SECT. 3.—D. (a).

**k i.** — *Action by beneficial owner on behalf of himself & all other shareholders.*—*Held:* it was not open to plffs in a suit framed on behalf of themselves & all other shareholders of the co. to bring a suit as beneficial owners of shares, against the co. for enforcement of their beneficial rights & that the whole of the allegations & relief asked with respect to such suit must be struck out.—*MAAS v. MINTOSH* (1928), 28 S. R. N. S. W. 441; 15 N. S. W. W. N. 107.—*AUS.*

#### PART III. SECT. 33, SUB-SECT. 3.—D. (b).

**sq.** — *Unregistered shareholder.*—In an action wherein plff alleged that he was a shareholder in deft. co. & sued on behalf of himself & all the other shareholders to compel the individual defts. to account to the co. for shares alleged to have been illegally obtained by them, it was held that, although plff. was not a registered shareholder, he had a *status* to bring the action whether he was the beneficial owner outright of the shares alleged to be his or owned then subject to a charge in favour of the registered holder.—*GOODBURN v. MITCHELL* (Man.), [1928] 1 W. W. R. 495.—*CAN.*

#### PART III. SECT. 33, SUB-SECT. 12.

**4535 i.** *Out of what fund—Action by company for benefit of directors.*—While it is a well established rule that directors may not use the co.'s funds in payment of their own costs, although such costs would not have been incurred if they had not been directors, yet it is equally well established that directors acting as such within such of the co.'s powers as are conferred to them & without gross negligence, cannot be called upon to pay out of their own funds the costs of defending resolutions passed by them in the interests of the co., simply because a plff. has chosen to make them individually co-defts.—*NORTHERN LIFE ASSURANCE CO. OF CANADA v. McMASTER*, [1928] 3 D. L. R. 497; [1928] S. C. R. 512.—*CAN.*

#### PART III. SECT. 33, SUB-SECT. 13.—A. (b) ii.

**sr.** *"Credible testimony" of inability to pay—Hud vs.*—In an action for reduction of a lease, brought by a co., defender was absolved & ob-

4568. *Add. Annotation*:—**Mentd.** *Deuchar v. Gas Light & Coke Co.*, [1925] A. C. 691.
4571. *Add. Annotation*:—**Mentd.** *Re Railways Act, 1921, Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.
4593. *Add. Annotation*:—**Mentd.** *Stumbles v. Whitley* (1929), 46 T. L. R. 37.
4607. *Add. Annotation*:—**Consd.** *Garrard v. James*, [1925] Ch. 616.
4623. *Add. Annotations*:—**As to** (2) **Consd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826. **Refd.** *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 216; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.
4625. *Add. Annotations*:—**As to** (1) **Consd.** *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775. **Refd.** *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 216; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.
4628. *Add. Annotation*:—**Mentd.** *The Hayle*, [1929] P. 275.
4630. *Add. Annotation*:—**As to** (2) **Refd.** *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246.
4637. *Add. Annotation*:—**Refd.** *Lemon v. Austin Friars Investment Trust*, [1926] Ch. 1.
- 4637a. *Whether certificate securing income stock is debenture.*—**Defts.**, a limited co., issued certificates for securing income stock, & a certificate was issued to plts. whereby the co. certified that it was indebted to them in

a certain amount. The certificate stated that three-fourths of the net profits of the co. in each year or a sum equal thereto were to be applied in paying off the income stock *pari passu*. Under conditions indorsed on each certificate a register of the certificates was to be kept at the co.'s registered office, wherein would be entered the names & addresses of the registered holders & particulars of the certificates held by them & by clause 9 of the conditions the rights of the holders might be modified with the consent of the holders of three-fourths in value of the certificates. Pltfs. were refused inspection of the register, & brought an action for an injunction to restrain defts. from interfering with their right, under 1908 Act, s. 102, to inspect the register:—**Held**: the certificates were debentures within the sect., & pltfs. were entitled to the injunction.—**LEMON v. AUSTIN FRIARS INVESTMENT TRUST, LTD.**, [1926] Ch. 1; 95 L. J. Ch. 97; 133 L. T. 790; 41 T. L. R. 629; 69 Sol. Jo. 762, C. A.

4639. *Add. Annotation*:—**Refd.** *Fenton Textile Assocn. v. Lodge*, [1928] 1 K. B. 1.

4666. *Add. Annotation*:—**Mentd.** *Guatemala (Republica de) v. Nunez* (1926), 95 L. J. K. B. 955.

4676. *Add. Annotation*:—**Refd.** *Fenton Textile Assocn. v. Lodge*, [1928] 1 K. B. 1.

4688a. ——— **Refusal to give information to debenture-holders—Acquisition of debentures from cestui que trust at inadequate prices.**—*Re MAGADI SODA CO., LTD.*, No. 7409a, *post*.

4690. *Add. Annotation*:—**Refd.** *Re Automatic*

tained an award of expenses. Pursuers having reclaimed, defender, founding upon an unfavourable balance-sheet of pursuers which was about a year old, moved that pursuers should be required to find caution for expenses under 1908 Act, s. 278. The ct. refused the motion, as it did not appear by "credible testimony" that pursuers would be unable to pay defender's expenses if he were successful in respect that a later balance-sheet showed that the financial depression from which pursuers had been suffering was passing off, & further, in respect that pursuers had a responsible directorate & a profitable record in the past, & that there was no suggestion that any creditor was pressing them for payment which he was unable to get.—**EDINBURGH ENTERTAINMENTS, LTD v. STEVENSON**, [1925] S. C. 848.—**SCOT.**

**PART III. SECT. 34, SUB-SECT. 1.—A. (a).**

4569 II. ——— **J.**—**ZIMMERMAN v. ANDREW MOTHERWELL OF CAN., LTD. (TRUSTEE)** (1925), 3 D. L. R. 953; 3 W. W. R. 42.—**CAN.**

**PART III. SECT. 34, SUB-SECT. 1.—A. (b).**

**sw.** *Elevator company—Bond for price of elevator.*—A co. whose charter provides that it "may acquire, own, lease & sell real estate," & "build, sell, lease & otherwise deal with elevators, etc.," & further "may issue bonds bearing interest to an amount not exceeding the cost of any elevator built by it," has the power to issue such bonds for the price of an elevator bought by it.—**ROYAL TRUST CO. v. GREAT NORTHERN ELEVATOR CO.** (1906), Q. R. 30 S. C. 499.—**CAN.**

**s i.** ——— **J.**—Although under *Rural Telephone Act, 1920* (c. 96), s. 31, deft. co. is impliedly prohibited from borrowing money otherwise than by the issue & sale of debentures, &

has no power to make or give a promissory note, yet, held in an action on a promissory note, & in the alternative for money borrowed, that, since the money was used by deft. in paying its legitimate debts incurred in carrying out the purposes of the co. pltf. was entitled to recover on the alternative claim with interest at the legal rate.—**SMITH v. ELROSE RURAL TELEPHONE CO., LTD.**, [1928] 3 D. L. R. 51; [1928] 1 W. W. R. 970; 22 Sask. L. R. 414.—**CAN.**

**sd.** *Co-operative livestock company incorporated under Companies Act.*—**Held**: to have power to borrow.—**CANADIAN BANK OF COMMERCE v. JOHNSON (ATL.)**, [1926] 4 D. L. R. 1179; [1926] 3 W. W. R. 613.—**CAN.**

**PART III. SECT. 34, SUB-SECT. 1.—B.**

**ek.** *Power to borrow & raise money—Mortgage.*—**Held**: a mto. over part of a co.'s real estate as security for a loan was justified.—**UNIQUE PROPERTIES, LTD v. E. ENDEAN**, [1927] N. Z. L. R. 244.—**N.Z.**

**PART III. SECT. 34, SUB-SECT. 2.—A.**

**sm.** *Agreement postponing lien of bondholders to lien of lender—Agreement not signed by all bondholders.*—**Held**: binding on the bondholders.—**GREENE v. RUGGLES** (1891), 31 N. B. R. 679.—**CAN.**

**PART III. SECT. 34, SUB-SECT. 2.—C. (a) ii.**

**m i.** ——— **J.**—**MERCHANTS BANK OF CANADA v. HANCOCK** (1884), 6 O. R. 285.—**CAN.**

**PART III. SECT. 34, SUB-SECT. 2.—C. (b) i.**

**ri.** ——— *Issue before prospectus filed*—**MARTIN v. CLARKSON**, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

**sn.** *Unauthorized loan—Recoverable.*—**DOUGLAS v. MARITIME UNITED FARMERS CO-OP., LTD., WILSON v. MARITIME UNITED FARMERS CO-OP., LTD.** (N. B.), [1928] 3 D. L. R. 166.—**CAN.**

**PART III. SECT. 34, SUB-SECT. 2.—C. (b) ii.**

**k i.** ——— **J.**—Persons lending money to a co. have a right to assume that the essentials of internal management have been carried out by the co.—**MARTIN v. CLARKSON**, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—**CAN.**

**PART III. SECT. 34, SUB-SECT. 2.—C. (c).**

**m i.** ——— **J.**—Where debentures were issued before the co. had filed a prospectus:—**Held**: even if the debentures were not valid in the hands of the debenture-holder, they were valid in the hands of the pledgee to whom they had been assigned.—**MARTIN v. CLARKSON**, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

**PART III. SECT. 34, SUB-SECT. 3.—A. (b) i.**

**p i.** ——— **J.**—*Whether misfeasance claims included.*—Where a debenture purports to create a charge on "the undertaking of the co. & all its property present & future including uncalled capital," misfeasance claims are included in such charge.—**RE BUTICK SALES, LTD.**, [1926] N. Z. L. R. 24.—**N.Z.**

**PART III. SECT. 34, SUB-SECT. 3.—C. (a).**

**sq.** *Mortgage of specific assets.*—A co. deposited & pledged with & to a bank as security for repayment of a loan all the liquid assets, including stock-in-process now or at any time

Bottle Makers, *Osborne v. Automatic Bottle Makers*, [1926] Ch. 412.

4697. *Add. Annotation*:—*As to (2) Refd. National Provincial Bank of England v. Charnley* (1923), 93 L. J. K. B. 241.

4698. *Add. Annotation*:—*Refd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.

4699a. *Effect of section—Redemption of debenture—Remedies of liquidator.*—A co., which had become insolvent, issued to a trustee, as security for some of their debts, a debenture which was to rank as a first charge on the co.'s assets & as a floating security only. Subsequently the co. sold the goodwill of its business, & out of the proceeds paid to the trustee the amount required to discharge the debenture. Within three months from the issue of the debenture a different creditor of the co. obtained a winding-up order. The liquidator took out a summons to set aside the charge created by the debenture & to recover the money paid under it:—*Held*: though under 1908 Act, s. 212, the charge was invalid, the amount paid could not be recovered on the summons, but it would be open to the liquidator either to apply to set aside the payment as a fraudulent preference within sect. 210, or to question the validity of the debenture on any other ground.—*Re PARKES GARAGE (SWADLINCOTE), LTD.*, [1929] 1 Ch. 139; 98 L. J. Ch. 9; 140 L. T. 174; 45 T. L. R. 11; [1928] B. & C. R. 144, D. C.

4700. *Add. Annotation*:—*Consd. Re Lloyd's Furniture Palace, Evans v. Lloyd's Furniture Palace*, [1925] Ch. 853.

4708. *Add. Annotation*:—*As to (1) Apld. Re Stanton*, [1929] 1 Ch. 180.

4709a. ———.—*Money*s were advanced on the security of debentures creating a floating charge on the property & assets of the co. Fifty-four days elapsed after the first advance & five days after the last advance before the issue of the debentures on Jan. 20, 1926. The delay in the issue of the debentures was not acquiesced in by the lenders, who when they sent cheques for the advances wrote that the money was in further payment on account of debentures to be issued as arranged. The co. went into liquidation on Jan. 25, 1926. During the period in which the bulk of the advances were made the lenders were unaware that the co. was on the verge of liquidation. The debentures were issued when the co. was unable to pay its debts:—*Held*: the debentures were valid, the payments being made "at the time of" the creation of the charge & in consideration for the charge within 1908 Act, s. 212, & consequently the debentures were not a fraudulent preference within 1908 Act, s. 210.—*Re STANTON (F. & E.), LTD.*, [1929] 1 Ch. 180; 98 L. J. Ch. 133; 140 L. T. 372; [1928] B. & C. R. 161.

4716. *Add. Annotation*:—*Folld. Heaton & Dugard v. Cutting*, [1925] 1 K. B. 655.

4716a. ———.—*Judgment* having been recovered in an action against a limited co., which had issued debentures giving a floating

charge over its property, execution was issued under a *fi. fa.*, & the sheriff went into possession. In order to avoid a sale the co.'s managing director paid the judgment debt & costs, whereupon the sheriff withdrew. Thereafter, & before the sheriff paid the amount of the debt & costs to the execution creditors, the debenture-holders in deft. co. appointed a receiver, who claimed to be entitled to the money in the hands of the sheriff:—*Held*: the money was paid to the sheriff as a debt owing by defts. to the execution creditors, who were therefore entitled to retain it as against the receiver.—*HEATON & DUGARD, LTD. v. CUTTING BROTHERS, LTD.*, [1925] 1 K. B. 655; 94 L. J. K. B. 673; 133 L. T. 41; 41 T. L. R. 286, D. C.

4730a. ———.—*Floating charge over part of assets already charged.*—Where a debenture trust deed, creating a general floating charge over all the undertaking & assets of the co. both present & future, reserves power to the co. in the ordinary course of its business to create specific charges over any of those assets, then although a second general floating charge over all the property comprised in the first charge but ranking *pari passu* with or in priority to that charge, is, under the general law, incompatible with the first charge & ranks subject to it, yet there is no principle of law which forbids the creation of a second floating charge over part only of those assets ranking *pari passu* with, or in priority to, the earlier floating charge, so long as the later floating charge is within the limits of the power reserved.

A debenture trust deed created a general floating charge over all its undertaking & assets both present & future, but reserved to the co. power to create in priority to that charge such mtges. or charges as the co. should think proper "by the deposit of any dock warrants, bills of lading, or other similar commercial documents, or upon any raw materials, or finished or partly finished products & stock for the purpose of raising money in the ordinary course of the business of the co." In pursuance of the power & in the course & for the purposes of its business, the co. raised £12,000 & secured payment thereof by charging all the before-mentioned documents, materials & stock, both present & future, by way of a floating security to rank in priority to the floating charge created by the trust deed:—*Held*: the power reserved to the co., except as to subject-matter & purpose, was unlimited; it enabled the co. to choose the form of a floating charge, if required, & the second charge was valid & entitled to priority over the first charge.—*Re AUTOMATIC BOTTLE MAKERS, OSBORNE v. AUTOMATIC BOTTLE MAKERS*, [1926] Ch. 412; 95 L. J. Ch. 185; 131 L. T. 517; 70 Sol. Jo. 402, C. A.

4740. *Add. Annotation*:—*Mentd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.

4755. *Add. Annotations*:—*As to (1) Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926]

hereafter to be stored by the co. in its godowns, the keys of which had been delivered to the bank:—*Held*: the charge was not a floating charge, but a mtge. of specific assets, with a licence to the mtgor. to dispose of

them in the course of the business subject to prescribed conditions.—*BANK OF BARODA, LTD. v. H. B. SHIVDASANI* (1926), 1 L. R. 50 Bom. 547.—IND.

PART III. SECT. 34, SUB-SECT. 3.—C. (d) ii.

4729 I. *General rule.*—*DOMINION IRON & STEEL CO. v. CANADIAN BANK OF COMMERCE (N. S.)*, [1928] 1 D. L. R. 809.—CAN.

2 K. B. 450. *Generally, Refd.* Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 246. *Mentd.* Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

4758. *Add. Annotation* :—*Mentd.* Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 605.

4781. *Add. Citations* :—93 L. J. Ch. 27; 130 L. T. 93.

4783a. — *Delay in issue to retain credit.*—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.—*Re LLOYD'S FURNITURE PALACE, LTD., EVANS v. LLOYD'S FURNITURE PALACE, LTD.*, [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

Under “*Right to inspect register of debenture holders & have copies.*”—*See* 1908 Act, s. 102,” add as follows :—

4808. *Add. Annotation* :—*Distd. Re* Automatic Bottle Makers, Osborne v. Automatic Bottle Makers, [1926] Ch. 412.

4809. *Add. Annotation* :—*Consd. Re* Automatic Bottle Makers, Osborne v. Automatic Bottle Makers, [1926] Ch. 412.

4825a. —.]—*LEMON v. AUSTIN FRIARS INVESTMENT TRUST, LTD.*, No. 4637a, *ante*.

4829a. *Right of transferee to accrued interest.*—*Re* KIDNER, KIDNER v. KIDNER, No. 2221a, *ante*.

4858. *Add. Annotation* :—*Consd.* British America Nickel Corpn. v. O'Brien, [1927] A. C. 369.

4858a. —.]—A co. issued mtge. bonds secured by a trust deed, which gave power to a majority of the bondholders, consisting of not less than three-fourths in value, to sanction any modification of the rights of the bondholders. A scheme for reconstruction of the co. provided for the mtge. bonds being exchanged for income bonds subject to an issue of first income bonds; also that a committee, one only of whom was to be appointed by the mtge. bondholders, should have power to modify the scheme without confirmation by the bondholders. The scheme was sanctioned by the majority of the bondholders requisite under the trust deed. The required majority would not have been obtained but for the vote of the holder of a large number of bonds, whose support of the scheme was obtained by the promise of a large block of ordinary stock, an arrangement which was not mentioned in the scheme :—*Held* : the resolution was invalid, both because the bondholder in voting had not treated the interest of the whole class of bondholders as the dominant consideration,

& because the scheme, so far as it provided for a committee, was *ultra vires*.—*BRITISH AMERICA NICKEL CORPN. v. O'BRIEN*, [1927] A. C. 369; 96 L. J. P. C. 57; 136 L. T. 615; 43 T. L. R. 195, P. C.

4872a. — *Redemption at figure below par but above market price.*—*MEADE-KING v. USHER'S WILTSHIRE BREWERY, LTD.* (1928), 44 L. R. 298.

4883. *Add. Annotation* :—*Refd.* Jacobs v. Batavia & General Plantations Trust, [1924] 2 Ch. 329.

4904a. *After twenty years—Reference to debentures in company's published accounts.*—A co. at various dates between 1890 & 1902 issued debentures payable within two years, but paid no part of the principal or interest. The co.'s published accounts habitually referred to the debenture debt as outstanding, & in 1925 the accounts, which were signed by two directors & the secretary, stated the amount of the arrears of interest :—*Held* : the statement in the accounts was a written acknowledgment within Civil Procedure Act, 1833 (c. 42), s. 5, & an action to recover the principal & interest was not barred by the twenty years limitation fixed by sect. 3 of that Act.—*Re ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., BURNHAM (VISCOUNT) v. ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD.*, [1928] Ch. 836; 97 L. J. Ch. 369; 140 L. T. 18; 44 T. L. R. 702; 72 Sol. Jo. 598.

4906. *Add. Annotation* :—*Consd.* Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

4925. *Add. Annotation* :—*Consd.* Employers' Liability Assoc. v. Sedgwick (Collins) (1926), 95 L. J. K. B. 1015.

4931. *Add. Annotation* :—*Consd.* National Provincial & Union Bank of England v. Charnley, [1921] 1 K. B. 431

4933. For the paragraph in the original volume substitute the following paragraph :—

**Due registration—Particulars of property charged insufficiently entered.**—A co. with the object of securing payment of its overdraft at pltf. bank “demised” to the bank a certain leasehold factory with all the movable “plant used in or about the premises” for a term of about 996 years. The bank sent the indenture to the registrar of companies for registration under 1908 Act, s. 93. In the particulars required to be filed pursuant to that sect. the instrument was described as a mtge. of the leasehold premises, no mention being made of the chattels. The registrar entered the description of the instrument in the register in similar terms, identifying it by its date, & omitting all mention of any charge on the chattels. Subsequently the sheriff, in execution of a judgment recovered by deft. against the co.,

PART III. SECT. 34, SUB-SECT. 3.—  
G. (c).

s i. —.]—The Apateo, Ltd., gave a debenture to M. to secure a certain sum, constituting a floating charge over all the assets of the co. present or future, & prohibiting the creation of any mtge. or charge in priority to it. Afterwards the co. gave a debenture to W. to secure portion of the purchase money of certain goods sold to it by W., & constituting a floating charge over the assets so sold. Subsequently, W.

recovered a judgment against the co. for portion of the money secured by his debenture, & issued execution, under which the sheriff seized goods of the co. M. claimed the goods & the sheriff interpleaded. M. then instituted a suit to restrain the sale of the goods by the sheriff :—*Held* : as regards the goods comprised within the second debenture, the rights of deft. under the said debentures were paramount to those of pltf.—*MATTHESON v. WAILEN* (1928), 28 S. R. N. S. W. 189; 45 N. S. W. W. N. 47.—*AUS.*

PART III. SECT. 34, SUB-SECT. 3.—I.

st. *Grounds for allowing or refusing—Under Sale of Shares Act, 1916 (c. 15).*—*Re* SALE OF SHARES ACT, UNITED GRAIN GROWERS, LTD.'S CASE (Sask.), [1918] 3 W. W. R. 92.—*CAN.*

PART III. SECT. 34, SUB-SECT. 4.—  
A. (a).

4920 iii. —.]—*Re* HOLMES (SAMUEL), LTD. (1923), 58 L. L. T. 9.—*IR.*

seized certain chattels of the co. upon the mortgaged premises, including certain motor vans. The bank claimed the goods in question under their mtge., & obtained from the registrar a certificate "that a mtge. or charge dated"—specifying the date & the parties to the instrument—"was registered pursuant to Cos. Act, s. 93." On an interpleader issue to try the title of the bank as against the execution creditor:—*Held*: as the certificate identified the instrument of charge, & stated that the mtge. or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument, including that of the chattels, & it was conclusive evidence of the due registration of the chattels none the less because the register in omitting to mention them was not merely defective but misleading.—*NATIONAL PROVINCIAL & UNION BANK OF ENGLAND v. CHARNLEY*, [1924] 1 K. B. 431; 93 L. J. K. B. 241; 130 L. T. 465; 68 Sol. Jo. 480; [1924] B. & C. R. 37.

4941. *Add. Annotation*:—*Generally, Refd. National Provincial & Union Bank of England v. Charnley*, [1924] 1 K. B. 431.

4975. *Add. Annotation*:—*Apld. Thomas v. Todd*, [1926] 2 K. B. 511.

4977. *Add. Annotation*:—*Refd. Fenton Textile Assocn. v. Lodge* (1927), 96 L. J. K. B. 1016.

4979. *Add. Citations*:—93 L. J. Ch. 42; 130 L. T. 178.

4979a. — *Effect of voluntary winding up*.—Where under a debenture deed in the common

the business of the co., the authority of the receiver so to do is terminated by the voluntary winding up of the co., & on a contract thereafter made by the receiver as such he will be personally liable.—*THOMAS v. TODD*, [1926] 2 K. B. 511; 95 L. J. K. B. 808; 135 L. T. 377; 42 T. L. R. 494.

4982. *Add. Annotation*:—*Consd. Re Glyncorwg Colliery Co., Railway Debenture & General Trust Co. v. The Co.*, [1926] Ch. 951.

4982a. *Debenture containing floating charge & fixed charge—Priority given only in respect*

of assets subject to floating charge.]—*Held*: when the receiver is appointed by a debenture holder whose debenture is secured by both a fixed charge & a floating charge, the priority given to the preferential debts by 1908 Act, s. 107 (1), applies only in respect of assets subject to the floating charge & not to assets subject to the fixed charge.—*Re LEWIS MERTHYR CONSOLIDATED COLLIERIES, LTD., LLOYDS BANK v. THE CO.*, [1929] 1 Ch. 498; 98 L. J. Ch. 353; 140 L. T. 321; 73 Sol. Jo. 27; 22 B. W. C. C. 20, C. A.

5011a. — *Not appointed if hostile to debenture-holders.*—*GILES v. NUTTALL, Re HOUSE IMPROVEMENT ASSOCN., LTD.* (1885), 78 L. T. Jo. 352, C. A.

5016. *Add. Annotation*:—*Mentd. Guatemala (Republica de) v. Nunez* (1926), 95 L. J. K. B. 955.

5036a. *Right to sue—On bills of exchange drawn by receiver—For goods supplied by company to acceptor.*—Where bills of exchange, signed by "R., Receiver, F. Ltd.," as drawer, had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves":—*Held*: the words "Receiver, F. Ltd.," were words of description only, & the bills did not purport to have been drawn on behalf of the co., & pltf. was entitled to recover against defts. upon the bills.—*KETTLE v. DUNSTER & WAKEFIELD* (1927), 138 L. T. 158; 43 T. L. R. 770.

5036b. *Power of sale—Contract subject to approval*

*before completion.*—Where, in a debenture-holders' action, the receiver contracts to sell property included in the debentures, subject to the contract being approved & sanctioned by the ct. & no date is fixed for obtaining such approval, it must be obtained before the date fixed for completion of the contract.

On Oct. 31, 1927, the receiver in a debenture-holders' action entered into a conditional contract to sell land & cottages included in the debentures. The contract provided that the purchase should be completed on or before Dec. 31, 1927. By clause 14 it was provided

#### PART III. SECT. 34, SUB-SECT. 4.— B. (b).

*sv. Agreement to give security.*—Deft. co., having agreed to purchase from pltf. co. a motor, paid £100 on delivery, & agreed to give security over the motor for the balance, & a bill of sale was prepared, but was not executed:—*Held*: the agreement to give security had not created an equitable mtge., which, not being within the definition of "mtge." in Cos. Act, 1908, s. 130 (11), was not rendered void by that sect. by reason of non-registration.—*NEW ZEALAND SERPENTINE CO., LTD. v. HOON HAY QUARRIES, LTD.*, [1925] N. Z. L. R. 73.—N.Z.

*sw. Assignment of book debts.*—Where the assignor is a co. the assignment of book debts must be registered in the offices of the County Court of the county in which the head office of the co. is situate & the head office means the head office designated in the letters patent incorporating the co., or in any bye-law that may be passed by the co. pursuant to Cos. Act, s. 32.—*Re SMITH TRANSPORTATION CO.*, [1928] 2 D. L. R. 508; 62 O. L. R. 203; 10 C. B. R. 48.—CAN.

#### PART III. SECT. 34, SUB-SECT. 4.— C. (a).

*sx. Power of court—To impose terms.*—In making an order under Cos. (Registration of Securities) Act, 1918, s. 7, granting an extension of time for the registration of debentures, the ct. will, in a proper case, impose terms for the protection of the unsecured creditors of the co., although it will not do so except where the circumstances so require.—*Re A LIMITED COMPANY* (1928), 28 S. L. N. S. W. 364; 45 N. S. W. N. 91.—AUS.

*sy. What must be shown.*—Where the time prescribed by Cos. Act, 1908, s. 130, within which a mtge. given by a co. is to be registered has expired it is essential that a co. applying for an extension of such time should in the supporting affidavit, in addition to giving full particulars relating to the grounds upon which the application is made, give a very full & complete statement of the financial position of the co., with information (i) as to the amount owing to unsecured creditors & the nature of the accounts, i.e. whether ordinary monthly accounts

or of long standing: (ii) as to whether there are any judgments outstanding against the co.; (iii) as to whether any proceedings are pending for winding up the co. & generally such full & complete information as may be necessary to enable the ct. to be fully seized of the position & to enable it to determine whether it is necessary to insert in the order any words specifically protecting unsecured creditors.—*Re DALGETY & CO.*, [1928] N. Z. L. R. 731.—N.Z.

#### PART III. SECT. 34, SUB-SECT. 6.— B. (b) i.

4988 i. *Discretion of court—Interference by appellate court*.—*EASTERN TRUST CO. v. NOVA SCOTIA STEEL & COAL CO., LTD.*, [1927] 1 D. L. R. 321; 59 N. S. R. 123. CAN.

#### PART III. SECT. 34, SUB-SECT. 6.— B. (b) ii.

*sa. What amounts to default payment of interest*.—It cannot be said that there has been default until demand has been made for payment at the place, or one of the places, named in the bond for payment of interest.—*TRUSTS & GUARANTEE CO., Ltp. v.*



that the contract was subject to its being approved & sanctioned by the ct., & in the event of its not being so approved it was to become void, & the purchasers were to be entitled to be repaid their deposit. The receiver took no effective steps to obtain the sanction of the ct., & on Jan. 10, 1928, the purchasers' solrs. wrote to the debenture-holders' solrs. repudiating the contract & demanding the return of the deposit money under clause 14. On an application for an order that the conditional contract should be confirmed:—*Held*: the purchasers were entitled to repudiate the contract & to be repaid their deposit money, together with all interest earned by such deposit, from the date of its payment to the vendor.—*Re SANDWELL PARK COLLIERY CO., FIELD v. THE CO.*, [1929] 1 Ch. 277; 98 L. J. Ch. 229; 140 L. T. 612.

**5067a.** ———.]—Pltf. assocn. brought an action against defts., C. & Co., & L., managing director of the co. Since the matters relevant to the action the debenture-holders of C. & Co. had gone into possession under the powers of their debentures, & had appointed L. as receiver & manager. L. filed an affidavit of discovery disclosing certain documents which he declined to produce, on the ground that though he had them in his possession at the time when he was managing director of the co., he now held them as receiver & manager of the debenture-holders, & an order could not be made against C. & Co., to produce them:—*Held*: there might be documents which were such that C. & Co. itself would have the right to inspect for the purposes of the action, C. & Co. having a right to redeem them, & the right of inspection of C. & Co. could be used by pltf. assocn. as L., though an agent for the debenture-holders, was also for some purposes the agent of C. & Co.—*FENTON TEXTILE ASSOCN., LTD. v. LODGE*, [1928] 1 K. B. 1; 96 L. J. K. B. 1016; 137 L. T. 241, C. A.

**5067b.** ———.]—**Right to sue.**—A debenture of a co. empowered the holder to appoint a receiver & manager, & provided: "A receiver & manager so appointed shall be the agent of the co. & shall have power to take possession of & get in the property hereby charged." A receiver & manager having been appointed, brought an action in the name of the co. for the rescission of an agreement by deft. for the purchase of land from the co. & forfeiture of the deposit, & alternatively for specific performance:—*Held*:

POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—CAN.

**PART III. SECT. 34, SUB-SECT. 6.**—C. (c).

*sb. Duty to preserve & carry on undertaking as going concern.*—*NATIONAL TRUST CO. v. DOMINION IRON & STEEL CO. (N. S.)*, [1927] 3 D. L. R. 1063.—CAN.

**PART III. SECT. 34, SUB-SECT. 6.**—D. (a).

*sd. Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*—*Re ESSEX LAND & TIMBER CO., TROUT'S CASE* (1891), 21 O. R. 367.—CAN.

**PART III. SECT. 34, SUB-SECT. 6.**—D. (b).

*st. Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*—*Re ESSEX LAND & TIMBER CO., TROUT'S CASE* (1891), 21 O. R. 367.—CAN.

**PART III. SECT. 34, SUB-SECT. 6.**—E. (d).

*sk. Affidavits—Made before institution of proceedings—Inadmissible.*—*TRUSTS & GUARANTEE CO., LTD. v. DRUMHELLER POWER CO.*, [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—CAN.

**5130 i.** *Ex parte application.*—A receiver ought not to be appointed *ex p.*, especially for the purpose of taking possession of & managing a going

the debenture empowered the receiver & manager to bring the action without the co.'s consent.—*M. WHEELER & CO., LTD. v. WARREN*, [1928] Ch. 840; 97 L. J. Ch. 486; 139 L. T. 543; 44 T. L. R. 693, C. A.

**5069a.** ———.]—*FENTON TEXTILE ASSOCN., LTD. v. LODGE*, No. 5067a, *ante*.

**5091.** *Add. Annotation*:—*Apld. Thomas v. Todd*, [1926] 2 K. B. 511.

**5127a.** **Plaintiff director debenture-holder—Substitution of independent plaintiff.**—*Re SERVICES' CLUB ESTATE SYNDICATE, LTD., McCANDLISH v. THE CO.*, [1929] W. N. 214.

**5149a.** ———.]—**Application of assets—Deficiency.**—In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) costs of realisation, (2) costs including remuneration of receiver, (3) costs, charges & expenses of debenture trust deed including the trustees' remuneration, (4) pltf.'s costs of action, (5) preferential creditors, (6) debenture-holders.—*Re GLYNCORRWG COLLIERY CO., RAILWAY DEBENTURE & GENERAL TRUST CO. v. THE CO.*, [1926] Ch. 951; 96 L. J. Ch. 43; 70 Sol. Jo. 857; *sub nom. Re GLYNCORRWG COLLIERY CO., Re RAILWAY DEBENTURE & GENERAL TRUST CO.*, 136 L. T. 159.

**5149b.** ———.]—*Re BURRADON & COXLIDGE COAL CO., LTD.*, [1929] W. N. 15.

**5170.** *Add. Annotation*:—*Refd. Re Glyncoirwg Colliery Co., Railway Debenture & General Trust Co. v. The Co.*, [1926] Ch. 951.

**5184a.** **On authority of receiver—To carry on business of company.**—*THOMAS v. TODD*, No. 4979a, *ante*.

**5186a.** **Debenture given for money bonâ fide advanced—After knowledge of presentation of petition for winding up.**—The fact that a person to whom a debenture was granted after a petition to wind up the co. had been launched had knowledge of the launching of such petition does not prevent the ct. from validating the debenture, if it was given for money advanced by the debenture-holder for the purpose of *bonâ fide* assisting the co. to pay wages, & the costs of appt. to such an application to validate his debenture, notwithstanding 1908 Act, s. 205 (2), & of the liquidator, may be paid out of the assets of the co.—*Re PARK WARD & CO., LTD.*, [1926] Ch. 828; 95 L. J. Ch. 581; 135 L. T. 575; 70 Sol. Jo. 670; [1926] B. & C. R. 91.

**5194.** *Add. Annotation*:—*Consd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

business, except in extraordinary circumstances.—*TRUSTS & GUARANTEE CO., LTD. v. DRUMHELLER POWER CO.*, [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—CAN.

**PART III. SECT. 34, SUB-SECT. 6.**—E. (f) ii.

*CLARKSON, 1927*, 4 D. L. R. 208; 57 O. L. R. 499; 5 C. B. R. 835. CAN.

**PART III. SECT. 35.**

*sm. Meaning of "being wound up"—Under Companies Ordinance, 1901 (c. 20), s. 47.*—The words do not refer to a winding up under any particular Act in the sense of a dissolution, but mean a winding up of a co. in the sense of a realisation of the assets, a distribution of the proceeds among



**5314. Add. Annotations:—***Distd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. *Refd. Re Stanton*, [1928] 1 K. B. 464.

**5316. Add. Annotations:—***Consd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118; *Refd. Re Stanton*, [1928] 1 K. B. 464. *Mentd. R. v. Central Criminal Court JJ.*, *Ex p. L. C. C.*, [1925] 2 K. B. 43.

**5316a. — May decide validity of debentures.]—**Less than three months before the commencement of its compulsory winding up in a county ct., a co. having a paid-up capital of less than £10,000 issued debentures to the extent of £4,500 in favour of two persons. The liquidator moved in the county ct. for a declaration that the debentures were invalid either as a fraudulent preference under 1908 Act, s. 210, or as a floating charge created otherwise than for cash under sect. 212, & that the persons named in the debentures had no rights in respect of the sums expressed to be secured thereby except as unsecured creditors:—*Held*: the county ct. judge had jurisdiction to entertain the liquidator's application, & as he had done so, his discretion could not be interfered with.—*Re F. & E. STANTON, LTD.*, [1928] 1 K. B. 464; 97 L. J. K. B. 131; 138 L. T. 175; 41 T. L. R. 118; [1927] B. & C. R. 187, D. C.

**5337. Add. Annotation:—***Refd. Loch v. Blackwood*, [1924] A. C. 783.

**5343. Add. Annotation:—***Mentd. Re Quintin Dick, Cloncurry v. Fenton*, [1926] Ch 992

**5346. Add. Annotations:—***Mentd. Bank of Liverpool & Martins v. Holland* (1926), 13 T. L. R. 605, *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.

**5354. Add. Annotation:—***Refd. Loch v. Blackwood*, [1924] A. C. 783.

creditors & an adjustment of the rights of shareholders among themselves, & therefore a co. may be "being wound up" in this sense under Bkcy. Act, as well as under either Dominion or provincial Winding-up Acts.—*Re IRMA CO-OPERATIVE CO., LTD.*, *Re LOVE & KNUDSON*, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.

**PART III. SECT. 36, SUB-SECT. 1.—A.**  
t. Add "*reusd.* 14 S. C. R. 624."

**PART III. SECT. 36, SUB-SECT. 2.—B.**  
n i. — *Delay not accounted for.*—*Re SOUTHLAND WOOLLEN MILLS, LTD.*, [1929] N. Z. L. R. 289.—N.Z.

**PART III. SECT. 36, SUB-SECT. 2.—C. (a).**

a i. — [—]—Where the notice provided for by Winding-up Act, R. S. C. 1906 (c. 144), s. 4, has not been served, & a petition for a winding-up order is presented, the question whether the co. is "unable to pay its debts as they become due," within sect. 3 (a), must be determined by the ct. upon the material filed.—*Re MILO WHEAT CO., LTD.*, [1925] 2 D. L. R. 1170; [1925] 1 W. W. R. 1142; 35 Man. L. R. 1; 5 C. B. R. 707.—CAN.

**PART III. SECT. 36, SUB-SECT. 2.—D. (a).**

d i. — [—]—*Re JAMES LUMBERS CO., LTD.*, [1926] 1 D. L. R. 173; 58 O. L. R. 190.—CAN.

d ii. — [—]—*Re BRITISH EMPIRE STEEL CORPN., LTD. (N.S.)*, [1927] 2 D. L. R. 964.—CAN.

**PART III. SECT. 36, SUB-SECT. 2.—D. (b) i.**

fi. — *Property of speculative value.*—Appet. was a minority shareholder, holding 37,500 shares of the total capitalisation of 2,000,000 shares. The property owned by the co. was an undeveloped mining location of merely speculative value. The location was intact & there were practically no liabilities, but the actual cash in the treasury was trifling:—*Held*: the case was not brought within the class of cases in which a winding-up is ordered, because the whole substratum of the undertaking has disappeared.—*Re JURY GOLD MINE DEVELOPMENT CO., LTD.*, [1928] 4 D. L. R. 735; 63 O. L. R. 109.—CAN.

**PART III. SECT. 36, SUB-SECT. 2.—D. (b) ii.**

ii. — [—]—*Re DOMINION STEEL CORPN. (N. S.)*, [1927] 4 D. L. R. 337.—

**PART III. SECT. 36, SUB-SECT. 2.—D. (d).**

5384 ii. — [—]—Although a co. may be wound up where there is a complete deadlock in its management, where a substantial majority of the shareholders are opposed to the making of the order, where the petition is the outcome of a mere domestic quarrel, & where no substantial advantage will accrue from the granting of the order, an order will not be made.—*Re SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD.*, [1926] 2 D. L. R. 887; 58 O. L. R. 585.—CAN.

t i. — *Differences between two sole members.*—Where resp. had treated

**5357. Add. Annotation:—***Refd. Loch v. Blackwood*, [1924] A. C. 783.

**5357a. —**[—]—A co. was registered in Barbados under Cos. Act, 1910, of Barbados, as a public co., in order to carry on testator's business & to divide the profits of it between members of his family entitled under his will to share them; the managing director had a preponderating voting power. Upon a petition for winding up by shareholders who were not directors, it appeared that the directors had omitted to hold general meetings, or to submit accounts, or recommend a dividend, & that they had laid themselves open to the suspicion that their object in so omitting was to keep petitioners in ignorance of the co.'s position & affairs & to acquire petitioners' shares at an under-value:—*Held*: the power to wind up the co. under sect. 127 (vi) of that Act [which was identical with 1908 Act, s. 129] was not confined to cases in which there were grounds analogous to those mentioned earlier in the sect.; & in the circumstances of the case, regard being had to the domestic character of the co., petitioners were entitled under that provision to a winding-up order.—*LOCH v. BLACKWOOD (JOHN), LTD.*, [1924] A. C. 783; 93 L. J. P. C. 257; 131 L. T. 719; 40 T. L. R. 732; 68 Sol. Jo. 735; [1924] B. & C. R. 209, P. C.

**5372. Add. Annotation:—***Refd. Loch v. Blackwood*, [1924] A. C. 783.

**5388. Add. Annotation:—***Consd. Loch v. Blackwood*, [1924] A. C. 783.

**5397a. — Omission to hold general meetings or to submit accounts.]—***LOCH v. BLACKWOOD (JOHN), LTD.*, No. 5357a, *ante*.

**5474. Add. Annotation:—***Mentd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

the co. as his own business in such a way as to destroy his fellow-shareholder's confidence in the impartiality of his administration:—*Held*: it was just & equitable that the co. should be wound up.—*THOMSON v. DRYSDALE*, [1925] S. C. 311.—SCOT.

t ii. — *Deadlock caused by petitioners.]—*Winding-up order refused.—*Re JAMES LUMBERS CO., LTD.*, [1926] 1 D. L. R. 173; 58 O. L. R. 100.—CAN.

**PART III. SECT. 36, SUB-SECT. 2.—D. (e).**

5397a i. — [—]—*Managing director conducting affairs as though company his private business.]—BAIRD v. LEEES*, [1921] S. C. 83.—SCOT.

**PART III. SECT. 36, SUB-SECT. 3.—B. (b) iv.**

q i. — [—]—A petition for the winding up of a co. filed by a creditor with the view of enforcing payment of a disputed debt, is an abuse of the process of the ct. & should be dismissed.—*PYDA SATYARAZU v. GUNTUR COTTON & PAPER MILLS CO., LTD.* (1924), 1 L. R. 48 Mad. 267.—IND.

5439 ii. — [—]—*SMITHFIELD COLD STORAGE & EXPORT CO. OF SOUTH AFRICA, LTD v. LEVER* (1924), 45 N. L. R. 73.—S. AF.

**PART III. SECT. 36, SUB-SECT. 3.—B. (c) i.**

5484 i. *Executor of deceased shareholder.]—*Entitled to present a winding-up petition, although his name had not been entered in the book,

5590a. — Effect on right to costs.]—PRACTICE NOTE. [1929] W. N. 66.

5604. *Add. Annotation*:—*Mentd. Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.

5648. *Add. Annotation*:—*Refd. Re City Life Assce.*, [1926] Ch. 191.

5841a. *Issue of debenture—For money advanced to company for payment of wages.*]—*Re PARK WARD & CO., LTD.*, No. 5186a, *ante*.

*Add. Annotations*:—*Distd. Re Stanton, v. Maule* (1927), 44 T. L. R. 118.

*Refd. Re Stanton*, [1928] 1 K. B. 464. *Mentd. R. v. Central Criminal Court JJ.*, *Ex p. L. C. C.*, [1925] 2 K. B. 43.

5890. *Add. Annotation*:—*Mentd. More v. Weaver*, [1928] 2 K. B. 520.

5908a. *Application for order under 1908 Act, s. 175 (6), for exculpation—Right of successful applicant to costs.*]—*Re AMUSEMENTS (CON- Co., LTD.*, [1927] W. N. 7.

5953. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

5972. *Add. Annotation*:—*Refd. Re Windsor Steam Coal Co.* (1901), 144 (1928), 140 L. T. 80.

6056a. — Damages & costs paid by insurance company in respect of judgment obtained against insured company.]—Appet. obtained judgment against a co. for damages for personal injuries & costs. Afterwards the co. went into liquidation, & the insurance co. with which the co. in liquidation was insured paid the amount of the damages & costs to the liquidator:—*Held*: appet. was not

of the co. as the holder of the shares, & notwithstanding that the co.'s Act of incorporation provided that certain formalities must be observed before the co. was obliged to recognise as a shareholder a person who had become such by transmission by law.—*Re GREAT WEST PERMANENT LOAN CO. & WINDING-UP ACT (MAN.)*, [1927] 2 W. W. R. 15.—CAN.

PART III. SECT. 36, SUB-SECT. 3.—D. (a) i.

1 i. *General rule—Winding up detrimental to all concerned.*]—Winding-up order set aside.—*Re SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD.*, [1926] 2 D. L. R. 887; 58 O. L. R. 585.—CAN.

PART III. SECT. 36, SUB-SECT. 3.—D. (a) ii.

q i. — *Exceptional circumstances.*]—A creditor of a co. presented a petition for the winding up of the co. by the ct. The co. had gone into voluntary liquidation, & the petition was opposed on the ground that the majority of the creditors desired the voluntary winding up to be continued. A statement of the co.'s affairs showed that its liabilities amounted to £335,000, while its assets were estimated at £9,500; that about £116,000, stated to be irrecoverable, had been advanced to directors of the co.; & that the co. had received large advances from associated cos., part of which were completely secured. Creditors to the extent of £300,000, including one whose claim amounted to about two-thirds of the co.'s whole indebtedness, had assented to the voluntary winding up, & petitioner, who was a creditor to the extent of £5,000 only, was the sole creditor who objected to the co. being wound up voluntarily:—*Held*: although as a general rule the co. would have regard

to the wishes of a majority of creditors, the circumstances were of such a special character that an exception to the general rule should be made, & a winding-up order pronounced.—*BOULIS v. MANN, MACNEAL & CO., LTD.*, [1926] S. C. 637.—SCOT.

PART III. SECT. 36, SUB-SECT. 3.—E. (h).

sm. *Examination of petitioner—Application by shareholders for second application.*]—Application refused.—*Re WINDING-UP ACT, Re GREAT WEST PERMANENT LOAN CO. (MAN.)*, [1927] 2 W. W. R. 433.—CAN.

PART III. SECT. 36, SUB-SECT. 4.—B. (g).

m i. — *Sale of goods—Monthly deliveries—Company in default of payment for previous deliveries.*]—*HAMILTON v. HAMILTON STEEL CO.* (1911), 18 O. W. R. 739; 2 O. W. N. 779; 23 O. L. R. 270.—CAN.

PART III. SECT. 36, SUB-SECT. 8.—B.

sp. *Officer of company—Becomes functus officio on dissolution of company.*]—*KRISHNASWAMI NAIDU v. ANDI CHETTI* (1927), 1 L. L. R. 51 Mad. 681.—IND.

st. *Liability to justify expenditure—Necessity for proof of misfeasance.*]—Before a liquidator can be called upon to justify an expense incurred by him in the course of liquidation, some particular evidence of negligence or breach of trust must be adduced before the case can be left to a jury.—*NEW BRILLIANT FREEHOLD GOLD MINING CO., LTD. v. MILLS*, [1928] St. R. Qd. 120.—AUS.

PART III. SECT. 36, SUB-SECT. 8.—C. (b).

k i. — *Action by company—To*

entitled to have the amount paid to him direct by the liquidator, but it formed part of the assets for distribution among the general creditors, including appet.—*Re HARRINGTON MOTOR CO., Ex p. CHAPLIN*, [1928] Ch. 105; 97 L. J. Ch. 55; 138 L. T. 185; 44 T. L. R. 58; 72 Sol. Jo. 48; [1927] B. & C. R. 198, C. A.

*Annotation*:—*Apld. Hood's Trustees v. Southern Union General Insee. Co. of Australasia*, [1928] Ch. 793.

6064. *Add. Annotations*:—*Consd. Re Stanton*, [1928] 1 K. B. 464. *Refd. Re Stanton*, Maule (1927), 44 T. L. R. 118.

6137a. — — — — —.]—*Re OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., POTTER'S CASE* (1849), 1 De G. & Sm. 728; 5 Ry. & Can. Cas. 628; 18 L. J. Ch. 247; 13 L. T. O. S. 320; 13 Jur. 691; 63 E. R. 1270.

*Annotations*:—*Consd. Re South Essex Estuary & Reclamation Co., Ex p. Pain & Layton* (1869), 17 W. R. 275. *Refd. Re Shrewsbury & Leicester RY., Re Vardy* (1851), 20 L. J. Ch. 325; Hope v Liddell (1855), 20 Beav. 438.

6150. *Add. Annotations*:—*Refd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853; *Re Etic*, [1928] Ch. 861.

6150a. —.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

6150b. —.]—The liquidators of a co. issued a summons under 1908 Act, s. 215, against the secretary of the co., asking for a declaration that he was indebted to the co. for sums overdrawn with the consent of the managing director:—*Held*: the operation of sect. 215 was not applicable to all cases in which a co. had a right of action against an officer of the co., but was limited to cases where there had

recover purchase price of shares—*What defences available—Fraud*] *FARMERS PACK CO., LTD. v. TULLY & TULLY, FARMERS PACK CO., LTD. v. HAYERS (MAN.)*, [1927] 2 D. L. R. 749; [1927] 1 W. W. R. 902.—CAN.

PART III. SECT. 36, SUB-SECT. 8.—C. (c).

sb. *Change of solicitor—When permissible—Under order of court.*]—*Re CONTINENTAL FIRE & CASUALTY CO.*, [1924] 3 D. L. R. 9; 2 W. W. R. 440; 34 Man. L. R. 482.—CAN.

PART III. SECT. 36, SUB-SECT. 9.—A.

sc. *Notice of meeting—To shareholders.*]—It is the duty of the trustee to give shareholders of an insolvent co. the same notice of the first meeting of creditors as is sent to those who are ordinarily deemed to be creditors, but the trustee's failure to do so does not invalidate the meeting, unless the irregularity has prejudiced the shareholders.—*Re PATRICIA APPLIANCE SHOPS, LTD.*, [1923] 3 D. L. R. 1169; 52 O. L. R. 215; 2 C. B. R. 466.—CAN.

PART III. SECT. 36, SUB-SECT. 10.—B. (f) iii.

6110 i. *Whether justified—Examination of officer.*]—An officer of a co. summoned for examination must, on the examination, disclose the information he has concerning the trade, dealings, estate or effects of the co. in liquidation, regardless of whether he acquired it in his official capacity or otherwise, subject to his right to object to incriminating questions & those involving professional privilege.—*Re MC MILLAN GRAIN CO. & WINDING-UP ACT*, [1927] 3 D. L. R. 229; [1927] 1 W. W. R. 899; 36 Man. L. R. 454.—CAN.

been something in the nature of a breach of duty by an officer of the co. as such, which had caused pecuniary loss to the co., & no order would be made on the summons under the summary jurisdiction under sect. 215.—*Re ERIC, LTD.*, [1928] Ch. 861; 97 L. J. Ch. 460; 140 L. T. 219; [1928] B. & C. R. 81.

**6154. Add. Annotations:—***Distd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118; *Re Stanton*, [1928] 1 K. B. 464.

**6158. Add. Annotation:—***Refd. Weld v. Petre*, [1929] 1 Ch. 33.

**6161. Add. Annotations:—***As to (1) Consd. Re Etic*, [1928] Ch. 861. *As to (2) Refd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

**6164a. Creditor—Misfeasance by liquidator.**—*Re HOME & COLONIAL INSURANCE CO., LTD.*, No. 6180a, *post*.

**6169. Add. Annotation:—***Consd. Re Etic*, [1928] Ch. 861.

**6173. Add. Annotation:—***Refd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

**6173a. — Article relieving directors from loss—Unless arising from wilful neglect or default.**—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

**6173b. —**—*Re ETIC, LTD.*, No. 6150b, *ante*.

**6180a. Payment under invalid contract—Unstamped policy.**—A co. entered into marine insurance contracts which were not, as required by law, embodied in stamped policies, in the liquidation of the co., the liquidator, being then unaware that in the absence of stamped policies the contracts were invalid, admitted a proof & made a payment in respect of a very large claim under the contracts. On a misfeasance summons taken out against the liquidator by a creditor of the co., under 1908 Act, s. 215:—*Held*: in view of

the magnitude of the claim it was the duty of the liquidator carefully to investigate the validity of the proof & therefore he was liable for misfeasance, but the ct. would exercise its discretion under the section by ordering him to contribute to the assets of the co. only such an amount as would enable all the creditors to be paid in full with interest at 5 per cent.—*Re HOME & COLONIAL INSURANCE CO., LTD.* (1929), 45 T. L. R. 658.

**6180b. Extent of liability—Discretion of court.**—*Re HOME & COLONIAL INSURANCE CO., LTD.*, No. 6180a,

**6182. Add. Annotations:—***As to (1) Consd. Re Etic*, [1928] Ch. 861. *As to (2) Apld. Re A Debtor*, [1927] 1 Ch. 410.

**6183. Add. Annotation:—***Apld. Re A Debtor*, [1927] 1 Ch. 410.

**6212. Add. Annotation:—***Refd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

**6222. Add. Annotation:—***Refd. Re Darwin & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

**6229. Add. Annotation:—***Refd. Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

**6238. Add. Annotation:—***Mentd. Douglass Lloyds Bank* (1929), 31 Com. Cas. 263.

**6241. Add. Annotation:—***Mentd. Hunter v. Städtische Hochseetischerei Gesellschaft*, [1925] 2 K. B. 493.

**6346. Add. Annotation:—***As to (1) Refd. Swift v. Board of Trade*, [1925] A. C. 520.

**6368a. — For salary for dismissal without notice.**—Where a clerk claimed to be paid out of the assets for services rendered, & a year's salary for dismissal without notice, contrary to agreement:—*Held*: he was entitled to the salary as claimed. *Re MADRID BANK, Ex p. WILLIAMS* (1866), L. R. 2 Eq. 216; 35 L. J. Ch. 471; 14 W. R. 706.

### PART III. SECT. 36, SUB-SECT. 10.— C. (d) i.

**sd. Something in nature of misconduct.**—To make a person liable under Cos. Act, 1908, s. 254, he must be shown to have been guilty of some misconduct by which the co. has suffered loss. There must be actual loss or damage measurable in terms of money.—*Re BUTCH SALES, LTD.*, [1926] N. Z. L. R. 24.—N.Z.

### PART III. SECT. 36, SUB-SECT. 10.— C. (d) iii.

**so. Payments to discharge directors' liability on guarantee.**—When a co. is insolvent to its directors' knowledge, & the directors cease payment of all but small & pressing accounts & pay all the rest of the co.'s takings into the bank to wipe out the co.'s overdraft, not with intention to prefer the bank, but in order to wipe out the directors' liability as sureties under their personal guarantee of the overdraft, such payments do not amount to a misfeasance or breach of trust within Cos. Act, 1908, s. 254.—*Re LINNEY (H.) & CO., LTD.*, [1925] N. Z. L. R. 907.—N.Z.

### PART III. SECT. 36, SUB-SECT. 10.— C. (g).

**6201 i. Position of liquidator on summons—Security for costs—Whether court will order.**—On a summons for an order requiring the liquidator to give security for costs:—*Held*: although the ct., in the exercise of its general jurisdiction, could order security to be given, nevertheless the established practice in the English cts. should be

followed, & the summons must be dismissed.—*Re NEW ZEALAND MACHINERY CO., LTD. (IN LIQUIDATION)*, [1927] N. Z. L. R. 100.—N.Z.

### PART III. SECT. 36, SUB-SECT. 10.— E. (a) iii.

**6221 i. When liable as contributory—General rule.**—A past member of a limited co. may be liable to contribute to its assets in a winding up, notwithstanding the fact that the existing members at the date of the commencement of the liquidation hold fully-paid shares only.—*Re SOUTHERN CROSS MOTOR FUELS, LTD., Ex p. KELLEWAY*, [1926] V. L. R. 527; 48 A. L. J. T. 100; [1926] Argus L. R. 427.—AUS.

**sg. Who are past members—Deceased joint shareholder.**—Upon the death of one of several joint holders of a share in a limited co., deceased becomes a past member within Cos. Act, 1899, s. 33, & in the event of the co. going into liquidation prior to the expiration of a period of one year from his death, his personal representatives are liable to be placed upon the B. list of contributories of the co.—*Re WOOL TRADING CO., LTD. (No. 2)* (1920), 28 S. R. N. S. W. 435; 15 N. S. W. W. N. 113.—AUS.

### PART III. SECT. 36, SUB-SECT. 10.— E. (b).

**sj. How enforced—Right of liquidator to bring action.**—Cos. Winding-up Act (Sask.), ss. 15 & 22, which establish a summary statutory procedure, enabling a liquidator to get payment from a contributory under the

Act instead of proceeding by action are only permissive & not obligatory, & the liquidator is not bound to have recourse to that procedure but may proceed by way of action.—*MACKAY v. MCKENZIE & SON*, [1924] 2 D. L. R. 1242; 2 W. W. R. 521.—CAN.

### PART III. SECT. 36, SUB-SECT. 10.— E. (c).

**ti. — — —**—There is nothing in Winding-up Act to justify the suggestion that in settling the list of contributories regard is to be had only to those shareholders whose liability is subject to call.—*Re NATIONAL STADIUM, LTD.* (1921), 55 O. L. R. 199.—CAN.

**sk. — Deceased shareholder.**—*Re CANADIAN CORDAGE & MANUFACTURING CO.* (1923), 54 O. L. R. 486.—CAN.

### PART III. SECT. 36, SUB-SECT. 10.— E. (e) ii.

**6296 ii. — — —**—A member of a co. in liquidation is liable in respect of unpaid calls, even though, as against the co., the realisation of such calls may have become barred by limitation.—*Re DELUXA DIX-MISSOURE ELECTRIC TRAMWAY CO., LTD., Re PANNA LAL* (1927), 1 L. R. 50 All. 476.—IND.

**6298 i. — — —**—Power of liquidator to make immediate call.—For whole of unpaid balance on shares.—*Re IRMA CO-OPERATIVE CO., LTD., Re LOVE & RICHMOND*, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.

*sub nom. Re MADRID BANK, LTD., Ex p. HOLDER, Ex p. WILLIAMS*, 14 L. T. 456.

*Annotations*:—*Re* Madrid Bank, Wilkinson's Case (1867), 15 W. R. 331; *Re* General Exchange Bank, Preston's Claim (1868), 19 L. T. 138.

**6374. Add. Annotation**:—*Mentd. Britannia Hygienic Laundry Co. v. Thornycroft* (1925), 94 L. J. K. B. 858.

**6392. Add. Annotation**:—*Consd. Re Agricultural Wholesale Soc.*, [1929] 2 Ch. 261.

**6394a.** ———.]—The society, under a loan stock trust deed, issued loan stock bearing interest at 7 per cent. with a quinquennial bonus of 2½ per cent. Under the trust deed, entered into by the society with trustees for the stockholders, an amount equal to 7½ per cent. on the par value of the stock was to be paid to the trustees, for apportionment to the interest & to a fund for the bonus. At the date of an order for the winding up of the society, most of the stockholders had received payment in full of interest at 7 per cent. on the amount of loan stock issued, up to & including a date seven months before the order. The trustees lodged with the liquidator a proof stated to be for cash advanced on loan; & this summons asked (i) whether the proof should be rejected to the extent of interest proved for above 7½ per cent. up to the date of the commencement of the winding up; (ii) whether interest should be calculated, at 5 per cent., to the date of the order or to the commencement of the winding up; & (iii) whether Bkpcy. Act, 1914 (c. 59), s. 66 (2) (b), had any application to proof or dividend in respect of the loan stock:—*Held*: (1) the amounts proved for by the trustees were to be computed only to the date of the commencement of the winding up; (2) Bkpcy. Act, 1914 (c. 59), s. 66, was not incorporated by 1908 Act, s. 207, so as to apply in the winding up of an insolvent co., & that the trustees' proof was therefore calculable at the rate of 7½ per cent.—*Re AGRICULTURAL WHOLESALE SOCIETY*, [1929] 2 Ch. 261; 98 L. J. Ch. 396; 141 L. T. 551; 45 T. L. R. 467.

*Annotation*:—*As to* (2) *Apld. Re Wells*, [1929] 2 Ch. 269.

**6396a.** — **Whether bankruptcy rules applicable.**—*Re AGRICULTURAL WHOLESALE SOCIETY*, No. 6391a, *ante*.

**6400. Add. Annotations**:—*Mentd. Re Clemmons Aluminium* (1924), 94 L. J. K. B. 487; *Costello v. Brown* (1924), 94 L. J. K. B. 220; *Re Snowdown Colliery Co.*, South-Eastern Coalfield Extension Co. v. Snowdown Colliery Co. (1925), 94 L. J. Ch. 305.

**6406. Add. Annotation**:—*Mentd. Re City Life Assee.* (1925), 42 T. L. R. 45.

**6409. Add. Annotation**:—*Consd. Re Pitchford*, [1924] 2 Ch. 260.

**6409a. Rule limiting rate of interest.**—*Re AGRICULTURAL WHOLESALE SOCIETY*, No. 6391a, *ante*.

**6427. Add. Annotation**:—*Re* City Life Assee. (1925), 42 T. L. R. 45.

**6436a.** ———.]—In a common law action by a co. in liquidation against a shareholder for a call made before the liquidation, debt. has

no right of set-off in respect of sums alleged to be due to him from the co.—*ALLIANCE FILM CORPN., LTD. v. KNOLES* (1927), 43 T. L. R. 678.

**6442. Add. Annotation**:—*Mentd. Re Pink, Elvin v. Nightingale* (1926), 70 Sol. Jo. 1090.

**6442a.** ———.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co.:—*Held*: the indebtedness of applt. having been incurred under an order made after the date of the winding up, there were at that date no mutual debts capable of set-off; the payment by the liquidator being void as a fraudulent preference, applt. had not any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator, & his only right was to prove in the winding up with the other creditors.—*Re A DEBTOR* (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re MUMFORD, DEBTOR v. PETITIONING CREDITOR, Ex p. OFFICIAL RECEIVER*, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

**6444. Add. Annotation**:—*Re* City Life Assee. (1925), 42 T. L. R. 45.

**6445. Add. Annotation**:—*Apld. Re A Debtor*, [1927] 1 Ch. 410.

**6446. Add. Annotations**:—*As to* (2) *Re* City Life Assee., [1926] Ch. 191. *Generally, Mentd. Martin v. Stout*, [1925] A. C. 359; *Tyldesley U. D. C. v. Leigh R. D. C.* (1925), 23 L. G. R. 243.

**6447. Add. Annotations**:—*As to* (2) *Apld. Re City Life Assee.*, [1926] Ch. 191. *Re* National Benefit Assee., [1924] 2 Ch. 339.

**6455a.** — **Joint partnership debt—Creditor member of firm.**—In the winding up of a co. the liquidator sought to set off against a debt due by the co. to a creditor a debt alleged to be due to the co. by a partnership firm of which the creditor was a member:—*Held*: the alleged debt of the partnership firm being a joint & not a joint & several debt, it could not be set off against the separate debt due by the co. to the partner.—*Re PENNINGTON & OWEN, LTD.*, [1925] Ch. 825; 95 L. J. Ch. 93; 134 L. T. 66; 41 T. L. R. 657; 69 Sol. Jo. 759; [1926] B. & C. R. 39, C. A.

**6456. Add. Annotations**:—*Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487. *Mentd. Re Snowdown Colliery Co.*, South-

PART III. SECT. 36, SUB-SECT. 11.—C. (a).

**6423 i.** ———.]—Shareholders are not

entitled to set off against their liability for immediate payment of the amounts unpaid on their shares any dividends owing to them.—*Re IRMA CO-OPERA-*

*TIVE CO., LTD., Re LOVE & KNUDSON*, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.

*o. Add "reversd. 16 S. C. R. 456."*

Eastern Coalfield Extension Co. v. Snowdown Colliery Co. (1925), 94 L. J. Ch. 305.

6460. *Add. Citations*:—130 L. T. 1; [1923] B. & C. R. 114; *affg.* S. C. *sub nom.* *Re WEBB (II. J.) & Co. (SMITHFIELD, LONDON), LTD.*, [1922] 2 Ch. 369.

*Add. Annotations*:—*Refd. Re Winget, Burn v. Winget*, [1924] 1 Ch. 550. *Mentd.* *Gilbert v. Gilbert & Bougher* (1927). 96 L. J. P. 137.

6462. *Add. Annotation*:—*Refd. Re Winget, Burn v. Winget*, [1924] 1 Ch. 550.

6465a. — *Rates paid by director—Preferential rights of director.*—*Re LAMPLUGH IRON ORE CO., No. 3105a, ante.*

6467. *Add. Annotations*:—*Refd. Re Clemmons Aluminium* (1924), 94 L. J. K. B. 487. *Mentd. Re Snowdown Colliery Co., South-Eastern Coalfield Extension Co. v. Snowdown Colliery Co.* (1925), 94 L. J. Ch. 305.

6477a. — *General Radio Co., LTD., FIRST CO-OPERATIVE INVESTMENT TRUST, LTD. v. THE CO.*, [1929] W. N. 172.

### PART III. SECT. 36 SUB-SECT. 11.— D. (a).

*h i. — Rent.*—A landlord of a co. in liquidation has a preferential claim to payment up to three months' rent, where there are goods on the premises to that value at the date of liquidation.—*Re SHRIVES & MCKENZIE PTY., LTD.*, [1926] V. L. R. 563; 48 A. L. T. 99; [1926] *Argus* L. R. 442.—AUS.

*h ii. S. P. Re CARPENTER HALES, Co., LTD.* (1926), 26 S. R. N. S. W. 43 N. S. W. W. N. 116.—AUS.

### PART III. SECT. 36, SUB-SECT. 11.— D. (b).

*sm. Price of wheat supplied under State wheat scheme.*—The Minister charged with the administration of Wheat Marketing Acts sold a quantity of wheat to a co. which before payment went into liquidation.—*Held*: the debt being a Crown debt, the Minister was entitled to priority of payment in the administration of the assets of the co. In the winding up of a co. the Crown is not bound by the provisions of Cos. Act, 1893, & its amendments.—*Re OCKERBY & Co., LTD.* (1932), 25 W. A. L. R. 25.—AUS.

*so. Debt due to public Board.*—Meat Industry Act, 1915, No. 69 (N. S. W.), established a Board to administer the Act. The Governor had power to veto certain of its actions. The Board had wide powers, which it exercised at its discretion; any power of interference which a Minister of the Crown possessed was not such as to make the acts of administration his acts. Money received by the Board was not paid into the general funds of the State, but to its own fund.—*Held*: a debt due to the Board was not a debt due to the Crown.—*METROPOLITAN MEAT INDUSTRY BOARD v. SHEEDY*, [1927] A. C. 899; 137 L. T. 782; 43 T. L. R. 701, P. C.—AUS.

### PART III. SECT. 36, SUB-SECT. 11.— D. (c).

*sq. Municipal taxes & taxes due to Public Utilities Commission—Payable before Crown claims.*—*Re INTERNATIONAL METAL WORKS, LTD.*, *Ex p. R.*, [1925] 1 D. L. R. 309; 5 C. B. R. 378.—CAN.

### PART III. SECT. 36, SUB-SECT. 11.— D. (d).

*st. Effect of Bankruptcy Act, s. 48 (4).*—The above sect. does not restrict the amount of the debt for which an officer, director or shareholder

of a co., which has made an authorised assignment, may in the first instance prove, & postpone the right to prove for the balance until all other creditors have been paid in full, but while allowing him to prove for the full amount of his claim, it merely restricts the amount of payment or satisfaction in the aggregate which he may receive on account of his claim as proven until claims of other creditors have been satisfied.—*Re CALGARY FURNITURE STORE, LTD & HIGGS*, [1924] 2 D. L. R. 308; [1924] 1 W. W. R. 1137; 4 C. B. R. 538.—CAN.

### PART III. SECT. 36, SUB-SECT. 11.— E. (a).

*sv. Not bondholders under un-registered trust mortgage.*—*Re BEAVER TRUCK CO (Ont.)*, [1926] 1 D. L. R. 71.—CAN.

*sw. Bondholders — Notwithstanding abandonment of lien against purchase of assets.*—*Re ST. JOHN RIVER LOG & CO. (N. B.)*, [1927] 3 D. L. R. 800.—CAN.

### PART III. SECT. 36, SUB-SECT. 11.— E. (b).

6490 *i. Whether proof for total sum due at time of claim—Where securities realised before claim.*—Where a secured creditor realises on his securities himself without sending in a claim to the liquidator or valuing his securities, he is debarred from ranking on the estate for any deficiency, & must be regarded as standing outside the liquidation proceedings.—*McFARLAND v. LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. (Can.)*, [1927] 3 D. L. R. 67.—CAN.

*sy. Whether interest on balance after security exhausted can be added.*—In the liquidation proceedings of an insolvent co. a secured creditor after having exhausted his security cannot in proving as regards the balance of his debt unsatisfied include interest after the date of the winding up order.—*OPPENHEIMER v. MOOLA* (1929), 1 L. R. 7. *Ran.* 514.—IND.

### PART III. SECT. 36, SUB-SECT. 12.—C.

*sz. Right of judgment creditors to interest.*—On the liquidation of a co. judgment creditors who obtained their judgments after the commencement of the liquidation as well as those who obtained their judgments prior thereto held alike entitled to interest out of any surplus remaining after payment of all the principal debts.—*Re COLONIAL ASSURANCE CO. (Man.)*,

6500. *Add. Annotation*:—*Refd. Re Houlder*, [1929] 1 Ch. 205.

6506. *Add. Annotation*:—*Apld. Re Agricultural Wholesale Soc.*, [1929] 2 Ch. 261.

6565. *Add. Annotations*:—*Refd. Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 576; *Re Wilts & Somerset Farmers* (1928), 98 L. J. Ch. 17.

6567. *Add. Annotation*:—*Consd. Collaroy Co. v. Giffard*, [1928] Ch. 144.

6591. *Add. Annotation*:—*Refd. Re Keystone Knitting Mills Trade Mks.*, [1929] 1 Ch. 92.

6663. *Add. Annotation*:—*Refd. Re South Rhondda Colliery Co.* (1898), *Id.* (1928), 72 Sol. Jo 453.

6740. *Add. Annotation*:—*Refd. Re Lloyd's Furniture Palace, Evans v. Lloyd's Furniture Palace*, [1925] Ch. 853.

6741. *Add. Annotation*:—*Consd. Re A Debtor*, [1927] 1 Ch. 410.

6745. *Add. Annotation*:—*Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

[1928] 3 W. W. R. 703.—CAN.

### PART III. SECT. 36, SUB-SECT. 12.— D. (c).

*m i. — — — Re SKEETONS, LTD. (IN LIQUIDATION)*, [1928] N. Z. L. R. 190.—N.Z.

### PART III. SECT. 36, SUB-SECT. 13.— A.

*p i. — — — Sale by mortgagees in possession.*—A co. being in liquidation, the mtgees. went into possession prior to the issue of the winding-up order. The liquidator sought to restrain the mtgees. from selling without the sanction of the ct., on the ground that such sale would be a "proceeding against the co".—*Held*: the mtgees were proceeding rightfully.—*Re BRITISH COLUMBIA TIE & TIMBER CO. (1908)*, 11 B. C. R. 81; 9 W. L. R. 195.—CAN.

### PART III. SECT. 36, SUB-SECT. 13.— D. (a).

*n. Add "reversd."* 23 A. R. 426 "

### PART III. SECT. 36, SUB-SECT. 13.— D. (c).

*sb. Writ filed after winding-up order.*—*Held*: not to constitute a lien, even for costs, against the property of co. in liquidation.—*Re LITCH COLLIERIES, LTD. (Alta)*, [1926] 1 D. L. R. 1183; [1926] 1 W. W. R. 528.—CAN.

### PART III. SECT. 36, SUB-SECT. 15.—B.

*sd. General rule.*—In order to establish a fraudulent preference it must be clear that the substantial & dominant view of debtor was to give a preference, & it is not sufficient that the creditor was in fact preferred.—*Re NEW ZEALAND ELECTRICAL APPLIANCE & ENGINEERING CO., LTD.*, [1927] N. Z. L. R. 16.—N.Z.

*sf. Deposit of lease—To prevent creditor cashing post-dated cheque.*—Within the period of three months prior to the bkcy. of a co. a lease was deposited with a creditor of the co. by way of security & to prevent the creditor from cashing a post-dated cheque which he held from the co.—*Held*: as the purpose of the payment was to benefit debtor & to save him from creditors' pressure, there was no fraudulent preference.—*Re DROGHEDA & DISTRICT CO-OPERATIVE SOCIETY, LTD.* (1924), 58 1 L. T. 42.—IR.

*sg. Loan of stock by directors to company—Mortgage of stock—Assignment of equity of redemption to directors.*—*MICHELL v. BOOTH*, [1927] S. A. S. R. 576.—AUS.

**6746a. Payment to principal creditor—To relieve surety.**—Where a payment has been made to a principal creditor with the intent to a guarantor of the debt, *Bkpcy. Act*, 1914 (c. 59), s. 44, enables the liquidator in a compulsory winding up to recover payment from the person actually preferred.

A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within 1908 Act, s. 210, & a preliminary objection being raised that in any event no order for repayment could be made:—*Held*: the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re STANLEY (G.) & CO.*, [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

**6750. Add. Annotation:—Mentd.** *Guatemala (Republica de) v. Nunez* (1926), 95 L. J. K. B. 955.

**6751. Add. Annotations:—Mentd.** *King v. Sunday Pictorial Newspapers* (1920), (1924), 41 T. L. R. 229; *Knight v. Ponsonby*, [1925] 1 K. B. 545.

**6756a. Order of county court.**—This ct. will not entertain appeals from county ct. orders, unless the order appealed against has been completed & an office copy is produced for our inspection (*EVE, J.*).—*Re PARKES GARAGE (SWADLINCOTE), LTD.*, [1929] 1 Ch. 139; 98 L. J. Ch. 9; 140 L. T. 174; 45 T. L. R. 11; [1928] B. & C. R. 144, D. C.

**6775. Add. Annotations:—Refd.** *Cornish Mutual Assee. v. I. R. Comrs.*, [1926] A. C. 281; *Greenberg v. Cooperstein*, [1926] Ch. 657; *Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Asscn.* (1926), 135 L. T. 673. **Mentd.** *Brighton College v. Marriott*, [1925] 1 K. B. 312; *Re United General Commercial Insee. Corpn.*, [1927] 2 Ch. 51.

### PART III. SECT. 36, SUB-SECT. 17.

*sk. Order of province*—To enforce an order of the ct. of another province made under Winding-up Act the registrar should, on production thereof, enter it without direction as an order of the Supreme Ct. of British Columbia & proceed upon it as an ordinary record of that ct.—*Re HOME BANK*

321.—CAN.

### SECT. 36, SUB-SECT. 18.—C.

t. Add "revid. 14 S. C. R. 624"

### PART III. SECT. 36, SUB-SECT. 18.—D. (a).

e i. *S. P. Re DOMINION SHIPBUILDING & REPAIR CO., LTD.*, [1926] 3 D. L. R. 274; 59 O. L. R. 89.—CAN.

### PART III. SECT. 36, SUB-SECT. 18.—H.

sl. *Of directors appealing against order.*—The directors of a co. that was ordered to be wound up under Cos. Act retained in their hands certain moneys belonging to the co. & spent them on an appeal filed by the co. against the order of the winding up. The appeal was unsuccessful & there was no order of appellate ct., allowing

the costs of the co.'s advocates out of the estate.—*Held*: the official liquidator could, under the directions of the ct., allow the expenditure, if incurred *bond fide*, & up to a reasonable extent.—*MOOLLA v. OFFICIAL LIQUIDATOR* (1928), 1 L. R. 7 Ram. 31.—IND.

### PART III. SECT. 36, SUB-SECT. 19.—I.

*order.*—*Re SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., DAVIDSON v. SWANSON (Sask.)*, [1928] 2 W. W. R. 256.—CAN.

### PART III. SECT. 36, SUB-SECT. 20.

m i. — *On powers of liquidator—Power to complete formal act after dissolution of company.*—*KRISHNASWAMI NAIDU v. ANDI CHETTI* (1927), 1 L. R. 51 Mad. 681.—IND.

q i. — *Grounds for granting or refusing.*—*Re ALBURN PACIFIC, THOMAS v. LAWSON (B. C.)*, [1927] 3 D. L. R. 1126; [1927] 2 W. W. R. 662.—CAN.

### PART III. SECT. 37, SUB-SECT. 3.—B.

d i. — *Sufficiency of resolution.*—An extraordinary resolution for the winding up of a co., that it cannot "by reason of the passing & enforcement

**6811. Add. Annotation:—Mentd.** *Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.

**6823a. — Motion to validate debenture.**—*Re PARK WARD & CO., LTD.*, No. 5186a, *ante*.

**6857. Add. Annotation:—Consd.** *Re Windsor Steam Coal Co. (1901), Ltd.* (1928), 140 L. T.

**6857a. —**—A voluntary liquidator of a co. is not a trustee within Trustee Act, 1925 (c. 19), s. 68 (17), & is not entitled to the indemnity given to trustees by sect. 30 (1).—*Re WINDSOR STEAM COAL CO. (1901), LTD.*, [1928] Ch. 609; 97 L. J. Ch. 238; 72 Sol. Jo. 335; [1928] B. & C. R. 36; *affd.* on other grounds, [1929] 1 Ch. 151, C. A.

**6862. Add. Annotation:—Mentd.** *Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

**6874. Add. Annotations:—Consd.** *Chibbett v. Robinson* (1924), 132 L. T. 26; *Mudd v. Collins* (1925), 133 L. T. 186. **Distd.** *Reed v. Seymour* (1927), 11 Tax Cas. 625. **Refd.** *Seymour v. Reed*, [1927] A. C. 554; *Benyon Thorpe* (1928), 97 L. J. K. B. 707.

**6895. Add. Annotation:—Apld.** *Re Home Colonial Insee.* (1929), 45 T. L. R. 658.

**6904a. — By receiver—Liability of receiver.**—*THOMAS v. TODD*, No. 4979a, *ante*.

----- *Add. Citations:—*130 L. T. 1; [1923] B. & C. R. 114; *affg.* *S. C. sub nom. Re WEBB (H. J.) & CO. (SMITHFIELD, LONDON) LTD.*, [1922] 2 Ch. 369.

*Add. Annotations:—Refd.* *Re Winget, Burn v. Winget*, [1924] 1 Ch. 550. **Mentd.** *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137.

**6936a. — Deduction of income tax from payment of interest by company on mortgage.**—A co. having mortgaged all its property & assets, subsequently passed a resolution for voluntary winding up. Between the date of the mtge. & the commencement of the winding up the co. made no profits, but paid three several sums by way of interest on the mtge. less income tax. The co. never paid or accounted for such deductions of tax to the Inland Revenue Comrs.:—*Held*: inasmuch as such deductions could not be said to answer the description of a tax "assessed"

of Prohibition Act continue its business" is not the equivalent of the extraordinary resolution, authorised by Cos Act, R. S. B. C., 1911 (c. 39), s. 226 (3), as it stood prior to Nov. 1917, to the effect that the co. cannot by reason of its liabilities continue its business.—*DUNCAN & GRAY, LTD. v. SILVER SPRING BREWERY*, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—

d ii. — *Resolution providing for liquidator to act under supervision of directors.*—*Held*: highly objectionable.—*PARASHURAM DATARAM SHAM-DASANI v. TATA INDUSTRIAL BANK, LTD.* (1928), 55 L. L. Ind. App. 274.—IND.

### PART III. SECT. 37, SUB-SECT. 4.—B.

sm. *Payment to person purporting to be liquidator*—Where, after payment made to one purporting to be a liquidator, debt discovered that the payee was not legally a liquidator.—*Held*: the doctrine of estoppel was not applicable.—*DUNCAN & GRAY, LTD. v. SILVER SPRING BREWERY*, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—CAN.

### PART III. SECT. 37, SUB-SECT. 8. 6936 i. Preferential debts—Crown

on the co. within 1908 Act, s. 209 (1), the Crown could not be treated as having any preferential rights over other creditors in respect of it, & there was nothing in the language of the sub-sect. giving any priority to the debt.—*Re LANG PROPELLER, LTD.*, [1927] 1 Ch. 120; 95 L. J. Ch. 516; 136 L. T. 48; 42 T. L. R. 702; 70 Sol. Jo. 836, 11 Tax Cas. 46; [1926] B. & C. R. 127, C. A.

**6936b.** — **Rates—Payment by director—Preferential rights of director.**—*Re LAMPLUGH IRON ORE CO.*, No. 3105a, *ante*.

**6937.** *Add. Annotations* :—**Mentd.** *King v. Sunday Pictorial Newspapers* (1920), (1924), 41 T. L. R. 229; *Knight v. Ponsonby*, [1925] 1 K. B. 545.

**6958.** *Add. Annotations* :—*As to* (1) **Refd.** *I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52. *As to* (2) **Refd.** *Naval Colliery Co. v. I. R. Comrs.* (1928), 138 L. T. 593.

**6965.** *Add. Annotations* :—**Consd.** *Collaroy Co. v. Giffard*, [1928] Ch. 144. **Mentd.** *I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52; *Re Railways Act, 1921*, *Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.

**6974.** *Add. Citation* :—[1923] B. & C. R. 139.

**6977.** *Add. Annotations* :—*As to* (1) **Distd.** *Re Madame Tussaud*, [1927] 1 Ch. 657. **Refd.** *I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52; *Re Railways Act, 1921*, *Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.

**6980.** *Add. Annotation* :—**Refd.** *I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52.

**6984.** *Add. Annotation* :—*As to* (1) **Expld.** *Collaroy Co. v. Giffard*, [1928] Ch. 144.

**6986.** *Add. Annotation* :—*As to* (1) **Consd.** *Collaroy Co. v. Giffard*, [1928] Ch. 144.

**6987.** *Add. Annotation* :—**Apld.** *Re Dominion Tar & Chemical Co.*, [1929] 2 Ch. 387.

**6988.** *Add. Annotations* :—**Apld.** *Re Dominion Tar & Chemical Co.*, [1929] 2 Ch. 387. **Refd.** *Coulson v. Austin Motor Co.* (1927), 43 T. L. R. 493.

**6988a.** — **No dividend declared.**—The memorandum of assocn. of a co. provided that in the event of a winding-up the preference shareholders should be entitled to receive in full out of the assets the amount of capital paid up on their shares, & also all arrears of dividend due thereon at the date of winding-up. A resolution was passed for the winding-up of the co. in Apr. 1925, at which date no dividends on the preference shares had been declared or paid for over four years past. After the winding up there was a surplus sufficient to pay arrears of dividend due :—**Held** : no dividends having been declared between 1921 & 1925, none were due, & the preference shareholders were not entitled to be paid anything in respect of arrears.—*Re ROBERTS & COOPER, LTD.*, [1929] 2 Ch. 383; 98 L. J. Ch. 450; 141 L. T. 636.

*debts.*—A co., which had given a mtge. to the Crown under Fruit Preserving Industry Act, 1913, which mtge. was transferred to the State Advances Account, went into voluntary liquidation.—**Held** : the Crown debt had priority.—*TASMAN FRUIT PACKING ASSCOON., LTD. v. R.*, [1927] N. Z. L. R. 518.—N.Z.

**PART III. SECT. 37, SUB-SECT. 9.—A.**  
**sn.** *Restraint of distribution*—At

*instance of lessor—Until covenant to build completely performed—Notwithstanding assignment of lease with consent of lessor.*—*Re VICTORIA STREET PROPERTIES, LTD. (IN VOLUNTARY LIQUIDATION)*, [1927] N. Z. L. R. 95.—N.Z.

**PART III. SECT. 37, SUB-SECT. 9.—B.**

**6949 i.** *Liquidator's remuneration & costs—Realisation of security belong-*

**6988b.** — **Right to payment without deduction of income tax.**—Where upon the winding up of a co. the preference shareholders are entitled to payment of all arrears of dividend, & there is a fund available for payment, they are entitled to receive the full amount of the dividends in arrear without any deduction of income tax, in priority to any payment to the ordinary shareholders.—*Re DOMINION TAR & CHEMICAL CO., LTD.*, [1929] 2 Ch. 387; 98 L. J. Ch. 148; 45 T. L. R. 601.

**6989.** *Add. Annotation* :—**Consd.** *Collaroy Co. v. Giffard*, [1928] Ch. 144.

**6989a.** — **—**—A co. issued preference shares, which entitled the holders to a fixed cumulative preference dividend in priority to the ordinary shares, but not conferring any priority as regards capital. By the arts. of assocn. it was provided that subject to the rights of members entitled to shares issued upon special conditions the profits of the co. should be divisible among the members in proportion to the amount paid up on the shares held by them respectively. The co. was wound up voluntarily & the liquidator having paid all dividends & debts, & returned the whole of the paid-up capital to the shareholders, there remained surplus assets :—**Held** : (1) as long as the co. was a going concern the preference shareholders were entitled only to the preferential dividend, but on the voluntary winding up this preference was determined, & thenceforward the preference shares retained no preference or priority over the ordinary shares; (2) according to the constitution of the co. the *primâ facie* presumption in favour of equality of distribution amongst all the shareholders ought to obtain, & the surplus assets, including deposit interest, would be distributed amongst all the shareholders *pro rata* in proportion to the amount paid up on their shares.—*Re MADAME TUSSAUD & SONS, LTD.*, [1927] 1 Ch. 657; 96 L. J. Ch. 328; 137 L. T. 516; 43 T. L. R. 289; [1927] B. & C. R. 112.

**6989b.** — **—**—By the memorandum & arts. of assocn. of a co. it was provided that the preference shares should “confer the right to a fixed cumulative dividend” at a certain rate, “& shall rank, both as regards dividends & capital, in priority to the ordinary shares.” By the arts. it was provided in the same terms as to the dividends, & that the preference shares should “confer the right in a winding up to repayment of capital in priority to the ordinary shares” :—**Held** : the full rights of the holders of preference shares, both as to dividends & capital, were delimited by the contract between them & the co., & they were entitled to no further rights; nothing being said in the contract as to surplus assets, in the event of a winding up they were not entitled to share in any surplus assets.—

*ing to debenture-holders* :—The costs of a liquidator properly incurred by him in realising any property comprised in a security belonging to debenture-holders are payable out of the amount so realised upon such securities, but the remaining costs of the liquidator must be borne by the free assets, if any, of the co.—*Re WILLIS & RAYMOND, LTD. (IN LIQUIDATION)*, [1928] N. Z. L. R. 11.—N.Z.



COLLAROY CO., LTD. v. GIFFARD, [1928] Ch. 144; 97 L. J. Ch. 69; 138 L. T. 321; [1927] B. & C. R. 217.

7001. *Add. Annotations*:—*Distd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. *Refd. Re Stanton*, [1928] 1 K. B. 464.

7014a. — *Validity of winding-up order in question*.]—The validity of a winding up cannot be questioned on a motion in the winding up, but must be challenged in independent proceedings.—*Re EMPIRE BUILDERS, LTD., Re TRANSVAAL UNITED TRUST & FINANCE CO., LTD.* (1919), 88 L. J. Ch. 459; 121 L. T. 238; 63 Sol. Jo. 608.

7034. For the paragraph in the original volume substitute the following paragraph:—

— *Judgment after winding up—Right of company to recover money from third party based on company's liability to judgment creditor—No ground for not staying execution.*]—The manager of a co. fraudulently & without authority accepted bills of exchange in the co.'s name, & upon those bills the co. was sued to judgment by the holders. After the commencement of the action the co. went into voluntary liquidation. The co. subsequently recovered judgment in an action against a third party for damages for having wrongfully facilitated the commission of the above fraud, & for having thereby rendered the co. liable on the bills. The judgment creditors in the first action then sought to attach under a garnishee order the money so payable to the co. by the third party. On an application by the co. to stay the garnishee proceedings:—*Held*: where a judgment is recovered against a co. which is in voluntary liquidation the invariable practice of the ct. is to stay execution of the judgment unless there are very exceptional reasons for exercising its discretion otherwise, & the fact that the only right of the co. to recover the money claimed from the garnishees was based upon the co.'s liability to the judgment creditors was not such an exceptional circumstance as to take the case out of the

general rule.—*ANGLO-BALTIC & MEDITERRANEAN BANK v. BARBER & CO.* [1924] 2 K. B. 410; 93 L. J. K. B. 1135; 132 L. T. 1; [1924] B. & C. R. 224, C. A.

7043a. — *Preferential debts exceeding assets.*]—*Re SOUTH RHONDDA COLLIERY CO.* (1898), *LTD.*, [1928] W. N. 126.

7044a. — *Re NATIONAL STORES, LTD.* (1898), 42 Sol. Jo. 740.

7051. *Add. Annotation*:—*Mentd. Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137.

7064. *Add. Annotation*:—*Refd. Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

7074. *Add. Annotations*:—*Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769. *Refd. Re Wilts & Somerset Farmers*, [1928] Ch. 809.

7076. *Add. Annotation*:—*Refd. Wall v. Exchange Investment Corp.*, [1926] Ch. 143.

7082. *Add. Annotation*:—*As to (1) Refd. Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

7083. *Add. Annotation*:—*Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.

7102. *Add. Citation*:—130 L. T. 256.

7104. *Add. Annotation*:—*Mentd. Perry v. Equitable Life Assce. Soc. of U.S.A.* (1929), 15 T. L. R. 468.

7124. *Add. Annotation*:—*Mentd. Eastwood & Holt v. Studer* (1926), 31 Com. Cas. 251.

7146. *Add. Annotation*:—*Mentd. Public Trustee v. Elder*, [1926] Ch. 776.

7161. *Add. Annotation*:—*Refd. Soc. Anon. Pecheries Ostendaises v. Merchants Marine Insce.*, [1928] 1 K. B. 750.

7168. *Add. Annotation*:—*Refd. Morris v. Harris*, [1927] A. C. 253.

7169. *Add. Annotation*:—*Refd. Morris v. Harris*, [1927] A. C. 252.

7174a. — *Mode of application for order.*]—(1) Where a co. has been dissolved, & on the subsequent discovery of assets a motion is made under 1908 Act, s. 223 (1), to declare

PART III. SECT. 37, SUB-SECT. 10.

a1. — *To give directions to liquidator—What questions may be submitted.*]—*Re HAMILTON & CO., LTD. (IN LIQUIDATION)*, [1928] N. Z. L. R. 419.—N.Z.

PART III. SECT. 37, SUB-SECT. 11.—D.

sp. *Power of court to order stay—Under Indian Companies Act, 1913, s. 215*]—*Re SHI YOGASHIRAM PHARMACY, LTD. (IN LIQUIDATION)*, *Re MOHAN LAL MEHTA* (1927), 1 L. R. 50 All. 482.—IND.

PART III. SECT. 37, SUB-SECT. 13.—E. (b).

st. *Whether member of old company.*]—In 1917 a deed to carry into effect a scheme of liquidation was drawn up, but it was never in fact registered nor executed, although its terms were actually carried out, in that the great majority of shareholders in the co. surrendered their shares & received others in exchange. In 1924 certain of these shareholders held a meeting & appointed two of their number as liquidators & attempted to assume the direction of the liquidation.—*Held*: the shareholders, who in 1917 had relinquished their shares, accepting shares in the other cos. in exchange, had ceased to be other shareholders or contributories & had no right to take any part in the management of

the co.'s affairs.—*HUNTER v. DAMODAR DAS* (1924), 1 L. R. 46 All. 759.—IND.

PART III. SECT. 37, SUB-SECT. 13.—E. (f).

o. *Add "revid." 1 O. L. R. 480.*  
p1. *On contract—To pay commission.*] *BETHELL v. AUTOMATIC TOTALISATORS, LTD.* (1927), 28 S. R. N. S. W. 76; *affd.* 1 A. L. J. 386.—AUS.

PART III. SECT. 37, SUB-SECT. 14.—B.

sw. *Avoidance—Jurisdiction to order—For limited purpose only.*]—A co. went into voluntary liquidation, & was dissolved. Thereafter intimation was received from the Inland Revenue that a sum was repayable to the co. in respect of excess profits duty, & a petition was presented to the ct. by the co. & the liquidator for an order declaring the dissolution of the co. to have been void, for the purpose of the exercise by the liquidator of authority to receive the payment & to grant receipt therefor.—*Held*: it was incompetent under 1908 Act, s. 223, to declare the dissolution of a co. void for a limited purpose only. The petition was amended by the deletion of all reference to the purpose, & the ct. granted it as amended.—*Re CHAMPDANY JUTE CO., LTD.*, [1924] S. C. 209.—SCOT.

sz. — *Application more than two years after dissolution.*]—Eight years after a co. was dissolved by order of the ct., it was discovered that the liquidator had not dealt with a feu held by the co. The superior & the liquidator presented a petition craving the ct. to declare the dissolution void, & to authorise the liquidator to grant a disposition of the feu *ad perpetuum remanentum* in favour of the superior. The ct. refused the order craved.—*MacDONALD'S (LORD) CURATOR*, [1924] S. C. 489-90.—SCOT.

sb. — *—*]—A co. was dissolved for the purpose of reconstruction after the liquidator had entered into an agreement for the transfer of the assets, including certain heritable property, to a new co. The new co. entered into possession of the heritable property, but did not obtain a conveyance, & itself subsequently went into liquidation. More than two years after the dissolution of the old co., a petition was presented to the ct. by the liquidators of both cos. praying the ct. to declare the dissolution of the old co. to have been void, & to empower the liquidator of that co. to grant such titles as might be requisite to vest the heritable property in the new co. The ct. refused the order craved.—*FORTH SHIPBREAKING CO., LTD., PETITIONERS*, [1924] S. C. 489-90.—SCOT.



the dissolution void, notice of the motion ought to be given to the Treasury Solr. since on dissolution the undistributed assets pass to the Crown as *bona vacantia*. (2) Under sect. 242, as to removal of defunct cos. from the register, the same practice should be adopted where there are undistributed assets.—*Re HOME & COLONIAL INSURANCE CO., LTD.* (1928), 44 T. L. R. 718.

**7177a.** — *Effect of.*—An order of the ct., declaring the dissolution of a co. to have been void, does not affect the validity of proceedings taken during the interval between the dissolution & its avoidance.—*MORRIS v. HARRIS*, [1927] A. C. 252; 96 L. J. Ch. 253; 136 L. T. 587; [1927] B. & C. R. 65, H. L.

**7269.** *Add. Annotation.*—*Refd.* Houghton v. Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

**7370.** *Add. Annotation.*—*Refd.* Kirby v. Wilkins, [1929] 2 Ch. 444.

**7371a.** — *Scheme involving reduction of capital—Modification of rights of different classes of shareholders.*—*Re ODHAMS PRESS, LTD.*, [1925] W. N. 10.

**7382a.** — *Scheme involving reduction, reorganisation & increase of capital.*—*Re WALTERS (STEPHEN) & SONS, LTD.*, No. 839a, *ante*.

**7407a.** — *Omission to advertise—Sufficient majority present.*—Where there was an inadvertent omission to advertise a scheme of arrangement under 1908 Act, s. 120, but it was satisfactorily proved that thirty out of thirty-one shareholders of the co. had

received the notices:—*Held*: the meetings had in substance been held in manner prescribed, & the ct. would not insist on further meetings being convened.—*Re ANGLO-SPANISH TARTAR REFINERIES, LTD.* (1921), 68 Sol. Jo. 738.

**7409a.** — *—*—(1) Proxy papers to be used at meetings to consider schemes of arrangement should follow the form settled by the judge, which empowers the proxy "to vote for me & in my name [ ] the said scheme either with or without modification as my proxy may approve," & contains opposite the blank a marginal note as follows: "If for, insert 'for,' if against, insert 'against,' & strike out the words after 'scheme' & initial alterations." Proxies not according to this form will be properly rejected.

(2) On a scheme of arrangement being sanctioned, the ct. refused to re-appoint the original trustees for the debenture-holders, it having been proved that they had refused to give information to the debenture-holders as to the trust estate, & had in fact acquired debentures from their *cestuis que trust* at inadequate prices, & not in their own names, but in the names of cos. controlled by them.—*Re MAGADI SODA CO., LTD.* (1925), 91 L. J. Ch. 217; 41 T. L. R. 297; 69 Sol. Jo. 365; [1925] B. & C. R. 70.

**7452a.** *Notice of motion to be given to Treasury Solicitor—Where undistributed assets.*—*Re HOME & COLONIAL INSURANCE CO., LTD.*, No. 7174a, *ante*.

**PART III. SECT. 37, SUB-SECT. 15.—**  
A. (b) iii.

e i. — *—*—*Held*: in the absence of proof that creditors' rights or those of the contributories would be prejudiced by the voluntary winding up, applications for compulsory winding up must be dismissed.—*SANSAR CHAND v. KARAM CHAND* (1925), 1 L. R. 6 Lab. 340.—*IND.*

**PART III. SECT. 37, SUB-SECT. 15 —**  
A. (c).

sd. *Handing over of books by voluntary to compulsory liquidator—Lien of voluntary liquidator over books.*—*Re STOCKBRIDGE & CO., LTD.*, [1923] N. Z. L. R. 221.—*N.Z.*

**PART III. SECT. 39, SUB-SECT. 1.—B.**

i. — *Preferential treatment of creditor.*—Where a co. proposed a scheme of arrangement, under which a bank appeared to be secured to the extent of 20s. in the pound:—*Held*: the scheme was not one which, in view of the apparent preferential treatment accorded to the bank, the ct. should sanction.—*LAINIERE DE ROUBAIX v. GLEN GLOVE & HOSIERY CO., LTD.*, [1926] S. C. 91.—*SCOT.*

**PART III. SECT. 39, SUB-SECT. 1.—D.**

7387 ii. — *—*—The ct. refused to approve of a scheme of arrangement proposed by the insolvent debtor, an incorporated co., & accepted by a majority of its creditors, whereby the

preferred & secured creditors were to be paid by debtor, & the unsecured creditors paid in full by the allotment & issue to them of fully paid-up preference shares in the debtor co. or in a new co. to be incorporated. The scheme was not one which should be forced upon an unwilling creditor.—*Re LINDNIES, LTD.* (1921), 64 D. L. R. 717; 51 O. L. R. 116; 2 C. B. R. 49.—*CAN.*

**PART III. SECT. 39, SUB-SECT. 1.—**  
F. (a).

7399 ii. — *—*—*—*—Where a bank, being a secured creditor, improperly voted with the unsecured creditors:—*Held*: in the absence of the bank as a voting creditor, the necessary three-fourths in value would not have been obtained, & the procedure had not complied with 1908 Act, s. 120 (2).—*LAINIERE DE ROUBAIX v. GLEN GLOVE & HOSIERY CO., LTD.*, [1926] S. C. 91.—*SCOT.*

**PART III. SECT. 39, SUB-SECT. 1.—**  
F. (b).

sf. *Time for lodging.*—Creditors' proxies need not be lodged at any particular date.

Where proxies lodged by creditors within forty-eight hours of a meeting to approve a scheme of arrangement had been disallowed:—*Held*: the rejection of the proxies was wrong.—*LAINIERE DE ROUBAIX v. GLEN GLOVE & HOSIERY CO., LTD.*, [1926] S. C. 91.—*SCOT.*

**PART III. SECT. 40, SUB-SECT. 2.—A.**

7449 v. — *—*—*—*—A co. formed for the purpose of money-lending, which, having discontinued business, had been struck off the register, applied for an order to have its name restored thereto, the main ground of its application being that it desired to recover from a bkpt. estate a dividend which had become payable since the date of striking off:—*Held*: the application should be granted.—*CHARLES DALE, LTD.*, [1927] S. C. 130.—*SCOT.*

oi. — *Dissolution of company on non-compliance with statutory formalities.*—A co. which failed to comply with Cos. (Reconstitution of Records) Act (N.I.), 1923, & was thereupon dissolved, may be "replaced on" & "restored to" the register in accordance with sect. 5 (4).—*Re CLONARD BRICK & ESTATE CO., LTD.*, [1926] N. 17.—*IR.*

sl. *Effect of.*—Where a co. has defaulted in complying with Cos. Act, ss. 80–85, & its letters patent have been revoked & cancelled, & the default can be waived by showing that it was due to inadvertence, accident or neglect, the revocation is not complete but conditional, & on the revival of the charter, the co.'s existence must be considered to have been at no time interrupted.—*BANQUE CANADIENNE NATIONALE v. SAWHUCK*, [1926] 3 D. L. R. 964; [1926] 2 W. W. R. 771; 36 Man. L. R. 1.—*CAN.*

## Part IV.—Banking Companies.

**7462a.** ——— **Defences available—Liability for calls.]—Assumpsit** on a money demand against a joint stock banking co. Plea, after setting out the deed of settlement, to which pltf. was a party, a set-off for calls due on shares held by pltf. Replication, “not indebted.”—**Held:** (1) the replication was bad, the set-off being founded entirely on the deed; (2) the plea was good.—**MILVAIN v. MATHER** (1850), 5 Exch. 55; 1

L. M. & P. 220; 19 L. J. Ex. 227; 14 L. T. O. S. 446; 155 E. R. 24.  
**Annotation:—Generally, Refd.** *Smith v. Trowsdale* (1854), 18 Jur. 552.

**7479. Add. Annotation:—Consd.** *Spencer v. Ashworth Partington* (1925), 94 L. J. K. B. 447.

**7479a.** ———.]—**BARCLAY v. PEARSE** (1884), *Times*, Aug. 4, C. A.

**Annotations:—Distd.** *Perry v. Barnett* (1885), 14 Q. B. D. 467. **Apld.** *Seymour v. Bridge* (1885), 14 Q. B. D. 460.

## Part V.—Insurance Companies.

**7482. Add. Annotation:—Refd.** *Jacobs v. Batavia & General Plantations Trust*, [1924] 2 Ch. 329

**7482a. Power of company to vary rate of interest on loans to policy-holders.]—In an action by a policy-holder against an insurance co. for a declaration that the co. were not entitled to charge more than 4 per cent. interest on sums advanced on security of their policies, pltf. based his case on an alleged collateral contract or on established practice:—**Held:** there was no collateral contract, & the practice proved was to make loans at the rate of interest fixed by the board, & not to charge one fixed rate for all time.—**THISELTON v. COMMERCIAL UNION ASSURANCE CO.**, [1926] Ch. 888; 95 L. J. Ch. 447; 136 L. T. 114; 70 Sol. Jo. 892.**

**7485a. Companies to which Assurance Companies Act, 1909 (c. 49), applies—Employers’ liability insurance company—Carrying on business outside United Kingdom—What is.]—The above Act applies to employers’ liability insurance business carried on in the United Kingdom, though the risks run, & the liability insured against, originated outside the United Kingdom, as sect. 33 (1) (i) of the above Act refers to the place where the business is carried on & not to the place where the risks are run, the act of issuing the policies constituting the carrying on or transacting business.—**Re UNITED GENERAL COMMERCIAL INSURANCE CORPN.**, [1927] 2 Ch. 51; 96 L. J. Ch. 231; 136 L. T. 653; 71 Sol. Jo. 141, C. A.**

**Annotation:—Refd.** *First Russian Insce v. London & Lancashire Insce.*, [1928] Ch. 922.

**7490a.** ——— **Reinsurance of fire risks.]—The business of reinsuring fire risks is fire insurance business within Assurance Companies Act, 1909 (c. 49), & a foreign co., which carries on the business of reinsurance of fire risks in the United Kingdom, but does not otherwise carry on insurance business in England, is bound to deposit with the Paymaster-General the sum prescribed by s. 2 (1) of the Act.—**FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) v. A.-G.**, [1925] A. C. 639; 94 L. J. K. B. 712; 133 L. T. 151; 41 T. L. R. 473; 69 Sol. Jo. 543; 30 Com. Cas. 252, H. L.; *affg.* S. C. *sub nom.* A.-G. v. **FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN)** (1924), 93 L. J. K. B. 679, C. A.**

**Annotations:—Refd.** *First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922; *Re National Benefit Assce., Ex p. English Insce.*, [1928] Ch. 74.

**7493a.** ——— **R. S. C., Ord. 50, r. 2 (8).]**—**Re CANADA LIFE ASSURANCE CO.**, [1929] W. N. 46.

**7498. Add. Annotation:—Refd.** *Re Profits & Income Insce.*, [1929] 1 Ch. 262.

**7526a.** ———.]—Where an assurance co. having power under its memorandum of assocn. to transfer its business or any part thereof to another co. has agreed to transfer all its life business to another assurance co., & the proposed transfer has been sanctioned by the ct. upon a petition presented under Assurance Companies Act, 1909 (c. 49), s. 13, & all statutory requirements in connection with the transfer have been duly complied with, the effect is that all liability of the transferring co. towards its policy holders is completely

### PART IV. SECT. 4.

**an. Position of depositors.]—If a co. is deprived of the power to receive money on deposit, then in a subsequent bkprcy, liquidation of the co. the depositors claiming for moneys on deposit prior to its losing such powers will be paid in full, before depositors claiming for deposits made after it lost such powers. Withdrawals made by one of the second class of depositors will be appropriated by the ct. to his deposits made before the loss of such powers.—**Re NIPPON KINYO SHU, LTD., Ex p. TOTARO FUJINO**, [1923] 1 D. L. R. 1156; 32 B. C. R. 56; [1923] 1 W. W. R. 880; 3 C. B. L. 673.—**CAN.****

### PART V. SECT. 1.

**st. Grounds for granting or refusing**

**licence—Whether company carrying on business in good faith.]—**Re ALL RISK INSURANCE AGENCIES, LTD.** (B. C.), [1927] 3 D. L. R. 245; [1927] 3 W. R. R. 58.—**CAN.****

**7493 i. Power of directors to contract—Contract to stand surety for debt due by third party.]—**Held:** not within the co.’s arts. of assocn.—**HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE v. KHAISA BANK, LTD., GUJRANWALA** (1927), 1 L. R. 9 Lah. 360.—**IND.****

**8x. Superintendent of insurance—Powers—To alter annual statement of company.]—**Re SUN LIFE ASSURANCE CO.**, [1927] 4 D. L. R. 287.—**CAN.****

### PART V. SECT. 5.

**sa. British company doing business in Irish Free State.]—**A British insurance****

**co. doing business in the Irish Free State after Dec. 1922 claimed not to be liable to make any deposits in the Irish Free State in consequence of Constitution & Adaptation of Enactments Act, 1922, art. 73, & External Cos. Adaptation Order, 1923, on the ground that the Act had been complied with in 1914, when deposits were made in England:—**Held:** the co. was bound to make such deposits in the Irish Free State.—**WESTERN AUSTRALIAN INSURANCE CO. LTD. v. A.-G. & MINISTER FOR INDUSTRY & COMMERCE**, [1926] 1 R. 57; 59 L. T. 109.—**IR.****

**7498 i. Application of deposit on winding up.]—**Re NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN KY. CO.’S CASE**, [1927] 3 D. L. R. 289; [1927] 2 W. W. R. 348; 36 Man. L. R. 549.—**CAN.****

discharged, & the ct. can order payment out of the deposit money to the transferring co.—*Re UNITED BRITISH INSURANCE CO.*, [1929] 2 Ch. 430; 98 L. J. Ch. 444.

**7542a.** ————.]—*Re BRITANNIC ASSURANCE CO., LTD. & ASSURANCE COMPANIES ACT, 1909* (1927), 71 Sol. Jo. 729.

**7549.** *Add. Annotations*:—As to (1) *Refd.* *Cornish Mutual Assee. v. I. R. Comrs.*, [1926] A. C. 281. *Generally. Mentd.* *Brighton College v. Marriott*, [1925] 1 K. B. 312.

**7593.** *Add. Annotation*:—*Refd.* *Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 576.

**7600.** *Add. Annotation*:—As to (2) *Consd. & Apld.* *Re Profits & Income Insee.*, [1929] 1 Ch. 262.

**7609.** *Add. Annotation*:—*Consd.* *Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.

**7611a.** ———— *Former actuary—In receipt of pension.*]—On the resignation of the actuary & secretary of an insurance co. which, in addition to other branches of insurance business, carried on the business of ordinary life assurance, both by the issue of policies upon human life & by the granting of annuities upon human life, the directors passed a resolution granting him a pension. The co. was subsequently ordered to be wound up compulsorily, & the late actuary, having lodged a proof in respect of his pension, died before the proof was dealt with:—*Held*: that the annuity was an annuity within the meaning of the Assurance Cos. Act, 1909 (c. 49), & must be valued, as at the date of the winding-up order, in the manner indicated in that statute.—*Re PROFITS & INCOME INSURANCE CO.*, [1929] 1 Ch. 262; 98 L. J. Ch. 155; 140 L. T. 526; [1929] B. & C. R. 17.

**7612a.** ————.]—*Held*: the liquidator had rightly rejected a proof, in that the contract in respect of which the proof of debt was advanced, was a contract of marine insurance & no stamped policy was issued as required by law, so that the contract was invalid.—*ENGLISH INSURANCE CO. v. NATIONAL BENEFIT ASSURANCE CO. (OFFICIAL RECEIVER)*, [1929] A. C. 114; 98 L. J. Ch. 1; 140 L. T. 76; [1928] B. & C. R. 67, H. L.; *affg.* S. C. *sub nom.* *Re NATIONAL BENEFIT ASSURANCE CO., Ex p. ENGLISH INSURANCE CO.*, [1928] Ch. 74, C. A.

*Annotations*—*Distd.* *Re Norske Lloyd Insee*, [1928] W. N. 99. *Refd.* *Re Home & Colonial Insee*, (1929), 45 T. L. R. 658.

**7612b.** ———— *Effect of compromise under 1908 Act,*

*s. 214, accepted & acted on by parties.*]—*Re NORSKE LLOYD INSURANCE CO., LTD.*, [1928] W. N. 99.

**7620.** *Add. Annotation*:—*Consd.* *Re Profits & Income Insee.*, [1929] 1 Ch. 262.

**7622.** *Add. Annotation*:—*Refd.* *Re Profits & Income Insee.*, [1929] 1 Ch. 262.

**7623.** *Add. Annotations*:—As to (1) *Consd.* *Re Profits & Income Insee.*, [1929] 1 Ch. 262. *Refd.* *Re City Life Assee.* (1925), 42 T. L. R. 45.

**7625.** *Add. Annotations*:—*Distd.* *Re National Benefit Assee.*, [1924] 2 Ch. 339. *N.F.* *Re City Life Assee.* (1925), 42 T. L. R. 45.

**7626.** *Add. Annotation*:—*Refd.* *Re City Life Assee.* (1925), 42 T. L. R. 45.

**7627.** *Add. Annotations*:—*Overd.* *Re City Life Assee.* (1925), 42 T. L. R. 45. *Refd.* *Re National Benefit Assee.*, [1924] 2 Ch. 339.

**7627a.** ————.]—A policy-holder in a life assurance co. borrowed money from the co. on his policy. Before the death of the assured the co. was wound up, & the policy was valued under Assurance Companies Act, 1909 (c. 49). The policy-holder claimed to set off the value of the policy against his debt:—*Held*: *Bkpev. Act, 1911* (c. 59), s. 31, applied, there having been at the date of the winding up contractual obligations the breach of which might give rise to a claim for damages provable in the winding up, & the policy-holder was entitled to set off the value of his policy against his debt.—*Re NATIONAL BENEFIT ASSURANCE CO., LTD.*, [1924] 2 Ch. 339; 94 L. J. Ch. 33; 132 L. T. 50; 40 T. L. R. 755; 68 Sol. Jo. 753; [1924] B. & C. R. 231.

*Annotation*—*Apprvd. & Folld.* *Re City Life Assee. Co.* (1925) 42 T. L. R. 45.

**7627b.** ————.]—In the liquidation of a life insurance co. policy holders who have mortgaged their policies to the co. to secure advances are entitled under *Bkpev. Act, 1914* (c. 59), s. 31, as made applicable by 1908 Act, s. 207, to set off the statutory value of their policies in full against the money due on their mtges., if the co. held the mtges. at the date of the commencement of the winding up, but not if, before that date, the co. had equitably assigned the mtges. to trustees to secure a trust fund for the payment of a certain class of the policies.—*Re CITY LIFE ASSURANCE CO., LTD.*, [1926] Ch. 191; 95 L. J. Ch. 65; 134 L. T. 207; 42 T. L. R. 45; 70 Sol. Jo. 108; [1925] B. & C. R. 233, C. A.

*Annotation*—*Refd.* *Re Profits & Income Insee.*, [1929] 1 Ch. 262.

## Part VII.—Unregistered Companies.

**7650.** *Add. Annotation*:—*Refd.* *Employers' Liability Assee. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

**PART V. SECT. 8, SUB-SECT. 4—A.**  
e. i. ———— *Dominion Winding-up Act.*]—*Re CONTINENTAL FIRE & CASUALTY CO.*, [1924] 1 W. W. R. 132.—CAN.  
e. ii. ————.]—*Re CONTINENTAL FIRE & CASUALTY CO.*, [1924] 1 W. W. R. 1080.—CAN.

**PART VII. SECT. 2, SUB-SECT. 1.**

**7654 i.** *Power of court—Under Com-*

*panies Acts—Discretionary.*]—The general partner in a limited partnership consisting of two members presented a petition for the winding up of the partnership by the ct. & for the appointment of a liquidator:—*Held*: although it was competent for the ct. to appoint a judicial factor to wind up a limited partnership, the averments of parties showed that questions as to the liability of the limited partner

were likely to arise, & it was more expedient that the partnership should be wound up by the ct. —*MURHEAD v. BORDAND*, [1925] S. C. 474.—SCOT.

**PART VII. SECT. 2, SUB-SECT. 2.—A.**  
**7658 i.** ———— *"Unregistered company"*—*Benevolent society*—A co. & its directors instituted & endowed a benevolent society, which was not

## Part VIII.—Cost-Book Companies and Mining Companies in the Stannaries.

7723a. ————]—**COURTEIS v. JOHNSON** (1853), cited 10 Exch. 242, n.; 156 E. R. 433.

*Annotation* :—**Refd.** *Watson v. Spratley* (1854), 10 Exch. 222.

7726. *Add. Annotations* :—**Refd.** *Jebara v. Ottoman Bank*, [1927] 2 K. B. 251. **Mentd.**

*Prager v. Blatspiel Stamp & Heacock*, [1924] 1 K. B. 566.

7737. *Add. Annotation* :—**As to** (2) **Consd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

## Part IX.—Statutory Companies for Public Purposes.

7862. *Add. Annotation* :—**As to** (1) **Consd.** *Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756.

8045. *Add. Annotations* :—**Distd.** *Aylott v. West Ham Corpn.*, *Sisson v. Same* (1926), 95 L. J. Ch. 533. **Refd.** *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602; *Royal Trust Co. v. A.-G. for Alberta* (1929), 46 T. L. R. 25.

8126. *Add. Annotation* :—**As to** (2) **Refd.** *Cotter v. National Union of Seamen* (1929) Ch. 58.

8129. *Add. Annotation* :—**Refd.** *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

8176. *Add. Annotation* :—**Refd.** *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

8225. *Add. Annotation* :—**Consd.** *Hartland v. Diggin* (1924), 41 T. L. R. 131.

8243. *Add. Annotation* :—**Refd.** *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

8246. *Add. Annotation* :—**Refd.** *Morris v. Harris*, [1927] A. C. 252.

8302. *Add. Annotation* :—**Distd.** *Garrard v. James*, [1925] Ch. 616.

8339. *Add. Annotation* :—**Mentd.** *Wright v. Morgan*, [1926] A. C. 788.

8349. *Add. Annotation* :—**Generally, Mentd.** *Putsman v. Taylor*, [1927] 1 K. B. 637.

8361. *Add. Annotation* :—**Refd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

8365. *Add. Annotation* :—**Consd.** *Garrard v. James*, [1925] Ch. 616.

8366. *Add. Annotation* :—**Refd.** *Iiggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

8383. *Add. Annotation* :—**Generally, Mentd.** *Putsman v. Taylor*, [1927] 1 K. B. 637.

8389. *Add. Annotation* :—**As to** (1) **Appld.** *Garrard v. James*, [1925] Ch. 616.

8412a. ————]—**Re** *MERSEY RY. CO., GIBBS v. MERSEY RY. CO.* (1895), 11 T. L. R. 390.

8444a. ————]—A receiver & manager was appointed of the undertaking of a tramways co.—**BARTLETT v. WEST METROPOLITAN TRAMWAYS CO.**, [1893] 3 Ch. 437; 63 L. J. Ch. 208; 69 L. T. 560.

*Annotation* :—**Distd.** *Marshall v. South Staffordshire Tram. Co.*, [1895] 2 Ch. 36.

8458. *Add. Annotation* :—**Mentd.** *Aylott v. West Ham Corpn.*, *Sisson v. West Ham Corpn.* (1926), 90 J. P. 99.

8459. *Add. Annotation* :—**Mentd.** *Everett v. Griffiths*, [1924] 1 K. B. 941.

registered under Friendly Societies Act, 1896, & made it a condition in the contract of employment of its manual labourers that they should be members of the society. In addition to income derived from the endowment fund, further income was provided, in terms of the constitution, by the members paying small weekly sums to the society, which were deducted from their wages, & by the co. paying an equal amount. The members & their dependants were respectively entitled to sickness & death benefits. The management was vested in a committee which was elected by the members in annual general meeting. The co., having been bought up by a larger concern, went out of business, & the works were eventually closed down. A special meeting of the society

was thereafter held, at which it was resolved to cease receiving contributions & paying benefits. Subsequently certain officers of the society presented a petition for the winding up of the society as an "unregistered co." :—**Held** :—the society was not a "partnership, assocn., or co." within Cos. Act, 1908, Part VIII., s. 267, in respect that there was no contractual relation between the members *inter se*, & accordingly, that it could not be wound up under the Act as an "unregistered co."—**Re CALEDONIAN EMPLOYEES' BENEVOLENT SOCIETY**, [1928] S. C. 633.—**SCOT.**

### PART IX. SECT. 8, SUB-SECT. 5.—B.

b i. ——— *Necessity for.*—Where the directors of a railway co. at one meeting

made several calls, payable at intervals of two months from each other :—**Held** :—bad, for the calls cannot be made at less intervals than two months; & a stockholder who had paid the first call thus made, & then transferred his shares, was not responsible for the subsequent calls thus illegally made.—**MOORE v. McLAREN** (1862), 11 C. P. 534.—**CAN.**

b ii. ——— *How calculated.*—Where calls on stock were to be made "at periods of not less than three months' interval," & one call was made payable on Aug. 10, & another on Nov. 10 :—**Held** :—an interval of three months had not elapsed between the two calls, & that the second call was therefore bad.—**STADACONA FIRE & LIFE INSURANCE CO. v. MACKENZIE** (1878), 29 C. P. 10.—**CAN.**

## Part XII.—Foreign Companies.

**8510. Add. Annotations:—***Refd.* Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255; A.-G. v. Bclilios, [1928] 1 K. B. 798.

**8512. Add. Annotation:—***Refd.* Employers' Liability Assee. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

**8514. Add. Annotation:—***Refd.* Gilbert v. Gilbert & Bougher (1927), 96 L. J. P. 137.

**8520. Add. Annotation:—***Refd.* Midland Bank v. I. R. Comrs., [1927] 2 K. B. 465.

**8523.** For the portion of the paragraph in the original volume commencing with "*Held:*" substitute the following paragraph:—

*Held:* (1) upon the construction of the decrees of the Soviet Govt., defts. had not proved that pltf. bank was dissolved or that the property in the bonds was no longer in the bank; (2) it was not open to defts. to raise by way of defence to the action the objection that the London branch manager had no authority to bring the action in the name of pltf. bank, but they ought to have moved to strike out the name of the bank as pltf.—*RUSSIAN COMMERCIAL & INDUSTRIAL BANK v. COMPTOIR D'ESCOMTE DE MULHOUSE*, [1925] A. C. 112; 93 L. J. K. B. 1098; 132 L. T. 99; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

*Annotations:—*As to (1) *Apld.* Employers' Liability Assee. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015. As to (2) *Follid.* Banque Internationale de Commerce de Petrograd v. Goukassow, [1925] A. C. 150. *Consd.* The Jupiter (No. 2), [1925] P. 69; The Jupiter (No. 3) (1927), 137 L. T. 333. *Distd.* Page v. Scottish Insee. Corpn. (1929), 98 L. J. K. B. 308.

**8524.** For the paragraph in the original volume substitute the following paragraph:—

—A Russian bank having a head office in Petrograd & a branch in Paris had, through its Paris branch, a series of financial transactions with a customer as the result of which the customer was largely indebted to the bank. In 1920 the Paris manager brought an action in the name of the bank against the customer to recover the amount of the debt. Deft. pleaded that by virtue of the nationalisation of the Russian banks under decrees of the Soviet Govt. pltf. bank had ceased to exist, & that no one had authority to sue in the name of the bank:—*Held:* the case was governed by *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, No. 8523, *ante*, & the defence failed.—*BANQUE INTERNATIONALE DE COM-*

*MERCE DE PETROGRAD v. GOUKASSOW*, [1925] A. C. 150; 93 L. J. K. B. 1084; 132 L. T. 116; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

*Annotation:—**Refd.* The Jupiter (No. 3) (1927), 137 L. T. 333.

**8527a. ——— Whether company in existence.]**

—A Russian insurance co., having its principal office in Petrograd & a branch office in London, in accordance with 1908 Act, s. 274, filed with the registrar the name of C. as its authorised representative to accept service of process on its behalf. By a series of decrees passed in 1918 the Soviet Govt. purported to put all insurance cos. in Russia into liquidation & to appropriate their property. In the spring of 1923 C. sent a notice to the registrar that the co. which he represented had ceased to exist, & at his request this notice was placed upon the file. In the summer of the same year resps. brought an action against the co. by specially indorsed writ for payment of a sum of money claimed to be due to them in respect of certain insurance transactions. The writ was served upon C., who protested that he had no power to act for the co., & judgment was signed in default of appearance:—*Held:* (1) at the date of the writ the co. had not ceased to exist by virtue of the decrees of the Soviet Govt.; (2) the service of the writ on C. was valid; (3) the co. by putting on the file the name of a person authorised to accept service of process on its behalf agreed to submit to the jurisdiction of the Ct., & it must be assumed that the Russian Govt. would, according to the comity of nations, recognise the judgment as effective.—*EMPLOYERS' LIABILITY ASSURANCE CORPN. v. SEDGWICK COLLINS & CO.*, [1927] A. C. 95; 95 L. J. K. B. 1015; 42 T. L. R. 749; *sub nom.* SEDGWICK COLLINS & CO., LTD. v. ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L.; *affy.* S.C. *sub nom.* SEDGWICK COLLINS & CO. v. ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1, C. A.

*Annotations:—*As to (1) *Refd.* First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922. As to (3) *Apld.* Sabatier v. Trading Co., [1927] 1 Ch. 495. *Generally.* *Refd.* The Jupiter (No. 3) (1927), 137 L. T. 333.

**8542. Add. Annotation:—***Refd.* Sedgwick Collins v. Russia Insee. of Petrograd, [1926] 1 K. B. 1.

**8543. Add. Annotation:—***Refd.* Sedgwick Collins v. Russia Insee. of Petrograd (1925), 133 L. T. 808.

## PART X. SECT. 6.

*sb. Effect of Act respecting Capacity of Companies*, 1917 (c. 12).—The above Act deals only with the capacity of cos. to exercise their powers, & does not enlarge the powers themselves.—*Re* NORTH WESTERN TRUST CO., *Ex p.* PURE OIL CO., LTD. (MAN.), [1926] 1 D. L. R. 689; [1926] 1 W. W. R. 426; 35 Man. L. R. 433.—CAN.

## PART XII. SECT. 4.

t. (top of p. 1200). Read now "w."

w (p. 1200) i. — *Company holding no licence in mortmain.*—An insurance co., incorporated in a foreign State & holding no licence under Ontario Mortmain & Charitable Uses Act, but registered as authorised to do business in Ontario, applied to be registered as the transferee of a charge upon land:—

*Held:* the co. was entitled to be registered without any qualification as to proceedings that might be taken under that Act or any other Act affecting the holding of land by corps.—*Re* NEW YORK LIFE INSURANCE CO. (1924), 55 O. L. R. 408.—CAN.

q (p. 1200) i. — *Burden of proof of status to carry on business.*—*LA SALLE EXTENSION UNIVERSITY v. FREEMAN (Man.)*, [1926] 3 W. W. R. 474.—CAN.

c. (p. 1202). Add.—*revid.* 56 S. C. R. 539."

## PART XII. SECT. 8, SUB-SECT. 1.

e i. — *—*—A winding-up order by a Canadian ct. in the matter of a Scotch co. doing business in Canada, & having assets & owing debts in Canada, which order was made on

the petition of a Canadian creditor, with the consent of the liquidator previously appointed by the ct. in Scotland, as ancillary to the winding-up proceedings there:—*Held:* a valid order.—*Re* SCOTTISH CANADIAN ASSURANCE CO., *Allen v. HANSON* (1890), 18 S. C. R. 667.—CAN.

e ii. — *—*—Where a winding-up order had been made in England against an English co. prior to the making of a Canadian winding-up order.—*Held:* a double liquidation should be avoided, by treating the duties of the Canadian liquidator as ancillary to the English winding-up proceedings.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., *PACIFIC GREAT EASTERN Ry. Co.'s Case*, [1927] 3 D. L. R. 289; [1927] 2 W. W. R. 348; 36 Man. L. R. 549.—CAN.

## Part XIII.—Illegal Companies.

- 8576a.** ———.]—**HARVEY v. COLLETT** (1846), 15 Sim. 332; 4 Ry. & Can. Cas. 387; 15 L. J. Ch. 376; 10 Jur. 603; 60 E. R. 646.  
*Annotation* :—**Refd.** *Stewart v. Austin* (1866), 36 L. J. Ch. 162.
- 8581a.** ——— **Action against treasurer & secretary—Illegality will not prevent account.**—**GREENBERG v. COOPERSTEIN**, No. 272a, *ante*.
- 8582.** *Add. Annotation* :—**Refd.** *Greenberg v. Cooperstein*, [1926] Ch. 657.
- 8583.** *Add. Annotation* :—**Refd.** *Greenberg v. Cooperstein*, [1926] Ch. 657.
- 8587.** *Add. Annotations* :—**Refd.** *Cornish Mutual Assce. v. I. R. Comrs.*, [1926] A. C. 281; *Greenberg v. Cooperstein*, [1926] Ch. 657; *Thomas v. Evans*, *Jones v. South-West Lancashire Coal Owners' Assocn.* (1926), 135 L. T. 673. **Mentd.** *Brighton College v. Marriott*, [1925] 1 K. B. 312; *Re United General Commercial Insce. Corpn.*, [1927] 2 Ch. 51.

## Part XIV.—Companies under Private Acts.

- 8595a.** ——— **Name of member omitted from memorial of names of members—Deed not executed.**—**SCOTT v. BERKELEY** (1847), 3 C. B. 925; 5 Ry. & Can. Cas. 51; 16 L. J. C. P. 107; 8 L. T. O. S. 389; 11 Jur. 242; 136 E. R. 371.  
*Annotations* :—**Refd.** *Porter v. Emmens* (1876), 1 C. P. D. 201; *Kipling v. Todd* (1878), 3 C. P. D. 350. *Re South London Fish Market Co.*, *Plimsoll's Case* (1888), 1 Meg. 92.
- 8621a.** ———.]—**BROWNE v. LONDON NECRO-**  
**POLIS & NATIONAL MAUSOLEUM CO.** (1857), 6 W. R. 188.
- 8631.** *Add. Annotation* :—**Mentd.** *Harnett v. Bond*, [1924] 2 K. B. 517.
- 8633.** *Add. Annotations* :—**Consd.** *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443, **Refd.** *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48. **Mentd.** *Deuchar v. Gas Light & Coke Co.*, [1925] A. C. 691.

### PART XIV. SECT. 2, SUB-SECT. 3.

*sd. Subscription books—Conditions as to.*]—**MARMORA FOUNDRY CO. v. MURNEY** (1850), 1 C. P. 29. - CAN.

## COMMONS AND RIGHTS OF COMMON.

NOTE.—As to commons & rights of common after 1925, see Law of Property Act, 1925 (c. 20), ss. 193, 194.

### Part II.—Different Kinds of Rights of Common.

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| <p>18. <i>Add. Annotation</i> :—As to (1) <b>Refd.</b> <i>Stoney v. Eastbourne R. C. &amp; Devonshire</i> (1926), 95 L. J. Ch. 312.</p> <p>144. <i>Add. Annotation</i> :—<b>Mentd.</b> <i>Back v. Daniels</i> (1924), 69 Sol. Jo. 160.</p> | <p>224. <i>Add. Annotations</i> :—<b>Generally, Mentd.</b> <i>Verge v. Somerville</i>, [1924] A. C. 496; <i>Re Gwyon</i>, Public Trustee v. A.-G. (1929), 46 T. L. R. 96.</p> <p>226. <i>Add. Annotation</i> :—As to (2) <b>Refd.</b> <i>Hodgson v. McCreagh</i> (1923), 92 L. J. Ch. 426.</p> |
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### Part V.—Right of Free Warren.

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| <p>323. <i>Add. Annotation</i> :—<b>Consd.</b> <i>Hodgson v. McCreagh</i> (1923), 93 L. J. Ch. 339.</p> <p>323a. — In demesne land—Is warren in gross.] —Deft., lord of the manor of B., claimed sporting rights over plfts.' freehold farms within the manor, basing his claim on a franchise of free warren appurtenant to the manor granted by the Crown to J., in 1301; alternatively, on a lost grant, presumed from immemorial user :—<b>Held</b> : the grant to J. in 1301 was of a franchise in gross, &amp; even if not in gross, it would have passed by J.'s subsequent alienation of the land, or become a franchise in gross by J.'s reserving the franchise upon the occasion of that alienation; there was therefore no title in deft. by the grant of the manor, &amp; there was no</p> | <p>evidence supporting his claim by prescription to the presumption of a lost grant.—<b>HODGSON v. MCCREAGH</b> (1923), 93 L. J. Ch. 339; 131 L. T. 340; 40 T. L. R. 10; 68 Sol. Jo. 58, C. A.</p> <p>329. <i>Add. Annotation</i> :—<b>Refd.</b> <i>Hodgson v. McCreagh</i> (1923), 93 L. J. Ch. 339.</p> <p>339. <i>Add. Annotation</i> :—<b>Generally, Mentd.</b> <i>The Fagernes</i>, [1926] P. 185.</p> <p>347. <i>Add. Annotation</i> :—<b>Consd.</b> <i>Hodgson v. McCreagh</i> (1923), 93 L. J. Ch. 339.</p> <p>347a. <b>Alienation reserving franchise of free warren.]</b> —<b>HODGSON v. MCCREAGH</b>, No. 323a, <i>ante</i>.</p> <p>349a. — By alienation of soil—Although soil reacquired.]—<b>R. v. SHIRLAND</b> (1314), Y. B. 6 &amp; 7 Edw. 2, VIII. Sel. Soc. (Vol. III., Eyre of Kent) 181.</p> |
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### Part VI.—Creation and Proof of Rights of Common.

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| <p>366. <i>Add. Annotation</i> :—<b>Generally, Mentd.</b> <i>Verge v. Somerville</i>, [1924] A. C. 496.</p> | <p>452. <i>Add. Annotation</i> :—<b>Mentd.</b> <i>Hulley v. Silver-springs Bleaching Co.</i>, [1922] 2 Ch. 268.</p> |
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### Part VIII.—Acquisition of Commons under Compulsory Powers.

554. *Add. Annotation* :—**Mentd.** *British Thomson-Houston Co. v. British Insulated & Helsby Cables*, [1924] 2 Ch. 160.

### Part IX.—Rights, Remedies and Liabilities of Lord of Manor as Owner of Soil.

640. *Add. Annotation* :—**Mentd.** *Weber v. Birkett*, [1925] 1 K. B. 720.

## Part X.—Rights and Remedies of Commoners.

693. *Add. Annotation*:—**Mentd.** *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

## Part XIII.—Inclosure of Commons and Common Fields.

886. *Add. Annotation*:—**Refd.** *Back v. Daniels*, [1925] 1 K. B. 526.893. *Add. Annotations*:—*As to* (4) **Refd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135. *As to* (5) **Refd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.899. *Add. Annotation*:—*As to* (1) **Consd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.900. *Add. Annotation*:—**Consd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.901. *Add. Citation*:—[1922] 2 Ch. 187, n.*Add. Annotation*:—**Folld.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.

903. For the paragraph in the original volume substitute the following paragraph:—

—By the *Lancaster Inclosure Act, 1773*, the moors & commons of the manor of *Lancaster, Durham*, were divided & allotted. The Act provided that the lord of the manor & his assigns should have, hold & enjoy all mines & minerals within & under the allotments, with full & free liberty of searching for, draining, winning & working the mines & minerals by any ways or means then in use or thereafter to be invented as fully & freely, as he might or could have had, held, used & enjoyed the same in case that Act had not been made without paying any damages or making any satisfaction for so doing; & also that the annual rental of a certain allotment to the justices should be applied in or towards the compensation of those allottees whose allotments were damaged by the exercise of the lord's mining rights, & that any deficiency should be made up by means of a rate levied upon all the allottees:—*Held*: (1) the case was governed by the decision of the Ct. of Appeal in *Consett Waterworks Co. v. Ritson*, No. 901, *ante*, which was a decision on the identical question arising on the construction of the same Act & in the same circumstances, & although the reasoning upon which that decision was founded had been disapproved of by the House of Lords in *Butterknowle Colliery Co. v. Bishop Auckland Industrial Co.*, No. 905, *post*, the decision itself had not been overruled & was therefore binding upon the *ct.*, & *defts.* had a right to work the mines so as to let down the surface of the land without paying damages or making any compensation to *plffs.*; (2) (*YOUNGER, L.J.*) the decision at which the Ct. of Appeal had felt itself compelled to arrive in deference to

authority binding upon it might quite well have been reached on the construction of the Act itself apart altogether from the decision by which it was bound.—**CONSETT INDUSTRIAL & PROVIDENT SOCIETY, LTD. v. CONSETT IRON CO.**, [1922] 2 Ch. 135; 91 L. J. Ch. 630; 127 L. T. 383; 38 T. L. R. 584; 66 Sol. Jo. 452, C. A.

905. *Add. Annotation*:—**Consd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.906. *Add. Annotation*:—**Consd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.909. *Add. Annotations*:—*As to* (2) **Consd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135. *As to* (3) **Consd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.911. *Add. Annotation*:—*As to* (2) **Consd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.913. *Add. Annotation*:—**Refd.** *Taylor v. British Legal Life Assee.*, [1925] Ch. 395.939a. *As to fences—Power to direct maintenance.*—Notwithstanding the omission from *Inclosure Act, 1836* (c. 115), of an express power for the *comrs.* to direct the repair & maintenance of fences, the erection of which by the respective allottees of land that Act empowers them to direct, such a power is nevertheless conferred upon them by the Act by implication.—*GARNETT v. PRATT*, [1926] Ch. 897; 95 L. J. Ch. 453; 135 L. T. 471; 70 Sol. Jo. 736.942a. *Trespass—Power to maintain—Interference with stake.*—*DRIVER v. SIMPSON* (1818), 8 Taunt. 614, n.; 2 Moore, C. P. 682, n.; 120 E. R. 523*Annotation*:—**Distd.** *Newcastle v. Clark* (1818), 2 Moore, C. P. 666.953. *Add. Annotation*:—**Mentd.** *R. v. Electricity Comrs.*, *Ex p. London Electricity Joint Committee*, [1924] 1 K. B. 171.985. *Add. Annotations*:—*Generally*, **Mentd.** *R. v. Nat. Bell Liquors*, [1922] 2 A. C. 128; *R. v. Lincolnshire J.J.*, *Ex p. Brett*, [1926] 2 K. B. 192; *Palmer v. Crone*, [1927] 1 K. B. 804.1009. *Add. Annotation*:—**Mentd.** *Leyton U. D. C. v. Wilkinson*, [1927] 1 K. B. 853.1013. *Add. Annotation*:—*Generally*, **Mentd.** *White v. Williams*, [1922] 1 K. B. 727.1016. *Add. Annotation*:—**Mentd.** *Hulley v. Silver-springs Bleaching Co.*, [1922] 2 Ch. 268.1023. *Add. Annotation*:—*As to* (1) **Refd.** *Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.

## Part XIV. Regulation of Commons.

1089. After this case add “— **Injunction to restrain promotion—Scheme inconsistent with****prior conveyance.**—*See* *INJUNCTION*, Vol. XXVIII., pp. 469, 470, No. 789.”



# COMPULSORY PURCHASE OF LAND AND COMPENSATION.

## Part I.—Compulsory Powers over Land.

4. *Add. Annotations* :—*As to* (2) **Dlstd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. v. Leetham, [1924] 1 Ch. 557.
5. *Add. Annotation* :—**Mentd.** Edwards v. A.-G. for Canada (1929), 46 T. L. R. 4.
7. *Add. Annotations* :—*As to* (3) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey, [1929] 1 Ch. 686; Farnworth v. Manchester Corpn., [1929] 1 K. B. 533.
19. *Add. Annotation* :—**Refd.** R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co., [1924] 1 K. B. 171.

## Part II.—Conditions attached to the Powers.

28. *Add. Annotations* :—*As to* (2) **Consd.** Rockingham Sisters of Charity v. R., [1922] 2 A. C. 315. **Refd.** Manchester Corpn. v. Farnworth (1929), 46 T. L. R. 85.
48. *Add. Annotation* :—**Mentd.** Farnworth v. Manchester Corpn., [1929] 1 K. B. 533.
56. *Add. Annotation* :—**Refd.** S. E. Ry. v. Cooper, [1924] 1 Ch. 211.
- 62a. —.]—The Board of the Railway Comrs. for Canada made an order directing a railway co. to construct a subway so that, owing to the increased traffic the existing roadway should be lowered & pass under the railway instead of crossing it on the level, & ordering that detailed plans be filed for the approval of the chief engineer of the Board :—**Held** : (1) the subway was not part of the undertaking of the railway, so as to enable the co. to take possession of land under Expropriation Act, R. S. C., 1906 (c. 143), for the purpose of the railway proper, & the lowered road still remained part of the road belonging to the municipality; (2) detailed plans must be detailed plans of what was actually lodged as the general plan, & it was not within the liberty of the co. to enlarge the scope of the original plan & provide for a new access to the subway & the taking of land. Detailed plans were only to show the precise way in which the construction was to be made.—**BOLAND v. CANADIAN NATIONAL RY. CO.**, [1927] A. C. 198; 95 L. J. P. C. 209; 136 L. T. 197, P. C.
67. *Add. Annotation* :—**Refd.** Farnworth v. Manchester Corpn., [1929] 1 K. B. 533.
88. *Add. Annotations* :—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey, [1929] 1 Ch. 686; Farnworth v. Manchester Corpn., [1929] 1 K. B. 533.
91. *Add. Annotations* :—**Refd.** Conron v. L. C. C., [1922] 2 Ch. 283; Roberts v. Hopwood, [1925] A. C. 578. **Mentd.** Short v. Poole Corpn. (1925), 42 T. L. R. 107.
98. *Add. Annotation* :—**Refd.** Conron v. L. C. C., [1922] 2 Ch. 283.
- 99a. — **Subway.**] — **BOLAND v. CANADIAN NATIONAL RY. CO.**, No. 62a, *ante*.
109. *Add. Annotation* :—*As to* (1) **Refd.** Conron v. L. C. C., [1922] 2 Ch. 283.
110. *Add. Annotation* :—**Refd.** Conron v. L. C. C., [1922] 2 Ch. 283.
111. *Add. Annotation* :—*As to* (1) **Refd.** Conron v. L. C. C., [1922] 2 Ch. 283.
113. *Add. Annotation* :—**Mentd.** Roberts v. Hopwood, [1925] A. C. 578.
114. *Add. Annotation* :—**Refd.** Conron v. L. C. C., [1922] 2 Ch. 283.
116. *Add. Annotation* :—**Refd.** Sydney Municipal Council v. Campbell, [1925] A. C. 338.
- 116a. — **Land not bonâ fide intended to be taken for purpose.**]—Applts. had statutory power to acquire compulsorily land required for the purpose of making or extending streets, also land required for "carrying out improvements in or remodelling any portion of the city." In connection with the extension of a street, they resolved to acquire resps.' land for the latter purpose. They had previously been restrained from acquiring the land for the extension, on the ground that it was not really required for that purpose, but that its purchase was desired because of its probable increase in value. No plan for improving or remodelling the area was considered or proposed, & evidence as to proceedings in the council showed that applts. were endeavouring to give a new form to the transaction

### PART II. SECT. 2, SUB-SECT. 1.

**sa.** Land in use "otherwise for more convenient occupation" of building—**Municipal Act**, s. 325.—**SURREY DISTRICT CORPN. v. CAINE** (1920), 67 D. L. R. 794; 28 B. C. R. 321.—**CAN.**

**m i.** — **Public Works Act**, R. S. B. C., 1911 (c. 189)—**Validity of contract by Minister of Public Works.**—A contract made by the Minister for the purchase of land for a public pur-

pose does not bind the Crown unless the acquisition of the land has been authorised by an Order in Council, or a resolution in Council amounting to an order, even if the contract is sealed with the seal of the Department.—**MACKAY v. A.-G. FOR BRITISH COLUMBIA**, [1922] 1 A. C. 457.—**CAN.**

**m ii.** — **Expropriation Act**, 1906 (c. 143)—**Discretion of Minister.**—As to the propriety & necessity of expropriation the Minister is the sole judge

& the ct. has no jurisdiction to interfere with his discretion.—**Imperial Bank of Canada**, [1923] 3 D. L. R. 345.—**CAN.**

### PART II. SECT. 3, SUB-SECT. 3.—**B. (a).**

**sb.** Land taken for building **Toronto Viaduct—What Act applicable.**—**CANADIAN NATIONAL RY. CO. v. TORONTO IRON WORKS**, [1926] Exch. C. R. 133.—**CAN.**

- previously decided upon, rather than considering whether resps.' land was required for improving or remodelling:—*Held*: the evidence sustained the lower ct.'s conclusion of fact that applts. were exercising their powers for a purpose differing from those specified by the statute, & they had rightly been restrained from acquiring resps.' land.—*SYDNEY MUNICIPAL COUNCIL v. CAMPBELL*, [1925] A. C. 338; 133 L. T. 63; *sub nom.* *SYDNEY MUNICIPAL COUNCIL v. CAMPBELL*, *SAME v. HUGHES MOTOR SERVICE, LTD.*, 94 L. J. P. O. 65, P. C.
120. *Add. Annotation*:—*Mentd.* Busby v. Avgherino, [1928] A. C. 290.
126. *Add. Annotation*:—*Refd.* Conron v. L. C. C., [1922] 2 Ch. 283.
129. *Add. Annotation*:—*Refd.* Manchester Corpn. v. Farnworth (1929), 46 T. L. R. 85.
- 133a. — For pleasure gardens & street widening —Part used for pleasure garden—May be subsequently used for street widening.—A local authority bought land in 1896 for the purposes of: (1) street widening; (2) making new streets; (3) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution:—*Held*: as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—*A.-G. v. SUNDERLAND CORPN.*, [1929] 2 Ch. 436; 45 T. L. R. 618; 93 J. P. Jo. 480; *affd.*, 46 T. L. R. 10, C. A.
134. *Add. Annotation*:—*Apld.* *A.-G. v. Sunderland Corpn.*, [1929] 2 Ch. 436.
135. *Add. Annotation*:—*As to* (1) *Distd.* *A.-G. v. Sunderland Corpn.* (1929), 46 T. L. R. 10.
136. *Add. Annotation*:—*Distd.* *A.-G. v. Sunderland Corpn.* (1929), 46 T. L. R. 10.
139. *Add. Annotations*:—*As to* (1) *Distd.* *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. *Consd.* *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355. *Refd.* *York Corpn. v. Leatham*, [1924] 1 Ch. 557. *Generally*, *Mentd.* *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.
140. *Add. Annotations*:—*Generally*, *Refd.* *Aldridge v. Wright*, [1929] 2 K. B. 117. *Mentd.* *Long v. Gowlett*, [1923] 2 Ch. 177.
142. *Add. Annotations*:—*Consd.* *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355. *Refd.* *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
143. *Add. Annotations*:—*Consd.* *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. *Refd.* *York Corpn. v. Leatham*, [1924] 1 Ch. 557; *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.
145. *Add. Annotation*:—*Refd.* *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.
146. *Add. Annotation*:—*As to* (4) *Refd.* *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.

## Part III.—Principles of the Law of Compensation.

155. *Add. Annotations*:—*Mentd.* *Jackson v. Simons*, [1923] 1 Ch. 373; *Chaplin v. Smith*, [1926] 1 K. B. 198.
160. *Add. Citation*:—*sub nom.* *R. v. MIDLAND, ETC. RY. CO., Ex. p. BROWN*, 8 B. & S. 456. *Add. Annotation*:—*Refd.* *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.

### PART III. SECT. 1, SUB-SECT. 2.—A.

149 ii. — *Subsequent conveyance unregistered.*—If a municipal corpn. takes expropriation proceedings for a highway under Municipal Act, s. 362, & compensation is awarded to the registered owner, the municipal corpn. cannot refuse payment to the registered owner on the ground that after filing his claim he executed a conveyance which remains unregistered.—*NORTH COWICHAN CORPN. v. GOIRE-LANGTON*, [1921] 2 W. W. R. 484.—CAN.

149 iii. — *Unless right to compensation reserved by vendor.*—*Re CODVILLE* (1907), 5 W. L. R. 140; 16 Man. L. R. 426.—CAN.

c i. — *After expropriation.*—The Crown expropriated the right to flood property which belonged to V., who subsequently sold to H. together with V.'s right to recover the compensation from the Crown for all damages caused by flooding & expropriation.—*Held*: H. was entitled to recover compensation for damages to his land by flooding, & by the expropriation of the easement to flood.—*R. v. HYE* (1921), 21 Exch. C. R. 76.—CAN.

### PART III. SECT. 1, SUB-SECT. 3.—A.

156 ii. — *Re SCOTT & OSHAWA TOWN* (1922), 52 O. L. R. 504.—CAN.

156 iii. — *The right to receive compensation for land taken depends upon the statute or order which authorises the taking, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.*—*Re POWELL & TORONTO CORPN.*, [1925] 2 D. L. R. 796; 56 O. L. R. 541.—CAN.

f (p. 124) i. — *Where a county corpn. expropriated certain toll roads: Held*: the value to the owner & not to the taker was the basis upon which the compensation should be awarded, & while the roads had become a burden instead of a benefit to their owners, they were entitled to be paid for the physical assets they possessed—road material in place, bridges, culverts, ditches & parts of roads owned in fee.—*Re OTTAWA & GLOUCESTER ROAD CO. & COUNTY OF CARLETON* (1921), 69 D. L. R. 486; 51 O. L. R. 467.—CAN.

f (p. 124) ii. — *Re NEW BRUNSWICK POWER COMMISSION*

& INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—CAN.

1 (p. 124) i. — *Contracting evidence.*—*R. v. ARCHER*, [1925] 3 D. L. R. 355; [1925] S. C. R. 684.—CAN.

1 (p. 124) ii. — *Where the evidence of expert witnesses as to value is conflicting, neither the arbitrators nor the ct. should endeavour to arrive at the true result by "averaging of witnesses," or "splitting the difference."*—*Re LENNOX & TORONTO BOARD OF EDUCATION* (1926), 58 O. L. R. 427.—CAN.

1 (p. 124) iii. — *While the "averaging of witnesses" or "splitting the difference" is an improper way of reaching an award, some discretion & freedom may nevertheless be allowed the arbitrators; they are bound to exercise their judicial functions in dealing with the evidence.*—*WINNIPEG v. CROSS*, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—CAN.

q i. — *Re REDDIAR & SAN CHHEN v. SECRETARY OF STATE FOR INDIA IN COUNCIL & COLLECTOR OF*

169. *Add. Annotations:—As to (2) Refd. Swift v. Board of Trade, [1925] A. C. 520; Swift v. Board of Trade, [1926] 2 K. B. 131.*

171. *Add. Annotation:—Refd. Swift v. Board of Trade, [1926] 2 K. B. 131.*

186. *Add. Annotation:—Refd. Glenboig Union*

*Fireclay Co. v. I. R. Comrs. (1922), 12 Tax Cas. 427.*

187. *Add. Annotation:—As to (1) Apld. Swift v. Board of Trade, [1926] 2 K. B. 131.*

197. *Add. Annotations:—As to (2) Refd. S. E. Ry. v. Cooper, [1924] 1 Ch. 211. Generally, Mentd. Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.*

RANGOON (1927), I. L. R. 5 Ran. 799.—IND.

o (p. 125) i. ——— *Equivalent to value to owner.*—The market value of the land acquired is the price that the owner willing, & not obliged, to sell might reasonably expect from a willing purchaser. There is no difference between the term "value to the owner" as used in the Land Clauses Act, in England, & the expression "market value" as used in Land Acquisition Act, s. 23.—SWARNA MANJUM DASSI v. SECRETARY OF STATE FOR INDIA (1927), I. L. R. 55 Cal. 991.—IND.

k (p. 125) i. ——— *Where by reason of expropriation by the Crown the owners of the property taken suffer materially & are put to great trouble in moving, & the site so taken was most advantageous & it took several years of negotiating before they were able to find a new & suitable place for their operation, the ct. should add ten per cent. to the fair market value of the property taken, for contingent losses & inconveniences, in fixing the compensation.*—R. v. ROYAL NOVA SCOTIA YACHT SQUADRON (1921), 21 Exch. C. R. 160.—CAN.

k (p. 125) ii. ——— *Re TORRANCE & PROVINCE OF ONTARIO, Re NOBLE & PROVINCE OF ONTARIO, Re PARKDALE BOULEVARD, LTD. & PROVINCE OF ONTARIO, [1923] 3 D. L. R. 1136; 52 O. L. R. 325.—CAN.*

k (p. 125) iii. ——— *There is no foundation for the view that the "allowance for disturbance" usually added in awards to the value found is arbitrarily fixed at ten per cent.; an award of six per cent. may be ample.*—Re LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—CAN.

k (p. 125) iv. ——— *An "allowance for disturbance," & the amount thereof, seem to be in the discretion of the arbitrators.*—WINNIPEG v. CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 641; 37 Man. L. R. 40.—CAN.

k (p. 125) v. ——— *R. v. McPHERSON (1914), 15 Exch. C. R. 215; 20 D. L. R. 988.—CAN.*

p (p. 125) i. ——— *Not value according to quantity survey.*—It. v. IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—CAN.

se. ——— *Value of assets necessary to operation of undertaking.*—TORONTO (CITY) CORPN. v. TORONTO RAILWAY CORPN., [1925] A. C. 177; 94 L. J. P. C. 25; 132 L. T. 401.—CAN.

sd. ——— *Where land of college taken for street—Under disputed agreement.*—ST. MICHAEL'S COLLEGE v. TORONTO CITY CORPN., [1926] 2 D. L. R. 244; [1926] S. C. R. 318; *varying*, 27 O. W. N. 474; *varying*, 26 O. W. N. 413.—CAN.

se. ——— *Value for commercial purposes.*—Where the residence & adjoining consulting rooms of a medical practitioner were situated in a position which was more suitable for a business site than a medical practitioner's residence, & compensation was assessed on the basis of the value of the land for a commercial purpose:—*Held*: the correct method of assessing compensation had been adopted.—GUNSON v. MUNICIPAL TRAMWAYS TRUST, [1927] S. A. S. R. 276.—AUS.

# PART III. SECT. 1, SUB-SECT. 3.—B.

u i. ——— *R. v. KELLY (1921), 63 D. L. R. 402; 21 Exch. C. R. 205.—CAN.*

u ii. ——— *An owner of property is not entitled to claim some prospective value of the property remote in its character & only realisable upon the expenditure of enormous sums of money.*—R. v. COLEMAN, [1926] Exch. C. R. 121.—CAN.

b (p. 125) i. ——— *How estimate to be made.*—In determining the market value of land acquired under Land Acquisition Act, 1894, the value should be estimated with reference to the most lucrative & advantageous manner in which the land might be used.

The operative effect of the special adaptability of the land or its future utility must be estimated not by idle speculation or impractical imagination, but by prudent business considerations such as would weigh with a purchaser intending to buy the land in the open market.—*MAHARAJADHIRAJA SIR RAMESHWAR SINGH BAHADUR v. SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), I. L. R. 8 Pat. 793.—IND.*

# PART III. SECT. 1, SUB-SECT. 3.—C.

o i. ——— *R. v. LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—CAN.*

o ii. ——— *Re NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—CAN.*

169 i. For "169 i." read "170 i."

# PART III. SECT. 1, SUB-SECT. 3.—D.

p i. ——— *Re LETROS & TORONTO CORPN (1924), 56 O. L. R. 175.—CAN.*

fi. ——— *Flooding of neighbourhood.*—The Crown expropriated the right to flood a part of L's property, on the erection of a dam, a public work. L. claimed, besides compensation for easement taken on his property, that he should be compensated for damages to his trade, resulting from the decrease of population, due to the flooding of neighbouring farms:—*Held*: no claim could arise in respect of an inconvenience common to the public generally.—R. v. LAFOND (1921), 69 O. L. R. 127; 21 Exch. C. R. 55.—CAN.

176 iii. ——— *Cost of removal.*—While allowance ought not to be made for loss of business or estimated profits, yet where a lessee of a store has suffered a diminution of good-will, he is entitled to compensation although it is in the nature of a business loss. In addition, allowance must be made for the reasonable cost of moving, seeking a new location, loss of time, storage of furniture, depreciation in fixtures & dislocation of business occasioned by such removal.—R. v. GOLDSTEIN, [1924] Exch. C. R. 55.—CAN.

# PART III. SECT. 1, SUB-SECT. 3.—E.

179 i. ——— *Cost of acquiring new site.*—In the course of arbn. proceedings to determine compensation for the portion of a lot taken & injury to the remainder, the corpn. offered to transfer part of an adjoining lot, which it did not own & had as yet taken no steps to expropriate:—*Held*: the offer should be taken into account & dealt with by the arbitrator in his award.—

Re GARLAND & TORONTO (1924), 55 O. L. R. 646.—CAN.

# PART III. SECT. 1, SUB-SECT. 3.—I.

187 vi. ——— *Subsequent improvements by owner.*—Where an owner remains on the property after expropriation, & makes repairs to the buildings, & puts up temporary structures, he must assume the responsibility of such a course & its consequences, & nothing will be allowed him therefor.—R. v. LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—CAN.

187 vii. ——— *Re v. MOREAU (1921), 21 Exch. C. R. 82.—CAN.*

m i. ——— *Buildings erected by expropriator before notice to treat given.*—Whether value of buildings to be considered:—The Govt. having resolved to acquire under Land Acquisition Act, 1891, land belonging to applts., took possession by arrangement with sitdars, who occupied part of the land, & erected buildings partly on land occupied by applt. & partly on land occupied by the sitdars. Only after doing so the Govt. notified a declaration under sect. 6 of the Act that the land was required for a public purpose. Applt. was awarded under the Act the value of the land, & interest thereon from the date when possession had been taken:—*Held*: applt. was not entitled to the value of the buildings, since by the law of India they did not form part of the soil, & even if applt. would have been entitled to compensation for them, if the Govt. had acted as mere trespassers, & without colour of title, the Govt. had not so acted. VALLABIDAS NARANJI v. BANDRA DEVELOPMENT OFFICER (1929), 56 L. R. Ind. App. 259.—IND.

# PART III. SECT. 2.

191 i. *What constitutes severance.*—Part of land taken—Premises not contiguous—No legal right over intervening land:—Where by a previous expropriation property was severed by the right of way of a railway co. crossing it, & the use of a culvert under the tracks as a passage was only by sufferance & without legal right or title:—*Held*: if expropriation takes land on each side of the right of way & thus closes access to the culvert it is not a severance of the property which would entitle to compensation.—R. v. LOONAN (1920), 20 Exch. C. R. 131.—CAN.

a i. ——— *Held*: the right to additional value & the right to damages for severance must depend on the existence at the time of acquisition of the property of some right of passage between the pieces of land.—R. CANAL CO., LTD., & MINISTER OF MARINE, [1927] S. A. S. R. 106.—AUS.

# PART III. SECT. 3, SUB-SECT. 1.

af. *General rule*—The right to receive compensation for land injuriously affected depends upon the statute or order which authorises the injurious affection, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—Re FOWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—CAN.

n i. *Claim must be made within prescribed time*—Under Edmonton Charter a claim for compensation, because claimant's land will be injuriously

208. *Add. Annotation*:—*Generally*, *Mentd.* Slack v. Leeds Industrial Co-op. Soc., [1923] 1 Ch. 431.

213. *Add. Annotation*:—*Consd.* Rockingham Sisters of Charity v. R., [1922] 2 A. C. 315.

215. *Add. Annotations*:—*As to* (1) *Apld.* Rockingham Sisters of Charity v. R., [1922] 2 A. C. 315. *Generally*, *Mentd.* A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268; Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

216. *Add. Annotation*:—*Folld.* Rockingham Sisters of Charity v. R., [1922] 2 A. C. 315.

216a. ————]—Applts. owned land immediately on the west side of a public road & a railway, & had thereon a school; on the east side they owned two small promontories of land on the margin of a public harbour. They had made on the promontories a bathing house & wharf, both of which they used in connection with the school, but no legal right of way across the railway was proved. The Crown took the two promontories for a public purpose, & upon an area wholly to the east of the railway, & including the two small promontories, made a large railway shunting yard. A claim by applts. to compensation for the damage to their property on the west of the railway by reason of the construction of the shunting yard having been rejected:—*Held*: the possession & control of the two promontories gave an enhanced value to applts.' land on the west side of the railway, & in respect of depreciation in value of those lands due to the anticipated legal use of works which might be constructed upon the two promontories, applts. were owners whose lands had been injuriously affected, & accordingly they were entitled to compensation; further, the ct. in assessing the compensation should have regard to the anticipated use of the promontories as part of a shunting yard, not to the actual use at the time of the assessment.—*ROCKINGHAM SISTERS OF CHARITY v. R.*, [1922] 2 A. C. 315; 91 L. J. P. C. 198; 127 L. T. 608; 38 T. L. R. 782, P. C.

affected by the closing of a street, is absolutely extinguished unless filed within the time fixed by the council in the notice which sect. 506 requires it to publish.—*Re EDMONTON CHARTER, MICHAEL HRUSHEVSKY UKRAINIAN INSTITUTE v. EDMONTON CORPN.*, [1925] 1 W. W. R. 780.—*CAN.*

*sg.* *Railway Act, 1919*—*Spur track constructed along streets*—*Measure of compensation to adjacent landowners*]—*BRITISH COLUMBIA PERMANENT LOAN CO. v. CANADIAN NORTHERN RY.* (No. 3), [1923] 2 D. L. R. 802; [1923] 1 W. W. R. 1072; 30 Can. Ry. Cas. 71; 16 Sunk. L. R. 298.—*CAN.*

*sk.* *Road laid through land*—*Expense of keeping up fences*.]—*R. v. KENT J.J.* (1854), 8 N. B. R. (3 All.) 118.—*CAN.*

### PART III. SECT. 3, SUB-SECT. 3.

*sl.* *Adjoining land occupied with hotel*—*Loss of water supply*.]—*Re BUSH v. NIAGARA FALLS PARK COMRS.* (1887), 14 A. L. R. 73.—*CAN.*

*sm.* *Land adjoining water-lot*—*Water-lot taken*—*Loss of riparian rights*.]—*Re SNOW & TORONTO*, [1924] 4 D. L. R. 1023; 56 O. L. R. 100.—*CAN.*

*sp.* *Land divided into lots*—*Some lots sold*—*Five lots taken for sewage plant*.]—*Held*: the owner of the unsold plots was entitled, over & above the actual value of the lots expropriated,

to compensation for consequent depreciation in the value of the adjacent lands.—*MONTREAL (CITY) v. MCANULTY REALTY CO.*, [1923] 2 D. L. R. 409; [1923] S. C. R. 273.—*CAN.*

*sa.* *Land taken for lowering road*—*Obstruction of access by road to other land*]—*Held*: claimant entitled to compensation.—*M. E. MOOLLA v. COLLECTOR OF RANGOON* (1926), 1 L. R. 4 Ran. 350.—*IND.*

### PART III. SECT. 3, SUB-SECT. 4.—A. (a).

227 iv. ————]—The Crown not having expropriated any part of suppliant's property or any easement to flood the same:]—*Held*: the case did not come within Exch. Ct. Act, s. 20, & the ct. had no jurisdiction to entertain the claim under Expropriation Act or any other provision of law.—*YATES v. R.* (1920), 20 Exch. C. R. 175.—*CAN.*

227 v. ————]—*ALEXANDER BROWN MILLING CO. v. CANADIAN PACIFIC RY. CO.*, [1923] 4 D. L. R. 1136, 29 Can. Ry. Cas. 345; 52 O. L. R. 528.—*CAN.*

### PART III. SECT. 3, SUB-SECT. 4.—B. (a).

*fi.* ————]—*Re OGILVIE FLOUR MILLS CO., LTD. & WINNIPEG CITY*, [1927] 2 D. L. R. 606; [1927] 1 W. W. R.

223. *Add. Annotation*:—*Refd.* Rockingham Sisters of Charity v. R., [1922] 2 A. C. 315.

245. *Add. Annotation*:—*Refd.* Howard Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

265. For ("LORD WESTBURY") read ("LORD WESTBURY, dissenting").

*Add. Annotation*:—*As to* (1) *Refd.* Rockingham Sisters of Charity v. R., [1922] 2 A. C. 315.

274a. ———— By construction of bridge.]—

Resps., a county council, were empowered by a private Act to build a bridge across a navigable river giving access to a wharf, which was resorted to by sea-going vessels & was also used for the storage of goods. The bridge, when built, constituted an obstruction to the navigation & interfered with access to the wharf, so that goods destined for the wharf had to be transhipped from sea-going vessels into barges below the bridge, & the owners of the wharf had to acquire a new wharf below the bridge. The owners of the old wharf, i.e., the freeholders, & a mtgee., & the occupiers, who were tenants at will, claimed compensation under the following heads: depreciation of freehold value of the old wharf; cost of the new wharf; damage through loss of traffic; damage through extra cost of handling traffic at the new wharf; damage to river sailing-barge traffic; damage through total stoppage of dumb craft with goods for overseas; damage through loss of storage rents:—*Held*: claimants were entitled to compensation only under the first head, & were not entitled to compensation under the other heads.—*HEWETT v. ESSEX COUNTY COUNCIL* (1928), 138 L. T. 742; 44 T. L. R. 373; 72 Sol. Jo. 241.

275a. ———— *River frontage of private house*.]—*BUCCLEUGH (DUKE) v. METROPOLITAN BOARD OF WORKS*, No. 215, *ante*.

288a. ———— *Wharf*.]—*HEWETT v. ESSEX COUNTY COUNCIL*, No. 274a, *ante*.

289a. ————]—*HEWETT v. ESSEX COUNTY COUNCIL*, No. 274a, *ante*.

833; 33 Can. Ry. Cas. 92; 36 Man. L. R. 412.—*CAN.*

### PART III. SECT. 3, SUB-SECT. 4.—B. (a) ii.

266 vi. ————]—Where direct access to land on which a business is conducted is not cut off by the closing of a street, the fact that such closing will oblige persons going to & from such place of business & neighbouring properties to use a slightly less convenient route does not give the owner of such land a right to compensation.—*Re EDMONTON CHARTER, FREEMAN CO., LTD. v. EDMONTON CORPN.*, [1925] 1 W. W. R. 778.—*CAN.*

### PART III. SECT. 3, SUB-SECT. 4.—B. (a) iii.

*sb.* ————]—*Depreciation in value of land*.]—*NELSON v. PACIFIC GREAT EASTERN RY. CO., OBLATE ORDER OF MARY IMMACULATE v. PACIFIC GREAT EASTERN RY. CO., LEFRAUX & CARLISLE v. PACIFIC GREAT EASTERN RY. CO.* (1919), 67 D. L. R. 792; 27 B. C. R. 420.—*CAN.*

### PART III. SECT. 3, SUB-SECT. 4.—C. (a).

292 v. ————]—The general depreciation of property resulting from being in the vicinage of a public work does not give rise to a claim by any particular owner.—*R. v. LAFOND* (1921), 21 Exch. C. R. 55.—*CAN.*

- 323a. ———.]—ROCKINGHAM SISTERS OF CHARITY v. R., No. 216a, *ante*. 324. *Add. Annotation* :—*Generally*, *Mentd.* Rockingham Sisters of Charity v. R., [1922] 2 A. C. 315.

## Part IV.—Compensation for Mines and Minerals.

328. To the existing paragraph add as follows :—  
(3) Limestone is a mineral within the above sects.
- 336a. ——— *Within Act.*]—MIDLAND RY. CO. & KETTERING, THRAPSTON & HUNTINGDON RY. CO. v. ROBINSON, No. 328, *ante*.
337. *Add. Annotation* :—*Mentd.* South Staffordshire Mines Drainage Comrs. v. Elwell (1927), 91 J. P. 113.
343. *Add. Annotation* :—*Mentd.* Craddock v. Hunt, [1923] 2 Ch. 136.
355. *Add. Annotation* :—*Consd.* Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.
367. *Add. Annotations* :—*Refd.* Swift v. Board of Trade, [1925] A. C. 520. *Mentd.* Swift v. Board of Trade (1924), 93 L. J. K. B. 529.
374. *Add. Annotation* :—*Consd.* Glenboig Union Fireclay Co. v. I. R. Comrs. (1922), 12 Tax Cas. 427.
378. To the existing paragraph add as follows :—  
(3) The word “lands” in sect. 6 of the above Act includes mines.
- Add. Annotation* :—*Generally*, *Consd.* Graigola Merthyr Co. v. Swansea Corpn. (1927), 71 Sol. Jo. 681.
412. *Add. Annotations* :—*Refd.* Swift v. Board of Trade, [1925] A. C. 520. *Mentd.* Swift v. Board of Trade (1924), 93 L. J. K. B. 529.

## Part V.—Procedure to acquire Land by Agreement.

418. *Add. Annotation* :—*Generally*, *Mentd.* *Re* Allott, Hanmer v. Allott, [1924] 2 Ch. 498.

## Part VI.—Procedure to acquire Land otherwise than by Agreement.

475. For existing citations and annotations, substitute (1851), 9 Harc. 436 ; 7 Ry. & Can. Cas. 92 ; 18 L. T. O. S. 116 ; 68 E. R. 580, L. JJ. ; *subsequent proceedings* (1852), 2 De G. M. & G. 94, L. JJ.
- Annotations* :—*Refd.* Salisbury v. G. N. Ry. (1852), 17 Q. B. 840 ; *Hedges v. Met. Ry.* (1860), 28 Beav. 109. *Mentd.* Haynes v. Haynes (1861), 1 Drow. & Sm. 426 ; *Furniss v. Mid. Ry.* (1868), L. R. 6 Eq. 473.
478. *Add. Annotation* :—*Refd.* Brakspear v. Barton, [1924] 2 K. B. 88.
479. *Add. Annotation* :—*Mentd.* Mackenzie-Kennedy v. Air Council, [1927] 2 K. B. 517.
526. *Add. Annotation* :—*As to* (1) *Refd.* Cardiff Corpn. v. Cook, [1923] 2 Ch. 115.
531. *Add. Annotation* :—*Refd.* Cardiff Corpn. v. Cook, [1923] 2 Ch. 115.
- 533a. ——— *Rights of assignee.*]—A landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice & so as not to increase their obligations, & he is also entitled before acceptance to withdraw & amend his claim. But where a landowner, possessed of a leasehold interest, who has claimed £550 for compensation for disturbance & valued his leasehold interest at nil, subsequently, but before his claim is accepted, assigns his leasehold interest, his assignee stands in the same position as the landowner & can withdraw or amend the claim, either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim, & the undertakers are not then at liberty to disregard the assignee & continue to treat & contract with the original landowner.—*CARDIFF CORPN. v. COOK*, [1923] 2 Ch. 115 ; 92 L. J. Ch. 177 ; 128 L. T. 530 ; 87 J. P. 90 ; 67 Sol. Jo. 315 ; 21 L. G. R. 279.
534. *Add. Annotation* :—*Refd.* Matthey v. Curling, [1922] 2 A. C. 180.
- 558a. *Misdescription as to nature of property—Abatement of purchase-money—Not ordered.*]—*Re* STEPNEY BOROUGH COUNCIL & SMART'S CONTRACT (1902), 47 Sol. Jo. 159.
562. *Add. Annotation* :—*As to* (1) *Refd.* Greswolde-Williams v. Newcastle-upon-Tyne Corpn. (1927), 91 J. P. Jo. 968.

### PART III. SECT. 3, SUB-SECT. 5.

*so. Payment of mortgage on part of land.*]—The Crown expropriated five lots of land belonging to applt. A mtge. in favour of M. upon four of the lots had been discharged by the Crown by payment to M. of \$22,000 :—*Held* :

the above payment, although satisfying any claim in respect of the four lots covered by the mtge., could not be applied towards compensation for the fifth lot.—*STUART v. R.*, [1926] 2 D. L. R. 260 ; [1926] S. C. R. 284 ; [1926] Exch. C. R. 101, n.—*CAN.*

### PART VI. SECT. 1, SUB-SECT. 2.—D.

490 i. *Effect of—No right of action at common law—Damages for rendering land useless & unsaleable not recoverable.*]—*ALEXANDER BROWN MILLING CO. v. CANADIAN PACIFIC RY. CO.*, [1923] 4 D. L. R. 1136 ; 29 Can. Ry. Cas. 345 ; 52 O. L. R. 528.—*CAN.*

592. *Add. Annotation*:—**Mentd.** *Early v. Drummond* (1923), 39 T. L. R. 171.

595a. Building consisting of several blocks of

offices—**Constitutes one "building."**—*GRESWOLDE-WILLIAMS v. NEWCASTLE-UPON-TYNE CORPN.* (1927), 92 J. P. 13; 26 L. G. R. 26.

## Part VII.—Assessment of Purchase Price and Compensation.

650. *Add. Citations*:—[1922] 1 A. C. 27; 91 L. J. K. B. 202; 126 L. T. 258; 86 J. P. 25. *Add. Annotations*:—**Distd.** *Thurrock, Grays & Tilbury Joint Sewerage Board v. Thames Land Co.* (1925), 23 L. G. R. 648. **Mentd.** *Thornely v. Leconfield*, [1925] 1 K. B. 236.

650a. — **Acquisition of land & appointment of arbitrator under Public Health Act, 1875** (c. 55).—A land co. was the owner in fee simple of certain land through which a sewerage board, under Public Health Act, 1875 (c. 55), after duly serving on the co. notice of intention to do so, carried a sewer & a rising main. Subsequently an agreement in writing was entered into between the parties regarding what had been done. Differences having arisen regarding the compensation to be paid by the board to the co., recourse was had to arbn. The arbitrator was appointed under Public Health Act, 1875, & before entering on the arbn. made the statutory declaration under that Act. Having considered the disputes he made an alternative award in the form of a special case for the opinion of the ct. If the ct. was of opinion that compensation was to be assessed solely under Public Health Act, 1875, he awarded the co. £5,090; if the arbitration was under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the basis on which compensation was to be awarded was to be governed by the principles in s. 2 of that Act, he awarded the co. £2,148:—**Held**: as the land had been acquired under powers conferred by Public Health Act, 1875, before the agreement between the parties was entered into, it had been acquired compulsorily, & as there was nothing in the agreement which affected the primary basis of the value of the land nor any other matter, including the appointment of the arbitrator expressly under

Public Health Act, 1875, which was inconsistent with the rules laid down by s. 2 of the Act of 1919, that Act applied to the arbn., & the co. should be awarded £2,148.—*THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD v. THAMES LAND CO., LTD.* (1925), 90 J. P. 1; 23 L. G. R. 648.

671. *Add. Annotation*:—**Mentd.** *Swift v. Board of Trade* (1924), 93 L. J. K. B. 529.

672. *Add. Annotation*:—**Generally, Mentd.** *Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372.

702a. **Arbitrator incapable of continuing—Power to replace.**—Where an arbitrator, appointed by the Reference Committee under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 1, becomes incapable of continuing a particular arbn., the authority of the Reference Committee includes the power to replace him by some one else.—*GROSS, SHERWOOD & HEALD, LTD. v. ESSEX COUNTY COUNCIL*, [1927] 1 Ch. 205; 96 L. J. Ch. 21; 136 L. T. 371; 91 J. P. 17; 43 T. L. R. 5; 70 Sol. Jo. 1196; 25 L. G. R. 135.

702b. **Effect of appointment under protest—Whether right to compensation admitted.**—*Semble*: a co. does not, by nominating under protest an arbitrator in pursuance of the Lands Act, 1845, admit that the case is one entitling the claimant to any compensation.—*SUTTON HARBOUR IMPROVEMENT CO. v. HITCHELNS* (1851), 1 De G. M. & G. 161; 21 L. J. Ch. 73; 18 L. T. O. S. 163; 16 Jur. 70; 42 E. R. 514, L. J. J.

*Annotations*:—**Mentd.** *R. v. L. & N. W. Ry.* (1854), 3 E. & B. 443; *Bradford L. B. of Health v. Hopwood* (1858), 6 W. R. 818.

715. *Add. Annotation*:—**Generally, Mentd.** *Samuel v. Dumas*, [1924] A. C. 431.

727a. **Hearing—Entry in Crown Paper.**—An award made by an official arbitrator under Acquisition of Land (Assessment of Com-

### PART VI. SECT. 4, SUB-SECT. 1.—B. (a).

566 ii. *Includes all that is necessary for enjoyment of house.*—The word "house" in Lands Act, 1847, s. 92, is not limited to the four walls of the building, but includes all that is necessary to the convenient occupation of the house.

**Promoters of an undertaking**:—**Held**: not entitled to take a strip of land immediately in front of a house between it & the wall & containing a tank & fruit trees, when the owner was willing & able to convey the whole of the house.—*DRAPER v. SOUTH AUSTRALIAN RAILWAYS COMR.* (1901), 3 S. A. L. R. 150.—**AUS.**

### PART VII. SECT. 1.

**eg. Public Works Act, s. 22—Acquisition of toll road under Provincial Highways Act, 1917.**—*Re COBOURG & GRAFTON TOLL ROAD CO.* (1921), 64 D. L. R. 241; 50 O. L. R. 125.—**CAN.**

### PART VII. SECT. 2, SUB-SECT. 1. k. Jurisdiction of Exchequer Court]

—Property & civil rights being matters within the exclusive powers of the Provincial Legislature, the Exch. Ct. of Canada in ascertaining the estate or interest of persons claiming compensation for property expropriated by the Dominion Crown will have regard to the laws affecting such estate & interest in the province where the property is situated.—*R. v. HUDSON'S BAY CO.* (1921), 20 Exch. C. R. 413.—**CAN.**

**sl. Cannot inquire into validity of mutual agreement for compensation.**—**Held**: where one of the parties set up an agreement purporting to fix the compensation a dispute as to the existence, validity, & applicability of such agreement must be settled by agreement of the parties or determined by the ct. before a case for arbn. arises; & the arbitrators exceeded their jurisdiction when they entered upon an inquiry as to the existence & validity of the agreement alleged.—*Re HARMANS, LTD., & TORONTO CITY, Re PORTER & TORONTO CITY, Re*

*STEWART & TORONTO CITY*, [1928] 4 D. L. R. 781; 62 O. L. R. 475.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 1.

**n i. — Passing of bye-law by local authority—Submission before bye-law passed ultra vires.**—*Re KOEHMSTEDT v. RURAL MUNICIPALITY OF EYE HILL*, No. 382, [1923] 2 W. W. R. 669.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 2.

**sm. Under Dominion Railway Act, 1919.**—Where a judge of the Supreme Ct. of Ontario has made an order for possession, under the above Act, with a term that the ry. co. shall pay money into ct. as security, any judge of the Supreme Ct. has jurisdiction to appoint an arbitrator; & under sect. 220 the judge of the county ct. of the county wherein the expropriated lands lie is the proper person to appoint.—*Re LITTLE & CAMPBELLFORD LAKE ONTARIO & WESTERN RY. CO.* (1924), 55 O. L. R. 581.—**CAN.**

pensation) Act, 1919 (c. 57), in the form of a special case, is rightly entered in the Crown Paper.—*HEWITT v. ESSEX COUNTY COUNCIL* (1927), 97 L. J. K. B. 249; 92 J. P. 36; 44 T. L. R. 111; 72 Sol. Jo. 50; 26 L. G. R. 48 D. C.

729. *Add. Annotations*.—*Mentd. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211; *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.

761a. —Award embodying decision of court on special case.]—An official arbitrator stated a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the Div. Ct. decided adversely to the contention of claimants for compensation. The arbitrator then made his award, embodying therein the decision of the Div. Ct. Claimants applied to another Div. Ct. to set the award aside, on the ground that the award was on the face of it erroneous in law, but the ct. dismissed the application. Claimants appealed:—*Held*: no appeal could be entertained.—*NORTHWOOD v. LONDON COUNTY COUNCIL* (No. 2) (1927), 96 L. J. K. B. 520; 137 L. T. 49; 91 J. P. 93; 43 T. L. R. 347; 1 G. R. 254, C. A.

762. *Add. Annotation*:—*As to* (2) *Apprvd. & Apld. Matthey v. Curling*, [1922] 2 A. C. 180.

766. *Add. Annotation*:—*Mentd. Cayzer, Irvine v. Board of Trade* (1926), 42 T. L. R. 731.

768. *Add. Annotation*:—*Mentd. Salisbury & Fordingbridge Drainage District Board v. Southern Tanning Co.* (1920), Ltd., [1927] 2 K. B. 506.

773a. *Award of lump sum—Validity*.—Claimant was the owner of certain land with regard to

the acquisition of which an arbn. was held under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57). He claimed £17,302, & before the hearing of the arbn., the President of the Air Council made an unconditional offer of £10,000. The sum awarded to claimant by the official arbitrator in respect of his interest in the land & the consequential damage thereto was £11,415. In dealing with the costs the arbitrator directed the Council "to pay £100 towards the costs of claimant." Claimant applied to the ct. by motion for the award to be remitted to the arbitrator on the ground that he had, in making the above order as to costs, not properly exercised the discretion conferred upon him by sect. 5 (4) of the above Act:—*Held*: in awarding the lump sum of £100, the arbitrator had in terms awarded to claimant part of his costs of the arbn. within sect. 5, & as it seemed reasonably clear from the Act that, when a sum was awarded by the arbitrator in excess of the amount offered by the authority but less than the sum which claimant had offered to accept, the arbitrator had an absolute discretion as to the costs, the motion to review the award failed.—*BRADSHAW v. AIR COUNCIL*, [1926] Ch. 329; 95 L. J. Ch. 499; 135 L. T. 538; 42 T. L. R. 197; 70 Sol. Jo. 367; 24 L. G. R. 351.

785. For "No. 749, *ante*," read "No. 372, *ante*."

894. *Add. Annotation*:—*Mentd. R v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.*, [1924] 1 K. B. 171.

966. *Add. Annotation*:—*Refd. Simbro Trading Co. v. Posograph Parent Corpn.*, [1929] 2 K. B.

## Part VIII.—Entry on Lands by Promoters.

1005. *Add. Annotations*:—*As to* (1) *Refd. Grant v. Derwent*, [1929] 1 Ch. 390. *Generally, Mentd. Kennard v. Cory*, [1922] 1 Ch. 265.

### PART VII. SECT. 5, SUB-SECT. 8.

736 i. —*Claim in respect of several interests—Award not apportioning sums between several interests—Insufficient.*—*STEWART MUNICIPAL DISTRICT v. BLIESNER*, [1924] 2 W. W. R. 1217.—CAN.

s i. —*Arbitrator not entitled to allow interest*.—*Re LETROS & TORONTO CORPN.* (1924), 56 O. L. R. 175.—CAN.

### PART VII. SECT. 5, SUB-SECT. 10.

m (p. 196) i. —*Under Dominion Railway Act, 1906* (c. 37).—*Re KITSIANO INDIAN RESERVE, VANCOUVER HARBOUR COMRA. v. R.*, [1918] 2 W. W. R. 411.—CAN.

m (p. 196) ii. —*Under Dominion Railway Act, 1919* (c. 68).—*Re ARBITRATION UNDER THE RAILWAY ACT, BRITISH COLUMBIA PERMANENT LOAN CO. v. CANADIAN NORTHERN RY. CO.* (No. 1), [1922] 2 W. W. R. 677; 65 D. L. R. 735; 15 Sask. L. R. 431.—CAN.

m (p. 196) iii. —*CEDAR RAPIDS MANUFACTURING & POWER CO. v. LACOSTE*, [1927] 2 D. L. R. 83.—CAN.

r (p. 196) i. —*Award determined on wrong principle*.—Where damages were recoverable by reason of lowering of the sidewalk in front of a building, consisting in the decreased value of the property, but were assessed at the cost of lowering the store floor:—*Held*: the award must be set aside

determined upon a wrong principle.—*RADISSON TOWN v. AMSON*, [1919] 1 W. W. R. 580.—CAN.

x i. —*WINTER v. TORONTO (CITY)* (1922), 70 D. L. R. 458.—CAN.

y i. —*Lump sum awarded—Award good on its face*.—*NORTH COWICHAN CORPN. v. GORE-LANGTON*, [1921] 2 W. W. R. 484.—CAN.

o (p. 197) i. —*NASH & WILLIAMS v. EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO.*, [1917] 3 W. W. R. 553; 36 D. L. R. 601.—CAN.

o (p. 197) ii. —*An appellate ct. should not interfere to vary an award unless it is satisfied that the award does not truly represent the honest opinion of the arbitrators as to damages, or that the basis of valuation was erroneous*.—*Re SCOTT & OSHAWA TOWN*, [1922] 52 O. L. R. 504.—CAN.

o (p. 197) iii. —*WINNIPEG v. CROSS*, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—CAN.

o (p. 197) iv. —*Re SULLIVAN & TOWNSHIP OF BERTIE*, [1927] 2 D. L. R. 74; 60 O. L. R. 107.—CAN.

o (p. 197) i. —*Re ARBITRATION ACT, RE WOODS*, [1923] 2 D. L. R. 1000; 32 B. C. R. 211; [1923] 1 W. W. R. 1344.—CAN.

m (p. 197) i. —*Re DIXON & TORONTO CORPN.* (1924), 56 O. L. R. 67.—CAN.

o (p. 197) i. —*Where a large number of witnesses give evidence to the same effect on a question of value the award of an arbitrator based thereon will not be set aside*.—*CANADIAN NORTHERN RY. CO. v. KETCHESON* (1918), 21 Can. Ry. Cas. 104; 32 D. L. R. 629.—CAN.

q (p. 197) i. —*Question only one of quantum*.—*Re LETROS & TORONTO CORPN.* (1924), 56 O. L. R. 175.—CAN.

### PART VII. SECT. 5, SUB-SECT. 12.—A.

sn. *Costs follow event—Subject to discretion of court—Principles governing exercise of discretion*.—The ordinary rule is that costs should follow the event. But the ct. has a discretion to depart from this rule, & such discretion is to be exercised on well recognised principles.—*ASSISTANT COLLECTOR SALSSETTE v. DAMODAR DAS TRITHUVANDAS* (1928), 1 L. R. 53 Bom. 178.—IND.

### PART VIII. SECT. 1, SUB-SECT. 1.

so. *Payment or tender of compensation not necessary*.—*CANADIAN PACIFIC RY. CO. v. PAUL* (1921), 27 Can. Ry. Cas. 417.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 2.—A.

ai. —*Or expropriation proceedings completed*.—*GODDARD v. BAINBRIDGE LUMBER CO.* (1920), 29 B. C. R. 186.—CAN.

## Part IX.—Assessment of Compensation after Entry or Injurious Affection.

1097. *Add. Annotation* :—*As to* (1) *Refd.* Cardiff Corpn. v. Cook, [1923] 2 Ch. 115

## Part X.—Conveyance of Land and Payment of Purchase-Money.

1125. *Add. Annotations* :—*As to* (1) *Refd.* Swift v. Board of Trade (1924), 93 L. J. K. B. 529; Swift v. Board of Trade, [1925] A. C. 520.

1126. *Add. Annotation* :—*Mentd.* Swift v. Board of Trade (1924), 93 L. J. K. B. 529.

1158. *Add. Annotation* :—*Consd.* Berners v. Fleming, [1925] Ch. 264.

1205a. —.]—Upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest on the principal sum awarded from the date when possession was taken, unless the Act clearly shows a contrary intention.—INGLE-

WOOD PULP & PAPER CO. v. NEW BRUNSWICK ELECTRIC POWER COMMISSION, [1928] A. C. 492; 97 L. J. P. C. 118; 139 L. T. 593, P. C.

1227. After this case add :

—.]—*See, further*, CHARITIES, Vol. VIII., pp. 359, 360, Nos. 1558–1565.

1237. *Add. Annotation* :—*Refd.* Clark v. Barnes, [1929] 2 Ch. 368.

1238. *Add. Annotation* :—*Mentd.* Swift v. Board of Trade (1924), 93 L. J. K. B. 529.

1239. *Add. Annotation* :—*Mentd.* Swift v. Board of Trade (1924), 93 L. J. K. B. 529.

1242a. —.]—*Re* BROMLEY GUARDIANS (1845), 4 L. T. O. S. 430.

## Part XI.—Application of Money Deposited in Bank.

1382. *Add. Annotation* :—*Apld.* *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384. *Add. Annotation* :—*Consd.* *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384a. — Title not proved to be defective—

*Payment out ordered.*]—*Ex p.* BURDETT COUTTS, [1927] 2 Ch. 98; 96 L. J. Ch. 453; 137 L. T. 404; 71 Sol. Jo. 389.

1500. *Add. Annotation* :—*Consd.* *Re* Williams' Settlement, Williams Wynn v. Williams, [1922] 2 Ch. 750.

## Part XII.—Costs when Money Deposited—Liability of Promoters.

1597. *Add. Annotations* :—*As to* (2) *Refd.* Campbell v. Pollak, [1927] A. C. 732. *Generally*, *Mentd.* *Re* Letters Patent No. 139207, *Re* Carbonit Akt. [1924] 2 Ch. 53; *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123.

1604. *Add. Annotation* :—*Refd.* *Re* Letters Patent No. 139207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1614a. — —.]—*Re* LONDON BRIDGE ACTS, *Ex p.* TATHAM (1838), 3 Y. & C. Ex. 67; 7 L. J. Ex. Eq. 64; 2 Jur. 440; 160 E. R. 617.

1686a. — —.]—*Ex p.* NORFOLK RY. CO. (1860), 1 Drew. & Sm. 48, n.; 62 E. R. 296.

*Annotation* :—*Apld.* *Re* Cleveland's Harte Estates (1860), 1 Drew. & Sm. 46.

1985. *Add. Annotations* :—*Refd.* *Re* Booth &

PART VIII. SECT. 2, SUB-SECT. 1. *sp.* Application for warrant of possession—Jurisdiction of Exchequer Court to hear.]—*Re* EXCHEQUER COURT JURISDICTION, [1925] 4 D. L. R. 673.—CAN.

*sq.* — — —.]—CANADIAN NATIONAL RY. CO. v. BOLAND, [1925] 4 D. L. R. 703; [1925] Exch. C. R. 173.—CAN.

PART X. SECT. 1, SUB-SECT. 2.—B. (c) i. y i. —.]—H. v. MCKENZIE (1890), 2 Exch. C. R. 198.—CAN.

PART X. SECT. 1, SUB-SECT. 4. p i. — from filing of caveat—Owner remaining in possession.]—*Re* ARBITRATION ACT, *Re* ROSHKO & WINNIPEG SCHOOL DISTRICT No. 1, [1924] 4 D. L. R. 1017; 3 W. W. R.

614.—CAN. z i. — Sydney Corporation (Amendment) Act (No. 7 of 1924), s. 17.]—SYDNEY MUNICIPAL COUNCIL v. TROY, [1927] A. C. 706; 96 L. J. P. C. 124; 137 L. T. 707, P. C.—AUS.

PART XII SECT. 8, SUB-SECT. 5.—A. z i. — —.]—*Re* FORD & CANADIAN PACIFIC RY. CO. (1926), 32 Can. Ry. Cas. 319.—CAN.



Southend-on-Sea Estates Co.'s Contract, [1927] 1 Ch. 579. *Mentd. Re Child Villiers' Appn., Villiers v. A.-G.*, [1922] 1 Ch. 394.

1997a. Transfer of fund from charity trustees to

official trustees of charitable funds—Costs to be borne equally by promoters.]—*Ex p. SUNBURY-ON-THAMES URBAN DISTRICT COUNCIL, Ex p. STAINES RESERVOIRS JOINT* (1922), 86 J. P. Jo. 153.

## Part XIII.—Purchase of Particular Interests in Land.

2004. *Add. Annotation* :—*Generally, Mentd. Lapish v. Braithwaite* (1924), 93 L. J. K. B. 1123.

2017a. *Agreement with mortgagor—Binding on mortgagee entering into possession.*]—*MOLD v. WHEATCROFT* (1859), 27 Beav. 510; 29 L. J. Ch. 11; 1 L. T. 226; 6 Jur. N. S. 2; 54 E. R. 202.

2035a. — Lease granted after conveyance to promoters—Reference to ascertain validity of agreement for lease.]—*NORFOLK RY. Co. v. BAYES* (1849), 14 L. T. O. S. 170; 13 Jur. 435.

2037. *Add. Annotation* :—*Refd. Cardiff Corpn. v. Cook* (1922), 92 L. J. Ch. 177.

2038. *Add. Annotation* :—*Apld. Cardiff Corpn. v. Cook*, [1923] 2 Ch. 115.

2058. *Add. Annotation* :—*Mentd. Bean v. Flaxton R. Co.*, [1929] 1 K. B. 450.

2059. *Add. Citation* :—68 L. J. Q. B. 30.

2067. *Add. Annotation* :—*Consd. Matthey v. Curling*, [1922] 2 A. C. 180.

2068. *Add. Annotation* :—*Refd. Matthey v. Curling*, [1922] 2 A. C. 180.

2075. *Add. Annotation* :—*Refd. Cardiff Corpn. v. Cook* (1922), 92 L. J. Ch. 177.

## Part XIV.—Superfluous Lands.

2125. *Add. Annotation* :—*Generally, Mentd. Richmond v. Savill*, [1926] 2 K. B. 530.

2136. *Add. Annotation* :—*Refd. Conron v. L. C. C.*, [1922] 2 Ch. 283.

2141. *Add. Annotations* :—*Mentd. Kelly v. Barrett*, [1924] 2 Ch. 379; *Lord Strathcona S.S. Co. v. Dominion Coal Co.* (1925), 42 T. L. R. 86.

2145. *Add. Annotation* :—*Mentd. Graigola Merthyr Co. v. Swansea Corpn.*, [1929] A. C. 344.

2150. *Add. Annotation* :—*Generally, Mentd. Conron v. L. C. C.*, [1922] 2 Ch. 283.

2175. *Add. Annotation* :—*Refd. Aldridge v. Wright*, [1929] 2 K. B. 117.

## Part XV.—Compensation for Land taken or used for Special Purposes.

2203a. —.]—*THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD v. THAMES LAND CO., LTD.*, No. 650a, *ante*.

2214. *Add. Annotation* :—*Mentd. Cardiff Corpn. v. Cook* (1922), 92 L. J. Ch. 177.

2218. *Add. Annotation* :—*Refd. Cardiff Corpn. v. Cook* (1922), 92 L. J. Ch. 177.

2222a. — — — Loss of trade & licence & value of trade fixtures not considered.]—*NORTHWOOD v. LONDON COUNTY COUNCIL*, [1926] 2 K. B. 411; 95 L. J. K. B. 862; 135 L. T. 159; 90 J. P. 128; 42 T. L. R. 508; 24 L. G. R. 415, D. C.; *on appeal* (1927), 96 L. J. K. B. 520, C. A.

### PART XIII. SECT. 3.

2022 i. *Interest—Rate of—Application to reduce*—*R. S. O.*, 1897 (c. 110), ss. 15, 16.]—*Re KINGSTON LIGHT, HEAT & POWER CO. & KINGSTON CORPN.* (1904), 24 C. L. T. 358; 8 O. L. R. 258; 3 O. W. R. 769.—*CAN.*

### PART XIII. SECT. 5, SUB-SECT. 1.

2044 i. — *Under invalid lease.*]—Land expropriated by the Dominion Crown was leased for a period of five years under an instrument not registered as required—*Held*: the un-

registered lease did not vest any estate or interest in the lessee & he was not entitled to compensation in respect of the expropriation.—*It. v. HUDSON'S BAY Co.* (1921), 65 D. L. R. 569; 20 Exch. C. R. 413.—*CAN.*

### PART XIII. SECT. 6, SUB-SECT. 1. —A.

fi. — *Entitled to offer—As well as owner.*]—*R. v. MUSGRAVE*, [1924] Exch. C. R. 218.—*CAN.*

### PART XIII. SECT. 6, SUB-SECT. 2.

st. *Measure of compensation—Licence.*]—Where one is in occupation

of part of a street under licence from the municipality, by the provisions of which licence he was obliged to vacate upon notice before a given date, & when by reason of the expropriation of the property he was forced to vacate before such date, he becomes entitled to compensation for his loss of the use & occupation, as well as for the extra inconvenience & expense occasioned by reason of having to make an immediate move instead of having the whole life of the licence to do so, but not to include the cost of moving.—*VALENCOURT v. It.*, [1928] Exch. C. R. 118.—*CAN.*

**2225a. Under Housing, Town Planning, etc., Act, 1919 (c. 35)—Acquisition of land—Extent of powers.]—**Under the above Act, defts. made an order, subsequently confirmed by the Minister of Health, for the compulsory acquisition for the purposes of a scheme under sect. 1 of the Act, of three thousand acres for the erection of working-class houses for the accommodation of one hundred & twenty thousand persons. They also proposed to acquire compulsorily a beerhouse within the area with the objects, (a) of controlling or regulating the traffic in intoxicating liquor on the site, that control to be based on management by some co. or assocn. whose servants were not to have a pecuniary interest in the sale of alcohol, & (b) of providing for the general entertainment & refreshment of the population:—*Held*: the Act contemplated extensive schemes for the provision of working-class houses by local authorities, involving in many cases the acquisition of considerable areas of land & extending even to the creation of a new town; sect. 12 (1), treated the land within the selected area as a whole, & as something in the nature of a building estate, & as incidental to the complete control of the development of the building scheme, empowered the local authority to acquire any houses or other buildings, whether the same were or were not required for use as, or as a site for, workmen's dwellings, or for roads or other purposes mentioned in the earlier Housing Acts; & that power was not limited to houses which it was proposed to adapt for working-class accommodation under the power to alter contained in the later part of the sub-sect.;

upon the above construction of the Act, subject to confirmation by the Minister of Health, defts. had power under sect. 12 (1) of the Act to acquire compulsorily the beerhouse in question for the attainment of the objects above-mentioned.

*Semble*: both under sect. 12 (2) of the Act, & under Housing of the Working Classes Act, 1903 (c. 39), s. 11, defts. had a similar power for effecting the like objects.—*CONRON v. LONDON COUNTY COUNCIL*, [1922] 2 Ch. 283; 91 L. J. Ch. 386; 126 L. T. 791; 87 J. P. 109; 38 T. L. R. 380; 20 L. G. R. 131; *sub nom.* *CONSON v. LONDON COUNTY COUNCIL*, 66 Sol. Jo. 350.

**2249. Add. Annotations:—Mentd.** *The Wilhelmina*, [1923] P. 112; *Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.

**2252. Add. Annotation:—As to (3) Refd.** *Conron v. L. C. C.*, [1922] 2 Ch. 283.

**2256. Add. Annotation:—Mentd.** *Conron v. L. C. C.*, [1922] 2 Ch. 283.

**2271. Add. Annotation:—Mentd.** *Conron v. L. C. C.*, [1922] 2 Ch. 283.

**2274. Add. Annotation:—Mentd.** *Conron v. L. C. C.*, [1922] 2 Ch. 283.

**2278. Add. Annotation:—Mentd.** *Conron v. L. C. C.*, [1922] 2 Ch. 283.

**2286a. Compensation for damage to land by severance not included.]—***COURTAULDS, LTD. v. CITY OF LONDON CORPN.*, [1926] 2 K. B. 506; 95 L. J. K. B. 972; 136 L. T. 275; 90 J. P. 164; 42 T. L. R. 781; 70 Sol. Jo. 1024; 24 L. G. R. 538, D. C.

**2295. Add. Annotation:—Mentd.** *Conron v. L. C. C.*, [1922] 2 Ch. 283.

**PART XV. SECT. 3, SUB-SECT. 6.**

**sv. Amount of land—Amount necessary for contemplated works.]—**Deft. corpn. issued to plff. notice of its intention to take the whole of her land for a certain public work, although it admitted that the area was larger than that actually required for the contemplated work. It also refused plff.'s application for a permit to build on the land, on the ground of its intention to take same for the work:—*Held*: it had no power under Public Works Act, 1908, to take a larger area than it actually required for the public work.—*QUINLAN v. WELLINGTON CORPN.*, [1929] N. Z. L. R. 491.—**N.Z.**

**sw. Time for valuation—***declarations relating to different land.]—*The local government published under Land Acquisition Act, 1894, s. 6, a declaration that land belonging to applts. respectively & land belonging to other persons were required for public purposes. Five months later the govt. published another declaration for the acquisition of applts' lands only. the declaration stated that the earlier declaration was thereby cancelled:—*Held*: having regard to Land Acquisition Act, 1894, s. 23 (1), the compensation should have been based upon the value of the land at the date of the publication of the later declaration.—*MA SIN v. RANGOON COLLECTOR*

(1929), 56 L. R. Ind. App. 210.—**IND.**

**PART XV. SECT. 3, SUB-SECT. 7.—C.**

**sv. Land taken under Winnipeg Charter—Time for making claim.]—**Defts.' claim was for compensation for their land injuriously affected by the exercise of the powers of the City under the Charter, & had been expressly recognised by a bye-law of the council:—*Held*: the Charter had, under the circumstances, no application to the claim of defts., & they had all the time allowed them by the general law applicable to the case for making their claims.—*WINNIPEG CORPN. v. TORONTO GENERAL TRUSTS CORPN.* (1911), 20 Man. L. R. 545.—**CAN.**

# CONFLICT OF LAWS.

## Part I.—Principles of Jurisdiction.

1. *Add. Annotation* :—*Refd.* *Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58.
6. *Add. Annotations* :—*Folld. Re Visser, Holland v. Drukker*, [1928] Ch. 877. *Mentd.* *Tallack v. Tallack & Broekema*, [1927] P. 211.
- 6a. —.]—The English cts. will not entertain an action for the enforcement of the revenue law of a foreign State.—*Re VISSER, QUEEN OF HOLLAND v. DRUKKER*, [1928] 1 Ch. 877; 97 L. J. Ch. 488; 139 L. T. 658; 44 T. L. R. 692; 72 Sol. Jo. 518.
11. *Add. Annotation* :—*Refd.* *Kramer v. A.-G.*, [1923] A. C. 528.
12. *Add. Annotation* :—*As to* (1) *Apprvd.* *Kramer v. A.-G.* (1922), 92 L. J. Ch. 1.  
After this case add "Who are foreign nationals within Treaties of Peace & consequent Orders generally, *see pp. 75-77, ante.*"
13. *Add. Citation* :—2 T. L. R. 116, D. C.
14. *Add. Annotation* :—*Consd.* *Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll*, [1929] 1 K. B. 170.
17. *Add. Annotations* :—*As to* (1) *Refd.* *The Jupiter* (1924), 93 L. J. P. 156; *Russian Commercial & Industrial Bank v. Comptoir D'Escompte De Mulhouse* (1924), 93 L. J. K. B. 1098. *As to* (2) *Folld.* *White, Child & Beney v. Simmons; White, Child & Beney v. Eagle Star & British Dominions Insce.* (1922), 127 L. T. 571. *Refd.* *Fenton Textile Assocn. v. Krassin* (1921), 38 T. L. R. 259; *Banque Internationale De Commerce De Petrograd v. Goukassow* (1924), 40 T. L. R. 837. *As to* (3) *Consd.* *The Jupiter* (No. 3) (1927), 137 L. T. 333. *Generally, Refd.* *Musmann v. Engelke* (1927), 43 T. L. R. 685. *Mentd.* *Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.
- 17a. — — —.] — *Pltfs.* were an English limited co. of engineers & merchants. Part

of its business was transacted in Russia, & for the purpose of that business *plfts.*, through their London bankers, deposited moneys & Russian Treasury Bonds with the Petrograd branch of the *Banque de Commerce de l'Azoff-Don*. Having done so, *plfts.* took out two policies of insurance to insure themselves against loss or damage to the insured property "directly caused by fire, rioters, civil commotions, war, civil war, revolutions, rebellions, military or usurped power. . . ." No claim was to attach under the policy (*inter alia*) "for confiscation or destruction by the Govt. of the country in which the property is situated." In Dec. 1917, during the currency of the policy, the *Banque de Commerce* was occupied by soldiers & sailors of the Red Guard, & by the Bolsheviks, purporting to act under the authority of an executive committee of the Commissaries of the People. They demanded & obtained control & possession of the bank & everything contained in it, including the insured property. Two actions were brought claiming for losses under the policies, & the question arose with regard to the recognition of the Soviet Govt. as a sovereign power:—*Held*: on the information then available, the act of the military in seizing the insured property was an act of confiscation by the Govt. of Russia which was in existence at the material time, & had since been recognised by His Majesty's Govt. as the *de facto* Govt. of Russia, & was not an act of a usurped authority; therefore the claim failed by reason of the clause which provided that no claim was to attach under the policy ". . . for confiscation or destruction by the Govt. of the country in which the property is situated."—*WHITE, CHILD & BENEY, LTD. v. SIMMONS, WHITE, CHILD & BENEY, LTD. v. EAGLE STAR & BRITISH DOMINIONS INSURANCE CO.* (1922), 127 L. T. 571; 38 T. L. R. 616, C. A.

## Part II.—Domicil.

19. *Add. Annotations* :—*As to* (2) *Refd.* *Fleming v. Horniman* (1928), 138 L. T. 669. *As to* (3) *Refd.* *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692. *Generally, Refd.* *A.-G. for Alberta v. Cook*, [1926] A. C. 444. *Mentd.* *Eustace v. Eustace*, [1924] P. 45.
36. *Add. Annotations* :—*Generally, Refd.* *A.-G. for Alberta v. Cook*, [1926] A. C. 444. *Mentd.* *Eustace v. Eustace*, [1924] P. 45.
37. *Add. Annotation* :—*Refd.* *Fleming v. Horniman* (1928), 138 L. T. 669.
38. *Add. Annotation* :—*Refd.* *Rudd v. Rudd*, [1924] P. 72.
44. *Add. Annotation* :—*Refd.* *A.-G. v. Belilios*, [1928] 1 K. B. 798.
- 48a. — — —.]—Where a man leaves the country of his domicil of choice with the fixed & settled intention to give up residence there, & thereupon reverts to his domicil of origin, if he afterwards changes his mind, & forms the intention of returning to that country, as permanently residing there, he re-acquires

### PART II. SECT. 1.

*sq. Person settled in province.*—For purposes of divorce the domicil of a person settled in one of the provinces of Canada is that particular province though the Dominion Parliament has legislative power to dissolve the marriage.—*A.-G. FOR ALBERTA v. COOK*,

[1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317.—*CAN.*

### PART II. SECT. 2, SUB-SECT. 1.

40 *III.* — — —.]—Where a person whose domicil of origin was outside of the United States & who has acquired a domicil of choice in one of the states

thereof, resides temporarily in another country with the intention of returning to some place in the United States, though not necessarily to the state in which he formerly lived, he does not revert to his domicil of origin, even with respect to divorce.—*NEILSON v. NEILSON*, [1925] 3 D. L. R. 22; [1925] 2 W. W. R. 1.—*CAN.*

a domicile of choice there, only when with that intention he again resides there. The domicile of choice must be re-acquired by fulfilment of the same conditions as when it was formerly acquired.—*FLEMING v. HORNIMAN* (1928), 138 L. T. 669; 44 T. L. R. 315.

50. *Add. Annotation*:—As to (6) *Refd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

51. *Add. Annotation*:—As to (2) *Refd. Rudd v. Rudd*, [1924] P. 72.

52a. —[—](1) In questions of domicile, less weight is given by the cts. to a testator's declarations than to his acts, & no one act is necessarily *per se* paramount in importance; but the relative importance of all his acts, however trivial, must be considered as evidence of the *animus manendi* or *revertendi*.

(2) The cts. are now slower to hold a change of the domicile of origin, & must be satisfied that testator intended *quatenus in illo exerce patriam*.

(3) The decisions that persons going to India in the service of the East India Co. thereby acquire an Anglo-Indian domicile, are exercises upon, & anomalous to, the principles of domicile.

(4) The *animus* to change an acquired domicile is not sufficient without the *factum* of return.—*DREVON v. DREVON* (1864), 4 4 New Rep. 316; 34 L. J. Ch. 129; 10 L. T. 730; 10 Jur. N. S. 717; 12 W. R. 946.

*Annotation*:—As to (1) *Consd. Doucet v. Geoghegan* (1878), 9 Ch. D. 441.

54a. —[—] After revival of domicile on abandonment of domicile of choice.—*FLEMING v. HORNIMAN*, No. 48a, *ante*.

55a. —[—]*Rudd v. Rudd*, No. 903a, *post*.

59. *Add. Annotations*:—As to (2) *Distd. Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61. *Refd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

64a. —[—]*DREVON v. DREVON*, No. 52a, *ante*.

66. *Add. Annotation*:—*Folld. Re Cunningham, Healing v. Webb*, [1924] 1 Ch. 68.

67. *Add. Annotation*:—*Refd. Fleming v. Horniman* (1928), 138 L. T. 669.

67a. —[—]*DREVON v. DREVON*, No. 52a, *ante*.

68. *Add. Annotation*:—As to (1) *Refd. Rudd v. Rudd*, [1924] P. 72.

68a. —[—]Appl. was the proprietor of a Scotch estate, but left Scotland for America in 1895 to earn his living. In 1901 he married resp., an American lady, & in 1902 they went to Quebec where he carried on the business of manufacturing arms. They lived together there till 1917 with occasional visits to England. In 1917 applt. went to Washington, staying there as an expert adviser

on munitions till Sept. 1918, when he stayed a certain time in Great Britain & in 1918 leased a house in London. In 1922 he took a lease of a flat in New York of which he remained tenant when these proceedings for divorce began in Dec. 1923. Up to the year 1920 there was no statement by applt. of his intention to abandon his Scottish domicile, & as late as Dec. 1920, he stated in an affidavit that he was a domiciled Scotchman. Between Dec. 1920, & the institution of these proceedings he was trying for the purposes of taxation to become a resident alien in the United States, & in Apr. 1923, succeeded. In Jan. 1924, after these proceedings he sought to be naturalised as an American citizen. He spent increasing periods of time at his Scottish estate & referred to it as his home in a letter written to resp. in Nov. 1922. Since 1920, however, he had made statements in documents & verbally that he intended to live permanently in New York, though such statements were never made to his wife, nor, with one exception, to any personal friend:—*Held*: the evidence of declared intention of change of domicile was not established, as such declarations must be examined by considering the person to whom, the purposes for which, & the circumstances in which they were made, & be carried into effect by conduct & action consistent with the declared intention.—*Ross v. ELLISON* (OR ROSS) (1929), 96 L. J. P. C. 163; 141 L. T. 666, H. L.

68b. *Declarations as to intention—Purpose & circumstances must be considered*.—*Ross v. ELLISON* (OR ROSS), No. 68a, *ante*.

69. *Add. Annotations*:—As to (1) *Expld. Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61. *Refd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692. *Generally, Mentd. Perlak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.

104. *Add. Annotations*:—As to (1) *Expld. Graham v. Graham*, [1923] P. 31. *Refd. Eustace v. Eustace*, [1924] P. 45.

112. *Add. Annotation*:—*Consd. Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.

114. *Add. Annotation*:—*Consd. & Expld. Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.

115. *Add. Annotations*:—*Refd. Rudd v. Rudd*, [1924] P. 72; *Bartlett v. Bartlett*, [1925] A. C. 377; *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.

128. *Add. Citation*:—4 Notes of Cases, 698, n.

142. *Add. Annotations*:—As to (2) *Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *H. v. H.*, [1928] P. 206.

145. *Add. Annotation*:—*Consd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

## PART II. SECT. 3, SUB-SECT. 1.—A.

51 ii. —[—]—A domicile of origin differs from a domicile of choice mainly in this, that its character is more enduring, its hold stronger & less easily shaken off. Such a domicile continues unless it is shown with perfect clearness & satisfaction that there was a fixed & settled purpose to acquire a new domicile. This *onus* is a heavy one, & is upon those who assert a change of domicile.—*Re MURRAY'S ESTATE*, [1921]

3 W. W. R. 874; 31 Man. L. R. 362.—CAN.

51 iii. —[—]—A domicile of origin is not easily shaken off. Mere absence from home, roving & wandering, however long pursued, are not in themselves sufficient to effect a change; to do so there must be a fixed & settled purpose to abandon the domicile of origin & to settle in the country of choice.—*BARRY v. JAMES* (1921), *Times*, Apr. 29; [1921] 3 W. W. R. 182.—

## S. AF.

51 iv. —[—]—*TAYLOR v. TAYLOR* (1928), Q. R. 45 K. B. 184.—CAN.

## PART II. SECT. 3, SUB-SECT. 1.—B.

60 iii. —[—]—*GROTHKOP v. GROTHKOP*, [1922] N. Z. L. R. 1.—N.Z.

## PART II. SECT. 3, SUB-SECT. 2.—A.

67 ii. —[—]—*CROSBY v. THOMSON* (N. B.), [1926] 4 D. L. R. 56.—CAN.

191. *Add. Annotation*:—**Consd.** *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
192. *Add. Annotation*:—**Refd.** *Fleming v. Horniman* (1928), 138 L. T. 669.
214. *Add. Annotations*:—**Apld.** *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. **Refd.** *Mitford v. Mitford & Von Kuhlmann*, [1923] P. 130.
218. *Add. Annotations*:—*As to* (1) **Consd.** *H. v. H.*, [1928] P. 206. **Refd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. *Generally*, **Refd.** *Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.
220. *Add. Annotations*:—*As to* (3) **Consd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444. *Generally*, **Refd.** *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 611; *H. v. H.*, [1928] P. 206.
221. *Add. Annotations*:—*As to* (2) **Consd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 611.
223. *Add. Annotation*:—**Refd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444.
225. *Add. Annotation*:—**Expld.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444.
228. *Add. Annotations*:—**Consd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641; *Papadopoulos v. Papadopoulos* (1929), 46 T. L. R. 44. **Refd.** *Mitford v. Mitford & Von Kuhlmann*, [1923] P. 130; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669; *II. & II.*, [1928] P. 206.
- 243a. ——— **Nature of doctrine.**—*DREVON v. DREVON*, No. 52a, *ante*.
248. *Add. Annotations*:—**Consd.** *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
249. *Add. Annotation*:—**Dbtd.** *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.
- 249a. ———.—**The question whether a person is or is not domiciled in a foreign country is to be determined in accordance with the requirements of English law as to domicile, irrespective of the question whether the person in question has or has not acquired a domicile in the foreign country in the eyes of the law of that country.**  
Where an Englishwoman had never taken the steps prescribed by French Civil Code, art. 13:—**Held**: (1) she had nevertheless on the evidence acquired a French domicile of choice, & the ct. would apply the law of France in administering her estate; (2) on the evidence as to the French law, the French cts. in administering the movable property of deceased would apply French municipal law, & the testamentary disposing power of deceased was governed by that law.—*Re ANNESLEY, DAVIDSON v. ANNESLEY*, [1926] Ch. 692; 95 L. J. Ch. 404; 135 L. T. 508; 42 T. L. R. 584.
- Annotations*:—*As to* (1) **Consd.** *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61. *As to* (2) **Consd.** *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
- 251a. ———.—**Re ANNESLEY, DAVIDSON v. ANNESLEY**, No. 249a, *ante*.
285. *Add. Annotation*:—**Refd.** *Kramer v. A.-G.*, [1923] A. C. 528.

## Part III.—Nature of Property.

290. *Add. Annotation*:—**Refd.** *Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.
297. *Add. Annotations*:—**Refd.** *Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192. **Mentd.** *Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

### PART II. SECT. 3, SUB-SECT. 2.—B. (i).

146 i. *House or apartments rented in another country—Family estate kept up.*—**Def.**, whose domicile of origin was Scottish & who held a Scottish title & owned large landed estates in Scotland, left Scotland in 1895 for Canada, & carried on business there until 1917. Thereafter he took a flat in New York, where he resided for a part of each year. In order to supervise his financial interests, which were in America, & to avoid British income tax, he retained his Scottish estates, & resided on them during some part of each year. In correspondence with his wife, who lived in London, he referred to the family residence on his Scottish estates as "home," & in an affidavit signed by him in 1920 he described himself as a domiciled Scotsman:—**Held**: **def.** had failed to prove an intention to abandon his Scottish domicile & to acquire a domicile of choice in America.—*ROSS v. ROSS*, [1926] S. C. 1033.—**SCOT.**

**sr. Residence in country of origin retained—Residence in another country—Connections with country of origin**

*continued.*—**Re MURRAY'S ESTATE**, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

**st.** ———.—**Re DONALD v. DONALD**, [1922] N. Z. L. R. 237.—**N.Z.**

### PART II. SECT. 3, SUB-SECT. 2.—G.

**sw. Income tax paid in country of choice—Claims for income tax in country of origin successfully resisted.**—**Held**: facts of great importance in determining question of domicile.—**BARRY v. JAMES** (1921), *Times*, Apr. 29; [1921] 3 W. W. R. 182.—**S. AF.**

### PART II. SECT. 3, SUB-SECT. 4.

230 x. ———.—**Re BOYLE v. BOYLE**, [1925] 1 W. W. R. 829.—**CAN.**

230 xi. ———.—**Re JONES v. JONES** (1923), 1 L. R. 1 Ran. 705.—**IND.**

230 xii. ———.—**To establish change of domicile, it must be proved that the change was made with a clear intention of settling there, as a person whose ultimate & permanent home was to be in that country. The entire burden of proving change of domicile lies on him who wants to establish it.**

*LINTON v. GUDERIAN* (1928), 1 L. R. 56 Cal. 530.—**IND.**

230 xiii. ———.—**Re HARRISON v. HARRISON**, [1929] N. Z. L. R. 668.—**N.Z.**

230 xiv. ———.—**Re BROWN v. BROWN**, [1928] S. C. 542.—**SCOT.**

### PART III. SECT. 2.

p i. ———.—**Although land for purposes of succession may be regarded as personal property, it is not a movable.**—**ALEXANDER v. A.-G.**, [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—**CAN.**

p ii. ———.—**Interest in land agreed to be sold.**—**Where on the death intestate of an owner of land situate in Saskatchewan his title is subject to the interest of a purchaser under an outstanding agreement for sale, the interest of deceased in the land is immovable property, & devolves according to the law of Saskatchewan & is to be administered by the representative of the estate in that province, even though deceased died domiciled elsewhere.**—**Re BURKE ESTATE (Sask.)**, [1927] 3 W. W. R. 718.—**CAN.**

300. *Add. Annotation* :—*Refd. Re Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.*
302. For the paragraph in the original volume substitute the following paragraph :—  
 — *Interest in proceeds of sale of English freeholds—By English law.*—When a person domiciled in a foreign country dies intestate leaving an interest in the proceeds of sale of English freeholds which are subject to a trust for sale but not yet sold, such an interest is an immovable, & the succession thereto is governed by the *lex situs*.—*Re BERCHTOLD, BERCHTOLD v. CAPRON, [1923] 1 Ch. 192 ; 92 L. J. Ch. 185 ; 128 L. T. 591 ; 87 Sol. Jo. 212.*
303. For the paragraph in the original volume substitute the paragraph numbered 302 in the original volume.
308. *Add. Annotation* :—*Refd. Re Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.*
309. *Add. Annotation* :—*Consd. Re Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.*
311. *Add. Annotation* :—*Generally, Mentd. Re Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.*

## Part IV.—Immovables.

322. *Add. Annotation* :—*Mentd. Tallack v. Tallack & Brockema, [1927] P. 211.*
349. *Add. Annotations* :—*Refd. Hunter v. Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493 ; Re Ross, Ross v. Waterfield (1929), 46 T. L. R. 61.*
352. *Add. Citation* :—*sub nom. ANON., 1 Salk. 404.*
363. *Add. Annotation* :—*Mentd. Re Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187.*
368. For “(2) an order giving leave to serve a writ in an action for rescission” read “(2) an order giving leave to serve out of the jurisdiction a writ in an action for rescission.”
- Add. Citation* :—127 L. T. 209.
373. *Add. Annotation* :—*Refd. Tallack v. Tallack & Brockema, [1927] P. 211.*
374. After this case for “Foreign judgments generally.”—*See Part XIV., post,* read “Foreign judgments generally, *see pp. 444 et seq., post.*”
380. *Add. Annotations* :—*As to (1) Consd. New York Life Insce. v. Public Trustee, [1924] 1 Ch. 15 ; Guatemala (Republica de) v. Nunez, [1927] 1 K. B. 669.*
400. *Add. Annotation* :—*Mentd. Re Jordison, Raine v. Jordison, [1922] 1 Ch. 440.*

## Part V.—Movables.

417. *Add. Annotation* :—*Consd. Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.*
- 417a. ————.]—The Q. Co. was a co. incorporated & carrying on business in Queensland. In Sept. 1886, the Q. Co. issued & deposited with the U. Bank, as security for moneys due & to become due, two debentures, the one for £10,000, & the other for £50,000 ; both debentures assigned the uncalled capital of the co., & were, as the ct. held, valid according to the law of Queensland. In Dec. 1886 the Q. Co. made a call of £50 a share payable in four instalments, in Feb., Apr., June, & Aug. 1887. The co. had many shareholders domiciled in Scotland & some in England. On Oct. 20, 1887, an order was made for winding up the co. in Queensland, & on June 14, 1888, a similar order was made in England. On Feb. 24, 1887, the A. Co., a co. domiciled in Scotland, commenced proceedings in Scotland to recover from the Q. Co. large sums entrusted to them for investment. Immediately after the institution of the action the call moneys due under the call made by the Q. Co. as above, from shareholders resident in Scotland, were arrested by the Scotch process called arrestment on the dependence of the action. Proceedings in this action were restrained by the High Ct. in England on Feb. 24, 1888, on the motion of the English liquidator of the Q. Co., but the order was expressly made without prejudice to the security, if any, upon the amounts payable by the Scotch shareholders in the Q. Co. which the A. Co. had acquired by their proceedings, & the amounts received from the Scotch shareholders were directed to be carried by the liquidator to a separate account. On Sept. 6, 1889, an order was made in the Queensland winding up allowing the claim of the A. Co. for £12,662 4s. 5d. The U. Bank, whose

### PART IV. SECT. 1, SUB-SECT. 1.

314 *iv.* ————.]—*Re HICKSON, [1927] 4 D. L. R. 607 ; 61 O. L. R. 180.—CAN.*

334 *i.* *Trespass to land—Land situate abroad—Injury by fire spreading into foreign State*—*HOSLUND v. ABBOTSFORD LUMBER MINING & DEVELOPMENT CO., [1925] 1 D. L. R. 978 ; [1925] 1 W. W. R. 475 ; 34 B. C. R. 485.—CAN.*

### PART IV. SECT. 2, SUB-SECT. 2.

349 *i.* ————.]—*Scottish heritage.*—Testator, domiciled in England, left a will made in England & in English form disposing of his whole estate, which consisted of the most part of real & personal property in England, but also included Scottish heritage :—*Held* : the Scottish cts. had exclusive jurisdiction in an action dealing with competing claims to the Scottish heritage.—*FOSTER v. FOSTER'S TRUSTEES, [1923]*

### S. C. 212.—SCOT.

### PART V. SECT. 3, SUB-SECT. 1.

409 *i.* *Mobilia sequuntur personam.*—A., whose domicile was in Ontario, died in Michigan. Certain securities were, at the time of his death, in a bank in Michigan :—*Held* : the securities, although physically situated in Michigan, had an artificial or legal status in Ontario.—*A. G. FOR ONTARIO v. BABY, [1926] 3 D. L. R. 928 ; 69 O. L. R. 181.—CAN.*

claim against the Q. Co. had been allowed for £74,000, but who had valued their security at £31,000, took out a summons claiming that the liquidator should pay over to the bank all the moneys in his hands representing proceeds of the said call. The A. Co. claimed to be paid in priority out of the money received from Scotch shareholders. The evidence stated that, according to the law of Scotland, the arrestment had the effect of attaching the fund in favour of the creditor obtaining it, & upon the decree being pronounced in the suit the security would become complete, & that such an arrestment operated as an assignment of the fund duly intimated; that an admission of the sum due in the winding up of a co. was for this purpose equivalent to a decree; & that, according to the law of Scotland, in order to create a competent security over incorporeal personal property, the assignment thereof must be duly intimated to the debtor:—*Held*: without deciding the point whether the maxim "*Mobilia sequuntur personam*" made the assignment of the calls by the Q. Co. domiciled in Queensland valid in Scotland, the case was governed by the principle that, if a transfer of personal property is carried out validly according to the law of the country where the property is situated, it cannot be

made invalid by anything in the law of the assignor's domicile; & as the evidence proved that the arrestment operated as an assignment by the Q. Co., completed by intimation according to the law of Scotland, that assignment could not be made invalid by the prior assignment, which could only have effect by the law of Queensland.—*Re* QUEENSLAND MERCANTILE & AGENCY CO., *Ex p.* AUSTRALASIAN INVESTMENT CO., *Ex p.* UNION BANK OF AUSTRALIA, [1892] 1 Ch. 219; 61 L. J. Ch. 145; 66 L. T. 433; 8 T. L. R. 177, C. A.

*Annotations*:—*Consd.* Guatemala (Republica de) v. Nunez (1926), 95 L. J. K. B. 953. *Refd.* Kelly v. Solwyn, [1905] 2 Ch. 117.

418. *Add. Annotations*:—*Consd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669. *Refd.* Albemarle Supply Co. v. Hind (1927), 13 T. L. R. 652. *Mentd.* *Re* Allester, [1922] 2 Ch. 211; Pennington v. Reliance Motor Works, [1923] 1 K. B. 127.

421. *Add. Annotation*:—*Refd.* Sedgwick Collins v. Russia Insee. of Petrograd (1925), 133 L. T. 808.

423. *Add. Annotations*:—*Apld.* Guatemala (Republica de) v. Nunez (1926), 95 L. J. K. B. 955. *Refd.* New York Life Insee. v. Public Trustee, [1924] 1 Ch. 15.

424. *Add. Annotation*:—*Dlstd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

## Part VI.—Succession.

439. *Add. Annotation*:—*Refd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.

439a. — Interest in proceeds of sale of English freeholds.—*Re* BERCHTOLD, BERCHTOLD v. CAPRON, No. 302, *ante*.

440a. — Will of Egyptian realty made by British subject domiciled in Egypt—Ottoman Order in Council, 1910, art. 90.—A Moslem British subject domiciled in Egypt died in 1918 possessed of property which was all in Egypt. He was survived by his mother, who according to the Moslem law of inheritance was entitled to a one-sixth share of his estate. Deceased executed a will in the English form leaving all his property to his widow & children:—*Held*: having regard to the proviso to the above art. testator had no testamentary power over the share of his estate to which his mother was entitled by Moslem

law.—BARTLETT v. BARTLETT, [1925] A. C. 377; 94 L. J. P. C. 100; 133 L. T. 23, P. C.

440b. — Will of Italian realty by British subject domiciled in Italy.—*Re* ROSS, ROSS v. WATERFIELD, No. 457a, *post*.

448. *Add. Annotation*:—As to (1) *Refd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.

456. *Add. Annotation*:—*Refd.* *Re* Ross, ROSS v. WATERFIELD (1929), 46 T. L. R. 61.

457a. —.]—(1) The succession to movable property, wherever situate, is governed by the law of testator's domicile, that is to say, the whole law of the country of domicile, including the rules of private international law administered by its tribunals. The inquiry in an English ct. before which such a question of succession comes is, therefore, what the cts. of the country of domicile

### PART VI. SECT. 1, SUB-SECT. 1.

436 iii. —.]—Where on the death intestate of an owner of land situate in S. his title is subject to the interest of a purchaser under an outstanding agreement for sale the interest of the deceased in the land is immovable, not movable, property & therefore, devolves according to the law of S., & is to be administered by the representative of the estate in that province, even though the deceased died domiciled elsewhere.—*Re* BURKE ESTATE, [1928] 1 D. L. R. 318; 22 Sask. L. R. 142; [1927] 3 W. W. R. 718.—CAN.

### PART VI. SECT. 1, SUB-SECT. 2.—A.

By Will of Chinese Buddhist domiciled in Burma—Whether Chinese customary law applicable—Right to make will.—Chinese customary law governs the succession to the estate of a Chinaman

domiciled in Burma. The right of the Chinese to make wills has also been recognised.—CHAN PYU v. SAW SIN (1928), 1 L. R. 6 Ran. 623.—IND.

### PART VI. SECT. 2, SUB-SECT. 1.—A.

453 ix. —.]—Testator who had formerly resided in N.Z. went to Victoria, where according to an affidavit filed by his exor. he acquired & at his death retained a domicile. The bulk of his property was invested in bonds & in mtges. of land in N.Z.:—*Held*: the mtges. were movable property, & the intestate succession to them was governed by the law of deceased's domicile.—*Re* O'NEILL, ETC., [1922] N. Z. L. R. 468.—N.Z.

453 x. —.]—War Stock & National War Bonds are Imperial or British investments, although administered in England, & where testator was domiciled in Scotland:—*Held*: the

effect of the destinations fell to be ascertained according to Scots law, & not according to English law.—CUNNINGHAM'S TRUSTEES v. CUNNINGHAM, [1924] S. C. 581.—SCOT.

453 xi. —.]—A domiciled Scotsman died leaving a will in Scottish form, by which he conveyed his estate to Scottish trustees, & directed them to set aside a certain sum for the use of a life interest, & on her death to pay a legacy out of it to a named legatee. He further directed that, in the event of the legatee predeceasing the period of division without leaving issue, the legacy should be paid to the legatee's "nearest heirs." The legatee predeceased the life interest without leaving issue. Both at the date of testator's death & his own death he was a domiciled Englishman. On the death of the life interest:—*Held*: in the absence of any indication of a contrary intention on the part of testator,

would decide in the particular case. The result is that, where by the law of the domicile the succession to the movables of a testator depends on the law of that testator's nationality, an English ct. will hold that the succession is governed by the law of the nationality & not by the municipal law of the domicile.

(2) The succession to the immovable property situate in Italy of an English testator domiciled in Italy is to be determined by Italian law, namely, in the same manner as English Courts would determine it if the property belonged to an Englishman & was situate in England.—*Re* ROSS, *ROSS v. WATERFIELD* (1929), 46 T. L. R. 61.

460. *Add. Annotation*:—*Generally*, *Mentd. Ord v. Ord*, [1923] 2 K. B. 432.

461. *Add. Annotation*:—*Refd. Re* ROSS, *ROSS v. WATERFIELD* (1929), 46 T. L. R. 61.

463. *Add. Annotations*:—*As to* (1) *Consd. Re* ROSS, *ROSS v. WATERFIELD* (1929), 46 T. L. R. 61. *As to* (2) *Consd. Re* ROSS, *ROSS v. WATERFIELD* (1929), 46 T. L. R. 61.

467a. — *Law of nationality*.—*Re* ROSS, *ROSS v. WATERFIELD*, No. 457a, *ante*.

481. *Add. Annotation*:—*As to* (3) *Consd. Re* ROSS, *ROSS v. WATERFIELD* (1929), 46 T. L. R. 61.

511. For the paragraph in the original volume substitute the following paragraph:—

— *Share in proceeds of sale of freeholds—Held on trust for sale but not converted.*—

An interest in the proceedings of sale of real estate settled upon a trust for sale, which has not been executed, is personal estate within Wills Act, 1861 (c. 114), s. 1.—*Re* LYNE'S SETTLEMENT TRUSTS, *Re* GIBBS, *LYNE v. GIBBS*, [1919] 1 Ch. 80; 88 L. J. Ch. 1; 120 L. T. 81; 35 T. L. R. 44; 63 Sol. Jo. 53, C. A.

*Annotation*:—*Refd. Re* Berchtold, *Berentold v. Capron*, [1923] 1 Ch. 192.

517. *Add. Annotation*:—*Consd. Re* ROSS, *ROSS v. WATERFIELD* (1929), 46 T. L. R. 61.

521. *Add. Annotation*:—*Folld. Re* CUNNINGTON, *HEALING v. WEBB*, [1924] 1 Ch. 68.

526a. — — —.]—By his will made in English form in England testator, who described himself as a British subject residing in France, bequeathed to his sole exor., who was English, all his estate upon trust for conversion, & after payment of certain legacies to domestic servants, to divide all the residue of his estate equally between ten named legatees; & if any of such legatees died in his lifetime the legacy was to belong to the issue of such person. Testator died in France, & his will was proved in England. Two of the residuary legatees died in his lifetime, but neither left any issue. There was no realty & the property comprising the residue was in England. The residuary legatees were all English. On a summons the domicile of testator at his death was held to be French.

By French law there was no lapse of the shares of those legatees who had died, & the survivors were entitled:—*Held*: the domicile being French & there being no sufficient indication in the will, either express or implied, that testator desired that it should be construed by English law, the *prima facie* general rule applied, & the will must be construed by French law.—*Re* CUNNINGTON, *HEALING v. WEBB*, [1924] 1 Ch. 68; 93 L. J. Ch. 95; 130 L. T. 308; 68 Sol. Jo. 118.

528. *Add. Annotation*:—*As to* (1) *Refd. Re* MANNERS, *MANNERS v. MANNERS*, [1923] 1 Ch. 220.

536. *Add. Annotation*:—*Consd. Favorke v. Steinkopff*, [1922] 1 Ch. 174.

548a. — — —.]—Funds in ct. standing to the credit of an infant, having a foreign domicile, ordered to be paid out to her on her attaining the age of eighteen, being her full age according to the law of her domicile.—*Re* SCHNAPPER, [1928] 1 Ch. 420; 97 L. J. Ch. 237; 139 L. T. 42; 72 Sol. Jo. 137.

563a. — — —.]—Administration, with a copy of the will annexed, of a party domiciled in Scotland, granted, in conformity with the grant of the ct. of competent jurisdiction in Scotland, though great doubt entertained as to the correctness of the grant in Scotland.—*In the Goods of* HENDERSON (1850), 2 Rob. Eccl. 144; 7 Notes of Cases, 378; 163 E. R. 1271.

574. *Add. Annotation*:—*Refd. Re* McLaughlin, [1922] P. 235.

580a. — *Foreign grant of will & unattested codicil—Followed.*—*In the Goods of* FOY (1839), 2 Curt. 328; 163 E. R. 428.

587a. — — —.]—Will made after death according to directions of deceased—Valid under Spanish law—Grant made.—*In the Goods of* OSBORNE (1855), Dea. & Sw. 4; 26 L. T. O. S. 128; 1 Jur. N. S. 1220; 4 W. R. 164.

587b. *S. P. In the Goods of* GUTTIEREZ (1869), 38 L. J. P. & M. 48; 17 W. R. 742; *sub nom. In the Goods of* GUTIERES, 20 L. T. 758; 33 J. P. 535.

590. *Add. Annotation*:—*Consd. In the Goods of* GREWE (1922), 127 L. T. 371.

594. *Add. Annotations*:—*Consd. Re* ROSS, *ROSS v. WATERFIELD* (1929), 46 T. L. R. 61. *Refd. Re* ANNESLEY, *DAVIDSON v. ANNESLEY*, [1926] Ch. 692.

594a. — — —.]—A British born subject, domiciled in Malta, having made his will in England, according to English law, & not according to the law of Malta applicable to wills made in that island, the ct. refused to pronounce against the validity of the will, there being no evidence to show that the cts. at Malta would consider it invalid, but rather the contrary.—*FRERE v. FRERE* (1847), 5 Notes of Cases, 593.

*Annotation*:—*Consd. Re* ROSS, *ROSS v. WATERFIELD* (1929), 46 T. L. R. 61

the legatee's heirs fell to be ascertained by the law of his domicile, i.e., the law of England.—*SMITH'S TRUSTEES v. MACPHERSON*, [1926] S. C. 983.—SCOT.

#### PART VI. SECT. 2, SUB-SECT. 2.

s. d. *Intestate domiciled abroad leaving shares in Canadian company—Issue as to ownership of shares—By what court determined.*—*Re* FENWICK (1915), 35 O. L. R. 29; 9 O. W. N. 227.—CAN.

#### PART VI. SECT. 2, SUB-SECT. 3.—D. (a).

521 iv. — — —.]—*Re* ROPER (Deceased), [1927] N. Z. L. R. 731.—N.Z.

#### PART VI. SECT. 2, SUB-SECT. 3.—D. (b).

sm. "Heirs"—*In Canadian will—Whether adopted children included.*—Where in a will of testator domiciled in British Columbia a gift of personality

is made to a person "or his heirs" & such person dies domiciled in a foreign country before the death of testator, the word "heirs" includes an adopted child, where under the law of that country the effect of adoption is to confer on an adopted child all the rights & status of a child born in lawful wedlock.—*PURCELL v. HENDRICKS & MARKS*, (B.C.), [1925] 3 D. L. R. 854; [1925] 2 W. W. L. 689.—CAN.



615. *Add. Annotation*:—*As to* (2) *Folld. Re Cunningham, Healing v. Webb* (1923), 68 Sol. Jo. 118.

621a. ————.]—Testator gave a share of his residuary estate to trustees upon trust for sale & to stand possessed of the proceeds to pay the income to M. for life & then for such persons as she should by will appoint, & in default of appointment for her children at twenty-one in equal shares. M. married a German in 1880 & died in 1922, leaving two daughters who attained twenty-one. By her will, made in German form, she appointed the elder her heiress, the younger to receive only her legal portion:—*Held*: the will was an effectual exercise of the power.—*Re STRONG, STRONG v. MEISSNER* (1925), 95 L. J. Ch. 22; 69 Sol. Jo. 693.

626a. Over stock representing proceeds of sale of real estate in England—& liable to be laid out in purchase of land.]—An Englishwoman,

domiciled in France, having a general power of appointment over a sum of stock, representing a share of proceeds of real estate in England sold under the judgment in a partition action, such proceeds being liable to be laid out in the purchase of land under Settled Estates Act, 1877 (c. 18), s. 31, by her will in the French language gave “all her properties & chattels (*tous les biens et droits mobiliers*)” to T. absolutely:—*Held*: the will must be construed as disposing of everything in the form of personal estate over which testatrix had a general power of disposition, & the fund being personal estate in form, it passed by the will.—*Re HARMAN, LLOYD v. TARDY*, [1894] 3 Ch. 607; 63 L. J. Ch. 822; 71 L. T. 401; 8 R. 549.

*Annotation*:—*Refd. Re Scholefield, Scholefield v. St. John, Re Young, Smith v. St. John*, [1905] 2 Ch. 408.

638. *Add. Citation*:—127 L. T. 117.

## Part VII.—Contracts.

639. To the cross-reference before this case add “No. 1981a.”

639a. ————.]—Pltf. was received by defts., a British co., under a contract made in Detroit, to be carried in one of their steamships from New York to Southampton. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. It was further provided that all questions arising under the clause should be decided according to English law. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held*: the language of the contract showed that it was the intention of the parties that it should be wholly governed by English law; the clause relieving defts. from liability for the negligence of their servants, though void by the law in force in Detroit, was valid & enforceable, by English law, but, applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury.—*JONES v. OCEANIC STEAM NAVIGATION CO., LTD.*, [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

640. *Add. Annotation*:—*Apld. Pass v. British Tobacco Co. (Australia)* (1926), 42 T. L. R. 771.

640a. Agreement for contract to be subject to

foreign law—Contract cancelled by decree of foreign Government.]—In May, 1903, pltf. took out a 20 year endowment life insurance policy with defts. for 10,000 roubles payable at defts.' office in St. Petersburg, & by the terms of the policy all premiums were to be paid in Russia. Pltf. paid all the premiums in Russia down to 1917, & then in London down to 1919. By the terms of an Imperial Decree of the Russian Empire, dated July 7, 1889, which were incorporated in the policy, it was provided (*inter alia*) that all disputes in connection with insurance operations should be settled according to Russian laws & in Russian cts. of justice. By a Monopolisation Decree of the Russian Soviet Govt., dated Dec. 1918, insurance in all its forms was declared a State monopoly, & in Nov. 1919, a Decree of Cancellation abolished life assurance altogether in the Soviet Republic, & all existing contracts were annulled. In those circumstances pltf., who was prevented by the above decrees of 1918 & 1919 from suing on the policy in Russia, brought an action in England for a declaration that defts. were liable to him under the policy:—*Held*: the proper law of the contract was, according to the policy rules, the law of Russia, & the effect of the Cancellation Decree of Nov. 1919, was that the contract, if in fact there was any contractual  *nexus* left in existence between the parties after the Monopolisation Decree of 1918 came into force, was annulled, & pltf. could not recover on it.—*PERRY v. EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A.* (1929), 45 T. L. R. 468.

641. *Add. Annotations*:—*As to* (2) *Refd. N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 601. *Generally, Mentd. Matthey v. Curling*, [1922] 2 A. C. 180.

643. *Add Annotations*:—*Refd. Jones v. Oceanic Steam Navigation Co.*, [1921] 2 K. B. 730;

### PART VI. SECT. 3.

635 iv. ————.]—*Re BURKE ESTATE* (Sask.), p. 366, *ante.*—CAN.

N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay, [1927] A. C. 604. **Mentd.** Sanderson v. Armour (1922), 91 L. J. P. C. 167.

644. *Add. Annotation*:—As to (2) **Refd.** Cayzer, Irvine v. Board of Trade (1926), 95 L. J. K. B. 1054.

645a. —.]—The master of a North German ship, lying at Constantinople, entered into a charterparty with North German subjects, there resident, to carry a cargo to a port in the United Kingdom or on the continent, to be delivered to English consignees. The charterparty & the bill of lading given under it were in the English language, & it was stipulated that the ship should call at one of three ports of the United Kingdom for orders. The ship duly called at F., & was ordered to proceed to an English port to discharge:—**Held**: as the intention of the parties as to what law should govern was to be gathered from the circumstances of the case, & as the giving of the orders fixed the seat of the contract in England, the law of England applied.—**THE WILHELM SCHMIDT** (1871), 25 L. T. 34; 1 Asp. M. L. C. 82.

*Annotations*:—**Refd.** The San Roman (1872), L. R. 3 A. & E. 583; The Dannebrog (1874), 31 L. T. 759

646. *Add. Annotations*:—**Apld.** Jones v. Oceanic Steam Navigation Co., [1924] 2 K. B. 730. **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay, [1927] A. C. 604.

(c) *Application of Lex loci solutionis* (Vol. XI., p. 392)

650a. **Contract by State—Loan.**—When the Govt. of a State contracts a loan in another country, the contract is governed by the law of the State whose Govt. contracts the loan, & not by the law of the country in which the contract is made.—**SMITH v. WEGUELIN** (1869), L. R. 8 Eq. 198; 38 L. J. Ch. 465; 20 L. T. 724; 17 W. R. 904.

*Annotation*:—**Refd.** Goodwin v. Roberts (1876), 1 App. Cas. 476.

Before 659 add as follows:—

658a. **General rule.**—Where a contract made in one country is to be performed in another, the law governing the contract is the law of the country where the performance is to take place.

A contract for the sale of goods, made in Malta, was to be performed by the delivery of the goods on board a ship at Gibraltar selected by the purchaser:—**Held**: as from the moment of such delivery, the vendor had no further control over the goods, & had parted with their possession of & property in them, & the purchaser had, after their arrival in Malta, dealt with them in a manner inconsistent with the ownership of the vendor he had no right to reject the goods & rescind the contract, which was governed by the law of Gibraltar.—**BENAIM & Co. v.**

DEBONO, [1924] A. C. 514; 93 L. J. P. C. 133; 131 L. T. 1, P. C.

664. *Add. Annotation*:—**Refd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

668. *Add. Annotations*:—**Refd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669; **Re** Visser, Holland v. Drukker, [1928] Ch. 877.

669. *Add. Annotations*:—**Refd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

670. *Add. Annotations*:—**Consd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669 **Refd.** *Re* Visser, Holland v. Drukker, [1928] Ch. 877.

672. *Add. Annotation*:—**Refd.** Farr, Smith v. Messers, [1928] 1 K. B. 397.

676. *Add. Annotation*:—**Refd.** Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse, [1923] 2 K. B. 630

683. *Add. Annotation*:—**Refd.** The Colorado, [1923] P. 102.

688. *Add. Annotations*:—**Refd.** Benaim v. Debono' [1924] A. C. 514. **Mentd.** Matthey v. Curling, [1922] 2 A. C. 180.

699. *Add. Annotations*:—**Consd.** Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172. **Apld.** Kursell v. Timber Operators & Contractors (1926), 95 L. J. K. B. 569. **Consd.** Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.

703a. — Policy effected in England by foreigner—With foreign company through English office.]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe, were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable, & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law:—**Held**: it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable; applying that test in the present

#### PART VII. SECT. 2, SUB-SECT. 1.— B. (b).

652 vi. — *Assessment of damages.*]  
—Damages recoverable in an action for breach of contract made abroad will be determined by the proper law of the contract, that is to say, the law which the parties intended should govern their rights & liabilities.—**HORST v. LIVESLEY**, [1924] 2 D. L. R. 1002; [1924] 2 W. W. R. 443; 34 B. C. R. 19; *affd.*, [1925] 1 D. L. R. 159.—**CAN.**

652 vii. —.]—**LUCAS & Co. v. MONCTON SUPPLY Co.**, [1924] 4 D. L. R. 376.—**CAN.**

sn. *Offer made & accepted by post—Governed by law of country of offeror.*]  
—**RENFREW FLOUR MILLS v. SANSCHAGRIN** (1928), Q. R. 45 K. B. 29.—**CAN.**

#### PART VII. SECT. 2, SUB-SECT. 1.— B. (c).

m. Read now "658a i."

#### PART VII. SECT. 2, SUB-SECT. 4.—A.

so. *Jurisdiction of court to enforce—Contract to be performed abroad—Defendants resident within jurisdiction.*]  
—Where debts, in a suit reside in this country & the principal office of pltf. is in England, & a contract is entered

into there between the parties which is to be executed in New York, a suit in respect thereof may be instituted in this Province.—**DIRECT CABLE Co. v. DOMINION TELEGRAPH Co.** (1881), 28 Gr. 648; (1883) 8 A. R. 416.—**CAN.**

#### PART VII. SECT. 2, SUB-SECT. 4.— B. (c).

701 i. *Marine policy—Governed by lex loci contractus.*]  
—**PATTERSON v. CONTINENTAL INSURANCE Co.** (1859), 18 U. C. R. 9.—**CAN.**

703 ii. —.]—*Re* **HEWITT & HEWITT** (Ont.) (1918), 14 O. W. N. 300; 43 D. L. R. 716.—**CAN.**

case, the debts were recoverable in London where they were expressed to be payable.—**NEW YORK LIFE INSURANCE CO. v. PUBLIC TRUSTEE**, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

*Annotations*.—**Refd.** *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 253; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**705. Add. Annotation**.—*As to* (1) **Refd.** *The Colorado*, [1923] P. 102.

**709. Add. Annotation**.—**Refd.** *Behnke v. Bede Shipping Co.*, [1927] 1 K. B. 649.

**709a. — Contract cancelled by decree of foreign Government.**—**PERRY v. EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A.**, No. 610a, ante.

**711. Add. Annotation**.—*As to* (1) **Refd.** *The Colorado*, [1923] P. 102.

**716. Citations**.—For “5 De G. M. & G. 604” read “1 De G. M. & G. 604.”

*Add. Annotations*.—**Mentd.** *Lord Strathcona S.S. Co. v. Dominion Coal Co.* (1925), 42 T. L. R. 86; *Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609; *Re Wait*, [1927] 1 Ch. 606.

*Annotation*.—**Refd.** *The Colorado*, [1923] P. 102.

**730. Add. Annotation**.—**Distd.** *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470.

**732. Add. Annotation**.—**Distd.** *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470.

**732a. — Goods to be smuggled into foreign country—Not enforceable in England.**—*F.*, a financier, *L.*, a distiller, *D. & M.*, a firm of shipbrokers, & one *A.* were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. *D. & M.* entered into a contract to buy a steamer for £2,565; *F.* advanced £256 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between *F.*, *L. & D. & M.*, whereby *L.* agreed to sell to *D. & M.* 7,500 cases of whisky at 27s. 6d. a case free on board at Leith or Glasgow to be delivered at warehouse not later than Nov. 26. *D. & M.* were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by *F.*, accepted by *A.* & indorsed to *L.*, & a second bill for £1,812 accepted by *A. & D. & M.*, both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26, & handed to *L.* to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. *L.* agreed to lend

*D. & M.* £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 40 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. *F.* agreed to lend *D. & M.* £1,000 at 10 per cent. *per annum* interest to be secured by a second mtge. on the steamer. *D. & M.* agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to *L.* cover notes for £1,500 & £1,000 & to *F.* a cover note for £1,000. *F. & L.* agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. *D. & M.* agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage.—**Held**: the object to be attained by this agreement being a breach of international comity, the agreement was contrary to public policy & void.—**FOSTER v. DRISCOLL**, **LINDSAY v. ATTFIELD**, **LINDSAY v. DRISCOLL**, [1929] 1 K. B. 470; 98 L. J. L. B. 282; 140 L. T. 479; 45 T. L. R. 185, C. A.

**733. Add. Annotation**.—**Distd.** *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470.

**740. Add. Annotation**.—*As to* (2) **Refd.** *Employers' Liability Assee. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

**748. Add. Annotations**.—*As to* (1) **Refd.** *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. **Generally**, **Mentd.** *Larrinaga v. Soc. Franco Americaine Des Phosphates de Medulla* (1923), 92 L. J. K. B. 455.

**750. Add. Annotations**.—**Apld.** *Soc. Anon. des Grands Etablissements de Touquet*—*Plage v. Baumgart* (1927), 96 L. J. K. B. 789. **Refd.** *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.

**752. Add. Annotations**.—**Apld.** *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. **Refd.** *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.

**752a. — — — — —.**—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, *pltf.* can ignore the security & sue as for money lent to debt.—**SOCIÉTÉ ANONYME DES GRANDS ETABLISSEMENTS DE TOUQUET PARIS-PLAGE v. BAUMGART** (1927), 96 L. J. K. B. 789; 136 L. T. 799; 43 T. L. R. 278.

*Annotation*.—**Consd.** *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.

**757. Add. Annotation**.—*As to* (1) **Apld.** *Swiss Bank Corp'n. v. Boehmische Industrial Bank*, [1923] 1 K. B. 673.

currency of the country where the money is payable, unless by express terms or necessary implication payment in some other currency is required.—**SIMMS v. CHERNEKOFF**, [1922] 1 W. W. R. 967; 62 D. L. R. 703; 15 Sask. L. R. 185.—**CAN.**

**PART VII. SECT. 2, SUB-SECT. 8.**

**756 i. By act of parties—Payment—In what currency.**—**EHMKA v. CITIES IMPROVEMENT CO.** (1922), 52 O. L. R. 193.—**CAN.**

**756 ii. — — — — —.**—**MYERS v. UNION NATURAL GAS CO.** (1922), 53

O. L. R. 88.—**CAN.**

**756 iii. — — — — —.**—Where a payment originating in one country is to be made in another country, & the currency denomination specified is the same in both countries, the rule is that the payment must be made in the

## Part VIII.—Torts.

777. *Add. Annotation*:—**Refd.** Isaacs v. Cook, [1925] 2 K. B. 391.
781. *Add. Annotation*:—**Mentd.** Tallack v. Tallack & Broekema, [1927] P. 211.
783. *Add. Annotations*:—**Generally, Mentd.** McMillan v. Canadian Northern Ry., [1923] A. C. 120; Walpole v. Canadian Northern Ry., [1923] A. C. 113.
788. *Add. Citation*:—*sub nom.* BADTOLPH v. BAMFIELD, *Cas. temp.* Finch, 186.
789. *Add. Annotation*:—**Refd.** The Fagernes, [1927] P. 311.
796. *Add. Annotation*:—*As to* (2) **Refd.** Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.

## Part IX.—Marriage.

802. *Add. Annotations*:—**Refd.** R. v. Moscovitch (1927), 44 T. L. R. 4. **Mentd.** R. v. Moscovitch (1927), 138 L. T. 183.
806. *Add. Annotation*:—*As to* (3) **Refd.** Mitford v. Mitford, [1923] P. 130.
817. *Add. Annotation*:—**Refd.** Berthiaume v. Dastous (1929), 45 T. L. R. 607.
821. *Add. Annotations*:—**Refd.** Papadopoulos v. Papadopoulos (1929), 46 T. L. R. 44. **Mentd.** *Re* Wombwell's Settlt., *Clerke v. Menzies*, [1922] 2 Ch. 298.
827. *Add. Annotations*:—*As to* (1) **Refd.** Papadopoulos v. Papadopoulos (1929), 46 T. L. R. 44. *As to* (2) **Refd.** Mitford v. Mitford, [1923] P. 130.
829. *Add. Annotations*:—**Refd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669; Sloggett v. Sloggett, [1928] P. 148.
- 835a. ——.]—**BERTHIAUME v. DASTOUS** (1929), 45 T. L. R. 607, P. C.
836. *Add. Annotations*:—**Folld.** Mitford v. Mitford, [1923] P. 130. **Consd.** Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641; Berthiaume v. Dastous (1929), 45 T. L. R. 607.
840. *Add. Annotation*:—*As to* (2) **Refd.** Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930.
853. *Add. Annotations*:—**Refd.** Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Perlak Petroleum Maatschappij v. Deen, [1924] 1 K. B. 111; R. v. Moscovitch (1927), 138 L. T. 183.
860. *Add. Annotation*:—**Refd.** Berthiaume v. Dastous (1929), 45 T. L. R. 607.

## Part X.—Divorce and other Matrimonial Causes.

- 861a. ———— **Marriage in Turkey before Treaty of Lausanne.**—**MARTIN v. MARTIN & MAY** (1928), 72 Sol. Jo. 612.
- 873a. ————]—The jurisdiction in divorce is limited to England & Wales & depends upon domicile there, & it does not necessarily confer any authority over the property of a person domiciled in a foreign country.—**TALLACK v. TALLACK & BROEKEMA**, [1927] P. 211; 96 L. J. P. 117; 137 L. T. 487; 43 T. L. R. 467; 71 Sol. Jo. 521.
- Under Judicature (Consolidation) Act, 1925 (c. 49), s. 191.]—See HUSBAND & WIFE, No. 5512a, *post*.**

## PART VIII. SECT. 1.

775 xii. ————]—Appellant, resident in Ontario, in the course of his employment was injured in that province owing to the negligence of a fellow servant. He sued for damages in Saskatchewan, in which province common employment was not a defence, although a defence to an action in Ontario.—**Held**: the action could not be maintained.—**McMILLAN v. CANADIAN NORTHERN RY. CO.**, [1923] A. C. 120; 92 L. J. P. C. 44; 128 L. T. 293; 39 T. L. R. 14.—**CAN.**

775 xiii. ————]—An application under K. B. Act, 1920 (Sask.), for leave to bring an action for damages for personal injuries incurred in the province of Alberta in the course of plaintiff's employment was refused, on the ground that the acts complained of were not "unjustifiable" according to Alberta law, & an essential condition to found the action was not fulfilled.—**WARD v. BRITISH AMERICAN OIL CO., LTD.**, [1923] 1 W. W. R. 1240; 16 Sask. L. R. 526.—**CAN.**

## PART VIII. SECT. 2, SUB-SECT. 1.

780 i. *Trespass to person—Damages—Granting of compensation entrusted to special tribunal in country where tort committed.*—Since in B. C. the board appointed under Workmen's Compensation Act has exclusive jurisdiction

in matters of compensation in lieu of all rights of action of a workman or his dependents against his employer for any accident arising out of & in the course of his employment, no action can be in Saskatchewan on behalf of a widow & child of a workman for his death while domiciled in B. C.—**WALPOLE v. CANADIAN NORTHERN RY. CO.**, [1923] A. C. 113; 92 L. J. P. C. 39; 128 L. T. 289; 39 T. L. R. 16.—**CAN.**

b. For "*Trespass—Negligence—Common employment—Lex loci actus*" read "*—Negligence—Common employment—Lex loci actus.*"

f. After this case add "*See, also, No. 775 xii., ante.*"

## PART IX. SECT. 1, SUB-SECT. 1.

811 i. ————]—*Marriage solemnised according to law of state.*—If a person domiciled in a country whose laws permit polygamous marriages is, in accordance with its laws, married there to two wives, citizens of that country, & dies while still domiciled there though temporarily residing in B. C., the status of the wives will be recognised by the cts. of B. C. for the purpose of fixing the succession duty payable on movable property in B. C. going under deceased's will to each of the wives.—**YEW v. A.-G. FOR BRITISH COLUMBIA**, [1924] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *reesp.* S. C.

*sub nom.* **Re LEE CHEONG**, [1923] 1 W. W. R. 867.—**CAN.**

## PART IX. SECT. 1, SUB-SECT. 2.—B.

814 iii. ————]—**FAFARD v. BEAUPRE** (1927), Q. R. 66 S. C. 24.—**CAN.**

## PART IX. SECT. 1, SUB-SECT. 2.—C.

827 ii. ————]—In 1911 H., domiciled in the Transvaal, married his deceased wife's sister, W., who was domiciled in Natal. By the common law prevailing in T. at the time, marriage between a man & his deceased wife's sister was prohibited. In N. such a marriage was permitted by statute.—**Held**: the marriage was valid inasmuch as the domicile of W. was in N. & the marriage was celebrated in N., & the N. cts. would not regard the validity of the marriage as affected by an incapacity imposed by the law of the husband's domicile not recognised by the law of N.—**FRIEDMAN v. FRIEDMAN'S EXECUTORS** (1922), 43 N. L. R. 259.—**S. AF.**

## PART X. SECT. 1, SUB-SECT. 2.—A. (a).

b i. ————]—**Held**: it is the duty of the district judge, when a petition for dissolution of marriage comes before him, to satisfy himself that the parties to the marriage were domiciled in India at the time when the petition was

878. *Add. Annotation*:—*Mentd. Rudd v. Rudd*, [1924] P. 72.

884. *Add. Annotation*:—*Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

885. *Add. Annotations*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Salvesen (or von Lorange) v. Austrian Property Administrator*, [1927] A. C. 641. *Refd. Graham v. Graham* (1923), 128 L. T. 639; *Eustace v. Eustace* [1924] P. 45; *Rudd v. Rudd*, [1924] P. 72; *Sasson v. Sasson*, [1924] A. C. 1007.

891. *Add. Annotation*:—*Mentd. Bosworthick v. Bosworthick*, [1927] P. 64.

894. *Add. Annotations*:—*Consd. Graham v. Graham*, [1923] P. 31; *Salvesen (or von Lorange) v. Austrian Property Administrator*, [1927] A. C. 641. *Refd. Mitford v. Mitford*, [1923] P. 130.

894a. ———.]—(1) The competent jurisdiction to dissolve a marriage is that of the husband's domicile & deft. must be domiciled in that jurisdiction at the commencement of proceedings. Independent authority to dissolve the marriage cannot exist in two sovereign States simultaneously.

(2) A husband by deserting his wife in one domicile does not become estopped from alleging another domicile after acquiring it, & the wife so deserted is not thereby entitled to determine the forum of her proceedings for dissolution. A decree of judicial separation by reason of a matrimonial offence of the husband does not as from its date fix matrimonial domicile or render it incapable of alteration without the consent of the wife.—*H. v. H.*, [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598.

895. *Add. Annotations*:—*As to (1) Refd. Graham*

presented & to see that the petition itself contains a declaration to that effect; & before hearing the suit, to satisfy himself that the parties are in fact domiciled in India.—*MURPHY v. MURPHY* (1929), 1 L. R. 10 Lah. 607.—**IND.**

b ii. ———. *Under Indian Divorce (Amendment) Act, 1926* [—Under Indian & Colonial Divorce Jurisdiction Acts, s. 1 (1), & Indian Divorce Act, 1869, s. 3, the High Ct. has jurisdiction to grant a decree for dissolution of a marriage; the words in sect. 1 (1) (a) of the Act of 1926 are intended to mean that the grounds on which a decree for the dissolution of the marriage of British subjects domiciled in England may be granted by a High Ct. in India shall be those on which such a decree might be granted by the Divorce Ct. in England according to the law for the time being in force in England, i.e. according to Supreme Ct. of Judicature (Consolidation) Act, 1925, s. 176.—*BARNARD v. BARNARD* (1928), 1 L. R. 56 Calc. 89.—**IND.**

878 i. ———. *Indian marriage*.]—Petition by the wife for dissolution of marriage. The husband was a subject of the U.S.A. & domiciled in that country; the marriage was celebrated & both parties resided in India until Jan. 1923, when the husband left for America where he remained. Adultery & cruelty were committed within the jurisdiction of the ct. sufficient to entitle petitioner to a decree nisi.—*Held*: the ct. had jurisdiction to pass the decree.—*MILLER v. MILLER* (1924), 1 L. R. 52 Calc. 566.—**IND.**

879 iv. ———.]—The domicile of the married pair at the time

when the question of divorce arises is the test of jurisdiction to dissolve their marriage, & the ct. of the *bona fide* existing domicile has jurisdiction over persons originally domiciled in another country to undo a marriage solemnised in that other country; & such a divorce will be recognised by the ct. of Ontario, even if granted for a cause which would not be sufficient to obtain a divorce in Ontario.—*CHROMARTY v. CHROMARTY* (1917), 38 O. L. R. 481; 33 D. L. R. 151.—**CAN.**

890 iv. ———.]—An action by a husband, who had been married in Ontario, in a foreign State for a divorce resulted in favour of the wife, & judgment dissolving the marriage was granted to her, & by it she was awarded alimony. Subsequently the wife sought by action to recover the amount of alimony, & the husband contended that as he had never acquired the necessary domicile to give the foreign ct. jurisdiction to grant the divorce the judgment was invalid.—*Held*: as he had invoked & submitted to the jurisdiction of the foreign ct., he had precluded himself from setting up want of jurisdiction.—*SWAIZIE v. SWAIZIE* (1899), 51 O. R. 324.—**CAN.**

#### PART X. SECT. 1, SUB-SECT. 2.— A. (b).

fi. ———. *Must be within territorial limits of province*.]—The domicile necessary to confer jurisdiction to dissolve a marriage must be within the territorial limits of the province whose ct. are appealed to.—*MARRIAGGI v. MARRIAGGI*, [1923] 3 W. W. R. 849; 4 D. L. R. 463.—**CAN.**

899 iii. ———.]—Where a wife has obtained a decree of judicial

*v. Graham*, [1923] P. 31; *Eustace v. Eustace*, [1924] P. 45. *Generally, Mentd. A.-G. for Alberta v. Cook* (1926), 134 L. T. 717.

899a. ———.]—A decree for judicial separation made under Matrimonial Causes Act, 1857 (c. 75), s. 16, does not enable the wife to acquire a domicile different from that of her husband, & thus entitle her to sue for a divorce in a ct. other than that of the husband's domicile. The effect of sects. 25 & 26 of the above Act upon the legal relationship of the spouses after a decree for judicial separation is confined within the precise terms of those sects.—*A.-G. FOR ALBERTA v. COOK*, [1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317, P. C.

*Annotations*:—*Consd. Salvesen (or von Lorange) v. Austrian Property Administrator*, [1927] A. C. 641. *Refd. H. v. H.*, [1928] P. 206.

899b. ———.]—*Subsequent change of domicile by husband*.]—*H. v. H.*, No. 89 la, *ante*.

903a. ———.]—(1) The burden of proving a change of the domicile of origin is strongly on those alleging it.

(2) In this case resp. had not been proved to have acquired at the material time an American domicile, so the American ct., which had granted him a decree of divorce, had no jurisdiction.

(3) Even if the American ct. had jurisdiction petitioner would have not have been bound by proceedings, of which she had no notice or knowledge.

(4) *Semble*: even if resp. has now acquired an American domicile, petitioner can still as a deserted wife obtain relief from the English ct.s.—*RUDD v. RUDD*, [1924] P. 72; 93 L. J. P. 45; 130 L. T. 575; 40 T. L. R. 197.

separation, she is entitled to a domicile independently of her husband.—*HASTINGS v. HASTINGS*, [1922] N. Z. L. R. 273.—**N.Z.**

903 iv a. ———.]—The law of domicile governing divorce is that the domicile of the husband is the domicile of the wife; but circumstances may arise, as a result of that rule, which will justify the intervention of the ct.s. so as to give a deserted wife relief from her marriage tie.—*PAYN v. PAYN*, [1924] 3 D. L. R. 1006; 3 W. W. R. 111.—**CAN.**

903 iv b. ———.]—Although a married woman has been deserted by her husband & he is moving about from place to place, she cannot acquire an independent domicile; & therefore, an action for divorce, brought by her in a province in which she is residing & was residing when he deserted her but which is not his domicile at the time of the action must be dismissed.—*NELSON v. NELSON & ANDREWS (Sask.)*, [1928] 4 D. L. R. 910; [1928] 3 W. W. R. 291.—**CAN.**

903 vi. ———.]—*Pitf husband*, when domiciled in N., married deft. in that State. She deserted him while in that State in 1907. In 1917 he came to Q. & acquired a domicile there. Deft. continued to reside in N. In 1927 he brought this action for dissolution of the marriage on the ground of desertion continuously without cause for five years. *Held*: the ct. had jurisdiction to entertain the action.—*ROCKIE v. ROCKIE*, [1928] St. R. Qd. 11. **AUS.**

st. *In Ireland - Power to elect to be domiciled either in Northern Ireland or in Irish Free State*.—*EGAN v. EGAN*, [1928] N. I. 159.—**IR.**

903b. ——— Subsequent change of domicile by husband.]—*H. v. H.*, No. 894a, *ante*.

905. *Add. Annotation*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

906. *Add. Annotation*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

916. *Add. Annotation*:—*Refd. Graham v. Graham*, [1923] P. 31.

917. *Add. Annotations*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *H. v. H.*, [1928] P. 206. *Refd. Graham v. Graham*, [1923] P. 31; *Raeburn v. Raeburn* (1928), 138 L. T. 672.

918. *Add. Annotations*:—*Distd. Eustace v. Eustace*, [1924] P. 45. *Refd. Graham v. Graham*, [1923] P. 31; *Mitford v. Mitford*, [1923] P. 130.

918a. ———.]—It is established by the cases of *Armylage v. Armylage*, No. 917, *ante*, & *Anghinelli v. Anghinelli*, No. 918, *ante*, that, according to the practice of the ecclesiastical cts., a suit for judicial separation, which is now substituted for the divorce *a mensu et thoro*, can be entertained in a case where both parties are resident but not domiciled within the jurisdiction. But the ct. has no jurisdiction to maintain a suit against a resp. who at the time of his citation or of the institution of the suit is resident out of the jurisdiction. Statute of Citations, 1531 (c. 9), s. 2, which forbade the ecclesiastical cts. to cite any person out of the diocese where he was inhabiting or dwelling, must be taken to have limited the jurisdiction & not only the power of service of the ecclesiastical cts.; & Matrimonial Causes Act, 1857 (c. 85), which permits service within or without His Majesty's Dominions, cannot extend the jurisdiction.—*GRAHAM v. GRAHAM*, [1923] P. 31; 92 L. J. P. 26; 128 L. T. 639; 39 T. L. R. 139; 67 Sol. Jo. 316.

*Annotations*:—*Distd. Eustace v. Eustace*, [1924] P. 45. *Refd. Raeburn v. Raeburn* (1928), 138 L. T. 672; *Johnstone v. Johnstone* [1929] P. 165. *Mentd. Smith v. Smith*, [1923] P. 128.

918b. ———.]—Where the parties are not domiciled in England, in a suit for judicial separation the question must be, in order

to give jurisdiction in such a suit, whether, at the time when the petition indorsed with the citation was issued out for service, resp. was resident within the jurisdiction.—*RAEBURN v. RAEBURN* (1928), 138 L. T. 672; 44 T. L. R. 381.

918c. ——— Respondent domiciled in England.]—There is jurisdiction in the Probate, Divorce & Admty. Div. to decree judicial separation at the suit of the wife where the husband is domiciled in England, although at the date of the institution of the suit he is not resident in this country.—*EUSTACE v. EUSTACE*, [1924] P. 45; 93 L. J. P. 28; 130 L. T. 79; 39 T. L. R. 687; 67 Sol. Jo. 807, C. A.

924. *Add. Annotations*:—*As to* (1) *Refd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. *As to* (2) *Consd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

926. *Add. Annotations*:—*N.F. Graham v. Graham*, [1923] P. 31. *Refd. Mitford v. Mitford*, [1923] P. 130.

926a. Parties domiciled in country where decree sought—Validity of marriage in dispute.]—

(1) Where the validity of a marriage is in dispute the ct. of the domicile of the parties has jurisdiction, whether it is an exclusive jurisdiction or not, to pronounce a decree of nullity of marriage.

(2) A decree of nullity of marriage pronounced by a ct. of competent jurisdiction, whatever be the ground of the decree, is a judgment determining status & is equivalent to a judgment *in rem*.

(3) Where the parties are domiciled in a foreign country a decree of nullity of marriage pronounced by a competent ct. of that country will, in the absence of fraud or collusion, be recognised as binding & conclusive by the cts. of England & Scotland, unless it offends against British notions of substantial justice.—*SALVESEN (OR VON LORANG) v. AUSTRIAN PROPERTY ADMINISTRATOR*, [1927] A. C. 641; 96 L. J. P. C. 105; 137 L. T. 571; 43 T. L. R. 609, H. L.

*Annotation*:—*As to* (3) *Refd. H. v. H.* (No. 2) (1928), 97 L. J. P. 116.

#### PART X. SECT. 1, SUB-SECT. 3.

g i. ———.]—Where a wife brings an action of separation & alimony against her husband on the ground of a matrimonial offence committed by the husband while domiciled in Scotland, the ct. in Scotland has jurisdiction to entertain the action, although prior to the bringing of the action the husband has taken up his permanent residence & acquired a domicile in a foreign country.—*RAMSAY v. RAMSAY*, [1925] S. C. 216.—SCOT.

#### PART X. SECT. 1, SUB-SECT. 4.

ii. ———.]—On petition by a wife for restitution of conjugal rights:—*Held*: resp. had an Irish domicile, & the ct. had jurisdiction to give relief, it being immaterial whether resp. was or was not an American citizen.—*BELL v. BELL*, [1923] 2 I. R. 152.—IR.

#### PART X. SECT. 1, SUB-SECT. 5.

n i. ———.]—An application in a nullity of marriage suit to determine the question of the jurisdiction of the Ct. of K. B. of S. to entertain the action. The marriage was celebrated in S.; the husband, pltf., was domiciled & resident in A. at the time of the commencement of the action, & the wife was residing in M.:—*Held*:

the Ct. of K. B. of S. had jurisdiction to make a decree of the nullity of a marriage entered into in S.—*G. v. G.*, [1928] 1 W. W. R. 651; 22 Sask. L. R. 376.—CAN.

o i. ——— Respondent residing in country where decree sought.—*Petitioner not residing in country where decree sought*.]—While residence only is sufficient to found jurisdiction in nullity actions, as distinguished from divorce actions, such residence must be *bona fide*. Where a petition setting up grounds for a declaration of nullity was erroneously dismissed, the ct. declined to restate the petition, as petitioner was merely a casual visitor, although his wife was a resident, in British Columbia.—*PURDY v. PURDY*, [1919] 2 W. W. R. 551.—CAN.

#### PART X. SECT. 2, SUB-SECT. 1.—A.

q i. ———.]—*POTRATZ v. POTRATZ* (Sask.), [1926] 1 D. L. R. 147.—CAN.

q ii. ———.]—A divorce obtained by a wife in a foreign State, when her husband was domiciled in Saskatchewan, not recognised as valid.—*BURNFIEL v. BURNFIEL*, [1926] 2 D. L. R. 129; [1926] 1 W. W. R. 657; 20 Sask. L. R. 407.—CAN.

q iii. ———.]—*SHEASER v. SHEASER*, [1926] 3 D. L. R. 196; [1926] 2

W. W. R. 389; 22 Alta. L. R. 261; *varrump*, [1926] 2 D. L. R. 906; [1926] 2 W. W. R. 129.—CAN.

q iv. ———.]—*BROWN v. MCINNESS*, [1927] 2 D. L. R. 655; [1927] 1 W. W. R. 597; 38 B. C. R. 324.—CAN.

q v. ———.]—*MCNUTT v. CREE* (1928), Q. R. 66 S. C. 332; 34 R. de J. 370.—CAN.

927 v. ———.]—*As the domicile of a wife is the husband's domicile & foreign proceedings cannot affect the legal status of a marriage in Canada, where the grounds supporting a foreign decree would not support a decree under Canadian law:—Held*: a wife's divorce & re-marriage in Minnesota constituted legal adultery, & furnished ground for the husband's claim for dissolution of the Canadian marriage.—*CAMPBELL v. CAMPBELL*, [1921] 2 W. W. R. 849.—CAN.

927 vi. ———.]—Where a husband had left Manitoba for the purpose of obtaining a divorce which he could not have obtained there, & had obtained a divorce abroad & married again:—*Held*: the wife's prayer for divorce should be granted.—*YATES v. YATES*, [1924] 4 D. L. R. 835; 3 W. W. R. 578.—CAN.

928. *Add. Annotation*:—**Refd.** Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.
929. *Add. Annotation*:—**Refd.** Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.
930. *Add. Annotation*:—**Refd.** Rudd v. Rudd, [1924] P. 72.
932. *Add. Annotations*:—**Generally**, **Refd.** Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.
935. *Add. Annotations*:—*As to* (1) **Folld.** Mitford v. Mitford (1923), 92 L. J. P. 90. *As to* (3) **Refd.** Eustace v. Eustace, [1924] P. 45.
- 935a. ————]—**RUDD** v. **RUDD**, No. 903a, *ante*.
944. *Add. Annotations*:—**Expld.** Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford v. Mitford, [1923] P. 130; Papadopoulos v. Papadopoulos (1929), 46 T. L. R. 44.
- 944a. ————]—The husband, of British nationality & domicil, married a woman of German nationality & domicil in Berlin in accordance with German law on Jan. 5, 1914. On Oct. 23, 1914, a German ct. annulled the marriage under a provision of the German Civil Code, & this decree of nullity was upheld on appeal. On Mar. 4, 1920, the woman, resp. in the present suit, contracted in Germany a second marriage, in respect of which the first husband, the present petitioner, claimed relief:—**Held**: the German decision was a conclusive adjudication between the parties, & no marriage was at the commencement of the suit or now subsisting.—**MITFORD** v. **MITFORD** & **VON KUHLMANN**, [1923] P. 130; 92 L. J. P. 90; 129 L. T. 153; 39 T. L. R. 350.
- 944b. ————]—**SALVESEN** (OR **VON LORANG**) v. **AUSTRIAN PROPERTY ADMINISTRATOR**, No. 926a, *ante*.
- 946a. **Foreign court without jurisdiction to grant decree of nullity.**—Where a domiciled Cypriot was sued in Cyprus by his wife, a Frenchwoman whom he had married in London at a register office, for a declaration of the validity of the marriage & on certain pecuniary claims, a consent judgment was recorded by the Cyprus ct. declaring the marriage null & void, & the agreement of the parties that in return for a money payment, which was duly made, the wife should make no further claims on the husband. Fifteen years later the wife summoned the husband, now resident in London, for maintenance, & the magistrate held that the marriage was still subsisting & ordered the husband to pay the wife £2 a week. The Cyprus ct. had no power to grant a decree of nullity:—**Held**: the decree of nullity was invalid, the Cyprus ct. not being competent to pronounce it, & the agreement was unlawful & immoral, being a licence to remarry & commit adultery, & the magistrate's decision must be affirmed.—**PAPADOPOULOS** v. **PAPADOPOULOS** (1929), 46 T. L. R. 44; 73 Sol. Jo. 797; 93 J. P. Jo. 721, D. C.
947. *Add. Citation*:—*sub nom.* **SUGDEN** v. **LOLLEY**, 2 Cl. & Fin. 567, n.
- Add. Annotation*:—**Consd.** Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.
952. *Add. Annotations*:—**Consd.** Jacobson v. Frachon (1927), 44 T. L. R. 103; Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford v. Mitford, [1923] P. 130; Rudd v. Rudd, [1924] P. 72.

## Part XII.—Assignment of Property on Marriage.

966. *Add. Annotation*:—**Refd.** Rudd v. Rudd, [1924] P. 72.
969. *Add. Annotation*:—*As to* (2) **Refd.** Banque Internationale de Commerce de Petrograd v. Goukassow, [1923] 2 K. B. 682. **Generally**, **Refd.** Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.
1000. *Add. Annotation*:—**Consd.** A.-G. v. Belilios, [1928] 1 K. B. 798.
1010. *Add. Annotation*:—**Mentd.** Webster v. Webster & Williamson, [1926] P. 198.

936 ii. ————]—**CROMARTY** v. **CROMARTY**, No. 879 iv., *ante*.—**CAN.**

### PART X. SECT. 2, SUB-SECT. 2.

947 iii. ————]—**CROMARTY** v. **CROMARTY**, No. 879 iv., *ante*.—**CAN.**

### PART X. SECT. 2, SUB-SECT. 3.

*sw. Presumption in favour of validity of proceedings.*—**FIELDS** v. **FIELDS**, [1925] 2 D. L. R. 256; 58 N. S. R. 65.—**CAN.**

*sw. Foreign without jurisdiction*  
—*Doubt as to husband's domicil.*—A decree was granted to a wife by a ct. of a foreign state wherein the husband was born & had lived continuously up to a time shortly before the date of the commencement of the divorce proceedings should not be pronounced invalid by our ct., when collaterally attacked years afterwards on the ground that at said date the

husband had acquired another domicil, unless there is the clearest possible proof that the new domicil had then been acquired by him.—**GILBERT** v. **STANDARD TRUSTS CO.** (Alta.) [1928] 4 D. L. R. 371; [1928] 3 W. W. R. 111.—**CAN.**

952 ii. ————]—**OWEN** v. **ROBINSON** (OTHERWISE **OWEN**), [1925] N. Z. L. R. 591.—**N.Z.**

### PART X. SECT. 2, SUB-SECT. 4.

954 iv. ————]—By decree of the Michigan ct. the mother of infants was granted a divorce from the father & awarded the custody of the infants, until they reached a certain age or until the further order of the ct. The infants were in the custody of the father in Ontario:—**Held**: the decree was not conclusive upon an application to an Ontario ct. for an order for custody, more especially as the judgment of the Michigan ct. was not final.

—**Re** **GAY**, [1926] 3 D. L. R. 349; 59 O. L. R. 40.—**CAN.**

954 v. ————]—Where children were residing with their father in a province where he was engaged in business, & their welfare would be best served by leaving them in his custody:—**Held**: his application to be appointed their guardian should be granted, notwithstanding the fact that their mother, in securing a divorce in an undefended action in a foreign ct., had also obtained as incidental thereto an order giving her their custody.—**Re** **SNYDER**, **SNYDER** v. **SNYDER**, [1927] 3 D. L. R. 151; [1927] 2 W. W. R. 240; 38 B. C. R. 336.—**CAN.**

954 vi. ————]—*On orders for alimony.*—A judgment of a foreign ct. awarding alimony to a husband is enforceable in Ontario, although the Ontario ct. does not know or recognise any right to alimony in a husband against his wife.—**BURCHELL** v. **BURCHELL**, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

## Part XIV.—Foreign Judgments.

1033. For "No 383, ante," read "No. 454, ante."

1033a. Due constitution of court—Necessity for strict proof.—*R. v. BEECH, POLLITT & STRUDWICK* (1928), 20 Cr. App. Rep. 175, C. C. A.

1041. *Add. Annotation* :—*Generally, Refd.* Employers' Liability Assee. Corp'n. v. Sedgwick, Collins, [1927] A. C. 95.

1044a. Judgment of horning.—(1) An action lies in the English cts. on a Scotch judgment of horning against a Scotchman born. (2) Where a Scotch decree adjudges interest to be paid, but does not fix the time from which it is to run, it is payable from the day of citation.—*DOUGLAS v. FORREST* (1828), 4 Bing. 686; 1 Moo. & P. 663; 6 L. J. O. S. C. P. 157; 130 E. R. 933.

*Annotations* :—*As to* (1) *Refd.* Don v. Lippmann (1837), 5 Cl. & Fin. 1, Cowan v. Braddwood (1840), 9 Dowl. 26; Schibby v. Westenholtz (1870), L. R. 6 Q. B. 155; Rousillon v. Rousillon (1880), 14 Ch. D. 351; Emanuel v. Symon, [1908] 1 K. B. 302; Gavin Gibson v. Gibson, [1913] 3 K. B. 379. *Generally, Mentd.* Rhodes v. Smethurst (1840), 6 M. & W. 351; Towns v. Mead (1855), 16 C. B. 123; Mohamidu Mohideen Hadjar v. Pichev, [1891] A. C. 437; Musurus Bey v. Gadban, [1894] 2 Q. B. 352.

1045. *Add. Annotation* :—*Mentd.* The Sylvan Arrow (1922), 128 L. T. 448.

1052. *Add. Annotation* :—*Refd.* Employers' Liability Assee. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1054. *Add. Annotation* :—*Apld.* Rudd v. Rudd, [1924] P. 72.

1069. *Add. Annotation* :—*Refd.* The Joannis Vatis (No. 2), [1922] P. 213.

1073. *Add. Annotation* :—*As to* (1) *Apld.* Employers' Liability Assee. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

## PART XIII. SECT. 2.

*r. i.* —.] The only ct. with jurisdiction over the custody of an infant is the ct. of the domicile of the infant.—*Cody v. Cody*, [1927] 3 D. L. R. 319; [1927] 1 W. W. R. 693, 21 Sask. L. R. 391.—*CAN.*

*r. ii.* — *Divorce proceedings commenced in Alberta—Removal of children by father to another Province.*—Where the husband is domiciled in Alberta at the time an action for divorce is begun, the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother even though they have been removed by the father to a foreign State & are residing therein at the time of the application for the order.—*GORORTH v. GORORTH* (Alta.), [1929] 1 D. L. R. 58; [1928] 3 W. W. R. 483.—*CAN.*

Compare No. 1117 *l. post*.

## PART XIV. SECT. 1.

*a. i.* — *Order conferring rights on committee of lunatic.*—The rights conferred upon the committee of a lunatic by a ct. of the lunatic's domicile, with reference to personality, are entitled to world-wide recognition.—*Re HICKSON*, [1927] 4 D. L. R. 607, 61 O. L. R. 180.—*CAN.*

## PART XIV. SECT. 2, SUB-SECT. 2.—A.

1034 *iii.* —.]—Where a suit is brought on a foreign judgment, it is not open to deft. to plead that the ct. which passed the judgment had no jurisdiction to do so, when he himself had submitted to the jurisdiction & had not challenged it.—*GANGA PRASAD*

*v. GANESHI LAL* (1923), 1 L. R. 46 All. 119.—*IND.*

1039 *i.* *Essentials to establishment of jurisdiction.*—*Held* : the provisions in Jud. Act, 1927 (c. 88), ss. 51, 52, must be confined to actions upon judgments obtained in the Province of Q., which, according to the principles of international law, applicable as between the different Provinces of the Dominion, are entitled to extra-territorial recognition, i.e. to those cases in which the writ was served within the Province of Q. upon a person domiciled & resident therein & who owed allegiance to the laws of Q.—*LUNG v. LEE*, [1929] 1 D. L. R. 130; 63 O. L. R. 191.—*CAN.*

## PART XIV. SECT. 2, SUB-SECT. 2.—C.

1054 *xiv.* —.]—A judgment on an award obtained in England by default cannot be sued on in India, since it is not a judgment "on the merits" within Code of Civil Procedure (Act V. of 1908), s. 13.—*OPPENHEIM & Co. v. MAHOMED HANEEF*, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196; 49 L. R. Ind. App. 174.—*IND.*

## PART XIV. SECT. 2, SUB-SECT. 2.—E.

*c. i.* — *Judgment based on joint petition presented by both parties.*—*MUHAMMAD MOIDEEN v. CHINTHAMANI CHETTRAR* (1929), 1 L. R. 52 Mad. 503.—*IND.*

## PART XIV. SECT. 2, SUB-SECT. 2.—F.

*e. i.* — *Execution of power of attorney—Authorising agent to appear as plaintiff or defendant—Failure of agent to appear.*—*JANOO HASSAN*

1080. *Add. Citation* :—[1921] B. & C. R. 195.

1090a. —.]—*RUDD v. RUDD*, No. 903a, ante.

1098a. *General rule.*—A plea of judgment recovered in a foreign ct. of competent jurisdiction must show that the judgment so recovered is final & conclusive between the parties according to the law of the place where such judgment is pronounced.—*FRAYES v. WORMS* (1861), 10 C. B. N. S. 149; 142 E. R. 407.

*Annotation* :—*Mentd.* *Re Henderson, Nouvion v. Freeman* (1857), 35 Ch. D. 704.

1108. *Add. Annotation* :—*Apld.* Beatty v. Beatty, [1924] 1 K. B. 807.

1112. *Add. Annotation* :—*Consd.* Beatty v. Beatty, [1924] 1 K. B. 807.

1113. *Add. Annotation* :—*Consd.* Beatty v. Beatty, [1924] 1 K. B. 807.

1113a. Judgment for payment of sum of money—Amount not subject to variation—Alimony.]

—By the law of the State of New York, where a judgment has been pronounced by the proper ct. of that State for the payment of alimony, & instalments under that judgment are due & in arrear, it is not competent for that ct. to vary its judgment in respect of the instalments so accrued due.—*Held* : such a judgment is in that respect a final judgment & an action may be brought to enforce payment of those arrears in this country.—*BEATTY v. BEATTY*, [1924] 1 K. B. 807; 93 L. J. K. B. 750; 131 L. T. 226, C. A.

1114. *Add. Annotation* :—*Refd.* Beatty v. Beatty, [1924] 1 K. B. 807.

*SAIT v. MAHAMAD OHUTHU* (1924) 1 L. R. 47 Mad. 877.—*IND.*

## PART XIV. SECT. 2, SUB-SECT. 3.

*o.* Read now "1098a i."

*p.* Read now "1098a ii."

1098a *iii.* — *Presumption of finality.*—The finality & conclusiveness of a foreign judgment will be presumed in favour of a plff. relying on it, unless it is put in issue by deft.'s pleadings, but a Ct. of Appeal in ordering a new trial can allow such amendments to be made as will enable deft. to raise the issue.—*SMITH v. SMITH*, [1923] 2 D. L. R. 896; 2 W. W. R. 389.—*CAN.*

*q.* Read now "1098a iv."

*r.* Read now "1098a v."

1098a *vi.* —.]—*AINSLIE v. AINSLIE* (1927), 39 C. L. R. 381; 27 S. L. N. S. W. 524; [1927] Argus L. R. 301.—*AUS.*

1113 *ii.* —.]—Where there did not appear to be any difference proved between the effect in the foreign State & in Ontario of such a judgment.—*Held* : a decree for alimony not being an absolute judgment, plff. was not entitled to recover upon the foreign judgment in respect of arrears of alimony.—*MACUIRE v. MACUIRE* (1921), 64 D. L. R. 180; 50 O. L. R. 100.—*CAN.*

1113 *iii.* —.]—*PERRY v. PERRY*, [1924] 4 D. L. R. 1177; 54 O. L. R. 613; *revers.*, [1924] 1 D. L. R. 665; 53 O. L. R. 502.—*CAN.*

## PART XIV. SECT. 2, SUB-SECT. 5.

1117 *i.* *Orders in respect of foreign infant—Custody.*—The ct. will give



**1122a. Judgment founded on immoral agreement.**—*PAPADOPOULOS v. PAPADOPOULOS*, No. 946a, *ante*.

**1132. Add. Annotations:**—*Apld.* Ellerman Lines *v.* Read (1927), 44 T. L. R. 7. *Refd.* Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

**1135a.** —[—]Pltfs.' steamer stranded in the Black Sea, & L. agreed to try to save her on the terms that security for payment of his remuneration should be arranged in London, & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, & as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct. awarded L. £23,890. L. then disposed of the ship, & pltfs. brought an action (1) for damages for breach of contract, (2) for a declaration that the Turkish judgment was invalid, & (3) for an injunction to prevent the judgment from being enforced:—*Held*: (1) the Turkish judgment was invalid; (2) an injunction restraining the enforcement of the judgment abroad should be granted.—*ELLERMAN LINES, LTD. v. READ*, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 33 Com. Cas. 219, C. A., *revsg.* (1927), 44 T. L. R. 7.

**1136. Add. Annotation:**—*Generally*, *Refd.* Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

**1144. Add. Annotation:**—*Mentd.* Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

**1147. Add. Annotation:**—*Refd.* Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

**1147a.** —[—]In an action by buyers against foreign sellers for breach of contract alleging failure to deliver goods in the quantity & of the quality agreed to be sold, the defence was set up that the matter had been litigated

in the French ct., which had given judgment for defts., & that the judgment was a bar to the action. Pltfs. replied that the judgment was obtained by proceedings contrary to natural justice. The action in France was brought by the sellers against the buyers for cancellation of the contract, & for damages, & the ct. made an order appointing an expert to go to London to examine the goods, compare them with the samples delivered, hear & take down in writing all evidence, & make a full report in writing to the French ct. It was proved in the English action that the expert appointed made a hurried & incomplete examination of the goods, refused to look at certain documents or to hear the evidence of pltfs. & their witnesses, & ultimately made a biased & erroneous report to the ct.:—*Held*: there being evidence that according to French law the ct. was not bound by the expert's report but could reject it, & that pltfs.' case had been properly argued before the French ct., & their evidence heard, there was no defect in the proceedings, & there being no fraud proved, the judgment in the French action was valid & could not be impeached, & was a complete defence to the English action.—*JACOBSON v. FRACHON* (1927), 138 L. T. 386; 44 T. L. R. 103; 72 Sol. Jo. 121, C. A.

**1151. Add. Annotation:**—*Consd.* Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

**1170. Add. Annotation:**—*Refd.* Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

**1195. Add. Annotations:**—*As to* (2) *Refd.* The Goulondris, [1927] P. 182. *As to* (3) *Refd.* Ingenohl *v.* Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

**1205a.** — *Inquiry abroad into loss of ship—Report not confirmed by governor of colony.*—*Held*: the inquiry was not conclusive.—*Re QUEEN OF THE THAMES* (1872), 36 J. P. 72.

**1214.** After this case add "*See, also, ESTOPPEL*, Vol. XXI., pp. 154–156, Nos. 165–190."

effect to the judgment of the ct. of a foreign State awarding the custody of an infant to one of the parents.—*Re AYERS*, [1921] 2 W. W. R. 171; *affd.*, [1921] 2 W. W. R. 625.—*CAN.*

—[—]—*See, also*, Nos. 954 i–954 v, *ante*.

**1117 ii.** — *Appointment of guardian.*—Where a child, whose parents had died, was removed from the province of its domicile of origin, its maternal grandfather, resident in that province, obtained from the cts. of that province letters of guardianship of the child & thereafter applied to the cts. of the province to which the child had been removed for a writ of *habeas corpus*. The application was granted on the ground that, other things being equal, the cts. of one province will recognise the proceedings of the cts. of another province in such a case.—*Re BEGGMAN & WALDRON, Re INFANTS ACT*, [1923] 4 D. L. R. 56; 3 W. W. R. 70.—*CAN.*

#### PART XIV. SECT. 2, SUB-SECT. 7.

**1127 i.** —[—]—*DELAPORTE v. DELAPORTE*, [1927] 4 D. L. R. 933; 61 O. L. R. 302.—*CAN.*

#### PART XIV. SECT. 2, SUB-SECT. 8.

**1140 i.** *What amounts to repugnancy to "natural justice"*—*Not merely following lex fori—Lex fori different from law in force in British India.*—*GANGA PRASAD v. GANESHI LAL* (1923), 1 L. R. 46 All. 119.—*IND.*

#### PART XIV. SECT. 3, SUB-SECT. 1.—A.

**1155 iii.** —[—]—In an action in Manitoba upon a foreign judgment the fact that defences have been raised & tried in the foreign ct. does not prevent their being raised & tried again, but there is a discretion in the ct. to allow the defences or to strike them out on the ground of embarrassment or delay: the fact that the case has been tried out in a foreign ct., that an unsuccessful appeal has been taken, or that a consent judgment has been entered will have a very strong bearing, but in each case the discretion must be exercised upon the merits of that case alone.—*CALLAGHAN v. NICHOLLS*, [1921] 3 W. W. R. 476; 31 Man. L. R. 331.—*CAN.*

**1167 v.** —[—]—The ct. will not entertain defences in an action on a foreign judgment that

should have been raised in the foreign ct. or which might properly have been made the subject of appeal in the foreign jurisdiction.—*HUTTON v. DENT* (1922), 70 D. L. R. 582.—*CAN.*

#### PART XIV. SECT. 3, SUB-SECT. 2.—A.

**1189 i.** *What is foreign judgment in rem—Adjudication on distribution of personal estate*—[—]Where a ct. of the country of domicile adjudicates upon the distribution of personal property that adjudication is binding upon all the world & is not subject to review in the cts. of another country.

It is for the ct. of the domicile to determine whether its own proceedings are *in rem* or merely *in personam*, & when that ct. determines that its proceedings are *in rem* all foreign cts. must so treat the proceedings, although they would not be so recognised by the law of the country where the judgment is set up.—*JONES v. SMITH*, [1925] 2 D. L. R. 790; 36 O. L. R. 550.—*CAN.*

#### PART XIV. SECT. 4, SUB-SECT. 1.

**1215 iv.** —[—]—*Re HAMAR, Ex p. MCGUINITY & Co.* (1921), 63 D. L. R. 241; 2 C. B. R. 137.—*CAN.*

1237. *Add. Annotation*:—**Mentd. Ord v. Ord**, [1923] 2 K. B. 432.
1240. *Add. Annotation*:—**Consd. Papadopoulos v. Papadopoulos** (1929), 46 T. L. R. 44.
1241. After the last cross-reference following this case add “—**Maintenance order made in Dominion—Under Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).**”—*See HUSBAND & WIFE*, No. 6233a.”
- 1241a. — **Judgment severable.**]—**RAULIN v. FISCHER**, No. 1120, *ante*.
- 1243a. — **Since constitution of Irish Free State.**]—**Judgments Extension Act, 1868 (c. 54)**, ceased to operate in Southern Ireland on Dec. 5, 1922.—**WAKELY v. TRIUMPH CYCLE CO.**, [1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269; 40 T. L. R. 15; 68 Sol. Jo. 117, C. A.
- Annotation*:—**Follid. Banfield v. Chester** (1925), 94 L. J. K. B. 805.
- 1243b. — — — — —.]—**Judgments Extension Act, 1868 (c. 54)**, has, since Dec. 5, 1922, ceased to apply to the Irish Free State. A certificate of an English judgment can, therefore, no longer be issued under **Judgments Extension Act, 1868, s. 1**, for registration in the Irish Free State cts.
- Semble*: such certificate will be registered in the Irish Free State cts., but the application to the English ct. should be for a certificate of the judgment *simpliciter* under R. S. C., Ord. 61, r. 7, & not supported by an affidavit having reference to **Judgments Extension Act, 1868.**—**BANFIELD v. CHESTER** (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.
- 1262a. **Date from which interest runs—No date fixed in judgment.**]—**DOUGLAS v. FORREST**, No. 1044a, *ante*.

## Part XVI.—Practice and Procedure.

- 1272a. — **Not payment under garnishee order in England.**]—**SWISS BANK CORPN. v. BOEHMISCHE INDUSTRIAL BANK**, No. 1307a, *post*.
1277. *Add. Annotation*:—**Mentd. The Wilhelmina**, [1923] P. 112.
- 1277a. — — — — —.]—(1) Questions of procedure are to be determined by the *lex fori*, not by the *lex loci contractus*.
- (2) *Semble*: set-off is matter of procedure, & as such, determinable by the *lex fori*.—**MACFARLANE v. NORRIS** (1862), 2 B. & S. 783; 31 L. J. Q. B. 245; 6 L. T. 492; 9 Jur. N. S. 74; 121 E. R. 1263.
- Annotation*:—*As to (2)* **Refd. Maspons y Hernando v. Mildred** (1882), 9 Q. B. D. 530.
- 1285a. — **Foreign receivers or assignees in bankruptcy.**]—Foreign receivers or assignees in bkpcy., who have, according to the law of the country in which they have been appointed, a right to sue in their own names for a chose in action due to a person in respect of whose property they have been appointed, have a similar right of action in England.—**MACAULAY v. GUARANTY TRUST CO. OF NEW YORK** (1927), 44 T. L. R. 99.
1289. *Add. Annotation*:—**Refd. Republica de Guatemala v. Nunez**, [1927] 1 K. B. 669.
1290. *Add. Annotation*:—**Refd. Republica de Guatemala v. Nunez**, [1927] 1 K. B. 669.

1215 v. — — — — —.]—**MARSHALL v. HOUGHTON**, [1923] 2 W. W. R. 553; 33 Man. L. R. 166.—CAN.

### PART XIV. SECT. 5.

1233 iii. — — — — —.]—While her husband, who had deserted her, was domiciled in Alberta, *plff.* obtained against him in Colorado, where they had formerly lived, a judgment in the nature of a decree of judicial separation & alimony. She sued in Alberta on that judgment, but abandoned that claim & asked for relief under an alternative claim for alimony:—**Held**: she was not estopped by the foreign judgment, & alimony granted.—**DETRO v. DETRO**, [1922] 3 W. W. R. 690; 70 D. L. R. 61.—CAN.

### PART XIV. SECT. 6.

1241a i. *Effect of judgment to be considered by enforcing court—Judgment severable.*]—The judgment of a foreign ct. comprising two parts, one of which may be enforced in Canadian cts., but the other not, is deemed to be severable, & one part will be enforced though the other rejected.

It is the duty of the ct. to decide for itself the substance of the right sought to be enforced, irrespective of the opinion which may have been expressed by the foreign ct.—**BURCHELL v. BURCHELL**, [1926] 2 P. L. R. 595; 58 O. L. R. 515.—CAN.

### PART XIV. SECT. 7, SUB-SECT. 1.—A.

1243a i. *To what judgments Act applicable—Since constitution of Irish Free State.*]—The certificate of an

English judgment may be registered under **Judgments Extension Act, 1868 (c. 54)**, in the Irish Free State.—**GIVES v. O'CONNOR**, [1924] 2 I. R. 182.—IR.

### PART XIV. SECT. 7, SUB-SECT. 2.

*sb. By registration of English High Court judgment—No submission to jurisdiction.*]—In a suit for divorce in the Divorce Div. of the High Ct. of Justice in England, an appearance was entered by London agents, on behalf of a co-respondent residing in New Zealand. In error & without any instructions to that effect. On an application to have the judgment for costs of the High Ct. registered in the Supreme Ct. so that it might be enforced in New Zealand:—**Held**: (1) co-respondent did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that ct.; (2) even if such entry of appearance did amount to submitting to the High Ct.'s jurisdiction, it would not be just & convenient for the judgment to be enforced in New Zealand.—**REDHEAD v. REDHEAD & CROTHERS**, [1926] N. Z. L. R. 131.—N.Z.

### PART XIV. SECT. 8.

1254 i. *Authentication by seal of court—Or signature of judge.*]—To satisfy Evidence Act, N. B., c. 127 s. 58, if the document sought to be proved be a foreign judgment, the authenticated copy must either be sealed with the seal of the ct. in which the original is filed, or, in the event of such ct. having no seal, be signed by

the judge, or one of the judges of such ct. with a statement from him in writing that the ct. has no seal.—**HARRIS v. GARRISON** (1921), 67 D. L. R. 682; 49 N. B. R. 91.—CAN.

### PART XVI. SECT. 1.

1266 i. *What are matters of procedure—Disability to sue—Statutes of limitation.*]—The question whether the enforcement of a right of action is barred by a statute of limitations, as distinguished from the question whether the right has been absolutely extinguished, is one of procedure only, & is governed wholly by the *lex fori*.—**COLONIAL INVESTMENT & LOAN CO. v. MARTIN** (Man.), [1927] 3 D. L. R. 360; 1927] 2 W. W. R. 94.—CAN.

### PART XVI. SECT. 3, SUB-SECT. 1.

*sc. Liability to action for damages within jurisdiction—Attempt to return to country of residence.*]—*Plff.* claimed \$20,000 damages from *def.*, the cause of action being criminal conversation with *plff.*'s wife. *Def.* lived in U.S., but was here for a temporary purpose when *plff.* had him arrested under an order to hold to bail. *Plff.* in his affidavit sworn on Jan. 30, on which the order was granted, stated that *def.* had arrived in Toronto that morning, & that he intended to leave for his own country that night, with intent to defraud *plff.* of the damages he had sustained:—**Held**: in leaving Ontario he was not doing so with intent to defraud *plff.*, & was therefore entitled to be discharged.—**RICE v. FLETCHER** (1889), 13 P. R. 46.—CAN.

**1292a.** ————.]—**WRIGHT v. SIMPSON** (1802), 6 Ves. 714; 31 E. R. 1272, L. C.

*Annotations.*—**Consd.** *Newton v. Chorlton* (1853), 2 Drew. 333. **Refd.** *The Vreede* (1811), 1 Dods. 1; *Pennell v. Roy* (1853), 3 De G. M. & G. 126; *Jackson v. Digby* (1854), 2 W. R. 540; *Strong v. Foster* (1855), 4 W. R. 151; *Madden v. M'Mullen* (1860), 4 L. T. 180; *Bailey v. Edwards* (1864), 4 B. & S. 761; *Relfast Banking Co. v. Stanley* (1867), 15 W. R. 989; *Liverpool Marine Credit Co. v. Hunter* (1867), L. R. 4 Eq. 62; *Barber v. Mackrell* (1892), 68 L. T. 29.

**1306a. Governed by lex fori.**]—**MACFARLANE v. NORRIS**, No. 1277a, *ante*.

**1307. Add. Annotations.**—**Distd.** *Swiss Bank Corp. v. Boehmische Industrial Bank*, [1923] 1 K. B. 673. **Consd.** *Sedgwick Collins v. Russia Insce. of Petrograd* (1925), 133 L. T. 808; *Richardson v. Richardson*, [1927] P. 228.

**1307a. Garnishee proceedings—Payment of debt situate in England—Recognised by international law.**]—Judgment having been recovered against a foreign corp., who submitted to the jurisdiction, a garnishee summons was issued to attach a debt due from a London bank to the foreign corp.:—**Held:** the judgment creditors were entitled to have an order *nisi* made absolute, inasmuch as payment under a garnishee order operated as a discharge of the amount paid & was recognised by international law as having that effect, & consequently there was no real risk of the garnishees being obliged to pay the debt over again to the foreign corp., & there was, therefore, nothing inequitable in making the order absolute.

The debt in this case is situate in England, & is discharged in whole or in part by payment under a garnishee order in England, which is not mere procedure & is recognised in international law (*BANKES, L.J.*).—**SWISS BANK CORPN. v. BOEHMISCHE INDUSTRIAL BANK**, [1923] 1 K. B. 673; 92 L. J. K. B. 600; 128 L. T. 809; 39 T. L. R. 179; 67 Sol. Jo. 423, C. A.

*Annotations.*—**Apld.** *Employers' Liability v. Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015. **Consd.** *Richardson v. Richardson*, [1927] P. 228.

**1307b.** ————.]—**Defts., a co. incorporated in Russia, had a branch office in London, & had registered C. as their agent to accept service of any judicial process that might be issued against them. In 1918 defts.' business & its assets were by revolutionary legislation transferred to the Soviet Govt. In 1923 an action was brought in England to recover a debt alleged to be due from defts. to ptf., the writ being served on C., & in default of appearance judgment was signed against defts. Ptf., having obtained a garnishee order *nisi* to attach a debt due to defts. from third parties in England:—**Held:** as the debt owing from the garnishees to defts. was governed by English law, payment by the garnishees of the amount of the judgment debt would be a discharge *pro tanto* of the debt due from them to defts., & it must be assumed that the Soviet Govt. would follow the ordinary rules of international comity & admit the validity of that payment, & the garnishee order ought to be made absolute.**—**SEDGWICK COLLINS & CO. v. RUSSIA INSURANCE CO. OF PETROGRAD**, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* **EMPLOYERS' LIABILITY ASSURANCE**

**CORPN. v. SEDGWICK COLLINS & CO.**, [1927] A. C. 95, H. L.

*Annotations.*—**Refd.** *Sabatier v. Trading Co.*, [1927] 1 Ch. 495; *First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922. **Mentd.** *The Jupiter* (No. 3) (1927), 137 L. T. 333.

**1308. Add. Annotation.**—**As to (2) Refd.** *The Stream Fisher*, [1927] P. 73.

**1309a. Rights of mortgagee of ship under French hypothèque—Claim for necessities.**]—According to French law, the mtgee. of a ship under a French *hypothèque*, although he has not the same right of property as that given by Merchant Shipping Act, 1894 (c.60), in respect of an English mtge., has a right to arrest the ship in the hands of a subsequent owner. His claim, however, is postponed to that of a necessities man.

On a motion to determine priorities between English claimants, in respect of necessary repairs effected upon a French ship & claimants under a French *hypothèque* upon the ship:—**Held:** as the rights under the *hypothèque* must be determined according to French law, which gave greater rights than those given by English law to a necessities man who had merely the right to sue *in rem*, the claim of the necessities men, according to the *lex fori* by which the question of priorities must be determined, was postponed to the claim of the mtgees.—**THE COLORADO**, [1923] P. 102; 92 L. J. P. 100; 128 L. T. 759; 16 Asp. M. L. C. 145, C. A.

*Annotation.*—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**1328. Add. Annotation.**—**Consd.** *The Golaa*, [1926] P. 103.

**1331. Add. Annotation.**—**Refd.** *Ellerman Lines v. Read*, [1928] 2 K. B. 141.

**1332. Add. Annotation.**—**Apld.** *Ellerman Lines v. Read*, [1928] 2 K. B. 141.

**1332a.** ————.]—**ELLERMAN LINES, LTD. v. READ**, No. 1135a, *ante*.

**1337. Add. Annotation.**—**Mentd.** *Salvesen (or von Lorange) v. Austrian Property Administrator*, [1927] A. C. 641.

**1340. Add. Annotations.**—**Consd.** *Ellerman Lines v. Read*, [1928] 2 K. B. 144. **Mentd.** *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255.

**1345. Add. Annotation.**—**Apld.** *Ellerman Lines v. Read*, [1928] 2 K. B. 144.

**1348a.** ———— **Scottish action for rectification of settlement.**]—**WILSON v. WILSON** (1895), *Times*, Feb. 14 & Mar. 5.

**1352. Add. Annotation.**—**Mentd.** *Eustace v. Eustace*, [1924] P. 45.

**1370. Add. Annotation.**—**Mentd.** *Re A Debtor*, [1922] 2 K. B. 109.

**1376. Add. Annotations.**—**Mentd.** *The Tervaele*, [1922] P. 259; *The Russland*, [1924] P. 55; *The Goulandris*, [1927] P. 182; *The Stream Fisher*, [1927] P. 73.

**1378a.** ————.]—In respect of a collision in the Red Sea the owners of the *J.* issued a writ in the Egyptian cts. against the owners of the *M.* & obtained bail. Shortly afterwards the owners of the *M.* instituted a cross-action against the owners of the *J.*, also in Egypt. In Oct. 1927, the owners of the *M.* issued a writ *in personam* in England against the owners of the *J.*, who entered appearance

under protest & set down a motion to set aside the writ. In Dec. the owners of the *M.* discontinued their cross-action in Egypt:—*Held*: if the cross-action had still been pending the owners of the *M.* might have been put to their election, but as they had already elected there was no justification for staying the action in England, merely because they were defts. to an action in another country in respect of the same subject-matter.—*THE JANERA*, [1928] P. 55; 97 L. J. P. 58; 138 L. T. 557; 44 T. L. R. 193; 17 Asp. M. L. C. 416.

1379a. — — — — —.]—In 1924 plffs. instituted an action *in rem* in the United States in respect of damage done by defts.' ship to some pipe lines belonging to plffs. in the bed of the river at Tampico, & the ship was arrested & released on bail being given by defts. Before the action in America had been brought to trial plffs. issued a fresh writ *in rem* in England, & on Feb. 27, 1926, re-arrested the ship in the Thames. On Mar. 4 defts. served notice of motion to set aside the writ & all subsequent proceedings in the English action. The American action was discontinued on Mar. 8:—*Held*: having obtained bail & so released the ship from any further claim in respect of the particular damage alleged, plffs.' subsequent discontinuance of the action in America after the re-arrest in England did not cure their breach of good faith in instituting proceedings in England & causing the ship to be arrested again, & the writ & all subsequent proceedings must be set aside.—*THE GOLAA*, [1926] P. 103; 95 L. J. P. 60; 135 L. T. 208; 42 T. L. R. 414; 70 Sol. Jo. 776; 17 Asp. M. L. C. 35.

1380. *Add. Annotations*:—*Distd.* *The Juno* (1922), 128 L. T. 671. *Apld.* *The Golaa*, [1926] P. 103. *Refd.* *The Goulondris*, [1927] P. 182.

1381. *Add. Annotation*:—*Consd.* *The Juno* (1922), 128 L. T. 671.

1383. *Add. Annotations*:—*Folld.* *The Juno* (1922), 128 L. T. 671. *Refd.* *The Golaa*, [1926] P. 103.

1383a. — — — — —.]—On June 13, 1922, a British steamer & a Finnish steamer were in collision in the river Maas, Holland. After the collision the Finnish owners threatened arrest in a Dutch port. The owners of the British steamer who were anxious that the litigation should take place in England, reluctantly instructed their agents in Holland to provide bail, & although no proceedings were begun, documents in identical terms in the nature of bank guarantees to provide bail if proceedings were commenced within three months were exchanged on July 29 between the owners. On Sept. 6 the Finnish vessel came within the jurisdiction of the English cts., & an action was commenced, & the ship arrested & bail given under protest at the suit of the owners of the British ship. At that time no proceedings had been begun in Holland, but on Sept. 14 an action was commenced in Holland by the Finnish owners. The Finnish owners moved that the writ & all proceedings in the action by the British owners should be stayed, on the ground that their action was oppressive because it required the Finnish owners to give bail in two cts., & was inequitable as a breach of faith of the agreement in Holland:—*Held*: no legal proceedings having been commenced when the writ was issued in England, & there being no arrest & no bail given prior to the writ now sought to be set aside, there was nothing to debar the British owners from carrying on proceedings in England.—*THE JUNO* (1922), 128 L. T. 671; 16 Asp. M. L. C. 118.

1387. *Add. Annotation*:—*Refd.* *Bristol Corp'n. v. Virgin*, [1928] 2 K. B. 622.

PART XVI. SECT. 6, SUB-SECT. 2.

a. Add "varied on appeal, 4 A. R. 267."

## CONSTITUTIONAL LAW.

### Part II.—The Title to the Crown.

2. *Add. Annotation* :—**Generally, Mentd.** *The Tervaele* (1922), 128 L. T. 176.

### Part III.—Relations between the Crown and the Subject.

17. *Add. Annotation* :—**Refd.** *Falcon v. Famous Players Film Co.*, [1926] 2 K. B. 474.

### Part IV.—The Royal Family.

25. *Add. Annotation* :—**Refd.** *Re Mason* (1928), 97 L. J. Ch. 321.

41. *Add. Annotations* :—**Mentd.** *Perlak Petroleum*

*Maatschappij v. Deen*, [1924] 1 K. B. 111; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930; *R. v. Moscovitch* (1927), 138 L. T. 183.

### Part V.—The Royal Prerogative.

53. *Add. Annotation* :—**As to (2) Consd.** *Nadan v. R.*, [1926] A. C. 482.

54. *Add. Annotation* :—**Refd.** *Nadan v. R.*, [1926] A. C. 482.

58a. **Crown cannot seize subject's property without compensation—What amounts to seizure.**—Assuming that the Crown has no right at common law to take a subject's property for reasons of State without paying compensation, that rule can only apply, if it does apply, to a case where property is actually taken possession of or used by the Govt., or where,

by the order of a competent authority, it is placed at the disposal of the Govt., & a mere negative prohibition, though it involves interference with an owner's enjoyment of property, does not, merely because it is obeyed, carry with it at common law any right to compensation.—**FRANCE FENWICK & Co. v. R.**, [1927] 1 K. B. 458; 96 L. J. K. B. 144; 136 L. T. 358; 43 T. L. R. 18; 32 Com. Cas. 116.

*Annotation* :—**Refd.** *Ensign Shipping Co. v. I. R. Comrs.* (1927), 139 L. T. 111.

### Part VI.—The Crown in relation to the Executive.

80. *Add. Annotation* :—**Refd.** *Brown v. Dagenham U. C.*, [1929] 1 K. B. 737.

81. *Add. Annotation* :—**Refd.** *Brown v. Dagenham U. C.*, [1929] 1 K. B. 737.

83. *Add. Annotation* :—**Refd.** *Brown v. Dagenham U. C.*, [1929] 1 K. B. 737.

96. *Add. Annotation* :—**Mentd.** *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470.

100. After the cross-reference following this case add as follows :—

— **Extension of British jurisdiction in British protectorate.**—*See* DEPENDENCIES, No. 10a.

#### PART III. SECT. 1.

b i. *To govern & protect—Statutory right to compensation for civil commotion—Loss of right by recovery from insurer.*—**LEEN v. EXECUTIVE COUNCIL** (PRESIDENT), [1928] 1 R. 408.—**IR.**

#### PART VI. SECT. 2. SUB-SECT. 1.

78 i. *Public officers & servants generally—Suspension of—Holding of inquiry—Court cannot interfere.*—**SCHIERHOUT v. UNION GOVERNMENT** (MINISTER OF JUSTICE), [1926] App. D. 295.—**S. AF.**

81 ii. ———.—**Ptff.**, manager of a railway under a con-

tract made with the Govt. to be paid a stated salary & six months' salary if at any time he should be dismissed without notice.—**Held** : (1) he was entitled to recover his six months' wages; (2) the Crown was not liable for interest.—**NOBLE v. NEWFOUNDLAND GOVERNMENT** (1902), 8 Nfld. L. L. 571, 601.—**NFLD.**

81. ———.—*Ordinance made under Northern Territory Acts.*—**Ptff.** was a classified officer in the public service of Queensland in 1917. He was then appointed to the Commonwealth office of Director of Lands in the Northern Territory, & he continued to hold the

position until 1921, when the Governor-General in Council dispensed with his services.—**Held** : the Crown had power to dispense, at will, with the services of **ptff.**, who was appointed under Ordinance No. 6 of 1913, made under the above Acts, & not under Commonwealth Public Service Act.—**THROWER v. THE COMMONWEALTH** (1924), 34 C. L. R. 587.—**AUS.**

#### PART VI. SECT. 3.

100 i. *Order in Council—Under War Measures Act, 1914, s. 6—Validity*—**PUGLEY v. GIBSON**, p. 383, *post*.—**CAN.**

100 ii. ———.—*Under Dominion Lands Act, R. S. C., 1886 (c. 54)—Validity.*—

- Effect of recitals in.]—See *ESTOPPEL*, Vol. XXI., p. 331, No. 1247.
107. *Add. Annotation*:—*Refd.* Eshugbayi Eleko v. Nigeria Government, [1928] A. C. 459.
110. *Add. Annotation*:—*Refd.* Ruffy-Arnell, etc. Co. v. R., [1922] 1 K. B. 599.
122. Before this case add “*See, also*, CROWN PRACTICE, Vol. XVI., pp. 481–491.”  
*Add. Annotation*:—*Mentd.* R. v. Comptroller-General of Patents, *Ex p.* Muntz (1922), 38 T. L. R. 652.
- 138a. *Statement of fact—Whether binding on court.*]—Where a collision took place in the Bristol Channel, some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast, & the judge decided that the waters where the collision occurred were within the *fauces terræ* & within the bodies of the counties of Devonshire & Glamorgan-shire, & on appeal, the ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended:—*Held*: (1) (ATKIN & LAWRENCE, L.J.J.) the statement of the A.-G. was

binding on the ct.; (2) (BANKES, L.J.) the ct. was not necessarily bound to accept the information as conclusive, but having regard to the absence of authority & to the general trend of modern jurists to limit the width of the *fauces terræ* within which there was territorial sovereignty, the ct. should be guided by the information so given.—*THE FAGERNES*, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) v. SOCIETÀ NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 634, C. A.

138b. ———.]—*ENGELKE v. MUSMANN*, No. 418a, *post*.

152. *Citations*:—For “[1920] 1 Ch. 107” read “[1921] 1 Ch. 107.”

*Add. Annotation*:—*Mentd.* Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81.

157a. *Air Council—Whether corporation.*]—*Semble*: the Air Council is not a corpn.—*MACKENZIE-KENNEDY v. AIR COUNCIL*, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 138 L. T. 8; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

## Part IX.—The Crown in relation to the Law.

175a. ———.]—*ROOKEWOOD'S CASE* (1696), Holt, K. B. 683; 90 E. R. 1277; *sub nom.* R. v. Rookwood, 13 St. Tr. 139, 186.

*Annotations*:—*Refd.* R. v. Kulooh (1746), 18 State Tr. 395; *Heward v. Shipley* (1803), 4 East, 180; R. v. Duffy (1849), 7 State Tr. N. S. 795; *Mulcahy v. R.* (1867), 15 W. R. 446. *Mentd.* R. v. Layer (1722), 8 Mod. Rep. 82; R. v. Heane (1864), 4 B. & S. 947.

214a. ———.]—*R. v. Crosby (alias Philips)* (1695), 1 Ld. Raym. 39; 5 Mod. Rep. 15; 12 Mod. Rep. 72; 2 Salk. 689; 12 State Tr. 1291; Holt, K. B. 753; Skin. 578; 91 E. R. 923.

*Annotations*:—*Refd.* R. v. Davis & Carter (1695), 5 Mod. Rep. 74; *The Ville de Varsovie* (1817), 2 Dods. 174; *Hinks' Case* (1815), 1 Den. 84; *Re Barber* (1850), 15 L. T. O. S. 500.

233. *Add. Annotations*:—*Refd.* *Nichol v. Fearby*,

*Nichol v. Robinson*, [1923] 1 K. B. 480; A.-G. v. Still (1927), 44 T. L. R. 102.

264a. ———.]—*BIDGOOD v. DAVIES* (1826), 6 B. & C. 84; 9 Dow. & Ry. K. B. 153; 5 L. J. O. S. K. B. 64; 108 E. R. 384.

266. For “—— Chaplain to King” read “—— Royal chaplain.”

266a. *S. P. WINTER v. DIBDIN* (1844), 13 M. & W. 25; 2 Dow. & L. 211; 13 L. J. Ex. 263; 3 L. T. O. S. 164; 153 E. R. 11.

*Annotation*:—*Apld.* *Harvey v. Dakins* (1849), 3 Exch. 266.

272. *Add. Citation*:—48 L. J. Q. B. 455.

284. *Add. Citations*:—66 Sol. Jo. 218; *affd.*, [1922] P. 122.

*STARLEY v. NEW McDUGGALL-SEGUR Oil Co.*, [1927] 2 W. W. R. 379; *affd.*, [1927] 3 W. W. R. 464.—CAN.

100 iii. ———. *Whether contract constituted.*]—*Held*: Orders in Council issued pursuant to 46 Vict. c. 17, ss. 49 & 50, authorising the Minister of the Interior to grant licenses to cut timber, did not constitute contracts between the Crown & proposed licensees, such Orders in Council being revocable by the Crown until acted upon by the granting of licenses under them.—*BULMER v. R.* (1894), 23 S. C. R. 488.—CAN.

100 iv. ———. ———.]—*STEWART v. JONES* (1900), 19 P. R. 227.—CAN.

100 v. ———. *Based on mistake of fact—Whether binding on Crown.*]—The Crown is not bound by an Order in Council passed inadvertently & on mistake of fact.—*QUEBEC, MONTREAL & SOUTHERN RY. Co. v. R.* (1914), 15 Exch. C. R. 237.—CAN.

*Sufficient memorandum writing of agreement.*]—*LAMARKE & Co. v. R.*, pp. 393, *post*.—CAN.

PART VI. SECT. 9, SUB-SECT. 1.—A.

sa. *Department of Attorney-General—Manitoba Temperance Act*, s. 68.]—The Department of the A.-G. referred

to in the above sect. is to be distinguished from the A.-G.—*R. (THOMPSON) v. HAMMATT (Man.)*, [1926] 3 W. W. R. 350.—CAN.

### PART VI. SECT. 10.

sb. *No power to waive statutory conditions.*]—A department of the Govt. cannot waive the performance of any of the conditions imposed by the legislature.—*PECK v. R.* (1884), 1 B. C. R. pt. 2, 11.—CAN.

sc. *Land Settlement Board.*]—The Land Settlement Board created by Land Settlement & Development Act, 1921 (c. 128), is a department of the Government, & there being nothing in said Act or other statutes which gives it a right to sue or be sued, no action lies against it for acts done in its official capacity.—*RATTENBURY v. LAND SETTLEMENT BOARD*, [1928] 3 D. L. R. 382; [1928] 2 W. W. R. 475; 39 B. C. R. 523; *on appeal*, [1929] 1 D. L. R. 242.—CAN.

### PART IX. SECT. 5, SUB-SECT. 5.

sd. *In proceedings concerning questions of legislative jurisdiction.*]—Where, in proceedings between private suitors, the validity of an Act of a provincial legislature is questioned, the A.-G. of the province will be heard on the

question of provincial legislative jurisdiction.—*CITIZENS INS. Co. v. JOHNSTON*, Cass. Dig. 2nd. ed. 678.—CAN.

### PART IX. SECT. 6, SUB-SECT. 1.

h (p. 523) i. ———. *For tort.*]—An action sounding in tort does not lie against the Crown.—*CHEKELMAN & VERGE v. R.* (1920), 62 D. L. R. 390; 20 Exch. C. R. 198.—CAN.

h (p. 523) ii. *S. P. YATES v. R.* (1920), 20 Exch. C. R. 175.—CAN.

h (p. 523) iii. *S. P. MANSEAU v. R.*, [1923] 1 D. L. R. 25; [1923] Exch. C. R. 21.—CAN.

h (p. 523) iv. ———. ———.]—An action in tort does not lie against the Crown, except under special statutory authority.—*FERRAULT v. R. (Que.)* (1917), 16 Exch. C. R. 253; 39 D. L. R. 705.—CAN.

h (p. 523) v. ———. ———.]—In an action against the Govt. of Ceylon to recover for damage caused to a steamship by grounding in Colombo harbour in a berth to which she had been taken by a Govt. pilot.—*Held*: it was not necessary to decide whether in Ceylon the Crown could be made liable in tort under Roman Dutch law, but having regard to the considered decision of the Supreme Ct. of Ceylon in *Colombo*

290. *Add. Annotation* :—**Refd.** Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.
291. *Add. Annotation* :—**Consd.** A.-G. for Straits Settlements v. Pang Ah Yew, [1925] A. C. 555.
292. *Add. Annotations* :—*As to* (1) **Refd.** Wigg v. A.-G. for Irish Free State, [1927] A. C. 674. *As to* (2) **Refd.** A.-G. for Ontario v. McLean Gold Mines Co. (1926), 95 L. J. P. C. 217. *Generally*, **Refd.** Jaeger v. Jaeger Co. (1927), 44 R. P. C. 437.
305. *Add. Citation* :—48 L. J. Q. B. 455.
317. *Add. Annotation* :—**Refd.** A.-G. for Ontario v. McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.
- 324a. *Civil action against Crown servant—By private person—Discretion of court to order trial at bar.*—**ANDERSON v. GORRIE** (1894), 10 T. L. R. 383, C. A.
329. *Add. Annotation* :—**Mentd.** Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.
- 339a. —.]—In proceedings by information on the revenue side of the K. B. Div. claiming payment of income tax, the taxpayer cannot set off a debt due to him from the Crown.—**A.-G. v. GUY MOTORS, LTD.**, [1928] 2 K. B. 78; 97 L. J. K. B. 421; 139 L. T. 311.
344. *Add. Annotations* :—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. **Refd.** *Swift v. Board of Trade*, [1926] 2 K. B. 131.
345. *Add. Annotation* :—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.
346. *Add. Annotation* :—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.
347. *Add. Annotation* :—**Mentd.** *Umra v. R.* (1924), 41 T. L. R. 86.
- 348a. —. In proceedings under Patents & Designs Acts.]—Appcts. applied by originating summons under Patents & Designs Act, 1907 (c. 29), s. 29, as amended by Patents & Designs Act, 1919 (c. 80), s. 8, for an inquiry as to the remuneration proper to be paid to them for the user by a Govt. department of the patented invention of which they were the registered owners. In the course of the proceedings, preliminary to hearing of the motion, orders were made in which the litigation was treated, with the acquiescence of both litigants, as subject to the ordinary rule as to costs, & on two occasions orders were made requiring appcts. to give security for costs. After the hearing had proceeded for some time appcts. withdrew their claim in view of a prior trial of the invention found to have been made on behalf of the Govt. which, by virtue of the proviso to Patents & Designs Act, 1919, s. 8, entitled the Govt. to make use of it thereafter without payment. On the question how the costs ought to be borne:—**Held**: (1) under that part of Patents & Designs Act, 1919, which authorised proceedings against a Govt. department, there was no express mention of costs, & the authority to deal with them was derived from the general jurisdiction of the ct., & the ct. had, therefore, no authority to depart from the common law rule that the Crown neither paid nor received costs, unless the special circumstances of the particular case justified it in so doing: (2) having regard to the orders that had been made before the hearing of the

*Electric Tramway Co. v. A-G.*, & inasmuch as the question in *Cevlon* was whether any particular part of Roman Dutch law had been recognised there, very clear arguments would be required to induce the Judicial Committee to reverse that decision.—**BRITISH PETROLEUM CO., LTD. v. A-G FOR Ceylon**, [1926] A. C. 147; 95 L. J. P. C. 86, 134 L. T. 305; 42 T. L. R. 166.—**CEYLON.**

h (p 523) vi. — *For fraud.*]—It is not competent to prove that the Crown has been guilty of fraud; nor can the Crown be held liable for the fraud of its officers.--*Re FROST BROTHERS*, [1925] 2 D L R. 339; [1925] 2 W. W. R. 459—CAN.

291 xiv. —————.]—An action of damages does not lie against the Crown in respect of a wrongful act committed by one of its servants.—*MACGREGOR v. LORD ADVOCATE*, [1921] S. C. 847.—**SCOT.**

WELDEN v. SMITH, [1924] A. C. 484.—  
AUS.

ROBINSON v. STATE OF SOUTH AUSTRALIA, [1929] A. C. 469, P. C.—AUS.  
y (p. 524). Add "revsd., 30 S. C. R. 42."

LECLERC v R. (1920), 62 D. L. R. 324 ;  
20 Exch. C. R. 236.—CAN.

2 W. W. R. 1179; 67 D. L. R. 733.—  
CAN.

y (p. 525) iii. \_\_\_\_\_.] —  
The suppliant was wounded by a

bullet fired, during target practice, from the rifle range at Cote St. Luc, in the District of Montreal. He filed a petition of right claiming damages for the injury he thereby sustained—"Held: the rifle range was not a "public work," within Exchequer Ct. Act, 50 & 51 Vict. c. 16 (D.), s. 16 (c), and the Crown was not liable.—*LAROSE v. R.* (1900), 6 Exch. C. R. 425.—**CAN.**

**h (p. 525) i.**—*Services rendered to committee.*—The Crown is not liable upon a claim for the services rendered by any one to a committee.—**KIMMITT v. R.** (1896), 5 Exch. C. R.130.—**CAN.**

¶ i. — For excess of salaries fixed & approved by Governor-General in Council.]—BURROUGHS v. R. (1891), 20 S. C. R. 420.—CAN.

**PART IX. SECT. 6, SUB-SECT. 2.**

304 ii. —.]—R. v. PIERREAU  
(1922), 66 D. L. R. 671; 21 Exch.  
C. R. 355.—CAN

sd. — *Reference to head of department.*—Under Exchequer Ct. Act of Canada, s. 38, any claim against the Crown may be prosecuted by petition of right as referred to the chief clerk of the department in connection with the administration of which the claim arises. A claim by applts. for compensation in respect of the repudiation of a contract was so referred by the Minister of Railways & Canals. Subsequently the Crown applied for leave to withdraw the reference:—*Held*: the claim arose "in connection with the administration" of the Department of Railways & Canals & came within sect. 38, & leave must be refused. — DOMINION BUILDING CORPN., LTD. v. R. (1929), 46 T. L. R. 33, P. C. — CAN.

**PART IX. SECT. 6, SUB-SECT. 6.**

337 vi. —.j—Estoppel cannot be invoked against the Crown.—R. v.

TESSIER (1921), 21 Exch. C. R. 150.—  
CAN.

339 iii. - —.]—A subject has no right to set off in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) v. BOURKE. [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—  
CAN

339 iv. —.]—A right of set-off does not exist against the Crown.—*R. v. BRITISH AMERICAN BANK NOTE Co.* (1901), 7 Exch. C. R. 119.—CAN.

o i. —.] A counterclaim cannot be pleaded against the Crown as of right.—*A.-G. FOR ONTARIO v. RUSSELL* (1921), 64 D. L. R. 59; 49 O. L. R. 103.—**CAN.**

On. —.]—A subject has no right to counterclaim in an action brought by the Crown.—R (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) v. BOURKE. [1925] 3 D. L. R. 537. [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—CAN

**sm. Whether action brought in right name.**—[In an action concerning transactions under Soldiers Settlement Act, dofts. contended that the action should have been brought in the name of the Soldiers Settlement Board & not in that of the Crown.—*Held* action properly instituted in that of the Crown.—*R. v. SAYWARD TRADING & RANCHING CO., LTD.* (1924) Exch. C. R. 15.—**CAN.**]

**PART IX. SECT. 6, SUB-SECT. 7.—A.**

**sp. Crown Costs Act, R. S. B. C., 1911 (c. 61) Effect of]**—**Held:** not to apply to the Crown in right of Dominion, the statute not making it clear in express terms or by necessary intendment that the reference is to the Crown other than in right of the province only.—**MONTREAL TRUST CO. v. R.** [1924] 1 D. L. R. 1030; 1 W. W. R. 657; 33 B. C. 280.—**CAN.**

motion, & particularly to the two orders for security for costs, the ct. would infer an agreement between the parties that each of them should be treated as ordinary litigants as regarded liability for costs.—*Re LETTERS PATENT* No. 139,207, *Re CARBONIT AKT.*, [1924] 2 Ch. 53; 93 L. J. Ch. 309; 131 L. T. 89; 40 T. L. R. 421; 68 Sol. Jo. 476; 41 R. P. C. 203, C. A.

*Annotation*—*As to* (1) *Consd. Swift v. Board of Trade*, [1926] 2 K. B. 131.

— — —.]—*See, generally*, PATENTS.

348b. — — — *As to validity of patent—Action against Air Council.*—*Held*: there was no reason for departing from the ordinary rule that the Crown neither paid nor received costs.—*ROWLAND v. AIR COUNCIL*, [1923] W. N. 72.

363. *Add. Annotations*:—*Mentd. A.-G. v. Swan*, [1922] 1 K. B. 682; *Gibson v. Reach* (1923), 40 T. L. R. 73.

367. *Add. Annotation*:—*Appld. Pathe of France v. Harris, Same v. Mansbridge* (1926), 42 T. L. R. 760.

368. *Add. Annotation*:—*Refd. Re Letters Patent* No. 139,207, *Re Carbonit Akt.*, [1924] 2 Ch. 53.

373. *Add. Annotations*:—*As to* (1) *Appld. Sterling Trust v. I. R. Comrs., I. R. Comrs. v. Sterling Trust* (1925), 12 Tax Cas. 868. *Consd. Birmingham Corpn. v. I. R. Comrs.*, [1929] 2 K. B. 187.

373a. — *Arbitration to assess compensation for requisitioned goods.*—In assessing the compensation to be paid for bacon requisitioned by the Food Controller under Defence of the Realms Regulations:—*Held*: the arbitrator had no power to order the Crown to pay the costs of the reference & award.—*SWIFT & CO. v. BOARD OF TRADE*, [1926] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.

376. *Add. Annotation*:—*Refd. Re Letters Patent* No. 139,207, *Re Carbonit Akt.*, [1924] 2 Ch. 53.

382. *Add. Annotation*:—*Refd. R. v. Provisional Government (General of the Forces)* (1922), 67 Sol. Jo. 125.

384a. — — —.]—*WOLFE TONE'S CASE* (1798). 27 State Tr. 613.

*Annotation*—*Mentd. Mgomini Mzinelwa & Wanda v. A.-G. for Natal* (1906), 22 T. L. R. 413.

## Part XII.—The Crown in Foreign Relations.

387. *Add. Annotations*:—*As to* (1) *Folld. White, Child & Beney v. Simmons, White, Child & Beney v. Eagle, Star & British Dominions Insee.* (1922), 127 L. T. 571. *Refd. Duff Development Co. v. Kelantan Government*, [1924] A. C. 797; *Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse* (1924), 93 L. J. K. B. 1098. *As to* (2) *Appld. The Jupiter* (1924), 93 L. J. P. 156. *Generally, Refd. Musmann v. Engelke* (1927), 43 T. L. R. 685. *Mentd. The Jupiter* (No. 3) (1927), 137 L. T. 333.

387a. — *Decrees of Russian Soviet Government—Effect of.*—The English ct. will not inquire into the validity of acts done by a recognised foreign Govt. against its own subjects in respect of property situate in its own territory.

In 1918 a section of Russian revolutionaries took & retained possession of movables in Russia belonging to pltf. against her will. The act of those revolutionaries was subsequently adopted by the Soviet Govt. as the *de jure* Govt. of Russia. In 1928 the movables in question were sold in Russia by the Soviet Republic to defts., who brought them to England. In an action by pltf. to recover those movables or damages for their detention or conversion:—*Held*: the action failed, as the ct. could not inquire into the

validity of the acts of a foreign sovereign Power which had been recognised by the Govt. of this country.—*PALEY (PRINCESS OLGA) v. WEISZ*, [1929] 1 K. B. 718; 98 L. J. K. B. 465; 141 L. T. 207; 45 T. L. R. 365; 73 Sol. Jo. 283, C. A.

— — —.]—*See, also*, COMPANIES, Nos. 8523, 8524, 8527a, *ante*.

— — — *On liability of Russian reinsurance company under reinsurance treaties.*—*See INSURANCE*, No. 712a, *post*.

— — — *Cancellation of life assurance.*—*See CONFLICT OF LAWS*, No. 610a, *ante*.

387b. *Declaration by representative of foreign Sovereign as to ownership of property—How far conclusive.*—A declaration by the representative of a foreign Sovereign as to ownership of personal property in this country is not conclusive in an action between private persons, when no question of the immunity of the sovereign State from the jurisdiction of the ct. is concerned.—*THE JUPITER* (No. 3), [1927] P. 250; 97 L. J. P. 33; 137 L. T. 333; 43 T. L. R. 741; 17 Asp. M. L. C. 250, C. A.

*Annotation*—*Refd. First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922.

388. *Citations*:—For “Coop. Pr. Cas. 501; 9 L. J. O. S. Ch. 215; 47 E. R. 619, L. C.”

### PART IX. SECT. 6, SUB-SECT. 7.—C.

t i. — *On appeal.*—Under Crown Costs Act, R. S. B. C., c. 61, costs of an appeal cannot be given against the Crown, though costs in the lower ct. may by direction of the ct.—*R. v. CASKIE* (1922), 70 D. L. R. 215; 38 Can. Crim. Cas. 198.—CAN

t ii. — *Under Fire Marshal Act*, 1921 (c. 15).—A local assistant to the fire marshal in carrying out the duties imposed on him by the above Act is an “officer, servant or agent of

& acting for the Crown” within Crown Costs Act, R. S. B. C., 1911 (c. 61), & costs of an appeal to the county ct. may be given against a local assistant to the fire marshal.—*WATSON v. HOWARD*, [1924] 4 D. L. R. 564; [1924] 3 W. W. R. 401; 34 B. C. R. 449.—CAN.

t iii. — *Under Summary Convictions Act, R. S. B. C., 1924 (c. 245).*—Crown Costs Act, R. S. B. C., 1924 (c. 62), is a bar to the awarding of costs against the Crown on an

appeal under Summary Convictions Act, R. S. B. C., 1924, form a conviction for an offence against Govt. Liquor Act, R. S. B. C., 1924 (c. 146).—*R. v. McLANE, It. v. Noon*, [1927] 1 W. W. R. 701; 47 Can. Crim. Cas. 208; 38 B. C. R. 306.—CAN.

t iv. — *In proceedings by creditor—Crown administrator of intestate's estate.*—*Held*: neither the Crown nor the A.-G. liable for costs.—*CARVER v. A.-G. OF PRINCE EDWARD ISLAND*, [1926] 4 D. L. R. 1106.—CAN.



- read "Coop. Pr. Cas. 501; 47 E. R. 619; *sub nom.* THOMPSON v. BARCLAY, 9 L. J. O. S. Ch. 215, L. C.; *previous proceedings* (1828), 6 L. J. O. S. Ch. 93."
389. *Add. Annotation*:—*Refd.* Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.
391. *Add. Annotations*:—*Refd.* The Tervaeete, [1922] P. 259; Engelke v. Musmann, [1928] A. C. 433.
392. *Add. Annotation*:—*As to* (2) *Refd.* The Tervaeete, [1922] P. 259.
394. *Add. Annotations*:—*Consd.* Duff Development Co. v. Kelantan Government, [1924] A. C. 797. *Refd.* The Tervaeete, [1922] P. 259; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673; Compania Mercantile Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333; Engelke v. Musmann, [1928] A. C. 433. *Mentd.* The Mogileff, [1922] P. 122; The Sylvan Arrow, [1923] P. 220.
395. *Add. Annotation*:—*As to* (2) *Refd.* Dickinson v. Del Solar (1929), 45 T. L. R. 637.
396. *Add. Annotation*:—*Refd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824.
401. *Add. Annotation*:—*Apld.* The Tervaeete, [1922] P. 259.
408. *Add. Annotation*:—*Refd.* Fenton Textile Assocn. v. Krassin (1921), 38 T. L. R. 259.
409. *Add. Annotation*:—*Consd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824.
411. *Add. Annotation*:—*Consd.* Engelke v. Musmann, [1928] A. C. 433.
- 412a. *Chief of mail department—Within privilege.*—*Held*: the rule as to immunity from civil proceedings, on the ground of diplomatic privilege, extended to a domiciled subject of the United States who was the chief of the mail department of the United States Embassy in London.—*ASSURANTIE COMPAGNIE EXCELSIOR v. SMITH* (1923), 40 T. L. R. 105, C. A.
413. Transfer paragraphs (2) to (5) to No. 421, *post*.
- Annotations*:—For the existing annotations read "*Refd.* *Re* Republic of Bolivia Exploration Syndicate, [1914] 1 Ch. 139."
- 418a. *Evidence—Settlement by Attorney-General on instructions of Foreign Office.*—A statement made to the ct. by the A.-G., on the instructions of the Foreign Office, as to the status of a person claiming immunity from judicial process on the ground of diplomatic privilege, whether as ambassador or as a member of the ambassador's staff, is conclusive.
- Deft. in an action in the K. B. Div. for arrears of rent took out a summons to set aside the writ, on the ground that he was a member of the staff of the German Embassy, & filed two affidavits in support of his application. Pltf. applied for leave to cross-examine deft. upon his affidavits. The judge ordered deft. to attend for cross-examination. On appeal the A.-G. attended at the request of the Foreign Office, & on the invitation of the ct. informed them that deft. had been appointed a member of the staff of the German Ambassador under the style of consular secretary, & had been received in that capacity by the British Govt.:—*Held*: (1) the statement of the A.-G. was binding on the ct., & deft. was entitled to diplomatic privilege; (2) (LORD DUNEDIN) apart from that statement, the order for the cross-examination of deft. would have been justified.—*ENGELKE v. MUSMANN*, [1928] A. C. 433; 97 L. J. K. B. 789; 139 L. T. 586; 44 T. L. R. 731, H. L.; *reversg.* S. C. *sub nom.* MUSMANN v. ENGELKE. [1928] 1 K. B. 90, C. A.
421. After the catchwords insert paragraphs (2) to (5) from No. 413, *ante*, substituting the numbers " (1), (2), (3), (4), " for " (2), (3), (4), (5). "
- Citations*:—For " No. 413, *ante*, " read " (1832), 1 Cr. & M. 117; 1 Dowl. 588; 3 Tyr. 184; 2 L. J. Ex. 13; 149 E. R. 338. "
- Annotations*:—*As to* (1) *Consd.* Parkinson v. Potter (1885), 16 Q. B. D. 152. *As to* (3) *Consd.* Parkinson v. Potter (1885), 16 Q. B. D. 152. *Refd.* Engelke v. Musmann, [1928] A. C. 433.
- 421a. — *Liability to be cross-examined to ascertain status.*—*ENGELKE v. MUSMANN*, No. 418a, *ante*.
422. *Add. Annotation*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433.
425. *Add. Annotation*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433.
427. For " No. 413, *ante*, " read " No. 421, *ante*. "
429. *Add. Annotation*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433.
430. *Add. Annotation*:—*Refd.* Masmann v. Engelke (1927), 96 L. J. K. B. 824.
431. *Add. Annotation*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433.
432. *Add. Annotation*:—*Refd.* Musmann v. Engelke, [1928] 1 K. B. 90.
435. *Add. Annotation*:—*As to* (2) *Refd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824.
436. For " No. 413, *ante*, " read " No. 421, *ante*. "
445. For " No. 413, *ante*, " read " No. 421, *ante*. "
447. *Add. Annotation*:—*Refd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824.
- 447a. — *]*—*ENGELKE v. MUSMANN*, No. 418a, *ante*.
465. *Add. Annotations*:—*Consd.* Dickinson v. Del Solar (1929), 45 T. L. R. 637. *Refd.* Engelke v. Musmann, [1928] A. C. 433. *Mentd.* Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385.
- 465a. — *By order of diplomatic superior.*—Deft., who was First Secretary of the Peruvian Legation, took out a policy of insurance against legal liability to members of the public in connection with the driving of his motor car, the policy providing that " the assured . . . shall not in any way act to the detriment or prejudice of the (insurance) co.'s interests, " & that " the co. is entitled to take absolute control of all negotiations & proceedings. " Pltf. brought an action for personal injuries against deft., & the latter served on the insurance co. a third-party notice claiming an indemnity. An appearance without protest was entered in the action on behalf of deft., & as the Peruvian Minister forbade deft. to raise the plea of diplomatic immunity, no such plea was inserted in the defence. The jury found a verdict for pltf. for damages, & the insurance co. repudiated

liability on the ground that deft. had broken the conditions of the policy by insisting that the plea of diplomatic immunity should not be raised :—*Held* : the privilege of diplomatic immunity was waived by the entry of appearance without protest.—*DICKINSON v. DEL SOLAR* (1929), 45 T. L. R. 637.

474. *Add. Annotation* :—*Mentd. Kramer v. A.-G.*, [1923] A. C. 528.

SECT. 5.—PASSPORTS (Vol. XI., p. 543).

- 474a. *Property of the Crown.*—A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within Bkpcy. Act, 1914 (c. 59).—*Re SUWALSKY, SUWALSKY v. TRUSTEE & OFFICIAL RECEIVER*, [1928] B. & C. R. 142.

## Part XIII.—The Crown in relation to War and Peace.

477. *Add. Annotation* :—*Generally, Refd. Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81.

483. *Add. Annotation* :—*Generally, Mentd. Ruffy-Arnell, etc. Co. v. R.*, [1922] 1 K. B. 599.

.]—By a policy of insurance effected on Nov. 2, 1918, during the European War, deft. agreed to pay to pltf. a certain sum "in the event of peace between Great Britain & Germany not being concluded on or before June 30, 1919." On June 28, 1919, these Powers signed a treaty of peace, but they did not exchange & deposit ratifications of the treaty until Jan. 1920. In an action brought by pltf. against deft. upon the policy in Aug. 1919 :—*Held* : peace had not been concluded between these Powers on or before June 30, 1919, within the policy, & pltf. was therefore entitled to succeed in the action.—*KOTZIAS v. TYSEER*, [1920] 2 K. B. 60; 89 L. J. K. B. 529; 122 L. T. 795; 36 T. L. R. 194; 15 Asp. M. L. C. 16.

*Annotation* :—*Folld. Lloyd v. Bowring* (1920), 36 T. L. R. 397.

- 487b. ———.]—For the purpose of a contract to pay a sum of money "if peace is not declared" by a certain date between two nations at war, peace is not declared until the ratification of the treaty of peace.—*LLOYD v. BOWRING* (1920), 36 T. L. R. 397.

- 487c. ——— *Whether subject's debt discharged.*—*TRONER v. HASSOLD* (1870), 1 Cas. in Ch. 173; 22 E. R. 748.

- 487d. *S. P. WEYMBERG v. TOUCH* (1669), 1 Cas. in Ch. 123; 22 E. R. 724.

496. *Add. Annotation* :—*Refd. Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054.

498. *Add. Annotation* :—*Refd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.

499. *Add. Annotations* :—*As to* (1) *Refd. Federated Coal & Shipping Co. v. R.*, [1922] 2 K. B. 42. *As to* (4) *Refd. A. & B. Taxis v. Secretary of State for Air*, [1922] 2 K. B. 328; *Matthey*

*v. Curling*, [1922] 2 A. C. 180; *Re Colnbrook Chemical & Explosives Co., A.-G. v. The Co.*, [1923] 2 Ch. 289; *Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271; *Rowland & Mackenzie-Kennedy v. Air Council* (1927), 96 L. J. Ch. 470. *Generally, Refd. Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81; *France Fenwick v. R.*, [1927] 1 K. B. 458. *Mentd. Re Webb* (Smithfield, London), [1922] 2 Ch. 369; *Fort Frances Pulp & Power Co. v. Manitoba Free Press Co.*, [1923] A. C. 695; *Bristol Channel Steamers v. R.* (1924), 131 L. T. 608; *Moffat Hydropathic Co. v. Secretary of State for War* (1924), 40 T. L. R. 543.

- 499a. ——— *Under Indemnity Act, 1920 (c. 48)*—*"Direct loss or damage"*—*What is.*—Claimants carried on business as motor garage proprietors in Dublin, where they owned & occupied extensive premises peculiarly well suited to their purposes. These premises were taken by the Govt. under powers conferred by statute for the defence of the realm. Claimants, having tried & failed to acquire premises temporarily, took the only reasonable course; they bought other premises, fitted them for use as a garage, & transferred to them all the appliances of their business which they thus continued to carry on as well as they could. When the Govt. retired from possession of the original premises claimants sold the substituted premises. They alleged that the difference between the amount they had expended in acquiring the substituted premises & fitting them for use as a garage on the one hand, & the sum they received on the sale of the substituted premises on the other hand amounted to £3,429. They claimed this sum as an item of "direct loss or damage incurred or sustained by reason of interference with" their "property or business" within sect. 2 (1) (b) of the above Act :—*Held* : "direct

### PART XIII. SECT. 2.

437 i. *Treaty of peace—Ratification by sovereign authority necessary.*—*Re 90TH BATTALION, WINNIPEG RIFLES*, [1923] 1 W. W. R. 37.—CAN.

437 ii. ——— *Between Great Britain & enemy countries—Date of signing—Effect on option to purchase.*—*PARRY v. DUNCAN* (1921), 65 D. L. R. 761; [1921] 2 W. W. R. 879.—CAN.

### PART XIII. SECT. 3, SUB-SECT. 1.

st. *Order in Council under War Measures Act, 1914, s. 6—Validity.*—

*Held* : the omission of an averment that the Governor in Council deemed an Order advisable for the welfare of Canada by reason of the existence of real or apprehended war, did not render the Order in Council invalid.—*PUGSLEY v. GARSON* (1922), 50 N. B. R. 414.—CAN.

### PART XIII. SECT. 3, SUB-SECT. 3.—A.

499 i. *Whether owner entitled to compensation—Possession taken for purposes of defence.*—*R. v. BROWN* (1920), 56 D. L. R. 312; 20 Exch. C. R. 30.—CAN.

499 ii. ———.]—*Held* : a portion of a building occupied by the Govt. as a recruiting station was not a "public work" within Exch. Ct. Act, s. 20 (c).—*WOLFE Co. v. R.*, *POWERS v. R.* (1921), 63 D. L. R. 647; 63 S. C. R. 141.—CAN.

499a i. ——— *Under Indemnity Act, 1920 (c. 48)—Basis of assessment.*—A distillery requisitioned during the war, owing to a fire while it was in the Govt.'s possession, could not be used for distilling for nearly three years after Jan. 19, 1919, at which date the prohibition against distilling was

loss or damage" may include consequential damage, & the item claimed could not be entirely excluded as indirect loss, but the amount to which claimants might be entitled in respect thereof must be assessed by the War Compensation Ct.—*A. & B. TAXIS, LTD. v. SECRETARY OF STATE FOR AIR*, [1922] 2 K. B. 328; 91 L. J. K. B. 779; 127 L. T. 478; 38 T. L. R. 671; 66 Sol. Jo. 633, C. A.

**499b.** — **Duty of tribunal assessing compensation.**—[Observations on the question of the extent of the duty of the War Compensation Ct., in deciding a claim for compensation under the above Act, to differentiate between their findings on issues of fact & their findings on issues of law, in view of there being, under sect. 2 (1) of the Act, no right of appeal except on a point of law.—*MOFFAT HYDROPATHIC CO., LTD. v. SECRETARY OF STATE FOR WAR* (1924), 40 T. L. R. 543; 68 Sol. Jo. 535, H. L.]

**505a.** — **Certificate that taking necessary—Mode of granting.**—(1) Where land is being acquired compulsorily for military purposes under the above Act, the certificate that the taking of the land is necessary or expedient is duly granted, although the person whose land is being acquired has not been heard; for the granting of such a certificate is not a judicial, but a merely administrative act.

(2) It is not a condition precedent to the summoning of a jury under sect. 19 of the above Act to assess the compensation payable to the owner of the land, that the Secretary of State for War shall have been put into possession of the land under the sect.; but even if it was, that condition precedent would have no application to the assessment of compensation in such a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57).—*HUTTON v. A.-G.*, [1927] 1 Ch. 427; 96 L. J. Ch. 285; 137 L. T. 20; 43 T. L. R. 166; 71 Sol. Jo. 159.

**505b.** — **Conditions precedent to assessment of compensation—Whether Crown in possession.**—*HUTTON v. A.-G.*, No. 505a, *ante*.

**512.** *Add. Annotations:*—*As to (2) Refd. Federated Coal & Shipping Co. v. R.*, [1922] 2 K. B. 42; *Rowland v. Air Council* (1923), 39 T. L. R. 228. *Generally, Refd. France Fenwick v. R.*, [1927] 1 K. B. 458; *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey*, [1929] 1 Ch. 686; *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.

**515a.** — **Closing of public footpath over land acquired.**—The ct. refused an application by the Air Ministry under sect. 6 (3) of the above Act, for leave to close per-

manently a public footpath over land which they had purchased under sect. 3 of the Act for an air depot.—*SECRETARY OF STATE FOR WAR v. MIDDLESEX COUNTY COUNCIL* (1923), 39 T. L. R. 357; 21 L. G. R. 291.

**521.** *Add. Annotation:*—*Generally. Refd. France Fenwick v. R.*, [1927] 1 K. B. 458

**526.** *Add. Citation:*—15 Asp. M. L. C. 205. *Add. Annotation:*—*As to (3) Distd. A.-G. v. Royal Mail Steam Packet Co.*, [1922] 2 A. C. 279.

**526a.** **Power to impose payment for licence to sell ship to foreigner—Recovery of money paid—Indemnity Act, 1920 (c. 48), s. 1 (1).**—The Shipping Controller, purporting to act in pursuance of his powers under Defence of the Realm Regulations, imposed upon suppliants as a condition of granting them a licence to sell a steamship to a foreigner the payment to him by suppliants of £30,800. By their petition of right suppliants alleged that the Shipping Controller had no lawful authority to impose a condition or to exact the payment, which suppliants had paid under protest, & that the Shipping Controller thereby became liable to repay the money to suppliants as money had & received to their use. The petition of right was not brought within one year from the termination of the war or within one year from the exaction of the money. The Crown demurred to the petition, on the ground that the case if founded on the alleged tort of the Shipping Controller was barred by the above sub-sect., & if based on an alleged breach of contract, the proceedings not having been brought within the prescribed time failed under proviso (b) of that sub-sect. A further ground of demurrer was that a petition of right would not lie against the Crown for tort, for the King could do no wrong. Suppliants contended that they were entitled to waive the tort & to sue for money had & received by the Shipping Controller & now in the hands of the Crown, & that their claim so grounded was not a proceeding for or in respect or on account of any act of the Shipping Controller, & therefore was not within the terms of the Act:—*Held:* the allegation that suppliants' money had been extorted from them by the wrongful act of the Shipping Controller was an essential part of suppliants' case, from which the claim for money had & received arose; & as such act was one to which the above sub-sect. applied, the petition of right was barred by that sub-sect.—*BRISTOL CHANNEL STEAMERS, LTD. v. R.* (1924), 131 L. T. 608; 40 T. L. R. 550; 68 Sol. Jo. 771.

**525 H.** — *—*—*LE MAY v. R.* (1922), 68 D. L. R. 489; 21 Exch. C. R. 364.—*CAN.*

**525 iii.** — *Who entitled—Charterer or owner.*—Whereas the right of action against the Crown is at common law in the owner & not in the charterer.—*Held:* the true intent, meaning & spirit of War Measures Act, 1914, s. 7, is to maintain & preserve to the subject any rights possessed by him at common law, & which he previously had notwithstanding that Act; & that sect. does not confer upon him any new rights to compensation in addition to those which he otherwise enjoyed.—*WARNER QUINLAN ASPHALT CO. v. R.*, [1923] Exch. C. R. 195.—*CAN.*

withdrawn. The proprietors having claimed compensation for loss of profits during the three years:—*Held:* the loss of profits was due, not to the war, but to the requisition & the fire, & the basis upon which compensation fell to be assessed was the prices obtainable for whisky during the three years, taken in conjunction with the other circumstances actually existing during that period.—*MACKENZIE BROTHERS v. THE ADMIRALTY*, [1925] S. C. (H. L.) 32.—*SCOT.*

### PART XIII. SECT. 3, SUB-SECT. 7.

*sm. Requisition under Order in Council—Powers of Dominion Government.*—In virtue of Order in Council dated Nov. 24, 1916, passed under

War Measures Act, 1914:—*Held:* the Dominion Govt. was empowered to requisition ships in its own name & as principal & not as agent for the British Govt., & the Minister of Marine & Fisheries, acting thereunder, had no power to vary same by adding to or derogating therefrom.—*Itc. GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. v. R.* (1922), 66 D. L. R. 242; 21 Exch. C. R. 370.—*CAN.*

**525 i.** *Compensation for requisitioned ship—To what amount claimant entitled—Comparison with rate in United States better guide than English rate.*—*Itc. GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. v. R.* (1922), 66 D. L. R. 242; 21 Exch. C. R. 370.—*CAN.*

526b. ———.]—The Shipping Controller, purporting to act under the authority of Defence of the Realm Regulations, required as a condition of a licence to suppliants to sell one of their ships to a foreign firm that they should pay a percentage of the purchase money to the Ministry of Shipping, & suppliants paid the percentage. On a petition of right to recover back the money so paid :—*Held*: (1) the imposition of the condition was illegal, & the payment was not a voluntary payment; (2) the petition of right was barred by the above sub-sect.; it was not open to suppliants, by waiving the tort of the illegal exaction & suing for money had & received, to bring the case within par. (b) of the proviso to the sub-sect., for the case fell within the exception to the proviso as being one in which a claim for compensation could have been brought under sect. 2 (1) (b); (3) (BANKES & SARGANT, L.J.J.) suppliants failed to bring the case within the proviso upon the further ground that the contracts referred to in paragraph (b) are limited to express contracts, & do not include the fictitious contract to repay money improperly extorted, the implication of which arises upon a waiver of the tort.—*BROCKLEBANK, LTD. v. R.*, [1925] 1 K. B. 52; 94 L. J. K. B. 26; 132 L. T. 166; 40 T. L. R. 869; 69 Sol. Jo. 105; 16 Asp. M. L. C. 415, C. A.; *reversg.*, [1924] 1 K. B. 647.

*Annotations*:—*As to* (2) *Folld. Marshal Shipping Co. v. R.* (1925), 41 T. L. R. 285. *Generally, Reffd. Bristol Channel Steamers v. R.* (1924), 131 L. T. 608; *Hardie & Lane v. Chilton* (1927), 96 L. J. K. B. 1040.

526c. ———.]—Suppliants were required in 1919 by the Shipping Controller to pay £20,000 to the Exchequer as a condition of his giving them permission to sell a steamship to a foreigner, & they made the payment accordingly. On a petition of right to recover back the amount from the Crown on the ground that the demand was unlawful :—*Held*: as the demand was made in the *bona fide* belief that the Shipping Controller was entitled to make it & as he was purporting to act in the execution of his duty the Crown was protected by the above sub-sect.—*MARSHAL SHIPPING CO. (IN LIQUIDATION) v. R.* (1925), 41 T. L. R. 285.

526d. ———.]—**Transfer of liabilities incurred by Shipping Controller to Board of Trade—Whether action maintainable against Board of Trade.**—(1) *Pltfs.* in 1922 brought an action against the Board of Trade for money had & received. The money which it was sought to recover was alleged to have been wrongfully extorted from *pltfs.* in 1919 by the Shipping Controller under colour of his office, & it was alleged that, on *pltfs.* electing to waive the tort, he would have been personally liable to refund the money as having been received to their use. By Ministry of Shipping (Cessation) Order, 1921, it was provided that the office of Shipping Controller should cease to exist, & that “All . . . liabilities . . . incurred by the Shipping Controller . . . shall be transferred to the Board of Trade.” The “Board of Trade” is the name given by statute to an unincorporated committee of the Privy Council. On an application to strike out the writ on the ground that the Board of Trade, as a department of the Crown, could not be

sued :—*Held*: the intention of the Order was to transfer to the Board of Trade as a Govt. department the personal liabilities, if any such there were, of the Shipping Controller for any wrongful acts committed by him in his office, & the Board was liable to be sued in respect of those acts notwithstanding that it was an unincorporated body.

(2) Although the Board of Trade may in the above-mentioned circumstances be sued as a Govt. department, service of the writ must, unless the solr. to the Board accepts service on their behalf, be effected upon the individual constituent members of the Board personally.

(3) Where an official of a Govt. department wrongfully extorts a sum of money from a subject for the use of the Crown & the injured party waives the tort :—*Qu.*: whether he can sue the official personally as for money had & received, or whether his only remedy is not by petition of right against the Crown.—*MARSHAL SHIPPING CO. v. BOARD OF TRADE*, [1923] 2 K. B. 343; 92 L. J. K. B. 901; 129 L. T. 644; 39 T. L. R. 415; 67 Sol. Jo. 639; 16 Asp. M. L. C. 210, C. A.

*Annotations*:—*As to* (1) *Reffd. G. S. & W. Ry. of Ireland v. R.*, [1924] 2 K. B. 450. *As to* (3) *Reffd. Brocklebank v. R.*, [1924] 1 K. B. 617. *Generally, Reffd. Bristol Channel Steamers v. R.* (1924), 131 L. T. 608.

Actions against Departments of State generally, *see* AGENCY, Vol. I., pp. 654, 655; PUBLIC AUTHORITIES.

530. *Add. Annotations*:—*As to* (1) *Reffd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271. *Generally, Reffd. Newcastle Breweries v. I. R. Comrs.* (1927), 137 L. T. 426.

531. *Add. Annotations*:—*As to* (5) *Reffd. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529. *Generally, Reffd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271. *Mentd. Fort Frances Pulp & Power Co. v. Manitoba Free Press Co.*, [1923] A. C. 695.

534. *Add. Annotation*:—*Consd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.

534a. ———.]—A British ship lying in a neutral port & laden with a cargo of timber belonging to neutrals of another country was requisitioned during the war by the British Govt. & brought home with her cargo to England without the consent & against the protest of the cargo owners. The timber was then requisitioned by the Controller of Timber Supplies on behalf of the Board of Trade avowedly under Defence of the Realm Regulations, 2B & 2JJ. The owners of the cargo made a claim in the War Compensation Ct. for compensation & contended that it should be assessed under Indemnity Act, 1920 (c. 48), s. 2 (2) (iii.) (a), on the ground that in the circumstances they would but for the Act have had a legal right to compensation :—*Held*: (1) the regulations did not apply to a seizure of goods of a neutral brought into England against his will; (2) the requisition of the timber was justifiable as an exercise of the royal prerogative right of angary & was, therefore, made “in exercise of” a “prerogative right to His Majesty” within s. 2 (1) (b) of the Act, & inasmuch as that right involved the obligation to pay full compensation to the owner of the property seized, claimants

"would have had apart from" the Act a valid claim for compensation by petition of right, & the Crown admitting that such a claim constituted "a legal right to compensation," compensation was to be assessed according to the principle laid down in s. 2 (2) (iii.) (a) of the Act.—**COMMERCIAL & ESTATES CO. OF EGYPT v. BOARD OF TRADE**, [1925] 1 K. B. 271; 94 L. J. K. B. 50; 132 L. T. 516, C. A.

*Annotation* :—As to (2) **Consd. Netherlands-American Steam Navigation Co. v. Procurator-General** (1923), 42 T. L. R. 81.

**535a. Right to compensation—Under Indemnity Act, 1920 (c. 48)—Exercise of right of expropriation.**—**COMMERCIAL & ESTATES CO. OF EGYPT v. BOARD OF TRADE**, No. 534a, *ante*.

**539. Add. Annotations** :—As to (1) **Refd. R. v. Cannon Row Police Station Inspector, Ex p. Brady** (1921), 91 L. J. K. B. 98. *Generally*, **Refd. Secretary of State for Home Affairs v. O'Brien**, [1923] A. C. 603; **Brown v. Dagenham U. C.** (1929), 98 L. J. K. B.

## Part XIV.—The Crown as the Fountain of Honour.

**563. Add. Annotation** :—**Consd. Rhondda's Claim**, [1922] 2 A. C. 339.

## Part XIX.—Royal Grants.

**634. Add. Annotation** :—**Mentd. Re Holliday**, [1922] 2 Ch. 698.

**653. Add. Annotation** :—**Mentd. The Fagernes**, [1926] P. 185.

**655. Add. Annotation** :—**Generally, Mentd. Harper v. Hedges**, [1923] 2 K. B. 314.

**661. Add. Annotations** :—**Refd. Layzell v. Thompson** (1927), 137 L. T. 106. **Mentd. Bourne-mouth-Swanage Motor Road & Ferry Co. v. Harvey**, [1929] 1 Ch. 686.

**680. Add. Annotation** :—**Mentd. Rhondda's Claim**, [1922] 2 A. C. 339.

**690. Add. Annotation** :—**Mentd. Harper v. Hedges**, [1923] 2 K. B. 314.

**706. Add. Annotation** :—**Refd. Hodgson v. McCreagh** (1923), 93 L. J. Ch. 339.

**728a. Grant of land reserving strip of coast land—Effect of confirming grant.**—**A.-G. FOR NEW SOUTH WALES v. DICKSON**, [1901] A. C. 273; 73 L. J. P. C. 48; 90 L. T. 213, P. C.

**754. Add. Annotation** :—**Generally, Refd. Layzell v. Thompson** (1927), 137 L. T. 106.

### PART XIX. SECT. 1, SUB-SECT. 1.

**i. —**—**R. v. NEW ENGLAND CO.** (1922), 63 D. L. R. 537; 21 Exch. C. R. 245.—**CAN.**

### PART XIX. SECT. 2, SUB-SECT. 3.—A.

**602 ii. —**—Where a Crown grant of land has been issued by error, but without false misrepresentation on the grantee's part, & whereby he obtains more than that to which he was entitled, the ct. need not set aside the whole grant, but may declare it void only in so far it purported to convey such portion improvidently granted, & will order the grant to be delivered up to be rectified.—**R. v. SEAMAN**, [1927] Exch. C. R. 201.—**CAN.**

**q. Add "revsd. on other grounds, 9 Gr. 224."**

**sa. As to Crown's title—Crown ousted by adverse possession.**—A. has been in possession of land at T. for over sixty years without having obtained a grant for the same from the Crown. B., a stranger, upon application, obtains a grant of said land. A. takes action to have grant declared null & void :—**Held** : the rights of the Crown in the land have been ousted, & the grant should be set aside.—**MILLER v. SMITH** (1900), 8 Nfld. L. R. 399.—**NFLD.**

**sb. Mistake in description—Cancellation of erroneous patent—Right to new patent.**—**R. v. SINCLAIR** (1912), 11 E. L. R. 367.—**CAN.**

### PART XIX. SECT. 2, SUB-SECT. 3.—B.

**607 iii. —**—**LAWRENCE v. POMEROY** (1863), 9 Gr. 474.—**CAN.**

### PART XIX. SECT. 2, SUB-SECT. 3.—C.

**h Add "revsd. on other grounds, 19 A. R. 329."**

### PART XIX. SECT. 2, SUB-SECT. 4.

**sd. Grants for homesteads—To men only.**—By R. S. O. 1877, c. 24, free grants of lands for homesteads are authorised to be made only to men.—**ROGERS v. LOWTHIAN** (1880), 27 Gr. 559.—**CAN.**

### PART XIX. SECT. 3, SUB-SECT. 2.

**656 i. Add "revsd. on other grounds, 19 A. R. 329."**

**602 ii. Add "revsd. on other grounds, 19 A. R. 329."**

### PART XIX. SECT. 3, SUB-SECT. 3.—A.

**ri. —**—A Crown grant of land, as to part of the land granted, used the words "grant, convey & assure," & as to other land granted, "grant, release & quit claim" :—**Held** : both conveyed the fee simple, & the grantee could convey the fee simple subject to conditions & reservations in the grant.—**NORTHERN TRUST CO. v. TURNER**, [1923] 2 D. L. R. 1176.—**CAN.**

**sf. Land subject to existing timber lease.**—Plff. obtained a Crown grant to certain lands, to the timber on which a lease for twenty-one years had been previously given. The grant from the Crown was silent as to the timber lease. At a date subsequent to the said grant, the timber lease had to be surrendered for renewal under the Land Act :—**Held** : the rights given the grantee under his Crown grant were subject to the existing timber lease.—**BROHM v. BRITISH COLUMBIA MILLS, TIMBER & TRADING CO.** (1907), 13 B. C. R. 123.—**CAN.**

### PART XIX. SECT. 3, SUB-SECT. 3.—C.

**sg. "Water-power" — Water-power from artificial channels.**—**KEEWATIN POWER CO. v. KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO. v. LAKE**

**OF THE WOODS MILLING CO.**, [1928] 1 D. L. R. 32, 61 O. L. R. 363.—**CAN.**

### PART XIX. SECT. 3, SUB-SECT. 3.—E.

**ii. —**—The reservation in a Crown grant of the mines & minerals "with full power to work the same & for this purpose to enter upon & use or occupy the lands or so much thereof & to such an extent as may be necessary for the effectual working of the said minerals" :—**Held** : this confers greater powers than is implied in a bare reservation in an agreement for the sale of the land so granted of "all mines & minerals."—**FULLER v. GARNEAU** (1920), 61 S. C. R. 450; 58 D. L. R. 612.—**CAN.**

**iii. —**—**Includes petroleum & natural gas.**—**CHEIGHTON v. UNITED OILS, LTD.**, [1927] 2 W. W. R. 458; *affd.*, [1927] 3 W. W. R. 463.—**CAN.**

**iv. S. P. STARLEY v. NEW McDUGGALL-SEGUR OIL CO. (No. 2).** [1927] 2 W. W. R. 466; *affd.*, [1927] 3 W. W. R. 461.—**CAN.**

**v. —**—**Effect of Act to amend Public Lands Act, 1908 (c. 16).**—**Re COX**, [1927] 4 D. L. R. 556, 61 O. L. R. 182.—**CAN.**

### PART XIX. SECT. 3, SUB-SECT. 3.—F.

**729 ii. —**—**Scrubble** : the Crown may grant a tract of land by a sufficient description to designate the portion meant although the township within which the land lies has not been surveyed & laid out into lots & concessions; & the grantee will be entitled to hold it although a subsequent survey made by authority of the Crown makes it by name a different lot, or places it in a different concession, from that named in the patent, or the surveyor laying it out projects a road through it.—**HOINE v. MUNRO** (1857), 7 C. F. 433.—**CAN.**

- 785a. — Grant of sole right to draw bills & informations.]—MOUNSON v. LYSTER (1632), W. Jo. 231; 82 E. R. 122.
786. *Add. Annotations* :—*Refd.* Layzell v. Thompson (1927), 137 L. T. 106; Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey, [1929] 1 Ch. 686.

829. *Add. Annotations* :—*Mentd.* The Koursk, [1924] P. 140; Performing Right Soc. v. Mitchell & Booker (Palais de Danse), [1924] 1 K. B. 762; Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

## Part XXI.—Hereditary and Private Revenues of the Crown.

857. *Add. Annotations* :—*As to* (4) *Refd.* *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. *As to* (5) *Refd.* *Re* Letters

- Patent No 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. *Generally, Mentd.* Campbell v. Polak, [1927] A. C. 732.

### PART XIX. SECT. 5, SUB-SECT. 1.

*i. i.* — *Derogation of rights under earlier grant.*]—KEEWATIN POWER CO., LTD. v. KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO., LTD. v. LAKE OF THE WOODS MILLING CO. (Ont.), [1928] 1 D. L. R. 32.—CAN.

### PART XIX. SECT. 5, SUB-SECT. 6.

*ci.* — — —.]—COSTIN v. CHAPPELL (1875), 10 N. S. R. (1 R. & C.) 40.—CAN.

*sh.* *Unoccupied land.*]—Land unoccupied in the island of Newfoundland at the time of passing 5 Geo. 4, c. 51, is within that statute, & may be granted out as waste lands under sect. 15, notwithstanding it has been occupied & enclosed before any grant of it was made.—A.-G. OF NEWFOUNDLAND v. RYAN (1836), 2 Nfld. L. R. App. 8.—NFLD.

*sk.* *Right of pre-emption.*]—HOGGAN v. ESQUIMALT & NANAIMO RY. CO.,

WADDINGTON v. ESQUIMALT & NANAIMO RY. CO. (1892), 20 S. C. R. 235; *affd.* [1894] A. C. 429.—CAN.

*sl.* — — —.]—HESELWOOD v. JONES (1910), 16 B. C. R. 485.—CAN.

### PART XIX. SECT. 8.

*p. i.* — *Evidence of invalidity of first grant—Not admissible.*]—DOE d. MCKAY v. RYKERT (1823–1900), 1 Ont. Dig. 1726.—CAN.

### PART XIX. SECT. 9.

*ri.* — *Cancellation for incompetency—Soldiers' settlement—Functions of Minister for Repatriation.*]—*Held*: the Minister had a merely administrative function, & might form an opinion on such materials as he himself thought sufficient without giving resp. an opportunity of being heard or of meeting allegations to his prejudice.—LAFFET v. GILLEN (1927), 40 C. L. R. 86.—AUS.

*sm.* *Whether Attorney-General necessary party.*]—The bill alleged that

the patentees obtained their patent by false representations to the Government, & showed a case in which the patentees would not be entitled to compensation if the patent were set aside & the land given to another :—*Held*: to such a bill the A.-G. was not a necessary party.—REES v. A.-G. (1869), 16 Gr. 467.—CAN.

### PART XX. SECT. 6.

*sp.* *Sale of land under Soldiers Settlement Act, 1919—Failure of soldier to perform agreement—Crown not entitled to warrant of possession.*]—A.-G. FOR CANADA v. PUGH, [1924] Exch. C. R. 62.—CAN.

### PART XXI. SECT. 1, SUB-SECT. 2.

858 *iii.* — — —.]—The right to precious metals in the land now held by the Hudson's Bay Co. belongs not to the co., but to the Crown.—HUDSON'S BAY CO. v. A.-G. FOR CANADA, [1929] A. C. 285; 98 L. J. P. C. 28; 45 T. L. R. 47, P. C.—CAN.

# CONTRACT.

## Part I.—Definitions and Classification.

3. *Add. Annotation* :—**Refd.** *Rose & Frank Co. v. Crompton*, [1923] 2 K. B. 261.
4. For the existing paragraph substitute the following paragraph :—

**Legal effect expressly excluded.]**

By successive arrangements made before 1913 between an American firm & an English co. the American firm were constituted sole agents for the sale in the United States & Canada of tissues for carbonising paper supplied by the English co. The greater part of these tissues was manufactured for this English co. by another English co. By an arrangement made between the American firm & both English cos. in 1913 the English cos. expressed their willingness that the existing arrangements with the American firm, which were then for one year only, should be continued on the same lines for three years & so on for further periods of three years, subject to six months' notice. This document, after setting out the understanding between the parties, including several modifications of the previous arrangements, proceeded as follows : " This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, & shall not be subject to legal jurisdiction in the law cts. either of the United States or England, but it is only a definite expression & record of the purpose & inten-

tion of the three parties concerned, to which they each honourably pledge themselves, with the fullest confidence—based on past business with each other—that it will be carried through by each of the three parties with mutual loyalty & friendly co-operation. This is hereinafter referred to as the ' honourable pledge ' clause." Disputes having arisen between the parties, the English cos. determined this arrangement without notice. Before the relations between the parties were broken off the American firm had given & the first-mentioned English co. had accepted certain orders for goods. In an action by the American firm for breach of contract & for non-delivery of goods :—**Held** : (1) the arrangement of 1913 was not a legally binding contract ; (2) at the date of the arrangement of 1913 all previous agreements were determined by mutual consent ; (3) the orders given & accepted constituted enforceable contracts of sale.—*ROSE & FRANK CO. v. CROMPTON (J. R.) & BROTHERS, LTD.*, [1925] A. C. 445 ; 94 L. J. K. B. 120 ; 132 L. T. 641 ; 30 Com. Cas. 163, H. 1.

5. *Add. Annotations* :—**Refd.** *Re Wait*, [1927] 1 Ch. 606. **Mentd.** *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
- 5a. ————**—**.]—*SNOW v. FIREBRASS* (1700), Holt, K. B. 609 ; 2 Salk. 557 ; 1 Ld. Raym. 611 ; 12 Mod. Rep. 434 ; 90 E. R. 1237.

## Part II. —Parties to Contract.

15. *Add. Annotation* :—**Mentd.** *A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn.* (1929), 34 Com. Cas. 309.
17. *Add. Annotation* :—**Refd.** *Johnson v. Stephens & Carter & Golding*, [1923] 2 K. B. 857.
48. *Add. Annotations* :—**As to** (1) **Refd.** *Clarkson v. Davies*, [1923] A. C. 100 ; *Duffner v. Bowyer* (1924), 40 T. L. R. 700 ; *Re Pennington & Owen*, [1925] Ch. 825. **As to** (2) **Refd.** *Firm of R. M. K. R. M. v. Firm of M. R. M. V. L.*, [1926] A. C. 761. **Generally, Mentd.** *The Koursk*, [1924] P. 140 ; *Re Pennington & Owen* (1925), 95 L. J. Ch. 93 ; *Bennett v. Whitehead*, [1926] 2 K. B. 380 ; *Pirie v. Johnson* (1926), 70 Sol. Jo. 1023 ; *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.
52. *Add. Annotation* :—**Refd.** *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.
55. *Add. Annotation* :—**Apd.** *Berry v. Berry*, [1929] 2 K. B. 316.
103. *Add. Annotation* :—**Distd.** *Way v. Bishop*, [1928] Ch. 637.
129. After this case add " *See, also*, No. 36, *ante*."
150. *Add. Annotation* :—**Consd.** *Johnson v. Stephens & Carter & Golding*, [1923] 2 K. B. 857.
160. *Add. Annotation* :—**Mentd.** *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.
163. After this case add " ——— **Effect of judgment against one.** ]—*See ESTOPPEL*, Vol. XXI., pp. 218-221."
- 163a. **Action brought against all—Successful defence by one—Unsuccessful defences by others.** ]—In an action for breach of contract brought against A., B. & C. as joint contractors, A. set up the defence that pltf. had not performed his part of the contract. B. & C. set up other defences which failed. The judge decided that A. having established an effective defence, the action failed as against

### PART II. SECT. 2, SUB-SECT. 2.—E.

130 iii. ——— *Disclaimer by one.* ]—If a contract purports to be made with two covenantors jointly, the disclaimer of one of them, to which the covenantor is not also a party, does not convert it

into a contract with the other & entitle him to sue alone, even though the joint covenantor who has disclaimed is an infant.—*BENNETT v. GREENSILL*, [1927] N. Z. L. R. 167.—N. Z.

### PART II. SECT. 2, SUB-SECT. 2.—F.

151 iii. ——— ]—In an action

to rescind a contract deft. applied to add W. as co-deft. :—**Held** : deft. had no right to force W. upon pltf. as deft., in the character of a joint contractor.—*TORONTO & HAMILTON NAVIGATION CO. v. SILCOX* (1888), 12 P. R. 622.—CAN.

him, but succeeded against B. & C.:—*Held*: B. & C. though they had not pleaded it, were entitled to the benefit of a defence set up by A. which went to the whole cause of action, & the action failed altogether.

Where the ct. has before it a fact common to the whole contract & not involving statutory illegality, it is bound to take notice of that fact as applicable to every joint debtor whether he has pleaded it or not. There can only be one judgment against joint contractors, except upon a matter peculiar to one of the contractors.—*PIRIE v. RICHARDSON*, [1927] 1 K. B. 448; 96 L. J. K. B. 413; 136 L. T. 104; 70 Sol. Jo. 1023, C. A.

165. *Add. Annotation*:—*Consd. United Dairies v. Public Trustee*, [1923] 1 K. B. 469.

192. *Add. Annotation*:—*Refd. Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

197. *Add. Annotation*:—*Refd. Key v. Bastin*, [1925] 1 K. B. 650.

209. *Add. Annotation*:—*Consd. York Glass Co. v. Jubb* (1925), 42 T. L. R. 1.

218. *Add. Annotation*:—*Refd. Re Pinto Lda. Ex p. Des Oliveira*, [1929] 1 Ch. 221.

255. *Add. Annotation*:—*Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

259. *Add. Annotation*:—*Refd. Re Franklin & Swathling*, [1929] 1 Ch. 238.

264. *Add. Annotations*:—*Refd. Hyman v. A. C. 601. Mentd. May v. May* (198 L. J. K. B. 770).

272. *Add. Annotation*:—*Refd. Edwards v. Porter. McNeill v. Hawes*, [1923] 2 K. B. 522.

273. *Add. Annotation*:—*Mentd. Cockburn v. Smith*, [1924] 2 K. B. 119.

## Part III.—Formation of Contract.

278. *Add. Annotation*:—*Mentd. Jones (Holloway) v. Woodhouse*, [1923] 2 K. B. 117.

297a. *Offer & acceptance*—*Though in pursuance of unenforceable agreement.*—*ROSE & FRANK CO. v. CROMPTON (J. R.) & BROTHERS, LTD.*, No. 4, *ante*.

298. After this case add "*Course of conduct.*"—

See pp. 52, 67, 114, 115, Nos. 289, 389, 747-751; *ESTOPPEL*, Vol. XXI., pp. 290, 291, No. 1034."

310. *Add. Annotations*:—*Refd. Kennedy v. Thomassen*, [1929] 1 Ch. 426. *Mentd. Ellesmere v. Wallace*, [1929] 2 Ch. 1; *Weddle, Beck v. Hackett*, [1929] 1 K. B. 321.

### PART II. SECT. 6, SUB-SECT. 2.

238 xvi. ———.—[An agreement between a dealer in automobiles & the maker thereof, providing that it should be construed as an agreement between the dealer signing it & all other dealers "who have signed a similar agreement"—*Held*: to bring about a contractual relationship between such dealers involving an obligation by breach of which an action would lie by one dealer against another who signed such agreement.—*McCANNELL v. MAREL McLAREN MOTORS, LTD.*, [1926] 1 D. L. R. 282; [1926] W. W. R. 353; 36 B. C. R. 369.—*CAN.*

sa. — *Member of public—Agreement between street railway & municipality.*—*Ex p. NEW BRUNSWICK POWER CO. (N. B.)*, [1928] 1 D. L. R. 332.—*CAN.*

### PART III. SECT. 1.

st. *Contract subject to approval*—*Effect of approval.*—*Held*: the effect of a clause in a contract, which made the agreement subject to the approval of the Governor-General in Council, was to suspend the contract pending the giving of such approval, & upon such approval being given the contract took effect & became enforceable.—*BANKS PENINSULA ELECTRIC-POWER BOARD v. AKAROA BOROUGH COUNCIL*, [1923] N. Z. L. R. 880.—*N.Z.*

sk. — *Sufficiency of approval.*—A contract contained a provision that it should be deemed executed & become binding only when approved by the proper officers of the vendor co. Beneath the signatures of the contracting parties a form of approval was signed by certain persons as managers. There was evidence that they occupied those positions, but no evidence that they were the proper officers of the vendors for approval of the contract:—*Held*: approval could

be shown by the subsequent conduct of the vendors.—*GENERAL SUPPLY CO OF CANADA v. O'NEILL MOKIN MACHINERY CO.*, [1924] 2 D. L. R. 183; 1 W. W. R. 1017.—*CAN.*

sl. *Contract for carriage of goods—Letter expressing wish for insurance of goods.*—*Held*: the contract was complete when the agent received the goods & gave a receipt, which contained the terms of the contract, & the letter was only a request to insure, & formed no part of the contract.—*MCGOLDRICK v. EASTERN EXPRESS CO.* (1872), 14 N. B. R. (1 Png.) 138.—*CAN.*

### PART III. SECT. 2, SUB-SECT. 1.—A. (a).

si. ———.—[*ACME GRAIN CO., LTD. v. WENNAUS*, [1917] 3 W. W. R. 157; 36 D. L. R. 347; 10 Sask. L. R. 305.—*CAN.*

b i. ———.—[In an action brought against exor. of a farmer who had died intestate, the pursuer averred that deceased, a childless widower & an invalid, proposed to him that, if he gave up a situation which he then had, resided with him at the farm, & looked after him & the farm, he would make the pursuer his heir; that, after consideration & induced by the representations of the deceased, he accepted the proposal, lived with the deceased for sixteen years as his companion & nurse without remuneration, & successfully managed the farm; & that, owing to the failure of deceased, in spite of his representations, to make a will in favour of pursuer, he had suffered material loss. He accordingly claimed to be indemnified for this loss, which he estimated at £6,000, or, alternatively, to be recompensed in so far as the estate had benefited from his services. The ct. dismissed the action as irrelevant, holding that pursuer's averments did not import a legal claim

enforceable against the deceased's executors, in respect (a) that nothing more was disclosed than a mere expression of intention on the part of the deceased to make the pursuer his heir; (b) that, even on the assumption that a definite promise of heirship was averred, such a promise could have been proved only by the writ of the deceased, & here admittedly no writ existed; (c) that no *prima facie* case for indemnification on ground of equity was disclosed, the loss averred by the pursuer as a result of the deceased's representations being based solely on hypothetical calculations & not on actual outlay.—*GRAY v. JOHNSTON*, [1928] S. C. 659.—*SCOT.*

sm. *Construction—Ambiguous offer.*—Where a written offer is ambiguous, it may be construed according to the contemporaneous interpretation put upon it by the maker & receiver.—*MANNING v. CARRIQUE* (1915), 9 O. W. N. 61; 34 O. L. R. 453.—*CAN.*

### PART III. SECT. 2, SUB-SECT. 1.—C. (a).

328 i. *What amounts to—Counter offer.*—Specific counter offer or rejection puts an end to an offer.—*SHAW v. JONES*, [1924] N. Z. L. R. 1133.—*N.Z.*

328 ii. ———.—[*Deft.*, through his agent, sent *pltf.* an offer to sell him land for \$1,800 on terms. *Pltf.* wired the agent: "Send lowest cash price. Will give \$1,600 cash. Wire." The agent replied by wire: "Cannot reduce price." *Pltf.* then wrote accepting the offer:—*Held*: the telegram reading "Cannot reduce price" was a renewal of the original offer, not merely a rejection of *pltf.*'s counter offer, & *pltf.*'s acceptance of it completed a contract of sale.—*LIVINGSTONE v. EVANS*, [1925] 4 D. L. R. 769; 1925] 3 W. W. R. 453.—*CAN.*



339a. —.]—HORSFALL v. GARNETT (1858), 6 W. R. 387.

345. *Add. Annotation*:—Mentd. Catton v. Ashwell & Nesbit (1927), 44 T. L. R. 130.

387a. —Sale of annuity—Execution of release.]—KENNEDY v. THOMASSEN, No. 3081a, *post*.

396. *Add. Annotations*:—Reid. Jones (Holloway) v. Woodhouse, [1923] 2 K. B. 117. Mentd. Bradford v. Price (1923), 92 L. J. K. B. 871.

416. To the existing paragraph, after the word "accepting," add "'subject to the terms of a contract being arranged.'"

418a. —. —. —. "Orders to be acknowledged by return."—Defts.' departmental manager orally agreed on their behalf to buy certain goods from *pltf.* & signed an order form on which was printed the clause, "orders to be acknowledged by return," but this term had not been orally agreed & no acknowledgment was sent to *defts.* In an action for breach of the contract *defts.* pleaded that there was merely an offer & no contract, as the only document contained a clause which had not been agreed:—*Held*: (1) the words on the order form, "orders to be acknowledged by return," were not intended to be words of contract; (2) the

words "by return" related only to the time within which, & not to the method by which, acknowledgment was to be made, & therefore there was a concluded contract, & *pltf.* was entitled to recover.—WILLIS v. BAGGS & SALT (1925), 41 T. L. R. 453; 69 Sol. Jo. 543.

420. *Add. Annotation*:—As to (2) *Dttd.* Curtis Moffat v. Wheeler, [1929] 2 Ch. 224.

420a. —. —. —.]—LORD CAIRNS indeed seems to have considered that, if the phrase ["subject to the title being approved by our solrs."] meant what the Ct. of Appeal thought it meant, it would follow that the purchaser was at liberty through the medium of his solr. to decline the title from mere caprice; but none of the judges accepted this extreme view. It is reasonable, they thought, to imply good faith as a necessary ingredient. On the other hand, it seems to be putting an undue strain on the words to construe them, when used by a layman, as connoting not the approval of his own solr., which is their plain, ordinary meaning, but the decision of a ct. of justice after an unknown delay & at an unascertainable cost (MAUGHAM, J.).—CURTIS MOFFAT, LTD. v. WHEELER, [1929] 2 Ch. 224; 98 L. J. Ch. 374; 141 L. T. 538.

### PART III. SECT. 2, SUB-SECT. 1.—C. (c) i.

337 viii. —.]—Where a document was no more than an offer & was withdrawn before acceptance.—*Held*: there was no contract.—GOODISON THRESHER Co. v. DOYLE (1925), 57 O. L. R. 300.—CAN.

### PART III. SECT. 2, SUB-SECT. 1.—C. (c) iv.

p. i. —.]—*Pltf.* a member of & holder of a seat upon a Stock & Mining Exchange, in July, 1927, entered into an agreement with *defts.* S. & M. for the sale to them of his seat for the price of \$20,000. In the course & as part of this transaction, a letter was written by *def.* M. to *pltf.* dated July 27, 1927, stating: "I hereby give you an option, & guarantee same, for you to repurchase the . . . seat on or before Sept. 15, 1927, at the price of \$21,000.—*Held*: the giving of the option was in consideration of the sale, & an option so given for a valuable consideration, cannot be revoked, & is open for acceptance by the optionee at any time within the period for which the option is given; all that was necessary to operate as an effectual exercise of the option was that *pltf.* not later than Sept. 15, should notify *def.* M. of his acceptance of the offer.—FORREST v. SOLLOWAY, [1928] 3 D. L. R. 574; 62 O. L. R. 311.—CAN.

### PART III. SECT. 2, SUB-SECT. 2.—A.

366 vi. —. —. —. *Intention to discuss terms with third party.*—Where parties have discussed terms, but one before finally accepting them intends to discuss the matter with others:—*Held*: there cannot be said to be a binding contract.—CARRON COAL & CLAY Co. v. NANOORE-WELLINGTON COLLIERIES, [1923] 1 D. L. R. 1160.—CAN.

366 vii. —. —. —.]—PATERSON (A. & G.), LTD. v. HIGHLAND RY. Co. [1927] S. C. (H. L.) 32.—SCOT.

366 viii. —. —. —.]—BIGELOW v. CRAIGELLACHIE-GLENLIVET DISTILLERY Co. (1905), 26 C. L. T. 186; 37 S. C. R. 1.

366 ix. —. —. —.]—WILSON & Co., LTD. v. FARQUHARSON (1906), 3 F. L. R. 146.—CAN.

370 xiii. —. —. —. *Acceptance stating*

*understanding of offer made.*—The Halifax Graving Dock & plant were wrecked by explosion in 1917, & in Jan. 1918, the Canadian Govt. passed an Order in Council providing that the work of repair should be entrusted to *appls.* on the condition (*inter alia*) that the latter should contribute the amount of insurance it carried & the Govt. pay the balance. A letter was sent to the co. enclosing a copy of the Order & stating "an agreement is being prepared & will be submitted shortly for signature," but no agreement was ever executed. Two days later the co. wrote to the Minister of Public Works that the terms of the Order were satisfactory & adding, "but in order that all will be quite clear our understanding is that we are to assign our insurances & policies to the Govt. & that the temporary buildings now being constructed are to be replaced by permanent buildings of the same kind as the original."—*Held*: the letter of the co. to the Minister did not contain an unqualified acceptance of the terms set out in the Order in Council.—HALIFAX GRAVING Co. v. IL. (1921), 62 S. C. R. 338.—CAN.

370 xiv. —.]—CANADA PERMANENT MORTGAGE CORPN. v. BARNARD (Sask.), [1926] 1 D. L. R. 153.—CAN.

370 xv. —.]—LEFEBVRE v. MORTGAGE (Alta.), [1928] 1 D. L. R. 1019.—CAN.

*sp. Time for—Time limited by contract.*—Where *applt.* had not notified his acceptance within the fixed time, & in the absence of proof that *resp.* had waived his right to demand definite written notice as stipulated:—*Held*: there was no valid acceptance.—LAWS v. LUTHERFORD, [1924] App. D. 261.—S. AF.

*st. —. Within reasonable time.*—SHATFORD v. B. C. WINE GROWERS, LTD., [1927] 2 D. L. R. 759; 38 B. C. R. 419.—CAN.

### PART III. SECT. 2, SUB-SECT. 2.—B. (a).

380i. *Necessity.*—BARRETT v. RAPELJE (1835), 4 O. S. 175.—CAN.

### PART III. SECT. 2, SUB-SECT. 2.—B. (b) ii.

*sz. Delivery of goods—Before time laid down in order.*—*Applt.* sent an

order on June 7 to *resp.* to send him on hire a binder, to be delivered on or about Oct. 1. The order contained a term that it was not to be binding on *resp.* until received & ratified in writing or by actual delivery of the goods to *applt.*, & that the order might be cancelled by *applt.* giving notice to *resp.* by registered letter at least thirty days prior to date for delivery, with a proviso that if prior to that date or six months thereafter *applt.* ordered a binder from any other person, *resp.* might by registered notice revive the order, & deliver the binder within thirty days. An agent of *resp.* was told by *applt.* that he wished to cancel the order, as he was buying a harvester, & the agent notified *resp.*, but no notice was given by *applt.* to *resp.* On Sept. 2 *resp.* forwarded by rail a binder to *applt.*, & wrote him stating that the binder had been forwarded per rail. The machine arrived, & *applt.* refused to take delivery, but admitted he had received the letter:—*Held*: the letter did not amount to a ratification of the order, & a delivery on Sept. 2 did not necessarily imply a delivery pursuant or referable to the stipulation in the contract for delivery on or about Oct. 1, & there was no acceptance of the order.—BLACKETT v. CLUTTERBUCK BROTHERS (ADELAIDE), LTD., [1923] S. A. S. R. 301.—AUS.

### PART III. SECT. 2, SUB-SECT. 2.—C.

403 ii. —. —. —. *Whether notice for informing material*—A reward was published by the Govt. of Western Australia "for such information as shall lead to the arrest & conviction of the person or persons who committed the murders" of two police officers. C. who knew of the offer, gave information that led to the arrest of one person, & the conviction of that person & another for the murder of one of those officers. By petition of right under Crown Suits Act, 1893, C. claimed payment of the reward:—*Held*: unless petitioner had performed the condition of the offer acting on the faith of or in reliance upon the offer, there was no acceptance of the offer, & therefore, no contract between the parties.—R. v. CLARKE (1927), 40 C. L. R. 227; [1928] Argus L. R. 97.—AUS.

429a. — What amounts to—Offer of house & "furniture"—Acceptance of house & "furniture & fittings as it stands."—Pltf. having an option from deft. to purchase a freehold house "with furniture for £4,000," wrote accepting deft.'s offer to sell the house "with the furniture & fittings as it stands":—*Held*: there was a concluded contract between pltf. & deft.—*GOFFIN v. HOULDER* (1920), 90 L. J. Ch. 488; 124 L. T. 145.

437. *Add. Annotation*:—*Folld. Willis v. Baggs & Salt* (1925), 41 T. L. R. 453.

448a. — — — — —.]—*WILLIS v. BAGGS & SALT*, No. 418a, *ante*.

465. *Add. Annotations*:—*Consd. Schiller v. Petersen*, [1924] 1 Ch. 394; *Phipps (Northampton & Towcaster Breweries) v. Rogers*, [1925] 1 K. B. 14.

466. *Add. Annotation*:—*Refd. Brakspear v. Barton*, [1924] 2 K. B. 88.

467a. *Offer & acceptance by telegram*.—Where an offer is made & accepted by telegram, the contract is complete, & the party accepting cannot repudiate the contract on the ground that his telegram had a meaning which would not be apparent to the other contracting party.—*ROTH (L.) & CO., LTD. v. TAYSEN, TOWNSEND & CO. & GRANT & GRAHAME* (1896), 12 T. L. R. 211; 1 Com. Cas. 306, C. A.

*Annotations*:—*Refd. Nickoll & Knight v. Ashton, Edridge*, [1900] 2 Q. B. 298; *Redegar Iron & Coal Co. v. Hawthorn* (1902), 18 T. L. R. 716.

467b. *Acceptance by telegram—Effect of word "writing" in telegram*.—*HOWARTH v. FORDER* (1903), 48 Sol. Jo. 52.

476. *Add. Annotation*:—*Refd. Re Sandwell Park Colliery Co., Field v. The Co.*, [1929] 1 Ch. 277.

478. *Add. Annotation*:—*Consd. Rawlinson v. Ames*, [1925] Ch. 96.

480. *Add. Annotation*:—*Refd. Edwards v. Porter*, [1925] A. C. 1.

487. For "Question of law—Not question of fact" in the catchwords read "Whether question of law or fact."

487a. — — — — —.]—Where a contract is made, not in express terms, but is to be collected from a variety of letters between the parties, it is for the jury, & not for the ct., to determine,

with reference to the situation & intention of the parties, whether a contract has actually been completed.—*RICHARDS v. HAYWARD* (1841), 2 Man. & G. 574; 2 Scott, N. R. 670; *Drinkwater*, 136; 10 L. J. C. P. 108; 133 E. R. 875.

487b. — — — — —.]—*CADDICK v. TERRY* (1864), 5 New Rep. 137.

488. *Add. Annotation*:—*Mentd. Slack v. Leeds Industrial Co-op. Soc.*, [1923] 1 Ch. 431.

489. After the cross-references following this case insert "Construction of contracts by correspondence."—*See DEEDS*, Vol. XVII., p. 245, Nos. 588-592."

492. *Add. Annotation*:—*Folld. Chillingworth v. Esche*, [1924] 1 Ch. 97.

496. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

501a. — "Subject to terms of contract being arranged."—*HONEYMAN v. MARRYATT*, No. 416, *ante*.

504a. — Lease "to be drawn by counsel."—*STURGIION v. PAINTER* (1608), Noy, 128; 74 E. R. 1092.

*Annotation*:—*Refd. Goodtitle d. Estwick v. Way* (1787), 1 Term Rep. 735.

511. *Add. Annotations*:—*Refd. Chillingworth v. Esche*, [1924] 1 Ch. 97; *Keppel v. Wheeler*, [1927] 1 K. B. 577.

513a. — "The usual public-house contract to be entered into."—*LUCAS v. HALL*, [1899] W. N. 92.

514. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

531. *Add. Annotation*:—*Refd. Chillingworth v. Esche*, [1923] 1 Ch. 576.

534. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

539a. — — — — —.]—Pltf. wrote to deft. an offer to sell a house to her for a certain sum subject to certain unspecified covenants, & deft. signed at the foot this statement: "I accept the above offer subject to contract." The solrs. of both parties approved a draft formal contract, but deft. refused to execute it. In an action for specific performance:—*Held*: the words "subject to contract" did not mean that deft. bound herself if the parties' solrs. approved a formal contract, but meant,

them should be regarded as based upon the terms so agreed upon.—*DOMINION IRON & STEEL Co. v. R.* (1920), 67 D. L. R. 609; 20 Exch. C. R. 245.—CAN.

490 xi. — — — — —.]—*HARICHAND NARAYAN CHARAM v. GOVIND LUXMAN GOKHALE* (1922), L. R. 50 Ind. App. 25.—IND.

fi. — — — — —.]—An option for sale read as follows: "The owners agree to give H. the option to purchase the lands herein leased at any time within the period of lease for \$25 per acre, \$2,000 cash & the balance at six per cent. interest & half crop payments, by agreement to be drawn up":—*Held*: the words "by agreement to be drawn up" had the same effect as the words "subject to an agreement to be drawn up," & since the agreement was to be on the crop-payment plan, the ct. could not supply the details necessary to complete it, & the option did not of itself constitute an enforceable contract.—*BOCALTER v. HAZLE*, [1925] 4 D. L. R. 948; [1925] 3 W. W. R. 577; *reversp.* 19 Sask. L. R. 417; [1925] 2 W. W. R. 436.—CAN.

PART III. SECT. 2, SUB-SECT. 2.—D.

425 viii. — — — — —.]—Deft., through his agent, offered pltf. 300 tons of hay at \$22 per ton. Pltf. accepted, & the agent wired his principal asking that shipment be rushed. Deft. replied that he could not confirm the order for immediate delivery, but would book for delivery the last of the month:—*Held*: a contract valid in law was then completed, & deft. could not subsequently vary it by demanding a deposit of \$2 per ton as a condition of shipping.—*BALLAM v. HATFIELD* (1922), 55 N. S. R. 508.—CAN.

PART III. SECT. 2, SUB-SECT. 3.—B. (b).

451 iii. — Offer not made by post—Acceptance binding only at time of receipt.—*CHARLEBOIS v. BARIL*, [1927] 3 D. L. R. 762.—CAN.

sa. *At place of posting—Contract under Farm Implement Act*, R. S. S., 1920 (c. 128).—*ELLARD v. WATERLOO MANUFACTURING CO.*, [1926] 3 D. L. R. 207; [1926] 2 W. W. R. 294; 20 Sask. L. R. 601.—CAN.

PART III. SECT. 2, SUB-SECT. 4.

471 xii. — — — — —.]—*BRUCE v. TOLTON* (1879), 4 A. R. 144.—CAN.

479 v. — — — — —.]—*Acceptance by telegram—Fresh term inserted in letter of confirmation*.—*ST. DENIS v. WESTERN PRODUCTS, LTD.*, [1923] 3 W. W. R. 858.—CAN.

489 iii. — — — — —.]—*Effect of correspondence coupled with conduct—Substantial part of goods delivered*.—*Held*: a contract was established whereby pltf. became bound to deliver the remainder of the goods.—*HAMILTON GEAR & MACHINE CO. v. LEWIS BROTHERS*, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—CAN.

PART III. SECT. 2, SUB-SECT. 5.

490 x. — — — — —.]—Where a proposal to manufacture certain steel rails was accepted in writing by the party to whom it was sent, such acceptance stating that it would be followed by a formal contract, & where it appeared that the formal contract was intended solely to embody the agreement already arrived at:—*Held*: in such a case, looking to the intentions of the parties, the contractual relations between

in the circumstances, "subject to the execution by the parties of a formal contract," & therefore the action failed.—*WILSON v. BALFOUR* (1929), 45 T. L. R. 625.

540. *Add. Annotations*:—*Apld.* *Chillingworth v. Esche*, [1924] 1 Ch. 97; *Lockett v. Norman-Wright* (1924), 69 Sol. Jo. 125; *Wilson v. Balfour* (1929), 45 T. L. R. 625. *Refd.* *Nevile Reid v. I. R. Comrs.* (1922), 12 Tax Cas. 545.

540a. ———.]—An agreement subject to contract is merely in the stage of negotiation (*SARGANT, L.J.*).—*KEPPEL v. WHEELER*, [1927] 1 K. B. 577; 96 L. J. K. B. 433; 136 L. T. 203, C. A.

545. *Add. Annotations*:—*Consd.* *Chillingworth v. Esche*, [1924] 1 Ch. 97. *Apld.* *Lockett v. Norman-Wright* (1924), 69 Sol. Jo. 125; *Wilson v. Balfour* (1929), 45 T. L. R. 625. *Refd.* *Nevile Reid v. I. R. Comrs.* (1922), 12 Tax Cas. 545.

546a. ——— "Subject to suitable agreements being arranged between your solicitor & mine."—The words "subject to suitable agreements being arranged between your solr. & mine" are indistinguishable in their effect from such words as "subject to formal contract," "subject to contract," or "subject to proper contract to be prepared by the vendor's solr.," & do not import a binding agreement between the parties.—*LOCKETT v. NORMAN-WRIGHT*, [1925] Ch. 56; 94 L. J. Ch. 123; 132 L. T. 532, 69 Sol. Jo. 125.

546b. ——— "Subject to a proper contract to be prepared by the vendor's solicitors."—By a document of July 10, 1922, the purchasers agreed to purchase certain freehold land & a nursery from the vendor "subject to a proper contract to be prepared by the vendor's solrs." & acknowledged having paid £240 "as deposit & in part payment of the said purchase-money." Completion was fixed for Nov. 2. The purchasers signed the document & the vendor added & signed a receipt for the deposit confirming the sale. A proper contract was subsequently prepared

by the vendor's solrs., approved by the purchasers' solr., executed by the vendor, & tendered to the purchasers for execution. The purchasers, however, refused to sign it, declined to proceed with the transaction, & claimed the return of the deposit:—*Held*: the document of July 10, 1922, was only conditional, & did not constitute a firm contract, & the purchasers were in the circumstances entitled to recover the deposit.—*CHILLINGWORTH v. ESCHÉ*, [1924] 1 Ch. 97; 93 L. J. Ch. 129; 129 L. T. 808; 40 T. L. R. 23; 68 Sol. Jo. 80, C. A.

*Annotations*:—*Apld.* *Lockett v. Norman-Wright*, [1925] Ch. 56; *Wilson v. Balfour* (1929), 45 T. L. R. 625. *Refd.* *Keppel v. Wheeler*, [1927] 1 K. B. 577.

546c. ——— "Formal contract to be signed in due course."—*RONALD FRANKAU PRODUCTIONS, LTD. v. BELL* (1927), 65 L. Jo. 33; 164 L. T. Jo. 501.

555. *Add. Annotation*:—*Refd.* *Chillingworth v. Esche* (1923), 129 L. T. 808.

559. *Add. Annotation*:—*Refd.* *Berners v. Fleming*, [1925] Ch. 264.

560. *Add. Annotation*:—*Mentd.* *Kinch v. Walcott*, [1929] A. C. 482.

563a. ———.]—*GULDFORD TRUST, LTD. v. POHL & MARITCH* (1928), 72 Sol. Jo. 171.

567. *Add. Annotation*:—*Distd.* *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

568. *Add. Annotation*:—*Consd.* *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

576. *Add. Annotation*:—*Refd.* *Brocklebank v. R.*, [1924] 1 K. B. 647.

581. *Add. Annotation*:—*Distd.* *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

587. *Add. Annotation*:—*Refd.* *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.

588. *Add. Annotation*:—*Refd.* *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

590. *Add. Annotation*:—*Mentd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

611. *Add. Annotation*:—*Refd.* *Shears v. Jones* (1922), 128 L. T. 218.

543 i. ——— *Solicitor to approve form of contract*.—An option agreement provided that in the event of the purchaser deciding to accept the option by entering into an agreement to purchase the land, "such agreement to purchase shall be on a form approved by the vendor's solr."—*Held*: the execution of a further contract was not necessary to the existence of an enforceable contract to purchase.—*VITALY v. BRYAN (Alta.)*, [1927] 1 D. L. R. 244; [1926] 3 W. W. R. 785.—CAN.

PART III. SECT. 3, SUB-SECT. 1.  
555 xiv. ———.]—*COLE v. SUMNER* (1900), 30 S. C. R. 379.—CAN.

555 xv. ———.]—*GRAHAM v. GRAHAM (Man.)* (1914), 27 W. L. R. 263; 16 D. L. R. 485.—CAN.

o i. ——— *Burden of proof*.—It is never necessary to prove in the first instance that either party to a contract understood the legal effect of a term thereof; if a party seeks to escape the liability imposed by a term of the contract, he must adduce evidence to establish ground of excuse.—*THORESON v. BLAIRMORE SCHOOL DISTRICT BOARD OF TRUSTEES*, [1927] 1 D. L. R. 1178; [1927] 1 W. W. R. 449; 22 Alta. L. R. 416.—CAN.

p i. ——— *Failure to read over whole contract*.—Where a purchaser of a large farm implement does not read English, Farm Implement Act, R. S. S.,

1920 (c. 128), s. 18, is not complied with unless the whole contract is read over & explained to him in his own language, even though he understands some English & after the whole contract has been read to him in English, those portions of it which he says he does not understand in English are read over & explained to him in his language, & he says he understands it all.—*ADVANCE HUMELY THRESHER CO. v. YORGA*, [1926] 3 D. L. R. 517; [1926] S. C. R. 397.—CAN.

p ii. ——— *Burden of proof*.—Where a contract was drawn up by a magistrate, who was employed for that purpose, & after being reduced to writing, it was read over to deft., who signed by his mark:—*Held*: the burden was upon deft. of establishing that the document was not his agreement.—*KEDDY v. DAUREY* (1913), 47 N. S. R. 229; 12 D. L. R. 621; 13 E. L. R. 163.—CAN.

p iii. ———.]—*MILLAR v. ELLARD*, [1927] 2 D. L. R. 102.—CAN.

p iv. ——— *Party intoxicated*.—*SCHOFIELD v. TUMMONDS* (1858), 6 Gr. 568.—CAN.

564 i. ——— *Contract of sale silent as to time & mode of payment*.—Defts. having ratified by telegram a contract made by their agents, afterwards attempted to repudiate it on the ground of an alleged variation in the terms of the bought note as to the time of delivery.

Defts.' letter of repudiation to their agents attempted to impose terms as to the time for payment as a condition of accepting the alleged variation:—*Held*: the contract was complete notwithstanding that the particular mode or time of payment was not stated.—*CAMPBELL v. MAHLER* (1919), 43 O. L. R. 395; 14 O. W. N. 318; *affd.*, 15 O. W. N. 339.—CAN.

PART III. SECT. 3, SUB-SECT. 2.—  
C. (a).

599 i. *Contract voidable*.—An agreement in writing by a wife to the provisions of her husband's will in lieu of the statutory provisions:—*Held*: to have been obtained by duress & not a bar to her application for relief under Devolution of Estates Act, 1920, s. 24.—*Re BURSAR'S ESTATE*, [1924] 3 W. W. R. 807.—CAN.

599 ii. ———.]—*BORRIS v. RUIND* (1899), 29 S. C. R. 498.—CAN.

PART III. SECT. 3, SUB-SECT. 3.—  
A. (a).

611 vi a. ———.]—*RAGHUNATH PRASAD v. SARJU PRASAD* (1923), L. R. 51 Ind. App. 101.—IND.

r i. ———.]—Where by reason of the confidential relationship existing between plff. & deft. & the influence he was able to exert over her by asserting knowledge of matters which he alleged could be used to her

613. *Add. Annotation*:—As to (3) *Apld.* Inche Noriah v. Shaik Allie Bin Omar, [1929] A. C. 127.
614. After this case add "See, also, FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a."
630. *Add. Annotation*:—*Consd.* Inche Noriah v. Shaik Allie Bin Omar, [1929] A. C. 127.
636. *Add. Annotation*:—*Consd.* Inche Noriah v. Shaik Allie Bin Omar, [1929] A. C. 127.
650. *Add. Annotation*:—*Consd.* Inche Noriah v. Shaik Allie Bin Omar, [1929] A. C. 127.
698. After this case add "See, also, FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a."
717. *Add. Annotation*:—*Consd.* Inche Noriah v. Shaik Allie Bin Omar, [1929] A. C. 127.
739. *Add. Annotation*:—*Consd.* Pontypridd Grdns. v. Drew (1926), 90 J. P. 169.
741. *Add. Annotation*:—*Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 743a. ——— Outdoor relief afforded to pauper.]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied.—PONTYPRIDD UNION v. DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.
- Sec, further, POOR LAW.*
747. *Add. Annotation*:—*Refd.* Brandt v. Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.
748. *Add. Annotations*:—*Refd.* Rederiakt. Transatlantic v. Compagnie Française des Phosphates de l'Océanie (1926), 136 L. T. 619. *Mentd.* Layton v. General Steam Navigation Co. (1923), 130, L. T. 662; Paterson Zochonis v. Elder Dempster, [1923] 1 K. B. 420; Lake v. Simmons (1926), 95 L. J. K. B. 586; The Hayle, [1929] P. 275.
750. *Add. Annotation*:—*Refd.* Brown v. Dagenham U. C., [1929] 1 K. B. 737.
763. *Add. Annotation*:—*Generally, Refd.* Meyrick v. Dyson (1925), 41 T. L. R. 368.
766. *Add. Annotation*:—*Refd.* Importers Co. v. Westminster Bank, [1927] 1 K. B. 869.

prejudice, which at the trial he admitted had no existence, he was enabled to procure from plff. an excessive amount for services performed, which was paid by her even after she had obtained independent advice, plff. was held entitled to recover the same back, less a reasonable amount for the services performed.—DISTER v. CLARKE (1894), 25 O. R. 493.—CAN.

r ii. ———.—*Re* WHITE, KERSTON v. TANE (1876), 21 Gr. 221.—CAN.

### PART III. SECT. 3, SUB-SECT. 3.—A. (b) i.

a i. ———.—An aged woman asked her son to inquire into the state of her property. By his report thereon she was induced to make a transfer of the property to him & a daughter.—*Held*: the mother was clearly capable of fully understanding what she was doing, & there was no undue influence or misrepresentation, & proof of independent advice was unnecessary to support the deed.—WEIR v. WEIR (B. C.), [1920] 3 W. W. R. 725.—CAN.

### PART III. SECT. 3, SUB-SECT. 3.—A. (b) iii.

50. *Donatio mortis causa to parish priest*—*Valid*.—BOHAN v. WALKER (N. B.), [1928] 4 D. L. R. 630.—CAN.

### PART III. SECT. 3, SUB-SECT. 3.—B.

696 i. *Onus on party alleging—Unless transaction prima facie unconscionable.*—RAGHUNATH PRASAD v. SARI PRASAD (1923), L. R. 51 Ind. App. 101.—IND.

### PART III. SECT. 3, SUB-SECT. 3.—C. (a).

715 i. *Principles on which relief granted*.—UNDERWOOD v. COX (1912), 21 O. W. R. 757; 3 O. W. N. 1112; 26 O. L. R. 303.—CAN.

722 i. *Transaction voidable*.—COLP v. HUNTER (1911), 1 W. W. R. 314.—CAN.

722 ii. ———.—ERWIN v. SNELOVE (Ont.), [1927] 4 D. L. R. 1028.—CAN.

### PART III. SECT. 4, SUB-SECT. 1.

741 xii. ———.—KILBORN v. FORESTER (1831), 1 Dru. 344.—CAN.

744 i. ———.—*From circumstances*.—RICE v. BURCKHARDT (1925), 36 B. C. R. 161.—CAN.

744 ii. ———.—NORTHERN RY. CO. v. LASTER (1867), 27 U. C. R. 57.—CAN.

747 ii. ———.—*Held*: an agreement by a co. to repurchase shares was established, as the conduct of the co. was quite inconsistent with any other reason than that it intended & agreed to repurchase the shares.—CLARKE v. LANGS & RODDIS, LTD. (1926), 37 B. C. R. 77.—CAN.

### PART III. SECT. 4, SUB-SECT. 2.—C.

u i. ———.—*Contract to dig well*.—When a party contracts to bore a well, with a proviso that he is to be paid a proportion of the price if it is a dry hole, there is an implied promise to go the distance his machinery will bore, & if because of a rock he does not go that distance it is not a "dry hole," & he is not entitled to payment.—WINKLER & MARTIN v. HUTTON, [1920] 2 W. W. R. 982; 13 Sask. L. R. 335.—CAN.

u ii. ———.—Where a hole is caving in & rendering it dangerous for him to work, & a well-digger abandons the work without having obtained water & without having gone to the full depth of his machine, he is not entitled to payment for the work already performed. A well-digger knows, & must be held to have assumed,

these risks when he has not in his contract protected himself against such contingencies.—SAVIDAN v. LAPLANTE, [1924] 3 D. L. R. 1089; 2 W. W. R. 1222.—CAN.

u iii. ———.—*Contract for removal of night soil—Special provisions as to cleansing*.—*Held*: the contract was one entire contract & every provision in it for strict cleanliness & disinfection was of the very essence & nature of the contract.—HUNTER v. WEST MAITLAND MUNICIPAL COUNCIL (1923), 23 S. R. N. S. W. 420.—AUS.

### PART III. SECT. 4, SUB-SECT. 2.—D.

e i. ———.—ANDERSON v. MCINTYRE, [1925] 3 D. L. R. 948.—CAN.

e ii. ———.—*Agreement to live on & work farm in consideration of father promising to devise farm*.—*Held*: the father having prevented the son from performing the work contracted for & discharged him from service, the son was entitled to recover on a quantum meruit for the work done by him & money & materials furnished.—RENTON v. RENTON (1925), 52 N. B. R. 356.—CAN.

Compare p. 395, case f i, post.

### PART III. SECT. 5, SUB-SECT. 2.

h i. ———.—*Agreement to accept land in satisfaction of debt*.—*Held*: binding, though not in writing.—FLEMING v. DUNCAN (1870), 17 Gr. 76.—CAN.

h ii. ———.—*Agreement to share commission*.—*Held*: Alberta Statutes, 1906 (c. 27), not applicable.—HEATON v. FLATER (1914), 27 W. L. R. 98; 16 D. L. R. 78; 8 Alta. L. R. 21.—CAN.

h iii. S. P. KARRAR v. SCHUBERT (1914), 29 W. L. R. 540; 7 W. W. R. 189; 8 Alta. L. R. 21; 19 D. L. R. 804.—CAN.

## Part IV.—The Statute of Frauds.

769. *Add. Annotation*:—**Refd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise* (1926), 42 T. L. R. 735.
772. *Add. Annotation*:—**Refd.** *Monnickendam v. Leanse* (1923), 39 T. L. R. 445.
775. *Add. Annotations*:—**Refd.** *Newman v. Slade*, [1926] 2 K. B. 328. **Mentd.** *Brakspear v. Barton*, [1924] 2 K. B. 88.
793. *Add. Annotation*:—**Expld.** *Scott v. Pattison*, [1923] 2 K. B. 723.
803. *Add. Annotation*:—**Mentd.** *Hall v. I. R. Comrs.* (1926), 135 L. T. 759.
810. *Add. Annotations*:—**As to** (3) **Consd.** *Re A Bankruptcy Notice*, [1924] 2 Ch. 76. **Refd.** *Rawlinson v. Ames* (1924), 69 Sol. Jo. 142.
819. *Add. Annotation*:—**As to** (1) **Refd.** *Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.
840. *Add. Annotations*:—**Consd.** *Jacobs v. Batavia & General Plantations Trust*, [1924] 1 Ch. 287. **Refd.** *Michael v. Phillips* (1923), 130 L. T. 142.
841. *Add. Annotations*:—**Consd.** *Jacobs v. Batavia & General Plantations Trust*, [1924] 1 Ch. 287. **Refd.** *Michael v. Phillips* (1923), 130 L. T. 142.
844. *Add. Annotation*:—**Refd.** *Michael v. Phillips* (1923), 130 L. T. 142.
845. *Annotations*:—**For** “**Refd.** *Heilbut, Symons v. Buckleton*, [1913] A. C. 30,” read “**Dbtd.** *Heilbut, Symons v. Buckleton*, [1913] A. C. 30.”
- Add. Annotation*:—**Refd.** *Collins v. Hopkins* [1923] 2 K. B. 617.
- 845a. — **Parol warranty to let for certain purposes.**]—**Pltf.**, in an action for damages for breach of warranty in connection with the letting to him of certain premises, alleged that as a basis of negotiations which culminated in an agreement in writing whereby defts. agreed to let & **pltf.** agreed to take the premises in question, defts. verbally warranted to let the premises for dancing purposes. Defts. had no power to let the premises for such purposes without the con-

sent of the superior landlord, & such consent was never in fact obtained. **Pltf.** took possession under the agreement & expended considerable sums in alterations, & now claimed to recover the amount of such expenses less the sums received by him during his possession of the premises. There was no fraudulent misrepresentation:—**Held**: **pltf.** had failed to establish the alleged parol agreement, & even if the evidence had established that before the contract was entered into **pltf.** had asked whether the premises could be let for dancing & had been answered in the affirmative, it would only have been evidence as to the subject-matter of the contract & could not control, vary, or add to the terms of the written contract.—**CRAWFORD v. WHITE CITY RINK (NEWCASTLE-ON-TYNE), LTD.** (1913), 29 T. L. R. 318; 57 Sol. Jo. 357; 77 J. P. Jo. 111.

— **Implied warranties.**]—*See, generally, LANDLORD & TENANT*, Vol. XXXI., pp. 176–181.

859. *Add. Annotation*:—**Apld.** *Farr, Smith v. Messers* (1927), 44 T. L. R. 48.
- 859a. — **What amounts to—Reconstitution of action.**]—**Defts.** on Jan. 9, 1924, agreed to sell a quantity of wood to a partnership firm. The firm, being in financial difficulties, formed a limited co., & duly notified defts. On July 9 it was orally agreed that the new co. should give defts. a cheque & three bills in respect of the indebtedness of the old firm, & that defts. should supply to the new co. the goods sold under the contract of Jan. 9, & accept the new co. as buyers of the goods. The new co. subsequently gave to defts. the cheque & three bills, but defts. did not deliver the goods under the contract of Jan. 9 to the new co. The two partners in the old firm then brought an action against defts. for breach of the contract of Jan. 9. To that action defts. put in a defence signed by counsel in which they pleaded, in par. 3, that it had been agreed by the contract of July 9 that the new co. should give defts. on the following Monday a cheque &

## PART IV. SECT. 1, SUB-SECT. 5.—A.

770 i. *Partnership agreement*—A contract for a partnership to last longer than a year is within Stat. Frauds.—**HOFFMAN v. COHEN (Man.)** (1914), 27 W. L. R. 127.—**CAN.**

**sp.** *Agreement to be performed before fixed date—Fixed date more than one year from agreement—Effect of renewals.*]—In 1921 **def.** promised to marry **pltf.** at a date not later than May, 1923. The promise was renewed from time to time up to May, 1922:—**Held**: the contract was one to be performed within a year, & a memorandum in writing to satisfy Stat. Frauds was unnecessary.—**CYR v. DUFAULT** (1923), 55 O. L. R. 90.—**CAN.**

**sq.** *Whether statute bar to action for dissolution of partnership.*]—**WONG v. HOU**, [1928] 1 W. W. R. 480; 39 B. C. R. 425.—**CAN.**

## PART IV. SECT. 1, SUB-SECT. 5.—B. (a).

**st.** *Agreement for partnership—For indefinite period.*]—A written contract, which provides for the continuance of a partnership from its date

until dissolved by mutual consent, unless previously determined by a specified notice, is not an agreement that is not to be performed within the space of one year from the making within Instruments Act, 1915, s. 228.—**GIBB v. SELL**, [1922] V. L. R. 561; 28 L. R. 305; 44 A. L. T. 1.—**AUS.**

## PART IV. SECT. 1, SUB-SECT. 5.—C.

806 ii. *S. P. DICKSON v. JACQUES* (1871), 31 U. C. R. 141.—**CAN.**

812 i. — *To commence on following day.*]—A contract to serve for one year, the service to commence on the day next after that on which the contract is made, is not a contract not to be performed within a year within Stat. Frauds, s. 4.—**BELLER v. KLOTZ (Sask.)**, [1917] 1 W. W. R. 585.—**CAN.**

820 ii. — *—*]—A contract for service, under which **def.** is to receive “\$700 a year, to be increased per year until it reaches \$1,000,” is a contract not to be performed within a year within Stat. Frauds.—**FARRGRIEVE v. O’MULLIN** (1896), 40 N. S. R. 215.—**CAN.**

823 ii. — *Share-milking agreement—Commencement & termination not stated.*]—**Held**: the contract was one for services not to be performed within one year from the making thereof, & therefore came within the statute.—**HALL v. GOLDSTONE**, [1923] N. Z. L. R. 916.—**N.Z.**

## PART IV. SECT. 1, SUB-SECT. 7.

838 i. *Promise to pay debt of another—Subsequent credit given to guarantor as principal debtor—Not entire.*]—**Held**: as to goods supplied before the alleged promise, the promise was one to answer for the debt of another & under Stat. Frauds was unenforceable because of the absence of a memorandum in writing to support it; but as to goods supplied subsequently, although the account was continued in the buyer’s name, it was established that the surety became the principal debtor & the goods were supplied on his account, & no memorandum in writing was required to enforce the claim.—**BATEMAN & MATTHEWS v. SPENCER**, [1923] 4 D. L. R. 170; 16 Sask. L. R. 474; [1923] 1 W. W. R. 1281.—**CAN.**

three drafts, & that debts. would supply to the new co. instead of to the old firm the goods sold under the contract of Jan. 9, & accept that co. as buyers of the goods. The pleadings were then amended & the action was reconstituted, the partners in the old firm being struck out & the new co. substituted as plffs., & the cause of action was stated to be a breach of the agreement of July 9. Defts. then amended their defence & relied upon Sale of Goods Act, 1893 (c. 71), s. 4, as a defence to that amended action:—*Held*: (1) par. 3 of the original unamended defence which was signed by counsel constituted a sufficient note or memorandum in writing of the contract signed by an agent of the party to be charged to satisfy the above sect., inasmuch as (2) the new departure with regard to the parties & the cause of action when the action was reconstituted must be treated as the commencement of the action within the rule in *Lucas v. Dixon*, No. 859, *ante*.—*FARR, SMITH & Co. v. MESSERS, LTD.*, [1928] 1 K. B. 397; 97 L. J. K. B. 126; 138 L. T. 154; 44 T. L. R. 48; 72 Sol. Jo. 14; 33 Com. Cas. 101.

862. *Add. Annotation*:—*Refd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

888. *Add. Annotation*:—*As to (2) Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

892. *Add. Annotation*:—*Distd. McDonald v. Nash*, [1924] A. C. 625.

893. *Add. Annotation*:—*Refd. McDonald v. Nash*, [1924] A. C. 625.

900. *Add. Annotation*:—*Consd. Farr, Smith v. Messers* (1927), 44 T. L. R. 48.

900a. —.—*FARR, SMITH & Co. v. MESSERS, LTD.*, No. 859a, *ante*.

900b. *Contract rectified by court*—*On ground of mistake*.—Where owing to a mistake common to both parties to a contract in writing it does not express the true bargain between the parties, the ct. in England has jurisdiction, since Jud. Act, 1873 (c. 66), to rectify the contract & to order specific performance

of it as rectified, although apart from the rectified contract there is no memorandum to satisfy Stat. Frauds.—*U.S.A. v. MOTOR TRUCKS, LTD.*, [1924] A. C. 196; 93 L. J. P. C. 46; 130 L. T. 129; 39 T. L. R. 723, P. C.

914. *Add. Annotation*:—*Consd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.

923a. *Agreement to remain in force so long as another agreement continued*.—Defts. agreed in writing to purchase from plffs. all the stores that they required in the United Kingdom for their vessels, plffs.' profits on the net price invoiced by the manufacturers to plffs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with plffs. for five months defts. repudiated it:—*Held*: the two agreements were sufficiently connected to enable the second to be read with the first, & Stat. Frauds did not prevent plffs. from contending that the first agreement was to last for ten years.—*FRANCO-BRITISH SHIP STORE CO., LTD. v. COMPAGNIE DES CHARGEURS FRANCAISE* (1926), 42 T. L. R. 735.

924. *Add. Annotation*:—*Refd. Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise* (1926), 42 T. L. R. 735.

930. *Add. Annotation*:—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.

933. *Add. Annotation*:—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B.

956. *Add. Annotation*:—*Refd. Reading Trust v. Spero* (1929), 46 T. L. R. 117.

980. *Add. Annotation*:—*Consd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.

983. *Add. Annotation*:—*As to (2) Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

#### PART IV. SECT. 2, SUB-SECT. 3.—A.

900a i. *Contract rectified by court*.—*As against a defence of Stat. Frauds*, the ct. has no power to reform a writing & then decree specific performance of it as reformed.—*SWEITZER v. GRANGER* (1923), 54 O. L. R. 70.—*CAN.*

90a. *Order in Council*.—*Held*: an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—*LAMARRE & Co. v. R.*, [1923] Exch. C. R. 174.—*CAN.*

#### PART IV. SECT. 2, SUB-SECT. 3.—B.

90b. *Contract not absolutely recognised*.—*Alleged variation of terms*.—Def'ts. agents in A., on Oct. 14, 1914, telegraphed to def't. in business in O., that they had sold to plffs. a cargo of apples for shipment on opening of navigation. On Oct. 16, def't. answered accepting. On that day the agents sent def't. a bought note, stating the terms of contract as in the telegram, with additions. On Oct. 20, def't. wrote to the agents: "I will return contract, as I find you have worded contract 'opening of navigation 1915.' I will not accept contract on these terms unless they will pay for the goods when packed".—*Held*: if the terms of the contract had not sufficiently appeared by the telegrams

& the bought note, the letter of Oct. 20 would have supplied a sufficient memorandum to satisfy Stat. Frauds, although it contained a repudiation of the contract.—*CAMPBELL v. MAHLER* (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.*, 15 O. W. N. 339.—*CAN.*

#### PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

923 i. *Letter referring to previous correspondence*.—*Contract constructively assented to therein*.—Vendor's solr. wrote to purchaser's solr.: "B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr., in acknowledging the letter, stated: "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement".—*Held*: the latter letter constituted a note or memorandum sufficient to satisfy Stat. Frauds, although the writer had no intention to sign one.—*CLONCURRY (LORD) v. LAFFAN*, [1924] 1 I. R. 78.—*IR.*

#### PART IV. SECT. 2, SUB-SECT. 3.—O. (b).

91. —. *From purchaser to partner*.—*Stating terms of purchase*.—In an

action against D., claiming damages for breach of contract to purchase bonds, a telegram from D. to his partner was produced saying, "I absolutely bought them yesterday after our phone conversation they agreeing to our terms".—*Held*: parol evidence was properly received to show that terms had been stated by D., over his signature, that they were the only terms & were those referred to in the telegram, & the two constituted a sufficient memorandum within Stat. Frauds.—*DORAN v. MCKINNON* (1916), 53 S. C. R. 609.—*CAN.*

#### PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

971 i. *General rule*.—A writing is not sufficient to make a contract of purchase of land comply with Stat. Frauds unless the parties to the contract are specified in the writing, either nominally or by description or reference, & in such a manner that there can be no fair or reasonable dispute as to their identity. A letter signed by a purchaser, addressed to persons who are the vendor's agents, but not mentioning the vendor, & there being nothing creating a contract binding upon the agents personally, is not sufficient to make a contract enforceable against purchaser under Stat. Frauds.—*MAHLER v. BARKER*, [1924] 3 D. L. R. 292; 2 W. W. R. 796; 34 B. C. R. 136.—*CAN.*

995. *Add. Annotation* :—**Apld.** *Re Howden & Hyslop's Contract*, [1928] Ch. 479.
999. *Add. Annotations* :—*As to* (2) **Apld.** *Chillingworth v. Esche*, [1923] 1 Ch. 576. **Folld.** *Monnickendam v. Leanse* (1923), 39 T. L. R. 445. *Generally*, **Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.
1002. *Add. Annotation* :—**Refd.** *Chillingworth v. Esche* (1923), 129 L. T. 808.
1017. *Add. Annotation* :—**Refd.** *Dominion Press v. Customs & Excise Minister*, [1928] A. C. 340.
- 1022a. —. —.]—On Nov. 21, 1918, pltf. paid deft. £10 & received the following receipt: "Received of Mr. A. £10 on account of house being sold for £500 from Mr. N. Possession to be taken in six weeks after date." Pltf. proved that on Nov. 21, 1918, before signing the receipt deft. verbally agreed to sell him his house & residence, N. Lodge, for £500 with possession in six weeks, & that the £10 was paid as a deposit on account of the purchase-money:—**Held**: the receipt was a sufficient memorandum of the verbal contract.—**AUERBACH v. NELSON**, [1919] 2 Ch. 383; 88 L. J. Ch. 493; 122 L. T. 90; 35 T. L. R. 655; 63 Sol. Jo. 683.
- 1027a. —. —.]—**HOWARD v. OKEOVER** (1778), 3 Swan. 482; 36 E. R. 933.
1031. *Add. Annotation* :—**Refd.** *Koskas v. Standard Marine Insce.* (1927), 137 L. T. 165.
1032. *Add. Citations* :—92 L. J. Ch. 598; 129 L. T. 659; 39 T. L. R. 576; 67 Sol. Jo. 638, C. A.
1059. *Add. Annotation* :—**Refd.** *Chillingworth v. Esche* (1923), 92 L. J. Ch. 461.
1063. *Add. Annotation* :—**Refd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
1068. *Add. Annotation* :—**Refd.** *Rawlinson v. Ames* (1924), 69 Sol. Jo. 142.
1074. *Add. Annotation* :—**Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
1077. *Add. Annotations* :—**Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Behnke v. Bede Shipping Co.*, [1927] 1 K. B. 649.
1078. *Add. Annotation* :—*As to* (1) **Refd.** *Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.
1087. *Add. Annotations* :—**Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Behnke v. Bede Shipping Co.*, [1927] 1 K. B. 649.
1089. *Add. Annotation* :—**Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
1092. *Add. Annotation* :—**Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
1104. *Add. Annotation* :—**Refd.** *Chaney v. Macleod* [1929] 1 Ch. 461.
1107. After this case add "See, also, No. 1123a, post."
1109. *Add. Annotation* :—**Refd.** *Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.
1119. *Add. Annotations* :—**Refd.** *Chillingworth v. Esche*, [1923] 1 Ch. 576; *Monnickendam v. Leanse* (1923), 39 T. L. R. 445.
1121. *Add. Annotation* :—**Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
- 1123a. —. —.]—**Purporting to enclose engrossment—Coupled with engrossment.**—Circumstances (see **LANDLORD & TENANT**, No. 396a, post) in which:—**Held**: there was a sufficient memorandum of an oral contract.—**HORNER v. WALKER**, [1923] 2 Ch. 218; 92 L. J. Ch. 573; 129 L. T. 782.
1125. *Add. Annotation* :—**Consd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
1170. *Add. Annotation* :—**Apld.** *Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.
1172. *Add. Annotation* :—**Refd.** *Farr, Smith v. Messers*, [1928] 1 K. B. 397.
1174. *Add. Annotation* :—**Mentd.** *Jacobs v. Batavia & General Plantations Trust*, [1924] 1 Ch. 287.
1176. *Add. Annotations* :—*As to* (1) **Consd.** *Re A Bankruptcy Notice*, [1924] 2 Ch. 76. *As to* (2) **Refd.** *Rawlinson v. Ames* (1924), 69 Sol. Jo. 142. *Generally*, **Refd.** *Houghton v. Not-hard, Lowe & Wills* (1927), 44 T. L. R. 76.
- 1178a. —. —. —.]—In cases under Stat. Frauds the general principle has been, not that the legislature has avoided contracts which are not made in accordance with the forms prescribed in the Act, but merely that those contracts shall only be proved in that particular way. In every single case under Stat. Frauds, except in the case of contracts relating to an interest in land, it has been held authoritatively that part performance of a contract which is within the terms of the Act is not sufficient to preclude the party who has made the part performance, or who has received a part performance, from taking advantage of the Act (**ATKIN, L.J.**).—*Re A BANKRUPTCY NOTICE*, [1924] 2 Ch. 76; 93 L. J. Ch. 497; 131 L. T. 307; 68 Sol. Jo. 458; [1924] B. & C. R. 188, C. A.
- Annotation* :—**Refd.** *Huddersfield Fine Worsteds v. Todd* (1925), 134 L. T. 82.
- 1184a. *S. P.* **CROYSTON v. BANES** (1702), *Presc. Ch.* 208; 24 E. R. 102.
- Annotation* :—**Consd.** *Rondeau v. Wyatt* (1792), 2 Hy. Bl. 63.

**PART IV. SECT. 2, SUB-SECT. 4.—**  
**B. (b).**

1027 hit. — *Admission of existence of contract.*—Vendor's solr. wrote to purchaser's solr. B. Informing me that he had agreed with R. F. who sold to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr. in acknowledging the letter, stated: "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement":—*Held*: this letter constituted a note or memorandum signed by purchaser's agent sufficient to satisfy Stat. Frauds, although he had not been specifically authorised to sign such a memorandum, & in writing the letter had no intention to sign one.

—CLONCURRY (LORD) v. LAFFAN,  
[1924] 1 I. R. 78.—IR.

**PART IV. SECT. 2, SUB-SECT. 4.—**  
**B. (d).**

q. Read now "1034 i."  
1034 ii. — *Share-milking agreement.*—*Held:* an incomplete memorandum of the terms of the contract, & the result was the same as if there were no memorandum at all.—*HALL v. GOLDSTONE*, [1923] N. Z. L. R. 916.—N. Z.

1035 li. — *Share-milking agree-*  
ment.]—HALL v. GOLDSTONE, No.  
1034 li., ante.—N.Z.

**PART IV. SECT. 2, SUB-SECT. 5.—A.**

1062 i. — Parol acceptance of written offer.]—Subsequent oral recognition of a memorandum previously

**1104. Add. Annotation :—***Refd. Chaney v. Maclow*  
[1929] 1 Ch. 461.

1107. After this case add "*See, also, No. 1123a, post.*"

**1109.** *Add. Annotation* :—**Refd.** Koenigsblatt v. Sweet, [1923] 2 Ch. 314.

**1119. Add. Annotations:—***Refd.* *Chillingworth v. Esche*, [1923] 1 Ch. 576; *Monnickendam v. Leanse* (1923), 39 T. L. R. 445.

**1121. Add. Annotation:—***Refd.* *Cohen v. Roche* (1926), 95 L. J. K. B. 945.

1123a. — Purporting to enclose engrossment—  
Coupled with engrossment.]—Circumstances  
(*see* LANDLORD & TENANT, No. 396a, *post*)  
in which:—*Held*: there was a sufficient  
memorandum of an oral contract.—*HORNER*  
*v. WALKER*, [1923] 2 Ch. 218; 92 L. J. Ch.  
573; 129 L. T. 782.

**1125. Add. Annotation:—***Consd.* *Cohen v. Roche* (1926), 95 L. J. K. B. 945.

**1170.** *Add. Annotation:—***Apld.** Koenigsblatt v. Sweet, [1923] 2 Ch. 314.

**1172. Add. Annotation:—**Refd. Farr, Smith v. Messers, [1928] 1 K. B. 397.

**1174. Add. Annotation :—Mentd. Jacobs v. Batavia & General Plantations Trust, [1924] 1 Ch. 287.**

**1178. Add. Annotations :—***As to* (1) **Consd. Re A** Bankruptcy Notice, [1924] 2 Ch 76. *As to* (2) **Refd. Rawlinson v. Arms** (1924), 69 Sol. Jo. 142. *Generally*, **Refd. Houghton v. Not-hard, Lowe & Wills** (1927), 44 T. L.R. 76.

1178a. ————.]—In cases under Stat. Frauds the general principle has been, not that the legislature has avoided contracts which are not made in accordance with the forms prescribed in the Act, but merely that those contracts shall only be proved in that particular way. In every single case under Stat. Frauds, except in the case of contracts relating to an interest in land, it has been held authoritatively that part performance of a contract which is within the terms of the Act is not sufficient to preclude the party who has made the part performance, or who has received a part performance, from taking advantage of the Act (ATKIN, L.J.).—*Re A BANKRUPTCY NOTICE*, [1924] 2 Ch. 76 ; 93 L. J. Ch. 497 ; 131 L. T. 307 ; 68 Sol. Jo. 458 ; [1924] B. & C. R. 188, C. A.

*Annotation:* **Reid.** Huddersfield Fine Worsteds v. Todd (1925), 134 L. T. 82.

**1184a.** *S. P.* CROYSTON *v.* BANES (1702), Prec. Ch.  
208; 24 E. R. 102.

*Annotation* :—**Consd.** Rondeau v. Wyatt (1792), 2 Hy. Bl. 63.

signed, as containing all the terms of the contract, is a sufficient compliance with Stat. Frauds.—**FRIEDMAN v. MAYER** (1913), 25 W. L. R. 551; 5 W. W. R. 168; 14 D. L. R. 154; 7 Alta. L. R. 60.—**CAN.**

80. *Sale & resale*.—No signature by sub-purchaser.]—*Held*: where Stat. Frauds applied liability could only be established by an acknowledgment in writing.—*WORDINGTON v. BUSH*, [1923] 3 D. L. R. 884; 32 B. C. R. 434.—**CAN.**

**PART IV. SECT. 2, SUB-SECT. 6.—A.**

1144 ii. ———— Parol evidence received to show that terms had been stated by a purchaser over his signature & were those referred to in a telegram from him to his partner.—*DORAN v. McKINNON* (1916), 53 S. C. R. 609.—CAN.



1185. *Add. Citation*:—*sub nom.* CHILD *v.* COMBER, 3 Swan. 423, n.

1186a. —.]—HOSTER *v.* READ (1724), 9 Mod. Rep. 86; 88 E. R. 332.

1213a. — Refusal to pay for instalments until whole work published.]—A purchaser contracted to purchase a series of engravings from plffs., the publishers, by signing a circular to the following effect: 'Please enter my name as a subscriber for 'The Cries of London,' to be sent to me as published, the price of each of the thirteen plates, £10 10s.' After plffs. had delivered the first four plates of the series, they called on deft. to pay for them, but he refused to do so till the entire set was published & delivered:—*Held*: the words "to be sent to me as published" made it clear that the contract was an instalment contract, & not an indivisible contract for the entire set, & the fact that the price of each plate was stated to be ten guineas, while there was no mention of the price of the whole set, showed that each instalment was to be paid for separately.—HOWELL *v.* EVANS (1926), 134 L. T. 570; 42 T. L. R. 310, D. C.

1214. *Add. Citations*:—[1923] 2 K. B. 723; 92 L. J. K. B. 886; 129 L. T. 830.

1217a. —.]—ANON (*circa* 1678), 1 Eq. Cas. Abr. 20, pl. 5, 1. C.

PART IV. SECT. 3, SUB-SECT. 3.—A.

1195 ii. —.]—A common law action for a balance of the purchase money of land sold under a verbal agreement cannot be maintained, although the deed has been delivered.—McMILLAN *v.* WILLIAMS (1894), 9 Man. L. R. 627.—CAN.

PART IV. SECT. 3, SUB-SECT. 3.—B. (a).

1200 ii. —.]—An item in an account stated, being a sum charged for the price of a lot of land, does not make it incumbent on plff. to prove the agreement respecting such land to have been made in writing.—DALTON *v.* BOTTS (1826), Tay. 281.—CAN.

PART IV. SECT. 3, SUB-SECT. 3.—B. (d).

i. —.— *Agreement to work in consideration of employer promising to dense ready—Liability for services rendered*—*Held*: the employee was entitled to compensation on a quantum meruit for work performed & services rendered for deceased employer.—*Re* MISTON, MISTON *v.* GRAY (SASK.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—CAN.

Compare p. 391, case c ii, ante.

ii. —.— *Value of services—Admissibility of contract*.—In an action brought on a quantum meruit for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years; it was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200:—*Held*: although the parol agreement was one to which the provisions of Stat. Frauds were applicable, it was nevertheless admissible as evidence of the value of plff.'s services.—WARD *v.* GRIFFITHS BROTHERS, LTD. (1928), 28 S. R. N. S. W. 425; 45 N. S. W. W. N. 130.—AUS.

PART IV. SECT. 3, SUB-SECT. 4.—A.

1217 i. *General rule*.—Stat. Frauds

& Mineral Act, B. C., s. 19, will not be allowed to be made instruments of fraud.—ROBERTS *v.* ROBERTS, [1923] 2 W. W. R. 137.—CAN.

1225 i. *Conveyance of interest in land—Whether evidence of trust admissible*.—SMITH *v.* BENOR (1913), 24 O. W. R. 521; 4 O. W. N. 985; 10 D. L. R. 824.—CAN.

PART IV. SECT. 3, SUB-SECT. 4.—B. (a).

1237 viii. —.—.]—The act of part performance relied on must be unequivocally referable to the agreement alleged.—TILLEY *v.* CLEARY & HENDERSON (1887), 7 Nfld. L. R. 209.—NFLD.

1237 ix. —.—.]—In order to enforce specific performance of an oral contract, whereby deceased promised to devise land to another in consideration of the latter working for deceased until the latter's death, the acts relied on as part performance excluding Stat. Frauds must be unequivocally referable to the contract asserted.

The fact that a son left his employment & lived & worked on his father's farm for ten years without drawing wages:—*Held*: not to point unmistakably to a contract by the father to leave his property to the son, & the alleged contract, not being evidenced by writing, was not enforceable.—*Re* MISTON, MISTON *v.* GRAY (SASK.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—CAN.

1237 x. —.—.]—A mother undertook verbally to make a will leaving to her son W. two farms in D., & thereby induced W. to convey his farm in B to A. & to pay A. £200. She afterwards made a will which gave effect to this verbal undertaking, but subsequently revoked it, leaving W. merely a life interest in the two farms:—*Held*: there was a sufficient act of part performance by W. to take the case out of the operation of Stat.

1217b. —.]—ANON. (*circa*. 1680), cited in 1 Eq. Cas. Abr. 20, pl. 5; 21 E. R. 842, L. C. Annotation:—*Re*fd. Maxwell *v.* Montacute (1720), Prec. Ch. 526.

1234a. —.]—Stat. Frauds not pleadable where the agreement is executed in part.—AYLESFORD'S (EARL) CASE (1727), 2 Stra. 783; 93 E. R. 845.

Annotation:—*Consd.* Whitechurch *v.* Bevis (1789), 2 Bro. C. C. 559.

1235. *Add. Annotation*:—*Consd.* Rawlinson *v.* Ames, [1925] Ch. 96.

1245. *Add. Annotation*:—*Re*fd. Rye *v.* Purcell, [1926] 1 K. B. 446.

1247. *Add. Annotation*:—*Re*fd. Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1248a. —.]—*Re* A BANKRUPTCY NOTICE, No. 1178a, ante.

1263a. —.—.]—In an action for the specific performance of an agreement, where it does not appear from the statement of claim whether the agreement was in writing or not, a defence founded on the Stat. Frauds cannot be raised by demurrer.—FUTCHER *v.* FUTCHER (1881), 50 L. J. Ch. 735; 45 L. T. 306; 29 W. R. 884.

1269. *Add. Annotation*:—*Re*fd. Hoystead *v.* Taxation Comr., [1926] A. C. 155.

Frauds—LOWRY *v.* REID, [1927] N. 142.—IR.

1237 xi. —.—.]—Where there was a parol agreement between plff. & deft. to the effect that plff. would grant a permanent lease to deft. in respect of a piece of land, & where no lease was either executed or registered, but deft. was put into possession & erected structures thereon to plff.'s knowledge, where it appeared that plff. must have realised deft. would not have constructed the same unless he was assured of the possession of a permanent right in the land, & that if the intention of plff. was not to grant such a lease it might reasonably be expected that he would have objected to the construction of such a building:—*Held*: in a suit of ejectment by the lessor, that deft. not having obtained a lease in conformity with the provision of Transfer of Property Act, s. 107, read with Registration Act, s. 49, can resist ejectment, only if the case can be brought within the range of one or other of those principles of equity which have been held to apply to this country.—ANIFF *v.* JADU NATH MAJUMDAR (1928), 1. L. R. 55 Calc. 1090.—IND.

PART IV. SECT. 4.

1258 i. *Since Judicature Acts—Necessity for pleading statute*.—In an action claiming damages for conversion of goods, if it appears that the title to the goods is based on a contract, deft. may urge that such contract is void under Stat. Frauds, though no such defence is pleaded. It is only where the action is between the parties to the contract, which one of them seeks to enforce against the other, that deft. must plead Stat. Frauds if he wishes to avail himself of it.—KENT *v.* ELLIS (1900), 31 S. C. R. 110; 32 N. S. R. 549.—CAN.

1258 ii. —.—.]—The defence of Stat. Frauds cannot be raised, unless it has been pleaded.—DOMINION MEAT CO. *v.* JAMESON (1917), 12 Alta. L. R. 353.—CAN.



## Part V.—Consideration.

**1274. Add. Annotation:—***Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.

**1285a. — Promise to pay debt for which promisor not liable—Agreement void.]—**BREALEY v. ANDREW (1837), 7 Ad. & El. 108; 2 Nev. & P. K. B. 114; Will. Woll. & Dav. 481; 6 L. J. K. B. 199; 1 Jur. 526; 112 E. R. 411

**1285b. — Promise to employ person—No obligation on promisee to act.]—Held:** there was no consideration for the agreement. PAYNE v. NEW SOUTH WALES COAL & INTER-COLONIAL STEAM NAVIGATION CO. (1854), 10 Exch. 283; 24 L. J. Ex. 117; 156 E. R.

*Annotation:—**Refd.* Kelner v. Baxter (1866), L. R. 2 C P 174.

**1299. Add. Annotation:—***Refd.* McDonald v. Nash, [1924] A. C. 625.

**1350. Add. Annotations:—***Refd.* Kennedy v. Thomassen, [1929] 1 Ch. 426. *Mentd.* Ellesmere v. Wallace, [1929] 2 Ch. 1; Weddle Beck v. Hackett, [1929] 1 K. B. 321.

**1352. Add. Annotation:—***Refd.* Crediton Gas Co. v. Crediton U. C., [1928] Ch. 447.

**1383. Add. Annotations:—***Refd.* Cohen v. Sellar, [1926] 1 K. B. 536; Riley v. Brown (1929), 98 L. J. K. B. 739.

**1388. Add. Annotation:—***Mentd.* Sweet v. Williams (1922), 128 L. T. 379.

**1421a. — By agent of joint owner of chattel to co-owner—Part of proceeds of sale of chattel.]—Held:** sufficient consideration for a promise to deliver to the agent a bill of exchange or the equivalent amount in cash.—*SURTEES v. LISTER* (1861), 7 H. & N. 1; 30 L. J. Ex. 369; 158 E. R. 367.

*Annotation:—**Mentd.* Miles v. New Zealand Alford Estate Co (1886), 32 Ch. D. 266.

**1432a. Agreement to grant annuity.]—A mutual agreement by several to grant an annuity to a third party may be a consideration sufficient to support the grant.—**BENTLEY v. MACKAY (1862), 31 Beav. 143; 31 L. J. Ch. 697; 6 L. T. 632; 8 Jur. N. S. 857; 10 W. R. 593; 54 E. R. 1092; *affd.*, 4 De G. F. & J. 279, L. J.J.

**1459a. —.]—S.**, a customer of bkpt., a stock-broker, became indebted to him in respect of Stock Exchange transactions in a sum for

which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500. & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. & as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled:—*Held:* the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes.—*Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom.* *Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, *TRUSTEE v. BANCE*, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

**1460. Add. Annotation:—***Consd.* Burrell v. Leven (1926), 42 T. L. R. 107.

**1462. Add. Annotation:—***Refd.* Hyde v. Tyler (1926), 42 T. L. R. 442.

**1475. Add. Annotation:—***Consd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

**1525. Add. Annotation:—***Refd.* Burrell v. Leven (1926), 42 T. L. R. 407.

**1527. Add. Annotations:—***Refd.* Burrell v. Leven (1926), 42 T. L. R. 407; Richardson v. Moncrieffe (1926), 43 T. L. R. 32; *Mentd.* Greenhalgh v. Union Bank of Manchester, [1924] 2 K. B. 153.

**1542. Add. Annotation:—***Refd.* Burrell v. Leven (1926), 42 T. L. R. 407.

held liable for damages.—*TIMMINS v. SURPLES* (1876), 26 C. P. 49.—*CAN.*

**PART V. SECT. 3, SUB-SECT. 2.—A.**  
*ad. Promise to allow offer of option to promisor.]—A* promise to allow a third party to offer the promisor an option on shares does not constitute a valuable consideration.—*GIBSON v. McVEIGH* (No. 1), [1922] 1 W. W. R. 151.—*CAN.*

**PART V. SECT. 3, SUB-SECT. 2.—B. (a).**

*si. Abandonment of claim.]—Where* any question arising between the parties on a previous verbal agreement had been compromised, & the compromise embodied in a written agreement. *Held:* sufficient consideration for the compromise was an abandonment of a claim by each party.—*BILODEAU v. McLEAN*, [1924] 3 D. L. R. 410; 2

W. W. R. 631; 34 Man. L. R. 239.—*CAN.*

**PART V. SECT. 3, SUB-SECT. 3.—A.**  
**1445 iii. —.]—***MOBERLY v. BAINES & SHORTIS* (1857), 15 U. C. R. 25.—*CAN.*

**PART V. SECT. 3, SUB-SECT. 3.—B. (a).**

**1453 iii. —.]—**Where a creditor grants an extension of time for payment of a past due debt & at the same time obtains from debtor security for the debt, the proper inference to be drawn, in the absence of evidence to the contrary, is that the extension was granted as a result of the creditor's obtaining the security.—*O'BRIEN v. STEBBINS & MULLEN*, [1927] 3 D. L. R. 274; [1927] 2 W. W. R. 176; 21 Sask. L. R. 478.—*CAN.*

**PART V. SECT. 1.**  
**1274 iv. —.]—**A good cause of action can be founded on a promise made seriously & deliberately & with the intention that a lawful obligation should be established.—*CONRADIE v. ROUSSOUW*, [1919] App. D. 279.—*S. AF.*

## PART V. SECT. 2.

**1275 xiv. —.]—**Pltf.'s goods being about to be sold under a distress for rent, it was agreed between pltf. & deft. that if deft. would go to the sale & purchase the goods, pltf. would at a future day repay him the price & interest, when deft. was to give him the goods. Dft. went to the sale & purchased the goods; but, although some months afterwards pltf. tendered the amount & interest, deft. did not deliver the goods.—*Held:* there was no contract on which deft. could be J.S.

1550. *Add. Annotation* :—**Refd.** Hardie & Lane v. Chilton, [1928] 2 K. B. 306.
1565. *Add. Annotation* :—**Mentd.** *Re A Bankruptcy Notice*, [1924] 2 Ch. 76.
1578. *Add. Annotation* :—**Consd.** Hyde v. Tyler (1926), 42 T. L. R. 442.
1590. *Add. Annotation* :—**Refd.** Hall v. I. R. Comrs. (1926), 135 L. T. 759.
1594. *Add. Annotation* :—**Mentd.** Lewis v. McKay, *Algate v. Vugler*, *Clark v. Potter* (1924), 93 L. J. K. B. 840.
1630. *Add. Annotation* :—**Consd.** Rose & Frank Co. v. Crompton, [1923] 2 K. B. 261.
1641. *Add. Annotation* :—**Consd.** Brandt v. Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.
1659. For “ (1549) ” read “ (1850). ”
1660. *Add. Annotation* :—**Mentd.** *Re Pinto Leite*, *p. Des Oliveira*, [1929] 1 Ch. 221.
1662. *Add. Annotations* :—**Refd.** The Lord Strathcona, [1925] P. 143. **Mentd.** Palmolive Co. (of England) v. Freedman (1927), 44 T. L. R. 86.
1701. *Add. Annotation* :—**Refd.** *Re Wethered*, *Ex p. Salaman*, [1926] Ch. 167.
1702. *Add. Annotation* :—**Mentd.** *Re Lloyd's Furniture Palace*, *Evans v. Lloyd's Furniture Palace*, [1925] Ch. 853.
- 1740a. ——— ————]—Promise by a father to his son-in-law after the marriage raises a consideration.—**MARSH v. KAVENFORD** (1587), Cro. Eliz. 59; 78 E. R. 319; *sub nom.* **MARSH & RAINSFORD'S CASE**, 2 Leon. 111.
- Annotations* :—**Consd.** Townsend v. Hunt (1635), Cro. Car. 408. **Refd.** *Riggs v. Bullingham* (1599), Cro. Eliz. 715; *A.-G. v. Royal College of Physicians* (1861), 30 L. J. Ch. 757.
1741. *Add. Annotation* :—**Mentd.** Venn v. Tedesco, [1926] 2 K. B. 227.
1817. *Add. Annotation* :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
- 1822a. ———.]—**R. v. LOPEN** (INHABITANTS) (1788), 2 Term Rep. 577; 100 E. R. 310.
- 1828a. ———.]—**GARBREY v. BROWN** (1588), Gouldsb. 94; 75 E. R. 1018; *sub nom.* **BROWNE v. GARBOROUGH**, Cro. Eliz. 63.
1837. *Add. Annotation* :—**Refd.** Cohen v. Sellar, [1926] 1 K. B. 536.
1838. *Add. Annotation* :—**Refd.** Cohen v. Sellar, [1926] 1 K. B. 536.
1839. *Add. Annotations* :—**Mentd.** The Empress (1922), 92 L. J. P. 42; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.
1871. *Add. Annotations* :—**Refd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246. **Mentd.** Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.
1876. *Add. Annotation* :—**Refd.** Home & Colonial Insee. v. London Guarantee & Accident Co. (1928), 45 T. L. R. 134.
1877. *Add. Annotation* :—**Consd.** Rowland v. Divall, [1923] 2 K. B. 500.
1878. *Add. Annotation* :—**Consd.** Rowland v. Divall, [1923] 2 K. B. 500.
- 1887a. *Add. Citations* :—[1923] 2 Ch. 452; 92 L. J. K. B. 944; 129 L. T. 624; 67 Sol. Jo. 656.
1888. *Add. Annotation* :—**Refd.** *Re Mason* (1928), 97 L. J. Ch. 321.
1905. *Add. Annotations* :—**Consd.** Chillingworth v. Esche, [1923] 1 Ch. 576. **Refd.** Monnicken-dam v. Leanse (1923), 39 T. L. R. 445; *Bernard v. Williams* (1928), 139 L. T. 22.
- 1914a. *S. P. ANON* (1538), Bro. N. C. 16; 73 E. R. 853.

**PART V. SECT. 3, SUB-SECT. 4.—A.**

1570 *It. Discontinuance of action.*—T., a member of a solrs.' partnership, borrowed money for the use of the partnership, without the knowledge or consent of the remaining partner, W. A demand having been made by the lender against both partners for repayment of the amount of the loan, a compromise was arranged between the lender & W. of the claim against the latter. Subsequently the lender took action against W. to recover the balance of the loan on the ground that the compromise arranged was without consideration & he was not bound thereby :—*Held*: W. entered into the compromise in the honest belief that he had a good defence to the claim, & this fact was sufficient to constitute a valid consideration for the compromise. O'CONNOR v. WALDEGRAVE, [1928] N. Z. L. R. 480.—N.Z.

**PART V. SECT. 4.**

a i. — — — —.]—Inadequate consideration alone is not sufficient to justify setting aside a settlement, the inadequacy not being so gross as to prove fraud or imposition.—*Gissing v. Eaton (T.) Co.* (1911), 20 O. W. R. 324; 3 O. W. N. 219; 25 O. L. R. 50.—**CAN.**

1653 i. *Whether consideration adequate.*—GREENHAM v. WATT (1866), 25 U. C. R. 365.—CAN.

**PART V. SECT. 5.**

ask. Third party to be allowed to

**offer option.**—*M. gave G. an option on shares owned by M. in a co.; the consideration expressed in the option was G.'s agreement "to make a similar proposition" to another shareholder:—Held: the alleged consideration was in effect a mere promise by G. to let such other shareholder give him an option similar to that given by M., & such promise did not constitute a valuable consideration.*—*Gibson v. McVeigh (No. 1), [1922] 1 W. W. R. 151.—CAN.*

**PART V. SECT. 6, SUB-SECT. 2.—A.**

1689 i. *Promise to perform existing agreement.*—Plt<sup>s</sup> agreed to build a house for deft. for \$6,404. When the house was nearly finished a fire took place in it, doing considerable damage. Deft. had insured the building & received \$2,150 from the insurers. Plt<sup>s</sup> effected no insurance. After the fire, deft. asked plt<sup>s</sup> to go on with & complete the work, & gave them to understand that she would pay over the \$2,150 to them.—*Held*: plt<sup>s</sup> were bound to complete the work, & the promise, if there was one, to pay for the work which it was their duty to do, was not binding for want of consideration.—SMITH v. DAWSON (1923), 53 O. L. R. 615.—CAN.

**PART V. SECT. 12. SUB-SECT. 1.**

**1867 i. Non-performance of condition.]**—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is a part of the consideration,

& the observance thereof is a condition precedent to the renewal of the licence.—A.-G. FOR BRITISH COLUMBIA v. BROOKS, BIDLAKE & Co., [1922] 3 W. W. R. 9; 63 S. C. R. 466.—CAN.

**sl. Correspondence course in law—**  
**Not a qualification for practice.]—A.**  
signed a contract to receive a correspondence course in law. In Canada this is not sufficient to qualify a person to practice in the law. In an action for the fees agreed to be paid.—**Held:** this insufficiency did not amount to a failure of consideration.—**RULE v.**  
**BRADNER, [1923] 4 D. L. R. 81.—**  
**CAN.**

**sm. Alteration to building—Removed under bye-law.]**—An alteration made to a building proved to be in violation of a bye-law & had to be removed. The owner set up a defence to an action for payment for such alteration that there had been a failure of consideration:—**Held:** the owner was bound to pay.—**ORPHEUM THEATRICAL Co. v. VULCAN ENGINEERING CONSTRUCTION Co., [1923] 3 D. L. R. 52.—CAN.**

**PART V. SECT. 12, SUB-SECT. 2.**

sp. *Option-contract—Non-completion.*]  
—GOULDING v. RABINOVITCH, [1927]  
3 D. L. R. 820; 60 O. L. R. 607.—CAN.

**PART V. SECT. 12, SUB-SECT. 8.—A.**

1888 il. ———.]— BUTTERFIELD  
v. CORMACK & MACKIE (1913), 25  
W. L. R. 457; 13 D. L. R. 817; 7  
Alta. L. R. 26.—CAN.

## Part VI.—Void and Illegal Contracts.

1938. *Add. Annotations* :—*Generally*, **Refd.** Sorrell v. Smith, [1925] A. C. 700. **Mentd.** Brimelow v. Casson, [1924] 1 Ch. 302; Reynolds v. Shipping Federation, [1924] 1 Ch. 28; Thompson v. British Medical Assocn. (New South Wales Branch), [1924] A. C. 764; British Oxygen Co. v. Liquid Air, [1925] Ch. 385.
1940. *Add. Annotation* :—**Consd.** Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.
1961. *Add. Annotation* :—**Refd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.
1967. *Add. Annotation* :—**Refd.** Dominion Press v. Customs & Excise Minister, [1928] A. C. 340.
1971. *Add. Annotation* :—**Refd.** James v. British General Insee., [1927] 2 K. B. 311.
1973. *Add. Annotations* :—*As to* (1) **Apld.** Palmolive Co. (of England) v. Freedman (1927), 44 T. L. R. 86. *As to* (3) **Refd.** English Hop Growers v. Dering, [1928] 2 K. B. 174.
1977. *Add. Annotation* :—*As to* (2) **Refd.** Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.
1981. *Add. Annotations* :—*As to* (1) **Consd.** James v. British General Insee., [1927] 2 K. B. 311. *Generally*, **Mentd.** *Re* Engelbach's Estate, Tibbetts v. Engelbach, [1924] 2 Ch. 348; Royal Exchange Assce. v. Hope, [1928] Ch. 179; Perrin v. Dickson (1929), 98 L. J. K. B. 683.
1984. *Add. Annotations* :—**Refd.** Burrell v. Leven (1926), 42 T. L. R. 407; Richardson v. Moncrieffe (1926), 43 T. L. R. 32. **Mentd.** Greenhalgh v. Union Bank of Manchester, [1924] 2 K. B. 153.
1986. *Add. Annotation* :—**Refd.** Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.
1992. *Add. Annotations* :—*As to* (3) **Refd.** English Hop Growers v. Dering, [1928] 2 K. B. 174. *As to* (4) **Refd.** Papadopoulos v. Papadopoulos (1929), 46 T. L. R. 44.
- 2011a. — **Knighthood.**—If a contract which is illegal as being contrary to public policy has any element of turpitude in it the parties to the contract are *in pari delicto*, & if one of the parties to the contract has been defrauded, no action for damages can be maintained by

the party defrauded, even though the contract is not of a criminal nature.

The secretary of a charity fraudulently represented to P. that he or the charity was in a position to undertake that P. would receive a knighthood if P. made a large donation to the funds of the charity, & undertook that the title would be conferred if the donation was made. P., relying upon those representations & in the belief that the secretary was authorised by the charity to give the undertaking, made a large donation to the funds of the charity. As P. did not receive the knighthood he brought an action against the charity & its secretary to recover back the money he had paid as money had & received or as damages for deceit or breach of contract :—**Held** : a contract for the purchase of a title, however the money is to be expended, is an improper & illegal contract, as being against public policy, & as I that he was entering into an improper & illegal contract he could not recover back the money he had paid from the charity as money had & received, nor recover damages from the charity or its secretary, nor claim to repudiate the contract as being still executory & recover back the money paid.—**PARKINSON v. COLLEGE OF AMBULANCE, LTD. & HARRISON**, [1925] 2 K. B. 1; 93 L. J. K. B. 1066; 133 L. T. 135; 40 T. L. R. 886; 69 Sol. Jo. 107.

(h) *Agreements Relating to Bankruptcy* (Vol. XII., p. 21

To the existing cross-references add as follows :—

**Agreement for withdrawal of petition.**—*See* BANKRUPTCY, No. 1366a, *ante*.

**Agreement for improper distribution of estate.**—*See* BANKRUPTCY, No. 4366a, *ante*.

**Agreements not to oppose discharge.**—*See* BANKRUPTCY, Vol. IV., pp. 516, 547.

**Agreements for payment of debts barred by discharge.**—*See* BANKRUPTCY, Vol. IV., pp. 589–592.

**Agreements for procuring assent of creditors to composition deeds.**—*See* BANKRUPTCY, Vol. V., pp. 1120, 1139–1145.

2028. *Add. Annotation* :—**Refd.** *Re* Lanyon, Lanyon v. Lanyon, [1927] 2 Ch. 264.

## PART VI. SECT. 2.

**o i. S. P. KANWAR BHAN-SUKHIA NAND v. GANPAT RAI-RAM JIWAN** (1926), 1 L. R. 7 Lah. 442.—**IND.**

## PART VI. SECT. 3.

1950 iv. **BRITISH COLUMBIA v. BROOKS, BIDLAKE & Co.**, [1922] 3 W. W. R. 9; 63 S. C. R. 466; 66 D. L. R. 475.—**CAN.**

## PART VI. SECT. 4, SUB-SECT. 1.—A.

**st. Manufacture of goods with false description.**—**Pltf. co.'s salesman** purported to enter into contracts for the sale to deft. of quantities of "All British" motor tyres & tubes. The goods would be manufactured in Melbourne, but each contract stipulated that the words "English Manufacture" should be branded upon them, & deft. intended to sell the goods, relying upon the brand to imply that they had been

manufactured in England :—**Held** : at common law the proposed brand would be a fraud on the public, & the maxim *ex turpi causa non oritur actio* applied.—**BARNET GLASS RUBBER CO., LTD. v. McDONALD**, [1922] N. Z. L. R. 767; **Gaz. L. R.** 213.—**N.Z.**

## PART VI. SECT. 4, SUB-SECT. 2.—A.

1977 iv. — **]**—A contract will not be declared unenforceable as being against public policy, unless it belongs to a class of contracts that the law recognises as being within that category. The ct. cannot invent a new head of public policy.—**WADGHERY v. FALL** (Sask.), [1926] 3 D. L. R. 333; [1926] 2 W. W. R. 657.—**CAN.**

## PART VI. SECT. 4, SUB-SECT. 2.—B. (f) iii.

**sz. Assignment of money due under mail-contract.**—A mail-contract pro-

hibited the assignment of moneys due thereunder without the consent of the Postmaster-General :—**Held** : such an assignment was not void as contrary to public policy, on the analogy of assignments of salaries of public servants.—**HODDER & TOLLEY, LTD. v. CORNES**, [1923] N. Z. L. R. 876.—**N.Z.**

## PART VI. SECT. 4, SUB-SECT. 2.—B. (g).

**sz. Erasure of revenue laws—False invoice—Claim by vendor—particeps criminis.**—Where merchants residing in the United States sold goods to deft., & combined with him in furnishing false invoices to evade the revenue laws of this Province in respect of the amount of duties to be paid on the importation of such goods :—**Held** : pltf. could not recover their value from deft. in this country.—**MULLEN v. KERR** (1811), 6 O. S. 171.—**CAN.**

**2084a.** — Marine insurance—Not expressed in sea policy.]—No contract for sea insurance is valid unless it is expressed in a sea policy. The contract in this case was a contract for sea insurance &, not being expressed in a policy, was unenforceable.

The expression of an agreement for sea insurance otherwise than in a policy is a thing forbidden in the public interest (LORD

ER).—NAGOREMULL v.

Co., LTD. (1924), 41 T. L. R. 168, r. v.

**2089.** Add. Citation :—15 Asp. M. L. C. 566.

Add. Annotations :—Distd. Pinnock v. Lewis Peat, [1923] 1 K. B. 690. Mentd. The P

B. 743.

**2089a.** Agreement for recovery of betting debt.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amounts recovered, he undertook to collect for the subscribers betting debts which, under the provisions of the Gaming Acts, were not recoverable. It was agreed between him & deft., in the terms of the prospectus, that in consideration of pltf. putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly was to be equally divided between claimant & the society. Pltf. brought an action to recover the amount of debts alleged to have been wrongfully collected by deft. in breach of the agreement :—Held : the agreement was illegal & void, being contrary to public policy, & pltf. could not recover.—FORD v. RADFORD (1920), 36 T. L. R. 658 ; 64 Sol. Jo. 571.

**2089b.** Agreement in breach of trade usage.]—The fact that the rules of the London Metal

Exchange prohibit a clerk to a member from participating in dealings on the Exchange as a principal does not make the contracts void as being against public policy.—BARNETT v. SANKER (1925), 41 T. L. R. 660 ; 69 Sol. Jo. 824.

**2102a.** —.]—GUIBORN v. FELLOWS (1717), 2 Eq. Cas Abr. 160 ; 5 Vin. Abr. 408, pl. 20 ; 22 E. R. 136, L. C.

Annotation :—Consd. Parkinson v. College of Ambulance & Harrison (1924), 40 T. L. R. 886.

**2118.** Add. Annotation :—Consd. Hardie & Lane v. Chilton, [1928] 2 K. B. 306.

**2122.** Add. Annotation :—As to (2) Apld. Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.

**2153.** Add. Annotation :—Apld. Mansfield v. Robinson, [1928] 2 K. B. 353.

**2156.** Add. Annotation :—Consd. Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.

**2190a.** — Inference of new promise after divorce.]—Pltf., who at the time was a married woman, accepted deft.'s proposal of marriage, provided that she obtained a divorce. Pltf. did obtain a divorce, & deft. then gave her an engagement ring & the date of the wedding was arranged. Ultimately deft. married another woman. In an action for breach of promise of marriage deft. pleaded that the contract was void in law as being contrary to public policy :—Held : although the original promise was void yet a new promise, after pltf. had become a free woman, could be inferred from the giving of the ring & the arrangement of the date of the wedding, & pltf. was entitled to recover.—SKIPP v. KELLY (1926), 42 T. L. R. 258, P. C.

**2199.** Add. Annotation :—Distd. Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.

**PART VI. SECT. 4, SUB-SECT. 2.—B. (b).**

**2086 iii.** —.]—Deflt. employed pltf., a land agent & member of a municipal council, to sell his land to the Closer Settlement Board under Discharged Soldiers Settlement Acts. Pltf. submitted the land to the Board, but before the sale he had resigned his position on the council. Under the above Acts pltf., as a member of the council, could be called upon to advise the Board in connection with purchase of land within the municipality. In an action by pltf. to recover from deflt. commission on the sale :—Held : the private interest of pltf. under his agreement with deflt. had a tendency to interfere with the proper discharge by pltf. of his public duty, & the agreement was illegal & void as being against public policy.—WOOD v. LITTLE, [1922] V. L. R. 11, 29 C. L. R. 564 ; 27 Argus L. R. 400.—AUS.

**2086 iv.** —.]—Held : a contract by which pltf. was to use his supposed influence with members of the Govt. for obtaining contracts in return for a commission was contrary to public policy & void.—CARR-HUTUS CANADIAN GENERAL ELECTRIC Co. (1920), 48 O. L. R. 231 ; 55 D. L. R. 506, 19 O. W. N. 591.—CAN.

**2086 v.** —.]—Where a contract to pay a commission on the sale of property to a provincial Govt. is entered into on the understanding that the agent is a person having influence with

the employees of the Govt. & that he will exercise such influence to bring about the sale.—Held : the contract is illegal.—MACMILLAN v. MOONEY, [1921] 4 D. L. R. 762 ; 3 W. W. R. 458.—CAN.

sb. Agreement between soldier & vendor of land to Soldier Settlement Board for payment to vendor by soldier of additional sum.]—Held : not enforceable as being against public policy.—WADGERY v. FALL (Sask.), [1926] 4 D. L. R. 333 ; [1926] 2 W. W. R. 657.—CAN.

**PART VI. SECT. 4, SUB-SECT. 4.—B. (a).**

**2091 viii.** —.]—HENRY v. DICKIE (1896), 27 O. R. 476.—CAN.

**2091 ix.** —.]—Held : a deed was illegal consideration as being the outcome of a bargain to stifle a prosecution against B. for an indictable offence, & was void. The offence for which B. was liable to prosecution was in the nature of larceny, & was an indictable offence of a public nature.—GOLDSBROUGH, MORT & Co., LTD. v. BLACK (1926), 29 W. A. L. R. 37.—AUS.

**2091 x.** —.]—Held : an agreement the consideration of which was the compounding of a compoundable offence was not forbidden by law & was valid ; (2) an agreement to compound a non-compoundable offence is void in law.—AHMED HASSAN HASSAN MAHOMED MALEK (1928), 1 L. R. 52 Bom. 693.—IND.

**PART VI. SECT. 4, SUB-SECT. 4.—B. (b).**

**2096 i.** —.]—A contract is not vitiated because it was induced by threat of criminal proceedings, for which there was sufficient ground, provided there is no agreement to stifle the prosecution.—BOW v. PREIFFER & ALBERT, [1924] 3 D. L. R. 854 ; 2 W. W. R. 1149.—CAN.

**2098 iv.** —.]—D. was in the employ of pltf. & was charged with criminal breach of trust in respect of a cheque for Rs. 30,000 which he cashed for pltf. D. paid pltf. Rs. 15,000, & D. & his brother R. executed a mtge. in favour of pltf. with a view to withdrawal of the prosecution. Pltf. put in a petition stating the facts, & the prosecution was dropped :—Held : the agreement was not against public policy.—DWIJENDRA NATH MULLICK v. GORNAM GOBINDARAM (1925), 1 L. R. 53 Calc. 51.—IND

**PART VI. SECT. 4, SUB-SECT. 5.—G.**

**2190 i.** Promisee married.—Promise to marry conditioned on divorce.]—Where a promise of marriage was made after the hearing of a petition for divorce, but before the passage of the bill of divorce :—Held : any promise of marriage to be performed contingently upon a divorce being obtained was against public policy, & no action could be maintained thereon.—CAULFIELD v. ARNOLD (No. 1), [1925] 1 D. L. R. 295 ; [1925] 1 W. W. R. 664 ; 34 B. C. R. 404.—CAN.

2214. *Add. Annotation*:—**Refd.** Anderson v.  
Daniel (1924), 130 L. T. 418.
2215. *Add. Annotation*:—**Apld.** Anderson v.  
Daniel, [1924] 1 K. B. 138.

SUB-SECT. 2.--PARTICULAR CONTRACTS RENDERED  
VOID OR ILLEGAL BY STATUTE (Vol. XII.,  
p. 272).

Add the following cross-reference :—

**Sale by other than imperial weights & measures.]—See WEIGHTS & MEASURES.**

- 2224. Add. Annotation:—Mentd.** Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443.

- 2226. Add Citation:—***See*, [1906] 1 Ch. 747, n.

*Add. Annotations:—***Apld.** *Anderson v. Daniel*, [1924] 1 K. B. 138. **Mentd.** *Re A Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.

2227. *Add. Annotation* :—**Refd.** Anderson v. Daniel, [1924] 1 K. B. 138.

- 2228.** *Add. Annotation :—***Apld.** *Anderson v. Daniel* (1923), 93 L. J. K. B. 97.

- 2229.** *Add. Annotation :—*Consd. Anderson v. Daniel, [1924] 1 K. B. 138.

- 2231.** *Add. Annotation :—***Refd.** Anderson “  
Daniel, [1924] 1 K. B. 138.

- 2232.** *Add. Annotation :—***Consd.** Anderson v. Daniel, [1924] 1 K. B. 138.

- 2236.** *Add. Annotation :—***Refd.** *Anderson v. Daniel* (1924), 130 L. T. 418.

- 2241.** *Add. Annotation* :—**Consd.** Garrard v. James,  
[1925] Ch. 616.

- 2245. Add. Annotation :--Apld.** *Foster v. Driscoll*,  
*Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929]  
1 K. B. 470.

- 2248a.** —.] —Pltf. cannot recover for goods sold which he knows are to be applied to an illegal

purpose, though he be not active himself in their being so applied, & be no sharer in the advantage to be derived therefrom.—*HUTTON v. WEY* (1827), 5 L. J. O. S. K. B. 220.

- 2251.** *Add. Annotation* :—**Refd.** *Foster v. Driscoll*,  
*Lindsay v. Attfield*, *Lindsay v. Driscoll*,  
[1929] 1 K. B. 170.

- 2285.** *Add. Annotation* :—**Folld.** *Parkinson v. College of Ambulance & Harrison* (1924), 40 T. L. R. 880.

- 2288.** *Add. Annotation* :—**Consd.** *Foster v. Driscoll*,  
*Lindsay v. Attfield*, *Lindsay v. Driscoll*,  
[1929] 1 K. B. 470.

- 2292a** —.]—NAGOREMULL v. TRITON INSUR-  
ANCE CO., LTD., No. 2084a, *ante*.

- 2310a.** — [-].—Where goods become forfeited in consequence of any fraud or neglect in respect of the revenue laws, the loss, as between the buyer & seller, must fall upon him whose fraud or neglect occasioned the forfeiture; but if the seller be a party to the intended fraud or neglect, or connive at it, he shall not recover, although the act of fraud or the neglect was committed by, or was chargeable upon, the buyers.—*STUDDY v. SANDERS* (1826), 5 B. & C. 628; 8 Dow. & Ry. K. B. 203; 4 L. J. O. S. K. B. 290; 108 E. R. 234.

- Annotation.*—**Refd.** Johnson v. Kinkaidy (1810), 4 Jun. 1888.

- 2317.** *Add. Annotations* :—As to (2) **Refd.** *Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co.*, [1924] A. C. 226; *Bowling v. Cox*, [1926] A. C. 751. *Generally*, **Mentd.** *Boston Corpn. v. Fenwick* (1923), 129 L. T. 766; *Holt v. Markham*, [1923] 1 K. B. 504; *Anchor Donaldson v. Crossland*, [1929] A. C. 297.

**PART VI. SECT. 4, SUB-SECT. 5.—H.**

**sd. Agreement for support of adulterine bastard.]**—*Held*, a contract by a third party to pay the mother for the support of a child alleged by her to be the result of adultery with him while she was living with her husband is against public policy, void & unenforceable. —**KIKKO v. BACZYSKI** (1922), 51 O. L. R. 225.—**CAN.**

**PART VI. SECT. 5, SUB-SECT. 1.**

2200 iii. —.—.]—If a person contracting to operate a boiler & engine has not a certificate or permit under the Boilers Act, R. S. 1922, c. 195, authorising him to operate that particular kind of boiler & engine, the contract is prohibited by the Act, & is unenforceable, & such person is not entitled to recover on a *quantum meruit*—*MILNE v. PETERSON*, [1925] 1 D. L. R. 271; [1924] 3 W. W. R. 957.—CAN.

**2200 iv. —.**]—Where the legislature has prohibited the making of a contract, & has expressly provided, or, having regard to the language in which the Act is couched, has manifested its intention, that the contract should be void for all purposes, such contract is utterly null & void. —MURSHIDABAD (NAWAB) v. BILAS ROY CHOUDHURI (1928), 1. L. R. 56 Cal. 252.—**IND.**

**2218 1. Action arising out of illegal contract—Recovery of money paid.]—**Money paid under an illegal contract cannot be recovered back.—**MERKEL v. McKENDRY**, [1926] 2 D. L. R. 995; [1926] 2 W. W. R. 7; 35 Man. L. R. 506.—**CAN.**

**PART VI. SECT. 7, SUB-SECT. 1.**

c. *Revsd. sub nom.* DOMINION FIRE

INSURANCE CO. v. NAKATA, 52 S. C. R.  
294; 26 D. L. R. 722.

**PART VI. SECT. 7. SUB-SECT. 2**

**2250 i. Goods supplied for illegal purpose—To knowledge of vendor—Smuggling.]**—An action brought by a brewery co. against the owners of a dock on the Ontario side of the D. river to restrain debts, from shipping from their dock beer, other than that brewed by plffs. in violation of a contract between the parties was dismissed upon the ground that the ct. should not entertain it. It is common knowledge that for several years there has existed in Ontario an industry known as the "liquor export business" or "rum-running," consisting in the exportation of intoxicating liquors to the United States by smuggling & in contravention of the laws of that country. The ct. is bound to take judicial notice of that which is commonly & publicly known. Viewing the evidence before the ct. in the light of that knowledge it clearly indicated that plffs. were not only the less-ees of a dock & warehouse that were being used by them for "rum-running" purposes, but were the employers or abettors of one of the gang of smugglers that infested the D. river frontier.—**WALKERVILLE BREWING CO. v. MAYRAND, [1928] 4 D. L. R. 500; 63 O. L. R. 5.—CAN.**

**2253 i.** --- *Sale of intoxicating liquor for use in place where Temperance Act in force.*—Price not recoverable. — FURLONG v. RUSSELL (1885), 24 N. B. R. 478.—**CAN.**

2253 ii. ————.]—SMITH v.  
BENTON (1890), 20 O. R. 344.—CAN.

**PART VI. SECT. 9. SUB-SECT. 1.—B.**

2288 ii. ——.]—TURNER & JONES  
v. CURRAN (1891), 2 B. C. R. 61. —CAN.

**5m. Imposing terms on defendant.—***At what stage of proceedings.*—While equitable terms may be imposed on deft. seeking relief from a contract on the ground of illegality, they can be given only when asked for on the dismissal of the action to enforce the contract, they cannot be enforced as a cause of action, or allowed when first asked for on appeal from such dismissal.—*DEMICHENKO v. FURKE*. [1926] 2 D. L. R. 1095, [1926] 2 W. W. R. 221; 20 Sask. L. R. 192.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—  
C. (b).

**2318 iii.** —. —.]—*Held*: while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—**LAWSON v. EARLEY**, [1921] 1 D. L. R. 279; 1 W. W. R. 213, 18 Sask. L. R. 48.—**CAN.**

**2318 iv.** —.]—*Held*: where an executory contract is made for illegal sale of goods & the contract has not been carried out but remains totally unperformed, it is open to a party to repudiate the illegal contract & on avoidance to recover any moneys deposited.—*HULL, DRYDEN & Co. v. MAUNG LYUN SHEIN* (1921), 1. L. R. 2 (Can. 414).—**IND.**

**sp. Pleading** 1 — Where a suit, brought on a contract for illegal sale of goods, was framed for enforcement of the contract & not for damages for breach: — *Held*: a decree for repayment of the money paid could not be passed, unless the plaint was amended. — **HIRUKI DEVIJAI & Co. v. MAUNG LYUN SHEIN** (1924), 1. L. R. 2 Ran. 414. — **IND.**



Unforeseen political complications prevented the supply of the goods from the source contemplated by the sellers, but it was not shown that the goods could not have been procured from other sources:—*Held*: the above clause did not protect the sellers from liability to deliver the goods.—*WILLS (GEORGE) & SONS, LTD. v. CUNNINGHAM (R. S.) SON & CO.*, [1924] 2 K. B. 220; 93 L. J. K. B. 1008; 131 L. T. 400; 40 T. L. R. 108.

**2512. Add. Annotation:—Mentd.** *Captain J. A. Cates Tug & Wharfage Co. v. Franklin Insee.*, [1927] A. C. 698.

**2523. Add. Annotation:—Mentd.** *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455.

**2544. Add. Annotations:—Refd.** *Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency*, [1925] 2 K. B. 172; *Hogarth v. Cory* (1928), 95 L. J. P. C. 204; *United States Shipping Board v. Strick*, [1926] A. C. 545; *Vergottis v. Cory* (1926), 95 L. J. K. B. 1002.

**2545. Add. Annotations:—Refd.** *Rederi Akt. Acolus v. Hillas* (1925), 42 T. L. R. 69; *United States Shipping Board v. Strick*, [1926] A. C. 545.

**2547. Add. Annotations:—Consd.** *Verelst's Administratrix v. Motor Union Insee.*, [1925] 2 K. B. 137. **Mentd.** *Transoceanica Soc. Italiana Di Navigazione v. Shipton*, [1923] 1 K. B. 31; *R. v. Roberts*, *Ex p. Scurr*, [1924] 2 K. B. 695.

**2553. Add. Annotations:—Consd.** *Verelst's Administratrix v. Motor Union Insee.*, [1925] 2 K. B. 137. **Refd.** *Hall v. Pim* (1927), 137 L. T. 585.

**2560. Add. Annotation:—Consd.** *Bernard v. Williams* (1928), 139 L. T. 22.

**2564. Add. Annotation:—Consd.** *Bernard v. Williams* (1928), 139 L. T. 22.

**2567. Add. Annotation:—As to (2) Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.

**2576. Add. Annotation:—Mentd.** *Ballantine v. Cramp & Bosman* (1923), 129 L. T. 502.

**2579. Add. Annotation:—Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.

**2585. Add. Annotation:—Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.

**2590. Add. Annotation:—Refd.** *Akt. Reidar v. Arcos*, [1927] 1 K. B. 352.

**2607. Add. Annotation:—Consd.** *Re Wait*, [1927] 1 Ch. 606.

**2621. Add. Annotation:—Consd.** *Bernard v. Williams* (1928), 139 L. T. 22.

**2621a. — From indefinite to definite date.]—Held:** in the circumstances, time was of the essence of the contract.—*BERNARD v. WILLIAMS* (1928), 139 L. T. 22; 44 T. L. R. 437, D. C.

**2624. Add. Annotation:—Consd.** *Martin v. Stout*, [1925] A. C. 359.

**2652. Add. Citation:—sub nom.** *MUFFATT v. PARSONS*, 1 Marsh. 55.

**2693a. —.]—KRAUS v. ARNOLD (1822), 7 Moore C. P. 59.**

**Annotation:—Mentd.** *Re Farley, Ex p. Dauks* (1832), 1 W. R. 57.

**2734. Add. Annotation:—Mentd.** *Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.

**2737. Add. Annotation:—Refd.** *Bradford v. Price* (1923), 92 L. J. K. B. 871.

**2738. Add. Annotation:—Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 915.

**2825. Add. Annotation:—Refd.** *British & Ben-*

#### PART VII. SECT. 2, SUB-SECT. 1.

**2506 iv. —.]—Where** W. agreed to pay H. £10 as damages for assault & give an admission in writing that the assault was unjustified.—*Held*: a tender of £10 under protest coupled with a statement that the assault was justified was not a compliance with the agreement.—*WARREN v. HESLOP* (1925), 46 N. L. R. 89.—S. AF.

#### PART VII. SECT. 3, SUB-SECT. 1.—A.

**2532 vi. —.]—Where** on the sale of a piano to be manufactured for the buyer there was a failure to deliver in four months, no time being specified for delivery.—*Held*: this was not a lapse of a reasonable time.—*FOSTER v. HEINTZMAN & Co.*, [1923] 4 D. L. R. 166.—CAN.

**2532 vii. —.]—WEBBER v. COPEMAN** (Sask.) (1912), 21 W. L. R. 961.—CAN.

**2532 viii. —.]—HOPE (HENRY) & SONS, LTD. v. CANADA FOUNDRY CO.** (1917), 40 O. L. R. 338; 39 D. L. R. 308.—CAN.

#### PART VII. SECT. 3, SUB-SECT. 2.—C. (b).

**st. Extension of contract.]—JONES v. CUSHING** (1909), 7 E. L. R. 190.—CAN.

**sw. Sale of shares.]—ROUNTREE v. WOOD** (1920), 56 D. L. R. 395.—CAN.

#### PART VII. SECT. 3, SUB-SECT. 2.—D. (b).

**2607 ii. —.]—Pltf.** contracted to sell to deft. certain Oregon timbers to be procured from America.—*Held*: the contract being a mercantile one, & therefore *prima facie* one in which

time was of the essence of the contract, & there being nothing in the contract or the surrounding circumstances to show that the parties had a different intention, time was of the essence of the contract.—*JACKSON & Co., LTD. v. CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD.*, [1922] N. Z. L. R. 2; *Gaz. L. R.* 176.—N.Z.

#### PART VII. SECT. 3, SUB-SECT. 2.—G.

**2620 iii. —.]—Where** the evidence showed no binding agreement to enlarge the time for delivery, but defts. merely permitted pltf. for their own convenience to postpone the time for delivery.—*Held*: defts. were entitled at any time before delivery to require pltf. to perform the contract according to its original terms.—*JACKSON & Co., LTD. v. CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD.*, [1922] N. Z. L. R. 2; *Gaz. L. R.* 176.—N.Z.

#### PART VII. SECT. 5, SUB-SECT. 2.

**2640 i. Stranger.]—Where** a creditor refuses to entertain the idea of payment by his debtor or by some one acting on his behalf, & puts it out of the power of the tenderer to offer payment in a manner acceptable to the creditor, the offer of performance by a person then able to carry out the promise in its entirety is a valid tender, in spite of the form of it being itself not legal tender.—*VENKATRAMA AYYAR v. GOPALAKRISHNA PILLAI* (1928), 1 L. R. 52 Mad. 322.—IND.

#### PART VII. SECT. 5, SUB-SECT. 6.—C.

**2704 i. —.]—Def't.**, an owner of land, informed D. & M., prospective purchasers, that he would sell it at a certain price to that one of

the two who would first deposit the purchase-money with def't.'s solr.; & he so instructed his solr. D., pltf., obtained the amount in currency called on the solr., telling him that he had come to pay the money. The solr. informed him that he was too late, since the night before he had agreed with M.'s solr., who had telephoned him that M. wished to pay the money, that he would treat that as an offer if completed in the morning. A few minutes later a letter arrived from M.'s solr. containing a cheque (there was no evidence adduced that it was certified), & the solr. informed D., pltf., that M. had got the land.—*Held*: what pltf. did constituted a legal tender & therefore brought him within the terms of def't.'s offer & entitled him to the land.—*DUNN v. HANSON (Alta.)*, [1928] 4 D. L. R. 606; [1928] 3 W. W. R. 178.—CAN.

#### PART VII. SECT. 5, SUB-SECT. 7.

**2778 i. General rule.]—A** valid tender on a contract of debt is as much a performance & discharge of debtor's duty as an actual payment.—*DASHARATHI GHOSE v. KHONDKAR ARJUN HANNAN* (1927), 1 L. R. 55 Cal. 624.—IND.

#### PART VII. SECT. 6, SUB-SECT. 2.

**2809 v. —.]—PENMAN MANUFACTURING Co. v. BROADHEAD** (1892), 21 S. C. R. 713.—CAN.

**q i. —.]—Held:** the agreements rolled on to establish a new contract were only in the nature of security.—*MCCUTCHEON BRICK Co. v. GARDINER (Man.)* (1912), 21 W. L. R. 72; 4 D. L. R. 487.—CAN.



- ingtons v. North Western Cachar Tea Co., [1923] A. C. 48.
2828. *Add. Annotation*:—*Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.
- 2829a. *Subsequent agreement unenforceable at law.*—ROSE & FRANK CO. v. CROMPTON (J. R.) & BROTHERS, LTD., No. 4. *ante*.
2830. *Add. Annotation*:—*Apprvd.* Martin v. Stout, [1925] A. C. 359.
2831. *Add. Annotations*:—*Refd.* The British Trade, [1924] P. 104; Berners v. Fleming, [1925] Ch. 264.
2832. *Add. Annotation*:—*Mentd.* Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451.
- 2832a. ———.]—Under agreements made in 1923 & 1925, plffs. were granted the right to occupy sufficient land of defts. for the purpose of constructing & working a railway until the termination of the exhibition to be held on the grounds of defts. at W. during 1924 & 1925, whereupon plffs. were to be at liberty to sell all their property & other assets at W. to a purchaser to whom defts. agreed to grant an option to occupy the land for the further period of one year thereafter & a further option to continue such occupation from year to year for a total period not exceeding six years from the closing of the exhibition. Plffs. constructed a railway on the ground of defts., & worked it until the closing of the exhibition on Oct. 31, 1925. On Dec. 30 defts. purported to terminate their agreements with plffs. on the ground that same had lapsed owing to plffs.' delay in exercising the option of calling for a renewal of the licence to occupy defts.' land in favour of a purchaser of the railway undertaking:—*Held*: by purporting to terminate the agreements defts. had committed an anticipatory breach thereof, & plffs. were entitled to damages.—*NEVER-STOP RY. (WEMBLEY) v. BRITISH EMPIRE EXHIBITION (1924) INCORPORATED*, [1926] Ch. 877; 95 L. J. Ch. 411; 135 L. T. 405; 70 Sol. Jo. 735.
2835. *Add. Annotations*:—*Consd.* Martin v. Stout, [1925] A. C. 359. *Refd.* Tyldesley U. D. C. v. Leigh R. D. C. (1925), 23 L. G. R. 243. *Mentd.* Re City Life Assee., [1926] Ch. 191.
- 2835a. ———.]—A party to a contract who desires to avail himself of an act of repudiation by the other party must evidence his election to do so with every reasonable dispatch.—*BERNERS v. FLEMING*, [1925] 1 Ch. 264; 94 L. J. Ch. 273; 132 L. T. 822, C. A.
- Annotation*:—*Refd.* Never-Stop Ry (Wembley) v. British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.
2841. *Add. Annotations*:—*Refd.* Berners v. Fleming, [1925] Ch. 264; Martin v. Stout, [1925] A. C. 359; Never-Stop Ry. (Wembley) v. British Empire Exhibition (1924) Incorporated, [1926] Ch. 877. *Mentd.* Ellis' Trustee v. Dixon-Johnson, [1924] 1 Ch. 342.
2846. *Add. Annotation*:—*Refd.* Akt. Reidar v. Arcos, [1927] 1 K. B. 352.
2847. *Add. Annotation*:—*Refd.* Akt. Reidar v. Arcos (1926), 42 T. L. R. 737.

## PART VII. SECT. 6, SUB-SECT. 3.—A. (a) i.

2833 viii. ———.]—Although repudiation by a party to a contract of sale entitles *de facto* the other party to recover damages thus incurred, the vendor has the right to insist on preserving the integrity of the contract & to tender the goods for delivery according to the terms of the sale, in which case his claim for damages will be more easily & readily assessed upon refusal to accept by the buyer.—*BRIGHTMAN SILK MANUFACTURING CO. v. KAUFMAN*, [1925] 2 D. L. R. 91; [1925] S. C. R. 249.—*CAN.*

2833 ix. ———.]—Where a co. renounced a contract before breach & the other party made a new arrangement with the co. with the object of minimising his damages:—*Held*: he had adopted the renunciation & was entitled to damages.—*GARRISON v. THOMSEN & CLARKE TIMBER CO.*, [1926] 2 D. L. R. 803; [1926] 2 W. W. R. 81; 37 B. C. R. 224.—*CAN.*

2833 x. ———.]—Y. P. BARLEY PRODUCERS, LTD. v. E. C. ROBERTSON PTY., LTD., [1927] V. L. R. 194; 48 A. L. J. 151; [1927] Argus, L. R. 116.—*AUS.*

2838 i. a. ———.]—Where the conduct of one of the parties to a contract has been such as would lead a reasonable person to the conclusion that he does not intend to fulfil his part of the obligation, the other party to the contract, whatever in fact may have been the actual intention of the former, may treat such conduct as an intimation that the contract has been repudiated.—*FAIRBANK, ETC. v. BECHELY-CRUNDALL*, [1922] S. C. (H. L.) 173.—*SCOT.*

2838 v. ———.]—On the facts:—*Held*: deft. did not refuse to carry out the real contract & what he did in the circumstances did not amount to a repudiation of the real contract so as to entitle plff. to

terminate it.—*FREEDMAN v. FRENCH* (1921), 50 O. L. R. 432.—*CAN.*

2838 vi. ———.]—If a party declares his intention not to be further bound by a contract, this is an anticipatory breach upon acceptance by the other party. It does not matter that the party so declaring is misinstructed at the time as to the facts upon which he bases such declaration.—*CLAUSEN v. CANADA TIMBER & LANDS, LTD.*, [1923] 4 D. L. R. 751.—*CAN.*

2838 vii. ———.]—Where a buyer knowing that the seller could not deliver, failed to pay the deposit agreed upon:—*Held*: not a breach of contract nor repudiation.—*TOWNSEND v. MOON MOTOR CO.*, [1924] 1 D. L. R. 511.—*CAN.*

2838 viii. ———.]—*Partial non-performance—Agreement substantially performed.*—By a tripartite agreement between the two applts., A. & B., & resp., it was agreed that A. should grant a sub-lease of one theatre to resp., that B. should grant a lease of another theatre to resp., & that resp. should grant a sub-lease of a third theatre, including all offices, to B. The parties entered into possession, except that B. was excluded from a room which applts. alleged to be an office which B. was entitled to under the agreement:—*Held*: the possession of the office was not essential to the use of the premises as a theatre, & a refusal to give it did not entitle applts. to rescind.—*FULLER'S THEATRES, LTD. v. MUSEROVE* (1923), 31 C. L. R. 524.—*AUS.*

2838 ix. ———.]—*ALBERT MINING CO. v. SPURK* (1883), 22 N. B. R. 346.—*CAN.*

2838 x. ———.]—*ROBINSON v. PETERS* (Sask.), [1927] 3 D. L. R. 131.—*CAN.*

xx. *Contract with Commonwealth—Reasonable belief that contract not being carried out—Powers of Minister.*—An agreement between the Commonwealth & applt. whereby applt. agreed to provide & maintain an efficient coastal

shipping service in the Northern Territory contained a provision that, if at any time the Minister for Home & Territories should "have reason to believe" that the agreement was not being carried out by applt. in accordance with the agreement, the Minister might determine the contract:—*Held*: in exercising the power the Minister's function was administrative & not quasi-judicial, & therefore he might determine the contract without giving applt. an opportunity of being heard.—*BOUCAIT BAY CO., LTD. v. THE COMMONWEALTH* (1927), 40 C. L. R. 98.—*AUS.*

## PART VII. SECT. 6, SUB-SECT. 3.—A. (a) ii.

sa. *Contract by correspondence—Refusal to sign formal contract.*—Certain correspondence & memoranda were relied on by plffs. to prove an agreement by defts. Subsequently a formal contract was sent to defts., which they refused to sign, objecting to its terms:—*Held*: assuming that the previous documents were sufficient to establish a contract, the terms of the proposed formal contract modified materially to defts.' prejudice the previous undertaking as to time of shipment, & defts. had rejected it & clearly intimated their intention to consider the contractual relations at an end, which they were entitled to do.—*FUJITA & CO., LTD. v. NORTHERN FRUIT CO., LTD.*, [1923] 1 D. L. R. 402; 16 Sask. L. R. 414; [1923] 1 W. W. R. 59.—*CAN.*

## PART VII. SECT. 6, SUB-SECT. 3.—A. (a) iii.

2851 ii. ———.]—Plff. contracted with deft. for advertising & agreed to pay a weekly rent in advance, if the rent fell into arrears, the agreement to be cancelled. In an action for breach of agreement, deft. pleaded that the contract had been avoided by plff.'s default in payment of rent:—



**2861a. — For fixed period—Afterwards determinable on notice—Time for giving notice.]**—By an agreement dated July 12, 1927, plffs. & defts. agreed that plffs. were to deal with defts.' entire output of Jarrow pig iron available for delivery in Scotland, plffs. undertaking to push the sale of the same in Scotland in preference to any other brand. They were to base their prices on the current prices for Middlesbrough pig iron, free on truck makers' works or f.o.b. makers' wharf, excluding Tees dues, & to pay cash on Mondays for the previous week's shipments. The agreement also contained the following clause: "It is understood that the above agreement is to hold good for the period of twelve months from Apr. 22, 1927, with six months' notice thereafter on either side to terminate, & that should any misunderstanding arise in connection with this agreement, an arbitrator should be appointed by the president for the time being of the London Chamber of Commerce." Disputes having arisen between the parties about the prices which plffs. ought to charge for the pig iron which they sold, defts. notified plffs. that they terminated the agreement as from Apr. 22, 1928. Plffs. acknowledged the notice & accepted it as a notice terminating the agreement at a date six months after Apr. 22, 1928, but defts. insisted that the agreement was terminated on Apr. 22, 1928. Plffs. brought an action for breaches of contract, (a) in terminating the contract before the expiry of the agreed term, & (b) because, as they alleged, defts. refused to supply them at "the current prices for the Middlesbrough pig iron":—*Held*: defts. were not entitled to terminate it on Apr. 22, 1928. It could only be terminated by a six months' notice, which could not be given before twelve months had elapsed, but could be given at any time after the expiration of the twelve months.—**JACKS (WILLIAM) & CO. v. PALMER'S SHIPBUILDING & IRON CO. (1928) 28 T. L. R. 366; 140 L. T. 473; 34 Com. Cas. 107, C. A.**

**2888. Add. Annotations:—***Refd.* Livock v. Pearson (1928), 33 Com. Cas. 188. *Mentd.* Thomas v. Todd, [1926] 2 K. B. 511.

*Held*: plff.'s default did not *ipso facto* avoid the contract, & in the absence of an allegation that plff. had elected to treat the contract as void, the plea was bad.—**MANNINGTON v. CLIFFORD (1921), 17 Tuss. L. R. 13.—AUS.**

**PART VII. SECT. 6, SUB-SECT. 3.—A. (c).**

*sb. Provision in contract for liquidated damages.]*—A clause in an agreement provided that a certain sum of money to be paid by resp. should be treated as the amount of compensation in case of his failure to carry out the contract:—*Held*: not to authorise resp. to determine the agreement by a notice to determine & an offer to pay that sum.—**FULLER'S THEATRES, LTD. v. MUSGROVE (1923), 31 C. L. R. 524.—AUS.**

**PART VII. SECT. 6, SUB-SECT. 3.—C.**

**2900 v. —.**—Where applt. had an election to rescind:—*Held*: he had by his conduct in going on with the agreement & taking advantage under it, irrevocably exercised his election to affirm the agreement.—**FULLER'S THEATRES, LTD. v. MUSGROVE (1923), 31 C. L. R. 524.—AUS.**

**2900 vi. —.**—Defts. ordered certain goods manufactured by plffs.

With some trifling exceptions all the goods were in accordance with the requirements of the contract & reasonably fit for the purpose for which they were supplied. Some of the goods were returned & an adjustment made concerning them: *Held*: defts. had waived any right they might have had to repudiate the contract because of the delivery of defective goods.—**HAMILTON GLAZ & MACHINE CO. v. LEWIS BROTHERS, [1924] 3 D. L. R. 367.—CAN.**

**PART VII. SECT. 6, SUB-SECT. 3.—D.**

*sc. Contract absolutely terminated.]*—Where there was a distinct unequivocal refusal by plffs. to perform their contract:—*Held*: so long as defts. were continuing to urge or demand compliance with the contract, it could not be said to have been terminated, but where finding that plffs.' attitude was unalterable, defts. decided to acquiesce in it, & communicated such acquiescence to plffs., the contract between the parties was put an end to.—**JHANDOO MALJAGAN NATH v. PUHL CHAND-FATEN CHAND (1924), 1 L. R. 5 Lah. 497.—IND.**

— *Collateral contract not ter-*

**2896. Add. Annotation:—***Consd.* Meyrick v. Dyson (1925), 41 T. L. R. 368.

**2899a. Effect of part-performance—Major part of consideration received.]**—Plff., a mental specialist, & the proprietor of a nursing home, sued deft. for medical attendance & board & lodgings of deft.'s son, a patient certified to be insane; & deft. counter-claimed for negligence & unskilful treatment. The jury found for plff. on the claim; & on the counterclaim they awarded deft. 20s., finding that plff. was guilty of negligence or breach of duty in not entering in a book the occasions when the patient was confined to a bedroom with the door locked, such entries being required by rr. 13 & 16 of the rules made by the Comrs. in Lunacy under Lunacy Act, 1890 (c. 5), s. 338:—*Held*: as deft. had received a substantial part of the consideration, plff.'s breach of duty did not go to the root of the contract so as to be a defence to plff.'s entire claim, & judgment must be entered in accordance with the verdict.—**MEYRICK v. DYSON (1925), 41 T. L. R. 368; subsequent proceedings, 41 T. L. R. 575, C. A.**

**2927. Add. Annotation:—***Consd.* Berry v. Berry, [1929] 2 K. B. 316.

**2932. Add. Annotation:—***Consd.* Berry v. Berry, [1929] 2 K. B. 316.

**2934. Add. Annotation:—***Refd.* Berry v. Berry, [1929] 2 K. B. 316.

**2936a. —. —.]**—By a deed of separation dated Mar. 4, 1920, the husband covenanted to pay a monetary allowance to the wife. By an agreement in writing not under seal dated June 25, 1928, the parties agreed that the terms of the deed regarding the allowance should be varied in certain respects. In Mar. 1929, the wife instituted proceedings claiming arrears of allowance under the deed. —*Held*: applying the rules of equity which must prevail when there is any conflict or variance between them & the rules of the common law with reference to the same matter, the plea by the husband of the simple contract of June 25, 1928, was a good defence

to *MURRAY v. DELTA COPPER CO., LTD., [1925] 1 D. L. R. 1061.—CAN.*

**PART VII. SECT. 6, SUB-SECT. 4.**

*sc. Agreement under seal.]*—Long delay in bringing action cannot defeat the enforcement of an agreement under seal when the twelve years specified by Stat. Limitations have not elapsed.—**ROBINSON, 3 D. L. R. 876; 2 W. W. R. 1110.—CAN.**

**PART VII. SECT. 6, SUB-SECT. 5.**

*sf. Rights of parties—Indemnification if partly misled from obligations of contract.]*—Where rescission of a contract is ordered the ct. has full power to make a just allowance & to do what is practically just, although it may not be able to restore the parties precisely to the state they were in prior to the contract. The right of the party misled to be put into the position in which he was before the contract, includes the right to be indemnified from the consequences & obligations which are the result of the contract set aside.—**LEWIS & LEWIS v. HOWSON, [1928] 4 D. L. R. 207; [1928] 2 W. W. R. 197; 22 Sask. L. R. 624.—CAN.**

to the wife's action under the deed.—**BERRY v. BERRY**, [1929] 2 K. B. 316; 98 L. J. K. B. 748; 141 L. T. 461; 45 T. L. R. 524.

**2938.** For "Validity of rescission of parol." read "Validity of rescission by parol."

**2938a.** *S. P. INGE v. LIPPINGWELL* (1772), 2 Dick. 469; 21 E. R. 352.

**2938b.** *S. P. Ex p. ILCHESTER (EARL)* (1803), 7 Ves. 348; 32 E. R. 142.

**Annotations:—***Refd.* Andrew v. Andrew (1855), 3 Sm. & G. 130; Dickenson v. Stidolph (1861), 11 C. B. N. S. 341; Louis v. Louis (1864), 3 New Rep. 369; *In the Estate of Tollemache*, [1917] P. 246; Ward v. Van Der Loeff, Burnyeat v. Van Der Loeff, [1924] A. C. 653. **Mentd.** Johnston v. Johnston (1817), 1 Phillim. 447; Elbeck v. Wood (1826), 1 Russ. 564; *In the Goods of Middleton* (1864), 3 Sw. & Tr. 583; Ibbott v. Bell (1865), 34 Beav. 395; Dancer v. Crabb (1873), L. R. 3 P. & D. 98; *In the Goods of McCabe* (1873), L. R. 3 P. & D. 94; Alexander v. Kirkpatrick (1874), L. R. 2 Sc. & Div. 397.

**2941. Add. Annotations:—***Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48; Newsholme v. Road Transport & General Insee., [1929] 2 K. B. 356.

**2945. Add. Annotations:—***Apld.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48; Rose & Frank Co. v. Crompton, [1925] A. C. 445. *Refd.* Royal Exchange Assee. v. Hope, [1928] Ch. 179.

**2958a. Add. Citation:—**28 Com. Cas. 265.

**Add. Annotations:—***As to* (1) *Consd.* Rose & Frank Co. v. Crompton, [1925] A. C. 445. *Refd.* Royal Exchange Assee. v. Hope, [1928] Ch. 179.

**2963. Add. Annotation:—***Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

**2964. Add. Annotation:—***Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

**2965. Add. Annotation:—***Refd.* Rose & Frank Co. v. Crompton, [1923] 2 K. B. 261.

**2967. Add. Annotation:—***Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

**2970. Add. Citation:—**28 Com. Cas. 244.

**2975. Add. Annotations:—***Refd.* Jacobs v. Batavia & General Plantations Trust, [1924] 1 Ch. 287; Berners v. Fleming, [1925] Ch. 284.

**PART VII. SECT. 6, SUB-SECT. 6.—**  
**B. (a).**

**2938 iii.** *S. P. STANLAKE v. RINGHAND* (Sask.), [1922] 3 W. W. R. 758; 70 D. L. R. 546.—**CAN.**

**PART VII. SECT. 6, SUB-SECT. 6.—**  
**B. (b) ii.**

**c i. —.**—[A contract required to be in writing cannot be varied by a new oral agreement, even if the variation relates to a part of the contract which, if it stood by itself, would not be required to be in writing.—*NUGENT v. DAVIES*, [1923] 1 D. L. R. 1040; 53 O. L. R. 458.—**CAN.**

**PART VII. SECT. 6, SUB-SECT. 6.—**  
**B. (b) iii.**

**2962 i.** *Extension of time*—For delivery of goods.—*Held:* since the contract of sale was one which was required by Stat. Frauds to be in writing, a verbal postponement of the date of delivery was not a variation of the contract.—*DOWLING v. RAE, H. G. HAMILTON PTY. LTD. v. RAE, KELLY v. RAE* (1927), 39 C. L. R. 363; [1927] V. L. R. 294; [1927] Argus, L. R. 149.—**AUS.**

**c i. —.**—*For cutting & removal of timber.*—*LAWRENCE v. ERRINGTON* (1874), 21 Gr. 261.—**CAN.**

**PART VII. SECT. 6, SUB-SECT. 6.—**  
**C. (a).**

**sg. What amounts to.**—[Where a clause in an agreement provided that a certain sum of money should be treated as the amount of compensation if the contract was not carried out.—*Held:* the giving of such an offer & notice to determine the agreement did not constitute a rescission by mutual consent.—*FULLER'S THEATRES, LTD. v. MUSGROVE* (1923), 31 C. L. R. 524.—**AUS.**

**PART VII. SECT. 6, SUB-SECT. 7.**

**sh. On good shipped under contract.**—*BELGIAN INDUSTRIAL CO., LTD. v. CANADA CEMENT CO., LTD.*, [1926] 1 D. L. R. 496; [1926] S. C. R. 244.—**CAN.**

**PART VII. SECT. 7.**

**sj. Distinguished from rescission.**—[There is a difference between cancellation and rescission. The logical consequences of true rescission are

**3033. Add. Annotation:—***Refd.* *Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.

**3038. Add. Annotation:—***Refd.* *Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.

**3040. Add. Annotation:—***Refd.* *Re Whitrod, Burrows v. Bax* (1925), 70 Sol. Jo. 209.

**3052. Add. Annotation:—***Mentd.* *Cory v. Davies*, [1923] 2 Ch. 95.

**3069. Add. Annotation:—***Consd.* *Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.

**3077. Add. Annotation:—***Apld.* *Kennedy v. Thomassen*, [1929] 1 Ch. 426.

**3081a. —.**—[Under the will of her then husband made in 1902, & a separation deed & settlement made in 1903, V. was entitled to two annuities of £200 each. Testator, who was also the settlor, died in 1913, & V. afterwards married a Dutch subject, & for the remainder of her life resided in Holland. In 1927 the trustees of the will offered to redeem both annuities, & after some negotiations were informed by V.'s solrs. that they would advise her to accept £6,000 for redemption, the annuities to be paid in full up to the date of redemption. The trustees sent the solrs. a draft release for their approval. V. having informed her solrs. that she would accept the offer of £6,000, they sent her the release engrossed for her execution, & she executed it on Jan. 12, 1928. On Jan. 17 she died, but no notification of her death was received by her solrs. in London until Jan. 31. In the meantime the trustees having been informed by V.'s solrs. on Jan. 24 that she had accepted the £6,000, on Jan. 30 paid the money to them, being in ignorance of V.'s death:—*Held:* (1) there was no concluded contract for the sale & purchase of the annuities, as the purchasers could not have intended their offer to be accepted by the vendor merely executing a document there was a concluded contract, there was a total failure of consideration, owing to the death of the annuitant before completion, & the trustees were entitled to recover back the £6,000.—*KENNEDY v. THOMASSEN*, [1929] 1 Ch. 426; 98 L. J. Ch. 98; 140 L. T. 215; 45 T. L. R. 122.

the returning by each party of the benefits he has received, or *restitutio in integrum*. Cancellation means determination of the contract without restitution.—*PRIMEAU & IMPERIAL LUMBER YARDS, LTD. v. MEAGHER*, [1923] 4 D. L. R. 1096; 3 W. W. R. 1308.—**CAN.**

**PART VII. SECT. 8, SUB-SECT. 3.**

**sk. Substitution of party.**—[To effect a sale an agent decided to buy the article himself & then sell to the buyer. To do this he altered a contract by substituting his own name for that of his principal.—*Held:* the contract was avoided by this alteration.—*ROYAL BANK OF CANADA v. FRANK*, [1923] 4 D. L. R. 1213.—**CAN.**

**sl. Addition of provision for payment of compound interest.**—*Held:* an alteration in a material respect.—*PARBATI CHARANMUKHERJEE v. AMARENDRANATH BHATTACHARJEE* (1925), 1 L. R. 53 Calc. 418.—**IND.**

**PART VII. SECT. 8, SUB-SECT. 8.—A.**

**3045 i. General rule.**—*THORNE v. WILLIAMS* (1887), 13 O. R. 577.—**CAN.**

**3082a.** —[.]—*SHALES v. SEIGNORET*, No. 3103a, *post*.

**3088.** *Add. Annotation*:—*Refd.* *G. W. Ry. v. S.S. Mostyn*, [1928] A. C. 57.

**3090.** *Add. Annotations*:—*Refd.* *Ilford U. D. C. v. Beal & Judd*, [1925] 1 K. B. 671. *Mentd.* *Edwards v. Birmingham Navigations Co. of Proprietors*, [1924] 1 K. B. 341; *Noble v. Harrison*, [1926] 2 K. B. 332; *G. W. Ry. v. S.S. Mostyn*, [1928] A. C. 57; *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1.

**3090a.** For the existing paragraph substitute the following paragraph:—

— **Absolute contract.**—By a contract dated Aug. 16, 1922, the sellers sold to the purchasers about one thousand boxes of Smyrna sultanas at 60s. a cwt. c.i.f. London, to be shipped from Smyrna by steamer to London during Sept. 1922. Smyrna at the date of the contract was in the occupation of the Greeks. On Sept. 9, 1922, it was taken by Turkish forces & shipment became impossible, with the result that the sellers did not ship any of the goods. The buyers claimed damages, & the dispute went before arbitrators, who stated a case for the opinion of the ct. under *Arbn. Act*, 1889 (c. 49), s. 7. The sellers said that they were excused from performance on the grounds (1) that the contract became illegal when the port of shipment came under Turkish control, as a state of war at that time existed between England & Turkey; & (2) that a state of circumstances had arisen which made the contract impossible of performance & that differed totally from the conditions with reference to which the contract was made:—*Held*: mere impossibility of performance did not discharge a party where performance was not naturally impossible, unless such a state of affairs had arisen as displaced the fundamental basis of the contract; in the absence of any strike, war or *force majeure* clause, the buyers were entitled to damages for failure of the sellers to deliver.—*SARGANT (W. J.) & SONS v. PATERSON (ERIC) & Co.* (1923), 129 L. T. 471; 39 T. L. R. 378.

**3093.** *Add. Annotations*:—*Consd.* *First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922; *The Penelope*, [1928] P. 180. *Refd.* *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569; *Re Wait*, [1926] Ch. 962; *May v. May*, [1929] 2 K. B. 386.

**3094.** *Add. Annotation*:—*Refd.* *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604.

**3094a.** —[.]—*SARGANT (W. J.) & SONS v. PATERSON (ERIC) & Co.*, No. 3090a, *ante*.

**3095.** *Add. Annotations*:—*Refd.* *Cantiere Navale Triestina v. Handelsvertretung der Russe*

*Soz. Fod. Naphtha Export* (1925), 94 L. J. K. B. 579; *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

**3101a.** — **All available shipping requisitioned.**

—In an action brought in Singapore in Aug. 1917, defts. counterclaimed damages for failure by pltf. to deliver sugar sold by him to be shipped & delivered at Bombay. The shipment of the sugar had been prevented by the requisitioning of ships by the British Govt.:—*Held*: *Civil Law Ordinance No. III (Str. Sett. No. VIII. of 1909)*, s. 5 (1), which provides that in all questions which arise for decision in the Colony "with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, unless in any case other provision is, or shall be made, by statute," made Defence of the Realm Amendment Act No. 2, 1915 (c. 37), & Courts (Emergency Powers) Act, 1917 (c. 26), applicable to the case, & the latter Act gave a good defence to the counterclaim whether the requisitioning was under Defence of the Realm Act, 1914 (c. 29), or under the prerogative power.—*SENG DJIT HIN v. NAGURDAS PURSHOTUMDAS & Co.*, [1923] A. C. 444; 92 L. J. P. C. 141; 128 L. T. 780; *sub nom.* *HIN v. PURSHOTUMDAS & Co.*, 39 T. L. R. 226, P. C.

**3103a.** —[.]—(1) If a man covenants to accept £1,000 bank stock on three days' notice upon or before a particular day, it is no excuse for him that the party to make the transfer had no stock before the day on which he was to make it. (2) A man cannot be sued for money he covenanted to pay on the performance of a particular act if he prevents such performance.—*SHALES v. SEIGNORET* (1699), 1 Ld. Raym. 440; 12 Mod. Rep. 248; 91 E. R. 1192.

*Annotations*:—*Generally.* *Mentd.* *Lancashire v. Killingworth* (1701), 1 Ld. Raym. 686; *Wyvil v. Stapleton*, *Shelburne v. Kildem* (1723), 1 Stra. 615.

**3106.** *Add. Annotation*:—*Mentd.* *Harper v. Hedges*, [1923] 2 K. B. 314.

**3115.** *Add. Annotation*:—*Consd.* *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

**3121.** *Add. Annotation*:—*Refd.* *The Penelope*, [1928] P. 180.

**3123.** *Add. Annotation*:—*Refd.* *The Penelope*, [1928] P. 180.

**3124.** *Add. Annotation*:—*Refd.* *The Penelope*, [1928] P. 180.

**3137.** *Add. Annotation*:—*As to* (2) *Consd.* *Haskell v. Marlow*, [1928] 2 K. B. 45.

**3149.** *Add. Annotation*:—*Expld.* *Re Wait*, [1927] 1 Ch. 606.

**3157.** *Add. Annotations*:—*Mentd.* *Sweet v. Williams* (1922), 128 L. T. 379; *Re Windsor Steam Coal Co.* (1901), Ld. (1928), 140 L. T. 80.

**3162.** *Add. Annotation*:—*As to* (3) *Apld.* *Sargant v. Paterson* (1923), 129 L. T. 471.

**PART VII. SECT. 9, SUB-SECT. 2.—B.**

**3096 v.** —[.]—Where a contract to thresh a whole crop does not provide for the rights & liabilities of the parties in the event of the threshing being interrupted by weather conditions, it will be held that the contract was based on the assumption that the state of the weather would remain such as to permit the threshing being done with nothing

more than temporary interruption, & therefore, although the contract will not be determined by a slight storm, a permanent break in the weather making threshing impossible for an indefinite period will put an end to it; & when so ended the threshor is entitled to recover for the threshing which he has already done.—*KLEIN v. SANDERSON*, [1928] 3 D. L. R. 294; [1928]

2 W. W. R. 289; 23 Alta. L. R. 467.—**CAN.**

**PART VII. SECT. 9, SUB-SECT. 2.—I.**

*sm* *Contract to instal furnace & maintain specified temperature of heat—Change of furnace.*—*MILLS v. GLACE BAY HOUSING COMMISSION*, [1926] 1 D. L. R. 608, 58 N. S. R. 317.—**CAN.**

**3166. Add. Annotations:—****Consd.** First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922. **Refd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522; Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497; The Penelope, [1928] P. 180; May v. May, [1929] 2 K. B. 386.

**3168. Add. Annotations:—****Consd.** First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922. **Refd.** Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen v. Sellar, [1926] 1 K. B. 536; The Penelope, [1928] P. 180; Hyman v. Hyman, Hughes v. Hughes, [1929] P. 1; May v. May, [1929] 2 K. B. 386.

**3170. Add. Annotations:—****As to (2) Refd.** The Lord Strathcona, [1925] P. 143; The Penelope, [1928] P. 180.

**3171. Add. Annotation:—****Refd.** The Penelope, [1928] P. 180.

**3172a. —.**—(1) By a charterparty made in Nov. 1916, respas. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her:—**Held:** there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract.

(2) The legal effect of the frustration of a contract does not depend upon the intention of the parties, or their opinions or even knowledge, as to the event which has brought about the frustration, but upon its occurrence in such circumstances as to show it to be inconsistent with the further prosecution of the adventure.—**HIRJI MULJI v. CHEONG YUE S.S. Co.**, [1926] A. C. 497; 95 L. J. P. C. 121; 134 L. T. 737; 42 T. L. R. 359; 17 Asp. M. L. C. 8; 31 Com. Cas. 199, P. C.

**Annotation:—***Generally, Refd.* De la Gardie v. Worsnop (1927), 96 L. J. Ch. 416.

**3175. Add. Annotation:—****Refd.** Hirji Mulji v. Cheong Yue S. S. Co., [1926] A. C. 497.

**3177. Add. Annotation:—****Refd.** Paterson Zochonis v. Elder Dempster, [1923] 1 K. B. 420.

**3178a. —.**—[In a charterparty there was a marginal memorandum that in the event of "war, blockade, or prohibition of export preventing loading, this charter to be cancelled":—**Held:** the charterparty was put an end to *ipso facto* by the happening of any or either of the contingencies mentioned in the memorandum to the charterparty.—**ADAMSON v. NEWCASTLE STEAMSHIP FREIGHT INSURANCE ASSOCN.** (1879), 4 Q. B. D. 462; 48 L. J. Q. B. 670; 41 L. T. 160; 27 W. R. 818; 4 Asp. M. L. C. 150, D. C.

**Annotations:—****Consd.** Mercantile S.S. Co. v. Tyser (1881), 7 Q. B. D. 73; Muel Tryvan Ship Co. v. Weir Andrew, [1910] 2 K. B. 841. **Appld.** Capel v. Soult (1916), 114 L. T. 921. **Refd.** *Re* Jamieson & Newcastle Steamship Freight Insce. Asscn. (1895), 11 T. L. R. 196.

**3178b. —.**—**THE PENELOPE**, [1928] P. 180; 97 L. J. P. 127; 139 L. T. 355; 44 T. L. R. 597; 72 Sol. Jo. 557; 17 Asp. M. L. C. 486.

**3179. Add. Annotation:—****Refd.** Cantiere Navale

Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

**3181. Add. Annotation:—****Consd.** Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

**3182. Add. Annotation:—****Distd.** Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

**3183. Add. Annotation:—****Distd.** Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

**3183a. —.**—**Ship ordered to leave port—Subsequent permission to return & load.**—A charterparty of an Italian ship provided that 216 running hours, Sundays & holidays excepted, weather permitting, should be allowed the charterers for loading & discharging, & that the lay days should commence from the time the steamer was ready to receive or discharge her cargo, the captain giving six hours' notice to the charterers' agents, berth or no berth. The exceptions clause excepted "restraint of princes, rulers & people." The ship arrived at Batoum, & notice of readiness to load was given, the lay days began to run. Owing, however, to a dispute between the Russian & Italian Govts. the ship was ordered by the port authorities to leave Batoum & also Russian waters, & accordingly the ship went to Constantinople. Subsequently permission was obtained to load the ship at Batoum, & she returned after being absent from the port a little over a fortnight. The owners subsequently claimed demurrage from the charterers, on the basis that the lay days continued to run during the period the ship was absent from Batoum:—**Held:** interference by the Russian Govt. did not amount to such an illegality as to excuse the performance of the contract.—**CANTIERE NAVALE TRIESTINA v. HANDELSVERTRETUNG DER RUSS. SOZ. FOD. SOVIET REPUBLIK NAPHTHA EXPORT**, [1925] 2 K. B. 172; 94 L. J. K. B. 579; 133 L. T. 162; 41 T. L. R. 355; 69 Sol. Jo. 443; 16 Asp. M. L. C. 501; 30 Com. Cas. 172, C. A.

**Annotation:—****Refd.** *Re* Ropner Shipping Co. & Cleves Western Valleys Anthracite Collieries, [1927] 1 K. B. 879.

**3184. Add. Annotation:—****Refd.** Akt. Reidar v. Arcos (1926), 42 T. L. R. 737.

**3185. Add. Annotations:—****Refd.** Sargent v. Paterson (1923), 129 L. T. 471; Akt. Reidar v. Arcos (1926), 42 T. L. R. 737; Jebara v. Ottoman Bank, [1927] 2 K. B. 254.

**3188. Add. Annotations:—****Consd.** Snia Soc. di Navigazione Industria e Commercio v. (1921), 29 Com. Cas. 284; Cantiere Navale Triestina v. Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579.

**3189. Add. Citations:—**92 L. J. K. B. 455; 129 L. T. 65; 16 Asp. M. L. C. 133; 29 Com. Cas. 1.

**Add. Annotation:—****Refd.** Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

**3193. Add. Annotation:—****Refd.** Perry v. Equitable Life Assee. Soc. of U.S.A. (1929), 45 T. L. R. 468.

**3194. Add. Annotations:—****Consd.** Larrinaga v. Soc. Franco Americaine Des Phosphates De

- Medulla (1923), 92 L. J. K. B. 455; First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922. **Refd.** Willis v. Willis (1927), 96 L. J. P. 177; The Penelope, [1928] P. 180; Hyman v. Hyman, Hughes v. Hughes, [1929] P. 1; May v. May, [1929] 2 K. B. 386.
- 3198. Add. Annotations:—As to (1) **Apld.** *Snia Soc. di Navigazione Industria e Commercio v. Suzuki* (1924), 29 Com. Cas. 284. **Consd.** First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922; The Penelope, [1928] P. 180. **As to (2) **Apld.** *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497. **Refd.** May v. May, [1929] 2 K. B. 386. **Generally, Refd.** *Cohen v. Sellar*, [1926] 1 K. B. 536; *Hyman v. Hyman*, *Hughes v. Hughes*, [1929] P. 1.****
- 3199. Add. Annotation:—As to (1) **Refd.** *Cantiaro San Rocco S. A. v. Clyde Shipbuilding & Engineering Co.*, [1924] A. C. 226.**
- 3199a. ———.]—*Hirji Mulji v. Cheong Yue S.S. Co.*, No. 3172a, *ante*.**
- 3201. Add. Annotation:—**Refd.** *Benaim v. Debono*, [1924] A. C. 514.**
- 3202. Add. Annotation:—As to (2) **Consd.** *Cantiere Navale Triestina v. Handelsvertretung der Russ. Soz. Fod. Naphtha Export* (1925), 94 L. J. K. B. 579.**
- 3206. Add. Annotations:—**Refd.** *Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1051. **Mentd.** *Ramduitt Ramkissendass v. Sassoon* (1929), 98 L. J. P. C. 58.**
- 3207. Add. Annotation:—**Refd.** *Finlay v. Kwik Hoo Tong Handel Maatschappij* (1928), 98 L. J. K. B. 251.**
- 3211. Add. Annotations:—As to (1) **Refd.** *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.**
- 3218. Add. Annotations:—As to (2) **Refd.** *Livock v. Pearson* (1928), 33 Com. Cas. 188. **Generally, Mentd.** *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.**
- 3221. Add. Annotation:—**Refd.** *Compagnie Continentale d'Importation v. Handelsvertretung der Union der Russian Soviet Republic in Deutschland* (1928), 138 L. T. 663.**
- 3225a. Confiscation by foreign Government.]—By a contract the vendors agreed to sell & the**
- purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by force majeure, or by war, from cutting or disposing of the timber. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated:—**Held:** the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—**KURSELL v. TIMBER OPERATORS & CONTRACTORS**, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.**
- 3226. Add. Annotation:—**Refd.** *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B.**
- 3233. Add. Annotations:—As to (2) **Consd.** *Cantiere Navale Triestina v. Handelsvertretung der Russe Soz. Fod. Naphtha Export* (1925), 94 L. J. K. B. 579. **Refd.** *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569; *The Penelope*, [1928] P. 180; *Hyman v. Hyman*, *Hughes v. Hughes*, [1929] P. 1; *May v. May* (1929), 98 L. J. K. B. 770.**
- 3238. Add. Annotation:—**Refd.** *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.**
- 3239. Add. Annotation:—**Refd.** *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.**
- 3240. Add. Annotation:—**Refd.** *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.**
- 3243. Add. Annotation:—**Refd.** *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.**
- 3262. Add. Annotation:—**Mentd.** *Glenboig Union Fireclay Co. v. I. R. Comrs.* (1922), 12 Tax Cas. 427.**
- 3276. Add. Annotation:—As to (2) **Refd.** *Hyman v. Hyman*, *Hughes v. Hughes*, [1929] P. 1.**

performance of it, unless substantially the whole contract became impossible of performance.—**DOMINION COAL CO. v. LORD STRATHCONA S.S. Co.**, [1924] 2 D. L. R. 66; 57 N. S. R. 113.—**CAN.**

#### PART VII. SECT. 9, SUB-SECT. 3.—C.

**3204 v. *Revsd.***, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

**3217 i. ———. Difficulties in way of shipment.]—By a contract, made in 1916, deft. sold certain goods, shipment to be from a continental port in six approximately equal monthly parcels:—**Held:** the long delay in shipment caused by war did not frustrate the commercial object of the contract & so put an end to it —**RINGSTAD v. GOLLIN & Co. PROPRIETARY, LTD.** (1925), 35 C. L. R. 303; 31 Angus L. R. 221.—**AUS.****

**3224 i. Importation restricted by Government.]—**Apld.**, a manufacturer of yeast, entered into a written contract under which he undertook to supply a certain portion of his output to resp. during 1927. Clause 8 of the contract provided that "in the event**

of legislation being passed . . . which may in any wise restrict or prohibit the sale of yeast in any quantity or to any class or race, this agreement shall become void," while clause 9 provided that "if such legislation . . . relates only to imported yeast then your selling price . . . may be increased at your option" in certain respects. In June, 1927, by Act 24 of 1927, the importation of yeast into the Union was prohibited except with the permission of the Comr. of Police. **Apld.** thereupon repudiated the contract, pleaded it was null & void under clauses 8 & 9 thereof.—**Held:** legislation prohibiting the importation of yeast did not fall within the terms of either clause of the contract, inasmuch as it did not prohibit or restrict the sale of yeast.—**COMPRESSED YEAST, LTD. v. DISTRIBUTING AGENCY, LTD.**, [1928] App. D. 301.—**S AF.**

**k i. ———.]—A contract being for export only:—**Held:** its object was frustrated.—**MAYER & LUGER INC. v. ATLANTIC SUGAR REFINERIES, LTD.**, [1926] 2 D. L. R. 783; 58 O. L. R. 531.—**CAN.****

#### PART VII. SECT. 9, SUB-SECT. 3.—D.

**sp. Strike of workmen—Lease of salt works.]—**Held:** the contract to pay rent had not become impossible of performance.—**HARI LAXMAN JOSHI v. SECRETARY OF STATE FOR INDIA** (1927), 1 L. R. 52 Bom. 142.—**IND.****

#### PART VII. SECT. 9, SUB-SECT. 5.

**1 i. ———. Lease of hotel.]—The lessors of an hotel property, upon prohibition coming into force in Alberta, sued for a declaration that the lease of the premises & an agreement to purchase the chattels in the hotel were terminated through failure to obtain a licence:—**Held:** the abolition of the bar was a risk that must be undertaken by the lessee, it being a case not of total destruction of the subject-matter, but a case of sterility.—**CHENIERE & ORTON v. MCCREIGHT & PENNINGTON**, [1917] 2 W. W. R. 8, 11 Alta. L. R. 270; 33 D. L. R. 659.—**CAN.****

#### PART VII. SECT. 9, SUB-SECT. 6.

**3278 i. *Revsd.***, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

**3280. Add. Annotations:—***Refd.* Hyman v. Hyman, Hughes v. Hughes, [1929] P. 1. *Mentd.* Campbell v. Pollak, [1927] A. C. 732.

**3282. Add. Annotations:—***Consd.* Cantiane San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226. *Refd.* Cohen v. Sellar, [1926] 1 K. B. 536; Hyman v. Hyman, Hughes v. Hughes, [1929] P. 1. *Mentd.* Anchor Donaldson v. Crossland, [1929] A. C. 297.

**3303. Add. Annotation:—***Refd.* Tredegar v. Harwood, [1929] A. C. 72.

**3306. Add. Annotation:—***Refd.* Tredegar v. Harwood (1927), 44 T. L. R. 17.

**3324. Add. Annotation:—***Consd.* Curtis Moffat v. Wheeler, [1929] 2 Ch. 224.

**3327. Add. Annotations:—***As to* (5) *Apld.* Meyrick v. Dyson (1925), 41 T. L. R. 368. *Generally, Refd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328.

**3328. Add. Annotations:—***Apld.* Baldry v. Marshall, [1925] 1 K. B. 260; Barker v. Agius (1927), 43 T. L. R. 751. *Mentd.* Szymonowski v. Beck, [1923] 1 K. B. 457; Lancaster v. Turner, [1924] 2 K. B. 222; Barker v. Agius (1927), 33 Com. Cas. 120.

After this case add "*See, also, COMPANIES, No. 814a.*"

**3330. To the cross-references following this case add "As regards bills of exchange."—***See* BILLS OF EXCHANGE, Vol. VI., pp. 79-93."

**3379a. —***Provided "undertaking" carried out.]* —BRUFF v. CONYREARE (1868), 17 L. T. 664, Ex. Ch.; *reversg.* (1862), 13 C. B. N. S. 263.

*Annotation:—**Consd.* London Corp'n. v. Sandon, London Corp'n. v. Met. Ry., Met. Ry. v. London Corp'n. (1872), 26 L. T. 86.

**3447. Add. Annotation:—***Refd.* Cohen v. Sellar, [1926] 1 K. B. 536.

# PART VII. SECT. 11, SUB-SECT. 1.—A.

**3305 i. Performance by one to satisfaction of other party.—***Whether party bound to decide reasonably or entitled to decide arbitrarily.—Bond fide decision.]* —Pltf. agreed to place sods around defts.' power house to their satisfaction. Defts., not being satisfied with the sods or the work, cancelled the contract. In an action for damages for breach of contract, the jury found that defts. had acted honestly but unreasonably.—*Held:* the judgment of defts. honestly arrived at was final, & pltf. was not entitled to recover.—TRUMAN v. FORD MOTOR CO. OF CANADA, LTD., [1926] 1 D. L. R. 960, 58 O. L. R. 317.—CAN.

*st. Receipt of money — Duty to collect.]—*A contract provided for

*Held:* liability could not be evaded by failure to collect the moneys, but where there was good reason to suppose that litigation for the purpose of collection would be useless, there was no duty to litigate.—NORTHERN PIPE LINE CO. v. CANADIAN GAS CO., [1924] 4 D. L. R. 1111.—CAN.

# PART VII. SECT. 11, SUB-SECT. 1.—B. (a).

**a i. —** *Agreement to sell dealer's business subject to granting of licence by licensing officer.]—*RAJAH v. SULIMAN (1927), 48 N. L. R. 309.—S. AF.

# PART VII. SECT. 11, SUB-SECT. 1.—D. (a).

HALIFAX & CAPE

BRETON COAL & RY. CO. v. GREGORY, CASS. DIG. 2nd ed. 727.—CAN.

# PART VII. SECT. 11, SUB-SECT. 1.—D. (q).

**sa. Timber licence.—***Condition against employment of Chinese or Japanese.]—*A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is one of the essential terms of the licence.—A-G. FOR BRITISH COLUMBIA v. BROOKS, BIDLAKE & CO., [1922] 3 W. W. R. 9; 63 S. C. R. 466.—CAN.

**sd. Contract for sale of currency.—***Condition precedent to delivery.]—*WALSH v. BROWN (1868), 18 C. 60. CAN.

AUCHTERLONIE v. ARMS (1875), 25 C. P. 403.—CAN.

**sk. Agreement to sell land for church.—***If congregation brought together.]—**Held:* although at first conditional, the contract, by reason of a congregation having assembled, became absolute.—A-G. v. CHRISTIE (1867), 13 Gr. 495.—CAN.

# PART VII. SECT. 11, SUB-SECT. 1.—E.

**3422 i. General rule.]—**Where document is sufficiently clear & certain, & payment depends on some simple condition or event, it is sufficient for pltf. to allege that the condition has been complied with or the event has happened. The onus then lies on deft. to show that what was intended by the

**3487. Add. Annotations:—***Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48; Never-Stop Ry. (Wembley) v. British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

**3490. Add. Annotation:—***Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

**3494. Add. Annotations:—***Refd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739; Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co., [1924] A. C. 406; Cohen v. Sellar, [1926] 1 K. B. 536.

**3495. Add. Annotation:—***Refd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739.

**3500. Add. Annotation:—***Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

**3508. Add. Annotation:—***Distd.* Chillingworth v. Esche, [1923] 1 Ch. 576.

**3509. Add. Annotation:—***Refd.* Samuel v. Dumas, [1924] A. C. 431.

**3513. Add. Annotations:—***Consd.* Acties Nord-Osterso Rederiet v. Casper, Edgar (1923), 28 Com. Cas. 222. *Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A.

**3514. Add. Annotation:—***Refd.* Admiralty Comrs. v. Chekiang (Owners), [1926] A. C. 637.

**3519. Add. Annotations:—***Refd.* Lawrence v. Hayes, [1927] 2 K. B. 111; Earle v. Hems-worth R. D. C. (1928), 44 T. L. R. 605; *Re* Pinto Leite, *Ex p.* Des Oliveira, [1929] 1 Ch. 221.

**3520. Add. Citation:—***Revsd. sub nom.* NICHOLS v. NORTH METROPOLITAN RAILWAY & CANAL CO. (1894), 71 L. T. 836, C. A.

document sued on to be a condition precedent to entitle pltf. to succeed has not been complied with.—UNION SHARE AGENCY & INVESTMENT, LTD. (LIQUIDATORS) v. SPAIN (1927), 48 N. L. R. 348.—S. AF.

# PART VII. SECT. 11, SUB-SECT. 3.—A. (b).

**p i. —**—The consideration for a quit-claim deed was the maintenance of the grantor & pltf. during their lives. After the death of the grantor, deft. married, & pltf. left & lived elsewhere.—*Held:* as it was clearly mount that pltf. would live in deft.'s house & be maintained there by him, & as she had no valid excuse for leaving him, deft. was not obliged to provide for her support elsewhere.—COMEAN v. LEBLANC, [1923] 2 D. L. R. 1076; 56 N. S. R. 201.—CAN.

# PART VII. SECT. 11, SUB-SECT. 3.—A. (c).

**3509 i. What amounts to waiver.]—**BOWES v. CHALEYER, [1923] V. L. R. 295; 32 C. L. R. 159.—AUS.

# PART VII. SECT. 11, SUB-SECT. 3.—C.

**3521 i. Right of defaulting party to sue other party.—***Recovery of deposit.]—*Defts. contracted to supply pltf. with a quantity of lumber to be loaded on cars in July, 1920. Defts. hauled the lumber to the railway siding ready for shipment, but pltf. failed to provide cars, as it was his duty to do, upon which the lumber could be loaded.—*Held:* an action by pltf. to recover a deposit paid on the contract must be dismissed.—GLENNIE v. RUSHTON (1922), 55 N. S. R. 530.—CAN.

## Part VIII.—Defences to Actions for Breach of Contract.

- 3561. Add. Annotations:—**Consd. *Rose & Frank Co. v. Crompton*, [1925] A. C. 445. **Refd.** *British & Beningtons v. North Western Cachar Tea Co.*, [1923] A. C. 48. **Mentd.** *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
- 3569. Add. Annotation:—**Refd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3606. Add. Annotation:—**Apld. *Berry v. Berry*, [1929] 2 K. B. 316.
- 3614. Add. Annotation:—**Refd. *Jenkins v. Jenkins*, [1928] 2 K. B. 501.
- 3622. Add. Annotation:—**Consd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3641. Add. Annotations:—**Consd. *Jones v. Waring & Gillow*, [1925] 2 K. B. 612. **Refd.** *Barclay v. Malcolm* (1925), 133 L. T. 512.
- 3646. Add. Annotations:—**As to (1) **Refd.** *Re British American Continental Bank, Lissner & Rosenkranz's Claim*, [1923] 1 Ch. 276; *Re Chesterman's Trusts, Mott v. Browning*, [1923] 2 Ch. 466; *Peyrae v. Wilkinson*, [1924] 2 K. B. 166.
- 3654. Add. Annotation:—**Consd. *Sowerby v. Lindsay* (1928), 44 T. L. R. 501.
- 3673. Add. Annotation:—**Refd. *If. v. H.*, [1928] P. 206.
- 3680. Add. Annotation:—**Refd. *Midland Motor Showrooms v. Newman*, [1929] 2 K. B. 256.
- 3749. Add. Annotation:—**Refd. *Re Houlder*, [1929] 1 Ch. 205.
- 3751. Add. Annotation:—**Refd. *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.
- 3752. Add. Annotation:—**Refd. *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
- 3763. Add. Annotation:—**Consd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3781. Add. Annotation:—**Consd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3784. Add. Annotation:—**Refd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3784a. —.**—[HALL v. PADLEY (1923), 156 L. T. Jo. 83.]
- 3784b. —.**—[Pltf. granted a bill of sale over certain furniture to a moneylender, & as she was unable to pay him the first instalment

when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts. & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on Bills of Sale (1878) Amendment Act, 1882 (c. 43), s. 8, & she contended that the real consideration was the payment off of the moneylender & the release of her furniture from the first bill of sale:—**Held:** the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—*D'USEZ v. TRAFFICS & DISCOVERIES, LTD.* (1924), 40 T. L. R. 441.

- 3784c. —.**—[If a bill of exchange or note be taken on account of a debt & nothing be said at the time, the legal effect of the transaction is that the original debt remains, but the remedy for it is suspended till the maturity of the instrument in the hands of the creditor. If the bill or note is given not by the debtor but by a stranger, the action for the original debt is equally suspended.—*ALLEN v. ROYAL BANK OF CANADA* (1925), 95 L. J. P. C. 17; 134 L. T. 194; 41 T. L. R. 625, P. C.]
- 3806. Add. Annotation:—**Refd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3813. Add. Annotation:—**Refd. *Jones v. Waring & Gillow*, [1926] A. C. 670.
- 3817. Add. Annotation:—**Consd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3818. Add. Annotation:—**Consd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3833. Add. Annotation:—**Consd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 3864. Add. Annotation:—**Refd. *Re Houlder*, [1929] 1 Ch. 205.

## PART VIII. SECT. 2, SUB-SECT. 2.—A.

**3542 i. General rule.**—[*WHITEFORD v. McLEOD* (1868), 28 U. C. R. 349.—CAN.]

**3547 ii. —.**—[Prior to foreclosure proceedings on a mgtg. given by deft., pltf.'s solr. wrote deft.'s solr. that the registered owner was willing to give a quit-claim deed to pltf. to clear up the title & avoid litigation if deft. would give a quit-claim deed to pltf. This was agreed to, but subsequently deft.'s solr. received a letter from pltf.'s solr. purporting to withdraw from all negotiations to accept a quit-claim deed:—**Held:** there was an accord but no satisfaction.—*CAIRNS v. BROWN*, [1924] 4 D. L. R. 590; 3 W. W. R. 409.—CAN.]

## PART VIII. SECT. 2, SUB-SECT. 3.—D.

**sl. Discharge of mortgage on execution of agreement between mortgagor & mortgagee.**—[*WEST v. ACCIDENTAL FIRE INSURANCE Co.*, [1927] 3 D. L. R. 260.—CAN.]

## PART VIII. SECT. 3, SUB-SECT. 4.

**3655 viii. —.**—[If there is no special covenant for payment of a debt elsewhere, the presumption of law is that the borrower ought to seek out the lender for payment.—*GOKUL DAS v. NATHU* (1925), 1 L. R. 48 All. 310.—IND.]

**3656 i. —.**—[*Unless creditor abroad.*]—The duty which English law imposes upon a debtor to find his creditor & pay him is imposed upon him only if the creditor is within the realm. If in India a debtor is subject to the same duty, it is similarly limited.—*BANSILAL ABIRCHAND v. GHULAN MAHBUB KHAN* (1925), 53 L. R. Ind. App. 58.—IND.]

**p. i. —.**—[*PLATT v. McFAUL* (1854), 4 C. P. 293.—CAN.]

## PART VIII. SECT. 3, SUB-SECT. 5.—F.

**sp. Manager of debtor agent of creditor—Fraudulent entry of payment.**—[*McMORRIS v. EMPRESS THEATRE*

*Co., LTD.*, [1923] 2 D. L. R. 555; 16 Sask. L. R. 504; [1923] 1 W. W. R. 1144.—CAN.]

## PART VIII. SECT. 3, SUB-SECT. 5.—G. (b) i.

**3766 iv. —.**—[*RABINEAU v. BOURQUE*, [1925] 1 D. L. R. 852.—CAN.]

## PART VIII. SECT. 3, SUB-SECT. 5.—G. (b) ii.

**3799 i. Acceptance in satisfaction question of fact.**—[The keeping & using of a cheque handed to a creditor on debtor's condition that it is to be taken in satisfaction of a claim for a larger amount, & with words on the cheque so intimating, is not conclusive in law of an accord & satisfaction; whether it was accepted in satisfaction of the claim is a question of fact.—*PETERSON v. PLACK*, [1923] 3 D. L. R. 132; 16 Sask. L. R. 493; [1923] 1 W. W. R. 1289.—CAN.]

## PART VIII. SECT. 3, SUB-SECT. 5.—K. sr. Agreement by creditors to work



- 3874. Add. Annotation:—Refd.** Abram S.S. Co. Westville Shipping Co., [1923] A. C. 773.
- 3880. Add. Annotation:—Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 3905. Add. Annotations:—Apld.** Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 652. **Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 3909. Add. Annotation:—Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 3930. Add. Annotation:—Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 3961. Add. Annotation:—Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 3977. Add. Annotation:—Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 3990. Add. Annotation:—Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 3997. Add. Annotation:—Mentd.** Dennerley v. Prestwick U. D. C. (1929), 45 T. L. R. 659.
- 4000. Add. Annotation:—Refd.** Re Wait, [1927] 1 Ch. 606.
- 4009. Add. Annotation:—Refd.** Houghton v. Not-hard, Lowe & Wills (1927), 44 T. L. R. 76.
- 4010. Add. Annotations:—Mentd.** Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 413; Lloyds Bank v. Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.
- 4017. Add. Annotation:—Refd.** Smith v. Wood, [1929] 1 Ch. 11.
- 4050. Add. Annotations:—Mentd.** S.S. Australia

v. S.S. Nautilus, [1927] A. O. 145; S.S. Hontestroom v. S.S. Sagaporack, S.S. Hontestroom v. S.S. Durham Castle, [1927] A. C. 37

- 4059a. —. —. —.]—FEENEY v. FIRBECK MAIN COL LIERIES, LTD.,** [1926] 2 K. B. 218; 92 L. J. K. B. 689; 134 L. T. 745; 19 B. W. C. C. 33, C. A.
- 4073. Add. Annotation:—Mentd.** Conquer v. Boot, [1928] 2 K. B. 336.
- 4077. Add. Annotation:—Refd.** Saunders v. Young's Brewery (1925), 42 T. L. R. 136.
- 4087. Add. Annotation:—Mentd.** Perrin v. Dickson (1929), 45 T. L. R. 621.
- 4117. Add. Annotations:—Mentd.** Jones (Holloway) v. Woodhouse, [1923] 2 K. B. 117; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Iethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53.
- 4130. Add. Annotation:—Refd.** Richmond v. Savill, [1926] 2 K. B. 530.
- 4132. Add. Annotation:—Mentd.** Re Harrington Motor Co., Ex p. Chaplin, [1928] Ch. 105.
- 4133. Add. Annotation:—As to (2) Consd.** Smith v. Wood, [1929] 1 Ch. 14.
- 4193. Add. Annotation:—Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
- 4203. Add. Annotation:—Folld.** Jenkins v. Jenkins, [1928] 2 K. B. 501.

*mine—Conditional on mine proving valuable—Mine valueless—Formation of company by creditors—Whether conclusive as to accord & satisfaction.*—WHITLA v. PHAIR (1898), 12 Man. L. R. 122.—CAN.

**PART VIII. SECT. 3, SUB-SECT. 7.—A.**

**3871 i. By debtor—How far creditor bound by debtor's appropriation.**—A creditor cannot appropriate in opposition to his debtor's expressed intention.—DASHARATHI GHOSE v. KHONDKAR ABDUL HANNAN (1927), 1 L. L. R. 55 Cal. 624.—IND.

**3876 i. —. —.]—A debt owing from creditor to his debtor cannot be considered as a payment by debtor until he consents to the creditor retaining it & applying it on his indebtedness.**—MATTHEWSON v. THOMPSON, [1925] 2 D. L. R. 1211 [1925] 2 W. W. R. 161; 19 Sask. L. R. 420.—CAN.

**3876 ii. —. —.]—A person who pays money has a right to apply that payment to any of the debts which he owes.**—ALBRECHT v. STOREY, [1925] 4 D. L. R. 374.—CAN.

**3884 iii. —. —.]—Where a debtor, who owes more than one debt to the same creditor, makes a payment without appropriating it towards the discharge of any particular debt, the right of the creditor to appropriate the amount paid towards any of the debts due to him continues up to the time when he applies the payment towards the discharge of a particular debt.**—MAISTRY v. JAMESON (1925), 1 L. L. R. 5 Pat. 326.—IND.

**3884 iv. —. —.]—Where a debtor owes several debts to one person & makes a payment to him, but has not taken advantage of the privilege conferred upon him by Indian Contract Act, s. 59, the creditor is at liberty to apply the payment in liquidation of any lawful debt actually due & payable to him from debtor.**—JELU MAL v. AHMAD (1925), 1 L. L. R. 7 Lah. 17.—IND.

**3884 v. —. —. —.]—FRASER v. LOUE (1863), 10 Gr. 207.—CAN.**

**3884 vi. —. —. —.]—DASHARATHI GHOSE v. KHONDKAR ABDUL HANNAN (1927), 1 L. L. R. 55 Cal. 624.—IND.**

**PART VIII. SECT. 3, SUB-SECT. 7.—C.**

**3913 i. —. —.]—Mortgage debt—Or simple contract debt.**—A mtgee., in receipt of the rents & profits of the mortgaged premises, sold goods to the mtgor., & the latter assented to the receipts being applied first in payment of the account for goods sold.—**Held:** an incumbrancer, whose rights accrued after the settlement, was not entitled to take the position that the rents & profits necessarily & irrevocably reduced the mtgo. as they were received.—MITCHELL v. SAYLOR (1901), 21 C. L. T. 224; 1 O. L. R. 458.—CAN.

**3913 ii. —. —. —.]—Re BROWN (A BANKRUPT) (1851), 2 Gr. 111.—CAN.**

**n i. —. —.]—Running account.**—PETRIE (L.), LTD. v. FRIZZLE, [1925] 4 D. L. R. 815; on appeal, [1926] 2 D. L. R. 419; [1926] 1 W. W. R. 905.—CAN.

**3934 i. —. —.]—Earlier debt.**—Under an agreement whereby debts, undertaken to pay through a co-operative assocn. for goods supplied up to a certain amount by pltf. to the assocn.—**Held:** money paid to pltf. by the assocn. after the execution of the agreement could not be appropriated to a debt owing to pltf. under a former agreement of the same kind.—COVILLE CO., LTD. v. GORDARD, [1926] 1 W. W. R. 602; 22 Alta. L. R. 41.—CAN.

**3934 ii. —. —. —.]—Arrears of salary—Unless appropriation by debtor to current salary.**—Re LOGAN (H. J.) Co. (Ont.), [1926] 2 D. L. R. 946; 7 C. B. R. 325.—CAN.

**q i. —. —. —.]—McGREGOR v. GAULIN (1848), 4 U. C. R. 378.—CAN.**

**t i. —. —. —.]—ROSS v. PERRAULT (1867), 13 Gr. 206.—CAN.**

**PART VIII. SECT. 3, SUB-SECT. 7.—E. (a).**

**3961 i. Statement of rule.**—SCOTT & PEDEN v. ELLIOTT, [1926] 2 D. L. R. 504, [1926] 2 W. W. R. 154; 37 B. C. R. 143.—CAN.

**3961 ii. —. —.]—The rule in Clayton's Case is at best merely a presumption.**—CANADIAN BANK OF COMMERCE v. SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—CAN.

**3962 v. —. —. —.]—CANADIAN BANK OF COMMERCE v. SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—CAN.**

**3962 vi. —. —. —.]—LAKE v. CROSBIE (1911), 9 Nfld. L. R. 490.—NFLD.**

**PART VIII. SECT. 3, SUB-SECT. 9.—A. (a).**

**4028 iv. —. —.]—ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. v. BAKER, [1926] 2 D. L. R. 289; [1926] S. C. R. 297.—CAN.**

**PART VIII. SECT. 4, SUB-SECT. 5.—A.**

**4184 ii. —. —.]—MOODIE v. MACKENZIE, [1925] 1 D. L. R. 801.—CAN.**

**PART VIII. SECT. 4, SUB-SECT. 7.—A. (a).**

**4200 iii. —. —.]—Where several debtors are bound jointly, a release given to one discharges the others, unless the creditor, when granting the release, reserves his right against them; this rule applies as much to a judgment debt as to any other obligation.**—CASTLE v. BILSKY (1921), 50 O. L. R. 536.—CAN.

**PART VIII. SECT. 4, SUB-SECT. 9.**

**sr. On security for debt.**—The release of a debt operates as a release of any security held in respect of it.—A. G. v. SMITH & FRANCE, [1925] N. Z. L. R. 217.—N.Z.



4285. *Add. Annotations*:—*Refd.* Lawrence v. Hayes, [1927] 2 K. B. 111; Humphery v. Wilson (1929), 141 L. T. 469.
4286. *Add. Annotations*:—*Mentd.* New York Life

Insee. v. Public Trustee (1924), 93 L. J. Ch. 449; Republica de Guatemala v. Nunez, [1927] 1 K. B. 669; Royal Trust Co. v. A.-G. for Alberta (1929), 46 T. L. R. 25.

## Part IX.—Constructive Contracts.

4325. *Add. Annotation*:—*Mentd.* Adams v. Morgan, [1923] 2 K. B. 234.

4335. *Add. Annotation*:—*Mentd.* Adams v. Morgan, [1923] 2 K. B. 234.

- 4340a. *Double payment by bank to client's order.*

—*Pltfs.*, a London bank, on telegraphic instructions from a bank in Warsaw, which was acting for a Polish co., paid to *defts.* £2,000 on account of a sum of over £4,000 owed by the Polish co. to *defts.* The Warsaw bank then wrote a letter of confirmation, but *plts.* mistook the letter for a direction to pay *defts.* a further sum of £2,000 & did so. Afterwards the Polish co., believing the sum paid off to be £2,000, told the Warsaw bank to arrange for the payment of another £1,000, but the instructions accordingly sent by the Warsaw bank to *plts.* were lost in transmission & were never received. On discovering the facts *plts.* were willing to credit *defts.* with the above-mentioned £1,000 & brought an action to recover £1,000, the balance of the £2,000, as money paid under a mistake of fact:—*Held*: (1) there was no such mistake of fact as entitled *plts.* to maintain that the amount claimed was money paid to their use, & the action failed; (2) *plts.* had been negligent as between themselves & *defts.*—*BARCLAY & CO., LTD. v. MALCOLM & CO.* (1925), 133 L. T. 512; 41 T. L. R. 518; 69 Sol. Jo. 675

- 4358a. *Payment of rates on tithe rentcharge by occupier—Demand after Tithe Act, 1891 (c. 8).*

—At the date of the passing of the above Act rates upon a tithe rentcharge were due & in arrears, owing to the omission of the overseers to demand payment thereof from the occupiers of the land out of which the tithe rentcharge issued. The tithe rentcharge for the period in respect of which the rates in arrear were due had been paid to the titheowner in full. After the passing of the Act, the overseers, purporting to act under Tithe Act of 1837 (c. 69), s. 8, demanded payment of the arrears of rates from the occupiers of the land, who paid them, & were allowed the amount thereof by their landlord, the owner of the land, out of the half-year's rent

next becoming due. Subsequently thereto a half-year's tithe rentcharge became payable by the landowner. The landowner claimed to deduct therefrom the amount which he had allowed to the occupiers out of their rent in respect of the arrears of rates paid by them:—*Held*: having regard to the Act of 1891, s. 6, the payment of the arrears of rates by the occupiers was a voluntary payment, & they were not entitled to deduct the amount so paid from their rent; consequently the landowner was not entitled to deduct the amount which he had allowed to the occupiers from the tithe rentcharge due by him.—*Re* TITHE ACT, 1891, *ROBERTS v. POTTS, JONES v. COOKE*, [1891] 1 Q. B. 213; 58 J. P. 333; 42 W. R. 294; 9 R. 230; *sub nom.* *JONES v. POTTS, JONES v. COOKE*, 63 L. J. Q. B. 381; 69 L. T. 819; 10 T. L. R. 111, C. A.

*Annotation*:—*Distd.* Lewis v. Hughes, [1916] 1 K. B. 831.

4359. For “— Payment to clear off maritime lien—No request from mortgagees” read “Payment to clear off maritime lien—No request from mortgagees.”

*Add. Annotations*:—*Refd.* The St. George, [1926] P. 217; The Goulondris, [1927] P. 182; The Stream Fisher, [1927] P. 73.

4360. For “— Premiums on husband's life policy paid by wife—First life interest under settlement of policies taken by wife” read “Premiums on husband's life-policies paid by wife—First life interest under settlement of policies taken by wife.”

4372. *Add. Annotation*:—*Refd.* Christoforides v. Terry, [1921] A. C. 566.

- 4377a. *Double payment by bank.*—*BARCLAY & CO., LTD. v. MALCOLM & CO.*, No. 4340a, *ante*.

4379. *Add. Annotation*:—*Refd.* Akt. Dampskibs Steinstad v. Pearson (1927), 137 L. T. 533.

4382. *Add. Annotation*:—*Consd.* Spencer v. Ashworth Partington, [1925] 1 K. B. 589.

4385. *Add. Annotation*:—*Refd.* Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443.

4390. *Add. Annotation*:—*Consd.* Smith, Hogg v. Bamberger, [1929] 1 K. B. 150.

### PART IX. SECT. 1, SUB-SECT. 1.—A.

4325 i. *General rule.*—*WILSON v. MASON, LAMB v. WILSON* (1876), 38 U. C. R. 14.—*CAN.*

### PART IX. SECT. 1, SUB-SECT. 1.—C.

*st.* *Payment to enable fulfilment of contract.*—Where a timber contract contained the terms that Govt. & all other dues should be paid by the contractor, & *deft.* co. reserved the right to retain Govt. dues from the contractor until clearance had been furnished:—*Held*: money paid by *deft.* co. to furnish the clearance was

paid on behalf of the contractor to fulfil his contract & was chargeable against him.—*KLANE v. CANADIAN PACIFIC RY. CO.* (1924), 34 B. C. R. 127.—*CAN.*

### PART IX. SECT. 1, SUB-SECT. 1.—D. (a).

4341 iii. —. A volunteer cannot recover over the debt of another paid without request of such other & without any legal obligation on his part.—*MARTELL v. WHITTEM* (1867), 5 Nfld. L. R. 200.—*NFLD.*

4341 iv. —. The principle that a payment made by one person for

the benefit of another cannot be recovered from the latter, no matter how clearly he has benefited therefrom, if he has not expressly impliedly requested the making of it or has not elected to adopt its benefit, and that the mere fact that he accepted the benefit of that which he had no opportunity to refuse is not evidence of his adoption or ratification was applied herein in an action brought to recover amounts paid for freight & for the feeding in transit of cattle shipped by *deft.* Mc KIS-ICK, ALCOCK, MAGNUS & CO. v. HALL (Sask.), [1929] 1 D. L. T. 48; [1928] 3 W. W. R. 509.—*CAN.*

4410. *Add. Annotation*:—As to (2) **Refd.** *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
4418. *Add. Annotation*:—**Dbtd.** *Lowther v. Clifford* (1926), 95 L. J. K. B. 576.
4429. *Add. Annotation*:—As to (1) **Refd.** *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
4435. *Add. Annotations*:—**Consd.** *The Chekiang*, [1925] P. 80. **Apprvd.** *Admiralty Comrs. v. Chekiang (Owners)*, [1926] A. C. 637.
4437. *Add. Annotation*:—**Overd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.
4438. After this case add "See, further, COMPANIES, Vol. IX., pp. 328—331."
4478. *Add. Annotation*:—**Refd.** *Re Mason* (1928), 97 L. J. Ch. 321.
4487. *Add. Annotations*:—**Refd.** *Holt v. Markham*, [1923] 1 K. B. 504; *Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co.*, [1924] A. C. 226; *Bowling v. Cox*, [1926] A. C. 751; *Anchor Donaldson v. Crossland*, [1929] A. C. 297. **Mentd.** *Boston Corp'n v. Fenwick* (1923), 129 L. T. 766.
4523. *Add. Annotation*:—**Distd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.
4534. *Add. Annotations*:—**Apld.** *Holt v. Markham*, [1923] 1 K. B. 504. **Refd.** *Jones v. Waring & Gillow*, [1926] A. C. 670; *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
- 4534a. ———.]—By certain military regulations officers in the Royal Air Force were on demobilisation entitled to a gratuity varying in amount according to circumstances. If their names were on a certain list, called the Emergency List, they were only entitled to a gratuity at a lower rate than if they were not on that list. Deft. was a demobilised officer of the Royal Air Force. Pltfs., who acted as Govt.'s agents for the payment (*inter alia*) of gratuities to demobilised officers of that force, in ignorance of the fact that deft. was on the Emergency List, but also in forgetfulness of the regulation which provided that the gratuities of officers on the Emergency List should be paid at the lower rate, & not appreciating the materiality of an officer being on that list, paid deft. his gratuity at the higher rate to which he would have been entitled if he had not been on that list. More than a year afterwards, & before

notice of the mistake, deft. spent the money. In an action to recover back the excess payment as money paid under a mistake of fact;—**Held**: pltfs. could not recover on the grounds that pltfs.' mistake was not a mistake of fact causing the payment; & that as deft. had been led by pltfs.' conduct to believe that he might treat the money as his own, & in that belief had altered his position by spending it, pltfs. were estopped from alleging that it was paid under a mistake.—**Holt v. MARKHAM**, [1923] 1 K. B. 504; 92 L. J. K. B. 406; 128 L. T. 719; 67 Sol. Jo. 314. C. A.

*Annotations*:—**Consd.** *Jones v. Waring & Gillow*, [1926] A. C. 670. **Refd.** *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92; *Reckitt v. Barnett, Pembroke & Slater* (1927), 44 T. L. J. 93; *Home & Colonial Insee. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134. **Mentd.** *Ord. v. Ord*, [1923] 2 K. B. 432.

4542. *Add. Annotations*:—**Generally**, **Refd.** *Holt v. Markham*, [1923] 1 K. B. 504; *British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328; *Jones v. Waring & Gillow*, [1926] A. C. 670.

4563. *Add. Annotation*:—**Consd.** *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.

4569a. *Damages recovered by holder of bill of exchange against sheriff—Bill held in trust for plaintiff.*—Where the holder of a bill of exchange, who held it in trust for pltf., sued the drawer, &, pending that suit, became bkpt., & his assignees afterwards brought an action against the drawer in bkpt.'s name, in which action, the sheriff having been guilty of an escape on mesne process, the assignees recovered against the sheriff in an action for the escape, damages to the amount of the bill:—**Held**: pltf. might maintain money had & received against the assignees for the damages so recovered, allowing to them the costs & expenses.—**RANDOLL v. BELL** (1813), 1 M. & S. 714; 105 E. R. 266.

*Annotation*:—**Distd.** *Neale v. Reid* (1823), 1 B. & C. 657.

4578. *Add. Annotation*:—**Refd.** *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

4578a. *Solicitor acting as banker—Cheque paid out of funds belonging to plaintiff—To party indebted to plaintiff.*—Pltfs. were a limited co. formed to amalgamate certain firms & cos. controlled by F., two of the directors of pltfs. being F. & deft. T. The latter was a member of the firm of T. & C., who were the solrs.

PART IX. SECT. 2, SUB-SECT. 1. A.

**sv.** *Effect of arrangement between co-contractors*.—Where co-contractors arrange between themselves that one of them, although liable to their creditor, is not to be called upon by the others to pay any portion of the debt, no action lies against him for contribution with respect to payments made by one of said others to the creditor.—**STAINSLIGH v. FISHER** (Alta.), [1928] 3 D. L. R. 136; [1928] 2 W. W. R. 205.—CAN.

PART IX. SECT. 3, SUB-SECT. 1.

**in i.** ———.]—**BARNHART v. ROBERTSON** (1842), 6 O. S. 542.—CAN.

PART IX. SECT. 3, SUB-SECT. 2.—A.

**sw.** *Company & municipality.*—A suit by a co. for the recovery of a sum wrongfully collected by a municipality under Madras Municipalities Act, V. of 1920, s. 92, is essentially an equitable action for "money had & received" & not a suit for "damages & compensation."—**DINDIGUL MUNICIPAL**

**COUNCIL v. BOMBAY CO.** (1928), 1 L. R. 29 Mad. 207.—IND.

PART IX. SECT. 3, SUB-SECT. 3.—C.

4556 *General rule.*—The corp'n. by one resolution directed that \$300 should be granted to each councillor, deft. being one, to be by them expended on the roads; & by another, that \$100 should be placed to the credit of each councillor, to be expended by them on the roads & bridges in their respective divisions. This was in accordance with an established practice, by which the councillors superintended the laying out of moneys in their respective divisions. Deft. granted several orders on the treasurer to different persons as for "work done," which were paid, & it appeared that such work, though contracted for, had not been performed. There was no evidence, however, of any fraud or collusion on deft.'s part, or of any gain to himself, except the usual charge to the corp'n. of the commission on such moneys as were

expended:—**Held**: there could be no recovery on the common counts, for deft. had received no money.—**CHATHAM TOWNSHIP CORPN. v. HOUSTON** (1868), 27 U. C. R. 550.—CAN.

PART IX. SECT. 3, SUB-SECT. 3.—D.

**sx.** *General rule.*—Deft. having sold a cargo & remitted the proceeds to C. & S., an action was brought by pltfs. on the common counts as for money received to their use:—**Held**: after the sale deft. held the proceeds for the benefit of pltfs., & in remitting them to C. & S. did so in his own wrong, & the verdict for deft. should be set aside.—**MORRIS v. MCLEOD** (1874), 10 N. S. L. (1 R. & C.) 71.—CAN.

**sy.** *Money paid to revenue officer—Representing value of seizure & fine—Action by informer for share.*—**WRIGHT v. CURLEIGH** (1888), 21 N. S. R.

of plffs. & also of F. Plffs. had moneys standing to their credit in the books of T. & C., & F. also had a running account with T. & C. During a period when F. was in debt to plffs. he drew for his own purposes on the moneys standing to the credit of plffs. in the books of T. & C. At the time of these transactions deft. T. was not aware of F.'s indebtedness to plffs., but the ct. found that deft. T. knew enough of F.'s methods to be put on inquiry as to what F. was doing. Subsequently plffs. brought the present action against T. in respect of these moneys on the ground of conversion & for money had & received & for breach of duty & negligence as one of their directors & as their solr. Deft. T. pleaded acquiescence by plffs.:—*Held*: deft. T. was liable in conversion, & even if there had been acquiescence he was liable for money had & received, & plffs. were entitled to recover.—*FENTON TEXTILE ASSOCN., LTD. v. THOMAS* (1929), 45 T. L. R. 264, C. A.

**4583. Add. Annotations:—***Refd.* Underwood v. Bank of Liverpool & Martins, Same v. Barclays Bank, [1924] 1 K. B. 775; *Liggett* (Liverpool) v. Barclays Bank (1927), 137 L. T. 443; *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.

**4587. Add. Annotation:—***Refd.* Brocklebank v. R., [1925] 1 K. B. 52.

**4590a. ——— To bank named by principal—Money returned by bank to agent.]—**Plffs. in London sold to a New York co. a quantity of Belgian francs to be delivered to defts. as the purchasers' agents in Brussels on Dec. 31, at a price to be paid in dollars on the same day in New York, & the purchasers instructed defts. to pay the francs when received to the C. Bank. On Dec. 30 bkpey. proceedings were commenced against the purchasers in New York & a receiver was appointed, & on the same day the purchasers cabled to plffs. not to pay the francs to defts., as they, the purchasers, were unable to complete their contract. Before that cable arrived plffs. had already paid the francs to defts., & defts. had paid them to the C. Bank. Plffs. then requested the C. Bank to return them, & the C. Bank returned them to defts., with an explanation that they did so for the purpose of cancelling defts.' payment to them. In these circumstances defts. claimed that the money having been returned to them, they were entitled to hold it on behalf of their principals, & refused to pay it over to plffs., who brought an action to recover the francs as being money had & received by defts. to their use:—*Held*: (1) as at the time plffs. paid the francs to defts. the purchasers

had already repudiated their contract, although plffs. did not know that fact & consequently had not accepted the repudiation, plffs. were under no legal obligation to pay, & having paid under a mistaken belief of legal liability, they would have been entitled to recover the money back if they had discovered their mistake before defts. had paid it to the C. Bank; (2) the effect of the money being returned by the C. Bank was to restore plffs. to the same position as that which they occupied before defts. paid it away, & that position was unaffected by the fact that before redemand of the money by plffs. the trustee in bkpey. of the purchasers had directed defts. not to part with it, & defts. in compliance with that direction had credited the purchasers with it in their books; (3) defts. were bound to repay it to plffs.—*BRITISH AMERICAN CONTINENTAL BANK v. BRITISH BANK FOR FOREIGN TRADE*, [1926] 1 K. B. 328; 95 L. J. K. B. 326; 134 L. T. 472; 42 T. L. R. 202, C. A.

**4591. Add. Annotation:—***Refd.* *Re* A Debtor, [1928] Ch. 199.

**4597. Add. Annotations:—***Refd.* *Abram S.S. Co. v. Westville Shipping Co.*, [1923] A. C. 773; *Rowland v. Divall*, [1923] 2 K. B. 500.

**4598. Add. Annotation:—***Refd.* *Abram S.S. Co. v. Westville Shipping Co.*, [1923] A. C. 773.

**4623. Add. Annotation:—***Distd.* *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

**4635. Add. Annotation:—***Consd.* *Brocklebank v. R.*, [1924] 1 K. B. 647.

**4640. Add. Annotations:—***Consd.* *Brocklebank v. R.*, [1925] 1 K. B. 52. *Refd.* *Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879.

**4644. Add. Annotations:—***Apld.* *Marshal Shipping Co. v. Board of Trade*, [1923] 2 K. B. 343. *Consd.* *Brocklebank v. R.*, [1925] 1 K. B. 52. *Refd.* *Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879.

**4649. After this case add "Payment as condition of licence to sell ship to foreigner."—***See* CONSTITUTIONAL LAW, pp. 280, 281, *ante*, Nos. 526a—526d, *ante*.

**4650. Add. Annotation:—***Refd.* *Catton v. Ashwell & Nesbit*, [1928] Ch. 481.

**4651. Add. Annotation:—***Mentd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**4676a. ———.]—**Pltf. cannot abandon his claim in tort & still pursue his claim for money had & received which depends upon the alleged tort.—*HARDIE & LANE, LTD. v. CHILTERN*, [1928] 1 K. B. 663; 96 L. J. K. B. 1010; 138 L. T. 14; 43 T. L. R. 709; 71 Sol. Jo. 664, C. A.

#### PART IX. SECT. 3, SUB-SECT. 3.—H.

**4596 i. General rule.]—***Re* CAIRNS & MCNAIRN, [1927] 2 D. L. R. 444; 60 O. L. R. 194.—CAN.

#### PART IX. SECT. 3, SUB-SECT. 4.—B. (a).

**ss. Money paid under decree—Decree unreversed.]—**Money recovered under a decree cannot be recovered back in a fresh suit while the decree remains in force; but if the decree has been reversed or superseded the money paid is recoverable.—*NAGANNA v. VENKATAPPAYYA* (1923), 1 L. R. 46 Mad. 895.—IND.

*sd. Money paid to obtain possession of goods.]—*WILSON v. MASON, LAMB v. WILSON (1876), 38 U. C. R. 14.—CAN.

#### PART IX. SECT. 3, SUB-SECT. 4.—B. (b).

**m i. ———.]—**RICHARDS v. TAYLOR (5), 28 N. S. R. (16 L. & G.) 311.—CAN.

#### PART IX. SECT. 3, SUB-SECT. 4.—B. (c).

**4616 ii. ———.]—**Pltf.'s action against deft. was dismissed with costs. Pltf. appealed. After service of notice of appeal deft. threatened to distrain for

the costs, & pltf.'s solr. paid the amount to deft.'s solr. The appeal was allowed & deft. ordered to pay the costs of the action & of the appeal. Neither deft. nor his solr. would refund the amount paid for the costs.—*Held*: the money could be recovered from deft. as money received to pltf.'s use.—*BURKE v. BEATTY & WHITE*, [1928] 1 R. 91.—IR

#### PART IX. SECT. 3, SUB-SECT. 4.—B. (d).

**4654 i. Cause of action known to defendant.]—**BANK of MONTREAL v. WEISBERG, [1917] 2 W. W. R. 615; 21 B. C. R. 73, 81; 31 D. L. R. 26.—CAN.

4678. *Add. Annotation*:—**Mentd.** *Ord v. Ord*, [1923] 2 K. B. 432.
4683. *Add. Annotation*:—**Mentd.** *Re Letters Patent No. 139, 207, Re Carbonit Akt.*, [1924] 2 Ch. 53.
4700. *Add. Annotation*:—**Refd.** *Woollatt v. Stanley* (1928), 138 L. T. 620.
4704. *Add. Annotation*:—**Mentd.** *Preston Corpn. v. Pyke*, [1929] 2 Ch. 338.
4711. *Add. Annotation*:—**Mentd.** *Ord. v. Ord*, [1923] 2 K. B. 432.
4716. *Add. Annotation*:—**Refd.** *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67.
- 4725a. ——— **Conversion by creditor of bankrupt—Proceeds paid to defendant.**—A. after committing an act of bkpy. in order to procure his discharge from an arrest at the suit of B. draws & indorses to B. a bill of exchange, which C. accepts in expectation of receiving goods of A.'s into his hands. C. receives the goods, sells them, & pays the amount of the bill to B.; the assignees of A. cannot maintain an action against B. for this money as money had & received to their use.—**WALLER v. DRAKEFORD** (1816), 1 Stark. 481; 171 E. R. 536.
4742. *Add. Annotation*:—**Consd.** *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.
4751. *Add. Annotations*:—**Consd.** *Jones v. Waring & Gillow*, [1925] 2 K. B. 612; *Re Mason*, [1929]
- 4770a. ———.—**PRESTON v. STRUTTON** (1792), 161 E. R. 145; 1 D. 707 (1841), Cr. & Ph. 161.
4824. *Add. Annotation*:—**Refd.** *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
4868. *Add. Annotations*:—**As to (1) Refd.** *Thompson v. British Medical Assocn. (New South Wales Branch)*, [1924] A. C. 764. **Generally, Refd.** *Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86.

## Part X.—Personal Contracts.

4907. *Add. Annotation*:—**Refd.** *Public Trustee v. Elder*, [1926] Ch. 776.
- 4908a. ———.—The element of personal confidence which renders a contract unassignable is not confined to cases where the purchaser relies on the personal skill of the vendor or manufacturer, or where the manufacturer relies on the personal idiosyncrasies of the buyer with regard to his requirements or with regard to his performance to the covenants other than his obligation to pay. Where the ability of the buyer to pay is the subject-matter of personal confidence, the contract is just as much taken out of assignability as where the manufacturing skill of the seller is the subject-matter of the buyer's personal confidence.
- Defts. entered into a contract with H. to supply him with 10,000 tons of coal, the delivery of which was to be extended over two years. H. had been carrying on the business of a coal merchant for some years, the business consisting of carting coals from defts.' depots round the streets of a certain district & there selling it to the working classes by weight in relatively small quantities, it being a regular practice to give short credit.
- H. assigned the contract to pltf., who up to the time of the assignment had no experience of the coal trade:—**Held**: there was that degree of difference between H.'s & pltf.'s knowledge of the business, which, having regard to the nature of the business, constituted an element of personal confidence in the matter personal to H. which made the contract unassignable.—**COOPER v. MICKLEFIELD COAL & LIME CO., LTD., COOPER v. RAYNER** (1912), 107 L. T. 457; 56 Sol. Jo. 706.
4913. *Add. Annotation*:—**Refd.** *Messenger v. British Broadcasting Co.*, [1928] 97 L. J. K. B. 251.
4915. *Add. Annotation*:—**Refd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.
4916. *Add. Annotation*:—**Refd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.
- 4922a. **Agreement as to right to perform play.**—By an agreement pltf. grant to E. "the sole & exclusive right of representing or performing" in certain areas a play, of the music of which pltf. was the composer:—**Held**: the agreement was not limited to performance at a theatre & was not a mere licence, but was an assignment to E. of rights which either

### PART IX. SECT. 3, SUB-SECT. 4.—C. (i).

sf. *Proceeds of sale of crop—Agreement for delivery of part of crops.*—**DUCAT v. SWEENEY** (1839), 2 Ont. Dig. 4259.—**CAN.**

### PART IX. SECT. 3, SUB-SECT. 4.—E.

sk. *Purpose illegal—Purpose partly fulfilled.*—If A. gives to another as his agent a cheque to make a purchase forbidden by law, & the agent makes the purchase & indorses the cheque to the vendor, A. cannot recover from the agent an alleged balance unaccounted for of the amount of the cheque as money paid to the agent for A.'s use. While the money might have been recovered before the effecting of the illegal purpose, it cannot be recovered

after.—**LAWSON v. FARLEY**, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

### PART IX. SECT. 4, SUB-SECT. 5.—B. (a).

sm. *Casual observation to third party—Insufficient.*—**CURRIE v. FLINDALL** (1847), 3 U. C. R. 323.—**CAN.**

### PART X. SECT. 1.

sb. *Advertising agreement.*—An agreement whereby defts. granted to J. S., carrying on business as J. S. Co., the exclusive rights of screen advertising, J. S. Co. to attend to all matters connected with the obtaining of advertising contracts, which it took in its own name:—**Held**: not

assignable.—**SWINSON (JOHN) CO., LTD. v. CRYSTAL PALACE, LTD.**, [1922] N. Z. L. R. 250; Gaz. L. R. 69.—**N.Z.**

sc. *Agreement for easement—Construction & use of tramway.*—Def't. & another in 1916 granted to S. a right to lay down a tramway through def't.'s land for the purposes of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf. The assignment was known to def't., who raised no objection. Def't. in 1922 put gates across the tramway, removed part of the tramline, & destroyed part of a trestle bridge:—**Held**: the grant or contract was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—**MACDONALD v. PEDDLE**, [1923] N. Z. L. R. 987.—**N.Z.**

he or his exors. could assign.—*MESSAGER v. BRITISH BROADCASTING CO., LTD.*, [1929] A. C. 151; 98 L. J. K. B. 189; 140 L. T. 227; 45 T. L. R. 50, 11. L.

4931a. —.—.]—*COOPER v. MICKLEFIELD COAL &*

*LIME CO., LTD., COOPER v. RAYNER*, No. 4908a, *ante*.

4936a. *S. P. JACKSON v. BRIDGE* (1702), 12 Mod. Rep. 650; 88 E. R. 1580.

*Annotations*:—*Refd.* *Tasker v. Shepherd* (1861), 6 H. & N. 575; *Farrow v. Wilson* (1869), L. R. 4 C. P. 744; *Hinkins v. Alder* (1906), 50 Sol. Jo. 258.

## Part XII.—Assignment of Contracts.

4956. *Add. Annotations*:—*Refd.* *Anderson v. Equitable Life Assee. Soc. of the United States* (1926), 134 L. T. 557; *Bennett v. Whitehead*, [1926] 2 K. B. 380.

4957. *Add. Annotation*:—*Refd.* *Public Trustee v. Elder*, [1926] Ch. 776.

4963. *Add. Annotation*:—*Consd.* *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.

4985. *Add. Citations*:—33 L. T. 760; *sub nom. Re EUROPEAN ASSURANCE SOCIETY ARBITRATION ACTS, 1872, 1873 & 1875, Re ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO., HARMAN'S CASE, PRATT'S CASE*, 45 L. J. Ch. 332.

4993. *Add. Annotation*:—*Mentd.* *Rackham v. Tabrum* (1923), 129 L. T. 24.

## Part XIII.—Interpretation of Contracts.

5031. *Add. Annotations*:—*Refd.* *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Cohen v. Sellar*, [1926] 1 K. B. 536; *First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922; *The Penelope*, [1928] P. 130; *Hyman v. Hyman*, *Hughes v. Hughes*, [1929] P. 1; *May v. May*, [1929] 2 K. B. 386.

5032. *Add. Annotations*:—*Refd.* *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461; *Livock v. Pearson* (1928), 33 Com. Cas. 188.

5033. *Add. Annotations*:—*Refd.* *Sack v. Jones*, [1925] Ch. 235; *O'cedar v. Slough Trading Co.*, [1927] 2 K. B. 123; *Aldridge v. Wright*, [1929] 2 K. B. 117; *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138.

5040. *Add. Annotation*:—*Mentd.* *Macmillan v. Cooper* (1923), 93 L. J. P. C. 113.

5041. *Add. Annotation*:—*Mentd.* *Hyman v. Hyman*, *Hughes v. Hughes*, [1929] P. 1.

5041a. —.—.]—Defts., manufacturers, sold goods to plffs., retailers, upon condition that plffs. should not resell the goods to the public at

less than a specified price. After business had been carried on upon this condition for three years defts., without giving plffs. notice of their intention to change their method of business, began to sell goods direct to the public without the intervention of middlemen, at a price very much lower than that which plffs. were obliged to charge under their contract with defts., & as a result plffs. were left with goods which they had bought from defts. & had in stock, & could not dispose of the goods except at a loss. They claimed damages on the ground that a term must be implied in the contract that defts. would not themselves sell the goods to the public at a price below that which plffs. were bound by the contract to charge, or at least that before beginning to sell goods to the public they would give plffs. sufficient notice to enable them to dispose of their stock of goods at a profit:—*Held*: no such term as plffs. required could be implied in the contract.—*LIVOCK v. PEARSON BROTHERS* (1928), 33 Com. Cas. 188.

5042. *Add. Annotations*:—*As to* (1) *Appld.* *Livock*

### PART XII. SECT. 2, SUB-SECT. 1.

4957 i. *When implied*.]—*MORRISON v. GALE* (1872), 1 N. B. R. (Pug.) 203.—CAN.

### PART XII. SECT. 2, SUB-SECT. 2.—A. (a).

4958 iii. —.—.]—A business was transferred to a new co. Plff. brought an action for an unpaid balance against the old firm. Evidence showed that plff. had disclosed no intention to accept the new co. as the debtor:—*Held*: the old firm were liable.—*SIMPSON & ORS v. COUSINS*, [1923] 1 D. L. R. 106.—CAN.

4958 iv. —.—.]—*SWINSON (JOHN) CO., LTD. v. CRYSTAL PALACE, LTD.*, [1922] N. Z. L. R. 250; *Gaz.* L. R. 69.—N.Z.

4958 v. —.—.]—*MCCULLY v. MARITIME UNITED FARMERS' CO-OPERATIVE, CARTER v. MARITIME UNITED FARMERS' CO-OPERATIVE (N. B.)*, [1926] 4 D. L. R. 727.—CAN.

### PART XII. SECT. 2, SUB-SECT. 2.—A. (b) i.

4967 i. *Clear proof of intention required—Onus on party alleging novation*.]—*GRAYTHORNE v. JENKINS*, [1926] N. Z. L. R. 858.—N.Z.

### PART XII. SECT. 2, SUB-SECT. 2.—B.

4999 iv. —.—.]—*MCCANNELL v. TYREMAN*, [1925] 1 D. L. R. 911.—CAN.

sd. *What constitutes—Bill of exchange of new firm taken in payment—Bill dishonoured*.]—Plff. co., a creditor of a firm, had no notice of the dissolution of the partnership between the partners, C. & S., until Feb. 7, when H., plffs.' manager, was told of it. H. took an acceptance of S. for the amount due to plffs. down to Feb. 1, dating it as of Feb. 7, receipted the bill & continued to supply goods to S. down to Mar. 4 when the business was closed. On Mar. 10 the draft taken by H. was dishonoured, & on Mar. 31, the whole dealing was closed by H. taking a

demand note from S. for the whole amount then due to plff. co.:—*Held*: C. was not released from his liability to plffs. until after notice of dissolution given by S. on Feb. 7. There was no novation & plffs. were entitled to recover from the members of the firm their account down to the date of notice.—*HAISTPORT FRUIT CO., LTD. v. COLDWELL*, [1923] 4 D. L. R. 65; 56 N. S. R. 222.—CAN.

### PART XIII. SECT. 2, SUB-SECT. 1.—B.

5034 ii. —.—.]—In construing a contract, a term or condition not expressly stated may, in certain circumstances, be implied by the ct., if it is clear, from the nature of the transaction, that the contracting parties must have intended such a term or condition to be a part of the agreement between them. The implication is founded upon the presumed intention of the parties & upon reason.—*PIONEER BANK v. CANADIAN BANK OF COMMERCE* (1915), 9 O. W. N. 96; 34 O. L. R. 531.—CAN.

- v. Pearson* (1928), 33 Com. Cas. 188; *Gaze v. Port Talbot Corpn.* (1929), 93 J. P. 89. **Refd.** *Cockburn v. Smith* (1923), 40 T. L. R. 113; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395; *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Transoceanica Soc. Italiana Di Navigazione v. Shipton*, [1923] 1 K. B. 31; *United States Shipping Board v. Durrell*, [1923] 2 K. B. 739; *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461. **As to (2) Refd.** *Re Windsor Steam Coal Co. (1901), Ltd.* (1928), 140 L. T. 80.
- 5045. Add. Annotations:—Consd.** *United States Shipping Board v. Durrell*, [1923] 2 K. B. 739. **Refd.** *Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co.*, [1924] A. C. 406; *Cohen v. Sellar*, [1926] 1 K. B. 536.
- 5048. Add. Annotations:—Consd.** *Cockburn v. Smith* (1923), 40 T. L. R. 113; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395; *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 138 L. T. 286. **Apld.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57; *Wallems Rederij A./S. v. Muller, Batavia*, [1927] 2 K. B. 99; *G. W. Ry. v. Durnford* (1928), 139 L. T. 145; *Livock v. Pearson* (1928), 33 Com. Cas. 188; *G. W. Ry. v. Monmouthshire County Council* (1929), 93 J. P. 142. **Refd.** *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *United States Shipping Board v. Durrell*, [1923] 2 K. B. 739; *British Petroleum Co. v. A.-G. for Ceylon*, [1926] A. C. 147; *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522; *United States Shipping Board v. Strick*, [1926] A. C. 545; *Marbe v. George Edwardes (Daly's Theatre)* (1927), 43 T. L. R. 460; *Gaze v. Port Talbot Corpn.* (1929), 93 J. P. 89. **Mentd.** *The Empress*, [1923] P. 96; *Great Lakes S.S. Co. v. Maple Leaf Milling Co.* (1924), 41 T. L. R. 21; *The Grit*, [1924] P. 246.
- 5052. Add. Annotations:—Refd.** *Livock v. Pearson* (1928), 33 Com. Cas. 188. **Mentd.** *Thomas v. Todd*, [1926] 2 K. B. 511.
- 5054. Add. Citation:—15 Asp. M. L. C. 544.**  
**Add. Annotation:—Apld.** *Gaze v. Port Talbot Corpn.* (1929), 93 J. P. 89.
- 5056. Add. Annotations:—Refd.** *Willis v. Willis*, (1927), 96 L. J. P. 177; *First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922; *The Penelope*, [1928] P. 180; *Hyman v. Hyman, Hughes v. Hughes*, [1929] P. 1; *May v. May*, [1929] 2 K. B. 386.
- 5059. Add. Annotation:—Apld.** *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.
- 5060. Add. Annotation:—Consd.** *A.-G. v. G. S. & W. Ry. of Ireland*, [1925] A. C. 754.
- 5068a. Term customary during war.]—**The ct. found that since the outbreak of war in 1914 it had been a universal custom in the dried fruit trade to insert in all contracts for the sale of sultanas a clause as follows: "Should shipment be prevented by force majeure such as prohibition of export, blockade, war, or any consequence of warlike operations, this contract or the then unfulfilled part thereof to be cancelled without claim." The ct., therefore, rectified certain bought & sold notes by the addition of this clause on the ground that the parties must be taken to have contracted on this basis.—**CARAMAN ROWLEY & MAY v. APERGHIS** (1923), 40 T. L. R. 124.
- 5072. Add. Annotation:—Mentd.** *Captain J. A. Cates Tug & Wharfage Co. v. Franklin Insee.*, [1927] A. C. 698.
- 5073. Add. Annotation:—Refd.** *Finar Bugge v. Bowater* (1925), 31 Com. Cas. 1.
- 5085. Add. Annotations:—Refd.** *Boorne v. Wicker*, [1927] 1 Ch. 667; *Farey v. Cooper*, [1927] 2 K. B. 384; *Livock v. Pearson* (1928), 33 Com. Cas. 188.
- 5086. Add. Annotations:—Apld.** *Boorne v. Wicker*, [1927] 1 Ch. 667. **Refd.** *Farey v. Cooper*, [1927] 2 K. B. 384; *Livock v. Pearson* (1928), 33 Com. Cas. 188.
- 5087. Add. Annotation:—Refd.** *Martin v. Stout*, [1925] A. C. 359.
- 5088. Add. Annotation:—As to (2) Refd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise* (1926), 42 T. L. R. 735.
- 5102. Add. Annotations:—Consd.** *First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922; *The Penelope*, [1928] P. 180. **Refd.** *Larrinaga v. Soc. Franco Americaine Des Phosphates Des Medulla* (1923), 92 L. J. K. B. 455; *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569; *Re Wait*, [1926] Ch. 962; *May v. May*, [1929] 2 K. B. 386.
- 5103. Add. Annotation:—Refd.** *Larrinaga v. Soc. Franco Americaine Des Phosphates Des Medulla* (1923), 92 L. J. K. B. 455.
- 5104. Add. Annotation:—Expld.** *Re Wait*, [1927] 1 Ch. 606.
- 5107. Add. Annotation:—Refd.** *The Penelope*, [1928] P. 180.
- 5113. Add. Annotation:—Consd.** *Marb  v. George Edwardes (Daly's Theatre)* (1927), 96 L. J. K. B. 980.
- 5117. Add. Annotation:—Refd.** *Sweet v. Williams* (1922), 128 L. T. 379.
- 5119. Add. Annotation:—Refd.** *Brown v. Dagenham U. C.*, [1929] 1 K. B. 737.

PART XIII. SECT. 2, SUB-SECT. 1.—C.

**5048 ii. —.]—**While the ct. must not by implication actually make a contract for the parties, yet it may hold that on a reasonable consideration of the terms of the contract there is necessarily implied an obligation for the purpose of giving efficacy to the transaction & preventing such a failure of consideration as cannot have been within the contemplation of either side.—**CONNORS v. McGREGOR**, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

**5048 iii. —.]—**A term or condition

may be implied by the ct., if it is clear, on a reasonable & business like consideration of all the terms of the contract, that the parties must have intended such a term or condition.—**WELLS v. BLAIN**, [1927] 1 D. L. R. 687; [1927] 1 W. W. R. 223; 21 Sask. L. R. 194.—**CAN.**

**5048 iv. — Whether period of agency included.]—**A contract of agency contained no express stipulation as to the term of the agency.—**Held:** it was not necessary, in order to give business efficiency to the contract or to carry into effect the intention of the parties, to imply a term that the contract could be terminated only on

reasonable notice, & such a term could not therefore be implied.—**POLLARD v. GIBSON**, [1924] 4 D. L. R. 354; 55 O. L. R. 424.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—G. (e).

**sk. Agreement to buy goods—Obligation to supply.]—**Implied.—**CANADA CYCLE & MOTOR CO., LTD. v. MEHR** (1919), 45 O. L. R. 576; 48 D. L. R. 579; 16 O. W. N. 253.—**CAN.**

**sl. S. P. BERLINER GRAMAPHONE CO., LTD. v. N. H. PHINNEY & CO., LTD.** (1921), 54 N. S. R. 295; 57 D. L. R. 596.—**CAN.**

5120. *Add. Annotation*:—**Consd.** *Marbé v. George Edwardes* (Daly's Theatre) (1927), 96 L. J. K. B. 980.

5121. *Add. Annotation*:—**Consd.** *Marbé v. George Edwardes* (Daly's Theatre) (1927), 96 L. J. K. B. 980.

5123. *Add. Annotation*:—**Refd.** *Re Windsor Steam Coal Co.* (1901), Ltd. (1928), 140 L. T. 80.

5126. *Add. Annotations*:—**Refd.** *Sweet v. Williams* (1922), 178 L. T. 379; *Re Windsor Steam Coal Co.* (1901), Ltd. (1928), 140 L. T. 80.

5132. *Add. Annotation*:—**Consd.** *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

5152. *Add. Annotation*:—**Refd.** *Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.

5167. *Add. Annotation*:—**Consd.** *Cohen v. Sellar*, [1926] 1 K. B. 536.

After this case add "*See, further, GIFTS, Vol. XXV., p. 525.*"

5168. *Add. Annotation*:—**Apld.** *London & South American Investment Trust v. British Tobacco Co.* (Australia), [1927] 1 Ch. 107.

SUB-SECT. 3.—IMPLIED WARRANTIES (Vol. XII., p. 628).

Add the following case:—

5168a. *Of fitness—Turkish baths.*—Defts. were the owners of Turkish baths, & customers who came late at night were permitted to use the beds in the cubicles till early the next morning. Pltf. & his brother slept one night at the baths, & when they woke up they found that they had been bitten badly by insects, proved afterwards to be bugs:—*Held*: there had been a breach of an implied warranty that the beds or couches supplied for the use of customers should be reasonably fit for the purpose, & defts. owed a duty to pltf. to take reasonable care that no bugs or other dangerous insects should infest their premises.—*SILVERMAN v. IMPERIAL LONDON HOTELS, LTD.* (1927), 137 L. T. 57; 43 T. L. R. 260.

For the cross-reference "*Of fitness—Sale of animals.*"—*See, generally, ANIMALS, Vol. I., pp. 260 et seq.*" read "*—Sale of animals.*"—*See, generally, ANIMALS, Vol. I., pp. 260 et seq.*"

PART XIII. SECT. 2, SUB-SECT. 1.—  
H. (a) iii.

**sn.** *Commission payable out of purchase-money.*—Pltf., an agent, made a special contract with deft. whereby he was to obtain a portion of the purchase price:—*Held*: in the absence of express provision, there was no obligation on deft. to keep the contract of sale alive in order that pltf. might obtain his commission, & upon the cancellation of the contract of sale pltf.'s right was determined.—*GOWAN v. BOWERN*, [1924] App. D. 550.—**S. AF.**

**st.** *Agreement to sell & share in proceeds of sale of goods—Obligation to supply.*—*LOCK v. PURDON* (1850), 7

N. B. R. (2 All.) 33.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—  
H. (b).

5133 i. *Agreement fixing prices.*—The military authorities accepted a tender from pltf. whereby he agreed to supply at prices specified so much of the goods mentioned therein as the officer in charge might require during the period mentioned in the tender:—*Held*: pltf.'s tender amounted merely to an offer to supply the goods mentioned at the prices specified, & the military authorities were not bound by their acceptance of the tender to purchase all or any of the said goods needed by them from pltf. in the

absence of a covenant to that effect.—*SECRETARY OF STATE v. MADHO RAM* (1928), 1 L. R. 10 Lab. 493.—**IND.**

PART XIII. SECT. 2, SUB-SECT. 1.—  
N.

**sw.** *Agreement to furnish planters for fishery with supplies—Obligation to turn in produce to supplier.*—Implied. *JOHNSON v. FINLAY* (1882), 6 Nfld. L. R. 363.—**NFLD.**

**sv.** *Supply of water. For particular period—Expiration of original contract—Continuation under terms of old contract.*—*R. v. PUBLIC UTILITIES BOARD OF COMUS, Ex p. TOWN OF MILTOWN* (N. B.) (1919), 17 D. L. R. 219.—**CAN.**

## COPYHOLDS.

NOTE.—As to copyhold tenure & manorial incidents after 1925, *see* Law of Property Act, 1922 (c. 16), ss. 128–145, scheds. 12–15; Law of Property (Amendment) Act, 1924 (c. 5), sched. 2.

## Part I.—The Manor.

41. *Add. Annotation* :—As to (1) **Refd.** Hodgson v. McCreagh (1923), 93 L. J. Ch. 339.      128. *Add. Annotation* :—As to (1) **Refd.** Jay v. Jay, [1924] 1 K. B. 826.  
122. *Add. Citation* :—92 L. J. Ch. 55.

## Part II.—Franchises and other Rights appendant to Manors.

213. *Add. Annotation* :—Generally, **Mentd.** Harper v. Hedges, [1923] 2 K. B. 314.

## Part III.—Custom of the Manor.

229. For catchwords “ — — In consideration of assistance to persons wrecked—Good.” read “To seize best anchor & cable —Of ship wrecked on shore of manor—In consideration of assistance to persons wrecked —Good.”

## Part IV.—Manorial Courts.

325. *Add. Annotation* :—As to (1) **Apld.** *Re* Holli-day, [1922] 2 Ch. 698.      332. *Add. Annotation* :—**Mentd.** Leyton U. C. v. Wilkinson, [1927] 1 K. B. 853.

## Part V.—The Court Rolls and other Manorial Documents.

393. *Add. Annotation* :—**Consd.** Beaumont v. Jeffery (1924), 40 T. L. R. 796.  
394a. — **Purchaser for value.**—Pltf., as lord of the manor of Great Tey, which he acquired by purchase in 1923, brought the present action of detinue to recover possession of certain ancient ct. rolls of that manor, which were of mere historical interest & which before his purchase pltf. had seen advertised for sale by deft., who, having purchased them in 1902, from one P., a waste paper dealer, had commenced advertising them for sale ten years before the commencement of the present action:—*Held*: in the absence of evidence to the contrary, it must be presumed that P. acquired the rolls lawfully in the ordinary course of his business from either the lord or the steward of the manor, & as the position of pltf.'s predecessor in title as trustee of the rolls, while they remained in his possession, did not make it illegal for him to part with them to a stranger, who came under the same obligation as the lord to produce them, pltf. was not entitled to recover the rolls.—**BEAUMONT v. JEFFERY**, [1925] Ch. 1; 93 L. J. Ch. 532; 132 L. T. 246; 40 T. L. R. 796; 68 Sol. Jo. 867.  
461. *Add. Annotation* :—**Refd.** Love v. Bentley (1707), 11 Mod. Rep.  
482. *Add. Annotation* :—**Refd.** Beaumont Jeffery (1924), 40 T. L. R. 796.

## Part VI.—Officers of the Manor.

491. *Add. Citations* :—2 Show. 21; Freem. K. B. 473.



## Part VII.—Manorial Tenures.

610. *Add. Annotations*:—**Mentd.** *Nicolle v. Voisin* (1922), 91 L. J. P. C. 129; *British-American Tobacco Co. v. Jones* (1925), 134 L. T. 405; *Stumbles v. Whitley* (1920), 46 T. L. R. 37.

## Part IX.—Particular Estates in Land of Copyhold and Customary Tenure.

795. *Add. Annotation*:—**Mentd.** *Re Engelbach's Estate, Tibbetts v. Engelbach*, [1924] 2 Ch. 348.
- 798a. — **Grandnephew as subsequent taker.**—*Qu.*: whether it is a good & reasonable custom that upon the death of a tenant in possession of lands holden of a manor for lives, the next life in reversion for which the estate is holden shall be entitled to enjoy the estate; & if such custom be good & reasonable, whether, where a party takes a grant of such lands for the life of himself & his grandnephews & dies, the grant shall operate as an advancement for the grandnephews, so as to rebut a resulting trust in favour of other parties claiming under the purchaser.—*EDWARDS v. EDWARDS* (1836), 2 Y. & C. Ex. 123; 6 L. J. Ex. Eq. 79; 160 E. R. 337.
1009. *Add. Annotation*:—**Mentd.** *Cohen v. Sellar*, [1926] 1 K. B. 536.

## Part XI.—Relationship of Lord and Tenant as affecting Services, Dues, etc.

1164. *Add. Annotation*:—**Refd.** *Bradford v. Price* (1923), 92 L. J. K. B. 871.
1176. *Add. Annotation*:—**Consd.** *Cheshire County Council v. Hopley* (1923), 130 L. T. 123.
1192. *Citations*:—For “12 E. R. 1126” read “125 E. R. 1126.”
1241. *Add. Annotation*:—**Refd.** *United Dairies v. Public Trustee*, [1923] 1 K. B. 469.
1273. *Add. Annotation*:—**Mentd.** *Harper v. Hedges*, [1923] 2 K. B. 314.
1274. *Add. Annotation*:—**Refd.** *Purnell v. Roche*, [1927] 2 Ch. 142.

## Part XII.—Descent of Copyholds.

1384. *Add. Annotation*:—**Mentd.** *Elliott v. Boynton*, [1924] 1 Ch. 236

## Part XIV.—Mortgage of Copyholds.

- 1461a. — *—*.—*FRASER v. THOMAS* (1852), 3 Seton's Judgments & Orders, 7th ed. 2171.  
*Annotation*: *Follū, Ashton v. Corrigan* (1871), L. R. 13 Eq. 76.

## Part XV.—Devise of Copyholds.

1498. *Add. Annotation*:—**Mentd.** *Oakley v. Wilson*, [1927] 2 K. B. 279.
1506. *Add. Annotation*:—**Refd.** *Re Brooke, Brooke v. Dickson*, [1923] 2 Ch. 265.
1508. *Add. Annotation*:—**Refd.** *Re Brooke, Brooke v. Dickson* (1923), 92 L. J. Ch. 504.
- 1533a. — **Remainder to his heir-at-law—Rule in Shelley's Case applies.**—By his will testator, among other devises of freeholds & copyholds, devised his two copyhold houses, gardens, & premises situate in the parish of B., & also a piece of copyhold land adjoining, to his nephew G. for life without impeachment of waste, & after his death he devised the same premises to the “heir-at-law” of the said G. There was no special custom of descent in the manor of B. affecting these copyholds:—**Held**: the use of the expression “heir-at-law” did not exclude the operation of the rule in *Shelley's Case*, which accordingly applied, & G. was entitled in customary fee simple for an estate to him & his heirs according to the custom of the manor.—*Re HACK, BEADMAN v. BEADMAN*, [1925] Ch. 633; 94 L. J. Ch. 343; 133 L. T. 134; 69 Sol. Jo. 602.
- See, now*, Law of Property Act, 1922 (c. 16), ss. 128–145, Schedules 12–15; Law of Property Act, 1925 (c. 20), s. 131.

## Part XVIII.—Mode of Transmission of Copyholds inter vivos.

1566. *Add. Annotation* :—**Mentd.** *Lapish v. Braithwaite* (1924), 93 L. J. K. B. 1123. | 1772. *Add. Annotation* :—**Mentd.** *Fanshawe v. Fanshawe*, [1927] P. 238.

## Part XIX.—Determination and Suspension of Tenant's Estate.

1970. *Add. Annotation* :—**Mentd.** *Re Twopeny's Settlement, Monro v. Twopeny*, [1924] 1 Ch. 522. | 1978. *Add. Annotation* :—**Refd.** *Re Price*, [1928] Ch. 579.

## Part XX.—Enfranchisement.

1998. *Add. Annotation* :—**Refd.** *Re Price*, [1928] Ch. 579.

2032. After this case add as follows :—

T. 3a. —**UNDER LAW OF PROPERTY ACTS.**

- 2032a. **Estate tail in undivided share—Interest in personality.**—Where before 1926 an undivided share in copyhold land was the subject of an estate tail, the enfranchisement of such copyhold land after 1925 can result in turning the estate tail into an absolute interest ; & where, by reason of the statutory trusts under Law of Property Act, 1925 (c. 20), such land becomes personalty, the absolute interest into which the estate tail is turned is an interest in personalty.—*Re PRICE*, [1928] Ch. 579 ; 97 L. J. Ch. 423 ; 139 L. T. 339.

*Annotation* :—**Refd.** *Re Kempthorne, Charles v. Kempthorne* (1929), 46 T. L. R. 15.

- 2032b. **Equitable joint tenancy in copyholds—Subject to rentcharge—Vesting of legal estate.**—On July 5, 1802, Bryan Abbs & another trustee who predeceased him were admitted to certain copyhold plots A., B. & C. upon trust out of the rents & profits to raise & pay an annual rent of £7 10s. to Harrison & his heirs & subject thereto in trust for Wilson & his heirs. Many years after Bryan Abbs' death his customary heir H. C. Abbs, since deceased, was admitted to A. & C., but no one was admitted to B. ; so that on Dec. 31, 1925, the best right to admittance was in the customary heirs of H. C. Abbs & Bryan Abbs. On the same date the equitable title to the land stood vested in Thompson & Collins as joint tenants in fee, subject to the equitable rentcharge then vested in Aylmer, subject to proof of his title.

On Jan. 1, 1926, the Law of Property Acts

came into operation & the copyhold plots were enfranchised. The ct. being asked to determine in whom the legal estates in the land & the rentcharge vested :—**Held** : (1) under para. 8 (b), vested in the first instance in the personal representative of H. C. Abbs & the customary heir of Bryan Abbs as trustees, Bryan Abbs having no known personal representative ; (2) either under the 1922 Act, Sched. XII., para. 8 (d), or under the 1925 Act, Sched. I., Part II., paras. 4, 6 (d), the rentcharge vested as a legal rentcharge in Aylmer or other the persons entitled thereto ; (3) on the rentcharge becoming a legal rentcharge the trustees became bare trustees with no longer any active duties to perform ; (4) under the 1925 Act, Sched. I., Part II., paras. 3, 6 (d), the initial vesting in the trustees was divested, & the legal estate subject to the legal rentcharge vested in Thompson & Collins as joint tenants in fee simple ; (5) sect. 36 of the 1925 Act did not come into operation until after the vesting provisions had done their work. It then merely attached a trust for sale to the joint legal estate in Thompson & Collins. It did not previously attach a trust for sale to the initial estate in the trustees so as to put the divesting provisions of the 1925 Act, Sched. I., Part II., out of operation. Still less did it bring in the undivided share provisions of the 1925 Act, Sched. I., Part IV. —*Re KING'S THEATRE, SUNDERLAND, DENMAN PICTURE HOUSES v. THOMPSON & COLLINS ENTERPRISES*, [1929] 1 Ch. 483 ; 98 L. J. Ch. 109 ; 140 L. T. 463.

- 2032c. — **Vesting of rentcharge.**—*Re KING'S THEATRE, SUNDERLAND, DENMAN PICTURE HOUSES v. THOMPSON & COLLINS ENTERPRISES*, No. 2032b, *ante*.

## COPYRIGHT AND LITERARY PROPERTY.

## Part I.—Nature of Copyright.

4. *Add. Annotation*:—*Refd.* Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.
16. *Add. Annotation*:—*Refd.* Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.
- 16a. **Dramatic work**—No “first publication” within 1911 Act, s. 1 (3)—Owner entitled to substituted copyright under 1911 Act, sched. 1.]—Under Dramatic Copyright Act, 1833 (c. 15), a foreign author dwelling outside British territory was entitled to secure dramatic copyright within the British Empire of the first performance of his play given in this country. By an agreement in writing dated June 30, 1898, G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.’s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—*Held*: a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since, (1) being written by G.’s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result, & (2) it constituted an admission by defts.’ predecessors in title.
- (3) An entry in the register of first performances of dramatic productions at Stationers’ Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *prima facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.

(4) 1911 Act, s. 1 (1) (a) & s. 1 (3), which provide that copyright shall subsist in every dramatic work if it has been first published in His Majesty’s dominions, but that the performance in public shall not be deemed to be publication, prescribe conditions for the future, but do not inflict them on past events so as to destroy existing rights.

(5) Where the owner of dramatic copyright possessed [by assignment] the sole right to perform, or permit the performance of, a certain play before 1911 Act came into operation he acquired, by sect. 2 (1) (b), coupled with sects. 24 & 35 of the Act, & sched. 1 to the Act, the right to the cinematograph & film rights of that play also.

An American corpn. made a film & sent a negative & two positives of it to an English co., who made further copies of the film & handed them to another English co., who let them to a British exhibitor. The American corpn. & the two British cos. were inter-working organisations linked together by complex agreements, & they all three shared in part of the receipts from the exhibition of the film by the exhibitor. The exhibitor in exhibiting the film, infringed pltf.’s copyright:—*Held*: (6) the American corpn. & the two British cos. had actively directed, counselled or aided the infringement by the exhibitor, & had infringed pltf.’s rights within 1911 Act, s. 2 (1), the operative effect of which sub-sect. is extended & not limited by sect. 2 (2) & (3).

(7) Where an infringement of copyright is proved under 1911 Act, s. 2 (1), the question of knowledge of infringement by the infringer does not arise except possibly with reference to the exemption from penalties for infringement provided by sect. 8 of the Act.—*FALCON v. FAMOUS PLAYERS FILM CO., LTD.*, [1926] K. B. 393; 95 L. J. K. B. 148; 131 L. T. 216; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

*Annotations*:—*As to* (6) *Refd.* English Hop Growers v. Dering, [1928] 2 K. B. 171. *Generally, Refd.* Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.

## Part II.—Subject-Matter.

18. *Add. Annotation*:—*Refd.* Macmillan v. Cooper (1923), 93 L. J. P. C. 113.
22. *Add. Annotation*:—*As to* (1) *Fold.* Macmillan v. Cooper (1923), 93 L. J. P. C. 113.
23. *Add. Annotation*:—*Refd.* Campbell v. Pollak, [1927] A. C. 732.
41. *Add. Annotation*:—*As to* (3) *Refd.* Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
42. *Add. Annotations*:—*As to* (1) *Consd.* Macmillan v. Cooper (1923), 93 L. J. P. C. 113. *Fold.* Masson Seeley v. Embosotype Manufacturing

## PART I. SECT. 1.

o i. ———.—“Copyright” in Commonwealth Copyright Act, 1912, s. 13 (1), includes the right to perform.—*POLLOCK v. WILLIAMSON (J. C.) LTD.*, [1923] V. L. R. 225; 29 Argus L. R. 133; 44 A. L. T. 161.—*AUS.*

## PART II. SECT. 3, SUB-SECT. 1.

o i. ———.—*Form of contract for sale of*

*land.*—*Held*: such a document was capable of copyright, but if copies were sold, there might be an implied authority to reproduce them where necessary in connection with the transaction for which they were purchased.—*REAL ESTATE INSTITUTE OF N.S.W. v. WOOD (1923)*, 23 S. L. N. S. W. 349; 40 N. S. W. W. N. 60.—*AUS.*

o ii. ———.—*Compilation.*—A compila-

tion may be an “original literary work” within Copyright Act.—*PASICK-NIAK v. DOJACEK*, [1928] 2 D. L. R. 545; [1928] 1 W. W. L. R. 865; 37 Man. L. R. 265.—*CAN.*

o iii. ———.—*Translation.*—Translations are original literary works.—*PASICKNIAK v. DOJACEK*, [1928] 2 D. L. R. 545; [1928] 1 W. W. L. R. 865; 37 Man. L. R. 265.—*CAN.*

Co. (1924), 41 R. P. C. 160. **Consd.** British Oxygen Co. v. Liquid Air. [1925] Ch. 383. *As to* (5) **Consd.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1. **Generally, Refd.** British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. .

43a. — **Letter written by manufacturer to trade customer.**—(1) A letter written by manufacturers to a trade customer, offering their goods at a low price if the customer agrees to take such goods exclusively from them, is an "original literary work" within 1911 Act, s. 1 (1), & the writers are entitled to copyright therein. Such a letter is not contrary to public policy as being in restraint of trade.

(2) The publication of the letter by rival manufacturers, together with a covering letter of

sect 2 (1) (i) of the  
YGEN Co. v. Liquid Air, LTD., [1925] Ch. 383; 95 L. J. Ch. 81; 133 L. T. 282.

43b. — **Single sentence.**—Pltf. had, since 1925, dealt with the treatment of the human face, & had advertised extensively in connection with that treatment. He claimed to have the copyright in a slogan in connection with those advertisements. The phrase was, "Beauty is a social necessity, not a luxury." Sometimes there were variations in the words used. Sometimes the words "youthfulness," or "good looks," or "youthful appearance" were substituted for "beauty." In May 1926 deft. inserted an advertisement containing the phrase "A youthful appearance is a social necessity." Some years before 1925 an advertiser had used a similar phrase, "Beauty is a modern necessity":—**Held:** (1) the only originality, if any, in pltf.'s phrase consisted in the substitution of the word "social" for the word "modern," & pltf.'s phrase was not an original composition; (2) although copyright might subsist in an advertisement, to quote a piece of a sentence from a literary work was too small a matter to afford ground for an action for infringement of copyright; (3) the doctrine *de minimis non lex curat* applied, & the matter in which copyright was claimed was too small for the ct. to attach any importance to it.—**SINANIDE v. LA MAISON KOSMEO** (1928), 139 L. T. 365; 44 T. L. R. 574, C. A.

51. **Add. Annotation:**—**Consd.** Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

55. **Add. Annotation:**—*As to* (5) **Refd.** British Oxygen Co. v. Liquid Air. [1925] Ch. 383.

60. **Add. Annotation:**—**Consd.** British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

65. **Add. Annotation:**—**Refd.** British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

73. **Add. Annotation:**—**Refd.** British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

74. **Add. Annotation:**—*As to* (1) **Consd.** British

Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

76. **Add. Annotation:**—**Consd.** Sinanide v. La Maison Kosmeo (1928), 139 L. T. 365.

77a. — **For type—Protected.**—Pltf. co., which carried on the business of supplying cutter-crush machines & type & other materials used therewith, issued a catalogue consisting for the most part of a number of words which illustrated the products of the several sizes & shapes of type supplied by the co. & customers ordered a particular class of type by referring to such words. Nearly all the words were selected by the managing director of the co. In 1922 defts., who were carrying on a similar business, circulated price lists which were practically copies of the price lists of pltf. co., the words in pltf. co.'s catalogue & price lists to indicate the style of type being copied in defts.' price lists without alteration. Pltf. co. commenced proceedings for an injunction to restrain infringement of copyright in their catalogue & passing off of goods which were not their goods as being their goods. On the question of copyright defts. contended (*inter alia*) that pltf.'s catalogue was a design or collection of designs capable of registration under Patents & Designs Acts, 1907 (c. 29), & 1919 (c. 80), & not the subject of protection under 1911 Act:—**Held:** on the question of copyright the contentions put forward by defts. failed, & an injunction restraining infringement of the copyright of pltf.'s in their catalogue was granted.—**MASSON SEELEY & Co., LTD. v. EMBOSOTYPE MANUFACTURING Co.** (1924), 41 R. P. C. 160.

80. **Add. Annotation:**—**Generally, Mentd.** Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

85a. **Programmes.**—Pltf's. were a limited co. formed to acquire the Postmaster-General's licence for the establishment & working of broadcasting stations, & to carry on any other business ancillary, incidental, or conducive thereto. Under the terms of their licence & a supplementary agreement pltf's. were required to transmit efficiently every day a programme of broadcast matter to the reasonable satisfaction of the Postmaster-General. They were not allowed to alter their memorandum as to objects without his written consent. He might revoke their licence if they failed to transmit satisfactory programmes, & within one month from their ceasing to hold the licence they were bound to pass a special resolution for voluntary winding up. Their profits from all sources beyond a 7½ per cent. cumulative dividend on their paid-up capital belonged to the Postmaster-General. Nine months after the licence, with the approval of the Postmaster-General pltf's. began publishing the *Radio Times* every Friday, including therein the advance daily programmes for the ensuing week Sunday to Saturday. These programmes gave the day & hour of each per-

545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

#### PART II. SECT. 3, SUB-SECT. 3.

**sk. Plan—Of harbour.**—**LYSHAR v. GIBBORNE HARBOUR BOARD**, [1924] N. Z. L. R. 13.—**N.Z.**

#### PART II. SECT. 3, SUB-SECT. 2.—C.

54 i. **Immoral works.**—There is nothing in the Copyright Act to deny an author a copyright on the grounds that his work is indecent, obscene or immoral. Where his work is of such a character that the law will not permit him to publish it, the cts. will deny

him damages, since if he cannot sell it he cannot prove damages. But apart from damages, there is no reason why the pirating of an author's original work should not be restrained by injunction, provided it is honest work, & not a fraud on the public.—**PASICK-NIAK v. DOJACEK**, [1928] 2 D. L. R.

formance, the artist's name, appropriate headings for items or groups of items, & translations of unfamiliar foreign titles of songs or music. The preparation, arrangement, & editing of the actual programmes involved considerable time, skill, labour & expense, although the preliminary work of fixing the days & hours, engaging the artists, & choosing the items had all been done some time beforehand. Defts. having selected & copied numerous items from a set of advance programmes so published, pl'tis. sued for infringement of copyright:—*Held*: (1) whether there was or was not copyright in an individual programme, there was undoubtedly copyright in the compilation of the seven advance programmes; (2) although the programmes were subject to the approval or veto of the Postmaster-General, who had power to revoke the licence if they included improper matter, they were not a work "prepared or published by or under" his "direction or control" within 1911 Act, s. 18, & so long as pl'tis. were allowed to trade & publish them, the copyright belonged to pl'tis. & not to the Crown. (3) *Seem*: there may be copyright in an individual programme.—**BRITISH BROADCASTING CO. v. WIRELESS LEAGUE GAZETTE PUBLISHING CO.**, [1926] Ch. 433; 95 L. J. Ch. 272; 135 L. T. 93; 42 T. L. R. 370.

88. *Add. Annotations*:—*As to* (2) *Refd.* *Bowling v. Camp* (1922), 128 L. T. 342. *Generally*, *Mentd.* *Ingle v. Farrand*, [1927] A. C. 417; *Gardner v. Cone*, [1928] Ch. 955.

- 91a. *Slogan or catch-phrase*.—*SINANIDE v. LA MAISON KOSMEO*, No. 43b, *ante*.

- 92a. *Abridgment—May be new work.*—While there may be copyright in an abridgment of a larger work, in a case in which accurate knowledge, sound judgment, & literary skill in presenting in a condensed form the material of the original author are displayed, there can be no copyright in a book consisting

work in which there is no copyright, & strung together by connecting sentences, so as to make the extracts read as a consecutive narrative. There may, however, be copyright in notes appended to such a book, although there is no copyright in the text.—*MACMILLAN & CO. v. COOPER* (1923), L. R. 51 Ind. App. 109; 93 L. J. P. C. 113; 130 L. T. 675; 40 T. L. R. 186; 68 Sol. Jo. 925 D C

*Annotation*:—*Refd.* *Masson Sealey v. Embosotype Manufacturing Co* (1924), 41 R. P. C. 160.

After this case for "*Abridgment—May be new work.*"—*See* Nos. 422, 426, *post*," read "———."—*See, also*, Nos. 422, 426."

95. *Add. Annotation*:—*Mentd.* *Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co.*, [1924] A. C. 406.

97. *Add. Annotation*:—*Refd.* *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.

- 99a. — *Of descriptive character.*—(1) A song which relates the burning of a ship at sea, & the escape of those on board, describes their feelings in vehement language, & sometimes expresses them in the supposed words of the suffering parties, is dramatic, & therefore at all events within the meaning of the statute, though it be sung only by one person, sitting at a piano, giving effect to the verses by his delivery, but not assisted by scenery or appropriate dress.

(2) A room where the song is performed, & to which persons paying for tickets are admitted for the purpose of hearing it, is, for the time, a place of dramatic entertainment within the meaning of the statutes, though the room be ordinarily used for different purposes.—*RUSSELL v. SMITH* (1848), 12 Q. B. 217; 17 L. J. Q. B. 225; 11 L. T. O. S. 286; 12 Jur. 723; 116 E. R. 849.

*Annotations*.—*As to* (1) *Apld.* *Clark v. Bishop* (1872), 25 L. T. 908. *Distd.* *Fuller v. Blackpool Winter Gardens & Pavilion Co.*, [1895] 2 Q. B. 129. *Refd.* *Hutton v. Kean* (1859), 29 L. J. C. P. 20. *As to* (2) *Consd.* *Wall v. Taylor, Wall & Martin* (1882), 9 Q. B. D. 727. *Apld.* *Duck v. Bates* (1883), 12 Q. B. D. 79. *Generally*, *Refd.* *Lacy v. Rhys* (1861), 1 B. & S. 873; *Edwards v. Cotton* (1902), 19 T. L. R. 31.

- 118a. *Adaptation of old play—Original musical composition.*—1911 Act has extended the protection of copyright, & there is musical copyright in an arrangement of previous music which amounts to a new work.

Pl'tf. composed music for an opera which was an adaptation of an old play. Defts. prepared an orchestral score from the same source, records of which they offered to the trade. Pl'tf. complained that defts. were passing off these records as records of pl'tf.'s music:—*Held*: defts. had borrowed from pl'tf.'s work in a way which was more than mere coincidence, & had infringed pl'tf.'s copyright.—*AUSTIN v. COLUMBIA GRAPHOPHONE CO* (1923), 67 Sol. Jo. 790.

- Add. Annotation*:—*Refd.* *Austin v. Columbia Graphophone Co.* (1923), 67 Sol. Jo. 790.

120. *Add. Annotations*:—*Consd.* *Falcon v. Famous Players Film Co.*, [1926] 2 K. B. 474; *Thompson v. Warner Pictures*, [1929] 2 Ch. 308.

125. *Add. Annotation*:—*Refd.* *Rex Co. & Rex Research Corp. v. Murrehead & Comptroller General of Patents* (1926), 41 R. P. C. 38.

133. *Add. Annotation*:—*Apld.* *Sinanide v. La Maison Kosmeo*, (1928) 139 L. T. 365.

- 135a. — "Official Guide". *Protected.*—*REUTER'S TELEGRAM CO., LTD. v. INTERNATIONAL GUIDE SYNDICATE & INTERNATIONAL EXPRESS, LTD.* (1893), 37 Sol. Jo. 325.

137. *Add. Annotation*:—*As to* (2) *Folld.* *Ridgway Co. v. Hutchinson* (1923), 40 R. P. C. 335.

## Part III.—Publication.

151. *Add. Annotation*:—*Refd.* *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.

164. *Add. Annotation*:—*As to* (1) *Consd.* *Falcon v. Famous Players Film Co.*, [1926] 2 K. B. 474.

165. *Add. Annotation*:—*Folld.* *Falcon v. Famous Players Film Co.*, [1926] 2 K. B. 474.

- 180a. *What documentary evidence admissible—Letters—From author's agent to assignee of*

performing rights.]—**FALCON v. FAMOUS PLAYERS FILM CO., LTD.**, No. 16a, *ante*.

180b. — **Entry in register at Stationers' Hall — Entry incorrect.**]—**FALCON v. FAMOUS PLAYERS FILM CO., LTD.**, No. 16a, *ante*.

## Part IV.—Ownership.

190. *Add. Annotation* :—**Refd.** *Austin v. Columbia Graphophone Co.* (1923), 67 Sol. Jo. 790.

194. *Add. Annotations* :—**Consd.** *Macmillan v. Cooper* (1923), 93 L. J. P. C. 113; **Refd.** *British Broadcasting Co. v. Wireless League Gazette Publishing Co.*, [1926] Ch. 433.

196. *Add. Annotation* :—**Apld.** *Black v. Stacey*, [1929] 1 Ch. 177.

196a. — **By compiler of book of reference—From information received from biographees.**]—Where the compiler of a biographical book of reference receives from the biographees information to be used as material from which the book may be compiled, the persons supplying the information are not, for the purposes of 1911 Act, the authors of the paragraphs containing the information.—**A. & C. BLACK, LTD. v. CLAUDE STACEY, LTD.**, [1929] 1 Ch. 177; 98 L. J. Ch. 131; 140 L. T. 402; 44 T. L. R. 347.

197a. **Automatic writing by medium.**]—A woman journalist, engaged as a medium in psychical research, claimed copyright in a production written by her in automatic writing & alleged to be communicated by a spiritual agent. Deft. was present at some of the séances & alleged that the communication was addressed to him. He claimed that the copyright was in him, or that it was a joint copyright, or that there was no copyright in any one :—**Held** : pltf. was the sole owner of the copyright.—**CUMMINS v. BOND**, [1927] 1 Ch. 167; 76 L. J. Ch. 81; 136 L. T. 368; 70 Sol. Jo. 1003.

205. *Add. Annotation* :—**Refd.** *Sasha v. Stoensesco* (1929), 45 T. L. R. 350.

206. *Add. Annotation* :—**Refd.** *Sasha v. Stoensesco* 45 T. L. R. 350.

206a. — — — — —.]—**SASHA, LTD. v. STOENESCO** (1929), 45 T. L. R. 350.

210. *Add. Annotation* :—**Refd.** *Sasha v. Stoensesco* (1929), 45 T. L. R. 350.

211. *Add. Annotation* :—**Refd.** *Sasha v. Stoensesco* (1929), 45 T. L. R. 350.

226. *Add. Annotation* :—**Generally, Refd.** *Drabble v. Hycolite Manufacturing Co.* (1928) 44 T. L. R. 264.

229a. **Sketches for advertisement show cards—Ordered by & made for advertiser for valuable**

**consideration—Design not registered under Patents & Designs Act, 1907 (c. 29).**]—Pltfs. claimed to be the assignees from the author of two sketches for cut-out advertisement show cards representing a pierrot & pierrette respectively with large faces & diminutive bodies. These sketches were shown by the author to defts. with defts.' name upon them with the view of being used by them for advertisement purposes. At the suggestion of defts. the colour of the costumes of the figures was changed from mauve to green & yellow; the colour of the lettering of defts.' name was also changed from red to green & yellow. Defts. ordered a number of the sketches so altered at a price which gave the author a very considerable profit. Subsequently defts. obtained a number of the sketches from sources other than pltfs.' Neither pltfs. nor the author had registered the sketches as designs under the above Act. In an action by pltfs. for infringement of copyright :—**Held** : (1) under 1911 Act, s. 5 (1) (a), defts. were the first owners of the copyright in the original sketches, as the sketches were ordered by, & were made for, them for valuable consideration & were "engravings" within that sub-sect.; (2) the sketches were designs which were capable of being registered under Patents & Designs Act, 1907, & as they were used or intended to be used as models or patterns to be multiplied by an industrial process, 1911 Act, by reason of sect. 22, did not apply to them, & as the sketches had not been registered as designs under the Act of 1907 pltfs. could not succeed.—**CON PLANCK, LTD. v. KOLYNOS INCORPORATED**, [1925] 2 K. B. 804; 94 L. J. K. B. 325; 133 L. T. 170.

229b. **Advertisement—Prepared by advertisement agent.**]—Where an advertisement agent prepares an advertisement on instructions information given to him by the advertiser, the ct. will, in the absence of evidence to the contrary, draw the inference that it was the intention of both parties that the copyright in the advertisement should belong to the advertiser.—**HAROLD DRABBLE, LTD. v. HYCOLITE MANUFACTURING CO.** (1928), 44 T. L. R. 264; 72 Sol. Jo. 102.

235. *Add. Annotation* :—**Refd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.

**PART IV. SECT. 1, SUB-SECT. 2.—A.**  
a. *Contract of service—If hat amounts to.*]—B. was engaged as an "artist contributor" to a newspaper under agreement to supply each week certain drawings at a weekly remuneration,

to comply with all orders, directions & regulations of the co. to properly conduct himself, & to refrain from divulging the co.'s affairs or from accepting engagement in any undertaking in competition with the co. :—

**Held** : B. was employed under a "contract of service" within sect. 5 (1) (b) of the Sched. to Copyright Act, 1912.—**SUN NEWSPAPERS, LTD. v. WHIPPIE** (1928), 28 S. R. N. S. W. 473; 45 N. S. W. N. 126.—**AUS.**

## Part V.—Assignment, Licence and Royalties.

- 247.** *Add. Annotation*:—**Refd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
- 251.** *Add. Annotation*:—**Refd.** Messenger v. British Broadcasting Co. (1928), 97 L. J. K. B. 251.
- 254.** *Add. Annotation*:—**Refd.** Messenger v. British Broadcasting Co. (1928), 97 L. J. K. B. 251.
- 256.** *Add. Annotation*:—As to (1) **Consd.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.
- 268.** *Add. Annotation*:—**Refd.** Messenger v. British Broadcasting Co. (1928), 97 L. J. K. B. 251.
- 278.** *Add. Annotation*:—**Refd.** The Lord Strathcona, [1925] P. 143.
- 289.** *Add. Annotation*:—**Refd.** Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.
- 290a.** ——— **Rights of assignee as to mechanical performance.**]—Where the author of a musical work has made an assignment of his rights in the work before July 1, 1912, the exclusive right conferred upon him by 1911 Act, of making or authorising the making of contrivances by means of which the work may be mechanically performed, does not enable him to restrain the assignees from performing or authorising the performance of the work by means of such contrivances.—**THOMPSON v. WARNER BROTHERS PICTURES, LTD.**, [1929] 2 Ch. 308; 98 L. J. Ch. 427; 141 L. T. 411; 45 T. L. R. 553, C. A.
- 294.** *Add. Annotation*:—**Refd.** Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.
- 302.** *Add. Annotations*:—**Consd.** Messenger v. British Broadcasting Co. (1928), 97 L. J. K. B. 251. **Refd.** Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.
- 305.** *Add. Annotation*:—**Consd.** Messenger v. British Broadcasting Co. (1928), 97 L. J. K. B. 251.
- 305a.** **Grant of licence giving sole & exclusive right of representation—Assignment.**]—Appl't. was the composer of the music of a French opera, an English version of which was produced at a London theatre on the terms of an agreement of Mar. 23, 1905. By this agreement, made between the composer (the applt.) & the authors of the opera (thereinafter called "the licensors") of the one part & the proprietor of the theatre (hereinafter called "the licensee") of the other part, after reciting that the licensors had delivered the play to the licensee, with the score of the music, with a view to its production in London & elsewhere "on the terms hereinafter mentioned," the licensors granted the licensee the sole & exclusive right of representing the play in the U.K., America, & the British Colonies & Dominions. The agreement further provided that the copyright in the music of the play should remain the property of applt.; that on the failure of the licensee to produce the play in London within a certain time all rights of representation as aforesaid should revert to & become again the absolute property of the licensors; that the licensee should pay to the licensors as royalties certain percentages of the gross profits; that the licensee should keep proper books showing the gross receipts of the theatres at which the play should be represented, & that the licensors should be entitled to inspect the books, so as to enable them to verify the amount of the percentage payable to them. Resps., in pursuance of a permission granted to them by a theatrical co., to whom on the death of the licensee the benefit of the agreement had been assigned by his exors., gave a broadcast performance of the opera at their studio in London. In an by applt. against resps. for infringement of copyright:—**Held**: upon the construction of the agreement, (1) it operated as an absolute assignment of the performing rights of the opera within the prescribed area & was not a mere licence, & (2) it was not limited to representations on the stage of a theatre, & the action failed.—**MESSENGER v. BRITISH BROADCASTING CO.**, [1929] A. C. 151; 98 L. J. K. B. 189; 140 L. T. 227; 45 T. L. R. 50, H. L.
- 308.** *Add. Annotation*:—**Refd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
- 308a.** ——— ——— ———.]—Pltf. was the sole authoress of & owner of the copyright in a novel called "The Scarlet Pimpernel." In 1903 in collaboration with her husband, she composed a dramatic version of the novel. By an agreement dated June 10, 1903, pltf. & her husband, as authors, granted to defts. T., as theatrical managers, the right of production of the play during a then forthcoming tour, & at a first-class West End London theatre, for two years; & the agreement further provided that if the production took place within that period then "the entire rights for the United Kingdom, the United States of America, & the Dominion of Canada in the play became theirs inalienable, & they shall present it when & where they will within the countries aforesaid," paying to the authors 5 per cent. on the gross weekly takings. Defts. fulfilled the specified condition. In an action by pltf. claiming a declaration that she had the sole right to perform the work by means of cinematograph films:—**Held**: the entire performing rights in the play became vested in defts. by virtue of the agreement, & when 1911 Act came into operation the right so vested included the right to the cinematograph reproduction of the play; & therefore pltf.'s action failed.—**BARTSTOW v. TERRY**, [1924] 2 Ch. 316; 93 L. J. Ch. 607; 132 L. T. 53.
- Annotations*:—**Fold.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.
- 308b.** ——— ——— ———.]—**FALCON v. FAMOUS PLAYERS FILM CO., LTD.**, No. 16a, ante.
- 308c.** **Assignment of sole & exclusive right of representation—Includes right to broadcast.**]—**MESSENGER v. BRITISH BROADCASTING CO.**, No. 305a, ante.
- 325.** *Add. Annotations*:—Generally, **Refd.** Falcon

**PART V. SECT. 3.**

sm. Gramophone records- Owner of

copyright in work on one side unknown—  
Division of royalties due.) ALBERT v. GRAMOPHONE Co.,  
S. R. N. S., W 70, -AUS.

*v. Famous Players Film Co.*, [1926] 2 K. B. 474; *Thompson v. Warner Pictures*, [1929] 2 Ch. 308. **Mentd.** *Evans v. Hulton* (1924), 131 L. T. 534.

**325a.** ———— .]—The adhesive labels to be supplied by the owner of musical copyright, for the purpose of enabling the maker of contrivances for the mechanical performance of the musical work to pay the royalties, must be capable of adhering to the particular contrivance in respect of which the royalties are paid.—*BOOSEY & CO., LTD. v. GOODSON, GRAMOPHONE RECORD CO., LTD.* (1929), 46 T. L. R. 98; 73 Sol. Jo. 863.

**325b. Reproduction of two works in one volume.]—**Where a person reproduces in one volume, under the conditions set out in the proviso to 1911 Act, s. 3, two copyright works by the same author, the provision as to the payment of a royalty "of 10 per cent. on the price at which he publishes the work" is satisfied by the payment of a royalty of 10 per cent. on the price at which he publishes the volume, inasmuch as the word "work" includes "works" by Interpretation Act, 1889 (c. 63), s. 1 (1) (b).—*OSBOURNE v. DENT (J. M.) & SONS, LTD.*, [1925] Ch. 369; 94 L. J. Ch. 308; 133 L. T. 362; 41 T. L. R. 419; 69 Sol. Jo. 590.

## Part VI.—University Copyright.

**327. Add. Annotation :—Mentd.** *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.

## Part VII.—Crown Copyright.

**332a. Programmes prepared by British Broadcasting Company—Whether "published by or under direction or control" of Crown.]—***BRITISH BROADCASTING CO. v. WIRELESS LEAGUE GAZETTE PUBLISHING CO.*, No. 85a, *ante*.

**332b. Telephone directory—Copyright in Postmaster-General.]—***A. - G. v. COLMAN'S PUBLICITY SERVICE* (1928), *Times*, Mar. 16.

**343. ——— Writs, bonds and indentures—Grant void.]—***YARMOUTH EARL v. DARRELL* (1685), 3 Mod. Rep. 75; 87 E. R. 48.

**Annotation :—Mentd.** *Millar v. Taylor* (1769), 4 Burr. 2303.

## Part IX.—Letters.

**355. Add. Annotation :—Consd.** *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383.

**360. Add. Annotation :—Consd.** *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383.

**364. Add. Annotation :—Consd.** *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383.

**366. Add. Annotation :—Consd.** *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383.

**373. Add. Annotation :—Mentd.** *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383.

## Part XIa.—Application to British Possessions.

See 1911 Act, ss. 25 28 & cases, *infra*.

## Part XII.—Registration.

To the cross-references in this Part add as follows :—

**Effect of—Admissibility of entry in register—**

### PART XIa.

**sn. Meaning of self-governing dominion—Irish Free State.]—**The Irish Free State, though not one of the self-governing dominions named in the Copyright Act, 1911 (not then being in existence), became a self-governing dominion within the terms of that Act at latest on Mar. 31, 1922, the date of the passing of the Irish Free State

(Agreement) Act, 1922, & from that date the Copyright Act, 1911, by sect. 25 (1) thereof, ceased to apply to the Irish Free State. As the Act was not in force in the Irish Free State at the date of the coming into operation of the Constitution, Dec. 6, 1922, it was unaffected by Art. 73 of the Constitution which continued in force in the Irish Free State the laws in force at that date.—*PERFORMING RIGHT*

*SOCIETY, LTD. v. BRAY U. D. C.*, [1928] 1. R. 506.—**IR.**

### PART XII.

**1 i. ——— Copyright Act, 1921 (c. 24), s. 39 (2).]—***CANADIAN PERFORMING RIGHT SOCIETY v. FAMOUS PLAYERS CANADIAN CORPN.*, [1929] A. C. 456; 98 L. J. P. C. 70; 140 L. T. 657; 45 T. L. R. 232, P. C.—**CAN.**



## Part XIII.—Infringement.

**394a. Knowledge of infringement—Whether material.]—FALCON v. FAMOUS PLAYERS FILM CO., LTD., No. 16a, ante.**

After this case for “As to knowledge as a defence.”—See No. 47, *ante*; Nos. 506, 539, 540, 541, 557, *post*,” read “———.”—See, also, No. 47, *ante*; Nos. 506, 539–541, 557, *post*.”

**394b. Authorising publication of unpublished work—Sale of rights in manuscript.]—To sell the rights in relation to an MS. to another with the view of its production, it being, in fact, produced as a result of such a sale, is “to authorise” the printing & publication within 1911 Act, s. 1 (2), & it is not necessary that there shall be an actual sanction of the acts being done by the servant or agent of the person affecting to give the authority on his behalf.—EVANS v. HULTON (E.) & CO., LTD. (1924), 131 L. T. 534; 40 T. L. R. 489; 68 Sol. Jo. 616.**

*Annotation:—*Apprvd. Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.

See, also, Nos. 489a, 489b, 510, *post*.

**398a. — By manufacturer—Of letter written by rival manufacturer—Covering letter of criticism.]—BRITISH OXYGEN CO. v. LIQUID AIR, LTD., No. 43a, ante.**

**408a. —.]—SINANIDE v. LA MAISON KOSMEO, No. 43b, ante.**

**414. Add. Annotation:—**Refd. Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.

**420a. Book of selected essays—Second book of selected essays including essays in first book.]—Pltfs. were the publishers of, & owners of the copyright in, a book entitled “Hazlitt’s Selected Essays,” edited by G. S., which included thirteen essays & notes on the essays. Defts. published & sold a book entitled “Hazlitt’s Selected Essays, Edition Hollingworth” containing twenty of such essays, including the thirteen selected by G. S.:—*Held*: there was no infringement of copyright.—CAMBRIDGE UNIVERSITY PRESS v. UNIVERSITY TUTORIAL PRESS (1928), 45 R. P. C. 335.**

**426a. —.]—MACMILLAN & CO. v. COOPER, No. 92a, ante.**

**441. Add. Annotation:—**Refd. British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

## PART XIII. SECT. 1, SUB-SECT. 4.

**482 1. By performance—Permitting place of entertainment to be used.]—**Appl. corpn. let its town hall to W. for a series of four vocal concerts. Resp. informed applt. that a song in which resp. had the copyright would be sung without its authority in the town hall at concerts given by W. The song was sung at two concerts. Applt. did nothing beyond acknowledging the receipt of the information:—*Held*: no inference should be drawn that applt. “permitted” the song to be sung, & therefore there was no infringement of copyright within Copyright Act, 1911 (c. 46) s. 2 (3).—CORPORATION OF CITY OF ADELAIDE v. AUSTRALASIAN PERFORMING RIGHT ASSOCN., LTD. (1928), 40 C. L. R. 481; [1928] Argus L. R. 127.—AUS.

**486 1. By mechanical contrivance—Consent to manufacture.]—**Deft applt.

made certain gramophone records in New South Wales of a song in which pltf.’s copyright existed, & which, apart from Copyright Act, 1912, s. 19, would have been an infringement of pltf.’s copyright. Gramophone records of the song in which pltf.’s copyright existed had been made in England, & also in America with the consent of the owner of the copyright before the alleged infringement in New South Wales:—*Held*: proof of the consent given by pltf. resp. to the manufacture of contrivances in England was sufficient to satisfy the condition imposed by British Copyright Act, 1911, s. 19 (2) (a); Federal Copyright Act, 1912, brings into force in Australia British Copyright Act, 1911, & consequently, the making of contrivances, with the consent of the owners of the copyright, in any part of the area to which the Act applies, releases the work throughout the area of the

operation of the Act.—GRAMOPHONE CO., LTD. v. LEO FEIST INCORPORATED, [1928] V. L. R. 420; 49 A. L. J. 196; [1928] Argus L. R. 257.—AUS.

**488 1. By sale of records.]—**Gramophone records which infringe copyright are “infringing copies” of a work within Imperial Copyright Act, 1911, s. 35.—ALBERT v. HOFFMANN & CO., LTD. (1921), 22 S. R. N. S. W. 75; 39 N. S. W. N. 5.—AUS.

**so. By broadcasting.]—**Defts., who carried on, for reward, the business of broadcasters, included in their programmes, caused to be sung by vocalists in their studio & broadcast, certain musical works, of the copyright in which pltf. was the owner:—*Held*: defts. had infringed pltf.’s copyright.—CHAPPELL & CO., LTD. v. ASSOCIATED RADIO CO. OF AUSTRALIA, LTD., [1925] V. L. R. 350; 47 A. L. J. 12; 31 Argus L. R. 297.—AUS.

**442. Add. Annotation:—**Refd. Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

**451. Add. Annotation:—**Refd. Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.

**467. Add. Annotations:—**Mentd. Harrison v. Wythemoor Colliery Co., [1922] 2 K. B. 674; Nichol v. Fearby, Nichol v. Robinson, [1923] 1 K. B. 480; Lاپis v. Braithwaite (1924), 93 L. J. K. B. 1123.

**483. Add. Annotation:—**Refd. Harms (Incorporated) v. Embassy Club (1926), 43 T. L. R. 21.

**483a. — In public—What amounts to.]—**The question whether the performance of a musical work was a performance in public, so as to constitute an infringement of copyright, is a question of fact, & in determining that question, the quantum of damage likely to accrue & the number & class of persons having a right to be present at the performance are factors to be noted.—HARMS INCORPORATED & CHAPPELL & CO. v. MARTANS CLUB, [1927] 1 Ch. 526; *sub nom.* HARMS INCORPORATED v. EMBASSY CLUB, LTD., 96 L. J. Ch. 84; 136 L. T. 362; 43 T. L. R. 21; 70 Sol. Jo. 1219, C. A.

*Annotation:—*Refd. Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.

**483b. — Broadcasting.]—**To broadcast an opera by wireless telephony is to “perform” it “in public” within 1911 Act, s. 1 (2).—MESSENGER v. BRITISH BROADCASTING CO., [1927] 2 K. B. 543; 97 L. J. K. B. 65; 137 L. T. 810; 43 T. L. R. 818; *reversd.* without touching this point, [1928], 1 K. B. 660 C. A.; [1929] A. C. 151, H. L.

**484. Add. Annotation:—**Refd. Austin v. Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

**488a. —.]—**AUSTIN v. COLUMBIA GRAPHOPHONE CO., No. 118a, ante.

**489a. By authorising performance—Director of theatrical syndicate with power to prevent performance.]—**Pltfs. were the proprietors of the right of performing in public certain musical pieces, & deft. syndicate were producers of plays at a theatre, & the second deft. was their managing director, & had power to prevent the orchestra from playing any particular piece of music. The orchestra, which was paid by the syndicate, played the pieces in question. In an action for infringement:—*Held*: since on the facts the second deft. had not authorised or permitted the

performance within 1911 Act, s. 1 (2), pltf.s. were not entitled under sect. 2 (1) of the Act to an injunction or damages against him.—**PERFORMING RIGHT SOCIETY v. CIRYL THEATRICAL SYNDICATE**, [1924] 1 K. B. 1; 92 L. J. K. B. 811; 129 L. T. 653; 39 T. L. R. 460; 68 Sol. Jo. 83, C. A.

*Annotations*:—**Consd. Evans v. Hulton** (1924), 131 L. T. 534. **Refd. Performing Right Soc. v. Mitchell & Booker**, [1924] 1 K. B. 762; **Falcon v. Famous Players Film Co.** (1925), 42 T. L. R. 91.

**489b.** — **Effect of 1911 Act, s. 1 (2).**—The word “authorise” in the above sub-sect. is superfluous, & there is nothing in the sub-sect. which cuts down the liability under sect. 2 (1) of the Act, in respect of an infringement of copyright.

Defts., who were the occupiers of a dancing hall, engaged on the terms of a written agreement a band to provide music therein. The agreement provided that the band should not, in the music played, infringe any copyright, & should be liable for damages & costs caused by any infringement. There was also a notice posted in the hall that “only such music as may be played without fee or licence is allowed to be played in this hall.” On one occasion the band played certain music, the copyright of which belonged to pltf.s., without pltf.s.’ licence; but defts. did not know, & had no reasonable ground for suspecting, that this infringement would take place. In an action by pltf.s. for damages & an injunction:—**Held**: on its true construction, the agreement between defts. & the band constituted the latter the servant of defts., & not independent contractors; the band on the occasion in question were acting in the course of their employment; defts. were liable under 1911 Act, s. 2, for the infringement of copyright; & pltf.s. were entitled to damages & an injunction.—**PERFORMING RIGHT SOCIETY, LTD. v. MITCHELL & BOOKER (PALAIS DE DANSE), LTD.**, [1924] 1 K. B. 762; 93 L. J. K. B. 306; 131 L. T. 243; 40 T. L. R. 308; 68 Sol. Jo. 539.

*Annotations*:—**Consd. Evans v. Hulton** (1924), 131 L. T. 534. **Refd. Falcon v. Famous Players Film Co.** (1925), 42 T. L. R. 91.

*See, also*, Nos. 394a, 510, 510a.

**502. Add. Annotation**:—**Refd. Harms (Incorporated) v. Embassy Club** (1926), 43 T. L. R. 21.

**506a.** — — — **Room to which public admitted on payment**—**Ordinarily used for other purposes.**—**RUSSELL v. SMITH**, No. 99a, *ante*.

**507. Add. Annotations**:—**Consd. Harms (Incorporated) v. Embassy Club** (1926), 43 T. L. R. 21. **Refd. Messenger v. British Broadcasting Co.**, [1927] 2 K. B. 543.

### PART XIII. SECT. 2.

**531 ii.** — **Of performing rights.**—An assoc. was the registered owner of the performing rights of two pieces of music, & pltf. in a suit to restrain

def. from permitting the use of his hall for infringing copyrights. Another pltf. was the assignor of those rights, but there was no evidence that he was the legal owner of the remaining part of the copyright:—**Held**: the assoc.,

as the legal owner of the performing rights, could maintain the suit.—**AUSTRALIAN PERFORMING RIGHT ASSOC. & J. LEIST, INCORPORATED v. TURNER & SON** (1927), 27 S. R. N. S. W. 344; 44 N. S. W. W. N. 76.—**AUS.**

**509. Add. Annotation**:—**Consd. Falcon v. Famous Players Film Co.**, [1926] 2 K. B. 474.

**510. Add. Annotations**:—**Consd. Performing Right Soc. v. Mitchell & Booker**, [1924] 1 K. B. 762; **Falcon v. Famous Players Film Co.** (1925), 42 T. L. R. 91.

**510a.** — — — **FALCON v. FAMOUS PLAYERS FILM CO., LTD.**, No. 16a, *ante*.

*See, also*, Nos. 394a, 489a, 489b, *ante*.

**513a.** — — — — — **Pltf.s. were the publishers of a magazine, published in America at frequent intervals, called “Adventure.” Defts. proposed to publish a monthly magazine called “Hutchinson’s Adventure Story Magazine.” In an action by pltf.s. to restrain such publication:—Held**: where any one adopted a descriptive word, as pltf.s. had done, they must not object if other persons made use of it, as descriptive of similar articles; pltf.s. had no monopoly of the word “Adventure,” & on the evidence no real confusion existed between pltf.s.’ & defts.’ periodicals.—**RIDGWAY CO. v. HUTCHINSON** (1923), 40 R. P. C. 335.

**525. Add. Annotation**:—**Consd. Performing Right Soc. v. London Theatre of Varieties**, [1924] A. C. 1.

**531. Add. Annotations**:—**As to (1) Consd. Falcon v. Famous Players Film Co.** (1925), 42 T. L. R. 91. **Refd. Performing Right Soc. v. Mitchell & Booker**, [1924] 1 K. B. 762.

**536. Add. Annotation**:—**Refd. Osbourne v. Dent**, [1925] Ch. 369.

**546a.** — **Joint tortfeasor.**—Where printers know that what they are printing is a piracy, & the purposes for which it is intended to use the pirated copies when delivered, they are tortfeasors, jointly with the persons for whom such copies are printed, & are jointly liable in damages to the persons whose copyright is infringed.—**LAMB v. EVANS**, [1895] W. N. 156.

**548. Add. Annotations**:—**As to (2) Refd. Haynes v. Aldridge Colliery Co.** (1923), 130 L. T. 282; **Hughes v. Satchell** (1925), 134 L. T. 93.

**553. Add. Annotation**:—**Consd. Performing Right Soc. v. Ciryl Theatrical Syndicate**, [1924] 1 K. B. 1.

**555. Add. Annotation**:—**Consd. Performing Right Soc. v. Ciryl Theatrical Syndicate**, [1924] 1 K. B. 1.

**560a.** — **Printer & person ordering pirated copies.**—**LAMB v. EVANS**, [1895] W. N. 156.

## Part XIV.—Remedies.

601. *Add. Annotation*:—**Consd.** *Macmillan v. Cooper* (1923), 23 L. J. P. C. 113.
- 635a. ———.]—**MACMILLAN & CO. v. COOPER**, No. 92a, *ante*.
638. *Add. Annotation*:—**Consd.** *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
642. *Add. Annotation*:—**Consd.** *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
644. *Add. Citations*:—*Affd.*, [1924] A. C. 1; 93 L. J. K. B. 33; 130 L. T. 450; 40 T. L. R. 52; 68 Sol. Jo. 99, H. L.  
*Add. Annotations*:—**Refd.** *Imperial Tobacco Co. of India v. Bonnan*, [1924] A. C. 755; *Drabble v. Hycolite Manufacturing Co.* (1928), 44 T. L. R. 264.
653. *Add. Annotation*:—**Mentd.** *Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.
- 657a. ———.]—**ASTRA-NATIONAL PRODUCTIONS, LTD. v. NEO-ART PRODUCTIONS, LTD.**, [1928] W. N. 218.
693. *Add. Annotation*:—*As to* (1) **Consd.** *Preston v. Raphael Tuck*, [1926] Ch. 667.
- 694a. ——— **Sale must be of work represented to be unaltered.**]—Pltf., the author of two original

drawings, sold the copyright to defts. Defts. afterwards published & sold two drawings, which were made by alterations of pltf.'s original drawings, but which had titles different from the titles of pltf.'s drawings. Defts. did not in any way expressly represent that the drawings made by such alterations were pltf.'s. Pltf. brought against defts. a passing-off action in which she alleged that her work had a distinctive character & could be recognised without bearing her name, & she claimed an injunction & penalties under sect. 7 of the above Act:—*Held*: to satisfy the sect. there must be a selling or publishing in conditions under which, to the knowledge of the seller or publisher, there was made either expressly or by necessary implication a representation that the author was the author of the work in the form in which it was sold or published, & since, although there was in many of pltf.'s productions a measure of distinctiveness, the mere seeing of defts.' productions did not necessarily suggest the inference that they were the unaltered work of pltf., the action failed.—**PRESTON v. RAPHAEL TUCK & SONS**, [1926] Ch. 667; 95 L. J. Ch. 382; 135 L. T. 93; 42 T. L. R. 440.

**PART XIV. SECT. 2, SUB-SECT. 1.**

570 ii. ———.]—A person, whose copyright in a book has been infringed, is entitled to demand delivery of all the copies of the offending work in the possession of the person who has infringed the copyright, & payment of the full price received by such person

for all copies of the work which have been sold.—**BIRBY v. DONALDSON**, [1926] App. D. 337.—**S. AF.**

**PART XIV. SECT. 3.**

**sp.** *Under Copyright Act, R. S. C.*, 1906 (c. 70).]—Pltf. seeking to recover penalties under sect. 39 of the above

Act cannot succeed if the act is satisfied that, in committing the act or the acts charged as an infringement of copyright, deft. did not act "with intent to evade the law".—**NATIONAL BREWERIES v. PARADIS**, [1925] 3 D. L. R. 875; [1925] S. C. R. 666; *affd.*, [1924] 1 D. L. R. 1082; 30 R. L. N. S. 429.—**CAN.**

## CORONERS.

## Part IV.—Remuneration and Compensation payable to Coroners.

45. *Add. Annotation* :—Generally, *Mentd. Everett v. Griffiths*, [1924] 1 K. B. 941.

## Part VII.—Inquests.

147. *Add. Annotation* :—As to (2) *Refd. R. v. Haslewood, Ex p. Margerison*, [1926] 2 K. B. 468.

156a. —.]—The failure by a coroner at an inquest to view the body makes the inquest a nullity, & is not merely an irregularity giving the ct. a discretion as to whether it will order another inquest, & since on such failure there has been no inquest, the ct. will quash the proceedings before the coroner & order an inquest to be held.—*R. v. Haslewood, Ex p. Margerison*, [1926] 2 K. B. 468; 95 L. J. K. B. 975; 136 L. T. 276; 90 J. P. 158; 42 T. L. R. 746; 70 Sol. Jo. 906; 24 L. G. R. 505, D. C.

237. *Add. Annotation* :—Generally, *Refd. R. v. Haslewood, Ex p. Margerison*, [1926] 2 K. B. 468.

- 308a. *Coroner present during jury's deliberations.*

—At the conclusion of the evidence in an inquest the jury retired, & after some time sent for the coroner, who went into the jury room & remained with the jury in private for a quarter of an hour :—*Held* : in going into the jury room during the deliberations of the jury, the coroner was guilty of misconduct, & the inquisition must be quashed & a fresh inquest held before the coroner for an adjoining district.—*R. v. Wood, Ex p. Anderson*, [1928] 1 K. B. 302; 97 L. J. K. B. 113; 138 L. T. 224; 91 J. P. 185; 44 T. L. R. 23; 25 L. G. R. 501; 28 Cox, C. C. 446, D. C. *Annotation* :—*Refd. Hobbs v. Tinning, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.

408. *Add. Annotation* :—*Consd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.

409. *Add. Annotation* :—*Mentd. Baker v. Dalgleish Steam Shipping Co.*, [1922] 1 K. B. 361.

## PART V. SECT. 1, SUB-SECT. 3.—A.

52 iv. — *Writ of fieri facias*.]  
—If the sheriff of a jurisdiction is a deflt., a writ of *fi. fa* against his goods may be directed to & executed by the coroner. The right to adopt this practice is not affected by Sheriff's Act ss. 8, 9, or by the fact that there is a deputy sheriff appointed by the Crown.—*Williams v. Richards*, [1923]

1 W. W. R. 1021; 32 B. C. R. 58.—CAN.

## PART VII. SECT. 4, SUB-SECT. 6.

sa. *Refusal of witness to testify*—*Power of coroner to imprison for contempt*.—A coroner has power to refuse to testify when present at an inquisition held by him, even though they were not duly summoned or in any

way ordered to appear, but were brought *volens volens* before him by the police when in their custody after being arrested without warrant.—*R. v. Little, R. v. Miller (Man)*, [1926] 2 W. W. R. 762; 46 Can. Crim. Cas. 136.—CAN.

## PART VII. SECT. 5, SUB-SECT. 5.—

A. (b) v.  
n. Read now "308a i."

# CORPORATIONS.

## Part I.—Nature and Attributes.

17. *Add. Annotation* :—*Generally*, *Mentd.* Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.
41. *Add. Annotations* :—*Refd.* Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517; Metropolitan Meat Industry Board *v.* Sheedy, [1927] A. C. 899.
79. *Add. Annotations* :—*Refd.* Everett *v.* Griffiths, [1924] 1 K. B. 941; Aylott *v.* West Ham Corpn., *Sisson v. West Ham Corpn.* (1926), 90 J. P. 99.
- 133a. ————]—A legacy was given to the Provost & Fellows of Queen's College. The proper name of the corpn. was "The Provost & Scholars":—*Held*: the Provost & Scholars were entitled.—*QUEEN'S COLLEGE*, OXFORD *v.* SUTTON (1842), 12 Sim. 521; 11 L. J. Ch. 198; 6 Jur. 906; 59 E. R. 1233.
176. *Add. Annotations* :—*Distd.* Houghton *v.* Notthard, Lowe & Wills, [1927] 1 K. B. 246. *Refd.* Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.
179. *Add. Annotation* :—*Consd.* Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.
181. *Add. Annotation* :—*Apld.* Kreditbank Cassel G. M. B. H. *v.* Schenkers, [1927] 1 K. B. 826.
190. *Add. Annotation* :—*Refd.* Stoke Newington B. C. *v.* Richards (1929), 45 T. L. R. 650.

## Part II.—Creation of Corporations.

264. *Add. Annotation* :—*Mentd.* Dewhurst *v.* Salford Grdns., [1925] Ch 655
265. *Add. Annotation* :—*Refd.* Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.
315. *Add. Annotations* :—*Mentd.* The Carlgarth, The Otarama, [1927] P. 93; Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

## Part III.—The Members.

326. *Add. Annotations* :—*Refd.* Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4. *Mentd.* Everett *v.* Griffiths (No. 3), [1923] 1 K. B. 138.
- 326a. *S.P.*—BROWNSCOMBE *v.* JOHNSON (1898), 78 L. T. 265; 62 J. P. 326; 19 Cox. C. C. 25; 14 T. L. R. 328 D. C.
327. *Add. Annotation* :—*Refd.* Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.
340. *Add. Annotations* :—*Folld.* Dodd *v.* Amalgamated Marine Workers' Union (No. 2) (1923), 93 L. J. Ch. 100. *Consd.* Dodd *v.* Amalgamated Marine Workers' Union (1923), 129 L. T. 401.
- 340a. ————]—Trade Union Act, 1871 (c. 31), s. 14, & sched. 1 (6), gives every member of a trade union a right to inspect the books of the union, "under proper conditions." That right entitles a member to inspect them by a skilled accountant, but the accountant should not be objectionable to the union on personal grounds, & should undertake not to disclose the information obtained by him except to his client. The fact that the trade union officials believe that the member desiring to inspect the books by an accountant is acting *malâ fide*, & for purposes hostile to the union, does not give them an implied discretion to refuse the inspection. The *onus* of establishing that the right of inspection should not be exercised lies on the trade union.—*DODD v. AMALGAMATED MARINE WORKERS' UNION*, [1924] 1 Ch. 116; 93 L. J. Ch. 100; 129 L. T. 819; 40 T. L. R. 44; 68 Sol. Jo. 117, C. A.
- Trade unions generally, *see* TRADE & TRADE UNIONS.
- 345a. ————]—*DODD v. AMALGAMATED MARINE WORKERS' UNION*, No. 340a. *ante*.

PART I. SECT. 2, SUB-SECT. 2.  
*sa. Miner's union.*]—CENTRE STAR MINING CO., LTD. *v.* ROSSLAND MINERS' UNION (1902), 9 B. C. R. 190.—CAN.

PART I. SECT. 2, SUB-SECT. 3.  
*sd. Sheriff—Of Bombay.*]—*Held*: not a corpn. sole.—BOMBAY (SHERIFF) *v.* HUKMOJI MOTAJI & Co. (1926), 1 L. R.

51 Bom. 749.—IND.

PART I. SECT. 4, SUB-SECT. 5.—C.  
*sf. Conviction*]—A corpn. can be convicted of an offence only under the exact name which it legally possesses.—*R. v. PELISSIERS, LTD.*, [1926] 1 D. L. R. 574; [1926] 1 W. W. R. 189; 45 Can. Crim. Cas.

161; 35 Man. L. R. 404.—CAN.

PART II. SECT. 3, SUB-SECT. 1.  
*sg. Commissions created by municipalities.*—Under New Brunswick Electric Power Act, 1920.]—*ST. JOHN POWER COMMISSION v. NEW SYSTEM LAUNDRY, LTD.* (N. B.), [1928] 2 D. L. R. 661.—CAN.

## Part IV.—Officers.

416. *Add. Annotation* :—**Refd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.
421. *Add. Annotation* :—**Refd.** *Everett v. Griffiths*, [1924] 1 K. B. 941.
474. *Add. Annotation* :—**Refd.** *Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.
512. *Add. Annotations* :—**Refd.** *Short v. Poole Corpn.* (1925), 42 T. L. R. 107; *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.

## Part V.—Election to Corporate Office.

583. For “How tested—Not by mandamus directed against person elected.” read “How tested —Not by quo warranto directed against person elected.”

## Part VI.—Regulations and Bye-laws.

631. *Add. Annotations* :—**Consd.** *A.-G. v. Denby*, [1925] Ch. 596; *Roberts v. Hopwood*, [1925] A. C. 578. **Apld.** *Everton v. Walker* (1927), 137 L. T. 594. **Refd.** *Owner v. King* (1922), 128 L. T. 307; *Mills v. L. C. C.* (1924), 41 T. L. R. 122; *R. v. Roberts, Ex p. Scurr*, [1924] 2 K. B. 695; *Short v. Poole Corpn.* (1925), 42 T. L. R. 107. **Mentd.** *United Bill Posting Co. v. Somerset County Council* (1926), 95 L. J. K. B. 899.
652. *Add. Annotation* :—**Refd.** *Everton v. Walker* (1927), 137 L. T. 594.
- 700a. ————.]—**WOOLLEY v. IDLE** (1766), 4 Burr. 1951; 98 E. R. 16.
- Annotations* :—**Apld.** *York Corpn. v. Welbank* (1821), 4 B. & Ald. 438. **Refd.** *Graves v. Colby* (1838), 9 Ad. & El. 356.
- 707a. ————.]—**SHAW v. POPE** (1831), 2 B. & Ad. 465; 109 E. R. 1215.
- 736a. ————.]—**CLARK'S CASE**, No. 751, *post*.
- 770a. *Presumption of—From non-observance.*—**A.-G. v. MIDDLETON** (1751), 2 Ves. Sen. 327; 28 E. R. 210, L. C.
- Annotations* :—**Refd.** *A.-G. v. Foundling Hospital* (1793), 4 Bro. C. C. 165; *A.-G. v. Smythies* (1836), 2 My. & Cr. 135.

## Part VII.—Meetings.

794. *Add. Annotation* :—**Refd.** *Neuschild v. British Equitorial Oil Co.*, [1925] Ch. 346.
820. *Add. Annotation* :—**Mentd.** *Leyton U. D. C. v. Wilkinson* (1926), 43 T. L. R. 35.

## PART IV. SECT. 2, SUB-SECT. 2.

**sh.** *Proceeding by corporation against former member—Whether maintainable.*—Two of defts. & another were duly elected school trustees in Oct. 1873. In Dec. defts., without the concurrence of the third trustee, removed the school house from its then site. In June, 1874, the comrs. of schools dismissed the three trustees, & appointed three others. The newly appointed trustees brought an action of trespass against the two trustees who had removed the school house, & their servants, for such removal.—**Held**: no action would lie at their suit against defts. for acts committed during their term of office.—**SCHOOL SECTION 16 TRUSTEES v. CAMERON** (1877), 11 N. S. R. (2 R. & C.) 328.—**CAN.**

## PART VI. SECT. 3, SUB-SECT. 2.—A.

631 i. *Test of reasonableness—General rule.*—Every bye-law, whether made under a power to prohibit or a power to restrain or a power to regulate, must contain adequate information as to the duties of those who are to obey it,

& such information must appear from the bye-law itself.—**MILLER v. CITY OF BRIGHTON**, [1928] V. L. R. 375; 49 A. L. T. 249; [1928] *Argus* L. R. 209.—**AUS.**

## PART VI. SECT. 3, SUB-SECT. 4.

713 i. *Whether bye-law void in toto.*—A municipal bye-law may be good in part & bad in part.—**BROWN TRANSFER CO. v. TOWNSHEND** (Sask.), [1927] 1 W. W. R. 916.—**CAN.**

## PART VI. SECT. 6, SUB-SECT. 1.

**sk.** *Who may sue.*—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.-G. may sue in respect of its breach.—**A.-G. & LUMLEY v. T. S. GILL & SON PTY., LTD.**, [1927] V. L. R. 22; [1927] *Argus* L. R. 223.—**AUS.**

## PART VI. SECT. 7.

**sl.** *Bye-laws made under statute—Not abrogated by repeal of statute.*—

A bye-law passed by the police comrs. of a city in 1915, admittedly valid when passed, provided that it should not be lawful for any person to use any vehicle in the “jitney bus service” for gain without being licensed so to do. S. had a “jitney” licence, but it expired on June 30, 1928. He continued to operate without a licence, & was convicted of a breach of the bye-law. The comrs. had ceased to issue jitney licences, because of an Ontario Statute passed in 1927, validating an agreement between the city corpn. & a street railway co., which provided that the corpn. should not issue any new jitney licences, & that existing licences should not continue in force after June 30, 1928.—**Held**: the validity of the bye-law was not destroyed.—**Re SHAWRA**, [1929] 1 D. L. R. 321; 50 Can. Crim. Cas. 267; 63 O. L. R. 158.—**CAN.**

## PART VII. SECT. 3, SUB-SECT. 1.—D.

836 i. *Must be exercised in accordance with constitution.*—**KAIK v. BORASKI** (Sask.), [1926] 3 D. L. R. 916.—**CAN.**

## Part VIII.—Corporation Books and Documents.

865. *Add. Citations*:—*sub nom.* R. v. SANKEY, 5 Ad. & El. 423; 6 Nev. & M. K. B. 839; 5 L. J. K. B. 255; 111 E. R. 1226.

*Add. Annotation*:—*Distd.* Newington L. B. v. Eldridge (1879), 12 Ch. D. 349.

866. *Add. Citations*:—*sub nom.* R. v. RYE (MAYOR), 2 Keny. 485; 96 E. R. 1253.

## Part IX.—Powers and Liabilities Generally.

880. *Add. Annotations*:—*Apld.* The Devon (1923), 130 L. T. 448. *Consd.* Dec Conservancy Board v. McConnell, [1928] 2 K. B. 159. *Refd.* Sutcliffe v. Clients Investment Co., [1924] 2 K. B. 746; British Petroleum Co. v. A.-G. for Ceylon, [1926] A. C. 147; Silverman v. Imperial London Hotels (1927), 137 L. T. 57.

891. *Add. Annotation*:—*Mentd.* R. v. Cory, [1927] 1 K. B. 810.

902. *Add. Annotation*:—*As to* (2) *Refd.* Suttle v. Cresswell (1925), 42 T. L. R. 75.

903a. — *Settled Land Act, 1925* (c. 18), ss. 19 (1), 20 (1).—The above sub-sects. are applicable to a corp., because the words "person of full age" are used throughout the new legislation in contrast with the word "infant," & merely mean "not being an infant," so that they are appropriate to a corp.—*Re* CARNARVON'S (EARL) CHESTERFIELD SETTLED ESTATES, *Re* CARNARVON'S (EARL) HIGHCLERE SETTLED ESTATES, [1927] 1 Ch. 138; 96 L. J. Ch. 49; 136 L. T. 241; 70 Sol. Jo. 977.

*Annotations*:—*Refd.* *Re* Alington & L. C. G.'s Contract, [1927] 2 Ch. 253; *Re* Ogile's S. E., [1927] 1 Ch. 229. *Re* Podley, Wallace v. Wallace, [1927] 2 Ch. 166.

907a. — *Local tramway Act.*—A local tramway Act authorised the Board of Trade to make bye-laws providing that engines should be brought to a stand at cross streets, & a penalty was imposed on any person offending:—*Held*: the word "person" included a co., & there was no contrary intention to that effect shown in the other words of the sect.—*St. HELENS TRAMWAYS Co. v. WOOD* (1891), 56 J. P. 71, D. C.

910. *Add. Annotation*:—*Consd.* *Re* Gibbs & Houlder's Lease, *Houlder v. Gibbs*, [1925] Ch. 575.

911. *Add. Annotation*:—*Refd.* Curtis Moffat v. Wheeler, [1929] 2 Ch. 224.

922. *Add. Annotations*:—*Refd.* Deuchar v. Gas Light & Coke Co., [1924] 2 Ch. 426; A.-G. v. Leeds Corp., [1929] 2 Ch. 291.

928. *Add. Annotation*:—*Consd.* Garrard v. James, [1925] Ch. 616.

932. *Add. Annotations*:—*Apld.* Deuchar v. Gas Light & Coke Co., [1925] A. C. 691; A.-G. v. Leeds Corp., [1929] 2 Ch. 291. *Mentd.* A.-G. v. Westminster City Council, [1921] 2 Ch. 416.

935. *Add. Annotation*:—*As to* (2) *Refd.* Morris v. Harris, [1927] A. C. 252.

935a. — — — — —. — *Pltfs.* were by statute entrusted with the control & management of part of the navigations of the Rivers Ouse Foss, in Yorkshire, with power to charge such tolls, within limits, as the corp. deemed necessary to carry on the two navigations in which the public had an interest. In 1888 the corp. entered into two agreements with the firm of H. L. & Sons. By the Ouse agreement the corp. covenanted to allow the firm, their successors & assigns, the right to carry cargoes on the Ouse in consideration of the annual payment of £600 in place of the authorised dues & charges, with a proviso that there should each year be refunded to the firm, their successors & assign, the difference between the £600 & the amount ordinarily charged on the traffic actually carried. By the Foss agreement the firm covenanted to pay the corp. £200 *per annum* for twenty years as a composition for the ordinary tolls, & the corp. covenanted to allow the firm, their successors & assigns, the free use of the Foss navigation, on payment of £200 *per annum* in lieu of tolls, for such further term or terms as the firm, their successors or assigns, might from time to time desire. Defts. were the successors of H. L. & Sons:—*Held*: the agreements were *ultra vires*, because during their currency, which depended on the wishes of defts., the corp., no matter what emergency might arise, had disabled itself from exercising its statutory powers to increase the tolls so far as might be necessary; & being *ultra vires* at the date of their execution, the agreements did not become *intra vires* by reason of estoppel, lapse of time, ratification, acquiescence or delay.—*YORK CORPN. v. LEETHAM (HENRY) & SONS, LTD.*, [1924] 1 Ch. 557. 91

## PART VIII. SECT. 3.

878 i. *By strangers*—*Ratepayer*—*In Ontario*.—*JOURNAL PRINTING Co. v. McVIETY* (1915), 33 O. L. R. 166; 7 O. W. N. 633, 796; 21 D. L. R. 81.—CAN.

## PART IX. SECT. 2, SUB-SECT. 1.

r i. — *British Columbia Government Liquor Act, ss. 26, 46*—*Does not include Army & Navy Veterans in Canada (Victoria Unit)*—*Branch association established by corporation*.—*R. v. VICTORIA UNIT (ARMY & NAVY*

*VETERANS)*, [1921] 3 W. W. R. 594; 66 D. L. R. 512; 36 Can. Crim. Cas. 285; 30 B. C. R. 248.—CAN.

r ii. — *Liquor Act, 1912, s. 156*—*Includes corporation*.—*SMITH v. TRO-CADERO DANSANT, LTD.*, [1927] S. R. O. 39; 21 Q. J. P. 6.—AUS.

## PART IX. SECT. 5, SUB-SECT. 2.—A.

d i. — *Power to take mortgage*.—An insurance co. was, by its charter, authorised to hold real estate for the immediate accommodation of the co., "or such as shall have been *bond fide*

mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts"; & having sold & conveyed a vessel, took from their vendee mtdges. on real estate for securing the purchase money:—*Held*: a transaction within the charter, the price of the vessel being a debt existing previously to the execution of the mtge.—*WESTERN ASSURANCE Co. v. TAYLOR* (1862), 9 Gr. 471.—CAN.

L. J. Ch. 159; 131 L. T. 127; 40 T. L. R. 371; 68 Sol. Jo. 459; 22 L. G. R. 371.

*Annotations*:—**Dtd.** Birkdale District Electric Supply Co. v. Southport Corp., [1926] A. C. 355. **Consd.** Brown v. Dagenham U. D. C., [1929] 1 K. B. 737.

948. *Add. Annotation*:—**Consd.** Deuchar v. Gas Light & Coke Co., [1924] 2 Ch. 426.

952. *Add. Annotation*:—**Consd.** Deuchar v. Gas Light & Coke Co., [1924] 2 Ch. 426.

955. *Add. Annotations*:—**Consd.** Deuchar v. Gas Light & Coke Co., [1925] A. C. 691. **Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

962. *Add. Annotation*:—**Apld.** A.-G. v. London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

964. *Add. Annotation*:—**Refd.** Birkdale District Electric Supply Co. v. Southport Corp., [1926] A. C. 355.

972. *Add. Annotation*:—**Consd.** A.-G. v. Leeds Corp., [1929] 2 Ch. 291.

974. *Add. Annotation*:—**Refd.** A.-G. v. Leeds Corp., [1929] 2 Ch. 291.

986a. **Expenses of running omnibuses—Power to run omnibuses on authorised routes.—Omnibuses run to connect up authorised routes.**—The corp. of L., a municipal corp., had by virtue of their special Act power to maintain & run a service of omnibuses within the city or outside the city boundaries. In the latter case, their special powers only extended to the running of omnibuses along the route of any tramways which the corp. should be authorised to construct. There were in fact two such authorised tramway routes. The expenditure in connection with the running of these authorised tramways could, under the corp.'s statutory powers, be borne out of the city fund. The corp. began an omnibus service in pursuance of their statutory powers, but it appeared that for a very small portion of the omnibus route, namely, for a distance of forty yards, the service of omnibuses ran outside the boundaries of the city, joining up with the tramway routes slightly further on, & that the expenses in connection therewith were borne by the city fund. An action was commenced by a ratepayer for a declaration (*inter alia*) that the running of these omnibuses over this particular stretch, & payment of the expenses in connection therewith out of the city fund, was *ultra vires* the statutory powers of the corp., & ought to be prohibited. The question at issue was whether, so far as the forty yards stretch was concerned, the corp. were entitled to spend moneys out of the city fund in connecting an authorised route of omnibuses outside the city with a route of omnibuses within the city boundaries. Under their statutory powers the corp.'s service of omnibuses along the route of a tramway outside the city which they were authorised to construct was a part of their tramways undertaking, & they were also authorised to apply the city fund in discharging the expenses in connection with the tramways undertaking:—

*Held*: the expense of running omnibuses over the forty yards so as to connect the two routes was an expense fairly incidental to the tramways undertaking, & that it was not *ultra vires* the corp.'s statutory powers to expend any part of the city fund in working & running the omnibuses over the forty yards which connected the two services, & which were branches of the corp.'s tramways undertaking.—A.-G. v. LEEDS CORPN., [1929] 2 Ch. 291; 141 L. T. 658; 93 J. P. 153; 27 L. G. R. 351.

991a. **Purchase of land for street widening & pleasure garden—Subsequent use of pleasure garden for street widening.**—A local authority bought land in 1896 for the purposes of: (a) street widening; (b) making new streets; (c) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution:—*Held*: as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—A.-G. v. SUNDERLAND CORPN., [1929] 2 Ch. 436; 45 T. L. R. 618; 93 J. P. Jo. 480; *affd.*, 46 T. L. R. 10, C. A.

994. *Add. Annotations*:—**Consd.** Deuchar v. Gas Light & Coke Co., [1924] 2 Ch. 426. **Refd.** A.-G. v. Westminster City Council, [1924] 2 Ch. 416. **Mentd.** A.-G. v. Denby, [1925] Ch. 596.

996. *Add. Annotation*:—**Apld.** A.-G. v. County of London Electric Supply Co., [1926] Ch. 512.

997. *Add. Annotation*:—*As to* (1) **Apld.** A.-G. v. County of London Electric Supply Co., [1926] Ch. 542.

997a. **Power to erect information bureau on promenade—Discretionary powers to erect "conveniences" for persons using promenade for pleasure or health.**—A.-G. v. BLACKPOOL CORPN. (1928), 92 J. P. 50; 26 L. G. R. 160, C. A.

998. *Add. Annotations*:—**Apld.** Deuchar v. Gas Light & Coke Co., [1925] A. C. 691; A.-G. v. Leeds Corp., [1929] 2 Ch. 291. **Refd.** A.-G. v. Westminster City Council, [1924] 2 Ch. 416.

1002. *Add. Annotations*:—*As to* (2) **Refd.** Deuchar v. Gas Light & Coke Co., [1925] 5 A. C. 691. **Generally, Mentd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

1006. *Add. Annotations*:—**Dtd.** Houghton v.

PART IX. SECT. 5, SUB-SET. 2.—  
D. (b).

**sn.** *Power to change rates charged for public utilities.*—*Exp.* p. MONCTON TRAMWAY ELECTRICITY & GAS CO. (N. B.), [1927] 3 D. L. R. 1112.—CAN.

**st.** *Power to erect shops—On land vested in corporation.*—There is no power in a municipal corp. to expend money in the erection of shops on land vested in it either as endowments or otherwise.—TAURANGA BOROUGH CORPN. v. A.-G., [1927] N. Z. L. R. 875.—N. Z.

PART IX. SECT. 6, SUB-SECT. 5.—  
B. (a).

**sa.** *Corporation under Native Land Act, 1909—To member of committee.*—TATAUANGI, TAIRUAKEA v. MUA CARR, [1927] N. Z. L. R. 688.—N. Z.



Nothard, Lowe & Wills, [1927] 1 K. B. 246.  
**Consd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1927] 1 K. B. 826. **Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443

**1008.** *Add. Annotation* :—**Mentd.** The Hayle, [1929] P. 275.  
**1033.** *Add. Annotation* :—**Refd.** Attwood v. Llay Main Collieries (1925), 70 Sol. Jo. 265.  
**1043.** *Add. Annotation* :—**Refd.** The Jupiter. No. 3, [1927] P. 122.

## Part X.—Contracts.

**1103.** *Add. Annotation* :—*As to* (1) **Apld.** Higgins v. Northampton County Borough (1926), 90 J. P. 82.

**1106.** *Add. Annotation* :—**Mentd.** Dewhurst v. Salford Grdns. (1924), 41 T. L. R. 151.

**1126.** *Add. Annotation* :—**Refd.** Nixon v. Erith U. C., [1924] 1 K. B. 819.

**1127a.** ——— **Local authority acting under Housing of Working Classes Act, 1890 (c. 70).**—The words of sect. 56 of the above Act must be read distributively, & as meaning that if the local authority's district is an urban district it shall have the same power of contracting that an urban sanitary authority has under the Public Health Acts, & if its district is a rural district the power which a rural sanitary authority has under those Acts, with the result that in the former case the authority cannot, when acting under the Act of 1890, contract otherwise than under its common seal if the value or amount of the contract exceeds £50.—**NIXON v. ERITH URBAN COUNCIL**, [1924] 1 K. B. 819; 93 L. J. K. B. 756; 131 L. T. 303; 88 J. P. 115, 40 T. L. R. 373; 68 Sol. Jo. 537; 22 L. G. R. 448, C. A.

**1127b.** ———.]—Pltfs. claimed to have a written contract dated Mar. 17, 1921, under which they agreed to erect fifty-eight concrete workmen's dwellings for deft. borough rectified so as to give effect to what was alleged to have been the common intention "of the parties" when the contract was drawn up. The contract was entered into between H. & deft. borough & was under their seal. H. subsequently assigned the contract to pltfs. :—**Held** : even if there were a common mistake the contract of Mar. 17, 1921, could not be rectified because, having regard to sect. 174 of the above Act, deft. borough were

incapable of entering into a contract with H. other than a contract under seal, so that when a tender was made by H. & accepted, there was no contract come to.—**HIGGINS (W.), LTD. v. NORTHAMPTON COUNTY BOROUGH** [1927] 1 Ch. 128; 96 L. J. Ch. 38; 136 L. T. 235; 90 J. P. 82.

**1131.** *Add. Annotation* :—**Refd.** Nixon v. Erith U. C., [1924] 1 K. B. 87.

**1133.** *Add. Annotation* :—**Refd.** Crediton Gas Co. v. Crediton U. C., [1928] Ch. 447.

**1134a.** ———.]—A firm, of which deft. was the sole surviving member, were employed as architects. Four years after the work was completed dry rot broke out in floors laid over concrete, a large area of which was laid on the ground floor of the new buildings. It was alleged that, in correspondence which passed between the parties after the dispute arose, deft., in consideration of the corpn. refraining from suing, undertook to put the work right at his own expense :—**Held** : deft. was liable under the subsidiary contract, although that contract was not under seal, as the seal was unnecessary.—**LEICESTER GUARDIANS v. TROLLOPE** (1911), 75 J. P. 197; 2 Hudson's B. C., 4th ed., 419.

**1135.** *Add. Annotation* :—**Consd.** Nixon v. Erith U. C., [1924] 1 K. B. 819.

**1164.** *Add. Annotation* :—**Mentd.** Anderson v. Daniel (1924), 130 L. T. 418.

**1165.** *Add. Annotation* :—**Apld.** Crediton Gas Co. v. Crediton U. C., [1928] Ch. 447.

**1176.** *Add. Annotation* :—**Refd.** Berners v. Fleming, [1925] Ch. 264.

**1193.** *Add. Annotation* :—**Distd.** Nixon v. Erith U. C., [1924] 1 K. B. 87.

**1205.** *Add. Annotation* :—**Consd.** Michaud v. Montreal (City) (1923), 92 L. J. P. C. 161.

### PART IX. SECT. 6, SUB-SECT. 5.— B. (d).

**1059 ii.** ———.]—Pltfs. had demised by parol for one year the land to F. & put him in possession. Shortly afterwards defts. entered, turned him out & retained possession. On the trial it was contended that F. being tenant in possession the action should have been brought in his name, & not in that of pltfs., & pltfs. were non-suited. In support of a rule to set this non-suit aside it was contended that the corpn. could only demise under seal & the parol demise to F. was therefore void & the corpn. properly made pltfs.—**Held** : the demise was void.—**ST. ANDREW'S**

(COLLEGE TRUSTEES v. GRIFFIN (1853), 1 P. E. 1. 80.—**CAN.**

**PART X. SECT. 1, SUB-SECT. 1.**  
*ed. Co-operative association—Formed to carry on labour or trade—Right to contract for work or services—R. S. O., 1877 (c. 158).*—**ONTARIO CO-OPERATIVE STONE CUTTERS' ASSOCN. v. CLARKE** (1880), 31 C. P. 280.—**CAN.**

**PART X. SECT. 2, SUB-SECT. 1.**  
*a i. ——— Position of purchaser from corporation.*—**TRUST & LOAN CO. v. MONK** (1868), 14 Gr. 385.—**CAN.**

**PART X. SECT. 5, SUB-SECT. 1.—  
A. (a).**  
*t i. ———.]—Where a workman*

is hired to do work for a corpn. by a person who has no authority to hire him, & the corpn. has not ratified the employment, the fact that he does the work does not create the relationship of employer & workman between him & the corpn.—**STUART v. PENNANT SCHOOL DISTRICT**, [1927] 2 D. L. R. 940; [1927] 1 W. W. R. 919, 21 Sask. L. R. 465.—**CAN.**

### PART X. SECT. 7.

*st. Ultra vires contract—Benefit received by corporation—Duty to account.*—**COUNTY OF HALTON v. TOWNSHIP OF TRAFALGAR**, [1927] 4 D. L. R. 134; 61 O. L. R. 45.—**CAN.**

## Part XI.—Liability and Remedies in Tort.

- 1223. Add. Annotations :—***Distd. Lagan Navigation Co. v. Iambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226. **Refd.** *Manchester Corp'n. v. Farnworth* (1929), 46 T. L. R. 85.
- 1225. Add. Annotations :—***Consd. Scammell v. Hurley*, [1929] 1 K. B. 419. **Refd.** *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 2 K. B. 832.
- 1227. Add. Annotation :—***Refd. Welden v. Smith*, [1924] A. C. 484.
- 1229. Add. Annotation :—***Consd. Farnworth v. Manchester Corp'n.*, [1929] 1 K. B. 533.
- 1230. Add. Annotation :—***Consd. Manchester Corp'n. v. Farnworth* (1929), 46 T. L. R. 85.
- 1231. Add. Annotation :—***Consd. Farnworth v. Manchester Corp'n.*, [1929] 1 K. B. 533.
- 1235a. —**—By a local Act a canal was vested in appts., who were required by the Act to keep the navigation & locks, & all works to be thereafter executed for the improvement thereof, in an efficient state for the traffic thereon. Appls. raised the coping on both sides of one of their locks & the banks behind it to prevent the lock from being flooded. Resps., adjacent landowners, objected that the effect of the works was to pen back the water in the part of the canal above the lock & to occasion the flooding of their lands, & appls. removed the coping without prejudice to their rights, but they did not reduce the height of the banks :—*Held* : there being no evidence of negligence, appls., in constructing works in the exercise of their statutory powers for the protection of their navigation, were not liable for the flooding of resps.' lands.—*LAGAN NAVIGATION CO. v. IAMBEG BLEACHING, DYEING & FINISHING CO.*, [1927] A. C. 226; 96 L. J. P. C. 25; 136 L. T. 417; 91 J. P. 46; 25 L. G. R. 1, H. L.
- 1236. Add. Annotation :—***Consd. Howard—Flanders v. Maldon Corp'n.* (1926), 135 L. T. 6.
- 1243. Add. Annotation :—***Refd. Manchester Corp'n. v. Farnworth* (1929), 45 T. L. R. 85.
- 1261. Add. Annotation :—***Apld. Percy v. Glasgow Corp'n.*, [1922] 2 A. C. 299.
- 1262. Add. Citations :—**86 J. P. 201; 20 L. G. R. 605.
- 1262a. —** By solicitor conducting proceedings for corporation—*Corporation not liable.*—*EGGINGTON v. LICHFIELD CORPN.* (1855), 5 E. & B. 100; 24 L. J. Q. B. 360; 26 L. T. O. S. 27; 19 J. P. 819; 1 Jur. N. S. 908; 119 E. R. 418.
- Annotation :—**Refd. Flood v. Jackson*, [1895] 2 Q. B. 21.
- 1263. Add. Annotations :—***Refd. Tolley v. Fry* (1929), 46 T. L. R. 108; *Watt v. Longsdon* (1929), 98 L. J. K. B. 711. **Mentd.** *Cassidy v. Daily Mirror Newspapers*, [1929] 2 K. B. 331.
- 1266. Add. Annotation :—***Refd. Sorrell v. Smith*, [1925] A. C. 700.
- 1275a. —**—A public corporate body, although not formed for the acquisition of gain & making no profits, is liable to pay damages in respect of injury caused by its negligence.—*A.-G. & DOMMES v. BASINGSTOKE CORPN.* (1876), 45 L. J. Ch. 726; 24 W. R. 817.
- Annotation :—**Refd. Glossop v. Heston & Isleworth L. B.* (1879), 12 Ch. D. 102.
- 1281. Add. Annotation :—***Mentd. Compania Marti-artu v. Royal Exchange Assee.*, [1923] 1 K. B. 650.

## Part XII.—Criminal and Quasi-Criminal Proceedings.

- 1286. Add. Annotation :—***Refd. R. v. Cory*, [1927] 1 K. B. 810.
- 1288. Add. Annotations :—***Consd. Griffiths v. Studebakers*, [1924] 1 K. B. 102. **Refd.** *R. v. Leinster*, [1924] 1 K. B. 311; *Allen v. Whitehead* (1929), 45 T. L. R. 655.
- 1292. Add. Annotation :—***As to (2)* *Refd. R. v. Cory*, [1927] 1 K. B. 810.
- 1292a. —**—(1) An indictment will not lie against a corp'n. either for a felony or for a misdemeanour involving personal violence under Offences against the Person Act, 1861 (c. 100), s. 31.
- (2) Criminal Justice Act, 1925 (c. 86), s. 33, is mere machinery to avoid the inconvenience arising from the fact that previously a corp'n. could not be indicted at assizes, does not alter the substantive law so as to render a corp'n. liable to be indicted where previously it was not liable.—*R. v. CORY BROTHERS & CO.*, [1927] 1 K. B. 810; 96 L. J. K. B. 761; 136 L. T. 735; 28 Cox, C. C. 346.
- 1293. Add. Annotation :—***Refd. Gough v. Rese* (1929), 46 T. L. R. 103.
- 1297. Add. Annotations :—***Consd. R. v. Cory*, [1927] 1 K. B. 810. **Refd.** *Griffiths v. Studebakers*, [1924] 1 K. B. 102.
- 1298. Add. Annotation :—***Refd. R. v. Cory*, [1927] 1 K. B. 810.
- 1303. Add. Annotation :—***Refd. Leyton U. C. v. Wilkinson*, [1927] 1 K. B. 853.
- 1303a. —** Effect of Criminal Justice Act, 1925 (c. 86), s. 33.—*R. v. CORY BROTHERS & CO.*, No. 1292a, ante.
- 1304. Add. Citations :—**27 Cox, C. C. 225; 16 Cr. App. Rep. 131.
- After this case add “*See, now, Criminal Justice Act, 1925 (c. 86), s. 33.*”
- 1308. After this case add “Appeal by case stated from justices—Recognisance—How made.”—***See MAGISTRATES*, Vol. XXXIII., p. 413, No. 1229.”

**PART XI. SECT. 4, SUB-SECT. 1.**  
1252 ii. —.—*BURRIS v. DART-MOUTH CORPN.* (1927), 59 N. S. R. 227.—*CAN.*

**PART XI. SECT. 4, SUB-SECT. 2.**  
i. —.—*Hospital liable for the negligence of nurses after an operation.*—*NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD*, [1927] 1 D. L. R.

969; [1927] S. C. R. 226.—*CAN.*  
t. i. —.—*Dangerous step—Of public library.*—*Library Board liable.*—*NICKELL v. CITY OF WINDSOR*, [1927] 1 D. L. R. 379; 59 O. L. R. 618.—*CAN.*

## Part XIII.—Delegation of Authority for Particular Purposes.

1313. *Add. Annotation*:—**Refd.** *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.

## Part XV.—Legal Proceedings by and against Corporations, their Members and Officers.

1329. *Add. Annotation*:—**Refd.** *Leyton U. C. v. Wilkinson*, [1927] 1 K. B. 853.
1330. *Add. Annotation*:—**Refd.** *Leyton U. C. v. Wilkinson*, [1927] 1 K. B. 853.
1365. *Add. Citation*:—*on appeal* (1880), 5 App. Cas. 473, II. L.
- Add. Annotations*:—**Refd.** *Deuchar v. Gas Light & Coke Co.*, [1925] A. C. 691; *A.-G. v. Leeds Corpn.*, [1929] 2 Ch. 291.
1366. *Add. Annotation*:—**Consd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.
1370. *Add. Annotation*:—*As to* (1) **Consd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B.
1376. *Add. Annotation*:—**Mentd.** *Re Kent Coal Concessions, Burn v. Kent Coal Concessions*, [1923] W. N. 328.
1377. *Add. Annotation*:—**Consd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.
1409. *Add. Annotation*:—**Refd.** *Everett v. Griffiths*, [1924] 1 K. B. 941.
1438. *Add. Annotation*:—*As to* (1) **Refd.** *Chowood v. Lyall*, [1929] 2 Ch. 406.
1495. *Add. Annotation*:—**Folld.** *R. v. Poplar B. C.*, *Ex p. L. C. C.*, *R. v. Poplar B. C. (No. 2)*, [1922] 1 K. B. 95.
1520. After this case insert "*See, further*, CROWN PRACTICE, Vol. XVI., pp. 405, 406."
1526. *Add. Annotations*:—*As to* (1) **Refd.** *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255. *As to* (2) **Refd.** *Employers' Liability Assee. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.
1527. *Add. Annotations*:—**Refd.** *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Employers' Liability Assee. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.
1528. *Add. Annotation*:—*As to* (1) **Refd.** *Sabatier v. Trading Co.*, [1927] 1 Ch. 495.
1529. *Add. Annotations*:—**Consd.** *New Zealand Shipping Co. v. Thew* (1922), 8 Tax Cas. 208; *Bradbury v. English Sewing Cotton Co.*, [1923] A. C. 744; *Swedish Central Ry. v. Thompson*, [1925] A. C. 495. **Apld.** *Egyptian Delta Land & Investment Co. v. Todd*, [1929] A. C. 1. **Refd.** *Baelz v. Public Trustee*, [1926] Ch. 863.
1532. *Add. Annotation*:—**Refd.** *Employers' Liability Assee. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.
1536. *Add. Annotation*:—**Refd.** *Wilcocks v. Pinto* (1924), 69 Sol. Jo. 178.
1537. *Add. Annotations*:—**Refd.** *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255. **Mentd.** *Ellerman Lines v. Read*, [1928] 2 K. B. 144.
1540. *Add. Annotations*:—**Refd.** *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255.
- 1544a. — **Manager of London branch.**—*Pltf.* issued a writ against *deft. co. & A.*, its managing director, & the writ was served upon *A.* Some years ago the *co.* had established a branch of their business in London under the management of *A.*, who had, in obedience to *Cos. (Consolidation) Act*, 1908 (c. 69), s. 274, on behalf of the *co.* registered himself as a person resident in the United Kingdom authorised to accept service of process, & the evidence showed that, although at the date of the service of the writ upon *A.* the *co.* had long ceased to carry on trade in London, yet certain administrative activities, *e.g.*, the remittance of dividends

### PART XV. SECT. 4.

**sa.** *For transgression of statutory powers—Action by Attorney-General.*—If a public body constituted under the laws of the Commonwealth transgresses its statutory power, the A.-G. for the Commonwealth on behalf of the public, whether private injury has or has not been alleged, has a right to complain & to obtain a declaration of transgression, &, if necessary, an injunction.—COMMONWEALTH & A.-G. FOR COMMONWEALTH v. AUSTRALIAN COMMONWEALTH SHIPPING BOARD (1926), 39 C. L. R. 1; [1927] Argus, L. R. 61.—**AUS.**

**sb.** *In what name—Trustees of.*—*Pltf.* brought action against *defts.* for a *mandamus* to compel them to provide for a debt due to him by the trustees of a school section. The writ was against *defts.* personally, but contained a statement that they were

trustees, etc., & that *deft. D.* was secretary. Evidence was taken as to the existence of the debt, & the case came on for hearing under the pleadings & evidence:—**Held**: the trustees could only be sued in their corporate name.—*COOK v. DAVIDSON* (1877), R. E. D. 37.—**CAN.**

### PART XV. SECT. 8.

1394 i. *To whom addressed.*—When *mandamus* proceedings lie against a municipal corporation, it is the better practice to make parties the members of council & officers whose alleged delinquencies are involved.—*R. (HEAD) v. PEMBINA MUNICIPAL DISTRICT NO. 552*, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—**CAN.**

### PART XV. SECT. 10, SUB-SECT. 3.—C.

**sd.** *Bye-laws.*—A clerk in the office of the treasurer of a municipal corpn.,

not being the custodian of the bye-laws of the corpn., is not compellable to produce any of them, upon his cross-examination on an affidavit made by him on behalf of the corpn. for use on a motion to which the corpn. is a party.—*WILSON v. FLEMING*, (1900), 19 P. R. 203.—**CAN.**

### PART XV. SECT. 12, SUB-SECT. 4.—B. (b).

**m i.** ———— *—*—A writ was issued against a *co.*, registered & carrying on business in England, but not registered nor carrying on business in Tasmania. The writ was served in London:—**Held**: the writ must be set aside, as there was no authority for the issue of a writ for service upon the *co.* in London.—*PORI HUON FRUITGROWERS' CO-OPERATIVE ASSOCN., LTD. v. LARKINSON (SAMUEL), LTD.* (1924), 20 Tas. L. R. 1.—**AUS.**

to shareholders, were then being carried out there, & at no other place, on behalf of the co. :—*Held* : (1) upon the evidence, deft. co., at the date of the service of the writ upon A., had a place of business within the United Kingdom, within sect. 274 of the above Act, & service upon A. was effective service upon the co. ; (2) even if the co. had not at the date aforesaid a place of business within the United Kingdom, such service was effective service upon the co.—*SABATIER v. TRADING Co.*, [1927] 1 Ch. 495 ; 96 L. J. Ch. 211 ; 136 L. T. 574 ; 71 Sol. Jo. 104.

**1544b. — On person authorised to accept**

**service—Sufficiency of indorsement of writ & affidavit of service.]—***FESTER FOTHERGILL & HARTUNG v. RUSSIAN TRANSPORT & INSURANCE Co.*, [1927] W. N. 27, C. A.

*See, also*, COMPANIES, No. 8527a, *ante*.

**1546. Add. Annotation :—***Refd. Sabatier v. Trading Co.*, [1927] 1 Ch. 495.

**1548. Add. Annotations :—***Refd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669 ; *Richardson v. Richardson*, [1927] P. 228.

**1557. Add. Annotation :—***Refd. Employers' Liability Assee. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

## Part XVI.—Dissolution.

**1604. Add. Annotation :—***Refd. Morris v. Harris*, [1927] A. C. 252.

## COUNTY COURTS.

## Part I.—Courts, Judges and Officers Generally.

14. *Add. Citation* :—15 B. W. C. C. 91.22. *Add. Annotation* :—*As to* (1) *Consd. A. W. v. Cooper & Hall*, [1925] 2 K. B. 816.

## Part II.—Liability and Protection of Judges and Officers of Court.

61. *Add. Annotations* :—*Apld. Freeborn v. Leeming*, [1926] 1 K. B. 160; *Morriss v. Winter* (1929), 45 T. L. R. 613.

## Part III.—Jurisdiction.

65. *Add. Annotation* :—*Apld. Parsons v. Burgess* (1927), 43 T. L. R. 713.68. *Add. Annotation* :—*Mentd. De Freville v. Dill* (1927), 96 L. J. K. B. 1056.70a. *Action for breach of promise of marriage.*—Resp. brought a county ct. action against appct. for the return of money & articles, alleging that the parties had promised to marry one another & that appct. had broken the promise. Resp. contended that the action was brought on a bailment, which was within the county ct. jurisdiction :—*Held* : in substance the claim was for damages for breach of promise of marriage, & a writ of prohibition must issue.—*PARSONS v. BURGESS* (1927), 96 L. J. K. B. 787; 138 L. T. 134; 43 T. L. R. 713.71. *Add. Annotation* :—*Folld. Brakspear v. Barton*, [1924] 2 K. B. 88.71a. *Question of repairs—Under Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17).*—Deft. was the tenant of a tied public-house with living accommodation, of which pltf. were the landlords. In 1910, the house was let to deft. at a rent of £75 *per annum* for three years. At all material times the ratable value was £68. After certain intermediate tenancies at rents less than two-thirds of the ratable value, deft. in Dec. 1920, took from pltf. a new lease : “To hold the said premises with the appurtenances unto the tenant from Mar. 25, 1920, for the term of seven years . . . at the yearly rent of £120.” The reason for the increased rent was a trade revival which had caused a great improvement in the licensed trade of the house. The conditions of the new lease as to repairs were more onerous for the tenant than those of the old. In an action by the landlords for rent, the tenant contended that the repairing clause amounted to a prohibited increase :—*Held* : the question as to repairs could only be decided by the county ct., & the High Ct. had no jurisdiction on this point.—*BRAKSPEAR (W. H.) & SONS, LTD. v. BARTON*, [1924] 2 K. B. 88; 93 L. J. K. B. 801; 131 L. T. 538; 40 T. L. R. 607; 68 Sol. Jo. 718.73. *Add. Annotation* :—*Mentd. Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762; *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.83. *Add. Citation* :—*sub nom. GLENNIE v. DELMAR*, 1 L. M. & P. 402.99. *Add. Annotation* :—*Consd. Egyptian Delta Land & Investment Co. v. Todd*, [1929] A. C. 1.106. *Add. Annotation* :—*Consd. Egyptian Delta Land & Investment Co. v. Todd*, [1929] A. C. 1.139a. ——— *Issue of summons before leave obtained—Irregularity.*—On Jan. 30, 1924, a tenant of a dwelling-house within the Rent Restrictions Acts lodged two plaints in the West London county ct., the one under sect. 12 (3) of the Act of 1920 for apportionment of rent, & the other under sect. 14 (1) of the same Act for certain sums paid by him in respect of rent which, as he alleged, was irrecoverable by his landlord. These sums were, by sect. 8 (2) of the Act of 1923, recoverable on or before Jan. 31, 1924, but not afterwards. The claim for apportionment could regularly be brought in the West London ct., but the claim for repayment could not be brought in that ct. without the leave of the judge or registrar on an application supported by an affidavit. No affidavit was sworn until Feb. 5, 1924. Notwithstanding this the plaint was entered, a plaint note under the seal of the ct. was given to pltf., & a summons was issued, all bearing the date Jan. 30, 1924. By Ord. 7, r. 2, a summons to appear to a plaint shall be dated of the day on which the plaint was entered, & the date thereof shall be the commencement of the action :—*Held* : (1) the irregular entry of the plaint & issue of the summons before the necessary leave had been obtained did not deprive the county ct. of jurisdiction to hear the action, but the irregularity could be waived by deft.; (2) as deft. had appeared to the summons & raised a defence in no way challenging the jurisdiction of the ct., he had waived the irregularity; the action must therefore be taken to have commenced on

Jan. 30, & plff. was entitled to recover.—*PRINGLE v. HALES*, [1925] 1 K. B. 573; 94 L. J. K. B. 458; 132 L. T. 785, C. A.

- 147a. ——— **Claim for declaration as to future payments—Involving payment of sums exceeding prescribed limit.**—Where an action was brought in the county ct. to recover a money claim under an agreement, & also for a declaration as to future payments under the agreement:—*Held*: the county ct. judge had no power to make a declaration which might involve the payment of sums of money by debt. in excess of the limit of £100 prescribed by 1888 Act, s. 56.—*SMITH v. SMITH*, [1925] 2 K. B. 144; 94 L. J. K. B. 813; 133 L. T. 345, D. C.

*Annotation*:—*Refd.* *Humber Conservancy Board v. Federated Coal & Shipping Co.*, [1928] 1 K. B. 492.

148. After this case add “**Sum lent beyond jurisdiction—Action for relief under Money-lenders Act, 1900 (c. 57).**”—*See* MONEY & MONEY-LENDING, No. 377a.”

197. *Add. Annotation*:—*Consd.* *Dudley & District Benefit Bldg. Soc. v. Gordon*, [1929] 2 K. B. 105.

- 198a. **Duty of judge to make order—On proof of right to possession.**—The words “may order” in 1888 Act, s. 138, are enabling words only, but where the legal right of a landlord to the possession of premises has been established it is the duty of the judge, notwithstanding the permissive form of the sect., to make an order for possession. In exercising the discretion given him as to the period for the coming into operation of the order, the judge must fix a period reasonably adjusted to the circumstances of the case, including the nature & term of the tenancy. The county ct. judge in two cases of weekly tenants whose tenancies had been validly terminated by notice to quit, refused to make any order in one case, & in the other, while making an order, postponed its operation for twelve months:—*Held*: this was not a judicial exercise of his discretion, in either case.—*SHEFFIELD CORPN. v. LUXFORD*, *SAME v. MORRELL*, [1929] 2 K. B. 180; 98 L. J. K. B. 512; 141 L. T. 265; 93 J. P. 235; 45 T. L. R. 491; 73 Sol. Jo. 367, D. C.

- 198b. **Terms of order—Postponement of operation—What must be considered.**—*SHEFFIELD CORPN. v. LUXFORD*, *SAME v. MORRELL*, No. 198a, *ante*.

205. *Add. Annotation*:—*Refd.* *Rye v. Purcell*, [1926] 1 K. B. 446.

206. *Add. Annotation*:—*Refd.* *Re* *Keystone Knitting Mills Trade Mk.*, [1929] 1 Ch. 92.

- 206a. **Claim for declaration.**—(1) The county ct. has no jurisdiction to entertain a claim for a declaration in an action in which no sum of money is claimed. *Stiles v. Ecclestone*, No. 211, *post*, *overd*.

Upon a contract for the sale of real property at a price exceeding £500 the vendor brought an action in the county ct. against the purchaser, claiming a declaration that debt. had

forfeited the deposit paid under the contract by debt. to stake-holders, who were not parties to the action, & that he was entitled to receive payment of the deposit from the stake-holders. No other claim appeared in the plaint or the summons or the particulars of claim:—*Held*: the county ct. had no jurisdiction to entertain the claim, (1) on the above ground, & (2) on the further ground that the claim was for partial specific performance of an agreement for the sale of property within 1888 Act, s. 67, where the purchase-money exceeded £500, the amount limited by that sect.—*DE VRIES v. SMALLRIDGE*, [1928] 1 K. B. 482; 97 L. J. K. B. 244; 138 L. T. 497, C. A.

- 206b. ——— **Observations as to declarations in county cts.**—*HUMBER CONSERVANCY BOARD v. FEDERATED COAL & SHIPPING CO., LTD.*, [1928] 1 K. B. 492; 97 L. J. K. B. 136; 138 L. T. 334; 17 Asp. M. L. C. 338, D. C.

——— *See, also*, Nos. 147a, 212.

208. *Add. Annotation*:—*Consd.* *Smith v. Smith*, [1925] 2 K. B. 144.

211. *Add. Annotation*:—*N.F.* *De Vries v. Smallridge*, [1928] 1 K. B. 482.

212. *Add. Annotations*:—*Distd.* *Davey v. Robinson*, [1923] 1 K. B. 563. *Apld.* *Smith v. Smith*, [1925] 2 K. B. 144. *Folld.* *De Vries v. Smallridge*, [1928] 1 K. B. 482. *Refd.* *Humber Conservancy Board v. Federated Coal & Shipping Co.*, [1928] 1 K. B. 492; *Woodrow v. Trawlers (White Sea) & Grimsby* (1929), 141 L. T. 676.

213. *Add. Annotation*:—*Refd.* *De Vries v. Smallridge*, [1928] 1 K. B. 482. After this case add “**In remitted action.**”—*See* No. 373a, *post*.”

235. For “**Not within jurisdiction**” read “**Within jurisdiction.**”

*v. SMALLRIDGE*, No. 206a,

*ante*.

249. *Add. Annotations*:—*Consd.* *Rossiter v. Langley*, [1925] 1 K. B. 741; *Rusoff v. Lipovitch* (1925), 94 L. J. K. B. 355. *Refd.* *De Vries v. Sparks* (1927), 137 L. T. 441. *Mentd.* *Turner v. Watts* (1927), 44 T. L. R. 105.

- 272a. ——— *Re* *BANE v. FOXALL & CANFOR IN THE COUNTY COURT OF NORFOLK* (1856), 20 J. P. Jo. 293.

295. *Add. Annotation*:—*Refd.* *Salter v. Lask*, [1923] 2 K. B. 798.

297. *Add. Annotation*:—*Refd.* *Salter v. Lask*, [1923] 2 K. B. 798.

298. *Add. Annotation*:—*Mentd.* *R. v. Customs & Excise Comrs.*, [1928] A. C. 402.

305. *Add. Annotation*:—*Mentd.* *Champagne Heid-sieck Monopole Soc. Anon. v. Buxton* (1929), 46 T. L. R. 36.

- 327a. ——— **Appearance—Raising defence not challenging jurisdiction.**—*PRINGLE v. HALES*, No. 139a, *ante*.

## Part IV.—Remitted Actions.

331. After this case add "Action for relief under Money-lenders Act, 1900 (c. 51)."—*See MONEY & MONEY-LENDING*, No. 434a."
352. *Add. Citation* :—91 L. J. K. B. 771.
- 373a. On jurisdiction of county court—Reduction of claim for damages—Alternative claim for injunction.]—Where an action, commenced in the High Ct., has been transferred to a county ct. under 1919 Act, s. 1, the effect of sect. 4 of that Act is to give the county ct. jurisdiction to deal with the matter equal to or the same as that of the High Ct.
- Pltf. & deft. entered into an agreement, which provided that in the event of any breach thereof by deft. he should pay to pltf. in respect of each such breach a sum of £150 by way of agreed & liquidated damages. Pltf. alleged that deft. had broken the agreement, & he brought an action in the High Ct. claiming the sum of £150 & an injunction. Pltf. afterwards applied, under 1919 Act, s. 1, to have the action remitted to a county ct., reducing the money claim to £90, & claiming an injunction in the alternative. The master made an order for remittal. Pltf. then delivered particulars of claim, asking for £90 damages or in the alternative an injunction. He admitted, however, that the real object of the action was to obtain an injunction. On the action coming on for trial the county ct. judge declined jurisdiction on the ground that in substance the action was for an injunction alone. On appeal to a Div. Ct., that ct. held that the county ct. judge had jurisdiction to entertain the action, & sent it back to him for trial:—*Held*: the decision of the Div. Ct. was correct.—*DAVEY v. ROBINSON*, [1923] 1 K. B. 563; 92 L. J. K. B. 336; 128 L. T. 513; 39 T. L. R. 163; 67 Sol. Jo. 246, C.A.
379. *Add. Annotation* :—*Consd. Davey v. Robinson*, [1923] 1 K. B. 563
- 404a. Duty of county court judge to specify scale of costs.]—In an action remitted from the High Ct. to the county ct., it is advisable that the county ct. judge should specify the scale on which costs are to be taxed. *Semble*: in the absence of any direction by him as to scale, the costs must be taxed in accordance with the scale applicable to the amount recovered.—*GOLD BROTHERS & NASH, LTD. v. FULLER* (1925), 134 L. T. 151; 70 Sol. Jo. 284, D. C.
- Annotation* :—*Consd. Davies v. Davies* (1927), 96 L. J. K. B. 1066.
- 404b. — Order for costs on higher scale—Necessity for certificate.]—A county ct. judge cannot award to pltf. in a remitted action costs on a scale higher than that applicable to the amount recovered without giving certificate in accordance with 1888 Act, s. 119.—*DAVIES v. DAVIES*, [1928] 1 K. B. 364; 96 L. J. K. B. 1066; 137 L. T. 567, D. C.
408. *Add. Annotation* :—*Refd. Hives v. Dawson* (1927), 41 T. L. R. 37.
- 410a. Discretion of county court judge—To deprive successful party of costs.]—Where a pltf. has begun an action in the High Ct. & within twenty-one days from issue of the writ has obtained, under R. S. C. Ord. 14, an order in respect of part of his claim whereby he may sign judgment for £20 or upwards either unconditionally or unless that sum is paid into ct. or to pltf.'s solr., & the remainder of pltf.'s claim is remitted to a county ct. with leave to defend, the judge of the county ct. has the same jurisdiction as a judge of the High Ct. over the costs of the whole proceedings, & he may order them to be taxed on the High Ct. or on the county ct. scale. But in deciding the scale on which they are to be taxed he must exercise his discretion judicially, & he is not entitled to deprive pltf. of the High Ct. costs of the High Ct. proceedings unless pltf. has been guilty of some misconduct.—*JENKINS & Co. v. SIMON*, [1926] 1 K. B. 111; 95 L. J. K. B. 97; 131 L. T. 88; 42 T. L. R. 39; 70 Sol. Jo. 162, D. C.

## Part V.—Procedure.

438. *Add. Annotation* :—*Generally. Refd. Friern Barnet U. C. v. Adams*, [1927] 2 Ch. 25.
455. *Add. Citations* :—91 L. J. Ch. 627, [1922] B. & C. R. 155.
471. *Add. Annotations* :—*Mentd. Re Rosse, Parsons v. Rosse* (1923), 93 L. J. Ch. 8; *Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762.
472. *Add. Citation* :—20 L. G. R. 567.
- 497a. — Application under Administration of Justice Act, 1920 (c. 81), s. 3—Discretion of judge to order trial without jury.]—On May 10, 1923, pltf. commenced proceedings claiming from defts. damages for personal injuries caused by the alleged negligence of defts.' servants. Defts. filed a defence denying negligence & afterwards gave pltf. notice of an application to dispense with a jury.
- The application for trial without a jury was made under the above sect. The county ct. judge, without giving any reasons for his decision, ordered the trial of the action without a jury, & pltf. appealed against that order & alleged that the learned judge had not properly exercised his discretion.—*Held*: the above sect. did not give the county ct. judge an absolute power to order the trial of an action without a jury; the sect. gave him a discretion which must be exercised judicially; in this case there were no proper materials on which the learned judge could exercise his discretion judicially; it would not be a proper exercise of the learned judge's judicial discretion to dispense with a jury merely because it was inconvenient; on the other hand it is not necessary for the judge to give his reasons for dispensing with a jury, but there must be some grounds

for so exercising his discretion.—*WINN v. LONDON COUNTY COUNCIL* (1923), 130 L. T. 350; 88 J. P. 31; 40 T. L. R. 106; 63 Sol. Jo. 502, D. C.

497b. ——— **Onus on party objecting to jury.** —On an application in the county ct. for an order that an action be tried with a jury the county ct. judge is bound in law to make the order asked for, unless the party desiring to dispense with a jury under the above sect. establishes to his satisfaction that the action could be as conveniently tried without a jury. Further, the fact that the lists are congested is not a ground on which the county ct. judge is entitled to suspend a litigant's right to trial by jury.—*CALCRAFT v. LONDON*

*GENERAL OMNIBUS Co.*, [1923] 2 K. B. 608; 92 L. J. K. B. 1092; 129 L. T. 794; 39 T. L. R. 466; 67 Sol. Jo. 641, D. C.

*Annotation* :—*Consd. Winn v. L. C. C.* (1923), 130 L. T. 350.

499a. ——— **Action in which fraud alleged—Whether mere allegation sufficient.**—To come within the proviso to Administration of Justice Act, 1920 (c. 81). s. 2 (1), a relevant issue of fraud must be raised, which will have to be decided in order to determine the rights of the parties, & it is not sufficient for plff. merely to allege that deft. acted fraudulently.—*EVERETT v. ISLINGTON GUARDIANS*, [1923] 1 K. B. 44; 92 L. J. K. B. 250; 128 L. T. 447; 87 J. P. 61, D. C.

## Part VI.—Trial, Judgment and Execution.

554. *Add. Annotation* :—*Consd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.

563. *Add. Annotations* :—*Consd. Jaeger Co. v. Jaeger* (1929), 46 R. P. C. 336. *Refd. Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.

565. *Add. Annotations* :—*Consd. Ord v. Ord*. [1923] 2 K. B. 432; *The Koursk* [1924] P. 140; *Debenhams v. Perkins* (1925), 133 L. T. 252. *Apld. Conquer v. Boot*, [1928] 2 K. B. 336.

*See, also, ESTOPPEL*, No. 447a. *post*.

571. *Add. Annotations* :—*Mentd. Fairman v. Perpetual Investment Bldg. Soc.*, [1923] A. C. 74; *Manton v. Brocklebank*, [1923] 1 K. B. 406; *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681; *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776; *Addie (Collieries) v. Dumbroek*, [1929] A. C. 358.

578. *Add. Annotation* :—*Refd. Scammell v. Hurley*, [1929] 1 K. B. 419.

582. *Add. Annotation* :—*Mentd. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.

593. *Add. Annotation* :—*As to (2) Refd. Campbell v. Pollak* (1927), 43 T. L. R. 495.

617. *Add. Citation* :—15 B. W. C. C. 43.

619. *Add. Annotation* :—*Refd. R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

621. *Add. Annotation* :—*Refd. R. v. Newport (Salop) JJ., Ex p. Wright*, [1929] 2 K. B. 416.

645a. ——— **Goods already in possession of sheriff.** —*A. W., Ltd. v. COOPER & HALL, LTD.*, No. 783a, *post*.

648a. ——— **Sum deposited by claimant to goods less**

**than value of goods—More than judgment debt & costs.**—Goods which had been taken in execution under a county ct. judgment were claimed by a claimant. The execution creditor did not admit the claim & claimant deposited with the bailiff under 1888 Act, s. 156, the sum of £26 which was considerably less than the value of the goods claimed, but was more than sufficient to cover the judgment debt & costs of the execution. The money was paid into ct. by the bailiff, who remained in possession of the goods, & an interpleader summons was issued. Before the return day of the interpleader summons the execution creditor gave notice that he admitted the title of claimant to the goods, & the bailiff withdrew from possession. Upon the taxation of the costs the bailiff claimed possession fees up to the date when the execution creditor admitted claimant's title, upon the ground that under sect. 156 he was bound to remain in possession until the amount of the value of the goods was deposited with him :—*Held* : as the £26 was deposited with & taken by the bailiff under sect. 156 of the Act, he must be deemed to have taken it upon the assumption that it represented the amount of the value of the goods, & therefore he had no right to remain in possession or to possession fees after the date of the deposit.—*NEWSUM, SONS & CO., LTD. v. JAMES*, [1909] 2 K. B. 384; 78 L. J. K. B. 761; 100 L. T. 852; 53 Sol. Jo. 521, D. C.

652. *Add. Annotation* :—*Refd. Sheffield Corpn. v. Luxford, Same v. Morrell*, [1929] 2 K. B. 180.

668. *Add. Annotation* :—*Mentd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.

## Part VII.—Costs.

677. *Add. Annotation* :—*Refd. Rusoff v. Lipovitch* (1924), 69 Sol. Jo. 276.

684. After this case insert "*See, also*, Nos. 566–573, *ante*."

686. *Add. Annotation* :—*Refd. Temperance Loan Fund v. Erwood* (1927), 137 L. T. 449.

690. After this case add " ——— **Action by money-lender.**—*See MONEY & MONEY-LENDING*, No. 442a."

691. *Add. Annotation* :—*Refd. Campbell v. Pollak*, [1927] A. C. 732.

691a. ——— **Order for costs on lower scale.**—When



the amount found due to pltf. is between £20 & £50 the scale of costs applicable is Scale B, & a county ct. judge has no jurisdiction to make an order for costs on a lower scale unless it be shown that pltf.'s action is frivolous or oppressive, or that there has been misconduct or dishonesty on his part.—*HUGHES (W.) & SON v. SATCHELL* (1925), 134 L. T. 93, D. C.

**691b.** — In remitted action.]—*JENKINS & Co. v. SIMON*, No. 410a, *ante*.

**693.** *Add. Annotation* :—*Reffd. Campbell v. Pollak* (1927), 43 T. L. R. 495.

**695a.** —.]—Pltf.'s motor car, whilst being driven by his wife, was injured, as pltf. alleged, through the negligent driving of a motor lorry by a servant of defts. At the trial of the action in the county ct. the judge held that both sides were to blame, & gave judgment for defts., but allowed no costs. On appeal on the question of costs :—*Held* : on the facts found at the trial there had been negligence on the part of pltf.'s wife, & therefore pltf. could not have succeeded whether there had or had not been negligence on the part of defts., & the county ct. judge had no discretion to deprive the successful defts. of their costs.—*JACKSON v. ANGLO-AMERICAN OIL Co.*, [1923] 2 K. B. 601; 92 L. J. K. B. 1000; 129 L. T. 792; 67 Sol. Jo. 640, D. C.

**695b.** — Order for costs on lower scale.]—On a claim by an unsuccessful debt against an insurance co. as third parties, for indemnity to an amount exceeding £50, judgment was given for the third parties. The county ct. judge, without giving any reasons, ordered

the unsuccessful defts. to pay costs to the third parties on Scale B, applicable to cases where the amount does not exceed £50, the scale where that amount exceeds £50 being Scale C. It was not suggested that any facts existed to justify a special direction as to costs under 1888 Act, s. 113 :—*Held* : there was no jurisdiction to make the order.—*BEVINGTON v. PERKS & BELL ASSURANCE SOCIETY*, [1925] 2 K. B. 229; 94 L. J. K. B. 829; 133 L. T. 511, D. C.

*Annotation* —*Apld. Hughes v. Satchell* (1925), 134 L. T. 93.

**750.** *Add. Annotation* :—*N.F. Warwick v. Butler & Lauritzen*, [1925] 2 K. B. 294.

**750a.** —.]—Where under the above rule the registrar, on the application of a debt, who alleges that he neither resides nor carries on business within twenty miles from the ct., makes an order directing pltf. to deposit in ct. a sum of money as security for the costs of debt., the county ct. judge under r. 11, sub-r. 8, has power to vary or rescind the order so made.—*WARWICK v. BUTLER & LAURITZEN* [1925] 2 K. B. 294; 94 L. J. K. B. 657; 133 L. T. 240, D. C.

**750b.** “Court in which plaint is entered”—*Court to which remitted action sent.*]—Where an action of tort commenced in the High Ct. has been remitted to a county ct. in default of security for costs, that county ct. becomes “the ct. in which the plaint was entered,” & the judge may order pltf. to give security for costs under Ord. XII., r. 9, of the county ct. rules on the application of a debt, who neither resides nor carries on business within twenty miles of the ct. *RIDDLE v. PLAYLE* (1929), 16 T. L. R. 27; 73 Sol. Jo. 796, D. C.

## Part VIII.—Appeals.

**761.** *Add. Annotation* :—*Reffd. Hives v. Dawson* (1927), 44 T. L. R. 37.

**763a.** — — —.]—*WARWICK v. BUTLER & LAURITZEN*, No. 750a, *ante*.

**776.** *Add. Annotation* :—*Mentd. Edwards v. Porter* (1924), 41 T. L. R. 57.

**776a.** Debt or damage claimed not exceeding £20.]—An appeal to the High Ct. against the decision of a county ct. judge granting a new trial is an appeal “in an action” within 1888 Act, s. 120, & where the debt or damage claimed did not exceed £20 the High Ct. has no jurisdiction to hear the appeal unless applt. has obtained leave of the county ct. judge to appeal.—*WARD v. SNETMAN* (1925), 133 L. T. 560; 41 T. L. R. 598, D. C.

*Annotation* —*Reffd. Hives v. Dawson* (1927), 44 T. L. R. 37.

**779a.** — Claim less than £20.]—There is no appeal without leave from a county ct. judge's refusal to review a taxation of costs, where the amount claimed is less than £20.—*HIVES v. DAWSON* (1927), 138 L. T. 238; 44 T. L. R. 37, D. C.

**783a.** Order for payment of possession fees of high bailiff—Under Ord. 27, r. 1 (2).]—(1) A Div. Ct. has jurisdiction to hear an appeal from the decision of a county ct. judge who, under the above sub-rule has, on the application of the high bailiff, made an order

against the execution creditors, who have directed the high bailiff to withdraw, for the payment of his fees.

On May 15, 1924, the high bailiff of a county ct. under a warrant of execution purported to levy upon the goods of judgment debtors at their premises, & put a man in possession. The sheriff was then in possession of the goods under process of an earlier date, but not to the knowledge of the high bailiff, as the county ct. judge found. The high bailiff on taking possession received from judgment debtors a document which stated that in consideration of his withdrawing from possession they authorised him at any time to re-enter & undertook not to remove any of the goods. On June 12, 1924, the high bailiff on the instruction of the judgment creditors withdrew from possession. The execution was ineffective, except in so far as it brought the parties into negotiation with a view to a settlement. The high bailiff made an application to the county ct. judge under the above rule, for an order for payment by the judgment creditors of his fees for keeping possession from May 15 to June 12. The county ct. judge found that the high bailiff did not withdraw from possession, but was in actual possession & not in mere walking possession.

- sion of the goods, & made an order for payment of the fees claimed:—*Held*: (2) the possession of the sheriff did not in the circumstances prevent the high bailiff from taking & keeping such possession as would entitle him to claim fees; (3) there was evidence to support the finding of the county ct. judge that the high bailiff did not withdraw from possession, but kept actual as distinct from walking possession; & therefore the order of the county ct. was right. —*A. W., LTD. v. COOPER & HALL, LTD.*, [1925] 2 K. B. 816; 94 L. J. K. B. 831; 133 L. T. 508.
789. *Add. Annotations*:—*Consd.* *Ward v. Sneiman* (1925), 133 L. T. 560. *Refd.* *Lloyd v. Cook*, *Goudge v. Broughton*, *Simson v. Miatt*, *Bartram v. Brown*, *Barker v. Hutson*, [1929] 1 K. B. 103. *Mentd.* *Nimmo v. Connell*, [1924] A. C. 595; *Dew v. United British S.S. Co.* (1928), 98 L. J. K. B. 88.
809. *Add. Annotation*:—*Refd.* *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
810. *Add. Annotations*:—*Mentd.* *Re Rosse*, *Parsons v. Rosse* (1923), 93 L. J. Ch. 8; *Performing Right Soc. v. Mitchell & Booker*, [1924], 1 K. B. 762.
818. *Add. Annotation*:—*As to* (1) *Refd.* *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
832. *Add. Annotations*:—*As to* (1) *Distd.* *Martin v. Stanborough* (1924), 41 T. L. R. 1. *Refd.* *Gayler & Pope v. Davies*, [1924] 2 K. B. 75.
842. *Add. Annotation*:—*Mentd.* *Gregg v. Richards*, [1926] Ch. 521.
851. After this case add the following cross-reference:—*Order directing arbitrator under Agricultural Holdings Acts to state special case.*—*See* AGRICULTURE, No. 2664.
852. *Add. Annotation*:—*Consd.* *Leyton U. C. v. Wilkinson*, [1927] 1 K. B. 853.
853. *Add. Annotation*:—*Mentd.* *Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.
900. *Add. Citation*:—20 L. G. R. 653.  
*Add. Annotations*:—*Mentd.* *Aston v. Smith*, [1924] 2 K. B. 143; *Precious v. Reddie*, [1924] 2 K. B. 149; *Queen's Club Garden Estates v. Bignell*, [1924] 1 K. B. 117.
903. *Annotations*:—For the existing annotations substitute as follows:—  
*Annotations*:—*Overd.* *Abrahams v. Dimmock*, [1915] 1 K. B. 662. *Cook v. Gordon* was wrongly decided (BUCKLEY, L. J.). *Refd.* *The Crescent, Great Northern S.S. Fishing Co. v. S.S. Crescent* (1893), 62 L. J. P. 63.
913. *Add. Annotation*:—*Refd.* *Simmons v. Crossley*, [1922] 2 K. B. 95.
- 928a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308, D. C.
933. *Add. Annotations*:—*Mentd.* *Llewellyn v. Turner* (1922), 126 L. T. 532; *Miss Gray, Ltd. v. Cathcart* (1922), 38 T. L. R. 562.
938. *Add. Annotation*:—*Distd.* *Rackham v. Tabrum* (1923), 129 L. T. 24.
945. *Add. Annotation*:—*Refd.* *United States Shipping Board v. Strick*, [1926] A. C. 545.
- 962a. —Appeal under Poor Persons Rules.]—The ct. may award costs against applt. who appeals under the Poor Persons Rules, if the appeal is entirely frivolous & vexatious & is an abuse of the process of the ct.—*DRUMMOND v. HERVEY* (1927), 138 L. T. 200; 44 T. L. R. 14, D. C.

## Part IX.—Certiorari, Prohibition and Mandamus.

979. *Add. Annotation*:—*Apld.* *R. v. Central Criminal Court JJ.*, *Ex p. L. C. C.*, [1925] 2 K. B. 43.
- 980a. — Not action voluntarily brought in county court not having jurisdiction.]—(1) A pltf. who voluntarily sues in a county ct. which, owing to a defence there raised, has no jurisdiction, is not entitled to remove the proceedings to the High Ct. by *certiorari*.  
(2) If such a pltf. succeeds in obtaining an *ex parte* order for *certiorari* deft. need not enter an appearance in the High Ct. Pltf. is not entitled to judgment in default of appearance, & such a judgment, if obtained by him, will be set aside for irregularity.—*GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* *GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, 129 L. T. 438.
- 1008a. On obligation of defendant to appear—Judgment in default of appearance—Validity.]—*GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, No. 980a, *ante*.
1016. *Add. Annotations*:—*Consd.* *Re Stanton*, [1928] 1 K. B. 464. *Refd.* *R. v. Central Criminal Court JJ.*, *Ex p. L. C. C.*, [1925] 2 K. B. 43.
1038. *Add. Annotation*:—*Consd.* *St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor*, [1923] P. 38. *Refd.* *Hunter v. Stadtische Hochseefischerei Gemeinnützige Gesellschaft* (1925), 133 L. T. 488; *Mansfield v. Robinson* [1928] 2 K. B. 353.
1064. *Add. Annotation*:—*Apld.* *Pringle v. Hales*, [1925] 1 K. B. 573.
1076. *Add. Annotation*:—*Expld. & Apld.* *Simbro Trading Co. v. Posograph Parent Corp.*, [1929] 2 K. B. 266.

## Part XII.—Statutes Conferring Special Jurisdiction.

1146. In the cross-reference following this case for "*See, generally, INDUSTRIAL PROVIDENT & SIMILAR SOCIETIES*" read "*See, generally, INSURANCE.*"

*Landlord & Tenant Act, 1927 (c. 36).*—*See* LANDLORD & TENANT, Vol. XXXI.

## CRIMINAL LAW AND PROCEDURE.

NOTE.—After June 1, 1926, see Criminal Justice Act, 1925 (c. 86)

## Part I.—Principles of Criminal Liability.

3. *Add. Annotations*:—**Consd.** *Sorrell v. Smith*, [1925] A. C. 700. **Refd.** *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383. **Mentd.** *Brimelow v. Casson*, [1924] 1 Ch. 302; *Sorrell v. Smith*, [1924] 1 Ch. 506; *Thompson v. British Medical Assocn.*, [1924] A. C. 764.
21. *Add. Annotation*:—**Refd.** *R. v. Cory*, [1927] 1 K. B. 810.
22. *Add. Annotation*:—**Refd.** *Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.
23. *Add. Annotation*:—**Refd.** *Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.
38. *Add. Annotation*:—**Refd.** *R. v. Denyer*, [1926] 2 K. B. 258.
40. *Add. Annotation*:—**Consd.** *Allard v. Selfridge* (1924), 88 J. P. 204.
- 40a. **Right of defendant to give evidence**—As to his state of mind.]—(1) Evidence that deft. is an accessory after the fact does not support an indictment for being a principal, or accessory before the fact.  
(2) On the question of *mens rea*, deft. is entitled to give evidence of the state of his mind at the relevant time.—*R. v. FITZPATRICK* (1926), 19 Cr. App. Rep. 91, C. C. A.
45. *Add. Annotation*:—**Folld.** *Bridges v. Griffin*, [1925] 2 K. B. 233.
47. *Add. Annotation*:—**Mentd.** *Rodbourne v. Hudson* (1924), 41 T. L. R. 132.
55. *Add. Annotation*:—**Refd.** *Anderson v. Daniel* (1923), 130 L. T. 418.
72. *Add. Annotation*:—**Distd.** *Farey v. Welch*, [1929] 1 K. B. 388.
- 72a. ————.]—**Held**: above sect. applies the general law of larceny to pigeons so far as it does not apply to them already: & consequently, a taker who honestly believed the pigeon taken to be his own was not within the sect.—*FAREY v. WELCH*, [1929] 1 K. B. 388; 98 L. J. K. B. 318; 140 L. T. 560; 93 J. P. 70; 45 T. L. R. 277; 27 L. G. R. 153, D. C.
- 72b. **Refusal to maintain wife & family**.]—It is no defence to a charge of “wilfully refusing & neglecting to maintain” a wife & family, whereby they have become chargeable to the common fund of a union, that the husband *bonâ fide* but erroneously believed that he was not legally bound to maintain them in the circumstances. *Mens rea* is immaterial.—*BIGGS v. BURRIDGE* (1924), 89 J. P. 75; 22 L. G. R. 555, D. C.
133. *Add. Annotation*:—**Apld.** *Allen v. Whitehead* (1929), 45 T. L. R. 655.
134. *Add. Annotation*:—**Refd.** *Allen v. Whitehead* (1929), 45 T. L. R. 655.
147. *Add. Annotation*:—As to (1) **Refd.** *Allen v. Whitehead* (1929), 45 T. L. R. 655.
150. *Add. Annotation*:—**Refd.** *Allen v. Whitehead* (1929), 45 T. L. R. 655.
167. *Add. Annotation*:—**Refd.** *R. v. Denyer*, [1926] 2 K. B. 258.
177. *Add. Annotation*:—**Consd.** *R. v. Bateman* (1925), 94 L. J. K. B. 791.
178. *Add. Annotation*:—**Consd.** *R. v. Bateman* (1925), 94 L. J. K. B. 791.

## PART I. SECT. 1.

sa. *...misdemeanour*.]—*Seemle*: at common law disobedience to a statute is a misdemeanour.—*O'DEA v. MIDWIVES REGISTRATION BOARD* (1924), 26 W. A. L. R. 129.—**AUS.**

24 i. *Statutory offences*.—“Offence”—*Prevention of Crimes Act*, 1871 (c. 112), s. 7.]—*STRATHGIRN v. PADDEN*, [1926] S. C. (J.) 9.—**SCOT.**

24 ii. ————“Crime”—*Prevention of Crimes Act*, 1871 (c. 112), ss. 7, 20.]—To be relevant a charge of a contravention of sect. 7 must libel upon its face a conviction on indictment of an offence, & a previous conviction of an offence, both of which offences must be “crimes” as defined in sect. 20.—*MURRAY v. MACMILLAN*, [1927] S. C. (J.) 14.—**SCOT.**

## PART I. SECT. 2, SUB-SECT. 1.

29 ii. ————*Criminal Code*, s. 247.]—*R. v. HURT* (1923), 48 Can. Crim. Cas. 32; 55 O. L. R. 48.—**CAN.**

29 iii. ————.]—*R. v. CANADIAN ALKALI-CHAMBERS, LTD.* (1923), 48 Can. Crim. Cas. 63; 54 O. L. R. 38.—**CAN.**

30 ii. ————.]—A fish merchant was convicted on a charge of clandestinely taking possession of fish boxes, the property of various fish merchants, well knowing that he had not, & would

not have, received permission from the owners to his doing so, & with the boxes by filling them with fish dispatching them to the fish market at Glasgow.—**Held**: as there was nothing clandestine in the conduct of accused, he was not guilty of the offence charged.—*MURRAY v. ROBERTSON*, [1927] S. C. (J.) 1.—**SCOT.**

## PART I. SECT. 2, SUB-SECT. 2.—A.

38 ii. ————.]—*R. v. CRAWFORD* (N. B.), [1927] 2 D. L. R. 563; 47 Can. Crim. Cas. 134.—**CAN.**

## PART I. SECT. 2, SUB-SECT. 2.—B.

59 i. *Notification of contagious disease*—*Public Health Act*, R. S. O., 1914 (c. 218), s. 55 (1).]—Where deft., a qualified medical practitioner, honestly believed that a disease was not communicable:—**Held**: there was no *mens rea*, & he could not be guilty of a criminal offence.—*R. v. GORDON*, [1924] 2 D. L. R. 358; 42 Can. Crim. Cas. 26; 54 O. L. R. 355.—**CAN.**

o (p. 38) i. ————.]—*Mens rea* is an essential ingredient of the offence of possessing apparatus suitable for the manufacture of spirits contrary to *Inland Revenue Act*, s. 180 (c). This does not mean that guilty motive or intention must be shown. *Mens rea* can be shown by the presumptions of fact which may be raised against

accused by the nature of the apparatus found in his possession & the circumstances surrounding that possession.—*R. (JACKSON) v. HUTCHINSON*, [1925] 3 W. W. R. 744.—**CAN.**

sb. *Keeping beer over legal strength*—*Ontario Temperance Act*, 1916 (c. 50), s. 40.]—**Held**: *mens rea* necessary element.—*R. v. HYDE*, [1925] 2 D. L. R. 958; 44 Can. Crim. Cas. 1.—**CAN.**

sc. ————.]—**Held**: *mens rea* not necessary element.—*R. v. BURKE*, [1925] 3 D. L. R. 625; 44 Can. Crim. Cas. 234.—**CAN.**

sf. *Using bottle for liquor incorrectly labelled*.]—**Held**: *mens rea* essential ingredient.—*R. v. SAVILL* (Ont.) (1927), 47 Can. Crim. Cas. 262.—**CAN.**

sj. *Branding animal without authority of owner*—*Brand Act*, R. S. S., 1920 (c. 123), s. 17(b).]—**Held**: *mens rea* essential ingredient.—*CLARK v. LAWSON* (Sask.), [1926] 1 W. W. R. 173; 46 Can. Crim. Cas. 115.—**CAN.**

## PART I. SECT. 3, SUB-SECT. 3.—A.

fi. ————*Driving motor*—*Breach of provisions of Motor Vehicle Act*.]—*R. v. DOYLE* (Ont.), [1928] 50 Can. Crim. Cas. 233.—**CAN.**

## PART I. SECT. 3, SUB-SECT. 3.—B.

o. Delete the word “not.”

212. *Add. Annotation*:—As to (3) **Consd. R. v. Bailey**, [1924] 2 K. B. 300.
- 230a. ———. ]—The Ct. of Criminal Appeal has no power to alter the rules in *McNaghten's Case*, No. 229, *ante*.—**R. v. FLAVELL** (1926), 19 Cr. App. Rep. 141, C. C. A.
243. *Add. Annotation*:—**Mentd. R. v. Harris**, [1927] 2 K. B. 587.
- 244a. *S.P.*—**R. v. Kopsch** (1925), 19 Cr. App. Rep. 50, C. C. A.
302. *Add. Annotation*:—As to (1) **Consd. R. v. Bateman** (1925), 94 L. J. K. B. 791.
306. *Add. Annotation*:—**Refd. R. v. Canham** (1925), 18 Cr. App. Rep. 163.
417. *Add. Annotations*:—**Consd. A.-G. for Straits Settlements v. Pung Ah Yew**, [1925] A. C. 555. **Refd. Badman v. R.**, [1924] 1 K. B. 64.
466. *Add. Annotation*:—**Refd. Lake v. Simmons** (1926), 95 L. J. K. B. 586.
610. *Add. Annotation*:—**Mentd. Pickup v. United Kingdom Dental Board**, [1928] 2 K. B. 459.
611. *Add. Annotation*:—**Apld. Gough v. Rees** (1929), 46 T. L. R. 103.
612. *Add. Annotation*:—**Distd. Gough v. Rees** (1929), 46 T. L. R. 103.
613. *Add. Annotation*:—**Apld. Gough v. Rees** (1929), 46 T. L. R. 103.
- 613a. **Overloading omnibus—Railway Passenger Duty Act, 1842 (c. 79), ss. 13, 15.**—The conductor of an omnibus was convicted of permitting the omnibus to be overloaded contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13, which by sect. 15 imposed a penalty for this offence on the "driver, conductor, or guard." His employer was not present at the time:—**Held**: the employer

was liable to be proceeded against for "aiding & abetting, counselling & procuring" the commission of the offence.—**GOUGH v. REES** (1929), 46 T. L. R. 103; 93 J. P. Jo. 756, D. C.

616. *Add. Annotation*:—**Apld. Allen v. Whitehead** (1929), 45 T. L. R. 655.
- 616a. ———. ]—Resp., the proprietor of a refreshment-house was charged with harbouring prostitutes contrary to Metropolitan Police Act, 1839 (c. 47), s. 44. It was proved that, though resp. received the profits of the business, he did not manage it, but left it in charge of a manager, to whom he had given express instructions not to allow prostitutes to assemble on the premises. Resp. only visited the premises once or twice a week. & there was no evidence that any offence had been committed in his presence or with his knowledge:—**Held**: having delegated all his authority to the manager & become a mere absentee, he was responsible for the acts of the manager, & was liable to conviction.—**ALLEN v. WHITEHEAD** (1929), 45 T. L. R. 655; 27 L. G. R. 652; 93 J. P. Jo. 512, D.
- 708a. ———. **Not supported by evidence that defendant accessory after the fact.**—**R. v. FITZPATRICK**, No. 40a, *ante*.
- 732a. ———. ]—**R. v. FITZPATRICK**, No. 40a, *ante*.
- 751a. ———. ]—On a charge of attempting to obtain by false pretences, "intent" & "attempt" must be carefully distinguished.—**R. v. PUNCH** (1927), 20 Cr. App. Rep. 18, C. C. A.
755. *Add. Annotation*:—**Refd. R. v. Punch** (1927), 20 Cr. App. Rep. 18.
756. *Add. Annotation*:—**Refd. R. v. Punch** (1927), 20 Cr. App. Rep. 18.

**PART I. SECT. 5, SUB-SECT. 1.—B. (b).**

201 ii. ———. ]—*Proof that accused under fourteen—Onus of proof lies on accused.*—**R. v. SCHNEIDER (Sussex)**, [1927] 1 D. L. R. 999; [1927] 1 W. W. R. 306, 47 Can. Crim. Cas. 61.—**CAN.**

**PART I. SECT. 5, SUB-SECT. 2.—B. (b).**

229 xiii. ———. ] A man may appreciate the nature & quality of his deed as an illegal act, & may yet be insane in respect that he fails to recognise that the act is morally wrong; & it is sufficient to justify a finding that accused is incapable of instructing his defence that, although sane in ordinary matters, he is insane in regard to the particular subject-matter of the charge which is made against him.—**H.M. ADVOCATE v. SHARP**, [1927] S. C. (J.) 66.—**SCOT.**

229 xiv. ———. ]—**TOLA RAM v. R.** (1927), 1 L. R. 8 Lah. 684.—**IND.**

e i. ———. ]—A man may be suffering from some form of insanity, in the sense in which the word would be used by an alienist, but may not be suffering from unsoundness of mind, as defined in Indian Penal Code, s. 84. The law recognises nothing but incapacity to realise the nature of the act, & presumes that where a man's mind or his faculties of reasoning are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes.—**MANI RAM v. R.** (1926), 1 L. R. 8 Lah. 114.—**IND.**

**PART I. SECT. 5, SUB-SECT. 2.—B. (c).**

245 iii. ———. ]—The driver of a motor car was charged with causing the death of a pedestrian by his reck-

less driving. He stated that he was not guilty "in respect that by the incidence of temporary mental disorientation due to toxic exhaustive factors he was unaware of the presence of deceased on the highway & of his injuries & death, & was incapable of appreciating his immediately previous & subsequent actions." It was not disputed that the pedestrian's death had been caused by the excessive speed & dangerous manoeuvring of the car:—**Held**: if accused was otherwise in a condition which justified his driving a car, & if, through no fault of his own & for some cause outwith his control & which he was not bound to foresee, he became either gradually or suddenly not master of his action, through some mental defect, & was in that state at the time of the accident, the jury were entitled to return a verdict of not guilty.—**H.M. ADVOCATE v. RITCHIE**, [1926] S. C. (J.) 45.—**SCOT.**

**PART I. SECT. 5, SUB-SECT. 2.—E.**

279 i. *Need not be scientific evidence.*—**R. v. MCCOSKEY**, [1927] 2 D. L. R. 539; 47 Can. Crim. Cas. 122; 60 O. L. R. 41.—**CAN.**

**PART I. SECT. 5, SUB-SECT. 3.—A.**

h i. ———. ]—**WARYAM SINGH v. R.** (1926), 1 L. R. 7 Lah. 141.—**IND.**

**PART I. SECT. 5, SUB-SECT. 3.—B.**

297 iv. ———. ]—Evidence of drunkenness falling short of a proved incapacity was not sufficient to form the intent necessary to constitute the crime, & merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.—**SHERO & GAMA v. R.** (1923), 1 L. R. 7 Lah. 50.—**IND.**

**PART I. SECT. 6, SUB-SECT. 2.—B.**

456 iv. ———. ]—Where several persons join in beating another with laths, & inflict such serious injuries on him that he dies shortly after the beating, all are guilty of the offence of murder without distinction.—**R. v. UMED** (1923), 1 L. R. 45 All. 727.—**IND.**

456 v. ———. ]—The doing to death of one person at the hands of several persons, in circumstances in which it could never be known by which hand life was actually extinguished, amounts to murder, & not merely attempted murder, on the part of each of the persons concerned.—**GHOSH v. R.** (1924), 41 T. L. R. 27; 1 L. R. 52 Ind. App. 40.—**IND.**

**PART I. SECT. 6, SUB-SECT. 3.—B. (a).**

n i. ———. ]—A person cannot be said to have aided & abetted another, where the latter had no consciousness of his act & exercised no volition in the matter.—**R. v. HASOOL**, [1924] App. D. 43.—**S. AF.**

**PART I. SECT. 6, SUB-SECT. 6.—C.**

772 i. *Liability for attempt—Larceny.*—**R. v. SHAH**, [1926] 3 D. L. R. 553; [1926] 2 W. W. R. 319; 46 Can. Crim. Cas. 209; 36 Man. L. R. 64.—**CAN.**

**PART I. SECT. 6, SUB-SECT. 6.—D.**

sf. *Charge of assault with intent to commit rape—Amounts to charge of attempted rape.*—**R. v. MACINTYRE** (1925), 43 Can. Crim. Cas. 356.—**CAN.**

**PART I. SECT. 6, SUB-SECT. 7.—A.**

h i. ———. ]—Every person of legal responsibility who knowingly &

812. *Add. Annotations*:—**Consd.** *Sorrell v. Smith*, [1925] A. C. 700. **Refd.** *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383. **Mentd.** *Brimelow v. Casson*, [1924] 1 Ch. 302; *Sorrell v. Smith*, [1924] 1 Ch. 506; *Thompson v. British Medical Assocn.*, [1924] A. C. 764.
814. *Add. Annotations*:—*As to* (1) **Refd.** *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306. *As to* (2) **Consd.** *Sorrell v. Smith*, [1925] A. C. 700. **Generally, Refd.** *G. W. K. v. Dunlop Rubber Co.* (1926), 42 T. L. R. 376. **Mentd.** *Brimelow v. Casson*, [1924] 1 Ch. 302.
861. *Add. Annotation*:—**Generally, Refd.** *R. v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.
902. *Add. Annotation*:—**Refd.** *R. v. Gordon* (1925), 133 L. T. 731.
913. *Add. Annotations*:—**Mentd.** *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Noble* (1928), 20 Cr. App. Rep. 191.
930. *Add. Annotation*:—**Refd.** *R. v. Luberg* (1926), 135 L. T. 411.
- 933a. ——— **Though no direct communication between conspirators.**—*R. v. MEYRICK, R. v. RIBUFFI* (1929), 45 T. L. R. 121; 21 Cr. App. Rep. 94, C. C. A.

## Part II.—Original Criminal Jurisdiction.

- 960a. ———.]—**GREY'S (LORD) CASE** (1541), 1 State, Tr. 439.
- 961a. **Right of Scotch peer.**] **SANCHAR'S (LORD) CASE** (1612), 9 Co. Rep. 117a; 77 E. R. 902; *sub nom.* **SANQUIRE'S (LORD) CASE**, 2 State Tr. 743.
- Annotations.*—**Consd.** *R. v. Graham* (1791), 2 Leach, 547. **Refd.** *Clarendon's Case* (1667), 6 State, Tr. 291. **Mentd.** *Judgment & Execution in Treason & Felony Case* (undated), 12 Co. Rep. 129; *R. v. Cooke* (1826), 7 Dow. & Ry. K. B. 673; *Smith v. R.* (1819), 13 Q. B. 738; *R. v. Eyre* (1868), L. R. 3 Q. B. 487; *R. v. Plummer*, [1902] 2 K. B. 339.
- 967a. ——— **Not by articles exhibited by peer in House of Lords.**] **CLARENDON'S (EARL) CASE** (1667), 6 State, Tr. 291.
- 975a. ———.]—**SOMERSET'S (DUKE) CASE** (1551), 1 State, Tr. 515.
988. *Add. Annotation*:—**Mentd.** *Everett v. Griffiths*, [1924] 1 K. B. 941.
989. For "*R. v. ELLIOT*" read "*R. v. ELLIOT, HOLLIS & VALENTINE*." *Add. Annotations*:—**Refd.** *R. v. Paty* (1704), 2 Ld. Raym. 1105; *Burdett v. Abbot* (1811), 14 East, 1.
991. *Add. Annotation*:—**Consd.** *R. v. Cory*, [1927] 1 K. B. 810.
992. *Add. Annotation*:—**Refd.** *Leyton U. C. v. Wilkinson*, [1927] 1 K. B. 853.
1004. *Add. Annotation*:—**Mentd.** *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383.
1007. *Add. Annotations*:—**Generally, Mentd.** *R. v. Evening Standard, Ex p. Public Prosecutions Director, R. v. Manchester Guardian, Ex p. Same, R. v. Daily Express, Ex p. Same* (1924), 40 T. L. R. 833; *R. v. Daily Mirror, Ex p. Smith*, [1927] 1 K. B. 845.
- 1016a. **Power to order payment of taxes in respect of honorarium payable to clerk of court.**]—An order made by the Central Criminal Ct. directing that any taxes demanded by the Inland Revenue authorities in respect of an honorarium payable to the clerk of that ct. shall be paid by the public bodies by which the salaries of the ct.'s officials are payable is not invalid & not in excess of the powers of the ct. under Central Criminal Ct. Act, 1834 (c. 36).—*R. v. CENTRAL CRIMINAL COURT JJ., Ex p. LONDON COUNTY COUNCIL*, [1925] 2 K. B. 43; 91 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.
- 1022a. ———.]—*R. v. DEVON J.J., Ex p. PUBLIC PROSECUTIONS DIRECTOR*, No. 1138, *post*.
1030. *Add. Annotation*:—**Distd.** *R. v. Teesdale* (1927), 138 L. T. 160.
1031. *Add. Annotation*:—**Distd.** *R. v. Teesdale* (1927), 138 L. T. 160.
- 1031a. ———.]—It is not necessary in order that a person may be dealt with as an

voluntarily co-operates with, or aids or assists or advises or encourages another in the commission of a crime is an accomplice, without regard to the degree of his guilt.—*R. v. GAL- LAGHER*, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

**h ii.** ———.]—An accused may be convicted on a charge of counselling an offence, although the person counselled did not actually commit the offence.—*R. v. YEE JAM HONG (Sak.)*, [1929] 1 D. L. R. 179; 50 Can. Crim. Cas. 372; [1928] 3 W. W. R. 490.—**CAN.**

### PART I. SECT. 6, SUB-SECT. 8.—A.

**s i.** ———.]—Conspiracy cannot exist unless two or more persons are parties to an agreement to do an illegal act, or to do a legal act illegally, both knowing, or being deemed to know, that the carrying out of the purpose involves the commission of an indictable offence.—*R. v. SEGAL*, [1925] 4 D. L. R. 762; *Q. R. 39 K. B. 436*.—**CAN.**

**s ii.** *What amounts to—Conspiring with another ignorant of intended fraud.*—*R. v. SEQUIRE (Ont.)* (1928), 49 Can. Crim. Cas. 266.—**CAN.**

### PART I. SECT. 6, SUB-SECT. 8.—C.

**831 i.** *One alone cannot conspire*.]—There can be no conspiracy unless two or more minds are *ad idem* as to their object.—*HARRIS v. R.* (1927), 48 N. L. R. 330.—**S. AF.**

**835 i.** *Husband & wife.*—Husband & wife cannot conspire together so as to be guilty of the crime of conspiracy.—*R. v. McKELUP*, [1926] N. Z. L. R. 1. **N.Z.**

### PART I. SECT. 6, SUB-SECT. 8.—N.

**894 ii.** ———.]—*R. v. BOOK- HALTER & LANIN*, [1924] 3 D. L. R. 122; 42 Can. Crim. Cas. 186.—**CAN.**

**894 iii.** ———.]—*R. v. PORTER & MARKS (B. C.)*, [1928] 4 D. L. R. 825; 50 Can. Crim. Cas. 339.—**CAN.**

### PART I. SECT. 6, SUB-SECT. 8.—O (a).

**921 i.** *Conspiracy may be inferred from facts proved.*—*R. v. SIMINGTON (B. C.)* (1926), 45 Can. Crim. Cas. 249.—**CAN.**

**921 ii.** *S. P. R. v. THORNTON (B. C.)* (1926), 46 Can. Crim. Cas. 249.—**CAN.**

**q i.** ———.]—If an information

charges a conspiracy between A., B., C. & D., together & with E. & F. & others, & a conviction finds A. guilty of a conspiracy with B. & with E. & F. & others, the conspiracy on which A. is convicted is not a different conspiracy from the one on which he was charged.—*R. v. MARINO & GIACOPPI*, [1927] 2 W. W. R. 168, 47 Can. Crim. Cas. 348; 38 B. C. R. 452.—**CAN.**

### PART I. SECT. 6, SUB-SECT. 8.—O (c).

**935 x.** ———.]—The rule of evidence that, on charges of conspiracy, the acts & declarations of each conspirator in furtherance of the common object are admissible against the rest, is applicable on a charge of bribery, since the crime of bribery involves corrupt conduct of, & the acting in concert by, & the existence of a common purpose between, the persons concerned. It is immaterial whether the existence of the common purpose or the participation therein of those alleged to have participated in the crime be proved first, though either element is nugatory without the other.—*R. v. LEVY*, [1929] App. D. 312. **S. AF.**

incorrigible rogue under Vagrancy Act, 1824 (c. 33), s. 5, on a second conviction for any of the offences named in sect. 4 of that Act, that the previous conviction should use the actual words "rogue & vagabond," since the statute itself provides that a person convicted of any of those offences "shall be deemed a rogue & vagabond."—*R. v. TEESDALE* (1927), 138 L. T. 160; 91 J. P. 184; 44 T. L. R. 30; 28 Cox, C. C. 438; 20 Cr. App. Rep. 113, C. C. A.

1049. *Add. Annotation*:—**Mentd.** *Salvesen* (or von Lörang) v. Austrian Property Administrator. [1927] A. C. 641.

1079a. — **Fraudulent conversion begun abroad**—**Receipt of proceeds in England.**—A fraudulent conversion begun abroad, even though triable there, but completed by receipt of the proceeds in this country, is justiciable in this country.—*R. v. LYLE* (1924), 18 Cr. App. Rep. 59, C. C. A.

1100. *Add. Annotation*:—**Refd.** *The Fagernes*. [1926] P. 185.

1101. *Add. Annotation*:—**Distd.** *The Fagernes*, [1927] P. 311.

1124. *Add. Annotations*:—**As to (2) Refd.** *The Fagernes*, [1926] P. 185. **As to (4) Refd.** *The Fagernes*, [1926] P. 185.

1138. For the existing paragraph in original volume substitute the following paragraph:—  
— — — — —.]—A person on board one of His Majesty's ships, which was then in commission & lying in the tidal waters of the Firth of Forth above the Forth

Bridge, was alleged to have committed larceny as a clerk or servant to the Navy, Army & Air Force Institutes. He was placed under arrest by an executive officer of the ship, & some days later, by which time the vessel had arrived in Torbay, he was apprehended by the Devon police & charged before the justices, who committed him for trial at the Devon quarter sessions. The indictment charged an offence contrary to Larceny Act, 1916 (c. 50), s. 17 (1) (a), committed on the high seas. Prisoner was arraigned & pleaded not guilty & a jury was impanelled, but quarter sessions declined to proceed with the indictment upon the ground that Larceny Act, 1861 (c. 96), s. 115, which was said to give them jurisdiction, did not extend to offences committed in estuaries or rivers in Scotland, & that the offence charged was properly triable only by the Scottish cts.:—**Held**: quarter sessions had jurisdiction to try the indictment inasmuch as it alleged an offence which, by virtue of Naval Discipline Act, 1866 (c. 109), was committed within the jurisdiction of the Admiralty of England, & therefore, being an offence mentioned in Larceny Act, 1861, it was triable, under sect. 115 of that Act, in the county where the offender was apprehended.—*R. v. DEVON JJ., Ex p. PUBLIC PROSECUTIONS DIRECTOR*, [1924] 1 K. B. 503; 93 L. J. K. B. 284; 130 L. T. 640; 88 J. P. 73; 40 T. L. R. 213; 68 Sol. Jo. 422; 27 Cox, C. C. 593, D. C.

1235. *Add. Annotations*:—**Mentd.** *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

## Part III.—Limitation of Time for Criminal Proceedings.

1269. *Add. Annotation*:—**Apld.** *R. v. Hewitt* (1925), 89 J. P. Jo. 721.

### PART II. SECT 1, SUB-SECT. 5.

**sa.** *Election for speedy trial.*—*R. v. CUMMINS* (N. S.) (1928), 50 Can. Crim. Cas. 375.—**CAN.**

**sb.** —.]—When a prisoner has elected a speedy trial, his consent to be so tried, on additional charges which it is sought to prefer against him, is required only when they are not founded on the facts or evidence disclosed in the depositions.—*R. v. DUFF* (Sask.), [1929] 1 D. L. R. 152; 50 Can. Crim. Cas. 246; [1928] 3 W. W. R. 550.—**CAN.**

**sc.** —.]—*R. v. YEE JAM HONG* (Sask.), [1929] 1 D. L. R. 179; 50 Can. Crim. Cas. 372; [1928] 3 W. W. R. 490.—**CAN.**

### PART II. SECT 2, SUB-SECT. 1.

**r i.** *Offence committed before jurisdiction granted—Trial subsequent to grant.*—*R. v. HEISLER* (N. S.), [1928] 3 D. L. R. 221; 49 Can. Crim. Cas. 341.—**CAN.**

**PART II. SECT. 3, SUB-SECT. 1.—A.**  
1148 **iv.** —.]—Accused,

charged with inflicting grievous bodily harm, was arrested on a warrant & brought before two justices for summary trial in a judicial district other than that in which the offence was committed. Justices of the peace in Saskatchewan have jurisdiction as such throughout the Province. He pleaded to the charge & made his defence, & it was not until he appealed from his conviction that he objected to the place of trial.—**Held**: applying Criminal Code, s. 577, applt. was properly charged & tried, even if s. 581 did apply; & even if he had a right to be tried in the district where the offence was committed, his objection to the place of trial was raised too late.—*R. v. ROBERTS*, [1928] 1 D. L. R. 260; 49 Can. Crim. Cas. 171; 22 Sask. L. R. 212; [1927] 3 W. W. R. 844.—**CAN.**

**PART II. SECT. 3, SUB-SECT. 1.—C. (a).**

**t i.** —.]—**Held**: a letter written by deft. from a city in Pennsylvania to Ontario, enclosing

money for travelling expenses & containing instructions to proceed to Montreal, was deft.'s act committed in Ontario, & a taking & enticing away within sect. 316 of the Code.—*R. v. LOFTUS* (1926), 45 Can. Crim. Cas. 390; 59 O. L. R. 65.—**CAN.**

### PART II. SECT. 3, SUB-SECT. 3.

1254 **xvi.** —.]—*R. v. DE BRUERE* (1927), 47 Can. Crim. Cas. 311; 60 O. L. R. 277.—**CAN.**

**sd.** *Appeal from refusal to change—British Columbia.*—Accused was convicted at Prince Rupert on a charge of murder. The Supreme Ct. of Canada on appeal set aside the conviction & ordered a new trial. An application was then made by accused to change the venue & was dismissed. An appeal from the order was dismissed for want of jurisdiction, as no appeal has been provided for by the Dominion Statute nor by the law of England applicable to this province.—*R. v. SANKEY* (1927), 49 Can. Crim. Cas. 195; 39 B. C. R. 247.—**CAN.**

## Part IV.—Bail.

- 1366. Add. Annotations:—Mentd.** *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.
- 1411a. — When granted—Only in special circumstances.**—*R. v. GREGORY* (1928), 20 Cr. App. Rep. 185, C. C. A.
- 1416. Add. Annotations:—Apld.** *R. v. Williams* (1925), 19 Cr. App. Rep. 67. **Mentd.** *R. v. Dennis*, *R. v. Parker*, [1924] 1 K. B. 867; *R. v. McDonnell* (1928), 20 Cr. App. Rep. 163.
- 1436a. — When term of imprisonment short.]**—In the case of a short sentence, where an appeal cannot be speedily heard, the ct. may grant bail.—*R. v. SELKIRK* (1925), 18 Cr. App. Rep. 172, C. C. A.
- 1438. Add. Annotation:—Mentd.** *Statham v. Statham*, [1929] P. 131.
- 1439. Add. Annotation:—Mentd.** *R. v. Chesshire, Lucas & Bottom* (1927), 20 Cr. App. Rep. 47.
- 1445. Add. Citation:—87 J. P. Jo. 536.**  
**Add. Annotation:—Refd.** *R. v. Davidson* (1927), 20 Cr. App. Rep. 66.
- 1445a. — .]**—The ct., in granting an application for leave to appeal against conviction & sentence, offered appt., in view of the interval before the hearing, bail on his own recognisance of £50 & that of a surety in the same sum.—*R. v. MACDONALD* (1928), 21 Cr. App. Rep. 26, C. C. A.
- 1446a. — .]**—*R. v. DAVIDSON*, No. 3129b, *post*.

## PART IV. SECT. 1.

**1301 vii. — .]**—*R. v. COOPER-BLOOM* (1924), 43 Can. Crim. Cas. 391.—CAN.

**]** The although not necessarily the only, consideration that should determine the exercise of a magistrate's discretion is the question of securing the attendance of accused.—*KOK v. R.* (1927), 48 N. L. R. 267.—S. AF.

**mi. — .]**—Criminal Code, s. 696, provides that where the offence is punishable by imprisonment for more than five years a justice of the peace, jointly with some other justice, may in certain circumstances admit the accused to bail. One justice has no jurisdiction to take the recognisances, &, if he does so, no liability is imposed, at least no liability which can be enforced in a summary manner.—*R. v. MOORE*, [1924] 1 W. W. R. 111; 41 Can. Crim. Cas. 164; 18 Sask. L. R. 60.—CAN.

**sl. Amount of bail.—Power to increase.]**—Bail was fixed by a magistrate at the close of a preparatory examination of accused who was committed for trial. The examination was reopened to ascertain whether accused admitted eight previous convictions. Upon his admission, prosecutor applied for an increase of bail, which the magistrate granted. Accused then applied for an order that the bail as originally fixed should stand.—*Held*: it was competent for the magistrate to reconsider the amount of the bail.—*SWART v. R.* (1923), 44 N. L. R. 133.—S. AF.

**sg. Effect of bail.—Whether reckoned as part of imprisonment.]**—The time during which prisoner is out on bail under an order for bail made at his request cannot be reckoned as part of his term of imprisonment, even though such order was *ultra vires*.—*R. v. IACT*, [1925] 2 W. W. R. 129; 43 Can. Crim. Cas. 363.—CAN.

**sh. — .]**—The time of imprisonment for an offence against Manitoba Temperance Act does not continue to run while prisoner is out on bail pending an appeal.—*R. v. SIPPS*, [1925] 3 D. L. R. 361; [1925] 2 W. W. R. 325; 44 Can. Crim. Cas. 60; 35 Man. L. R. 151.—CAN.

**sj. Estreatment of bail.]**—The procedure to be followed on an application to estreat bail is to be found in Bail Act, s. 12 (2).—*R. v. BRIGGS* (1923), 33 B. C. R. 297.—CAN.

**sk. — . Application to remit.—Appeal.]**—No appeal lies from the refusal by a county ct. judge of a motion to remit & discharge the estreat of appt.'s bail-bond.—*R. v. CHENEADER* (1923), 40 Can. Crim. Cas. 206; 56 O. L. —.

## PART IV. SECT. 2.

**p i. — .]**—*R. v. MURRAY* (1926), 59 N. S. R. 119.—CAN.

**1336 iii. — .]**—The fundamental test on bail motions is the probability of prisoner's evading justice.—*THE STATE v. PURCELL*, [1926] 1 R. 207; 59 I. L. T. 111.—IR.

**1344 i. — . Severity of punishment.]**—The ct. may have regard to the seriousness of the crime charged; (b) the severity of the punishment; (c) the strength of the case on the depositions; (d) the prospect of a reasonably speedy trial; & (e) the opposition of the A.-G.—*THE STATE v. PURCELL*, [1926] 1 R. 207; 59 I. L. T. 111.—IR.

**1344 ii. — .]**—*KRISHNA CHANDRA JAGATI v. R.* (1927), 1 I. L. R. 6 Pat. 802.—IND.

**1349 i. Conduct of prisoner.—Tampering with Crown witnesses.]**—Tampering with the prosecution witnesses may be a good reason for refusing bail.—*KRISHNA CHANDRA JAGATI v. R.* (1927), 1 I. L. R. 6 Pat. 802.—IND.

**1349 ii. — .]**—Where bail was opposed, on the ground that accused had been arrested before investigations were complete to prevent his tampering with Crown witnesses.—*Held*: the magistrate was not warranted in refusing bail for that reason.—*KOK v. R.* (1927), 48 N. L. R. 267.—S. AF.

## PART IV. SECT. 4.

**1361 v. — .]**—*R. v. STAGO* (1925), 44 Can. Crim. Cas. 128.—CAN.

**1361 vi. — .]**—*THE STATE v. PURCELL*, [1926] 1 R. 207; 59 I. L. T. 111.—IR.

**1361 vii. — .]**—*R. v. NGASANTHWAA* (1927), 5 I. L. R. Ran. 276.—IND.

**o i. — .]**—The opposition of the A.-G. to the giving of bail, while entitled to great weight, does not bind the discretion of the ct.—*THE STATE v. PURCELL*, [1926] 1 R. 207; 59 I. L. T. 141.—IR.

## PART IV. SECT. 8.

**1401 v. — .]**—Where a police

magistrate refused to allow accused to be released on bail pending the preliminary hearing, an application by way of *habeas corpus* for accused's release on bail was granted.—*R. v. MACDONALD*, [1925] 2 W. W. R. 613.—CAN.

## PART IV. SECT. 12.

**sl. Grounds for granting.]**—While it is not possible to lay down an inflexible rule as to when a person convicted of an offence & sentenced to imprisonment, who appeals against his conviction, should or should not be admitted to bail pending the determination of his appeal, it is important to bear in mind that every one is presumed to be innocent until legally convicted, & that so far as is humanly possible the law should be so administered as not to do injustice to an innocent person.—*R. v. SMITH, R. v. BARNARD* (1921), 43 Can. Crim. Cas. 21; 56 O. L. R. 244.—CAN.

**sm. By Supreme Court of Canada.]**—A judge of the Supreme Ct. has no jurisdiction to admit to bail an accused person pending his appeal, such jurisdiction being conferred by Criminal Code, s. 1019 (1), upon the Chief Justice of the appellate ct. or a judge of that ct. designated by him.—*STEELE v. R.*, [1924] 2 D. L. R. 470; [1924] S. C. R. 1; 42 Can. Crim. Cas. 47.—CAN.

**ei. — Time for entering into recognisance.]**—On an appeal from a summary conviction, since there is now no time limit for filing the notice of appeal under Criminal Code, s. 750, there is no time limit for entering into the recognisance which may be given under sub-sect. c.—*R. v. BAILKO*, [1924] 4 D. L. R. 832; 3 W. W. R. 424.—CAN.

**ei. — .]**—*R. v. DESJARLAIS*, [1924] 3 W. W. R. 145.—CAN.

**sn. When application for release can be made.—Before return by gaoler showing cause of commitment.]**—*R. v. HOOD*, [1923] 1 D. L. R. 624; 49 Can. Crim. Cas. 191; 59 N. S. R. 471.—CAN.

## PART IV. SECT. 13.

**so. Refusal by sheriff.—Summary complaint.]**—*Held*: an appeal to the High Ct. of Justiciary against a refusal of bail was not confined to cases tried upon indictment.—*LIDDELL v. STRATHERN*, [1926] S. C. (J.) 107.—SCOT.

## Part V.—Proceedings Preliminary to Indictment.

1458. *Add. Annotation*:—**Refd.** *Conn v. Turnbull* (1925), 89 J. P. Jo. 300.
1459. *Add. Annotation*:—**Refd.** *Conn v. Turnbull* (1925), 89 J. P. Jo 300.
1484. *Add. Citation*:—31 T. L. R. 401.
- 1513a. —. —.]—*R. v. BOULTON* (1871), 12 Cox, C. C. 87.
- Annotation*:—**Mentd.** *R. v. Luberg* (1926), 135 L. T. 414.
1523. *Add. Annotations*:—**Mentd.** *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Noble* (1928), 20 Cr. App. Rep. 191.
- 1536a. —. —.]—*R. v. BOULTON* (1871), 12 Cox, C. C. 87.
- Annotation*:—**Mentd.** *R. v. Luberg* (1926), 135 L. T. 414.
- 1555a. —. —. —. —.]—**WHITE** v. TAYLOR (1801), 4 Esp. 80; 170 E. R. 648.
1583. *Add. Annotation*:—**Refd.** *Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879.
1611. *Add. Annotations*:—**Refd.** *Poland v. Parr*, [1927] 1 K. B. 236. **Mentd.** *Prager v. Blattspiel, Stamp & Heacock*, [1924] 1 K. B. 566.
1622. *Add. Annotation*:—**Folld.** *Isaacs v. Keech*, [1925] 2 K. B. 354.
- 1622a. —. —.]—**Town Police Clauses Act, 1847 (c. 89), s. 28.**]—Under the above sect. in order to entitle a constable to take a person into custody without a warrant it is not necessary that the person should be in fact committing the offence, provided that the constable honestly & on reasonable grounds believes that the person is committing it.—**ISAACS v. KEECH**, [1925] 2 K. B. 354; 94 L. J. K. B. 676; 133 L. T. 347; 89 J. P. 189; 41 T. L. R. 432; 23 L. G. R. 444; 28 Cox, C. C. 22, D. C.
- 1663a. —. —.]—**BROWN'S CASE** (1647), cited in 2 Hale, P. C. at p. 111.
- Annotation*:—**Refd.** *Howard v. Gossett* (1845), 5 L. T. O. S. 144.
- 1678a. —. —.]—**BLATCHER v. KEMP** (1782), 1 Hy. Bl. 15, n.; 126 E. R. 10.
- Annotations*:—**Consd.** *R. v. Weir* (1823), 1 B. & C. 288. **Apd.** *A.-G. v. Jefferys* (1821), M'Cle. 270.
- 1678b. —. —.]—**Except when issued to A. & constable.**]—**WEATHERELL v. WATSON** (1822), 1 L. J. O. S. K. B. 2.
- 1704a. —. —.]—**To rehear charge - Justices equally divided.**]—**Apptc.** was charged with the

**PART V. SECT. 1. SUB-SECT. 2.—A.**

**1488 ii.** — — — — —.]—Where a man who knows that he is under detention acquires in the situation there is an arrest, even though there has been no actual touching of his person. **HIGGINS v. MACDONALD (B. C.). [1928]**  
4 D. L. R. 241; [1928] 3 W. W. R. 115; 150 Can. Crim. Cas. 353. **CAN.**

1498. *Necessary to inform prisoner under what power constable*—*Emp. j.*—A person is not to be arrested by a constable to know under what power the constable is arresting him &c, if he specifies a certain power, which the person knows the constable has not got, he is entitled to object to such arrest & escape from custody, such custody not being a lawful one—*APPASU MUDALIAR v R.* (1921), 1 L. R. 47 Nud. 112.—*IND.*

sp. Second arrest justified -- First arrest irregular] - Ex p. MALATSKY, [1925] 2 D. L. R. 242, 43 Can. Crim. Cas. 306 - CAN.

PART V. SECT. 1, SUB-SECT. 2.—  
E. (b).

1555 v. -----.] -Telegrams from the "police" of a Native State which, in addition to personal description of the fugitive & suggestions of his possible movements, merely alleged that he was wanted for embezzlement of money to the value of two lakhs, do not constitute credible information or reasonable suspicion sufficient to justify his arrest without a warrant in British India.- SURESH CHANDRA ROY Chowdhury v. R. (1924), 1. L. R. 52 Cal. 319 - IND.

**PART V. SECT. 1, SUB-SECT. 2.—**  
**E. (e) 1.**

**a i.** — *Liquor Act, R. S. A., 1922* (c. 226), s. 85 ]—Two police officers, suspecting that accused sold liquor contrary to the above Act, went to his premises &, without disclosing their identity, asked him to serve them with liquor, which he did. Having consumed the liquor they ordered more, which was being served but not consumed when, disclosing their identity, they arrested accused without a warrant:—*Held*: accused was “found actually committing” an offence, & could be arrested without a warrant. — *R. v. HILLS, [1924] 1 W. W. II. 651*;

41 Can. Crim. Cas. 329; 20 Alta L.R. 156.—CAN.

a ii. — *Manitoba Temperance Act*, C. A., 1924 (c 118), s. 114.]—R v ZENICK (Man.), [1927] 3 W. W. R. 421, 48 Can. Crim. Cas. 398.—CAN.

PART VI. SECT 1, SUB-SECT. 2. —  
F. (a)

**k.i. Warrant prematurely issued—Discharge on habeas corpus—Re-arrest.** *Ex p. DAVID (N. B.)*, [1928] 3 D. L. R. 237, 49 Can. Crim. Cas. 381. CAN.

PART V. SECT. 1, SUB-SECT. 2.—  
F. (b).

**sq. Inclusion of words not applicable**—Where deft.'s arrest was justified, as he was not prejudiced in any way.—*Held*: application for his discharge should be dismissed, notwithstanding the inclusion in the warrant of words which were not applicable & should have been omitted.—**OVERSEERS OF THE POOR v. MARRIOTT** (1924), 42 Can. Crim. Cas. 132; 57 N. S. R. 315.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.--  
F. (c).

1874 iii. ---. ]—Where an arrest is not justified without a warrant, it is necessary for the constable making the arrest to have the warrant in his personal possession, even although the person arrested does not demand its production. It is not sufficient that a warrant has been issued directed to "all or any of the police officers" of the province, & is in possession of a constable on whose instructions by telephone another constable at a different place makes the arrest & delivers the person arrested to the constable who holds the warrant. R. v. LINDER, [1924] 3 D. L. R. 503; 2 W. W. R. 646; 20 Alta. L. R. 415.—CAN.

1680 v. ————J—R v. WARD  
(1923), 53 O. L. R. 569.—CAN.

1685 v. —.]—An arrest on a Sunday under a warrant issued for an offence against Manitoba Temperance Act, C. A., 1924 (c. 118), is not illegal.—R. v. Smith, [1927] 2 D. L. R. 982; [1927] 1 W. W. R. 731; 47 Can. Crim. Cas. 345, 35 Man. L. R. 386.—CAN.

st. Accused illegally under arrest without warrant ]—Where, when a war-

1622a. — Town Police Clauses Act, 1847 (c. 89), s. 28.]—Under the above sect. in order to entitle a constable to take a person into custody without a warrant it is not necessary that the person should be in fact committing the offence, provided that the constable honestly & on reasonable grounds believes that the person is committing it. — ISAACS v. KEECH, [1925] 2 K. B. 354; 94 L. J. K. B. 676; 133 L. T. 347; 89 J. P. 189; 41 T. L. R. 432; 23 L. G. R. 444; 28 Cox, C. C. 22. D. C.

1663a. . . .]—BROWN'S CASE (1647), cited in  
2 Hale, P. C. at p. 111.

*Annotation*:—**Refd.** *Howard v. Gossett* (1845), 5 L. T. O. S. 144.

1678a. ———.]—BLATCHER *v.* KEMP (1782), 1 Hy. Bl. 15, n. ; 126 E. R. 10.

*Annotations*:—**Consd.** R. v. Weir (1823), 1 B. & C. 288.  
**Apld.** A.-G. v. Jefferys (1821), M'Cle. 270.

1678b. — — — — Except when issued to A. & constable.]—WEATHERELL v. WATSON (1822), 1 L. J. O. S. K. B. 2.

1704a. — To rehear charge - Justices equally divided.]—Appct. was charged with the

rant was issued, accused was illegally under arrest because previously arrested without a warrant:—*Held*: it did not affect the validity of the warrant.—*R. v. BABILKO*, [1921] 1 W. W. R. 60; 41 Can. Crim. Cas. 193; 20 Alta. L. R. 126.—CAN.

PART V. SECT. 1, SUB-SECT. 3.

d1. - — *By other constables acting in concert*]—The authority given by a search warrant to the constable to whom it is addressed extends to the other constables acting in concert with him under it.—*K. v. DIAMOND*, [1924] 1 D. L. R. 1033; 1 W. W. R. 444, 442 Cnn. Crim. Cas. 90; 20 Alta. L. R. 60.—CAN.

**11. — Validity of information.**—The ct. refused to set aside a search warrant issued under the above Act, where the grounds of suspicion were written on a separate piece of paper attached to the information but not initialed.—*R. v. WILSON, Ex p. HARRINGTON* (1911), 40 N. B. R. 384.—CAN.

1 ii. — — — —.]— A search warrant issued under the above Act will be quashed where no grounds of suspicion are stated in the information.— *R. v. NICKERSON, Ex p. WESTON* (1911), 40 N. B. R. 382.— **CAN.**

**PART V. SECT. 2. SUB-SECT. 1.**

a i. ———. ———.]— R. v. MLAKER,  
[1923] 2 W. W. R. 296; 39 Can. Crim.  
Cas. 384.—CAN.

a ii. — *To try charge without inquiring as to arrest.*—Where an accused person is before a magistrate who has jurisdiction over the offence, the magistrate need not inquire how he came there, but may proceed to try the case, notwithstanding objection by accused that he was wrongfully arrested without warrant.—*R. v. ALBERTS, [1924] 2 D. L. R. 863; 1 W. W. L. 863.*—**CAN.**

c i. ———.]—If accused be found guilty of a lesser included offence, it is unnecessary to amend the charge.—*QUN v. R.*, [1921] 4 D. L. R. 182.—CAN.

e i. — To hear charge on subsequent information—*Prior illegal arrest.*—If a person is duly charged with an offence on an information under oath, & is arrested on a warrant duly issued & brought before the magistrate, the



indictable offence of causing grievous bodily harm by the reckless & wanton driving of a motor car. The justices were equally divided on the question whether appct. should be committed for trial, & they decided that appct. was not, in these circumstances, entitled to be discharged, & that they would adjourn & have the case reheard on a later date by a reconstituted bench. Appct. then obtained a rule *nisi* for a mandamus to the justices to order his discharge in pursuance of Indictable Offences Act, 1848 (c. 42), s. 25:—*Held*: under that sect. the duty of the justices to discharge the accused arose only when they had reached an actual opinion that the evidence was not sufficient to put the accused upon his trial, & as they had not reached such an opinion, they were entitled to adjourn the hearing for the purpose of having the bench reconstituted, & the rule must be discharged.—*R. v. HERTSMERE JJ., Ex p. LARSEN*, [1926] 1 F. R. 191; 95 L. J. K. B. 130; 134 L. T. 143; 89 J. P. 205; 42 T. L. R. 77; 28 Cox, C. C. 90, D. C.

**1790a.** — Under Criminal Justice Act, 1925 (c. 86).—*R. v. STROUD, Ex p. STROUD* (1928), 72 Sol. Jo. 826, D. C.

**1793.** *Add. Annotations*:—*Consd. R. v. Beebe* (1925), 133 L. T. 736. *Refd. Statham v. Statham*, [1929] P. 131.

**1794.** *Add. Annotation*:—*Refd. R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127.

**1798a.** Several prisoners charged on same facts—

magistrate's jurisdiction is not ousted by the fact that at the time of the information & arrest accused was under detention as the result of an illegal arrest without warrant.—*R. v. JOHNSON*, [1924] 3 D. L. R. 470; 1 W. W. R. 828; 34 Man. L. R. 100.—*CAN.*

**ii.** — *Prior illegal search*.—*Held*: assuming a search to have been illegal, it did not affect subsequent proceedings under a warrant, & there was nothing to affect the jurisdiction of the magistrate.—*R. v. DIPENTA* (1924), 42 Can. Crim. Cas. 152; 57 N. S. R. 294.—*CAN.*

**PART V. SECT. 2, SUB-SECT. 2.—E. sv. Admissibility of—Whether notice to accused essential.**—*BRUNET v. R.*, [1928] 2 D. L. R. 254; [1928] S. C. R. 161; 49 Can. Crim. Cas. 257.—*CAN.*

**PART V. SECT. 2, SUB-SECT. 3.**

**1781 i. When remand granted.**—On a prisoner being brought before a magistrate for trial on the day of the arrest the magistrate was informed both by the prisoner & by telegram from a counsel that the latter had been retained for the defence & was requested by them to grant an adjournment to permit of the counsel's attendance:—*Held*: the refusal under such circumstances of a reasonable remand was a wrongful denial to the accused of the right given him by the Criminal Code

to make a full defence & have his counsel present.—*R. v. HALCHUK (HECHUK) (Man.)*, [1928] 1 D. L. R. 731; [1928] 1 W. W. R. 616.—*CAN.*

#### PART V. SECT. 2, SUB-SECT. 4.

**a i.** — *Justifiable homicide*.—*R. v. DU GUAY*, [1928] 2 W. W. R. 596; 50 Can. Crim. Cas. 318; 37 Man. L. R. 103.—*CAN.*

**1801 i. Form of commitment—Omission of time of offence.**—A warrant of commitment did not comply with Summary Convictions Act, B.C., 1915, in not fixing the time when the offence was committed.—*Held*: *bad*.—*R. v. RODGERS*, [1923] 3 W. W. R. 955; 11 Can. Crim. Cas. 190; 33 B. C. R. 16.—*CAN.*

**1801 ii.** — *Error in statutory description of offence*.—The use in the warrant of commitment of the words "ceremony of marriage" instead of "form of marriage," as in the statutory description, is no ground for setting aside a conviction, the meaning in both cases being the same & not distinguishable.—*R. v. ROOP*, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—*CAN.*

#### PART V. SECT. 2, SUB-SECT. 5.

**g i.** — *R. v. MCARTHUR'S BAIL* (1897), 3 Terr. L. R. 37.—*CAN.*

**sw. Estreatment of recognisance.**—The estreatment of a recognisance by a

**Differentiation of charges—One prisoner punishable summarily—Other prisoner punishable on indictment.**—When charges are to be brought against more than one prisoner on the same set of facts, it is desirable that the charges should not be so differentiated that one prisoner is tried by a jury, while another has no right to such mode of trial, unless there is good reason to the contrary.—*R. v. COPE* (1925), 94 L. J. K. B. 662; 132 L. T. 800; 89 J. P. 100; 41 T. L. R. 418; 27 Cox, C. C. 778; 18 Cr. App. Rep. 181, C. C. A.

**1804.** *Add. Annotation*:—*Consd. R. v. Ely JJ., Ex p. Mann* (1928), 93 J. P. 45.

**1810a.** *Add. Citations*:—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 411; 27 Cox, C. C. 581.

**1810b.** — *How proved.*—(1) An appeal lies to the Ct. of Criminal Appeal against a sentence passed on an alleged breach of a recognisance to be of good behaviour for a certain time, on the ground that applt. has not broken the recognisance.

(2) Breach of recognisance must be proved like any other fact alleged in a criminal ct.—*R. v. SMITH*, [1925] 1 K. B. 603; 94 L. J. K. B. 592; 132 L. T. 779; 89 J. P. 79; 41 T. L. R. 359; 27 Cox, C. C. 782; 18 Cr. App. Rep. 170, C. C. A.

**1810c.** — — — — — *Breach of recognisance must be strictly proved.*—*R. v. BUTLER* (1926), 19 Cr. App. Rep. 127, C. C. A.

magistrate may be carried out under Criminal Code, s. 1099, & any further necessary proceedings follow under the subsequent sects, without the requirement of any order of the cts.—*R. v. McEly & Brown* (1921), 34 B. C. R. 14.—*CAN.*

**sv.** — *Notice of motion to accused & sureties necessary.*—*R. v. McTAVISH, Ex p. Brown* (Man.), [1927] 1 D. L. R. 893; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—*CAN.*

**sz.** — *When ordered*.—*R. v. LEPY*, [1925] 4 D. L. R. 170; [1925] 2 W. W. R. 726; 11 Can. Crim. Cas. 263.—*CAN.*

**sa.** — *One surety bound instead of two*.—*R. v. CARVERY, Ex p. Howl*, [1925] 3 D. L. R. 414; 41 Can. Crim. Cas. 69.—*CAN.*

**sb.** — — — — — *R. v. SULLIVAN* (191), 29 W. L. R. 115; 18 D. L. R. 535; 23 Can. Crim. Cas. 174.—*CAN.*

**sd.** — — — — — *Within discretion of court.*—*R. v. McTAVISH, Ex p. Brown* (Man.), [1927] 1 D. L. R. 89; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—*CAN.*

**sf.** — *Discharge of.*—*R. v. SCHRAM* (1845), 2 O. C. R. 91.—*CAN.*

**sk.** — *Avoidance of.*—*R. v. MacDON* (1925), 13 Can. Crim. Cas. 381.—*CA*

## Part VI.—Indictments.

1823. *Add. Annotation*:—**Refd.** *Scammell v. Hurley*, [1929] 1 K. B. 419.

1826. *Add. Annotation*:—**Appld.** *Hart v. Hudson*, [1928] 2 K. B. 629.

1900a. **Receiving property—Known to have been obtained by fraud or false pretences.**—To receive goods knowing that the vendor obtained them on credit under false pretences or by means of fraud other than false pretences is not an offence known to the law.—*R. v. SCHWELLER* (1924), 18 Cr. App. Rep. 52, C. C. A.

1910a. **Fresh indictment in respect of another offence—Founded on facts disclosed in depositions.**—Where a person has been committed for trial for one offence a fresh indictment cannot be preferred against him in respect of another offence, which comes within Vexatious Indictments Act, 1859 (c. 17), without the leave of the ct., even though such fresh indictment is founded on facts disclosed in the depositions.—*R. v. MORGAN*, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

1913a. **Multiplication of indictments—Disapproved.**—(1) The ct. entirely approves of a ct. of trial dealing with all outstanding charges against a convicted prisoner, at his request, whenever it can legally do so.

(2) The ct. disapproves of the multiplication of indictments when the allegations can be conveniently made in one indictment.—*R. v. TAYLOR (alias SAUNDERS, alias WALLACE)* (1924), 18 Cr. App. Rep. 25, C. C. A.

*Annotation—Generally, Refd.* *R. v. Taylor* (1926), 19 Cr. App. Rep. 146.

1913b. ———.—*R. v. CLARKE*, No. 2115a, *post*.

## PART VI. SECT. 2, SUB-SECT. 1.—A.

1814 iii. ———.—*Newly created offence.*—A statute comes into force on the first moment of the day on which it receives the Royal assent, & if it be one creating a crime, an offence committed on that day, even although before the actual time at which the Royal assent was given, is within the Act.—*R. v. ROCCO*, [1924] 1 D. L. R. 501; 41 Can. Crim. Cas. 101.—CAN.

## PART VI. SECT. 3, SUB-SECT. 1.

1907 i. **Separate indictments in respect of same transaction—Where act constitutes more than one offence—Attempted carnal knowledge of young girl & indecent assault.**—*R. v. LANGLEY* (N. B.), [1927] 3 D. L. R. 934; 48 Can. Crim. Cas. 293.—CAN.

## PART VI. SECT. 4, SUB-SECT. 1.

t i. ———.—Where the indictment was in the words of the enactment describing the offence.—*Held*: sufficient.—*R. v. MCLACHLAN* (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

k i. ———.—*R. v. CANADIAN ALLIS-CHALMERS, LTD.* (1923), 54 O. L. R. 38.—CAN.

n i. **Identity of language with that of statute creating offence—"Car" used instead of "motor car."**—*R. v. YOUNG*, [1928] 3 D. L. R. 225; 49 Can. Crim. Cas. 349; 60 N. S. R. 128.—CAN.

o i. ———.—**Value of stolen property.**—An information should, therefore, state the value of the property alleged to have been stolen so as to determine to which class of crime the offence belongs & the nature of the proceedings to be

taken.—*R. v. THOMPSON*, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—CAN.

sa. **Rape.**—*R. v. ROSS*, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—CAN.

## PART VI. SECT. 4, SUB-SECT. 7.

am. **Indecent exposure—"With intent to offend."**—Where the facts alleged necessarily implied that the act charged was committed "wilfully":—*Held*: notwithstanding the omission of that word, the information was sufficient.—*R. v. SMOTHERS* (1924), 57 N. S. R. 179.—CAN.

## PART VI. SECT. 4, SUB-SECT. 8.—B. (a).

i i. ———.—Where ingredients of two distinct offences had been mixed together in a charge contrary to the settled principles of criminal procedure & in violation of Criminal Code, s. 710 (3):—*Held*: prisoner was entitled to his discharge.—*R. v. CHUE*, [1924] 4 D. L. R. 300; 34 B. C. R. 177.—CAN.

## PART VI. SECT. 4, SUB-SECT. 9.—B.

2087 iii. ———.—*R. v. McDONALD* (Ont.), [1928] 2 D. L. R. 787; 50 Can. Crim. Cas. 65.—CAN.

## PART VI. SECT. 4, SUB-SECT. 9.—C.

r. Read now "2102a i."

s. Read now "2102a ii."

t. Read now "2102a iii."

a. Read now "2102a iv."

2103 iii. ———.—A man & a woman were tried jointly on the charge of having murdered the husband of the

1913c. ———.—*R. v. TYREMAN*, No. 5350b, *post*.

1913d. ———.—**Offences which may lawfully be charged in one indictment ought not to be distributed into more.**—*R. v. SMITH* (1926), 19 Cr. App. Rep. 151, C. C. A.

1913e. *S. P. R. v. CARVER* (1927), 20 Cr. App. Rep. 3, C. C. A.

1934. *Add. Annotation*:—**Folld.** *R. v. Mosley*, [1924] 2 K. B. 187.

1937a. ———.—**Counts for offences within Vexatious Indictments Act, 1859 (c. 17), may be added to the indictment without the leave of the ct. where they are founded on facts disclosed on the depositions.**—*R. v. MOSLEY*, [1924] 2 K. B. 187; 93 L. J. K. B. 894; 130 L. T. 831; 88 J. P. 91, 68 Sol. Jo. 757; 27 Cox, C. C. 635; 18 Cr. App. Rep. 69, C. C. A.

*Annotation*:—**Refd.** *R. v. Morgan*, [1925] 1 K. B. 752.

1978a. **Larceny—Specific articles stolen must be set out.**—*R. v. DOUGLAS* (1926), 19 Cr. App. Rep. 119, C. C. A.

1992a. *S. P. R. v. DRAKE* (1850), 14 J. P. 483; 4 Cox, C. C. 333.

2102a. ———.—**Prejudice to one defendant.**—Persons arrested together need not be tried together, & if any one of them is likely to be embarrassed in his defence, ought not to be so tried.—*R. v. TOWNSEND, R. v. HILDER* (1924), 18 Cr. App. Rep. 117, C. C. A.

2105a. ———.—When a statement by one accused intended to be put in evidence implicates another, the ct. should consider whether accused should not be tried separately.—*R. v. SEYMOUR* (1927), 20 Cr. App. Rep. 98, C. C. A.

woman. They were convicted & sentenced to death. Each of the accused had applied to the trial judge for a separate trial, on the ground that statements had been made by each which would be admissible in evidence against the person making the statements, but which tended to incriminate the other accused, against whom the statements would be inadmissible. The trial judge had refused the applications.—*Held*: the refusal of the trial judge to grant separate trials did not amount to a miscarriage of justice, & afforded no ground of appeal.—*A.-G. v. JOYCE, A.-G. v. WALSH*, [1929] 1 R. 526.—IR.

## PART VI. SECT. 4, SUB-SECT. 10.—B.

2120 v. ———.—Where the trial judge had tried together fifteen charges against the prisoner for different offences:—*Held*: there was no reason disclosed to question his discretion in doing so, since he sat without a jury, & the offences were all of a similar character & connected together by being parts of a systematic course of criminal conduct pursued by prisoner.—*R. v. DUFF* (Sask.), [1929] 1 D. L. R. 152; 50 Can. Crim. Cas. 246; [1928] 3 W. W. R. 550.—CAN.

## PART VI. SECT. 4, SUB-SECT. 10.—C.

p i. ———.—**Suborning perjury & fabricating evidence.**—The accused, who was charged in the one indictment with suborning perjury & also, with fabricating evidence in connection with said offence, applied for an order requiring the Crown to sever the indictment & elect to proceed first on one or other

**2115a.** ———.]—Indictments should not be multiplied, but where the law permits separate offences should be charged in separate counts of one indictment.—*R. v. CLARKE* (1925), 18 Cr. App. Rep. 166, C. C. A.

**2155a.** ———.]—*R. v. LUBERG*, No. 3156d, *post*.

**2195.** *Add. Annotation*:—*Refd. R. v. Central Criminal Court JJ., Ex p. L. C. C., [1925] 2 K. B. 43.*

**2204a.** ——— **Wrong statute inserted—Later statute in similar words.**—The accused, who was a trustee under a will, was charged with having in Mar. 1916, fraudulently converted to his own use certain shares deposited with him by a co-trustee. In an affidavit filed by the accused in defence to proceedings for an account commenced against him by the co-trustee in the Ch. Div., the accused swore that he had, with the approval of his co-trustee, invested the capital in his own business. Subsequently, in his preliminary examination in bkpcy., he made admissions to the Official Receiver in regard to the disposition of the capital by him. He was indicted for fraudulent conversion as a trustee under Larceny Act, 1916 (c. 50), s. 21, but the judge, on his notice being brought to the fact that that Act was not in force at the time when the offence was alleged to have been committed, allowed the indictment to be amended by the substitution of Larceny Act, 1861 (c. 96), s. 80, for the later statute. The two statutes define the offence in almost precisely the same words:—*Held*: (1) the indictment was defective within Indictments Act, 1915 (c. 90), s. 5 (1), by reason of the wrong statute having been inserted, but in view of the fact that the offence under the earlier Act was defined in almost the same words as those used in the later Act, applt. could not have been prejudiced by the amendment, nor could injustice have been done to any defence that he might have had. The amendment was, therefore, rightly allowed; (2) the accused was not protected from prosecution by Larceny Act, 1861 (c. 96), s. 85, either in regard to acts disclosed by his affidavit or in regard to acts disclosed by his preliminary examination in bkpcy., as such disclosures were not “in consequence of any compulsory process of any court of law”; (3) the admissions in the preliminary examination in bkpcy. were not admissions made “in any compulsory examination or deposition before any ct. on the hearing of any matter in bkpcy.” & could, therefore, be

given in evidence at the trial without infringing Larceny Act, 1916 (c. 50), s. 43 (3).—*R. v. TUTTLE* (1929), 140 L. T. 701; 45 T. L. R. 357; 21 Cr. App. Rep. 85, C. C. A.

**2219a.** ———.]—Applt. was accused of having obtained sums of money by way of deposit from persons, who desired to be employed as managers of public-houses, by representing to them that he would appoint them to those positions. The indictment contained eighteen counts, relating to nine distinct offences, which were charged alternatively as obtaining sums of money by false pretences, & as larceny by a trick of the same sums. In every one of the counts relating to false pretences, the indictment as originally framed ran: “by falsely pretending that he would appoint . . . as manager.” At the close of the case for the prosecution the judge thought it right to amend the counts relating to false pretences so as to read “by falsely pretending that he was in a position to appoint,” etc. The jury convicted applt. on all counts:—*Held*: (1) the conviction for false pretences must be quashed, as the amendment of an indictment allowed by Indictments Act, 1915 (c. 90), s. 5 (1), is an amendment of a defect in form, & not the alteration & revision of the substance of a charge, such as had taken place in this case, which must necessarily prejudice accused; (2) the conviction for larceny must be quashed, because there was no evidence of larceny, as the persons seeking employment had in each case intended to part with their money; (3) Larceny Act, 1916 (c. 50), s. 44 (3), could not apply where the indictment had charged false pretences & was up to the last moment wrong in substance.—*R. v. HUGHES* (1927), 136 L. T. 671; 91 J. P. 39; 43 T. L. R. 250; 28 Cox, C. C. 336, C. C. A.

**2295a.** **Bill for rape—True bill found for indecent assault—Necessity for fresh indictment.**—An indictment for rape was put before the grand jury & they indorsed on it, “No true bill for rape. A true bill for indecent assault (aggravated),” but no indictment for indecent assault was put before the grand jury. The prisoner was convicted:—*Held*: as there was no true bill for rape, & as there was no indictment for indecent assault, the conviction must be quashed.—*R. v. KITCHING* (1929), 141 L. T. 687; 45 T. L. R. 569; 21 Cr. App. Rep. 116, C. C. A.; *subsequent proceedings*, 21 Cr. App. Rep. 144, C. C. A.

**2316.** For “Criminal Law Amendment Act, 1835 (c. 35),” read “Criminal Law Amendment Act, 1885 (c. 69).”

of the two charges:—*Held*: the joinder was not conducive to the ends of justice & therefore, the order should be granted.—*R. v. BRAUN* (Sask.), [1927] 3 W. W. L. 226; 50 Can. Crim. Cas. 292.—CAN.

**PART VI. SECT. 4, SUB-SECT. 10.—D.**  
r i. ——— *Shopbreaking & receiving stolen goods.*—*R. v. CROSS* (Sask.), [1927] 4 D. L. R. 923; [1927] 3 W. W. R. 432; 49 Can. Crim. Cas. 77.—CAN.

**PART VI. SECT. 4, SUB-SECT. 10.—E.**  
**2152i.** *Cases requiring separate trial—Indecent assault & theft—Acts forming part of one transaction.*—*R. v. CASSIDY* (Ont.), [1927] 4 D. L. R. 1106; 49 Can. Crim. Cas. 93.—CAN.

**2161 i.** *Cases not requiring separate trials—Similar acts—Separate indecent assaults.*—An indictment charged accused with indecent assault upon one little girl, & indecent assault, involving murder, upon another little girl. Both offences were libelled as having been committed on the same day at S.:—*Held*: the offences charged were so connected in time, circumstances, & character as to justify their inclusion in one indictment, & no sufficient reason had been shown for separation of the charges.—*H.M. ADVOCATE v. BICKERSTAFF*, [1926] S. C. (J.) 65.—SCOT.

**PART VI. SECT. 4, SUB-SECT. 13**  
k i. ——— *Attempt to give jurisdiction.*—A person committed on a

charge which a district ct. judge has no jurisdiction to try under any circumstances, cannot be tried by such judge on a substituted charge, over which the judge has jurisdiction, on the election of accused.—*R. v. CROVI*, [1924] 4 D. L. R. 1072; 3 W. W. L. 534.—CAN.

r i. ———.]—An indictment disclosing no offence & bad in law, was amended at the trial so as to make it an entirely different charge.—*Held*: the amendment ought not to have been made.—*R. v. LOFTUS* (1926), 45 Can. Crim. Cas. 390; 59 O. L. R. 65.—CAN.

**PART VI. SECT. 4, SUB-SECT. 14.**  
**2241 i.** *Application must be made to court of trial.*—*R. v. HANEY*, [1925] 2 D. L. R. 83; 43 Can. Crim. Cas. 297; 65 O. L. R. 293.—CAN.

## Part VII.—Trial of Indictments.

- 2365. Add. Annotations:—***Folld. R. v. Dennis, R. v. Parker*, [1924] 1 K. B. 867. *Apld. R. v. McDonnell* (1928), 20 Cr. App. Rep. 163. *Refd. R. v. Williams* (1925), 19 Cr. App. Rep. 67.
- 2365a. ———.**—[A criminal ct. has no jurisdiction to try two separate indictments against two defts. at one & the same time, even with the consent of counsel for the prosecution & counsel for defts.—*R. v. DENNIS, R. v. PARKER*, [1924] 1 K. B. 867; 93 L. J. K. B. 388; 130 L. T. 830; 88 J. P. 84; 40 T. L. R. 420; 68 Sol. Jo. 563; 27 Cox, C. C. 632; 18 Cr. App. Rep. 39, C. C. A.]
- 2365b. ———.**—[*R. v. McDONNELL* (1928), 20 Cr. App. Rep. 163, C. C. A.]
- 2567. Add. Annotation:—***Folld. R. v. Hussey* (1924), 18 Cr. App. Rep. 121.
- 2567a. ———.**—(1) *Applt.* was charged upon an indictment with breaking & entering a house with intent to commit a felony. At the trial *applt.* pleaded guilty to entering only, which plea was treated as a plea of guilty charges of false pretences might be taken into consideration when awarding sentence, but the ct. refused as they were not offences of a similar nature to breaking & entering.
- the ct. of quarter sessions should take into consideration the five cases of false pretences, but it might take them into consideration if certain conditions were fulfilled.—*R. v. LLOYD* (1923), 130 L. T. 319; 27 Cox, C. C. 576; 17 Cr. App. Rep. 184, C. C. A.]
- 2571a. Plea of guilty.**—By person fit to plead but not responsible for his actions *Effect of plea.*—[*R. v. TEBBITT* (1912), *Times*, Apr. 26.]
- 2582. Add. Annotation:—***Refd. R. v. Gordon* (1925), 133 L. T. 734.
- 2585a. Crime involving more serious offence in foreign country.**—Possibility of prosecution by foreign Government.—[*R. v. FRIEDERIKSEN* (1927), 164 L. T. Jo. 45.]
- 2594. Add. Annotations:—***Mentd. R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.
- 2710. Add. Annotation:—***Refd. R. v. Birch* (1924), 93 L. J. K. B. 385.
- 2711. Add. Annotations:—***Mentd. R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.
- 2730. Add. Annotations:—***Refd. R. v. Birch* (1924), 93 L. J. K. B. 385; *R. v. Harris* (1927), 20 Cr. App. Rep. 144.
- 2730a. ———.**—[Where, at the trial of an accused person for a criminal offence, a witness for the prosecution denies statements contained in the deposition sworn by the witness at the police ct., & leave has been obtained to treat the witnesses as hostile, counsel for the prosecution is entitled to cross-examine the witness on the statements contained in the depositions taken before the justices. But the depositions are not evidence at the trial, though they may be used to impeach the credit of the witness.—*R. v. BIRCH* (1924), 93 L. J. K. B. 385; 88 J. P. 59; 40 T. L. R. 365; 68 Sol. Jo. 540; 18 Cr. App. Rep. 26, C. C. A.]
- 2731a. After close of case for defence.**—[A judge at a criminal trial has the right to call a or justice, but in order that injustice should not be done to accused, a judge should not call a witness in a criminal trial after the for the defence is closed, except in a human ingenuity can foresee, on the prisoner.—*R. v. HARRIS*, [1927] 2 K. B. 587; 96 L. J. K. B. 1069; 137 L. T. 533; J. P. 152; 43 T. L. R. 774; 28 Cox, 432; 20 Cr. App. Rep. 86, C. C. A.]
- Annotation:—**Distd. R. v. Liddle* (1928), 21 Cr. App. Rep. 3.
- 2731b. ———** Where defence of alibi raised.—[*R. v. LIDDLE* (1928), 21 Cr. App. Rep. 3, C. C. A.]
- 2746. Add. Annotation:—***Mentd. Royal Exchange*
- 2823. Add. Annotation:—***Apld. R. v. Baggott* (1927), 20 Cr. App. Rep. 92.
- 2839a. Reference to fact that photographs of accused shown to witnesses.**—(1) Counsel for the prosecution should not employ as part of his case the fact that certain witnesses have been shown a photograph of prisoner, even if the showing of the photograph was perfectly proper.
- (2) Where a police witness has been asked by prisoner "where did I stay on the night

### PART VII. SECT. 1.

**2365 i. Separate indictments.**—[*Cannot be tried jointly.*—A purported trial of two or more persons on separate charges for different offences is a nullity, even though their counsel offers no objection, or consents, thereto.—*R. v. TIMBERLYOCK* (Alta.), [1928] 4 D. L. R. 431; [1928] 3 W. W. R. 225; 50 Can. Crim. Cas. 296.—CAN.]

**a i. ———** *Stealing parcels from mails & receiving parcels so stolen.*—[*Held:* accused entitled to be tried by a jury, even though the value of the property stolen did not exceed \$200.—*R. v. IWANCHUK*, [1927] 3 D. L. R. 539; [1927] 2 W. W. R. 325; 48 Can. Crim. Cas. 213; 22 Alta. L. R. 595.—CAN.]

**a ii. ———** *Right to elect for trial by judge without jury.*—[*After true bill*

*found—Criminal Code, s. 825.*—[*R. v. THOMPSON, R. v. FOULKES* (1908), 16 Man. L. R. 608.—CAN.]

**a iii. ———** *Effect of election.*—[*R. v. REIF* (Alta.), [1927] 1 D. L. R. 874; [1927] 1 W. W. R. 29; 47 Can. Crim. Cas. 38.—CAN.]

**sa. Offence punishable on indictment or on summary conviction.**—[*Decision as to method of trial.*—Where a statute makes an offence punishable on indictment or on summary conviction, it makes it either an indictable offence or a non-indictable offence, & confers on the Crown prosecutor, on the trial magistrate, perhaps partly on each, the right or "option" of deciding how each particular offence shall be considered, tried & punished.—*R. v. DENIS* (Man.), [1927] 3 W. W. R. 400; 49 Can. Crim.

Cas. 8.—CAN.]

### PART VII. SECT. 5, SUB-SECT. 1.

**p i. ———** *Effect of—Accused estopped from calling on prosecution to establish guilt.*—[*R. v. ROVONELLI* (1925), 44 Can. Crim. Cas. 354.—CAN.]

**p ii. ———** *Induced by mistake—Right to withdraw.*—[*R. v. AH TOM*, [1928] 2 D. L. R. 748; 49 Can. Crim. Cas. 204; 60 N. S. R. 1.—CAN.]

**q i. ———** [Where accused is indicted for murder, the question of insanity is raised by a plea of not guilty as much as the fact of killing.—*R. v. MCCOSKEY*, [1927] 2 D. L. R. 539; 47 Can. Crim. Cas. 122; 60 O. L. R. 41.—CAN.]

of the alleged crime?" &, in his answer, has launched a series of fresh charges against the accused, relating to his stay at that place, but based on mere suspicion & not included in the indictment or referred to in the depositions, an irregularity has occurred which goes to the root of a conviction & necessitates that it should be quashed.

(3) Where a successful applt. has a previous unexpired sentence to serve, the ct. will generally order that the time that has elapsed between the notice & the determination of the appeal which has succeeded shall count towards the completion of the earlier sentence, even though there has been no application by applt. to that effect.—*R. v. HASLAM* (1925), 134 L. T. 158; 28 Cox, C. C. 105; 19 Cr. App. Rep. 59, C. C. A.

*Annotation.—As to (1) Refd.* *R. v. Daily Mirror, Ex p. Smith*, [1927] 1 K. B. 815.

**2839b. Second trial—Reference to quashed conviction.]—**(1) On an allegation of breaking & entering the jury must be directed on the issue of breaking.

(2) When a trial has been set aside on a *verdict de novo* the conviction quashed should not be mentioned to the jury at the second trial.—*R. v. LLOYD* (1924), 18 Cr. App. Rep. 12, C. C. A.

**2839c. Overstatements.]—***R. v. DRISCOLL & ROWLANDS* (1928), 20 Cr. App. Rep. 161, C. C. A.

**2862. Add. Annotations:—Mentd.** *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

**2867. Add. Annotations:—Refd.** *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

**2879a. ———.]—**On a plea of guilty (1) there must be legal proof of any previous con-

victions given in evidence, & (2) no deposition of a witness, absent through illness, should be put in if all the statutory requirements in such a case have not been fulfilled.—*R. v. FINNEY* (1924), 18 Cr. App. Rep. 41, C. C. A.

**2895a. S. P. R. v. HUNT** (1847), 2 Cox, C. C. 261.

**2986a. Defence of alibi—Should be raised at earliest possible moment.]—***R. v. JONES* (1928), 21 Cr. App. Rep. 27, C. C. A.

**2988a. ——— Should not refer to probable consequences of verdict of guilty in murder trial.]—***R. v. FRAMPTON* (1928), 21 Cr. App. Rep. 17, C. C. A.

**2995a. ———.]—**If the ct. is of opinion that there is no case against accused, it ought to be withdrawn from the jury.—*R. v. HASLAM* (1926), 19 Cr. App. Rep. 163, C. C. A.

**3007a. ———.]—**(1) On a trial for larceny as a bailee there must be a direction on the point whether the conversion was fraudulent or not.

(2) An accused person must be asked whether he wishes to give evidence on oath or call witnesses.—*R. v. MOORE* (1924), 18 Cr. App. Rep. 29, C. C. A.

**3008. Add. Annotation:—Distd.** *R. v. Villars* (1927), 20 Cr. App. Rep. 150.

**3009. Add. Annotation:—Foldd.** *R. v. Villars* (1927), 20 Cr. App. Rep. 150.

**3010a. Should give evidence from witness box.]—**A deft. is entitled under Criminal Evidence Act, 1898 (c. 36), to give his evidence from the witness box. The ct. in ordering otherwise must exercise a judicial discretion.—*R. v. SYMONDS* (1924), 18 Cr. App. Rep. 100, C. C. A.

**3011a. ———.]—**A deft. witness may in a proper

#### PART VII. SECT. 7, SUB-SECT. 6.—C.

**sc. Effect of cross-examination of party's own witness.]—**Where a party is allowed to cross-examine his own witness, the effect of that cross-examination must be to discredit that witness altogether & not merely to get rid of part of his testimony, & hence that witness's evidence must be excluded altogether. In the case of a witness for the prosecution, this means, so far as it supports the case for the prosecution, for obviously the defence is entitled to rely on so much of his evidence as supports their case.—*R. v. MOKBUL KHAN* (1928), 1 L. R. 56 Calc. 145.—**IND.**

#### PART VII. SECT. 7, SUB-SECT. 6.—D.

**sc. After close of case for prosecution—Witness called to supply omission in evidence.]—***R. v. HERWORTH*, [1928], App. D. 265.—**S. AF.**

**sf. After plea of guilty—Taking evidence of complainant.—For purpose of deciding sentence.]—**While it is within the power of the judge, after a plea of guilty has been entered & before sentence is passed, to hear the evidence of the complainant in order to assist him in deciding on the proper sentence, he must avoid the danger of giving consideration, in passing sentence, to aggravating circumstances disclosed by such evidence which may change the character of the offence charged against the prisoner.—*R. v. WHEEDALE*, [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62; 22 Sask. L. R. 118.—**CAN.**

#### PART VII. SECT. 7, SUB-SECT. 7.—B.

**2816 iii. ———.]—**The duty of a Public Prosecutor is to represent, not

the police, but the Crown, & this duty should be discharged fairly & fearlessly & with a full sense of the responsibility attaching to the position. In a capital case the duty of the Crown is to place before the ct. all materials irrespective of the question as to whether they exculpate accused or incriminate him.—*KUNJA SUBBIAH v. R.* (1928), 1 L. R. 8 Pat. 289.—**IND.**

#### PART VII. SECT. 7, SUB-SECT. 7. E. (a).

**h i. ———.]—Held:** the mere fact that accused did not have the assistance of a legal adviser did not show that he had not had a full opportunity for cross-examination, as he was present when the deposition was taken & made no request for time or delay.—*R. v. McDONALD*, [1927] App. D. 110.—**S. AF.**

**k i. ———.]—***R. v. McDONALD*, [1927] App. D. 110.—**S. AF.**

**p i. ———.]—Whether attendance procurable under subpoena.]—**G. was indicted for incest. S., a daughter of accused, who had made a deposition at petty sessions in which she swore that accused had committed the alleged offence, was called as a witness at the trial, & failed to appear having gone into the Irish Free State. Her deposition was read to the jury, who having heard the accused's evidence, convicted him of the offence charged.—**Held:** the conviction should be quashed, as it had not been shown that the attendance of the witness, whose deposition had been put in evidence, could not have been procured by service on her of a writ of subpoena under the Irish Free State Act, 1924.—*R. v. GILCHRIST*, [1925] N. 27.—**IR.**

**p ii. ——— Witness dangerously ill—Use of.]—**Under Crimes Act, 1900, s. 100, only so much of a deposition tendered in evidence should be read to the jury as is relevant & properly admissible in evidence.—*R. v. GLOVER* (1928), 8 L. N. S. W. 182; 45 N. S. W. W. N. 148.—**AUS.**

**sp. Proof of absence.]—***CAUFFIELD v. R.* (1926), 48 Can. Crim. Cas. 109; Q. R. 42 K. B. 449.—**CAN.**

#### PART VII. SECT. 7, SUB-SECT. 8.—C.

**k i. ———.]—**Where a person is charged with stealing goods, & the fact that the goods were sold & delivered to him is proved in evidence, the case must not be allowed to go to the jury.—*R. v. FIESSEL* (1924), 42 Can. Crim. Cas. 150.—**CAN.**

**st. Trial without jury—Defending counsel entitled to make submission that evidence for Crown insufficient.]—***R. v. JONES* (Sask.), [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380; [1926] 3 W. W. R. 313.—**CAN.**

#### PART VII. SECT. 7, SUB-SECT. 8.—D.

**3011 iii. ——— As to previous conviction.]—***R. v. CIPPOLA* (Ont.) (1928), 49 Can. Crim. Cas. 129.—**CAN.**

**o i. ———.]—**Two panels, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898, s. 1. In the opinion of the judge the evidence of neither incriminated the other.—**Held:** neither was entitled to cross-examine the other, such right of cross-examination being limited to the case where, in the opinion of the judge, the evidence given incriminated, or tended to incriminate, the fellow panel.—*GEMMELL &*

case be asked in cross-examination whether he imputes improper motives to the witnesses against him.—*R. v. WILSON* (1924), 18 Cr. App. Rep. 108, C. C. A.

3051. *Add. Annotation*:—*Refd. R. v. Dunkley* (1926), 131 L. T. 632.

3056. *Add. Annotations*:—*Refd. R. v. Harris*, [1927] 2 K. B. 587. *Mentd. R. v. Noble* (1928), 20 Cr. App. Rep. 191.

3060. *Add. Annotation*:—*Refd. R. v. Harris*, [1927] 2 K. B. 587.

3063. *Add. Annotation*:—*Refd. R. v. Harris*, [1927] 2 K. B. 587.

3065. *Add. Annotation*:—*Refd. R. v. Harris*, [1927] 2 K. B. 587.

3090a. *Accused writing & handing in signature*.—Counsel for the prosecution is not entitled to a second speech against accused, because at the jury's request the latter writes his signature & hands it in.—*R. v. BAGGOTT* (1927), 20 Cr. App. Rep. 92, C. C. A.

3120a. — *To assist undefended prisoner—To cross-examine*.—The ct. should assist an undefended prisoner in putting questions by way of cross-examination.—*R. v. BARKER* (1927), 20 Cr. App. Rep. 70, C. C. A.

3120b. — *To inform prisoner of right to give evidence on oath*.—*R. v. VILLARS* (1927), 20 Cr. App. Rep. 150, C. C. A.

3122a. — *Does not include making disparaging suggestions*.—There ought not to be a suggestion from the judge that deft. on trial has previously appeared in a criminal ct.—

*R. v. MILLER* (1926), 19 Cr. App. Rep. 84, C. C. A.

3129a. — *—*.—A direction must make it clear that the *onus* of proof is on the prosecution.—*R. v. HAYTON* (1925), 18 Cr. App. Rep. 169, C. C. A.

3129b. — *—*.—(1) When the evidence on the facts is in direct conflict, the jury should be directed that, if they are in doubt which version of the facts to accept, they should acquit.

Observations on (2) the granting of bail by the trial judge, & on (3) the relation of his opinion of the verdict to the appeal.—*R. v. DAVIDSON* (1927), 20 Cr. App. Rep. 66, C. C. A.

3129c. — *—*.—A summing up must make it clear to the jury, especially where there is conflicting evidence, that the *onus* of proof is on the prosecution.—*R. v. REES* (1928), 21 Cr. App. Rep. 35, C. C. A.

3133a. — *—*.—While a judge is entitled to express his view of any evidence, he ought not to "invite" the jury to make a definite finding: any expression of his own views ought to be accompanied by a direction that the right of deciding on the facts is solely theirs.—*R. v. MASON* (1924), 18 Cr. App. Rep. 131, C. C. A.

3136a. *Avoidance of unhappy expressions suggesting guilt of accused*.—(1) In a direction upon the evidence of children of tender years, there must be a clear warning about the nature of such evidence.

(2) It is wrong to invite a jury to con-

McFAYDEN v. MACNIVEN, [1928] S. C. (J.) 5.—SCOT.

PART VII. SECT. 7, SUB-SECT. 9.—A.

3061 i. — *Evidence omitted advertently*.—*R. v. GREGOIRE* (1927), 47 Can. Crim. Cas. 288; 60 O. J. R. 363.—CAN.

k i. — *—*.—*Held*: it was incompetent for the prosecutor to recall a witness after the case for the prosecution had been closed; the only circumstances in which a witness might be recalled after the case had been closed being when this was done by the judge *ex proprio motu* in order to clear up an ambiguity in the witness's evidence.—*McNEILIE v. H.M. ADVOCATE*, [1929] S. C. (J.) 50.—SCOT.

PART VII. SECT. 7, SUB-SECT. 10.—B.

fi. — *—*.—Where it was objected that the A.-G. exercised the right of reply, although deft. had called no witnesses:—*Held*: the A.-G. was not bound to sum up for the Crown on the conclusion of the evidence of the prosecution, but had the right of reply.—*R. v. McLACHLAN* (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

PART VII. SECT. 7, SUB-SECT. 11.

hi. — *To decide whether evidence admissible*.—If evidence is tendered to prove the inadmissibility of evidence *prima facie* admissible, it is the duty of the judge to receive & to decide the question of admissibility before the evidence is given in the hearing of the jury.—*R. v. TREANOR, R. v. FLOOD, R. v. TREANOR, R. v. KELLY*, [1924] 2 I. R. 193.—IR.

hii. — *To decide whether witness by his admission is accomplice*.—It is for the judge, & not for the jury, to decide on an admission by a witness whether he is or is not an accomplice.—*R. v. YOUNG*, [1923] S. A. S. R. 35.—AUS.

3122 i. *Function of judge—Includes asking leading questions—& suggesting to counsel to waive their rights to address jury*.—*R. v. WEST* (1925), 44 Can. Crim. Cas. 109; 57 O. L. R. 146.—CAN.

3122 ii. — *Does not include asking leading questions*.—A judge is not entitled to put leading questions to a witness, the answers to which are calculated to prejudice accused.—*R. v. LAUBSCHER*, [1926] App. D. 276.—S. AF.

PART VII. SECT. 7, SUB-SECT. 12.—A.

3129 i. *Direction as to onus of proof*.—*R. v. KOLOMEJYC (Man.)*, [1926] 2 W. W. R. 126; 46 Can. Crim. Cas. 35.—CAN.

3133 iv. — *—*.—A judge, in summing up to a jury in a criminal case, is entitled to comment strongly on the facts.—*R. v. SUTHERLAND*, [1927] App. D. 88.—S. AF.

g (p. 297) i. — *Where jury disagree*.—A direction which amounted to no more than telling the jury that it was the duty of the minority not to allow any wilful or obstinate adherence to their own view to prevent them from giving full consideration to the view of the majority:—*Held*: not a misdirection.—*R. v. OLHOIM & McPHERSON*, [1925] V. L. R. 377; 47 A. L. T. 10; 31 Argus L. R. 228.—AUS.

g (p. 298) i. — *Distinction between evidence of facts & expert opinions*.—Where there is not only no direct testimony of eye-witnesses that an alleged criminal act was committed, but there is the direct testimony of an eye-witness called by the Crown that the act had not been committed, & the Crown relies on a chain of circumstantial evidence in which the opinions of scientific witnesses are referred to as an important link, the charge to the jury should point out the importance

of the distinction between evidence of scientific opinion & evidence of actual material facts & sufficiently remind the jury that such opinions were not testimony as to facts, & should specifically direct that the circumstances proven as actual objective facts must not only be consistent with the guilt of accused but must also be inconsistent with any reasonable hypothesis which would leave him innocent.—*R. v. HISLOP*, [1925] 1 W. W. R. 887; 43 Can. Crim. Cas. 384.—CAN.

— *Statements as to powers of Court of Criminal Appeal*.—A judge in his charge to the jury made statements to the effect that "In the Ct. of Criminal Appeal, in the event of your finding a verdict of guilty, prisoner's counsel is entitled to have the whole matter reviewed," & "When a case goes to the Ct. of Criminal Appeal the natural bent of their minds is to give prisoner the benefit of the doubt."—*Held*: the statements, taken in their proper context, did not amount to misdirection of such a character as to render the trial unsatisfactory, though it was desirable that such references to the Ct. of Criminal Appeal should not be made.—*A.-G. v. MURRAY*, [1926] 1 K. 266.—IR.

aii. — *Reading passages from law reports*.—Though reading passages from law reports is, as a rule, undesirable, it is not a misdirection.—*R. v. NGAI TIN GYI* (1926), 1 L. R. 4 Ran. 488.—IND.

aiii. — *Reference to opinion in text book*.—It is irregular & improper for the presiding judge in his summing up to the jury in a criminal trial to refer to an opinion expressed in a text-book, even though another passage in the same book has been put to a witness during the course of the trial.—*R. v. MOFOKENG*, [1928] App. D. 132.—S. AF.

sider whether deft. is "the sort of person" likely to commit the offence charged.—*R. v. MARSHALL* (1925), 18 Cr. App. Rep. 164, C. C. A.

**3137a. Where identity of accused in issue.]—**

(1) When the issue is identity of accused, especial care is needed in the charge to the jury; there ought to be a direction to them on his silence, if & when he hears a prejudicial statement.

(2) After notice of appeal, supplementary grounds should only be presented to the ct., if they disclose new matter.—*R. v. PORTER* (1927), 20 Cr. App. Rep. 55, C. C. A.

*Annotation—Generally, Reft. R. v. Walters* (1927), 20 Cr. App. Rep. 69.

**3145a. ———.]—**A judge in summing up is bound to put deft.'s case to the jury. A mere expression of the view of the judge is not sufficient to dispense with the duty of putting the case for the defence to the jury.—*R. v. MARRIOTT* (1924), 18 Cr. App. Rep. 74, C. C. A.

**3146. Add. Annotations: Folld. R. v. Thorpe** (1925), 133 L. T. 95. **Reft. R. v. Canham** (1925), 18 Cr. App. Rep. 163.

**3146a. ———.]—**Where a prisoner is charged with murder, & there is evidence on which a verdict of manslaughter could be found, it is the duty of the judge to leave to the jury the question whether the crime committed has or has not been reduced to manslaughter, even though that defence has not been raised & even though that defence is inconsistent with the defence actually raised; but a judge should not leave the question of manslaughter to the jury, where there is no evidence upon which such a verdict could be based.—*R. v. THORPE* (1925), 133 L. T. 95; 89 J. P. 143; 41 T. L. R. 468; 69 Sol. Jo. 525; 28 Cox, C. C. 4; 18 Cr. App. Rep. 189, C. C. A.

**3151a. Must warn jury against accepting mere suggestion by prosecution in cross-examination—No evidence in support.]—**The jury must be warned against the acceptance of a mere suggestion by the Crown in cross-examination unsupported by evidence on a material point.—*R. v. ALEXANDER* (1924), 18 Cr. App. Rep. 139, C. C. A.

**3156a. Indictment alleging several offences—Cases must be clearly distinguished.]—**When an indictment alleges specific offences on distinct dates the jury should be warned to deal with each occasion separately, & not to permit inadequate evidence in the one to supplement inadequate evidence in the other.—*R. v. ROSS* (1924), 18 Cr. App. Rep. 141, C. C. A.

**3156b. ———.]—**Where an indictment for indecent assault contains a number of counts, each count charging a separate assault on a different person, the jury should be directed not to return a general verdict but to return a verdict on each count, & they should also

be warned to draw a careful distinction between the evidence on each count & the evidence on every other count & not to supplement the evidence on any particular count by looking at the evidence as a whole.—*R. v. BAILEY*, [1924] 2 K. B. 300; 93 L. J. K. B. 989; 132 L. T. 349; 88 J. P. 72; 27 Cox, C. C. 692; 18 Cr. App. Rep. 42, C. C. A.

**3156c. ———.]—**If counts for fraudulent conversion & for obtaining by false pretences are left to the jury, they must be directed on each offence.—*R. v. MACLENNAN* (1925), 19 Cr. App. Rep. 37, C. C. A.

**3156d. ——— Indictment containing count for conspiracy.]—**(1) Where several prisoners are tried together upon an indictment containing counts for various offences against them individually & also a general count for conspiracy against them all, great care should be taken in directing the jury to keep the issues clear & to explain the relation of each count to the general count for conspiracy. In such a case it is a misdirection for the judge to tell the jury: "You must take the case as a whole & not in bits."

(2) Observations on the practice of charging a specific crime & adding a charge of conspiracy to commit that crime.—*R. v. LUBERG* (1926), 135 L. T. 411; 90 J. P. 183; 28 Cox, C. C. 264; 19 Cr. App. Rep. 133, C. C. A.

**3156e. ———.]—**(1) In cross-examination of a person accused of a sexual offence, questions should not be asked tending to show that he is a person likely to commit the offence alleged.

(2) If separate charges are included in an indictment, the jury should be carefully cautioned against allowing one to corroborate the other.—*R. v. COULMAN* (1927), 20 Cr. App. Rep. 106, C. C. A.

**3157. For "second trial before same jury—Clear direction essential—Same defendant" read "Second trial—Before same jury—Clear direction essential—Same defendant."**

**3157a. ———.]—**A jury trying a second or other charge against accused should be warned to disregard the evidence in the previous trial.—*R. v. LEE* (1927), 20 Cr. App. Rep. 68, C. C. A.

**3158. For " ——— Different defendants " read "Different defendants."**

**3158a. ——— First trial set aside on venire de novo—Reference to first conviction.]—***R. v. LLOYD*, No. 2839b, *ante*.

**3165a. ———.]—**(1) When prisoners are tried together, the direction to the jury must carefully discriminate between the respective cases.

(2) In Prevention of Crime Act, 1908 (c. 59), s. 10 (4), "seven days" means seven clear days.—*R. v. DEAN* (1924), 18 Cr. App. Rep. 21, C. C. A.

**3165b. ——— Counts for other offences included.]—**When two persons are jointly in-

**PART VII. SECT. 7, SUB-SECT. 12.—B**

**3152 i. Need not go into every detail of evidence.]—***R. v. BOAK* (B.C.) (1925), 44 Can. Crim. Cas. 225.—CAN

**3177 i. ——— Where defence of manslaughter is not raised.]—**Where, on a trial for murder, there is no evidence which would justify the jury in finding a verdict of manslaughter, there is no duty on the judge to leave to the jury

that defence.—*R. v. BURDESS & MCKENZIE*, [1928] 2 D. L. R. 694; [1928] 1 W. W. R. 633; 49 Can. Crim. Cas. 213; 39 B. C. R. 192.—CAN.

**sa. Incorrect statement as to effect of evidence.]—**Where in his summing up to the jury in a criminal case the trial judge made a statement of the evidence which was not exactly correct, the fact that there was sufficient evidence apart

from that with respect to which the mistake occurred to justify the verdict of guilty does not justify the ct., on appeal, from disregarding the mistake under the Code, s. 1014 (2), if it is impossible for it to say that the jury "must" have reached the same conclusion regardless of the mistake.—*R. v. BRAND* (Alta.), [1928] 3 W. W. R. 641.—CAN.

dicted for conspiracy, & also, in other counts, for other offences, it is wrong to lead the jury to believe that unless both are convicted, neither may be convicted on one of the other counts.—*R. v. TAYLOR* (1924), 18 Cr. App. Rep. 153, C. C. A.

**3165c.** ———.—[When several accused are jointly charged with knowingly receiving stolen property, there must be a careful ruling about the possession of each.—*R. v. PECKHAM (THE YOUNGER)* (1927), 20 Cr. App. Rep. 72, C. C. A.

**3165d.** ———.—[A charge to a jury trying co-defts. must carefully distinguish between the cases of each.—*R. v. MACDONALD* (1928), 21 Cr. App. Rep. 33, C. C. A.

**3165e.** ———.—[In charging the jury the judge must distinctly put the defence of each prisoner to them.—*R. v. BROOKS* (1929), 21 Cr. App. Rep. 112, C. C. A.

**3172a.** Where unsworn statement & evidence on oath of witness in conflict.—*R. v. HARRIS* (1927), 20 Cr. App. Rep. 144, C. C. A.

**3174a.** ———.—[On a trial for murder the defence of manslaughter ought not to be withdrawn from the jury where there is evidence to support it.—*R. v. BALL* (1924), 18 Cr. App. Rep. 149, C. C. A.

**3178.** Add. Annotation:—*Consd. R. v. Thorpe* (1925), 133 L. T. 95.

**3179.** Add. Annotation:—*Consd. R. v. Thorpe* (1925), 133 L. T. 95.

**3179a.** ———.—[*R. v. THORPE*, No. 3146a, *ante*.

**3179b.** ———.—Where defence of manslaughter raised.—*R. v. HALL*, No. 5338a, *post*.

**3180.** After this case add “*See, also*, Nos. 5933–5938, *post*.”

**3180a.** ———.—[On an indictment for obtaining by false pretences, the jury must be charged that intent to defraud is of the essence of the offence.—*R. v. MARCK* (1928), 21 Cr. App. Rep. 65, C. C. A.

**3180b.** Direction as to breaking & entering—Defence of bona fide claim of right.—[A defence of breaking & entering under a bona fide claim of right must be definitely put & explained to the jury, & the issue of felonious intent must be distinctly raised.—*R. v.*

*CURTISS* (1925), 18 Cr. App. Rep. 174, C. C. A.

**3180c.** Direction as to larceny by trick—Facts pointing to false pretences.—[On the trial of an indictment for larceny by a trick, the essential elements of that offence should be explained to the jury, & if the facts of the case point to an obtaining by false pretences, the difference between the two offences must be made clear to them in view of a possible verdict of guilty of the latter.—*R. v. FISHER* (1926), 19 Cr. App. Rep. 166, C. C. A.

**3180d.** Direction as to larceny by bailee—Defence of sale on credit.—*R. v. WARD* (1928), 20 Cr. App. Rep. 167, C. C. A.

**3185.** Add. Annotation:—*Refd. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

**3261.** Add. Annotation:—*Refd. Nadan v. R.*, [1926] A. C. 482.

**3272.** Add. Annotation:—*Refd. Broome v. Agar* (1928), 138 L. T. 698.

**3283a.** ———.—[*R. v. ABRAHAM & GERSTEIN* (1928), 20 Cr. App. Rep. 183, C. C. A.

**3318a.** ———.—[Where an indictment charges two persons with certain offences “with one another,” if one is acquitted the other may sometimes but not always be convicted.—*R. v. EDWARDS* (1924), 18 Cr. App. Rep. 140, C. C. A.

**3318b.** ———.—[Where in separate counts of an indictment a man & a woman are charged with incest, & there are separate trials of each count, the conviction of the man is good although the woman is acquitted.—*R. v. GORDON* (1925), 133 L. T. 734; 89 J. P. 156; 41 T. L. R. 611; 28 Cox, C. C. 41; 19 Cr. App. Rep. 20, C. C. A.

**3323.** Add. Annotation:—*Mentd. The Fagernes*, [1927] P. 311.

**3362a.** Indictment for shooting with intent to murder—Verdict of assault.—[On an indictment for shooting with intent to murder or to cause grievous bodily harm, prisoner cannot be convicted of common assault.—*R. v. STOKES* (1925), 134 L. T. 479; 28 Cox, C. C. 140; 19 Cr. App. Rep. 71, C. C. A.

**3366.** Add. Annotation:—*Refd. R. v. Stokes* (1925), 134 L. T. 479.

**3180 i.** Direction as to intent to defraud—Charge of obtaining by false pretences.—[A jury should, in cases under Crimes Act, 1915, s. 181 (a), be told that an intent to defraud is an essential element of the offence, unless in the exceptional cases where the intent is necessarily involved in the false statements made.—*R. v. O'SULLIVAN*, [1925] V. L. R. 514; 547 A. L. J. 3; 31 Argus L. R. 263.—*AUS.*

**PART VII. SECT. 7, SUB-SECT. 12.—C.**

—*R. v. BRAYDEN* (N. B.), [1926] 4 D. L. R. 765; 46 Can. Crim. Cas. 336.—*CAN.*

**b ii.** ———.—[*BIGAQUETTE v. R.*, [1927] 1 D. L. R. 1117; [1927] S. C. R. 112; 47 Can. Crim. Cas. 271.—*CAN.*

**sc.** To express his own view.—[In ——— up the judge is entitled to express his own view.—*COULTER & TREFFENE v. R.* (1926), 29 W. A. L. R.

**su.** To read opinions of law from cases & textbooks.—*LEBLANC v. R.* (1927), 19 Can. Crim. Cas. 207; Q. R. 42 K. B. 503.—*CAN.*

**PART VII. SECT. 7, SUB-SECT. 14.—B.**

**3217 ii.** ———.—[*Prima facie* any complete separation of the jury during a trial in a capital case will make the verdict bad, but where the separation occurs through inadvertence, & the result of the trial has not been influenced by what has occurred, the verdict ought to stand.—*R. v. WALTERS*, [1926] 1 D. L. R. 501; 45 Can. Crim. Cas. 77; 58 N. S. P. 306.—*CAN.*

**PART VII. SECT. 7, SUB-SECT. 15.—A.**

**o i.** ———.—Evidence ruled inadmissible after it has been given.—*R. v. TREANOR*, *R. v. FLOOD*, *R. v. TREANOR*, *R. v. KELLY*, [1924] 2 I. R. 193.—*IR.*

**PART VII. SECT. 7, SUB-SECT. 15.—B.**

**k i.** ———.—[Where evidence given before a judge in a criminal trial was exhibited in a trial *de novo* before another judge.—*Held*: such procedure was irregular, & consent of accused did not cure the irregularity.—*UMAR HAJEE v. R.* (1922), 1 I. L. R. 46 Mad 117.—*IND.*

**PART VII. SECT. 7, SUB-SECT. 16.—A.**

**3275 viii.** ———.—[On an indictment charging accused with assault

the jury returned a verdict of “guilty of common assault under provocation.”—*Held*: the verdict was one of guilty.—*R. v. BROGAN*, [1926] N. Z. L. R. 635.—*N.Z.*

**PART VII. SECT. 7, SUB-SECT. 16.—D. (b).**

**3348 v.** ———.—Effect of verdict.—*Held*: the finding was to be regarded as an acquittal on the charge of murder, & Code of Criminal Procedure, s. 439 (4), precluded the High Ct. from having jurisdiction upon revision to convict on that charge.—*KISHAN SINGH v. R.* (1928), 55 L. R. Ind. App. 390.—*IND.*

**n** (p. 320). Read now “3362a i.”

**o** (p. 320). Read now “3362a ii.”

**3371 v.** ———.—[*R. v. O'BRIEN* (1926), 50 Can. Crim. Cas. 369; 60 N. S. R. 17.—*CAN.*

**t** (p. 323) i. Indictment for robbery—Verdict of receiving stolen property.—[A verdict of receiving stolen property well knowing it to have been stolen is not competent on an indictment for



- 3391a. — By trick—Verdict of false pretences—Indictment charging larceny by trick & false pretences alternatively—Indictment for false pretences wrong in substance.]—R. v. HUGHES, No. 2219 a, *ante*.
3394. *Add. Annotation*:—*Refd.* R. v. Stokes (1925), 134 L. T. 479.
- 3398a. — Duty of jury to find.]—R. v. LLOYD (1927), 20 Cr. App. Rep. 139, C. C. A.
3407. For “Second indictment to be tried—Right of prosecution to trial by another jury,” read “Second indictment to be tried—Whether trial by another jury.”
- 3407a. — — —.]—It cannot be laid down as a general rule that a jury which has acquitted
- deft. on one indictment should not try him on another, but it must depend on the circumstances of each case; when it occurs they must be warned that the evidence in the two cases is not cumulative.—R. v. KLEIN (1926), 19 Cr. App. Rep. 161, C. C. A.
3413. *Add. Annotation*:—*Refd.* Hobbs v. Tinling, Hobbs v. Nottingham Journal, [1929] 2 K. B. 1.
3424. *Add. Annotation*:—*Refd.* R. v. Thorpe (1925), 133 L. T. 95.
3495. *Add. Annotation*:—*Mentd.* Broome v. Agar (1928), 138 L. T. 698.
3538. *Add. Annotation*:—*Consd.* R. v. Hertfordshire JJ., *Ex p.* Larsen (1925), 89 J. P. 205.

## Part VIII.—Special Pleas.

3567. *Add. Annotation*:—*Refd.* Nadan v. R., [1926] A. C. 482.
- 3644a. Acquittal for absence of jurisdiction.]—R. v. WALLACE (1928), 166 L. T. Jo. 339.
- 3647a. — Contradictory endorsement on indictment.]—An indictment against applt. for rape was endorsed by the grand jury: “No true bill for rape. A true bill for indecent assault (aggravated),” but no indictment for indecent assault was put before the grand jury. Applt., having been convicted, appealed, & the conviction was quashed on the grounds that there was no true bill for rape & that
- there was no indictment for indecent assault. On the same facts applt. was afterwards indicted for indecent assault, & he pleaded *autrefois acquit* but was convicted:—*Held*: although the first conviction had been recorded on the first indictment, applt. was never in peril on that self-contradictory document, & the plea of *autrefois acquit* failed, & the second conviction must be affirmed.—R. v. KITCHING (1929), 45 T. L. R. 634; 21 Cr. App. Rep. 144, C. C. A.
3650. *Add. Annotation*:—*As to* (1) *Consd.* Pointon v. Cox (1926), 136 L. T. 506.

### PART VII. SECT. 7, SUB-SECT. 16.—G.

3411 iii. —.]—R. v. WALTERS, No. 3217 H, *ante*.

### PART VII. SECT. 7, SUB-SECT. 16.—K.

g i. — *Meaning of “new trial.”*—Where by statute provision is made in the case of a jury disagreeing for a new trial, there is meant by the words “new jury” a jury entirely composed of new or fresh jurymen to the exclusion of all the jurymen who formed the first jury.—R. v. WONG O. SANG, [1924] 3 W. W. R. 45; 34 B. C. R. 8.—CAN.

### PART VII. SECT. 7, SUB-SECT. 17.—F.

se. *Omission of essential element of crime—Conviction invalid.*]—R. v. ING YICK ING (1924), 43 Can. Crim. Cas. 392.—CAN.

### PART VII. SECT. 7, SUB-SECT. 17.—G.

3536 ii. — *In prisoner's absence.*]—*Held*: the ct. was not *functus officio*.—R. v. HUGHES (1924), 35 B. C. R. 55.—CAN.

3536 iii. — *After removal of conviction by certiorari.*]—R. v. KNAPP (1925), 44 Can. Crim. Cas. 338.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 1.

g i. —.]—Where a person has

been charged with two offences arising out of the same circumstances, & he pleads guilty to one of the charges, is convicted & fined, & then pleads guilty to the other charge, the previous conviction & penalty cannot be pleaded as a bar to punishment for the other offence.—R. v. GEIGER, [1923] 3 W. W. R. 763; 41 Can. Crim. Cas. 185; 17 Sask. L. R. 412.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 3.—A

3567 iv. — — —.]—A. was prosecuted for selling liquor illegally & convicted. Based on the same facts a second prosecution was brought for keeping liquor for sale. A. pleaded *autrefois convict*.—*Held*: a good plea.—QUEBEC LIQUOR COMMISSION v. DUBOIS, [1924] 2 D. L. R. 861; 42 Can. Crim. Cas. 65.—CAN.

3567 v. — — —.]—REED & ROBERTS (*alias* McLEAN) v. R. (1926), 47 Can. Crim. Cas. 142; Q. R. 42 K. B. 35.—CAN.

3567 vi. — — —.]—YEOK KUK v. R. (1928), 1 L. R. 6 Itan. 386.—IND.

3567 vii. — — — *Offences under different statutes.*]—*Re* WILNEFF (N. S.), [1928] 4 D. L. R. 869; 50 Can. Crim. Cas. 196.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 3.—B.

a i. *Indictment for occasioning bodily harm—Previous acquittal for murder.*]—After being acquitted on a trial for murder accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *autrefois acquit*.—*Held*: the plea of *autrefois acquit* furnished no answer to the charge in question.—R. v. GOSSELIN & GOSSELIN (Man.), [1928] 1 W. W. R. 134; 50 Can. Crim. Cas. 287.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 3.—D.

b i. — *Previous acquittal for assaulting constable while discharging another duty.*]—A mere variation in the nature of the duty, which the officer is alleged to have been engaged in, cannot be considered as a variation in the nature of the offence charged against accused.—R. v. DIAMOND, [1924] 3 D. L. R. 359; 2 W. W. R. 621; 20 Alta. L. R. 419.—CAN.

sm. *Prosecution under Customs Act, R. S. C., 1906 (c. 48), s. 215—Previous conviction under Customs Act, R. S. C., 1906 (c. 48), s. 185.*]—R. v. SACCO (Ont.), [1926] 3 D. L. R. 771; 46 Can. Crim. Cas. 243.—CAN.

## Part X.—Informations.

- 3865.** *Citations* :—For “17 W. R. 567” read “47 W. R. 567.”
- 3718.** *Add. Annotation* :—*Reid. R. v. Evening News, Ex p. Hobbs*, [1925] 2 K. B. 158.
- 3751a.** By constables to extort money.]—*Held* : there being *bona fide* instructions to the con-

stables to watch appet., on which they had acted without unduly harrassing him, & there being no evidence of any conspiracy on the part of the constables, no criminal information could be granted.—*Ex p. WOLFF* (1863), 28 J. P. 23.

## Part XII.—Evidence and Proof.

- 3790a.** ——— *Identification of handwriting*.]—*R. v. MCCARTNEY & HANSEN* (1928), 20 Cr. App. Rep. 179, C. C. A.
- 3792a.** ———.]—*R. v. TAYLOR, WEAVER & DONOVAN* (1928), 21 Cr. App. Rep. 20, C. C. A.
- 3801.** *Add. Annotation* :—*Consd. R. v. Daily Mirror, Ex p. Smith*, [1927] 1 K. B. 845.
- 3801a.** ———.]—(1) It is permissible for a police officer who is in doubt upon the question who shall be arrested for a particular offence to show a photograph to persons in order to obtain information or a clue.
- (2) It is, however, not permissible for a police officer to show beforehand to persons who are afterwards to be called as identifying witnesses photographs of those persons whom they are about to be asked to identify.
- (3) Where photographs are used for the purpose of obtaining information a series of photographs, & not merely one or two, ought to be shown to the person who is expected to give the required information.—*R. v. DWYER, R. v. FERGUSON*, [1925] 2 K. B. 799; 95 L. J. K. B. 109; 132 L. T. 351; 89 J. P. 27; 41 T. L. R. 186; 27 Cox, C. C. 697; 18 Cr. App. Rep. 145, C. C. A.
- Annotations* :—*As to* (1) *Reid. R. v. Daily Mirror, Ex p. Smith*, [1927] 1 K. B. 845. *As to* (2) *Consd. R. v. Daily Mirror, Ex p. Smith*, [1927] 1 K. B. 845. *Reid. R. v. Wainwright* (1925), 19 Cr. App. Rep. 52.
- 3801b.** ——— But may be shown before arrest.]—A prosecutor identified a photograph as that of a prisoner whom the police subsequently arrested. After arrest prisoner was

- picked out by the prosecutor from a number of men in a room :—*Held* : there was no ground for complaint against the method of identification.—*R. v. MELANY* (1924), 18 Cr. App. Rep. 2, C. C. A.
- Annotation* :—*Reid. R. v. Dwyer, R. v. Ferguson*, [1925] 2 K. B. 799.
- 3801c.** ———.]—*R. v. DWYER, R. v. FERGUSON*, No. 3801a, *ante*.
- 3810.** *Add. Annotations* :—*Folld. R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38. *Reid. R. v. Cheshire, Lucas & Bottom* (1927), 20 Cr. App. Rep. 47. *Mentd. Statham v. Statham*, [1929] P. 131.
- 3817a.** ———.]—The prosecution is not entitled to put in police photographs for the purpose of identification as part of the evidence in chief. Where identification has been obtained by means of such photographs, the facts of such identification ought not to be given in evidence.—*R. v. WAINWRIGHT* (1925), 19 Cr. App. Rep. 52, C. C. A.
- 3820a.** ——— Reference to meritorious discharge from army.]—A more reference to a meritorious discharge from the army by an undefended prisoner in a statement handed to the ct. of trial does not necessarily expose him to cross-examination on his character generally, though it may do so on his career in the army. Such a statement should be looked through in his interest & nothing read to the jury of the legal consequences of which he is not aware.—*R. v. PARKER* (1924), 18 Cr. App. Rep. 14, C. C. A.

### PART X. SECT. 1.

*sf. Offence charged under repealed Act*.]—*R. v. CHEW DEB*, [1928] 1 W. W. R. 966; 49 Can. Crim. Cas. 332; 39 B. C. R. 559.—CAN.

### PART X. SECT. 2, SUB-SECT. 1.

*o i.* ——— *Inland revenue officer—Statement of capacity*.]—Since only inland revenue officers can lay an information for an offence under Excise Act, such an information must state that the person laying the information is an inland revenue officer.—*R. v. WITNIEWICZ (Man.)*, [1928] 2 W. W. R. 19; 49 Can. Crim. Cas. 330.—CAN.

### PART XII. SECT. 1.

**3786 i a.** ———.]—Evidence is not admissible of the actions of dogs while engaged in tracking down a person accused of a crime, even though the owner of the dogs testifies as to their character & training & their fitness for tracking men.—*R. v. WHITE*, [1926] 3 D. L. R. 1; [1926] 2 W. W. R. 481; 45 Can. Crim. Cas. 328; 37 B. C. R. 43.—CAN.

**3786 iii.** ———.]—GHANSHYAM SINGH *v. R.* (1927), 1 L. R. 6 Pat. 627.—IND.

**3791 i.** *Circumstantial evidence—Exclusion of other causes*.]—It is not admissible to convict a person on circumstantial evidence if such evidence can be interpreted to give any other explanation than the accused person's guilt.—*R. v. TYMKO* (1924), 42 Can. Crim. Cas. 147.—CAN.

*a i.* *S. P. GAUNE v. R.* (1926), 1 L. R. 7 Lah. 561.—IND.

*b i.* ———.]—*R. v. DEMETRIO* (1926), 46 Can. Crim. Cas. 133; 59 O. L. R. 249.—CAN.

*sg. Commercial documents—When admitted*.]—On a charge of theft from railway cars, documents, such as shipping bills, car checkers' records, etc., not made by the accused & of which he had no knowledge, have no probative value *per se*; & therefore, should not be admitted as evidence against the accused where it is not shown that the persons who made them are dead.—*R. v. DUFF (Sask.)*, [1929] 1 D. L. R. 152; 50 Can. Crim. Cas. 246; [1928] 3 W. W. R. 550.—CAN.

### PART XII. SECT. 2.

**3807 iv.** ———.]—Finger-print impressions of accused, com-

pulsorily taken before his committal to gaol, are admissible in evidence against him.—*R. v. MANGOLD*, [1926] App. D. 440.—S. AF.

*p i.* ——— *Reference by magistrate to exhibits*.]—A magistrate at a trial was called to prove the identifications of accused in gaol & the methods adopted. Instead of stating the details & results, witness referred to documents, described as exhibits, in which he stated his evidence was to be found. The documents were put on the record as his evidence :—*Held* : the attempt to record evidence in this manner was not only contrary to law, but violated the first principles of evidence, & must be entirely ignored.—*LAL SINGH v. R.* (1924), 1 L. R. 5 Lah. 396.—IND.

**3814 ii.** ———.]—*Held* : not a ground for allowing accused's appeal against his conviction.—*R. v. BAGLEY (B. C.)*, [1926] 3 D. L. R. 717; [1926] 2 W. W. R. 513; 46 Can. Crim. Cas. 257.—CAN.

**3814 iii.** ———.]—*R. v. HARRISON (B. C.)*, [1928] 3 D. L. R. 224; [1928] 1 W. W. R. 973; 49 Can. Crim. Cas. 356.—CAN.

**3820b.** — Evidence suggesting normal respectability.]—(1) Questions inviting a witness to make suggestions should not be put in cross-examination, especially when they may have the effect of inducing a prisoner to make an attack on the prosecution, which will let in evidence otherwise inadmissible.

(2) A defending counsel should refrain from putting questions to prisoner giving evidence which suggest normal respectability, but which fall just short of giving evidence of good character.—*R. v. BALDWIN* (1925), 133 L. T. 191; 89 J. P. 116; 69 Sol. Jo. 429; 28 Cox, C. C. 17; 18 Cr. App. Rep. 175, C. C. A.

*Annotation*:—*As to* (1) *Refd.* *R. v. Coulson* (1927), 20 Cr. App. Rep. 106.

**3820c.** —]—"Good character" of accused within Criminal Evidence Act, 1898 (c. 36), s. 1 (f) (ii), means not only general good character, but any claim to good character incidentally put forward by accused.—*R. v. WALKER* (1927), 20 Cr. App. Rep. 31, C. C. A.

**3827.** *Add. Annotations*:—*Consd.* *R. v. Noble* (1928), 20 Cr. App. Rep. 191. *Mentd.* *R. v. Harris*, [1927] 2 K. B. 587.

**3834.** *Add. Annotation*:—*Refd.* *R. v. Noble* (1928), 20 Cr. App. Rep. 191.

**3834a.** *S. P. R. v. NOBLE* (1928), 20 Cr. App. Rep. 191, C. C. A.

**3835.** *Add. Annotation*:—*Refd.* *R. v. Dunkley* (1926), 134 L. T. 632.

**3850a.** — Cross-examination of witness for defence constituting attack on character of accused.]—Questions must not be put in cross-examination to a witness called for the defence in such a way as to have the effect of constituting an attack on the character of the accused, when that is not in issue, even though the object of such questions may be to attack the credit of the witness & not the character of the accused.—*R. v. McCRAIG* (1925), 134 L. T. 160; 90 J. P. 64; 42

*T. L. R.* 215; 28 Cox, C. C. 109; 19 Cr. App. Rep. 68, C. C. A.

**3855a.** —]—A reference in evidence to accused's previous conviction may become relevant by the nature of the cross-examination.—*R. v. LESTER* (1927), 20 Cr. App. Rep. 25, C. C. A.

**3924.** *Add. Annotation*:—*Refd.* *Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

**3943a.** —]—On an indictment for embezzlement evidence that, on a series of occasions before & after those mentioned in the indictment, precisely similar errors [to those alleged against prisoner] had been made, & advantage taken of them, by him:—*Held*: admissible to explain motives & intentions.—*R. v. RICHARDSON* (1861), 2 F. & F. 343; 8 Cox, C. C. 448.

*Annotations*:—*Consd.* *R. v. Stephens* (1888), 58 L. T. 776. *Refd.* *R. v. Balls* (1871), L. R. 1 C. C. R. 328; *R. v. Francis* (1871), L. R. 2 C. C. R. 128; *R. v. Bond*, [1906] 2 K. B. 389.

**3971.** *Add. Annotation*:—*Refd.* *R. v. Berg, Britt, Carré & Lummies* (1927) 20 Cr. App. Rep. 38.

**3972.** *Add. Annotation*:—*Refd.* *R. v. Bateman* (1925), 94 L. J. K. B. 791.

**3992.** *Add. Annotation*:—*Refd.* *Godman v. Time Publishing Co.*, [1926] 2 K. B. 273.

**4009.** *Add. Annotation*:—*Apld.* *R. v. Hewitt* (1925), 89 J. P. Jo. 721.

**4009a.** —]—In a charge of unlawful carnal knowledge of a girl under sixteen years of age, evidence independent of the girl's evidence may be given that the accused on a previous occasion indecently assaulted the same girl, & the fact that a considerable time has elapsed since the earlier act of indecency affects only the weight & not the admissibility of the evidence.—*R. v. Hewitt* (1925), 134 L. T. 157; 90 J. P. 68; 42 T. L. R. 216; 28 Cox, C. C. 101; 19 Cr. App. Rep. 64, C. C. A.

**4048.** *Add. Annotation*:—*Refd.* *R. v. Stuart, R. v. Leonard, R. v. Maples, R. v. Tannen, R. v. Taylor* (1927), 43 T. L. R. 715.

#### PART XII. SECT. 3, SUB-SECT. 1.—B.

**i.** —]—The fact that a person has on a previous occasion been bound over may be stated & proved as one of the grounds on which the witnesses to general repute believe the accused to be a habitual offender.—*R. v. KUMERA* (1928), 1 L. R. 51 All. 275.—*IND.*

**sa.** *What is evidence of bad character*—*Not statements by witness as to disposition & demeanour of prisoner & prisoner's sister.*—*A-G. v. O'LEARY*, [1926] 1 R. 445.—*IR.*

#### PART XII. SECT. 4, SUB-SECT. 2.—A.

**i.** —]—*R. v. BRISTOL* (N. S.), [1926] 4 D. L. R. 753; 46 Can. Crim. Cas. 156.—*CAN.*

#### PART XII. SECT. 4, SUB-SECT. 2.—B. (a).

**3920 iii.** —]—On a charge of theft evidence tending to show that accused has been guilty of criminal acts, other than that upon which he has been charged, is inadmissible, & when allowed entitles accused to a new trial.—*R. v. MORRISON* (1923), 33 B. C. R. 244.—*CAN.*

**3923 ii.** —]—Evidence of other similar acts done by accused is not admissible merely for the purpose of proving that accused by reason of his character or habits is likely to have committed the offence with which he is charged, but it is admissible if it is

relevant in any other manner whatever to the guilt of accused, & it is not necessary before evidence of other similar but unconnected acts can be admitted that the prosecution should first lay a foundation for such evidence by establishing a *prima facie* case against accused, sufficient without the help of any such evidence to go to the jury.—*R. v. COOPER*, [1923] N. Z. L. R. 1237; *Gaz. L. R.* 528.—*N.Z.*

**3923 iii.** —]—*R. v. DZIURA* (Ont.), [1928] 1 D. L. R. 828; 49 Can. Crim. Cas. 220.—*CAN.*

#### PART XII. SECT. 4, SUB-SECT. 2.—B. (b).

**3943 ii.** —]—*HTIN, GYAW v. R.* (1927), 1 L. R. 6 Ran. 6.—*IND.*

**3943 iii.** —]—Evidence admitted to prove a system or course of conduct.—*HARRIS v. R.* (1927), 48 N. L. R. 330.—*S. AF.*

#### PART XII. SECT. 4, SUB-SECT. 2.—B. (c).

**3960 i.** *General rule.*—Evidence admitted to rebut a suggestion of accident or mistake.—*HARRIS v. R.* (1927), 48 N. L. R. 330.—*S. AF.*

#### PART XII. SECT. 4, SUB-SECT. 2.—B. (h) 1.

**p i.** — *Disguise as revenue officer.*—*B. & others* were convicted of the murder of the captain of a boat containing a cargo of liquor intended

to be illegally delivered in the United States. It was proved that B. had bought a yachtman's cup with a white top & ornamented with gold braid in order to give himself the appearance of a revenue officer, & in concert with the others had attacked the crew of the boat, under the pretence that he & his associates were officers of the law. Evidence was offered by the Crown that B. on one occasion recently, & on another at a considerably earlier date, had employed similar equipment & precisely the same ruse for the purpose of deceiving & disarming the opposition of bootleggers while he took over their illegal possessions:—*Held*: such evidence was admissible as tending to establish a practice.—*BAKER v. R., SOWASH v. R.*, [1926] 1 D. L. R. 115; [1926] S. C. R. 92; 45 Can. Crim. Cas. 19.—*CAN.*

#### PART XII. SECT. 4, SUB-SECT. 2.—B. (h) iv.

**k i.** — *Indecent assault involving murder on another child*—In reaching a conclusion on a charge of indecent assault, involving murder, upon a little girl:—*Held*: the jury were neither bound, nor entitled, to shut their eyes to what they might consider to have been proved under a charge of indecent assault upon another little girl, in view of the close association in time, character, & circumstances of the incidents alleged with regard to the two charges.—*H.M. ADVOCATE v.*

**4129a. Statement by wife—In absence of husband.]**—A statement by deft.'s wife to third persons is not evidence against deft. on his trial of the facts therein contained, but may be given in evidence with his remarks on them when it is repeated to him.—*R. v. FINDEN* (1926), 19 Cr. App. Rep. 144, C. C. A.

**4129b. Statement by co-defendant—In answer to questions by police.]**—(1) A statement relative to a pending charge, obtained in the course of a question addressed by a police officer to a person under arrest on that charge, is not a voluntary statement.

(2) Such a statement is not evidence against a co-deft., but if the jury have been adequately warned on that point the ct. will not interfere on the ground of an ambiguous sentence in the summing up.—*R. v. TURNER* (1926), 19 Cr. App. Rep. 171, C. C. A.

**4189. Add. Citation:**—27 Cox, C. C. 510.

**4194. Add. Annotations:**—*Distd. R. v. Whitehead*,

[1929] 1 K. B. 99. *Refd. R. v. Coulson* (1927), 20 Cr. App. Rep. 106.

**4199. Add. Annotations:**—*Distd. R. v. Whitehead*, [1929] 1 K. B. 99. *Refd. R. v. Coulson* (1927), 20 Cr. App. Rep. 106.

**4216a. ———.]**—On the trial of an indictment for corruptly giving or receiving a gift, a paper found on accused, which may refer to the bribery charged, is admissible in evidence against him.—*R. v. CHESHIRE, LUCAS & BOTTOM* (1927), 20 Cr. App. Rep. 47, C. C. A.

**4222a. ———.]**—(1) A disorderly house at common law is a house which is so conducted as to violate law & good order.

(2) Letters, if found in such a house referring to unnatural practices, may be given in evidence against a person charged with keeping such a house.—*R. v. BERG, BRITT, CARRE & LUMMIES* (1927), 20 Cr. App. Rep. 38, C. C. A.

BICKERSTAFF, [1926] S. C. (J.) 65.—SCOT.

**PART XII. SECT. 4, SUB-SECT. 2.—B. (h) viii.**

**4052 xiv. ———.]**—A person accused of obtaining goods on false pretences from B. & S. was convicted on the two counts. The pretence consisted, in the B. case, of representations that accused was a bank officer, at a certain place, was low in clothes & was about to take a holiday, & giving an assumed name; in the S. case, accused wrote a letter with similar false statements of his name & employment & stating that he desired to obtain personal requirements, as he was about to be married. Subsequently accused called & obtained goods at S.'s warehouse. The statements as to the holiday & the marriage were not proved to be untrue. Accused wrote a similar letter to M., but it was not shown that he obtained goods there. Accused also obtained credit from F. The only false representation to F. was the giving of the false name.—*Held:* evidence of the representations to M. & F. was rightly admitted on the question of intent.—*R. v. REYNOLDS*, [1927] S. A. S. R. 228.—AUS.

**4052 xv. ———.]**—*Similar crime abroad.*—In an indictment the charges against accused were that, having conceived a fraudulent scheme for obtaining money from the public in Scotland & elsewhere by means of counterfeit drafts, he (a) on Sept. 21, 1927, uttered in a bank in Dundee a forged document which purported to be a draft of a finance co. in New York, & (b) on Sept. 23, in the same bank pretended, by telephone from London, that the draft was genuine. The indictment further charged accused with pretending, in pursuance of the scheme, in an hotel in Brussels, in Oct., that a forged document was a genuine draft of the same finance co.:—*Held:* while admittedly the incident in Belgium could not be made the subject of a substantive charge, that incident & the crime charged were sufficiently closely connected to admit of evidence relating to that incident being used by the prosecution for the purpose of supporting the other charges.—*H.M. ADVOCATE v. JOSEPH*, [1929] S. C. (J.) 55.—SCOT.

**PART XII. SECT. 4, SUB-SECT. 5.—A.**

**4129a i. Statement by wife**—*In absence of husband.*—A statement made by the wife of accused was handed to him at his own request, & he admitted the signature was that of his wife, & made the remark, "I did not think she would let me down like

this. Anyhow, it is not true I was sucked from. . . I got testimonials from both places when I left":—*Held:* an acknowledgment of the truth of the statement in whole or in part might be inferred, & the contents of the statement were properly submitted to the jury, the question of admission or not of the truth of the contents being left to them.—*R. v. GRIGG*, [1926] N. Z. L. R. 781.—N.Z.

**t. i. ———.]**—*R. v. BROWN* (Sask.), [1927] 4 D. L. R. 779; [1927] 3 W. W. R. 335; 49 Can. Crim. Cas. 37.—CAN.

**PART XII. SECT. 4, SUB-SECT. 5.—C.**

**4147 i. ———.]**—*Should be excluded unless some evidence of admission by accused.*—It is only when accused, by "word or conduct, action or demeanour," has accepted what they contain, & to the extent that he does so, that statements made by other persons in his presence have any evidentiary value.—*STEIN v. R.*, [1929] 1 D. L. R. 143; 50 Can. Crim. Cas. 311; [1928] S. C. R. 553.—CAN.

**PART XII. SECT. 4, SUB-SECT. 5.—E.**

**4175 ii. ———.]**—Appl. & twenty-one others were convicted of faction fighting within Act 11, 1896. In the course of the fight a native was stabbed & subsequently died. At least a quarter of an hour after he was wounded he stated that it was applt. who had wounded him. The magistrate admitted evidence of this statement as part of the *res gestæ* & in consequence thereof, sentenced applt. to 18 months' imprisonment with hard labour, none of the other accused receiving more than 6 months:—*Held:* the statement was not part of the *res gestæ* & was wrongly admitted.—*KAWULA v. R.* (1929), 50 N. L. R. 39.—S. AF.

**PART XII. SECT. 4, SUB-SECT. 6.—B.**

**4200 viii. ———.]**—On a charge of incest there was evidence of prosecutrix having complained to her stepmother six days after the alleged crime was committed, & further evidence of prosecutrix & her sister was allowed in that two days later she had complained to her sister of the crime:—*Held:* evidence of the statements made by prosecutrix to her sister eight days after the occurrence when she had had ample opportunity to complain before, was inadmissible, & by its admission a substantial wrong was done to accused, & there should be a new trial.—*R. v. PROTEAU* (1923), 33 B. C. R. 39.—CAN.

**q. i. ———.]**—Upon appeal from

a conviction for rape it was argued that evidence of a complaint, made by complainant to her husband many hours after the alleged offence, was improperly admitted, she having had earlier opportunities to complain to others, though not to her husband:—*Held:* it was for the trial judge to decide whether the complaint was made in circumstances which rendered it properly admissible—the material point was whether it was made on the first reasonable opportunity—& the judge found that it would not have been reasonable for the woman to have complained to other persons.—*R. v. HILL*, [1928] 2 D. L. R. 736; 49 Can. Crim. Cas. 161; 61 O. L. R. 645.—CAN.

**4209 vi. ———.]**—*R. v. STONEHOUSE & PASQUALE*, [1928] 1 D. L. R. 506; [1928] 1 W. W. R. 161; 49 Can. Crim. Cas. 122; 39 B. C. R. 279.—CAN.

**PART XII. SECT. 4, SUB-SECT. 7.**

**4221 iii. ———.]**—It was objected that the trial judge improperly received in evidence a book found in prisoner's house, entitled "Theses & Statutes of the Third (Communist) International of Moscow," published in the interests of an organisation with which prisoner had voted to amalgamate:—*Held:* the evidence was admissible.—*R. v. McLAHLAN* (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

**4232 i. Must be material—Charge of acts of gross indecency—Evidence of possession of lewd pictures—Admitted on general issue.]**—Upon a charge of gross indecency, evidence that indecent photographs were found in accused's possession is not admissible, unless there is some specific connection between the articles & the participation of accused in the crime.—*R. v. DAVIS*, [1925] App. D. 30.—S. AF.

**PART XII. SECT. 5, SUB-SECT. 1.**

**1 i. Actual words & not substance of confession should be given.]**—The ct. ought to ascertain as far as possible the very words spoken by accused who is said to have confessed. There is no rule of law which precludes the ct. from holding that a confession has been proved even in cases where the evidence gives the substance, though not the actual words of the statement made by accused, if the ct. believes that evidence.—*NUR ALI v. R.* (1924), 1 L. L. R. 5 Lah. 140.—IND.

**1 ii. ———.]**—It is not the law that the statement of accused must be rejected if not in his *ipsissima verba*, but it is a matter for consideration

**4275a. ——— Preliminary examination.]—**

*R. v. TUTTLE*, No. 2204a, *ante*.

**4279. Add. Annotation :—***Apld. R. v. Tuttle* (1929), 140 L. T. 701.

**4286. Add. Annotations :—***Apld. R. v. Tuttle* (1929), 140 L. T. 701. *Mentd. R. v. Smith*, [1924] 2 K. B. 194.

**4308. Add. Annotation :—***Refd. Nadan v. R.*, [1926] A. C. 482.

**4317a. ———.]—**The fact that an accused

person makes a voluntary confession without a caution does not exclude its admissibility at the trial.—*R. v. PATTISON* (1929), 21 Cr. App. Rep. 139, C. C. A.

**4351. Add. Annotation :—***Refd. R. v. Turner* (1926), 19 Cr. App. Rep. 171.

**4351a. ———.]—***R. v. BOOKER*, No. 8793a, *post*.

**4129b, ante.**

by the judge in arriving at his decision as to the admission or not of the statement.—*A.-G. v. M'CABE*, [1927] I. R. 129.—*IR*.

*d. Previous written statement inconsistent with prisoner's evidence at trial.]—Held*: admissible.—*A.-G. v. MURRAY*, [1926] I. R. 266.—*IR*.

*se. Statement inculcating co-prisoners.]—*Three appts. together with a woman were convicted of the crime of murder. After arrest the woman had made a statement inculcating appts. under whose compulsion she said she had been acting:—*Held*: the statement was not a confession, & had been improperly admitted in evidence against appts.—*R. v. CAMANE*, [1925] App. D. 570.—*S. AF*.

*sf. Statement overheard in cells.]—*At the trial of four persons, on charges including a charge of murder against three of the number, a police-officer, who had been on duty on the morning after the murder at the office in which two of the persons charged were being detained, gave evidence. He deposed that prisoners were shouting to each other in the cells to see who was in. He was then asked by counsel for the Crown, "What did you hear?"—*Held*: the question must be disallowed.—*H.M. ADVOCATE v. KEEN*, [1926] S. C. (J.) 1.—*SCOT*.

*sg. What amounts to—Under 1917 Act (c. 31), s. 273.]—*The test to be applied in determining whether a statement made by accused is a confession within 1917 Act (c. 31), s. 273, is whether the acknowledgment of guilt on the part of the accused is such that, if made in a ct. of law, it would have amounted to a plea of guilty.—*It. v. BECKER*, [1929] App. D. 167.—*S. AF*.

**PART XII. SECT. 5, SUB-SECT. 2.**

*oi. ———.]—*Where a magistrate translated what he had written down to accused, who acknowledged it to be correct & affixed his thumb impression:—*Held*: the confession was admissible, any defects in the mode of recording it being cured by Code of Criminal Procedure, s. 533.—*It. v. DEO DAT* (1922), I. L. R. 45 All. 166.—*IND*.

**PART XII. SECT. 5, SUB-SECT. 3.**

*t (p. 408) i. ———.]—*The evidence of a judgment debtor on an examination for discovery in aid of execution is admissible against him on a subsequent criminal charge, unless he at the time objected to answer on the ground that his answers might tend to incriminate him.—*R. v. NOZAKI*, [1926] 4 D. L. R. 955; [1926] 3 W. W. R. 332; 46 Can. Crim. Cas. 168; 37 B. C. R. 305.—*CAN*.

*ri. ——— Subsequent charge of perjury.]—*At the preliminary hearing of another charge, accused, who was in custody, was questioned by the magistrate, when asking for an adjournment. He was not represented by counsel, & had not offered himself as a witness or been sworn, & his answers were not taken down in writing. At the trial accused was questioned as to

alleged admissions to the magistrate & he denied them. His denial was the subject of the perjury charge:—*Held*: the conviction for perjury should be quashed.—*It. v. CIESLENSKI*, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—*CAN*.

**PART XII. SECT. 5, SUB-SECT. 4.**

**4303 x. ———.]—**Neither the fact that accused was not cautioned before making a statement to a person in authority, nor the fact that it was made in answers to questions put by a police officer, is sufficient to render it inadmissible in law, but they are circumstances which the judge should consider in exercising his discretion to exclude or admit the statement.—*It. v. KOOTEN*, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—*CAN*.

**4303 xi. ———.]—***Held*: evidence as to a voluntary statement made by prisoner to the police, after being cautioned, was admissible, although the effect of the statement was to indicate the previous bad character of accused.—*H.M. ADVOCATE v. M'ADYEN*, [1926] S. C. (J.) 93.—*SCOT*.

**4303 xii. ———.]—***R. v. HAGERUP* (Sask.) (1927), 48 Can. Crim. Cas. 95.—*CAN*.

**4303 xiii. ———.]—***BOISSEAU v. R.* (1927), 49 Can. Crim. Cas. 222; Q. It. 43 K. B. 105.—*CAN*.

**4303 xiv. ——— Effect of retraction.]—**A retracted confession is admissible in evidence, but should have no weight attached to it unless it is corroborated in material particulars, or the tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases the retracted statement must be given full weight, & may be used against a co-accused.—*SHEONATHAN SINGH v. It.* (1928), I. L. R. 8 Pat. 262.—*IND*.

*s (p. 412) i. ———.]—*If based on an admission or confession to the police, when they were interrogating accused, a conviction on a summary trial will be set aside, unless it can be proved that accused made the admission or confession voluntarily.—*It. v. WARD* (1924), 41 Can. Crim. Cas. 418.—*CAN*.

*b (p. 412) i. ——— Though not in accused's native tongue—Confession read over & explained.]—R. v. IWANCHUK* (Alta.), [1929] 1 D. L. R. 279; 50 Can. Crim. Cas. 405.—*CAN*.

**4311 vi. ———.]—**A confession made to any person under the influence of a promise or threat held out by a person in authority, calculated to induce the confession, is inadmissible, unless it be clearly proved to the satisfaction of the judge, whose duty it is to decide the question, that the promise or threat did not operate upon the mind of the accused, & that the confession was voluntary.—*R. v. TREANOR, R. v. FLOOD, R. v. TREANOR, R. v. KELLY*, [1924] 2 I. R. 193.—*IR*.

**4311 vii. ——— Made under influence of mental suggestion.]—R. v. BOOKER (Alta.), [1928] 4 D. L. R. 795; [1928] 3 W. W. R. 203; 50 Can. Crim. Cas. 271.—*CAN*.**

**PART XII. SECT. 5, SUB-SECT. 5.**

**4326 i. Before accused is in custody—Inquiries as to offences may be made—Answers admissible in evidence—Caution not necessary.]—It. v. KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—*CAN*.**

**4326 ii. ———.]—**It is not the law that a statement must be excluded on the sole ground that either the statement was made in answer to questions put by a police officer to accused, or that it was made without a caution having been first administered. It is a matter for the judge to decide whether, in his discretion, he will admit the statement or not, having regard to all the circumstances, & observing the legal requirement that the statement shall be voluntary, though not necessarily volunteered.—*A.-G. v. M'CABE*, [1927] I. R. 129.—*IR*.

**4326 iii. ———.]—**Where a statement made by accused, at the time suspected but not then arrested, to a police officer was freely & voluntarily made:—*Held*: the fact that such officer failed to caution accused did not render the statement inadmissible.—*R. v. BARKIN*, [1926] App. D. 459.—*S. AF*.

**4336 xvi. ———.]—**A statement made to the police by a boy, between sixteen & seventeen years of age, detained on suspicion of murder, not admitted, in view of the youth of accused, his abnormal physical & mental condition at the time he made the statement, a doubt as to the adequacy of the warning given by the police, the fact that he had not the benefit of the advice of a lawyer, & the fact that the statement had followed upon a conversation put to accused in which questions put to accused had some bearing on the subject-matter of the charge.—*H.M. ADVOCATE v. AITKEN*, [1926] S. C. (J.) 83.—*SCOT*.

**4336 xvii. ———.]—**A statement made to the police by a man detained on suspicion of murder, in reply to a question addressed by one police officer to another, not admitted, as prisoner might have thought that the question was addressed to him, & his statement could not be regarded as voluntary.—*H.M. ADVOCATE v. LIESER*, [1926] S. C. (J.) 88.—*SCOT*.

**4336 xviii. ——— Burden of establishing voluntary character of statement on Crown.]—It. v. JELLOS, [1927] 3 D. L. R. 186; [1927] S. C. R. 258; 48 Can. Crim. Cas. 126.—*CAN*.**

**4336 xix. ——— How burden discharged.]—SANKLEY v. It., [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—*CAN*.**

**PART XII. SECT. 5, SUB-SECT. 6.—A.**

**4380 xiii. ———.]—**Where the village panch told accused that the truth had come out, & that he had better say what he knew, & accused thereupon confessed his guilt:—*Held*: the confession was inadmissible in evidence.—*KUNJA SUBDHU v. R.* (1928), I. L. R. 8 Pat. 289.—*IND*.

- 4357a. — Form of statement.]—R. v. O'DONOGHUE, No. 8266a, *post*.
4526. *Add. Annotation*:—*Consd. Minter v. Priest*, [1929] 1 K. B. 655.
4534. *Add. Annotation*:—*Refd. Minter v. Priest*, [1929] 1 K. B. 655.
4588. *Add. Annotation*:—*Refd. Broome v. Agar* (1928), 138 L. T. 698.
4600. *Add. Annotations*:—*Mentd. Britannia Hygienic Laundry Co. v. Thornycroft* (1925), 94 L. J. K. B. 858; *The Paludina*, [1925] P. 40.
4620. *Add. Annotation*:—*Refd. Shapiro v. La Morta* (1923), 130 L. T. 622.
4645. *Add. Annotation*:—*Refd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
4650. *Add. Annotation*:—*Consd. Pointon v. Cox* (1926), 136 L. T. 506.
4659. *Add. Citation*:—1 Leach, 300, n.
- Add. Annotation*:—*Refd. R. v. Elworthy* (1867), 37 L. J. M. C. 3.
4692. In the cross-reference following this case, for "See Part XXIII., Sect. 1, sub-sect. 1, Q. (b), *post*," read "See Part XXXIII., Sect. 1, sub-sect. 1, Q. (b), *post*."
- 4705a. *Duty of counsel*—To apply for leave to cross-examine as to character.]—When counsel for the prosecution proposes to cross-examine prisoner on character, under Criminal Evidence Act, 1898 (c. 36), s. 1 (f), it is desirable that he should make an express application for leave to the judge before proceeding to that line of cross-examination.—*R. v. McLEAN* (1926), 134 L. T. 640, C. C. A.
- 4705b. — To refrain from cross-examining as to character.]—*R. v. DUNKLEY*, No. 4734a, *post*.
- 4711a. — — —.]—*R. v. BALDWIN*, No. 3820b, *ante*.
4712. *Add. Annotation*:—*Consd. R. v. Baldwin* (1925), 133 L. T. 191.
- 4712a. — Cross-examination tending to show

- accused likely to commit offence charged.]—*R. v. COULMAN*, No. 3156e, *ante*.
4715. *Add. Annotations*:—*Refd. R. v. Dunkley* (1926), 134 L. T. 632; *R. v. McLean* (1926), 134 L. T. 640.
4716. *Add. Annotation*:—*Distd. R. v. King* (1927), 20 Cr. App. Rep. 158.
4733. *Add. Annotation*:—*Refd. R. v. Dunkley* (1926), 134 L. T. 632.
- 4734a. — Suggestion that witness deliberately committing perjury.]—(1) To suggest that a witness for the prosecution is deliberately committing perjury because he believes that he has a grievance against prisoner is an imputation on the character of that witness within Criminal Evidence Act, 1898 (c. 36), s. 1 (f), so as to render cross-examination of prisoner as to character admissible.
- (2) Even where such a line of cross-examination is admissible in law, counsel for the prosecution should refrain from adopting it, unless the circumstances are such as to make it appear to be a positive duty on his part so to cross-examine.—*R. v. DUNKLEY*, [1927] 1 K. B. 323; 96 L. J. K. B. 15; 134 L. T. 632; 90 J. P. 75; 28 Cox, C. C. 143; 19 Cr. App. Rep. 78, C. C. A.
4735. *Add. Annotations*:—*Refd. R. v. Dunkley* (1926), 134 L. T. 632; *R. v. McLean* (1926), 134 L. T. 640.
4742. *Add. Annotation*:—*Refd. R. v. Dunkley* (1926), 134 L. T. 632.
4747. *Add. Annotation*:—*Refd. R. v. Dunkley* (1926), 134 L. T. 632.
4748. *Add. Annotations*:—*Refd. R. v. Dunkley* (1926), 134 L. T. 632; *R. v. McLean* (1926), 134 L. T. 640.
4749. *Add. Annotation*:—*Refd. R. v. Dunkley* (1926), 134 L. T. 632.
4750. *Add. Annotation*:—*Refd. R. v. Dunkley* (1926), 134 L. T. 632.
- 4764a. — Grievous bodily harm.]—Upon

PART XII. SECT. 5, SUB-SECT. 6.—C. (b).

q i. — — —.]—A collecting & an assistant "pancharget" are persons in authority within Evidence Act, s. 24, when they have taken an important part in the inquiry into the circumstances of the commission of the offence.—*R. v. GANESH CHANDIA GOLDAR* (1922), 1 L. R. 50 Cal. 127.—IND.

PART XII. SECT. 6, SUB-SECT. 1.

4540 iii. — — —.]—In a criminal prosecution the charge against accused must be proved absolutely. If there is a reasonable doubt the conviction must be quashed.—*R. v. DUNRY* (1924), 42 Can. Crim. Cas. 152.—CAN.

4540 iv. — — —.]—*R. v. MYERS* (Ont.) (1928), 50 Can. Crim. Cas. 350.—CAN.

PART XII. SECT. 6, SUB-SECT. 2.

c i. — — —.]—Where, on a charge of unlawfully wounding a certain person with intent to maim or disable him, the Crown proves that the accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the *onus* then shifts to the accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—*R. v. SMART*, [1927] 3 W. W. R. 753; 49 Can. Crim. Cas. 75; 23 Alta. L. R. 349.—CAN.

PART XII. SECT. 6, SUB-SECT. 3.—B.

4610 i. *Sufficiency of proof*—*Question of fact for jury*.]—The question of intent is for the jury & not for the Crown.—*R. v. McLACHLAN* (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

4620 i. *Whether special intent must be proved*—*In malicious damage to property*.]—*R. v. MASHARIGN*, [1924] App. D. 11.—S. AF.

PART XII. SECT. 6, SUB-SECT. 4.—C.

sm. *Matter for discretion of court*.]—Act 31 of 1917, s. 256 (1), which makes provision for the taking of evidence on commission in criminal proceedings, is permissive & confers on a superior ct. the discretion, whether, under the circumstances of any particular case, it is in the interest of justice to have the evidence of a witness taken on commission or not.—*R. v. LEVY*, [1929] App. D. 312.—S. AF.

PART XII. SECT. 12, SUB-SECT. 1.

b i. — *Policemen or spotters*—*Sale of intoxicating liquors*.]—*R. v. CANCILLA*, [1928] 2 D. L. R. 783; [1928] 1 W. W. R. 852; 50 Can. Crim. Cas. 48; 37 Man. L. R. 315.—CAN.

ff i. — *Informers*.]—*HARRIS v. R.* (1927), 48 N. L. R. 330.—S. AF.

PART XII. SECT. 12, SUB-SECT. 2.—A.

b i. *Can be compelled to furnish speci-*

*men of handwriting*.]—A witness, in a criminal trial, though he be accused testifying on his own behalf, while under cross-examination may be ordered to write certain words dictated to him, & when accused is the witness an effect of such writing may be that a letter, otherwise unproved, is admitted in evidence against him.—*R. v. WHITTAKER*, [1924] 3 D. L. R. 63; 2 W. W. R. 706; 42 Can. Crim. Cas. 162.—CAN.

g i. — — — *Breach of city bye-law*.]—*R. v. HART* (1891), 20 O. R. 611.—CAN.

4695 i. *May be cross-examined*.]—*A.-G. v. MURRAY*, [1926] I. R. 286.—IR.

PART XII. SECT. 12, SUB-SECT. 2.—

4755 ii. — — —.]—Two prisoners, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898 (c. 36), s. 1. In the opinion of the judge the evidence of neither incriminated the other:—*Held*: neither was entitled to cross-examine the other, such right of cross-examination being limited to the case where, in the opinion of the judge, the evidence given incriminated, or tended to incriminate, the fellow prisoner.—*GEMMELL & M'FADYEN v. J.* [1928] S. C. (J.) 5.—SCOT.

an indictment for inflicting grievous bodily harm, the wife of prisoner must not be called as a witness for the Crown.—*R. v. KING* (1925), 19 Cr. App. Rep. 34, C. C. A.

4770. *Add. Annotation*.—*Refd. Statham v. Statham*, [1929] P. 131.

4818. *Add. Annotation*.—*Consd. R. v. Bailey*, [1924] 2 K. B. 800.

4824a. ————.]—*R. v. STEVENS* (1913), 135 L. T. Jo. 442; 9 Cr. App. Rep. 132.

4826a. ————.]—Appct. was convicted of unlawful carnal knowledge of a girl under thirteen, & was sentenced to three years' penal servitude. The girl, whose age was eight & a half years, gave unsworn testimony under the above sect., proviso (a) of which renders necessary corroboration of such evidence "by some other material evidence in support thereof implicating the accused." The only corroboration of the child's testimony was the evidence of an older girl to whom she stated her version of what had occurred immediately after the alleged offence

had taken place:—*Held*: corroboration must not only connect, or tend to connect, the accused with the crime, but must come from an independent quarter, & the evidence of the older girl originated from prosecutrix herself.—*R. v. EVANS* (1924), 88 J. P. 196; 18 Cr. App. Rep. 123, C. C. A.

4826b. ————.]—Corroboration of the unsworn evidence of a child must be "material evidence implicating accused."—*R. v. STANLEY* (1927), 20 Cr. App. Rep. 58, C. C. A.

4878a. ————.]—*R. v. SMITH*, No. 6066a, *post*.

4891. *Add. Annotation*.—*Refd. R. v. Beebe* (1925), 133 L. T. 736.

4900. *Add. Annotation*.—*Consd. R. v. Beebe* (1925), 133 L. T. 736.

4902. *Add. Annotations*.—*Consd. R. v. Beebe* (1925), 133 L. T. 736. *Refd. Statham v. Statham*, [1929] P. 131. *Mentd. R. v. Brixton Prison, Ex p. Perry*, [1924] 1 K. B. 455.

PART XII. SECT. 12, SUB-SECT. 3.—B.

s i. *Children Act*, 1908 (c. 67).—*Whether competent—Offence involving bodily injury*.—A man was tried upon a charge of using certain lewd, indecent & libidinous practices towards a girl aged six:—*Held*: an offence involving bodily injury to the child within the above Act, although no actual physical hurt had been done to her, & the wife of accused could under that Act & Criminal Evidence Act, 1898, be called & examined by the Crown as a witness.—*H.M. ADVOCATE v. LEE*, [1923] S. C. (J.) 1.—*SCOT*.

s ii. ————.]—A man was tried upon indictment for striking at, & attempting to cut with a razor, a child aged six weeks:—*Held*: an offence involving bodily injury to the child within the above Act, although the child had not been physically injured or actually touched, & the wife of accused could be called & examined by the Crown as a witness.—*H.M. ADVOCATE v. MACPHEE*, [1926] S. C. (J.) 91.—*SCOT*.

PART XII. SECT. 12, SUB-SECT. 4.—B.

s i. ———— *Criminal Code*, s. 1003.]—*R. v. GEMMILL* (1924), 43 Can. Crim. Cas. 360.—*CAN*.

f i. ————.]—Prisoner was indicted for an indecent assault on a girl under thirteen. At the trial there was admitted the unsworn testimony of the child alleged to have been assaulted & of two other children of tender years, & the evidence of the mother of the girl that she had asked the child what she was crying about, & that the child's reply was a complaint of prisoner's conduct to her:—*Held*: (1) the unsworn testimony of a child of tender years could not be corroborated by the unsworn testimony of any number of such children; (2) the answers of the girl to her mother's questions were not evidence of the facts complained of, & could not constitute corroboration of those facts.—*R. v. COYLE*, [1926] N. 208.—*IR*.

—.]—A panel was tried before a sheriff & jury upon an indictment which set forth certain lewd, indecent & libidinous practices towards a boy six years of age. The boy gave evidence in support of the charge, & his father & mother deposed to the condition of his person & clothing shortly after the offence, & also, to the statements which he had made to them *de recenti*. The sheriff charged the jury that the evidence was sufficient

in law to entitle them to convict, & the panel was convicted. On appeal:—*Held*: the boy's evidence was sufficiently corroborated in law by the evidence of his parents, & evidence of statements made by a victim *de recenti* afforded corroboration of that victim's evidence.—*M'LENNAN v. H.M. ADVOCATE*, [1928] S. C. (J.) 39.—*SCOT*.

n i. *S. P. R. v. LAMOND*, [1926] 1 D. L. R. 826; 45 Can. Crim. Cas. 200; 58 O. L. R. 264.—*CAN*.

PART XII. SECT. 13, SUB-SECT. 1.

r i. ————.]—The question whether a witness is an accomplice is one of fact for the jury, after the judge has instructed them as to what constitutes an accomplice & has decided that there is evidence from which the jury can reasonably infer that the witness comes within that category.—*R. v. GALLAGHER*, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—*CAN*.

4828 ii a. *S. P. R. v. RODGERS* (Ont.), [1926] 4 D. L. R. 609; 46 Can. Crim. Cas. 372.—*CAN*.

4828 ii b. *S. P. R. v. BANDEL* (Ont.), [1927], 47 Can. Crim. Cas. 266.—*CAN*.

o i. *Person giving bribe*.—A & B. were charged with conspiring to obtain money from C. by unlawful means. The Crown case was that prisoners had conspired to obtain, & had obtained, a large sum of money from C. as a bribe to refrain from taking criminal proceedings against C. or his daughter, both of whom gave evidence for the Crown. Accused denied having asked for or received any money:—*Held*: C. was not an accomplice.—*R. v. OLHOIM & McPHERSON*, [1925] V. L. R. 377; 47 A. L. T. 10; 31 Argus L. R. 228.—*AUS*.

so. *Person implicated in crime—Whether as principal or accessory*.—A person implicated, either as principal or as accessory in the crime under investigation, is an "accomplice" within the rule.—*A-G. v. LINEHAN*, [1929] I. R. 19.—*IR*.

sp. *Person cognisant of act of accused*.—A witness, whose evidence had been admitted as corroborating a girl, was shown to have known of the act of accused & to have assisted him to procure certain drugs to be used to bring about a miscarriage, but there was no evidence to show he knew of the girl's age:—*Held*: there was no evidence to show that the witness was an accomplice & the judge was right in not directing the jury that his evidence was not corroborative.—*R.*

—*AUS*. *ILL*, [1927] S. A. S. R. 287.

PART XII. SECT. 13, SUB-SECT. 4.—A.

sq. *Whether evidence corroborates—Functions of judge & jury*.—It is a preliminary question of law for the judge to determine whether there is any evidence that does corroborate the story of the approver, so far as the complicity of the accused is concerned. The judge must not tell the jury that such or such witness does in fact corroborate the approver. That is the function of the jury & depends upon whether they believe the witness or not.—*REBATI MOHAN CHAKAVARTY v. R.* (1928), 1 L. R. 56 Calc. 150.—*IND*.

PART XII. SECT. 13, SUB-SECT. 4.—B.

4891 xi. ————.]—*R. v. DAVIDSON* (1925), 44 Can. Crim. Cas. 311.—*CAN*.

4891 xii. ————.]—After trial before a judge & jury, deft. was convicted of the offence of stealing cattle. The cattle were in fact stolen—the defence was that deft. was not the thief. The only evidence against deft. was the testimony of an accomplice, one L.; & the trial judge, in charging the jury, told them that if they agreed that there was no evidence, but that of an accomplice, it was not safe to convict upon that, but if they were satisfied they might convict:—*Held*: the jury were properly directed.—*R. v. SKELLY*, [1928] 1 D. L. R. 619; 49 Can. Crim. Cas. 179; 61 O. L. R. 497.—*CAN*.

4904 ii a. *S. P. R. v. RODGERS* (Ont.), [1926] 4 D. L. R. 609; 46 Can. Crim. Cas. 372.—*CAN*.

4904 xii. ————.]—*R. v. SWITZER* (Ont.) (1925), 45 Can. Crim. Cas. 377.—*CAN*.

4904 xiii. ————.]—A charge cannot be said to be established merely on the unsupported testimony of an accomplice.—*R. v. SATISH CHANDRA SINGHA* (1927), 1 L. R. 154 Calc. 721.—*IND*.

4904 xiv. ————.]—*Held*: it is not a rule of law that the evidence of an accomplice must be corroborated, but it is the general practice to require corroboration.—*COULTER & TREFFENE v. R.* (1926), 29 W. A. L. R. 40.—*AUS*.

4904 xv. ————.]—The rule that it is dangerous to convict on the uncorroborated evidence of an accomplice applied in quashing on appeal a conviction for unlawfully purchasing from the Govt. Liquor Board a greater quantity of liquor than is allowed to be purchased on any one day.—*R. v.*



4934. *Add. Annotations*:—**Apld.** R. v. Evans (1924), 88 J. P. 196; R. v. Beebe (1925), 133 L. T. 736. **Consd.** Statham v. Statham, [1929] P. 131. **Refd.** R. v. Ross (1924), 18 Cr. App. Rep. 141; R. v. Harris, [1927] 2 K. B. 587.
4935. *Add. Annotation*:—**Mentd.** R. v. Cairns (1927), 43 T. L. R. 455.
4942. *Add. Annotations*:—**Distd.** R. v. Whitehead, [1929] 1 K. B. 99. **Consd.** Statham v. Statham, [1929] P. 131.
- 4972a. —. —.]—R. v. SMITH, No. 6066a, *post*.
- 4972b. —. —.]—R. v. BEEBE, No. 6066b, *post*.

## Part XIII.—Punishment and Prevention of Crime.

- 4974a. —.]—*R. v. JONES, R. v. POOLE, R. v. TERRY* (1924), 18 Cr. App. Rep. 135, C. C. A.
- 4974b. —.]—*R. v. WRIGHT* (1925), 19 Cr. App. Rep. 19, C. C. A.
- 4974c. —.]—*R. v. BUGGS* (1910), 6 Cr. App. Rep. 74, C. C. A.
- 4994a. — — —.]—The mere fact that a man has been convicted many times is not in itself sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself.—*R. v. TAYLOR* (1924), 18 Cr. App. Rep. 143, C. C. A.
- 4994b. — — —.]—The fact that a prisoner has committed some serious offences is no reason for giving him a sentence of penal servitude for such an offence as breaking into a railway station booking-office & stealing some cigarettes & bottles of horse medicine.—*R. v. PRICE* (1924), 18 Cr. App. Rep. 138, C. C. A.
- 4994c. — — —.]—Prisoner obtained various small sums of money from a tobacconist by falsely representing that he had obtained certain appointments, & was sentenced to three years' penal servitude. He had a bad record both in South Africa & in England:—*Held*: in considering whether the sentence was proper the ct. had to beware of treating an offence as serious in itself because it had been committed by a man who previously had committed a series of offences, & the sentence should be reduced to eighteen months' imprisonment with hard labour.—*R. v. DURAND* (1924), 18 Cr. App. Rep. 137, C. C. A.
- 4994d. — — —.]—*R. v. WALLS (alias RUSSELL)* (1925), 19 Cr. App. Rep. 35, C. C. A.
- 4994e. — — —.]—*R. v. DENT* (1925), 19 Cr. App. Rep. 18, C. C. A.
- 4994f. — — —.]—*R. v. GUMBS* (1926), 19 Cr. App. Rep. 74, C. C. A.
- 4994g. — — —.]—In imposing sentence on persons often previously convicted, regard must be had to the gravity of the offence in question.—*R. v. D'ARCY* (1926), 19 Cr. App. Rep. 22, C. C. A.
- 4994h. — — —.]—*R. v. CHARLES* (1927), 20 Cr. App. Rep. 129, C. C. A.
- 4994j. — — —.]—The mere fact that a prisoner has been previously convicted is not necessarily a ground for inflicting a severe sentence for dishonestly obtaining goods of small value.—*R. v. WOODWARD* (1929), 21 Cr. App. Rep. 137, C. C. A.
- 4994k. — — —.]—*R. v. SMITH* (1929), 21 Cr. App. Rep. 138, C. C. A.
- 4998a. — — —.]—Sentence reduced, in view of the small value of the property stolen & of prisoner's youth.—*R. v. ROATH* (1927), 20 Cr. App. Rep. 138, C. C. A.
- 4998b. — — —.]—Sentence reduced, in view of

BEALE, [1928] 2 D. L. R. 325; [1928] 1 W. W. R. 657; 49 Can. Crim. Cas. 292; 22 Sask. L. R. 293.—CAN.

**PART XII. SECT. 13, SUB-SECT. 4.—C.**

g i. —.]—General hostility to the victim cannot be considered to be corroboration of a direct statement connecting accused with a particular crime. Corroboration must point to the identification of the person charged with the particular act with which the direct evidence connects him.—*R. v. KALWA* (1926), 1. L. R. 48 All. 409.—IND.

**PART XII. SECT. 13. SUB-SECT. 4.—E.**

**4980 viii.** —. —.]—Where the evidence of an accomplice has not been corroborated, & the charge to the jury merely tells them that if they believe the accomplice they should convict, accused, the jury is not properly directed; & where it is impossible to say that if properly directed they must inevitably have come to the same conclusion, the conviction must be quashed.—*R. v. STABIUK* (Sask.). [1926] 4 D. L. R. 811; [1926] 2 W. W. R. 723; 46 Can. Crim. Cas. 129.—**CAN.**

4980 ix. —.]—In charging the jury the trial judge said: "Unless you are convinced beyond any real doubt that the girl has given testimony which is true in the material particulars, namely: the date & place of connection with the accused, then the accused is

entitled to your verdict. But if you are so convinced, then, of course, it will be your duty to declare your verdict accordingly." *Held*: as there was corroborative evidence, this direction, together with other parts of the summing up, was sufficient.—*R. v. KENNEWELL*, [1927] S. A. S. R. 287.—**AUS.**

b i. ———.]—R. v. GALLAGHER,  
No. 6064 vij. post.—CAN.

h i. ———]—A woman was charged with the murder of the illegitimate child of her granddaughter. The case against her rested entirely on the evidence of her granddaughter, & this evidence, as regards the main facts, was practically wholly uncorroborated. This evidence went to show that the granddaughter was implicated in the crime. The woman was convicted & sentenced to death. *Held*: the rule requiring corroboration of the evidence of an accomplice applied to the facts of the case, & the jury should have been warned as to the danger of acting upon the granddaughter's evidence alone without corroboration. Accordingly the conviction was reversed, & a re-trial ordered under Courts of Justice Act, 1928, s. 5. —A.-G. v. LINEHAN, [1929] I. R. 19.—IR.

**h ii. — Extent of corroboration necessary.]**—It is not sufficient for a trial judge to explain to a jury that, where witnesses are accomplices, they must be corroborated in some material

particular before it is safe for a jury to convict. He must go further & explain that the evidence should confirm in some material particular not only the evidence that the crime has been committed but, also, that the prisoner committed it.—R. v. GLOVER (1928), 28 S. R. N. S. W. 482; 45 N. S. W. W. N. 148.—AUS.

o i. — — —.]—Where the judge called the attention of the jury to the rule as to the danger of convicting on the uncorroborated testimony of an accomplice, at the same time pointing out that it was within their province to do so :—*Hick* : the conviction should be affirmed.—*R. v. SHEPHERD*, [1925] 2 D. L. R. 1001; 4 Can. Crim. Cas. 10; 58 N. S. R. 116.—CAN.

See, also, cases in Part XIV, Sect. 7, Sub-sect. 7, B, *post*.

**PART XIII. SECT. 1. SUB-SECT. 1.**

p i. ———.] — R. v. LEAF, [1926] 1  
W W. R. 888; 45 Can. Crim. Cas. 236;  
20 Sask. L. R. 542.—CAN.

**4991 i. Sentence must be proportionate to offence—Trifling offence—Previous convictions.**—*R. v. CROSS*, [1927] 3 W. W. R. 432.—**CAN.**

*st. Power of judge to hear evidence of complainant to decide on proper sentence—After plea of guilty—Must avoid consideration of aggravating circumstances likely to change character of offence charged.]—R. v. WHEPPDALE (Sask.), [1972] 3 W. W. R. 704; 49 Can. Crim. Cas. 62.—CAN.*



- the small value of the property stolen, notwithstanding previous convictions.—*R. v. WATSON* (1927), 20 Cr. App. Rep. 119 C. C. A.
- 4998c. ———.]—Sentence reduced, in view of the small value of the property obtained by false pretences & of prisoner's youth, notwithstanding previous convictions.—*R. v. BOREHAM* (1928), 20 Cr. App. Rep. 182, C. C. A.
- 5003a. ———.]—*R. v. UPTON* (1929), 21 Cr. App. Rep. 156, C. C. A.
- 5012a. Offence under Criminal Law Amendment Act, 1922 (c. 56), s. 2—Acquittal on major charge—Conviction on minor charge.]—The ct. declines to lay down a general rule concerning sentence in cases under above sect. where deft. is acquitted of the major charges therein referred to but convicted of a minor charge.—*R. v. KEECH* (1929), 21 Cr. App. Rep. 125, C. C. A.
- Annotation:—*Reid. R. v. Blackman* (1929), 21 Cr. App. Rep. 132.
- 5012b. ———.]—*R. v. BLACKMAN* (1929), 21 Cr. App. Rep. 132, C. C. A.
- 5024a. ———.]—*R. v. POWELL* (1928), 21 Cr. App. Rep. 67, C. C. A.
- 5024b. ———.]—*R. v. ATKINSON* (1929), 21 Cr. App. Rep. 111, C. C. A.
- 5028a. ——— Prisoners jointly accused.]—There should be discrimination between the sentences of persons jointly accused, in view of their previous records & ages, & account should be taken of the period of detention before trial.—*R. v. ANDREWS* (1927), 20 Cr. App. Rep. 37, C. C. A.
- 5036a. *S.P. R. v. MOLDON* (1926), 19 Cr. App. Rep. 116, C. C. A.
- 5039a. ———.]—Previous convictions of a prisoner on trial must be strictly proved.—*R. v. TURNER* (1924), 18 Cr. App. Rep. 161, C. C. A.
- Annotation:—*Reid. R. v. O'More* (1926), 19 Cr. App. Rep. 175.
- 5046a. ———.]—*R. v. DRIVER* (1926), 19 Cr. App. Rep. 86, C. C. A.
- 5046b. ———.]—*R. v. BERRY* (1928), 21 Cr. App. Rep. 47, C. C. A.
- 5049a. ———.]—Where prisoner, a young man, had made a real effort to retrieve his character & to get continuous work:—*Held*: (1) a sentence to penal servitude was not necessary, & prisoner's sentence of five years' penal servitude might suitably be reduced to twenty-one months' imprisonment with hard labour.  
(2) The term of first sentence to penal servitude must depend on the circumstances: there is no general rule that it is three years.—*R. v. TOWNSEND* (1924), 18 Cr. App. Rep. 99, C. C. A.
- MAN (1925), 19 Cr. App. Rep. 17, C. C. A.
- 5049c. ———.]—*R. v. TROTT* (1927), 20 Cr. App. Rep. 120, C. C. A.
- 5049d. ———.]—*R. v. ETTRIDGE* (1927), 20 Cr. App. Rep. 126, C. C. A.
- 5049e. ———.]—*R. v. HINKS* (1927), 20 Cr. App. Rep. 137, C. C. A.
- 5049f. ———.]—*R. v. HILL* (1928), 20 Cr. App. Rep. 170, C. C. A.
- 5049g. ———.]—*R. v. WAYE* (1928), 20 Cr. App. Rep. 171, C. C. A.
- 5057a. ———.]—Sentence mitigated in view of a long period of honest work.—*R. v. WINTER* (1924), 18 Cr. App. Rep. 139, C. C. A.
- 5057b. ———.]—Sentence reduced in view of a long period of honest work.—*R. v. PORTER* (1926), 19 Cr. App. Rep. 90, C. C. A.
- 5057c. ———.]—Sentence mitigated in view of an interval of three years' honest life.—*R. v. GUNTRIP* (1925), 19 Cr. App. Rep. 45, C. C. A.
- 5057d. ———.]—*R. v. WHITBY* (1926), 19 Cr. App. Rep. 115, C. C. A.
5065. *Add. Citations*:—130 L. T. 319; 27 Cox, C. C. 576.
- 5065a. ———.]—*R. v. ANDREWS*, No. 5028a, *ante*.
- 5074a. ———.]—*R. v. LLOYD*, No. 2567a, *ante*.
- 5081a. ———.]—*R. v. TAYLOR* (*alias* SAUNDERS, *alias* WALLACE), No. 1913a, *ante*.
- 5092a. ——— Duty of police to supply list of charges.]—Appct. had been convicted at quarter sessions of larceny & had been sentenced to five years' penal servitude. Offences which he admitted & which were other than those charged against him in the indictment were taken into consideration by the ct. of quarter sessions in passing sentence. He applied for leave to appeal against his sentence:—*Held*: as it was difficult to see what other cases had been taken into consideration by the ct. of quarter sessions in passing sentence on appct., it would be convenient if in such a case the police would file at the ct. of trial a list showing (a) the places where the other offences had been committed; (b) the dates & (c) the nature of such offences; (d) if possible, whether or not warrants had been issued in respect of such offences.—*R. v. HICKS* (1924), 88 J. P. 68; 18 Cr. App. Rep. 11, C. C. A.
- 5092b. Other court should be informed before sentence passed.]—*R. v. TAYLOR*, No. 5314a, *post*.
- 5097a. ———.]—*R. v. PEACE* (1925), 19 Cr. App. Rep. 58, C. C. A.
5099. *Add. Annotation*:—*Reid. R. v. Peace* (1925), 19 Cr. App. Rep. 58.
- 5111a. ———.]—There is no rule of law or practice that a co-prisoner should receive a lighter sentence, in view of his giving evidence for the Crown.—*R. v. O'DARE, DAVIS & MORTON* (1927), 20 Cr. App. Rep. 79, C. C. A.
- 5116a. Long interval free from conviction.]—Sentence mitigated.—*R. v. HODSON* (1927), 20 Cr. App. Rep. 11, C. C. A.
- 5118a. ———.]—Appct. treated as new offenders, & sentences reduced.—*R. v. SEATON & FLANAGAN* (1928), 20 Cr. App. Rep. 192, C. C. A.
- 5125a. ———.]—*R. v. COX* (1924), 18 Cr. App. Rep. 152, C. C. A.
- 5125b. ———.]—*R. v. HURRELL* (1926), 19 Cr. App. Rep. 89, C. C. A.

PART XIII. SECT. 1, SUB-SECT. 2.  
*sw. Perjury*.—*R. v. ZIZU NATANSON*  
(No. 2) (Sask.), [1927] 2 W. W. R. 154;  
49 Can. Crim. Cas. 89.—CAN.

PART XIII. SECT. 2, SUB-SECT. 1.—A.  
5028 ii. ———.]—*R. v. NGA BA SHEIN*  
(1928), 1 L. R. 6 Ran. 391.—IND.

5036 i. *Previous acquittals must not influence adversely*.—*R. v. JOHNSON*  
(1925), 41 Can. Crim. Cas. 319.—CAN.

- 5125c. —. —. —.]—R. v. WARD (1920), 19 Cr. App. Rep. 126, C. C. A.
- 5125d. —. —. —.]—Sentence reduced, although the case was serious, in view of the fact that it was prisoner's first offence, & on account of her youth.—R. v. CHICK (1925), 19 Cr. App. Rep. 57, C. C. A.
- 5148a. —. —. —.]—Sentence mitigated in view of youth.—R. v. HARDY (*alias* EMMETT) (1925), 18 Cr. App. Rep. 168, C. C. A.
- 5148b. —. —. —.]—R. v. CHICK, No. 5125d, *ante*.
- 5148c. —. —. —.]—Sentence mitigated in view of youth, notwithstanding prisoner had been detained in a Borstal institution & had also served a sentence of three months' imprisonment with hard labour.—R. v. LEATHERLAND (1926), 19 Cr. App. Rep. 85, C. C. A.
- 5148d. —. —. —.]—R. v. GETHING (1926), 19 Cr. App. Rep. 112, C. C. A.
- 5155a. —. —. —.]—R. v. HURRELL (1920), 19 Cr. App. Rep. 89, C. C. A.
- 5156a. —. —. —.]—What is post office offence.]—Where a postman had altered the time on a letter in order to make it appear to have been sent before the result of a competition for which he had entered:—*Held*: a sentence of three years' penal servitude was too severe, as the offence was not a post office offence in the ordinary sense.—R. v. TANNER (1910), 6 Cr. App. Rep. 62, C. C. A.
- 5170a. Failure to make restitution—After postponement.]—The ct. does not approve of a sentence being increased because, after a postponement, prisoner has failed to make fuller restitution.—R. v. PRITCHARD (1929), 21 Cr. App. Rep. 152, C. C. A.
5173. *Add. Annotation*:—*Refd.* R. v. Roberts & Morriss (1926), 134 L. T. 635.
5174. *Add. Annotation*:—*Refd.* R. v. Roberts & Morriss (1926), 134 L. T. 635.
5175. *Add. Annotation*:—*Refd.* R. v. Roberts & Morriss (1926), 134 L. T. 635.
- 5175a. —. —. —.]—There is no rule of law or of practice forbidding a sentence of simple imprisonment being given to follow a sentence of two years' imprisonment with hard labour.—R. v. ROBERTS & MORRISS (1926), 134 L. T. 635; 42 T. L. R. 373; 28 Cox. C. C. 150; *sub nom.* R. v. MORRISS, 90 J. P. 84; 42 T. L. R. 373; 70 Sol. Jo. 426; 19 Cr. App. Rep. 75, C. C. A.
5181. For "in the case of consecutive sentences" read "in the case of concurrent sentences."
- PART XIII. SECT. 2, SUB-SECT. 5.—C.
- 5142 ii. —. —. —.]—Sentence mitigated in view of youth.—R. v. HOPPER & GLAVEN (1924), 57 N. S. R. 438.—CAN.
- 5142 iii. *S.P.*—R. v. HAMILTON (1925), 58 N. S. R. 46.—CAN.
- PART XIII. SECT. 3, SUB-SECT. 1.
- 5182 i. *Concurrent sentences—Imprisonment & penal servitude.*]—A prisoner having been found guilty upon two charges, the ct. sentenced him to five years' penal servitude in respect of the first charge & to imprisonment for one year in respect of the second charge, the two sentences to run concurrently.—H.M. ADVOCATE v. CARSON, [1927] S. C. (J.) 70.—SCOT.
- PART XIII. SECT. 3, SUB-SECT. 2.
- t i. —. —. —.]—*Release on bail—Whether* *time counts.*]—*Re* HOOD, [1928] 1 D. L. R. 624; 49 Can. Crim. Cas. 191; 59 N. S. R. 471.—CAN.
- sz. *Of accused acquitted on ground of insanity—Powers of Lieutenant-Governor.*]—R. v. COLEMAN (N. S.) (1927), 47 Can. Crim. Cas. 148.—CAN.
- PART XIII. SECT. 3, SUB-SECT. 4.
- f i. —. —. —.]—On a conviction on a charge of robbery with violence the judge ordered prisoner to be whipped, & not having stated the number of times he was to be whipped, provided for this in the record of conviction in prisoner's absence:—*Held*: the sentence was not illegal.—R. v. HUGHES (1924), 35 B. C. R. 55.—CAN.
- g i. —. —. —.]—*Seduction offences.*]—The maximum punishment under Criminal Code, s. 213, is two years, & whipping is not authorised & cannot be added to the punishment provided.—R. v.
5184. *Add. Annotation*:—*Refd.* R. v. Fielder (1926), 135 L. T. 64.
- 5190a. —. —. —.]—The term of a sentence must precede the serving of a *remanet*.—R. v. HARVEY (1927), 20 Cr. App. Rep. 37, C. C. A.
- 5190b. —. —. —.]—A *remanet* term cannot be served concurrently with a fresh sentence.—R. v. NALL (1927), 20 Cr. App. Rep. 85, C. C. A.
5194. *Add. Annotation*:—*Apld.* Morriss v. Winter (1929), 45 T. L. R. 643.
- 5194a. —. —. —.]—Not interrupted by period of special treatment pending appeal against another conviction.]—In a proper case the ct. will order that the period of "special treatment" under Criminal Appeal Act, 1907 (c. 23), s. 14, of an applt. already serving a sentence shall not be added to that term.—R. v. FOX (1925), 18 Cr. App. Rep. 192, C. C. A.
- 5194b. —. —. —.]—R. v. HASLAM, No. 2839a, *ante*.
- 5198a. —. —. —.]—No previous conviction.]—R. v. EMMOTT (1928), 21 Cr. App. Rep. 42, C. C. A.
- 5201a. —. —. —.]—The ct. leans against a longer term of imprisonment with hard labour than two years.—R. v. LONG (1927), 20 Cr. App. Rep. 101, C. C. A.
- 5208a. —. —. —.]—The fact that a convicted prisoner has undergone terms of penal servitude does not of itself justify sentence to a further term; all the circumstances of the case must be considered, including the magnitude of the latest offence.—R. v. KNELL (1926), 19 Cr. App. Rep. 169, C. C. A.
- 5208b. —. —. —.]—Second offence of different nature.]—A previous sentence to penal servitude is not *per se* a ground for the infliction of penal servitude on a subsequent conviction, especially for an offence of a different nature.—R. v. FITT (1928), 21 Cr. App. Rep. 41, C. C. A.
- 5211a. When to be awarded under Penal Servitude Act, 1926 (c. 58).]—R. v. ASCOLI (1927), 20 Cr. App. Rep. 156, C. C. A.
5217. *Add. Annotation*:—*Refd.* R. v. Townsend (1924), 18 Cr. App. Rep. 99.
- 5217a. —. —. —.]—R. v. TOWNSEND, No. 5049a, *ante*.
- 5217b. —. —. —.]—There is no rule of law or practice that the term of a first sentence of penal servitude is limited to three years.—R. v. BASIRE (1926), 19 Cr. App. Rep. 174, C. C. A.
- HINSH, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 153.—CAN.
- g ii. —. —. —.]—*Assault—By young person under sixteen.*]—MACRAY v. LAMB, [1923] S. C. (J.) 16.—SCOT.
- 5230 i. —. —. —.]—*First offenders.*]—Circumstances in which:—*Held*: whipping should not be imposed on a first offender only twenty years old.—R. v. WHEPDAL (Sask.), [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62.—CAN.
- PART XIII. SECT. 3, SUB-SECT. 5.
- h i. —. —. —.]—*Power of court.*]—HALIFAX CORPN. v. BROWN (1885), 18 N. S. R. (6 L. & G.) 103.—CAN.
- h ii. —. —. —.]—Where an offence is punishable by imprisonment for more than five years, a sentence of a fine & imprisonment in default of payment is improper.—R. v. ENGLAND (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—CAN.

**5238a.** — **Power of court to call for expert reports.**—*R. v. HOBBS* (1928), 21 Cr. App. Rep. 14, C. C. A.

**5241a.** — **Youth of prisoner.**—Detention in a Borstal institution substituted for a sentence of imprisonment with hard labour passed on a boy sixteen years of age.—*THORPE'S CASE* (1918), 13 Cr. App. Rep. 176, C. C. A.

**5243a.** — **—**—**Sentence of detention quashed.**—*R. v. SMEE* (1928), 20 Cr. App. Rep. 192, C. C. A.

**5246a.** — **—**—**As a general rule, the term of detention in a Borstal institution should be three years.**—*R. v. KEVILL* (1925), 19 Cr. App. Rep. 44, C. C. A.

**5246b.** — **—**—**Term of detention in a Borstal institution increased to the maximum in applt.'s own interest.**—*R. v. FRIER* (1927), 20 Cr. App. Rep. 30, C. C. A.

**5255.** *Add. Annotation*:—**Appld.** *R. v. Baxter* (1924), 18 Cr. App. Rep. 127.

**5258.** *Add. Annotation*:—**Folld.** *R. v. Dean* (1924), 18 Cr. App. Rep. 21.

**5261a.** — **—**—**—**—*R. v. DEAN*, No. 3165a, ante.

**5269.** *Add. Annotation*:—**Refd.** *R. v. Hayward* (1927), 137 L. T. 64.

**5282.** *Add. Annotation*:—**Consd.** *R. v. Norman*, [1924] 2 K. B. 315.

**5283a.** — **—**—**Nothing must be stated to jury about charge until substantive offence dealt with.**—*R. v. TYREMAN*, No. 5359b, post.

**5285a.** — **—**—**—**—**An allegation of being a habitual criminal ought to be tried.**—*R. v. NASH* (1927), 20 Cr. App. Rep. 1, C. C. A.

*Annotation*:—**Folld.** *R. v. Rutt* (1928), 20 Cr. App. Rep. 186.

**5285b.** — **—**—**—**—*R. v. RUTT* (1928), 20 Cr. App. Rep. 186, C. C. A.

**5290a.** **Admission of being habitual criminal—Duty of court to explain charge.**—Before an admission of being a habitual criminal is accepted, it should be made clear to prisoner that the allegation is that he was a habitual criminal at the time of his arrest.—*R. v. DONOVAN* (1925), 19 Cr. App. Rep. 2, C. C. A.

**5290b.** **Plea of guilty—Meaning should be explained.**—A plea of guilty on the allegation of being a habitual criminal should not be accepted until its meaning has been explained

to the prisoner.—*R. v. WALLACE* (1929), 21 Cr. App. Rep. 70, C. C. A.

**5290c.** **Direction to jury—Necessary contents.**—*R. v. DINSDALE* (1926), 19 Cr. App. Rep. 123, C. C. A.

**5290d.** — **—**—**—**—*R. v. WEALE* (1927), 20 Cr. App. Rep. 153, C. C. A.

**5299.** *Add. Annotation*:—**Refd.** *R. v. Stokell* (1924), 18 Cr. App. Rep. 155.

**5300.** *Add. Annotation*:—**Consd.** *R. v. Stokell* (1924), 18 Cr. App. Rep. 155.

**5303a.** — **—**—**During the trial of accused as a habitual criminal the judge asked a police witness whether he knew anything of accused beyond his participation in the substantive offence which accused had confessed. The answer was: "I know he has been associating with convicted persons." Association with convicted persons was not one of the grounds set out in the statutory notice to accused:—Held: evidence of facts not included in the statutory notice to accused must not be given at the trial by the prosecution or by any of its witnesses, & the conviction as a habitual criminal must be quashed.**—*R. v. BAXTER* (1924), 132 L. T. 256; 27 Cox, C. C. 689; 18 Cr. App. Rep. 127, C. C. A.

**5303b.** — **—**—**No misconduct, whether criminal or not, may be given in evidence on the trial of an allegation of being a habitual criminal unless the statutory notice thereof has been served.**—*R. v. STOKELL* (1924), 18 Cr. App. Rep. 155, C. C. A.

**5303c.** — **—**—*R. v. TYREMAN*, No. 5359b, post.

**5303d.** — **—**—**Evidence that accused is an associate of thieves is not admissible, as an allegation of being a habitual criminal, unless notice has been given of it.**—*R. v. YARWOOD* (1928), 21 Cr. App. Rep. 25, C. C. A.

**5304a.** **Admission of offence made before trial—For particular purpose.**—When a prisoner is charged with being a habitual criminal an admission by the prisoner that he has committed an offence made before the trial may be given in evidence at the trial, & cannot be excluded on the ground that it was made for some particular or limited purpose.—*R. v. WILLIAMS* (1929), 141 L. T. 544; 21 Cr. App. Rep. 121, C. C. A.

*ing of.*—The expression as used in Criminal Code, s. 1081, does not mean or infer that sentence must be passed & its operation then suspended; it means that no sentence will be passed unless & until the offender is called upon to appear & receive judgment.—*R. v. HINCH*, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 153.—**CAN.**

#### **PART XIII. SECT. 4, SUB-SECT. 3.—A.**

**ss.** *By accused to rebut charge*—*Though previous sentence of preventive detention proved.*—Where accused is charged, under Prevention of Crime Act, 1908, with being a habitual criminal, & it is proved that he has on a previous occasion been found to be a habitual criminal & has been sentenced to preventive detention, the jury are not bound to convict him; the accused is entitled to lead evidence to show that he is not, at the date of the charge, a habitual criminal, & it is for the jury to determine, as a question of fact, whether, on the whole evidence adduced, the charge has or has not been established.—*M'DONALD v. H.M. ADVOCATE*, [1929] S. C. (J.) 76.—**SCOT.**

**h iii.** — *Jurisdiction of Supreme Court.*—Appl. was tried in the Supreme Ct. of the Northern Territory on an information charging him with maliciously publishing a defamatory libel, was convicted & was sentenced to pay a fine & directed to be imprisoned until the fine was paid:—*Held*: apart from statutory restriction the direction for imprisonment was lawful, & the direction was not made unlawful by Criminal Law Consolidation Act, 1876 (S. A.), ss. 365–367, for the enforcement of fines.—*MCKINNON v. R.* (1927), 40 C. L. R. 217.—**AUS.**

**m i.** — *Fine not paid—Warrant not acted on for five years.*—Arrest after five years upheld.—*R. v. MONDSHEIN (Mdn.)*, [1927] 1 D. L. R. 964; [1927] 1 W. W. R. 101; 47 Can. Crim. Cas. 63.—**CAN.**

**e i.** *Fine for violation of Criminal Code—Judge may not order payment to private individual.*—*R. v. ENGLAND* (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—**CAN.**

**ss.** *Reduction of fine on appeal—Effect of—On person by whom fine paid.*

—*LEVINE v. WANLESS (Ont.)* (1927), 47 Can. Crim. Cas. 273.—**CAN.**

#### **PART XIII. SECT. 3, SUB-SECT. 8.**

**sb.** *Under Probation of Offenders Act, 1907 (c. 17).*—A licensed publican pleaded guilty to opening his licensed premises for the sale of intoxicating liquor during prohibited hours. His house was well conducted, & this was his first offence. The magistrate having given deft. the benefit of the above Act:—*Held*: as there was nothing in the evidence as to character to bring the case within sect. 1, & the offence was not a trivial one, & there were no extenuating circumstances, the magistrate was not correct in law in giving deft. the benefit of the Act.

Before a magistrate deals with a case under the above Act, he should be satisfied that the case falls under one of the specific heads of sect. 1, & should state explicitly on which of the grounds he relies if he exercises the discretion conferred on him by the Act.—*GILROY v. BRENNAN*, [1926] 1 R. 482.—**IR.**

**ss.** *"Suspended sentence"* — *Mean-*

- 5304b. Must go to question whether prisoner habitual criminal when charged.]—*R. v. WINN*, No. 5355a, *post*.
5307. *Add. Annotation*:—*Consd. R. v. Hayward* (1927), 137 L. T. 64.
- 5308a. —.]—When accused is charged with being a habitual criminal, the three convictions forming the basis of the charge under Prevention of Crime Act, 1908 (c. 59), s. 10 (2) (a), must be strictly proved; but evidence of other convictions may be given, without production of the record & evidence identifying accused with those convictions, as "evidence of character & repute" under sect. 10 (5), on the question whether accused is or is not leading persistently a dishonest or criminal life. Even apart from the statutory provision, such evidence can be given if there is any evidence that accused has admitted the convictions.—*R. v. HAYWARD* (1927), 137 L. T. 64; 28 Cox, C. C. 312; *sub nom. R. v. HAYWARD, R. v. LAWRENCE*, 43 T. L. R. 356; 20 Cr. App. Rep. 33, C. C. A.
- 5312a. —.]—Applt. was convicted of shopbreaking, & was sentenced to three years' penal servitude. He was also found to be a habitual criminal on the ground that he had been convicted on three previous occasions & that he was leading persistently a dishonest or criminal life, & he was sentenced to five years' preventive detention. In Sept. 1923 applt. was sentenced to twelve months' imprisonment as a suspected person, & he was released on July 23, 1924. From Sept. to Dec. 1924 he was in honest employment. He committed the shopbreaking for which he had now been sentenced on Jan. 2, 1925:—*Held*: it was questionable whether, on these facts, the jury could properly have found applt. to be a habitual criminal, but if they had done so it must be on a direction to them that the burden of proof always rested on the prosecution to show that during the relevant period applt. had been leading, persistently, a dishonest or criminal life; as there were passages in the summing up which might have conveyed to the jury that, when the prosecution had gone a certain length, the burden rested on applt. to show that he had turned over a new leaf, the conviction must be quashed.—*R. v. DRISCOLL* (1925), 89 J. P. 104; 41 T. L. R. 425; 18 Cr. App. Rep. 184, C. C. A.
- 5312b. —.]—A jury trying the issue of being a habitual criminal or not must be expressly warned, where the Crown proves such a previous finding, that the onus of proving that the accused is still a habitual criminal at the material period rests on the Crown & not that of disproving it on him.—*R. v. KNIGHT* (1929), 21 Cr. App. Rep. 72, C. C. A.
- 5314a. —.]—(1) On the trial of an allegation that prisoner is a habitual criminal the direction that if the three statutory convictions are proved, he must be so found, is incorrect; his whole career must be considered by the jury.  
(2) When a ct. in passing a sentence takes into account charges pending in another ct., the latter ought to be informed thereof, before passing sentence upon such other charges.—*R. v. TAYLOR* (1926), 19 Cr. App. Rep. 146, C. C. A.
- 5319a. —.]—*R. v. HAYWARD*, No. 5308a, *ante*.
5322. *Add. Annotation*:—*Refd. R. v. White & Shelton* (1927), 20 Cr. App. Rep. 61.
- 5331a. —.]—On the trial of an allegation of being a habitual criminal, the interval between the last two convictions is only one of several elements to be considered by the jury; others are accused's silence on his life during that interval, the nature of the crime, & the possession of housebreaking instruments & their number & character at the time of arrest.—*R. v. WHITE & SHELTON* (1927), 20 Cr. App. Rep. 61, C. C. A.
- 5341a. —.]—*R. v. WHITE & SHELTON*, No. 5331a, *ante*.
5347. *Add. Annotations*:—*Refd. R. v. Lavender* (1927), 20 Cr. App. Rep. 10; *R. v. White & Shelton* (1927), 20 Cr. App. Rep. 61.
- 5352a. —.]—The mere fact that accused has done honest work in his latest interval of liberty is not a defence to the allegation that he is a habitual criminal.—*R. v. HAYES* (1926), 90 J. P. 190; 19 Cr. App. Rep. 157, C. C. A.
- 5355a. —.]—*Duty of judge*.—(1) The direction on the allegation of being a habitual criminal must explain the merits of an interval of honest work in each case.  
(2) The essential question is whether prisoner is a habitual criminal at the time when he is so charged.—*R. v. WINN* (1925), 69 Sol. Jo. 574; 19 Cr. App. Rep. 1, C. C. A.
- 5355b. —.]—A direction on the allegation of being a habitual criminal must deal with an interval of honest work.—*R. v. White & Shelton* (1927), 20 Cr. App. Rep. 21, C. C. A.
- 5355c. —.]—On the charge of being a habitual criminal, it is not a conclusive defence that accused has done honest work since his last release; it is for the jury on all the facts, including the most recent offence proved against him, to say whether he was, at the time of its commission, "leading persistently a dishonest or criminal life."—*R. v. LAVENDER* (1927), 20 Cr. App. Rep. 10, C. C. A.
- 5356a. *Periods without conviction—Should be put to jury*.—*R. v. MILLICHAAMP* (1929), 21 Cr. App. Rep. 106, C. C. A.
5357. *Add. Annotation*:—*Consd. R. v. Norman*, [1924] 2 K. B. 315.
5358. *Add. Annotation*:—*Consd. R. v. Norman*, [1924] 2 K. B. 315.
- 5359a. For the existing paragraph in original volume substitute the following paragraph:—  
—.]—Where a person who has been found to be a habitual criminal & has been sentenced to preventive detention subsequently commits another crime & a notice is served upon him under the above sub-sect., the jury are not bound to find prisoner to be at the time when the verdict is given a habitual criminal. In every case it is a question of fact for the jury to say whether or not prisoner is still a habitual criminal, & prisoner is entitled, notwithstanding that he has previously been found to be a habitual criminal & sentenced to preventive detention, to call evidence to show that he is not at the material time a

habitual criminal.—*R. v. NORMAN*, [1924] 2 K. B. 315; 93 L. J. K. B. 883; 131 L. T. 29; 88 J. P. 125; 40 T. L. R. 693; 68 Sol. Jo. 814; 27 Cox, C. C. 621; 18 Cr. App. Rep. 81, 119, C. C. A.

*Annotation*.—*Reid. R. v. Tyroman* (1925), 19 Cr. App. Rep. 4.

**5359b.** ———— **Conviction remitted.**—

(1) There ought not to be two indictments when all charges may be preferred in one.

(2) Nothing must be stated in the presence of jurors about the allegation of being a habitual criminal until the primary charge is disposed of.

(3) When a conviction as a habitual criminal has been remitted in view of the opinion of the Ct. of Criminal Appeal, it ought not to be alleged against prisoner on a subsequent trial.

(4) On the issue whether prisoner has been leading an honest life, no evidence is admissible of periods or of facts which has not been set out in the statutory notice.—*R. v. TYREMAN* (1925), 19 Cr. App. Rep. 4, C. C. A.

**5361a.** ———— *Before a sentence of preventive detention can be passed three things are requisite: first, that prisoner shall have been convicted of being a habitual criminal; secondly, that the ct. shall have taken such a view of the substantive crime of which prisoner has then been convicted as to think it right, by reason of that crime & not for any other reason, to pass a sentence of penal servitude; & thirdly, that the ct., in the exercise of its independent discretion, shall be of opinion that by reason of the criminal habits & mode of life of prisoner it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years. Sentence of preventive detention quashed where the judge at the trial had not exercised such independent discretion, but had treated the sentence as necessarily following the conviction as a habitual criminal.*—*R. v. PAUL*, [1925] 1 K. B. 77; 94 L. J. K. B. 63; 132 L. T. 159; 88 J. P. 200; 41 T. L. R. 35; 69 Sol. Jo. 293; 27 Cox, C. C. 660; 18 Cr. App. Rep. 128, C. C. A.

*Annotation*.—*Expld. R. v. Turnbull* (1926), 19 Cr. App. 155.

**5369a.** ———— *A term of penal servitude must not be inflicted, merely to found the jurisdiction of the ct. to impose pre-*

ventive detention; it must be warranted by the primary offence.—*R. v. TURNBULL* (1926), 19 Cr. App. Rep. 155, C. C. A.

**5369b.** ———— *R. v. THOMAS (OTHERWISE WILLIAMS)* (1928), 20 Cr. App. Rep. 172, C. C. A.

**5372a.** ———— *R. v. PAUL*, No. 5361a, *ante*.

**5373a.** ———— *R. v. MCCARTHY* (1910), 4 Cr. App. Rep. 198, C. C. A.

**5373b.** ———— *R. v. HENRY* (1927), 20 Cr. App. Rep. 117, C. C. A.

**5385a.** ———— *R. v. BEARD* (1927), 20 Cr. App. Rep. 155, C. C. A.

**5398.** *Add. Annotations*.—*Distd. R. v. Douglas* (1926), 19 Cr. App. Rep. 119. *Expld. R. v. Williams* (1929), 141 L. T. 544.

**5452.** *Add. Annotations*.—*Apld. Freeborn v. Leeming* (1925), 89 J. P. 179. *Consd. Morris v. Winter* (1929), 45 T. L. R. 643.

**5458.** *Add. Annotation*.—*Refd. Lewis v. Guest, Keen & Nettlefold, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (Cyfarthfa)* (1927), 96 L. J. K. B. 664.

**5478a.** ———— (1) In order that a person may be convicted under Larceny Act, 1916 (c. 50), s. 28 (2), of being "found by night having in his possession without lawful excuse implements of housebreaking", it must be proved that he was found by night, in possession by night, of housebreaking implements. The finding & the possession must both be by night, & the possession must be possession by a free man.

(2) Where a person has pleaded "Not guilty" to an indictment & is about to stand his trial, he ought not to be invited to plead, in the presence of those who, as jurors, will have to try him, to another indictment which recites a previous conviction.—*R. v. HARRIS* (1924), 94 L. J. K. B. 164; 132 L. T. 672; 89 J. P. 37; 41 T. L. R. 205; 27 Cox, C. C. 746; 18 Cr. App. Rep. 157, C. C. A.

**5481a.** ———— *Qu.*: whether in an indictment in which it is necessary to allege a previous conviction under above sect., the fact that at the same time prisoner was convicted of being a habitual criminal should be alleged.—*R. v. WESTFALL* (1928), 21 Cr. App. Rep. 40, C. C. A.

### PART XIII. SECT. 6.

**ki.** ———— *Conviction for assault—May be sentenced to whipping.*—*MACKEY v. LAMB*, [1923] S. C. (J.) 16.—**SCOT.**

**qi.** ———— *Re R. v. SLINN* (1926), 47 Can. Crim. Cas. 77 37 B. C. R. 275.—**CAN.**

### PART XIII. SECT. 8.

**fi.** ———— *Given after illegal arrest.*—*R. v. HOLTZER, Re LEVINE & PYZER (Man.)*, [1928] 3 D. L. R. 222; [1928] 1 W. W. R. 910; 49 Can. Crim. Cas. 352.—**CAN.**

**ii.** ———— *Appeal re-opened—No direction as to person to whom surrender to be made.*—*R. v. WAH LUNG (alias WONG WA)* (B. C.), [1928] 3 W. W. R. 232; 50 Can. Crim. Cas. 182.—**CAN.**

**iii.** ———— *Notice of motion must be given to sureties.*—*R. v. RUNNER*, [1928] 1 W. W. R. 921; 22 Sask. L. R. 478.—**CAN.**

### PART XIII. SECT. 10, SUB-SECT. 1.

**ki.** ———— *Plff., after conviction for manslaughter, began an action for possession of premises in which she & her husband, deft., lived, the property standing in her name & being registered under Real Property Act.*—*Held*: there was no disability or incapacity of bringing the action, by virtue of Forfeiture Act, 1870 (c. 23).—*ZAWOJOWSKA v. ZAWOJOWSKA (Man.)*, [1922] 3 W. W. R. 492.—**CAN.**

### PART XIII. SECT. 11, SUB-SECT. 2.

**sq.** *Previous conviction—Second offence not identical—Both included in one section.*—Under Liquor Act, 1925, 1924-25, c. 53, a person convicted for any one of the acts which s. 78 declares to be offences & who is subsequently convicted for another of such acts is guilty of a second offence even though the two offences are not exactly of the same kind.—*R. v. POLLARD (Sask.)*, [1928] 4 D. L. R. 623; [1928] 3 W. W. R. 78; 50 Can. Crim. Cas. 157.—**CAN.**

**sr.** ———— *Under repealed Act.*—*"Previous conviction"* in Government Liquor Control Act, 1928, c. 31, s. 178, means a conviction under that Act, & does not refer to convictions under prior Acts now repealed.—*R. v. RICEBERG (Man.)*, [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

**st.** *Interval between prosecutions longer than period limited for prosecutions under Act.*—*Re p. WOODS (N. S.)*, [1928] 2 D. L. R. 771; 49 Can. Crim. Cas. 141.—**CAN.**

### PART XIII. SECT. 11, SUB-SECT. 4.

**bi.** ———— *A document headed "Certificate of Conviction" & purporting to be a copy of a conviction under Manitoba Temperance Act, 1921, is not proof, under s. 151 (4) of Govt. Liquor Control Act, 1928, of a conviction under the former Act.*—*R. v. RICEBERG (Man.)*, [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

## Part XIV.—Appeal to Court of Criminal Appeal.

5523. *Add. Annotation*:—*Refd.* R. v. Birch (1924), 93 L. J. K. B. 385.

5528. *Add. Annotation*:—*Consd.* R. v. Parkin (1928), 20 Cr. App. Rep. 173.

5528a. ————]—*In what circumstances.*—R. v. PARKIN (1928), 20 Cr. App. Rep. 173, C. C. A.

5534. *Add. Annotation*:—*Refd.* R. v. Cope (1925), 94 L. J. K. B. 602.

5535. *Add. Annotation*:—*Refd.* R. v. Teesdale (1927), 91 J. P. 184.

5536a. ————]—The ct. will not review a summary conviction of an incorrigible rogue, but it will insist that quarter sessions, for the purpose of sentence, shall hear nothing but legal evidence.—R. v. DEAN (1924), 18 Cr. App. Rep. 133, C. C. A.

*Annotations*:—*Refd.* R. v. Cope (1925), 94 L. J. K. B. 602; R. v. Cadwell (1927), 20 Cr. App. Rep. 60.

5536b. ————]—The machinery of Vagrancy Act, 1824 (c. 83), must not be used merely because a crime is suspected, but the legal evidence to establish it fails. Sentence

reduced.—R. v. CADWELL (1927), 20 Cr. App. Rep. 60, C. C. A.

5542. *Add. Annotation*:—*Mentd.* R. v. Keech (1929), 21 Cr. App. Rep. 125.

5549a. ————]—R. v. LAMBERT (1926), 19 Cr. App. Rep. 131, C. C. A.

5550. *Add. Annotation*:—*Consd.* R. v. Smith, [1925] 1 K. B. 603.

5550a. ————]—R. v. SMITH, No. 1810b, *ante*.

5554a. *Order for payment of compensation—Forfeiture Act, 1870 (c. 23), s. 4.*—There is an appeal to the Ct. of Criminal Appeal against an order made under above sect., for the payment of compensation by a person convicted of felony to a person aggrieved by loss of property suffered by him through the felony, because by the sect. such compensation constitutes & is enforceable as a judgment debt, & is therefore a "sentence" within Criminal Appeal Act, 1907 (c. 23), s. 21.—R. v. JONES, [1929] 1 K. B. 211; 98 L. J. K. B. 174; 140 L. T. 144; 21 Cr. App. Rep. 59, C. C. A.

### PART XIII. SECT. 11, SUB-SECT. 5.

5504ia. ————]—Deft. was convicted of a second offence against Liquor Licence Act, the only evidence of the previous conviction being the production of a certificate under the Act, from which it appeared that a person of the same name & address as deft. had been previously convicted before the same magistrate.—*Held*: the evidence was sufficient.—R. v. ATKINSON (N.S.) (1910), 44 N. S. R. 521; 9 E. L. R. 212.—CAN.

### PART XIV. SECT. 1, SUB-SECT. 1.

ti. ————]—An appeal lies to the Supreme Ct. of Canada under Criminal Code, s. 1024, read with sect. 1013, only where a dissenting opinion has been expressed by a member of the ct. of appeal, upon a question which that ct. deems a question of law & pursuant to its direction.—DAVIS v. R., [1924] 4 D. L. R. 843; [1924] S. C. R. 522.—CAN.

tii. ————]—R. v. DE BERTOLI, [1927] 3 D. L. R. 193; [1927] S. C. R. 454; 48 Can. Crim. Cas. 118.—CAN.

ai. ————]—R. v. BOAK, [1926] S. C. R. 481; 46 Can. Crim. Cas. 164.—CAN.

aii. ————]—GURDITTA v. R., [1927] 2 D. L. R. 577; [1927] S. C. R. 80; 47 Can. Crim. Cas. 154.—CAN.

aiii. ————]—BARRE v. R., [1927] 2 D. L. R. 1097; [1927] S. C. R. 284; 48 Can. Crim. Cas. 91.—CAN.

aiiv. ————]—HOWLEY v. R., [1927] 3 D. L. R. 265; [1927] S. C. R. 529; 48 Can. Crim. Cas. 139.—CAN.

av. ————]—CARDINAL v. R., [1927] 4 D. L. R. 325; [1927] S. C. R. 541; 48 Can. Crim. Cas. 243.—CAN.

co i. ————]—*Effect of repeal of provisions for slating case pending appeal.*—Where the trial judge reserved a case for the ct., but before it came on for argument, the sects. of the Code allowing a stated case were repealed, & the ct. set aside the conviction & ordered a new trial.—*Held*: the amendment of the Code did not abrogate the rights possessed by prisoners on the date when they were convicted, but such rights must be determined under the old & not under the new provisions of the Code, which were not then in force.—R. v. TAYLOR & YOUNG (1924), 41 Can. Crim. Cas. 212; 56 N. S. R. 500.—CAN.

kk i. ————]—R. v. COWELL (Saak.)

(1928), 50 Can. Crim. Cas. 381.—CAN.

kk ii. ————]—R. v. WIGGINS (N. B.) (1928), 50 Can. Crim. Cas. 193.—CAN.

sd. *Jury illegally constituted—Leave of Court of Appeal necessary.*—R. v. BOAK, [1925] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218.—CAN.

so. *After dismissal of information—Failure of informant to appear.*—The right of appeal given by Criminal Code, s. 749, against the dismissal of an information or complaint does not exist when the dismissal is due to the complainant's or informant's failure to appear.—GHITTERMAN v. RALPH (Saak.), [1928] 2 W. W. R. 631; 50 Can. Crim. Cas. 282.—CAN.

st. *Objection to transcript of evidence—Translation.*—Part of the evidence on a charge of murder was given in Irish, which was translated into English, so that it might be understood by the judge, the jury, & others concerned in the case. This evidence was not officially recorded in Irish as given, but only as it was translated into English, & objection to the transcript was taken on behalf of the accused, who sought leave to amend their notices of application for leave to appeal (which had already been served) by including this objection.—*Held*: as it is not an essential requisite for the purpose of an application for leave to appeal to have a complete transcript or any transcript of the evidence before the ct., the ct., being satisfied that the transcript of the note of the interpreter's rendering of the evidence was a completely accurate record & fully adequate for the purpose of disposing of the applications for leave to appeal, & having regard to all the facts, refused to allow the notices of application for leave to appeal to be amended.—A-G. v. JOYCE, A-G. v. WALSH, [1929] 1 R. 526.—IR.

sg. *To county court—Under Summary Convictions Act—Whether trial de novo.*—R. v. LAURIENTE (B. C.), [1928] 3 W. W. R. 265.—CAN.

5528 i. *Certificate granted—Only where judge has doubt on case.*—The trial judge must have an opinion or belief of the fitness of the appeal upon questions of fact or mixed questions of law & fact involved; the burden on him would appear, therefore, to be greater than if he were asked to grant leave to appeal.—R. v. PAYETTE,

[1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863.—CAN.

5528 ii. ————]—*Form of certificate.*—A certificate stated generally that the case was a fit one for appeal.—*Held*: not such a certificate as 13 & 14 Geo. 5, c. 41, contemplated.—R. v. SCOTT & WILLIAMSON (1924), 50 O. L. R. 325; 43 Can. Crim. Cas. 364.—CAN.

5528 iii. *Whether applicable to trial without jury.*—R. v. TEWS, [1926] 1 W. W. R. 321; 45 Can. Crim. Cas. 116; 22 Alta. L. R. 161.—CAN.

### PART XIV. SECT. 1, SUB-SECT. 2.

ai. ————]—Where it was for the trial judge to decide whether prisoner's explanation could reasonably be true, & it was to be assumed from the fact of his finding prisoner guilty that he thought it could not reasonably be true, in which the ct. concurred.—*Held*: not the function of the ct. to retry the case.—R. v. COOKE (1923), 57 N. S. R. 362.—CAN.

### PART XIV. SECT. 1, SUB-SECT. 3.

ci. ————]—*What is—Not sentence for rape.*—R. v. DE YOUNG, R. v. LINDIARD, R. v. DARLING (1927), 47 Can. Crim. Cas. 207; 60 O. L. R. 155.—CAN.

sh. *Jurisdiction of Supreme Court of Canada—To hear appeal from addition to sentence by lower court.*—There is no jurisdiction in the above ct. to entertain an appeal against an addition to sentence by appellate cts., as under Criminal Code, s. 1024, the right of appeal is restricted to an appeal against the affirmance of a conviction.—GOLDHAMMER v. R., [1924] 3 D. L. R. 1009; [1924] S. C. R. 290; 5 C. B. R. 129.—CAN.

### PART XIV. SECT. 2.

5566 i. ————]—*Discretion of court.*—It is not the practice of the Ct. of Criminal Appeal to entertain any application for an extension of time, whether to apply to the trial judge for a certificate for leave to appeal, or to give notice of appeal, or to give notice of application for leave to appeal, if appct. does not, at the time of applying for such extension of time, show that he proposes to rely upon grounds of appeal, or grounds for applying for leave to appeal, which are grounds such as can be entertained by the ct. in the exercise of its statutory juris-

- 5570a.** —. —.]—*R. v. MacWILLIAM* (1928), 21 Cr. App. Rep. 31, C. C. A.
- 5570b.** —. —.]—**Computation of time—Whether Sunday included.**—For the purpose of the statutory notice of appeal Sunday is not a *dies non*.—*R. v. GREVILLE* (1929), 21 Cr. App. Rep. 108, C. C. A.
- 5572.** *Add. Annotation* :—*Refd. R. v. Porter* (1927), 20 Cr. App. Rep. 55.
- 5574a.** —. —.]—**Registrar must be informed at earliest possible moment.**—When leave is sought to add new grounds of appeal they should be communicated to the registrar at the earliest possible moment.—*R. v. HODGSON* (1924), 18 Cr. App. Rep. 7, C. C. A.
- 5577a.** —. —.]—**Substantial particulars of misdirection, & of any other objections to the summing up, must be included in the notice of appeal, or must be sent to the registrar with the notice of appeal.**—*R. v. CAIRNS* (1927), 43 T. L. R. 455; 20 Cr. App. Rep. 44, C. C. A.
- 5577b.** —. —.]—**Supplementary grounds—When allowed.**—*R. v. PORTER*, No. 3137a, *ante*.
- 5585.** *Add. Annotation* :—*Refd. R. v. Thompson* (1925), 18 Cr. App. Rep. 167.
- 5585a.** —. —.]—**An applt. may only in exceptional circumstances consent by counsel to be absent.**—*R. v. THOMPSON* (1925), 18 Cr. App. Rep. 167, C. C. A.
- 5595a.** **Appellant not entitled to be heard—When represented by counsel.**—*R. v. CHUNG YI MIAO* (1928), 21 Cr. App. Rep. 56, C. C. A.
- 5596a.** **Official transcript of judgment at trial—How far binding.**—The ct. is bound by the official transcript of a judgment of the trial ct., in the absence of evidence of error therein.—*R. v. MARTIN* (1927), 20 Cr. App. Rep. 103, C. C. A.
- 5604.** *Add. Annotation* :—*Refd. R. v. Porter* (1927), 20 Cr. App. Rep. 55.
- 5605.** *Add. Annotation* :—*Refd. R. v. Porter* (1927), 20 Cr. App. Rep. 55.
- 5607a.** —. —.]—**In each of the following cases—**

(1) a convict under sentence of penal servitude & preventive detention who appeals only against the sentence of preventive detention; (2) a prisoner under sentence of imprisonment & flogging who appeals only against the flogging; (3) a prisoner under sentence of imprisonment & a recommendation to deportation who appeals only against deportation; (4) a prisoner under concurrent sentences of imprisonment & penal servitude who appeals only against the penal servitude; (5) a prisoner under one sentence who appeals only against a sentence consecutive thereon—the person appealing is an applt. within Criminal Appeal Act, 1907 (c. 23), s. 14, & should be treated as such pending the determination of his appeal.—*R. v. ROSS*, *R. v. FRIEND*, *R. v. BEATTIE*, *R. v. LLEWELLYN*, *R. v. YOUNG* (1924), 131 L. T. 26; 88 J. P. 90; 40 T. L. R. 617; 27 Cox, C. C. 615; 18 Cr. App. Rep. 55, C. C. A.

- 5616a.** —. —.]—**In a proper case, especially with the concurrence of the Crown, the ct. will allow an application for leave to appeal against conviction to be treated as one for leave to appeal against sentence, & may thereupon deal with it as such.**—*R. v. TOWERS* (1929), 21 Cr. App. Rep. 74, C. C. A.
- 5629a.** **Sentence runs from session in which convicted—Although passed in later session.**—Sentence generally runs from the date of the first sitting of the ct. of trial, at whatever date it may be passed.—*R. v. ROBERTS* (1929), 21 Cr. App. Rep. 69, C. C. A.
- 5629b.** **Sentence ordered to run from passing of sentence—Abnormal delay in preparing transcripts for court.**—*R. v. MEYRICK*, *R. v. RIBUFFI* (1929), as reported in 21 Cr. App. Rep. 91, C. C. A.
- 5673a.** —. —.]—**The ct. will, if it thinks fit, hear a plea of insanity even though it was not raised at the trial.**—*R. v. CANHAM* (1925), 18 Cr. App. Rep. 163, C. C. A.
- 5739a.** *S. P. R. v. HATCH & SMITH* (1928), 20 Cr. App. Rep. 181, C. C. A.

diction.—*A.-G. v. M'GANN*, [1927] 1 R. 503.—**IR.**

**sk.** —. —.]—**Notice of appeal defective.**—*R. v. MOYLE* (Ont.), [1927] 3 D. L. R. 639; 47 Can. Crim. Cas. 349.—**CAN.**

**sl.** *Under Criminal Code, s. 750.*—*R. v. NORMAN* (Ont.) (1923), 49 Can. Crim. Cas. 405.—**CAN.**

**sm.** —. —.]—*R. v. FRASER* (P. E. I.), [1928] 1 D. L. R. 803; 49 Can. Crim. Cas. 189.—**CAN.**

**sn.** —. —.]—*R. v. WENN* (Ont.) (1928), 49 Can. Crim. Cas. 401.—**CAN.**

**so.** *Under Criminal Code, s. 750 (b).*—*R. v. BOUTILLIER* (N. S.) (1928), 50 Can. Crim. Cas. 186.—**CAN.**

**fl.** —. —.]—**Want of means.**—On an application for an extension of time within which to appeal, which was not made until six months after conviction:—*Held*: (1) want of means was not a sufficient ground on which to base the application; & (2) in view of the delay in applying, very exceptional circumstances would have to be established before the ct. would be justified in granting the application.—*R. v. SUNDERLAND & SUNDERLAND* (1927), 28 S. R. N. S. W. 26.—**AUS.**

#### PART XIV. SECT. 3.

**5572 III.** —. —.]—*Re R. v. LEBLANC*, [1928] 1 D. L. R. 539; 49 Can. Crim. Cas. 136.—**CAN.**

#### PART XIV. SECT. 5, SUB-SECT. 1.—A.

**5630 v.** —. —.]—**The ct. hearing an appeal is not warranted in weighing probabilities & substituting its view for that of the jury, to which the greatest weight must still be given.**—*R. v. DE BRUGGE*, [1924] 4 D. L. R. 496; 55 O. L. R. 507.—**CAN.**

**5630 vi.** —. —.]—*R. v. BURKE* (1924), 44 Can. Crim. Cas. 205.—**CAN.**

#### PART XIV. SECT. 5, SUB-SECT. 2.—A.

**5666 i.** —. —.]—**Insanity.**—At the trial of accused for murder there was, in the ct.'s opinion, evidence which, had the point been taken, would of necessity have raised in the mind of the trial judge a doubt whether accused was then, on account of insanity, capable of conducting his defence: but the point was not brought to the attention of the trial judge, & the course prescribed by Criminal Code, s. 967, was not adopted.—*Held*: the omission of counsel ought not to deprive accused of the right given him by the sect. & new trial directed.—*R. v. WILLIAMS*, [1929] 1 D. L. R. 313; 50 Can. Crim. Cas. 230; 63 O. L. R. 191.—**CAN.**

#### PART XIV. SECT. 5, SUB-SECT. 2.—C.

**sp.** *Objection to conviction on ground of defect in information.*—*R. v. BOUTILLIER* (N. S.) (1928), 50 Can. Crim. Cas. 186.—**CAN.**

#### PART XIV. SECT. 6, SUB-SECT. 1.

**sq.** *In Ireland.*—Practice & procedure, as to applications to allow fresh evidence on appeal, laid down by the Ct. of Criminal Appeal.—*A.-G. v. M'GANN*, [1927] 1 R. 503.—**IR.**

#### PART XIV. SECT. 6, SUB-SECT. 2.

**sr.** *Conviction improper—Claim to substitute sentence for lesser offence—Leave to obtain further evidence—Confined to lesser offence.*—Where on an appeal from a conviction for unlawfully having carnal knowledge of a girl 14 years of age, it appeared that the accused had not been properly convicted, but there being no majority of the ct. in favour of directing a new trial, the Crown asked the ct. to proceed under Criminal Code, s. 916 (2), & substitute a sentence for indecent assault, whereupon the accused's counsel moved for leave to obtain & present new evidence from one Z., who would have been a compellable witness at the trial.—*Held*: such leave should be granted, the additional evidence to be confined to the charge of indecent assault, & the hearing of the appeal should stand over until further order, & in the meantime, the evidence of said witness should be taken before the registrar of the Supreme Ct. & forwarded by him to the registrar of the Ct. of Appeal.—



**5800a. Conflicting medical views.]**—The mere fact that conflicting medical views of the evidence in a case were put before the jury is not a ground for granting leave to appeal.—*R. v. THORNE* (1925), 69 Sol. Jo. 493; 18 Cr. App. Rep. 186, C. C. A.

**5802a. Unsatisfactory identification.]**—Conviction quashed.—*R. v. HITCHCOCK* (1926), 19 Cr. Rep. 181, C. C. A.

**5802b. Photograph of accused published in newspaper.]**—*R. v. MORRISON* (1911), 6 Cr. App. Rep. 159, C. C. A.

**5802c. Insanity—Supervening after trial.]**—*R. v. DRISCOLL & ROWLANDS* (1928), 20 Cr. App. Rep. 161, C. C. A.

*R. v. SHUMARIN* (B. C.), [1928] 1 W. W. R. 300.—CAN.

**PART XIV. SECT. 6, SUB-SECT. 3.**

**5740 iii.** —.]—An application must be refused, where the person whom it was sought to call had been present in ct. at the time of the trial & available to be called by accused or his counsel if they desired to do so.—*R. v. CRONAN* (1924), 41 Can. Crim. Cas. 320; 57 N. S. R. 25.—CAN.

**5766 ii.** —.]—The defence having been permitted for the purpose of securing a new trial to read the affidavit of one who it contended should have been called as a witness by the prosecution:—*Held*: the omission to call such witness did not result in such a miscarriage of justice, or the possibility of it, as to warrant a new trial.—*R. v. GALLAGHER*, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

*st. No opportunity of cross-examining former witness on statement at trial.*—*R. v. VYE* (1925), 44 Can. Crim. Cas. 249; [1925] 3 W. W. R. 100.—CAN.

**PART XIV. SECT. 6, SUB-SECT. 4.**

**sv. Evidence material & relevant to show verdict wrong.]**—The purpose of the ct. in allowing applt. to lead additional evidence under Criminal Appeal (Scotland) Act, 1926, s. 6 (b), is to give him an opportunity of showing that the verdict was pronounced in the absence of material & relevant to lead to a contrary result.—*SLATER v. H.M. ADVOCATE*, [1928] S. C. (J.) 94.—SCOT.

**PART XIV. SECT. 6, SUB-SECT. 5.**

**m. Read now "5793 i."**  
**5793 ii.** —.]—*R. v. HURLEY* (1925), 57 N. S. R. 537.—CAN.

**PART XIV. SECT. 7, SUB-SECT. 1.**

**p i.** —.]—*Criminal Appeal (Scotland) Act*, 1926 (c. 15).—The Ct. of Criminal Appeal is not a ct. of review in the sense in which that term is used in civil procedure; it cannot upset a verdict merely because it disagrees with the view either of the evidence or of the credibility of the witnesses on which it proceeded; it cannot interfere unless it thinks the verdict unreasonable. The test of unreasonableness is similar to that applied to verdicts obtained in civil jury trials, viz., was the verdict so flagrantly wrong that no reasonable jury, acting honestly under proper direction, could have given it.—*WEBB v. H.M. ADVOCATE*, [1927] S. C. (J.) 92.—SCOT.

**p ii.** —.]—*Held*: an appellate ct. could not, under Criminal Code, s. 1016 (c. 15), substitute for the conviction under s. 405 a conviction under s. 406.—*R. v. LEROUX*, [1928] 3 D. L. R. 688; 50 Can. Crim. Cas. 52; 62 O. L. R. 386.—CAN.

**p iii.** —.]—Applt. was tried for murder by intentionally causing the death of another native. He was convicted by the Additional Sessions Judge & four assessors of culpable homicide

not amounting to murder, & was sentenced to a term of rigorous imprisonment. The Govt. applied for a revision of the judgment, & the High Ct. altered the conviction to one of murder & sentenced the applt. to death:—*Held*: on an application for revision, as distinguished from an appeal, the High Court had no jurisdiction to convert the finding of an acquittal of murder into one of conviction & to sentence the man to death.—*KISHAN SINGH v. R.* (1928), 44 T. L. R. 690, P. C.—IND.

**b i.** —.]—Deft. was tried on an indictment charging commission of an offence & was convicted of an "attempt to commit" that offence:—*Held*: the evidence was sufficient to sustain the verdict, & his appeal must be dismissed.—*R. v. GING* (1924), 57 N. S. R. 196.—CAN.

**b ii.** —.]—Where accused is charged with having committed a crime at a named place in a named county & province, & a place with such name is referred to in the evidence at the trial, the fact that there is nothing in the evidence to show that the place is within such county or province:—*Held*: not such an omission as to give ground for an appeal.—*R. v. PAYETTE*, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863.—CAN.

**b iii.** —.]—Where the Crown's case was founded on the evidence of a very young child, who contradicted herself on the vital point in the trial, & on several minor matters:—*Held*: a conviction founded on such evidence could not be sustained.—*R. v. GIRONI* (1925), 34 B. C. R. 554.—CAN.

**b iv.** —.]—*R. v. MCKENZIE* (1926), 58 N. S. R. 464.—CAN.

**b v.** —.]—Findings of the ct. or a jury on questions of fact are only to be set aside where the findings are obviously & palpably wrong, or are unreasonable & cannot be supported by the evidence.—*R. v. M.* (1926), 46 Can. Crim. Cas. 80; 58 N. S. R. 512.—CAN.

**b vi.** —.]—Appeal dismissed.—*R. v. DAVIDSON* (1926), 47 Can. Crim. Cas. 80; 59 N. S. R. 179.—CAN.

**b vii.** —.]—Appeal dismissed.—*R. v. NICHOLSON* (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—CAN.

**b viii.** —.]—Appeal dismissed.—*R. v. HADDAD* (1927), 47 Can. Crim. Cas. 163; 59 N. S. R. 187.—CAN.

**b ix.** —.]—Circumstances in which an appeal against a conviction for forgery, by making interlineations in a document, was allowed.—*R. v. ZERENKO* (Sask.) (1927), 48 Can. Crim. Cas. 87.—CAN.

**x.** —.]—*Variance between evidence & charge—As to date of offence.*—Conviction quashed.—*R. v. DAVIES* (Alta.), [1927] 2 W. W. R. 605; 49 Can. Crim. Cas. 86.—CAN.

**b xi.** —.]—The Ct. of Criminal Appeal quashed a verdict & sentence, where the evidence was defective in some important respects, & the evi-

**5806a. — Indictment alleging offence under repealed section of statute.]**—Where a person is convicted on an indictment framed under a repealed section of a statute, the Ct. of Criminal Appeal will quash the conviction.—*R. v. TAYLOR* (1924), 93 L. J. K. B. 912; 88 J. P. 152; 40 T. L. R. 836; 69 Sol. Jo. 12; 22 L. G. R. 681; 18 Cr. App. Rep. 105, C. C. A.

**5816a. —.]**—If a judge has distinctly reached the conclusion that the case against a deft. is merely one of suspicion, he ought to withdraw it from the jury.—*R. v. JOHNSON* (1928), 21 Cr. App. Rep. 66, C. C. A.

**5840a. —.]**—*R. v. DANIELS* (1927), 20 Cr. App. Rep. 127, C. C. A.

dence, such as it was, was not presented to the jury in such a way as to bring sufficiently clearly before them the questions they had to determine.—*A. G. v. SMITH*, [1927] 1 R. 564.—IR.

**b xii.** —.]—If the evidence is sufficient to justify a conviction, & the jury are properly directed, the Ct. of Appeal cannot interfere with their verdict because in the opinion of the presiding judge it is based on evidence which was untrustworthy & ought not to have been accepted.—*R. v. THOMAS* (1928), 28 S. R. N. S. W. 490; 45 N. S. W. W. N. 146.—AUS.

*st. Court may reduce sentence—Although no appeal from sentence.*—*R. v. MUSGRAVE* (N. S.) (1926), 46 Can. Crim. Cas. 45.—CAN.

**sv. Non-indictable offence tried as indictable offence.**—*R. v. THOMPSON*, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—CAN.

**sw. Conviction not in form required by Act—Omission of order for forfeiture.**—Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act:—*Held*: the omission invalidated the conviction.—*TANGNEY v. DISTRICT JUSTICE FOR COUNTY OF KERRY*, [1928] 1 R. 358.—IR.

**PART XIV. SECT. 7, SUB-SECT. 4.**

**5824 v.** —.]—*R. v. BERGEN*, [1925] 2 D. L. R. 237; 43 Can. Crim. Cas. 301.—CAN.

**5824 vi.** —.]—Defts. were convicted of the offences of conspiring to defraud a city corp'n. of money due to the corp'n. for taxes:—*Held*: an inference of guilty knowledge or belief could not properly be drawn beyond all reasonable doubt, & with such degree of certainty as would warrant the convictions, which were accordingly quashed.—*R. v. EPSTEIN*, *R. v. WALKER*, *R. v. SPERON* (1925), 43 Can. Crim. Cas. 348; 56 O. L. R. 587.—CAN.

**5824 vii.** —.]—Deft. was convicted of rape:—*Held*: having regard to the evidence, the verdict was unreasonable & could not be supported & must be set aside.—*R. v. HUBLEY* (1925), 58 N. S. R. 113.—CAN.

**5824 viii.** —.]—*R. v. WAH SING CHOW* (B. C.) (1927), 48 Can. Crim. Cas. 144.—CAN.

**5824 ix.** —.]—*Held*: a finding that deft., while intoxicated, was in charge of a motor-vehicle, did not justify a conviction for driving while intoxicated, nor could deft. be convicted of the alternative offence, for Criminal Code, s. 285 (4), cannot apply to a vehicle which is out of commission & cannot be operated by its own power.—*R. v. HIGGINS*, [1929] 1 D. L. R. 269; 50 Can. Crim. Cas. 381; 63 O. L. R. 101.—CAN.

**5843 viii.** —.]—*R. v. NICHOL-*



**5850. Add. Annotation:—***Refd. R. v. Rice* (1927), 20 Cr. App. Rep. 21.

**5850a. ————**—[The exercise of the jurisdiction under Criminal Appeal Act, 1907 (c. 23), s. 4, depends on the circumstances of the particular case, whatever may be the opinion of the judge who tried it.—*R. v. RICE* (1927), 20 Cr. App. Rep. 21, C. C. A.]

*Annotation:—Refd. R. v. Davidson* (1927), 20 Cr. App. Rep. 66.

**5850b. ————**—[*R. v. DAVIDSON*, No. 3129b, *ante*.

**5856a. ————**—[*R. v. RICHARDS*, No. 6230a, *post*.

**5856b. ————**—[Conviction quashed on the grounds of non-direction & of receipt of inadmissible evidence.—*R. v. HOWARTH* (1926), 19 Cr. App. Rep. 102, C. C. A.]

**5856c. ————**—[*R. v. BERRY* (1926), 19 Cr. App. Rep. 113, C. C. A.]

**5867. Add. Annotation:—***Distd. R. v. King* (1927), 20 Cr. App. Rep. 158.

App. Rep. 8, C. C. A.

**5870b. ————**—[*R. v. KING* (1927), 20 Cr. App. Rep. 158, C. C. A.]

**5870c. ————**—*Evidence of bad character.*—[*R. v. FLEMING*, No. 6106a, *post*.

**5873a. ————**—[*R. v. HASLAM*, No. 2839a, *ante*.

**5877a. ————**—[*R. v. HOMER* (1926), 19 Cr. App. Rep. 118, C. C. A.]

**5884. Add. Annotation:—***Refd. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

**5887. Add. Annotations:—***Refd. R. v. Dunkley* (1926), 134 L. T. 632; *R. v. McLean* (1926), 134 L. T. 640.

**5908. Add. Annotation:—***Consd. R. v. Baldwin* (1925), 133 L. T. 191.

**5926a. ————**—[*R. v. HOWARTH*, No. 5856b, *ante*.

*SON* (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—**CAN.**

**5843 ix. ————**—[*R. v. MAY* (Sask.), [1927] 1 D. L. R. 753; 47 Can. Crim. Cas. 118.—**CAN.**

**58. Conviction for offence not charged in summons.**—*HALIFAX CORPN. v. O'CONNOR* (1882), 15 N. S. R. (3 R. G.) 190.—**CAN.**

**PART XIV. SECT. 7, SUB-SECT. 5.**

**5856 vii a. S. P. R. v. CHIN CHONG** (1921), 29 B. C. R. 527.—**CAN.**

**5856 xvi. ————**—[*R. v. DITYNSKY*, [1927] 2 D. L. R. 973; [1927] 1 W. W. R. 957; 47 Can. Crim. Cas. 319; 21 Sask. L. R. 418.—**CAN.**

**s (p. 522) i. ————**—*Irregularities at former trial—Prosecution for perjury.*—[The Ct. can take into consideration circumstances & irregularities as to evidence, which occurred not at the trial, the verdict at which is in appeal, but at a former trial where the perjury for which accused has been convicted was alleged to have been committed.—*R. v. CIESLENSKI*, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—**CAN.**

**PART XIV. SECT. 7, SUB-SECT. 6.**

**5909 i. Conviction quashed—Evidence for defence excluded.**—[*WINNING v. TORRANCE*, [1928] S. C. (3), 79.—**SCOT.**

**PART XIV. SECT. 7, SUB-SECT. 7.—A. (a).**

**a i. ————**—[*R. v. AVERILL*, [1927] 2 W. W. R. 310; 18 Can. Crim.

J. S.

Cas. 121; 21 Sask. L. R. 679.—**CAN.**

**a ii. ————**—[*R. v. COOPER* (Ont.), [1927] 4 D. L. R. 1093; 49 Can. Crim. Cas. 87.—**CAN.**

**5920 iii. ————**—[Accused & one M. left a room in an hotel together, both intoxicated. On reaching the rotunda of the hotel M. said to the night clerk "I got hit in the eye, but the other fellow got worse than I did," & the clerk saw that there was blood on both of M.'s hands. Immediately after they had left the hotel, a third man, who came to the hotel with them, was found dead & in a battered condition in the room they had left. On appeal from the conviction of accused for manslaughter:—*Held*: there was non-direction amounting to misdirection in the charge of the judge, to the jury, the result of which was that the strongest evidence in favour of accused, viz., M.'s appearance after coming out of the room & his statement of his actions, was not submitted to the jury's consideration as it ought, & there should be a new trial. *R. v. NICHOLSON* (1927), 49 Can. Crim. Cas. 228; 39 B. C. R. 261.—**CAN.**

**5920 iv. ————**—[An indictment was presented against three accused persons for breaking & entering & for stealing. The trial judge left the case to the jury as being one of breaking & entering only, & did not point out to the jury that it was, under Criminal Code, s. 575, open to the jury to find the prisoners, or some of them, guilty of stealing:—*Held*: this omission was

**5927a. ————**—[Where the defence is an *alibi*, the jury must be pointedly directed on the identification.—*R. v. PHILLIPS* (1924), 89 J. P. 16; 41 T. L. R. 190; 18 Cr. App. Rep. 151, C. C. A.]

**5927b. ————**—*Direction as to time.*—[*R. v. SMITH*, No. 6066a, *post*.

**5927c. ————**—[Where an *alibi* is set up as a defence, the jury must be directed that if it fails they must consider the facts of the case on their merits.—*R. v. CHEW* (1926), 19 Cr. App. Rep. 73, C. C. A.]

**5929a. ————**—[When in a trial for larceny 'asportation of documents has been proved, there must be a direction whether it took place *animo furandi* or not.—*R. v. JONES* (1925), 19 Cr. App. Rep. 39, C. C. A.]

**5932a. ————**—*By bailie—Intent to defraud.*—[*R. v. MOORE*, No. 3007a, *ante*.

**5932b. Breaking & entering—Breaking.**—[*R. v. LLOYD*, No. 2839b, *ante*.

charged on this point.—*R. v. BRIERLEY* (1924), 18 Cr. App. Rep. 136, C. C. A.]

**5938a. ————**—[The gist of the crime of obtaining by false pretences is an intent to defraud: direction on this point must be clear.—*R. v. RENTON* (1925), 19 Cr. App. Rep. 33, C. C. A.]

**5938b. ————**—[On a charge of obtaining by false pretences there must be a direction on the issue of intent.—*R. v. KAY* (1925), 19 Cr. App. Rep. 42, C. C. A.]

**5959. Add. Annotations:—***Consd. R. v. Thorpe* (1925), 133 L. T. 95. *Refd. R. v. Canham* (1925), 18 Cr. App. Rep. 163.

**5976. Add. Annotation:—***Folld. R. v. Moore* (1924), 18 Cr. App. Rep. 29.

**5992a. S. P. R. v. TAYNER & TOBITT** (1928), 21 Cr. App. Rep. 63, C. C. A.]

in itself sufficient to amount to a miscarriage of justice.—*R. v. SHORT, GIBALEY & PLINT*, [1928] S. L. R. Qd. 216; 22 Q. J. P. 108.—**AUS.**

**59. Direction alleged to be unfair.**—[*R. v. HUNT KING*, [1928] 2 D. L. R. 687; 49 Can. Crim. Cas. 171; 60 N. S. R. 5.—**CAN.**

**PART XIV. SECT. 7, SUB-SECT. 7. A. (b).**

**sb. Bigamy—Felonious intent.**—[Where the trial judge directed the jury that if accused intended to be married a second time, his first wife being alive to his knowledge & the first marriage being a lawful marriage, there was felonious intent.—*Held*: this direction was right.—*R. v. KENNEDY*, [1923] S. A. S. R. 183.—**AUS.**

**PART XIV. SECT. 7, SUB-SECT. 7.—A. (c).**

**5948 i. Whether ground for quashing conviction.**—[*BROOKS v. R.*, [1928] 1 D. L. R. 268; 18 Can. Crim. Cas. 333; [1927] S. C. R. 633.—**CAN.**

**PART XIV. SECT. 7, SUB-SECT. 7.—C. (a).**

**6006 v. ————**—[In directing the jury, the judge gave them the impression that mere knowledge of the crime without any aiding or abetting thereof was sufficient to make accused a principal offender.—*Held*: a misdirection, & new trial ordered.—*R. v. DUTCHAK*, [1924] 1 D. L. R. 973.—**CAN.**

6013. *Add. Annotation*:—*Refd. R. v. Fisher* (1926), 19 Cr. App. Rep. 166.

6056. *Add. Annotations*:—*Consd. R. v. Evans* (1924), 88 J. P. 196. *Apld. R. v. Beebe* (1925), 133 L. T. 736. *Consd. Statham v. Statham*, [1929] P. 131. *Refd. R. v. Ross* (1924), 18 Cr. App. Rep. 141; *R. v. Harris*, [1927] 2 K. B. 587.

6063. *Add. Annotation*:—*Refd. R. v. Roberts & Morriss* (1926), 134 L. T. 635.

6064. *Add. Annotations*:—*Consd. Statham v. Statham*, [1929] P. 131. *Refd. R. v. Whitehead*, [1929] 1 K. B. 99.

6066a. ——— *Direction that corroboration exists not warranted on facts.*—(1) It is a ground for quashing a conviction, if the jury is directed that there is corroboration of an accomplice's evidence, when the ct. thinks there is none.

(2) In dealing with the defence of an *alibi*, the ct. of trial ought to direct the jury on any part of the period of time which is relevant.

(3) Without saying that in every case it is proper to sentence an accomplice pleading guilty before he gives evidence for the Crown, it is obvious that where he is not sentenced it is more than ever necessary to warn the jury about accepting his testimony, because

his object is to mitigate his own punishment (*AVORY, J.*).—*R. v. SMITH* (1924), 18 Cr. App. Rep. 19, C. C. A.

6066b. ——— *Where the evidence against a prisoner is the uncorroborated evidence of an accomplice the judge must warn the jury that, while they may convict on such evidence, it is always, not generally, dangerous to do so. It is wrong for the judge to tell the jury that if they are quite certain in such a case that the accomplice is telling the truth they ought to act on it.*—*R. v. BEEBE* (1925), 133 L. T. 736; 89 J. P. 175; 41 T. L. R. 635; 28 Cox, C. C. 47; 19 Cr. App. Rep. 22, C. C. A.

*Annotation*:—*Refd. R. v. Harris*, [1927] 2 K. B. 587.

6067a. ——— *The correct direction on a charge of indecent assault is that it is not safe to convict on the uncorroborated evidence of prosecutrix, but that the jury, if they are satisfied of her veracity, may, after paying attention to that warning, nevertheless convict.*—*R. v. JONES* (1925), 19 Cr. App. Rep. 40, C. C. A.

6068a. ——— *When consent is the defence to a charge of rape, the jury must be warned of the absence of corroboration of*

6016 iv. ——— *It was contended that the judge misdirected the jury in reading to them a sect. of the Criminal Code which had been repealed before the trial took place.*—*Held*: as the sect. in question was simply a statement of the common law & could not prejudicially affect prisoner, the case was within the Code, s. 1014 (c), & the objection had no effect.—*R. v. McLACHLAN* (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

6016 v. ——— *The fact that the trial judge in charging the jury misstated the law will not, in view of his subsequent correction of this statement after the jury were called back, justify the setting aside of the conviction.*—*STEELE v. R.*, [1924] 4 D. L. R. 175; [1924] 1 W. W. R. 1146.—CAN.

#### PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) i.

6019 iii. ——— *Where homicide was proved & was not denied, but the defence of temporary insanity caused by intoxicating liquor was set up;—Held*: the omission from the trial judge's charge of an instruction that accused was entitled to the benefit of a reasonable doubt was a substantial wrong entitling him to a new trial.—*R. v. PAYETTE*, [1925] 2 W. W. R. 747; 44 Can. Crim. Cas. 209; 35 B. C. R. 81.—CAN.

#### PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) ii.

d i. ——— *The omission to place clearly before the jury the law as to the right of private defence of the person, as bearing on the facts set up, & to direct their attention to the point whether, & how far, accused was justified in attacking deceased, in order to prevent injury to himself:—Held*: a misdirection vitiating the trial.—*R. v. ASERUDDIN* (1926), 1 L. R. 53 Calc. 980.—IND.

so. Rape.—*R. v. HALL* (Ont.) (1927), 49 Can. Crim. Cas. 146.—CAN.

#### PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) iv.

sd. *Direction that evidence as to accused's immoral character relevant.—Presumption of innocence.*—The judge directed the jury that the facts proved with reference to prisoner's character were relevant for their consideration,

& that the presumption of innocence applied with less effect to prisoner than to a man of proved good character. The jury found the prisoner guilty by a narrow majority:—*Held*: the judge had misdirected the jury in law, in respect that the immoral character of the panel was irrelevant, & the presumption of innocence applied equally in all cases, & could only be displaced by evidence relevant to prove the crime charged.—*SLATER v. H.M. ADVOCATE*, [1928] S. C. (J.) 94.—SCOT.

#### PART XIV. SECT. 7, SUB-SECT. 8.—A.

ri. ——— *Criminal Code, s. 1002.*—Def. was convicted of having had carnal knowledge of a feeble-minded girl:—*Held*: as there was no evidence in corroboration, the conviction must be quashed.—*R. v. SIMMS* (1924), 43 Can. Crim. Cas. 28; 57 N. S. R. 476.—CAN.

rii. ——— *HUBIN v. R.*, [1927] 4 D. L. R. 760; [1927] S. C. R. 442; 48 Can. Crim. Cas. 172.—CAN.

#### PART XIV. SECT. 7, SUB-SECT. 8.—B.

6064 vii. ——— *The rule as to the danger of convicting upon the uncorroborated testimony of an accomplice is not a strict rule of law, but merely one of practical wisdom & carefulness, & the omission of the trial judge to give the customary warning, even if technically an error, does not constitute such a miscarriage of justice or substantial wrong as to vitiate the conviction.*—*R. v. GALLAGHER*, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

6064 viii. ——— *A charge to the jury, that, while it was dangerous to convict on the evidence of an accomplice without corroboration, yet in this case it was the right & duty of the jury, if on the accomplice's evidence they felt no reasonable doubt of the guilt of accused, to convict him:—Held*: a misdirection.

If a judge discusses the evidence of an accomplice & points out its consistency, he should explain to the jury the considerations which prompt an accomplice to testify against accused.—*R. v. SLEE*, [1926] 1 D. L. R. 729; 45 Can. Crim. Cas. 190; 58 O. L. R. 313.—CAN.

6064 ix. ——— *When the evidence against a prisoner is the*

uncorroborated evidence of an accomplice, it is wrong for the judge to tell the jury that, if they are quite certain that the accomplice is telling the truth, they have not only the right to convict prisoner but that it is their duty to do so. In such a case, the judge should follow the rule laid down in *R. v. Baskerville*, No. 6056; the judge should warn the jury of the danger of convicting prisoner on the uncorroborated testimony of an accomplice & in his discretion, may advise them not to convict upon such evidence, but he should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence.—*GOUIN v. R.*, [1926] S. C. R. 539.—CAN.

6064 x. ——— *Where the evidence of accomplices is uncorroborated, juries should be instructed as nearly as possible in the language in which the rule of practice laid down in *Gouin v. R.*, No. 6064 ix, ante, is expressed.*

A charge which in effect puts the evidence of an accomplice on the same footing as that of an ordinary witness amounts to a miscarriage of justice.—*R. v. BACHRU* (Sask.), [1927] 3 D. L. R. 1179; [1927] 2 W. W. R. 171; 48 Can. Crim. Cas. 53.—CAN.

See, also, cases in Part XII., Sect. 13, Sub-sect. 4, *R. ante*.

6067 iii. ——— *A verdict of indecent assault founded solely on the testimony of prosecutrix not allowed to stand, where the judge did not warn the jury properly with respect to corroboration.*—*R. v. JELLENON* (Sask.), [1927] 4 D. L. R. 1126; [1927] 3 W. W. R. 564; 49 Can. Crim. Cas. 94.—CAN.

6067 iv. ——— *On the trial of a charge for indecent assault on a girl of under sixteen years, the trial judge, in the course of warning the jury of the danger of convicting on the uncorroborated testimony of the girl, said: "In such a case, it is usual, in fact, necessary, to caution the jury against the danger of acting upon the uncorroborated testimony of the girl," & also, "unless she is supported by independent testimony which implicates the accused, her evidence is not an entirely safe or satisfactory foundation for a verdict against him".—Held*: this direction was sufficient.—*R. v. KENNEDY*, [1927] S. A. S. R. 287.—AUS.

the female's story.—*R. v. SALMAN* (1924), 18 Cr. App. Rep. 50, C. C. A.

6068b. ————.—*R. v. DRAPER* (1929), 21 Cr. App. Rep. 147, C. C. A.

6069a. ————.—*Held*:—When the only witness for the Crown on a charge of larceny is the receiver of the stolen property, the jury should be warned that they may require corroboration.—*R. v. DIXON* (1925), 19 Cr. App. Rep. 36, C. C. A.

6072a. ————.—*Evidence of young children.*—*R. v. MARSHALL*, No. 3136a, *ante*.

6090. *Add. Annotations*:—*Folld. R. v. Dennis*, *R. v. Parker*, [1924] 1 K. B. 867; *Apld. R. v. Williams* (1925), 19 Cr. App. Rep. 67; *R. v. McDonnell* (1928), 20 Cr. App. Rep. 163.

6094. *Add. Annotation*:—*Folld. R. v. Hussey* (1924), 18 Cr. App. Rep. 121.

6097a. ————.—*Necessity for proof.*—When no reason is shown to the ct. to believe that a plea of guilty has been improperly accepted, it will decline to interfere.—*R. v. CLARK* (1929), 21 Cr. App. Rep. 81, C. C. A.

6106a. *Disagreement of first jury Second jury hearing way in which first divided.*—(1) If a jury, unable to agree, has announced in open ct., & therefore in presence of the jurors in waiting, the numbers of their members for & against a conviction, it is wrong to proceed with the second trial before such jurors.

#### PART XIV. SECT. 7, SUB-SECT. 10

a (p. 538) i. *One jurymen not sworn.*—Where one of the additional panel of jurymen summoned, who was present & answered to his name when first called by the clerk, was not called to be sworn by the clerk who announced that the panel was exhausted, which made it necessary to secure an additional jurymen from among those who had stood aside.—*Held*: an objection could not be allowed, as no substantial wrong or miscarriage of justice had occurred.—*R. v. McLAUGHLIN* (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

sf. *Policeman informant making arrest, conducting prosecution & giving evidence—Failure to employ counsel or attorney.*—The fact that, in a summary conviction proceeding, the informant, who was the policeman in charge of the case, acted as the prosecutor at the hearing, & was also a witness thereon, & had sworn to & executed the search warrant in person & arrested the accused held not a ground for setting aside the conviction.—*R. v. CRUTE*, [1928] 4 D. L. R. 581; [1928] 2 W. W. R. 377; 50 Can. Crim. Cas. 143; 22 Sask. L. R. 525.—CAN.

#### PART XIV. SECT. 7, SUB-SECT. 11.—D.

6115 vi. ————.—*R. v. DE BERTOLI*, [1927] 3 D. L. R. 193; [1927] S. C. R. 454; 48 Can. Crim. Cas. 118.—CAN.

6115 vii. ————.—*BROOKS v. R.*, [1928] 1 D. L. R. 268; 48 Can. Crim. Cas. 333.—CAN.

#### PART XIV. SECT. 7, SUB-SECT. 11.—E.

q i. ————.—*After jurymen called—By person on panel.*—*Held*: a miscarriage of justice.—*R. v. McNAMARA*, [1926] 4 D. L. R. 880; 46 Can. Crim. Cas. 230; 59 O. L. R. 342.—CAN.

aj. *Disqualification of juror.*—*Held*: such disqualification did not cause a miscarriage of justice.—*R. v. BOAK*, [1925] 3 D. L. R. 887; [1925] S. C. R.

525; 41 Can. Crim. Cas. 218; [1925] 2 D. L. R. 803; [1925] 2 W. W. R. 40; 43 Can. Crim. Cas. 402; 35 B. C. L. 256.—CAN.

#### PART XIV. SECT. 8, SUB-SECT. 1.—A.

sk. *Jurisdiction of court.*—*R. v. FOX*, *R. v. SANSOME* (1925), 44 Can. Crim. Cas. 262.—CAN.

h i. ————.—*Held*:—No definite principle can be laid down upon which a ct. of appeal should proceed in dealing with appeals for the reduction of sentences on the ground of excessive severity; all the circumstances should be carefully taken into account in each instance & full consideration given to matters of mitigation.—*R. v. FINLAY*, [1924] 4 D. L. R. 829; 3 W. W. R. 427.—CAN.

h ii. ————.—*Held*:—A sentence should be interfered with by a ct. of appeal only where the trial judge proceeded on some wrong principle or gave too great weight to particular circumstances; the fact that individual members of the ct. would have imposed a different sentence is not sufficient.—*R. v. GALLAGHER*, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

h iii. ————.—*Held*:—In considering the adequacy of a sentence, the ct. should be guided by the same considerations whether the appeal be taken for the reduction or increase of the sentence.—*R. v. HICKS*, [1925] 2 D. L. R. 1000; [1925] 1 W. W. R. 1155; 44 Can. Crim. Cas. 13; 19 Sask. L. R. 359.—CAN.

h iv. ————.—*DUSTOOR v. R.* (1927), Q. R. 42 K. B. 520.—CAN.

h v. ————.—*Held*:—Where prisoner was convicted of rape & sentenced to death:—*Held*: circumstances, such as low mentality & baneful environment, which were not brought to the attention of the judge, were sufficient to warrant a reduction of the penalty to twenty years' imprisonment & twenty lashes.—*R. v. MCCATHERN*, [1927] 2 D. L. R. 1142; 48 Can. Crim. Cas. 54; 60 O. L. R. 331.—CAN.

k i. ————.—*Abortion.*—An appeal by

Even if there is no other jury available the Bench ought not to threaten to deprive accused of bail, unless he will consent to be tried by those jurors.

(2) Inadmissible evidence of accused's bad character volunteered by a witness may invalidate a conviction.—*R. v. FLEMING* (1929), 21 Cr. App. Rep. 149, C. C. A.

6110. *Add. Annotation*:—*Distd. R. v. Villars* (1927), 20 Cr. App. Rep. 150.

6111. *Add. Annotation*:—*Folld. R. v. Villars* (1927), 20 Cr. App. Rep. 150.

6112a. *Improper question put to prisoner Prisoner undefended.*—*R. v. WEEKS* (1928), 20 Cr. App. Rep. 188, C. C. A.

6136. *Add. Annotation*:—*Refd. R. v. Morter* (1927), 20 Cr. App. Rep. 53.

6144a. *Refusal to permit accomplice to be called in mitigation—Count against accomplice withdrawn.*—*Proviso to Criminal Appeal Act, 1907, s. 4, applied despite a manifest error in procedure.*—*R. v. GASKELL* (1929), 21 Cr. App. Rep. 83, C. C. A.

6152. *Add. Citation*:—31 T. L. R. 401.

6169a. ————.—*The Ct. of Criminal Appeal does not make slight reductions of sentences. The ct. only interferes on matters of principle & on the ground of substantial miscarriages of justice.*—*R. v. DUNBAR* (1928), 21 Cr. App. Rep. 19, C. C. A.

an abortion-monger against a sentence of four years' imprisonment imposed on her on a conviction for abortion, dismissed.—*R. v. PITCH*, [1925] 4 D. L. R. 671; [1925] 3 W. W. R. 431; 35 Man. L. R. 299.—CAN.

k ii. ————.—*Held*:—Def. was convicted of breaking & entering with intent to commit an indictable offence. On appeal, there was sufficient evidence to support the conviction, & the trial judge having had the advantage of seeing prisoner & hearing his evidence, & no sufficient reason having been shown for reducing the sentence:—*Held*: the conviction be affirmed & deft.'s appeal dismissed.—*R. v. JOHN* (1927), 39 N. S. L. 385.—CAN.

#### PART XIV. SECT. 8, SUB-SECT. 1.—B.

6170 i. *Whether fresh sentence can be substituted—Plea of guilty.*—On an appeal against sentence in a case wherein accused pleaded guilty the Ct. of Appeal is in as good a position as the trial judge to determine the sentence which should be imposed.—*R. v. VINEGRATSKY (alias VINE)*, [1928] 3 D. L. R. 201; [1928] 1 W. W. R. 542; 49 Can. Crim. Cas. 298; 37 Man. L. R. 327.—CAN.

6170 ii. ————.—*R. v. ALTOMARE* (B. C.), [1928] 3 W. W. R. 187.—CAN.

6172 i. *Variation of sentence—Increase of sentence.*—The Ct. of Appeal is justified in increasing a sentence, if it clearly deems it justice to do so.—*R. v. GASCO* (1927), Q. R. 43 K. B. 116; 8 C. B. R. 291.—CAN.

n i. ————.—*Held*:—Where an illegal punishment has been imposed, as imprisonment with hard labour where hard labour is not authorised for the offence in question, the ct. will not exercise its powers under Criminal Code, s. 1124, by striking out the unauthorised portion of the penalty in order to uphold the conviction after the illegal punishment has been suffered in whole or in part.—*R. v. LOW QUONG*, [1924] 3 D. L. R. 666; 2 W. W. R. 695; 33 B. C. R. 522.—CAN.

n ia. *Recommendation to mercy.*—

- 6177a.** ———.]—Reduction of term of sentence in order to carry out intention of the trial judge.—*R. v. FIELDER* (1926), 135 L. T. 64; 90 J. P. 96; 28 Cox, C. C. 186; 19 Cr. App. Rep. 87, C. C. A.
- 6183a.** ———.]—The ct. will amend an incorrect record, though it may not vary the sentence.—*R. v. SHARMAN* (1925), 19 Cr. App. Rep. 43, C. C. A.
- 6186a.** ———.]—*R. v. PILLEY* (1926), 19 Cr. App. Rep. 101, C. C. A.
- 6187a.** ———.]—Sentence illegal.]—Sentence reduced in view of its illegality.—*R. v. JACKSON* (1926), 19 Cr. App. Rep. 159, C. C. A.
- 6187b.** ———.]—*R. v. IRVING* (1927), 20 Cr. App. Rep. 131, C. C. A.
- 6187c.** ———.]—*R. v. MILLICHAMP* (1929), 21 Cr. App. Rep. 106, C. C. A.
- 6187d.** ———.]—*R. v. DALE* (OTHERWISE MANDERS) (1929), 21 Cr. App. Rep. 114, C. C. A.
- 6199a.** ———.]—*R. v. CLUE* (1928), 21 Cr. App. Rep. 68, C. C. A.
- 6203a.** Previous conviction—Court reluctant to hear evidence of in justification of sentence—No previous conviction proved at trial.]—*R. v. GANS* (1928), 21 Cr. App. Rep. 1, C. C. A.
- 6209a.** Offer of employment—By old employer.]—Sentence reduced.—*R. v. JACKSON* (1927), 20 Cr. App. Rep. 130, C. C. A.
- 6209b.** *S. P. R. v. USHER* (1927), 20 Cr. App. Rep. 130, C. C. A.
- 6209c.** Inaccurate statements as to previous record.]—The ct. will revise a sentence when after conviction or plea inaccurate statements by the police about prisoner's record may have influenced that sentence.—*R. v. BOLTOLPH* (1928), 21 Cr. App. Rep. 37, C. C. A.
- 6209d.** Several charges for same offence.]—*R. v. KENNY* (1929), 21 Cr. App. Rep. 78, C. C. A.
- Effect of misunderstanding by trial judge.*—*R. v. WHITTAKER* (1928), 28 S. R. N. S. W. 411; 45 N. S. W. N. 172; [1928] Argus L. R. 303.—AUS.
- n i b.* ———.]—Petition for leniency—Improperly received.]—*R. v. LIM GIM*, [1928] 1 D. L. R. 1038; 49 Can. Crim. Cas. 255; 39 B. C. R. 457.—CAN.
- n i c.* ———.]—*R. v. GASCO*, [1928] 2 D. L. R. 751; 49 Can. Crim. Cas. 196; Q. R. 43 K. B. 116.—CAN.
- n ii.* ———.]—Imprisonment substituted for fine—Fine inadequate.]—*R. v. SYDORIK & ZOWATSKI* (Sask.), [1926] 3 W. W. R. 458.—CAN.
- n iii.* ———.]—Not after sentence partly served.]—*R. v. NORMAN* (N. S.) (1926), 46 Can. Crim. Cas. 74.—CAN.
- n iv.* ———.]—Imposed by mistake.]—*R. v. HALF* (1926), 49 Can. Crim. Cas. 253.—CAN.
- sp.* ———.]—Discretion of Court of Criminal Appeal.]—The Ct. of Criminal Appeal, in the exercise of the powers vested in it by Criminal Appeal Act, 1912, s. 6 (3), has an unfettered judicial discretion to review sentences imposed upon convicted persons without the necessity of considering whether in imposing any sentence under review, the trial judge proceeded upon any wrong principle, or upon any misapprehension of the facts.—*R. v. GOSPER* (1928), 28 S. R. N. S. W. 568; 45 N. S. W. W. N. 165.—AUS.
- sq.* ———.]—Conviction for perjury.]—*R. v. YIZU NATANSON* (Sask.), [1927] 2 W. W. R. 154; 49 Can. Crim. Cas. 89.—CAN.
- 6215a.** ———.]—*R. v. READE* (1927), 20 Cr. App. Rep. 60, C. C. A.
- 6215b.** ———.]—*R. v. MARTIN* (1928), 20 Cr. App. Rep. 187, C. C. A.
- 6219a.** ———.]—*R. v. LLOYD* (1927), 20 Cr. App. Rep. 139, C. C. A.
- 6230a.** Housebreaking—To receiving stolen property.]—(1) Evidence improperly admitted at the trial may be a ground for quashing a conviction.  
(2) On an indictment charging housebreaking, & knowingly receiving stolen property, if the latter count was not effective, the ct., when quashing the conviction in the former, will not substitute a verdict for receiving, as applt. was not, in fact, called upon to explain his possession.—*R. v. RICHARDS* (1924), 18 Cr. App. Rep. 144, C. C. A.
- 6234a.** ———.]—Exclusion of women from jury.]—The discretion which a judge at a trial has of excluding women from a jury must be exercised judicially, & unless it is shown that it has not been so exercised the ct. will not order a *venire de novo*.—*R. v. VAQUIER* (1924), 18 Cr. App. Rep. 112, C. C. A.
- 6234b.** ———.]—Denial of right of challenge.]—If deft. is wrongfully denied his right to challenge, the ct. will award a *venire de novo*.—*R. v. WILLIAMS* (1925), 19 Cr. App. Rep. 67, C. C. A.
- 6237a.** ———.]—*R. v. LLOYD*, No. 2567a, ante.
- 6249a.** ———.]—Procedure.]—*R. v. KNIGHTON* (1927), 20 Cr. App. Rep. 45, C. C. A.
- 6262.** Add. Annotation:—Mentd. *R. v. Noble* (1928), 20 Cr. App. Rep. 191.
- 6263.** Add. Annotation:—Refd. *R. v. Harris*, [1927] 2 K. B. 587.
- 6271.** Before this case insert "See, also, CROWN PRACTICE, No. 797a."  
Add. Annotation:—Fold. *R. v. Maidstone*
- PART XIV. SECT. 8, SUB-SECT. 1.—C.**  
**6202 i.** Prisoner's state of health.]—While a convict's physical state may be taken into consideration in passing sentence, yet changes in his health thereafter more properly afford ground for an application for the clemency of the Crown than for an appeal against the sentence.—*R. v. ZIMMERMAN*, [1926] 2 W. W. R. 882; 46 Can. Crim. Cas. 78; 37 B. C. R. 277.—CAN.
- PART XIV. SECT. 9.**  
**6222 i.** Carnal knowledge—To indecent assault.]—*R. v. GIBONE* (1925), 31 B. C. R. 534.—CAN.
- 6225 i.** Obtaining by false pretences—To attempting to obtain.]—Where a party has been convicted of obtaining goods by false pretences, & on the indictment the jury could have found him guilty of some other offence, e.g. attempting to obtain, & it clearly appears by the jury's finding that they must have been satisfied of facts which proved him guilty of attempting:—*Held*: a ct. of appeal, instead of allowing or dismissing the appeal, may substitute a verdict of guilty of attempting to obtain.—*R. v. McMANUS*, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B. R. 255.—CAN.
- sa.* Breaking & entering dwelling-house by day—To stealing in dwelling-house.]—*R. v. SAM CHUN*, [1926] 2 D. L. R. 287; 45 Can. Crim. Cas. 291; 36 B. C. R. 397.—CAN.
- sb.* Smuggling—Not to attempting to smuggle—Latter offence only triable summarily.]—*R. v. JONES* (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—CAN.
- sc.* Wounding with intent to do bodily harm—To common assault.]—*R. v. LEE FOON*, [1928] 1 W. W. R. 747; 49 Can. Crim. Cas. 233; 39 B. C. R. 298.—CAN.
- PART XIV. SECT. 10.**  
*aa i.* ———.]—Fresh evidence available not given at trial.]—*R. v. McDONALD* (N. S.) (1927), 49 Can. Crim. Cas. 35.—CAN.
- aa ii.* ———.]—Raising doubt as to correctness of verdict.]—*R. v. HASKINS* (Ont.), [1929] 1 D. L. R. 282; 50 Can. Crim. Cas. 412.—CAN.
- af.* ———.]—Misleading statements in summing up.]—*Held*: as there was a probability that some statements in the summing up had misled the jury, a miscarriage of justice had occurred; & a new trial was ordered.—*R. v. WILLIAMS*, *lt. v. McLAUGHLIN*, [1928] St. R. Qd. 133, 22 Q. J. P. 53.—AUS.
- ag.* ———.]—Failure to charge jury as to need for corroboration.]—*R. v. GOODFELLOW* (N. B.), [1928] 2 D. L. R. 598; 49 Can. Crim. Cas. 268.—CAN.
- sh.* ———.]—Admission of depositions.]—A new trial may be directed under Criminal Code, s. 1014 (3) (b), on the ground that it was not proved that certain of the conditions precedent prescribed by s. 999 for the admission of depositions had been fulfilled, & one, at least, of the depositions might have turned the scale of the jury's verdict.

Prison, *Ex p. Maguire* (1925), 133 L. T. 710.

6277. *Add. Annotation*:—**Mentd.** *R. v. Cory*, [1927] 1 K. B. 810.

6284. *Add. Annotation*:—**Refd.** *R. v. Maidstone Prison, Ex p. Maguire* (1925), 133 L. T. 710.

6293a. **Order to repair highway—Highway Act, 1862 (c. 61), s. 18.**—**Held**: not a judgment in a "criminal cause or matter."—**LOUGHBOROUGH HIGHWAY BOARD v. CURZON** (1886), 17 Q. B. D. 314; 55 L. J. M. C. 122; 55 L. T. 50; 50 J. P. 788; 34 W. R. 621; 2 T. L. R. 678, C. A.

*Annotations*:—**Refd.** *R. v. Poole Corpn.* (1887), 19 Q. B. D. 602; *Payne v. Wright* (1892), 61 L. J. M. C. 114.

**Mentd.** *Russell v. Russell* (1924), 93 L. J. P. 97; *Re A. B.'s Petn.* (1927), 97 L. J. P. 104; *Greenway v. A.-G.* (1927), 44 T. L. R. 121.

6298a. — **Invalidity of bye-law.**—Appl't. was charged with frequenting a street for the purpose of betting contrary to a bye-law of a borough, but the charge was dismissed on the ground that the bye-law was *ultra vires*, unreasonable. On a case stated, the High Ct. held that the bye-law was valid:—this being a "criminal cause or matter,"

there was no appeal except for error of law apparent on the record, &, even if the bye-law were, on the face of it, invalid, that would not be an error of law apparent on the record.—**BURNETT v. BERRY** (1896), 60 J. P. 550; 12 T. L. R. 461; 40 Sol. Jo. 561, C. A.

*Annotations*.—**Apld.** *McVittie v. Bolton JJ.*, [1924] W. N. 149. **Refd.** *Godwin v. Walker* (1896), 12 T. L. R. 367; *Teale v. Harris* (1896), 60 J. P. 741; *Jones v. Walters*, (1898), 78 L. T. 167; *Kitson v. Ashe*, [1899] 1 Q. B. 425; *White v. Morley*, [1899] 2 Q. B. 34; *Thomas v. Sutters*, [1900] 1 Ch. 10; *Sutton Harbour Improvement Co. v. Foster* (1920), 123 L. T. 549; *Everton v. Walker* (1927), 137 L. T. 591.

6298b. **"Error of law apparent on record."**—**BURNETT v. BERRY**, No. 6298a, *ante*.

6298c. — **]**—The effect of Jud. Act, 1873 (c. 66), s. 47 & Criminal Appeal Act, 1907 (c. 23), s. 20, is that there is no right of appeal to the Ct. of Appeal in a criminal cause or matter, even where the error is apparent on the record.—**McVITIE v. BOLTON JJ.**, [1924] W. N. 149, C. A.

After this case add the following new

#### SECT. 15.—APPEALS.

To House of Lords.]—*See* Part XV.

## Part XV.—Appeal to House of Lords and Judicial Committee of the Privy Council.

6301. *Add. Annotations*:—**As to** (1) **Apld.** *R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38. **Distd.** *R. v. Cheshire*,

*Lucas & Bottom* (1927), 20 Cr. App. Rep. 47. **Generally, Refd.** *Statham v. Statham*, [1929] P. 131.

## Part XVI.—Costs, Compensation, Rewards and Restitution.

*Annotation*:—**Refd.** *R. v. Ely JJ., Ex p. Mann* (1928), 93 J. P. 45.

6446a. — **Appeal from order—To Court of Criminal Appeal.**—*R. v. JONES*, No. 5551a, *ante*.

6496a. *S. P. R. v. D'EYN COURT* (1888), 21 Q. B. D. 109; 57 L. J. M. C. 64; 52 J. P. 628; 37

W. R. 59; 4 T. L. R. 455, D. C.

*Annotations*.—**Refd.** *Inkpin v. Roll* (1922), 126 L. T. 517; *Conn v. Turnbull* (1925), 89 J. P. Jo. 300.

6505. *Add. Annotations*:—**Refd.** *Lake v. Simmons*, [1926] 2 K. B. 51. **Mentd.** *Nanka-Bruce v. Commonwealth Trust* (1925), 94 L. J. P. C. 169; *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.

ist the accused.—*R. v. MORELLE*, [1928] 1 W. W. R. 68; 49 Can. Crim. Cas. 15; 39 B. C. R. 140.—**CAN.**

#### PART XIV. SECT. 15.

sl. To Supreme Court.—**Condition precedent**—*Certificate*—*By what court*

exceptional public importance, & that it is desirable in the public interest that an appeal should be taken, the Ct. of Criminal Appeal, & not the Supreme Ct.—*A.-G. v. MURRAY* (No. 2), [1926] 1 R. 300.—**IR.**

#### PART XVI. SECT. 1, SUB-SECT. 3.

6441 i. *Costs of defendant on acquittal*

—*Label*.—In Criminal Code, s. 1045, the word "information" means "criminal information," & a dismissal by the magistrate of a charge laid in the usual way by information & complaint is not a "judgment for deft."—*Buczeko v. Choboliar* (B. C.), [1926] 1 D. L. R. 1024; [1926] 1 W. W. R. 379; 45 Can. Crim. Cas. 216.—**CAN.**

Appeal involves a point of law of

## Part XVII.—Offences against the Sovereign.

6619. *Add. Annotations*:—**Mentd.** *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Noble* (1928), 20 Cr. App. Rep. 191.  
 6722. For “(1628)” read “(1541).”  
 6723. For “(1628)” read “(1539).”  
 6726. For “(1628)” read “(1443).”  
 6727. For “(1628)” read “(1494).”  
 6732. For “(1628)” read “(1453).”  
 6733. For “(1628)” read “(1462).”

## Part XVIII.—Offences against Public Tranquillity.

6887. *Add. Annotation*:—**Refd.** *Motor Union Insee. v. Boggan* (1923), 130 L. T. 588.  
 6890. *Add. Annotation*:—**Refd.** *Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.  
 6931. *Add. Annotation*:—**Refd.** *Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879.  
 6946. *Add. Annotations*:—**Mentd.** *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Noble* (1928), 20 Cr. App. Rep. 191.  
 6953. *Add. Annotation*:—**Mentd.** *Lowe v. Bentley* (1928), 44 T. L. R. 388.  
 7026. *Add. Annotation*:—**Refd.** *Anchor Trust Co. v. Bell*, [1926] Ch. 805.  
 7033a. ——. **ANON.** (1701), 12 Mod. Rep. 495; 88 E. R. 1472.

## Part XIX.—Offences in respect of Public Offices.

7175. *Add. Annotation*:—**Mentd.** *Papadopoulos v. Papadopoulos* (1929), 46 T. L. R. 44.

## Part XX.—Offences relating to Administration of Justice.

7276. *Add. Annotation*: **Refd.** *Conn v. Turnbull* (1925), 89 J. P. Jo. 300.

### PART XVII. SECT. 1, SUB-SECT. 1.

6515 i. *Breach of allegiance to the Crown—Status of State possessing internal sovereignty.*—The crime of high treason can be committed against a State which possesses internal sovereignty, even though its external powers may be limited in certain respects. The Govt. of the Union of South Africa, as mandalory of South-West Africa, possesses sufficient internal sovereignty to warrant a charge of high treason against an inhabitant of the mandated territory who takes up arms with hostile intent against the Govt. of that territory.—*R. v. CHRISTIAN*, [1924] App. D. 101.—**S. AF.**

### PART XVII. SECT. 1, SUB-SECT. 4.

61. ——. *—The crime of treason is constituted by the perpetration of armed attacks upon the State or Govt. with hostile intent. The existence or otherwise of such hostile intent is to be gathered from all the circumstances of the case. Where accused committed acts of hostility towards the State by taking up arms with the express intention of coercing the Govt. & enforcing the will of himself & those acting with him upon the Govt. —Held: accused had been properly convicted of treason.* *R. v. GRAMMUS*, [1923] App. D. 73.—**S. AF.**

### PART XVIII. SECT. 7.

6821 ii. ——. *Meaning of “prize-fight.”*—*R. v. PELKEY* (1913), 24 W. L. R. 804; 4 W. W. R. 1035; 11 D. L. R. 701; 6 Alta. L. R. 103.—**CAN.**

6821 iii. ——. *Restaurant.*—A restaurant is not a public place within Criminal Code, s. 238 (f), since the public has no rights, as such, to resort there; & therefore, the causing of a disturbance therein by one of the methods referred to in s. 238 (f), does not render the disturber subject to conviction thereunder.—*R. v. BENSON*, [1928] 3 W. W. R. 605; 50 Can. Crim. Cas. 426.—**CAN.**

### PART XVIII. SECT. 8, SUB-SECT. 1.

51. *Meeting to maintain right bond*

*file believed to be possessed.*—Where five or more persons assemble for maintaining by force, or show of force, a right which they bona fide believe they possess, & not for enforcing by such force, or show of force, a right or supposed right of theirs, they do not constitute an unlawful assembly punishable under India Penal Code, s. 143.—*Re VEERABADRA PILLAJ* (1927), 1 L. R. 51 Mad. 91. **IND.**

### PART XVIII. SECT. 9, SUB-SECT. 7.

st. *Whether municipal corporation liable.*—*GLOBE & RUTGERS FIRE INSURANCE CO. v. GLACE BAY CORPN.* (N. S.), [1927] 1 D. L. R. 80.—**CAN.**

### PART XX. SECT. 2, SUB-SECT. 1.

7236 i. *Nature of the offence.*—Perjury is in itself a contempt of ct.—*R. v. ZIZU NATANSON*, [1927] 3 D. L. R. 758; [1927] 2 W. W. R. 155; 48 Can. Crim. Cas. 227; 21 Sask. L. R. 532.—**CAN.**

### PART XX. SECT. 2, SUB-SECT. 5.—A.

ri. ——. *Absence of examiner—Failure to file affidavit.*—An examination for discovery in a county ct. action not conducted in the presence of the deputy clerk is not an examination taken pursuant to County Cts. Act, R. S. M., 1913 (c. 44), & perjury does not lie against the person examined, even though the solrs. agreed that the clerk need not remain during the examination.

The fact that no affidavit was filed prior to such examination is not a bar to a prosecution for perjury, where accused voluntarily agreed to submit to & attended the examination & was sworn & examined.—*R. v. ALLEN*, [1925] 1 D. L. R. 57; [1925] 1 W. W. R. 718; 43 Can. Crim. Cas. 118.—**CAN.**

rii. *S. P. R. v. KOHEL* (Sask.), (1926), 46 Can. Crim. Cas. 279; [1926] 3 W. W. R. 478.—**CAN.**

### PART XX. SECT. 2, SUB-SECT. 7.

si. ——. *—R. v. FERRISH & DE VASSE* (1926), 58 N. S. R. 370.—**CAN.**

### PART XX. SECT. 2, SUB-SECT. 8.—A.

ai. ——. *Witness protected by Evidence Act, 1912 (c. 27).*—Evidence given at a trial at which the witness is granted the protection of Canada Evidence Act, 1912, is not receivable against him on a prosecution for perjury on other occasions, e.g., on an inquest & preliminary hearing.—*R. v. KRUSCHKOVSKI*, [1925] 2 D. L. R. 167; [1925] 1 W. W. R. 426; 43 Can. Crim. Cas. 299.—**CAN.**

aii. ——. *—Accused was convicted of perjury in testifying in a civil action brought by the Crown against his brother for evading the payment of the proper duty on goods introduced into Canada by accused. The perjury was charged in respect of the statement by accused that he had intended such goods for the members of his family:—Held: the testimony of customs officials as to statements made by accused's brother to the customs appraiser on the strength of which the goods had been cleared, should not have been admitted.*—*R. v. ZIZU NATANSON* (No. 2) (Sask.), [1927] 4 D. L. R. 1035; [1927] 3 W. W. R. 550; 49 Can. Crim. Cas. 80.—**CAN.**

sy. *Circumstantial evidence.*—A conviction for perjury may be founded on circumstantial evidence alone.—*R. v. ZIZU NATANSON*, [1927] 3 D. L. R. 308; [1927] 2 W. W. R. 127; 48 Can. Crim. Cas. 158; 21 Sask. L. R. 505.—**CAN.**

### PART XX. SECT. 2, SUB-SECT. 8.—B.

sa. *Writ of summons.*—*Held: the evidence that the proceeding was a judicial proceeding was sufficient, although the writ of summons therein had not been produced.*—*R. v. GURDITTA*, [1927] 1 W. W. R. 273; 47 Can. Crim. Cas. 103; 38 B. C. R. 66.—**CAN.**

sb. *Certified copy of record—Prior notice not necessary where admission by accused that impugned statements were made in judicial proceedings.*—*R. v. KOBOLD*, [1927] 3 W. W. R. 294; 49 Can. Crim. Cas. 290; 37 Man. L. R. 37.—**CAN.**

7416. *Add. Annotation*:—*Refd.* Conn v. Turnbull (1925), 89 J. P. Jo. 300.

CASE (1619), 2 Roll. Rep. 78; 81 E. R. 671.

7564a. — On constables to execute warrant.]—

*Annotation*:—*Refd.* Miller v. Knox (1838), 4 Bing, N. C. 374.

## Part XXI.—Offences relating to Arrest, the Prosecution and Punishment of Criminals, and the Execution of Civil Process.

7625. *Add. Annotation*:—*Mentd.* Hardie & Lane v. Chilton, [1928] 2 K. B. 306.

7631. *Add. Annotation*:—*Mentd.* Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.

7641. *Add. Annotation*:—*Consd.* Hardie & Lane v. Chilton, [1928] 2 K. B. 306.

7657a. — — — — —]—SMITH v. STEVENS (1929), 45 T. L. R. 429.

7683. *Add. Annotation*:—*Refd.* Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879.

7685a. *Assaulting warder on duty.*]—A convict who assaults a warder on duty is liable to be sentenced by a ct. of summary jurisdiction to six months' hard labour, that being the punishment provided by Prevention of Crimes Act, 1871 (c. 112), s. 12, for assaulting a constable when in the execution of his duty. — *POINTING v. WILSON*, [1927] 1 K. B. 382; 96 L. J. K. B. 309; 136 L. T. 307; 91 J. P. 5; 43 T. L. R. 41; 70 Sol. Jo. 1091; 28 Cox, C. C. 291, D. C.

## Part XXII.—Offences affecting the Property and Prerogative of the Crown.

7785. *Add. Annotation*:—*Refd.* R. v. Stokes (1925), 134 L. T. 479.

## Part XXIV.—Offences on the High Seas.

7864. *Citation*:—Delete 33 J. P. 791.

7866. *Add. Annotation*:—*Refd.* Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.

7873. *Add. Annotation*:—*Refd.* *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

### PART XX. SECT. 2, SUB-SECT. 8.—C.

f i. — *Copy of affidavit.*]—Where deft. was charged with making a false affidavit in the United States of America.—*Held*: a copy of the false affidavit duly authenticated by a witness called before the judge was rightly admitted.—UNITED STATES v. SNYDER, [1925] 1 D. L. R. 200; 43 Can. Crim. Cas. 692; 57 N. S. R. 421.—CAN.

### PART XX. SECT. 2, SUB-SECT. 11.

sd. *Evidence*—*Of falsity of statement*—*Corroboration unnecessary.*]—R. v. MCBETH, [1926] 2 D. L. R. 801; [1926] 1 W. W. R. 931; 45 Can. Crim. Cas. 357; 22 Alta. L. R. 222.—CAN.

### PART XX. SECT. 2, SUB-SECT. 12.—C.

m i. — *Affidavit required by foreign law.*]—Where deft. was charged with making in America a false affidavit, which affidavit was required by American law:—*Held*: notwithstanding the affidavit had not been made in a judicial proceeding, the crime charged constituted perjury under the law of Canada.—UNITED STATES v. SNYDER, [1925] 1 D. L. R. 200; 43 Can. Crim. Cas. 92; 57 N. S. R. 421.—CAN.

### PART XXI. SECT. 4.

i i. — — — — —.]—A search warrant issued under Liquor Act, 1922, s. 90, does not authorise the constable, who suspects that a person is leaving the premises with liquor, when no liquor

has been found on the premises, to follow him & forcibly bring him back to the premises where the search is being made. If in doing so he is assaulted by such person, the latter cannot be convicted of assaulting the constable while acting in the discharge of his duty under the search warrant.—R. v. DIAMOND, [1924] 1 D. L. R. 1033; 1 W. W. R. 444; 42 Can. Crim. Cas. 90; 20 Alta. L. R. 60.—CAN.

7666 v. — — — — —.]—*Keeping constable at arm's length*—*Whether flight to avoid arrest.*]—The fact that a person violently assaulted by a police officer who is attempting to arrest him, tries to evade a repetition of the assault by keeping at arms' length from the officer, does not constitute a taking to "flight to avoid arrest" within Criminal Code, s. 41.—VIGNITCH v. BOND, [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 435.—CAN.

### PART XXII. SECT. 2, SUB-SECT. 1.

7761 iii. — — — — —.]—For a thing to be termed "counterfeit" according to the definition given in Indian Penal Code, s. 28, there should be some sort of resemblance sufficient to cause deception. In a case of counterfeiting currency notes, where the ability of the accused persons, & the capacity of the materials with which they worked, were not such as to produce a currency note which would take in even the most ignorant villager:—*Held*: there could be no conviction under Indian Penal Code, s. 489a, read with s. 511.—R. v. JWALA (1928), 1 L. R. 51 All. 470.—IND.

### PART XXII. SECT. 4.

o i. *Possession of package received from unknown source*—*No proof given that duty not paid.*]—R. v. MOYLE (Ont.) (1928), 49 Can. Crim. Cas. 375.—CAN.

st. *What constitutes smuggling*—*Customs Act*, s. 206.]—R. v. MAYALL (1926), 45 Can. Crim. Cas. 366; 37 B. C. R. 211.—CAN.

sg. — — — — —.]—R. v. JONES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—CAN.

sh. *Burden of proof*—*That goods imported legally*—*On accused.*]—R. v. MCKENZIE (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—CAN.

(N. B.), [1927] 2 D. L. R. 793; 47 Can. Crim. Cas. 302.—CAN.

sl. — — — — —.]—*Held*: where goods alleged to have been smuggled are found & seized in the possession of any person, the onus, under Customs Act, s. 264, is upon such person to explain how the goods had come into his possession or how they had been imported into Canada, & if so, to prove that the duty upon them was paid.—WEISS v. R., [1928] Exch. C. R. 106.—CAN.

sm. *Indictment for smuggling*—*No power to substitute conviction for attempting to smuggle*—*Latter offence only triable summarily.*]—R. v. JONES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—CAN.

## Part XXV.—Offences relating to Foreign Nations.

7899. *Add. Annotation* :—**Refd.** *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

7903. *Add. Annotation* :—**Refd.** *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470.

## Part XXVII.—Offences relating to Marriage.

7959. *Add. Annotation* :—**Refd.** *R. v. Moscovitch* (1927), 138 L. T. 183.

7960. *Add. Annotation* :—**Refd.** *R. v. Moscovitch* (1927), 138 L. T. 183.

7979. *Add. Annotation* :—**Mentd.** *Perlak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111.

7980. *Add. Annotation* :—**Refd.** *R. v. Moscovitch* (1927), 44 T. L. R. 4.

7989a. — [.]—On an indictment for bigamy the validity of a foreign marriage must be proved by the evidence of a professional lawyer, or of a person who is to be deemed by reason of his office to be skilled in the law of the country where it was celebrated.—*R. v. Moscovitch* (1927), 138 L. T. 183; 44 T. L. R.

4; 28 Cox, C. C. 442; 20 Cr. App. Rep. 121, C. C. A.

8026. *Add. Annotation* :—**Refd.** *R. v. Denyer*, [1926] 2 K. B. 258.

8031. *Add. Annotation* :—**Refd.** *R. v. Moscovitch* (1927), 44 T. L. R. 4.

8035. *Add. Citation* :—*sub nom.* *SUGDEN v. LOLLLEY*, 2 Cl. & Fin. 567, n.

*Add. Annotation* :—**Mentd.** *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 611.

8036. *Add. Annotation* :—**Mentd.** *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 611.

8038. *Add. Annotation* :—**Refd.** *R. v. Denyer*, [1926] 2 K. B. 258.

## Part XXVIII.—Offences against Decency and Morality.

8104. *Add. Annotation* :—**Refd.** *Statham v. Statham*, [1929] P. 131.

8110. *Add. Annotation* :—**Refd.** *R. v. Bailey*, [1924] 2 K. B. 300.

8112. *Add. Annotations* :—**Consd.** *R. v. Whitehead*, [1929] 1 K. B. 99; *Statham v. Statham*, [1929] P. 131.

8128a. — **What is disorderly house.**—*R. v.*

*BERG, BRITT, CARRÉ & LUMMIES*, No. 4222a, *ante*.

8129. *Add. Annotation* :—**Refd.** *R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38.

8154. *Add. Citations* :—*sub nom.* *GUAGLIENI v. MATTHEWS*, 34 L. J. M. C. 116; 29 J. P. 439; 11 Jur. N. S. 636; 13 W. R. 679.

*Add. Annotation* :—*As to* (1) **Distd.** *R. v. Tucker* (1877), 2 Q. B. D. 417.

PART XXVII. SECT. 1, SUB-SECT. 1.—**A.**

7956 ii. — [.]—On an indictment for bigamy the first marriage must be strictly proved, but where the person charged has pleaded guilty, it is an admission that strict proof of the marriage can be made & precludes the necessity for proof.—*R. v. ROOP*, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 3.—**C.**

p i. — [.]—Accused & his wife were Roman Catholics; they had never lived together, as accused left for active service immediately after the marriage. On his return he informed the priest who had performed the ceremony that he & his wife were first cousins, & asked whether the marriage was valid. The priest replied that in the eyes of the Church the marriage was null & void, & as though it had never taken place. Accused, honestly believing he was free, went through the form of marriage with another woman:—*Held*: accused had been under no mistake of law & was rightly con-

victed.—*R. v. KENNEDY*, [1923] S. A. S. R. 183.—**AUS.**

PART XXVII. SECT. 1, SUB-SECT. 3.—**D.**

8038 i. *Effect of mistaken belief.*—It is a defence in law to a charge of bigamy that prisoner, at the time of the alleged bigamous marriage, believed, in good faith & on reasonable grounds, that he had been divorced from the bond of his first marriage, if in fact he had not been divorced.—*R. v. CARSWELL*, [1926] N. Z. L. R. 321.—**N.Z.**

## PART XXVIII. SECT. 5, SUB-SECT. 1.

8109 i. — *Evidence—Complaint—Effect of delay.*—*R. v. ELLIOTT*, [1928] 2 D. L. R. 214; 49 Can. Crim. Cas. 302; 62 O. L. R. 1.—**CAN.**

## PART XXVIII. SECT. 5, SUB-SECT. 2.

8120. vii — [.]—Consent or non-consent makes no difference so far as accused is concerned in offences against Criminal Code, ss. 202 & 203.—*R. v. ELLIOTT*, [1928] 2 D. L. R. 244; 49 Can. Crim. Cas. 302; 62 O. L. R. 1.—**CAN.**

PART XXVIII. SECT. 6, SUB-SECT. 1.—**B.**

r (p. 755) i. — [.]—During a period of six weeks prostitutes resorted to a furnished flat, of which two men were the tenants & occupiers. Some of them went on the invitation of the tenants, others were taken by friends of the tenants, with their knowledge & consent:—*Held*: if the prostitution had been with the occupiers of the flat only, no offence would have been committed, in respect that the occupiers could not "permit" their own acts; & it was immaterial that no profit was made by accused.—*GIRGAWAY v. STRATHERN*, [1925] S. C. (J.) 31.—**SCOT.**

c (p. 756) i. — *Arrest under search warrant.*—*R. v. FRIEDMAN* (Sask.) (1927), 49 Can. Crim. Cas. 225.—**CAN.**

h (p. 757) i. — *Omission of "knowingly."*—A conviction which does not state that accused "knowingly" permitted his premises to be used for the illegal purpose described, is materially defective.—*R. v. KOZONOWSKI*, [1926] 1 D. L. R. 732; [1926] 1 W. W. R. 241; 45 Can. Crim. Cas. 193; 36 B. C. R. 327.—**CAN.**



## Part XXIX.—Offences affecting Public Health, Safety and Convenience.

### SECT. 2.—OFFENCES BY INNKEEPERS.

(Vol. XV., p. 761).

After this sect. add the following new sect :—

### SECT. 3.—DANGEROUS DRUGS.

See FOOD & DRUGS, Vol. XXV., pp. 115, 116, No. 388, &, generally, MEDICINE & PHARMACY.

## Part XXXI.—Offences relating to Trade.

**8195.** *Add. Annotations:—Apld.* Reynolds v. Shipping Federation, [1924] 1 Ch. 28. *Consd.* Sorrell v. Smith, [1925] A. C. 700. *Refd.* Brimelow v. Casson, [1924] 1 Ch. 302; Thompson v. British Medical Assn., [1924] A. C. 764; British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

**8198.** *Add. Annotations:—Distd.* Reynolds v. Shipping Federation, [1924] 1 Ch. 28. *Consd.* Sorrell v. Smith, [1925] A. C. 700. *Refd.* Brimelow v. Casson, [1924] 1 Ch. 302; G. W. K. v. Dunlop Rubber Co (1926),

42 T. L. R. 376; Hardie & Lane v. Chilton, [1928] 2 K. B. 306.

**8219.** *Add. Annotations:—As to (1) Apld.* Pointon v. Cox (1926), 136 L. T. 506. *As to (2) Consd.* Pointon v. Cox (1926), 136 L. T. 506.

**8236a.** *Conviction—Acts of intimidation must be set out.*—A conviction under Conspiracy & Protection of Property Act, 1875 (c. 86), for intimidation is bad, & will be quashed on appeal, unless it sets out the particular act or acts of intimidation proved in evidence.—METCALFE v. WISEMAN (1888), 52 J. P. 439.

## Part XXXIII.—Offences against the Person.

**8247.** *Add. Annotation:—Consd.* R. v. Bateman (1925), 94 L. J. K. B. 791.

**8266a.** “Newly-born” child.]—(1) Applt. was charged with the murder of her child, who had been born on Aug. 19, 1927, & had been strangled by her on Sept. 21, 1927. The trial judge held that there was no evidence to go to the jury that the child was “newly-born” within Infanticide Act, 1922 (c. 18), s. 1 (2):—*Held:* that ruling was correct.

(2) Observations on the form of statements made by accused persons while under arrest.—*R. v. O'DONOGHUE* (1927), 97 L. J. K. B. 303; 133 L. T. 240; 91 J. P. 199; 44 T. L. R. 51; 71 Sol. Jo. 897; 28 Cox, C. C. 461; 20 Cr. App. Rep. 132. C. C. A.

**8284.** *Add. Annotations:—Consd.* Williams v. Guest, Keen & Nettlefolds, [1926] 1 K. B. 407. *Refd.* Carr v. Port of Glasgow (1923),

16 B. W. C. C. 331; Hutchinson v. Kiveton Park Colliery Co., [1926] 1 K. B. 279. *Mentd.* Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637.

**8317.** *Add. Annotation:—Apld.* R. v. Hall (1928), 140 L. T. 142.

**8338.** *Add. Annotations:—Consd.* R. v. Thorpe (1925), 133 L. T. 95. *Refd.* R. v. Canham (1925), 18 Cr. App. Rep. 163.

**8338a.** — — — — —.]—(1) If in a trial for murder the defence of manslaughter is raised the judge ought not to ignore that defence in his charge to the jury.

(2) The rule on provocation in *R. v. Hayward*, No. 8317, *ante*, accepted.—*R. v. Hall* (1928), 140 L. T. 142; 21 Cr. App. Rep. 48, C. C. A.

### PART XXXI. SECT. 3, SUB-SECT. 3.— B.

**8221 a.** *Nature of offence.*—On an indictment under Conspiracy & Protection of Property Act, 1875 (c. 86), s. 7, for persistently following employer & watching his place of business & his private residence with a view to coerce him to take back a dismissed employee into his employment, the evidence being that defts. with other persons had continually watched & walked up & down before prosecutor's business premises, & had followed him through the streets to his private residence:—*Held:* (1) under the circumstances if the acts of “watching” & “persistently following” were done with the intention of coercing the employer to take back the dismissed employee, defts. ought to be found guilty; (2) Trade Disputes Act, 1906 (c. 47), s. 2 (1), did not apply as regards the “watching” of the private residence.—*R. v. Wall* (1907), 21 Cox, C. C. 401.—*IR.*

### PART XXXIII. SECT. 1, SUB-SECT. 1.— A.

*h i.* — — — — —.]—*H.M. ADVOCATE v. SAVAGE*, [1923] S. C. (J.) 49.—*SCOT.*

### PART XXXIII. SECT. 1, SUB-SECT. 1.— D.

**8285 iii.** — — — — —.]—Criminal Code, s. 258, which provides for the case of the causing of an injury of a dangerous nature, the treatment of which brings about death, does not apply to a case wherein there is no evidence from which it might be inferred that the injury was in any way increased or its consequences accelerated by the treatment which was given to the deceased with the obvious object of overcoming the effects thereof. Where a person alleged to have been murdered was operated on for the injuries alleged to have been inflicted by the accused, but there is no apparent reason for inferring that

said treatment was the immediate cause of death, there is no authority for holding that the *onus* is, nevertheless, on the Crown of calling the surgeon to describe the operation in detail.—*R. v. BURGESS & McKENZIE*, [1928] 2 D. L. R. 694; [1928] 1 W. W. R. 633; 49 Can. Crim. Cas. 213, 39 B. C. R. 492.—*CAN.*

### PART XXXIII. SECT. 1, SUB-SECT. 1.— F. (a).

**8312 i.** *Provocation answered by use of weapon.*—Appl. who had grounds of suspicion that his wife had mis-conducted herself with another man, stabbed her in the legs & lower part of the body with a long knife, causing her to bleed to death in a few minutes:—*Held:* an application for leave to appeal from a conviction for murder must be dismissed.—*R. v. BUTLER*, [1925] App. D. 160.—*S. AF.*

- 8459a. ————]—ANON. (1523), Y. B. 14 Hen. 8, fo. 16, pl. 3.  
*Annotations.*—Consd. Howard v. Gosset (1845), 10 Q. B. 359. Refd. Marshalsea Case (1613), 10 Co. Rep. 68b; Mend. Nector & Sharp v. Gennet (1596), Cro. Ellz. 466; Adfield v. Cabell (1743), Willes, 411; Butt v. Conant (1820), 1 Brod. & Bing. 548.  
8498. Add. Annotation:—Refd. R. v. Canham (1925), 18 Cr. App. Rep. 163.  
8575. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8640. Add. Annotation:—Refd. James v. British General Insee., [1927] 2 K. B. 311.  
8640a. ————]—R. v. ROSE (1928), 20 Cr. App. Rep. 164, C. C. A.  
8645. Add. Annotation:—Refd. Pratt v. Patrick, [1924] 1 K. B. 488.  
8665. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8666. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8666a. S. P. R. v. MARKUSS (1864), 4 F. & F. 356. Annotation:—Refd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8667. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8667a. ————]—R. v. MARKUSS (1864), 4 F. & F. 356. Annotation:—Refd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8668. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8672a. ————]—Where a doctor is consulted, as possessing medical skill & knowledge, by or on behalf of a patient he owes a duty to that patient to use due caution in undertaking the treatment. If he accepts the responsibility

- & undertakes the treatment & the patient submits to his direction & treatment accordingly he owes a duty to the patient to use a fair & reasonable degree of diligence, care, knowledge, skill, & caution in administering the treatment. To support an indictment for the manslaughter of a patient, however, the prosecution must satisfy the jury that the negligence or incompetence of the doctor went beyond a mere matter of compensation & showed such disregard for the life & safety of the patient as to amount to a crime against the State & conduct deserving punishment.—R. v. BATEMAN (1925), 94 L. J. K. B. 791; 133 L. T. 730; 89 J. P. 162; 41 T. L. R. 557; 69 Sol. Jo. 622; 28 Cox, C. C. 33; 19 Cr. App. Rep. 8, C. C. A.  
8674. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8676. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8677. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8679. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8680. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8681. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8682. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8684. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.  
8688. Add. Annotation:—Consd. R. v. Bateman (1925), 94 L. J. K. B. 791.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—F. (d.) ii.

d i. ————]—The fact that while a child is flouting its father's authority its mother "eggs it on" may be found to constitute provocation within Criminal Code, s. 261, under which culpable homicide, which would otherwise be murder, may be reduced to manslaughter.—R. v. PAYETTE, [1925] 2 W. W. R. 747; 44 Can. Crim. Cas. 209; 35 B. C. R. 81.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—H. (a).

m i. ————]—R. v. BEVIS, [1925] 1 D. L. R. 747; 43 Can. Crim. Cas. 229; 57 N. S. R. 513.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—I.

sa. Wrongful act.—Where, although there is no intent to do injury to the person or property of another, death results from the doing of an act which is merely *malum prohibitum*, the wrongful act is not the kind of act that the criminal law requires as a foundation for a charge of manslaughter, unless the statute or prohibition violated is one designed & intended to prevent injury to the person, or the prohibited act is accompanied by negligence.—R. v. D'ANGELO, [1927] 4 D. L. R. 593; 48 Can. Crim. Cas. 127; 60 O. L. R. 512.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—N. (a).

8584 iii. ————]—A Christian Science practitioner who gave a sick child "absent treatment," i.e. prayer, but who prescribed no medicine or other treatment, & who was not shown to have advised the parents not to call in a physician or to have aided, abetted or counselled them to abstain

from providing proper medical attendance for the child:—*Held*: wrongly convicted of manslaughter of the child.—R. v. ELDER, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—N. (c) i.

8612 i. Must be calculated to endanger life.—Criminal Code, s. 247, attaches no criminal responsibility to the mere omission, without lawful excuse, to perform the duty of taking reasonable precautions against & of using reasonable care to avoid endangering human life. To entail criminal responsibility there must be some physical consequences resulting from such omission; the danger itself is not a consequence within the act.—R. v. HURT (1923), 55 O. L. R. 48.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—O. (b).

8639 iv. ————]—Where accused, driving a motor car at night, entered a road which being under repairs was closed to traffic & ran over & killed two coolies, who were sleeping on the road with their bodies completely covered up, except for their faces:—*Held*: accused was not guilty of causing death by a rash & negligent act.—SMITH v. R. (1925), 1 L. R. 53 Cal. 333.—IND.

8639 v. ————]—Gross negligence or wanton misconduct necessary.—R. v. GREISMAN, [1926] 4 D. L. R. 738; 46 Can. Crim. Cas. 172; 59 O. L. R. 156.—CAN.

8639 vi. ————]—A direction to the jury which sufficiently brought to their mind the difference between the quantum of negligence required to be found in a civil & a criminal trial:—*Held*: sufficient.—MOORE v. R., [1926] S. A. S. R. 52.—AUS.

8639 vii. ————]—The test of negligence to be applied in criminal trials is the same as that applied in civil cases, namely, the standard of skill & care which would be observed by a reasonable man.—R. v. MEIRING, [1927] App. D. 41.—S. AF.

8639 viii. ————]—Proof of ordinary negligence justifies a conviction for manslaughter under Criminal Code, s. 247.—R. v. FIELD (Alta.), [1928] 3 W. W. R. 757.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—O. (g).

8694 v. ————]—R. v. CHOTEM (1924) 42 Can. Crim. Cas. 156.—CAN.

8694 vi. ————]—The negligence of the victim is not a defence to a charge of manslaughter unless it was the sole cause of the accident.—R. v. FIELD (Alta.), [1928] 3 W. W. R. 757.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—Q. (b) i.

si. ————]—In a murder trial where the victim's throat had been cut so that he was unable to speak, evidence of questions put to deceased by the prosecution's witnesses & answers giving by nodding the head & making signs, amount to "verbal statements" under Evidence Act, s. 32, & are admissible as a dying declaration.—RANGA v. R. (1924), 1 L. R. 5 Lah. 305.—IND.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—Q. (b) iii.

8741 xix. ————]—A native when dying from injuries inflicted upon him said that he was "dead" or had been "killed." He then sent for his children & relatives, but did not take farewell of them, saying that he would say more when the pain allowed or when he was better. He then made

**8793a.** ———.]—(1) The question whether or not a statement made by a person on whom a fatal attack has been made is a dying declaration, i.e. whether or not it has been made by that person while in a hopeless & settled anticipation of immediate dissolution, is for the judge at the trial of the person charged with the murder or manslaughter of the person in question &, to answer it, all the circumstances of each case must be regarded.

(2) Rules as to questions by police officers to detained persons commented on.—*R. v. BOOKER* (1924), 88 J. P. 75; 18 Cr. App. Rep. 47, C. C. A.

**8927.** *Add. Annotation* :—*Refd. R. v. Punch* (1927), 20 Cr. App. Rep. 18.

**9023a.** *Within Children Act, 1908 (c. 67), s. 12 (1).*—An assault within the above sect. must be one which is likely to cause unnecessary suffering or injury to the health of the child.

*Appl.*, who was the stepfather, & had the custody or care, of a girl of eleven years of age, was charged under the above sect. with wilfully assaulting the girl in a manner likely to cause her unnecessary suffering. The evidence of the girl was that *appl.* committed acts of indecency, not to her, but in her presence, & that when she screamed he put his hand over her mouth :—*Held* : this was not an assault within the sect.—*R. v. HATTON*, [1925] 2 K. B. 322; 94 L. J. K. B. 863; 133 L. T. 735; 89 J. P. 164; 41 T. L. R. 637; 28 Cox, C. C. 43; 19 Cr. App. Rep. 29, C. C. A.

**9036.** *Add. Annotation* :—*Refd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75.

**9042.** *Add. Annotation* :—*Apld. R. v. Newport (Salop) J.J., Ex p. Wright*, [1929] 2 K. B. 116.

**9042a.** ———.] At a school for boys there was a rule prohibiting smoking by pupils during the school term whether on the school precincts or in public. During the term a pupil rather less than sixteen years old, after having left the school for the day & returned home, smoked a cigarette in the

public street, & next day the schoolmaster administered to him five strokes of the cane as a punishment for breach of the rule. On the hearing of an information against the schoolmaster for an alleged assault on the boy the justices found that the rule in question was reasonable, that the father of the boy by sending him to the school authorised the schoolmaster to administer reasonable punishment to the boy for breach of a school rule, & that the punishment administered was reasonable; & they dismissed the information. An order *nisi* having been obtained calling upon the justices to show cause why they should not state a case on a question of law :—*Held* : the decision of the justices was right, no question of law arose on which they could state a case, & that the order *nisi* should be discharged.—*R. v. NEWPORT (SALOP) J.J., Ex p. WRIGHT*, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518, D. C.

**9043.** *Add. Annotation* :—*Consd. R. v. Newport (Salop) J.J., Ex p. Wright*, [1929] 2 K. B. 416.

**9103a.** ———.]—The old law that the owner of a house, or members of his family, may kill a trespasser who would forcibly dispossess him of the house, although such householder, or members of his family, has not previously retreated until no means of escaping his assailant are left to him, has not been amended or modified by modern practice.—*R. v. HUSSEY* (1924), 89 J. P. 28; 41 T. L. R. 205; 18 Cr. App. Rep. 160, C. C. A.

**9154.** *Add. Annotation* :—*Apld. Morris v. Winter* (1929), 45 T. L. R. 613.

**9154a.** ——— *Detention after receipt of remission marks.*—Remission marks obtained by a prisoner do not give him any legal right to an earlier discharge, & such discharge, if granted, is an act of grace & not a legal obligation.—*MORRIS v. WINTER* (1929), 45 T. L. R. 643.

**9161.** *Add. Annotations* :—*Mentd. Britanma Hygienic Laundry Co. v. Thornycroft* (1925), 94 L. J. K. B. 858; *The Paludina*, [1925] P. 40.

a statement inculcating *appl.* :—*Held* : deceased when he made the statement had not a settled hopeless expectation of death, & the statement should not have been admitted in evidence as a dying declaration.—*R. v. NGCOUN*, [1925] App. D. 561.—S. AF.

**8746 i.** *Must believe death to be imminent.*—A statement made when deceased had no expectation of death, but confirmed when he had a belief in impending death :—*Held* : admissible.—*DEBOROLI v. R.*, [1926] 4 D. L. R. 722; [1926] S. C. R. 492; 46 Can. Crim. Cas. 115.—CAN.

**PART XXXIII. SECT. 6, SUB-SECT. 1.**—C.

**d i.** ——— *Injury resulting in death.*—*Deft.* was convicted upon two charges of criminal negligence causing bodily or grievous bodily harm under Criminal Code, ss. 284 & 285 :—*Held* : *deft.* was properly convicted, notwithstanding that death resulted from the injuries inflicted by his negligence.—*R. v. STARK*, [1927] 3 D. L. R. 433; 47 Can. Crim. Cas. 356; 60 O. L. R. 375.—CAN.

**PART XXXIII. SECT. 6, SUB-SECT. 1.**—D.

**sd.** *Meaning of "actual bodily harm"*—The above words in sect.

295 of the Code mean little, if anything, more than "battery."—*R. v. TRESEGNE* (1926), 45 Can. Crim. Cas. 270; 58 O. L. R. 634.—CAN.

**PART XXXIII. SECT. 6, SUB-SECT. 2.**—B.

**m i.** ——— *Burden of proof.*—Where on a charge of unlawfully wounding a person with intent to maim or disable him, the Crown proves that accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the *onus* then shifts to accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—*R. v. SMART (Alta.)*, [1927] 3 W. W. R. 753; 49 Can. Crim. Cas. 75.—CAN.

**PART XXXIII. SECT. 7, SUB-SECT. 1.**

**sb.** *Running down by motor car.*—*No intent to assault.*—Prisoner was indicted for assault occasioning bodily harm. The evidence showed that the injury in question, a fracture of the collar bone, was due to an accident caused by a motor car driven by prisoner in a public thoroughfare at 2.50 a.m. There being no evidence of an intention to assault, the indictment was amended, at the suggestion of the learned trial judge, so as to allege negligence in the control of a dangerous

thing, in substitution for the charge of assault.—*R. v. McIVER*, 22 Q. J. P. 173.—AUS.

**PART XXXIII. SECT. 7, SUB-SECT. 2.**—C. (a).

**9041 i.** *Schoolmaster & scholar.*—Teacher entitled to inflict reasonable punishment.—*R. v. METCALFE (Sask.)*, [1927] 3 W. W. R. 194.—CAN.

**PART XXXIII. SECT. 7, SUB-SECT. 2.**—C. (b).

**9066 iv.** ———.]—Punishment causing temporary pain & discolouration of the flesh for a few days :—*Held* : not excessive.—*R. v. METCALFE (Sask.)*, [1927] 3 W. W. R. 194.—CAN.

**9071 ii.** ———.]—*R. v. METCALFE (Sask.)*, [1927] 3 W. W. R. 194.—CAN.

**PART XXXIII. SECT. 7, SUB-SECT. 2.**—D.

**9078 v.** ———.] On appeal from a conviction for an assault occasioning actual bodily harm :—*Held* : the force used by the accused, in defending himself, as he did, against an assailant armed with a hammer, was not disproportionate to the nature of the attack made on him, although it caused the fracture of his assailant's skull, & he had brought himself within, & was justified by, Criminal Code, s. 23.—*R. v. OGILVIE*, [1928] 3 D. L. R. 676

**9307a.** —. —.]—On the trial of a prisoner for having had unlawful carnal knowledge of a girl under sixteen years of age, the judge directed the jury that although what the girl said to her mother several months after the offence was committed was not evidence, yet the jury could infer what the girl said, namely, that the prisoner was responsible for her condition, from what the mother did, because the prisoner was at once accused, & that that amounted to corroboration of the girl's story. Further, that the fact that the prisoner when he was charged by a police officer & cautioned made no denial of the charge was also corroboration of her story:—*Held*: both directions were wrong. Any inference as to what the girl told her mother could not amount to corroboration of the girl's story, as it proceeded from the girl herself, & the girl could not corroborate herself. The fact that the prisoner when charged & cautioned made no denial of the charge could not be corroboration.—*R. v. WHITEHEAD*, [1929] 1 K. B. 99; 98 L. J. K. B. 67; 139 L. T. 640; 92 J. P. 197; 27 L. G. R. 1; 28 Cox, C. C. 547; 21 Cr. App. Rep. 23, C. C. A.

**9311.** *Add. Annotation*: — *Consd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.

**9320a.** —. —.]—In charges of sexual offences corroboration of the testimony of prosecutrix is not in law essential, but is in practice required.

If, on the trial of such a charge, there is corroboration on one count referring to one date, but there is none on another about another date, & the ct. rejects the corroboration on the former, it being possible that the jury gave credit to it on both counts, it may quash a conviction on both.—*R. v. BERRY* (1924), 18 Cr. App. Rep. 65, C. C. A.

[1928] 2 W. W. R. 465; 50 Can. Crim. Cas. 71; 23 Alta. L. R. 511.—CAN.

#### PART XXXIII. SECT. 9.

*sk. Injury caused in attempting to stop breach of peace.*—A person using the force necessary to prevent a continuance or renewal of a breach of the peace, & struck by the party he was attempting to control.—*Held*: justified in striking back.—*R. v. MANSON* (1925), 43 Can. Crim. Cas. 30; [1925] 1 W. W. R. 671.—CAN.

*sm. What is unlawful act.*—*Not breach of municipal bye-law.*—*R. v. GOSLING* (Alta.) (1927), 47 Can. Crim. Cas. 211.—CAN.

#### PART XXXIII. SECT. 11, SUB-SECT. 3.

**9206 i.** *Woman not pregnant.*—*Held*: an indictment charging accused with performing an operation on a woman, in the belief that she was pregnant, for the purpose of causing her to abort, & with attempting to cause her to abort, was irrelevant, in respect that it did not set forth that the woman was at the time pregnant.—*H.M. ADVOCATE v. ANDERSON*, [1928] S. C. (J.) 1.—SCOT.

#### PART XXXIII. SECT. 13, SUB-SECT. 1. —D.

**9281 i.** *Consent obtained by fraud.*—*What amounts to fraud.*—Cohabitation following a feigned marriage is not rape under the law of Canada. It cannot be said as a general proposition, with regard to rape, that fraud vitiates consent. The only sorts of fraud which destroy the effect of a woman's consent

are frauds as to the nature of the act itself or as to the identity of the person who does the act.—*PEOPLE OF CALIFORNIA STATE v. SKINNER*, [1924] 2 W. W. R. 209; 33 B. C. R. 555.—CAN.

*c. For "c. By misrepresentation or fraud—Personation of husband"* read **9295 i.** *Conditions negating consent—Personation of husband.*

*d. Read now "9295 ii."*

**9295 iii.** — — — — *What amounts to—Not obtaining consent by feigned marriage.*—*PEOPLE OF CALIFORNIA v. SKINNER*, [1924] 2 W. W. R. 209; 33 B. C. R. 555.—CAN.

**9295 iv.** — — — — *Former husband.*—*Held*: an indictment for rape was relevant which bore that the woman was the wife of a second husband who was alive, while the person said to be personated was the woman's former husband who had been officially reported as killed in action.—*H.M. ADVOCATE v. MONTGOMERY*, [1926] S. C. (J.) 2.—SCOT.

#### PART XXXIII. SECT. 13, SUB-SECT. 1. —E.

**9307 i.** *What amounts to corroboration.*—Evidence of a witness that he saw accused & the girl leave a dance hall under suspicious circumstances at 11.30 on the night of the alleged seduction amounts to corroboration so as to justify the charge going to the jury.—*STEELE v. R.*, [1924] 4 D. L. R. 175; [1924] 1 W. W. R. 1146.—CAN.

**9320b.** *What amounts to corroboration.*—The mere fact that the accused preserves a letter written to him by prosecutrix of a charge of a sexual offence is not corroboration of her evidence: nor is his mere silence when he is charged with the offence.—*R. v. MARSH* (1925), 19 Cr. App. Rep. 27, C. C. A.

**9336.** *Add. Annotation*:—*Refd. R. v. Mosley*, [1924] 2 K. B. 187.

**9340.** *Add. Annotation*:—*Refd. R. v. Roberts Morris* (1926), 134 L. T. 635.

**9347.** In the cross-reference before this case, for "Vagrancy Act, 1878" read "Vagrancy Act, 1898."

**9361a.** — — — — *Prosecutrix over sixteen.*—If on any of the material dates alleged in an indictment for incest the female has reached the age of sixteen, she may be liable as an accomplice &, therefore, if she is a witness she must be corroborated. It is a misdirection in such a trial to tell the jury that they must first decide whether they believe such a female witness; they should be instructed not to make up their minds until they find that she is corroborated.—*R. v. DRAPER* (1929), 21 Cr. App. Rep. 147, C. C. A.

**9364a.** *What is an aggravated assault.*—*MUNDAY v. MAIDEN* (1875), 33 L. T. 377; 39 J. P. 742; 24 W. R. 57.

**9367.** *Add. Annotation*:—*Expld. R. v. Keech* (1929), 21 Cr. App. Rep. 125.

**9367a.** — — — —.]—The ct. disapproves the defence open under above sect. to a charge of carnal knowledge, not being open on that of indecent assault.—*R. v. LAWS* (1928), 21 Cr. App. Rep. 45, C. C. A.

*Annotations.*—*Consd. R. v. Keech* (1929), 21 Cr. App. Rep. 125. *Refd. R. v. Blackman* (1929), 2 Cr. App. Rep. 132.

**9399a.** — — — —.]—*Resp. married his wife in 1916 & a child was born in 1917. In 1920*

#### PART XXXIII. SECT. 13, SUB-SECT. 2.

**9308 v.** —. —.]—*R. v. GOSSELIN* (Ont.) (1927), 47 Can. Crim. Cas. 318.—CAN.

**9316 v.** —. —.]—On a charge of attempting to have carnal knowledge of a girl under fourteen.—*Held*: corroboration was not necessary.—*R. v. LIZOWYX* (1927), 48 Can. Crim. Cas. 255; 61 O. L. R. 93.—CAN.

**9316 vi.** —. —.]—Nature of corroboration required under Criminal Code, s. 1002, on a charge of carnally knowing a girl under fourteen.—*HUBIN v. R.*, [1927] 4 D. L. R. 760; [1927] S. C. R. 442; 48 Can. Crim. Cas. 172.—CAN.

**9316 vii.** —. —.]—*R. v. BROWN* (N. S.), [1928] 3 D. L. R. 214; 49 Can. Crim. Cas. 334.—CAN.

*sp. Charge of seduction under Criminal Code, s. 211—Burden of proof.*—*R. v. SCHEMMER* (Sask.), [1927] 3 W. W. R. 417.—CAN.

*st. Charge of attempted carnal knowledge—Sufficiency of evidence.*—*R. v. YELDS*, [1928] N. Z. L. R. 18.—N.Z.

#### PART XXXIII. SECT. 13, SUB-SECT. 7.

*m i.* —. —. —.]—*DAWSON v. R.* (1927), 40 C. L. R. 206.—AUS.

*sw. Daughter of deceased wife's brother.*—*Held*: sexual intercourse between a man & the daughter of his deceased wife's brother constitutes the crime of incest by the law of Scotland.—*C. & W. v. H.M. ADVOCATE*, [1929] S. C. (J.) 1.—SCOT.

resp. entered into a written separation agreement with his wife, whereby resp. was to pay his wife 25s. a week & his wife was to maintain herself & the child, of which she was to have the sole custody & control without any interference by resp., but resp. was entitled to have reasonable access to the child. Resp. failed to make the payments under the agreement & fell into arrears to the amount of about £100. An information was preferred against resp. for neglecting the child in a manner likely to cause her unnecessary suffering or injury to her health, contrary to Children Act, 1908 (c. 67):—*Held*: the fact of the separation agreement, without regard to the way in which its obligations had been performed, did not get rid of the legal presumption that resp. had the custody of the child, & the case must be remitted to the justices to decide whether in fact resp. had wilfully neglected the child in the manner alleged.—*BROOKS v. BLOUNT*, [1923] 1 K. B. 257; 92 L. J. K. B. 302; 128 L. T. 607; 87 J. P. 64; 39 T. L. R. 168; 67 Sol. Jo. 299; 21 L. G. R. 150; 27 Cox, C. C. 399, D. C.

9458. *Add. Annotation*:—*Refd.* *R. v. Denyer*, [1926] 2 K. B. 258.

9468. *Add. Annotation*:—*Mentd.* *Cleghorn v. Oldham* (1927), 43 T. L. R. 465.

9480a. — — — — —.]—Appct. was summoned under Motor Car Act, 1903 (c. 36), s. 1, for, & convicted of, driving a motor car on a highway “recklessly & at a speed which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition & use of the said highway, & to the amount of traffic which actually was at the time, or might reasonably have been

expected to be, on the said highway”:—*Held*: as the driving of the car was one indivisible act which might constitute both the offences charged, the conviction was not bad for duplicity.—*R. v. JONES, Ex p. THOMAS*, [1921] 1 K. B. 632; 90 L. J. K. B. 543; 124 L. T. 668; 85 J. P. 112; 37 T. L. R. 299; 19 L. G. R. 351; 26 Cox, C. C. 706, D. C.

9482. *Add. Citation*:—*sub nom.* *HOUGHTON v. MANNING* (1905), 49 Sol. Jo. 446.

9483. *Add. Annotation*:—*Mentd.* *Pickup v. United Kingdom Dental Board*, [1928] 2 K. B. 459.

9488. *Add. Annotation*:—*As to* (1) *Refd.* *Pointon v. Cox* (1926), 136 L. T. 506.

9490a. — — — — — *Motor coach*—*Advertised times of departure & arrival*—*Necessitating speed in excess of statutory maximum.*]—*Resps.* owned a motor coach which was a heavy motor car fitted with pneumatic tyres, & was restricted under Heavy Motor Car Order, 1901, to a maximum speed limit of twelve miles per hour. The vehicle was driven by a servant of *resps.* between London & Plymouth. *Resps.* advertised times of departure & arrival which necessitated an average speed of eighteen miles per hour without allowing for stops. While driving the coach at thirty-five miles per hour on one of the scheduled journeys, *resps.*’ servant was stopped by the police, & *resps.* were summoned for counselling, procuring, aiding & abetting the commission of the offence: *Held*: *resps.* ought to have been convicted of counselling & procuring.—*NEWMAN v. OVERINGTON, HARRIS & ASH, LTD.* (1928), 93 J. P. 46; 27 L. G. R. 85, D. C.

## Part XXXIV.—Offences against Property.

9498. *Add. Annotation*:—*Refd.* *Lake v. Simmons*, [1926] 1 K. B. 366.

9499. *Add. Annotations*:—*Refd.* *Lake v. Simmons*, [1926] 2 K. B. 51; *Lowther v. Harris* (1926), 43 T. L. R. 24.

9500. *Add. Annotations*:—*Refd.* *Lake v. Simmons* (1926), 95 L. J. K. B. 586; *Lowther v. Harris* (1926), 43 T. L. R. 24.

9537. *Add. Annotations*:—*Consd.* *Lowther v. Harris* (1926), 43 T. L. R. 24; *Lake v. Simmons*, [1927] A. C. 487.

After this case add “*See, also.* *INSURANCE*, Vol. XXIX., p. 417, No. 3258.”

9553. *Add. Annotation*:—*Refd.* *Lake v. Simmons* (1926), 95 L. J. K. B. 586.

### PART XXXIII. SECT. 14, SUB-SECT. 1. —A.

q i. — — — — —.]—A person having a domicile out of Canada, who leaves his family in Canada without means, may be convicted of failing to support his family in Canada.—*R. v. SCOTT* (1925), 41 Can. Crim. Cas. 117.—CAN.

### PART XXXIII. SECT. 15, SUB-SECT. 1.

i i. — — — — —.]—*Girl out of parents’ control.*—*R. v. JOE (Ont.)* (1928), 50 Can. Crim. Cas. 152.—CAN.

### PART XXXIII. SECT. 21.

sa. *Of wife & children*—*Genuine*

*inability to provide necessities*]—*Held*: a “lawful excuse.”—*R. v. BUNTING* (1926), 45 Can. Crim. Cas. 135; 58 O. L. R. 373.—CAN.

### PART XXXIV. SECT. 1, SUB-SECT. 1. —A. (a) iii.

9510 iii. — — — — —.]—Where the driver of a motor car had it supplied with gasoline & oil at a service station without arranging for credit & on the proprietor requesting payment & stating that the car must be left until the goods were paid for, he drove the car away without paying:—*Held*: he was guilty of theft.—*R. v. THOMAS*, [1928] 2 W. W. R. 608; 50 Can. Crim.

9557. *Add. Annotation*:—*Refd.* *R. v. Fisher* (1926), 19 Cr. App. Rep. 166

9614a. — — — — —.]—*R. v. HUGHES*, No. 2219a, *ante*.

9702a. *S. P. R. v. BANKS* (1821), Russ. & Ry. 441, C. C. R.

*Annotation*:—*Refd.* *R. v. Stear* (1818), 1 Den 349.

9769. *Add. Annotations*:—*Refd.* *Jones v. Waring & Gillow*, [1926] A. C. 670. *Mentd.* *Commonwealth Trust v. Akotey* (1925), 94 L. J. P. C. 167.

9773a. — — — — —.]—Where a clerk or servant, who has the mere custody of goods, disposes of them for his own benefit, & in a manner alien from the purposes for which he was intrusted with them, he is guilty of larceny.—*R. v. (1810)*, 4 J. P. 620.

Cas. 177; 23 Alta. L. R. 523.—CAN.

### PART XXXIV. SECT. 1, SUB-SECT. 4. A.

9647 iii. — — — — —.]—Where the trial judge directed the jury that, where a person is found to be in possession of anything stolen, shortly after it has been stolen, he may be convicted of the stealing or of receiving, that the accused might get rid of this fact by a satisfactory explanation, but the burden is on him to give this explanation:—*Held*: this was sufficient direction when the accused was found guilty of larceny by finding, but would have been insufficient on a conviction for

9944. *Add. Annotation*:—**Distd. Farey v. Welch**, [1929] 1 K. B. 388.  
 9954. For “———.” read “**Live animals feræ naturæ—Larcenable if reduced into possession.**”  
 9956. *Add. Annotation*:—**Consd. Farey v. Welch**, [1929] 1 K. B. 388.

R. v. Harding

L. R. 105.

- 10,060a. —. —.]—**Applt. broke into a dwelling-house which was then occupied only by a maidservant, & he attacked her & demanded money & clothes. The servant handed over a mackintosh belonging to her master. Applt. was convicted of robbing the servant of the mackintosh:—Held:** as the servant was in charge of her master's belongings she had a special property in the mackintosh, & applt.'s conviction for robbing her of it was right.—**R. v. HARDING** (1929), 46 T. L. R. 105; 73 Sol. Jo. 853; 93 J. P. Jo. 780, C. C. A.  
 10,115. *Add. Annotation*:—**Mentd. R. v. Porter** (1927), 20 Cr. App. Rep. 55.  
 10,116. *Add. Citations*:—93 L. J. K. B. 236; 130 L. T. 320; 68 Sol. Jo. 389; 27 Cox, C. C. 579.  
*Add. Annotation*:—**Consd. R. v. Hughes** (1927), 136 L. T. 671.  
 10,143. *Add. Annotation*:—**Refd. Performing Right Soc. v. Mitchell & Booker**, [1924] 1 K. B. 702.  
 10,200a. **Steward & clerk to guardians.**—**Held:** guilty of embezzlement, though not duly appointed, nor even appointed at all under the common seal.—**R. v. BEACALL, R. v. WELLINGS** (1824), 1 C. & P. 457.  
 10,315a. —. —.]—**Question of fact for jury.**—(1) Where a debt is charged with the fraudulent conversion of money the question whether he

has been entrusted with the money or has received it for or on behalf of the persons specified in the indictment is a question of fact for the jury on which the judge must adequately direct them.

(2) Counts charging the fraudulent conversion on a certain date of a general deficiency are bad unless it is the duty of deft., on the date specified, to hand over the lump sum in his hands to the person entitled to it.—**R. v. SHEAF** (1925), 134 L. T. 127; 89 J. P. 207; 42 T. L. R. 57; 28 Cox, C. C. 86; 19 Cr. App. Rep. 46, C. C. A.

*Annotation*:—(generally, **Mentd. R. v. Morter** (1927), 20 Cr. App. Rep. 53.

- 10,315b. —. —.]—Whether a transaction is an “entrusting” within Larceny Act, 1916 (c. 50), s. 20 (1), or a loan, entitling the recipient of the property to use it, is a question of fact for the jury.—**R. v. SMITH**, [1924] 2 K. B. 194; 93 L. J. K. B. 1006; 131 L. T. 28; 88 J. P. 108; 69 Sol. Jo. 37; 27 Cox, C. C. 619; 18 Cr. App. Rep. 76, C. C. A.  
*Annotation*:—**Foll'd. R. v. Sheaf** (1925), 89 J. P. 207.  
 10,315c. —. —.]—The true test in a charge under Larceny Act, 1916 (c. 50), s. 20 (1) (iv) (a), is whether accused had control of the property charged or not, in circumstances whereby he became entrusted.—**R. v. MORTER** (1927), 20 Cr. App. Rep. 53, C. C. A.  
 10,316. *Add. Annotations*:—**Appld. R. v. Tuttle** (1929), 140 L. T. 701. **Refd. R. v. Smith**, [1924] 2 K. B. 194.  
 10,317. *Add. Annotation*:—**Refd. R. v. Morter** (1927), 20 Cr. App. Rep. 53.  
 10,322. *Add. Annotation*:—**Dbtd. R. v. Smith**, [1924] 2 K. B. 194.  
 10,326a. **Indictment—Necessary averments.**—**R. v. SHEAF**, No. 10,315a,  
 10,333. *Add. Annotation*:—**Refd. R. v. Smith**, [1924] 2 K. B. 194.

larceny or receiving.—**R. v. WESTON**, [1927] S. A. S. L. 439.—**AUS.**

**PART XXXIV. SECT. 1, SUB-SECT. 9.**  
 —B. (b).

sl. *Goods on approval*.—**Conversion of good.**—Where a person takes goods on approval under an agreement that property therein was to pass only if he exercised his option to take them, & paid cash in full for certain articles & in part for others.—**Held:** the trust continues till the option is exercised & cash payments made, & he commits a criminal breach of trust if he sells them without such payments.—**KHITISH CHANDRA DEB Roy v. R.** (1924), 1 L. R. 51 Cal. 796.—**IND.**

**PART XXXIV. SECT. 1, SUB-SECT. 13.**

sm. *Crop-payment lease*.—**Lessee disposing of whole crop & appropriating proceeds**.—Not offence of theft.—**R. v. HANDSBER**, [1924] 1 D. L. R. 1194; 41 Can. Crim. Cas. 177; [1923] 2 W. W. R. 661.—**CAN.**

**PART XXXIV. SECT. 1, SUB-SECT. 14.—A.**

9880 i. *From sheriff*.—**Valid seizure must be proved.**—**R. v. LUCIUK** (Sask.), [1926] 3 W. W. R. 453.—**CAN.**

**PART XXXIV. SECT. 1, SUB-SECT. 17.**  
 —C.

so. *Obtaining signature to promissory note*.—Deft. was convicted under Criminal Code, s. 405, of the offence of obtaining by false pretences a promissory note for \$1,000 from one B. The evidence showed that deft. procured the signature of B. to a form of promissory note, giving his own note

in exchange therefor. The printed form was not the property of B.—**Held:** merely inducing B. to sign his name was not “obtaining anything capable of being stolen” within s. 405.—**R. v. LEROUX**, [1928] 3 D. L. R. 688; 50 Can. Crim. Cas. 52; 62 O. L. R. 336.—**CAN.**

**PART XXXIV. SECT. 1, SUB-SECT. 20.**

10,121 i. For “**R. v. MCINTYRE** (1898), 31 N. S. R. 422,” read “**R. v. MCCAFFREY** (1900), 33 N. S. R. 232.”

10,123 xiii. —. —.]—**R. v. ANDREWS** (N.R.) (1925), 44 Can. Crim. Cas. 201.—**CAN.**

10,123 xiv. —. —.]—**R. v. WIL-** (1924), 35 B. C. R. 64.—**CAN.**

10,123 xv. —. —.]—**R. v. JONES** (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

10,123 xvi. —. —.]—Accused was found on May 17 in possession of a bicycle stolen on Feb. 11.—**Held:** the period of three months was not too long to cast upon accused the duty of accounting, or giving some reasonable explanation, for his possession, & in the absence of a reasonable explanation the ct. might infer guilt & convict.—**JAMES v. R.** (1927), 48 N. L. R. 289.—**S. AF.**

**PART XXXIV. SECT. 2, SUB-SECT. 3.**  
 d. For “**AUS.**” read “**S. AF.**”

**PART XXXIV. SECT. 2, SUB-SECT. 6.**

10,298 iv. —. —.]—Where a law-agent did not account for sums

collected for a client, notwithstanding repeated applications made for the money, & only remitted the sums after he had been arrested.—**Held:** a conviction for embezzlement was justified.—**EDGAR v. MACKAY**, [1926] S. C. (J.) 94.—**SCOT.**

**PART XXXIV. SECT. 3, SUB-SECT. 1.**

10,314 ii. —. —.]—H. entered the offices of F., Ltd., in V., & in exchange for \$1,000 received \$23 in cash & a draft for \$200 drawn on P. Bank, Ltd., London, reciting “pay from our credit balance to the order of H. \$200,” & signed F., Ltd. H. indorsed the draft “pay to the order of L. Bank, Ltd., for deposit to my credit.” When H. presented the draft at L. Bank, Ltd., Liverpool, payment was refused. On a charge against F. under Criminal Code, s. 355, for converting the money to his own use & for failing to account for it, it was found by the trial judge that F., Ltd., was an alias for F. himself; that F. knew of the transaction carried out by his clerk; that F., Ltd., had no credit either at L. Bank, Liverpool, or at P. Bank, London, & they did not remit H.'s money to London as undertaken.—**Held:** on the facts stated the case did not come within sect. 355, & the conviction was set aside.—**R. v. FAULDS** (1922), 40 Can. Crim. Cas. 300; 31 B. C. R. 421.—**CAN.**

10,314 iii. —. —.]—Where a person hands over money to another pursuant to a proposal & undertaking of the latter to invest the money in certain securities, there is in substance a “direction,” within Criminal Code, s. 357, so to invest it.—**R. v. CAMPBELL**

10,345. *Add. Annotation*:—*Appld. R. v. Tuttle* (1929), 140 L. T. 701.

10,345a. ——— *Preliminary examination in bankruptcy*.—*R. v. TUTTLE*, No. 2204a, *ante*.

10,345b. ——— *Affidavit in defence to action for account by co-trustee*.—*R. v. TUTTLE*, No. 2204a, *ante*.

10,480. *Add. Annotations*:—*Refd. R. v. Denyer*, [1926] 2 K. B. 258; *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

10,487a. *Demand of money as alternative to inclusion in stop list—Protection of trade interests*.—D., a servant & stop list superintendent of the Motor Trade Assocn., wrote a letter to R., a garage proprietor, stating that the assocn. offered an alternative to R. to inclusion in the stop list of the assocn., namely, the payment of a certain sum, & the publication of an undertaking to observe protected prices of motor cars, etc.:—*Held*: D. was rightly convicted of uttering a letter demanding money with menaces contrary to Larceny Act, 1916 (c. 50), s. 29 (1), & it was immaterial that his motive in writing the letter was the protection of a trade interest.—*R. v. DENYER*, [1926] 2 K. B. 258; 95 L. J. K. B. 699; 134 L. T. 637; 42 T. L. R. 452; 28 Cox, C. C. 153; 19 Cr. App. Rep. 93, C. C. A.

*Annotations*:—*N.F. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306. (NOTE.—For the purposes of the administration of criminal law, unless & until *R. v. Denyer* is reversed by the only competent tribunal [viz., the House of Lords], it is binding upon, & will be enforced by, the Ct. of Criminal Appeal against any person or persons offending in like manner (*LORD HEWART, C. J.*) (1928), 20 Cr. App. Rep., at pp. 185 & 186). *Refd. Auto-Mart (London) v. Chilton* (1927), 43 T. L. R. 463.

(1926), 45 Can. Crim. Cas. 159; 22 Alta. L. R. 219; [1926] 1 W. W. R. 671.—CAN.

#### PART XXXIV. SECT. 3, SUB-SECT. 2.

10,327 iv. ———.—To be guilty of theft under Criminal Code, s. 355, accused must have received money, valuable security, or other things on terms requiring him to hand over the thing received, or the proceeds thereof, to some person other than the person from whom he received it, & have fraudulently converted it to his own use.—*R. v. CONNORS* (1923), 51 N. B. R. 247.—CAN.

10,327 v. ———.—Where A. delivers goods to B. requiring him to account to him, A., for them, the case is not within Criminal Code, s. 355.—*R. v. LUCIUK* (Sask.), [1926] 3 W. W. R. 453.—CAN.

#### PART XXXIV. SECT. 3, SUB-SECT. 3.

10,334 v. ———.—On the trial of a charge under Criminal Code, s. 357, the jury should be instructed to determine, leaving aside any directions which may be in evidence with respect to the disposition of the money alleged to have been misapplied, whether without such directions the relationship of debtor & creditor would exist between the parties, & that if it would the directions must have been in writing, & that, if it would not, oral directions would be sufficient to support the charge.—*R. v. SWIRK*, [1925] 1 D. L. R. 1015; [1925] 1 W. W. R. 656; 43 Can. Crim. Cas. 245.—CAN.

#### PART XXXIV. SECT. 8, SUB-SECT. 2.

10,469 i. ———.—*Letter addressed to non-existent person*.—Def't. was convicted of sending a threatening letter addressed to "Sir James W. Moir" at

40, Duke St., Halifax. There was no such person as "Sir James W. Moir," but 40 Duke St. was the business address of James W. Moir, by whom the letter was received.—*Held*: def't.'s appeal from the conviction failed.—*R. v. VARBEFF* (1922), 57 N. S. R. 415.—CAN.

#### PART XXXIV. SECT. 8, SUB-SECT. 3. —B.

10,465 ii. ———.—Where a person is indicted on a charge under Crimes Act, 1900, s. 99, of having by menaces demanded property with intent to steal the same, & where the threats or menaces used for the purpose of obtaining the property are manifestly of such a character that there can be no doubt that they would operate on the mind, not only of the victim, but of any reasonable person, a judge may in his summing up direct the jury as a matter of law, that if they believe the evidence for the Crown, the threats or menaces used would constitute a menace within the meaning of the sect.—*R. v. KASMUSSEN & SPIEGELGLASS* (1928), 28 S. R. N. S. W. 349; 45 N. S. W. N. R. 87.—AUS.

*P. I.* ———.—*Extortion by constable*.—*R. v. LAPHAM* (1913), 24 O. W. R. 111; 4 O. W. N. 838; 21 Can. Crim. Cas. 79; 10 D. L. R. 315.—CAN.

#### PART XXXIV. SECT. 9, SUB-SECT. 3.

10,679 i. *Intent must be alleged*.—*R. v. ROSS*, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—CAN.

#### PART XXXIV. SECT. 14, SUB-SECT. 1.

*et. — Distinct from receiving goods knowingly stolen*.—*R. v. YEAMAN*, [1924] 2 D. L. R. 1116; 2 W. W. R. 452; 42 Can. Crim. Cas. 78; 33 B. C. R. 390.—CAN.

10,505a. ———.—*Applts. were convicted of threatening to accuse of a crime within Larceny Act, 1916 (c. 50), s. 29 (2) (b), with intent to extort money. They had enticed a man into a compromising situation with one of themselves & then threatened to accuse him of "improper conduct":—Held: the mere fact of the words being capable of being understood to mean some offence not within the sect. was no defence, as it was a question for the jury what was the effect on the mind of the man on whom they were intended to operate, & as there was evidence on which the jury could properly come to the conclusion that the threat was a threat to accuse of the particular crime mentioned in the indictment, & the convictions must be affirmed.—R. v. STUART, R. v. LEONARD, R. v. MAPLES, R. v. TANNEN, R. v. TAYLOR* (1927), 43 T. L. R. 715; 20 Cr. App. Rep. 74, C. C. A.

by night].—*R. v.*

*HARRIS*, No. 5178a, *ante*.

10,731a. ———.—*Possession must be by night*.—*R. v. HARRIS*, No. 5178a, *ante*.

10,752. *Add. Citation*:—68 Sol. Jo. 251.

10,754a. ———.—*R. v. HYMAN* (1926), 19 Cr. App. Rep. 125, C. C. A.

10,754b. ———.—*Or obtained—Meaning*.—"Obtained" in Larceny Act, 1916 (c. 50), s. 33, means obtained physically.—*R. v. MISSELL, R. v. RINGLE, R. v. BERRINGTON* (1926), 19 Cr. App. Rep. 109, C. C. A.

10,779. *Add. Annotation*:—*Refd. Conn v. Turnbull* (1925), 89 J. P. Jo. 300.

#### PART XXXIV. SECT. 14, SUB-SECT. 3. —A.

10,773 iv. ———.—*Proof of suspicion that goods stolen*.—Where, on a charge of unlawful possession, neither of the arresting police constables swore that he actually entertained a suspicion that the article had been stolen or unlawfully obtained, & the evidence only rendered it probable that such suspicion existed.—*Held*: def't. could not be convicted.—*CONSTEN v. NOBLETT*, [1927] S. A. S. R. 421.—AUS.

10,773 v. ———.—*What evidence necessary*.—A person cannot be called on to account for his possession of property under Police Act, XIII of 1856, s. 35 (1), unless there is evidence which satisfies, not the police officer, but the Ct., after judicial consideration, that such property "may be reasonably suspected of being stolen or fraudulently obtained."—*R. v. DHANJIBHAI EDULJI* (1895), 1 L. L. R. 20 Bom. 348.—IND.

#### PART XXXIV. SECT. 14, SUB-SECT. 3. —B.

10,789 iii. ———.—The mere finding of stolen property in the house where accused lived is not of itself sufficient to prove possession by him, where there are other inmates of the house. There must be control, exclusive or joint, as well. Especially is this the case where accused was only a casual inmate of the house & where the place where the property was found hidden was accessible, not only to the other inmates of the house, but to outsiders as well.—*R. v. PAWLETT*, [1923] 1 W. W. R. 1453; 40 Can. Crim. Cas. 312; 33 Man. L. R. 103.—CAN.

#### PART XXXIV. SECT. 14, SUB-SECT. 4. A.

10,828 i. *Onus of proof*.—*R. v.*



**10,815a.** — Under Frauds by Workmen Act, 1777 (c. 56), s. 10—"Dwelling-house"—Includes warehouse not attached to dwelling-house.—*R. v. EDMUNDSON* (1859), 2 E. & F. 77; 28 L. J. M. C. 213; 33 L. T. O. S. 237; 23 J. P. 710; 5 Jur. N. S. 1351; 7 W. R. 505; 8 Cox, C. C. 212; 121 E. R. 30.

*Annotations.*—**Mentd.** *Gunnestad v. Price*, Fullmore v. Wait (1875), L. R. 10 Exch. 65; *R. Layard, Layard v. Bessborough* (1916), 85 L. J. Ch. 505; A.-G. v. Brown, [1920] 1 K. B. 773.

**10,878a.** — — — — — *R. v. DAWSON* (1926), 19 Cr. App. Rep. 128, C. C. A.

**10,878b.** — — — — — *R. v. DAWSON* (1926), 19 Cr. App. Rep. 128, C. C. A. — The proper direction on a charge of receiving with guilty knowledge is that, if the jury are satisfied that deft.'s explanation is consistent with his innocence, they ought to, not may, acquit, even if they do not accept the explanation given by a witness for the defence.—*R. v. KETTERINGHAM* (1926), 19 Cr. App. Rep. 159, C. C. A.

**10,898.** *Add. Annotation.*—**Refd.** *Eadie v. I. R. Comrs.*, [1924] 2 K. B. 198.

**10,905a.** — — — — — *R. v. REYNOLDS* (1927), 20 Cr. App. Rep. 125, C. C. A.

**10,906a.** — — — — — *R. v. REYNOLDS* (1927), 20 Cr. App. Rep. 125, C. C. A. — On the trial of an indictment for receiving with guilty knowledge, the jury must be clearly warned that the contents of a statement made by the thief before the trial are not evidence against deft., & if the former is called at the trial before he is sentenced, there must be a careful direction on his testimony.—*R. v. BAGULEY* (1925), 19 Cr. App. Rep. 54, C. C. A.

**10,927a.** Several accused charged with receiving—Direction as to possession.—*R. v. PECKHAM* (THE YOUNGER), No. 3165c, ante.

*BERELOVITCH* (N. S.) (1926), 46 Can. Crim. Cas. 148.—CAN.

**PART XXXIV. SECT. 14, SUB-SECT. 5.**

**ii.** — — — — — *R. v. JONES* (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—CAN.

**10,851 i.** What is recent—Materiality of nature of article.—*R. v. JONES* (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—CAN.

**10,852 iv.** — — — — — *R. v. ANDREWS* (N.B.) (1925), 44 Can. Crim. Cas. 201.—CAN.

**10,852 v.** — — — — — *R. v. JONES* (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—CAN.

**PART XXXIV. SECT. 14, SUB-SECT. 8.**

**10,901 i.** Recent possession of stolen property—As evidence of receiving.—*R. v. JONES* (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—CAN.

**PART XXXIV. SECT. 14, SUB-SECT. 9.**

**sn.** Several articles received by different persons—Receivers triable jointly.—*MUHAMMAD GULJANIA v. R.* (1927), 1 L. R. 6 Pat. 583.—IND.

**PART XXXIV. SECT. 16, SUB-SECT. 1.**

**10,975 ii.** — — — — — In order to constitute the offence of obtaining money by false pretences, it is not necessary that the fraud should operate in precisely the way intended or expected

by prisoner. If in fact the fraud operated as a direct cause of the payment of money, it is immaterial that the chain of causation was different from that which prisoner intended or expected.—*R. v. LAMBART*, [1927] V. L. R. 349; 49 A. L. T. 23; [1927] Argus L. R. 297.—AUS.

**PART XXXIV. SECT. 16, SUB-SECT. 2.**

**B.**  
**11,001 ii.** — — — — — Where accused was found guilty of an offence under Crimes Act, 1915, s. 181 (a), for obtaining goods by false pretences—*Held:* under the above sect. it was not necessary that the property in the goods obtained should pass to accused, the passing of the property from the person defrauded being sufficient.—*R. v. O'SULLIVAN*, [1925] V. L. R. 514; 547 A. L. T. 3; 21 Argus L. R. 263.—AUS.

**PART XXXIV. SECT. 16, SUB-SECT. 2.**

**D.**  
**ii.** — — — — — Where a party is induced by false representation to part with possession of goods, but does not part with the right of property therein, there can be no conviction for obtaining goods under false pretences.—*R. v. MCMAHON*, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B. R. 255.—CAN.

**PART XXXIV. SECT. 16, SUB-SECT. 3.**

**D. (d).**  
**11,191 i.** Value or extent of business.—*R. v. PENNY* (1925), 35 B. C. R. 414.—CAN.

**PART XXXIV. SECT. 16, SUB-SECT. 4.**

**11,266 i.** — — — — — Reasonable belief in ability to pay.—*R. v. REYNOLDS*, [1927] S. A. S. R. 228. AUS.

**10,940.** *Add. Annotation.*—**Refd.** *R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38.

**10,997.** *Add. Annotation.*—**Refd.** *Lake v. Simmons* (1926), 95 L. J. K. B. 586.

**11,011.** *Add. Annotation.*—**Mentd.** *Perlak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111.

**11,038a.** — — — — — False pretences are not proved, unless the falsity of the words used is unequivocal & intentional.—*R. v. SEELY* (1928), 21 Cr. App. Rep. 18, C. C. A.

**11,069.** *Add. Annotation.*—**Mentd.** *Short v. Poole Corpn.* (1925), 42 T. L. R. 107.

**11,120.** *Add. Annotation.*—**Refd.** *R. v. Punch* (1927), 20 Cr. App. Rep. 18.

**11,346.** *Add. Annotation.*—**Refd.** *R. v. Punch* (1927), 20 Cr. App. Rep. 18.

**11,375.** *Add. Citations.*—[1924] 1 K. B. 311; 93 L. J. K. B. 144; 130 L. T. 318; 27 Cox, C. C. 574; [1924] R. & C. R. 78.

**11,428.** *Add. Annotation.*—**Mentd.** *Minter v. Priest*, [1929] 1 K. B. 655.

**11,467.** *Add. Annotation.*—**Refd.** *Shapiro v. La Morta* (1923), 130 L. T. 622.

**11,642a.** Charge under Metropolitan Police Courts Act, 1839 (c. 71), s. 38—Time for bringing—Existing tenancy.—Where a landlord, during the existence of a tenancy, charged his tenant under the above sect. with having three months before wilfully damaged his premises:—*Held:* the charge should have been made within one month.—*DOWELL v. BENINGFIELD* (1841), Car. & M. 9.

**11,686.** *Add. Annotation.*—**Refd.** *British Broadcasting Co. v. Wireless League Gazette Publishing Co.* (1926), 95 L. J. Ch. 72.

**PART XXXIV. SECT. 16, SUB-SECT. 7.**

**ii.** — — — — — Alleged false representation of market value of bonds—No averment that market value not as represented.—*R. v. ROBERTSON* (N. S.), [1928] 4 D. L. R. 778; 50 Can. Crim. Cas. 179.—CAN.

**PART XXXIV. SECT. 21, SUB-SECT. 2.**

**11,383 i.** Who is a "creditor."—A person who sells goods, other than necessities, to an infant, & who has no enforceable claim for the price, is not a "creditor" within Criminal Code, s. 417.—*R. v. RASH* (1923), 41 Can. Crim. Cas. 215; 53 O. L. R. 245.—CAN.

**PART XXXIV. SECT. 26, SUB-SECT. 1.**

**B.**  
**sq.** Intentional wrongful injury.—To constitute the crime of malicious injury to property, all that is necessary is an intentional & wrongful injury to another's property. Upon proof of the wrongful intention the ct. will presume malice, though that presumption may be rebutted.—*R. v. MASHARION*, [1924] App. D. 11.—S. AF.

**PART XXXIV. SECT. 26, SUB-SECT. 6.**

**sr.** Possession of explosive substance—Explosive Substances Act, s. 4—Meaning of "unlawfully" & "maliciously."—*Held:* the word "unlawfully" in Explosive Substances Act, s. 4, signifies "not for a lawful object," & the word "maliciously" means & implies an intention to do an act which is wrongful, to the detriment of another person.—*DULA SINGH v. R.* (1928), 1 L. R. 9 Lah. 531.—IND.

**PART XXXIV. SECT. 26, SUB-SECT. 17.**

**11,699 ii.** — — — — — The fact that a



- 11,709. *Add. Annotation*:—**Refd.** *Barnard v. Evans*, [1925] 2 K. B. 794. | 11,738. *Add. Annotation*:—**Refd.** *Conn v. Turnbull* (1925), 89 J. P. Jo. 300.

## Part XXXV.—Forgery.

- 11,797. *Add. Annotation*:—**Refd.** *McDonald v. Nash*, [1924] A. C. 625. | *v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40. **Mentd.** *Australian Bank of Commerce v. Perel*, [1926] A. C. 737; *Jones v. Waring & Gillow*, [1926] A. C. 670.
- 11,834. *Add. Annotations*:—**Consd.** *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. **Refd.** *Goldman v. Cox* (1924), 40 T. L. R. 423; *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Fenton Textile Assocn. v. Thomas* (1929), 45 T. L. R. 264; *Lloyds Bank* | 11,837. *Add. Annotation*:—**Refd.** *Mason v. Lack* (1929), 140 L. T. 696.
- 11,962. *Add. Annotation*:—**Refd.** *R. v. FERGUSON* (1845), 5 L. T. O. S. 458.

## Part XXXVI.—Deceit by Fortune Telling, Witchcraft, Sleight of Hand, etc.

- 12,169a. ———.] — The offence under Vagrancy Act, 1824 (c. 83), s. 4, of professing to tell fortunes is complete without any allegation or proof that deft. did not believe in the possession of the powers claimed. Merely to tell fortunes is an offence in itself, whatever the state of mind of deft.—**STONEHOUSE v. MASSON**, [1921] 2 K. B. 818; 91 L. J. K. B. 93; 125 L. T. 463; 85 J. P. 167; | 37 T. L. R. 621; 19 L. G. R. 477; 27 Cox, C. C. 23, D. C.
- Annotation*:—**Folld.** *Irwin v. Barker* (1925), 69 Sol. Jo. 589. | 12,169b. ———.]—It is not necessary to prove a deceitful purpose or fraudulent intent as a condition precedent to a conviction under Vagrancy Act, 1824 (c. 83), s. 4, of a person professing to tell fortunes.—**IRWIN v. BARKER** (1925), 69 Sol. Jo. 589, D. C.
- stray bull is castrated, in accordance with a local custom among stock breeders to protect pure-bred stock, is not a defence to a prosecution under Criminal Code, s. 510 (B) (b), for maiming or wounding the stray bull.—**R. v. ENGLAND** (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165, [1925] 1 W. W. R. 237.—**CAN.**
- st. What is "wilfully" killing?—A charge laid under Criminal Code, s. 537, of wilfully killing a silver black fox which had escaped from its cage was dismissed on the ground that the accused's shooting of the fox was not done "wilfully," within the meaning of that term in said section, but was justified to protect his property.—**R. v. PETERSON** (Sask.), [1928] 3 W. W. R. 516.—**CAN.**
- PART XXXIV. SECT. 26, SUB-SECT. 20.**
11. ———.]—The form of conviction should state the amount of injury done, although it should adjudge the whole penalty, including the amount to be applied according to law.—**R. v. KRUTZEL**, [1921] 1 D. L. R. 621; 1 W. W. R. 342; 41 Can. Crim. Cas. 279; 20 Alta. L. R. 19.—**CAN.**
- PART XXXV. SECT. 2, SUB-SECT. 2.**
- 11,762 i. *Ante-dating* ]—The ante-dating of a document is not a forgery, unless it has or could have operated to the prejudice of any one.—**R. v. GOBIND SINGH** (1926), 1 L. L. R. 5 Pat. 573. **IND.**
- PART XXXV. SECT. 8, SUB-SECT. 1.**
- sz. *Utterer need not be actual forger.* ]—**BARK v. H.M. ADVOCATE**, [1927] S. C. (J.) 51.—**SCOT.**

## CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL.

## Part I.—Contempt of Court Generally.

3. *Add. Annotation* :—*Mentd.* Glasbrook v. Glamorgan County Council, [1925] A. C. 270.

## Part III.—Jurisdiction to Commit or Fine for Contempt.

46. *Add. Citations* :—*sub nom.* R. v. BROWNELL, 1 Ad. & El. 598 ; 3 L. J. M. C. 118 ; 110 E. R. 1835.

## Part IV.—Criminal Contempt.

98. *Add. Citation* :—*sub nom.* *Re* DAVIES, BUTSON v. DAVIES, 4 T. L. R. 580.

164a. —.—.]—Observations on the distinction between legitimate criticism of a judge & such an imputation of unfairness & lack of impartiality as constitutes contempt of ct.—R. v. NEW STATESMAN (EDITOR), *Ex p.* PUBLIC PROSECUTIONS DIRECTOR (1928), 44 T. L. R. 301, D. C.

165a. —.—.]—R. v. NEW STATESMAN (EDITOR). *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 164a, *ante*.

166. *Add. Annotations* :—*As to* (1) *Apld.* R. v. New Statesman, *Ex p.* Public Prosecutions Director (1928), 44 T. L. R. 301. *As to* (2) *Apld.* R. v. New Statesman, *Ex p.* Public Prosecutions Director (1928), 44 T. L. R. 301.

167. *Add. Annotation* :—*Refd.* R. v. People, *Ex p.* Hobbs (1925), 69 Sol. Jo. 494.

179. *Add. Annotations* :—*Refd.* R. v. Evening Standard, *Ex p.* Public Prosecutions Director. R. v. Manchester Guardian, *Ex p.* Same, R. v. Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833 ; R. v. Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.

179a. —.—.]—*Results of investigations of private detectives.*—When an accused person is under

arrest on a criminal charge, it is contempt of ct. for the persons responsible for conducting a newspaper to employ amateur detectives for the purpose of investigating the facts of the alleged crime & to publish the results of that investigation.—R. v. EVENING STANDARD. *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, R. v. MANCHESTER GUARDIAN, *Ex p.* SAME, R. v. DAILY EXPRESS, *Ex p.* SAME (1924), 40 T. L. R. 833, D. C.

180a. *Charge to grand jury.*—A charge to the grand jury delivered by the Recorder of London in a place to which the public & reporters are admitted is a public judicial proceeding in a ct. of justice, of which newspapers have a right to publish a fair & accurate report.

Consideration of the question whether or not a report published in a newspaper of a charge by the Recorder of London to the grand jury was a fair & accurate report & should be regarded as privileged.—R. v. EVENING NEWS, *Ex p.* HOBBS, [1925] 2 K. B. 158 ; 94 L. J. K. B. 511 ; 132 L. T. 767 ; 41 T. L. R. 291 ; 27 Cox, C. C. 764, D. C.

182a. *Publication of statement that money paid into court*—*Libel action against newspaper*—*Libel Act, 1845 (c. 75), s. 2.*—(1) The amount of a payment into ct. by deft. under

## PART III. SECT. 2.

h i. —.—.]—Under Letters Patent of the Patna High Ct., clause 28, a Div. Bench has power to issue a rule to show cause against committal for contempt.—*Re* MURLI MANOHAR PRASAD (1928), 1 L. L. R. 8 Pat. 323.—IND.

k i. —.—.]—*Irish Free State.*—The High Ct. of Justice of the Irish Free State has jurisdiction to commit for contempt of ct.—A.-G. v. O'KELLY, [1923] 1 I. R. 308.—IR.

## PART IV. SECT. 1.

97 iv. —.—.]—The phrase "contempt of ct." does not in the least describe the true nature of the class of offence committed, viz., interfering with the administration of the law in hindering & preventing the course of justice. Imprisonment for breach of interdiction being in vindication of public law, it must not be assumed

that an order for release will follow upon an apology & promise of obedience to the orders of the ct., even though such apology is accompanied by a statement on behalf of complainant that he no longer requires the protection which the original interdiction gave him.—JOHNSON v. GRANT, [1923] S. C. 789.—SCOT.

## PART IV. SECT. 3, SUB-SECT. 1.

sp. *Sending letter to judge containing offensive references to judgment.*—*Re* MILLER (1921), 54 N. S. R. 529.—CAN.

## PART IV. SECT. 3, SUB-SECT. 2.

166 ii. —.—.]—A newspaper in the course of an article called a judge "sycophantic," & accused him of having decided a case not according to the dictates of justice but in order to please others.—*Held* : (1) the publication of an article referring to a case which had been decided might amount to contempt ; (2) an article

scandalising a ct. or judge was a contempt of ct.—R. v. SAYYAD HABIB (1925), 1 L. R. 6 Lah. 529.—IND.

## PART IV. SECT. 3, SUB-SECT. 3.—A. (a).

r i. —.—.]—*Re* SMITH'S NEWS-PAPERS, LTD., *Ex p.* HIGGS (1927), 28 S. R. N. S. W. 85.—AUS.

170 i. —.—.]—*No proceedings pending.*—*Applt.* was fined for contempt in respect of matter published by him :—*Held* : (1) there being no attack on any ct. or its members, there could be no contempt of ct. in respect of anything tending to obstruct the course of justice in the absence of any pending proceedings to which the published matter could apply ; (2) there was nothing in the published matter which was calculated to prejudice the course of justice ; (3) the order must be set aside.—PORTER v. R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. J. 433.—AUS.

Libel Act, 1845 (c. 75), s. 2, amending Libel Act, 1843 (c. 96), s. 2, is not to be communicated to the jury, & where money has been so paid in, it is contempt of ct. to publish before the trial a statement that a particular sum has been paid by deft. to pltf.'s solr., inasmuch as the publication of such a statement is calculated to prejudice the fair trial of the action.

(2) In such a case the proper procedure to be adopted by deft., who alleges that pending the trial of the action pltf. has been guilty of contempt of court, is not to apply for a rule *nisi* for attachment, but to proceed by notice of motion in the action.—*R. v. WEALDSTONE NEWS & HARROW NEWS* (EDITOR, PRINTER & PUBLISHER), *HARLEY v. SHOLL* (1925), 41 T. L. R. 508; 69 Sol. Jo. 642, D. C.

190 *Add. Annotations*:—*As to* (1) *Apld.* *R. v. Wealdstone News & Harrow News, Harley v. Sholl* (1925), 41 T. L. R. 508. *Refd.* *R. v. Evening Standard, Ex p. Public Prosecutions Director, R. v. Manchester Guardian, Ex p. Same, R. v. Daily Express, Ex p. Same* (1924), 40 T. L. R. 833; *R. v. People, Ex p. Hobbs* (1925), 69 Sol. Jo. 494; *R. v. Daily Mirror, Ex p. Smith*, [1927] 1 K. B. 845; *R. v. Daily Mail, Ex p. Factor* (1928), 44 T. L. R. 303.

192a. ———.]—A publication made with the clear intention of prejudicing the fair trial of an issue pending before a ct. is obviously a contempt of ct., & will be punished as such. But where the ct. is satisfied that there was no such intention & yet the publication might prejudice a pending trial, the ct. will, in considering whether a writ of attachment should issue, take into account the circumstances of the case, & no attachment will be

granted unless (*inter alia*) the ct. is satisfied that the pending proceeding is a genuine proceeding, brought & intended to be prosecuted to effect its avowed purpose.—*R. v. DAILY MAIL* (EDITOR), *Ex p. FACTOR* (1928), 44 T. L. R. 303, D. C.

200. *Add. Annotation*:—*Refd.* *R. v. Daily Mail, Ex p. Factor* (1928), 44 T. L. R. 303.

234. *Add. Annotation*:—*Refd.* *R. v. Daily Mail, Ex p. Factor* (1928), 44 T. L. R. 303.

236. *Add. Annotation*:—*Dbtd.* *R. v. Payne*, [1896] 1 Q. B. 577. In my opinion, in some instances, the cts. have gone rather too far (LORD RUSSELL, C.J.).

283a. *Photograph of prisoner—Identity in issue.*]—It is a contempt of ct. in a newspaper to publish the photograph of a person charged with a criminal offence, where it is reasonably clear that the question of the identity of accused with the criminal has arisen or may arise, & such publication is calculated to prejudice a fair trial.—*R. v. DAILY MIRROR, Ex p. SMITH*, [1927] 1 K. B. 845; *sub nom.* *R. v. "DAILY MIRROR" (EDITOR & PROPRIETORS), R. v. "DAILY MAIL" (EDITOR & PROPRIETORS), Ex p. SMITH*, 96 L. J. K. B. 352; 136 L. T. 539; 43 T. L. R. 254; 28 Cox, C. C. 324.

298a. *Advertisement misrepresenting result of proceedings.*]—*GILLETTE SAFETY RAZOR Co. v. GAMAGE (A. W.), LTD.* (1906), 24 R. P. C. 1.

*Annotation*:—*Refd.* *St. Mungo Manufacturing Co. v. Hutchison Main* (1908), 25 R. P. C. 356.

301. *Add. Annotations*:—*As to* (1) *Refd.* *Greenway v. A.-G.* (1927), 44 T. L. R. 124. *As to* (2) *Consd.* *Re A. B.'s Petn.* (1927), 97 L. J. P. 104.

## Part V.—Contempt in Procedure.

406a. ———.]—*OWEN v. PRITCHARD*, [1876] W. N. 147; 3 Chap. Pr. Cas. 367.

406b. ———.] *RANSOM v. BOYD*, [1877] W. N. 236.

429a. ———. *Consent order—Breach of scheduled terms.*]—There is a distinction between a case where there is in the body of an order an express direction or undertaking, & a case where the ct. is merely staying an action on terms which the parties have agreed, & only keeping the action alive for the purpose of

enforcing those terms. In the latter case the terms are not an order of the ct. capable of being enforced by proceedings for contempt, but must be enforced by an action for specific performance of the terms or for an injunction to restrain breach of the terms, followed by proceedings for contempt in the event of further breach, while in the former case contempt proceedings can be launched forthwith on breach.—*DASHWOOD v. DASHWOOD* (1927), 71 Sol. Jo. 911.

### PART IV. SECT. 3, SUB-SECT. 2.—A. (d) i.

193 ii. ———.]—*R. v. MCINROY, Re WHITESIDE* (1915), 32 W. L. R. 764; 9 W. W. R. 846.—CAN.

193 iii. ———.]—*MERIDEN BRITANNIA CO., LTD. v. WALTERS, Re LEWIS* (1915), 9 O. W. N. 87; 34 O. L. R. 518.—CAN.

193 iv. ———.]—The publication of comments on a case pending trial in a ct. amounts to contempt of ct., if the comments are such as are likely to prejudice the administration of justice in the case.—*R. v. MAUNG TIN SAW* (1927), 1 L. R. 6 Ran. 39.—IND.

### PART IV. SECT. 3, SUB-SECT. 3.—A. (d) iv.

sq. *General rule.*]—A newspaper may not, in the guise of reporting public judicial proceedings, indicate the

writer's own opinion of the demeanour of a witness & so comment on that demeanour.—*A.-G. v. DAVIDSON*, [1925] N. Z. L. R. 849.—N.Z.

### PART IV. SECT. 3, SUB-SECT. 3.—A. (e).

o i. ———. *Liability of printer.*]—A printer cannot escape liability, by alleging a contract with the owner of the press that he was not to be responsible for the contents of the publications.—*R. v. MAUNG TIN SAW* (1927), 1 L. R. 6 Ran. 39.—IND.

### PART V. SECT. 1, SUB-SECT. 1.—B. (a).

st. *Discretion of court to commit—Party unable to obey order.*]—Where a party could neither be said to have refused nor neglected to comply with an order of the ct.:—*Held*: he was

not guilty of contempt.—*R. v. CITY, Ex p. ROBERTS, JR. v. WHITE, Ex p. ROBERTS* (1922), 50 N. B. R. 401, 111.—CAN.

### PART V. SECT. 2, SUB-SECT. 3.—K.

sw. *To hand over papers—By one solicitor to another—Offer to comply subject to condition.*]—A solr. was ordered by the ct. to hand over papers to another solr. & failed to do so:—*Held*: guilty of contempt.

An offer was made to hand over subject to certain specified conditions:—*Held*: a refusal of this offer was justified.—*Re BRYANT, ISAID & Co., Ex p. LANGLEY*, [1924] 1 D. L. R. 49.—CAN.

sx. *To refrain from interference with business.*]—*CUMBERLAND RAILWAY & COAT Co. v. McDONNELL (N. S.)* (1911), 9 E. L. R. 289.—CAN.

- 6 Notes of Cases, 536; The Mellona (1848), 3 Wm. Rob. 16; The Benares (1850), 14 Jur. 581; The Milan (1861), 5 L. T. 590; R. v. City of London Court Judge, [1892] 1 Q. B. 273; The Dictator. [1892] P. 304.

## Part VI.—Attachment and Committal.

750. *Add. Annotations* :—**Mentd. Re** Wingfield & Blew, [1904] 2 Ch. 665 ; *Russell v. Russell*, [1924] A. C. 687 ; *Warren v. Warren*, [1925] P. 107.
- 776a. **Substituted service—When ordered.**—*Re A SOLICITOR*, [1892] W. N. 22 ; 36 Sol. Jo. 271.
- 781a. **On former clerk—At place where solicitor's name on door.**—*Held* : the service was not sufficient.—*BRAGG v. HATCHARD* (1858), 28 L. J. Ex. 35 ; *sub nom. Re BRAGG & HATCHARD*, 32 L. T. O. S. 132.
894. *Add. Annotation* :—*As to* (1) **Refd. R. v. Central Criminal Court JJ., Ex p. L. C. C.**, [1925] 2 K. B. 43.
- 931a. — **Irregularity of attachment.**—*Re BEVAN & GIRLING* (1863), 12 W. R. 196, L. JJ.
948. *Add. Annotation* :—**Mentd. Pitchers v. Surrey County Council**, [1923] 2 K. B. 57.
- 1039a. — — — — —.]—After an order for a writ of attachment had been made against a solr. in default further time was given by his client, the creditor, on part payment being made. On further default the writ was executed, & the solr. imprisoned :—*Held* : the right to enforce the writ had not been waived.—*Re A SOLICITOR* (1895), 64 L. J. Ch. 894.

## Part VII.—Position of Party in Contempt.

- L. J. K. B. 735 ; *Russell v. Russell*, [1924] A. C. 687, *Warren v. Warren*, [1925] P. 107.

1 Ch. Ch. 229.—CAN.

**PART VII. SECT 1, SUB-SECT. 5.**

**1144 III.**— *By filing objections to report of official referee.*—In a case where a deft., having been peremptorily ordered by the ct. to file her accounts before the official referee, failed to do so, but subsequently wanted to file her exceptions to the report of the referee. —*Held:* she could do so even though she continued to be in contempt, confining herself strictly to the defence of her rights. —**CHANDRA DAS v. RASESWARI CHAUDHURANI** (1928), **L. L. R. 55 Cal. 1110.**—**IND.**

**PART VI. SECT. 10, SUB-SECT. 6.—A.**  
b i. —.—.]—HARRIS v. MYERS (1864).

## COURTS.

## Part I.—What is a Court.

2. *Add. Annotation* :—**Refd.** *Collins v. White-way*, [1927] 2 K. B. 378.
3. *Add. Annotation* :—**Refd.** *Collins v. White-way*, [1927] 2 K. B. 378.
5. *Add. Annotations* :—**Refd.** *R. v. Bath Compensation Authority*, [1925] 1 K. B. 685; *Collins v. White-way*, [1927] 2 K. B. 378.
6. *Add. Annotations* :—**Refd.** *Frome United Breweries Co. v. Bath JJ.*, [1926] A. C. 586; *R. v. Leicester JJ.*, *Ex p. Allbrighton*, [1927] 1 K. B. 557.
9. *Add. Annotation* :—**Refd.** *Frome United Breweries Co. v. Bath JJ.*, [1926] A. C. 586.
10. *Add. Annotations* :—**Consd.** *R. v. Bath Compensation Authority*, [1925] 1 K. B. 685. **Refd.** *R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171; *R. v. Sheffield JJ.*, *Ex p. Rawson* (1927), 138 L. T. 234. **Mentd.** *R. v. Sheffield JJ.*, *Ex p. Rawson* (1927), 91 J. P. 193.
- 17a. **Court of referees - Under Unemployment Insurance Act, 1920 (c. 30).**—**Held** : a ct. discharging administrative duties only.—**COLLINS v. WHITEWAY (HENRY) & CO.**, [1927] 2 K. B. 378; 96 L. J. K. B. 790; 137 L. T. 297; 43 T. L. R. 532.

## Part IV.—Jurisdiction.

22. *Add. Annotation* :—**Mentd.** *Sassoon v. Graham & Oriental Navigation Co.* (1925), 133 L. T. 805.
- 22a. **Death of judge during trial—Jurisdiction of another judge to continue hearing.**—**Semble** : a judge has no jurisdiction to continue the hearing of a case, in which witnesses have been called in ct. in the course of a trial before a jury & another judge.—**COLESHILL v. MANCHESTER CORPN.**, [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.
- 22b. ———.—**Where during proceedings without a jury, after some of the witnesses have been called, the presiding judge dies, another judge, if there is no conflict of evidence, may at the request of the parties preside at the continuation of the hearing, after reading the shorthand notes of the evidence, & need not have the witnesses recalled.**—**Re BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD.'S APPLICATION** (1929), 45 T. L. R. 186.
- 22c. **Court with local jurisdiction—Acts to be done within jurisdiction—In absence of contrary intention.**—**Where an Act of Parliament establishes a ct. for a particular part of the United Kingdom, the true construction of it is, that everything which is to be done under the authority of the ct. is to be done within the jurisdiction of the ct., unless the Act either in express terms or by necessary implication says that it may be done out of the jurisdiction.**—**Re O'LOGHLEN, Ex p. O'LOGHLEN** (1871), 6 Ch. App. 406; 40 L. J. Bey. 28; 23 L. T. 878; 19 W. R. 459, L. JJ.
- Annotations* :—**Refd.** *Re Morton, Ex p. Robertson* (1875), L. R. 20 Eq. 733. **Mentd.** *Re Lancaster, Ex p. Lancaster* (1876), 3 Ch. D. 498, *Re Myer, Ex p. Pascal* (1876), L. L. J. Bey. 81.
23. *Add. Annotation* :—**Generally, Mentd.** *St. Magnus Parochial Church Council, etc. v. London Diocese Chancellor*, [1923] 1 P. 38.
24. *Add. Annotation* :—**Mentd.** *Pryce v. Pioneer Press* (1925), 42 T. L. R. 29.
25. *Add. Annotation* :—**Consd.** *Sassoon v. Graham & Oriental Navigation Co.* (1925), 133 L. T. 805.
28. *Add. Annotation* :—**Mentd.** *Tallack v. Tallack & Brockema*, [1927] P. 211.
30. *Add. Annotations* :—**Refd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 441. **Mentd.** *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.
- 33a. **Will not try hypothetical case.**—**It is not the function of a ct. of law to advise parties as to what would be their rights under a hypothetical state of facts** (**LORD LORE-BURN, C.**)—**GLASGOW NAVIGATION CO. v. IRON ORE CO.**, [1910] A. C. 293; 79 L. J. P. C. 83; 102 L. T. 435; 11 Asp. M. L. C. 387, H. L.
- 33b. **Will not decide academical question.**—**TINDALL v. WRIGHT** (1922), 127 L. T. 149; 86 J. P. 108; 38 T. L. R. 521; 66 Sol. Jo. 524; 27 Cox, C. C. 212, D. C.
35. *Add. Annotations* :—**Refd.** *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385; *Compania Mercantil Argentina v. United States Shipping Board* (1924), 93 L. J. K. B. 816; *Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.
37. *Add. Annotation* :—**Consd.** *The Fagernes*, [1926] P. 185.

## PART I.

**sa. Not income tax board of appeal.**—A board of appeal created under Income Tax Assessment Act, 1922–1923, s. 41, is not a High Ct. or a federal ct.—**BRITISH IMPERIAL OIL CO., LTD. v. FEDERAL COMB. OF TAXATION** (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—**AUS.**

**sb. Not Medical Council of Physicians.**—**The Medical Council of**

**Physicians & Surgeons of Saskatchewan acting under Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not a ct.**—**HUNT v. COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN**, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—**CAN.**

## PART IV. SECT. 3, SUB-SECT. 1.—A.

**sd. Power to act as appeal court from**

**inferior court.**—**Where an inferior ct. is acting within its jurisdiction the Superior Ct. has no power at common law to assume the function of an appellate ct. & review its conclusions by means of a writ of *habeas corpus* either with or without *certiorari*.**—**Re CHINESE IMMIGRATION ACT & LEE CHOW YING** (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

37a. — *Waters within fauces terrae.*—Defts., an Italian co., moved to set aside an order for service of notice of a writ in *personam* upon them in Italy, in respect of a collision between their vessel, which sank, & plffs.' vessel in the Bristol Channel some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast according to the respective cases. The ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty

extended:—*Held*: having regard to the statement of the A.-G. (see CONSTITUTIONAL LAW, No. 136a, ante), the place where the collision took place was not within the jurisdiction of the High Ct., & the order for service of notice of the writ on defts. in Italy must be set aside.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) v. SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 631, C. A.

38. *Add. Annotation*:—As to (1) *Consd.* The Fagernes, [1926] P. 185.

#### PART IV. SECT. 3, SUB-SECT. 2.

45 vii a. — — — — —.]—DEPUTY FEDERAL COMR. OF TAXATION FOR TASMANIA v. THOMAS (1924), 35 C. L. R. 299.—AUS.

45 vii b. — — — — —.]—Jurisdiction of a county ct. action against a non-resident of the judicial division in which the action is entered cannot be sustained on the ground that the cause of action arose within the division, unless the whole cause of action arose therein.—COMRA v. SIMPSON, [1925] 4 D. L. R. 1002; [1925] 3 W. W. R. 541; 35 Man. J. L. R. 235.—CAN.

45 vii c. — — — — —.]—*Re* NOBLE v. CLINE (1889), 18 O. R. 33.—CAN.

45 vii d. — — — — —.]—*Re* LEWIS, *Ex p.* ELECTROLUX, LTD. (1928), 28 S. R. N. S. W. 578; 45 N. S. W. W. N. 185.—AUS.

45 vii e. — — — — —.]—In County Cts. Act, R.S.M. 1913, c. 44, s. 69, which provides that any suit may be entered & tried in the ct. holden in the judicial division in which the cause of action arose, or in which deft. or one of defts. resides or carries on business at the time the action is brought, the words "carries on business" are not to be read literally, but confer jurisdiction only when the business is carried on by deft. in person; i.e. if the cause of action did not arise within the division the condition of jurisdiction is presence of deft. within the division either by residence or by carrying on business therein.—MILLER v. AIKINS (Man.), [1929] 1 D. L. R. 140; [1928] 3 W. W. R. 520.—CAN.

45 xii a. — — — — —.]—*Re* PIKE v. WALKER, [1926] 3 D. L. R. 439; 59 O. L. R. 47.—CAN.

45 xiv. — — — — —.]—*Municipal Courts Act*, R. S., 1923 (c. 219), s. 9 (4).—BISHOP v. KILGUP, [1927] 1 D. L. R. 231; 59 N. S. R. 109.—CAN.

45 xv. — — — — —.]—*Suit against non-resident foreigner.*—*Held*: Code of Civil Procedure, s. 21, applied only to cts. which are subject to the provisions of the Code, & does not apply to a suit instituted in a British Indian ct. against a non-resident foreigner on a cause of action which arose wholly outside British territory, & therefore, the decree passed in this case must be set aside as being without jurisdiction.—BHAMBHOO MAL v. RAM NARAIN (1928), 1 L. R. 9 Lah. 455.—IND.

e (p. 105) i. — — — — —.]—HUTTON, McLEA & Co. v. KELLY (1818), 1 Nfld. L. R. 105.—NFLD.

e (p. 105) ii. — — — — —.]—MORRIS v. CAMERON (1862), 12 C. P. 422.—CAN.

e (p. 105) iii. — — — — —.]—FLEMING v. LIVINGSTONE (1873), 6 P. R. 63.—CAN.

e (p. 105) iv. — — — — —.]—CANADIAN OIL COS., LTD. v. MARGESON (1917), 51 N. S. R. 331.—CAN.

e (p. 105) v. — — — — —.]—*Whether plaintiff may abandon part of claim.*—CHAPMAN v. DOHERTY (1885), 25 N. B. R. 271.—CAN.

e (p. 105) vi. — — — — —.]—*Application*

*to moving jurisdiction.*—County Courts Act, s. 34, which provides *inter alia* that, if in any action of tort plff. shall claim over \$250, & deft. objects to the action being tried in the county ct. & gives security for trial in the Supreme Ct., the proceedings in the county ct. shall be stayed, applies to proceedings in the county ct. under its moving jurisdiction.—MURHEAD v. SPRUCE (BEEK POWER CO., LTD. (1901), 2 M. M. Cas. 155; 11 B. C. R. 1.—CAN.

e (p. 105) vii. — — — — —.]—*Amount ascertained by act of parties.*—Deft. employed plffs. as his brokers to sell on his account 200 shares of stock at a named price, plffs. undertaking that, in the event of loss, deft.'s liability should not exceed \$200. In an action upon this contract plffs. recovered \$200 & interest.—*Held*: the amount of \$200 recovered was ascertained by the act of the parties within County Courts Act, R. S. O. 1897, c. 55, s. 23, & therefore, recoverable in a county ct.—THOMPSON v. PEARSON (1899), 18 P. L. R. 420.—CAN.

e (p. 105) viii. — — — — —.]—*Legacy charged on land—Value of land beyond limit.*—A county ct. has jurisdiction under 59 Vict. c. 19 (O.), s. 3 (13), in an action brought by the legatee against the devisee of land, to recover a legacy of \$5 charged on the land, as involving equitable relief in respect of a matter under \$200. The subject-matter involved in such an action is the amount of the legacy & not the value of the land.—RUSTIN v. BRADLEY (1896), 28 O. R. 119.—CAN.

f (p. 105) i. — — — — —.]—CUTLER v. NICHOLSON (1925), 58 N. S. R. 231.—CAN.

f (p. 105) ii. — — — — —.]—*Whether amount liquidated by act of parties.*—WALLBRIDGE v. BROWN (1859), 18 U. C. R. 158.—CAN.

f (p. 105) iii. — — — — —.]—WATSON v. SEVERN (1881), 6 A. R. 559.—CAN.

f (p. 105) iv. — — — — —.]—BROWN v. HOSE (1890), 14 P. R. 3.—CAN.

f (p. 105) v. — — — — —.]—OSTROM v. BENJAMIN (1894), 21 A. R. 467.—CAN.

f (p. 105) vi. — — — — —.]—EVANS v. CHANDLER (1900), 19 P. R. 160.—CAN.

g (p. 106) i. — — — — —.]—*Right of appeal.*—By Division Courts Act, s. 125, an appeal lies "where the sum in dispute exceeds \$100, exclusive of costs." The "sum in dispute" means the sum in dispute at the time of the appeal; & where in a division ct. action plff. claimed \$55.88 & deft. admitted \$17.15, part of plff.'s claim, disputed the balance, & counterclaimed for \$103.55, & the judge in the division ct. allowed plff. the disputed portion of his claim, & wholly disallowed the counterclaim, & deft. appealed generally.—*Held*: even assuming that deft. could not counterclaim for more than \$100, the amount in dispute on the appeal exceeded \$100, & the appeal lay.—CAMPBELL v. MCGREGOR, [1928] 2 D. L. R. 70; 61 O. L. R. 649.—CAN.

k (p. 106) i. *May not entertain counterclaim—Amounting to action for specific performance.*—A counterclaim

by a vendor for the moneys alleged to be due under an agreement for the sale of land being in reality an action for specific performance is beyond the jurisdiction of the district ct.—BURRELL v. WATT & HARDINGE (Sask.), [1928] 3 D. L. R. 505; [1928] 2 W. W. R. 482.—CAN.

n i. — — — — —.]—*Unconnected items.*—READ v. WEDGE (1870), 29 U. C. R. 456.—CAN.

b (p. 107) i. — — — — —.]—Where in matters of tort relating to personal chattels, title to land is brought in question, though incidentally, the ct. has no jurisdiction.—THORNTON v. HOLCOMBE (1850), 7 U. C. R. 548.—CAN.

e (p. 107) i. — — — — —.]—*Exceptions to rule District court of Thunder Bay—47 Vict. c. 14 (O.).*—MCQUAD v. COOPER (1886), 11 O. R. 213.—CAN.

e (p. 107) ii. — — — — —.]—Summary Ejectment Act (Consol. Stat. c. 83, s. 22), is not applicable to a case where the title to the land is brought in question. If, in such a case, the question of title is *bona fide* raised, the county ct. judge or justices should not continue the trial.—*Ex p.* TOWER (1889), 28 N. B. R. 159.—CAN.

63 i. *May set aside judgment—For matters of irregularity.*—*Re* MOMBROQUETTE (N. S.) (1928), 50 Can. Crim. Cas. 308.—CAN.

sk. *Injunction—Power of district court.*—ROSE v. DILKE VILLAGE, [1926] 1 D. L. R. 190; [1926] 1 W. W. R. 85; 20 Sask. L. R. 259.—CAN.

sl. *Action for rescission—Agreement for sale of land—Cannot be entertained by county court.*—RICHARDS v. TROTTER (1914), 28 W. L. R. 553, 18 D. L. R. 508; 6 W. W. R. 1123; 21 Man. L. R. 473.—CAN.

sm. *Action for specific performance—Agreement for sale of land—Cannot be entertained by district court.*—BYERS v. SINGLETON, [1921] 2 W. W. R. 71; 14 Sask. L. R. 195.—CAN.

sn. *Application under Vendors & Purchasers Act—Cannot be entertained by local judge.*—*Re* LEVY & JACOBS, [1927] 4 D. L. R. 937; 61 O. L. R. 296.—CAN.

sp. *Petition for amendment of registered plan of land—Under Registry Act, R. S. O., 1897 (c. 136)—Jurisdiction of county court other than that of county in which land lay.*—*Re* McDONALD & LISTOWEL (1903), 21 C. L. T. 8; 6 O. L. R. 556; 2 O. W. R. 1000.—CAN.

st. *Local masters—Jurisdiction.*—LORCH v. OLSON (Sask.), [1927] 3 W. W. R. 780.—CAN.

sw. — — — — —.]—*To order transfer of action.*—HAMELIN v. PHILLIPS (Sask.), [1927] 4 D. L. R. 1107; [1927] 3 W. W. R. 504.—CAN.

sx. *Action for breach of contract—Neglect in using horse.*—A plaintiff in a division ct. charging that deft. hired of plff. a horse, etc., to go from A. to B. & back, & agreed to take good care of the same as bailee, with an aver-

66. *Add. Annotation*:—*Generally, Refd. Re Key-stone Knitting Mills Trade Mk.*, [1929] 1 Ch. 92.
74. *Add. Annotation*:—*Refd. Owl Mill Co.* (1920) *v. Croft, Elliott v. Duchess Mill* (1926), 95 L. J. K. B. 635.
- 137a. —.]—*LEADER v. MOXON* (1773), 2 Wm. Bl. 924; 3 Wils. 461; 95 E. R. 1157.
- Annotations*:—*Mentd.* British Cast Plate Manufacturers Co. *v. Meredith* (1922), 4 Term Rep. 794; *Sutton v. Clarke* (1815), 6 Taunt. 29; *Boulton v. Crowther* (1824), 2 B. & C. 703; *Hall v. Smith* (1824), 2 Bing. 156; *Mersey Dock Trustees v. Gibbs, Mersey Dock Trustees v. Penhallow* (1866), L. R. 1 H. L. 93; *R. v. St. Luke's Chelsea* (1871), L. R. 7 Q. B. 148.
142. *Add. Annotation*:—*Apld. Witham Outfall Board v. Boston Corpn.* (1926), 130 L. T. 756.
- 143a. —.]—Where an issue arises upon the proceedings before the Court the jurisdiction of the Court to dispose of that issue can only be ousted by plain words (*HAMILTON, J.*).—*A.-G. v. BODEN*, [1912] 1 K. B. 539; 81 L. J. K. B. 704; 105 L. T. 247.
- Annotations*:—*Mentd.* *A.-G. v. Sandwich*, [1922] 2 K. B. 500; *Baker v. I. R. Comrs.*, [1923] 1 K. B. 323.
147. *Add. Annotations*:—*Consd.* *Clark v. Epsom R. D. C.*, [1929] 1 Ch. 287. *Refd.* *Everett v. Griffiths*, [1924] 1 K. B. 941; *Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58; *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88. *Mentd.* *Boston Corpn. v. Fenwick* (1923), 129 L. T. 766; *Sheppy Glue & Chemical Works v. Medway River Conservators* (1926), 24 L. G. R. 457; *Whitney v. I. R. Comrs.*, [1926] A. C. 37; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
149. *Add. Annotations*:—*Apld.* *Hallen v. Spaeth*, [1923] A. C. 684. *Consd.* *Caven v. Canadian Pacific Ry.* (1925), 133 L. T. 774; *Apld.* *Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269. *Refd.* *Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610; *Gowar v. Hales* (1927), 96 L. J. K. B. 1088; *Wales v. Iron Trades Employers' Asscn.* (1928), 21 B. W. C. C. 316; *Hymen v. Hymen, Hughes v. Hughes*, [1929] P. 1. *Mentd.* *Lothian v. Epworth Press* (1927), 137 L. T. 582.
150. *Add. Citations*:—15 Asp. M. L. C. 566; *affg. S. C. sub nom. DREYFUS & Co. v. ATLANTIC SHIPPING & TRADING Co.* (1921), 37 T. L. R. 417, C. A.
- Add. Annotations*:—*As to* (1) *Consd.* *Ford v. Compagnie Furness (France)*, [1922] 2 K. B. 797. *Refd.* *Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690. *As to* (2) *Refd.* *Reed v. Page & East*, [1927] 1 K. B. 743. *Generally, Mentd.* *The Christel Vinnen*, [1924] P. 61.
155. *Add. Annotation*:—*Mentd. Re Boundary between Canada & Newfoundland in Labrador Peninsula* (1927), 137 L. T. 187.
157. *Add. Annotation*:—*Mentd.* *Graham v. Graham*, [1923] P. 31.
170. *Add. Annotations*:—*Refd.* *St. Magnus Parochial Church Council, etc. v. London Diocese Chancellor*, [1923] P. 38; *Hunter v. Städtische Hochseefischerei Gemeinnützige Gesellschaft* (1925), 133 L. T. 488; *Mansfield v. Robinson*, [1928] 2 K. B. 353.
172. *Add. Annotation*:—*Refd.* *Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.
185. *Add. Annotation*:—*Folld.* *Pringle v. Hales*, [1925] 1 K. B. 573.
199. *Add. Annotation*:—*Refd.* *Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.
235. *Add. Annotation*:—*Mentd.* *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88.

## Part VI.—Right of Public to Admission.

276. *Add. Annotations*:—*Folld. Re A. B.'s Petn.* (1927), 97 L. J. P. 104. *Consd.* *Greenway v. A.-G.* (1927), 44 T. L. R. 124.
- 277a. —.]—In cross suits for divorce the case for the wife having been opened in public & the wife on being called as a witness finding it almost impossible to give her evidence by reason of the presence of people in ct., the President directed this part of the case to be heard *in camera*.—*MOOSBRUGGER v. MOOSBRUGGER, MOOSBRUGGER v. MOOSBRUGGER & MARTIN* (1913), 29 T. L. R. 658.
- Annotation*:—*Mentd.* *Statham v. Statham*, [1929] P. 131.
- 280a. In proceedings under *Legitimacy Act, 1926* (c. 60).—A petition filed under the above Act for the legitimization of a person who was born illegitimate, but whose parents were
- ment that deft. so carelessly, etc., drove said horse, etc., that the horse was killed, etc., is a plaint in contract & not in tort, & therefore within the jurisdiction.—*Re LUMBLE v. WILSON* (1869), 5 P. R. 38.—CAN.
- ay. —.]—Pltf. sued in a division ct. for \$90 as the value of his horse employed by deft., the injury complained of being that deft. allowed the horse to be worked after he took sick, by which his death was occasioned.—*Held*: this was an action for breach of contract in not taking proper care of the horse, & that the division ct. had jurisdiction.—*O'Brien v. IRVING* (1878), 7 P. R. 308.—CAN.
- sz. *Right to order writ or process outside jurisdiction*.—Since the passing of *Judicature Act, 1909*, under *County Cts. Act, 11 Geo. 5, 1921* (N. B.), c. 3, s. 71, a county ct. judge can order a writ or process outside the jurisdiction.
- SMITH v. GORDON* (1927), 53 N. B. R. 316.—CAN.
- PART IV. SECT. 10, SUB-SECT. 1.—A.
- 153 xv. —.]—The consent, or request, of the parties concerned does not empower the Supreme Ct. in its equitable jurisdiction to entertain a suit involving the determination of purely legal claims.—*PRESCOTT, LTD. v. PERPETUAL TRUSTEE CO., LTD.* (1928), 28 S. R. N. S. W. 324; 45 N. S. W. W. N. 80.—AUS.
- PART IV. SECT. 10, SUB-SECT. 1.—B.
- aa. *Effect of acquiescence—Accused present but not professionally represented—Objections by judge*.—At the hearing of a summons charging an offence under *Customs Acts*, deft. was present, but was not professionally represented. No preliminary objections to the juris-
- diction of the district justice were made by her, but certain objections were made by the district justice himself:—*Held*: there had not been any waiver of such objection by deft.—*A.-G. v. HEALY*, [1928] L. R. 460.—IR
- PART IV. SECT. 12.
- sb. *Claim reduced below amount conferring jurisdiction—Claim dismissed*.—In an action by pltf., a seaman, to recover a balance of wages alleged to be due to him, the evidence showed that with respect to two months' wages, part of the time claimed for, pltf. had received an amount which reduced his claim below the jurisdiction of the ct., & as to the balance of the time claimed for, pltf. had forfeited his claim to wages by desertion.—*Held*: pltf.'s claim be dismissed with costs.—*FORBES v. WASSON* (1928), 60 N. S. L. 29.—CAN.

married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camera*.—*Re A. B.'s PETITION* (1927), 97 L. J. P. 104; *sub. nom. Re C. D.'s PETITION*, 138 L. T. 208; *sub. nom. GREENWAY v. A.-G.*, 41 T. L. R. 124; 71 Sol. Jo. 882.

*Annotation*:—*Mentd. Re Lowe, Stewart v. Lowe*, [1929] 2 Ch. 210.

286. *Add. Annotation*:—*Generally, Mentd. Sharp*

& Dohme Inc. *v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.

289a. — Includes justices hearing *ex parte* application for summons.]—*KIMBER v. PRESS ASSOCN.*, [1893] 1 Q. B. 65; 62 L. J. Q. B. 152; 67 L. T. 515; 57 J. P. 247; 41 W. R. 17; 9 T. L. R. 6; 37 Sol. Jo. 8; 4 R. 95, C. A.

## Part VII.—Classification of Courts.

292. *Add. Annotation*:—*Consd. R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.

293. *Add. Annotation*:—*Consd. R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.

302a. *Justices*.]—*ANON.* (1523), Y. B. 14 Hen. 8, fo. 16, pl. 3.

*Annotations*:—*Refd. Nector v. Gennet* (1596), Cro. Ellz. 466; *Marshalsea Case* (1613), 10 Co. Rep. 68b; *Butt v. Conant* (1820), 1 Brod. & Bing. 548; *Howard v. Gossett* (1845), 10 Q. B. 359. *Mentd. R. v. Waller v. Hanger* (1615), 3 Bulst. 1; *Padfield v. Cabell* (1743), Willes, 411.

## Part IX.—Court of Lord High Steward.

320. After this case for "*See, also, PARLIAMENT,*" read "*See, also, CRIMINAL LAW, Vol. XIV., pp. 125, 126, Nos. 965-985.*"

## Part X.—The Judicial Committee of the Privy Council.

329. *Add. Annotation*:—*Refd. R. v. North, Ex p. Oakley* (1926), 43 T. L. R. 60.

339. *Add. Annotation*:—*Apprvd. Campbell v. Pollak*, [1927] A. C. 732.

341. *Add. Annotation*:—*Refd. Campbell v. Pollak*, [1927] A. C. 732.

342. *Add. Annotation*:—*Consd. Campbell v. Pollak*, [1927] A. C. 732.

344. *Add. Annotation*:—*Refd. Campbell v. Pollak* (1927), 96 L. J. K. B. 1093.

345. *Add. Annotation*:—*Refd. Campbell v. Pollak*, [1927] A. C. 732.

348a. *Interlocutory order*.]—As a general rule an interlocutory order is not a suitable subject for review by the Judicial Committee.—

*BEVOY KRISHNA MUKHERJIR v. SATISH CHANDRA GIRI* (1927), 55 L. R. Ind. App. 131.

349. *Add. Annotation*:—*Generally, Mentd. Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.

350. *Add. Annotation*:—*Refd. Ware v. Whitlock*, [1923] 2 K. B. 418.

352a. *Affidavit of service of notice of intended application—Necessity for lodging—Judicial Committee Rules, 1925, r. 4.*]—*PRACTICE NOTE*, [1925] W. N. 164, P. C.

363. *Add. Annotation*:—*Mentd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

### PART VII. SECT. 3, SUB-SECT. 1.

sd. *Board of Valuation & Revision—Under Winnipeg Charter, s. 341.*]—*Re WINNIPEG CHARTER, Re COMMUNITY OF SISTERS OF THE HOLY NAMES OF JESUS & MARY*, [1922] 2 W. W. R. 253; 68 D. L. R. 506.—*CAN.*

80. *Local court continued under Local Courts Act, 1926.*]—The local ct. continued by Local Ct. Act, 1926, s. 6, is the ct. of record, not the officers or instrumentalities by whom the jurisdiction was formerly exercised.—*METROPOLITAN ABATTORS BOARD v. SCHOLE*, [1927] S. A. S. R. 444.—*AUS.*

### PART X. SECT. 1.

321 i. *Status of Judicial Committee—Adversers of Crown.*]—The Judicial Committee sit in the capacity of judges; their report is acted on by the Sovereign in full Privy Council, so that proceedings before the Committee are in substance strictly judicial. The Judicial Committee is not an English body in

any exclusive sense; it is not a body with any location. The Sovereign is everywhere throughout the Empire in the contemplation of the law. He may as well sit in Dublin, or at Ottawa or in South Africa, or in Australia, or in India, as in London, & it is only for convenience & because the members of the Privy Council are conveniently in London that the Judicial Committee do sit there.—*HULL v. M'KENNA, "FREEMAN'S JOURNAL" v. FERNSTROM & TRAFSLIBERN*, [1926] 1 R. 402.—*IR.*

### PART X. SECT. 2, SUB-SECT. 8.

348 ii. —.]—A question of procedure is not one upon which an appeal to the Privy Council will be entertained.—*A.-G. FOR ONTARIO v. DALY*, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 811.—*CAN.*

st. *Maintenance granted to wife—No miscarriage in method of computing.*]—The Judicial Committee is extremely reluctant to interfere with the amount

of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—*EKRADDESHWARI BATHUASIN v. HOMESHWAR SINGH* (1929), 56 L. R. Ind. App. 182.—*IND.*

### PART X. SECT. 3, SUB-SECT. 1.—A. (c).

sg. *Time occupied in prosecuting application for review—Addition to prescribed period.*]—Appl. allowed to add the time occupied by the prosecution in good faith of an application for review to the period prescribed for presenting a petition for leave to appeal.—*NARIMAN RUSTOMJI MEHTA v. HASHAM ISMAYAL VALAD HAJI KHAMISA* (1924), 1 L. R. 49 Bom. 149.—*IND.*

### PART X. SECT. 3, SUB-SECT. 1.—B.

371 iii. —.]—An order directing a new trial is not a final judgment or order within Order in Council of



373. *Add. Citations*:—*sub nom. Ex p. KENSINGTON*, 15 Moo. P. C. C. 209; 15 E. R. 473.

388a. ———— *When further security ordered.*—CORPORATION AGENT, LTD. *v. HOME BANK OF CANADA*, [1926] W. N. 58, P. C.

403a. ———— *In a suit claiming property by adoption, one of defts. denied the alleged adoption & claimed widow's maintenance. The first ct. found for the alleged adoption but decreed maintenance at a sum less than that claimed. The appellate ct. varied the decree by increasing the amount of maintenance, & refused leave to appeal.*—*Held*: special leave to appeal should be granted limited to the question of the maintenance allowance. — *ANNAPURNARAI v. RUPRAO* (1924), L. R. 51 Ind. App. 319, P. C.

427a. ———— *Immaterial documents—Inclusion disapproved.*—Documents not material to an appeal should not be included in the record. If one party wishes a document to be included, but the other party considers it unnecessary, the matter should be referred to the High Ct. or its registrar. It does not follow that because unnecessary documents have been printed in India they should be included in the books for the Judicial Committee. It is the duty of the solr. in England to make a selection of the necessary documents, the other papers being ready in case they are required. In cases of doubt, the solr. should take counsel's advice, for which purpose, on application being made, a fee will be allowed. — *SONATON PAL v. GALSTAUN* (1927), 54 L. R. Ind. App. 118; 43 T. L. R. 224, P. C.

483a. *Form of case—Necessity for signature of one of counsel appearing at hearing.*—*MONTREAL LIGHT, HEAT & POWER CO. v. MONTREAL (CITY)* (1924), 68 Sol. Jo. 419, P. C.

486. *Add. Annotations*:—*Consd. Hoystead v. Taxation Comr.*, [1926] A. C. 155; *Green v.*

*Weatherill*, [1929] 2 Ch. 213. *Mentd. Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 44 T. L. R. 15.

526. *Add. Annotation*:—*Mentd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

528. *Add. Annotation*:—*Mentd. Brown v. Dagenham U. D. C.* (1929), 140 L. T. 615.

535a. ———— *It is no part of the functions of the Judicial Committee, generally speaking, to interpret an Order in Council unless it be brought before them in the ordinary way of appeal. In the present case, however, in which a suit had been remitted to the High Ct. to assess damages & that ct. had adjourned an appeal in order that the parties might apply to the Board to ascertain the intention & effect of the Order made, their Lordships entertained a petition by resp. with that object, though upon the facts the declaration prayed for was refused with costs.*—*HURNANDRAI FULCHAND v. PRAGDAS BUDHSEN, Ex p. PRAGDAS BUDHSEN* (1924), L. R. 52 Ind. App. 118.

554. *Add. Annotation*:—*Mentd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

578a. ———— *Applt. obtained leave to appeal conditionally upon entering into a bond, & the native agent of applt., who had conducted the litigation, executed a bond on his behalf in the presence of the chief registrar of the ct., who accepted it without objection. Upon the appeal coming on for hearing, the appellate ct. dismissed it, upon a preliminary objection that the authority of the agent to execute the bond should have been strictly proved. Under the rules of the ct. there was power to make any order which was considered necessary for doing justice.*—*Held*: there had been a failure to do justice between the parties, & the case should be remitted to be heard, the appellate ct. giving an opportunity to prove the authority, if that was

Jan. 10, 1910, r. 2. & there is consequently no jurisdiction to grant leave to appeal therefrom to the Privy Council. — *BLACK & WHITE CABS, LTD. v. ANSON*, [1928] N. Z. L. R. 613. — *N.Z.*

*sh. Point settled by previous decision.*—Where their Lordships of the Privy Council have clearly laid down the law which is applicable to a particular set of facts, leave to appeal to His Majesty in Council under such circumstances would be refused. — *MAUNG SHWE AN v. MA THE NU* (1929), L. L. R. 7 Ind. 271. — *IND.*

#### PART X. SECT. 3, SUB-SECT. 1.—C.

379 iia. ———— *BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.*, [1924] 2 D. L. R. 1238; 54 O. L. R. 629. — *CAN.*

389 iia. ———— *The ct. can, under Civil Procedure Code (Act V. of 1908), 1908, Ord. 45, r. 17, read with Privy Council Rules, 1920, r. 9, enlarge the time for furnishing security & making the deposit, beyond the period prescribed by Ord. 45, r. 7.* — *NILKANTH BALWANT NATU v. SHRI SATCHIDANANTH VIDYA NARSINIA BHARATI* (1927), L. L. R. 51 Bom. 430. — *IND.*

390 i. ———— *Form of security.*—An order to furnish security for costs of resp. in an appeal to the Privy Council in a form other than cash or Govt. Bonds can be made only at the time of granting the certificate & not after-

*wards.* — *ARUNACHALA NAIDU v. BALAKRISHNA & CO.* (1924), L. L. R. 48 Mad. 559. — *IND.*

#### PART X. SECT. 3, SUB-SECT. 5.

447 i. *When allowed Suits involving same question.*—Actions brought by plff. against three cos. were based on separate contracts, precisely similar in form. On an appeal to the Privy Council, application was made to the Ct. of Appeal (B.C.) to consolidate the appeals. Application refused. — *VAN HEMELRYCK v. NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO.* (No. 2) (1920), 29 B. C. R. 60. — *CAN.*

#### PART X. SECT. 3, SUB-SECT. 9.—A.

487 iv. ———— *The operation of a judgment restraining defts. from selling certain goods under certain trade names is not stayed pending an appeal of defts., to the Privy Council, although under Privy Council Appeals Act, 1914, ss. 3, 4, upon the perfecting of security by defts., execution shall be stayed in the original cause.* — *BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.* (1924), 55 O. L. R. 127. — *CAN.*

#### PART X. SECT. 3, SUB-SECT. 10.—B.

*sk. Documents not produced at trial.*—The Judicial Committee has unrestricted power to admit documents where sufficient ground is shown for their not having been produced at the initial stage of the litigation. — *INDRAJIT PRATAP SAHAI v. AMAR SINGH* (1923) L. R. 50 Ind. App. 183. — *IND.*

#### PART X. SECT. 3, SUB-SECT. 10.—C. (b).

536 v. ———— *The Privy Council will only deal with the original issues raised at the trial, & cannot consider new pleadings & the issues raised therein.* — *BROWN v. MOORE*, [1921] 2 D. L. R. 545; *affg.* 69 D. L. R. 11; 55 N. S. R. 460. — *CAN.*

536 vi. ———— *A new contention, which involves an amendment of the plaint, cannot be entertained.* — *GAJADHAR MAHTON v. AMBIKA PRASAD TIWARI* (1925), L. L. R. 47 All. 459. — *IND.*

536 vii. ———— *The Privy Council declined to entertain an argument which had not been presented to, or settled by, the ct. in India, especially as the subject to be decided concerned the diversified & complicated law of India as to tenure of land.* — *SECRETARY OF STATE FOR INDIA IN COUNCIL v. RAJA JYOTI PRASHAD SINGH* (1926), 53 L. R. Ind. App. 100. — *IND.*

536 viii. ———— *Where a question whether minor members of a family were bound by a decree in a former suit brought by the managing member, has been abandoned in the High Ct., it cannot be raised before the Judicial Committee, as the question is one of mixed law & fact.* — *LINGANGOWDA v. BASANGOWDA* (1927), 54 L. R. Ind. App. 122. — *IND.*

#### PART X. SECT. 3, SUB-SECT. 10.—C. (c).

*sm. Effect of order—Case remitted to*

deemed necessary in the circumstances.—*KOJO PON v. ATTA PUA*, [1927] A. C. 693; 96 L. J. P. C. 121; 137 L. T. 706, P. C.

**585a.** —[—]—A Chinese resident in Penang executed a deed settling a fund upon his "sons & grandsons" equally. Applt. having claimed that his father, T., was a "son" of the settlor entitled to share in the gift, an inquiry whether T. was legitimate, as being a son by a "t'sip," or secondary wife, was remitted for rehearing, applt. not having had an opportunity of adducing certain evidence upon which he relied, & because the view of the lower ct. that a Christian woman could not be a "t'sip" required reconsideration, seeing that no ceremony was needed to constitute that status. Further consideration was also needed of the possible jural conceptions: (a) that a child might be legitimate, although its parents were not, & could not be, legitimately married; & (b) that a father might legitimatise his natural child by a mother free to contract a legitimate union.—*KHOO HOOI LEONG v. KHOO HEAN KWEE*, [1926] A. C. 529; 95 L. J. P. C. 94; 135 L. T. 170, P. C.

**592a.** —[—]—*CHEESEBROUGH MANUFACTURING CO. v. KUDHOOS* (1929), 46 T. L. R. 95, P. C.

**609.** *Add. Citation*:—128 L. T. 10.

**611a.** *Matter of terms.*—In default of evidence the Judicial Committee will accept the decision of the local ct. as to what terms are proper in a particular case, that ct. being better informed on the subject than the Board can be.—*SUNDER MULL v. SATYA KINDER SAHANA* (1927), 55 L. R. Ind. App. 85.

**651.** *Add. Annotation*:—*Mentd.* *Gabriel v. Eliatamby*, [1926] A. C. 133.

**653.** *Add. Annotation*:—*Refd.* *Robins v. National Trust Co.*, [1927] A. C. 515.

*the jury "for assessment of damages—Not order for assessment by original jury.*—*LEW v. WING LEE*, [1926] 1 D. L. R. 678; 37 B. C. R. 81.—*CAN.*

#### PART X. SECT. 3, SUB-SECT. 10.— D. (a).

**607 i.** *Matter of discretion—Exercised by Indian courts.*—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—*EKRADIESHWARI BAHUASIN v. HOMESHWAR SINGH* (1929), 56 L. R. Ind. App. 182.—*IND.*

#### PART X. SECT. 3, SUB-SECT. 10.— D. (b) ii.

**650 vi.** —[—]—Where all the cts. below have concurred in the findings of fact, the Judicial Committee will ordinarily accept them & not review them.—*LAING v. TOKONTO GENERAL TRUSTS CORPN.*, [1924] 4 D. L. R. 1138.—*CAN.*

**650 vii.** —[—]—*MONTREAL TRANSPORTATION CO., LTD. v. R.*, [1926] 2 D. L. R. 862.—*CAN.*

**650 viii.** —[—]—When in a suit to set aside a sale for arrears of revenue both cts. in India have found that there were no arrears, the Judicial Committee, in accordance with its practice as to concurrent findings, will not interfere, although the findings depend upon the meaning & effect of somewhat obscure revenue records, & are based upon the view that the records show payments in advance.—*NAKENDRA NATH DUTTA v. ABDUL HAKIM* (1928), 55 L. R. Ind. App. 380.—*IND.*

#### PART X. SECT. 3, SUB-SECT. 10.— D. (c).

**680 i.** *Want of prosecution—Jurisdiction of Appeal over costs.*—*CLEAVE v. McDONALD*, [1927] N. Z. L. R. 433.—*N.Z.*

#### PART X. SECT. 3, SUB-SECT. 11.

**t i.** —*Against legal representatives of respondents.*—Where some of resps. in the appeal before the Privy Council were dead, & their legal representative had not been brought on the record when the appeal was heard &

**653a.** —*Applicable to appeals from every court in Empire.*—*ROBINS v. NATIONAL TRUST CO.*, [1927] A. C. 515; 96 L. J. P. C. 84; 137 L. T. 1; 43 T. L. R. 243; 71 Sol. Jo. 158, P. C.

*Annotation* —*Consd.* *Pope Appliance Corp. v. Spanish River Pulp & Paper Mills*, [1929] A. C. 269.

**676.** *Add. Annotation*:—*Refd.* *Robins v. National Trust Co.*, [1927] A. C. 515.

**685.** *Add. Annotation*:—*Generally, Consd. Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242.

**690.** *Add. Annotation*:—*Consd. Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242.

**690a.** *Add. Annotations*:—*Consd. Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242. *Mentd.* *Rhondda's Petition* (1922), 92 L. J. P. C. 81; *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

**690b.** —[—]—There is no inherent incompetency in the Judicial Committee of the Privy Council to order the rehearing of a case which has already been decided by the Judicial Committee, even where a question of a right of property has been involved, but such an indulgence will only be granted in very exceptional circumstances. —*Re TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION*, [1929] A. C. 242; *sub nom. Re IRISH CIVIL SERVANTS*, 98 L. J. P. C. 39; 140 L. T. 254; *sub nom. Re ARTICLE X. OF ARTICLES OF AGREEMENT FOR TREATY BETWEEN GREAT BRITAIN & IRELAND*, 45 T. L. R. 57, P. C.

**726.** *Add. Annotation*:—*Mentd.* *Ellesmere v. Wallace*, [1929] 2 Ch. 1.

**763.** *Add. Annotation*:—*Mentd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

**771.** *Add. Annotations*:—*Mentd.* *Hyman v. Hyman*, *Hughes v. Hughes*, [1929] P. 1; *May v. May* (1929), 98 L. J. K. B. 770.

judgment delivered by the Privy Council:—*Held*: the decree against them was not a nullity under Judicial Committee Act, 1833, s. 23.—*KALYANI PILLAI v. THIRUVENKADASWAMI AYYANGAR* (1924), 1 L. R. 47 Mad. 618.—*IND.*

**t ii.** —*Order directing restitution.*—Where an application is made to obtain restitution as the necessary result of an order of His Majesty in Council, that application must be taken as one to "enforce" an order in Council & will be governed by Art. 183, & not by the general Art. 181 of Indian Limitation Act, 1908.—*SOHAN BIBI v. BALJNATH DAS* (1928), 1 L. R. 50 All. 767.—*IND.*

#### PART X. SECT. 3, SUB-SECT. 13.— A. (a) i.

**719 ii.** —*Not appearing but lodging case.*—Resps., who did not appear, but had lodged a case, allowed costs up to the date of doing so.—*GAJADHAR MAHTON v. AMBIKA PRASAD TIWARI* (1925), 1 L. R. 47 All. 459.—*IND.*

## Part XI.—The Supreme Court of Judicature.

775. In the cross-reference before this case for "Judicature Acts, 1873 (c. 66) to 1902 (c. 31)" read "Judicature (Consolidation) Act, 1925 (c. 49)."

779. *Add. Annotation* :—**Apld.** *Horrell v. St. John of Bletso*, [1928] 2 K. B. 616.

781. *Add. Annotation* :—**Refd.** *Ideal Films v. Richards*, [1927] 1 K. B. 374.

782. *Add. Annotation* :—**Mentd.** *Purnell v. Roche*, [1927] 2 Ch. 142.

784. *Add. Annotation* :—*As to* (1) **Refd.** *Campbell v. Pollak*, [1927] A. C. 732.

786. *Add. Annotation* :—**Refd.** *Lowe v. Bentley* (1928), 44 T. L. R. 388.

788. *Add. Annotation* :—**Mentd.** *Public Trustee v. Elder*, [1926] Ch. 776.

789. *Add. Annotation* :—**Refd.** *Earle v. Hemsworth* R. D. C. (1928), 140 L. T. 69.

790. *Add. Annotation* :—**Refd.** *The Fagernes*, [1926] P. 185.

792. *Add. Annotations* :—**Mentd.** *Re A Bankruptcy Notice*, [1924] 2 Ch. 76; *Rawlinson v. Ames* (1924), 69 Sol. Jo. 142.

793. *Add. Annotations* :—**Mentd.** *Clarkson v. Davies*, [1923] A. C. 100; *Duffner v. Bowyer* (1924), 40 T. L. R. 700; *The Koursk*, [1924] P. 140; *Re Pennington & Owen*, [1925] Ch. 825; *Bennett v. Whitehead*, [1926] 2 K. B. 380; *Firm of R. M. K. R. M. v. Firm of M. R. M. V. L.*, [1926] A. C. 761; *Pirie v. Richardson* (1926), 70 Sol. Jo. 1023; *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

797. *Add. Annotation* :—**Mentd.** *Re Bueb*, [1927] W. N. 299.

809. *Add. Annotation* :—**Refd.** *Rackham v. Tabrum* (1923), 129 L. T. 24.

827. *Add. Annotation* :—**Refd.** *Capron v. Capron*, [1927] P. 243.

831a. ———.]—When a judge adjourns a chambers summons into ct. under R. S. C., Ord. 54, r. 23, & does not direct that it is to be heard in ct. as chambers, the matter is in ct. for all purposes & is open to the press.—*HARDIE & LANE v. CHILTERN* (1927), 96 L. J. K. B. 773; 43 T. L. R. 477; *on appeal*, [1928] 1 K. B. 663; 96 L. J. K. B. 1040; 138 L. T. 14, C. A.

834a. ———.]—*HARDIE & LANE v. CHILTERN*, No. 831a, *ante*.

840a. **To order amendments—Judge trying causes in short cause list.**—Although it may be a condition precedent to the master's power to order a cause to be tried in the short cause list, that the claim specially indorsed on the writ should be for a liquidated demand, yet when once he has made the order giving leave to defend, & has ordered the cause to be put in the short cause list, there is no restriction whatever on the powers of the judge to order such an amendment as he is authorised to make under the rules of ct. The judge trying causes in the short cause list has the full powers of amendment that are given to him by the rules of ct. as though he were hearing the cause in the ordinary list.—*THOMAS v. ALDERTON, LTD.*, [1928] 1 K. B. 638; 97 L. J. K. B. 259; 138 L. T. 315, C. A.

865. *Add. Annotations* :—**Refd.** *Capron v. Capron*, [1927] P. 243. **Mentd.** *Barrowes v. Barrowes* (1929), 141 L. T. 201.

913. *Add. Annotation* :—**Mentd.** *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.

919. *Add. Citation* :—*sub nom.* *R. v. ILLINGWORTH*, 32 W. R. 451.

After this case add "*Sec. now*, Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

944. *Add. Annotations* :—**Refd.** *Davey v. Robinson*, [1923] 1 K. B. 563; *Shrager v. Dighton*, [1924] 1 K. B. 274. **Mentd.** *Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493; *Pringle v. Hales*, [1925] 1 K. B. 573.

#### SECT. 5. —OFFICERS AND CENTRAL OFFICE (Vol. XVI., p. 189).

Add the following case :—

949a. **Officer—Right to institute suit Personal interest.**—It is against public policy to allow an officer of the ct. to institute suits, in the conduct of which he may have a direct personal interest.—*HOSANNA ARATHOON KERAKOOSE v. SERLE* (1844), 3 Moo. Ind. App. 329; 4 Moo. P. C. C. 459; 18 E. R. 523.

#### PART XI. SECT. 2, SUB-SECT. 1. — A. (a).

*sp. To hear action.*—A judge of the High Ct. may direct the whole of a case which comes before him for hearing to be argued before the Full Ct.—*STATE OF NEW SOUTH WALES v. COMMONWEALTH* (1926), 38 C. L. R. 74.—**AUS.**

#### PART XI. SECT. 2, SUB-SECT. 3.

*st. To rescind patent.*—Although voidable or void at law.—*MARTIN v. KENNEDY* (1850), 2 Gr. 80.—**CAN.**

*sw. To try validity of will.*—Important questions involved—*Transfer of action*

*from surrogate court.*—Where the validity of a will relating to both real & personal estate was in dispute, the personal property being worth, at least, £2,000, & it was sworn & not denied that the questions to be determined were of such importance that they could be more effectually tried & disposed of in the ct. of chancery than in the surrogate ct. an order for removal was made.—*Re ECCLES* (1865), 1 Ch. Ch. 376.—**CAN.**

#### PART XI. SECT. 2, SUB-SECT. 6. —A.

*sy. Local masters.*—*Jurisdiction of.*—Local masters have no authority to sit

on the final hearing & adjudge the merits on applications to the summary jurisdiction of a judge of the K. B. over exors, administrators & trustees, no matter how such applications may be commenced; nor have they jurisdiction to refer such applications to a judge of the K. B. The office of a master or local master in Saskatchewan is to be distinguished from that of a master in England & from that of a county ct. judge exercising jurisdiction as a local judge of the Superior Ct. in those Provinces in which he is appointed a local judge.—*LOREN v. OLSON* (Sask.), [1928] 1 D. L. R. 365, [1927] 3 W. W. R. 780.—**CAN.**

## Part XVI.—Consular Courts.

- 954. Add. Annotations:—***Refd. Rudd v. Rudd*, [1924] P. 72; *Bartlett v. Bartlett*, [1925] A. C. 377. **Mentd.** *Re Annesley*, *Davidson v. Annesley*, [1926] Ch. 692; *Re Ross*, *Ross v. Waterfield* (1929), 46 T. L. R. 61.

- Innovation :—****Reid.** *Bartlett v. Bartlett*, [1925] A. C. 377.  
**956b.** ——— **To try action for damages for breach of contract—Breach in England.**—By the Ottoman Order, 1910, the jurisdiction of the Supreme Ct. thereby established extends, as regards Egypt, to, so far as material: “(i) British subjects, as herein

969a. — Transfer of jurisdiction—Effect of Treaty of Peace (Turkey) Act, 1924 (c. 7).—Petitioner, the wife of a British subject domiciled in Turkey, obtained in His Britannic Majesty's Supreme Ct. for the Dominions of the Sublime Porte (Matrimonial Jurisdiction) a decree *nisi* for a divorce on the ground of her husband's adultery. In consequence of the ratification of the Treaty of Lausanne the above ct. ceased to exist before the decree was made absolute:—*Held*: by virtue of the combined effect of the above Act, art. 16 of the Convention between Turkey & Great Britain of the same date as the Treaty, & art. 2 of the Treaty of Peace (Turkey) Order, 1924, the Divorce Division of the High Ct. had jurisdiction to make the decree absolute.—*SEAGER v. SEAGER*, [1925] P. 105; 94 L. J. P. 66; 133 L. T. 319; 69 Sol. Jo. 724.

## Part XVII.—Forest Courts.

- 974a. Court books—Duty of clerk to produce for inspection.]—*A.-G. v. BROWN* (1814), 2 L. T. O. S. 424; 8 J. P. 711.

## Part XXI.—Palatine Courts.

- 1014a. — — — — —.]—DYKE v. STEPHENS (1885), 29 Sol. Jo. 682.

## Part XXIII.—Borough and Local Courts of Record.

**1019.** *Add. Annotation* :—**Mentd.** Debenhams *v.* Perkins (1925), 133 L. T. 252.

**1024a.** *S. P. PENDRED v. CHAMBERS* (1591), Cro. Eliz. 256; 78 E. R. 512.

*Annotation* :—**Refd.** Goodson *v.* Duffield (1612), Cro. Jac. 313.

**1053.** To the reference before this case add “; Liverpool Corporation Act, 1921 (c. lxxiv),

## Part XXV.—Judicial Commissioners.

**1126.** *Add. Annotation* :—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

## Part I.—Proceedings on the Revenue Side of the King's Bench Division.

- ## Part II.—Petition of Right.

- 351 viii. ———.]—KENDALL v.  
R., [1926] Exch. C. R. 34.—CAN.

- Settlements v. Pang Ah Yew, [1925] A. C. 555.
352. *Add. Annotations*:—As to (1) *Distd.* A.-G. for Straits Settlements v. Pang Ah Yew, [1925] A. C. 555. *Refd.* Jamieson v. Downie, [1923] A. C. 691; Badman v. R., [1924] 1 K. B. 64.
- 353a. ——— *Compensation for injury to property in Ireland.*—No claim for compensation for injuries done to property in Ireland is maintainable against the Crown in an English ct.—*PRICE v. R.* (1925), 42 T. L. R. 179.
355. After this case add “— *Effect of Indemnity Act, 1920 (c. 48).*—See *CONSTITUTIONAL LAW*, pp. 280, 281, Nos. 526a-526c, 534a, ante.”
356. *Add. Annotation*:—*Folld.* A.-G. for Straits Settlements v. Pang Ah Yew, [1925] A. C. 555.
- 356a. ————]—Under Crown Suits Ordinance No. 22 of the Straits Settlements a petition of right can be maintained to recover damages arising from a collector of land revenue selling land under Ordinance No. 35 for arrears of revenue without first serving a written notice of demand as required by s. 4. The collector in selling is an agent of the Crown although he acts under statutory authority, & the fact that he has carried out his duties in an unauthorised manner does not prevent the Crown from being liable.—*A.-G. FOR STRAITS SETTLEMENTS v. PANG AH YEW*, [1925] A. C. 555; 91 L. J. P. C. 150; 133 L. T. 106, P. C.
- 360 *Add. Annotations*:—*Distd.* Wigg v. A.-G. for Irish Free State, [1927] A. C. 671. *Apld.* Nixon v. A.-G. (1929), 46 T. L. R. 31. *Consd.* *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242.
361. *Add. Annotations*:—*Distd.* Wigg v. A.-G. for Irish Free State, [1927] A. C. 671. *Apld.* Nixon v. A.-G. (1929), 46 T. L. R. 31. *Consd.* *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242.  
After this case add:—  
———]—See, further, *REVENUE*, Vol. XXXIX., pp. 307, 308, Nos. 836-841.
- 363a. *Bona vacantia*—*Recovery by next of kin.*—*Re MASON*, No. 374b, *post*.
368. *Add. Annotations*:—*Consd.* Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271. *Refd.* Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81.
369. *Add. Annotation*:—*Refd.* Buerger v. New York Life Assee. (1927), 96 L. J. K. B. 930.
370. *Add. Annotations*:—*Refd.* *Re Mason*, [1929] 1 Ch. 1. *Mentd.* Gayzer, Irvine v. Board of

Trade (1925), 95 L. J. K. B. 131; Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

371. After this case add “*Compensation for use of invention by Crown.*—See *PATENTS*, No. 1673a, *post*.”
372. *Add. Annotation*:—*Refd.* Brown v. Dagenham U. C., [1929] 1 K. B. 737.
374. *Add. Annotation*:—*Apld.* Badman v. R., [1924] 1 K. B. 64.
- 374a. ——— *When allowed.*—Under Petitions of Right Act, 1860 (c. 34), s. 7, the ct. has jurisdiction to allow a petition of right to be amended, provided the amendment does not involve a substantial alteration in the cause of action, so that the allowance of it without a fresh fiat would operate in derogation of the prerogative of the Crown. The test whether a particular amendment ought to be allowed is this: if the petition had originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused?—*BADMAN BROTHERS v. R.*, [1921] 1 K. B. 64; 93 L. J. K. B. 132; 130 L. T. 261; 68 Sol. Jo. 166, C. A.
- 374b. ——— *Service of copy on person in possession of property claimed*—*Petitions of Right Act, 1860 (c. 34), s. 5.*—A lunatic, at the date of her death in 1798, was entitled to certain funds in Court representing the residuary estate of her father. In 1791 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratia* grants of these funds to certain persons & obtained an indemnity in respect of these grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties agreed to confine themselves, for the present, to seeking a determination of the following questions: (a) whether the petition was maintainable on the assumption that no part of the funds in question ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund; (b) whether the petition was barred by any Statute of Limitations; (c) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, the suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratia* grants had been made:—*Held*: Petitions of Right Act, 1860 (c. 34), s. 5, did not apply to the case.—*Re MASON*, [1928] 1 Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *on appeal*, [1929] 1 Ch. 1, C. A.
375. *Add. Annotation*:—*Refd.* Buerger v. New York Life Assee. (1927), 96 L. J. K. B. 930.

## PART II. SECT. 3.

374a i. ——— *May be amended by court—When allowed.*—Where a suppliant seeks to substitute or add a substantially new cause of action, the amendment should not be allowed in the absence of the Lieutenant-Governor's fiat or the consent of the A.-G.; but if the substance of the case is not changed, the ct. can help the suppliant by amendment.—*NORTHERN CONSTRUCTION CO. v. R.*, [1923] 3 D. L. R. 1069; 2 W. W. R. 759.—*CAN.*

374a ii. ————]—Even if the ct. has power in some cases to

amend a petition without the consent of the Crown, that power must be limited to minor matters, & cannot go the length of allowing a suppliant to change the character of his claim against the Crown, either by adding to it or withdrawing part of it or by adding parties as co-defts. with the Crown.—*FLEXLEME SIGN CO. v. MACEY SIGN CO.*, [1923] 1 D. L. R. 1185; 51 O. L. R. 595.—*CAN.*

374a iii. ————]—A petition cannot be amended, unless one month's notice of the substance of the petition is given to a law officer.—*OFFICIAL ASSIGNEE v. R.*, [1922]

N. Z. L. R. 265.—*N.Z.*

374a iv. ————]—*Fitz-PATRICK v. R.* (1925), 57 O. L. R. 178.—*CAN.*

380 iii. ————] The Crown expropriated certain lands, & in the plan & description deposited in the registry office, named M. as the owner of a part. M., then, having obtained a fiat from the Crown, filed a petition of right in this ct. claiming the value of the land expropriated. M. later discovered that his wife & not himself was the owner of the land expropriated, & a motion was made for leave to amend the petition of right by substituting

381. *Add. Annotations*:—As to (1) **Refd.** Jamieson v. Downie, [1923] A. C. 691. As to (3) **Apprvd.** Badman v. R., [1924] 1 K. B. 64.
388. *Add. Annotations*:—As to (1) **Consd.** *Re*

Mason, [1929] 1 Ch. 1. **Refd.** Cayzer, Irvine v. Board of Trade (1925), 95 L. J. K. B. 134. *Generally*, **Mentd.** Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

## Part III.—Scire Facias.

441. *Add. Annotations*:—**Mentd.** British Thomson-Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn, [1924] 2 Ch. 33; Parker & Cooper v. Reading, [1926] Ch. 975; Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Assocn. (1926), 42 T. L. R. 401; Howson v. Buxton (1928), 97 L. J. K. B. 749.
449. *Add. Annotation*:—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

## Part V.—Habeas Corpus.

464. *Add. Annotation*:—**Refd.** Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603.
469. *Add. Annotations*:—As to (1) **Distd.** Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603. As to (4) **Refd.** R. v. Maidstone Prison, *Ex p.* Maguire, [1925] 2 K. B. 265.
470. *Add. Citations*:—[1923] 2 K. B. 361; 92 L. J. K. B. 797; 129 L. T. 419; 87 J. P. 166; 21 L. G. R. 419; 27 Cox, C. C. 433; *sub nom.* O'BRIEN v. SECRETARY OF STATE FOR HOME AFFAIRS, 67 Sol. Jo. 553; *on appeal*, *sub nom.* SECRETARY OF STATE FOR
- HOME AFFAIRS v. O'BRIEN, [1923] A. C. 603, H. L.
- Add. Annotation*:—**Refd.** Campbell v. Pollak, [1927] A. C. 732.
491. *Add. Annotation*:—**Mentd.** R. v. Secretary of State for Home Affairs, *Ex p.* O'Brien, [1923] 2 K. B. 361.
492. *Add. Annotation*:—**Refd.** Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603.
493. *Add. Annotation*:—As to (1) **Consd.** Sobhuza II. v. Miller, [1926] A. C. 518.
498. *Add. Annotation*:—**Refd.** R. v. Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.

the wife's name for that of M. as suppliant. *Held*: as no action can be taken against the Crown without first obtaining its fiat which gives the ct. jurisdiction, such an amendment could not be allowed & the motion was, under the circumstances, dismissed without costs.—**MORREY v. R.**, [1927] Exch. C. R. 238.—**CAN.**

**g i.** ——— *Defence*—When particulars ordered.—**O'BRIEN v. DOHERTY v. R.**, [1925] Exch. C. R. 1.—**CAN.**

**sk.** *Claim against individual as well as Crown*—Necessity for separate action against individual—*Action & petition of right tried together*.—**NORTHERN CONSTRUCTION CO. v. R.**, [1923] 3 D. L. R. 1069; 2 W. W. R. 759.—**CAN.**

393 **i.** *Discovery*—*Suppliant's right as against Crown*.—In proceedings by petition of right against the Crown, an order will not be made for the examination by petitioner of an officer of the Crown for discovery before trial.—**CROMBIE v. R.**, [1924] 2 D. L. R. 542; 52 O. L. R. 72.—**CAN.**

394 **i.** *Evidence*—*Burden of proof*—*Negligence charged against officers & servants of Crown*.—The burden of proof is upon the suppliant, who must show that there was negligence, & the maxim *res ipsa loquitur* cannot be invoked to relieve him of the onus in such actions under Exch. Ct. Act, 1906, s. 20.—**MONTREAL TRANSPORTATION CO. v. R.**, [1924] 4 D. L. R. 808.—**CAN.**

### PART III. SECT. 1.

**sl.** *Whether writ will issue against heir*—After return of *nulla bona* by administrator.—A *sci. fa.* will not issue against an heir under 5 Geo. 2, although an execution may have issued against

the goods & chattels in the hands of the administrator & been returned *nulla bona*.—**PATERSON v. MCKAY** (1823), Tay. 43.—**CAN.**

### PART V. SECT. 1, SUB-SECT. 1.

**sm.** *Civil proceeding*—*Appeal to Court of King's Bench*.—The writ of *habeas corpus* is a civil proceeding whatever may be the cause of detention, whether a criminal or supposed criminal or civil matter or any other illegal detention. A judgment maintaining a writ of *habeas corpus* is a judgment in a civil case, & is susceptible of appeal to the Ct. of K. B.—*Ex p.* FONG, *Ex p.* YAU, *Ex p.* CHALIFOUX, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; Q. R. 44 K. B. 476.—**CAN.**

### PART V. SECT. 1, SUB-SECT. 2.—A.

**c i.** ——— *Commitment not in any criminal case under any Act of Parliament of Canada*.—Petitioner was convicted, in July & October, 1928, on charges under Intoxicating Liquor Act of New Brunswick, & was committed to gaol in York County, N.B. He applied to a judge of this ct. for a writ of *habeas corpus*, alleging that, on & prior to Dec. 10, 1917, Canada Temperance Act was in force in said county, that, on that date, an Order in Council, passed pursuant to Statutes of Canada, 1917, c. 30, became effective, suspending the operation of the Canada Temperance Act in said county; that, at the time of the passing of said Order in Council, there was in force the New Brunswick Intoxicating Liquor Act, 1916, referred to in said Order in Council as being as restrictive as the Canada Temperance Act; that, in 1927, New Brunswick Intoxicating Liquor Act, 1927, c. 3, came into force, which repealed the 1916 Act, & was less

restrictive than Canada Temperance Act; & he contended that, as a result, the said suspension of the operation of Canada Temperance Act automatically ceased, & that Act came into force in said county, & that the offences for which he was convicted & committed to gaol were offences against that Act & not against the Provincial Act.—*Held*: a judge of this ct. had no jurisdiction to issue the writ applied for, as the commitment was not "in any criminal case under any Act of Parliament of Canada," within Supreme Court Act, s. 57.—**DOHERTY v. HAWTHORNE**, [1929] 1 D. L. R. 136; 50 Can. Crim. Cas. 209; [1928] S. C. R. 559.—**CAN.**

**so.** *Right to apply to different judges successively*—*Extradition proceedings*.—The common law right to make successive applications to different judges for a writ of *habeas corpus* still exists with respect to extradition proceedings.—*Re* O'CONNOR, [1928] 1 D. L. R. 588; [1928] 1 W. W. R. 65; 49 Can. Crim. Cas. 151; 39 B. C. R. 271.—**CAN.**

### PART V. SECT. 1, SUB-SECT. 3.—A.

501 **iv.** ———.—**REID v. DRAKE** (1867), 4 P. R. 141.—**CAN.**

501 **v.** ——— *Not granted where detention lawful*—*Not available as means of appeal*.—A writ of *habeas corpus* will not issue where the accused is being held in custody in virtue of a valid judgment of a ct. having jurisdiction. It is not intended & cannot be used as a means of appeal.—**HOWLEY v. PIEUZE** (1927), Q. R. 65 S. C. 483.—**CAN.**

501 **vi.** ———.—**Ex p.** BOUCHER (Que.) (1928), 50 Can. Crim. Cas. 161.—**CAN.**



508. *Add. Annotations*:—As to (1) *Apld. Campbell v. Pollak*, [1927] A. C. 732. *Generally, Refd. Eshugbayi Eleko v. Nigeria Government*, [1928] A. C. 459.

553. *Add. Annotation*:—*Refd. R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127.

554. *Add. Annotations*:—*Consd. R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127. *Refd. R. v. Brixton Prison, Ex p. Perry*, [1924] 1 K. B. 455.

570. *Add. Annotation*:—*Mentd. Everett v. Ryder* (1926), 135 L. T. 302.

585a. — *Form of summons*.]—A summons taken out during the long vacation with a view to obtaining a writ of *habeas corpus* to bring the body of *appet.* before the High Ct. should require the parties concerned to show cause, not why the writ should not issue, but why an order *nisi* for the writ should not issue, inasmuch as the former procedure does not, whereas the latter does, disclose the grounds upon which the application is made.—*R. v. Brixton Prison (Governor), Ex p. Shure*, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.

601. *Citations*:—For “*sub nom. R. v. HOME SECRETARY, Ex p. O'BRIEN*,” 39 T. L. R. 487, C. A.; *sub nom. HOME SECRETARY v. O'BRIEN*, *Times*, May 15, H. L.,” read “*sub nom. R. v. SECRETARY OF STATE FOR HOME AFFAIRS, Ex p. O'BRIEN*, [1923] 2 K. B. 361, C. A.;

*sub nom. SECRETARY OF STATE FOR HOME AFFAIRS v. O'BRIEN*, [1923] A. C. 603, H. L.” *Add. Annotation*:—*Refd. Campbell v. Pollak*, [1927] A. C. 732.

611. *Add. Annotations*:—*Consd. Eshugbayi Eleko v. Nigeria Government*, [1928] A. C. 459. *Refd. Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.

613a. *May be made to successive judges*.]—Each judge of the High Ct. established by Jud. Act, 1873 (c. 66), has jurisdiction to entertain an application for a writ of *habeas corpus*, in term time or in vacation, & is bound to hear & determine the application on its merits, notwithstanding that some other judge has already refused a similar application; & this principle applies in the case of the judges of the Supreme Ct. of Nigeria.—*ESHUGBAYI ELEKO v. NIGERIA GOVERNMENT (ADMINISTERING OFFICER)*, [1928] A. C. 459; 97 L. J. P. C. 97; 139 L. T. 527; 44 T. L. R. 632; 72 Sol. Jo. 452, P. C.

656a. — *J.*—*RUDYARD'S CASE* (1670), 2 Vent. 22; 86 E. R. 286.

*Annotations*:—*Refd. R. v. Wilkes* (1763), 2 Wils. 151; *Wood's Case* (1771), 3 Wils. 172; *R. v. Dunn* (1840), 12 Ad. & El. 599.

660a. — *J.*—Assuming that an order transferring a convict sentenced to penal servitude in Northern Ireland to an English prison was not valid to justify the transfer between the Irish & the English prisons, it is a sufficient answer by the governor of the English prison,

#### PART V. SECT. 1, SUB-SECT. 3.— B. (b).

523 i. *Where warrant prima facie valid*.]—*R. v. WONG YUEN* (1925), 44 Can. Crim. Cas. 338.—CAN.

#### PART V. SECT. 1, SUB-SECT. 3.—C.

552 iv. — *J.*—Where an inferior ct. is acting within its jurisdiction, the superior ct. has no power, at common law, to assume the function of an appellate ct. & review its conclusions by means of a writ of *habeas corpus* either with or without *certiorari*.—*THE CHINESE IMMIGRATION ACT & LEE CHOW YING* (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—CAN.

554 i. — *J.*—On ground that *decision against weight of evidence*.]—Application by way of *habeas corpus* & *certiorari* in aid to quash a conviction made by a police magistrate on a charge, under Excise Act, s. 181, of unlawful possession of spirits unlawfully manufactured:—*Held*: assuming that the evidence before the magistrate might be examined to determine its sufficiency, the magistrate having had some evidence before him on which to base his finding, the ct. was not justified in interfering with the conclusion or inference drawn by him therefrom.—*R. v. SCHARF (Man.)*, [1928] 3 W. W. R. 398.—CAN.

557 i. — *Acting without jurisdiction—Magistrate*.]—*Ex p. MOHAMED ALI (N. S.)* (1919), 32 Can. Crim. Cas. 65.—CAN.

o. For “4 C. L. R. 101” read “4 V. L. R. 101.”

r. i. — *J.*—*R. v. MOORE*, [1924] 3 W. W. R. 923.—CAN.

sp. *Where proceedings so irregular as to preclude fair trial*.]—Accused discharged upon a writ of *habeas corpus*.—*R. v. CAMPBELL* (1924), 43 Can. Crim. Cas. 340.—CAN.

sq. *Not decisions of court of record—County court judge's criminal court*.]—*Ex p. MARTIN*, [1927] 3 D. L. R. 1134; 48 Can. Crim. Cas. 23; 60 O. L. R. 577.—CAN.

J. S.\*

#### PART V. SECT. 1, SUB-SECT. 3.— D. (c).

st. *Person outside British India*.]—The High Ct. can issue a writ of *habeas corpus* for the production of a person outside British India, provided he is in the custody, or under the control, of a person within its jurisdiction.—*MAHOMDALLI ALLABUX v. ISMAILJI ABDULALI & SAIDAR SYEDNA TAHER SAIFUDDIN MULLAJI SAHEB* (1926), 1 L. R. 50 Bom. 616.—IND.

#### PART V. SECT. 1, SUB-SECT. 4.— A. (b).

sv. *To court in another province—Conviction under Opium & Narcotic Drug Act, 1923—Not without good reason*.]—*R. v. JUNGO LEE* (No. 2), [1927] 1 W. W. R. 578; 47 Can. Crim. Cas. 255; 38 B. C. R. 343.—CAN.

#### PART V. SECT. 1, SUB-SECT. 4.— A. (c).

595 v. — *J.*—An application for *habeas corpus* must be supported by an affidavit of prisoner, or an affidavit showing that his affidavit cannot be obtained.—*R. v. MURRELL*, [1924] 2 D. L. R. 647; 40 Can. Crim. Cas. 298.—CAN.

595 vi. — *J.*—*R. v. LEE* (B. C.), [1926] 3 W. W. R. 264.—CAN.

599 ii a. — *J.*—*R. v. MURRELL*, No. 595 v., *ante*.—CAN.

599 ii b. s. P. R. v. BANATT, [1926] 1 D. L. R. 424; 45 Can. Crim. Cas. 75; 58 L. L. R. 165.—CAN.

#### PART V. SECT. 1, SUB-SECT. 4.— A. (d).

611 vi. — *J.*—An *appet.* for a writ of *habeas corpus* is not at liberty to go from judge to judge of the Supreme Ct. in his quest of release.—*RE LOO LEE* (No. 2), [1924] 1 D. L. R. 910; 1 W. W. R. 735; 41 Can. Crim. Cas. 388; 33 B. C. R. 213.—CAN.

611 vii. — *J.*—An *appet.* for a writ of *habeas corpus* whose discharge is refused by one judge, may make another application before another

judge, even of the same ct., on the same or on different grounds, & so on from judge to judge, each judge being uncontrolled by the previous decisions.—*R. v. GEE DEW* (No. 1), [1924] 3 D. L. R. 153; 2 W. W. R. 773; 42 Can. Crim. Cas. 188; 33 B. C. R. 524.—CAN.

611 viii. — *J.*—When an application for a writ of *habeas corpus* has been refused on its merits by a judge of the Ct. of K. B. in Manitoba, the only ct. of original jurisdiction in Manitoba in questions of that kind, the application cannot be renewed before any other single judge.—*R. v. ROMANCHUK*, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—CAN.

611 ix. — *J.*—The dismissal of a *habeas corpus* application or applications is not a bar to the making of a new application for *habeas corpus* before the same judge.—*R. v. IACI*, [1925] 2 W. W. R. 129; 43 Can. Crim. Cas. 353.—CAN.

#### PART V. SECT. 1, SUB-SECT. 4.—B.

sw. *Order nisi—Notification of prosecutor & magistrate not necessary*.]—*R. v. KUZICK*, [1924] 1 W. W. R. 872; 42 Can. Crim. Cas. 144.—CAN.

#### PART V. SECT. 1, SUB-SECT. 4.—C. (c).

641 i. *General rule—Original writ*.]—There is nothing in King's Bench Act or Rules which expressly or impliedly provides that a writ of *habeas corpus* in a civil proceeding can be properly served by the delivery of a copy.—*BUSHELL v. STONIE (Man.)*, [1928] 1 W. W. R. 749.—CAN.

#### PART V. SECT. 1, SUB-SECT. 4.— C. (d).

g i. — *J.*—Where a judge of the Ct. of Appeal grants a writ of *habeas corpus*, the Ct. of Appeal has the right to quash the judge's order if granted erroneously.—*R. v. ROMANCHUK*, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—CAN.

to whom a rule nisi for a writ of *habeas corpus* has been directed, that appt. was lawfully sentenced to a term of penal servitude, which is still current, & that he detains him under an order lawfully made by the Home Secretary.—*R. v. MAIDSTONE PRISON (GOVERNOR), Ex p. MAGUIRE*, [1925] 2 K. B. 265; 94 L. J. K. B. 679; 133 L. T. 710; 89 J. P. 89; 41 T. L. R. 456, D. C.; *on appeal*, 95 L. J. K. B. 55, C. A.

- 666.** *Add. Annotation* :—*As to* (3) **Consd.** Eshugbayi Eleko v. Nigeria Government, [1928] A. C. 458.
- 682a.** —. ]—**SECRETARY OF STATE FOR HOME AFFAIRS** v. O'BRIEN, No. 801, *post*.
- 750.** *Add. Annotation* :—*As to* (2) **Refd.** Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603.
- 787.** *Add. Citation* :—17 Jur. 1163.
- 792.** *Add. Annotations* :—*As to* (1) **Consd.** Eshugbayi Eleko v. Nigeria Government, [1928] A. C. 459. *As to* (2) **Refd.** Campbell v. Pollak, [1927] A. C. 732.
- 793.** *Add. Annotations* :—**Distd.** Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603. **Refd.** G. v. G. (1928), 45 T. L. R. 7. **Mentd.** Green v. Green, [1929] P. 101.
- 795.** *Add. Annotation* :—**Refd.** R. v. Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.
- 797a.** ——— **Person sentenced to penal servitude.**]—Where, on an application for a writ of *habeas corpus*, a Div. Ct. has held that a person sentenced to penal servitude by a ct. in Northern Ireland has been lawfully transferred to a convict prison in England to serve his sentence, no appeal lies to the Ct. of Appeal as the question of the legality of the transfer & detention is one arising out of a criminal cause or matter.—**R. v. MAIDSTONE PRISON (GOVERNOR), Ex p. MAGUIRE** (1925),

95 L. J. K. B. 55; 133 L. T. 710; 89 J. P.  
161; 41 T. L. R. 554, 69 Sol. Jo. 691,  
C. A.

800. *Add. Annotation* :—*Mentd. R. v. Maidstone Prison, Ex p. Maguire*, [1925] 2 K. B. 265.
801. For the existing paragraph in original volume substitute as follows :—

**From order declaring prisoner's right to liberty—Order not directing discharge—Order of Court of Appeal—No appeal to House of Lords.]—No appeal lies from an order of a competent ct. for the issue of a writ of *habeas corpus* where the ct. determines the illegality of appct.'s detention & his right to liberty, although the order does not direct his discharge.**

Upon the application of a man whom the Home Secretary had caused to be arrested & deported to Dublin, where he was interned by the Govt. of the Irish Free State, the Ct. of Appeal, reversing the decision of the Div. Ct., granted an order *nisi*, which they subsequently made absolute, for the issue of a writ of *habeas corpus* directed to the Home Secretary, the ct. holding that the detention was illegal as the Home Secretary had no power to order a person to be interned in the Irish Free State; &, owing to a doubt whether the Home Secretary had control of the body, the order allowed him a week within which to make his return to the writ. Before the week had elapsed an appeal by the Home Secretary to the House of Lords was heard on the question of competency :—*Held* : notwithstanding the generality of the language of Appellate Jurisdiction Act, 1876 (c. 59), s. 3, the House had no jurisdiction to entertain the appeal.—**SECRETARY OF STATE FOR HOME AFFAIRS v. O'BRIEN**, [1923] A. C. 608; 92 L. J. K. B. 830; 129 L. T. 577; 87 J. P. 174; 39 T. L. R. 638; 67

**PART V. SECT. 1, SUB-SECT. 4.—**  
**D. (f) ii.**

**726 v. ———.]**—The ct. is entitled, on a *habeas corpus* application, to receive affidavit evidence to show that the magistrate had no jurisdiction or has exceeded his jurisdiction in convicting appet.—**R. v. MONTEMURRO, [1924] 2 W. W. R. 250.—CAN.**

726 vi. ———.—If, on an application to make absolute an order for a writ of *habeas corpus*, no want or excess of jurisdiction appears on the face of the documents filed with the return to the rule nisi, affidavits are admissible to establish such want or excess of jurisdiction, even although they may directly contradict facts stated in the documents filed with such return.—*RE CAVENETT*, [1926] N. Z. L. R. 755.—N.Z.

**PART V. SECT. 1, SUB-SECT. 4.—E.**

**EX.** Duty of court—To consider all evidence, records & proceedings taken.]—*R. v. PAGE* (1923), 41 Can. Crim. Cas. 59.—**CAN.**

sa. S. P. *Re* HILLMAN (N. S.), [1927]  
1 D. L. R. 725; 46 Can. Crim. Cas.  
308.—CAN.

319. **-CAN.**  
**sb.** — *Findings of fact - Right to question.*]—R. v. HILL (N. S.), [1929]  
 1 D. L. R. 349; 50 Can. Crim. Cas.  
 319. **-CAN.**

sc. — To raise technical points—*Extradition proceedings.*—Since the judge must look at the evidence to ascertain whether the conditions of the extradition treaty & statute have been fulfilled, it is not the duty of the *habeas corpus* judge to interfere with the proceedings on merely technical

grounds.—*Re* O'CONNOR, [1928] 1 D. L. R. 558, [1928] 1 W. W. R. 65; 49 Can. Crim. Cas. 151; 39 B. C. R. 271. — **CAN.**

**PART V. SECT. 1, SUB-SECT. 4.—G.**

788 i. *Re-arrest on same cause—Warrant of commitment prematurely issued.*—*Ex p.* DAVID (N. B.), [1928] 3 D. L. R. 237; 49 Can. Crim. Cas. 381.—**CAN.**

f (p. 269) i. *Not where prisoner detained under warrant of arrest from another Province—Legality of arrest not questioned.*—*Re NETTLETON (B. C.), [1928] 3 W. W. R. 735.—CAN.*

§ (p. 269) i. — Commitment for default of payment of fine— Fine partly paid.]—*Ex p.* WHYNOT (N. S.), [1928] 1 D. L. R. 528; 49 Can. Crim. Cas. 155.—**CAN.**

(g p. 269) ii. — *Unauthorised order as to costs.*—In making a conviction under Liquor Act, 1925, 1924-25, c. 53, a Justice of the peace has no authority to order that the costs be paid to him & such a provision in the conviction cannot be treated as a nullity on an application for *habeas corpus*.—R. v. RABIEK, [1928] 1 W. W. R. 588; 50 Can. Crim. Cas. 348; 22 Sask. L. R. 179. — CAN.

so. *Discretion of court.*—*Ex p.*  
LEADLEY (N. S.) (1926), 46 Can. Crim.  
Cas. 298.—CAN.

**PART V. SECT. 1, SUB-SECT. 4.—H.**

q i. —.]—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of

a judge to grant a writ of *habeas corpus* in aid of criminal matters.—*R. v. McADAM*, [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—**CAN.**

a i. — Grounds for allowing or refusing.]—*Re* WOOD (N. S.), [1927] 4 D. L. R. 537; 48 Can. Crim. Cas. 146. —CAN.

798 v. ———.]—When a judge or the full Ct. of K. B. has granted a writ of *habeas corpus* & discharged prisoner, there is no appeal.—R. v. ROMANCHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231. 34 Man. L. R. 371.—CAN.

798 vi. — — .]—R. v. DUNN  
(N. B.), [1928] 3 D. L. R. 674; 50  
Can. Crim. Cas. 37.—CAN.

**eg. Appeal from discretionary order as to custody of infants—Whether Court of Appeal will interfere.]—***Re PAISLEY* (N. B.), [1928] 1 D. L. R. 403.—**CAN.**

sh. Time for—*More than sixty days after date of judgment.*—On appeal to the Supreme Ct. of Canada in matters of *habeas corpus* the first step is the filing of the case in appeal with the registrar. Judgment of the Ct. of Appeal in a *habeas corpus* proceeding was pronounced Nov. 13, 1888; notice of appeal was immediately given, but the case in appeal was not filed in the Supreme Ct. until Feb. 18, 1889:—*Held:* the appeal was not brought within sixty days from the date on which the judgment sought to be appealed from was pronounced, & there was no jurisdiction to hear it.—*Re SMART* (Ont.) (1889), 16 S. C. R. 396.—**CAN.**

**Annotation:—***Consd. Campbell v. Pollak, [1927] A. C. 732.*

not lie.—*R. v. KINGSLAND PARISH INSPECTOR OF TAXES, Ex p. PEARSON, KINGSLAND ESTATE, It. v. KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES* (1922), 8 Tax Cas. 327.

*Annotation* :—*Refd. R. v. Swansea Income Tax Comrs., Ex p. English Crown Spelter Co.,* [1925] 2 K. B. 250.

1150. *Add. Annotations* :—*Consd. Clark v. Epsom R. D. C.,* [1929] 1 Ch. 287. *Refd. Phillips v. Britannia Hygienic Laundry Co.,* [1923] 2 K. B. 832.

1152. *Add. Annotation* :—*Refd. R. v. Lancashire JJ., Ex p. Tyrer,* [1925] 1 K. B. 200.

1156. *Add. Annotations* :—*As to (1) Apld. R. v. L. C. C., Ex p. Swan & Edgar* (1927) (1929), 141 L. T. 590. *Generally, Mentd. Huyton & Roby Gas Co. v. Liverpool Corpn.* (1925), 42 T. L. R. 116.

1181. *Add. Annotations* :—*Mentd. R. v. Labour Minister,* [1924] 2 K. B. 210; *L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council* (1925), 95 L. J. K. B. 255; *R. v. Swansea Income Tax Comrs., Ex p. English Crown Spelter Co.,* [1925] 2 K. B. 250; *R. v. St. Marylebone Income Tax Comrs., Ex p. Schlesinger* (1928), 13 Tax Cas. 716.

1182. *Add. Annotations* :—*Mentd. Barber v. Chudley* (1922), 92 L. J. K. B. 711; *Re Hummeltenberg, Beatty v. London Spiritualistic Alliance,* [1923] 1 Ch. 237; *Jackson v. Voss,* [1923] 2 K. B. 357; *Re Ludlow, Bence-Jones v. A.-G.* (1923), 93 L. J. Ch. 30; *Re Shakespeare Memorial Trust, Lytton v. A.-G.,* [1923] 2 Ch. 398; *A.-G. v. National Provincial Bank,* [1924] A. C. 262; *Brighton College v. Marriott No. 1* (1924), 69 Sol. Jo. 229; *Verge v. Somerville,* [1921] A. C. 496; *Brighton College v. Marriott,* [1925] 1 K. B. 312; *Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121; *Re Gray, Todd v. Taylor,* [1925] Ch. 362; *R. v. Income Tax Special Comrs., Ex p. Headmasters' Conference, Same v. Same, Ex p. Incorporated Asscn. of Preparatory Schools* (1925), 41 T. L. R. 651; *I. R. Comrs. v. Falkirk Temperance Café Trust* (1926), 11 Tax Cas. 353; *I. R. Comrs. v. Glasgow Musical Festival Asscn.* (1926), 11 Tax Cas. 154; *I. R. Comrs. v. Peeblesshire Nursing Asscn.* (1926), 11 Tax

Cas. 335; *Jackson's Trustees v. Lord Advocate* (1926), 10 Tax Cas. 460; *Martin v. Lowry, Martin v. I. R. Comrs.,* [1926] 1 K. B. 550; *Scottish Woollen Technical College, Galashiels v. I. R. Comrs.* (1926), 11 Tax Cas. 139; *I. R. Comrs. v. Yorkshire Agricultural Soc.* (1927), 44 T. L. R. 59; *Re Williams, Public Trustee v. Williams,* [1927] 2 Ch. 283; *General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. I. R. Comrs.* (1928), 97 L. J. K. B. 578; *Geologists' Asscn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271; *Adamson v. Melbourne & Metropolitan Board of Works,* [1929] A. C. 142; *Re Grove-Grady, Plowden v. Lawrence,* [1929] 1 Ch. 557.

1185. *Add. Annotations* :—*As to (2) Refd. St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor,* [1923] P. 38. *Generally, Refd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.

1186. *Add. Annotation* :—*Consd. R. v. Central Criminal Court JJ., Ex p. L. C. C.,* [1925] 2 K. B. 43.

1213. *Add. Annotation* :—*Distd. Port of London Authority v. I. R. Comrs.* (1919), 12 Tax Cas. 122.

1217. *Add. Annotations* :—*Refd. R. v. Roberts, Ex p. Scurr,* [1924] 2 K. B. 695; *Roberts v. Hopwood,* [1925] A. C. 578; *Short v. Poole Corpn.* (1925), 42 T. L. R. 107. *Mentd. Sadler v. Sheffield Corpn., Dyson v. Sheffield Corpn.,* [1924] 1 Ch. 483.

1219. *Add. Annotation* :—*Refd. Short v. Poole Corpn.,* [1926] Ch. 66.

1221. *Add. Citations* :—3 Nev. & M. K. B. 802; 3 L. J. M. C. 117.

1225. *Add. Citations* :—3 L. T. O. S. 180; 8 J. P. 662.

1228. *Add. Citation* :—*sub nom. R. v. LEICESTER, DEPUTIES OF FREEMEN,* 15 Q. B. 671; 117 E. R. 613.

*Add. Annotations* :—*Folld. R. v. Monmouth Corpn., R. v. Bolton Corpn.* (1870), L. R. 5 Q. B. 251. *Refd. Ex p. Portingell,* [1892] 1 Q. B. 15; *R. v. Somerset JJ.* (1900), 16 T. L. R. 166. *Mentd. R. v. Pawlett* (1873), L. R. 8 Q. B. 491.

#### PART VI. SECT. 1, SUB-SECT. 4.—A.

1157 iv. — — — — —.]—A mandamus lies against a minister of the Crown to compel the discharge of a duty laid upon him in the interest of the public.—*MORIN v. PIERON* (1927), Q. R. 41 K. B. 181.—CAN.

a i. *Income Tax Commissioner v. To perform a discretionary act*—*Held*: inasmuch as Specific Relief Act, s. 43, did not apply to this High Ct. it has no power to issue a mandamus directing the Income Tax Comr. to do what the Act gives him a discretion to do.—*MOHAMMAD FAIRUD-MOHAMMAD SHAFI v. LAHORE INCOME TAX COMR.* (1927), L. L. R. 9 Lah. 317.—IND.

a ii. — — — — —.]—*To state case on points of law not raised at hearing.*—*Held*: where an assessee seeks for a mandamus from the High Ct. against the Comr. of Income Tax requiring him to state a case on points of law different from those he had urged before the Comr. to state a case, his application cannot be entertained.—*A. K. A. C. T. V. CHETTYAR (FIRM) v. INCOME TAX COMR.* (1928), L. L. R. 6 Bom. 492.—IND.

#### PART VI. SECT. 1, SUB-SECT. 5.—A. (b).

n i. — — — — —.]—*Architects Registration*

*Board*—Where an application by resp. for registration as an architect had been refused by the above Board:—*Held*: mandamus would not lie directing the Board to register resp.—*ARCHITECTS REGISTRATION BOARD OF VICTORIA v. HUTCHISON,* [1925] V. L. R. 195; 35 C. L. R. 404; 31 Alta. L. R. 93.—AUS.

#### PART VI. SECT. 1, SUB-SECT. 5.—A. (d).

1221 vii. — — — — —.]—*Not to hear case without its jurisdiction.*—*R. v. BRINDA,* [1924] 3 D. L. R. 1092; 57 N. S. R. 323.—CAN.

1221 viii. — — — — —.]—*In criminal matter.*—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judge's criminal ct. to try, according to the procedure of Criminal Code, s. 527, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.—*A.-G. FOR ONTARIO v. DALY,* [1924] A. C. 1011; 94 L. J. P. C. 21; 139 L. T. 210; 40 T. L. R. 814.—CAN.

#### PART VI. SECT. 1, SUB-SECT. 5.—A. (e).

o i. — — — — —.]—The Supreme Ct. of Ontario has jurisdiction to grant a mandamus to a judge of a division ct. to hear an appeal from a conviction of deft., by a police magistrate, of an offence contrary to Inland Revenue Act, 1906, s. 180 (f).—*R. v. SPEIRS* (1924), 55 O. L. R. 290.—CAN.

#### PART VI. SECT. 1, SUB-SECT. 5.—A. (g).

1237 ii. — — — — —.]—*Re HOLLAND* (1875), 37 U. C. R. 214.—CAN.

#### PART VI. SECT. 1, SUB-SECT. 5.—A. (h).

sp. *To sign record of acquittal—After retirement of judge.*—A retired judge of a county ct. criminal ct. cannot be compelled by mandamus to sign a record of acquittal for lack of jurisdiction, after a long interval of time. If there is any right to have the record signed, the only competent person is the present judge.—*Re HALL* (1922), 38 Can. Crim. Cas. 55.—CAN.

#### PART VI. SECT. 1, SUB-SECT. 5.—B.

1270 iv. — — — — —.]—*Not where dismissal*

1293. *Add. Annotation*:—*Generally*, *Mentd.* Hesketh v. Birmingham Corpn. [1924] 1 K. B. 260.
1306. *Add. Annotations*:—*Mentd.* R. v. Labour Minister, [1924] 2 K. B. 210; L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington with-Thorpe Parish Council (1925), 95 L. J. K. B. 255; R. v. St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746.
1308. *Add. Annotation*:—*Refd.* Reigate Corpn. v. Surrey County Council, [1928] Ch. 359.
1317. *Add. Annotation*:—*Refd.* Brown v. Dagenham U. C., [1929] 1 K. B. 737.
1323. *Add. Annotation*:—*Refd.* Everett v. Griffiths, [1924] 1 K. B. 941.
1337. *Add. Annotation*:—*Refd.* Everett v. Griffiths, [1924] 1 K. B. 941.
1375. *Add. Annotation*:—*As to* (2) *Apld.* R. v. L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.
- 1433a. *Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.*—*PRACTICE NOTE*, [1926] W. N. 308.
1457. *Add. Annotation*:—*Mentd.* Bowker v. Woodroffe, Bowker v. Premier Drug Co., [1928] 1 K. B. 217.
- 1466a. — *Cross-examination of deponent—When ordered—Only in very special circumstances.*—*R. v. KENT JJ., Ex p. SMITH*, [1928] W. N. 137, D. C.
- 1486a. — — — — — *R. v. HANCOCK, ALDERMAN OF NORTH WEST WARD OF BOROUGH OF POOLE* (1839), 3 J. P. 723.
1524. *Add. Annotation*:—*Mentd.* Leconfield v. Thornely, [1926] A. C. 10.
1736. *Add. Annotations*:—*Refd.* R. v. Cory, [1927] 1 K. B. 810. *Mentd.* Griffiths v. Studebakers, [1921] 1 K. B. 102.
1740. *Add. Citation*:—2 B. R. A. 639.
- 1749a. — — — — — *R. v. VAYLE* (1814), 8 J. P. Jo. 212.
1809. *Add. Annotations*:—*Refd.* *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53; *Swift v. Board of Trade*, [1926] 2 K. B. 131.
1810. *Add. Annotations*:—*Generally*, *Mentd.* I. R. Comrs. v. Burrell, [1921] 2 K. B. 52; *Herbert v. I. R. Comrs.*, I. R. Comrs. v. Herbert (1925), 9 Tax Cas. 593; *Daw v. I. R. Comrs.*, *Duff-Dunbar v. I. R. Comrs.* (1928), 14 Tax Cas. 58; I. R. Comrs. v. Hawley, [1928] 1 K. B. 578.

## Part VII.—Quo Warranto.

1837. *Add. Annotations*:—*Refd.* Metcalfe v. Boyce, [1927] 1 K. B. 758; *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey*, [1929] 1 Ch. 686. *Mentd.* Layzell v. Thompson (1926), 43 T. L. R. 58.
1846. *Add. Annotation*:—*Refd.* Everett v. Griffiths, [1924] 1 K. B. 911.
1847. *Add. Annotation*:—*Refd.* Everett v. Griffiths, [1924] 1 K. B. 941.

justified.]—*Re* MONAGHAN (1924), 57 N. S. R. 242.—CAN.

1270 v. ————ADAMS RIVER LUMBER CO. v. KAMLOOPS SAWMILLS, LTD. (1921), 70 D. L. R. 863; 30 B. C. R. 351.—CAN.

### PART VI. SECT. 1, SUB-SECT. 5.—D.

1292 i. *General rule—Bill pending to repeal Act.*—Where a duty is imposed upon a local authority to carry out an Act, the fact that a bill has been introduced to repeal that Act does not justify the local authority in refusing to carry out the duty, & mandamus lies to compel performance.—*R. v. RATHMINES URBAN DISTRICT COUNCIL*, [1928] 1 R. 260.—IR.

1294 ii. ————Health Act, 1919, s. 147, gives the Commission of Public Health power to order a municipal council to combine with other councils in providing, equipping & maintaining a common hospital. On the refusal by a council to obey such an order the Commission obtained an order *visi* for the issue of a writ of mandamus:—*Held*: where the issue of a writ is obligatory under the statute, vagueness in the order sought to be enforced is immaterial & the writ must issue.—*R. v. ROCHESTERSHIRE COUNCIL, Ex p. PUBLIC HEALTH COMMISSION*, [1928] V. L. R. 492; [1928] Argus L. R. 315.—AUS.

### PART VII. SECT. 1, SUB-SECT. 5.—E.

e i. ————*To register transfer.*—*R. v. REGISTRAR OF TITLES, Ex p. MOSE*, [1928] V. L. R. 411; 49 A. L. T. 275; [1928] Argus L. R. 293.—AUS.

ar. *Municipal council—Imposing con-*

*ditions to permission to erect petrol pump outside legitimate scope of council's functions.*—*Held*: a mandamus should be granted.—*Re* RANDWICK MUNICIPAL COUNCIL, *Ex p. BOWSER & Co.* (1927), 27 S. R. N. S. W. 209; 41 N. S. W. W. N. 57.—AUS.

st. *Mayor—Refusing to put motion to motion.*—*R. v. POLLEY, Ex p. MILLER*, [1928] V. L. R. 1.—AUS.

### PART VI. SECT. 2.

1326 iv. ————CASTLEMAN v. JOHNSON, [1921] 3 W. W. R. 830; 70 D. L. R. 862; 30 B. C. R. 354.—CAN.

### PART VI. SECT. 3.

1341 i. *When action for mandamus pending.*—An interlocutory mandamus should not be granted, unless it can be shown that ptf. will suffer injury by waiting for the result of the trial. Proof of the claim for damages is not a condition precedent to the granting of an interlocutory mandamus.—*LIDINGS v. ELMHURST SCHOOL TRUSTEES* (Sask.), [1926] 4 D. L. R. 81; [1926] 2 W. W. R. 752.—CAN.

### PART VI. SECT. 6, SUB-SECT. 1.—A. (a).

1350 i. *Necessary parties—Mandamus against municipal corporation.*—In mandamus proceedings against a municipal corpn. it is the better practice to make parties to the proceedings the members of council & officers whose alleged delinquencies are involved.—*R. (READ) v. PEMBINA MUNICIPAL DISTRICT NO. 552*, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—CAN.

### PART VII. SECT. 2.

1840 i. *Discretion of court—Court bound to consider all circumstances.*—On application for a *quo warranto*, the ct. will consider whether in all the circumstances the public interest calls for the exercise of its discretion in favour of appeal.—*R. (BOUMROT) v. JOHNSTON*, [1923] 2 D. L. R. 278; 56 N. S. R. 214.—CAN.

1840 ii. ————Where an application for *quo warranto* is made to the Ct. of K. B., the granting or withholding of leave is in the discretion of the ct., & the discretion ought to be exercised upon a sound consideration of the particular circumstances of each case.—*R. (MATTHESON) v. HUBER*, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—CAN.

### PART VII. SECT. 3, SUB-SECT. 1.—A. (d).

1871 iii. ————An application for a *quo warranto*, to test the validity of the appointment of an inspector, on the ground that the appointment was illegal because there was already an inspector in office, was dismissed, as the municipality had power to appoint "one or more inspectors."—*R. v. THIBAUT* (1926), 59 N. S. R. 93.—CAN.

### PART VII. SECT. 3, SUB-SECT. 1.—F.

av. ————*Failure to post name of candidate.*—Where after being legally nominated as a councillor for a rural municipality, a candidate informs the clerk & returning officer that he is considering withdrawing, but does not withdraw, & the returning officer does not post his name as one of the

1852. *Add. Annotation*:—**Refd.** *Brown v. Dagenham U. C.*, [1929] 1 K. B. 737.
1952. *Add. Annotation*:—**Refd.** *Everett v. Griffiths*, [1924] 1 K. B. 941.
1954. *Add. Annotation*:—**Refd.** *Everett v. Griffiths*, [1924] 1 K. B. 941.
2007. *Add. Annotation*:—**Refd.** *Everett v. Griffiths*, [1924] 1 K. B. 941.
2029. *Add. Annotation*:—**Mentd.** *Baldwin v. Ellis*, [1929] 1 K. B. 273.

2034. *Add. Annotation*:—**Mentd.** *Leconfield v. Thornely* (1925), 89 J. P. 199.
- 2046a. — **Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.**—**PRACTICE NOTE**, [1926] W. N. 308.
2084. *Add. Annotation*:—**Mentd.** *Westminster Corpn. v. Armstrong*, [1929] 2 K. B. 451.
2093. *Add. Annotation*:—**Apld.** *R. v. L. C. C.*, *Ex p.* *Swan & Edgar* (1927) (1929), 141 L. T. 590.

## Part VIII.—Prohibition.

2110. *Add. Annotations*:—**Refd.** *St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor*, [1923] P. 38; *Hunter v. Stadtische Hochschulefischerlei Gemeinnützige Gesellschaft* (1925), 133 L. T. 488; *Mansfield v. Robinson*, [1928] 2 K. B. 353.
2112. *Add. Annotation*:—**As to** (1) **Refd.** *St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor*, [1923] P. 38.
2121. *Add. Annotation*:—**As to** (2) **Folld.** *R. v. North*, *Ex p.* *Oakey* (1926), 43 T. L. R. 60.
2128. *Add. Annotations*:—**Mentd.** *R. v. Electricity Comrs.*, *Ex p.* *Yorkshire Electric Power Co.* (1927), 138 L. T. 230; *R. v. St. Marylebone Income Tax Comrs.*, *Ex p.* *Schlesinger* (1928), 13 Tax Cas. 746.
2129. *Add. Annotations*:—**Apld.** *St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor*, [1923] P. 38. **Refd.** *R. v. North*, *Ex p.* *Oakey* (1926), 43 T. L. R. 60.
2130. *Add. Annotations*:—**Refd.** *R. v. Electricity Comrs.*, *Ex p.* *London Electricity Joint*

*Committee Co.* (1920), [1924] 1 K. B. 171; *R. v. Powell*, *Ex p.* *Camden*, [1925] 1 K. B. 641.

2132. *Add. Annotations*:—**Consd.** *R. v. Swansea Income Tax Comrs.*, *Ex p.* *English Crown Spelter Co.*, [1925] 2 K. B. 250; *R. v. North Worcestershire Assessment Committee*, *Ex p.* *Hadley*, [1929] 2 K. B. 397. **Refd.** *R. v. Electricity Comrs.*, *Ex p.* *London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171; *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.
- 2132a. — — — — —.]—**R. v. KINGSLAND PARISH, INSPECTOR OF TAXES**, *Ex p.* *PEARSON, KINGSLAND ESTATE, R. v. KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES*, No. 1141a, *ante*.
2138. *Add. Annotation*:—**Mentd.** *R. v. Labour Minister*, [1924] 2 K. B. 210.
- 2142a. — — — — —.]—A writ of prohibition will not lie to restrain justices in petty sessions from enforcing a warrant of imprisonment on an

nominees but declares another candidate elected by acclamation, a *quo warranto* proceeding is the correct method for testing the latter's right to the office.—**R. (MACKAY) v. GOOP**, [1922] 1 W. W. R. 712; 66 D. L. R. 763.—**CAN.**

**sw.** — *Disqualification of candidate.*—Where a person elected to a municipal office is at the time of his election disqualified for election, the election can only be attacked by an election petition; but where he is disqualified from holding municipal office his case comes under the category of continuing disqualifications which afford good ground for a proceeding by *quo warranto*.—**R. (NUTTALL) v. BROWN** [1923] 2 W. W. R. 511; 33 Man. L. R. 184.—**CAN.**

**sz.** — *Statutory remedy available.*—The remedy by *quo warranto* is not excluded by another statutory remedy, unless the Legislature has so declared expressly or by necessary implication.—**R. (MCARTHUR) v. MAYCOCK**, [1924] 4 D. L. R. 1222; 3 W. W. R. 540.—**CAN.**

### PART VII. SECT. 4, SUB-SECT. 2.—B. (a).

**t i.** — — — — —.]—*Proof of interest.*—**R. v. MCKENZIE** (1851), 2 C. L. Ch. 36.—**CAN.**

### PART VII. SECT. 4, SUB-SECT. 2.—B. (b).

**ci.** — — — — —.]—**R. (MATHESON) v. HUBER**, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

### PART VII. SECT. 4, SUB-SECT. 2.—B. (c).

1958 iii. — — — — —.]—**R. v. ADAMS** (1850), 1 C. L. Ch. 203.—**CAN.**

1969 i. *What is acquiescence.*—Acquiescence by a relator in the alleged offence, to be fatal, must be acquiescence at the time the alleged offence is committed. The subsequent conduct of a relator in agreeing to overlook the equal alleged guilt of others does not constitute disqualifying acquiescence.—**R. (MATHESON) v. HUBER**, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

### PART VII. SECT. 4, SUB-SECT. 3.

1990 i. *Effect of delay.*—Unnecessary delay in making an application for a rule nisi for *quo warranto* is a bar to that remedy. A delay from Oct. to Apr., the ct. having sat twice in the meantime, is a delay of such length.—**Re CROSMAN & McLEOD'S ELECTION, Ex p. HOWARD** (1922), 70 D. L. R. 580.—**CAN.**

### PART VII. SECT. 4, SUB-SECT. 4.—A.

**ss.** *Necessity for — That motion made at instance of relator.*—On a motion for a *quo warranto*, an affidavit stating that the motion is made at the instance of the relator must be filed before the service of the notice of motion or petition, & where it has not been so filed the motion will fail.—**R. (MACKAY) v. GOOP**, [1922] 1 W. W. R. 712; 66 D. L. R. 763.—**CAN.**

### PART VII. SECT. 4, SUB-SECT. 4.—C.

2017 i. *Acceptance of office—Acceptance or acting in office need not be stated.*—**R. v. STEPHENSON** (1851), 1 C. L. Ch. 270.—**CAN.**

### PART VII. SECT. 5.

**i i.** — — — — —.]—**R. (MCARTHUR) v. DOUCET**, [1924] 3 D. L. R. 812.—**CAN.**

**sb.** *Defence—Failure to answer objection—Is admission of truth of objection.*—**R. v. SCOTT** (1851), 2 C. L. Ch. 98.—**CAN.**

**sc.** *Service of notice of motion—Time for—Mistake as to day of week subsequently amended.*—**R. v. PONSFORD** (1902), 3 O. L. R. 410; 22 C. L. T. 146; 1 O. W. R. 645.—**CAN.**

### PART VIII. SECT. 1.

2109 i. *Whether grantable ex debito justitie—On excess or want of jurisdiction—Apparent from proceedings.*—Where want of jurisdiction is apparent on the face of the proceedings a stranger is entitled to a writ of prohibition, *ex debito justitie*.—**R. v. KNYVETT** (1928), 22 Q. J. P. 138.—**AUS.**

### PART VIII. SECT. 2.

**h i.** — — — — —.]—**MINISTER FOR LABOUR & INDUSTRY (N. S. W.) v. MUTUAL LIFE & CITIZENS ASSURANCE CO., LTD.** (1922), 30 C. L. R. 488; 28 Argus L. R. 252; 22 S. R. N. S. W. 610; 39 N. S. W. W. N. 94; (1922), N. S. W. Ind. Arbn. Cas. 20.—**AUS.**

### PART VIII. SECT. 4, SUB-SECT. 1.

**a i.** — — — — —.]—*Interference with discretion of judge.*—**Ex p. BORG** (1928), 28 S. R.

order for payment of rates where no remedy of a preventive, as distinct from a corrective, nature can result from the issue of the writ.—*R. v. NORFOLK JJ.*, *Ex p. DAVIDSON* (1925), 69 Sol. Jo. 558, D. C.

**2149a.** —.]—Appets. having obtained a rule for a writ to prohibit the General Comrs. from making, allowing, confirming, enforcing, or otherwise proceeding upon an assessment to income tax:—*Held*: prohibition would not lie to the General Comrs., who had acted in accordance with their statutory duty in making the assessment & had not exceeded their jurisdiction.—*R. v. SWANSEA INCOME TAX COMRS.*, *Ex p. ENGLISH CROWN SPELTER CO.*, [1925] 2 K. B. 250; 94 L. J. K. B. 718; 133 L. T. 143; 41 T. L. R. 505; 9 Tax Cas. 487; *sub nom. R. v. INCOME TAX GENERAL COMRS.*, *Ex p. ENGLISH CROWN SPELTER CO., LTD.*, 69 Sol. Jo. 606.

**2168.** *Add. Annotation*:—*Apprvd. R. v. North*, *Ex p. Oakey*, [1927] 1 K. B. 491.

**2185.** *Add. Annotations*:—*Mentd. R. v. Electricity Comrs.*, *Ex p. Yorkshire Electric Power Co.* (1927), 138 L. T. 230; *R. v. St. Marylebone Income Tax Comrs.*, *Ex p. Schlesinger* (1928), 13 Tax Cas. 746.

**2187a.** —.]—In the case of the misinterpretation of an Act by an inferior ct., the consideration of which arises incidentally in the course of a proceeding which is confessed to be within its jurisdiction, a prohibition will not lie, unless it be made appear to the superior ct. that the party applying for the prohibition has, in the course of the proceedings in the inferior ct., alleged the grounds for a contrary interpretation of the Act on which he applies for the prohibition, & that the inferior ct. has proceeded notwithstanding such allegation.—*HOME v. CAMDEN (EARL)* (1795), 6 Bro. Parl. Cas. 203; 2 Hy. Bl. 533; 126 E. R. 687; *affg. S. C. sub nom. CAMDEN (LORD) v. HOME* (1791), 4 Term Rep. 382.

*Annotations*:—*Consd. Gould v. Gapper* (1804), 5 East, 345. *Distd. Wadsworth v. Spain* (1851), 17 Q. B. 171. *Apld. R. v. Greenwich County Court Judge* (1888), 60 L. T. 248. *Refd. Gare v. Gapper* (1803), 3 East, 472; *Veley v. Burder* (1841), 12 Ad. & El. 265; *Re Appleford Commutation* (1845), 8 Q. B. 139; *Egyptian Bonded Warehouses Co. v. Yeyasu Goshi Kaisha*, [1922] 1 A. C. 111. *Mentd. The St. Tudno*, [1918] P. 174.

N. S. W. 564; 45 N. S. W. W. N. 167. —AUS.

#### PART VIII. SECT. 4, SUB-SECT. 2.

**2150 vi.** —.]—Prohibition is granted where there is want of jurisdiction in an inferior ct.—*ROSENBERG v. THE MACCABEES*, [1923] 2 W. W. R. 320.—CAN.

**2150 vii.** —.]—*Re WOODROOF*, [1925] 3 D. L. R. 966; 44 Can. Crim. Cas. 199.—CAN.

**2150 viii.** —.]—*Re R. v. LAMBERT (Ont.)* (1926), 46 Can. Crim. Cas. 13.—CAN.

**2150 ix.** —.]—Prohibition should not issue, unless it is clear on the face of the proceedings that there is want of jurisdiction.—*CHILDREN'S AND SOCIETY OF ST. ADELARD v. STE. ROSE RURAL MUNICIPALITY (Man.)*, [1926] 4 D. L. R. 466; [1926] 3 W. W. R. 8; 46 Can. Crim. Cas. 305.—CAN.

**2150 x.** —.]—The writ of prohibition may be resorted to only where there is a complete lack of jurisdiction.—*R. v. DEF (Man.)*, [1927] 4 D. L. R. 1065; [1927] 3 W. W. R. 529; 49 Can. Crim. Cas. 57.—CAN.

**2150 xi.** *S. P. R. v. JOYCE*, *Ex p. MEREDITH*, [1927] V. L. R. 481; 49

A.L. T. 57; [1927] Argus L. R. 348.—AUS.

#### PART VIII. SECT. 4, SUB-SECT. 4.—A.

**2184 iv.** —.]—*Re WILTON FARMERS' CO-OPERATIVE ASSOCN. v. BURGESS*, [1924] 4 D. L. R. 435; 55 O. L. R. 534.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 4.—B.

**2192 iii.** —.]—Prohibition does not lie where the lower ct., having properly entered upon an inquiry, has erroneously found a fact which, though essential to the validity of its order, it was competent to try.—*R. v. EMERALD MAGISTRATES COURT & EDMOND*, *Ex p. BEAZLEY*, [1928] St. R. Qd. 349; 22 Q. J. P. 97.—AUS.

#### PART VIII. SECT. 5, SUB-SECT. 1.

*se. Before hearing.*—A writ of prohibition prohibiting a district judge from hearing an appeal from a summary conviction, on the ground of want of jurisdiction:—*Held*: good.—*R. (LAMSON) v. SHARPE & INGLE*, [1921] 3 W. W. R. 674; 66 D. L. R. 521; 36 Can. Crim. Cas. 326; 15 Sask. L. R. 35.—CAN.

*ad.* —.]—A motion for prohibition being commenced before the

**2196.** *Add. Annotation*:—*Mentd. Lapish v. Braithwaite* (1924), 93 L. J. K. B. 1123.

**2200.** *Add. Annotations*:—*Consd. St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor*, [1923] P. 38; *R. v. North*, *Ex p. Oakey* (1926), 43 T. L. R. 60.

**2220.** *Add. Annotations*:—*Refd. R. v. Electricity Comrs.*, *Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171; *R. v. Health Minister*, *Ex p. Davis* (1929), 141 L. T. 6.

**2221.** *Add. Annotations*:—*Consd. R. v. Electricity Comrs.*, *Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171; *R. v. Health Minister*, *Ex p. Davis*, [1929] 1 K. B. 619.

**2254.** *Add. Annotations*:—*Refd. R. v. Electricity Comrs.*, *Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171; *R. v. Health Minister*, *Ex p. Davis* (1929), 141 L. T. 6.

**2287.** *Add. Annotations*:—*Consd. R. v. Electricity Comrs.*, *Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171. *Mentd. R. v. Maidstone Prison*, *Ex p. Maguire* (1925), 133 L. T. 710.

**2287a.** *Assessment committee.*—A rating authority had appointed a sub-committee to fix the values of properties in the district for the purpose of the preparation of the valuation list. They appointed P. & G. members thereof, & subsequently appointed the same two persons as their representatives on resp. assessment committee. The applicant had given notice of objections to his assessment to resp. committee, & on learning the above facts, obtained a rule nisi for a prohibition to that committee from hearing & determining his objection:—*Held*: a writ of prohibition would lie to an assessment committee.—*R. v. NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE*, *Ex p. HADLEY*, [1929] 2 K. B. 397; 98 L. J. K. B. 605; 141 L. T. 557; 93 J. P. 199; 45 T. L. R. 525; 27 L. G. R. 458.

**2290.** *Add. Annotation*:—*Consd. R. v. Electricity Comrs.*, *Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171.

magistrate has heard the evidence in a charge may be dismissed without prejudicing appct. as to any motion he may make at a later stage.—*R. v. JAEGER CO.* (1922), 38 Can. Crim. Cas. 180.—CAN.

#### PART VIII. SECT. 5, SUB-SECT. 3.—A.

*st. Before defence filed or matter dealt with.*—Where want of jurisdiction does not appear on the face of the proceedings, the application should be made before judgment. The fact that a defence has not been filed, or that the matter has not been dealt with by the inferior ct., is not a ground against deft. applying for prohibition.—*ROSENBERG v. THE MACCABEES*, [1923] 2 W. W. R. 320.—CAN.

#### PART VIII. SECT. 6.

**2287 i.** —]—*Not to persons without lawful authority purporting to act as court.*—*R. (KELLY) v. MAGUIRE & O'SHEIL*, [1923] 2 I. R. 58.—IR.

*nt. S. P.—WATERSIDE WORKERS' FEDERATION OF AUSTRALIA v. GILCHRIST, WATT & SANDERSON, LTD.* (1927), 34 C. L. R. 482.—AUS.

*b. Add "revsd. on other grounds."* 16 S. C. R. 707."



2303. For the existing paragraph in original volume substitute as follows:—

**Electricity Commissioners.]**—The powers of the Electricity Comrs. are to be exercised judicially & not ministerially, & a writ of prohibition will issue if they make an order giving effect to an *ultra vires* scheme.—*R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.* (1920), 1 *Ad.*, [1924] 1 K. B. 171; 93 L. J. K. B. 390; 130 L. T. 164; 88 J. P. 13; 39 T. L. R. 715; 68 Sol. Jo. 188; 21 L. G. R. 719, C. A.

**Annotations:—***Apld.* *R. v. Church Assembly Legislative Committee & Church Assembly, Ex p. Haynes Smith* (1927), 44 T. L. R. 68; *R. v. Health Minister, Ex p. Davis*, [1929] 1 K. B. 619; *R. v. North Worcestershire Assessment Committee, Ex p. Hadley*, [1929] 2 K. B. 397. **Consd.** *A.-G. v. London & Home Counties Joint Electricity Authority*, [1929] 1 Ch. 513. **Refd.** *R. v. Electricity Comrs., Ex p. Yorkshire Electric Power Co.* (1927), 91 J. P. 191. **Mentd.** *Prager v. Blatspiel Stamp & Heacock*, [1924] 1 K. B. 566.

2309. **Add. Annotation:—***Refd.* *R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171.

2310. **Add. Annotation:—***Refd.* *R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171.

2312. **Add. Annotation:—***Refd.* *R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171.

2314. **Add. Annotation:—***Mentd.* *Graham v. Graham*, [1923] P. 31.

2321. **Add. Citation:—**[1923] P. 38.

2326a. **Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—**PRACTICE NOTE, [1926] W. N. 308.

2345. **Add. Annotation:—***Refd.* *Engelke v. Musmann*, [1928] A. C. 433.

2382. **Add. Annotations:—***Refd.* *St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor*, [1923] P. 38. **Mentd.** *R. v. North, Ex p. Oakley* (1926), 43 T. L. R. 60.

2388. **Add. Annotations:—***Refd.* *Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 43 T. L. R. 659; *R. v. St. Marylebone Income Tax Comrs., Ex p. Schlesinger* (1928), 13 Tax Cas. 746; *R. v. L. C. C., Ex p. Swan & Edgar* (1927), (1929), 141 L. T. 590. **Mentd.** *Ingle v. Farrand*, [1925] 2 K. B. 728; *Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 138 L. T. 500.

2400. **Add. Annotation:—***Consd.* *Simbro Trading Co., Ltd. v. Posograph (Parent) Corp.*, [1929] 2 K. B. 266.

2401. **Add. Annotation:—***Refd.* *Campbell v. Pollak*, [1927] A. C. 732.

## Part IX.—Certiorari.

2421. **Add. Annotations:—***As to* (1) *Refd.* *R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171. *As to* (3) *Refd.* *R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.* (1920), [1924] 1 K. B. 171. **Generally, Mentd.** *Frome United Breweries Co. v. Bath J.J.*, [1926] A. C. 586; *R. v. Sheffield J.J., Ex p. Rawson* (1927), 91 J. P. 193.

2422a. — **Remedy by way of appeal—Notice of**

### PART VIII. SECT. 7.

2319 *via.* — — — — —.]—Circumstances in which:—*Itld.* resp., by applying to the judge of the Division Ct., under Division Cts. Act, to set aside a judgment, had not waived his rights to move for prohibition.—*Itc* *Ord v. Krepesky*, [1925] 3 D. L. R. 1018; 57 O. L. R. 353.—CAN.

2319 *viii.* — — — — —.]—Where a person appears at the hearing of an affiliation summons only to protest & to object to the jurisdiction, he does not, by remaining there after his objection is overruled, & by endeavouring to discredit complainant's story, voluntarily submit himself to the jurisdiction or deprive himself of the right to apply for a prohibition.—*Ex p. Holmes* (1927), 27 S. L. N. S. W. 253; 44 N. S. W. W. N. 82.—AUS.

PART VIII. SECT. 8, SUB-SECT. 4. *sg. Against parties.]*—Prohibition lies against parties as well as against the judge of the inferior ct.—*Rosenberg v. The Macabees*, [1923] 2 W. W. R. 320.—CAN.

### PART VIII. SECT. 8, SUB-SECT. 6.

*sk. Admissibility of statements made*

*on information & belief.]*—An application for prohibition is not an interlocutory motion, hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—*Beauchene & Peltier v. Gunkon* (Sask.), [1928] 3 D. L. R. 692; [1928] 2 W. W. R. 197; 50 Can. Crim. Cas. 57.—CAN.

### PART VIII. SECT. 8, SUB-SECT. 10.

2401 *i. Not from order as to costs.]*—On granting a writ of prohibition preventing a magistrate from proceeding with the hearing of a charge, costs were given against the informant. On appeal as to costs:—*Itld.* the appeal should be dismissed.—*It. v. Leonard*, [1921] 3 W. W. R. 768; 66 D. L. R. 497; 36 Can. Crim. Cas. 255; 15 Sask. L. R. 29.—CAN.

### PART IX. SECT. 1.

*gi.* — — — — —.]—*R. v. Denny* (1921), 61 D. L. R. 663; 36 Can. Crim. Cas. 77; 51 O. L. R. 121.—CAN.

*gi.* — — — — —.]—*R. v. Woodstock, Town Assessors, Ex p. Bank of Nova Scotia* (1922), 68 D. L. R. 48.—CAN.

*appeal given.]—**R. v. Kingsland Parish, Inspector of Taxes, Ex p. Pearson, Kingsland Estate, R. v. Kingsland Parish Income Tax Comrs. & Inspector of Taxes*, No. 1141a, ante.

2430. **Add. Annotations:—***Mentd.* *Ord v. Ord*, [1923] 2 K. B. 432; *Jacobson v. Frachon* (1927), 138 L. T. 386; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

*g. iii.* — — — — —.]—*R. v. Wood* (1924), 43 Can. Crim. Cas. 382.—CAN.

*g. iv.* — — — — —.]—*MAHAMMAD ILAZA SAHER BELGAMI v. SADASIVA RAO* (1925), 1 L. R. 49 Mad. 49.—IND.

*g. v.* — — — — —.]—*R. v. O'Brien, Ex p. Thieriault* (1917), 45 N. B. R. 275; 29 Can. Crim. Cas. 141; 41 D. L. R. 97.—CAN.

*g. vi.* — — — — —.]—Where a party has ample remedy by appeal *certiorari* will not be granted unless some satisfactory reason is given why the remedy by way of appeal was not taken advantage of.—*It. v. LeBlanc, Ex p. McDonald* (1926), 53 N. B. R. 37.—CAN.

*g. vii.* — — — — —.]—*Ex p. Gautreau* (N. R.), [1928] 1 D. L. R. 271; 49 Can. Crim. Cas. 182.—CAN.

*zi.* — — — — —.]—*R. v. Olsen* (1923) 32 B. C. R. 516.—CAN.

### PART IX. SECT. 4.

*sl. General rule — Persons illegally purporting to act as court.]*—Where the assumption of authority by a tribunal is illegal from the beginning, it is not subject to *certiorari*.—*R. (Kelly) v. Maguire & O'Sheil*, [1923] 2 I. R. 58.—IR.



**2448. Add. Annotation:—***Folld. R. v. Central Criminal Court JJ., Ex p. L. C. C., [1925] 2 K. B. 43.*

**2449a. — Not to quash order.]—**The K. B. Div. of the High Ct. of Justice has no jurisdiction to issue a writ of *certiorari* for the purpose of removing into that ct. an order of the Central Criminal Ct. with a view to its being quashed.—*R. v. CENTRAL CRIMINAL COURT JJ., Ex p. LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.*

**2458. Add. Annotations:—As to (3) Apld. R. v. Church Assembly Legislative Committee & Church Assembly, Ex p. Haynes Smith (1927), 44 T. L. R. 68. Refd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.**

**2521. Add. Annotation:—***Refd. R. v. Cory, [1927] 1 K. B. 810.*

**2522. Add. Annotation:—***Refd. Leyton U. C. v. Wilkinson, [1927] 1 K. B. 853.*

**2556. Add. Citation:—**4 Jur. 151.

**2566. Add. Annotation:—***Refd. R. v. Harris, [1927] 2 K. B. 587.*

**2713. Add. Annotation:—***Consd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.*

**2730. Add. Annotations:—***Refd. R. v. Sheffield JJ., Ex p. Rawson (1927), 91 J. P. 193; R. v. Southampton County Confirming Committee, Ex p. Slade, [1929] 1 K. B. 263.*

**2734. Add. Annotation:—As to (2) Refd. Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.**

**2735. Add. Annotations:—***Refd. Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586; Maclean v. Workers' Union, [1929] 1 Ch. 602; R. v. Huntingdon Confirming Authority, [1929] 1 K. B. 698.*

**2736a. — Certificate of Post Office medical officer—Workmen's Compensation Act, 1925 (c. 84).—**Appet., a telegraphist in the employment of the Postmaster-General, complained to the Post Office medical officer at G. that she was suffering from telegraphist's cramp. In accordance with the regulations of the Post Office medical service, the case was referred to the chief medical officer, who had special knowledge of telegraphist's cramp, & he certified that appet. was not suffering from it:—*Held*: (1) the giving of a certificate was a judicial act, in respect of which *certiorari* would lie; (2) it issued *ex debito justitiae* at the instance of an aggrieved person; (3) an appeal to a medical referee under sect. 43 (1) (f) of the above Act was not equally beneficial, since he could only deal with the medical correctness of the certificate & could not inquire into its validity.—*R. v. POSTMASTER-GENERAL Ex p. CARMICHAEL, [1928] 1 K. B. 291; 96 L. J. K. B. 317; 137 L. T. 26; 91 J. P. 43; 43 T. L. R. 228; 21 B. W. C. C. 226, D. C.*

**2771. Add. Citation:—**2 B. R. A. 612.

**2795. Add. Citation:—**27 Cox, C. C. 253.

**Add. Annotations:—***Refd. R. v. Lincolnshire JJ., Ex p. Brett, [1926] 2 K. B. 192. Mentd. Nadan v. R., [1926] A. C. 482.*

**2797. Add. Annotation:—***Refd. R. v. Sheffield JJ., Ex p. Rawson (1927), 91 J. P. 193.*

#### PART IX. SECT. 5, SUB-SECT. 2.—A.

**2495 ii. —**—A writ of *certiorari* is not granted *ex debito justitiae* or as a matter of legal right, but is an application to the sound discretion of the ct., & where there are disputed questions of fact which cannot be satisfactorily tried out on affidavits, but should be tried by *voir dire* testimony, & the questions involved are pending for decision in the Ct. of K. B., the application for *certiorari* will not be granted.—*WORKMEN'S COMPENSATION BOARD v. BATHURST LUMBER CO., [1923] 4 D. L. R. 84.—CAN.*

#### PART IX. SECT. 6, SUB-SECT. 1.—A.

**t i. —**—Where the inferior ct. has, & the ct. above has not, jurisdiction, *certiorari* cannot be had.—*PINSENT v. BOYD & McDUGALL (1865), 4 Nid. L. R. 727.—NFLD.*

**t ii. — One of judges prejudiced.]—**Where a legal practitioner, having no direct interest in a local ct. action, on the morning on which judgment in the action was to be delivered, discussed the action with one of the justices who heard the action, & made certain statements calculated to prejudice him against one of the parties:—*Held*: an order in the nature of a writ of *certiorari* should be granted removing the hearing of the action into the Supreme Ct.—*THE AN ACTION IN THE LOCAL COURT OF ADELAIDE, BURKE v. STARKER, [1927] S. A. S. R. 180.—AUS.*

#### PART IX. SECT. 6, SUB-SECT. 2.—A.

**2711 i. — Distress warrant for liquor exportation *loc.*]**—Where the duty of assessing a tax rested with the A.-G. for the province, & the provincial Secretary-Treasurer had power only to determine whether the tax should be recovered by distress or by

action:—*Held*: *certiorari* would not lie to bring into the Supreme Ct. a distress warrant signed by the Secretary-Treasurer for an amount so assessed, his act being ministerial & not judicial.—*HETHERINGTON v. SECURITY EXPORT CO., LTD., [1924] A. C. 988; 94 L. J. P. C. 1; 132 L. T. 215.—CAN.*

**d i. — Decision of county court reversing dismissal of offender.]—**Where on the trial of an offence punishable by summary conviction the magistrate dismisses the charge, & on appeal to the county ct. he is reversed & accused convicted, redress may be sought by *certiorari*.—*R. v. MEEHAN, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.—CAN.*

#### PART IX. SECT. 6, SUB-SECT. 2.—B. (a).

**2763 i. General rule.]—***R. v. BARRY, Ex p. LINDSAY (1922), 70 D. L. R. 193; 38 Can. Crim. Cas. 190.—CAN.*

**2763 ii. —**—The question whether a decision of a wreck comr. sitting as a ct. under Canada Shipping Act, R. S. C. 1906 (c. 113), Part X., was made in excess of his jurisdiction can be inquired into on *certiorari*.—*RE BERQUIST, [1925] 2 D. L. R. 696; [1925] 1 W. W. R. 1084.—CAN.*

**2763 iii. —**—*Ex p. JONES (N.B.), [1926] 1 D. L. R. 587; 45 Can. Crim. Cas. 169.—CAN.*

**2789 i. Sufficiency of evidence in court below—Conviction under Temperance Act, R. S. C., 1920 (c. 194).—**Application for a *certiorari* to quash a conviction under the above Act on the above grounds, dismissed.—*R. v. GRANT (SASK.), [1922] 2 W. W. R. 624; 69 D. L. R. 718; 38 Can. Crim. Cas. 234.—CAN.*

**2789 ii. —**—When a county ct.

judge has acted entirely within his jurisdiction & has decided a question of fact upon evidence properly before him, *certiorari* does not lie to remove & quash such decision, merely upon the ground that it is not warranted by the evidence or weight of evidence.—*Ex p. SMITH LUMBER CO., LTD. (1924), 51 N. B. R. 440.—CAN.*

**2789 iii. —**—*Re HILLMAN (N. S.), [1926], 46 Can. Crim. Cas. 308.—CAN.*

**sm. Plea of "guilty" disputed.]—**Def. having pleaded guilty & being summarily convicted by a police magistrate, moved for a *certiorari*, denying that he had so pleaded:—*Held*: def. had pleaded guilty, & the motion was dismissed.—*R. v. ARMSTRONG (1922), 38 Can. Crim. Cas. 98.—CAN.*

**sn. —**—Where def. had been summarily convicted by a magistrate, who had been informed by a sworn interpreter that def. pleaded guilty:—*Held*: *certiorari* was not available, unless the presumption that the proceedings were regular was rebutted.—*R. v. LEE WAH DAI (1923), 41 Can. Crim. Cas. 152.—CAN.*

**sp. —**—The ct. on *certiorari* will quash a conviction by a magistrate, made without evidence being taken but on the statement of the sworn interpreter that accused pleaded guilty, where it appears to the ct. that accused did not really understand what offence he was charged with. In such a case, accused cannot be taken to have pleaded guilty & the magistrate had no jurisdiction to convict.—*R. v. MLAKER, [1923] 3 W. W. R. 988; 40 Can. Crim. Cas. 287.—CAN.*

#### PART IX. SECT. 6, SUB-SECT. 2.—B. (b) i.

**2801 i. General rule.]—**Want of jurisdiction in a magistrate & irregu-

2812. *Add. Annotation*:—**Expld. & Distd. R. v. Central Criminal Court JJ., Ex p. L. C. C.,** [1925] 2 K. B. 43.
2820. *Add. Annotation*:—**Mentd. Fox v. Fox,** [1925] P. 157.
2822. *Add. Annotation*:—**Apld. R. v. Postmaster-General, Ex p. Carmichael** (1927), 96 L. J. K. B. 347.
2830. *Add. Annotation*:—**Refd. Palmer v. Crone,** [1927] 1 K. B. 804.
2834. *Add. Annotations*:—**Refd. R. v. Adams, Ex p. Pope,** [1923] 1 K. B. 415; **Palmer v. Crone,** [1927] 1 K. B. 804.
2846. *Add. Annotation*:—**Consd. Andrews v. Carlton** (1928), 93 J. P. 65.
2862. *Add. Annotations*:—**Apld. R. v. North Worcestershire Assessment Committee, Ex p. Hadley,** [1929] 2 K. B. 397. **Refd. Frome United Breweries Co. v. Bath JJ.,** [1926] A. C. 586.
2869. *Add. Annotations*:—**Consd. Frome United Breweries Co. v. Bath JJ.,** [1926] A. C. 586. **Refd. Maclean v. Workers' Union,** [1929] 1 Ch. 602.
2923. *Add. Annotation*:—**Refd. Kenney v. Kenney** (1925), 133 L. T. 400.
2941. *Add. Citation*:—7 Dowl. 616.
2955. *Add. Annotation*:—**Distd. R. v. Central Criminal Court JJ., Ex p. L. C. C.,** [1925] 2 K. B. 43.
3069. *Add. Annotation*:—**Refd. R. v. Adams, Ex p. Pope** (1923), 128 L. T. 597.
- 3131a. *Who may apply—Not plaintiff.*—**SOWTON v. CUTLER & CLERKE** (1875), 2 Rep. Ch. 108; 21 E. R. 630.
- Annotation*:—**Apld. Giusti Patents & Engineering Works v. Maggs,** [1923] 1 Ch. 515.
- 3131b. **S. P. GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS,** [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.*

GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS, 129 L. T. 438.

*Annotation*:—**Mentd. Parkes S. & Co., Ltd. v. Cocker Bros.** (1929), 46 R. P. C. 241.

3142a. *Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.*—**PRACTICE NOTE,** [1926] W. N. 308.

3168a. — *Removal of cause applied for by plaintiff.*—**SOWTON v. CUTLER & CLERKE** (1875), 2 Rep. Ch. 108; 21 E. R. 630.

*Annotation*:—**Apld. Giusti Patents & Engineering Works v. Maggs,** [1923] 1 Ch. 515.

3168b. — *No appearance by defendant in proceedings in superior court.*—**GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS,** [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* **GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS,** 129 L. T. 438.

*Annotation*:—**Mentd. Parkes S. & Co., Ltd. v. Cocker Bros.** (1929), 46 R. P. C. 241.

3185a. — — — — — *]*—**GUNN v. MACKHENRY** (1750), 1 Wils. 277; 95 E. R. 617.

3185b. — — — — — *]*—*On the removal of a cause from an inferior to a superior ct., if pltf. declares de novo, he is not bound to declare in the same form of action as that in the inferior ct.*—**BOWERBANK v. WALKER** (1787), 2 Chit. 517.

3209a. *Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.*—**PRACTICE NOTE,** [1926] W. N. 308.

3350. *Add. Annotation*:—*Generally, Refd. Maclean v. Workers' Union.* [1929] 1 Ch. 602.

3352a. **S. P. Re KAYE** (1822), 1 Dow. & Ry. K. B. 436; 1 Dow. & Ry. M. C. 114.

3356. *Add. Annotation*:—**Mentd. R. v. Corfield** (1923), 128 L. T. 305.

larities in procedure which touch the substantial rights of appct. constitute those exceptional circumstances which justify relief by way of *certiorari*, even though appct. has a right of appeal.—**ORREY v. SPANGLER,** [1925] 1 D. L. R. 859; [1925] 1 W. W. R. 518; 19 Sask. L. R. 256.—**CAN.**

2801 ii. — *]*—**R. v. RYAN,** [1925] 1 D. L. R. 877; 43 Can. Crim. Cas. 223; 52 N. B. R. 101.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—**B. (b) iii.**

2826 i. *General rule.*—Where the jurisdiction of an inferior ct. depends upon a fact collateral to the actual matter which that ct. has to try, it cannot by a wrong decision with regard to that fact give itself jurisdiction which it would not otherwise possess. The lower ct. must decide as to the collateral fact in the first instance, but the superior ct. may upon *certiorari* inquire into the correctness of that decision.—**R. (GREENAWAY) v. ARMAGH JJ.,** [1924] 2 I. R. 55.—**IR.**

PART IX. SECT. 6, SUB-SECT. 2.—**B. (d).**

2870 i. *General rule.*—Where a conviction was bad on its face:—*Held:* a writ of *certiorari* should issue & the conviction be quashed.—**R. (EUSTACE) v. TIPPERARY COUNTY DISTRICT JUSTICE,** [1924] 2 I. R. 69.—**IR.**

2888 i. *Convictions—Formal defect in.*—It is the duty of the ct. on *certiorari* to see that convictions are perfectly regular in form.—**R. v. HING HOP,** [1926] 1 W. W. R. 799; 45 Can.

Crim. Cas. 239; 37 B. C. R. 158.—**CAN.**

2888 ii. — — — — — *Unauthorised sentence.*—**CHIN KOW v. MOQUIN** (1927), Q. R. 44 K. B. 1.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—**B. (e).**

st. *Perjury.*—A conviction can be attacked on *certiorari* on the ground of perjury or other fraud.—**R. v. SAFRUK,** [1924] 1 D. L. R. 695; 40 Can. Crim. Cas. 222; 19 Alta. L. R. 677; [1923] 2 W. W. R. 1126.—**CAN.**

PART IX. SECT. 7, SUB-SECT. 2.—**C. (a).**

3042 i. *Right not taken away—Unless expressly stated.*—Where a statute takes away the right of *certiorari*, it does not disentitle the Crown to *certiorari*, where the Crown is not named & there are no words necessarily implying a reference to the Crown.—**R. v. ON SING,** [1924] 2 W. W. R. 258.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 2.—**I.**

3287 i. *No appeal lies—Criminal matter.*—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *certiorari* in aid in criminal matters.—**R. v. MCADAM,** [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—**A. (a).**

3336 i. *Who may apply—Person*

*aggrieved.*—A licensing inspector lodged notice of intention to object to an application for the grant of a licensed victualler's licence. & on the hearing of the application, stated that the objection was lodged as a mere formal objection, & that he did not desire to give or offer evidence or to address the ct., & after the licence had been granted by the ct., treated the licence as being valid in subsequent proceedings before the licensing ct. He subsequently moved for a writ of *certiorari* to quash the grant of the licence:—*Held:* he was a person aggrieved, & competent to make the application.—**R. v. DALBY LICENSING AUTHORITY, Ex p. KELLY,** [1928] St. R. Qd. 151.—**AUS.**

PART IX. SECT. 9, SUB-SECT. 3.—**A. (b).**

g i. — *Application more than thirty days after conviction—Intoxicating Liquor Act, 1927.*—*Ex p. CROWLEY, Ex p. KENNETH STAPLES DREW CO. (N. B.),* [1928] 4 D. L. R. 561; 50 Can. Crim. Cas. 378.—**CAN.**

g ii. — — — — — *]*—**R. v. BEGIN, Ex p. CARON (N. B.)** (1928), 50 Can. Crim. Cas. 69.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—**A. (c).**

3373 ii. — *May be amended.*—Leave may be given to amend a notice of motion to quash a conviction by including additional particulars intended to be relied upon.—**R. (LESLIE) v. MARCOVICH,** [1923] 2 W. W. R. 975.—**CAN.**

**3433a.** — Cross-examination of deponent—When ordered—Only in very special circumstances.]—*R. v. KENT JJ., Ex p. SMITH*, [1928] W. N. 137.

**3456a.** Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]-PRACTICE NOTE, [1926] W. N. 308.

**3560.** *Add. Citation* :—2 L. M. & P. 130.

**3581.** After this case add “*See, now, Judicature (Consolidation) Act, 1925 (c. 49), s. 25.*”

**3596.** *Add. Annotation* :—*Refd. R. v. L. C. C., Ex p. Swan & Edgar* (1927) (1929), 141 L. T. 590.

## Part X.—The Attorney-General.

**3637.** *Add. Annotations* :—*Folld. A.-G. v. Westminster City Council*, [1924] 2 Ch. 416. *Refd. A.-G. v. Denby*, [1925] Ch. 596. *Mentd. Deuchar v. Gas Light & Coke Co.*, [1924] 2 Ch. 426

**3637a.** —.]-Where the A.-G. has exercised his discretion by issuing his fiat for the prosecution of an action against a public body to restrain an unauthorised exercise of its powers, the ct. will not consider whether the action is one proper to be brought in the circumstances.—*A.-G. v. WESTMINSTER CITY COUNCIL*, [1924] 2 Ch. 416; 93 L. J. Ch. 573; 131 L. T. 802; 88 J. P. 145; 40 T. L. R. 711; 68 Sol. Jo. 736; 22 L. G. R. 506, C. A.

**3651.** *Add. Annotation* :—*As to (1) Refd. A.-G. v. Denby*, [1925] Ch. 596.

**3678a.** —.]-In cases of *ultra vires*, delay is not a ground for refusing relief in a suit by

the A.-G.—*A.-G. v. SOUTH STAFFORDSHIRE WATERWORKS CO.* (1909), 25 T. L. R. 408.

**3684.** *Add. Annotations* :—*Refd. A.-G. v. Westminster City Council*, [1924] 2 Ch. 416; *A.-G. v. Leeds Corp.*, [1929] 2 Ch. 291. *Mentd. Deuchar v. Gas Light & Coke Co.*, [1925] A. C. 691.

**3686.** *Add. Annotation* :—*Refd. A.-G. v. County of London Electric Supply Co.*, [1926] Ch. 542.

**3688.** *Add. Annotation* :—*Refd. A.-G. v. Denby*, [1925] Ch. 596.

**3692.** *Add. Annotation* :—*Mentd. Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686.

**3708.** *Add. Annotation* :—*Refd. R. v. Copestake, Ex p. Wilkinson*, [1927] 1 K. B. 468.

**3715.** *Add. Annotation* :—*Refd. Salisbury & Fordingbridge District Drainage Board v. Southern*

### PART IX. SECT. 9, SUB-SECT. 3.—A. (d) ii.

**3410 i.** *Absence or excess of jurisdiction—May be shown by affidavit.*]-While on *certiorari* the depositions before the magistrate cannot be considered by the ct. in determining whether his jurisdiction was established, yet *appet.* who seeks to quash a conviction, on the ground of want of or excess of jurisdiction, may incorporate in proper material, & thus present to the ct., any facts, whether within or outside the depositions, which would affect the jurisdiction of the magistrate.—*R. v. ROZONOWSKI*, [1926] 1 D. L. R. 732; [1926] 1 W. R. 241; 45 Can. Crim. Cas. 193; 36 B. C. R. 327.—CAN.

### PART IX. SECT. 9, SUB-SECT. 3.—A. (e).

*sw. Affidavits tending to establish guilt of accused—Not admissible.*]-*R. v. MLAKER*, [1923] 3 W. W. R. 988.—CAN.

### PART IX. SECT. 9, SUB-SECT. 3.—K.

**3556 i.** *General rule—Whether court will examine evidence—Summary conviction.*]-In the case of a summary conviction for an indictable offence the ct. on *certiorari* is not precluded from examining the evidence to ascertain if there was any legal evidence upon which accused could be or ought to have been convicted.—*R. v. OAKES*, [1923] 1 W. W. R. 1220; 39 Can. Crim. Cas. 329.—CAN.

**3556 ii.** —.]-*R. v. JACKSON*, [1924] 1 W. W. R. 817; 41 Can. Crim. Cas. 416.—CAN.

**3556 iii.** —.]-*R. v. BRANDELINA*, [1927] 1 W. W. R. 832; 47 Can. Crim. Cas. 166; 38 B. C. R. 87.—CAN.

### PART IX. SECT. 9, SUB-SECT. 3.—M.

*sy. Whether appeal lies—Criminal*

*proceedings.*]-No appeal lies to the Ct. of Appeal from an order made by a Judge of the King's Bench on an application for *certiorari*, with respect to a conviction under the Criminal Code.—*Re NAGY, NAGY v. GALL (Sask.)*, [1926] 3 W. W. R. 759; 46 Can. Crim. Cas. 333.—CAN.

### PART X. SECT. 3, SUB-SECT. 1.

*sz. Cannot sue in official name on behalf of himself personally.*]-*A.-G. FOR ONTARIO v. RUSSELL* (1921), 64 D. L. R. 59; 49 O. L. R. 103.—CAN.

*sa. Right to issue summons under Customs Acts—No prosecution instituted by Minister, Department of State, or authorised person.*]-A district justice raised a preliminary objection to the hearing of a summons charging an offence under Customs Acts, viz. that the complainant was the A.-G., the district justice being of opinion that under Customs & Inland Revenue Act, 1879, s. 11, an officer of the customs & excise must be the complainant.—*Held*: the objection was unsustainable as (Criminal Justice Administration Act, 1924, s. 9 (2), authorised the A.-G. to prosecute in any ct. of summary jurisdiction in all cases in which a prosecution is not instituted by a Minister, Dept. of State, or authorised person.—*A.-G. v. HEALY*, [1928] 1 R. 160.—IR.

### PART X. SECT. 3, SUB-SECT. 2.

**3683 ii.** —.]-*Scmble*: a bill to remove a fixed bridge across a navigable river as impeding navigation, & to erect instead a drawbridge, as provided for by statute, should be by the A.-G., where the statute was passed for the general benefit of the public.—*CULL v. GRAND TRUNK RY. CO.* (1864), 10 Gr. 491.—CAN.

### PART X. SECT. 4.

*sb. Questions raised as to jurisdiction of Provincial Court—Or right of*

*Provincial Attorney-General to intervene—Notice to Attorney-General before appeal heard.*]-*VALOIS v. BOUCHERVILLE*, [1928] 1 D. L. R. 343.—CAN.

### PART X. SECT. 5.

**3723 i.** *Effect of fiat—On amount recoverable.*]-An award for a sum in excess of that named in the A.-G.'s fiat:—*Held*: void, even though A.-G.'s consent was afterwards obtained.—*BRACH v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO*, [1925] 4 D. L. R. 513; *affg.*, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—CAN.

**s i.** —.]-*To maintain set-off or counterclaim.*]-*Held*: to allow a counterclaim or set-off the ct. must as a condition precedent be vested with the jurisdiction of hearing both the action & the counterclaim or set-off, & that thus ct. has no jurisdiction to hear the counterclaim until a fiat has been given to hear the same.—*R. v. COSGRAVE EXPORT BREWING CO. LTD.*, *R. v. JOHN LABATT, LTD.*, [1928] Exch. C. R. 103.—CAN.

**s ii.** —.]-*To action by ratepayer Representative action.*]-*LOGGIE v. CHATHAM MUNICIPALITY (N. B.)*, [1928] 2 D. L. R. 583.—CAN.

**s iii.** —.]-*To prosecution for falsifying pedigree—Whether applicable to pedigrees of animals.*]-The offences contemplated by Criminal Code, s. 597, which require the consent of the A.-G. before certain prosecutions are commenced, are those created by s. 419 thereof, & the pedigree referred to therein is one which is of importance in determining the title to property. Such consent is not necessary to a prosecution under Live Stock Pedigree Act, R. S. C. 1927, c. 121, s. 17, with respect to a false or fraudulent statement of the pedigree of an animal.—*R. v. DAVENPORT (Alta.)*, [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—CAN.

- Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.
3718. *Add. Annotation*:—**Refd.** *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.
3719. *Add. Annotations*:—**Apld.** *Hurley v. Stepney B. C.* (1923), 67 Sol. Jo. 767. **Mentd.** *St. Nicholas, Acons v. L. C. C.* [1928] A. C. 469.
3720. *Add. Annotation*:—**Consd.** *Salisbury & Fordingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd.*, [1927] 2 K. B. 566.
- 3722a. **Proceedings to restrain borough council from reducing wages of employees.**—In an action by three members of a borough council for a declaration that a resolution of the council reducing the wages of the council's employees was *ultra vires* & invalid, on the ground that the resolution was not passed by a two-thirds majority in accordance with the council's bye-laws:—**Held**: the A.-G. must be a party to the action.—**HURLEY v. STEPNEY BOROUGH COUNCIL** (1923), 67 Sol. Jo. 767.
3733. *Add. Annotations*:—**Refd.** *Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53; *R. v. Copestake, Ex p. Wilkinson* (1926), 96 L. J. K. B. 65.
3736. *Add. Annotations*:—**As to** (1) **Refd.** *Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53. **Generally, Mentd.** *Campbell v. Pol-lak*, [1927] A. C. 732.

## CUSTOM AND USAGES.

## Part I.—Custom.

22. *Add. Annotation* :—**Generally, Mentd.** Moser v. Ambleside U. D. C. (1925), 89 J. P. 118.
30. *Add. Annotation* :—**Mentd.** Maine & New Brunswick Electrical Power Co. v. Hart, [1929] A. C. 631.
32. *Add. Annotation* :—**Mentd.** Horlick v. Scully, [1927] 2 Ch. 150.
48. *Add. Annotation* :—**Refd.** The Harkaway, [1928] P. 199.
61. *Add. Annotations* :—**Mentd.** Sack v. Jones, [1925] Ch. 235; Brooke v. Bool, [1928] 2 K. B. 578.
65. *Add. Annotation* :—**Refd.** Busby v. Avgherino, [1927] 2 Ch. 33.
74. *Add. Annotations* :—**Refd.** Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879. **Mentd.** Brocklebank v. R., [1925] 1 K. B. 52.
75. *Add. Annotation* :—**Refd.** Busby v. Avgherino, [1928] A. C. 290.
77. *Add. Annotation* :—**Consd.** Busby v. Avgherino, [1928] A. C. 290.
86. *Add. Annotation* :—**Generally, Mentd.** Moser v. Ambleside U. D. C. (1925), 89 J. P. 118.
164. *Add. Annotation* :—**Refd.** Moser v. Ambleside U. D. C. (1925), 89 J. P. 118.
212. *Add. Annotation* :—**Mentd.** The Fagernes, [1926] P. 185.

## Part II.—Usages Generally.

303. *Add. Annotation* :—**Mentd.** Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.
304. *Add. Annotations* :—**Refd.** Layton v. General Steam Navigation Co. (1923), 130 L. T. 662; Lake v. Simmons (1926), 95 L. J. K. B. 586. **Mentd.** Rederiakt. Transatlantic v. Compagnie Francaise des Phosphates de l'Océanie (1926), 136 L. T. 619.
369. *Add. Annotation* :—**Mentd.** Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.
384. *Add. Annotation* :—**Mentd.** Horlick v. Scully, [1927] 2 Ch. 150.
393. *Add. Annotation* :—**Mentd.** Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83.
396. *Add. Annotation* :—**Refd.** A.-G. v. Goddard (1929), 98 L. J. K. B. 743.
397. *Add. Annotation* :—**Mentd.** Re A Debtor, [1927] 2 Ch. 367.
434. *Add. Annotation* :—**Refd.** Schiller v. Petersen (1924), 130 L. T. 810.
451. *Add. Annotation* :—**Mentd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
462. *Add. Annotation* :—**Refd.** Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis, [1924] A. C. 522.
485. *Add. Annotation* :—**Mentd.** Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij, [1929] 1 K. B. 100.
- 492a. *Add. Annotation* :—**Consd.** Smith, Hogg v. Bamberger, [1929] 1 K. B. 150.
497. *Add. Annotation* :—**Refd.** Scriven v. Schmoll Fils Insee. (1924), 40 T. L. R. 677.
501. *Add. Annotation* :—**Refd.** Rederi Akt. Acolus v. Hillas (1925), 134 L. T. 184.
510. *Add. Annotation* :—**Refd.** United States Shipping Board v. Strick, [1926] A. C. 545.
537. *Add. Annotations* :—**Consd.** Smith, Hogg v. Bamberger, [1929] 1 K. B. 150. **Refd.** Rederi Akt. Acolus v. Hillas (1925), 134 L. T. 184.
540. *Add. Annotation* :—**Mentd.** Richardsons & Bradley v. Bernhard, [1925] 2 K. B. 121.
543. *Add. Citation* :—*affg.* S. C. *sub nom.* THE TURID, [1921] P. 146, C. A.
- Add. Annotations* :—**Folld.** Hillas v. Rederi Akt. Acolus (1926), 43 T. L. R. 67. **Consd.** Dampsselskab Svendborg v. L. M. & S. Ry. Co. (1929), 111 L. T. 521; Smith, Hogg & Co. v. Bamberger & Sons, [1929] 1 K. B. 150. **Refd.** The Renstjell, The Ornestjell, The Uppland, The Fritioff, The Svein Jarl (1921), 131 L. T. 761; Akt. Dampskibs Steinstad v. Pearson (1927), 137 L. T. 533. **Mentd.**

## PART I. SECT. 5, SUB-SECT. 1.—A.

57 i. *Time of legal memory* :—The legal recognition of a custom in British India depends upon its antiquity, certainty & uniformity. As to antiquity or the period of "legal memory," a British ct. need not extend its inquiries beyond its own establishment. Moreover a series of legal decisions confirming a custom is cogent evidence that such custom has the force of law. —CHAN PYU v. SAW SIN (1928), 1 L. L. 11. 6 Ran. 623.—IND.

## PART I. SECT. 9, SUB-SECT. 1.

p. 1. — *Rwaj-i-am*—*Unsupported by instances.*—A *rway-i-am* is admissible in evidence to prove the facts entered thereon, subject to rebuttal,

& that the statements therein may be accepted, even if unsupported by instances. Manuals of customary law, in accordance with *rway-i-am*, issued by authority for each district, stand on much the same footing as the *rway-i-am* itself as evidence of custom. —VARSHNO DITTI v. RAMSHIRI (1928), L. R. 55 Ind. App. 497.—IND.

## PART II. SECT. 3, SUB-SECT. 1.—A.

303 vii. —. —.]—The question whether a trade custom or usage exists is one of fact, & clear & convincing testimony is required to prove its existence; it must be shown that the custom or usage relied on is certain & reasonable, & so universally recognised that everyone engaged in

the trade knows, or should know, of it. —YEATES v. BARRETT (Sask.), [1927] 3 D. L. R. 812; [1927] 3 W. W. R. 286.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.

340 iv. —. —.]—YEATES v. BARRETT, No. 303 vii, *ante*—CAN.

## PART II. SECT. 3, SUB-SECT. 3.

350 ii. —. —.]—YEATES v. BARRETT, No. 303 vii, *ante*—CAN.

## PART II. SECT. 6, SUB-SECT. 2.—B. (a).

472 ii. —. —.]—HOLMES, WILSON & Co., LTD. v. BATA KRISTO DE (1927), 1 L. R. 54 Calc. 549.—IND.

Finlay James & Co. v. N. V. Kwik Hoo Tong, [1929] 1 K. B. 400.

544. *Add. Annotation* :—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.
- 544a. ———.]—**Pltfs.**, shipowners, chartered a steamer to defts. to carry a cargo of timber from the Baltic to Hull. The charterparty contained a clause as follows: "Cargo to be loaded & discharged with customary steamship dispatch according to the custom of the respective ports. The cargo to be brought to & taken from alongside the steamer at charterer's risk & expense as customary." The steamer discharged the cargo at Hull in due course, but disputes arose between **pltfs.** & **defts.** as to the division of the cost of discharging the cargo. **Pltfs.** brought an action to recover a sum which they had paid in effecting the discharge which they said should have been paid by **defts.** **Defts.** refused to pay on the ground that by the custom of the port of Hull the expense in question should be borne by the shipowners:—**Held**: the custom relied on by **defts.** was inconsistent with the language of the charterparty & was not admissible in order to decide upon whom the expense in question should rest.—**REDERI AKT. ACOLUS v. HILLAS & Co., LTD.** (1926), 96 L. J. K. B. 186; 136 L. T. 385; *sub nom.* HILLAS (W. N.) & Co., LTD. v. REDERI AKT. ACOLUS, 43 T. L. R. 67; 32 Com. Cas. 69; 17 Asp. M. L. C. 193, H. L.
- Annotations* :—**Consd.** Smith, Hogg & Co. v. Bamberger & Sons, [1929] 1 K. B. 150. **Refd.** Dampsselskab Svendborg v. London Midland & Scottish Ry. Co. (1929), 141 L. T. 521.
545. *Add. Annotation* :—**Refd.** Rederi Akt. Acolus v. Hillas (1925), 184 L. T. 184.
546. *Add. Annotation* :—**Consd.** Rederi Akt. Acolus v. Hillas (1925), 42 T. L. R. 69.
550. *Add. Annotation* :—**Mentd.** Rye v. Purcell, [1926] 1 K. B. 446.
559. *Add. Annotation* :—**Mentd.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289; *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242.
587. *Citations* :—For "9 App. Cas. 508," read "8 App. Cas. 508."
588. *Add. Annotations* :—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458; Dampsselskab Svendborg v. L. M. & S. Ry. Co. (1929), 141 L. T. 521.
- ### Part III.—Particular Usages.
595. *Add. Annotation* :—**Mentd.** Laurie & Morewood v. Dudin, [1925] 2 K. B. 383.
616. *Add. Annotation* :—**Refd.** United States Shipping Board v. Strick, [1926] A. C. 545.
625. *Add. Annotations* :—**Consd.** Michalinos v. Drefus (1924), 131 L. T. 177; Bunge y Born Co. v. Brightman, [1925] A. C. 799. **Refd.** Brightman v. Bunge y Born, [1924] 2 K. B. 619; Matheos S.S. v. Drayfus, [1925] A. C. 654. **Mentd.** Einar Bugge A. S. v. Bowater (1925), 31 Com. Cas. 1.
636. *Add. Annotation* :—**Refd.** Lake v. Simmons (1926), 95 L. J. K. B. 586.
643. *Add. Annotation* :—**Refd.** Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.
646. *Add. Annotation* :—**Apld.** Hart v. Riversdale Mill Co. (1927), 96 L. J. K. B. 691.
663. *Add. Annotation* :—**Mentd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.
678. *Add. Annotation* :—**Mentd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
690. *Add. Annotation* :—**Mentd.** Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.
700. *Add. Annotation* :—**Distd.** Mikkelsen v. Arcos (1925), 42 T. L. R. 3.
701. *Add. Annotations* :—**Mentd.** Finn v. Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Westminster Bank v. Hilton (1926), 136 L. T. 315; Sassoon v. International Banking Corp., [1927] A. C. 711.
- 703a. *Usage as to arbitration.*—**Pltfs.** sold to **defts.** a quantity of paraffin wax under a contract providing, "any dispute arising under this contract to be settled by arbitrators in London in the usual way." A claim was made by **defts.** against **pltfs.**, & the arbitrators, being unable to agree, appointed an umpire by a document headed, "the use of this form constitutes a submission to the rules of the assocn." *i.e.* the London Oil & Tallow Trades Assocn. The umpire awarded that **defts.** claim failed & that they were to pay the costs of the arbitration. The rules of the assocn. provided for an appeal to an appeal committee, & **defts.** claimed a right of appeal. **Pltfs.** thereupon brought an action against **defts.** to recover the costs of the arbn., & the evidence was that in the trade in paraffin wax the usual way of settling a dispute by arbn. was to appoint arbitrators who could appoint an umpire whose decision would be final:—**Held**: the heading did not apply & the umpire was really appointed in pursuance of the original agreement as to arbn. & not under the rules of the assocn., & **pltfs.** were entitled to recover.—**PALMER & Co., LTD. v. PILOT TRADING CO., LTD.** (1929), 45 T. L. R. 214.
710. *Add. Annotations* :—**Refd.** Tournier v. National Provincial & Union Bank of England, [1924] 1 K. B. 461; Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.
712. *Add. Annotation* :—**Refd.** Williams v. Manisalian Frères (1923), 29 Com. Cas. 42.
- 729a. *Carriage of wool.*—The contract of carriage customary in the trade for the carriage of wool from import ship in London to Bradford *via* Goole is one by which the carrier undertakes to deliver the wool in a good condition as he receives it, the act of God & the King's enemies excepted.—**FRANCE, FENWICK & Co. v. MANNHEIM INSURANCE CO.** (1905), 10 Com. Cas. 242.
- 734a *Metal trade—Rules of London Metal Exchange—Clerk prohibited from dealing as principal.*—The fact that the rules of the London Metal Exchange prohibit a clerk to a member from participating in dealings on the Exchange as a principal does not make the contracts void as being against public policy.—**BARNETT v. SANKER** (1925), 41 T. L. R. 660; 69 Sol. Jo. 824.
742. *Add. Annotation* :—**Mentd.** Ellesmere, Earl v. Wallace, [1929] 2 Ch. 1.

## DAMAGES.

## Part I.—Definitions, Nature and Classification.

1. *Add. Annotation*:—**Refd.** *Marbé v. George Edwardes* (Daly's Theatre) (1927), 43 T. L. R. 460.
- 1a. **Damages compared with statutory compensation.**—Compensation under Cos. Act, 1908 (c. 69), s. 84, is not, either as to the amount recoverable or the mode of measuring it something different from or even greater than damages.—*CLARK v. URQUHART, STRACEY v. URQUHART* (1929), 141 L. T. 641, H. L.
3. *Add. Annotation*:—**Mentd.** *Sassoon v. International Banking Corp.*, [1927] A. C. 711.
8. *Add. Annotation*:—**Refd.** *Peyrae v. Wilkinson*, [1924] 2 K. B. 166.
9. *Add. Annotations*:—**Consd.** *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637; *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655. **Mentd.** *The Molière* (1924), 41 T. L. R. 154.
14. *Add. Annotations*:—**Refd.** *Performing Right Society v. Mitchell & Booker*, [1924] 1 K. B. 762; *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
15. *Add. Annotation*:—**Consd.** *Shapiro v. La Motta* (1923), 130 L. T. 622.
19. *Add. Annotation*:—**Consd.** *Ilford U. D. C. v. Beal*, [1925] 1 K. B. 671.

## Part II.—Rules and Principles in Awarding Damages.

20. *Add. Annotation*:—**Mentd.** *Everett v. Ryder* (1926), 135 L. T. 302.
22. *Add. Annotation*:—**Refd.** *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
26. *Add. Annotations*:—**Consd.** *The Chekiang*, [1925] P. 80; *The Susquehanna*, [1925] P. 196; *A.-G. v. Glen Line, Ltd., & Liverpool & London War Risks Insee. Assocn.* (1929), 34 Com. Cas. 309.
- 29a. ——— **Property destroyed by fire.**—A cottage was almost completely destroyed by fire caused by a spark emitted from a steam-roller which was found to constitute a nuisance. In assessing the damages recoverable by the owner of the cottage:—**Held**: the measure of damage was not the fair cost of rebuilding the cottage & making it as good & habitable as before the fire, but the difference between the money value of the owner's interest before & after the fire.—*MOSS v. CHRISTCHURCH RURAL DISTRICT COUNCIL, ROGERS v. SAME*, [1925] 2 K. B. 750; 95 L. J. K. B. 81; 23 L. G. R. 331.
30. *Add. Annotation*:—**Refd.** *York Glass Co. v. Jubb* (1925), 134 L. T. 36.
34. *Add. Annotation*:—**Apprvd.** *Swift v. Board of Trade*, [1925] A. C. 520.
40. *Add. Annotation*:—**Mentd.** *Valentine v. Hyde*, [1919] 2 Ch. 129.
41. *Add. Annotation*:—**Mentd.** *Putsman v. Taylor*, [1927] 1 K. B. 637.

## PART I.

7 i. *Nominal damages—Defunct.*—Nominal damages does not necessarily mean small damages.—*McGEE v. CLARKE*, [1927] 1 W. W. R. 593; 38 B. C. R. 156.—CAN.

c i. ———.—*LUNDY v. McLEOD v. POWELL* (Sask.), [1922] 3 W. W. R. 991; 70 D. L. R. 659.—CAN.

## PART II. SECT. 3.

27 i. *Application of rule.*—*In tort—Property destroyed by fire.*—Where damages were recovered for loss through destruction of property by fire caused by deft.'s negligence:—**Held**: the measure of damages was not the cost of replacing the property destroyed, but the value of the property as it stood at the time of the destruction. The cost of replacing may be taken into account in arriving at such value.—*STEVENS v. ABBOTSFORD LUMBER CO.*, [1924] 1 D. L. R. 1163; 1 W. W. R. 660; 33 B. C. R. 299.—CAN.

27 ii. ———.—*Where there had been misdirection as to the damages, viz. that they should be assessed on a replacement basis:—Held*: there should be a new trial.—*O'NEIL v. DOMINION COAL CO.*, [1924] 1 D. L. R. 961; 57 N. S. R. 126.—CAN.

27 iii. ———.—*Depreciation in selling value.*—In an action for damages

in respect of injury done to the land, the trial judge assessed pltf.'s damages at \$4,500, estimating the actual damage which flowed from deft.'s wrong-doing at \$3,500; but, taking into account deft.'s whole course of conduct & persistence in the wrong which he was doing, fixed the total damages at \$4,500:—**Held**: having regard to the evidence & to the fact that the measure of damages is not the sum necessary to restore the property, but the depreciation in its selling value, the finding of \$3,500, for the actual damage done, could not be said to be clearly wrong.—*PARFARD v. CAVOTTI*, [1929] 1 D. L. R. 111; 63 O. L. R. 171.—CAN.

30 v. ———.—*Where plaintiff has alternative claim—Duty to elect.*—Damages cannot be recovered both in tort & for breach of contract, when the tort & the breach of contract result from the same act; in such a case pltf. must elect or be deemed to have elected; & if he seeks to recover damages for breach of contract, they must be measured upon that basis, & not upon the basis of any coincident or concomitant act of tort.—*TORONTO HOCKEY CLUB v. ARENA GARDENS, LTD.*, [1924] 4 D. L. R. 384; 55 O. L. R. 509; *affd.* [1925] 4 D. L. R. 546; 57 O. L. R. 610; *affd.*, [1926] 4 D. L. R. 1; [1926] 3 W. W. R. 26.—CAN.

## PART II. SECT. 4.

38 xii. ———.—*Goods not of warranted description—Allowance made.*—Certain goods supplied under a contract not answering the warranted description were taken back & an adjustment made in respect of them:—**Held**: the purchaser could not claim damages for the breach.—*HAMILTON GEAR & MACHINE CO. v. LEWIS BROTHERS*, [1924] 3 D. L. R. 367; 54 O. L. R. 583.—CAN.

38 xiii. ———.—*—FRENCH v. PAIRS*, [1928] 3 D. L. R. 555.—CAN.

42 iv. ———.—*—In an action for wrongfully obstructing the flow of a river by increasing the height of a wall, whereby pltf.'s lands, abutting on the river, were flooded, the judge declined to direct the jury that actual damage was essential to maintain the action:—Held*: the direction was right.—*McGLONE v. SMITH* (1888), 22 L. R. Ir. 559.—IR.

51 iv. ———.—*No reasonable expectation of pecuniary benefit—Death of young child in accident.*—**Held**: a verdict of damages awarded to parents of young children killed in an accident arising from negligence could not stand, where there was no reasonable expectation of future pecuniary benefit. In a case of this kind damages are not awarded as a solatium nor from sentimental

- ### Part III.—Directness and Remoteness.

- sb. Contract for work & labour—Work unperformed—Cost of performance.**—Resp. gave applt. an option to purchase a mine. On the first instalment falling due, applt. negotiated for an extension of time for payment, which was granted by resp. on condition that applt. should do certain development work not mentioned in the option. Applt. failed to pay, & subsequently relinquished possession of the mine & surrendered the option without having done the work. —**Held:** resp. entitled to recover damages amounting to the cost of the work. —**CUNNINGHAM v. INSINGER, [1924] 2 D. L. R. 433; [1924] S. C. R. 8.—CAN.**



141. *Add. Annotation*:—**Consd.** Finlay James & Co. v. N. V. Kwik Hoo Tong H. M., [1929] 1 K. B. 400.

141a. **Agreement not to arrest ship—Arrest & disposal of ship.**—Circumstances (*see* **CONFLICT OF LAWS**, No. 1135a, *ante*), in which:—*Held*: pltf.s were entitled to damages, & were entitled to recover the value of the ship as at the date when pltf.s were first deprived of her use by arrest.—**ELLERMAN LINES, LTD. v. READ**, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 33 Com. Cas. 219, C. A.; *revsq.* (1927), 44 T. L. R. 7.

146a. ——— **As result of shock.**—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife:—*Held*: pltf. would establish a cause of action if he established that the death of his wife resulted from the shock

occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—**HAMBROOK v. STOKES BROTHERS**, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

149. *Add. Annotations*:—**Consd.** Hambrook v. Stokes (1924), 41 T. L. R. 125. **Mentd.** Venn v. Tedesco, [1926] 2 K. B. 227.

150. *Add. Annotation*:—**Consd.** Hambrook v. Stokes (1924), 41 T. L. R. 125.

151. *Add. Annotations*:—**Apprvd.** Hambrook v. Stokes (1924), 41 T. L. R. 125. **Mentd.** Venn v. Tedesco, [1926] 2

152. *Add. Annotation*:—**Consd.** Hambrook v. Stokes (1924), 41 T. L. R. 125.

165. *Add. Annotation*:—**Refd.** Leeds Industrial Co-op. Soc. v. Slack, [1924] A. C. 851.

166. *Add. Annotations*:—**Refd.** Leeds Industrial Co-op. Soc. v. Slack, [1924] A. C. 851. **Mentd.** Light v. West, [1926] 2 K. B. 238.

### PART III. SECT. 2, SUB-SECT. 3.

147 i. **Pain & suffering.**—In an action for damages for personal injuries arising from negligence:—*Held*: items which should go to make up pltf.'s damages were (*inter alia*) a sum, not to compensate for, but to represent the inconvenience of his condition, & his pain & suffering, past & future.—**COSGROVE v. CANADIAN NATIONAL RAILWAYS**, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

147 ii. ——— **Ejection from tramcar—Illness from exposure to cold.**—*Held*: not too remote a cause for damages.—**TORONTO RY. CO. v. GRINSTEAD** (1895), 24 S. C. R. 570.—**CAN.**

149 i. ——— **Nervous shock—Actual impact.**—Damages claimed for nervous shock, as a result of an accident arising from negligence, cannot be recovered where the nervous shock produces only a mental disturbance unaccompanied by any actual physical injury. If impact is not necessary, it is a question of fact in each case whether or not pltf. sustained physical injury & whether such injury was the natural & reasonable result of defts.' negligence.—**HOGAN v. R.**, [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—**CAN.**

149 ii. ——— ————**—**—Damages cannot be recovered for nervous shock unaccompanied by any physical impact.—**PENMAN v. WINNIPEG ELECTRIC RY. CO.**, [1925] 1 D. L. R. 497; [1925] 1 W. W. R. 156.—**CAN.**

149 iii. ——— **False statement.**—Def't. falsely stated that pltf.'s son had hanged himself. The report was told to pltf., who, believing it, suffered a violent shock & became ill.—*Held*: the damage was the natural & probable cause of def't.'s act, & pltf. had a good cause of action.—**BIELITSKI v. OBADISK**, [1922] 2 W. W. R. 238; 65 D. L. R. 627; 15 Sask. L. R. 155; *affg.* 61 D. L. R. 494.—**CAN.**

149 iv. ——— ————**—**—A man & a woman to whom he was engaged were knocked down by a motor omnibus. The man was struck by the omnibus & received considerable physical injury. The woman did not appear to have been actually struck, & she received no direct physical injury, but she suffered severely from shock. In an action of damages at her instance the Judge directed the jury that, if by the fault of defts. pursuer had suffered nervous

shock through apprehension for her own safety, they were entitled, in assessing damages, to include any aggravation of that shock occasioned by the fact that her companion was involved in the catastrophe. The jury found that pursuer had suffered personal injury resulting in nervous shock involving apprehension for her own safety, aggravated by anxiety for the safety of her companion, & awarded damages.—*Held*: in the circumstances the jury could not be asked to discriminate between the amount of shock suffered by pursuer due to apprehension for her own safety & the amount due to anxiety for her companion.—**CURRIE v. WATKINSON**, [1927] S. C. 538.—**SCOT.**

149 v. ——— **Assault on husband in wife's presence—Loss of consortium.**—An action lies for mental anguish, ill health or shock sustained by reason of acts done to a third person, & not causing any apprehension of danger to pltf., & an action *quare consortium amittit* lies at the suit of a wife.—**JOHNSON v. COMMONWEALTH** (1927), 27 S. R. N. S. W. 133; 44 N. S. W. W. N. 54.—**AUS.**

162 i. **Loss of or injury to property—Collision at sea—Loss of musical manuscripts.**—In an action of damages against steamship owners, arising out of the sinking of one of their ships, pursuer claimed £15,000 in respect of the loss of certain music & orchestral settings in manuscript used by a concert party of which she was manager. She averred that the lost manuscripts were the sole copies of the compositions in question, & that she had the sole right to publish, perform, or issue mechanical reproductions, & to obtain copyright thereof. The compositions had cost pursuer about £2,000, but she averred that, through her concert party, they had acquired a reputation among the public which had greatly enhanced their value, & she further averred that she would have made substantial profits from the lost music in respect of copyright royalties, publication & sale, & disposal of performing & mechanical rights, apart from the use of it by her concert party:—*Held*: (1) pursuer's averments as to loss of contingent profits from copyright royalties, publication & sale, & disposal of performing & mechanical rights, were irrelevant; (2) the measure of her damages in respect of the lost

music was the cost of its replacement as nearly as might be, ascertained either by the market price of actual replacement, or by consideration of the commission which would have to be paid to composers of music of the class, to which the lost compositions belonged.—**KLAVIS v. CLAN LINE STEAMERS, LTD.**, [1926] S. C. 215.—**SCOT.**

sd. **Loss of earning power—Physical or mental.**—In an action for damages for personal injuries arising from negligence:—*Held*: items which should go to make up pltf.'s damages were (*inter alia*) a sum to compensate for loss of earning power by reason of physical injury & any incidental mental injury.—**COSGROVE v. CANADIAN NATIONAL RAILWAYS**, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

st. **Loss of time—Injury in motor-car collision.**—In an action for damages for injuries arising out of a motor collision, where it was found that the accident was caused by pltf.'s negligence:—*Held*: damages should be given def't. for loss of time, repairs to the car & costs.—**TILMAN v. MCKENZIE**, [1923] 1 D. L. R. 1189.—**CAN.**

### PART III. SECT. 3, SUB-SECT. 2.

sk. **Depreciation in price—Machinery components purchased by vendor to perform contract.**—*Held*: the vendor was not entitled, as damages for breach of contract to purchase an ammonia gas compressing outfit, to a sum for loss through decrease in price of the parts purchased for the purpose of the contract, this not being a loss "directly & naturally resulting in the ordinary course of events from the buyer's breach of contract," as there was nothing in the negotiations for the contract to give the purchaser to understand that the vendor would have to go into the market & buy the various parts to make up the plant.—**GENERAL SUPPLY CO. OF CANADA v. O'NEILL MORRIS MACHINERY CO.**, [1923] 2 W. W. R. 928.—**CAN.**

sl. **Loss of custom—Defective goods sold but replaced.**—Certain goods supplied under contract not complying with the warranted description:—*Held*: it could not reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, that pltf.s. were to compensate defts. for such loss of business as defts. might incur by

174. *Add. Annotation*:—**Refd.** *Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535.
181. *Add. Annotations*:—**Dbtd.** *Marb  v. George Edwardes (Daly's Theatre)*, [1928] 1 K. B. 269. **Refd.** *Marb  v. George Edwardes (Daly's Theatre)* (1927), 96 L. J. K. B. 980.
- 181a. ———.]—**Pltf.**, an actress, was engaged by defts. to play in a play for the period of rehearsal & for the run of the play, & there was a collateral agreement that defts. would advertise her in a prominent position. Defts. refused to allow **pltf.** to play, but they paid her the whole of her salary down to the end of the run of the play. In an action for breach of contract the jury awarded to **pltf.**, over & above her salary already paid, damages for loss of reputation through her not being employed to play the part:—**Held**: as there was an express agreement to advertise **pltf.** this necessarily implied an obligation to give **pltf.** an opportunity of acting, & **pltf.** was entitled, in addition to her salary already paid, to the damages awarded by the jury for loss of reputation.—**MARB  v. GEORGE EDWARDS (DALY'S THEATRE), LTD.**, [1928] 1 K. B. 269; 96 L. J. K. B. 980; 138 L. T. 51; 43 T. L. R. 809, C. A.
182. *Add. Annotation*:—**Refd.** *Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.
193. *Add. Annotations*:—**Distd. Re** *Hall & Pim* (1928), 139 L. T. 50. **Refd.** *Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535.
194. *Add. Annotations*:—**Refd.** *Hall v. Pim* (1927), 137 L. T. 585. **Mentd.** *Verelst's Administratrix v. Motor Union Insee.*, [1925] 2 K. B. 137.
212. *Add. Annotation*:—**Mentd.** *Stoney v. Eastbourne R. D. C. & Devonshire* (1925), 90 J. P. 133.
214. *Add. Annotations*:—**Folld.** *Bennett v. Kreeger* (1925), 41 T. L. R. 609. **Apld.** *Slavovski v. La Pelleterie de Roubaix Soc. Anon.* (1927), 137 L. T. 645. **Consd. Re** *Hall & Pim* (1928), 139 L. T. 50. **Refd.** *Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83; *Kasler & Cohen v. Slavovski* (1927), 96 L. J. K. B. 850; *Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535; *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.
215. *Add. Annotations*:—**Folld.** *Bennett v. Kreeger* (1925), 41 T. L. R. 609. **Consd.** *Britannia*

the withdrawal of their customers on account of a few of the articles resold being defective, such articles being replaced when complaint was made.—**HAMILTON GEAR & MACHINE CO. v. LEWIS BROTHERS**, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—**CAN.**

#### PART III. SECT. 3, SUB-SECT. 3.

194 i. ———. *Loss of profit.*—**W.** entered into a contract to supply a paper co. with pulpwood. He had previously made a contract with **M.** who agreed to deliver certain pulpwood at a lower price & who was informed of the first-mentioned contract, though not of all its terms. At the end of the season **M.** was short of the quantity he agreed to deliver:—**Held**: **W.** was entitled to recover damages from **M.** for non-performance of his contract, & the measure of those damages was the profit **W.** would have made under his contract with the paper co.—**MONDOR v. WILLERS**, [1923] 3 D. L. R. 964; [1923] S. C. R. 433; 2 W. W. R. 486.—**CAN.**

#### PART III. SECT. 4, SUB-SECT. 1.

p (p. 107) i. ———.]—In an action for damages for breach of contract by refusal to take delivery of goods:—**Held**: a claim for expenses incurred in going to deft.'s residence to urge him to take delivery could not stand.—**BRADLEY v. BAILEY & JASTERSON**, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

k (p. 108) i. ———. *Medical attendance.*—In an action for damages for personal injuries arising from negligence:—**Held**: the items which should go to make up **pltf.**'s damages were (*inter alia*) medical & hospital bills.—**COBROVE v. CANADIAN NATIONAL RAILWAYS**, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

k (p. 108) ii. ———. *On wife.*—**S.** & his wife brought an action against deft. for damages for personal injuries. Deft. was found guilty of negligence, but the action by **S.** was dismissed on account of contributory negligence. The ct. awarded damages

*Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83. **Refd.** *Kasler & Cohen v. Slavovski* (1927), 96 L. J. K. B. 850.

215a. ———.]—**Pltfs.** bought a coat with fur collar attached, for re-sale, from deft. & sold it to a customer. Owing to the colouring matter with which the fur was dyed, the customer contracted a skin disease & brought an action against **pltfs.**, claiming damages. **Pltfs.** informed deft. thereof & requested him to undertake the defence of the action. Deft. denied liability but never suggested that **pltfs.** had no answer to the action, with the result that **pltfs.** defended the action & a jury awarded the customer damages for her suffering, & **pltfs.** had to pay the costs of the action:—**Held**: **pltfs.** were entitled to recover from deft. the damages so awarded, together with the customer's taxed costs of the action & their own costs of defending the action as between solr. & client.—**BENNETT (SIDNEY) LTD. v. KREEGER (1925), 41 T. L. R. 609.**

217. *Add. Annotation*:—**Refd.** *Sheppy Glue & Chemical Works v. Medway River Conservators* (1926), 24 L. G. R. 157.

220. *Add. Annotation*:—**Refd.** *Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.

223. *Add. Annotation*:—**Refd.** *Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.

224. *Add. Annotation*:—**Generally, Mentd.** *Stoney v. Eastbourne R. C.*, [1927] 1 Ch. 367.

227a. ———. *Several sub-sales.*—**Defts.** sold skins to **pltfs.**, who resold to a sub-vendee. That sub-vendee sold to a second sub-vendee, who sold one of the skins, which had been made into the collar of a fur coat, to a third sub-vendee. The third sub-vendee sold to a woman who wore the coat & developed dermatitis on the face in consequence of antimony contained in the skin. In each sale the vendor knew the particular purpose for which the goods were required by the purchaser, & there was an implied warranty that the goods were reasonably fit for such purpose. The ultimate purchaser brought an action for breach of contract against her supplier, the third sub-vendee. The third sub-vendee defended the action, & in so doing acted reasonably; but in the result the ultimate purchaser recovered damages &

to the wife against deft. It was sought to give in evidence the wife's medical & hospital bills:—**Held**: the bills had been contracted by the wife as her husband's agent & were his liability alone.—**SCOBLE v. WOODWARD**, [1924] 1 W. W. R. 1040.—**CAN.**

r (p. 108) i. ———. *Injury to chattel—Costs of repairs & depreciation.*—**Held**: recoverable.—**WALTER v. SEIBEL**, [1927] 2 D. L. R. 1005; [1927] 1 W. W. R. 967 21 Sask. L. R. 452.—**CAN.**

#### PART III. SECT. 4, SUB-SECT. 2.

209 v. ———.]—**Solr. & client** costs incurred by the driver of a motor car in successfully defending an action brought against him by a passenger in another car with which his car had collided cannot be recovered by him in an action for negligence brought against the driver of the other car.—**LONDON GUARANTEE & ACCIDENT CO., LTD. v. GIBSON**, [1928] 3 D. L. R. 610; [1928] 2 W. W. R. 532; 23 Alta. L. R. 518.—**CAN.**

costs against him. The third sub-vendee, who had incurred certain additional costs in connection with the action, claimed to be reimbursed by the second sub-vendee, & after some resistance, incurring further costs, the second sub-vendee paid. The second sub-vendee then claimed against the first sub-vendee, who after some dispute incurring further costs, also paid. The first sub-vendee claimed against pltf., who, after taking advice, occasioning further costs, paid. Pltfs. sued defts. for breach of contract, claiming as damages the damages recovered by the ultimate purchaser, the costs on both sides in that action, & the costs of the intermediate actions:—*Held*: pltfs. were entitled to recover the damages which might reasonably be supposed to have been in the contemplation of the parties at the time of the contract; the parties must have contemplated that damages would be claimed, if there were a breach of contract of the kind that had occurred, by parties separated by several contractual steps from each of the immediate parties to each of the contracts along the line; pltfs.' damages should include (1) the damages recovered by the ultimate purchaser, (2) the costs on both sides in that action, inasmuch as it was reasonably defended, & (3) the costs of the intermediate actions, in so far as they were reasonably incurred.—*KASLER & COHEN v. SLAVOUSKI*, [1928] 1 K. B. 78; 96 L. J. K. B. 850; 137 L. T. 641; *subsequent proceedings, sub nom. SLAVONSKI v. LA PELLETERIE DE ROUBAIX SOCIETE ANONYME* (1927), 137 L. T. 645.

- 235a. — Costs awarded in previous proceedings, but not recovered.]—Pltfs. sought to recover from defts., as special damage, the costs which they themselves had incurred in previous litigation in which they were defts. Pltfs. in the present action sent a motor lorry to be overhauled by defts. The repairs were carried out & the lorry was returned. Very shortly afterwards, while the lorry was in use on the highway, one of the wheels came off & damaged the van of pltf. in the previous litigation, who brought an action in the county ct. to recover damages against present pltfs. He won the action at the hearing, but the decision was reversed on appeal. He was a man of straw & unable to pay the costs incurred. Present pltfs. sued present defts. for damages for alleged breach of contract & negligence, & a common jury found in pltfs.' favour. After argument as to the right of pltfs. to recover as special damage against defts., on account of their breach of contract

& negligence, the costs of all previous litigation:—*Held*: such damage was not too remote.—*BRITANNIA HYGIENIC LAUNDRY Co. v. THORNYCROFT & Co.* (1925), 94 L. J. K. B. 858; 41 T. L. R. 667; *on appeal*, 95 L. J. K. B. 237; 135 L. T. 83; 42 T. L. R. 198.

237. *Add. Annotations*:—*Consd.* *Harnett v. Bond*, [1924] 2 K. B. 517. *Refd.* *Hambrook v. Stokes* (1924), 41 T. L. R. 125; *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461; *Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83; *Singleton Abbey (Owners) v. Paludina (Owners)*, *The Paludina* (1926), 95 L. J. P. 135.
- 260a. *S. P. HARRISON v. MCSHEEHAN*, [1885] W. N. 207.
265. *Add. Annotations*:—*Refd.* *Britannia Laundry Co. v. Thornycroft* (1926), 135 L. T. 83; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
268. *Add. Annotations*:—*Consd.* *Addie R. & Sons (Collieries) v. Dumbreck*, [1929] A. C. 358. *Refd.* *Sutcliffe v. Clients Investment Co.*, [1924] 2 K. B. 746; *Compania Mexicana De Petroleo El Aguila v. Essex Transport & Trading Co.* (1929), 141 L. T. 106. *Mentd.* *Harnett v. Fisher* (1926), 135 L. T. 724; *De Freville v. Dill* (1927), 43 T. L. R. 702; *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
279. *Add. Annotations*:—*Refd.* *Noble v. Harrison*, [1926] 2 K. B. 332; *Smith v. G. W. Ry.* (1926), 135 L. T. 112; *Pontardawe Rural Council v. Moore-Gwyn*, [1929] 1 Ch. 656.
280. *Add. Annotation*:—*Refd.* *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.
282. *Add. Annotations*:—*As to* (1) *Distd.* *Martin v. Stanborough* (1924), 41 T. L. R. 1. *Refd.* *Gayler & Pope v. Davies*, [1924] 2 K. B. 75.
284. *Add. Annotation*:—*Refd.* *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.
288. *Add. Annotations*:—*Consd.* *The St. Nicolai* (1925), 133 L. T. 640. *Distd.* *G. W. Ry. v. S.S. Mostyn*, [1928] A. C. 57. *Refd.* *British-American Tobacco Co. v. Jones* (1925), 134 L. T. 405; *Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756. *Refd.* *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159; *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. R. 108. *Mentd.* *Abrahams v. MacFisherics*, [1925] 2 K. B. 18.

## Part IV.—Aggravation and Mitigation.

290. *Add. Annotation*:—*Refd.* *Martin v. Stout*, [1925] A. C. 359.
298. *Add. Annotation*:—*Refd.* *Cohen v. Sellar*, [1926] 1 K. B. 536.
301. *Add. Annotations*:—*Consd.* *Riley v. Brown*

(1929), 98 L. J. K. B. 739. *Refd.* *Cohen v. Sellar*, [1926] 1 K. B. 536.

302. *Add. Annotation*:—*Consd.* *Riley v. Brown* (1929), 98 L. J. K. B. 739.

304. *Add. Annotation*:—*Refd.* *Curtis Moffat, Ltd. v. Wheeler*, [1920] 2 Ch. 224.

PART IV. SECT. 1, SUB-SECT. 2.  
d i. —.]—*Trespass—Abusive conduct*.—An appeal from a judgment whereby pltf., in an action for trespass,

was awarded vindictive damages in addition to special damages:—*Held*: in view of deft.'s persistence in trespassing in defiance of pltf.'s requests to desist,

his violent & abusive conduct towards pltf., & the particularly injurious & malicious manner in which certain of the trespasses were committed, the

- 388.** *Add. Annotation* :—**Mentd.** *Re* Lanyon, | **393.** For the cross-reference following this case,  
Lanyon v. Lanyon, [1927] 2 Ch. 264. | "As to interest under Civil Procedure Act.

364 iv. — *To assault.*]—On

**380 xiii.** ——— *Goods manufactured or partly manufactured.*]—In respect of goods manufactured or partly manufactured & ready or partly ready for delivery, before defts. repudiated their contract:—*Held:* plaintiffs were entitled to recover, as damages for breach of contract, a sum equal to the contract price of the finished or partly finished

sd. *Wrongful eviction of lessee.*]—In regard to damages recoverable by a wrongfully evicted lessee, the case is governed by the general rule applicable to all breaches of contract, namely, that the party wronged is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed. Compensation to the lessee will not be confined to the value of the unexpired term, but will include all loss naturally resulting from the eviction.—*HAACK v. MARTIN*, [1927] 3 D. L. R. 19; [1927] S. C. R. 413.—CAN.

1833 (c. 42), s. 28, & damages in lieu of such interest.]—*See MONEY & MONEY LENDING*, read "As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest, *see* MONEY & MONEY LENDING."

408a. Option to purchase—Profit on resale lost by improper withdrawal.]—Pltf., having an option from deft. to purchase a freehold house for £4,000, agreed to sell the property to S. for £4,500, & then wrote accepting deft.'s offer to sell the house. In the meantime deft. had sold the property to B. for £4,000.—*Held*: as specific performance of the contract was impossible by reason of deft.'s own act, pltf. was entitled to recover from deft. as damages £500, the difference between the price at which the property was offered to pltf. & that at which pltf. contracted to sell it.—*GOFFIN v. HOULDER* (1920), 90 L. J. Ch. 488; 124 L. T. 145.

412a. Continuation of contract depending on third party.]—Defts. agreed in writing to purchase from pltf. all the stores that they required in the United Kingdom for their vessels, pltf.'s profits on the net price invoiced by the manufacturers to pltf. to be discussed every six months, & the agreement was to remain

in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltf. for five months defts. repudiated it:—*Held*: as the continuation of the agreement between pltf. & defts. for more than six months depended on the volition of a third party, & as the agreement contained nothing to prevent defts. from buying their stores outside the United Kingdom, pltf. were entitled only to damages in respect of a period of one month.—*FRANCO-BRITISH SHIP STORE CO., LTD. v. COMPAGNIE DES CHARGEURS FRANÇAISE* (1926), 42 T. L. R. 735.

413. *Add. Annotation*:—*Refd.* *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. R. 108; *Watt v. Longsdon* (1929), 98 L. J. K. B. 711. *Mentd.* *Hardie & Lane v. Chiltern*, [1928] 1 K. B. 663.

418. *Add. Annotations*:—*As to* (1) *Appld.* *Smith v. Schilling*, [1928] 1 K. B. 429. *As to* (2) *Refd.* *Martin v. Benson*, [1927] 1 K. B. 771.

420. *Add. Annotation*:—*Mentd.* *Sorrell v. Smith*, [1925] A. C. 700.

## Part VI.—Liquidated Damages or Penalty.

424. *Add. Annotation*:—*Generally, Refd.* *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637.

426. *Add. Annotations*:—*As to* (2) *Appld.* *English Hop Growers v. Dering*, [1928] 2 K. B. 174. *Generally, Mentd.* *Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86.

426a. —.]—Deft. was a member of pltf. society, which was formed to organise the marketing of home-grown hops by their sale through pltf.s., & by a written agreement deft. undertook to deliver to pltf.s. all hops grown or produced by him in 1926 on certain land. The agreement also provided that if deft. failed to deliver to pltf.s. the hops or disposed of them otherwise than through pltf.s., he would pay to pltf.s. as & for liquidated damages £100 per acre or proportionately on a less acreage:—

*Held*: as a breach of the agreement might occasion serious damage which it might be difficult to value exactly or ascertain beforehand, the sum fixed by the parties as a pre-estimate of the damage, namely, £100 per acre, was not a penalty but liquidated damages.—*ENGLISH HOP GROWERS v. DERING*, [1928] 2 K. B. 174; 97 L. J. K. B. 569; 139 L. T. 76; 44 T. L. R. 443, C. A.

455. *Add. Annotation*:—*Refd.* *English Hop Growers v. Dering*, [1928] 2 K. B. 174.

461. *Add. Annotation*:—*Refd.* *English Hop Growers v. Dering*, [1928] 2 K. B. 174.

506. *Citation*:—For "*on appeal*" read "*subsequent proceedings*."

*Annotations*:—Delete "*Generally, Mentd. Re Hall* (1861), 11 L. T. 579."

st. *Lease of racehorse to trainer for specified period—Owner taking horse away before expiration of period—Loss of prospective winnings recoverable.*—*HOWE v. TEEFY* (1927), 27 S. R. N. S. W. 301; 44 N. S. W. W. N. 102.—*AUS.*

sg. *Measure selected by plaintiff.*—*BUKHARD & CO., LTD. v. WAHLEN* (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—*AUS.*

### PART V. SECT. 1, SUB-SECT. 2.

414 ii. *Revsd.* on other grounds, Q. R. 15 K. B. 11; [1907] A. C. 454.

414 viii. —.]—*PAFFARD v. CAVOTTI*, [1929] 1 D. L. R. 111; 63 O. L. R. 171.—*CAN.*

### PART VI. SECT. 1, SUB-SECT. 2.

424 vii. —.]—A rule of damages provided for in a contract between a co-operative co. & a grower of fruits & vegetables, under which the latter agreed to deliver all his products to the co. to be marketed by it, for the breach thereof:—*Held*: to be liquidated damages & not a penalty.—*ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA*

*FRUIT LAND, LTD.*, [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—*CAN.*

424 viii. —.]—A contract between pltf. & deft. provided that should deft. fail to deliver to pltf.s. all the wheat covered by the contract, he would pay to pltf.s. as liquidated damages 25 cents per bushel for all wheat which he should have failed to deliver:—*Held*: the 25 cents per bushel was not a penalty but liquidated damages.—*SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. v. ZUROWSKI (Sask.)*, [1926] 3 D. L. R. 810; [1926] 2 W. W. R. 604.—*CAN.*

424 ix. —.]—*BOUCAUT BAY CO., LTD. v. THE COMMONWEALTH*, [1927] *Argus* L. R. 415.—*AUS.*

### PART VI. SECT. 1, SUB-SECT. 3.

442 i. — — — *Onus of disproof.*—If the sum mentioned in a bond is expressed to be a penalty, the *onus* of showing that it was intended as liquidated damages is on the person asserting it.—*R. (A.-G. OF CANADA) v. LONDON GUARANTEE & ACCIDENT CO., LTD.*, [1920] 2 W. W. R. 83.—*CAN.*

448 iii. — — —.]—Where a sum is stipulated to be paid as liquidated damages, & is payable, not on the happening of a single event, but of one or more of a number of events, some of which might result in inconsiderable damage, the ct. may decline to construe the words "liquidated damages" according to their ordinary meaning & may treat such a sum as a penalty.—*SHATILLA v. FEINSTEIN*, [1923] 3 D. L. R. 1035; 16 Sask. L. R. 454; [1923] 1 W. W. R. 1474.—*CAN.*

453 iv. — — —.]—*Held*: having regard to the language in a clause of a contract of service, fixing a sum as liquidated damages for violation by deft. of any or all of the provisions of the contract, the sum fixed was not in the nature of a penalty.—*DOMINION ART CO., LTD. v. MURPHY* (1923), 54 O. L. R. 332.—*CAN.*

### PART VI. SECT. 1, SUB-SECT. 5.

471 ii. — — —.]—The sum mentioned in a bond given under Canada Grain Act by one licensed to operate a country elevator:—*Held*: to be a penalty & only recoverable to

## Part VII.—Pleading, Proof and Assessment.

561. *Add. Annotation*:—**Mentd.** Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

574a. ——— **Contingent damages.**—When a verdict is found for deft. upon an issue which bars the action, the jury cannot assess contingent damages for pltf., without the assent of deft.—**NEWTON v. HARLAND** (1840), 1 Man. & G. 644; 1 Scott. N. R. 474; 2 Jur. 350; 133 E. R. 490.

*Annotations*:—**Mentd.** *Harvey v. Bridges* (1846), 3 Dow. & L. 55; *Wright v. Burroughes* (1846), 3 C. B. 685; *Davis v. Burrell* (1851), 10 C. B. 821; *Delaney v. Fox* (1856), 1 C. B. N. S. 166; *Carter v. Hughes* (1858), 2 H. & N. 714; *Pollen v. Brewer* (1859), 1 L. T. 9; *Accidental Death Insc. v. Mackenzie* (1861), 5 L. T. 20; *Blades v. Higgs* (1861), 10 C. B. N. S. 713; *Telford v. Laws* (1874), 31 L. T. 90; *Boddall v. Maitland* (1881), 17 Ch. D. 174; *Edridge v. Hawker* (1881), 50 L. J. Ch. 577; *Edwick v. Hawkes* (1881), 18 Ch. D. 199; *Jones v. Foley* (1891), 60 L. J. Q. B. 464; *Hemmings v. Stoke Poges Golf Club*, [1920] 1 K. B. 720.

576. After this case add “—— **In matrimonial causes.**—*See* **HUSBAND & WIFE**, No. 4677a.”

592a. ———.]—Where a jury has improperly awarded an annuity by way of damages instead of a lump sum the judge should redirect the jury; he has no power to enter judgment for the capitalised amount of the annuity.—**FOURNIER v. CANADIAN NATIONAL RY. CO.**, [1927] A. C. 167; 95 L. J. P. C. 177; 135 L. T. 609; 42 T. L. R. 629, P. C.

594. *Add. Annotation*:—**Refd.** *Marlin v. Stout*, [1925] A. C. 359.

598. *Annotation*:—For “**Refd.** *S.S. Celia v. S.S. Volturmo*, [1921] 2 A. C. 544,” read “**Expld.** *S.S. Celia v. S.S. Volturmo*, [1921] 2 A. C. 544.”

the extent of the actual loss shown, there being no evidence to show it was intended as liquidated damages, & because the conditions of the bond consisted in the performance of many acts, some of which might be of great & others of trifling importance.—**IT. (A.-G. OF CANADA) v. LONDON GUARANTEE & ACCIDENT CO., LTD.**, [1920] 2 W. W. R. 83—CAN.

## PART VI. SECT. 1, SUB-SECT. 6.

**pi.** ———.]—**Agreement for share of profits under option—Failure to take up option—Liquidated damages**—**KENNEDY v. HARRIS** (1912), 23 O. W. R. 179; 4 O. W. N. 183; 7 D. L. R. 291.—CAN.

## PART VI. SECT. 1, SUB-SECT. 7.

529 iii. ———.]—Pltf. gave deft. the exclusive agency for six months for the sale of certain land. Dft. covenanted that if he failed to effect a sale of 1,000 acres in the first six months he would pay as liquidated damages an amount equal to \$2 per acre for each acre of the 1,000 acres unsold. Dft. failed to effect a sale:—**Held**: not a penalty, but liquidated damages arising on proof of failure to make the sales, without having to show actual loss.—**NORTHERN TRUSTS CO. v. RASMUSSEN**, [1924] 2 W. W. R. 1015.—CAN.

## PART VII. SECT. 1.

549 xv. ———.]—To recover special damages, a pltf. must expressly claim them in his pleadings & prove them strictly at the trial.—**CARROLL v. BAER**, [1924] 2 D. L. R. 452; 1 W. W. R. 1249; 18 Sask. L. R. 292.—CAN.

549 xvi. *S. P. BUTT v. OSHAWA CORPN.*, *WILKINSON v. OSHAWA CORPN.*,

[1926] 4 D. L. R. 1138; 59 O. L. R. 520.—CAN.

549 xvii. ———.]—In an action for breach of covenant by delaying the completion of a railway crossing, which afforded the best road to pltf.'s saw mill:—**Held**: evidence of special damage was not admissible, none being alleged in the declaration, & pltf. not having notified defts. at the time of the fact of his suffering the loss of profit, which constituted the alleged damages.—**SHAVER v. GREAT WESTERN RY. CO.** (1857), 6 C. P. 321.—CAN.

## PART VII. SECT. 2.

559 i. *Necessity for proof of special damage.*—On a claim for damages for personal injuries, pltf. cannot claim for special damages for nursing where he fails to show that he has either paid or is under any legal obligation to pay for the nursing done; the fact that he intends to pay a sum to his nurse is not sufficient.—**CARROLL v. BAER**, [1924] 2 D. L. R. 452; 1 W. W. R. 1249; 18 Sask. L. R. 292.—CAN.

**c j.** ———.]—**CLAUSEN v. CANADIAN TIMBER & LANDS, LTD.** (1925), 35 B. C. R. 461.—CAN.

## PART VII. SECT. 3, SUB-SECT. 2.

575 ii. ———.]—*On same principles as jury.*—In assessing damages against a member of the Winnipeg Grain Exchange for wrongfully closing out the account of a customer, a judge is not bound to take the highest peak as the measure thereof, but may base his assessment upon the principal adopted by juries.—**NELSON v. BAIRD & BOTTERELL** (1915), 30 W. L. R. 822; 8 W. W. R. 144; 25 Man. L. R. 244.—CAN.

579 vi. ———.]—When the writ in

601. *Add. Annotation*:—**N.F. Peyrae v. Wilkinson**, [1924] 2 K. B. 166.

602. *Add. Annotation*:—**Refd.** *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

604. *Add. Annotations*:—**Refd.** *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451. **Mentd.** *Richardson v. Richardson*, [1927] P. 228.

611. *Add. Annotation*:—**Folld.** *Peyrae v. Wilkinson*, [1924] 2 K. B. 166.

612. For the existing paragraph in original volume substitute the following paragraph:—

———.]—In an action in this country for a debt payable in a foreign currency the debt must be converted into English currency at the rate of exchange prevailing at the date when the debt became due & payable, & not at the rate of exchange prevailing at the date of judgment.—**PEYRAE v. WILKINSON**, [1924] 2 K. B. 166; 93 L. J. K. B. 121; 130 L. T.

612a. ———.]—Between 1903 & 1909 pltf's., Russian subjects, effected with defts., an American insurance co. then having a branch in Russia, insurances in the form of four endowment life policies & paid the premiums in Russia in roubles down to 1918. The amounts secured by two of the policies having become payable:—**Held**: judgment should be entered for pltf's. for the sterling equivalent of the amounts due in chervonetz roubles at the date when those amounts became due.—**BUEGER v. NEW YORK LIFE ASSURANCE CO.** (1927), 96 L. J. K. B. 930; 137 L. T. 431; 43 T. L. R. 601, C. A.

*Annotation*:—**Refd.** *Perry v. Equitable Life Assce. Society of U. S. A.* (1929), 45 T. L. R. 468.

an action, under Wrongs Act, 1915, Part III., has been endorsed for trial with a jury, sect. 16 of that Act makes the jury the tribunal to assess the damages. If interlocutory judgment be entered in default of appearance, Ord. XIII., r. 5, does not, in the absence of consent of the parties, enable the prothonotary to ascertain the damages. The deft. is entitled to notice of the assessment of damages by the jury.—**WALSH v. McMICHAEL**, [1928] V. L. R. 345; [1928] Argus L. R. 195.—AUS.

## PART VII. SECT. 3, SUB-SECT. 3.—B.

598 i. *Amount due in foreign currency—Date of judgment sued on.*—Where deft. in a suit in Bombay contended that the rate of exchange should be that on the day on which the ct. pronounced judgment:—**Held**: the rate to be taken was that prevailing on the day judgment was given in the High Ct. in England, which gave pltf. the cause of action for the suit in Bombay.—**MADHAVJI VISRAM v. RAMNIKLAL VADILAL** (1921), 1 L. R. 47 Bom. 487.—IND.

**si.** ———.]—**Held**: the rate for conversion of dividends payable in foreign currency was the rate ruling on the date when each dividend became due.—**THE CUSTODIAN v. BRUCHER**, [1927] 3 D. L. R. 40; [1927] S. C. R. 420.—CAN.

603 iii. ———.]—In cases of breach of contract, the date on which the rate of exchange is to be taken for the purpose of converting one set of currency into another is the date on which under the agreement the money was to be paid & on which a breach occurred by its not being paid.—**SHAKOOL & CO. v. FINLAY FLEMING & CO.** (1923), 1 L. R. 1 Ban. 339.—IND.

613. *Citations*:—Add “15 Asp. M. L. C. 570.” Delete “*reusg.* S. C. *sub nom.* DREYFUS & Co. v. ATLANTIC SHIPPING & TRADING Co. (1921), 37 T. L. R. 417, C. A.”  
*Annotations*:—Delete “**Mentd.** Czarnikow v. Roth, Schmidt (1922), 92 L. J. K. B. 81; Ford v. Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock v. Lewis & Peat, [1923] 1 K. B. 690.”
614. *Add. Annotation*:—**Consd.** Anderson v. Equitable Life Assee. Soc. of United States (1926), 134 L. T. 557.
615. After this case add “*See, also*, INSURANCE. Vol. XXIX., p. 389, No. 3104.”
618. *Add. Citations*:—93 L. J. Ch. 263; 130 L. T. 109.  
*Add. Annotations*:—As to (1) **Consd.** Anderson v. Equitable Life Assee. Soc. of United States (1926), 134 L. T. 557; Buerger v. New York Life Assee. (1927), 96 L. J. K. B. 930. *Generally*, **Refd.** Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451.
625. *Add. Annotations*:—As to (2) **Refd.** Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108. *Generally*, **Refd.** Watt v. Longsdon (1929), 98 L. J. K. B. 711. *Generally*, **Mentd.** Hardie & Lane v. Chiltern, [1928] 1 K. B. 663.
626. *Add. Annotations*:—**Refd.** The Koursk, [1924] P. 140; Pirie v. Richardson, [1927] 1 K. B. 448. **Mentd.** Cumberland v. Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.
638. *Add. Annotation*:—**Consd.** The Koursk, [1924] P. 140.
648. *Add. Annotations*:—**Consd.** Wing Lee v. Lew, [1925] A. C. 819. **Refd.** Hobbs v. Tinling, Hobbs v. Nottingham Journal, [1929] 2 K. B. 1.
673. *Add. Annotation*:—**Refd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
- 721a. ———.]—The Ct. of Appeal may set aside the assessment of damages by a jury where the amount assessed is so small or so large as that twelve sensible jurors could not reasonably have given the verdict, or as to lead the ct. to the conclusion that the jury must have taken into consideration matter which they ought not to have considered, or that they have omitted to pay regard to matter which they ought to have considered.—**SMITH v. SCHILLING**, [1928] 1 K. B. 429; 97 L. J. K. B. 276; 138 L. T. 475; 44 T. L. R. 109, C. A.
737. *Add. Annotations*:—**Apld.** Hobbs v. Tinling, Hobbs v. Nottingham Journal, [1929] 2 K. B. 1. **Refd.** Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108. **Mentd.** Williams v. Barton, [1927] 2 Ch. 9.
751. *Add. Annotation*:—**Refd.** Smith v. Schilling, [1928] 1 K. B. 429.
- 751a. ———.]—**SMITH v. SCHILLING**, No. 721a, *ante*.
753. *Add. Annotation*:—**Mentd.** Hearn v. Southern Ry. (1925), 41 T. L. R. 305.
764. *Add. Annotation*:—**Refd.** Hobbs v. Tinling, Hobbs v. Nottingham Journal, [1929] 2 K. B. 1.
784. *Add. Annotation*:—**Refd.** Smith v. Schilling, [1928] 1 K. B. 429.
- 784a. ———.]—**SMITH v. SCHILLING**, No. 721a, *ante*.
830. After this case add “*See, also*, JURIES, Vol. XXX., pp. 245, 246.”
- 832a. ———.]—**SMITH v. SCHILLING**, No. 721a, *ante*.

**PART VII. SECT. 3, SUB-SECT. 4.**

627 li. —.]—GAY Co., LTD. v.  
TRICK, [1927] 1 D. L. R. 1091; 60  
O. L. R. 8.—CAN.

**PART VII. SECT. 3, SUB-SECT. 5.**

g1. — *Right of—Defendant not entitled to examine plaintiff with view to assessment of damages.*—*PONG YOUNG v. SHING WAH*, [1928] 3 D. L. R. 481; 62 O. L. R. 370.—**CAN.**

st. When assessment must be by master.]—HENNIGAR v. HENNIGAR (N. B.), [1926] 1 D. L. R. 891.—CAN.

**PART VII. SECT. 4, SUB-SECT. 3.—A.**

661 x. ———.]—COGHLIN v. LA  
FONDERIE DE JOLIETTE (1903), 34  
S. C. R. 153.—CAN.

661 xi. ———.—Where damages are claimed for the depreciation in value of an article, the basis of assessment is the difference between the value of the article immediately before it was damaged & its value immediately afterwards. Where damages have been assessed on a wrong principle a new trial will be ordered.—*DRYDEN v. ORR* (1928), 28 S. R. N. S. W. 216; 45 N. S. W. W. N. 44.—**AUS.**

**PART VII. SECT. 4, SUB-SECT. 3.—**  
**B. (a).**

680 v a. ———.] *Held*: although the damages were excessive, the ct. would not interfere upon that account. —*McMONAGLE v. ORTON* (1888), 5 Man. L. R. 193. —*CAN.*

**680 xl.** —.] —New trial granted on payment of costs on the ground of excessive damages.—**STOCK v. GREAT WESTERN RY. Co.** (1858), 7 C. P. 526.—**CAN.**

689 i. — Misconduct of jury.]— Where an assessment of damages is

not thought to be unconscionable but only excessive, it ought to be set aside if the jury took into account something which they ought not to have taken into account & failed to take into account something which they ought to have taken into account—  
COSGROVE v. CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818;  
[1923] 3 W. W. R. 1152.—CAN.

692 viii a. ————.]—Where the damages were excessive:—*Held*: there should be a new trial, unless pltf. consented to reduce his verdict.—*CLARKE v. MURRAY* (1877), *Temp. Wood*, 127.—*CAN.*

692 xviii. ————.]—In an action for damages for breach of contract, the jury awarded plff. \$30 for special damages, including law costs, £250 for loss of profits, & £20 for general damages. Deft. moved for a new trial upon the ground that the award of anything more than a merely nominal sum as general damages was excessive:—*Held*: as no substantial wrong or miscarriage of justice had been occasioned, a new trial ought not to be ordered, but the judgment should stand, subject to plff. consenting to the elimination of the amount awarded as general damages.—*STEWART v. O'BRIEN*, [1925] N. Z. L. R. 400.—N.Z.

692 xix. — — — — —.]—GOLDMAN  
v. KIRBY & SONS, LTD., [1927] S. R. S.  
58.—AUS.

705 **li a.** ———.]—In an action for work & labour, the second trial being before a special jury struck by defts., & the verdict being larger than before, the ct. declined to interfere for excessive damages.—**Strock v. GREAT WESTERN RY. Co.** (1858), 9 C. P. 131.—**CAN.**

705 iii. ———.]—MASON v. SOUTH

NORFOLK RY. CO. (1889), 19 O. R.  
132.—CAN.

705 iv. — Assessment by jury in excess of claim. — *Statement of claim amended by trial judge.* — In an action of trespass to a certain lot of land & expulsion of pltf. therefrom, pltf. claimed \$500, the jury assessed the damages at \$1,500, & the trial judge amended the statement of claim accordingly. — *Held:* the damages were excessive, & a new trial was granted. — *ROBINSON v. HALL* (1882), 1 O. R. 286. — CAN.

705 v. — *Unless party agreed to reduction of damages.*—SIBBALD v. GRAND TRUNK RY. CO., TREMAYNE v. GRAND TRUNK RY. CO. (1890), 19 O.R. 161.—CAN.

731 ix. —.]—In an action to recover an amount due under a contract for purchase of an hotel, doft. set up a breach of warranty, but at the trial a plea of misrepresentation was substituted. The jury were directed that the proper measure of damages recoverable by doft. would be that applicable in an action on a breach of warranty.—*Held*: there should be a new trial, for the purpose of assessing damages upon the basis of the difference between the market price at the date of the contract & the contract price.—**HARDMAN v. McLEOD** (1926), 26 S. R. N. S. W. 578-81, 43 N. S. W. W. N. 194.—**AUS.**

**PART VII. SECT. 4, SUB-SECT. 3.—**  
**B. (c).**

**748 i. Mistake—Acting upon wrong principle.**—Where a jury assessed damages on a wrong principle:—*Held*: the ct. would set aside the verdict on the ground of excessive damage having been given.—*FENEITY v. HALIFAX COUNTY* (1858), 3 N. S. R. (2 Thom.) 412.—**CAN.**



## DEEDS AND OTHER INSTRUMENTS.

## Part I.—Deeds.

2. *Add. Annotation* :—**Mentd.** *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.
18. *Add. Annotation* :—**Mentd.** *Milsted v. Hamp & Ross & Glendinning* (1927), 71 Sol. Jo. 845.
57. *Add. Annotation* :—**Refd.** *Messenger v. British Broadcasting Co.* (1928), 97 L. J. K. B. 251.
74. *Add. Annotation* :—**Refd.** *Importers Co. v Westminster Bank*, [1927] 1 K. B. 869.
149. *Add. Annotation* :—**Mentd.** *Nagoremull v Triton Insee.* (1924), 41 T. L. R. 168.
166. *Add. Annotation* :—**Refd.** *Humphrey & Denman v. Kavanagh* (1925), 41 T. L. R. 378.
194. *Add. Annotation* :—**Mentd.** *Tournier v National Provincial & Union Bank of England*, [1924] 1 K. B. 461.
262. *Add. Annotation* :—**Mentd.** *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.
449. *Add. Annotation* :—**Refd.** *Guildford Trust v. Pohl & Maritch* (1928),
457. *Add. Annotation* :—**Refd.** *Jenkins v. Jenkins*, [1928] 2 K. B. 501.
464. *Add. Annotation* :—**Apld.** *Re Clout & Frewer's Contract*, [1924] 2 Ch. 230.
470. *Add. Annotation* :—**Refd.** *Swift v. Board of Trade* (1924), 93 L. J. K. B. 529.
490. *Add. Annotation* :—**Refd.** *In the Estate of Southerden, Adams v. Southerden*, [1925] P. 177.

## Part II.—Instruments Under Hand—Non-Testamentary.

527. *Add. Annotation* :—**Mentd.** *Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan*, [1929] A. C. 127.
555. *Add. Annotation* :—**Consd.** *Swift v. Board of Trade*, [1925] A. C. 520. **Refd.** *Maine & New Brunswick Electrical Power Co. v. Hart*, [1929] A. C. 631; *Simpson v. Maurice's Exors.* (1929), 45 T. L. R. 581.
557. *Add. Annotation* :—**Mentd.** *Rye v. Purcell*, [1926] 1 K. B. 446.

## Part III.—Interpretation of Deeds and Non-Testamentary Instruments.

581. *Add. Annotation* :—**Refd.** *Sharpe & Dolme Inc. v. Boots Pure Drug Co.* (1927), 44 R. P. C.
- 367; *British Thomson-Houston Co. v. Metropolitan-Vickers Electrical Co.* (1928), 45

## PART I. SECT. 2, SUB-SECT. 1.

17 ii. — *Whether gift intended*].—Where a conveyance or mtge. is expressed to be for valuable consideration, but the fact is that none was paid, nothing but the clearest evidence can avail to show that a gift was intended. —*JOHN DEERE PLOW CO., LTD. v. PETERS & SPOHN*, [1928] 3 W. W. R. 686.—CAN.

## PART I. SECT. 5, SUB-SECT. 1.—A.

sa. *Proof of execution—Deeds within county*—9 *Fact. c.* 34, s. 7.—*Re YORK COUNTY REGISTRAR* (1847), 3 U. C. R. 188.—CAN.

## PART I. SECT. 5, SUB-SECT. 1.—E.

183 iii. — *Attestation required by statute—Deed improperly attested—Execution admitted by grantor*.—*Held*: as the mtge deed was not attested within Transfer of Property Act, s. 59, it was invalid in spite of the grantor's admission.—*HIRA BIBI v. RAM HARI LAL* (1925), L. R. 52 Ind. App. 362.—IND.

sb. *Certificate of Sufficiency of Absence of date*.—*Held*: the deed was properly recorded.—*MCKENZIE v. LAMONT* (1877), 11 N. S. R. (2 R. & C.) 517.—CAN.

## PART I. SECT. 5, SUB-SECT. 2.—C.

231 vii. — — — — —.—*HUGGARD v. & SARKATCHEWAN LAND*

*CORPN.* (1908), 1 Sask. L. R. 526; 6 W. L. R. 645; 8 W. L. R. 866.—CAN.

## PART I. SECT. 5, SUB-SECT. 4.

h i. — — — — —.—*Land Act*, 1888, s. 26.]. —*HJORTH v. SMITH* (1897), 5 B. C. R. 369.—CAN.

## PART I. SECT. 5, SUB-SECT. 7.—A.

s i. — — — — —.—Some of the persons named as joining in a covenant cannot be bound, where the others who are named, & whose concurrence is necessary to the accomplishment of the object recited in the deed, have not joined.—*MOORE v. IRWIN*, [1926] 4 D. L. R. 1120; 59 O. L. R. 546.—CAN.

## PART I. SECT. 6, SUB-SECT. 1.

406 iv. — — — — —.—A deed under seal cannot bind a person who is not a party to the deed.—*BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.*, [1923] 4 D. L. R. 543.—CAN.

406 v. — — — — —.—*FAULKNER v. FAULKNER* (1893), 23 O. R. 252.—CAN.

## PART I. SECT. 7.

425 v. — — — — —.—*BENNETT v. KIDD*, [1926] N. 50.—IR.

## PART I. SECT. 8, SUB-SECT. 3.

b i. — — — — —.—*DYNES v. BALES* (1878), 25 Gr. 593.—CAN.

## PART I. SECT. 8, SUB-SECT. 5.

454 vi. — — — — —.—Under an

agreement between pltf. & defts. for the sale of a business the latter undertook to incorporate a co. & to assume & pay the amount due on a chattel mtge. In carrying out the agreement pltf. signed what he thought was a mere transfer of the business to the co., but which was in fact a new agreement which expressly released defts. from its obligation to pay off the chattel mtge. There was no evidence of anything being said to or by pltf. with respect to such release, & the evidence as to whether he read the new agreement over before signing it was conflicting.—*Held*: the release had been fraudulently inserted, & pltf. was entitled to be indemnified by defts. against his liability on the mtge.—*JACK v. NANOOSE WELLINGTON COLLIERIES, LTD.*, [1925] 3 D. L. R. 398; [1925] 2 W. W. R. 267; 35 B. C. R. 295.—CAN.

## PART III. SECT. 1.

sd. *Parent & child bearing same name—No addition of "senior" or "junior"—Presumption in favour of parent*.—*NEW BRUNSWICK POWER CO. v. PRICE HATT* (1924), 52 N. B. R. 1.—CAN.

## PART III. SECT. 2.

576 x. — — — — —.—*INCHES v. FOGG & DOWLING* (1870), 13 N. B. R. (2 Han.) 149.—CAN.



- R. P. C. 1. **Mentd.** Pope Appliance Corp'n. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.
582. **Add. Annotation** :—**Refd.** Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij, [1929] 1 K. B. 400.
587. **Add. Annotations** :—**Refd.** Tournier v. National Provincial & Union Bank of England, [1924] 1 K. B. 461; Livock v. Pearson (1928), 33 Com. Cas. 188.
592. After this case insert "See, generally, CONTRACT, Vol. XII., pp. 79 *et seq.*"
597. **Add. Annotation** :—**Refd.** Schiller v. Petersen (1924), 130 L. T. 810.
617. **Add. Annotation** :—**Mentd.** Charles v. Cardiff Collieries (1928), 44 T. L. R. 448.
622. **Add. Annotations** :—**Apld.** G. W. Ry. v. S.S. Mostyn, [1928] A. C. 57. **Refd.** Abrahams v. MacFisheries [1925] 2 K. B. 18; British-American Tobacco Co. v. Jones (1925), 134 L. T. 405; Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159. **Mentd.** The St. Nicolai (1925), 133 L. T. 640; Witham Outfall Board v. Boston Corp'n. (1926), 136 L. T. 756; Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.
627. **Add. Annotation** :—**Refd.** Greenhill v. Federal Insee. (1926), 95 L. J. K. B. 717.
631. **Add. Annotations** :—**Consd.** Sherwood v. Tucker, [1924] 2 Ch. 440. **Refd.** Batchelor v. Murphy (1924), 41 T. L. R. 153.
665. **Add. Annotation** :—**Apld.** Saunders v. Young's Brewery (1925), 42 T. L. R. 136.
679. **Add. Annotation** :—**Mentd.** Parr v. A.-G., [1926] A. C. 239.
697. **Add. Annotation** :—**Refd.** Samuel v. Dumas, [1924] A. C. 431.
700. **Add. Annotation** :—**Refd.** Russell v. Russell, [1924] A. C. 687.
701. **Add. Annotation** :—**Refd.** The Penelope, [1928] P. 180.
743. **Add. Annotation** :—**Refd.** Herbert's Trustee v. Higgins, [1926] Ch. 794.
750. **Add. Annotations** :—**Refd.** *Re* Hammond, Parry v. Hammond, [1924] 2 Ch. 276. **Mentd.** *Re* Hack, Beadman v. Beadman, [1925] Ch. 633.
786. **Add. Annotation** :—**Refd.** The Ruapehu, [1927] P. 47; Shaw v. Public Trustee (1929), 141 L. T. 465.
792. **Add. Annotation** :—**Consd.** Lorden v. Brooke-Hitching, [1927] 2 K. B. 237.
801. **Add. Annotation** :—**Mentd.** Cohen v. Sellar, [1926] 1 K. B. 536.
- 815a. **Recurring words—Same construction.**—There is no rule of general application that in construing a document the same meaning must be assigned to an expression throughout; it is only in cases of doubt or ambiguity that it is necessary or permissible to resort to the device.—**WATSON v. HAGGITT**, [1928] A. C. 127; 97 L. J. P. C. 33; 138 L. T. 306; 44 T. L. R. 90; 71 Sol. Jo. 963, P. C.
822. **Add. Annotation** :—**Mentd.** Curtis Moffat v. Wheeler, [1929] 2 Ch. 224.
825. **Add. Annotations** :—**Consd.** Schiller v. Petersen, [1924] 1 Ch. 394. **Refd.** Phipps v. Rogers, [1925] 1 K. B. 14.
842. **Add. Annotation** :—**Refd.** Brakspear v. Barton, [1924] 2 K. B. 88.
853. **Add. Annotation** :—**Refd.** *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.
877. **Add. Annotations** :—**Refd.** Farnworth v. Manchester Corp'n., [1929] 1 K. B. 533. **Mentd.** Edwards v. A.-G. for Canada (1929), 46 T. L. R. 4.
882. **Add. Annotation** :—**Refd.** United States Shipping Board v. Strick, [1926] A. C. 545.
893. **Add. Annotation** :—**Consd.** *Re* Ellwood, [1927] 1 Ch. 455.
895. **Add. Annotation** :—**Refd.** Wilston S.S. Co. v. Weir (1925), 31 Com. Cas. 111.
900. **Add. Annotations** :—**Refd.** Jones v. Oceanic Steam Navigation Co., [1924] 2 K. B. 730; A.-G. v. Blackpool Corp'n. (1928), 92 J. P. 50. **Mentd.** Pailin v. Northern Employers' Mutual Indemnity Co., [1925] 2 K. B. 73.

**PART III. SECT. 3, SUB-SECT. 3.—A.**  
632 ii. ———.—**MANUFACTURERS LIFE INSURANCE CO. v. SWINNEY**, [1925] 2 D. L. R. 503.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 3.—B.**  
705 xi. ———.—**IN** deciding whether a given transaction is an out & out sale with a condition for re-purchase or a mtge. by conditional sale, it is the intention of the parties at the time of entering into the transaction which must be regarded. That intention must be gathered from the terms of the deed itself & the surrounding circumstances.—**BISKAWBAD v. MUKAMNAD** (1923), 1 L. R. 45 All. 58.—**IND.**

705 xii. ———.—**THE** intention of the parties to an instrument must be collected from the language of the instrument, & may be elucidated by the conduct they have pursued.—**MIDNAPORE ZAMINDARI CO., LTD. v. MUKTAFESHI PATRANI** (1926), 1 L. R. 6 Pat. 51.—**IND.**

**PART III. SECT. 3, SUB-SECT. 4.**  
716 xxi. ———.—**WHEN** a person agrees to purchase, he impliedly covenants to pay in the absence of terms exhibiting a different intention, but the whole document must be construed & may show that such implication is not to be drawn.—**GRIEVE**

**INDUSTRIAL, LTD. v. DOMB LUMBER CO., LTD. & THOMPSON**, [1923] 2 D. L. R. 154; 1 W. W. R. 989.—**CAN.**

716 xxii. ———.—**BARTLE v. BEYLA** (N. B.), [1926] 1 D. L. R. 1196.—**CAN.**

716 xxiii. ———.—**WHEN** under the terms of a Kabulyat a rent in kind is reserved & its price is also mentioned the intention is to be gathered with reference to expressions used in other parts of the document.—**JURAM MANDAL v. RAM MANDAL** (1927), 1 L. R. 55 Calc. 808.—**IND.**

**PART III. SECT. 3, SUB-SECT. 8.—A.**  
773 xxx. ———.—**HELD**: the words "net proceeds" did not mean "net profits."—**SCOTT v. MONTGOMERY**, [1920] 1 W. W. R. 140; 50 D. L. R. 394; 30 Man. L. R. 90.—**CAN.**

d. Read now "815a i."

815a ii. ———.—**HELD**: evidence to show that a word was used in a different sense in one sentence from that in which it was used in a preceding sentence, was rightly excluded.—**MCDONALD v. HALIFAX CORPN.** (1895), 28 N. S. R. (16 R. & G.) 84.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 9.**  
874 ii. ———.—**SHUKIN v. DEMOSKY** (Sask.), [1927] 1 D. L. R. 649.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 13.—B. (b).**

948 vi. ———.—**AS** soon as there is

an adequate & sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it.—**DARAPALE, ETC. v. NAZIR** (1923), 1 L. R. 50 Calc. 394.—**IND.**

949 xvi. ———.—**WILSON v. R.**, [1926] Exch. C. R. 8.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 14.**  
951 ii. ———.—**PRICE BROTHERS & CO., LTD. v. R.**, [1926] 3 D. L. R. 642.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 15.**  
11. ———.—**CROWN GRANTS.**—The doctrine of *omnia presumuntur rite esse acta* should apply in its fullest extent in respect to the compliance with statutory conditions in the obtaining of Crown grants for purchase or pre-emption under the Land Act, & though it may be shown in a proper case that irregularity, error or deception have in fact led to the issuance of such a grant, yet before it can be attacked the Crown must be, at least, a party to the proceedings and the issue will, in many cases, depend upon the attitude taken by the Crown.—**NORTH PACIFIC LUMBER CO. v. SAYWARD**, [1918] 2 W. W. R. 771; 21 B. C. R. 273.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 16.**  
r i. ———.—**Grant of easement—Refer-**

969. *Add. Annotation*:—**Refd.** *Busby v. Avgherino*, [1927] 2 Ch. 33.
981. *Add. Annotation*:—**Generally**, **Refd.** *Berners v. Fleming*, [1925] Ch. 264.
992. *Add. Annotation*:—**Mentd.** *Re Villar, Public Trustee v. Villar*, [1929] 1 Ch. 243.
998. *Add. Annotation*:—**Mentd.** *Re Villar, Public Trustee v. Villar*, [1929] 1 Ch. 243.
1007. *Add. Annotation*:—**Refd.** *Lowther v. Clifford* (1926), 95 L. J. K. B. 576.
1009. *Add. Annotation*:—**Mentd.** *Re Keystone Knitting Mills Trade Mk.* (1928), 97 L. J. Ch. 316.
1015. *Add. Annotation*:—**Refd.** *Westminster Bank v. Hilton* (1926), 136 L. T. 315.
1031. *Add. Annotations*:—**Mentd.** *Elliott v. Bax-Ironside*, [1925] 2 K. B. 301; *Kettle v. Dunster & Wakefield* (1927), 43 T. L. R. 770.
1065. *Add. Annotation*:—**Consd.** *Taylor v. British Legal Life Assce.* (1925), 94 L. J. Ch. 284.
1067. *Add. Annotation*:—**Refd.** *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.
1081. *Add. Annotation*:—**Refd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
1093. *Add. Annotation*:—**Consd.** *Aldridge v. Wright* (1929), 98 L. J. K. B. 582.
1098. *Add. Annotation*:—**Refd.** *Gregg v. Richards*, [1926] Ch. 521.
1099. *Add. Annotation*:—**Refd.** *Humphery v. Wilson* (1929), 141 L. T. 469.
1101. *Add. Annotation*:—**Mentd.** *Bradford v. Gammon*, [1925] Ch. 132.
1106. *Add. Annotation*:—**Refd.** *Gregg v. Richards*, [1926] Ch. 521.
1107. *Add. Annotations*:—**Refd.** *Gregg v. Richards*, [1926] Ch. 521; *Inland Revenue Comrs. v. Dalgety & Co.* (1929), 98 L. J. K. B. 542. **Mentd.** *Bradbury v. English Sewing Cotton Co.* (1923), 8 Tax Cas. 481; *Whelan v. Henning* (1924), 41 T. L. R. 141; *Alianza Co. v. I. R. Comrs.*, [1925] A. C. 644; *Foulsham v. Pickles*, [1925] A. C. 458; *Swedish Central Ry. v. Thompson*, [1925] A. C. 495; *Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58; *Archer-Shee v. Baker* (1926), 95 L. J. K. B. 929; *I. R. Comrs. v. Anderström* (1927), 13 Tax Cas. 482; *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882; *Proctor v. Ryall, Ryall v. Proctor* (1928), 14 Tax Cas. 204; *Fry v. Burma Corpn.* (1929), 98 L. J. K. B. 693; *Leeming v. Jones* (1929), 141 L. T. 472.
1108. *Add. Annotation*:—**Mentd.** *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.
1109. *Add. Annotations*:—**Refd.** *Reed v. Page & East* (1926) 42 T. L. R. 744. **Mentd.** *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.
1129. *Add. Annotation*:—**Mentd.** *Bisset v. Wilkinson* (1926), 42 T. L. R. 727.
1149. *Add. Annotation*:—**Mentd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
- 1157a. —]—**ANON.** (1849), 13 L. T. O. S. 325.
1171. *Add. Citation*:—109 L. T. 820.

ence to plan—Plan omitted.]—**Held**: where there was no plan, parol evidence was admissible to identify the land.—**BANKS PENINSULA ELECTRIC POWER BOARD v. AKAROA BOROUGH COUNCIL**, [1923] N. Z. L. R. 880.—**N.Z.**

**PART III. SECT. 3, SUB-SECT. 18.—A.**

988 vi. —.]—Where there are two possible interpretations of a contract & one would lead to an obvious absurdity or injustice, the other interpretation is to be accepted.—**THOMPSON v. NORTH BATTLEFORD**, [1924] 1 D. L. R. 159; 1 W. W. R. 51.—**CAN.**

988 vii. —.]—**Re FORD & HARDY (Ont.)**, [1926] 2 D. L. R. 749.—**CAN.**

988 viii. —.]—**CANADIAN STEVEDORING CO., LTD. v. ROBIN LINE S.S. CO., CANADIAN STEVEDORING CO., LTD. v. SEAR SHIPPING CO. (B. C.)**, [1927] 4 D. L. R. 614; [1927] 2 W. W. R. 737.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 21.**

b 1. —.]—**Award—Computation of hours worked.**—An award made by the Commonwealth Ct. of Conciliation & Arbitration between the Seaman's Union & various respns., of whom deft. co. was one, provided in respect of deckhands that "the time taken for meals partaken while the vessel is under way shall not be included." Deft. co. in reckoning the hours worked by an employee claimed to deduct the time occupied by him at meals while the vessel was in port.—**Held**: in the absence of a custom or usage to support such a deduction, the maxim *expressio unius est exclusio alterius* applied, & the appeal was allowed.—**THE FEDERATED SEAMEN'S UNION OF AUSTRALASIA v. THE HUON CHANNEL & PENINSULA STEAMSHIP CO., LTD.**, [1925] Tas. L. R. 1.—**AUS.**

**PART III. SECT. 4, SUB-SECT. 1.**

1144 x. —.]—**Blanks in printed form not filled in.**—**Re DEMPSEY & MIDLAND**

J. & S. Co., [1925] 4 D. L. R. 570.—**CAN.**

1144 xi. —.]—**CANADIAN COLLIERIES (DUNSMUIR), LTD. v. DUNSMUIR, DUNSMUIR v. MCKENZIE** (1911), 18 B. C. R. 538.—**CAN.**

1144 xii. —.]—**LACHMAN DAS v. RAM PRASAD** (1927), 1 L. R. 49 All. 680.—**IND.**

1144 xiii. —.]—Parol evidence to vary a written instrument rejected, although it was doubtful if it contained all the agreement between the parties.—**MALPINE v. HOW** (1862), 9 Gr. 372.—**CAN.**

h i. —.]—**WILLARD v. McNAB** (1851), 2 Gr. 601.—**CAN.**

h ii. —.]—**PAPINEAU v. GUARD** (1851), 2 Gr. 512.—**CAN.**

h iii. —.]—**McGILL v. McGLASHAN** (1857), 6 Gr. 324.—**CAN.**

1174 i. *As to nature of transaction—Absolute conveyance—Relationship of mortgagor & mortgagee.*—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtgo. is inadmissible in evidence.—**MAUNG SHWE PHOO v. MAUNG TUN SHIN** (1927), 1 L. R. 5 Kan. 644.—**IND.**

**PART III. SECT. 4, SUB-SECT. 2.**

1176 xxviii. —.]—Where parties to a contract have set out its terms & conditions in writing, which is presumably intended to be a record of the transaction, the law does not permit the introduction of other terms by means of oral evidence.—**STEINE v. MATHIEU**, [1923] 3 W. W. R. 493.—**CAN.**

1176 xxix. —.]—Where an original agreement has complied with Stat. Frauds, evidence of an alleged parol variation of its terms is inadmissible.—**HALL v. GOLDSTONE**, [1923] N. Z. L. R. 916.—**N.Z.**

1176 xxx. —.]—**KASTER v. COWAN**, [1925] 2 D. L. R. 742; [1925] 2 W. W. R. 186; 21 Alta. L. R. 366; *revers.*, [1923] 4 D. L. R. 491; [1923] 3 W. W. R. 610.—**CAN.**

1176 xxxi. —.]—Defts. excepted to a declaration on the ground that pltf. could not vary the terms of a written deed of transfer by evidence of a prior agreement, unless or until he expressly claimed a cancellation, ratification, or reformation of the deed of transfer.—**Held**: the exception should be upheld.—**ADAM v. JHAIVARY** (1925), 46 N. L. R. 190.—**S. AF.**

1176 xxxii. —.]—**BARTLE v. BEYEA** (N. B.), [1926] 1 D. L. R. 1196.—**CAN.**

1176 xxxiii. —.]—**TYSON v. ABERCROMBIE** (1888), 16 O. R. 98.—**CAN.**

1176 xxxiv. —.]—**LILLY v. PITTMAN** (1899), 8 Nfld. L. R. 170.—**NFLD.**

1176 xxxv. —.]—Where an agreement signed by deft. was not accepted by pltf., & there was no memorandum in writing of the agreement actually entered into between the parties.—**Held**: the rule prohibiting the introduction of oral evidence to vary the terms of a writing had no application.—**DORRY v. GRAY** (1908), 42 N. S. R. 259.—**CAN.**

1176 xxxvi. —.]—The rule of law that extrinsic evidence is not, in general, admissible to contradict, vary or explain written instruments, must be enforced in cases that fairly come within it.—**FORMAN v. UNION TRUST CO., LTD.**, [1927] S. C. R. 1.—**CAN.**

1176 xxxvii. —.]—**KEEWATIN POWER CO. v. KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO. v. LAKE OF THE WOODS MILLING CO.**, [1928] 1 D. L. R. 32; 61 O. L. R. 363.—**CAN.**

1176 xxxviii. —.]—**LAKE OF THE WOODS MILLING CO. v. VINCENT**, [1928] 2 D. L. R. 145.—**CAN.**

- 587

1513. *Add. Annotation* :—**Refd.** Michael v. Phillips (1923), 130 L. T. 142.
1534. *Add. Annotation* :—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.
1537. *Add. Annotation* :—**Consd.** Jacobs v. Batavia & General Plantations Trust, [1924] 2 Ch. 329.
1542. *Add. Annotation* :—**Mentd.** Edwards v. Porter (1924), 41 T. L. R. 57.
1562. *Add. Annotation* :—**Consd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
1576. *Add. Annotation* :—**Refd.** Collins v. Hopkins, [1923] 2 K. B. 617.
1582. *Add. Annotations* :—**Consd.** Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael v. Phillips (1923), 130 L. T. 142.
1583. *Add. Annotations* :—**Consd.** Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael v. Phillips (1923), 130 L. T. 142.
1607. *Add. Annotations* :—**Consd.** United States Shipping Board v. Bunge y Born Limitada Sociedad (1925), 134 L. T. 303. **Refd.** Cunard S.S. Co. v. Buerger, (1926), 135 L. T. 494; Frenkel v. McAndrews & Co., [1929] A. C. 545; Kaufmann v. British Surety Insce. Co. (1929), 45 T. L. R. 399.
1628. *Add. Annotation* :—**Consd.** Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.
1638. *Add. Annotation* :—**Mentd.** Morris v. Harris, [1927] A. C. 252.
1652. *Add. Annotation* :—**Refd.** *Re* Carnarvon's Chesterfield S. F., *Re* Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.
1672. *Add. Annotation* :—**Mentd.** Samuel v. Dumas, [1924] A. C. 431.
1675. *Add. Annotation* :—**Refd.** Excess Insce. v. Mathews (1925), 31 Com. Cas. 43.
- 1678a. *Printed words deleted.*—Words deleted in a printed form of mercantile contract are to be treated as if they had not formed part of the printed contract; they cannot be used to construe added words.—**SASSOON (M. A.)**

amount so specified in the written agreement. In this case the prior collateral agreement was not interfered with by the subsequent written agreement. It was a parol condition on which the written agreement depended.—**AUSTIN v. BOONE** (1866), 6 N. S. R. (2 Old.) 149.—**CAN.**

1509 vii. —.—.—]—As between the actual parties to an outright conveyance a contemporaneous oral agreement to allow repurchase cannot be proved, but if the party who alleges the contemporaneous oral agreement was not actually a party to the conveyance, although the conveyance was given on his behalf, he can prove that there was such an agreement.—**MA MI v. MAUNG AUNG DUN** (1928), 1 L. R. 6 (Tan. 376.—**IND.**)

**PART III. SECT. 4, SUB-SECT. 11.—E. (b).**

1529 ii. —.—.—]—**Held**: the trial judge had been in error in construing a deed in the light of antecedent correspondence between the parties, it being well settled that even a formal antecedent contract cannot be looked at to control the terms of a conveyance.—**WADIA v. SECRETARY OF STATE FOR INDIA** (1928), L. R. 56 Ind. App. 51.—**IND.**

**PART III. SECT. 4, SUB-SECT. 11.—G. (a).**

h i. —.—.—]—**McLEAN v. JOHNSON**,

[1923] 4 D. L. R. 178; 32 B. C. R. 495; [1923] 3 W. W. R. 913.—**CAN.**

h ii. —.—.—]—**Contemporary oral agreement acted on by parties.**—In an action for foreclosure & sale on default in payment of principal, according to the written terms of a mtge. :—**Held**: an oral agreement that payment would not be exacted until a subsequent date could be proven & enforced.—**JOHNSON INVESTMENTS, LTD. v. PAGRITIDE**, [1923] 2 D. L. R. 985; [1923] 2 W. W. R. 736.—**CAN.**

m i. —.—.—]—**Mortgage.**—**DICK v. SCHWARTZ** (Man.), [1926] 3 D. L. R. 894.—**CAN.**

**PART III. SECT. 4, SUB-SECT. 11.—G. (b).**

1573 i. *Evidence admissible—Proof of consideration.*—Regard may be had to a collateral oral agreement to show that a deed is in fact founded on a valuable consideration.—**KIRK v. GRAVES**, [1924] N. Z. L. R. 260.—**N.Z.**

m i. —.—.—]—Where a complete agreement was contained in a written contract & it satisfied Stat. Frauds :—**Held**: an oral arrangement as to remuneration was a separate collateral agreement.—**PERRY v. ESPILEY**, [1924] 4 D. L. R. 1280; 3 W. W. R. 674.—**CAN.**

m ii. —.—.—]—When the

& SONS, LTD. v. INTERNATIONAL BANKING CORPN., [1927] A. C. 711; 96 L. J. P. C. 153; 137 L. T. 501, P. C.

1694. *Add. Annotation* :—**Mentd.** Brakspear v. Barton, [1924] 2 K. B. 88.

1709. *Add. Annotation* :—**Mentd.** S. E. Ry. v. Cooper, [1924] 1 Ch. 211.

1733. *Add. Annotation* :—**Mentd.** *Re* Quintin Dick, Cloncurry v. Fenton, [1926] Ch. 992.

1735a. *Incorporation of guarantee clause—Identity of clause uncertain—Clause not available.*—Pltfs., a ship-repairing co., requiring a new intermediate pressure cylinder for the engines of a steamer which they had contracted to repair, obtained a quotation from defts., marine engineers. At the head of defts.' letter was a printed notice, "All offers are subject to our usual strike & guarantee clauses, accidents, etc." Pltfs. ordered the cylinder, but after it had been delivered & fitted it was found to be defective. A new cylinder was subsequently supplied by defts., but owing to the delay pltfs. were not able to complete the repairs in accordance with their contract with the shipowners & had to pay them damages. In an action to recover the amount of the damages defts. alleged that the contract for the supply of the cylinder was made subject to "our usual" guarantee clause & that their guarantee clause provided (*inter alia*) that "the contractors shall not in any case be liable for any detention of the vessel or other consequential damages howsoever arising":—**Held**: as it was not clear what guarantee clause was incorporated, since the clause suggested by defts. was the clause in their usual engine agreement which was drawn to meet the case of engines being supplied to a shipowner & not to meet such a case as the present, & as it was not proved that defts. had made it clear that they intended to limit their liability, pltfs. were entitled to recover.—**ALISON (J. GORNON) & CO., LTD. v. WALLSEND SHIPWAY & ENGINEERING CO., LTD.** (1927), 43 T. L. R. 323, C. A.

ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written.—**CONNORS v. MCGREGOR**, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

**PART III. SECT. 5, SUB-SECT. 4.**

r i. —.—.—]—*Meaning to words given though grammatical construction faulty.*—**Re** *DEMPSLEY & MIDLAND L. & S. Co.*, [1925] 4 D. L. R. 570.—**CAN.**

**PART III. SECT. 6.**

t i. —.—.—]—The date mentioned in a deed is not conclusive, & the actual date of the execution may be shown.—**DORR v. CONNELL v. DICKINSON** (1869), 12 N. B. R. (1 Han.) 456.—**CAN.**

**PART III. SECT. 7, SUB-SECT. 2.**

sw. "*Et cetera*."—The phrase "*et cetera*" does not render a contract uncertain, if its application appears from the context.—**AVERBACH v. BLOOM & DWORKIN** (Can.), [1927] 3 D. L. R. 721.—**CAN.**

**PART III. SECT. 8, SUB-SECT. 1.—A. (a).**

1737 i. *General rule.*—If both the

1744. *Add. Annotation* :—**Refd.** *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.
- 1869a. — **Curtilage, garden & adjoining close.**—ANON. (1531), Bro. N. C. 86 ; 73 E. R. 885.
1910. *Add. Annotation* :—**Mentd.** *Re* Wait, [1927] 1 Ch. 606.
1913. *Add. Annotation* :—**Apprvd.** Public Trustee v. Lancaster Duchy, [1927] 1 K. B. 516.
1941. *Add. Annotation* :—**Mentd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
- 1944a. **Limitation to commence after existing lease—Lease void.**—A conveyance which is limited to commence after an existing lease takes effect presently, if that lease is void.—BLACKMORE v. CUMBERFORD (1680), 1 Freem. K. B. 527 ; 89 E. R. 395.

## Part IV.—Covenants and Provisoes.

2001. *Add. Annotation*:—**Mentd.** Aldridge v. Wright, [1929] 2 K. B. 117.
2037. *Add. Annotations*:—**Mentd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105; Hood's Trustees v. Southern Union General Insee. Co. of Australasia, [1928] Ch. 793.
2101. *Add. Annotation*:—**Mentd.** Civil Service Co-op. Soc. v. McGrigor's Trustee, [1923] 2 Ch. 347.
2111. *Add. Annotation*:—**Refd.** Wise v. Whitburn, [1924] 1 Ch. 460.
2125. *Add. Annotation*:—**Mentd.** Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler, [1926] Ch. 609.
2131. *Add. Annotation*:—**Consd.** Everett v. Griffiths, [1924] 1 K. B. 941.
2163. *Add. Annotations*:—**Refd.** Leeming v. Jones (1929), 141 L. T. 472. **Mentd.** Perrin v. Dickson (1929), 98 L. J. K. B. 683.

recitals & the operative part of a deed are clear & unambiguous, but are inconsistent with each other, the operative part must prevail.—**HUSSAIN v. CHIN CHONG** (1924), 1. L. R. 3 Ran. 53.—**IND.**

**PART III. SECT. 10, SUB-SECT. 1.—D.**

**t i. —.]-DAVISON v. BENJAMIN**  
(1874), 9 N. S. R. (3 G. & O.) 474.—  
**CAN.**

**PART III. SECT. 10, SUB-SECT. 1.—E.**

1844 ii. ———.]—Pltf. held a certificate of indefeasible title to lots

1 & 2, part of the north-east quarter of a certain section of land, & the Crown grant to his predecessor in title described the land by reference to a plan annexed & numbered the north-east quarter of said section. Deft.'s title was as purchaser under the grantee from the Crown of land, also described in the grant by reference to a plan annexed & numbered the south-east quarter of the same section. Neither quarter was a full quarter section, & the plans showed that pltf.'s land had for its southerly boundary a certain creek & that said creek was the northerly boundary of deft.'s land. Pltf. claimed

a small point of land in possession of deff., which extended into the creek & north of the quarter-section line:—*Held* while the quarter sections were referred to in words in the deeds, yet on the true construction of them it was clear that the plans were to govern.—*KUPP v. SIMPSON*, [1928] 4 D. L. R. 421; [1928] 3 W. W. R. 331.—*CAN.*

**PART IV. SECT. 1, SUB-SECT. 2.—A.**

1990 i. *General rule.*] --Cts. always construe clauses in deeds as covenants rather than conditions if they reasonably do so. — *WOLFE v. CROFT* (N. S.) (1911), 9 E. L. R. 402.—**CAN.**

## DEPENDENCIES.

INCLUDING DOMINIONS, DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.

## Part I.—In General.

3. *Add. Annotation* :—**Refd.** Sobhuza II. v. Miller, [1926] A. C. 518.

7. *Add. Annotation* :—**Refd.** Sobhuza II. v. Miller, [1926] A. C. 518.

10a. ———.—[An extension of British jurisdiction in a British protectorate by Orders in Council may be referred to an exercise of power by an act of State, unchallengeable in any British ct., or to statutory powers given by Foreign Jurisdiction Act, 1890 (c. 37), under which the jurisdiction acquired by the Crown in a protected country is indistinguishable in legal effect from that acquired by conquest. The Crown cannot, except by statute, deprive itself of freedom to make Orders in Council, even such as are inconsistent with previous Orders.

Before the conquest & annexation of the South African Republic Swaziland was an independent native State, treated as a protected dependency of that Republic, by which it was administered under a Con-

vention made in 1894 between Great Britain & the Republic. The Convention provided for the preservation of native law, & the agricultural & grazing rights of the natives. The annexation did not extend to Swaziland. Subsequently under Orders in Council certain lands in Swaziland were expropriated to the Crown, to the extinguishment of the use & occupation of them by natives under native law, certain lands being allotted exclusively to the natives :—*Held* : the Orders in Council were effective, even if they were not within the powers recognised by the Convention.—SOBHUZA II. v. MILLER. [1926] A. C. 518 ; 95 L. J. P. C. 137 ; 135 L. T. 215 ; 42 T. L. R. 440, P. C.

13. *Add. Annotations* :—**Refd.** Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81. **Mentd.** Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.

## Part II.—Colonial and Dominion Government.

14. *Add. Annotation* :—**Generally, Mentd.** A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328.

15. *Add. Annotation* :—**Generally, Mentd.** Re Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

20a. **Power of expropriation in mandated territory.** [—By the Mandate for Palestine, dated July 24, 1922, the Council of the League of Nations, acting under art. 22 of the Covenant of the League, entrusted to Great Britain the administration of Palestine. Art. 2 of the Mandate provided that Great Britain should be responsible for "safeguarding the civil & religious rights of the inhabitants of Palestine irrespective of race & religion." In 1923 an Order in Council authorised the High Comr. for Palestine to promulgate such ordinances as might be necessary for the peace, good order, & government of the country, & were not inconsistent with the Mandate. The High Comr. promulgated an ordinance expropriating certain springs for the purpose of supplying water to Jerusalem, with certain provisions for compensation. In an action by the owners of the springs the

Supreme Ct., sitting as a ct. of first instance, held that the ordinance was *ultra vires*, on the ground that it was inconsistent with the Mandate in that the provisions for compensation were inadequate. Special leave to appeal was granted, all questions of jurisdiction being left open. An Order in Council had made provision for appeals to the Privy Council, but only from orders of the Supreme Ct. sitting as a Ct. of Appeal :—*Held* : (1) the appeal was competent, since the jurisdiction under the Mandate was jurisdiction in a foreign country within the description in the preamble to Foreign Jurisdiction Act, 1890 (c. 37) ; (2) it was the right & duty of the ct. to consider whether the ordinance was consistent with the Mandate, but art. 2 had been misconstrued, & the ordinance was valid ; (3) art. 2 did not mean that in every case of expropriation for a public purpose full compensation must be given. Natural justice required that in the absence of exceptional circumstances, fair provision should be made for compensation, but that depended not upon civil right, but upon the principles of sound administration, & it was not within the province of the ct. to consider whether

## PART II. SECT. 2, SUB-SECT. 1.—A.

5a. *Duty to accept advice of Executive Council—Decision by Governor-General in Council.* [—Where a statute directs that a matter shall be decided by the Governor-General in Council, the Governor-General is bound to accept the advice of the Executive Council,

Governor-General personally, & there is no legal duty upon him to peruse documents placed before him & make up his mind upon them.—SCHIEKHOUT v. UNION GOVERNMENT, [1927] App. D. 94.—S. AF.

t (p. 419) i. — *Proclamation fixing importation duties.* [—The Governor-

35 of 1922, s. 5, issued two proclamations, the first fixing an exchange duty for asbestos cement sheets imported from Belgium & the second confining the first to certain cheaper kinds of asbestos sheets :—*Held* : the proclamations were *intra vires* the Governor-General.—CUSTOMS COMR. v. AIRTON TIMBER CO., LTD., [1926] App. D. 1.—R. AF.

an ordinance was within those principles. Further, the ordinance did make adequate provision for compensation.—**JERUSALEM-JAFFA DISTRICT GOVERNOR v. SULEIMAN MURRA**, [1926] A. C. 321; 95 L. J. P. C. 46; 134 L. T. 609; 42 T. L. R. 299, P. C.

23. *Add. Annotation*:—**Consd. A.-G. v. G. S. & W. Ry. of Ireland**, [1925] A. C. 754.

24a. — **Grant of proprietary right in river—Canada.**—By letters patent issued by the Lieutenant-Governor of Quebec in 1910 under Companies Act of that province, applt. co. was incorporated for the purpose of carrying on the business of producers of electricity, & with power to construct & maintain dams in a river of the province within certain limits, after having acquired from the riparian proprietors the properties necessary for that purpose. In 1923 applts. not having then constructed any works, the provincial Govt. granted to resps. a lease of the water power & bed of the river within limits which overlapped those referred to in applts.' letters patent. Applts. brought an action against resps., claiming a declaration that applts. had a vested right in the river to construct dams, & an injunction:—*Held*: the action failed, since the letters patent contained no grant of a proprietary right in, or power to take possession of, any part of the river or its bed.—**UNITED MANUFACTURING CO. v. ST. MAURICE POWER CO.**, [1926] A. C. 708; 95 L. J. P. C. 149; 135 L. T. 389; 42 T. L. R. 495, P. C.

34. For "(1774)" read "(1775)".

*Add. Annotation*:—**Refd. Tallack v. Tallack & Broekema**, [1927] P. 211.

52a. **Legislative Council of Nova Scotia—Appointment to.**—The Lieutenant-Governor of Nova Scotia, acting by & with the advice of the Executive Council of Nova Scotia, has power to appoint in the name of the Crown so many members of the Legislative Council of Nova Scotia that the total number would (a) exceed twenty-one or (b) exceed the total number at the union mentioned in British North America Act, 1867 (c. 3), s. 88. The membership of the Council is not limited in number. The tenure of office of members of the Council appointed before May 7, 1925, is during the pleasure of His Majesty the King, represented in that behalf by the Lieutenant-Governor of Nova Scotia acting by & with the advice of the Executive Council of Nova Scotia.—**A.-G. FOR NOVA SCOTIA v. NOVA SCOTIA LEGISLATIVE COUNCIL**, [1928] A. C. 107; 97 L. J. P. C. 27; 138 L. T. 114; 44 T. L. R. 1; 71 Sol. Jo. 864, P. C.

52b. — **Membership of—Tenure of office.**—**A.-G. FOR NOVA SCOTIA v. NOVA SCOTIA LEGISLATIVE COUNCIL**, No. 52a, *ante*.

52c. **Canadian Senate—Membership of—Who are qualified persons—Women.**—The words "qualified persons" in British North

America Act, 1867 (c. 3), s. 24, include women, & therefore women are eligible for membership of the Senate of Canada.—**EDWARDS v. A.-G. FOR CANADA** (1929), 46 T. L. R. 4; 73 Sol. Jo. 711, P. C.

56a. — **Future exercise—Cannot be fettered.**—Acting within the constitution, the legislature of a self-governing Colony or State is supreme, & no act of the executive Govt. can fetter in any legal sense the future exercise of its powers, or give to any person a title other than such as could be conferred under existing legislation.

When New South Wales Consitution Act, 1855, was enacted, Garden Island, in Port Jackson, was part of the waste lands of the Crown, the entire management & control of which were vested by sect. 2 of that Act in the legislature of the Colony. By notices published in 1865 & 1866, pursuant to Crown Lands Alienation Act, 1861 (N.S.W.), the island was dedicated as a naval depot. It continued to be so used by the Imperial naval authorities until 1913, but since that date it had been occupied by the Commonwealth naval authorities for the use of the naval forces which it provided & maintained. An Imperial Order in Council made in 1899 under Colonial Fortifications Act, 1877, recited an agreement by which the Government of New South Wales were to erect buildings & carry out works, partly on Garden Island, & the Imperial Government agreed that when the buildings & works were completed & the sites "conveyed, granted, or dedicated in perpetuity for the use of Her Majesty's navy in the same way as Garden Island had been," the Imperial Government would surrender certain lands which were not within 1855 Act, s. 2; the Order then, in consideration of the agreement, vested the lands in the Government of New South Wales. In 1923 the Minister administering the Crown Lands Consolidation Act, 1913 (N.S.W.), acting under sect. 25 of that Act, revoked the dedication of Garden Island:—*Held*: the recital in the Order in Council of 1899 did not preclude the Minister from revoking the dedication in the manner provided by the Act of 1913, & the revocation was effectual under sect. 25 of that Act, although the notice did not state the manner in which it was proposed to deal with the island. Judgment of the High Ct. affirmed, subject to the declaration made, that resp. State was entitled to possession of Garden Island, being varied to a declaration, in the words of Crown Lands Consolidation Act, 1913, s. 25, that by virtue of the revocation the island had become Crown lands within that Act, & liable to be dealt with in accordance therewith.—**AUSTRALIA COMMONWEALTH v. NEW SOUTH WALES STATE**, [1929] A. C. 431; 98 L. J. P. C. 81; 140 L. T. 537; 15 T. L. R. 216, P. C.

**PART II. SECT. 3, SUB-SECT. 2.—A.**

*al. Cannot suspend Habeas Corpus Act.*—The Imperial Parliament alone can suspend the above Act.—**RE BLANSHAY (Quo.)** (1918), 24 R. de J. 578.—**CAN.**

*al. Disqualified member voting—Liability to penalties.*—Since Constitution Act, R. S. B. C., 1924 (c. 45), imposes but one penalty for each day

on which a disqualified person sits & votes as a member of the Legislative Assembly, there is but one cause of action for each such day, & where an action is brought on such cause of action that penalty, if recovered, belongs to pltf. therein, who thereby attaches or appropriates it to himself. Such action, even though dismissed, is a bar to a subsequent action for the

same penalty, unless such prior action was collusive.—**KEENE v. COLLEY**, [1925] 4 D. L. R. 229, [1925] 3 W. W. R. 250.—**CAN.**

**PART II. SECT. 3, SUB-SECT. 2.—B.**

59 *iv.* — *j.* — When an Act of the Dominion Parliament is in part repugnant to an Imperial Act, effect will be given to its enactments in so

62. *Add. Annotation*:—**Mentd.** *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
68. *Add. Annotation*:—**As to** (1) **Refd.** *The Fagernes*, [1927] P. 311.
70. *Add. Annotation*:—**Mentd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242.
72. *Add. Annotation*:—**Mentd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242.
90. *Add. Annotation*:—**Consd.** *Toronto Electric Comrs. v. Snider*, [1925] A. C. 396.

**91a. Enactment preventing King in Council from granting leave to appeal—Criminal case.]—**

Sect. 1025 of the Criminal Code of Canada, if & so far as it is intended to prevent the King in Council from giving effective leave to appeal against an order of a Canadian Ct. in a criminal case, is invalid. The legislative authority of the Parliament of Canada as to criminal law & procedure, under British North America Act, 1867 (c. 3), s. 91, is confined to action to be taken in Canada. Further, an enactment annulling the royal prerogative to grant special leave to appeal would be inconsistent with Judicial Committee Acts, 1833 (c. 41) & 1844 (c. 69), & would be invalid under Colonial Laws Validity Act, 1865 (c. 63), s. 2. The royal assent to the Criminal Code could not give validity to an enactment which was void by Imperial statute; exclusion of the prerogative could be accomplished only by an Imperial statute.

According to the well-settled practice of the Judicial Committee His Majesty is advised to intervene in a criminal case only if it is shown that, by a disregard of the power of legal process, or by some violation of natural justice, or otherwise, substantial & grave injustice has been done.

Applt. was convicted in Alberta of an offence under Govt. Liquor Control Act of Alberta, which did not incorporate sect. 1025 of the Criminal Code of Canada, & of an offence under Canada Temperance Act, R. S. Can., 1906 (c. 152). For each offence he was sentenced to a fine, & in default imprisonment. The Supreme Ct. of Alberta, rejecting contentions as to the construction & invalidity of the material sects., affirmed the convictions, but gave leave to appeal to the Privy Council. The Crown petitioned the Judicial Committee to quash the appeals as incompetent, having regard to sect. 1025. Applt. petitioned for special leave to appeal. The petitions were heard with the appeals:—**Held**: (1) each appeal

was in a "criminal case" to which sect. 1025 applied, so far as it was valid; (2) in the absence of argument to the contrary, sect. 1025 prevented the Appellate Div. from giving effective leave to appeal; (3) sect. 1025 did not exclude the prerogative right to give leave to appeal; (4) the cases were clearly not within the category of the exceptional cases in which special leave to appeal was advised in a criminal matter.—*NADAN v. R.*, [1926] A. C. 482; 95 L. J. P. C. 114; 134 L. T. 706; 42 T. L. R. 356; 28 Cox, C. C. 167, P. C.

96. *Add. Annotation*:—**Refd.** *Lord's Day Alliance of Canada v. A.-G. for Manitoba*, [1925] A. C. 384.

97. *Add. Annotations*:—**Apld.** *A.-G. for Ontario v. Reciprocal Insurers*, [1924] A. C. 328. **Distd.** *Toronto Electric Comrs. v. Snider*, [1925] A. C. 396.

98. For the paragraph in the original volume substitute the following paragraph:—

**Bona vacantia—Right of Crown in right of province.]—***Bona vacantia* are "royalties" within British North America Act, 1867 (c. 3), s. 109, & accordingly belong to the province in which they are situate or arise, & not to the Dominion. The word "royalties" is used in the sect. as the equivalent of *jura regalia*. Its meaning is not limited by its association with the words "lands, mines, minerals."—*R. v. A.-G. OF BRITISH COLUMBIA*, [1924] A. C. 213; 93 L. J. P. C. 76; 130 L. T. 231; 40 T. L. R. 13; 68 Sol. Jo. 138, P. C.

- 98a. ———.]—(1) Land in Alberta granted by the Crown either before or after Sept. 1, 1905, when Alberta Act, 1905 (c. 3 Dom.), came into force, in the absence of heirs, escheats to the Crown in the right of the Dominion.

(2) Effect of Land Titles Act, 1894 (c. 28 Dom.), & Land Titles Act, 1906 (Alta.).

(3) Meaning of "royalties" in Alberta Act, s. 21.

(4) *Bona vacantia* in Alberta belong to the Crown in the right of the province. The effect of Alberta Act, s. 3, was to place the Province of Alberta in the same position in regard to property as the provinces previously constituted save so far as the Act provided otherwise, either expressly or by reasonable implication.

(5) Ultimate Heir Act, R. S. A., 1922 (c. 144), is *ultra vires* so far as it purported to affect real property.—**A.-G. FOR ALBERTA v. A.-G. FOR CANADA**, [1928] A. C. 475; 97 L. J. P. C. 106; 139 L. T. 532; 44 T. L. R. 651, P. C.

far as they agree.—*Re THE RAREWELL* (1881), 7 Q. L. R. 380.—**CAN.**

59 v. *Transfer of schools—By Education Act (Northern Ireland)*, 1923 (c. 21) —*Whether repugnant to Government of Ireland Act, 1920* (c. 67).—*Education Act (Northern Ireland)*, 1923 (c. 21), which relates to the transfer of schools, is not void under Govt. of Ireland Act, 1920, c. 67, s. 5.—**LONDONDERRY COUNTY COUNCIL v. McGLADE**, [1929] N. I. 47.—**IR.**

**PART II. SECT. 3, SUB-SECT. 4.—**  
**A. (a).**

**sn. Recital in preamble to private Act**  
—*Effect of.*—A recital in the preamble

to a special private Act enacted by the Parliament of Canada is not such a declaration as that contemplated by B. N. A. Act, 1867, s. 92 (10) (c), in order to bring the subject-matter of the legislation within the jurisdiction of Parliament.—*HEWSON v. ONTARIO POWER CO.* (1905), 36 S. C. R. 596.—**CAN.**

**SP. Incidental subjects included.]—***BENNETT v. QUEBEC PHARMACEUTICAL ASSOCN.* (1881), 1 D. C. A. 336; 2 Cart. 250.—**CAN.**

**98 i. Bona vacantia—Right of Crown in right of Dominion—Saskatchewan.]**  
—In 1916, H. domiciled in the province of S. died, leaving no heirs or

other persons legally entitled to his estate. Both the Dominion & the province claimed the estate as *bona vacantia* by right of escheat.—**Held**: as the province of S. was not at the date of its establishment owner of the lands, nor had any vested rights in any duties or revenues in respect to the lands from which the province was carved, differing in this respect from the original provinces of Confederation, B. N. A. Act, ss. 102, 109 did not apply, notwithstanding Saskatchewan Act, s. 3, & in any event, these sects. did not purport to transfer any "property" or rights to the provinces.—*R. v. WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN &*



99. *Add. Annotation*:—As to (2) **Refd.** A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1.
101. *Add. Annotations*:—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328.
102. *Add. Annotation*:—**Refd.** A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1.
105. *Add. Annotations*:—**Apld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328. **Refd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396.
106. *Add. Annotations*:—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260; A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1.
108. *Add. Citations*:—93 L. J. P. C. 101; 130 L. T. 101.  
*Add. Annotation*:—**Distd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396.

108a. ——— **Question of substance, not of form.**—(1) The Parliament of Canada cannot, by purporting to create penal sections under head 27 of the above sect., appropriate to itself exclusively a field of jurisdiction in which, apart from that procedure, it could exert no legal authority; if, when examined as a whole, legislation in form criminal is found, in aspects & for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid.

Reciprocal Insurance Act 1922, of Ontario, authorised any person to exchange, through the medium of an attorney, with persons, whether in Ontario or elsewhere, reciprocal contracts of insurance, subject to provisions as to licences & other conditions; & it was provided that actions in respect of such contracts might be maintained in the cts.

of the province. A Dominion Act of 1917 inserted in the Criminal Code (R. S. Can. 1906, c. 148), sect. 508c, by which it was made an indictable offence for any person to solicit or accept any insurance risk except on behalf of a co. or assocn. licensed under Insurance Act, 1917, of Canada. In answer to questions referred by the Lieutenant-Governor of Ontario to the Appellate Div.:—**Held**: (2) the Act of 1922 was *intra vires* the province, since (a) its provisions were capable of receiving a meaning according to which, whether enabling or prohibitive, they applied only to persons & acts within the territorial jurisdiction of the province, & (b) although it might incidentally affect aliens & dominion cos., it did not deal with them as such, but was an Act dealing with contracts of insurance; (3) the making & carrying out of contracts licensed pursuant to the Act were not rendered illegal, or otherwise affected, by Criminal Code, s. 508c; that sect. was invalid, since, in substance though not in form, it was in regulation of contracts of insurance, subjects not within the legislative competence of the Dominion; (4) the answers under (2) & (3) would be the same if any of the persons subscribing to a reciprocal insurance contract was (a) a British subject not resident in Canada immigrating into Canada, or (b) an alien. In so answering this question no opinion was expressed as to the competence of the Dominion Legislature to enact Insurance Act, 1917, ss. 11 & 12 (1), whereby restrictions were placed upon aliens & British cos. in the matter of carrying on insurance business in Canada; but sect. 12 (2) was held to be invalid in relation to the subject of immigration.—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, [1924] A. C. 328; 130 L. T. 738; 68 Sol. Jo. 383; *sub nom.* A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, CRAIGON *v.* R., OTTE *v.* R., 93 L. J. P. C. 137; 40 T. L. R. 273, P. C.

*Annotations*:—As to (1) **Foldd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Refd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475.

SHULZE (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—CAN.

**sr. "Royalties"**—*British North America Act, 1867, s. 109—Construction.*—"Royalties" in this sect. does not embrace all kinds of royalties, but is limited in its meaning by the text to such as are connected with lands, mines & minerals; such as (*inter alia*) the right to *bona vacantia* & of escheat arising by reason of a failure of heirs.—R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SHULZE (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—CAN.

#### PART II. SECT. 3, SUB-SECT. 4.—A. (b) i.

**h i.** ———.—R. *v.* HANEL, R. *v.* YELLE (Que.) (1925), 45 Can. Crim. Cas. 381.—CAN.

**h ii.** ———.—Provincial legislation repugnant to B. N. A. Act, 1867, s. 93 (2), is "absolutely void & inoperative," & is not appealable under sub-sect. 3 to the Governor in Council.—ITRSCH *v.* MONTREAL PROTESTANT BOARD SCHOOL COMRS., [1926] 2 D. L. R. 8; [1926] S. C. R. 246; *varying*, 31 R. de J. 440; *on appeal* [1928] A. C. 200, P. C.—CAN.

**h iii.** ———.—Any provincial legislation repugnant to B. N. A. Act, 1867, s. 93 (1), is to the extent of such repugnancy absolutely void & in-

operative.—TINY SEPARATE SCHOOL TRUSTEES *v.* R. (1926), 59 O. L. R. 96.—CAN.

**k.** For "**k.** ———." substitute "101 ii. ———."—J. —

**101 iii.** ———.—Where both the Dominion Parliament & a provincial legislature have legislated on the same subject & with the same object, & the legislation is within the powers of the Dominion Parliament, the provincial legislation is inoperative.—R. *v.* SHENDAN, [1924] 3 D. L. R. 339; 3 W. W. L. 617; 34 B. C. R. 161.—CAN.

**106 i.** ———.—*Power to repeal local Act.*—RUMSEY *v.* HARRIS (1877), 3 R. & C. 4.—CAN.

**st. Creation of new province—Restriction of legislative powers.**—In exercising the authority to establish new provinces given to it by B. N. A. Act, 1871, the Dominion Parliament had power to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93.—R. (BROOKS) *v.* ULMER, [1923] 1 D. L. R. 304; 1 W. W. R. 1; 38 Can. Crim. Cas. 207; 19 Alta. L. R. 12.—CAN.

**sv. Legislation inconsistent with provincial rights—Powers conferred on**

*Board of Commerce.*—The Dominion Parliament cannot confer on the Board of Commerce jurisdiction that would restrict the liberty of the inhabitants of a province.—A.-G. FOR ONTARIO *v.* CANADIAN WHOLESALE GROCERS ASSOCN., [1923] 2 D. L. R. 617; 39 Can. Crim. Cas. 272.—CAN.

#### PART II. SECT. 3, SUB-SECT. 4.—A. (b) ii.

**m** (p. 431) i. ———.—KINNEY *v.* DUDMAN (1876), 2 R. & C. 19; 2 Cart. 412.—CAN.

**m** (p. 431) ii. ———.—PEEK *v.* SHELDON (1881), 6 A. R. 639; 3 Cart. 266.—CAN.

**o** (p. 431) i. ———.—*Bankruptcy Act, 1920* (c. 34), s. 11 (1) (10)—*Intra vires.*—BELANGER, ETC. *v.* ROYAL BANK OF CANADA, [1926] 2 D. L. R. 929; [1926] S. C. R. 218, *affd. sub nom.* ROYAL BANK OF CANADA *v.* LARUE, [1928] A. C. 187; 139 L. T. 562, P. C.—CAN.

**sw. Building societies—In Quebec—Liquidation of—Ultra vires.**—McCLANAGHAN *v.* ST. ANN'S MUTUAL BUILDING SOCIETY (1880), 24 L. C. J. 162; 2 Cart. 237.—CAN.

**sy. Cheese factories—Act to prevent fraud against—Ultra vires.**—R. *v.* STONE (1892), 23 O. R. 46.—CAN.

**sz. Copyright.**—SMILES *v.* BELFORD (1877), 1 A. R. 436; 1 Cart. 576.—CAN.

115. *Add. Annotation* :—**Refd.** A.-G. for Manitoba v. A.-G. for Canada, [1929] A. C. 260.
116. *Add. Annotation* :—**Refd.** A.-G. for Quebec v. Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.
117. *Add. Annotations* :—**Appld.** A.-G. for Manitoba v. A.-G. for Canada, [1929] A. C. 260; **Refd.** A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328; Toronto Electric Comrs. v. Snider, [1925] A. C. 396.
- 117a. ————**]**—Sale of Shares Act, 1924, & Municipal & Public Utility Board Act, 1926, both of Manitoba, are *ultra vires* under British North America Act, 1867 (c. 3), s. 92. in so far as they purport to prohibit Dominion cos. from selling their own shares within the Province without the consent of a Provincial Comr. or Board, since thereby they interfere, directly & substantially, with the status & capacity conferred on the cos. by Dominion legislation *intra vires* under British North America Act, 1867 (c. 3), s. 91.—A.-G. FOR MANITOBA v. A.-G. FOR CANADA, [1929] A. C. 260; 98 L. J. P. C. 65; 140 L. T. 386; 45 T. L. R. 146, P. C.
119. *Add. Annotations* :—**As to** (1) **Refd.** Montreal Corp'n. v. Montreal Harbour Comrs., Tetreault v. Montreal Harbour Comrs., A.-G. for Quebec v. A.-G. for Canada (1925), 42 T. L. R. 1; A.-G. for Quebec v. Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.
- 119a. ————**]**—(1) Fisheries Act, 1914, ss. 7a, 18, requiring persons who operate for commercial purposes a fish cannery, & in British Columbia a salmon cannery or salmon curing establishment, to obtain a licence from the Canadian Minister of Fisheries are *ultra vires* of the Parliament of Canada.  
(2) The Special Fishery Regulations made for British Columbia under sect. 45 of the same Act do not give the Minister a discretion to refuse an application by a properly qualified person for such a fishing licence as is required by those regulations.—A.-G. FOR CANADA v. A.-G. FOR BRITISH COLUMBIA (1929), 46 T. L. R. 1, P. C.
120. *Add. Annotation* :—**Refd.** The Fagernes, [1927] P. 311.
121. *Add. Annotation* :—**Refd.** A.-G. for Quebec v. Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.
- 121a. ————**Safeguarding navigation of river obstructed by bridge included.]**—British North America Act, 1867 (c. 3), s. 91 (10), gives to the Parliament of the Dominion exclusive legislative authority over navigation & shipping, & sect. 92 (10) excludes from the jurisdiction of the provincial legis-

latures railways & other works extending beyond the limits of the province, & any works which, although wholly situate within the province, have been declared by the Parliament of Canada to be for the general advantage of Canada. In the case of two railway bridges, one of them authorised by dominion statute, which fell within the exception:—**Held**: (1) the right & power of safeguarding the navigation of the river passing under & alleged to be obstructed by them was also in the hands of the Dominion; (2) the rights & powers of the Dominion were not affected by the provisions of a treaty entered into between Great Britain & the United States in 1842, the Ashburton Treaty, which proceeded on the assumption that the Govt. of New Brunswick had power to make regulations as to the navigation of the river in question, there being no undertaking or guarantee, either to the United States or to New Brunswick, that such powers should remain unaltered for all time, & the change made being wholly consistent with the treaty.—A.-G. FOR NEW BRUNSWICK v. CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING (1925), 94 L. J. P. C. 142; 133 L. T. 436, P. C.

122. *Add. Annotation* :—**Refd.** A.-G. for Quebec v. Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

122a. ————**Expropriation of provincial Crown lands.]**—Railway Act, 1919 (c. 68), s. 189, which empowers any railway co., with the consent of the Governor-General, to take for the use of the railway provincial Crown lands as well as Dominion Crown lands, was within the legislative powers of the Parliament of Canada under British North America Act, 1867 (c. 3), ss. 91 (29), 92 (10).—A.-G. FOR QUEBEC v. NIPISSING CENTRAL RY. CO. & A.-G. FOR CANADA, [1926] A. C. 715; 95 L. J. P. C. 221; 135 L. T. 520; 42 T. L. R. 591, P. C.

125a. ————**Regulation of running rights.]**—Applts. owned a short railway line in Alberta branching from a line which branched from the Canadian Northern Railway at a point within the province. Both branches were operated by the Canadian Northern Railway Co. under agreements, & traffic could pass from applts.' line without interruption into such other provinces as were served by that co.'s railway. The Railway Board made an order declaring its power to grant an application by first resp. for running rights over applts.' line, with permission to construct a short track joining it:—**Held**: the Railway Board had power to grant the application, since applts.' line was part of a system of railways operated together, & connecting one province

**sb. Education.]**—**Held**: Alberta Act (D., 1905, c. 3), s. 17, was within the powers of the Dominion Parliament.—**Re** ALBERTA ACT, SECTION 17, [1927] 2 D. L. R. 993; [1927] S. C. R. 364.—**CAN.**

114 iv. ————**]**—Part IV. added to Canada Temperance Act, prohibiting the importation of intoxicating liquor into those provinces where its sale for beverage purposes is forbidden by provincial law, is *intra vires* the Dominion Parliament.—**GOLD SEAL, LTD. v. DOMINION EXPRESS CO. & A.-G. FOR ALBERTA PROVINCE** (1921), 62 D. L. R. 62; 62 S. C. R. 424; [1921] 3 W. W. R. 710; *affg.* 58 D. L. R. 51; 34 Can.

Crim. Cas. 259; 16 Alta. L. R. 113.—**CAN.**

115 iii. ————**By** 45 Vict. c. 119—**Valid.]**—**Re** QUEBEC TIMBER CO. (1882), Cout. 43.—**CAN.**

r (p. 432) i. ————**Regulations as to inland fisheries—Valid.]**—**BAYER v. KAIZER** (1894), 26 N. S. R. 280.—**CAN.**

r (p. 432) ii. ————**]**—The provisions of Fisheries Act, 1914 (c. 8) (Dom.), ss. 7A, 18, for the licensing & taxing of fish canneries:—**Held**: *ultra vires*.—**R. v. SOMERVILLE CANNERY CO., LTD.** (B. C.), [1927] 4 D. L. R. 494; [1927] 3 W. W. R. 215; 49 Can. Crim. Cas. 65.—**CAN.**

h (p. 432) i. ————**Guarding of crossings.]**—**Re** CANADIAN PACIFIC RY. CO. & COUNTY & TOWNSHIP OF YORK (1896), 27 O. R. 559.—**CAN.**

y i. ————**Dominion Insurance Act, ss. 11, 12 (1), 71, 71A, 134, 134A—Ultra vires.]**—**Re** INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—**CAN.**

sd. **Interest—Amount of—R. S. C., 1886 (c. 127), s. 7—Intra vires.]**—**BRADBURN v. EDINBURGH LIFE ASSURANCE CO.** (1903), 23 C. L. T. 199; 5 O. L. R. 657; 2 O. W. R. 253.—**CAN.**

c (p. 433). For "c" substitute "128b i."

with another, & it was within the legislative authority of the Dominion under British North America Act, 1867 (c. 3), s. 92 (10) (a).—*LUSCAR COLLIERIES v. McDONALD*, [1927] A. C. 925; 97 L. J. P. C. 21; 137 L. T. 779; 43 T. L. R. 801, P. C.

**128a. — Question of substance, not of form.]—**A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

**128b. Power to impose customs duty—Alcoholic liquor imported by province.]—**Customs & other duties imposed by the Dominion of Canada upon alcoholic liquors imported into Canada can be levied upon alcoholic liquors imported by the Govt. of British Columbia for the purpose of sale by it. The power of the Dominion under British North America Act, 1867 (c. 3), s. 91, heads 2 & 3, to impose duties upon the importation of goods into Canada is not limited by sect. 125, which exempts the "property" of a province from taxation.—A.-G. OF BRITISH COLUMBIA *v.* A.-G. OF CANADA, [1924] A. C. 222; 130 L. T. 257; 40 T. L. R. 4; 68 Sol. Jo. 58, P. C.

**130a. "Peace, order & good government of Canada"—Whether trade disputes included.]—**TORONTO ELECTRIC COMRS. *v.* SNIDER, No. 179a, *post*.

**130b. Taxation—Income tax.]—**(1) The Parliament of Canada had power under British

North America Act, 1867 (c. 3), s. 91, head 3, to enact Income War Tax, 1917, & the amending Act of 1919, whereby every person residing, or ordinarily residing, or carrying on business in Canada is rendered liable to pay income tax.

(2) A minister of the Govt. of a province is liable under the Acts in respect of the salary & sessional indemnity payable to him under statutes of the province.—*CARON v. R.*, [1924] A. C. 999; 94 L. J. P. C. 9; 132 L. T. 218; 40 T. L. R. 874, P. C.

**130c. — Salary of provincial official—Whether liable.]—***CARON v. R.*, No. 130b, *ante*.

**130d. Navigation of river—Formerly considered as in provincial control—Ashburton Treaty.]—**A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING, No. 121a, *ante*.

**131. Add. Annotation:—***Refd.* Royal Bank of Canada *v.* Larne, [1928] A. C. 187.

**132. Add. Annotation:—***Apld.* Royal Bank of Canada *v.* Larne, [1928] A. C. 187.

**134. Add. Annotation:—***Consd.* A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328.

**135. Add. Annotations:—***Refd.* A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; *Eric Beach Co. v. A.-G. for Ontario* (1929), 16 T. L. R. 33. *Mentd.* A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 931.

**128b ii. — Imposition of additional customs duties.]—***Held*: 53 Vict. c. 20, s. 19, was not *ultra vires* the Dominion Parliament.—A.-G. OF CANADA *v.* FOSTER (1892), 31 N. B. R. 153.—*CAN.*  
**st. Migratory Birds Protection Act, 1917 (c. 18)—How far intra vires.]—***R. v.* STUART, [1925] 1 D. L. R. 12; [1924] 3 W. W. R. 648.—*CAN.*

**sj. Soldier Settlement Act, ss. 33, 34—Intra vires.]—***It. v.* POWERS, [1923] Exch. C. R. 131.—*CAN.*

**sk. Judges Act, R. S. C., 1906 (c. 138), ss. 33–35.]—**In so far as the above sects. attempt to disqualify or prohibit a judge of the King's Bench from acting as an arbitrator in matters lying wholly within provincial control, they are *ultra vires*.—*WINNIEG CORPN. v. CROSS (Man.)*, [1926] 4 D. L. R. 318; [1926] 2 W. W. R. 868.—*CAN.*

**sl. Live-stock & Live-stock Products Act, 1923, & regulations made thereunder—How far ultra vires.]—***R. v.* COLLINS, [1926] 4 D. L. R. 548; 46 Can. Crim. Cas. 282; 59 O. L. R. 453.—*CAN.*

**129 i. Pilotage.]—***R. v.* PETERS (1873), N. B. Dig. 138.—*CAN.*

**l (p. 434) i. —.]—***Held*: Criminal Code, 1892, ss. 865 & 866, were *intra vires* the Dominion Parliament.—*FLICK v. BRISBIN* (1895), 26 O. R. 423.—*CAN.*

**o (p. 434) i. —.]—**If an act prohibited by the Dominion Parliament is one that may be considered a criminal matter, its prohibition & the subject of offence establishing such act are within the powers of Parliament, even though the act is one that relates to property & civil rights.—*It. v. POULIN (Alta.)*, [1925] 1 D. L. R. 618; [1925] 1 W. W. R. 16; 43 Can. Crim. Cas. 242.—*CAN.*

**o (p. 434) ii. —.]—**Criminal Code, s. 734.—*Held*: *intra vires*.—*DOWSETT v. EDMUNDS (Alta.)*, [1926] 4 D. L. R. 796; [1926] 3 W. W. R. 447; 46 Can. Crim. Cas. 330.—*CAN.*

**o (p. 434) iii. —**Issue of certificate releasing from all further proceedings civil or criminal.—*Held*: 32 & 33 Vict. c. 20, s. 45, is not *ultra vires*.—

*WILSON v. CODYRE* (1866), 26 N. B. R. 516.—*CAN.*

**q (p. 434) i. —.]—***O'BRIEN v. ROYAL GEORGE CO., LTD.*, [1921] 1 W. W. R. 559; 57 D. L. R. 301; 16 Alta. L. R. 373; 35 Can. Crim. Cas. 22.—*CAN.*

**s (p. 434) i. —**Canada Grain Act, 1919, s. 95 (7)—*Whether ancillary to or necessary for operation of Dominion law.]—*The above Act is not in the nature of an ancillary provision which, whilst encroaching upon matters assigned to the provincial legislatures, is required to prevent a scheme of a Dominion law being defeated; nor is it a case where, in order to operate a validly enacted law, procedure must be adopted to make effective that law even though it invades the legislative fields of the provinces in respect of property or civil rights.—*R. v. EASTERN TERMINAL ELEVATOR CO.*, [1925] S. C. R. 434.—*CAN.*

**s (p. 434) ii. —.]—**The provisions of the above Act, requiring a primary grain-dealer to take out a licence thereunder, & prescribing the form of contract to be used on the purchase of grain, are *ultra vires*.—*TRIMBLE v. CAPLING*, [1927] 1 D. L. R. 717; [1927] 1 W. W. R. 188; 22 Alta. L. R. 536.—*CAN.*

**s (p. 434) iii. —**War legislation—*Establishment of Canada Wheat Board.]—**Held*: the legislation & Orders in Council establishing the Board were *intra vires* the Dominion Parliament as being either (a) legislation arising out of war, or (b) regulation of trade & commerce.—A.-G. FOR CANADA *v.* ALEXANDER BROWN MILLING & ELEVATOR CO., [1923] 4 D. L. R. 443; 53 O. L. R. 298.—*CAN.*

**dd i. Courts—Power to establish—Maritime court—Jurisdiction limited to Ontario—Valid.]—**THE PICTON (1879), 4 S. C. R. 648; 1 Cart. 557.—*CAN.*

**dd ii. —**Power to extend jurisdiction—*Court created by Imperial Act—Valid.]—*A.-G. OF CANADA *v.* FLINT (1884), 16 S. C. R. 707; 4 Cart. 288.—*CAN.*

**dd iii. —.]—***Held*: the Dominion Parliament had power to confer jurisdiction on a ct. to try offences against Inland Revenue Act, R. S. C. c. 34.—*It. v. KENNEDY* (1902), 35 N. S. R. 266.—*CAN.*

**sp. Appeal to Supreme Court of Canada—42 Vict. c. 39, s. 6—Ultra vires.]—**GRAND TRUNK RY. CO. *v.* CREDIT VALLEY RY. CO. (1875–1908), 1 Cout. Dig. 282.—*CAN.*

**st. Jury—Selection of jurors—In criminal cases.]—***R. v. O'ROURKE* (1882), 32 C. P. 388.—*CAN.*

**sw. Opium & Narcotic Drug Act.]—**The Opium & Narcotic Drug Act, 1923, now R. S. C. 1927, c. 141, is *intra vires*.—*R. v. GORDON*, [1928] 2 D. L. R. 315; [1928] 1 W. W. R. 678; 49 Can. Crim. Cas. 272.—*CAN.*

**sx. —.]—***R. v. WAKABAYASHI, R. v. LORE YIP*, [1928] 3 D. L. R. 226; [1928] 1 W. W. R. 187; 49 Can. Crim. Cas. 392; 59 B. C. R. 310.—*CAN.*

**sy. Agriculture—Live Stock Pedigree Act.]—**"Agriculture" within B. N. A. Act, s. 95, is not restricted to the cultivation of the fields. The purpose of Live Stock Pedigree Act being to improve the quality of live stock on the farms of the Dominion, it is *intra vires* of the Dominion under said section.—*R. v. DAVENPORT*, [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—*CAN.*

**sz. Gold & Silver Marking Act intra vires.]—***Held*: Gold & Silver Marking Act, 7 & 8 Edw. 7, c. 30, s. 16 (b), is *intra vires* of the Dominion Parliament. *R. v. LEE* (1911), 18 O. W. R. 845; 2 O. W. N. 933; 23 O. L. R. 490; 18 Can. Crim. Cas. 180.—*CAN.*

**PART II. SECT. 3, SUB-SECT. 4.—**A. (b) iii.

**w i. —**Nova Scotia Railway Arrangement Act—*Ultra vires.]—*MURDOCH *v.* WINNIPEG & ANNAPOLIS RY. CO. (1877), 3 Cart. 368.—*CAN.*

**w ii. —**Nova Scotia Winding-up Act—*Valid.]—**Re* WALLACE HUESTIS

**135a.** ——— Direct—What is.]—A tax is not "direct taxation" within British North America Act, 1867 (c. 3), s. 92, head 2, unless in substance it is one which is demanded from the person who it is intended should pay it, even if the Act imposing it declares that it is to be a direct tax upon the person who pays.

In answer to questions referred by the Governor-General, namely: (1) whether the legislature of Manitoba had authority to enact c. 17 of its statutes for 1923, entitled "An Act to provide for the collection of a tax from persons selling grain for future delivery," & (2), if the Act was *ultra vires* in certain parts, then in what particulars it was *ultra vires*:—*Held*: the Act was wholly *ultra vires*, since in many transactions to which it related the person paying the tax would indemnify himself at the expense of others, & it was not possible to assume that the legislature intended to pass it in a truncated form.—A.-G. FOR MANITOBA v. A.-G. FOR CANADA, [1925] A. C. 561; 94 L. J. P. C. 146; 133 L. T. 193; 41 T. L. R. 409; 69 Sol. Jo. 445, P. C.

*Annotation*:—*Consd.* A.-G. for British Columbia v. Canadian Pacific Ry., [1927] A. C. 934.

**135b.** ———.]—A tax imposed by a provincial legislature, in respect of a commodity, is an indirect tax, & *ultra vires* under British North America Act, 1867 (c. 3), s. 92 (2), if from the terms of the Act there appears an expectation & intention that the person required to pay the tax will indemnify himself upon a resale of the commodity taxed, even if in the case under consideration no resales have taken place.

An Act of the legislature of British Columbia, Fuel-Oil Tax Act, R. S. B. C., 1924 (c. 251), requiring that every person who shall purchase within the province fuel-oil for the first time after its manufacture in, or importation into, the province, shall pay a tax thereon, is invalid.—A.-G. FOR BRITISH

[1927] A. C. 934; 96 L. J. P. C. 149; 137 L. T. 745; 43 T. L. R. 750; 71 Sol. Jo. 761, P. C.

*Annotation*:—*Consd.* Erie Beach Co. v. A.-G. for Ontario (1926), 46 T. L. R. 33.

GREY STONE CO. (1881), 3 Cart. 374.—CAN.

a (p. 435). For "a. Taxation—Direct—Power to impose." substitute "135a i. Taxation—Direct—What is."—

b (p. 435). For "b" substitute "135a ii."

c (p. 435). For "c" substitute "135a iii."

**135a iv.** ———.]—City Act (Sask.), s. 415a, which empowers the city council to enact a bye-law requiring every person attending a place of amusement to pay a tax upon each admission to such place, is *intra vires*, as it is a direct tax & comes within the taxation powers of B. N. A. Act, s. 92 (2).—CLARKE v. MOOSE JAW (CITY), [1923] 2 D. L. R. 216; 16 Sask. L. R. 332; [1923] 1 W. W. R. 1126.—CAN.

**135a v.** ———.]—A municipal tax sought to be imposed on a trustee on assessment under Ontario Assessment Act, R. S. O., 1914 (c. 195), s. 13 (3), as enacted by 1922 (c. 78), s. 12, in respect of income "not wholly distributed annually," is an indirect tax & *ultra vires*.—CITY OF

WINDSOR CORPN. v. McLEOD, [1926] 2 D. L. R. 97; [1926] S. C. R. 450; 57 O. L. R. 15.—CAN.

e (p. 435) i. ———.]—PLUMMER WAGON CO. v. WILSON (1885), 3 Man. L. R. 68.—CAN.

**141 iii.** ———.]—The tax under Succession Duty Act (B. C.), as applied to "movables" outside the province belonging to a person who died domiciled within the province, is a direct tax & *intra vires*.—*Re INVERARITY ESTATE*, [1924] 1 D. L. R. 1020; 1 W. W. R. 901; 33 B. C. R. 318.—CAN.

**141 iv.** ———.]—Succession Duty Act, R. S. O., 1914 (c. 24):—*Held*: *intra vires*.—A.-G. FOR ONTARIO v. BABY, [1926] 3 D. L. R. 928; 59 O. L. R. 181.—CAN.

**141 v.** ———.]—Succession Duty Act, 1915, s. 10 (6):—*Held*: *intra vires*.—R. v. DONEGAL (MAR-CHIONESS) (1923), 51 N. B. R. 309; [1924] 2 D. L. R. 1191.—CAN.

j i. ——— *Exemption from*.]—*Held*: the power & authority to raise revenue for Dominion purposes was specially given to the Parliament of Canada, & any legislation passed by the Old

**135c.** ———.]—The Halifax Corpn. charter provided that the owner of property let to the Crown, or to any person exempt from taxation, should be deemed to be in occupation thereof, & should be assessed & rated to business tax if the premises were used for business purposes:—*Held*: the tax was a direct tax falling within the authority of British North America Act, 1867 (c. 3), s. 92 (2), & was within the powers of the province.—HALIFAX CORPN. v. FAIRBANKS' ESTATE (1927), 44 T. L. R. 5; 71 Sol. Jo. 946, P. C.

————— Succession duty.]—*See Nos.* 140–142a, *post*.

**135d.** ———.]—Mine Owners Tax Act, 1923 (c. 33), of Alberta, purported to impose upon every mineowner, as therein defined, a percentage tax upon the gross revenue of his mine during each preceding month:—*Held*: the tax was not direct taxation within British North America Act, 1867 (c. 3), s. 92 (2), & the Act was *ultra vires*.—R. v. CALEDONIAN COLLIERIES, [1928] A. C. 358; 97 L. J. P. C. 94; 139 L. T. 525; 44 T. L. R. 622, P. C.

**136.** *Add. Annotations*:—*Consd.* Halifax Corpn. v. Fairbanks' Estate (1927), 44 T. L. R. 5; R. v. Caledonian Collieries, [1928] A. C. 358; Erie Beach Co. v. A.-G. for Ontario (1929), 46 T. L. R. 33. *Refd.* Caron v. R., [1924] A. C. 999; A.-G. for Manitoba v. A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia v. Canadian Pacific Ry., [1927] A. C. 934; A.-G. for Manitoba v. A.-G. for Canada, [1929] A. C. 260.

**138.** *Add. Annotations*:—*Refd.* A.-G. for Manitoba v. A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia v. Canadian Pacific Ry., [1927] A. C. 934.

**140.** *Add. Annotations*:—*Mentd.* New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101; Richardson v. Richardson, [1927] P. 228.

**141.** *Add. Annotations*:—*Consd.* A.-G. for Manitoba v. A.-G. for Canada, [1925] A. C. 561. *Refd.* Halifax Corpn. v. Fairbanks' Estate (1927), 44 T. L. R. 5; Erie Beach Co., Ltd. v. A.-G. for Ontario (1929), 46 T. L. R. 33.

Province of Canada, denying the right to tax or exempting any subject in Ontario to pay such tax, could not be valid after the passing of B. N. A. Act, 1867.—*HOLMSTEAD v. MINISTER OF CUSTOMS & EXCISE*, [1927] Exch. C. R. 68.—CAN.

i (p. 436) i. ———.]—Hawkers & Pedlars Act, R. S. S., 1920 (c. 147), applies to a hawker & pedlar acting as such as the agent of a Dominion co., even though its letters patent give it the power to sell & make known its products through "salesmen & agents going from house to house & displaying samples," etc., the licence fee imposed by the Act not being an indirect tax, & not being made so by the fact that an employer pays it for his agents.—R. (SINCLAIR) v. GEBHARDT, [1926] 2 D. L. R. 950; [1926] 2 W. W. R. 235; 45 Can. Crim. Cas. 321; 20 Sask. L. R. 485.—CAN.

n (p. 436) i. ——— *Of Dominion notes forming part of bank reserve—Valid*.]—WINDSOR v. COMMERCIAL BANK OF WINDSOR (1882), 3 R. & G. 420; 3 Cart. 377.—CAN.

q (p. 437) i. ———.]—Ontario Insurance Act, 1924, ss. 168, 180:—*Held*: *intra vires*.—*Re INSURANCE CONTRACTS*,

142. *Add. Annotations*:—*Consd. A.-G. for Manitoba v. A.-G. for Canada*, [1925] A. C. 561; *Erie Beach Co., Ltd. v. A.-G. for Ontario* (1929), 46 T. L. R. 33. *Refd. Brassard v. Smith*, [1925] A. C. 431.

142a. ————*]*—Certain shares in applt. co., which was registered in Ontario, were registered in the name of a person domiciled in the State of New York. By Ontario Succession Duty Act, s. 10 (2), "No property in Ontario belonging to any deceased person at the time of his death . . . whether such deceased person was at the time of his death domiciled in Ontario or elsewhere shall be transferred . . . until the duty, if any, is paid, or security given therefor, & any corporation or person allowing such property to be so transferred . . . contrary to this subsection shall be liable for such duty":—*Held*: on the death of the shareholder, as the co.'s share register was required by law to be kept in Ontario & as the shares could therefore be effectively dealt with only in Ontario, the shares were situate in Ontario & subject to succession duty there, & that as there was no provision for reimbursement of the co. the statute did not impose indirect taxation & was not *ultra vires* of the Provincial Legislature.—*ERIE BEACH CO., LTD. v. A.-G. FOR ONTARIO* (1929), 46 T. L. R. 33, P. C.

144. *Add. Annotation*:—*Refd. Halifax Corp'n. v. Fairbanks' Estate* (1927), 44 T. L. R. 5.

[1926] 2 D. L. R. 204; 58 O. L. R. 404.—CAN.

q (p. 437) ii. ————*]*—*Held*: the right to empower the imposition of license fees on insurance cos. was *ultra vires*.—*HALIFAX CITY CORPN. v. WESTERN ASSURANCE CO.* (1885), 18 N. S. R. (6 L. & G.) 387.—CAN.

q (p. 437) iii. ————*]*—*Held*: Ordinance incorporating City of Calgary (No. 33 of 1893), s. 117 (41), was *ultra vires*.—*ENGLISH v. O'NEILL* (1899), 4 Terr. L. R. 74.—CAN.

146 iii a. ————*]*—*LAPINE v. LAURENT* (1891), 17 Q. L. R. 226.—CAN.

146 xii. ————*]*—Govt. Liquor Act, 1921 (c. 30), which vests in a Board of Control the exclusive sale of intoxicating liquor within the province, is *ultra vires*.—*R. v. FERGUSON (B.C.)*, [1922] 2 W. W. R. 473; 69 D. L. R. 153; 37 Can. Crim. Cas. 89.—CAN.

146 xiii. ————*]*—The imposition by Govt. Liquor Act, 1921 (c. 30), s. 55, of a tax upon any liquor not purchased from a vendor at a govt. liquor store, is *ultra vires* the provincial legislature.—*LITTLE v. A.-G. FOR BRITISH COLUMBIA (B.C.)*, [1922] 2 W. W. R. 359; 65 D. L. R. 297; 37 Can. Crim. Cas. 189; *affg.*, 60 D. L. R. 335; 30 B. C. R. 343.—CAN.

146 xiv. ————*]*—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 11 (2), requiring every brewer, distiller, & liquor exporter to make certain returns to the Commission is *ultra vires* the provincial legislature, even in respect to a liquor export co. incorporated by the Dominion Parliament.—*R. v. REGINA WINE & SPIRIT, LTD., R. v. PRAIRIE DRUG CO., LTD.*, [1922] 1 W. W. R. 195; 65 D. L. R. 258; 36 Can. Crim. Cas. 348; 15 Sask. L. R. 100.—CAN.

146 xv. ————*]*—*Suspension of Canada Temperance Act.*—*SHEEHAN v. SHAW*, [1928] 2 D. L. R. 468; 49 Can. Crim. Cas. 357.—CAN.

146 xvi. ————*]*—*Held*: reading sect. 141 of Liquor Control Act

(Ontario), 17 Geo. 5, c. 70, in connection with sect. 72 (1), the latter must be regarded as limited to cases over which the Ontario Legislature had jurisdiction, & not as an attempt to invade the field of Dominion Legislature.—*R. v. RUDDICK*, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 218. CAN.

t (p. 438) i. ————*]*—*KEEFE v. MOLENNAN* (1876), 2 R. & C. 5; 2 Cart. 100.—CAN.

c (p. 438). For "—*Prohibition Act—Confiscatory provisions*—" read "—*Confiscatory provisions—Prohibition Act.*"

c (p. 438) i. ————*]*—*Act of 1886 (c. 3)*, s. 55.—*Held*: the right to impose forfeiture under the above sect. of an offender's goods as punishment was within the powers of the provincial legislature.—*R. v. GARDNER* (1892), 25 N. S. R. (13 R. & G.) 48.—CAN.

d (p. 438) i. ————*]*—*Alberta Liquor Control Act*, 1924 (c. 14).—*Held*: sect. 113 (3) of the above Act was *ultra vires*.—*R. v. FORHAN (Alta.)*, [1927] 1 W. W. R. 689; 48 Can. Crim. Cas. 86.—CAN.

f (p. 438) i. ————*]*—*Restrictions on export.*—The requirements in Saskatchewan Temperance Act, that all warehouses in which liquor is kept for export be located in cities having a population of 10,000, is *ultra vires*.—*CANADA DRUGS, LTD. v. A.-G. FOR SASKATCHEWAN (SASK.)*, [1922] 2 W. W. R. 1089; 67 D. L. R. 3; 38 Can. Crim. Cas. 69; 15 Sask. L. R. 506; *varying*, 66 D. L. R. 815; 37 Can. Crim. Cas. 367.—CAN.

k (p. 438) i. ————*]*—*Creation of criminal offences.*—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 68 (2), as amended, is *ultra vires* the provincial legislature, in so far as it professes to set up certain acts as a criminal offence, namely, the obstruction of the "officer" mentioned in sect. 2 (7a) in the execution of his duties under the Act.—*R. (WILBUR) v. MAGEE (SASK.)*, [1923] 3 W. W. R. 55.—CAN.

145. *Add. Annotations*:—*Refd. A.-G. for Ontario v. Reciprocal Insurers*, [1924] A. C. 328; *Caron v. R.*, [1924] A. C. 999; *Toronto Electric Comrs. v. Snider*, [1925] A. C. 396; *A.-G. for Manitoba v. A.-G. for Canada*, [1929] A. C. 260.

145a. ————*]*—*Construction of legislation—Limitation to provincial jurisdiction.*—*A.-G. FOR ONTARIO v. RECIPROCAL INSURERS*, No. 108a, *ante*.

148. *Add. Annotation*:—*Refd. A.-G. for Manitoba v. A.-G. for Canada*, [1929] A. C. 260.

150. *Add. Annotations*:—*Refd. Nadan v. R.* [1926] A. C. 482. *Mentd. R. v. Lincolnshire JJ.*, *Ex p. Brett*, [1926] 2 K. B. 192.

153. *Add. Annotation*:—*Refd. The Fagernes*, [1927] P. 311.

154a. ————*]*—*No power to confirm transfer of federal railway.*—*BOURGOIN v. COMPAGNIE DU CHEMIN DE FER DE MONTRÉAL, OTTAWA, ET OCCIDENTAL* (1880), 5 App. Cas. 381; 49 L. J. P. C. 68; 42 L. T. 414, P. C.

159. *Add. Annotation*:—*Refd. A.-G. for Ontario v. Reciprocal Insurers*, [1924] A. C. 328.

161. *Add. Citations*:—[1924] A. C. 203; 93 L. J. P. C. 33; 130 L. T. 227.

162a. ————*]*—*Legislation incidentally affecting.*—*A.-G. FOR ONTARIO v. RECIPROCAL INSURERS*, No. 108a, *ante*.

k (p. 438) ii. ————*]*—*Imposition & recovery of fines & penalties—Valid.*—*R. v. McMILLAN* (1873), 2 Pug. 110; 2 Cart. 489.—CAN.

k (p. 438) iii. *S. P. R. v. RONAN* (1891), 23 N. S. R. 421.—CAN.

k (p. 438) iv. ————*]*—*Amendment of Temperance Act, 1884 (c. 18)—Validity.*—*COOKE v. BROME MUNICIPALITY* (1877), 2 Cart. 385.—CAN.

151 i. *Barristers—Provision authorising remuneration by share of proceeds of action.*—It is *ultra vires* a provincial legislature to alter the law relating to champerty, authorising barristers & solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs.—*TAYLOR v. MACKINTOSH*, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—CAN.

151 ii. *S. P. R. Re CONSTITUTIONAL QUESTIONS DETERMINATION ACT, Re LEGAL PROFESSIONS ACT (B. C.)*, [1927] 4 D. L. R. 195; [1927] 2 W. W. R. 808; 48 Can. Crim. Cas. 278.—CAN.

o (p. 439) i. ————*]*—It is not competent to the legislature of the Province of Alberta to enact legislation authorising the construction & operation of railways in such a manner as to interfere with the physical structure or with the operation of railways subject to the jurisdiction of the Parliament of Canada.—*Re ALBERTA RAILWAY LEGISLATION* (1913), 24 W. L. R. 630; 4 W. W. R. 608; 48 S. C. R. 9; 12 D. L. R. 150; 15 Can. Ry. Cas. 213.—CAN.

o (p. 439) ii. ————*]*—*Nova Scotia Railway Arrangement Act—Valid.*—*Re WINDSOR & ANNAPOLIS RY. CO.* (1883), 4 R. & G. 312; 3 Cart. 387.—CAN.

160 ii. ————*]*—*Coal Mines Regulation Act, s. 4, as amended by Coal Mines Regulation Amendment Act, 1890, s. 1, provides that "no Chinaman shall be employed in, or allowed to be for the purpose of employ-*

- 164a. —.]—Lord's Day Act (R. S. Can., 1906, c. 153) made it a punishable offence to run or conduct Sunday excursions "except as provided by any provincial Act or law now or hereafter in force." An Act passed by the legislature of Manitoba in 1923 to amend Lord's Day Act of that province, enacted that it should be lawful to run or conduct Sunday excursions to resorts within the province. Sunday excursions were not unlawful by the laws of England existing in 1870, which were part of the law of Manitoba

by 51 Vict. c. 33 (Dom.):—*Held*: the Manitoba statute of 1923 being merely permissive, & not dealing with a matter brought within the criminal law, was competent to the provincial legislature under British North America Act, 1867 (c. 3), s. 92, heads 13, 16; & that being so, the Act was a provincial Act “now or hereafter in force” within Lord’s Day Act of Canada; it was unnecessary to consider whether the Act of 1923 could be justified as Dominion legislation by delegation or reference.—*LORD’S DAY ALLIANCE OF CANADA v. A.-G. FOR MANITOBA*, [1925] A. C. 384; 94 L. J. P. C. 84; 132 L. T. 678; 41 T. L. R. 225. P. C.

a (p. 442) i. — *Remuneration of judges.*—Having regard to B. N. A Act, 1867, ss. 92 (14), 96-101, the matters dealt with in Judges Act, R. S. C. 1906, s. 34 are within the

ca (p. 443) i. — *Penalties for fraudulent conveyances.*—Stat. 13 Eliz. c. 5, s. 3, is not in force in Alberta. 13 & 14 Geo. v, c. 5 (Alta.), s. 46, declaring this stat. to have been in force, could not have the effect of introducing s. 3. The Federal Parliament having made

1 (p. 445) i. ——— *No power to alter or amend.*—*Held:* Revised Statutes (3rd series), c. 159, being part of the criminal law of Canada, the legislature of Nova Scotia had no power to alter or amend any of its provisions.—*R. v. HALIFAX ELECTRIC TRAMWAY Co.* (1898), 30 N. S. R. 499. —CAN.

168. *Add. Annotations*:—**Apld.** A.-G. for Manitoba v. A.-G. for Canada, [1929] A. C. 260. **Refd.** A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328; *Canon v. R.*, [1924] A. C. 999.

170a. — **Legislation incidentally affecting.**—A.-G. FOR ONTARIO v. RECIPROCAL INSURERS, No. 108a, *ante*.

176a. — **Protection of denominational schools—Meaning of Protestant.**—The Quebec Legislature in 1903 passed an Act, 3 Edw. 7, c. 16, which provided that persons professing the Jewish religion should, for school purposes, be treated as Protestants & have the same rights & privileges; that their children should have the same right of education as Protestant children; & that school taxes paid by them should go to the support of the Protestant schools. Under statutes of Lower Canada consolidated in 1861 by 24 Viet., c. 15, there were outside the cities of Quebec & Montreal (the rural area) common schools & dissentient schools, & within those cities Roman Catholic separate schools & Protestant separate schools. British North America Act, 1867, by s. 93, conferred on Provincial Legislatures exclusive power to make laws in relation to education, but, by proviso 1, preserved "any right or privilege with respect to denominational schools which any class of persons had by law," & by proviso 2 enacted that privileges conferred by law on separate Roman Catholic schools in Upper Canada should be extended to dissentient schools of Roman Catholics & Protestants in Quebec:—*Held*: (1) the word "Protestant" in the statutes consolidated in 1861 could not be construed as "non-Catholic," & so as including Jews; & the Protestant community, though divided for certain purposes into denominations, was itself a denomination & capable of being regarded as "a class of persons" within British North America Act, 1867 (c. 3), s. 93 (1); (2) having regard to the provisions of the Act of 1861 as to management & control, the dissentient schools in the rural area, & the separate schools in the two cities, had rights & privileges within sect. 93, proviso 1, but that the common schools in the rural area had not, as although each school might in fact be controlled by persons of the faith of the majority, that was not a right or privilege which "a class of persons had by law"; (3) the Act of 1861 impliedly reserved the right of attendance at dissentient schools in the rural area to children of the religion of the dissentients; in any case sect. 93, proviso 2, of the Act of 1867 had that effect; (4) the provisions as to the management & control of separate schools in the two cities gave them a denominational stamp which could not be effaced by the attendance of a certain number of children

of a divergent faith; (5) 3 Edw. 7, c. 16 (Quebec), although otherwise *intra vires*, was *ultra vires* so far as it would enable persons professing the Jewish religion to be appointed to the Protestant Board of School Comrs. in the cities of Quebec or Montreal or on any Protestant Board of Examiners, or take part with Protestants in the establishment of a dissentient school outside those cities, & except so far as it would confer the right of attendance at dissentient schools outside those cities upon persons of religious faith different from that of the dissentient minority; (6) it would be possible to frame legislation for establishing separate schools for non-Christians without infringing the rights of the two Christian communities, & that legislation so limited would be valid.—*HIRSCH v. MONTREAL PROTESTANT SCHOOL COMRS.*, [1928] A. C. 200; 97 L. J. P. C. 40; 138 L. T. 650; 41 T. L. R. 287; 72 Sol. Jo. 137, P. C.

*Annotation*:—*Generally*, **Refd.** *Roman Catholic Separate School Trustees v. R.*, [1928] A. C. 363.

177a. — **Separate schools Roman Catholic separate schools—Courses of study & grades of education in—Right to share in legislative grants.**—**ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES v. R.**, [1928] A. C. 363; 97 L. J. P. C. 69; 139 L. T. 493; 44 T. L. R. 611, P. C.

177b. — **Act affecting Protestant or Roman Catholic minority—Appeal to Governor-General in Council.**—**BROPHY v. A.-G. OF MANITOBA**, [1895] A. C. 202; 64 L. J. P. C. 70; 72 L. T. 163; 11 T. L. R. 198; 11 R. 385, P. C.

*Annotations*:—**Consd.** *Hirsch v. Protestant School Comrs. of Montreal*, [1928] A. C. 200; *Roman Catholic Separate School Trustees v. R.*, [1928] A. C. 363. **Refd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 11, 4.

177c. — — — — **—ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES v. R.**, [1928] A. C. 363; 97 L. J. P. C. 69; 139 L. T. 493; 44 T. L. R. 611, P. C.

177d. **Building & public health—Application to denominational schools.**—British North America Act, 1867 (c. 3), s. 93, does not prevent the provisions of Municipal Act of Ontario with reference to building, & other matters relating to the health & convenience of the population, from applying to denominational schools.—**TORONTO CORPN. v. ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES**, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658, P. C.

178. *Add. Annotation*:—**Refd.** *Nadan v. R.*, [1926] A. C. 482.

178a. **Property & civil rights—Ultimate Heir Act, R. S. A., 1922 (c. 144)—Ultra vires.**—**A.-G. FOR ALBERTA v. A.-G. FOR CANADA**, No. 98a, *ante*.

m (p. 445) i. — **What are—Not Act to prevent fraud against cheese factories.**—**R. v. WASON** (1890), 17 A. R. 221; 4 Cart. 578.—**CAN.**

m (p. 445) ii. — **Not Act respecting appeals on prosecutions to enforce penalties & punish offences under provincial Acts.**—**R. v. WASON** (1890), 17 A. R. 221; 4 Cart. 578.—**CAN.**

a (p. 445) i. — **Powers of medical council.**—**Medical Profession Act, R. S. S., 1920 (c. 135), s. 40**, is not

*ultra vires* on the ground that it infringes on the powers of the Governor-General under B. N. A. Act, 1867, s. 96.—**HUNT v. COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN**, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—**CAN.**

d (p. 445) i. — — — — **A provincial enactment altering the law relating to champerty, by authorising solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of**

actions in lieu of the usual costs, is an invasion of the legislative domain of the Dominion—**TAYLOR v. MACKINTOSH**, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 31 B. C. R. 56.—**CAN.**

178a i. **Property & civil rights—Closing disorderly house.**—10 Geo. V., c. 81 (Q.), authorising a judge to order the closing of a disorderly house, is *intra vires* the provincial legislature, as it deals with matter of property & civil rights by providing for the sup-



**179a. Trade disputes.**—Industrial Disputes Investigation Act, 1907, of Canada, provided that upon a dispute occurring between employers & employees in any of a large number of important industries in Canada the Minister for Labour for the Dominion might appoint a board of investigation & conciliation. The board was to make investigations, with power to summon witnesses & inspect documents & premises, & was to try to bring about a settlement; if no settlement resulted, they were to make a report with recommendations as to fair terms, but the report was not to be binding upon the parties. After a reference to a board, a lock-out or strike was to be unlawful & subject to penalties:—*Held*: the Act was not within the competence of the Parliament of Canada under British North America Act, 1867 (c. 3); it clearly was in relation to property & civil rights in the provinces, a subject reserved to the provincial legislatures by sect. 92 (13), & was not within any of the overriding powers of the Dominion Legislature specifically set out in sect. 91; the Act could not be justified under the general power in sect. 91 to make laws "for the peace, order, & good government of Canada," as it was not established that there existed in the matter any emergency which put the

national life of Canada in anticipated peril.—*TORONTO ELECTRIC COMRS. v. SNIDER*, [1925] A. C. 396; 94 L. J. P. C. 116; 132 L. T. 738; 41 T. L. R. 238; 69 Sol. Jo. 325, P. C.

**181a. Appointment of judges.**—Judicature Act, 1924, of Ontario, s. 2 (2—6), & s. 4 (1) & (2), are *ultra vires* the legislature of the province, since their effect is to authorise the Lieutenant-Governor of the province to assign, that is to say to appoint, certain judges of the High Ct. Div. of the Supreme Ct. to be judges of the Appellate Div. of that ct., & also to designate, that is to say to appoint, certain judges to hold the offices of Chief Justice of Ontario & Chief Justice of the High Ct. Div., & consequently the provisions are inconsistent with British North America Act, 1867 (c. 3), s. 96, under which the powers of appointment referred to are given to the Governor-General of Canada. Sect. 4 (3), however, which provided that upon a vacancy occurring among the judges of the Appellate Div. or of the High Ct. Div. before the provisions of the Act came fully into force, the Divs. were to consist of the remaining judges, was not open to objection.—*A.-G. FOR ONTARIO v. A.-G. FOR CANADA*, [1925] A. C. 750; 94 L. J. P. C. 132; 133 L. T. 434, P. C.

pression of a nuisance & not with criminal law by aiming at the punishment of a crime.—*BEDARD v. DAWSON & A.-G. FOR QUEBEC*, [1923] 4 D. L. R. 293; [1923] S. C. R. 681; 3 W. W. R. 412.—CAN.

**sb. Labour in industrial undertakings.**—The matter of labour in industrial undertakings in Canada is primarily within the competence of provincial legislatures, but Parliament can legislate as to labour in territories not yet organised into, or forming part of, a province, & as to labour of servants of the Dominion, if these are within the scope of the draft convention adopted by the International Labour Conference of the League of Nations in 1919.—*RE TREATY OF VERSAILLES, RE HOURS OF LABOUR*, [1925] 3 D. L. R. 1114; [1925] S. C. R. 505.—CAN.

**sk. Marriage**—Marriage Act, R.S.O., 1914 (c. 148), ss. 15 & 36, as amended by Marriage Law Amendment Act, 1919 (c. 35), ss. 2 & 4, are within the powers of the provincial legislature.—*STEWART v. STEWART*, [1925] 1 D. L. R. 1; 56 O. L. R. 57.—CAN.

**sm. —.**—Marriage Act, R. S. O., 1914 (c. 148), & its amendments, are *ultra vires* the provincial legislature, in so far as they provide for dissolution or nullity of a marriage.—*DOYLE v. DEADY*, [1925] 3 D. L. R. 317; 57 O. L. R. 44.—CAN.

**sn. —.**—Affecting status of husband & wife.—A provincial statute which purports to give a married woman the right to sue her husband in tort is *ultra vires* on the ground that it alters the common law status of husband & wife, a subject which under the term "marriage" is assigned exclusively to the Dominion Parliament.—*HILL v. HILL*, [1928] 4 D. L. R. 161; [1928] 3 W. W. R. 673.—CAN.

**so. —.**—Consent of parents.—*MARQUANDT v. GORR*, [1929] 1 D. L. R. 206.—CAN.

**sp. Wide Tire Act, 1889 (c. 22)—***Intra vires*.—*R. v. HOWE, McNEIL v. HOWE* (1890), 2 B. C. R. 36.—CAN.

**sq. Habeas corpus.**—The provincial statute known as "An Act Respecting *Habeas Corpus*," R. S. P. Q. 1925, c. 167, is *intra vires*, & has general

application to all judgments, irrespective of the cause of detention.—*EX p. FONG, EX p. YOW, EX p. CHALIFOUX*, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; *sub nom. MOQUIN v. FONG*, Q. R. 41 K. B. 476.—CAN.

## PART II. SECT. 3, SUB-SECT. 4.—A. (c).

**s i. —.**—*Held*: 37 Vict. c. 32, was *ultra vires*.—*SEVERN v. R.* (1878), 2 S. C. R. 70; 1 Cart. 414.—CAN.

**a i. —.**—*Liquor Act*, 1902, s. 2.—*Held*: although unusual, it was well within the powers of the legislature.—*R. v. WALSH* (1903), 23 C. L. T. 186; 5 O. L. R. 527; 2 O. W. R. 222; 3 O. W. R. 31.—CAN.

**b i. —.**—*Right to appeal to Supreme Court of Canada—Restrictions on—Ultra vires*.—*CLARKSON v. RYAN* (1890), 17 S. C. R. 251; 4 Cart. 439.—CAN.

**d i. —.**—*Betting Information Act*, 1923 (c. 5)—*Ultra vires*.—*R. v. LIGHTMAN* (1923), 42 Can. Crim. Cas. 1; 54 O. L. R. 502.—CAN.

**ii. —.**—*Succession Duties Act*, 1914 (c. 10)—*Valid*.—*BARTHE v. SHARPLES* (1918), Q. R. 55 S. C. 301.—CAN.

## PART II. SECT. 3, SUB-SECT. 4.—B. (a).

**o (p. 447) i. —.**—Customs Tariff (Industries Preservation) Act, 1921–1922, deals only with the imposition of taxation, & does not infringe the first paragraph of sect. 55 of the Constitution. Customs Tariff (Industries Preservation) Act, 1921–1922, s. 8, deals with duties of customs only, & does not infringe the second paragraph of sect. 55 of the Constitution. The tax imposed by sect. 8 is imposed by the Commonwealth Parliament, & is not an infringement of sect. 90 of the Constitution.—*NOTT BROTHERS & CO., LTD. v. BARKLEY* (1925), 36 C. L. R. 20; 31 Argus L. R. 256.—AUS.

**o (p. 447) ii. —.**—*Held*: neither Income Tax Assessment Act, 1922–1924, nor Income Tax Assessment Act, 1922–1925, nor either of Income Tax Acts which incorporated those Assessment Acts, was obnoxious to any of the provisions of sect. 55 of the

Constitution.—*FEDERAL TAXATION COMR. v. MUNRO, BRITISH IMPERIAL OIL CO., LTD. v. FEDERAL TAXATION COMR.* (1926), 38 C. L. R. 153.—AUS.

**o (p. 447) iii. —.**—*Held*: War-time Profits Tax Assessment Act, 1917–1918, s. 14 (5), was not obnoxious to sect. 55 of the Constitution.—*FEDERAL TAXATION COMR. v. HIRSELYS, LTD.* (1926), 38 C. L. R. 219.—AUS.

**o (p. 447) i. —.**—*Commonwealth Shipping Act*, 1923—*Validity*.—*COMMONWEALTH v. A.-G. FOR COMMONWEALTH v. AUSTRALIAN COMMONWEALTH SHIPPING BOARD* (1927), 39 C. L. R. 1; [1927] Argus L. R. 61.—AUS.

**h (p. 447) i. —.**—Judiciary Act, 1903–1920, s. 39 (2) (a) [as interpreted in No. 605 i, *post*], is a valid exercise of the power conferred by sect. 77 (iii.) of the Constitution.—*LIMERICK S.S. CO. v. COMMONWEALTH OF AUSTRALIA* (1924), 25 S. R. N. S. W. 293; 35 C. L. R. 69; 31 Argus L. R. 153.—AUS.

**h (p. 447) ii. S. P. THE COMMONWEALTH v. KREGLINGER & FRINAU, LTD. & BARDLEY (1926), 37 C. L. R. 393; [1926] V. L. R. 331; [1926] Argus L. R. 161.—AUS.**

**o (p. 448) i. —.**—*Election for Senate*.—*Held*: Commonwealth Electoral Act, 1918–1925, s. 128A (12), was a valid exercise of the power conferred by sect. 9 of the Constitution upon the Commonwealth Parliament to make laws "prescribing the method of choosing senators."—*JUDD v. McKEON* (1926), 38 C. L. R. 380.—AUS.

**st. Removal of proceedings to High Court.**—Judiciary Act, 1903–1920, s. 40, is a valid exercise of the powers conferred by sects. 76 & 77 of the Constitution.—*RE YATES, EX p. WALSH, RE YATES, EX p. JOHNSON* (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—AUS.

**sv. —.**—Judiciary Act, 1903–1920, s. 40A, is a valid exercise of the power conferred by sects. 77 (ii) & 61 (xxxix) of the Constitution.—*PIRRIE v. McFARLANE* (1925), 36 C. L. R. 170.—AUS.

**sw. Trading by Commonwealth—**



**184a.** — Power to compel British company to deduct income tax from dividends on shares situate in England.]—*Pltfs.*, a British co., held shares in deft. co., which was a British co., but which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. Deft. co. having declared a dividend, the Australian income tax authorities, acting under Australian Income Tax Acts, required deft. co. to deduct the Australian income tax from the dividend due to pltf. co. In an action claiming the amount so deducted:—*Held*: the debt created by the declaration of a dividend was situate in England, & the Commonwealth legislature had no power to impose taxation on pltf. co. in respect of such debt, & the action succeeded.—*LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. v. BRITISH TOBACCO CO. (AUSTRALIA), LTD.*, [1927] 1 Ch. 107; 96 L. J. Ch. 58; 70 Sol. Jo. 1024; *sub nom.* *PASS v. BRITISH TOBACCO CO. (AUSTRALIA), LTD.* (1926), 42 T. L. R. 771.

**199. Add. Annotation:—Refd. Bhagechand Dag-**

*Through agents—War Precautions (Wool) Regulations.*—During the war & after the making of the above regulations, the Executive Govt. of the Commonwealth entered into agreements with a co., engaged in the manufacture & sale of wool tops. Each of these agreements was either an agreement to give consent to a sale of wool tops by the co. in return for a share of the profits, called by the parties a "licence fee," or an agreement that the business of manufacturing wool tops should be carried on by the co. as agent in consideration of an annual sum from the Commonwealth, or a combination of both these agreements:—*Held*: apart from any authority conferred by an Act of Parliament of the Commonwealth or by regulations thereunder, the Executive Govt. had no power to make or ratify any of the agreements.—*COMMONWEALTH & CENTRAL WOOL COMMITTEE v. COLONIAL COMBING, SPINNING & WEAVING CO., LTD.* (1922), 31 C. L. R. 421.—*AUS.*

*sy. Power to confer judicial powers.*—The powers which Income Tax Assessment Act, 1922–1923, by ss. 44, 50 & 51, purports to confer upon a Board of Appeal created under the Act are part of the judicial power of the Commonwealth, which under sect. 71 of the Constitution can only be vested in the High Ct. or a federal ct., & a Board of Appeal not being such a ct., the conferring of those powers is *ultra vires* the Commonwealth Parliament.—*BRITISH IMPERIAL OIL CO., LTD. v. FEDERAL COMR. OF TAXATION* (1925), 35 C. L. R. 422; 31 *Argus* L. R. 129.—*AUS.*

*sz. Power to give appellate jurisdiction to High Court—Appeal from non-federal court.*—The Commonwealth Parliament may confer upon the High Ct. jurisdiction to entertain an appeal from a ct. established by the Parliament in a territory, notwithstanding that the ct. so established is not a federal ct. within sect. 71 of the Constitution; & jurisdiction to entertain an appeal from the Supreme Ct. of the Northern Territory is lawfully conferred upon the High Ct. by Supreme Ct. Ordinance, 1911–1922, s. 21, & Northern Territory (Administration) Act, 1910, s. 13.—*PORTER v. R., Ex p. CHIN MAN YEE* (1926), 37 C. L. R. 433.—*AUS.*

*sa. Discovery—Against State.*—Judiciary Act, 1903–1920, s. 64, in so far as it gives pltf., resident of one State, in an action against another State, the right to obtain discovery of documents

from, & to administer interrogatories to, defts., is within the legislative power of the Commonwealth Parliament.—*GRIFFIN v. SOUTH AUSTRALIA STATE* (1924), 35 C. L. R. 200; 31 *Argus* L. R. 81.—*AUS.*

*sb. Immigration.*—Immigration Act, 1901–1925, s. 8AA, is a valid exercise of the power conferred by sect. 51 (xxvii) of the Constitution.—*Re YATES, Ex p. WALSH, Re YATES, Ex p. JOHNSON* (1925), 37 C. L. R. 36; [1926] *Argus* L. R. 46.—*AUS.*

*sc. —.*—Immigration Act, 1901–1925, s. 5 (3) (3A) (3B). *Held*: valid. *WILLIAMSON v. AU ON* (1927), 39 C. L. R. 95; [1927] *Argus* L. R. 13.—*AUS.*

*sd. Power to grant financial aid to States.*—*Held*: Federal Aid Roads Acts, 1926, was a valid exercise of the power conferred upon the Commonwealth Parliament by sect. 96 of the Constitution, to grant financial assistance to any State on such terms & conditions as the Parliament might think fit.—*STATE OF VICTORIA v. COMMONWEALTH* (1926), 38 C. L. R. 399.—*AUS.*

*se. Bankruptcy—State Acts not affected as to matters not dealt with in Commonwealth Act—Or as to pending proceedings.*—*Re PARSONS* (1928), 28 S. R. N. S. W. 575; 45 N. S. W. W. N. 158.—*AUS.*

**PART II. SECT. 3, SUB-SECT. 4.—B. (b).**

*Power to impose customs & excise duties.*—*Held*: Taxation (Motor Spirit Vendors) Act, 1925 (S. A.), was invalid.—*COMMONWEALTH & COMMONWEALTH OIL REFINERIES, LTD. v. STATE OF SOUTH AUSTRALIA, LTD.* (1926), 38 C. L. R. 408, [1927] *Argus* L. R. 40.—*AUS.*

*r ii. —.*—*Held*: Finance (Newspapers Taxation) Act, 1926 (N. S. W.), & Finance (Taxation Management) Act, 1926 (N. S. W.), ss. 2, 3, 5, 6 & 7, were invalid.—*FAIRFAX (JOHN) & SON, LTD. & SMITH'S NEWSPAPERS, LTD. v. NEW SOUTH WALES STATE* (1927), 39 C. L. R. 139; [1927] *Argus* L. R. 87.—*AUS.*

*t i. —.*—*JAMES v. THE STATE OF SOUTH AUSTRALIA* (1927), 40 C. L. R. 1.—*AUS.*

*st. Power to alter Federal award.*—When an award has been made by the Commonwealth Ct. of Conciliation & Arb'n. pursuant to Commonwealth Conciliation & Arb'n. Act, 1904–1921,

*dusa Gujrathi v. Secretary of State for India in Council* (1927), 43 T. L. R. 617.

**200a. Appointment—What constitutes.]—A.-G. FOR ONTARIO v. A.-G. FOR CANADA, No. 181a, ante.**

**200b. — Rights of existing judge—On constitution of new court.]—Judicature Act, 1919, of Alberta, s. 6, requires for its working the appointment of two Chief Justices, one of the Appellate Div., & the other of the Trial Div., of the Supreme Ct., & the fact that before the passing of the Act the Chief Justice was Chief Justice of the Supreme Ct. did not necessarily entitle him to be, or to be appointed, Chief Justice of the Appellate Div., & his non-appointment to that office did not constitute an infringement of any legal right to which he was entitled.—*SCOTT v. A.-G. FOR CANADA* (1923), 40 T. L. R. 6, P. C.**

**201. Add. Annotation:—Mentd. Re Letters Patent No. 139,207; Re Carbonit Akt., [1924] 2 Ch. 53.**

**208. Add. Annotation:—Refd. Palmer v. Crone, [1927] 1 K. B. 804.**

the Parliament of a State cannot alter the terms of the award, or confer or impose on the parties to it rights or obligations which are inconsistent with such terms.—*CLYDE ENGINEERING CO. LTD. v. COWBURN, METTERS, LTD. & LEVER BROTHERS, LTD. v. PICKARD* (1926), 37 C. L. R. 466; [1926] *Argus* L. R. 214.—*AUS.*

**PART II. SECT. 3, SUB-SECT. 4.—C.**

*sj. Samoa Act, 1921—Valid.]—TUGALON v. INSPECTOR OF POLICE, FUATAGA v. INSPECTOR OF POLICE, [1927] N. Z. L. R. 883.—N. Z.*

**PART II. SECT. 3, SUB-SECT. 4.—D.**

*h i. — Distribution of dividends.]—The tax imposed upon financial cos. by Transvaal Provincial Ordinance 8 of 1923, s. 3, of one shilling for each pound of dividend distributed after a certain date, is a direct tax *ultra vires* the Provincial Council under South Africa Act, s. 85 (1).—*JOHANNESBURG CONSOLIDATED INVESTMENT CO., LTD. v. TRANSVAAL PROVINCIAL ADMINISTRATION, [1925] App. D. 477.—S. AF.**

*h ii. — Receipt of premiums.]—The tax imposed by Tax Ordinance of 1923 (Transvaal) upon insurance cos., on premiums received, is a direct tax *ultra vires* the Provincial Council under South Africa Act, s. 85 (1).—*INLAND REVENUE COMR. v. ROYAL EXCHANGE ASSURANCE CO., [1925] App. D. 223.—S. AF.**

*h iii. — Control of trading licences.]—Held: Transvaal Provincial Ordinance 12 of 1926 was *ultra vires* the Provincial Council.—*RELOOMAL v. RECEIVER OF REVENUE, [1927] App. D. 401.—S. AF.**

*ki. — Proclamation of local arrus.]—Natal Provincial Ordinance 7 of 1923, which confers on the Administrator power to proclaim local areas & provides for the election of committees to function therein, such committees being established with the sole object of carrying out Public Health Act 36 of 1919, & not of creating any form of local self-government, is *ultra vires* the Provisional Council under South Africa Act, s. 85 (6).—*ISPINGCO HEALTH COMMITTEE v. JADWAT, [1926] App. D. 113.—S. AF.**

*k ii. — Municipal franchise.]—Ord. 19, 1924, s. 13 (1):—Held: *ultra vires*.—*ABRAHAM v. DURBAN CORPN.* (1926), 47 N. L. R. 356.—*S. AF.**

*k iii. — Enrolment of burgesses.]—Held: Natal Ordinance 19 of 1924,*

**234a. Court of civil judge of Secunderabad—Limitation of action.**—Applt. sued resps. in the ct. of the civil judge at Secunderabad to recover money lent to a deceased relative. Both the borrower & the alleged surety & their representatives were residents in Hyderabad, in which the civil judge's ct. had no jurisdiction. If the suit had been brought in the Nizam's ct. at Hyderabad, it would have been barred by Stat. Limitations, but,

in the Secunderabad ct. foreign residence could be claimed by way of exemption from limitation. Judgment of the Resident at Hyderabad dismissing the suit affirmed, no part of the cause of action having arisen within the local limits of the ct. of the civil judge at Secunderabad.—**RAI BAHADUR BANSILAL ABIRCHAND v. GHULAN MAHBUB KHAN** (1925), 42 T. L. R. 5, P. C.

## Part III.—Laws of the Colonies.

**283a. Rule of English law as to parliamentary control of revenue—Application in New Zealand.**—It is a principle of the British constitution, inherited in the constitution of New Zealand, that no money can be taken out of the Consolidated Fund into which the revenues of the State have been paid, except under a distinct authorisation by Parliament itself; a payment made without that authority is illegal & *ultra vires*, & the money, if it can be traced, can be recovered by the Govt.

An agreement made in 1913 provided

(*inter alia*) that the Minister of Railways of New Zealand, representing the Crown, should pay to applts. £7,500 when applts. granted a lease to B. & Co. The making of the agreement had been authorised by an Act of 1912, which empowered the Minister, without further appropriation, to pay to applts. out of the Public Works Fund such sum as might be payable in accordance with the agreement. Owing to an alteration in the scheme to which the agreement related, the Minister did not require applts. to grant the lease, & it was not granted. Nevertheless the £7,500

s. 13 (1), was *intra vires* the Provincial Council.—**ABRAHAM v. DUBHAN CORPN.**, [1927] App. D. 444.—S. AF.

**sk. Rhodesia—Taxation of non-residents carrying on business within territory.**—Under the power conferred upon the legislature of Southern Rhodesia by the Order in Council of 1898, s. 35, it is *intra vires* for that legislature to levy a tax upon income accruing to a non-resident from a source not within the territory, where such non-resident carries on business within the territory.—**RHODESIA RYS. v. COMR. OF TAXES**, [1925] App. D. 438.—S. AF.

**sl. Transkeian Territories—Immigration of Asiatics.**—**Held:** Proclamation 264 of 1904 was *ultra vires*.—**L. v. BARMANTIA**, [1927] App. D. 537.—S. AF.

### PART II. SECT. 3, SUB-SECT. 4.—E.

**sm. Crown grants.**—Crown Grants Act, XV. of 1895, which enacts that grants by the Crown of estates unknown to the law are not invalid, is not *ultra vires* the Indian legislature.—**SECRETARY OF STATE FOR INDIA v. RAJA PANTHASARATHY APPA RAO** (1926), 1 L. R. 49 Mad. 349.—IND.

**sp. Taxation.**—**Held:** Income Tax Act, s. 67, was not *ultra vires*.—**DR. R. N. SINGHA v. SECRETARY OF STATE FOR INDIA IN COUNCIL** (1927), 1 L. R. 5 Ran. 825.—IND.

**sq. Acts of local Legislatures—Extent of operation.**—The United Provinces Ct. of Wards, like the Acts of many other local Legislatures dealing with the local Ct. of Wards, has no effect beyond the jurisdiction of its own Legislature. Civil Procedure Code (Act V. of 1908) gives a local Act local validity & special procedure validity in its own sphere. No local Legislature can prescribe procedure for any ct. beyond its territorial jurisdiction, & any Act passed by a local Legislature for its own ct. cannot be enforced beyond those territories.—**CHHATTOO LAL MISSEER v. NARAYAN DAS BAIYNATH PRASAD** (1928), 1 L. R. 56 Cal. 704.—IND.

### PART II. SECT. 4, SUB-SECT. 1.—A.

**ol. — Whether presumed—Commissioner with judicial powers.**—To

appoint a comr. under Mining Act (Ont.), s. 123, & then invest him with powers exercisable by a superior ct., as that term is to be understood in B. N. A. Act, is to enable the provincial authority in effect to appoint a judge of a superior ct., which is beyond its power, & it could not be presumed that the Governor-General had given the provincial appointee a patent designating him a judge of a superior ct.—**RE McLEAN GOLD MINES, LTD. v. A.-G.**, [1923] 1 D. L. R. 10; 54 O. L. R. 573.—CAN.

**st. Remuneration—Restrictions on.**—**Held:** Judges Act, R. S. C. 1906, s. 34, has no application to the remuneration of a judge whose appointment to perform the duty or service was made before the enactment of that act.—**RE JUDGES ACT**, [1923] 2 D. L. R. 604; 52 O. L. R. 105.—CAN.

### PART II. SECT. 4, SUB-SECT. 2.—A.

**sw. Canada—District court.**—Except as to matters for which particular statutory directions provide otherwise, a district ct. has jurisdiction over persons & property throughout the province & may entertain an action irrespective of where within the province the cause of action arose, the property is situated, or debts reside.—**POLAR AERATED WATER WORKS v. WINNIKOFF**, [1921] 3 W. W. R. 370; 62 D. L. R. 403; 17 Alta. L. R. 150.—CAN.

**sz. Prince Edward Island.**—The ct. of last resort in Prince Edward Island is the Supreme Ct. in that province.—**KELLY v. SULLIVAN** (1876), 1 S. C. R. 1.—CAN.

**sl Northern Ireland—Power to make order against "neighbouring counties."**—**Limited to counties in Northern Ireland.**—Under Grand Jury (Ireland) Act, 1836, s. 140, the expression "neighbouring counties" must be taken to mean "neighbouring counties" in Northern Ireland. The jurisdictions respectively set up by Govt. of Ireland Act, 1920, are mutually independent & exclusive of each other within the respective areas.—**PLUMB & ORR v. FERMANAGH COUNTY COUNCIL**, [1923] 2 I. R. 54.—IR.

**sm. High Court of Australia—Proceedings involving the interpretation &**

**application of Commonwealth of Australia Constitution Act, s. 92.**—The question of the validity of determinations made pursuant to the Dried Fruits Acts fixing the quantity of dried fruits which might be marketed within the Commonwealth raises an issue directly involving the interpretation & application of s. 92 of the Constitution, & the question of the validity of acquisitions of dried fruits pursuant to those Acts, also, raises an issue directly involving the interpretation of the Constitution, & an action raising those questions is, therefore, within the original jurisdiction of the High Ct. conferred by Judiciary Act, 1903–1926, s. 30.—**JAMES v. THE STATE OF SOUTH AUSTRALIA** (1927), 40 C. L. R. 1.—AUS.

**sn. — To make order refused by court of co-ordinate jurisdiction.**—**JONES v. JONES** (1928), 40 C. L. R. 315; [1928] V. L. R. 112; [1928] Argus L. R. 45.—AUS.

**so. — Proceedings between residents of different States—One plaintiff & defendant resident in same State.**—An action instituted in the High Ct. in which there is on each side of the record a resident of the same State who is a necessary party to the action is not a matter between residents of different States within the Constitution, s. 75, & the High Ct. has no jurisdiction to entertain it.—**WATSON & GODFREY v. CAMERON** (1928), 40 C. L. R. 446; [1928] Argus L. R. 44.—AUS.

### PART II. SECT. 4, SUB-SECT. 2.—J.

**228 ii. — "Suit for land."**—**HATIMBHAI HARSANALLY v. EDULJE DINSRAW** (1927), 1 L. R. 51 Bom. 516.—IND.

**ci. — At Calcutta—To direct appellant to Privy Council to provide funds to enable minor to be represented.**—The High Ct. is not entitled after the final admission of a Privy Council appeal to make an order directing applt. in the Privy Council case to put the guardian of the minor resp. in funds to have the case argued on behalf of the minor before the Judicial Committee.—**BIR BIKRAM KISHORE MANIKYA v. ALI AHAMAD** (1927), 1 L. R. 55 Cal. 758.—IND.

was paid by the Minister of Railways to applts. in 1914 out of a vote included in the Public Works Schedule to the Appropriation Act for the year, & the Controller & Auditor-General passed the sum as being so payable:—*Held*: as the lease had not been granted the payment of the £7,500 was not authorised by the Act of 1912, & it was recoverable by the Govt. & could be deducted from a larger sum admittedly due to applts.—**AUCKLAND HARBOUR BOARD v. R.**, [1924] A. C. 318; 93 L. J. P. C. 126; 130 L. T. 621, P. C.

*Annotation*:—**Refd.** A.-G. v. G. S. & W. Ry. of Ireland, [1925] A. C. 754.

241. *Add. Annotation*:—**Consd.** *Arseculeratne v. Perera*, [1928] A. C. 173.

242. *Add. Annotations*:—**Refd.** A.-G. for Alberta. v. Cook, [1926] A. C. 444; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

252a. ——— **Revenue laws.**—When a foreign colony becomes a British colony the British laws of revenue immediately attach.—**THE FRIENDSHIP** (1814), 1 Dods. 373; 165 E. R. 1346.

263. *Add. Annotation*:—**Refd.** *Berthiaume v. Dastous* (1929), 45 T. L. R. 607.

265a. **Recognition of existing proprietary rights—Effect of proclamation.**—After a sovereign State has acquired territory, either by consent, or by cession under treaty, or by the occupation of territory theretofore unoccupied by a recognised ruler, or otherwise, an inhabitant of the territory can enforce in the municipal cts. only such proprietary rights as the Sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights that gives them no right which they can so en-

force. The meaning of a general statement in a proclamation that existing rights will be recognised is that the Govt. will recognise such rights as upon investigation it finds existed. The Govt. does not thereby renounce its right to recognise only such titles as it considers should be recognised, nor confer upon the municipal cts. any power to adjudicate in the matter.

• Applts. brought a suit for a declaration that they were proprietors of certain lands situated within territory which in 1860 had been ceded to the British Govt. under a treaty:—*Held*: upon the facts, & applying the above principles, the suit failed.—**VAJESINGJI JORAVARSINGJI v. SECRETARY OF STATE FOR INDIA** (1924), L. R. 51 Ind. App. 357, P. C.

271a. ———.—**WJJEYEWARDENE v. JAYAWARDENE** (1924), 91 L. J. P. C. 44; 132 L. T. 161; 60 Sol. Jo.

290. *Add. Annotation*:—**Refd.** *Nadan v. R.*, [1926] A. C. 482.

315. *Add. Annotation*:—**Mentd.** *Bristol Corp'n. v. Virgin*, [1928] 2 K. B. 622.

315a. ——— **Limitation Act, 1623 (c. 16)—Extends to India.**—**EAST INDIA CO. v. ODITCHURN** (1850), 7 Moo. P. C. C. 85; 5 Moo. Ind. App. 43; 14 Jur. 253; 13 E. R. 811, P. C.

*Annotations*:—**Folld.** *Ruckmaboye v. Mottichund* (1853), 8 Moo. P. C. C. 4. **Mentd.** *Reigate R. D. C. v. Sutton District Water Co.* (1908), 6 L. G. R. 936; *Spencer v. Hemmerde* (1922), 91 L. J. K. B. 941.

315b. **S. P. RUCKMABOYE v. LULLOOBHOY MOTTICHUND** (1853), 8 Moo. P. C. C. 4; 5 Moo. Ind. App. 234; 22 L. T. O. S. 203; 14 E. R. 2, P. C.

318. *Add. Annotation*:—**Mentd.** *Ellesmere (Earl) v. Wallace*, [1929] 2 Ch. 1.

## Part V.—Extradition and Fugitive Offenders.

365. *Add. Annotations*:—**Mentd.** *Re Paget, Ex p. Official Receiver*, [1927] 2 Ch. 85; *Re Jowett*, 1 Ch. 108.

### PART III. SECT. 1, SUB-SECT. 1.

239 i. *Introduction of English law by colonial statute.*—The custom whereby, when marine insurance was effected through a broker, the broker & not the assured was liable to the underwriter for the premium, while the underwriter was directly responsible to the assured for the loss, was not so firmly established as part of the law of England in 1792 that it was to be deemed to have been introduced into Upper Canada by 32 Geo. 3, c. 1.—**O'KEEFE & LYNCH OF CANADA, LTD. v. TORONTO INSURANCE & VESSEL AGENCY, LTD.**, [1926] 4 D. L. R. 477; 59 O. L. R. 235.—**CAN.**

239 ii. ———.—The rule in *Shelley's Case* is not part of the law of Alberta, since it was not "applicable" within North-West Territories Act, 1884, to the Territories.—**Re SIMPSON ESTATE** 817; [1927]

1922, constituted a complete code upon the subject which had the effect of excluding Stat. 13 Eliz. c. 5, s. 3, as to a penal action.—**CONNORS v. EDLI**, [1924] 2 D. L. R. 59; 1 W. W. R. 1050; 20 Alta. L. R. 205.—**CAN.**

### PART III. SECT. 2, SUB-SECT. 1. B.

w i. *Forfeiture Act, 1870 (c. 23)—Not applicable to Saskatchewan.*—**Re NORLE** (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

t (p. 464) i. *Real Estate Charges Act, 1867 (c. 69), s. 2—Applicable to Saskatchewan.*—**Re MACDOUGALL**, [1927] 3 D. L. R. 464; [1927] 1 W. W. R. 612; 21 Sask. L. R. 397.—**CAN.**

mm (p. 464) i. ——— *Applicable to Alberta.*—**LAMB v. LAMB**, [1925] 4 D. L. R. 526; [1925] 3 W. W. R. 397.—**CAN.**

b (p. 465) i. ——— *Applicable to India.*—The above Act extends to India, & applies to Hindoos & Mahomedans as well as Europeans, in civil actions in the Supreme Ct.—**RUCKMABOYE v. LULLOOBHOY MOTTICHUND** (1853), 5 Moo. Ind. App. 234.—**IND.**

### PART IV.

s i. ——— *Requisites of conversion to Hinduism.*—In the Indian Suc-

cession Act (XXXIX. of 1925), the term "Hindu" is used in a theological, as distinguished from a national or racial sense. A person of non-Hindu origin can become a Hindu by conversion. Membership of a caste is not a necessary pre-requisite for being a Hindu. It is a question of fact in each case whether a given person is a Hindu or not. A European does not become a Hindu merely because he professes a theoretical allegiance to the Hindu faith, or is an ardent admirer & advocate of Hinduism, & its practices; but if he resides long in India, abdicates his religion by a clear act of renunciation, & adopts Hinduism by undergoing formal conversion, gives up, along with Christianity, his Christian name & deliberately assumes a Hindu name, marries, in accordance with Hindu religious rites, a person who is a Hindu by race & religion, & cuts himself off from his old environments, & takes to the Hindu mode of life, in such a case the Ct. may justly come to the conclusion that he is a Hindu within Indian Succession Act. A European who becomes a Hindu is governed by Hindu law, the test in such case being not domicile, but religion. **MORARI v. ADMINISTRATOR-GENERAL OF MADRAS** (1928), 1 L. R. 52 Mad. 160.—**IND.**

### PART III. SECT. 2, SUB-SECT. 1.—A.

h i. *Mode of exclusion.—Subject-matter covered by colonial legislation.*—The provisions, relating to fraudulent & preferential assignments, of Assignments Act, 1907, repealed in 1921, re-enacted in 1922, & consolidated in Fraudulent Preferences Act, R. S. A.

## Part VI.—Conflict of Laws—Colonial Judgments.

366. *Add. Annotation* :—**Mentd.** *Employers' Liability Assee. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

## Part VIII.—Property in Land.

369. *Add. Annotations* : **Refd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4. **Mentd.** *Ontario & Minnesota Power Co. v. R.*, [1925] A. C. 196.

371. *Add. Annotation* :—**Mentd.** *Ontario & Minnesota Power Co. v. R.*, [1925] A. C. 196.

378a. — **Foreshore & bed of navigable river—St. Lawrence.**—The King, as representing the Province of Quebec, is the sole owner of the foreshore & bed of the St. Lawrence River at the place where the Montreal harbour comrs. constructed works which necessitated the outlet of a sewer in the city of Montreal being changed. The Dominion statutes did not authorise the harbour comrs. to take possession of the lands of the Province of Quebec without compensation.—**MONTREAL CORPN. v. MONTREAL HARBOUR COMRS., TETREAU v. MONTREAL HARBOUR COMRS., A.-G. FOR QUEBEC v. A.-G. FOR CANADA**, [1926], A. C. 299; 95 L. J. P. C. 60; 134 L. T. 578; 42 T. L. R. 98, P. C.

378b. — **Boundary between Canada & Newfoundland.**—The effect of various Orders in Council, Proclamations, & Statutes being to give the Govt. of Newfoundland, not mere rights of inspection & regulation upon a line of shore, but territory which became as much a part of the colony as the island of Newfoundland itself & was capable of being defined by metes & bounds :—**Held** : the boundary

between Canada & Newfoundland in the Labrador Peninsula was along the crest of the watersheds of the rivers flowing into the sea on the shore of Labrador.—**RE BOUNDARY BETWEEN CANADA & NEWFOUNDLAND IN LABRADOR PENINSULA** (1927), 137 L. T. 187; 43 T. L. R. 289, P. C.

381. *Add. Annotations* :—**Apld.** *A.-G. for Alberta v. A.-G. for Canada*, [1928] A. C. 475. **Mentd.** *Re Ellwood*, [1927] 1 Ch. 455.

381a. — — — — —. — **A.-G. FOR ALBERTA v. A.-G. FOR CANADA**, No. 98a, *ante*.

390a. — — — — — **Dedication as naval depot**  
**Revocation of dedication.**—**AUSTRALIA COMMONWEALTH v. NEW SOUTH WALES STATE**, No. 56a, *ante*.

390b. — **Land held under Discharged Soldiers' Settlement Acts—Eviction.**—If a person holding Crown land in South Australia under Australian Discharged Soldiers' Settlement Act, 1917, & amending Acts, fail to carry out the conditions laid down in his agreement with the Govt., he can be ejected without a judicial or quasi-judicial inquiry.—**LAFFER v. GILLEN**, [1927] A. C. 886; 96 L. J. P. C. 166; 137 L. T. 701; 43 T. L. R. 694, P. C.

391. *Add. Annotations* :—**Apld.** *Sunmonu v. Disu Raphael*, [1927] A. C. 831. **Refd.** *Sobhuza II. v. Miller*, [1926] A. C. 518; *Bakare Ajakaiye v. Southern Provinces Lieutenant-Governor*, [1929] A. C. 679.

### PART VIII. SECT. 1.

370 i. *Canada—Respective rights of Dominion & Province—Territory ceded to Indians—British North America Act, 1867 (c. 3).*—**PROVINCE OF QUEBEC v. DOMINION OF CANADA, RE DOMINION OF CANADA & PROVINCES OF ONTARIO & QUEBEC, RE INDIAN CLAIMS** (1898), 30 S. C. R. 151.—**CAN.**

ei. — **Rights of Dominion & private person—Grant of land by province before confederation.**—Where plff. claimed under a grant issued by the province, in 1857, prior to confederation :—**Held** : the Crown, as represented by the Dominion under B.N.A. Act, 1867, s. 91 (12), could not grant by licence power to erect a well on private property.—**DELAPE v. HAYDEN** [1924] 3 D. L. R. 11; 57 N. S. R. 316.—**CAN.**

ii. — **Indian Reserves—Indians not entitled to alienate by lease or sale—Right of Crown to recover possession.**—**R. v. McMASTER**, [1926] Exch. C. R. 63.—**CAN.**

iii. — **Boundaries—Whether extended by acts of possession by Indians.**—**R. v. HEISLER (N. S.)** (1913), 13 E. L. R. 375.—**CAN.**

iv. — **Right to sell cordwood cut on unsundered reserve land.**—**FEAGAN v. McLEAN** (1869), 29 U. C. R. 202.—**CAN.**

v. — **Indian lands—Sale by Indian before receipt of Crown patent—Indian Act, R. S. C. 1906, c. 81, s. 102.**—

**SANDERSON v. HEAP** (1909), 11 W. L. R. 238.—**CAN.**

379 i. *South Africa—Restriction of prospecting & mining—Whether Proclamation ultra vires.*—**R. v. NOLTE**, [1928] App. D. 377.—**S. AF.**

sp. *India—Land held by East India Company.*—A village not permanently assessed was granted by the East India Co. in 1843 to the predecessor of plff. with a condition restraining its alienation without the Govt.'s previous sanction :—**Held** : though the formal assumption of sovereignty in India by the Crown was only in 1858, yet the possessions were, as provided by the previous Charter Acts, held by the East India Co. only as the delegates of & in trust for the Crown.—**SECRETARY OF STATE FOR INDIA v. RAJA PARTHASARATHY APPA RAO** (1926), 1 L. R. 49 Mad. 349.—**IND.**

### PART VIII. SECT. 2.

qi. — **Whether sale of ordinance land cancelled.**—**MURPHY v. R.** (1892), 3 Exch. C. R. 75.—**CAN.**

qii. — **Timber cut on Crown lands—Necessity for marking.**—**HARRISON BAY CO., LTD. v. GAUTHIER** (1925), 35 B. C. R. 498.—**CAN.**

qiii. — **Decision of Minister of Lands, Forests & Mines—Effect of.**—The decision of the above Minister in favour of the issuing of a patent is merely an intimation that he will recommend such issue; it is not a final adjudication & does not bind the

**CROWN.—FITZPATRICK v. R.**, [1926] 4 D. L. R. 239; 59 O. L. R. 331.—**CAN.**

ri. — **Canal Reserve, Ottawa.**—**Held** : legislation with respect to Ordnance lands vested in the Province of Canada the lands comprised in 19 Vict. c. 45, sched. 2, & any trust with which the lands were impressed was put an end to as to the lands under that schedule by such legislation, & 7 Vict. c. 11 gave power to sell any vacant land not required for military or canal purposes or for the Ordnance Dept.—**OTTAWA (CITY) v. GRAND TRUNK RY. CO., OTTAWA (CITY) v. OTTAWA & NEW YORK RY. CO.** (1920), 64 D. L. R. 337; 50 O. L. R. 239.—**CAN.**

ti. *S. P. R. v. CUDDIHY* (1831), 2 Nfld. L. R. 8.—**NFLD.**

tii. *S. P. R. v. RYAN* (1831), 2 Nfld. L. R. 47.—**NFLD.**

ai. — **Agreement to exchange—Necessity for consent of Commissioner of Crown Lands—Duty of transferor.**—**MAY v. DALY**, [1927] S. A. S. R. 428.—**AUS.**

386 i. *Australia—Right of New South Wales—To Garden Island.*—**Held** : New South Wales was entitled as against the Commonwealth, which claimed in right of the Imperial Govt., to possession to Garden Island.—**STATE OF NEW SOUTH WALES v. COMMONWEALTH** (1926), 38 C. L. R. 74.—**AUS.**

## Part IX.—Judicial Committee of the Privy Council.

394. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

398a. *Supreme Court of Palestine—Sitting as court of first instance.*—*JERUSALEM-JAFFA DISTRICT GOVERNOR v. SULEIMAN MURRA*, No. 20a, *ante*.

401. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

405. *Add. Annotations* :—*Consd. Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242. *Mentd.* *St. Magnus the Martyr, London Bridge* (1924), 41 T. L. R. 3; *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

406. *Add. Annotation* :—*Consd. Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242.

445. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

462a. ——— *Freedom of speech of members of legislature.*—*MAHOMED ABDUL CADER v. KAUFMAN*, [1928] W. N. 264; 66 L. Jo. 425, P. C.

465. *Add. Annotation* :—*Appld. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

466a. ——— *Patent cases.*—As no question of general importance usually arises in a patent case, their Lordships deprecated the granting of special leave to appeal in cases of that nature in which there were concurrent judgments.—*POPE APPLIANCE CORPN. v. SPANISH RIVER PULP & PAPER MILLS, LTD.*, [1929] A. C. 269; 98 L. J. P. C. 50; 140 L. T. 409; 46 R. P. C. 23, P. C.

*Annotations* :—*Mentd.* *Rose Street Foundry & Engineering Co. v. India Rubber Gutta Percha & Telegraph Works Co.* (1929), 46 R. P. C. 294; *Canadian General Electric Co. v. Fada Radio* (1929), 46 T. L. R. 18.

485a. ——— *Directly or indirectly involved—Success-*

*ful appeal rendering possible prosecution of claim for larger sum.*—Upon a dispute as to a contract for the sale of goods, arbitrators awarded Rs. 18,000 to petitioner & Rs. 3,900 to resps. The award in favour of petitioner having been set aside, he brought a suit to set aside the award in favour of resps. The appellate ct. in India made a decree dismissing the suit & refused to certify under Code of Civil Procedure, 1908, s. 110, that the case was a fit one for appeal to the Privy Council in that it would "involve, directly or indirectly, some claim or question to or respecting property" of Rs. 10,000, or upwards. Petitioner contended that he had a right of appeal under the above words of sect. 110, since if the appeal succeeded he could proceed with a suit, which had been stayed, claiming Rs. 81,000 damages under the contract :—*Held* : without defining the meaning of "property" as used in sect. 110 petitioner's claim upon the contract was too remote to be considered as being property indirectly involved, & his petition should be dismissed.—*UDOYCHAND PANNALAL v. GUZDAR (P. E.) & Co.* (1925), L. R. 52 Ind. App. 207, P. C.

490. *Add. Annotations* :—*Mentd.* *Prager v. Blat-spiel, Stamp & Heacock*, [1924] 1 K. B. 506; *Poland v. Parr*, [1927] 1 K. B. 236.

501. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

525. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

526a. ——— *From Canadian court.*—*NADAN v. R.*, No. 91a, *ante*.

527. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

## PART IX. SECT. 4, SUB-SECT. 2.—A.

448 i. *General rule.*—Special leave to appeal should only be granted where the case involves matters of public interest or some important question of law.—*RICHES v. CITY OF MOOSE JAW*, [1925] 4 D. L. R. 326; [1925] 3 W. W. R. 399.—CAN.

466 i. ——— *Not if important only to parties.*—Ordinarily none but the parties to a litigation are concerned with the result of a case. In every such case, where the valuation is less than the prescribed limit, there is no right of appeal to His Majesty in Council. It is only when a case is of larger importance & the principle when finally decided by the Privy Council will be of benefit, not only to the people who are directly involved, in the litigation, but to a considerable body of other people, that leave to appeal should be granted.—*RUCHHA SATHWAR v. HANSRANI* (1928), 1 L. R. 50 All. 640.—IND.

468 v. ———.—Where in a petition for leave to appeal to His Majesty in Council the subject-matter of the suit is more than Rs. 10,000, & the High Ct. affirmed the decision of the trial ct., & therefore, the only question to be determined was whether there was a substantial question of law involved in the case :—*Held* : the certificate for leave to appeal could not be granted, as the question involved, whether, if the marriage of the mother has been positively disproved, the acknowledgment by the father is sufficient for the legitimization of a son, having been definitely settled by their Lordships of

the Privy Council, was not a substantial question of law within Civil Procedure Code, s. 110.—*FEROZE DIN KHAN v. NAWAB KHAN* (1928), 1 L. R. 9 Lah. 582.—IND.

476 i. *Leave granted on terms—By what court imposed.*—Where leave to appeal to the Privy Council is granted, the conditions attached to such leave, & the terms on which it is allowed, should be left to the Judicial Committee.—*STEVENSON v. FLORANT*, [1926] 1 D. L. R. 601; [1926] S. C. R. 90.—CAN.

477 i. ——— *Security—By whom allowed—Privy Council Appeals Act, R. S. O., 1914 (c. 54), s. 11.*—*MCBRIDE v. ONTARIO JOCKEY CLUB, LTD.*, [1926] 1 D. L. R. 743; 58 O. L. R. 267.—CAN.

## PART IX. SECT. 4, SUB-SECT. 2.—B. (a).

483 iv. ——— *Partnership suit.*—Where leave to appeal to the Privy Council was applied for, petitioner contending that the decree involved a claim respecting property of Rs. 10,000 within the meaning of Civil Procedure Code, 1908, s. 110 (2) :—*Held* : it was the value of applt.'s share in the partnership that must be looked to, & not the value of the whole of the partnership property.—*NARIMAN RUSTOMJI MEHTA v. HASHAM ISMAYAL VALAD HAJI KHAMISA* (1924), 1 L. R. 49 Bom. 149.—IND.

483 v. ——— *"Property"—Loss of trade & goodwill.*—Where the result of a judgment was to destroy or prevent debts from trading by depriving them

of goodwill & of trade names which they had hitherto used :—*Held* : these were "property" & as any of the matters in controversy was worth more than \$4,000, the matter was a "pecuniary amount" exceeding that sum within Privy Council Appeals Act, s. 2.—*BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.*, [1924] 2 D. L. R. 1238, 54 O. L. R. 629.—CAN.

483 vi. ———.—In a suit for an easement of light & air claimed by the owner of property A. against the owner of property B., it is the value of the easement & not the value of property A. that determines the appealable value for leave to appeal to the Privy Council under Civil Procedure Code, 1908, s. 110.—*LALLUBHAI PRAGJI v. BHIMBAI DAJBHAI* (1929), 1 L. R. 53 Bom. 552.—IND.

h ii. ———.—On an application for leave to appeal to the Privy Council mesne profits subsequent to the date of the High Ct. decree cannot be taken into account in making an estimate of value under Civil Procedure Code, 1908, s. 110 (2).—*SESHGIRI SHAMBHULINGAM v. MANJAYYA* (1925), 1 L. R. 50 Bom. 160.—IND.

st. *Not amount of penalty imposed by fine or forfeiture under penal statute.*—*R. v. REGINA WINE & SPIRIT, LTP.* (No. 2), [1923] 2 W. W. R. 1166; 67 D. L. R. 436.—CAN.

## PART IX. SECT. 4, SUB-SECT. 2.—B. (b).

e i. *Motion for injunction Passng-offaction.*—These were motions

- ¶ q. i. — *Necessity for.*—Ever since 34 Geo. 3. c. 2, s. 36, now found, substantially unchanged, in Privy Council Appeals Act, R. S. O., 1914 (c. 54), s. 2, the right of appeal in cases falling within its terms has stood unchallenged, & no leave to appeal, either to be given by the Judicial Committee or by the ct. below, has been regarded as necessary. Although the Act is absolute in prohibiting an

621. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

626. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

640a. ——— If merely advisory.]—Applts. claimed to deduct from the income on which they had been assessed a sum paid to underwriters on an issue of preference shares on the ground that it was "expenditure incurred for making profits in their business" within Indian Income Tax Act, 1918. The collector of taxes, the chief revenue authority, & the High Ct. successively decided against them. They then appealed to His Majesty in Council :—*Held* : on a preliminary objection, the decision, judgment, or order made by the High Ct. under Indian Income Tax Act, 1918, s. 51, was merely advisory & not final, & the appeal to His Majesty in Council was, therefore, incompetent.—*TATA IRON & STEEL Co. v. BOMBAY CHIEF REVENUE AUTHORITY*

(1923), L. R. 50 Ind. App. 212 ; 39 T. L. R. 288, P. C.

640b. ——— Order of High Court—On appeal from application to district judge to file award.]—An appeal to the Privy Council lies under Code of Civil Procedure, 1908, s. 109, from a decree or final order of a High Ct. made upon appeal from an order of a district judge upon an application to him to file an award in ct. The appeal is not precluded by sect. 104 (2) of the Code ; that provision applies only to an appellate order of a district judge where the application has been made to a subordinate judge.—*RAMLAL HARGOPAL v. KISHANCHAND* (1923), L. R. 51 Ind. App. 72, P. C.

662. *Add. Annotation* :—*Refd. Nadan v. R.*, [1926] A. C. 482.

662a. ——— Appeal from deportation order made by Administration of Western Samoa.]—*NELSON v. R.*, [1928] W. N. 197, P. C.

appeal in cases which do not fall within it, this does not deprive his Majesty of the prerogative right to grant leave to appeal in any case in which he sees fit to exercise that right.—*MCBRIDE v. ONTARIO JOCKEY CLUB, LTD.*, [1926] 1 D. L. R. 743 ; 58 O. L. R. 267.—*CAN.*

t i. ———.]—Appl't. co., having been held liable for approximately \$7,000, appealed giving security only for \$500 for the costs of the appeal. The appeal having been dismissed, applts. applied for a stay of proceedings pending a projected appeal to the Judicial Committee of the Privy Council :—*Held* : the application as made could not be granted.—*FIDELITY PHENIX FIRE INSURANCE Co. of New York v. McPHERSON*, [1925] 3 D. L. R. 131 ; [1925] S. C. R. 104.—*CAN.*

f i. ———.]—An application for special leave to appeal to the Privy Council, & even the granting of such leave, do not *ipso facto* operate as a suspension of proceedings in execution of the judgment rendered by the Supreme Ct. of Canada.—*STEVENS v. FLORENT*, [1926] 1 D. L. R. 601 ; [1926] S. C. R. 90.—*CAN.*

k (p. 498) i. ———.]—(1) Leave to appeal to the Privy Council should not be granted in a criminal case, but parties desiring to appeal should be left to their remedy by application to the Privy Council for such leave.

(2) Assuming the ct. to have power to grant leave to appeal, such leave should be refused in any case not coming within the principles laid down in *Re Dillel*, No. 542, *ante*.—*R. v. R.* (1926), 46 Can. Crim. Cas. 367 ; 58 N. S. R. 457.—*CAN.*

sk. Appeals pending in Supreme Court & before Privy Council—Stay of proceedings in Canadian appeal.]—Where, A. & B. being co-defts., A. had first inscribed an appeal for hearing in the Supreme Ct. of Canada, & B. later on had inscribed an appeal to the Judicial Committee of the Privy Council, upon motion on behalf of B. the proceedings on the first appeal were stayed pending the decision of the Privy Council upon B.'s appeal.—*ASHBRIDGE v. SHAVER & HARRISON*, [1925] 4 D. L. R. 1048 ; [1925] S. C. R. 694.—*CAN.*

#### PART IX. SECT. 8. SUB-SECT. 3.

p i. ———.]—A judgment

of the High Ct. on the Appellate Side, granting probate to a person, is a final decree, from which an appeal lies to His Majesty in Council.—*VELLASAWMY SERVAT v. L. SIVARAMAN SERVAT* (1926), 1 L. R. 5 Ran. 119.—*IND.*

t i. ———.]—*SYED KHAN v. SYED EBRAHIM* (1927), 1 L. R. 6 Ran. 169.—*IND.*

ai. ——— From interlocutory judgments.]—Appeals on matters interlocutory in their nature should be allowed to be preferred to His Majesty in Council only when their decision will practically put an end to the litigation & finally decide the rights of the parties.—*BHAGWATI DAYAL v. DHAN KHUNWAR* (1925), 1 L. R. 48 All. 329.—*IND.*

639 ii. ——— From order refusing to enrol legal practitioner.]—An order of the High Ct. refusing to enrol a person as a legal practitioner under Legal Practitioners Acts, 1879, is not one from which the High Ct. has jurisdiction to grant leave to appeal to the Privy Council.—*Re Miss* (1922), 1 L. R. 1 Pat. 590.—*IND.*

b i. ——— Valuation of property compulsorily acquired.]—In appeals involving the valuation of property in India, the Judicial Committee will entertain an appeal under Act XIX, 1921, s. 2, as to the value of property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence.—*NOWROJI RUSTOMJI WADIA v. BOMBAY GOVERNMENT* (1925), 1 L. R. 49 Bom. 700.—*IND.*

f i. ———.]—The question of law involved need not be of general importance ; it is sufficient if there is a substantial question of law between the parties.—*RAGHUNATH PRASAD SINGH v. PARTABGASH DEPUTY COMRS.* (1927), 54 L. R. Ind. App. 126.—*IND.*

f ii. ———.]—*DELHI CLOTH & GENERAL MILLS Co., LTD. v. DELHI INCOME TAX COMRS.* (1927), 54 L. R. Ind. App. 421.—*IND.*

f iii. ———.]—*MATHURA, KURMI v. JAGDEO SINGH* (1927), 1 L. R. 50 All. 208.—*IND.*

f iv. ——— Order made without jurisdiction.]—*KISHAN SINGH v. THE*

KING EMPEROR (1928), L. R. 55 Ind. App. 390.—*IND.*

f v. ——— Matter of general importance.]—*Held* : a case was a fit one for appeal to the Privy Council, where the question in dispute was of general importance, as the execution of documents with an option of re-purchase was very common & a considerable amount of litigation came before the cts. in connection therewith.—*JIVAN-GIRI GURU CHAMELGHRI v. GAJANAN NARAYAN PATKAR* (1926), 1 L. R. 50 Bom. 753.—*IND.*

651 i. Sum below appealable value—When appeal lies.]—*MAUNG BA. THAN v. PEGU DISTRICT COUNCIL* (1927), 1 L. R. 6 Ran. 43.—*IND.*

sl. Limitation of right to appeal—Letters Patent of Calcutta High Court of 1927.]—The new clause of the Letters Patent of the Calcutta High Ct., passed 1927, takes away, in all second appeals decided by a single judge, without his giving a certificate that the case is a fit one for appeal, the right to go to the Privy Council under the ordinary law, though the right of the Judicial Committee to give special leave is not of course affected. The new Letters Patent cannot be applied to pending cases without taking away existing rights of appeal. *SADAR ALI v. DALIMUDDIN* (1928), 1 L. R. 56 Cal. 512.—*IND.*

#### PART IX. SECT. 8, SUB-SECT. 4.

k (p. 503) i. ——— Judges equally divided.]—The Ct. of Appeal granted leave to appeal to the Privy Council from a decision of the Ct. of Appeal reversing an order for a new trial, the verdict of the jury being for more than £500, & the judges, including the trial judge, being equally divided.—*TREMAIN v. MANAWATEE DRAINAGE BOARD*, [1926] N. Z. L. R. 416.—*N.Z.*

sm. Irish Free State—Leave to appeal—When granted.]—The general principles governing applications for leave to appeal stated.—*HULL v. M'KENNA*, "FIREMAN'S JOURNAL" v. FERENSTROM & TRAESLIBERI, [1926] 1 L. R. 402.—*IR.*

sn. ———.]—Leave to appeal refused.—*O'CALLAGHAN v. O'SULLIVAN*, [1926] 1 L. R. 586.—*IR.*

—————.]—*See, also*, No. 715.



## Part XII.—Irish Free State.

713. *Add. Citation*:—21 L. G. R. 419, C. A.

*Add. Annotation*:—**Mentd.** *Campbell v. Pollak*, [1927] A. C. 732.

714. For the paragraph in the original volume substitute the following paragraph:—

— **Transference of liabilities of British Government to Irish Free State.**—By agreements made in 1917, during the war with Germany, it was agreed between the British Govt. & resp. co., that the co. should make certain alterations in their railway lines in order to facilitate the carriage of coal from certain collieries for purposes connected with the war, the Govt. undertaking to reinstate the lines after the conclusion of the war. In 1922, Irish Free State (Agreement) Act, 1922 (c. 4), & Irish Free State Constitution Act, 1922 (session 2) (c. 1), were passed. At the date of the passing of these Acts the contracts with the Govt. were still executory:—**Held**: the effect of these Acts, & of the Orders made under them, was to transfer the liability under the contracts of 1917 from the British Govt. to the Govt. of the Irish Free State.—**A.-G. v. GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND**, [1925] A. C. 754; 94 L. J. K. B. 772; 133 L. T. 568; 41 T. L. R. 576; 69 Sol. Jo. 744, II. L.; *reusg.* S. C. *sub nom.* **GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND v. R.**, [1924] 2 K. B. 450, C. A.

714a. — **Effect of on Judgments Extension Act, 1868 (c. 54).**—The effect of Irish Free State Constitution Act, 1922 (session 2) (c. 1), s. 1, & art. 73 of the Schedule thereto,

& of Irish Free State (Consequential Provisions) Act, 1922 (session 2) (c. 2), s. 1 (1), is that Judgments Extension Act, 1868, has, since Dec. 5, 1922, ceased to apply to the Irish Free State.—**BANFIELD v. CHESTER** (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

—**J.**—*See, also*, No. 716.

714b. **Government of Ireland Act, 1920 (c. 67), s. 56 (6), Sched. VIII—Constitution of Irish Free State (Saorstát Éireann) Act, 1922 (No. 1 of 1922), Sched. I, art. 78—Right of transferred civil servants to compensation on retirement in consequence of change of government.**—**WIGG v. A.-G. OF IRISH FREE STATE**, [1927] A. C. 674; 96 L. J. P. C. 88; 137 L. T. 460; 43 T. L. R. 457, P. C.

*Annotations*:—**Folld.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 242; **Refd.** *Nixon v. A.-G.* (1929), 46 T. L. R. 31.

714c. **S.P. Re TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION**, [1929] A. C. 242; *sub nom.* *Re IRISH CIVIL SERVANTS*, 98 L. J. P. C. 39; 140 L. T. 254; *sub nom.* *Re ARTICLE X OF ARTICLES OF AGREEMENT FOR TREATY BETWEEN GREAT BRITAIN & IRELAND*, 45 T. L. R. 57, P. C.

715. After this case add “*See, also*, cases in Part IX., Sect. 8, sub-sect. 4, *ante*.”

716. *Add. Citations*:—[1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269.

*Add. Annotation*:—**Folld.** *Banfield v. Chester* (1925), 94 L. J. K. B. 805.

## Notes on Canadian Constitutional Cases

(Vol. XVII., p. 508).

Cases coming under this head decided since the publication of the original volume have been included on pp. 514–521, *ante*.

## PART XII.

714 i. **Irish Free State Constitution Act, 1922 (session 2) (c. 1)—Transference of assets of British Government to Irish Free State.**—**Held**: a debt due to the Land Commission, although incurred in 1922, was an “asset” that had been transferred from the former Govt. of the United Kingdom of Great Britain & Ireland to the Govt. of the Irish Free State.—**Re MALONEY**, [1926] 1 I. R. 202.—**IR.**

714 ii. — **Effect on jurisdiction of existing courts—Pending establishment of courts for Irish Free State.**—**R. v. WICKLOW COUNTY COURT JUDGE**, [1924] 2 I. R. 139.—**IR.**

714 iii. — **Public Safety Act, 1927 (c. 31)—Ordinary legislation.**—**A.-G. v. M’BRIDE**, [1928] 1 I. R. 461.—**IR.**

714 b i. **Government of Ireland Act, 1920 (c. 67), ss. 54, 55, Sched. VIII—Constitution of Irish Free State (Saorstát Éireann) Act, 1922 (No. 1 of 1922), Sched. I, Art. 78—Right of transferred civil servants to compensation on retirement in consequence of change of Government.**—**LONSDALE v. A.-G.**, [1928] 1 I. R. 35.—**IR.**

**st. Irish Free State (Agreement) Act, 1922 (c. 4)—Effect on Companies Acts.**—On petition by a shareholder for the compulsory winding up of a co. as an unregistered co.:—**Held**: notwithstanding the provisions of the above act & of the Orders thereunder, the Cos. Acts remain in full force until revoked or altered by a competent legislature, & the cts. of Southern Ireland had no jurisdiction to make the order.—**Re PORTARLINGTON ELEC-**

**TRIC LIGHT & POWER CO., LTD.**, [1922] 1 I. R. 100.—**IR.**

**sw. Power of Oireachtas.**—Within the whole area of the Irish Free State, the Oireachtas is a free & unfettered legislature, & there is nothing in the treaty, the constitution, or the statute confirming them, to limit the power of the Oireachtas to authorise the detention of unfried persons.—**R. (O’CONNELL) v. HARE PARK CAMP (MILITARY GOVERNOR)**, [1924] 2 I. R. 104.—**IR.**

**sz. — Public Safety (Powers of Arrest & Detention) Temporary Act (I. F. S.), 1924—Intra vires.**—**R. (O’CONNELL) v. HARE PARK CAMP (MILITARY GOVERNOR)**, [1924] 2 I. R. 104.—**IR.**



## DESCENT AND DISTRIBUTION.

NOTE.—For the references to Law of Property Act, 1922 (c. 16), substitute references to Administration of Estates Act, 1925 (c. 23).

### Part III.—Devolution of Real and Personal Estate.

9. *Citations* :—Delete “C. A.”

10. After this case add “——— Death after

1925.]—*See, now*, Administration of Estates Act, 1925 (c. 23), s. 9.”

### Part IV.—Descent of Real Estate.

74. *Add. Annotation* :—*Re*fd. *Re Price*, [1928] Ch. 579.

102a. ————].—*PHILPOTTS d. PHILPOTTS v. JAMES* (1784), 3 Doug. K. B. 425; 99 E. R. 730.

*Annotations* :—*Distd. Re Sheppard, Sheppard v. Manning*, [1897] 2 Ch. 67. *Expld. Re Inman, Inman v. Inman*, [1903] 1 Ch. 241.

113a. *Lease pur autre vie—To A. & his heirs—Heir special occupant.*—*PHILPOTTS d. PHILPOTTS v. JAMES* (1784), 3 Doug. K. B. 425; 99 E. R. 730.

*Annotations* :—*Distd. Re Sheppard, Sheppard v. Manning*, [1897] 2 Ch. 67. *Consd. Re Inman, Inman v. Inman*, [1903] 1 Ch. 241.

132a. ————].—*RAWLINSON v. MONTAGUE (DUCHESS)* (1710), 2 Vern. 667; 3 P. Wms. 264, n., 23 E. R. 1035.

*Annotation* :—*Consd. Bearpark v. Hutchinson* (1830), 7 Bing. 178.

133. After this case insert “— **Liability to legacy duty.**—*See ESTATE & OTHER DEATH DUTIES*, Vol. XXI., p. 58, No. 377.”

133a. *S. P. LOCK v. LOCK* (1710), 2 Vern. 666; 23 E. R. 1035.

134a. *Construction of ancient customary — “Nepos.”*—*WHITLOCK v. WHITLOCK* (1924), 40 T. L. R. 566, D. C.

144. *Add. Annotation* :—*Mentd. Re Smalley, Smalley v. Scotton*, [1929] 2 Ch. 112.

150a. *Copyholds subject to custom of gavelkind — Enfranchisement by Law of Property Acts — Destruction of custom of gavelkind.*—*T.*

died on Jan. 28, 1926, without issue & without having confirmed or republished his will which he had made on July 20, 1925. He was, before Jan. 1, 1926, when the Law of Property Act, 1925, came into operation, tenant of one undivided ninth share in customary tail special by descent in land formerly of copyhold tenure subject to the custom of gavelkind, but at that date by virtue of sect. 128 & Sched. 12, para. 1, sub-s. (a), of Law of Property Act, 1922 (c. 16), & sect. 202 of the Law of Property Act, 1925 (c. 20), of freehold tenure, the entirety of the land which then became vested by virtue of Part IV. of Sched. I. para. 1, sub-para. 4 of Law of Property Act, 1925 (c. 20), in the Public Trustee, having subsequently become vested in trustees appointed in his place upon the statutory trusts mentioned in sect. 35 of Law of Property Act, 1925 (c. 20) :—*Seem* : in the absence of a statutory conversion of land into personal estate, the share of T. in the land on his death descended under the Inheritance Act to the heir at common law of the body of the last purchaser & not to the heir in gavelkind of the last purchaser; the effect of the enfranchisement having been to destroy the gavelkind custom. —*Re PRICE*, [1928] 1 Ch. 579; 97 L. J. Ch. 423; 139 L. T. 339.

*Annotation* :—*Re*fd. *Re Kempthorne, Charles v. Kempthorne* (1929), 46 T. L. R. 15.

#### PART I.

a. i. *Meaning of “legally represent” & “legal representatives of”*—*Ontario Devolution of Estates Act*, s. 30.]—*Re MACKENZIE*, [1927] 4 D. L. R. 825; 61 O. L. R. 230.—CAN.

sa. *Murderer—Not entitled to share in estate of victim.*—*Re MEDAINI ESTATE*, [1927] 4 D. L. R. 1137; [1927] 2 W. W. R. 38; 38 B. C. R. 319.—CAN.

sb. *Marriage Ordinance, 1884, of Southern Nigeria, ss. 38, 39—Construction.*—*MARTINS v. FOWLER*, [1926] A. C. 746; 95 L. J. P. C. 189; 135 L. T. 582.—NIGERIA.

#### PART III. SECT. 1.

sd. “Devolve”—*Local Registration*

of *Tille Act*, s. 84.]—*M'DONNELL v. STENSON*, [1921] 1 I. R. 80.—IR.

—].—*COLLINS v. COLLINS*, [1924] 1 I. R. 72.—IR.

#### PART IV. SECT. 1

h i. ————].—*MACLEAN & GRAHAM v. SMITH & MACKINTOSH*, [1927] N. 109.—IR.

h ii. ———— *Who are.*—*LEE v. BRANSCOMBE* (1925), 52 N. B. R. 239.—CAN.

sj. *Effect of Dominion Land Tille Act, 1894 (c. 28), s. 3.*—*Re JENSEN (Alta.)*, [1927] 1 D. L. R. 76; [1926] 3 W. W. R. 737.—CAN.

#### PART IV. SECT. 2, SUB-SECT. 2.—A. (a).

sk. *Heir of half-blood—Onus of proof.*—Where a party claims as one of the heirs of the half-blood of an intestate, & in his bill professes to set out how his interest arises, it is necessary for him to negative the fact of the intestate having obtained the land by gift or devise from his ancestor; or, if he did so obtain it, the claimant must show that he is of the blood of such ancestor. —*TRYON v. PEER* (1867), 13 Gr. 311.—CAN.

#### PART IV. SECT. 4, SUB-SECT. 2.

h. Read now “113a i.”  
k. Read now “113a ii.”  
l. Read now “113a iii.”

## Part V.—Distribution of Personal Estate.

161. *Citation*:—For “Skin. 212” read “Skin. 218.”

165a. ——— Subject to interest of posthumous child.]—Distributory share vests on the intestate's death, but not so as to exclude a posthumous child.—EDWARDS v. FREEMAN (1727), 2 P. Wms. 435; 24 E. R. 803, L. C.

*Annotations*:—*Folld.* Wallis v. Hodson (1740), Barn. Ch. 272. *Refd.* Villar v. Gilbey, [1907] A. C. 139. *Mentd.* Evelyn v. Evelyn (1731), 2 P. Wms. 659; Morris v. Burroughs (1737), 1 Atk. 399; Green v. Ekins (1742), 2 Atk. 473; Parsons v. Parsons (1744), 9 Mod. Rep. 464; Elliot v. Collier (1747), 3 Atk. 526; Boyd v. Boyd (1867), L. R. 4 Eq. 305; Taylor v. Taylor (1875), L. R. 20 Eq. 155; *Re* Blockley, Blockley v. Blockley (1885), 29 Ch. D. 250; *Re* Ford, Ford v. Ford (1901), 46 Sol. Jo. 51.

165b. ———.—J. W. died intestate in 1724, & left issue T. W. who died within a week after his father, & his wife enceinte, & on May 29 following pltf. was born; she is entitled to her share under the Statute of Distributions, as much as if she had existed in his lifetime.—WALLIS v. HODSON (1740), 2 Atk. 114; Barn. Ch. 272; 26 E. R. 472, L. C.

*Annotations*:—*Folld.* Burnet v. Mann (1748), 1 Ves. Sen. 156; Thellusson v. Woodford (1799), 4 Ves. 227. *Refd.* Thellusson v. Woodford (1805), 1 Bos. & P. N. R. 357; Villar v. Gilbey, [1907] A. C. 139.

165c. ———.—A child *en ventre sa mère* may take under the Statute of Distribution.—THELLUSSON v. WOODFORD (1799), 4 Ves. 227; 31 E. R. 117, L. C. *affd.* (1805), 1 Bos. & P. N. R. 357, L. C.

*Annotations*:—*Refd.* Blackburn v. Stables (1814), 2 Ves. & B. 367; *Re* Burrows, Cleghorn v. Burrows, [1895] 2 Ch. 497; *Re* Wilmer's Trusts, Moore v. Wingfield, [1903] 1 Ch. 874; Villar v. Gilbey, [1907] A. C. 139. *Mentd.* Godfrey v. Davis (1801), 6 Ves. 43; St. Paul's v. Morris (1804), 9 Ves. 316; Underhill v. Horwood (1804), 10 Ves. 209; Beard v. Westcott (1813), 5 Taunt. 393; Southampton v. Hertford (1813), 2 Ves. & B. 54; Cadell v. Palmer (1833), 10 Bing. 140; Doe d. Winter v. Perrat (1813), 6 Man. & G. 314; Cooke v. Turner (1844), 14 Sim. 218; Nightingale v. Goulbourn (1848), 2 Ph. 594; Egerton v. Brownlow (1853), 8 State Tr. N. S. 193; Langdale v. Briggs (1856), 8 De G. M. & G. 391; Turvin v. Newcome (1856), 3 K. & J. 16; Thellusson v. Rendlesham (1859), 7 H. L. Cas. 429; Eastern Counties, etc. Cos. v. Marriage

(1860), 9 H. L. Cas. 32; Income Tax Special Purposes Comrs. v. Pemsel, [1891] A. C. 531; *Re* Stamford & Warrington, Payne v. Grey, [1911] 1 Ch. 255; *Re* Villar, Public Trustee v. Villar, [1929] 1 Ch. 243.

*See, now, Administration of Estates Act, 1925* (c. 23), ss. 47 (1), 55 (2).

173. *Add. Annotation*:—*Consd. Re* Jones, Johnson v. A.-G., [1925] Ch. 340.

180. *Add. Annotation*:—*Refd. Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

181. *Add. Annotation*:—*Consd. Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

187. *Add. Annotation*:—*Consd. Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

188a. Under Administration of Estates Act, 1925 (c. 23), s. 46 (1) (i)—Interest on sum charged—Payable out of corpus of estate.]—Under above sect. interest becoming payable on the sum of £1,000, thereby charged on the estate of an intestate in favour of a surviving wife or husband is not a charge upon the income but upon the corpus of the estate.—*Re* SAUNDERS, PUBLIC TRUSTEE v. SAUNDERS, [1929] 1 Ch. 674; 98 L. J. Ch. 303; 141 L. T. 27; 45 T. L. R. 283.

202a. Under Administration of Estates Act, 1925 (c. 23), s. 46 (1) (i)—Interest on sum charged—Payable out of corpus of estate.]—*Re* SAUNDERS, PUBLIC TRUSTEE v. SAUNDERS, No. 188a, *ante*.

232. *Add. Annotation*:—*N.F. Re* Brooks, Public Trustee v. White, [1928] Ch. 214.

234. In the cross-reference following this case for “p. 148, No. 374,” read “p. 374, No. 148.”

239. For “Mother, brothers & sisters—Mother takes half & brothers & sisters half—Subject to right of widow.” read “Mother, brothers & sisters—Share moiety equally—Widow taking half.”

256. *Add. Annotation*:—*Consd. Re* Merrall, Greener v. Merrall, [1924] 1 Ch. 45.

## PART V. SECT. 1.

n i. — *As amended by 17 Geo. 5, c. 36, s. 2—Effect of.*—*Re* Shier, *ante*, not overruled, & the practice adopted since that decision not altered.—*Re* ALLISON, [1927] 4 D. L. R. 729; 61 O. L. R. 261.—CAN.

## PART V. SECT. 3, SUB-SECT. 1.

1 i. Provision made for widow—Less than amount receivable on intestacy—What relief granted.]—The discretion conferred on the ct. in favour of the widow, who applies for relief under Married Women's Relief Act is restricted by implication to the portion of her deceased husband's estate which she would have received on an intestacy.—MCBRATNEY v. MCBRATNEY (1919), 59 S. C. R. 550; [1919] 3 W. W. R. 1000; 50 D. L. R. 132.—CAN.

## PART V. SECT. 3, SUB-SECT. 2.

sk. Effect of charge.]—*Held*: the widow is not entitled to any portion of the real estate in specie.—CUNNINGHAM v. CUNNINGHAM, [1920] 11 R. 119.—IR.

sl. S. P. DUNICAN v. DUNICAN, [1920] 11 R. 212.—IR.

## PART V. SECT. 3, SUB-SECT. 3.—A.

213 i. Covenant to secure payment of sum of money—Satisfaction *pro tanto*.]—F. on his marriage executed a bond,

whereby, in the event of his death in the lifetime of his wife, a sum of money was to be paid to two trustees in trust for his wife. F. predeceased his wife, intestate & without issue.—*Held*: the sum secured by the bond was to be regarded, in the absence of evidence of any other intention, as satisfaction *pro tanto* of the widow's share of her husband's estate.—MATTHEWS v. DONEGAN & COOKE, [1925] 1 I. R. 201.—IR.

## PART V. SECT. 4, SUB-SECT. 1.

229 v. ———.]—The words “child or children of a deceased brother or sister” in Intestate Successions Act, R. S. A., 1922 (c. 143), s. 7 (2), mean issue in the first generation only, & do not include grandchildren or more remote descendants.—*Re* EMBLEY (ALTA.), [1925] 1 W. W. R. 816.—CAN.

a i. ———.]—*Held*: such child not entitled in Saskatchewan to share in the estate of the father dying intestate & domiciled in Saskatchewan before the coming into force of Adoption of Children Act, 1922.—BURNFIELD v. BURNFIELD, [1926] 2 D. L. R. 129; [1926] 1 W. W. R. 657; 20 Sask. L. R. 407.—CAN.

a ii. ———.]—The word “child” in a will made in Saskatchewan by testator domiciled therein, who died before the coming into force of Adop-

tion of Children Act, 1922, held not to include an adopted child, even though under the law of the foreign state where the child & its adopting parents were domiciled & in which it was adopted the effect of the adoption was to entitle it to all the rights of a child of its adopting father born in lawful wedlock.—*Re* DONALD ESTATE, BALDWIN v. MOONEY, [1928] 4 D. L. R. 181; [1928] 2 W. W. R. 636; *subsequent proceedings*, [1928] 4 D. L. R. 771.—CAN.

a iii. ——— Child Welfare Act—Rights of inheritance.]—Child Welfare Act does not create a new canon for the construction of wills. Therefore, where the adopted daughter was the niece of the foster father's wife & his will, after making provision for said adopted daughter by name, gave part of the residue of his estate to his & his wife's next-of-kin, said daughter took under the residuary bequest as his wife's niece & not as the testator's child.—*Re* SCOTT ESTATE, [1928] 1 W. W. R. 168.—CAN.

## PART V. SECT. 6.

sp. Not widow of only brother predeceasing intestate.]—*Re* HENDERSON, [1926] 2 D. L. R. 536.—CAN.

st. Brothers & sisters—Of infant dying after father who predeceased grandfather—Infant's share in grand-

## Part VII.—Escheat and bona vacantia.

285. *Add. Annotations*:—**Consd.** A.-G. for Alberta v. A.-G. for Canada, [1928] A. C. 475. **Mentd.** *Re Ellwood*, [1927] 1 Ch. 455.
292. *Add. Annotation*:—**Refd.** *Re Deloitte, Griffiths v. Deloitte*, [1926] Ch. 56.
306. *Add. Annotations*:—**Mentd.** *The Carlgarth, The Otarama*, [1927] P. 93; *Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.
311. *Add. Citations*:—[1924] 2 Ch. 19; 93 L. J. Ch. 483; 130 L. T. 800; 68 Sol. Jo. 419.
315. After this case add “**Land in Alberta granted by Crown.**”—*See* DEPENDENCIES, No. 98b.”
329. *Add. Annotation*:—**Refd.** *Re Cullum, Mercer v. Flood*, [1924] 1 Ch. 540.
330. After this case add “**Property in Alberta.**”—*See* DEPENDENCIES, No. 98b.”
- 336a. ———.—[A lunatic, at the date of her death in 1798, was entitled to certain funds in ct. representing the residuary estate of her father. In 1794 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratia* grants of the funds to certain persons & obtained an indemnity in respect of the

grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties sought a determination of the following questions: (1) whether the petition was maintainable on the assumption that no part of the funds ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund; (2) whether the petition was barred by any Statute of Limitations; (3) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratia* grants had been made:—**Held**: the first question must be answered in favour of suppliants.—*Re MASON*, [1928] Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *affd.*, [1929] 1 Ch. 1, C. A.

337a. ———.—[*Re MASON*, No. 336a, *ante*.

344. *Add. Annotation*:—**Mentd.** *Ormond Investment Co. v. Betts*, [1928] A. C. 143.

345. *Add. Annotation*:—**Mentd.** A.-G. for Ontario v. McLean Gold Mines Co. (1926). 95 L. J. P. C. 217.

*father's estate*—*Devolution of Estates Act, R. S. S., 1920 (c. 73), ss. 18, 23.*—*Re GEORGET ESTATES (Sask.)*, [1928] 1 D. L. R. 230; [1927] 3 W. W. R. 769.—CAN.

## PART V. SECT. 7.

249 ii. ———.—[M. who was unmarried died intestate. He had one sister still living, & another sister who had predeceased him, left one son living. One brother was still living. A second brother who had predeceased

him left three children still living, & a third brother (A.) who had predeceased him left nine children still living, & a tenth child (E.) who had predeceased M. left four children (grandchildren of M.) still living. On a petition for directions:—**Held**: the one-fifth share of the estate to which the brother A. would have been entitled should be divided into ten parts, & one of the ten parts should be divided equally amongst Edward's four children. —*Re MCKAY* (1927), 39

B. C. R. 51.—CAN.

## PART V. SECT. 8.

h i. — *Uncle & children of deceased uncles.*—*Re KROESING ESTATE*, [1928] 1 D. L. R. 613; [1928] 1 W. W. R. 221. CAN.

## PART V. SECT. 9.

273 iv a. *S. P. Re JENSEN (Alta.)*, [1927] 1 D. L. R. 76; [1926] 3 W. W. R. 737.—CAN.

## DISCOVERY, INSPECTION, AND INTERROGATORIES.

## Part I.—In General.

10. *Add. Annotation*:—**Mentd.** *Lapish v. Braithwaite*, [1925] 1 K. B. 474.

## Part II.—Discovery of Documents.

- 77a. — **Inquiry as to damages.**—There is no different principle applicable to an application for discovery of documents on an inquiry as to damages from that which prevails on an application for discovery where any other issue has to be tried between opposing parties.—**BRITISH UNITED SHOE MACHINERY CO., LTD. v. LAMBERT HOWARTH & SONS, LTD.** (1929), 46 R. P. C. 315.
86. *Add. Annotation*:—**N.F.** *Wakefield v. Board* (1928), 45 R. P. C. 261.
- 87a. — **WAKEFIELD & CO., LTD. v. BOARD (TRADING AS J. P. BOARD & CO.)** (1928), 45 R. P. C. 261.
89. *Add. Annotation*:—**Mentd.** *Delahunt v. Moody* (1927), 21 B. W. C. C. 588.
99. *Add. Annotation*:—**As to (2) Apld.** *Cavendish v. Cavendish* (1925), 42 T. L. R. 134.
126. *Add. Annotation*:—**Fold.** *Seddon v. Commercial Salt Co.* (1924), 69 Sol. Jo. 159.
127. *Add. Annotation*:—**Overd.** *Seddon v. Commercial Salt Co.*, [1925] Ch. 187.
- 127a. — **By an underlease lands & works** were demised to the first defts. for the term of twenty-one years less one day. The underlease contained a covenant by these defts. that they would not assign, transfer or part with possession of the demised premises or any part thereof without the consent of the underlessor, & that in case of the breach of such covenant it should be lawful for the underlessor to re-enter upon the demised premises, & that thereupon the demise should absolutely determine. Pltf., the purchaser of the reversion on the underlease, brought an action to recover possession of the premises. By his statement of claim he alleged that the first defts., in breach of their covenant, had transferred, underlet or parted with the possession of the premises to the second defts., &/or the third defts. By their respective defences defts. traversed the allegations in the statement of claim. On a summons taken out by pltf. asking that the second defts. might be ordered to file a full & sufficient affidavit of documents, the judge, considering himself bound by *Powis (Earl) v. Negus*, No. 127, made the order asked for:—**Held**: there was one issue only between pltf. & the three defts., namely, whether the underlease, subject to which pltf. as he alleged derived his title to the possession of the land in question, was still subsisting or had been determined by the exercise by pltf. of his right of re-entry, & that being so, the well-established rule that the ct. would not assist a forfeiture by ordering discovery of documents applied, & the order made against the second defts. must be discharged. *Powis (Earl) v. Negus*, No. 127, overr.—**SEDDON v. COMMERCIAL SALT CO., LTD.**, [1925] Ch. 187; 94 L. J. Ch. 225; 132 L. T. 437; 69 Sol. Jo. 159, C. A.
171. *Add. Annotations*:—**As to (2) Consd.** *Soviet Republics Union v. Belaiev* (1925), 42 T. L. R. 21. **Refd.** *Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.
238. *Add. Annotation*:—**Refd.** *Tecalemit v. Ex-A-Gun* (1926), 44 R. P. C. 62.

## PART I. SECT. 1.

88. *Whether experiments ordered—Not necessary for proper determination of issues*—**NICHOLS v. T. T. O.**, [1928] 2 D. L. R. 364; 34 Can. Ry. Cas. 252; 62 O. L. R. 121.—**CAN.**

## PART II. SECT. 4, SUB-SECT. 1.

130 iv. — **BAILIE v. INGLIS & CO., LTD. & JAMISON**, [1926] N. 53.—**IR.**

130 v. — **Deft. co. sought production of a diary which had been kept by one of pltf's. solrs., & which, it was alleged, recorded an interview between such solr. & a person other than pltf's. in the action, at which interview the preparation of a debenture was discussed:—Held**: the diary was the solrs.' property, & as they were not parties to the action, there was no power in the present proceedings to order production & inspection of their diary.—**KEEP BROS. v. BIRCH & BRADSHAW**, [1928] N. Z. L. R. 360.—**N.Z.**

88. *Miners' union—Defence fled raising question whether defendants legal entity.*—A miners' union entered an appearance in an action, & by statement of defence raised the objec-

tion that it was not shown that deft. was a legal entity capable of being sued:—**Held**: deft. by so pleading must be deemed, before the trial of the action, to be a corp'n. for the purpose of the litigation, & so compellable to make discovery.—**CENTRE STAR MINING CO., LTD. v. ROSSLAND MINERS' UNION** (1902), 9 B. C. R. 190.—**CAN.**

## PART II. SECT. 4, SUB-SECT. 2.

a. *Citation*:—For "[1908] S. C. 335" read "[1909] S. C. 335."

## PART II. SECT. 4, SUB-SECT. 4.—A.

182 i. *Whether next friend may make affidavit.*—The ct. will not order a party to an action who is of unsound mind, or his next friend or the Public Trustee administering such person's estate under Mental Defectives Act, 1911, s. 100 (h), to make an affidavit of documents in compliance with an order for discovery under Rule 161A: & Rule 167A does not apply to persons of unsound mind.—**TASKER v. ALGAR**, [1928] N. Z. L. R. 529.—**N.Z.**

## PART II. SECT. 5, SUB-SECT. 1.

88. *Not till issues defined.*—When it is necessary, before an order for

discovery can be made, that certain questions in the suit should first be decided, the proper order to make is that the suit should be set down for the settlement of the issues. The judge will then be in a position to decide which of the issues are necessary to be determined before the question of inspection or discovery can be decided.—**EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. v. DINANATH** (1922), 1 L. R. 47 Bom. 509.—**IND.**

## PART II. SECT. 5, SUB-SECT. 3.

218 i. *Not till after defence delivered—Interlocutory judgment signed.*—After pltf. had signed interlocutory judgment against deft. in an action of tort, deft. sought to examine the pltf. for discovery, the action being about to come on at the assizes for assessment of damages. R. 489 states that the examination of pltf. by deft. may take place at any time after such deft. has delivered his statement of defence:—**Held**: deft. could not examine pltf.—**ASHLEY v. BRENTON** (1889), 13 P. R. 98.—**CAN.**

218 ii. — **FONG YOUNG v. SHING WAH**, [1928] 3 D. L. R. 481; 62 O. L. R. 370.—**CAN.**

242. *Add. Annotation* :—**Consd.** *Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.
- 254a. *Liberty to apply reserved.*—**POISSON & WOODS v. ROBERTSON & TURVEY** (1902), 86 L. T. 302; 50 W. R. 260; 46 Sol. Jo. 196, C. A.

SECT. 7.—**GROUND FOR RESISTING.**

(Vol. XVIII., p. 71).

For "Sect. 3, sub-sect. 2, *ante*," read "Part III., sect. 9, *post*."

279. *Citations* :—For "**BITT. PRAC. CAS. 1**" read "**BITT. PRAC. CAS. 13.**"
324. *Add. Annotation* :—**Consd.** *Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.
- 373a. ———.]—**THE CITY OF BARODA**, No. 874a, *post*.
377. *Add. Annotation* :—**Refd.** *Minter v. Priest*, [1929] 1 K. B. 655.
378. *Add. Annotations* :—**Mentd.** *Huyton & Roby Gas Co. v. Liverpool Corpn.* (1925), 42 T. L. R. 116; *Conquer v. Boot* [1928] 2 K. B. 336.
379. *Add. Annotation* :—**Mentd.** *Parkinson v. College of Ambulance & Harrison* [1925] 2 K. B. 1.
382. *Add. Annotation* :—**Apld.** *Reddaway v. Hartley* (1928), 72 Sol. Jo. 502.
389. *Add. Annotation* :—*As to* (1) **Apld.** *Chowood v. Lyall*, [1929] 2 Ch. 406.

394. *Add. Annotations* :—*As to* (2) **Folld.** *The Hopper No. 13*, [1925] P. 52. **Apld.** *The City of Baroda* (1920), 134 L. T. 576.

- 405a. **R. S. C., Ord. 31, r. 19A (3)—Effect of.**—**REDDAWAY (F.) & Co. v. HARTLEY** (1928), 72 Sol. Jo. 502; 45 R. P. C. 432.

- 436a. ———.]—**ASTRA - NATIONAL PRODUCTIONS, LTD. v. NEO-ART PRODUCTIONS, LTD.**, [1928] W. N. 218.

456. *Add. Citations* :—93 L. J. K. B. 169; 130 L. T. 139; 16 Asp. M. L. C. 236.

- 462a. ——— **Effect of.**—Where in an action on a marine policy the usual order is made for the filing of an affidavit of ship's papers & for a stay of proceedings meanwhile, this stay does not operate to paralyse the activities of either party & prevent him preparing his case; & on a taxation of costs it is for the taxing master to determine, having regard to the stay & all other material factors, whether the costs were reasonably or prematurely incurred.—**PÊCHERIES OSTENDAISES (SOC. ANON.) v. MERCHANTS' MARINE INSURANCE CO.**, [1928] 1 K. B. 750; 97 L. J. K. B. 445; 138 L. T. 532; 44 T. L. R. 270; 72 Sol. Jo. 102; 17 Asp. M. L. C. 401, C. A.

*Annotation* :—**Refd.** *The Channel Queen*, [1928] P. 157.

468. After this case add "For form of order for production of ship's papers, *see* **R. S. C.** (No. 1), 1915, r. 11."

**PART II. SECT. 6.**

255 iii. ———.]—**Resp.**, a member of the Permanent Defence Force of the Union & discharged therefrom as medically unfit, applied for an order on applt. to furnish him with a true copy of the medical certificate issued under Act 27 of 1923, s. 54. He alleged he had sustained injuries in the discharge of & specially attributable to his duties, that he was entitled to receive compensation in manner provided under the sect., that he was desirous of bringing an action to obtain compensation & that it was imperative that a copy of the prescribed medical certificate referred to in sect. 54 should be disclosed to him before any legal steps were taken to enable him to determine the form of relief to which he was entitled. A Provincial Div. having granted the application :—**Held** : as the real dispute between the parties was whether resp.'s ill-health was occasioned in the discharge of his official duties or not & as it was only when the cause of his ill-health had been established in his favour as a fact, that the necessity for the inspection of the certificate might arise, the application was premature & should have been refused.—**UNION GOVERNMENT MINISTER OF DEFENCE v. VAN ZYL**, [1929] App. D. 131.—**S. AF.**

256 i. ———.]—**Alleged partnership.**—**HARNAM SINGH v. KAPOOR SINGH** (1927), 39 B. C. R. 485.—**CAN.**

**PART II. SECT. 9, SUB-SECT. 4.**

p 1. ——— "**Pleadings & proceedings**" in specified action.—**ISITT & ISITT v. HAMMOND & NATIONAL RESOURCES SEC. CO.** (1924), 34 B. C. R. 133.—**CAN.**

**PART II. SECT. 9, SUB-SECT. 5.**

369 v. ———.]—**REID v. VAN COUVER TUG BOAT CO., LTD.**, [1928] 2 J. L. R. 214; [1928] 1 W. W. R. 800. 39 B. C. R. 179.—**CAN.**

370 iii. ———.]—When in an affidavit of discovery privilege is claimed in respect of any document or documents, such document or documents must be specified individually in the schedule attached to the affidavit of discovery, & not referred to as being included among others contained in a bundle.—**RUSHBROOK v. O'SULLIVAN & HIBERNIAN FIRE INSURANCE CO., LTD.**, [1926] 1 R. 500; 59 L. T. 161.—**IR.**

370 iv. ———.]—Where privilege is claimed with respect to documents deponent is not required to describe the documents in such a manner as would disclose the nature or particulars of such documents. "A bundle of documents marked 'A' & numbering 1 to 160, all of which documents were initialed by this deponent," is a sufficient identification of the documents.—**CAMPBELL v. WOODS, IRVIE & THE CANADIAN PRESS (Alta.)**, [1926]

2 D. L. R. 805; [1926] 2 W. W. R. 99.—**CAN.**

**PART II. SECT. 10.**

385 iv. ———.]—Where deft. obtained an order for discovery, & in the affidavit of discovery it was sworn on behalf of pltf. that a document in his possession related solely to pltf.'s case & did not support deft.'s case, & the Supreme Ct. had refused an application by deft. for inspection of the document :—**Held** : on the evidence there was no substantial ground upon which to base a conclusion that the statement in the affidavit was made erroneously or under a misconception of the character of the document, & the application was properly refused.—**SMITH, ETC. v. SUNDAY TIMES** (1923), 31 C. L. R. 552.—**AUS.**

386 i. ———.]—**Claim of privilege.**—Where an affidavit sets out positively & definitely that privilege is claimed for certain documents, on the ground that they arose out of negotiations carried on "without prejudice," that statement cannot be contradicted by affidavits or material from the other side; but it can be attacked or impugned only by some admission or qualification coming from that side.—**BLACK v. OCEAN ACCIDENT & GUARANTEE CO. (Man.)**, [1926] 2 D. L. R. 985; [1926] 1 W. W. R. 883.—**CAN.**

## Part III.—Production and Inspection.

494. After this case add "Receiver & manager appointed by debenture-holders—Liability to produce."—See COMPANIES, No. 5037a, *ante*."
- 528a. — Action on bill of exchange—Deed giving time to principal debtor.—Where an action on bills of exchange was brought against deft., who pleaded that he was liable, if at all, as a surety only:—*Held*: he was not entitled to the inspection of a deed in pltf.'s possession, by which it was suggested time had been given to the principal debtor, but to which deed the surety was no party.—SMITH v. WINTER (1838), 3 M. & W. 309; 6 Dowl. 386; 1 Horn. & H. 45; 7 L. J. Ex. 79; 150 E. R. 1162.
539. *Add. Annotation*:—*Refd.* Godman v. Times Publishing Co., [1926] 2 K. B. 273.
- 539a. — Action for slander.—DAY v. TUCKETT (1846), 7 L. T. O. S. 234.
544. *Add. Annotation*:—As to (2) *Apld.* Chowood v. Lyall, [1929] 2 Ch. 406.
- 555a. —.—In an action of slander imputing to pltf. that he was the writer of a scandalous letter reflecting upon deft., the latter in one of his pleas set forth the letter & justified the words spoken:—*Held*: pltf. should inspect the letter with witnesses, in order that he might be prepared at the trial to show that it was not in his handwriting.—CURTIS v. CURTIS (1833), 3 Moo. & S. 819.
- 640a. *Broker's book*.—BROWNING v. AYLWIN (1827), 7 B. & C. 204; 9 Dow. & Ry. K. B. 801; 5 L. J. O. S. K. B. 320; 108 E. R. 609.
- Annotations*:—*Distd.* Smith v. Winter (1838), 3 M. & W. 309; Day v. Tuckett (1846), 10 J. P. Jo 358. *Refd.* Mutter v. Eastern & Midland Ry. (1888), 38 Ch. D. 92.
- 650a. —.—.—Ross v. LAUGHTON (1813), 1 Ves. & B. 349; 35 E. R. 136.
- Annotations*:—*Consd.* Griffiths v. Griffiths (1843), 12 L. J. Ch. 397; Simmonds v. G. E. Ry. (1868), 3 Ch. App. 797; *Re* Hawkes, Ackerman v. Lockhart, [1898] 2 Ch. 1; *Re* Rapid Road Transit Co., [1909] 1 Ch. 96. *Refd.* Rozon v. Bolland, Husband v. Bolland (1839), 4 My. & Cr. 354.
- 651a. —.—.—BAKER v. HENDERSON (1830), 4 Sim. 27; 58 E. R. 11.
- Annotations*:—*Distd.* Warburton v. Edge (1839), 9 Sim. 508. *Refd.* *Re* Hawkes, Ackerman v. Lockhart, [1898] 2 Ch. 1.
653. *Add. Annotations*:—*Apld.* *Re* Cameron's Coalbrook, etc., Ry. (1859), 25 Beav. 1. *Refd.* Lockett v. Cary (1864), 3 New Rep. 405; Fowler v. Fowler (1881), 29 W. R. 800; *Re* Hawkes, Ackerman v. Lockhart, [1898] 2 Ch. 1.
714. *Add. Annotation*:—As to (1) *Distd.* The City of Baroda (1926), 134 L. T. 576.
736. *Add. Annotation*:—*Apld.* Minter v. Priest, [1929] 1 K. B. 655.
740. *Add. Annotation*:—*Apprvd.* Minter v. Priest, [1929] 1 K. B. 655.
743. *Add. Annotation*:—*Consd.* Minter v. Priest, [1929] 1 K. B. 655.
754. *Add. Annotation*:—As to (2) *Refd.* Minter v. Priest, [1929] 1 K. B. 655.
757. *Add. Annotation*:—*Consd.* Minter v. Priest, [1929] 1 K. B. 655.
759. *Add. Annotation*:—*Apprvd.* Minter v. Priest, [1929] 1 K. B. 655.
763. *Add. Annotation*:—*Apld.* Minter v. Priest, [1929] 1 K. B. 655.
- 805a. —.—.—Completed drafts of documents [settled by counsel] in support of an application for the fiat of the A.-G. to counterclaim

## PART III. SECT. 4, SUB-SECT. 7.

*af. Deponent on application for security for costs—Production of documents referred to in affidavit.*—COLLEGE BRAND CLOTHES CO., LTD. v. BROWN & FITZPATRICK, [1928] 2 D. L. R. 502; [1928] 1 W. W. R. 778; 23 Alta. L. R. 363.—CAN.

## PART III. SECT. 5, SUB-SECT. 1.

525 ii. —.—.—HAMILTON v. STREET (1850), 1 Gr. 327.—CAN.

525 iii. —.—.—Documents supporting case.—Or repelling defendant's case.—As a general rule pltf. in equity is entitled to a discovery, not only of that which constitutes his own title, but also of whatever is material to repel the case set up by deft.; & as a part of that discovery, to the production of such documents as are material for the same purpose.—LAWLOR v. MURCHISON (1852), 3 Gr. 553.—CAN.

*fi.* —.—.—In an action on a policy of insurance against liability for damages, to recover the amount of a judgment which the insured had paid & which had been recovered against them in an action in which the insurance co. had conducted the defence:—*Held*: pltf. were entitled on discovery to know all that was done by the insurance co. in defending the action & to see all papers & documents connected therewith, & also were entitled to the benefit of all investigations made, & opinions obtained, by the co.—WILLIAMS v. LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 1 W. W. R. 1023.—CAN.

## PART III. SECT. 5, SUB-SECT. 3.

577 iii. —.—.—BRADBURY v. M.

FATT & CARMAN (1884), 1 Man. L. R. 92.—CAN.

583 i. *Possession of agent—Agency must be established—Pay-in slips in hands of banker.*—A bank, retaining pay-in slips which have accompanied payments into a customer's account, does not hold them as the agent of the customer, who, consequently, will not be ordered in an action to which he is a party to produce them as documents in his possession or power. In such an action the ct. also declined to make any order relating to those documents under Evidence Act, 1915, s. 89.—LIEVER v. MAGUIRE, [1928] V. L. R. 262; [1928] Argus L. R. 169.—AUS.

*sg. Documents not produced at first hearing—Official records needed to assist court—Leave granted to admit at later stage.*—Where a party has not produced at the first hearing, as required by Ord. 13, r. 1, the documents in his possession or power on which he relies, the leave of the ct. under r. 2, admitting them at a later stage, should not ordinarily be refused if the documents are official records of undoubted authenticity which may assist the ct. to decide rightly the issues before it.—GOPKA RAMAN ROY v. ATAL SINGH (1929), 1 L. R. 56 Ind. App. 119.—IND.

## PART III. SECT. 5, SUB-SECT. 5.—F.

*sh. General rule.*—In the case of public documents there is a common law right of inspection, but that right must necessarily be exercised within certain limits. The right ought to be restricted to those persons who can prove themselves to be interested, & there are documents which, for reasons of State, ought not to be

dislosed.—*Re* FITZGERALD, [1925] 1 I. R. 42.—IR.

*aj. Register of titles to land kept under Local Registration of Title (Ireland) Act, 1891 (c. 66).*—The above register is a public register, & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] 1 I. R. 42.—IR.

## PART III. SECT. 6.

*o i.* —.—.—May be dispensed with.—The master has jurisdiction to provide, in an order for directions which calls for the production of documents, that "the service of a notice to produce such documents be dispensed with & that the service of a copy of this order upon the solrs. of the respective parties shall have the same effect as the service of a notice to produce."—ROYAL TRUST CO. v. CANADIAN PACIFIC RY. CO., [1925] 4 D. L. R. 772; [1925] 3 W. W. R. 571.—CAN.

## PART III. SECT. 9, SUB-SECT. 1.—A.

*ri.* —.—.—Letter dictated by solicitor—& reply thereto.—*Held*: privileged.—MERCHANTS BANK v. MOFFATT (1876), 6 P. R. 348.—CAN.

*rii.* —.—.—Notes of evidence taken during arbitration.—*Held*: not privileged from discovery & inspection in a subsequent action between the same parties.—EAST TAMARI CO-OPERATIVE DAIRY CO. v. NORNEN, [1928] N. Z. L. R. 395.—N.Z.

## PART III. SECT. 9, SUB-SECT. 1.—C. (a).

*si.* —.—.—KEEP BROS. v. BIRCH & BRADSHAW, [1928] N. Z. L. R. 360.—N.Z.

for revocation of a patent are privileged documents, & defts. are not bound to produce them for inspection by pltfs.—*VIGNERON-DAHL (BRITISH & COLONIAL), LTD. v. PETTIT* (1925), 69 Sol. Jo. 693; 42 R. P. C. 431.

821. *Add. Annotation*:—*Refd.* *Minter v. Priest*, [1929] 1 K. B. 655.

823. *Add. Annotation*:—*As to (1) Apld.* *The City of Baroda* (1926), 134 L. T. 576.

874a. ———.]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery:—*Held*: (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—*THE CITY OF BARODA* (1926), 134 L. T. 576; 70 Sol. Jo. 1044; 17 Asp. M. L. C. 27.

891a. ———.]—In obedience to general instructions issued by the Port of London Authority to the masters of their vessels that, in the event of a casualty, the circumstances of the occurrence were to be reported on a printed form supplied for the purpose, the master of one of the Authority's dredgers reported the details of a collision with a sailing barge belonging to pltfs. The form was headed, "Confidential report for the information of the Authority's solr. . . ." The report was sent to the master's superior officers, who passed it on to the manager of the Authority's insurance department, & he in turn sent it to the solrs. who acted for the Authority's underwriters. Pltfs. contended that the report must be produced:—*Held*: there having been a collision it was to be anticipated that there would be litigation, & although the report went through various

hands, it was made for the purpose of being put before the solrs.; the report therefore complied with the tests laid down by *BUCKLEY, L.J.*, in *Birmingham & Midland Motor Omnibus Co. v. London & North Western Ry. Co.*, No. 394, ante, & was privileged from production.—*THE HOPPER NO. 13*, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

*Annotation*:—*Distd.* *The City of Baroda* (1926), 134 L. T. 576.

905. *Add. Annotation*:—*Refd.* *The Hopper No. 13*, [1925] P. 52.

933. *Add. Annotation*:—*Consd.* *Minter v. Priest*, [1929] 1 K. B. 655.

941. *Add. Annotation*:—*Refd.* *Minter v. Priest*, [1929] 1 K. B. 655.

1039a. ———.]—*GREENWOOD v. ROTHWELL* (1844), 7 Beav. 291; 13 L. J. Ch. 226; 2 L. T. O. S. 496; 49 E. R. 1077.

1087a. ———.]—*Deed pleaded*.—*PENARTH HARBOUR, DOCK & Ry. Co. v. CARDIFF WATERWORKS Co* (1860), 7 C. B. N. S. 816; 29 L. J. C. P. 230; 1 L. T. 551; 6 Jur. N. S. 912; 8 W. R. 215; 141 E. R. 1036.

*Annotation*:—*Consd.* *Price v. Harrison* (1860), 8 C. B. N. S. 617.

1090a. *S. P. A.-G. OF PRINCE OF WALES v. LAMBE* (1848), 11 Beav. 213; 17 L. J. Ch. 154; 10 L. T. O. S. 498; 12 Jur. 386; 50 E. R. 798.

1144. *Add. Citation*:—1 Leach, 300, n.

*Add. Annotation*:—*Refd.* *R. v. Elworthy* (1867), 37 L. J. M. C. 3.

1197. *Add. Annotation*:—*Refd.* *Seddon v. Commercial Salt Co.*, [1925] Ch. 187.

1198. *Add. Annotation*:—*Refd.* *Waterhouse v. Barker* (1924), 132 L. T. 15.

1212. *Add. Annotation*:—*Consd.* *Isaacs v. Cook*, [1925] 2 K. B. 391.

1218. *Add. Annotation*:—*Consd.* *Isaacs v. Cook*, [1925] 2 K. B. 391.

1223. *Add. Annotation*:—*As to (2) Refd.* *Brown v. Dagenham Urban District Council*, [1929] 1 K. B. 737.

1283a. ———.]—*AKT. FÜR AUTOGENE ALUMINIUM SCHWEISSUNG v. LONDON ALUMINIUM CO., LTD.* (No. 2) (1921), 38 R. P. C. 361.

1285. *Add. Annotation*:—*Mentd.* *Re Southerden, Adams v. Southerden*, [1925] P. 177.

#### PART III. SECT. 9, SUB-SECT. 1.— C. (b).

807 ii. ———.]—*Letter included in—Not privileged*.—*MOFFATT v. HANGAR*, [1923] N. Z. L. R. 448.—N.Z.

#### PART III. SECT. 9, SUB-SECT. 1.— F. (a).

856 i. *No privilege—Litigation not contemplated*.—*SMITH v. C. N. Ry.* (Alta.), [1926] 2 D. L. R. 372.—CAN.

g i. ———.]—*Report of local manager—To head office of insurance company*.—*Held*: privileged.—*GRAIN CLAIMS BUREAU, LTD. v. CANADIAN SURETY CO. (Man.)*, [1927] 4 D. L. R. 297; [1927] 2 W. W. R. 407.—CAN.

#### PART III. SECT. 9, SUB-SECT. 1.— F. (b) ii.

e i. *S. P. STEPHENSON v. E. D. & B. C. R. (Alta.)*, [1926] 2 D. L. R. 680.—CAN.

e ii. ———.]—*Reports of claims agent*.—*STEPHENSON v. E. D. & B. C. R. (Alta.)*, [1926] 2 D. L. R. 680.—CAN.

886 ii. ———.]—*LAURENSEN v. WEL-LINGTON CITY CORPN.*, [1927] N. Z. L. R. 510.—N.Z.

#### PART III. SECT. 9, SUB-SECT. 1.— F. (c).

a. *Citation*:—For "[1908] S. C. 335" read "[1909] S. C. 335."

#### PART III. SECT. 9, SUB-SECT. 1.—H.

924 i. *Privileged—Communication with view to compromise—Copy not retained by solicitor*.—*Held*: although the occasion on which the document was written was not privileged, the document, owing to its nature & effect, was privileged from production.—*MOFFATT v. HANGAR*, [1923] N. Z. L. R. 448.—N.Z.

924 ii. ———.]—*Stipulation in event of failure to agree*.—Negotiations carried on "without prejudice," & with a view to the settlement of an action, & all letters & communications arising out of such negotiations, are privileged from production.—*BLACK v. OCEAN ACCIDENT & GUARANTEE CO. (Man.)*, [1926] 2 D. L. R. 985; [1926] 1 W. W. R. 883.—CAN.

#### PART III. SECT. 9, SUB-SECT. 4.

1116 ii. ———.]—*SYDNEY CHEESE & BUTTER FACTORY ASSOCN. v. BROWN* (1900), 19 P. R. 152.—CAN

#### PART III. SECT. 9, SUB-SECT. 5.

1132 i. *Objection attaches to production not discovery*.—*MILLER v. MERCER CO., LTD.* (1893), 15 P. R. 276.—CAN.

b i. ———.]—*Not taken away by Alberta Evidence Act, R. S. A., 1922 (c. 87), ss. 3, 7*.—*CAMPBELL v. WOODS, IRVIE, & THE CANADIAN PRESS (Alta.)*, [1926] 2 D. L. R. 805; [1926] 2 W. W. R. 99.—CAN.

#### PART III. SECT. 9, SUB-SECT. 8.

f i. ———.]—*HELLET v. SOUTH AFRICAN RAILWAYS & HARBOURS* (1927), 48 N. L. R. 65.—S. AF.

o. *Citation*:—For "[1908] S. C. 335" read "[1909] S. C. 335."

sk. *Publication against public policy—Objection by Attorney-General*.—Where, in an action to which a State is a party, the State objects to produce for inspection documents which are in fact State papers, a statement by the A.-G. for that State, that their production to the public interests is conclusive & an answer to an application for an order for inspection.—*GRIFFIN*

## Part IV.—Interrogatories.

1314. *Add. Annotation*:—As to (1) **Consd. Sutherland v. British Dominions Land Settlmt. Corpn.**, [1926] Ch. 746.

1343. *Add. Annotation*:—**Mentd. Jarvis v. Surrey County Council**, [1925] 1 K. B. 554.

1345. *Add. Annotation*:—**Mentd. Jarvis v. Surrey County Council**, [1925] 1 K. B. 554.

1360. *Add. Annotation*:—**Mentd. Soviet Republics Union v. Belaiew** (1925), 134 L. T. 64.

r. STATE OF SOUTH AUSTRALIA (1925), 36 C. L. R. 378.—AUS.

## PART III. SECT. 12.

o i. —.j.—The party who has obtained an order for production of documents may insist on obedience to that part of the order which requires the documents produced to be deposited with the prothonotary.—**BLOOMFIELD v. MONARCH, ETC., Co.** (No. 1), [1927] 1 W. W. R. 140; *affd.*, [1927] 3 D. L. R. 335; [1927] 2 W. W. R. 196; 36 Man. L. R. 603.—CAN.

## PART IV. SECT. 1.

1314 vii. —.j.—With respect to the scope of an examination for discovery, the practice is now settled in favour of a full examination "touching the matters in question in the action," & is not confined to matters respecting which discovery might have been sought under the old Chancery practice in England.—**HARVEY v. CANADIAN PACIFIC RY. CO. & HURST ENGINEERING & CONSTRUCTION CO., LTD.**, [1928] 1 D. L. R. 696; [1928] 1 W. W. R. 187; 22 Sask. L. R. 361.—CAN.

ri. —.j.—Under r. 328 a foreign plff. has not a *prima facie* right to be examined for discovery at his place of residence. The place & manner of his examination are matters to be determined by the ct., having regard to what is "just & convenient."—**SWEENEY v. MANUFACTURERS HOLDING CORPN.**, [1924] 2 D. L. R. 296; 54 O. L. R. 250.—CAN.

rii. —.j.—*Temporary absence*—**Rules** 270, 272, 275.—**ABRAMSON v. UNITED STATES FIRE INSURANCE CO.**, [1927] 1 D. L. R. 834; [1927] 1 W. W. R. 252; 21 Sask. L. R. 372.—CAN.

## PART IV. SECT. 2, SUB-SECT. 1.

si. *Probate of will.*—Probate Rules, 1916, r. 32, makes provision for discovery of documents but not for discovery by interrogatories.—**IN THE WILL OF DENIS**, [1928] V. L. R. 266; [1928] Argus L. R. 136.—CAN.

## PART IV. SECT. 3.

f (p. 184) i. —.j.—Rule 267 (Sask.) provides that a person for whose immediate benefit an action is prosecuted or defended shall be regarded as a party for the purpose of examination in discovery, but where a party to the action wishes to avail himself of the rule & the pleadings do not disclose that the action has been brought for the immediate benefit of the person sought to be examined, the registrar is not in a position to say that the party seeking the appointment is entitled to examine such person, & he should therefore not issue an appointment without an order of the ct. or a judge.—**JOHNSON v. HAWKES**, [1924] 3 D. L. R. 524; [1924] 2 W. W. R. 965.—CAN.

f (p. 184) ii. —.j.—In order to obtain an order for the examination for discovery of a person who is not a party to the action, appct. must show that plff. in whose name the action was brought is not really plff., but that the person whose examination is asked for is the real plff. & that the action is being prosecuted for his benefit.—**CANADIAN CREDIT MEN'S TRUST ASSOCN. v. MORTON**, [1925] 1 W. W. R. 772.—CAN.

f (p. 184) iii. —.j.—An order is necessary for the examination for discovery under rule 267 of a person for whose immediate benefit an action is prosecuted, or defended.—**IMPERIAL LUMBER YARDS, LTD. v. McMANUS**, [1928] 2 D. L. R. 150; [1928] 1 W. W. R. 409; 22 Sask. L. R. 278.—CAN.

sm. *Person for whose immediate benefit action defended—Beneficiary under will—Action against trustees.*—In an action against trustees under a will to rescind a contract for the sale of property of the estate:—*Held*: a beneficiary who was entitled to the rents & profits of such property, whether sold or not, was not "a party for whose immediate benefit the action was defended," & was not examinable for discovery.—**WOOLWORTH CO. v. POOLEY**, [1925] 2 W. W. R. 481.—CAN.

g (p. 185) i. —.j.—*Co-defendant not actively defending.*—Where plffs. sued C. & G. to recover the balance of the purchase-price of land, & C. did not defend otherwise than by delivering demand of notice, & G. alleged that C. shared in a secret commission paid by one of the plffs. to procure G. to enter into the agreement of purchase:—*Held*: G. was not a person "adverse in interest" to C. so as to make C. examinable for discovery by G. under r. 234.—**HEGLER v. MACNAB**, [1924] 3 D. L. R. 501; [1924] 2 W. W. R. 649.—CAN.

m (p. 185) i. *Counterclaim for balance of account—Assignment from assignee of insolvent stockbroker.*—*Held*: the stockbroker was examinable, at the instance of plff., under r. 285, O. J. Act.—**CARNEGIE v. COX** (1886), 11 P. R. 311.—CAN.

s (p. 186) i. *Employee.*—In order to be examinable for discovery under r. 234 an employee of a party must have been directly connected with the transaction in issue, not merely as a witness, but because of the character of his employment.—**WEISS v. SCHIESSEL (Alta.)**, [1926] 1 W. W. R. 154.—CAN.

s (p. 186) ii. —.j.—*Does not include minister of Crown.*—**R. (PROVINCIAL TREASURER OF ALBERTA) v. SMITH**, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—CAN.

e (p. 186) i. —.j.—Under County Ct. Ord. 8, r. 17, an infant, a party to an action, may be examined by the opposite party for discovery before the trial.—**LANCASTER v. VAUGHAN** (1924), 33 B. C. R. 159.—CAN.

e (p. 186) ii. —.j.—An infant plff., who is competent to testify at the trial, is subject to examination for discovery.—**WATSON v. MOTOR LIVERY CO. (Alta.)**, [1926] 1 W. W. R. 652.—CAN.

i (p. 186) i. —.j.—Def., in an action by a corpn., has a right to select the officer of the corpn. whom he will examine.—**TRINITY COLLEGE v. LEVINTER**, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—CAN.

i (p. 186) ii. —.j.—In an action for libel against the publishers of a newspaper, wherein the only questions in issue were those of malice & damages, an order was made designating an officer of deft. co. as its officer to be examined for discovery as to matters affecting damages.—**KART**

v. STAR PUBLISHING CO., [1925] 1 W. W. R. 774.—CAN.

e (p. 187) i. —.j.—*Held*: an officer of the railway co.—**GORDANIER v. C. N. R.** (1904), 15 Man. L. R. 1.—CAN.

m (p. 187) i. —.j.—*Street foreman.*—*Held*: not an officer examinable for discovery.—**WEBSTER v. TORONTO CORPN.** (1892), 15 P. R. 21.—CAN.

n (p. 187) i. —.j.—*Fire warden.*—*Held*: an officer examinable for discovery.—**KING LUMBER MILLS v. CANADIAN PACIFIC RY. CO.** (1912), 19 W. L. R. 950; 17 B. C. R. 26; 2 D. L. R. 345.—CAN.

s (p. 188) i. —.j.—*Whether limited to officers employed when cause of action arises.*—The plff. having examined for discovery, under rule 266, an officer of each of the two deft. cos., applied for leave to examine, as servants, two other men who at the time of the accident in question were employed by one deft., a contracting co., & at the time of the application were employed by the other deft., a railway co.:—*Held*: the leave should be given, but, in view of the facts disclosed in the material filed, plff. should be allowed by this order to examine only one of said servants, she to elect which one. Rule 266 did not limit the examination to officers & servants who were employed by the corpn. when the cause of action arose.—**HARVEY v. CANADIAN PACIFIC RY. CO. & HURST ENGINEERING & CONSTRUCTION CO., LTD.**, [1928] 1 D. L. R. 696; [1928] 1 W. W. R. 187; 22 Sask. L. R. 361.—CAN.

e (p. 188) i. —.j.—An order may be made for the examination of a deft. corpn. by its officer outside the jurisdiction. The question is one of convenience.—**CAYEN v. CANADIAN PACIFIC RY. CO.**, [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—CAN.

f (p. 188) i. —.j.—In an action against a landlord for damages for illegal distress, the bailiff not being a party to the action is not examinable for discovery.—**HARVEY v. SYLVIA COURT, LTD.**, [1924] 3 W. W. R. 849.—CAN.

sp. *Minister of Crown.*—*Held*: not an officer within r. 250.—**R. (PROVINCIAL TREASURER OF ALBERTA) v. SMITH**, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—CAN.

## PART IV. SECT. 4.

m i. —.j.—While a judge or master in chambers has jurisdiction to direct that a party shall not examine an opposite party for discovery until the examining party has himself made discovery of documents, such jurisdiction should be exercised only under special circumstances.—**MILLER v. GREAT WEST NATURAL GAS CORPN., PAGE HERSEY IRON TUBE & LEAD CO. v. GREAT WEST NATURAL GAS CORPN.** (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—CAN.

sr. *After amendment of pleadings.*—If a party, after all discovery ordered has been made, desires to amend his pleadings & then desires to have a further examination for discovery, this can be granted by a judge or master under r. 234.—**MILLER v. GREAT WEST NATURAL GAS CORPN., PAGE HERSEY**



- 1422.** *Add. Annotation* :—**Refd.** Wakefield v. Board (1928), 45 R. P. C. 261.
- 1442a.** —. —. —. —.]—Deft., a shipowner, was sued by the cargo owners & charterers for non-delivery of the cargo. Deft. alleged that the non-delivery was caused by perils of the sea excepted in the charterparty & bill of lading :—**Held** : interrogatories asking plffs. whether the cargo was insured, & if so, with whom, by whom, & to what amount, were irrelevant & inadmissible.—**BOLCKOW, VAUGHAN & Co. v. YOUNG** (1880), 42 L. T. 690; 4 Asp. M. L. C. 301.
- 1444.** *Add. Annotation* :—**Consd.** Sutherland v. British Dominions Land Settlmt. Corp., [1926] Ch. 746.
- 1462a.** —. —. —. —.]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.* :—**Held** : the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—**THE NEDENES** (1924), 41 T. L. R. 243.
- 1464.** *Add. Annotation* :—**Refd.** Perlak Petroleum Maatschappij v. Deen (1923), 93 L. J. K. B. 158.
- 1465.** *Add. Citations* :—93 L. J. K. B. 158; 130 L. T. 234.  
*Add. Annotation* :—**Refd.** La Radiotechnique v. Weinbaum, [1928] Ch. 1.
- 1521.** *Add. Annotation* :—**Mentd.** Cassidy v. Daily Mirror Newspapers, [1929] 2 K. B. 331.
- 1531.** *Add. Annotation* :—**Consd.** Isaacs v. Cook, [1925] 2 K. B. 391.
- 1532.** *Add. Annotation* :—**Refd.** Aga Khan v. Times Publishing Co., [1924] 1 K. B. 675.
- 1549.** *Add. Annotation* :—**Refd.** Tournier v. National Provincial & Union Bank of England, [1924] 1 K. B. 461.
- 1555.** *Add. Annotations* :—**Refd.** Aga Khan v. Times Publishing Co., [1924] 1 K. B. 675.  
**Mentd.** Sutherland v. Stopes (1924), 41 T. L. R. 106.
- 1571.** *Add. Annotations* :—**Refd.** Aga Khan v. Times Publishing Co., [1924] 1 K. B. 675.  
**Mentd.** Sutherland v. Stopes (1924), 41 T. L. R. 106.
- 1625a.** —. —. —. —.]—In an action for infringement of a patent, defts. alleged prior user by V., & prior publication by J. :—**Held** : (1) defts. alleging that the prior user was by machine, they ought to state whether any such machine existed, & if so, whether any such machine was in their possession, custody, or power, & the present address of V.; (2) defts. alleging that the prior publication was by document, they ought so to state & sufficiently identify the document & the present address of J.—**GENERAL ELECTRIC Co. (1900), LTD. v. SAFETY LIFT & ELEVATOR Co. (1903)**, 21 R. P. C. 109.
- 1626a.** *Prior publication.*—**GENERAL ELECTRIC Co. (1900), LTD. v. SAFETY LIFT & ELEVATOR Co., No. 1625a, ante.**
- 1631a.** *Chemical composition of infringing substance.*—**SHARPE & DOHME, INCORPORATED BOOTS PURE DRUG Co., LTD. (1927)**, 44 R. P. C. 69.
- 1631b.** *General question as to process used in manufacturing infringing article.*—**Held** : inadmissible.—**OSRAM LAMP WORKS v. POPE'S ELECTRIC LAMP Co., LTD. (1914)**, 31 R. P. C. 313, C. A.
- 1677a.** —. —. —. —.]—**Ownership—Alleged fraudulent representations by seller.**—In an action against an auctioneer for the price of a horse sold by him for pltf., deft., who pleaded fraud, was not allowed to ask whether the horse was pltf.'s & if so how did it become his.—**SIVIER v. HARRIS** (1876), Bitt. Prac. Cas. 98; 2 Char. Cham. Cas. 54.
- 1690a.** *As to ingredients of infringing articles.*—

**IRON TUBE & LEAD CO. v. GREAT WEST  
NATURAL GAS CORPN. (1923), 20 Alta.  
L. R. 379; [1924] 1 W. W. R. 1100.—  
CAN.**

**PART IV. SECT. 5, SUB-SECT. 6.**

**1416 v. —.**]—A party cannot be required to state what course he proposes to adopt at the trial, or to disclose the names of his informants or witnesses. —**NEMEROVSKY v. McBRIDE** (No. 2) (Man.), [1927] 1 D. L. R. 148; [1926] 3 W. W. R. 436.—**CAN.**

**PART IV. SECT. 5, SUB-SECT. 7.**

1432 iii. —.]—If the answers to an interrogatory can disclose anything which can be fairly said to be material to enable pltf. either to maintain his own case, or to destroy that of his adversary, the interrogatory ought to be answered, but if the answers cannot be material for either of these purposes deft. ought not to be ordered to answer.

—HEIDNER & Co. v. THE HANNA NIELSEN, [1926] 2 D. L. R. 1059;

[1926] 2 W. W. R. 397; 37 B. C. R. 207.—CAN.

1434 iv. —.]—Under r. 423 imported into county ct. procedure, interrogatories must be directly relevant to the matters in issue.—*DI NOLLO DRUG DEPOT v. HARTT BOOT & SHOE CO.* (Man.), [1926] 2 W. W. R. 92.—**CAN.**

**PART IV. SECT. 5, SUB-SECT. 9.**

**1457 i. How far admissible.**—In a suit to set aside an agreement on the ground of fraudulent misrepresentations:—*Held*: deft. was entitled to ask for the substance of the conversations.—**WEST v. CONWAY** (1923). 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—**AUS.**

1457 ii. — .]—WEDIN v. ROBERTSON (1907), 7 W. L. R. 72. — CAN.

**PART IV. SECT. 5, SUB-SECT. 12.**

1476 i. — *Material in part.*]—On an application to set aside interrogatories, on the ground that they were prolix, oppressive, & unnecessary:—*Held*: they should be set aside as a

whole, even though some of them, taken by themselves, might be unobjectionable.—LYTE v. CURREY, [1927] V. L. R. 472; 49 A. L. J. 47; [1927] Argus L. R. 353.—AUS.

**PART IV. SECT. 5, SUB-SECT. 15.-- F.**

**1590 i.** *Document in hands of third party.*—On examination for discovery the party being examined can be asked to tell what are the contents of a document not under his control & not produced to him.—**HARRISON v. KING**, [1925] 1 D. L. R. 1072, [1925] 1 W. W. R. 649; 21 Alta. L. R. 373.—**CAN.**

**PART IV. SECT. 5, SUB-SECT. 15.— G.**

1596 ii. —.]—HILLMAN v. IMPERIAL BANK OF CANADA, [1926] 3 D. L. R. 192; [1926] 2 W. W. R. 276; 20 Sask. L. R. 507 — CAN.

**PART IV. SECT. 5, SUB-SECT. 15.—I.**

1614 i. *Partnership accounts*.]—  
MACDONALD v. MCARTHUR (1887), 4  
Man. L. R. 56.—CAN.

COCA COLA Co. v. DUCKWORTH & Co.  
45 R. P. C. 225.

1695. *Add. Annotation*:—**Mentd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

1705a. **Shares—Refusal of company to register transfer—Grounds for refusal.**—Art. 27 of a co.'s arts. of assocn. was as follows: "The directors may without assigning any reason decline to register any transfer of shares not fully paid up made to any person not approved by them or made by any member jointly or alone indebted or under any liability to the co." Pltf. was the holder of 10,000 partly paid cumulative preference shares of £1 each in the co., & in Dec. 1925, executed a transfer of 8,000 of these shares to a transferee. Registration of the transfer was refused, & pltf. brought an action claiming a declaration that deft. co. was not entitled to refuse registration of the transfer & rectification of the co.'s register accordingly. Earlier in 1925 the co. had issued debentures secured by a debenture trust deed, in which the co. covenanted with the trustees that it would not in regard to 100,000 preference shares register until the shares were fully paid any transfer of any of them to any proposed transferee not approved by the trustees, & would not, except with the previous written consent of the trustees, release any of the holders of these shares from any money payable or which might become payable in respect of such shares. Pltf. alleged by his statement of claim that deft. co. had wrongfully refused to register the transfer, that the directors did not exercise any proper dis-

cretion under the arts., & that they had abdicated their discretion by entering into the above covenant with the trustees. Defts. by their defence claimed to have exercised the discretion under the art. *bonâ fide*. Pltf. sought to interrogate deft. co. by asking: (1) Whether the co. said that the directors had declined registration in exercise of the power to decline to register any transfer made to any person not approved by them or in exercise of the power to decline to register any transfer by a member jointly or alone indebted to the co.; (2) whether they said that the transfer was to a person of whom the directors did not approve; (3) whether they said pltf. was in fact a person jointly or alone indebted to the co.; (4) whether the debenture trust deed was referred to by any one at any meeting at which the question of registering the transfer was discussed:—**Held**: all the interrogatories were proper to be allowed. Deft. co. was not entitled to refuse to state which of the grounds mentioned in the art. the directors had acted under, although it might refuse to say what reasons influenced them in exercising their discretion upon that ground.—**SUTHERLAND (DUKE) v. BRITISH DOMINIONS LAND SETTLEMENT CORPN., LTD.**, [1926] Ch. 746; 95 L. J. Ch. 542; 135 L. T. 732.

1710. *Add. Citations*:—93 L. J. K. B. 158; 130 L. T. 234.

*Add. Annotation*:—**Refd.** La Radiotechnique v. Weinbaum (1927), 137 L. T. 638.

1817. *Add. Annotation*:—**Refd.** Cavendish v. Cavendish (1925), 42 T. L. R. 134.

#### PART IV. SECT. 5, SUB-SECT. 15.—R.

1700 i. *Agency—Whether representations made by agent—Name of agent—Disallowed.*—**WEST v. CONWAY** (1923), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—**AUS.**

1709 i. *Wrongful dismissal—Acts justifying dismissal.*—Pltf., a doctor, sued defts. for wrongful dismissal. He had been dismissed on the ground that he had recommended, as a suitable person to be a nurse in defts.' hospital, a woman with whom he had lived in adultery. Upon an application to compel pltf. to answer questions as to his relations with the woman:—**Held**: he was bound to answer such as referred to his alleged adultery.—**JNES v. CALGARY GENERAL HOSPITAL** (1899), 4 Terr. L. R. 58.—**CAN.**

sa. *Action for alienation of affections.*—On examination for discovery in an action for alienation of affections, the wife having been deft.'s housekeeper, he may be required to answer the question whether he ever heard from her of any objection by her husband to her working at his house.—**HARRISON v. KING**, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 649; 21 Alta. L. R. 373.—**CAN.**

#### PART IV. SECT. 6, SUB-SECT. 1.

sk. *Under Marginal Rules, rr. 344 (2), 318.*—**ESQUIMALT & NANAIMO RY. CO. v. GRANBY CONSOLIDATED MINING, SMELTING & POWER CO. (B. C.)**, [1926] 3 W. W. R. 240.—**CAN.**

#### PART IV. SECT. 8, SUB-SECT. 1.

1732 xiv. —.—]—The person examined must make full disclosure of information which he has secured from others that has a bearing on the issue; & he must give his belief, if any, with reference to the matters in issue; this

belief may be founded on information which he has secured from others, but he must state what it is; & he may also give his reasons therefor.—**KIRKPATRICK v. CANADIAN PACIFIC RY. CO. (Sask.)**, [1926] 3 D. L. R. 542; [1926] 2 W. W. R. 861.—**CAN.**

1748 ix. —.—]—Where a party is interrogated as to matters in issue done by his agents or servants, or done or omitted in their presence in the course of their employment, he is bound to obtain the information they have, & does not sufficiently answer by saying that he does not know & has no information on the subject.—**DUNLOP DRUG DEPOT v. HARTY BOOT & SHOE CO. (Man.)**, [1926] 2 W. W. R. —.—**CAN.**

1748 x. —.—]—A witness on his examination for discovery as an officer of a co. must not only answer as to his individual knowledge, but must also inquire & get such information as he can from the other officers & servants of the co. who have personal knowledge of the facts.—**GOODBUN v. MITCHELL**, [1928] 3 D. L. R. 709; [1928] 2 W. W. R. 594; 37 Man. L. R. 451.—**CAN.**

1748 xi. —.—]—A party under examination for discovery is bound to impart any information touching the matters in question which at the time discovery is sought he has either of his own knowledge or has actually received from third persons.—**CULVER & CULVER v. LLOYDMINSTER TOWN**, [1928] 2 D. L. R. 93; [1928] 1 W. W. R. 406; 22 Sask. L. R. 314.—**CAN.**

1748 xii. —.—]—**ROGERS v. BIRLEY**, [1928] 3 W. W. R. 584.—**CAN.**

#### PART IV. SECT. 8, SUB-SECT. 3.

1803 i. *Officers acting as solicitor—Claim of professional privilege.*—**Held**: the fact that the chancellor of pltf.

corpn was a member of the firm acting for the corpn. was not a reason for refusing to allow him to be examined: if he had as solr. information which pltf. corpn. had the privilege of preventing him from disclosing, the privilege could be exercised when a question was put as to something which he had learned in his professional capacity.—**TRINITY COLLEGE v. LEVINTER**, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—**CAN.**

1806 i. *Officer's information acquired in course of employment—Whether answers amount to admissions by company.*—**Qu.**: whether, when an officer of a co. has been examined for discovery under rule 266 (3), answers of his which are qualified as being based on information acquired by him from the co.'s servants & other officers can be read against the co. as an admission.—**ANWEILER v. G. T. P. Lt. Co.**, [1928] 3 D. L. R. 626; [1928] 2 W. W. R. 511.—**CAN.**

q1. *Equivalent to examination of corporation.*—Under the present Alberta rules as to examination for discovery, there is no room for making any distinction between individual parties & corpn. parties, & the examination of a corpn.'s officer, selected in accordance with r. 250, is the examination of the corpn.—**CAVEN v. CANADIAN PACIFIC RY. CO.**, [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—**CAN.**

#### PART IV. SECT. 8, SUB-SECT. 4.—B.

1813 xii. —.—]—The provisions of Canada Evidence Act, R. S. C., 1906 (c. 145), & Alberta Evidence Act, R. S. A., 1922 (c. 87), that a witness shall not be excused from answering a question on the ground that the answer may tend to criminate him, do not apply to an examination for discovery, but his common law right to refuse to

1855. *Add. Annotation*:—*Refd.* *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461; *Minter v. Priest*, [1929] 1 K. B. 655.
1895. *Add. Annotation*:—*Refd.* *British Thomson-Houston Co. v. British Insulated & Helsby Cables*, [1924] 2 Ch. 160.

answer a question tending to criminate does apply; & on discovery the person examined may on such ground refuse to answer the question whether he has committed adultery.—*HARRISON v. KING* (No. 2), [1925] 3 D. L. R. 395, [1925] 2 W. W. R. 407; 21 Alta. L. R. 381; *revsq.*, [1925] 2 D. L. R. 1111, [1925] 2 W. W. R. 276.—CAN.

**PART IV. SECT. 8, SUB-SECT. 4.—C.**

1847 i. *Communication with legal adviser or agents—Contract of employment or agency not established.*—*Re U.S.A. v. MAMMOTH OIL CO.*, [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307.—CAN.

t i. —.—.]—While members of the Executive Council of the Irish Free State, sued as corpn. solo, are liable to the ordinary orders for discovery by

way of interrogatories & discovery of documents, & to orders for better discovery on filing inadequate answers to interrogatories, a claim to privilege made by them on grounds of public interest is conclusive, & must be recognised as paramount, on the same principle as that underlying the recognition of a similar claim by the British Minister under the royal prerogative.—*LEEN v. PRESIDENT OF THE EXECUTIVE COUNCIL, ETC.*, [1926] 1 R. 456.—IR.

**PART IV. SECT. 8, SUB-SECT. 4.—D.**

st. *Disclosure of name of person on whose behalf privilege claimed.*—Privilege may be claimed without disclosing to the ct. the name of the client or person on whose behalf it is claimed.—*Re U.S.A. v. MAMMOTH OIL CO.*, [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*,

[1925] 2 D. L. R. 66; 56 O. L. R. 307.—CAN.

**PART IV. SECT. 9.**

1877 iv. —.—.]—Where the only question which appert. for an order for re-examination for discovery wished put was one which the party to be examined was entitled to refuse to answer, & his counsel stated that he would instruct him to refuse to answer it, the order was refused.—*HARRISON v. KING* (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407, 21 Alta. L. R. 381.—CAN.

**PART V. SECT. 3.**

sw. *Conditions precedent to order—Decision that questions properly put & refusal to answer questions on further examination.*—*HANSON v. GLENNER LTD.*, [1925] 3 D. L. R. 189 — CAN.

## DISTRESS.

## Part II.—Distress for Rent.

43. For the paragraph "Defts. were partners in business . . . for his quiet tenancy" substitute:—"Defts. were partners in business & one of them, in the name of the firm, signed a warrant of distress authorising a broker to levy off the goods of pltf. for rent due 'to me.' Pltf. held under a lease from the Board of Ordnance & defts. were sureties for pltf.:—*Held*: it was an illegal distress because the rent was not due to the partner authorising the distress but to the Board of Ordnance."
- Add. Annotations*:—*Refd.* The Koursk, [1924] P. 140; Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762. *Mentd.* Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
63. *Add. Annotation*:—*As to* (1) *Refd.* Carrington Manufacturing Co. v. Saldin (1925), 133 L. T. 432.
128. *Add. Annotation*:—*Refd.* Prout v. Hunter, [1924] 2 K. B. 736.
175. *Add. Annotation*:—*As to* (1) *Refd.* Conquer v. Boot, [1928] 2 K. B. 336.
234. *Add. Citation*:—*sub nom.* HUDSON v. SNELLGAR, 2 Roll. Rep. 212.
- 421a. ——— Agreement with one of two joint tenants.]—Premises were demised to two persons jointly: one of them hired from applts. a piano under a hire-purchase agreement:—*Held*: the piano was liable to distress for arrears of rent of the premises under Law of Distress Amendment Act, 1908 (c. 53), s. 4 (1), although the other of the joint tenants had not been a party to the hire-purchase agreement.—*GAMAGE (A. W.), LTD. v. PAYNE* (1925), 134 L. T. 222; 90 J. P. 14; 42 T. L. R. 138, D. C.
423. *Add. Annotation*:—*Distd.* Smart Bros., Ltd. v. Holt, [1929] 2 K. B. 303.
424. *Add. Annotation*:—*Distd.* Smart Bros., Ltd. v. Holt, [1929] 2 K. B. 303.
- 424a. ———.]—The tenant of a dwelling-house hired goods from pltf. under a hire-purchase agreement, by which he agreed to pay punctually the instalments & also the rent of the premises on which the goods might be. By a clause of the agreement, in case of any breach, the owners might, by written notice, forthwith determine the agreement, & thereupon neither party thereafter should have any rights under it. The instalments being in arrear, pltf. served on the hirer a notice terminating the agreement, & claiming a return of the goods. A distress was subsequently levied on behalf of the landlord, & the goods the subject of the hire-purchase agreement were seized. In an action by the owners for illegal distress, the county ct. judge gave judgment for pltf.:—*Held*: as soon as the notice terminating the agreement was given the right of the hirer to possession of the goods was at an end, & neither party to the agreement had any rights under it. When the distress was levied there was therefore no hire-purchase agreement in force relating to the goods, & they were not at that time "comprised in any hire-purchase agreement" within Law of Distress Amendment Act, 1908 (c. 53), s. 4, & the distress was illegal.—

## PART II. SECT. 3, SUB-SECT. 2.—A.

44 viii. ———.]—When a new lease is substituted for an existing one, the right of distress for rent due under the prior lease is at an end.—*CRYSTALL v. OLSEN (Alta.)*, [1927] 3 D. L. R. 85; [1927] 2 W. W. R. 35.—*CAN.*

d i. ———.]—*Alleged lessors unable to enter into lease—Unincorporated body.*—*CANADA MORNING NEWS, LTD. v. THOMPSON*, [1928] 4 D. L. R. 628; [1928] 3 W. W. R. 35.—*CAN.*

## PART II. SECT. 4, SUB-SECT. 7.—B. (a) i.

160 vii. ———.]—A mtgee. of land who under an attornment clause distrains for arrears of interest or principal due under his mtge. can make a valid distress only on the goods & chattels of the mtgor, or his assigns, & the word "assigns" does not include a purchaser from the mtgor, under an executory contract of sale of land, even though such purchaser be actually in possession.—*KLENMAN v. ISMAN*, [1924] 2 D. L. R. 146; 1 W. W. R. 883; 18 Sask. L. R. 171.—*CAN.*

160 viii. ———.]—*Distress Act, R. S. A., 1922 (c. 97), s. 6—Effect.*—*BANK OF MONTREAL v. LYON (Alta.)*, [1927] 4 D. L. R. 1012; [1927] 3 W. W. R. 520.—*CAN.*

## PART II. SECT. 5, SUB-SECT. 1.

sb. Goods sold after seizure for taxes & left in charge of city chamberlain.]—*Held*: liable to seizure for rent due to

the original landlord.—*LANGTON v. BACON* (1859), 17 U. C. R. 559.—*CAN.*

## PART II. SECT. 5, SUB-SECT. 3.

261 ii. ———.]—The remedy of distress is not available against the Crown, & the interest of the Crown cannot be affected by any distress made by the landlord.—*A.-G. FOR CANADA v. GORDON*, [1925] 1 D. L. R. 654; 56 O. L. R. 48.—*CAN.*

## PART II. SECT. 5, SUB-SECT. 4.—C.

285 ii. ———.]—L. was the tenant of deft., & carried on a public trade of salesman of motor supplies, & he also acted as agent of pltf. co., receiving goods manufactured by pltf. for sale or return, subject to certain conditions. These goods were delivered under a memorandum, which on its face was a delivery note, to L. as agent. A consignment account was kept showing the goods sold & in stock. This was signed by L. as consignment agent, & given from time to time to pltf. L. fell into arrears with his rent, & secretly left the premises. Deft. distrained on L.'s property on the premises, including goods which had been delivered by pltf. to L. on sale or return.—*Held*: under the memorandum the goods delivered to L. by pltf., & unsold, remained the property of pltf.; at the time of distress L. was tenant of deft. & had custody of pltf.'s goods upon the premises; the goods were exempt from liability to distress, & deft. was ordered to deliver them to

pltf.—*PERDRIAU RUBBER CO., LTD. v. SADEK*, [1928] S. R. Q. 141.—*AUS.*

## PART II. SECT. 5, SUB-SECT. 4.—D.

sd. Market.—Goods m.]—Where pltf. was not using premises as a market, but simply as a shop in which to offer, in the ordinary way, goods purchased to be sold for a profit:—*Held*: a claim for exemption, on the ground that the goods seized were in a public market for sale, failed.—*BENT v. McDOUGALL* (1881), 2 R. & G. 468; 2 C. L. T. 262.—*CAN.*

## PART II. SECT. 5, SUB-SECT. 10.

st. Not grain removed & sold under execution before claim for rent made.]—*DOUGLAS v. CARRINGTON* (1914), 29 W. L. R. 90; 7 W. W. R. 59; 7 Sask. L. R. 80; 20 D. L. R. 919.—*CAN.*

## PART II. SECT. 5, SUB-SECT. 11.

h i. ———.]—*BLOEMFONTEIN MUNICIPALITY v. JACKSONS, LTD.*, [1929] App. D. 266.—*S. AF.*

q i. ———.]—*Goods assigned.*—*FARR v. ANNABLE*, [1926] 2 D. L. R. 127; 58 O. L. R. 387.—*CAN.*

## PART II. SECT. 5, SUB-SECT. 12.—A.

405 i. General rule.—Goods not privileged.]—When a lessee sublets premises to a sub-lessee, the head landlord may distrain upon the goods of the sub-lessee for all the rent owing by the lessee.—*Re CHAMBERLAIN & PEERLESS BUMPER & ACCESSORIES, LTD.*, [1924] 4 D. L. R. 298.—*CAN.*

- SMART BROS., LTD. v. HOLT, [1929] 2 K. B. 303; 98 L. J. K. B. 532; 141 L. T. 268; 45 T. L. R. 504.
435. *Add. Annotation* :—**Mentd.** Gregg v. Richards, [1926] Ch. 521.
517. *Add. Annotation* :—**Mentd.** Weld v. Petre, [1929] 1 Ch. 33.
523. *Add. Annotation* :—**Consd.** Drughorn v. Moore, [1924] A. C. 53.
524. *Add. Annotation* :—**Refd.** Tredegar Viscount v. Harwood, [1929] A. C. 72.
581. *Add. Annotation* :—**Refd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
583. *Add. Annotation* :—**As to (1) Refd.** Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
623. *Add. Annotation* :—**Mentd.** Purnell v. Roche, [1927] 2 Ch. 142.
- 654a. ———— **Distress by landlord in person.**—There is nothing in the above Act to prevent an uncertificated landlord from distraining in person.—JACKSON v. BENNAN (1893), 37 Sol. Jo. 282.
723. *Add. Annotation* :—**Expld.** Davies v. Property & Reversionary Investments Corp., Ltd., [1929] 2 K. B. 222.
731. *Add. Citation* :—after Ex. Ch. add "*reusg.* S. C. *sub nom.* LEYLAND v. TANCRED (1850), 16 Q. B. 664."
732. *Add. Annotation* :—**As to (1) Folld.** Davies v. Property & Reversionary Investments Corp., [1929] 2 K. B. 222.
735. *Add. Annotation* :—**Mentd.** Sorrell v. Smith, [1925] A. C. 700.
- 737a. ————,]—(1) A notice of distress which specifically sets out each article that has been distrained, or which, while not specifically setting them out, is to be interpreted as meaning that all the goods on the premises have been distrained, is good.
- (2) A notice which, after setting out certain specified articles, continued "& all other goods upon the premises (unless specially exempt) sufficient to satisfy the amount of this distress"—**Held** : bad.—DAVIES v. PROPERTY & REVERSIONARY INVESTMENTS CORP., [1929] 2 K. B. 222; 98 L. J. K. B. 515; 141 L. T. 256; 93 J. P. 167; 45 T. L. R. 434; 73 Sol. Jo. 252; 27 L. G. R. 500, D. C.
738. *Add. Annotation* :—**As to (2) Refd.** Davies v. Property & Reversionary Investments Corp., [1929] 2 K. B. 222.
739. *Add. Annotation* :—**As to (3) Refd.** Davies v. Property & Reversionary Investments Corp., [1929] 2 K. B. 222.
923. *Add. Annotation* :—**Mentd.** The Jupiter (No. 3) (1927), 137 L. T. 333.

## PART II. SECT. 5, SUB-SECT. 13.

sj. *Conditional Sales Act—Interest of seller under conditional sale.*—A landlord is not entitled to distrain on the interest of a seller in goods bought by the tenant under a conditional sale agreement, even though the above Act has not been complied with.—BELL & SCHIESSEL v. JACOBSON & WEITZER, [1925] 2 D. L. R. 393; [1925] 1 W. W. R. 913.—CAN.

## PART II. SECT. 6, SUB-SECT. 1.

440 iv. ————,]—ALBERT v. STOREY, [1925] 4 D. L. R. 374.—CAN.

440 v. ————,]—The attornment clause in question herein, which was contained in an agreement for the sale of land, held not to be affected by the acceleration clause in said agreement; & therefore, since there was no rent due under the attornment clause at the time the distress, with respect to which this action was brought, was made, the distress was bad & the purchaser entitled to damages therefor.—BURRELL v. WATT & HARDINGE, [1928] 3 D. L. R. 505; [1928] 2 W. W. R. 482.—CAN.

## PART II. SECT. 6, SUB-SECT. 5.

456 iii. ————,]—A distress for rent, when made at night, is invalid even as against a third party, when the tenant has not waived the objection.—ROACH v. LAPPAS, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—CAN.

461 i. *Waiver of irregularity by tenant—Whether distress valid as against third party.*—ROACH v. LAPPAS, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—CAN.

## PART II. SECT. 7.

496 i. *General rule—Land out of which rent issues.*—The distress was void *ab initio* on the ground that it was not made on the premises in respect to which the rent was claimed.—BURRELL v. WATT & HARDINGE, [1928] 3 D. L. R. 505; [1928] 2 W. W. R. 482.—CAN.

## PART II. SECT. 9, SUB-SECT. 3.

566 iii. ————,]—Where there was a crop payment lease, & prior to the lease there was a mtgo. over the property & the mtgees. had exercised

their right to take possession :—**Held** : the lessor had no right to distrain.—R. v. SULLIVAN, [1924] 2 ————,]—CAN. Crim. Cas. 44.—CAN.

## PART II. SECT. 12, SUB-SECT. 3.—A.

779 iv. ————,]—MACDONALD v. CUMMINGS (1892), 8 Man. L. R. 406.—CAN.

## PART II. SECT. 12, SUB-SECT. 3.—C. (e)

833 i. *Effect of—Property seized under Absconding Debtors Act.*—Property seized upon a warrant issued under the above Act is not liable to the landlord for a year's rent, though notice of his claim is given to the sheriff before the delivery of the property to the trustees.—STANTON v. JOHNSTON (1858), 4 All. 54.—CAN.

## PART II. SECT. 13, SUB-SECT. 2.

880 i. *Bar to action for rent—Goods insufficient to satisfy rent.*—The existence of a distress is, until the sale, an answer to an action for rent, regardless of whether the distress be sufficient or not to satisfy the amount for which the levy is made.—FAWELL v. ANDREWF, [1917] 2 W. W. R. 400; 34 D. L. R. 12; 10 Sask. L. R. 162.—CAN.

## PART II. SECT. 13, SUB-SECT. 10.

sl. *On goods sold under conditional sale by wife to husband—Bailliff's sale a mere pretence.*—BARLOW v. BREEZE (B. C.), [1917] 1 W. W. R. 270.—CAN

## PART II. SECT. 17, SUB-SECT. 1.—C.

ai. ————,]—To entitle a landlord to follow & distrain & sell goods which his tenant has removed from the demised premises it is necessary that the rent should be actually due at the time of the tenant's removal of the goods. If no rent is due at the date of removal, & the landlord follows & distrains & sells the goods for rent subsequently falling due, the distress & sale are illegal & the landlord is liable in damages.—ZUROVINSKI v. DUKE, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—CAN.

ei. ————,]—*Necessity for.*—A landlord on becoming aware that his tenant who was in arrear with his rent was removing the *invecta et illata*, prevented

the tenant from doing so by force without any application to the ct. for an attachment or interdict :—**Held** : the landlord's hypothec was inoperative until an order of attachment was obtained from the ct., & the landlord was not entitled to prevent forcibly the removal of the *invecta et illata*.—REIDY v. JOHNSON (1923), 44 N. L. R. 190.—S. AF.

## PART II. SECT. 17, SUB-SECT. 1.—F.

1000 iv. ————,]—A lease to C. provided that in case the lessee attempted to abandon the premises or to remove his goods & chattels so that there would not be a sufficient distress for three months' rent, the rent for the current & ensuing three months should immediately become due. The premises were in fact occupied by a co., of which C. was a shareholder & official, though no assignment of the lease was made. The co. proceeded to abandon the premises & to remove its goods, & the lessor distrained :—**Held** : this clause did not justify a seizure of the co.'s goods, upon which there was no right to distrain for rent not in arrear.—CRYSTAL, LTD. v. WILLARD KITCHEN, LTD., [1924] 2 D. L. R. 1051; 2 W. W. R. 344.—CAN.

## PART II. SECT. 19, SUB-SECT. 3.

mi. ————,]—A distress is excessive when the value of the goods seized was unreasonably greater than the amount of rent due, & in such a case, nominal damages will be presumed.—ROWAN v. COSTELLO, [1928] 3 D. L. R. 744; [1928] 2 W. W. R. 313.—CAN.

## PART II. SECT. 19, SUB-SECT. 4.—C. (a).

ti. ————,]—DICKS v. BARBOUR (P. E. I.), [1927] 4 D. L. R. 478.—CAN.

## PART II. SECT. 19, SUB-SECT. 4.—E. (b).

gi. ————,]—*Held* : a replevin bond with one surety was sufficient.—TAYLOR v. BURKE (1861), 10 N. B. R. (5 All.) 191.—CAN.

## PART II. SECT. 19, SUB-SECT. 4.—E. (c) i.

si. ————,]—P. brought a replevin action, & the goods were de-

**1266a.** — **Evidence—Terms of tenancy.**—If a tenant suing his landlord for a wrongful distress does not put in the agreement of tenancy, the jury, as against him, may infer its terms from his own admission or his own

evidence in the case.—**COWNE v. CORDERY** (1862), 10 W. R. 347.

**1271.** *Add. Annotation* :—**Refd. Elliott v. Boynton**, [1924] 1 Ch. 236.

## Part III.—Distress for Rates.

**1378.** *Add. Annotation* :—**Mentd. L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council** (1925), 95 L. J. K. B. 255.

**1379.** *Add. Annotation* :—**Mentd. L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council** (1925), 95 L. J. K. B. 255.

**1396.** *Add. Annotation* :—**Refd. L. C. C. v. Hackney B. C.**, [1928] 2 K. B. 588.

**1409.** *Add. Citation* :—2 B. R. A. 949.

**1412.** *Add. Citation* :—1 B. R. A. 450.  
*Add. Annotation* :—**Consd. L. C. C. v. Hackney B. C.**, [1928] 2 K. B. 588.

**1413.** *Add. Annotation* :—**Folld. L. C. C. v. Hackney B. C.**, [1928] 2 K. B. 588.

**1413a.** — — — — —.]—Where a rate, duly made & confirmed, has been levied in respect of a vacant building, occupied by a caretaker only, not being held in readiness for use, & not being fitted for any use, & a distress warrant has been issued by justices in enforcement of payment of such rate, an action of replevin will not lie; the jurisdiction of the justices depends simply on occupation within the parish, & not on beneficial occupation.—**LONDON COUNTY COUNCIL v. HACKNEY BOROUGH COUNCIL**, [1928] 2 K. B. 588; 97 L. J. K. B. 694; 139 L. T. 407; 92 J. P. 138; 44 T. L. R. 592; 26 L. G. R. 366.

livered to him. The judgment in his favour was reversed, but return of the goods or damages for their detention was neither demanded nor adjudged :—**Held** : as the obligees could in the replevin action have claimed & obtained an order for return of the goods or for damages, they could not claim it in an action on the replevin bond.—**PETRIE v. RIDEOUT**, [1925] 1 D. L. R. 1078; [1925] S. C. R. 347.—**CAN.**

a i. — — — — —.]—**(Goods liable to seizure.)** **MARTIN v. PASSARINI**, [1928] 1 D. L. R. 636; 59 N. S. R. 460.—**CAN.**

**PART II. SECT. 19, SUB-SECT. 4.—**  
**F. (a).**

p (p. 380) i. — **Breach of covenant forfeiting rent claimed—Admissible.**—In an action of replevin by a sub-lessee against the lessor, plff. is entitled to prove, on cross-examination of the lessor, that there had been a breach of a covenant in the lease which forfeited the rent claimed, the sub-lessee being entitled to the benefit of such covenant, though there has been no assignment of the lease in writing.—**RIGNIETTE v. HEBERT** (1905), 37 N. B. R. 68.—**CAN.**

st. **Slay of proceedings When ordered.**—**DEWHURST v. MCCOTTIN** (1870), 17 Gr. 572.—**CAN.**

**PART II. SECT. 19, SUB-SECT. 4.—**  
**F. (e).**

a i. — **Effect of.**—**ALEXANDER v. COWIE** (1880), 19 N. B. R. (3 P. & B.) 599.—**CAN.**

**PART II. SECT. 19, SUB-SECT. 4.—**  
**F. (f).**

sd. **Plaintiff ordered to return goods.**—Plff. obtained possession of goods by virtue of an order for replevin & subsequently discontinued his action :—**Held** : the ct. had power to order the return of the goods.—**PASSARINI v. MARTIN**, [1925] 2 D. L. R. 914; 58 N. S. R. 121.—**CAN.**

**PART II. SECT. 19, SUB-SECT. 5.—**  
**A. (a).**

**1259 i. Against landlord—Pleading.**—**SCOTT v. McCABE** (1871), 31 U. C. R. 220.—**CAN.**

so. **Whether proof of value of goods necessary—Value admitted by defendant accepted.**—**MARTIN v. PASSARINI**, [1928] 1 D. L. R. 636; 59 N. S. R. 460.—**CAN.**

sp. **Against bailiff & auctioneer—Right of defendants to protection of Magistrates Courts Act, 1908.**—Where a bailiff acting in good faith seizes goods belonging to A., under a distress warrant directed against B., & where an auctioneer at the request of the bailiff & in good faith sells such goods, both the bailiff & the auctioneer are entitled to the protection afforded by above Act.—**KRWENE v. BUCHLAND & SONS**, [1928] N. Z. L. R. 818.—**N.Z.**

**PART II. SECT. 19, SUB-SECT. 5.—**  
**A. (b).**

d i. — — — — —.]—Where a landlord follows & distrains & sells goods for rent subsequently falling due, & the distress & sale are illegal :—**Held** : the quantum of damages is the full value

of the goods lost to the tenant after allowing for depreciation, but exemplary damages cannot be awarded where the landlord considered that he was acting within his rights & did not act in a wanton or insolent manner in making the seizure.—**ZURUVINSKI v. DUKE**, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—**CAN.**

**PART II. SECT. 19, SUB-SECT. 5.—**  
**C. (a).**

a i. — — — — —.]—While it seems that an action for distraining for more rent than is due cannot be maintained without a tender of the sum that is actually due, this principle does not apply to an action for an excessive distress.—**ROWAN v. COSTELLO**, [1928] 3 D. L. R. 744; [1928] 2 W. W. R. 343.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 1.**

p i. — — — — —.]—Where a tenant under a lease has covenanted to pay all municipal taxes, the landlord, against whom the taxes are assessed, is a person liable therefor with the tenant under Mercantile Law Amendment Act, 1856, s. 5, & payment by the landlord to the creditor, the city, is a prerequisite to the landlord becoming entitled to the securities or to use the remedies of the city. But the city's right of distress is not a security under the Act, nor is it a remedy which, upon payment, the landlord can use.—**Re HINGSTON-SMITH, Ex p. MACPHERSON ESCATE**, [1924] 3 D. L. R. 844; 2 W. W. R. 1081; 34 Man. L. R. 312; 5 C. B. R. 41.—**CAN.**

1420. *Add. Annotation* :—**Refd.** Gateshead Assessment Committee v. Redheugh Colliery, [1925] A. C. 309.
1422. *Add. Annotation* :—**Refd.** Palmer v. Crone, [1927] 1 K. B. 804.
1423. *Add. Annotation* :—**Refd.** Palmer v. Crone, [1927] 1 K. B. 804.
1424. *Add. Annotation* :—**Refd.** Pigg v. Weardale Union Tow Law Overseers (1923), 22 L. G. R. 17.
1431. *Add. Annotation* :—*As to* (2) **Refd.** R. v. North, *Ex p.* Oakey (1926), 43 T. L. R. 60.
1438. *Add. Annotation* :—*As to* (1) **Refd.** L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.
1462. *Add. Annotation* :—**Refd.** Palmer v. Crone, [1927] 1 K. B. 804.
1471. *Add. Annotation* :—*As to* (1) **Consd.** R. v. Norfolk JJ., *Ex p.* Porter (1926), 43 T. L. R. 53.
1472. *Add. Annotation* :—**Folld.** R. v. Norfolk JJ., *Ex p.* Porter (1926), 43 T. L. R. 53.
1484. *Add. Annotation* :—**Refd.** L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.
1489. *Add. Annotation* :—**Refd.** L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.
1491. *Add. Annotations* :—**Consd.** L. C. C. v. Hackney B. C., [1928] 2 K. B. 588. **Mentd.** Kingston Union v. Metropolitan Water Board, [1926] A. C. 331; Metropolitan Meat Industry Board v. Sheedy, [1927] A. C. 899.
1506. *Add. Annotation* :—*As to* (1) **Refd.** Palmer v. Crone, [1927] 1 K. B. 804.
1532. *Add. Citation* :—*sub nom.* BLETCHINGDON SURVEYOR v. DAND, 3 New Sess. Cas. 640.
1542. *Add. Citation* :—1 B. R. A. 570.
1548. *Add. Annotation* :—**Refd.** L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.
1582. *Add. Citation* :—*sub nom.* NEARE v. WALKER, 7 J. P. 143.
- 1588a. *Costs of distress—Power to levy.*—The power given to Comrs. of Sewers by Sewers Act, 1833 (c. 22), s. 55, to levy the costs of a distress is limited in the cases of distress for sums under £20 by Distress (Costs) Acts, 1817 (c. 93) & 1827 (c. 17).—*R. v. NORFOLK JJ., Ex p. PORTER* (1926), 96 L. J. K. B. 158; 136 L. T. 327; 91 J. P. 14; 43 T. L. R. 53; 70 Sol. Jo. 1198; 25 L. G. R. 44, D. C.; *sub nom.* R. v. SMITH, *Ex p.* PORTER, [1927] 1 K. B. 478.
1604. *Add. Citation* :—*R. v. LINDSEY*, Parts of, Lincolnshire, JJ., *Ex p.* Bower, 107 L. T. 170.

## Part IV.—Distress for Assessed Taxes.

1607. *Add. Annotations* :—**Refd.** R. v. Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250. **Mentd.** Ingle v. Farrand, [1927] A. C. 417.
1609. *Add. Annotation* :—*As to* (1) **Refd.** Glamorgan County Council v. Glassbrook, [1924] 1 K. B. 879.
1636. *Add. Annotation* :—**Refd.** Pickford v. Quirke, Pickford v. I. R. Comrs. (1927), 138 L. T. 500.

## Part V.—Distress for Tolls.

1638. *Add. Annotations* :—**Mentd.** Layzell v. Thompson (1926), 43 T. L. R. 58. *mouth-Swanage Motor Road & Ferry v. Harvey & Sons*, [1929] 1 Ch. 686.
1639. *Add. Annotation* :—**Mentd.** The Jupiter (No. 3) (1927), 137 L. T. 333.
1649. *Add. Annotations* :—**Mentd.** Aylott v. West Ham Corpn., Sisson v. Same (1926), 95 L. J. Ch. 533; Dennerley v. Prestwich U. D. C. (1929), 111 L. T. 602.
1653. *Add. Annotation* :—**Mentd.** The Jupiter (No. 3) (1927), 137 L. T. 333.

### PART III. SECT. 1, SUB-SECT. 4.—A.

1427 i. *By whom made—Collector.*—The right to serve notice & the right to receive payment of municipal taxes rest in the collector of taxes & not in the city, & the service of the notice is not a remedy of the city which, upon payment, the landlord is entitled to use against his tenant.—*Re HINGSTON-SMITH, Ex p. MACPHERSON ESTATE*, [1924] 3 D. L. R. 844; 2 W. W. R. 1081; 34 Man. L. R. 312; 5 C. B. R. 41.—**CAN.**

1427 ii. — *Under Village Act, R. S. S., 1920 (c. 88).*—The duties of the secretary-treasurer of a village under this Act do not include that of levying distress. Where no person is appointed by the Act for such purpose, the village must appoint some person when necessary, & where distress has been levied by a person not authorised, the village may subsequently ratify & adopt his acts.—*MANITOBA OIL PRODUCTS, LTD. v. LANGENBURG VILLAGE*, [1923] 4 D. L. R. 260; 3 W. W. R. 308.—**CAN.**

### PART III. SECT. 1, SUB-SECT. 6.—A. (b).

*sk. Measure of damages.*—The seizure of goods, worth over \$5,000 to

satisfy a debt of \$178 is an excessive seizure, & a village corpn. having made or ratified such an unauthorised seizure, was found liable in damages; & the measure of damages was the difference between the full value of the goods seized & the value of the goods necessary to be sold to realise the amount of the taxes & the incidental sts.—*MANITOBA OIL PRODUCTS, LTD. v. LANGENBURG VILLAGE*, [1923] 4 D. L. R. 260; 3 W. W. R. 308.—**CAN.**

### PART IV. SECT. 1.

*g i.* — — — — — *]*—Where several quarter sections are separately assessed, a seizure for taxes of goods belonging to a person other than the person taxed or owner of the land in possession thereof can be made only for the taxes owing with respect to the particular quarter section on which the goods are found.—*SPRINGBANK MUNICIPALITY v. WALKER*, [1925] 1 D. L. R. 925; [1925] 1 W. W. R. 697; 21 Alta. L. R. 344.—**CAN.**

*g ii.* — — — — — *]*—Under Municipal District Act, R. S. A. 1922 (c. 110), the right to seize chattels lying on the land taxed, but not belonging to the person taxed, is limited to the case in which the person assessed is in actual

occupation of the land.—*SCOTT v. MUNICIPAL DISTRICT OF WOODFORD (ALTA.)*, [1925] 4 D. L. R. 783; [1925] 3 W. W. R. 727; *affu.*, [1925] 2 W. W. R. 578.—**CAN.**

*sm. Right of sheriff to sell land—Insufficient distress.*—*DOE d. BEEL v. REAUMORE* (1831), 3 O. S. 243.—**CAN.**

*sn.* — — — — — *]*—*FOLEY v. MOODIE* (1858), 16 U. C. R. 254.—**CAN.**

*sp.* — — — — — *]*—*FRAZER v. MATTICE* (1860), 19 U. C. R. 150.—**CAN.**

*st. Sale of mortgaged land—Purchase by mortgagee—Right of mortgagee—To surplus.*—*Re GRANT* (1891), 7 Man. L. R. 468.—**CAN.**

*sv.* — — — — — *To whole security.*—*FARROW v. MASSEY-HARRIS CO., LTD.*, [1927] 3 D. L. R. 997; [1927] 2 W. W. R. 539; 21 Sask. L. R. 610.—**CAN.**

*sw.* — — — — — *Validity Failure to give notice to "persons interested."*—*STANDARD TRUSTS CO. v. HIRAM MUNICIPALITY*, [1927] 1 D. L. R. 1063; [1927] S. C. R. 50.—**CAN.**

*sx.* — — — — — *Notice to mortgagee of application for title sent to wrong address.*—*Howe v. KIPP*, [1927] 3 D. L. R. 1048; [1927] 2 W. W. R. 522; 21 Sask. L. R. 637.—**CAN.**

## Part VII.—Distress Damage Feasant.

- 1732a. ————.]—HARRINGTON v. RUSH (1709), 11 Mod. Rep. 219; Fortes. Rep. 255. Holt, K. B. 23; 88 E. R. 1000.
- 1732b. ————.]—OSWAY v. BRISTOW (1711), 10 Mod. Rep. 37; 88 E. R. 615.
1780. *Add. Annotation*:—*Refd. Back v. Daniels* (1924), 69 Sol. Jo. 160.

## Part VIII.—Distress for other Purposes.

1870. *Add. Citations*:—*sub nom. R. v. FORDHAM*, L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85.

### PART VI. SECT. 3, SUB-SECT. 1.

*sa. Imposition of hard labour*.—*Validity—Criminal Code*, s. 739 (2).]—*R. v. RILEY* (N. S.) (1905), 14 Can. Crim. Cas. 346.—CAN.

### PART VII. SECT. 5.

1782 i. *Failure to maintain fences—Cattle straying on to land*]—*BOLTON v. MACDONALD* (1891), 3 Terr. L. R. 269.—CAN.

### PART VII. SECT. 8, SUB-SECT. 1.—A.

o (p. 445) i. ————.]—*Notice—Under Stray Animals Act*.]—On an appeal from a summary conviction under the above Act for illegal impounding:—*Held*: the conviction should be quashed as the record did not show that the notice required by s. 34 was given to the poundkeeper.—*STAHN v. PEUFERT* (1922), 70 D. L. R. 285; [1922] 2 W. W. R. 835.—CAN.

### PART VII. SECT. 8, SUB-SECT. 1.—B.

1818 i. ————.]—*Under Stray Animals Act*, 1920, animals impounded must be placed in the pound provided by the municipal council under s. 9; & where a poundkeeper placed & kept horses upon a fenced quarter section owned by him & separated by a road allowance from the pound provided by the municipality & the fence being broken down, the horses escaped or were driven off:—*Held*: the municipality was liable under s. 9, as it must be taken to have assumed the risk of placing & keeping the horses in a place other than an authorised pound.—*SINWICK v. ELFROS*, [1924] 2 W. W. R. 755.—CAN.

### PART VII. SECT. 8, SUB-SECT. 1.—E.

k i. ————.]—Where under *Stray Animals Act*, 1915, s. 27 (1), the posting of notices of sale of impounded animals were not complied with:—*Held*: the sale amounted to a conversion & the poundkeeper, & the municipality employing him, were liable in damages, as (1) the posting of two notices within the municipality & one outside it was not a compliance with the Act; (2) where animals are branded, the poundkeeper is guilty of negligence in failing to mention the brands in the notices.—*LEACH v. MANTARIO RURAL MUNICIPALITY* No. 262 & MOIR, [1921] 1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25.—CAN.

k ii. ————.]—Where there is nothing indicating the presence of a

brand on an impounded animal the poundkeeper is not obliged to feel all over its body in search of a possible brand, in order properly to describe the animal in the prescribed advertisement.

The sale of an impounded horse by a poundkeeper:—*Held*: defective because notices of the impounding & of the sale had not been properly posted, & both the poundkeeper & the municipality which employed him were liable in conversion for the value of the horse at the time of sale.—*BROWN v. RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER & BRIELAND* (Man.), [1925] 1 W. W. R. 42.—CAN.

l i. ————.]—Where the posted & published notices of the impounding of an animal under *Stray Animals Act*, R. S. S., 1920, c. 121, the owner of the animal was unknown, did not describe the brand correctly & the description of the animal was insufficient to satisfy the requirements of sect. 26 (1) of the Act, it was held that the sale was invalid, & that the municipality & the poundkeeper were liable for the value of the animal, which was placed at the amount for which it was sold at said sale.—*MILLER AND MUTCH v. LOREBUCK AND KELLY RURAL MUNICIPALITY*, [1928] 4 D. L. R. 251; [1928] 2 W. W. R. 66; 22 Sask. L. R. 486.—CAN.

sd. *Payment of residue to owner—Domestic Animals Act*, 1921 (c. 50)—*Municipal District Act*, 1911 (c. 3).]—The effect of the amendment made by ss. 27, 28 of the former Act extends the period of twelve months provided by s. 213 of the latter Act, for application for payment to the owner of the residue of the proceeds of sale of an impounded animal, to twenty-four months from the date of sale.—*GOLLAN v. STERLING*, [1924] 3 W. W. R. 209.—CAN.

### PART VII. SECT. 8, SUB-SECT. 2.—A.

1838 ii. ————.]—*Payment by uncertified cheque*.]—The delivery of an uncertified cheque to the poundkeeper is not a "deposit of the amount claimed for damages" within *Stray Animals Act*, R. S. S., 1920, c. 124, s. 34 (1), even though the poundkeeper treats the cheque as cash. What the Act contemplates is the payment of money. The deposit of the money is a condition precedent to the right of the owner of the impounded animal, which is released under the sect., to institute proceedings against the person impounding it.—

*WILEY v. BOOKER*, [1928] 2 W. W. R. 329.—CAN.

### PART VII. SECT. 9.

st. *Conviction—Under Stray Animals Act*, 1920 (c. 124).]—Where the evidence showed that accused had been wrongfully convicted of an offence of unlawfully rescuing cattle under a provincial Act, in that he had merely made an attempt:—*Held*: (1) the offence, not being an indictable offence, could not be remitted to the magistrate to convict of an attempt under *Criminal Code*, s. 949; (2) s. 49 (d) of the above Act did not apply to the portion of the province within which the offence was charged to have been committed.—*R. v. GUTSKI* (1922), 69 D. L. R. 191; 38 Can. Crim. Cas. 139; [1922] 3 W. W. R. 540.—CAN.

### PART VII. SECT. 12.

g i. ————.]—*Measure of damages*.]—Damages were fixed on the basis of prices obtained at auction sales, for while it may be that prices paid at auction sales are not as large as are usually obtained at private sales, still the prices obtained at auction sales very often have a great deal to do with fixing the price of an animal in the community.—*SINWICK v. ELFROS*, [1924] 2 W. W. R. 755.—CAN.

g ii. ————.]—*Allowance for poundkeeper's fees & expenses*.]—In an action for damages for the conversion of animals illegally sold at a pound-sale, debts have no right to an allowance for the poundkeeper's fees or expenses.—*LEACH v. MANTARIO RURAL MUNICIPALITY* No. 262 & MOIR, [1921] 1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25.—CAN.

k i. ————.]—Pltf. impounded with a poundkeeper cattle which had come on to his land through a wire fence & claimed damages. The poundkeeper, without obtaining payment of the damages or security therefor, released the cattle to the owner on receipt of the latter's cheque, payment of which was stopped. On appeal by the owner the council of the municipality decided that the fence was not a lawful fence & that pltf. was not entitled to damages. Pltf. sued the poundkeeper & the municipality for the damages:—*Held*: pltf. was entitled as against both defts. to the damages claimed.—*JOHNSON v. MUNICIPAL DISTRICT OF BEAVER DAM*, [1925] 4 D. L. R. 299; [1925] 3 W. W. R. 369.—CAN.



# EASEMENTS AND PROFITS À PRENDRE.

## Part I.—Nature and Characteristics of Easements.

4. *Add. Annotations*:—*As to* (1) **Refd.** *Sack v. Jones*, [1925] Ch. 235. *Generally, Mentd.* *Brooke v. Bool*, [1928] 2 K. B. 578.
25. For “*Distinguished from running powers over railway.*” read “—.”
27. *Add. Annotations*:—**Refd.** *Simpson v. Weber* (1925), 133 L. T. 46; *Aldridge v. Wright*, [1929] 2 K. B. 117; *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138.
48. *Add. Annotations*:—**Refd.** *Back v. Daniels* (1924), 69 Sol. Jo. 160; *Hackney B. C. v. Metropolitan Asylums Board* (1924), 131 L. T. 136.
60. *Add. Annotation*:—*As to* (2) **Refd.** *Aldridge v. Wright*, [1929] 1 K. B. 381.
68. *Add. Annotation*:—*As to* (1) **Refd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.
69. *Add. Annotation*:—**Refd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.

## Part III.—Creation of Easements.

89. *Add. Annotation*:—**Refd.** *Lord Strathcona S.S. Co. v. Dominion Coal Co.* [1926] A. C. 108.
97. *Add. Annotations*:—**Expld. & Distd.** *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. **Consd.** *York Corpn. v. Leatham*, [1924] 1 Ch. 557. **Refd.** *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355. **Mentd.** *Brown v. Dagenham U.D.C.*, [1929] 1 K. B. 737.
98. *Add. Annotations*:—**Consd.** *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. **Refd.** *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.
112. *Add. Annotation*:—*Generally, Mentd.* *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
124. *Annotations*:—For “**Mentd.** *Poulton v. Moore* (1913), 83 L. J. K. B. 875,” read “**Consd.** *Poulton v. Moore* (1913), 83 L. J. K. B. 875.”
139. *Add. Annotation*:—*As to* (1) **Distd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.
- 147a. *According to intention of parties—Common approach—Not effective until approach cleared.*—*SWAN v. SINCLAIR*, No. 515, *post*.
166. *Add. Annotation*:—*As to* (1) **Expld.** *Aldridge v. Wright*, [1929] 2 K. B. 117.
173. *Add. Annotation*:—**Refd.** *Aldridge v. Wright* (1929), 98 L. J. K. B. 582.
178. *Add. Annotation*:—*As to* (2) **Refd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.
- 181a. ——— **Right of way struck out of draft conveyance.**—*CLARK v. BARNES*, No. 196a, *post*.
182. *Add. Annotation*:—**Refd.** *Clark v. Barnes*, [1929] 2 Ch. 368.
183. *Add. Annotations*:—**Consd.** *Gregg v. Richards* (1926), 95 L. J. Ch. 209. **Refd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.
185. *Add. Annotation*:—**Consd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.
- 186a. ——— ——— In the conveyance to pltf. of a house & land there was an express grant to her of a way described as coloured green on the plan indorsed on the deed. The part coloured green was four feet wide & formed part of a wider roadway running along the back of the adjoining houses to the back premises of pltf.'s house. At the time of the conveyance a right of access for vehicles to pltf.'s back premises over the whole roadway was enjoyed with the house conveyed. The habendum in the conveyance was “to hold same with the benefit of all such easements & privileges in the nature of easements as are now subsisting in respect of the property hereby conveyed.” Pltf. claimed that the right to use the whole width of the roadway for the purpose of access of vehicles to her back premises passed to her under her conveyance:—**Held**: that the right claimed

### PART I. SECT. 2, SUB-SECT. 2.

20 v. ———.]—*GAPES v. FISH*, [1927] V. L. R. 88; 48 A. L. T. 161; [1927] Argus L. R. 111.—**AUS.**

### PART II.

76 i. *Distinguished from profits à prendre.*—*BRATT v. TOWNSHIP OF MALDEN*, [1927] 1 D. L. R. 1116; 60 O. L. R. 102.—**CAN.**

80 i. *Distinguished from licence.*—*WHIPP v. MACKAY*, [1927] 1 L. R. 372.—**IR.**

### PART III. SECT. 1, SUB-SECT. 1.

sa. *Public right.*—Though the public cannot acquire ownership of a land, it can acquire over it an easement  
**J.S.**

by grant.—*USSAN KASIM SAIT v. SECRETARY OF STATE FOR INDIA* (1923), 1 L. R. 47 Mad. 116.—**IND.**

### PART III. SECT. 1, SUB-SECT. 2.—A.

98 i. *Must not be ultra vires.*—A corpn. having agreed to grant an easement to lay pipes over certain land:—**Held**: the granting of such easement being quite consistent with the purposes for which the corpn. was authorised to hold land, it was competent for the corpn. to make such grant.—*BANKS PENINSULA ELECTRIC POWER BOARD v. AKAROA BOROUGH COUNCIL*, [1923] N. Z. L. R. 880.—**N.Z.**

98 ii. ——— *Quebec Public Utility Commission.*—**Held**: the above com-

mission had no power to create a servitude, or any other right, in property of a “public utility.”—*MONTREAL TRAMWAYS CO. v. MONTREAL-NORD VILLE*, [1921] A. C. 994.—**CAN.**

### PART III. SECT. 1, SUB-SECT. 5.

sb. *Devise of adjoining plots to two drivees—Condition for maintenance of right of way.*—*VANSICKLE v. KELLY* (1877), 42 U. C. R. 271.—**CAN.**

### PART III. SECT. 1, SUB-SECT. 6.—A.

- n. For “n” substitute “147a i.”
- o. For “o” substitute “147a ii.”
- p. For “p” substitute “147a iii.”

passed to pltf. by virtue of sect. 6 (2) of the above Act, there being no unequivocal "contrary intention" expressed in the deed within sect. 6 (4), sufficient to negative the passing of such right.—*GREGG v. RICHARDS*, [1926] Ch. 521; 95 L. J. Ch. 209; 135 L. T. 75; 70 Sol. Jo. 443, C. A.

190. *Add. Annotation* :—As to (1) *Refd. Gregg v. Richards* (1926), 95 L. J. Ch. 209.

195. *Add. Annotation* :—As to (1) *Distd. Aldridge v. Wright*, [1929] 2 K. B. 117.

196a. — *Right reputed to be enjoyed with land.*

—Pltf. at the date of the action was the owner in fee simple of certain plots of land in the village of C. in the county of Sussex, numbered on the Ordnance Survey Map 634, a portion of 635 & 636; also of a strip of land coloured brown on the plan on the conveyance to pltf., leading from the plot 634 & part of 635 to the high road running from C. to a common. Deft. became in Oct. 1926, the owner of other plots, numbered 652, 653, 654 & 618 in the same parish. Pltf. had previously purchased the strip coloured brown in 1925, the parcels being as follows: "All that strip of land leading from W. Fields"—which were the plots 652 & 653—"to the high road running from the village of C. to . . . C. common in the parish of P. . ."; the *habendum* being to pltf. in fee simple "to the use that the vendor his heirs & successors in title owner or owners . . . of the hereditaments coloured red"—which were the plots 634, 653 & 652—" . . . shall have full right & liberty . . . to pass & repass . . . over and along the piece of land coloured brown on the said plan . . ." Pltf. subsequently, in June, 1925, purchased at an auction sale the plots referred to above, 634, part of 635, 652 & 653; deft. also bought the plots numbers 618 & 654. The plots purchased by pltf., being Lot 24 in the sale, were described as including a right of way for all purposes over the brown strip. By that purchase pltf., having become the legal owner of the dominant & servient tenements, the right of way became merged. Pltf. subsequently contracted to sell plots 653 & 652 to deft. In the draft conveyance submitted to pltf.'s solrs. by deft.'s solrs., a right of way was inserted in favour of the purchaser (deft.) over pltf.'s land to the brown strip. This was struck out by the solrs. for the vendor (pltf.); & no grant was shown in the conveyance ultimately executed by the parties in Oct. 1926, of any right of way. Pltf. found later that deft. was passing over a track in plot 631 in order to make use of the brown strip for the purpose of taking farm carts from his own land over pltf.'s property to the high road; & he claimed a right of way. Pltf. sought a declaration that deft. was not entitled to any such right of way as he claimed, & further that the conveyance to deft. of plots 652 & 653 might be rectified by the express exclusion therefrom of any implied right of way which might arise under Law of Property Act, 1925 (c. 20), s. 62:—*Held*: though the right to use the track was one reputed to be enjoyed with the

land, that was plots 653 & 652, & to that extent deft. was entitled to succeed, yet pltf. was entitled to have the conveyance rectified. The evidence showed that neither pltf. nor deft. intended that any such right should pass on the conveyance of plots 653 & 652. The conveyance therefore would be rectified by the insertion therein of proper words limiting the implication of any right of way which might arise under the Law of Property Act, 1925 (c. 20), s. 62.—*CLARK v. BARNES*, [1929] 2 Ch. 368.

204a. — *Intention of parties—No evidence of intention to determine status quo.*

—Two adjoining houses, originally belonging to one person, subsequently became vested in pltf. & deft. respectively. For some years before the severance of ownership, a creeper had been growing in what was now deft.'s garden with its foliage spreading along the wall of pltf.'s house. Also, again before the severance of ownership, the post of a gate leading from what was now deft.'s garden had been fastened by plugs & nails into pltf.'s wall. The growth of the creeper had from time to time reached pltf.'s gutter, & he had been obliged to cut it back. Pltf. brought an action for trespass in respect of the two above-mentioned acts, & the county ct. judge found both acts to be trespasses:—*Held*: both the growth of the creeper on pltf.'s wall & the fastening of the gate to pltf.'s wall would amount to trespasses, unless they could be justified by the existence of an easement; the implied reservation of an easement in a grant of property depends on the common intention of the parties; here there was no evidence that it was not the intention of the parties to the conveyance that creeper & gate-post should remain, & therefore an easement in each case was impliedly reserved; there was, however, a duty on the part of the grantee to use care that the grantor's property was not unduly interfered with; deft. in allowing the creeper to obstruct pltf.'s gutter had failed to use necessary care, & as to this part of the case the award as to damages must stand.—*SIMPSON v. WEBER* (1925), 133 L. T. 46; 41 T. L. R. 302, D. C.

210a. — *Matter of convenience & not necessity.*

—Where real property is severed by the grant of a part of it, there can be no implied reservation, in favour of the property retained, of an easement of convenience; but only of an easement of necessity.

Two adjoining messuages in a terrace, Nos. 28 & 30, in common ownership, were leased on a ninety-nine years' lease, which, in 1896, was assigned to G., who in 1901 assigned the lease of No. 30 to pltf.'s predecessors in title, without reserving expressly in favour of No. 28, the property retained, any right of way across the garden of No. 30. In 1904 G. assigned the lease of No. 28 to deft.'s predecessor in title. Pltf. claimed in the county ct. an injunction restraining deft. from crossing on a path across the garden of No. 30 from a gate in the fence between the two properties, to a gate opposite, which led

into a passage-way giving access to the road in front of the terrace. Deft. claimed a right of footway across this path by reason of her occupation of No. 28. The county ct. judge found that both at the time when there was unity of possession of Nos. 28 & 30, & from the time when the lease of No. 30 had been assigned, the path had always been used for the limited purpose of removing dust & refuse & for bringing in coal, & for no other purpose. But he did not find whether this user was by pltf.'s leave & courtesy, or whether there was an apparent & continuous easement from some certain time. Confusing the dates & thinking that the lease of the alleged dominant tenement, No. 28, was first assigned, when in fact the lease of No. 30 was first assigned, he held that although deft. had no unrestricted right of way across the path, yet, in 1901, there was an implied grant of an apparent quasi-easement enuring to deft. for the limited purpose of removing refuse & bringing in coal, & he made a declaration to that effect:—*Held*: there was no evidence that on the grant in 1901 to the pltf.'s predecessor in title there was an implied reservation of a right of way in favour of deft. across the garden of pltf. for the removal of dust & refuse & the delivery of coal.—**ALDRIDGE v. WRIGHT**, [1929] 2 K. B. 117; 98 L. J. K. B. 582; 141 L. T. 352, C. A.

215. *Add. Annotation*:—*As to* (1) **Consd.** Aldridge v. Wright, [1929] 2 K. B. 117.

216. *Add. Annotation*:—*As to* (1) **Refd.** Aldridge v. Wright, [1929] 1 K. B. 381.

223. *Add. Annotations*:—**Refd.** Sack v. Jones, [1925] Ch. 235; Aldridge v. Wright, [1929] 2 K. B. 117; Vanderpant v. Mayfair Hotel Co., [1930] 1 Ch. 138.

226. *Add. Annotation*:—*As to* (4) **Consd.** Aldridge v. Wright, [1929] 1 K. B. 381.

229. *Add. Annotations*:—**Apld.** Sack v. Jones, [1925] Ch. 235. **Refd.** Simpson v. Weber (1925), 133 L. T. 46; Aldridge v. Wright, [1929] 2 K. B. 117; Vanderpant v. Mayfair Hotel Co., [1930] 1 Ch. 138.

### PART III. SECT. 2, SUB-SECT. 1.—B.

223 i. *Whether reservation will be implied—Easement of necessity—Support—Subsequent sale by grantor.*—**NATIONAL TRUST CO. v. WESTERN TRUST CO.** (1912), 21 W. L. R. 571; 2 W. W. R. 667; 4 D. L. R. 455.—**CAN.**

### PART III. SECT. 2, SUB-SECT. 1.—C.

g i. ——— *Land bounded by private road.*—Pltf., a lessee, claimed to be entitled to a right of way over a private road existent at the time of the lease & maintained by the lessor, owner of adjoining lands, as one of the approaches from the highway to his own house, & permitted to be used by tenants in prior years without objection. The leased property as described in the lease did not embrace this road, but the lessee claimed that he & prior occupiers of the leased house had the use of it, & as one of the named boundaries was the roadway, the lease impliedly gave him a right of way over it.—*Held*: the lessee was not entitled to the right-of-way.—**BREADY v. MOLENNAN** (No. 2), [1924] 3 W. W. R. 924; 33 B. C. R. 460.—**CAN.**

g ii. ——— *Land bounded by lane.*—A conveyance or lease of land described as abutting on, or bounded by, a lane or right of way, or a conveyance by reference to a plan indicating that the land in fact abuts on, or is

bounded by, a lane or right of way, is equivalent to a grant to the conveyee or lessee of access to & fro over that lane or right of way, if the ownership of the same is vested in the conveyor or lessor.—**COWLSHAW v. PONSFORD** (1928), 28 S. R. N. S. W. 331; 45 N. S. W. W. N. 94.—**AUS.**

### PART III. SECT. 2, SUB-SECT. 1.—D.

k i. ——— *Right of way reserved to some grantees only.*—**MAUGHAN v. CASCI** (1884), 5 O. R. 518.—**CAN.**

284 i. *Conveyances not simultaneous—Right of way.*—**PHILLIPS v. ROSS**, [1926] 1 D. L. R. 605; 58 N. S. R. 326.—**CAN.**

### PART III. SECT. 3, SUB-SECT. 2.

sm. *The public.*—To a suit by a private person against the Govt. for a declaration of his ownership of a land, the acquisition of an easement over it by the public is no defence. Though the public cannot acquire ownership of a land, it can acquire over it an easement by prescription.—**URSAN KASIM SAIT v. SECRETARY OF STATE FOR INDIA** (1923), 1 L. R. 47 Mad. 116.—**IND.**

oi. ——— *In land of lessor.*—Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor, he may claim a right of easement based on im-

250. *Add. Annotation*:—*As to* (3) **Refd.** Aldridge v. Wright (1929), 98 L. J. K. B. 285.

253. *Add. Annotations*:—*As to* (1) **Apld.** Aldridge v. Wright, [1929] 2 K. B. 117. **Refd.** Simpson v. Weber (1925), 133 L. T. 46. *As to* (2) **Consd.** Aldridge v. Wright, [1929] 2 K. B. 117.

261. *Add. Annotation*:—*As to* (6) **Refd.** Aldridge v. Wright, [1929] 2 K. B. 117.

264. *Add. Annotation*:—**Refd.** O'Ceard v. Slough Trading Co., [1927] 2 K. B. 123.

267. *Add. Annotation*:—**Refd.** Vanderpant v. Mayfair Hotel Co., Ltd., [1930] 1 Ch. 138.

271. *Add. Annotation*:—**Refd.** Aldridge v. Wright, [1929] 2 K. B. 117.

274. *Add. Annotation*:—**Refd.** Aldridge v. Wright, [1929] 2 K. B. 117.

278. *Add. Annotation*:—**Consd.** Aldridge v. Wright, [1929] 2 K. B. 117.

282. *Add. Annotation*:—*As to* (2) **Apprvd.** Gregg v. Richards, [1926] Ch. 521. *As to* (3) **Distd.** Aldridge v. Wright, [1929] 2 K. B. 117.

291. *Add. Annotation*:—*As to* (1) **Refd.** Simpson v. Weber (1925), 133 L. T. 46.

299. In the last line of the first paragraph add the word "not" after the word "ought."

*Add. Annotations*:—**Consd.** Yorkshire East Riding County Council v. Selby Bridge Co., [1925] Ch. 841. **Refd.** Winsford Entertainments v. Winsford U. D. C. (1924), 23 L. G. R. 254; Layzell v. Thompson (1926), 43 T. L. R. 58; Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686. **Mentd.** Jaeger v. Jaeger (1927), 44 R. P. C. 437.

309. *Add. Annotation*:—**Refd.** Aldridge v. Wright, [1929] 2 K. B. 117.

320. *Add. Annotation*:—**Refd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.

322. *Add. Annotations*:—*Generally*, **Mentd.** Vergé v. Somerville, [1924] A. C. 496; *Re* Gwyon, Public Trustee v. A.-G. (1929), 46 T. L. R. 96.

memorial user.—**TINKOWRI, ETC. v. RAM, ETC.** (1922), 1 L. R. 50 Calc. 356.—**IND.**

### PART III. SECT. 3, SUB-SECT. 3.

s i. ———.—In India a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—**TINKOWRI, ETC. v. RAM, ETC.** (1922), 1 L. R. 50 Calc. 356.—**IND.**

sw. *Not right to use railway.*—**MEAGHER v. CANADIAN PACIFIC RY CO.** (1912), 42 N. B. R. 46.—**CAN.**

sz. *Right to trap.*—**RICI LAKE FUR CO., LTD. v. MCALLISTER**, [1925] 2 D. L. R. 506; 56 O. L. R. 440.—**CAN.**

### PART III. SECT. 3, SUB-SECT. 4.—A.

326 x. ———.—Pltf. claimed that he & his predecessors in title for 20 years preceding the commencement of the action had enjoyed as of right a way for themselves & their servants on foot & with horses, carriages, vehicles, cattle, sheep & other farming stock from the public highway over deft.'s land to pltf.'s land & from pltf.'s land to such public highway & that deft. had wrongfully obstructed him in the enjoyment of such right of way. Deft. pleaded that there had been no such user or enjoyment of the way claimed by pltf. as supported a pre-

329. *Add. Annotation*:—*As to* (1) **Refd.** Busby v. Avgherino, [1928] A. C. 290.
346. *Add. Annotations*:—*Generally*, **Refd.** Layzell v. Thompson (1927), 137 L. T. 106; Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.
347. *Add. Annotations*:—**Refd.** Stoney v. East-bourne R. D. C., [1927] 1 Ch. 367; Hue v. Whiteley, [1929] 1 Ch. 440. **Mentd.** Moser v. Ambleside U. D. C. (1924), 89 J. P. 118; Trafford v. Thrower (1929), 45 T. L. R. 502.
359. *Add. Annotation*:—**Refd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.
389. *Add. Annotation*:—*As to* (3) **Refd.** Slack v. Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch.
435. *Add. Annotation*:—*As to* (1) **Refd.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

scriptive right or claim thereto, & alleged (*inter alia*) that deft.'s predecessor in title had no knowledge of the alleged claim, & further, that pltf. during the said period of 20 years had himself claimed the ownership of part of the land over which the way was claimed to have been enjoyed:—**Held**: deft.'s predecessor in title in any event had had a reasonable opportunity of becoming aware of the enjoyment by pltf. of a right over his land & for that reason the enjoyment of the right of way could not be alleged to be secret.—**HOUGH v. TAYLOR**, [1927] W. A. L. R. 97.—**AUS.**

326 xi. —. —.]—**Held**: where a person has possessory rights over a piece of land, the title to the land being vested in Govt., another person may establish a right of access to a tomb erected on such land & to worship there. Such a right must have been openly enjoyed without leave, stealth, or force for a length of time which suggests originally an agreement or an usage that has become a customary law of the place in respect of the persons or things in which it is concerned.—**DAWSON v. ROUTHAM ZAMANI BEGUM (PRINCESS)** (1928), 1 L. L. R. 6 Ran. 456.—**IND.**

sa. *User as one of public*.]—To constitute a legal possession of land, not only must there be a corporeal detention, or that quasi-detention which, according to the nature of the right, is equivalent thereto, but, also, the intention to act as owner of the land; no legal possession is acquired by the exercise of a supposed right as one of the public. The rear portions of pltf.'s & deft.'s lands abutted on a public lane, a strip of land between the fence erected on deft.'s land & the boundary of the lane being unenclosed. Pltf., for over 20 years, believing this strip to be a part of the lane, had been accustomed to drive over it to get to his stable, doing so in the exercise of a supposed right as one of the public, & not as an easement to his land:—**Held**: he had not acquired any right to use the strip.—**ADAMS v. FAIRWEATHER** (1906), 7 O. W. R. 785; 8 O. W. R. 886; 13 O. L. R. 490.—**CAN.**

sb. *Dominant & servient tenement in same occupation*.—*Occupation of servient tenement wrongful*.]—The time for acquisition of an easement by prescription does not run while the dominant & servient tenements are in the occupation of the same person, even though the occupation of the servient tenement be wrongful & without the privity of the true owner.—**INNES v. FERGUSON** (1894), 21 A. R. 323; *affd.* (1895), 24 S. C. R. 703.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 4.—B.**  
339 iv. —. —.]—Pltfs. & defts.

occupy lands very near each other, the land of a third party intervening between. Defts. had been taking water, flowing through an artificial channel, into their land, for the purpose of irrigation, for nearly thirty-two or thirty-five years without interruption, every monsoon through the land of the third person, by cutting the ridge (all of a plot of land, belonging to pltfs., in one place. Pltfs. sued for permanent injunction to restrain defts. from cutting the ail.—**Held**: defts. had acquired a prescription right to take water by cutting the ail.—**BIJIN BEHARI GHATAK v. RAMNATH GHATAK** (1929), 1 L. L. R. 56 Calc. 161.—**IND.**

sc. *Continuous user*.—*Right exercised from year to year*.]—**Held**: where deft., in an action for trespass to land, claimed a right of way by prescription over the land, it was necessary for him to show continuous user of a definite way & exercise of the right from year to year.—**PETIPAS v. MYETTE** (1913), 12 E. L. R. 537.—**CAN.**

sd. —. —.]—*Whether as of right or by permission*.]—Pltf. & deft. were the owners & occupiers of adjoining farms, & deft. claimed to have acquired, by prescription, a right of way over a road or track on pltf.'s property. The way over pltf.'s property had been used by deft. whenever he wished to visit his brother or whenever he wished to go past his brother's house into the main road. Deft. used the way for all the purposes for which he required to use it in connection with his farm. This user commenced at a time when pltf.'s farm was owned by deft.'s brother & continued through subsequent changes of occupancy until & since pltf. became the owner & occupier of the farm. Pltf. alleged & deft. denied that permission had been given to deft. to use the road, & that the use of the road by deft. was not as a right:—**Held**: deft.'s right of way over the road had been established.—**AUSTIN v. WRIGHT**, [1927] W. A. L. R. 55.—**AUS.**

**PART III. SECT. 3, SUB-SECT. 5.—A.**

345 i. *Origin of doctrine*.]—When enjoyment of a right of easement has continued uninterrupted for a long series of years, such enjoyment should be attributed to a legal origin, & the ct. should presume a grant or an agreement.—**TINKOWRI, ETC. v. RAM, ETC.** (1922), 1 L. L. R. 50 Calc. 356.—**IND.**

**PART III. SECT. 3, SUB-SECT. 5.—E.**

se. *Proof of commencement of tenancy*.—*User immemorial*.]—Where the origin of a tenancy is known, but the origin of a right of easement has not been traced, the tenancy does not rebut the presumption of a grant which arises upon proof of immemorial user.

—**TINKOWRI, ETC. v. RAM, ETC.** (1922), 1 L. L. R. 50 Calc. 356.—**IND.**

**PART III. SECT. 3, SUB-SECT. 6.—C. (b) i.**

ti. *S. P. SUBBA RAO v. LAKSHMANA RAO* (1925), 1 L. L. R. 49 Mad. 820.—**IND.**

t ii. —. —.]—**CARPET IMPORT CO., LTD. v. BEATH & CO., LTD.**, [1927] N. Z. L. R. 37.—**N.Z.**

**PART III. SECT. 3, SUB-SECT. 6.—C. (b) ii.**

413 i. *Evidence that user not of right*.—*Parol licence granted during statutory period*.]—Parol licence is of no moment unless it is applied for & granted within the period of forty years prescribed by Limitations Act, R. S. O., 1914, s. 35, in which case it will negative the enjoyment of the easement as of right for forty years.—**BOWES v. REID**, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 6.—C. (b) iii.**

ei. —. —.]—**HUGHES v. FERGUSON v. INNES** (1895), 21 S. C. R. 703.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 6.—C. (c) i.**

sf. *Forty years*.—*Whether conclusive*.]—Limitations Act, R. S. O., 1914, s. 35, makes a right which has been enjoyed for the full period of forty years indefeasible, unless it appears that it was enjoyed by virtue of some consent or agreement expressly given by deed or writing.—**BOWES v. REID**, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

433 i. *Against whom time computed*.—*Reverser*.]—**EISENHAUER v. WHYNACHT** (1902), 35 N. S. R. 295.—**CAN.**

**PART III. SECT. 5, SUB-SECT. 2.**

sg. *Place of user*.—*Load within well-defined limits*.—*Slight variation of via trita*.—*Sufficient*.]—**BOWES v. REID**, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

**PART IV. SECT. 1.**

sh. *Whether assignable*.]—In July, 1916, deft. & another granted to S. a right to lay down a tramway through deft.'s land for the purpose of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf., who continued to use the tramway. The assignment was known to deft., who raised no objection. Deft., in Aug. 1922, placed obstructions across the tramway. On a motion for an injunction, deft. contended that the contract granting the tramline was not assignable:—**Held**: the grant was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—**MACDONALD v. PEDDLE**, [1923] N. Z. L. R. 987.—**N.Z.**

## Part V.—Preservation and Repair of Easements.

482. *Add. Annotation* :—**Refd.** *Sack v. Jones*, [1925] Ch. 235. | 483. *Add. Annotation* :—**Refd.** *Metropolitan Water Board v. L. & N. E. Ry.* (1924), 131 L. T. 123.

## Part VI.—Extinguishment of Easements.

487. *Add. Annotation* :—**Generally**, **Refd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.  
 493. *Add. Annotations* :—**As to** (1) **Appl.** *Swan v. Sinclair*, [1924] 1 Ch. 254. **Refd.** *Swan v. Sinclair*, [1925] A. C. 227.  
 494. *Add. Annotation* :—**As to** (2) **Refd.** *Swan v. Sinclair*, [1925] A. C. 227.  
 502. *Add. Annotation* :—**Refd.** *Swan v. Sinclair*, [1925] A. C. 227.  
 505. *Add. Annotation* :—**Refd.** *Swan v. Sinclair*, A. C. 227.  
 511. *Add. Annotation* :—**As to** (1) **Refd.** *Swan Sinclair*, [1925] A. C. 227.  
 515. For the paragraph in the original volume substitute the following paragraph :—

— **Acquiescence in obstruction of way.**—

In 1870 a row of houses was put up for sale by auction in eleven lots. One of the conditions was that a strip of land fifteen feet in width, running the entire length of the lots & being the rear portions of the back gardens of the houses, was intended to form a right of way from the back garden of each house into Church Road, which bounded the side of lot 1 on the south, & that the lots would be sold subject to & with the benefit of such right of way, & that the respective purchasers should at the earliest possible moment remove the fifteen feet of end garden wall & form the right of way. This condition was recited in each of the conveyances. Lot 1 was conveyed subject to the right of way of the owners of the other lots & lots 2 & 3 with the benefit of & subject to the right of way. The purchaser of lot 1 let it for a term of fifty years, which expired on June 15, 1922, subject to the right of way. In 1904 pltf. took an assignment of this lease, & in 1911 he purchased the fee simple of lots 2 & 3,

with the benefit & subject to the right of way. Deft. was the present owner of lot 1. For fifty years from the date of the original sale no attempt was made to form the proposed roadway, the garden walls dividing the several lots remained intact, & the wall separating lot 1 from Church Road was not breached. Church Road was six feet above the level of the back gardens. In 1883 the original lessee of lot 1 in the course of erecting some stables in his back garden raised the surface of the strip of land at the end of of Church Road, with the result that there was a drop of six feet from that strip into lot 2. In 1919 pltf., in anticipation of the expiration of his lease, proposed to build a garage on lots 2 & 3. With that object in view he pulled down part of the wall which separated the rear portion of lot 1 from Church Road & erected gates there, & he also raised the level of the rear portion of lot 2; & subsequently he caused a car to be driven through the gates over the strip in lot 1 into lot 2. On the expiration of the lease deft. blocked up the gates & obstructed the way. In an action by pltf. as owner of lots 2 & 3 to enforce his right of way against the deft. :—**Held** : (1) until the land was cleared there could be no effectual creation of a right of way; (2) having regard to the time which had elapsed before any purchaser attempted to assert his rights under the original conveyance, the inevitable inference was that the arrangement made in 1870 had been abandoned by common consent.—**SWAN v. SINCLAIR**, [1925] A. C. 227; 94 L. J. Ch. 104; 132 L. T. 577; 89 J. P. 38; 41 T. L. R. 158; 22 L. G. R. 705, H. L.

541. *Add. Annotation* :—**Mentd.** *Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.

## PART VI. SECT. 2, SUB-SECT. 2.—B.

507 i. *Non-user alone as presumption of abandonment*.—*Abandonment question of fact.*—While mere non-user is not sufficient to amount to abandonment of a right of way, it is a fact to be taken into consideration, as it is from all such facts that the ct. has to decide whether or not a clear intention to abandon can be inferred or is indicated. Where pltf. & his predecessors in title had failed to exercise a right of way had fenced off their land, so as to shut off the right of way & had omitted any specific mention of the right in various conveyances :—**Held** : an abandonment was established.—**CHRISTOPHER v. COHEN** (1924), 1 L. R. 2 Kan. 534.—**IND.**

508 v. —.—[Non-user is not of itself evidence of abandonment.—

**NANTAIS v. PAZNER**, [1928] 4 D. L. R. 258; 59 O. L. R. 318.—**CAN.**

508 vi. —.—*Onus of proof.*—**LISCOMBE v. MAUGHAN**, [1928] 3 D. L. R. 397; 62 O. L. R. 328.—**CAN.**

## PART VI. SECT. 3, SUB-SECT. 1.

1 i. —.—[The unity of the dominant & servient estates in the same person extinguishes the easement appurtenant to the dominant estate.—**TINKOWRI, ETC. v. RAM, ETC.** (1922), 1 L. R. 50 Calc. 356.—**IND.**

1 ii. —.—*Easement of support.*—**BACKUS v. SMITH** (1880), 5 A. R. 341.—**CAN.**

549 i. *Unity of possession without unity of seisin*.—*Suspension of easement*.—**Water.**—**TINKOWRI, ETC. v. RAM, ETC.** (1922), 1 L. R. 50 Calc. 356.—**IND.**

n i. —.—[An easement may be revived after it has been extinguished, by the union of the dominant & servient tenements in one owner, by their subsequent severance provided the easement is apparent continuous & essential to the enjoyment of the dominant tenement.—**TINKOWRI, ETC. v. RAM, ETC.** (1922), 1 L. R. 50 Calc. 356.—**IND.**

## PART VI. SECT. 4.

sk. *Sale of servient tenement for taxes under statutory power.*—Under Calgary Charter a sale for taxes of the servient tenement does not extinguish a true easement.—**HUTCHINGS v. CAMPBELL, WILSON & HORNE, LTD.**, [1924] 2 D. L. R. 299; 1 W. W. R. 1070; 20 Alta. L. R. 275.—**CAN.**

## Part VII.—Rights of Way.

581. In the cross-references following this case for "Church ways.]—See HIGHWAYS," substitute "Church ways.]—See ECCLESIASTICAL LAW, p. 307, *post*."
598. *Add. Annotation*:—*Refd.* Taylor v. British Legal Life Assce. (1925), 94 L. J. Ch. 284.
607. *Add. Annotation*:—*Distd.* Aldridge v. Wright, [1929] 2 K. B. 117.
641. *Add. Annotation*:—*Refd.* Taylor v. British Legal Life Assce. (1925), 94 L. J. Ch. 284.
684. *Add. Annotation*:—*Consd.* S. E. Ry. v. Cooper, [1924] 1 Ch. 211.
687. *Add. Citations*:—[1924] 1 Ch. 211; 130 L. T. 273; 88 J. P. 37.  
*Add. Annotations*:—As to (2) *Refd.* Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355. *Generally, Mentd.* Kelly v. Barrett, [1924] 2 Ch. 379.
- 721a. *Includes motor cars.*—A. G. v. HODGSON, [1922] 2 Ch. 429; 91 L. J. Ch. 426; 127 L. T. 329; 87 J. P. 121; 38 T. L. R. 601; 66 Sol. Jo. 538; 20 L. G. R. 425.
738. *Add. Annotation*:—*Consd.* S. E. Ry. v. Cooper, [1924] 1 Ch. 211.
743. *Add. Annotation*:—*Consd.* S. E. Ry. v. Cooper, [1924] 1 Ch. 211.
754. *Add. Annotation*:—*Refd.* Taylor v. British Legal Life Assce. (1925), 94 L. J. Ch. 284.
795. *Add. Annotation*:—As to (1) *Apld.* Oldham v. Sheffield Corpn. (1927), 136 L. T. 681.

## PART VII. SECT. 1.

566 ii. — *Agreement between co-owners.*—Deft. & B., each of whom owned one-half of a lot of land, entered into an agreement for a right of way to a building in the rear, each contributing from his half one foot nine inches, so as to make a right of way, three feet six inches in width:—*Held*: the deed providing for the establishment of the way must be construed as a mutual conveyance from each party to the other of an interest in the land necessary to be used in common for the alleged right of way, & not as an agreement to establish a right of way by grant or otherwise.—*TRAVIS INVESTMENT CO. v. POWER*, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—*CAN.*

r. For "BADHANATH" read "RADHANATH."

## PART VII. SECT. 2, SUB-SECT. 5.

602 i. *Extent of user of way*—*Grant subject to existing obstruction.*—When a right of way is granted over land on which there exists an obstruction at the date of the grant, it is a question of interpretation of the grant whether the easement is subject to the obstruction or free from it.—*SPEAR v. ROWLATT*, [1924] N. Z. L. R. 801.—*N.Z.*

## PART VII. SECT. 3, SUB-SECT. 2.—D.

g i. —.—*J.*—*FIELDER v. BANNISTER* (1860), 8 Gr. 257.—*CAN.*

## PART VII. SECT. 6, SUB-SECT. 3.—B. (a).

683 v. —.—*J.*—*TRAVIS INVESTMENT CO. v. POWER*, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—*CAN.*

ii. —.—*J.*—Where there was a grant of way to & from claimant's warehouse solely for the purpose of taking goods to & from the warehouse, & at the time of the grant claimant had no building which could be described as a warehouse, but was then contemplating the building of one:—*Held*: when the grant was made the parties must have intended to create a right of way in connection with the warehouse to be erected in the future, & the grant ought to be so considered.—*PATERSON & BARR, LTD. v. OTAGO UNIVERSITY*, [1925] N. Z. L. R. 191.—*N.Z.*

## PART VII. SECT. 6, SUB-SECT. 3.—B. (b).

690 i. *Limited by user proved*—*Only when terminus ad quem of special nature.*—The only cases in which servitudes of way acquired by prescription are limited by reference to the purposes of the traffic carried by them are those cases in which there is some special feature attached to the terminus to which the roadway leads, as in a way to a mill, kirk, or peat moss.—*CARSTAIRS v. SPENCE*, [1924] S. C. 380.—*SCOT.*

## PART VII. SECT. 6, SUB-SECT. 3.—B. (f).

716 i. *Whether way for general purposes.*—Where proprietors of certain lands sought to interdict the proprietor of adjoining lands from carting building materials for dwelling-houses over a roadway or track which traversed their lands:—*Held*: during a period defenders had acquired a servitude right of access for cart traffic; & the fact that the carting had been for agricultural purposes did not limit the servitude to a right of passage for such purposes, but a right of access by cart for all purposes, including the carting of building materials, had been acquired.—*CARSTAIRS v. SPENCE*, [1924] S. C. 380.—*SCOT.*

716 ii. —.—*J.*—Where a dominant owner, who has acquired a right of way over the servient heritage for the agricultural uses of his land, seeks to use that right of way for non-agricultural purposes, he has a right to do so, provided that additional burden is not thereby imposed on the servient heritage.—*MANCHERSHA SORABJI v. VIRJIVALLABHDAS JEKISONDAS* (1926), 1 L. R. 50 Bom. 635.—*IND.*

## PART VII. SECT. 6, SUB-SECT. 3.—D. (a).

754i. —.—*Method of*—*Whether reasonable.*—Deft. leased to pltf. an island, standing in a shallow lake, which in the dry season became a muddy marsh. The land surrounding the island belonged to deft., & the lease provided that pltf. should have a right of way across it, nothing being said as to the mode of exercising the right. Pltf. having built a trestle

bridge from the island to the main land:—*Held*: pltf.'s mode of user was reasonable, & deft. was not justified in interfering with the bridge.—*BUTCHART v. DOYLE* (1897), 24 A. R. 615.—*CAN.*

sl. *Removal of existing obstruction*—*Way granted free of obstruction.*—Where a right of way is granted over land on which there exists an obstruction at the date of the grant, but free from it, it is for the grantee to get rid of the obstruction by his own act. The grantor is not under any obligation in the absence of a contract to that effect.—*SPEAR v. ROWLATT*, [1924] N. Z. L. R. 801.—*N.Z.*

## PART VII. SECT. 6, SUB-SECT. 3.—D. (b).

759 i. *General rule.*—Apart from special custom or express contract, the owner of a servient tenement is not bound to execute any repairs necessary to ensure the enjoyment of the easement by the owner of the dominant tenement.—*SPEAR v. ROWLATT*, [1924] N. Z. L. R. 801.—*N.Z.*

## PART VII. SECT. 8.

p i. —.—*J.*—Deft. having, by grant, a right of way over a strip of land, the property of pltf.:—*Held*: pltf. was entitled to erect a fence upon the boundary between the strip & deft.'s land, allowing deft. reasonable access by a gate or gates to the way.—*LEWIS v. WAKELING* (1923), 54 O. L. R. 647.—*CAN.*

s i. —.—*No duty on dominant owner to close.*—A landowner over whose holding an adjoining owner had a general right of way erected a gate across the passage over which the right existed. There was no intention on the part of the servient owner to derogate from the rights of the dominant owner, but the latter, objecting to the obstruction, left the gate open after he had used the way. The servient owner, suing by civil bill, claimed damages for the failure & refusal by the dominant owner to close the gate. No actual damage was caused:—*Held*: the gate having been erected by the servient owner in the reasonable & proper exercise of his rights in his own property, that an obligation was cast upon the dominant owner to shut it.—*GEOGHEGAN v. HENRY*, [1922] 2 I. R. 1.—*IR.*

## Part VIII.—Light.

830. *Add. Annotation*:—*As to* (6) **Consd.** *Slack v. Leeds Industrial Co-op. Soc.* (1924), 94 L. J. Ch. 46.
831. *Add. Annotation*:—**Mentd.** *Pontardawe R. D. C. v. Moore-Gwyn*, [1929] 1 Ch. 656.
850. In passage commencing "*Held*: (3) in order to satisfy Prescription Act, 1832 (c. 71), s. 2," for "s. 2" read "s. 3."
858. *Add. Annotations*:—**Consd.** *Foster v. Lyons* (1926), 70 Sol. Jo. 1182. **Mentd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
896. *Add. Annotation*:—*As to* (1) **Refd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
898. *Add. Annotation*:—*As to* (1) **Folld.** *Foster v. Lyons* (1926), 70 Sol. Jo. 1182.
- 898a. ————]—A reservation in a lease empowering the lessor to build on adjoining land, notwithstanding such building might obstruct any lights on the demised land, prevents the lessee from acquiring a right to light under Prescription Act, 1832 (c. 71), s. 3.—*FOSTER v. LYONS & Co.*, [1927] 1 Ch. 219; 96 L. J. Ch. 79; 136 L. T. 372; 70 Sol. Jo. 1182.
903. *Add. Annotation*:—*Generally*, **Mentd.** *Johnson v. Clarke*, [1928] Ch. 847.
- 934a. ————]—The standard as to the amount of light required to be left so as to prevent a nuisance is an absolute one, & if an obstruction to an ancient light renders a room inadequately lighted & causes an actionable nuisance, the obstruction does not cease to be actionable because the room is situated in a manufacturing town.—*HORTON'S ESTATE, LTD. v. BEATTIE, LTD.*, [1927] 1 Ch. 75; 96 L. J. Ch. 15; 136 L. T. 218; 42 T. L. R. 701; 70 Sol. Jo. 917.
956. *Add. Annotation*:—**Consd.** *Slack v. Leeds Industrial Co-op. Soc.*, [1924] 2 Ch. 475.
982. *Add. Annotation*:—*As to* (1) **Refd.** *Slack v. Leeds Industrial Co-op. Soc.*, [1924] 2 Ch. 475.

## Part IX.—Water.

- 997a. ———— **Water from pond.**]—A right to take water from the pond of another is a mere easement, & not a *profit à prendre*.—*MANNING v. WASDALE* (1836), 5 Ad. & El. 758; 2 Har. & W. 431; 1 Nev. & P. K. B. 172; 6 L. J. K. B. 59; 111 E. R. 1353.
- Annotations*:—**Apld.** *Franks v. Quiusee* (1839), 2 Will. Woll. & H. 38; *Race v. Ward* (1855), 4 E. & B. 702.
1016. *Add. Annotation*:—**Apld.** *Attwood v. Llay Main Collieries* (1925), 70 Sol. Jo. 265.
1117. *Add. Annotations*:—**Consd.** *Ilford U. D. C. v. Beal & Judd*, [1925] 1 K. B. 671. **Refd.** *Noble v. Harrison*, [1926] 2 K. B. 332.

## Part X.—Support.

1165. *Add. Annotations*:—**Refd.** *Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 31. **Mentd.** *Martins v. Fowler*, [1926] A. C. 746.
1174. *Add. Annotation*:—**Refd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.
1193. *Add. Annotation*:—**Consd.** *Ilford U. D. C. v. Beal & Judd*, [1925] 1 K. B. 671.
1195. *Add. Annotation*:—*Generally*, **Mentd.** *Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 235.
1206. *Add. Annotation*:—**Refd.** *Aldridge v. Wright*, [1929] 2 K. B. 117.
1223. *Add. Annotation*:—**Apld.** *Sack v. Jones*, [1925] Ch. 235.
- 1226a. **Whether party-wall entitled to support—From adjacent building.**]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house:—**Held**: pltf.'s allegations had not been substantiated by the evidence. *Seemle*: even if they had been substantiated pltf. would have had no

PART IX. SECT. 2, SUB-SECT. 2.—C.  
1035 iii. ————]—*CARTER v. SUDDABY* (Ont.), [1927] 1 D. L. R. 812.—CAN.

## PART IX. SECT. 3.

1133 iii. ————]—*FORTIN v. CARON* (Can.), [1927] 4 D. L. R. 936.—CAN.

**sm. Irrigation from tank—Prescription by lessee.**]—In India, a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. L. R. 50 Calc. 356.—IND.

## PART IX. SECT. 4.

**sm. Unity of seisin for different**

**estates—Enjoyment of irrigation rights continued by tenant.**]—Where the tenancy in execution of a rent decree was sold & purchased by the landlord, but the tenant continued in occupation in the undisturbed enjoyment of the right of irrigation & the rent was substantially enhanced:—**Held**: in such circumstances the right of irrigation was not extinguished, but momentarily suspended & revived.—*TINKOWRI, ETC., v. RAM, ETC.* (1922), 1 L. L. R. 50 Calc. 356.—IND.

## PART X. SECT. 1, SUB-SECT. 1.—A. (b).

1143 i. **General rule—Support in natural state.**]—A person must not excavate on his land so as to destroy

the lateral support sufficient to maintain the soil on his neighbour's adjoining land in its natural state.—*METROPOLITAN LIFE ASSURANCE CO. v. MCQUEEN*, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.

## PART X. SECT. 1, SUB-SECT. 1.—B. (b).

1189 i. **Weight of building contributing to subsidence.**]—Where a person by an excavation on his land causes subsidence on his neighbour's land, because of the added weight of a building thereon, he is not liable. The neighbour is not entitled to sufficient support to maintain his building.—*METROPOLITAN LIFE ASSURANCE CO. v. MCQUEEN*, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.

cause of action.—**SACK v. JONES**, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

**1231. Add. Annotation :—***As to* (2) **Reid. Brooke**  
**v. Bool**, [1928] 2 K. B. 578.

## Part XI.—Miscellaneous Easements.

1270. *Add. Annotation* :—**Refd.** *Vanderpant v. Mayfair Hotel Co., Ltd.*, [1930] 1 Ch. 138.
1282. *Add. Annotations* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588. **Refd.** *Back v. Daniels* (1924), 69 Sol. Jo. 160; *Hackney B. C. v. Metropolitan Asylums Board* (1924), 131 L. T. 136.
1302. *Add. Annotation* :—**Mentd.** *O'Cedar v. Slough Trading Co.*, [1927] 2 K. B. 123.
- 1322a. **To attach creeper to wall.**—**SIMPSON v. WEBER**, No. 204a, *ante*.
- 1322b. **To attach post to wall.**—**SIMPSON v. WEBER**, No. 204a, *ante*.

## Part XII.—Disturbance of Easements.

- 1330a.** ———.]— *PENWARDEN v. CHING* (1829),  
Mood. & M. 400; 173 E. R. 1203, N. P.  
*Annotations:—***Consd.** *Bryant v. Foot* (1867), L. R. 2 Q. B.  
161; *Dalton v. Angus* (1881), 6 App. Cas. 740.  
**1352.** *Add. Annotation:—As to* (2) **Consd.** *Freeborn v. Leeming*, [1926] 1 K. B. 160.  
**1358.** *Add. Annotations:—As to* (2) **Consd.** *Slack v. Leeds Industrial Co-op. Soc.*, [1924] 2 Ch. 475; *Horton's Estate v. Beattie* (1926), 42 T. L. R. 701. **Refd.** *Farnworth v. Manchester City Corpn.*, [1929] 1 K. B. 533.  
**1396.** *Add. Annotation:—Refd.* *Slack v. Leeds Industrial Co-op. Soc.*, [1924] 2 Ch. 475.  
**1399.** For the paragraph in the original volume substitute the following paragraph:—  
——.]— *Chancery Amendment Act*, 1858 (c. 27), s. 2, confers on the Ct. of Ch. jurisdiction to award damages in lieu of an injunction in the case of a threatened injury. Notwithstanding the repeal of that Act by *Statute Law Revision & Civil Procedure Act*, 1883 (c. 49), the combined effect of *Jud. Act*, 1873 (c. 66), s. 16, & *Statute Law Revision Act*, 1898 (c. 22), s. 1, is to maintain in force the jurisdiction conferred by *Chancery Amendment Act*, 1858, s. 2.

Where therefore an action was brought in the Ch. Div. for an injunction to restrain an obstruction of ancient lights, & the ct. found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place :—*Held* : the ct. had jurisdiction to award damages in lieu of an injunction.—**LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. v. SLACK**, [1924] A. C. 851 ; 93 L. J. Ch. 436 ; 131 L. T. 710 ; 40 T. L. R. 745 ; 68 Sol. Jo. 715, H. L. ; *reversing* S. C. *sub nom.* **SLACK v. LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD.**, [1923] 1 Ch. 431, C. A. ; *subsequent proceedings*, [1924] 2 Ch. 475, C. A.

- 1399a. —.]—In an action brought by pltf. against deft. society for an injunction & damages in respect of an alleged obstruction of ancient lights, the judge found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place.

& he expressed the opinion that the interference with plttf.'s legal rights when the building was completed would be small, & could be adequately compensated by damages, but held, contrary to his own opinion, that he was bound by the opinion of the Ct. of Appeal in *Dreyfus v. Peruvian Guano Co.* (1889), 43 Ch. D. 316, that there was no jurisdiction under Chancery Amendment Act, 1858 (c. 27), to give damages in lieu of an injunction where the injury was threatened but had not been sustained, & he therefore granted an injunction. The Ct. of Appeal, without going into the merits, by a majority, upheld the view that the ct. had no jurisdiction in such a case to award damages in lieu of an injunction. The House of Lords, by a majority, reversed this decision, & remitted the case to the Ct. of Appeal to deal with it on its merits:—*Held*: the findings of the judge brought the case within the “good working rule” suggested by A. L. SMITH, L.J., in *Shelfer v. City of London Electric Lighting Co.*, No. 1356, *ante*, as that which might guide the ct. in exercising the discretion given it by Chancery Amendment Act, 1858, to award damages in lieu of an injunction; that was still the rule to be adopted by the ct. as a guide & was not affected by anything that was decided in *Colls v. Home & Colonial Stores*, No. 830, *ante*; therefore, there being evidence to support the findings of the judge, the injunction granted by him, contrary to his own opinion, ought to be discharged, & in lieu thereof an inquiry directed as to damages. —*SLACK v. LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD.*, [1924] 2 Ch. 475; 94 L. J. Ch. 46. C. A.

- 1406a.** — **Erection of building interfered with acquiesced in by defendant.]**—Where pltf. & deflt. held adjoining pieces of ground under a common landlord, & pltf., with the licence of the landlord, & without objection by deflt., had erected a manufactory, an injunction was granted to restrain deflt. so building as to obstruct the lights of pltf.'s manufactory pending trial.—**CROOK v. WILSON** (1855), 3 W. R. 378.

**PART XII. SECT. 2, SUB-SECT. 2.—**  
**B. (a).**

st. Mortgages.—Though not in possession.]—A nitgee. of land, though not in possession, has a right to have his

security left unimpaired, & if the owner of adjoining land excavates on the mortgaged land, although the mtgee. may not be entitled to maintain an action for trespass, he has a right of action for injunction or damages, independent.

of any that the owner of the mortgaged land might have.—METROPOLITAN LIFE ASSURANCE Co. v. McQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.



1408. *Add. Annotation*:—*As to* (1) **Consd.** *Slack v. Leeds Industrial Co-op. Soc.* (1924), 94 L. J. Ch. 46.

1442a. — **Against lessee—Freeholder not party to action—Light.**—*BARNES v. ALLEN* (1927), 64 L. Jo. 92; 161 L. T. Jo. 83.

1444a. —.]—*SLACK v. LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD.*, No. 1399a, *ante*.

1471. *Add. Annotation*:—**Folld.** *Horton's Estate v. Beattie* (1926), 42 T. L. R. 701.

## Part XIII.—Profits à Prendre.

1503. *Add. Annotation*:—*Generally*, **Refd.** *Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. K. B. 312.

1570. *Add. Annotation*:—*As to* (2) **Refd.** *The Fagernes*, [1926] P. 185.

1573. *Add. Annotations*:—*Generally*, **Mentd.** *The*

*Carlgarth, The Otarama*, [1927] P. 93; *Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.

1589. *Add. Annotations*:—**Refd.** *Abrahams v. Mac Fisheries*, [1925] 2 K. B. 18; *Roe v. Russell*, [1928] 2 K. B. 117.

### PART XII. SECT. 2, SUB-SECT. 2.— D. (b) i.

1451 iii. —.]—Under Specific Relief Act, 1877, the question of an injunction to restrain a party from erecting a building so as to interfere with his neighbour's easements of light & air presents itself in a different light to what it does in the English cts.; & the ct. has a discretion, & may issue an injunction where the injury is such

that pecuniary compensation would not afford adequate relief.—*MAHOMED ACZAM ISMAIL v. JAGANATHI JAMNADAS* (1925), 1. L. lt. 3 Ran. 230.—IND.

### PART XIII. SECT. 4, SUB-SECT. 1.—A.

**sw.** *Who may acquire—Public*].—Though the public cannot acquire ownership of a land, it can acquire profits *d prendre* over it by grant.—*USSAN KASIM SAIT v. SECRETARY OF STATE*

FOR INDIA (1923), 1. L. R. 47 Mad. 116.—IND.

### PART XIII. SECT. 4, SUB-SECT. 2.—B.

1536 i. *The public.*].—Though the public cannot acquire ownership of a land, it can acquire profits *d prendre* over it by prescription.—*USSAN KASIM SAIT v. SECRETARY OF STATE FOR INDIA* (1923), 1. L. R. 47 Mad. 116.—IND.

## ECCLESIASTICAL LAW.

## Part I.—In General.

- 1a. **Church Assembly—Legislative Committee.**—Neither the Legislative Committee of the Church Assembly, nor the Church Assembly itself, is a body to which a writ of *certiorari* or of prohibition will issue, as neither of them is a body which is under a duty to act in a judicial capacity.—*R. v. CHURCH ASSEMBLY*
6. *Add. Annotation* :—**Mentd.** *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

LEGISLATIVE COMMITTEE & CHURCH ASSEMBLY, *Ex p. HAYNES SMITH*, [1928] 1 K. B. 411; 97 L. J. K. B. 222; 138 L. T. 399; 44 T. L. R. 68; 71 Sol. Jo. 947, D. C.

## Part III.—Constitution of the Church of England.

16. *Add. Annotation* :—**Generally**, **Refd.** *R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
36. *Add. Annotations* :—**Generally**, **Mentd.** *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289; *Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.
70. *Add. Annotation* :—*As to* (1) **Refd.** *Re Mason* (1928), 97 L. J. Ch. 321.
135. *Annotations* :—For “*Re Letters Patent No. 139,207, Re Carbonit Akt.*,” [1923] 2 Ch. 504,” read “*Re Letters Patent No. 139,207, Re Carbonit Akt.*,” [1924] 2 Ch. 53.”
- Add. Annotation* :—**Generally**, **Mentd.** *Swift v. Board of Trade*, [1926] 2 K. B. 131.
185. *Add. Annotation* :—*As to* (2) **Consd.** *Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
- 185a. — **Former Royal chapel—Grant by Crown for use as parish church.**—The ct. held that the rector & the parish church of St. Mary, Stafford, in the diocese of Lichfield, were subject to the ordinary episcopal jurisdiction, including the right of visitation.—*LICHFIELD (BISHOP) v. LAMBERT* (1929), 46 T. L. R. 24.
199. *Add. Annotation* :—*As to* (3) **Consd.** *Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
270. *Add. Annotation* :—**Refd.** *R. v. Church Assembly Legislative Committee & Church Assembly, Ex p. Haynes Smith* (1927), 44 T. L. R. 68.
276. *Add. Annotation* :—*As to* (2) **Refd.** *R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
292. *Add. Citations* :—*sub nom.* *AYER v. ORME*, 2 Dyer 221b; Ben. 129; *sub nom.* *ANON.*, Dal. 53; 1 And. 9.
- Add. Annotations* :—**Refd.** *Cromwel's Case* (1601) 2 Co. Rep. 69b; *Lyn v. Wyn* (1665), O. Bridg. 122.
306. *Add. Annotation* :—**Mentd.** *Beaumont v. Jeffery* (1924), 40 T. L. R. 790.
356. *Add. Annotation* :—**Mentd.** *Vanderpant v. Mayfair Hotels Co.*, [1930] 1 Ch. 138.
472. *Add. Annotation* :—**Apld.** *Hauxton Parochial Church Council v. Stevens*, [1929] P. 240.
- 472a. — **Liability of lay-impropriation to sequestration.**—*WALWYN v. AWBERRY*, No. 2599a, *post*.
- 472b. — **Personal liability.**—The impropriator of an impropriate rectory in the receipt of the profits thereof is personally liable for the repair of the chancel of the parish church, although at the time of the conveyance to him of the lands forming part of the rectory he had no notice of the liability.—*HAUXTON PAROCHIAL CHURCH COUNCIL v. STEVENS*, [1929] P. 240.
- 472c. — **No notice of liability—At time of conveyance of lands.**—*HAUXTON PAROCHIAL CHURCH COUNCIL v. STEVENS*, No. 472b, *ante*.
475. *Add. Annotation* :—**Refd.** *Hauxton Parochial Church Council v. Stevens*, [1929] P. 240.
- 482a. — — — — —]—A tenant of premises rated at £125, who sublet the greater part & retained for his personal occupation a portion which was over £40 in rateable value, but not separately assessed :—**Held** : qualified as a vestryman under Metropolis Management Acts, 1855 (c. 120), & 1856 (c. 112).—*GORDON v. WILLIAMSON*, [1892] 2 Q. B. 459; 61 L. J. Q. B. 820; 67 L. T. 214; 57 J. P. 166; 40 W. R. 692; 8 T. L. R.
- Annotation* :—**Refd.** *London & India Docks Co. v. Woolwich Borough* (1902), 71 L. J. K. B. 394.
569. *Add. Annotation* :—*As to* (3) **Refd.** *R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
627. After this case add :—**Right of presentation where patronage vested in parishioners.**—*See* No. 1981a, *post*.
716. *Add. Annotation* :—**Mentd.** *Hauxton Parochial Church Council v. Stevens*, [1929] P. 240.
983. *Add. Annotation* :—**Refd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
1063. *Add. Annotation* :—*As to* (1) **Refd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444.

## PART I.

1 i. *Church—Religious community—Schism—Whether provided for by constitution.*—**BRENDZIJ v. HAJDIJ**, [1927] 1 D. L. R. 1051, [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 ii. — — — — — *What amounts to.*—**BRENDZIJ v. HAJDIJ**, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 iii. — — — — — *Effect of—Members adhering to original con-*

*stitution entitled to use of church property.*—**BRENDZIJ v. HAJDIJ**, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 iv. *S. P. HENNIG v. TRAUTMAN (Alta.)*, [1926] 2 D. L. R. 280; [1926] 1 W. W. R. 912.—**CAN.**

## Part IV.—Ecclesiastical Courts.

1115. *Add. Annotations*:—*As to* (1) **Folld.** *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. **Refd.** *Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
1125. *Add. Annotation*:—*Generally*, **Mentd.** *Capel St. Mary, Suffolk v. Packard*, [1928] P. 69.
1145. *Add. Annotations*:—*As to* (1) **Consd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243. *As to* (8) **Consd.** *Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1. *Generally*, **Refd.** *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
1146. *Add. Annotations*:—*As to* (1) **Refd.** *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. *As to* (2) **Consd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.
1148. *Add. Annotation*:—*As to* (2) **Refd.** *R. v. North, Ex p. Oakley*, [1927] 1 K. B. 491.
1149. *Add. Annotation*:—**Consd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.
1171. *Add. Annotation*:—**Mentd.** *R. v. North, Ex p. Oakley* (1926), 43 T. L. R. 60.
- 1280a. — **Alternative remedy**.]—Prohibition will issue in respect of an order of an ecclesiastical ct. made without jurisdiction, notwithstanding an appeal lie from such order to a higher ecclesiastical ct. & thence to the Privy Council.—**R. v. NORTH, Ex p. OAKLEY**, [1927] 1 K. B. 491; 96 L. J. K. B. 77; 136 L. T. 387; 43 T. L. R. 60; 70 Sol. Jo. 1181, C. A.
1331. *Add. Annotation*:—**Mentd.** *R. v. Health, Minister. Ex p. Davis* (1929), 141 L. T. 6.
1349. *Add. Annotation*:—**Refd.** *R. v. North, Ex p. Oakley* (1926), 43 T. L. R. 60.
1372. *Add. Annotation*:—*As to* (1) **Refd.** *Raeburn v. Raeburn* (1928), 138 L. T. 672.
1400. *Add. Annotation*:—**Refd.** *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
1413. *Add. Annotation*:—**Mentd.** *Lankester v. Lankester & Cooper*, [1925] P. 114.
1503. *Add. Annotation*:—**Mentd.** *Engelke v. Musmann*, [1928] A. C. 433.
1504. *Add. Annotations*:—*Generally*, **Mentd.** *Tate & Lyle v. L. & N. E. Ry. & L. M. & S. Ry.* (1926), 43 T. L. R. 49; *Sheffield Corpn. v. Luxford, Same v. Morrell*, [1929] 2 K. B. 180.
1549. *Add. Annotations*:—**Mentd.** *Tate & Lyle v. L. & N. E. Ry. & L. M. & S. Ry.* (1926), 43 T. L. R. 49; *Sheffield Corpn. v. Luxford, Same v. Morrell*, [1929] 2 K. B. 180.
1605. *Add. Annotation*:—**Refd.** *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
1641. *Add. Annotations*:—**Mentd.** *Salvesen (or Von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641; *Berthiaume v. Dastous* (1929), 45 T. L. R. 607.
1721. *Add. Annotations*:—**Refd.** *Eshugbayi Eleko v. Nigeria Government*, [1928] A. C. 459. **Mentd.** *Campbell v. Pollak*, [1927] A. C. 732.
1755. *Add. Annotation*:—**Refd.** *Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
1756. *Add. Annotation*:—**Refd.** *Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
- 1768a. — — — — —.]—*Held*: a faculty ought to issue for the removal of (1) a tabernacle, (2) a sacring gong, (3) four out of six candlesticks on the retable, (4) two candlesticks on the credence which had been used ceremonially, (5) a censor which had been used ceremonially, (6) the Stations of the Cross, (7) a second Holy Table introduced after a faculty for it had been refused, (8) an image of the Blessed Virgin Mary with candles & vases, (9) a holy water stoup, (10) two brass candelabra used in a service of adoration of the Sacrament, & a hanging lamp in the chancel used to denote the presence of the reserved Sacrament; a faculty ought not to issue for the removal of (11) books & pamphlets displayed on tables in the church, (12) notices as to times when confessions could be heard, (13) notices asking for prayers for deceased persons, (14) a kneeling stool used by persons making their confessions, & (15) the rector's books of devotion on the Holy Table, but these articles were not proper subjects for a confirmatory faculty; a faculty ought not to issue for the removal of (16) a crucifix on the wall above the kneeling stool, used to assist the devotions of those making their confessions, & a confirmatory faculty till further order ought to issue in respect of it; a faculty ought not to issue for the removal of (17) a crucifix behind the Holy Table which had been proved to have been the object of veneration, the rector having undertaken not to genuflect to it or cense it, & not to allow any other officiating clergymen to do so, & a confirmatory faculty till further order ought to issue in respect of it.
- (18) Memorials purporting to be signed by parishioners, as to which no evidence is given in proof of the signatures or of the representations made to those who sign them, are inadmissible in a faculty suit.—**CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD**, [1927] P. 289; *subsequent proceedings*, [1928] P. 69.
- 1775a. — — — — — “Till further order.”]—(1) Where a cause of faculty has been remitted by the Ct. of Arches to a consistory ct. to decree a faculty as directed by the Ct. of Arches, a party to the suit who is aggrieved by a condition proposed to be inserted in the faculty may appeal to the Ct. of Arches by way of the assertion of a grievance, & the Ct. of Arches may hear & determine the appeal without retaining the cause.
- (2) A condition in a confirmatory faculty “that if any of the articles included in the faculty are treated with superstitious reverence we reserve to ourselves the right to order their removal at any time hereafter upon being satisfied hereon” is an improper condition, & such a condition is not substantially similar to, but wholly different from, a con-

dition that the faculty is granted "till further order."

(3) Observations upon the object & effect of granting a faculty till further order, the proceedings required by the practice of the cts. before such further order can be made, the distinction between the order of the ct. in a faculty suit & the faculty, & the matters which are proper to be included in each.—**CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD**, [1928] P. 69.

**1784. Add. Annotation:—****Refd.** *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

**1785. Add. Annotation:—****Mentd.** *St. Nicholas Acons, London v. L. C. C.*, [1928] P. 102.

**1789a. Cause remitted to decree faculty—Objection to condition proposed to be inserted in faculty—Right of aggrieved party to appeal.]—****CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD**, No. 1775a, *ante*.

**1792. Add. Annotation:—****Mentd.** *Bermondsey B. C. v. Mortimer*, [1926] P. 87.

## Part V.—Clergy.

**1821. For "Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay member" read "Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay reader."**

**1851. Add. Annotation:—****Apld.** *Re Clerical Disabilities Act, 1870, Ex p. Cowan* (1927), 71 Sol. Jo. 272.

**1851a. S. P. Re CLERICAL DISABILITIES ACT, 1870, Ex p. COWAN (1927), 137 L. T. 515; 71 Sol. Jo. 272.**

**1862. Add. Annotation:—****Mentd.** *Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.

**1896. Add. Annotation:—****Mentd.** *Weld v. Petre* 97 L. J. Ch. 399.

**1981a. Patronage vested in parishioners—Transfer to parochial church council—Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1).—***Re LICHFIELD CATHEDRAL GRANT, CHAPEL-EN-LE-FRITH PAROCHIAL CHURCH COUNCIL v. BAGSHAW* (1929), 45 T. L. R. 583.

**2104a. Whether vendor bound to make marketable title—Whether stamp necessary.]—***WILMOT v. WILKINSON* (1827), 6 B. & C. 506; 9 Dow. & Ry. K. B. 620; 5 L. J. O. S. K. B. 196; 108 E. R. 538.

*Annotation:—***Refd.** *Doogood v. Rose* (1850), 9 C. B. 132.

**2105a. — Non-completion of purchase—Default of vendor.]—***WEDDALL v. NIXON* (1853), 17 Beav. 160; 22 L. J. Ch. 939; 21 L. T. O. S. 147; 17 Jur. 642; 51 E. R. 994.

**2437. Add. Citation:—**2 B. R. A. 932.

**2440. Add. Citation:—**2 B. R. A. 831.

**2443a. Grounds for approval or disapproval of scheme.]—**Although it may seem desirable on grounds of economy & administration to unite two country benefices with small populations, yet a scheme for such union will

not be affirmed on special reference by the Judicial Committee of the Privy Council if there is united opposition to it on the part of the inhabitants.—*Re GUSSAGE ALL SAINTS & GUSSAGE ST. MICHAEL, DORSET, PARISHES* (1925), 69 Sol. Jo. 493, P. C.

**2491. Add. Annotation:—****Mentd.** *Re Wait*, [1927] 1 Ch. 606.

**2496. Add. Citation:—***sub nom.* *CURLEWS v. BUTTS*, 9 L. J. O. S. K. B. 69.

**2509. Add. Annotation:—****Mentd.** *Paterson v. Ardrossan Harbour Co.* (1926), 19 B. W. C. C. 621.

**2539. Add. Annotation:—****Refd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.

**2595. Add. Annotation:—***As to (2) Consd. R. v. North, Ex p. Oakley* (1926), 43 T. L. R. 60.

**2599a. — Failure to repair chancel.]—**(1) A justification in trespass, that pltf. was the rector of such a church, & that the goods were taken under a sequestration of the profits of the rectory, for the reparation of the chancel, must aver that no more was taken than was necessary to the expense of reparation. (2) But the profits of a lay-impropriation cannot be sequestered for the repair of the chancel.—*WALWYN v. AWBERRY* (1677), 1 Mod. Rep. 258; 2 Mod. Rep. 254; Freem. K. B. 230; 86 E. R. 866; *sub nom.* *ANON.*, 2 Vent. 35; 3 Keb. 829.

*Annotations:—*1<sup>st</sup> to (2) **Consd.** *Hauvton Parochial Church Council v. Stevens*, [1929] 1 P. 240. *Generally, Mentd.* *Harding v. Hall* (1842), 10 M. & W. 42.

**2607. Add. Annotation:—***As to (1) Consd. R. v. North, Ex p. Oakley* (1926), 43 T. L. R. 60.

**2617. Add. Annotation:—****Mentd.** *Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.

## Part VI.—Public Worship and Church Ministrations.

**2751. Add. Annotations:—***Generally, Refd.* *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. **Mentd.** *Re Article X of Articles of Agreement for Treaty between Great Britain and Ireland* (1928), 45 T. L. R. 57.

**2762. Add. Annotation:—***As to (1) Refd.* *Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.

**2764a. — — — — —.]—***VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS)*, No. 2831, *post*.

**2768. Add. Annotations:—***As to (7) Folld.* *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. *As to (8) Folld.* *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. *As to (9) Folld.* *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. **Generally, Refd.** *Capel St. Mary, Suffolk v. Packard*, [1928] P. 69.

**2786. Add. Annotation:—***As to (1) Refd.* *Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.

**2797. Add. Annotation:—***As to (3) Refd.* *St.*

Margaret's, Toxteth Park (1924), 40 T. L. R. 687.

**2801a.** ———.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.

**2809a.** ———.]—CAPEL v. ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.

**2812.** *Add. Annotation* :—As to (3) **Folld.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289.

**2818a.** ———.]—On credence table.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.

**2824a.** ———.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD. No. 1768a, *ante*.

**2825.** For the paragraph in the original volume substitute the following paragraph :—

— **As of course.**—VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post*.

**2831.** For the paragraph in the original volume substitute the following paragraph :—

— **Approval of decorations & fittings.**]  
—On the hearing in the Consistory Ct. of London of a petition as to the furniture & fittings of the Church of St. Magnus-the-Martyr, in the City of London, a faculty was granted for, amongst other things: (1) a second Holy Table; (2) an image of the Virgin & Holy Child placed behind the second Holy Table; & (3) a crucifix fixed to a pillar at a considerable height from the floor & near the pulpit. On appeal the Ct. of Arches dismissed the appeal as to (1) & (3), but allowed it as to (2):—**Held**: (1) the law was the same for every kind of sacred image in a church, including a crucifix or rood, & although such an image was not illegal *per se*, it could not lawfully be placed in a church without a faculty.

On an application for such a faculty, the question to be considered is whether, if the faculty be granted, there is or is not, in the particular case, a danger of the image being used for purposes of worship or adoration condemned by Article of Religion 22. After discussion of the kind of evidence proper to this inquiry :—**Held**: (2) there was a danger of the proposed image of the Virgin & Holy Child being so used; (3) an image used for purposes of worship or adoration was an ornament & was illegal, because not included amongst the ornaments of the church sanctioned by the Ornaments Rubric in the Book of Common Prayer; (4) a faculty authorising the erection of an image in a church should not be absolute, but until further order.

(5) The other matter of appeal is the second Holy Table. The church holds, or will hold, between three hundred & four hundred people, & there are a large number of celebrations every week. In those circumstances it would be a matter of course to allow a second Holy Table, but for the exceptional character of the ceremonial & services of this church. I am not, however, disposed to interfere with the exercise of the learned Chancellor's discretion in this part of the case. I think there ought to be full plans & particulars of the decorations & fittings of & surrounding the second Holy Table, & these fittings ought to be subject

to the approval of the learned Chancellor & to be specifically included in the faculty (SIR LEWIS DIBDIN).—VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), [1925] P. 1; *sub nom.* ST. MAGNUS THE MARTYR, LONDON BRIDGE, 41 T. L. R. 3.

*Annotation* —*Generally*, **Refd.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289.

**2842.** *Add. Annotation* :—**Refd.** Vincent v. Magnus the Martyr, etc., [1925] P. 1.

**2844.** *Add. Annotation* :—**Refd.** Vincent Magnus the Martyr, etc., [1925] P. 1.

**2852.** *Add. Annotation* :—**Mentd.** St. Nicholas Acons, London v. L. C. C., [1928] P. 102.

**2859.** *Add. Annotation* :—As to (3) **Dbtd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2861.** *Add. Annotation* :—As to (1) **Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2862.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2871.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2872.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2873.** For the paragraph in the original volume substitute the following paragraph :—

— **Ordinary rules as to images apply.**—VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

**2874.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1895] P. 1.

**2875.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1895] P. 1.

**2876.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2882.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2883.** *Add. Annotations* :—**Apld.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289. **Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2888.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2889.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2892.** *Add. Annotation* :—**Generally**, **Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2893.** *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.

**2896.** For the paragraph in the original volume substitute the following paragraph :—

—.]—VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

**2899a.** ———.]—Above confessional stool—Whether permissible.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.

**2899b.** ———.]—Behind Holy Table—Whether permissible.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.

**2900.** *Add. Annotations* :—As to (2) **Consd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1. As to (3) **Folld.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289. *Generally*, **Mentd.** *Ite* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

**2903.** *Add. Annotations* :—As to (3) **Folld.** Capel

- St. Mary, Suffolk v. Packard, [1927] P. 289. *As to* (5) **Folld.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289. *As to* (6) **Folld.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289. *As to* (7) **Folld.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289. *Generally*, **Refd.** Capel St. Mary, Suffolk v. Packard, [1928] P. 69.
- 2904a. —.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
2906. For the paragraph in the original volume substitute the following paragraph :—  
—.]—VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.
2913. *Add. Annotation* :—**Refd.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289.
- 2915a. — With candles & vases—Whether permissible.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
2916. For the paragraph in the original volume substitute the following paragraph :—  
**The Virgin & Child—Probability of veneration.**]—VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.
- 2924a. —.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
- (n) *Lights* (Vol. XIX., p. 449).  
Add the following cross-references :—  
**Used in service of adoration of Sacrament.**]—*See* No. 1768a, *ante*.  
**To denote presence of reserved Sacrament.**]—*See* No. 1768a, *ante*.
- 2947a. **Books & pamphlets displayed in church.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
- 2947b. **Notices—Times for hearing of confessions.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
- 2947c. — Asking for prayers for dead.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
- 2947d. **Confessional stool.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
2948. *Add. Annotation* :—*As to* (1) **Folld.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289.
- 2965a. **Books of devotion—On Holy Table.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
- 2972a. — — —.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.
2975. *Add. Annotation* :—**Refd.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289.
2985. After this case, for  
“**Registration of baptism.**” —*See* REGISTRATION OF BIRTHS, MARRIAGES & DEATHS,” read “**Registration of baptism.**” —*See* Canon 70 of 1603 ; Parochial Registers Act, 1812 (c. 146).  
**Admissibility in evidence.**]—*See* EVIDENCE, Vol. XXII., pp. 336, 337, Nos. 3358—3378.”
3006. *Add. Annotations* :—*Generally*, **Refd.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289.  
**Mentd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.
- 3015a. **Sounding sacring gong—Whether permissible.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD, No. 1768a, *ante*.

## Part VII.—Property of the Church of England.

3112. *Add. Annotation* :—**Refd.** Vincent v. St. Magnus the Martyr, etc., [1925] P. 1.
- 3113a. **Whether faculty absolute—Erection of image.**]—VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.
3124. *Add. Annotation* :—**Mentd.** R. v. Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619.
- 3391a. — — — **Tithable where landed.**]—By custom, fish taken in the sea is tithable where landed.—ANON (1632), Cro. Car. 264 ; 79 E. R. 830.
3406. *Add. Annotation* :—*As to* (1) **Refd.** Busby v. Avgherino, [1928] A. C. 290.
3416. *Add. Annotations* :—*Generally*, **Mentd.** R. v. Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192 ; Palmer v. Crone, [1927] 1 K. B. 804.
3433. *Add. Annotation* :—*Generally*, **Mentd.** Underwood v. Bank of Liverpool, Same v. Barclays Bank, [1924] 1 K. B. 775.
3449. *Add. Citation* :—West. Tithe Cas. 44.  
*Add. Annotation* :—**Refd.** Busby v. Avgherino, [1928] A. C. 290.
3451. *Add. Annotation* :—*As to* (1) **Refd.** Busby v. Avgherino, [1928] A. C. 290.
- 3454a. — **Whether premises exempted from prescribed rate—Onus of proof.**]—By the above Act & a decree made pursuant to it & having the force of a statute, the lessees of houses & all other hereditaments, with certain immaterial exceptions, situated in the City of London, are liable to pay a tithe of 2s. 9d. for every rent of 20s. by the year, “ & so above the rent of 20s. by the year by the rate aforesaid.” The decree contained a proviso that in the case of premises in respect of which less sums had been accustomed to be paid for tithes before 1545, the date of the above Act, the premises should be exempted from the prescribed rate. In an action by the owners of tithes against the occupiers of premises in the City for tithe at the rate prescribed by the Act :—**Held** : (1) the *onus* was on defendants to prove that the tithe paid before 1545 in respect of the premises was less than the sum prescribed by the Act ; (2) defendants had not discharged the *onus*.—BUSBY v. AVGHERINO, [1928] A. C. 290 ; 97 L. J. Ch. 291 ; 139 L. T. 170 ; 92 J. P. 129 ; 44 T. L. R. 551 ; 26 L. G. R. 401, H. L.
- 3455a. — **Whether payable on reserved or**

**improved rent.]**—A lease of premises was granted at the yearly rent of £102 10s. in consideration of the lessee expending £2,000 in building thereon. The improved annual value was £250 :—*Held* : tithes were payable upon the annual value, & not on the rent reserved.—*VIVIAN v. COCHRAN* (1855), 4 De G. M. & G. 818; 25 L. J. Ch. 553; 26 L. T. O. S. 17; 19 J. P. 131; 1 Jur. N. S. 809; 3 W. R. 254; 43 E. R. 728, L. C.

**3455b. — Whether non-payment a defence.]**—Mere non-payment of tithes under the Act is not an answer.—*ST. PAUL'S WARDEN, ETC. v. KETTLE* (1813), 2 Ves. & B. 1; 35 E. R. 218, L. C.

*Annotations* :—*Refd.* *Payne v. Esdaille* (1888), 13 App. Cas. 613; *Busby v. Avgherino*, [1928] A. C. 290.

**3455c. — — —.]**—*PAYNE v. ESDAILE*, No. 3451, *ante*.

**3456. Add. Annotation :—***Refd.* *Busby v. Avgherino*, [1928] A. C. 290.

**3465a. — What words operate to pass.]**—A tithe rentcharge will not, upon a conveyance of land without more, pass to the purchaser by virtue of Conveyancing Act, 1881 (c. 41), s. 63. Tithe rentcharge is, like tithe, a hereditament separate from the land, & express words are necessary to pass it.—*PUBLIC TRUSTEE v. LANCASTER DUCHY*, [1927] 1 K. B. 516; 96 L. J. K. B. 188; 136 L. T. 468; 43 T. L. R. 163; 71 Sol. Jo. 19, C. A.

**3468. Add. Annotation :—***As to* (2) *Refd.* *Jones v. Waring & Gillow*, [1926] A. C. 670.

**3470. Add. Annotation :—***Refd.* *Hauxton Parochial Church Council v. Stevens*, [1929] P. 240.

**3475a. — — —.]**—*UNIVERSITY COLLEGE, OXFORD (MASTER & FELLOWS) v. GARTON* (1847), 10 Q. B. 760; 16 L. J. Q. B. 381; 9 L. T. O. S. 245; 11 Jur. 907; 110 E. R. 289.

*Annotation* :—*Refd.* *R. v. England & Wales Tithe Comrs.* (1852), 21 L. J. Q. B. 208.

**3488. For “Held : the ct. had jurisdiction to deal with the costs, & they would have to be paid by W., the landlord seeking compulsory redemption” read “Held : (1) the ct. had jurisdiction to deal with the costs; (2) they must be paid by W., the landowner seeking compulsory redemption.”**

*Add. Annotations* :—*As to* (1) *Apprvd. Re Wartling Tithe Redemption*, [1924] 2 Ch. 123. *As to* (2) *Overd. Re Wartling Tithe Redemption*, [1924] 2 Ch. 123.

**3506. Add. Annotation :—***Refd.* *R. v. Customs & Excise Comrs.*, [1928] A. C. 402.

**3513a. Mode of payment of compensation—At election of limited owner—Whether election revocable.]**—*Re WARTLING TITHE REDEMPTION*, No. 3513b, *post*.

**3513b. Cost of investment of redemption money—Compulsory redemption—Jurisdiction of court to deal with.]**—By a settlement dated in 1893 certain tithe rentcharges payable out of lands situate at W. were settled, subject to certain

life interests which had determined, to the use of H. for life with remainders over. The settlement contained a proviso appointing the trustees of the settlement trustees for the purposes of the Settled Land Acts, & providing that a sole trustee should be competent to act for all the purposes of the Acts, including the receipt of capital money. In 1899 H. assigned his life interest in the rentcharges to C. In 1905 C. died, having by his will devised his real & personal estate to resps. & appointed them his exors. In 1922 applt., who was the owner of the land out of which certain of the tithe rentcharges were payable, in exercise of the power given him by Tithe Act, 1918 (c. 54), s. 3, applied to the Ministry of Agriculture & Fisheries for the redemption of certain of these charges, amounting to £48 10s. 8d. & 5s. respectively, & for the determination by the Minister of the amount of the consideration money payable in respect thereof. On Sept. 20, 1922, resps., in exercise of their option under Tithe Act, 1846 (c. 73), s. 9, signed a form of consent which had been sent to them by the Ministry to the payment of the consideration money to the surviving trustee of the settlement of 1893. A month later they wrote to the Ministry revoking their consent & requesting that the money might be paid into ct. The Ministry thereupon wrote to applt. directing him to pay the money into ct., which he accordingly did. On Feb. 12, 1923, resps. took out an originating summons for an order that the fund in ct. might be invested & the income therefrom paid to resps. or the survivor of them as & when received during the life of the tenant for life :—*Held* : (1) on an application to invest money paid into ct. representing compensation paid under the Tithe Acts on the redemption of rentcharges, there was no general principle that required the ct. to direct that the person exercising the compulsory powers under the Acts should bear the burden of the costs, but the costs were, under Jud. Act, 1890 (c. 44), s. 5, in the discretion of the ct. entirely unfettered by any such general principle; the ct. below ought to have exercised its discretion by holding that applt., who had been brought before the ct. solely for the purpose of making him liable for costs, was not so liable, & to have dismissed the application as against him with costs.

(2) *Semble* : there is no power in the Tithe Acts which enables a tithe owner who has once exercised the option given him by the Act of 1846, s. 9, to revoke or alter the exercise of it.—*Re WARTLING TITHE REDEMPTION*, [1924] 2 Ch. 123; 93 L. J. Ch. 562; 131 L. T. 185; 88 J. P. 133; 68 Sol. Jo. 518; 22 L. G. R. 349, C. A.

*Compare* original volume, p. 492, No. 3488.

#### PART VII. SECT. 5, SUB-SECT. 4. -I.

*ad. Necessity for consent of Ministry of Finance.]*—The estate of G., which vested in the Land Purchase Commission by Northern Ireland Land Act, 1925, was subject to two ecclesiastical tithe rentcharges. The vendor served notice of motion to redeem these charges, & the redemption price was fixed by the Judicial Comr. at nineteen years' purchase in each case, the Ministry of Finance objected :—*Held* :

ecclesiastical tithe rentcharges cannot be redeemed under Land Purchase Acts without the consent of the Ministry of Finance as representing the Treasury.—*In the Estate of GUNNING*, [1929] N. I. 61.—*IR*.

#### PART VII. SECT. 6, SUB-SECT. 3.

**3536 I. Proceeds of sale—Application—Church of Scotland (Property & Endowments) Act, 1925 (c. 33), s. 30.]**—

*MILLIGAN, PETITIONER*, [1927] S. C. 692.—*SCOT*.

*d i. — — — Action for trespass.]*—Where land is granted to a church corp. as a glebe, & a rector has been duly inducted, he has the possession, & an action of trespass for entering on the land & cutting down trees must be brought in his name, & not in the name of the corp.—*ST. STEPHEN RECTOR v. TORTELLOT* (1842), 1 Kerr, 537.—*CAN*.

3543. *Add. Citations*:—[1924] 1 K. B. 151; 93 L. J. K. B. 116; 130 L. T. 383; 88 J. P. 33; 68 Sol. Jo. 541.

3579a. — *What amounts to incumbrance affecting land.*—WRENCH *v.* LORD (1837), 3 Bing. N. C. 672; 4 Scott, 381; 6 L. J. C. P. 193; 132 E. R. 569.

3614. *Add. Citations*:—1 And. 47; 3 Dyer, 338 b; *sub nom.* BELFORD *v.* FOORD (1595), Cro. Eliz. 447; *sub nom.* BETFORD *v.* FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a.

*Add. Annotations*:—*Refd.* Betesworth *v.* St. Paul's (Dean) (1726), *Cas. temp. King* 66. *Mentd.* St. Albans Corpn. *v.* Dobbins (1872), *Freem. K. B.* 36; *Mirehouse v. Rennell* (1832), 8 Bing. 490.

3615. *Add. Citations*:—*sub nom.* BETFORD *v.* FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a; *sub nom.* ANON. (1574), 1 And. 47; 3 Dyer, 338 b; Ben. 238.

*Add. Annotations*:—*Refd.* Betesworth *v.* St. Paul's (Dean) (1726), *Cas. temp. King*, 66. *Mentd.* St. Albans Corpn. *v.* Dobbins (1872), *Freem. K. B.* 36.

3621. *Add. Annotation*:—*Generally*, *Mentd.* Everett *v.* Griffiths, [1924] 1 K. B. 941.

3707. *Add. Annotation*:—*Generally*, *Mentd.* Kurrell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298.

3798. *Add. Annotation*:—*Mentd.* Campbell *v.* Pollak, [1927] A. C. 732.

3827. *Add. Annotations*:—*Refd.* R. *v.* Customs & Excise Comrs., [1928] A. C. 402. *Mentd.* R. *v.* Customs & Excise Comrs., *Ex p. Pegler* (1927), 96 L. J. K. B. 997.

3893. *Add. Annotation*:—*Mentd.* Fox *v.* Fox, [1925] P. 157.

3900. The order of the cross-references following this case should be inverted.

3916. *Add. Annotation*:—*Mentd.* Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

## Part VIII.—Religious Bodies other than the Church of England.

3970. *Add. Annotation*:—*Mentd.* Everett *v.* Griffiths, [1924] 1 K. B. 941.

4027. *Add. Annotation*:—*Mentd.* Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

PART VII. SECT. 7, SUB-SECT. 2. —A. *sk. Ontario Act of 1889 simplifying sales of property held in trust for Church of England—Effect of.*—*Re* St. John's Church, [1927] 3 D. L. R. 535; 60 O. L. R. 491.—CAN.

PART VII. SECT. 16, SUB-SECT. 1.

*sa. Spiritual corporation aggregate—Power to borrow.*—An ecclesiastical corpn., being a non-trading corpn., has no implied power to borrow money, unless such power is expressly or impliedly given by its constitution. Although an Act constituting such a corpn. does not expressly give power to borrow or to erect a church, but does expressly give power to mortgage, the power to borrow for the purpose of erecting a church is implied, since the erection of a church is the principal reason for the incorporation. —LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

PART VIII. SECT. 2, SUB-SECT. 1. *ti.* ———.—The canon law of the Roman Catholic Church is foreign law, which must be proved accordingly.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—IR.

*ai.* ———.—*Power to remove parish priest.*—Appl., a parish priest, was removed from his parish by a decree of removal issued by the bishop of the diocese in which the parish was situated. Applt. claimed a declaration that the decree was illegal & void on the ground that (1) there was no power under the canon law to issue such a decree unless a "citation" had been first served on him, & he had an opportunity to meet the charges made against him; (2) alternatively, if the canon law did not require the service of a "citation" or the granting of a personal hearing, yet the making of the decree without notice to him was contrary to natural justice:—*Held*: the decree was not

illegal on either ground.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—IR.

*sb. Corporation—Parish—Borrowing for church building.*—LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

*sd. Relation to civil law—Archbishop of Edmonton—As to parishes in Calgary diocese.*—LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

PART VIII. SECT. 3, SUB-SECT. 3.—A.

*qi.* ———.—Land was conveyed to certain persons in trust for a religious body called the United Brethren in Christ, & a congregation was organised & a church built. Subsequently a division took place in the religious body, & it was held that the party to which the congregation in question adhered were seceders. This congregation continued to use the church, & some of the original trustees having died, appointed new trustees to act with the survivors, & these trustees refused to give up possession to the representative of what had been declared to be the true body:—*Held*: the trustees must be treated as being trustees for the true body, who were entitled to enforce the trust & to have possession of the church, & it was not necessary to organise another congregation & appoint new trustees for that congregation under Religious Institutions Act.—BREWSTER *v.* HENDERSHOT (1900), 27 A. R. 232.—CAN.

*st. Union of religious bodies—Non-concurring Presbyterian congregation—Property of.*—MCLEAN *v.* BALLANTYNE, [1928] 4 D. L. R. 37; 62 O. L. R. 413.—CAN.

*sg. Transfer by trustees to church corporation—Representing denomination of original congregation.*—Pitfs. claimed certain land & a church edifice thereon, the title to which was in defts. until they transferred it to the congregation

incorporated under the name of "The Evangelical Lutheran Trinity Church of the Synod of Missouri, Ohio, & other States at Neudorf, Saskatchewan": & the question in dispute was, whether pitfs. or defts. represented the congregation for which the land was bought & the edifice erected:—*Held*: all the original members of the congregation belonged to the Missouri Synod of the Evangelical Lutheran Church in the United States & Canada, & the church was built & dedicated as a mission church of the Missouri Synod, & not as an independent church, & the question in litigation should be decided in favour of defts., & it should be declared that it was no breach of trust on their part to transfer the property to the above-mentioned church corpn.—STEIN *v.* HAUSER (1913), 26 W. L. R. 452; 5 W. W. R. 971; 15 D. L. R. 223; 6 Sask. L. R. 383.—CAN.

*sh. Church books—Right to retain—Clerk of sessions of Presbyterian church.*—GRIFFITHS *v.* FRASER, [1928] 2 D. L. R. 540; 60 N. S. R. 71.—CAN.

*sj. Church records, correspondence, etc.—Right to inspect—Church member—Whether court will interfere.*—The principle that the ct. will not interfere with the decision of the members of a voluntary assocn., professing to act under their rules, where it is not shown that there was *mala fides* in arriving at the decision, or that the rules were contrary to natural justice, or that anything was done which was contrary to the rules themselves, was applied herein to the decision of the board of directors of a local church, ratified by the congregation, refusing to allow a member thereof to inspect all the records, correspondence & files of said local church.—WETMON *v.* BAYNE, [1928] 1 D. L. R. 848; [1928] 1 W. W. R. 519; 23 Alta. L. R. 446.—CAN.

PART VIII. SECT. 3, SUB-SECT. 3.—E.

*sk. Power to sell—With consent of governing body—Contract to sell by*



4033a. ———.]—DOE d. KIRK v. ROE (1838), 2 Jur. 945. 4055. After this case add the following new sections:—

4034. Add. Citation:—*sub nom.* ——— v. ———, 3 Jur. 460.

4034a. ———.]—DOE d. SMITH v. ROE (1840), 8 Dowl. 509; *sub nom.* DOE d. SMYTHE v. ROE, 4 Jur. 338.

SECT. 9.—PRESBYTERIANS.

See cases *infra*.

SECT. 10.—GREEK CHURCH.

See case *infra*.

*representative of congregation—Invalid.*—IRVING v. MCLACHLAN (1856), 5 Gr. 625.—CAN.

PART VIII. SECT. 4.

sl. *Authority of the yearly meeting—Right to hold property—Members refusing to accept book of discipline.*—The supreme or governing body of the Society of Friends, or Quakers, in Canada, as well in respect to matters of discipline as to the general govt. of the society, is the Canada yearly meeting. The Canada yearly meeting having adopted a book of discipline which certain members of the society refused to accept, these dissentient members, therefore, could not hold, nor exercise any right over, property granted to a subordinate branch of the society to which they had formerly belonged.—JONES v. DORLAND (1886), 14 S. C. R. 39.—CAN.

PART VIII. SECT. 7.

b i. ——— *Irregular marriage in*

*presence of minister followed by prayer—Minister not guilty of offence under Marriage Notice (Scotland) Act, 1878 (c. 43), s. 12.*—STRATHERN v. STUART, [1926] S. C. (J.) 114.—SCOT.

sl. *Minister's stipend—Obligation to provide.*—GREENOCK (PROVOST) v. PETERS, [1893] A. C. 258.—SCOT.

PART VIII. SECT. 9.

sm. *Plan of co-operation adopted by Presbyterian & Methodist congregations—Whether unit for voting on church union.*—*Re* CONN PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 385.—CAN.

so. *Members—Who are—Name on roll.*—RODNEY CASE (Ont.), [1926] 2 D. L. R. 516.—CAN.

sp. ———— *Name also on roll of another church.*—*Re* MAPLE VALLEY PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 378.—CAN.

sq. ———— *Old roll.*—*Re* BURLINGTON PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 380.—CAN.

sr. S. P. *Re* DALHOUSIE MILLS PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 383.—CAN.

st. ———— *Reserve or appendix roll.*—WICK CASE (Ont.), [1926] 1 D. L. R. 829.—CAN.

sv. ———— *Re* RICHMOND HILL PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 365.—CAN.

sw. *Meetings—Calling—How regulated.*—CAMERON v. ST. LUKE'S SALT SPRINGS (TRUSTEES), [1927] 2 D. L. R. 760; 59 N. S. R. 272.—CAN.

sy. *Property—Statutory disposal of.*—*Re* UNITED CHURCH (P. E. I.), [1927] 2 D. L. R. 1169.—CAN.

PART VIII. SECT. 10.

sz. *Selection of priests—Right of majority of members.*—DWIRNICHUK v. ZAICHUK (Sask.), [1926] 3 W. W. R. 508.—CAN.

# EDUCATION.

## Part I.—In General.

5. *Add. Annotation* :—*Reid. B. v. B.*, [1924] P. 176.

## Part II.—Central and Local Education Authorities.

13. *Add. Annotation* :—*As to* (2) *Folld. Richardson v. Abertillery U. D. C.*, *Thomas v. Same* (1928), 44 T. L. R. 333.

14a. — — — — —.]—Pltfs., assistant teachers in the employ of deft. council, claimed injunctions to restrain the council from acting on resolutions to dismiss them from their employment & notices sent to them in pursuance thereof. The council were in financial difficulties, & had approached the Minister of Health with a view to obtaining a further loan. This had been refused, unless the finances were placed on a sound footing & expenses reduced. With a view to achieving this result they appointed a sub-committee with full powers to scrutinise expenditure & effect reductions & savings. This committee recommended that pltfs., who were remunerated on the Burnham scale, should have their engagements determined by notice. Acting in pursuance thereof the committee passed the resolutions complained of, & notices were

sent out determining the contracts signed by their clerk :—*Held* : (1) it was clear that it had become necessary to practise strict economy, & judicial notice could be taken of the fact that at the time pltfs. were remunerated on the highest scale of the Burnham award. The council in considering these questions were acting in pursuance of their statutory obligations, & no objection could be entertained as to the validity of the notices on the ground of motive. (2) There was power to delegate under 1921 Act, s. 4 (2), & the committee had vested in them the duty of ascertaining how best savings could be brought about. On their report the notices of dismissal had been prepared & sent to pltfs., signed by the clerk of the council. That was a sufficient ratification of what the committee had done, & pltfs.' claim failed.—*RICHARDSON v. ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS v. SAME* (1928), 138 L. T. 688; 92 J. P. 59; 44 T. L. R. 333; 72 Sol. Jo. 226.

## Part IV.—Elementary Schools.

30. *Add. Annotation* :—*Consd. Northern Theatres Co. v. Shillito*, [1925] 2 K. B. 100.

32a. — — — — — *Provision of concrete paving in play-*

*ground*.]—A local education authority paid for the concrete paving & flagging of the playgrounds of two non-provided schools.

### PART I.

sa. *Right of child—To receive instruction*.]—The governing principle of School Act, R. S. S. 1920, c. 110, is that children between the ages referred to in sect. 202 (2) (as amended by 1928, c. 48, s. 18) have the right to attend school & receive instruction. The right is the right of the child itself; & it is not a matter left to the discretion of its parents or the school board.—*WILKINSON v. THOMAS* (Sask.), [1928] 2 W. W. R. 700.—CAN.

### PART II. SECT. 2, SUB-SECT. 1.

sb. *School board—Election—Method of voting*.]—*Re EDMONTON SCHOOL BOARD ELECTION* (Alta.), [1927] 1 D. L. R. 411.—CAN.

sc. *Education Board—Distinct entity from Crown—Right of sub-contractor—Charge on money due from board to contractor*.]—The effect of Education Act, 1924, s. 24, is to constitute an Education Board an entity separate & distinct from the Crown, & in consequence a claim of charge can be validly established by a sub-contractor upon moneys due to a contractor by an Education Board in respect of work done for the Board by such contractor.—*McCALLUM v. OFFICIAL ASSIGNEE OF SAGAR & LUSTY*, [1928] N. Z. L. R. 292.—N.Z.

sd. *Duty of trustees—To summon meeting—Requisition by majority of*

*ratepayers—Powers of inspector on refusal*.]—If a requisition is made to the trustees of schools, by a majority of the ratepayers of a district, to call a special meeting for a purpose authorised by Common School Act, 1871, it is their duty to call the meeting under sect. 28 of the Act; & if they refuse, the Inspector is authorised to appoint new trustees, under sect. 37 of the Act.—*Ex p. GILBERT* (1873), 14 N. B. R. (1 Pug.) 231.—CAN.

se. — — — — — *To take legal advice—In important matters of law*.]—School trustees should not act with respect to important matters of law, such as the legal right of a child to receive instruction in the school, without consulting their solr. & counsel; & if they do so, it must be at the risk of having to pay costs if they are wrong.—*WILKINSON v. THOMAS*, [1928] 2 W. W. R. 700.—CAN.

sf. — — — — — *Meeting not formally summoned—All trustees present—Necessity to record waiver of proper notice*.]—Where all the members of a board of school trustees are present at a meeting thereof & tacitly waive the written notice called for by School Act, R. S. S. 1920, c. 110, s. 104 (1), the fact that their consent to the waiver is not recorded in the minutes & subscribed by each member of the board is a mere informality.—*WATERMAN-WATERBURY MANUFACTURING CO., LTD. v. SLAVANKA*

SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16.—CAN.

sg. — — — — — *Contract—Formalities necessary—Executed contract*.]—The contention that a contract in the form prescribed by School Act, R. S. A. 1922, c. 51, s. 194, between a school teacher & a school district was not binding on the latter because not entered into pursuant to a resolution of the board of trustees or adopted at a meeting of the board was held not applicable to an executed contract, & in any event, was completely met by School Act, R. S. A. 1922, c. 51, s. 195, which provides that "The contract shall be deemed valid & binding if signed by the teacher & by the chairman on behalf of the board."—*SOMERS v. LIBERTY SCH. DIST.*, [1928] 2 D. L. R. 334; [1928] 1 W. W. R. 884.—CAN.

sh. — — — — — *Tenders not called for*.]—The fact that before awarding a contract for the erection of a school-house the board of trustees did not advertise for or obtain formal written tenders held to have been a mere informality in the internal management of the board which did not affect the rights of the contractor to whom the contract was awarded.—*WATERMAN-WATERBURY MANUFACTURING CO., LTD. v. SLAVANKA SCHOOL DISTRICT*, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16.—CAN.

sk. — — — — — *Benefits of contract*

The expenses so incurred were disallowed by the district auditor on the ground that the local education authority had no statutory authority to expend money on alterations or improvements of a schoolhouse not provided by them. On a case stated by the Minister of Health under Audit (Local Authorities) Act, 1927 (c. 31), s. 2:—*Held*: the concrete paving or flagging of the playgrounds was not an alteration or improvement in the buildings, & that therefore the obligation to pay for such work was not thrown upon the managers of the schools by Education Act, 1921 (c. 51), s. 29 (2) (d), but the local educa-

tion authority were bound to pay for such work under their obligation to maintain & keep efficient all public elementary schools within their area which are necessary.—*LANCASTER (COUNTY PALATINE) COUNCIL v. CROWE* (No. 1), [1929] 1 K. B. 587; 98 L. J. K. B. 353; 140 L. T. 554; 93 J. P. 38; 45 T. L. R. 170; 73 Sol. Jo. 13; 27 L. G. R. 96. D. C.; *subsequent proceedings*, [1929] 1 K. B. 604, D. C.

47. *Add. Annotation*:—*Reid. Sadder v. Sheffield Corpn., Dyson v. Sheffield Corpn.*, [1924] 1 Ch. 483.

*accepted*.]—School Act, R. S. S. 1920, c. 110, s. 105, is imperative; & where it has not been complied with in respect to a contract the contract is absolutely void; & the fact that the work has been done & the benefits thereof accepted by the board does not entitle the contractor to recover from the board an amount due thereunder.—*WATERMAN-WATERBURY MFG. CO., LTD. v. SOUTH ARCOLA SCHOOL DIST.*, [1928] 3 W. W. R. 690.—*CAN.*

sl. *Removal of trustees*—By Board of Commissioners—Under 4th R. S., c. 32.—*Held*: where no vacancy had occurred & no proof was produced of any refusal or neglect by & on the part of the trustees to act or perform their duties as such, their dismissal by the Board of Comm. was *ultra vires*.—*SCHOOL SECTION 16 TRUSTEES v. CAMERON* (1877), 11 N. S. R. (2 R. & C.) 328.—*CAN.*

sm. — Improper dealings with trust funds—Action—Whether attorney (general necessary party).—In an action by an incorporated educational institute for the removal of one of the trustees, who also acted as secretary, for alleged improper dealing with the corporate funds, judgment was given, but without any finding of wilful misconduct, directing such trustee's removal, on the ground that so much doubt was cast upon his dealings with the trust funds that it would not be proper to allow him to remain a member of the board. Such an action is maintainable without making the A.-G. a party.—*WILBERFORCE EDUCATIONAL INSTITUTE v. HOLDEN* (1887), 17 O. R. 439.—*CAN.*

so. — Neglect of duty—Proceedings for removal informal—One applicant not ratepayer.]—Although on an appeal by school trustees from a judgment removing them from office the Ct. of Appeal agreed with the judge appealed from that applicants had been guilty of a neglect of duty in disregarding School Act, R. S. S. 1920, c. 110, with respect to procuring a new site for a school house, it was held, nevertheless, that the appeal must be allowed on the ground, raised apparently for the first time in the notice of the appeal, that one of the five persons by whom the proceedings for removal were commenced was not at the time they were commenced on the last revised assessment roll for the district, & therefore, was not a "ratepayer" within the meaning of sect. 124 of the Act.—[1928]

sq. *Appointment of trustee*—Whether valid—Made at annual meeting of ratepayers—No notice of special business.]—The election of a trustee at the annual meeting of ratepayers in question herein to fill a vacancy on the board caused by resignation was held invalid, since by School Act, R. S. S. 1920, c. 110, s. 125, such a vacancy must be filled at a special meeting; & since sect. 92 (2) requires the notice of a special meeting to set forth its purpose, & the notice of said annual meeting made no mention of the election of a trustee to fill the vacancy, it could not be said

that the annual meeting was such a special meeting.—*LACOURSE v. McLELLAN & DEGRAU*, [1928] 3 W. W. R. 680.—*CAN.*

st. — Reports not read as directed in School Act.]—An election of trustees under School Act, R. S. S. 1920, c. 110, is not rendered invalid by the fact that the reports referred to in sect. 70 were not read before they were elected.—*LACOURSE v. McLELLAN & DEGRAU*, [1928] 3 W. W. R. 680.—*CAN.*

sv. *Qualification of trustees*—"Able to read & write"—Whether "in the English language" implied.]—The words "able to read & write" in Public Schools Act, R. S. M. 1913, c. 165, s. 24 (2) (C. A. 1924, c. 165, s. 8), which prescribes the qualifications of school trustees, are not to be read as if modified by the addition of the words "in the English language."—*RE MACZEWSKI*, [1928] 2 W. W. R. 21.—*CAN.*

sw. *School district—Annual meeting—Commenced after time fixed by School Act—Whether valid*.]—The fact that the annual meeting of a school district was not commenced until after two o'clock in the afternoon, the hour appointed by School Act, R. S. S. 1920, c. 110, s. 64, does not render the proceedings at such meeting invalid.—*LACOURSE v. McLELLAN & DEGRAU*, [1928] 3 W. W. R. 680.—*CAN.*

## PART II. SECT. 2, SUB-SECT. 4.

17 l. *Negligence of education authority—Defective state of playground*.]—Appnts. planted a number of young trees upon a portion of the playground of a school under their control, & erected wooden stakes with sharp & jagged points round each tree. These stakes were pressed into the ground & brought together at the top in the form of a pyramid. The area covered by the trees had become overgrown with grass, & in that area a hole had been dug, & the earth heaped up at the side of it, forming a mound two or three feet in height. Resp.'s daughter, a child of six years, when playing fell on one of the stakes, which pierced her eye.—*Held*: appnts. had been negligent in not taking steps to obviate the danger, & were liable in damages.—*TRANSVAAL PROVINCIAL ADMINISTRATION v. COLEY*, [1925] App. D. 24.—*S. AF.*

o i. — Supervision of rifle-shooting competition.]—A school board has a duty to see that the school premises are not used in a manner dangerous to the children. If it authorises or permits a shooting competition with rifles in the course of school sports on a holiday granted for such purpose, it must provide efficient supervision, including efficient inspection of the rifles used, & a breach of that duty will subject it to damages for injury to a boy caused through his having a defective rifle.—*WALTON v. VANCOUVER BOARD OF SCHOOL TRUSTEES*, [1924] 2 D. L. R. 387; 2 W. W. R. 49; 34 B. C. R. 38.—*CAN.*

## PART IV. SECT. 2, SUB-SECT. 2.

26 i. *Duty to "maintain & keep efficient"*—School transferred to local authority.]—Trustees of a voluntary Episcopal school transferred it to the local education authority, the school then being conducted as a primary school, with a supplementary course. Two years after the transfer, the education authority altered the system & began to conduct it in sequence with a neighbouring school. In an action against the education authority at the instance of the former trustees.—*Held*: under Education (Scotland) Act, 1918, s. 18 (3), defenders were bound to hold, maintain, & manage the transferred school as a public school of the same character & status as at the date of the transfer & provide similar instruction to that provided at that date.—*NORFOLK v. ABERDEENSHIRE EDUCATION AUTHORITY*, [1924] S. C. 590.—*SCOT.*

26 ii. — Performance of duty disputed—Jurisdiction of court.]—*Held*: while questions as to due fulfilment or observance by the education authority of their statutory obligations were questions of fact which fell to be determined by the Education Department under Education (Scotland) Act, 1918, s. 18 (4), where the question involved the measure of these obligations, that was a question of law, with regard to which the jurisdiction of the Ct. had not been excluded.—*NORFOLK v. ABERDEENSHIRE EDUCATION AUTHORITY*, [1923] S. C. 881.—*SCOT.*

## PART IV. SECT. 2, SUB-SECT. 3.

so. *Teachers—Employment of sisters of Order of Roman Catholic Church—Whether sectarian education*.]—*ITOGERA v. BATHURST SCHOOL DISTRICT NO. 2 (TRUSTEES)* (1896), 1 N. B. Eq. Rep. 266.—*CAN.*

sd. — Contracts with—Duty of trustees to confirm.]—*DES ROSIERS v. BALMORAL & DALHOUSIE SCHOOL DISTRICTS NO. 1* (N. B.), [1927] 3 D. L. R. 505.—*CAN.*

## PART IV. SECT. 5.

so. *Contribution by one education authority to another—Parents not residing in area in which school situate*.]—The B. education authority granted bursaries to a number of children of persons resident in Arran for the purpose of facilitating their secondary education. There was no secondary school in Arran, & the children attended Ardrossan Academy, which is within the education authority. Except for two months in summer, the children left Arran for Ardrossan on Monday mornings, & they were boarded during the week with persons resident in Ardrossan, with whom they lived in family. On Saturday they returned home for the week-end, & they spent their holidays at their homes in Arran. The A. education authority claimed repayment of the cost of educating the children at Ardrossan from the B. education authority.—*Held*: pursuers were entitled to recover the cost of the

## Part V.—School Attendance.

62. *Add. Annotation* :—*Apld. Woodward v. Oldfield* (1927), 96 L. J. K. B. 796.
72. *Add. Annotation* :—*As to (3) Consd. Thomas v. Hughes* (1928), 139 L. T. 613.
78. *Add. Annotation* :—*N.F. Rednall v. Beamish* (1926), 135 L. T. 155.
- 78a. ———.]—Where an education authority has refused an application for exemption from school attendance on the ground of employment, the fact of such employment can be neither a "reasonable excuse" for non-attendance, nor an extenuating circumstance entitling the justices under Probation of Offenders Act, 1907 (c. 17), to dismiss a summons against the parent.—*THOMAS v. HUGHES*, [1929] 1 K. B. 226; 98 L. J. K. B. 42; 139 L. T. 613; 92 J. P. 169; 44 T. L. R. 818; 28 Cox, C. C. 542; 26 L. G. R. 545, D. C.
- 79a. ———.]—Resp., a share-fisherman & the father of a boy of fourteen years of age & of six other children of school age, placed the boy out at work at 5s. 6d. a week, & applied to the local education authority to exempt the boy from school attendance. Exemption was refused, & on an information against resp. for failing, without reasonable excuse, to cause the boy, being between five & fifteen

years of age, to attend school, as required by the bye-laws of the education authority, the justices held that the fact of the boy's having obtained regular employment of a beneficial nature was a reasonable excuse, & they dismissed the information:—*Held*: the fact of the boy's employment was not a reasonable excuse, & the case must be remitted to the justices.—*REDNALL v. BEAMISH* (1926), 135 L. T. 155; 90 J. P. 153; 42 T. L. R. 538; 24 L. G. R. 391; 28 Cox, C. C. 245, D. C.

82. *Add. Annotation* :—*Distd. L. C. C. v. Maher*, [1929] 2 K. B. 97.
- 88a. ———.]—The words "under efficient instruction in some other manner" mean that the child is receiving the whole of its instruction in some other manner, & do not entitle a parent to withdraw a child for one hour a week for the purpose of attending private lessons in a subject not approved by the Board of Education for elementary schools.—*OSBORNE v. MARTIN* (1927), 138 L. T. 268; 91 J. P. 197; 44 T. L. R. 38; 25 L. G. R. 532, 28 Cox, C. C. 465, D. C.
- 96a. ———.]—1921 Act (c. 51), s. 49, provides that any of the three reasons therein set out, which may be summarised as follows: (a) sickness; (b) no school open within three

children's education from defenders. Education (Scotland) Act, 1918 (c. 48), s. 10, discussed.—*AYRESHIRE EDUCATION AUTHORITY v. BOTESHIRE EDUCATION AUTHORITY*, [1926] S. C. 169.—SCOT.

## PART IV. SECT. 6.

sl. *Alteration of school section boundaries—Sufficiency of notice.*—By a township bye-law, certain land was detached from one school section & added to another. Notice of the proposed alteration had been given by the township council by posting fourteen notices, seven in each of the sections, & publicity was given in the public press, though not by advertisement containing the formal notice. On an application for a declaration that the bye-law was invalid:—*Held*: Public Schools Act, 1920, s. 15 (1) (b), should be construed as leaving the notice to be given entirely to the discretion of the township council.—*Re HOYLAND & YORK* (1923), 55 O. L. R. 185.—CAN.

sj. *Alteration of school districts—By whom sanctioned*—7 Vict. c. 29, ss. 14, 24.]—*McFEE v. DUNDAR* (1860), 10 C. P. 94.—CAN.

sk. ———.]—*Award under Public Schools Act, 1896* (c. 70) (Ont.).—*Validity.*—*Re CHESTERVILLE PUBLIC SCHOOL BOARD* (1898), 29 O. R. 321.—CAN.

sm. *Union of sections*—40 Vict. c. 16 (Ont.).—*Effect of.*—*Re MINISTER OF EDUCATION PETITION* (1877), 28 C. P. 325.—CAN.

so. *Refusal of some trustees to join in transfer—Right of majority of trustees to require execution by minority.*—The managers & a majority of the trustees of B. public elementary schools decided that the schools should be transferred to the County Council of L. under Education Act (Northern Ireland), 1923. Four trustees refused to join in the necessary deed of conveyance:—*Held*: the majority of the trustees could require the minority to join in the deed for the purpose of transferring the schools under the Act.

—LONDONDERRY C. C. v. [1929] N. I. 47.—IR.

sq. *Under Education (Scotland) Act, 1918* (c. 48), s. 18 (7)—*Necessity for consent of Education Authority.*—The trustees of a Roman Catholic school, established after the passing of above Act, obtained in 1926 the consent of the Dept. to the transfer of the school to the Education Authority, & thereafter they intimated to the Authority their intention to transfer the school. The Authority refused to accept the proposed transfer, & in an action of declarator brought by the trustees, maintained that its consent was a condition precedent to a valid transfer:—*Held*: the determination of the question whether the Education Authority was bound to accept the transfer depended upon the construction to be given to above subsect.; it did not expressly, or by necessary implication, impose any obligation on the Authority to accept a transfer against its will, even where such transfer had been consented to by the Education Department, the assumption being that the transfer should have been agreed on by the transferor & the transferee before the Department was asked for its consent.—*BONNYBRIDGE ROMAN CATHOLIC SCHOOL v. STIRLINGSHIRE EDUCATION AUTHORITY*, [1928] S. C. (Cl. of Sess.) 855.—SCOT.

## PART V. SECT. 1, SUB-SECT. 2.

st. *By whom taken.*—A father, charged with failure to provide efficient education for his child upon a complaint at the instance of "the person appointed by the education authority for the county of Lanark to prosecute," objected on the ground that the proper prosecutor was the school management committee for the area, or the person appointed by them:—*Held*: the power, previously vested in school boards, to prosecute for education offences was included in the powers transferred to the education authority by 1918 Act, & had not been restricted by s. 3 (2); & the education

authority, or the person appointed by them, could competently prosecute.—*HIDDLESTON v. WILSON*, [1924] S. C. (J.) 62.—SCOT.

sb. *Under Education (Scotland) Act, 1872* (c. 62), s. 70.]—The above sect. has not been impliedly repealed by Education (Scotland) Act, 1908 (c. 63), s. 8, & a prosecution under sect. 70 is competent, even though the real question at issue between the parent & the education authority is the selection of the school which the children are to attend. *Semble*: proceedings should not be taken under sect. 70 where there is a question of principle at issue between the parties.—*CALDER v. ALEXANDER*, [1926] S. C. (J.) 51.—SCOT.

## PART V. SECT. 2.

sd. *To regulate age of admission of pupils to grade I—Power of town district trustees.*—The power which School Act, R. S. S. 1920, c. 110, s. 110 (27), gives the trustees in town districts to determine in the case of graded schools at what time pupils may be admitted to grade I, is not conferred on the trustees of districts which are not town districts.—*WILKINSON v. THOMAS*, [1928] 2 W. W. R. 700.—CAN.

## PART V. SECT. 3.

89 l. ———.]—*No school within three miles—Parent's refusal of offer of travelling facilities.*—A father was charged with failure to provide efficient education for his son aged twelve years, contrary to Education (Scotland) Act, 1908 (c. 63), s. 7 (1). The boy had passed out of the primary school, & there was no secondary school within three miles of his place of residence. The education authority offered to pay an allowance towards the cost of conveying the boy to a secondary school. The father refused the offer:—*Held*: the father had a "reasonable excuse" for failure to provide education within Education (Scotland) Act, 1883 (c. 56), s. 11.—*MACKENZIE v. SMITH*, [1927] S. C. (J.) 47.—SCOT.

miles; (c) efficient instruction in some other manner, shall be a reasonable excuse for not causing a child to attend school:—*Held*: those three reasons were not an exhaustive enumeration of what would be a reasonable excuse, but that if facts were established showing an excuse within one of the categories (a), (b) & (c), the tribunal must accept the excuse as being a reasonable excuse. If, however,

parents sought to find a reasonable excuse outside the named categories (a), (b) & (c), the tribunal were not bound to accept it; the tribunal must decide whether the facts, in their opinion, showed a reasonable excuse.—*LONDON COUNTY COUNCIL v. MAHER*, [1929] 2 K. B. 97; 98 L. J. K. B. 492; 93 J. P. 178; 45 T. L. R. 534; 73 Sol. Jo. 269; 27 L. G. R. 444, D. C.

## Part VI.—Blind, Deaf, Defective and Epileptic Children.

99a. ——— *Who is "parent."*—The parent, whose consent is required to be given or unreasonably withheld before a defective child can be ordered, under 1921 Act, s. 54 (1), to be sent to a special school which is not within reach of the child's residence or to a boarding school, is the parent who has *de facto* custody of the child; & where the

father of a defective child was a convict serving a term of penal servitude, & the child resided with its mother:—*Held*: the mother was the parent for the purposes of the sect.—*WOODWARD v. OLDFIELD*, [1928] 1 K. B. 204; 96 L. J. K. B. 796; 136 L. T. 731; 91 J. P. 151; 43 T. L. R. 488; 25 L. G. R. 296; 28 Cox, C. C. 363, D. C.

## Part VII.—Higher Education.

100. *Add. Annotation*:—*Mentd. R. v. Health Minister, Ex p. Dore*, [1927] 1 K. B. 765.

### PART VIII.

105 i. *Conveyance of children to school—Duty of school trustees—Under School Act, R. S. S., 1920 (c. 110), ss. 188, 207 (1).*—*RIDINGS v. ELMHURST SCHOOL DISTRICT NO. 3665 BOARD OF TRUSTEES* (No. 2), [1927] 3 D. L. R. 173; [1927] 2 W. W. R. 159; 21 S. C. R. 471.—*CAN.*

sm. *Lease by school trustees—Validity.*—*NIAGARA PUBLIC SCHOOL BOARD v. QUEENSTON WOMEN'S INSTITUTE*, [1926] 4 D. L. R. 13; 59 O. L. R. 213.—*CAN.*

### PART X.

m i. ——— *Penalty for non-compliance with School Act—Whether applicable where schoolhouse rebuilt on same site.*—*WATERMAN-WATERBURY MANUFACTURING CO., LTD. v. SLAVANKA SCHOOL DISTRICT*, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16.—*CAN.*

p i. ——— *Power of trustees—Sale of old site.*—*Under School Act, R.S.A., 1922*, a board of trustees has power to purchase a new site for a school & remove the school building to it, & with the Minister's approval, to sell the old site.—*OLSTED v. COAL VALLEY SCHOOL DISTRICT NO. 1053*, [1924] 1 W. W. R. 211.—*CAN.*

l (p. 574) i. ——— *Validity of bye-law prohibiting.*—A bye-law passed by a city council under Municipal Act of Ontario, s. 399A, prohibiting in a certain district the erection of buildings except for use as private residences, is enforceable in respect of a school erected by the trustees of a separate school under their statutory powers.—*TORONTO CORPN. v. ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES*, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658.—*CAN.*

### PART XI.

g i. ——— *Annexation by urban municipality—Effect of.*—*WINDSOR v. TURNER*, [1925] 2 D. L. R. 684; [1925]

S. C. R. 413; *reversg.* 26 O. W. N. 221.—*CAN.*

g ii. ——— *Assessment by—Whether property temporarily in district liable.*—*Re EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO. & McLELLAN SCHOOL DISTRICT, Re MANNIX & WAGGREN & McLELLAN SCHOOL DISTRICT*, [1928] 2 W. W. R. 684.—*CAN.*

k i. ——— *For county pupils attending urban collegiate institute.*—*Re GRIMSBY & LINCOLN COUNTY*, [1928] 4 D. L. R. 589; 62 O. L. R. 470.—*CAN.*

p (p. 576) i. ——— *Demand upon for money collected for erection of school—Resolution of trustees insufficient—Subsequent bye-law invalid.*—*Re SANDWICH TOWN SCHOOL TRUSTEES & SANDWICH TOWN* (1864), 23 U. C. R. 639.—*CAN.*

p (p. 576) ii. ——— *Demand upon for expenses of conducting high school—Alleged irregularity in description of applicants, etc.*—*Re FORT ROWAN HIGH SCHOOL TRUSTEES & WALSHINGHAM TOWNSHIP CORPN.* (1873), 23 C. P. 11.—*CAN.*

p (p. 576) iii. ——— *Money raised by sale of debentures—For erection of school building—Right to unexpended balance.*—It is the duty of a municipal council to pay over to a school board or boards, from time to time, upon request, moneys raised by the sale of municipal debentures for the erection of a school building. The unexpended balance of such moneys is not the property of the municipality in its own right, at most it is a trustee or custodian of the moneys for the boards.—*CLARKSON v. ALLISTON CORPN.*, [1928] 2 D. L. R. 715; 62 O. L. R. 149.—*CAN.*

p (p. 576) iv. ——— *Agreement exempting taxpayer from taxes—Whether school taxes included.*—*Ex p. BATHURST CO.*, [1928] 4 D. L. R. 65.—*CAN.*

p (p. 576) v. ——— *Appeal against equalised assessment—Duty of equaliser.*—On an appeal against the equalised assessments made under Public Schools Act, s. 133, as amended by 1928, c. 48, s. 13, the only question for the judge

to decide is whether the equaliser has done what the statute as amended requires him to do, i.e. made his equalisation on the basis of the equalisation made by Manitoba Tax Commission.—*Re BEAUFORT SCHOOL DISTRICT (Man.)*, [1928] 3 W. W. R. 310.—*CAN.*

sn. *City board—School in adjoining rural section—Equalisation of assessment.*—An agreement was made in 1917 between the trustees of a rural school section adjoining a city & the board of education for the city for the erection & maintenance by the latter of a school house in the rural section, the pupils in the rural section to have the right to attend the school & the higher grade schools in the city, & the trustees of the rural section agreeing to pay a fixed annual sum to be raised by taxation:—*Held*: assuming the agreement was a valid one, School Law Amendment Act, 1922, s. 14, did not apply to the agreement, as it was not one for payment of any proportion of the cost of erecting & maintaining the school; & a judgment restraining the city board & arbitrators appointed to equalise the assessment in respect of the school from proceeding to do so, was affirmed.—*YORK PUBLIC SCHOOL BOARD v. TORONTO BOARD OF EDUCATION* (1923), 54 O. L. R. 216.—*CAN.*

so. *School board—Liability for cost of vocational training—Refused by school board—Granted by vocational board.*—*FREDERICTON SCHOOL TRUSTEES v. KINGSCLEAK SCHOOL TRUSTEES*, [1928] 4 D. L. R. 13.—*CAN.*

sp. *Joint board of grammar & common school trustees—Claim against district municipality—Joint board illegal.*—*Re TRENTON SCHOOL TRUSTEES & TRENTON VILLAGE CORPN.* (1867), 26 U. C. R. 353.—*CAN.*

sq. ——— *Remittance to bank of county treasurer for grammar school trustees—Failure of bank—Liability of county treasurer.*—*CALEDONIA GRAMMAR & COMMON SCHOOL TRUSTEES v. FARRELL* (1868), 27 U. C. R. 321.—*CAN.*

## Part XII.—Reformatory and Industrial Schools.

135. *Add. Annotation* :—**Refd.** *L. C. C. v. Wiltshire County Council* (1927), 137 L. T. 526.

137a. ————.]—A youthful offender committed an offence while on a temporary visit to the place in W. where it was committed. Until about three weeks previously he had resided in L., but at the date of the offence had neither home nor employment in L. to which he could have returned. He was ordered to be sent to a reformatory school, & his place of residence was specified to be L. :—**Held** : as there was no proof of his actual residence in L. at the date of the offence, his place of residence should have

been specified as W., not because of his actual residence there, which was admittedly only temporary, but because the presumed residence in the place where the offence was committed provided for by the above sect. had not been successfully displaced.—**LONDON COUNTY COUNCIL v. WILTSHIRE COUNTY COUNCIL** (1927), 137 L. T. 526; 91 J. P. 122; 43 T. L. R. 563; 25 L. G. R. 384; 28 Cox, C. C. 416, D. C.

138. *Add. Citations* :—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 414; 27 Cox, C. C. 581.

## Part XIV.—Universities and Public Schools.

176. *Add. Annotation* :—**As to** (2) **Refd.** *Short v. Poole Corpn.* (1925), 42 T. L. R. 107. **Generally Mentd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.

178. *Add. Annotation* :—**Expld.** *Ereaut v. Girls' Public Day School Trust*, [1929] 2 K. B. 274.

180. *Add. Annotation* :—**Distd.** *Ereaut v. Girls' Public Day School Trust*, [1929] 2 K. B. 274.

182. *Add. Annotation* :—**Consd.** *Ereaut v. Girls' Public Day School Trust*, [1929] 2 K. B. 274.

182a. ————.]—Where a school is carried on by a co. whose shareholders receive dividends not exceeding a fixed rate on their shares, the

school, though otherwise possessing the essential characteristics of a public school, is not a public school so as to be entitled under Income Tax Act, 1918 (c. 40), Sched. A., No. VI., r. 1 (c), to an allowance in respect of the assessment to income tax on the school buildings, for the existence of an element of profit-making for the private benefit of the founders & managers is fundamentally opposed to the conception of a public school.—**EREAUT v. GIRLS' PUBLIC DAY SCHOOL TRUST**, [1929] 2 K. B. 274; 98 L. J. K. B. 475; 141 L. T. 481; 45 T. L. R. 557; 73 Sol. Jo. 401; 93 J. P. Jo. 449; 27 L. G. R. 579, C. A.

## Part XV.—Educational Charities.

222. *Add. Annotation* :—**Mentd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.

## Part XVII.—Schoolmasters and Teachers.

273. *Add. Annotation* :—**Consd.** *R. v. Newport (Salop) Justices, Ex p. Wright*, [1929] 2 K. B. 416.

275. *Add. Annotation* :—**Apld.** *R. v. Newport (Salop) Justices, Ex p. Wright* (1929), 98 L. J. K. B. 555.

275a. ————.]—At a school for boys there was a rule prohibiting smoking by pupils during the school term, whether on the school

precincts or in public. During the term a pupil rather less than sixteen years old, after having left the school for the day & returned home, smoked a cigarette in the public street, & next day the schoolmaster administered to him five strokes of the cane as a punishment for breach of the rule. On the hearing of an information against the schoolmaster for an alleged assault on the boy the justices found that the rule in question

### PART XII. SECT. 1.

b i. ————.]—**Re** *R. v. St. PETERS* (1927), 47 Can. Crim. Cas. 204; 59 N. S. R. 198.—**CAN.**

### PART XIV. SECT. 2, SUB-SECT. 4.

n i. ————.]—When plff. was appointed to a professorship in 1916, no definite term was fixed :—**Held** : the ordinary rule that such a contract of employment could be terminated by reasonable notice on either side

would apply, unless the particular nature of the contract or the circumstances in which it was made overrode the rule; & an appointment to a professorship without limitation of time could not be an appointment for life, subject only to good behaviour & ability to perform his duties, as such a contract must be mutual, & could be binding neither on the university nor on the professor.—**CRAIG v. UNIVERSITY OF TORONTO (GOVERNORS)** (1925), 53 O. L. R. 312.—**CAN.**

### PART XV. SECT. 8, SUB-SECT. 2.—A.

192 i. *Modification of scheme*—**Powers under Educational Endowments (Scotland) Act, 1882** (c. 59).]—Where a scheme approved by the Education Department is submitted which is reasonable & consistent with the Act, it is not the function of the ct. to remodel or alter it.—**Re CAMPBELL ENDOWMENT TRUST, ARGYLL EDUCATION AUTHORITY v. CAMPBELTOWN CORPN.**, [1928] S. C. 171.—**SCOT.**

was reasonable, that the father of the boy by sending him to the school authorised the schoolmaster to administer reasonable punishment to the boy for breach of a school rule, & that the punishment administered was reasonable; & they dismissed the information. An order *nisi* having been obtained calling upon the justices to show cause why they should not state a case on a question of law:—*Held*: the decision of the justices was right, that no question of law arose on which they could state a case, & that the order *nisi* should be discharged.—*R. v. NEWPORT (SALOP) JUSTICES, Ex p. WRIGHT*, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518, D. C.

**288a. — Right to withhold “carry-over” — Unsatisfactory service.**—Pltf. was appointed head teacher of a non-provided school in 1904, & in 1921 the Burnham Report was adopted by the local education authority. The effect of the adoption of the report was that pltf. became entitled to an increase of salary, & it was agreed that the payment of the “carry-over,” i.e. the difference between the salary which pltf. would have received at the date of the adoption of the report by

the local education authority, if throughout pltf.’s service the Burnham scale had been in operation, & the salary which at that date pltf. was in fact receiving, should be spread over three years. The education committee refused to pay the instalment for the year ending Mar. 31, 1924, on the ground that in 1923 pltf.’s service had been unsatisfactory:—*Held*: the local education authority had no power, under the terms of the report, to withhold from a teacher any part of the “carry-over” by reason of unsatisfactory service after the date of the adoption of the report.—*WITTS v. MACKAY* (1927), 43 T. L. R. 535; 71 Sol. Jo. 666, D. C.

**290. Add. Annotations:—As to (2) *Reid*.** Short v. Poole Corpn. (1925), 42 T. L. R. 107. *Generally, Mentd.* *R. v. Roberts, Ex p. Scurr*, [1924] 2 K. B. 695; *Reitzes de Marienwert v. Administrator of Austrian Property*, [1924] 2 Ch. 282; *Roberts v. Hopwood*, [1925] A. C. 578; *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88.

**293a. Death gratuity granted to legal personal representative of deceased teacher—Devolution on death of grantee.**—A death gratuity granted by the Board of Education under the power conferred by School Teachers

**PART XVII. SECT. 4, SUB-SECT. 1.**  
**st. Duty of teacher to obey order of school board to suspend pupil.**—If a teacher knows of no reason why a pupil be suspended or expelled & has received no complaint against the pupil, he is justified in refusing to obey an order of the school board to suspend such pupil.—*LECLERO v. PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES*, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—CAN.

**sv. Duty of master—Pupil guilty of “wilful opposition to authority.”**—A pupil who remains away from school because he finds certain school work uninteresting, or because he does not like the teacher’s manner of teaching, is guilty of “wilful opposition to authority” within School Act, R. S. A., 1922 (c. 51), s. 202, & it is not only the teacher’s right, but his duty, to suspend him.—*FINLAYSON v. POWELL, TUCKER v. POWELL*, [1926] 2 D. L. R. 383; [1926] 1 W. W. R. 939; 22 Alta. L. R. 171.—CAN.

**PART XVII. SECT. 4, SUB-SECT. 2.**  
**sw. General rule.**—Where a child is sent by its parent or guardian to a school, they must be held to have given an implied consent to the infliction of such reasonable punishment as may be necessary for the purpose of school discipline, & the purpose with which the parental authority is delegated to the schoolmaster must to some extent include authority over the child when it is outside the school walls; but when the school is closed for any length of time for a period of regular holidays, the child then returns to the charge of its parent or guardian & the authority of the schoolmaster ceases.—*R. v. MAUNG BA THAUNG* (1925), 1 L. R. 3 Ran. 659.—IND.

**1 i. — Moderate & reasonable.**—A schoolteacher has the right to inflict corporal punishment on a pupil for violating the rules of the school, provided the punishment is not excessive, the instrument with which it is inflicted is a proper one for the purpose & there is no malice or ill will on the part of the teacher.—*R. v. METCALFE* (Sask.), [1927] 3 W. W. R. 194.—CAN.

#### PART XVII. SECT. 5.

**q i. — Night school teacher —**

*Liability of school board.*—A night school teacher may recover on his contract with a school board, although it is not in the prescribed form or in writing.—*LECLERO v. PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES*, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—CAN.

**q ii. — Computation of teaching period—Teacher prevented from teaching.**—Where a school board wrongfully prevents a teacher from teaching, the time during which he is thereby unable to teach will be counted in his favour in determining whether he has been teaching continuously for the four months or more required to entitle him to the benefits of School Act, R. S. A., 1920 (c. 110), s. 195 (1). Holidays under sect. 177 of the Act should not be counted as actual teaching days under sect. 195 (1).—*LECLERO v. PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES*, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—CAN.

**q iii. — School arbitrarily closed.**—Where a school is closed arbitrarily by a school board, & a teacher, who is ready, willing & able to teach, is thereby prevented from teaching for the full two hundred & ten days on which, under School Act, R. S. A., 1922 (c. 51), s. 199 (1), his salary is based, he is entitled in a claim for salary to have the days during which the school was so closed credited to him as “actual teaching days.”—*STEPHENS v. GEM CONSOLIDATED SCHOOL DISTRICT, NO. 60, TRUSTEES*, [1925] 1 W. W. R. 745.—CAN.

**q iv. — Whether teacher entitled to full year’s salary.**—School Act, R. S. A. 1922, c. 51, does not guarantee to a teacher a full year’s salary in any event; but bearing in mind the whole scheme of the Act, & more particularly the plan adopted for the calculation of salary, the statutory obligation of the school board to provide teaching during every day which is not excepted, & the basis of a yearly period of hiring, there is a legal obligation upon the board to place at the disposal of the teacher every available teaching day without deduction, except as provided by statute & the contract, & the teacher is entitled to be paid for

every available teaching day so long as there was no default on his part.—*PETERSON v. YOUNGSTOWN SCHOOL DISTRICT TRUSTEES*, [1928] 1 D. L. R. 344; [1928] 1 W. W. R. 128.—CAN.

**q v. — Scale—Head teacher in secondary school.**—As regards head teachers of secondary schools, the Craik scale is prescribed, until a defined & fixed scale of salaries is introduced.—*SMART v. PERTSHIRE EDUCATION AUTHORITY*, [1927] S. C. (H. L.) 22.—SCOT.

**q vi. — School Ordinance, s. 155.**—*PORTER v. FLEMING SCHOOL DISTRICT* (1906), 3 W. L. R. 186; 6 Torr. L. R. 348.—CAN.

**q vii. — Receipt for “final payment.”**—Effect of a receipt given by a school teacher to a school district for a payment of salary, which was expressed to be the “final payment” for the term then ending, held not to be an answer to the teacher’s claim for the amount remaining due under her contract with the district, the document not being a release & there being nothing in the evidence to indicate that the payment was expressly accepted in satisfaction of the whole amount or that any new agreement was entered into at the time.—*SOMERS v. LIBERTY SCHOOL DISTRICT*, [1928] 2 D. L. R. 334; [1928] 1 W. W. R. 884.—CAN.

**sz. Decrease of salary—Revision of scale—From what date operative.**—A revised scheme does not become operative until it has received the Education Department’s approval.

The Department has no power to sanction a revised scheme retrospectively so as to affect a teacher’s contractual right to his salary.—*COULL v. FIRE EDUCATION AUTHORITY* [1925] S. C. 240.—SCOT.

**290 i. Differentiation of salaries—Graduate & non-graduate teachers—Effect of admitting non-graduate to graduate scale.**—The admission of a non-graduate master to the graduate scale of salary does not preclude an education authority from treating him as a non-graduate teacher on a revision of the scales of salaries.—*COULL v. FIRE EDUCATION AUTHORITY*, [1925] S. C. 240.—SCOT.



Superannuation Act, 1918 (c. 55), s. 3, to the legal personal representative of a deceased teacher, who died intestate & insolvent, leaving a widow & an infant daughter, will be treated as forming part of the estate of the intestate, & be primarily applicable in payment of the intestate's debts, & ought not to be held upon trust for his next of kin.—*Re HAWKINS, HAWKINS v. DEW & SONS*, [1926] Ch. 428; 95 L. J. Ch. 402; 135 L. T. 89; 42 T. L. R. 286.

**293b. — Liability to estate duty.]**—The death gratuity which under Teachers (Superannuation) Act, 1925 (c. 59), s. 5, is payable to the legal personal representatives of a teacher in the circumstances there specified is property passing on the death of the teacher within Finance Act, 1894 (c. 30), & is therefore aggregable with the remainder of the teacher's estate & chargeable with estate duty.—*A.-G. v. QUIXLEY* (1929), 98 L. J. K. B. 652; 141 L. T. 288; 93 J. P. 227; 45 T. L. R. 455; 27 L. G. R. 693, C. A.

**297. Add. Annotations:—As to (1) Refd. Short v. Poole Corpn.** (1925), 42 T. L. R. 107; *Fennell v. East Ham Corpn.*, [1926] Ch. 641.

**299. Add. Citations:—131 L. T. 55; 68 Sol. Jo. 403; 22 L. G. R. 138.**

**Add. Annotations:—As to (2) Refd. Short v. Poole Corpn.** (1925), 42 T. L. R. 107 *Fennell v. East Ham Corpn.*, [1926] Ch. 641.

**302. Add. Annotation:—As to (4) Consd. Short v. Poole Corpn.**, [1926] Ch. 66.

**302a. — — — Bonâ fide exercise of discretion.]**—A local education authority has power to dismiss a married woman teacher in a public elementary school on the ground that, in the *bonâ fide* exercise of their discretion, they have come to the conclusion that it is impossible for her to look after her domestic concerns & effectively & satisfactorily to act as a teacher at the same time.—*SHORT v. POOLE CORPN.*, [1926] Ch. 66; 95 L. J. Ch. 110; 134 L. T. 110; 90 J. P. 25; 42 T. L. R. 107; 70 Sol. Jo. 245; 24 L. G. R. 14, C. A.

**Annotations:—Apld. Fennell v. East Ham County Borough Corpn.** (1925), 89 J. P. Jo. 721. *Consd. Richardson v. Abertillery U. D. C.*, *Thomas v. Same* (1928), 138 L. T. 688. **Refd. Brown v. Dagenham U. D. C., [1929] 1 K. B. 737.**

**302b. — — — Onus of proof.]**—The council of deft. borough, as the local education authority, in pursuance of a recommendation of their education committee, made after exhaustive inquiries & discussion, resolved that the engagements of all married women teachers falling under certain specified cate-

gories should be terminated; &, accordingly, notice was given to each of plffs. to terminate her engagement. Plffs., three married women, had for several years been engaged under contracts terminable by a month's notice on either side, as assistant certificated teachers in some of defts.' schools, & were admittedly efficient teachers. It was proved that the object of the council in reducing the number of the married women teachers was to create vacancies for unemployed single women teachers whom the council trained for the teaching profession & for whom it was important in the interest of educational efficiency that teaching posts should be provided. In carrying out that policy, the council, with the view of minimising cases of hardship in the selection of married women teachers for dismissal, took into consideration the domestic circumstances & duties of the married women teachers & the earning capacity of their husbands. Plffs. sought declarations that the notices of dismissal were invalid on the ground that the council in giving them did not act *bonâ fide* with the intention of discharging their statutory duties of maintaining educational efficiency, but acted with the illegitimate object of providing employment for unmarried women without reference to educational efficiency, of obliging married women teachers to confine themselves to home duties & of preventing those whose husbands were in regular employment from increasing the income of the joint home:—**Held:** (1) plffs. failed to discharge the *onus* which lay upon them of showing that the policy adopted by the council of reducing the number of the married women teachers for the purpose of creating vacancies for unemployed single women teachers, & the steps taken to carry it out, were in excess of their statutory powers or were adopted or taken in pursuance of some illegitimate object; (2) the matters taken into consideration by the council were not irrelevant from an educational standpoint, but were material factors in determining, not only whether the policy ought to be adopted, but the best method of applying it; (3) as defts. had acted *bonâ fide* & within their statutory powers, the action ought to be dismissed.—*FENNELL v. EAST HAM CORPN.*, [1926] Ch. 641; 95 L. J. Ch. 119; 134 L. T. 276; 90 J. P. 36; 70 Sol. Jo. 324; 24 L. G. R. 76.

**302c. — — —.]—RICHARDSON v. ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS SAME, v. No. 14a, ante.**

#### PART XVII. SECT. 6.

**sa. Right of members of teaching staff of Education Department of Western Australia to superannuation allowances.]**—*WALSH v. R.*, [1927] A. C. 337; 96 L. J. P. C. 50; 136 L. T. 641.—**AUS.**

#### PART XVII. SECT. 7.

**t i. — Non-compliance with provisions as to termination—Teacher entitled to damages.]—HUNT v. BRANT SCHOOL DISTRICT TRUSTEES (Alta.),** [1926] 3 D. L. R. 288; [1926] 2 W. W. R. 431.—**CAN.**

**t ii. — Form of contract prescribed by Minister of Education under School Act, R. S. A., 1922 (c. 51)—How far provisions for determining contract binding.]—THORSON v. BLAIRMORE SCHOOL DISTRICT TRUSTEES,** [1927] 1 D. L. R. 1178; [1927] 1 W. W. R. 449;

22 Alta. L. R. 415.—**CAN.**

**s i. — One month—Or one month's wages.]—A teacher engaged by the month is, in the absence of a special agreement, only entitled to one month's notice for the termination of his contract. In lieu of notice, he is only entitled to one month's wages, & not to six months' salary.—MAUNG THEIN PE v. DESOUZA** (1929), 1 L. R. 7 Han. 303.—**IND.**

#### PART XVII. SECT. 8.

**315 i. Injury to pupil—Allowed access to dangerous substance.]—A national school contained two class-rooms, one for the junior & one for the senior class. During the luncheon hour the junior class were sent out-of-doors to the playground, & deft., who was the teacher of the senior class, used to allow the**

junior class to come into his class-room & warm themselves at the fire. He was under no obligation to allow the junior class into his room; he merely did it out of kindness to the children, & so that they would not have to remain outside in the severe weather. On one occasion he temporarily removed the fire screen which usually guarded the fire in his room, & the junior class coming into his room as usual, & going to the fire, the clothes of one of them, a child of six years of age, caught fire, & she was severely burned:—**Held:** deft. was liable.—*BOHANE v. DRISCOLL*, [1929] 1 R. 428.—**IR.**

#### PART XVIII.

**n i. — — —.]—Where the secretary of a school board, acting under its instructions, notifies in**



336. *Add. Annotations* :—As to (3) *Consd. Short v. Poole Corpn.*, (1925) 42 T. L. R. 107. *Gener-*

*ally, Mentd. Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.

writing each of two or more appets. for a teacher's position that her application has been accepted, but the board enters into the formal contract prescribed by statute with only one of them & notifies the others that their services will not be required, each of the latter has a right of action against the board as a corpn. for damages, but not against the members thereof individually or against the secretary.—*MORRISON v. CASSELL HILL SCHOOL*

*DISTRICT TRUSTEES*, [1925] 1 W. W. R. 526.—CAN.

n ii. ——— *Signature of county superintendent—Whether party to the contract.*—A county superintendent of common schools, signing together with trustees, a contract with a teacher, will be considered to have signed the same only as approving of the appointment, & in pursuance of the direction of the statute, & not as a party con-

tracting with the teacher.—*CAMPBELL v. ELLIOTT, BLACK, MOORE & SOUTHWICK* (1847), 3 U. C. R. 241.—CAN.

st. *Conviction for using words tending to impair discipline—Form of conviction.*—*R. v. THORNE*, [1926] 2 D. L. R. 587; 45 Can. Crim. Cas. 360; 58 N. S. R. 449.—CAN.

sk. *Under Schools Act, 1922 (c. 5) (N. B.).*—*KELLY v. GRIMMER S D.* 25 (N. B.), [1927] 3 D. L. R. 704.—CAN.

## ELECTIONS.

### Part II.—Male Franchise.

#### SECT. 1.—PARLIAMENTARY

(Vol. XX., p. 8).

*See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.*

24. *Add. Annotation:—Refd. Edwards v. A.-G. for Canada (1929), 46 T. L. R. 4.*

92. *Add. Citation:—13 L. T. 762.*

96a. — **Exclusive occupation of room by director**  
—**At yearly rent.**—By an agreement in writing a limited co. gave one of its directors the exclusive possession of a room in its premises at a yearly rent of £20. The director occupied the room solely for the purpose of carrying out his duties as director:—*Held*: (1) the room constituted “premises” within Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1 (3);

(2) it was occupied by the director for the purpose of his business within the meaning of the same subsection, & he thereby had the requisite business premises qualification within Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1 (1) (2), which entitled him to be on the register of voters.—*FROST v. CASLON, FROST v. WILKINS*, [1929] 2 K. B. 138; 98 L. J. K. B. 523; 141 L. T. 281; 45 T. L. R. 417; 93 J. P. 192; 73 Sol. Jo. 333; 27 L. G. R. 480, C. A.

#### SECT. 2.—LOCAL GOVERNMENT FRANCHISE

(Vol. XX., p. 18).

*See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 2.*

## Part V.—Registration.

146a. — **Sufficiency of—Christian name in full not necessary.**—*R. v. HARTLEPOOL CORPN.* (1851), 2 L. M. & P. 666; 21 L. J. Q. B. 71; 15 J. P. 835; 15 Jur. 1158; *sub nom. R.*

*v. HARTLEPOOL CORPN., Ex p. DOBING*, 18 L. T. O. S. 111.  
*Annotations:—Apld. R. v. Avery* (1852), 18 Q. B. 576.  
10 L. J. Q. B. 180; *R. v.*

#### PART I.

a i. — **Voters in township added to city.**—*R. v. WILSON* (1888), 12 P. R. 546.—CAN.

a ii. — **Persons omitted from verified copy of collector's roll—Persons omitted from collector's roll.**—*R. v. STEPHENSON* (1851), 1 C. L. Ch. 270.—CAN.

#### PART II. SECT. 1, SUB-SECT. 1.—B. (n).

aa. **Local agent of corporation—No office maintained—Not permanently employed—Whether “chief resident officer.”**—A local agent for a corpn. in a town where it does not maintain an office of its own & who is not permanently employed thereby or in receipt of a salary therefrom is not a “chief resident officer” of the corpn. who under Town Act, 1927 (Sask.), c. 24, s. 284, is entitled to vote on its behalf where a vote is taken on a by-law.—*R. v. HOLZ*, [1928] 3 W. W. R. 80; 50 Can. Crim. Cas. 298.—CAN.

#### PART II. SECT. 2, SUB-SECT. 2.—B.

ab. **Ownership—Proof of—Registration.**—In order to qualify as a voter at municipal elections under Municipal Elections Act, s. 6, as enacted by Municipal Elections Act Amendment Act, 1902, s. 2, with respect to real

estate, it is necessary that applicant should be the registered owner of such real estate under Land Registry Act, 1906, c. 23, s. 74.—*Re KASLO MUNICIPAL VOTERS' LIST* (1907), 12 B. C. R. 362.—CAN.

ac. — **Of corporation as trustee.**—*Semble*: a corpn. acting as a trustee, exor. or administrator of an estate has not the right under Town Act, 1927 (Sask.), c. 24, to have its name placed on the voters' list with respect to the property of an estate which it represents.—*R. v. HOLZ*, [1928] 3 W. W. R. 80; 50 Can. Crim. Cas. 298.—CAN.

#### PART II. SECT. 2, SUB-SECT. 3.—B.

ad. **Gaoler—Living in county gaol rent free—Not a householder within 14 & 15 Vict. c. 109, Sched. A, No. 12.**—*Re CHARLES v. LEWIS & McMAHON* (1851), 2 C. L. Ch. 171.—CAN.

#### PART V. SECT. 2, SUB-SECT. 5.

249 vii. For “1 D. L. R. 84” read “1 D. L. R. 265,” & for “22 Man. L. R. 597” read “22 Man. L. R. 16.”

#### PART V. SECT. 3, SUB-SECT. 5.

fi. — **Non-compliance with statutory qualifications—Election Laws Amendment Act, 1920, s. 6 (1), (2).**—Votes cast by persons whose names

were on the lists, but who had not been residents of the electoral district for three months next preceding the day of polling:—*Held*: illegal.—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

fh. — **Register wrongfully prepared—Right of court to investigate.**—There is in every ct. having jurisdiction in such matters an inherent power to hold a scrutiny for the purpose of investigating the legality of the votes cast at an election.

On a motion under Controverted Municipal Elections Act, R. S. S. 1920, c. 91, s. 19, to set aside an election, the ct. is not limited to ascertaining whether any violation of the Act has taken place in the actual conduct of an election, & therefore, if there has been an extraneous illegality which is shown to have a direct bearing on the result of the election, that is a fit subject for inquiry. The provisions of Village Act, R. S. S. 1920, c. 88, do not prevent such an inquiry being made.—*R. v. JOHANSICK*, [1928] 2 D. L. R. 913; [1928] 2 W. W. R. 315.—CAN.

fi. **Only when so declared by statute.**—A voters' list is final & conclusive only if made so by statute either expressly or by implication.—*R. v. JOHANSICK*, [1928] 2 D. L. R. 913; [1928] 2 W. W. R. 315.—CAN.

## Part VI.—Parliamentary Election.

**361a. Act involving persuasion of voters.]**—The expression “to get votes” must be taken with some limitation, because in one sense all work whatsoever which is done for a candidate at an election is done to get votes, & I think in this connection the words mean something in the nature of canvassing, soliciting & persuading individual voters, though, of course, not necessarily one by one separately, to vote for a candidate (TALBOT, J.).—PLYMOUTH ELECTION CASE (1929), 7 O.M. & H. 101.

**390. Add. Annotation :—***As to (3) Consd. Plymouth Borough Case (1929), 7 O.M. & H. 101.*

**624a. ———.]**—PLYMOUTH ELECTION CASE (1929), 7 O.M. & H. 101.

**697. Add. Annotation :—***Refd. Plymouth Election Case (1929), 7 O.M. & H. 101.*

*F. Incurring of Expenses by Person Other than Election Agent (Vol. XX., p. 98).*  
Add the following case :—

## PART VI. SECT. 5.

**323 i. Who is a candidate.]**—Where pltf. was selected as a candidate, & statements were published concerning him, & a writ in an action for libel was issued before the issue of the writ for the election, but after the vacancy had occurred:—*Held*: pltf. was a candidate for a Parliamentary constituency when the libel was published.—CULLEN v. STANLEY, [1926] 1 R. 73.—IR.

*eg. Deposit payable—Return of—Successful candidate entitled to return notwithstanding refusal to take prescribed oath.]*—O'DONOGHUE v. REDMOND ROCHE (1), [1927] 1 R. 152.—IR.

## PART VI. SECT. 7.

**480 i. Refusal of nomination by returning officer—Jurisdiction of court—To compel returning officer to accept nomination & grant poll.]**—*Re* ADDINGTON ELECTION, [1927] 1 D. L. R. 188; 59 O. L. R. 570.—CAN.

**PART VI. SECT. 9, SUB-SECT. 1.—A. (a) i.**

*sh. To candidate—To induce withdrawal of candidature—What amounts to.]*—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON v. MCCALLUM (1927), 61 O. L. R. 392; 33 O. W. N. 135; varied [1928] 1 D. L. R. 101; 61 O. L. R. 392.—CAN.

*sk. ———.]*—*Re* NORTH BRUCE PROVINCIAL ELECTION, FENTON v. MEWINNEY, [1927] 4 D. L. R. 397; 61 O. L. R. 99.—CAN.

**PART VI. SECT. 9, SUB-SECT. 1.—B. (a).**

**681 iv. ———.]** *Speech at picnic instead of hiring hall.]*—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

*r (p. 91) i. ———.]*—The act of an agent in treating an elector to a drink, without the knowledge or consent of the candidate, & at the emphatic request of the elector:—*Held*: not to have been a corrupt practice.—ADAMS v. HUCK (No. 2), [1926] 1 W. W. R. 313; 20 Sask. L. R. 433.—CAN.

**PART VI. SECT. 9, SUB-SECT. 1.—B. (b).**

**695 xix. For “23 D. L. R. 573” read “26 D. L. R. 573.”**

**774a. What amounts to.]**—During an election at which there were three candidates, Conservative, Liberal & Labour respectively, applt., who was a Conservative in politics but disapproved of the existing Conservative Govt. on special grounds, incurred expenses on account of issuing posters, circulars & publications which were antagonistic to the Conservative candidate & advised the constituents not to vote for him, but did not in express terms advise them to vote for the other candidates or either of them:—*Held*: applt. had acted in contravention of Representation Act, 1918, s. 34 (1).—*R. v. HAILWOOD, R. v. HAILWOOD & ACKROYD, LTD.*, [1928] 2 K. B. 277; 97 L. J. K. B. 394; 138 L. T. 495; 44 T. L. R. 343; 28 Cox, C. C. 489; 20 Cr. App. Rep. 177, C. C. A.

**851. Add. Annotation :—***Distd. Everett v. Ryder (1926), 135 L. T. 302.*

**859. Add. Citation :—***sub nom. JONES v. PICKERING, 29 L. T. 210.*

**695 xxv. ———.]** *Entertainment & picnic—At meeting of supporters for speech by candidate—Expense of hiring hall saved.]*—Payments were made by resp., through his official agent, for the services of a band & an entertainer at a picnic, a gathering of members of the party organisation supporting resp.'s candidature, & at which he made a speech:—*Held*: these payments, though they might be considered corrupt practices, were not made with corrupt intent, but with a belief in their propriety, as resp. by addressing the electors at the picnic was saved the expense of hiring halls, which would have been a legitimate expense.—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

## PART VI. SECT. 9, SUB-SECT. 3.

**b i. Band & entertainment at picnic.]**—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

## PART VI. SECT. 10, SUB-SECT. 7.

**n i. ———.]** *Presumption that duties properly carried out.]*—*Re* PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—CAN.

**n ii. ———.]** *Breach of duties—Effect of.]*—Breaches by a presiding officer of the rules of procedure prescribed for the performance of his duties do not necessarily render an election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—CAN.

## PART VI. SECT. 11, SUB-SECT. 2.

**881 i. Name wrongly inserted on register—Voter under age—Voter exercising right incorrectly.]**—*A.-G. v. CUNNINGHAM*, [1929] 1 R. 187.—IR.

## PART VI. SECT. 11, SUB-SECT. 3.—A.

**d (p. 109) i. Counterfoil not wholly detached.]**—Ballots, from which the counterfoil has not been detached by the officer taking the ballot, should be counted on an election under Provincial Elections Act, 1920. Ballots to which only a small portion of the counterfoil remained attached, such portion furnishing no means of identifying the voter, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH v. CATHERWOOD, [1924] 3 W. W. R. 947.—CAN.

**ii. ———.]** *On counterfoil.]* Where the deputy returning officer did not initial the ballots in the manner prescribed by the statute, but initialled the counterfoils, which he afterwards destroyed:—*Held*: this irregularity did not affect the election.—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

**a (p. 110) i. ———.]** *Signed voting paper.]*—*MAPLE VALLEY CASE (Ont.)*, [1926] 1 D. L. R. 808.—CAN.

**c (p. 110) i. ———.]**—At a general provincial election a plebiscite was also taken. Of twenty election ballots of absentee voters only nine were enclosed in envelopes bearing the affidavit required of such voters with respect to the election, while the other eleven were found in plebiscite envelopes bearing plebiscite affidavits. The affidavits required of such eleven absentee voters in the election were not sent to the returning officer nor accounted for in any way, & there was no evidence to show from which envelopes the votes for the respective candidates had been taken:—*Held*: in the absence of any evidence of fraud or collusion, the above facts were not grounds for declaring the election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—CAN.

**c (p. 110) ii. ———.]** *Non-compliance by presiding officer.]*—Absent voters' ballots, which have been enclosed in envelopes on which the presiding officer has failed to affix, as required by Provincial Elections Act, s. 106 (3), his official mark across the line where the envelope is closed, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH v. CATHERWOOD, [1924] 3 W. W. R. 947.—CAN.

## PART VI. SECT. 11, SUB-SECT. 3.—B.

**890 v. ———.]** *Alberta Election Act, 1924 (c. 34), s. 82.]*—The above sect. is mandatory & must be substantially complied with, & the use of the words, one, two, three, etc., instead of the figures, 1, 2, 3, etc., renders a ballot void; but if it is clear that a figure can reasonably be said to have been honestly intended for the figure 1, it is sufficient, even though it is not precisely the same form of the figure as that printed in the Act.—*Re* ALBERTA ELECTION ACT, *Re* ROW

923. *Add. Annotation*:—**Mentd.** *More v. Weaver* (1928), 140 L. T. 15. 967. *Add. Annotation*:—**Refd.** *Plymouth Election Case* (1929), 7 O'M. & H. 101.

## Part VII.—Municipal and Other Elections.

1012. *Add. Annotation*:—**Distd.** *Baldwin v. Ellis*, [1929] 1 K. B. 273.

1021. *Add. Annotation*:—**Apld.** *Baldwin v. Ellis*, [1929] 1 K. B. 273.

1025a. ——— **Description as commonly understood.**—A nomination paper at an election of town councillors was subscribed with the full & correct name of "Charles Arthur Burman" as an assenting burgess; but his name was erroneously entered upon the burgess roll as "Charles Burman" only:—**Held**: the defect was not such as was remedied by Municipal Corporations Act, 1882 (c. 50), s. 241, the words "commonly understood" in that sect. meaning "commonly understood by any person comparing

the nomination paper & the burgess roll."—**MOORHOUSE v. LINNEY, THORPE v. LINNEY** (1885), 15 Q. B. D. 273; 53 L. T. 343; 49 J. P. 471; 33 W. R. 704; 1 T. L. R. 500, D. C.

*Annotations*:—**Distd.** *Bowden v. Besley* (1888), 21 Q. B. D. 309; *Gledhill v. Crowther* (1889), 23 Q. B. D. 136.

1038a. ——— **From election address.**—An election address not exhibited for general display, but only circulated in envelopes by post or by hand:—**Held**: not a "bill, poster or placard" within Municipal Corrupt Practices Act, 1884 (c. 70).—**Re ELECTION OF COMMON COUNCILMEN FOR THE WARD OF FARRINGTON WITHOUT IN THE CITY OF LONDON** (1925), 161 L. T. Jo. 26, D. C.

VALLEY ELECTION (Alta.), [1926] 4 D. L. R. 117; [1926] 3 W. W. R. 1.—**CAN.**

### PART VI. SECT. 12.

915 x. ——— **Unqualified persons allowed to vote—Illegal votes exceeding majority.**—Resp. was returned as elected by a majority of only 15 votes. The evidence showed that 21 votes were cast by persons who had no right to vote:—**Held**: the election should be declared void, although it could not be shown in whose favour the illegal votes were cast.—**MERCER v. HOMUTH** (1924), 55 O. L. R. 245.—**CAN.**

915 xi. ——— **Ballot papers issued & accepted in excess of voters on register.**—Where in a polling sub-division 137 ballots were found in the box & only 134 names appeared in the poll-book:—**Held**: an irregularity, which did not affect the result of the election.—**MERCER v. HOMUTH** (1924), 55 O. L. R. 245.—**CAN.**

### PART VI. SECT. 13.

m. For "— Power of Supreme Court to compel" substitute "Recount —Power of Supreme Court to compel."

m i. ——— **Under Manitoba Election Act—Not applicable to election under proportional representation system.**—**Re MANITOBA ELECTION ACT, Re WINNIPEG ELECTORAL DISTRICT**, [1927] 3 W. W. R. 92; 37 Man. L. R. 87.—**CAN.**

### PART VI. SECT. 15, SUB-SECT. 2.—B.

964 i. **Error in return—Liability of candidate to penalties—Not for accidental omission of one small item.**—**McINNES v. BIRD**, [1926] N. Z. L. R. 638.—**N.Z.**

### PART VII. SECT. 1.

sl. **Place of election—Outside ward—Election void.**—**R. v. PRESTON** (1851), 2 C. L. Ch. 178.—**CAN.**

sm. **When election completed—Effect of declaration of returning officer.**—The election of candidates takes place, not as a result of the declaration of the returning officer, but by virtue of the methods prescribed by Village Act, 1927; the declaration is merely a formal indication that the persons named have been elected under that Act.—**R. v. LOUNT**, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

### PART VII. SECT. 3.

f (p. 121) i. ——— **—**—**R. v. JACKSON**, [1927] 2 D. L. R. 977; 60 O. L. R. 264.—**CAN.**

a (p. 122) i. **S. P. SMILEY v. EVANS**, [1927] 4 D. L. R. 629; 38 B. C. R. 468.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 1.—C.

n i. ——— **Casting vote given by lot.**—On an election for a councillor of a municipality, the votes cast showed a tie between the two candidates. The returning officer then prepared a number of slips which were put in a hat & mixed up. The returning officer asked a voter to draw, stating he would give the casting vote to the candidate whose name first appeared. On the petition of the unsuccessful candidate:—**Held**: the election was void & a new election ordered.—**Re MUNICIPAL ELECTIONS ACT & TOMSETT**, [1924] 1 D. L. R. 921; 33 B. C. R. 377.—**CAN.**

n ii. ——— **Striking out vote wrongly entered.**—New election ordered.—**R. v. RANKIN** (1861), 2 C. L. Ch. 161.—**CAN.**

n iii. ——— **Improperly closing poll.**—New election ordered.—**R. v. MARCHANT** (1851), 2 C. L. Ch. 189.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 1.—D.

t i. ——— **Ous of proving irregularity not material.**—The onus of showing that in an election under Rural Municipality Act, R. S. S. 1920, c. 89, the failure to comply with the requirements of the Act as to posting notices of the poll "did not affect the result of the election" is on the person upholding the election.

Under said Act the notice of poll is required to be posted in at least two widely separated conspicuous places in each division of the municipality. In the present case no notice at all was posted in one of the divisions, a number of voters in that division did not vote, & resp. was declared elected by one vote:—**Held**: it could not be said that the omission to post the notice did not affect the result, & the election was declared invalid & resp. unseated.—**R. v. REID**, [1928] 3 D. L. R. 747; [1928] 2 W. W. R. 436; 22 Sask. L. R. 595.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 1.—E. (a).

sn. **Withdrawal of nomination—Declaration of intention—Not made formally.**—A candidate cannot withdraw under the Ontario Election Act by making a declaration of his intention to do so to a few persons.—**Re SOUTH BRUCE PROVINCIAL ELECTION, JOHN-**

STON v. MCCALLUM, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 1.—E. (b).

1013 i. **Delivery of—Time for—Paper returned for amendment—Power of returning officer to extend time.**—Where a nomination paper when delivered to the returning officer is so incomplete as not to constitute a valid nomination & it is subsequently amended, it is "received" by the returning officer when it is handed back to him in its amended state, & if then the time limited by statute for the receipt of nominations has expired the nomination is bad. It is not within the discretion of a returning officer at an election under Village Act, 1927, c. 54, to receive a nomination paper after the time fixed by the statute nor has he power to say that a nomination paper delivered to him after that time constitutes a good nomination.—**R. v. LOUNT**, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

so. **Rejection of—Declaration of election by acclamation—Time for nomination expired.**—The rejection of nomination papers & a declaration of election by acclamation may properly be made by the returning officer after the time limited for the nomination of candidates.—**R. v. LOUNT**, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 1.—F. (a).

sp. **Must be strictly proved.**—**R. (GLOVER) v. LITTLE & ARMSTRONG**, [1926] 2 D. L. R. 1056; 59 O. L. R. 28.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 1.—G. (a).

sq. **Copy of collector's roll not furnished to returning officer.**—**Held**: an irregularity, for which the election might be avoided.—**Re CHARLES v. LEWIS & McMAHON** (1851), 2 C. L. Ch. 171.—**CAN.**

q i. ——— **Ballot papers not initialled—Result of election affected.**—Under Rural Municipality Act, R. S. S. 1920, c. 89, as amended, a ballot cast at an election thereunder, which has not been marked on the back thereof with the initials of the deputy returning officer, must be rejected by him, & by the returning officer & by a judge conducting a recount. Where, however, the result of the rejection of ballots on the above ground was that

**1038b. False statements—Allegation that candidate is communist.]—**Pltfs., six labour candidates for the office of borough councillor at a municipal election then about to be held, moved to restrain defts. from publishing statements to the effect that pltfs. were communists.—*Held*: the statements complained of were not false statements as to personal character within Municipal Elections (Corrupt & Illegal Practices) Act, 1884 (c. 70).—**BURNS v. ASSOCIATED NEWSPAPERS, LTD.** (1925), 89 J. P. 205; 42 T. L. R. 37.

**1042. Add. Annotation:—***As to* (2) **Apld.** *Baldwin v. Ellis*, [1929] 1 K. B. 273.

**1057. Add. Annotation:—***As to* (1) **Refd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.

**1075. Add. Citation:—***sub nom.* **Re SAFFRON WALDEN ELECTION, Ex p. ROBSON**, 51 J. P. 199.

**1089. Add. Citation:—***sub nom.* **R. v. EXETER (MAYOR)**, 3 J. P. 49.

**1090. For the existing paragraph substitute the following paragraph:—**

*S.P.—R. v. GLOUCESTER (MAYOR)* (1838), 2 J. P. 777.

**1103. After this case add “***See, now*, Municipal Corporations Act, 1882 (c. 50), s. 34 (1).

**1145a. ——— Omission of parish for which nominee qualified.]—**The nomination papers of four persons nominated for election as rural district councillors merely stated in column 5, under the heading “how qualified,” that the persons nominated were “local government electors,” & did not state the name of the parish for which they were qualified as local government electors, as required by Rural District Councillors Election Order, 1898, r. 4. The deputy

returning officer rejected the nomination papers as being invalid, because the parish within the poor law union for which qualification was claimed was not stated. Upon an election petition:—*Held*: (1) the omission to state in the nomination paper the name of the parish for which the person nominated was qualified as a local government elector was a non-compliance with Rural District Councillors Election Order, 1898, r. 4; (2) that defect was not cured by Ballot Act, 1872 (c. 33), s. 13, because that sect. only applied to a case where there had been a wrongful admission of a nomination paper, & did not apply to a case where a nomination paper had been rejected; (3) neither was the omission an “inaccurate description” of the person nominated within r. 33 of the 1898 Order, but was a non-compliance with the requirements of r. 4 of that Order, & therefore was not cured by r. 33.—**BALDWIN v. ELLIS**, [1929] 1 K. B. 273; 98 L. J. K. B. 71; 140 L. T. 278; 93 J. P. 86; 27 L. G. R. 72, D. C.

**1146a. ——— Rejection—Whether Ballot Act, 1872 (c. 33), s. 13, applies.]—****BALDWIN v. ELLIS**, No. 1145a, *ante*.

**1146b. ——— Inaccurate description of nominee—What amounts to.]—****BALDWIN v. ELLIS**, No. 1145a, *ante*.

**1154a. ———.]—***R. v. ST. MARY NEWINGTON (GOVERNORS)* (1848), 6 Dow. & L. 162; Cripps Church Cas. 117; 2 Saund. & C. 303; 17 L. J. Q. B. 220; 11 L. T. O. S. 205; 12 Jur. 918.

**1157. Add. Annotation:—****Mentd.** *R. v. L. C. C.*, *Ex p. Swan & Edgar* (1927) (1929), 141 L. T. 590.

## Part IX.—Petitions.

**1099. Add. Annotation:—***As to* (2) **Consul.** *Cambridge County Council Petn., Fordham v. Webber*, [1925] 2 K. B. 740.

**1099a. ——— Candidate —Necessity for declaration or nomination.]—**An election for the office of county aldermen took place at a

a candidate was elected who would not have been elected had it been possible to count the ballots not properly initialed, the ct. should declare the election invalid & the seat vacated.—*R. v. SLUGGETT*, [1928] 3 D. L. R. 702; [1928] 2 W. W. R. 431; 22 Sask. L. R. 551.—**CAN.**

**c i. ——— No right to vote—Except to give casting vote.]—***Ex p. TUTTLE* (1860), 4 All. 615.—**CAN.**

**st. Recount—Ballot not initialed by deputy returning officer must be counted—Although required to be rejected on count by returning officer.]—***Re RURAL MUNICIPALITY ACT, Re CARROT RIVER, RURAL MUNICIPALITY, MINAKER v. SANDERSON* (Sask.), [1927] 1 W. W. R. 439.—**CAN.**

**PART VII. SECT. 5, SUB-SECT. 2.—A.**

**k i. ——— Failure to comply with—Nomination.]—***Held*: Town Act, 1927, c. 55, s. 221, requires a candidate to do what had not been required of him before, it must be read strictly; & where two candidates' acceptances of their nominations omitted all but one of the statements included in said form the acceptances & nominations were invalid & their election must be set aside.—*R. v. PHILLIPS*, [1928] 2 W. W. R. 51.—**CAN.**

**PART VII. SECT. 5, SUB-SECT. 2.—C.**

**sw. Secrecy of ballot —Necessity for.]—**Where at an election of a mayor & aldermen the provisions of Consolidated Municipal Act, 1922, enjoining secrecy of the ballot were generally ignored:—*Held*: the non-compliance with the provisions of the Act had effected the result of the election, & a new election ordered.—*R. (JACQUES) v. MITCHELL* (1924), 55 O. L. R. 286.—**CAN.**

**PART VII. SECT. 5, SUB-SECT. 3.—C.**

**sx. Secrecy of ballot —Necessity for.]—**Where at an election of aldermen of a city the provisions of Consolidated Municipal Act, 1922, requiring secrecy of the ballot were generally ignored:—*Held*: the election was invalid.—*R. (JACQUES) v. MITCHELL* (1924), 55 O. L. R. 286.—**CAN.**

**PART IX. SECT. 1, SUB-SECT. 1.**

**h i. ———.]—***Held*: it was not the duty of the ct. to pronounce upon the constitutional right of the executive to direct the issue of a new writ.—*Re NIPISING DOMINION ELECTION, KLOCK v. VARIN*, 21 C. L. T. 258.—**CAN.**

**h ii. ——— To make preliminary order.]—***Re NORTH HURON ELECTION*, [1926] 1 D. L. R. 590; 58 O. L. R. 197.—**CAN.**

**PART IX. SECT. 1, SUB-SECT. 2.—E.**

**p i. ———.]—***Held*: Controverted Elections Act, R. S. S. 1920 (c. 5), s. 4 (c), had been complied with by a petition which alleged that resp. “was guilty of, by himself & his agents, corrupt practices within Saskatchewan Election Act, R. S. S. 1920 (c. 3), ss. 247, 249, 251 & 252, & amendments thereto.”—**ADAMS v. HUCK**, [1925] 3 W. W. R. 546.—**CAN.**

**sy. Proof of identity of petitioners & execution of petition.]—**The identity of petitioners & their execution of the petition should be proved by calling each petitioner to prove his own identity & status.—*Re MUNICIPAL CT. HEATHER v. MADDOCK*, [1925] 2 W. W. R. 464.—**CAN.**

**PART IX. SECT. 1, SUB-SECT. 4.—B.**

**m i. ——— From dismissal before trial of petition for irregularity.]—***Held*: the Supreme Ct. of Canada had no jurisdiction to entertain such an appeal.—**VALIANTE v. BELL**, [1927] 3 D. L. R. 796; [1927] S. C. R. 341.—**CAN.**

meeting of a county council, & voting papers were signed & personally delivered to resp., who was chairman of the county council & of the meeting, & were openly produced & read by him. Amongst the voting papers was one containing a vote for petitioner, by writing his name & address on the voting paper, as a county alderman. Forty-four voting papers contained votes for resp. as a county alderman. Neither petitioner nor resp. had before the election declared himself to be a candidate at the election of county aldermen. Resp. declared himself to be elected amongst others a county alderman, & petitioner was not elected. Petitioner, alleging himself to have been a candidate at the election, presented a petition against the election of resp.:—*Held*: petitioner was not right in alleging himself to have been a candidate at the election for county

aldermen, as he had not been elected & had not declared himself before the election as a candidate for election, & the writing by the voter of petitioner's name & address on the voting paper did not amount to a nomination of him as candidate within Municipal Corporations Act, 1882 (c. 50), s. 77, & he was not, under s. 88 of the Act, entitled to present a petition for the purpose of questioning the election of resp.—CAMBRIDGE COUNTY COUNCIL CASE, *FORDHAM v. WEBBER*, [1925] 2 K. B. 740; 94 L. J. K. B. 891; 89 J. P. 181; 41 T. L. R. 634; 69 Sol. Jo. 779, D. C.

1626. *Add. Citation*:—*sub nom. Re HEREFORD MUNICIPAL ELECTION PETITION*, *Ex p. GARROLD*, 5 T. L. R. 411.

1627a. ————]—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

## Part X.—Criminal Law, Penal Actions, and Injunctions.

1693. *Add. Annotation*:—*Consd. Thomas v. Bolton* (1928), 139 L. T. 397.

PART IX. SECT. 1, SUB-SECT. 5.—E.  
k l. — *Failure to establish—Effect.*]  
—BUCKMASTER v. KNICKLE, [1926] 2  
D. L. R. 798; 58 N. S. R. 492.—CAN.

PART IX. SECT. 2, SUB-SECT. 1.  
p i. — *United Provinces Municipalities Act, 1916.*—There is no right of appeal against the order of a comr. on an election petition presented to him under United Provinces Municipalities Act, 1916.—ABDUR RAHMAN, SON OF ISMAIL v. ABDUR RAHMAN, SON OF ZAHURI (1925), 1 L. R. 47 All. 513.—IND.

sa. *Jurisdiction of judge to fix time & place of trial—Notwithstanding absence of rules.*—*Re SLOAN MUNICIPAL*

ELECTION (1902), 9 B. C. R. 113.—CAN.  
sb. *Whether civil action lies.*—A suit will not lie in a civil ct. for a declaration that the result of a municipal election has been wrongly declared & that plff. is the person entitled to be declared elected.—ABDUR RAHMAN, SON OF ISMAIL v. ABDUR RAHMAN, SON OF ZAHURI (1925), 1 L. R. 47 All. 513.—IND.

PART IX. SECT. 2, SUB-SECT. 2.  
sd. *Joinder of parties.*—Consolidated Municipal Act, 1922, s. 172 (1) (a), does not give power to join a city corpn. as an "other person," as a party to proceedings to avoid a municipal election.—*R. (JACQUES)*

*v. MITCHELL* (1924), 55 O. L. R. 286.—CAN

PART X. SECT. 2, SUB-SECT. 1.  
st. *Against candidate—For corrupt practice—Proof required.*—*Re SOUTH BRUCE PROVINCIAL ELECTION*, JOHNSTON v. McCALLUM, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—CAN.

sg. *Against voter—Casting more votes than lawful—Mens rea.*—The doctrine of *mens rea* applies to the case where a person is charged under Town Act, 1927 (Sask.), c. 24, s. 136, with having voted oftener than he was entitled to do at a municipal election.—*It. v. HOLZ*, [1928] 3 W. W. R. 80; 50 Can. Crim. Cas. 298.—CAN.

# ELECTRIC LIGHTING AND POWER.

## Part I.—Powers of Board of Trade and Electricity Commissioners.

1. *Add. Annotations*:—*Apld.* A.-G. v. London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513. *Consd.* R. v. Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191. *Refd.* R. v. Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68; R. v. Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619; R. v. North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397.
- 3a. — *Amendment or revocation of special order.*—The power conferred by Electricity (Supply) Act, 1919 (c. 100), s. 26, to amend or revoke by special order any provisional order made under Electric Lighting Acts & confirmed by Parliament, does not include a power to amend or revoke a special order by another special order.—R. v. TRANSPORT MINISTER, *Ex p.* LEICESTERSHIRE & WARWICKSHIRE ELECTRIC POWER CO. (1928), 139 L. T. 660; 92 J. P. 171; 44 T. L. R. 823; 26 L. G. R. 572, D. C.

## Part II.—Powers, Duties, and Liabilities of Undertakers.

5. *Add. Annotations*:—*As to* (1) *Folld.* A.-G. v. County of London Electric Supply Co., [1926] Ch. 542. *As to* (2) *Refd.* A.-G. v. County of London Electric Supply Co., [1926] Ch. 542. *As to* (3) *Refd.* A.-G. v. County of London Electric Supply Co., [1926] Ch. 542.
- 6a. *Abstraction of water*—"Other source."—The King George Reservoir, belonging to the Metropolitan Water Board, is a "river, stream, canal, inland navigation or other source," within Electricity (Supply) Act, 1919 (c. 100), s. 15 (1).—METROPOLITAN WATER BOARD v. TRANSPORT MINISTER (1925), 90 J. P. 52; 42 T. L. R. 165; 24 L. G. R. 289.
- 6b. *Statutory authority incorporated by Electricity Commissioners*—Power to promote bill for purposes of scheme—Extent of power.]—Defts. were a statutory body incorporated on July 29, 1925, by the Electricity Comrs. under Electricity (Supply) Act, 1919 (c. 100), & a scheme made thereunder. This scheme strictly defined their district & gave them only some of the powers available under the Electricity (Supply) Acts; but clause 10 authorised them to promote "any" bill "for the purposes of this scheme":—*Held*: defts., as a purely statutory body, were strictly bound by their scheme, & were neither expressly nor impliedly authorised by their scheme or the Acts to expend their funds in promoting a Bill for the improvement of their scheme by enlarging their district, or by obtaining additional powers omitted from their scheme, though adumbrated in the Acts.—A.-G. v. LONDON & HOME COUNTIES JOINT ELECTRICITY AUTHORITY, [1929] 1 Ch. 513; 98 L. J. Ch. 162; 140 L. T. 578; 93 J. P. 115; 45 T. L. R. 235; 27 L. G. R. 337.
10. *Add. Annotation*:—*Refd.* A.-G. v. County of London Electric Supply Co., [1926] Ch. 542.
11. *Add. Annotation*:—*Refd.* Farnworth v. Manchester Corp., [1929] 1 K. B. 533.
12. *Add. Annotation*:—*As to* (1) *Consd.* Caerphilly U. D. C. v. Griffin (1927), 44 T. L. R. 132.
13. *Add. Annotation*:—*Refd.* A.-G. v. Sunderland Corp., (1929), 46 T. L. R. 10.
25. *Add. Annotations*:—*As to* (1) *Consd.* St. Nicholas Acons, London v. L. C. C., [1928] P. 102. *Refd.* St. Nicholas Acons v. L. C. C., [1928] A. C. 469.
- 38a. — *General strike*—Refusal to employ naval ratings—Agreement with union workers to abandon supply of power.]—Pltfs., who carried on business in S., were entitled, by

### PART I. SECT. 2.

sa. *Whether under jurisdiction of Public Utilities Board of Commissioners*—*Not St. John Power Commissioners.*—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1926] 1 D. L. R. 483.—CAN.

sb. — *Andover & Perth Electric Light Commissioners.*—*Ex p.* ANDOVER & PERTH ELECTRIC LIGHT COMRS. (N. B.), [1926] 1 D. L. R. 589.—CAN.

### PART II. SECT. 9, SUB-SECT. 2.

g1. — *Erection of poles.*—The Hydro-Electric Power Commission of Ontario has no right, either under Power Commission Act, 1915, s. 5, or otherwise, without the consent of the municipal corp., controlling

a highway, to place poles & wires upon the highway.—HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO v. GREY COUNTY (1924), 55 O. L. R. 339.—CAN.

### PART II. SECT. 9, SUB-SECT. 5.

See case in Sect. 13, sub-sect. 2, post.

### PART II. SECT. 11, SUB-SECT. 2.

11. — *Failure by default of undertaker.*—In an action for damages for failure to supply electric power under a contract made in Nov. 1912 between the parties, it was admitted that defts. had developed enough power in Jan. 1921, when the shortage occurred, to have supplied all require-

ments of pltfs., & that they did not give them the power owing to the requirements of other customers:—*Held*: defts. could not set up the requirements of other customers as modifying what on the face of the contract with pltfs. made compliance with pltfs. demands an absolute undertaking.—HOLLINGER CONSOLIDATED GOLD MINES, LTD. v. NORTHERN CANADA POWER CO., LTD., [1923] 4 D. L. R. 1205; 54 O. L. R. 508.—CAN.

111. — *Under agreement with municipality*—Construction of agreement.]—MAPLE RIDGE CORPN. v. WESTERN POWER CO. OF CANADA, [1926] 2 D. L. R. 525; 37 B. C. R. 252.—CAN.

statute & by contract, to receive from the S. borough council a supply of electrical power, but were deprived of this supply on certain days in May, 1926, when the general strike was in operation. In respect of this deprivation of supply pltf's. sued defts., who were the members of the Electricity Supply Committee of the S. borough council, to whom the council had lawfully delegated the management of the electricity supply, alleging that defts. had wrongfully & maliciously conspired & combined among themselves & with the London District Committee of the Electrical Trades Union to procure & induce the borough council, its servants & agents, to discontinue the supply of electrical power to pltf's. The writ in the action was issued on Jan. 13, 1927. Defts. denied pltf's. allegations, & pleaded Public Authorities Protection Act, 1893 (c. 61). At the trial it was proved that at the end of Apr. 1926, when the general strike was threatened, the Govt. made preparations for the maintenance of essential services & offered to provide naval ratings to take the place of workers who might go on strike. The Govt. also issued an Emergency Order relieving the S. borough council from its obligation to supply the whole of the previous requirements of consumers of power by 50 per cent. Defts. did not accept the Govt.'s offer of naval ratings to work the electricity plant, considering it unwise to do so in view of the likelihood of disorder in the borough; but they discussed the position with the Trades Union Council & eventually resolved that if the union workers would continue the supply of light they would abandon the supply of power. The result of this was that the supply of power to pltf's., as to all other occupiers of premises in the borough, was discontinued, whereby pltf's. suffered damage. The jury found that defts. in making the agreement whereby power was not supplied to pltf's. were not acting in good faith & in the honest belief that they were carrying out their statutory duties, & that they were actuated by an indirect motive to injure pltf's. & to further the interests of those taking part in the strike. Upon these findings judgment was entered for pltf's. Defts. appealed:—*Held*: there was no evidence to support the jury's findings.—SCAMMELL G. & NEPHEW, LTD. v. HURLEY, [1929] 1 K. B. 419; 98 L. J. K. B. 98; 140 L. T. 236; 93 J. P. 99; 27 L. G. R. 53, C. A.

- 39a. — **Injunction to restrain supply by another person.**—Pltf's., a local authority empowered to supply electricity within a certain area, sought an injunction under Electric Lighting Act, 1909 (c. 34), s. 23, to restrain deft. from supplying electricity to certain consumers in the area:—*Held*: as the supply of electrical energy was not deft.'s primary business, the action failed.—CAERPHILLY URBAN DISTRICT COUNCIL v. GRIFFIN, [1928] Ch. 171; 97 L. J. Ch. 139; 138 L. T. 516; 92 J. P. 5; 44 T. L. R. 132; 26 L. G. R. 38.

**PART II. SECT. 11, SUB-SECT. 5.—A.**

p 1. — **At fixed rate for definite period—Whether valid.**—In the absence of an express or necessarily implied grant of power to pltf. town to contract to supply electric energy from its

municipal plant for a definite period at a fixed rate, *held* that such a contract was *ultra vires*, since it wiped out during its currency the statutory power of the town to fix from time to time such rates as it may deem necessary in the proper management of the utility, of which

- 42a. — **Supply to premises partly outside area—Point of supply within area.**—Defts. were authorised by the County of London (Northern Extensions) Electric Lighting Order, 1897, made under Electric Lighting Acts, 1882 (c. 56) & 1888 (c. 12), to supply electricity within an area adjoining the relators' area of supply. Sect. 6 of the Order prohibited the supply of energy by defts. beyond their area of supply, & Electric Lighting Act, 1909 (c. 34), s. 23, contains a general prohibition against supplying energy outside an authorised area. Defts. entered into a contract to supply a firm having a small part of its premises within defts.' area of supply & the remainder of the premises in the relators' area of supply. For the purpose of this contract defts. erected their apparatus on the part of the premises of the firm within their area, & the consumers' terminals, that is, the point where the electricity was passed from defts.' service lines to the lines on the firm's premises owned & controlled by them, were also on that part of the premises. The use of electricity on this part of the premises was trivial. In the circumstances the A.-G. brought an action on the relation of the relators to restrain defts. from supplying energy to the firm outside their area:—*Held*: the point of supply was the consumers' terminals, & as the firm's terminals were within defts.' area, defts. had not committed any breach of the prohibitions in their Order & the Act of 1909.—A.-G. v. COUNTY OF LONDON ELECTRIC SUPPLY CO., [1926] Ch. 542; 95 L. J. Ch. 357; 135 L. T. 601; 42 T. L. R. 328; 70 Sol. Jo. 486.

47. *Add. Annotation*:—As to (1) *Refd. Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.

52. For the paragraph in the original volume substitute the following paragraph:—

— **Not incompatible with performance of statutory duties.**—By a Provisional Order of 1898 the B. Council were constituted electricity undertakers in B. with power to charge up to a certain maximum price, but with authority to make special agreements with particular consumers as to price. By a transfer deed of Dec. 31, 1901, approved by the Board of Trade, the B. Council transferred the undertaking to defts. with a provision for retransfer if defts. made default in their obligations as undertakers. By a supplemental deed of same date, made without the approval of the Board of Trade, defts. agreed with the B. Council not to charge higher prices than those charged in the adjoining borough of S. In 1911 the B. district & the contractual rights of the B. Council were transferred to pltf's., the S. Corp'n., but defts. still remained electricity undertakers in B. Defts. having recently begun to charge higher prices than pltf's., pltf's. brought an action to restrain their breach of agreement. Defts. contended that their agreement was *ultra vires* both under Electric Lighting Act, 1882 (c. 50), s. 11,

the council are in a sense trustees for the public.—BROADVIEW TOWN v. SASKATCHEWAN CO-OPERATIVE CREAMERIES, LTD., [1928] 1 D. L. R. 1119; [1928] 1 W. W. R. 324; 22 Sask. L. R. 356.—CAN.



which prevented them from divesting themselves of their statutory powers without the consent of the Board of Trade, & also under the general law applicable to statutory undertakings:—*Held*: the agreement was a business transaction into which defts. might reasonably enter; it did not fetter the powers of defts. & was not incompatible with the performance by them of their statutory duties, & was not therefore *ultra vires*.—*SOUTHPORT CORPN. v. BIRKDALE DISTRICT ELECTRIC SUPPLY CO.*, [1925] Ch. 794; 94 L. J. Ch. 371; 133 L. T. 354; 89 J. P. 149; 69 Sol. Jo. 523; 23 L. G. R. 490, C. A.; *affd. sub nom.* Birkdale District Electric Supply Co. v. Southport Corp., [1926] A. C. 355; 95 L. J. Ch. 587; 134 L. T. 673; 90 J. P. 77; 42 T. L. R. 303; 24 L. G. R. 157, H. L.

*Annotation*:—*Refd.* Brown v. Dagenham Urban District Council, [1929] 1 K. B. 737.

64. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corp., (1927), 138 L. T. 465.

65a. *Liability for*—*Under Electric Lighting (Clauses) Act, 1899 (c. 19).*—*Ptlf.*, who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corp., under Parliamentary powers & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by the ptlf. In an action for a nuisance:—*Held*: (1) above Act did not

expressly make defts. liable for a nuisance, but (2) as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers ptlf. was entitled to an injunction & damages.—*MANCHESTER CORPN. v. FARNWORTH* (1929), 46 T. L. R. 85; 73 Sol. Jo. 818; 93 J. P. Jo. 780; *sub nom.* FARNWORTH v. MANCHESTER CORPN., 27 L. G. R. 709, H. L.

67. *Add. Annotations*:—*Refd.* Farnworth v. Manchester City Corp., [1929] 1 K. B. *Mentd.* Horton's Estate v. Beattie (1926), 42 T. L. R. 701.

70a. *Fumes—Injunction.*—*MANCHESTER CORPN. v. FARNWORTH*, No. 65a, *ante*.

72. *Add. Annotations*:—*Consd.* Noble v. Harrison [1926] 2 K. B. 332. *Distd.* St. Anne's Well Brewery Co. v. Roberts (1928), 140 L. T. 1. *Refd.* Ilford U. C. v. Beal, [1925] 1 K. B. 671; Booth v. Thomas (1926), 95 L. J. Ch. 160; Smith v. G. W. Ry. (1926), 135 L. T. 112; Glanville v. Sutton (1927), 44 T. L. R. 98; G. W. Ry. v. S.S. Mostyn, [1928] A. C. 57; Pontardawe R. D. C. v. Moore-Gwyn, [1929] 1 Ch. 655. *Mentd.* Hines v. Tonsley (1926), 95 L. J. K. B. 773.

73. *Add. Annotation*:—*Refd.* Manchester Corp. v. Farnworth (1929), 46 T. L. R. 85.

76. *Add. Annotation*:—*Apld.* Farnworth v. Manchester Corp., [1929] 1 K. B. 533.

## Part IV.—Special Legislation—Power Acts.

111. *Add. Annotation*:—*Consd.* Southport Corp. v. Birkdale District Electric Supply Co., [1925] Ch. 794.

111a. *Act authorising application by another party for power to supply energy within area of*

*supply—Consent of undertakers unnecessary.*—*R. v. ELECTRICITY COMRS., Ex p. YORKSHIRE ELECTRIC POWER CO.* (1927), 138 L. T. 230; 91 J. P. 191; 44 T. L. R. 26; 25 L. G. R. 524, D. C.

### PART II. SECT. 11, SUB-SECT. 5.—B.

sk. *Whether entitled to locn.—Under Public Utilities Act, R. S. O., 1914 (c. 204), s. 27.*—*WELLAND CITY v. ELECTRIC STEEL & METALS CO., LTD.*, [1927] 2 D. L. R. 168; 60 O. L. R. 127.—*CAN.*

sl. ——— *Supply to tenants—Tenants evicted.*—*Held*: the only right of the undertakers was to recover damages for the refusal of the consumers to carry out their contract.—*Re McKITTRICK PROPERTIES, LTD.*, [1927] 2 D. L. R. 93; 60 O. L. R. 132.—*CAN.*

### PART II. SECT. 13, SUB-SECT. 2.

st. *Falling wires—Compensation.*—*Damage to land or stock from falling wires, arising apart from unauthorised or negligent acts on the part of a power board for which claimants would have a remedy by action at law:—Held*: improbable & too speculative to form a subject of compensation.—*WOOD v. TABANAKI ELECTRIC POWER BOARD*, [1927] N. Z. L. R. 392.—*N.Z.*

### PART II. SECT. 13, SUB-SECT. 3.

78 i. ——— *Limitation of—Statutory authority.*—*The principle of Rylands v. Fletcher, No. 72, does not apply to persons properly exercising their statutory powers.*—*HANCOCK v. MIDLAND JUNCTION MUNICIPALITY CORPN.* (1926), 28 W. A. L. R. 91.—*AUS.*

### PART II. SECT. 25.

sa. *Property in apparatus on premises—Transformers, switches & bulbs.*—*Held*: the words "dynamoes, poles & wires" in 3 Edw. 7, 1903, c. 45, s. 20, refer to the equipment necessary to render electricity available for the ratepayers generally, as contrasted with equipment necessary to supply any individual ratepayer; The expression "all other machinery," construed *ejusdem generis* with the words "dynamoes, poles & wires," does not include transformers, switches or electric bulbs in private houses or factories, & which would only benefit the individual ratepayers & not the general body of the ratepayers.—*Ex p. LEWIS*, [1923] 1 D. L. R. 146; 50 N. B. R. 446.—*CAN.*

### PART II. SECT. 27.

sb. *Whether compulsory—Agreement with provision for arbitration confirmed by statute.*—*An agreement between a municipality & a co. for the supply of electric light & other services to the citizens of the municipality contained a clause for the adjustment of rates in future between the parties with provision for arbn., & an Act was passed in 1906 confirming it & declaring it binding upon the parties:—Held*: the effect of the Act was not to turn the clause in the agreement into a statutory obligation to go to arbn. but the Act only made valid & binding what without it might have been an invalid agreement.—*RED DEER (CITY) v. WESTERN GENERAL ELECTRIC CO.*, [1924] 2 D. L. R. 317; 1 W. W. R. 1092; 20 Alta. L. R. 372.—*CAN.*

sd. *Authority of counsel to refer dispute to arbitration—Validity of consequent award—Power Commission Act, R. S. O., 1914 (c. 39), s. 16.*—*BEACH v. HYDRO ELECTRIC POWER COMMISSION OF ONTARIO*, [1927] 1 D. L. R. 277; [1927] S. C. R. 251.—*CAN.*

## EQUITY.

## Part I.—Nature and Purpose of Equity.

2. *Add. Annotation* :—**Mentd.** *Re Wait*, [1927] 1 Ch. 606.

## Part II.—Equitable Maxims.

30. *Add. Annotation* :—**Refd.** *Tallack v. Tallack & Broekema*, [1927] P. 211.
31. *Add. Annotation* :—**Mentd.** *Re Boundary between Canada & Newfoundland in Labrador Peninsula* (1927), 137 L. T. 187.
44. *Add. Annotations* :—**Refd.** *Wright v. Morgan* [1926] A. C. 788; *A.-G. v. Goddard* (1929), 98 L. J. K. B. 743.
59. *Add. Annotation* :—**Refd.** *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.
76. *Add. Citation* :—132 L. T. 21.
86. *Add. Annotation* :—*As to* (1) **Apld.** *Berry v. Berry*, [1929] 2 K. B. 316.
101. *Add. Annotation* :—**Refd.** *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.
108. *Add. Annotation* :—**Refd.** *Soviet Republics Union v. Belaiew* (1925), 42 T. L. R. 21.
133. *Add. Annotations* :—*Generally*, **Refd.** *Maine & New Brunswick Electrical Power Co., Ltd. v. Hart*, [1929] A. C. 631; *Simpson v. Maurice's Exors.* (1929), 45 T. L. R. 581.
- 140a. *S. P. Rich v. Sydenham* (1671), 1 Cas. in Ch. 202; 3 Rep. Ch. 74; 21 E. R. 733.
159. *Add. Annotations* :—*As to* (1) **Consd.** *Re Wait*, [1927] 1 Ch. 606. *As to* (2) **Consd.** *Re Wait*, [1927] 1 Ch. 606.
173. *Add. Annotation* :—**Refd.** *Re Wait*, [1927] 1 Ch. 606.
177. *Add. Annotation* :—**Consd.** *Re Blackwell, Blackwell v. Blackwell*, [1929] A. C. 318.
186. *Add. Annotation* :—**Refd.** *Re Blackwell, Blackwell v. Blackwell*, [1929] A. C. 318.
- 193a. ——— **Purchase pendente lite.**—A purchase *pendente lite*, though without actual notice, & for a valuable consideration, shall be set aside.—**SORRELL v. CARPENTER** (1728), 2 P. Wms. 482; 24 E. R. 825, L. C.
- Annotations* :—**Consd.** *Bollamy v. Sabine* (1857), 1 De G. & J. 566; *Wigram v. Buckley*, [1894] 3 Ch. 483. **Refd.** *Metcalf v. Pulvertoft* (1813), 2 Ves. & B. 200.
- 233a. ————]—Pltf. filed a bill to have a conveyance set aside. Deft. had conveyed the estate to mtgees. :—**Held** : they, as purchasers for valuable consideration without notice, could not be interfered with.—**BULLEY v. BULLEY** (1874), 9 Ch. App. 739; 44 L. J. Ch. 79; 30 L. T. 848; 22 W. R. 770, L. J.J.
- 239a. ————]—**HARRISON v. FORTH** (1695), Prec. Ch. 51; 1 Eq. Cas. Abr. 331; 24 E. R. 26.
252. *Annotations* :—For “**Refd.** *Stickney v. Keeble* [1915] A. C. 386” read “**Consd.** *Stickney v. Keeble*, [1915] A. C. 386.”
- Add Annotation* :—**Apld.** *Bernard v. Williams* (1928), 139 L. T. 22.
253. *Add. Annotations* :—**Consd.** *Re Sandwell Park Colliery Co., Field v. The Co.*, [1929] 1 Ch. 277. **Refd.** *Bernard v. Williams* (1928), L. T. 22.

## PART II. SECT. 5, SUB-SECT. 1.

971. *Imposition of equitable terms—As condition of relief.*—A person who seeks equity must do equity, & therefore one who demands performance of an agreement to hold property in trust for him must be content to have the agreement equitably construed.—*Re REGAL PHONOGRAPH CO., Ex p. TRUSTEE*, [1924] 1 D. L. R. 947; 4 C. B. R. 418.—**CAN.**

## PART II. SECT. 5, SUB-SECT. 2.

sa. *Applicable to school corporation.*—**NIAGARA PUBLIC SCHOOL BOARD v. QUEENSTON WOMEN'S INSTITUTE**, [1926] 4 D. L. R. 13; 59 O. L. R. 213.—**CAN.**

## PART II. SECT. 6.

130 vi. ————]—**McGUIRE v. PROSSER**, [1925] 3 D. L. R. 866.—**CAN.**

## PART II. SECT. 7.

ci. — *Executory agreement for lease—Acts of ownership—Ejectment* :—**ARIEF v. JADU NATH MAJUMDAR** (1928), 1 L. R. 5, Cal. 1090.—**IND.**

## PART II. SECT. 11, SUB-SECT. 1.

192 iv. ————]—In April, 1923, pltf. co. entered into an agreement in writing with B. for a lease to the co. for five years of certain land. B. died in Feb. 1924. This action was brought on May 20, 1924, against the exors. of B. & against G., to whom the exors. had, in May, 1924, agreed to sell the same land; & the M. co., to which the land was (by direction of G.) conveyed by the exors. of B. on July 13, 1921, was added as a deft. Pltf. co. claimed specific performance of its agreement with B., a declaration that its rights were paramount to the rights of defts., in the land, & in the alternative damages for delay in carrying out the agreement & for breach thereof. A certificate of *lis pendens* was registered on May 21, 1924. On May 20, 1924, which was after the making of the second agreement, but before its registration on that day, defts. received notice of the claim made by pltf. co. Defts. G. & the M. co. contended that they were purchasers in good faith without notice of pltf. co.'s claim & were entitled to the benefit of the Registry

Act, R. S. O. 1914, c. 124, ss. 71, 72, 73 & 75. :—**Held** : sect. 71 was applicable to the facts of the case; at the time of the purchase these defts. had no actual notice of pltf. co.'s claim or agreement, & their agreement was registered before pltf. co.'s—in fact the latter was never registered at all—& the provisions of the Act afforded them a complete defence, but, leaving aside the provisions of the Registry Act, defts. had the better equity.—**PARAMOUNT THEATRES, LTD. v. BRANDENBERGER**, [1928] 1 D. L. R. 573; 62 O. L. R. 579.—**CAN.**

sb. *Defence of purchase for value without notice—Not pleaded—Right to raise on appeal.*—The plea of *bona fide* purchase for value is one which ought to be specifically alleged & proved by those who rely on it. Where, therefore, defts. did not plead that they were *bona fide* purchasers for value without notice & no issue was raised on this point, which was for the first time taken in argument in the appellate etc. :—**Held** : the defence was not available to defts. at the appellate stage.—**MURAT SINGH v. PHEKO SINGH** (1928), 1 L. R. 7 Pat. 584.—**IND.**

## Part III.—Equitable Jurisdiction or Equitable Relief.

- 258a. *S. P. DREWRY v. BARNES* (1826), 3 Russ. 94; 5 L. J. O. S. Ch. 47; 38 E. R. 511.  
*Annotations:—Mentd. A.-G. v. Pearson* (1846), 2 Coll. 581; *Delarue v. Church* (1851), 20 L. J. Ch. 183; *Preston v. Great Yarmouth Corpn.* (1872), 7 Ch. App. 657, n.
- 292a. ——— **Pleading.**—*STURTON v. RICHARDSON* (1844), 13 M. & W. 17; 2 Dow. & L. 182; 13 L. J. Ex. 281; 8 Jur. 476; 153 E. R. 7; *sub nom. RICHARDSON v. STURTON*, 3 L. T. O. S. 164.  
*Annotations:—Refd. Eason v. Henderson* (1848), 12 Q. B. 986; *Henderson v. Eason* (1851), 17 Q. B. 701.
- 293a. ——— **One tenant in common locking gate & taking away grass.**—*Held*: the circumstances did not amount to an ouster, nor to a destruction of the common property, & the only remedy was a proceeding for an account.—*JACOBS v. SEWARD* (1872), L. R. 5 H. L. 464; 41 L. J. C. P. 221; 27 L. T. 185; 36 J. P. 771, H. L.  
*Annotation: Refd. Birkin v. Smith*, [1909] 2 K. B. 112.
303. *Add. Annotation:—Refd. Soviet Republics Union v. Belaiew* (1925), 42 T. L. R. 21.
332. *Add. Annotations:—Mentd. Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569. *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137. *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265; *Shotts Iron Co. v. Curran*, [1929] A. C. 409.
347. *Add. Annotation:—Refd. Anderson v. Equitable Assce. Soc. of the United States* (1926), 134 L. T. 557.
358. *Add. Annotation:—Refd. Re Barratt, National Provincial Bank v. Barratt*, [1925] Ch. 550.

## Part IV.—Exercise of Equitable Jurisdiction by the High Court.

475. *Add. Annotation:—Mentd. Ideal Films v. Richards*, [1927] 1 K. B. 374.
482. *Add. Annotation:—Generally, Mentd. The City of Baroda* (1926), 134 L. T. 576.
484. *Add. Annotation:—Mentd. Purnell v. Roche*, [1927] 2 Ch. 142
- 497a. — **Variation of specialty by parol agreement.**—Since by Jud. Act, 1873 (c. 66), s. 25 (11), as re-enacted by Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 44, in the case of a conflict between the rules of law & the rules of equity the rules of equity are to prevail, a contract under seal may be varied by a subsequent parol agreement.—*BERRY v. BERRY*, [1929] 2 K. B. 316; 98 L. J. K. B. 748; 141 L. T. 461; 45 T. L. R. 524, D. C.
501. *Add. Annotation:—Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
504. *Add. Annotation:—As to (2) Refd. Re Wait*, [1927] 1 Ch. 606.
506. *Add. Annotation:—Refd. Re Mason* (1928), 97 L. J. Ch. 321.

## Part VI.—Priority.

- 509a. ———.—*ANON.* (1675), 2 Cas. in Ch. 208 22 E. R. . . .
511. *Add. Annotations:—Apld. Commonwealth Trust v. Akotey*, [1926] A. C. 72. *Refd. Jones v. Waring & Gillow*, [1926] A. C. 670.

**PART III. SECT. 3, SUB-SECT. 1.**  
**50. Right to maintain action.**—*Disputed allegations raised by pleadings.—Whether preliminary points raised.*—Plff. having brought an action against deft. for an account of moneys received by deft., an order was made in chambers for an account under the Rules of the Supreme Ct., 1909, Ord. 15, r. 1. Prior to the order being made pleadings had been delivered, & in his defence deft. made certain allegations which were disputed by plff. —*Held*: these allegations did not raise preliminary points to be decided before the taking of the accounts, but points which would arise upon the taking of the accounts.  
*—LE MESURIER v. CONNOR*, [1927] W. A. L. R. 66. —**AUS.**

**PART III. SECT. 3, SUB-SECT. 8.—B. (a).**  
**5d. Materiality of error.**—*Parties in fiduciary relationship.*—The ets. will grant permission to reopen an account that has been settled for errors less considerable than usual

where the parties stand in a fiduciary relationship.—*RAHIM v. LOW* (1924), 1 L. R. 3 Kan. 1.—**IND.**

**PART III. SECT. 3, SUB-SECT. 8.—B. (b).**

**318 iv.** ———.—Where a single fraudulent error is discovered in settled accounts, the proper order for the ct. to make is for the reopening of the whole account.—*RAHIM v. LOW* (1924), 1 L. R. 3 Kan. 1.—**IND.**

**PART III. SECT. 3, SUB-SECT. 8.—C.**

**362 ii.** ———.—*For what mistakes.*—Where an error of importance has been proved in an account stated, though such error may not be important enough to justify the opening of the settled accounts, the ct. should permit the accounts to be surcharged & falsified generally.—*RAHIM v. LOW* (1924), 1 L. R. 3 Kan. 1.—**IND.**

**362 iii.** ———.—*Parties in fiduciary relationship.*—The ets. will grant permission to surcharge & falsify an account that has been settled for

errors less considerable than usual where the parties stand in a fiduciary relationship.—*RAHIM v. LOW* (1924), 1 L. R. 3 Kan. 1.—**IND.**

**366 i. Overcharge.**—*Acquiesced in.*—Where an overcharge has been paid by a principal with knowledge of the overcharge & without protest, he cannot be permitted to question such payment after the accounts have been settled.—*RAHIM v. LOW* (1924), 1 L. R. 3 Kan. 1.—**IND.**

**PART IV. SECT. 2.**

**5l. In Ontario.**—*Deprivation of right to present claim to Department of Crown Lands.*—*JOHNSTON v. STEACY*, [1926] 4 D. L. R. 902; 59 O. L. R. 475.—**CAN.**

**PART VI. SECT. 2, SUB-SECT. 2.—A.**

**614 i. Time alone insufficient to give priority.**—A widow & administratrix had carried on the business of deceased, & appointed her son to act as manager, giving him cheques blank as to the amount, & signed on behalf of the trading co. With this money the son

## Part VII.—Notice.

**649a.** —[.]—The doctrine of constructive notice operates adversely to a person who neglects to inquire; it does not entitle such a person to claim for his own advantage to be treated as having knowledge of the facts which inquiry would have disclosed.—**HOUGHTON & Co. v. NOTHARD, LOWE & WILLS**, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd.*, [1928] A. C. 1, H. L.

*Annotations*:—**Refd.** *Newsholme Bros. v. Road Transport & General Insee. Co., Ltd.*, [1929] 2 K. B. 356. **Mentd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.

**652.** *Add. Annotation*:—**Mentd.** *Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.

**659.** *Add. Annotations*:—**Apld.** *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28. **Refd.** *Newsholme Bros. v. Road Transport & General Insee. Co.*, [1929] 2 K. B. 356.

**661a.** —[.]—As a general rule the equitable doctrines of constructive notice are not to be extended to purely commercial transactions.—**GREER v. DOWNS SUPPLY CO.**, [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.

**686.** *Add. Annotation*:—**Generally.** **Refd.** *Manchester & County Bank v. Monk* (1929), 73 Sol. Jo. 465.

**687.** *Add. Annotation*:—**As to** (1) **Refd.** *Kreditbank Cassel G.m.b. H. v. Schenkers*, [1926] 2 K. B. 450.

**699.** *Add. Annotation*:—**Refd.** *Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.

**719a.** —[.]—**HALL v. SMITH** (1808), 14 Ves. 426; 33 E. R. 584.

*Annotations*:—**Consd.** *Pope v. Garland* (1841), 4 Y. & C. Ex. 394; *Drysdale v. Mace* (1854), 2 Sm. & G. 225; *Grosvenor v. Green* (1858), 28 L. J. Ch. 173; *Phillips v. Miller* (1875), L. R. 10 C. P. 420. **Refd.** *Adams v. Lambert* (1838), 2 Jur. 1078; *Carroll v. Keays*, *Keays v. Carroll* (1873), 22 W. R. 243.

**727.** *Add. Annotation*:—**Apld.** *Melzak v. Lilienfeld*, [1926] Ch. 480.

**735.** *Add. Annotation*:—**Mentd.** *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

**746.** *Add. Annotation*:—**Refd.** *Re Des Reaux & Setchfield's Contract*, [1926] Ch. 178.

**755a.** *Stock standing in joint names—Whether notice of trust.*—[.]—The fact that stock or shares are standing in the names of joint owners is not notice to persons buying, or lending money on the stock or shares that the owners are trustees, nor does it put on such persons the duty of inquiring whether the property is held in trust.—**KAEMENA v. CENTRAL BANK OF LONDON, LTD.** (1888), 4 T. L. R. 657.

**759.** For “(1836)” read “(1839).”

**760a.** *Notice of mortgage—After payment of purchase-money countermanded—Countermand withdrawn.*—[.]—An owner of a house mortgaged to first, second & third mtgees. He then sold it, subject to the first two incumbrances only, to a purchaser who paid for it & took the assignment, but owing to misgivings he countermanded payment of the cheque, & then for the first time received notice of the existence of the third mtge. Being, however, threatened with a summons in bkpcy., he withdrew his countermand, & the cheque was paid:—**Held**: he was not a purchaser for value without notice.—**TILDESLEY v. LODGE** (1857), 3 Sm. & G. 543; 30 L. T. O. S. 29; 3 Jur. N. S. 1000; 65 E. R. 772.

**760b.** *Notice of second mortgage—After first mortgage discharged & purchase-money paid but before assignment of term.*—**MEYNELL v. GARRAWAY** (1662), Nels. 63; 21 E. R. 790.

## Part VIII.—Equitable Assignments.

**770.** *Add. Annotations*:—**Distd.** *Kursell v. Timber Operators & Contractors*, [1927] 1 K. B. 298.

**Consd.** *Re Wait*, [1927] 1 Ch. 606. **Refd.** *Re Smith, Franklin v. Smith*, [1928] Ch. 10.

purchased various securities which he lodged with the bank to secure overdrafts for himself & for the co. The next of kin sought a declaration that the securities were assets of deceased, & were held by the bank in trust for them:—**Held**: the equitable estate of the bank took precedence over the equity of the next of kin in spite of the latter's priority of time.—**SCOTT v. SCOTT** (1924), 58 L. T. 137.—**IR.**

## PART VII. SECT. 3, SUB-SECT. 1.

**648** i. *Nature of doctrine.*—**HENDERSON v. GRAVES** (1856), 2 E. & A. 9.—**CAN.**

## PART VII. SECT. 3, SUB-SECT. 2.

**659** i. *Commercial transactions—Doctrine not applicable.*—[.]—Attention drawn to *Greer v. Downs Supply Co.*, No. 661a, *supra*.—**R. v. MCPHERSON & QUIGLEY & UNION BANK OF CANADA**

(Alta.), [1927] 4 D. L. R. 937; 3 W. W. R. 416.—**CAN.**

## PART VII. SECT. 3, SUB-SECT. 6.

**730** iv. —[.]—Possession is in itself notice of the title under which such possession is retained which any one dealing with the property cannot, without risk, ignore.—**NATIONAL BANK OF AUSTRALASIA, LTD. v. JOSEPH**, [1921] 1 W. W. R. 379.—**CAN.**

## Part IX.—Conversion and Reconversion.

- 775a.** ———.]—Money was to be laid out in land, to be settled to the husband for life; remainder to raise portions for young children; the money was afterwards invested, by direction of the husband, in S.S. annuities; afterwards by will he devised generally all his manors, etc. to certain uses; the money in the funds must be laid out in land.—*HICKMAN v. BACON* (1793), 4 Bro. C. C. 333; 29 E. R. 920, L. C.
- 803.** *Add. Annotation:—Refd. Re Carnarvon's Chesterfield S. E., Re Carnarvon's Highclere S. E.* (1926), 70 Sol. Jo. 977.
- 807.** *Add. Annotation:—Refd. Re Calow, Calow v. Calow*, [1928] Ch. 710.
- 815a.** ——— *Fines & Recoveries Act, 1833 (c. 74), s. 71.*]—Testator, who died in 1875, specifically devised an undivided share in freeholds to his son P. for life with remainders which never took effect & devised the residue of his real estate upon limitations which in 1878 were held by the ct. to give testator's son W. an estate tail therein. In 1877 the freeholds, the undivided share in which was devised to P. for life, were sold under Leases & Sales of Settled Estates Act, 1856 (c. 120), & the proceeds of sale representing such share were paid into ct. After the sale W., who had previously executed a disentailing deed dealing in general terms with the lands devised to him by testator's will, executed another disentailing deed dealing in terms with the undivided share & the money in ct. resulting from the sale thereof. Neither of these deeds was executed with the consent of P. as the protector of the settlement. W. died in the lifetime of P. having by his will devised his residuary real estate to applt. & bequeathed his personal estate to resps. At the death of P. in 1920 applt. petitioned for payment out of ct. of the money, claiming that it had passed to him as residuary devisee of W.:—*Held*: the money retained the character of real estate inasmuch as *Fines & Recoveries Act, 1833, s. 71*, did not convert disentailed money into personal estate for all purposes, but merely directed that it should be treated as personal estate for the purpose of the form of a disentailing deed.—*Re DICKSON'S SETTLED ESTATES*, [1921] 2 Ch. 108; 90 L. J. Ch. 453; 125 L. T. 528; 65 Sol. Jo. 532, C. A.
- 817a.** ——— *Law of Property Act, 1925 (c. 20), Sched. I., Part IV.*]—A testator, who died in 1928, devised to applt. all his freehold & copyhold property & gave all his leasehold property & personally to trustees on certain trusts. Testator was absolutely entitled to two equal ninth parts of the residuary real estate of his father & to one-fourth part of certain mines & minerals:—*Held*: as a result of *Law of Property Act, 1925 (c. 20), Sched. I., Part IV., & sect. 35*, the real property became subject to a trust for sale, with the result that testator's interest became, on the passing of the Act, personal property by reason of the conversion so effected, & therefore, passed under the gift of personal estate & not to the devisee.—*Re KEMPTHORNE, CHARLES v. KEMPTHORNE* (1929), 46 T. L. R. 15, C. A.
- 820a.** ———.]—Conversion out & out of real into personal estate, in a will, only arises where a testator, by a will duly executed to pass real estate, directs that the produce of the real estate shall be treated at his death as if it had in all respects the quality of personal estate.—*WHYTALL v. KAY* (1833), 2 My. & K. 765; 3 L. J. Ch. 94; 39 E. R. 1136.
- Annotation:—Mentd. Swift v. Nash* (1837), 6 L. J. Ch. 363.
- 859.** *Add. Annotations:—Refd. Re Conquest, Royal Exchange Assce. v. Conquest*, [1929] 2 Ch. 353; *Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662. *Mentd. Re Gray, Public Trustee v. Wodehouse* (1926), 70 Sol. Jo. 1112; *Re Robins, Holland v. Gillam*, [1928] Ch. 721.
- 871.** *Add. Annotation:—Consd. Re White, Pitman v. White* (1929), 46 T. L. R. 30.
- 914a.** ———.]—*COLLINGWOOD v. WALLIS* (1727), 1 Eq. Cas. Abr. 395; 21 E. R. 1128, L. C.
- 915.** *Add. Annotations:—Refd. Ormond Investment Co. v. Betts*, [1927] 2 K. B. 326. *Mentd. Ormond Investment Co. v. Betts*, [1928] A. C. 143.
- 937a.** ——— *Specific devise of land subject to contract for sale.*]—Testator in 1925 devised all his freehold property situate at D. to trustees upon trust to hold same or the proceeds of sale thereof for his two sons named as joint tenants, & gave & bequeathed his residuary real & personal estate to other persons. Testator possessed at the date of his will an undivided moiety in some thirty-seven acres of freehold land at D., ten & a half acres of which he had, in 1921, contracted to sell. He died in 1925, before the purchase had been completed, & owing to difficulties of title completion did not take place until Dec. 1925:—*Held*: the will having been made after the date of the contract for sale, & with full knowledge of that contract, indicated an intention, as shown by the reference to proceeds of sale, to pass whatever estate testator had in the property, though it was only part of his freehold land at D., to the specific devisees.—*Re CALOW, CALOW v. CALOW*, [1928] Ch. 710; 97 L. J. Ch. 253; 139 L. T. 235; 72 Sol. Jo. 437.
- 956.** *Add. Annotation:—Apld. Re Calow, Calow v. Calow*, [1928] Ch. 710.
- 962.** *Add. Annotation:—Apld. Re Calow, Calow v. Calow*, [1928] Ch. 710.
- 964.** *Add. Annotation:—Apld. Re Calow, Calow v. Calow*, [1928] Ch. 710.
- 970.** *Add. Citation:—1 Coll. 80, n.*
- 992.** *Add. Annotation:—Refd. Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.
- 1006.** *Add. Annotation:—Consd. Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.
- 1007a.** ———.]—In 1924, by an order of the Ch. Div. funds in ct. belonging to S., a person of unsound mind not so found, were invested in a freehold house as a residence for S. The order did not say whether the house was to be regarded as real or personal estate. The house was sold, pursuant to an order of the master in lunacy, in 1927, & the proceeds of sale were invested in 3½ per cent. Conversion Stock. S. died

in 1928 a widower & without issue:—*Held*: the freehold house became the real estate of S., & that the proceeds of sale retained the character of real estate, & passed to the heir at law.—*Re SILVA, SILVA v. SILVA*, [1929] 2 Ch. 198; 98 L. J. Ch. 459; 141 L. T. 452.

1008. *Add. Annotation*:—*Folld. Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.

1034. *Add. Annotation*:—*Apld. Re Price*, [1928] Ch. 579.

1037. *Add. Annotation*:—*Consd. Re Bund, Cruikshank v. Willis*, [1929] 2 Ch. 455.

1040a. ————*J*.—A husband by his will, directed the remainder of the produce of his real & personal estate to be placed out at interest, & the dividends & produce thereof to be paid to his wife during her life:—*Held*: she was entitled to have all the property of testator, including the reversionary interest in the annuity, treated as converted at the time of testator's death.—*JOHNSON v. ROUTH* (1857), 27 L. J. Ch. 305; 6 W. R. 6.

*Annotation*:—*Refd. Harrington (Countess) v. Alberton* (1864), 4 New Rep. 206.

1049a. ————*J*.—Testator devised his real & personal estate to trustees, charging them not to sell, if they could avoid it, the real property till the end of nineteen years; but if they should sell part, to apply the proceeds to pay off his mortgage debts, & to hold the residue till the end of the nineteen years, when the proceeds were to be paid to his children, A., B. & C. in certain shares. The trustees declined to accept the trust. All the *cestuis que trust* then executed a deed of trust, by which they agreed to divide the property into two classes. Class 1 was to be sold immediately, to pay testator's debts. Class 2 was to be held by the trustees named, in trust for the purposes of the will, so far as not inconsistent with the trust deed, to pay the rents accruing to the parties as entitled under the will, & with power to a majority of the trustees to sell even within the nineteen years, at the end of which period, however, the property was to be sold absolutely, & the proceeds divided as the will directed. B. died before the end of the nineteen years:—*Held*: (1) under the trust deed there was a conversion out & out of class 1 from the date of that deed; but that there was a conversion of class 2 only at the end of the nineteen years, or, if sold before that period, then at the time of such sale; & the intermediate rents of the part remaining unsold went to those entitled to the real estate; (2) *semble*: under the will taken by itself, there was no conversion till the end of the nineteen years of that part of the real property which was then unsold, any conversion possible before that period being only for a certain limited purpose, that is, to pay debts of testator.—*FERRIE v. ATHERTON* (1852), 20 L. T. O. S. 170, H. L.

1061a. ————*Discretion to sell immediately for limited purpose.*—*FERRIE v. ATHERTON*, No. 1049a, *ante*.

1068a. ————*J*.—When property is given by will on trusts for conversion & investment, & to hold the investments on trust for a tenant for life & remaindermen, with a discretionary power to the trustees to postpone the conversion, & a provision that the income until conversion is to go to the tenant for life, that provision extends to property, such as a reversionary interest, which is not producing income as well as to property of a wasting character.

In adjusting the rights as between tenant for life & remaindermen in respect of a reversionary interest which ought to have been but has not been converted by trustees, interest should be calculated at the rate of 3 per cent.—*ROWLLS v. BEBB, Re ROWLLS, WALTERS v. TREASURY SOLICITOR*, [1900] 2 Ch. 107; 69 L. J. Ch. 562; 82 L. T. 633; 48 W. R. 562; 44 Sol. Jo. 448, C. A.

*Annotations*:—*Consd. Re Woods, Gabellini v. Woods*, [1904] 2 Ch. 4; *Re Baker, Baker v. Public Trustee*, [1924] 2 Ch. 271. *Refd. Re Hargreaves, Hargreaves v. Hargreaves* (1902), 86 L. T. 43; *Re Whiteford, Inglis v. Whiteford*, [1903] 1 Ch. 889; *Re Beech, Saint v. Beech*, [1920] 1 Ch. 40.

1268. *Add. Annotation*:—*Refd. A.-G. for Alberta v. A.-G. for Canada*, [1928] A. C. 475.

1283a. *Reconversion by foreclosure Effect of Conveyancing Act, 1911 (c 37), s. 9—Intention to accept reconversion.*—*J*.—Testator, who died in 1861, devised his real estate in strict settlement & empowered the trustees, with the consent of the tenant for life, to sell the same or any part thereof, & directed them with such consent to invest the proceeds of sale in the purchase of freehold land or in the public funds or on real securities to be respectively settled & held to & upon such uses & trusts corresponding as nearly as might be with the uses & trusts therein declared concerning the land sold, with power for the trustees from time to time with the like consent to vary such investments. In the events which happened the material limitations of the will resulted as follows: To the use of E., T. & J. successively for life in the order named, with remainder to the use of E., T. & J. as tenants in common in tail general, with cross-remainders between them in tail general, with remainders over. In 1867 part of the land was sold & the proceeds invested in mtge. of freehold land. In 1871 E. died leaving an only daughter. In 1881 T. died a bachelor. In 1898 the surviving trustee foreclosed, & in 1899, by a deed appointing a new trustee to which J. was party, the foreclosed land was conveyed to the uses & upon the trusts of the will as if the same had been thereby specifically devised. On the death of J. in 1916 without issue, his executrix, who was also executrix of T., claimed that the foreclosed land in fact represented personality & was subject to a trust for sale by Conveyancing Act, 1911 (c. 37), s. 9, & that she was entitled to two-thirds of the proceeds. The only daughter of E. claimed the foreclosed land as tenant

# PART IX. SECT. 2, SUB-SECT. 3.—A.

925 iii. ————*J*.—M. having specifically devised certain land, entered into an agreement with the tenant of portion of the land that, in the event of the Irish Land Commission advancing £500 Guaranteed Land Stock to

the tenant, the tenant would purchase, & he would sell, for that sum, & the agreement provided that the parties would execute the formal Land Commission agreement for sale on the terms of the agreement. M. died, & his exors. entered into a formal agreement with the tenant for sale at £500, & the sale was

carried out:—*Held*: the land stock passed under the residuary clause in the will as personality as & from the date on which the Land Commission agreed to advance the purchase money.—*MILEY v. CARRY & MILEY*, [1927] 1 R. 541.—*IR*.

in tail under the limitations of the will, E., T. & J. never having disentailed:—*Held*: (1) owing to the power to vary investments, the crucial time for determining the character of each investment was the death of J., the surviving tenant for life, & that the mtgs. having been then foreclosed the mere foreclosure operated as a reconversion of the property into realty, & that there was no equity on the part of any *cestui que trust* under the will to have the personal character of the investment restored to it; (2) by the deed of 1899, to which all the parties able to control the character of the investment of the trust fund were parties, the foreclosed land was duly adopted as real estate & settled to the uses of the will; (3) although Conveyancing Act, 1911 (c. 37), s. 9 (5), may apply to land foreclosed before the commencement of the Act & remaining at the passing of the Act in the condition determined by the foreclosure, it would be unreasonable to extend the retrospective operation of the section to a case like the present where previously to the commencement of the Act the foreclosed land had been definitely accepted & settled as land & rights acquired thereby; (4) even if, by virtue of sub-sect. 5, Conveyancing Act, 1911 (c. 37), s. 9, was to be deemed to apply to foreclosed lands as from the date of foreclosure, the terms of both sub-sects. 3 & 4 had in the present case been complied with sufficiently to prevent the reconversion of the land into money under sub-sects 1 & 2; (5) the foreclosed land had become legally vested in the daughter of E. in tail as the heir in

tail of E.—*Re BOGG, ALLISON v. PAICE*, [1917], 2 Ch. 239; 86 L. J. Ch. 536; 116 L. T. 714.  
*Annotation*:—*Generally*. *Reid*. *Re Twopeny, Monro v. Twopeny* (1921), 130 L. T. 816.

**1316a. Contingent reversionary interest—In personalty.**—Testator, who was entitled in reversion expectant upon the determination of his wife's interest & contingently upon no issue of the marriage living to attain a vested interest, to the proceeds of sale of certain real estate conveyed by him, upon his marriage in 1880, to trustees upon trust for sale, died in 1886 in his wife's lifetime, having devised the real estate, which had remained unsold, to the use of his wife for life with remainders over by way of legal limitations in strict settlement. There was no issue of the marriage. The real estate was not sold in the lifetime of the wife, who accepted the benefits under her husband's will & died in 1921:—*Held*: inasmuch as at his death testator's interest was a contingent reversionary interest in personalty, contingent upon the event of no posthumous child being born who might attain a vested interest, & reversionary because it was expectant upon his wife's life interest, testator was not competent to effect a reconversion by his will, because he never became entitled to an absolute interest in the property before his death, & the property passed under his will as personalty.—*Re STURT, DE BUNSEN v. HARDINGE*, [1922] 1 Ch. 416; 91 L. J. Ch. 289; 126 L. T. 460; 66 Sol. Jo. 236.

**1410. Add. Annotation**:—*Consd. Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.

## Part X.—Election.

**1424a. — Legacy to heir-at-law—Will operative to pass real estate.**—C., by his will, gave all he should leave in the world to trustees to pay his debts & legacies, among which was £1,000 to A., his brother & heir, & as to the residue in trust for natural children. Testator had real estate in Nova Scotia, but, as there were no witnesses to his will, it descended to the heir-at-law:—*Held*: supposing the words of the will would have passed real estate, if attested in due form, which was doubted, A. was entitled to his legacy, & also to the real estate.—*FARQUHARSON v. COLVILLE (LORD)* (1772), Rom. 129, L. C.

**PART IX. SECT. 9, SUB-SECT. 2.**—A. 1284 i. *Election by person absolutely entitled.*—Although there may be a trust for conversion, the beneficiaries may, if absolutely entitled, elect to take the property in its actual state.—*CRAWFORD v. LUNDY* (1876), 23 Gr. 244.—CAN.

**PART IX. SECT. 9, SUB-SECT. 2.**—E. (c).

**1349 i. Election on behalf of infant.**—By court.—Where circumstances make it highly advantageous for an infant devisee, an order will be made on his behalf granting election, to take property in its actual state before its

conversion *de facto* where the directs conversion.—*Re CANN* (11) 34 W. L. R. 296; 10 W. W. R. 147; 26 Man. L. R. 285.—CAN.

**PART X. SECT. 2, SUB-SECT. 1.**—B. (e).

so. *Income of estate left to widow by will for life—Widow's property left after her death to son by codicil—Income received by widow till will & codicil proved—Liability of widow on election against will.*—Testator by his will left the income of his estate to his wife for life, & directed that after her death it should be disposed of as set out in a codicil, not to be opened until after

**1428a. — — — — —**—GAINIER v. GUNNINGHAM (1750), 1 Bl. 27, n.; 1 P. R. 10, L.

*Annotation*:—*Consd. Keir v. Wauchope* (1819), 1 Bl. 1.

**1438a. — — — — —**—Where by her will a wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it & confined the operation of her will to her own property, & there was nothing in the husband's will which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions:—*Held*: she was in no way precluded from exercising her power of appointment by a subsequent will.—*GRAY v. PERPETUAL*

her death. By the codicil he disposed of all his estate among his children, giving to two of them, after the death of his wife, a certain property, which in reality belonged to her. His widow, without proving the will, received all the income of the estate for five years, after the lapse of which the will & codicil were proved. She then elected against the will. *Held*: her election related back to, & she was liable to account from, the date of testator's death; but, as she was not called upon to elect until this action was brought, she should not be charged with interest in the meantime.—*DAVIS v. DAVIS* (1896), 27 O. R. 532.—CAN.

- TRUSTEE Co., [1928] A. C. 391; 97 L. J. P. C. 85; 139 L. T. 469; 44 T. L. R. 654, P. C.
1439. *Add. Annotation*:—**Mentd.** *Re* Field, Sander-son v. Young, [1925] Ch. 636.
- 1552a. **Provision for forfeiture in case of dispute—Election.**—*Re* WHITWELL, SENIOR v. WILSON, [1890] W. N. 171.
- Annotation*: **Refd.** Haynes v. Foster, [1901] 1 Ch. 361.
- 1578a. ————]—Where successive irrevocable appointments are made in favour of the same person, the latter appointment will be held to be in substitution for the former, if such appears to be the intention of the donee of the power, & the person in whose favour the appointments are made will be compelled to elect between them.—**ENGLAND v. JAEVRS** (1866), L. R. 3 Eq. 63; 15 W. R. 51.
- Annotations*:—**Expld.** *Re* Tancered's Settltmt., Somerville v. Tancered, *Re* Selby, Church v. Tancered, [1903] 1 Ch. 715. **Refd.** *Re* Eardley's Will, Simeon v. Freemantle, [1920] 1 Ch. 397.
- 1580a. **Appointment to object within extent of power—No object in fact in existence—No election.**—**BULWER v. HOARE** (1825), 3 L. J. O. S. Ch. 227.
- 1581a. **Invalid delegation of power—Gifts conferred on persons entitled under appointment exercised under delegated power—No election.**—*Re* STEVENS (1912), 134 L. T. Jo. 83.
1582. *Add. Annotation*:—**Mentd.** *Re* Villar, Public Trustee v. Villar, [1929] 1 Ch. 243.
- 1619a. ———— **Marriage settlement—Husband not entitled to elect against interests of other parties to marriage settlement.**—**CROKER v. MARTIN** (1827), 1 Bli. N. S. 573; 1 Dow. & Cl. 15; 4 E. R. 987, H. L.
- Consd.** Anstey v. Newman (1870), 39 L. J. Ch. 769.
- 1637a. ————]—Testator having directed his exors. to sell whatever real estates he might die possessed of, & having given benefits to his heir-at-law, afterwards acquired other lands:—**Held**: the heir was not bound to elect.—**BACK v. KETT** (1822), Jac. 534; 37 E. R. 952.
- Annotations*:—**Consd.** Churchman v. Ireland (1831), 1 Russ. & M. 250. **Refd.** Schroder v. Schroder (1854), 3 Eq. Rep. 97; Hanco v. Truwhitt (1862), 2 John. & H. 216.
- 1643a. **Bequest of debt to mortgagor—Devise of reversion in property mortgaged.**—Testator having a debt secured on lands, gives the mtge. money to the mtgor., & desires that he will give a reversionary interest therein to a third person. The mtgor. selling the estate shall bring the mtge. money into ct., for the use of the devisee, subject to the life estate.—**LEWIS v. KING** (1789), 2 Bro. C. C. 600; 29 E. R. 330, L. C.
- Annotation*:—**Consd.** Whittaker v. Whittaker (1792), 4 Bro. C. C. 31.

## Part XI.—Satisfaction and Ademption.

1753. *Add. Annotation*:—**Folld.** *Re* Ware, *Re* Rouse, Ware v. Rouse (1926), 70 Sol. Jo. 691.
1769. *Add. Annotation*:—**As to** (1) **Apld.** *Re* Binns, Public Trustee v. Ingle, [1929] 1 Ch. 677.
- 1772a. ————]—**WALPOLE v. CONWAY** (LORD) (1710), Barn. Ch. 153; 27 E. R. 593, L. C.
- Annotations*:—**Distd.** Tolson v. Collins (1799), 4 Ves. 483. **Apld.** Douglas v. Willes (1819), 7 Harc. 318. **Refd.** Kirkham v. Smith (1749), 1 Ves. Sen. 258. **Mentd.** Cunningham v. Moody (1748), 1 Ves. Sen. 174; Doe d. Willis v. Martin (1790), 4 Term Rep. 39; Doe d. Tanner v. Dorell (1791), 5 Term Rep. 518; Smith v. Camelford, Lord (1795), 2 Ves. 698; Phipps v. Ackers (1812), 9 Cl. & Fm. 583.
1840. *Add. Annotation*:—**Distd.** *Re* Binns, Public Trustee v. Ingle, [1929] 1 Ch. 677.
1873. *Add. Annotation*:—**Apld.** *Re* Ware, *Re* Rouse, Ware v. Rouse (1926), 70 Sol. Jo. 691.

**PART X. SECT. 3, SUB-SECT. 9.**  
**sp.** *Widow taking different interests under will.*—Under S.'s will his widow took absolutely thirty-four acres devised to her worth \$1,000; she also took for life his house & lot garden worth about \$1,500, but subject to a son's & a daughter's right "to have a home" there "as long as they are single." The son took absolutely the rest of testator's land worth about \$3,500, & at the widow's death took "the house & lot & garden" also:—**Held**: the widow was not put to her election.—*Re* SEYMITH (1925), 57 O. L. R. 283—**CAN.**

**sq.** *Gift of legacy & maintenance to son (Gift of mortgage debt to mortgagor—Mortgage debt previously assigned to son.)*—**ROSBOROUGH v. ST. ANDREW'S CHURCH, THE TRUSTEES OF** (1917), 55 S. C. R. 360; 38 D. L. R. 119.—**CAN.**

**PART X. SECT. 7, SUB-SECT. 2.**  
 1691 ii. ————]—P. in Feb. 1921, conveyed certain lands to a trust co., & by a declaration of trust of even date, accepted by the trust co., declared certain trusts upon which the lands were to be held. P.'s wife was to have a life interest in three of the parcels conveyed, & certain other benefits, & at her death the property was to be distributed among P.'s children; this life interest was to be in lieu of dower in all P.'s lands. On Feb. 21, 1921, P., by letter, requested the trust co.

to sign a declaration of trust to the effect that it held one of the parcels of land conveyed to it, in which the wife was given a life interest, in trust, for payment to an investment society of \$7,500 "which pays off the loan on stock for that amount held by my wife," & this the trust co. did. By P.'s will, made on the date of the execution of the conveyance & declaration, he appointed the trust co. his exor. & trustee. The wife took nothing under the will. P. died in July, 1921. In Jan. 1923, the trust co. made a mtge. in favour of an assurance co. upon three of the properties in which the widow claimed a life estate, to secure repayment of a large sum of money which was advanced to the trust co. & which the trust co. applied in paying off loans made to P. In an action by the widow against the assurance co. for a declaration as to her rights under the trust deed & declaration & for other relief:—**Held**: pltf. having taken & continued in possession of the properties in which she claimed to have a life interest, had elected to take the benefits given to her by the trust deed & declaration, & was, therefore, tenant for life of the three properties referred to.—**PURDON v. NORTHERN LIFE ASS'CE CO. OF CANADA**, [1928] 4 D. L. R. 679; 63 O. L. R. 12.—**CAN.**

**PART XI. SECT. 1.**  
 1743 i. *Satisfaction defined.*—**Satis-**

faction is the donation of a thing, with the intention, either expressed or implied, that it is to be taken, either wholly or in part, in extinguishment of some prior claim of the donee. The doctrine has no application to cases where the prior portion has actually been transferred or paid.

One whose life was insured assigned to his son a portion of the insurance moneys \$1,000, in consideration of an undertaking by the son to advance from time to time moneys necessary to pay parts of the premiums. Subsequently the insured made his will by which he gave to his son \$1,000 "out of the money payable at my death out of my life insurance policy":—**Held**: the \$1,000 given by the will could not be regarded as a satisfaction of the \$1,000 assigned to the son.—*Re* MARKS (1921), 64 D. L. R. 516; 50 O. L. R. 473.—**CAN.**

**PART XI. SECT. 3, SUB-SECT. 2.—A. (a).**

**sp.** *By payments to legatee in testator's lifetime.*—**Held**: a sum of money paid by testator to persons to whom he had bequeathed one-half of his effects, was an anticipated payment of their provision, & not a donation.—**BUCHANAN v. CRAWFORD** (MOLLISON) (1824), 2 Sh. Sc. App. 445.—**SCOT.**



**1873a** ———.]—There is no such obligation, according to the rules of equity, on a mother to advance or make a provision for her child, as in the case of a father; &, therefore, when a mother makes a purchase or investment in the name of her child, or in the joint names of herself & her child, that does not of itself afford the presumption of advancement; in such a case the intention to advance is a question of evidence.—**BENNET v. BENNET** (1879), 10 Ch. D. 474; 40 L. T. 378; 27 W. R. 573.

*Annotation*:—**Refd.** *Re Orme, Evans v. Maxwell* (1883), 50 L. T. 51.

**1873b**. ———.]—(1) No presumption arises in cases of dispositions in favour of children by a mother unless she has placed herself *in loco parentis* towards them, & evidence that such is the case must be forthcoming.

(2) Where testatrix exercised a general power of appointment by will in favour of her daughter, & subsequently on the daughter's marriage covenanted in her daughter's marriage settlement to pay a similar amount to the trustees thereof, & later by codicil recited the appointment of a certain sum by the will:—**Held**: the provision in the marriage settlement was by way of satisfaction or ademption of the powers made by the will, & the codicil was not inconsistent with such a view.—**Re WARE, Re ROUSE, WARE v. ROUSE** (1926), 70 Sol. Jo. 691.

**1878**. *Add. Annotation*:—As to (3) **Refd.** *Re Binns, Public Trustee v. Ingle*, [1929] 1 Ch. 677.

**1918a**. ———.]—If a father devises to a daughter a portion equal or greater than what she is entitled to out of his land by settlement, that is a satisfaction, but the daughter may have her election.—**BRIDGES v. HALES** (1729), Mos. 108; 25 E. R. 298, L. C.

**1920a**. ———.]—**BRIDGES v. HALES**, No. 1918a, *ante*.

**2006a**. ———.]—The principle deducible from the dictum of the Ct. of Appeal expressed in *Re Scott, Langton v. Scott*, No. 1810, at page 9, namely that, in the distribution of a testator's estate amongst his children & the children of deceased children, children claiming to take by substitution the share of their deceased parent must bring into account an advancement made by testator, in his lifetime to their parent, is not applicable to the case of a parent's indebtedness to testator; so that,

where a testator gave his residuary estate in trust for his children living at the period of distribution & the children of any child then dead, grandchildren are not liable, upon claiming their deceased parents' share, to bring into account a debt owing by the parent to testator's estate.—**Re BINNS, PUBLIC TRUSTEE v. INGLE**, [1929] 1 Ch. 677; 98 L. J. Ch. 307; 141 L. T. 91.

**2012**. *Add. Annotation*:—**Mentd.** *Chaney v. Maclow* (1928), 97 L. J. Ch. 315.

**2030a**. ———.]—**Re WARE, Re ROUSE, WARE v. ROUSE**, No. 1873b, *ante*.

**2046a**. ——— **Although interest unpaid at date of death.**]—A person, who borrowed £100 carrying interest at 5 per cent. *per annum*, by his will left a legacy of £100 free of duty to his creditor. The will did not contain any direction to pay debts. At the date of the debtor's death there was interest due & unpaid in respect of the debt. The exors. of the deceased paid the creditor the amount of the legacy & interest on the debt, up to the date of payment. The creditor then sued for the amount of the debt:—**Held**: the rule, that a legacy to a creditor of an amount equal to or greater than the debt owed by the testator to the creditor operated as a satisfaction of the debt, applied notwithstanding that there was interest due & unpaid in respect of the debt at the date of testator's death.—**FITZGERALD v. NATIONAL BANK, LTD.**, [1929] 1 K. B. 394; 98 L. J. K. B. 382; 140 L. T. 106.

**2047a**. — **Bequest antecedent to debt.**]—**ROBERTS v. BENNET** (1690), 2 Vern. 136; 23 E. R. 695. *Annotation*:—**Refd.** *Northcote v. Northcote* (1702), Colles 287, H. L.

**2057a**. — **Although interest unpaid at date of death.**] **FITZGERALD v. NATIONAL BANK, LTD.**, No. 2046a, *ante*.

**2075a**. ———.]—**Re SHAFTO, FAWCETT v. SHAFTO** (1903), 48 Sol. Jo. 68, C. A.

**2101**. *Add. Annotation*:—**Mentd.** *Re Pennington & Owen*, [1925] Ch. 825.

**2102a**. ———.]—**HOBBS v. TAITE** (1738), West *temp.* Hard. 582; 25 E. R. 1096, L. C.

*Annotation*:—**Consd.** *Wallace v. Pomfret* (1805), 11 Ves. 542.

**2138**. *Add. Citation*:—3 Bro. C. C. 242.

**2188a**. ———.]—**KEMP (LADY) v. KEMP** (1671), 2 Rep. Ch. 63; 21 E. R. 617.

## Part XII.—Performance.

**2286**. *Add. Annotation*:—**Mentd.** *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.

### PART XI.—SECT. 3, SUB-SECT. 3.—C.

**1902 i.** *In respect of reality.*]—**Doe. d. SHORE v. SAUNDERS** (1842), 2 Kerr, 18. —CAN.

### PART XI. SECT. 4, SUB-SECT. 3.—B.

**2069 i.** *Addition to annuity.*]—**COLE v. COLE** (1838), 5 O. S. 744.—CAN.

### PART XII. SECT. 3, SUB-SECT. 2. sk. Failure to pay contributions—

*Joint venture. Whether abandonment.*] —**DADSON v. GREST & GREST**, [1928] 1 D. L. R. 179; [1928] 1 W. W. R. 286; 22 Sask. L. R. 253.—CAN.

## Part XIV.—Merger of Estates and Charges.

2367a. ———.]—**NORFOLK v. GIFFORD** (1690), 2 Vern. 208; 23 E. R. 735.

2373a. ———.]—Where under a marriage settlement the trusts of the wife's property were for the wife for her life & after her death for the husband for his life, with a common form protected life interest proviso in respect of the husband's interest, & the usual trusts for the issue of the marriage, with a gift over in default of issue, which event happened, as the wife should by deed or will appoint with an ultimate trust for next of kin, & the wife died & her will operated as an exercise of the power of appointment in the husband's

favour, on an application by the husband to have the trust transferred to him on the ground of merger of his interests:—**Held**: there had been no merger of the husband's life estate in the reversion, because the two estates were not coterminous, & an estate might come into existence on an alienation of his life estate in favour of possible children on a re-marriage.—**Re CHANCE'S SETTLEMENT TRUSTS, CHANCE v. BILLING** (1918), 62 Sol. Jo. 349.

2395. *Add. Annotation*:—**As to (2) Distsd. Re Silva, Silva v. Silva**, [1929] 2 Ch. 198.

## Part XV.—Subrogation.

2424. *Add. Annotation*:—**Refd. Page v. Scottish Insee. Corpn.** (1929), 98 L. J. K. B.

## Part XVIII.—Equitable Defences.

2481. *Add. Annotation*:—**Mentd. Salvesen (or von Lorang) v. Austrian Property Administrator**, [1927] A. C. 641.

2483. *Add. Annotation*:—**Apld. R. v. Essex JJ., Ex p. Perkins**, [1927] 2 K. B. 475.

2489a. ———.]—**WHALLEY v. WHALLEY** (1860), 2 De G. F. & J. 310; 45 E. R. 641, L. J.

2490. *Citations*:—For “3 Bro. C. C. 646” read “3 Bro. C. C. 639, n.”

*Add. Annotation*:—**As to (2) Consd. Weld v. Petre** (1928), 97 L. J. Ch. 399.

2497. *Add. Annotation*:—**As to (1) Refd. Weld v. Petre** (1928), 97 L. J. Ch. 399.

2512. *Add. Annotations*:—**As to (4) Consd. Weld**

**v. Petre** (1928), 97 L. J. Ch. 399. **Refd. Anchor Trust Co. v. Bell**, [1926] Ch. 805.

2513. *Citations*:—For “L. R. 5 C. P. 221” read “L. R. 5 P. C. 221.”

*Add. Annotations*:—**As to (2) Apld. Weld v. Petre** (1928), 97 L. J. Ch. 399. **Refd. Anchor Trust Co. v. Bell**, [1926] Ch. 805.

2527. *Add. Annotation*:—**Refd. Jones v. Waring & Gillow**, [1926] A. C. 670.

2541. *Add. Annotation*:—**Mentd. The St. George**, [1926] P. 217.

2552. *Add. Annotation*:—**Refd. Douglass v. Lloyds Bank, Ltd.** (1929), 34 Com. Cas. 263.

2554. *Add. Annotation*:—**Refd. Douglass v. Lloyds Bank, Ltd.** (1929), 34 Com. Cas. 263.

### PART XIII. SECT. 3.

*sv. General rule.*—In order to marshal, not only must there be two creditors of the same person, but one of them must have two funds belonging to the same person to which he can resort.—**ROYAL BANK OF CANADA v. LENZ**, [1921] 2 W. W. R. 929.—**CAN.**

### PART XV.

2424 i. *Definition.*—As a general rule the doctrine of subrogation does not apply in favour of a party who has not paid money or given something in satisfaction or extinguishment of a security, claim, or demand, or partly so, or who has not paid something by way of getting in a security, or the like.—**COUBOLLES v. FOOKES** (1889), 16 O. R. 691.—**CAN.**

### PART XVI. SECT. 1, SUB-SECT. 2.—A.

2428 i. *What is a penalty.*—Goods delivered under hire-purchase agreement—*Right to seize goods on failure to pay instalment.*—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full

of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due, but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract:—**Held**: the clause of the agreement which enabled the owner to seize the truck, & keep it without making any payment to the hirer even though the value of the truck may be very greatly in excess of the amount due under the agreement, was a stipulation by way of penalty which the ct. can relieve against under Contract Act, s. 74.—**MAUNG BA OH v. MOTOR HOUSE CO.** (1929), 1 L. R. 7 Kan. 431.—**IND.**

### PART XVI. SECT. 1, SUB-SECT. 2.—C.

*sw. Discount for prompt payment.*—**Held**: a penalty, & relief granted.—**COLGROVE v. GUNDY** (1914), 28 W. L. R. 731; 17 D. L. R. 45.—**CAN.**

### PART XVI. SECT. 1, SUB-SECT. 2.—D.

1 i. ———.]—In the case of a sale when the conditions are that the

purchaser shall forfeit the money which he has paid if he makes default in any future payment, the ct. will relieve the purchaser from forfeiture where the non-payment has been the result of the deliberate misrepresentations of the vendor, in order to expose the purchaser to forfeiture.—**Re STANLEY & BUNTING**, [1924] 3 D. L. R. 599; 5 C. B. R. 18.—**CAN.**

### PART XVI. SECT. 1, SUB-SECT. 3.

*sz. Penalty being reservation only of existing legal right.*—**Relief not granted.**—**BOLAND v. MCCARROLL** (1876), 38 U. C. R. 487.—**CAN.**

### PART XVIII. SECT. 4, SUB-SECT. 4.—B.

2579 i. *Rescission on ground of fraud.*—Where deft. raises a defence of fraud & misrepresentation, the ct. will not grant him relief if he has been guilty of laches. On discovering the fraud or misrepresentation it is the duty of deft. to repudiate the transaction immediately.—**MERKLEJOHN v. HUGO**, [1924] 1 D. L. R. 272.—**CAN.**

## Part XIX.—Ne exeat regno.

**2637a.** ———.]—A.-G. v. MUCKLOW (1815), 1 Price, 289; 145 E. R. 1405.

**2667a. Not residuary legatee.]**—A residuary legatee

cannot have a writ of *ne exeat regno* against a debtor of testator, on the ground that he colludes with the exor.—GRAVES v. GRIFFITH (1820), 1 Jac. & W. 616; 37 E. R. 514, L. C.

## Part XX.—Quia Timet Actions.

**2702a. Nature of action.]**—A *quia timet* action is a proceeding by which the ct. is enabled to prevent its jurisdiction from being stultified.—*Re* ANDERSON-BERRY, HARRIS v. GRIFFITH, [1928] Ch. 290; 97 L. J. Ch. 111, 138 L. T. 354, C. A.

**2703. Add. Annotation :—Refd.** *Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

**2705. Add. Annotation :—Consd.** Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.

**2705a. Threatened injury to property by waterworks.]**—It is open to the owners of property threatened with injury by authorised

waterworks to bring a *quia timet* action to restrain the undertakers from doing an act which threatens to injure such property.—GRAIGOLA MERTHYR Co., LTD. v. SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600; 71 Sol. Jo. 681; *affd.* on another point, [1928] Ch. 235, C. A.; [1929] A. C. 311, H. L.

**2712. Add. Annotation :—Consd.** *Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

**2713. Add. Annotations :—Refd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105; Hood's Trustees v. Southern Union General Insec. Co. of Australasia, [1928] Ch. 793.

## ESTATE AND OTHER DEATH DUTIES.

## Part I.—In General.

1. *Add. Annotation:—As to (2) Refd. A.-G. v. Belilios*, [1928] 1 K. B. 798.

## Part II.—Estate Duty.

22a. ———.] — Testator bequeathed "B. House & contents" & the stables held therewith, the leases of which would expire in 1995, to trustees upon trust to allow C. to have the use & enjoyment thereof for life, & after her death upon the like trust for the benefit of L. for life. Testator directed "the rent, outgoing, rates & taxes for the time being payable in respect of the messuage & premises, & keeping same & the contents thereof insured against fire & burglary & in a proper state of preservation, shall always be paid by my trustees out of the income of my residuary personal estate." C. having died, was succeeded as tenant for life by L.: —*Held*: (1) on the death of C., the property which passed was the right to enjoy the benefit of the annual sum, & the case fell within 1894 Act, s. 1; (2) the principal value of the property should be ascertained under sect. 7 (5) (8), the special facts of the case being taken into consideration by the comrs.; (3) the duty must be borne by L., but on equitable terms, namely, it should in the first instance be borne by residue, which should be recouped by a policy on the life of L. to be vested in the trustees which at her death would produce a sum equal to the duty, & the interest on the duty & the policy premiums should be retained & paid by the trustees in each year out of the sum which would otherwise be expended by them on B. House.

—*Re CASSEL, PUBLIC TRUSTEE v. MOUNTBATTEN*, [1927] 2 Ch. 275; 96 L. J. Ch. 483; 137 L. T. 785; 43 T. L. R. 743; 71 Sol. Jo. 804.

*Annotation:—Consd. Re Northcliffe, Arnholz v. Hudson*, [1929] 1 Ch. 327.

27. *Add. Annotations:—As to (1) Apld. Re Cassel, Public Trustee v. Mountbatten*, [1927] 2 Ch. 275. *Refd. Parr v. A.-G.*, [1926] A. C. 239. *As to (5) Consd. Parr v. A.-G.*, [1926] A. C. 239. *Generally, Refd. Re Northcliffe, Arnholz v. Hudson*, [1929] 1 Ch. 327.

33a. *Death gratuity payable to representatives of teacher.*—Estate duty is payable on a death gratuity granted under Teachers (Superannuation) Act, 1925 (c. 59), s. 5 (1), by the Board of Education to the personal representatives of a deceased intestate teacher as property passing on the death of the teacher, such gratuity being property of which the deceased was at the time of her death competent to dispose within Finance Act, 1894 (c. 30), ss. 2 (1) (a), 22 (2) (a) as deceased had an authority enabling her to appoint or dispose of the gratuity as she thought fit, whether exercised by instrument, *inter vivos*, or by will, or by both.—*A.-G. v. QUIXLEY* (1929), 98 L. J. K. B. 652; 141 L. T. 288; 93 J. P. 227; 45 T. L. R. 455; 27 L. G. R. 693, C. A.

39. *Add. Citation:—132 L. T. 704.*

## PART II. SECT. 3, SUB-SECT. 1.—A.

sa. *License—& interest in licensed premises*] The interest of a deceased person in the business carried on in licensed premises leased from him & in the license thereof is "property" within Death Duties Act, 1909, s. 5, on the value of which his estate is liable for payment of estate duty over & above the amount of the valuation made under Valuation of Land Act, 1908.—*Re GILMER, PUBLIC TRUSTEE v. STAMP DUTIES COMR.*, [1929] N. Z. L. R. 61.—N.Z.

sb. *Provincial bonds exempt from succession duty.*—[Alberta provincial bonds, exempt from succession duty, must be included in the net value of an estate in order to arrive at the percentage of duty payable by any beneficiary, but such inclusion does not make the amount of the bonds subject to succession duty.—*Re MILLS ESTATE*, [1928] 3 D. L. R. 106; [1928] 2 W. W. R. 65; 23 Alta. L. R. 521.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.

D. (b).

so. *Gift made within three years before death—Money spent on improving house—Whether gift to wife.*—A husband & wife, with their children, lived together in a house which belonged to the wife; each enjoyed a separate income. The husband paid to a builder with whom

he had made contracts about £2,000 for improvements & repairs to the house. A few months later he died at the age of fifty-three. It was found that the transaction was not entered into with intent to diminish the value of the husband's estate, but that the object was simply to improve the family home in accordance with their means & station in life; & that there was no reason to believe that the husband would not enjoy the normal span of life, or that he would necessarily predecease his wife.—*Held*: the payments did not constitute a gift to the wife of the deceased within Death Duties Act, 1921, of New Zealand, ss. 38, 39, so as to be deemed to be part of the husband's estate for the purposes of that Act.—*FINCH v. STAMP DUTIES COMR.*, [1929] A. C. 427.—N.Z.

## PART II. SECT. 3, SUB-SECT. 2.—E.

sd. *Reservation of life interest to settlor—On surviving wife.*—By a marriage settlement made in 1876, £30,000 was settled upon trust to pay the income to the settlor's wife for life, after her death to the settlor for life, & after the death of the survivor upon trust for the children or remoter issue as they should by deed jointly appoint, or in the absence of a joint appointment

as the survivor should by will or deed appoint, & in default of appointment for the children as therein provided. The settlor died in 1925, without having exercised the joint power of appointment, leaving his wife & children him surviving. For the purpose of death duty under the Stamp Duties Act, 1920–1924, of N. S. W.:—*Held*: as the settlement contained a trust to take effect "after the death" of the deceased settlor & in reference thereto, his property was to be "deemed to include" the property subject to the trust, without deducting the value of his widow's life interest therein.—*RABETT v. STAMP DUTIES COMR.*, [1929] A. C. 444.—AUS.

se. — *Jointly with wife.*—In 1896 a husband settled property in N. S. W., directing that the income therefrom should be paid to his wife during their joint lives, & upon the death of either of them to their daughters equally for their respective lives. The settlor died in 1914, & was survived by his wife.—*Held*: the settlement contained a trust "to take effect after his" (the settlor's) "death" within Stamp Duties Act, 1898, of New South Wales, s. 58, & accordingly upon the death of the settlor duty under that sect. became payable.—*THOMSON v. STAMP DUTIES COMR.*, [1929] A. C. 450.—AUS.

61. *Add. Annotation*:—**Re**ld. Bird v. I. R. Comrs. (1924), 12 Tax Cas. 785.
68. *Add. Annotation*:—**Generally, Mentd.** Ormond Investment Co. v. Betts, [1928] A. C. 143.
72. *Add. Annotation*:—**As to (2) Refd.** Re Wilkinson, Page v. Public Trustee, [1926] Ch. 842.
75. *Add. Citations*:—94 L. J. K. B. 139; 132 L. T. 717.

90a. ——— **Trust established in England.**—

By his will, made in English form, testator, who declared that the instrument was to take effect according to the law of Hong Kong where he was domiciled, devised & bequeathed his property, which was situate out of the United Kingdom, to trustees on trust to invest a sum to produce an annuity for his wife, to pay certain legacies & to stand possessed of the residue to pay the annual income thereof to his sons or son during their or his lives or life, & on the death of the last survivor of his sons in trust for his son's children. The tenant for life, who was the only son of testator living at his death, wished to borrow money &, at the request of the lenders, he appointed, in England, four new trustees of the will, three of whom were resident in England. Between 1913 & 1922, owing to the tenant for life's dealings with the trust funds, proceedings in the Ch. Div. were instituted & orders were made in connection with the administration of the trusts of the will. In 1922 the tenant for life died, leaving him surviving his widow & two infant sons, who were domiciled in Hong Kong but had been made wards of ct. by virtue of the proceedings in the Ch. Div. & the orders made therein. The trust property was situate abroad:—**Held**: the succession of the infants to testator's residuary estate was at his death a succession by virtue of Hong Kong law & to Hong Kong property, & it had never lost that character or fallen within 1853 Act, s. 2, & the property was not liable to estate duty under 1894 Act, s. 2 (2).—**A-G. v. BRILLIOS**, [1928] 1 K. B. 798; 97 L. J. K. B. 139; 138 L. T. 294; 44 T. L. R. 214; 72 Sol. Jo. 49, C. A.

94. *Add. Annotation*:—**Apld.** A-G. v. Howe (1925), 94 L. J. K. B. 540.

- 96a. ——— **Shares.**—Testator, a German subject, was, at the outbreak of the European War, entitled to stocks, shares, & securities in English, South African, & American cos. The certificates were in all cases situate in London, & the securities themselves were transferable in London at the outbreak of

war, & at the date of testator's death. Testator died in 1915, in Berlin, being domiciled in Germany. By his will three-fifths of his property were bequeathed to German & Austrian beneficiaries, & two-fifths to British & Polish beneficiaries. In 1915 the will was proved in Germany by the exors. named therein. In 1922, grant of administration in England was made to pltf. By virtue of Treaty of Peace Orders, the whole of the interests of the German & Austrian beneficiaries became charged with & subject to the claims of the Custodian of Enemy Property. In 1922 all the South African securities were transferred to the South African Custodian, an exor. dative was appointed in South Africa to administer testator's South African estate, & estate duty in South Africa was paid by him in respect thereof. Some of the American securities were transferred to the American Alien Property Custodian, administration of testator's American estate was granted in America, & the securities were transferred to the American Custodian to be distributed by the American administrator among the beneficiaries. All the remaining American securities, with the exception of a small balance, were released to pltf. by the English Custodian. In May, 1924, pltf. filed a corrective affidavit, including therein those of the American securities which had been released to him at that date, & he paid estate duty & interest in respect thereof:—**Held**: (1) all the shares were locally situate in England & the administrator was bound to include them as property of which testator was competent to dispose, & was accountable to the extent of the assets he had received for the estate duty in respect thereof; (2) the basis of valuation of such shares was the price similar shares would fetch in the open market at the date of testator's death.—**Re ASCHROTT, CLIFTON v. STRAUSS**, [1927] 1 Ch. 313; 96 L. J. Ch. 205.

99. *Add. Annotation*:—**As to (4) Refd.** Re Bateman, [1925] 2 K. B. 429.

- 107a. ——— **By settlements made in 1906 & 1911, a lady, in consideration of £5,100 which was paid over to her by her son, conveyed certain furniture upon trust for herself for life with remainder to her son absolutely. At her death in 1918 the furniture was sold for £45,000, & the Crown claimed succession duty & estate duty upon the difference between the two sums from the trustee of the settlements:—Held**: (1)

PART II. SECT. 4, SUB-SECT. 1.

s. 1. S. P. HOLMES v. STAMP DUTIES COMM., [1927] N. Z. L. R. 753.—N. Z.

**Discharge by son of** ———  
—A father granted a bond for £30,000 in implement of an undertaking by him in his second son's marriage contract, in contemplation of the son's marriage, & in consideration of a conveyance executed by the son's intended wife for behoof of the spouses. In the marriage contract the son accepted the obligations therein contracted by his father as in full satisfaction in any event of all legal claims for legitim or otherwise he might have upon his father's estate. At the date of the marriage contract & of the bond the only claim to legitim possible to the son was in the event of his elder brother predeceasing his father. That event happened, & at the father's

death the amount of legitim to which the second son would have had a claim, had he not discharged it, was £25,000:—**Held**: the bond could not be regarded as a debt incurred by the father for full consideration in money or money's worth wholly for deceased's own use & benefit in the sense of 1894 Act, s. 7 (1), & did not form a proper deduction in determining the value of his estate for the purposes of estate duty.—**LORD ADVOCATE v. WARRENDER'S TRUSTEES** (1906), 8 F. (Ct. of Sess.) 371.—**SCOT.**

PART II. SECT. 4, SUB-SECT. 2.

sa. "Interest in business"—**What is** —1914 Act, s. 15.—A father & two of his sons carried on business in partnership. By a re-arrangement of the partnership relations the father accepted £124,646 in full of his whole

rights in the old firm & its assets, & agreed to allow this sum to remain as a loan to the new firm at 4 per cent. interest, on condition that, if called up by him, or in any event on his death, it was to be repaid by ten yearly instalments. The father contributed no capital to the new firm apart from the loan, but had an interest in the profits to the extent of a one-tenth share. He died in 1922, leaving a will by which he bequeathed the residue of his estate, including the loan, to his family, & estate duty was duly paid thereon. The two sons came to an arrangement with their father's exors., under which the sons agreed to repay the loan at once in return for a certain discount; & in settling with the exors., they retained in the business the respective shares of the loan falling to them, by crediting themselves with the amounts in the books of the firm.

the transaction was a *bona fide* sale between mother & son, & no succession duty was payable; (2) as to the claim for estate duty, there had been a "purchase for partial consideration" within 1894 Act, s. 3 (2), the consideration paid represented four-fifths of the value of the property at the date of such purchase, & estate duty was payable only upon one-fifth of the value as at the date of the death of the tenant for life; (3) "partial consideration," in sect. 3 (2), meant something less than the full & fair value as between buyer & seller.—*Re BATEMAN (BARONESS)*, [1925] 2 K. B. 429; 95 L. J. K. B. 199; *sub nom. Re BATEMAN (BARONESS)*, A.-G. v. WRELFORD-BROWN, 134 L. T. 153.

121. *Add. Annotation*:—*As to (2) Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

128. *Add. Annotations*:—*Refd. Re Exmouth's Annuity*, [1925] Ch. 280; *Re Drake, Drake v. Wilson*, [1926] Ch. 559.

128a. — "Land & chattels"—What are "chattels."—By an Act of 54 Geo. 3 an annuity of £2,000 was inalienably settled on Lord E. & his successors in title. In 1892 the redemption of the annuity for a sum of £55,890 was agreed upon, & that amount was paid into ct. & invested in the purchase of Consols. The fifth Viscount E. died in Aug. 1922, & the sixth Viscount in Feb. 1923. Questions having arisen as to the payment of estate duty, the ct. was asked whether estate duty became payable (a) upon the capital of the sum of Consols, or (b) upon the value of the interest of the successor to the title in such sum of Consols, & if estate duty became so payable, then whether, for the purpose of determining the rate of estate duty, such sum of Consols ought (a) to be aggregated with the other property, or (b) to be treated as an estate by itself:—*Held*: "chattels" in collocation with settled lands in 1894 Act, s. 5 (5), did not suggest personality generally, but those particular items of it which were usually settled upon trusts that followed the devolution of the settled land, & the sum of Consols was not "chattels" within the sub-sect., & must be aggregated with the other property for the purpose of paying estate duty.—*Re EXMOUTH'S ANNUITY*, [1925] Ch. 280; 94 L. J. Ch. 208; 133 L. T. 39; 69 Sol. Jo. 411.

129a. — Where duty commuted—Not aggregated with unsettled property.]—Where estate duty has been commuted under 1894 Act, s. 12, the property in respect of which the

commutation has been made is not property on which "estate duty is leviable" within s. 4 of that Act & is not to be aggregated with other property of the same person on which estate duty is leviable.—*A.-G. v. HOWE (EARL)* (1925), 94 L. J. K. B. 540; 133 L. T. 801; 41 T. L. R. 610; 69 Sol. Jo. 791, C. A.

131. *Add. Citations*:—*affd. sub nom. PARR v. A.-G.*, [1926] A. C. 239; 95 L. J. K. B. 417; 134 L. T. 321; 42 T. L. R. 217, H. L.

136a. — *Shares*.]—*Re ASCHROTT, CLIFTON v. STRAUSS*, No. 96a, *ante*.

136b. — How ascertained—Special facts to be considered.]—*Re CASSEL, PUBLIC TRUSTEE v. MOUNTBATTEN*, No. 22a, *ante*.

137a. *Bequests of shares of residue—Accruer clause—Calculation of value of interest of deceased beneficiary*.]—Viscount N. by his will & three codicils thereto disposed by clause 6 of his will of 74½ hundredths of the income of his residuary estate. By sub-clause 28 he provided that on the death of any of the legatees, his or her share should accrue to the survivors. By sub-clause 29 he provided for the application of the remaining income in payment of other legacies, & these being paid the remainder was to be applied in the same manner as the 74½ hundredths. By clause 10 it was directed that the capital should go in moieties to charities. By an order made on July 28, 1924, the income was divided into one hundred & thirds. Two of the income beneficiaries had now died. On a summons taken out in these circumstances asking whether the estate duty payable by reason of the death of any person entitled to any share of the income was to be paid upon the value of the share in the capital equal to that of the income previously enjoyed by such person or upon the like proportion of the actuarial capital value of the income during the respective lives of the several persons entitled thereto or other the period during which the trusts in respect of such income should be subsisting or how otherwise the same ought to be calculated & out of what fund the same was payable:—*Held*: (1) the property which passed on the death of any such person must be taken to be a share of capital in the residuary trust fund, & that estate duty must be paid on the value of such share; (2) the duty payable on any such death was a first charge on that portion of the residue out of which the income was payable, & must be borne by the corpus of such estate.—*Re*

to the relief claimed.—*WARREN'S TRUSTEES v. INLAND REVENUE*, [1928] S. C. 806.—SCOT.

#### PART II. SECT. 4, SUB-SECT. 4.

d. For "Charitable purposes—In Australia & abroad," read "Charitable purposes—In Australia & abroad."

d.i. —.—.]—By Estate Duty Assessment Act, 1914, s. 8 (5), estate duty is not to be assessed upon so much of the estate as is bequeathed "for religious, scientific, charitable or public educational purposes"—*Held*: as no contrary intention appeared, the word "charitable" was to be construed in its legal & not its popular sense.—*CHESTERMAN v. FEDERAL COMR. OF TAXATION*, [1926] A. C. 125; 95 L. J. P. C. 39; 134 L. T. 360; 42 T. L. R. 121.—AUS.

Within two years of the father's death one of the sons died, & estate duty became payable on his estate. His exor. having claimed a reduction, under the above sect., of the estate duty payable on the sum credited to the son in the firm's books in respect of his share of his father's loan:—*Held*: the father's right to repayment of the loan was not an "interest in the business" within the sect., & the sum standing in the son's name in the books of the firm was an interest in the assets of the firm, & was not identical with his father's interest in the *ius credit* of the loan.—*GLEN v. INLAND REVENUE*, [1926] S. C. 44.—SCOT.

se. —.—.]—The proprietor of a wine & spirit business, by his trust-disposition & settlement, directed his trustees to convey the residue of his estate to his only daughter on her

attaining twenty-five years of age, with a destination over in the event of her predeceasing the period of conveyance, & to pay her the income of the residue until that date. He directed his trustees to sell the business. The daughter died eight days after testator, under the age of twenty-five, & before the direction to sell had been implemented. The trustees having claimed a reduction, under Finance Act, 1914, s. 15, of the estate-duty payable on the daughter's death, in so far as assessable on the value of the business, the Comrs. of Inland Revenue refused the claim:—*Held*: sect. 15 applied, in respect that the beneficial possession & enjoyment of the residue, including the business, had passed to the daughter on testator's death, & had again passed on her death; & the trustees were, accordingly, entitled

NORTHCLEFFE, ARNHOLZ v. HUDSON, [1929] 1 Ch. 327; 98 L. J. Ch. 65; 140 L. T. 300.

147a. **Payment by instalments—Real property—Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—***Re WHEELER, JAMESON v. COTTER*, No. 209c, *post*.

147b. ———.]—*A.-G. v. PUBLIC TRUSTEE & TUCK*, No. 209d, *post*.

155. **Add. Annotations:—As to (1) Expld. *Re Portman* (No. 2), [1925] Ch. 294; Distd. *Re Drake, Drake v. Wilson*, [1926] Ch. 559; *Re Lomer, Public Trustee v. Victoria Hospital for Children*, [1929] 1 Ch. 731. Rejd. *Re Northcliffe, Arnholz v. Hudson*, [1929] 1 Ch. 327.**

161. **Add. Annotations:—Folld. *Re Portman* (No. 2), [1925] Ch. 294. Distd. *Re Drake, Drake v. Wilson*, [1926] Ch. 559.**

161a. ———.]—A rentcharge of £50,000 per annum charged on L. settled estates was limited to the use of def., the fourth Viscount P., for life with remainder to the use of his eldest son during his life, to commence from their respective successions to the title & to be paid without any deduction except for death duties, & a similar rentcharge was limited in remainder, in the event of any other issue of the fourth Viscount succeeding to the title, to the use of the sons of such eldest son & other sons of the fourth Viscount in tail male. Subject to such rentcharge, the L. settled estates were limited to the use of pltf. for life with remainder to the use of his eldest son for life with remainders over. By a deed poll dated Oct. 15, 1913, provision was made for the abatement of the £50,000 rentcharge in certain events. The third Viscount, who was tenant for life of the estates in question, had died in 1923, while nine of the sixteen half-yearly instalments of estate duty payable in respect of the death of the second Viscount, who had died in 1919, remained unpaid. One of the questions for the decision of the ct. at the original hearing of the summons (*Re Portman (Viscount)*, No. 249, *post*) was as to what proportion of the balance remaining unpaid at the death of the third Viscount of the estate duty,

which became assessable on the death of the second Viscount in respect of the L. estates, should be borne by the yearly rentcharge of £50,000, & it was admitted in argument that there was no difference in principle in respect of that unpaid balance between that duty & that which was assessable upon the death of the third Viscount. After judgment had been delivered & before the minutes had been finally drawn up, leave was given to withdraw the admission made in argument as aforesaid, & it was directed that the question with regard to the liability of the rentcharge in respect of the unpaid instalments of estate duty assessable on the death of the second Viscount should be argued:—*Held*: the effect of 1894 Act, s. 14 (1), was to throw the incidence of the duty ratably & in proper proportions upon all persons becoming beneficially interested in the property upon which the duty was constituted a first charge by force of sect. 9 (1) of the Act; the rentcharge, or the abated rentcharge, must be dealt with, as regards these unpaid instalments, in the manner indicated in the original judgment; & the order would be in the terms of the minutes prepared in accordance with that judgment.—*Re PORTMAN (VISCOUNT)* (No. 2), [1925] Ch. 294; 94 L. J. Ch. 329; 133 L. T. 389.

170a. ———.]—*Re Northcliffe, Arnholz v. HUDSON*, No. 137a, *ante*.

209a. **Effect of Law of Property Act, 1925 (c. 20), s. 16 (5).]** *Re MELLISH, CLARK v. BUCHANAN* (1927), cited in [1929] 2 K. B. at p. 82, n.

**Annotations:—Folld. *A.-G. v. Public Trustee & Tuck*, [1929] 2 K. B. 77; *Re Wheeler, Jameson v. Cotter*, [1929] 2 K. B. 81, n. Distd. *Re Kempthorne, Charles v. Kempthorne* (1929), 16 T. L. R. 15.**

209b. ———.]—The above sub-*sect.* preserves the liability of real estate to pay its own duties.—*Re MORRIS, SKINNER v. SANDERS* (1927), 71 Sol. Jo. 472.

209c. **Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—**Where an undivided share in land disposed of by will has become subject to a statutory trust, the incidence of estate duty remains unchanged & where the exors. in

## PART II. SECT. 6.

**sd. Degree of relationship—Calculation of—Beyond third degree.]—**The words "not beyond the third degree" occurring in Deceased Persons' Estates Duties Act, 1921, Sched. (2), Part II., para. 2, refer to the method of calculation according to the civil law, in which the degrees were calculated up to the common ancestor, & then down to the beneficiary in question.—*Held*: a son of a first cousin of testatrix was beyond the third degree of relationship to testatrix, & the Comr. of Taxes had rightly assessed the duty payable in respect of the benefit he took under her will, in accordance with Sched. (2), Part II., para. 3, of the said Act.—*Re Cook* (1925), 21 Tas. L. R. 11.—**AUS.**

**se. —Selected class of relatives.]—**The benefit of Estate Duty Assessment Act, 1914–1922, s. 8 (6), extends to all property which by force of the will, or by the law as to the distribution of the estates of intestates, passes directly from testator or intestate to a member of the selected class, provided in the case of a will that on the death of testator it can be shown, from the terms of the will & by reference to the state of his family, that the property must go directly from him to persons

within the class & that in no conceivable event can it pass from the testator to any person who is outside the class.—*SMITH v. THE FEDERAL COMR. OF TAXATION* (1928), 40 C. L. R. 467; [1928] Argus L. R. 189.—**AUS.**

## PART II. SECT. 7, SUB-SECT. 2.

**b i. —Secured on home & foreign assets—Foreign assets alone sufficient security.]—**The estate of a deceased person consisted of property in N. S. W. & of property outside the State. Amongst other debts there was one of £32,279 which was secured by mortgage or charge over a part of his home assets & also, over certain of his foreign assets which were valued at £33,427.—*Held*: the case fell within Stamp Duties Act, 1920, s. 109 (3), & in assessing death duty on the estate no allowance should be made for the debt or any part thereof.—*SOLLAS v. STAMP DUTIES COMR.* (1928), 28 S. R. N. S. W. 207; 45 N. S. W. W. N. 52.—**AUS.**

## PART II. SECT. 9, SUB-SECT. 1.—B.

**a i. —.]—**By his will testator directed that all his debts & funeral & testamentary expenses should be paid as conveniently as might be after his decease, & thereafter proceeded by his

will to devise & bequeath all his real & personal property not otherwise disposed of.—*Held*: (1) estate duty was under the direction payable actually out of the residuary estate; (2) in the event of the residuary estate being insufficient to pay the estate duty, the life interests were not liable for a portion of the deficiency, but the annuitants & specific devisees of real estate should jointly contribute to the deficiency.—*CALDWELL, ETC. v. FLEMING*, [1927] N. Z. L. R. 145.—**N.Z.**

## PART II. SECT. 9, SUB-SECT. 3.

**sf. Aggregation of settled funds—Whole estate subject to duty at higher rate.]—**Deceased made a settlement of property on her marriage, & on her death left a will. The rate at which duty was assessed was 6½ per cent., & if the value of the settled property had not been included in the final balance, the rate would have been 4½ per cent. The exors. claimed that the trustees of the settlement were liable to bear the difference.—*Held*: the incidence of the duty was governed by Death Duties Act, 1909, s. 31 (4), & the exors.' claim could not be sustained.—*BROWN v. BROWN*, [1924] N. Z. L. R. 127.—**N.Z.**

such a case have, as exors., paid the estate duty on the share as a testamentary expense, the amount so paid is repayable to them by the devisee of the share, & the repayment may, at his option, be by instalments.—*Re WHEELER, JAMESON v. COTTER*, [1929], 2 K. B. 81, n.; 141 L. T. 322.

*Annotations: Follid. A.-G. v. Public Trustee & Tuck*, [1929] 2 K. B. 77. *Distd. Re Kempthorne, Charles v. Kempthorne* (1929), 46 T. L. R. 15.

**209d.** ———.]—Notwithstanding the provisions of Law of Property Act, 1925 (c. 20), which abolish tenancies in common of land & direct such land to be held by certain persons as trustees for sale upon statutory trusts, the death duty to be paid on freehold land which just before the commencement of Law of Property Act, 1925 (c. 20), was held in undivided shares, & in respect of which there have been no dealings since the commencement of that Act, is, even where the duty only became payable after the commencement of that Act, deemed to be "duty due upon an account of real property" within Finance Act, 1894 (c. 30), s. 6 (8), & under that sub-sect. as amended by Finance Act, 1896 (c. 28), s. 18, & Finance Act, 1919 (c. 32), s. 30, the duty may be paid by instalments extending over a period of eight years with interest at 4 per cent. *per annum* as therein provided.—*A.-G. v. PUBLIC TRUSTEE & TUCK*, [1929] 2 K. B. 77; 98 L. J. K. B. 462; 141 L. T. 398; 73 Sol. Jo. 299.

**220.** *Add. Annotation:—Generally, Consd. Re Cassel, Public Trustee v. Mountbatten*, [1927] 2 Ch. 275.

**226.** *Add. Annotation:—As to (1) Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

**229.** *Add. Annotation:—As to (1) Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

**233.** *Add. Annotation:—As to (1) Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

**234.** *Add. Annotation:—Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

**234a.** *Bequest to pay duties—Duties payable at death of testator.*—Testator who died in 1912 gave, by clause 7 of his will, certain shares to his exor. "upon trust to sell so many of such shares as shall be sufficient to pay all my debts & funeral & testamentary expenses . . . & all duties of every description, including settlement estate duty where payable, to which my estates, both real & personal, or any part thereof, shall be liable, & subject to such payments, in trust for my son G. absolutely": & he devised & bequeathed his residuary real & personal estate to his trustee free of all duties upon trust to pay the income thereof to his wife during her life, & after her death in trust for his two daughters for their lives, with remainders over. The question having been raised whether the duties payable on the deaths of testator's daughters under Finance Act, 1914 (c. 10), s. 14, were charged under or by virtue of clause 7 of the will on the shares bequeathed by that clause:—*Held*: what testator contemplated by clause 7 was an immediate process under which the shares were to be sold & applied in paying duties which were presently payable, & under which, after those duties had been paid, the residue of the shares or the proceeds

were to be handed over to G.—*Re FENWICK, LLOYD'S BANK, LTD. v. FENWICK*, [1922] 2 Ch. 775; 92 L. J. Ch. 97; 128 L. T. 191; 66 Sol. Jo. 631.

*Annotation:—Refd. Re Sutherland (Duke), Chaplin v. Leveson Gower*, [1922] 2 Ch. 782.

**238.** *Add. Annotations:—Apld. Re Forder, Forder v. Forder* (1927), 137 L. T. 538. *Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

**238a.** ———.]—*Re JONES, LAMBERT v. COLBOURN*, [1928] W. N. 227.

**239.** *Add. Citations:—94 L. J. Ch. 155; 132 L. T. 339.*

**244a.** ———.]—An assignee for value of a sum of £10,000 to be paid "absolutely & free from incumbrances," being part of a portions fund of £15,000 charged on settled land:—*Held*: in the absence of a special contract in that behalf, not to be liable to pay a ratable proportion of the estate duty borne & payable by the portions fund upon the death of the tenant for life of the settled land.

Sect. 14 (1) of the above Act provides for a ratable recoupment between the person who has paid estate duty in respect of property passing on death, & the person entitled to a sum charged on that property. It does not go on to provide for further recoupment by persons entitled derivatively to various parts of the sum so charged, but leaves their rights to be determined by their contractual arrangements.—*Re DRAKE, DRAKE v. WILSON*, [1926] Ch. 559; 95 L. J. Ch. 386; 134 L. T. 362, C. A.

**246.** *Add. Annotation:—Refd. Re Portman (No. 2)*, [1925] Ch. 294.

**249.** *Add. Citation:—132 L. T. 440.*

**254a.** *Beneficiary & residue—Equitable terms.*—*Re CASSEL, PUBLIC TRUSTEE v. MOUNTBATTEN*, No. 22a, *ante*.

**261.** *Add. Annotation:—As to (2) Refd. Re Abergavenny S. E., Abergavenny v. Nevill*, [1926] Ch. 465.

**262.** *Add. Annotation:—Consd. Re Drake, Drake v. Wilson*, [1926] Ch. 559.

**264.** *Add. Annotations:—As to (1) Refd. Re Drake, Drake v. Wilson*, [1926] Ch. 559; *Re Reeves, Reeves v. Pawson*, [1928] Ch. 351. *Generally, Mentd. Re Hardyman, Teesdale v. McClintock*, [1925] Ch. 287.

**265a.** *Requests to several charities successively—Intention to exonerate earlier charities.*—By his will dated 1911 a testator devised & bequeathed his residuary real & personal estate to his exors., the Public Trustee & another, upon trust for sale & conversion & after payment of his debts & funeral & testamentary expenses, he desired the balance (called his residuary trust fund) to be placed with the Public Trustee & the income paid to his wife for life. Testator then directed that after his wife's death four capital sums amounting to £10,000, free of estate duty & settlement estate duty but not free of legacy duty, should be set apart & the respective income paid to certain life tenants respectively. By clause 9 testator directed that on the cesser of the respective life tenancies the respective capital sums should be paid to thirteen charities thereafter named "in the order of priority in which the names appear in this my will as far as the money will go, no. 1 being first paid; no. 2 next &



so on, that is to say:—Testator then enumerated thirteen consecutive charities, giving nos. 1 to 10 £500 apiece; no. 11, £1,000; & nos. 12 & 13 £2,000 apiece, thereby exhausting the £10,000. The residue, after providing for the settled £10,000 was given to a daughter. Testator died on June 11, 1914, before Finance Act, 1914 (c. 10), s. 14, abolishing settlement estate duty & the relief thereby conferred, was passed. The estate was cleared & the residuary trust fund paid to the Public Trustee, who paid the income to the wife till her death on July 1, 1928, & then set apart the £10,000 settled legacies. One of these was immediately distributable, without further payment of estate duty, owing to the life tenant having predeceased the wife; but on the cesser of subsequent life tenancies estate duty would be payable, & the Public Trustee therefore issued a summons to determine how it was to be borne, as between the successive charities:—*Held*: clause 9 conferred an absolute priority as between the successive charities, & was sufficient as between the earlier & the later charities to exempt the former from their *prout jacie* statutory liability to contribute to the estate duty under Finance Act, 1894 (c. 30), s. 8 (4).—*Re LOMER, PUBLIC TRUSTEE v. VICTORIA HOSPITAL FOR CHILDREN*, [1929] 1 Ch. 731; 98 L. J. Ch. 201; 140 L. T. 687.

- 265b. Devise with option to sell to specified person—Purchaser to pay annuities & road charges—No reference to death duties.**—Testator, by his will, devised land to P. subject to the payment of certain annuities, of road-making charges for which testator was liable, & of estate & other death duties, & subject also to the proviso that if within twenty-years of testator's death P. should desire to sell the land, he was to give the Governors of the N. Grammar School the option of purchasing the land at the price of £300 an acre, such offer to be subject to the payment by the Governors of the said annuities & road charges, & acceptance to be notified within three months. The land, of about 22 acres in area, was in fact worth £670 an acre at the date of the testator's death. In accordance with the condition P. offered it to the School Governors at £300 an acre, & the offer was duly accepted & the land sold & conveyed to the Governors for £6,688. The value of the land for the purposes of death duties was assessed at £14,720. On a summons being taken out to determine whether the Governors were liable to pay a rateable proportion of the estate & succession duties levied upon the value of the property:—*Held*: that the Governors having

acquired the land, not under any disposition by testator, but by the voluntary act of P. in selling instead of retaining the property, took no benefit under testator's will, & they acquired the land expressly subject to annuities & road-making charges, but impliedly free from any charge for death duties.—*Re COCKERILL, MACKANESS v. PERCIVAL*, [1929] 2 Ch. 131; 98 L. J. Ch. 281; 141 L. T. 198.

- 271a. — By devise—Estate duty on undivided moiety of land paid out of residuary estate.**—*Re MELLISH, CLARK v. BUCHANNAN* (1927), cited in [1929] 2 K. B. at p. 82, n.

*Annotations*:—*Foll.* *Re Wheeler, Jameson v. Cotter*, [1929] 2 K. B. 81, n. *Refd.* *A.-G. v. Tuck, Public Trustee*, [1929] 2 K. B. 77; *Re Kempthorne, Charles v. Kempthorne* (1929), 46 T. L. R. 15.

- 271b. — — — — —.**—*Re WHEELER, JAMESON v. COTTER*, No. 200c, *ante*.

- 274a. Out of corpus—Estate settled by Act of Parliament—Whether duty unpaid.**—Where the formal assessment of estate duty on an inalienable estate settled by Act of Parliament is not made until after the passing of Finance Act, 1922 (c. 17), although sufficient money has before the passing of the Act been paid over to the Inland Revenue, the duty is still unpaid within sect. 44 of the Act &, at the option of the tenant in tail in possession, may be raised & paid out of the corpus of the settled estate. A person entitled to a rentcharge on such an estate under a private Act of Parliament which gives the owner for the time being of the estate the right to create a rentcharge is not entitled to exercise a similar option. The estate duty is payable out of the rentcharge itself.—*Re ABERGAVENNY SETTLED ESTATES, ABERGAVENNY (MARQUIS) v. NEVILL*, [1926] Ch. 465; 95 L. J. Ch. 289; 134 L. T. 662; 70 Sol. Jo. 634.

- 277a. — Deduction of income tax.**—In accordance with 1896 Act, s. 18 (1), trustees paid to the Crown certain sums of interest on unpaid estate duty without deduction of income tax:—*Held*: for the purposes of assessment to income tax under Income Tax Act, 1918 (c. 40), sched. D, Case III., in respect of untaxed interest received by the trustees, they were not entitled to any deduction therefrom in respect of the interest on estate duty paid by them.—*INVERCLYDE'S (LORD) TRUSTEES v. MILLAR*, [1924] A. C. 580; 9 Tax Cas. 14; *sub nom.* *INVERCLYDE'S (LORD) TRUSTEES v. INLAND REVENUE COMRS.*, 93 L. J. P. C. 266; 131 L. T. 739, H. L.

## Part III.—Settlement Estate Duty.

- 287. Add. Annotation**:—*Refd.* *Ormond Investment Co. v. Betts*, [1928] A. C. 143.
- 288. Add. Annotations**:—*Refd.* *Re Ryder & Steadman's Contract*, [1927] 2 Ch. 62; *Ormond Investment Co. v. Betts*, [1928] A. C. 143.

*Mentd.* *Dewhurst v. Salford Grdns.*, [1925] Ch. 655.

- 292. Add. Annotation**:—*As to* (1) *Consd.* *Re Alington & L. C. C.'s Contract*, [1927] 2 Ch. 253.

## Part IV.—Legacy Duty.

327. *Add. Annotation* :—**Mentd.** *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.
345. *Add. Annotation* :—**Refd.** *Jones v. Wright* (1927), 44 T. L. R. 128.
349. *Add. Annotation* :—**Refd.** *Jones v. Wright* [1928] A. C. 143.
359. *Add. Annotation* :—**As to (1) Refd.** *Ormond Investment Co. v. Betts*, [1928] A. C. 143.
- 384a. **Gift of equitable life interest in personalty—Absolute interest on payment of debts in lifetime of life tenant—Beneficiary legatee.**—Testator by his will conveyed to trustees all his personalty in Scotland, & after providing for the payment of his debts, directed the trustees to make an inventory of the collection of “marbles, bronzes, objects of vertu, buhl, pictures, ornamental china, & the library,” in his house, which were to remain vested in the trustees as part of the trust estate, the life-rent use thereof being given to his son D., whom failing to the heir of entail entitled to succeed to the estate. He further provided that, if all his debts were paid in the lifetime of D., the trustees should convey the whole of the personalty by deed to D. The debts were paid in the lifetime of D., but the art collection was never conveyed by the trustees to him, but was held by them during his life :—**Held** : the collection had vested in D. as beneficial owner, & that his estate was liable to pay duty thereon.—*HAMILTON (DUKE) v. LORD ADVOCATE* (1892), 68 L. T. 94 ; 1 R. 70, H. L.
405. *Add. Annotation* :—**Refd.** *Fleming v. Horniman* (1928), 138 L. T. 669.
413. *Add. Annotation* :—**Apld.** *A.-G. v. Belilios*, [1928] 1 K. B. 798.
414. *Add. Annotations* :—**As to (2) Consd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444. **Generally, Mentd.** *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641
448. *Add. Annotation* :—**Apld.** *A.-G. v. Rudge*, [1928] 2 K. B. 515.
- 462a. **Settled articles not yielding income.**—For the purposes of legacy duty the value of such articles is to be taken as at the time when they vest absolutely, & not as at the death of testator.—*A.-G. v. RUDGE*, [1928] 2 K. B. 515 ; 97 L. J. K. B. 710 ; 140 L. T. 536 ; 44 T. L. R. 708 ; 72 Sol. Jo. 487.
- 576a. — **Direction to pay legacies free of duty.**—*Re TANQUERAY, SEWELL v. WOODFIELD*, [1924] W. N. 142 ; 59 L. Jo. 252 ; 157 L. T. Jo. 324.
577. *Add. Annotation* :—**Distd.** *Re Tanqueray, Sewell v. Woodfield*, [1924] W. N. 142.

## Part V.—Succession Duty.

591. *Add. Annotation* :—**As to (3) Refd.** *Jackson's Trustees v. Lord Advocate* (1926), 10 Tax Cas. 460.
602. *Add. Annotation* :—**As to (1) Consd.** *A.-G. v. Belilios*, [1928] 1 K. B. 798.
622. *Add. Annotation* :—**Generally, Refd.** *Parr v. A.-G.*, [1926] A. C. 239.
632. *Add. Annotation* :—**As to (2) Refd.** *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 97 L. J. Ch. 371 ; *Inland Revenue Comrs. v. Dalgety & Co.* (1929), 98 L. J. K. B. 542.
660. *Add. Annotation* :—**As to (5) Refd.** *A.-G. v. Belilios*, [1928] 1 K. B. 798.
662. *Add. Annotation* :—**Refd.** *Parr v. A.-G.*, [1926] A. C. 239.
666. *Add. Citation* :—132 L. T. 699.

## PART IV. SECT. 3.

c i. — *Not restricted to purposes in Province.*—Application by exors. for determination of certain questions arising under a will whereby testatrix bequeathed “unto the society called the British Union for the abolition of vivisection \$75,000 free of legacy duty” :—**Held** : 9 Edw. 7, c. 12, s. 6 (2), absolving from succession duties “property devised or bequeathed for religious, charitable or educational purposes to be carried out in Ontario,” only applied to objects which must of necessity be carried out in Ontario, not to those which might be carried out in Ontario without occasioning a breach of trust.—*Re GWYNNE* (1912), 22 O. W. R. 405 ; 3 O. W. N. 1428 ; 5 D. L. R. 713.—CAN.

## PART V. SECT. 1.

sg. *Distinct from estate & probate duty*—Application of doctrine of *mobilia sequuntur personam*.—Ontario Succession Duty Act is a succession duty Act, & not an estate & probate duty Act ; the duty is imposed on the succession, & the doctrine of *mobilia*

*sequuntur personam* applies.—*ERIE BEACH CO. v. A.-G. FOR ONTARIO*, [1928] 1 D. L. R. 739 ; 61 O. L. R. 507.—CAN.

## PART V. SECT. 2, SUB-SECT. 1.

599 i. “*Property*”—*Transfer of stock, etc., to wife—Dividends paid to husband.*—**Held** : deceased retained an interest in the gift to his wife to the extent of the dividends to be derived therefrom, & the stock, etc., were subject to succession duty.—*FOWKES v. MINISTER OF FINANCE*, [1927] 2 D. L. R. 717 ; 38 B. C. R. 395.—CAN.

## PART V. SECT. 2, SUB-SECT. 2.—A.

g i. — *Re LITTRIDGE* (B. C.), [1927] 3 D. L. R. 250.—CAN.

## PART V. SECT. 2, SUB-SECT. 2.—B.

624 i. *When succession accrues.*—*STAMP DUTIES COMR. (QUEENSLAND) v. DONALDSON* (1927), 39 C. L. R. 539.—AUS.

## PART V. SECT. 2, SUB-SECT. 4.

h i. — *Person entitled after death*

*of successor before property paid over.*—Where a share in a residuary estate was not paid to the residuary devisee during her lifetime but passed under her will, her death occurring eighteen months after that of testator :—**Held** : the Crown was entitled to succession duty thereon, although succession duty had been paid by the exors. under the first will on the residuary estate.—*Re LUNN ESTATE* (B. C.), [1925] 2 W. W. R. 608.—CAN.

h ii. — *Residuary gift in trust for Presbyterian Church of New Zealand—For purpose of assisting foreign missionary work.*—**Held** : the Presbyterian church was a “successor” under Death Duties Act, 1921, s. 16.—*PERPETUAL TRUSTEES, ESTATE & AGENCY CO., LTD., OF NEW ZEALAND v. STAMP DUTIES COMR.*, [1927] N. Z. L. R. 714.—N. Z.

## PART V. SECT. 2, SUB-SECT. 5.—A.

670 iv. — *Donor of trust fund—Succession Duties Act, R. S. A., 1922 (c. 28), s. 6.*—*A.-G. OF ALBERTA v. COWAN*, [1926] 1 D. L. R. 29 ; [1926] S. C. R. 142.—CAN.

694. *Add. Annotation*:—As to (8) *Refd. Parr v. A.-G.*, [1926] A. C. 239.
714. *Add. Annotation*:—*Distd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
718. *Add. Annotation*:—*Distd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
719. *Add. Annotation*:—*Distd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
724. *Add. Annotation*:—*Consd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
725. *Add. Annotation*:—*Refd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
726. *Add. Annotation*:—*Consd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
732. *Add. Annotation*:—*Distd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
- 755a. ————*Re BATEMAN (BARONESS)*, No. 107a, *ante*.
765. *Add. Annotation*:—*Consd. Re Bateman*, [1925] 2 K. B. 429.

PART V. SECT. 2, SUB-SECT. 5.—  
B. (b).

sf. *Succession Duty Act*, 1915 (c. 27) (N. B.)—*Absolute power of appointment*—[PROVINCIAL SECRETARY-TREASURER v. SCHOFIELD (N. B.)], [1923] 2 D. L. R. 1144.—CAN.

PART V. SECT. 2, SUB-SECT. 7.—A.

p i. ————*Bonds issued by Dominion Government to testator resident in province*.—[Certain bonds were issued to a testator resident in Alberta by the Govt. of Canada under statutory authority, & on his death his executors raised the question whether succession duties with respect to the bonds were assessable by the Province of Alberta under *Succession Duties Act* of Alberta, s. 27, which provided that "all property of the owner thereof situate within the Province & passing on the death shall be subject to succession duties." The bonds passed on the death of testator. The register of bondholders was at Ottawa in Ontario.]—*Held*: as the bonds constituted a statutory obligation they were debts by specialty & therefore in point of liability to taxation had their local situation at the testator's place of residence in Alberta & were subject to the duties in question.—*ROYAL TRUST CO. v. A.-G. FOR ALBERTA* (1929), 46 T. L. R. 25.—CAN.

PART V. SECT. 2, SUB-SECT. 7.—B.

718 i. *Really outside province—Devised under trust for sale—Testator domiciled in province*.—[Where by the will of testator, who died domiciled in British Columbia, land outside the province is devised to a trustee under direction to convert it into money, it is not, while at least it is yet unsold, subject to duty under *Succession Duty Act*, R. S. B. C., 1921 (c. 244).]—*ALEXANDER v. A.-G.*, [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—CAN.

q i. ————*Agreement for sale*.—[V., resident & domiciled in U.S.A., agreed by writing under seal to sell land owned by him in the province of Alberta, the purchaser going into possession. The purchase-money was to be paid, with interest, in U.S.A. At V.'s death in U.S.A. there was a balance owing him under the agreement.—*Held*: V., at his death, was the owner of property situated in Alberta or of an interest in the land, liable to duty in Alberta under *Succession Duties Act*, 1914 (c. 5), the question not being determined by the locality of the debt, but by the nature of the interest held by deceased in the Alberta land.—*VAUGHN v. A.-G. FOR ALBERTA*, [1924] 3 D. L. R. 467; 2 W. W. R. 821; 20 Alta. L. R. 424.—CAN.

sk. *Mortgages on land outside province—Owner domiciled within province*.—*Held*: subject to duty under *Succession Duty Act*, R. S. B. C., 1924 (c. 244).—*Re PARKER*, [1926] 1 D. L. R. 783; [1926] 1 W. W. R. 1105; 60 B. C. R.—CAN.

PART V. SECT. 2, SUB-SECT. 7.—C.

b i. ————*Shares held in company incorporated in province*.—[Shares in a co. incorporated in Ontario, which were

recorded in the name of a foreigner domiciled in the State of Michigan, who died there, were held not liable to succession duty in Ontario. *ERIE BEACH CO. v. A.-G. FOR ONTARIO*, [1928] 1 D. L. R. 739; 61 O. L. R. 307.—CAN.

k i. ————*Held*: subject to duty under *Succession Duty Act*, R. S. B. C., 1924 (c. 244).—*Re SUCCESSION DUTY ACT, A.-G. FOR BRITISH COLUMBIA v. WILSON (B. C.)*, [1926] 4 D. L. R. 139; [1927] 1 W. W. R. 265.—CAN.

k ii. ————*Testator, whose domicile was in Ontario, possessed securities, which were in a safety deposit box in a bank in Michigan: Held*: the securities were subject to duty under *Succession Duty Act*, R. S. O., 1914 (c. 24).—*A.-G. FOR ONTARIO v. BABY*, [1927] 1 D. L. R. 1105; 60 O. L. R. 1.—CAN.

k iii. ————*Debtenture stock of a city in Nova Scotia, transferable & redeemable at the office of the city treasurer, & money in a bank at the same city, belonging to testator domiciled in New Brunswick: Held*: not liable to duty under *Succession Duty Act*, C. S., 1903 (c. 17).—*RECEIVER GENERAL OF NEW BRUNSWICK v. ROSBOROUGH* (1915), 43 N. B. R. 258.—CAN.

n i. ————*Specialty debt*.—[A mortgage due in New Brunswick at the time of the foreign creditor's death is property of the creditor's estate which may be liable to duty under *Succession Duty Act*, 1915.—*ROYAL TRUST CO. v. PROVINCIAL SECRETARY, TREASURER OF NEW BRUNSWICK*, [1925] 2 D. L. R. 49; [1925] S. C. R. 94; *reversy*, 52 N. B. R. 21.—CAN.

—j.—*Specialty debts secured by bond & mtge. of real estate situate in Nova Scotia, the bonds & mtges. being in the possession of testator in New Brunswick at the time of his death: Held*: liable to duty under *Succession Duty Act*, C. S., 1903 (c. 17).—*RECEIVER GENERAL OF NEW BRUNSWICK v. ROSBOROUGH* (1915), 43 N. B. R. 258.—CAN.

o i. ————*Registered outside province*.—[A banking co., with a head office at Montreal in the Province of Quebec, had power by statute to maintain in any province a registry office at which alone shares held by residents in that province were to be registered & could validly be transferred. A. resided at Halifax in the Province of Nova Scotia, & died there, owning shares registered at an office of the co. at Halifax under the above statutory power. Under *Succession Duty Act* (Que.), 1909, art. 1376, duty was imposed upon "property actually situate within the province, whether the transmission takes place within or without the province".—*Held*: as the ownership of the shares could be effectively dealt with only in Nova Scotia, they were not property situate in Quebec, & the claim could not be maintained.—*BRASSARD v. SMITH*, [1925] A. C. 371; 94 L. J. P. C. 81; 132 L. T. 647; 41 T. L. R. 203.—CAN.

p. For the paragraph in the original volume substitute the following paragraph:—

—*Owner not domiciled within province—Recognition of status of "wives"*.—[If a person domiciled in a country whose laws permit polygamous marriages is married there to two wives, & dies while still domiciled there though temporarily residing in British Columbia, the status of the wives will be recognised by the est. of British Columbia for the purpose of fixing the succession duty payable on property in British Columbia going under deceased's will to each of the wives.—*YEW v. A.-G. FOR BRITISH COLUMBIA*, [1921] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *g. S. C. sub nom. Re LEE CHEONG*, [1923] 1 W. W. R. 867.—CAN.

PART V. SECT. 3, SUB-SECT. 1.

sl. *Declaration of trust several years before death*.—[Ten years before his death an owner of debentures executed a declaration of trust whereby he declared that he held them in trust for his children & deposited the debentures & the declaration in a bank where they remained until his death. He never received any benefit from the debentures, & there was no evidence of any scheme or reservation whereby he retained any beneficial interest. No part of the income was paid to the beneficiaries, but the trustee invested it in trust or placed it to the credit of a trust account in the same bank where it accumulated until he died.—*Held*: the fund was not liable to succession duties under *Succession Duties Act*, R. S. A. 1922 (c. 28).—*COWAN v. A.-G.*, [1925] 2 D. L. R. 647; [1925] 1 W. W. R. 993; 21 Alta. L. R. 241; *reversd.* [1926] 1 D. L. R. 29.—CAN.

PART V. SECT. 3, SUB-SECT. 7.

oi. ————*Validity*.—[There is nothing in *Succession Duty Act*, 1923 (c. 13), or other statutes of Saskatchewan to prevent a testator from directing that legacies be paid free from succession duty.—*Re ANDERSON ESTATE, CANADA PERMANENT TRUST CO. v. MCADAM*, [1928] 4 D. L. R. 51; [1928] 2 W. W. R. 365; 22 Sask. L. R. 610.—CAN.

sm. *Legacy subject to payment of all succession duty payable on estate—Whole legacy included in estate in determining rate of duty—Portion of legacy applied in payment of duty exempt from duty*.—[*STAMP DUTIES COMR. v. LANS-DOWNE* (1927), 40 C. L. R. 115.—AUS.

PART V. SECT. 4.

so. *Provincial duty—Assets in province forming part of larger estate—Deceased domiciled outside province*.—[Deceased, domiciled outside British Columbia, left personal property of \$1,000,000 of which \$10,000 was in British Columbia.—*Held*: under R. S. B. C., Acts 1911 (c. 217) & 1921 (c. 58), the duty payable on the net amount should be 1½ per cent. on the first \$100,000, 2½ per cent. on the second \$100,000 & 5 per cent. on the balance; of the sum thus ascertained the \$10,000 within the province was charged with its proportion which was taken by the province.—*Re SUCCESSION DUTY ACT, Re HECHT*, [1924] 1 W. W. R. 1153 33 B. C. R. 154.—CAN.

796. *Add. Annotations*:—**Consd. A.-G. v. Bedford**, [1926] 2 K. B. 184. **Refd. A.-G. v. Bellios**, [1928] 1 K. B. 798.

796a. ——— **Finance Act, 1925 (c. 36), s. 24.**—Circumstances (*see* No. 90a, *ante*) in which:—**Held**: succession duty was not payable, since the above sect. was not retrospective.—**A.-G. v. Bellios** [1927] 2 K. B. 439; 43 T. L. R. 669; *revid.* without affecting this point, [1928] 1 K. B. 798, C. A.

799a. ———.]—Where a person, who has succeeded to the life interest in leasehold property, subsequently receives the rack rents from the property when the leases fall in, the

increased value of the succession for the purpose of succession duty is to be calculated by reference to the age of the successor at the expiration of the leases & to the value of the property as at that date, less the ground rents, & not to the value of the property when the succession first arose, less the ground rents.—**A.-G. v. Bedford (Duke)**, [1926] 2 K. B. 184; 95 L. J. K. B. 517; 135 L. T. 541; 42 T. L. R. 346; 70 Sol. Jo. 465.

824. *Add. Annotation*:—**Refd. Ormond Investment Co. v. Betts**, [1928] A. C. 143.

853. *Add. Annotation*:—**Refd. Re Drake, Drake v. Wilson**, [1926] Ch. 559.

861. For citation read "No. 268, *ante*."

## Part VI.—Probate Duty.

894. *Add. Annotation*:—**Refd. Re Silva, Silva v. Silva**, [1929] 2 Ch. 198.

899. *Add. Annotation*:—**Generally, Mentd. Ormond Investment Co. v. Betts**, [1928] A. C. 143.

902. *Add. Annotation*:—**As to (1) Refd. Royal Trust Co. v. A.-G. for Alberta** (1929), 46 T. L. R. 25.

914. *Add. Annotations*:—**Apprvd. Brassard v.**

### PART V. SECT. 5, SUB-SECT. 1.

d i. ——— **Shares.**—**Held**: with respect to a very large block of shares in a mining co., the "fair market value" could not be said to be the price which probably would have been obtained had the whole block of shares been put on the market at once, in view of the number of shares & the limited market, that course would undoubtedly have depressed the market price, & the exors. were not bound to offer the shares for sale at one time or at all; nor should said value be fixed at the price which would probably have been obtained from underwriters had a sale *en bloc* been made to them at the time of the death.—**UNTERMEYER ESTATE v. A.-G. FOR BRITISH COLUMBIA**, [1928] 3 D. L. R. 311; [1928] 2 W. W. R. 209; 39 B. C. R. 533.—CAN.

h i. ———.]—Although exors., when applying for ancillary letters patent in British Columbia, had placed a value on the estate in the province for the purpose of succession duty & being accepted by the Crown, had given a bond to secure payment of the duty, they are not bound by such valuation & its acceptance by the Crown; but they have still the right to present a petition under Succession Duty Act, s. 43, to a judge of the Supreme Ct. of the province who has jurisdiction to determine what property of the estate is liable to duty & the amount due.—**BLACKMAN v. R.**, [1924] 4 D. L. R. 123; [1924] S. C. R. 406.—CAN.

h ii. ———.]—In an action on a bond to secure payment of duties under Succession Duties Act, R. S. A., 1922 (c. 28), wherein the defence was that the true value of the estate did not exceed \$5,000 & no duty was payable:—**Held**: the question of value was concluded by the values sworn to in the affidavits filed for the purpose of obtaining the letters probate, which values had been accepted as satisfactory by the Crown.—**R. v. LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. (Alta.)**, [1926] 4 D. L. R. 874; [1926] 3 W. W. R. 461.—CAN.

h iii. ———.]—The essential precedent to the jurisdiction of the ct. under Succession Duties Act, 1922, c. 28, s. 38, is that there is property the liability of which to duty is in question & has to be determined by

the judge. Therefore, when an exor. on applying for probate placed a valuation on the estate for the purpose of succession duty & this valuation was accepted by the Crown, the ct. cannot grant relief under said section.—**THE SPENCE ESTATE**, [1928] 1 D. L. R. 644; [1928] 1 W. W. R. 71; 23 Alta. L. R. 199.—CAN.

sp. **Aggregate value—Succession Duty Act, C. S., 1903 (c. 17).**—**RECEIVER GENERAL OF NEW BRUNSWICK v. ROSBOROUGH** (1915), 43 N. B. R. 258.—CAN.

### PART V. SECT. 5, SUB-SECT. 2.

st. "Net value"—**Mode of calculation—Aggregate value including life insurance money.**—**R. v. MCHABACH**, [1927] 2 D. L. R. 1020; [1927] 1 W. W. R. 981; 22 Alta. L. R. 482.—CAN.

### PART V. SECT. 6, SUB-SECT. 1.

sw. **Valuation of estate & acceptance by Crown of surety bond—Right of executor to distribute estate—Succession Duty Act, R. S. B. C., 1911 (c. 217).**—**MINISTER OF FINANCE v. CALEDONIAN INSURANCE CO., Re LAND REGISTRY Act & HIGGINSON**, [1923] 4 D. L. R. 439; [1923] 3 W. W. R. 925.—CAN.

### PART V. SECT. 6, SUB-SECT. 2.

sa. **Postponement—Disputed claim against estate.**—Where deceased's estate is subject to a claim, not admitted, on notes made as surety for another, while it is right to postpone the final settlement of the exor.'s liability for succession duty as to the sum represented by such alleged indebtedness, an order dealing with the matters should postpone the date of payment to a time certain, & should contain a term directing payment of duty upon the sum should it be determined that the estate is not liable for the claim, & a further term that, if the estate is liable, the exor. should pay duty upon his claim against the principal debtor.—**Re SUCCESSION DUTY Act & SPOULE**, [1924] 2 W. W. R. 1087; 34 B. C. R. 110.—CAN.

### PART V. SECT. 6, SUB-SECT. 3.—A.

sb. "Sister" of deceased—**Succession Duty Act Amendment Act, 1899, s. 2 (4)—Includes half-sister.**—**Re OLIVER** (1901), 8 B. C. R. 91.—CAN.

### PART V. SECT. 8, SUB-SECT. 1.

sd. **From what date payable—Succession Duty Act, R. S. B. C., 1924 (c. 244).**—**Re OLDFIELD ESTATE, Re SUCCESSION DUTY Act (B. C.)**, [1927] 4 D. L. R. 711; [1927] 3 W. W. R. 361.—CAN.

sf. ———.]—Where under Succession Duty Act, R. S. B. C. 1924, c. 244, the exors. elect to pay the duty on a contingent estate within two years from the death of the deceased, & a time is fixed by the Lieutenant-Governor in Council for the payment thereof, no interest on said duty is chargeable except from the date so fixed.—**WILSON v. MINISTER OF FINANCE**, [1928] 3 D. L. R. 253; [1928] 2 W. W. R. 585.—CAN.

sg. **Extension of date from which interest runs—Application for—Time for making.**—**Held**: such an application might be made after the expiration of the six months during which, if payment were then made, no interest was chargeable.—**Re FARMER**, [1926] 1 D. L. R. 894; [1926] 1 W. W. R. 366; 36 B. C. R. 334.—CAN.

### PART V. SECT. 8, SUB-SECT. 3.

sj. **Hearing of summons under Succession Duty Act, R. S. B. C. 1924 (c. 244), s. 34—Must be before judge who issued summons.**—**Re CLAPHAM, MINISTER OF FINANCE v. BURKE-ROCHE (B. C.)**, [1925] 4 D. L. R. 325; on appeal sub nom. **R. v. BURKE-ROCHE** (1926), 37 B. C. R. 313.—CAN.

### PART V. SECT. 9.

sl. **When repayment carries interest.**—**Succession Duties Act, 1893, s. 34 (2)**, relating to the payment of interest on succession duty repaid applies only to the repayments of succession duty assessed under sect. 34 (1).—**Re KNOX** (1927), S. A. S. R. 261.—AUS.

### PART VI. SECT. 2, SUB-SECT. 1.—B.

886 i. **Not liable to duty—Under Probate Duty Act, R. S. B. C., 1924 (c. 202).**—**BOWMAN v. A.-G. (B. C.)**, [1926] 4 D. L. R. 834.—CAN.

### PART VI. SECT. 3.

a i. ——— **Deed of gift.**—**STAMPS COMR. v. SKINNER** (1926), 29 W. A. L. R. 58.—AUS.

Smith, [1925] A. C. 371. **Apld.** *Baelz v. Public Trustee*, [1926] Ch. 863; *Pass v. British Tobacco Co. (Australia)* (1926), 42 T. L. R. 771. **Consd.** *Eric Beach Co., Ltd. v. A.-G. for Ontario*, [1929] 46 T. L. R. 33. **Refd.** *A.-G. v. Sudeley*, [1896] 1 Q. B. 354; *A.-G. v. New York Breweries Co.*, [1898] 1 Q. B. 205; *Re Aschrott, Clifton v. Strauss*, [1927] 1 Ch. 313; *London & South American Investment Trust v. British Tobacco Co. (Australia)*, [1927] 1 Ch. 107. **Mentd.** *In the Goods of Ewing* (1881), 6 P. D. 19.

917. **Add. Annotations** :—As to (1) **Consd.** *Baker*

*v. Archer-Shee*, [1927] A. C. 844. **Refd.** *Herbert v. I. R. Comrs., I. R. Comrs. v. Herbert* (1925), 9 Tax Cas. 593; *A.-G. v. Belilios*, [1928] 1 K. B. 798; *Daw v. Inland Revenue Comrs.*, *Duff-Dunbar v. Inland Revenue Comrs.* (1928), 14 Tax Cas. 58. **Generally**, **Mentd.** *Brassard v. Smith*, [1925] A. C. 371.

919. **Add. Citation** :—*Subsequent proceedings* (1883), S. B. & Ad. 78.

943. **Add. Annotation** :—**Mentd.** *Re Bower Williams, Ex p. Trustee*, [1927] 1 Ch. 441.

## ESTOPPEL.

## Part I.—Nature and Classification.

5. *Add. Annotation* :—*As to* (3) **Refd.** *H. v. H.*, [1928] P. 206.
7. *Add. Annotation* :—**Refd.** *H. v. H.*, [1928] P. 206.
8. *Add. Annotations* :—**Refd.** *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416. **Mentd.** *Statham v. Statham*, [1929] P. 131.
9. *Add. Annotation* :—**Refd.** *H. v. H.*, [1928] P. 206.
10. *Add. Annotations* :—**Refd.** *Page v. Scottish Insce. Corpn.* (1929), 98 L. J. K. B. 308.
- Mentd.** *The Jupiter* (No. 2), [1925] P. 69; *Employers' Liability Assee. Corpn. v. Sedgwick, Collins*, [1927] A. C. 95; *The Jupiter* (No. 3) (1927), 137 L. T. 333.
- 10a. —.]—Estoppel is a rule of evidence, & not a bar to the jurisdiction.—*H. v. H.*, [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598.
11. *Add. Annotation* :—**Refd.** *H. v. H.*, [1928] P. 206.
28. *Add. Annotation* :—**Refd.** *Anderson v. Equitable Assee. Soc. of the United States* (1926), 134 L. T. 557.

## Part II.—Estoppel by Matter of Record.

52. *Add. Annotations* :—**Apld.** *Morriss v. Winter* (1929), 45 T. L. R. 643. **Mentd.** *Freeborn v. Leeming*, [1926] 1 K. B. 160.
63. *Add. Annotation* :—**Consd.** *Selby v. Atkins* (1926), 135 L. T. 45.
96. *Add. Annotation* :—**Distd.** *Hoystead v. Taxation Comr.*, [1926] A. C. 155.
- 103a. —.]—Money-lenders Act, 1900 (c. 51), s. 1 (1), does not empower a judge to re-open a money-lending transaction where the money-lender has brought an action in respect of that transaction, & deft. borrower has consented to judgment, although the judgment may never have been drawn up & entered. The agreement to pay has become merged in the judgment, which is *res judicata* & not an agreement within the sect.—**COHEN v. JONESCO**, [1926] 1 K. B. 119; 95 L. J. K. B. 100; 90 J. P. 18; 42 T. L. R. 41; 70 Sol. Jo. 138; *reversd.* on other grounds, [1926] 2 K. B. 1; 95 L. J. K. B. 467; 134 L. T. 690; 90 J. P. 74; 70 Sol. Jo. 386; 42 T. L. R. 294, C. A.
- 104a. —.]—An order by consent is binding unless & until it has been set aside in proceedings constituted for that purpose. *Pltf.* in an action based upon charges which he has withdrawn by a consent order in a previous action between the parties is estopped by the order, & cannot effectively plead in reply that his consent was induced by fraudulent concealment.—**KINCH v. WALCOTT**, [1929] A. C. 482; 98 L. J. P. C. 129; 141 L. T. 102, P. C.
114. *Add. Annotation* :—**Consd.** *Papadopoulos v. Papadopoulos* (1929), 46 T. L. R. 44.
122. *Add. Annotation* :—**Refd.** *King v. Sunday Pictorial Newspapers* (1920), *Ltd.* (1924), 133 L. T. 397.
141. *Add. Annotation* :—**Mentd.** *Re A Debtor*, [1927] 1 Ch. 410.
148. *Add. Annotation* :—**Consd.** *Conquer v. Boot*, [1928] 2 K. B. 336.
151. After this case add “**Decree for restitution of conjugal rights.**”—*See HUSBAND & WIFE*, No. 4767a.”
- 153a. **Re-registration of birth of illegitimate child.**—The re-registration, as provided for in the schedule to Legitimacy Act, 1926 (c. 60), of the birth of a child originally illegitimate, the child having become legitimate by virtue of the provisions of that Act, is not a record of a binding decision. In authorising the re-registration the Registrar-General does not act in a judicial capacity & the re-registration of the birth does not create a *res judicata*.—**JONES v. JONES** (1929), 98 L. J. P. 71; 110 L. T. 647; 45 T. L. R. 292; 73 Sol. Jo. 192.

PART II. SECT. 2. SUB-SECT. 1.—  
B. (a) ii.

**aa. Irregularities in procedure.**—The dismissal of prior motions for irregularities in procedure does not prevent an adjudication on a subsequent proper & regular motion.—*Re DOTY & MARKS*, [1925] 4 D. L. R. 740.—**CAN.**

**ab. Action on immoral contract.**—On the trial of an action the judge came to the conclusion that the evidence disclosed an illegal contract under which defts. were to receive part of the

money obtained by *pltf.* while engaged in prostitution, & that the action was of an indecent character & unfit to be dealt with, & he dismissed it, the formal judgment stating that “this ct. does of its own motion & without adjudicating as between *pltf.* & *defts.* on the matters in dispute between them, order that this action be dismissed out of this ct., with costs.”—**Held**: the order precluded *pltf.* from again suing in respect of any of the causes of action included in the statement of claim.—**GUILBAULT v. BROTHIER** (1904), 24 C. L. T. 342;

10 B. C. R. 449.—**CAN.**

PART II. SECT. 2. SUB-SECT. 1.—  
B. (a) iv.

**104 i.** —.]—Where an order was made at chambers by consent of the parties, & an appeal was subsequently taken by the solr. for one of the parties that at the time of the making of the order he was under a misapprehension as to the effect of two judgments of the Supreme Ct.:—**Held**: the consent order operated as an estoppel.—*Re KLINE*, [1924] 1 D. L. R. 295; 56 N. S. R. 389.—**CAN.**

190. After this case add " ———.]—*See, also*, INSURANCE, Vol. XXIX., pp. 122, 182-184, Nos. 752, 1404-6, 1408, 1409, 1420, 1422."

204a. ———.]—*For deduction of costs—Not res judicata.*—Pltf., who had been negotiating for the purchase of a house, handed to deft., as his agent, the amount of the deposit & this balance of £490 payable to the vendor on completion & instructed deft. to pay the balance to the vendor when completion took place. Completion did not take place, & pltf. demanded the above balance from deft. & brought an action against him to recover it. The vendor claimed that pltf. was liable to him for £100 damages & directed deft. not to pay over that sum to pltf. Deft. thereupon issued an interpleader summons in respect of the £100, & the master directed an issue, & ordered that deft. should pay into ct. the £100 less his costs. On the trial of the issue the vendor's claim was dismissed. Pltf. then obtained leave to sign judgment for £390, for which deft. admitted liability. Pltf. now claimed the additional £100 in full without any deduction of deft.'s costs. Deft. contended that the master's order allowing deft. to deduct his costs was final:—*Held*: the master's order allowing the deduction of costs was not *res judicata*, but merely relieved deft. from paying the full £100 until the decision of the interpleader issue & the result of the action, & pltf. was entitled to recover the full £100.—*ALLNUTT v. MILLS* (1925), 42 T. L. R. 68.

209. To the cross-reference following this case add "In proceedings before Railway & Canal Commission—Under Mines (Working Facilities & Support) Act, 1923 (c. 20).—*See* MINES, Vol. XXXIV., pp. 635, 636, No. 325."

213. *Add. Annotations*:—As to (4) *Refd.* Jacobson v. Frachon (1927), 138 L. T. 386. *Generally*,

*Mentd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

214a. ———.]—A previous decision on a matter in dispute between parties does not create an estoppel unless (1) the decision was given by a competent tribunal, & (2) the matter was raised & controverted before that tribunal & was clearly & finally decided by it.—*EASTWOOD & HOLT v. STUDER* (1926), 31 Com. Cas. 251.

215. *Add. Annotation*:—As to (2) *Refd.* Eastwood & Holt v. Studer (1926), 31 Com. Cas. 251.

222a. ———.]—In July & Aug. 1920, the shareholders of a co. carrying on the business of whiskey distilling passed resolutions for its voluntary winding up. With a view to selling the distillery as a going concern the liquidator continued distilling up to Mar. 31, 1921, but not after, & pending the sale of the business he sold the co.'s stocks of whiskey as opportunity offered. Such sales of whiskey extended over a period of more than two years. An assessment to income tax was made upon the co. for the year 1921-22 in respect of the profits of its business on the footing that the liquidator was carrying on the trade in that year. This assessment was discharged by the Special Comrs. on appeal on the ground that an assessment on the co. for the preceding year had been discharged by the recorder on appeal to him from the determination of the Special Comrs., & that they were bound to follow his decision:—*Held*: the Special Comrs. were not bound by the decision of the recorder regarding the 1920-21 appeal to discharge the 1921-22 assessment.—*EDWARDS v. "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION)* (1926), 10 Tax Cas. 285, H. L.

232. *Add. Annotations*:—*Apld.* Jaeger Co., Ltd. v. Jaeger (1929), 46 R. P. C. 336. *Refd.*

## PART II. SECT. 2, SUB-SECT. 1.— B. (a) v.

h i. ———.]—*ATKINS v. BLAIN* (1865), 11 Gr. 212.—*CAN.*

## PART II. SECT. 2, SUB-SECT. 1.— B. (c).

201 i. *In administration suit—Originating summons against administrator—Subsequent probate action by administrator.*—D.'s father was believed to have died intestate, & D. took out a grant of letters of administration *de bonis non*. Subsequently a sister of D. issued an originating summons, an order for administration was made, & also an order that four payments should be made to four sisters of D. out of the funds in ct. to the credit of the matter. D. was represented by counsel at the hearing of the summons upon which this last order was made. Subsequently D. was advised by his solr. that a will which he knew his father had made, & which had been burned by his father's directions, was not legally revoked, & D. instituted an action to revoke the grant of letters of administration *de bonis non* to himself, & to prove the will in solemn form:—*Held*: being an originating summons by a next-of-kin for administration against D. as administrator, it was not open to D. to challenge in those proceedings the fact that he was an administrator, & D. was not estopped by the above orders.—*DOOLEY v. DOOLEY*, [1927] 1 R. 190.—*IR.*

204 i. ———.]—An interlocutory judg-

ment, which definitely decides a question of law, & from which no appeal is taken, may be *res judicata* when the question is raised between the same parties, even in the same action.—*DIAMOND v. WESTERN REALTY CO.*, [1924] 2 D. L. R. 922; [1924] S. C. R. 308.—*CAN.*

st. *Order striking out guardian ad litem's name from record.*—*Held*: not to operate as *res judicata*—*KUMAR GANGANAND SINGH v. MAHARAJAH SIR RAMESHWAR SINGH BAHADUR* (1927), 1 L. R. 6 Pat. 388.—*IND.*

## PART II. SECT. 3, SUB-SECT. 1.—A.

213 x. ———.]—*VILLAGE OF HAGERSVILLE v. HAMBLETON*, [1927] 4 D. L. R. 1044; 61 O. L. R. 327.—*CAN.*

## PART II. SECT. 3, SUB-SECT. 1.— B. (b).

sk. *Agency.*—Where a judgment for indemnity has been pronounced between two parties, on the ground that one was the principal & the other the agent, the judgment is conclusive as to that fact.—*PLUMB v. MACDONALD (W. C.) REGISTERED, LATIMER v. FOSTER TOBACCO CO., LTD.*, [1926] 1 D. L. R. 899; 58 O. L. R. 322.—*CAN.*

st. *Decided by jury in ejectment action.*—The judgment in an action of ejectment is only an estoppel between the parties as to the statutory issue whether the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—*BURNHAM v. CARROLL MUSGROVE THEATRES, LTD.*

& *VICTORIA ARCADE, LTD.* (1927), 28 S. R. N. S. W. 169; 45 N. S. W. W. N. 23.—*AUS.*

## PART II. SECT. 3, SUB-SECT. 1.— B. (c).

225 i. *General rule.*—Where the cause of action is different from what it was in the first action, the matter is not *res judicata*.—*BRANIGAN v. SABA*, [1924] N. Z. L. R. 481.—*N.Z.*

## PART II. SECT. 3, SUB-SECT. 1.— B. (d).

230 xvii. ———.]—Resp. claimed to deduct £1,000 in computing the profits for the year ending Mar. 31, 1921, & the recorder allowed the deduction claimed. The question came again before the Special Comrs. by way of an appeal from an assessment for 1922-23:—*Held*: the recorder's decision on the assessment for 1921-22 was binding, & the question was *res judicata*.—*ALYMER v. MAHAFFEY*, [1925] N. 167; 10 Tax. Cas. 594.—*IR.*

230 xviii. ———.]—*WILSON v. CAMERON* (1842), 1 Kerr, 542.—*CAN.*

230 xix. ———.]—*CHAMBERS v. DOLLAR & STEVENSON* (1870), 29 U. C. R. 599.—*CAN.*

230 xx. ———.]—*JONES v. CITY OF ST. JOHN* (1901), 31 S. C. R. 320.—*CAN.*

230 xxi. ———.]—*FOSTER v. REAUME*, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—*CAN.*

Hoystead v. Taxation Comr., [1926] A. C. 155.

253. *Add. Annotation*:—*Refd.* Green v. Weatherill, [1929] 2 Ch. 213.

256a. —.]—Applts.' mine was worked during the years 1919, 1920, & 1921 during two hundred & five days only owing to strikes & the low price obtainable for ore, though maintenance was continued during the whole period:—*Held*: the question of average annual value was not *res judicata* by a decision of the High Ct. of Australia between the parties as to the valuation for a previous year.—*BROKEN HILL PROPRIETARY CO. v. BROKEN HILL MUNICIPAL COUNCIL*, [1926] A. C. 94; 95 L. J. P. C. 33; 134 L. T. 335, P. C.

257. *Add. Annotation*:—*Distd.* Hoystead v. Taxation Comr., [1926] A. C. 155.

265a. *Decision that patent valid—Subsequent action for infringement—Whether defendant estopped from disputing validity of patent.*—In an action for infringement of a patent deft. denied infringement & pleaded that the patent was invalid by reason of lack of novelty & lack of subject-matter owing to common general knowledge & prior publication, want of utility, insufficiency & false suggestion in the specification, & he counter-claimed for revocation of the patent. In a previous action the patent had been attacked only on the ground of prior publication of two specifications, G. & V., & the issue of infringement had not been contested. In that action the patent had been held to be valid. It was contended by deft. that the ct. was bound by the prior decision only as to construction of the specification & not as to subject-matter, that the additional documents relied on showed features claimed in the specification not disclosed by G. or V., & that, owing to the issue of infringement not having been contested it had been unnecessary for the ct. to define the ambit of the claims:—*Held*: the ct. was not strictly bound by a prior decision as to anticipation, & it was open to deft. to prove anticipation by documents not before the ct. in the previous action.—*HIGGINSON & ARUNDEL v. PYMAN, SAME v. SAME* (1926), 43 R. P. C. 291, C. A.

*Annotation*:—*Mentd.* *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

276. *Add. Annotations*:—*As to* (3) *Apprvd.* Hoystead v. Taxation Comr., [1926] A. C. 155. *Apld.* Green v. Weatherill, [1929] 2 Ch. 213. *Refd.* Pickford v. Quirke, Pickford v. I. R. Comrs. (1927), 44 T. L. R. 15.

291. *Add. Annotation*:—*Generally*, *Refd.* Conquer v. Boot, [1928] 2 K. B. 336.

294. *Add. Annotation*:—*Refd.* Hoystead v. Taxation Comr., [1926] A. C. 155.

296a. *Admission.*—Under a will the annual income from an estate in Australia was divisible by the trustees between testator's daughters. The trustees objected to an assessment for the financial year 1918–1919 under Land Tax Assessment Act, 1910–1916, of Australia; they claimed under sect. 38 (7) of the Act a deduction of £5,000 in respect of the share of each daughter, & a case was stated for the opinion of the Full Ct. of the High Ct. upon the questions: (1) whether the shares of the joint owners, or of any & which of them, in the land were original shares within sect. 38; (2) how many deductions of £5,000 resp. should make. The Full Ct. answered these questions as follows: (1) the shares of the six children surviving at the date of the assessment: (2) six. Upon the assessment for 1919–1920 the comr. allowed only one deduction of £5,000, contending that the beneficiaries were not joint owners within the Act. Upon a case stated the Full Ct. upheld that view, & held that the comr. was not estopped by the previous decision:—*Held*: the comr. was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed & admitted that they were, the matter so admitted was fundamental to the decision then given.—*HOYSTEAD v. TAXATION COMR.*, [1926] A. C. 155; 94 L. J. P. C. 79; 134 L. T. 354; 42 T. L. R. 207, P. C.

*Annotations*:—*Consd.* Pickford v. Quirke, Pickford v. I. R. Comrs. (1927), 44 T. L. R. 15. *Refd.* Green v. Weatherill, [1929] 2 Ch. 213.

334. *Add. Annotation*:—*Refd.* Hoystead v. Taxation Comr., [1926] A. C. 155.

366. *Add. Annotation*:—*Refd.* Mackenzie-Kennedy v. Air Council, [1927] 2 K. B. 517.

**PART II. SECT. 3, SUB-SECT. 1.—**  
**B. (e).**

254 xi. —.]—*CHAMBERS v. UNGER* (1875), 25 C. P. 180.—*CAN.*

**PART II. SECT. 3, SUB-SECT. 1.—**  
**B. (f).**

274 ix. —.]—*RE GLOBE WINE CO.* (Sask.), [1926] 1 D. L. R. 213.—*CAN.*

274 x. —.]—*CASHIDY v. INGOLDSBY* (1875), 36 U. C. R. 339.—*CAN.*

**PART II. SECT. 3, SUB-SECT. 1.—**  
**B. (g).**

276 ii. —.]—An action was brought by a co. to remove two of its trustees for refusing to obey an order of the ct. made in a previous action directing them to join with the other trustee in assessing certain shares:—*Held*: deft. trustees were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action.—*FRASER RIVER MINING CO. v.*

*GALLAGHER* (1896), 5 D. C. R. 82.—*CAN.*

276 iii. —.]—*FORSYTH v. BURY* (1887–8), 15 S. C. R. 543.—*CAN.*

**PART II. SECT. 3, SUB-SECT. 1.—**  
**B. (i).**

303 i. *General rule.*—*CARPENTER v. COMMERCIAL BANK OF CANADA* (1862), 2 E. & A. 111.—*CAN.*

**PART II. SECT. 3, SUB-SECT. 1.—**  
**C. (a) i.**

329 xxvii. —.]—*(Co-defendants.)*—If the relief given to plff. does not require or involve a decision of any case between co-defts., they will not be bound as between each other by any proceeding which may be necessary only to the decree plff. obtains.—*MA PAN NYUN v. MAUNG SIT PHAUNG* (1928), 1 L. R. 6 Ran. 575.—*IND.*

329 xxviii. —.]—A judgment was obtained against A. & two others without service of process on A. or his having any knowledge of the suit; an attorney retained by the other defts. having appeared for A. also. He was

afterwards arrested on a *ca. sa.* issued on the judgment, & was discharged by a judge's order on an affidavit denying knowledge of the suit & of any authority to the attorney to appear for him. In an action for false imprisonment against plff. in that suit:—*Held*: A. was not estopped by the judgment from denying his liability.—*SULLIS v. FERGUSON* (1861), 10 N. B. R. (5 All.) 110.—*CAN.*

**PART II. SECT. 3, SUB-SECT. 1.—**  
**C. (b).**

346 ii. —.]—*Exception to—Action on covenant of indemnity.*—An action on a covenant of indemnity is an exception to the general rule that an estoppel is binding only on privies.—*LONDON GUARANTEE & ACCIDENT CO. v. DAVIDSON*, [1926] 1 D. L. R. 66; [1926] 1 W. R. 148; 36 B. C. R. 301.—*CAN.*

g i. —.]—*One plaintiff president of company defendant in other proceedings.*—*LONDON LOAN & SAVINGS CO. v. OSBORN*, [1928] 3 D. L. R. 258; [1928] S. C. R. 451.—*CAN.*



381. *Add. Annotation*:—**Mentd.** *More v. Weaver*, [1928] 2 K. B. 520.

382a. —. —.]—**KNIGHT v. LEIGH** (1828), 4 Bing. 589; 1 Moo. & P. 528; 6 L. J. O. S. C. P. 128; 130 E. R. 895.

385a. —. —.]—**Pltfs.' steamer stranded in the Black Sea, & deft. L. agreed to try to save her on the terms (*inter alia*) that security for payment of his remuneration should be arranged in London & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, the deft. L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, & as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct., awarded L. £23,890. L. then disposed of the ship, & pltfs. brought this action, (a) for damages for breach of contract, (b) for a declaration that the Turkish judgment was invalid, & (c) for an injunction to prevent the Turkish judgment from being enforced:—**Held**: as pltfs. were not parties to the Turkish proceedings the doctrine of *res judicata* could not apply to the question of breach of contract.—**ELLERMAN LINES, LTD. v. READ** (1927), 44 T. L. R. 7; on appeal, [1928] 2 K. B. 144, C. A.**

405. *Add. Annotation*:—**Refd.** *Wilson v. Maple Mill* (1925), 95 L. J. K. B. 666.

417. *Add. Annotation*:—**Mentd.** *A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92.

422. *Add. Annotations*:—**Refd.** *Ingenohl v. Wing On* (Shanghai) (1927), 44 It. P. C. 343; *Salvesen (or von Lorange) v. Austrian Property Administrator*, [1927] A. C. 641. **Mentd.** *The Goulondris*, [1927] P. 182.

432. *Add. Annotation*:—**Refd.** *A.-G. v. Denby*, [1925] Ch. 596.

## PART II. SECT. 3, SUB-SECT. 1.—C. (c).

**sm. Action by reversioner—How far binding on other reversioners.**—**Held**: it is well settled that a suit for a declaration by a reversioner to contest an alienation made by a widow in possession, is a representative suit on behalf of all the reversioners, & a decree fairly & properly obtained against the reversioner in such a suit binds not only him but the whole body of reversioners on the one hand, & the alienee or his representatives on the other.—**THAKARSINGH v. UTTAMKAUR** (1929), 1 L. R. 10 Lah. 613.—**IND.**

## PART II. SECT. 3, SUB-SECT. 1.—C. (d).

374 ii. —. —.]—**SONACHALAM PILLAI v. KUMARAVELU CHETTIAR** (1927), 1 L. R. 51 Mad. 128.—**IND.**

## PART II. SECT. 3, SUB-SECT. 1.—C. (g).

**so. Ejectment—Fictitious lessee party to first action—Second action against lessor.**—At the trial of an ejectment, under 14 & 15 Vict. c. 114, recovery was proved in favour of John Doe, on the demise of the now deft. against the now pltf.; & it appeared that the question there decided, being one of boundary, was precisely the same as

that again brought up in this case.—**Held**: clearly no estoppel, for that judgment was between different parties, & under the old practice.—**CLUBINE v. McMULLEN** (1854), 11 U. C. R. 250.—**CAN.**

## PART II. SECT. 3, SUB-SECT. 2.—A.

a i. —. —.]—Where an application for a writ of possession was dismissed because no notice of determination of the lease had been given.—**Held**: the landlord was not thereby barred from making another application after giving such notice.—**RE ERNEWEIN & WELCH**, [1928] 4 D. L. R. 498; [1928] 2 W. W. R. 628.—**CAN.**

## PART II. SECT. 3, SUB-SECT. 2.—B. (a) i.

g i. —. —.]—**JONES v. RYDER**, [1928] 3 D. L. R. 301; [1928] 2 W. W. R. 302; 39 B. C. R. 547.—**CAN.**

## PART II. SECT. 3, SUB-SECT. 2.—B. (a) ii.

465 i. **Lease—Unsuccessful action for breach of covenant against subletting—Action for ejectment on conviction under licensing laws.**—Appl., lessee from resp. & licensee of an hotel, was convicted of an offence under Liquor Act, 1912 (N. S. W.). After the conviction, by a writ issued on the same day, resp.

447a. —. —.]—To sustain a second action on the same contract or the same facts there must be a distinct cause of action, not merely different damages.—**CONQUER v. BOOT**, [1928] 2 K. B. 336; 97 L. J. K. B. 452; 139 L. T. 18; 44 T. L. R. 486, D. C.

457. *Add. Annotation*:—**Consd.** *Conquer v. Boot*, [1928] 2 K. B. 336.

460. *Add. Annotation*:—**Mentd.** *The Goulondris*, [1927] P. 182.

461. *Add. Annotation*:—**Mentd.** *Burrell v. Leven* (1926), 42 T. L. R. 407.

464. *Add. Annotation*:—**Refd.** *Berry v. Berry*, [1929] 2 K. B. 316.

473. *Add. Annotation*:—**Refd.** *Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.

477. *Add. Annotation*:—**Mentd.** *The Goulondris*, [1927] P. 182.

478. *Add. Annotation*:—**Generally, Mentd.** *The Vectis*, [1929] P. 201.

480. *Add. Annotations*:—**Consd.** *Conquer v. Boot*, [1928] 2 K. B. 336. **Refd.** *Debenham v. Perkins* (1925), 133 L. T. 252.

482. *Add. Annotation*:—**Refd.** *Palmer v. Crone*, [1927] 1 K. B. 804.

483. *Add. Annotation*:—**Refd.** *Conquer v. Boot*, [1928] 2 K. B. 336.

492. *Add. Annotation*:—**As to** (1) **Refd.** *Eastwood & Holt v. Studer* (1926), 31 Com. Cas. 251.

498a. —. —.]—**Held**: a statement of claim should be struck out, & the action dismissed, on the ground that the matter was *res judicata* by a previous decision.

The ct. has inherent jurisdiction to strike out as frivolous or vexatious a claim or defence, which has either been already decided in previous proceedings, against the party raising it, or might have been raised in a previous proceeding in which the facts necessary to raise it have been decided against the person who desires to raise them (**SCRUTTON, L.J.**).—**MACKENZIE-KENNEDY v. AIR COUNCIL**, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

brought an action for ejectment against applt. claiming to be entitled to possession on the ground of a breach by applt. of his covenant not to assign or sublet without resp.'s leave, & judgment was entered for applt. By a writ issued about a year after the issue of the writ in the first action, resp. brought another action for ejectment against applt., claiming to be entitled to possession on the ground of the conviction:—**Held**: resp. was not debarred from relying on the conviction by reason of the fact that in the first action he might have asserted the right of re-entry which it gave him.—**COHEN v. LAPIN** (1924), 35 C. L. R. 247; 25 S. R. N. S. W. 291; 42 N. S. W. W. N. 7.—**AUS.**

## PART II. SECT. 3, SUB-SECT. 2.—B. (b).

496 iii. —. —.]—**WILLIAMS & SEARS v. RICHARDS** (1918), 25 B. C. R. 19.—**CAN.**

496 iv. —. —.]—The chief test of *res judicata* is identity of issue. The issue raised in the present motion for an extension of time for serving the statement of claim held not to be identical with any issue that had been adjudicated in the earlier proceedings in this matter.—**GOODBUN v. MITCHELL**, [1928] 2 W. W. R. 12.—**CAN.**

508a. —.] — MACKENZIE - KENNEDY v. AIR COUNCIL, No. 498a, ante.

510. Add. Annotation :—*Refd.* Conquer v. Boot, [1928] 2 K. B. 336.

511. Add. Annotation :—*As to* (2) *Consd.* Conquer v. Boot, [1928] 2 K. B. 336.

520. Add. Annotation :—*Refd.* Green v. Weatherill, [1929] 2 Ch. 213.

521a. Proceedings in respect of registered trade mark—Former proceedings before registration.]—Pltfs. commenced an action for infringement of their registered trade marks & passing off, & delivered their statement of claim alleging acts of infringement & passing off by defts. Defts. moved to strike out the statement of claim, on the ground that the alleged acts of infringement & passing off had been already adjudicated upon or were subsequent to the issue of the writ in the present action. The judge held that there was a total absence of any evidence that the alleged acts had ever been adjudicated upon. Defts. appealed :—*Held* : the reasons for the decision of the judge were right.—JAEGER Co., LTD. v. JAEGER (1929), 46 R. P. C. 336, C. A.

528. Add. Annotation :—*Mentd.* Fishwick v. Gyani, [1925] 1 K. B. 617.

529a. Judgment against separate estate of married woman—Action to obtain payment into court.]—Where the ct. in giving judgment against a married woman who is a defaulting trustee orders that the judgment be satisfied out of her separate estate & execution proves useless it is not open to pltf. in a new action to obtain against her judgment in a different form for payment of the moneys into ct. As against her the matter is *res judicata*. But if it appear that she has transferred the moneys to a person with knowledge of the proceedings against her action will lie against the transferee as constructive trustee. Pltf. obtained against the first deft. a married woman judgment for payment out of her separate estate of the sum in dispute & costs. Evidence disclosed that the first deft. had parted with the whole of the sum, having transferred most of it to her sister, the second deft., who was not a party to the proceedings but knew of them at the time. Execution

in respect of the judgment thus proving useless pltf. now brought this action alleging that the first deft. had paid the money to the second deft. in order to defeat any judgment for pltf., & that the second deft. received the money as constructive trustee :—*Held* : in regard to the first deft. the matter was *res judicata*, as pltf. had already obtained judgment against her separate estate & therefore could not now on the same facts obtain against her another form of judgment for payment of the moneys into ct.—GREEN v. WEATHERILL, [1929] 2 Ch. 213 ; 98 L. J. Ch. 369 ; 45 T. L. R. 494.

538. Add. Annotations :—*As to* (1) *Refd.* Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197 ; Pirie v. Richardson (1926), 70 Sol. Jo. 1023 ; Cumberland v. Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780. *Generally, Refd.* Jenkins v. Jenkins, [1928] 2 K. B. 501.

540. Add. Annotations :—*Apld.* Pirie v Richardson, [1927] 1 K. B. 448. *Refd. Re* Pennington & Owen, [1925] Ch. 825 ; Bennett v. Whitehead (1926), 96 L. J. K. B. 268 ; Hardie & Lane v. Chiltern (1927), 96 L. J. K. B. 773.

546. Add. Annotation :—*Refd.* Pirie v. Richardson, [1927] 1 K. B. 448.

550. In the last line for "case of the law" read "case out of the law."

Add. Annotations :—*Refd.* Pirie v. Richardson, [1927] 1 K. B. 448 ; Cumberland v. Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

After this case add "Compare Contract, No. 163a."

555a. —.]—BARKER v. MARTIN (1647), Sty. 20 ; 82 E. R. 498.

556. Add. Annotation :—*Generally, Refd.* Cumberland v. Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

557. Add. Annotation :—*As to* (1) *Refd.* Clark v. Urquhart, Stracey v. Urquhart (1929), 141 L. T. 641.

559. Add. Annotations :—*As to* (1) *Apld.* Brooke v. Bool, [1928] 2 K. B. 578. *Refd.* Debenham v. Perkins (1925), 133 L. T. 252.

## PART II. SECT. 3, SUB-SECT. 2.— B. (d).

507 vi. —.]—Where a cause of action is shown & the claim is defended, tried & decided, or where the real issue between the parties, although not set out in the statement of claim, is tried & decided, it is not open to pltf., by a subsequent action relating to the same matters involved in the earlier proceedings, to put forward a claim or plea which he had an opportunity of putting forward in the earlier proceedings but which he either omitted or chose not to put forward at that time. Such claim or plea is *res judicata*.—WAHL v. NUGENT, [1924] 3 D. L. R. 679 ; [1924] 2 W. W. R. 1138 ; 18 Sask. L. R. 592 ; *reseq.*, [1924] 2 D. L. R. 97 ; [1924] 1 W. W. R. 939.—CAN.

507 vii. —.]—A suit is not barred by *res judicata* where, though the matter which forms the ground of attack might have been made a ground of attack in the former suit, pltfs. were not bound to do so.—ABID-UD-DIN v. BISHARAT, ALI, ETC., RAOF-UN-DIN, ETC. (1927), 1 L. R. 8 Lah. 308.—IND.

507 viii. —.]—SOKOLOSKI v. WINISKI, [1927] 2 D. L. R. 1029 ; [1927] 1 W. W. R. 972 ; 21 Sask. L. R. 455.—CAN.

507 ix. —.]—WINTER v. DEWAR & Co., [1928] 3 D. L. R. 631.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.— B. (f).

d i. Award of damages for delay—Subsequent proceedings for compensation for further delay.]—Where there was only one cause of action, & it was pltf.'s right to have his damages assessed once for all :—*Held* : the finding that pltf. could recover no damages after commencement of a subsequent action was binding upon both parties & was not, though erroneous, open to dispute. The judgment had not been appealed from & the question was *res judicata* between the parties.—MCINTOSH v. PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.— B. (g).

aa. Action for rent—Eviction pleaded

by tenant—Reduction of rent granted—Right to bring action for trespass.]—If a tenant defends an action for rent, & a reduction is made on the amount claimed on the ground that he has been evicted by the landlord from part of the premises, he cannot afterwards maintain trespass against the landlord for the same action which he relied on as an eviction in the former action.—ROURKE v. McCULLOUGH (1859), 9 N. B. R. (4 All.) 361.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.— C. (c)

572 i. Unsatisfied judgment.]—The fact that a decree has been obtained against one of a number of joint & several obligants does not preclude a fresh action being brought against the others, if satisfaction has not been got under the decree already obtained.—STEVEN v. BROADY NORMAN & Co., [1928] S. C. 351.—SCOT.

## PART II. SECT. 3, SUB-SECT. 2.— C. (d) i.

n i. —.]—Where it had not been established that in contracting to pay

573. *Add. Annotation*:—As to (2) **Refd.** Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., [1926] A. C. 761.

575a. ———— **Power to set aside judgment.**—A judgment in Penang against deft., described in the writ by the group of letters under which a money-lending firm there carries on business followed by the name of the firm's local representative, is a judgment against the local representative personally, whether he is a partner in, or merely an agent for, the firm. A subsequent suit for the same debt against the firm itself is barred. The ct., including the appellate ct., has no jurisdiction on motion to set aside the earlier judgment on the ground that pltf. was ignorant of its effect in law.—FIRM OF R. M. K. R. M. v. FIRM OF M. R. M. V. L., [1926] A. C. 761; 135 L. T. 645; *sub nom.* FIRM OF R. M. K. R. M. v. FIRM OF M. R. M. V. L., R. M. K. R. M. v. SOMASUNDARAM CHETTY v. M. R. M. V. L. SUPRAMANIAN CHETTY, 95 L. J. P. C. 197; 42 T. L. R. 686, P. C.

*Annotation*—Folld. Kinch v. Walecott, [1929] A. C. 182.

577. *Add. Annotations*:—**Consd.** Bennett v. Whitehead, [1926] 2 K. B. 380. **Refd.** Anderson v. Equitable Assee. Soc. of United States (1926), 134 L. T. 557.

577a. ———— **Action against partner—Subsequent action against firm.**—FIRM OF R. M. K. R. M. v. FIRM OF M. R. M. V. L., No. 575a, *ante*.

579. *Add. Annotations*:—As to (2) **Refd.** Debenham v. Perkins (1925), 133 L. T. 252; Bennett v. Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., R. M. K. R. M. v. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

580. *Add. Annotation*:—**Distd.** Debenham v. Perkins (1925), 133 L. T. 252.

581a. ———— **Judgment for debt incurred after separation.**—Where an action for goods sold is brought against a wife on a bill containing a number of items, & judgment is recovered against her on all items purchased after a certain date, on the ground that since that date she has been acting as principal

by reason of her having separated from her husband on that date, proceedings may subsequently be taken against the husband as agent for the items purchased prior to that date, since there are two distinct causes of action, & there has been no election by suing of the wife to judgment on the whole or part of one undivided debt.—DEBENHAM'S, LTD. v. PERKINS (1925), 133 L. T. 252, D. C.

590. *Add. Annotation*:—**Apld.** Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.

593. *Add. Annotations*:—**Apld.** Dexters v. Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348. **Refd.** Anderson v. Equitable Assee. Soc. of the United States (1926), 134 L. T. 557.

597a. ———— **Meaning of "forthwith".**—"Forthwith" means, forthwith upon demand by the person entitled to the certificate, & not forthwith upon the dismissal of the complaint. A certificate was applied for by the person entitled, five days after the complaint had been dismissed, & granted two days after the application, but dated as of the day upon which the complaint was made:—**Held**: to have been made out "forthwith" within Offences Against the Person Act, 1828 (c. 31), s. 27, & to be a good defence, under sect. 28, to a subsequent action for the same assault.—COSTAR v. HETHERINGTON (1859), 1 E. & E. 802; 8 Cox, C. C. 175; 28 L. J. M. C. 198; 33 L. T. O. S. 105; 23 J. P. 663; 5 Jur. N. S. 985; 7 W. R. 413; 120 E. R. 1111.

599a. ———— **What amounts to conviction.**—To an action for an assault deft. pleaded that, before action brought, pltf. caused deft. to be summoned before a magistrate to answer a complaint in respect of the assault, & that the magistrate "adjudged & determined the said complaint & charge, & then ordered deft. then to pay, & then convicted him, deft., in the costs as well of the said complaint & charge as of the hearing thereof, but did not further order or convict deft." The magistrate had decided only that deft. should enter into recognisances to keep the peace & pay the costs thereof, & such costs only had been paid. No record of a conviction was produced, but the magistrate's clerk stated that it was not the practice to draw up a

a commission, deft. had been acting as the agent of H. & that pltf. had elected to look to H. for payment.—**Held**: a judgment by default recovered by pltf. against H. did not render pltf.'s claim against deft. *res judicata*, since the cause of action against deft., which it was admitted pltf. had before he sued H., did not exist against the latter & was not affected by the judgment.—WILLIAMS v. RODGERS, [1921] 2 W. W. R. 185; 56 D. L. R. 691; 60 S. C. R. 664.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—C. (e).

586 iv. ————**ABDUR RAHIM v. MAHOMED BARKAT ALI** (1927), 55 L. R. Ind. App. 96.—IND.

PART II. SECT. 3, SUB-SECT. 2.—E.

594 i. *Summons for assault—Dismissal—Subsequent action for same assault.*—In an action for assault & battery, deft. pleaded that an information had been made against him by pltf. before a magistrate in respect to the trespass declared on, under Dominion Act, 32 & 33 Vict. c. 20, s. 43, & that the magistrate, after hearing, dismissed the information & gave deft. a certifi-

cate of dismissal, whereby & by force of the statute he was released from the action.—**Held**: the plea was insufficient in not stating that the complainant had prayed the magistrate to proceed summarily.—WILSON v. CODYRE (1866), 26 N. B. R. 516.—CAN.

sc. *Acquittal on charge of murder—Subsequent charge of assault occasioning actual bodily harm.* After being acquitted on a trial for murder the accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *res judicata*:—**Held**: since the fact of the assault in question was involved in the alleged murder, i.e. if there was a murder it could only be because there was the assault, & therefore, it must have been considered & directly adjudicated on by the jury, the acquittal on the charge of murder rendered the matter of the assault *res judicata* as between the Crown & the accused, & was a bar to the second charge.—R. v. GOSSELIN, [1928] 1 W. W. R. 134; 50 Can. Crim. Cas. 287.—CAN.

598 iii. ———— **Necessity for**

*certificate of conviction.*—JUDE v. ARCHER & GOODMAN, [1924] 1 D. L. R. 448; [1924] 1 W. W. R. 279; 41 Can. Crim. Cas. 289; 18 Sask. L. R. 32.—CAN.

g i. ———— *Subsequent conviction for same offence—Whether appeal in action constituted "further proceedings."* Pltf. sued deft. by civil bill for £20 damages for assault. The Recorder held in pltf.'s favour, & gave a decree for £14 5s. Deft. appealed from the decree, & entered into a recognisance as provided by 45 & 46 Vict. c. 29, s. 6. After the case had been at hearing before the judge of Assize for a short time, deft. admitted the assault & the reasonableness of the damages awarded, & raised a new defence which had not been available to him in the county ct. Deft. relied upon Offences Against the Person Act, 1861, c. 100, s. 43, & it was contended on his behalf that deft.'s conviction coupled with the payment of the penalty operated as a release from "all further or other proceedings," including the re-hearing of the civil bill on appeal:—**Held**: the appeal did not constitute "further or other proceedings" within Offences Against the Person Act, 1861, s. 45.—

formal conviction in such cases:—*Held*: the plea was no bar to the action within Offences Against the Person Act, 1861 (c. 100), s. 45, & taking it as it stood it was not proved.—*HARTLEY v. HINDMARSH* (1866), L. R. 1 C. P. 553; *Har. & Ruth*, 607; 35 L. J. M. C. 255; 14 L. T. 795; 12 Jur. N. S. 502; 14 W. R. 862.

*Annotations*:—*Expld.* R. v. Miles (1890), 24 Q. B. D. 423.  
*Refd.* Police Comr. for the Metropolis v. Donovan (1903), 52 W. R. 14.

610. *Add. Annotation*:—*Generally*, *Mentd.* R. v. Hertfordshire JJ., *Ex p.* Larsen, [1926] 1 K. B. 191.

647. *Add. Annotation*:—*As to* (1) *Consd.* Pirie v. Richardson, [1927] 1 K. B. 448.

659. *Add. Annotation*:—*As to* (2) *Apld.* The Point Breeze, [1928] P. 135.

After this case add “*See, also*, ADMIRALTY, No. 706b.”

## Part III.—Estoppel Quasi of Record.

672. *Add. Annotation*:—*Refd.* Hyman v. Hyman, [1929] A. C. 601.

677. *Add. Annotation*:—*Mentd.* Saklat v. Bella (1925), 42 T. L. R. 25.

686. *Add. Annotation*:—*Distd.* *Re* Stollery, Weir v. Treasury Solicitor, [1926] Ch. 284.

687. *Add. Annotation*:—*Refd.* York Glass Co. v. Jubb (1925), 134 L. T. 36.

692. *Add. Annotation*:—*Mentd.* Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.

## Part V.—Estoppel by Deed.

701. *Add. Annotations*:—*Mentd.* Palmolive Co. (of England) v. Freedman (1927), 44 T. L. R. 86; English Hop Growers v. Dering, [1928] 2 K. B. 174.

734. *Add. Annotation*:—*Refd.* Torbay Hotel v. Jenkins, [1927] 2 Ch. 225.

776. *Add. Annotation*:—*As to* (1) *Refd.* Parr v. A.-G., [1926] A. C. 239.

786a. —.]—The recital, in a deed, of a former deed between the same parties, proves, as between the parties, so much of the former deed as is recited, but no more.—*GILLET v. ABBOTT* (1838), 7 Ad. & El. 783; 3 Nev. & P. K. B. 24; 1 Will. Woll. & Il. 91; 7 L. J. Q. B. 61; 2 Jur. 300; 112 E. R. 665.

*Annotation*:—*Refd.* Fishmongers' Mystery Wardens & Commonalty v. Robertson & Staines (1818), 18 L. J. C. P. 55.

916. *Add. Citation*:—94 L. J. Ch. 159.

*Add. Annotations*:—*Mentd.* Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355; Brown v. Dagenham District Council, [1929] 1 K. B. 737.

965. *Add. Annotation*:—*Refd.* A.-G. v. Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

993a. *S. P.* SEABOURNE v. POWEL (1686), 2 Vern. 11; 23 E. R. 619.

*Annotation*:—*Refd.* Smith v. Osborne (1857), 6 H. L. Cas. 375.

993b. —.]—(CLAYTON v. NEWCASTLE (DUKE) (1682), 2 Cas. in Ch. 112; 22 E. R. 871, L. C.

*Annotation*:—*Refd.* Morse v. Faulkner (1792), 3 Swan. 429, n.

MAGEE v. STOREY, [1929] N. I. 134.—IR.

### PART II. SECT. 4, SUB-SECT. 3.

623 i. *General rule.*—Lack of jurisdiction in the ct. deprives a judgment of any effect whether by estoppel or otherwise, even though the party alleged to be estopped sought the assistance of the ct. whose jurisdiction is impugned.—*McINTOSH v. PARENT*, [1924] 4 D. L. R. 420, 35 O. L. R. 552.—CAN.

### PART II. SECT. 5, SUB-SECT. 1.

638 x. —.]—*JOURNEY v. RAILWAY PASSENGERS ASSURANCE CO.*, [1924] 1 D. L. R. 308; 50 N. B. R. 501.—CAN.

### PART II. SECT. 5, SUB-SECT. 2.

st. *Should not be pleaded in statement of claim.*—*VICTORIA LUMBER & MANUFACTURING CO., LTD. v. THOMSEN & CLARK* (B. C.), [1926] 4 D. L. R. 971; [1926] 3 W. W. R. 459.—CAN.

sa. *Should not be pleaded in counter-claim.*—*VICTORIA LUMBER & MANUFACTURING CO., LTD. v. THOMSEN & CLARK* (B. C.), [1926] 4 D. L. R. 971; [1926] 3 W. W. R. 459.—CAN.

### PART V. SECT. 2, SUB-SECT. 1.

sb. *Lease null & void.—Lessor under disability.*—Where the Nawab of M. executed a lease of certain immovable property for a term of 21 years in consideration of the sum of rupees 5 lacs as advance of the total rent

payable for & during the said term of 21 years, on a suit being brought by the Nawab for recovery of possession:—*Held*: as the lease contravened condition (1) of the Murshidabad Act it was null & void & the Nawab was entitled to recover possession of the demised property. The Nawab was not estopped from denying the validity of the lease by reason of the Act as he was a person under disability.—*MURSHIDABAD NAWAB v. BILAS ROY CHOUDHURI* (1928), 1 L. R. 56 Calc. 252.—IND.

### PART V. SECT. 2, SUB-SECT. 2.

709 i. *General rule.*—T., to whom a patent of land issued, by deed poll made prior thereto, sold the land to L.:—*Held*: in obtaining the patent T. was estopped by the deed from setting up title in himself under the patent.—*ROBERTSON v. DALEY* (1886), 11 O. R. 352.—CAN.

### PART V. SECT. 2, SUB-SECT. 3.

sc. *By nominee of Crown to convey land.—Subsequent grant to stranger.*—Where the nominee of the Crown gave a bond for a deed of the land to be made when the patent should issue, & in the same bond conveyed & covenanted to guarantee the title:—*Held*: on ejectment by a grantee of the nominee under a deed executed after the patent issued, this bond gave to the obligee no title by estoppel.—*DOE d. MCGILL v. SHEA* (1846), 2 U. C. R. 483.—CAN.

### PART V. SECT. 5.

sd. *Transfer under Real Property Act.—Without special covenants.—Equitable interest subsequently acquired by transferor.*—A transfer of land, in the form provided in the Real Property Act, made by the registered owner & without any special covenants or recitals, does not operate as an estoppel & does not vest in the transferee an equitable interest subsequently acquired by the transferor in the absence of any fraud or misrepresentation by the latter.—*RENNETT v. GILMOUR* (1906), 16 Man. L. R. 304.—CAN.

se. *Deed of adoption.—Accompanied by all necessary ceremonies.*—Where an adoption had taken place with great publicity & with due performance of all the necessary ceremonies, & a formal deed of adoption had been executed & registered & the adopted son had been received into the family of his adoptive father, & where, further, the adoption was not challenged for several years:—*Held*: an estoppel was created whereby the adoptive mother was precluded from afterwards disputing the adoption.—*DHARAM PRAKASH v. KATAWATI DEVI* (1928), 1 L. R. 50 All. 885.—IND.

PART V. SECT. 8, SUB-SECT. 3.—C. 993 vii. —.]—*DOE d. TIFFANY v. McEWAN* (1837), 5 O. S. 598.—CAN.

### PART V. SECT. 9.

*See cases in Part II., Sect. 5, sub-sect. 2, ante.*

## Part VI.—Estoppel in Pais.

- 1021. Add. Annotations:—As to (2) Refd.** Jones v. Waring & Gillow, [1926] A. C. 670. *Generally, Refd.* Commonwealth Trust v. Akotey (1925), 94 L. J. P. C. 167.
- 1036. Add. Annotation:—Refd.** Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.
- 1036a. —.**—[If a man misrepresents a fact, to that fact he is bound, if any other person misled by such misrepresentation acts upon it, & thereby suffers damage.—*BEATTIE v. EBURY* (LORD) (1874), L. R. 7 H. L. 102; 44 L. J. Ch. 20; 30 L. T. 581; 38 J. P. 564; 22 W. R. 897, II. L.; *affg.* (1872), 7 Ch. App. 777, L. JJ.
- Annotations:—Mentd.* Weeks v. Propert (1873), L. R. 8 C. P. 427; McCollin v. Gilpin (1880), 5 Q. B. D. 390; Yorkshire Ry. Wagon Co. v. Maclure & Cornwall Minerals Ry. (1881), 45 L. T. 747; West London Commercial Bank v. Kitson (1884), 13 Q. B. D. 360; Robertson v. Harris, [1900] 2 Q. B. 117; Halbot v. Lens, [1901] 1 Ch. 344; Oliver v. Bank of England, [1901] 1 Ch. 652; Rainford v. Keith & Blackman Co., [1905] 1 Ch. 296.
- 1038. Add. Citation:—132 L. T. 22.**
- 1040. Add. Annotation:—Apld.** Huddersfield Fine Worsteds v. Todd (1925), 134 L. T. 82.
- 1043. Add. Annotation:—Refd.** Houghton v. Nothard, Lowe & Wills (1927), 44 T. L. R. 76.
- 1065. In the twelfth line on p. 297, after the word "agreement," insert "defts. pleaded that the agreement."**
- 1066. Add. Annotations:—Consd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450. *Distd.* Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443. *Refd.* Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 216.
- 1068. Add. Annotations:—Refd.** Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443.
- 1108. Add. Annotations:—Apld.** Silver v. Ocean S.S. Co. (1929), 46 T. L. R. 78. *Refd.* Evans v. Webster (1928), 45 T. L. R. 136.
- 1111. Add. Annotations:—Distd.** Reckitt v. Barnett, Pembroke & Slater (1927), 44 T. L. R. 63. *Refd.* Jones v. Waring & Gillow, [1926] A. C. 670; British & North European Bank v. Zalstein, [1927] 2 K. B. 92; Home & Colonial Insce. v. London Guarantee & Accident Co. (1928), 45 T. L. R. 134.
- 1130. Add. Annotation:—Mentd.** Re Wait, [1927] 1 Ch. 606.
- 1147. Add. Annotation:—Refd.** Laurie & Morewood v. Dudin, [1926] 1 K. B. 223.
- 1148a. —.**—[Defts., warehousemen & wharfingers, held 600 quarters of maize belonging to A., who sold 200 quarters thereof to W. & Co., who sold them to ptlfs., giving to the latter a delivery note, which they lodged with defts. Defts. did not acknowledge it or object to it, but some days later, no weighing out or appropriation of the 200 quarters having taken place, A. stopped delivery. It was contended that on the sale to W. & Co. the latter became tenants in common with A. of the 600 quarters, with the right in W. & Co. to assign their interest therein to ptlfs., although no appropriation of the 200 quarters had taken place:—*Held:* (1) ptlfs. had no claim to the maize; (2) defts. & A. were not estopped from denying that

## PART VI. SECT. 3, SUB-SECT. 1.—A.

**1032 i. How estoppel arises.**—[Estoppel arises where a man is precluded from denying the truth of anything which he has represented to be a fact, though it is not a fact.—*Re MONTGOMERY v. DIAMOND, DIAMOND v. MONTGOMERY*, [1925] 4 D. L. R. 736.—CAN.

**1040 i. Where all parties know the truth—No representation.**—[A tenant after the expiry of his original lease received from his landlord notice to quit at the end of the following month. In reply, he wrote a letter which contained (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment the tenant contended that his original lease being for manufacturing purposes he had a tenancy from year to year, & was entitled to six months' notice:—*Held:* he was not estopped from so contending as the facts affecting the tenancy were within the knowledge of both parties.—*JACKS & Co. v. JOOSAB MAHOMED* (1923), I. L. R. 48 Bom. 38.—IND.

## PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

**1041 xiv. —.**—[In 1894 applt. granted a lease of land "from year to year" to resp. In 1903 resp. wished to build a house on the land & applt. wrote that the lease was a permanent one, though the rent was liable to enhancement. Resps. built a house & applt. received a bonus in respect of it. In 1916 applt. sought to eject resps.:—*Held:* whether the lease was a permanent one under the agreement, applt.'s statement in the letter that it was so was a representation of fact & not an expression of opinion, & he was estopped from denying it.—

*FORBES v. RALLI* (1925), L. R. 52 Ind. App. 178.—IND.

**1044 i. —.**—[In order to found an estoppel a representation must be of an existing fact, not of a mere intention, & a promise which mere statement of an intention to do something in the future is not sufficient.—*RAZANSOFF v. BROUNSTEIN*, [1921] 2 D. L. R. 1170; 2 W. W. R. 500.—CAN.

**1044 ii. S. P. ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE Co. v. BAKER**, [1926] 2 D. L. R. 289; [1926] S. C. R. 297.—CAN.

## PART VI. SECT. 3, SUB-SECT. 1.—B. (g) ii.

**1096 xviii. —.**—[If a person sets up estoppel he must show that he has altered his position to his prejudice owing to the conduct of the other party whom he claims is estopped.—*ST. JOHN COUNTY HOSPITAL v. PECK*, [1924] 2 D. L. R. 163; 51 N. B. R. 324.—CAN.

**1096 xix. —.**—[A tenant in reply to a month's notice to quit wrote a letter containing (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment, he contended that he was entitled to six months' notice:—*Held:* he was not estopped from so contending, as the landlord having already given notice to quit had not shown that he had altered his position by reason of the admission.—*JACKS & Co. v. JOOSAB MAHOMED* (1923), I. L. R. 48 Bom. 38.—IND.

**1096 xx. —.**—[In order to create an estoppel *in pais* it must be shown that he who desires to take advantage of it has acted upon the untrue representation as true, not

knowing it to be untrue, thereby altering his position to his prejudice.—*HUFFMAN v. ROSS* (1925), 57 O. L. R. 320.—CAN.

**1096 xxi. —.**—[Where a person, in reliance on the statement of a third person, pays over money which he has a legal right to get back, it is not true, as a general proposition, that in order to establish prejudice sufficient to support an estoppel against such third person he must show that the payee is insolvent.—*BOYES v. BOILEY*, [1928] 4 D. L. R. 302; [1928] 3 W. W. R. 69.—CAN.

## PART VI. SECT. 3, SUB-SECT. 2.—A.

**1144 xi. —.**—[Pltf. was induced to buy certain lots of land at R. by the representations of the vendor's agent that a near-by block of land was a public park to the free user of which, as a bathing beach & recreation ground, pltf. & his family would be entitled. The vendor, who owned said block, afterwards fenced it off & demanded a fee from pltf. & others for admission to it:—*Held:* on the ground of estoppel, pltf. was entitled to a declaration that he & all persons claiming through or under him were entitled to free passage to & free use of said block at all times as though it were a public park, & to an injunction restraining vendor from doing anything to prevent such passage & use.—*HUGH v. LOW*, [1928] 4 D. L. R. 315; [1928] 2 W. W. R. 710.—CAN.

*sd. As to fault for accident*—[The fact that pltf., the driver of a vehicle which came into collision with a motor car, stated immediately after the accident that he misjudged the distance of the motor car:—*Held:* not to raise any estoppel.—*HUNT v. MORGAN* (Alta.), [1926] 3 W. W. R. 804; [1927] 1 D. L. R. 267.—CAN.

pltf's. were the owners of the 200 quarters of maize.

No doubt property can be acquired by estoppel. In one aspect estoppel does not create a title but merely enables pltf. to rely upon the doctrine & to treat the property as if it had been transferred (SANKEY, J.).—LAURIE & MOREWOOD v. DUDIN (JOHN) & SONS, [1925] 2 K. B. 383; 94 L. J. K. B. 928; 30 Com. Cas. 280; *affd.*, [1926] 1 K. B. 223; 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.

*Annotation:—As to (1) Appl. Re Wait*, [1927] 1 Ch. 606.

1154. *Add. Annotation:—Mentd.* Jones v. Waring & Gillow, [1926] A. C. 670.

1209. *Add. Annotation:—Mentd.* Brown v. Harrison (1927), 96 L. J. K. B. 1025.

1213. *Add. Annotation:—As to (2) Refd.* Anderson v. Equitable Assee. Soc. of the United States (1926), 134 L. T. 557.

1219. *Add. Citation:—1 B. R. A. 210.*

*Add. Annotation:—As to (1) Expld. & Distd.* Gateshead Union Assmt. Com. v. Redheugh Colliery, [1925] A. C. 309.

1223. *Add. Annotation:—Mentd.* London Holeproof Hosiery Co. v. Padmore (1928), 44 T. L. R. 499.

1227. *Add. Annotation:—Consd.* Houghton v. Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

#### PART VI. SECT. 3, SUB-SECT. 2.— B. (a).

*q i.* ————*—Held:* the sellers were not estopped from proving their ownership of the safe.—WALKER v. HYMAN (1877), 1 A. R. 345.—CAN.

*q ii.* ————*—Held:* there was evidence of an estoppel.—WEST v. O'LEARY (1894), 32 N. B. R. 286.—CAN.

#### PART VI. SECT. 3, SUB-SECT. 2.— B. (c).

1173 *iv.* ————*Allegation of previous judgment—Made by attorney ad litem.*—Acquiescence in a judgment cannot be presumed & must be unequivocal: it must be made by the party himself or by his attorney specially authorised & it is not binding upon the principal if made by an attorney *ad litem* acting under his general mandate.—DUBUC v. CORPN. DE MARITON, [1928] 1 D. L. R. 225; [1927] S. C. R. 526.—CAN.

#### PART VI. SECT. 3, SUB-SECT. 2.— B. (e).

*sf. Document evidencing loan.*—Where doft. executed a document evidencing a loan received by him from applt. & constituting an order, for the amount of the advance upon a co. about to be formed for the purpose of acquiring & conducting resp.'s business.—*Held:* the document constituted an estoppel which precluded resp. from giving evidence to contradict or vary the terms thereof, & the money advanced, not having been paid by the co. to applt., resp. was personally liable on the contract.—HEMPENSTALL BROS., LTD. v. POULSON (1928), 22 Q. J. P. R. 156.—AUS.

PART VI. SECT. 3, SUB-SECT. 3.—A.  
1221 *i.* *General rule.*—DERMINGS v. BRIDELL, [1925] 3 D. L. R. 1063.—CAN.

1221 *ii.* ————*—PATTERSON v. SMITH* (1877), 42 U. C. R. 1.—CAN.

1221 *iii.* ————*—Where pltf. induced the ct. to grant him a judgment recognising doft.'s right to timber:—Held:* he was estopped from afterwards contending that doft. had no right to dispose of timber.—MANLEY

v. O'BRIEN, *Re* MACKINTOSH (1901), 22 C. L. T. 74; 8 B. C. R. 280.—CAN.

1221 *iv.* ————*—BAKER v. BAKER* (1904), 40 N. S. R. 470.—CAN.

1225 *i.* *As to position of party estopped.*—A party is not disabled by law from explaining a matter of evidence, only because his explanation consists of circumstances which include wrongdoing on his part.—PRESS v. MATHERS, [1927] V. L. R. 326; 48 A. L. T. 183; [1927] Argus L. R. 197.—AUS.

#### PART VI. SECT. 3, SUB-SECT. 3.—B.

1233 *ii.* ————*—The fact that a person, who has recovered a judgment, takes part in a reference directed thereby, does not bring him within the rule that a person, who after recovering a judgment puts it into effect & accepts benefits under it, is estopped from appealing therefrom.*—MAINFROID v. MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—CAN.

1241 *i.* ————*Property afterwards claimed under another title.*—CONNORS v. MYATT (1915), 49 N. S. R. 139.—CAN.

1243 *i.* ————*Title subsequently acquired by possession.*—SMITH v. SMITH (1884), 5 O. R. 690.—CAN.

*q i.* ————*Sale of reversionary interest.*—FLEMING v. WEST (1881), 14 N. S. R. (2 R. & G.) 294; 1 C. L. T. 709.—CAN.

*a i. Acceptance of credit from unauthorised agent.*—A co., knowing a vendor of goods was giving it credit in a case where the person buying on its behalf has no proper authority so to do, is estopped afterwards from disputing liability on the ground of want of authority.—GREAT WEST SADDLERY CO. v. CANADIAN INGOT IRON CO., [1924] 4 D. L. R. 881.—CAN.

#### PART VI. SECT. 3, SUB-SECT. 3.— C. (a).

1260 *iv.* ————*—Estoppel by acquiescence connotes that the person estopped has represented to the person who is infringing his right that he is not entitled to complain, & that the other party relying upon this repre-*

1228a. *As to performance of statutory duty or exercise of statutory discretion.*—Performance of a statutory duty, or exercise of a statutory discretion, by a corporate local authority is not prejudiced by any prior action which that authority may have taken without aid from the statutes. No estoppel can arise in such a case.—SUNDERLAND CORPN. v. PRIESTMAN, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.

1238. *Add. Annotations:—Consd.* Hyman v. Hyman, [1929] A. C. 601. *Refd.* May v. May (1929), 98 L. J. K. B. 770.

1247. *Add. Citations:—94 L. J. P. C. 93; 132 L. T. 511.*

1257. *Add. Annotations:—Consd.* Huddersfield Fine Worsteds v. Todd (1925), 42 T. L. R. 52. *Mentd. Re Ellis*, [1925] Ch. 564.

1259. *Add. Citation:—132 L. T. 99.*

*Add. Annotations:—Refd.* Page v. Scottish Insee. Corpn. (1929), 98 L. J. K. B. 308. *Mentd.* The Jupiter (No. 2), [1925] P. 69; Employers' Liability Assee. Corpn. v. Sedgwick, Collins, [1927] A. C. 95.

1265. *Add. Annotations:—Refd.* A-G. v. Denby, [1925] Ch. 596. *Mentd.* The Jupiter (No. 3) (1927), 137 L. T. 333.

sentation has altered his position to his detriment.—GOBINDA RAMANUJ DAS MOHANTA v. RAM CHARAN DAS (1925), 1 L. R. 52 Calc. 748.—IND.

1260 *v.* ————*—In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist. The party claiming the benefit of the doctrine must have made a mistake as to his legal rights & must have expended some money or done some act on the faith of his mistaken belief; & the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, & he must have encouraged the other party in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right.*—JAI NARAIN v. JAFAR BEG (1926), 1 L. R. 48 All. 353.—IND.

1260 *vi.* ————*—CROCKER v. HUTCHINSON* (1861), 10 N. B. R. (5 All.) 139.—CAN.

1260 *vii.* ————*—NAUGLER v. JENKINS* (1899), 32 N. S. R. 333.—CAN.

1268 *ii.* ————*Or ultra vires.*—Acquiescence cannot rehabilitate or render valid a transaction which is *ultra vires* or illegal.—GOBINDA RAMANUJ DAS MOHANTA v. RAM CHARAN DAS (1925), 1 L. R. 53 Calc. 748.—IND.

#### PART VI. SECT. 3, SUB-SECT. 3.— C. (b) i.

1270 *vi.* ————*—Where under a contract between pltf's, U.S. citizens, & defts., a Canadian co., payments had been made in different currencies at different times:—Held:* as under the contract payments should be in Canadian currency, payments made in U.S. currency could not operate as an estoppel, as they were made under misapprehension of rights.—MYERS v. UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—CAN.

#### PART VI. SECT. 3, SUB-SECT. 3.— C. (e).

*sm. Assent to sale of goods—Ac-*

**1285a. Acquiescence by trustees—In proceedings for administration of trust.]—**DOYLE v. DOYLE (1850), 12 Beav. 471; 19 L. J. Ch. 246; 15 L. T. O. S. 498; 50 E. R. 1141.

**1294. Add. Annotations:—**Refd. Jones v. Waring & Gillow, [1926] A. C. 670; British & North European Bank v. Zalstein, [1927] 2 K. B. 92.

**1297a. Preparation of deed by solicitor.]—**A conveyance was made by L. to his son for the purpose of giving the latter a colorable qualification to kill game:—*Held*: the solr. who prepared & attested the deed, knowing the purpose for which it was to be used & himself actively furthering the object of the parties, could not afterwards, in trover by the son for the deed, contend that nothing passed to him under it.—*LORD v. WARDLE* (1837), 3 Bing. N. C. 680; 4 Scott, 402; 1 Jur. 382; 132 E. R. 572.

**1311. Add. Annotation:—**Mentd. Riversdale Mill Co. v. Hart (1926), 43 T. L. R. 73.

**1318a. — Payment of rent not due.]—**The predecessors in title of defts. were owners in fee simple of land including both the surface & the strata below the surface. They conveyed the land to plffs.' predecessors by a deed which contained an exception & reservation of all mines & veins of coal in or under the land. Defts. & their predecessors worked the coal mines under the land & made an underground road which was not confined to the seams of coal, but was cut also through the adjacent strata. Along this road they carried coal obtained from mines beyond the limits of the land conveyed to plffs.' predecessors. Defts. & their predecessors had for some years paid rent to plffs. in the belief that they were bound to do so under

a licence from plffs.:—*Held*: (1) by virtue of the exception, the property in the strata below the surface remained in defts. sufficiently to entitle them to construct roads therein & use them in any way they pleased; (2) the payment being voluntary & made under a supposed legal liability created in law no obligation at all, & defts. were not thereby estopped from setting up their title under the conveyance.—*BATTEN POOLL v. KENNEDY*, [1907] 1 Ch. 256; 76 L. J. Ch. 102.

**1319a. Objections to account stated not pressed.]—**BURROUGH'S ADDING MACHINE, LTD. v. ASPINALL (1925), 41 T. L. R. 276, C. A.

**1326. Add. Annotations:—**Consd. Weld v. Petre (1928), 97 L. J. Ch. 399. Refd. Anchor Trust Co. v. Bell, [1926] Ch. 805

**1330. Add. Annotation:—**Mentd. Bow's Emporium v. Brett (1927), 44 T. L. R. 194.

**1345. Add. Annotation:—**Apld. Coplovitch v. Williams (1929), 73 Sol. Jo. 484.

**1347. Add. Annotation:—**Mentd. Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan, [1929] A. C. 127.

**1380. Add. Annotation:—**Refd. Bennett v. Whitehead, [1926] 2 K. B. 380.

**1395. Add. Annotation:—**As to (2) Refd. Australian Bank of Commerce v. Perel, [1926] A. C. 737.

**1402. Add. Annotations:—**Dlst. Reckitt v. Barnett, Pembroke & Slater [1929] A. C. 176. Refd. Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

**1435a. —.]—**LAURIE & MOREWOOD v. DUDIN (JOHN) & SONS, No. 1148a, ante.

*quiescence in condition of goods.]—*In an action to recover for work & labour in pressing a quantity of straw, evidence showed that deft. was of opinion that the straw was not in a fit condition to be pressed, & that he only consented to have the work done on plff. offering to buy the straw, & that plff. subsequently made a sale of the straw which was delivered at his request:—*Held*: plff. was precluded from setting up the unmerchantable condition of the straw in answer to deft.'s counterclaim for the price agreed to be paid.—*PEPPARD v. WOOD, PEPPARD v. CAMERON* (1924), 57 N. S. R. 222.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—**E. (a).

m i. —.]—*MILLER v. R.*, [1927] Exch. C. R. 52; *affd.* [1928] S. C. R. 318.—CAN.

an. *Application of doctrine—Guarantee induced by fraud—Delay in repudiation.]—*A. was induced to guarantee a debt by fraud of debtor. On learning of the fraud from the creditor he did not repudiate the guarantee:—*Held*: it was afterwards too late to set a defence based on the fraud.—*MANTLE LAMP CO. OF AMERICA v. NIXON*, [1924] 3 D. L. R. 1073.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—**E. (b) ii.

so. *Delay in taking security—Creditor estopped from relying on agreement by debtor to give security.]—*Re MCINTYRE, TRUSTEE v. CANADA METAL CO., [1925] 2 D. L. R. 889; 5 C. B. R. 629.—CAN.

sp. *Delay by vendor in giving notice that goods not paid for by agent—Agent's drafts on principal duly met.]—*In an

action by plff. co. against deft. co. for the price of goods:—*Held*: the latter had accepted the London agency's drafts for the goods in the belief that the amounts due in respect thereof had been paid to plff. co. & plff. co. had by its conduct induced deft. co. to believe that such was the case, & was not entitled to recover.—*SOPWITH AVIATION & ENGINEERING CO., LTD. v. MAGNUS MOTORS, LTD.*, [1928] N. Z. L. R. 433.—N.Z.

**PART VI. SECT. 3, SUB-SECT. 3.—**F. (a).

s i. —.]—*Adoption of one of two alternative remedies.]—*HUTCHINSON v. PAXTON, [1928] 4 D. L. R. 704; 63 O. L. R. 74.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—**F. (b).

sq. *Special contract denied—Not available to defeat claims.]—*SPOOK v. GREAT WESTERN RY. CO. (1858), 7 C. P. 526.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—**F. (c).

h i. —.]—*Re KEARNEY'S ESTATE, WHITEHURST, APPELLANT* (1927), 27 S. R. N. S. W. 386; 44 N. S. W. W. N. 117.—AUS.

h ii. —.]—Where a vendor, on default of payment of an instalment of the purchase price of land, takes out an order nisi for foreclosure, he cannot afterwards proceed by way of execution against the purchaser.—*STANDARD TRUST CO. v. LITTLE* (1915), 31 W. L. R. 769.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—**G. (b).

sr. *Nationality of party.]—*Where

plff. was ignorant when he made a contract that deft. was a person of enemy origin & that under War Legislation & Statute Law Amendment Act, 1918, s. 6, the contract was illegal:—*Held*: in an action for breach of contract, deft. would be estopped from alleging that the contract was void on account of his enemy origin since the deft. well knew that fact.—*BRANIGAN v. SARA*, [1924] N. Z. L. R. 481.—N.Z.

**PART VI. SECT. 3, SUB-SECT. 3.—**G. (c).

h i. —.]—*WELLBRAND v. WALKER* (Man.) (1911), 16 W. L. R. 408.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—**H. (a).

**1438 i. A form of acquiescence.]—**GOBINDA RAMANUJ DAS MORANTA v. RAM CHARAN DAS (1925), 1 L. R. 52 Calc. 748.—IND.

t i. —.]—*HUTCHINSON BROTHERS & CO., LTD. v. PERKINS* (B. C.) (1908), 8 W. L. R. 16.—CAN.

st. *Claim to distinctive colour design—Objection not raised in previous proceedings.]—*Plff. co., which had adopted a certain design of contrasting black & white colours for the painting of its cabs, dissimilar to any previously in use in the city in which it conducted its operations, sought by injunction to restrain defts. from using cabs painted a similar design of contrasting blue & white, on the ground that, although the respective cabs might readily be distinguished in daylight, those of defts. were so got up as to be calculated, at night, to deceive people into believing them plffs.' cabs. No instance of actual deception on defts.' part was



1439. *Add. Annotation*:—**Refd.** *Re Wait*, [1927] 1 Ch. 606.
1507. *Add. Annotation*:—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
1537. *Add. Annotation*:—**Refd.** *R. v. Essex JJ., Ex p. Perkins*, [1927] 2 K. B. 475.
1540. *Add. Annotation*:—**Mentd.** *Grant v. Derwent*, 140 L. T. 330.
1542. *Add. Annotation*:—**Mentd.** *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
1549. *Add. Annotation*:—**Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.
1550. *Add. Annotation*:—**Refd.** *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.
1556. *Add. Annotation*:—**Refd.** *Sowerby v. Lindsay* (1928), 44 T. L. R. 501.
1557. *Add. Annotation*:—**Refd.** *Macaura v. Northern Asce.*, [1925] A. C. 619.
1559. *Add. Annotation*:—**Mentd.** *Tarn v. Scanlan, Neilson, Andersen v. Collins, Muller (London) v. Lethem, Muller (London) v. I. R. Comrs.* (1927), 44 T. L. R. 53.
1561. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.
1601. *Add. Annotations*:—**Mentd.** *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265; *Shotts Iron Co. v. Curran*, [1929] A. C. 409.
1602. *Add. Annotation*:—**Refd.** *Guildford Trust v. Goss* (1927), 136 L. T. 725.
1604. *Add. Annotations*:—**Refd.** *Australian Bank*

of Commerce v. Perel, [1926] A. C. 737; *Jones v. Waring & Gillow*, [1926] A. C. 670; *Fenton Textile Asscn. v. Thomas* (1929), 45 T. L. R. 264. **Mentd.** *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 A. B. 244.

1605. *Add. Annotation*:—**Refd.** *Lloyds Bank v. Chartered Bank of India, Australia & China* [1928] 97 L. J. K. B. 609.

1610a. —. —.]—Defts. received a consignment of wheat & issued a delivery order for it, which came into the hands of B. Upon this delivery order B. obtained advances from pltf's. Shortly afterwards defts. issued a second delivery order in respect of the same consignment of wheat. The two delivery orders were different, & such as might reasonably be supposed to relate to distinct consignments of wheat. Upon this second delivery order B. obtained further advances from pltf's, who were under the belief that the delivery orders related to distinct consignments of wheat. B. having afterwards become insolvent:—**Held**: defts. having been guilty of culpable negligence, & such negligence having been the proximate cause of pltf's. loss, were estopped from alleging that the two delivery orders related to the same consignment of wheat, & were liable to compensate pltf's. for the loss sustained by them through the advances to B.—**COVENTRY v. GREAT EASTERN RY. CO.** (1883), 11 Q. B. D. 776; 52 L. J. Q. B. 694; 49 L. T. 641, C. A.

*Annotation*: **Appld.** *Seton v. Lafone* (1887), 19 Q. B. D. 68.

proved, nor was any fraudulent intention of their part to mislead the public established:—**Held**: pltf. having, in previous proceedings, concurred in the painting of defts.' cabs in a particular design & colour now had no ground for complaint.—**BLACK & WHITE CABS, LTD. v. NICHOLSON, NICHOLSON v. BLACK & WHITE CABS, LTD.**, [1928] N. Z. L. R. 273.—**N.Z.**

**PART VI. SECT. 3, SUB-SECT. 3. — H. (b).**

1. —. —.]—The equitable principle prohibiting a party from lying by & reaping the benefit of the expenditure of another's money on his property, applied.—**PUBLIC PROPERTY TRUSTEES v. GILLIS** (1881), 14 N. S. R. (2 R. & G.) 262.—**CAN.**

1465 i. *Works executed by local authority.*—**SANDRINGHAM CITY CORPN. v. RAYMENT** (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] *Argus* L. R. 173.—**AUS.**

1465 ii. —. —.]—A municipal council prepared plans, specifications & estimates for the construction of a street formed or set out on private property. Before the notice to property owners provided for by the Local Govt. Act, 1915, had been sent out, a contract for the work had been entered into by the council & the work commenced. In an action by one of the property owners for a declaration that the municipality was not entitled to a charge on his land for the proportion of the cost of making the said street alleged to be due by him.—**Held**: pltf. had not by conduct waived compliance with the statutory provisions nor was he by conduct estopped from asserting his rights.—**DUNN v. SHIRE OF BRAYBROOK**, [1928] V. L. R. 454; [1928] *Argus* L. R. 286.—**AUS.**

**PART VI. SECT. 3, SUB-SECT. 3. — H. (e).**

**sw. Acquisseer of agent—Holding goods as agent for sale—Goods seized in execution.**—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry:—**Held**: pltf. was not estopped by his agent's silence or conduct from asserting that he was the owner of the lorry.—**MORT v. BARNES**, [1928] V. L. R. 56.—**AUS.**

**PART VI. SECT. 3, SUB-SECT. 3. — I. (b) ii.**

**m (p. 387) Citation**:—For "**AGRICULTURAL INSURANCE CO. OF WATERTOWN v. ANSLEY**" read "**ANSLEY v. WATERTOWN INSURANCE CO.**"

**PART VI. SECT. 3, SUB-SECT. 3. — I. (b) iii.**

1i. —. —.] *To nature of goods delivered.*—**Held**: the purchasers were estopped from alleging that the goods were not as contracted for.—**J. I. CASE THRESHING MACHINE CO. v. MITTEN** (Sask.), [1919] 3 W. W. R. 601; 49 D. L. R. 30.—**CAN.**

**PART VI. SECT. 3, SUB-SECT. 4. — A. 1596 x. —. —.]**—Deft. wished to

purchase a piece of land & approached S. for a loan of the amount which he required to make up the price. S., without the knowledge of deft., obtained from pltf. the money which deft. needed, & presented a mtge. in pltf.'s favour to deft. to sign. Deft. never read the mtge., but understood from the representations of S. that the writing which he signed was merely an acknowledgment of the receipt of the money from S. who, he thought, was advancing it:—**Held**: the mtge. was not the deed of deft. & he was not estopped from alleging that it was not.—**COOIL v. CLARKSON**, [1925] 2 D. L. R. 493; [1925] 1 W. W. R. 1094; 35 B. C. R. 308.—**CAN.**

1605 vi. —. —.]—Where taxes were paid to a municipal employee who had no authority to receive them:—**Held**: the fact that the municipality kept its tax-receipt books, cashier's stamp & tax roll in such a manner that the employee was enabled to get possession of the books, etc., & give a receipt for the taxes, did not estop the municipality from showing his lack of authority, even if it amounted to negligence, since such negligence did not occur in the transaction itself & was not the proximate cause of the taxpayer's payment of his taxes to the employee.—**RICHES v. CITY OF MOOSE JAW**, [1925] 3 D. L. R. 1176; [1925] 3 W. W. R. 127.—**CAN.**

**PART VI. SECT. 5.**

1619 xii. —. —.]—The facts relied upon to establish an estoppel of any kind should be pleaded in any case in which it is intended to rely upon it.—**HUGHES v. J. H. WATKINS & CO.**, [1927] 3 D. L. R. 302; 60 O. L. R. 448; *affd.* [1928] 2 D. L. R. 176; 61 O. L. R. 587.—**CAN.**



## EXECUTION.

## Part II.—Matters Common to all Modes of Execution.

22. *Add. Annotation*:—*Refd.* *Weld v. Petre* (1928), 97 L. J. Ch. 399.
60. *Add. Annotations*:—*Refd.* *Capron v. Capron*, [1927] P. 243; *Burrowes v. Burrowes* (1929), 141 L. T. 201.
61. *Add. Annotation*:—*Refd.* *Kayley v. Hother-sall*, [1925] 1 K. B. 607.
63. *Add. Citation*:—[1925] 1 K. B. 607.
- 88a. *Against co-surety—Judgment debt paid by surety.*—Where a surety has paid a judgment debt & has obtained an assignment of the judgment under Mercantile Law Amendment Act, 1856 (c. 97), s. 5, he must obtain the leave of the ct. under R. S. C., Ord. 42, r. 23, before he can issue execution against his co-surety to enforce contribution to the judgment debt.—*KAYLEY v. HOTHERSALL*, [1925] 1 K. B. 607; 94 L. J. K. B. 348; 132 L. T. 468; 69 Sol. Jo. 310, C. A.
- 146a. ——— *Omission to claim costs.*—Where, at the trial, the judge grants a certificate for speedy execution under 1 Will. 4, c. 7, s. 2, pltf. should issue one writ of execution for the amount of the damages & costs. Where deft. had been arrested under a *ca. sa.* for the damages only, & had paid them, & been discharged out of custody, the ct. refused to allow pltf. to issue another *ca. sa.* for the costs.—*SMITH v. DICKINSON* (1844), 5 Q. B. 602; *Dav. & Mer.* 468; 13 L. J. Q. B. 151; 2 L. T. O. S. 368; 8 Jur. 123; 114 E. R. 1376.
260. *Add. Annotation*:—*Refd.* *Re A Debtor*, No. 549 of 1928, [1929] 1 Ch. 170.
313. *Add. Annotation*:—*Refd.* *Martin v. Benson*, [1927] 1 K. B. 771.
318. *Add. Annotation*:—*Refd.* *Macaulay v. Guaranty Trust Co. of New York* (1927), 44 T. L. R. 99.
380. *Add. Citation*:—*sub nom.* *WALTER v. DAVIES*, *Ex p. GLAMORGAN* (FORMER SHERIFF), 31 L. T. O. S. 169.
- 417a. *Service of writ—On clerk in court.*—*Held*: not good.—*ELLISON v. PICKERING* (1803), 8 Ves. 319; 32 E. R. 377.
- Annotation*:—*Refd.* *Ward v. Arch* (1839), 8 L. J. Ch. 255.
- 417b. *Sheriff's officer remaining in house—Until money paid.*—*MOORE v. BEAMONT* (1795), 6 Term Rep. 137; 101 E. R. 476.

## Part III.—Particular Forms of Execution.

512. *Add. Annotation*:—*Generally*, *Refd.* *The Point Breeze*, [1928] P. 135.
- 556a. ———.—*HODGES v. MARKS* (1618), Cro. Jac. 485; 79 E. R. 414.

*Annotations*:—*Mentd.* *Layton v. Grindall* (1709), 2 Salk. 643; *Hooper v. Lane* (1857), 6 H. L. Cas. 443.

## PART II. SECT. 3.

17 iii. ———.—*CULLEN v.*  
*CULLEN* (1866), 2 Ch. Ch. 94.—CAN.

17 iv. ———.—*Re MCLELAN*  
(B. C.), [1926] 1 W. W. R. 198.—CAN.

sb. *Judgment on promissory note taken for "cash," payment on agreement for sale of land—Issue of execution on note before sale of land—Valid.*—*GOTTON v. DEMPSTER* (Alta.), [1925] 1 W. W. R. 954.—CAN.

## PART II. SECT. 4.

so. *Extension of time for filing renewal—Right of master in chambers to grant.*—*Re RENEWAL OF A CERTAIN EXECUTION*, [1917] 1 W. W. R. 113.—CAN.

## PART II. SECT. 8, SUB-SECT. 1.—C. (c).

o i. ———.—The assignee of a judgment debt can enforce execution only after obtaining leave under K. B. Rule 451, even though the assignment expressly purports to assign the execution issued by the judgment creditor.

## PART II. SECT. 8, SUB-SECT. 2.

sd. *Affidavit in support—Attachment of property of absconding debtor—Con-*  
*stantia* ———.—*Ex p. MOORE* (1883),

## PART II. SECT. 11.

st. *Prior proceedings under Absconding Debtors Act.*—*Held*: a subsequent execution was defeated.—*KERR v*  
*J.S.*

*SCOVIL* (1870), 13 N. B. R. (2 Han.) 16.—CAN.

## PART II. SECT. 15, SUB-SECT. 4.—B. (a) i.

315 iii. ———.—In the absence of special circumstances, & where it was unlikely that leave to appeal would be granted by the Privy Council, the Appellate Div. refused to stay execution of a judgment for £2,801 damages & \$1,414 costs pending an application to the Privy Council for special leave to appeal & refused also to order that security *de restituyendo* should be given by the party levying execution.—*FISMER v. THORNTON*, [1929] App. D. 17.—S. AF.

## PART II. SECT. 15, SUB-SECT. 4.—B. (a) ii.

k i. ———.—*Stay permitted only as to amount involved in suit pending.*—*SCUILLI v. PLANTA* (1928), 39 B. C. R. 450.—CAN.

## PART II. SECT. 15, SUB-SECT. 5.

sj. *Protection of successful party's interests.*—Upon motion by defts. for stay pending appeal:—*Held*: the ct. had inherent jurisdiction to stay proceedings, but a stay should not be granted unless defts. could devise a scheme by which pltf. would be adequately protected.—*BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.* (1924), 55 O. L. R. 127.—CAN.

## PART II. SECT. 20, SUB-SECT. 1.—A. (a).

—*McDONALD*

ARQ

*MITCHELL* (1878), 12 N. S. R. (3 R. & C.) 274.—CAN.

## PART II. SECT. 20, SUB-SECT. 4.—A. (a).

459 i. ———.—*In action by third party.*—Where a third party brings an action against the sheriff for seizure of goods under an execution & establishes a *prima facie* case of title as against the execution debtor, the sheriff must prove a judgment as well as an execution.—*KIRCHHOFFER v. CLEMENT* (1897), 11 Man. L. R. 460.—CAN.

## PART II. SECT. 20, SUB-SECT. 4.—B. (a).

q i. ———.—*Onus of proof on sheriff—To justify seizure.*—*BUCHANAN v. BUCHANAN* (1896), 29 N. S. R. (17 R. & G.) 27.—CAN.

## PART II. SECT. 21.

494 i. *When ordered.*—*HART v. RUTAN* (1874), 23 C. P. 613.—CAN.

## PART III. SECT. 1, SUB-SECT. 1.

506 i. *In respect of what judgment or order—Judgment for instalments of purchase money.*—*WORTH v. DAVIE*, [1917] 1 W. W. R. 615; 11 Alta. L. R. 461.—CAN.

## PART III. SECT. 1, SUB-SECT. 4.—B. (b).

532 iii a. *S. P. HOWARD v. HIGH RIVER TRADING CO.* (1899), 4 Terr. L. R. 109.—CAN.

532 v. ———.—*SNARR v. WADDELL* (1864), 24 U. C. R. 165.—CAN.

574a. ————.]—ANON. (1704), 6 Mod. Rep. 105; 87 E. R. 864.

574b. ————.]—BURDETT v. ABBOT (1811), 14 East, 1; 104 E. R. 501; *affd. sub nom.* BURDETT v. ABBOT, BURDETT v. COLMAN (1817), 5 Dow. 165, II. L.

*Annotations:—*Consol. Harvey v. Harvey (1884), 26 Ch. D. 644. *Mentd.* Launock v. Brown (1819), 2 B. & Ald. 592; R. v. Hobhouse (1820), 2 Chit. 207; Bedreehuud v. Elphinstone (1831), 2 State Tr. N. S. 379; Wellesley v. Beaufort, Long Wellesley's Case (1831), 2 Russ. & M. 639; Beaumont v. Barrett (1836), 1 Moo. P. C. C. 59; Stockdale v. Hansard (1839), 9 Ad. & El. 1; Middlesex Sheriff's Case (1840), 11 Ad. & El. 273; Re Clarke (1842), 2 Q. B. 619; Kiellay v. Carson (1843), 4 Moo. P. C. C. 63; Howard v. Gosset (1845), 10 Q. B. 359; *Re* Martin, *Ex p.* Van Sandau (1845), 4 L. T. O. S. 369; Howard v. Gossett, Gossett v. Howard (1847), 6 State Tr. N. S. 319; Panton v. Hampton (1858), 11 Moo. P. C. C. 347; *Re* Fernandes (1861), 6 Il. & N. 717; *Ex p.* Fernandez (1861), 10 C. B. N. S. 3; Dill v. Murphy (1864), 1 Moo. P. C. C. N. S. 487; A-G. of New South Wales v. Macpherson (1870), L. R. 3 P. C. 268; R. v. Carden (1879), 5 Q. B. D. 1; Bradlaugh

v. Erskine (1883), 47 L. T. 618; Bradlaugh v. Gossett (1884), 12 Q. B. D. 271; Barton v. Taylor (1886), 2 T. L. R. 382; Fielding v. Thomas, [1896] A. C. 600; Heddon v. Evans (1919), 35 T. L. R. 642; Pitchers v. Surrey County Council, [1923] 2 K. B. 57.

582a. ———— Original entry unjustifiable.]—PARKE & PERCIVAL v. EVANS (1615), Hob. 62; 80 E. R. 211.

*Annotations:—*Refd. Lee v. Gansel (1774), 1 Cowp. 1; Sandon v. Jervis (1859), E. B. & E. 942.

614. *Add. Annotation:—*Refd. English Hop Growers v. Dering, [1928] 2 K. B. 174.

615. *Add. Annotation:—*Refd. English Hop Growers v. Dering, [1928] 2 K. B. 174.

680. *Add. Citation:—sub nom.* DICKINSON v. KITCHEN, 8 E. & B. 789; 120 E. R. 293.

*Add. Annotations:—*Refd. The Feronia (1868), 1 L. R. 2 A. & E. 65; Keith v. Burrows (1876), 1 C. P. D. 722.

532 vi. ———— *Earlier writ not renewed within year.*—BANK of MONTREAL v. TAYLOR (1864), 15 C. P. 107.—CAN.

*G. i.* ————.]—HAMILTON PROVIDENT & LOAN SOCIETY v. CAMPBELL (1881), 12 A. R. 250.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (b).

*f. i.* S. P. HINCKS v. SOWERBY (1879), 4 A. R. 113.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) ii.

*sl.* Not last cow.]—MCLEAN v. WATSON (1858), 2 Thom. 406.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) iii.

*sn.* Seisin in fee.]—*Held:* not saleable under an execution against goods.—DOE d. KEIGH v. CALHOUN (1843), 1 U. C. R. 157.—CAN.

*sp.* Interest of assignee of leasehold property in lease.]—*Held:* not saleable under an execution against goods.—DOE d. SIMPSON v. PRIVAT (1848), 5 U. C. R. 215.—CAN.

*st.* Interest in land charged for maintenance.]—*Held:* saleable under execution.—RATHBUN v. CULBERTSON (1875), 22 Gr. 465.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) iv.

607 i. General rule.]—DOE d. AUSMAN v. MINTHORNE (1846), 3 U. C. R. 423.—CAN.

608 iii. ————.]—GILBERT v. JARVIS (1869), 16 Gr. 265.—CAN.

*sv.* Purchaser's interest in land under agreement to buy.]—A purchaser's interest in land which he has agreed to buy is not bound by an execution against him, unless he has become the registered owner.—HUDSON'S BAY CO. v. BULLOCK FARMS, LTD., [1925] 2 W. W. R. 559.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) v.

*o. i.* ———— On homestead transferred to wife.]—Where a husband transfers his homestead to his wife, who becomes the real manager of the farming operations with him as her assistant, the crops grown by her are not exigible under an execution, even though she admits that the farm has been managed in such way because of the existence of the execution.—STANDARD TRUSTS CO. v. BRIGGS, [1926] 2 D. L. R. 379; [1926] 1 W. W. R. 332; 22 Alta. L. R. 113.—CAN.

*o. ii.* ———— On wife's farm worked by debtor.]—*Held:* in the circumstances the crop belonged to the husband & could be seized in execution.—PAREN-

TEAU v. HARRIS (1884), 3 Mail. L. R. 329.—CAN.

*o. iii.* S. P. SLINGERLAND v. MASSEY MANUFACTURING CO. (1894), 10 Man. L. R. 21.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) vii.

*e. i.* ———— Interest in shares.]—SAYRE v. GILFOY, [1925] 1 W. W. R. 992.—CAN.

*e. ii.* ———— Interest of vendor of land.]—A vendor who has retained the legal title as security for payment of his purchase money, has, until full payment has been made, a beneficial interest in the land which, coupled with the legal title, may be seized & sold under execution.—WEIDMAN v. MCCLARY, [1917] 2 W. W. R. 210; 33 D. L. R. 672.—CAN.

*e. iii.* ————]—The provisions of Land Titles Act (Alta.) are such, that a legal execution against land cannot bind an equitable interest in lands registered in the name of a person other than an execution debtor, some form of equitable execution is necessary for the purpose.—SEAY v. THE SOMMERVILLE HARDWARE CO., LTD., [1917] 1 W. W. R. 1497; 33 D. L. R. 508.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) viii.

*sa.* Article claimed as fixture by third party—Interpleader issue directed—Effect of.]—Where an article seized under a writ of execution against goods is claimed by a third person as a fixture the directing of an interpleader issue with respect to it in no way decides that it is a chattel.—FINDLAY v. MENZIES, [1928] 1 W. W. R. 457.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) x.

*n. i.* ———— Paid to debtor's solicitor—For payment of costs of action.]—*Held:* not liable to attachment.—*Re* FORT FRANCES PULP & PAPER CO. v. TELEGRAM PRINTING CO., PHILLIPS & SCARTH v. LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 4 D. L. R. 204.—CAN.

*f. i.* ———— In name of wife & son.]—ROBERT DOLLAR CO. v. WALKER (1926), 36 B. C. R. 405.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) xiii.

*f. i.* ————]—KASSOP v. EVANS (1900), 8 Nfld. L. R. 396.—NFLD.

*f. ii.* ———— Not ship sold under admiralty judgment.]—VANEVRY v. GRANT (1862), 21 U. C. R. 542.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) xv

*q. i.* ————]—In order to be entitled

to an exemption from execution with respect to the tools or implements of his trade, debtor must have been actually following the trade at the time of the seizure.—MCLEOD v. GILVIN CENTRAL TELEPHONE ASSOC. (Sask.), [1926] 1 D. L. R. 216; [1926] 1 W. W. R. 38.—CAN.

*s. i.* Automobile used exclusively for master's business.]—The judgment debtor, the salaried manager of a building co., claimed exemption for an automobile which he used exclusively & continuously in superintending the erection of houses by his co. in different parts of the city. The contract between him & the co. did not require him to supply an automobile, & did not define his duties or the method to be followed in performing them.—*Held:* the automobile was not exempt under Exemptions Act, R. S. M. 1915, c. 66, s. 29 (f), as amended by 1925 Act, c. 20.—GOLDSMITH v. HARRIS, [1928] 3 D. L. R. 478; [1928] 2 W. W. R. 401; 37 Man. L. R. 389.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) xvi.

*e. (p. 493) i.* ———— Part of proceeds consisting of mortgage.]—*Held:* not exempt.—MASSEY-HARRIS CO. v. SCHRAM (1902), 5 Terr. L. R. 338.—CAN.

*e. (p. 493) ii.* ———— Whether proceeds exempt.]—PURDY v. COLTON (1908), 1 Sask. L. R. 288; 7 W. L. R. 820.—CAN.

*d. (p. 493) i.* ————]—MASSEY v. MCCLILLAND, BAKER v. MCCLILLAND (1895), 2 Terr. L. R. 179.—CAN.

*d. (p. 493) ii.* S. P. BOZ v. SPILLER (1905), 6 Terr. L. R. 225; 1 W. L. R. 366; 2 W. L. R. 280.—CAN.

*h. (p. 493) i.* ————]—A motion for final judgment for the sale of land under a registered certificate of judgment will not be granted unless plff. has pleaded in his statement of claim or shown by affidavit that the land is not exempt as the homestead of the debtor. Where a transfer of a homestead is colourable only & the title is held upon a secret trust for the transferor, it does not deprive him of his right of exemption.—DAYHOLM v. KUNIC, [1928] 1 W. W. R. 691.—CAN.

*k. (p. 493) i.* ————]—Plff. brought this action for a declaration that executions registered by deft. in the execution register in a land titles office, against the lands of plff., were not a charge or lien on certain land described, which plff. claimed as his homestead, & for the removal of the executions from the register.—*Held:* if plff. had established that the land described was his "homestead," within Exemptions Ordinance, it was so only for the time that it was occupied by the debtor & his family; there might be a change; & any declaration would

**718a. Debtor's goods sold by public auction—Debtor remaining in possession—Execution creditor present at sale.]—Held:** the goods could not be taken in execution by such execution creditor.—**WOODERMAN v. BALDOCK** (1819), 8 Taunt. 676; 3 Moore, C. P. 11; 129 E. R. 547.

*Annotations:—***Refd.** Aldred v. Constable (1844), 3 L. T. O. S. 299; Hickman v. Cox (1857), 30 L. T. O. S. 279; Barker v. Furlong, [1891] 2 Ch. 172.

**750. Add. Citation:—previous proceedings, 3 C. & P. 524, N. P.**

apply only at the particular moment when made.—**GILMORE v. CALLIES** (1911), 10 W. L. R. 345.—**CAN.**

**k** (p. 493) **ii.** —.—.]—**Plt.** applied to have taken off the register of the title of land transferred to her by her husband, a certain execution obtained against her husband, on the ground that at the time of such transfer the land was her husband's homestead & as such exempt under Exemptions Ordinance. On the facts.—**Held:** the land was, at the time of the transfer to **plt.**, her husband's homestead, & therefore, exempt from seizure.—**HART v. RYE** (1914), 27 W. L. R. 9.—**CAN.**

**k** (p. 493) **iii.** —.—.]—A homestead under Homesteads Act (Sask.) means the home of the debtor, the actual residence of himself & his family, & includes the lot upon which the dwelling-house is situate, according to the registered plan of the same.—**Held:** Exemptions Act, s. 2 (10), applied.—**OVERTON v. GERRITY** (1916), 34 W. L. R. 875.—**CAN.**

**k** (p. 493) **iv.** —.—.]—**Whether exemption extends to members of family.]—MEUNIER v. DORAY** (1905), 6 Terr. L. R. 194.—**CAN.**

**i i.** —.—.]—When debtor is in actual residence on certain property belonging to him, such property is *prima facie* exempt under Exemptions Act, R. S. S., 1920, & the fact that the wife of debtor happens to own a house that had been previously used as the family home cannot deprive debtor of the right to claim the exemption.—**SALTER & ARNOLD, LTD v. DILLMAN**, [1924] 2 W. W. R. 1225.—**CAN.**

**m** (p. 493) **i.** —.—.]—**BAKER v. GILLUM** (1908), 1 Sask. L. R. 498; 9 W. L. R. 436.—**CAN.**

**q i.** —.—.]—**McLATCHIE v. McLEOD** (1890), 6 Mun. L. R. 452.—**CAN.**

**q ii.** —.—.]—**Exemptions Act, Alta.—Not applicable against Crown.]—R. v. O'BRIEN**, [1924] 1 D. L. R. 222; [1924] 1 W. W. R. 104.—**CAN.**

**q iii.** —.—.]—**Rents & profits of.]—The exemption of a homestead from seizure under execution does not extend to the rents & profits thereof, beyond the personal property specified.]—WILKINS v. MINER (Alta.), [1927] 1 D. L. R. 286; [1926] 3 W. W. R. 778.—**CAN.****

**s** (p. 493) **i. Goods of business—Carried on in name of wife—Managed entirely by husband.]—MEAKIN v. SAMBON** (1878), 28 C. P. 355.—**CAN.**

**a** (p. 494) **i. Income of trust fund.]—Deft.'s father devised his estate to trustees upon the trust, among others, "to pay my son A. [deft.] the interest of the sum of \$500 annually during the term of his natural life." An order was made by the master in chambers, directing the trustees to pay over the interest, from time to time accruing, to **plt.**, who was a judgment creditor of the son.—**LOYD v. WALLACE** (1882), 9 P. R. 335.—**CAN.****

**s** (p. 494) **ii. Goods of third party subject to landlord's lien.]—Where goods belonging to a third party are subject to a landlord's lien such goods are liable to execution in respect of a magistrate's ct. judgment for arrears**

rent, without a separate action against the owner of such goods.—**COLUMBIA FURNISHING Co. v. GOLDBLATT**, [1929] App. D. 27.—**S. AF.**

**k** (p. 494) **i.** —.—.]—**RIVERS v. MURPHY** (1893), 3 Terr. L. R. 169.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) i.**

**710 iii.** —.—.]—**Re BANK OF MONTREAL v. TANNAN, TANNAN v. BANK OF MONTREAL**, [1925] 3 D. L. R. 1079.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) ii.**

**p i.** —.—.]—**Sale—No change of possession.]—Judgment in favour of the execution creditor affirmed.]—PETTINGREW v. THOMAS** (1885), 12 A. R. 577.—**CAN.**

**p ii.** —.—.]—**Of land.]—Where an agreement for the sale of land provides that in case the vendor becomes entitled to cancel the contract, he shall have the right to enter into & possess any improvements on the land, & to apply the net receipts therefrom upon the contract, the taking possession by the vendor will prevent the goods so possessed from being exigible under writs of execution against the purchaser.]—**Re CANADIAN PACIFIC RY. CO., CROWN LUMBER Co. v. MCKENZIE** (1916), 10 W. W. R. 1370.—**CAN.****

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) iii.**

**b i.** —.—.]—The fact that goods exempt from seizure under execution are included in a chattel mtge. made by the debtor does not deprive the debtor of his right of exemption.—**FINDLAY v. MENZIES**, [1928] 1 W. W. R. 457.—**CAN.**

**c i.** —.—.]—**Not in possession of debtor—Onus of proof.]—On an interpleader issue between an execution creditor & a claimant of goods which, at the time of their seizure under the execution, were not in the possession of the execution debtor, the onus is on the execution creditor of showing that the execution debtor was the owner of the goods or had an interest therein capable of being seized under the execution; & he must make out a *prima facie* case before the claimant can be put to proof of his case.]—**STEWART v. CURRIE, CANADIAN PACIFIC RY. Co. v. STEWART**, [1928] 1 D. L. R. 842; [1928] 1 W. W. R. 206; 22 Sask. L. R. 351.—**CAN.****

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) x.**

**g i. S. P. KILBRIDE v. CAMERON** (1867), 17 C. P. 373.—**CAN.**

**g ii. S. P. MASSEY-HARRIS v. MOORE** (1905), 6 Terr. L. R. 75.—**CAN.**

**k i. Transfer of property to trustee—In fraud of creditors—Attachment sustained.]—THOMPSON v. ELLIS** (1883), 16 N. S. R. (4 R. & G.) 307.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) xi.**

**sd. Property of husband—Standing in name of wife.]—In an action against a man & his wife, brought by an execution creditor of the man, for a declara-**

**783a.** —.—.]—**FURBER v. STURMEY** (1859), 32 L. T. O. S. 259; 23 J. P. 88; 5 Jur. N. S. 45; 7 W. R. 162.

**804. Add. Annotation:—Refd.** Bosworthick v. Bosworthick (1926), 136 L. T. 211.

**817a.** —.—.]—**TOCOCK v. HONYMAN** (1602), Yelv. 6; 80 E. R. 5.

*Annotations:—***Refd.** Meriton v. Stevens (1741), Willes 271; Giles v. Grover (1832), 9 Bing. 128.

**835. For "——— & finally" read "——— Not finally."**

tion that certain property standing in the name of the wife was exigible under the execution against the husband.—**Held:** the facts & circumstances adduced in evidence did not warrant the inference that the husband intended to defraud creditors. Fraudulent intent should not be found except upon substantial grounds & upon clear evidence.—**ROBERTSON v. ROBINSON**, [1928] 2 D. L. R. 343; 62 O. L. R. 12.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) xii.**

**sx. Execution against hirer—Equitable interest of third party in goods.]—Circumstances in which such interest was preferred to the execution creditor's claim to the proceeds of the goods.]—**BLACK v. BROUILLAUD** (1877) 28 C. P. 107.—**CAN.****

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) xiv.**

**m i.** —.—.]—**Fixtures affixed to mortgaged freehold.]—CARSON v. SIMPSON** (1891), 25 O. R. 385.—**CAN.**

**n i.** —.—.]—**FERRIE v. CLEGHORN** (1860), 19 U. C. R. 211.—**CAN.**

**n ii.** —.—.]—**C. S. U. C. c. 45, s. 3—Effect of.]—ROSS v. SIMPSON** (1876), 23 Gr. 552.—**CAN.**

**n iii.** —.—.]—**SMITH, LTD. v. VANCOUVER CREMATION SOCIETY** (1914), 29 W. L. R. 150; 20 D. L. R. 214.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) xv.**

**p i.** —.—.]—**GURNEY v. JAMES** (1860), 10 U. C. R. 156.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 4.—E. (f) xvi.**

**s i.** —.—.]—**Assets in futuro.]—An execution on a judgment of assets in futuro is invalid if issued without leave after application made under r. 451.]—**Re SMITH'S ESTATE, CANADIAN GUARANTEE TRUST Co. v. DELISLE**, [1924] 4 D. L. R. 1288; [1924] 3 W. W. R. 815.—**CAN.****

**PART III. SECT. 1, SUB-SECT. 4.—E. (g) ii.**

**817 i. Property still remains in debtor.]—RUSSELL v. REID**, [1928] 1 D. L. R. 628.—**CAN.**

**sy. Attachment under Absconding Debtors Act.]—STARR v. MURPHY** (1845), 3 N. S. R. (2 Thom.) 244.—**CAN.**

**PART III. SECT. 1, SUB-SECT. 4.—F. (a).**

**t i.** —.—.]—**RAPELJE (SHERIFF) v. FINCH** (1866), 14 U. C. R. 249.—**CAN.**

**y i. Right to place husband or wife of debtor in possession.]—Though Act 32 of 1917, Ord. 25, r. 5, does not expressly forbid the appointment of the husband or wife of a debtor as a person in whose charge property attached may be left by the messenger, a husband who is a man of no standing & worth nothing is not a suitable person to place in charge of property attached in respect of a debt of his wife.]—**KOTZE v. JOHNSON**, [1928] App. D. 313.—**S. AF.****

881a. May be compelled to sell.—ANON. (1702), 7 Mod. Rep. 118; 87 E. R. 1135.

883a. —.—]—BOTTOMLEY v. HEYWARD (1862), 7 H. & N. 562; 31 L. J. Ex. 500; 7 L. T. 44; 158 E. R. 595; *sub nom.* BOTHAMLEY v. HEYWARD, 8 Jur. N. S. 1156.

924. *Add. Annotation*:—*Mentd.* Lowther v. Harris, [1927] 1 K. B. 393.

954. *Add. Annotations*:—*As to* (3) *Refd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328. *Generally, Mentd.* Jones v. Waring & Gillow, [1926] A. C. 670.

1043. *Add. Annotation*:—*Distd.* *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

1069. *Add. Annotation*:—*Refd.* *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.

1231a. —.— *What amounts to.*]—Where, under process of execution from a county ct., some goods of a stranger had been taken, the mere fact that the execution creditor told the bailiff that goods would be claimed by a third party, but that such claim was not to be regarded:—*Held*: not to amount to a direction to take all the goods, or any which were not liable to be seized, so as to make the execution creditor personally liable.—*CRONSHAW v. CHAPMAN* (1862), 7 H. & N. 911; 31 L. J. Ex. 277; 6 L. T. 54; 10 W. R. 323; 158 E. R. 738.

PART III. SECT. 1, SUB-SECT. 4.—  
F. (c).

*e i.* —.—]—Where execution has been levied upon goods, the sheriff is not bound to leave an officer continuously in possession, & the absence of such officer, if satisfactorily explained, does not amount to such an abandonment of possession as will entitle other persons claiming the goods to take possession of them.—*Re MURPHY* (1927), 27 S. R. N. S. W. 503; 44 N. S. W. W. N. 189.—*AUS.*

PART III. SECT. 1, SUB-SECT. 4.—  
H. (a).

*sz.* *Place of sale.*]—A sheriff cannot lawfully sell goods on deft.'s premises without his permission, & any person going on the premises to purchase may be treated as a trespasser.—*McMASTER v. McPHERSON* (1839), 6 O. S. 16.—*CAN.*

*sa.* *Payment—What amounts to.*]—*CARRALL v. MONTREAL BANK* (1861), 21 U. C. R. 18.—*CAN.*

*sb.* *Setting aside sale—After confirmation.*]—In the absence of fraud or collusion, a sale in execution, which has once been confirmed, cannot be set aside because the decree under which it was held was at first incorrectly drawn up, & has since been amended.—*AQHA HUSAIN v. QASIM ALI* (1925), 1 L. R. 48 All. 94.—*IND.*

PART III. SECT. 1, SUB-SECT. 4.—  
H. (b).

*sd.* *Notwithstanding notice of alleged defect in execution.*]—*McPHAIL v. MCKINNON* (1868), 7 N. S. R. 168.—*CAN.*

PART III. SECT. 1, SUB-SECT. 4.—  
H. (i) ii.

915 vii. —.—]—An execution creditor can take only the precise interest, & no more, which the debtor possesses in the property seized.—*OVERBY v. McLEAN*, [1928] 4 D. L. R. 917; [1928] 3 W. W. R. 328; 37 Man. L. R. 525.—*CAN.*

*st.* *Purchaser estopped from claiming goods as his own.*]—*RUTTAN v. WELLER* (1855), 14 U. C. R. 44.—*CAN.*

PART III. SECT. 1, SUB-SECT. 4.—  
H. (j).

940 iv. —.—]—*MACPIE v. HUNTER* (1882), 9 P. R. 149.—*CAN.*

*sj.* *Proceeds not exceeding amount of landlord's claim.*]—Where the sheriff sells goods for a sum not exceeding the landlord's claim, & the execution creditor claims the money, it is a sufficient answer to show that the landlord has a good claim to the money, although it has not been paid over to him.—*LAMBERT v. CLEMENT* (1897), 11 Man. L. R. 519.—*CAN.*

*sk.* *Payment of preference claim for wages—When wage-earner entitled to preference.*]—*CAMPBELL v. CLEUGH* (1920), 28 B. C. R. 352.—*CAN.*

PART III. SECT. 1, SUB-SECT. 5.—A.

*o i.* —.—]—*STREET v. GLASS* (1840), 3 N. B. R. (1 Kerr) 165.—*CAN.*

965 ii. —.—]—*HART v. REYNOLDS* (1863), 13 C. P. 501.—*CAN.*

967 i. *In respect of what goods—Not property seized under Absconding Debtors Act.*]—*STANTON v. JOHNSTON* (1858), 9 N. B. R. (4 All.) 54.—*CAN.*

967 ii. —.— *Not goods of third party.*]—*ROBINSON v. MCINTOSH* (1899), 4 Terr. L. R. 102.—*CAN.*

*a i.* —.— *Right of sheriff to inquire into claim.*]—Where a landlord makes a claim for rent to be deducted out of the proceeds of an execution, the sheriff is entitled to a reasonable time to inquire into the demand; & where the tenant had denied that any rent was due, & the landlord refused to allow the sheriff time to make the inquiry, the ct. refused the cost of an application to compel the sheriff to pay the rent.—*NOWLIN v. ANDERSON* (1849), 6 N. B. R. (1 All.) 497.—*CAN.*

PART III. SECT. 1, SUB-SECT. 7.

*q i.* —.—]—*MAHON v. CROWE* (1896), 28 N. S. R. (16 L. & G.) 250.—*CAN.*

*q ii.* —.— *Sale bond fide.*]—On an interpleader issue between a buyer of goods from an execution debtor & an execution creditor whose execution was in the hands of the sheriff prior to the sale:—*Held*: the sale was *bond fide*, it was followed by "an actual & continued change of possession" sufficient to satisfy Executions Act, R. S. S. 1920, c. 52, s. 2, & the buyer's absence of knowledge of the execution having been established, the buyer was entitled to the goods under the proviso in said act.—*WILSON v. MATTHEWSON BROS. & MAGERNIN*, [1928] 3 D. L. R. 276; [1928] 2 W. W. R. 136; 22 Sask. L. R. 543.—*CAN.*

*al.* *Assignee—Assignment not filed.*]—*Held*: the execution prevailed.—*CARRCALLEN v. MOODIE* (1856), 15 U. C. R. 92.—*CAN.*

*am.* —.— *Want of notice of writ—Onus of proof.*]—*ROSS v. CREIGHTON* (1890), 40 N. S. R. 131.—*CAN.*

PART III. SECT. 1, SUB-SECT. 9.

*ap.* *Creditors' Relief Act, R. S. A., 1922 (c. 88), s. 30, not applicable.*]—*TERMINAL GRAIN CO. v. SODERBERG*, [1925] 1 D. L. R. 313; [1925] 1 W. W. R. 9.—*CAN.*

PART III. SECT. 1, SUB-SECT. 10.—A.

1020 i. *Return as evidence—Conclusive against sureties.*]—*SHUTER v. GRAHAM* (1848), 2 U. C. R. 164.—*CAN.*

1 i. —.— *Prisoner not deprived of supersedeas.*]—The issuing of a *fi. fa.*, which is not returned, will not deprive a prisoner of a supersedeas.—*JACKSON v. BLACK, BAINBRIDGE v. BLACK, CARVILL v. BLACK* (1858), 9 N. B. R. (4 All.) 79.—*CAN.*

*sr.* *Indorsement of writ.*]—It is a condition precedent to an action under Cos. Act, s. 55, that an execution against a co. is returned unsatisfied in whole or in part; & to enable the action to be brought, even where the co. has become bkpt., a return is not sufficient unless it is indorsed on the writ as required by r. 629, & a certificate is filed as required by r. 632.—*CROWDER v. COLEMAN*, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—*CAN.*

PART III. SECT. 1, SUB-SECT. 11.

*d i.* —.— *Conflicting claims.*]—The ct. will not grant a rule nisi to compel a sheriff to pay over money collected under execution where there are conflicting claims to the fund, but will leave the parties to their remedy by action.—*SCOTT v. ANGUS* (1854), 2 N. S. R. (James) 183.—*CAN.*

*e i.* —.— *For money realised by bailiff—Onus of proof.*]—A sheriff is responsible for all money realised by a bailiff in executing a *fi. fa.*, where the bailiff was appointed by & paid by the sheriff, & in an action against a sheriff for money realised on a *fi. fa.* by his bailiff & not accounted for, the burden is on the sheriff to prove that the bailiff was appointed by the Lieutenant-Governor in Council.—*ROSS v. FISKE*, [1926] 3 D. L. R. 289; [1926] 2 W. W. R. 422; 20 Sask. L. R. 553.—*CAN.*

*e ii.* —.— *Time for bringing—Public Officers Protection Act, 1923 (c. 19).*]—*HOLDEN v. MILBURN* (Sask.), [1927] 1 D. L. R. 271; [1926] 3 W. W. R. 701.—*CAN.*

PART III. SECT. 1, SUB-SECT. 12.—C.

*r i.* —.—]—*MAY v. HOWLAND, FITCH & WEBB* (1859), 19 U. C. R. 66.—*CAN.*

1230 v. —.—]—*A.*, after delivering an execution to a constable, took him down upon land owned by B., showed him hay owned by B., & said it was the property of C. The constable having seized the hay under an execution in a suit to which B. was not a party:—*Held*: A. was answerable for the consequence of what the constable did in obeying his instructions.—*GRAVES v. SPRAGUE* (N. B.) (1920), 53 D. L. R. 337.—*CAN.*

1230 vi. —.—]—*Deft.*, having obtained an order in a ct. of petty sessions against *pltf.*'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of *pltf.*, & was in the possession of L. as his agent for sale. L. did not inform the police of *pltf.*'s claim, & refrained from giving any information of the seizure to *pltf.* until after the lorry had been sold. In an action by *pltf.* for conversion of

1243. *Add. Annotation*:—*Refd. Robinson v. Midland Bank* (1925), 41 T. L. R. 402.
1250. *Add. Citations*:—1 New Pract. Cas. 476; *sub nom. ROLLS v. SENIOR*, 7 L. T. O. S. 60.
- 1281a. *Sale without order of court—Sale not confirmed.*—*R. v. BLUNT* (1828), 2 Y. & J. 120; 148 E. R. 857.
- 1334a. — *Appeal from—Lies to Court of Appeal.* — *SMITH v. TSAKYRIS*, [1929] W. N. 39, C. A.
1358. *Add. Annotations*:—*Mentd. British-American Tobacco Co. v. Jones* (1925), 134 L. T. 405; *Stumbles v. Whitley* (1929), 46 T. L. R. 37.
- 1380a. — — — — — *SMITH v. TSAKYRIS*, [1929] W. N. 39, C. A.
1405. *Add. Annotation*:—*Mentd. Paterson v. Ardrossan Harbour Co.* (1926), 19 B. W. C. C. 621.
1506. *Add. Annotation*:—*Refd. Campbell v. Pollak* (1927), 43 T. L. R. 495.

the lorry:—*Held*: debt. had so intermodded in the distress as to be liable for conversion.—*MOIR v. BARNES*, [1928] V. L. R. 56.—AUS.

1243 i. *Relatification by creditor—Whether giving rise to liability—Wrongful seizure.*—Where a sheriff acting under a valid writ, by the command, & as the servant, of the ct., seizes the wrong person's goods, a subsequent declaration by the execution creditor ratifying & approving the taking cannot alter its character & make it a wrongful taking by the creditor.—*BALLANTYNE v. McCULLOCH & Co. & SONS* (B. C.), [1927] 4 D. L. R. 525; [1927] 3 W. W. R. 148.—CAN.

### PART III. SECT. 1, SUB-SECT. 13.—A.

o i. — *After receipt of attachment.*—*Held*: the sale could not be upheld, & the attachment must prevail.—*RILEY v. NIAGARA DISTRICT BANK* (1866), 26 U. C. R. 21.—CAN.

### PART III. SECT. 2, SUB-SECT. 2.

st. *Not after debt treated by creditor as satisfied.*—*BANK OF UPPER CANADA v. MURPHY* (1850), 7 U. C. R. 328.—CAN.

### PART III. SECT. 2, SUB-SECT. 3.

sv. *Delivery of writ—Land bound from time of delivery.*—*DOE d. NESMITH v. WILLISTON* (1844), 4 N. B. R. (2 Kerr) 459.—CAN.

sw. — *Proof of.*—The sheriff's deed is *prima facie* evidence that the writ was delivered to the sheriff & the land seized & sold under it.—*MITCHELL v. GREENWOOD* (1854), 3 C. P. 465.—CAN.

### PART III. SECT. 2, SUB-SECT. 4.—C.

1340 i. *False return.*—*YOUNG v. BABY (SHERIFF)* (1855), 4 C. P. 537.—CAN.

### PART III. SECT. 2, SUB-SECT. 5.—A.

fi. — *Land of patentee of free grant.*—An execution against the lands of a patentee under the Free Grants & Homesteads Act, R. S. O. 1887, c. 25, on a judgment obtained for a debt incurred before location of the lands, does not operate as a charge against the lands when sold by his devisee, even after the expiry of twenty years from the date of the location.—*Re BRATTY & FINLAYSON* (1896), 27 O. R. 642.—CAN.

1356 i. *Land held under joint tenancy.*—Lands were conveyed to a man & his wife as joint tenants & not as tenants in common:—*Held*: estates by entireties having been abolished, the joint estate was severable, & the interest of one joint tenant could be sold under execution.—*Re CRAIG*, [1929] 1 D. L. R. 142; 63 O. L. R. 192.—CAN.

sz. *Land held by tenant in common—Claim by other tenants in common for rent received in excess.*—*McPHERSON v. McPHERSON* (1883), 10 P. R. 140.—CAN.

sy. — — — — — Under a judgment obtained against a person in a district ct. the registrar of the ct., in executing such judgment, may seize & take under a writ of execution the interests of such person in lands as a tenant in common & upon the writ being forwarded to the

Registrar-General, it is his duty to note it on the *folium* of the register which certifies the title of the registered proprietor as a tenant in common.—*In re GUSS* (1927), 28 S. R. N. S. W. 226; 45 N. S. W. W. N. 32.—AUS.

sz. *Land held by debtor at time of death—On judgment against representative.*—Lands & tenements held in fee simple by a debtor at the time of his decease, may be legally taken in execution on a judgment against his executor or administrator.—*FOURSYTH v. HALL* (1830), Dra. 304.—CAN.

sb. *Estate in hands of executor—Judgment against debtor.*—*In the Estate of CARTER, ASCOT TIMBER CO. LTD., LTD. v. CARTER*, [1928] V. L. R. 290; [1928] Argus L. R. 199.—AUS.

gi. — — — — — *RUSSELL v. RUSSELL* (1881), 28 G. 419.—CAN.

g ii. — — — — — *PARKE v. RILEY*, 3 E. & A. 215.—CAN.

g iii. — *By heir or devisee—Before execution issued.*—*Held*: a bona fide purchaser for value would have a good title as against creditors.—*REID v. MILLER* (1865), 24 U. C. R. 610.—CAN.

sc. *Land registered in name of debtor—Ownership vested in third party.*—*Held*: not executable.—*UNION GOVERNMENT (MINISTER OF JUSTICE) v. BOLAN*, [1927] App. D. 467.—S. AF.

### PART III. SECT. 2, SUB-SECT. 5.—C.

gi. — — — — — After a mtge. in fee has become forfeited by non-payment of the mtge. money, the mtgee's interest in the premises cannot be sold under an execution against land.—*DOE d. CAMPBELL v. THOMPSON* (1813), 2 Ont. Dig. 2630.—CAN.

g ii. — *Right of dower in equity of redemption.*—*CANADIAN BANK OF COMMERCE v. HOLSTON* (1902), 22 C. L. T. 232; 4 O. L. R. 106; 1 O. W. R. 351.—CAN.

ki. *Interest of unpaid vendor.*—The interest of an unpaid vendor of land made exigible under an execution against him by Land Titles Act, R. S. A., 1922, s. 112, includes the legal estate as affected by the contract together with the rights of the vendor under the contract; & it is that estate & those rights which are bound by the writ & may be sold by the sheriff.—*MORTON & COWELL v. HOFFERT*, [1924] 3 D. L. R. 16; [1924] 2 W. W. R. 529.—CAN.

k ii. *Assignee of purchaser under contract of sale.*—The equitable interest of an assignee from the purchaser of a contract for the sale of land is exigible under a writ of *fi. fa.* against the land of such assignee.—*WARD v. ARCHER* (1894), 21 O. R. 650.—CAN.

sd. *Debtor interested in land held by wife—Interest sufficient to discharge debt.*—*MACDONALD & Co. v. TEASDALE* (1913), 24 O. W. R. 534.—CAN.

st. *What interests may be seized—Under amendment to Land Titles Act, s. 125.*—*FOSS v. STERLING LOAN* (1915), 8 W. W. R. 569; 23 D. L. R. 540; 8 Sask. L. R. 289.—CAN.

### PART III. SECT. 2, SUB-SECT. 5.—G.

sg. *Timber.*—Where the owner of land sells the timber after a writ against

his land is placed in the sheriff's hands, & the purchaser cuts down & removes the timber before an injunction is obtained, he is accountable to the execution creditor for such timber.—*BROWN v. SAGE* (1865), 11 Gr. 239.—CAN.

### PART III. SECT. 2, SUB-SECT. 7.

ui. — — — — — *Where prior assignment for benefit of creditors.*—B. made an assignment to C. for benefit of his creditors. Various executions were issued against B.'s lands & notice thereof filed with the Registrar of Titles. C. applied for a certificate of title to B.'s lands:—*Held*: registrar must issue the certificate without endorsing thereon the executions of which he has received notice.—*Re BROOKS* (1900), 12 W. L. R. 303.—CAN.

a i. — *Effect as against assignment for benefit of creditors.*—*MCINTYRE v. SHAW* (1866), 12 Gr. 295.—CAN.

a ii. — *Effect as against unrecorded deed.*—*GRINDLEY v. BLAKIE* (1886), 19 N. S. R. (7 R. & G.) 27; 7 C. L. T. 50.—CAN.

o i. — *Effect on judgment mortgage.*—*Held*: a judgment mtge. did not bind priority over a judgment registered under 3 & 4 Vict. c. 105, but not re-registered within five years next before the registration of the judgment mtge.—*REID v. MILLER*, [1928] N. I. 151.—IR.

e i. — *Judgment for alimony.*—Where, at the time a judgment for alimony is registered against the husband's interest in certain land held by him under an uncompleted agreement for sale, he is in a position to compel specific performance of the agreement, the judgment is a charge on the husband's interest; & if, subsequently to the registration of the judgment, & with knowledge of it, the vendor accepts from the husband a quit-claim deed of all of the latter's estate & interest in the land, the vendor holds that interest subject to the charge until the charge is extinguished.—*BRIGGS v. CARSON*, [1924] 4 D. L. R. 774; [1924] 3 W. W. R. 465; 19 Sask. L. R. 59.—CAN.

o ii. — *How far binding—Defendant mere conduit pipe to convey title from vendor to third party.*—*OWEN v. LYNCH* (1877), 11 N. S. R. (2 R. & C.) 406.—CAN.

e iii. — — — — — 5 R. S. c. 84, s. 21—*Effect of.*—*LOISBURG LAND CO. v. TUTTY* (1884), 16 N. S. R. (4 R. & G.) 401.—CAN.

sh. *Duty of registrar—With notice of writ of execution—Patent not issued for lands entered as homestead.*—*Re CLAXTON* (1890), 1 Terr. L. R. 282.—CAN.

sj. *Judgment not registered—Priority of mortgage.*—*MINERAL PRODUCTS CO. v. CONTINENTAL TRUST CO.* (1906), 37 S. C. R. 517.—CAN.

s (p. 571) i. — — — — — As between the execution creditors of a vendor, & the assignee of his interest under an agreement of sale, whose assignment was acquired subsequently to registration of the executions:—*Held*: the instalment of purchase-money paid into ct. should belong to the execution creditors, but as the money had been

1524. *Add. Annotation*:—*Mentd. Re Quintin Dick*, Cloncurry v. Fenton, [1926] Ch. 992.
- 1552a. — *Equitable interest—Amendment—Costs.*—KIDD v. TALLENTIRE, [1877] W. N. 21.
- 1564a. *Issue into county palatine—Indorsement for less than £50.*—BROWN v. M'MILLAN (1840), 7 M. & W. 196; 10 L. J. Ex. 147; 151 E. R. 736; *sub nom.* BROWN v. MACMILLAN, SAME v. MACPHERSON, 8 Dowl. 852; H. & W. 46; 4 Jur. 1090.
1569. *Add*—ANON. (1774), Lofft, 390.
- 1576a. *When completed.*—OWEN v. OWEN (1831), 2 B. & Ad. 805; 109 E. R. 1341.
- 1577a. — *Whether defendant discharged.*—HODGSON v. TOWNING (1837), Will. Woll. & Dav. 53; *sub nom.* ANON., 1 Jur. 84.
- Annotation*:—*Consd.* Aga Kurboolis Mahomed v. R. (1843), 4 Moo. P. C. C. 239.
- 1578a. *Right to break outer doors.*—MALEVERER

obtained under execution, it should be treated as money realised from the sale of the vendor's interest, & being in the sheriff's hands should be subject to distribution under Creditors' Relief Act.—MORTON & COWELL v. HOFFERT, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—CAN.

PART III. SECT. 2, SUB-SECT. 8.—A.

1459 i. *Right to possession—As against third parties in possession—Not asserting title through debtor.*—EDWARDS v. BENNETT (1869), 5 P. R. 161.—CAN.

1459 ii. — *Possession taken forcibly.*—DOE d. PROK v. ROE (1845), 2 U. C. R. 27.—CAN.

*sm. Duty of sheriff to retain.*—DOE d. CREW v. CLARKE (1841), 1 Ont. Dig. 233.—CAN.

PART III. SECT. 2, SUB-SECT. 10.—A.

a (p. 576) i. — *Mortgage not registered.*—MORFAT v. GROVER (1855), 4 C. P. 402.—CAN.

a (p. 576) ii. — *In hands of receiver.*—A judgment creditor can sell properties in the hands of a receiver of the ct. in execution of a mtge. decree, although the receiver, who was appointed subsequently to the institution of the mtge. suit, was not made a party to the suit.—TOOMKY v. BHUPENDRA NATH BOSE (1928), 1 L. R. 7 Pat. 520.—IND.

h (p. 576) i. — *Jones v. Jones* (1868), 15 Gr. 40.—CAN.

bb (p. 576) i. — *Proof of—In execution on sheriff's deed.*—MORAN v. PATTON (1853), 10 U. C. R. 640.—CAN.

bb (p. 576) ii. — *Delisle v. Dewitt* (1859), 18 U. C. R. 155.—CAN.

bb (p. 576) iii. — *Low v. Hicks* (1870), 21 C. P. 113.—CAN.

bb (p. 576) iv. — *Relation back.*—The title conveyed by a sheriff's deed to land, sold under an execution issued upon a judgment recovered in an action brought on a former judgment in the same ct., does not relate back to the time of signing the first judgment, so as to defeat a conveyance made between the times of signing the first & second judgments.—DOE d. PEABODY v. MCKNIGHT (1838), 2 N. B. R. (Ber.) 567.—CAN.

bb (p. 576) v. — *To day of sale.*—Although a sheriff's deed relates back to the day of sale, for the purpose of defeating intermediate conveyances, the vendee cannot bring ejectment until the execution thereof.—GAVILLER v. BEATON (1862), 12 C. P. 519.—CAN.

cc (p. 576) i. — *Into debtor's title.*—A purchaser of lands on an execution, is entitled to recover in ejectment against the debtor or his representative, without proof of the debtor's title, or that he was in possession of the premises.—MORAN v. PATTON (1853), 10 U. C. R. 640.—CAN.

cc (p. 576) ii. — *To growing crops on land sold.*—Crops growing at the time of the confirmation of a sheriff's sale of the land under an execution pass with the land to the purchaser.—ANDERSON v. STASIUK [1926] 1

D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—CAN.

cc (p. 576) iii. — *Right to claim partition.*—An order made on the appln. of purchaser at a sheriff's sale of the interest of a husband, holding as joint tenant, for partition or sale was affirmed.—*Re CRAIG*, [1929] 1 D. L. R. 142; 63 O. L. R. 192.—CAN.

t (p. 577) i. — *No issue for two weeks.*—ABELL ENGINE & MACHINE WORKS Co. v. SCOTT (1907), 6 Terr. L. R. 302; 6 W. L. R. 272.—CAN.

g (p. 577) i. — *Land held adversely by third party.*—A sheriff selling under execution is not within the class of cases which apply to a person selling land held adversely by another.—DOULL v. KEEFE (1901), 34 N. S. R. 15.—CAN.

h (p. 577) i. — *Error in judgment.*—Held: the sheriff's deed could give no title.—VAREY v. MUIRHEAD (1831), Dra. 486.—CAN.

h (p. 577) ii. — *Too much sold.*—Held: no ground for invalidating the sale.—DOE d. HAGERMAN v. STRONG (1848), 4 U. C. R. 510.—CAN.

h (p. 577) iii. — *Sale in separate lots.*—Held: permissible.—DOE d. ROBERTS v. WATSON (1850), 6 N. B. R. (1 All.) 675.—CAN.

h (p. 577) iv. — *Part only sold—Duty of sheriff to designate portion offered for sale.*—KNAGGS v. LEDYARD (1866), 12 Gr. 320.—CAN.

h (p. 577) v. — *Sale of undivided interest in township lots.*—RATHBUN v. CULBERTSON (1875), 22 Gr. 465.—CAN.

h (p. 577) vi. — *Time of sale.*—Held: the sheriff might sell at any time between the hours named in 27 Geo. 3, c. 12.—DOE d. ROBERTS v. WATSON (1850), 6 N. B. R. (1 All.) 675.—CAN.

h (p. 577) vii. — *Sheriff disregarding judgment creditor's instructions—Bidding at once full amount instead of bidding gradually.*—Held: the judgment creditor had no ground of action against the sheriff.—MARKLE v. THOMAS (SHERIFF) (1856), 13 U. C. R. 321.—CAN.

h (p. 577) viii. — *Proof of.*—ROE v. McNEIL (1863), 13 C. P. 189.—CAN.

h (p. 577) ix. — *Fields v. Livingston & Wightman* (1866), 17 C. P. 15.—CAN.

h (p. 577) x. — *Purchaser elopped from disputing validity.*—FERGUSON v. FERGUSON (1869), 16 Gr. 309.—CAN.

(p. 577) xi. — *Effect of—Sale of equity of redemption—Purchase by assignee from execution creditor—Subsequent conveyance to debtor.*—CHITTICK v. LOWERY (1903), 24 C. L. T. 15; 6 O. L. R. 547; 2 O. W. R. 957.—CAN.

h (p. 577) xii. — *Covenants.*—The implied covenants between vendor & purchaser, including those implied by Land Titles Act, R. S. S., 1920 (c. 67), s. 64 (2), do not come into existence where land is sold by the sheriff under execution.—ANDERSON v. STASIUK (No. 3), [1927] 1 D. L. R.

529; [1927] 1 W. W. R. 49; 21 Sask. L. R. 276.—CAN.

h (p. 577) xiii. — *Right to proceeds—Two writs lodged with registrar.*—*Re THE MASSEY MANUFACTURING Co. v. HUNT, THE McCORMICK HARVESTING MACHINE Co. v. HUNT* (1895), 2 Terr. L. R. 84.—CAN.

h (p. 577) xiv. — *Under writ of execution lodged prior to agreement for sale to third party—Priorities—Affidavits in support of confirmation of sale irregular.*—*Re PRICE* (1912), 21 W. L. R. 299.—CAN.

dd (p. 577) i. *Lands sold subject to "incumbrances"—Whether subject to subsequent executions.*—GRIESE v. WALKER (1913), 23 W. L. R. 709; 4 W. W. R. 77.—CAN.

ee. *Confirmation of sale—Right of appeal.*—A local master, in confirming a sale of land sold under execution, is not acting in a matter of an action in ct. but as *persona designata* under Land Titles Act, R. S. S., 1920, c. 67, & the only appeal is to the Ct. of Appeal.—*ETHER v. NOLLE*, [1924] 1 W. W. R. 493.—CAN.

eb. *Distribution of proceeds of sale.*—The proceeds of a sale of land under execution when paid over to the registrar of the ct. are distributable by him as if they were money in the hands of the sheriff distributable under Creditors' Relief Act. An appeal lies to a judge from the registrar's scheme of distribution.—CAUDWELL v. GEORGE, [1925] 2 D. L. R. 229; [1925] 1 W. W. R. 579; 35 B. C. R. 134.—CAN.

eo. *Right to sell—To realise judgment of county court.*—Queen's Bench Act, 1895, r. 804 to 806, do not authorise proceedings to be taken in a summary way under them for the purpose of realising a registered judgment of a county ct. by sale of land, such rules being applicable only to judgments in the Q. B.—*PROCTOR v. PARKER* (1897), 11 Man. L. R. 485.—CAN.

ed. *Affidavit of execution of transfer—Sworn before unauthorised person.*—*JOHN ABELL ENGINE & MACHINE WORKS Co. v. SCOTT* (1907), 6 W. L. R. 272; 6 Terr. L. R. 302.—CAN.

ef. *Proceedings to confirm sale—How initiated.*—*JOHN ABELL ENGINE & MACHINE WORKS Co. v. SCOTT* (1907), 6 W. L. R. 272; 6 Terr. L. R. 302.—CAN.

PART III. SECT. 2, SUB-SECT. 11.

1557 i. *Order of court—When court will set aside sale—On equitable grounds.*—WOOD v. LEEING (1827), Tay. 463.—CAN.

1557 ii. — *Campbell v. Smith* (1863), 10 Gr. 206.—CAN.

1557 iii. — *Notice of motion not given to purchaser.*—Held: the ct. would not interfere.—*McGILLIS v. McDONALD* (1839), 2 Ont. Dig. 2662.—CAN.

PART III. SECT. 3, SUB-SECT. 3.—A.

sg. *Proceedings after surrender—Set aside.*—WARD v. STOCKING (1825), Tay. 216.—CAN.

- v. SPINKE (1537), 1 Dyer, 35 b; 73 E. R. 79.
- Annotations*:—**Mentd.** Russel v. Gulwol (1599), Cro. Eliz. 657; Lasington's Case (1600), Cro. Eliz. 750; Mouse's Case (1608), 12 Co. Rep. 63; Case of Parliament in Ireland (1613), 12 Co. Rep. 116; Lifford's Case (1614), 11 Co. Rep. 46 b; Secheverel v. Dale (1626), Poph. 193; Simmons v. Norton (1831), 9 L. J. O. S. C. P. 185; Cope v. Sharpe, [1910] 1 K. B. 168; Cope v. Sharpe (No. 2), [1912] 1 K. B. 496.
- 1578b. — **After escape of prisoner.**—ANON. (1774), Lofft, 390; 98 E. R. 709.
- 1578c. — **—**—HOPKINS v. NIGHTINGALE (1794), 1 Esp. 99; 170 E. R. 292, N. P.
- 1579a. — **Opening of door obtained by trick.**—**Held**: an unlawful entry.—PARKE & PERCIVAL v. EVANS (1615), Hob. 62; 80 E. R. 211.
- Annotations*:—**Refd.** Lee v. Gansel (1774), 1 Cowp. 1; Sandon v. Jervis (1859), E. B. & F. 942.
- 1579b. — **—**—ANON. (1695), 12 Mod. Rep. 73; 88 E. R. 1172.
- 1580a. — **What is outer door—Whether hole in wall.**—Where it was proved that a hole in the outer wall of a house was not intended to have either a door or window put into it, but was to remain open, so that the place should be used as a conservatory:—**Held**: if the hole in the wall had been intended to have had a door or window put into it, it must be considered that the outer fence of the house was left open, but if the hole was always intended to be left open, the staircase window must be considered as the outer fence of the house.—WHALLEY v. WILLIAMSON (1836), 7 C. & P. 294; 173 E. R. 130.
- 1581a. — **—**—RING v. HLYDE (1850), 14 L. T. O. S. 377.
- 1584a. — **—**—**Held**: valid.—ANON. (1702), 7 Mod. Rep. 8; 87 E. R. 1060.
- Annotation*:—**Apld.** Sandon v. Jervis (1858), E. B. & F. 935.
- 1584b. — **Window broken to take into custody.**—**Held**: valid.—LLOYD v. SANDILANDS (1818), 8 Taunt. 250; 2 Moore, C. P. 207; 129 F. R. 379.
1615. *Add. Annotation*:—**Mentd.** Cumberland v. Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.
- 1658a. — **More than amount of rent due—Redelivery of surplus**—Several crops having been taken under an *habere facias possessionem* issued on an ejectment brought against a tenant for holding over, the ct. refused a rule for the lessors of pltf. to pay over the value of them to deft. after deducting the amount of rent due.—DOE d. UPTON v. WITHERWICK (1825), 3 Bing. 11; 10 Moore, C. P. 267; 3 L. J. O. S. C. P. 126; 130 E. R. 417.
- Annotation*:—**Refd.** Kelly v. Webber (1860), 3 L. T. 124.
1704. *Add. Annotation*:—**Folld.** Employers' Liability Assce. Corpn. v. Sedgwick, Collins, [1927] A. C. 95.
- 1706a. — **—**—**Payment of rent—How rent calculated.**—Upon a motion to set aside an ejectment & restore possession upon payment of the rent due & costs, the rent must be calculated only to the last rent day, not to the day of computing.—DOE d. HARCOURT v. ROE (1813), 4 Taunt. 883; 128 E. R. 579.
1720. *Add. Annotations*:—**Apld.** Burrowes v. Burrowes (1929), 141 L. T. 201. **Refd.** Capron v. Capron, [1927] P. 243.
1753. *Add. Annotations*:—**Refd.** Capron v. Capron, [1927] P. 243; Burrowes v. Burrowes (1929), 141 L. T. 201.
1754. *Add. Annotations*:—**Refd.** Capron v. Capron, [1927] P. 243; Burrowes v. Burrowes (1929), 141 L. T. 201.
- 1754a. — **—**—**Semle**: arrears of alimony accrued due come within the scope of R. S. C., Ord. 43, as constituting disobedience to an order not merely to pay money, but to do so within a limited time.—CAPRON v. CAPRON, [1927] P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.
1758. *Add. Annotation*:—**Refd.** Re Nelson, Norris v. Nelson, [1928] Ch. 920, n.
1769. *Add. Annotations*:—**Refd.** Engelke v. Musmann, [1928] A. C. 433. **Mentd.** Dickinson v. Del Solar (1929), 45 T. L. R. 637.
1847. *Add. Annotation*:—**Refd.** Capron v. Capron, [1927] P. 243.
1855. *Add. Annotation*:—**Refd.** Capron v. Capron, [1927] P. 243.
- 1882a. *S. P. Re* RUSH (1870), L. R. 10 Eq. 442; 39 L. J. Ch. 759.
1900. *Add. Annotation*:—**Mentd.** *Re* Lloyd's
1912. *Add. Annotation*:—**Refd.** Capron v. Capron, [1927] P. 243.
1944. *Add. Citations*:—*sub nom.* KIRLEW v. BUTTS, 2 B. & Ad. 736, n.; 109 E. R. 1318. *Add. Annotations*:—**Apld.** Britten v. Wait (1832), 3 B. & Ad. 915. **Refd.** Newland v. Watkin (1832), 2 Moo. & S. 174; Colebrooke v. Layton (1833), 1 Nev. & M. K. B. 374.

## Part V.—Analogous Proceedings.

2046. In the cross-reference before this case, for 'METROPOLIS' read 'MAYOR'S & CITY OF LONDON COURT.'
2081. *Add. Annotation*:—**Mentd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

PART III. SECT. 3, SUB-SECT. 5.—A.  
a i. — *By mistake—Second writ*  
LONEY (1842),

a ii. — *Where proof of no intention to leave province—Ownership of property sufficient to satisfy debt.*—TOOLE v. HENNEBERRY, [1928] 3 D. L. R. 38.—CAN.

sk. *Not granted—Debtor having interest in land not subject to execution.*—*Re* GELDERT v. HOAR, *Ex p.* GELDERT (1899), 34 N. B. R. 612.—CAN.

PART III. SECT. 5, SUB-SECT. 3.  
By whom signed & issued—  
By clerk of court & not by judge.—  
ALLENACH v. DESBRISAY (1860), N. B. Dig. 493.—CAN.

PART V. SECT. 1, SUB-SECT. 2.—A.  
sl. *Magistrate's order for maintenance of deserted wife—Affirmed by county court.*—*Held*: a judgment enforceable by the attachment of a debt due to the husband.—BROWN v. BROWN, [1927] 4 D. L. R. 314; [1927] 3 W. W. R. 172;

38 B. C. R. 473.—CAN.

sm. *Judgment by consent—Not to be entered till subsequent date.*—Where a consent judgment provides that it shall not be entered until a subsequent date the party for whom the judgment is given cannot in the meantime truthfully make the affidavit required by King's Bench Act, s. 759, for the obtaining of a garnishee order.—HODGINS v. HARRIS INVESTORS, LTD., [1929] 1 D. L. R. 189; [1928] 3 W. W. R. 540.—CAN.



**2084a. Person out of jurisdiction.**—R. S. C., Ord. 45, r. 1, contemplates both a garnishee & a debt recoverable within the jurisdiction.

A judgment debtor had a balance in an English bank with foreign branches where foreign currency was in use. It was claimed that a garnishee order obtained in England against the bank should extend to possible balances to the credit of the judgment debtor at its foreign branches:—*Held*: the foreign balances, not constituting a debt recoverable within the jurisdiction, could not be attached by a garnishee order.—**RICHARDSON v. RICHARDSON**, [1927] P. 228; 96 L. J. P. 125; 137 L. T. 492; 43 T. L. R. 631; 71 Sol. Jo. 695.

**PART V. SECT. 1, SUB-SECT. 2.—B.**

**ni.**—*Making assignment in bankruptcy.*—Where after recovering a judgment the judgment creditor makes an assignment in bkpy., & there has been no re-assignment of the judgment to him, a garnishee summons issued by him, on an affidavit which states that the judgment debtor is indebted to him in respect of such judgment, is a nullity & cannot be cured by acquiescence, particularly in the absence of knowledge on the part of the garnishee.—**LANIN v. ZAWISLAK & DEMOSKY (Sask.)**, [1927] 2 W. W. R. 71.—**CAN.**

**PART V. SECT. 1, SUB-SECT. 2.—C.**

**2077 ii.**—*—*—An application to set aside a garnishee summons, on the ground that the money attached is trust money & does not belong to appt., will not be entertained.—**THOMPSON v. FRASER (Sask.)**, [1926] 3 W. W. R. 251.—**CAN.**

**k.** Read now "2084a i. Person out of jurisdiction."

**l.** Read now "2084a ii."

**m.** Read now "2084a iii."

**n.** Read now "2084a iv."

**o.** Read now "2084a v."

**so.** *Debtor out of jurisdiction.*—*Writ obtained ex parte.*—*Leave to execute.*—**JONES v. JONES**, [1928] V. L. R. 24.—**AUS.**

**sq.** *Company in liquidation.*—When a co. is in liquidation its funds are not subject to garnishment.—**RUELLE (GRAIN GROWERS ASS'N., LTD. v. CLEATOR & SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD.)**, [1928] 1 W. W. R. 222.—**CAN.**

**PART V. SECT. 1, SUB-SECT. 3.—A.**

**r (p. 621) i.**—*—*—Money paid into ct. cannot be attached by garnishing the clerk of the ct.—**ROYAL BANK OF CANADA v. VAN BUREN & MCKAY (Alta.)**, [1927] 1 W. W. R. 268.—**CAN.**

**r (p. 621) ii.**—*—*—Money paid into ct. as compensation due to the dependants of a deceased workman under Workmen's Compensation Act, 1925 (c. 81), is not subject to arrestment.—**WILLIAM BAIRD & CO. v. CAMPBELL**, [1928] S. C. 314.—**SCOT.**

**r (p. 621) iii.**—*Money deposited with returning officer.*—*Held*: not attachable.—**CREAGH v. SUTHERLAND & READE** (1895), 3 Terr. L. R. 303.—**CAN.**

**k (p. 622) i.**—*—*—**HIME v. COULTHARD** (1910), 15 W. L. R. 288; 20 Man. L. R. 164.—**CAN.**

**k (p. 622) ii.**—*For destruction of exempt property.*—Where a claim for damages for the destruction of exempt property has been converted into a debt, the amount thereof is not exempt from garnishment.—**ROSS v. ROGERS & CANADIAN NATIONAL BKS. (Sask.)**, [1927] 3 W. W. R. 169.—**CAN.**

**l (p. 624) i.**—*Deposit paid under agreement to purchase.*—Judgment debtor by memorandum in writing

agreed to purchase from appls. (garnishees) land on which a house was to be erected. He agreed to pay & paid to appls. £100 deposit & "balance" purchase-money when house is completed. No price was specified. It was not clear on the evidence whether the price had been subsequently agreed or not, but, on an account being rendered to debtor for £1,150, he said he would consider the matter, & continued to negotiate either as to the price or arrangements for payment until he was served with the garnishee order *nisi*, when he agreed to take the land for £1,150:—*Held*: the amount of the deposit was neither a debt owing or accruing from the garnishees to judgment debtor, the deposit was intended to remain with appls. until it was certain that negotiations for the contract had failed, & was not subject to attachment.—**MAYWALD v. RIEDEL**, [1927] S. A. S. R. 345.—**AUS.**

**m (p. 624).** *Revsd.*, [1924] 1 D. L. R. 1154; [1924] 1 W. W. R. 707; 18 Sask. L. R. 158.

**m (p. 624) i.**—*—*—The balance of purchase-money owing under an agreement of sale of land, though all overdue, & assuming that the vendor is able & willing to convey & that the contract contains the usual provisions as to transfer, free from encumbrances on payment of the purchase-money, but where no transfer has been given or tendered, is not attachable by garnishment, as the debt is not a perfected & unconditional one.—**KEED v. BENTON & PETTINGER**, [1924] 2 W. W. R. 223.—**CAN.**

**m (p. 624) ii.**—*Balance of payment to mortgagee under policy taken out by mortgagor.*—A hail-insurance policy taken out by a mtgor. on a crop growing on the mortgaged land provided that all loss thereunder should be payable to the mtgoes., "as their interests may appear" & that the policy was held as collateral security to the mtge. On a loss occurring, the amount thereof was paid by the insurance co. to the mtgoes., who applied part of it in payment of arrears then due on the mtge. & entered the surplus in their books "to the credit of the mtge. account." On being served with a garnishee order the mtgoes. paid the amount claimed into ct.:—*Held*: the money in ct. should be paid to the garnishing creditor.—**ROYAL BANK OF CANADA v. KENWARD**, [1925] 4 D. L. R. 905; [1925] 3 W. W. R. 549.—**CAN.**

**m (p. 624) iii.**—*Purchase-money deposited in escrow.*—The purchase price of land deposited in escrow pending the showing of proper title & delivery of the conveyance:—*Held*: garnishable, where there was no suggestion that there was any defect of title, or that there would be any obstacle to the execution & delivery of the conveyance.—**HANKEY & CO., LTD. v. VERNON**, [1926] 1 D. L. R. 684; [1926]

**2086a.** —*—*—**FASNNIDGE v. FLINT & SON** (1892), 8 T. L. R. 213.

**2107. Add. Annotation.**—*Refd.* **Re Pinto Leite & Nephews, Ex p. Visconde Des Oliveira**, [1929] 1 Ch. 221.

**2108. Add. Annotation.**—*Expld.* **Re Clark, Clark v. Clark**, [1926] Ch. 833.

**2121. Add. Annotation.**—*Refd.* **Richardson v. Richardson**, [1927] P. 228.

**2124a. Must be recoverable within jurisdiction.**—**RICHARDSON v. RICHARDSON**, No. 2084a, *ante*.

**2156. Add. Annotation.**—*As to (1) Refd.* **Re Pinto Leite & Nephews, Ex p. Visconde Des Oliveira**, [1929] 1 Ch. 221.

1 W. W. R. 375; 36 B. C. R. 401.—**CAN.**

**PART V. SECT. 1, SUB-SECT. 3.—B.**

**sj.** *Must be at time of issue of summons.*—**THORSON v. BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.)**, [1927] 3 D. L. R. 641; [1927] 2 W. W. R. 439.—**CAN.**

**sk.** *Claim by dismissed servant.*—Where the debt alleged to be due from the garnishee to deft. was based on an oral agreement of service for one year, & deft. had been dismissed by the garnishee & had retained a solr., who wrote stating that deft. intended to hold the garnishee to his contract & threatening legal proceedings, but no writ had been issued at the time of the service of the garnishee summons:—*Held*: there was no debt due or accruing due from the garnishee to deft.—**MASON v. MCLEOD & FOSTER**, [1925] 1 D. L. R. 752; [1925] 1 W. W. R. 165; 19 Sask. L. R. 221.—**CAN.**

**PART V. SECT. 1, SUB-SECT. 3.—E.**

**2124 ii.**—*—*—**PARKER v. MCILWAIN** 1896, 17 P. R. 84.—**CAN.**

**PART V. SECT. 1, SUB-SECT. 3.—F.**

**2131 ii.**—*—*—Garnishee orders take effect only as against that which debtor can properly, & without violation of any other rights of any one else, grant.—**CAMPBELL v. GEMMELL** (1890), 6 Man. J. R. 355.—**CAN.**

**t i.** *Debt due to judgment debtor in hands of co-defendant.*—*Held*: not attachable.—**GILCHRIST v. WILEY** (1881), 28 Gr. 425.—**CAN.**

**sl.** *Debt due from one partnership to debtor of another partnership.*—*One partner common to both firms.*—**MCCORMICK v. PARK** (1859), 9 C. P. 330.—**CAN.**

**so.** *Money lodged by candidate for election.*—*Before election held.*—Moneys lodged by a candidate for election under Local Government Act, 1915, s. 127, are not, before the election has taken place, attachable as a debt due by the returning officer to the candidate.—**HUNT v. BALFOUR**, [1928] V. L. R. 488; [1928] A. L. R. 313.—**AUS.**

**PART V. SECT. 1, SUB-SECT. 3.—H.**

**p i.** *Assignment of earnings of farm implement.*—An assignment of 25 per cent. of the earnings of a farm implement in favour of the vendor takes priority over a garnishee order attaching such earnings, even though the notice required to be given by the vendor was not served until after the service of the garnishee order.—**TURNER v. WATERLOO MANUFACTURING CO.**, [1926] 2 D. L. R. 706; [1926] 1 W. W. R. 949; 35 Man. L. R. 472.—**CAN.**

**PART V. SECT. 1, SUB-SECT. 3.—I.**

**2142 iv.**—*—*—The word "debts,"



**2169. Add. Annotations:—***Refd.* Employers' Liability Assce. Corp'n. v. Sedgwick, Collins, [1927] A. C. 95; Richardson v. Richardson. [1927] P. 228.

**2170. Add. Annotations:—***Folld.* Employers' Liability Assce. Corp'n. v. Sedgwick, Collins, [1927] A. C. 95. *Refd.* Richardson v. Richardson, [1927] P. 228.

**2170a. ————.**—[Pltfs. had brought an action & had signed a judgment against a Russian co. in default of appearance. Service of the writ had been effected by leaving a true copy of the writ of summons with one C., who was the person authorised by registration in England to accept service on behalf of deft. co. under Companies (Consolidation) Act, 1908 (c. 69), s. 274. The co. had been liquidated in Russia but this liquidation took no account of debts due to the co. by English debtors or by the co. to English creditors, & an order had since been made to wind up the co. in England. The English liquidator decided not to attack

the judgment. C. had endeavoured without success to have his name removed from the register:—*Held:* the judgment creditors were entitled to a garnishee order attaching money due to the Russian co. from a debtor of that co. in this country.—*SEDGWICK COLLINS & CO. v. ROSSIA INSURANCE CO. OF PETROGRAD*, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 603, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. v. SEDGWICK, COLLINS & CO., [1927] A. C. 95; *sub nom.* SEDGWICK, COLLINS & CO. LTD. v. ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L.

*Annotations:—**Refd.* The Jupiter (No. 3) (1927), 137 L. T. 333; Sabatier v. Trading Co., [1927] 1 Ch. 495; First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922.

**2188. Add. Annotations:—***Refd.* Richardson v. Richardson, [1927] P. 228; Douglass v. Lloyds Bank (1929), 31 Com. Cas. 263.

**2210a. ————.**—*Not necessary to make judgment debtor a party.*—*LEVENE v. MATON* (1907), 51 Sol. Jo. 532.

as used in Code of Civil Procedure, s. 60, applies only to debts actually due; it cannot include debts, e.g. rent, which may become due in the future. Rent which has not yet become due cannot be attached either as a debt or as an actionable claim.—*LACHMAN v. JARBANDHAN* (1927), 1 L. R. 50 All. 507.—*IND.*

#### PART V. SECT. 1, SUB-SECT. 3.—J.

*c* (p. 633) i. — *Amount of exemption*—*Not affected by payments made on account.*—*CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. v. HOBBS, DYCKE & CANNORE COAL CO., LTD.* (Alta.), [1927] 1 W. W. R. 401.—*CAN.*

*d* (p. 633) i. — *Deputy sheriff & gaoler.*—*Ex p. BOWES* (1896), 34 N. B. R. 76.—*CAN.*

*d* (p. 633) ii. — *Workman—Duration of employment.*—*DOMINION LUMBER & FUEL CO. v. KNAPP*, [1928] 2 W. W. R. 257; 37 Man. L. R. 353.—*CAN.*

*e* (p. 633) i. — ————.—*On the proper construction of Dried Fruits Act, 1924, in acquiring under that Act dried fruits on behalf of His Majesty the Minister of Agriculture acts merely as the instrument of the Crown. The obligation to pay for the fruits is upon the Crown & not upon the Minister as such, & therefore is not subject to attachment by garnishee proceedings.*—*MILDURA CO-OPERATIVE FRUIT CO., LTD. v. NOYCE, Re NOYCE, Ex p. MINISTER OF AGRICULTURE*, [1928] V. L. R. 390; [1928] Argus L. R. 234.—*AUS.*

*r* (p. 634) i. — ————.—*The rule, whereby the remuneration of the holders of public offices is exempt from arrestment, applies to the wages of an ordinary workman in the employment of a Govt. Department.*—*MULVENNA v. THE ADMIRALTY*, [1926] S. C. 842.—*SCOT.*

*t* (p. 634) i. — ————.—*Under School Act, R. S. A., 1922 (c. 51), a teacher's salary is not a debt accruing due from day to day.*—*THORSON v. BLAIRMORE SCHOOL DISTRICT TRUSTEES* (1925), 1 L. L.

*f* (p. 634) i. — *Army surgeon.*—*The pay of an assistant-surgeon, attached to a British regiment serving in India, is not liable to attachment in execution of a decree of a civil ct.*—(1925), 1 L. L.

#### PART V. SECT. 1, SUB-SECT. 4.

*an. To what court—Court of division*

*where garnishee resides.*—*Re SAVORY v. DESJARDINS*, [1927] 1 D. L. R. 541; 59 O. L. R. 645.—*CAN.*

*s. Revsd.*, 17 Alta. L. R. 109.

*d* (p. 637) i. — ————.—*In an affidavit in support of a garnishee summons, deponent must swear positively to the indebtedness & the amount thereof, & if his affirmation as to the amount is upon information & belief only his previous positiveness as to the indebtedness is thereby qualified; & as to a judgment debt the affidavit must show not only the existing indebtedness, but also the amount for which judgment was recovered.*—*FROST v. ROCHON & VERHELST*, [1924] 3 W. W. R. 422.—*CAN.*

*d* (p. 637) ii. — ————.—*An affidavit in support of a garnishee summons with respect to a judgment debt, need not state the original amount of the judgment, but only the amount still due thereon.*—*PONTIUS v. SMITH & CONNAUGHTY*, [1925] 3 D. L. R. 513; [1925] 2 W. W. R. 293; 19 Sask. L. R. 497.—*CAN.*

*d* (p. 637) iii. — ————.—*An affidavit for a garnishee order is not sufficient, unless it states that it is founded upon information & belief, or that deponent has knowledge of the facts.*—*TILICUM ATHLETIC CLUB v. BURICK*, [1925] 3 W. W. R. 368.—*CAN.*

*d* (p. 637) iv. — ————.—*Where the affidavit in support of a garnishing order states that the garnishee is a certain named bank, it describes the garnishee sufficiently.*—*VAN WASENAER v. ADAMS*, [1927] 3 D. L. R. 180; [1927] 2 W. W. R. 287; 38 B. C. R. 275.—*CAN.*

*d* (p. 637) v. — ————.—*An affidavit for garnishing order before judgment must state shortly & concisely the cause of action in common & plain language, & a garnishing order issued where the affidavit filed is defective in this respect will be set aside.*—*HUHN v. BOGACH*, [1928] 3 W. W. R. 422.—*CAN.*

*h* (p. 637) i. — *Time for swearing.*—*The fact that the affidavit in support of a garnishee summons was sworn before the action was begun, although on the same day on which the statement of claim was issued, is ground for setting the garnishee summons aside.*—*MCPARLAND v. SEYMOUR*, [1925] 4 D. L. R. 944; [1925] 3 W. W. R. 666; *revsd.*, [1925] 4 D. L. R. 325; [1925] 3 W. W. R. 256.—*CAN.*

#### PART V. SECT. 1, SUB-SECT. 5.—B.

*q* i. ————.—*Service of a garnishee*

summons set aside, the copy served not having been a true copy.—*LIVERGANT v. CAPITAL JOBBERS, LTD.*, [1925] 3 W. W. R. 719.—*CAN.*

#### PART V. SECT. 1, SUB-SECT. 6.—B. (a).

*2206 i. (Claim by third party.—Duty of court—Rights of third party.)—Held:* when it is suggested by the garnishee on the return of an order nisi for the attachment of a debt that there is a claim by a third person in respect of that debt the justices should, in accordance with Justices Act, 1915, s. 131, direct such third person to appear & state the nature & particulars of his claim; & where such third person appears, & his claim is disregarded by the justices, he has a right to be heard & is entitled to review an order of the justices as a "person who feels aggrieved" within sect. 150 of the same Act.—*HUNT v. BALFOUR*, [1928] V. L. R. 488; [1928] Argus L. R. 313.—*AUS.*

*h* i. — *Affidavit of denial—Cross-examination on—What questions must be answered.*—*WILSON v. FLEMING* (1900), 19 P. R. 203.—*CAN.*

*h* ii. — *Attachment of Debts Act.*—*There is strong authority for holding that a garnishee has not the right to have a garnishee summons set aside on an application based merely on the ground that there is no debt due from the garnishee to deft., since Attachment of Debts Act, s. 8, makes provision for determining such an issue.*—*SIMONSON v. SIMONSON*, [1928] 3 D. L. R. 31; [1928] 1 W. W. R. 863; 22 Sask. L. R. 481.—*CAN.*

#### PART V. SECT. 1, SUB-SECT. 6.—B. (b).

*sp. Onus of proof.*—*ADOLPH v. HILTON & STEPHENS* (1907), 7 Terr. L. R. 407; 6 W. L. R. 119.—*CAN.*

#### PART V. SECT. 1, SUB-SECT. 6.—C. (b).

*t* i. — *Jurisdiction of district court judge to set aside.*—*RABINOVITCH v. FRIST*, [1927] 3 D. L. R. 892; [1927] 2 W. W. R. 673; 21 Sask. L. R. 582.—*CAN.*

*st. Debt not liable to be garnisheed.*—*Indian Act, R. S. C. 1906, ss. 99, 102.*—*ARMSTRONG GROWERS' ASSOCN. v. HARRIS*, [1924] 1 D. L. R. 1043; 1 W. W. R. 729; 33 B. C. R. 285.—*CAN.*

*sv. Error in form.*—*ARMSTRONG GROWERS' ASSOCN. v. HARRIS*, [1924] 1 D. L. R. 1043; 1 W. W. R. 729; 33 B. C. R. 285.—*CAN.*

2279. *Add. Annotation*.—*Refd.* C. L. v. C. F. W., [1928] P. 223.

2280. *Add. Annotation*.—*Refd.* C. L. v. C. F. W.,

2350. After the word "*Held*" add "(ERLE, J., *diss.*)"

*Annotations*.—For the annotations in the original volume substitute as follows:—

*Annotations*.—*Dtd.* Beavan v. Oxford (1856), 6 De G. M. & G. 507. I prefer the opinion of ERLE, J., to that of the other three judges (TURNER, L.J.). *N.F.* Kinderley v. Jervis (1856), 22 Beav. 1; Scott v. Hastings (1858), 4 K. & J. 633. *Consd.* Nicholls v. Rosewarne (1859), 6 C. B. N. S. 480. *N.F.* Bonham v. Keane (1861), 1 John. & H. 685. *Dtd.* Pickering v. Ilfracombe Ry. (1868), L. R. 3 C. P. 235; Robinson v. Nesbitt (1868), L. R. 3 C. P. 264. The opinion of the majority of the ct. in that case is no longer law (BOVILL, C.J.). *N.F.* Gill v. Continental Union Gas Co. (1873), L. R. 7 Exch. 332. *Dtd.* Punchard v. Tomkins (1882), 31 W. R. 286. The case of *Watts v. Porter* is itself unsound law, but ERLE, J.'s

*sw. Who may apply.*—A "person claiming to be interested in the money attached," within Attachment of Debts Act, R. S. S. 1920 (c. 59), s. 7, is some person, other than plff., deft., or garnishee, who claims some interest in the money attached by the garnishee summons.—PONTIUS v. SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513; [1925] 2 W. W. R. 293; 19 Sask. L. R. 497.—CAN.

*sv.* —.—]—HOYD & ELGIE v. KERSEY (B. C.), [1927] 2 D. L. R. 679; [1927] 1 W. W. R. 665; 38 B. C. R. 342.—CAN.

#### PART V. SECT. 1, SUB-SECT. 7.

*t i.* *Against prior assignment—Validity of assignment—Trial of issue to determine—Power to order.*—PAQUET Co., LTD. v. WIESE & KRANT (Alta.), [1927] 1 W. W. R. 685.—CAN.

*t ii.* —.—]—*Creditors Relief Act, R. S. B. C.*, 1924 (c. 59).—VERNON HARDWARE Co. v. REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—CAN.

#### PART V. SECT. 1, SUB-SECT. 8.

2242 ii. —.—]—BRETHOUR v. TAYLOR & BANK OF MONTREAL (B. C.), [1927] 3 W. W. R. 166.—CAN.

2242 iii. —.—]—*After notice of assignment of reversion.*—FOULDS v. CHAMBERS (1896), 11 Man. L. R. 300.—CAN.

*sa.* —.—]—*By judgment debtor—To sheriff.*—*Held*: payment by the judgment debtor to the sheriff of the amount of the execution did not entitle him to have the garnishees discharged.—KOLJEA v. GENSER (Man.), (1912), 22 W. L. R. 197; 6 D. L. R. 188.—CAN.

*t i.* —.—]—*Distribution—Under Creditors Relief Act.*—WARD (ROBERT) & Co., LTD. v. WILSON (1907), 7 W. L. R. 37; 13 B. C. R. 273.—CAN.

#### PART V. SECT. 2, SUB-SECT. 5.—A.

2289 i. *Fund in court—Paid under garnishee proceedings.*—PRAT v. HITCHCOCK, JONAH v. HITCHCOCK, [1925] 3 D. L. R. 1142.—CAN.

#### PART V. SECT. 2, SUB-SECT. 6.—A.

*sb.* *Costs of obtaining orders—On winding-up of company—By whom payable.*—RE SASKATCHEWAN CO-OPERATIVE ELEVATOR Co., LTD., DAVIDSON v. SWANSON (S.), [1928] 2 W. W. R. 256.—CAN.

#### PART V. SECT. 3, SUB-SECT. 2.—D.

2393 i. *Right of assignor to fund.*—

construction of Judgments Act, 1838 (c. 110), is now held to be the law (CHITTY, J.). *N.F.* *Re General Horticultural Co., Ex p. Whitehouse* (1886), 32 Ch. D. 512; *Re Leavesley*, [1891] 2 Ch. 1; *Vacuum Oil Co. v. Ellis*, [1914] 1 K. B. 693. *Refd.* *Hirsch v. Coates* (1856), 18 C. B. 757; *Croft v. Lumley* (1858), 6 H. L. Cas. 672; *Baker v. Tynite* (1860), 2 E. & E. 807. *Mentd.* *Whistler v. Forster* (1863), 14 C. B. N. S. 248.

2454. *Add. Annotation*.—*Refd.* *Ideal Films Richards*, [1927] 1 K. B. 374.

2463. *Add. Annotation*.—*Refd.* *Re Bueb*, [1927] W. N. 299.

2465. *Add. Annotation*.—*Refd.* *Re Bueb*, [1927] W. N. 299.

2502. *Add. Annotation*.—*Refd.* *Ideal Films v. Richards*, [1927] 1 K. B. 374.

2526. *Add. Annotation*.—*Refd.* *Guatemala (Re-publica de) v. Nunez* (1926), 95 L. J. K. B. 955.

*Re DAVIDSON & SMITH, Ex p. LONDON GUARANTEE & ACCIDENT Co.*, [1925] 2 D. L. R. 433.—CAN.

#### PART V. SECT. 3, SUB-SECT. 4.

*e i.* —.—]—*Compensation for dependants of deceased workman.*—Money paid into ct. as compensation due to the dependants of a deceased workman under the Workmen's Compensation Act, 1925, is not subject to arrestment.—WILLIAM BAIRD & Co., LTD. v. CAMPBELL, [1928] S. C. 314.—SCOT.

#### PART V. SECT. 3, SUB-SECT. 6.

*sc.* *Order obtained without notice of prior assignment—Notice of assignment entered in accountant's office.*—COTTINGHAM v. COTTINGHAM (1886), 11 O. R. 294.—CAN.

#### PART V. SECT. 5, SUB-SECT. 1.

2448 i. *Not execution but equitable relief.*—Equitable execution is a means of freeing exigible assets from impediments in the way of execution & reaching them when such impediments prevent them from being taken in the ordinary course; it will not be awarded unless it is reasonably clear that benefit will be derived from the appointment of a receiver.—STRANG v. BEAL, [1923] 3 D. L. R. 1141; 52 O. L. R. 208.—CAN.

#### PART V. SECT. 5, SUB-SECT. 2.

*sd.* *Of master.*—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution.—BAIRD v. MURPHY, [1928] 1 K. B. 125.—IR.

*se.* *Effect of County Courts Act, R. S. M., 1913, s. 57.*—Under the above sect. county ct. judges in Manitoba have no jurisdiction to make an order for the appointment of a receiver if the order is, in effect, an injunction against deft. restraining him from receiving the moneys therein referred to.—McFARLANE v. FRANKLIN, [1924] 3 D. L. R. 605; 2 W. W. R. 1036; 34 Man. L. R. 293.—CAN.

*sf.* *Action commenced in one judicial district—Appointment of receiver—Land in another district.*—INTERNATIONAL HARVESTER Co., LTD. v. KIRK, [1928] 1 W. W. R. 303; 22 Sask. L. R. 485.—CAN.

#### PART V. SECT. 5, SUB-SECT. 3.—A. (a).

2453 v. —.—]—A plff. who holds a judgment on which he is entitled

to issue a writ of execution against goods only, & who seeks the appointment of a receiver to take possession of the goods, must show (*inter alia*) that he is entitled to have the goods seized, but that it is impossible owing to some impediment in law of deft.'s interest.—LANGSTAFF v. SQUIRRELL, [1924] 2 D. L. R. 930; [1924] 1 W. W. R. 1265; 18 Sask. L. R. 250.—CAN.

2453 vi. —.—]—The appointment of a receiver by way of equitable execution will not as a general rule be made, unless there exists some special difficulty or legal impediment to obtaining execution in the ordinary course by garnishment of the debt due to the execution debtor.—ROYAL TRUST Co. v. KRITZWISER, [1924] 3 D. L. R. 596; [1924] 2 W. W. R. 760.—CAN.

2453 vii. —.—]—Before a receiver by way of equitable execution can be appointed, there must be a legal right in the creditor to be paid out of the particular asset, which he cannot reach unless aided by the ct.; but the creditor cannot by this process reach a kind of asset not exigible under legal execution.—EATON v. BRANT (1924), 55 O. L. R. 346.—CAN.

2453 viii. —.—]—THOMSON v. CUSHING (1889), 30 O. R. 123.—CAN.

2453 ix. —.—]—NOVA SCOTIA MINING Co. v. GREENER (1898), 31 N. S. R. (19 R. & G.) 189.—CAN.

*sk.* *Whether granted as of right.*—It is erroneous to assume that because property of a judgment debtor is not liable to the ordinary processes of execution, the judgment creditor must be able successfully to invoke the equitable jurisdiction of the ct. to obtain realisation of the property.—MATTHEWSON v. STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—CAN.

#### PART V. SECT. 5, SUB-SECT. 3.—C.

*ni.* *Legal estate in remainder.*—A vested interest in land subject to another person's life estate does not constitute a sufficient present interest in land to justify the appointment of a receiver with a view to realisation.—MATTHEWSON v. STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—CAN.

*qi.* —.—]—BARNES v. SHARPE, [1924] 2 D. L. R. 1119; 2 W. W. R. 462.—CAN.

## Part VI.—Discovery in Aid of Execution.

2547a. — On foreign debtor — Temporarily within jurisdiction — Form of order.]—PRACTICE NOTE, [1928] W. N. 209.

## PART VI.

**h i.** — [Where an order under Rule 478 (1) for the examination of a judgment debtor orders his attendance for examination, it is not necessary to serve him with a *subpoena* under Rule 480; the service of the order & appointment on him with payment of conduct money is sufficient. But if such order provides only that he be orally examined & does not order him to attend for examination or to produce his books or documents, it is then necessary to serve a *subpoena* to compel his attendance or to produce such books & documents as may be required. — *GREAT WEST LIFE ASSCE. CO. v. WRIGHT*, [1928] 4 D. L. R. 144; [1928] 2 W. W. R. 94; 22 Sask. L. R. 409.—**CAN.**

**s i.** — *Mortgagor—Although execution stayed.*]—*FRANCO-BELGIUM INVESTMENT CO. v. MCNAMARA* (Alta.), [1918] 2 W. W. R. 929.—**CAN.**

**a i.** — [Order made for examination, where it was disclosed that judgment debtor had purchased & put in his wife's name certain land & had paid out money on account of the purchase price & for interest & taxes.—*BEAU MONDE LADIES' TAILORING CO. v. GARRETT*, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

**a ii.** — *Mother-in-law of judgment debtor.*]—Order made for examination,

where it was disclosed that judgment debtor had made payments to his mother-in-law of sums which it was alleged she had lent him.—*BEAU MONDE LADIES' TAILORING CO. v. GARRETT*, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

**b i.** — *Transferee of land in another Province.*]—*CRUCIBLE STEEL CO. v. FOLKES* (1912), 21 O. W. R. 302; 3 O. W. N. 750; 1 D. L. R. 381.—**CAN.**

**2552 i.** *Nature of examination.*]—The questions should be limited to the scope of the order for examination.—*FLANAGAN v. ENGLAND*, [1926] 3 D. L. R. 360; [1926] 2 W. W. R. 428; 20 Sask. L. R. 579.—**CAN.**

**2552 ii.** — *Judgment on contract readjusting earlier contracts.*]—On examination for discovery in aid of execution on a judgment recovered on a contract, debtor may be required to answer questions relating to his property & his dealings with it prior to the date of the contract sued on, where it is shown, even by evidence adduced on an application to a judge to compel debtor to answer the questions, that the contract had replaced earlier contracts between the same parties & was merely a readjustment of a liability incurred prior to its date.—*STANDARD TRUST CO. v. WALTER*, [1926] 1 D. L. R. 86; [1926]

1 W. W. R. 16; 22 Alta. L. R. 176.—**CAN.**

**st.** *Refusal to attend.*]—K. B. Rules (Sask.), Ord. 33, contains no provision for compelling the attendance of a person ordered to attend for examination other than that contained in r. 480.—*SASKATOON HARDWARE CO. v. McMANUS*, [1924] 3 D. L. R. 344; 2 W. W. R. 809.—**CAN.**

**sz.** — *Non-attendance on previous day waived.*]—Where non-attendance on the day fixed by an order for debt.'s attendance for examination as a judgment debtor is waived by ptfr., debt. cannot be committed for failure to attend upon a subsequent day, the effect of the order being spent.—*HYATT v. OWENS*, [1927] 3 D. L. R. 563; 60 O. L. R. 489.—**CAN.**

**sa.** *Scope of examination—Evidence admissible as proof of ability to pay.*]—On an application under King's Bench Act, s. 51 (a), the ct. has no jurisdiction to adjudicate upon the question of a fraudulent conveyance, yet the circumstances under which the debtor has transferred his property may be considered for the purpose of assisting the ct. in concluding whether the debtor's failure to pay his debts was due to inability or unwillingness to pay.—*BELL v. LONG*, [1928] 3 W. W. R. 208.—**CAN.**

## Part I.—General Principles.

- n ii. —.]—MONTREAL TRUST CO. v. CANADIAN PACIFIC RY. CO., [1927] 4 D. L. R. 373; 61 O. L. R. 137.—CAN.

125. *Add. Annotation*:—**Mentd.** Crediton Gas Co. v. Crediton U. C., [1928] Ch. 447.
155. *Add. Annotation*:—**Mentd.** Sharpe v. Southern Ry., [1925] 2 K. B. 311.
167. *Add. Annotations*:—**Mentd.** *Re* Annesley, Davidson v. Annesley, [1926] Ch. 692; Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930; *Re* Ross, Ross v. Waterfield (1929), 46 T. L. R. 61.

## Part II.—Admissibility of Evidence.

- 301a. *Effect of letter written by plaintiff's solicitor.*—A letter written by pltf.'s attorney, demanding payment of an inclosed bill, does not confine pltf. from going into evidence of other matters not included in the bill so inclosed.—**SHORT v. EDWARDS** (1795), 1 Esp. 373; 170 E. R. 390, N. P.
312. For "Letters from agent—Forming part of contract" substitute "— Letters from agent—Forming part of contract."  
In the cross-reference following this case, for "— After contract complete" substitute "After contract complete."
343. *Add. Annotation*:—**Refd.** Manchester Corpn. v. Farnworth (1929), 46 T. L. R. 85.
370. *Add. Annotation*:—**Refd.** Short v. Poole Corpn. (1925), 42 T. L. R. 107.
374. *Add. Annotation*:—**Mentd.** Baines v. National Provincial Bank (1927), 96 L. J. K. B. 801.
395. *Add. Annotation*:—**Apld.** Thompson v. London, Midland & Scottish Ry. (1929), 98 L. J. K. B. 615.
397. *Add. Annotation*:—**As to** (1) **Refd.** Koskas v. Standard Marine Insec. (1926), 42 T. L. R. 692.
417. *Add. Citation*:—132 L. T. 229.
418. *Add. Annotation*:—**Mentd.** *Re* Clayton's Petn. (1927), 43 T. L. R. 659.
419. *Add. Annotations*:—**Mentd.** Holland v. Holland, [1925] P. 101; Warren v. Warren, [1925] P. 107; Mart v. Mart, [1926] P. 24; Selby v. Atkins (1926), 135 L. T. 45; S. v. S. & P. (1927), 44 T. L. R. 52.
- 421a. —.—.—**SMITH v. WILKINS** (1833), 6 C. & P. 180; 172 E. R. 1198, N. P.

### PART I. SECT. 6, SUB-SECT. 1.—A.

119 xxv. — *Payment.*—**BRONDRON v. NORTHGRAVES** (Sask.), [1925] 3 W. W. R. 456.—**CAN.**

119 xxvi. — *Loan not repaid.*—To establish a claim for money lent pltf. must allege & prove non-payment. On the hearing of a complaint in a ct. of petty sessions for money lent, evidence was given by deft. that he had repaid the money, & by the complainant denying the repayment. The justices, being unable to decide whether or not repayment of the loan had been made, dismissed the complaint.—**Held**: as the complainant had not established his case, the justices were right in dismissing the complaint.—**NELSON v. CAMPBELL**, [1928] V. L. R. 364; [1928] Argus L. R. 221.—**AUS.**

### PART I. SECT. 7, SUB-SECT. 1.

q i. —.—.—Where practically all the correspondence between the parties save one letter, had been placed in evidence:—**Held**: the way had been opened, & the entire correspondence was properly admissible.—**EAGLES v. CANADIAN BANK OF COMMERCE** (1920), 47 N. B. R. 480.—**CAN.**

266 ii. —.—.—Where there was no unfairness to accused in admitting as evidence only a portion of a statement:—**Held**: the judge was not bound to admit the whole statement.—**R. v. SCHWARZ**, [1923] S. A. S. R. 347.—**AUS.**

### PART II. SECT. 1.

h (p. 54) i. —.—.—*Evidence of absence of previous accident.*—In an action for damages for injuries resulting from a fall sustained by the female pltf. when entering deft.'s hotel on a visit to one of the sample rooms, evidence of the hotel manager that during the ten years he had been manager he had never heard of any accident at or complaint of the entrance in question was held admissible.—**WAY v. LELAND HOTEL CO., LTD.**, [1928] 2 D. L. R. 235; [1927] 3 W. W. R. 224.—**CAN.**

ag. In action for breach of contract—Correspondence irrelevant to issue—

*Affecting conduct of parties before & at trial.*—**BURKARD & CO., LTD. v. WATLEN** (1928), 28 S. L. N. S. W. 607; 45 N. S. W. W. N. 201.—**AUS.**

s j. *By consent—Evidence otherwise inadmissible.*—Evidence not otherwise admissible, or which would have been liable to rejection if any objection were taken to it, may be perfectly good evidence if admitted by the consent of the parties.—**RADHA KISHAN v. KEDAR NATH** (1924), 1 L. L. R. 46 All. 815.—**IND.**

### PART II. SECT. 3, SUB-SECT. 2.—A.

306 i. —.—.—*Circumstances of case.*—A promissory note was discounted with private funds advanced by a bank manager as agent for the lender. In an action against the original maker & another party, who signed the note as a maker, at the request of the manager, before its maturity, but several months after it was discounted, & while it was in the bank for collection:—**Held**: evidence of the conversation between the manager & such party at the time the latter signed was admissible on his defence of want of consideration as part of the *res gestæ*.—**ROGERS v. WEIR** (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—**CAN.**

*Telephone conversation—Proof of authority of agent.*—**Held**: telephone conversation was admissible, where evidence existed from which it could be inferred that the telephone conversation took place with a person authorised to engage in such a conversation.—**Re DREYFUS** (LOUIS) & SOUTH AUSTRALIAN MILLING & TRADING CO., [1923] S. A. S. R. 75.—**AUS.**

### PART II. SECT. 3, SUB-SECT. 2.—D. (b).

an. *Report by agent to principal.*—**Held**: a telegram & a letter dispatched shortly after a sale of goods by the seller's agent to his employers recording his version of the transaction may competently be referred to for the

purpose of testing his credibility.—**GIBSON v. NATIONAL CASH REGISTER CO.**, [1925] S. C. 500.—**SCOT.**

### PART II. SECT. 3, SUB-SECT. 5.—C.

r i. —.—.—*Of defendant.*—In an action under Customs Act to recover unpaid customs duties & penalties:—**Held**: evidence of a conversation between deft. & a customs official subsequent to the transactions in issue was admissible, since it tended to show that deft. was again proposing to defraud the customs in practically the same manner in which he was alleged to have done so in the case at bar.—**It. v. ZIZU NATANSON** (No. 1), [1927] 3 D. L. R. 591; [1927] 2 W. W. R. 139; 48 Can. Crim. Cas. 194; 21 Sask. L. R. 518.—**CAN.**

### PART II. SECT. 3, SUB-SECT. 8.—A.

h i. —.—.—*Indecent assault.*—In an action for damages for indecent assault evidence of the general reputation for unchastity of pltf. is admissible, but evidence of specific acts of impropriety is not.—**GROSS v. BRODRICHT** (1897), 24 A. R. 687.—**CAN.**

n i. —.—.—**EDWARDS v. OTTAWA RIVER NAVIGATION CO.** (1876), 39 U. C. R. 264.—**CAN.**

so. *Sparks from engine causing fire—Previous fires caused by engine.*—**Held**: admissible.—**CANADA CENTRAL RY. CO. v. McLAREN** (1883), 8 A. R. 564.—**CAN.**

### PART II. SECT. 4, SUB-SECT. 1.—C.

n i. —.—.—**DEVEHER v. ROOF** (1876), 16 N. B. R. (3 Pug.) 295.—**CAN.**

### PART II. SECT. 4, SUB-SECT. 2.—A.

495 ii. —.—.—Admissions in civil cases should be considered, made use of, & interpreted in the same way as confessions in criminal cases.—**ROGERS v. WEIR** (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—**CAN.**

496 ii. —.—.—**LARGE v. PERKINS** (1823), Tay. 62.—**CAN.**

525. *Add. Annotation*:—**Mentd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

535a. *Admissions "without prejudice."*—At the trial of an action, pltf's. proposed to put in evidence the examination, taken on commission, of a representative of pltf's. as to admissions alleged to have been made by a representative of defts. Defts. contended that the alleged admissions had been made at interviews which, although they had not been expressed to be "without prejudice," were such that they would be regarded as having been made "without prejudice," & that the examination was inadmissible:—**Held**: the examination was inadmissible.—**SCOTT PAPER CO. v. DRAYTON PAPER WORKS, LTD.** (1927), 44 R. P. C. 151; *on appeal*, 44 R. P. C. 529, C. A.

537. *Add. Annotation*:—**Consd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

544. *Add. Annotation*:—**Consd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

580a. *Admission by author—As to copyright.*—**FALCON v. FAMOUS PLAYERS FILM CO., LTD.**, No. 624a, *post*.

595. *Add. Annotation*:—**Refd.** Warren v. Warren, [1925] P. 107.

624a. *Agent of predecessor in title—Licensee of copyright.*—(1) By an agreement in writing dated June 30, 1898, one G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—**Held**: a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties, who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since (a) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result; & (b) it constituted an admission by defts.' predecessors in title.

(2) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *prima facie* proof of a right to produce or reproduce the play to which it relates, but

it can be regarded by the ct. as corroboration of other evidence of title.—**FALCON v. FAMOUS PLAYERS FILM CO., LTD.**, [1926] 1 K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

*Annotations*:—**Generally**, **Mentd.** Messenger v. British Broadcasting Co., [1927] 2 K. B. 543; English Hop Growers v. Dering, [1928] 2 K. B. 174.

633. *Add. Annotations*:—**Mentd.** Auchteroni v. Midland Bank, [1928] 2 K. B. 294; Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

653. *Add. Annotation*:—**Refd.** Bonham v. Maycock (1928), 138 L. T. 736.

669. *Add. Annotation*:—**Generally**, **Mentd.** Rye v. Purcell, [1926] 1 K. B. 446.

725. *Add. Annotations*:—**Generally**, **Refd.** R. v. Moscovitch (1927), 138 L. T. 183. **Mentd.** Burger v. New York Life Assce. (1927), 96 L. J. K. B. 930.

745. *Add. Annotation*:—**Folld.** Republica de Guatemala v. Nunez (1926), 135 L. T. 436.

775. *Add. Annotation*:—**Refd.** Republica de Guatemala v. Nunez (1926), 135 L. T. 436.

816. *Add. Annotation*:—**Refd.** Jones v. Cory (1926), 20 B. W. C. C. 251.

867. *Add. Annotation*:—**Mentd.** Great Western Ry. v. Monmouthshire County Council (1929), 93 J. P. 142.

871. *Add. Annotation*:—**Refd.** Jones v. Cory (1926), 20 B. W. C. C. 251.

968. *Add. Annotation*:—**Generally**, **Refd.** R. v. Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

969. *Add. Annotation*:—**Refd.** R. v. Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

1004. *Add. Annotation*:—**Refd.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

1024. *Add. Annotations*:—**Consd.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312; Hue v. Whiteley, [1929] 1 Ch. 440. **Refd.** Trafford v. Trafford (1929), 45 T. L. R. 502. **Mentd.** Moser v. Ambleside U. D. C. (1925), 89 J. P. 118.

1026. *Add. Annotation*:—**Refd.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1033. *Add. Annotation*:—**Mentd.** Muscroft v. Stewarts & Lloyds (1928), 140 L. T. 64.

1034. *Add. Annotation*:—**Mentd.** *Re* Chemische Fabrik auf Actien (Vorm E. Schering) Patent Appln. (1928), 45 R. P. C. 403.

1040. *Add. Annotation*:—**Consd.** Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.

1086. *Add. Annotation*:—**Mentd.** Jebara v. Ottoman Bank, [1927] 2 K. B. 254.

#### PART II. SECT. 5, SUB-SECT. 1.

684 i. *As corroborative evidence.*—Statements made by deceased after the execution of her will are admissible to corroborate a witness who has deposed to the execution with all the proscribed formalities.—**HOWITH v. McFARLANE**, [1925] 2 D. L. R. 395; 56 O. L. R. 375.—**CAN.**

*sp. Must be statement of fact.*—Evidence of a statement made by deceased who died as the result of a blow, struck by accused, that he hoped

accused would not get into any trouble with the police over it as it was not his fault:—**Held**: inadmissible, as the words only amounted to an expression of hope & opinion.—**R. v. SCHWARZ**, [1923] S. A. S. R. 347.—**AUS.**

#### PART II. SECT. 5, SUB-SECT. 2.—E. (b).

752 ii. —.]—In so far as words used by deceased were statements of facts:—**Held**: they were inadmissible, as there was nothing to show that

deceased knew them to be contrary to his pecuniary or proprietary interests when he made them; & in so far as they related to opinion on what was in accused's mind they were not admissible, as they were not statements of fact.—**R. v. SCHWARZ**, [1923] S. A. S. R. 347.—**AUS.**

#### PART II. SECT. 10, SUB-SECT. 1.

mi. —.]—**COURT v. HOLLAND**, *Ex p.* **HOLLAND & WALSH** (1879), 8 P. R. 219.—**CAN.**

### Part III.—Modes of Proof and Weight of Evidence.

1088. *Add. Annotation:—As to (1) Refd. Muscroft v. Stewart & Lloyds* (1928), 140 L. T. 64.
1114. *Add. Annotation:—Mentd. Hyman v. Hyman, Hughes v. Hughes* (1929), P. 1.
1164. *Add. Annotation:—Mentd. Green v. Weatherill*, [1929] 2 Ch. 213.
- 1200a. ———.]—All statutes which concern the King are general laws, of which the judges will take notice without pleading.—*CROMWELL'S (LORD) CASE* (1578), 4 Co. Rep. 12, b.; 76 E. R. 877.
- Annotations:—Mentd. Birchley's Case* (1585), 4 Co. Rep. 16a.; *Davis v. Gardiner* (1593), 4 Co. Rep. 16b.; *Shrewsbury v. Stanhop* (1594), Popl. 66; *Brittridge's Case* (1602), 4 Co. Rep. 18b.; *Frost v. Eyre* (1616), 3 Bulst. 265; *Wright v. Gerrard* (1618), Hob. 306; *Say & Seal v. Stephens* (1628), Cro. Car. 135; *Traverse v. Daws* (1673), Freem. K. B. 324; *Barnardiston v. Soame* (1671), 6 State Tr. 1063; *Shaftsbury v. Digby* (1676), Freem. K. B. 429; *Townsend v. Hughes* (1676), Freem. K. B. 222; *How v. Prin* (1702), 7 Mod. Rep. 107; *Oldroyd v. Crampton* (1837), 7 L. J. C. P. 57; *Edsall v. Russell* (1842), 4 Man. & G. 1090; *Bremridge v. Latimer* (1861), 4 New Rep. 285.
1209. *Add. Annotation:—Mentd. South Staffordshire Mines Drainage Comrs. v. Elwell* (1927), 91 J. P. 153.
1229. *Add. Annotation:—Mentd. More v. Weaver*, [1928] 2 K. B. 520.
1260. *Add. Annotations:—Refd. Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534. *Mentd. Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269; *Clan Line Steamers v. Board of Trade*, [1929] A. C. 514.
- 1264a. ———.]—It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State, & the information so received is conclusive.—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.
- Annotations:—Apld. Engelke v. Musmann*, [1928] A. C. 433. *Mentd. Dickinson v. Del Solar* (1929), 15 T. L. R. 637.
1267. *Add. Annotations:—As to (1) Consd. The Jupiter* (No. 3) (1927), 137 L. T. 333. *Generally. Mentd. Musmann v. Engelke* (1927), 43 T. L. R. 685.
1269. *Add. Annotation:—Refd. The Fagernes*, [1927] P. 311.
1270. *Add. Annotation:—Consd. Musmann v. Engelke* (1927), 96 L. J. K. B. 824.
1273. *Add. Annotation:—Mentd. The Jupiter* (No. 2), [1925] P. 69.
1282. *Add. Annotation:—Mentd. Manchester Corpn. v. Audenshaw & Denton U. D. Councils* (1928), 139 L. T. 509.
1301. *Add. Annotation:—Refd. Brown v. Leech* (1924), 94 L. J. K. B. 48.
1306. *Add. Annotation:—As to (1) Refd. Addie (R.) & Sons (Collieries) v. Dumbreck*, [1929] A. C. 358.
1319. *Add. Annotation:—Refd. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.
1338. *Add. Citations:—*[1925] 1 K. B. 399; 94 L. J. K. B. 497; 132 L. T. 267; 17 B. W. C. C. 221.
- Add. Annotations:—Refd. Welsh Navigation Steam Coal Co. v. Evans*, [1927] A. C. 834; *Nugent v. Londonderry Collieries* (1929), 141 L. T. 619. *Mentd. Young v. Londonderry Collieries* (1924), 17 B. W. C. C. 215; *Kennedy v. Horden Collieries, Bamford v. Charlaw & Sacriston Collieries, Bevan v. Joicey*, [1925] 2 K. B. 438.
- 1382a. ———.]—*HALIFAX'S (LORD) CASE* (undated), cited in Bull. N. P. at p. 298a.
- Annotation:—Consd. Williams v. East India Co.* (1802), 3 East, 192.
- Add. Annotation:—Expld. Lal Chand Marwari v. Mahant Ramrup Gir* (1925), 42 T. L. R. 159.
- 1418a. ———.]—*In the Goods of SERGEANT* (1872), 26 L. T. 669; 36 J. P. 696; *sub nom. In the Goods of SERJEANT*, 20 W. R. 872.
- 1421a. ———.]—(1) If a person has not been heard of for a term of not less than seven years, there is a presumption of law that he is dead. (2) The *onus* of proving the death of the person at any particular date must rest with the person to whose title that fact is essential.—*LAL CHAND MARWARI v. MAHANT RAMRUP GIR* (1925), 42 T. L. R. 159, P. C.

**PART III. SECT. 5, SUB-SECT. 2.—E.**  
*st. Native law, customs & usages.*—  
 NGOOBO v. NGOOBO, [1929] App. D.  
 233.—S. AF.

**PART III. SECT. 5, SUB-SECT. 6.—B.**

e. i. —.].—Judicial notice cannot be taken of the fact that a particular place is within a certain judicial district or of the distance of one place from another or of the identity of a place referred to in one document with that of a place referred to in another document, even though the names be the same.—**HYNES v. ALTON**, [1928] 3 W. W. R. 261.—**CAN.**

**PART III. SECT. 5, SUB-SECT. 7. —D.**

**h i. Bar-room**—*Place where liquor kept.*—On the description of a room as a bar-room of licensed premises, judicial notice is to be taken that this is a room where alcoholic liquor is kept.—**FRANCE v. HUMPHREYS, [1926] U. S. S. R. 214. -AUS.**

**PART III. SECT. 5, SUB-SECT. 7.—G.**

q i. S P.—R. v. MCPHERSON (1915),

33 W. L. R. 21; 9 W. W. R. 613; 8 Sask. L. R. 412.—CAN.

qu. *Home-brew—Intoxicating liquor.*]—The ct. will not take judicial notice of the fact that home-brew is an intoxicating liquor.—*R. v. MARSHALL*, [1925] 1 D. L. R. 1132; 43 Can. Crim. Cas. 253; [1924] 3 W. W. R. 865.—**CAN.**

**s i. Mode of conducting traffic -Stopping-places for trams.]--Held:** the ct. could take judicial notice of the mode of conducting traffic on an established system of tramways in a city & its suburbs, including the fact that there were recognised stopping-places for trams.--**Re BYE-LAW MADE BY PROSPECT DISTRICT COUNCIL, &c p. HILL, [1926] S. A. S. R. 326.--AUS.**

**PART III. SECT. 6, SUB-SECT. 6.—A.**

**5v.** Evidence of—Whether Public Administrator requires same as court of law.]—*Re TIERSTROM* (1905), 1 W. L. R. 385.—**CAN.**

**PART III. SECT. 6, SUB-SECT. 6.—B.**

1410 xviii. ———.]—*Re* JELFS,  
[1925] 1 W. W. R. 735.—CAN.

1410 xix. ———.]—*Re DE MILLE*  
(Alta.), [1926] 3 D. L. R. 140; [1926]  
2 W. W. R. 148.—CAN.

1410 xx. ———.]—*Re* HICKEY,  
Dwyer v. Hickey, [1925] V. L. R.  
270; 31 Argus L. R. 261.—AUS.

sw. *Death of writer of old letters.*]—Where papers about 45 years old are produced before a ct. it may presume, in the absence of evidence to the contrary, that the writer was dead at the time they were produced.—JABBAR ALI SARDAR C. MONMOHAM PANDEY (1928). L. L. R. 55 Cal. 1216.—**IND.**

**1413 v.** ——— ——— ——— .]—*Re TOMES*  
(Man.), [1927] 2 D. L. R. 864; [1927]  
1 W. W. R. 429.—**CAN.**

**1413 vi.** ——— *Strong incentive to disappear—Death not presumed.*—**O'DONNELL v. NORTH AMERICAN LIFE ASSURANCE CO., [1927] 3 D. L. R. 412; 60 O. L. R. 502.—CAN.**

- 1445a. On party to whose title fact essential.]—*LAL CHAND MARWARI v. MAHANT RAMRUP GIR*, No. 1421a, ante.
- 1459a. ———.]—*DOE d. FRANCE v. ANDREWS* (1850), 15 Q. B. 756; 117 E. R. 644.  
*Annotations*:—*Consd.* Prudential Assoc. v. Edmonds (1877), 2 App. Cas. 487; Lyell v. Kennedy (1887), 56 L. T. 647; *Re Stollery*, Weir v. Treasury Solicitor, [1926] Ch. 284.
- 1489a. ———.]—There is no presumption of law as to survivorship among persons whose death is occasioned by one & the same cause. The question is one of fact, & if the evidence does not establish the survivorship, the law will treat it as a matter incapable of being determined.—*Re NIGHTINGALE, HARGREAVES v. SHUTTLEWORTH* (1927), 71 Sol. Jo. 542.
1505. *Add. Annotations*:—*Refd.* *Re Deloitte, Griffiths v. Deloitte*, [1926] Ch. 56; *I. R. Comrs. v. Bone* (1927), 13 Tax Cas. 20.
- 1526a. ———.]—*HALIFAX'S (LORD) CASE* (undated), cited in Bull. N. P. at p. 298a.  
*Annotation*:—*Consd.* Williams v. East India Co. (1802), 3 East, 192.
1531. *Add. Annotation*:—*Refd.* Busby v. Avgherino, [1928] A. C. 290.
1545. *Add. Annotation*:—*Mentd.* Manchester Corpn. v. Farnworth (1929), 46 T. L. R. 85.
1581. *Add. Annotation*:—*Mentd.* Jones & Attwood v. National Radiator Co. (1928), 45 R. P. C. 71.
1584. *Add. Annotation*:—*Mentd.* Smith's Potato Crisps v. Paige's Potato Crisps (1928), 45 R. P. C. 132.
1586. *Add. Annotation*:—*Apld.* *Re Davis's Trade Marks, Davis v. Sussex Rubber Co.*, [1927] 2 Ch. 345.

## Part IV.—Documentary Evidence.

- 1633a. Entry in marriage register.]—*WYATT v. ROCHFORD* (1837), 1 Jur. 592, N. P.
- 1664a. ———.]—*R. v. MCCARTNEY & HANSEN* (1928), 20 Cr. App. Rep. 179, C. C. A.
1708. *Add. Annotation*:—*Mentd.* Wing Lee v. Lew, [1925] A. C. 819.
- 1829a. ———.]—Where an order is given verbally for goods, & the person to whom it is given puts down the terms of it in writing, as a memorandum, but it is not signed by the person ordering the goods, the terms of the order may be given in evidence, without producing the written memorandum.—*DAL-*
- SON v. STARK* (1802), 4 Esp. 163; 170 E. R. 677, N. P.  
*Annotation*:—*Refd.* R. v. Wrangle (1835), 1 Har. & W. 41.
1894. *Add. Annotation*:—*Mentd.* Berners v. Fleming, [1925] Ch. 264.
1895. *Add. Annotation*:—*Mentd.* Macaulay v. Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.
- 1933a. ———.]—Where plffs. called defts.' solr.:—*Held*: he could state whether he had a lease in his possession, but as he knew nothing about it except as attorney for defts., he could not be called upon to give any evidence about it.—*ROUPELL v. HAWS* (1863), 3 F. & F. 784, N. P.

### PART III. SECT. 6, SUB-SECT. 6.—C. (a).

1423 ii. ———.]—Under Indian Evidence Act, 1872, s. 108, when the cl. has to determine the date of the death of a person who has not been heard of for a period of more than seven years, there is no presumption that he died at the end of the first seven years, or at any particular date.—*LAL CHAND MARWARI v. RAMRUP GIR* (1925), 53 L. R. Ind. App. 24.—*IND.*

### PART III. SECT. 6, SUB-SECT. 6.—D.

i. ———.]—*Re FORSYTH* (N. S.), [1927] 2 D. L. R. 72.—*CAN.*

### PART III. SECT. 6, SUB-SECT. 6.—F.

1497 i. *Whether presumption exists.*]—Although death will, in a proper case, be presumed, there is no presumption that the person died without issue.—*Re SAUNDERS, PARK v. AUSTIN*, [1928] N. Z. L. R. 391.—*N.Z.*

### PART III. SECT. 6, SUB-SECT. 7.

fi. ———.]—*MACRAE v. WALSH* (1927), 27 S. R. N. S. W. 290; 44 N. S. W. W. N. 71.—*AUS.*

### PART III. SECT. 6, SUB-SECT. 8.

1526 ii. ———.]—*R. v. O'HARA* (N. B.) (1927), 48 Can. Crim. Cas. 231.—*CAN.*

i (p. 178) i. *As to delivery of package by common carrier to consignee.*]—Where a package is delivered to a railway or express co., or other similar common carrier, for transportation to a named consignee, & the consignee receives a package answering the description of that sent by the consignor, it will be held, in the absence of proof to the

contrary, that the package sent was identical with that received; & where a package has been so delivered to such a common carrier for transportation, it will be held that it was received by the consignee in due course, unless there is proof to the contrary.—*R. v. PINNO*, [1925] 1 W. W. R. 737.—*CAN.*

r (p. 179) i. *As to party being administrator.*]—*SMITH v. McLEAN* (1868), 7 N. S. R. (1 G. & O.) 310.—*CAN.*

### PART III. SECT. 7, SUB-SECT. 1.

i. ———.]—*REILLY v. LONDON CORPN.* 1891, 14 P. R. 171.—*CAN.*

ii. ———.]—*CLOUSE v. COLEMAN* (1895), 16 P. R. 541.—*CAN.*

### PART III. SECT. 8.

1593 x. ———.]—*Nature & application of rule.*]—The principle that the evidence of a witness who testifies affirmatively that a conversation took place is more valuable than the evidence of one equally trustworthy who denies the conversation, is not a rule of law, & should only be used with a due regard to the circumstances of each case & should not be resorted to until other means of testing credibility have failed; & it should not be applied in a case wherein the conversation in question constitutes the particular matter at issue between the parties.—*MORARCH LUMBER CO., LTD. v. PERRY* (Sask.), [1927] 3 D. L. R. 861; [1927] 3 W. W. R. 71.—*CAN.*

1596 i. ———.]—*Telephone conversation overheard by bystander.*]—*Held*: the nature of the testimony, the possibility of dishonesty & the connection of the witness with the matter, were circumstances to determine the weight of

testimony, but were not valid grounds for rejecting the evidence so long as it was not hearsay.—*WARREN GZOWSKI & Co. v. FORST & Co.* (1912), 23 O. W. R. 311; 46 S. C. R. 642.—*CAN.*

### PART IV. SECT. 2, SUB-SECT. 10.

1762 ii. ———.]—*FOULDS v. BOWLER* (1908), 8 W. L. R. 189.—*CAN.*

### PART IV. SECT. 5, SUB-SECT. 2.—B.

si. ———.]—*Will filed in office of Surrogate-General of another province.*]—Secondary evidence of a will devising real estate in this province, the original will being filed in the office of the Surrogate-General of Nova Scotia, is not admissible, there being no evidence of any law of Nova Scotia prohibiting the removal of the will.—*DOE d. GILMOUR v. WHITNEY* (1838), 2 N. S. R. (Ber.) 514.—*CAN.*

### PART IV. SECT. 5, SUB-SECT. 3.—A.

bi. ———.]—*SMITH v. NEVILLES* (1859), 18 U. C. R. 473.—*CAN.*

ii. ———.]—*GLEN BAIN RURAL MUNICIPALITY v. HALEY* (Sask.), [1927] 3 D. L. R. 474.—*CAN.*

### PART IV. SECT. 5, SUB-SECT. 4.—C.

1941 i. *Duplicate originals.*]—Deft. let land to pltf., & a lease having been written, A. affixed seals & signed their names to it. It was then agreed that A. should make a copy of the lease & execute it for them in the same manner; he did so, & afterwards, in the presence of both parties, delivered one copy to pltf. & the other to deft. —*Held*: they were duplicate originals, & either of them was primary evidence.—*LEONARD v. YOUNG* (1858), 4 All. 111.—*CAN.*



**2048. Add. Annotation:—Mentd.** Lala Indar Prasad v. Lala Jagmohan Das (1927), 43 T. L. R. 536.

**2129a. ————]**—Copies cannot be put in of letters of which notice to produce ought to be given.—**R. v. MORGAN**, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

**2304. Add. Annotations:—Mentd.** Rodwell v. Wade (1924), 23 L. G. R. 174; Keeling v. Wirral R. D. C. (1925), 23 L. G. R. 201.

**2345a. ————]**—**DORRETT v. MEUX** (1854), 15 C. B. 142; 2 C. L. R. 807; 23 L. J. C. P. 221; 23 L. T. O. S. 144; 2 W. R. 480; 139 E. R. 374.

**2475a. ————]**—**DOE d. ST. JOHN v.** (1799), 2 Esp. 721; 170 E. R. 510, N. P.

**2476a. ————]**—**WALLISS v. BROADBENT** (1836), 4 Ad. & El. 877; 2 Har. & W. 40; 6 L. J. K. B. 269; 111 E. R. 1014.

**2477a. ————]**—**CHEVELEY v. FULLER** (1853), 13 C. B. 122; 1 W. R. 152; 138 E. R. 1143; *sub nom.* FULLER v. CHEVELEY, Saund. & M. 101; 20 L. T. O. S. 278; 17 J. P. 105; 17 Jur. 736

**2480a. ————]**—**HARRIS v. CHAPMAN** (1868), 17 L. T. 517, N. P.

**2486a. ————]**—**Though receipt for penalty erased.]—**APOTHECARIES' CO. v. FERNYHOUGH (1826), 2 C. & P. 438; 172 E. R. 199, N. P.

*Annotation:—***Refd.** R. v. Preston (1834), 3 Nev. & M. K. B. 31.

**2501. Add. Annotation:—Mentd.** Ladies' Hosiery & Underwear v. Parker (1929), 46 T. L. R. 43.

**2513a. To prove amount originally claimed.]—**WICKES v. TANNER (1848), 10 L. T. O. S. 504, N. P.

#### PART IV. SECT. 5, SUB-SECT. 5.—A.

**o i. ————]**—**GOUGH v. McBRIDE** (1860), 10 C. P. 106.—**CAN.**

**q i. ————]**—**Reconstructed cash book.**—A fire in the office of the secretary-treasurer of the pltf. municipality having destroyed most of the pltf.'s records therein, including the record of payment of taxes made since the last audit, the secretary-treasurer, under the authority of the council, employed an office assistant & canvassers, who compiled from the surviving records & from receipts, cheques & other evidence in the hands of taxpayers a statement called "the reconstructed cash book," showing the amounts paid by them during two months of 1921. In an action against the secretary-treasurer to recover an amount alleged to have been misappropriated by him during 1921, pltf. sought to charge him with the receipt of the sum which was shown by said "reconstructed cash book" as received & said book was submitted in evidence:—**Held:** said book was not admissible against deft.; its contents were not obtained in the manner contemplated by Rural Municipality Act & therefore, it did not, even if it had been wholly compiled by deft., constitute an acknowledgment by him, as the entries in the original cash book would have done; he had not so recognised or acted upon it as to make its contents evidence against him; it was not secondary evidence of the destroyed cash book; & the necessary foundation not having been laid for the purpose, it was not admissible as secondary evidence of the taxpayers' receipts & cheques.—**GLEN BAIN RURAL MUNICIPALITY v. HALEY**, [1928] 3 D. L. R. 306; [1928] 2 W. W. R. 184, 288; 22 Sask. L. R. 559.—**CAN.**

J.S.

#### PART IV. SECT. 5, SUB-SECT. 5.—D. (c).

**sr. Affidavit of petitioner—Absence of particulars of search made.]—**RE BELL (1871), 3 Ch. Ch. 239.—**CAN.**

#### PART IV. SECT. 5, SUB-SECT. 5.—E. (a).

**2058 iv. ————]**—**MARVIN v. CURTIS** (1857), 6 C. P. 212.—**CAN.**

**2058 v. ————]**—**Evidence of subscribing witness.**—In ejectment by trustees of a Wesleyan Methodist congregation for the parsonage property, a search for & the loss of the deed from the patentee to the trustees at the parsonage home having been proved:—**Held:** the evidence of the subscribing witness as to the execution of the deed & memorial, with a copy of the memorial certified by the registrar, was clearly sufficient secondary evidence.—**AINLEYVILLE TRUSTEE WESLEYAN METHODIST CHURCH v. GREWER** (1874), 23 C. P. 533.—**CAN.**

**2063 i. Written declaration by testator—Lost will.]—**A lost will may be proved by secondary evidence. The evidence of a single witness, though interested, whose veracity & competency is unimpeachable, is sufficient, & probate will be granted to such an extent as he is able to prove it. Declarations relative to the will became secondary evidence if it is lost.—**RE PIKE'S WILL** (1882), 6 Nfld. L. R. 445.—**NFLD.**

**st. Lost deed—Memorandum made by predecessor in title.]—**In seeking to prove the existence & contents of a lost deed, a memorandum made in a book, by a person through whom petitioner claimed, was held not to be evidence in favour of petitioner.—**RE BELL** (1871), 3 Ch. Ch. 239.—**CAN.**

**sv. ————]**—**Copy produced from cus-**

**2533. Add. Annotations:—Mentd.** Ellesmere, Earl v. Wallace, [1929] 2 Ch. 1; Kennedy v. Thomas-sen, [1929] 1 Ch. 426; Weddle, Beck v. Hackett, [1929] 1 K. B. 321.

**2544. Add. Annotation:—Mentd.** Ellesmere, Earl v. Wallace, [1929] 2 Ch. 1.

**2544a. ————]**—One paper containing two different contracts for the purchase of different lots by different persons, one stamp affixed on that part of the paper which contained the contract of sale with deft., & to which the stamp officer's receipt for one penalty referred:—**Held:** sufficient to legalise the evidence of such contract.—**POWELL v. EDMUNDS** (1810), 12 East, 6; 104 E. R. 3.

*Annotations:—***Refd.** Ogilvie v. Foljambe (1817), 3 Mer. 53; Bradshaw v. Bennett (1831), 5 C. & P. 48; Shelton v. Livius (1832), 2 Cr. & J. 411; Bartlett v. Ponnell (1836), 2 Har. & W. 16; Evans v. Pratt (1842), 3 Man. & G. 759; Eden v. Blake (1845), 13 M. & W. 614; Brett v. Clowser (1880), 5 C. P. D. 376.

**2570. Add. Annotations:—Refd.** Nagoremull v. Triton Insee. (1924), 41 T. L. R. 168; *Re* National Benefit Assce. (1927), 71 Sol Jo. 880.

**2583a. ————]**—**Objection doubtful.]—**An objection that a document requires a stamp will not be given effect to if the point is doubtful.—**WESTLAKE v. ADAMS** (1858), 1 F. & F. 183, N. P.

**2587. Add. Annotation:—Refd.** Nagoremull Triton Insee. (1924), 41 T. L. R. 168.

**2603. Add. Annotation:—Refd.** Koechlin v. Kostenbaum, [1927] 1 K. B. 889.

**2614. Add. Annotation:—Mentd.** Gregg v. Richards, [1926] Ch. 521.

**2639. Add. Annotations:—Refd.** R. v. Lincolnshire J.J., *Ex p.* Brett, [1926] 2 K. B. 192. **Mentd.** Palmer v. Crone, [1927] 1 K. B. 804.

*body of successors of grantee—With endorsement signed by three predecessors in title.]—***SEETHAYYA v. SUBRAMANYA SOMAYAJULU** (1929), L. R. 56 Ind. App. 146.—**IND.**

#### PART IV. SECT. 9, SUB-SECT. 3.—A.

**sw. Of power of attorney—Proof of contents of original only.]—**Where an office copy of a power of attorney, purporting to have been executed, was put in evidence:—**Held:** Conveyancing & Law of Property Act, 1881, s. 48 (4), merely obviates the necessity for production of an original instrument by enacting that an office copy of an instrument deposited as therein provided shall, without further proof, be sufficient evidence of its contents, but the sect. does not make such copy evidence either of the truth of the contents or of the identity of the person by whom the original was made.—**O'KANE v. MULLAN**, [1925] N. I. 1.—**IR.**

**PART IV. SECT. 9, SUB-SECT. 5.—A. f. Revsd. on other grounds, 18 A. R. 135.**

#### PART IV. SECT. 11, SUB-SECT. 2.

**2634 ii. ————]**—Where, in an action for wages & overtime, based on the award of the Commonwealth Ct. of Conciliation & Arb'n., the only evidence of the award was a printed document purporting to be a copy of the award bearing the imprint "By authority: H. J. Green, Govt. Printer, Melbourne":—**Held:** the award was not proved.—**MID-NORTH ELECTRICITY CO., LTD. v. LUTHERFORD**, [1927] S. A. S. R. 273.—**AUS.**

#### PART IV. SECT. 11, SUB-SECT. 4.—A.

**2667 i. ————]**—**Res inter alios acta—**

2683. *Add. Annotation* :—**Mentd.** A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.

2685. *Add. Annotations* :—**Mentd.** A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92; Reigate Corp. v. Surrey County Council, [1928] Ch. 359.

2693. *Add. Annotation* :—**Mentd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.

2707a. ———.]—**DAVIES v. LOWNDES** (1835), 1 Bing. N. C. 597; 1 Hodg. 125; 2 Scott, 71; 4 L. J. C. P. 214; 131 E. R. 1247; *on appeal* (1838), 4 Bing. N. C. 478, Ex. Ch.

*Annotations* :—**Mentd.** Cowley v. Cowley, [1901] A. C. 450; *Re Greenwood*, Goodhart v. Woodhead, [1902] 2 Ch. 198.

2709. *Add. Annotation* :—**Folld.** Little v. Little, [1927] P. 224.

After this case add, "See, also, HUSBAND & WIFE, No. 2763a"

2722. *Add. Annotation* :—**Consd.** Partington v. Partington & Atkinson, [1925] P. 34.

2723. *Add. Annotation* :—**Consd.** Partington v. Partington & Atkinson, [1925] P. 34.

2733. *Add. Annotation* :—**Generally**, **Mentd.** Marsland v. Taggart, [1928] 2 K. B. 447.

2757a. ———.]—In a suit for restitution of conjugal rights, the validity of the marriage in Jamaica having been proved in a previous suit of a similar nature between same parties, further proof of its validity was not required. —**VERNEY v. VERNEY** (1920), 36 T. L. R. 203.

2825. *Add. Annotations* :—**Mentd.** Auchteroni v. Midland Bank, [1928] 2 K. B. 294; Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

2880. *Add. Annotation* :—**Refd.** Brown v. Dagenham Urban Council, [1929] 1 K. B. 737.

2971. *Add. Annotation* :—**Mentd.** Gilbey v. Gilbey, [1927] P. 197.

3036. *Add. Annotation* :—**Refd.** Selby v. Atkins (1926), 135 L. T. 45.

3107. *Add. Annotation* :—**Mentd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.

3122a. ———.]—In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a

communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.—**DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT**, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

*Annotation* :—**Apld.** Engelke v. Musmann, [1928] A. C. 433.

3122b. ———.]—**DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT**, No. 1264a, *ante*.

3125. *Add. Annotations* :—**Consd.** Musmann v. Engelke (1927), 96 L. J. K. B. 824. **Mentd.** Dickinson v. Del Solar (1929), 45 T. L. R. 637.

3157. *Add. Annotation* :—**Consd.** *Re Stollery*, Weir v. Treasury Solicitor, [1926] Ch. 284.

3158. *Add. Annotation* :—**Overd.** *Re Stollery*, Weir v. Treasury Solicitor, [1926] Ch. 284.

3159. *Add. Annotation* :—**Folld.** *Re Stollery*, Weir v. Treasury Solicitor, [1926] Ch. 284.

3163. *Add. Annotation* :—**Folld.** *Re Stollery*, Weir v. Treasury Solicitor, [1926] Ch. 284.

3164. *Add. Annotation* :—**Folld.** *Re Stollery*, Weir v. Treasury Solicitor, [1926] Ch. 284.

3165a. ———.]—**Marriage of parents.**—In an action brought by plffs., who claimed to be two of the next of kin of an intestate, for administration of her estate, the usual order for inquiries as to the next of kin & heir-at-law of the intestate was made. In taking those inquiries before the master it became necessary to prove the lawful marriage of the parents of the intestate before her birth &, as no record of the marriage could be found, a summons was taken out by plffs. for the determination of the question whether three certificates of birth of three of the children, including the intestate, of those parents & a certificate of death of one of those children were *prima facie* or any evidence of the lawful marriage of the parents :—**Held** : the certificates were admissible, but not alone sufficient, because taken by themselves they did not identify the persons therein mentioned. It would be for the master at the inquiry to determine whether the certificates, taken in conjunction with the other evidence adduced before him, were sufficient to establish the fact of marriage between the parents in question. *Re Wintle*, No. 3158, *overd.*—

*Conviction for murder.*—On an application by a husband, who has killed his wife, or his attorney for a grant of administration a certified copy of the conviction is admissible, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime. —**Re NOBLE** (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

#### PART IV. SECT. 11, SUB-SECT. 4.—C.

2690 i. *Evidence of commission of crime—Presumptive evidence.*—**Re NOBLE**, No. 2667 i, *ante*.—**CAN.**

#### PART IV. SECT. 11, SUB-SECT. 6.—A. (a).

2739 i. *No opportunity to cross-examine.*—**Held** : the evidence was inadmissible. —**JOHNSON v. R.** (Ont.) (1911), 13 Exch. C. R. 389.—**CAN.**

#### PART IV. SECT. 11, SUB-SECT. 12.

3004 i. *How proved—Production of copy printed in Stationery Office.*—The District Ct. Rules are rules made by a minister within Documentary Evidence Act, 1925, s. 4, & the production of a copy of the rules, printed in

the Stationery Office, is *prima facie* evidence that the rules have been validly made. —**TANGNEY v. DISTRICT JUSTICE FOR COUNTY OF KERRY**, [1928] 1 R. 358.—**IR.**

#### PART IV. SECT. 11, SUB-SECT. 15.—A.

xx. *Proof—Will of execution.*—**STUART v. ANDREWS** (1827), N. B. Dig. 332.—**CAN.**

xy. ———.]—**DOE d. STOCKING v. WATTS** (1842), 2 Ont. Dig. 2665.—**CAN.**

#### PART IV. SECT. 12, SUB-SECT. 10.—A. (b).

sa. *British consul abroad—Certificate on point of law.*—A British consul may prove by his certificate a point of foreign law which he is competent to prove by affidavit. —**Re BERGMAN ESTATE**, [1928] 1 W. W. R. 601.—**CAN.**

#### PART IV. SECT. 12, SUB-SECT. 10 —A. (d).

sb. *Certificates of professor of anatomy.*—A certificate from the professor of anatomy at the Grant

Medical College, Bombay, as to certain bones submitted to him for examination, is not *per se* admissible in evidence, but must be proved by calling the professor as a witness. —**R. v. AHILYA** (1922), 1 L. R. 47 Bom. 74.—**IND.**

#### PART IV. SECT. 12, SUB-SECT. 14.

sc. *Regulation of Minister of Crown—In possession of prosecuting counsel—Whether amounts to production.*—The fact that counsel for the prosecution has a copy of a regulation made by a Minister of the Crown in his possession at the trial & available for the perusal of the justice hearing the case, does not amount to its "production" within Canada Evidence Act, s. 21, at least when no opportunity is given the accused's counsel to peruse it or object to it. —**R. v. YEE CLUN & YEE LOW** (Sask.), [1929] 1 D. L. R. 104; 50 Can. Crim. Cas. 440; [1928] 3 W. W. R. 558.—**CAN.**

#### PART IV. SECT. 12, SUB-SECT. 15.—A. (a).

1 i. *Value as evidence.*—**HEATH v. PORTAGE LA PRAIRIE CORPN.** (1909), 13 Man. L. R. 693.—**CAN.**

- Re* STOLLERY, WEIR v. TREASURY SOLICITOR, [1926] Ch. 284; 95 L. J. Ch. 259; 134 L. T. 430; 90 J. P. 90; 42 T. L. R. 253; 70 Sol. Jo. 385; 24 L. G. R. 173, C. A.
- 3177a. — Marriage of parents of deceased.]—*Re* STOLLERY, WEIR v. TREASURY SOLICITOR, No. 3165a, ante.
3179. *Add. Annotation*:—*Distd. Re* Stollery, Weir v. Treasury Solicitor, [1926] Ch. 284.
3287. *Add. Annotations*:—*Apprvd.* Hendon Paper Works Co. v. Sunderland Assmt. Com., [1915] 1 K. B. 763. *Folld.* Fowler (Leeds) v. Hunslet Assmt. Com., [1917] 1 K. B. 720. *Expld. & Distd.* Gateshead Union Assmt. Com. v. Redheugh Colliery, [1925] A. C. 309.
3288. *Add. Citation*:—1 B. R. A. 210.  
*Add. Annotations*:—*Folld.* Fowler (Leeds) v. Hunslet Assmt. Com., [1917] 1 K. B. 720. *Expld. & Distd.* Gateshead Union Assmt. Com. v. Redheugh Colliery, [1925] A. C. 309. *Refd.* Davis v. Pontypridd Union Assmt. Com., Rhondda Overseers & Rhondda U. C. (1916), 85 L. J. K. B. 1545.
3289. *Add. Citation*:—2 B. R. A. 592.  
*Add. Annotation*:—*Expld. & Distd.* Gateshead Union Assmt. Com. v. Redheugh Colliery, [1925] A. C. 309.
3349. *Add. Annotation*:—*Consd.* Busby v. Avgherino, [1927] 2 Ch. 33.
3371. *Add. Annotation*:—*Refd.* *Re* Stollery, Weir v. Treasury Solicitor, [1926] Ch. 284.
3376. *Add. Annotation*:—*Mentd.* Warren v. Warren, [1925] P. 107.
3377. *Add. Annotation*:—*Consd. Re* Stollery, Weir v. Treasury Solicitor, [1926] Ch. 284.
3388. *Add. Annotation*:—*Consd. Re* Stollery, Weir v. Treasury Solicitor, [1926] Ch. 284.
3389. *Add. Annotation*:—*Consd. Re* Stollery, Weir v. Treasury Solicitor, [1926] Ch. 284.
- 3419a. *S. P. MONEY v. MONEY & TURNER* (1927), 71 Sol. Jo. 666.
- 3422a. — — — — —.]—As Jersey is in the diocese of Winchester, it is unnecessary to call a Jersey lawyer to prove a marriage celebrated in a church in Jersey.—*PRITCHARD v. PRITCHARD* (1920), 37 T. L. R. 104.
- 3437a. — — — — —.]—*L. (OTHERWISE B.) v. L.* (1919), 36 T. L. R. 148; 64 Sol. Jo. 225.
3466. *Add. Annotation*:—*Refd.* *R. v. Moscovitch* (1927), 138 L. T. 183.
- 3483a. — — — — —.]—*Held*: the production of the register from the custom house was conclusive evidence of ownership.—*MARSH v. ROBINSON* (1802), 4 Esp. 98; 170 E. R. 655, N. P.
3503. *Add. Annotation*:—*Mentd.* Juggi Lal-Kamlapat & Juggilal-Kamlapat Mills of Cawnpore v. Swadeshi Co. (1928), 46 R. P. C. 74.
- 3513a. *Stationers' Hall register*—Of first performances of dramatic productions.]—*FALCON v. FAMOUS PLAYERS FILM CO., LTD.*, No. 624a, ante.
3539. *Add. Annotation*:—*Mentd.* Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.
3543. *Add. Annotations*:—As to (2) *Consd.* Falcon v. Famous Players Film Co. (1926), 135 L. T. 650. *Appld. Re* Stollery, Weir v. Treasury Solicitor, [1926] Ch. 284.
3547. *Add. Annotation*:—*Refd.* Stoney v. Eastbourne R. D. C., [1927] 1 Ch. 367.
3572. *Add. Annotation*:—*Refd.* Busby v. Avgherino, [1928] A. C. 290.
3580. *Add. Annotation*:—*Refd.* Busby v. Avgherino, [1928] A. C. 290.
3584. *Add. Annotation*:—*Refd.* Stoney v. Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.
3589. *Add. Annotation*:—*Refd.* Busby v. Avgherino, [1928] A. C. 290.
3686. *Add. Annotation*:—As to (2) *Consd.* Busby v. Avgherino, [1927] 2 Ch. 33.
3784. *Add. Citation*:—2 B. R. A. 582.
3790. *Add. Annotation*:—*Mentd.* Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108.
- 3802a. — — — — —.]—*HAYNES v. HAYTON* (1828), 6 L. J. O. S. K. B. 231.  
*Annotations*:—*Consd.* Bessey v. Windham (1844), 6 Q. B. 166; White v. Morris (1852), 11 C. B. 1015.
3834. *Add. Annotation*:—*Mentd.* Riley v. Brown (1929), 98 L. J. K. B. 739.
3837. *Add. Annotation*:—*Mentd.* Bernard v. Williams (1928), 139 L. T. 22.
- 3850a. — Following letters.]—Letters following a letter written "without prejudice" should be treated as being also inadmissible, unless there is a clear break in the chain of correspondence to indicate that the ensuing letters
- PART IV. SECT. 12, SUB-SECT. 19.—  
C. (d) iii.  
sy. Certificate of baptism—*Admissible.*]—*SUTHERLAND v. YOUNG* (1884), 1 Man. L. R. 38.—CAN.
- PART IV. SECT. 12, SUB-SECT. 19.—G.  
sz. Register of titles to land kept under Local Registration of Title (Ireland) Act, 1891 (c. 66).]—The above register is a public register & the documents kept in the office for registration of titles are public documents.—*Re FITZGERALD*, [1925] 1 I. R. 42.—IR.
- PART IV. SECT. 12, SUB-SECT. 21.  
s i. — How proved.]—The contents of a statute of any province within the King's dominions may be proved by the production of a copy purporting to be printed under the authority of the Legislature of that province.—*NORTHERN TRUSTS CO. v. McLEAN*, [1926] 3 D. L. R. 93; 58 O. L. R. 683.—CAN.
- PART IV. SECT. 12, SUB-SECT. 22.  
sa. Records of secretary of province—Entry as to delivery of patent—In secretary's handwriting—Whether proof of possession of patent.]—*Qu.*: whether the evidence of the secretary of the province, that it appears by an entry in his own handwriting, in a book kept for such entries, that a patent was delivered to A., & that he therefore felt sure that it was delivered to A. or his servant, but has no recollection of it, is sufficient to charge A. in trover with the possession of such patent.—*HAMPSON v. BOULTON* (1836), 5 O. S. 23.—CAN.
- PART IV. SECT. 13, SUB-SECT. 2.—B.  
sb. To prove to whom credit given.]—*WHITE v. MILLER* (1888), 27 N. B. R. 143.—CAN.
- PART IV. SECT. 13, SUB-SECT. 4.  
sc. Books of railway companies—Repair book.]—*CANADA CENTRAL RY. Co. v. McLAREN* (1883), 8 A. R. 564.—CAN.
- PART IV. SECT. 13, SUB-SECT. 5.  
di. — — — — —.]—A book maintained by members of a family of hereditary bards, containing entries of domestic events occurring in the family to which they rendered service, the events recorded being such as are usually known to a family bard in connection with his calling:—*Held*: admissible as evidence concerning the relationship of the members of the family, whose history was entered therein.—*ANANDI v. NAND LAL* (1924), 1 I. L. R. 46 All. 665.—IND.
- PART IV. SECT. 13, SUB-SECT. 7.—B.  
3843 ff. S P. MERRY v. MACHIN (1926), 47 N. L. R. 236.—S. AF.
- PART IV. SECT. 13, SUB-SECT. 11.  
3870 i. Admissibility.]—*Held*:

are open.—INDIA RUBBER, GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. v. CHAPMAN (1926), 20 B. W. C. C. 184, C. A.

3860. *Add. Annotations*:—*Refd.* Hobbs v. Tinling, Hobbs v. Nottingham Journal, [1929] 2 K. B. 1. *Mentd.* Wing Lee v. Lew, [1925] A. C. 819.

3902. *Add. Annotation*:—*Refd.* Layzell v. Thompson (1927), 137 L. T. 106.

3907. *Add. Annotation*:—*As to* (3) *Refd.* Moser v. Ambleside U. D. C. (1925), 89 J. P. 118.

3909. *Add. Annotation*:—*Mentd.* Great Western Ry. v. Monmouthshire County Council (1920), 93 J. P. 142.

3911. *Add. Annotations*:—*Consd.* Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch.

312; Trafford v. Thrower (1920), 45 T. L. R. 502. *Refd.* Hue v. Whiteley, [1929] 1 Ch. 440. *Mentd.* Moser v. Ambleside U. D. C. (1924), 89 J. P. 118.

3914. After this case add "See, also, HIGHWAYS, Nos. 355a, 355b."

3919a. —To prove state of premises.]—DOE d. FENTON v. BUTCHER (1847), 9 L. T. O. S. 82.

3946. *Add. Annotations*:—*Mentd.* Capel St. Mary, Suffolk v. Packard, [1927] P. 289; *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

3947. *Add. Annotations*:—*Mentd.* Capel St. Mary, Suffolk v. Packard, [1927] P. 289; *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

3959. *Add. Citation*:—130 L. T. 445.

## Part V.—Witnesses.

3975a. —.]—A judge cannot exclude a child-witness from the box on the ground that the case is unfit for him or her to be concerned in; his power is limited to the usual inquiry about the child's understanding of an oath or of the duty of telling the truth.—R. v. MOSCOVITCH (1924), 18 Cr. App. Rep. 37, C. C. A.

4027. *Add. Annotation*:—*Refd.* Isaacs v. Cook, [1925] 2 K. B. 391.

4029. *Add. Annotation*:—*Apld.* Isaacs v. Cook, [1925] 2 K. B. 391.

4053. *Add. Annotation*:—*Mentd.* R. v. Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

4077. *Add. Annotations*:—*Apprvd. & Apld.* *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. *Refd.* *Re* Jawett, [1929] 1 Ch. 108.

4130. *Add. Annotation*:—*Refd.* R. v. Bath Compensation Authority, [1925] 1 K. B. 685.

4148. *Add. Annotation*:—*Refd.* Minter v. Priest, [1929] 1 K. B. 655

4161a. —Acting for partner.]—A., a solr., being engaged in negotiations for the sale of an estate of his own, devolved the conduct of the business with regard to it on his partner, & made certain statements to him:—*Held*: the relation of solr. & client existed between them, & the communications were privileged.—BEAMISH v. OWENS (1846), 7 L. T. O. S. 66.

telegram received by plff. from deceased was not admissible in evidence without proof that deceased had sent a telegram in those terms, & that the original telegram, signed by deceased, had been destroyed or lost.—ADAMSON v. VACHON (Sask.) (1912), 22 W. L. R. 491.—CAN.

### PART IV. SECT. 13, SUB-SECT. 12.

q 1. —.]—Will proved before a notary public, & recorded during the lifetime of testator, properly admitted in evidence.—MURRAY v. DUFF (1895), 33 N. B. R. 351.—CAN.

sd. *Necessity for production of*.]—Where plff.'s counsel in opening his case stated it as a question of legitimacy, & that deft. claimed under a will, & the defence was conducted without the production of the will, is it the statement of the counsel had rendered that unnecessary?—*Held*: it ought to have been produced.—DOE l. BREAKY v. BREAKY (1846), 2 U. C. R. 349.—CAN.

### PART IV. SECT. 18, SUB-SECT. 2.

3958 i. *Surveyor's report*.]—*Held*: not admissible to prove the extent of the lands he was employed to survey.—R. v. PRICE BROTHERS & Co., [1925] 3 D. L. R. 595; *reversd.*, [1924] 3 D. L. R. 817.—CAN.

### PART IV. SECT. 20.

se. *Certificate of weighmaster*.]—*Held*: *prima facie* evidence only of weight at the time of weighing.—TENOLD & TANNAS v. CANADIAN PACIFIC RY. CO., [1927] 3 D. L. R. 695; [1927] 2 W. W. R. 491; 33 Can. Ry. Cas. 86; 21 Sask. L. R. 665.—CAN.

### PART V. SECT. 1, SUB-SECT. 1.—A. (a).

3974 iii. —.]—New trial ordered in an action for negligence, on the ground that the trial judge had not expressly directed the jury that the law required that the case should not be decided on the testimony of the infant plff., seven years old, who was not sworn, unless it was corroborated by some other material evidence; although he had warned the jury to consider her testimony very carefully.—ROBINSON v. BURNS & Co., LTD. & CHURCH, [1928] 1 D. L. R. 610; [1928] 1 W. W. R. 76; 23 Alta. L. R. 170.—CAN.

3974 iv. —.]—"Other material evidence" within the requirement of Alberta Evidence Act, s. 19, that the unsworn testimony of a child of tender years must be corroborated, means evidence material to the issue which must be sustained by the party on whose behalf the child's evidence is adduced; therefore, where that issue is negligence, it means evidence relating to the alleged negligence. The evidence relied on as corroborative in the present case did not go so far as to touch the question of negligence.—CUTHBERTSON v. LETHBRIDGE, [1928] 2 D. L. R. 562; [1928] 1 W. W. R. 815.—CAN.

3976 ii. —.]—A child of ten said, "I know I have got to tell the truth, I know where you go when you don't tell the truth, to gaol":—*Held*: this answer was not inconsistent with an understanding of the nature & quality of an oath, although showing no appreciation of reward & punishment in a future state.—SPOONER v. TAYLOR, [1926] S. A. S. R. 396.—AUS.

3979 iv. —.]—Canada Evidence Act, s. 16.]—SANKEY v. R., [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—CAN.

### PART V. SECT. 1, SUB-SECT. 1.—B.

g (p. 390) i. —.]—Agent conducting case.]—An agent conducting a case in the Burgh police ct. is a competent witness in the cause.—CAMPBELL v. COCHRANE, [1928] S. C. (J.) 25.—SCOT.

p (p. 391) i. —.]—A prosecutor who has conducted a preparatory examination in a magistrate's ct. is a competent witness for the Crown at the trial.—R. v. BECKER, [1929] App. D. 167.—S. AF.

sg. *Juryman in first action*.]—On hearing of new trial.]—At the hearing of a new trial, a juryman in the first action was called to give evidence as to what he saw whilst on a view with his fellow juryman. His evidence was rejected on the ground that having been a juryman in the first action he was not competent to give evidence at the new trial:—*Held*: the witness was competent to give evidence of what he actually saw & observed provided the evidence was otherwise admissible.—MACKAY v. ELIAS (1928), 28 S. R. N. S. W. 340; 45 N. S. W. W. N. 86.—AUS.

4001 i. —.]—Solicitor.]—A solr. is a competent witness for his client, & when he is not also acting as an advocate, there is nothing reprehensible in his being a witness. While an advocate can testify for a party whose cause he is conducting, the practice is highly objectionable.—PARRY v. PARRY, [1926] 3 D. L. R. 95; [1926] 2 W. W. R. 185; 20 Sask. L. R. 474.—CAN.

4190. *Add. Annotation*:—**Consd.** *Minter v. Priest*, [1929] 1 K. B. 655.

4192. *Add. Annotation*:—**Apprvd.** *Minter v. Priest*, [1929] 1 K. B. 655.

4199. *Add. Annotation*:—**Apld.** *Minter v. Priest*, [1929] 1 K. B. 655.

4201. *Add. Annotation*:—**Apprvd.** *Minter v. Priest*, [1929] 1 K. B. 655.

4213a. ————.]—(1) Communications passing between a solr. & a prospective client with a view to the client retaining the solr. on professional business are privileged from disclosure, even if the solr. does not accept the retainer.

(2) Conversations between a solr. & client relating to the business of obtaining a loan for the deposit on the purchase of real estate are privileged from disclosure, as the business is professional business within the ordinary scope of a solr.'s employment.

S. & T. interviewed a solr. with a view to obtaining a loan for the deposit on a contemplated purchase of a house & with the intention, if he could find the money, of employing him to carry out the purchase; but the solr. refused to find the money, & in stating his reasons slandered the vendor of the house, with whom he had had previous dealings. In an action by the vendor against the solr. T. claimed privilege from disclosing what passed at the interview:—**Held**: as S. & T. had gone to him in his professional capacity & on business within the ordinary scope of his business as a solr., the circumstances in which & the purpose for which they interviewed the solr. showed that T.'s claim to privilege ought to have been upheld & his evidence of the defamatory statements ought not to have been admitted.—*MINTER v. PRIEST*, [1929] 1 K. B. 655; 98 L. J. K. B. 661; 141 L. T. 140; 45 T. L. R. 393; 73 Sol. Jo. 529, C. A.

4217. *Add. Annotation*:—**Refd.** *Minter v. Priest*, [1929] 1 K. B. 655.

4218a. ————.]—*MINTER v. PRIEST*, No. 4213a, *ante*.

4228a. ————.]—Plff., who had been employed by deft. to take care of his house, but who had subsequently left it, brought an action against him for breach of promise of

marriage. Deft. had threatened to proceed criminally against her on a charge of taking away some of his property from the house. The ct. refused to compel plff.'s attorney to disclose her place of residence, as deft. knew who she was, & had avowed that he sought the information with the view of effecting her arrest on the criminal charge.—*HARRIS v. HOLLER* (1849), 19 L. J. Q. B. 62.

*Annotation*:—**Refd.** *Cox v. Bockett* (1865), 18 C. B. N. S. 239.

4230. *Add. Annotation*:—**Generally.** *Mentd.* *R. v. Southampton County Confirming Committee*, *Ex p. Slade*, [1929] 1 K. B. 263.

4259. *Add. Annotation*:—**Consd.** *Minter v. Priest*, [1929] 1 K. B. 655.

4275. *Add. Annotation*:—**Refd.** *Minter v. Priest*, [1929] 1 K. B. 655.

4286. The first line of the text of the paragraph should read "Where at law the party calls."

4299. *Add. Annotation*:—**Mentd.** *Salvesen* (or von Iorang) *v. Austrian Property Administrator*, [1927] A. C. 641.

4428a. ———— **Application to set aside—Whether "in" action.**—**Held**: an application by a person, who had been served by one of the parties to an action with a *subpoena duces tecum*, to set the subpoena aside was an application "in" the action within R. S. C., Ord. 52, r. 2, although appet. was not a party to the action, & the application could not be heard.—*R. v. INVESTORS' REVIEW, LTD.*, *Ex p. WHEELER*, [1928] 2 K. B. 644; 97 L. J. K. B. 802; 140 L. T. 43; 44 T. 724; 72 Sol. Jo. 570, D. C.

4455. *Add. Annotation*:—**Mentd.** *Busby v. Avgherino*, [1927] 2 Ch. 33.

4461a. ————.]—The possession of a solr. is, for the purpose of a *subpoena duces tecum*, the possession of the client.—*JORDAN v. ROBERTS* (1862), 7 L. T. 68.

4472a. ———— **Court not entitled to impound.**—*Re TILL, Ex p. PARSONS* (1871), 19 W. R. 325.

4477. *Add. Annotations*:—**Refd.** *Re Cameron's Coalbrook, etc. Ry.* (1859), 25 Beav. 1; *Lockett v. Cary* (1864), 3 New Rep. 405; *Fowler v. Fowler* (1881), 29 W. R. 800; *Re Hawkes, Ackerman v. Lockhart*, [1898] 2 Ch. 1.

#### PART V. SECT. 2, SUB-SECT. 4.—B. (a).

4060 xxi. ————.]—Under Canada Temperance Act, 1878, s. 123, accused is not bound to criminate himself.—*R. v. HALPIN* (1886), 12 O. R. 330.—**CAN.**

4060 xxii. ————.]—The refusal "to answer any question touching the case" in Liquor License Act, s. 115, means any question which may be lawfully put, which the witness is otherwise bound to answer.—*Re ASKWITH* (1899), 31 O. R. 150.—**CAN.**

#### PART V. SECT. 2, SUB-SECT. 4.—C.

4105 i. *Who may take objection—Not counsel.*—The claim for protection against incriminating questions is a personal one & must be made by the party himself & under oath. The objection of his counsel will not do.—*R. v. MCINTYRE* (1909), 7 E. L. R. 50.—**CAN.**

PART V. SECT. 2, SUB-SECT. 10. **sk.** *Whether Act of 1696, c. 25, applies in questions between.*—*GALLOWAY v. GALLOWAY*, [1929] S. C. 160.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 3.—B. (d).

**sa.** *Notes made by police officer.*—

Notes made by a police officer for the purpose of making a report to his superior officer are confidential, & their production cannot be insisted on by accused.—*HINSHELWOOD v. AULD*, [1926] S. C. (J.) 4.—**SCOT.**

#### PART V. SECT. 3, SUB-SECT. 5.—A.

4493 iii. ———— *Expert witness.*—**Held**: a medical witness could not refuse to give evidence because his fees had not been paid.—*R. v. HUBLEY* (N. S.), [1925] 1 D. L. R. 491; 43 Can. Crim. Cas. 203.—**CAN.**

#### PART V. SECT. 3, SUB-SECT. 5.—D. (a).

4548 v. ————.]—Where there was sufficient evidence before the trial judge to warrant him in finding that deft. came from Cuba to St. John, not merely because he was a necessary witness & wished to testify at a trial on his own behalf, but that he would have come as he did had there been no trial of the cause expected:—**Held**: deft. was not entitled to be paid travelling expenses under such conditions.—*PURITY ICE CREAM CO. v. O'CONNELL* (1924), 52 N. B. R. 422.—**CAN.**

1 i. ———— *Whether applicable to Royal Commission.*—The right of a witness in a civil proceeding to prepayment of conduct money & expenses to & from where he is ordered to be in attendance is well settled, & the same principle which applies to a civil proceeding in one of H. M. Superior cts. of record must *a fortiori* apply to a Royal Commission in the absence of express statutory power.—*R. v. MCADAM* (1927), 50 Can. Crim. Cas. 31; 39 B. C. R. 101.—**CAN.**

#### PART V. SECT. 3, SUB-SECT. 5.—F.

b i. ———— *Award silent as to fees of witnesses—Power to grant fees vested in arbitrator.*—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any particular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of prepayment was reasonably necessary.—*Re GALT BROS. & BURNABY* (1928), 39 B. C. R. 470; [1928] 1 W. W. R. 798.—**CAN.**

4521a. — Put in witness-box but not examined. —Held: his costs of travelling & attending the trial ought to be allowed.—FLOWER v. GARDNER (1857), 3 C. B. N. S. 185; 27 L. J. C. P. 56; 30 L. T. O. S. 135; 140 E. R. 710.

4586. Add. Annotation:—Refd. The Massilia, [1926] P. 180.

4594a. — Witness not called.]—Where a charge for the attendance of such witness was allowed, because counsel in advising on evidence thought that the witness was necessary:—Held: that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.

4649. For "(circa. 1660)" read "(circa. 1670)."

4722. Add. Annotation:—Refd. R. v. Huntingdon Confirming Authority, [1929] 1 K. B. 698.

4729a. Whether obligations of oath understood.—When witness may be asked.]—A judge is entitled to question a witness at any stage of his evidence with a view to ascertaining whether he recognises the obligations of an oath.—R. v. WILSON (1924), 18 Cr. App. Rep. 108, C. C. A.

4734. Add. Annotation:—Consd. Lala Indar Prasad v. Lala Jagmohan Das (1927), 43 T. L. R. 536.

4816. Add. Annotations:—As to (2) Consd. More v. Weaver, [1928] 2 K. B. 520. Expld. Minter v. Priest, [1929] 1 K. B. 655.

4829. Add. Annotation:—Mentd. Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930.

4848. Add. Annotation:—Mentd. Smith's Potato Crisps v. Paige's Potato Crisps (1928), 45 R. P. C. 132.

4849. Add. Annotation:—Mentd. La Radio-technique v. Weinbaum (1927), 137 L. T. 638.

4859. Add. Annotation:—Apld. Grinham v. Davies, [1929] 2 K. B. 249.

4875. Add. Annotation:—Distd. R. v. Harris, [1927] 2 K. B. 587.

4974. Add. Annotation:—Mentd. Royal Exchange Assce. v. Hope, [1928] Ch. 179.

4997. Add. Annotations:—Refd. Jacobson v. Frachon (1927), 138 L. T. 380. Mentd. Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

5022. Add. Annotation:—Refd. R. v. Copestake, Ex p. Wilkinson (1926), 90 J. P. 191.

5027. Add. Annotation:—Consd. R. v. Copestake, Ex p. Wilkinson (1926), 90 J. P. 191.

5045. Add. Annotation:—Generally, Mentd. Mellor v. Beardmore (1927), 44 R. P. C. 175.

5048. Add. Annotations:—Mentd. Dotzauer v. Dotzauer (1925), 41 T. L. R. 289; Lankester v. Lankester & Cooper, [1925] P. 114; Preger (otherwise Prager) v. Preger (otherwise Prager) (1926), 134 L. T. 670.

5067. Add. Annotation:—Mentd. Roberts v. Hopwood, [1925] A. C. 578.

5092. Add. Annotation:—Mentd. Farr, Smith v. Messers, [1928] 1 K. B. 397.

5099. Add. Annotations:—Refd. R. v. Liddle (1928), 21 Cr. App. Rep. 3. Mentd. R. v. Harris, [1927] 2 K. B. 587.

5107. The second line of this paragraph should

PART V. SECT. 3, SUB-SECT. 7.—A. (c) i.

4645 i. General rule.—Clear case must be made out.]—DESROCHERS v. QUEBEC LIQUOR COMMISSION & SIMARD (1922), 37 Can. Crim. Cas. 17; 23 Q. P. R. 427.—CAN.

4649 iv. —.]—A witness, summoned by the High Ct. to give evidence, left the jurisdiction without being discharged as a witness & without the permission of the ct., in order to avoid giving evidence:—Held: such conduct amounted to contempt, & the High Ct. had inherent jurisdiction to punish for that contempt.—ABRAHIM MAMOOJEE PAREKH v. R. (1926), 1 L. R. 4 Ran. 257.—IND.

PART V. SECT. 5, SUB-SECT. 2.

4769 ii. —.]—Two plaintiffs witnesses.]—Semble: when there are two plifs. & both are witnesses, deft. has not the right to insist that while one of them is giving his testimony the other shall be excluded.—MCINTYRE v. MCINTYRE, [1925] 2 W. W. R. 581.—CAN.

PART V. SECT. 6, SUB-SECT. 1.—A.

sb. Evidence of foreign witness.—When interpreter allowed.]—While it is desirable that a foreigner should not be allowed to give his testimony through an interpreter if he really understands English, yet where a witness persists in stating his ignorance of English & that he does not understand the questions put to him, & there is no evidence that he is not speaking the truth, he should not be forced to testify in English, especially where the result is a mass of unintelligible evidence.—PONOMOROFF v. PONOMOROFF, [1925] 3 W. W. R. 673.—CAN.

— In criminal trials.]—See CRIMINAL LAW, Vol. XIV., p. 264.

PART V. SECT. 6, SUB-SECT. 2.—B.

4830 i. — Other defendant & his

witnesses.]—On the trial of a civil action, other than for divorce, against more than one deft., when defts. have pleaded separately, but there is no substantial difference in their interests, the judge may refuse to allow separate cross-examination of co-deft.'s witnesses; in other circumstances separate counsel may be allowed to be heard, with the consequential right to cross-examine co-deft. or his witnesses.—MILLAR v. B. C. RAPID TRANSIT CO., LTD., [1926] 1 D. L. R. 1171; [1926] 1 W. W. R. 543; 36 B. C. R. 345.—CAN.

PART V. SECT. 6, SUB-SECT. 4.

4874 iii. —.]—Re HAYES WILLIAMS (1926), 26 S. R. N. S. W. 383; 43 N. S. W. W. N. 101.—AUS.

PART V. SECT. 6, SUB-SECT. 7.—D.

4955 iii. — Although inadmissible.—Because produced too late.]—JEWAN LAL DAGA v. NILMANI CHAUDHURI (1927), L. R. 55 Ind. App. 107.—IND.

PART V. SECT. 6, SUB-SECT. 7.—E.

s i. —.]—Before a witness is allowed to refresh his memory of a statement made by another by reference to a memorandum of it made at the time, he must be able to state that such statement was truly & correctly entered in the memorandum, & where a copy of the memorandum is sought to be used the witness must be able to show that while the entry was fresh in his mind he compared the copy with the original entry, & that he found the copy correct.—R. v. ELDER, [1926] 3 D. L. R. 447; [1926] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—CAN.

PART V. SECT. 6, SUB-SECT. 7.—G.

5012 i. — By jury.]—O'BRIEN v. O'BRIEN (1888), Cont. Dig. 554, 992; Cam. Cas. 282.—CAN.

so. Whether document admissible as evidence.]—The fact that a witness is allowed to refresh his memory, by referring to a memorandum made by him, does not make such memorandum admissible as evidence in corroboration of his testimony.—YOUNG v. DENTON, [1927] 1 D. L. R. 426; [1927] 1 W. W. R. 75; 21 Sask. L. R. 319.—CAN.

PART V. SECT. 6, SUB-SECT. 8.

5020 i. Refusal to answer questions.—Penalties.—Punishment for contempt.—Power of magistrate.]—Re AYOTTE (1905), 15 Man. L. R. 156.—CAN.

5020 ii. —.]—Deft. was committed for contempt of ct., for not answering a question asked by the magistrate:—Held: the magistrate had power to commit deft.—R. v. ENDLER (1909), 7 E. J. R. 150, 151, 152.—CAN.

PART V. SECT. 7, SUB-SECT. 3.—A.

5054 ii. —.]—STERLING TRUSTS CORPN. v. MELNECHUK (Sask.), [1927] 4 D. L. R. 521; [1927] 3 W. W. R. 131.—CAN.

5059 i. Whether party entitled to split evidence into two parts.—As part of his case & partly as evidence in reply.]—Pltf. is not allowed in presenting evidence to divide his case, either by omitting to give evidence originally upon a material point & offering such evidence in reply, or by giving some evidence upon a particular point in his original case & offering other evidence upon the same point in reply.—HARVEY v. CANADIAN PACIFIC RY. CO. (1885), 3 Man. L. R. 266.—CAN.

PART V. SECT. 8, SUB-SECT. 1.—A.

5082 ii. —.]—The duty of determining whether a witness may be treated as adverse or hostile is one peculiarly within the discretion of the trial judge.—MAYFIELD RURAL MUNICIPALITY, No. 406 v. LONDON &

read "out to be unfavourable to the party calling him is not."

5112. *Add. Annotation* :—*Refd. R. v. Harris* (1927), 20 Cr. App. Rep. 144.

5140. *Add. Annotation* :—*Consd. Hobbs v. Tinling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.

5182. *Add. Annotation* :—*Consd. Hobbs v. Tinling,*

*Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.

5197. *Add. Annotation* :—*Consd. Hobbs v. Tinling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.

5199. *Add. Annotation* :—*Refd. Hobbs v. Tinling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.

## Part VI.—Expert Evidence.

**5403a. Limitation of volume of evidence.**—In cases involving expert evidence the expert advisers of the parties, whether legal or scientific, are under a special duty to the ct. to limit in every possible way the contentious matters of fact to be dealt with at the hearing (TOMLIN, J.).—*GRAIGOLA MERTHYR CO., LTD. v. SWANSEA CORPN.*, [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600; *on appeal*, [1928] Ch. 235, C. A.; [1929] A. C. 314, H. L.

**5403b. S. P. A.-G. v. RINGWOOD RURAL DISTRICT COUNCIL** (1928), 92 J. P. 65; 26 L. G. R. 174.

LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—CAN.

### PART V. SECT. 8, SUB-SECT. 1.—C. (b).

*sd. Statement made on examination for discovery.*—*Held*: a "previous" or "former" statement within Saskatchewan Evidence Act, R. S. S., 1920 (c. 44), ss. 32-34.—*MAYFIELD RURAL MUNICIPALITY, No. 406 v. LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA*, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—CAN.

### PART V. SECT. 8, SUB-SECT. 2.—B.

*k i.* — *Questions tending to show bad character*—*Directed to prove issue in case.*—Evidence Amendment Act, 1925, s. 12 (c), provides that a person charged & called as a witness in pursuance of this Act shall not be asked, & if asked, shall not be required to answer, any question tending to show that he is of bad character.—*Held*: questions not directed to show an accused's bad character, but to prove his guilty knowledge, which was one of issues, are not inadmissible, because they may also tend to show his bad character.—*R. v. BAXTER*, [1927] S. A. S. R. 321.—AUS.

### PART V. SECT. 8, SUB-SECT. 2.—C. (a).

*n i.* — *To shake evidence given by witness.*—Evidence of a previous statement inconsistent with the testimony of a witness is not admissible as evidence on the issues to be decided in the action, but can only be looked to to neutralise or cut down the evidence given by the witness.—*HAMMER v. S. HOFFMUNG & CO., LTD.* (1928), 28 S. R. N. S. W. 280; 45 N. S. W. W. N. 71.—AUS.

### PART V. SECT. 8, SUB-SECT. 2.—C. (b).

**5168 i. Letter written by witness.**—Where a telegram & a letter were dispatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the

transaction:—*Held*: not corroboration of the agent's oral testimony, although they might competently be referred to for the purpose of testing his credibility.—*GIBSON v. NATIONAL CASH REGISTER CO.*, [1925] S. C. 500.—SCOT.

### PART V. SECT. 9, SUB-SECT. 1.

**5209 i. Whether necessary.**—*McNAB v. COWARD*, [1925] 4 D. L. R. 712; *affg.*, [1925] 1 D. L. R. 741.—CAN.

**5211 i. What constitutes corroboration**—*Whether letter written by witness*—*About time of event in question.*—*Held*: a telegram & a letter despatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction were not corroboration of the agent's oral testimony.—*GIBSON v. NATIONAL CASH REGISTER CO.*, [1925] S. C. 500.—SCOT.

**5211 ii.** — *Evidence of fact essential to success of party.*—The corroboration required by Evidence Act, R. S. O. 1914, c. 76, s. 12, must be of something essential to be shown before *pltf.* can, upon his own evidence, obtain a decision in his favour upon the cause of action he is setting up. Evidence which is consistent with two views corroborates neither. The corroborating evidence must be of some fact essential to the success of *pltf.*, though it is not required that all such facts be corroborated.—*ELGIN v. STRUBBS*, [1928] 2 D. L. R. 838; 62 O. L. R. 128.—CAN.

**5211 iii.** — *Of telephone conversation.*—A person who hears a telephone conversation may give evidence to corroborate the person whom he was with & who was the actual speaker.—*HANSON v. GLEANER, LTD.*, [1925] 3 D. L. R. 189.—CAN.

### PART V. SECT. 9, SUB-SECT. 4.

*c* (p. 494) i. — *The rule, that claims against the estate of a deceased person require to be corroborated by other evidence than that of *pltf.*, is a rule of practice rather than of law, & is only applied where the *onus* of proof rests upon *pltf.*, & has no application where the *onus* of proof of the facts which determine the issue or issues involved rests upon the representative*

**5403c. Limitation of number of expert witnesses.**—In cases involving expert evidence only two experts are to be heard on each side, unless the judge is satisfied that by reason of special circumstances justice cannot be done without hearing further expert evidence. This rule does not exclude either side from calling any one to speak to matters he has seen, even though an expert, but in such a case the examination must be confined to matters of fact, & such person must not be treated as an expert witness.—*GRAIGOLA MERTHYR CO., LTD. v. SWANSEA CORPN.* (1926), 71 Sol. Jo. 142; *subsequent proceedings*, [1928] Ch. 31.

of the deceased person.—*TAMARA TE ANGIANGI v. TREADWELL*, [1926] N. Z. L. R. 693.—N.Z.

*c* (p. 494) ii. — *PIEPER v. ZINKANN* (1927), 60 O. L. R. 443.—CAN.

*c* (p. 491) iii. — *B. made a claim against the estate of C., deceased, for services rendered, which was allowed by the surrogate judge of probate. Held: setting aside the decision with costs, under R. S. c. 107, the evidence of B. was inadmissible in support of his claim.*—*Re CONDON ESTATE* (1896), 28 N. S. R. (16 R. & C.) 208.—CAN.

*c* (p. 494) iv. — *In re MALLOWS, FLETCHER v. INTERSTATE ESTATES CURATOR* (1926), 29 W. A. L. R. 62.—AUS.

*c* (p. 494) v. — *Although a trial judge ought not to disallow a claim against the estate of a deceased merely because the claimant's evidence is not corroborated, nevertheless he should examine such evidence with care, & even suspicion, & should not allow the claim unless completely satisfied of its truth.*—*JOHNSON v. BERRY*, [1928] 4 D. L. R. 286; [1928] 2 W. W. R. 410; 22 Sask. L. R. 402.—CAN.

*c* (p. 494) vi. — *Re LUTZ*, [1928] 1 D. L. R. 72.—CAN.

*f* (p. 495) iv. — *Claim made up of separate items.*—*GERARD v. HUDSON*, [1928] 1 D. L. R. 839.—CAN.

### PART V. SECT. 10, SUB-SECT. 2.—C. (a) iv.

*f i.* — *CUVILLIER v. THIBODO* (1849), 5 U. C. R. 328.—CAN.

### PART VI. SECT. 1.

*m.* Read now "5403c i."

*n.* Read now "5403c ii."

*o.* Read now "5403c iii."

**5403c iv.** — *Construction of Ontario Evidence Act, s. 10*—*BUTTRIM v. UDELL*, [1925] 3 D. L. R. 45; 57 O. L. R. 97.—CAN.

*s.* For "Conflict of opinion as to value" read "Conflict of opinion—Duty of court—Conflict of opinion as to value."

*s i.* — *HAY v. BAIN*, [1925] 2 D. L. R. 948.—CAN.



- 5407a. — Only medical witnesses—Not research student in toxicology.]—NIGHTINGALE v. BIFFEN, HEWITT v. BIFFEN (1925), 18 B. W. C. C. 358, C. A.
5433. Add. Annotation:—*Re*d. Australia (Owners) v. Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

5476. Add. Annotation:—*Mentd.* *Re* Clayton's Petn. (1927), 43 T. L. R. 659.
5479. Add. Annotations:—*Consd.* Buerger v. New York Life Assee. (1927), 96 L. J. K. B. 930. *Re*d. R. v. Moscovitch (1927), 138 L. T. 183.

## Part VII.—Evidence by Affidavit.

5493. Add. Citations:—94 L. J. Ch. 73; 132 L. T. 540.
- Add. Annotation:—*Mentd.* *Re* Drage, Palmer & Roberts v. Knight (1926), 134 L. T. 765.
- 5523a. — Proceedings on which affidavit made no longer pending.]—CATHOLIC PUBLISHING & BOOKSELLING CO., LTD. v. WYMAN (1863), 1 New Rep. 468; 7 L. T. 849; 11 W. R. 399.
5573. Add. Annotation:—*Mentd.* *Re* Reddaway's Appln., [1925] Ch. 693.
- 5676a. —.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.
- 5873a. —.]—The *jurat* of an affidavit of the due taking of an acknowledgment had an interlineation in the body of it, & an erasure in the *jurat*. The ct. refused to allow it to be filed, & refused to enlarge the time for returning the commission, in order to get the defects remedied, the time for the return having expired.—*Re* TIERNEY (1855), 15 C. B. 761; 24 L. T. O. S. 260; 139 E. R. 625.
- 5880a. —.]—*Re* TIERNEY, No. 5873a, ante.
- 5951a. — In material part of affidavit—Proof of time of erasure.]—The ct. allowed a certificate of acknowledgment & affidavit of verification, taken in New South Wales, to be received & filed, notwithstanding an erasure in a material part of the affidavit, there being satisfactory evidence, by affidavit, that the erasure was made before the acknowledgment & affidavit were taken &

sworn.—*Re* BINGLE (1854), 15 C. B. 449; 2 C. L. R. 1793; 23 L. T. O. S. 177; 139 E. R. 500.

6015. Add. Annotation:—*Mentd.* Moser v. Ambleside U. D. C. (1925), 89 J. P. 118.
- 6052a. —.]—ANON. (1839), No. 6108a, post.
- 6053a. — No commissioner available.]—*Re* GROOM, No. 6066a, post.
6056. Add. Annotation:—*Folld.* *Re* Eastern United Assee. Corpn. (1928), 72 Sol. Jo. 353.
- 6056a. —.]—*Re* EASTERN UNITED ASSURANCE CORPN. (1928), 72 Sol. Jo. 353.
- 6066a. Notary public—No commissioner available.]—The ct. allowed a certificate of acknowledgment under Fines & Recoveries Act, 1833 (c. 74), s. 84, to be filed under s. 85 where the affidavit verifying the certificate was sworn before a notary public in the Hebrides, as the affidavit on which the application was made deposed that there was no comr. of the ct. in the Hebrides or nearer than the mainland.—*Re* GROOM (1869), 17 W. R. 589.
- 6081a. —.]—*Re* STREET (1845), 2 C. B. 364; 135 E. R. 987.
- 6081b. —.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.
6083. Add. Annotation:—*Folld.* *Re* Eastern United Assee. Corpn. (1928), 72 Sol. Jo. 353.
- 6083a. S. P. *Re* EASTERN UNITED ASSURANCE CORPN. (1928), 72 Sol. Jo. 353.

s ii. —.]—Where a case is complicated by the introduction of opinion evidence, particularly in cases where the testimony is that of medical men, it is the duty of the judge to arrive at his own conclusion after carefully considering the evidence of the experts, & it is not enough for him to say, "I doubt & cannot resolve the doubt because an expert also doubts."—BENNETT v. PEATTIE (1925), 57 O. L. R. 233.—CAN.

sh. Weight of evidence.]—WILLIAM HAMILTON MANUFACTURING CO. v. VICTORIA LUMBERING & MANUFACTURING CO. (1890), 26 S. C. R. 96.—CAN.

sj. —.]—GUELPH WORSTED SPINNING CO. v. GUELPH CORPN., GUELPH CARPET MILLS CO. v. GUELPH CORPN. (1914), 30 O. L. R. 466; 18 D. L. R. 73; 5 O. W. N. 761.—CAN.

### PART VI. SECT. 2, SUB-SECT. 1.

5406 i. What witnesses may be heard—*Nurse.*]—A nurse's evidence, as to the physical condition of a child, & her opinion as to its sufferings:—*Held*: admissible as an expert up to a certain point.—HEPENSTAL v. MERRITT (1895), 33 N. B. R. 91.—CAN.

a i. — Distance at which gun held.]—*R. v.* PREPPER (1890), 22 N. S. R. 174.—CAN.

### PART VII. SECT. 1.

sk. As proof of settlement of action.]—The question whether or not an action has been settled should not be disposed of on affidavits, where the evidence is conflicting.—PULKRABEK v. PULKRABEK (1927) 4 D. L. R. 635; [1927] 3 W. W. R. 239.—CAN.

### PART VII. SECT. 4, SUB-SECT. 1.

ri. — County Courts Act, R. S. M., 1913 (c. 44), s. 138—Effect of.]—*R. v.* GUYOT, [1927] 1 D. L. R. 191; 36 Man. L. R. 178; [1926] 3 W. W. R. 584.—CAN.

### PART VII. SECT. 6.

sl. Affidavit on application for security for costs—Right to require production of documents—Relating to defence.]—On a cross-examination on an affidavit in support of an application for security for costs, the deponent can be required, without an order by a judge to do so, to produce documents relating to the defence alleged in the affidavit, even though such cross-examination is held before the statement of defence is filed.—COLLEGE BRAND CLOTHES CO., LTD. v. BROWN & FITZPATRICK, [1928] 2 D. L. R. 502; [1928] 1 W. W. R. 778; 23 Alta. L. R. 363.—CAN.

### PART VII. SECT. 11, SUB-SECT. 2.—A.

sm. Affidavit filed on rule nisi—Initialed differently from rule—Right to amend.]—Where the heading of an affidavit, on which a rule nisi was obtained, differed from the heading of the rule nisi, the ct. gave leave for the affidavit to be amended so as to agree with the rule nisi.—*Ex p.* HIGGS, *Re* SMITH'S NEWSPAPERS, LTD. (1927), 28 S. R. N. S. W. 85.—AUS.

### PART VII. SECT. 11, SUB-SECT. 7.—B.

5904 i. What is an interlocutory proceeding—Not an application for prohibition.]—An application for prohibition is not an interlocutory motion; hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—BEAUCHENE & PELTIER v. GUNSON, [1928] 3 D. L. R. 692; [1928] 2 W. W. R. 497; sub nom. *Ex p.* BEAUCHENE, 50 Can. Crim. Cas. 57.—CAN.

### PART VII. SECT. 12, SUB-SECT. 1.—B.

6022 iii. —.]—Affidavits sworn before an attorney, who is a partner of counsel engaged in the cause, but not otherwise connected therewith, may be read.—WILDE v. CROW (1861), 10 C. P. 406.—CAN.



- 6092a. ———.]—*Re* CRAWFORD (1847), 4 C. B. 626; 136 E. R. 653.
- 6096a. *Italy—British minister.*]—The ct. refused to direct the proper officer under Pines & Recoveries Act, 1833 (c. 74), to receive & file an acknowledgment, where the affidavit of verification was sworn before the British minister at Florence, it not appearing that there was any difficulty in getting it sworn before some properly constituted authority at that place.—*Re* DUNSANY (1849), 7 C. B. 119; 137 E. R. 49.
- 6108a. ———.]—The ct. refused to file

the certificate of the acknowledgment of a deed by a married woman resident in America, verified by an affidavit made before a notary public, without an affidavit that notaries public are the proper officers for taking affidavits in America, & also as to the identity of the comrs.—ANON. (1839), 3 Jur. 125.

6143. *Add. Annotation:—Mentd.* Charles v. Cardiff Collieries (1928), 44 T. L. R. 448.
6153. *Add. Annotation:—Mentd.* Hunter v. Stadtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

## Part VIII.—Evidence out of Court.

6201. *Add. Annotation:—Consd.* Woodrow v. Trawlers (White Sea) & Grimsby (1929), 111 L. T. 676.
6239. *Add. Annotation:—Mentd.* *Re* Southerden, Adams v. Southerden, [1925] P. 177.

- 6561a. ———.]—*Re* TIERNEY, No. 5873a, *ante*.
6604. *Add. Annotation:—Mentd.* *Re* City Equitable Fire Insee., [1925] Ch. 407.
- 6743a. ——— *Application after judgment entered.*]—CORBOLD v. GARRETT, [1929] W. N. 16.

**PART VIII. SECT. 1, SUB-SECT. 1.**  
6176 x. ———.]—KOURI v. NEMEROVSKY, [1927] 4 D. L. R. 928; [1927] 3 W. W. R. 357; 37 Man. L. R. 9.—CAN.

sn. *Application on motion to add defendant—No grounds shown for addition.*]—RENE v. CARLING EXPORT BREW. & MALT CO., [1928] 1 D. L. R. 634; 61 O. L. R. 495.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 5.—E.**

6286 iii. ———.]—Where there is nothing to show that deft. administrator is not lawfully & properly, according to his ordinary course of life, entitled to be away from Saskatchewan, he may obtain an order for his own examination *de bene esse* in the foreign jurisdiction wherein he resides.—JACQUES v. JACQUES, [1928] 1 W. W. R. 447.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 5.—F.**  
m i. ———.]—WILLIAMS & WILLIAMS v. FRASER (1925), 35 B. C. R. 481.—CAN.

a i. ———.]—*Re* WEINGARTEN, [1925] 2 D. L. R. 1036; 5 C. B. R. 606.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 5.—G.**  
e i. ———.]—BURROUGHS v. INTER-COLONIAL GOLD MIN. CORPN. (N. S.), [1927] 3 D. L. R. 371.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 5.—H.**  
6338 iv. ——— *Party.*]—PHANINDA KRISHNA DOTT v. PRAMATHA NATH MALIA (1927), 1 L. R. 55 Calo. 748.—IND.

1 i. ——— *Illness of plaintiff.*]—Under Supreme Ct. Ord. 37, r. 5 (B. C.), plff. may, on the grounds of serious illness, obtain leave to issue a writ of commission to have his evidence taken for use on the trial before the time for appearance has elapsed.—KELLY v. KELLY, [1925] 1 W. W. R. 332.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 6.—B. (a).**

r i. ———.]—The onus of establishing that an examination on commission of a party outside the jurisdiction is "necessary for the purposes of justice" is on the party applying for the order.—STAPLES v. MILOFF (Man.) [1927] 2 D. L. R. 817; [1927] 1 W. W. R. 435.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 6.—B. (c).**

6408 i. *Of necessity of examination—Belief of deponent.*]—Evidence based on information & belief, if the grounds thereof are sufficiently stated, is admissible on an application for a commission to examine witnesses out of the jurisdiction of the ct.—SYDNEY FERRIES, LTD. v. S. S. TAHITI (1928), 28 S. R. N. S. W. 307; 45 N. S. W. W. N. 71.—AUS.

**PART VIII. SECT. 2, SUB-SECT. 1.—C.**

6523 i. *What must be included—Names of witnesses.*]—There is no rigid rule that such names must be given in the order for the commission.—WATKINS (J. R.) Co. v. CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—CAN.

**PART VIII. SECT. 2, SUB-SECT. 1.—D.**

6540 i. *What must be inserted—Names of witnesses.*]—There is no rigid rule that such names must be given in the commission.—WATKINS (J. R.) Co. v. CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—CAN.

**PART VIII. SECT. 3, SUB-SECT. 2.—A.**

6681 vi. ———.] *Held:* whereas in the present case evidence had been taken on commission & no objection had been raised, & the matter to be proved was purely formal, the ct. was entitled to accept the evidence as *prima facie* sufficient.—SOPWITH AVIATION & ENGINEERING CO., LTD. v.

MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—N.Z.

so. *May be put in by other side.*]—GAINERS v. CANADIAN NORTHERN RY. CO., [1925] 3 D. L. R. 369.—CAN.

**PART VIII. SECT. 4.**

m i. *For use of foreign court.*]—Under Foreign Tribunals Evidence Act, 1856, the ct. is empowered to order the examination of witnesses within its jurisdiction, whose examination is applied for by a ct. of competent jurisdiction in a foreign country.—LORD ADVOCATE, THE PETITIONER, [1925] S. C. 568.—SCOT.

**PART VIII. SECT. 5.**

6739 i. *Whether allowed to successful party—When order obtained by consent.*]—A commission to examine a witness was granted of consent of parties in a case in which proof had been allowed by the sheriff-substitute. The allowance of proof was subsequently recalled by the sheriff, whose decision was affirmed on appeal. While the appeal against the sheriff's interlocutor was pending, the commission was executed.—*Held:* in this particular case, the expenses of obtaining & executing the commission fell to be allowed, in respect that it had been granted of consent.—GILCHRIST v. NATIONAL CASH REGISTER CO., [1929] S. C. 272.—SCOT.

**PART IX. SECT. 2.**

sp. *To prove testamentary capacity—Will made before testator found insane.*]—A suit will lie at the instance of an insane testator in his lifetime, to perpetuate testimony as to his testamentary capacity at the time of his will, made before he was found insane.—HANKEN v. PEACE (1927), 27 S. R. N. S. W. 110; 44 N. S. W. W. N. 123.—AUS.

## Part XI.—Colonial and Foreign Law.

6851. *Add. Annotation* :—**Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
6859. *Add. Annotation* :—**Mentd.** *Tallack v. Tallack & Broekema*, [1927] P. 211.
6864. *Add. Annotation* :—**Apld.** *R. v. Moscovitch* (1927), 44 T. L. R. 4.
6865. *Add. Annotation* :—**Apld.** *R. v. Moscovitch* (1927), 44 T. L. R. 4.
6866. *Add. Annotation* :—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6867. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
6872. *Add. Annotations* :—**Refd.** *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. **Mentd.** *Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
6874. *Add. Annotation* :—**Consd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
- 6876a. ———.]—**Pltf.** divorced her husband in France & made a verbal agreement with him pending the divorce proceedings that she would not ask for alimony if he would promise to assist her when he should be in a position to do so, unless in the meantime she had married a wealthy man or had ceased to live a chaste life :—**Held** : (1) the validity in French law of such an agreement could not be presumed by the judge when the expert witnesses as to French law had given no evidence on the point; (2) the French witnesses having returned to France after having given their testimony, it would not be just to allow the pleadings to be amended so as to allow further proof of the French law.—**DENNISTOUN v. DENNISTOUN** (1925), 69 Sol. Jo. 476.
6887. *Add. Annotation* :—**Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
6890. *Add. Annotation* :—**Mentd.** *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604.
6894. *Add. Annotation* :—**Mentd.** *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
6896. *Add. Annotations* :—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. **Mentd.** *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604; *Berthiaume v. Dastous* (1929), 45 T. L. R. 607.
6900. *Add. Annotation* :—**Apld.** *R. v. Moscovitch* (1927), 44 T. L. R. 4.
6901. *Add. Annotation* :—**Refd.** *R. v. Moscovitch* (1927), 138 L. T. 183.
6906. *Add. Annotation* :—**Apld.** *Perry v. Equitable Life Assce. Society of U.S.A.* (1929), 45 T. L. R. 468.
6907. *Add. Annotations* :—**Refd.** *Re Visser, Holland v. Drukker*, [1928] Ch. 877. **Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
6916. *Add. Annotation* :—**Consd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6917. *Add. Annotation* :—**Apld.** *Perry v. Equitable Life Assce. Society of U.S.A.* (1929), 45 T. L. R. 468.
- 6917a. ———. **As to law of Russia.**]—**PERRY v. EQUITABLE LIFE ASSCE. SOCIETY OF UNITED STATES OF AMERICA** (1929), 45 T. L. R. 468.
6918. *Add. Annotations* :—**As to** (1) **Refd.** *R. v. Moscovitch* (1927), 138 L. T. 183. **As to** (2) **Consd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6923. *Add. Annotations* :—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. **Mentd.** *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604.
6928. *Add. Annotation* :—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6951. *Add. Annotation* :—**Mentd.** *Macaulay v. Guaranty Trust Co. of New York* (1927), 44 T. L. R. 99.

### PART XI. SECT. 1.

**eq. Jurisdiction to order.**]—**Held** : even if it was within the power of the ct. to examine foreign written law so as to ascertain what that law was, it was always competent, if the ct. considered it necessary, to order a proof of foreign law, whether written or unwritten.—**HIGGINS v. KWING'S TRUSTEES**, [1925] S. C. 440.—**SCOT.**

### PART XI. SECT. 2.

**n i.** ———.]—**The Supreme Ct.**

of Canada is bound to take judicial notice of the laws of all the provinces of the Dominion.—**CANADIAN PACIFIC RY. Co. v. PARENT** (1917), 86 L. J. P. C. 123.—**CAN.**

### PART XI. SECT. 3.

**6869 vi.** ———.]—**The canon law of the Roman Catholic Church is foreign law, which must be proved as a fact & by the testimony of expert witnesses according to the well-settled**

rules as to proof of foreign law. The foreign law applicable to a case must be taken from the statement of the expert witness as to what the law is, & not from text-books or codes referred to by him.—**O'CALLAGHAN v. O'SULLIVAN**, [1925] 1 I. R. 90.—**IR.**

### PART XI. SECT. 8, SUB-SECT. 1.

**6939 xi.** ———.]—**TILTON v. McKAY** (1874), 24 C. P. 94.—**CAN.**

## EXECUTORS AND ADMINISTRATORS.

## Part I.—The Office of Executor or Administrator.

—*In the Goods of* EVANS (1923), 128 L. T. 669.

17b. **Appointment written in margin.**—An appointment of exors., written vertically in the margin of a will, excluded from the probate, there being no signature at the bottom of the clause in the margin.—*In the Goods of* TOOKEY (1847), 5 Notes of Cases, 386.

54a. *S. P. In the Goods of* COLES (1871), L. R. 2 P. & D. 362; 41 L. J. P. & M. 21; 25 L. T. 852; 36 J. P. 120; 20 W. R. 214.

*Annotation*:—*Re*fd. *Foundling Hospital v. Crane* (1911), 105 L. T. 187.

63a. ————*In the Goods of* WAY, [1901] P. 345; 71 L. J. P. 13; 85 L. T. 643; 17 T. L. R. 758.

150. *Add. Annotation*:—*Re*fd. *Jenkins v. Jenkins*, [1928] 2 K. B. 501.

151. *Add. Annotation*:—*Re*fd. *Jenkins v. Jenkins*, [1928] 2 K. B. 501.

152. *Add. Annotations*:—*Ap*ld. *Re* *Comberbach, Saunderson v. Jackson* (1929), 73 Sol. Jo. 403. *Re*fd. *Jenkins v. Jenkins*, [1928] 2 K. B. 501.

153. *Add. Annotation*:—*Generally*, *Re*fd. *Jenkins v. Jenkins*, [1928] 2 K. B. 501.

154a. ————**Appointment of one of several makers of promissory note.**—During the lifetime of testator the exor. named in his will & three

other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof:—*Held*: the action was not maintainable, inasmuch as the effect of pltf.'s appointment as exor. was (1) at common law that the debt was discharged by release at the date of the death of testator, & (2) in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action was brought.—*JENKINS v. JENKINS*, [1928] 2 K. B. 501; 97 L. J. K. B. 400; 139 L. T. 119; 41 T. L. R. 483; 72 Sol. Jo. 319, D. C.

165a. ————**Appointment of wife of debtor.**—*Re* PRICE, PRICE *v.* PRICE (1879), 11 Ch. D. 163; 48 L. J. Ch. 478; 40 L. T. 668; 27 W. R. 698, C. A.

165b. ————*JENKINS v. JENKINS*, No. 154a, *ante*.  
209a. *S. P. ANON.* (1806), 12 Ves. 4; 33 E. R. 2. *Annotation*:—*Re*fd. *Browell v. Reid* (1842), 11 L. J. Ch. 272.

258. *Add. Annotation*:—*As to* (1) *Re*fd. *Jenkins v. Jenkins*, [1928] 2 K. B. 501.

296. *Add. Annotation*:—*Re*fd. *Re City Equitable Fire Insee.*, [1925] Ch. 407.

427. *Add. Citations*:—*Moore*, K. B. 146; *sub nom.* *RUSSEL v. PRAT*, 1 And. 177; *on appeal* (1589), 1 Leon. 193, Ex. Ch.

## PART I. SECT. 1.

sa. *Nature of office.*—The office of exor. is an administrative appointment, not a benefit, & a widow who has been appointed extrix. under her husband's will is not bound to elect between accepting the office & claiming her legal rights.—*SMART v. SMART*, [1926] S. C. 332.—*SCOT*.

## PART I. SECT. 2, SUB-SECT. 1.

sb. *Public Trustee.*—Testator, domiciled in the Irish Free State, appointed the Public Trustee to be his exor. & trustee:—*Held*: neither the Irish Public Trustee nor the English Public Trustee could accept the appointment.—*In the Goods of* LEESON, [1928] I. R. 168.—*IR*.

## PART I. SECT. 3, SUB-SECT. 2.—A. (a).

47 i. *S. P. Re* MAURAT ESTATE (Sask.), [1927] 3 W. W. R. 18.—*CAN*.

## PART I. SECT. 3, SUB-SECT. 2.—A. (b).

so. *Universal legatee—Trust to divide between legatee & others.*—A will reading, "I bequeath all my estate to Mrs. S. to be divided ———— Mrs. S. & her brothers & sister":—*Held*: not to constitute Mrs. S. an extrix. according to the tenor of the will.—*Re* McMILLAN, [1925] 3 W. W. R. 584.—*CAN*.

## PART I. SECT. 4, SUB-SECT. 1.—A.

sd. *Appointment of executors for New Zealand property & executors for English property—Probate granted to New Zealand executors.*—Where testator dies domiciled in England, leaving property in New Zealand & in England, & having by his will appointed separate exors.

to deal with his New Zealand & his English property, a ct. in New Zealand may grant probate to the New Zealand exors. in respect of the property within the jurisdiction, reserving leave to the English exors. to apply in England for probate in respect of the remainder of the property. For the purpose of facilitating the latter appln. the New Zealand ct. may permit the removal from its file of the original will upon condition that an exact copy of such will, certified by the Registrar, be left upon the file of the local ct.—*Re* WRIGHTON, [1929] N. Z. L. R. 96.—*N.Z.*

## PART I. SECT. 9.

202 i. *Jurisdiction to release—Surrogate court.*—A surrogate ct. judge has no power to make an order releasing exors. "from their exorship."—*Re* DENTON ESTATE (Sask.), [1926] 3 W. W. R. 186.—*CAN*.

o i. ————*Under the discretionary power given him by Trustee Act, R. S. S., 1920 (c. 75), s. 71, the judge appointed a judicial trustee in place of an extrix.*—*SMALL v. PACKARD*, [1925] 1 W. W. R. 897.—*CAN*.

1 (p. 46) i. ————*Executor—Desiring to be released—Co-executor necessary party.*—When some of several co-exors. apply to be released from the trust, the ct. will require the other co-exors. to be brought before the ct. before they will refer it to a master to report on suitability of persons to be substituted.—*Re* TOBIN'S ESTATE (1858), 3 N. S. R. (2 Thom.) 338.—*CAN*.

1 (p. 46) ii. ————*Conduct of co-executor prejudicial to trust property.*—On the appln. of an exor. held that an order should go for the removal of his

co-exor. on the ground that the latter's conduct had been such as to endanger the trust property, although nothing in the nature of fraud or dishonesty was imputed against him.—*Re* SOMERSET ESTATE, [1928] 2 W. W. R. 697.—*CAN*.

so. *Contested motion—Costs of.*—The costs of a contested motion, for the removal of an administrator & the appointment of another in his place, should not be taxed as between solr. & client.—*Re* GAMMON ESTATE, PAYNE v. GAMMON, [1927] 2 D. L. R. 605; [1927] 1 W. W. R. 506; 38 B. C. R. 153.—*CAN*.

st. *Order for made upon originating notice—Direction to pass accounts—& replace trust fund.*—An order under Trustee Act, R. S. O. 1927, c. 150, s. 36, for the removal of an exor., may now be made summarily upon originating notice. An order removing an exor. & trustee directed him to pass his accounts. It was not denied that he was liable for the loss or jeopardy of a considerable sum of money. He made a claim for the statutory compensation for his services which was not admitted; & he was required, pending the taking of the accounts, to replace the trust fund for which he was not able to show any security in hand.—*Re* LATTERSON, [1928] 3 D. L. R. 197; 62 O. L. R. 255.—*CAN*.

## PART I. SECT. 10, SUB-SECT. 1.—C.

274 ia. *S. P. PUBLIC TRUSTEE v. REGISTRAR—GENERAL OF LAND*, [1927] N. Z. L. R. 839.—*N.Z.*

## PART I. SECT. 12.

sg. *What amounts to renunciation—Right reserved to infant to come in & prove.*—Probate was granted to adult

## Part II.—Probate and Letters of Administration.

718a. ———.] CHAMBERLAIN v. AGAR (1813), 2 Ves. & B. 259; 35 E. R. 317.

Annotations:—*Reid, Briggs v. Penny* (1849), 3 De G. & Sm. 525. *Mentd. Re James, Ex p. Mudd* (1842), 6 Jur. 1093.

734a. ———.]—*In the Goods of* SERGEANT (1872), 26 L. T. 669; 36 J. P. 696; *sub nom. In the Goods of* SERJEANT, 20 W. R. 872.

774a. *S. P. In the Goods of* BARBER (1886), 11 P. D. 78; 56 L. T. 894; 35 W. R. 80.

784. *Add. Annotation*:—*Reid. Lal Chand Marwari v. Mahant Ramrup Gir* (1925), 42 T. L. R. 159.

858. *Citation*:—For “34 Ch. D. 177” read “24 Ch. D. 177.”

884. For “———— Will proved in France.” read “———— Will proved in France.”

885. For “————.” read “————.”

909. *Add. Annotation*:—*Mentd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

exors., reserving to infant exor. a right to be admitted to executorship upon attaining majority:—*Held*: as the infant exor. had not declined to prove the will, & his right to prove was reserved to him by the letters probate, his minority did not prevent his taking. —*Re GRACEY* (1928), 63 O. L. R. 218.—CAN.

### PART I. SECT. 13, SUB-SECT. 2.

n i. ———.]—The exor. named in a will represents the estate of deceased for all purposes, even before probate of the will is taken out. The taking out of probate establishes the will from the date of the death of testator, & thereby all intermediate acts of the exor. in connection with the estate are validated. —*MEGHRAJ v. KRISHNA CHANDRA BHATTACHARJI* (1923), 1 L. R. 46 All. 286.—IND.

### PART I. SECT. 13, SUB-SECT. 8.—B.

471 i. *General rule*.]—Although an exor., who elects to act, may be sued before probate, the ct. has no jurisdiction over a person as exor., who has obtained a grant of probate in a foreign country, unless there were assets of testator within the jurisdiction at the time of his death, in respect of which the ct. may reasonably assume that the exor. will clothe himself in due course with the necessary representative character by an application for probate or the rescinding of the foreign probate. —*NAGEL v. HOUGH* (1927), 27 S. R. N. S. W. 418; 44 N. S. W. N. 121.—AUS.

### PART I. SECT. 14, SUB-SECT. 3.—A.

b i. ———.]—Letters of administration relate back to the death of the intestate so as to enable the administrator to bring action in respect of matters done between the death & his appointment. —*DOE d. MCKINLAY v. ELLIOTT* (1851), 3 Nfld. L. R. 180.—NFLD.

### PART I. SECT. 14, SUB-SECT. 3.—B. (b).

sg. *Liability on agreement*—*Entered into before grant*.]—*LARRY v. BAKER* (1902), 7 Terr. L. R. 145.—CAN.

### PART I. SECT. 15, SUB-SECT. 2.

g i. ———.]—*Held*: the sale of the reversion in a term of years, under a *fi. fa.* on a judgment against an exor. *de son tort*, was a valid sale as against the rightful administrator. —*BAIN v. MCINTYRE* (1867), 17 C. P. 500.—CAN.

sh. *On whom binding*—*Third party*—*Estoppel*.]—Where a buyer of goods under a conditional sale agreement induces a buyer of the same goods from him under a similar agreement to deliver up the goods to the exor. *de son tort* of the original seller in settlement of his, the first buyer's claim, he will not be allowed, in an action against such second buyer, to deny the authority of the exor. *de son tort* to take over the goods. —*LARSON v. COATES* (Sask.), [1926] 4 D. L. R. 561; [1926] 3 W. W. R. 397.—CAN.

sk. — *Administrator of estate*—*Onus on administrator*.]—Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement. Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom deft. had sold them. The authority of the exor. *de son tort* to take the chattels & so bind the administrator was established by a prior decision in an action by the deft. herein against the buyer from him. There was no evidence herein as to what the exor. *de son tort* did with the chattels:—*Held*: the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of Conditional Sales Act as to retention of the chattels & notice of their sale was on plff. herein, the administrator. —*NATIONAL TRUST CO., LTD. v. LARSON*, [1928] 3 W. W. R. 723.—CAN.

### PART I. SECT. 15, SUB-SECT. 4.—B. (a).

m i. ———.]—In an action by a creditor of a deceased against an exor. *de son tort* it is proper to sue deft. as executor as well as personally, & if plff. establishes his claim the judgment should be that the amount thereof be paid out of the assets of deceased, if deft. have so much, & if not, then out of deft.'s personal assets. —*BURNS P. & CO. v. CZERNIK*, [1928] 4 D. L. R. 854; [1928] 3 W. W. R. 294.—CAN.

### PART II. SECT. 1, SUB-SECT. 1.—A. (a).

697 i. *Construction of documents*—*Only for purposes of admission to probate*.]—*NANDKISHORE LAL v. PASUPATI NATH SAHU* (1928), 1 L. R. 7 Pat. 396.—IND.

911a. ——— Who is—Holder of office appointed executor.]—Where the holder of an office has been appointed exor., the person entitled to probate is the holder of that office, not at the time when the will was executed, but at the date of testator's death.—*In the Estate of* JONES (1927), 43 T. L. R. 324.

924a. ———.]—Ct. of Probate Act, 1857 (c. 77), s. 73, confers wide powers on the ct. Under it an exor., not willing or competent to take probate, may be replaced by an administrator to be appointed by the ct., if it shall appear to be necessary or convenient by reason of special circumstances. Misfeasance on the part of an exor. with regard to the estate of his testator is a ground for proceeding under the sect., even after the exor. has intermeddled.

Exors. had intermeddled & neglected to prove the will, & had made an agreement with the universal legatee that the will should not

### PART II. SECT. 5, SUB-SECT. 5.

ri. ———.]—*Will proved in Sweden*.]—When a will has been probated, or recognised as a valid will, in a jurisdiction other than a British country or a State of the United States of America, probate may be granted by a Surrogate Ct. in Saskatchewan upon production of a copy of the will & of the decree of probate or other act of recognition thereof, & without requiring further evidence of its validity. The extract in question herein, from the records of a District Ct. in Sweden, & the sworn translation thereof, quoted in the judgment, held admissible in evidence on an appln. for letters of administration with the will annexed of the estate of a husband who with his wife had executed a joint will in Sweden. —*Re BERGMAN*, [1928] 1 W. W. R. 601.—CAN.

rii. ———.]—*Will proved in Scotland*.]—*Re CLAZY*, [1928] 2 D. L. R. 971; [1928] 1 W. W. R. 974.—CAN.

### PART II. SECT. 5, SUB-SECT. 11.

sl. *Where suspicion arises only as to particular provisions*.]—In all cases in which a will is prepared under circumstances which raise the suspicion of the ct. that it does not express the mind of testator, it is for those who propound the will to remove that suspicion, & it is only when that has been done that the onus is thrown on those who oppose the will to prove fraud or undue influence. Where the provision arises only as to one particular provision which is severable, & that suspicion is not removed the ct. can admit the rest of the document to probate. —*SATAT KUMARI DEBI v. SAKTI CHAND* (1928), 1 L. R. 8 Pat. 382.—IND.

### PART II. SECT. 6, SUB-SECT. 1.—A.

n i. ———.]—Probate may be granted to an extrin., even though at the date of testator's death & of the application she was resident out of the jurisdiction of the ct.—*Re WALLEN*, [1926] N. Z. L. R. 729.—N.Z.

### PART II. SECT. 6, SUB-SECT. 1.—C.

ri. ———.]—*Allegation of undue influence*.]—An allegation that the appointment of a person as exor. under a will is invalid & of no effect because such person caused or procured the will to be written, is insufficient to sustain a claim to set aside the appointment. —*SMITH v. BIRD* (1924), 45 N. L. R. 381.—S. AF.

be proved. In passing them over the ct. ordered that a grant of administration should be made to a third person to be agreed upon by the exors. & the legatee, or in default to be appointed by the ct.—*In the Estate of POTTICARY*, [1927] P. 202; 96 L. J. P. 94; 137 L. T. 256.

931. *Add. Citation*:—*sub nom. In the Goods of HETT*, 6 Jur. 350.

931a. ——— *Failure to prove will.*—*In the Estate of POTTICARY*, No. 924a, *ante*.

931b. ———.]—Where property was left to an exor. in trust for a minor the ct. passed over the exor. without citation, on proof that his interest was adverse, that he had delayed obtaining probate & that he was unfit, although he resided in England & apparently was competent & not unwilling to act.—*In the Goods of RAY* (1926), 96 L. J. P. 37; 136 L. T. 640.

*Annotation*:—*Refd. In the Estate of Potticary*, [1927] P. 202.

938a. ———.]—(1) No rule of the common law as to evidence is contravened by the admission of secondary evidence as to the contents of a lost document, & when the due execution of a no longer existing testamentary paper is established, & its contents are shown to have included a clause revoking previous papers, those papers are no longer testamentary from the moment of such execution.

(2) Declarations of testator made after execution of the will are not admissible as to the fact of execution itself, as tending to contravene the statutory requirements as to execution; but they are admissible to prove the contents of a paper otherwise shown to have been properly executed, & no longer in existence.—*BARKWELL v. BARKWELL*, [1928] P. 91; 44 T. L. R. 207; 72 Sol. Jo. 69; *sub nom. In the Estate of BARKWELL*, *BARKWELL v. BARKWELL*, 97 L. J. P. 53; 138 L. T. 526.

970. *Add. Annotation*:—*Consd. In the Estate of Musgrove*, *Davis v. Mayhew*, [1927] P. 264.

991. *Add. Annotation*:—*Refd. In the Estate of Musgrove*, *Davis v. Mayhew*, [1927] P. 264.

992. *Add. Annotation*:—*Refd. In the Estate of Musgrove*, *Davis v. Mayhew*, [1927] P. 264.

993a. ———.]—Where there is a defect in the attestation clause, the evidence of one witness is required. But where an affidavit is necessary to account for alterations, & where two witnesses are required to make an affidavit, & these join in one affidavit, both shall depose to the execution (SIR H. JENNER PUST).—*In the Goods of BATTEN* (1849), 2 Rob. Eccl. 124; 7 Notes of Cases, 288; 163 E. R. 1264.

*Annotation*:—*Mentd. In the Goods of Minty* (1850), 7 Notes of Cases, 374.

1011a. ———.]—*In the Goods of BRINING* (1870), 22 L. T. 630; 34 J. P. 694.

**PART II. SECT. 6, SUB-SECT. 3.—G.**

1002 i. *Testator deaf & dumb.*—Circumstances in which probate of an alleged will of a deaf & dumb person was refused.—*Re EWEN (DECEASED)*, [1927] N. Z. L. R. 881.—N.Z.

**PART II. SECT. 6, SUB-SECT. 5.—B.**

1035 i. *Proof of contents—Need of stringent proof.*—*Re PERRY*, [1925] 1 D. L. R. 930; 56 O. L. R. 278.—CAN.

**PART II. SECT. 6, SUB-SECT. 8.—A.**

sn. *Nature of proof required.*—The

proof necessary to establish a will is not an absolute or conclusive one, but such proof as would satisfy a prudent man.—*SURENDRA NATH CHATTERJI v. JAHNAVI CHARAN MUKHERJI* (1928), 1 L. R. 56 Calc. 390.—IND.

**PART II. SECT. 6, SUB-SECT. 8.—B.**

1053 i. ——— *Wherever ground for suspicion.*—*Howie v. CHATTERTON*, [1926] N. Z. L. R. 595.—N.Z.

1053 ii. ———.]—The burden of proof as to the execution & the testa-

1016. *Add. Annotation*:—*Refd. Barkwell v. Barkwell*, [1928] P. 91.

1017. *Add. Annotation*:—*Refd. In the Estate of Musgrove*, *Davis v. Mayhew*, [1927] P. 264.

1018. *Add. Annotation*:—*As to* (1) *Refd. Barkwell v. Barkwell*, [1928] P. 91.

1019. *Add. Annotations*:—*As to* (1) *Refd. Barkwell v. Barkwell*, [1928] P. 91. *Generally, Refd. In the Estate of Jessop* (1924), 132 L. T. 31.

1022a. ———.]—*BARKWELL v. BARKWELL*, No. 938a, *ante*.

1031a. ——— *Will gnawed by rats.*—A will torn in pieces with rats, if a stranger by laying the pieces together could make the devise appear, good; if gnawed before the death, against the will.—*ETHERINGHAM v. ETHERINGHAM* (1646), Aleyn. 2; 82 E. R. 883.

1031b. ——— *Belief that will useless.*—*In the Goods of LEGG* (1848), 6 Notes of Cases, 528.

*Annotation*:—*Distd. Wharram v. Wharram* (1864), 3 Sw. & Tr. 301.

1031c. ——— *Accidental destruction.*—The ct. will not admit the draft of a will, which has been inadvertently destroyed, to probate on motion.—*In the Goods of BODY* (1865), 4 Sw. & Tr. 9; 34 L. J. P. M. & A. 55; 164 E. R. 1418.

*Annotation*:—*Apld. Re Sainsbury* (1896), 12 T. L. R. 428.

1031d. ——— *Destruction by third party—After testator's death.*—A. devises lands to several persons, & after his death, one who was a friend to the heir at law, snatches the will out of the exor.'s hands & tears it in pieces. The pieces being gathered up, & stitched together, a bill was brought to establish the will, & decreed the devisees to hold & enjoy, & the heir to convey to them.—*HAINES v. HAINES* (1702), 2 Vern. 441; 23 E. R. 883; *sub nom. HAYNE v. HAYNE*, Dick. 18.

*Annotations*:—*Consd. Davies v. Evans* (1851), 4 De G. & Sm. 440. *Refd. Cowgill v. Rhodes* (1863), 33 Beav. 310.

1031e. ———.]—A will destroyed after death of testator, who had consented to its destruction before his death. A copy admitted to probate.—*In the Goods of CARTER* (1843), 2 Notes of Cases, 105.

*Annotations*:—*Distd. Wharram v. Wharram* (1864), 3 Sw. & Tr. 301. *Refd. In the Goods of Legg* (1848), 6 Notes of Cases, 528.

1031f. ——— *Without testator's knowledge.*—A will destroyed in the lifetime of testator, but without his knowledge; substantiated & admitted to proof.—*TREVELYAN v. TREVELYAN* (1810), 1 Phillim. 149; 161 E. R. 944.

*Annotations*:—*Distd. Wharram v. Wharram* (1864), 3 Sw. & Tr. 301. *Refd. Lister v. Smith* (1863), 3 Sw. & Tr. 282.

1042. *Add. Annotation*:—*As to* (1) *Consd. In the Estate of Birkby* (1929), 73 Sol. Jo. 556.

1044. *Add. Annotations*:—*As to* (1) *Apld. In the Estate of Musgrove*, *Davis v. Mayhew*, [1927] P. 264. *As to* (2) *Apld. In the Estate of Musgrove*, *Davis v. Mayhew*, [1927] P. 264.

mentary capacity of testator at the time of the execution of a will lies upon its propounder who has to explain away the suspicious circumstances appearing in the case.—*SURENDRA NATH CHATTERJI v. JAHNAVI CHARAN MUKHERJI* (1928), 1 L. R. 56 Calc. 390.—CAN.

**PART II. SECT. 6, SUB-SECT. 9.—A.**

so. *Non-compliance with Wills Act, R. S., 1923 c. 146, s. 15.*—Application refused.—*Re COX*, [1927] 1 D. L. R. 441; 59 N. S. L. 103.—CAN.

1120. *Add. Annotation*:—**Mentd.** *Re* Ross, *Ross v. Waterfield* (1929), 46 T. L. R. 61.
1164. *Add. Annotation*:—**Consd.** *In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
1191. *Add. Annotation*:—**Generally, Refd.** *Robins v. National Trust Co.*, [1927] A. C. 515.
- 1247a. ————]—**LAMKIN v. BABB** (1752), 1 Lee, 1; 161 E. R. 1.
1271. *Add. Annotation*:—**Refd.** *Robins v. National Trust Co.*, [1927] A. C. 515.
1294. *Add. Annotations*:—**Refd.** *In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264; *Robins v. National Trust Co.*, [1927] A. C. 515.
- 1301a. ————]—Testatrix having directed the person whom she made her residuary legatee to prepare her will, he did so, but by mistake the name of one of the legatees was omitted. Subsequently she directed that three additional bequests should be inserted in the will, which the residuary legatee promised but neglected to do. The will was afterwards read over to testatrix by the residuary legatee, & having declared herself satisfied, she executed it:—**Held**: although the residuary legatee was aware at the time of the execution of the will by testatrix, that her further instructions were not complied with, & that testatrix was ignorant of that fact, still in the absence of fraud on his part the will was entitled to probate.—**MITCHELL v. GARD** (1863), 3 Sw. & Tr. 75; 32 L. J. P. M. & A. 129; 8 L. T. 438; 27 J. P. 487; 9 Jur. N. S. 673; 11 W. R. 773; 164 E. R. 1280.
- Annotation*:—**Refd.** *Guardhouse v. Blackburn* (1866), 35 L. J. (P. & M.) 116.
1304. *Add. Annotations*:—**Consd.** *In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264. **Refd.** *Robins v. National Trust Co.*, [1927] A. C. 515.
1310. *Add. Annotation*:—**Refd.** *Re* Belliss, *Polson v. Parratt* (1929), 141 L. T. 245.
1317. *Add. Annotation*:—**As to (3) Refd.** *In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.
1318. *Add. Annotation*:—**Refd.** *In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.
1367. *Add. Annotation*:—**Distd.** *In the Estate of Caie, In the Estate of Davis* (1927), 71 Sol. Jo. 898.
- 1369a. ————]—The ct. directed that certain non-testamentary words of an offensive nature should be omitted from the probate of a will, but declined to order their expungement from the will itself.—**Re** MAXWELL (1929), 140 L. T. 471; 45 T. L. R. 215; *sub nom.* *In the Estate of MAXWELL*, 73 Sol. Jo. 159.
- 1371a. ————]—*In the Estate of CAIE* (1927), 43 T. L. R. 897; *sub nom.* *In the Estate of CAIE, In the Estate of DAVIS*, 71 Sol. Jo. 898.
- 1375a. **Settlement—Identical bequests.**]—Where a will contained bequests identical with the trusts of a marriage settlement the ct. did not require the whole of the marriage settlement to be set out in the probate, but only such extracts as were necessary to explain the bequests.—*In the Goods of GARBET* (1869), 33 J. P. 792; 21 L. T. 366.
1383. *Add. Annotation*:—**Consd.** *In the Estate of Todd*, [1926] P. 173.
- 1388a. ————]—*In the Estate of TODD*, No. 1398a, *post*.
- 1398a. ———— **Wills not independent.**]—If testamentary papers are independent, one dealing exclusively with property within the jurisdiction & the other with property outside it, there is no obligation on a party propounding the first to obtain probate of the second. The question is whether the papers are independent or interdependent.
- Testator left two wills, one English, the other American; the latter dealt exclusively with property outside the English jurisdiction, but the two documents were interdependent with regard to the residue, which was liable for English estate duty. The exors. of the two wills were different persons. Testator had expressly directed that the American will should be "probated" in America:—**Held**: (1) the two wills & a codicil to the English will should all be proved in England; (2) the document to be retained in the English Probate Registry as evidence of the testamentary act of making the American will should be an examined & sealed copy of that will, & after probate the original American will should be handed out to the exors. named therein for probate in America.—*In the Estate of TODD*, [1926] P. 173; 95 L. J. P. 105; 135 L. T. 381; 42 T. L. R. 545; 70 Sol. Jo. 671.
- 1410a. ————]—*In the Estate of TODD*, No. 1398a, *ante*.
- 1431a. **Where minority interest.**]—*Re* HERBERT, No. 1883a, *post*.
- 1431b. ————]—Under Jud. (Consolidation) Act, 1925 (c. 49), ss. 160 (1) & 162 (1), the ct. cannot make a grant of administration to less than two individuals, when it is aware that there is a minority interest.—*Re* WHITE, [1928] P. 75; 96 L. J. P. 157; 138 L. T. 68; 43 T. L. R. 729; 71 Sol. Jo. 603, C. A.
1474. *Add. Annotation*:—**Refd.** *Re* Bower Williams, *Ex p. Trustee*, [1927] 1 Ch. 441.
1485. *Add. Annotation*:—**Refd.** *Ormond Investment Co. v. Betts*, [1928] A. C. 143.

## PART II. SECT. 8.

1238 i. **Double grants—Discouraged.**]—When a will appoints one exor. for general purposes & another one for limited purposes, only one grant should be made, & the respective powers of the two exors. should be distinguished therein. The ct. should discourage double grants, & upon the application for probate made by either exor., the other one should be cited.—*Re* MAURAT ESTATE (Sask.), [1927] 3 W. W. R. 18.—CAN.

## PART II. SECT. 9, SUB-SECT. 5.—A.

1244 i. **Exercise of influence must be proved.**]—*MURRAY v. HAYLOW*, [1927] 3 D. L. R. 1036; 60 O. L. R. 629.—CAN.

## PART II. SECT. 10, SUB-SECT. 4.—B.

1369 i. **Objectionable matter—Unconnected with testamentary dispositions—Scandalous or defamatory matter.**]—The Supreme Ct. has jurisdiction, to be exercised with great care, to order that words in a will, which are scandalous or defamatory & in no way germane to the dispositions of the will, be omitted from the probate.

Testator stated: "I make no provision for my wife on account of her intemperate habits & other misconduct." The ct. refused to order those words be omitted from the probate.—*Re* O'REILLY'S WILL, [1927] V. L. R. 533; [1927] Argus L. R. 396.—AUS.

## PART II. SECT. 11, SUB-SECT. 4.—B.

*sp. To attorney of executors.*]—*Re* BULLEN (DECEASED) (1926), 37 B. C. R. 240.—CAN.

## PART II. SECT. 11, SUB-SECT. 4.—C.

1447 ii. ————]—In the absence of special circumstances, a sole administrator should be appointed to the estate of deceased, rather than joint administrators, even when the claimants are equal in degree of kindred to deceased.—*STONE v. STONEY* (1923), 1 L. R. 2 Pat. 508.—IND.

1502. *Add. Annotation* :—**Mentd.** Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.
1508. *Add. Annotation* :—**Refd.** A.-G. for Alberta v. Cook, [1926] A. C. 444.
1509. *Add. Annotation* :—**Refd.** A.-G. for Alberta v. Cook, [1926] A. C. 444.
1510. For “ ——— Protection order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary ” read “ ——— Separation order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary.”
1586. *Add. Annotation* :—**Refd.** A.-G. for Alberta v. Cook, [1926] A. C. 444.
1653. *Add. Annotation* :—**As to** (2) **Consd.** *Re Mason* (1928), 97 L. J. Ch. 321.
1656. *Add. Annotation* :—**Refd.** A.-G. for Ontario v. McLean Gold Mines, [1927] A. C. 185.
- 1772a. **Remainderman—Settlement determined on death of life tenant.**—Where a woman died intestate without known next of kin & was, at the time of her death, the life tenant of an estate previously settled upon her by will, the settlement was determined on her death, & the legal estate vested in the personal representative of the life tenant. The ct. made a general grant of administration to the remainderman under the settlement, following the non-appearance of persons interested in the life tenant's estate who had been cited. —*In the Estate of BORDASS*, [1929] P. 107; 98 L. J. P. 65; 140 L. T. 120; 45 T. L. R. 52; 72 Sol. Jo. 826.
- Annotation* :—**Distd.** *In the Estate of Taylor*, [1929] P. 260.
- 1772b. ————*In the Estate of BIRCH*, [1929] P. 164; 98 L. J. P. 66; 141 L. T. 32; 73 Sol. Jo. 221.
- Annotation* :—**Distd.** *In the Estate of Taylor*, [1929] P. 260.
1774. *Add. Annotation* :—**Refd.** *Re White*, [1928] P. 75.
1785. *Add. Annotation* :—**Refd.** *In the Estate of Potticary*, [1927] P. 202.
- 1883a. ——— **During minority.**—Jud. (Consolidation) Act, 1925 (c. 49), s. 160 (1), directs that either a trust corpn., with or without an individual, or not less than two individuals, shall take a grant of administration in the case of an interest in the estate during minority of the party interested; but this provision must be read subject to the modification of sect. 162 (1), namely, that the ct. in the case of insolvency is to have a discretion to grant administration to some person other than those interested in the residue. Under the latter sect. it is competent for the ct., even during a minority, to appoint a creditor to be a single administrator, as it could formerly have done under Ct. of Probate Act, 1857 (c. 77), s. 73.—*Re HERBERT*, [1926] P. 109.

**PART II. SECT. 11, SUB-SECT. 4.—**  
**H.**

st. Preferred to official administrator—  
Though resident out of jurisdiction—  
Agent managing estate.]-Re LELAIRE  
(1903), 9 B. C. R. 429.—CAN.

**PART II. SECT. 11, SUB-SECT. 4.—**  
**K. (a).**

**vv. Creditor with judgment against debtor—Right to file bill against real representative—Before suing out execution.]—DUFFY v. GRAHAM (1869), 15 Gr. 547.—CAN.**

**PART II, SECT. 11, SUB-SECT. 4.—M.**  
**32. Ex-convict 1—A person who has**

has been convicted of felony, & has served his sentence, is in the same position as if pardoned, & can be appointed administrator.—*In the Goods of COLEMAN*, [1926] 1. R. 327.—IR.

**PART II. SECT. 11, SUB-SECT. 5.—**  
**D. (a).**

1834 i. *Conviction for killing intestator.*—A husband, who has been convicted of killing his wife, who died intestate, has no claim to her estate, & neither he nor his attorney is entitled

*sub nom.* In the Goods of HERBERT, 95 L. J. P. 53; 135 L. T. 123; 42 T. L. R. 460.

**Annotations:—***Consd. Re White* (1927), 43 T. L. R. 729.  
*Dbtd. Re White*, [1928] P. 75.

2056a. ———.]—Testator made his will leaving all

his money to A. There was no appointment of an exor. A. moved for administration with the will annexed. The parties interested in intestacy resisted the application:—*Held*: in the circumstances the application failed, the persons entitled in intestacy taking the grant in priority to a legatee or devisee under Non-contentious Rules, r. 119, operating since Jan. 1, 1926, in the case of an estate not wholly disposed of.—*In the Goods of GATES*, [1928] P. 128; 97 L. J. P. 76; 138 L. T. 714; 44 T. L. R. 353; 72 Sol. Jo. 172; *varied*, [1928] P. 178, C. A.

*Annotation* :- **Mentd.** *Re* Gates, Gates v. Cabell, [1929] 2 Ch. 420.

**2436.** *Add. Annotation:—Refd. Re Achillopoulos, Johnson v. Mavromichali, [1928] Ch. 433.*

**2440.** *Add. Annotation:—Refd. Re Achillopoulos, Johnson v. Mavromichali, [1928] Ch. 433.*

**2441a.** —.]—Where administration is taken out in this country by the attorney of a foreign principal in respect of English assets belonging to a foreign testator, & the foreign principal is not by the law of the domicile an exor., but by virtue of his interest under the foreign will is charged by the law of the domicile with the duties which under English law are imposed on an exor., the ct. will authorise such administrator, after satisfying all English liabilities & all foreign liabilities of which he has notice, to hand over the surplus in his hands to the foreign principal, whose receipt will be a good & sufficient discharge. In such a case the administrator need not issue any foreign advertisements or take any active steps abroad to ascertain the position with regard to debts, as the foreign principal, who by the law of the domicile is in the position of an exor., is in such a case directly responsible for the payment of foreign debts. —*Re* ACHILLOPOULOS, *JOHNSON v. MAVROMICHALI*, [1928] Ch. 433 ; 97 L. J. Ch. 246 ; 139 L. T. 62.

**2585a. Trust estate vested in tenant for life—Settled Land Act, 1925 (c. 18).]**—Where testator, dying in 1897, appointed his wife A. sole extrix. & devised to her for life all his real estate with remainder to B. in fee simple absolutely, & A. died in Feb. 1926, intestate & a widow, leaving no statutory next of kin & no trustees for the purposes of the above Act were ever appointed:—*Held*: B. was entitled under Jud. (Consolidation) Act, 1925 (c. 49), s. 155 (1), to a grant of limited administration in respect of such real estate.—*Re DALLEY* (1926), 136 L. T. 223; 70 Sol. Jo. 839.

to administer it.—*Re* NOBLE  
[1927] 1 W. W. R. 938.—CAN.

**PART II. SECT. 12, SUB-SECT. 1.—**  
**B. (h).**

2155 1. *Where estate insolvent—Assets assigned before death to executor—Executor neither proving nor renouncing.*—*Held:* letters of administration should be granted to a duly appointed syndic of the creditor, who might be one of its officers.—*Re RANDALL*, [1927] V. L. J. 535; 49 A. L. T. 89; [1927] Argus L. R. 395.—*AUS.*



- 2585b. Property subject to life tenancy—Settled Land Act, 1925 (c. 18), s. 20 (1)—Law of Property Act, 1925 (c. 20), Sched. I, Part II., para. 6 (c).—*In the Estate of JAMES* (1926), 162 L. T. Jo. 498.
- 2585c. Settled land.]—Grants of probate to special exors. are not to be confined to those persons whose qualifications fall within Settled Land Act, 1925 (c. 18), s. 30 (1), & the effect of that Act is not to limit the operation of Administration of Estates Act, 1925 (c. 23), ss. 1, 13 & 22.—*In the Estate of GIBBINGS*, [1928] P. 28; 97 L. J. P. 4; 138 L. T. 272; 44 T. L. R. 230; 71 Sol. Jo. 911.
- 2603a. ———.]—A will duly executed was on the death of testator in the custody of the sole exor., & universal legatee named in it. It was never proved, there not being at that time any property which could pass under it, & was subsequently lost or mislaid. No draft or copy of it was forthcoming. The ct. granted administration of the effects of deceased, limited until the will, or an authentic copy of it, shall be brought into the probate registry.—*In the Goods of JOHNSON* (1865), 11 Jur. N. S. 184.
- 2744a. Threatened breach—Surety entitled to apply to court—For relief by way of indemnity against liability under bond.]—*Re ANDERSON-BERRY, HARRIS v. GRIFFITH*, [1928] Ch. 290; 97 L. J. Ch. 111; 138 L. T. 354, C. A.
- 2777a. ———.]—*THOMPSON v. JUDGE* (1854), 2 Drew. 414; 61 E. R. 780; *sub nom. TOMSON v. JUDGE*, 2 Eq. Rep. 1141; 23 L. J. Ch. 929; 23 L. T. O. S. 217; 2 W. R. 574.
2833. Add. Annotation:—*Mentd. Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
2838. Add. Annotation:—*Mentd. In the Goods of Gates*, [1928] P. 128.
2877. Add. Annotations:—*Refd. Ormond Investment Co. v. Betts*, [1927] 2 K. B. 326. *Mentd.*
- Ormond Investment Co. v. Betts, [1928] A. C. 143.
2911. Add. Annotations:—*Refd. Hoystead v. Taxation Comr.*, [1926] A. C. 155; *Jaeger Co., Ltd. v. Jaeger* (1929), 46 R. P. C. 336.
- 2979a. ——— Twenty years after death of testator.]—Administration revoked.—*In the Estate of MUSGROVE, DAVIS v. MAYHEW*, [1927] P. 264; 96 L. J. P. 140; 137 L. T. 612; 43 T. L. R. 648; 71 Sol. Jo. 542, C. A.
3011. Add. Annotation:—*Refd. Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.
3074. Add. Annotation:—*Refd. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.
3111. Add. Annotation:—*Apld. Re Howden & Hyslop's Contract*, [1928] Ch. 479.
- 3111a. ——— Sale of English real estate.]—Scottish exors. with a confirmation resealed under Jud. (Consolidation) Act, 1925 (c. 49), s. 168, can make a good title to English real estate without the necessity of any separate grant in respect thereof.—*Re HOWDEN & HYSLOP'S CONTRACT*, [1928] Ch. 479; 97 L. J. Ch. 313; 139 L. T. 309; 72 Sol. Jo. 400.
3125. Add. Annotation:—*Consd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3126. Add. Annotation:—*Apld. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3127. Add. Annotations:—*Consd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139. *Refd. Thomas v. Jones*, [1928] P. 162.
- 3127a. ———.]—The proviso to R. S. C., Ord. 65, r. 1, that nothing in that rule contained shall deprive an exor. who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules theretofore acted upon in the Chancery Div., governs the case of bare exors. who reasonably pro-

PART II. SECT. 13, SUB-SECT. 7. - B. (b).

sw. Right of surtices—Anticipated waste by administrator—Injunction & rescission.]—*In the Estate of HUNTER* (1928), 45 N. S. W. N. 170.—AUS.

PART II. SECT. 15, SUB-SECT. 2. - A.

sx. Foreign will—Incorrect translation annexed.]—Where letters of administration, *cum testamento annexo*, have been granted with an incorrect translation of a foreign will annexed thereto, the ct. will, upon evidence to its satisfaction, order the substitution of a correct translation in lieu of the incorrect one.—*Re KLEINSANG* (No. 2) (1928), 28 S. R. N. S. W. 559; 45 N. S. W. W. N. 150.—AUS.

PART II. SECT. 15, SUB-SECT. 2. - B. (c).

n 1. ———.]—Probate is conclusive proof of the due execution of the will by testator.—*CHANDRESHWAR PRASAD NARAIN SINGH v. BISHESHWAR PRATAP NARAIN SINGH* (1926), 1 L. R. 5 Pat. 777.—IND.

PART II. SECT. 15, SUB-SECT. 2. - B. (e).

p. *Revsd.* on other grounds, 37 O. L. R. 498.

PART II. SECT. 15, SUB-SECT. 4. - C.

st. As to title to land.]—*Held*: probate was not sufficient.—*SUTHERLAND v. YOUNG* (1884), 1 Man. L. R. 38.—CAN.

PART II. SECT. 16, SUB-SECT. 2. - C.

sb. As to person entitled—Advocate consenting without instructions.]—Where an advocate for one of the parties under a misapprehension consented to the other party being granted the letters:—*Held*: if such consent was given by the advocate without instructions, the client might withdraw the consent at any time prior to the actual issue of letters.—*KYONG HOE TSEE v. KYON SOON SUN* (1925), 1 L. R. 3 Itan. 261.—IND.

PART II. SECT. 16, SUB-SECT. 2. - J.

sd. Validity of will not proved.]—*ODYNAK v. FESCHUK* (Alta.), [1927] 3 D. L. R. 842; [1927] 3 W. W. R. 61; *revsd.* [1928] 1 D. L. R. 423; [1928] 1 W. W. R. 113; 23 Alta. L. R. 263.—CAN.

PART II. SECT. 16, SUB-SECT. 3. - H.

3055 iii. ———.]—On an application to revoke a grant of probate on the grounds that persons who ought to have been cited were not cited, & that the will was a forgery, if the first ground is established the *onus* is upon the opposite party to prove that the will is genuine.—*RAMAUAUNDI KUER v. KALAWATI KUER* (1927), 55 L. R. Ind. App. 18.—IND.

PART II. SECT. 18, SUB-SECT. 3.

st. Grounds for granting or refusing application for resealing.]—The ct. has the right, on an application under Alberta Rules, r. 945 (24), for resealing,

to inquire as to the original appointment of the administrator, & should refuse the application, where the exors. have the right & duty to apply in Alberta for probate.—*Re BLAGBURN ESTATE*, [1927] 1 W. W. R. 716; *affd.*, [1927] 2 W. W. R. 206.—CAN.

PART II. SECT. 19.

c 1. ———.]—An extric., to whom probate of a will had been granted in England, appointed appct. as attorney under power in Victoria to procure the resealing of the probate in Victoria:—*Held*: appct. was authorised to produce the probate & obtain the sealing thereof under Administration & Probate Act, 1915, s. 51, that being the proper procedure for him to adopt in order to procure himself to be constituted the legal representative of testator in Victoria.—*Re FAIRER'S WILL*, [1927] V. L. R. 580, [1927] Argus L. R. 462.—AUS.

sg. Duty of registrar—Supreme Court of New Zealand.]—Where letters of administration have been duly granted in England & are produced to the registrar of the Supreme Ct. of New Zealand, & a copy thereof left with him, the registrar is bound under Administration Act, 1908, s. 43, to reseat letters of administration, & there is no need of an application to the ct., for the ct. has no discretion in the matter. In the absence of fraud in the will or by the administrator the ct. has no power to set aside such resealing.—*Re WILLCOX*, [1926] N. Z. L. R. 525.—N.Z.



pound a will & codicil, even if, though the will is pronounced for, the codicil is pronounced against. The position of such exors. differs from that of persons named as exors. in a testamentary paper which they unsuccessfully propound. Having established the validity of the will, & made good their position as testator's exors., they are entitled to their costs of the litigation out of the estate as between solr. & client, & can be deprived of that right, which rests substantially upon contract, only if they have acted culpably or unreasonably. Until that has been established, their costs are not in the discretion of the ct., & notwithstanding Jud. Act, 1873 (c. 66), s. 49, repealed & re-enacted by Jud. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (h), an appeal lies without leave from an order condemning them in costs or depriving them of costs out of the estate.—*In the Estate of PLANT, WILD v. PLANT*, [1926] P. 139; *sub nom. Re PLANT, WILD v. PLANT*, 95 L. J. P. 87; 135 L. T. 238; 42 T. L. R. 443; 70 Sol. Jo. 605, C. A.

*Annotation:—Refd.* *Thomas v. Jones*, [1928] P. 162.

**3127b.** —.]—The principle of the decision in *In the Estate of Plant, Wild v. Plant*, No. 3127a, *ante*, that exors. who have established the validity of their will are entitled to their whole costs of the litigation, although they fail in establishing a codicil, does not extend in all cases to costs incurred by them by reason of their insisting upon probate not only of clauses in a will expressing the testamentary mind of their testator, but also of a clause which is found not to be his testamentary act. If a residuary gift is excluded from probate on the ground of want of capacity the question still arises whether the costs so incurred by the exors. are due to their "violation or culpable neglect of duty." If the ct. finds on this issue that an exor. is a wrongdoer, his *prima facie* right to receive out of the estate costs not otherwise provided for is displaced.—*THOMAS v. JONES*, [1928] P. 162; 139 L. T. 211; 41 T. L. R.

467; 72 Sol. Jo. 255; *sub nom. In the Estate of JONES, THOMAS v. JONES*, 97 L. J. P. 81.

**3163.** *Add. Annotation:—Apld.* *In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

**3164.** *Add. Annotation:—Apld.* *In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

**3171a.** —.]—There is no authority for allowing costs out of the estate in a probate action to an unsuccessful party who merely seeks to prove, in the case of a will executed by testator of sound disposing mind, that testator had a domicile under the law of which that party would take a large part of testator's estate in opposition to his wishes. The costs should follow the event in such a case.—*FLEMING v. HORNIMAN* (1928), 138 L. T. 669; 44 T. L. R. 315.

**3175.** *Add. Annotation:—Apld.* *In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

**3181.** *Add. Annotation:—Refd.* *In the Estate of Southerden, Adams v. Southerden*, [1925] P. 177.

**3303.** *Add. Annotation:—Refd.* *In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

**3312.** *Add. Annotation:—Consd.* *In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

**3315.** *Add. Annotation:—Distd.* *In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

**3384.** *Add. Annotation:—Mentd.* *Maesfield v. Robinson*, [1928] 2 K. B. 353.

**3478a.** —.]—For purpose of lawsuit out of the jurisdiction.—There is no power in the Probate Ct. to allow a will admitted to probate in England to go out of the jurisdiction, even in the custody of an official, for the purposes of a lawsuit in a British Dominion or elsewhere abroad.—*Re GREER* (1929), 45 T. L. R. 362; 73 Sol. Jo. 319.

*Annotation:—Föld.* *In the Estate of Guinee* (1929), 73 Sol. Jo. 569.

**3478b.** —.]—*In the Estate of GUINEE* (1929), 73 Sol. Jo. 569.

**3487.** *Add. Annotation:—Refd.* *Capron v. Capron*, [1927] P. 243.

## Part III.—Interest of Representative in Deceased's Property.

**3509.** *Add. Annotation:—Refd.* *Toates v. Toates*, [1926] 2 K. B. 30.

**3517a.** *Right of selection under will.*—Testator bequeathed to his wife such articles as she should within two months select from the articles in certain rooms in a house. Five days after his death his wife died without having made any selection.—*Held*: the right of selection did not pass to the wife's exors.—*Re MADGE, PRIDIE v. BELLAMY* (1928), 41

T. L. R. 372; *sub nom. Re MADGE, PUDEE v. BELLAMY*, 72 Sol. Jo. 281.

**3518a.** *Loan posted to but not received by deceased.*—On the receipt of a signed promissory note a money-lender forwarded an agreed sum to the borrower through the post. The borrower, the secretary to a co., died between the times of the posting & delivery of the letter. The joint acting secretary of the co. having notice of the secretary's death, opened the money-

### PART II. SECT. 20, SUB-SECT. 3.—A. (b)

**3187 iv.** —.]—Testator 87 years old, executed a will, & probate was opposed on the grounds of want of testamentary capacity & undue influence. The ct. pronounced in favour of the will, but only after much consideration. Much of the evidence was not available to the caveators, & the ct. considered they were amply justified in opposing the will.—*Held*: the caveators should be relieved of the Public Trustee's costs, but should not

be granted costs out of the estate.—*Re PATERSON (DECEASED)*, [1924] N. Z. L. R. 441.—N.Z.

### PART II. SECT. 20, SUB-SECT. 4.—B.

*sj. Taraton.*—*Re MOREN*, [1927] 1 D. L. R. 648; 59 N. S. R. 58.—CAN.

### PART II. SECT. 21, SUB-SECT. 10.

*sk. Jurisdiction of court.—To alter previous order.*—In addition to its

powers under Succession Act, s. 231, & Probate & Administration Act, s. 50, the ct. has power in review to alter its previous order in contested proceedings for the grant of probate or letters of administration.—*KYONG HOE TSEE v. KYON SOON SUN* (1925), 1 L. R. 3 Ran. 261.—IND.

*sl. Duty to sell.—To pay beneficiary share of proceeds.*—*Re MONTGOMERY, LUMBERS v. MONTGOMERY* (1912), 22 W. L. R. 634; 22 Man. L. R. 735.—CAN.

lender's letter & retained possession of the enclosed money until such time as he could hand it over to the personal representatives of the borrower. In an action by the money-lender to recover the sum lent from the joint acting secretary:—*Held*: deft. received the money on behalf of deceased's estate, & the proper course for the money-lender was to litigate with the borrower's representatives.—*MICHAELSON v. CRISP* (1927), 71 Sol. Jo. 982.

3543. *Add. Annotation*:—*As to* (2) *Refd. Re Mathieson*, [1927] 1 Ch. 283.

3553. *Add. Annotation*:—*Consd. Riley v. Brown* (1929), 98 L. J. K. B. 739.

3572a. ————]—*NOBLE v. CASS* (1828), 2 Sim. 343; 57 E. R. 817.

*Annotations*:—*Refd. Richards v. A.-G. of Jamaica* (1848), 6 Moo. P. C. C. 381; *Re Francis, Barrett v. Fisher* (1905), 74 L. J. Ch. 198; *Re Lacon's Settlement*, *Lacon v. Lacon*, [1911] 2 Ch. 17.

3575. *Add. Annotation*:—*Mentd. Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.

3605. *Add. Annotation*:—*Refd. Riley v. Brown* (1929), 98 L. J. K. B. 739.

3611. *Add. Annotation*:—*Mentd. Savil v. Roberts* (1698), 1 Salk. 13.

3611a. ————]—*ANON.* (1457), Y. B. 36 Hen. 6, fo. 7, pl. 4; 7 Jur. 494, n.

*Annotations*:—*Apld. Tharpe v. Stallwood* (1843), 5 Man. & G. 760. *Refd. Wangford v. Wangford* (1704), 11 Mod. Rep. 38. *Mentd. Beddingfield's Case* (1586), 9 Co. Rep. 15b; *Leyfield's Case* (1611), 10 Co. Rep. 88a.

3611b. ————]—*EAST v. NEWMAN* (1601), Gouldsb. 152; 75 E. R. 1059; *sub nom. EASON v. NEWMAN*, Cro. Eliz. 495.

*Annotation*:—*Mentd. Oxford University Case* (1613), 10 Co. Rep. 53b.

3611c. ————]—*BEAR v. SOPER* (1759), 2 Keny. 441; 96 E. R. 1238.

3617. *Add. Citations*:—*sub nom. MASON & DAVY v. DIXON*, Latch 167; Noy 87.

*Add. Annotations*:—*Refd. Saunders v. Plummer* (1662), O. Bridg. 223; *Finlay v. Chirney* (1888), 57 L. J. Q. B. 247.

3655. *Add. Annotation*:—*Refd. Re Portman* (No. 2), [1925] Ch. 294.

3658. *Add. Annotations*:—*Refd. Price v. Corp'n. d'Energie de Montmagny*, [1927] A. C. 363. *Mentd. Lord Strathcona S.S. Co. v. Dominion Coal Co.* (1925), 42 T. L. R. 86.

3687a. ————]—*APPLETON v. DOILY* (1609), Yelv. 135; 80 E. R. 91.

*Annotations*:—*Refd. Shuttleworth v. Garnett* (1688), Carth. 90; *Hudson v. Jones* (1706), 1 Salk. 90.

3691. *Add. Annotation*:—*Refd. Roe v. Russell*, [1928] 2 K. B. 117.

3692. *Add. Annotations*:—*As to* (1) *Refd. Roe v. Russell*, [1928] 2 K. B. 117; *Lovibond (J.) & Sons v. Vincent*, [1929] 1 K. B. 687.

3699. *Add. Annotation*:—*Refd. Re Bower Williams, Ex p. Trustee*, [1927] 1 Ch. 441.

3702. *Add. Annotation*:—*Folld. Re Bower Williams, Ex p. Trustee*, [1927] 1 Ch. 441.

3732a. ————]—*BATHO v. FULTON* (1824), 2 L. J. O. S. Ch. 196.

3766a. ————]—*CURLING v. AUSTIN* (1862), 2 Drew. & Sm. 129; 10 W. R. 682; 62 E. R. 570.

*Annotations*:—*Refd. Lawrie v. Lees* (1881), 7 App. Cas. 19. *Mentd. Upperton v. Nickolson* (1871), 6 Ch. App. 436; *McGrory v. Alderdale Estate Co.*, [1918] A. C. 503.

3786. *Add. Annotation*:—*Mentd. Re Sandwell Park Colliery Co. Field v. The Co.*, [1929] 1 Ch. 277.

3818a. ————]—The effect of Land Transfer Act, 1897 (c. 65), ss. 1 & 2, is to impose an "express trust" within Jud. Act, 1873 (c. 66), s. 25 (2), on the personal representatives of deceased in respect of real estate, & so to prevent Real Property Limitation Act, 1874 (c. 57), from running in their favour.—*TOATES v. TOATES*, [1926] 2 K. B. 30; 95 L. J. K. B. 526; 135 L. T. 25; 90 J. P. 103, D. C.

SUB-SECT. 4.—IN CASE OF PERSONS DYING SINCE 1925 (Vol. XXIII, p. 317).

Add the following case:—

3819a. *Settled land—Termination of settlement on death of tenant for life.*—Administration of Estates Act, 1925 (c. 23), s. 22 (1), does not apply where the settlement comes to an end on the death of the tenant for life, & his exor. when constituted can sell, & he is not deemed to have appointed the sole surviving trustee of the settlement as his special exor. pursuant to such sect.—*Re BRIDGETT & HAYES' CONTRACT*, [1928] Ch. 163; 97 L. J. Ch. 33; 138 L. T. 106; 44 T. L. R. 222; 71 Sol. Jo. 910.

*Annotation*:—*Distd. In the Estate of Taylor*, [1929] P. 260.

3819b. ————]—*In the Estate of BORDASS*, No. 1772a, *ante*.

### PART III. SECT. 1, SUB-SECT. 2.—I. (a) v.

p i. ————]—An option to purchase contained in a will is *prima facie* not purely personal, but is assignable by the optionee & transmissible by him to his personal representatives.—*PERPETUAL TRUSTEE Co. v. UNION TRUSTEE Co.* (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—*AUS.*

### PART III. SECT. 1, SUB-SECT. 2.—I. (b) i.

3817 i. *Application of rule—Detinue.*—The administrator of the estate of a deceased person cannot recover damages, in respect of a chattel belonging to the deceased, for its detention or seizure during his lifetime, or prior to the issue of the letters of administration, unless there is evidence to show that the chattel was damaged, or that the estate of the deceased was depreciated by the seizure or detention in that period. The administrator, however, is entitled to recover for the

estate damages for being deprived of the use & possession of the chattel after the issue of the letters of administration.—*DAY v. HORTON* (1913), 26 W. L. R. 72; 5 W. W. R. 751; 14 D. L. R. 763; 23 Man. L. R. 623.—*CAN.*

### PART III. SECT. 1, SUB-SECT. 2.—I. (b) iii.

sn. *Whether right continues in personal representative.*—Under the provisions of R. S. c. 113, s. 1, the right to maintain or to institute an action for an injury to land, committed within six months of the death of the owner, survives to his personal representative. The clear & reasonable meaning of the statute is that the exor. or administrator may commence an action or carry on an action instituted by testator or intestate.—*MILLER v. CORKUM* (1899), 32 N. S. R. 358.—*CAN.*

so. ————]—In an action for trespass to land brought in 1895, the statement

of claim included a claim for erecting & maintaining fences & depasturing cattle. Pltf. died in 1897, & his extrix. was made a party in 1898.—*Held*: R. S. c. 113, s. 21, in relation to a continuing cause of action, applied.—*GRANT v. WOLFE* (1899), 32 N. S. R. 444.—*CAN.*

### PART III. SECT. 1, SUB-SECT. 2.—I. (b) iv.

sq. *Whether right continues in representative.*—In case of tort, for alleged negligence resulting in the death of the person injured, the right to maintain an action dies with the person.—*HAWLEY v. WRIGHT* (1904), 37 N. S. R. 77.—*CAN.*

sr. ————]—An action for injury to the person now survives to the exor. of pltf., who can, in case of his death, *pendente lite* on entering a suggestion of the death & obtaining an order of revivor, continue the action.—*MASON v. PETERBOROUGH TOWN* (1893), 20 A. R. 683.—*CAN.*

**3819c.** ———.]—*In the Estate of BIRCH*, [1929] P. 164; 98 L. J. P. 66; 141 L. T. 32; 73 Sol. Jo. 221.

*Annotation:—Distd. In the Estate of Taylor*, [1929] P. 260.

**3819d.** ——— **Grant of probate to tenant for life as special executor.**—Land was devised by H. on trusts providing for limited ownerships & in default of issue for the right heirs of H. C. who was the right heir of H., by his will appointed the applicant T. exor. & trustee & devised his lands to the use of the applicant for life with remainders over. On Jan. 1, 1926, the commencement of Settled Land Act, 1925 (c. 18), the lands passing under the wills of H. & C. remained subject to the settlement created by the will of H., & in the event of the termination of the limited ownership under the will, also subject to the settlement created by the will of C. On the same date J. was tenant for life under

the will of H. By a vesting deed dated Apr. 16, 1926, the lands were declared to be vested in J. in fee upon the trusts operating from time to time under the will of H. or otherwise. J. died Apr. 27, 1928. General probate of his will including the settled land was granted to his exors. in the first place. Later the grant was amended limiting it "save & except the settled land vested in testator settled previously to his death & remaining settled notwithstanding his death." J. having died without issue appct. T. then became tenant for life in possession under the settlement created by the will of C. as well as the trustee of that settlement. On appeal from the registrar a grant of probate of the will of J. limited to the settled land was directed to issue to the appct. as special exor. of J.—*In the Estate of TAYLOR*, [1929] P. 260; 98 L. J. P. 145; 141 L. T. 200; 45 T. L. R. 481; 73 Sol. Jo. 385.

## Part IV.—Duties of Representative.

**3899. Add. Annotation:—As to (2) Consd. Re City Equitable Fire Insc.**, [1925] Ch. 407.

**3959a.** ———.]—Exor. charged with interest on dividends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—*GOODCHILD v. FENTON* (1829), 3 Y. & J. 481; 148 E. R. 1269.

**3999a.** ———.]—*HUDSON v. MARTIN* (1726), 2 Eq. Cas. Abr. 461; 22 E. R. 600.

**4021. Add. Annotation:—As to (2) Refd. Re Mathieson**, [1927] 1 Ch. 283.

**4086a. Devise in trust to pay debts—Until son attain twenty-one—Death under twenty-one—Debts unpaid.**—Devise of the rents & profits of lands till his son attain twenty-one,

towards payment of debts; & if my son die before twenty-one, my debts being paid, then to A., & the son dies before twenty-one; yet the rents & profits not only till he would have attained twenty-one, but also beyond, till the debts be paid, shall be applied for that purpose.—*MARTIN v. WOODGATE* (1691), Prec. Ch. 31; 21 E. R. 18.

**4089a. Foreign estate—Produce in transit at time of death.**—*CLIFFE v. GIBBONS* (1714), 2 Ld. Raym. 1324; 92 E. R. 364, L. C.

*Annotations:—Refd. Goodtitle d. Hart v. Knot* (1774), 1 Cowp. 43. *Mentd. Denn d. Mellor v. Moor* (1796), 1 Bos. & P. 558.

**4154a. Solicitor entitled to payment of testamentary charges not paid by deceased executor.**—*TANNER v. CARTER* (1856), 25 L. J. Ch. 664; 27 L. T. O. S. 195; 2 Jur. N. S. 413; 4 W. R. 533.

### PART IV. SECT. 1, SUB-SECT. 3.—A.

**3891 i. Duty to get in debts—Liability for neglect.**—*Re JOHNSTON. JOHNSTON v. Hogg* (1877), 25 Gr. 261.—CAN.

### PART IV. SECT. 1, SUB-SECT. 3.—B. (e).

**n.i.** ———.]—Where a will directs that the proceeds of sales of property of the estate shall be deposited in a chartered bank, such proceeds cannot be otherwise invested except by consent of all persons interested.—*Re WAITERS*, [1925] 2 W. W. R. 557.—CAN.

### PART IV. SECT. 2, SUB-SECT. 1.

**st. Claim disputed—Effect of service of notice of appointment for passing accounts on claimant.**—The act of an administrator in serving claimants against the estate with orders & appointments for passing accounts both with, & subsequent to, the service upon them of notice of dispute, held to have estopped him from setting up said notice as a bar to such claims.—*Re KURYLO ESTATE*, [1922] 2 W. W. R. 815; 68 D. L. R. 784; 15 Sask. L. R. 463.—CAN.

### PART IV. SECT. 2, SUB-SECT. 2.—A.

**av. Undisposed of realty & personally—Before personal estate charged with payment.**—In the administration of the

estate of testator, who has died testate as to some assets & intestate as to others, the primary fund for payment of his debts, funeral & testamentary expenses, in the absence of a contrary intention expressed in the will, is that constituted by both the real & personal estate of which testator has died intestate & is in priority to personal estate, charged with their payment. *PUBLIC TRUSTEE v. LEITCH* (1928), 28 S. R. N. S. W. 313; 15 N. S. W. N. 85.—AUS.

### PART IV. SECT. 2, SUB-SECT. 2. —C. (b) i.

**sn. Under 5 (Geo. 2, c. 7).—Held:** land was assets in the hands of exors. for the payment of unliquidated damages in an action of covenant. *SICKLES v. ASHLESTONE* (1853), 10 U. C. R. 203.—CAN.

### PART IV. SECT. 2, SUB-SECT. 3.—A.

**p i. —Preferred to mortgagee of property devised beneficially to executor.**—*Re SCUTTHORPE* (Ont.), [1926] 2 D. L. R. 739; 7 C. B. R. 505.—CAN.

**so. Widow's right to money payable under marriage contract.**—*O'REILLY v. O'REILLY* (1910), 16 O. W. R. 75; 21 O. L. R. 201.—CAN.

**sp. Claim for breach of trust.**—The fact that a claim against the estate of a deceased person arose in consequence

or by means of a breach of duty as a trustee, affords no ground for giving such claim a preference over other creditors of the estate; as, under Property & Trusts Act, R. S. O. 1877, c. 107, s. 30, the claimant can only rank *pari passu* with other creditors.—*BROCK v. CAMERON* (1878), 25 Gr. 369.—CAN.

### PART IV. SECT. 2, SUB-SECT. 3.—B.

**4162 i. Simple contract debt due to the Crown—Priority over specialty & simple contract debts due to subject.**—A debt incurred by the purchase of wheat from the Minister of Agriculture, under Wheat Marketing Acts, is a Crown debt, & should be paid in priority to all other debts of intestate.—*Re McMAHON. LAWSON v. INTERSTATE ESTATES CURATOR*, [1921] V. L. R. 549.—AUS.

### PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

**4167 i. Priority over specialty & simple contract debts.**—In the administration of assets, a judgment obtained against deceased is entitled to priority over simple contract & specialty creditors, but it is essential to the judgment that it should have been docketed.—*FRONTENAC LOAN CO. v. MORICK* (1886), 3 Man. L. R. 462.—CAN.

**4178 i. Degrees of priority—Between**

4210a. ————.]—A judgment was signed in 1854, but was not registered till after the death of the judgment debtor in 1862:—*Held*: the judgment had no preference over simple contract debts against the estate of the judgment debtor.—*KEMP v. WADDINGHAM* (1866), 1 L. R. 1 Q. B. 355; 7 B. & S. 301; 35 L. J. Q. B. 114; 13 L. T. 709; 14 W. R. 390.

4225. Delete the cross-reference immediately preceding this case.

4546. *Add. Annotation*:—*Generally, Mentd. Re Wait*, [1927] 1 Ch. 606.

4591. *Add. Annotation*:—*Consd. Re Quintin Dick, Cloncurry v. Fenton*, [1926] Ch. 902.

4630. *Add. Annotation*:—*Consd. Re City Equitable Fire Insee.*, [1925] Ch. 407.

4653. *Add. Annotations*:—*Reid. Herbert v. I. R. Comrs.*, 1 L. R. Comrs. v. Herbert (1925), 9 Tax Cas. 593; *Daw v. Inland Revenue Comrs.*, *Duff-Dumbar v. Inland Revenue Comrs.* (1928), 14 Tax. Cas. 58. *Mentd. I. R. Comrs. v. Hawley*, [1928] 1 K. B. 578.

*judgment creditors—Judgment for balance of legacy charged on realty—Judgment by creditor secured by mortgage.*—*CAMERON v. HARPER* (1892), 21 S. C. R. 273.—*CAN.*

#### PART IV. SECT. 2, SUB-SECT. 3.—C. (c).

4206 i. *Against deceased.*—*FRONTE-NAC LOAN CO. v. MORICE*, No. 4167 i., *ante.*—*CAN.*

#### PART IV. SECT. 2, SUB-SECT. 4.—A. (c) i.

d i. *S. P. WATKINS v. WASHBURN* (1846), 2 U. C. R. 291.—*CAN.*

sq. *By executor de son tort.*—An *exor. de son tort* cannot give a new starting point to Stat. Limitations as against the rightful administrator, or the parties beneficially interested in the estate.—*GRANT v. McDONALD* (1860), 8 Gr. 468.—*CAN.*

PART IV. SECT. 2, SUB-SECT. 5.—A. st. *Claim for wages by manager of intestate's farm—Claim by execution creditor.*—*GILMOUR v. GILMOUR* (1894), 3 B. C. R. 397.—*CAN.*

#### PART IV. SECT. 3, SUB-SECT. 1.

sv. *Future liability contingent—Rights of executor to distribute residue.*—The father of a pauper lunatic daughter, who had become chargeable to the parish council, admitted his liability to aliment her, & died intestate. The son, as *exor.*, divided the estate, which was movable, equally between himself & his sister. At the date of division the daughter's share had not been exhausted by the cost of her maintenance since his death:—*Held*: as any claim there might be against the rest of the estate for aliment was merely contingent, the *exor.* was not bound to retain the remaining share of the estate to meet that claim.—*EDINBURGH PARISH COUNCIL v. COUPER*, [1924] S. C. 139.—*SCOT.*

#### PART IV. SECT. 5, SUB-SECT. 1.—B.

4548 i. *What are—Bequest of stock—Testator possessing no such stock at death.*—*Re MILLAR*, [1927] 3 D. L. R. 270; 60 O. L. R. 434.—*CAN.*

#### PART IV. SECT. 5, SUB-SECT. 4.—C.

n i. — *No power to impose terms as condition precedent to immediate payment.*—*BEDDY v. SMITH* (1845), 1 L. T. O. S. 390.—*IR.*

sw. *Discretion given by will.*—A will contained a bequest (para. 5) to *pltf.* of \$300 per annum during his lifetime, "to be paid as soon as the finances of my estate will permit my exors. to do so." By para. 7 testatrix directed that "it shall not be incumbent to pay any bequest until three years after my decease, & my husband, & any other exors. after his death, shall decide when the amounts shall be paid & in what amounts from time to time." By para. 12 testatrix authorised her exors. "at any time to withhold any payment of legacy or bequest until such time as they may consider it advisable to make same":—*Held*: nothing in paras. 5 & 7 authorised *def.* to withhold payment of *pltf.*'s legacy; & the discretion given by para. 12 did not put *def.* in a position to violate deliberately the terms of the will. The discretion was one to be reasonably exercised.—*SEYMOUR v. PRATT* (1925), 57 O. L. R. 278.—*CAN.*

sx. *Before letters of administration—Legacy very small.*—*ROSS v. ROSS* (1872), 4 Ch. Ch. 27.—*CAN.*

#### PART IV. SECT. 5, SUB-SECT. 4.—D.

4683 i. *Out of what funds payable.*—Testator by his will directed his exors. "to pay to the legatees mentioned in the will of my late wife amounting in all to \$20,000, which sum is represented by bonds in a "certain bank" in a parcel separate from my own securities":—*Held*: the legacies were to be treated as legacies from testator, payable out of that portion of his estate earmarked in the way indicated.—*Re LASHAM* (1924), 56 O. L. R. 137.—*CAN.*

#### PART IV. SECT. 5, SUB-SECT. 4.—E. (a).

4703 i. *Direction for postponement or accumulation—When legatee may require payment.*—Where testator gives a legatee an absolute vested interest in a defined fund, the *ct.* will order payment on his attaining twenty-one, notwithstanding that by the terms of the will payment is postponed to a subsequent period.—*GOFF v. STROHM* (1897), 28 O. R. 553.—*CAN.*

#### PART IV. SECT. 5, SUB-SECT. 4.—E. (b).

sy. *Annuity charged on land—Duty of representative on transferring land to devisees—Land Titles Act.*—*Re*

4661. For "(1844)" read "(1842)."

4664a. *Incomplete gift inter vivos—Completion by appointment as executor—No necessity for assent.*—*Re COMBERBACH, SAUNDERSON v. JACKSON* (1929), 73 Sol. Jo. 103.

4687a. ———— *Advances by co-legatees barred by Statute of Limitations—Not interest on such advances.*—*POOLE v. POOLE* (1871), 7 Ch. App. 17; 25 L. T. 771; 20 W. R. 133, L. J.

*Annotations*:—*Consd. Re Rees, Rees v. George* (1881), 17 Ch. D. 701. *Reid. Re Milnes, Milnes v. Sherwin* (1885), 53 L. T. 534.

4712a. ————.]—*FRYER v. BUTTAR* (1837), 8 Sim. 442; 59 E. R. 175.

*Annotations*:—*Consd. Re Parry, Scott. v. Leak* (1889), 42 Ch. D. 570. *Reid. Harbin v. Masterman* [1896] 1 Ch. 351.

4738a. ————.]—*HORNER v. SAYNER* (1838), Coop. Pr. Cas. 168; 47 E. R. 450, L. C.

4753. After this case add "Sale of legacy to executor—In return for annuity—Validity of transaction."—*See FRAUDULENT & VOIDABLE CONVEYANCES*, No. 895a, *post*."

4763a. ————.]—*Re LYMAN'S TRUST & TRUSTEE RELIEF AMENDMENT ACT*, 1860 (1860), 2 L. T. 662.

*CREST ESTATE* (1914), 7 W. W. R. 611; 19 D. L. R. 190.—*CAN.*

#### PART IV. SECT. 5, SUB-SECT. 5.—B. (a).

4765 vii. ————.]—*Re DALY*, [1926] 1 D. L. R. 822; 58 O. L. R. 301.—*CAN.*

4765 viii. ————.]—Testator died in 1888, & legacies became payable in 1890. His estate was heavily insolvent, & the last of the debts was not finally discharged until 1919. From that date the trustees accumulated funds until 1924, when they brought an action of multipointing & exoneration for distribution of the estate:—*Held*: (1) while as a general rule interest was allowed upon legacies from the death of testator or from the prescribed date of payment, there was no absolute rule compelling the *ct.* in all cases to allow such interest, the general rule being displaced if circumstances showed it to be inapplicable; (2) the general legacies were not entitled to interest on their legacies from 1890 to 1919, in respect that, owing to the insolvency of the estate during that period, there was no asset realisable to meet the legacies nor any interest-bearing subject; (3) there was no absolute rule to the effect that the rate of legal interest should be 5 per cent., the rate of interest being in every case for the discretion of the *ct.* in the particular circumstances.—*WADDELL'S TRUSTEES v. CRAWFORD*, [1926] S. C. 654.—*SCOT.*

#### PART IV. SECT. 5, SUB-SECT. 5.—B. (d).

4827 iii. ————.]—In determining the right of legatees to interest upon legacies the payment of which is postponed for a definite period by the will, the mere direction of such postponement will not of itself alter the date from which interest is to run, & testator's reasons for such postponement may be taken into consideration. If payment was delayed in order thereby to benefit a residuary legatee, then, in the absence of a direction to the contrary, no interest upon such postponed legacies would be payable before the expiration of the prescribed period. But where the postponement was intended primarily to enable the exors. to collect & realise the assets, the postponed legacies would carry interest from such a time after the end of the "exors." year "as the exors. had in hand realised assets which

**4869a.** ———.]—The ct. has power where realisation has been postponed for the benefit of the residuary legatees to direct that a legatee should be paid, not £4 per cent. under R. S. C., Ord. 65, r. 64, but £5 per cent. as from one year from the death of testator upon the legacy moneys.—*Re BRINTON, BRINTON v. PREEN* (1923), 67 Sol. Jo. 704.

**4895a.** ———.]—Testatrix gave legacies of £100 to each of her exors. & trustees & then bequeathed all her plate, jewellery, ornaments, china, & other household effects to two specific legatees absolutely. The whole of her residuary property of every kind she devised, bequeathed & appointed to her trustees upon trust to sell & out of the proceeds, first, to pay her funeral & testamentary expenses, debts, & the legacy duty; secondly, to appropriate & set apart two sums of £4,000 & £2,000 to be held upon certain trusts for life & then over; & thirdly, to pay a number of pecuniary legacies, including one of £600. Testatrix declared that should her residuary personal estate be insufficient to pay all the legacies then the legacy of £600 should be reduced to £500; & every legacy & annuity was bequeathed free of legacy duty. There was a deficiency in the estate:—*Held*: (1) there were sufficient indications in the will that the testatrix intended the distribution of her estate to be in accordance with the priorities mentioned, & the settled legacies must be paid in full before all the other pecuniary legacies; (2) the legacy of £600 must be reduced to £500 & this reduced legacy, plus the duty, must abate *pro rata* with the other postponed legacies, including those to the exors.; (3) the costs of packing & delivering specific legacies must be borne by the specific legatees.—*Re LEACH, MILNE v. DAUBENY*, [1923] 1 Ch. 161; 92 L. J. Ch. 225; 128 L. T. 525; 67 Sol. Jo. 198.

**4910.** *Add. Annotation*:—*Refd. Jones v. Wright* (1927), 139 L. T. 43.

**4953.** *Add. Annotation*:—*Refd. Re Whitrod, Burrows v. Base*, [1926] Ch. 118.

could rightfully be applied to the payment of such legacies.—*MORPETH v. WILLIAMSON*, [1926] N. Z. L. R. 39.—N.Z.

#### PART IV. SECT. 5, SUB-SECT. 5.—C.

**4868 i.** *When more than 4 per cent. allowed*—*Special circumstances*.—*WADDELL'S TRUSTEES v. CRAWFORD*, No. 4765 vill, *ante*.—SCOT.

#### PART IV. SECT. 5, SUB-SECT. 6.—A.

**4883 iv.** ———.]—A. by his will directed that certain pecuniary legacies, amounting in all to the sum of £710, should be paid "with & out of the proceeds" of the sale of his investments comprising stocks & shares. The investments realised the sum of £487 0s. 4d. At the date when the will was made they were worth approximately the sum of £181 12s. 6d. There was a further direction that the legacies were to be paid free of all Crown duties. Testator further dealt with the residue of his property item by item. On a summons raising the question whether the balance of the legacies was payable out of the general residue of the estate:—*Held*: the balance was not payable & as the fund specified by testator for their payment was insufficient to pay them in full, they must abate ratably

*inter se*.—*Re BOYD ESTATE, BOYD v. BOYD*, [1928] N. I. 11.—IR.

#### PART IV. SECT. 5, SUB-SECT. 6.—D.

**4961 ii.** ———.]—*BOYD v. BOYD*, [1928] N. I. 11.—IR.

#### PART IV. SECT. 5, SUB-SECT. 8.

*sa Judgment for balance of legacy—Priority over creditors*—*HARPER v. HARPER* (1890), 2 B. C. R. 15.—CAN.

#### PART IV. SECT. 5, SUB-SECT. 13.—A. (a).

**5111 v.** — *Appointment by codicil of new executors—Provision in codicil for remuneration of executors*.—*Held*: the exors. were entitled only to the commission mentioned in the codicil, notwithstanding a provision in the codicil that the will should be construed as if the names of the exors. were inserted throughout in place of those of the original exors.—*Re BOSS* (1897), 5 B. C. R. 446.—CAN.

**5111 vi.** ———.]—Where testator gives a legacy to an executor or trustee, stating that it is given for his services in that capacity, & particularly where testator declares it to be in lieu of commission or remuneration, such exor. or trustee, if he accepts the trust, is not entitled to anything more than

**5065.** *Add. Annotation*:—*Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

**5072.** *Add. Annotation*:—*As to* (1) *Refd. Re Pennington & Owen*, [1925] Ch. 825.

**5079.** *Add. Annotation*:—*Distd. Re Pennington & Owen*, [1925] Ch. 825.

**5110a.** ———.]—*LLOYD v. STODDART* (1752), Amb. 152; 27 E. R. 100, L. C.

**5139.** *Add. Annotation*:—*Mentd. Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.

**5160a.** ———.]—*WILSON v. LESLIE* (1857), 5 W. R. 815.

*Annotation*:—*Dbtd. Re Dacre, Whitaker v. Dacre* (1916), 85 L. J. Ch. 274.

**5202.** *Add. Annotation*:—*Refd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

**5206.** After this case add "*See, also, CONFLICT OF LAWS, No. 548a, ante.*"

**5240a.** ———.]—Testator bequeathed sums of stock to his grandchildren, to be paid to them on attaining twenty-one, with benefit of survivorship to those attaining that age, but in case they should all die under twenty-one, then he willed the interest arising from such sums to their father for life, with remainder over:—*Held*: the grandchildren were entitled during their minority to have the interest arising from their legacies applied towards their maintenance.—*BODDY v. DAWES* (1836), 1 Keen, 362; 6 L. J. Ch. 145; 48 E. R. 346.

*Annotations*:—*Refd. Festing v. Allen* (1844), 5 Hare, 573; *Dundas v. Wolfe Murray* (1863), 1 Hem. & M. 425; *Re Judkin's Trusts* (1881), 50 L. T. 200.

**5246.** *Add. Annotation*:—*Apld. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.

**5249.** *Add. Annotation*:—*As to* (4) *Refd. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.

**5250.** *Add. Annotation*:—*Apld. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.

**5251a.** ———.]—A contingent or future pecuniary legacy payable to an infant upon attaining twenty-one does not carry intermediate income under Law of Property Act, 1925 (c. 20), s. 175, & there is no power under

he is given by the will, unless under exceptional circumstances, such as the gift being so small as to be illusory; & the mere inadequacy of the remuneration given by the will is not of itself a sufficient reason for departing from that practice.—*Re MURPHY* (1928), S. R. Q. 1.—AUS.

#### PART IV. SECT. 5, SUB-SECT. 14.—C.

**5189 i.** — *Parent*.—An exor. cannot discharge himself by paying a legacy given to an infant to the father, or mother, as guardian, unless the ct. allows it in special circumstances.—*Re NAKAUCHI ESTATE*, [1927] 3 D. L. R. 1087; [1927] 2 W. W. R. 607; 21 Sask. L. R. 673.—CAN.

*sb. Payment into court—Estate in Australia—Infant legatee & guardian domiciled in England*.—By his will testator, domiciled in California, bequeathed money on deposit in banks in Australia, amounting to about £12,000, to the infant daughters of E., & appointed E. as guardian of the estate of his daughters, & appointed two residents of Brisbane as exors. of the testator's estate in Australia. E. & his two daughters were domiciled in England:—*Held*: in the circumstances the exors. should pay the legacies into ct., leaving E. to make

Trustee Act, 1925 (c. 19), s. 31, to apply the interest, or intermediate income thereof, when invested, for the infant's maintenance, unless testator is the parent of or *in loco parentis* to the infant, or has indicated an intention by his will that the infant should be maintained out of the income, or has directed the legacy to be appropriated & invested for the benefit of the infant.—*Re RAINE, TYERMAN v. STANSFIELD*, [1929] 1 Ch. 716; 98 L. J. Ch. 244; 141 L. T. 25.

**5273. Add. Annotations:—***Folld. Re Stokes, Bowen v. Davidson*, [1928] Ch. 716. *Expld. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.

**5273a. —.**—Where a legacy given to an infant is clearly indicated by the will to be intended for the support of the infant, interest on such legacy will run from the death of testator, as the support of the infant must begin immediately upon such death; & where such legacy is one of two or more legacies all in the same category & all given in the same group to the trustees of the will, no distinction being made between any of the legacies, the other legacy or legacies will likewise carry interest from the date of testator's death.—*Re STOKES, BOWEN v. DAVIDSON*, [1928] Ch. 716; 97 L. J. Ch. 273; 139 L. T. 331; 72 Sol. Jo. 384.

*Annotation:—Distd. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.

**5273b. Whether infant entitled to whole of income.**—Testator, standing *in loco parentis*, gave to trustees a legacy of £4,000, on trust to pay it to A., on his attaining twenty-one. He authorised them to raise it by mtge. of his real estates, & out of the money thereby bequeathed, to raise such sum, not exceeding the interest at 4 per cent. of the expectant portion, as to them should seem sufficient for maintenance:—*Held*: the legatee, during minority, was entitled to maintenance only, & not to the whole amount of interest on the legacy.—*RUDGE v. WINNALL* (1849), 12 Beav. 357; 18 L. J. Ch. 469; 14 L. T. O. S. 325; 13 Jur. 737; 50 E. R. 1098.

*Annotations:—Refd. Re Rouse's Estate* (1852), 9 Harc. 649. *Mentd. Re Roose, Evans v. Williamson* (1880), 17 Ch. D. 696.

**5287. Add. Annotation:—***Distd. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.

**5320. Add. Annotation:—***Refd. Re King, Public Trustee v. Aldridge*, [1928] Ch. 330.

**5322. Add. Annotation:—***Apld. Re Mabey, Ward v. Mabey*, [1928] Ch. 88.

appropriate application for payment out to him.—*Re TUDOR*, [1928] S. R. Q. 299.—**AUS.**

#### PART IV. SECT. 6, SUB-SECT. 1.—A.

*sk. Law-agent's business books*—A law-agent directed his exors. to convey the residue of his estate to a residuary legatee. The exors. conveyed the residue, with the exception of deceased's business books, which they retained on the ground that it would be a breach of confidentiality towards deceased's clients if they were to hand them over. In an action by the residuary legatee for delivery of the books:—*Held*: pursuer was entitled to delivery.—*ROBERTSON v. ROBERTSON'S EXECUTORS*, [1925] S. C. 606.—**SCOT.**

#### PART IV. SECT. 6, SUB-SECT. 1.—B.

*sm. Mistake as to value of assets*—

**5331. Add. Annotation:—***Refd. Re Whitrod, Burrows v. Base*, [1926] Ch. 118.

**5334. Add. Annotation:—***Refd. Re Whitrod, Burrows v. Base*, [1926] Ch. 118.

**5335. Add. Annotation:—***Apld. Re Whitrod, Burrows v. Bax* (1925), 70 Sol. Jo. 209.

**5337. Add. Annotation:—***Refd. Re Whitrod, Burrows v. Base*, [1926] Ch. 118.

**5340a. —.**—Testator left his property on trust for sale & realisation, & thereafter gave & bequeathed one-tenth part to A., two-tenth parts to C.'s children, & the rest in tenth & twentieth parts to specific objects in a similar manner, & "to K. £30, to L. £40, to Nonconformist Ministers of D. the residue in equal shares":—*Held*: the will must be read as though after disposing of nine-tenths of his residuary estate he directed the remaining tenth, charged with the two sums as therein provided, to be divided among the ministers, & there was an intestacy as to the undivided aliquot shares of persons who predeceased testator.—*Re WHITROD, BURROWS v. BASE*, [1926] Ch. 118; 95 L. J. Ch. 205; 134 L. T. 627; 70 Sol. Jo. 209.

**5341. Add. Annotation:—***Refd. Re Whitrod, Burrows v. Base*, [1926] Ch. 118.

**5352a. —.**—After payment of all debts.]—*Applt.* on attaining the age of twenty-five became entitled to a quarter share in the capital & income of the residue of his father's estate, which consisted mainly of real property heavily mortgaged. The will provided that the property was to be divided when the youngest child attained twenty-five, which happened in 1916, & not before, & that until then the exors. & trustees should apply the surplus income, after payment of legacies, annuities, etc., in reduction of the mtge. debts. In fact the exors. did not divide the property & continued, from 1916 to 1925, to apply the surplus income to reducing the mtges. All testator's debts other than the mtge. debts had been paid off before Mar., 1919, & payment of certain legacies & annuities was begun in Dec. 1919, but no payment was made to the residuary legatees until 1921, after which small annual payments were made. The delivery of a residuary account was not necessary in this case as no legacy duty was payable on the residue. Assessments to super-tax for the years 1920-21 to 1925-26 were made upon *applt.* to include one-fourth of the income from the

*New distribution ordered.*]—*CLARKE v. HAWKE* (1865), 11 Gr. 527.—**CAN.**

#### PART IV. SECT. 6, SUB-SECT. 3.

*sn. Duty of administrator—To distribute under Devolution of Estates Act.*—*Re BOWER* (1905), 5 O. W. R. 383; 9 O. L. R. 199.—**CAN.**

#### PART IV. SECT. 6, SUB-SECT. 4.—A. (b).

**5382 i. Whether intention for executor to take beneficially apparent by will.**—*Construction of will.*—Testator by his will gave certain legacies & devised certain land to his widow for life, or widowhood, & upon her death, or marriage, this land to go to the children of his sister. The residue of his estate he devised & bequeathed to "my exors." In the next clause he appointed three of his nephews his

exors. One of these was at the date of the will an infant of tender years, & was only 13 years old at the time of testator's death. Probate was granted to the adult exors. reserving to the infant a right to be admitted to exorship upon attaining majority:—*Held*: the change made in the law of the Imperial Act of 1830, known as Sugden's Act, adopted in this Province, & now found in Trustee Act, R. S. O. 1927, c. 150, s. 53, does not apply to cases in which testator himself has given the property to his exors., the Act applies only to cases where there is a bare appointment of exors., so that the implication of law has to be resorted to in order to see whether the estate of testator not otherwise disposed of vests in them beneficially *virtute officii*; & as nothing in the will indicated a contrary intention, the exors. took beneficially.—*Re GRACEY* (1928), 63 O. L. R. 218.—**CAN.**

property, less annual charges but without deduction for repayment of mtges. Applt. contended that the estate was still in course of administration, that the residue had not been ascertained, that there had been no appropriation to the beneficiaries, & that no part of the income of the estate was his income for super-tax purposes. The Crown contended that applt. at any time after 1916 could have compelled the exors. to convey to him his share of the residuary estate subject to charges, that the residue was both ascertainable & ascertained, & that the income from applt.'s share of the residue was his income for super-tax purposes. The assessments were confirmed by the Special Comrs. on appeal:—*Held*: so long as the mtge. or other debts remained unpaid the exors. were entitled to retain any assets coming to their hands, the applt. did not enforce conveyance to himself of his share of the residue, & therefore the income arising from his share was not his income for super-tax purposes.—*Daw v. INLAND REVENUE COMRS., DUFF-DUNBAR v. INLAND REVENUE COMRS. (1928), 14 Tax. Cas. 58.*

5353a. ———.—*Re COPE'S TRUSTS (1877), 36 L. T. 437.*

5354. *Add. Annotations:—Consd. Baker v. Archer-Shee, [1927] A. C. 844. Refd. Herbert v. I. R. Comrs., I. R. Comrs. v. Herbert (1925), 9 Tax. Cas. 593; A.-G. v. Belillos, [1928] 1 K. B. 798; Daw v. Inland Revenue Comrs., Duff-Dunbar v. Inland Revenue Comrs. (1928), 14 Tax. Cas. 58.*

5358. *Add. Annotation:—Refd. Re Oldham, Oldham v. Myles (1927), 71 Sol. Jo. 491.*

5360a. ———.—*The interim interest from a fund set apart to meet future vested legacies, which do not carry interest in the meantime, is capital & not income of residue, & must, therefore, be invested, & the income only of such investment paid to the tenant for life of the residuary estate. The rule adopted in Allhusen v. Whittell, No. 5358, ante, in reference to contingent legacies, has no application to vested legacies.—Re WHITEHEAD, PEACOCK v. LUCAS, [1894] 1 Ch. 678; 63 L. J. Ch. 229; 70 L. T. 122; 42 W. R. 491; 38 Sol. Jo. 183; 8 R. 142.*

*Annotation:—Distd. Re Hawkins, White v. White, [1916] 2 Ch. 570.*

5363a. ———.—*Gross or net amount.*—In applying the rule in *Allhusen v. Whittell*, No. 5358, *ante*, the income of the estate should be calculated, not on the basis of the

gross amount received, but at the net amount after deduction of tax.—*Re OLDHAM, OLDHAM v. MYLES (1927), 71 Sol. Jo. 491.*

5373. *Add. Annotations:—Consd. Re Barratt National Provincial Bank v. Barratt, [1925] Ch. 550; Re Corelli (1925), 69 Sol. Jo. 525; Re Sullivan, Dunkley v. Sullivan (1929), 45 T. L. R. 590. Apld. Re Trollope's Will Trusts, Public Trustee v. Trollope, [1927] 1 Ch. 596. N.F. Re Brooker, Brooker v. Brooker (1926), 70 Sol. Jo. 526.*

For the cross-reference following this case substitute "———."—*See, further, SETTLEMENTS, Vol. XL, pp. 672-674; WILLS."*

5407. *Add. Annotation:—Apld. I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.*

5411. *Add. Annotation:—Refd. Re Jones, Johnson v. A.-G. (1925), 133 L. T. 601.*

5423a. ———.—*By his will dated Jan. 27, 1913, testator appointed his wife M. & pltf. J. to be his exors., & after directing them to pay his debts & funeral & testamentary expenses, bequeathed all his estate & effects, real & personal, which he might die possessed of, to his wife M. absolutely. M. predeceased testator & died on Aug. 14, 1919. Testator died on Dec. 30, 1920, leaving real & personal property, but no heir-at-law or next of kin:—Held: there was in the will an obvious indication of an intention by testator that the exor. was not to take beneficially. He was in the position of a trustee, & on failure of a *cestui que trust* the beneficial interest in the personal estate vested in the Crown as *bona vacantia*.—*Re JONES, JOHNSON v. A.-G., [1925] Ch. 340; 94 L. J. Ch. 341; 133 L. T. 601; 69 Sol. Jo. 460.**

5440. *Add. Annotation:—Mentd. Re Cassel, Public Trustee v. Mountbatten, [1926] Ch. 358.*

5442a. ———.—*Re SIVEWRIGHT, LAW v. FENWICK (1922), 128 L. T. 416; 67 Sol. Jo. 168.*

*Annotation:—Fold. Re Leach, Milne v. Daubeney, [1923] 1 Ch. 161.*

5442b. ———.—*Re LEACH, MILNE v. DAUBENY, No. 4895a, ante.*

5448a. ———.—*Re CLEWOW, YEO v. CLEWOW, [1900] 2 Ch. 182; 69 L. J. Ch. 522; 82 L. T. 550; 48 W. R. 541; 44 Sol. Jo. 428.*

*Annotations:—Refd. Re Treasure, Wild v. Stanham, [1900] 2 Ch. 648; Re Sharman, Wright v. Sharman, [1901] 2 Ch.*

PART IV. SECT. 7, SUB-SECT. 1.—  
A. (a).

5425 v. ———.—*P. by his will directed that his real property, not specifically devised, should be sold & all the remainder of his property realised. He also directed that his debts, funeral & testamentary expenses should be paid, an annuity provided for his sister, & that certain legacies, all charitable save one, should be paid:—Held: testator not having directed that the proceeds of sale of his realty & personalty should form a mixed fund, the primary fund out of which the debts, funeral & testamentary expenses, the annuity, & the legacies should be paid was the pure personalty, & the realty was only charged in aid of the pure personalty in so far as it proved insufficient for the*

payment of all charges, except the charitable legacies which lapsed as far as the pure personalty proved insufficient.—*Re PATTON, CAUGHEY v. COPELAND, [1925] N. 206.—IR.*

*see. Payment of death duties.—Exemption by statute.—Full effect to be given:—Re ATKINS, [1928] 2 D. L. R. 415; 62 O. L. R. 33.—CAN.*

PART IV. SECT. 7, SUB-SECT. 1.—  
A. (b).

5462 i. *Specific legacy.—Of incumbered chattel.*—*As between a specific legatee of an incumbered chattel & other specific legatees & devisees, the former must bear the burden of the incumbrance, & a general direction that debts shall be paid will not alter this.—Re SIMPSON, [1927] 2 D. L. R. 1043; 60 O. L. R. 310.—CAN.*

PART IV. SECT. 7, SUB-SECT. 1.—  
A. (c) ii.

5511 i. *Whether mixed fund primarily liable.*—*Where testator has devised his real & personal estates to his exors., to sell or convert same into money & out of the proceeds to pay his debts & legacies, he has created a mixed fund for the purpose.—GRAYSON v. WALSH, [1926] 1 D. L. R. 206; [1926] 1 W. W. R. 125; 20 Sask. L. R. 288.—CAN.*

PART IV. SECT. 7, SUB-SECT. 1.—  
C. (a).

5540 vi. ———.—*RICKER v. RICKER (1868), 14 Gr. 261.—CAN.*

5540 vii. ———.—*SCOTT v. SUPPLE (1893), 23 O. R. 393.—CAN.*

5546 i. *Personal estate insufficient.*—*LAPP v. LAPP (1869), 16 Gr. 159.—CAN.*



*Jearnsides, Baines v. Chadwick*, [1903] 1 Ch. 250 ; *Re King, Travers v. Kelly*, [1904] 1 Ch. 363 ; *Re Spencer Cooper, Pot v. Spencer Cooper*, [1908] 1 Ch. 130 ; *Porte v. Williams*, [1911] 1 Ch. 188 ; *O'Grady v. Willmot*, [1916] 2 A. C. 231 ; *Re Massey, Itam v. Massey* (1920), 90 L. J. Ch. 40.

5449a. Costs of probate action.]—*Re CLEMON, YEO v. CLEMON*, No. 5448a, *ante*.

5452. *Add. Citation* :—*previous proceedings*, [1892] 1 Ch. 450.

5466. *Add. Annotation* :—*Consd. Re Forder, Forder v. Forder* (1927), 137 L. T. 538.

5483a. ———.]—*DIXON v. DUTFIELD*, No. 6014b, *post*.

5540. *Add MELLERSH v. BRIDGER, SMITH v. BRIDGER* (1853), 17 Jur. 908.

5556. *Add. Annotations* :—*Apld. Re Reeves, Reeves v. Pawson*, [1928] Ch. 351. *Mentd. Re Hardyman, Teesdale v. McClintock*, [1925] Ch. 287.

5594. *Add. Annotation* :—*Apld. Re Fegan, Fegan v. Fegan*, [1928] Ch. 45.

5594a. *Direction in will for payment of "money secured on mortgage" out of residue—Balance of unpaid purchase-money.*]—Testator, who at the date of his will in 1912 was the owner of several freehold properties, one of which was subject to a mtge. & of leasehold & other personal estate, gave & bequeathed all the freehold & leasehold properties of which he might die possessed upon trusts in favour of certain of his grandchildren & great-grandchildren, & the residue of his estate upon trust for sale & conversion ; he then directed that his trustees should out of the money thereby produced pay (*inter alia*) his debts & legacies, & should out of the residue of such money pay & discharge "any sum of money secured on mtge. of any of my freehold properties," & should stand possessed of the residue of such money in trust to divide same as therein mentioned. After the date of his will testator paid off the mtge. & took a reconveyance of the mortgaged property. Shortly before his death, in June & Oct. 1917, testator contracted to purchase certain freehold properties in respect of which he paid deposits, leaving balances of the purchase-money owing to the respective vendors. On Dec. 23, 1917, testator made a final codicil, by which, after revoking the appointment of one of his exors. & bequeathing a legacy, he confirmed his will in all other respects. Testator died on Dec. 26, 1917, without having completed the purchases or paid the balances of the purchase-money, & shortly after his death his exors. completed the purchases & paid the balances of the purchase-money ; whereupon the question arose whether, as between the persons claiming under testator's will, those balances ought to be borne by the freehold properties of testator in respect of which same were payable, or ought to be satisfied out of his residuary estate :—*Held* : (1) inasmuch as a vendor's lien for unpaid purchase-money differs essentially from a mtge., even in the modern & wider sense of that term, upon the

true construction of the will in the absence of any context enlarging the meaning of the term "mtge.," the balances of the unpaid purchase-money owing at testator's death were not "sums of money secured on mtge.," & no contrary intention was signified by the direction in the will to pay & discharge such sums out of testator's residuary estate, so as to exclude the operation of 1854 Act, which by virtue of 1867 Act, s. 2, extends to a vendor's lien for unpaid purchase-money ; with the result that the balances in question ought to be borne by & satisfied out of the freehold properties in respect of which same were payable, & the devisees thereof were not entitled to have those balances discharged out of testator's residuary estate ; (2) the confirmation of the will by the last codicil thereto, although executed after the mtge. on testator's freehold property had been paid off & after the vendor's lien had arisen, had not the effect of extending the meaning of the words "any sums of money secured on mtge. of any of my freehold & leasehold properties," so as to include the balances of unpaid purchase-money in question.—*Re BEIRNSTEIN, BARNETT v. BEIRNSTEIN*, [1925] Ch. 12 ; 94 L. J. Ch. 62 ; 132 L. T. 251 ; *sub nom. Re BEIRNSTEIN, BARNETT v. BEIRNSTEIN*, 69 Sol. Jo. 88.

(c) *After 1925* (Vol. XXIII., p. 495).

Add the following case :—

5620a. *Special fund for payment of debts — "Contrary or other intention"—Administration of Estates Act, 1925 (c. 23), s. 35.*]—The provision by testator in his will of a special fund, not being any of the funds mentioned in sect. 35 (2) of the above Act, for payment of his debts operates as the expression of a "contrary or other intention" within the sect., so as to exonerate, as between the different persons claiming through testator, a personalty fund which at testator's death was subject to a mtge. from the primary liability to discharge it ; but the fund is only exonerated to the extent that the special fund is available for discharging the mtge. debt, & in so far as it is inadequate, the mortgaged property remains primarily liable.—*Re FEGAN, FEGAN v. FEGAN*, [1928] 1 Ch. 45 ; 97 L. J. Ch. 36 ; 138 L. T. 265 ; 71 Sol. Jo. 866.

5641a. ———.]—*MARCH (LADY) v. FOWKE* (1679), *Cas. temp. Finch*, 414 ; 23 E. R. 226, L. C.

5654a. ———. *To revert to residue on death of legatee.*]—By his will, testator bequeathed a legacy of £16,000 to trustees for his daughter A. during her life & after her death directed that the legacy should revert to & be added to his general residuary personal estate & go as the same was bequeathed by his will. Testator then gave his general residuary personal estate to B. Testator devised his estates in certain places to other trustees as a fund for the discharge of his debts, funeral & testamentary expenses & his pecuniary legacies in aid of his personal estate, with

PART IV. SECT. 7, SUB-SECT. 1.—  
C. (b) iii.

5561 ii. ———.]—Where land is devised which testator held as a purchaser subject to a vendor's lien, unless a contrary intention appears, it is

primarily liable for the unpaid purchase-money.—*Re MACDOUGALL*, [1927] D. L. R. 464 ; [1927] 1 W. W. R. 612 ; 21 Sask. L. R. 397.—*CAN.*

5561 iii. ———.]—*Re NAGEL*, [1928] 3 D. L. R. 36.—*CAN.*

PART IV. SECT. 7, SUB-SECT. 2.—A. k i. ———.]—Lands are assets for the satisfaction of debts in the hands of an exor., under 5 Geo. 2, c. 7 ; & to a plea of *plene administravit*, plff. may reply lands.—*GARDINER v. GARDINER* (1832), 2 O. S. 554.—*CAN.*



power to his trustees, if they thought it expedient or necessary either before or after his residuary personal estate should be exhausted to raise money for those purposes by sale or mortgage & subject thereto upon trust for B., in fee. The personal estate of testator was insufficient for the payment of his debts & legacies, & B. supplied such deficiency, including the annual payments to A. in respect of her legacy. A. survived both testator & B. On the death of B., the question arose whether, as testator's personalty was insufficient for the payments before mentioned, testator intended that the corpus of the legacy should be raised out of the real estate devised to B. for the benefit of B., who was testator's residuary legatee :—*Held* : the words " revert to & be added to my general residuary estate " in the will, showed that the testator meant the legacy to be restored to the funds from which it was taken ; & it was not to be taken from the real estate merely for the purpose of augmenting the personal estate.—*Re SOMERSET (DUKE), THYNNE v. ST. MAUR* (1886), 55 L. T. 753.

5692. *Add. Annotation* :—**Mentd.** *Rc* Porter, Porter v. Porter, [1925] Ch. 746.

5697a. —.]—EYLES v. CARY (1687), 1 Vern.  
457; 23 E. R. 583.

- **Dbtd.** *Mallison v. Middleton* (1739), 1 Eq. Cas. Abr. 198, n.

**5697b.** —.]—**BOWDLER v. SMITH** (1706), Prec.  
Ch. 261; 2 Eq. Ca. Abr. 371; 24 E. R. 128.

**5697c.** —.]—**PARKER v. WILCOX** (1723), 2 Eq. Cas. Abr. 371; 22 E. R. 316.

**5697d.** ———.]—WILLAN v. LANCASTER (1826), 3  
Russ. 108; 38 E. R. 516.

5723a. ———.]—Testatrix, who had power, under her brother's will, to appoint real & personal estate, gave the real estate to trustees to raise £1,000, & pay the amount as legacies to various persons & subject thereto for P. & his heirs. She then gave several legacies, payable out of her own personal estate, & other legacies payable out of an unappointed moiety of her brother's personal estate, after the decease of his widow, & she directed the duty on all the foregoing legacies to be paid out of her personal estate, & if deficient for full payment either of duty or legacies, such deficiency was to be made good out of the real estate, on which she charged same. By two codicils, testatrix left other legacies, & directed that the sums bequeathed out of her brother's estate should be paid, with the other legacies, immediately after her decease :—*Held* : the legacies given by the codicils were charged on the real estate.—*WILLIAMS v. HUGHES* (1857), 24 Beav. 474 ; 27 L. J. Ch. 218 ; 30 L. T. O. S. 215 ; 4 Jur. N. S. 42 ; 6 W. R. 94 ; 53 E. R. 441.

5734. *Add. Citations*:—*sub nom.* NYSSSEN v. GRETTON, 2 Y. & C. Ex. 222; 160 E. R. 378.

**PART IV. SECT. 7, SUB-SECT. 2. --**  
C. (c) i.

**p i.** ---.] **WRIGHT v. WRIGHT,**  
[1928] N. Z. L. R. 331.—**N.Z.**

**r i.**—Balance of proceeds of sale of land sold by mortgagee treated as land.] —**ARMSTRONG v. THOMPSON** (1877), 25 Gr. 138.—**CAN.**

**r ii. ----.]**—Testator devised to his daughter a lot of land charged with a legacy. The daughter predeceased testator, leaving two children, to whom the lot descended. On an appln. by the exors. at the instance of the official guardian:—**Held:** it was the duty of the exors. to sell the land & pay the

legacy.—*Re* EDDIE (1892), 22 O. R.  
556.—CAN.

**PART IV. SECT. 7. SUB-SECT. 4.**

5874 i. *Before specific legacies.*—*Re*  
HUNT, [1924] 3 W. W. R. 241.—CAN.

**5737a.** —.]—Testator directed his debts & funeral & testamentary expenses to be paid out of his personal estate. He then devised his freeholds to trustees to be sold, & the proceeds, after deducting costs, to be deemed part of the residue of his personal estate, & to be subject to the dispositions thereafter made of the same. Testator then gave a legacy of £1,000 upon certain trusts, & finally directed all the rest & residue of his personal estate to go to his wife for life, remainder over. The pure personal estate being insufficient to pay all the debts & legacies:—*Held*: the legacy of £1,000 ought to be paid out of the moneys arising from the sale of the real estate.—*Re WOOLLARD'S TRUST* (1854), 18 Jur. 1012.

**5839a.** ———.]—A general charge of debts & legacies upon all the real estates of testator not annulled by a subsequent power to sell a particular estate only & apply the produce to the same purpose: but that estate was first applied.—*COXE v. BASSET* (1796), 3 Ves. 155; 30 E. R. 945.

**Annotation :—****Consd.** *Wrigley v. Sykes* (1856), 21 Beav. 337.

5864a. —.]—WATERHOUSE v. CLOUT, *Ex p.*  
BOOKER (1871), 41 L. J. Ch. 223 : 20 W. R.  
277.

**5917a. ----- Administration of**  
**Estates Act, 1925 (c. 23), Sched. I., Part II.]—**  
 A share of residuary estate which lapses owing to the person who would have been entitled to it under the will of a testator predeceasing testator is "property undisposed of by will" within clause 1 of above Part, & therefore under sect. 34 (3) of the Act primarily liable, subject to any direction to the contrary in the will, to the discharge thereof of funeral & testamentary expenses, debts & legacies.—  
*Re LAMB, VEPOND v. LAMB*, [1929] 1 Ch. 722; 98 L. J. Ch. 305; 141 L. T. 60; 45 T. L. R. 190; 73 Sol. Jo. 77.

1 (b), 726. —Distd. *Re Petty, Holliday v. Petty*, [1929]

**5917b.** ——— **Contrary intention of testator.]**—Testator devised & bequeathed his residuary real & personal estate upon trust for sale & conversion, & after directing payment of his debts, etc., out of that mixed fund gave the residue thereof thereafter referred to as the residuary trust fund, as to one-half to his wife & as to the other half to two daughters in settled shares. Testator died in 1928. His wife having predeceased him, her moiety lapsed & passed as on an intestacy :—*Held*: the order of application of assets prescribed by Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., being under sects. 33 (7), 34 (3), & Sched. I., Part II., para. 8 (a), expressly subject to variation by the provisions of the will, which in this case clearly threw the debts, etc., rateably on the mixed fund, those debts, etc., were payable out of that mixed fund rateably, & not

primarily out of the lapsed moiety.—*Re PETTY, HOLLIDAY v. PETTY*, [1929] 1 Ch. 726; 98 L. J. Ch. 207; 141 L. T. 31.

5919a. — As property undisposed of by will—*Contrary intention of testator.*—*Re ATKINSON, WEBSTER v. WALTER*, [1929] W. N. 189.

## Part V.—Powers and Rights of Representative.

6014a. — —.—]—Testator devised & bequeathed to trustees estate A. & also all & singular his freehold & leasehold estates & effects in H. & W. together with the steam engines & machinery, money in hand, etc., together with all & singular other his real & personal estates & effects, upon trust, that his trustees, etc., should carry on his cotton manufactory in the best & most proper manner they possibly could & he empowered them to retain as much ready money, as a capital in the business, as by them might be considered necessary, with full power to carry on the same, & to keep the whole in good repair, & to renew the machinery: & directed that at the end of every twelve months next after his decease, provided his daughters L. & E. were living, the profits, if any, & the surplus income from his H. & W. estates, after paying certain annuities, after retaining a sufficient capital to carry on the manufactory, should be equally divided between his two daughters, share & share alike; but if his trustees were not inclined to carry on the cotton manufactory, he empowered them to let the same, when he directed the reserved capital to be immediately divided between his two daughters L. & E. share & share alike: & he further directed that the surplus rents of his H. & W. estates, after paying the annuities, were to be equally divided every twelve months after his decease between such two daughters, share & share alike. He directed his trustees to allow his daughter E. to receive all the rents, etc., of his estate A. for her life & declared that at her death her issue were to be entitled to such estates, but if she left no issue then such estates were to go to his daughter L. & if she should then be dead, having left issue, such issue were to take; he then gave to L. an annuity of £600 during her life, & charged the same on all his real & personal estates in H. & W. & bequeathed the same at her death to her issue equally: & if she should die without leaving lawful issue, his daughter E. if she should be living, was to take the annuity of £600 & the whole of the surplus rents, etc., of his H. & W. estates, both real & personal: & if neither of his daughters left issue, the whole of his estates, both real & personal, were to go to R. H. for life, with remainder to his issue, remainder to his heir at law. L. & E. survived testator: E. & L. both died without issue:—*Held*: (1) the

representatives of L. & E. were absolutely entitled, in equal shares, to all such personal estate as was situate in H. & W. & which was not retained by the trustees as capital for carrying on the manufactory; (2) on the death of the survivor of E. & L. without leaving issue, the whole of testator's personal estate described in his will as situate in H. & W. consisting of his leasehold estate & the manufactory, & the capital retained by the trustees for carrying on the business, were subject to the trusts declared in favour of R. H.; (3) R. H. was entitled for his life to the whole of the income of the freehold estates at A., H. & W. & to the income of the capital retained & employed by the trustees in carrying on the business.—*HORSEFIELD v. ASHTON* (1856), 26 L. T. O. S. 300; 2 Jur. N. S. 193, L. C. & L. JJ.; *affirmed, sub nom. ASHTON v. HORSFIELD, HORSFIELD v. SIDEBOTHAM* (1860), 2 L. T. 1; 6 Jur. N. S. 355, H. L.

*Annotations*:—*Generally*, *Reid*, *Tyrone Earl v. Waterford Marquis* (1860), 1 De G. F. & J. 613; *Guthrie v. Walrond* (1883), 22 Ch. D. 573.

6014b. — — —.—]—Testator directed that his business should be carried on for the benefit of his widow or until her second marriage, with very full powers to the trustees to carry on the same, & “to increase or abridge his said business, & his capital, stock & implements therein,” & generally to act “as most advantageous & mostly for the benefit of the persons claiming under his will.” He also directed that all his debts, funeral & testamentary expenses, & the “costs, charges & expenses of carrying into effect the trusts of his said will,” should be paid out of the capital of said business:—*Held*: (1) the widow was entitled for life or until her second marriage, to the whole of the profits made by such business after testator's death; the cash at the banker's & the trade debts being assets or part of the capital of such business; (2) the debts, funeral & testamentary expenses, & the costs of suit, etc., should be borne out of the capital of such business; testator having exonerated his residuary estate from any such or similar charges.—*DIXON v. DUTFIELD* (1862), 5 L. T. 741.

6053a. *Effect of Administration of Estates Act, 1925 (c. 23), s. 39.*—*Re TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE v. TROLLOPE*, [1927] 1 Ch. 596; 96 L. J. Ch. 340; 137 L. T. 375; 71 Sol. Jo. 310.

### PART IV. SECT. 7, SUB-SECT. 9.—A.

t L. — — —.—]—Testator, whose estate was subsequently sequestrated on the petition of his exors., & who had effected several whole life policies of assurance upon his own life with the Australian Mutual Provident Society, in respect of which the total amount payable at his death was £1,628 18s. 3d., & which were protected under Australian Mutual Provident Society's Act, 1857, s. 14, to the extent of either

£1,500 or £1,780 1s. 9d., had during his lifetime assigned the policies in question to the Society by way of mtge. as collateral security for the repayment of certain advances totalling £3,500, in respect of which advances the amount of £3,500 12s. 3d. was due at the date of his death:—*Held*: the equitable doctrine of marshalling applied, & the mtgee. must resort primarily to the protected fund to satisfy the mtge. debt, so as to leave the unprotected portion of the policy moneys available

for the unsecured creditors, with the result that the protection afforded by the Act was entirely destroyed.—*Re HOLLAND, Ex p. HOLLAND* (1928), 28 S. R. N. S. W. 369; 45 N. S. W. N. 88.—*AUS.*

PART V. SECT. 2, SUB-SECT. 1.  
so. *Before death duties paid—Where security for payment given.*—*R. v. CALEDONIAN INSURANCE CO.*, [1924] 2 D. L. R. 649; [1924] S. C. R. 207.—*CAN.*

6062. *Add. Annotation*:—*Apld. Johnson v. Clarke*, [1928] Ch. 847.

6074a. ——— *To pay specialty debt—Mortgage valid as against bond—Executor without notice of bond.*—*WATERLOO INSURANCE CO. v. HIND* (1862), 1 New Rep. 64.

6138a. *Effect of Administration of Estates Act, 1926 (c. 23), s. 39.*—*Re TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE v. TROLLOPE*, [1927] 1 Ch. 596; 96 L. J. Ch. 340; 137 L. T. 375; 71 Sol. Jo. 310.

6267a. ——— *Re READE-REVELL, CRELLIN v. MELLING*, [1929] W. N. 218.

6281a. ——— *Testator, who died on May 17, 1916, by his will appointed appcts. exors. & trustees, & bequeathed a number of absolute & settled pecuniary legacies. Testator gave all his estate whatsoever unto appcts. upon trust for sale & conversion at such time & manner as they should think fit, with power & discretion to postpone sale & conversion & charged the moneys to arise with the legacies bequeathed by his will. Testator's will contained a residuary bequest, investment clause in wide terms, & a power to appcts. to appropriate any part of the estate in its actual*

*condition in satisfaction of any legacy. The principal asset of testator's estate was a sum of nearly a quarter of a million pounds Irish Three per cent. Guaranteed Stock, & the estate was insufficient for payment in full of all the legacies. The Irish stock could not be sold even at a reduced market value of £151,411 & in the interests of the estate it was inexpedient to realise it at once. Appcts. having caused to be prepared a scheme of apportionment, appropriation & abatement among & between the legacies, applied by an originating summons issued on June 27, 1917, to the ct. for its sanction:—Held: appcts. could exercise the discretionary power of appropriation notwithstanding the fact that some of the legacies were settled by testator's will.*—*Re DANIELS, LONDON CITY & MIDLAND EXECUTOR TRUSTEE CO., LTD. v. DANIELS* (1918), 87 L. J. Ch. 661; 118 L. T. 435.

6341. *Add. Annotation*:—*Consd. Jones v. Wright* (1927), 139 L. T. 43.

6341a. ——— *Charges for work in execution of statutory trusts.*—*By his will testator directed that his trustees should stand possessed of certain hereditaments upon*

PART V. SECT. 2, SUB-SECT. 3.—  
B. (a) i.

r (p. 577) i. ——— *Where testator charged his debts on his land:—Held: the mere failure of testator to enumerate all his land did not detract from the conclusion that all the land was so charged, & the direction that his debts should be paid by his exors. conferred an implied power of sale upon them for the purpose of paying the debts out of the proceeds.*—*YOST v. ADAMS* (1886), 13 A. R. 129.—CAN.

t (p. 577) i. ——— *Where executor's power coupled with interest.*—*WESSELS v. CARSCALLEN* (1860), 10 C. P. 215.—CAN.

bb (p. 577) i. ——— *Legal estate in exors.*—*A devise of land to exors., in trust for the purpose of selling the lands, passes the legal estate & the beneficiaries acquire an equitable interest.*—*TOOMEY v. PHUPENDRA NATH BOSE* (1928), 1 L. R. 7 Pat. 520.—IND.

t (p. 578) i. ——— *Where testator directed his trustees to hold property for twenty-one years, & then sell it:—Held: there was no power to sell contrary to the express provisions of the will, except perhaps in a case of emergency.*—*DORREL v. LOUDOUN*, [1920] N. Z. L. R. 131.—N.Z.

b (p. 578) i. ——— *Under Devolution of Estates Act.*—*Re LOGAN*, [1927] 4 D. L. R. 1074; 61 O. L. R. 323.—CAN.

h (p. 578) i. ——— *Interference by court—Whether court will restrain executor from selling.*—*SAMUELSON v. SCHWANDT*, [1927] 3 D. L. R. 565; [1927] 1 W. W. R. 620; 21 Sask. L. R. 341.—CAN.

h (p. 578) ii. ——— *Sale not necessary for administration purposes—Title of bond fide purchaser.*—*An exor. or administrator has no absolute power to dispose of the property of deceased if it is not necessary for the purpose of administration of the estate, but a bond fide purchaser may be protected in certain cases where a transfer is not for that purpose.*—*TARAKESWAR DAS GUPTA v. AMBICA CHARAN BHATTACHARJEE* (1927), 1 L. R. 55 Calc. 892.—CAN.

PART V. SECT. 2, SUB-SECT. 3.—  
B. (a) ii.

1 i. S. P. McCURDY v. McDANIEL (1868), 7 N. S. R. (1 G. & O.) 267.—CAN.

PART V. SECT. 2, SUB-SECT. 3.—  
B. (b).

6145 ii. ——— *Held: although there was no express devise of realty to the exors., a devise was implied by the terms of the will, & there being a general charge of debts, the exors. had full power to give a mtge.*—*BANQUE PROVINCIALE DU CANADA v. CAPITAL TRUST CORPN.*, [1927] 3 D. L. R. 199; 60 O. L. R. 452.—CAN.

PART V. SECT. 2, SUB-SECT. 3.—  
B. (c).

sp. *Power to reserve benefit to one beneficiary—Out of lands devised to another beneficiary.*—*MCKENZIE v. GRANT* (1856), 13 U. C. R. 180.—CAN.

PART V. SECT. 2, SUB-SECT. 3.—  
C. (a).

h i. *Sale under licence of Probate Court—Whether licence conclusive—Licence obtained improperly.*—*DOW v. THOMPSON* (1860), 9 N. B. R. (4 All.) 483.—CAN.

h ii. ——— *Sufficient personal property for payment of debts.*—*Doe d. SULLIVAN v. CURREY* (1872), 14 N. B. R. (1 Pug.) 175.—CAN.

st. *Conveyance inoperative.*—*TEAHON v. LEAMBY* (1861), 21 U. C. R. 216.—CAN.

PART V. SECT. 3, SUB-SECT. 1.

sa. *Power to reduce debt & execute quit-claim deed.*—*Where testator had agreed to sell land to K., & the exors. reduced the purchase price in order to keep K. on the land, & later gave T., from whom testator had bought the land, a quit-claim deed of all their interest in the land:—Held: (1) the action of the exors. in reducing the price payable by K. was reasonable & proper; (2) they should not have executed the quit-claim deed without applying, under Trustee Act, R. S. S., 1920 (c. 75), s. 64, to a judge of the King's Bench for advice, but, since they had acted honestly & in what they considered to be the best interests of the estate, their failure to do so should be excused under sect. 44.*—*LEMCKE v. NEWLOVE (Sask.)*, [1926] 4 D. L. R. 293; [1926] 2 W. W. R. 830; varied [1927] 2 D. L. R. 1049; S. C. R. 389.—CAN.

PART V. SECT. 6, SUB-SECT. 1.

1 (p. 601) i. ——— *Under Trustee Act, R. S. B. C., 1924 (c. 262), s. 80—Amount limited to 5 per cent. of gross value of estate.*—*Re BECKMAN'S ESTATE* (1925), 37 B. C. R. 41.—CAN.

t (p. 601) i. ——— *Re BUSCH*, [1927] 2 D. L. R. 344; 59 N. S. R. 254.—CAN.

g (p. 602) i. ——— *Not after estate properly administered & accounts passed.*—*Re OXENHAM*, [1925] 2 D. L. R. 662.—CAN.

sb. *Liability for—Beneficiary entitled to specific bequest benefited by work of executor.*—*There is no jurisdiction in the ct. to order that the remuneration of an exor. be paid out of a specific bequest on account of its benefiting by the work of the exor.*—*In the Estate of RATHBONE*, [1929] N. Z. L. R. 123.—N.Z.

PART V. SECT. 7, SUB-SECT. 1.

ni. ——— *STORY v. DUNLOP* (1867), 13 Gr. 375.—CAN.

n ii. ——— *Re WILLIAMS* (1895), 22 A. R. 196.—CAN.

PART V. SECT. 7, SUB-SECT. 2.—A.

ri. ——— *In respect of guarantee—Distribution of estate in ignorance of guarantee.*—*SAUDRY v. HAMPTON*, [1927] N. Z. L. R. 673.—N.Z.

r ii. ——— *In respect of debt contracted for estate—Right of creditor to benefit of representative's right to indemnification.*—*Where an exor. contracts a debt on behalf of the estate the creditor is in equity entitled to the benefit of the exor.'s right to be indemnified out of the assets of the estate in the hands of the beneficiaries.*—*NETHERLANDS INVESTMENT CO. v. DESBRISSAY*, [1928] 1 D. L. R. 581; [1928] 1 W. W. R. 461; 23 Alta. L. R. 291.—CAN.

PART V. SECT. 7, SUB-SECT. 3.

so. *Representative not authorised by will—Beneficiaries claiming profits of business—Right of representative to be indemnified.*—*M'GINLEY v. GALLAGHER*, [1929] 1 R. 307.—IR.

certain trusts, & declared that any exor. or trustee of his will, who was a solr. or a person engaged in any profession or business, might individually, or through his firm, act in the course of his profession or business on behalf of the exors. & trustees, & charge for so doing:—*Held*: as the land was vested in the trustees upon the statutory trusts, any exor. or trustee of the will, who was a solr. or a person engaged in a profession or business, was entitled, under the will, to charge for work or business done in the execution of the statutory trusts, because such work or business would be done on behalf

of the exors. & trustees.—*Re* PEDLEY, WALLACE v. WALLACE, [1927] 2 Ch. 168; 90 L. J. Ch. 438; 137 L. T. 636; 71 Sol. Jo. 583.

6370. *Add. Annotation*:—*Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

6388a. ————.]—Leasehold property belonging to testator, who was original lessee, having been directed to be sold & the proceeds divided:—*Held*: the exors. were entitled to be indemnified out of the proceeds.—SMITH v. SMITH (1854), 2 Eq. Rep. 727.

## Part VI.—Liability of Representative.

6446a. ———— Sale of goodwill of business—

*Solicitation of customers.*]—The rule in *Trego v. Hunt*, [1896] A. C. 7, extends to a vendor's exor. completing a contract for the sale of the goodwill of a business, & the exor. will be restrained at the suit of the purchaser from soliciting customers of the business.—BOORNE v. WICKER, [1927] 1 Ch. 667; 96 L. J. Ch. 361; 137 L. T. 409; *sub nom.* BORNE v. WICKER, 71 Sol. Jo. 310.

*Annotation*:—*Re*id. Farey v. Cooper, [1927] 2 K. B. 384.

6505. *Add. Annotation*:—*Mentd.* Burrell v. Leven (1926), 42 T. L. R. 407.

6526. *Add. Annotations*:—*Mentd.* Rawlinson v. Ames, [1925] Ch. 96; Houghton v. Nothard, Lowe & Wills, [1928] A. C. 1.

6544. *Add. Annotation*:—*Mentd.* Richmond v. Savill, [1926] 2 K. B. 530.

6547. *Add. Annotation*:—*Generally, Mentd.* Pontypridd Grdns. v. Drew, [1926] 1 K. B. 567.

6600. *Add. Annotation*:—*Folld.* Firman v. Royal, [1925] 1 K. B. 681.

6602. *Add. Annotation*:—*Generally, Mentd.* Brocklebank v. R., [1925] 1 K. B. 52.

6610. *Add. Annotation*:—*Generally, Re*id. Field, Sanderson v. Young, [1925] Ch. 636.

6611. *Add. Annotation*:—*Re*id. *Re* Weld-Blundell Estate, Mowbray (Lord) v. Weld-Blundell (1929), 73 Sol. Jo. 585.

6667a. ———— *Non-repair by representative.*]—In debt for rent against an administrator, as assignee of the intestate, deft. pleaded, in discharge of his liability otherwise than as administrator, that the intestate underlet,

for an unexpired term, to a tenant who had become insolvent & unable to pay rent; that the premises were of less value than the rent, viz. of the value of a certain sum, part of which deft. had paid to pltf., & part towards the expense of a party-wall; that, before the rent became due, deft. offered to surrender all his interest in the premises to pltf., who refused to accept them; & that he had fully administered, etc. Replication; that the premises were of more value than the sum mentioned in the plea, viz. of the value of the rent; & that deft. did not offer to surrender, etc. Issue thereon:—*Held*: (1) the real value of the premises, as against deft., must be taken to be that which it would have been if he had not himself co

of a covenant to repair in the original lease; (2) the value, as between pltf. & deft., was not affected by the insolvency of the under-tenant, whose lease also contained a covenant to repair with a proviso of re-entry for breach & for non-payment of rent.—HORNIDGE v. WILSON (1840), 11 Ad. & El. 645; 3 Per. & Dav. 641; 9 L. J. Q. B. 72; 113 E. R. 559.

*Annotations*:—As to (1) *Consd.* *Re* Bowes, Strathmore v. Vane, Norecliffe's Claim (1887), 37 Ch. D. 128. *Re*id. Rendall v. Andrew (1892), 61 L. J. Q. B. 630. *Generally, Mentd.* Hopwood v. Whaley (1848), 6 C. B. 744.

6712. *Add. Annotation*:—*Consd.* Riley v. Brown (1929), 98 L. J. K. B. 739.

6713. *Add. Annotation*:—As to (1) *Consd.* Riley v. Brown (1929), 98 L. J. K. B. 739.

6713a. ————.]—An action for damages for breach of promise of marriage abates on the death of the alleged promisor & cannot be

### PART V. SECT. 8.

st. To receive payment of lump sum for which pension commuted by deceased.]—R. v. MCCORRISTON, [1926] 1 D. L. R. 1086.—CAN.

sj. To bring action.—To set aside tax sale of land belonging to estate.]—RODGER v. MORAN (1896), 28 O. R. 275.—CAN.

### PART V. SECT. 9.

6426 i. ———— Power of executor to bind — (Co-executor.)—*Held*: a settlement made by an exor. precluded the co. exor. & cestuis que trust from opening up the estate so settled.—*Re* BATH'S ESTATE (1879), 12 N. S. R. (3 R. & C.), 601.—CAN.

### PART V. SECT. 10.

6438 iii. ————.]—*Re* HEWETT v. JERMYN (1898), 20 O. R. 383.—CAN.

### PART VI. SECT. 2, SUB-SECT. 3.

6501 i. *Covenant to pay debt*—Under mortgage.]—In a will, the only provision for the payment of debts, was the usual one, that all testator's first debts should be paid by his exors. At the time of his death, a parcel of land was held in joint tenancy by testator & his wife, subject to a mtge.:—*Held*: the wife on death of testator, became owner subject to the mtge., & as between her & testator's estate, she was not entitled to call upon the estate to pay the mtge.; but if mtgee. could recover from testator's estate upon a covenant by testator for payment, dissolution of testator's interest could not deprive mtgee. of that right.—*Re* GRACEY (1925), 63 O. L. R. 218.—CAN.

### PART VI. SECT. 2, SUB-SECT. 5.

6521 ii. ————.]—WHYATT v. MARSH (1848), 4 U. C. R. 485.—CAN.

g. *Add. Citation*:—*re*vid. *sub nom.* M'GUGAN v. SMITH, 21 S. C. R. 263.

g i. ————.]—MURDOCH v. WEST (1895), 24 S. C. R. 305.—CAN.

g ii. ————.]—GRAY v. JOHNSTON, [1928] S. C. 659.—SCOT.

### PART VI. SECT. 2, SUB-SECT. 10.—D.

6595 i. ———— *Matrimonial causes*—Order for costs against husband.]—A wife, whose husband had died after a decree nisi for divorce & before the date when it could have been made absolute:—*Held*: not entitled, there being no funds in ct., to costs against his estate.—JARVIS v. JARVIS, [1925] 8 D. L. R. 416; [1925] 1 W. W. R. 247.—CAN.

continued against the exors. of the deceased unless special damage can be proved. Such special damage must arise directly or naturally out of the transaction between the parties to the breach & must relate to matters within the contemplation of the parties at the time the alleged promise was made.—*RILEY v. BROWN* (1929), 98 L. J. K. B. 739; 45 T. L. R. 613; 73 Sol. Jo. 499.

6723. *Add. Annotation*:—*Consd. Firman v. Royal*, [1925] 1 K. B. 681.

6729. *Add. Annotation*:—*Mentd. Collins v. Associated Greyhounds Racecourses, Ltd.* (1929), 141 L. T. 529.

6762. *Add. Annotation*:—*Refd. Re Field, Sander-son v. Young*, [1925] Ch. 636.

6835. *Add. Annotation*:—*Refd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

6840. *Add. Annotation*:—*Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

6861a. ————]—*BEAUMONT v. GROVER* (1701), 1 Eq. Cas. Abr. 8; 21 E. R. 833.

6861b. ————]—*KEMISH v. BETSON* (1732), Kel. W. 74; 25 E. R. 497.

6911. *Add. Annotation*:—*Appld. Re Munton, Munton v. West*, [1927] 1 Ch. 262.

6922. *Add. Annotation*:—*Consd. Re City Equitable Fire Insee.*, [1925] Ch. 407.

7059. *Add. Annotation*:—*Refd. Re Munton, Munton v. West*, [1927] 1 Ch. 262.

7163. *Add. Annotation*:—*Consd. Manley v. Sartori*, [1927] 1 Ch. 157.

7169a. ————]—*FLOCKTON v. BUNNING* (1868), 8 Ch. App. 323, n.

7190a. ————]—Exors. must be allowed a reasonable time for breaking up testator's domestic establishment & discharging his servants. Two months:—*Held*: not to be an unreasonable delay, having regard to the circumstances.—*FIELD v. PECKETT* (No. 3) (1861), 29 Beav. 576; 9 W. R. 525; 54 E. R. 751.

7190b. ————]—*BROWNE v. COLLINS*, No. 6308, ante.

7219. *Add. Annotation*:—*Consd. Re Mason* (1928), 97 L. J. Ch. 321.

7225a. *Assets improperly obtained*.]—Where two exors. obtained part of the assets improperly, by signing joint receipts in favour of each other while they had large balances in their hands respectively, the ct. gave interest on those sums at five per cent. against both exors.—*BECK v. MOTLEY* (1835), 2 My. & K. 312; 33 E. R. 962; *sub nom.* *BECK v. MOTLEY* 4 L. J. Ch. 63.

7230a. ————]—Where there is a direction in the will to accumulate a residue, with which the exor. does not comply, he must pay interest from the expiration of one year after testator's decease up to the date of filing the answer.—*AMISS v. HALL* (1857), 3 Jur. N. S. 584.

*Annotation*—*Dtd. Re Emmet's Estate, Emmet v. Emmet* (1881), 17 Ch. D. 112.

7256a. ————]—Exor. charged with interest

#### PART VI. SECT. 3, SUB-SECT. 1.

6726 i. *General rule*.—*Representatives not liable*.]—*CONNOLLY v. SHIVER* (1879), 18 N. B. R. 606.—*CAN.*

6726 ii. ————]—*LESLIE v. CALVIN* (1885), 9 O. R. 207.—*CAN.*

ri. ————]—*To negligence in management of ship*.]—*CAMERON v. MILLOY* (1872), 22 C. P. 331.—*CAN.*

#### PART VI. SECT. 4, SUB-SECT. 2.—A.

oi. ————]—A contract made by an exor. or administrator on behalf of the estate, but not relating to an obligation incurred by testator or intestate, renders him personally liable, even though it is expressed to be made "as exor." or "as administrator."—*WALCH v. NORDBLUM*, [1926] 4 D. L. R. 126; [1926] 2 W. W. R. 854; 36 Man. L. R. 46.—*CAN.*

d i. ————]—*Administrator guilty of fraud*.]—*DORR v. DOBIE v. VANDERLIP* (1836), 5 O. S. 85.—*CAN.*

#### PART VI. SECT. 4, SUB-SECT. 5.—A. (a).

6851 i. *Sale of testator's estate*.—*Below proper value*.]—Defts., as exors. of a will, were directed by the will to sell lands of testatrix, & distribute the proceeds among her children & a grandchild. In this action, plffs., two of the children, alleged that defts., exors., had committed a breach of trust by selling the lands at a gross undervalue. Plffs. gave a notice for trial by jury, & the action was tried with a jury, & judgment entered upon its findings in favour of plffs. for the recovery of damages:—*Held*: the evidence established no negligence on the part of defts., & no breach of trust.—*DAVIES v. NELSON*, [1928] 1 D. L. R. 254; 61 O. L. R. 457.—*CAN.*

#### PART VI. SECT. 4, SUB-SECT. 5.—A. (c).

6906 i. *Insurance of property*.]—In

Ontario exors. are bound to insure, against fire, buildings forming part of the estate in their hands, & are liable on a *deceit* if they fail to insure.—*Re GAMBLE*, [1925] 1 D. L. R. 768; 57 O. L. R. 501.—*CAN.*

#### PART VI. SECT. 4, SUB-SECT. 5.—A. (d).

6913 i. *Misappropriation*.—*By agent*.—*Agent previously employed by deceased*.]—Exors., relying in good faith on the statement of their testator's solr. that he had in his hands securities sufficient to answer a fund they were directed by the will to invest for an annuitant, distributed the estate. Subsequently it was found that before testator's death the solr. had misappropriated the money given to him by testator to invest, & had, in fact, at the time of the representation, no securities or money in his hands:—*Held*: the exors. were protected by Trustee Limitation Act, R. S. O. 1897, c. 129, s. 32.—*CLARKE v. BELLAMY* (1900), 27 A. R. 435.—*CAN.*

#### PART VI. SECT. 4, SUB-SECT. 5.—C. (a).

6979 i. *Bar to enforcement of remedy*.—*Conduct of party injured*.—*Delay*.]—*MEACHAM v. DRAPER* (1851), 2 Gr. 316.—*CAN.*

#### PART VI. SECT. 6, SUB-SECT. 1.

sd. *Jurisdiction of court*.—"To call upon executors to account."—The Surrogate Ct. has jurisdiction to call upon an exor. to account even before the expiration of the two years provided for in his letters probate.—*Re NORDBLUM*, [1928] 3 W. W. R. 290.—*CAN.*

#### PART VI. SECT. 6, SUB-SECT. 2.—B. (b).

sm. *Not where administration granted on application of party interested*

*adversely to executor*.]—*HARRISON v. McGLASHAN* (1859), 7 Gr. 531.—*CAN.*

#### PART VI. SECT. 6, SUB-SECT. 5.—B.

sm. *Counsel's fee*.—*For general work of adviser*.—*Not allowed*.]—*Re DODGE ESTATE*, [1925] 1 D. L. R. 1140; [1925] 1 W. W. R. 776.—*CAN.*

sp. ————]—*Unless estate difficult to manage or solicitor required to render services by way of business management*.]—*Re ROEMER (Sask.)*, [1927] 3 W. W. R. 603; *varied sub. nom. Re ROEMER ESTATE, Re MOTT v. ROEMER*, [1928] 3 D. L. R. 860; [1928] 2 W. W. R. 566.—*CAN.*

#### PART VI. SECT. 6, SUB-SECT. 5.—C. (a).

7200 i. *Under special circumstances*.]—Where the circumstances of the case render it reasonable that they should do so exors. are entitled to employ the services of such agents as may be necessary.—*Re LEVEL ESTATE*, [1927] 1 D. L. R. 900; [1927] 1 W. W. R. 1000; 38 B. C. R. 211.—*CAN.*

#### PART VI. SECT. 6, SUB-SECT. 5.—D. (a).

sq. *Increased fee to counsel*.—*Necessity of notice to parties interested*.]—In a proper case, an increased counsel fee should be allowed the solr. of the exor. as between solr. & client. It is impossible to lay down any fixed rule governing such amounts. The increased fee should not be applied for or granted without notice to the parties interested; but in the present case, since the parties were all before the ct. & had argued the point, an increased counsel fee on the passing of accounts was allowed to save further expense, although notice that it would be applied for had not been given.—*Re MACDONALD ESTATE*, [1928] 2 D. L. R. 338; [1928] 1 W. W. R. 652; 22 Sask. L. R. 288.—*CAN.*

on dividends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—*GOODCHILD v. FENTON* (1829), 3 Y. & J. 481; 148 E. R. 1269, Ex. Ch.

7273a. ———.]—*GILROY v. STEPHENS*, No. 7268, *ante*.

7276a. ——— To authorise maintenance.]—*CHARL-*

*TON v. SADEN* (1836), Donnelly, 36; 47 E. R. 210.

7311a. Who may re-open.]—A., entitled to a share of a residue, made a settlement of the balance appearing upon a settlement of accounts with the exors. upon himself & afterwards on C., a volunteer:—*Held*: C. could not, against the will of A., open the settlement of accounts with the exors.—*PARKER v. BLOXAM* (1855), 20 Beav. 295; 52 E. R. 616.

## Part VII.—Actions by and against Representative.

7439a. In whose name—Deceased's property assigned to assignees before death.]—The property of an intestate was assigned to assignees previous to his death; pltf. administered, & applied to deft. for payment for goods sold him by the intestate, in the name of the assignees, & afterwards brought an action in his character of administrator:—*Held*: such action was well brought.—*BRANDT v. HEATIG* (1818), 2 Moore, C. P. 184.

7492a. Suit for account of testator's estate.]—

Lapse of time will not of itself bar an exor. of an exor. of his right to have an account of his exor.'s testator's estate taken, with a view to ascertain such exor.'s liabilities as an accounting party.—*SMITH v. O'GRADY* (1870), L. R. 3 P. C. 311; 7 Moo. P. C. C. N. S. 106; 39 L. J. P. C. 63; 23 L. T. 476; 19 W. R. 22; 17 E. R. 41, P. C.

7584. Add. Annotation:—*Reid. Re Forder*, *Forder v. Forder*, [1927] 2 Ch. 291.

### PART VI. SECT. 6, SUB-SECT. 7.—A.

sr. Jurisdiction of registrar.—Should not pass upon his own accounts.]—*It* *BENT*, [1927] 1 D. L. R. 592; 59 N. S. R. 107.—*CAN.*

7296 i. Passing accounts—Costs—Form of order.]—*It* *HASLETT*, *McKENNA v. HASLETT*, [1927] V. L. R. 21; 48 A. L. T. 125; [1927] *Argus* L. R. 12.—*AUS.*

### PART VII. SECT. 1, SUB-SECT. 7.

i. i. ——— Evidence of opposite or interested party.]—*TAYLOR v. LEGGIS* (1895), 26 O. R. 483.—*CAN.*

### PART VII. SECT. 1, SUB-SECT. 9.—A.

st. General rule.]—In litigating with third persons, exors. are, with respect to costs, in the same position as parties who litigate in their own right.—*GREAT WESTERN RY. Co. v. JONES* (1867), 13 Gr. 355.—*CAN.*

sv. Liability on failure of appeal—Appeal without merit or substance.]—The costs of an appeal without merit or substance taken by a personal representative:—*Held*: to be payable by such representative in his individual capacity.—*STRELIOFF v. FIRST NATIONAL BANK OF JOLIET*, [1925] 2 W. W. R. 501.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 5.—B. (a).

sw. Appointment by foreign court.]—An exor. or administrator cannot, as a general rule, be sued as such in the ets. of any State or country other than that in which he received his appoint-

ment.—*GOODBUN v. MITCHELL*, [1926]

UJ 2 W. W. R. 51, 57, *CAN.*

### PART VII. SECT. 2, SUB-SECT. 5.—B. (c) ii.

sx. To action by widow—Under Widow's Relief Act—Six months after death of husband.]—*KROGMAN v. DICKSON*, [1928] 2 D. L. R. 948.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 6.—A.

p i. ——— Claim for deceased's board during lifetime.]—*Re THOMPSON* (1926), 58 N. S. R. 489.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 8.—A.

a i. ———.]—The proper form of judgment against exors. or administrators in respect of a liability of deceased is for payment in due course of administration, unless there is on their part a distinct affirmative admission of assets sufficient to pay all creditors: upon a judgment for the amount recovered to be paid in due course of administration it is improper to issue execution.—*Re HEXTALL ESTATE*, [1921] 1 W. W. R. 118; 36 D. L. R. 710.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 8.—C.

d i. ——— Judgment against defendant administrator of estate.]—A certificate of a county ct. judgment against "A. B., administrator of the estate of X." charges A. B. personally & not the estate.—*Re JOYCE & SCARRY* (1889), 6 Man. L. R. 281.—*CAN.*

fi. ——— Contribution from devisees.]—*EMERSON v. CANNIFF* (1878), 26 Gr. 149.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 9.—A.

s i. ——— Widow's costs of application for relief under Devolution of Estates Act, R. S. S., 1920 (c. 73), s. 24.]—*Re MOWCHENKO*, [1926] 1 D. L. R. 265; [1926] 1 W. W. R. 139; 20 Sask. L. R. 279.—*CAN.*

s ii. ——— Litigation caused by legatee.]—*O'SULLIVAN v. HARTY* (1885), 11 S. C. R. 322.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 10.—A.

7763 i. Garnishee proceedings—Decree in administration suit—Damages recovered by administrator under Fatal Accidents Act—Garnishee summons set aside.]—*McEWAN v. SPECKT* (N. W. T.) (1906), 4 W. L. R. 325.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 10.—B. (a).

sy. Priority of execution—Over purchaser from executor.]—*HENRY v. SHARP* (1871), 18 Gr. 16.—*CAN.*

### PART VII. SECT. 2, SUB-SECT. 10.—B. (b).

l i. ———.]—*Held*: land & tenements, held in fee simple by debtor at the time of his decease, might be taken in execution on a judgment against his exor. or administrator.—*FORSYTH & RICHARDSON v. HALL* (1830), Dra. 304.—*CAN.*

sz. Judgment by default—Notwithstanding insufficient personal assets.]—*Held*: the exor. was not entitled to an injunction against proceedings on the judgment.—*DONER v. ROSS* (1872), 19 Gr. 229.—*CAN.*

## Part VIII.—Administration by Court.

7867. *Add. Annotation* :—**Refd.** *Horwood v. Statesman Publishing Co.* (1929), 98 L. J. K. B. 450.

7987. *Add. Annotation* :—**Mentd.** *Weld v. Petre*, [1929] 1 Ch. 33.

7990. *Add. Annotation* :—**Refd.** *Re Robertson's Application* (1929), 46 T. L. R. 17.

7993. *Add. Annotation* :—**Refd.** *Haskell v. Marlow*, [1928] 2 K. B. 45.

8014. *Add. Annotation* :—**As to** (1) **Refd.** *Re Ross*, *Ross v. Waterfield* (1929), 46 T. L. R. 61.

8018. *Add. Annotation* :—**Refd.** *Hunter v. Stadtische Hochseefischerei Gessellschaft*, [1925] 2 K. B. 493.

8228. *Add. Annotation* :—**Mentd.** *Grant v. Boos*, [1926] A. C. 781.

8270a. — **Separate sets of trustees of settled shares.**—*Re SCOTT, SCOTT v. SCOTT* (1926), 71 Sol. Jo. 430.

8280a. **Power of court to order—Ancillary to order relating to management of property—R. S. C. Ord. 15, r. 2 (13).**—When, in an administration action upon a summons connected with the management of the property, under above sub-rule, a judge of the Ch. Div. sitting in chambers makes an order sanctioning the expenditure of a certain sum out of capital for the purposes authorised, he has ancillary jurisdiction under that sub-rule, by the same order, to give full practical effect thereto by further directing payment of the sum so authorised out of a fund of whatever amount standing in ct. to the general credit of the action.—*Re TERRY, TERRY v. TERRY*, [1929] 2 Ch. 412; 98 L. J. Ch. 436; 141 L. T. 536; 45 T. L. R. 539.

8337. *Add. Annotation* :—**Consd.** *Green v. Weatherill*, [1929] 2 Ch. 213.

### PART VIII. SECT. 1, SUB-SECT. 4.

**b i.** — *Cannot entertain claim for balance on mortgage by executors to pay debts & legacies.*—*Re RICHARDSON'S ESTATE* (1890), 22 N. S. R. 416.—**CAN.**

**g i.** — *Application for directions—Previous decree to deliver property in sub-court.*—Where a decree was obtained by a legatee against the exor. for delivery of the property in a suit in a sub-court, & subsequently the exor. filed a petition in the High Ct. under Indian Succession Act, XXXIX of 1925, s. 302, for directions as to the fund relating to a charity mentioned in the will but not dealt with by the decree of the lower ct., the High Ct. had jurisdiction to give directions, as the matter was not adjudicated in the suit, but would not give directions where the matter had been definitely settled in a properly constituted suit.—*AKKAYYA v. VANAMA LAKSHANMA* (1927), 1 L. R. 51 Mad. 849.—**IND.**

### PART VIII. SECT. 2, SUB-SECT. 1.

**ss.** *Share of next of kin—Mortgagee of.*—**Held**: entitled to bring proceedings.—*SWEENEY v. GALLAGHER* (1888), 22 I. L. T. 82.—**IR.**

**sb.** — *Assignee of.*—**Held**: entitled to bring proceedings.—*TEVLIN v. GILSENAN* (1901), 36 I. L. T. 35.—**IR.**

### PART VIII. SECT. 3, SUB-SECT. 2.—B.

7987 ii. —.—*SORBY v. PARKER* (1920), 52 D. L. R. 692.—**CAN.**

**sd.** *Not question whether property part of estate.*—*Re COLLINS*, [1927] 1 D. L. R. 770; 61 O. L. R. 225.—**CAN.**

**ss.** *Question whether executors might act without consent of named person.*—*Re ROGERS*, [1929] 1 D. L. R. 116; 63 O. L. R. 180.—**CAN.**

### PART VIII. SECT. 5, SUB-SECT. 1.

**n i.** —.—*GILBERT v. JARVIS* (1869), 16 Gr. 265.—**CAN.**

### PART VIII. SECT. 5, SUB-SECT. 3.—G.

8199 ii. —.—*Where personal estate sufficient if properly administered—Limit of time for application for sale.*—*PEOPLE'S BANK v. MARROW* (1825-1897), N. B. Dig. 312.—**CAN.**

### PART VIII. SECT. 5, SUB-SECT. 3.—H. (b).

**h i.** — *Balance on bond—After foreclosure & sale by mortgagee.*—*Re CHANDLER'S ESTATE* (1884), 5 It. & G. 78.—**CAN.**

**h ii.** — *Not debt arising out of illegal transaction.*—*Re GHEE, Ex p. LOWE KING, PUBLIC TRUSTEE v. LOWE KING*, [1928] N. Z. L. R. 266.—**N.Z.**

8342a. **Action against representative—Payment into court—Subsequent action by creditors—Whether creditors entitled to fund in court.**—

A bill was filed by a *cestui que trust* against a surviving trustee & the representative of B., a defaulting trustee, to obtain a proper investment of the trust fund. B.'s representative did not admit assets, but admitted that he had in his hands part of B.'s estate, which he paid into court under the order of the ct. A decree was obtained, by which B.'s estate was declared liable to make good the trust fund, & accounts were ordered to be taken of B.'s estate. A creditors' suit was instituted for the administration of B.'s estate, & the common decree obtained :—**Held**: the decree in the first suit did not entitle plffs. therein to the whole fund paid into ct. in that suit, but only to a proportional part of it with the other creditors of B.—*SMITH v. BIRCH* (1840), 3 Beav. 10; 9 L. J. Ch. 349; 4 Jur. 670; 49 E. R.

*Annotation* :—**Refd.** *Tomlin v. Tomlin* (1841), 1 Haro. 236.

8349. *Add. Annotation* :—**Refd.** *Douglass v. Lloyds Bank* (1929), 31 Com. Cas. 263.

8358. *Add. Annotation* :—**Mentd.** *English Insee. v. National Benefit Assce.*, [1929] A. C. 114.

8371. *Add. Annotation* :—**Refd.** *Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.

8484a. — **Valuation of annuity payable under payment included.**—In order to qualify an annuitant, to whom a person who died in 1922 was liable under a judgment by consent to pay the annuity, to prove for the value thereof in the administration by the ct. of the deceased person's estate, it is sufficient for the annuitant to prove, as a fact, that if the annuity continues for the period normally to be expected, the estate will not suffice to meet the debts & the annuity in full.—*Re PINK, ELVIN v. NIGHTINGALE*, [1927] 1 Ch. 237;

8228 i. —.— *Mortgage debt—Purchase of land by deceased—Payment of mortgage as part of purchase price.*—**Held**: the mtgee. was entitled to prove for the balance of the mtge. debt against the general estate of the purchaser.—*Re COZIER, PARKER v. GLOVER* (1877), 24 Gr. 537.—**CAN.**

### PART VIII. SECT. 5, SUB-SECT. 3.—H. (d).

**sf.** *Parol evidence.*—**Held**: the master had properly received parol evidence to establish the widow's claim in question.—*ROSS v. MASON* (1862), 9 Gr. 568.—**CAN.**

### PART VIII. SECT. 5, SUB-SECT. 4.—C.

**n i.** — *Disposal of assets.*—Where a creditor or one of the next of kin institutes an administration suit against an exor. the institution of the action or the obtaining of a decree will not bring the doctrine of *lis pendens* into operation, & does not deprive the exor. of the power to dispose of assets, unless plff. has obtained an order appointing a receiver or an injunction restraining the exor. from exercising the powers vested in him.—*LEE LIM MA HOCK v. SAW MA HONE* (1923), 1 L. R. 2 Ban. 4.—**IND.**

96 L. J. Ch. 202 ; 136 L. T. 399 ; 70 Sol. Jo. 1090.

8494. *Add. Annotation* :—*Mentd. Re City Life Assce.* (1925), 42 T. L. R. 45.

8520a. *Rate of interest.*—Where an intestate dies insolvent proof can be made in respect of interest claimed by a creditor at the rate of 7 per cent. *per annum* calculated down to the date of payment, & Bkpcy. Act, 1914 (c. 59), s. 66, does not apply to such a case.—*Re WELLS*, [1929] 2 Ch. 269 ; 98 L. J. Ch. 407 ; 141 L. T. 323.

8750. *Add. Annotation* :—*Mentd. Re Hardyman, Teesdale v. McClintock*, [1925] Ch. 287.

8790a. ———.]—A bill was filed for the administration of the real & personal estate. A part of the real estate was specifically devised, & gave rise to questions of construction ; other part was devised to charities, which devise was void under the Statute of Mortmain. The residuary real estate descended on the heir, & the residuary personal estate was undisposed of, & went to the next of kin :—

*Held* : the costs of suit attributable to the administration of the trusts of the real estate were payable out of the descended estates, & that those relating to the execution of the trusts of the personal estate out of the residuary personal estate.—*SANDERS v. MILLER* (1858), 25 Beav. 154 ; 53 E. R. 595 ; *sub nom.* *SAUNDERS v. MILLER*, 6 W. R. 454.

*Annotations* :—*Consd. Re Middleton, Thompson v. Harris* (1882), 19 Ch. D. 552. *Refd. Randfield v. Randfield* (1863), 32 L. J. Ch. 668 ; *Patching v. Barnett* (1881), 51 L. J. Ch. 74.

8793. *Add. Annotation* :—*Generally, Mentd. Re Beirnstien, Barnett v. Beirnstien*, [1925] Ch. 12.

8802. *Add. Annotation* :—*As to (2) Refd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

8841a. — — — — —.]—*Re POTTS, HOOLEY v. FOUNTAIN*, [1884] W. N. 106.

8866. *Add. Annotation* :—*Refd. Re Porter, Porter v. Porter*, [1925] Ch. 746.

8891. *Add. Annotation* :—*Consd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

9014. *Add. Annotation* :—*As to (4) Refd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

PART VIII. SECT. 7, SUB-SECT. 2.—  
B. (b).

*sy. Insurance policy*—*Protected for payment of debts*—*Under Life Insurance Act*, 1908, s. 65.]—Where an insolvent estate includes the proceeds of an insurance policy protected for deceased's debts by the above Act, the policy moneys are liable for all testamentary expenses arising in the administration & realisation thereof ; funeral & the other testamentary expenses are borne by the protected policy moneys & the remainder of the estate in proportion to their value.—*MITLAND v. PUBLIC TRUSTEE*, [1924] N. Z. L. R. 840.—*N.Z.*

PART VIII. SECT. 7, SUB-SECT. 2.—  
B. (c).

*sz. Overpayment—Liability of executor.*]—*TAYLOR v. BRODIE* (1874), 21 Gr. 607.—*CAN.*

PART VIII. SECT. 8, SUB-SECT. 1.—A.

8559 ii. ——— *Costs of mortgagee's action to realise security & for administration.*]—*LEONARD v. KELLETT* (1891), 27 L. R. Ir. 418.—*IR.*

PART VIII. SECT. 8, SUB-SECT. 2.—A.

i. ——— *Establishing claim as such.*]—Next of kin who are successful in establishing their claims as such before the chief clerk are entitled to be paid

their costs incurred in so doing out of the estate of the intestate.—*Re GRAZERBROOK, CHASE v. LAYTON* (No. 2), [1928] V. L. R. 212.—*AUS.*

PART VIII. SECT. 8, SUB-SECT. 2. —C.

8771 i. *Legatee & assignee—Whether legatee's costs only allowed.*]—Orders for costs, in administration suits, should be made in such a form that a person who has not encumbered his share will be relieved as far as possible in the matter of costs created by the fact that another co-sharer has assigned or encumbered his share.—*NATIONAL INSURANCE CO., LTD. v. NISSIM ABRAHAM GUBBY* (1928), 1 L. R. 56 Cal. 417. —*IND.*



# EXTRADITION AND FUGITIVE OFFENDERS.

## Part I.—Extradition to Foreign Countries.

37. *Add. Annotations*:—*As to* (1) *Refd. R. v. Beebe* (1925), 133 L. T. 736. *Generally, Mentd. Statham v. Statham*, [1929] P. 131.
126. *Add. Annotation*:—*As to* (1) *Refd. R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127.
127. *Add. Annotation*:—*Consd. R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127.

## Part III.—Surrender between British Dominions inter se and the United Kingdom.

148. *Add. Annotation*:—*As to* (1) *Apprvd. Sobhuza II. v. Miller*, [1926] A. C. 518.
159. *Add. Annotations*:—*Apld. Re Paget, Ex p. Official Receiver*, [1927] 2 Ch. 85. *Refd. Re Jawett*, [1929] 1 Ch. 108.
160. *Add. Annotation*:—*Refd. Campbell v. Pollak*, [1927] A. C. 732.

### PART I. SECT. 2, SUB-SECT. 2.—B.

*sa. Obtaining by false pretences—Extraditable offence.*—*Re MARTIN* (No. 2) (1897), 2 Terr. L. R. 304.—CAN.

*sb. Procuring abortion.*—The procuring abortion held extraditable on the demand of the State of Alabama.—*Re O'CONNOR*, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p. O'CONNOR*, 49 Can. Crim. Cas. 151.—CAN.

### PART I. SECT. 3, SUB-SECT. 1.

39 iv. — *Application by French Republic—Extradition to Saar Basin of Germany.*—*Re INCAMPE*, [1928] 3 D. L. R. 240; 49 Can. Crim. Cas. 386.—CAN.

t i. —.—*Extradition proceedings need not originate in the foreign country.*—*Re O'CONNOR*, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p. O'CONNOR*, 49 Can. Crim. Cas. 151.—CAN.

### PART I. SECT. 3, SUB-SECT. 3.—C. (a) i.

68 i. *Identity of accused.*—Evidence which under Canadian law may be inadmissible on a trial because the prisoner had not been properly warned

of the possible consequences of the making of a statement or giving answers to a policeman's question is at least admissible on extradition proceedings to prove the identity of the person arrested with the person charged.—*Re O'CONNOR*, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 39 B. C. R. 271; *sub nom. Ex p. O'CONNOR*, 49 Can. Crim. Cas. 151.—CAN.

### PART I. SECT. 3, SUB-SECT. 3.—C (a) ii.

83 iv. —.—*While the imputed offence must be shown to be a crime under the law of the demanding State, yet, in determining whether there is such evidence of criminality as according to Canadian law would justify a commitment if the crime had been committed in Canada, regard is to be had to the essence of the act charged, & extradition is permitted if there exists the elements of the imputed offence according to Canadian law.*—*WASHINGTON STATE v. FLETCHER*, [1926] 3 D. L. R. 426; [1926] 2 W. W. R. 508; 46 Can. Crim. Cas. 226; 20 Sask. L. R. 575.—CAN.

c i. — *Whether admissible as proof of law of demanding State.*—*Re WAGNER*

[1928] 4 D. L. R. 615; 50 Can. Crim. Cas. 254.—CAN.

sl. *Foreign law—Mode of proof.*—*UTAH STATE v. JONES* (1925), 44 Can. Crim. Cas. 355; [1925] 3 W. W. R. 750.—CAN.

### PART I. SECT. 3, SUB-SECT. 3.—E.

b i. —.—*Re MARTIN* (No. 2) (1897), 2 Terr. L. R. 304.—CAN.

### PART III. SECT. 1, SUB-SECT. 3.

sk. *Not absconding from jail.*—*JAIPAL BHAGAT v. R.* (1921), 1 L. R. 1 Pat. 57.—IND.

### PART III. SECT. 2, SUB-SECT. 1.

st. *Cancellation of warrant—Jurisdiction of High Court.*—Although Extradition Act, 1903, s. 15, empowers the Govt. of India & the local Govt. to stay proceedings taken under chap. III of the Act & to direct any warrant to be cancelled & accused released, this does not oust the jurisdiction of the High Ct. to interfere where action has not been taken under a valid warrant.—*JAIPAL BHAGAT v. R.* (1921), 1 L. R. 1 Pat. 57.—IND.

# FACTORIES AND SHOPS.

## Part I.—Classification and Definitions.

8. *Add. Annotation*:—*As to* (1) *Consd. Mumby v. Vulp* (1929), 141 L. T. 663.
28. *Citation*:—For “2 B. & S. 153” read “3 B. & S. 153.”
29. *Add. Annotation*:—*Refd. Skinner v. Breach*, [1927] 2 K. B. 220.
- 36a. — *Need not be by owner of building.*—*MUMBY v. VULF*, No. 98a, *post*.
40. *Add. Annotation*:—*Refd. Skinner v. Breach*, [1927] 2 K. B. 220.

## Part III.—Accidents.

62. *Add. Annotation*:—*Refd. Dew v. United British S.S. Co.* (1928), 139 L. T. 628.
68. *Add. Annotation*:—*Generally, Refd. Atkinson v. L. & N. E. Ry.* (1925), 42 T. L. R. 79.
- 68a. — — — — —]—*Resps.*, the occupiers of a factory, provided adequate guards for securely fencing the mill-gearing, & exhibited a notice prohibiting workmen from removing any guard without special instructions. The workmen removed nine guards for the purpose of setting the rollers, & having replaced only eight of the guards, started the rollers. Owing to their neglect, one workman, who slipped & fell, was dragged into the coupling gear & was killed. An information against *resps.* under 1901 Act, s. 136, for neglecting to observe the provision of sect. 10 (1) (c) that the mill-gearing must be securely fenced, was dismissed, on the grounds that *resps.* had taken all adequate precautions by providing the necessary guards, & that it was the fault of the workmen that caused the accident:—*Held*: under sect. 10 it was the duty of *resps.* not merely to provide guards, but to fence the machinery securely, & as they had not performed this duty, the justices ought to have convicted them.—*THOMAS v. BOLTON (THOMAS) & SON, LTD.* (1928), 139 L. T. 397; 92 J. P. 147; 44 T. L. R. 640; 26 L. G. R. 459; 28 Cox, C. C. 529, D. C.
71. *Add. Annotation*:—*Refd. Atkinson v. L. & N. E. Ry.* (1925), 42 T. L. R. 79.
- 70a. — — — — —]—*machinery equally safe fenced or unfenced*—*Overhead shaft.*]—*Resps.* were the occupiers of a factory in which was a machine driven by a pulley fixed on a horizontal shaft, which formed part of the mill gearing. The driving belt slipped off the pulley & an employee of *resps.* attempted to put it back while the shaft was running & sustained injuries. The shaft & pulley were about thirteen feet from the floor & they were not fenced or guarded. In attempting to put on the belt the workman stood on a beam about seven feet from the floor, & was acting contrary to *resps.* instructions. *Resps.* were summoned for not having the shaft fenced, but the justices, being of opinion that any fence would have been useless owing to the shaft being thirteen feet above the ground, dismissed the case:—*Held*: the finding of the justices was not equivalent to a finding that the shaft was “in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced,” which was the requirement of 1901 Act, s. 10 (1) (c), & there would have been no evidence to support the latter finding.—*ATKINSON v. LONDON & NORTH EASTERN RY. CO.*, [1926] 1 K. B. 313; 95 L. J. K. B. 266; 134 L. T. 217; 90 J. P. 17; 42 T. L. R. 79; 23 L. G. R. 702; 28 Cox, C. C. 112, D. C.
80. *Add. Annotations*:—*As to* (1) *Consd. Dew v. United British S.S. Co.* (1928), 139 L. T. 628. *Generally, Mentd. Scammell & Nephew v. Hurley*, [1929] 1 K. B. 216.

**PART I. SECT. 1, SUB-SECT. 1.**  
*sa. Flour mill.*]—*Held*: a “factory” within Factories Act, 1894.—*SELBY v. BANNIGAN* (1901), 3 S. A. L. R. 21.—*AUS.*

*m i.* — — — — —]—*Held*: a drying yard, situate about five or six yards from a factory, was part of the factory.—*RAMANATHAM v. R.* (1926), 1 L. R. 50 Mad. 834.—*IND.*

**PART III. SECT. 1, SUB-SECT. 1.—A.**

70 iii. — — — — —]—A co. was charged under 1901 Act, s. 10 (1) (c), with failing to keep its factory in conformity with that Act, in respect that a dangerous part of the machinery, the cutter of a horizontal milling machine, was not either securely fenced, or in such a position or of such construction as to be equally safe to every person employed or working in the factory as it would have been if it had been securely fenced:—*Held*: (1) the question whether a part of the machinery was “dangerous” within the Act was one of degree, & the risk involved in the use of the cutter did not reach a degree sufficient to justify that part being classified as “dangerous”; (2) in any event, to

secure a conviction, facts must be established to support the second branch of the complaint, & on the facts, the charge was not proven.—*LAUDER v. BARR & STROUD*, [1927] S. C. (J.) 21.—*SCOT.*

76 a i. — — — — —]—*Defts.* were the occupiers of a factory. A workman in their employment, following his daily duties, climbed up a ladder to the shafting in the dye-house to fix a belt on a pulley, & was caught in the shafting, whirled round & killed. No one actually saw the occurrence, but, as portions of deceased’s clothing were on the shaft, they probably got caught in it. An information against *defts.* charged that, contrary to Factory & Workshop Act, 1901, s. 10 (1) (c), a part of the mill gearing, namely, a line of shafting, was neither securely fenced nor in such a position nor of such construction as to be equally safe to every person employed or working in the factory as if it had been securely fenced. The justices dismissed the information, but stated a case for the opinion of the K. B. D.:—*Held*: *defts.*, in failing to fence the line of shafting, had contravened Factory & Workshop Act, 1901, s. 10 (1) (c), &

should be convicted.—*MINISTRY OF LABOUR FOR NORTHERN IRELAND v. COWDY & SONS*, [1929] N. I. 110.—*IR.*

81 iii. — — — — —]—In an action by the widow of a deceased employee against his employer *pltf.* alleged that *deft.* in contravention of Factories & Shops Act, 1912 (N.S.W.), neglected & omitted securely or at all to fence the dangerous parts of a machine whereby deceased was injured & died. The jury returned a general verdict for *deft.*:—*Held*: in the particular circumstances there should be a new trial, there having been a misdirection on the question of contributory negligence upon which the jury might have acted.—*CORFIELD v. WATERLOO CASE CO., LTD.* (1924), 34 C. L. R. 363.—*AUS.*

81 iv. — — — — —]—Contributory negligence is not a defence to an action to recover damages for personal injury, caused by a breach of an absolute statutory duty imposed for the benefit of a class of persons, of which *pltf.* is a member.—*BOURKE v. BUTTERFIELD & LEWIS, LTD.* (1927), 38 C. L. R. 354; 27 S. R. N. S. W. 339; [1927] *Argus* L. R. 3.—*AUS.*

91. *Add. Annotation* :—*As to (2) Consd. & Expld. Mumby v. Volp* (1929), 141 L. T. 663.
92. For “69 L. T. 622” read “79 L. T. 622.”
- 98a. **Duty to keep in repair & free from obstruction**—**Part of factory in occupation of lessee.**—The supply of mechanical power referred to in *Factory & Workshop Act, 1901* (c. 22), s. 149 (1), is not limited to the case of supply by the owner of the building, & there is no reason to read into the sub-sect. after the word “supplied” the words “by the owner.”
- X. owned a building which was a factory where more than forty persons were employed, & carried on business as a shirt manufacturer in the basement & on the ground & first floors. The second floor was unoccupied. The third & fourth floors were let to Y., who carried on business there as a blouse manufacturer, employing more than forty

persons. The factory of X. & that of Y. were respectively worked by separate & distinct electric motors, driven by electricity generated & supplied by the electricity undertaking of a municipal corpn. & each factory had a separate meter. Without this supply of electricity the electric motors could not be driven:—*Held*: mechanical power, namely, electrical current, was supplied to different parts of the same building within sect. 149 (1). Accordingly, as the building was a tenement factory, etc., the owner, was responsible under sect. 14 (6), (7) of the Act that the means of escape in case of fire provided throughout the factory, including the two floors occupied by Y., should be maintained in good condition & free from obstruction.—*MUMBY v. VOLP* (1929), 141 L. T. 663; 93 J. P. 197; 27 L. G. R. 594, D. C.

## Part IV.—Dangerous and Unhealthy Industries.

118. *Add. Annotations* :—*Refd. Hamilton v. Shelton Iron, Steel & Coal Co., Leigh v. Same, Timmins v. Same* (1926), 96 L. J. K. B. 295; *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664; *Bevan v. Nixon's Navigation Co.*, [1929] A. C. 44.
129. *Add. Annotation* :—*Generally, Mentd. Bennett v. Whitehead*, [1926] 2 K. B. 380.
153. *Add. Annotation* :—*Refd. Stroud v. Bath Gas Light & Coke Co.* (1927), 137 L. T. 623.
- 153a. — “Temporarily used”—**Machinery not in actual use.**—By *Factory & Workshop Act, 1901* (c. 22), s. 79, the Secretary of State may make regulations in respect of dangerous machinery. By sect. 105 the provisions of the Acts with respect (*inter alia*) to fines in respect of death or injury are applicable as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word “factory,” & as if the person who by himself, his agents or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of a factory. The Secretary of State, in pursuance of s. 79, made certain regulations casting upon employers of workmen the duty

of fencing floor-openings with a suitable guard rail & toe board or other efficient means: *Held*: (1) the words “temporarily used” are not confined to the actual moment when the machinery is in use, but extend to the whole period during which the machinery is available for use in the constructional work, & therefore that persons who had brought such machinery upon the premises were liable to conviction as the occupiers of a factory in respect of the death of a workman who fell through an unfenced shaft at a time when the mechanical hoist for which the shaft was made was not in use; (2) the words “employers of workmen” imposed upon sub-contractors, engaged in laying floors in a building in course of erection, liability in respect of the death of one of their workmen who fell through an unguarded well hole which the sub-contractors had left for a staircase in the construction of which the sub-contractors were not concerned.—*BARNETT v. CAXTON FLOORS, LTD., BUTLER v. KLEINE PATENT FIRE RESISTING FLOORING SYNDICATE, LTD.* (1928), 140 L. T. 138; 93 J. P. 59; 45 T. L. R. 141; 27 L. G. R. 27; 28 Cox, C. C. 558, D. C.

- 180a. — Regulations binding on “employer of workman”—**Liability of sub-contractor.**—*BARNETT v. CAXTON FLOORS, LTD., BUTLER v. KLEINE PATENT FIRE RESISTING FLOORING SYNDICATE, LTD.*, No. 153a, *ante*.

## Part V.—Conditions as to Employment and Wages.

192. *Add. Annotation* :—*As to (1) Consd. Rutherford v. Trust Houses*, [1926] 1 K. B. 321.
193. *Add. Annotation* :—*As to (2) Distd. Rutherford v. Trust Houses* (1925), 89 J. P. Jo. 682.
- 206a. — *Shops Act, 1913* (c. 24), s. 1.—Where the occupier of premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, elects under

sect. 1 (1) of the above Act that instead of the provisions of *Shops Act, 1912* (c. 3), s. 1, with regard to holidays, the provisions of sect. 1 (1) (a), (b), (c) & (d) of the above Act shall apply to shop assistants employed on the premises wholly or mainly in connection with the sale of intoxicating liquors or refreshments for consumption on the premises, he must be taken to elect to adopt the extended definition of shop assistant in

**PART V. SECT. 3, SUB-SECT. 1.**  
*ok. Meal-times—Interval for meals—Whether part of hours of employment—Shops Act, 1913* (c. 3), s. 1 (3) & *Sched. I.*—Two employees in a shop began work at 7 a.m. & stopped work at

6.45 p.m. One of them was allowed away for dinner from 10.45 a.m. until 11.45 a.m., the other from 2 p.m. to 3 p.m., approximately:—*Held*: although each of the employees was away during part of the period 11.30 to 2.30, their hours of employ-

ment included those hours, & their employer had contravened the above Act by not allowing them an interval of three-quarters of an hour between those hours.—*HUTCHISON v. CUMMING*, [1926] S. C. (J.) 110.—*SCOT*.

sect. 1 (5) of the above Act, namely, that "shop assistant" includes "all persons wholly or mainly employed in any capacity at the premises in connection with the business there carried on," & he cannot afterwards be heard to say that any person so employed is not a shop assistant.—*RUTHERFORD v. TRUST HOUSES, LTD.*, [1926] 1 K. B. 321; 95 L. J. K. B. 371; 134 L. T. 630; 90 J. P. 62; 42 T. L. R. 148; 24 L. G. R. 245; 28 Cox, C. C. 161, D. C.

233. *Add. Citation* :—*previous proceedings, sub nom.* *SHARMAN v. UNION IRON WORKS Co.* (1852), 3 Car. & Kir. 298, N. P.

236. *Add. Annotation* :—*Refd.* *Pritchard v. James Clay* (Wellington) (1925), 42 T. L. R. 139.

261. *Add. Annotation* :—*Refd.* *Riversdale Mill Co. v. Hart* (1926), 43 T. L. R. 73.

263. *Add. Annotations* :—*Appld.* *Jones v. Harris* (1926), 43 T. L. R. 1. *Consd.* *Hart v. Riversdale Mill Co.*, [1928] 1 K. B. 176.

264a. —.]—Applt. was employed by resps. as a moulder of iron pipes upon piece work under an agreement by which applt. was to be paid 5½d. for a complete pipe free from defects, & other & smaller agreed prices for pipes defective in specified ways, e.g., 5¼d. for a pipe that was bent. These agreed prices were fixed at the time of applt.'s employment. No notices containing the terms of the agreement were kept by resps. as required by Truck Act, 1896 (c. 44), & no particulars in writing were supplied to applt. as required by that Act :—*Held* : the agreement was a clear attempt to evade the above Act. The workman was employed to make pipes of full

length & free from defects, & in paying the smaller prices for defective pipes resps. were making deductions "for or in respect of bad or negligent work or injury to the materials or other property of the employer."—*PRITCHARD v. JAMES CLAY (WELLINGTON), LTD.*, [1926] 1 K. B. 238; 95 L. J. K. B. 107; 134 L. T. 244; 90 J. P. 15; 42 T. L. R. 139; 70 Sol. Jo. 266; 28 Cox, C. C. 122, D. C.

*Annotation* :—*Distd.* *Riversdale Mill Co. v. Hart*, [1927] 1 K. B. 624.

264b. —.]—By order dated Mar. 3, 1897, the Secretary of State exempted from the provisions of Truck Act, 1896 (c. 44), persons engaged in the weaving of cotton in the county of Lancashire. Resp., a weaver of cotton in Lancashire employed by applt., was negligent in performing certain work & in accordance with a custom which had long existed in the Lancashire trade, the employers deducted a reasonable sum from the "standard list" rates of wages which had been agreed between the employers' & workers' organisations, as the remuneration for good, merchantable cloth, & paid her the balance as her wages :—*Held* : this deduction was not illegal as being in contravention of the Truck Acts.—*HART v. RIVERSDALE MILL Co.*, [1928] 1 K. B. 176; 96 L. J. K. B. 691; 137 L. T. 364; 91 J. P. 135; 43 T. L. R. 396; 71 Sol. Jo. 407, C. A.; *affg.* *S. C. sub nom.* *RIVERSDALE MILL Co. v. HART*, [1927] 1 K. B. 624, D. C.

276. *Add. Annotation* :—*Appld.* *Hart v. Riversdale Mill Co.*, [1928] 1 K. B. 176.

277. *Add. Annotation* :—*Consd.* *Hart v. Riversdale Mill Co.*, [1928] 1 K. B. 176.

## Part VI.—Administration and Penalties.

299. *Add. Annotation* :—*Refd.* *Atkinson v. L. & N. E. Ry.* (1925), 42 T. L. R. 79.

### PART V. SECT. 3, SUB-SECT. 2.—A.

211 i. *Customer in shop before closing hour—Failure to complete purchase in time—Shops (Early Closing) Act, 1920* (c. 58), *Sched. 1, Art. 2* (1).—An auctioneer, who had closed his premises

to the public at the appointed hour, but continued after that hour to conduct retail sales by auction to persons who were already collected within the premises, was held rightly convicted, in respect that, while an auctioneer might complete any transaction which

was in progress at the time of closing for the benefit of those then present, he was not entitled thereafter to put up further articles to auction.—*GORDON v. SOMERVILLE*, [1928] S. C. (J.) 45.—SCOT.

## FAMILY ARRANGEMENTS.

## Part II.—Validity and Effect.

58. *Add. Annotation* :—**Mentd.** *Jagger v. Jagger*, [1926] P. 93.      164. *Add. Annotation* :—**Refd.** *Parr v. A.-G.*, [1926] A. C. 239.
114. *Add. Annotation* :—**Mentd.** *Re Barratt*, National Provincial Bank *v. Barratt*, [1925] Ch. 550.      165. *Add. Annotation* :—**Consd.** *Re Carnarvon's Chesterfield S. E.*, *Re Carnarvon's Highclere S. E.*, [1927] 1 Ch. 138.

## PART I. SECT. 3.

32 ii. —.—.]—In the usual type of family arrangement, unless any item of property which is admitted by all the parties to belong to one of them is allotted to another there is no "exchange" or other transfer of ownership.

A binding family arrangement of this type can be made orally, & if made orally, no question of registration arises. If such arrangement is followed by a writing containing reference to it, then the question is whether thereby the terms of the arrangement have been "reduced to the form of a document," i.e. formally recorded in a document with the purpose that they

should be evidenced by that document, & that is a question of fact in each case to be determined upon a consideration of the nature & phraseology of the writing & the circumstances in which & the purpose with which it is written. —*RAM GOPAL v. TULSHI RAM* (1928), 1. L. R. 51 All. 79.—**IND.**

## PART II. SECT. 1.

n i. —.—.]—*SIDH GOPAL v. BIHARI LAL* (1927), 1. L. R. 50 All. 284.—**IND.**

## PART II. SECT. 7.

136 ii. —.—.]—*HAWKINS v. AGLASSINGER*, [1928] 4 D. L. R. 188.—**CAN.**

## PART II. SECT. 8, SUB-SECT. 1.

sa. *Compromise between husband & wife—Respecting wife's property—Concealment of fact by husband.*]—Specific performance decreed of an agreement in the English form made between husband & wife, Armenian Christians, in the nature of a family compromise respecting the wife's separate property. In the answer of the wife it was alleged that property purchased by the husband had been concealed by him from her when she executed the agreement :—*Held* : under the circumstances, that fact even if proved, was not sufficient to entitle the wife to treat the agreement as a nullity.—(*GREGORY v. COCHRANE* (1866), 8 Moo. Ind. App. 275.—**IND.**

## FERRIES.

## Part I.—Definition and Nature of Ferries.

6. *Add. Annotation* :—Bournemouth - Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.
8. For the paragraph in the original volume substitute the following paragraph :—  
 —.]—Defts., under a statute of 1791, built a toll-bridge in place of an ancient ferry on a public highway, & also approaches which by the Act were to be considered as part & parcel of the bridge. Pltfs., the county council, owned land adjoining one of the approaches & built a school on it. Defts. denied pltfs.' right to free access to the school over the approach :—*Held* : as the old highway consisted of the approaches to the ferry plus the passage across the river, & the substituted highway consisted of the approaches to the bridge plus the bridge, & as the old approaches were highways to which owners would be entitled to access, the substituted approaches were highways by which adjoining owners had similar rights of access, & defts.' claim was ill founded.—*YORKSHIRE, EAST RIDING, COUNTY COUNCIL v. SELBY BRIDGE CO. OF PROPRIETORS*, [1925] Ch. 841 ; 95 L. J. Ch. 86 ; 133 L. T. 628 ; 41 T. L. R. 602 ; 69 Sol. Jo. 775 ; 23 L. G. R. 547.
- 13a. — — — — **Persons able to cross on foot at low water.**—(1) *Held* : a franchise ferry between South Benfleet & Canvey Island had been granted to pltfs.' predecessors in title. (2) The case is unique in one respect because at low water the tidal creek can be traversed on foot (*ROMER, J.*).—*LAYZELL v. THOMPSON* (1926), 91 J. P. 89 ; 43 T. L. R. 58 ; *affd.* (1927), 96 L. J. Ch. 332, C. A.
- 31a. — — — —.]—The landing stage constructed in Poole Harbour at South Haven Point by the Bournemouth-Swanage Motor Road & Ferry Co. under their private Act of 1923 is the private property of the co., & they are entitled to prevent any one from using it except in connection with their ferry & on payment of the appropriate tolls.—*BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. v. HARVEY & SONS* (1929), 45 T. L. R. 598 ; 93 J. P. Jo. 496 ; 27 L. G. R. 633.

## Part II.—Creation and Transfer of Ferries.

34. *Add. Annotations* :—As to (2) **Expld.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686. As to (3) **Refd.** Layzell v. Thompson (1926), 43 T. L. R. 58. As to (5) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.
35. *Add. Annotations* :—**Consd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686. **Refd.** Layzell v. Thompson (1926), 43 T. L. R. 58.
- 35a. — — — —.]—*LAYZELL v. THOMPSON*, No. 13a, *ante*.
51. *Add. Annotation* :—As to (2) **Refd.** Layzell v. Thompson (1926), 43 T. L. R. 58.
- 55a. **Extent of right—Whether exclusive right of ferry—Construction of Act.**—By a private Act pltfs. were empowered to make & maintain a motor road from South Haven Point in the parish of Studland in the county of Dorset to a public road leading from Studland to Swanage. By sect. 56 of the Act they were empowered to establish, maintain, work & use a ferry service for passengers, animals vehicles & goods between the Sandbanks & South Haven Point within Poole Harbour. By sect. 62, passed for the protection of the Poole Harbour Comrs., pltfs. were required to establish or acquire & thereafter continuously work the ferry by means of a vessel propelled by steam on a chain cable system, & by sects. 62, 97, passed for the benefit of certain land-owners, they were required to provide from seven o'clock in the forenoon when summer time should be in force & from eight o'clock in the forenoon at all other times of the year until one hour after sunset on every day a minimum hourly service of vessels from each shore. The two sects. contained provisions enabling Poole Harbour Comrs. & the land-owners respectively to exercise certain powers & rights in case pltfs. should cease working the ferry or fail to work it continuously & efficiently. They established a ferry service in accordance with these provisions :—*Held* : the Act did not confer on pltfs. an exclusive right of ferry, & that they were not entitled to an injunction restraining defts., who for many years before the Act had in fact carried passengers between the Sandbanks & South Haven Point without claiming any franchise entitling them to do so, from carrying passengers bicycles & goods across the mouth of Poole Harbour within or near the limits of pltfs.' said ferry.—*BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. v. HARVEY & SONS*, [1929] 1 Ch. 686 ; 98 L. J. Ch. 118 ; 140 L. T. 415 ; 93 J. P. 129 ; 45 T. L. R. 189 ; 27 L. G. R. 264, C. A.

## Part III.—Rights, Duties and Liabilities of Ferry Owner.

65. *Add. Annotations* :—**Refd.** Layzell v. Thompson (1926), 43 T. L. R. 58 ; Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.
66. *Add. Annotations* :—*As to* (1) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686. *Generally*,
- Refd.** Winsford Entertainments v. Winsford U. D. C. (1924), 23 L. G. R. 254 ; Yorkshire East Riding County Council v. Selby Bridge Co., [1925] Ch. 841. **Mentd.** Jaeger v. Jaeger Co. (1927), 44 R. P. C. 437.
87. *Add. Annotation* :—*As to* (2) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.

## Part IV.—Disturbance of Ferries and Remedies Therefor.

109. *Add. Annotation* :—*Generally*, **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.
150. *Add. Annotations* :—*As to* (1) **Refd.** Metcalfe v. Boyce, [1927] 1 K. B. 758. *As to* (3) **Consd.** Bournemouth-Swanage Motor Road & Ferry
- Co. v. Harvey & Sons, [1929] 1 Ch. 686. *Generally*, **Refd.** Layzell v. Thompson (1926), 43 T. L. R. 58.
- 151a. ———.—]—LAYZELL v. THOMPSON, No. 13a, *ante*.

### PART IV. SECT. 2, SUB-SECT. 3.—B.

**sb.** *Proof of acquisition of termini sufficient—Proof of origin unnecessary.*]  
—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—**Held** : conveyances from the owners of the lands on either side of the ferry of their whole rights gave pursuers,

in the absence of any rival title in favour of defender, a *prima facie* title to sue, without the necessity of averring on what their author's titles were founded.—LONDON, MIDLAND & SCOTTISH RY. CO. v. M'DONALD, [1924] S. C. 835.—SCOT.

### PART IV. SECT. 2, SUB-SECT. 4.

**sd.** *Right of ferry exercised by*

*others.*—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—**Held** : a defence that pursuers had not exercised an exclusive right of ferry, in respect that other persons had, without protest, ferried passengers for hire, was irrelevant.—LONDON, MIDLAND & SCOTTISH RY. CO. v. M'DONALD, [1924] S. C. 835.—SCOT.

## FISHERIES.

## Part II.—Public Fisheries.

9. *Add. Annotation*:—Generally, **Mentd.** The Fagernes, [1927] P. 311.
29. *Add. Annotation*:—As to (2) **Refd.** The Fagernes, [1926] P. 185.
50. *Add. Annotation*:—**Refd.** The Harkaway, [1928] P. 199.
57. *Add. Annotation*:—**Refd.** South Staffordshire Mines Drainage Comrs. v. Elwell (1927), 91 J. P. 153.

## Part III.—Private Fisheries.

176. *Add. Annotations*:—**Refd.** Abrahams v. Mac-Fisheries, [1925] 2 K. B. 18; Roe v. Russell, [1928] 2 K. B. 117.
- 176a. **Order for renewal of lease under Landlord & Tenant Act, 1927 (c. 36)**—Includes fishing rights.]—Where a hotel is let with fishing rights & where on the termination of the tenancy the grant of a new tenancy is ordered by the tribunal under above Act, the tenant is entitled to have the fishing rights included in the new lease.—**STUMBLER v. WHITLEY** (1929), 46 T. L. R. 37; 73 Sol. Jo. 782, C. A.
262. *Add. Annotation*:—**Mentd.** *Re* Gwyon, Public Trustee v. A.-G. (1929), 46 T. L. R. 96.
331. *Add. Annotation*:—Generally, **Mentd.** Farnworth v. Manchester City Corp., [1929] 1 K. B. 533.
- 353a. ———.]—In May & Oct. 1922, some dead fish were observed in a river, at a spot below that from which a drain-pipe leading from certain gasworks entered the river. Samples of the effluent from this pipe were taken on each occasion, which, on analysis, were found to contain matter highly poisonous to fish. The owner of the fishing rights over that part of the river affected commenced an action for an injunction & damages against the owners of the gasworks:—**Held**: it was satisfactorily proved that the effluent from the gasworks was, on each occasion, the cause of the death of the fish, & pltf. was entitled to an injunction & damages.—**GRANBY (MARQUIS) v. BAKEWELL URBAN DISTRICT COUNCIL** (1923) 87 J. P. 105; 21 L. G. R. 329.

## PART II. SECT. 1, SUB-SECT. 1.—A.

9 iii. ———.]—*Whether right to interfere with obstruction.*—Though every subject has a common right of fishery in the sea, a person in possession of a weir built below low water mark may maintain trespass against a wrongdoer who interferes with his possession, though, as against the Crown, the weir was wrongfully there.—**WILSON v. CODYRE & ALLINGHAM** (1888), 27 N. B. R. 320.—**CAN.**

20 i. ———.]—*Between high & low water mark—Effect of grant of soil.*—The fact that the soil between high & low water marks has been granted does not interfere with the public right of fishery.—**WILSON v. CODYRE & ALLINGHAM** (1888), 27 N. B. R. 320.—**CAN.**

## PART III. SECT. 1, SUB-SECT. 1.—B.

109 ii. ———.]—*Whether prescriptive right of fishing from old banks exercisable from new banks.*—Where the right of salmon-fishing had been exercised from banks on the bed of a river for more than forty years, but, from changes in the river, new banks had been formed, one of which had existed for less than that period.—**Held**: the possession of the fishings from this new bank was only an exercise of the right of fishing previously exercised from the former banks, the substantial right of fishing being the matter to be regarded & not the particular stations from which the right was exercised.—**EARL OF ZETLAND v. TENNENT'S TRUSTEES** (1873), 11 Macph. (Ct. of Sess.) 469; 45 Sc. Jur. 311.—**SCOT.**

## PART III. SECT. 1, SUB-SECT. 5.

130 i. *Inland non-tidal lake—Land vested in Crown—Rights of owner or lessee of land extending to lake.*—**MCDONALD v. LINTON** (N. B.), [1926] 3 D. L. R. 779.—**CAN.**

## PART III. SECT. 3, SUB-SECT. 1.—A.

k i. ———.]—By the charter of the

City of St. John, all the lands & waters within certain defined limits, bounded by low water mark, were granted by the Crown to the city, with all the rights & privileges appurtenant thereto, including fishing; & to the freemen & inhabitants of the city was granted the sole & exclusive privilege of fishing, & erecting weirs between high & low water marks:—**Held**: the exclusive right of fishing granted by the charter did not extend to any part of the sea shore beyond the bounds of the city, though it was within the harbour of St. John.—**WILSON v. CODYRE & ALLINGHAM** (1888), 27 N. B. R. 320.—**CAN.**

## PART III. SECT. 3, SUB-SECT. 1.—B.

154 xi. ———.]—**LITTLE v. MOYLETT**, [1929] I. R. 439.—**IR.**

158 ii. ———.]—*Defts. denied the validity of the documentary title relied on, & further contended that, by the provisions of Magna Carta, the Crown was prohibited from granting a several or sole & exclusive fishery in the locus in quo in case such was not existing in or before the year 1189, & any grant by the Crown contrary to the provisions aforesaid was null & void; that a several or sole & exclusive fishery in the locus in quo in or before the year 1189 did not in fact exist, & was not historically possible; & that the said documents of title & the historical evidence given showed that the claim to a several or sole & exclusive fishery in the locus in quo was modern in origin, & dated at the earliest from the times of Queen Elizabeth & King James I.*—**Held**: there was nothing in the terms of Magna Carta, c. 16, or the writings of ancient lawyers, or the judgments in modern cases to support the proposition that, whether the several fishery was actually in the hands of the Crown at the time of the death of Henry II., or in the hands of an assignee or feudatory of the Crown, or even of an intruder, the original act of appropriation must have been

effected by the Crown itself.—**MOORE v. A.-G.**, [1929] I. R. 191.—**IR.**

## PART III. SECT. 3, SUB-SECT. 2.

sb. *Right of lessee to cut bushes along bank necessary for fishing.*—Pltf. by indenture under seal, leased to deft. for a term of years, with the right to renew, pltf.'s land on the E. River, G. County, for fishing purposes, with the right to enter & use the same in such a way as might be necessary for fishing in said river. Damages claimed by pltf. were for cutting bushes along the bank of the river:—**Held**: the burden of proof was upon pltf. & the right to fish from the bank of the river involved the right to do such cutting as was necessary for that purpose.—**McKEEN v. PATTILLO** (1927), 59 N. S. R. 452.—**CAN.**

## PART III. SECT. 3, SUB-SECT. 4.

d i. ———.]—*Extent of rights acquired.*—**Held**: the right which may be acquired by possession of forty years on a grant of salmon-fishings pertaining to lands situated on one side of a river (a) is not limited to the fishings in that part of the river which is *ex adverso* of the lands; & (b) may extend to fishings beyond the *medium flum* of the river.—**EARL OF ZETLAND v. TENNENT'S TRUSTEES** (1873), 11 Macph. (Ct. of Sess.) 469; 45 Sc. Jur. 311.—**SCOT.**

## PART III. SECT. 4, SUB-SECT. 2.

sd. *Ownership of land abutting on river—Tenant at will.*—A person in possession of land bordering on a non-tidal river, as a tenant at will of the owner, is entitled to be treated as a riparian owner, so far as regards the right of fishing.—**PHAIR v. VENNING** (1882), 22 N. B. R. 362.—**CAN.**

## PART III. SECT. 5, SUB-SECT. 1.—A.

m i. ———.]—**LITTLE v. MOYLETT**, [1929] I. R. 439.—**IR.**

## PART III. SECT. 5, SUB-SECT. 2.—C.

o i. ———.]—*Centuries.*—**MOORE v. A.-G.**, [1929] I. R. 191.—**IR.**



## Part IV.—Fisheries in relation to Navigation.

356. *Add. Annotations*:—As to (2) *Refd.* The Carlgarth, The Otarama, [1927] P. 93. Generally, *Mentd.* Lagan Navigation Co. v. Lamdeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
366. *Add. Annotation*:—*Refd.* The Carlgarth, The Otarama, [1927] P. 93.
388. *Add. Annotation*:—As to (2) *Refd.* The Carlgarth, The Otarama, [1927] P. 93.

## Part VI.—Statutory Enactments relating to Salt Water Fisheries and Sea Fishing.

485. *Add. Annotation*:—*Refd.* *Everton v. Walker* (1927), 137 L. T. 594.

## Part VIII.—Jurisdiction of Justices relating to Fishery Offences.

523. *Add. Annotation*:—*Mentd.* *Maclean v. Workers' Union*, [1929] 1 Ch. 602.

### PART V. SECT. 1, SUB-SECT. 2.

c i. — *Power to restrict fishing for salmon—Riparian owners on non-tidal river.*—*PHAIR v. VENNING* (1882), 22 N. B. R. 362.—CAN.

c ii. — *Riparian owners on estuary—Titles acquired prior to July, 1867.*—*DELANEY v. McDONALD* (1883), 23 N. B. R. 139.—CAN.

### PART V. SECT. 5, SUB-SECT. 1.—D (a).

sk. *Within two hundred yards of weir—Weir used for supplying water to mills, factories, or for navigation—Fisheries (Ir.) Act, 1850 (c. 88), s. 37.*—*IRELAND v. QUIRKE*, [1928] I. R. 231.—IR.

### PART V. SECT. 5, SUB-SECT. 3.

n i. — *The owners of a bag-net fishery duly removed the leaders of their bag-nets during the weekly close time. In spite of this, they caught 165 salmon during eleven successive weekly close times.—Held: the owners were guilty of a contravention of Salmon Fisheries (Scotland) Act, 1868 (c. 123), s. 15 (2),*

*in respect that compliance with bye-laws did not avoid the duty of observing the statutory prohibition against fishing for or taking salmon during the weekly close time.*—*ABERDEEN HARBOUR COMRS. v. STOTT*, [1927] S. C. (J.) 35.—SCOT.

### PART VI. SECT. 2, SUB-SECT. 1.—A.

sm. *Prohibition against use of nets—Accused charged as "master or person in charge"—No evidence that accused on board.*—*Held: as there was no statutory provision making the master of a vessel liable, as such, for a contravention of the bye-law, &c, as the bye-law might be contravened by "any person," the prosecutor was bound to prove that the accused was on board the vessel at the time.*—*SHUACH v. FARQUHAR*, [1929] S. C. (J.) 88.—SCOT

### PART VI. SECT. 2, SUB-SECT. 1.—C.

so *Prohibition against use of crayfish pots—Condemnation of boat & appurtenances—Failure to summon joint owners.*—*FISHERIES COMRS. v. BUTTON* (1925), 21 Tas. L. R. 8.—AUS.

### PART VI. SECT. 4, SUB-SECT. 4.

sp. *Bounty—Time of service on ship—Regulations of December 10, 1897.*—*SNOW v. R.* (1907), 11 Exch. C. R. 164.—CAN.

### PART VII. SECT. 2.

b i. — *Division of proceeds—Shipwrecked sailors on board sealer.*—*CONNELL v. RORKE* (1859), 4 Nfld. L. R. 394.—NFLD.

### PART VIII. SECT. 1.

a i. — *Doft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act.—Held: the omission invalidated the conviction.*—*TANGNEY v. KERRY COUNTY DISTRICT JUSTICE*, [1928] I. R. 358.—IR.

### PART VIII. SECT. 5.

526 i. *General rule—Jurisdiction ousted.*—*R. (MOORE) v. O'HANRAHAN*, [1927] I. R. 406.—IR.

m i. — *R. v. HARRAN* (1912), 21 O. W. R. 951; 3 O. W. N. 1107; 3 D. L. R. 753.—CAN.

## FOOD AND DRUGS.

## Part II.—Adulteration and Impoverishment.

76. *Add. Annotation* :—**Folld.** *Bowker v. Woodroffe, Bowker v. Premier Drug Co.* (1927), 96 L. J. K. B. 750.
78. *Add. Annotation* :—**As to (2) Apld.** *Bowker v. Woodroffe, Bowker v. Premier Drug Co.* (1927), 96 L. J. K. B. 750.
- 78a. ———.]—(1) Where a person is charged with selling to the prejudice of a purchaser an article of food which is not of the nature, substance & quality demanded, & the article is one for which there is no recognised standard of quality, it is the duty of the ct. to fix a standard, in the sense of having regard to a minimum below which the article must be regarded as deficient.
- (2) Where an analyst expresses in a certificate an opinion as to the quality or genuineness of an article, the ct. must accept it, if uncontradicted.
- (3) A wholesale merchant cannot be convicted of aiding & abetting a retailer, if the wholesaler was not present when the retail sale complained of took place, nor if there is no evidence that he knew the composition of the article.—**BOWKER v. WOODROFFE, BOWKER v. PREMIER DRUG CO.**, [1928] 1 K. B. 217; 96 L. J. K. B. 750; 137 L. T. 347; 91 J. P. 118; 43 T. L. R. 516; 25 L. G. R. 306; 28 Cox, C. C. 397, D. C.
- Annotation* :—**As to (3) Refd.** *Gough v. Rees* (1929), 46 T. L. R. 103.
- 98a. **Liability of wholesaler—Sale by retailer.**—**BOWKER v. WOODROFFE, BOWKER v. PREMIER DRUG CO.**, No. 78a, *ante*.
135. *Add. Citations* :—23 L. G. R. 15; 27 Cox, C. C. 672.
140. *Add. Citations* :—23 L. G. R. 22; 27 Cox, C. C. 678, D. C.
- Add. Annotation* :—**As to (2) Refd.** *Preston v. Grant* (1924), 94 L. J. K. B. 125.
147. *Add. Annotation* :—**As to (1) Refd.** *Bowker v. Woodroffe, Bowker v. Premier Drug Co.* (1927), 96 L. J. K. B. 750.
148. *Add. Annotation* :—**Refd.** *Bowker v. Woodroffe, Bowker v. Premier Drug Co.* (1927), 96 L. J. K. B. 750.
150. *Add. Annotation* :—**As to (1) Consd.** *Bowker v. Woodroffe, Bowker v. Premier Drug Co.* (1927), 96 L. J. K. B. 750.
- 150a. ——— **Absence of recognised standard.**—**BOWKER v. WOODROFFE, BOWKER v. PREMIER DRUG CO.**, No. 78a, *ante*.
174. *Add. Annotation* :—**Folld.** *Bridges v. Griffin*, [1925] 2 K. B. 233.
187. After this case insert “**Addition of colouring matter to milk.**”—*See* No. 218a, *post*.”
- 218a. ——— **Milk adulterated with colouring matter.**]—The defence that he purchased the milk with a written warranty is not available to a vendor of milk adulterated by the addition of colouring matter contrary to Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 4, which neither includes such a defence nor contains any provision that it is to be read with any Act containing such a defence.—**REEMAN v. KNAPP** (1925), 134 L. T. 224; 90 J. P. 7; 42 T. L. R. 131; 24 L. G. R. 42; 28 Cox, C. C. 117, D. C.
- 243a. **What amounts to.**—**Applts.**, who manufactured an article called “**R.’s rum & butter toffee**,” supplied it to a confectioner with a warranty, & on analysis it was found to contain rum & butter, & coconut fat. On a summons against applts. for giving a false warranty there was evidence that toffee made partly with coconut fat had been sold for years as “**rum & butter toffee**.” The justices convicted applts. :—**Held** : the description “**butter toffee**” implied that no fat, except butter, was used in the manufacture, & the conviction must be affirmed.—**RILEY BROTHERS HALIFAX, LTD. v. HALLIMOND** (1927), 44 T. L. R. 238, D. C.
283. *Add. Annotation* :—**As to (3) Refd.** *Conn v. Turnbull* (1925), 89 J. P. Jo. 300.

## Part III.—Sale of Unwholesome Food.

358. *Add. Annotation* :—**Refd.** *Frome United Breweries Co. v. Bath JJ.*, [1926] A. C. 586.

## PART II. SECT. 3, SUB-SECT. 3.—C. (a).

110 iii. — *Whether property passed*—*Food & Drugs Act, 1908, ss. 5, 22.*—**WALTERS v. MITTON**, [1926] S. A. S. R. 261.—**AUS.**

## PART II. SECT. 3, SUB-SECT. 3.—C. (b) iv.

142 i. — *Notice not seen by purchaser—Onus of proof.*—Where an article of food exposed for sale bears a label indicating that it does not conform to the statutory standard of genuineness :—**Held** : the seller must prove that the contents of the label were brought to the notice of the purchaser.—**PATTERSON v. FINDLAY**, [1925] S. C. (J.) 53.—**SCOT.**

## PART II. SECT. 3, SUB-SECT. 3.—D. (b).

*sd. Coffee.*—**K.** having asked accused for coffee, received a mixture containing at least 67 per cent. of chicory. When he asked for coffee **K.** expected to get an addition of chicory according to commercial usage :—**Held** : what **K.** got was substantially chicory containing an addition of some coffee, & the commodity was not of the nature, substance & quality demanded.—**MOODLEY v. R.** (1927), 48 N. L. R. 395.—**S. AF.**

## PART II. SECT. 5, SUB-SECT. 4.—A.

*sd. When returnable—Under Health Act, 1919, s. 262 (d).*—The provision in above section, that where any prosecution or proceeding under

Part XII. of the Act relates to any food, drug or substance, the summons “shall not be made returnable in less than fourteen days, from the day on which it is served,” means that such summons is to be “returnable in not less than fourteen clear days” from such date.—**DOWNES v. FRASHERY**, [1928] V. L. R. 64; [1928] Argus L. R. 6.—**AUS.**

## PART III. SECT. 2, SUB-SECT. 1.—D.

*sg. Article sold—Mens rea—Whether knowledge of disease necessary.*—**Held** : there was no evidence on which the magistrate could find that deft. sold meat affected by tuberculosis, knowing at the time that it was so affected, & the conviction should be quashed.—**DIXON v. SEILER, Ex p. SEILER**, [1928] S. R. Q. 93.—**AUS.**

## Part V.—Particular Articles of Food.

- 414a. Exposure for sale—What amounts to.]—**A baker was delivering bread from an open car ; after completing his round, while he was on his way back to the bakehouse, he was stopped by an inspector, who weighed the remaining loaves & found a deficiency :—**Held :** there was both an offering & an exposure for sale of the bread left in the car, since, when the journey started, it was uncertain which, if any, loaves would remain unsold, & they were taken for the purpose of being sold if customers required them.—**KEATING v. HORWOOD** (1926), 135 L. T. 29 ; 90 J. P. 141 ; 42 T. L. R. 472 ; 24 L. G. R. 362 ; 28 Cox, C. C. 198, D. C.
- 447. Add. Annotation :—****Refd.** *Preston v. Grant*, [1925] 1 K. B. 177.
- 465. Add. Citation :—**27 Cox, C. C. 637.
- 475. Add. Annotation :—****Distd.** *Burrows v. Rapson* (1927), 25 L. G. R. 397.
- 475a. ——— Grocer occasionally selling bottled milk.]—**Applt. carried on business as a general grocer. He purchased for resale sterilised milk in sealed bottles, & resold about three dozen bottles a week in the condition in which the milk was received from the factory. He was not registered as a dairyman or purveyor of milk :—**Held :** there was evidence to support a conviction of applt. for carrying on the trade of a dairyman or purveyor of milk without being registered.—**BURROWS v. RAPSON** (1927), 25 L. G. R. 397, D. C.
- 476. Add. Annotation :—****Refd.** *Easington Rural District Council v. Gilson* (1929), 46 T. L. R. 107.
- 476a. ——— Necessity for registration in every district where business carried on.]—**A person carrying on business as purveyor of milk must be registered under art. 6 of the Milk & Dairies Order, 1926, with the sanitary authority of each district in which he carries on business. It is not sufficient that he is registered with the sanitary authority of the district where his cowsheds & dairy are situated if he also carries on business in other districts where he has a regular milk round.—**EASINGTON RURAL DISTRICT COUNCIL v. GILSON** (1929), 46 T. L. R. 107 ; 93 J. P. Jo. 780.
- 495. Add. Annotation :—****Refd.** *Bridges v. Griffin*, [1925] 2 K. B. 233.
- 508. Add. Citation :—**28 Cox, C. C. 7.

## Part VI.—Control in Wartime.

519. *Add. Annotation* :—**Folld.** *Brocklebank v. R.*, [1925] 1 K. B. 52.
555. *Add. Annotation* :—**Generally, Mentd.** *France Fenwick v. R.*, [1927] 1 K. B. 458.
558. *Add. Annotation* :—**Generally, Mentd.** *Inglewood Pulp & Paper Co. v. New Brunswick Electric Power Commission*, [1928] A. C. 492.
- 558a. ————.]—The Food Controller, acting under powers conferred by Defence of the Realm Regulations, reg. 2B, requisitioned all the bacon landed on or before a certain specified date, & at the same time, acting under powers conferred by reg. 2F, requisitioned all bacon landed after such date :—**Held** : in assessing the compensation to be paid for the bacon requisitioned under reg. 2F, the arbitrator was entitled to take into consideration the fact that the Food Controller was already in possession of large stocks of bacon requisitioned under reg. 2B. —**SWIFT & Co. v. BOARD OF TRADE**, [1928] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.; *previous proceedings*, [1925] A. C. 520, H. L.
572. *Add. Annotation* :—**Refd.** *R. v. Maidstone Prison, Ex p. Maguire* (1925), 133 L. T. 710.

**PART V, SECT. 3, SUB-SECT. 4.—B.**

§ i. ——— *Words descriptive of article sold.*]—Where margarine was sold in a wrapper which bore, in large type, the words "Charmo Margarine," below which, in smaller type, were the words "containing a small quantity of butter," & the name "Charmo" was a duly approved addition to the word "margarine," & the seller, convicted under Butter & Margarine Act, 1907, s. 8, appealed:—*Held*:—the words "containing a small quantity of butter," were merely descriptive of the article sold, & did not form part of a fancy or descriptive name which had not been approved; & conviction quashed.—*SOMERVILLE & BARR, LTD. v. CHALMERS, [1925] S. C. (J.) 70.—SCOT.*

**PART V. SECT. 4, SUB-SECT. 8.**

508 iii. ——— ——— ——— ———.]—A

dairymen was convicted of selling sweet milk which was not genuine, in respect that it contained less than 3 per cent. of milk fat. The alleged deficiency in fat was established but it was also proved that the milk had not been tampered with in any way, the deficiency being due to the milk having stood for some time in the can, & to the sample having been drawn from a tap at the bottom after the cream had risen. No evidence was led as to the possibility or impossibility of redistributing the constituents of the milk in the can by stirring or otherwise:—*Held*: accused had failed to rebut the statutory presumption that the milk was not genuine, & the conviction was right.—*M'CALLUM v. BROOKS*, [1926] S. C. (J.) 39.—*SCOT*.

**PART V. SECT. 4, SUB-SECT. 4.**

sp. Sale by driver of cart—Name of

quisitioned all bacon landed after such date :—*Held* : in assessing the compensation to be paid for the bacon requisitioned under reg. 21<sup>f</sup>. the arbitrator was entitled to take into consideration the fact that the Food Controller was already in possession of large stocks of bacon requisitioned under reg. 21<sup>b</sup>. — *SWIFT & Co. v. BOARD OF TRADE*, [1926] 2 K. B. 131 ; 95 L. J. K. B. 834 ; 135 L. T. 391 ; 42 T. L. R. 461, C. A. ; *previous proceedings*, [1925] A. C. 520, H. L.

- 572. Add. Annotation:—***Refd. R. v. Maidstone Prison, Ex p. Maguire* (1925), 133 L. T. 710.

*defendant on cart—Whether evidence of sale by defendant.*—[On the hearing of an information against resp. co. for selling adulterated milk the evidence showed that an inspector saw in the street a milk-cart bearing the same name & address as those of the co., & purchased from the driver of the cart milk which was adulterated:—*Held*: the evidence was insufficient to establish, even *prima facie*, that the milk-cart was the cart of the co. or used in its business, or that there was any relationship between the driver of the cart & the co.—*HOUSTON v. WITTNER'S PTY., LTD.*, [1928] V. L. R. 539; [1928] Argus L. R. 356.—**AUS.**

**PART V. SECT. 6.**

**st. Flour**—Sale in unmarked barrels—*Seller not liable—Manufacturer or packer liable.*—R. v. BECKMAN (1844), 2 U. C. R. 57.—CAN.

## FRAUDULENT AND VOIDABLE CONVEYANCES.

## Part I.—Conveyances Impeachable by Creditors under Statute.

126. *Add. Annotation* :—*Apld. Re Wethered, Ex p. Salaman*, [1926] Ch. 167.
133. *Add. Annotation* :—*As to (4) Consd. Re Lloyd's Furniture Palace, Evans v. The Co.*, [1925] Ch. 853.
145. *Add. Annotation* :—*Mentd. Re Debtor*, [1929] 1 Ch. 362.
252. *Add. Annotation* :—*Refd. Re Lloyd's Furniture Palace, Evans v. The Co.*, [1925] Ch. 853.

## PART I.

sa. *Homestead*.]—*MEUNIER v. DORAY* (1905), 6 Terr. L. R. 194.—CAN.

sb. — *Transfer prior to Land Titles Act, 1917*.]—13 Eliz. c. 5, which is practically re-enacted by R. S. S. 1920, c. 204, s. 1, does not apply to property which at the time of the alleged fraudulent conveyance was not subject to the payment of the grantor's debts or liable to be taken in execution. So where a transfer of a homestead was completed before Land Titles Act, 1917, which altered the law with regard to executions against land, came into force, & was, because of the above rule, unimpeachable at the time of the transaction, it cannot be affected retrospectively by said change in the law.—*PACHAL v. MARKHAM*, [1922] 1 W. W. R. 818; 63 D. L. R. 97; 15 Sask. L. R. 308.—CAN.

## PART I. SECT. 2, SUB-SECT. 1.

a i. —.]—Deft. provided a house for her father in which to live rent free for the rest of his life, in consideration of which he transferred a business block to her with the object of securing her for the rental value of the house & the cost of upkeep. Execution creditors of the father attacked the transfer under 13 Eliz. c. 5, & Fraudulent Preferences Act, R. S. S., 1920 (c. 204):—*Held*: deft. held the title to the business block as trustee for her father, subject to a charge in her favour for the rent & upkeep of the house, & subject to deft.'s lien for such amount on her father's equity the property should be available for his creditors.—*COLONIAL INVESTMENT & LOAN CO. v. HUSH*, [1925] 4 D. L. R. 108; [1925] 3 W. W. R. 157.—CAN.

d i. —.]—*KEENLEYSIDE v. PARTRIDGE*, [1925] 3 D. L. R. 961.—CAN.

n i. — *Saskatchewan*.]—13 Eliz. c. 5, is in force in Saskatchewan.—*BANK OF MONTREAL v. REIS*, [1925] 3 D. L. R. 125; [1925] 2 W. W. R. 169; 19 Sask. L. R. 423.—CAN.

## PART I. SECT. 3, SUB-SECT. 1.

sd. *Assignment to cover money taken from trust account*.]—*Uld*: It could not be attacked by a creditor of the assignor.—*BANK OF HAMILTON v. BLACK* (1918), 37 D. L. R. 801; 24 B. C. R. 394.—CAN.

## PART I. SECT. 3, SUB-SECT. 2.—B. (b).

ss. *Bona fide sale in course of trade—In consideration of debt due to buyer & other creditors*.]—The sale of wheat in question herein, the consideration for which was an indebtedness of the seller to the buyer & the payment by the buyer of certain other creditors of the seller, held to be protected as against attack under Fraudulent Preferences Act, s. 4, by sect. 7 thereof, which provides that the prior provisions of the Act shall not apply to a *bona fide* sale made in the ordinary course of trade or calling to innocent purchasers or parties. The proceeds of the wheat amounted to more than the amount of the consideration expressed in the bill of sale, but this

could not be foreseen at the time of the transaction, & it was held that the excess was not large enough to be regarded as an element of fraud.—*DEJARDINE v. CALLISON*, [1928] 3 D. L. R. 147; [1928] 2 W. W. R. 250.—CAN.

## PART I. SECT. 3, SUB-SECT. 2.—C.

135 ii. —.]—Circumstances in which the purchaser was estopped from setting up consideration.—*MCCARTY v. McMURRAY* (1871), 18 Gr. 604.—CAN.

## PART I. SECT. 3, SUB-SECT. 3.—B.

157 ii. —.]—*MULHOLLAND v. WILLIAMSON* (1868), 11 Gr. 291.—CAN.

## PART I. SECT. 3, SUB-SECT. 3.—C. (b) i.

177 i. *Exceptions to general rule—Settlement supported by other consideration—Agreement to separate—Followed by immediate separation*.]—*HILL v. HILL* (Man.), [1926] 4 D. L. R. 588.—CAN.

## PART I. SECT. 3, SUB-SECT. 3.—E.

204 ii. — *Partition by father on remarriage—Allegation by settlor that conveyance in fraud of creditors—Onus of proof*.]—In 1904 a Burman executed on his remarriage a deed of partition by which he purported to convey to his daughter, the only child of his first marriage & then eight years of age, immovable property as her one-quarter share of the joint property of that marriage, & he appointed his own mother to take care of it. He remained in possession, but contributed to the support of his daughter, who resided with her maternal grandmother. At the time of the conveyance the father was considerably indebted, & his creditors, finding that they could not attach the property, settled with him upon easy terms. In 1915 the father promised his daughter & her maternal uncle that the property would be restored to her. In 1925 the daughter sued for possession. The father pleaded that the conveyance was in fraud of his creditors, & that the suit was barred by limitation:—*Held*: upon the whole facts the father had failed to discharge the burden, which was heavily upon him of proving that the conveyance was in fraud of his creditors, & not a genuine conveyance of his daughter's share, possibly liberally calculated; & consequently his possession was not adverse to his daughter, but on her behalf.—*MA NGWE NAING v. MAUNG THA MAUNG* (1928), 1 L. R. 7 Ran. 4.—IND.

## PART I. SECT. 4, SUB-SECT. 1.

209 xix. —.]—*HALIFAX BANKING CO. v. MATTHEW* (1838), 16 S. C. R. 721.—CAN.

sf. *Plan to bring property into existence—Valid*.]—*KEARL v. WONNACOTT* (Alta.), [1927] 4 D. L. R. 1051; [1927] 3 W. W. R. 693.—CAN.

## PART I. SECT. 4, SUB-SECT. 2.—A.

224 ii. —.]—*DOE d. STEEL v. MCGILL* (1842), 2 Ont. Dig. 2918.—CAN.

## PART I. SECT. 4, SUB-SECT. 2.—C.

qi. —.]—*SCHUBERT v. KOCH*, [1928] 3 W. W. R. 623.—CAN.

ti. —.]—The transfer of his homestead from a husband to his wife, when he was insolvent & in order to prevent his creditors from satisfying their claims therefrom:—*Held*: fraudulent.—*BARRETT v. BARON*, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—CAN.

t ii. —.]—The transfer by a husband to his wife of his homestead, which is exempt from seizure under execution, cannot be set aside for the benefit of the husband's creditors.—*RUSSIAN MERCANTILE CO., LTD. v. SLOBODA & SLOBODA* (Alta.), [1927] 4 D. L. R. 931; [1927] 3 W. W. R. 451.—CAN.

ai. — *Husband trustee for wife of property conveyed*.]—*GRAY v. FORD*, [1925] 1 W. W. R. 943; 34 B. C. R. 517.—CAN.

aii. — *Goods purchased with wife's money & goods of husband exempt from seizure for debt*.]—*REVELSTOCK SAWMILL CO., LTD. v. STRATFORD*, [1928] 4 D. L. R. 772; [1928] 3 W. W. R. 260.—CAN.

## PART I. SECT. 4, SUB-SECT. 2.—D.

sg. *Conveyance by husband to wife—Proof of validity against creditors—Affidavits necessary*.]—Where property is claimed by or on behalf of a wife under a conveyance to her during coverture, an explanation of the transaction should be given on oath to show that it was *bona fide*, & good as against the husband's creditors; the affidavits for this purpose should be by the petitioners, & should be satisfactorily corroborated by disinterested persons of known credibility.—*Ex p. LYONS* (1869), 2 Ch. Ch. 357.—CAN.

sk. *Reconveyance by wife to husband—Land held by wife on trust for husband*.]—*WINDSOR AUTO SALES AGENCY v. MARTIN* (1915), 7 O. W. N. 471; 8 O. W. N. 130, 252; 25 D. L. R. 549; 33 O. L. R. 354.—CAN.

sl. *Voluntary conveyance—To person of same name as owner—Necessity for explanation*.]—*Ex p. WRIGHT* (1869), 2 Ch. Ch. 355.—CAN.

sm. *Family arrangement—Without consideration*.]—*HAWKINS v. AGLASINGER*, [1928] 4 D. L. R. 188.—CAN.

## PART I. SECT. 4, SUB-SECT. 3.

ni. — *Payment of charges & incumbrances*.]—The promise of a transferee to pay the charges & incumbrances against the property transferred is not a sufficient consideration to support the transaction as against the creditors of the transferor. The question whether a transfer was a voluntary one or not for good consideration is only important as against creditors where it was made *bona fide*.—*BLUDOFF v. OSACHOFF*, [1928] 3 D. L. R. 170; [1928] 2 W. W. R. 150; 22 Sask. L. R. 533.—CAN.

293. *Add. Annotation*:—*Mentd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

339a. ——— *Subsequent sale to third party—Purchaser from sheriff entitled to recover.*—*KIDD v. RAWLINSON* (1800), 2 Bos. & P. 59; 126 E. R. 1155.

*Annotations*:—*Consd. Arundell v. Phipps & Taunton* (1804), 10 Ves. 139. *Appld. Watkins v. Birch* (1813), 4 Taunt. 823; *Latimer v. Batson* (1825), 7 Dow. & Ry. K. B. 106. *Consd. Cook v. Walker* (1855), 25 L. T. O. S. 51. *Refd. Joseph v. Ingram* (1817), 1 Moore, C. P. 189; *Cromack v. Heathcote* (1820), 4 Moore, C. P. 357; *Steward v. Lombe* (1820), 1 Brod. & Bing. 506.

377. *Add. Annotation*:—*Refd. Re Lloyd's Furniture Palace, Evans v. The Co.*, [1925] Ch. 853.

395. *Add. Annotation*:—*Consd. Jagger v. Jagger*, [1926] P. 93.

396. *Add. Annotation*:—*Consd. Jagger v. Jagger*, [1926] P. 93.

422a. ———.]—*Re LLOYD'S FURNITURE PALACE, LTD., EVANS v. THE CO.*, No. 428a, *post*.

PART I. SECT. 4, SUB-SECT. 5.—A.

264 iii. ———.]—*GALIBERT v. SOCIÉTÉ D'ADMINISTRATION GÉNÉRALE & BANQUE NATIONALE & CIE. GÉNÉRAL D'ENTREPRISES PUBLIQUES*, [1925] 3 D. L. R. 1206; [1925] S. C. R. 683.—CAN.

264 iv. ———.]—*CUMMINGS & ELLIS v. O'FLYNN* (1924), 34 B. C. R. 275.—CAN.

264 v. ———.]—*A sale by a son to his father, made when the son was in insolvent circumstances & with the common intent & effect of giving a preference*:—*Held*: void.—*HUNTER v. LAWRIE*, [1925] 1 D. L. R. 654; [1925] 1 W. W. R. 411; 35 Man. L. R. 126.—CAN.

264 vi. ———.]—*ENFIELD REALTY CO. v. PETERSON* (Sask.), [1926] 2 D. L. R. 1005.—CAN.

264 vii. ———.]—*CANADIAN OIL CO., LTD. v. JAMIESON* (Sask.), [1926] 2 D. L. R. 1046.—CAN.

PART I. SECT. 4, SUB-SECT. 5.—C.

sd. *Under guarantee—Voluntary conveyance set aside.*—*ONTARIO WIND ENGINE & PUMP CO. v. HOBBS* (Alta.), [1926] 1 D. L. R. 57; [1926] 1 W. W. R. 45.—CAN.

PART I. SECT. 4, SUB-SECT. 6.—A.

se. *Under sale by parol.*—*Held*: the sale was void as against subsequent creditors.—*WILLIAMS v. RAPELJE* (1880), 8 C. P. 186.—CAN.

PART I. SECT. 4, SUB-SECT. 7.

sf. *Conveyance to wife—Onus of proof—Discharge of onus.*—If land is transferred by a husband to his wife, who *bond fide* works the land on her own account, a person alleging that the whole transaction, including the working of the land, is colourable only must satisfy the ct. by showing facts & circumstances which go beyond raising a mere suspicion.—*JOHNSTONE LUMBER CO. v. HAGER*, [1924] 1 D. L. R. 693; 1 W. W. R. 389; 20 Alta. L. R. 286.—CAN.

PART I. SECT. 4, SUB-SECT. 11.

418 i. a. ———.]—*The assignment of a lease by the lessee to a trustee, for a bond fide creditor of the assignor, with the intention of thereby evading the creditors of the lessee, is not a fraudulent assignment.*—*DOE d. BIGGARD v. MILLARD* (1839), 1 Ont. Dig. 480.—CAN.

418 xiii. ———.]—*SHAVER v. GOLDHAR*, [1925] 2 D. L. R. 1216.—CAN.

418 xiv. ———.]—*Re RICE*, [1928] 2 D. L. R. 96.—CAN.

a i. ———.]—*Security given by an insolvent debtor to a creditor with intent to give him a preference over other creditors is void*: but the existence of the intent may be negated by showing that the debtor yielded to the importunity of the preferred creditor, & may also be negated by proof of the existence of some other motive which may not have had its origin in the creditor, *e.g.* when property is conveyed as the result of fear of a criminal prosecution or where the transaction has its origin in the recognition of a moral obligation to restore property improperly converted.—*GOLDMAN v. HARRISON*, [1928] 3 D. L. R. 73; 62 O. L. R. 291.—CAN.

sj. *Mortgage to obtain loan to pay creditor—Presumption that mortgage void.*—*MILLER v. OSIER*, [1925] 4 D. L. R. 692.—CAN.

sk. *What constitutes preference—Security given to creditor—Debtor insolvent.*—*W.*, secretary-treasurer of pltf. municipality, misappropriated funds. At his request deft. sent him a cheque to pay off a mtgc., & in repayment sent deft. his own cheque, which was refused by the bank. He also received from deft. a cheque to purchase an interest in land, which he deposited to the credit of the municipality. He notified deft. & assigned him securities to cover the two cheques. Within sixty days of the assignments pltf. began action to set them aside as preferential.—*Held*: under Assignments Act, R. S. S. 1909, then in force, the assignments to deft. were void as against pltf. & should be set aside.—*MOUNT HOPE RURAL MUNICIPALITY v. FINDLAY* (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—CAN.

sl. *Who is a "creditor"—Agent making advance out of funds of principal—No pressure by principal for security.*—*MOUNT HOPE RURAL MUNICIPALITY v. FINDLAY* (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—CAN.

PART I. SECT. 5, SUB-SECT. 1.

o. Delete this case.

t i. ———.]—*On crops raised by vendee.*—If land is transferred by a husband to his wife, who *bond fide* works the land on her own account, even if the transfer is one that as against creditors can be set aside, the wife is entitled to the crops raised under her operations.—*JOHNSTONE LUMBER CO. v. HAGER*, [1924] 1 D. L. R. 693; 1 W. W. R. 389; 20 Alta. L. R. 286.—CAN.

t ii. ———.]—*The fact that a sale of land is found to be fraudulent & voidable as against execution*

428a. ——— *Issue of debentures to one creditor—Issue postponed for benefit of company.*—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.

If, as appears to be established by the authorities, a present fraudulent intention to prefer one creditor over the others is not sufficient under the statute to avoid a conveyance to that creditor, unless the debtor is himself in some way benefited by the conveyance, I am unable to see how the conveyance is avoided merely because the debtor always had the intention to prefer the creditor at some time or another (*ROMER, J.*).—*Re LLOYD'S FURNITURE PALACE, LTD., EVANS v. THE CO.*, [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

creditors of the vendor, does not entitle them to seize crops grown thereon by the vendee, although the rule is otherwise if the transaction is shown to be a mere sham.—*BANQUE CANADIENNE NATIONALE v. TENCHA*, [1927] 4 D. L. R. 665.—CAN.

PART I. SECT. 5, SUB-SECT. 2.—A.

sn. *Not receiver of company—Alleged fraudulent preference made before receiver appointed.*—*FOX v. NIPISSING RY. CO., GOODERHAM v. NIPISSING RY. CO.* (1881), 29 Gr. 11.—CAN.

PART I. SECT. 5, SUB-SECT. 2.—D. (a).

sp. *Secured creditor.*—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204).—*BARRETT v. BARON*, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 438.—CAN.

sq. *S. P. McLEAN v. RATEKIN* (Sask.), [1926] 4 D. L. R. 174; [1926] 2 W. W. R. 671.—CAN.

st. *Not creditor advising conveyance.*—*BLACKLEY v. KENNY* (1889), 16 A. R. 522.—CAN.

PART I. SECT. 5, SUB-SECT. 2.—D. (c).

m i. ———.]—*Pltf. suing for a tort, such as slander or malicious prosecution, is not a creditor of deft. until he has recovered judgment in the action, & has no status to impeach a conveyance as fraudulent against him, even though it was made because of the threatened action.*—*FISHER v. KOWSIOWSKI* (1913), 25 W. L. R. 417; 5 W. W. R. 91; 13 D. L. R. 785; 23 Man. L. R. 769.—CAN.

m ii. ———.]—*A judgment creditor may in his own name maintain an action to set aside a conveyance as fraudulent & void, without having a lien by virtue of an execution in the hands of the sheriff.*—*BROWN v. WEIL*, [1927] 4 D. L. R. 218; 61 O. L. R. 55.—CAN.

sw. *Judgment for alimony.*—Where a wife, having obtained a judgment for permanent alimony, brought an action to have a release executed by the husband set aside & the transaction declared preferential, fraudulent, & void, under Fraudulent Conveyances Act, R. S. O., 1914 (c. 105):—*Held*: even if pltf. was not her husband's creditor she could nevertheless bring an action, for under sect. 3 "creditors & others" were protected.—*SHEPHERD v. SHEPHERD*, [1925] 2 D. L. R. 897;

## Part II.—Conveyances Impeachable by Subsequent Purchasers under Statute.

547. *Add. Annotation* :—*Mentd.* Cayzer, Irvine v. Board of Trade, [1927] 1 K. B. 269.
561. *Add. Annotation* :—*Mentd.* Jones v. Waring & Gillow, [1926] A. C. 670.
594. *Add. Annotation* :—*As to* (1) *Refd.* Bird v. I. R. Comrs. (1924), 12 Tax Cas. 785.
- 604a. *Settlement with uses in remainder.*—*Held* : fraudulent against a purchaser.—ANON. (1606), Lane, 22; 145 E. R. 267.
- 619a. —.—.]—*HEISIER v. CLARKE* (1709), 2 Eq Cas. Abr. 46; 22 E. R. 41, L. C.
780. *Add. Annotation* :—*Mentd.* *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.

## Part III.—Conveyances Impeachable from Position of Parties.

- 807a. —.—.]—A conveyance by a weak man for a small consideration set aside.—CLARKSON v. HANWAY (1723), 2 P. Wms. 203; 24 E. R. 700, L. C.
- Annotations* :—*Consd.* Cray v. Mansfield (1750), 1 Ves. Sen. 379. *Refd.* Hawes v. Wyatt (1790), 2 Cox, Eq. Cas. 263; Blachford v. Christian (1829), 1 Knapp. 73.
- 831a. *Deed not fully explained to donor.*—PHILLIPSON v. KERRY (1863), 32 Beav. 628; 9 L. T. 40; 11 W. R. 1034; 55 E. R. 247.
- Annotation* :—*Apld.* Ellis v. Ellis (1909), 26 T. L. R. 166.
- 834a. —.—.]—A voluntary gift will be set aside when the relations between the donor & the donee have at, or shortly before, the execution of the gift been such as to raise a presumption that the donee had influence over the donor, unless the donee discharges the *onus* of proving that the gift was the spontaneous act of the donor, acting under circumstances which enabled the exercise of an independent will. Independent legal advice is not the only way in which the presumption can be rebutted; & the presumption may be rebutted even if the advice, when given, was not taken.—INCHE NORIAH v. SHAIK ALLIE BIN OMAR, [1929] A. C. 127; 98 L. J. P. C. 1; 140 L. T. 121; 45 T. L. R. 1, P. C.
844. *Add. Annotation* :—*Consd.* Inche Noriah v. Shaik Allie Bin Omar, [1929] A. C. 127.
- 844a. —.—.]—GREENLAW v. KING (1841), 10 L. J. Ch. 129; 5 Jur. 18, L. C.
- Annotations* :—*Refd.* Llewellyn v. Badeley (1842), 1 Hare, 527; Walsingham v. Goodricke (1843), 3 Hare, 122; Beaden v. King (1852), 9 Hare, 499; Boyd v. Barker (1859), 28 L. J. Ch. 445; Guest v. Smythe (1870), 5 Ch. App. 553, n.; Fenner v. L. & S. E. Ry. (1872), L. R. 7 Q. B. 767.

56 O. L. R. 555; *affu.*, [1924] 3 D. L. R. 566.—CAN.

### PART I. SECT. 6, SUB-SECT. 2.—B.

d (p. 220) i. —.—.]—*Unless execution creditor.*—An execution creditor, who sues to set aside a transfer by his debtor on the ground that it is fraudulent against creditors, is not obliged to sue on behalf of all other creditors of debtor as well as himself. Origin of the distinction in this respect between execution creditors & simple contract creditors reviewed.—ST. GREGOR MERT CANTILE Co. v. HALBACH & BANK OF MONTREAL, [1927] 1 D. L. R. 761; [1927] 1 W. W. R. 247; 21 Sask. L. R. 315.—CAN.

### PART I. SECT. 6, SUB-SECT. 2.—D.

h i. —.—.]—*Semble* : in an action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204), the *onus* is always on plff. of proving debtor's insolvency.—MCLEAN v. RATERIN (Sask.), [1927] 4 D. L. R. 739; [1927] 3 W. W. R. 444; *affd.*, [1928] 4 D. L. R. 18; [1928] 2 W. W. R. 421; 22 S. L. R. 633; 10 C. B. R. 156.—CAN.

o (p. 223) i. —.—.]—In an action to set aside as fraudulent against creditors a transfer between sisters :—*Held* : the corroborative evidence necessary to meet the *prima facie* case which plff. established by showing a transfer between near relatives in circumstances of suspicion, had been supplied.—LUNDQUIST v. PULA, [1925]

3 D. L. R. 84; [1925] 1 W. W. R. 834.—CAN.

o (p. 223) ii. —.—.]—KUSHNER v. YASINKA (Sask.), [1927] 4 D. L. R. 697; [1927] 3 W. W. R. 328.—CAN.

s (p. 223) i. —.—.]—KNOX v. SHAW, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494, 31 Sask. L. R. 593.—CAN.

s (p. 223) ii. —.—.]—BROWN v. WEIL, [1927] 4 D. L. R. 218; 61 O. L. R. 55.—CAN.

s (p. 223) iii. —.—.]—KUSHNER v. YASINKA (Sask.), [1927] 4 D. L. R. 697; [1927] 3 W. W. R. 328.—CAN.

### PART II. SECT. 3, SUB-SECT. 2.—B. (a).

5721. *Necessity for valuable consideration.*—DOE PROUDFOOT v. MCCRAE (1842), 6 O. S. 502.—CAN.

### PART III. SECT. 1.

ii. —.—.]—*Grantor without business experience.*—*Held* : the instruments were void in equity.—EDINBURGH LIFE ASSURANCE Co. v. ALLEN (1871), 18 Gr. 425.—CAN.

p i. —.—.]—*Grant in consideration of maintenance for life.*—A woman, 69 years old, transferred land to defts. in consideration of her maintenance for life, which transfer the Supreme Ct. of Tasmania on her death set aside as procured by undue influence.—*Held* : the transaction was properly set aside.—WATKINS v. COOMBS (1922), 30 C. L. R. 180.—AUS.

p ii. —.—.]—*Conveyances set aside on grounds of improvidence, & want of proper professional advice.*—SHANAGAN v. SHANAGAN (1884), 7 O. R. 209.—CAN.

r i. —.—.]—*Deaf & illiterate.—Onus of proof.*—Action to set aside a conveyance obtained from an old woman who was deaf & unable to write, & who had no relatives or friends, by the reeve of the township in which she lived, & who was well known as a justice of the peace, & an active, shrewd business man, engaged in many enterprises :—*Held* : the onus was not on deff., & plff. must prove her case.—MCLEWAN v. MILNE (1884), 5 O. R. 100.—CAN.

t i. —.—.]—*Onus of proof.*—The fact that deff., who had set up the defence of fraud to an action on a guarantee, proved that he could not read or write the English language, that in which the guarantee was written, was held not to be sufficient of itself in the present case to raise such a *prima facie* presumption of fraud as to justify the trial judge in placing on plff. the burden of proving affirmatively that that portion of the document, which deff. attacked, was in fact read over to him & that he understood the same.—LASBY v. JOHNSON, [1928] 4 D. L. R. 956; [1928] 3 W. W. R. 447.—CAN.

PART III. SECT. 2, SUB-SECT. 1.  
o (p. 259) i. —.—.]—PLAETZER v. RAYMOND (Ont.), [1927] 2 D. L. R. 389; 8 C. B. R. 181.—CAN.

845. *Add. Annotation*:—*Consd. Inche Noriah v. Shaik Allie Bin Omar*, [1929] A. C. 127.

895a. —. —.]—If a legatee agrees to sell to the exor. of the will his legacy for an annuity, the burden will lie on the exor. to show that there was no unfairness in the transaction.—*Re BIEL'S ESTATE, GRAY v. WARNER* (1873), L. R. 16 Eq. 577; 42 L. J. Ch. 556; 28 L. T. 835; 21 W. R. 808.

*Annotation*:—*Refd. Harloe v. Harloe* (1875), 44 L. J. Ch. 512.

**PART III. SECT. 2, SUB-SECT. 2.—B.**

*sz. Onus of proof—On party alleging fairness of transaction—Sale by parent to son.*—In an action by a father against his son to set aside a transfer on the ground of fraud, where admittedly no pecuniary consideration passed at the time, the father could not speak English, the son, who drew the transfer spoke only English, & the document was in English, & the father was entirely dependent on the son for information as to what was said & done, the burden of proof was held to be upon the son that his father knew well the nature & effect of the instrument.—*IWANCHUK v. IWANCHUK* (Alta.), [1919] 3 W. W. R. 363; 48 D. L. R. 381.—**CAN.**

**PART III. SECT. 2, SUB-SECT. 2.—F.**

*sy. When presumed—Husband in impaired physical & mental condition—Wife with business ability.*—*McCaffrey v. McCaffrey* (1891), 18 A. R. 599.—**CAN.**

**PART III. SECT. 2, SUB-SECT. 2.—M.**

*sz. Fiancée & fiancé's father.*—Where shortly after the death of assured the beneficiary, his fiancée, assigned to his father, without consideration, all her interest in the policy & the benefits thereof:—*Held*: in the circumstances

she should be declared entitled to the insurance money.—*REDMOND v. BOUEY* (Man.), [1927] 1 D. L. R. 1057; [1927] 1 W. W. R. 386; *affd.*, [1928] 4 D. L. R. 806; [1928] 3 W. W. R. 345; 37 Man. L. R. 458.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 1.**

*ri. —.*—Pltf. purchased land from deft. Subsequently pltf.'s husband having been convicted of a crime & sentenced to imprisonment, deft. induced pltf. to retransfer the land to him:—*Held*: pltf. having been imposed on, & having conveyed the land for less than the real value thereof & without independent advice, the transfer should be set aside.—*COLP v. HUNTER* (1911), 1 W. W. R. 314.—**CAN.**

928 *iii. —.*—*McEACHERN v. SOMERVILLE, McEACHERN v. WHITE* (1876), 37 U. C. R. 609.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 2.—A.**

935 *i. Principles of relief—Presumption of incapacity.*—Expectant heirs & reversioners need to be protected against the consequences of their own improvidence in dealing with designing men.—*MORREY v. TOTTEN* (1857), 6 Gr. 176.—**CAN.**

**PART III. SECT. 4, SUB-SECT. 3.**

*c i. —.*—Pltf. a person of

909a. —. —.]—*DEANE v. RASTRON* (1792), 1 Anst. 64; 145 E. R. 801.

964a. *Purchase by devisee—Representation that defective will duly executed.*—*BRODERICK v. BRODERICK* (1713), 1 P. Wms. 239; 24 E. R. 369, L. C.

*Annotations*:—*Refd. Baugh v. Price* (1752), 1 Wils. 320. *Mentd. Clifton v. Cockburn* (1834), 3 My. & K. 76.

little or no business ability, who was possessed of a life interest in a capital sum of considerable amount, had been adjudicated bkpt., & under threat of his creditors to realise the life interest, had approached deft., a money-lender, for assistance. Notwithstanding the business ignorance of pltf. & the financial straits in which he was placed, of which deft., by reason of previous transactions with him, must have been well aware, & without pltf., being independently advised, a sale of the life interest to deft. was arranged at a figure considerably under its real value. In an action brought some eleven years later to have the transaction set aside:—*Held*: although inadequacy of consideration for a transaction is not of itself sufficient to give rise to a presumption of undue influence, the surrounding circumstances in the present case were sufficient to show that pltf. was in the hands of deft. & the subsequent delay in bringing action, & the conduct by pltf., in effecting further insurance in pursuance of the transaction having taken place, while pltf. yet remained in ignorance of its impeachable nature, did not amount to a confirmation & same should be set aside.—*HARRIS v. RICHARDSON*, [1929] N. Z. L. R. 668.—**N.Z.**

## FRIENDLY SOCIETIES.

## Part III.—Unregistered Societies.

17. *Add. Annotation* :—*As to* (3) *Refd.* *Greenberg v. Cooperstein*, [1926] Ch. 657.

## Part IV.—Collecting Societies.

35. *Add. Annotation* :—*Apld.* *Bell v. Harker* (1927), 91 J. P. 189.

35a. ———.]—Industrial Assurance Act, 1923 (c. 8), s. 26 (1), applies whether the transaction involves transfer of the whole membership or interest of the assured, or of only one

policy out of several, & whether the transferee is or is not already a member of, or a person assured with, the new society.—*BELL v. HARKER*, [1928] 1 K. B. 368; 97 L. J. K. B. 155; 138 L. T. 226; 91 J. P. 189; 44 T. L. R. 33; 25 L. G. R. 505; 28 Cox C. C. 451, D. C.

## Part XII.—Officers.

109a. *Agent—Termination of employment—Under amended rules.*]—Pltf. was appointed an agent of defts., a friendly society, whose rules, though subject to alteration, provided at that time for the retention of agents in office so long as their conduct was satisfactory. After pltf. reached the age of sixty-five defts. altered their rules, by providing that agents

should be compulsorily retired at the age of sixty-five, & defts. terminated pltf.'s employment :—*Held* : as the rules, on the face of them, were alterable, pltf. was not entitled to a declaration that defts. were not entitled to terminate his employment.—*PAGE v. LIVERPOOL VICTORIA FRIENDLY SOCIETY* (1927), 43 T. L. R. 712, C. A.

## Part XIII.—Membership.

133. *Add. Annotation* :—*Apld.* *R. v. Lancashire JJ.*, *Ex p. Tyrer*, [1925] 1 K. B. 200.

155a. ——— *What must be disclosed to directors.*]—On the construction of Geo. 3, c. lxxiii., by which the Customs' Annuity & Benevolent Fund was established, & of the rules made under the authority of that Act :—*Held* : (1) in appointing a "nominee" of a subscriber's interest in the fund the directors ought to be informed for what purpose the nominee is appointed & to whom money is to be paid. This may be done by the instrument appointing the nominee or by some other instrument signed by the subscriber, or by his will; (2) *Seem* : a "nominee" may be a person who is intended to take as a trustee for others.—*URQUHART v. BUTTERFIELD* (1887), 37 Ch. D. 357; 57 L. J. Ch. 521; 57 L. T. 780; 36 W. R. 376; 4 T. L. R. 161, C. A.

155b. ——— *Who may be nominee—Trustee.*]—*URQUHART v. BUTTERFIELD*, No. 155a, *ante*.

175a. *Insurance of child for more than statutory amount.*]—*Resps.*, an industrial assurance co., issued three policies of insurance in respect of the life of a child, for sums which aggregated more than the statutory maximum, though each was for a sum less than that maximum. Each policy contained a provision that no payment would be made which either alone or in conjunction with other such payments exceeded the statutory maximum. On a charge of having committed an offence within

Industrial Assurance Act, 1923 (c. 8), s. 39 (2) :—*Held* : (1) the words in sect. 4 (1) "relating to payments on the death of children" were merely descriptive of the group of sects. in the 1896 Act headed "Payments on death of children," & did not limit those sects. in their application to industrial assurance cos. to payment only, but included the provisions as to insurance; (2) the above provision in each policy had no legal effect at all, & it could not be contended that in fact the co. did not insure for more than the statutory amount; (3) the proceedings were in time because, for this purpose, the insurance co. did not insure from the time only when the policies were taken out, but (*LORD HEWART, C.J.*) either insured on every occasion when a premium was paid, or (*AVORY, J.*) continued to insure during the time that the assured was not in default & the policies were in force.—*HARKER v. BRITANNIC ASSURANCE CO., LTD.*, [1928] 1 K. B. 766; 97 L. J. K. B. 359; 138 L. T. 395; 91 J. P. 51; 44 T. L. R. 243; 72 Sol. Jo. 121; 26 L. G. R. 136; 28 Cox, C. C. 475, D. C.

*Annotation* :—*As to* (2) *Distd.* *Hirst v. Liverpool Victoria Friendly Society*, *Clark v. London & Manchester Assce. Co.* (1929), 73 Sol. Jo. 832.

175b. ——— *Proviso in policy limiting sum assured.*]—*HIRST v. LIVERPOOL VICTORIA FRIENDLY SOCIETY*, *CLARK v. LONDON & MANCHESTER ASSURANCE CO.* (1929), 73 Sol. Jo. 832; 93 J. P. Jo. 796, C. A.; *reversing S. C. sub nom. RE HIRST & LIVERPOOL VICTORIA FRIENDLY SOCIETY*, 73 Sol. Jo. 748.



## Part XVIII.—Disputes.

- 224a. —[.]—TIMMS v. WILLIAMS (1842), 3 Q. B. 413; 2 Gal. & Dav. 621; 11 L. J. Q. B. 210; 6 J. P. 685; 6 Jur. 1012; 114 E. R. 565. 277. *Add. Annotation*:—Mentd. Palmer v. Crone, [1927] 1 K. B. 8
- Annotations*:—Mentd. Magnus v. Hall (1843), 8 J. P. 71; |  
*Er p. Payne* (1849), 18 L. J. Q. B. 197.

## Part XIX.—Offences, Penalties and Proceedings.

322. *Add. Annotation*:—Consd. Fishwick v. Gyani, [1925] 1 K. B. 617.

## Part XXII.—Dissolution.

430. *Add. Annotations*:—As to (1) Refd. J. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. v. Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

### PART XIX. SECT. 3, SUB-SECT. 1.— A. (a).

sb. *Action for libel*—[Whether proof of special damage necessary.]—*Held*: plffs. were entitled to maintain an action to recover damages for defamation of the society as such; it was unnecessary, in the case of a trading corp., society or partnership, to allege & prove special damages where defamatory words were spoken or written of the corp., society or partnership, in relation to its trade or business; & damages limited to the injury done to the joint adventure might be awarded without proof of special damage.—IRISH PEOPLES ASSOC. CO. v. DUBLIN CTRY ASSCE. CO., [1929] 1. R. 25.—IR.

### PART XX. SECT. 3.

sc. *Right to secede*.—In the absence of statutory provisions there is no power in a branch lodge of a friendly

society to secede from the order to which it belongs, unless the power is expressly conferred by the rules of the society. *Semble*: even if the rules give a right to secede, there is no practical method of doing so, unless machinery is provided for the purpose.—INDEPENDENT ORDER OF ODDFELLOWS v. INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE NO. 11, [1901–3] S. A. L. R. 62.—AUS.

sd. *Effect of secession*—[On property & funds.]—A mere right to secede does not confer a power in the seceding lodge to take away the funds constituted under the rules of the order. A rule of a friendly society providing that a lodge which is expelled shall forfeit its property to the ruling authority of the society is not *ultra vires*.—INDEPENDENT ORDER OF ODDFELLOWS v. INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE NO. 11, [1901–3] S. A. L. R. 62.—AUS.

sf. *Secession by Scottish branch of English society*—[Refusal to grant certificate of secession—Jurisdiction of Scottish courts.]—The Scottish branch of a friendly society, whose registered office was in England but whose rules had been recorded in Scotland, resolved to secede from the parent body, & applied to the secretary of the society for a certificate of secession in order that the branch might be registered as a separate society in Scotland. The certificate having been refused, the branch brought a petition, under Ct. of Session (Scotland) Act, 1868 (c. 100), s. 91, for an order on the society to grant a certificate:—*Held*: the ct. had jurisdiction to entertain the petition, & procedure by way of a summary petition under sect. 91 was a convenient & practical method of invoking the aid of the ct.—SONS OF TEMPERANCE FRIENDLY SOCIETY, [1926] S. C. 418.—SCOT.

## GAME.

### Part IV.—Persons having Rights over Game.

76. *Add. Annotation* :—**Refd.** *Swayne v. Howells* (1926), 43 T. L. R. 14.

### Part VI.—Remedies for Infringement of Rights.

142. *Add. Annotation* :—**Refd.** *Andrews v. Carlton* (1928), 93 J. P. 65.

poachers charged with violence. —*R. v. PEARCE* (1929), 21 Cr. App. Rep. 79, C. C. A.

247a. **Summing up—Necessary contents.**]—There must be a careful direction to the jury on the nature of common enterprise in the case of

299. *Add. Annotation* :—**Consd.** *Farey v. Welch*; [1929] 1 K. B. 388.

### Part VII.—Gamekeepers.

354. *Add. Annotation* :—**Refd.** *Barnard v. Evans*, [1925] 2 K. B. 794.

### Part VIII.—Licences.

387. *Add. Annotation* :—**Refd.** *Clark v. Westaway*, [1927] 2 K. B. 597.

#### PART IV. SECT. 4.

f i. —.]—*R. v. SYLBOY*, [1929] 1 D. L. R. 307 ; 50 Can. Crim. Cas. 389.—**CAN.**

# GAMING AND WAGERING.

## Part I.—Gaming and Wagering Contracts Generally.

1. *Add. Citation* :—69 Sol. Jo. 824.
2. *Add. Annotations* :—**Apld.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1; *Weddle, Beck v. Hackett*, [1929] 1 K. B. 321. **Refd.** *Kennedy v. Thomassen*, [1929] 1 Ch. 426.
5. *Add. Annotation* :—**Consd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
7. *Add. Annotation* :—**Consd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
13. *Add. Annotations* :—**Folld.** *Barnett v. Sanker* (1925), 41 T. L. R. 660. **Consd.** *Ironmonger v. Dyne* (1928), 44 T. L. R. 497; *Ellesmere v. Wallace*, [1929] 2 Ch. 1. **Refd.** *Cooper v. Stubbs*, [1925] 2 K. B. 753; *Weddle, Beck v. Hackett*, [1929] 1 K. B. 321.
15. *Add. Annotation* :—**Consd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
- 15a. **Limited to two parties.**—*Ellesmere (Earl) v. Wallace*, No. 15c, *post*.
- 15b. **Agreement to refer betting disputes to arbitration.**—Where an agreement to refer betting disputes to a particular arbitrator is an integral part of the bargain by which the bets are made, the agreement to refer is itself a contract by way of gaming or wagering & is unenforceable.—*JOE LEE, LTD. v. DALMENY (LORD)*, SAME *v. TATTERSALL'S COMMITTEE*, [1927] 1 Ch. 300; 96 L. J. Ch. 174; 136 L. T. 375; 43 T. L. R. 119; 71 Sol. Jo. 20.
- 15c. **Contract between Jockey Club & racehorse owner.**—(1) At the invitation of the Jockey Club, which was issued subject to the Club's Rules of Racing, deft. nominated a horse for two races, namely, (a) the Peel Handicap, & (2) a long course Selling Plate of 200 sovereigns. The horse did not run in either race. In an action by E. on behalf of himself & the other members of the Club, the trustees of the Club & W. & Sons as stakeholders, to enforce payment by the deft. of the entrance fees or the part of them agreed to be forfeited :—**Held** : the contracts for the two races, which were between the Club & deft. & not between the various entrants *inter se*, were in neither case by way of gaming or wagering within Gaming Act, 1845 (c. 109), s. 18, & the Club were entitled to recover from deft. the amount of the fees agreed to be forfeited in the two races.  
(2) There cannot be more than two parties or two sides to a bet (*RUSSELL, L.J.*).—*Ellesmere (Earl) v. Wallace*, [1929] 2 Ch. 1; 98 L. J. Ch. 177; 140 L. T. 628; 45 T. L. R. 238; 73 Sol. Jo. 143. C. A.
- 15d. **Transactions in foreign currencies.**—*IRON-MONGER & Co. v. DYNE* (1928), 44 T. L. R. 497, C. A.  
*Annotation* :—**Consd.** *Weddle, Beck v. Hackett* (1928), 45 T. L. R. 67.
26. *Add. Annotation* :—**Mentd.** *James v. British General Insee.*, [1927] 2 K. B. 311.
47. *Add. Annotation* :—**Distd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
51. *Add. Annotation* :—**Distd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
52. *Add. Annotation* :—**Distd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
53. *Add. Annotation* :—**Distd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
55. *Add. Annotation* :—**Distd.** *Burrell v. Leven* (1926), 42 T. L. R. 407.
58. *Add. Annotations* :—**Distd.** *Burrell v. Leven* (1926), 42 T. L. R. 407. **Refd.** *Richardson v. Moncrieffe* (1926), 43 T. L. R. 32.
- 62a. ————**]**—An agreement by debtor to pay a debt resulting from a betting transaction :—**Held** : to be enforceable, although obtained under the threat that, notwithstanding ct. proceedings were pending, he would be reported to Tattersall's.—*BUXTON v. CUMMING* (1927), 71 Sol. Jo. 232.
64. *Add. Annotation* :—**Distd.** *Hyde v. Tyler* (1926), 42 T. L. R. 442.

### PART I. SECT. 1.

1 i. *Distinguished from speculative transactions.*—The mere fact that a transaction is speculative does not make it a wagering one.—*KANWAR BHAN-SUKHA NAND v. GANPAT RAI-RAM JIWAN* (1926), 1 L. R. 7 Lah. 442.—**IND.**

10 i. *Severable contract.*—*Pltf. & deft. entered into an agreement whereby pltf. was to train deft.'s horses for trotting, & deft. was to pay £2 per week for each horse, give pltf. one-fourth of stakes won, & further, when a horse was in a race & had a reasonable chance of winning, deft. was to put £5 on the totalisator & pay to pltf. any dividend received* :—**Held** : (1) an agreement by an owner to pay to his trainer one-fourth of the stakes won was valid & enforceable; (2) the term of the contract whereby investment was to be made on the totalisator by deft. in pltf.'s interest was unlawful; (3) the whole contract was not rendered unlawful thereby, the promises being independent, & the lawful promises being capable of enforcement.—*WILSON v. HOGARTH*, [1927] N. Z. L. R. 332.—**N. Z.**

d i. ————**]**—*WILSON v. HOGARTH*, No. 10 i, *ante*.—**N. Z.**

aa. *Agreement for payment of differences—Arising out of wagering contract.*—Where a forward contract for the purchase & sale of goods is void on the ground of wagering under Contract Act, s. 30, a subsequent cross contract, as a result of which the differences payable under the original wagering contract are settled, is void under Bombay Act III. 1865, s. 1.—*JIVANCHAND GAMBHIRMAL, ETC. v. LAXMINARAYAN GANESHARAM* (1925), 1 L. R. 49 Bom. 689.—**IND.**

ab. *Agreement by racehorse owner to pay trainer share of stakes won.*—*WILSON v. HOGARTH*, No. 10 i, *ante*.—**N. Z.**

ac. *Contract to buy & sell on margin—Onus on defendant to prove illegal.*—*Defts., Toronto merchants, engaged pltf., Chicago brokers, to buy & sell grain in Chicago on margin, which the latter did, advancing them money for which they sued. Defts. having refused to settle for losses sustained* :—**Held** : assuming the State law to be that if the contract was to deal in such a

way that only the differences in prices should be settled according to the rise & fall of the market, & no grain be either delivered or accepted, the contract would be a gambling contract & illegal, it lay upon defts. to establish clearly that such was the character of the dealing.—*RICE v. GUNN* (1881), 4 O. R. 579.—**CAN.**

### PART I. SECT. 3, SUB-SECT. 1.—C.

55 i. ————**]**—*Forbearance to post as defaulter.*—A wagering contract under Indian Contract Act is void to the extent that no ct. will enforce such a contract, but it is not illegal. A collateral agreement, therefore, based upon a transaction which was originally a wagering transaction, is not on that account illegal.

A cheque arising out of a betting transaction, but given in consideration of a person's promise to refrain from posting the drawer of the cheque before the Turf Club, & having him declared a defaulter, is valid, & for good consideration.—*BANYARD v. MOULLA* (1928), 1 L. R. 7 Kan. 263.—**IND.**

- 64a. ———.]—Pltf. backed a horse with deft. for £10 & the horse won the race. There was subsequently a dispute as to whether the result of the betting was payable at 100 to 1 or at 33 to 1. The parties agreed to refer the question to Tattersall's Committee. The Committee decided that the amount payable was £1,000, & that it was to be paid within seven days. In an action to recover the £1,000 pltf. alleged that deft. had agreed to abide by the decision of the Committee:—*Held*: as the parties only referred to Tattersall's Committee the question whether the bet was at 100 to 1 or at 33 to 1, & as there was no further agreement by deft. for good consideration to pay such sum as the Committee might find to be payable, the action failed.—*HYDE v. TYLER* (1926), 42 T. L. R. 652; 70 Sol. Jo. 856, C. A.
70. *Add. Annotation*:—*Apld.* *Hyde v. Tyler* (1926), 42 T. L. R. 442.
- 70a. ——— *Agreement to compromise action.*]—A mere agreement to compromise an action brought for a gaming debt is not sufficient consideration on which to found an action on the agreement.—*BURRELL & SON v. LEVEN* (1926), 42 T. L. R. 407.
76. *Add. Annotation*:—*As to* (1) *Consd.* *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
83. *Add. Annotation*:—*Distd.* *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
94. *Add. Annotation*:—*Refd.* *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
98. *Add. Annotation*:—*Refd.* *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
107. *Add. Annotation*:—*Distd.* *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
130. *Add. Annotation*:—*Mentd.* *Campbell v. Pollak*, [1927] A. C. 732.
131. *Add. Annotation*:—*Mentd.* *Campbell v. Pollak*, [1927] A. C. 732.
152. *Add. Annotation*:—*Refd.* *Ellesmere v. Wallace*, [1929] 2 Ch. 1.
164. *Add. Annotation*:—*As to* (1) *Consd.* *Humphery v. Wilson* (1929), 141 L. T. 469.
171. *Add. Annotations*:—*Refd.* *Ramdutt Ramkissen Dass v. Sassoon E. D. & Co.* (1929), 98 L. J. P. C. 58. *Mentd.* *Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.
181. *Add. Annotation*:—*Consd.* *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.
182. *Add. Annotation*:—*Consd.* *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.
185. For "Gaming Act, 1838" read "Gaming Act, 1738."  
*Add. Annotation*:—*As to* (1) *Refd.* *Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll*, [1929] 1 K. B. 470.
- 188a. ——— *Loan to bookmaker for general purposes of business.*]—A loan to a firm of bookmakers for the general purposes of the business & charged by deed on the assets of the partnership in the absence of proof that the money was required for the purpose of making bets, is not illegal as being "for the reimbursing or repaying any money knowingly lent or advanced for betting" within Gaming Acts, 1710 & 1835.—*HUMPHERY v. WILSON* (1929), 141 L. T. 469; 45 T. L. R. 535, C. A.
- 188b. ———.]—Money lent in England on a security with a view to its being used by the borrower in playing here a game of cards for money cannot be recovered in an English Ct.—*CARLTON HALL CLUB v. LAURENCE*, [1929] 2 K. B. 153; 98 L. J. K. B. 305; 140 L. T. 534; 45 T. L. R. 195; 73 Sol. Jo. 127, D. C.
189. *Add. Annotations*:—*Refd.* *Hill v. Fox* (1858), 31 L. T. O. S. 118; *Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll*, [1929] 1 K. B. 470.
191. *Add. Annotation*:—*Apld.* *Humphery v. Wilson* (1929), 141 L. T. 469.
192. *Add. Annotation*:—*As to* (2) *Apld.* *Humphery v. Wilson* (1929), 141 L. T. 469.
203. *Add. Annotations*:—*As to* (1) *Consd.* *Ellesmere, Earl v. Wallace*, [1929] 2 Ch. 1. *As to* (2) *Apld.* *Carlton Hall Club, Ltd. v. Laurence*, [1929] 2 K. B. 153. *Consd.* *Humphery v. Wilson* (1929), 141 L. T. 469.
- 205a. ———.]—Pltf. & other players of chemin de fer took it in turn to be croupier or banker. Deft., one of the players, bought counters to stake, & at the end of the game, having lost £500, he gave a cheque for that amount to pltf. in payment of what he had lost to pltf. &/or other persons. In an action on the cheque:—*Held*: a payment to a winner at gaming, or to a person who accepted payment for winners, in the form of a cheque was void & unenforceable, & the action failed.—*RICHARDSON v. MONCRIEFFE* (1926), 43 T. L. R. 32.
213. *Add. Annotation*:—*Consd.* *Humphery v. Wilson* (1929), 141 L. T. 469.
224. *Add. Annotation*:—*As to* (1) *Refd.* *Re Wilson, Ex p. Salaman v. Keith, Prowse* (1925), 133 L. T. 814.
226. *Add. Annotation*:—*Refd.* *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
229. *Add. Annotation*:—*Refd.* *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
239. *Add. Annotations*:—*Folld.* *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. *Consd.* *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.
240. *Add. Annotations*:—*Apld.* *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153. *Refd.* *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789.
243. *Add. Annotations*:—*Folld.* *Soc. Anon. des*

## PART I. SECT. 4, SUB-SECT. 2.

h i. ———.]—Where deft. sold for pltf. horses won by pltf. at a raffio, & received the purchase money:—*Held*: he could not refuse to pay it over, on the ground that pltf. had obtained the horses by gambling.—*JAMESON v. SHERWOOD* (1856), 14 U. C. R. 282.—CAN.

## PART I. SECT. 6, SUB-SECT. 1.

181 iii. ———.]—Where during a

game of dice cheques are given by one player to another player for money advanced to enable the former to continue the game, such cheques will be deemed to have been given for an illegal consideration.

If in an action brought on such cheques the evidence discloses the illegal consideration the trial judge should dismiss the action, even though the illegality has not been pleaded.—*GOGGINS v. MORRISON*, [1925] 2 D. L. R. 1203; [1925] 2 W. W. R. 75.—CAN.

## PART I. SECT. 7, SUB-SECT. 3.

§ 1. ——— *Contract to buy & sell on margin.*]—*PEARSON v. CARPENTER & SON* (1904), 35 S. C. R. 380.—CAN.

§ ii. ——— *Contract not speculative transaction on part of plaintiff.*]—*WOODWARD & CO., LTD. v. KOEFOED* (1921), 62 D. L. R. 431; 37 Can. Crim. Cas. 329; 31 Man. L. R. 286; [1921] 3 W. W. R. 232.—CAN.

*Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789.  
**Consd.** *Carlton Hall Club, Ltd. v. Laurence*, [1929] 2 K. B. 153.

245. *Add. Annotations*:—**Folld.** *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789.  
**Consd.** *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.

245a. ————.]—Where money is lent in

a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, *pltf.* can ignore the security & sue as for money lent to *deft.*—**SOCIÉTÉ ANONYME DES GRANDS ÉTABLISSEMENTS DE TOUQUET PARIS-PLAGE v. BAUMGART** (1927), 96 L. J. K. B. 789; 136 L. T. 799; 43 T. L. R. 278.

*Annotation*:—**Consd.** *Carlton Hall Club v. Laurence*, [1929] 2 K. B. 153.

## Part II.—Games, Gaming and Gaming Houses.

247. *Add. Annotation*:—**Consd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.

251. *Add. Annotation*:—**Refd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.

252. *Add. Annotation*:—**Consd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.

253. *Add. Annotation*:—**Consd.** *Ellesmere v. Wallace*, [1929] 2 Ch. 1.

254. *Add. Annotation*:—*As to* (2) **Consd.** *R. v. Kirby, Parker & Patrick* (1927), 20 Cr. App. Rep. 12; *R. v. O. K. Social & Whist Club, Ltd.* (1929), 45 T. L. R. 570.

255a. ————.]—The questions whether a house is used for unlawful gaming within sect. 4 of the above Act, & whether a game is unlawful within Betting Act, 1853 (c. 119), s. 3, are for the judge, & not the jury.—*R. v. KIRBY, PARKER & PATRICK* (1927), 20 Cr. App. Rep. 12, U. C. A.

260. *Add. Annotations*:—*As to* (4) **Refd.** *Richard-*

*son v. Moncrieffe* (1926), 43 T. L. R. 32. *Generally, Refd.* *R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38; *R. v. O. K. Social & Whist Club, Ltd.* (1929), 45 T. L. R. 570.

261. *Add. Annotation*:—**Refd.** *Richardson v. Moncrieffe* (1926), 43 T. L. R. 32.

267a. ————.]—Progressive whist, where the partners are shuffled as well as the cards, is not a game of skill, & if played for money prizes, is an unlawful game.—*R. v. O. K. SOCIAL & WHIST CLUB, LTD.* (1929), 45 T. L. R. 570; 73 Sol. Jo. 451; 21 Cr. App. Rep. 119, C. C. A.

275. *Add. Annotation*:—**Folld.** *Bennett v. Ewens*, [1928] 2 K. B. 510.

278. *Add. Annotations*:—*As to* (1) **Folld.** *Bennett v. Ewens*, [1928] 2 K. B. 510. *As to* (2) **Consd.** *R. v. Kirby, Parker & Patrick* (1927), 20 Cr. App. Rep. 12.

278 IV. ————.]—*R. v. C. WOLFE*, [1928] 4 D. L. R. 941; [1928] 2 W. W. R. 689; 50 Can. Crim. Cas. 189.—**CAN**

### PART II. SECT. 2. SUB-SECT. 1

*sd. (General rule.)*—Where a game as played on premises encourages an indulgence in all classes of the community of the propensity to gamble, & is injurious to public morals & a common law nuisance, the premises are a common gaming house.—*DAWSON v. SINCLAIR*, [1926] N. Z. L. R. 721.—**N.Z.**

284 i. *Proprietary club—Need not be open to public.*—A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming, & it makes no difference that its use is restricted to subscribers & members of a club, & it is not open to all persons desirous of using it.—*Re CHINNIAH* (1923), 1 L. R. 47 Mad. 426.—**IND.**

284 ii. ————.]—*In which poker played.*—An incorporated co., the proprietor of a "club" in which membership was secured by payment of a periodical fee, & where stud poker was played, the players being required to buy cards from the "club" & gum, fruit, candy or soft drinks being supplied on each sale of cards.—*Held*: to have been properly convicted for keeping a common gaming house.—*R. v. TRAINMEN'S CLUB* (1926), 45 Can. Crim. Cas. 231; 20 Sask. L. R. 461; [1926] 1 W. W. R. 830.—**CAN.**

c i. *Place or office kept for making contracts for sale of stocks & goods on differences.*—*R. v. HARKNESS* (1905), 6 O. W. R. 219; 10 O. L. R. 555.—**CAN.**

e i. ————.]—On a prosecution for keeping a common gaming house:

### PART II. SECT. 1, SUB-SECT. 1.

252 i. ————.]—*Prizes provided out of admission money.*—A person hired a hall for one night, & another hall for two nights, & advertised that whist drives, open to the public on payment of one shilling for admission, would be held in the halls on those nights. A large number of people attended, & prizes were awarded to the successful players. The purchase of the prizes was defrayed out of the admission money, any balance over being retained by the promoter.—*Held*: (1) the playing of progressive whist was gaming, in view of the facts that the element of chance predominated in the game, & that the prizes were derived from the admission money, & it was immaterial whether the proceedings were or were not detrimental to the morals of the community; (2) accused had managed, conducted, or carried on gaming in the premises, although his operations had been restricted to three isolated occasions.—*HUNTON v. MILLER*, [1926] S. C. (J.) 120.—**SCOT.**

### PART II. SECT. 1, SUB-SECT. 2.—E.

b i. ————.]—*R. v. ARNOLD*, [1927] 4 D. L. R. 206; 48 Can. Crim. Cas. 101; 60 O. L. R. 582.—**CAN.**

f i. ————.]—*Held*: a machine known as the "Calle Victory Vendor" was one to which the prohibition in Gaming Machines (Scotland) Act, 1917 (c. 23), s. 1 (1), applied.—*ULIVI v. MILLER*, [1927] S. C. (J.) 87.—**SCOT.**

276 i. *Whether dominant element of skill.*—*Deft.* kept for use by the public on his premises a number of machines, known by the name of "Diddler." Any one wishing to use one of these machines purchased from *deft.* discs at the price of seven for 6d. He inserted one disc in a slot & pulled a handle, which caused three rollers to

revolve. On each turn was printed a number of devices, such as cherries, roses, etc. If certain combinations of these devices stopped opposite a pointer on the face of the machine, the player won a certain number of discs. With these he could purchase on the premises certain goods. The winning combinations & the odds for each were printed on the front of the machine in view of the player. If none of these combinations stopped opposite the pointer, the player lost his disc. The machine was fitted with a control, by which the player could stop the rollers, one at a time, & so endeavour to obtain a winning combination. There were 15 machines on the premises. *Deft.* was prosecuted under Gaming Houses Act, 1854, s. 4, that he, being the occupier of the premises, did use them for the purpose of unlawful gaming. The justice was satisfied on the evidence that the majority of the persons who used the machine would be players of less than average skill, & therefore, held that the game was one in which the chances were not favourable alike to all players, including the owner of the machine, & accordingly convicted the *deft.*.—*Held*: the conviction was right.—*GORDON v. DUNLEVY*, [1928] 1 R. 595.—**IR.**

276 ii. ————.]—*R. v. LIMPOT*, [1928] 3 W. W. R. 60; 50 Can. Crim. Cas. 244.—**CAN.**

276 iii. ————.]—The operation of the slot machine in question herein, when, at least, it is exposed for use with the object of gain to the proprietor, & operated by his customers, held to be a "mixed game of chance & skill" within Criminal Code, s. 226 (a).—*R. v. CANADA MINT CO.*, [1928] 4 D. L. R. 539; [1928] 3 W. W. R. 195; 50 Can. Crim. Cas. 384.—**CAN.**

286. *Add. Annotation*:—*Apld. R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38.

304. *Add. Annotation*:—*Refd. Allen v. Whitehead* (1929), 45 T. L. R. 655.

305. *Add. Annotation*:—*Refd. Allen v. Whitehead* (1929), 45 T. L. R. 655.

## Part III.—Betting and Betting Houses.

310. After this case add "Agreement to collect betting debts—Contrary to public policy."—*See ACTION*, p. 9, No. 599a, *ante*."

326. *Add. Annotation*:—*Refd. Everton v. Walker* (1927), 137 L. T. 594.

330. *Add. Annotation*:—*Consd. Everton v. Walker* (1927), 137 L. T. 594.

358. *Add. Annotations*:—*As to* (4) *Refd. Clark v. Westaway*, [1927] 2 K. B. 597. *As to* (5) *Refd. Clark v. Westaway*, [1927] 2 K. B. 597.

*Generally, Refd. Schneiders v. Abrahams*, [1925] 1 K. B. 301.

401a. Holding whist drive.]—Whist drives, where an entrance fee is charged & prizes offered, are illegal under Betting Act, 1853 (c. 119), s. 1.—*BENNETT v. EWENS*, [1928] 2 K. B. 510; 97 L. J. K. B. 801; 139 L. T. 335; 92 J. P. 120; 44 T. L. R. 545; 72 Sol. Jo. 354; 28 Cox, C. C. 522; 26 L. G. R. 396, D. C.

—*Held*: premises on which were found cards, poker chips, dice, a round cloth-covered table & a "punch board," were provided with any means or contrivance for unlawful betting or gaming within Criminal Code, s. 986.—*R. v. Coy*, [1925] 3 W. W. R. 538; 44 Can. Crim. Cas. 119.—CAN.

multiseller" for gain:—*Held*: to render the place in which it was kept & where it was "played" by persons resorting thereto, a common gaming house.—*R. v. ELASZ* (1926), 45 Can. Crim. Cas. 257; 20 Sask. L. R. 605; [1926] 2 W. W. R. 368.—CAN.

cf. *Under Gaming Act*, 1908, s. 4.—*WEATHERED v. FITZGIBBON*, [1925] N. Z. L. R. 331.—N.Z.

### PART II. SECT. 2, SUB-SECT. 2.

h i. — *Acting as "banker" but not residing in common gaming house.*—*Held*: not to justify a conviction as keeper of the house.—*R. v. MARK* (1924), 43 Can. Crim. Cas. 368.—CAN.

h ii. — *Under Gaming Act*, 1908, s. 4.—*WEATHERED v. FITZGIBBON*, [1925] N. Z. L. R. 331.—N.Z.

h iii. — *Trading in sale & purchase of cotton—On payment of differences.*—*EMPEROR v. THAVARMAL RUPCHAND* (1928), 1 L. R. 53 Bom. 367.—IND.

r i. — *—*—*R. v. CHARLIE SAM*, [1929] 1 D. L. R. 166; 50 Can. Crim. Cas. 364; [1928] 3 W. W. R. 424.—CAN.

### PART II. SECT. 2, SUB-SECT. 3.

g i. — *—*—*Conviction for allowing gambling on premises for which there was a retail liquor licence quashed, the holder of the licence not having knowledge of the gambling.*—*R. v. WHELAN* (1908), 9 W. L. R. 424.—CAN.

### PART II. SECT. 2, SUB-SECT. 4.

a i. — *Effect of inaccuracy.*—*Held*: as the inaccuracy was not so material or substantial as to mislead a stranger if one were to go to the locality & attempt to find the place intended to be raided with the help of the warrant, it did not amount to more than a misdescription & was not of a nature to vitiate the warrant.—*EMPEROR v. THAVARMAL RUPCHAND* (1928), 1 L. R. 53 Bom. 367.—IND.

a i. — *Invalid—Effect.*—*A conviction for keeping a common gaming house may be sustained, even though the search warrant, under which entry was made, was defective.*—*R. v. PIDGON* (1926), 45 Can. Crim. Cas. 233; 37 B. C. R. 309; [1926] 3 W. W. R. 765.—CAN.

sg. Witness—*Required to be examined—Right to certificate of freedom.*—*R. v. SCOTT, Ex p. SCOTT*, [1927] S. A. S. R. 492.—AUS.

### PART III. SECT. 1.

310 i. *Betting or betting business—Not illegal ipso facto.*—Neither in India nor in England has the legislature gone so far as to enact in express terms that betting transactions are illegal, but it is clear that in both countries the legislature regards it as undesirable in the public interest that any assistance should be afforded by cts. of law to enforce obligations which have been created in connection with betting or wagering transactions.—*MITCHELL v. TENNENT* (1925), 1 L. R. 52 Calc. 677.—IND.

### PART III. SECT. 2, SUB-SECT. 1.

sk. *Pathway—Sole access to three houses.*—*A pathway leading from public land to three separate dwelling-houses, to which it provided the only means of access, was entered from the lane through a gate which was never locked:—Held*: the pathway was a "public passage," & a "street," within Street Betting Act, 1906 (c. 43), s. 1.—*MACKIE v. CROMBIE*, [1926] S. C. (J.) 29.—SCOT.

### PART III. SECT. 2, SUB-SECT. 3.

i i. — *Investment received elsewhere than at totalisator itself.*—During the progress of a trotting club's meeting, totalisator tickets having been sold at the members' & stewards' stands from boxes not situated in the totalisator building, appt., a servant of the club, was convicted of the offence of permitting an investment on the totalisator to be received elsewhere than at the totalisator itself:—*Held*: an investment received in an entirely separate building with no connection & no attempt at synchronising with the main totalisator is a payment made elsewhere than at the totalisator itself, & appt. was rightly convicted under Gaming Act, 1908, s. 30 (3).—*GOGGIN v. YOUNG*, [1928] N. Z. L. R. 753.—N.Z.

r i. *Paraphernalia for conducting betting house.*—*R. v. BRENNAN & NEWLANDS* (1928), 49 Can. Crim. Cas. 354.—CAN.

### PART III. SECT. 4, SUB-SECT. 1.—A.

m (p. 438) i. — *—*—*A person standing stationary in a public street for a considerable period is not thereby guilty of the offence of loitering under Lottery & Gaming Act, 1917, s. 40, although he has been requested by a police constable to cease from loitering.*—*MATTIN v. CURRIE*, [1927] S. A. S. R. 459.—AUS.

k (p. 439) i. S. P. MUHAMMAD KHAN v. R. (1927), 1 L. R. 9 Lah. 255.—IND.

t (p. 440) i. — *—*—*Where certain persons rented an enclosure, part of a larger enclosure abutting on a public road, & invited others to come there & make bets:—Held*: any person found betting there was rightly convicted of gambling in a public place.—*R. v. TULSHI DAS* (1924), 1 L. R. 46 All. 787.—IND.

sl. *Shed—Used by workmen for meals.*—At the trial of a workman, who was charged with using a place for the purpose of betting it was proved that on five dates labelled, between the hours of 12 noon & 1 p.m., he had engaged in ready-money betting with fellow-workmen in a shed in the employers' premises. The workmen were allowed to use the shed for the purpose of taking their meals, but the accused's betting transactions were carried on without the permission or knowledge of his employers:—*Held*: the shed was a "place" used by the accused for the purpose of betting.—*YOUNG v. DARRAH*, [1929] S. C. (J.) 17.—SCOT.

### PART III. SECT. 4, SUB-SECT. 1.—B.

g i. — *—*—*Deft. assocn. was incorporated as a co. by letters patent, which were amended by adding certain objects & purposes, viz., to encourage horse-racing, to construct, maintain, & operate race-courses, & other like objects & purposes. The co. established a race-course & held race-meetings, at which betting on the races was permitted, & was convicted under Criminal Code, ss. 228, 235, of the offences of keeping a common betting house, & recording & registering bets, etc.:—Held*: the co. was not protected by sect. 235 (2).—*R. v. LONG BRANCH RACING ASSOCN.*, [1925] 2 D. L. R. 46; 43 Can. Crim. Cas. 283; 56 O. L. R. 303.—CAN.

### PART III. SECT. 4, SUB-SECT. 2.—A.

363 i. *What persons liable to penalties—Persons "keeping"—Servant in sole charge.*—Any person, whether servant or agent, or on his own account, who has for the time being the exclusive charge of premises, & who uses those premises for the purpose of betting, is guilty of keeping or using the premises as a common gaming house under Gaming Act, 1908, s. 4, even though he is not the owner, & the owner is ignorant of the use to which the premises were put, & though the premises so used are only part of the premises of the owner.—*DAVIS v. NUTTALL*, [1924] N. Z. L. R. 65.—N.Z.

363 ii. — *Licensee of hotel—Permitting others to use premises for betting purposes.*—*DEELY v. DICK*, [1928] V. L. R. 121; [1928] A. L. R. 62.—AUS.

**415a.** ———.]—Applts. were the responsible proprietors of a four-page weekly newspaper, which was sold at 6d. a copy, & which had in winter a weekly circulation of over 32,000 copies. The newspaper contained what was called a "Free Football Competition" with a coupon giving particulars of future football matches & a column for the competitors to fill in their forecast of the results, a prize of £150 being offered for a correct forecast of all the results & a prize of £100 for a correct forecast of nine results, but no money was to be sent with the coupons. Applts. were summoned for unlawfully publishing a coupon of a ready-money football betting business contrary to sect. 1 of the above Act. The justices found that the majority of the persons who bought the newspaper did so for the sake of the coupon, & that applts. had circulated coupons of a ready-money football betting business, & they convicted applts.:—*Held*: the case was typical of the mischief aimed at by the Act, & the justices' decision must be affirmed.—*SUTTLE v. CRESSWELL*, [1926] 1 K. B. 264; 95 L. J. K. B. 367; 134 L. T. 144; 90 J. P. 3; 42 T. L. R. 75; 23 L. G. R. 695; 28 Cox, C. C. 94, D. C.

*Annotations*:—*Apld.* Turf Publishers v. Davies, [1927] W. N. 190. *Expld.* Leng (Sheffield Telegraph) v. Sillitoe, [1929] 1 K. B. 366.

**415b.** ———.]—*Turf Publishers, Ltd. v. Davies*, [1927] W. N. 190, D. C.

*Annotation*:—*Apld.* Leng (Sheffield Telegraph) v. Sillitoe, [1929] 1 K. B. 366.

**415c.** ———.]—Where a daily newspaper contained as one among its various features coupons in which the names of football teams were set out, & the public were invited to forecast the winners of matches in which

the teams were shortly to be engaged, the person who most nearly got the correct results receiving a prize:—*Held*: the proprietors & publishers of the newspaper were guilty of an offence under sect. 1 of the above Act, although the evidence only showed that some, & not the majority, of the purchasers of the newspaper bought it, wholly or partly, for the sake of the coupon, & although no competitor was allowed to send in more than one coupon from one & the same issue of the newspaper.—*SIR W. C. LENG & CO. (SHEFFIELD TELEGRAPH), LTD. v. SILLITOE*, [1929] 1 K. B. 366; 98 L. J. K. B. 262; 140 L. T. 500; 93 J. P. 26; 45 T. L. R. 94; 72 Sol. Jo. 810, D. C.

**423.** *Add. Annotation*:—*As to* (1) *Refd.* Pointon v. Cox (1926), 136 L. T. 506.

**424a.** ——— *Information under Licensing Consolidation Act, 1910 (c. 24)—Form of conviction.*—An information was preferred against applt. under sect. 79 (1) (b) of the above Act for that he, being the holder of a justices' licence, suffered his premises to be used in contravention of Betting Act, 1853 (c. 119). Applt. was convicted, & appealed to quarter sessions, who allowed the appeal, on the ground that the conviction was bad on the face of it because it did not specify what contravention of Betting Act, 1853 (c. 119), was alleged:—*Held*: applt. was entitled to the precise information to which he would have been entitled if he had been prosecuted under Betting Act, 1853 (c. 119), & the decision of quarter sessions was right.—*POINTON v. COX* (1926), 136 L. T. 506; 91 J. P. 33; 43 T. L. R. 175; 25 L. G. R. 101; 28 Cox, C. C. 308, D. C.

## Part IV.—Lotteries.

**434.** *Add. Annotations*:—*Refd.* Kerslake v. Knight (1925), 133 L. T. 606

**443.** *Add. Annotations*:—*Apld.* Howgate v. Ralph

(1929), 141 L. T. 512. *Refd.* Kerslake v. Knight (1925), 133 L. T. 606.

**449.** *Add. Citations*:—94 L. J. K. B. 919; 133

### PART III. SECT. 6.

**415 i.** "Printing or knowingly circulating coupons".—*Construction of Football Betting Act, 1920 (c. 52), ss. 1, 2.*—Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. Apart from the coupons & matters connected therewith the paper contained very little reading matter, & the majority of purchasers bought it for the sake of the coupons. The commission agents were convicted of knowingly printing & circulating circulars or coupons of a ready-money football betting business:—*Held*: the paper was a circular or coupon of the business of applts., & conviction sustained.—*JAMESON v. SINCLAIR*, [1925] S. C. (J.) 1.—*SCOT*.

*an.* "Ready-money football betting business".—*Newsagents settling with publishers monthly.*—Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. It was issued to wholesale newsagents, & distributed by them to retail newsagents, who sold it to the public. The wholesale & retail newsagents settled their accounts

weekly; the wholesale newsagents ran monthly accounts with the commission agents, who paid the prizewinners. The prize money was paid, although the monthly accounts had not been settled:—*Held*: there was evidence on which the magistrates might hold that applts.' business was a ready-money football betting business.—*JAMESON v. SINCLAIR*, [1925] S. C. (J.) 1.—*SCOT*.

### PART III. SECT. 7.

**b i.** ——— *Lottery & Gaming Act Amendment Act, 1921, s. 14.*—*HOLMES v. ALLCHURCH*, [1926] S. A. S. R. 255.—*AUS.*

**b ii.** ———.]—*LAMPARD v. WEST*, [1926] S. A. S. R. 293.—*AUS.*

**b iii.** ——— *Similar transactions on other days—Admissible.*—*PINCHBECK v. GLEESON*, [1926] S. A. S. R. 379.—*AUS.*

**c i.** ———.]—*PATERSON v. MACPHERSON*, [1924] S. C. (J.) 38.—*SCOT*.

**c ii.** ——— *Right to open closed envelopes.*—*Held*: the special warrant under Betting Act, 1853, s. 11, entitled the police to open postal or other communications found on the premises, although contained in closed

envelopes, for the purpose of ascertaining whether they contained documents relating to betting.—*STRATHERN v. BENSON*, [1925] S. C. (J.) 40.—*SCOT*.

**b i.** ——— *Joint complaint—One defendant calling no evidence, but wishing to give evidence for co-defendant—Mode of trial.*—*HOLMES v. ALLCHURCH*, [1926] S. A. S. R. 255.—*AUS.*

*sp. Appeal—Principles on which court acts.*—*R. v. SMITH* (1926), 37 B. C. R. 248.—*CAN.*

### PART IV. SECT. 1.

**d i.** ———.]—*POWER v. CANNIFF* (1859), 18 U. C. R. 403.—*CAN.*

**d ii.** ———.]—*LLOYD v. CLARK* (1862), 12 C. P. 320.—*CAN.*

**h i.** ———.]—The accused, who was the agent of a cigarette co. at Belfast, published a pamphlet advertising a prize of Rs.5 which could be automatically obtained by purchasers of Park Drive cigarettes. Accused sent ten currency notes of Rs.5 each to the manufacturers of Park Drive cigarettes at Belfast, who put each note in a packet of cigarettes, mixed those packets with other packets which contained no notes, & sent them out to accused in India. On a prosecution

L. T. 606; 89 J. P. 142; 23 L. G. R. 574; 28 Cox, C. C. 27.

464. *Add. Annotation*:—**Appld.** *Ranson v. Burgess* (1927), 137 L. T. 530.

464a. ———.]—A printer printed & sold to a purchaser a set of tickets adapted for use in a lottery, but no lottery was then in existence. The purpose was that the purchaser should institute & carry on a lottery by means of the tickets, by reselling them singly & providing out of the proceeds a prize for the holder of the winning ticket. The printer took no further interest, financial or otherwise, in the matter, beyond the original purchase price for the sale of the tickets as a set:—**Held**: the printer was properly convicted of publishing a proposal or scheme for the sale of tickets or chances in a lottery contrary to the above sect.—**RANSON v. BURGESS** (1927), 137 L. T. 530; 91 J. P. 133; 43 T. L. R. 561; 25 L. G. R. 378; 28 Cox, C. C. 425, D. C.

464b. ——— **Distribution of circulars advertising lottery.**—Resp. employed canvassers to call from house to house, inviting persons to undertake to buy tea from her regularly. Each week the canvassers carried with them handbills which declared that: "To advertise our famous tea we will distribute among our customers cash gifts of £3 & £6," as the purchaser bought one or two packets of tea per week. The circular continued: "Each customer's name is entered in rotation in

our ledger & cash gifts are paid out accordingly." The names & addresses of new customers were entered in the ledger in the exact order in which they had been obtained, the list of one canvasser's customers on his return to the office being completely entered before that of the next was begun. Resp. awarded her bonus each week to the next customer whose name was on the list after that of the customer last to receive a bonus, provided that the customer was still regularly buying the tea. The names of customers who ceased to buy the tea weekly were struck out of the list, thus advancing the names of customers below them. It was stated in one of the circulars that during the twenty-four weeks ending in June, 1928, resp. had paid out £1,920 by way of bonus gifts. Applt., a superintendent of police, preferred an information against resp., charging her with publishing a proposal or scheme for the sale of chances in a lottery not authorised by Act of Parliament, contrary to above Act. The stipendiary magistrate dismissed the information holding that resp. had not published a proposal or scheme for the sale of chances in a lottery:—**Held**: there were no materials to justify the magistrate in so holding. The case must be remitted to him with the direction to convict.—**HOWGATE v. RALPH** (1929), 141 L. T. 512; 93 J. P. 127; 45 T. L. R. 426; 73 Sol. Jo. 253; 27 L. G. R. 432, D. C.

of accused under second part of Indian Penal Code, s. 294A:—**Held**: the scheme published by accused for distribution of prizes by lot or chance amounted to a lottery.—**EMPEROR v. VAZIRALLY** (1928), 1 L. R. 53 Rom. 57. —**IND.**

n i. ——— **Bonds in series**—*Payment not dependent on knowledge or skill.*—In a prosecution for a contravention of Lotteries Act, 1823, it was established that the promoters had formed & put into execution a scheme for the sale of bonds, each of which entitled the holder on certain conditions to £150. To qualify for this sum a participant had first to obtain a bond at the cost of 1s. either from the promoters or from a friend. This was the parent of a family of bonds which was brought into existence by a process of sub-sales. The holder of the parent bond had to buy from the promoters four bonds for 3s. & to sell them to four friends for 1s. each. These four bonds were the first generation, & each of the four holders of them had to repeat the same process, thus bringing the second generation of sixteen bonds into existence. The process had to be repeated until the sixth generation of 4096 bonds had come into existence, making, for the complete series, 5461 bonds. On the occurrence of this event the holder of the parent bond became entitled to £150. Not only was each individual bond a member of a family of bonds, but it could itself become the parent of a new family, & the holder of it was entitled to £150 as soon as its sixth generation was completed:—**Held**: the scheme was a lottery, in respect that the occurrence of the event upon which payment fell to be made could neither be approximately predicted nor materially influenced by the

exercise of any knowledge, experience, art, or skill on the part of the holder of the parent bond.—**BARNES v. STRATHERN**, [1929] S. C. (J.) 41. —**SCOT.**

p i. ——— *Not dependent on skill alone.*—The chance, which the prohibition in Criminal Code, s. 236, evidence that tickets & other paraphernalia suitable for lottery purposes were found on the premises of the accused does not amount to a *prima facie* case.—**R. v. WONG SIM**, [1929] 1 D. L. R. 240; 50 Can. Crim. Cas. 231; [1928] 3 W. W. R. 492.—**CAN.**

b (p. 454) i. ——— *Conducting "suit clubs."*—**Held**: a violation of Criminal Code, s. 236 (c) (d).—**R. v. A. D. MURRAY TAILORING, LTD.**, [1925] 3 W. W. R. 483; 44 Can. Crim. Cas. 346. —**CAN.**

b (p. 454) ii. ——— *Club distributing "chances" for prizes with membership cards.*—**Held**: a violation of Criminal Code, s. 236.—**R. v. GRATTON** (Ont.) (1926), 46 Can. Crim. Cas. 41.—**CAN.**

b (p. 454) iii. ——— *Giving purchasers of goods tickets for club—Club distributing prizes.*—**Held**: a violation of Criminal Code, s. 236.—**R. v. RODRICK** (Ont.) (1926), 45 Can. Crim. Cas. 110.—**CAN.**

b (p. 454) iv. ———.]—**R. v. UNITED PROFIT SHARING SYSTEM, LTD.** (Ont.), [1927] 4 D. L. R. 619; 48 Can. Crim. Cas. 154.—**CAN.**

sq. *Conducting lottery—Sufficiency of evidence—Finding of tickets & para-*

*phernalia.*—Where a charge is laid under Criminal Code, s. 236, evidence that tickets & other paraphernalia suitable for lottery purposes were found on the premises of the accused does not amount to a *prima facie* case.—**R. v. WONG SIM**, [1929] 1 D. L. R. 240; 50 Can. Crim. Cas. 231; [1928] 3 W. W. R. 492.—**CAN.**

#### PART IV. SECT. 3.

st. *Art unions—Whether exempt under Criminal Code, s. 236.*—**R. v. LEBLANC** (Ont.) (1926), 46 Can. Crim. Cas. 38.—**CAN.**

#### PART IV. SECT. 5, SUB-SECT. 1.

q i. ———.]—Defts. conducted in public a series of games known as "diggers' bagatelle." Bystanders were invited to take part in each game on payment of threepence to defts. The winner of a game received from defts. the sum of ninepence, & became entitled to join in the next game without charge:—**Held**: defts. did not thereby "dispose" of any "property" within Police Offences Act, 1915, s. 88 (b).—**DEELEY v. McEVoy**, [1928] V. L. R. 117; [1928] Argus L. R. 47.—**AUS.**

sw. *Sale of gambling device.*—A violation of Criminal Code, s. 236 (b), may be proved, although there is no evidence that at the time of the sale of the device in question, e.g., a punch board, there was a conscious arrangement between the buyer & seller that some property would be disposed of by chance by means of the device. The essential inquiry is, what is the purpose or known intended use of the device.—**R. v. HEISE**, [1926] 1 D. L. R. 60; [1925] 3 W. W. R. 724.—**CAN.**



## Part V.—Races and Racecourses.

472. *Add. Annotation* :—**Refd.** Weddle, Beck v. Hackett, [1929] 1 K. B. 321.
479. *Add. Annotation* :—**Distd.** Ellesmere v. Wallace, [1929] 2 Ch. 1.
483. *Add. Annotation* :—**Refd.** Ellesmere v. Wallace, [1929] 2 Ch. 1.
484. *Add. Annotation* :—**Refd.** Ellesmere v. Wallace, [1929] 2 Ch. 1.

## Part VI.—Competitions.

496. *Add. Annotation* :—**Distd.** Suttle v. Cresswell (1925), 42 T. L. R. 75.
497. *Add. Annotation* :—**Refd.** Suttle v. Cresswell (1925), 42 T. L. R. 75.
498. *Add. Annotation* :—**Apld.** Suttle v. Cresswell (1925), 42 T. L. R. 75.
501. *Add. Annotation* :—**Refd.** Suttle v. Cresswell (1925), 42 T. L. R. 75.
502. *Add. Annotation* :—**As to (3) Refd.** Greenberg v. Cooperstein, [1926] Ch. 657.
- 504a. ——— **Determination of order of popularity of specified articles.**—[The proprietors of a number of commodities organised, for advertisement purposes, a competition in which customers were asked to place thirteen named articles in the order of their popularity as shown by the actual voting of the entrants themselves. A number of money & other prizes were offered to those whose lists most nearly agreed with that shown by the voting as a whole. No entrance fee was charged, but each entrance form had to be accompanied by part of a bag or wrapper from one of the named articles:—*Held*: since the competitors were not asked to judge the real merits of the articles but to guess how other people would guess at their popularity, there was material on which a magistrate was justified in finding that the result depended entirely on chance & in convicting the advertising manager of the promoters of an offence under Lotteries Act, 1823 (c. 60), s. 41. —**HOBBS v. WARD** (1929), 93 J. P. 163; 45 T. L. R. 373; 27 L. G. R. 119, D. C.]
505. *Add. Annotation* :—**Apld.** Hobbs v. Ward (1929), 93 J. P. 163.
506. *Add. Annotation* :—**Distd.** Hobbs v. Ward (1929), 93 J. P. 163.

### PART V. SECT. 1, SUB-SECT. 3.

*sy. Coursing—Use of mechanical hare*—*Whether within Gaming & Betting Act, 1912, s. 7.*—[Resp. attended a licensed racecourse on which a sport consisting of the pursuit of a mechanical hare by dogs was held, & made bets on several of the dogs. He was charged before a magistrate with an offence under above sect., & the magistrate held, as a matter of law, on the evidence before him, that the pursuit of a mechanical hare by dogs was "coursing" within above sect., & dismissed the information:—*Held*: the pursuit of a mechanical hare by dogs was not "coursing" within above sect., & the determination of the magistrate was erroneous in point of law.—**KEILSO v. McLACHLAN** (1928), 28 S. R. N. S. W. 510; 45 N. S. W. N. 113.—**AUS.**

### PART V. SECT. 3.

484 i. *Finality of decision*—*Absence of final decision.*—[Where a challenge cup, to be won in a bicycle race between competing clubs, was held by trustees under an instrument of trust, by which all arrangements pertaining to the course, race, protests & matters "connected with the welfare of the cup" were to be decided by the trustees according to certain rules, the cl.,

upon the mere allegation of fraud, & before any decision of the trustees, refused to exercise jurisdiction restraining the trustees from parting with the cup to an alleged winner under protest, upon the ground that one of the winning riders did not go round the course, that being a matter of fact for the decision of the trustees.—**ROSS v. ORR** (1891), 25 O. R. 595.—**CAN.**

484 ii. ——— *Appeal to committee of Turf Club—Powers of committee.*—[**MONTGOMERY v. LEE SPELRE** (1926), 29 W. A. L. R. 70.—**AUS.**

### PART VI. SECT. 1.

d i. ——— *Receipt of money with coupons—Whether offence under Street Betting Act.*—[In a complaint under Street Betting Act, 1906, it was proved that accused received in the street from various persons a large number of slips accompanied by sums of money. The slips were odd pieces of paper, upon each of which were written the names of at least one group of eight football teams, to which was added a name, number or other symbol, for identifying the sender of the slip. Accused did not submit lists of football teams for the purpose of selection, the names of such teams being selected by the senders of the slips from lists

of teams advertised or reported in the public press to play on the Saturday following the date on which the slips were received by accused. The teams selected were those which the senders of the slips predicted would be winning teams on that Saturday. Along with each slip was sent, i.e., the understanding being that, after the results of the matches were published, accused would examine the forecasts made, & thereafter would deduct from the money received a sum in name of commission, & hand over the balance to the person sending in the correct forecast if only one forecast was correct, or, if more than one forecast was correct, an equal share of such balance to each of the senders of correct forecasts. If no correct selection was sent in, there was no distribution, & the whole contributions were carried forward to the next week; which procedure was repeated until a correct forecast was made, or until the end of the football season arrived, when if there had been no correct selection received, the money in hand, less a commission to the accused, was distributed among those who had sent in. —*Held*: accused was engaged in betting transactions & was guilty of an offence under Street Betting Act, 1906.—**YETTS v. McQUILKIE**, [1928] S. C. (J.) 54.—**SCOT.**

## GAS.

## Part II.—Lands and Works.

10. *Add. Citations* :—94 L. J. Ch. 382 ; 133 L. T. 565 ; 89 J. P. 177 ; 23 L. G. R. 525.

15a. ——— *Country road.*]—The word “street,” as used in Gasworks Clauses Act, 1847 (c. 15), s. 6, is not necessarily confined to what is ordinarily known as a street, &

over which there is a public right of way. A country lane with certain residences abutting upon it may be a street, although it has not been dedicated to the public & no public right of way exists.—*DAVIES v. RIPON CORPN.*, [1928] Ch. 884 ; 97 L. J. Ch. 479 ; 139 L. T. 636 ; 92 J. P. 153 ; 26 L. G. R. 530.

## Part III.—Supply of Gas.

31. *Add. Annotation* :—*Refd.* *Scammell v. Hurley*, [1929] 1 K. B. 419.

37. *Add. Annotation* :—*Refd.* *R. v. Electricity Comrs.*, *Ex p. Yorkshire Electric Power Co.* (1927), 91 J. P. 191.

48. *Add. Annotation* :—*Mentd.* *Re Quintin Dick, Cloncurry v. Fenton*, [1926] Ch. 992.

51a. *Duration of agreement to supply—Power to terminate.*]—In 1906 a co. was incorporated by statute to supply gas in a certain area in the place of a limited co., & by sect. 7 the statutory co. took the benefit of all contracts & engagements of the limited co. which had been supplying gas to the defts., an urban council, for public lighting. In 1909 the co. entered into an agreement under seal with the council in which it was recited that before the passing of the Act “it was agreed by & between the predecessors of the gas co. & the council that the agreement then in force for public lighting should continue to remain in force & be binding on both parties until the council should determine the same,” & that “it has been deemed desirable by the said parties hereto that the terms of the said agreement for the public lighting shall be set out as hereinafter mentioned.” By the

operative part of the agreement the co. agreed to light all the public lamps within the district “from & after the first day in Sept. in every year up to the following first day of May inclusive” on certain terms ; & provisions were made for increasing the number of lamps. There was no provision as to the period for which the agreement was to run or giving either party a right to determine it. By a supplemental agreement dated June 30, 1921, the times of lighting & the charges were varied, & clause 1 (c) provided that new lanterns supplied by the co. should become the property of the council without payment after fifteen years if the agreements continued for so long, “& if the said agreements be determined before the expiration of such period” the council were to pay for them. On Apr. 30, 1927, the council gave notice to determine the agreement on Aug. 31, 1927 :—*Held* : having regard to the recitals in the original agreement & clause 1 (c) of the supplementary agreement & to the nature of the contracts they were determinable by notice.—*CREDITON GAS CO. v. CREDITON URBAN DISTRICT COUNCIL*, [1928] Ch. 447 ; 97 L. J. Ch. 184 ; 138 L. T. 723 ; 92 J. P. 76 ; 44 T. L. R. 369 ; 72 Sol. Jo. 225 ; 26 L. G. R. 325, C. A.

## Part IV.—Protection of Property of Undertakers.

62. *Add. Annotation* :—*As to* (2) *Refd.* *Brooke v. Bool*, [1928] 2 K. B. 578.

## PART III. SECT. 2, SUB-SECT. 6.

*sa.* *Refusal to pay increased rates—Right to cut off gas.*]—*Held* : Natural Gas Conservation Acts, 1921 (c. 17), & 1922 (c. 23), were valid.—*SANDWICH v. UNION NATURAL GAS CO. (Ont.)*, [1925] 4 D. L. R. 795 ; *affg.*, [1925] 2 D. L. R. 707 ; 56 O. L. R. 399.—*CAN.*

## PART IV. SECT. 2, SUB-SECT. 1.

62 i. *Gas main—Damage by sub-*

*sidence.*]—A gas co. opened a street in a city & laid down a gas main. The city corpn. constructed an underground drain, & by reason of a subsidence of the drain, the gas main was broken. The co. opened the street & repaired the gas main & the corpn. reinstated the drain & roadway. In an action by which the corpn. sought to recover from the co. the cost of such reinstatement, the co. by counterclaim sought to recover from the corpn. the

cost of repairing the gas main :—*Held* : the liability of the corpn. for the damage to the gas main depended upon negligence in the exercise of its statutory powers causing unnecessary damage to the co., & the *onus* of proving such negligence had not been discharged by the co.—*METROPOLITAN GAS CO. v. MELBOURNE CORPN.*, [1925] V. L. R. 132 ; 35 C. L. R. 186 ; 31 Argus L. R. 25.—*AUS.*

## Part V.—Negligence and Nuisance.—Liability of Undertakers.

99. *Add. Annotation* :—**Refd.** *Sheffield Corpn. v. Kitson*, [1929] 2 K. B. 322.

## Part VIII.—Gas Supply in the Metropolis.

114. *Add. Annotation* :—**Consd.** *A.-G. v. County of London Electric Supply Co.*, [1926] Ch. 542.

125. *Add. Annotation* :—*As to* (1) **Consd.** *Salis-*

*bury & Fordingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd.*, [1927] 2 K. B. 566.

### PART V. SECT. 1, SUB-SECT. 1.—B.

q. For "*Escape of gas from gas main*"  
read "*Escape of gas—From gas main.*"

q i. ——— *During installation of gas connections—Destruction of buildings by fire following explosion.*—*Held* : the

gas co. were liable.—**CONSUMERS' GAS Co. v. R.**, [1927] 1 D. L. R. 564 ; [1926] S. C. R. 709.—**CAN.**

## Part II.—Capacity to Give and to Receive Gifts.

### Part III.—Gifts inter vivos.

171. *Add. Annotation :—Consd. Re Wilkinson, Page v. Public Trustee, [1926] Ch. 842.*

**172 v.** ————.]—A present made by an engaged man to his fiancée, in view of marriage, & intended for the use of both of them during their courtship & after their marriage, is recoverable by his personal representative where he dies before the marriage & during the continuance of the engagement.—**SHEPPARD v. ROBINSON, [1928] 3 D. L. R. 347; [1928] 2 W. W. R. 235; 23 Alta. L. R. 461—CAN.**

172. *Add. Annotation* :—**Consd.** *Cohen v. Sellar*, [1926] 1 K. B. 536.
173. *Add. Annotation* :—**Consd.** *Cohen v. Sellar*, [1926] 1 K. B. 536.
174. *Add. Annotation* :—**Consd.** *Cohen v. Sellar*, [1926] 1 K. B. 536.
175. *Add. Annotation* :—**Consd.** *Cohen v. Sellar*, [1926] 1 K. B. 536.

175a. ————.]—(1) If a man who has promised to marry a woman, & has given to her an engagement ring in contemplation of marriage, refuses without legal justification to carry out his promise, he cannot demand the return of the engagement ring.

(2) *Semble* : if a woman who has received an engagement ring in contemplation of marriage refuses to fulfil the conditions of

the gift & to carry out her promise, she must return the ring.

(3) *Semble* : if an engagement to marry be dissolved by mutual consent, then in the absence of an agreement to the contrary the engagement ring & like gifts must be returned by each party to the other.—**COHEN v. SELLAR**, [1926] 1 K. B. 536 ; 95 L. J. K. B. 629 ; 135 L. T. 21 ; 42 T. L. R. 409 ; 70 Sol. Jo. 505.

191. *Add. Annotation* :—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.

192. *Add. Annotations* :—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776. **Mentd.** *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681 ; *Addie R. & Sons (Collieries) v. Dumbreck*, [1929] A. C. 358.

## Part IV.—Incomplete Gifts.

206. *Add. Annotation* :—**Distd.** *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

227. *Add. Annotation* :—**Overd.** *Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

228. For the paragraph in original volume substitute the following paragraph :—

— **Non-payment due to suspicious signature—Subsequent death of donor.**—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—**Held** : the cheque not having been paid, there was no valid & effectual gift

of the money to the donee.—*Re SWINBURNE, SUTTON v. FEATHERLEY*, [1926] 1 Ch. 38 ; 95 L. J. Ch. 104 ; 134 L. T. 121 ; 70 Sol. Jo. 64, C. A.

*Compare* original volume, p. 542, No. 292.

259. *Add. Annotation* :—**Distd.** *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

268. *Add. Annotations* :—**Apld.** *Re Comberbach, Saunderson v. Jackson* (1929), 73 Sol. Jo. 403. **Refd.** *Jenkins v. Jenkins*, [1928] 2 K. B. 501.

269. *Add. Annotation* :—**Refd.** *Jenkins v. Jenkins*, [1928] 2 K. B. 501.

276a. ——— **Incomplete gift of real estate.**—*Re COMBERBACH, SAUNDERSON v. JACKSON* (1929), 73 Sol. Jo. 403.

## Part V.—Gifts mortis causa.

292. *Add. Annotation* :—**As to** (1) **Consd.** *Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

294a. ————.]—*Semble* : when testator, in his lifetime, hands over to a person a sum of money, & directs him, out of it, to pay the

expenses consequent on his sickness, & in case of death, his funeral expenses, such money does not pass under the will.—*In the Goods of TOOMY* (1864), 3 Sw. & Tr. 562 ; 34 L. J. P. M. & A. 3 ; 28 J. P. 824 ; 13 W. R. 106 ; 164 E. R. 1393.

### PART III. SECT. 8.

187 i. *Onus of proof on donee.—Grant purporting to be for consideration.*—

Where a conveyance or mtgo. is expressed to be for valuable consideration, but the fact is that none was paid, nothing but the clearest evidence can avail to show that a gift was intended. Where there is nothing but the instrument itself before the ct. from which to draw conclusions, it must be held to be the exclusive & conclusive evidence of the contract between the parties.—**JOHN DEERE PLOW CO., LTD. v. PETERS & SPOHN**, [1928] 3 W. W. R. 686.—**CAN.**

### PART III. SECT. 10, SUB-SECT. 2.

**sm. Gift of land subject to mortgage.**—Where a father makes a gift of land to his son, the presumption is that it is made subject to mtges. which then actually exist against the land, including a mtgo. which had not been

registered at the date of the gift.—**ORENCZUK v. DOLINSKY (Alta.)**, [1927] 3 W. W. R. 596.—**CAN.**

### PART IV. SECT. 1, SUB-SECT. 1.

**h i. —.**—**MORTON v. BRIGHOUSE**, [1927] 1 D. L. R. 1009 ; [1927] S. C. R. 118.—**CAN.**

### PART IV. SECT. 2, SUB-SECT. 1.—B.

**Document not completed.—Nor proved to be document made by donor.**—**REILLY v. WOODWORTH** (1924), 51 N. B. R. 153.—**CAN.**

### PART IV. SECT. 2, SUB-SECT. 2.

**Document not completed.**—**HOVEY v. FERGUSON** (1871), 18 Gr. 498.—**CAN.**

### PART IV. SECT. 2, SUB-SECT. 3.

**Re JENKINS & BRABIN v. VULCAN IRON WORKS, BRAY v. VULCAN IRON WORKS (B.C.)**, [1927] 1 D. L. R. 1099.—**CAN.**

### PART IV. SECT. 3.

**sp. Donor repossessing himself of transfer & certificate of title.—Before transfer registered.**—Registered owner of land, with intention of making a gift of it to S., delivered to the father of S. a transfer of the land to S. & the duplicate certificate of title. He subsequently repossessed himself of the transfer & certificate before S. had an opportunity to register the transfer which he destroyed :—**Held** : the mortgage gift to S. was effectually revoked & S. was not entitled to be recorded as owner of the land.—**SMITH v. SMITH** (1915), 19 D. L. R. 192 ; 31 W. L. R. 607 ; 8 W. W. R. 1077.—**CAN.**

### PART V. SECT. 1.

**sr. Grounds for setting aside.—Undue influence.—Gift by parishoner to parish priest.**—**BOHLEN v. WALKER**, [1928] 4 D. L. R. 630.—**CAN.**

327. *Add. Annotation*:—*Re*ld. *Re* Swinburne, Sutton v. Featherley (1925), 70 Sol. Jo. 64.

330a. ———.]—*Re* WHILE, WILFORD v. WHILE, [1928] W. N. 182.

331. *Add. Annotation*:—*Re*ld. *Re* Swinburne, Sutton v. Featherley (1925), 70 Sol. Jo. 64.

337a. ———.]—Where testator, in his last illness, said he wanted to leave something to C., & then directed her father to get mtge. deeds out of a box in his room, & said he should give the deeds for C., & handed them over to

her father:—*Held*: the gift was a good *donatio mortis causa*, & the donee was entitled to the money secured by the deeds.—*Re* PATTERSON, MITCHELL v. SMITH (1864), 10 L. T. 520; 10 Jur. N. S. 578; *on appeal*, 4 De G. J. & Sm. 422.

347. *Add. Citations*:—95 L. J. Ch. 204; 133 L. T. 465.

372. *Add. Annotation*:—*Re*ld. *Re* Swinburne, Sutton v. Featherley, [1926] Ch. 38.

399a. *Donee with access to keys*—*Presumption of fraud*.]—SIMMS v. COX (1824), 3 L. J. O. S. K. B. 44.

PART V. SECT. 2, SUB-SECT. 2.—A.

*st. Receipts issued to transferee of stock by Banks of England & Ireland.*]—Neither the receipt issued by the Bank of England to a transferee of India 5½ per cent. stock, 1932, which contained particulars of the consideration paid for the "interest or share in the stock transferred," nor the receipt issued by the Bank of Ireland to a transferee of 3 per cent. local loans stock, can be the subject of a *donatio mortis causa*.—*Re* M'WEY, RYAN v. CASHIN & COSTELLO, [1928] I. R. 486.—IR.

PART V. SECT. 2, SUB-SECT. 2.—B. (b).

311 xxiii. ———.]—A *donatio*

*mortis causa* may be made by the donor placing money upon deposit receipt in the joint names of himself & the donee. The handing of the deposit receipt to the donee is sufficient delivery, & a direction by the donor to the donee to make certain payments out of the money does not invalidate the gift.—FAYNE v. MARTIN (1924), 59 I. L. T. 14.—IR.

PART V. SECT. 2, SUB-SECT. 2.—B. (f).

341 i. *Life insurance policy—Document delivered to third party for donee.*]—*Held*: all the essential conditions of a valid & effectual *donatio mortis causa*

had been established.—NELSON v. PRUDENTIAL ASSURANCE CO., [1929] N. I. 113.—IR.

PART V. SECT. 3, SUB-SECT. 3.—B.

374 v. ———.]—The delivery by a person *in extremis* of the keys of his safe, accompanied by the words, "They lead to everything I have got, everything I have got is yours":—*Held*: to operate as a *donatio mortis causa* of the things in the safe other than the money in a bank represented by a pass book found in the safe.—CUBACK v. DAY, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—CAN.

# GUARANTEE AND INDEMNITY.

## Part I.—Characteristics of Guarantee.

13. *Add. Annotation* :—*Generally*, **Mentd.** *Re* Harrington Motor Co. (1927), 44 T. L. R. 58.

## Part II.—Requisites of Guarantee.

41. *Add. Annotation* :—**Distd.** *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
121. *Add. Annotation* :—**Refd.** *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
134. *Add. Annotation* :—**Refd.** *Hall v. I. R. Comrs.* (1926), 135 L. T. 759.

## Part III.—Proof of Guarantee.

185. *Add. Annotation* :—**Mentd.** *Houghton v. Not-hard, Lowe & Wills* (1927), 44 T. L. R. 76.
257. *Add. Annotation* :—**Refd.** *Royal Exchange Assee. v. Hope*, [1928] Ch. 179.
295. *Add. Annotation* :—**Apld.** *Farr, Smith v. Messers* (1927), 44 T. L. R. 48.
323. *Add. Annotation* :—**Refd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Française* (1926), 42 T. L. R. 735.
345. *Add. Annotations* :—**Distd.** *Reckitt v. Barnett, Pembroke & Slater*, [1929] A. C. 176. **Refd.** *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.

## Part IV.—Interpretation.

368. *Add. Annotation* :—**Mentd.** *Royal Exchange Assee. v. Hope*, [1928] Ch. 179.
407. *Add. Annotation* :—**Mentd.** *Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.
421. *Add. Annotation* :—**Refd.** *Allen v. Royal Bank of Canada* (1925), 95 L. J. P. C. 17.

### PART I.

b i. ——— *Original distinguished from collateral contract.*—**IC** THOMSON, [1927] 2 D. L. R. 254; 60 O. L. R. 165.—**CAN.**

13 i. ———.]—The mere fact that a particular agreement may terminate in a liability for the debt of another does not make it a guarantee instead of an indemnity where the former is not its immediate or main object.—**MCPHERSON v. FORLONG**, [1928] 3 W. W. R. 45; 37 Man. L. R. 508.—**CAN.**

sa. *Distinguished from direction to furnish goods on credit of principal.*—**GRASSETT v. HUTCHINSON** (1860), 10 C. P. 265.—**CAN.**

### PART II. SECT. 1.

so. *Fidelity guarantee—Primary obligation of principal.*—**R. v. BLACK** (Ont.) (1899), 8 Exch. C. R. 236.—**CAN.**

### PART II. SECT. 3, SUB-SECT. 2.

44 ii. ——— *For benefit of third party.*—Where a married woman signs an instrument at the request of her husband, not for his benefit, but for the accommodation of a friend or relative of his, the evidence necessary to prove that undue influence was exercised by the husband must be

much stronger than would be necessary had the signature been obtained for the husband's benefit.—**WATKINS (J. R.) Co. v. NOBERT (Alta.)**, [1926] 1 D. L. R. 526; [1926] 1 W. W. R. 156.—**CAN.**

——— *For benefit of husband.*—**See HUSBAND & WIFE**, Nos. 1370 I, 1370 II, *post*.

### PART II. SECT. 4, SUB-SECT. 1.

55 vi. ———.]—**CAMPBELL v. McISAAC** (1873), 9 N. S. R. (3 G. & O.) 287.—**CAN.**

### PART II. SECT. 4, SUB-SECT. 3.—A.

sd. *Agreement by bailee to deliver goods to purchaser—Promise by vendor to indemnify bailee against loss if goods not according to contract.*—**Held**: the agreement to deliver, and not the delivery itself, formed the consideration for the promise to indemnify.—**CUNNARD v. PLUMMER** (1844), 4 N. B. R. (2 Kerr.) 418.—**CAN.**

### PART III. SECT. 1, SUB-SECT. 1.—A.

so. *Verbal agreement of guarantee or suretyship.*—**Held**: unenforceable because of Stat. Frauds.—**DOYLE v. MCKINNON**, [1925] 3 D. L. R. 334; 57 O. L. R. 104.—**CAN.**

### PART III. SECT. 1, SUB-SECT. 1.—B.

sf. *Promise to guarantee dividend & stock.*—**Held**: not a guarantee to which Stat. Frauds, R. S. O., 1914 (c. 102), s. 6, applied.—**QUANCE v. BROWN**, [1926] 2 D. L. R. 824; 58 O. L. R. 578.—**CAN.**

### PART III. SECT. 1, SUB-SECT. 2.—A.

196 iii. ———.]—**TUTTER v. CROWE** (1862), 15 N. S. R. (3 R. & G.) 261.—**CAN.**

sh. *Representations within C. S. U. C., c. 46, s. 10—As to solvency of trader—Necessity for writing.*—**McLEAN v. DUN** (1877), 1 A. R. 153.—**CAN.**

### PART III. SECT. 2, SUB-SECT. 2.

263 i. *Promise to stranger—Surety, guarantor or bail.*—A promise to indemnify one who is a surety, guarantor or bail for a third person is not within Stat. Frauds.—**MCPHERSON v. FORLONG**, [1928] 3 W. W. R. 45; 37 Man. L. R. 508.—**CAN.**

### PART IV. SECT. 2, SUB-SECT. 1.

sj. *To supply name of principal debtor—Not admissible.*—**IMPERIAL BANK OF CANADA v. NIXON**, [1926] 4 D. L. R. 1052; 59 O. L. R. 538.—**CAN.**

479. *Add. Annotation*:—**Refd.** *Smith v. Wood* (1928), 139 L. T. 250.

483. *Add. Annotation*:—*Generally*, **Mentd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602.

571. *Add. Annotation*:—*As to* (3) **Refd.** *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

574. *Add. Citation*:—11 Exch. 623.

587. After this case add “— **Sufficiency of consideration.**”—*See* LANDLORD & TENANT, No. 4142a.”

628. *Add. Annotation*:—**Apld.** *Re Houlder*, [1929] 1 Ch. 205.

631. *Add. Annotation*:—**Distd.** *Re Houlder*, [1929] 1 Ch. 205.

679. *Add. Annotations*:—**Refd.** *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. R. 244. **Mentd.** *Kreditbank Cassel (i. m. b. H. v. Schenkens*, [1927] 1 K. R. 826.

**782a.** ————.]—BECKETT v. BOOTH (1708), 2 Eq. Cas. Abr. 595; 22 E. R. 500, L. C.  
**809.** Add. Annotation :—**Refd.** Smith v. Wood (1928), 139 L. T. 250.  
**815.** Add. Annotation :—As to (2) **Apld.** Smith v. Wood (1928), 139 L. T. 250.  
**824.** Add. Annotation :—As to (2) **Refd.** Smith v. Wood (1928), 139 L. T. 250.  
**849.** Add. Annotation :—**Apld.** Re Houlder, [1929] 1 Ch. 205  
**851.** Add. Annotation :—**Apld.** Re Houlder, [1929] 1 Ch. 205.

876. *Add. Annotation* :—**Mentd.** Akt. Dampskibs Steinstad v. Pearson (1927), 137 L. T. 533.

898. *Add. Annotation* :—**Refd.** *Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

902. *Add. Annotation* :—**Generally**, **Refd.** *Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

907. *Add. Annotation* :—**As to** (1) **Refd.** *Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

913. *Add. Annotation* :—**Refd.** *Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

**449 i. Disposition by surety of property**—*To evade liability*—*Void.*—A guarantor is not more justified in placing the whole of his property out of the reach of liability to pay the debt than is the principal debtor.—*BLUDOW v. OSACHOFF*, [1928] 3 D. L. R. 170; [1928] 2 W. W. R. 150; 22 Sask. L. R. 533.—**CAN.**

**k i.** — *Given for due performance of duties by inspector—Inspector liable for default of his deputy—Deputy also covered by guarantee.*—**VERRATT v. McAULAY** (1884), 5 O. R. 313.—**CAN.**

**sk.** Under guarantee for payment of compensation for land compulsorily acquired.]-MURRAY v. THOMPSON, 3 Ont. Dig. 5953-4.—CAN.

sm. —.]—HENRY Co., LTD. v. BIRMINGHAM (1909), 7 E. L. R. 163.—CAN.

so. —.]—HIGBY v. CUMMINGS (1853), 10 U. C. R. 222.—CAN.

**sq.** Notice by surety to creditor—Asking for limitation of liability to fixed sum—Not acted upon by creditor—Effect of.]—

st. — *Money received by de facto sheriff colore officiu.*]—**KENT v. MERCER** (1862), 12 C. P. 30.—**CAN.**

sv. Admissibility of parol evidence.—To show liability limited to specific transactions.]-The guarantee bonds in question herein which were given to pltf. bank held to be on the face of them continuing guarantees, &, therefore, parol evidence was not admissible to show that the liability thereunder was intended to be limited to certain specific transactions.—CANADIAN BANK OF COMMERCE v. KOFFMAN & (HERRY), [1928] 4 D. L. R. 87; [1928] 2 W. W. R. 662.—CAN.

sw. *Inspector*.—*Default of deputy inspector.*—*Held*: the surety was liable, & the fact of there being a remedy also on the deputy inspector's bond was no answer.—*VERRATT v. MCAULAY* (1884). 5 O. R. 313.—*CAN.*

5x. After judgment by default—*Whether amendment allowed.*—SCOTT v. M'DONALD (1841), 6 O. S. 238.—CAN.

728 ii. ——— ——— ———.)—*Re THOM.*

**PART VI. SECT. 3, SUB-SECT. 3.**  
 775 ii. ———.]—REVILLON  
 WHOLESALE, LTD. v. NEMIRSKY, [1926]  
 2 D. L. R. 374; [1926] 2 W. W. R. 166;  
 7 C. B. R. 583.—CAN.

782 iv. ———— *Against assignee of interest in security.*]—GARRETT v. JOHNSTONE (1867), 13 Gr. 36.—CAN.

782 v. ——— *Rights of mortgagee of surety.*—QUAY v. SOUTHWORPE (1869), 16 Gr. 449.—CAN.

782 vi. ———— *Further advance by creditor to debtor.*—*Re* HAMILTON TRUSTS (1895), 10 Man. L. R. 573.—CAN.

822 i. *Assignment of judgment.*] —  
SMITH v. BURN (1880), 30 C. P. 630.—  
CAN.

sz. *Where land transferred as security.*  
—SCHULTZ v. CAN. SURETY CO. (Alta.),  
[1927] 2 D. L. R. 580.—CAN.

g. ———.]—SUTTON v. HINCH (1910),  
19 Man. L. R. 705.—CAN.

937 iv. ———.]—READ v.  
McLEAN. [1925] 3 D. L. R. 716.—CAN.



947. *Add. Annotation*:—**Refd.** *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.  
996. *Add. Annotation*:—**Mentd.** *Biddulph & Dis-*

*trict Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 578.

## Part VIII.—Rights and Liabilities of Co-Sureties inter se.

1115a. *Form of order.*—**KENT v. ABRAHAMs**, [1928] W. N. 266; 66 L. Jo. 323.

## Part IX.—Determination of the Guarantee.

1149. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.  
1177. *Add. Annotation*:—**Distd.** *Re Houlder*, [1929] 1 Ch. 205.  
1186. *Add. Annotation*:—**As to** (3) **Consd.** *Smith v. Wood* (1928), 139 L. T. 250.  
1200. *Add. Annotation*:—**Distd.** *Midland Motor Showrooms v. Newman*, [1929] 2 K. B. 256.  
1200a. ——— **Hire-purchase agreement.**  
—Pltfs. were the assignees of the rights of the R. Co. under a hire-purchase agreement dated July 6, 1927, whereby the co., "the owners," agreed to let to one T., "the principal," a motor car on the terms that he should be at liberty to purchase the car at a fixed price, paying as a first payment £22 6s. 8d., & thereafter monthly payments of £14 3s. 4d., until the whole was paid. The payments by the principal under this agreement were guaranteed by deft. as surety under a document signed by her on July 6, 1927. The principal afterwards fell in arrears

in payment of the monthly instalments, & on Feb. 3, 1928, he wrote to the owners offering a cheque for £20 drawn by a friend in part payment. On Feb. 4 the owners wrote accepting this cheque & stipulating that the rest of the arrears should be paid within one month. The cheque was sent to the owners, but the arrears, which amounted to £79, were not paid within one month, & the owners then took back the car, acting upon their powers under the hire-purchase agreement. On Sept. 18, 1928, the owners assigned their rights under that agreement to pltfs., who claimed £122 in all from deft. as surety:—**Held**: (1) there was a binding contract by the owners to give time to the principal debtor; (2) the liability for payments under the hire-purchase agreement was one & indivisible, & deft. was entirely discharged from her suretyship.—**MIDLAND MOTOR SHOWROOMS v. NEWMAN**, [1929] 2 K. B. 256; 98 L. J. K. B. 490; 141 L. T. 230; 45 T. L. R. 499, C. A.

### PART VII. SECT. 4, SUB-SECT. 4.

964 i. *Rights after debtor discharged.—Debt due before discharge.—Payment by surety after.*—K. was surety for payment of a debt due by G. to D. G. applied to be declared insolvent & in due course G. was discharged. D. then sued K. & got a decree against him. Thereafter K. sued G. for recovery of the amount which he had been compelled to pay:—**Held**: the order of discharge was a bar to the suit.—**GANGADHAR v. KANHAI** (1928), 1 L. R. 50 All. 606.—**IND.**

**HOFFMAN & BANK OF MONTREAL v. HENSCHEL**, [1928] 2 D. L. R. 543; [1928] 1 W. W. R. 763.—**CAN.**

### PART VIII. SECT. 2, SUB-SECT. 2.—B. (a).

1058 iv. ———.—The fact that a settlement made by some of a number of co-sureties with their creditor has not been agreed to by all the co-sureties or fixed by judgment does not prevent those who have made the settlement & paid thereunder from enforcing contribution from the others, if the latter, although notified of & invited to take part in the negotiations for settlement, did nothing & made no protest with respect thereto.—**STEWART v. BRAUN**, [1925] 2 D. L. R. 423; [1925] 1 W. W. R. 871.—**CAN.**

1058 v. ———.—**McNEILL v. SHORT (Alta.)**, [1926] 4 D. L. R. 951.—**CAN.**

1058 vi. ———.—**CADWELL v. CAMPEAU** (1912), 21 O. W. R. 263; 3 O. W. N. 616; 3 D. L. R. 555.—**CAN.**

1058 vii. ———.—**TUCKER v. BENNETT**, [1927] 2 D. L. R. 42; 60 O. L. R. 118.—**CAN.**

### PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1068 i. *Revsd.*, 35 C. L. R. 48.

### PART VIII. SECT. 2, SUB-SECT. 4.—B.

1116 i. *Application of Mercantile Laws Amendment Act, 1856 (c. 97), s. 5.—Assignment of judgment.—Necessity for leave to issue execution.*—Where a creditor takes judgment against two

or more sureties & issues execution against each, & one of them pays the judgment, the surety so paying is entitled to stand in the place of the creditor & carry on, in his own name, any proceedings already taken to enforce the judgment against the other surety until he receives the amount of the other's contributive share, & he is not required to obtain leave to issue execution in his own name.—**FAST v. ZARCHEKOFF**, [1926] 4 D. L. R. 355; [1926] 2 W. W. R. 577; 20 Sask. L. R. 596.—**CAN.**

### PART IX. SECT. 2, SUB-SECT. 1.—A. 1179 vii. ———.—**NASH-SIMINGTON CO., LTD. v. THOMAS (Sask.)**, [1926] 2 D. L. R. 462.—**CAN.**

a i. ———.—**Held**: the surety was not released from his guarantee.—**DUNN v. THICKETT (Man.)**, [1925] 3 W. W. R. 736.—**CAN.**

a ii. ———.—**WINSLOW v. VEINER** (1890), 30 N. B. R. 150.—**CAN.**

### PART IX. SECT. 2, SUB-SECT. 1.—C. (b).

st. *Surrender of some chattels bought under lien note.—No detriment to value of chattels.*—**Held**: the surety who signed the note was not released.—**TOOVEY v. BROCK & BROCK** (1916), 34 W. L. R. 973.—**CAN.**

sk. *Sale of goods exceeding stipulated amount.*—**Held**: the sureties were not liable.—**TEXAS CO. (S. A.), LTD. v. WEBB & TOMLINSON** (1927), 48 N. L. R. 24.—**S. AF.**

### PART VII. SECT. 4, SUB-SECT. 6.

sa. *On debtor's property.—Agreed to be deposited in bank to meet surety's promissory notes.—Property garnished by creditor.*—A surety having been called upon to pay the principal's debt, paid the creditor part of it in cash & gave him his promissory notes for the balance. The principal, who was selling his house, repaid the surety out of the proceeds the cash previously paid by him & promised to deposit the balance of the proceeds in a bank to the joint credit of the surety & himself. Instead of doing so, he deposited it in his own name & it was garnished by pltf. when the notes given by the surety were not yet due & were still unpaid. On an interpleader issue between the garnisher & the surety who contended that there had been an equitable assignment of the money so deposited:—**Held**: said promise was nothing more than a voluntary one, never carried to completion, & therefore, unenforceable as against the claims of the principal's other creditors.—

- If there is, in fact, in the possession of the creditor such a counter-security, it is the duty of the creditor, whether its existence is known to the surety or not, to exercise reasonable care in maintaining it for the benefit of the surety, so as to be available, unimpaired by reason of any negligence, on the discharge of the debt. If he fails in this duty, the surety is entitled to credit against his liability for the damages suffered by such breach of duty by the creditor.—NORTHERN BANKING CO., LTD. v. NEWMAN & CALTON, [1927] 1 R. 520.—IR.

1506. *Add. Annotation* :—**Mentd.** A.-G. v. Pritchard (1928), 97 L. J. K. B. 561.
1520. *Add. Annotation* :—**Mentd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149; Leitch v. Emmott, [1929] 2 K. B. 236.
1523. *Add. Annotation* :—**Refd.** Morris v. Harris, [1927] C. A. 252.
1561. *Add. Annotation* :—**Refd.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
1570. *Add. Annotations* :—**Refd.** Firm of R. M. K. R. J. v. Firm of M. R. M. V. L. (1926), 95 L. J. P. C. 197; Pirie v. Richardson (1926), 70 Sol. Jo. 1023; Cumberland v. Lanarkshire Tram Co. (1927), 20 B. W. C. 780; Jenkins v. Jenkins, [1928] 2 K. B. 501.
1571. *Add. Annotations* :—**Mentd.** Bennett v. Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., [1926] A. C. 761; Pirie v. Richardson (1926), 70 Sol. Jo. 1023; Hardie & Lane v. Chiltern (1927), 96 L. J. K. B. 773.
1576. *Add. Annotation* :—**Refd.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
1577. *Add. Annotation* :—**Refd.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
1582. *Add. Annotation* :—*As to* (2) **Consd.** Smith v. Wood (1928), 139 L. T. 250.
1608. *Add. Annotation* :—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills v. Barnes (1926), 95 L. J. Ch. 487.
1643. *Add. Annotation* :—**Mentd.** Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.

## Part X.—Avoidance of the Guarantee.

1739. *Add. Annotation* :—**Mentd.** Hong Kong & Shanghai Bank v. Lo Lee Shi, [1928] A. C. 181.

## Part XII.—Indemnity.

1745. *Add. Annotation* :—**Refd.** Wiggins v. Lavy (1928), 44 T. L. R. 721.
1784. *Add. Annotation* :—**Mentd.** H. v. H., [1928] P. 206.
1787. *Add. Annotation* :—**Refd.** Pontypridd Grdns. v. Drew, [1926] 1 K. B. 567.
1789. *Add. Annotation* :—**Refd.** Pontypridd Grdns. v. Drew (1926), 95 L. J. K. B. 1030.

### PART IX. SECT. 2, SUB-SECT. 8. B.

1480 i. *Release of mortgage debt.*—*Held*: the surety was not liable under the guarantee.—ORCHINSON v. SCHLAEPFER, [1924] N. Z. L. R. 1170.—N.Z.

### PART IX. SECT. 2, SUB-SECT. 9. A.

1499 i. *When surety discharged*—*Release of debtor.*—MILNE v. YORKSHIRE GUARANTEE & SECURITIES CORPN. (1906), 37 S. C. R. 331.—CAN.

### PART IX. SECT. 2, SUB-SECT. 9.—B. (a).

sv. *Sale of debtor's equity of redemption.*—*Held*: not a release of debtor, nor of his surety.—STEWART v. CLARK (1863), 13 C. P. 203.—CAN.

### PART IX. SECT. 2, SUB-SECT. 9.—B. (c).

sw. *Release of co-lessee*—*Surety discharged*—ISMAN v. WIDEN (Sask.), [1926] 1 D. L. R. 247.—CAN.

### PART IX. SECT. 2, SUB-SECT. 9.—C. (b).

1561 iv. ———.—HOLLIDAY v. HOGAN (1893), 20 A. R. 298.—CAN.

### PART X. SECT. 4, SUB-SECT. 2.—C.

1685 i. *Character.*—An offer, by an employer, who has knowledge of dishonesty on the part of his employee, amounts to a representation to one from whom he seeks or obtains, without disclosure, a fidelity guaranty, that, so far as he is aware, the employee whose fidelity is to be guaranteed is not dishonest. If that representation is untrue, it matters not that the

employer's failure to disclose the true situation was not wilful, intentional, or with a view to advantage himself.—EBY-BLAIN, LTD. v. MATTHEWS, [1925] 2 D. L. R. 382; 56 O. L. R. 383.—CAN.

1685 ii. ———.—Where an employee is required to furnish a fidelity bond, & his employer knows that he has been dishonest in the office or service to which the bond is to apply, but fails to disclose such knowledge to the surety who gives the bond in ignorance of the former dishonesty of applicant, such non-disclosure releases the surety.—RURAL MUNICIPALITY OF CHURCHBRIDGE No. 211 v. LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 3 D. L. R. 341; [1925] 2 W. W. R. 334; 19 Sask. L. R. 450.—CAN.

1685 iii. S. P. MAYFIELD RURAL MUNICIPALITY, No. 406 v. LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—CAN.

gi. ———.—*Statement made in ignorance & without fraud.*—For the purpose of a renewal of a fidelity policy, plffs. certified to defts. that the employee "is not at present in arrears or default." The employee was in fact in arrears & default at the time, but the certificate was made without knowledge of this & without fraud.—*Held*: plffs. could not recover under the policy.—DOMINION OF CANADA GUARANTEE & ACCIDENT CO., LTD. v. HOUSING COMMISSION OF CITY OF HALIFAX, [1927] 4 D. L. R. 161; [1927] S. C. R. 492.—CAN.

### PART X. SECT. 4, SUB-SECT. 3.

h i. ———.—*Separate obligations*—*Only one explained*—*Sureties illiterate.*—

WATKINS J. R. CO. v. MINKIE, [1928] 3 D. L. R. 557. [1928] S. C. R. 114.—CAN.

1713 i. *As to nature of transaction.*—It is a good defence to an action on a guarantee that it was executed by the surety in the belief, induced by the fraudulent misrepresentations of debtor, that it is a document of another nature.—WATKINS (J. R.) CO. v. HANNAH (Sask.), [1926] 4 D. L. R. 93; [1926] 2 W. W. R. 800.—CAN.

### PART X. SECT. 5, SUB-SECT. 2.

1730 ii. ———.—*Held*: the influence exerted by the husband was not undue influence, & the wife executed the guarantee as the result of her own considered judgment of the consequences thereof.—CANADIAN BANK OF COMMERCE v. FOREMAN, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 413.—CAN.

### PART XII. SECT. 1.

1744 iii. ———.—*Person indemnified insolvent.*—Where a person entitled to be indemnified is insolvent—*Scemle*: the contract to indemnify him has the same effect as if it were a guarantee to the principal creditor of payment of the debt.—*Re* WINDING-UP ACT & FRANCO-CANADIAN MORTGAGE CO., LTD., *Re* BANK OF MONTREAL (Alta.), [1927] 1 W. W. R. 403, 8 C. B. R. 176.—CAN.

sy. *Does not extend to do an unlawful act.*—*Held*: the fact of a municipal council having undertaken to indemnify an officer for lawful acts done in his official capacity, does not entitle him to look to them for indemnity against the consequences of unlawful acts.—IRWIN v. MARIPOSA CORPN. (1872), 22 C. P. 367.—CAN.

1790. *Add. Annotation* :—**Overd.** Pontypridd Grdns. v. Drew (1926), 95 L. J. K. B. 1030.

1790a. ———.]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied. *Birkenhead Union Guardians v. Brookes*, No. 1790, *overd.*—PONTYPRIDD UNION v. DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

*See, further, POOR LAW.*

1800. *Add. Annotation* :—**Consd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.

1826a. **Limited to claims by third parties.**]—Pltfs. took a lease of premises from deft. railway co., & by an agreement supplemental to the lease, defts. gave pltfs. permission to use a portable gangway, which could be moved over certain of defts.' railway lines. One of the terms was that pltfs. "agree & undertake to indemnify the co. against all claims & demands or liability whatsoever, whether in respect of damage to person or property, arising out of or in connection with the existence or user of the gangway." When pltfs. were using the gangway some trucks were shunted down the line, & the gangway was destroyed. In an action for damages for negligence &/or breach of duty defts. denied

liability & pleaded the above term of the supplemental agreement :—*Held* : the undertaking was only one to hold defts. harmless against claims by third parties. — *GREAT WESTERN RY. CO. v. DURNFORD (JAMES) & SONS, LTD.* (1928), 139 L. T. 145; 44 T. L. R. 415; 33 Com. Cas. 251, H. L.; *affg.*, S. C. *sub nom.* DURNFORD (JAMES) & SONS, LTD. v. GREAT WESTERN RY. CO. (1927), 138 L. T. 137, C. A.

*Annotation* :—**Mentd.** *Bottomley v. Hurst & Blackett & Houston* (1928), 44 T. L. R. 451.

1830. *Add. Annotation* :—**As to (2) Refd.** *Stoney v. Eastbourne R. D. C.*, [1927] 1 Ch. 367.

1867. *Add. Annotations* :—**Refd.** *Re* Harrington Motor Co. (1927), 44 T. L. R. 58; *Hoods' Trustees v. Southern Union General Insee. of Australasia*, [1928] Ch. 793.

1877. *Add. Annotation* :—**Refd.** *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655.

1882. *Add. Annotation* :—**Refd.** *Re* Pinto Leite Nephews, *Ex p.* Des Olivares (Visconde), [1929] 1 Ch. 221.

1885. *Add. Annotation* :—**Mentd.** *Collins v. Associated Greyhounds Racecourses, Ltd.* (1929), 141 L. T. 529.

1889. *Add. Annotation* :—**As to (2) Refd.** *Ilyman v. Ilyman, Hughes v. Hughes*, [1929] A. C. 601; *Generally, Refd.* *May v. May*, [1929] 98 L. J. K. B. 770.

**PART XII. SECT. 6, SUB-SECT. 1.—A.**

1825 ii. ———.]—*RUTHERFORD v. STOVEL* (1861), 12 C. P. 9.—**CAN.**

1825 iii. ———.]—*GRAND TRUNK PACIFIC COAST S.S. CO. v. VICTORIA-VANCOUVER STEVEDORING CO.* (1919), 43 D. L. R. 231.—**CAN.**

**PART XII. SECT. 7, SUB-SECT. 1.**

b i. ——— *Claim by liquidator of indemnified party—Before payment of liability.*]—Where commission agents had incurred liability on behalf of their principals, who had agreed to indemnify them, & the agents having subsequently gone into liquidation,

official liquidator sued the principals for the amount of liability :—*Held* : he could recover the amount even though the agents having gone into liquidation had not actually paid their vendor—*OSMAN JAMAL & SONS v. GOVAL PURSHATTAM* (1928), 1 L. L. R. 56 Cal. 262.—**IND.**

# HIGHWAYS, STREETS AND BRIDGES.

## Part I.—Definitions and Characteristics.

5. *Add. Annotation* :—As to (4) **Refd.** A.-G. & Public Trustee v. Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.
- 29a. —.]—A.-G. v. TASKER, No. 263a, *post*.
65. To the existing paragraph add as follows :—  
(3) The words “annual payment towards the cost of the maintenance & repair” in Local Government Act, 1888 (c. 41), s. 11 (2), mean a payment to be made annually in respect of the expenditure of the particular year, not a fixed sum to be arrived at by taking the average expenditure over a series of years.
- Annotations* :—As to (1) **Consd.** Manchester Corp'n. v. Auden-shaw U. C. & Denton U. C., [1928] Ch. 763. **Apld.** Reigate Corp'n. v. Surrey County Council, [1928] Ch. 359.
66. *Add. Annotation* :—As to (1) **Consd.** Reigate Corp'n. v. Surrey County Council, [1928] Ch. 359.
79. *Add. Annotation* :—**Refd.** Howard-Flanders v. Maldon Corp'n. (1926), 135 L. T. 6.
96. *Add. Annotation* :—**Generally. Mentd.** Thurrock Grays & Tilbury Joint Sewerage Board v. Thames Land Co. (1925), 90 J. P. 1.
137. *Add. Annotation* :—**Apld.** A.-G. & Public Trustee v. Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.
- 137a. — — —.]—A.-G. & PUBLIC TRUSTEE v. WOOLWICH METROPOLITAN BOROUGH COUNCIL, No. 951a, *post*.
146. *Add. Annotation* :—**Apld.** A.-G. & Public Trustee v. Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

## Part III.—Origin and Proof of Highways.

178. *Add. Annotation* :—As to (2) **Refd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.
187. *Add. Annotation* :—**Refd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.
189. *Add. Annotation* :—As to (1) **Consd.** A.-G. v. Tasker (1928), 92 J. P. 157.
196. *Add. Annotations* :—As to (2) **Refd.** Layzell v. Thompson (1926), 43 T. L. R. 58. **Generally. Mentd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.
216. *Add. Annotation* :—**Consd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.
219. *Add. Annotation* :—As to (1) **Refd.** Stoney v. Eastbourne R. D. C. & Devonshire (1926), 95 L. J. Ch. 312.
225. *Add. Annotation* :—**Mentd.** Birkdale District Electric Supply Co. v. Southport Corp'n., [1926] A. C. 355.
226. *Add. Annotation* :—**Mentd.** Birkdale District Electric Supply Co. v. Southport Corp'n., [1926] A. C. 355.
227. *Add. Annotation* :—**Mentd.** Birkdale District Electric Supply Co. v. Southport Corp'n., [1926] A. C. 355.
236. *Add. Annotation* :—**Generally. Mentd.** Birkdale District Electric Supply Co. v. Southport Corp'n., [1926] A. C. 355.
241. *Add. Annotation* :—**Mentd.** Birkdale District Electric Supply Co. v. Southport Corp'n., [1926] A. C. 355.
251. *Citations* :—For “L. R. 3 Exch. 316” read “L. R. 2 Exch. 316.”  
*Add. Annotations* :—As to (1) **Consd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133. As to (2) **Refd.** Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159. **Generally. Refd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.
- 263a. —.]—Where nothing is known about a way except that it is used, the origin of the way is to be found in the user ; & in such a case the user raises a legal presumption of dedication.  
Upon proof that a path had been used by the public on foot & on horseback as of right during the period of living memory & that such right was reputed to exist theretofore back to the early part of last century :—**Held** : the path was dedicated to the public as a bridleway at or about the commencement of, or prior to the commencement of, last century.—A.-G. v. TASKER (1928), 92 J. P. 157.

**PART I. SECT. 6, SUB-SECT. 2.**  
58. *By Government survey*—*Preails against previous possession.*—MOUNTJOY v. R. (1861), 1 E. & A. 429.—**CAN.**

**PART III. SECT. 1.**  
r. i. — — —.]—POINT ABINO ASS'N. v. BERTIE TOWNSHIP, [1927] 4 D. L. R. 503 ; 61 O. L. R. 120 ; *affd.*, [1928] 2 D. L. R. 31 ; 61 O. L. R. 610.—**CAN.**

**PART III. SECT. 2, SUB-SECT. 2.**  
206 vi. — — — *Crown patents issued in accordance with plan showing highway.*—EDMONTON TOWN v. BROWN & CURRY (1893), 1 Terr. L. R. 454.—**CAN.**

**PART III. SECT. 2, SUB-SECT. 3.—C.**  
218 ii. — — —.]—**Held** : no presumption of dedication from user by the public could be made against an owner who was in fact out of possession or control ; to justify such presumption

it must be shown that there was some period during which the owner could have taken action to exclude the public.—A.-G. v. DE NEBIN, [1929] N. Z. L. R. 261.—**N.Z.**

**PART III. SECT. 2, SUB-SECT. 4.—B. (c).**

sd. *Lane less than prescribed minimum width of private streets*—*No dedication inferred.*—CARPET IMPORT CO., LTD. v. BEATH & CO., LTD., [1927] N. Z. L. R. 37.—**N.Z.**

270a. Motive of user immaterial.]—HUE v. WHITELEY, No. 298a, *post*.

274a. ——— Reputed to exist for over one hundred years.]—A.-(1. v. TASKER, No. 263a, *ante*.

285. Add. Annotations:—As to (1) *Distd.* Hue v. Whiteley, [1929] 1 Ch. 440. *Refd.* Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312. As to (2) *Consd.* Trafford v. Thrower (1929), 45 T. L. R. 502.

298. Add. Annotation:—Generally, *Refd.* Boulthwood v. Paignton U. D. C. (1928), 92 J. P. 98.

298a. ——— Paths joining existing highways.]—Evidence of long public user, as of right, of a pathway or roadway for the purpose of passing from one public place to another, is not the less ground for inferring dedication because recreation may have been the sole motive of such user.

H. & W. were neighbouring freeholders, & the sites of their properties originally formed part of the D. estate. The property of H. was originally let on a long lease in 1878 to one G., together with a right of way over a rough road, of the nature of a timber road, leading up from the London Road towards the property & past the property to Box Hill. In 1916 H. acquired the freehold of the property, & took a conveyance of the roadway in 1924. W., without the consent of H., opened a small gate for pedestrians in the boundary fence. In the action H. claimed a declaration that he was the freeholder of the said roadway & an injunction to restrain W. from trespassing thereon. Evidence was given of public user between Box Hill & the London Road for purposes of pleasure:—*Held*: the evidence of public user led to a presumption that the land had been dedicated, & that the motive of such user was irrelevant.—HUE v. WHITELEY, [1929] 1 Ch. 440; 98 L. J. Ch. 227; 140 L. T. 531.

311a. Footpath along sea cliff.]—Where there was evidence of the user by the public of a footpath along a sea cliff for some distance when its direction continued on a line slanting inland, & during the course of some twenty years, owing to erosion by the sea, the footpath so used had receded about twenty or thirty feet inland, though the ct. was always slow to infer the dedication of a public right of way along a sea cliff, such a dedication could be here inferred, having regard to the fact that part of the footpath did not run along the sea cliff, & no objection to its user had been made by the owner of the land over which the footpath continued after leaving the sea cliff. *Pltfs.* having claimed that there was no public right of way over a strip of land under a portion of a fence removed by *defts.*:—*Held*: the public had wandered from the original right of way over the land of *pltfs.* when it was in the hands of their predecessor in title & was derelict, but the user of the new way by the public had never

been acquiesced in, & there had never been a dedication of it to the public use, & *pltfs.*

PAIGNTON URBAN DISTRICT COUNCIL (1928), 92 J. P. 98.

322a. ——— User by sufferance.]—*Deft.* council claimed that there was a public footpath over *pltf.*'s park. On a plan attached to an inclosure award of 1816 no such public footpath was set out, & since that time down to 1901 the park had been in settlement with no one capable of dedicating a right of way to the public. The alleged footpath led from the public road over part of the carriage drive to the hall, & then turned off through the park, leading to only three farms & three or four cottages, & by its use a distance of about sixty-four yards was saved. There was no evidence of dedication, & the evidence of user was by the occupants of the farms & cottages & their friends:—*Held*: the proof of uninterrupted user was no more than evidence from which the ct. could infer that at some time the owner of the soil had dedicated the path to the public of which there was no evidence, & the evidence of user was user by sufferance only since 1816, before which no such public footpath was shown to exist.—FENWICK v. HUNTINGDON RURAL DISTRICT COUNCIL (1928), 92 J. P. 41.

329a. ———.]—BOULTWOOD v. PAIGNTON URBAN DISTRICT COUNCIL, No. 311a, *ante*.

355a. ———.]—The purchaser of land sold "subject to rights of way," after an unsuspected right of way had been established on behalf of the public, brought an action against the vendor for breach of the implied covenants expressed by his having conveyed as "beneficial owner." The vendor's covenant being qualified, the question turned upon whether there had been dedication of the right subsequently to 1782, the date of the last purchase for value by those through whom the vendor claimed. *Pltf.* produced two tithe maps, made respectively in 1802 & 1840, in neither of which was the right of way marked:—*Held*: the tithe maps were made for a special purpose, & not for the purpose of showing public or private rights other than as regards tithe; they were not, therefore, *prima facie* evidence enabling *pltf.* to contend that the dedication was at a subsequent date, so as to shift upon *deft.* the onus of proving that the dedication was prior to 1782.—STONEV v. EASTBOURNE RURAL COUNCIL, [1927] 1 Ch. 367; 95 L. J. Ch. 312; 135 L. T. 281; 90 J. P. 173; 70 Sol. Jo. 690; 24 L. G. R. 333, C. A.

355b. ———.]—A tithe map & award produced from the proper custody may, in cases in which the question is whether a highway was dedicated to the public before or after Mar. 20, 1836, be used in conjunction with evidence of uninterrupted public user throughout living memory as evidence,

#### PART III. SECT. 2, SUB-SECT. 4.— B. (d).

317 ii. ———.]—Where a person has possessory rights over a piece of land, the title to the land being vested in *Govt.*, another person may establish a right of access to a tomb erected on such land & to worship there. Such a right must have been openly enjoyed without leave, stealth, or force for a

length of time which suggests originally an agreement or usage that has become a customary law of the place in respect of the persons or things in which it is concerned. But the establishment of such right only does not include the right to erect substantial structures over & round the tomb which would be an infringement of the possessory rights of its owner.—DAWSON v.

ROUNAC ZAMANI BEGUM (PRINCESS) (1928), 1 L. R. 6 Ran. 456.—IND.

#### PART III. SECT. 2, SUB-SECT. 4.— B. (e).

so. Right to obstruct.—*Locus in quo conveyed with adjoining property.*—LEARY v. ARMSTRONG (1850), 12 N. B. R. (1 Han.) 22.—CAN.

(1) that there was at the date of the award a carriage-way along the line shown on the map, & (2) of reputation that the way so shown had by the date of the award been dedicated to the public.—*A.-G. (FEVERSHAM'S (EARL) TRUSTEES) v. STOKESLEY RURAL DISTRICT COUNCIL* (1928), 26 L. G. R. 440.

356. *Add. Annotation* :—*Refd. Layzell v. Thompson* (1927), 137 L. T. 106.

361. *Add. Annotation* :—*As to* (1) *Consd. Great Western Ry. v. Monmouthshire County Council* (1929), 93 J. P. 142.

## Part V.—Rights in Connection with Highways.

546. *Add. Annotation* :—*Mentd. Foster v. Lyons* (1926), 70 Sol. Jo. 1182.

587. *Add. Annotation* :—*Dlstd. Curtis v. Geeves* (1929), 93 J. P. Jo. 812.

588. *Add. Annotation* :—*As to* (2) *Consd. Grant v. Derwent*, [1929] 1 Ch. 390.

607. *Add. Annotation* :—*Refd. Noble v. Harrison*, [1926] 2 K. B. 332.

618. *Add. Annotations* :—*Apld. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92. *Refd. Grant v. Derwent*, [1929] 1 Ch. 390.

634. *Add. Annotation* :—*Mentd. Montreal City v.*

*Montreal Harbour Comrs., Tetreault v. Montreal Harbour Comrs.*, [1926] A. C. 299.

651. *Add. Annotation* :—*As to* (1) *Refd. Howard-Flanders v. Maldon Corpn.* (1926), 135 L. T. 6.

657. *Add. Annotation* :—*As to* (2) *Consd. Howard-Flanders v. Maldon Corpn.* (1926), 135 L. T. 6.

661. *Add. Annotation* :—*Dbtd. Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756.

664. *Add. Annotation* :—*Generally, Mentd. Light v. West*, [1926] 2 K. B. 238.

676. After this case add “— *Grant void for uncertainty*.”—*See CONSTITUTIONAL LAW*, Vol. XI., p. 564, No. 637.”

## Part VI.—Repair of Highways.

786a. ——— *Increased burden of traffic.*—

A road was constructed by pltf. corp. under powers conferred by a private Act of 1875, which enacted that the road should be constructed according to a certain specification & that it should thereafter be maintained at pltf's. expense. The road was completed in 1878 as a waterbound macadamised road in accordance with the statutory requirements, & was fully maintained by them for many years, but ultimately it deteriorated owing to the increase of traffic of a kind unknown in 1878, & unless resort was had to tar-spraying, or to some similar modern expedient, the existing traffic would rapidly destroy the road :—*Held* : (1) pltf's. were liable to maintain the road in the condition in which

it was completed in 1878, & that liability still continued, notwithstanding the change of circumstances brought about by the increase of traffic; (2) the obligation to maintain the road rested on pltf's. alone.—*MANCHESTER CORPN. v. AUDENSHAW URBAN COUNCIL & DENTON URBAN COUNCIL*, [1928] Ch. 763; 97 L. J. Ch. 276; 139 L. T. 509; 92 J. P. 163; 44 T. L. R. 628; 72 Sol. Jo. 452; 26 L. G. R. 343, C. A.

797. *Add. Annotation* :—*As to* (1) *Consd. Reigate Corp. v. Surrey County Council*, [1928] Ch. 359.

819. *Add. Annotation* :—*As to* (1) *Refd. Palmer v. Crone*, [1927] 1 K. B. 804.

### PART III. SECT. 2, SUB-SECT. 7.

404 i. *Non-user by public.*—*BRITISH COLUMBIA HOP CO., LTD. v. DISTRICT OF KENT*, [1925] 3 D. L. R. 171; [1925] 2 W. W. R. 31.—*CAN.*

### PART III. SECT. 3.

434 i. *Compliance with statutory requirements—Failure of commissioners to file return of laying out—Laying out not invalidated.*—*BROWN v. MCKEEL* (1941), 1 Kerr. 311.—*CAN.*

### PART V. SECT. 1, SUB-SECT. 2.

si. ————.—*HASAN v. ZAMAN* (1924), 41 T. L. R. 88.—*IND.*

### PART V. SECT. 2, SUB-SECT. 3.

ni. *Under Town Planning & Development Act, 1920.*—A piece of land, comprising about 14,000 acres, situated in a farming district, & within the boundaries of a district council area, was subdivided by the owner into twelve lots. A plan was deposited in the Lands Titles Registration Office, & showed certain private roads which were marked “private roads to be

vested in” the owner :—*Held* : the fee-simple of these roads did not vest by virtue of Town Planning & Development Act, 1920, in the district council.—*LONDON DISTRICT COUNCIL v. BRUCE*, [1927] S. A. S. R. 463.—*AUS.*

### PART V. SECT. 4.

o i. ————.—*Grade of street lowered causing subsidence.*—*NEW WESTMINSTER CITY CORPN. v. BRIGHOUSE* (1922), 20 S. C. R. 520.—*CAN.*

### PART V. SECT. 5, SUB-SECT. 1.

st. *Power of International Bridge Company—To regulate charges.*—*CANADA SOUTHERN RY. CO. v. INTERNATIONAL BRIDGE CO.* (1883), 8 App. Cas. 723.—*CAN.*

### PART VI. SECT. 1.

789 i. *Revsd.*, 26 A. R. 43.

789 ii. ————.—*Every portion of road.*—A municipality is liable in damages for an accident resulting from the breach of its duty to keep every portion of a road in repair, that is, in a fit condition to be travelled upon.—

*REA v. MUNICIPALITY OF MINTO*, [1925] 3 D. L. R. 523; [1925] 2 W. W. R. 637; 35 Man. L. R. 190.—*CAN.*

789 iii. ————.—*Although every portion of a public road must be kept in repair by the municipality in which the road lies, the driver of a very heavy vehicle is not entitled to drive it to the extreme edge of a raised road built of earth in absolute reliance that it will not crumble.*—*BLACKIE v. MUNICIPALITY OF MINION*, [1925] 4 D. L. R. 1051; [1925] 3 W. W. R. 561.—*CAN.*

### PART VI. SECT. 5, SUB-SECT. 1.

sg. *Liability of village—Village Act, R. S. A. 1922 (c. 109), s. 88.*—Before a village can be held liable for damage resulting from a defect in a road, it must be shown that the road is within one of the classes of roads specified in the above sect.—*GREENAWAY v. CANADIAN PACIFIC RY. CO.*, [1925] 1 D. L. R. 992; [1925] 1 W. W. R. 667; 21 Alta. L. R. 331; *varying*, [1924] 1 D. L. R. 977; [1924] 3 W. W. R. 198.—*CAN.*

892. *Add. Annotations*:—As to (1) *Apld. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92. *Refd.* *Reigate Corp'n. v. Surrey County Council*, [1928] Ch. 359.
945. *Add. Annotation*:—*Consd. Garnett v. Pratt*, [1926] Ch. 897.
951. *Add. Annotation*:—*Apld. A.-G. & Public Trustee v. Woolwich Metropolitan Borough Council* (1929), 93 J. P. 173.
- 951a. ———.]—Relators were trustees of two wills, & as such owned lands abutting upon a certain road in the Metropolitan Borough of W. By notices dated Feb. 14, 1928, the trustees were required to pay to defts. two sums amounting to £1,473 11s. 2d., being the estimated expenses of making up as a new street certain portions of the road upon which their lands respectively abutted. The A.-G. claimed a declaration that those portions of the road were highways repairable by the inhabitants at large, & relators as co-pltfs. claimed a declaration that those portions of the road were not "new streets" within *Metropolis Management Acts, 1855 & 1862*. Defts. contended that the road in question had not been dedicated to the public before Mar. 20, 1836, & was therefore not repairable by them. Further, they said that each of the portions of the road was in fact & in law a "new street" within *Metropolis Management Acts*, & that neither they nor their predecessors had at any time taken into charge or assumed the maintenance of the paving or roadway of the street of which the said portions of the road formed part:—*Held*: (1) on the evidence there was nothing to show that the road in question was anything else than a public highway repairable by the inhabitants at large. The fact that

repairs had been done by private owners for their own benefit was no evidence of any liability on their part to repair *ratione tenuræ*; (2) neither of the portions of road in respect of which the claim arose constituted a "new street" within *Metropolis Management Acts*.—A.-G. & PUBLIC TRUSTEE *v. WOOLWICH METROPOLITAN BOROUGH COUNCIL* (1929), 93 J. P. 173; 27 L. G. R. 700.

997. *Add. Annotation*:—*Refd. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92.

1002a. *Walls & roof of tunnel*.]—In 1823 a road was constructed as a private road by S., on, through, & under his own land. In order to make the road S. tunnelled under an existing footpath. In 1923 the road became a main road, pltfs., S.'s successors in title to the soil through which the tunnel was driven, being the road authority. In 1924 it became necessary to repair the walls & roof of the tunnel:—*Held*: (1) the walls & roof of the tunnel either formed part of the highway or were necessary for its maintenance, & the costs of their repair were costs within *Local Govt. Act, 1888* (c. 41), s. 11 (2), towards which defts. were bound to make an annual payment; (2) even if S., having in 1823 tunnelled under an existing highway, became liable *ratione documenti* to repair the part of the tunnelled road under the highway, that liability did not descend to pltfs. under *Local Govt. Act, 1888*, s. 97, because pltfs. were not only S.'s successors in title but also a highway authority.—*REIGATE CORPN. v. SURREY COUNTY COUNCIL*, [1928] Ch. 359; 97 L. J. Ch. 168; 138 L. T. 691; 92 J. P. 46; 44 T. L. R. 308; 72 Sol. Jo. 154; 26 L. G. R. 278.

## Part VII.—Enforcement of Duty to Repair.

1053. *Add. Annotation*:—*Refd. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92.

## Part VIII.—Powers, Duties and Liabilities of Highway Authorities.

- 1146a. ———. *Removal of footway*.]—A municipal corp'n., in exercise of its powers as highway authority under *Public Health Act, 1875* (c. 55), s. 149, widened a narrow street in the town by entirely removing a raised & kerbed footway on one side, & throwing its site into the carriage-way without any notice to or consent of the owner of the adjoining house & premises, who was also owner of one-half

of the soil of the road. The owner brought an action in the county ct. for a mandatory order to restore the footway, & for damages for injury to his property. It was proved that the access to & egress from the property through doors in a garden wall was rendered inconvenient & dangerous by the removal of the footway, & the county ct. judge granted a mandatory injunction to defts. to restore

### PART VII. SECT. 1.

1006 ii. ———.]—*Re R. v. LAMRTON* (Ont.) (1926), 46 Can. Crim. Cas. 13.—CAN.

### PART VII. SECT. 2, SUB-SECT. 1.

sk. *Not suspended by provision of statutory remedy*.]—*R. v. TOWN OF PARIS* (1862), 12 C. P. 445.—CAN.

### PART VII. SECT. 2, SUB-SECT. 8.—B.

1107 i. *Neglect to repair after conviction—Writ de documento amovendo*.]—*R. v. PORTAGE LA PRAIRIE RURAL MUNICIPALITY* (1905), 2 W. L. R. 141; 10 Can. Crim. Cas. 125.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 1.

b i. ———.]—*STRONG v. ARMAN*. (1913), 28 O. L. R. 106; 4 O. W. N. 765; 12 D. L. R. 44.—CAN.

sm. *No power to alienate part of old road*.]—*CHAPPUIS v. LA SALLE*, [1927] 3 D. L. R. 764; 60 O. L. R. 564; *affd.*, [1928], 2 D. L. R. 386; 62 O. L. R. 139.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 2.

f i. ———. 18 *Vict. c. 100*.]—*QUEBEC NORTH SHORE TURNPIKE ROAD TRUSTEES v. VEZINA* (1884), Cass. Dlg. (2nd ed.) 758.—CAN.



the footway to a width of 1 ft. less than before:—*Held*: the county ct. judge had rightly directed himself in law, & there was evidence upon which he was entitled to find that the action of defts. in removing the footway was unreasonable & arbitrary, & it was not sufficient for the action to be *bond fide*; & the order was properly made.—*HOWARD-FLANDERS v. MALDON* (CORPN. (1926), 135 L. T. 6; 90 J. P. 97; 70 Sol. Jo. 544; 24 L. G. R. 224, C. A.

**1164a. Duty to inspect trees—On private ground adjoining highway.—Patent danger.**—*MACKIE v. DUMBARTONSHIRE COUNTY COUNCIL, WESTERN DISTRICT COMMITTEE* (1927), 71 Sol. Jo. 710; 91 J. P. Jo. 634, H. L.

**1191a. — Obstruction during construction of new road.**—A corpn., in making a new road connecting two existing roads in the same straight line with a bridge across a ravine dividing them, pulled down an old wall which closed a *cul de sac* in which one of the roads terminated, partly constructed the new road

& erected a wooden fence at the end, beyond which was the ravine. Pltf. drove his car after dark down a public road leading straight into the new road under construction, & not seeing the fence in time, which had no red lamp or other warning of danger upon it, & was not watched, drove through it & fell with his car into the ravine, sustaining serious personal injury & damage to the car:—*Held*: the corpn. being in occupation of the land under construction as a new road, pltf. was not a trespasser upon private property, but an invitee, to whom they owed a duty to warn of any hidden danger; the unlighted fence was in the circumstances a concealed trap, & pltf. not being guilty of contributory negligence, defts. were liable to him in damages for negligence.—*OLDHAM v. SHEFFIELD CORPN.* (1927), 136 L. T. 681; 91 J. P. 69; 43 T. L. R. 222; 25 L. G. R. 94, C. A.

*Annotation*:—*Consd. Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.

**1191b. — Trench dug in unfinished road.**—Defts. in execution of a housing scheme were

#### PART VIII. SECT. 1, SUB-SECT. 4.

**1164a i. Duty to inspect trees.**—A tree planted in a city highway fell upon a motor car. The tree had long been in a decaying condition:—*Held*: the city corpn., having by bye-law assumed the duty of caring for the trees planted upon the highway, were liable for discharging that duty negligently.—*HUESTIS v. CITY OF TORONTO*, [1926] 3 D. L. R. 142; 58 O. L. R. 648.—CAN.

#### PART VIII. SECT. 1, SUB-SECT. 5.

*c i. S. P. PHEASEY v. EDMONTON* (Alta.), [1927] 2 W. W. R. 445.—CAN.

*r* (p. 389) i. —.—Pltf. slipped & fell when walking upon a granolithic sidewalk & was injured. For five or six days before this occurrence, the sidewalk at the point where she fell was covered with glare ice & was consequently in a slippery & dangerous condition. Pltf.'s injury was not attributable to any lack of care on her part. The city authorities had knowledge of the dangerous condition for five or six days before the accident & made no attempt to remove the danger:—*Held*: the city corpn. were guilty of gross negligence within Consolidated Municipal Act, 1922, s. 460 3), & were liable.—(*COCKERS v. BELLEVILLE*, [1925] 2 D. L. R. 250; 56 O. L. R. 451; *revers.* [1924] 2 D. L. R. 333.—CAN.

*r* (p. 389) ii. —.—*Dangerous condition known to pedestrian.*—Where a person, who knows that a sidewalk is in a dangerous condition because of a pile of slippery snow thereon, deliberately makes use of it, instead of walking on the road as he has previously done, & thereby sustains injuries, the maxim *volenti non fit injuria* is applicable.—*ROBINSON v. ASSINIBOIA TOWN*, [1927] 3 D. L. R. 514; [1927] 2 W. W. R. 499; 21 Sask. L. R. 658.—CAN.

*r* (p. 389) iii. —.—*Depression caused by permitting children to use sidewalk as slide—Gross negligence.*—*MATLAND v. PEMBROKE*, [1929] 1 D. L. R. 191.—CAN.

*r* (p. 389) iv. —.—*Exemption from liability except for gross negligence.*—*McKEE v. WINNIPEG CITY*, [1929] 1 D. L. R. 65; [1928] 3 W. W. R. 561.—CAN.

*so. Method adopted temporarily dangerous—Whether gross negligence.*—Where ice or icy snow covered the surface of a sidewalk in a city & the method of removing it used by men employed by the city corpn. was such as to make the sidewalk temporarily dangerous to pedestrians who chose to

walk on it while the work of removal was in progress, & an accident happened to a passer-by.—*Held*: the adoption

*OTTAWA CITY*, [1928] 1 D. L. R. 171; 61 O. L. R. 405.—CAN.

#### PART VIII. SECT. 1, SUB-SECT. 7.

*o i. —.—*—A public road crossed a stream by a bridge. There was a fence between the road & the land adjoining it, erected by the proprietors of the latter. At a point immediately adjoining the bridge there was a gap, 15 feet wide, in the fence. A pedestrian, on a dark night, mistaking this gap for the road, walked through it & fell into the stream & was drowned. In an action of damages against the proprietors of the land adjoining the road:—*Held*: there was no duty on such proprietors to fence a natural, as opposed to an artificially created, danger on their lands, any such duty, where it existed, falling on the road authorities.—*MORRISON v. LONDON MIDLAND & SCOTTISH RY. CO.*, [1929] S. C. 1.—SCOT.

*o ii. —.—*—Defts. constructed a bridge across a navigable stream, having in it a draw or swing to enable vessels to ply on the river. There was not any gate or other protection to guard the approaches to the bridge when swung. A horse belonging to pltf. broke away from the person in charge of him, escaped out upon the public road, & ran a distance of about two miles to the bridge, reaching it while the draw was open to allow a vessel to pass, & rushing into the gap was drowned:—*Held*: deft. municipality could not be made answerable for the loss of the horse.—*STEINHOFF v. KENT CORPN.* (1887), 14 A. R. 12.—CAN.

#### PART VIII. SECT. 1, SUB-SECT. 8.

*sq. Restriction during repairs—What is sufficient warning of danger.*—The duty of those making repairs upon a travelled road, is to take such reasonable care, by notice, lighting, guarding or otherwise, as may be reasonably necessary to prevent damages as the result of the temporary condition of the road. When this is done, & the condition of non-repair & of temporary danger is brought home to a person using the highway, he is called upon to use reasonable care on his part for his own safety.—*WISE v. TORONTO TRANSPORTATION COMMISSION*, [1928] 2 D. L. R. 557; 62 O. L. R. 120.—CAN.

#### PART VIII. SECT. 1, SUB-SECT. 9.

*sd. Street railway track adjacent to highway.*—Pltf., in a motor car attempted to cross the tracks of a street railway, which were at that point not laid upon the travelled highway but upon land owned by the city corpn. adjacent to the travelled highway. The place of crossing was in a dangerous condition, by reason of the tracks not being ballasted but simply resting upon exposed sleepers. The car was imprisoned there & run into by a street car, & pltf. were injured & the car damaged:—*Held*: the city corpn. were liable since, although no obligation to repair existed, there was a trap or concealed danger.—*JAMES v. TORONTO* (1925), 57 O. L. R. 322; *affg* 27 O. W. N. 233.—CAN.

#### PART VIII. SECT. 1, SUB-SECT. 11.—A.

**1190 i. Liability for failure to light—Statutory duty to light.**—A motor car driven at night came into collision with a tramway island, & was damaged. In an action against defenders, as the local authority charged, under Edinburgh Municipal & Police Act, 1879, with the lighting of the streets, it was proved that a red lamp situated on the island was not lit at the time of the accident. It was also established that defenders had not failed in their duty with respect either to the construction & condition of the lamp, or to the precautions taken to ensure that it should remain alight during the hours of darkness:—*Held*: the standard of performance could not be absolute, but must be relative to the best available means of achieving exact performance, & in the absence of evidence of any failure on the part of defenders to take every reasonable means of carrying out their statutory obligations, they fell to be absolved.—*KEOGH v. EDINBURGH MAGISTRATES*, [1926] S. C. 814.—SCOT.

*r i. —.—*—A corpn. planted trees along one of its streets, & resp. sustained injuries through his motor car colliding with one of the trees on a dark night. There was a street-lamp in the vicinity, but it had gone out:—*Held*: the corpn. having caused a dangerous obstruction on the street, it was its duty to light & keep lighted the obstruction, so as to make it visible to persons using the street.—*CAMARU (MAYOR) v. CLARKE*, [1927] N. Z. L. R. 464.—N. Z.

laying out a new road running eastwards from a certain highway & closed at its eastern end by a quickset hedge. Footpaths had already been laid out & edged with kerbstones; houses were being built on the northern side & heaps of earth & building materials made the footpath on this side impassable; the footpath on the south side was still unfinished, but was traversable; it was bounded by a fence of wooden posts & bars; the middle of the road was levelled but not metalled; across it, for laying an electric cable, defts. had cut a trench which they left unfenced & by night unlighted. They did not prevent persons, whether intending occupiers of houses or others, from walking down the new road. Pltf. on a Sept. evening, while there was still daylight, walked with a companion down the highway & into the new road along the southern footpath. Through a gap in the fence they went across other land occupied by defts. to a golf course. They returned somewhat hurriedly when it was growing dark, & pltf. fell into the trench & was injured:—*Held*: the trench being apparent to all, there was nothing in the nature of a concealed danger or trap, & defts were not liable to pltf., who was a mere licensee.—*COLESHILL v. MAN-*

CHESTER CORPN., [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

1197. *Add. Annotation*:—*Refd.* Oldham v. Sheffield Corpn. (1927), 136 L. T. 681.

1216. *Add. Annotation*:—*Apld.* Manchester Corpn. v. Audenshaw U. C. & Denton U. C., [1928] Ch. 127.

1228a. Amount of payment—How calculated—Local Government Act, 1888 (c. 41), s. 11 (2).—SANDGATE URBAN DISTRICT COUNCIL v. KENT COUNTY COUNCIL, No. 65, *ante*.

1236. *Add. Annotation*:—*Apld.* A.-G. v. London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1237. *Add. Annotation*:—*Apld.* A.-G. v. London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1268. *Add. Annotation*:—*Refd.* Oldham v. Sheffield Corpn. (1927), 136 L. T. 681.

1272. *Add. Annotation*:—*Generally*, *Mentd.* R. v. Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

1278. *Add. Annotation*:—*Refd.* Oldham v. Sheffield Corpn. (1927), 136 L. T. 681.

1280. *Add. Annotation*:—*Refd.* Oldham v. Sheffield Corpn. (1927), 136 L. T. 681.

## Part IX.—Nuisances and Remedies.

1330a. ——— Enclosing highway.]—R. v. OGDEN (1702), *Portes. Rep.* 251; 7 *Mod. Rep.* 45. 92 E. R. 839.

1369a. Fireplug — Projection above pavement—Liability of water company.]—A fireplug had been lawfully fixed in a footpath by defts.

### PART VIII. SECT. 1, SUB-SECT. 11.—D.

1210 i. *Liability of driver—Accidental injury.*—*Held*: the driver of a horse van, which was capsized against a lamp-post by a gust of wind, was not liable in damages under General Police & Improvement (Scotland) Act, 1862 (c. 101), s. 128, in respect that the breaking of the lamp was not his act.—*HOGG v. MACPHERSON*, [1928] S. C. (J.) 15.—*SCOT.*

### PART VIII. SECT. 5, SUB-SECT. 1.—A.

1280 xxii. ———.]—*GREER v. MULMUR TOWNSHIP*, [1926] 4 D. L. R. 132; 59 O. L. R. 259.—*CAN.*

1280 xxiii. ———.]—*LINGRELL v. STOCKS No. 363 MUNICIPAL DISTRICT (Alta.)*, [1927] 3 D. L. R. 478; [1927] 2 W. W. R. 313.—*CAN.*

g (p. 403) i. ——— *Ditch without guards railings.*]—*WALTON* YORK COUNTY CORPN. (1881), 6 A. R. 181.—*CAN.*

k (p. 404) i. ——— *Failure of traveller to see.*]—Where a traveller fails to see an obstruction which a person using ordinary care would have avoided, the statutory liability does not arise.—*KING v. TULEY*, [1925] 2 D. L. R. 218.—*CAN.*

k (p. 404) ii. ——— *Imbedded wire.*]—Pltf. was injured by tripping over a wire imbedded in a street.—*Held*: defts. had not discharged the onus of removing the presumption that they had failed in their duty.—*WOODCOCK v. VANCOUVER (B. C.)*, [1927] 3 W. W. R. 759.—*CAN.*

k (p. 404) iii. ——— *Projecting iron covering of excavation.*]—Pltf., while walking on a sidewalk, stumbled & fell as a result of the projection over the cement part of the sidewalk of the iron covering of an excavation which the

city had allowed the abutting owner to make:—*Held*: the accident happened because of want of proper repair of the sidewalk, & the city had not shown that it had done all that could reasonably be done to prevent the want of repair.—*MORAN v. VANCOUVER CITY*, [1928] 3 W. W. R. 660.—*CAN.*

k (p. 404) iv. ——— *Projecting slab of concrete.*]—*Held*: the defect was one which, in such a location, should have been remedied: it would have been negligence to have there constructed the sidewalk with such a rise, & deliberately to allow it to remain was not less a fault.—*JENNESY v. TORONTO CITY*, [1928] 4 D. L. R. 378; 62 O. L. R. 541.—*CAN.*

cc1. ———.]—Where an accident results from lack of repair of a road, a presumption arises, without evidence that the municipality responsible for the road had notice of its condition, that the statutory duty to repair has been neglected.—*REA v. MUNICIPALITY OF MINTO*, [1925] 3 D. L. R. 523; [1925] W. W. R. 657; 35 *Man. L. R.* 190.—*CAN.*

### PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

1289 i. ——— *Damage to adjoining owners—Construction of road causing flood.*]—Municipality:—*Held*: liable.—*MEIER v. FRANKLIN, LINPRECHT v. FRANKLIN, STREICH v. FRANKLIN (Man.)*, [1926] 3 D. L. R. 433; [1926] 2 W. W. R. 330.—*CAN.*

1289 ii. ——— *Negligent construction of ditches causing flood.*]—*STADNICK v. BIFROST MUNICIPALITY*, [1927] 4 D. L. R. 61; [1927] 3 W. W. R. 49; 37 *Man. L. R.* 26.—*CAN.*

1289 iii. ——— *Road materials carried into roadway by violent storm.*]—*Held*: defts. were not liable.—

*SNOOK v. BRANTFORD TOWN COUNCIL*, (1856), 14 U. C. R. 255.—*CAN.*

sk. Road under repair by Minister of Highways.]—*Held*: as long as the work of construction or repair is being carried on, the highway is removed from the direction, control & management of the municipality, which is not liable to travellers for damages resulting from its state of repair until the highway is again under its control & management.—*HORSFIELD v. CANA RURAL MUNICIPALITY No. 214*, [1925] 2 D. L. R. 874; [1925] 1 W. W. R. 1067; 19 *Sask. L. R.* 378.—*CAN.*

### PART IX. SECT. 1, SUB-SECT. 1.—A.

ki. ——— *Obstruction on part not used by public.*]—*R. v. BENNETT* (1825), N. B. Dig. 400.—*CAN.*

sn. Obstruction permitted—Duty of person causing obstruction to provide lights at night.]—*HERVEY v. FRENCH* (1839), 4 *Ont. Dig.* 7433.—*CAN.*

### PART IX. SECT. 1, SUB-SECT. 1.—D.

so. Areas forming part of sidewalk—Left uncovered.]—On a dark night one of pltf., wife of her co-pltf., stepped into an area, one of several, in the sidewalk of a street in a town & was injured. The areas were constructed as part of a building adjacent to the sidewalk & were for the benefit of the owners or tenants of the building. No authorisation by the town corpn. for the construction of the areas was shown, but it appeared that, since the year 1900, the corpn. had looked after the coverings of the areas, treating them as part of the sidewalk. Before the accident, the area into which pltf. stepped had been covered with a plank, but on the night of the accident it was uncovered:—

Originally the top of the fireplug had been level with the pavement, but in consequence of the ordinary wearing away of the footpath the fireplug projected half an inch above of the pavement. The fireplug itself was in perfect repair. *Pltf.*, whilst passing along the footpath, fell over the fireplug & was hurt:—*Held*: as the fireplug was in good repair, & had been lawfully fixed in the footpath, no action by *pltf.* would lie against *defts.*—*MOORE v. LAMBETH WATERWORKS CO.* (1886), 17 Q. B. D. 462; 55 L. J. Q. B. 304; 55 L. T. 309; 50 J. P. 756; 34 W. R. 559; 2 T. L. R. 587, C. A.

*Annotations*:—*Apld.* *Thompson v. Brighton Corp.*, *Oliver v. Horsham L. B.*, [1894] 1 Q. B. 332. *Consd.* *Hartley v. Rochdale Corp.*, [1908] 2 K. B. 594. *Apld.* *G. C. Ry. v. Hewlett*, [1916] 2 A. C. 511. *Refd.* *R. v. Poole Corp.* (1887), 19 Q. B. D. 602. *Stoel v. Dartford L. B.* (1891), 60 L. J. Q. B. 256; *Dawson v. Bingley U. D. C.* (1910), 75 J. P. 17; *Papworth v. Battersea B. C.* (1914), 79 J. P. 105.

**1372a.** ——— **Liability of water company.**—A water co., at the request & expense of the owner of a house, laid down a service pipe leading from their main under the street into the house, in which they placed a stop-cock for the purpose of regulating the supply of water. This stop-cock was protected by a cover or guard-box let into the pavement, which was provided with a lid or flap. Owing to the hinge of the lid or flap being out of repair, it projected above the pavement, & *pltf.* while passing along the street tripped over it & sustained injury. The apparatus could not be repaired without being removed, or removed without breaking up the pavement. The jury found that there was negligence on the part of those who were liable for the repair of the hinge:—*Held*: the co., who alone had power to break up the street for the purpose of repairing the guard-box, were responsible for its repair, & liable in respect of the injuries sustained by *pltf.*—*CHAPMAN v. FYLDE WATERWORKS CO.*, [1894] 2 Q. B. 599; 64 L. J. Q. B. 15; 71 L. T. 539; 59 J. P. 5; 43 W. R. 1; 10 T. L. R. 580; 38 Sol. Jo. 629; 9 R. 582, C. A.

*Annotations*:—*Consd.* *Colne Valley Water Co. v. Hall* (1907), 96 L. T. 395. *Distd.* *Stacey v. Gas Light & Coke Co.*, *Metropolitan Water Board & West End Tailoring Co.* (1910), 9 L. G. R. 174. *Consd.* *Batt v. Metropolitan Water Board*, [1911] 2 K. B. 965. *Refd.* *Grand Junction Waterworks Co. v. Rodocanachi*, [1904] 2 K. B. 230.

**1380a. Overcrowded inn yard—Vehicles left in highway.**—An innkeeper had for some years, when his yard was full, placed the vehicles of his guests on a triangular piece of ground at the corner of two streets. This piece of ground having been ascertained to be part of the highway:—*Held*: *def.* was rightly convicted of an obstruction under Highway Act, 1835 (c. 50), s. 72.—*GORING v. BARFIELD* (1864), 4 New Rep. 284.

**1381a.** ———]—A person placing a dangerous obstruction in a highway, or in a private road over which persons have a right of way, is bound to take all necessary precautions to protect persons exercising their right of way; & if he neglects to do so, is liable for the consequences.—*CLARK v. CHAMBERS* (1878),

3 Q. B. D. 327; 47 L. J. Q. B. 427; 38 L. T. 454; 42 J. P. 438; 26 W. R. 613.

*lations*:—*Consd.* *Bull v. Shoreditch Corp.* (1902), 87 [191] Glasgow City Corp. v. Taylor, [1922] 1 A. C. 44. *Refd.* *A-G. v. Tod-Heathly & Brownrigg* (1879), 76 L. T. 174; *Tollhausen v. Davies* (1888), 59 L. T. 436; *McDowall v. G. W. Ry.*, [1902] 1 K. B. 618; *Latham v. Johnson & Nephew*, [1913] 1 K. B. 398. *Mentd.* *The Bernina* (2) (1887), 12 P. D. 58; *Coldrick v. Partridge, Jones* (1909), 78 L. J. K. B. 452; *Cory v. France, Fenwick*, [1911] 1 K. B. 114; *Weld-Blundell v. Stephens*, [1920] A. C. 956; *The San Onofre*, [1922] P.

**1391. Add. Annotations**:—*Refd.* *Williams v. Larsen* (1928), 21 B. W. C. 339; *Templeton v. Parkin & Co.* (1929), 110 L. T. 519.

**1397. Add. Annotation**:—*Mentd.* *S.S. Singleton Abbey v. S.S. Paludina*, [1927] A. C. 16.

**1399. Add. Annotation**:—*Distd.* *Oldham v. Sheffield Corp.* (1927), 136 L. T. 681.

**1435a. Street traders—Licence—Application to renew—Duties of borough council.**—(1) The remedy by appeal to petty sessions given by London County Council (General Powers) Act, 1927 (c. xxii.), s. 35 (2), to a street trader who is aggrieved by the refusal of the renewal of his licence as a street trader is equally beneficial, convenient & effectual as *mandamus* would be. *Mandamus* will therefore not lie to a Metropolitan borough council to compel them to hear & determine a street trader's application for renewal of a licence.

(2) In deciding such applications, the council is an administrative body, not a judicial one; it may therefore properly take into account a report of a committee, & its decision will not be invalidated merely by the fact that some members taking part in it were not present at an earlier meeting when the applicant was heard.

(3) *Scmble*: the Act does not contemplate the calling of evidence before the council on such applications; but the justices at petty sessions who hear an appeal can conveniently hear such evidence as may be necessary.—*R. v. LEWISHAM CORPN.*, *Ex p. JACKSON* (1929), 93 J. P. 171; 73 Sol. Jo. 318; 27 L. G. R. 416, D. C.

**1435b.** ——— **Refusal to renew—Appeal to petty sessions—Evidence.**—*R. v. LEWISHAM CORPN.*, *Ex p. JACKSON*, No. 1435a, *ante*.

**1435c.** ——— **Mandamus.**—*R. v. LEWISHAM CORPN.*, *Ex p. JACKSON*, No. 1435a, *ante*.

**1435d.** ——— **Removal of refuse—Liability for charges.**—The "other services" mentioned in London County Council (General Powers) Act, 1927 (c. xxii.), s. 37, are services *ejusdem generis* as the removal of refuse.

*Applts.*, a borough council, claimed payment of their charges in respect of "other services" rendered by them to resp., a licensed street trader, being charges in respect of the general administration of Part VI. of the Act dealing with the regulation of street trading:—*Held*: in the absence of evidence of the removal of refuse or of services *ejusdem generis* as the removal of refuse, *applts.* were not entitled to recover.—*WESTMINSTER CORPN. v. ARMSTRONG*, [1929] 2 K. B. 451; 98 L. J. K. B. 707; 15 T. L. R. 634; 93 J. P. Jo. 524; 27 L. G. R. 671, D. C.

*Held*: the town corp., having knowledge of the condition, & having taken no steps to close the areas, or to see that they were adequately protected,

were liable to *pltf.*—*McMICHAEL v. GODERICH TOWN*, [1928] 4 D. L. R. 536; 62 O. L. T. 547. —*CAN.* sp. *Lift forming part of pavement* -

*Well of lift inadequately fenced.* *HAYMAN CITY PROPERTY INVESTMENT TRUST CORPN., LTD.*, [1929] S. C. (H. L.) 65. *SCOT.*

1441. *Add. Annotation*:—**Apld.** Vanderpant v. Mayfair Hotel Co. (1929), 27 L. G. R. 752.  
 1442. *Add. Annotation*:—**Consd.** Vanderpant v. Mayfair Hotel Co. (1929), 27 L. G. R. 752.  
 1443. *Add. Annotation*:—**Consd.** Vanderpant v. Mayfair Hotel Co. (1929), 27 L. G. R. 752.  
 1447. *Add. Annotations*:—**Consd.** Vanderpant v. Mayfair Hotel Co. (1929), 27 L. G. R. 752. **Mentd.** Lowe v. Bentley (1928), 44 T. L. R. 388.

1457a. — **Causing horse to shy.**—In an action for a nuisance it appeared that pltf. was driving at night in a cart drawn by a horse along a public highway, when the horse shied at a heap of earth & refuse placed by defts. on their land adjoining the highway, & the cart was upset & pltf. injured. Evidence was tendered by pltf. to prove that other horses had shied at the heap on the same day:—**Held**: if the heap was of such a nature as to be dangerous by causing horses passing on the highway to shy, it was a public nuisance.—**BROWN v. EASTERN & MIDLANDS RY. Co.** (1889), 22 Q. B. D. 391; 58 L. J. Q. B. 212; 60 L. T. 266; 53 J. P. 342; 5 T. L. R. 242, D. C.; *on appeal*, 22 Q. B. D., at p. 393, C. A.

*Annotation*:—**Refd.** Heath's Garage v. Hodges (1915), 14 L. G. R. 195.

1465. After this case add "*See, also, AGRICULTURE, Nos. 970a, 970b.*"

1473. *Add. Annotation*:—**Consd.** Vanderpant v. Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1475. *Add. Annotation*:—**Apld.** Vanderpant v. Hotel Co. (1929), 27 L. G. R. 752.

1500. *Add. Annotation*:—**Consd.** Eastbourne County Borough v. Fuller & Sons (1928), 93 J. P. 29.

1509. *Add. Citation*:—95 L. J. K. B. 81.

1511. *Add. Annotation*:—**Consd.** Eastbourne County Borough v. Fuller & Sons (1928), 93 J. P. 29.

1513a. — **When any one places a motor omnibus or other vehicle which is likely to skid upon the highway, such person may be liable for placing a nuisance upon the road, & for negligent use of the highway.**—**WALTON (ISAAC) & Co., LTD. v. VANGUARD MOTOR BUS Co., GIBBONS v. VANGUARD MOTOR BUS Co.** (1908), 72 J. P. 505; 25 T. L. R. 13; 53 Sol. Jo. 82; 7 L. G. R. 349, D. C.

*Annotations*:—**Overd.** Parker v. L. G. O. Co. (1909), 101 L. T.

**PART IX. SECT. 1, SUB-SECT. 1.—N. sq. Prickly bush protruding through fence.**—Where deft. permitted a gorse bush growing on his land to project over a street, & pltf. was injured by a thorn of the bush penetrating one of his eyes:—**Held**: deft. was liable.—**CULL v. GREEN** (1924), 27 W. A. L. R. 62.—**AUS.**

**sr. Suffering trees to grow—Causing obstruction—Madras Local Boards Act.**—The allowing of prickly-pear to spread on to a road used by the public is a public nuisance within Indian Penal Code, s. 268.—**Re MOTAIPIA GOUNDAN** (1928), 1 L. R. 52 Mad. 79.—**IND.**

#### PART IX. SECT. 1, SUB-SECT. 11.

**st. Encroachment on private street—Authorised by Dean of Guild.**—The proprietors of a building adjoining a private street in G., who were, also, the owners of the *solum* of the street, applied to the Dean of Guild for authority to extend their building over part of the foot pavement of the street. The master of works lodged objections in the public interest, on the ground

that, under Glasgow Police Acts, 1866 to 1924, the Dean of Guild had no jurisdiction to sanction an encroachment on a private street:—**Held**: nothing in these Acts deprived the Dean of Guild of jurisdiction to grant a licence for the erection of a building on a private street within the burgh.—**SAXONE SHOE Co., LTD. v. SOMERS**, [1929] S. C. 232.—**SCOT.**

#### PART IX. SECT. 1, SUB-SECT. 14.

**k i. Broken-down motor car—Not left on highway for unreasonable time—Owner not liable.**—**PEDERSON v. PATERSON** (1916), 31 D. L. R. 368.—**CAN.**

**sv. House left in street at night—Street blocked—Person moving house liable.**—**SCOTT v. CALGARY & RIDDOCK**, [1927] 2 D. L. R. 263; [1927] 1 W. W. R. 521; 22 Alta L. R. 167.—**CAN.**

#### PART IX. SECT. 3, SUB-SECT. 3.—A.

**1670 v. —**—**In an action for a mandatory injunction requiring deft. to remove a verandah & steps attached to her house, which encroached upon a street in a village, &**

**623. Refd.** Barnes U. D. C. v. L. G. O. Co. (1908), 7 L. G. R. 359; Wing v. L. G. O. Co., [1909] 2 K. B. 652.

1514. *Add. Annotation*:—**Generally, Refd.** Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83.

1519. *Add. Annotations*:—**Distd.** Noble v. Harrison, [1926] 2 K. B. 332. **Consd.** Reigate Corp'n. v. Surrey County Council, [1928] Ch. 359.

1546a. **Heap of refuse—Horse frightened.**—Pltf.'s horse shied at a heap of road-scrappings placed by defts. by the side of a public highway on land belonging to them, & personal injuries were, in consequence sustained by pltf.'s wife. Upon the trial of an action brought in respect of such injuries, evidence that other horses had shied at the same heap, on the same day, was rejected:—**Held**: such evidence was admissible, for if the heap was of such a nature as to be likely to cause horses to shy, it was a public nuisance, & whatever showed it to be likely to cause horses to shy was evidence for pltf's.—**BROWN v. EASTERN & MIDLANDS RY. Co.** (1889), 22 Q. B. D. 391; 58 L. J. Q. B. 212; 5 T. L. R. 284, C. A.

*Annotation*:—**Refd.** Heath's Garage v. Hodges (1915), 14 L. G. R. 195.

1592. *Add. Annotation*:—**Refd.** Layzell v. Thompson (1926), 91 J. P. 89.

1616. *Add. Annotation*:—**Refd.** Reigate Corp'n. v. Surrey County Council, [1928] Ch. 359.

1623. *Add. Annotation*:—**Refd.** Oldham v. Sheffield Corp'n. (1927), 136 L. T. 681.

1627. *Add. Annotation*:—**Mentd.** R. v. Cory, [1927] 1 K. B. 810.

1634. *Add. Annotation*:—**Refd.** Hargrove v. Burn (1929), 46 T. L. R. 59.

1637. *Add. Annotations*:—**Apld.** Cooper v. Swadling (1929), 46 T. L. R. 73. **Consd.** Hargrove v. Burn (1929), 46 T. L. R. 59. **Refd.** The Vectis, [1929] P. 204.

1639. *Add. Annotation*:—**Mentd.** Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

1652. *Add. Annotation*:—**Generally, Refd.** Salisbury & Fordingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

caused inconvenience to pltf. & other persons using the street:—**Held**: the inconvenience was such only as was common to all persons using the street, & pltf., whose house was so situated that persons coming from it, in order to gain access to the principal street of the village, had to make a detour by reason of the verandah & steps, suffered no special damage or injury by reason of the nuisance, & was not entitled to the relief claimed. **WHALEY v. KELSEY**, [1928] 2 D. L. R. 268; 61 O. L. R. 679.—**CAN.**

**1670 vi. —**—**ARDENAR JIVANJI v. AIMAI KUVARJI** (1928), 1 L. R. 53 Bom. 187.—**IND.**

**q i. —**—**The owner of an automobile is not entitled to maintain an action against a municipality for damages for non-repair of a highway, if he has not taken out a licence to permit him to operate his car.**—**SAMPSON v. ROBERTSON**, [1925] 1 D. L. R. 624; 57 N. S. R. 498.—**CAN.**

**q ii. — Notice of claim.**—**The absence of the notice required by City Act, R. S. S. 1920 (c. 86), s. 542, to be given the municipality is a bar**

1677. *Add. Annotation* :—*Generally*, *Mentd.* Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.
- 1680a. ———.]—*VANDERPANT v. MAYFAIR HOTEL CO., LTD.*, [1929] W. N. 221; 27 L. G. R. 752.
1709. *Add. Annotation* :—*As to* (2) *Refd.* Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.
1711. *Add. Annotation* :—*Distd.* Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.
- 1717a. *Remedy trespass not ejectment.*]—*DOE d. ST. JULIAN SHREWSBURY (PARISH) v. COWLEY* (1823), 1 C. & P. 123; 171 E. R. 1129, N. P.
1737. *Add. Annotation* :—*Mentd.* Maclean v. Workers' Union, [1929] 1 Ch. 602.
1747. After this case add "*Compare* *MAGISTRATES*, Nos. 503a, 503b."
1760. *Add. Annotation* :—*Refd.* *R. v. Newport Salop Justices*, *Ex p. Wright*, [1929] 2 K. B. 416.

## Part X.—Interference with Highways under Statutory Powers.

- 1761a. *Duty of local authority—On request to exercise statutory powers.*]—A local authority, requested to carry out in a "street laid out but not dedicated" constructive works under its statutory powers, need not necessarily inquire into the title of those making the request. But it must, in considering whether compliance with the request will be a lawful exercise of the powers, have regard primarily to the physical conditions

obtaining in the area of the proposed operations; & those physical conditions will be one of the principal factors in determining whether relevant statutory definitions are complied with. This applies to powers conferred by either public general or private local statutes.—*DAVIES v. RIPON CORPN.*, [1928] Ch. 884; 97 L. J. Ch. 479; 139 L. T. 636; 92 J. P. 153; 26 L. G. R. 530.

## Part XI.—Excessive Weight and Extraordinary Traffic.

1765. *Add. Annotation* :—*Consd.* Eastbourne County Borough v. Fuller & Sons (1928), 93 J. P. 29.
1771. *Add. Annotation* :—*Distd.* Eastbourne County Borough v. Fuller & Sons (1928), 93 J. P. 29.
1772. *Add. Annotation* :—*As to* (1) *Refd.* Eastbourne County Borough v. Fuller & Sons (1928), 93 J. P. 29.
- 1775a. ———.]—Defts., who owned & used traction engines for the purposes of their business, drove two of these engines on a very hot day in July over a highway belonging to plffs., who were the highway authority for the district. The highway, which had been constructed as a first class main road for the purpose of bearing traffic of all sorts, had a mephalte surface. In passing along the most exposed part of the highway, the driving wheels of these engines sank into the road at a point where the surface was very soft, with the result that the road was damaged. Plffs. thereupon brought an action against defts. to recover extraordinary expenses, pursuant to Highways & Locomotives (Amendment) Act, 1878 (c. 77), s. 23, as amended by Locomotives Act, 1898 (c. 29), s. 12. They also claimed damages for wrongful abuse of the highway by defts. & for nuisance & negligence.—*Held* : as agricultural traffic, including heavy traction engines, was admittedly part of the ordinary traffic, & the weights in the present case were normal, no claim for excessive weight or for extraordinary traffic could arise under the Act of 1878; there was no excess whatever by defts. of the lawful use of the highway & no wrongful abuse of their rights of passing & repassing; the injury to the highway was due to a peculiar & unique conjunction of heat & of atmospheric & other conditions; defts.' vehicles did not constitute a nuisance, & there was no negligence on the part of defts.—*EASTBOURNE COUNTY BOROUGH v. FULLER & SONS* (1928), 93 J. P. 29; 72 Sol. Jo. 762.
1810. *Add. Annotation* :—*Distd.* Eastbourne County Borough v. Fuller & Sons (1928), 93 J. P. 29.
1841. After this case add "*See, also*, No. 1852, *post*."
1844. To the existing paragraph add as follows :—  
The surveyor of a highway gave a certificate under the above sect. to the effect that extraordinary expenses had been incurred by reason of extraordinary traffic caused by resp. in repairing roads in four separate townships. Six months later he gave another certificate which referred to extraordinary expenses incurred partly before & partly after the date of the first certificate on a single road in one of the townships :—*Held* : the first certificate was good, & with regard to expenses incurred before it was made, the period of six months limited by Summary

to an action for damages for injuries caused by snow or ice on a sidewalk.—*HICKMAN v. MOOSE JAW CITY*, [1925] 1 D. L. R. 115; [1924] 3 W. W. R. 839.—*CAN.*

**PART IX. SECT. 3, SUB-SECT. 5.**  
*sw. Cost of fencing bank—Whether within Burgh Police (Scotland) Act, 1892, s. 190.*]—The magistrates of a burgh, founding upon the section,

brought an action against the owners of a steep natural bank, which sloped down from the side of a street to the sea shore, in order to recover the cost of fencing the bank :—*Held* : the sect. was inapplicable, in respect that, in view of their ambiguity, the words "any other place" fell to be construed in the light of the context & of the heading of the group of sects. in which they occurred, & so construed,

the places to which the section referred were limited to places rendered dangerous by some artificial construction connected with buildings or streets.—*BUCKIE MAGISTRATES v. SEAFIELD'S (DOWAGER CONTESS) TRUSTEES*, [1928] S. C. 525.—*SCOT.*

**PART IX. SECT. 3, SUB-SECT. 6.**  
*d. i. ———.*]—*It. v. FITZGERALD* (1876), 39 U. C. R. 297.—*CAN.*

Jurisdiction Act, 1848 (c. 43), s. 11, for recovering the amount began to run from the date of the first certificate.

1852. After this case add "*Sec, also*, No. 1841, *ante*."

1852a. — Where more than one certificate given.]—WIRRAL HIGHWAY BOARD v. NEWELL, No. 1844, *ante*.

1858a. — Where several contracts.]—EPSOM URBAN COUNCIL v. LONDON COUNTY COUNCIL, No. 1818, *ante*.

1872. *Add. Annotation*:—*Refd.* Eastbourne County Borough v. Fuller & Sons (1928), 93 J. P. 29.

1876. *Add. Annotation*:—*Refd.* Eastbourne County Borough v. Fuller & Sons (1928), 93 J. P. 29.

## Part XII.—Stopping-up or Diversion of Highways.

1894a. — Consent of owners of land abutting on highway—Condition precedent.]—By sect. 59 of a local Act "the corp'n. may from time to time by order stop up wholly or partially any highway which in their opinion is unnecessary on such terms as to the vesting of the soil & other matters as may be agreed on between the corp'n. & the owners & lessees of buildings & lands abutting on the highway & on any highway being so stopped up all public & other rights of way & other rights in, over or upon the same shall be absolutely extinguished." By sect. 117: "Any person deeming himself aggrieved by any order or determination of the corp'n. or by any conviction or order made by a ct. of summary jurisdiction under any provision of this Act may appeal . . . to the next practicable ct. of quarter sessions under & according to Public Health Act, 1875 (c. 55), s. 269":—*Held*: (1) it was a condition of the making of an order under sect. 59 that there should be an agreement between the corp'n. & the owners & lessees of buildings & lands abutting on the highway; (2) the "highway" must mean the

whole highway & not any part thereof: & the applt. was therefore a person aggrieved although his land did not abut on the part of the highway stopped up.—LINTON v. NEWCASTLE-UPON-TYNE CORPN. (1929), 94 J. P. 20; 27 L. G. R. 607, H. L.

1894b. — — — — — Meaning of highway—Not confined to part of highway stopped up.]—LINTON v. NEWCASTLE-UPON-TYNE CORPN., No. 1894a, *ante*.

1897. *Add. Annotation*:—*Refd.* Oldham v. Sheffield Corp'n. (1927), 136 L. T. 681.

1922. *Add. Annotation*:—*Appl.* R. v. Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347.

1958. *Add. Annotation*:—*Refd.* Brown v. Harrison, Hourani v. Same (1927), 137 L. T. 549.

1979a. — Not costs of preparing for appeal—Order abandoned.]—R. v. WING (1825), 4 B. & C. 184; 6 Dow. & Ry. K. B. 323; 3 Dow. & Ry. M. C. 184; 3 L. J. O. S. K. B. 201; 107 E. R. 1028.

## Part XIII.—Streets.

1997. *Add. Annotations*:—*Consd.* Howard-Flanders v. Maldon Corp'n. (1926), 135 L. T. 6. *Mentd.* Graigola Merthyr Co. v. Swansea Corp'n., [1928] Ch. 235.

2032. *Add. Annotation*:—*As to* (2) *Consd.* A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.

2039. *Add. Annotation*:—*As to* (2) *Consd.* A.-G. & Public Trustee v. Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

2044. *Add. Annotation*:—*Appl.* Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.

2075. *Add. Annotation*:—*Appl.* Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.

2076. *Add. Annotation*:—*Apprvd.* Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.

2202. *Add. Annotation*:—*Mentd.* Hutton v. A.-G., [1927] 1 Ch. 427.

2203. *Add. Annotation*:—*Appl.* Ashby-de-la-Zouch Grdns. v. Summers, [1928] 2 K. B. 397.

2204a. — Recovery of expenses of repairing dangerous structure—London Building Act, 1894, s. 116—Summary Jurisdiction Act, 1848 (c. 43), s. 11.]—A building in the metropolis having been certified to be dangerous, the county council did the work necessary to make it safe, & on Sept. 15, 1924, demanded from the owner the amount of the expenses. The amount not having been paid, the council on Jan. 1, 1926, applied to a magistrate under sect. 116 (1) of the above Act of 1894 to fix the amount of the expenses & to make an order that no part of the structure should be let for occupation until after payment thereof. The magistrate dismissed the complaint on the ground that more than the

**PART XI. SECT. 4, SUB-SECT. 5.**  
1872 i. *General rule*.]—It is not the total sum actually spent on repair that is recoverable by the road authority, whether that repair involves reconstruction or not. Regard must be had to all the circumstances of the case; the state of the roads when the extraordinary traffic commenced, its general character & suitability for the traffic reasonably to be expected

thereon, the amount of ordinary traffic whether of deft. or other persons, & the extent & nature of the repairs reasonably required. Deductions should also be made if roads when repaired are in a better condition than before extraordinary traffic commenced.—DOWN COUNTY COUNCIL v. STEWART, [1927] N. 49.—IR.

1881 i. *Deductions & allowances*.—Improvement of road due to repair.]—

DOWN COUNTY COUNCIL v. STEWART, No. 1872 i, *ante*.—IR.

**PART XII. SECT. 2, SUB-SECT. 1.**  
ix. *Necessity for compliance with statutory formalities*.]—*Held*: a public highway cannot be closed without complying with the statutory formalities.—LARCHER v. SUDBURY TOWN (1913), 24 O. W. R. 659; 4 O. W. N. 1289; 11 D. L. R. 111.—CAN.

period of six months limited by sect. 11 of the above Act of 1848 had elapsed between the time when the matter of the complaint arose & the date when the complaint was made:—*Held*: the six months' limitation of time applied to proceedings under sect. 116 (1) of the Act of 1894, & the time ran from the date of the demand, & the magistrate's decision must be affirmed.—*LONDON COUNTY COUNCIL v. OWNER OF 14, LEE-STREET STEPNEY* (1926), 135 L. T. 182; 90 J. P. 145; 42 T. L. R. 543; 24 L. G. R. 386, D. C.

**2229a. Part of premises fronting another street.**—Deft. in 1903 purchased a house which on G. road. In 1907 a strip of land which she used to form a carriage drive to the house. In 1904 her husband became the tenant of a field to the south of & adjoining the house & land. The field fronted on E. road. In 1907 deft. purchased the field, but entered into a tenancy agreement letting it to her husband, & from that time the field & the house & land had been separately assessed by the local authority though in fact the tenancy agreement between deft. & her husband ceased to exist about 1918. In 1920 E. road was made up, the usual course being followed under Public Health Act, 1875 (c. 55), ss. 150 & 257, with the result that plffs. claimed a charge, for the admitted proportion due from deft. of the expenses incurred in making up E. road, on the whole of deft.'s property, including her house & grounds as well as the field, as fronting, adjoining or abutting on E. road.—*Held*: the house & grounds & the field must be considered as being one close, & as such the whole was liable to a charge for making up E. road as fronting, adjoining or abutting thereon.—*ALTRINCHAM URBAN DISTRICT COUNCIL v. O'BRIEN* (1927), 91 J. P. 149; 25 L. G. R. 369.

**2244a.** ———.]—(1) A notice given to a frontager to make up the portion of the street opposite to his premises under Public Health Act, 1875 (c. 55), s. 150, is not rendered inoperative because all the frontagers on the street are not served, but he will be liable only for his proportion of the sum expended in making up those portions of the street which abut on the premises of such of the frontagers as are served with the notice, no change of ownership occurring during the course of the proceedings.

(2) The words "the same" contained in the form of notice given in the above Act refer to that portion only of the street abutting on the premises of the owner on whom such notice is served, & not to the whole street.

(3) Two winter months given as the time within which to execute works under a notice given under the above sect. is sufficient.—*SUNDERLAND CORPN. v. GRAY*, [1928] Ch. 756; 97 L. J. Ch. 411; 136 L. T. 405; 91 J. P. 52; 25 L. G. R. 139.

### PART XIII. SECT. 2, SUB-SECT. 2.

**sa. Purchase for widening & improvement—What is due compensation.**—*Re MACDONALD & TORONTO CORPN.* (1912), 27 O. L. R. 179; 4 O. W. N. 54; 8 D. L. R. 303.—*CAN.*

**sb.** ——— *Power to acquire land beyond quantity actually required.*—*Held*: under Municipal Corpn. Act, 1920, s. 192, a municipal corpn. is empowered

when widening a street, to acquire not only what land is required for that purpose, but also to acquire, if the corpn. deems it expedient, land additional thereto on either or both sides of the street in question, provided land is required for the purpose of widening the street & that the land proposed to be taken, is on either or both sides of the street & whether or not the land is owned in part by one

owner & in part by another.—*WEL- LINGTON CORPN. v. DEALY*, [1929] N. Z. L. R. 352. *N.Z.*

### PART XIII. SECT. 2, SUB-SECT. 3.

**o 1.** ———.]—*SOUTH GRIMSBY TOWNSHIP v. COUNTY OF LINCOLN & NORTH GRIMSBY TOWNSHIP, COUNTY OF LINCOLN v. SOUTH GRIMSBY TOWNSHIP* (1921), 19 O. W. N. 576; 58 D. L. R. 599.—*CAN.*

**2252a.** ——— "The same."—*SUNDERLAND CORPN. v. GRAY*, No. 2244a, *ante*.

**2254a.** ———.]—*SUNDERLAND CORPN. v. GRAY*, No. 2244a, *ante*.

**2268. Add. Annotation:**—*As to* (2) *N.F. Sunderland Corpn. v. Gray* (1926), 136 L. T. 405.

**2282a.** ——— *Two streets repaired at same time.*—A local authority which has executed repairs to streets under Public Health Acts Amendment Act, 1907 (c. 53), s. 19, is not entitled to include two streets in the same account & apportion the combined expenses among the frontagers of both streets. Nor have the

seek to recover such expenses, any jurisdiction to investigate the accounts & separate the expenses of the two streets for the purpose of

*NASH v.*  
L. T. 352; 91 J. P. 19; 43 T. L. R. 121; 25 L. G. R. 66, D. C.

**2285a. Effect of agreement between frontagers—Frontager not to be liable for maintenance of road until taken to by local authority—Frontager not entitled to repayment of apportioned share of cost of making up road.**—*MOORE v. TODD* (1903), 68 J. P. 43; 19 T. L. R. 612; 2 L. G. R. 376, C. A.

**2316. Add. Annotation:**—*Refd. Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.

**2318. Add. Annotations:**—*Refd. R. v. North Worcestershire Assessment Committee, Ex p. Hadley*, [1929] 2 K. B. 397. *Consd. Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.

**2340. Add. Annotation:**—*Refd. Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.

**2351.** After this case add the following new subsection:—

#### Other Cases.

**2351a. Action to recover expenses—Form of writ—Names & addresses of owners not known.**—Plffs., being entitled under Public Health Acts to recover the expenses of making up a road from the owners of the lands abutting on the roadway & being unable to discover who some of those owners were, issued a writ against A., a known owner of some of the land, " & the owners of certain lands adjoining " the road " more particularly described in the indorsement " on the writ, " whose names & addresses are not known to plffs. " Upon the summons for directions plffs. desired to amend the writ by adding after the word " owners " the words " at the time of the completion of the works referred to in the indorsement hereon, " & they also asked for leave to effect substituted service on defts. so described by affixing copies of the writ on the respective premises:—*Held*: the writ, in not giving the names & addresses of defts. other than A., did not comply with the form of writ which had the basis of statutory authority & was prescribed by R. S. C., Ord. 2, r. 3, & Appendix A,



Part 1; the writ, whether as originally issued or as proposed to be amended, was bad as against the persons so sought to be made defts., & the words following A.'s name must be struck out.—**FRIERN BARNET URBAN COUNCIL v. ADAMS**, [1927] 2 Ch. 25; 96 L. J. Ch. 145; 136 L. T. 649; 91 J. P. 60 25 L. G. R. 75, C. A.

**2353. Add. Annotation:—As to (1) Refd.** *Sunderland Corpn. v. Priestman*, [1927] 2 Ch. 107.

**2357. Add. Annotations:—Apld.** *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622. **Refd.** *Paddington B. C. v. Finucane*, [1928] Ch. 567.

**2360. Add. Annotations:—Distd.** *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602. **Mentd.** *Re Jauncey, Bird v. Arnold* (1926), 134 L. T. 728.

**2364. Add. Annotations:—Apld.** *Paddington B. C. v. Finucane*, [1928] Ch. 567. **Refd.** *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622.

**2366. Add. Annotation:—Refd.** *Friern Barnet U. C. v. Adams*, [1927] 2 Ch. 25.

**2367a. — Before expiry of time for summary proceedings.]—**The two remedies conferred by Public Health Act, 1875 (c. 55), s. 257, are concurrent, & a local authority need not wait till the six months, during which the summary remedy is available, have expired before commencing proceedings to enforce the charge created by the sect.—**SUNDERLAND CORPN. v. PRIESTMAN**, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.

**2405a. Burial ground “attached” to place of worship.]—**The exemption from liability for the expenses of private street works given by Private Street Works Act, 1892 (c. 57), s. 16, to a burial ground “attached” to a “place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor,” extends only to a burial ground in physical attachment or contiguity to the building, & does not include a burial ground at a distance, “attached” to the place of worship in the functional sense that it is owned & maintained by the congregation of the place of worship for their members.—**HOLY LAW SOUTH BROUGHTON BURIAL BOARD v. FALLSWORTH URBAN DISTRICT COUNCIL**, [1928] 1 K. B. 231; 96 L. J. K. B. 713; 137 L. T. 483; 91 J. P. 104; 43 T. L. R. 519; 25 L. G. R. 324, D. C.

**2409. Add. Annotation:—Refd.** *Faulkner v. Hythe Corpn.* (1926), 43 T. L. R. 55.

**2430a. — After completion of works.]—**When an objection is lodged to proposed works under Private Street Works Act, 1892 (c. 57), s. 7, the local authority must apply under sect. 8 to the justices to determine the objection before the works are executed. After the works are completed, the justices have no jurisdiction to determine an objection under sect. 7.—**FAULKNER v. HYTHE CORPN.**, [1927] 1 K. B. 532; 96 L. J. K. B. 167; 136 L. T. 329; 91 J. P. 22; 43 T. L. R. 55; 71 Sol. Jo. 20; 25 L. G. R. 60, D. C.

**2432. Add. Annotation:—Refd.** *Faulkner v. Hythe Corpn.* (1926), 43 T. L. R. 55.

**2436. Add. Annotation:—Refd.** *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.

**2439a. — Sale by owner—Necessity for demand**

**on purchaser—Limitation of action.]—**Defts. being a local authority having duly made a final apportionment under Private Street Works Act, 1892 (c. 57), s. 12, of the expenses of certain private street works, demanded in 1910 the amount thus apportioned from an owner of land abutting on the street thus made up. In 1927 the latter sold the land in question to pltf. without having satisfied defts.' demand, & pltf. then proceeded to erect houses on the land in respect of which he became entitled to a subsidy. Defts. thereupon claimed to set off against the subsidy the amount of their claim against the owners for the time being of the land in respect of the apportioned expenses, together with interest thereon:—**Held:** (1) although defts. might have lost their right to sue the original owner for the expenses they were not prevented from suing pltf. as a subsequent owner for the time being. A demand on such owner was necessary to complete the cause of action for such expenses & Stat. Limitations did not begin to run until such demand had been made; (2) on the footing that Real Property Limitation Act, 1874 (c. 57), s. 8, was applicable, that sect. did not apply to defeat a claim against pltf., the owner for the time being, because defts. had no present right to receive the sum set off from pltf. until he became owner & twelve years from that date had not elapsed.—**DENNERLEY v. PRESTWICH URBAN DISTRICT COUNCIL** (1929), 141 L. T. 602; 94 J. P. 34; 45 T. L. R. 659; 73 Sol. Jo. 530; 27 L. G. R. 618, C. A.

**2443. Add. Annotation:—Refd.** *Faulkner v. Hythe Corpn.* (1926), 43 T. L. R. 55.

**2466a. — Powers of magistrate.]—B. Corpn.** proposed to execute certain private street works under Birmingham Corpn. (Consolidation) Act, 1883, ss. 46–50, which were substantially identical with Private Street Works Act, 1892 (c. 57). The corpn. duly complied with the formalities required & made a provisional apportionment on resps., the frontagers on the street, according to their respective frontages. Resps. objected that the works were unnecessary. On the hearing of this objection resps. called no evidence. The stipendiary magistrate held that some works were necessary, but was of opinion that the estimated expenses were too heavy. He reduced the estimate & ordered that one resp. should pay one-half & each other resp. two-thirds of the respective sums named in the provisional apportionment:—**Held:** inasmuch as the corpn. had not resolved that the apportionment should be on any basis other than frontage, the stipendiary magistrate could not direct an apportionment on any other basis. Subject to that limitation, he must consider & determine, upon evidence, whether the proposed works were in any, & what, respect unnecessary, & must have regard to any alternative proposals, if resps. made any & supported them by evidence, & to the cost thereof.—**BIRMINGHAM CORPN. v. MOTHER-GENERAL OF CONVENT OF SISTERS OF CHARITY OF ST. PAUL** (1927), 91 J. P. 186; 44 T. L. R. 31; 25 L. G. R. 517, D. C.

**2470a. — Not mortgagee of pews & vaults in & under church.]—CHORLTON UPON MEDLOCK**



(CONSTABLES & BURGESSIES) *v.* WALKER (1842), 10 M. & W. 742; 12 L. J. Ex. 88; 7 J. P. 162; 152 E. R. 671.

2523. *Add. Annotation*:—*As to* (1) *Consd.* Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

2591a. *Meaning of "new building"*—*Reconstructed building not included.*—BAILLARD

*v.* HORTON'S ESTATE, LTD. (1926), 24 L. G. R. 499, D. C.

2592a. *Meaning of "erections" & "obstructions"*—*Includes petrol pumps.*—MACKENZIE *v.* ABBOTT (1926), 24 L. G. R. 444, D. C.

2596. *Add. Annotation*:—*Generally*, *Refd.* Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

## Part XIV.—Footpaths.

2619. *Add. Annotation*:—*Apld.* A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

## Part XV.—Bridges and Approaches thereto.

2630. *Add. Citation*:—95 L. J. Ch. 86.

2650. *Add. Annotation*:—*Refd.* A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2661. *Add. Annotation*:—*As to* (1) & (2) *Consd.* Great Western Ry. *v.* Monmouthshire County Council (1929), 93 J. P. 142.

2705. *Add. Annotation*:—*Refd.* Manchester Corpn. *v.* Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2712. *Add. Annotation*:—*Refd.* Manchester Corpn. *v.* Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2716. *Add. Annotation*:—*Apld.* Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

2717. *Add. Annotation*:—*Apld.* Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

2719a. — *Damage by locomotive passing over bridge*—*Locomotive Act, 1861 (c. 70), s. 7.*—*In respect of actual damage to a bridge, as distinguished from consequential loss, the liability to repair is imposed upon the owner*

of the locomotive if he has the charge of it at the material time, but if some person other than the owner has the charge of it, the liability is upon that person. The above sect. does not make the owner & such other person jointly & severally liable for that damage.—SOUTHERN RY. CO. *v.* GOSPORT CORPN., [1926] 2 K. B. 89; 95 L. J. K. B. 545; 90 J. P. 161; 70 Sol. Jo. 651; *varied*, [1927] 1 K. B. 331, C. A.

2750. *Add. Annotation*:—*Mentd.* Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436.

2766a. *Liability of borough council*—*Bridge built since 1835—Public Health Act, 1875 (c. 55), s. 4.*—*In 1882 seven streets were, in the course of the development of an estate, carried across a river on iron girder bridges. These streets subsequently became highways repairable by the inhabitants at large. An action was commenced by the A.-G. against the local authority for a declaration that they were liable to repair & keep in repair these seven bridges:—Held: having regard to the fact that the word "street," as defined by the above sect., includes, if this is not incon-*

### PART XIII. SECT. 2, SUB-SECT. 6.—A.

*sd.* *Single scheme for several streets communicating with one another—Right of authority to recover cost from owners.*

—A municipal council in proceeding under Local Govt. Act, 1925, ss. 526, 527, may properly adopt a specification, estimate & scheme of distribution of the cost of forming, levelling, etc., several streets communicating with one another & enforce payment of a proportionate part of the cost of the whole scheme against the owner of premises adjoining or abutting on one or more only of such streets.—MAGGOWAN *v.* ST. KILDA CITY, [1928] V. L. R. 162; [1928] Argus L. R. 254. —AUS.

*so.* *Notice to property owners—Defective notice—For less than prescribed period.*—SANDRINGHAM CITY CORPN. *v.* RAYMENT (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] Argus L. R. 173.—AUS.

*sl.* — *Necessity for—Before works entered upon.*—DUNN *v.* BRAYBROOK SHIRE, [1928] V. L. R. 454; [1928] Argus L. R. 286.—AUS.

J.S.

### PART XIII. SECT. 2, SUB-SECT. 6.—B.

*sh.* *Bye-law authorising opening of street—Before land acquired.*—A bye-law passed by the council of a town authorising the opening & improving of a street shown upon a registered plan, as a local improvement under Local Improvement Act, R. S. O. 1927, c. 233, was held not to be invalid or illegal because the land for the street had not been acquired by the corpn. before the bye-law was passed.—*Re CHAPPUS & LA SALLE TOWN*, [1928] 2 D. L. R. 950, 62 O. L. R. 140. —CAN.

*sk.* *Bye-law providing for construction of sidewalks—Street not opened—Ultra vires.*—*Re CHAPPUS & LA SALLE TOWN*, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—CAN.

*sl.* *Width of entrance to new street—Existing entrance a narrow road—Over land of third party.*—ROSE *v.* SYDENHAM LOCAL ADMINISTRATION & HEALTH BOARD (1928), 49 N. L. R. 203.—S. AF.

### PART XIII. SECT. 2, SUB-SECT. 6.—D.

*b i.* — *Lots bordering on navigable*

*river.*—Land Registry Act, c. 23 of 1906, s. 68, dealing with the subdivision of land into town or other lots, provides, *inter alia*, that, in case a lot borders on the shores of any navigable water, streets leading to & continuing to such water must be shown at a not greater distance apart than 600 feet.—*Held: the object of the section was to require land abutting on navigable waters to be subdivided so as to provide straight & continuous access to the water at intervals of not less than 600 feet.*—*Re LONSDALE ESTATE* (1907), 12 B. C. R. 366. —CAN.

### PART XV. SECT. 2, SUB-SECT. 1.—A. (a).

*d i.* — *Re SANDUSK CREEK BRIDGE* (Ont.), [1926] 3 P. L. R. 353.—CAN.

### PART XV. SECT. 2, SUB-SECT. 1.—A. (b).

*p i.* — *Re CALEDONIA & HULLMUND* (1912), 22 O. W. R. 961, 3 O. W. N. 1651; 6 D. L. R. 267.—CAN.

sistent with the context, any bridge, not being a county bridge, pltf. was entitled to the declaration.—*A.-G. v. HORNSEY BOROUGH COUNCIL*, [1927] 1 Ch. 331; 96 L. J. Ch. 164;

136 L. T. 502; 91 J. P. 61; 43 T. L. R. 92; 70 Sol. Jo. 1197; 25 L. G. R. 260.

2787. *Add. Annotation*:—*As to* (3) *Refd. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92.

**PART XV. SECT. 2, SUB-SECT. 2.—**  
**B. (c).**

**o i.** — *Transfer of area to municipality.*—A railway co. constructed & maintained a bridge & approaches by which a road was carried across their railway. The area in which the bridge was situated was subsequently annexed to a burgh, & the burgh authorities called upon the co., as frontagers to a private street, to construct a paved footway along one side of the road:—*Held*: assuming that the co. were frontagers to a private street, Burgh Police (Scotland) Act, 1903 (c. 33), s. 16, had not, either expressly or by implication, altered or

extended these obligations.—*MAGISTRATES OF LEVEN v. LONDON & NORTH EASTERN RY. CO.*, [1926] S. C. 528.—**SCOT.**

**PART XV. SECT. 3.**

**k i.** — *Apportionment of cost—Bridge across railway.*—*PUBLIC HIGHWAYS DEPT., ONTARIO v. CANADIAN PACIFIC RY. CO. (CLAPPISON BRIDGE CASE)* (1924), 30 Can. Ry. Cas. 5.—**CAN.**

**k ii.** — *Bridge over boundary river.*—In order to give jurisdiction to the Municipal Comr. to apportion the costs of building a bridge over a

river or stream forming the boundary between two municipalities, the latter must previously have agreed to construct the bridge.

The power of a municipality to contract with another municipality to build by joint action such a bridge must be exercised by bye-law.—*RURAL MUNICIPALITY OF PORTAGE LA PRAIRIE v. RURAL MUNICIPALITY OF CARTIER*, [1925] 4 D. L. R. 1035; [1925] S. C. R. 691; *affg.*, [1924] 4 D. L. R. 601; [1924] 3 W. W. R. 244; 34 Man. L. R. 405; *reversg.*, [1924] 1 D. L. R. 775; [1924] 1 W. W. R. 225.—**CAN.**



## Part III.—Personal Rights and Obligations arising from Marriage.

**595a. — Bankruptcy of husband.]**—The bkpcy. of a husband who has entered into a separation deed is an answer to any claim for the payment of agreed sums under the deed, but does not convert his wife's agreement to live apart with an allowance into an agreement to live apart without maintenance. Her right to that maintenance is not in contract but is an incident of matrimonial status at common law. An agreement under a separation deed to receive an allowance merely suspends, but does not annul, that right, which revives as soon as the agreement is terminated by bkpcy., notwithstanding the receipt of a dividend. The dividend is not a transaction between |

husband & wife, but an incident in the bkpcy., & its receipt does not operate as a new bargain with the husband compounding the common law right of the wife. The separation agreement thus put an end to does not debar the wife from alleging the wilful neglect of the husband to provide reasonable maintenance for her within Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925.—*DEWE v. DEWE, SNOWDON v. SNOWDON*, [1928] P. 113; 97 L. J. P. 65; 138 L. T. 552; 92 J. P. 32; 44 T. L. R. 274; 72 Sol. Jo. 69; 26 L. G. R. 191.

**647. Add. Annotation :—***Reid. Re Wilkinson*, Page v. Public Trustee, [1926] Ch. 842.

## Part IV.—Effect of Marriage with Regard to Wife's Property.

**656. Add. Annotation :—***As to (1) Consd. Re Bower Williams, Ex p. Trustee*, [1927] 1 Ch. 441.

### PART III. SECT. 1, SUB-SECT. 1.

**k (p. 76) i.** — *Effect of repeal of Judicature Act, 1922, pendente lite.*—An alimony action begun before the coming into force of Domestic Relations Act, 1927, c. 5, s. 75, is governed as to plff.'s rights & deft.'s liability by Jud. Act, R. S. A. 1922, c. 72, s. 21, notwithstanding its repeal by said sect. 75. —*CLARKE v. CLARKE*, [1928] 1 D. L. R. 219; [1927] 3 W. W. R. 728.—CAN.

**s (p. 76) i.** — *Provoked by wife's misconduct*—*WEITZEL v. WEITZEL*, [1928] 3 D. L. R. 261.—CAN.

**m (p. 77) i.** — *Invalidity of marriage.*—*Held*: plff. was not entitled to succeed on an alternative claim for a quantum meruit for her services as deft.'s housekeeper.—*HOLMES v. HOLMES (Alta.)*, [1927] 2 D. L. R. 979; [1927] 2 W. W. R. 253.—CAN.

**fi i.** — *Liability for interim disbursements.*—The Supreme Ct. of Alberta has the power in an alimony action to grant the wife an order for payment of interim disbursements.—*DREWRY v. DREWRY*, [1928] 3 W. W. R. 460.—CAN.

**hh i.** — *Husband purposed depriving himself of his property.*—*LIGHTHART v. LIGHTHART*, [1927] 1 D. L. R. 386; [1927] 1 W. W. R. 393.—CAN.

**hh ii.** — *Alimony provided for in prior separation agreement—Power of court to increase.*—*KAWIN v. KAWIN*, [1927] 3 D. L. R. 383; [1927] 1 W. W. R. 690; 21 Sask. L. R. 415.—CAN.

### PART III. SECT. 2, SUB-SECT. 3.—B.

**f i. - .** — *In an action by a wife against her husband's father for alienat-*

*ing the affections of her husband, she alleged that she was prevented from the companionship of her husband & infant daughter by deft.'s conduct in keeping her husband away from her, so that she was compelled to support herself as best she could. There was no allegation of making defamatory statements by deft., & there was no allegation of malice.—Held: no reasonable cause of action was shown.—TALMAGE v. TALMAGE*, [1928] 3 D. L. R. 15; 62 O. L. R. 209.—CAN.

### PART IV. SECT. 1.

**n i. — Acquired & disposed of through husband—Belong to husband.**—A number of hogs, either the progeny of two hogs acquired by a wife as compensation for services performed by her for a neighbour or bought with the proceeds of sale of such progeny, were raised, acquired & disposed of through the efforts & the expense of her husband.—*Held*: they did not belong to the wife as against the husband's creditors.—*JOHN DEERE PLOW CO. v. BOWEN*, [1925] 1 D. L. R. 769; [1925] 1 W. W. R. 357.—CAN.

**sd. Legacy to wife—Death before reduction into possession—Right of husband as representative of wife**—If a legacy is bequeathed to a married woman, who dies before any act done by husband to reduce it into possession, he can only maintain an action for it as the representative of his wife, though he may be beneficially entitled to it.—*COLLINS v. CAHILL* (1850), 7 N. B. R. (2 All.) 103.—CAN.

**se. Husband not constituted agent of wife by marriage.**—A husband is not *prima facie* an agent for his wife by reason of their relationship. The onus is on the person alleging such agency

to prove that he is her agent.—*MILLARD v. BEVAN LUMBER & SHINGLE CO., LTD.*, [1928] 2 D. L. R. 367; 39 B. C. R. 430.—CAN.

### PART IV. SECT. 2.

**st. Reversionary interest.**—*STANDARD BANK v. BOULTON* (1878), 3 A. R. 93.—CAN.

### PART IV. SECT. 6, SUB-SECT. 2.

**sg. Not business carried on in partnership with husband.**—*CORN v. CANARY (B. C.)*, [1925] 4 D. L. R. 431; [1925] 3 W. W. R. 357; *reorg.*, [1925] 3 D. L. R. 223; [1925] 2 W. W. R. 563.—CAN.

**sh. Crops grown by wife—On husband's land—Strict proof necessary.**—*ANDERSON v. JOHN DEERE PLOW CO., LTD. (Sask.)*, [1926] 4 D. L. R. 255; [1926] 2 W. W. R. 667.—CAN.

**sj. — On wife's land—Burden of proof**—*BANQUE CANADIENNE NATIONALE v. TENCHA (Can.)*, [1927] 4 D. L. R. 665.—CAN.

### PART IV. SECT. 7, SUB-SECT. 1.

**sk. Conveyance to husband & wife—Creates tenancy in common.**—At common law, under a conveyance of land to husband & wife, they took an estate by entireties; but the effect of Married Women's Property Act is to enable the wife to take as though she were a *fee sole* & so the effect of the marital relationship is ended so far as real property is concerned. Under Conveyancing & Law of Property Act, R. S. O. 1927, c. 137, s. 12, they now take as tenants in common.—*SPRING v. KINNEE*, [1928] 4 D. L. R. 723; 62 O. L. R. 562.—CAN.

## Part V.—Effect of Divorce or Separation with Regard to Wife's Property.

- 757a. Husband entitled to income of trust fund during separation.**—*DUNCAN v. CAMPBELL* (1842), 12 Sim. 616; 6 Jur. 677; 59 E. R. 1269.
- Annotation*:—*Apld. Re Barnard, Barnard v. White* (1887), 56 L. T. 9.
- 786. Add. Annotation**:—*Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.
- 787. Add. Annotation**:—*Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

## Part VI.—Disposition of Property.

- 809. Add. Annotation**:—*Mentd. Parr v. A.-G.*, [1926] A. C. 239.
- 906. Add. Citations**:—*reversd. sub nom. PUBLIC TRUSTEE v. WOLF*, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.
- Add. Annotation*:—*Mentd. Parr v. A.-G.*, [1926] A. C. 239.
- 986. Add. Annotation**:—*Generally, Refd. Capron v. Capron*, [1927] P. 243.
- 1007. Add. Annotation**:—*Refd. Bosworthick v. Bosworthick*, [1926] P. 159.
- 1036. Add. Annotation**:—*Refd. Re Alington & L. C. C.'s Contract*, [1927] 2 Ch. 253.
- 1106. Add. Annotation**:—*Apld. Re Mathieson*, [1927] 1 Ch. 283.
- 1118. Add. Annotation**:—*Mentd. Re Bold, Banks v. Hartland* (1926), 95 L. J. Ch. 201.
- 1203. Add. Citation**:—8 W. R. 333.
- 1220. Add. Annotation**:—*Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
- 1225. Add. Annotation**:—*Apld. Re Fleetwood's Policy*, [1926] Ch. 48.
- 1226. Add. Annotations**:—*Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179. *Mentd. James v. British General Insce.*, [1927] 2 K. B. 311; *Perrin v. Dickson* (1929), 98 L. J. K. B. 683.
- 1226a. ——— If living at his death—Cash value of policy sought to be taken by insured during**

### PART VI. SECT. 1, SUB-SECT. 5.— B. (a) i.

**911i. Assignment imperative—Transfer to pay husband's debts.**—*RODRIGUE v. DOSTIE & VACHON*, [1927] 4 D. L. R. 1139; [1927] S. C. R. 563.—*CAN.*

### PART VI. SECT. 1, SUB-SECT. 5.— C. (a).

**951 v. ———**—*UNION BANK v. BENEDICT*, [1925] 4 D. L. R. 1057.—*CAN.*

### PART VI. SECT. 3, SUB-SECT. 1.

**d i. ——— Not on conveyance of equitable estate.**—*ADAMS v. LOOMIS* (1875), 22 Gr. 99.—*CAN.*

**e i. ———**—*HARTLEY v. MAYCOCK* (1897), 28 O. R. 508.—*CAN.*

**k i. ———**—*ELLIOTT v. BROWN* (1884), 11 A. R. 228.—*CAN.*

**k ii. ——— Sale as spinster—Conveyance not impeachable on ground of non-compliance with statutory formalities.**—*GRAHAM v. MENCILLY* (1869), 16 Gr. 661.—*CAN.*

### PART VI. SECT. 6, SUB-SECT. 1.

**c i. Conveyance by husband alone—Effect.**—*WALLIS v. BURTON* (1855), 5 Gr. 352.—*CAN.*

**c ii. ——— Held: an effectual transfer of his marital rights in the land conveyed.**—*ALLAN v. LEVES-COITE* (1857), 15 U. C. R. 9.—*CAN.*

**c iii. ——— Held: a deed of gift executed by a Burmese Buddhist husband without his wife's consent of part of the joint property of the marriage is wholly void & conveys no title to the donee in respect of the property which it purports to convey.**—*U. Po. U. v. MATOK GYI* (1929), 1 L. R. 7 Ran. 374.—*IND.*

**sl. Property used & maintained by husband—No presumption of gift by wife.**—*CALHOUN v. REID* (Sask.), [1927] 4 D. L. R. 808; [1927] 3 W. W. R. 429.—*CAN.*

**i. ———**—*SEMPLE v. SHARP*, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—*CAN.*

**ii. ——— Wife not examined—Certificate of examination fraudulently**

*signed.*—Title set aside, subject to the rights of an innocent purchaser from the transferee to obtain the land on the terms of his agreement with the transferee.—*FROSTAD v. LIBER*, [1927] 3 D. L. R. 916; [1927] 2 W. W. R. 550; 21 Sask. L. R. 603.—*CAN.*

**iii. ———**—The fact that the husband makes his home on certain land, in which he & another have each a one-half interest, brings it within Homesteads Act, 1915 (c. 29).—*McDOUGALL v. McDOUGALL*, [1919] 2 W. W. R. 637; 12 Sask. L. R. 289.—*CAN.*

**iv. ———**—After a homestead under Homesteads Act has ceased to be such owing to its permanent abandonment as a place of residence the wife has no status under said Act to oppose the validity of an assignment of the land executed by her husband prior to said date, although the assignment was not executed, as the Act requires it to be, by her; & her husband is in no better position in this respect than she is.—*DOUGLAS v. ADDIE*, [1928] 4 D. L. R. 167 [1928] 3 W. W. R. 37.—*CAN.*

**v. ——— Order dispensing with consent of wife to disposition—When granted under Dower Act.**—Where a husband had refused, without lawful reason therefor, to live with his wife or support her & his treatment of her was found to have conduced to her adultery, it was held that it would not be "fair & reasonable under the circumstances," to grant an order under Dower Act, R. S. A. 1922, c. 135, s. 8, dispensing with her consent to his disposition of his homestead within said Act. Under Dower Act, s. 3, as it now stands a disposition of the homestead by the husband without the wife's consent, when there is no order dispensing with it, is absolutely null & void, & not so merely as it affects the wife's interest therein.—*Re MILLER*, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—*CAN.*

**ni. ——— Residence condition precedent.**—*PENDLETON v. PENDLE-*

*TON*, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—*CAN.*

### PART VI. SECT. 8, SUB-SECT. 2.—A.

**el. ——— Separate estate.**—The interest of a wife in a policy effected by her husband on his own life, & which has been declared by him to be for her benefit, is her separate estate, & may, in her husband's lifetime, be assigned by her.—*GRAHAM v. CANADA LIFE ASSURANCE CO., PROCTOR v. GRAHAM* (1894), 24 O. R. 607.—*CAN.*

### PART VI. SECT. 8, SUB-SECT. 2.—B.

**ni. ——— Bankruptcy of husband.**—S. effected an insurance on his own life in favour of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. S's estates were afterwards sequestrated:—*Held* the policy vested in bkpt. as trustee for his wife, & it formed no part of his estate & was not liable to the diligence of his creditors.—*STEWART v. HODGE* (1901), 8 S. L. T. 436.—*SCOT.*

**ni. ———**—Money due under a policy of insurance payable to the wife of the insured after his death forms part of the estate of the insured. No trust is created in favour of the wife by a life policy expressed to be for the benefit of the wife of the assured.—*KRISHNA LAL SADHU v. PRAMILA BALA DAS* (1928), 1 L. R. 55 Cal. 1315.—*IND.*

**ni. ——— Whether assignable.**—A policy of insurance was effected by a husband for the benefit of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. There was competition between the widow & an assignee claiming under an assignment which bore to have been executed with the consent & concurrence of the wife:—*Held*: the wife had no power to discharge the trust in her favour created by the policy, & the insurance co. ought to have known that the deed was one which the spouses were disabled from granting.—*SCOTTISH LIFE CO. v. DONALD* (1901), 9 S. L. T. 200.—*SCOT.*

**life.]**—A husband took out an insurance policy for £500 on his life, & by the terms of the policy the co. agreed to pay that sum to insured's wife, if she were living at his death, or in the event of her prior death to pay it to insured's exors., administrators & assigns. The policy contained a proviso that, if at the end of twenty years insured was still living, he should have the right to exercise any of six specified options. Insured being then still living, he exercised an option to receive the entire cash value of the policy with its share of accumulated profits & to discontinue the policy. A sum of £288 thus became payable. The co. were unwilling to pay over this sum except on the joint receipt of the husband & wife, & ultimately paid it into ct. : -- **Held :** (1) the policy came within sect. 11 of the above Act, & created a trust in favour of the wife in certain events : (2) insured

must be taken to have exercised the option for the benefit of the trust; (3) unless the husband & wife came to an agreement, the fund must be accumulated in ct. until it could be ascertained by the death of either party who was entitled to it.—*Re FLEETWOOD'S POLICY*, [1926] Ch. 48; 95 L. J. Ch. 195; 135 L. T. 374.

**1228. Add. Citation :—**95 L. J. Ch. 24.

**1233a. Number of trustees - Fund to be retained for infants—Single trustee not appointed.]—*Re* HOWSON'S POLICY TRUSTS, [1885] W. N. 213.**

**1234. Add. Annotations :—***Refd.* *Royal Exchange Assce. v. Hope*, [1928] Ch. 179; *Smith v. Wood* (1928), 139 L. T. 250.

**1302.** In second paragraph for "on which" read  
"or child."

**PART VI. SECT. 9, SUB-SECT. 1.—A.**

-WHITEHEAD v.  
(1887), 14 O. R. 621.—

**CAN.**

t ii. ———— BELL v. BELL,  
[1928] 2 D. L. R. 311. - CAN.

**PART VI. SECT. 9, SUB-SECT. 2.—**  
**A. (8).**

1302 v. ————,]—Pltf., def.'s husband, became entitled to a conveyance of certain land vested in a solr. By pltf.'s direction the solr. conveyed the land to deft. The conveyance was dated Apr. 9, 1920, & was not registered until the following Dec. Until registration the deed had not been delivered, & deft. had been told nothing about it. —Held: though the presumption of advancement may be rebutted by evidence of actual intention, there was cogent evidence of pltf. having ultimately made up his mind that his wife should have the property.—HARRINGTON v. HARRINGTON, [1925] 2 D. L. R. 849 : 56 O. L. J. 568.—CAN.

1302 vi. — — — — — DE BURY v.  
DE BURY (1903), 36 N. B. R. 37; 22  
C. L. T. 181. CAN.

**sm. Grain & stock on land conveyed to wife.** - A husband conveyed to his wife half of a quarter section of land. Husband & wife lived together on, & farmed, the quarter section, & the husband worked on the farm after the transfer in the same way as before. -- **Held:** the husband was the owner of grain grown on, & animals situated on, the quarter section. - NATIONAL TRUST CO. v. HOWLAWCHUK, [1925] 3 W. W. R. 382. - **CAN.**

**sn. Purchase in husband's name—Subsequent transfer to wife—Failure of consideration.**—Husband & wife purchased a house in Oct. 1920. The house was in pltf.'s name until Jan. 1922, when it was transferred to the wife. In Jan. 1924, the husband was ejected from the house, & he brought action against the wife for a declaration that his wife held the house as trustee for him. On the trial the husband stated that when he made the conveyance to his wife he did so on her undertaking that the members of her family would vacate the house, & this was never carried out.—**Held:** pltf. could not succeed, as the only claim he could set up would be that he had made a conveyance for a consideration that had failed, & his action

would be either for specific performance or damages.—**BODY v. BODY (1924), 34 B. C. R. 315.—CAN.**

**50. Conveyance by husband without consideration. Husband solvent.—Certificate of title issued to wife.**—Where land was transferred, as a gift, to a married woman by her husband, during the time that Married Woman's Act, R. S. M. 1892, c. 95, was in force, the husband being then solvent, & a certificate of title therofore issued in her name under Manitoba Real Property Act.—*Held*: the beneficial, as well as the legal, interest in the land vested in her for her separate use, & neither the land nor its proceeds could be taken in execution for debts of the husband subsequently incurred, notwithstanding Married Woman's Act, s. 2, respecting property received by a married woman from her husband during coverture. —FRASER v. DOUGLAS (1908), 40 S. C. R. 384.—**CAN.**

**PART VI. SECT. 9, SUB-SECT. 2.—**  
**A. (b).**

1337 iii. ———, J.—The deposit by a Hindu of his own money in a bank in the joint names of himself & wife, & on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife, there being in India no presumption of an intended advancement in favour of a wife.—GUJAN DITTA v. RAM DITTA (1928), 55 L. R. Ind. App. 235.—**IND.**

m i. —.]-Held: to raise a presumption of joint tenancy.—**MATHEWS v. NATIONAL TRUST CO. (Ont.)**, [1925] 4 D. L. R. 774.—**CAN.**

**sp. Banking account in joint names.]**—A wife & husband opened a joint account in a bank, & both signed a direction to the bank: "All money which may be deposited by us or either of us to the account is our joint property, but such money may be withdrawn by either one of us, or the survivor of us." The money was all the husband's, & was deposited to pay the expenses of the wife & her child, during the husband's absence, & to make payments in connection with his property:—**Held:** the wife was not entitled to half the money to the credit of the account.—**SOUTHEY v. SOUTHEY** (1917), 40 O. L. R. 429; 38 D. L. R. 700.—**CAN.**

— *Right of wife as survivor.*—  
See Nos. 1335-1338.

**PART VI. SECT. 9, SUB-SECT. 3.—**  
**A. (a).**

**1370 i. Wife not independently advised—[Guarantee for husband.]**—Want of independent advice standing alone is insufficient to justify relief, but where there has been undue influence by the husband & knowledge of its exercise or facts from which such knowledge should be inferred, & the transaction is contrary to the wife's interests, a sufficient case has been made out for the granting of relief.—**CANADIAN BANK OF COMMERCE v. FOREMAN (Alta.),** [1926] 4 D. L. R. 844; [1926] 3 W. W. R. 486; *reversd.* on the facts, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 413.—**CAN.**

1870 ii. ———.]—BRADLEY v.  
IMPERIAL BANK OF CANADA, [1926]  
3 D. L. R. 38: 58 O. L. R. 650.—CAN.

1370 iii. — *Promissory note.* —  
FRYERS & CO., LTD. v. STEEVES (N. B.),  
[1927] 4 D. L. R. 1077. — CAN.

1382 iv. — — —.] (On an interpleader issue between an execution creditor & the wife of the debtor as to the ownership of a motor car, the wife & her husband testified that the car had been bought with her money, which had come to her from the keeping of boarders & from the sale of her property. These moneys were all collected by the husband & left by the wife in his hands to use as he saw fit, & he placed them in his own account & used them indifferently with his own. He had never rendered her an account of them, nor had she ever called on him to do so. They had lived together in amity since their marriage & he had maintained her. The wife testified that she had an arrangement with the husband under which said moneys were to remain her property, but the circumstances under which it was entered into were not disclosed, & its terms were indefinite:—*Held*: the moneys in question had become the husband's by way of gift from his wife.

—PEAREN v. BLACK & ARMSTRONG, [1928] 3 D. L. R. 471:—[1928] 2 W. W. R. 98: 22 Sask. L. R. 502.—CAN.

**PART VI, SECT. 9, SUB-SECT. 4.**

d 1. — Property purchased with man's money—Woman realising property & appropriating proceeds ordered to account.]-*ST. ELOI v. ENO* (1925), 36 B. C. R. 153.—CAN.

- fi. — Summary application for delivery up of title deeds. — *Re MELLOR* (B. C.) (1905), 2 W. L. R. 17. — **CAN.**

## Part X.—Wrongs of Wife during Coverture.

**1860a. Liability of husband—Goods delivered to husband & wife.**—ANON. (1364), Y. B. 38 Edw. 3, fol. 1A.

*Annotation* :—**Consd.** Isaac v. Clark (1615), 2 Bulst. 306.

**1897a.** ————.]—LANHAM v. PIRIE (1857), 29 L. T. O. S. 171; 3 Jur. N. S. 704; 5 W. R. 540, L. C. & L. JJ.

## Part XI.—Contracts for Separation.

**1920. Add. Annotation** :—**Generally, Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

**1930. Add. Annotation** :—**Refd.** Hyman v. Hyman, [1929] A. C. 601.

**1934. Add. Annotation** :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

**1935. Add. Annotation** :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

**1937. Add. Annotation** :—**Refd.** Papadopoulos v. Papadopoulos (1929), 46 T. L. R. 44.

**1939. Add. Annotation** :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

**1941. Add. Annotation** :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

**1943. Add. Annotation** :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

**1965. Add. Annotations** :—**Consd.** Hyman v. Hyman, [1929] A. C. 601. **Refd.** Dewe v. Dewe, Snowden v. Snowden, [1928] P. 113.

**1969. Add. Annotation** :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

**1989. Add. Annotations** :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416; May v. May (1929), 98 L. J. K. B. 770.

**2019. Add. Annotations** :—**As to (1) Refd.** Hyman, v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416. **As to (7) Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

**2038. Add. Annotations** :—**Consd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416. **Apld.** May v. May, [1929] 2 K. B. 386.

**2039. Add. Annotations** :—**Consd.** Hyman v. Hyman, [1929] A. C. 601. **Apld.** May v. May, [1929] 2 K. B. 386.

**2039a.** ————.]—By a deed of separation reciting that differences had arisen between a husband & a wife, it was agreed that the wife should during the life of the husband live separate & apart from him & free from his marital control & authority as if she were unmarried, & that the wife should retain as her separate property certain articles which, if she should die in the lifetime of the husband without having disposed of them, should devolve as if she had died possessed thereof intestate & a widow. The husband covenanted that he would during the life of the wife pay to her an annual sum of £600. The wife was also to be entitled to certain furniture & effects for the use of herself during her life. Throughout the deed the parties were referred to as "the husband" & "the wife" respectively. It was provided that if the husband & the wife should be reconciled to each other & return to cohabitation the deed should become void. The husband subsequently committed adultery & the wife obtained a decree dissolving the marriage. He then made default in paying the full annual sum provided for by the deed, & she brought an action to recover the arrears :—**Held** : the deed was not subject to any implied term that it should only operate so long as the marriage relation continued to exist between the parties, & plff. was entitled to recover.—**MAY v. MAY**, [1929] 2 K. B. 386; 98 L. J. K. B. 770; 141 L. T. 629, C. A.

### PART X. SECT. 2, SUB-SECT. 1.

**r i.** ————.]—A husband may be made jointly liable with his wife for her torts, notwithstanding Married Women's Property Act, R. S. M., 1913 (c. 123). —**DEKOVICH v. HUCAL** (Man.), [1927] 1 D. L. R. 879; [1927] 1 W. W. R. 179.—**CAN.**

**ad.** *False representation by wife—As to authority of husband to order goods—Whether coverture good defence.*—**Held** : plea good : Administration of Justice Act could not assist plff., & Married Women's Act, R. S. O. 1877, c. 125, ss. 6, 20, did not create any new liability against a married woman for her torts or quasi torts, but merely allowed her to be sued alone, where formerly she could have been sued with her husband, & the authorities showed that if so sued the action would have failed.—**STONE v. KNAPP** (1879), 29 C. P. 605.—**CAN.**

### PART X. SECT. 2, SUB-SECT. 2.

**st.** *Joint conversion by husband & wife—Liability of wife's separate estate.*—Where plff. proved a joint wrongful

occupation & conversion of the rents & profits of his land by a husband & wife.—**Held** : the husband & wife were jointly liable to plff., & plff. was entitled to recover against the separate property of the wife, for it could not be inferred that the latter was acting under the direction or coercion of her husband so as to exempt her from liability.—**BARKER v. WESTOVER** (1882), 5 O. R. 116.—**CAN.**

### PART X. SECT. 2, SUB-SECT. 4.

**sg.** *Joint trespass by husband & wife—Damage to adjoining property—Due to acts of husband—Liability of wife.*—In an action of trespass against husband & wife for placing logs against plff.'s building & causing damage, & for placing a spout, by which the water from the roof of defl.'s house ran against & injured plff.'s building, the evidence showed that the property was owned by the wife, but that she did not interfere with the management of it, or participate in the acts complained of.—**Held** : the wife was not liable.—**McDONALD v. LESTER** (1890), 30 N. B. R. 137.—**CAN.**

### PART XI. SECT. 1, SUB-SECT. 3.—A.

**1928** *in. S. P.* **WOODS v. WOODS**, [1927] 3 D. L. R. 321; 60 O. L. R. 438.—**CAN.**

### PART XI. SECT. 3, SUB-SECT. 2.

**n i.** ————.]—Where a wife understood the agreement, had independent advice, & was not misled or influenced by her husband in regard to her legal rights or the meaning & effect of the document.—**Held** : it could not be set aside for fraudulent misrepresentation & duress.—**THOMSON v. THOMSON**, [1927] 1 D. L. R. 653; 59 O. L. R. 661.—**CAN.**

### PART XI. SECT. 6, SUB-SECT. 7.

**f i.** ————.]—Where a separation agreement was not invalid on the ground that the father had therein waived his rights to the control & guardianship of the children :—**Held** : before the wife could ask for maintenance for them, she must show that she had failed to perform those duties to them amounting to guardianship which she had assumed under the agreement.—**HOLOWACHUK v. HOLOWACHUK** (Man.), [1927] 2 W. W. R. 470.—**CAN.**



- 2040a. — Bankruptcy of husband.**—*DEWE v. DEWE, SNOWDON v. SNOWDON*, No. 595a, *ante*.
- 2049. Add. Annotation:—Refd.** *Willis v. Willis* (1927), 96 L. J. P. 177.
- 2061a. — Refusal of nominee to undertake custody—Effect on deed.**—Where the parties to a matrimonial suit had agreed to settle it, & a deed of separation had been approved to give effect to such settlement:—*Held*: the refusal of the husband's brother to undertake the custody of one of the children, as nominee of the husband, which custody had been agreed on between the husband & wife as one of the terms of the deed, was not a failure of such a vital term as to prevent the settlement from being carried into effect.—*WILLIS v. WILLIS*, [1928] P. 10; 96 L. J. P. 177; 137 L. T. 621; 43 T. L. R. 657, C. A.
- 2083. Add. Annotation:—Apprvd.** *Hyman v. Hyman*, [1929] A. C. 601.
- 2084. Add. Annotation:—Apprvd.** *Hyman v. Hyman*, [1929] A. C. 601.
- 2085. Add. Annotation:—Overd.** *Hyman v. Hyman*, [1929] A. C. 601.
- 2085a. —**—*]*—A woman who, in a deed of separation, covenants in consideration of certain benefits not to claim from her husband in the future maintenance or alimony, & is afterwards granted a decree absolute of divorce, is not debarred from petitioning for maintenance after the dissolution of marriage, notwithstanding that the deed contained no

- provision for its termination on the marriage being dissolved.—*HYMAN v. HYMAN*, [1929] A. C. 601; 98 L. J. P. 81; 141 L. T. 329; 93 J. P. 209; 45 T. L. R. 444; 73 Sol. Jo. 317; 27 L. G. R. 379, H. L.
- Annotations:—Expld.* *May v. May*, [1929] 2 K. B. 386. *Refd.* *Papadopoulos v. Papadopoulos* (1929), 46 T. L. R. 44.
- 2090. Add. Annotation:—Generally, Refd.** *Hyman v. Hyman*, [1929] A. C. 601.
- 2106. Add. Annotation:—As to (1) Refd.** *Hyman v. Hyman*, [1929] A. C. 601.
- 2111. Add. Annotation:—Refd.** *II. v. H.*, [1928] P. 206.
- 2144. Add. Annotation:—Refd.** *Hyman v. Hyman*, [1929] A. C. 601.
- 2151. Add. Annotation:—Refd.** *Hyman v. Hyman*, [1929] A. C. 601.
- 2174. Add. Annotations:—Refd.** *Bosworthick v. Bosworthick*, [1927] P. 64; *Hyman v. Hyman*, [1929] A. C. 601.
- 2176. Add. Annotations:—Refd.** *Bosworthick v. Bosworthick*, [1927] P. 64; *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416.
- 2177. Add. Annotations:—Consd.** *Bosworthick v. Bosworthick* (1926), 136 L. T. 211. *Appl.* *May v. May*, [1929] 2 K. B. 386. *Refd.* *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416.
- 2179. Add. Annotation:—Consd.** *Hyman v. Hyman*, [1929] A. C. 601.

## Part XII. — Legal Proceedings.

- 2189a. — — — — — ] — PRACTICE NOTE**, [1926] W. N. 8.
- 2210. Add. Annotation:—Consd.** *Smith v. Schilling*, [1928] 1 K. B. 429.
- 2213. Add. Annotation:—Consd.** *Smith v. Schilling*, [1928] 1 K. B. 429.
- 2249. Add. Annotation:—As to (2) Consd.** *Green v. Weatherill*, [1929] 2 Ch. 213.

### PART XI. SECT. 6, SUB-SECT. 11.

**2073 ii. — — — — — ]**—A separation agreement, which provided for the payment of a specific sum by instalments to be secured by a mortgage, & which did not contain a *dum casta* clause—*Held*: enforceable by the wife, although there had been subsequent adultery by her & she had been divorced & had married again.—*JURR v. RUST*, [1927] 2 D. L. R. 248; [1927] 1 W. W. R. 491; 22 Alta. L. R. 430.—CAN.

### PART XI. SECT. 6, SUB-SECT. 12.

**2086 i. Covenant by wife not to claim further maintenance—Subsequent judicial separation.**—Where a petition for a decree of judicial separation on the ground of the husband's adultery was brought so that a petition for alimony might be founded:—*Held*: the petition must be dismissed.—*K. v. K.*, [1925] 3 D. L. R. 872; [1925] 2 W. W. R. 641.—CAN.

**sl. Covenant by wife not to claim alimony—Subsequent adultery of husband—Whether covenant still binding—Right of court to award maintenance for children.**—*HOLTEN v. HOLTEN*, [1928] 1 D. L. R. 516.—CAN.

### PART XI. SECT. 7, SUB-SECT. 2. — B.

**sx. Jurisdiction of court—King's Bench Act, s. 22.**—*DAVIS v. DAVIS*, [1926] 1 W. W. R. 942, 20 Sask. L. R. 543.—CAN.

**2102 ii. — Breach of condition—As to access to child—Reply alleging husband's bad character.**—A separation agreement provided that the wife should be given the custody of the son,

but that his father should be allowed to see him with reasonable frequency & should be consulted as to, & satisfied with, his up-bringing. To an action by the wife under the agreement for overdue instalments breach of the condition as to the son was pleaded:—*Held*: a reply alleging the husband's bad character was no excuse for a breach of the condition.—*MCLENNAN v. MCLENNAN*, [1925] 3 D. L. R. 281; [1925] S. C. R. 279; *affg.*, [1925] 1 D. L. R. 277; 57 N. S. R. 480.—CAN.

**2103 i. For arrears of annuity.**—*BARLOW v. BARLOW* (1927), 30 W. A. L. R. 8.—AUS.

**sy. For agreed sum for maintenance—Covenant not to sue.**—By a separation agreement it was provided, *inter alia*, that the husband would pay the wife £150 for her maintenance & support; that the wife would keep the husband indemnified against her debts; that the wife would not commence proceedings for maintenance against the husband, & that she would not molest him. Custody of, & the duty of maintaining, two children of the marriage were conferred on the wife. The husband did not pay the £150 mentioned; the wife sued for this sum:—*Held*: the wife was entitled to recover.—*MEZZINE v. MEZZINE*, [1927] S. A. S. R. 167.—AUS.

**sz. — — — — — ]**—*BAKEWELL v. BAKEWELL* (1927), 38 S. R. N. S. W. 94; 45 N. S. W. W. N. 45.—AUS.

### PART XI. SECT. 7, SUB-SECT. 2. C.

**sa. Claim for—Whether claim for alimony can be joined.**—A claim for specific performance of a separation

agreement is inconsistent with a claim for alimony & so long as the former claim stands it is a bar to the obtaining alimony *pendente lite* or interim costs.—*HENKE v. HENKE*, [1928] 1 D. L. R. 1090; [1928] 1 W. W. R. 337; 22 Sask. L. R. 267.—CAN.

### PART XI. SECT. 8.

**2165 iii. — — — — — ]**—A separation agreement may have as a secondary object the effecting of a permanent settlement of property, but unless a separation agreement clearly indicates such purpose the general rule, that the agreement is no longer enforceable after resumption of cohabitation, should be applied.—*NATIONAL TRUST CO., LTD. v. BELL*, [1925] 4 D. L. R. 1029; [1925] 3 W. W. R. 712.—CAN.

**sb. Agreement for—Failure of consideration.**—*WAKARUK v. WAKARUK* (Alta.), [1926] 1 D. L. R. 493.—CAN.

### PART XII. SECT. 1, SUB-SECT. 1.—A.

**e (p. 249) i. — — — — — ]**—In an action by a purchaser for specific performance of an agreement for the sale of land, a motion by deft.'s wife to be added as deft. on the ground that, under Dower Act, R. S. A. 1922 (c. 135), she had an interest in the property, was refused.—*SAMPSON v. THOMAS*, [1925] 1 W. W. R. 1018.—CAN.

### PART XII. SECT. 1, SUB-SECT. 1.—F.

**2221 ii. — — — — — ]**—Under K. B. Rule 755 an order for payment may be obtained by a judgment creditor against a married woman.—*BISHOP*

## Part XIII.—Matrimonial Causes.

2317. *Add. Annotation :—As to (2) Apld. Cavendish v. Cavendish*, [1926] P. 10.
2321. *Add. Annotations :—Consd. H. v. H.*, [1928] P. 206. *Refd. A.-G. for Alberta v. Cook*, [1928] A. C. 444; *Raeburn v. Raeburn* (1928), 138 L. T. 672.
2334. *Add. Annotation :—Refd. Salvesen (or von Lorange) v. Austrian Property Administrator*, [1927] A. C. 641.
2345. *Add. Annotation :—Folld. II. v. H. (otherwise N.)* (1929), 45 T. L. R. 618.
- 2345a. - - —.]—Where the ct. finds in a suit for nullity of marriage that both the parties to the ceremony of marriage are impotent, each being incapable as regards the other, a decree *nisi* may be granted to each of the parties & either may apply in due course for a decree absolute.—*II. v. H. (OTHERWISE N.)* (1929), 98 L. J. P. 155; 45 T. L. R. 618.
- 2484a. **Persistent extravagance—Adequate allowance made.]**—If a woman marry a man whose business or career demands his residence out of England, & the wife by persistent extravagance makes it impossible for him to live with her in his country of residence without jeopardising his business position, his refusal to have her living with him in his country of residence is not desertion if he maintain her in England with a suitable allowance. Proof of such facts set up as an answer to a wife's petition for restitution of conjugal rights would be a good defence in law so long as such circumstances continue to exist.—*G. v. G.* (1929), 46 T. L. R. 69.
2490. *Add. Annotations :—As to (2) Consd. Hyman v. Hyman, Hughes v. Hughes*, [1929] P. J. **Refd. Hyman v. Hyman**, [1929] A. C. 601.
2492. *Add. Annotation :—Consd. Hyman v. Hyman*, [1929] A. C. 601.
2498. *Add. Annotation :—Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2501. *Add. Annotation :—Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

v. BLACK, [1925] 3 W. W. R. 679.—  
CAN.

**PART XII. SECT. 1, SUB-SECT. 1.—I.**

**50. Liability of husband.—Participating in litigation.**—In an action by a married woman against a third party.—*Held*, notwithstanding Married Women's Property (Scotland) Act, 1920 (c. 64), s. 3 (1), pursuer's husband, in respect that he had actively participated in the litigation, fell to be made jointly & severally liable in expenses along with his wife.—*M'ILLIAN v. MACKINLAY*, [1926] S. C. 673.—**SCOT.**

**PART XII. SECT. 1, SUB-SECT. 2.—A.**

• i. — *Interference with business carried on by wife.*—Pltf., a married woman, carried on business as an hotel-keeper, & owned the chattels in the hotel. Def't., her husband, interfered with pltf. in her business by taking the receipts, giving orders to servants, & maltreating pltf. An injunction was granted restraining def't. from interfering in the business or with the servants or agents, or removing any of pltf.'s chattels.—DONNELLY v. DONNELLY (1885), 9 O. R. 673.—CAN.

**PART XII. SECT. 1, SUB-SECT. 2.—B.**

**2292 i. Action by wife against husband**  
**—For negligence.**—[1st., a married woman, brought this action against her husband & another for negligence in the operation of a motor vehicle driven by her husband, in which she was a passenger, whereby she was injured, & she claimed damages for her injury. The statement of claim contained no allegation of any express or implied contract:—*Held*: the action was for a tort within Married Women's Property Act, 1926, s. 8, & was not maintainable against pltf.'s husband.—**GOLDMAN v. GOLDMAN**, [1928] 2 D. L. R. 152; 61 O. L. R. 657.—**CAN.**]

2292 ii. ----- .] A wife, who was being driven by her husband in his motor car, was injured in a collision between the motor car & a motor lorry. She brought an action of damages against the owner of the lorry &

against her husband—*Ucid* : the action against the husband was incompetent, in respect that (a) at common law the relationship existing between husband & wife is of so intimate a character that it is against public policy that the one should have a right of action against the other in consequence of a wrong done, & (b) Married Women's Property (Scotland) Act, 1920, has not altered the law in this respect.—*HARPER v. HARPER*, [1929] S. C. (Ct. of Sess.) 220—**SCOT.**

2292 iii. — *Married Women's Act, R. S. A. 1922, s. 2.* [— A provincial statute which purports to give a married woman the right to sue her husband in tort is *ultra vires*, on the ground that it alters the common law status of husband & wife, a subject which under the term "marriage" is assigned exclusively to the Dominion Parliament. Therefore, *Married Women's Act, R. S. A. 1922, c. 214, s. 2*, which provides, *inter alia*, that a married woman shall be capable of suing & being sued in any form of action as if she were an unmarried woman cannot be relied on to support an action in tort by a wife against her husband. — *HILL v. HILL*, [1928] 4 D. L. R. 161; [1928] 3 W. W. R. 1, 673. — **CAN.**

**PART XII. SECT. 1, SUB-SECT. 2.—D.**

**sd.** *Jurisdiction to decide on originating notice—Right to direct an issue.*—**FOSTER v. FOSTER**, [1928] 3 W. W. R. 573.—**CAN.**

**PART XIII. SECT. 1, SUB-SECT. 1.**

m 1. ———.]—A judge of the Supreme Ct., sitting in his ordinary capacity, has no jurisdiction to interfere with decrees pronounced by the ct. as a ct. for divorce & matrimonial causes under Matrimonial Causes Act, 1857 (c. 85).—CLAMAN v. CLAMAN (1925). 35 B. C. R. 137.—CAN.

ai. — *High Court—Bombay*—*To hear matrimonial suits between Jews.*—The High Ct. of Bombay has jurisdiction to entertain a suit arising out of matrimonial disputes between Jews, & in deciding such disputes, the

out of England, & the wife by persistent extravagance makes it impossible for him to live with her in his country of residence without jeopardising his business position, his refusal to have her living with him in his country of residence is not desertion if he maintain her in England with a suitable allowance. Proof of such facts set up as an answer to a wife's petition for restitution of conjugal rights would be a good defence in law so long as such circumstances continue to exist.—*G. v. G.* (1929), 46 T. L. R. 69.

**2490. Add. Annotations:—**As to (2) **Consd. Hyman**  
*v. Hyman*, *Hughes v. Hughes*, [1929] P. 1.  
 " **Refd. Hyman v. Hyman**, [1929]  
 A. C. 601.

**2492. Add. Annotation :—**Consd. *Hyman v. Hyman*,  
[1929] A. C. 601.

**2498.** *Add. Annotation :—***Refd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

**2501.** *Add. Annotation :—***Reid.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

Jewish law must be applied "with such adaptations to the circumstances of the case as justice may require."—**BERN-  
JAMIN v. BENJAMIN** (1925), 1 L. R.  
50 Bom. 369.—**IND.**

**PART XIII. SECT. 1, SUB-SECT. 3.**

2320 i. *Practice of Ecclesiastical Courts followed—Proceedings in forma pauperis in Manitoba.*—**COLERIDGE v. COLERIDGE** (Man.), [1926] 2 D. L. R. 896; [1926] 1 W. W. R. 857.—**CAN.**

**PART XIII. SECT. 3, SUB-SECT. 1.**

**p. i. —.]**—The fact that, at the time of her marriage, a wife has living a child born as a consequence of illicit intercourse with another man, of which intercourse her husband had no knowledge, does not entitle the latter to have the marriage set aside.—**STANDER v. STANDER, [1929] App. D. 349.—S. AF.**

**PART XIII. SECT. 3, SUB-SECT. 2.—C.**

**2346 iii.** ————.]—Where the husband was potent & there was no structural incapacity on the part of the wife, but the marriage had never been consummated owing to the opposition of the wife without any legitimate reason, the ct. granted a decree of nullity of the marriage on the ground that there was an invincible repugnance on the part of the wife to the act of consummation resulting in paralysis of the will, which was consistent only with incapacity.—S. v. S. (1926), 29 W. A. L. R. 52.—AUS.

**PART XIII. SECT. 3. SUB-SECT. 2.—E.**

2397 i. *Sufficiency of.*—*Hate v. Hate*, [1927] 3 D. L. R. 481; [1927] 2 W. W. R. 366; 22 Alta. L. R. 565—CAN.

**PART XIII. SECT. 5, SUB-SECT. 1.—E.**

2452 ii. —.]—On a petition for restitution of conjugal rights petitioner must satisfy the ct. that he or she has a sincere desire for a real restitution of those rights & a corresponding willingness to render them to the other spouse.—**WOODLANDS v. WOODLANDS** (1924). 35 C. L. R. 446.—**AUS.**

**2511. Add. Annotation :—***Refd. Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.*

**2518a. —.**—A husband & wife intermarried in Feb. 1922, & continued to cohabit until July, 1927, when the wife left the husband. On Nov. 2, 1927, the wife petitioned for a divorce founded upon an act of sodomy alleged to have been committed on her by the husband in Mar. 1922, & alleged acts of cruelty consisting of (a) acts of shameful uncleanness & invitations to repeat them, & (b) ordinary acts of cruelty, such as acts of ill-temper & abuse.

At the trial the judge in summing up to the jury did not warn the jury against finding that the sodomy alleged had been committed on the uncorroborated evidence of the wife, who was an accomplice; nor did he clearly point out that before it could be held that there was cruelty as regards the sexual malpractices it must be shown that they caused danger to life, limb or health, bodily or mental, or a reasonable expectation of it. The jury's verdict was that sodomy had been committed as alleged; that the husband had been guilty of cruelty of the class (a), & that he had not been guilty of cruelty of class (b). The judge then made a decree *nisi* for dissolution of the marriage. On appeal:—*Held*: (1) the judge ought to have warned the jury that cogent evidence was required to overcome the presumption of innocence of sodomy, & that they should not convict on the wife's uncorroborated evidence; (2) the ct. must take notice of the fact that there had been condonation of the offence, even though the husband did not plead it; (3) the judge had misdirected the jury by saying that the sexual malpractices were cruelty in themselves, as there could not be legal cruelty without danger to life, limb, or health, physical or mental, or reasonable

apprehension of it; & (4) instead of directing a new trial the ct. should dismiss the wife's petition.

(5) The wife having on the evidence been a consenting party to the act of sodomy alleged to have been committed it would be impossible for her to obtain a decree of divorce based solely on that act.

(6) The rules with regard to condonation & connivance as a bar to a decree for divorce were well established in the practice of the Ecclesiastical Cts. before the Act of 1857. In my judgment these rules apply to cases in which the ground alleged for divorce is sodomy (*GREER, L.J.*)—*STATHAM v. STATHAM, [1929] P. 131; 98 L. J. P. 113; 140 L. T. 292; 45 T. L. R. 127; 72 Sol. Jo. 847. C. A.*

**2554. Add. Annotation :—***Generally, Refd. Raeburn v. Raeburn (1928), 138 L. T. 672.*

**2648a. Unnatural offences.]—***STATHAM v. STATHAM, No. 2518a, ante.*

**2661. Add. Annotations :—***Apld. Statham v. Statham, [1929] P. 131. Mentd. Welton v. Welton, [1927] P. 162.*

**2718a. —.**—An infection of resp. with "crabs" is, in the absence of prior misconduct or infection of petitioner, *prima facie* evidence that resp. has committed adultery.—*STEAD v. STEAD (1927), 71 Sol. Jo. 391.*

**2733a. — — — Hotel evidence.]—**On the trial of an undefended petition for divorce, on the ground of adultery with a woman unknown, the ct. declared its intention of refusing to sanction the practice of resorting to hotels to establish a *prima facie* case for dissolution of marriage, & dismissed the petition.—*AYLWARD v. AYLWARD (1928), 44 T. L. R. 456.*

#### PART XIII. SECT. 5, SUB-SECT. 1. F. (a).

*sd. Petitioner guilty of adultery.]* A suit for restitution of conjugal rights lies under Burmese Buddhist law, but a husband will not obtain such restitution on account of his misconduct.—*MATHWIN NWE v. MATING KIA (1929), 1 L. R. 7 Ban. 451.—IND.*

*se. Defendant in prison.]—*The ct. has no power to dispense with the preliminary order of restitution in an action for restitution of conjugal rights falling which a divorce on the ground of malicious desertion. In such an action the mere fact that deft. is in prison is no bar to the granting of a restitution order.—*ALDRED v. ALDRED, [1929] App. D. 356.—S. AF.*

#### PART XIII. SECT. 5, SUB-SECT. 1.— F. (b).

*sf. Petitioner suffering from venereal disease.]—*The fact that a husband is suffering from venereal disease is no bar to an action by him against his wife for restitution of conjugal rights falling which a divorce.—*AINSBURY v. AINSBURY, [1929] App. D. 109.—S. AF.*

#### PART XIII. SECT. 5, SUB-SECT. 2.— B. (a).

**2521 i. Question of fact & degree.]—**Cruelty is a matter of degree.—*A. v. A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—CAN.*

**2521 ii. —.**—The question whether ptif. herein was actually afraid of her husband or not held not to affect the

question whether his conduct amounted to legal cruelty as defined in *Russell v. Russell, No. 2661. DESABRAINS v. DESABRAINS, [1928] 3 D. L. R. 549; [1928] 2 W. W. R. 394; 22 Sask. L. R. 417.—CAN.*

**2534 i. Cumulative effect of acts not cruelty per se.]—**The acts constituting cruelty may be treated as cumulative.—*A. v. A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—CAN.*

#### PART XIII. SECT. 5, SUB-SECT. 2.— B. (b).

**2560 ix. —.**—A course of conduct calculated to break the spirit of the sufferer & continued until health breaks down, or is likely to break down, under the strain, is cruelty.—*KAUFELD v. KAUFELD (Sask.), [1926] 1 W. W. R. 159.—CAN.*

#### PART XIII. SECT. 5, SUB-SECT. 2.— B. (b).

*sg. Spending earnings on mistress—Telling wife of preference for mistress.]—*Where the conduct of a husband, in obliging his wife to earn her own living while he spends his earnings on a mistress for whom he openly indicates his preference, so preys on the wife's mind that, to his knowledge, it undermines her health, it constitutes cruelty.—*JONES v. JONES, [1925] 2 D. L. R. 1144; [1925] 1 W. W. R. 449; 19 Sask. L. R. 262.—CAN.*

#### PART XIII. SECT. 5, SUB-SECT. 2.— B. (b).

*sh. Husband describing himself on*

*enlistment as widower—Deserting wife during pregnancy.]—*A husband deserted his wife on two occasions, on one of which she had a baby three months old, & on the other when she was about to be confined. On joining the army in 1916 the husband stated that he was a widower, & thereby the wife was caused considerable pain & anxiety, & with difficulty obtained an allowance out of his pay as his wife.—*Held*: the husband's conduct amounted to cruelty.—*STUART v. STUART (1926), 1 L. R. 53 Cal. 436.—IND.*

#### PART XIII. SECT. 5, SUB-SECT. 2. E.

**2683 iii. —.**—Action by a wife for judicial separation on the ground of cruelty dismissed, where the violence complained of did not injure her health or give her cause to fear injury thereto, & was the result of her conduct with another man which she continued knowing that it provoked deft.—*CONNOLLEY v. CONNOLLEY, [1925] 2 W. W. R. 426.—CAN.*

#### PART XIII. SECT. 5, SUB-SECT. 3.— B. (b).

**2736 i. Whether necessary to prove direct fact—When opportunity shown to exist—Letter from defender admitting incident.]—***SMITH v. SMITH, [1929] S. C. (Ct. of Sess.) 75.—SCOT.*

*sj. Failure to deny evidence given by other side.]—Held*: a strong circumstance to be taken into account.—*STACEY v. STACEY (Alta.), [1927] 2 D. L. R. 854; [1927] 1 W. W. R. 821.—CAN.*

**2737a.** — — — — —.]—Applt. in 1915 ceased to live with resp. as his wife, though she joined him sometimes in America, London & Scotland, & letters passed between them of an affectionate nature. In 1919 applt. met D. in New York, who was living with her husband & two daughters on terms of affection & up to the date of these proceedings, continued to be on these terms with them. In Dec. 1920, with her husband's consent, she went on a big game shooting expedition to Africa with applt.; applt.'s wife consented, though against her desire. Applt. & D. were drawn together through their mutual enthusiasm for sport. An expert photographer was with them on the expedition but fell ill. Applt. & D. were away on trips with no one but natives for several days & nights together. D. was, in 1920, forty-five years of age, & there was no direct evidence of familiarity between them:—*Held*: there was not sufficient ground for the inference that adultery might reasonably be assumed as the result of an opportunity for its occurrence.—*ROSS v. ELLISON (OR ROSS)* (1929), 96 L. J. P. C. 163; 141 L. T. 666, H. L.

**2743.** *Add. Annotations*:—*Distd. Mart v. Mart*, [1926] P. 24. *Refd. Selby v. Atkins* (1926), 135 L. T. 45; *S. v. S. & P.* (1927), 44 T. L. R. 52; *Re A. B.'s Petn.*, [1928] P. 25.

**2746.** *Add. Annotation*:—*Refd. Mart v. Mart*, [1926] P. 24.

**2747.** *Add. Citations*:—[1926] P. 24; 95 L. J. P. 29; 134 L. T. 446.

**2753.** *Add. Annotation*:—*Refd. Sloggett v. Sloggett*, [1928] P. 148.

**2762.** *Add. Annotation*:—*Folld. Little v. Little*, [1927] P. 224.

**2763a.** — — — — —.]—The adultery of a husband in his wife's suit for dissolution of marriage is sufficiently established, subject to identification, by the production of the decree in a former suit, upon which it appears that damages have been assessed against him as co-resp. in respect of the same adultery, & that he has been ordered to pay such damages, without the decree in question containing any express & separate finding that he committed the adultery in question.—

**PART XIII. SECT. 5, SUB-SECT. 3.—**  
**B. (c).**

**2743 i.** *Proof of non-access*—*Evidence of either spouse*.]—The rule of *Russell v. Russell*, No. 2713, does not apply so as to exclude evidence of non-access, where there is no possibility of bastardizing a child.—*ROBERTS v. ROBERTS (Alta.)*, [1928] 1 D. L. R. 227; [1927] 3 W. W. R. 625.—**CAN.**

**2755 i.** *Statement by wife*—*As to illegitimacy of child*—*Admissible to establish fact of wife's adultery*.]—*BLEEKER v. BLEEKER* (1927), 48 N. L. R. 133.—**S. AF.**

**PART XIII. SECT. 5, SUB-SECT. 3.—**  
**B. (d).**

**h i.** — *In regular course of business*.]—Where a person, e.g. a tradesman, physician, mechanic or taxi-driver, is called to the house of a prostitute in the regular course of his business, the inference that he committed adultery there should not be drawn against him in a divorce action in the absence of evidence in addition to that of the fact of such visits.—*WRIGHT v. WRIGHT*, [1928] 1 D. L. R. 934; [1928] 1 W. W. R. 383.—**CAN.**

**PART XIII. SECT. 5, SUB-SECT. 3.—**  
**B. (f) i.**

**2770 i.** *Admission of adultery by wife*—*Sufficiency of*.]—In July, 1923, petitioner & resp. entered into a separation agreement, & thereafter lived separate & apart. During the separation resp., in May, 1924, gave birth to a child. The husband petitioned for divorce. The evidence of adultery consisted of admissions by resp.—*Held*: this evidence was admissible.—*HENLEY v. HENLEY*, [1927] S. A. S. R. 361.—**AUS.**

**sk.** *Admissions by respondent*.]—Admissions, whether written or verbal, made by resp. in a suit for dissolution of marriage are not in themselves sufficient proof of adultery; but when other facts, tending to establish such adultery, have been adduced, the admissions are corroborated evidence of such facts so adduced.—*WILKIE v. WILKIE*, [1928] N. Z. L. R. 406.—**N.Z.**

**PART XIII. SECT. 5, SUB-SECT. 3.—**  
**B. (f) ii.**

**2773 i.** — *To petitioner's solicitor*.]—*Semble*: a decree for divorce should not be granted on evidence merely of

*LITTLE v. LITTLE*, [1927] P. 224; 96 L. J. P. 131; 137 L. T. 495; 71 Sol. Jo. 493.

**2765a.** *Conviction for perjury*—*In action in which immorality alleged*.]—A conviction for perjury committed during a slander action, for falsely swearing that sexual intercourse with a certain woman had not occurred, is equivalent to a finding that there had been such intercourse, & the certificate of conviction is admissible as *prima facie* evidence of the intercourse in a subsequent suit for dissolution of marriage in which the man convicted is resp.—*O'TOOLE v. O'TOOLE* (1926), 134 L. T. 542; 42 T. L. R. 245.

*F. Remedies (Vol. XXVII., p. 304).*

Add the following case:—

**2813a.** *Petition for judicial separation*—*Whether petition brought only for collateral purpose*.]—A wife petitioned for judicial separation from her husband, on the ground of his adultery. She needed no protection against interference from her husband, but she required orders for permanent maintenance & for custody. The judge, following his usual custom, asked petitioner why she prayed for judicial separation & not dissolution of the marriage. Petitioner stated that she did not wish her husband to marry the woman who had ruined her home:—*Held*: permanent maintenance & custody being, at any rate, a part of the purpose for which the suit was brought, petitioner had a right to a decree of judicial separation. The ct. had a discretion to refuse such a decree, but not an unlimited discretion, & that discretion must be exercised upon some legal ground, such as the absolute & discretionary bars & the ground that the suit was not brought *bona fide*, but only for some collateral purpose. It was not such a legal ground that the ct. thought it would be better that the relief to be granted should be dissolution, & not judicial separation.—*BLANCHARD v. BLANCHARD* (1928), 138 L. T. 176; 44 T. L. R. 313; 72 Sol. Jo. 138.

**2829a.** — *With her consent*.]—*STATHAM v. STATHAM*, No. 2518a, *ante*.

**2830.** *Add. Annotation*:—*Apld. Statham v. Statham*, [1929] P. 131.

deft.'s admissions of adultery, especially when made to plff.'s solr. or other officer of the ct. or on deft.'s testimony admitting adultery.—*SANBORN v. SANBORN*, [1928] 1 D. L. R. 881; [1928] 1 W. W. R. 78; 22 Sask. L. R. 168.—**CAN.**

**PART XIII. SECT. 5, SUB-SECT. 3.—**  
**E. (a).**

**2802 i.** *Acts other than those charged in petition*—*Subsequent acts of adultery*.]—Evidence of acts of adultery subsequent to the date of the petition can only be admitted where preceded by some evidence upon which the jury, without more, might find a charge of adultery, as alleged in the petition, to have been proved.—*ELLIOTT v. ELLIOTT*, [1927] N. Z. L. R. 338.—**N.Z.**

**PART XIII. SECT. 5, SUB-SECT. 3.—**  
**F. (a).**

**sl.** *Divorce*—*Mere adultery on part of husband*.]—Mere adultery on the part of the husband does not by itself entitle a wife to a divorce according to Burmese Buddhist law.—*MATHEIN NWE v. MAUNG KHA* (1929), 1 L. R. 7 Ran. 451.—**IND.**

**2830a.** ———.]—*STATHAM v. STATHAM*, No. 2518a, *ante*.

**2833a.** Whether amounting to cruelty.]—*STATHAM v. STATHAM*, No. 2518a, *ante*.

**2833b.** Condonation—Whether special plea necessary.]—*STATHAM v. STATHAM*, No. 2518a, *ante*.

**2940.** *Add. Annotation*.—*Refd. Diggins v. Diggins* (1926), 43 T. L. R. 37.

**2960.** *Add. Annotations*.—*Consd. Statham v. Statham*, [1929] P. 131. *Refd. Welton v. Welton*, [1927] P. 162.

**2995.** *Add. Annotations*.—*As to* (1) *Consd. Hyman v. Hyman*, *Ilughes v. Hughes* (1928), 139 L. T. 416. *Refd. Statham v. Statham*, [1929] P. 131.

**2999a.** ———.]—Under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), justices are empowered on the application of a wife to make an order containing a provision that the applicant be no longer bound to cohabit with her husband, & this provision while in force has the effect in all respects of a decree of judicial separation on the ground of cruelty. But where the wife's application is based upon a charge of desertion only, such a clause should not be inserted in

the order, inasmuch as it prevents the continuance of desertion in strict law after the date of the order. In the present case the wife was granted a separation order on the ground of desertion, & the non-cohabitation clause was inserted in the order.—*Held*: the justices were entitled to find as they did, but were wrong in allowing the non-cohabitation clause to be included in the order. In cases of cruelty it might be necessary for the protection of the wife, but that was not so in cases of desertion; & the non-cohabitation clause was struck out.—*SAYERS v. SAYERS* (1929), 93 J. P. 72; 27 L. G. R. 366, D. C.

**3010a.** ———.]—*False assertion of pregnancy*.—On an application by a wife against her husband for an order for maintenance on the ground of desertion, the justices have no discretion to refuse an order on the ground that the wife had deceived the husband into marrying her by an untrue statement that she was pregnant.—*DAWSON v. DAWSON* (1929), 93 J. P. 187; 45 T. L. R. 397; 73 Sol. Jo. 367; 27 L. G. R. 368, D. C.

**3024.** *Add. Citations*.—“*affg.*, [1892] P. 222; 61 L. J. P. 115.”

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (a).**

**2844 ii.** ———.]—In order to establish desertion, proof of a refusal to acknowledge the obligations of the married state may suffice.

*Semble*: the bringing of a prior suit, which was abandoned, for divorce can be relied on as constituting desertion.—*BRUCE v. BRUCE* (Alta.), [1926] 4 D. L. R. 1117, [1926] 3 W. W. R. 605.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (b).**

**2860 i.** *What amounts to cohabitation*.—*Parties living under same roof—Husband not recognising or treating wife as such.*—*Held*: the husband was living apart from his wife without sufficient excuse in circumstances entitling her to restitution of conjugal rights.—*LINKHART v. LINKHART*, [1925] 2 D. L. R. 1180.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (c) ii.**

**n i.** ———.]—Malicious denial of carnal intercourse persisted in for four years may constitute desertion, but the standard of proof, both of the denial itself & of the absence of consent by the offended spouse, must be exacting.—*GOOLD v. GOOLD*, [1927] S. C. 177.—SCOT.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (f).**

**2933 ii.** ———.]—*LEE v. LEE*, [1927] 1 D. L. R. 94; 59 O. L. R. 561.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (g).**

**2940 ii.** ———.]—A divorce refused, on the ground that a separation agreement prevented a finding of desertion. In an action for divorce the existence of a separation agreement is not to be disregarded by the ct. merely because deft. does not set it up as a bar.—*WALSH v. WALSH & KIRKLAND*, [1925] 2 D. L. R. 794; [1925] 1 W. W. R. 951; 19 Sask. L. R. 509.—CAN.

**2941 ii.** ———.]—*Deed not acted upon*.—Proposition, that, when a deed of separation is treated as a nullity or set at naught, & the spouse who repudiates it persists in leaving the other as if deserted, the former is from that time guilty of desertion, doubted.

—*HOGGETT v. HOGGETT*, [1926] V. L. R. 11, 505; 48 A. L. T. 62; [1926] Argus L. R. 330.—AUS.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**D. (a).**

**2964 i.** *From time of intention to desert*.—Petition by wife for dissolution of marriage on the ground of the husband's desertion.—*Held*: desertion begins when the intention to desert is complete, & in this case there never was any intention on the part of the husband to desert his wife.—*LITTLE v. LITTLE* (1927), 30 W. A. L. R. 60.—AUS.

**PART XIII. SECT. 5, SUB-SECT. 8.—E.**

**2975 i.** *During imprisonment—Manifest intention to desert*.—A husband, who was married in July, 1916, lived with his wife for six weeks, & thereafter did not live with her again for over three years. In Nov. 1919, he met her accidentally & lived with her for a few days, & then he went abroad to take up an appointment. On the voyage out he wrote informing her that the appointment had been cancelled. Thereafter he never lived with his wife or communicated with her again. From Apr. 1920 till June 1923 he was in prison, & in Oct. 1925, after his release, he wrote to his wife's father stating that he was about to go abroad, & offering to supply material for divorce.—*Held*: pursuer had relevantly averred desertion commencing in Nov. 1919 & including the periods of defender's incarceration, in respect that, when liberated from prison, defender had shown no disposition to alter his intention to persist in his desertion.—*PARKER v. PARKER*, [1926] S. C. 574.—SCOT.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**F. (b).**

**2981 i.** *Whether desertion terminated—Filing of petition*.—*ADEY v. ADEY*, [1928] S. R. Q. 303.—AUS.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**G. (c).**

**3003 i.** *What is "reasonable cause"*.—*Conduct falling short of matrimonial offence—Not mere frailty of temper & habits*.—*Mere infirmity of temper accompanied by the free use of a vulgar & abusive tongue, an occasional*

resort to physical violence not directed against the person of her husband & futile threats of bodily harm to him, are not sufficient to justify a husband's desertion of his wife.—*CLARKE v. CLARKE* (Alta.), [1927] 3 W. W. R. 728.—CAN.

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**A. (a).**

**3026 i.** *Dissolution suit Previous suit*.—A former suit for divorce brought by pltf. was dismissed on the ground that by his wilful neglect of his wife he had conduced to her adultery. In a subsequent suit for divorce he proved that his wife & co-resp. had, since the former suit, left the province & were living as man & wife in California.—*Held*: the dismissal of the former suit was not a bar to the subsequent suit.—*KESLERING v. KESLERING* (OTHERWISE NEVERKA) & NEVERKA (Sask.), [1927] 4 D. L. R. 767; [1927] 3 W. W. R. 273.—CAN.

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**A. (b).**

**3027 i.** *Suit for dissolution—Same evidence as in former suit—For judicial separation*.—A petitioner in the absence of any fresh matrimonial offence, is not entitled to a decree for dissolution of marriage upon precisely the same grounds as those on which she obtained previously judicial separation.—*COLLINS v. COLLINS* (1928), 1 L. R. 56 Calc 166.—IND.

**sk.** *Counterclaim for judicial separation & alimony—Same evidence as in former suit for same relief*.—In an action by a husband for judicial separation the wife counterclaimed for judicial separation & alimony, setting up, in substance, the same facts as were alleged & adduced in evidence in a former action, in which she, as pltf., claimed the same relief against the present pltf., but which was decided against her. There was no subsequent resumption of marital relations or other change in circumstances;—*Held*: the husband was entitled to have the counterclaim struck out on the ground of *res judicata*, even if Domestic Relations Act, 1927, c. 5, s. 6 (2), which had been passed after the dismissal of the first action, had a retrospective effect.—*DAVIS v. DAVIS*, [1928] 3 D. L. R. 69, [1928] 2 W. W. R. 130; 23 Alta. L. R. 355.—CAN.

3042. *Add. Annotation*:—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
3044. *Add. Annotation*:—**Consd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
3047. *Add. Annotation*:—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
3064. *Add. Annotation*:—**As to (1) Distd.** Preger v. Preger (1926), 134 L. T. 670.
3066. *Add. Annotation*:—**Distd.** Preger v. Preger (1926), 134 L. T. 670.
3068. *Add. Annotation*:—**Distd.** Preger v. Preger (1926), 134 L. T. 670.
3069. *Add. Annotation*:—**Distd.** Preger v. Preger (1926), 134 L. T. 670.
- 3092a. — — **Agreement between husband & co-respondent as to damages.**—Petitioner filed a petition for divorce on the ground of his wife's adultery with co-resp., & it was disclosed to the ct. that petitioner & co-resp. had agreed that co-resp. should pay petitioner £2,500 damages, of which £1,750 was to be paid down, & the rest later, & that petitioner should claim no further damages from co-resp. & should put no obstacles in the way of a decree nisi being made absolute. The petition was dismissed on the ground that the suit was collusive. After the dismissal resp. & co-resp. continued to live in adultery, & petitioner, who had received the £1,750, presented a second petition against them, complaining of the adultery since the date of the former petition:—**Held**: petitioner had by the agreement prevented himself from complaining of any adultery whether past or future, & he had connived at the adultery of which in his second petition he complained, & the second petition must be dismissed.—(GIFFORD v. GIFFORD & FREEMAN (1926), 43 T. L. R. 141.
3093. *Add. Annotation*:—**Distd.** Preger v. Preger (1926), 134 L. T. 670.
3094. *Add. Annotation*:—**Distd.** Preger v. Preger (1926), 134 L. T. 670.
3122. *Add. Citation*:—134 L. T. 670.
- 3124a. — — — — —]—TOWNEND v. TOWNEND (1928), 72 Sol. Jo. 518.
3143. *Add. Annotation*:—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
- 3163a. — — **Application of rules to condonation of sodomy.**—STATHAM v. STATHAM, No. 2518a, ante.
3166. *Add. Annotation*:—**As to (1) Refd.** Sneyd v. Sneyd & Burgess, [1926] P. 27.
3171. *Add. Annotation*:—**As to (1) Refd.** Statham v. Statham, [1929] P. 131.
- 3179a. — — — — —]—(1) Condonation has been defined as "the complete forgiveness & blotting out of a conjugal offence followed by cohabitation, the whole being done with knowledge of all the circumstances of the particular offence forgiven."  
(2) Petitioner alleged, but in the opinion of the ct. failed to prove, that he was induced to resume cohabitation by his belief, brought about by the fraudulent representation of his wife, that she was innocent:—**Semble**: such a belief would not be material if proved.—SNEYD v. SNEYD & BURGESS, [1926] P. 27; 95 L. J. P. 22; 135 L. T. 124; 42 T. L. R. 247.
- 3182a. — — — — —]—SNEYD v. SNEYD & BURGESS, No. 3179a, ante.
- 3183a. **Agreement for temporary separation after confession of adultery—Parties continuing to live apart for several years.**—After a wife's confession of adultery she & her husband agreed to live apart for six months, she to receive an allowance, & it was agreed that at the end of that time their mutual position was to be reconsidered. After the six months they continued to live apart, & ten years after the admitted adultery the husband sued for divorce on that ground:—**Held**: the agreement was made by a man who was distraught by the domestic calamity. There was no condonation in the legal sense of complete reinstatement of the wife in the rights of a wife. The delay was excusable by the effect which the wrongdoing had upon the petitioner's mind.—LETBE v. LETBE & WHITEHEAD (1928), 140 L. T. 199; 45 T. L. R. 6; 72 Sol. Jo. 745.
3196. *Add. Annotation*:—**Refd.** M. v. M., [1928] P. 123.
3213. *Add. Annotation*:—**As to (1) Refd.** Sneyd v. Sneyd & Burgess, [1926] P. 27.
3223. *Add. Citations*:—[1926] P. 27; 95 L. J. P. 22; 135 L. T. 124; 42 T. L. R. 247.

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**B. (b) iii.**

3081 i. *Invitation to commit adultery.*—McEWEN v. McEWEN (Man.), [1926] 3 D. L. R. 430.—CAN.

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**C. (b) i.**

3135 ii. — — — — —]—"Collusion" is a species of statutory fraud on the ct., & like "fraud," is incapable of exhaustive definition, & will over be widened to prevent the mischief which the statute was intended to prevent. Collusion is possible in a good case, *v.c.* although the ct. is convinced that matrimonial misconduct was proved, yet if evidence of collusion, too gross & palpable to admit of being overlooked or explained, appeared, no decree should be made.

In the present case the ct., having concluded that there was an arrangement between the parties to obtain a divorce & as to the testimony which should be offered to support the claim therefor, & that the testimony given by the resp. was in accordance with this arrangement & largely untrue, refused

admission as to the arrangement, the appearances of collusion were too gross & palpable to admit of being overlooked or explained, & that the arrangement itself was clearly collusive.—SANBORN v. SANBORN, [1928] 1 D. L. R. 881; [1928] 1 W. W. R. 78; 22 Sask. L. R. 168.—CAN.

31. *Acts regarded as unobjectionable by solicitor.*—Collusion cannot be imputed from ordinary acts of parties which a solr. would naturally regard as inoffensive & unobjectionable.—LINTON v. GUDERIAN (1928), 1 L. R. 56 Calc. 530.—IND.

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**C. (b) ii.**

3138 iii. — — — — —]—The fact that a husband's suit for divorce has been brought at the request of a man, with whom deft. has been living for a number of years, & who has promised pltf. to pay all the costs in order that deft. may be made free to marry him, does not constitute collusion.—CHRISTMANSON v. CHRISTMANSON (Alta.), [1927] 1 D. L. R. 651; [1927] 1

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**C. (b) v.**

3159 i. *Respondent assisting in identification.*—The fact that deft. to a divorce action admitted to pltf.'s solr. before the trial that she had been guilty of adultery with co-resp., & supplied the solr. with her photograph to be used for the purpose of identification, is not proof of collusion, where there is no evidence that pltf. ever had any arrangement with deft. that she should provide him with grounds for divorce.—PARRY v. PARRY, [1926] 3 D. L. R. 95; [1926] 2 W. W. R. 185; 20 Sask. L. R. 474.—CAN.

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**D. (a).**

31. *Is defence to suit for divorce on ground of bestiality.*—A. v. A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—CAN.

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**D. (b) i.**

3169 iii. — — — — —]—PREMCHAND HIRA v. BAI GALAL (1927), 1 L. R. 51 Bom. 1026.—IND.

- 3224a.** —.]—HOWARD v. BURTONWOOD (1742), Selwyn's N. P. 13th edn., p. 9, n.  
*Annotation* :—**Consd.** Bernstein v. Bernstein, [1893] P. 292.  
**3234.** *Add. Annotation* :—**Consd.** Statham v. Statham, [1929] P. 131.  
**3395.** *Add. Annotation* :—**Mentd.** Blanchard v. Blanchard (1928), 138 L. T. 716.  
**3433.** *Add. Annotation* :—**Refd.** Welton v. Welton, [1927] P. 162.  
**3436a.** —.]—PLOWs v. PLOWs (1928), 44 T. L. R. 263.  
**3449a.** —.]—GRAYSON v. GRAYSON (1927), 43 T. L. R. 225.  
**3470.** *Add. Annotation* :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.  
**3486.** For "Coupled with discretion" read "Coupled with desertion."  
**3533.** *Add. Annotation* :—**Refd.** Sloggett v. Sloggett, [1928] P. 148.  
**3537.** *Add. Annotation* :—*As to* (1) **Apld.** O'Toole v. O'Toole (1926), 134 L. T. 542.  
**3539.** *Add. Annotations* :—*As to* (2) **Refd.** Arnold & Weaver v. Amari, [1928] 1 K. B. 581. **Generally, Refd.** Welton v. Welton, [1927] P. 162.  
**3540.** *Add. Annotation* :—**Refd.** Welton v. Welton, [1927] P. 162.

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**D. (h) iii.**

**3255 iii.** —.]—Any matrimonial offence which in itself is ground for divorce but which has been condoned may be revived by the subsequent commission of any other legally recognised matrimonial offence, e.g., cruelty.—A. v. A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**D. (h) iv.**

**3274 i.** *By desertion*.—For two years without reasonable excuse.—Condoned adultery revived.—SPRING v. SPRING (Alta.), [1926] 2 D. L. R. 893; [1926] 2 W. W. R. 78.—**CAN.**

**1.** For "i. By desertion" read "3274 ii."

**PART XIII. SECT. 7, SUB-SECT. 4.—**  
**B. (d) i.**

**3838 i.** *General rule*.—LACHANCE v. ROCHON (Que.), [1927] 1 D. L. R. 1190.—**CAN.**

**PART XIII. SECT. 7, SUB-SECT. 4.—**  
**C. (a) i.**

**3397 iii.** —.]—McNALLY v. McNALLY, [1927] 2 D. L. R. 604; 59 N. S. R. 268.—**CAN.**

**PART XIII. SECT. 7, SUB-SECT. 4.—**  
**C. (a) iii.**

*sn. Letter instigating adultery.*—GALLACHER v. GALLACHER, [1928] S. C. (Ct. of Sess.) 586.—**SCOT.**

**PART XIII. SECT. 7, SUB-SECT. 4.—**  
**D. (a) ii.**

**3446 i.** *Principle on which court acts.*—There is nothing in Marriage Act, 1915, s. 131 (1), to indicate that the general rule is that the discretion of the ct. should be exercised against a petitioner who has himself been guilty of adultery, or that it should only be exercised in his favour in exceptional circumstances. The discretion of the ct., on the wording of the section, is quite open. If anything, the words "would appear to indicate that ordinarily the decree nisi would be granted notwithstanding the adultery of the petitioner, but that in such a case the ct. is not bound to grant it." Under

the section the ct. has an unfettered discretion, & it is neither desirable nor possible to lay down definite & rigid rules by which the ct. should be guided in all cases. The mere non-disclosure in his affidavit by a petitioner of the fact that he has during the marriage committed adultery is not a sufficient ground for refusing a decree nisi to which he would otherwise be entitled.—ADAMS v. ADAMS, [1925] V. L. R. 90; [1928] A. L. R. 89.—**AUS.**

**3448 i.** *Factors governing exercise of.*—When it is admitted by petitioner that he has been guilty of adultery, the ct. will exercise its discretion in his favour in a case that comes clearly within the principles laid down in *Wilson v. Wilson*, No. 3148 LAIRD v. LAIRD (1927), 38 B. C. R. 297.—**CAN.**

**3448 ii.** —.]—A wife who was deserted by her husband, having reason to believe he was dead, married second time. The first husband, turning up, petitioned for divorce. It appeared from the evidence that petitioner had been guilty of infraction of substantially all the matters set out in Divorce & Matrimonial Causes Act, s. 16, & that the wife was a very deeply injured woman without a stain on her character.—*Held*: although there is power to refuse petitioner a decree, the judge's discretion is left unfettered & absolute by the legislature, & it is in the best interests of the wife, in the circumstances, to be set free; the marriage will, therefore, be dissolved on condition that petitioner gives security for the maintenance of resp. in the terms of sect. 17 of the statute.—HARNIS v. HARNEY (1926), 39 B. C. R. 275.—**CAN.**

**3448 iii.** —.]—*Held*: even if the evidence against the plff. justified the inference that he had committed adultery, the circumstances of the case, including the interests of plff.'s child, warranted the ct. in exercising its judicial discretion in his favour.—WRIGHT v. WRIGHT, [1928] 1 D. L. R. 934; [1928] 1 W. W. R. 383.—**CAN.**

**PART XIII. SECT. 7, SUB-SECT. 4.—**  
**D. (a) v.**

**3468 i.** *Whether conclusive in favour of petitioner.*—On a petition for

**3559.** *Add. Annotation* :—**Refd.** Welton v. Welton, [1927] P. 162.

**3560.** *Add. Annotation* :—**Refd.** Welton v. Welton, [1927] P. 162.

**3569.** *Add. Annotation* :—*As to* (1) **Refd.** Porter v. Porter (1928), 72 Sol. Jo. 826.

**B. Indorsement of Notice to Appear**  
**(Vol. XXVII., p. 375).**

Add the following case:—

**3635a.** *Form—Woman charged with adultery named in petition.*—(1) On a wife's petition for dissolution of marriage, which was undefended, a woman named in the petition as having committed adultery with the husband was ordered to pay costs.

(2) As the prayer in the petition contained a claim for costs against the woman named, in accordance with an instruction of the senior registrar, dated June 4, 1927, the notice indorsed on the copy of the petition served on the woman was in the form set out in Matrimonial Causes Rules, 1924, Appendix I, in accordance with r. 2 of those rules, & the woman's name formed part of the title of the suit as resp.—DAVIS v. DAVIS & HELBRING (1928), 138 L. T. 623.

**3667.** *Add. Annotation* :—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

dissolution of marriage under Divorce & Matrimonial Causes Amendment Act, 1920, s. 1, as amended by 1921–22 Act, s. 2 (1), where resp. proves to the ct.'s satisfaction that the separation was due to petitioner's adultery, resp. is entitled to rely on that adultery as a bar to petitioner's claim for relief, notwithstanding such adultery was condoned. CHAPMAN v. CHAPMAN, [1926] N. Z. L. R. 291. **N.Z.**

**PART XIII. SECT. 7, SUB-SECT. 4.—**  
**D. (a) vi.**

**3505 i.** *Desertion by respondent—No excuse for petitioner's adultery—Bigamous marriage.*—Bigamous adultery by a husband, in wholly inexcusable circumstances.—*Held*: a bar to a decree nisi, even though the adultery did not occur until three years after the wife's desertion, & could not be regarded as conducing to or excusing that desertion.—THOMAS v. THOMAS (No. 2), [1926] V. L. R. 206; 47 A. J. T. 158; [1926] Argus L. R. 186. **AUS.**

**3508 i.** —.]—*Petitioner destitute.*—A wife was deserted by her husband for four years & was forced by necessity & circumstances to become unchaste.—*Held*: her petition for divorce should be granted.—REBERIO v. REBERIO (1926), 1 L. R. 54 Cal. 80.—**IND.**

**PART XIII. SECT. 8, SUB-SECT. 1.—**  
**D. so. How suit commenced. Necessity for writ of summons.**—CALLANDER v. CALLANDER (Sask.), [1927] 3 W. W. R. 449.—**CAN.**

**PART XIII. SECT. 8, SUB-SECT. 1.—**  
**F. (a).**

**ii.** —.]—*Alternative claim for judicial separation.*—In a suit by a wife for divorce it is not necessary, or indeed proper, to ask to have a separation agreement between the parties set aside, or to include an alternative claim for judicial separation.—CAMRUD v. CAMRUD (Sask.), [1927] 1 D. L. R. 365; [1927] 2 W. W. R. 759.—**CAN.**

*sp. By counterclaim.*—In action for alimony.—A claim for divorce may be set up by a counterclaim to an action for alimony.—SCHEERER v. SCHEERER, [1928] 1 W. W. R. 305; 22 Sask. L. R. 302.—**CAN.**



3775. *Add. Annotation*:—**Mentd.** *Blanchard v. Blanchard* (1928), 138 L. T. 716.
- 3783a. *Wife's petition—Woman charged with adultery added as respondent with husband.*—*PEPPER v. PEPPER & BAKER*, No. 4848a, *post*.
- 3825a. — *When granted.*—**GLEED v. GLEED** (1927), 43 T. L. R. 678; 71 Sol. Jo. 729.
3859. *Add. Annotation*:—**Refd.** *McCausland v. McCausland* (1927), 43 T. L. R. 592.
- 3859a. — *Where resp. is a minor, personal service of the petition on resp. is good service, & the appointment of a guardian ad litem is not necessary.*—*MCCAUSLAND v. MCCAUSLAND* (1927), 96 L. J. P. 149; 137 L. T. 653; 43 T. L. R. 592; 71 Sol. Jo. 472.
3866. *Add. Annotation*:—**Mentd.** *Raeburn v. Raeburn* (1928), 138 L. T. 672.
3867. *Add. Annotations*:—**Apld.** *Raeburn v. Raeburn* (1928), 138 L. T. 672. **Consd.** *Johnstone v. Johnstone*, [1929] P. 165.
3955. *Add. Annotation*:—**Apprvd.** *Johnstone v. Johnstone*, [1929] P. 165.
4022. *Add. Annotation*:—**Mentd.** *La Radiotechnique v. Weinbaum* (1927), 137 L. T. 638.
- 4028a. — *Where resp. is a minor, personal service of the petition on resp. is good service, & the appointment of a guardian ad litem is not necessary.*—*PORTER v. PORTER* (1928), 72 Sol. Jo. 826.
- 4063a. *Under Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (3).*—**Held**: (1) the effect of

the above sub-sect. was not to confine the power of the ct. to make interim orders to cases in which the facts were such as would warrant the ct. in making an order in proceedings for judicial separation, but to confer on the ct. a general power to make interim orders of the same nature & class as could be made in properly instituted proceedings for judicial separation; (2) a wife found guilty of adultery in a suit for divorce brought by her husband, whose petition had been dismissed because by his conduct he conduced to her adultery, was a competent suitor for dissolution of marriage on the ground of her husband's adultery, & if she presented a petition for divorce, the ct. had jurisdiction under the above sub-sect., in its discretion, to award her alimony *pendente lite*; (3) as the means of the wife were insufficient to support herself & her two children, she was entitled to alimony *pendente lite*, although the husband had contributed nothing towards her maintenance for seven years before the institution of the suit, & she had been able in some precarious fashion to maintain herself.—*WELTON v. WELTON*, [1927] P. 162; 96 L. J. P. 75; 136 L. T. 675; 43 T. L. R. 174; 71 Sol. Jo. 121, C. A.

4097. *Add. Annotation*:—**Distd.** *Welton v. Welton*, [1927] P. 162.

PART XIII. SECT. 8, SUB-SECT. 2.

**sq.** *Non-disclosure of acts of adultery—Nor of circumstances in which respondent left petitioner—Effect of.*—A husband, who petitioned for divorce, on the ground of his wife's adultery, failed, in the affidavit in support of his petition, to disclose certain acts of adultery alleged by resp. against him, & also, failed to disclose the circumstances in which resp. left him:—**Held**: the non-disclosure in the affidavit of these facts was, of itself, not a sufficient ground for dismissing the petition, but the petitioner should have been given an opportunity of explaining, if he were able, how the affidavit came to be drawn as it was.—*Y v. MCKAY*, [1928] V. L. R. 6.—**AUS.**

— *Right to cross-examine petitioner as to—Evidence in disproof not already given.*—Petitioner having failed to disclose, in his affidavit in support of his petition, acts of adultery alleged by his wife to have been committed by him, was cross-examined to show that he had committed such adultery.—**Held**: the witness, not having already given evidence in disproof of such alleged adultery, should not, by reason of Marriage Act, 1923, s. 8, have been asked such questions at that stage, unless previously warned that he was not bound to answer them.—*MCKAY v. MCKAY*, [1928] V. L. R. 6.—**AUS.**

PART XIII. SECT. 8, SUB-SECT. 4.—D.

**st.** *Leave to sue in forma pauperis—When granted.*—*COLERIDGE v. COLERIDGE* (Man.), [1926] 2 D. L. R. 896; [1926] 1 W. W. R. 857.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 4.—E. (b) i.

**sv.** *Where uncorroborated affidavit of petitioner only evidence.*—The ct. will not dispense with the co-respondent in a suit for dissolution of marriage on the uncorroborated affidavit of petitioner only.—*SPARKES v. SPARKES*, [1928] N. Z. L. R. 750.—**N.Z.**

PART XIII. SECT. 8, SUB-SECT. 4.—E. (c).

3826 i. *Where leave granted*—

*Petition amended—Substituted service of notice of amendment—Advertisement.*

—When, on a petition for divorce, an order dispensing with the naming of a co-resp. has been made & for substituted service, & subsequently an appln. to amend the petition by adding a further charge of adultery was allowed, the ct. ordered that substituted service of the notice of amendment be served by registered post on an uncle of the petitioner, & that a notice that the petition had been amended be advertised, & enlarged the time for appearance, but were of opinion that no further order was necessary for leave to proceed without naming a co-resp.—*MARTIN v. MARTIN*, [1927] S. A. S. R. 363.—**AUS.**

PART XIII. SECT. 8, SUB-SECT. 4.—F. (a).

3836 i. *Position of interrener.*—**Held**: a "party" within K. R. Rule 951.—*RUSSELL v. RUSSELL & MCKENNA* (No. 3), [1927] 3 W. W. R. 600.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 5.—B.

3853 ii. — *Substitutional service in a divorce action effected in accordance with an order therefor regularly made is equivalent to personal service, & it is not necessary that actual notice of the proceedings should reach deft.*—*PARTINGTON v. PARTINGTON*, [1925] 3 D. L. R. 1085; [1925] 2 W. W. R. 723; *revers*, 19 Sask. L. R. 402; [1925] 1 W. W. R. 1039.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 5.—E. (c) ii.

3909 i. *Service complete on proof of receipt by respondent.*—*SHERIFF v. SHERIFF*, [1928] V. L. R. 585.—**AUS.**

PART XIII. SECT. 8, SUB-SECT. 5.—F.

3917 ii. — *Sworn in England before commissioner for oaths—Admissibility.*—An affidavit, purporting to be sworn in England before a person describing himself as a commr. for oaths, may be received in evidence of the facts deposed to therein in proof of service of the petition & citation in a divorce suit.—*THOMAS v. THOMAS*, [1926]

V. L. R. 188; 47 A. L. T. 157; [1926] Argus L. R. 137.—**AUS.**

PART XIII. SECT. 8, SUB-SECT. 8.—B.

**sw.** *Further & better particulars—When ordered.*—Petitioner for divorce ordered, on motion of co-resp., to deliver further & better particulars of the dates & places when & where the acts of adultery mentioned in the petition were committed.—*GUSHOWATY v. GUSHOWATY & JONES*, [1925] 3 D. L. R. 436; [1925] 2 W. W. R. 238; 35 Man. L. R. 134.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 11.—A.

**r i.** — *Adultery by both parties.*—On the hearing of a petition & cross-petition for divorce it appeared that both the husband & wife had committed adultery.—**Held**: the wife's petition should be dismissed, but that the marriage should be dissolved on the husband's cross-petition.—*S. v. S.* (1927), 30 W. A. L. R. 40.—**AUS.**

PART XIII. SECT. 9, SUB-SECT. 1.—A.

**sy.** *Not local master.*—In an action for judicial separation & alimony applications for *interim* alimony must be made to a judge in chambers; a local master has no jurisdiction to entertain them.

Where an order for *interim* alimony has been made by a local master, such order is a nullity, but a judge in chambers has no jurisdiction to set it aside where the application to him is not by way of appeal.—*VOLHOFFER v. VOLHOFFER*, [1925] 3 D. L. R. 552; [1925] 2 W. W. R. 304; 19 Sask. L. R. 412.—**CAN.**

PART XIII. SECT. 9, SUB-SECT. 1.—B. (c).

4086 iv. — *An order for payment by deft. to pltf. in an action for alimony of interim alimony & disbursements was set aside, pltf. having means of her own ample for the purpose of maintaining herself & bringing the action to trial.*—*GIBBS v. GIBBS*, [1925] 2 D. L. R. 880; 56 O. L. R. 614.—**CAN.**



4098. *Add. Annotation*:—*Distd. Welton v. Welton*, [1927] P. 162.

4098a. ———]—*WELTON v. WELTON*, No. 4063a, *ante*.

4111. *Add. Annotation*:—*Generally, Refd. Gilbey v. Gilbey*, [1927] P. 197.

4131. *Add. Annotations*:—*Refd. Capron v. Capron*, [1927] P. 243; *Burrowes v. Burrowes* (1929), 141 L. T. 201.

4156. *Add. Annotation*:—*Consd. M. v. M.*, [1928] P. 123.

4158. *Add. Annotation*:—*Refd. Welton v. Welton* (1926), 43 T. L. R. 161.

4189a. *In suit for judicial separation—Before decree nisi.*—The provision of alimony *pendente lite* is a privilege of the wife for her subsistence during the litigation; & a wife who has obtained a decree of judicial separation is not entitled to an allotment of alimony *pendente lite*, unless she has obtained an order for it before the decree, although she may have commenced proceedings earlier in the suit to obtain it.—*M. v. M.*, [1928] P. 123; 97 L. J. P. 101; 138 L. T. 648; 44 T. L. R. 299; 72 Sol. Jo. 155.

4278. *Add. Annotation*:—*As to (2) Apld. Williams v. Williams*, [1929] P. 114.

4278a. ——— *When appeal lies.*—The principle that the ct. will provide for the wife's costs of a matrimonial suit originally arose from the fact that on her marriage her property passed to her husband, but it still obtains, though at the present day the question is whether as a litigant she has sufficient separate estate wherewith to pay the costs of a solr. The power of a registrar under Matrimonial Causes Rules, 1924, r. 91, to provide for the wife's costs is discretionary & not subject to review unless he has clearly proceeded on a basis which is wrong. He is entitled to take into consideration the capital & income of both parties & the nature & availability of it in arriving at a conclusion as to the "sufficient separate estate" of the wife within the rule. Among other matters the amount of an allowance under an existing deed of separation is a factor, although partly & primarily intended as an alimentary provision & not as a fund for defraying costs.—*WILLIAMS v. WILLIAMS*, [1929] P. 114; 98 L. J. P. 40; 140 L. T. 383; 45 T. L. R. 157; 73 Sol. Jo. 77.

4280a. ———]—On a husband's petitioning for divorce on the ground of his wife's alleged adultery with a named co-resp., the paternity of a child being in dispute, the wife by her answer admitted the birth of the child, & she did not allege that petitioner was the father, but she denied adultery with co-resp. It was urged on behalf of petitioner that the pleadings showed that the wife had not a good ground for her defence so as to justify an order against her husband to secure her costs. In accordance with an offer made by petitioner an order was made for security to be given without payment into ct.—*Re*

A. B.'s PETITION, [1928] P. 25; *sub nom. S. v. S. & P.*, 97 L. J. P. 37; 138 L. T. 302; 44 T. L. R. 52; 72 Sol. Jo. 31.

4281a. ———]—A husband cannot refuse to pay & give security for his wife's costs of divorce suit or issue as to domicile merely on the ground that he disputes the jurisdiction. A husband who appears under protest to a wife's petition & disputes the jurisdiction on the ground of his having a foreign domicile may be ordered to pay his wife's costs of suit up to the setting down of the issue & to give security for her costs attendant on the issue & down to the close of pleadings, on the ground *per* LORD HANWORTH, M.R., & LAWRENCE, L.J., that the ct. had jurisdiction to make the order under Matrimonial Causes Rules, 1924, r. 91; *per* GREER, L.J., that the ct. had inherent jurisdiction derived from the practice of the old Ecclesiastical Cts.—*JOHNSTONE v. JOHNSTONE*, [1929] P. 165; 98 L. J. P. 76; 140 L. T. 451, C.A.

4281b. ——— *Origin of principle.*—*WILLIAMS v. WILLIAMS*, No. 4278a, *ante*.

4293a. ——— *What must be considered.*—*WILLIAMS v. WILLIAMS*, No. 4278a, *ante*.

4296. *Add. Annotations*:—*Refd. Welton v. Welton*, [1927] P. 162; *Arnold & Weaver v. Amari*, [1928] 1 K. B. 584.

4305. *Add. Annotation*:—*As to (3) Refd. Arnold & Weaver v. Amari*, [1928] 1 K. B. 584.

4306. *Add. Annotation*:—*Refd. Fanshawe v. Fanshawe*, [1927] P. 238.

4307. *Add. Annotation*:—*As to (1) Refd. Baldwin Raper v. Baldwin Raper & Metz* (1926), 42 T. L. R. 619.

4313. *Add. Citations*:—95 L. J. P. 18; 134 L. T. 414.

4342a. ——— *District registrar—Poor persons' suit commenced in district registry.*—In a poor persons' undefended nullity suit commenced in a district registry & determined on assize in accordance with the Matrimonial Causes at Assizes Order, 1922, the district registrar has authority to appoint medical inspectors in accordance with the practice of the Divorce Registry.—*STROUD v. STROUD* (OTHERWISE GRANTHAM) (1929), 45 T. L. R. 248; 73 Sol. Jo. 221.

4354a. ——— *"Discretion cases"—Adultery by petitioner—Insertion in defended list necessary.*—*HOWELL v. HOWELL & DAVIDSON* (1926), 42 T. L. R. 497.

4354b. ——— *Application to expedite trial—Grounds for refusing.*—The ct., on the ground of public policy, refused an application by a wife, petitioning for a divorce on the ground of her husband's adultery, that the trial of the suit in the undefended list might be expedited so that the decree might be made absolute, & resp. might marry the woman named in the petition, before the birth of a child expected to be born as the result of resp.'s relations with that woman.—*P. v. P.* (1927), 44 T. L. R. 114; 71 Sol. Jo. 964.

PART XIII. SECT. 9, SUB-SECT. 5.—A.

*bx. Whether court can grant interim costs to wife.*—There is no rule or practice in Alberta which permits the granting of interim costs to a wife in a divorce action.—*ROUSSEAU v. ROUSSEAU*, [1928] 3 D. L. R. 195; [1928] 2 W. W. R. 104; 23 Alta. L. R. 371.—*CAN.*

J.S.

PART XIII. SECT. 10, SUB-SECT. 1.—A.

4308 i. *Against whom order made—Not infant intervener or his next friend.*—*RUSSELL v. RUSSELL & MCKENNA* (Man.), [1927] 4 D. L. R. 403; [1927] 3 W. W. R. 144.—*CAN.*

PART XIII. SECT. 10, SUB-SECT. 1.—C.

4325 i. *What interrogatories allowed—Relating to charge of adultery.*—On an examination for discovery, in an action for judicial separation & alimony, deft. should not be required to answer questions intended to fasten responsi-

4406a. ——— Substituted service of petition on respondent & co-respondent.]—*TUTT v. TUTT & WOOD* (1928), 165 L. T. Jo. 55.

4422. *Add. Annotation*:—*Distd. Preger v. Preger* (1926), 134 L. T. 670.

4427. *Add. Citation*:—11 W. R. 85.

4434. *Add. Annotation*:—*Refd. Capron v. Capron*, [1927] P. 245.

4439. *Add. Annotation*:—*Consd. Cavendish v. Cavendish*, [1926] P. 10.

4442. *Add. Annotation*:—*Refd. Bosworthick v. Bosworthick*, [1927] P. 64.

4447a. ———.]—In undefended petitions for divorce the ct. should not be asked to act on evidence identifying resp. by photograph when personal identification by witnesses could easily have been effected.—*PRACTICE NOTE* (1925), 159 L. T. Jo. 95.

4636. *Add. Annotation*:—*Refd. Sloggett v. Sloggett*, [1928] P. 148.

4650. *Add. Annotation*:—*As to* (1) *Refd. Statham v. Statham*, [1929] P. 131.

4671. *Add. Annotations*:—*Mentd. Welton v. Welton*, [1927] P. 162; *Statham v. Statham*, [1929] P. 131.

#### B. By Whom Assessed (Vol. XXVII., p. 452).

After the cross-reference add as follows:—

4677a. *By court*.]—The ct. has power to direct that damages shall be assessed by a judge alone, unless one of the parties applies for trial by jury. The practice is now regulated

by R. S. O., Ord. 36, rr. 2-6, & Matrimonial Causes Rules, 1924, r. 30 (b).—*BEDFORD v. BEDFORD & POWDRILL* (1926), 96 L. J. P. 22; 136 L. T. 383.

4746. *Add. Annotation*:—*Generally, Refd. Bosworthick v. Bosworthick*, [1927] P. 64.

4767a. ——— *Effect of*—*On status of parties*.]—A decree for restitution of conjugal rights with the usual finding that the parties to the suit are husband & wife, though it may not directly affect their status, nevertheless proceeds upon the basis of their status being thus conclusively established *inter partes*. Resp. in a suit for restitution of conjugal rights, who does not resist such a finding, cannot afterwards dispute the validity of the marriage of the parties. A subsequent suit for nullity of the marriage, in which bigamy is alleged to have been in fact committed by one of the parties to it, does not, after this finding of its validity as between them, afford any exception to the general rule of estoppel.—*WOODLAND v. WOODLAND (OTHERWISE BELIN OR BARTON)*, [1928] P. 169; 97 L. J. P. 92; 139 L. T. 262; 44 T. L. R. 405; 72 Sol. Jo. 303.

4790. *Add. Annotations*:—*Refd. Bosworthick v. Bosworthick*, [1927] P. 64; *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416.

4837. *Add. Annotation*:—*As to* (2) *Refd. Darnborough v. Darnborough & Smith, Clare Intervening* (1926), 96 L. J. P. 24.

bility on him for certain letters, where such letters tend to show that he has committed adultery.—*LIGHTHEART v. LIGHTHEART* (Sask.), [1926] 4 D. L. R. 885; [1926] 3 W. W. R. 494.—*CAN.*

#### PART XIII. SECT. 11, SUB-SECT. 1.

*ay. Necessity for preponderance of evidence*.—*Effect of declaration of no intention to remarry*.]—In a divorce action the rule as to the preponderance of evidence in civil actions should not be weakened, but the evidence required to establish *pltf.'s* case should be, if anything, stronger & more preponderating than in other actions. *Pltf.* in a divorce action who proves a case entitling him to a divorce is not prejudiced or deprived of his right to the divorce because he declares that if he gets it he does not intend to remarry.—*LEBOURIE v. LEBOURIE & GERMAIN*, [1928] 2 D. L. R. 23; [1928] 1 W. W. R. 423; 23 Alta. L. R. 328.—*CAN.*

#### PART XIII. SECT. 11, SUB-SECT. 2.

4376 i. *Whether formal proof essential*.—*Suit for dissolution—Damages claimed against co-respondent*.]—Where on a petition for divorce damages are claimed against co-resp. *prima facie* proof of marriage, if not rebutted, is sufficient to meet the strictness of proof required in the criminal conversation phase of the proceedings.—*Knight v. Knight & Owens*, [1925] 2 D. L. R. 467; [1925] 1 W. W. R. 824.—*CAN.*

#### PART XIII. SECT. 11, SUB-SECT. 3.—B. (b).

4384 i. *"Proceeding instituted in consequence of adultery"*.—*Suit for nullity*.]—In a suit for nullity petitioner may be compelled to answer questions tending to show that he has committed adultery.—*W. v. W.*, [1926] S. A. S. R. 425.—*AUS.*

#### PART XIII. SECT. 11, SUB-SECT. 5.

*h i.* ———.]—In a suit by a husband for divorce, letters written by the wife to co-resp., but not delivered to him, are not made evidence of

adultery admissible against co-resp. by Ceylon Evidence Ordinance, 1895, s. 9. The fact that co-resp.'s counsel has based questions in cross-examination upon the contents of the letters, which had properly been admitted as evidence against the wife, does not make the letters evidence against co-resp.—*GABRIEL v. ELIATAMBY*, [1926] A. C. 133; 95 L. J. P. C. 9; 134 L. T. 200.—*CEYLON.*

*h ii.* ———.]—*Letters to husband from alleged adulterers*.—*Taken from husband's desk by wife*.]—*Held*: admissible.—*LIGHTHEART v. LIGHTHEART*, [1927] 1 D. L. R. 386; [1927] 1 W. W. R. 393; 21 Sask. L. R. 300.—*CAN.*

*m i.* ———.]—The pursuer in an action of divorce for adultery, instituted in 1923, reclaimed against an interlocutor, pronounced in 1927, which absolved defender & co-defender. Before the case was put out for hearing in the Inner House, pursuer presented a note, in which she asked leave to amend her record, & to lead evidence regarding certain incidents which occurred in 1925, for the purpose of throwing light upon the relations of defender & co-defender prior to the date of the action. The ct. in the exercise of its discretion, granted the leave craved.—*ROSS v. ROSS*, [1928] S. C. (Ct. of Sess.) 600.—*SCOT.*

*sz. Admissions—Of adultery—By wife—Bastardizing offspring*.]—Admissions by a wife, that the father of a child born to her during the marriage was not her husband:—*Held*: receivable in evidence, so far as they did not relate to non-access.—*JUSTICE v. JUSTICE*, [1925] S. A. S. R. 278.—*AUS.*

#### PART XIII. SECT. 11, SUB-SECT. 12.

4456 ii. ———.]—*DAHLBERG v. SWANSON*, [1927] 3 D. L. R. 669; [1927] 1 W. W. R. 617; 21 Sask. L. R. 388.—*CAN.*

#### PART XIII. SECT. 15, SUB-SECT. 2.—A.

*g i.* ———.]—*Withdrawal at trial—Order*

*directing husband to pay interim costs not affected*.]—*CAMRUD v. CAMRUD* (Sask.), [1927] 4 D. L. R. 365; [1927] 2 W. W. R. 759.—*CAN.*

#### PART XIII. SECT. 16, SUB-SECT. 5.—A.

4676 i. *General rule*.]—The factors to be considered in granting damages against co-resp. are (1) the actual value of the wife to the husband; (2) the injury to his feelings, the blow to his marital honour & the hurt to his matrimonial & family life.—*HAYNES v. HAYNES* (Sask.), [1926] 4 D. L. R. 473; [1926] 2 W. W. R. 726.—*CAN.*

#### PART XIII. SECT. 16, SUB-SECT. 5.—B.

*sb. By jury*.]—It is not the law in Saskatchewan that damages against co-resp. must be assessed by a jury.—*RIDER v. RIDER*, [1925] 3 D. L. R. 370; [1925] 1 W. W. R. 1051; 19 Sask. L. R. 334.—*CAN.*

#### PART XIII. SECT. 16, SUB-SECT. 5.—D. (b).

4685 i. *Not punitive*.]—*RIDER v. RIDER*, [1925] 3 D. L. R. 370; [1925] 1 W. W. R. 1051; 19 Sask. L. R. 384.—*CAN.*

4685 ii. ———.]—*TRANTER v. TRANTER & LAMB*, [1925] N. Z. L. R. 593.—*N.Z.*

#### PART XIII. SECT. 16, SUB-SECT. 5.—D. (c).

4690 i. *Whether bar to claim for damages—Illicit relationship continued after knowledge*.]—Co-resp.'s conduct in continuing adulterous relations with resp. after he became aware that she was married:—*Held*: to deprive him of any protection with respect to immunity from damages to which his prior ignorance of her married state might have entitled him.—*HAYNES v. HAYNES* (Sask.), [1926] 4 D. L. R. 473; [1926] 2 W. W. R. 726.—*CAN.*



as that attributed in the petition to the woman actually cited. The ct. refused to allow the intervenor her costs.—*DARNBOROUGH v. DARNBOROUGH* (1929), 141 L. T. 610; 45 T. L. R. 603; 73 Sol. Jo. 514.

5050a. ——— Profit costs—When ordered.]—*GRIBBLE v. GRIBBLE* (1929), 45 T. L. R. 192; 73 Sol. Jo. 61.

5067. Add. Annotation :—*Refd.* *Sloggett v. Sloggett*, [1928] P. 148.

5068. Add. Annotations :—*Consd.* *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416. *Refd.* *Statham v. Statham*, [1929] P. 131.

5068a. ——— Time for investigations not limited.]—*MACKENZIE v. MACKENZIE* (1928), 72 Sol. Jo. 400.

5070. Add. Annotation :—*Consd.* *Sloggett v. Sloggett*, [1928] P. 148.

5071. Add. Annotation :—*Mentd.* *A.-G. for Alberta v. Cook*, [1926] A. C. 444.

5074. Add. Annotations :—*Refd.* *Sloggett v. Sloggett*, [1928] P. 148. *Mentd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

5076. Add. Annotation :—*Refd.* *Sloggett v. Sloggett*, [1928] P. 148.

5076a. ———.]—The intervention of &, if necessary, the calling of evidence by the King's Proctor, subject to the direction of the A.-G., in a suit

for the dissolution of marriage, before decree nisi, is not limited to cases of suspected collusion.—*SLOGGETT v. SLOGGETT*, [1928] P. 148; 97 L. J. P. 71; 139 L. T. 238; 44 T. L. R. 394; 72 Sol. Jo. 192.

5112. Add. Annotation :—*Refd.* *Sloggett v. Sloggett*, [1928] P. 148.

5197. Add. Annotation :—*Refd.* *Fletcher v. Fletcher*, [1928] P. 20.

5209. Add. Annotation :—*Mentd.* *Hyman v. Hyman*, [1929] A. C. 601.

5236. Add. Annotation :—*Refd.* *Woodland v. Woodland* (otherwise *Belin*), [1928] P. 169.

5271a. ———.]—*MILLER v. MILLER* (1928), 72 Sol. Jo. 205.

5271b. Who may apply—Respondent.]—*MILLER v. MILLER* (1928), 72 Sol. Jo. 205.

5327. Add. Annotation :—*Generally*, *Refd.* *Hyman v. Hyman*, [1929] A. C. 601.

5332. Add. Annotations :—*Consd.* *Gandy v. Gandy* (1885), 30 Ch. D. 57. *Dbtd.* *Hyman v. Hyman*, [1929] A. C. 601. *Refd.* *May v. May* (1929), 98 L. J. K. B. 770.

K. Enforcement of Order (Vol. XXVII., p. 500).

After "Injunction—Restraining husband from receiving legacy" add "Restraining husband from receiving dividends."—*See* No. 5995a, post."

#### PART XIII. SECT. 20, SUB-SECT. 1.

5093 i. *King's Proctor.*—The King's Proctor can intervene in an action for divorce in the Supreme Ct. of Alberta, & can so intervene on the ground of collusion or on the ground of material facts not brought before the ct.—*ELKOWECH v. ELKOWECH*, [1925] 4 D. L. R. 1037; [1925] 3 W. W. R. 705; [1925] 3 D. L. R. 676; [1925] 2 W. W. R. 485.—CAN.

#### PART XIII. SECT. 20, SUB-SECT. 3.—A.

sd. Decree obtained by evidence "framed up" between defendant & detective employed by petitioner.—*Held*: the decree should be rescinded, even though neither petitioner nor her solicitor were implicated in the "frame-up."—*RUSSELL v. RUSSELL & MCKENNA* (No. 2) (Man.), [1927] 3 W. W. R. 297.—CAN.

#### PART XIII. SECT. 20, SUB-SECT. 4.—A. (g) ii.

sf. Unsuccessful allegation of collusion.—If, on an intervention by the King's Proctor, the allegation of collusion fails, the practice in England, that the King's Proctor is not entitled to costs, is not necessarily applicable in the Supreme Ct. of Alberta.—*ELKOWECH v. ELKOWECH*, [1925] 4 D. L. R. 1037; [1925] 3 W. W. R. 705.—CAN.

#### PART XIII. SECT. 21, SUB-SECT. 3.—B. (a).

sj. Refusal of trial judge to infer adultery.—Appeal dismissed.—*HENDERSON v. HENDERSON & MCKAY*, [1927] 3 D. L. R. 815; [1927] 2 W. W. R. 473; 21 Sask. L. R. 675.—CAN.

#### PART XIII. SECT. 21, SUB-SECT. 4.

sk. Action for declaration that decree void for want of jurisdiction.—Action for a declaration that two decrees ordering judicial separation & awarding permanent alimony were null & void for lack of jurisdiction, dismissed.—*CLAMAN v. CLAMAN* (No. 2) (1925), 35 B. C. R. 141.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—A.

sn. In decree of judicial separation.]—

An award of permanent alimony may be made in a decree of judicial separation itself.—*WEDLEY v. WEDLEY*, [1925] 3 W. W. R. 46.—CAN.

sp. Effect of—Wife not debarred from filing caveat under *Homesteads Act*, R. S. S., 1920 (c. 69).—*Re LONNEM CAVEAT*, [1926] 1 D. L. R. 279; [1926] 1 W. W. R. 134; 20 Sask. L. R. 275.—CAN.

st. — Not defence to application for relief under *Decree of Estates Act*, R. S. S., 1920 (c. 73).—*Re LONNEM CAVEAT*, [1926] 1 D. L. R. 279; [1926] 1 W. W. R. 134; 20 Sask. L. R. 275.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—C.

5282 i. After decree of judicial separation—By application in chambers.—*CAMRUD v. CAMRUD* (Sask.), [1927] 4 D. L. R. 365; [1927] 2 W. W. R. 759.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—D. (a).

c i. —.]—On an application for permanent alimony the ct. should not recognise any right in the husband to reduce his income by retaining unsaleable & unproductive real estate & paying taxes & interest thereon; but it should be astute to frustrate an intention to make such payments the means of escaping payment of alimony.—*NEWTON v. NEWTON* (Man.), [1927] 1 D. L. R. 756; [1927] 1 W. W. R. 106.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—D. (c).

e i. —.]—*MACINTOSH v. MACINTOSH* (N. B.), [1927] 3 D. L. R. 1190.—CAN.

e ii. —.]—Where the wife was a school teacher, the ct. awarded her one-half of the joint income less the amount of her salary.—*NEWTON v. NEWTON* (Man.), [1927] 1 D. L. R. 756; [1927] 1 W. W. R. 106.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—F.

5325 ii. — Facts discovered after trial.]—Amount of permanent alimony

increased on consideration of facts discovered after the trial.—*WEDLEY v. WEDLEY*, [1925] 3 W. W. R. 46.—CAN.

5328 i. Reduction—Husband's means reduced.]—*MACKINNON v. MACKINNON* (1924), 58 N. S. R. 220.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—G.

5333 i. Payment of arrears—Whether enforced.]—*PATTERSON v. PATTERSON*, [1928] 4 D. L. R. 793; 63 O. L. R. 97.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—K.

sv. Order for sale of husband's land—Amount recoverable.]—Pltf., in Feb. 1924, recovered a judgment against deft. for alimony. Payments under the judgment being in arrear, pltf., in 1928, applied for an order for leave to sell deft.'s interest in certain land in order to satisfy the arrears. It appeared that deft. & pltf. had lived together as man & wife for about a month at the end of 1927. Pltf. swore that deft. lived with her during this month at her parent's home, & left her early in Jan. 1928, & she had not lived with him since. Deft. swore that his home had been & still was open for her to return to at any time, & that it was at his home that they lived together for a month.—*Held*: pltf. was entitled to an order for sale, but the amount recoverable must be limited to the arrears that accrued up to Dec. 1, 1927.—*PATTERSON v. PATTERSON*, [1928] 4 D. L. R. 793; 63 O. L. R. 97.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 2.—B.

5360 i. On dissolution of marriage—For guilt of wife.]—Divorce & Matrimonial Causes Act, 1908, s. 42, does not authorise the ct., where a decree for dissolution of marriage has been obtained by a husband against a wife, to make an order on the husband for the permanent maintenance of the wife.—*HARRIS v. HARRIS*, [1926] N. Z. L. R. 274.—N.Z.

**5360a. On lunacy of husband.**—The jurisdiction in lunacy to appoint a receiver of the estate of a person of unsound mind does not exclude other cts. from enforcing lawful claims against his estate, including claims arising in the Divorce Div. Although the primary duty of those concerned with the care of a person of unsound mind is to apply his estate for his maintenance, & there is power under Law of Property Act, 1925 (c. 20), s. 171, to direct a settlement of the property of a lunatic or defective, the Divorce Div. is not thereby discharged from the duty of providing for the permanent maintenance of a petitioning wife out of the estate of a husband of unsound mind. When by an order in lunacy a provision has been directed for the wife during the lifetime of the husband & pending his incapacity, & the Divorce Div. approve the quantum of the order, the proper course, on application in that Div. by the wife for permanent maintenance, is to order it to be secured to her at the rate ordered in lunacy so far as the husband's means permit without prejudice to any further order in lunacy, the security not to be enforceable pending subsistence of the order in lunacy, & should it subsist during the life of the husband not to be enforceable till his death.—*C. L. v. C. F. W.*, [1928] 2 K. B. 223; 97 L. J. P. 138.

**5364a. ——— Delay.**—In allotting maintenance one of the statutory duties of the ct. is to have regard "to the conduct of the parties." If a wife obtains a decree in an undefended case it does not necessarily follow that her conduct, for example, in the matter of delay, was approved by the trial judge. Even if the judge disapproved of the delay, he still had a discretion to pronounce the decree. In an undefended case, therefore, on allegations of unreasonable delay being made in the maintenance proceedings, sufficient evidence must be received to enable the ct. properly to determine whether the allegations are established & if so, how if at all the conduct in question would affect the sum of money which the husband should be ordered to secure &/or to pay.—*CHAPPEL v. CHAPPEL* (1929), 98 L. J. P. 95; 140 L. T. 699; 45 T. L. R. 273; 73 Sol. Jo. 207.

**5373. Add. Annotation:—Apprvd.** *Hyman v. Hyman*, [1929] A. C. 601.

**5374. Add. Annotation:—As to (1) Apprvd.** *Hyman v. Hyman*, [1929] A. C. 601.

**5375. Add. Annotation:—Refd.** *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416.

**5382. Add. Annotation:—Refd.** *Gilbey v. Gilbey*, [1927] P. 197.

**5382a. ———**—Although the considerations which applied in the Ecclesiastical Cts. to awards of alimony must have due weight in determining the proper award of maintenance to a wife after a decree of divorce, the assumption of a fixed arithmetical rule & an indispensable process of applying that rule is erroneous, & disregards the duty imposed on the ct. by Jud. (Consolidation) Act, 1925 (c. 49), s. 190 (1) & (2). Where the husband's whole income has been expended on the requirements of the matrimonial home, a third of his means may well be required for the wife's maintenance; but where, beyond everything called for by such requirements,

the husband possesses an ample fortune, the amount of his income affords no definite guidance as to the sum required to supply his sometime wife with the necessities, comforts, & advantages incidental to her station in life.

Where the husband's gross income was £25,337 a year, derived mainly from his interest in a business concern, the registrar by his report submitted that the husband should be ordered to secure to his wife, who had divorced him, by way of permanent maintenance for her life, the annual sum of £3,500 less tax, & to pay to his wife during their joint lives the further annual sum of £500 less tax. The ct. confirmed the report. —*GILBEY v. GILBEY*, [1927] P. 197; 96 L. J. P. 55; 137 L. T. 31; 43 T. L. R. 283.

**5382b. ———**—*Resp.*, a husband, who had been divorced, re-married, & by an antenuptial settlement settled property, which included the matrimonial home & the chattels therein & the major part of his capital, on his wife *in futuro*. Petitioner, his former wife, had obtained an order for permanent maintenance of £100 a year & of £100 for her son, when resp.'s annual income was about £1,500. Subsequently, when resp.'s income, not taking into account the settlement, was about £4,500, petitioner applied for an increase in the amount of the order, on the ground that resp.'s means had increased. The registrar increased the order for permanent maintenance from £400 to £1,200 a year, less income tax, & from £100 to £150 a year, free of income tax, for the son:—*Held*: (1) resp.'s means had increased, as by sharing the advantages of the matrimonial home as of right settled upon his wife, a larger portion of the £1,500 unsettled income was left free to be dealt with by him & by the ct.; (2) the order could not be made disregarding the settlement, which subsisted; (3) an order for permanent maintenance, or an increase of it, should not be based on the income of the husband during a year of exceptional prosperity; (4) an order for permanent maintenance in such a case should not be based on the old practice of the Ecclesiastical Cts. in the case of a decree *a mensâ et thoro*, of granting to the wife one-third of the husband's available means, as the conditions arising from the two decrees were not the same, petitioner & resp. being divorced, & free to marry again; (5) in view of the increased means of the husband, having regard to the wife's fortune, the ability of the husband & the conduct of the parties, the order for permanent maintenance for the former wife should be increased from £100 a year to £750 a year, less income tax.—*N. v. N.* (1928), 138 L. T. 693; 44 T. L. R. 324; 72 Sol. Jo. 156.

**5384. Add. Citations:—**[1926] P. 1; 95 L. J. P. 30; 134 L. T. 24.

*Add. Annotations:—Apld.* *May v. May* (1929), 98 L. J. K. B. 770. *Refd.* *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416.

**5393. Add. Annotation:—Refd.** *Gilbey v. Gilbey*, [1927] P. 197.

**5393a. ——— Wife owner of valuable jewellery.**—In fixing the amount of permanent maintenance for a wife who has obtained a decree of divorce, the registrar

is entitled to take into consideration the fact that she is the owner of valuable jewellery, which could be sold so as to produce an income.—*LYSAGHT v. LYSAGHT* (1928), 44 T. L. R. 723 ; 72 Sol. Jo. 546.

**5396a. In discretion of court—No fixed principles.]**—*SHERWOOD v. SHERWOOD*, No. 5498a, *post*.

**5399a. — — — — —.]**—*SHERWOOD v. SHERWOOD*, No. 5498a, *post*.

**5403. Add. Annotation :—***Refd. Fanshawe v. Fanshawe*, [1927] P. 238.

**5410a. — — — — — To increase maintenance.]**—The power to increase the amount provided by an order for permanent maintenance upon an increase in the means of a husband conferred by Matrimonial Causes Act, 1907 (c. 12), & Jud. (Consolidation) Act, 1925 (c. 49), which repeals & re-enacts the power given by the former Act, is retrospective in its operation & extends to dealing with orders made under the previous Act, namely, Matrimonial Causes Act, 1866 (c. 32).—*EDMUNDS v. EDMUNDS*, [1926] P. 202 ; 95 L. J. P. 151 ; 136 L. T. 186.

**5414a. — — — — — Increase in income caused by own acts.]**—*N. v. N.*, No. 5382b, *ante*.

**5446. Add. Annotation :—***Refd. Fanshawe v. Fanshawe*, [1927] P. 238.

**5447. Add. Annotation :—***Refd. Fanshawe v. Fanshawe* (1927), 43 T. L. R. 666.

**5449. Add. Annotation :—***Consd. Fanshawe v. Fanshawe*, [1927] P. 238.

**5450. Add. Citations :—**[1926] P. 93 ; 95 L. J. P. 83 ; 135 L. T. 1 ; 42 T. L. R. 413 ; 70 Sol. Jo. 503, C. A.

*Add. Annotations :—Refd. Fanshawe v. Fanshawe*, [1927] P. 238 ; *Gilbert v. Gilbert & Boucher*, [1928] P. 1.

**5477. Add. Annotation :—***Refd. Re Nelson, Norris v. Nelson* (1918), [1928] Ch. 920, n.

**5486. Add. Annotations :—***As to (3) Consd. Legge v. Legge* (1928), 45 T. L. R. 157. *As to (1) Expld. Legge v. Legge* (1928), 45 T. L. R. 157.

**5487a. — — — — —.]**—*LEGG v. LEGGE* (1928), 45 T. L. R. 157 ; 73 Sol. Jo. 59, C. A.

PART XIII. SECT. 22, SUB-SECT. 2.—  
F.

**5410a1. Jurisdiction of court—To increase maintenance.]**—The ct. has no jurisdiction to increase the permanent order to be paid by a husband, on the ground of either the increased means of the husband or the increased necessities of the wife.—*HARRIS v. HARRIS*, [1926] N. Z. L. R. 274.—N. Z.

**5410a ii. — — — — —.]**—When application is made to the ct. under Divorce & Matrimonial Causes Act, 1908, s. 46, for the revision of a decree for permanent maintenance in favour of a wife or children of the marriage, the ct. may, in the case of children, either increase or reduce the order ; but the ct. has no power to increase an order for permanent maintenance made in favour of the wife under sect. 42, though it may reduce it.—*BURTON v. BURTON*, [1928] N. Z. L. R. 496.—N. Z.

**5411 ii. — — — — — Offer of home by husband.]**—Where an order has been made for the maintenance by a money payment of a destitute wife by her husband, the fact that the husband is subsequently ready & willing to maintain the wife with himself in a

suitable home does not afford sufficient ground under Destitute Persons Act, 1881, s. 11, for renouncing the order when the husband is able to comply with the order for payment.—*MOLLOY v. MOLLOY*, [1927] S. A. S. R. 403.—AUS.

**5416 i. — — — — — Increase in wife's means — Dissolution suit.]**—*STANTON v. NEWTON*, [1928] S. R. Q. 192.—AUS.

PART XIII. SECT. 22, SUB-SECT. 2.—  
J.

**sw. Effect of resumption of cohabitation.]**—An order for maintenance having been made against a husband under Marriage Act, 1915, s. 84, the husband & the wife subsequently agreed to make good their differences & live together. They accordingly cohabited for ten months, when they again separated.—*Held* : the agreement to live together & resumption of cohabitation implied an agreement by both parties that the husband should be released from his obligations under the maintenance order, & an information by the wife against the husband for failure to comply with the order was rightly dismissed.—*STOKES v. STOKES*, [1928] V. L. R. 479 ; [1928] Argus L. R. 351.—AUS.

**5493a. — — — — — Time for—After decree absolute.]**—*WARWICK v. WARWICK* (1928), 73 Sol. Jo. 12, C. A.

**5497a. — — — — — Past & probable future earnings.]**—*SHERWOOD v. SHERWOOD*, No. 5498a, *post*.

**5498. Add. Annotation :—***Expld. Sherwood v. Sherwood*, [1929] P. 120.

**5498a. — — — — — Amount of deduction.]**—

(1) In estimating the disposable income of a divorced husband after meeting his liability for taxes for the purpose of allotting permanent maintenance to his wife in future within the principle of *Dayrell-Steyning v. Dayrell-Steyning*, No. 5498, the amount of deduction from his gross income in respect of income tax & super tax is the amount of those taxes chargeable on income received during the current year.

(2) There is no fixed rule that the ct. will allow to the wife one-third of the husband's disposable income as permanent maintenance. It is no more than a rough working rule & does not impose an absolute limit. Further, in estimating the amount of the allowance the ct. must not focus its attention only on the disposable income of the husband in the year preceding the making of the order, but must have regard to his earnings in previous years & to his probable earnings in the

(3) In making an order for permanent maintenance the ct. is given a wide discretion by Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (1), with which the Ct. of Appeal will not readily interfere unless it is satisfied that the ct. below has proceeded on some wrong principle.—*SHERWOOD v. SHERWOOD*, [1929] P. 120 ; 98 L. J. P. 66 ; 140 L. T. 230 ; 45 T. L. R. 53 ; 72 Sol. Jo. 874, C. A.

**5499. Add. Annotations :—***Apld. Warwick v. Warwick* (1928), 73 Sol. Jo. 12. *Refd. Gilbert v. Gilbert & Boucher* (1927), 96 L. J. P. 137 ; *Skipwith v. Skipwith* (1928), 139 L. T. 317.

**5509. Add. Annotation :—***Generally. Mentd. Gilbert v. Gilbert & Boucher*, [1928] P. 1.

**5513a. Order securing to wife provision made by order in lunacy.]**—*C. L. v. C. F. W.*, No. 5360a, *ante*.

PART XIII. SECT. 22, SUB-SECT. 2.—  
L.

**bx. Information for disobedience of order—After order quashed.]**—An order for maintenance made against deft. in 1923 was quashed in Feb. 1928. In May, 1928, an information for disobedience of the maintenance order prior to the date of quashing was heard, & an order was then made that deft. be imprisoned until the maintenance order should be complied with.—*Held* : the maintenance order having been quashed, the justices had no jurisdiction to inquire into any disobedience of the order alleged to have been committed before it was quashed, & consequently the information ought to have been dismissed.—*GALLOWAY v. WATSON*, [1928] V. L. R. 308 ; [1928] Argus L. R. 201.—AUS.

PART XIII. SECT. 22, SUB-SECT. 5.—  
C.

**cy. Only circumstances at or immediately after dissolution of marriage.]**—The ct. should not consider extraneous events subsequent to the dissolution as good ground for varying a settlement.—*JACKSON v. JACKSON*, [1928] N. Z. L. R. 88.—N. Z.

- 5515. Add. Annotation:—As to (6) Consd. Allison v. Allison, [1927] P. 308.**
- 5523a. ———.**—Under Jud. (Consolidation) Act, 1925 (c. 49), s. 187 (2), a reversionary interest of a husband is not an asset which can form part of the security to be ordered for his periodical payments to his wife, on his non-compliance with a decree of restitution of conjugal rights.—**ALLISON v. ALLISON, [1927] P. 308; 96 L. J. P. 181; 137 L. T. 823; 43 T. L. R. 823; 71 Sol. Jo. 682.**
- 5531a. ——— Application—After decree for divorce—Mode of application.**—Upon the occasion of a wife's petition for restitution of conjugal rights the ct. ordered the husband to make certain periodical payments to her for herself & the children of the marriage. Later, the wife obtained a decree *nisi* for divorce, but as she, at the expiration of six months, made no move to have the decree made absolute, her husband applied by motion, under Jud. (Consolidation) Act, 1925 (c. 49), s. 196, to have the periodical payments suspended or discharged:—**Held**: the husband could make the application by motion, & was not constrained to apply by petition under Matrimonial Causes Rules, 1924, rr. 63 & 70.—**SKIPWITH v. SKIPWITH, [1929] P. 93; 97 L. J. P. 109; 139 L. T. 317, C. A.**
- 5537a. ——— Application—After decree for divorce—Mode of application.**—**SKIPWITH v. SKIPWITH, No. 5531a, ante.**
- 5542a. ——— To order settlement where wife not domiciled in England.**—(1) The property of a guilty wife, amenable, under Jud. (Consolidation) Act, 1925 (c. 49), s. 191, to the jurisdiction to order a settlement of it, is *prima facie* the property of a woman in England & subject to English jurisdiction. That jurisdiction can be invoked against a person not domiciled in England, & in respect of property beyond the jurisdiction, only subject to the principle that English cts. will not infringe the authority of foreign tribunals in their domestic affairs, or adjudicate with regard to property when their judgment will be ineffective. Apart from jurisdiction over property, the exercise of jurisdiction *in personam* in such a case depends upon the question whether the party to be affected by it is within the reach of the compulsory process of the ct.
- (2) The provisions of Matrimonial Causes Act, 1857 (c. 85), s. 42, for service out of the jurisdiction, apply to the service of the petition in a suit, & not to proceedings for a settlement.
- (3) The practice with reference to appearance to a petition for a settlement is governed by Divorce Rules, rr. 71 & 72, & (4) an appearance under these rules, qualified during the proceedings upon it, by denial of the existence of jurisdiction, is not to be regarded as a submission to that jurisdiction.—**TALLACK v. TALLACK & BROEKEMA, [1927] P. 211; 96 L. J. K. B. 117; 137 L. T. 487; 43 T. L. R. 407; 71 Sol. Jo. 521.**
- 5543. Add. Annotation:—Generally, Refd. Tallack v. Tallack & Broekema, [1927] P. 211.**
- 5543a. Petition for settlement—Service—Out of jurisdiction.**—**TALLACK v. TALLACK & BROEKEMA, No. 5542a, ante.**
- 5543b. ——— Appearance to—Practice.**—**TALLACK v. TALLACK & BROEKEMA, No. 5542a, ante.**
- 5543c. ——— Effect of—Whether submission to jurisdiction.**—**TALLACK v. TALLACK & BROEKEMA, No. 5542a, ante.**
- 5549. Add. Annotations:—As to (1) Consd. Janion v. Janion (1926), [1929] P. 237, n. Refd. Hargreaves v. Hargreaves, [1926] P. 42. As to (2) Refd. Jagger v. Jagger, [1926] P. 93.**
- 5551. Add. Annotation:—Consd. Bosworthick v. Bosworthick (1926), 95 L. J. P. 171.**
- 5576. Add. Annotation:—Refd. Tallack v. Tallack & Broekema, [1927] P. 211.**
- 5579. Add. Annotation:—Refd. Tallack v. Tallack & Broekema, [1927] P. 211.**
- 5580a. ———.**—**PRINSEP v. PRINSEP (1929), 46 T. L. R. 29, C. A.**
- Annotation:—Refd. Alston v. Alston, [1929] P. 311.**
- 5582. Add. Annotation:—Refd. Fanshawe v. Fanshawe, [1927] P. 238.**
- 5583a. ———.**—After a decree *nisi* for dissolution of marriage the ct. has no jurisdiction under Jud. (Consolidation) Act, 1925 (c. 49), s. 192, to entertain any application for an inquiry into, & variation of, settlements until after the decree has been made absolute. **GILBERT v. GILBERT & BOUCHER, [1928] P. 1; 96 L. J. P. 137; 137 L. T. 619; 43 T. L. R. 589; 71 Sol. Jo. 582, C. A.**
- 5588. Add. Annotation:—N F. Webster v. Webster amison, [1926] P. 198.**
- 5588a. ———.**—Although there is the fullest power to vary settlements, the ct. will regard the interests of the children as the important element for consideration in varying a settlement. Where an ante-nuptial settlement did not provide for the contingency of one of the spouses dying & the survivor marrying again, the ct., when varying the settlement after dissolution of the marriage, declined to insert in the settlement a provision enabling the husband to appoint a portion of the trust funds to a future wife & future children.—**WEBSTER v. WEBSTER & WILLIAMSON, [1926] P. 198; 95 L. J. P. 97; 135 L. T. 670.**
- Annotation:—Distd. Scolliek v. Scolliek, [1927] P. 205.**
- 5588b. ———.**—In varying a settlement the ct. will exercise the wide powers conferred upon it by Jud. (Consolidation) Act, 1925 (c. 49), s. 192, with regard to the facts of the case & the interests of children. If on the facts before the ct. a child of a first marriage may gain advantages concurrently with the creation of a fresh power of appointment enabling children of a second marriage to share a settled fund with it, the ct. will create that power, although it is not originally existent in the settlement, & although its creation may eventually involve some pecuniary sacrifice on the part of the child of the first marriage.—**SCOLLICK v. SCOLLICK, [1927] P. 205; 96 L. J. P. 96; 137 L. T. 485; 71 Sol. Jo. 584.**
- 5596. Add. Annotation:—Refd. Bosworthick v. Bosworthick, [1926] P. 159.**
- 5599. Add. Annotation:—As to (2) Refd. Webster v. Webster & Williamson, [1926] P. 198.**
- 5600. Add. Annotation:—Refd. Webster v. Webster & Williamson, [1926] P. 198.**
- 5603. Add. Annotation:—Distd. Webb v. Webb, [1929] P. 159.**
- 5622. Add. Annotation:—Refd. Bosworthick v. Bosworthick, [1926] P. 159.**



5623. *Add. Annotation*.—**Refd.** *Bosworthick v. Bosworthick*, [1927] P. 64.

5623a. — **Bond to secure annuity—Appointment of annuity.**—A post-nuptial provision for his life made by a wife for her husband by a bond, or by the exercise of her power of appointment, giving him an annuity for his life expectant upon her death, are post-nuptial settlements within Matrimonial Causes Act, 1859 (c. 61), s. 5, & Jud. (Consolidation) Act, 1925 (c. 49), s. 192, & give rise on the dissolution of the marriage to the power of the ct. to vary the settlements.—*BOSWORTHICK v. BOSWORTHICK*, [1927] P. 64; 95 L. J. P. 171; 136 L. T. 211; 42 T. L. R. 719; 70 Sol. Jo. 857, C. A.

5623b. — **Life policy—Contingent interest in policy money.**—A life policy effected after marriage by one of the spouses on the life of the spouse effecting it, with a contingent interest of the other spouse in the policy money, is a post-nuptial settlement, & after divorce the ct. has power, under Jud. (Consolidation) Act, 1925 (c. 49), s. 192, to make orders with reference to the application of the policy money.—*GULBENKIAN v. GULBENKIAN*, [1927] P. 237; 96 L. J. P. 53; 136 L. T. 800; 43 T. L. R. 267; 71 Sol. Jo. 311.

5624a. — **Settlement not made in contemplation of marriage.**—The expression “ante-nuptial or post-nuptial settlements,” in Jud. (Consolidation) Act, 1925 (c. 49), s. 192, does not, as regards the parties whose marriage is the subject of the decree, include a settlement of the property of either spouse not made in contemplation of any particular marriage, but giving the spouse power to appoint an interest to any future wife or husband.—*MARGREAVES v. MARGREAVES*, [1926] P. 42; 95 L. J. P. 31; 134 L. T. 543; 42 T. L. R. 252.

5625a. — **Questions for consideration.**—*JANION v. JANION* (1926), [1929] P. 237, n.; 98 L. J. P. 111, n.; 141 L. T. 226, n.; 45 T. L. R. 381, n.

*Annotations*.—**Folld.** *Prinsep v. Prinsep*, [1929] P. 225. **Consd.** *Alston v. Alston*, [1929] P. 311.

5625b. — — — — —.]—(1) In deciding whether a settlement comes within the meaning of “post-nuptial settlement” on the parties within the purview of Jud. Act, 1925 (c. 49), s. 192, the material question is whether the settlement in question is upon the husband in the character of husband or on the wife in the character of wife or upon both in the character of husband & wife. Mere form is immaterial. The settlement may be one in the strictest sense or it may be, for instance, a covenant to pay by one spouse to the other or by a third party to a spouse. What is material is that the settlement should provide financial benefit for one or other or both of the spouses as spouses & with reference to their married state. (2) In dealing with a settlement under the powers conferred by sect. 192 the ct. will not be fettered in its application of the settled funds by remote & contingent interests therein of volunteers.—*PRINSEP v. PRINSEP*, [1929] P. 225; 98 L. J. P. 105; 141 L. T. 220; 45 T. L. R. 376; 73 Sol. Jo. 429; *subsequent proceedings*, [1929] P. 265; *varied*, 46 T. L. R. 29, C. A.

*Annotation*.—**Consd.** *Alston v. Alston*, [1929] P. 311.

5629. *Add. Annotation*.—**As to** (1) **Folld.** *Bosworthick v. Bosworthick* (1926), 95 L. J. P. 171.

5630. *Add. Annotations*.—**Refd.** *Webster v. Webster* (1926), 135 L. T. 670; *Scollick v. Scollick* (1927), 96 L. J. P. 96.

5643. *Add. Annotation*.—**As to** (1) **Consd.** *Hyman v. Hyman*, [1929] A. C. 601.

5650. *Add. Annotations*.—**Refd.** *Webster v. Webster & Williamson*, [1926] P. 198; *Scollick v. Scollick*, [1927] P. 205.

5653. *Add. Annotation*.—**Refd.** *Webster v. Webster & Williamson*, [1926] P. 198.

5674. *Add. Annotation*.—**Generally, Refd.** *Tallack v. Tallack & Broekema*, [1927] P. 211.

5680a. — — — — —.]—**ALEXANDER v. ALEXANDER** (1929), 45 T. L. R. 193; 73 Sol. Jo. 127.

5680b. — **Power in favour of after-taken spouse & issue of second marriage—Acceleration—Notwithstanding benefit to guilty party.**—The operation of a power in a marriage settlement for the resettlement of the trust funds of a surviving party to the marriage upon his or her after-taken spouse & the children or issue of his or her subsequent marriage may be accelerated in the event of the dissolution of the marriage so far as to become effective without actual survivorship & during the lifetime of the other party. By varying the settlement accordingly the ct. may effect this acceleration for the benefit not merely of an innocent party but also for that of a guilty spouse on the basis (*inter alia*) of the interest of the children of the dissolved marriage, in the opinion of the ct. being adequately protected by the terms & conditions of the acceleration.—*ALSTON v. ALSTON*, [1929] P. 311; 98 L. J. P. 155; 141 L. T. 542; 45 T. L. R. 642; 73 Sol. Jo. 544.

5686. *Add. Annotation*.—**Distd.** *Webb v. Webb*, [1929] P. 159.

5688. *Add. Annotation*.—**Consd.** *Webb v. Webb*, [1929] P. 159.

5688a. — — — — —.]—By a marriage settlement the settled fund of a wife who had obtained a dissolution of the marriage was held in the absence of issue in trust, if the husband survived her, to yield him a specified income for a term with an absolute interest in a part of the corpus & subject thereto for her next of kin absolutely & if the wife survived, for her absolutely. The ct. extinguished the interest of the husband in his wife's fund, but refused to order the fund to be reconveyed to her freed from the trust for her next of kin so as to extinguish their interest.—*WEBB v. WEBB*, [1929] P. 159; 98 L. J. P. 72; 140 L. T. 592; 45 T. L. R. 223; 73 Sol. Jo. 174.

5691. *Add. Annotation*.—**Distd.** *Webb v. Webb*, [1929] P. 159.

5700. *Add. Annotation*.—**Refd.** *Bosworthick v. Bosworthick*, [1927] P. 64.

5718a. **Interests of volunteers.**—*PRINSEP v. PRINSEP*, No. 5625b, *ante*.

5730a. — — — — —.]—*TAYLOR v. TAYLOR* (1926), 161 L. T. Jo. 236.

5752. *Add. Annotation*.—**Refd.** *Jagger v. Jagger*, [1926] P. 93.

5760a. **Hearing in camera—Whether ordered—Question involving legitimacy.**—*ROBERTSON*



v. ROBERTSON & BUTT, *Re* ISSUE, ROBERTSON v. ROBERTSON (1928), 72 Sol. Jo. 585.

5766. *Add. Annotation*:—**Folld.** Gilbert v. Gilbert & Boucher (1927), 43 T. L. R. 589.

5770. *Add. Annotation*:—**Refd.** Bosworthick v. Bosworthick (1926), 136 L. T. 211.

5781a. *Child born before marriage.*—In a divorce suit, to which only the husband & wife were parties:—**Held**: an order giving to the husband custody of the child of the parties born before the marriage must be refused, as the ct. was not competent to find the facts necessary to make the child a legitimated child by virtue of Legitimacy Act, 1926 (c. 60).—**BEDNALL v. BEDNALL & SHIVUSAWA**, [1927] P. 225; 96 L. J. P. 150; 137 L. T. 632; 43 T. L. R. 599; 71 Sol. Jo. 453.

*Annotations*:—**Folld.** Green v. Green, [1929] P. 101. **Refd.** Jones v. Jones (1929), 98 L. J. P. 74.

5781b. —. ]—The ct. has no jurisdiction to make an order for custody in divorce proceedings, in the case of a child of the parties who was born before their marriage & had not been declared legitimate, in accordance with Legitimacy Act, 1926 (c. 60). The word “children” in Jud. (Consolidation) Act, 1925 (c. 49), s. 193, means legitimate children.

Petitioner was given the “care & control” of the child by a direction of the ct., made under the general jurisdiction of the High Ct. in respect of infants.—**GREEN v. GREEN**, [1929] P. 101; 98 L. J. P. 58; 140 L. T. 93; *sub nom.* G. v. G., 45 T. L. R. 7; 73 Sol. Jo. 111.

*Annotation*:—**Folld.** Jones v. Jones (1929), 98 L. J. P. 74.

5781c. **S. P. JONES v. JONES** (1929), 98 L. J. P. 74; 140 L. T. 647; 45 T. L. R. 292; 73 Sol. Jo. 192.

5781d. *To vary order of magistrate made under Guardianship of Infants Acts.*—**VIGON v. VIGON & KUTTNER**, [1929] P. 245; 141 L. T. 293; 93 J. P. 112, n., C. A.; *subsequent proceedings*, 141 L. T. 610.

5781e. —. ]—**VIGON v. VIGON & KUTTNER** (1929), 141 L. T. 610; 45 T. L. R. 611; 93 J. P. Jo. 524; 27 L. G. R. 766; *previous proceedings*, [1929] P. 245, C. A.

5792a. —. **Father's disobedience to decree for restitution of conjugal rights.**—There is no settled practice that after a husband's disobedience to a decree for restitution of conjugal rights, the custody of children

should be refused to the husband or given to the complaining wife. The paramount consideration must be the welfare of the children.—**W. v. W.**, [1926] P. 111; 95 L. J. P. 56; 135 L. T. 383; 42 T. L. R. 470.

5802a. —. **Discharge of inchoate order.**—**VIGON v. VIGON & KUTTNER**, [1929] P. 245; 141 L. T. 293; 93 J. P. 112, n., C. A.; *subsequent proceedings*, 141 L. T. 610.

5957a. —. ]—Process of sequestration in the Divorce Ct. is governed by Matrimonial Causes Rules, 1924, r. 79 (a), & not by R. S. C., Ord. 43, r. 6. According to the former a writ of sequestration is a remedy for non-payment of a sum of money at the time appointed, & is appropriate to the case of non-payment of an instalment of alimony. If it is contended that the issue of the writ would be futile or unreasonable by reason of the absence of available assets, the *onus* lies upon the party against whom relief is sought to establish that fact.—**CAPRON v. CAPRON**, [1927] P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.

5959. *After this case add*

“ —. ]—*See, also*, EXECUTION, Vol. XXI., p. 591, Nos. 1751-1758.”

5968. *Add. Annotations*:—*As to* (1) **Refd.** Allison v. Allison, [1927] P. 308; Burrowes v. Burrowes (1929), 141 L. T. 201.

5980. *Add. Annotation*:—**Consd.** Burrowes v. Burrowes (1929), 141 L. T. 201.

5993. *Add. Annotation*:—**Refd.** Fanshawe v. Fanshawe, [1927] P. 238.

5995a. —. **Restraint from receipt of dividends—Until payment of costs.**—A wife was granted a decree of judicial separation on the ground of her husband's cruelty in an undefended petition, & an order for permanent alimony for herself & her four children was made at the rate of £950 a year. The husband had capital of at least £40,000. When each instalment of alimony became due he adopted an attitude of passive resistance, & on three successive occasions she secured payment only by execution on her husband's household effects, & on one occasion she secured a charging order on certain of his securities for the payment of a monthly instalment accrued due. Therefore she applied for an order to secure, under the control of the ct. or of a receiver, sufficient of the husband's

welfare; (2) the wife, as innocent spouse, had a primary claim to the custody of the children; (3) on the facts she was, from the point of view of the children's welfare, as suitable a guardian as the father.—**HUME v. HUME**, [1926] S. C. 1008.—**SCOT**.

PART XIII. SECT. 22, SUB-SECT. 6.—**B.**

**p i. —. —. ]**—Adultery by a wife ought not to be regarded for all time & under all circumstances as sufficient to disentitle her to access to or even to the custody of the children. The ct. will have regard to the particular circumstances of each case, always bearing in mind that the benefit & the interest of the infant is the paramount consideration.—**BOLTON v. BOLTON**, [1928] N. Z. L. R. 473. **N.Z.**

PART XIII. SECT. 23, SUB-SECT. 3.—**A.**

**e i. —. ]**—An order for *interim* alimony may be enforced by execution.—**McCLUSKY v. McCLUSKY**, [1925] 2 W. W. R. 649.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 6.—**A. (a).**

**sa. Children removed from jurisdiction—Order valid according to law of place of residence.**—Where the husband is domiciled in Alberta at the time an action for divorce is begun, the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother, even though they have been removed by the father to a foreign State & are residing therein at the time of the appln. for the order; & will where the merits warrant it make such an order provided it appears that under the laws of said State the order will be recognised as valid by the cts. thereof.—**GOFORTH v. GOFORTH**, [1929] 1 D. L. R. 58; [1928] 3 W. W. R. 483.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 6.—**A. (b).**

**sb. Guilty wife.**—Although in a husband's action for divorce he was found entitled to a decree on the ground

of adultery, the wife was, in view of all the circumstances, given the custody of the children & maintenance for them & herself *dum sola et casta viveret*.—**LILLIE v. LILLIE**, [1926] 1 D. L. R. 866; [1926] 1 W. W. R. 298; 20 Sask. L. R. 442.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 6.—**A. (c).**

**5791 i. Interests of children -- & parents.**—A wife obtained a decree of divorce for adultery in an action which also contained a conclusion for the custody of the two pupil children of the marriage. The Lord Ordinary, regarding the question solely from the point of view of the children's welfare, awarded the custody to the father:—**Held**: (1) Guardianship of Infants Act, 1925 (c. 45), s. 1, recognised & proceeded upon the existence of rights & preferences in the spouses to the custody of their children, & its effect was not to abolish those rights & preferences, but to provide that they should not be enforced if the result would be adverse to the children's

capital from which payments of the monthly instalments could be made to her as they became due. The judge held that owing to a defect in the matrimonial law the ct. had no power to grant the relief asked for. The summons must be dismissed, but the husband would pay the wife's costs:—*Held*: under the law as it now stood, the husband could not be treated as in contempt with regard to future payments, but as he was in contempt as regards past payments & had expressed an intention to disobey the order for alimony as regards future payments, the ct. while not overstepping the proper limitations with regard to future payments, would make an order restraining him from receiving any dividends in respect of investments to the extent of £395 16s. 8d., being the amount of the arrears of alimony & costs, directing that the solr. of resp. should receive the dividends & pay the same to the petitioner, & would give liberty to apply in chambers in regard to future arrears. *BURROWES v. BURROWES* (1929), 141 L. T. 201; 45 T. L. R. 401, C. A.; *reversing* S. C. *sub nom.* *B. v. B.*, 73 Sol. Jo. 334.

**5995b.** ———. **Until payment of alimony.**]  
*BURROWES v. BURROWES*, No. 5995a, *ante*.

**6005.** *Add. Annotation*:—**Refd.** *Fanshawe v. Fanshawe*, [1927] P. 238.

**6006.** *Add. Annotation*:—**Refd.** *Fanshawe v. Fanshawe*, [1927] P. 238.

**6006a.** ———. ]—The ct. will interfere by way of injunction to restrain a husband from dealing with his property so as to defeat an order for costs or alimony *pendente lite*, when the amount of the latter has been fixed & an instalment of it is already due & in arrear, but will not so restrain him in respect of instalments of alimony to become due at a future date.—*FANSHAWE v. FANSHAWE*, [1927] P. 238; 96 L. J. P. 133; 137 L. T. 496; 43 T. L. R. 666; 71 Sol. Jo. 762.

**6011.** *Add. Annotation*:—**Refd.** *Fanshawe v. Fanshawe*, [1927] P. 238.

**6012a.** ———. ]—*FANSHAWE v. FANSHAWE*, No. 6006a, *ante*.

**6026a.** ———. ]—Petitioner, in 1919, went through a ceremony of marriage with resp. In 1923 resp. was convicted of bigamy, she having been lawfully married to A. on Dec. 26, 1903, which marriage was still subsisting. The ct. pronounced a decree *in sol.* of nullity, & under the powers conferred by Jud. (Consolidation) Act, 1925 (c. 49), s. 183 (1), allowed petitioner to apply for the decree to be made absolute after the expiration of one month.—*OSBORN v. OSBORN* (OTHERWISE IVIL) (1928), 70 Sol. Jo. 388.

**6042a.** ———. **Application for substitution of alternative decree—Judicial separation.** ]—Circumstances in which such application was granted.—*ROCH v. ROCH* (1926), 161 L. T. Jo. 395.

#### PART XIII. SECT. 24, SUB-SECT. 1.

**5996 i.** *As to what matters granted—Restraint from molestation.* ]—The ct. has jurisdiction, in an undefended suit brought by a wife for judicial separation or alternatively for divorce, to grant an injunction restraining resp., until the hearing of the suit, from molesting petitioner by going to & remaining in petitioner's house.—*MULLENS v. MULLENS*, [1928] V. L. R. 55; [1928] *Argus* L. R. 6.—**AUS.**

#### PART XIII. SECT. 25, SUB-SECT. 4.

**ad. Decree in undefended divorce action—Decree in absence liable to suspension.** ]—*Held*: a decree in an undefended action of divorce, was a decree in absence to which Ct. of Session (No. 1) Act, 1838, s. 5, applied, & it was, therefore, competent to bring a suspension of such decree.—*CUNNINGHAM v. CUNNINGHAM*, [1928] S. C. (Ct. of Sess.) 790.—**SCOT.**

**6080.** *Add. Annotations*:—**Mentd.** *Jacobson v. Frachon* (1927), 138 L. T. 386; *Salvesen* (or *von Lorange*) *v. Austrian Property Administrator*, [1927] A. C. 641.

**6081a.** ———. ]—*R. v. LERESCHE* (1887), 56 L. J. M. C. 135; 35 W. R. 805, D. C.

**6085a.** **Only one justice present throughout hearing—Validity of proceedings.** ]—On the hearing by justices of an application by a wife under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, for a maintenance order, on the ground of her husband's wilful neglect to provide her with reasonable maintenance, there was an adjournment, after four justices had heard evidence. At the resumed hearing there were two justices present, only one of whom had been present at the first hearing, & they made an order against the husband:—*Held*: the proceedings were rendered null & void by there being present throughout only one justice, & the matter must go back to the justices.—*LEWIS v. LEWIS* (1928), 92 J. P. 88; 72 Sol. Jo. 369; 26 L. G. R. 323.

**6085b.** **Power to make applicant elect—Summons containing several grounds of complaint.** ]—Where a summons under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, claiming an order for maintenance, non-cohabitation, & custody, contained two of the statutory grounds of complaint, namely, wilful neglect to provide reasonable maintenance & persistent cruelty, either of which, if established, would justify such an order being made, the justices have no right to put appt. to her election upon which ground only she will proceed. Both must be disposed of.—*TYRRELL v. TYRRELL* (1928), 138 L. T. 624; 92 J. P. 45; 26 L. G. R. 188; 28 Cox, C. C. 485, D. C.

**6088.** *Add. Annotation*:—**Refd.** *Diggins v. Diggins* (1926), 43 T. L. R. 37.

**6094a.** ———. **Traveller—Wife living with mother by consent.** ]—A wife, whose husband was a traveller, by the tacit consent of both of them, lived with her mother. At the hearing of her summons on which she was granted a maintenance order on the ground of her husband's desertion, evidence was given to the effect that he had sent her money from time to time, & that for the six weeks preceding the issue of the summons such money had in fact exceeded the 15s. a week ordered by the justices. Marital relationship had also taken place shortly before the issue of the summons. On an appeal by the husband against the order:—*Held*: there was no evidence of desertion, particularly in view of the tacit consent of both parties that the wife should live with her mother, & the justices were wrong in making the order they did make.—*GRAEFF v. GRAEFF* (1928), 93 J. P. 48; 27 L. G. R. 6, D. C.

**6098.** *Add. Annotation*:—**Refd.** *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416.

#### PART XIII. SECT. 27, SUB-SECT. 2.—B.

**6098 i.** ———. **Refusal to cohabit—After temporary separation.** ]—A husband & wife agreed to separate immediately after their marriage until the husband, a constable in the Royal Ulster Constabulary, had sufficient length of service to permit him to support his wife. When the agreement expired the husband refused to cohabit with his wife & refused & neglected to

**6099a. ——— Occupation of separate rooms.]—**

A wife who continued to live in the same house as her husband & to take meals with him, applied for a summons for alleged desertion on the grounds that he treated her as nothing more than a servant, & insisted on their having separate rooms, & had refused to cohabit with her. The summons was dismissed:—*Held*: the justices had rightly dismissed the summons.—*STEVENS v. STEVENS* (1929), 93 J. P. 120; 27 L. G. R. 362, D. C.

**6124a. ——— Termination of separation agreement.— On bankruptcy of husband.]—***DEWE v. DEWE, SNOWDON v. SNOWDON*, No. 595a, *ante*.

**6124b. ——— Failure to continue payments under separation agreement.]—**By an agreement of separation a husband undertook to pay his wife 17s. 6d. a week by way of maintenance, & the wife undertook that she would not by any means whatsoever endeavour to compel the husband to allow her any alimony or maintenance other than the above sum of 17s. 6d. a week. On the husband failing to continue payments under the agreement, the wife took out a summons under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925 for an order against her husband, on the ground that he had wilfully neglected to provide reasonable maintenance for her & her infant child. The justices dismissed the summons, holding their jurisdiction was ousted by the undertaking of the wife, & the proper forum for her claim was the county ct.:—*Held*: as the payments under the agreement had not been maintained by the husband, the justices had jurisdiction, & if a case of wilful neglect were proved, to make an order, at any rate for an amount not exceeding 17s. 6d. a week.—*MCCREANNEY v. MCCREANNEY* (1928), 138 L. T. 671; 92 J. P. 44; 26 L. G. R. 185, D. C.

**6124c. ———.]—***FLETCHER v. FLETCHER* (1928), 92 J. P. 94; 26 L. G. R. 398, D. C.

**6124d. ——— Must be neglect amounting to misconduct.]—**Before an order for maintenance can be made by justices on the ground of wilful neglect to maintain, the husband must be proved to have been guilty of such wilful neglect as amounted to misconduct.—*JONES v. JONES* (1929), 46 T. L. R. 33; 93 J. P. Jo. 678; 27 L. G. R. 771, D. C.

**6147a. Refusal of wife to live with husband— Without good reason—Effect of.]—**Under Summary Jurisdiction (Married Women) Acts, 1895 (c. 39), & 1925 (c. 51), the ct. will find great difficulty in granting a wife's application for maintenance where she has disclaimed her proper obligations to her

husband & has without good cause refused to live with him.—*WEATHERLEY v. WEATHERLEY* (1929), 46 T. L. R. 28; 73 Sol. Jo. 730; 93 J. P. Jo. 678, D. C.

**6161. Add. Annotation:—***Consd. Price v. Price* (1927), 43 T. L. R. 609.

**6164a. ———.]—**A complaint by a wife against her husband for wilful neglect to maintain her or her infant child need not, under Summary Jurisdiction Act, 1848 (c. 43), s. 11, be brought within six months from the time when by such neglect he caused her to live separately & apart from him, inasmuch as by Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 1 (1), the complaint may now be made notwithstanding that the neglect has not caused her to leave & live separately & apart from him.—*PRICE v. PRICE* (1927), 43 T. L. R. 609; 71 Sol. Jo. 432, D. C.

**6179a. ———.]—**A wife's right to claim & obtain an order for maintenance from a bench of justices under Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), is not necessarily barred by a deed of separation which makes an allowance for her maintenance, but it must depend on the terms of the deed whether she is or is not deprived of that right.—*DIGGINS v. DIGGINS*, [1927] P. 88; 96 L. J. P. 14; 136 L. T. 224; 90 J. P. 208; 43 T. L. R. 37, D. C.

*Annotation:—**Refd. McCreanney v. McCreanney* (1928), 138 L. T. 671.

**6188a. Power of magistrates— To make applicant elect—Summons containing several grounds of complaint.]—***TYRRELL v. TYRRELL*, No. 6085b, *ante*.

**6191a. ——— What amounts to—Cross-examination of husband.]—**Where a wife seeks a separation & maintenance order on the ground of her husband's desertion, & the only evidence given is that of the husband & the wife, then the husband's evidence in cross-examination may be corroboration of her evidence so as to justify the justices in making an order.—*WILLIAMS v. WILLIAMS* (1928), 93 J. P. 32; 27 L. G. R. 4, D. C.

**6192a. ——— Statement by probation officer— Otherwise than as witness.]—**In a case in which a wife summoned her husband for desertion the justices adjourned the hearing with a view to the probation officer using his good offices to effect a reconciliation. At the resumed hearing he informed the ct., not as a witness, that his efforts had been fruitless, & in the course of his statement expressed a favourable view as to the character of the husband. The justices refused to make an order, & on the wife's appeal it was urged

maintain her:—*Held*: the husband had deserted the wife.—*TIMONEY v. TIMONEY*, [1926] N. 75.—*IR*.

**PART XIII. SECT. 27, SUB-SECT. 2.— C.**

**6121 i. Persistent cruelty— What amounts to.]—**A husband who reflected on his wife's chastity & questioned the paternity of their child, displayed indifference to her physical welfare, threatened to put her out of the house & to do her bodily harm & actually assaulted her, although not severely, on two isolated occasions:—*Held*: guilty of persistent cruelty.—*MCKIER-NAN v. MCKIERNAN*, [1926] 1 D. L. R.

558; [1926] 1 W. W. R. 199; 35 Man. L. R. 412.—*CAN.*

**6121 ii. ———.]—***R. v. GARDNER* (Ont.) (1927), 47 Can. Crim. Cas. 180.—*CAN.*

**6121 iii. ———.]—**An order under Wives' & Children's Maintenance & Protection Act, L. S. M. 1913, c. 206, ss. 8, 9, based on a finding of "persistent cruelty," upheld.—*NEILSON v. NEILSON*, [1928] 2 D. L. R. 776; [1928] 1 W. W. R. 833; 37 Man. L. R. 337.—*CAN.*

**PART XIII. SECT. 27, SUB-SECT. 2.— D.**

**6126 i. Causing to leave & live apart— Husband's failure to pay allowance**

during separation—Or provide home.] Applt., the husband, had, while intoxicated, threatened his wife, & she left home, being in fear of him. Subsequently she wrote suggesting reconciliation, but the letters were unanswered. The husband contributed nothing to her support except a sum of 10s. & her train fare to Adelaide, & almost eight months after she had left him definitely refused to take her back or support her. On these facts the magistrate granted relief for neglect to maintain, but refused to grant relief for desertion on the ground mentioned above.—*Held*: desertion should have been found by the special magistrate.—*MORGAN v. MORGAN* [1927] S. A. S. R. 140.—*AUS.*

that the justices' minds were biased in favour of the husband by the probation officer's improper & unsolicited testimonial:—*Held*: the justices were entitled to come to their decision on the evidence. The note of the proceedings contained no reference to any observations by the probation officer & no extraneous evidence should be allowed in the Div. Ct.—*PEARCE v. PEARCE* (1929), J. P. 64; 27 L. G. R. 364, D. C.

**6217a.** Adjourned hearing before different justices—Only one justice present throughout whole hearing.—Validity of proceedings.]—*LEWIS v. LEWIS*, No. 6085a, ante.

**6230a.** Attachment of husband's income—Discharge of maintenance order.]—Where a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), has been discharged on the ground of the wife's adultery, she may nevertheless enforce payment of arrears accrued due down to the date of discharge & obtain an order for the attachment of her husband's income. Such an order is not an order "under this Act" within Summary Jurisdiction (Married Women) Act, 1895, s. 6.—*OUTERBRIDGE v. OUTERBRIDGE*, [1927] 1 K. B. 368; 96 L. J. K. B. 74; 136 L. T. 303; 90 J. P. 204; 43 T. L. R. 33; 70 Sol. Jo. 1113; 28 Cox, C. C. 281, D. C.

**6233a.** Made in Dominion—Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).—A married woman obtained in a police ct. in Australia a maintenance order against her husband ordering him to pay £5 10s. per week for her & her child's maintenance. An application was subsequently made by her to a ct. of summary jurisdiction in England under the above Act to confirm that order as against her husband who was resident in England. Upon that application no evidence was submitted to the justices on behalf of the husband. The justices confirmed the order with the modification or variation of substituting £2 10s. per week, i.e., £2 for the married woman & 10s. for the child, in lieu of £5 10s. per week, they being of opinion that they were bound to reduce the amount payable under the order to the limit prescribed for such orders made by a ct. of summary jurisdiction under Summary Jurisdiction (Married Women) Act, 1895 (c. 39):—*Held*: (1) the justices had power to state a case for the opinion of the K. B. Div. on the question whether they were right in so deciding; (2) they were wrong in holding that in dealing with an order under the above Act of 1920 they were bound to limit the amount payable to the sum prescribed for orders made under the above Act of 1895.

(3) The expression "Summary Jurisdiction Acts" in sect. 7 of the above Act of 1920 does not include Summary Jurisdiction (Married Women) Act, 1895 (c. 39) (*AVORY, J.*).—*PEAGRAM v. PEAGRAM*, [1926] 2 K. B. 165; 95 L. J. K. B. 819; 135 L. T. 48; 90 J. P. 136; 42 T. L. R. 530; 70 Sol. Jo. 670; 28 Cox, C. C. 213, D. C.

**6236.** After this case add "*See, now, Criminal Justice Administration Act, 1914* (c. 58), s. 32 (1)."

**6241a.** After this case add "— — — — —.]—*See, now, Summary Jurisdiction (Separation & Maintenance) Act, 1925* (c. 51), s. 2 (2)."

**6242a.** — Effect of—On right to recover arrears of maintenance.]—*OUTERBRIDGE v. OUTERBRIDGE*, No. 6230a, ante.

**6250.** Add. Annotations:—As to (1) *Appl.* *Outerbridge v. Outerbridge* (1926), 90 J. P. 204. *Refd.* *Peagram v. Peagram*, [1926] 2 K. B. 165.

**6250a.** — — — — —.]—Observations upon the administration of the jurisdiction conferred on justices by Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 7, as amended by Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 2, to discharge a maintenance order on proof of the wife's adultery.—*BROADBENT v. BROADBENT* (1927), 43 T. L. R. 186, D. C.

**6250b.** — — — — — Time for application.]—A complaint under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 7, that a married woman has committed adultery, is subject to the six months' limitation imposed by Summary Jurisdiction Act, 1848 (c. 43), s. 11.

A wife obtained an order for separation & an allowance in 1922. In 1926 justices purported to discharge the order by reason of adultery of the wife found by them to have been committed in 1915:—*Held*: the justices had exceeded their jurisdiction.—*WALLER v. WALLER*, [1927] P. 154; 96 L. J. P. 58; 136 L. T. 512; 43 T. L. R. 285; 71 Sol. Jo. 232; 28 Cox, C. C. 329, D. C.

*Annotation*:—*Refd.* *Dutch v. Dutch* (1928), 45 T. L. R. 33.

**6250c.** — — — — —.]—A husband, in seeking the rescission of a maintenance order on the ground of the wife's subsequent adultery, must make his complaint within six months of the alleged act of adultery, or within six months of his knowledge, or his means of acquiring the knowledge, of the alleged act.—*DUTCH v. DUTCH* (1928), 98 L. J. P. 44; 140 L. T. 96; 92 J. P. 197; 45 T. L. R. 33; 72 Sol. Jo. 796.

**6250d.** — — — — — Particulars of adultery.]—A wife had obtained an order under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, that her husband should pay her 30s. a week by way of maintenance. The order did not contain a non-cohabitation clause. Subsequently the husband took out a summons asking that the order for maintenance should be discharged, on the ground that the wife had committed adultery. The husband gave evidence that, since the date of the maintenance order, his wife had given birth to a child, & of non-access on his part. This was the only evidence of adultery. The justices found that the wife had committed adultery, & discharged the weekly order for maintenance:—*Held*: (1) the evidence of the husband of non-access to bastardise his child was not admissible, & the justices' order discharging the maintenance order must be set aside; (2) in proceedings under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, if there is a charge of adultery, the act or acts of adultery should be specified with particulars, if possible, of the place where, the time when, & the name of the person with whom it is alleged the adultery has been committed.—*BOSTON v. BOSTON* (1928), 138 L. T. 647; 92 J. P. 44; 26 L. G. R. 183.

**6251a.** Revival of order.]—(1) A separation order granted to a wife, & made under Summary Jurisdiction (Married Women) Act. 1895

- (c. 39), s. 5, upon cause being shown upon fresh evidence to the satisfaction of the ct., if the order has been discharged by the justices, may be revived by them under Criminal Justice Administration Act, 1914 (c. 58), s. 30 (3). (2) A finding of adultery against a wife by justices is not conclusive, whereas a subsequent finding by a judge of the High Ct., that the adultery alleged was not committed, is conclusive. Such a finding by a judge of the High Ct. is a new fact, & the nature of his finding is also a new fact, & both these facts are "fresh evidence" within the statutes.—*PRATT v. PRATT* (1927), 96 L. J. P. 123; 137 L. T. 491; 43 T. L. R. 523; 71 Sol. Jo. 433; 28 Cox, C. C. 413.
6252. *Add. Annotations* :—*Refd.* *Colchester v. Peck* (1926), 135 L. T. 32; *R. v. Copestake*, *Ex p. Wilkinson* (1926), 90 J. P. 191.
6255. *Add. Annotations* :—*Refd.* *Colchester v. Peck*, [1926] 2 K. B. 366; *R. v. Copestake*, *Ex p. Wilkinson*, [1927] 1 K. B. 468.
- 6255a. ———.—[*PRATT v. PRATT*, No. 6251a, *ante*.]
6271. *Add. Annotation* :—*Refd.* *Mart v. Mart*, [1926] P. 24.
6272. *Add. Annotation* :—*Distd.* *Peagram v. Peagram*, [1926] 2 K. B. 165.
- 6275a. ———.—*Order made in Dominion.*—*PEAGRAM v. PEAGRAM*, No. 6233a, *ante*.
- 6283a. ———.—[*PEARCE v. PEARCE*, No. 6192a, *ante*.]
6300. *Add. Annotation* :—*Distd.* *Fletcher v. Fletcher*, [1928] P. 20.
- 6300a. ———.—*Wife's appeal.*—A wife who has failed in her application before justices for a maintenance order on the ground of her husband's desertion, is not entitled to an order against her husband for security of the costs of her appeal against the justices' decision.—[*FLETCHER v. FLETCHER* [1928] P. 20; 97 L. J. P. 1; 138 L. T. 135; 91 J. P. 208; 44 T. L. R. 13; 71 Sol. Jo. 846.]

## INCOME TAX.

## Part I.—Administration.

SUB-SECT. 1.—IN GENERAL (Vol. XXVIII., p. 5).

Add the following case :—

- 9a. **Delivery of lists by person in receipt of income belonging to others—Duty of bank.]**—*A.-G. v. NATIONAL PROVINCIAL BANK, LTD.* (1928), 44 T. L. R. 701.
10. **Add. Annotation :—***Refd. Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 138 L. T. 500.

SECT. 1.—APPLICATION OF SCHEDULE (Vol. XXVIII., p. 6).

Add the following case :—

- 11a. **General rule.]**—(1) Income tax under Schedule A., as under every other Schedule, is assessed on profits & gains, & the test in regard to liability to tax under Schedule A. is not whether the person taxed had an independent ownership of the property, but

whether he had profits &amp; gains in respect of his occupation.

(2) A person who by a will is given a right of residence in a house rent free so long as he wishes, & who is in residence during the year of assessment, is assessable to income tax for that year under Schedule A. in respect of his beneficial occupation; & the amount at which he is assessed must be included in a return of the total income for super tax purposes in the following year.

(3) When the right of residence is given to two persons jointly, it is for the Special Comrs. to fix the proportion of the total assessment applicable to each person, & when such a finding has been made, it should be accepted in any higher ct.—*SHANKS v. INLAND REVENUE COMRS.*, [1929] 1 K. B. 342; 98 L. J. K. B. 341; 140 L. T. 157; 73 Sol. Jo. 76; 45 T. L. R. 28; 14 Tax Cas. 249, C. A.

*Annotation :—**Consd. Sutton v. Inland Revenue Comrs.* (1929), 45 T. L. R. 565.

## Part II.—Schedule A.

13. **Add. Annotations :—***Generally, Refd. Glenboig Union Fireclay Co. v. I. R. Comrs.* (1922), 12 Tax Cas. 427; *Naval Colliery Co. (1897), Ltd. v. I. R. Comrs.* (1928), 138 L. T. 593; *Ormond Investment Co. v. Betts*, [1928] A. C. 143.
15. **Add. Annotation :—***As to (1) Consd. Shanks v. I. R. Comrs.*, [1929] 1 K. B. 342.
- 24a. **Right of residence given to more than one person.]**—*SHANKS v. INLAND REVENUE COMRS.*, No. 11a, *ante*.
- 25a. **Annual value. House let in apartments.]**—Where a house or tenement is let in different apartments or tenements & occupied by two or more persons severally, the annual value, under 1918 Act, Schedule A., No. VII., r. 8 (c), is the aggregate of the hypothetical rack rents of the separate tenements, & not a hypothetical rack rent for the whole payable by one who would then sublet its separate tenements for the sake of profit.—*WILLIAMS v. SANDERS*, [1927] 2 K. B. 498; 96 L. J. K. B. 912; 137 L. T. 820; 43 T. L. R. 663; 11 Tax Cas. 673.

*Annotation :—**Refd. Embleton v. Norwich Union Life Insee. Soc., Norwich Union Life Insee. Soc. v. Embleton* (1927), 11 Tax Cas. 681.

- 25b. — **Blocks of flats.]**—Certain premises consisted of a number of blocks or buildings, each containing a number of self-contained flats which had separate entrance doors from the public staircase. The rents pay-

able by the tenants included the payment of rates & taxes & the maintenance, lighting & cleaning of staircases & the performance of various other services by the landlord:

*Held*: (1) in accordance with 1918 Act, Schedule A., No. VII., r. 8 (c), one assessment must be made in respect of each block or building, & not a separate assessment in respect of each flat; (2) the allowance for repairs must also be made in respect of each building in accordance with Schedule A., No. V., r. 7; (3) the premises not being let at rack rent, in estimating the annual value the payments made by the owner for rates, etc., in the preceding year were to be excluded, as provided by Schedule A., No. IV., r. 1.—*NORWICH UNION LIFE INSURANCE SOCIETY v. EMBLETON, EMBLETON v. NORWICH UNION LIFE INSURANCE SOCIETY* (1927), 137 L. T. 415; 11 Tax Cas. 681.

*Annotation :—**Generally, Refd. Williams v. Sanders*, [1927] 2 K. B. 498.

- 25c. — **Premium paid for lease.]**—*Held*: the comrs. were entitled, in determining the annual value of premises, the lease of which had been assigned to applt., to take into account the premium originally paid by the assignor for the lease, plus interest thereon.—*DAVIES v. ABBOTT* (1927), 11 Tax Cas. 575, C. A.

- 25d. **Gross value.—**Whether property included in

**PART II. SECT. 2, SUB-SECT. 1.**  
25 ii. — [ ]—The Finance Acts contain in each year, except in years of revaluation, a provision that the annual value of property which has been adopted for the purpose of

income tax under Sched. A. for one year shall be taken as the annual value of that property for the same purpose for the next year.—*Held*: this provision does not preclude an increase in the assessment or an additional first

assessment under Income Tax Act, 1918, s. 125, where the original assessment is found not to have included the whole annual value.—*INLAND REVENUE COMRS. v. DICKSON*, [1928] S. C. (Cl. of Sess.) 752.—*SCOT*.

valuation list—Property in occupation of Crown—Computed annual value entered as rateable value in valuation list.] LEWIS v. ELGY (1927), 11 Tax Cas. 723.

28. *Add. Annotation* :—**Consd.** Salisbury House Estate v. Fry (1929), 98 L. J. K. B. 722.

29. *Add. Annotation* :—**Refd.** Glenboig Union Fireclay Co. v. I. R. Comrs. (1922), 12 Tax Cas. 427.

36a. ———.]—Resp. board, which was constituted for the regulation & improvement of the navigation of the upper portion of a firth, was authorised to levy shipping dues, & these dues were its sole revenue :—**Held** : as the dues did not arise from "property in lands, tenements, hereditaments, & heritages," the board was not liable to be assessed in respect of them to income tax under 1918 Act, Schedule A., No. III., r. 3.—INLAND REVENUE COMRS. v. FORTH CONSERVANCY BOARD, [1929] A. C. 213; 98 L. J. P. C. 34; 140 L. T. 251; 93 J. P. 97; 45 T. L. R. 83; 27 L. G. R. 167, H. L.

37. *Add. Annotation* :—**Distd.** I. R. Comrs. v. Forth Conservancy Board, [1929] A. C. 213.

50a. ——— **Blocks of flats.**]—NORWICH UNION LIFE INSURANCE SOCIETY v. EMBLETON, EMBLETON v. NORWICH UNION LIFE INSURANCE SOCIETY, No. 25b, ante.

51. *Add. Annotations* :—As to (2) **Appld.** I. R. Comrs. v. Glasgow Musical Festival Asscn. (1926), 11 Tax Cas. 154; Scottish Woollen Technical College, Galashiels v. I. R. Comrs. (1926), 11 Tax Cas. 139. **Consd.** Geologists' Asscn. v. I. R. Comrs. (1928), 11 Tax Cas. 271. **Refd.** Chesterman v. Taxation Federal Comr., [1926] A. C. 128. **Generally, Refd.** I. R. Comrs. v. Falkirk Temperance Cafe Trust (1926), 11 Tax Cas. 353; I. R. Comrs. v. Peeblesshire Nursing Asscn. (1926), 11 Tax Cas. 335; I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 14 T. L. R. 59; General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same (1928), 97 L. J. K. B. 578. **Mentd.** Martin v. Lowry, Martin v. I. R. Comrs., [1926] 1 K. B. 550; Re Williams, Public Trustee v. Williams, [1927] 2 Ch. 283; Adamson v. Melbourne & Metropolitan Board of Works, [1929] A. C. 142; Re Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.

54. *Add. Annotation* :—As to (1) **Appld.** Salisbury House Estate v. Fry (1929), 98 L. J. K. B. 722.

58a. ——— **Convalescent home for members of friendly society.**]—An unregistered friendly

society, of which there were over two million members, had for its principal objects the relief of distressed members & the widows & orphans of members, & the promotion of social intercourse & recreation in its lodges. Members of the society paid a small subscription, which was divided & allocated to various benevolent funds. A house & grounds were bought by the society for use as a convalescent home by its members. The purchase price was paid partly by the society & partly by contributions by its members. The home was maintained by the society & was furnished to accommodate twenty or thirty members. No expense was incurred by a member during his residence at the home, & medical men gave their services to it gratuitously :—**Held** : the home was a hospital within 1918 Act, Schedule A., No. VI., r. 1 (c), & the society was entitled to be allowed the amount of tax charged in respect of the premises of which the home was composed.—ROYAL ANTI-DILUVIAN ORDER OF BUFFALOES v. OWENS, [1928] 1 K. B. 446; 97 L. J. K. B. 210; 138 L. T. 644; 44 T. L. R. 122; 71 Sol. Jo. 928; 13 Tax Cas. 176.

59a. ———.]—Applts., a limited co., owned & carried on a high-class secondary school managed by governors who were partly elected by the shareholders & partly nominated by the Crown. By the co.'s arts. no profit was to be divided amongst members. Practically the whole of the receipts of the co. arose from fees paid for pupils :—**Held** : the elements of permanence connoted by the word "foundation" were part of the essence of a public school, & as these elements were absent applts. were not entitled to an allowance on the ground that the school was a public school.—BIRKENHEAD SCHOOL, LTD. v. DING (1926), 13 T. L. R. 48; 11 Tax Cas. 273.

60. *Add. Annotation* :—**Expld.** Ercaut v. Girls' Public Day School Trust, [1929] 2 K. B. 274.

62. *Add. Annotation* :—**Distd.** Ercaut v. Girls' Public Day School Trust, [1929] 2 K. B. 274.

62a. ——— **School carried on by company paying dividends.**]—Where a school is carried on by a co. whose shareholders receive dividends not exceeding a fixed rate on their shares, the school, though otherwise possessing the essential characteristics of a public school, is not a public school so as to be entitled under r 1 (c) of No. VI. of Sched. A. to an allowance in respect of the assessment to income tax on the school buildings, for the existence

## PART II. SECT. 2, SUB-SECT. 6.

sa. *Conservancy board.*]—A conservancy board was established by statute to keep a river in a navigable condition & to control the navigation therein. Wide powers were vested in it to enable it to carry out its duties, but it did not own any property from which profits were derived. Under sect. 54 of its Act it levied dues upon all shipping entering the river within its jurisdiction. Having been assessed to income tax under Sched. A. No. III., Rule 3, upon the balance of these dues, it appealed :—**Held** : the balance was not a profit arising out of lands or heritages within the meaning of Sched. A., & the board was not assessable under that Sched.—INLAND REVENUE COMRS. v. FORTH CON-

SERVANCY BOARD, [1929] S. C. (H. L.) 1. —SCOT.

## PART II. SECT. 4, SUB-SECT. 1.

sb. *Company for advancement of woollen industry.*]—A limited co., membership of which was restricted to persons engaged in the woollen industry in Scotland, was formed "with a view to the advancement of the woollen industry in Scotland, to promote by means of a college systematic education, instruction & study in all branches of the industry." Its income & property were dedicated to these objects, & no profits could be distributed among its members. It owned & occupied a college at which classes were held for instruction in the prin-

ciples & practice of woollen & worsted cloth manufacture. The students were fifteen years of age & upwards, & paid fees for the courses of instruction :—**Held** : (1) the college was not a "public school"; (2) the college buildings were "heritages owned & occupied by a charity," & the co. was entitled to exemption under 1921 Act, s. 30 (1).—SCOTTISH WOOLLEN TECHNICAL COLLEGE v. INLAND REVENUE COMRS., [1926] S. C. 934, 11 Tax Cas. 139.—SCOT.

## PART II. SECT. 4, SUB-SECT. 2.

ki. ——— *Woollen technical college.*]—SCOTTISH WOOLLEN TECHNICAL COLLEGE v. INLAND REVENUE COMRS., ante.—SCOT.

of an element of profit-making for the private benefit of the founders & managers is fundamentally opposed to the conception of a public school.—*EREAUT v. GIRLS' PUBLIC DAY SCHOOL TRUST*, [1929] 2 K. B. 274; 98 L. J. K. B. 475; 141 L. T. 481; 45 T. L. R. 557; 73 Sol. Jo. 401; 93 J. P. Jo. 449; 27 L. G. R. 579, C. A.

69. *Add. Annotation*:—**Mentd.** Metropolitan Meat Industry Board v. Sheedy, [1927] A. C. 899.

74. *Add. Annotations*:—*As to* (3) **Consd.** Salisbury House Estate v. Fry (1929), 98 L. J. K. B. 722. **Generally, Refd.** Huxham v. Johnson (1926), 136 L. T. 410.

## Part III.—Schedule B.

77. *Add. Citations*:—70 Sol. Jo. 586; 10 Tax Cas. 346.

*Add. Annotation*:—**Refd.** Huxham v. Johnson (1926), 136 L. T. 410.

79a. “**Dealer in milk**”—**Land insufficient for keep of cattle—Liability to be assessed under Schedule D.**—*Resp.* occupied a farm which was charged to tax under Schedule B. on which he kept a number of cows for milking. The soil was of such a poor quality that *resp.* had to expend considerable sums yearly on feeding stuffs. The produce grown on the land represented only about thirty per cent. of the food required for the cows. *Resp.* sold his milk to regular customers in the district, & only purchased milk for resale when his own supply was insufficient for his customers' ordinary requirements. He sold his cows when they became dry. The general comrs. held that *resp.* was not a dealer in milk, & they discharged an assessment made upon him in accordance with 1918 Act,

Schedule D., Case III., r. 4:—**Held**: *resp.* was a dealer in milk whose land was insufficient for the keep of the cows within the rule, & the further question whether the assessable value afforded no just estimate of the profits was for the comrs. to find, & the case must be remitted to them for that purpose.—*HUXHAM v. JOHNSON* (1926), 136 L. T. 410; 11 Tax Cas. 266.

*Annotation*:—**Refd.** Stephenson v. Waller (1927), 13 Tax Cas. 318.

79b. “**Seller of milk**”—**Land insufficient for keep of cattle—Liability to be assessed under Schedule D.**—A farmer may be a “seller of milk” within 1918 Act, Schedule D., Case III., r. 4, even though he merely sells, by wholesale, the milk produced on his farm; & it is not necessary that, to come within the rule, he should own some outside trading organisation for the disposal of the milk.—*STEPHENSON v. WALLER* (1927), 44 T. L. R. 155; 72 Sol. Jo. 102; 13 Tax Cas. 318.

## Part V.—Schedule D.

87. *Add. Annotations*:—**Consd.** Machon v. McLoughlin (1926), 11 Tax Cas. 83. **Expld.**

*Shanks v. I. R. Comrs.*, [1929] 1 K. B. 342. **Refd.** Grainger v. Maxwell, [1926] 1 K. B. 430;

### PART II. SECT. 5.

**sc. Under Taxation Act, R. S. B. C.**, 1911 (c. 222), s. 155—*Not income of non-residents derived from mines*].—*KENT v. I.R.*, [1924] 4 D. L. R. 77; [1927] S. C. R. 388.—**CAN.**

**sd. Arrears—Where land under control of court—Liability of occupier.**—A receiver was appointed over certain lands in 1908. The owner of the lands, which were being sold under the Land Acts, was in occupation of them under a ct. lease up to the time of his death in 1917. After his death the lands were let for grazing under Court Grazing Agreements, & were subsequently let under a Court Letting Agreement for a year. Arrears of income tax having been claimed by the Revenue Comrs., the receiver applied to the land judge for directions:—**Held**: the owner of the lands who had been in occupation was liable for the arrears of tax under both Scheds. A. & B., up to the time of his death.—*RE FOLEY'S ESTATE*, [1928] 1 R. 576.—**IR.**

### PART III.

77 i. ——— *Poultry farm.*—A poultry farm consisted of thirty-three acres of land, all of which was in grass except half an acre upon which green crops were grown for consumption by the poultry in winter along with other feeding stuffs. A permanent stock of about one thousand head of poultry was kept, & in addition forty-

six sheep were grazed on the land, & some of the grass was cut for hay.—**Held**: the land was occupied for the purpose of husbandry, in respect that the fruits of the soil were used to a material extent for the sustenance of the poultry, & the poultry farmer was entitled to be assessed on the profits of the business under Schedule B., & not under Schedule D.—*LEAN v. INLAND REVENUE*, [1926] S. C. 15; 10 Tax Cas. 341.—**SCOT.**

**sd. Arrears—Liability of occupier.**—An occupier of lands, even though he be the owner, is not liable for arrears of income tax under Sched. B. of Income Tax Act, 1918, which should have been levied upon, & ultimately borne by, the former occupier.—*DOLAN v. JOYCE & KIRWAN*, [1928] 1 R. 559.—**IR.**

### PART V. SECT. 1, SUB-SECT. 1.

**sd. Distribution of bonus—No option to shareholders to take cash—Distribution by company as capital.**—A co. resolved that its accumulated profits should be distributed as a bonus amongst the shareholders, & that the directors should be authorised to distribute such number of unissued shares of £1 each paid up to 10s. as should be equivalent to the amount to be capitalised in satisfaction of such bonus; & it was agreed that the co. should allot & issue to each shareholder his respective proportion of the unissued £1 shares each credited as paid up to 10s., that the shares should be credited as paid up to 10s., & that

the shares so credited should be accepted in satisfaction of the bonus. In the books of the co. each shareholder was credited with his proportion of the bonus in payment of 10s. in respect of each of the shares so allotted & issued to him:—**Held**: the proportion of the bonus so credited to each shareholder was “profits or bonus credited” to him within Income Tax Assessment Act, 1915–1921, s. 14 (b), & was properly included in his income.—*JAMES v. FEDERAL COMR. OF TAXATION* (1921), 34 C. L. R. 404.—**AUS.**

**sd. Distribution of property on discontinuance of business by company—What is “income.”**—A reserve made up of accretions to the value of real estate & goodwill is not “income” within Income War Tax Act, 1917, s. 3 (9), but a reserve made up to trading profits or that portion of a co.'s income which has not been paid out is undistributed income of the co., unless before the distribution it has become capital.—*RE ANDERSON ESTATE*, [1925] 4 D. L. R. 116; [1925] 3 W. W. R. 312; 35 Man. L. R. 279.—**CAN.**

**m i. ———**—A money-lender, visiting Berlin on business, purchased a large consignment of toilet paper. Before delivery had been made, he found a purchaser in London, to whom he re-sold the whole consignment at a profit. The transaction was outside the scope of his ordinary business:—**Held**: the transaction, although isolated, was an adventure in the nature of trade, the profits of which were assessable to income tax under



- Tollemache v. I. R. Comrs.* (1926), 136 L. T. 444; *Ormond Investment Co. v. Betts*, [1928] A. C. 143; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 97 L. J. Ch. 371; *I. R. Comrs. v. Dalgety & Co.* (1929), 98 L. J. K. B. 542.
90. *Add. Annotations*:—*As to* (1) *Consd. Leeming v. Jones* (1929), 141 L. T. 472. *Generally*, *Refd. Liverpool Corn Trade Assocn. v. Monks*, [1926] 2 K. B. 110.
91. *Add. Citations*:—[1926] 2 K. B. 110; 95 L. J. K. B. 519; 134 L. T. 756; 10 Tax Cas. 442.
93. *Add. Annotation*:—*Consd. Ducker v. Rees Roturbo Development Syndicate, I. R. Comrs. v. Rees Roturbo Development Syndicate*, [1928] A. C. 132.
- 93a. — *Exchange transaction*.—Under an agreement made on Mar. 8, 1921, for the supply of marble by a co. to building contractors, the contractors agreed to advance £20,000 of the price, percentage deductions being made from the amount due on each consignment of marble until the advance had been repaid. On Mar. 17, 1921, the £20,000 was paid to the co., & in anticipation of the marble being purchased in Italy, though not till the autumn of 1921, the co. at once arranged for the conversion of the greater part of the £20,000 into lire at one hundred & three to the £, & a lira account was opened. In May, 1921, the lira had appreciated in value, & as the money was not yet required by the co., their nominee, without the co.'s knowledge or authority, directed the sale of the balance of the lira account, & at seventy-two to the £ the lire realised a profit of £6,707, which was received by the co. The lire were subsequently repurchased for the purposes of the contract for £19,386, which was allowed as a deduction from the co.'s profits for income tax purposes:—*Held*: in computing the co.'s profits for the purposes of assessment to income tax for the year 1922–23 the £6,707 was not a profit arising out of the contract for the supply of marble, but was merely an appreciation of a temporary investment, & was not assessable to income tax as part of the profits of the co.'s trade.—*McKINLAY v. JENKINS (H. T.) & SON, LTD.* (1926), 10 Tax Cas. 372.
- Annotation*:—*Distd. Thompson v. I. R. Comrs., I. R. Comrs. v. Thompson* (1927), 12 Tax Cas. 1091.
95. *Add. Annotation*:—*Refd. I. R. Comrs. v. Fisher's Exors.*, [1926] A. C. 395.
96. *Add. Citation*:—*affd.* (1924), 12 Tax Cas. 586, C. A.
- 96a. *Sale of patent rights*.—A syndicate formed to work & develop a group of English & foreign patents carried on business mainly by granting licences to manufacturers at royalties. Certain foreign manufacturers refused to take licences, unless they were also given an option of purchase exercisable within a given period, & the syndicate entered into a contract with an American co. to grant them a licence to use & work the syndicate's American patents, with an option of purchase thereof. The co. having exercised its option of purchase, & paid to the syndicate a sum for the purchase of the American patents out & out, the Special Comrs. decided that profits on the sale of the patents arose in the course of the co.'s business & were chargeable to income tax:—*Held*: the Special Comrs. had not wrongly directed themselves, & there was ample evidence to support their conclusion of fact.—*DUCKER v. REES ROTURBO DEVELOPMENT SYNDICATE, INLAND REVENUE COMRS. v. REES ROTURBO DEVELOPMENT SYNDICATE*, [1928] A. C. 132; 97 L. J. K. B. 317; 138 L. T. 598; 44 T. L. R. 307; 72 Sol. Jo. 171; *sub nom.* *REES ROTURBO DEVELOPMENT SYNDICATE, LTD. v. DUCKER, REES ROTURBO DEVELOPMENT SYNDICATE, LTD. v. INLAND REVENUE COMRS.*, 13 Tax Cas. 366, H. L.
97. *Add. Citation*:—*affd.* (1927), 43 T. L. R. 727, H. L.
- Add. Annotation*:—*Folld. Mills v. Jones* (1929), 46 T. L. R. 118.
- 97a. *S. P. MILLS v. JONES* (1929), 46 T. L. R. 118, H. L.
- 97b. *Payments for grant of shop rights of patented invention*.—Applt. was managing director of a co. engaged in the dyeing industry, & also carried on the business of selling yarn & machinery on his own account. He had invented new apparatus for dyeing which was patented in the United Kingdom & America. He exploited this invention by providing & selling the necessary machinery to firms in America, & he did not dispute that he was assessable to income tax, under Case I. of Sched. D., on the profits made on the machinery. Under the agreements made with these firms, however, in addition to the price paid for the machinery, he was entitled to further payments for grant of "shop rights," i.e. the right of the purchasers to use the machinery & processes in their own mills or within a limited area. Applt. contended that these payments were for the acquisition of an exclusive licence to use the patented processes in a limited area, that they were payment for portions of the patent rights & therefore capital payments in respect of which he was not assessable. The Special Comrs. found that the agreements were primarily for the sale of machinery & that the grant to the purchasers of "shop rights" was consequential on the sale; & therefore that the payments for the "shop rights" must be included with the payments for the machinery in the receipts of applt.'s business:—*Held*: the Comrs. had decided rightly on the evidence before them.—*BRANDWOOD v. BANKER, BRANDWOOD v. INLAND REVENUE COMRS.* (1928), 14 Tax Cas. 44.
- sk. Income of accumulated fund*.—*Under will for benefit of testator's children after twenty-one years*.—*Held*: such income was taxable under Income War Tax Act, 1917, as amended by 10 & 11 Geo. 5, c. 49, s. 41.—*MCLEOD v. CUSTOMS & EXCISE MINISTER*, [1925] Exch. C. R. 105; *affd.*, [1926] 3 D. L. R. 531; [1926] S. C. R. 457.—*CAN.*
- Sched. D., Case I.—*RUTLEDGE v. INLAND REVENUE COMRS.*, [1929] S. C. (Cl. of Sess.) 379.—*SCOT.*
- t i. (—).—*MORRISON v. MINISTER OF CUSTOMS & EXCISE*, [1928] 2 D. L. R. 759; [1928] Exch. C. R. 75.—*CAN.*
- a i. (—).—From the date of incorporation to 1920 a co.'s profits were allowed to accumulate until G., the manager & owner of all the shares, declared a dividend of 92 per cent. amounting to \$40,000 paid out of such accumulated profits:—*Held*: such dividend was not a return of capital, but income & subject to taxation.—*GAGNE v. FINANCE MINISTER*, [1925] Exch. C. R. 19.—*CAN.*
- d i. *S. P. MACPHERSON v. TAXATION COMR.* (1927), 27 S. R. N. S. W. 105; 44 N. S. W. W. N. 33.—*AUS.*

98. *Add. Annotation*:—**Refd.** *Davis v. Harrison* (1927), 11 Tax Cas. 707.

99. *Add. Citations*:—*sub nom.* **JERSEY'S (LORD) EXECUTORS v. BASSOM, DERBY (LORD) v. BASSOM**, 135 L. T. 274; 10 Tax Cas. 357.

99a. **Repaid excess profits duty.**—Where a trader was assessed to income tax on the amount of excess profits duty repaid to him:—**Held**: he had been rightly assessed.—**HILL v. MATHEWS** (1925), 10 Tax Cas. 25.

99b. — **Repayment after trading ceased.**—**Held**: liable to be assessed to income tax.—**KIRKE'S TRUSTEES v. INLAND REVENUE COMRS.** (1920), 136 L. T. 582; 11 Tax Cas. 323, H. L.

*Annotation*:—**Appl.** *Olive & Partington v. Rose* (1929), 73 Sol. Jo. 766.

99c. — **OLIVE & PARTINGTON, LTD. v. ROSE** (1929), 73 Sol. Jo. 766.

99d. **S. P. NESBITT (A. & W.), LTD. v. MITCHELL** (1926), 11 Tax Cas. 211, C. A.

*Annotation*:—**Appl.** *Olive & Partington v. Rose* (1929), 73 Sol. Jo. 766.

99e. **Profits made in illegal business.**—Income Tax Acts are not necessarily restricted in their application to lawful businesses only. The question is one of construction of the particular words used.—**CANADIAN MINISTER OF FINANCE v. SMITH** (1926), 42 T. L. R. 734; 70 Sol. Jo. 941; *sub nom.* **MINISTER OF FINANCE v. SMITH**, 95 L. J. P. C. 103, P. C.

*Annotation*:—**Mentd.** *Clark v. Westaway*, [1927] 2 K. B. 597.

99f. **Repayment of sum illegally demanded by Food Controller for licence to purchase milk.**—**Held**: in the computation of liability to income tax the amount repaid must be treated as a receipt of the year in which it was originally paid to the Food Controller.—

**ENGLISH DAIRIES, LTD. v. PHILLIPS, ENGLISH DAIRIES, LTD. v. INLAND REVENUE COMRS.** (1927), 11 Tax Cas. 597.

100. *Add. Annotations*:—**Consd.** **I. R. Comrs. v. Forth Conservancy Board**, [1929] A. C. 213; *Leeming v. Jones* (1929), 141 L. T. 472.

104. *Add. Annotations*:—**Consd.** **I. R. Comrs. v. Forth Conservancy Board**, [1929] A. C. 213. **Refd.** *Brighton College v. Marriott*, [1926] A. C. 192; *Salisbury House Estate v. Fry* (1929), 98 L. J. K. B. 722.

112a. **Company—Carrying on several businesses.**—A co. may carry on more than one trade within 1918 Act, Schedule D, Case I. Whether the activities of a co. constitute one business or two separate businesses is a question of fact.—**SCALES v. THOMPSON (GEORGE) & CO., LTD.** (1927), 138 L. T. 331; 13 Tax Cas. 83.

113. *Add. Citation*:—10 Tax Cas. 29.

*Add. Annotations*:—**Expld.** *Leeming v. Jones* (1929), 141 L. T. 472. **Refd.** *Re Bankruptcy Notice* (No. 292 of 1928) (1928), 44 T. L. R. 533; **I. R. Comrs. v. Lysaght**, [1928] A. C. 234; **Rees Roturbo Development Syndicate v. I. R. Comrs.**, **Rees Roturbo Development Syndicate v. Ducker** (1928), 13 Tax Cas. 366.

114. *Add. Citations*:—[1927] A. C. 312; 96 L. J. K. B. 379; 136 L. T. 580; 43 T. L. R. 116; 71 Sol. Jo. 18; 11 Tax Cas. 297, H. L.; *affy.*, [1926] 1 K. B. 550.

*Add. Annotations*:—**Refd.** *Kirke's Trustees v. I. R. Comrs.* (1926), 136 L. T. 582; *Nesbitt v. Mitchel* (1926), 11 Tax Cas. 211; *Constantinesco v. R.* (1927), 11 Tax Cas. 730; *Devon Mutual Steamship Insee. Assocn. v. Ogg* (1927), 13 Tax Cas. 184; **I. R. Comrs. v.**

98 i. **Compensation for loss of office.**—Where a co. of managing agents obtained a certain sum of money as compensation for the liquidation of the principal co., the amount is a receipt arising from business & is, therefore, liable to be assessed to income tax.—**RE TURNER, MORRISON & CO., LTD.** (1928), 1 L. R. 56 Calc. 211.—**IND.**

99 i. **Stud fees.**—**Appl.** was a farmer & breeder of horses, & occupied three farms, in respect of which he was assessed to income tax under Schedule B. He was also the owner of a number of stallions which he used for the service of his own mares, & in addition he sold for fees their services to the mares of other owners, the stallions travelling "rounds" for this purpose in the care of his own servants. He appealed against assessments to income tax made upon him under Schedule D. In respect of stallion fees, & the comrs. decided that in regard to stallion fees the expenses required to make the profits from service to mares, plus any expenses of keeping up the stud to the number of stallions earning fees should be allowed, but the number of horses to be used for replacement should not exceed one-third of those earning fees:

**Held**: **applt.** was assessable to income tax under Schedule D, in respect of profits from stallion fees, in accordance with the principle laid down by the comrs.—**MARSHAL v. TWEDDY** (1926), 11 Tax Cas. 524.—**SCOT.**

k. Read now "99ai."

sm. **Money remitted from branch office.**—Money remitted to the headquarters of a firm in British India, from a branch situated in a foreign country, is presumed to be profits & not capital, & is assessable to income tax.—**RE MURUGAPPA CHETTIAR** (1925), 1 L. R. 49 Mad. 465.—**IND**

sn. **Gift of money to jockey from race-horse owner after winning race.**—**Held**: an emolument which arose or accrued to the jockey by reason of his vocation as such, & liable to assessment for income tax.—**WING v. O'CONNELL**, [1927] 1 R. 84.—**IR.**

sp. **Compensation for detention of ships requisitioned by Government.**—**Held**: a trading receipt, & chargeable. **ALLIANCE & DUBLIN CONSUMERS' GAS CO. v. M'WILLIAMS**, [1928] 1 R. 1.—**IR.**

st. **Profit from sale of land at enhanced price—Whether taxable.**—**STOTT v. INLAND REVENUE COMR.** (1927), 48 N. L. R. 471.—**S. AF.**

sw. **Profits of company—Maintaining & conducting club for benefit of members—Whether taxable.**—**RE DIBRUGARU DISTRICT CLUB, LTD.** (1927), 1 L. R. 55 Calc. 971.—**IND.**

sy. — **Letting houses—Taxable.**—**RE COMMERCIAL PROPERTIES, LTD.** (1928), 1 L. R. 55 Calc. 1057.—**IND.**

sz. **Profits from unlawful enterprise—Sweepstakes.**—Profits derived from carrying out a sweepstake, being profits derived from a criminal enterprise, are not assessable to income tax.—**HAYES v. DUGGAN**, [1929] 1 R. 406.—**IR.**

sa. **Profits from sale of rights of co.—In pursuance of original scheme—Whether capital or income.**—**Resp. co.** acquired in pursuance of its objects certain platinum bearing properties from a vendor syndicate. The co. began development work on one of the properties, opening up some of the claims & sinking a shaft, but on encountering a strong flow of water stopped the work on the ground that it did not want to expend money on a pumping plant, in view of the more

important work of purchasing all properties upon which the reef discovered by the co.'s technical advisor was found by him to exist. The co. thereupon purchased certain further properties, thereby exhausting its cash resources. Thereafter one of the co.'s directors stated that the occurrence of platinum in the properties required a large working capital, & suggested that a new powerful co. should be formed to take over the rights held by resp. co. The board of resp. co. approved of this & an agreement was arrived at whereby in effect resp. co. sold its properties to the new co., resp. co. having been assessed to pay income tax on the profits arising out of the sale:—**Held**: the profits resulting from the sale to the new co. were obtained in an operation of business in a scheme for profit making & were therefore income & not accruals of a capital nature.—**INLAND REVENUE COMRS. v. LEYDENBERG PLATINUM, LTD.**, [1929] App. D. 137.—**S. AF.**

## PART V. SECT. 1, SUB-SECT. 2.

sb. **Transmission of electricity & supply of air through pipes.**—**Held**: the co. did not carry on the business of "manufacturer" within Assessment Act, s. 10 (1) (d).—**RE COLEMAN & NOR. ONT. LIGHT & POWER CO.** (1927), 60 O. L. R. 405.—**CAN.**

## PART V. SECT. 2, SUB-SECT. 1.—A.

110 i. **Golf club—Charging visitors for use of links.**—**Held**: the management of the municipal golf courses was a trade or business the profits of which were assessable to income tax under Sched. D, Case I.—**CARNOUSTIE GOLF COURSE COMMITTEE v. INLAND REVENUE COMRS.**, [1929] S. C. (Cl. of Sess.) 419.—**SCOT.**

Newcastle Breweries (1927), 12 Tax Cas. 927; Rees Roturbo Development Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker (1928), 13 Tax Cas. 366; Leeming v. Jones (1929), 141 L. T. 472.

- 114a. — “Turning over” cotton mills.]—During the boom in the Lancashire cotton trade in 1919, applt., with other persons, engaged in the operation known locally as “turning over” a cotton mill, i.e. acquiring a controlling interest in the mill, organising its administration & finances, & reselling it to a new co. The operation was successful & applt. joined other syndicates, composed partly of the same persons engaged in “turning over” three other mills. In each case a profit resulted to applt. On Mar. 24, 1923, the additional comrs. for the division in which applt. resided signed the book containing an estimated assessment upon applt. to income tax under Schedule D. for the year 1919–20. The book was not delivered to the general comrs. until Apr. 18, 1923; notice was given to applt. on May 5, 1923, & the assessment was signed by the general comrs. on Sept. 5, 1923.—*Held*: (1) though each adventure of “turning over” a mill, taken singly, was not a trade, but a capital transaction, yet the succession of such adventures, in each of which applt. took part, might constitute the carrying on of a trade, & the Special Comrs., on an appeal against the assessment, were not estopped by their previous decisions from reconsidering the whole of the facts, & finding that applt. was carrying on a trade, on the profits of which he was liable to income tax; (2) the assessment was made in time, having been made when it was signed by the additional comrs. within the three years allowed by 1918 Act, s. 125 (2), & the subsequent steps need not be within that time.—*PICKFORD v. QUIRKE, PICKFORD v. INLAND REVENUE COMRS.* (1927), 138 L. T. 500; 44 T. L. R. 15; 13 Tax Cas. 251, C. A.

- 114b. — Isolated transaction—Assignment of option.]—L., on Aug. 10, 1925, entered into option agreements for the acquisition of rubber estates, & in Oct. 1925, transferred his right, making a net profit of £603 10s. The transactions were carried out by an agent who consulted with L. from time to time,

but L. took no part in the negotiations for the purchase or sale of the rights. L. was assessed for the year ending Apr. 5, 1926, to income tax under Sched. D. of the Income Tax Act, 1918, in the sum of £603 10s.:—*Held*: as the transaction was found to be not a concern in the nature of a trade within the definition of “trade” in 1918 Act, s. 237, & as the transaction was an isolated transaction, the profits resulting were not in the nature of income, but an accretion of capital value, & the case did not fall within the words of Case VI., “annual profits or gains.” To apply Case VI. it must be in respect of something to which Sched. D. applied, something in the nature of profits or gains in contradistinction to a capital accretion.—*LEEMING v. JONES* (1929), 141 L. T. 472, C. A.

- 116a. Company letting out offices—Profits from contracts for services.]—A co. owning a large building let it out in parts for offices at rents, & also contracted with the tenants for heating, lighting, & cleaning:—*Held*: the co. could not, in addition to the assessment on the gross receipts under Sched. A., be assessed under Sched. D. on the amount of the total receipts arising from the contracts of tenancy & for services less the expenses, with a deduction of the amount of the assessment under Sched. A., & there was no legal justification for making such a deduction. The co. was assessable under Sched. D. only in respect of the profits on the contracts for services.—*SALISBURY HOUSE ESTATE, LTD. v. FRY* (1929), 98 L. J. K. B. 722; 141 L. T. 498; 45 T. L. R. 562, C. A.

*Annotation*:—*Folld. City of London Real Property Co., Ltd. v. Jones* (1929), 45 T. L. R. 573.

- 116b. *S. P. CITY OF LONDON REAL PROPERTY CO., LTD. v. JONES* (1929), 45 T. L. R. 573, C. A.
118. *Add. Annotations*:—*Consd. Leeming v. Jones* (1929), 141 L. T. 472. *Refd. Jersey's Exors. v. Bassom, Derby v. Bassom* (1926), 135 L. T. 274; *I. R. Comrs. v. Lysaght*, [1928] A. C. 234.
120. *Add. Annotations*:—*As to (2) Consd. Alabama Coal, Iron, Land & Colonization Co. v. Mylam* (1926), 11 Tax Cas. 232; *Leeming v. Jones* (1929), 141 L. T. 472. *Refd. Rees Roturbo Development Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker*

119 i. — — — *Poultry farm.*]—*LEAN v. INLAND REVENUE*, No. 77 1, *andc.*—*SCOT.*

ii. *Difference in value of stock-in-trade on sale of business.*]—*Resp. & his partner sold their business to a co. They treated their stock-in-trade as being of the value of £43,357, but the co. treated it as being worth £58,383:—Held*: the difference between the two sums was not a profit derived from the business of the partnership, & resp. was not assessable for income tax in respect of his share of such difference.—*DOUGHTY v. COMR. OF TAXES*, [1927] A. C. 327; 96 L. J. P. C. 45; 136 L. T. 706; 43 T. L. R. 207.—*N.Z.*

iii. *Sale by lumber company of timber at profit.*]—*Held*: not a sale in the ordinary course of trading by the co., but a sale of part of its capital assets, & the amount received was an accretion of capital.—*A.-G. FOR COLUMBIA v. STANDARD LUMBER CO., LTD.*, [1926] 2 W. W. R. 187; 36 B. C. R. 431.—*CAN.*

iv. *Purchase, conversion, & re-sale*

*of ship—Isolated transaction.*]—A ship repairer, a blacksmith, & a fish salesman's employee, who had not previously been connected with each other in business, bought a cargo steamer, converted it, partly by their own labour, into a steam drifter, & sold it within four months of the date of purchase at a profit:—*Held*: the transaction, though isolated, was the carrying on of a trade, the profits of which were assessable to income tax.—*INLAND REVENUE COMRS. v. LIVINGSTON*, [1927] S. C. 251; 11 Tax Cas. 338.—*SCOT.*

v. *Carrying on a trade—What amounts to—Question of law.*]—The question whether a taxpayer in buying & selling land was carrying on the trade or business of a land jobber so as to make the proceeds of such sales part of his gross income is a question of law, & an inference drawn by the Special Income Tax Ct. from the facts found by it does not bind the Ct. to which a case has been stated under s. 60 of Act 40 of 1925.—*INLAND REVENUE COMR. v. STOTT*, [1928] App. D. 252.—*S. AF.*

## PART V. SECT. 2, SUB-SECT. 1.—B.

sp. *Agricultural land.*]—*Held*: as the land had been bought as an investment of capital, the profit was an accretion to capital, & not taxable.—*WRIGHT v. DEPUTY COMR. OF TAXES*, [1927] S. A. S. R. 212.—*AUS.*

sq. *Profits on re-sale of land.*]—*Held*: the premises were bought with the intention of being used in the business of a tailor which applt. was then carrying on, & not with a view to profit on re-sale. The proper test is whether the gain made was an enlargement of capital arising from the mere realisation of property, or was a gain made in business operations in the course of carrying on a scheme for profit making.—*BROWN v. STATE TAXATION COMR.* (1927), 30 W. A. L. R. 30.—*AUS.*

sr. *Licensed premises—Sale of interest in—Sum recovered for goodwill.*]—The amount of the consideration received for the sale of the goodwill of a hotel property held by the vendor as lessee is income assessable to income tax under Income Tax Act, 1921, s. 11 (2).—*RE INCOME TAX ACT OF 1924* (No. 2), [1928] S. I. Q. 333.—*AUS.*

- (1928), 13 Tax Cas. 366. *Generally, Refd.* Hall v. I. R. Comrs. (1926), 135 L. T. 759.
121. *Add. Annotation:—Distd.* Alabama Coal, Iron, Land & Colonization Co. v. Mylam (1926), 11 Tax Cas. 232.
122. *Add. Annotation:—Refd.* Rees Roturbo Development Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker (1928), 13 Tax Cas. 366.
- 122a. — *Managing trust lands for benefit of holders of Alabama bonds.*—*Held:* a trading co., & assessable on profits made in the realisation of such lands.—*ALABAMA COAL, IRON, LAND & COLONIZATION CO., LTD. v. MYLAM* (1926), 11 Tax Cas. 232.
125. *Add. Annotation:—Refd.* I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.
127. *Add. Citations:—*95 L. J. K. B. 356; 10 Tax Cas. 213.  
*Add. Annotations:—Generally, Refd.* General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same (1928), 97 L. J. K. B. 578; *Ereaut v. Girls' Public Day School Trust*, [1929] 2 K. B. 274.
128. *Add. Annotation:—Refd.* Levene v. I. R. Comrs., [1927] 2 K. B. 38.
129. *Add. Citation:—*10 Tax Cas. 424.  
*Add. Annotation:—Refd.* Levene v. I. R. Comrs., [1928] A. C. 217.
130. *Add. Annotation:—Consd.* I. R. Comrs. v. Lysaght, [1928] A. C. 234.
131. *Add. Annotations:—As to (1) Consd.* I. R. Comrs. v. Lysaght, [1928] A. C. 234; *Proctor v. Ryall, Ryall v. Proctor* (1928), 14 Tax Cas. 204. *As to (2) Refd.* Fleming v. Wilkinson (1925), 10 Tax Cas. 416. *Generally, Refd.* Levene v. I. R. Comrs., [1927] 2 K. B. 38.
- 131a. — — — — —]—Applt. was employed by a British co. as general manager of their sugar estates in Demerara where he lived & where his salary was wholly earned & paid. He was in England on leave from June to Sept. 1918, & during that time the co., at his request, placed to the credit of his banking account in England £525, being an advance on account of salary falling due before Apr. 5, 1919, & an assessment to income tax was made upon him for the year 1918–19 in respect of this sum under Schedule D., Case V. His wife had been for several years, & was throughout the year 1918–19, the owner of a house in Kent, towards the upkeep of which he contributed out of other income arising in England, but since Sept. 1917, she had been mainly living with him in Demerara, the house being left unoccupied. During his stay in England in 1918, applt. lived for the most part in hotels & in fact spent only one night at the house. The Special Comrs. having decided that applt. was resident in the United Kingdom during the year ending Apr. 5, 1919, & that he had been rightly assessed to income tax in respect of the above sum as having been received in the United Kingdom during that year from an employment abroad:—*Held:* inasmuch as applt.'s salary was payable in Demerara, the sum credited to him in the United Kingdom must be regarded as remitted to him from abroad & as constituting income from a foreign possession chargeable under Schedule D., Case V.—*FLEMING v. WILKINSON* (1925), 10 Tax Cas. 416, C. A.
- 131b. — — — — —]—Consideration of the meaning of the expressions “resident” & “ordinarily resident” in Income Tax Act, 1918 (c. 40).—*I. R. v. INLAND REVENUE COMRS.*, [1928] A. C. 217; 97 L. J. K. B. 377; 139 L. T. 1; 44 T. L. R. 374; 72 Sol. Jo. 270; 13 Tax Cas. 486 H. L.  
*Annotations:—Distd.* I. R. Comrs. v. Lysaght, [1928] A. C. 234. *Consd.* I. R. v. St. Marylebone Income Tax Comrs., *Ex p. Schlesinger* (1928), 13 Tax Cas. 746; *Fry v. Burma Corp.* (1929), 98 L. J. K. B. 693.
- 131c. — — — — —]—No special or technical meaning is attached to the terms “resident” & “ordinarily resident” as used in 1918 Act; accordingly the question whether a person is “resident” & “ordinarily resident” in the United Kingdom for the purposes of the Act is essentially a question of fact for the comrs.  
A person is ordinarily resident in a country for income tax purposes, if his residence there is not casual or uncertain, but is in the ordinary course of his life.—*INLAND REVENUE COMRS. v. LYSAGHT*, [1928] A. C. 234; 97 L. J. K. B. 385; 139 L. T. 6; 44 T. L. R. 374; 72 Sol. Jo. 270; *sub nom.* *LYSAGHT v. INLAND REVENUE COMRS.*, 13 Tax Cas. 511, H. L.  
*Annotations:—Consd.* Morley v. Lawford & Co. (1928), 140 L. T. 125; *Egyptian Delta Land & Investment Co. v. Todd*, [1929] A. C. 1. *Appld.* I. R. v. St. Marylebone Income Tax Comrs., *Ex p. Schlesinger* (1928), 13 Tax Cas. 746.
- 131d. — — — — —]—*INLAND REVENUE COMRS. v. ZORAB* (1926), 11 Tax Cas. 289.  
*Annotation:—Refd.* I. R. Comrs. v. Brown (1926), 11 Tax Cas. 292.
- 131e. — — — — —]—*INLAND REVENUE COMRS. v. BROWN* (1926), 11 Tax Cas. 292.
132. *Add. Annotation:—Refd.* Muller (London) v. Lethem, Muller (London) v. I. R. Comrs., [1927] 1 K. B. 780.
136. *Add. Annotations:—Apprvd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1. *Refd.* Baelz v. Public Trustee, [1926] Ch. 863.
139. *Add. Annotations:—As to (1) Distd.* Noble v. Mitchell (1926), 43 T. J. R. 102. *Consd.* Fry v. Burma Corp. (1929), 98 L. J. K. B. 693. *Generally, Consd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1.
141. *Add. Annotation:—Refd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1.
142. *Add. Annotations:—Consd.* Fry v. Burma Corp. (1929), 98 L. J. K. B. 693. *Refd.*

**PART V. SECT. 2, SUB-SECT. 2.—B.**  
**st. General rule.**—A partnership resides, for purposes of income tax, at the place where its real business is carried on; & the real business is carried on where the central management & control of the whole of its business actually abides. There may

be two such places of residence, but the suggested second residence must not merely have a delegation of the management of some portion of the partnership business, however extensive, but a delegation of some portion of the management of the business as a whole. The question as to where the individual

partners actually have their places of residence is a wholly irrelevant consideration in determining the place of residence of the firm.—*MADRAS INCOME TAX COMR. v. T. S. FIRM, TANJORE AT NEGAPATAM* (1927), I. L. R. 50 Mad. 847.—**IND.**

*Proctor v. Ryall, Ryall v. Proctor* (1928), 14 Tax Cas. 204; *Egyptian Delta Land & Investment Co. v. Todd*, [1929] A. C. 1.

- 142a. — By resident director under power of attorney—Profits retained abroad.]—Applts., insurance & reinsurance brokers & agents in London, had an office in Paris for the purpose of direct insurance on behalf of cos. for which they acted as agents, & applts. in some cases represented the same cos. in London & in Paris. A resident director of applts. had the sole conduct of the Paris business under a power of attorney. The results of the Paris business were incorporated in applts.' balance-sheets, but no part of the French profits was remitted to London:—*Held*: as the power of attorney did not, except as against third parties, divest the directors in London of their power of control over the French business, applts. were assessable to income tax on the whole of their profits, including those of the Paris office.—*NOBLE (B. W.), LTD. v. MITCHELL* (1926), 43 T. L. R. 102.
144. *Add. Annotations*:—*Expld.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1. *Refd.* Baelz v. Public Trustee, [1926] Ch. 863.
- 144a. — — —.]—A co., which is registered in England but carries on its real business abroad, does not necessarily reside in England, so as to be liable to income tax, because it is obliged by law to perform in England certain duties which cannot be performed abroad, such as having a registered office & keeping a register of shareholders. For income tax purposes a co. resides where its real business is carried on.—*EGYPTIAN DELTA LAND & INVESTMENT CO., LTD. v. TODD*, [1929] A. C. 1; 98 L. J. K. B. 1; 140 L. T. 50; 44 T. L. R. 747; 72 Sol. Jo. 545; *sub nom.* *TODD v. EGYPTIAN DELTA LAND & INVESTMENT CO., LTD.*, 14 Tax Cas. 119. H. 1.
145. *Add. Annotation*:—*As to* (1) *Consd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1.
153. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Cavan Central Co-op. Agricultural & Dairy Soc. (1917), 12 Tax Cas. 1.
155. *Add. Annotations*:—*Apld.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1. *Mentd.* Baelz v. Public Trustee, [1926] Ch. 863.
156. *Add. Annotation*:—*Consd.* Michael Faraday, Rodgers & Eller v. Carter (1927), 11 Tax Cas. 565.
157. *Add. Annotations*:—*As to* (1) *Refd.* Rees Roturbo Development Syndicate v. I. R. Comrs., *Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366. *As to* (2) *Consd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1. *Generally, Refd.* I. R. Comrs. v. Cavan Central Co-op. Agricultural & Dairy Soc. (1917), 12 Tax Cas. 1; *Lysaght v. I. R. Comrs.*, [1927] 2 K. B. 55.
159. *Add. Annotation*:—*Consd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1.
160. *Add. Annotation*:—*Consd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1.
164. *Add. Annotation*:—*Refd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1.
166. *Add. Annotations*:—*Refd.* *Maclaine v. Eccott*, [1926] A. C. 424; *Nielsen, Andersen v. Collins, Tarn v. Scanlan* (1926), 135 L. T. 744; *Whitney v. I. R. Comrs.*, [1926] A. C. 37; *Belfour v. Mace* (1928), 138 L. T. 338; *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford*, [1928] A. C. 252.
168. *Add. Annotations*:—*Consd.* *Maclaine v. Eccott*, [1926] A. C. 424. *Apld.* *Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Lethem, Muller (London) v. I. R. Comrs.* (1927), 44 T. L. R. 53. *Refd.* *Lysaght v. I. R. Comrs.*, [1927] 2 K. B. 55.
- 168a. — Foreign shipping company.]—(1) With a view of avoiding delay in bringing before the ct. revenue appeals on cases stated by the General or Special Comrs., henceforward points of argument need not be delivered & the case may be set down by either party.  
(2) A Danish co. & an English co. established a line of steamers between Copenhagen & Hull, & the English co. were appointed exclusive agents for the Danish co. at Hull. The English co. controlled the freights at this end, quoted rates, accepted consignments of goods & put them on board the steamers of the Danish co. The bills of lading were signed "for the master" by one of the English co.'s clerks. The English co. collected the freights for outward bound goods & any other moneys due from the consignors, & remitted what was due to the Danish co. On an appeal against assessments to income tax for the four years ended Apr. 5, 1913–1916 of the English co. as agents for the Danish co.:—*Held*: on the principle of *Erichsen v. Last*, No. 168, the Danish co. exercised a trade in the United Kingdom to the extent to which goods were taken on board their ships at Hull for carriage elsewhere, & this trade was carried on by the British co. as their regular agents. Therefore, the Danish co. were assessable to income tax in the name of the British co. for

#### PART V. SECT. 2, SUB-SECT. 2.—C.

144 i. *Registered office in England—Business & management abroad—General control by English office—Dual residence.*—A co. can carry on business in more places than one, & in places where it does not reside.

Three railway cos. were incorporated in England. A. co. owned a line of railway situate wholly in Portuguese East Africa. B. co. owned a line situate wholly in Portuguese East Africa with the exception of six miles situate in Southern Rhodesia, & C. co. owned a line situate wholly in Southern

Rhodesia. C. co. had its head office & general control in England, but also had offices in Bulawayo, where a general manager & staff conducted & managed the line. C. co. worked the lines of A. co. & B. co. as one with its own, & the three cos. shared the profits & losses of the joint venture upon a specified basis:—*Held*: A. co. & B. co. were in partnership with C. co., & the partnership business was carried on within Southern Rhodesian territory by the latter co. within Southern Rhodesia Income Tax Ordinance 20 of 1915.—*RHODESIA RYS. v. COMRS. OF TAXES*, [1925] App. D. 438.—S. AF.

#### PART V. SECT. 2, SUB-SECT. 3.—A.

xx. *Salary earned & received in Canada by person residing in foreign country.*—*Held*: such person was not assessable by the comrs. of the city where he earned his salary.—*Re Fox & Windsor Corp'n.* (1925), 57 O. L. R. 243.—CAN.

xy. *Royalties received in Canada by patentee residing in foreign country.*—*Held*: the patentee was chargeable.—*Re POPE ALLIANCE CORP., LTD.*, [1926] 4 D. L. R. 1152.—CAN.

the three years ended Apr. 5, 1915, under 1842 Act, s. 41, in respect of the profits arising from such trade, so far as regards freights collected by the British co. in respect of such goods, & for the year ended Apr. 5, 1916, under 1842 Act, s. 41, as amended by Finance (No. 2) Act, 1915 (c. 89), s. 31, in respect of all the profits arising from such trade, whether the freights were collected by the British co. or not.

(3) Two Dutch shipping companies owned four steamships known as the Batavier Line which traded regularly between Rotterdam & London. A Dutch firm, W. & Co., were the directors & had the management & control of both companies, & were also the shipping agents of both companies. By an agreement in 1899 made between the Dutch firm & one of the companies the firm were authorised to appoint sub-agents, where they deemed it necessary. In 1904, & again in 1910, the Dutch firm appointed applts. sole agents in London of the Batavier Line & thereafter applts. did all that was required to be done in connection with the ships of the Batavier Line in London. Assessments to income tax having been made on applts. as agents of the Dutch companies in respect of the profits of their business of shipowners:—*Held*: the Dutch companies were exercising a trade in the United Kingdom, even assuming that the Dutch firm, in appointing applts. as agents, acted as shipping agents & not as directors, they nevertheless constituted applts. direct agents of the two Dutch companies in London.—*TARN v. SCANLAN, NIELSEN, ANDERSEN & CO. v. COLLINS, MULLER (W. H.) & CO. (LONDON) v. LETHEM, SAME v. INLAND REVENUE COMRS.*, [1928] A. C. 34; 97 L. J. K. B. 267; 138 L. T. 241; 44 T. L. R. 53; 71 Sol. Jo. 1002; 13 Tax Cas. 91, 126, H. L.

*Annotation*:—*Refd.* Belfour v. Mace (1928), 138 L. T. 338.

169. *Add. Annotations*:—*As to* (2) *Refd.* Whitney v. I. R. Comrs., [1926] A. C. 37; Belfour v. Mace (1928), 138 L. T. 338; I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, [1928] A. C. 202.

170. *Add. Annotation*:—*Refd.* Belfour v. Mace (1928), 138 L. T. 338.

172. *Add. Citations*:—[1926] A. C. 424; 95 L. J. K. B. 616; 135 L. T. 66; 10 Tax Cas. 481.

*Add. Annotations*:—*As to* (2) *Appld.* Tarn v. Scanlan, Nielsen, Andersen v. Collins, Muller (London) v. Lethem, Muller (London) v. I. R. Comrs. (1927), 44 T. L. R. 53. *Generally*, *Refd.* I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford (1927), 96 L. J. K. B. 882.

173. *Add. Annotations*:—*As to* (1) *Refd.* Nielsen, Andersen v. Collins, Tarn v. Scanlan (1926), 135 L. T. 744; Muller (London) v. Lethem, Muller (London) v. I. R. Comrs., [1927] 1 K. B. 780. *As to* (2) *Appld.* Gavazzi v. Mace, Gavazzi v. I. R. Comrs., Boyd v. Stephen (1926), 135 L. T. 634. *Folld.* Belfour v. Mace (1928), 138 L. T. 338.

178. *Add. Citations*:—*affd.* (1928), 138 L. T. 338; 13 Tax Cas. 539, C. A.

179. *Add. Citations*:—*sub nom.* GAVAZZI v. MACE, GAVAZZI v. INLAND REVENUE COMRS., BOYD (T. L.) & SONS, LTD. v. STEPHEN, 135 L. T. 634; 10 Tax Cas. 698.

*Add. Annotation*:—*Consd.* Belfour v. Mace (1928), 138 L. T. 338.

180. *Add. Annotation*:—*Refd.* Muller (London) v. Lethem, Muller (London) v. I. R. Comrs., [1927] 1 K. B. 780.

181. *Add. Citations*:—[1926] A. C. 424; 95 L. J. K. B. 616; 135 L. T. 66; 10 Tax Cas. 481.

*Add. Annotations*:—*As to* (2) *Consd.* I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford (1927), 96 L. J. K. B. 882. *Appld.* Tarn v. Scanlan, Nielsen, Andersen v. Collins, Muller (London) v. Lethem, Muller (London) v. I. R. Comrs. (1927), 44 T. L. R. 53.

185. *Add. Annotations*:—*As to* (1) *Consd.* Belfour v. Mace (1928), 138 L. T. 338; Tarn v. Scanlan, Nielsen, Andersen v. Collins, Muller (London) v. Lethem, Same v. I. R. Comrs., [1928] A. C. 34. *Refd.* MacLaine v. Eccott, [1926] A. C. 424. *As to* (2) *Consd.* Scales v. Atalanta S.S. Co. of Copenhagen (1925), 134 L. T. 411.

186. *Add. Annotations*:—*Consd.* MacLaine v. Eccott, [1926] A. C. 424. *Refd.* Nielsen, Andersen v. Collins, Tarn v. Scanlan (1926), 135 L. T. 744; I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford (1927), 96 L. J. K. B. 882; Muller (London) v. Lethem, Muller (London) v. I. R. Comrs., [1927] 1 K. B. 780.

186a. — Agent appointed by agent of principal.] —*TARN v. SCANLAN, NIELSEN, ANDERSEN & CO. v. COLLINS, MULLER (W. H.) & CO. (LONDON) v. LETHEM, SAME v. INLAND REVENUE COMRS.*, No. 168a, *ante*.

188. *Add. Annotations*:—*Consd.* Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1. *Mentd.* Baelz v. Public Trustee, [1926] Ch. 863.

193a. — — — — —]—*TARN v. SCANLAN, NIELSEN, ANDERSEN & CO. v. COLLINS, MULLER (W. H.) & CO. (LONDON) v. LETHEM, SAME v. INLAND REVENUE COMRS.*, No. 168a, *ante*.

200a. — Purchase of business within three years —No evidence of vendor's profits.]—*Held*: it was the comrs.' duty to determine to the best of their judgment the average profits of the business for the three years respectively preceding the years of assessment.—*OGILVIE v. BARRON* (1925), 11 Tax Cas. 503.

200b. — Foreign corporation—Registered office transferred to England.]—A mining co. incorporated, having a registered office & carrying on business in Burma, decided to transfer its registered office & the control of its business to London, which it did as from July 1, 1925, thereby becoming liable to be assessed to British income tax. An assessment was therefore made upon it for the year ending Apr. 5, 1926:—*Held*: the assessment should be under the rule applicable

# PART V. SECT. 2, SUB-SECT. 3.—B.

193 i. *Assessment on agent—Foreign shipping company—What deductions allowed.*—In the assessment of the income of a shipping co., of which the principal place of business is out

sum which represents 10 per cent. of the amount payable to it in respect of the carriage of passengers, etc., & upon which the agent of the co. is liable to pay income tax, no deduction can be made of so much of the assessable income as is available for distribution & is distributed to the members or

CO. OF NEW ZEALAND, LTD. v. FEDERAL COMR. OF TAXATION (1924), 35 C. L. R. 209; 31 Argus L. R. 337.—*AUS.*

## PART V. SECT. 2, SUB-SECT. 4.

sz. *Under Assessment Act.*—*Re* DONALD MASON & Co. (Ont.), [1927]

to Case I. of Sched. D. in respect of its profits "upon a fair & just average of three years ending on that day of the year immediately preceding the year of assessment." The fact that the seat of the co.'s continuing business was transferred to England did not mean that at the date of transfer its trade was "set up & commenced" within the meaning of rule 1 (2) applicable to Cases I. & II., so as to make it liable to assessment upon the profits of its first year's trading as a co. registered in England.—*FRY v. BURMA CORPN.* (1929), 98 L. J. K. B. 693; 141 L. T. 361, C. A.

**204a.** — **Date when accounts "usually" made up—Effect of change of date.**—*BORTHWICK (THOMAS) & SONS, LTD. v. NOLDER* (1926), 11 Tax Cas. 261.

**204b.** **Money recovered under insurance policy—Stock destroyed by fire—Whether trade receipt.**—*Held*: the trader must bring the whole of such money received from the insurance co. in respect of the goods destroyed by fire into his profit & loss account as a trading receipt, in order to arrive at his profits for income tax purposes.—*GLIKSTEN J. & SON, LTD. v. GREEN*, [1929] A. C. 381; 98 L. J. K. B. 363; 140 L. T. 625; 45 T. L. R. 274, II. L.; *affg.* S. C. *sub nom.* *GREEN v. GLIKSTEN (J.) & SON, LTD.*, [1928] 2 K. B. 193, C. A.

**204c.** **Ascertainment of profits where stocks undervalued.**—When the opening & closing stocks of a business are both undervalued, the real profits of the year cannot be ascertained by merely raising the valuation of the closing stock & not taking into consideration the similar undervaluation of the opening stock.—*BOMBAY COMR. OF INCOME TAX v. AHMEDABAD NEW COTTON MILLS CO., LTD.* (1929), 46 T. L. R. 68, P. C.

**208.** *Add. Annotations*:—*As to* (3) *Consd.* *Fry v. Burma Corpn.* (1929), 98 L. J. K. B. 693. *As to* (4) *Folld.* *Elliott v. Duchess Mill* (1926), 95 L. J. K. B. 963. *Consd.* *Stewart & Young v. Walker* (1926), 11 Tax Cas. 123. *As to* (5) *Consd.* *Leitch v. Emmott* (1929), 98 L. J. K. B. 459. *Refd.* *Martin v. Lowry*, *Martin v. I. R. Comrs.*, [1926] 1 K. B. 550. *Generally*, *Refd.* *Betts v. Clare & Heyworth*, [1926] 2 K. B. 289.

**210.** *Add Citations*:—*reversd.* [1926] 2 K. B. 289; 95 L. J. K. B. 872; 135 L. T. 339; 42 T. L. R. 479, C. A.; *reversd. sub nom.* *CLARE &*

*HEYWORTH v. BETTS*, [1927] A. C. 443; 96 L. J. K. B. 645; 137 L. T. 306; 43 T. L. R. 387; 11 Tax Cas. 469, H. L.

*Annotations*:—*As to* (1) *Overd.* *Kneeshaw v. Clay & Horsfall*, [1929] 1 K. B. 285. *As to* (2) *Consd.* *Kneeshaw v. Clay & Horsfall*, [1929] 1 K. B. 285.

**210a.** — **Partnership.**—By a deed dated Nov. 22, 1922, A. & B., partners in a firm, dissolved partnership as from Apr. 1, 1922. Upon the dissolution of the partnership A. continued to carry on business at the firm's address, but from Nov. 22, 1922, until his death in June, 1923, B. carried on, in his own name at his private address, a small amount of business previously done by the firm. By a deed dated Dec. 15, 1922, A. took C. into partnership as from Apr. 1, 1922. An assessment having been made on the firm for 1922-23 upon the average of the profits for the three years ended Mar. 31, 1922, the comrs. found that the partnership between A. & B. was not dissolved until Nov. 22, 1922, & that there had been no discontinuance of the business, but that A. had succeeded to the business of A. & B., & that A. & C. had succeeded to the business carried on by A. after the dissolution of his partnership with B.:—*Held*: there was evidence upon which the comrs. could come to their conclusions, & they had not misdirected themselves in law.—*PARADAY, RODGERS & ELLER v. CARTER* (1927), 11 Tax Cas. 565, C. A.

**212.** *Add. Citations*:—[1927] 1 K. B. 182; 95 L. J. K. B. 963; 136 L. T. 51; 42 T. L. R. 707; 70 Sol. Jo. 891; 11 Tax Cas. 56, C. A. *Add. Annotation*:—*Refd.* *Borthwick v. Nolder* (1927), 11 Tax Cas. 261.

**212a.** — *—*—*Held*: in order to establish that there has been a falling short of the profits or gains of a trade within the exception to r. 11 of the Rules applicable to Cases I. & II. of Sched. D., it has only to be shown that the profits or gains in the year of assessment have fallen short from some specific cause, & not that the aggregate profits or gains since the change have so fallen short; & if the profits or gains in the year of assessment are found to have fallen short from some specific cause, income tax is computed on the actual profits or gains of that year instead of on the average of the three preceding years.—*KNEESHAW v. CLAY & HORSFALL*, [1929] 1 K. B. 285; 98 L. J. K. B. 325; 140 L. T. 188; 72 Sol. Jo. 809; 14 Tax Cas. 295, C. A.

#### PART V. SECT. 2, SUB-SECT. 5.—B.

**213 ii.** — *—*—A firm of manufacturing confectioners, in which changes of partnership had taken place, claimed that a falling short of profits was due to two specific causes, (1) an increase in the price of sugar due to interference with the Cuban supplies by the American Govt., the formation of a speculative ring in New York, & curtailment of European supplies owing to the French occupation of the Ruhr, & (2) an increase in bad debts caused by the failure of inexperienced venturers in the confectionery trade:—*Held*: (1) the expression "specific cause" denoted an exceptional circumstance, which could be clearly identified, & to which the shortage of profits could substantially be attributed; (2) the causes of the falling off of profits alleged were not "specific causes."—*STEWART & YOUNG v. INLAND REVENUE COMRS.*, [1926] S. C. 883; 11 Tax Cas. 123.—*SCOT*

#### PART V. SECT. 2, SUB-SECT. 7.—A.

**i.** — *Farm land—Expenses of fencing.*—A farmer is entitled to deduct under Land & Income Tax Amendment Act, 1924, s. 31, expenditure for the purchase & erection of vermin proof fencing.—*LINDSAY v. TAXATION COMR.* (1927), 30 W. A. L. 11. 24.—*AUS.*

**ii.** — *Annuity.*—The payment of an annuity payable by a taxpayer & charged upon his land on which he carries on his business as a pastoralist is not money "wholly & exclusively laid out or expended for the purposes of his trade," within Income Tax Act, 1915, s. 19 (2) (g) (Vict.), & therefore, may not be deducted from his gross income.—*CALVERT v. VICTORIA TAXES COMR.* (1927), 40 C. L. R. 142.—*AUS.*

**iii.** — *Donations to public, social, charitable & ecclesiastical institutions.*—*Held*: donations made to public, social, charitable & ecclesiastical institutions, at the request of friends of such

institutions, as well as amounts paid in the office to casual visitors for tickets to performances, lotteries, etc., under an alleged commercial practice, with the object of benefiting appl.'s business, & not for charitable purposes, are not disbursements or expenses "wholly, exclusively & necessarily laid out or expended for the purposes of earning the income," & cannot be deducted from the profits & gains of the co. in arriving at its taxable income.—*O'REILLY & BELANGER, LTD. v. MINISTER OF NATIONAL REVENUE*, [1928] Exch. C. R. 61.—*CAN.*

**iv.** — *Loan to experimental company.*—A firm of law agents from time to time made advances to one of their clients, an experimental limited co. which had been formed to manufacture a new metal alloy. It was intended, after the business had been established, to promote a large public co., & the firm anticipated considerable legal work in this connection. The advances



**217a. — Advances made to company by company's solicitors.]**—A firm of writers to the signet advanced money from time to time without security & without any written acknowledgment to a limited co. for which they had acted as law agents since its inception. The co. failed, & the advances were irrecoverable. On an appeal to the General Comrs. from an assessment to income tax under Sched. D. the firm claimed that the amount of the advances was a permissible deduction in ascertaining their profits & gains as writers to the signet:—*Held*: the loss was not a permissible deduction, as it did not represent moneys wholly & exclusively laid out or expended for the purposes of the firm's profession within r. 3 of the rules applicable to Cases I. & II.—*HAGART & BURN-MURDOCH v. INLAND REVENUE COMRS.*, [1929] A. C. 386; 98 L. J. P. C. 113; 141 L. T. 97; 45 T. L. R. 338, H. L.

**222a. Company—Payment to director as inducement to retire.]**—*Held*: a payment by a co. to a director in order to induce him to retire, in circumstances in which the other directors had come to the conclusion that it was essential in the interests of the co. that he should retire, was a business expense deductible from the co.'s profits for purposes of income tax.—*MITCHELL v. NOBLE (B. W.), LTD.*, [1927] 1 K. B. 719; 96 L. J. K. B. 484; 137 L. T. 33; 43 T. L. R. 245; 71 Sol. Jo. 175; *sub nom.* *NOBLE (B. W.), LTD. v. MITCHELL, MITCHELL v. NOBLE (B. W.), LTD.*, 11 Tax Cas. 372, C. A.

*Add. Annotation:—Refd. Morley v. Lawford (1928), 44 T. L. R. 716.*

**224a. — — —.]**—Applt. co. was a member of the Cold Rolled Brass & Copper Asscn., an unincorporated body having as its objects the fixing of prices for goods manufactured by its members, & the provision of a common fund to be applied in the interests of its members. The common fund consisted of members' entrance fees & monthly payments proportional to output tonnage, & in the event of the Association being wound up was distributable between the members in proportion to their contributions. In 1918 the Ministry of Munitions had large surplus stocks of brass & copper & the Asscn. was specially authorised by its members to negotiate with the Ministry in regard to its disposal. As a result the Asscn. contracted to purchase the metal from the Ministry at fixed prices per ton, & this contract, & also the draft arrangement for the disposal of the metal to the Asscn.'s members, were subsequently approved by the Asscn. in general meeting. By these arrangements members were given, firstly, an option of purchasing a quantity of the metal proportional to their monthly output, at prices scheduled by the Association varying according to quality & size, & secondly, an option to apply for any residue. The whole of the metal was thus disposed of by the Association at prices higher than those paid to the Ministry, & the "profit" was carried to the common fund.

were not made by the firm as factors for the co. The co. having failed, the loans became irrecoverable, & the firm claimed to deduct the loss thus incurred in arriving at the profits of their profession for income tax purposes:—*Held*: the advances were not money

"wholly & exclusively laid out for purposes" of business & the deduction of them was inadmissible.—*INLAND REVENUE COMRS. v. A. & B.*, [1929] S. C. (H. L.) 76.—*SCOT.*

o v. — *Cost of reconstruction of*

Appls. debited in their accounts the full cost of the metal purchased by them from the Asscn., & did not bring into the accounts their share in the "profit." They were assessed to income tax under Case I. of Sched. D. on the basis that they were entitled to deduct only the net cost of the metal, i.e. the full cost less their share in the "profit":—*Held*: applts. were able to share in the distribution of the metal only on payment of the prices scheduled by the Asscn.; their share in the "profit" was in proportion, not to the price paid, but to the quantity taken; the profit carried to the common fund could not be regarded as the individual members' profit; & in the circumstances applts. were entitled to deduct as a business expense the price paid by them to the Asscn.—*CLIFFORD & SON, LTD. v. PUTTICK, CLIFFORD & SON, LTD. v. INLAND REVENUE COMRS.* (1928), 14 Tax Cas. 189.

**224b. Subscription to guarantee fund of British Empire Exhibition.]**—Appls., asphalters, subscribed to the guarantee fund of the British Empire Exhibition at Wembley, solely, as the General Comrs. found, in the hope of obtaining preferential treatment in the allocation of contracts for asphaltting work within the exhibition grounds. They did not in fact obtain any contract at all from the exhibition authorities. Having been called upon to pay a considerable part of the amount guaranteed they sought to deduct the sum so paid from their profits assessable to income tax as a trade expense. The General Comrs. held it was an allowable deduction:—*Held*: the question was one of fact, & as there was evidence to support the finding of the General Comrs., their decision must be affirmed.—*MORLEY v. LAWFORD & CO.* (1928), 140 L. T. 125; 45 T. L. R. 30; 72 Sol. Jo. 825; 14 Tax Cas. 229, C. A.

*Annotations:—Distd. Hagart & Burn-Murdoch v. I. R. Comrs.*, [1929] A. C. 386. *Refd. Bourne & Hollingsworth v. Ogden* (1929), 45 T. L. R. 222.

**224c. Subscription to hospital—Where employee treated.]**—Appls., who gave considerable subscriptions to a hospital at which their employees were frequently treated, claimed to deduct the amount of the subscriptions as a trade expense under r. 3 (a) of the rules applicable to Cases I. & II. of Sched. D.:—*Held*: the question whether the subscriptions were given with the view of obtaining a staff that would earn profits, or whether they were given merely because the staff had in fact been treated at the hospital, was a question of fact for the Special Comrs., & their decision must be affirmed.—*BOURNE & HOLLINGSWORTH, LTD. v. OGDEN* (1929), 45 T. L. R. 222; 73 Sol. Jo. 127.

**226a. Liability to bank on loans to meet acceptances—Subsequent compromise of bank's claim.]**—Applt., who carried on business as an exporter of cloth, habitually financed his shipments by drawing bills on the buyer in Shanghai & borrowing from a bank in London on the security of the bills & shipping documents. In 1920 a buyer became unable

*COMRS.*, [1929] S. C. (Ct. of Sess.) 384.—*SCOT.*

o vi. — *Expenses of winter grazing of sheep.]*—*INLAND REVENUE COMRS. v. MARSHALL & MITCHELL*, [1929] S. C.



to meet his acceptances, & applt. found himself responsible to the bank for a large sum. In computing his assessable profits for the year ended Mar. 31, 1921, he was allowed to deduct a sum of £22,410, being the estimated amount of the bank's claim against him, but subsequently he advanced certain contentions against the bank & eventually, at the end of 1922, the bank accepted £8,000 in settlement of its claim. Applt. objected to additional assessments made in order to bring into charge the difference between the £8,000 & the £22,410 previously allowed, contending that the sums advanced by the bank were a liability for the year ended Mar. 31, 1921, & that the subsequent reduction of the debt was immaterial in determining his liability for that or any later year:—*Held*: applt.'s transactions with the bank constituted part of his business & that the loss incurred was a trading loss; & the computations for the purposes of income tax must be reopened & adjusted by reference to the actual amount of this loss.—*BERNHARD v. GAHAN, BERNHARD v. INLAND REVENUE COMRS.* (1928), 13 Tax Cas. 723, C. A.

227. *Add. Annotation*:—*Refd.* *Naval Colliery Co.* (1897), Ltd. v. I. R. Comrs. (1928), 138 L. T. 593.

229. *Add. Annotation*:—*Consd.* *Fry v. Burma Corp.* (1929), 98 L. J. K. B. 693.

235. *Add. Citation*:—12 Tax Cas. 227.  
*Add. Annotation*:—*Consd.* *Morley v. Lawford & Co.* (1928), 140 L. T. 125.

236. *Add. Citation*:—12 Tax Cas. 232.  
*Add. Annotations*:—*Consd.* *Morley v. Lawford & Co.* (1928), 140 L. T. 125. *Refd.* *Finance Minister v. Smith* (1926), 95 L. J. P. C. 193.

#### PART V. SECT. 2, SUB-SECT. 7.—B.

*p i.* —.]—A co. owned, & occupied for the purpose of its trade, land & heritages, which were "mills, factories or other similar premises," within Rules applicable to Cases I. & II., r. 5 (2).—*Held*: in estimating the profits or gains of the co. for the purpose of assessment to income tax under Schedule D, the whole annual value of its trading premises fell to be deducted, & not merely the amount at which the premises were actually assessed for the purpose of collection of tax under Schedule A.—*INLAND REVENUE COMRS. v. SCOTTISH CENTRAL ELECTRIC POWER CO.*, [1928] S. C. 260.—*SCOT.*

#### PART V. SECT. 2, SUB-SECT. 7.—D.

*sa. Statutory company—Creation of reserve fund—Loss in realisation of investments forming part of fund.*—*Held*: since the words of the Act authorising the creation of the reserve fund were permissive & enabling only, the exercise of the power was discretionary, & the loss was not an allowable deduction. *Scmble*: it would have been otherwise, if the Act had imposed a duty on the co. to create a reserve fund.—*ALLIANCE & DUBLIN CONSUMERS' GAS CO. v. DAVIES*, [1926] I. R. 372.—*IR.*

*sb. Bank—Losses written off during year—Method of computation.*—*Re BANK OF MONTREAL ASSESSMENT* (1909), 14 B. C. R. 282.—*CAN.*

*sc. Losses on sales of temporary investments in Government securities.*—*Held*: such temporary investments could not be regarded as an investment of capital; the investment & realisation of such funds from time

to time was merely part of the bank's ordinary business, & the loss incurred was a loss incurred in the production of income.—*TAXATION COMR. v. COMMERCIAL BANKING CO. OF SYDNEY* (1927), 27 S. R. N. S. W. 231; 44 N. S. W. W. N. 65.—*AUS.*

#### PART V. SECT. 2, SUB-SECT. 7.—E. (a).

*e i.* — *Loss on trade branch.*—A trader having two branches in his trade (viz. a cloth business & a banking business) carried on both, each with borrowed capital; & as the cloth business ended in a loss, he had to close it in 1924; & all that portion of the borrowed capital which was sunk in the cloth business was lost before 1924. The trader having had to pay interest on that lost capital in 1924–25, the year of assessment, claimed deduction therefor from the assessable profits of his remaining banking business for the year 1924–25. *Held*: though the branches were distinct, the trade was one, & though the lost capital was not available for use in the trade, viz. the banking business, in the year of assessment, the interest paid on it should be deducted under Indian Income Tax Act, s. 10 (2) (ii).—*AJUNACHALAM CHETTY v. INCOME TAX COMRS.* (1928), 1 L. R. 52 Mad. 296.—*IND.*

#### PART V. SECT. 2, SUB-SECT. 7.—E. (b).

246 *ii.* — *Instalment of purchase price—& costs of plant additions.*—*Held*: capital expenditure.—*ROSEBERRY-SURPRISE MINING CO. v. R.*, [1924] S. C. R. 445; [1924] 4 D. L. R.

236a. *Calls on shares in company formed to take over trading company's buying agency.*—*Held*: not a trading loss, but a loss of capital & not a sum that could be properly deducted.—*M. JACOBS YOUNG & CO., LTD. v. HARRIS* (1926), 11 Tax Cas. 221.

238. *Add. Annotation*:—*Refd.* *Naval Colliery Co.* (1897), Ltd. v. I. R. Comrs. (1928), 138 L. T. 593.

239. *Add. Annotations*:—*As to* (1) *Consd.* *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405. *Refd.* I. R. Comrs. v. Northfleet Coal & Ballast Co. (1927), 12 Tax Cas. 1102; *Thompson v. I. R. Comrs.*, I. R. Comrs. v. *Thompson* (1927), 12 Tax Cas. 1091.

240. *Add. Annotation*:—*Refd.* *Eastman v. Shaw* (1927), 43 T. L. R. 549.

241a. *Payment of liabilities of subsidiary company.*—*Held*: a loss of capital, & no deduction could be allowed.—*BAKER v. MABIE TODD & CO., LTD.* (1927), 13 Tax Cas. 235.

244. *Add. Annotation*:—*Refd.* *Mallett v. Staveley Coal & Iron Co.* (1927), 138 L. T. 201.

248a. *Payment in consideration of surrender of lease—Mining lease.*—Sums paid by a colliery co. to the lessor in consideration of the surrender of a portion of the area demised by a mining lease, & for the release of the co. from the obligations undertaken by the lease, are capital payments, & are not allowable deductions.—*MALLET v. STAVELEY COAL & IRON CO., LTD.*, [1928] 2 K. B. 405; 97 L. J. K. B. 475; 139 L. T. 211; 13 Tax Cas. 772, C. A.

*Annotations*:—*Folld.* *Cowcher v. Mills* (1927), 13 Tax Cas. 216. *Refd.* I. R. Comrs. v. Northfleet Coal & Ballast Co. (1927), 12 Tax Cas. 1102.

248b. —.]—Resps. carried on business at premises held on a lease expiring in 1923. In 1916 the business was closed down, & the

197; [1924] 1 W. W. R. 1017.—*CAN.*

*se. Railway company—Expense of making deviations.*—*Held*: sums expended by a railway co. in making deviations in its line from time to time were expenditure of a capital nature.—*RHODESIA RYR. v. COMR. OF TAXES*, [1925] App. D. 438.—*S. AF.*

*sf. Company owning one ship—Ship seized & used by enemy—Expenditure on reconditioning ship.*—*Held*: not a proper deduction, in respect that the expenses were not a recurring maintenance expenditure, but were of the nature of capital outlay.—*INLAND REVENUE v. GRANITE CITY S. S. CO.*, [1927] S. C. 705.—*SCOT.*

*sh. Loss on conversion of plant & works—Under arrangement with Minister of Munitions.*—*Held*: a loss of capital, & not admissible as a deduction for income tax purposes.—*LOTHIAN CHEMICAL CO., LTD. v. ROGERS, LOTHIAN CHEMICAL CO., LTD. v. INLAND REVENUE COMRS.* (1926), 11 Tax Cas. 508.—*SCOT.*

*sj. Value of wool on backs of sheep purchased with station.*—*WEBSTER v. WESTERN AUSTRALIA TAXATION DEPUTY COMR.* (1927), 39 C. L. R. 130; [1927] Argus L. R. 113.—*AUS.*

*sk. Cost of reconstruction of shop.*—*HYAM v. INLAND REVENUE COMRS.*, [1929] S. C. (Cl. of Sess.) 384.—*SCOT.*

*sl. Consideration for right to deposit material by carting contractor.*—*INLAND REVENUE COMRS. v. ADAM* (1928), 14 Tax Cas. 34.—*SCOT.*

- lessor agreed to accept a surrender of the lease in consideration of a sum to be paid by instalments of £250 a year, & resps. issued a debenture to the lessor securing the instalments by a floating charge on all their assets. In 1921 the lessor accepted £600 from resps. in satisfaction of all further liability under the debenture:—*Held*: the payment of £600 was not an admissible deduction.—*Cowcher v. Mills & Co., Ltd.* (1927), 13 Tax Cas. 216.
249. *Add. Annotations*:—*Consd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205. *Refd.* *Mitchell v. Noble* (1926), 43 T. L. R. 100.
250. *Add. Annotation*:—*Apld.* *Marsden v. I. R. Comrs.* (1919), 12 Tax Cas. 217.
251. *Add. Annotations*:—*Refd.* *Small v. Easson* (1920), 12 Tax Cas. 351; *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mitchell v. Noble*, [1927] 1 K. B. 719.
252. *Add. Annotation*:—*Refd.* *Mallett v. Staveley Coal & Iron Co.* (1927), 138 L. T. 201.
- 252a. *Difference between cost & proceeds of sale of fixtures of branch shops.*—A trading co., with a number of branch shops controlled by a head office, followed a policy of opening & closing their branches in accordance with the local demands & the probabilities of profit or loss:—*Held*: the difference between the cost of new fixtures, fittings, & utensils for the new shops, & the receipts from the sales of equivalent second hand fixtures, etc., from the shops that were closed, was a capital expenditure, & was not a revenue expenditure which could be debited to the trading account of the co. in ascertaining the profits which were assessable to income tax.—*EASTMANS, LTD. v. SHAW, EASTMANS, LTD. v. INLAND REVENUE COMRS.* (1928), 45 T. L. R. 12; 72 Sol. Jo. 744; 14 Tax Cas. 218, 11 L.
254. *Add. Annotation*:—*Refd.* *Roebank Printing Co., Ltd. v. I. R. Comrs.* (1928), 13 Tax Cas. 864.
260. *Add. Annotations*:—*As to* (1) *Refd.* *Small v. Easson* (1920), 12 Tax Cas. 351; *Mitchell v. Noble*, [1927] 1 K. B. 719. *As to* (2) *Distd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405.
262. *Add. Annotations*:—*Distd.* *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405. *Refd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mitchell v. Noble*, [1927] 1 K. B. 719; *Morley v. Lawford* (1928), 44 T. L. R. 716; *Rees Roturbo Development Syndicate v. I. R. Comrs.*, *Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366.
264. *Add. Citation*:—*sub nom.* *ATHERTON v. BRITISH INSULATED & HELSBY CABLES, LTD.*, 10 Tax Cas. 155.
- Add. Annotations*:—*Apld.* *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405. *Consd.* *Morley v. Lawford* (1928), 140 L. T. 125. *Refd.* *Mitchell v. Noble*, [1927] 1 K. B. 719.
265. *Add. Annotations*:—*Refd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mallett v. Staveley Coal & Iron Co.* (1927), 138 L. T. 201.
- 268a. — *Books used for professional purposes—Solicitor.*—The word “plant” in Finance Act, 1925 (c. 30), s. 16, does not include a solr.’s books which he consults for professional purposes.—*DAPHNE v. SHAW* (1926), 43 T. L. R. 45; 71 Sol. Jo. 21; 11 Tax Cas. 256.
- 276a. *Replacement of obsolete plant or machinery*  
*Meaning of obsolete—Question of fact for commissioners.*—*SOUTH METROPOLITAN GAS Co. v. DADD* (1927), 13 Tax Cas. 205.
278. *Add. Annotation*:—*Refd.* *Brighton College v. Marriott*, [1926] A. C. 192.
285. *Add. Annotations*:—*Apld.* *Waldie v. I. R. Comrs.* (1919), 12 Tax Cas. 113. *Distd.* *Hagart & Burn-Murdoch v. I. R. Comrs.*, [1929] A. C. 386. *Refd.* *Bourne & Hollingsworth v. I. R. Comrs.* (1921), 12 Tax Cas. 483; *Baker v. Mabie Todd* (1927), 13 Tax Cas.
287. *Add. Annotations*:—*Apld.* *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405. *Consd.* *Morley v. Lawford* (1928), 140 L. T. 125. *Expld.* *Hagart & Burn-Murdoch v. I. R. Comrs.*, [1929] A. C. 386. *Distd.* *Salisbury House Estate v. Fry* (1929), 98 L. J. K. B. 722. *Refd.* *Small v. Easson* (1920), 12 Tax Cas. 351; *Bourne & Hollingsworth v. I. R.*

## PART V. SECT. 2, SUB-SECT. 7.—F.

253 i. *Loss on advances to saw-miller to secure supplies of timber—Advances written off as bad debts on liquidation of saw-miller.*—*Held*: the loss was properly deducted. *HOGG & Co., LTD. v. COMR. OF TAXES*, [1925] N. Z. L. R. 306.—N.Z.

254 i. *Limited to trading debts—Whether debt of managing director to company included.*—A calico printing co. paid its managing director in part by a commission on profits. During the first year of the arrangement the directors authorised him to draw two sums on account of his commission, & in subsequent years he drew sums on this account without special authority but with the knowledge of the directors. These sums were debited to a commission account. During the year ending Dec. 31, 1923, he drew out £5,141 in sums varying between £150 & £400. It was subsequently ascertained that no commission was due for that year, & the commission account showed a balance due by him to the co. of £3,391. In arriving at its profits for income tax purposes the co. claimed

to be entitled to deduct this loss:—*Held*: the loss was a “loss not connected with or arising out of the trade.”—*ROEBANK PRINTING CO., LTD. v. INLAND REVENUE COMRS.*, [1928] S. C. (Cl. of Sess.) 701.—SCOT.

## PART V. SECT. 2, SUB-SECT. 7.—G.

o i. — *Payment for qualification shares.*—*SHAPIRO v. INLAND REVENUE COMRS.* (1928), 49 N. L. R. 436.—S. AF.

## PART V. SECT. 2, SUB-SECT. 7.—J.

b i. — *Diminished value of rails & sleepers.*—*Held*: a railway co. was not entitled to any deduction for such diminished value.—*RHODESIA RYS. v. COMR. OF TAXES*, [1925] App. D. 438.—S. AF.

## PART V. SECT. 2, SUB-SECT. 7.—L.

p i. — *Separate assessments under Schedules B. & D.*—A farmer bred horses & cattle on a considerable scale. He used his stallions for his own horse-breeding purposes, & also earned fees by sending them on journeys for the service of other owners’ mares. In this connection he kept a reserve of stallions to replace any which might become incapacitated. All his stallions,

of which only a small proportion earned fees, formed part of one undivided stud. He was assessed to income tax, on the profits of his general farming business under Schedule B., & on the profits of his fee-earning stallions under Schedule D. As a method of fixing the amount of profits assessable under the latter Schedule, the comrs. determined to regard a certain number of stallions as exclusively used in earning fees, & to allow the deduction of the cost of their full upkeep & attendance, & to provide for replacements by allowing a similar deduction in respect of other stallions in the stud to the extent of one-third of the number of travelling stallions. The farmer contended that his stallion-owning business should be treated as entirely separate from his farming business, & that the whole of the expenses & losses connected with his stallions should be set against the revenue derived from them:—*Held*: it was primarily a question for the comrs. to determine, & no cause had been shown for disturbing their determination.—*MARSHALL v. INLAND REVENUE COMRS.*, [1927] S. C. 243.—SCOT.

- Comrs. (1921), 12 Tax Cas. 483; *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mitchell v. Noble*, [1927] 1 K. B. 719; *Green v. Gliksten* (1928), 139 L. T. 12; *Rees Roturbo Development Syndicate v. I. R. Comrs.*, *Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366. **Mentd.** *Hart v. Riversdale Mill Co.* (1927), 96 L. J. K. B. 691.
288. **Add. Annotations:—***Consd. Morley v. Lawford & Co.* (1928), 140 L. T. 125. **Refd.** *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.
290. **Add. Annotations:—***As to* (1) *Consd. Morley v. Lawford & Co.* (1928), 140 L. T. 125. *As to* (2) **Refd.** *Mitchell v. Noble*, [1927] 1 K. B. 719. *Generally*, **Refd.** *Small v. Easson* (1920), 12 Tax Cas. 351.
291. **Add. Annotations:—***Consd. Hart v. Riversdale Mill Co.* (1927), 96 L. J. K. B. 691; *Morley v. Lawford & Co.* (1928), 140 L. T. 125. **Refd.** *I. R. Comrs. v. Lysaght*, [1928] A. C. 234; *Salisbury House Estate v. Fry* (1929), 98 L. J. K. B. 722.
- 292a. —]—*YOUNGS, CRAWSHAY & YOUNGS, LTD. v. BROOKE* (1912), 6 Tax Cas. 393.
293. **Add. Annotation:—****Refd.** *Thomas v. Evans. Jones v. South-West Lancashire Coal-Owners' Asscn.* (1927), 11 Tax Cas. 790.
294. **Add. Annotation:—****Refd.** *Collins v. I. R. Comrs.* (1924), 12 Tax Cas. 773.
295. **Add. Annotation:—****Refd.** *Collins v. I. R. Comrs.* (1924), 12 Tax Cas. 773.
296. **Add. Citation:—**2 Tax Cas. 100.  
**Add. Annotations:—***As to* (2) **Consd.** *Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Asscn.* (1927), 11 Tax Cas. 790. *Generally*, **Refd.** *Pegg & Jones v. I. R. Comrs.* (1919), 12 Tax Cas. 82; *I. R. Comrs. v. Westleigh Estates Co., I. R. Comrs. v. South Behar Ry., I. R. Comrs. v. Eccentric Club* (1925), 12 Tax Cas. 657.
297. **Add. Annotations:—****Apld.** *Pegg & Jones v. I. R. Comrs.* (1919), 12 Tax Cas. 82. **Consd.** *Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Asscn.* (1927), 11 Tax Cas. 790. **Refd.** *I. R. Comrs. v. Westleigh Estates Co., I. R. Comrs. v. South Behar Ry., I. R. Comrs. v. Eccentric Club* (1925), 12 Tax Cas. 657.
300. **Add. Annotations:—****Consd.** *I. R. Comrs. v. Westleigh Estates Co., I. R. Comrs. v. South Behar Ry., I. R. Comrs. v. Eccentric Club* (1925), 12 Tax Cas. 657; *Cornish Mutual Assce. v. I. R. Comrs.*, [1926] A. C. 281. **Distd.** *Liverpool Corn Trade Asscn. v. Monks*, [1926] 2 K. B. 110. **Apld.** *Jones v. South-West Lancashire Coal-Owners' Asscn.*, [1927] A. C. 827.
301. **Add. Annotation:—****Refd.** *Butler v. Mortgage Co. of Egypt* (1927), 138 L. T. 328.
302. **Add. Annotations:—****Refd.** *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *A.-G. v. Metropolitan Water Board*, [1928] 1 K. B. 833.
304. **Add. Annotations:—****Distd.** *Scales v. Thompson* (1927), 138 L. T. 331. **Consd.** *Butler v. Mortgage Co. of Egypt* (1928), 139 L. T. 29.
305. **Add. Annotations:—****Distd.** *Scales v. Thompson* (1927), 138 L. T. 331. **Consd.** *Butler v. Mortgage Co. of Egypt* (1928), 139 L. T. 29.
- 307a. **Accident Insurance—Mutual society.]—**A mutual insurance assocn. was formed, its sole activity being the indemnity of its members, who were coal-owners, against liability for compensation in respect of fatal accidents to workmen. The members of the assocn. were the persons protected by it, every member being liable to contribute a sum not exceeding £25 in the event of a winding up. The assocn. formed a general fund by making calls upon members proportionate to the wages paid in their works for the time being, & the balance of the ordinary call fund was transferred to a reserve fund, into which any extraordinary calls were also paid. A member, on retirement, was entitled to get back in cash a proportion of his share in the above reserve fund, but, apart from this, members had no right at all to the cash in the reserve fund, though the interest accruing on the reserve fund could be used in diminution of members' calls:—**Held:** (1) the sums paid by the members to the assocn. were admissible deductions in computing the profits made by a member for the purpose of assessment to income tax, as the money was laid out by the respective members on a true insurance principle; (2) the surplus funds of the assocn. were not assessable to income tax, as the assocn. was mere machinery for the purpose of enabling subscribing members to insure themselves.—*THOMAS v. EVANS (RICHARD) & CO., JONES v. SOUTH-WEST LANCASHIRE COAL OWNERS' ASSCN.*, [1927] 1 K. B. 33; 95 L. J. K. B. 990; 135 L. T. 673; 42 T. L. R. 703; 11 Tax Cas. 790, C. A.; *affd. sub. nom. JONES v. SOUTH-WEST LANCASHIRE COAL OWNERS' ASSCN.*, [1927] A. C. 827; 96 L. J. K. B. 894; 137 L. T. 737; 43 T. L. R. 725; 71 Sol. Jo. 680, H. L.
- 307b. **Marine insurance company—Building ships—Cancellation of shipbuilding contracts.]—**A marine insurance co., having entered into contracts for the building of four ships, accepted delivery of two of the ships & then, owing to a slump in the shipping trade, cancelled the contracts for the other two ships on payment of £70,000. It was contended that a new business of dealing in ships had been begun by the co., & that the £70,000 was a proper deduction in arriving at its profits:—**Held:** the co. was not carrying on any trade, from the profits of which the £70,000 was an admissible deduction.—*DEVON MUTUAL STEAMSHIP INSURANCE ASSCN. v. OGG* (1927), 13 Tax Cas. 184.
- 309a. **Loss on investments—What amounts to.]—***Appls.*, an insurance co., had investments in British railway stocks, & it was admitted by the Crown that any loss suffered by *appls.* on such investments was deductible from their profits for purposes of income tax. The result of *Railways Act, 1921* (c. 55), was that *appls.* received in exchange for their various railway holdings stocks in the four amalgamated railway cos. created by that Act. The market value of these new stocks was less than the original cost to *appls.* of the old stocks, & they claimed that the loss so occasioned to them should be allowed as a deduction from their profits for 1922 & 1923 in computing their income tax liability:—**Held:** as the effect of what had happened was that the old investments had been closed & realised, & new investments had been begun, *appls.* were entitled to the deduction claimed.—*ROYAL INSURANCE CO., LTD. v.*

STEPHEN (1928), 44 T. L. R. 630 ; 14 Tax Cas. 22.

313a. — **Remuneration of solicitor-trustee under trust.**—A solr.-trustee was empowered by clauses in the instruments creating the trusts to charge for work done by him in connection with the trusts. By agreement between himself, his co-trustees & the beneficiaries, his remuneration was calculated as a percentage of the annual income of the trust funds, which income had already been brought into charge to tax:—*Held*: this remuneration was chargeable to income tax against the solr. under 1918 Act, Schedule D., Case II., as his profits or earnings arising from an employment, & was not constituted of annual payments payable wholly out of profits or gains brought into charge to tax within Rules applicable to all Schedules, r. 19.—*JONES v. WRIGHT* (1927), 139 L. T. 43 ; 44 T. L. R. 128 ; 72 Sol. Jo. 86 ; 13 Tax Cas. 221.

316. *Add. Annotations*:—*As to* (3) *Appld.* *Whelan v. Henning*, [1926] A. C. 293. *Distd.* *Ormond Investment Co. v. Betts*, [1927] 2 K. B. 326. *Refd.* *Kirke's Trustees v. I. R. Comrs.* (1926), 136 L. T. 582 ; *Turton v. Mitchell* (1927), 138 L. T. 365 ; *Leeming v. Jones* (1929), 141 L. T. 472. *Generally*, *Refd.* *Leitch v. Emmott*, [1929] 2 K. B. 236.

317. *Add. Citations*:—[1926] 1 K. B. 430 ; 10 Tax Cas. 139.

*Add. Annotations*:—*Appld.* *Turton v. Mitchell* (1927), 138 L. T. 365. *Consd.* *Leeming v. Jones* (1929), 141 L. T. 472. *Refd.* *Ormond Investment Co. v. Betts*, [1927] 2 K. B. 326.

317a. — **Different holdings of War Loan.**—*Appl.*, who owned £2,350 5 per cent. War Loan inscribed in the books of the Bank of England, in June 1924 converted this holding into 4½ per cent. Conversion Loan, the interest on which was payable under deduction of income tax. *Appl.*, however, continued throughout the year 1925–26 to hold a small amount of 5 per cent. War Loan Post Office issue, to which he had succeeded on the death of his daughter, & which he was not aware he could convert:—*Held*: *applt.* continued throughout the year 1925–26 to hold the same source of income, i.e., 5 per cent. War Loan, & under Schedule D., Case III., r. 2, he was assessable to income tax for that year in the full amount of the interest received from such War Loan in the preceding year.—*TURTON v. MITCHELL* (1927), 138 L. T. 365 ; 13 Tax Cas. 245.

317b. — **Holdings of husband & wife.**—Where *applt.*'s wife, who was living with him, was in receipt of £9 16s. 10d. interest of War Loan in the year preceding the year of assessment, in which year *applt.* held no War Loan, & *applt.* in the year of assessment bought War Loan from which he received interest amounting to £3,662 10s.:—*Held*: *applt.* had been in possession of the source of such interest in the previous year, & was assessable only in the sum of £9 16s. 10d. in respect of interest

of War Loan.—*WALKER v. HOWARD* (1927), 138 L. T. 367 ; 13 Tax Cas. 313.

*Annotation*:—*Overd.* *Leitch v. Emmott*, [1929] 2 K. B. 236. *Compare* No. 570a, *post*.

321a. **Surrender of Victory Bonds in payment of death duties—Unpaid interest taken into account in valuation.**—Where Victory Bonds are surrendered in payment of estate duty, & the accrued but still unpaid interest is taken into account in the valuation of the bonds, the interest is not subject to income tax.—*MONKS v. FOX'S EXECUTORS*, [1928] 1 K. B. 351 ; 97 L. J. K. B. 241 ; 138 L. T. 203 ; 44 T. L. R. 115 ; 72 Sol. Jo. 31 ; 13 Tax Cas. 171.

336. *Add. Annotations*:—*Consd.* *Perrin v. Dickson* (1929), 98 L. J. K. B. 683. *Refd.* *Leeming v. Jones* (1929), 141 L. T. 472.

337. *Add. Annotations*:—*Consd.* *Re Fitch's Will Trusts, Public Trustee v. Nives* (1928), 139 L. T. 556 ; *Perrin v. Dickson* (1929), 98 L. J. K. B. 683. *Refd.* *Glenboig Union Fire-clay Co. v. I. R. Comrs.* (1922), 12 Tax Cas. 427.

345a. — **By insurance company—In consideration for annual payments.**—A contract with an insurance co., by which the assured, in consideration of annual payments, is to receive other annual payments at a later date, does not create an annuity chargeable with income tax, except to the extent that the payments made by the co. consist of interest on those made to them by the assured.—*PERRIN v. DICKSON* (1929), 98 L. J. K. B. 683 ; 45 T. L. R. 621, C. A.

347. *Add. Annotation*:—*Consd.* *Perrin v. Dickson*, (1929), 98 L. J. K. B. 683.

354. *Add. Annotation*:—*Refd.* *Sherwood v. Sherwood*, [1929] P. 120.

356. *Add. Annotation*:—*Appld.* *South American Stores (Gath & Chaves) v. I. R. Comrs.* (1926), 12 Tax Cas. 905.

367a. — **Agreement to pay super-tax on wife's income in excess of specified sum—Whether husband entitled to marshal wife's income.**—A husband & wife lived apart upon the terms of a separation deed by which the husband covenanted during the joint lives of himself & his wife to pay to trustees for the benefit of the wife such a sum in each year as, after deducting income tax at the current rate, should amount to the sum of £3,000. Clause 11 of the deed was in these terms: "In addition to all other payments by this indenture agreed to be made by the husband or his representatives after his decease he or they shall pay & discharge all super-tax which shall be payable in respect of the income of either the husband or the wife except any super-tax in respect of any income of the wife not coming to her under or by virtue of this indenture in excess of £1,400 for any year." Apart from the deed the wife had an income exceeding £1,400 a year:—*Held*: in computing the super-tax payable by the husband in respect of the income of the wife, the husband was not entitled to marshal the component parts of the wife's income so that one part, namely, the annual amount payable

#### PART V. SECT. 4, SUB-SECT. 1.

a1. *Dividends received by broker—Deduction of interest on unpaid balance*

*due to broker.*—*Held*: the client was not assessable for income in respect of the whole amount of the dividends received by the broker & credited to his account, but only in respect of the

difference between the sum of the dividends & the sum charged for interest.—*Re STOUT & TORONTO CITY*, [1927] 2 D. L. R. 1100 ; 60 O. L. R. 313.—CAN.

under the deed plus £1,400, should be exempt from super-tax as to £2,000 thereof, & as to the balance should bear the lower rates of tax, & that the higher rate of tax should fall upon another part, namely, the excess of the wife's total income over the first-mentioned part; but clause 11 of the deed required that the whole super-tax payable in respect of the total income of the wife should be divided in the proportion which the amount of one of the above-mentioned parts of the wife's income bore to the amount of the other, & that the husband should pay super-tax in the proportion which the first-mentioned part bore to that secondly mentioned.—*FLEETWOOD-HESKETH v. FLEETWOOD-HESKETH*, [1929] 2 K. B. 55; 98 L. J. K. B. 417; 141 L. T. 317, C. A.

**369c. Payment of interest to debenture holders—Out of accumulated profits.**—Where a limited co. pays debenture interest, not out of the profits of the year in respect of which it is paid, but out of accumulated undivided profits which have been charged with tax in previous years, the co. is bound to deduct from the interest the amount of the tax & to account for it to the Crown.—*LURPAARD'S VLEI ESTATE & GOLD MINING CO., LTD. v. INLAND REVENUE COMRS.* (1929), 46 T. L. R. 42.

**375. Add. Annotation:—***Consd. Martin v. Lowry, Martin v. I. R. Comrs.*, [1926] 1 K. B. 550.

**378. Add. Annotation:—***Refd. Re Jauncey, Bird v. Arnold*, [1926] Ch. 471.

**392. Add. Annotations:—***Consd. Sterling Trust v. I. R. Comrs., I. R. Comrs. v. Sterling Trust* (1925), 12 Tax Cas. 868. *Distd. Dickson v. Hampstead B. C.* (1927), 91 J. P. 146. *Apld. A.-G. v. Metropolitan Water Board*, [1928] 1 K. B. 833. *Consd. Birmingham Corp'n. v. I. R. Comrs.*, [1929] 2 K. B. 187; *I. R. Comrs. v. Dalgety & Co.* (1929), 98 L. J. K. B. 542; *Shanks v. I. R. Comrs.*, [1929] 1 K. B. 342; *Salisbury House Estate v. Fry* (1929), 98 L. J. K. B. 722. *Refd. Birt, Potter & Hughes v. I. R. Comrs.* (1927), 12 Tax Cas. 976; *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, Gascoigne v. I. R. Comrs.*, [1927] 1 K. B. 594.

**393. Add. Annotations:—***Apld. Dickson v. Hampstead B. C.* (1927), 91 J. P. 146. *Consd. Birmingham Corp'n. v. I. R. Comrs.*, [1929] 2 K. B. 187. *Refd. I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, Gascoigne v. I. R. Comrs.* (1927), 136 L. T. 699; *A.-G. v. Metropolitan Water Board*, [1928] 1 K. B. 833.

**393a. —**—[Under Housing of the Working Classes Acts & Metropolitan Management Act, 1855 (c. 120), resps., a metropolitan borough council, assigned to the London County Council all rates authorised to be raised by resps. under Metropolitan Management Act, 1855, or London Govt. Act, 1899 (c. 14), to secure money advanced by the London County Council. The money so raised was used by resps. in connection with the construction of flats for the working classes in pursuance of a scheme prepared by them under Housing, Town Planning, etc., Act, 1919 (c. 35), s. 1. In making payments of interest on the sums advanced resps. deducted income tax under Rules applicable to all

Schedules, r. 21. The interest was paid out of the general fund in the hands of resps., into which fund were paid all profits or gains, whether derived from a housing scheme or from elsewhere. Resps. had only one banking account, out of which all payments, including the interest, were made & into which all receipts, including the profits & gains derived from resps.' electricity undertaking, or otherwise, were paid. No special fund in respect of any housing scheme was maintained. Resps. possessed profits or gains brought into charge to income tax sufficient for the payment of interest on the sums advanced, apart from any revenue derived under any housing scheme:—*Held*: as none of resps.' profits & gains other than the receipts of the housing scheme contributed to the payment of the interest, & as resps. had an indemnity against loss on the scheme, resps. were liable to account for the amount of the deductions.—*DICKSON v. HAMPSTEAD BOROUGH COUNCIL*. (1927), 91 J. P. 146; 43 T. L. R. 595; 25 L. G. R. 402; 11 Tax Cas. 691.

*Annotation:—**Apprvd. Birmingham Corp'n. v. I. R. Comrs.*, [1929] 2 K. B. 187.

**393b. —**—[The Birmingham Corp'n. undertook a Housing Scheme, under the provisions of the Town Planning Act, 1919 (c. 35), & under the provisions of sect. 7, the Local Govt. Board undertook to, & did, refund to them, by means of an Exchequer subsidy, the loss thereby incurred. In order to finance the scheme, the corp'n. issued housing bonds, & when paying interest upon them they deducted income tax. They alleged that that interest was paid out of their general borough fund, which was used in financing their markets, gas, electricity, tramways & other undertakings, & that as the income in respect of that fund & those undertakings had already been brought into charge for income tax purposes, they were entitled to retain the amounts deducted:—*Held*: as the corp'n. had an indemnity against loss on the housing scheme the interest so paid could not be regarded as a general payment out of profits brought into charge, & the corp'n. must account to the Revenue for the tax so deducted under rule 21 of the rules applicable to all Scheds.—*BIRMINGHAM CORPN. v. INLAND REVENUE COMRS.*, [1929] 2 K. B. 187; 98 L. J. K. B. 498; 141 L. T. 339; 93 J. P. 216; 45 T. L. R. 463; 27 L. G. R. 551, C. A.

**394. Add. Annotations:—***Apld. Birmingham Corp'n. v. I. R. Comrs.*, [1929] 2 K. B. 187. *Refd. Sterling Trust v. I. R. Comrs., I. R. Comrs. v. Sterling Trust* (1925), 12 Tax Cas. 868.

**394a. —**—[The profits of the Metropolitan Water Board were assessable under 1918 Act, Schedule A., No. III., r. 3, by reference to the profits of the year preceding the year of assessment. The accounts of the Board for the year ending Mar. 31, 1922, showed a loss, & no assessment was made for the year ending Apr. 5, 1923. The accounts for the year ending Mar. 31, 1923, showed a profit of over two millions, out of which the Board paid over one million interest on water stock, & debentures, deducting & retaining the income tax thereon. On an information claiming that the Board was liable to account for the amount of the tax so deducted, the

Board contended that the interest paid for the year 1922-23 was payable out of profits brought into charge for 1922-23 within Rules applicable to all Schedules, r. 19, & was in fact paid out of the profits for 1922-23, & that, although the income tax for 1922-23 was to be measured by the profits of the preceding year, the profits for 1922-23 had been brought into charge, & rule 21 did not apply:—*Held*: as the Board had been assessed at zero under Schedule A for 1922-23, the interest had not been paid out of profits brought into charge, & the Crown was entitled to succeed.—*A.-G. v. METROPOLITAN WATER BOARD*, [1928] 1 K. B. 833; 97 L. J. K. B. 214; 138 L. T. 346; 44 T. L. R. 135; 72 Sol. Jo. 30; 13 Tax Cas. 294, C. A.

*Annotation*:—*Distd. Salisbury House Estate v. Fry* (1929), 98 L. J. K. B. 722.

**397. Add. Annotations**:—*Consd. Sterling Trust v. I. R. Comrs., I. R. Comrs. v. Sterling Trust* (1925), 12 Tax Cas. 868. *Apld. Dickson v. Hampstead B. C.* (1927), 91 J. P. 146. *Consd. A.-G. v. Metropolitan Water Board*, [1928] 1 K. B. 833; *Birmingham Corpn. v. I. R. Comrs.*, [1929] 2 K. B. 187. *Refd. I. R. Comrs. v. Dalgety & Co.* (1929), 98 L. J. K. B. 542.

**416a. — Debentures.**—A co. issued debentures, stating in the prospectus that the interest thereon would be payable "free of English income tax." The debentures themselves, & the trust deeds by which they were secured, provided for payment of interest at 5½ per cent. *per annum* "free of English income tax," & the co. undertook, in addition to the interest, to pay or indemnify the owner of each coupon against the English income tax on the interest to which the coupon related:—*Held*: the contract was void, as regards the stipulation for payment of interest free of income tax.—*SOUTH AMERICAN STORES (GATH & CHAVES), LTD. v. INLAND REVENUE COMRS.* (1926), 12 Tax Cas. 905.

**425. Add. Annotations**:—*Consd. I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882. *Refd. Baker v. Archer-Shee*, [1927] A. C. 844.

**427. Add. Annotation**:—*N.F. Manton's Trustees v. Steele, Steele v. Manton's Trustees* (1927), 11 Tax Cas 549.

**428a. — Securities in control of foreign custodian of enemy property**—*Payment of dividends by Anglo-German Mixed Arbitral Tribunal—When interest accrues.*—Before the war one K., who was a naturalised British subject ordinarily resident in the United Kingdom, deposited certain securities, stocks, & shares with a bank in Germany for safe custody, & the bank collected the interest & dividends & put them to the credit of K.'s account. From the outbreak of war in 1914 K. ceased to operate the account & he died in 1916. The bank, however, continued to credit the account with the interest & dividends until 1917, when the German Govt. appointed a custodian to take over & administer enemies' property in Germany, & the bank then paid the interest & dividends to the custodian. K.'s last surviving exor. died in 1921, & resps.,

the exors. of such survivor, recovered the interest & dividends, together with interest thereon, through the Anglo-German Mixed Arbitral Tribunal. Resps. were assessed to income tax in respect of these sums for the years 1922-23 to 1926-27 under Cases IV. & V. of Sched. D. on the ground that they were income arising to resps. in those years as they accrued only when received under the decree of the Tribunal:—*Held*: the dividends & interest accrued in the years when they were paid into the bank, & it was now too late to make assessments in respect of the years before K.'s death, & as to the years after his death assessments could be made only so far as the assessments were in time, & the further sum paid as interest thereon under the decree of the Tribunal was not income but was compensation comparable to damages for detention of a chattel & therefore was not assessable to income tax.—*SIMPSON v. MAURICE'S EXORS.* (1929), 45 T. L. R. 581, C. A.

**428b. — — — & interest thereon—Whether interest income.**—*SIMPSON v. MAURICE'S EXORS.*, No. 428a, *ante*.

**430. Add. Annotations**:—*Apld. Manton's Trustees v. Steele, Steele v. Manton's Trustees* (1927), 11 Tax Cas. 549; *Fry v. Burma Corpn.* (1929), 98 L. J. K. B. 693. *Refd. I. R. Comrs. v. Blackwell* (1925), 134 L. T. 372; *Baker v. Archer-Shee*, [1927] A. C. 844; *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

**430a. — Foreign agreement for repayment by foreign company of loan with interest—Not a security.**—*MANTON'S (LORD) TRUSTEES v. STEELE, STEELE v. MANTON'S (LORD) TRUSTEES* (1927), 11 Tax Cas. 549, C. A.

**430b. — Company making investments on real estate abroad.**—A co. incorporated in the United Kingdom, & carrying on business there at its head office in the making of loans of money upon the security of land in Egypt, was assessed to income tax until Apr. 1, 1922, under Schedule D., Case I., upon the profits of the co.'s business. As from Apr. 1, 1922, the entire control of the business was removed to Egypt. The trade of the co. wholly consisted of the lending of money to approved borrowers in Egypt in accordance with Egyptian law, at rates of interest varying from 6 to 8½ per cent. No loans were entertained without good real security being given, & in the event of the borrower's default, proceedings were invariably taken in the local cts. to realise the security, & if it could not be sold immediately, the co. would go into possession:—*Held*: as from Apr. 1, 1922, the co., though it carried on a trade or business, was properly assessed to income tax under Schedule D., Case IV., in respect of income arising from securities in a place out of the United Kingdom, & was to be taxed in the full amount of such income, whether it was remitted to the United Kingdom or not. There was no evidence upon which the comrs. could find, as they had, that the taking of securities for the loans advanced was only

#### PART V. SECT. 6.

**q. i. — — — Remittance under foreign decree of divorce.**—*Held*:

annual remittances received by a woman in Scotland from her divorced husband in Sweden, under a Swedish decree of divorce, fell to be taxed under Case V. in respect that "possessions"

included not only corporeal possessions but also incorporeal possessions.—*INLAND REVENUE COMRS. v. ANDERSTROM*, [1925] S. C. 224; 13 Tax Cas. 482.—*SCOT*.

"an incident" in such business; on the contrary it was an indispensable condition of the business. The case being one coming both under Case IV. & Case V. the Crown had an option to tax the co. under either case.—**BUTLER v. MORTGAGE CO. OF EGYPT, LTD.** (1928), 189 L. T. 29; 13 Tax Cas. 803, C. A.

431. *Add. Annotation*:—**Refd.** Ormond Investment Co. v. Betts, [1928] A. C. 143.

433. *Add. Annotations*:—*As to* (1) **Consd.** Fry v. Burma Corpn. (1929), 98 L. J. K. B. 693; 1 R. Comrs. v. Dalgety & Co. (1929), 98 L. J. K. B. 542. **Refd.** Whitney v. I. R. Comrs., [1926] A. C. 37; Archer-Shee v. Baker (1927), 11 Tax Cas. 749; I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford (1927), 96 L. J. K. B. 882; Proctor v. Ryall, Ryall v. Proctor (1928), 14 Tax Cas. 204. *As to* (2) **Expld.** Fry v. Burma Corpn. (1929), 98 L. J. K. B. 693. *Generally, Refd.* Leeming v. Jones (1929), 141 L. T. 472. *Generally, Mentd.* Gregg v. Richards, [1926] Ch. 521.

437. *Add. Annotation*:—*As to* (1) **Refd.** Ormond Investment Co. v. Betts, [1927] 2 K. B. 326.

441. *Add. Annotations*:—**Appld.** Sutton v. I. R. Comrs. (1929), 45 T. L. R. 326. **Refd.** Tollemache v. I. R. Comrs. (1926), 96 L. J. K. B. 766; I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford (1927), 96 L. J. K. B. 882.

442. For the existing paragraph substitute the following paragraph:—

—[Testator, a citizen of the United States left the residue of his property in trust for his daughter during her life. The trustees, who had full power over the investment of the trust fund, were a co. constituted under the law of the State of New York & resident therein. The trust fund consisted of foreign govt. securities, foreign stocks & shares, & other foreign property. The trustees paid over such of the sums they received as they considered to be income, after deducting expenses, to the order of the daughter at a bank in New York. No part of the income was remitted to the United Kingdom. Resp., the husband of testator's daughter & resident in the United Kingdom, was assessed under Schedule D., Case IV., in the full amount of the income of the trust:—**Held**: (1) the daughter was specifically entitled under the will in equity during her life to the interest & dividends of the securities, stocks, & shares comprised in the trust fund, & her husband was assessable under Case IV., r. 1, & Case V., r. 1, to income tax in respect thereof, except such, if any, as were shown to be "foreign possessions other than stocks, shares & rents," whether such interest & dividends were remitted to the United Kingdom or not; (2) the matter should be remitted to the comrs. to state which of the items of

the trust fund were (a) "securities" within Case IV., r. 1, (b) "stocks, shares or rents" within Case V., r. 1, & (c) "possessions out of the United Kingdom other than stocks, shares or rents" within Case V., r. 2.—**BAKER v. ARCHER-SHEE**, [1927] A. C. 844; 96 L. J. K. B. 803; 137 L. T. 762; 43 T. L. R. 758; 71 Sol Jo. 727, H. L.; *reversg.* S. C. *sub nom.* SHEE v. BAKER, [1927] 1 K. B. 109; *sub nom.* ARCHER-SHEE v. BAKER, 11

*Annotation*:—**Refd.** Walker v. Howard (1927), 138 L. T. 367.

444a. ——— Includes interest paid under foreign agreement for repayment by foreign company of loan with interest.]—**MANTON'S (LORD) TRUSTEES v. STEELE, STEELE v. MANTON'S (LORD) TRUSTEES** (1927), 11 Tax Cas. 549, C. A.

445. *Add. Annotations*:—**Distd.** Fry v. Burma Corpn. (1929), 98 L. J. K. B. 693. **Consd.** Leitch v. Emmott, [1929] 2 K. B. 230. **Refd.** Egyptian Delta Land & Investment Co. v. Todd, [1929] A. C. 1. **Mentd.** Baetz v. Public Trustee, [1926] Ch. 863.

446a. ——— Advance on account of salary paid into banking account in United Kingdom.]—**FLEMING v. WILKINSON**, No. 131a, *ante*.

450. *Add. Citations*:—95 L. J. K. B. 394; 10 Tax Cas. 263, H. L.

*Add. Annotations*:—**Appld.** Grainger v. Maxwell, [1926] 1 K. B. 430. **Refd.** I. R. Comrs. v. Drysdale Trustees (1928), 13 Tax Cas. 565.

450. After this case add  
———.]—*See, now*, Finance Act, 1926 (c. 22), s. 22.

450a. ——— Income received during less period than three years.]—An investment co. received during the first year of its existence a dividend from foreign shares & had no other income from foreign possessions. In assessing the co. to income tax under Case V.:—**Held**: (1) Rules applicable to Cases I. & II., r. 1 (2), had no application to the receipt of dividends on foreign securities, & the only relevant rule was the rule applicable to Case I.; (2) Finance Act, 1924 (c. 21), s. 26, which was founded upon an erroneous assumption as to the effect of Case V., r. 1, could not be referred to for the purpose of interpreting that provision; (3) the assessment for the first year should be nil, & for the second year one-third of the amount of the dividend.—**ORMOND INVESTMENT CO. v. BETTS**, [1928] A. C. 143; 97 L. J. K. B. 342; 138 L. T. 600; 13 Tax Cas. 400, H. L.

*Annotation*:—*Generally, Consd.* Fry v. Burma Corpn. (1929), 98 L. J. K. B. 693.

452a. ———.]—**LEEMING v. JONES**, No. 114b, *ante*.

453. *Add. Annotations*:—**Folld.** Lyons v. Cowcher (1926), 10 Tax Cas. 438. **Apprvd.** Martin v.

450 i. *Assessment*—No income received during year of assessment.—From one foreign possession.—Each foreign possession to be treated separately.]—Resps. were interested as sleeping partners in a firm, & as shareholders in a limited co., both of which carried on business & were controlled in Australia. The company regularly paid dividends, & resps. were assessed for the year 1923-24 under rule 1 of Case V. on the average of the

amounts so arising in the three preceding years. Remittances were received from the firm in each of the three years 1920-21, 1921-22 & 1922-23, & the average amount of these remittances formed the basis of an additional assessment on resps. for the following year, 1923-24, under rule 2 of Case V. In 1923-24, however, no remittance was received from the firm, & resps. contended that there was therefore no

income from that source to be assessed:—**Held**: each foreign possession must be treated separately in determining whether or not liability existed for any year, & if in any year no income arose from a particular possession, no liability could exist for that year in respect of that possession.—**INLAND REVENUE COMRS. v. DRYSDALE'S TRUSTEES** (1928), 13 Tax Cas. 565.—**SCOT**.



Lowry, Martin v. I. R. Comrs. (1926), 43 T. L. R. 116; Leeming v. Jones (1929), 141 L. T. 472.

457a. ——— Director's commission on underwriting shares.]—Applt., a co. director, received commission from a syndicate for underwriting shares in a new co., & he was assessed to income tax under Schedule D. for the year 1919-20 in respect of the commission. He was not concerned in any other underwriting transaction in 1919, 1920 & 1921:—*Held*: the commission was an annual profit or gain within Schedule D., Case VI., & applt. had been properly assessed to income tax in respect of such commission.—LYONS v. COWCHER (1926), 10 Tax Cas. 438.

459a. ——— Assignment of option.]—LEEMING v. JONES, No. 114b, ante.

460a. ——— Purchase & sale of properties by builder.]—Applt. was a builders' foreman until Feb. 1923, & subsequently a director of a co. carrying on the business of a builder & contractor. During the years 1920 to 1924 he bought on his own account some seven properties, of which he sold four during the period, & still owned the remainder in 1926:—*Held*: the profits, if any, were not assessable under Case VI. of Schedule D., & the case should be remitted to the Special Comrs. to consider whether the transactions in question constituted a trade assessable under Case I.—PEARNE v. MILLER (1927), 11 Tax Cas. 610.

Annotation:—*Apprvd.* Leeming v. Jones (1929), 141 L. T. 472.

462. Add. Annotations:—*Expld.* Salisbury House Estate v. Fry (1929), 98 L. J. K. B. 722. *Consd.* Leeming v. Jones (1929), 141 L. T. 472. *Refd.* Brighton College v. Marriott, [1926] A. C. 192; Huxham v. Johnson (1926), 136 L. T. 410; Martin v. Lowry, Martin v. I. R. Comrs., [1926] 1 K. B. 550.

471. Add. Citation:—10 Tax Cas. 73.

Add. Annotation:—*Refd.* I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.

472a. ——— Relief of members of medical association & dependants in necessitous circumstances.]—Two societies whose funds were applied entirely to making grants for the relief of subscribing members or their dependants in necessitous circumstances:—

#### PART V. SECT. 9.

470 i. Exemption of charities—Charitable purposes.]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone, & is a trust for "charitable purposes only" within 1918 Act.—JACKSON'S TRUSTEES v. INLAND REVENUE, [1926] S. C. 579; 10 Tax Cas. 460.—SCOT.

470 ii. ——— Stimulating interest in music.]—INLAND REVENUE COMRS. v. GLASGOW MUSICAL FESTIVAL ASSOCN., [1926] S. C. 920; 11 Tax Cas. 154.—SCOT.

470 iii. ——— Supplying nurses.]—An assocn. was formed for the purpose of improving & extending nursing facilities in a county. The members were divided into three classes according to income, the largest class consisting of persons in comparatively poor circumstances. An annual membership fee was charged, varying, according to the class, from 2s. 6d. to 10s. 6d. per annum. The fees charged for the services of a nurse, or

for admission to the assocn.'s hospital, varied from sums which, in the case of the poorest class, were considerably below the cost of the services rendered, to sums which, in the case of the wealthiest class, were reasonably equivalent to such cost. Nursing facilities, when not required for members, were granted to non-members at increased rates. Funds were held by the assocn. which had been raised by public subscription, & the hospital had been acquired with funds similarly raised. In respect of special charitable donations, necessitous cases from certain parishes received the services of a nurse gratuitously:—*Held*: the assocn. was established for "charitable purposes only."—INLAND REVENUE COMRS. v. PEEBLES SHIRE NURSING ASSOCN., [1927] S. C. 215; 11 Tax Cas. 335.—SCOT.

470 iv. ——— Promotion of temperance.]—Testator expressed his desire that the leading of a sober life might be made more easy for the inhabitants of F., & with that object conveyed half of the residue of his estate to trustees

*Held*: charities, & entitled to exemption from income tax.—INLAND REVENUE COMRS. v. SOCIETY FOR RELIEF OF WIDOWS & ORPHANS OF MEDICAL MEN, INLAND REVENUE COMRS. v. MEDICAL CHARITABLE SOCIETY FOR WEST RIDING OF YORKSHIRE (1926), 136 L. T. 60; 42 T. L. R. 612; 70 Sol. Jo. 837; 11 Tax Cas. 1.

472b. ——— Temperance reform.]—A society whose main object was "united action to secure legislative & other temperance reform":—*Held*: not a body of persons established for charitable purposes only, & its income, inasmuch as it was not applied to charitable purposes only, was not entitled to exemption from income tax.—INLAND REVENUE COMRS. v. TEMPERANCE COUNCIL OF CHRISTIAN CHURCHES OF ENGLAND & WALES (1926), 136 L. T. 27; 42 T. L. R. 618; 10 Tax Cas. 748.

472c. ——— Seaside boarding-house with reduced charges.]—By a declaration of trust "a home or place of residence" was founded & endowed, "where persons requiring temporary rest & change of air for the benefit of their health may obtain same." About half the income of the home came from payments by visitors, who included convalescents, persons needing rest & change, & holiday applicants:—*Held*: since on the construction of the trust deed there was throughout an overriding charity which fulfilled the character of a charitable convalescent home, the trustees were entitled to exemption from income tax on the ground that the trust was established for charitable purposes only.—INLAND REVENUE COMRS. v. ROBERTS MARINE MANSIONS TRUSTEES (1926), 43 T. L. R. 270; 11 Tax Cas. 425, C. A.

472d. ——— Agricultural society.]—An agricultural society, founded mainly for the purpose of holding an annual agricultural show, had also among their objects the improvement of live stock & poultry & of machinery & appliances used in agriculture, & agricultural education & scientific research, & they claimed exemption from income tax upon the dividends from their investments, on the ground that they were a society established for charitable purposes only:—*Held*: there was evidence on which the Special Comrs. could find that the society

for the purpose of providing F. with a temperance public-house. His trustees spent part of the funds in establishing a temperance hotel, containing a middle-class cafe & a cheap working-class cafe, free reading & recreation rooms, & bedrooms, & a lecture-hall, which could be hired at moderate figures. Their policy was to make the hotel pay its way without earning profits, & the balance of the trust funds was invested & the interest was used to make good an annual deficit on the working of the hotel:—*Held*: the interest formed part of the income of a trust established for "charitable purposes only," & was "applied to charitable purposes only."—INLAND REVENUE COMRS. v. FALKIRK TEMPERANCE CAFE TRUST, [1927] S. C. 261; 11 Tax Cas. 353.—SCOT.

470 v. ——— Improvement of spiritual, intellectual, social & physical condition of young men.]—YOUNG MEN'S CHRISTIAN ASSOCN. OF MELBOURNE v. FEDERAL COMR. OF TAXATION (1926), 37 C. L. R. 351; [1926] Argus L. R. 97.—AUS.



was established for charitable purposes only.—**INLAND REVENUE COMRS. v. YORKSHIRE AGRICULTURAL SOCIETY**, [1928] 1 K. B. 611; 97 L. J. K. B. 100; 138 L. T. 192; 41 T. L. R. 59; 72 Sol. Jo. 68; 13 Tax Cas. 58, C. A.

*Annotations*.—**Appld.** *Geologists' Asscn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271. **Refd.** *Midland Counties Institution of Engineers v. I. R. Comrs.* (1928), 14 Tax Cas. 285. **Mentd.** *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.

**472e.** ——— **General Medical Council.**—*Held*: not a body established for charitable purposes only, & not entitled to exemption from income tax on the income from its funds.—**GENERAL MEDICAL COUNCIL v. INLAND REVENUE COMRS.**, **ENGLISH BRANCH COUNCIL OF GENERAL MEDICAL COUNCIL v. INLAND REVENUE COMRS.** (1928), 97 L. J. K. B. 578; 139 L. T. 225; 44 T. L. R. 139; 13 Tax Cas. 819, C. A.

**472f.** ——— **Simplified Spelling Society.**—The Simplified Spelling Society is not a body established for "charitable" purposes, & is therefore not entitled to exemption from income tax under 1918 Act, s. 37 (1).—**SIR G. B. HUNTER (1922) "C" TRUST, TRUSTEES v. INLAND REVENUE COMRS.** (1929), 45 T. L. R. 314; 73 Sol. Jo. 281.

**473.** *Add. Annotations*.—**Consd.** *Salisbury House Estate v. Fry* (1929), 98 L. J. K. B. 722. **Refd.** *Brighton College v. Marriott*, [1926] A. C. 192.

**Temperance reform.**—**INLAND REVENUE COMRS. v. TEMPERANCE COUNCIL OF CHRISTIAN CHURCHES OF ENGLAND & WALES**, No. 472b, *ante*.

**476b.** ——— **Geologists' Association.**—The Special Comrs. found that the main function of the Geologists' Asscn. was the combination of members for scientific purposes & mutual improvement, that all the benefits of the Asscn. were enjoyed primarily by the members, & that although their studies tended indirectly to the promotion of education generally, the Asscn. was not a body persons established for charitable purposes only, & was therefore not entitled to exemption:—*Held*: the question was one of fact, & that there were no grounds on which the Comrs.' decision could be disturbed.—**GEOLOGISTS' ASSOCIATION v. INLAND REVENUE COMRS.** (1928), 14 Tax Cas. 271, C. A.

*Annotation*.—**Appld.** *Midland Counties Institution of Engineers v. I. R. Comrs.* (1928), 14 Tax Cas. 285.

**476c.** ——— **Institution of Mining Engineers.**—The Special Comrs. found that the Institution of Mining Engineers was an association of persons for their mutual improvement in technical & professional knowledge, the acquisition of which, although beneficial to the public at large, through the better management of coal mines, was of direct

advantage to the members in the practice of their profession. They decided therefore that the Institution was not a body of persons established for charitable purposes only & was not entitled to exemption from income tax:—*Held*: the question was one of fact, & the Comrs. had evidence before them to support their conclusion.—**MIDLAND COUNTIES INSTITUTION OF ENGINEERS v. INLAND REVENUE COMRS.** (1928), 14 Tax Cas. 285, C. A.

*Add. Annotation*.—**Refd.** *I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.

**480.** *Add. Annotation*.—**Refd.** *A.-G. v. Metropolitan Water Board*, [1928] 1 K. B. 600.

**483.** *Add. Annotations*.—**Appld.** *Marie Celeste Samaritan Soc. of London Hospital v. I. R. Comrs.* (1926), 43 T. L. R. 23. **Consd.** *Daw v. I. R. Comrs.*, *Duff-Dunbar v. I. R. Comrs.* (1928), 14 Tax Cas. 58.

**483a.** ——— ]—Testator devised his residuary estate on trust for applts., who were a society established for charitable purposes only & were entitled to exemption from income tax on their income from investments. Pending completion of the administration the exors. paid to the trustees for applt. society certain sums on account of income. Applts. claimed repayment of income tax, but the Inland Revenue Comrs. refused repayment so far as related to income received by the exors. before the date when the residue was ascertained: *Held*: as the income when it was received was the income only of the exors. & the money paid to the charity was only a sum equal to the income payable to the charity as a matter of equitable book-keeping in due course of administration, applts. were not entitled to the repayment claimed. **MARIE CELESTE SAMARITAN SOCIETY OF LONDON HOSPITAL v. INLAND REVENUE COMRS.** (1926), 43 T. L. R. 23; 11 Tax Cas. 226.

**483b. Exemption of industrial societies—1918 Act, s. 39—Number of shares unlimited.**—**Resp. Society**, which was registered under Industrial Provident Societies Act, 1893 (c. 39), claimed exemption under Sched. D. on the ground that the number of its shares was not limited by its rules or practice. The Society was formed to carry on the business of (*inter alia*) manufacturers & dealers in butter, cheese, milk & other dairy products. Admission to membership was at the discretion of the committee & subject to taking up a qualifying number of shares; further every member was bound by the Society's rules to sell to the Society any milk produced on any lands farmed by him if required to do so. The number of shares held by any individual member was limited to 200. The majority of the members were dairy

**473 i.** ——— "*Applied to charitable purposes only*".—**Promotion of temperance.**—**INLAND REVENUE COMRS. v. FALKIRK TEMPERANCE CAFE TRUST**, No. 470 iv, *ante*.—**SCOT.**

**473 ii.** ——— "*Stimulating interest in music.*"—**INLAND REVENUE COMRS. v. GLASGOW MUSICAL FESTIVAL ASSCN.**, [1926] S. C. 920; 11 Tax Cas. 154.—**SCOT.**

**st. Exemption of person not ordinarily resident in United Kingdom—Holder of**

*securities issued free of tax.*—*Held*: the whole circumstances must be considered, & the Special Comrs. were entitled to find that applt. was ordinarily resident in the United Kingdom.—**Refd.** *I. R. Comrs.*, [1926] S. C. 589.—**SCOT.**

**sv.** ——— ]—*Held*: the Special Comrs. were entitled, on the facts stated, to find that applt. was ordinarily resident in the United Kingdom.—**PEEL v. INLAND REVENUE COMRS.**, [1928] S. C. 205; 13 Tax Cas. 413.—**SCOT.**

**sw.** *Whether preferred shares "borrowed capital" within Income War Tax Act, 1917, s. 3 (II.).*—**DUPUIS FRERES, LTD. v. CUSTOMS & EXCISE MINISTER**, [1927] Exch. C. 12, 207.—**CAN.**

**sx.** *Under statutory agreement with Government—Construction of agreement.*—**NOVA SCOTIA STEEL & COAL CO., LTD. v. FINANCE & CUSTOMS MINISTER**, [1922] 2 A. C. 176, P. C.—**CAN.**

farmers, & milk dealers & consumers were not in practice admitted to membership. Approximately 98 per cent. of the Society's sales were made to non-members. The Crown contended that practically the whole of the Society's sales were to non-members, & that the restriction of membership in general to persons willing to supply milk to the Society & the exclusion of milk dealers

constituted an effective limitation of shares. The General Comrs. found in favour of the Society:—*Held*: the number of the Society's shares was not limited within 1918 Act, s. 39 (4), either by its rules or practice, & it was entitled to the exemption.—*BENSTED v. MIDLAND DAIRY FARMERS, LTD. SOC.* (1928), 14 Tax Cas. 87.

## Part VI.—Schedule E.

**484. Add. Citations:**—*revsd.*, [1927] A. C. 417; 96 L. J. K. B. 523; 136 L. T. 770; 91 J. P. 75; 43 T. L. R. 279; 71 Sol. Jo. 191; 25 L. G. R. 123; 11 Tax Cas. 446, H. L.

**486. Add. Annotations:**—*Consd.* *Watson v. Rowles* (1926), 95 L. J. K. B. 959. *Refd.* *Ingle v. Farrand*, [1927] A. C. 417; *Scymour v. Reed*, [1927] A. C. 554; *Lysaght v. I. R. Comrs.*, [1928] A. C. 234; *Rees Roturbo Development Syndicate v. I. R. Comrs.*, *Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366; *Morley v. Lawford & Co.* (1928), 140 L. T. 125.

**489a. — Foreign director of British company.**—*Applt.* in the first case was appointed foreign director of a British co. for fourteen years from 1918. The co. had subsidiary cos. on the Continent, the principal one being a French co. of which *applt.* was managing director. He was also a director of a German co., & had control over selling organisations in other European countries. He was thus responsible for the whole of the British co.'s Continental business, & his only remuneration was a fixed salary payable by the British co. plus commission on the co.'s profits from trading on the Continent. Since 1918 *applt.* had lived in Paris with his family. He came to London once a month to attend the co.'s directors' meetings, his function being to report & advise the directors on questions affecting the Continental business. It was no part of his duty to attend to the general business of the co. *Applt.* was assessed in respect of salary & commission for each year from 1920–21 to 1926–27 by the General Comrs. for the division in which the co.'s registered office was situated:—*Held*: (1) his office was an office within the United Kingdom; (2) the General Comrs. had jurisdiction to assess for 1920–21 & 1921–22 as well as for later years.—*PROCTOR v. RYALL, RYALL v. PROCTOR* (1928), 14 Tax Cas. 204.

**490. Add. Annotations:**—*Refd.* *Seymour v. Reed*, [1927] A. C. 554; *Benyon v. Thorpe* (1928), 97 L. J. K. B. 705.

**492. Add. Annotation:**—*Appld.* *Scymour v. Reed*, [1927] A. C. 554.

**493. Add. Annotation:**—*Distd.* *Reed v. Seymour* (1927), 11 Tax Cas. 625.

**494. Add. Annotation:**—*Consd.* *Reed v. Seymour* (1927), 11 Tax Cas. 625.

**495. Add. Annotations:**—*Consd.* *Seymour v. Reed*, [1927] A. C. 554. *Refd.* *Hartland v. Diggines*, [1926] A. C. 289.

**496a. — Gift to directors of company.**—*Held*: the payment, although called a gift, was extra remuneration paid to the directors, & was assessable to income tax.—*RADCLIFFE v. HOLT* (1927), 11 Tax Cas. 621.

**496b. — After retirement.**—It was the custom of a co. to grant an annual allowance to members of its staff by way of pension on retirement. *Resp.* had been managing director of the co., & after his retirement the directors made him a voluntary allowance annually. They subsequently stopped this annual allowance & paid *resp.* a lump sum as a gift in lieu thereof:—*Held*: the allowances could not be regarded as supplementary salary. They were not "a profit or gain arising from an employment," nor could they be considered as receipts in respect of an office, but were merely gifts, & *resp.* was not liable to income tax on the sums so received by him.—*BENYON v. THORPE* (1928) 97 L. J. K. B. 705; 44 T. L. R. 610; 72 Sol. Jo. 453; 14 Tax Cas. 1.

**497. Add. Annotation:**—*Distd.* *Jones v. Wright* (1927), 44 T. L. R. 128.

**499. Add. Citations:**—*affd.* (1926), 95 L. J. K. B. 959; 135 L. T. 614; 42 T. L. R. 691; 70 Sol. Jo. 796; 11 Tax Cas. 171, C. A.

**500. Add. Citation:**—10 Tax Cas. 609.

**501. For** " (1926), 161 L. T. Jo. 235 " read " No. 510, *post.* "

**501a. — Applied in payment for shares.**—*Applt.*, the chairman & managing director of a co. in which he held shares, agreed that he would take up additional shares in the co., in payment for which sums due by the co. to him by way of remuneration were to be applied:—*Held*: *applt.* was assessable to income tax under Schedule E. in respect of the remuneration, notwithstanding that it had been applied in payment for shares.—

**PART VI. SECT. 1, SUB-SECT. 1.**  
§ 1. — [Notwithstanding the provisions of sect. 100 of South Africa Act, which provides that the remuneration of judges of the Supreme Ct. appointed after Union shall not be diminished during their continuance in office, a judge of the Supreme Ct.

appointed after Union is not exempted from paying income tax under Act 40 of 1925 on the amount of his salary.—*KRAUSE v. INLAND REVENUE COMRS.*, [1929] App. D. 286.—S. AF.

**PART VI. SECT. 1, SUB-SECT. 2.**  
—*Agent of company sharing in*

*profits.*—*Held*: liable to income tax.—*SEARLEY & Co. v. BROWN*, [1927] 1 W. W. R. 185; 37 B. C. R. 514.—CAN.

1 ii. — *Pay of locomotive engineer according to miles run by locomotive.*—*Held*: not liable to taxation.—*RE ASSESSMENT ACT* (1902), 9 B. C. R. 209.—CAN.

- PARKER v. CHAPMAN (1928), 138 L. T. 729, 13 Tax Cas. 677, C. A.
502. *Add Citations*:—[1927] 1 K. B. 90; 95 L. J. K. B. 796, 135 L. T. 259; 42 T. L. R. 514; 70 Sol. Jo. 707; 11 Tax Cas. 625, C. A.; *reversd. sub nom.* SEYMOUR v. REED, [1927] A. C. 554; 96 L. J. K. B. 839; 137 L. T. 312; 43 T. L. R. 584; 71 Sol. Jo. 488, H. L. *Add. Annotation*:—*Consd.* Davis v. Harrison (1927), 11 Tax Cas. 707.
- 502a. — *Accrued benefit*—Professional footballer.]—Resp. was employed to play football for a club in return for payment, &, on his being transferred in accordance with the rules of the Football Assocn. to another club, he was given by the first-named club a sum as accrued benefit:—*Held*: the payment was neither a gift nor compensation for loss of employment, but was really remuneration for services, & was assessable to income tax.—DAVIS v. HARRISON (1927), 96 L. J. K. B. 848; 137 L. T. 324; 43 T. L. R. 623; 11 Tax Cas. 707.
504. *Add. Annotations*:—*Distd.* Dauncey v. Howlett (1926), 135 L. T. 279. *Consd.* Davies v. Harrison (1927), 96 L. J. K. B. 848. *Refd.* Borthwick v. Nolder (1927), 11 Tax Cas. 261.
- 504a. — *Additional remuneration of company director*.]—DAUNCEY v. HOWLETT, No. 510, *post*.
505. *Add. Annotation*:—*Refd.* Machon v. McLoughlin (1926), 11 Tax Cas. 83.
506. *Add. Citations*:—95 L. J. K. B. 392; 10 Tax Cas. 247.
507. *Add. Annotation*:—*Refd.* Machon v. McLoughlin (1926), 11 Tax Cas. 83.
- 507a. S. P. MACHON v. MCLOUGHLIN (1926), 11 Tax Cas. 83, C. A.
510. For the existing paragraph substitute the following paragraph:—  
— *Additional remuneration of company director*.]—Resp. as director of a co. was entitled as remuneration for his services to £3,000 *per annum* free of income tax. Towards the close of the year of assessment the co. in general meeting resolved that the directors be paid by way of additional remuneration for their services such a sum as after the provision of income tax would entitle them to receive the further sum of £25,000 free of tax:—*Held*: resp.'s share of such additional remuneration was not a perquisite, but was assessable by additional assessments under Income Tax Act, 1918 (c. 40), Schedule E., rr. 1 & 5.—DAUNCEY v. HOWLETT (1926), 135 L. T. 279; 10 Tax Cas. 454.
514. *Add. Annotation*:—*Refd.* Hartland v. Diggin, [1926] A. C. 289.
516. *Add. Annotation*:—*Expld.* Proctor v. Ryall, Ryall v. Proctor (1928), 14 Tax Cas. 204.
- 516a. — *Company director*—*Registered office*.]—PROCTOR v. RYALL, RYALL v. PROCTOR, No. 489a, *ante*.
519. *Add. Citation*:—10 Tax Cas. 118.
- 526a. — — — — —.]—MACHON v. MCLOUGHLIN, No. 507a, *ante*.
530. *Add. Annotations*:—*Refd.* Machon v. McLoughlin (1926), 11 Tax Cas. 83; Reed v. Seymour (1927), 11 Tax Cas. 625.

## Part VII.—General Allowances, Exemptions and Abatements.

- 539a. *Personal allowance*—In respect of wife—Whether earned income of wife included in husband's total income.]—THOMPSON v. BRUCE (1927), 11 Tax Cas. 607.
- 540a. — *Child receiving instruction at "educational establishment."*]—A teacher's house, where he gives to individual pupils private lessons & directions for home study & practice, is not an "educational establishment" where a pupil receives full-time instruction, so as to entitle the father to a deduction from income tax under 1920 Act, s. 21 (1).—HEASLIP v. HASEMER (1927), 138 L. T. 207; 44 T. L. R. 112; 72 Sol. Jo. 31; 13 Tax Cas. 212.
- 540b. *Earned income relief*—How calculated.]—Appl. was employed as assistant secretary to a limited co. whose superannuation fund had

### PART VI. SECT. 2.

508 i. *Basis of assessment*.]—Where resp. was employed as solr. to a board:—*Held*: he was chargeable to income tax for the year of assessment in respect of a sum for fees, notwithstanding that the bills of costs which included such sum were not taxed or paid within the year of assessment.—M'KEOWN v. ROR, [1928] L. R. 195.—IR.

### PART VII. SECT. 1.

536 ii. — *Whether gross or net income under will*.]—*Held*: applt.'s income under her father's will, for the purposes of a claim to repayment of income tax in respect of personal allowance, etc., was one-half only of the net income of the estate after the

deduction of all prior charges, including the expenses of management of the trust.—MURRAY v. INLAND REVENUE COMRS. (1926), 11 Tax Cas. 133.—SCOT.

536 iii. — — — — —.]—A beneficiary was entitled to income from (*inter alia*) two trusts, under one of which, after the expenses of the trust were paid, he was entitled to a life interest in the whole residue of the estate; & under the other, after the expenses of the trust were paid, to (1) an annual sum, & (2) subject to a trust for accumulation for a particular purpose, the annual income of the estate during his life. The beneficiary, being a British subject resident abroad, was entitled to certain relief from British income tax under Finance Act, 1920, s. 24 (1):

—*Held*: in computing the "amount of his total income from all sources" for the purpose of this relief, the beneficiary was not entitled to include, along with the actual sums received by him from the trusts, the management expenses of the trusts.—MACFARLANE v. INLAND REVENUE COMRS., [1929] S. C. (Ct. of Sess.) 453.—SCOT.

539 a i. *Personal allowance*—Whether bankrupt entitled—Property in hands of trustee.]—*Held*: during sequestration the income from the sequestrated estate, which was vested in the trustee, was the trustee's income & not the bkpt.'s, & that neither the trustee nor the bkpt. was entitled to claim the relief sought.—INLAND REVENUE COMRS. v. FLEMING (1928), 14 Tax Cas. 78.—SCOT.

been approved by the Comrs. of Inland Revenue under 1921 Act, s. 32, & his annual contribution to the fund was therefore deducted as an expense in arriving at the net amount of his salary assessable to income tax. In the assessment one-sixth of the net amount was allowed as earned income relief, but applt. contended that one-sixth of his gross salary, before deducting the superannuation contribution, should be so allowed:—*Held*: earned income relief must be calculated on the net amount of remuneration assessable after deducting allowable expenses.—*FRAME v. FARRAND* (1928), 13 Tax Cas. 861.

**545a. — Whether vested or contingent interest.]**

—Resp., who came of age in July, 1922, claimed relief under Income Tax Act, 1918 (c. 40), s. 25, in respect of the accumulated income of a fund given to his parents by a relation in 1902 with a letter, which, after referring to a gift for the benefit of resp.'s brother, continued: "I also hand you a stock receipt representing the investment of £500 in Consols which, with the accruing dividends thereon, will fall due to your youngest boy (resp.) as he attains the age of twenty-one years. You will observe that you & W. are practically trustees for carrying this out":—*Held*: resp. took a vested & not a contingent interest in the gift, & was not entitled to the relief conferred by the sect. in respect of the income of the fund which had been accumulated for his benefit.—*ROBERTS v. HANKS* (1926), 134 L. T. 754; 10 Tax Cas. 351.

**545b. —**—[The words "for the benefit of" in 1918 Act, s. 25, include a case where the accumulations of income are added to the capital of a trust fund in which the beneficiary has only a life interest, & where the accumulations never pass to the beneficiary. —*DALE v. MITCALFE*, [1928] 1 K. B. 383; 97 L. J. K. B. 161; 138 L. T. 167; 44 T. L. R. 21; 71 Sol. Jo. 981; 13 Tax Cas. 41, C. A.]

**545c. —**—[The words "specified age" in 1918 Act, s. 25, mean an age expressed by a definite number of years, & not an age which can be ascertained only by reference to some other occurrence as, for instance, the death of testatrix, who has directed that an accumulated fund shall be paid to a beneficiary twenty years after her death.—*WHITE v. WHITCHER*, [1928] 1 K. B. 453; 97 L. J. K. B. 321; 138 L. T. 205; 44 T. L. R. 113; 13 Tax Cas. 202.]

**545d. Lunacy percentage.]**—Under Lunacy Act, 1890 (c. 5), & the Rules in Lunacy, 1892, the Crown is in certain circumstances entitled to receive 4 per cent., but not exceeding £400, of the clear annual income of a lunatic. A., a lunatic, had a considerable income &

the whole of the funds were in ct. The income as it came in was credited to the lunatic's account by the Paymaster-General, & the appropriate lunacy percentage was debited annually in that account. Applt., the committee of A., was assessed under Case III. of Sched. D. for the year 1926–27 in the sum of £452, the amount of War Loan interest arising in 1925–26; the remainder of the lunatic's income was received under deduction of income tax. Applt. claimed that a deduction of £161, the lunacy percentage for 1925–26 on the whole of the lunatic's income, should be made from the assessment, on the grounds that the lunacy percentage did not form part of the lunatic's income that there was no authority for charging it to income tax. The Crown contended that there was no provision in the income tax Acts for allowing such a deduction, that the payment was merely an application of the lunatic's income, or alternatively that the deduction from the assessment should be restricted to the percentage appropriate to that source of income:—*Held*: lunacy percentage is a payment out of the lunatic's income, & that no deduction is admissible for income tax purposes.—*A. B.'S COMMITTEE v. SIMPSON* (1928), 14 Tax Cas. 29.

**546. Add. Annotation:—***Reid. Whitney v. I. R. Comrs.*, [1926] A. C. 37.

**548a. — Premium paid by insurer under reduction of premium system.]**—Resp.'s life was insured under a policy of whole-life insurance expressed to be at a yearly premium of £48 5s., which entitled him to participate in the insurance co.'s surplus funds by means of the "reduction of premium system." The insured had in each year the option of taking the reduction of premium for that year in cash or of converting it into the equivalent reversionary bonus. The co.'s premium notice showed £48 5s. as the premium payable on the policy & £33 15s. 6d. as bonus, leaving £14 9s. 6d. as the "amount to be paid." Resp. remitted £14 9s. 6d. to the co. but claimed that the amount of the premium paid by him in the year was £48 5s.:—*Held*: the reduction of premium had been provided by the policy, that the amount of the premium paid by resp. was £14 9s. 6d., & that he was entitled to relief from income tax on that amount only.—*WATKINS v. JONES* (1928), 14 Tax Cas. 94.

**549. Add. Annotation:—***Consd. Perrin v. Dickson* (1929), 98 L. J. K. B. 683.

**549a. — Policy on joint lives of two persons—Payment of premium shared equally.]**—A person who has entered into an insurance on the joint lives of himself & another person at a single premium which is shared equally

**545 i. Relief in respect of income accumulated under trust—For benefit of person "contingently on his attaining some specified age"—Double contingency.]**—Claims for repayment of tax refused, where the contingency upon which the fund was held for the benefit of claimants was not that prescribed by 1918 Act, s. 25, but was a double contingency, namely, survival of their mother & attainment of a specified age.—*INLAND REVENUE COMRS. v. BONE*, [1927] S. C. 698.—**SCOT.**

**6 1. —**—[*TILLARD v. COMR. OF TAXES*, [1928] N. Z. L. L.

**sm. Right to discount—Taxation Act, R. S. B. C.**, 1911 (c. 222), s. 10.]—*GRANBY CONSOLIDATED MINING, SMELTING & POWER CO., LTD. v. A.-G. FOR BRITISH COLUMBIA*, [1923] A. C. 247; 92 L. J. P. C. 74; 128 L. T. 677. **CAN.**—

**sd. Mining company—Reconstruction—Right of shareholders to deduction in respect of calls paid—Income Tax Assessment Act, 1915–1918, ss. 18 (1), 53.]**—*JAQUES v. FEDERAL COMR. OF TAXATION* (1924), 34 C. L. R. 328; 31 Argus L. L. 61.—**AUS.**

**st. Taxable income—"Accruing & arising"—Meaning of.]—***Held*: the words "accrue & arise" when applied to income are to be governed by the sources from which the income accrues & arises, not by the place where it is received or earned.—*INCOME TAX COMRS. v. ITHRA PHERASON SATARAK* (1928), 1 L. L. R. 6 Ran. 598.—**IND.**

**sg. Company—Sale of assets on winding up—Interest on deferred payments—Whether income.]—***NORTH PACIFIC LUMBER CO., LTD. v. MINISTER OF NATIONAL REVENUE*, [1928] Exch. C. R. 68.—**CAN.**

between them, has not "made an insurance on his life" within Income Tax Act, 1918 (c. 40), s. 32 (1), & is not entitled under that sect. to a deduction of the amount of the annual premium from his taxable profits. **WILSON v. SIMPSON**, [1926] 2 K. B. 500; 95 L. J. K. B. 885; 135 L. T. 766; 42 T. L. R. 690; 10 Tax Cas. 753.

**552. Add. Annotations:—As to (1) Consd. Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa**, [1926] Ch. 338. **As to (3) Refd. I. R. Comrs. v. Dalgety & Co.** (1929), 98 L. J. K. B. 512.

**553. Add. Annotations:—Consd. Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa**, [1926] Ch. 338. **Apld. I. R. Comrs. v. Dalgety & Co.** (1929), 98 L. J. K. B. 542.

**555. Add. Annotations:—Consd. Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa**, [1926] Ch. 338. **Apld. I. R. Comrs. v. Dalgety & Co.** (1929), 98 L. J. K. B. 542.

## Part VIII.—Miscellaneous Provisions Applicable to the Duties Generally.

**567.** For existing paragraph & citation read ———. ———. **TARN v. SCANLAN, NIELSEN, ANDERSON & Co. v. COLLINS, MILLER (W. II.) & Co. (LONDON) v. LETHBRIDGE, SAME v. INLAND REVENUE COMRS.**, No. 168a, *ante*.

**570a. — — — After death of husband.]—Held:** the first year after her husband's death a widow in receipt of income from War Stock not taxed at source was liable to income tax under Case III. of Sched. D. computed on

her income from the same source in the preceding year, notwithstanding that by proviso 1 to r. 16 of the Rules applicable to all Schedules that income was to be "deemed the profits of her husband." This proviso operated only to convert the wife's income into the husband's income for the purpose of collecting tax.—**LEITCH v. HAMMOTT**, [1929] 2 K. B. 236; 98 L. J. K. B. 673; 141 L. T. 311, C. A.

### PART VIII. SECT. 1, SUB-SECT. 1.

**k i. ———.]—In Oct. 1923, a trustee was assessed in respect of the income of an estate, which he was directed to receive & accumulate until 1933, & then to distribute among persons not ascertainable until the date fixed for distribution.—Held:** the assessment being made in 1923 for taxes payable in 1924, the validity of the assessment should be determined by reference to the Act in force at the date of the assessment.—**RE McLEOD & WINDSOR CORPN.**, [1925] 3 D. L. R. 89; 57 O. L. R. 15.—**CAN.**

**k ii. ———.]—Payments to foreign company for user of films. Company making payments as trustee.]—UNIVERSAL FILM MANUFACTURING CO. (AUSTRALASIA), LTD. v. THE STATE OF NEW SOUTH WALES** (1927), 40 C. L. R. 333.—**AUS.**

**k iii. ———.]—Entire control of business by foreign firm.]—FERGUSON v. DONOVAN**, [1929] 1 K. 489.—**IR.**

**k iv. ———.]—Testator left a life interest of £20,000 & of one-third of the residue of his estate to each of his wife & daughter, & £20,000 & one-third of the residue to his son absolutely. The beneficiaries were all *capaces* & resident in this country. Testator held £10,000 5 per cent. War Stock, the interest on which was payable without deduction of tax. The interest due on June 1, & paid to the trustees on that date, amounting to £1,000, was treated by them as capital, & estate**

duty was paid thereon. The trustee having been assessed to income tax on the £1,000 of interest, contended that trustees acting for benefit of a British resident who was *capax* were not assessable to income tax. The Comrs. decided that the trustees were assessable as regarded the two-thirds of the interest accruing to the portions destined to the testator's wife & daughter in life interest, but not as regarded the one-third payable by them to the son.—**Held:** the trustees were assessable to tax on the whole interest, under Rule 1 of the Miscellaneous Rules applicable to Sched. D.—**REID'S TRUSTEES v. INLAND REVENUE COMRS.**, [1929] S. C. (Cl. of Sess. 439.—**SCOT.**

**k v. Wife (Gift of income to Direction to maintain children. Whether liable as trustee.)—**Testator devised & bequeathed the whole of his property to his wife in trust for life; the wife during her life to receive the income thereof for the support, maintenance of herself & the children, & after her death the proceeds of the sale of such property to be equally divided between the children.—**Held:** the wife was entitled to receive the income of testator's estate subject to no liability to account for its application, provided she discharged the duty of supporting & maintaining the children; & therefore, she was not a "trustee" within Income Tax Assessment Acts, 1922–1925, s. 4. **MANNING v. FEDERAL COMR. OF TAXATION** (1928), 40 C. L. R. 506; [1928] Argus L. R. 165.—**AUS.**

### PART VIII. SECT. 1, SUB-SECT. 2.

**570 l. Liability of married woman to be charged—Married woman living United Kingdom separate from husband—Income from property out of United Kingdom.]—**The wife of a professor at Calro University received annually a share of income from Canadian property, which was held by a body of

accompanied him to England on furlough for three months every summer. During the furlough in 1922 the state of her health necessitated her removal to a nursing home, where she remained throughout the financial year 1923–24. The professor returned to Calro at the end of his leave in 1922, visiting this country again the following summer. For the year 1923–24 the trustees were assessed to income tax upon the wife's share of Canadian income.—**Held:** the income was liable to be charged to income tax upon the wife, & was not to be deemed to be the husband's profits. **DERRY v. INLAND REVENUE**, [1927] S. C. 711.—**SCOT.**

**571 i. Liability of husband to be charged—Whether married woman "living with her husband."]—**Circumstances in which:—**Held:** a wife was not "living with her husband" so as to make her profits assessable & chargeable in the husband's name.—**DONOVAN v. CROFTS**, [1926] 1 K. 477.—**IR.**

**571 ii. — Royalties paid to wife for right to publish novels.]—**Where a novelist wrote books in the Union but

575. *Add. Annotation*:—**Refd.** *I. R. Comrs. v. Pakenham*, *I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.
577. *Add. Annotation*:—**Refd.** *Whitney v. I. R. Comrs.*, [1926] A. C. 37.
580. *Add. Annotations*:—*As to* (3) **Appld.** *R. v. St. Marylebone Income Tax Comrs.*, *Ex p. Schlesinger* (1928), 13 Tax Cas. 746. **Refd.** *L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council* (1925), 95 L. J. K. B. 255.
- 585a. **Sum claimed already allowed as deduction.**—**Appltd.** co. habitually financed its purchases by loans from its bankers repayable on demand; the loans were for no specified period, but were paid off with interest when the co. received payment for the goods, usually within three months. The interest was paid without deduction of income tax, & was debited in the co.'s profit & loss account as a business expense. It had been allowed

as such in computing the profits on which the co. was assessed under Case I. of Sched. D. for the four years ended Apr. 5, 1925. The co. claimed repayment of tax under 1918 Act, s. 36, for these four years on the interest paid to the bank, contending that it should not have been allowed as a deduction in computing profits, that this error could be corrected by additional assessments, & that the interest must be treated as having been paid out of profits or gains brought into charge to tax. The Comrs. of Inland Revenue refused the claim, & on appeal the Special Comrs. upheld this decision:—**Held**: as in fact the interest had been deducted in arriving at the assessable profits, it had not been paid out of profits brought into charge to tax, & that it was not open to the co. to claim revision of the assessments.—**MULLER & CO. LONDON, LTD. v. INLAND REVENUE COMRS.** (1928), 14 Tax Cas. 116.

## Part IX.—Procedure after Assessment.

588. *Add. Annotation*:—*As to* (2) **Refd.** *Ingle v. Farrand*, [1927] A. C. 417.
589. *Add. Annotation*:—**Distd.** *R. v. St. Marylebone Income Tax Comrs.*, *Ex p. Schlesinger* (1928), 13 Tax Cas. 746.
- 591a. **Whether assessment made in time.**—**PICKFORD v. QUIRKE**, **PICKFORD v. INLAND REVENUE COMRS.**, No. 114a, *ante*.
- 595a. ——— **Absence of accountant's certificate.**—**Applts.** delivered to the inspector of taxes balance sheets & trading & profit & loss accounts of their business covering the period of three years, on the average profits of which their Sched. D. liability was to be computed; they also delivered to the assessor of taxes a statement showing the average profits to be £1,447 after making the adjustments required for income tax purposes. The inspector asked that the accounts should be certified by a qualified accountant in view of their magnitude, & applts. refused on the ground that there was no statutory authority

for such a requirement. In due course the statement & accounts were laid before the Additional Comrs., who, not being satisfied, made an assessment of £2,000, against which applts. appealed. On the hearing of the appeal the General Comrs. were of opinion that examination of the books as proposed by applts. would occupy them for several weeks, & even then would not enable them to establish the correctness of the accounts because they were not professional accountants. The Comrs. accordingly, not being satisfied on the evidence tendered that the assessment was excessive, decided to confirm it unless within two months applts. should produce accounts audited by a qualified auditor. Applts. expressed dissatisfaction with the Comrs.' decision as being erroneous in point of law & required them to state a case:—**Held**: the Comrs.' decision was not *ultra vires*.—**HUNT & Co. v. JOLY** (1928), 14 Tax Cas. 165.

596. *Add. Citation*:—12 Tax Cas. 147.

granted to her publishers in England the right of printing & publishing her novels in book form in Gt. Britain & elsewhere, they undertaking to pay her a percentage of the published price of the novels as royalties:—**Held**: since her facilities were employed within the Union both in writing the novels & in dealing with her publishers, the source of the income was in the Union & the royalties had rightly been included in the taxable income of her husband.—**MILLIN v. INLAND REVENUE COMR.**, [1928] App. D. 207.—S. AF.

### PART VIII. SECT. 1, SUB-SECT. 4.

sl. **Agreement to operate telegraph system**—*Undertaking by operating company to pay owning company's income tax on annual payments under agreement.*—**Held**: such undertaking could not be pleaded by the owning co. in answer to the Crown's claim for income tax.—**R. v. MONTREAL TELEGRAPH CO. & GREAT NORTH WESTERN TELEGRAPH CO. OF CANADA**, [1925] Exch. C. R. 79.—CAN.

### PART IX. SECT. 1.

586 i. **Jurisdiction of commissioner**—

**Avoidance of tax owing to fraud.**—**MORREAU v. FEDERAL TAXATION COMR.** (1926), 39 C. L. R. 65.—AUS.

586 ii. ——— **Alteration of assessment.**—**Applts.** owned certain land the value of which for taxation purposes was, in 1923, £24,626. In 1924 a new assessment was made by the Comr. & the value fixed at £32,197. In 1925 the Comr. made a new assessment & fixed the value at £46,835:—**Held**: the only sect. under which the Comr. can alter an assessment which has been made is sect. 37 of Land & Income Tax Assessment Act, 1907, & having once made an assessment the Comr. may let it stand or may alter it from time to time subject to the restriction imposed by the legislature for the benefit of the taxpayer to prevent his being harassed by frequent re-assessments.—**O'CONNOR v. STATE TAXATION COMR.** (1927), 30 W. A. L. R. 50.—AUS.

586 iii. ——— **Held**: the second proviso to sect. 2 of Income Tax Assessment Act, 1922–1925, namely, that no alteration or addition shall be made in or to any assessment made under the Acts repealed by that Act after three years from the date when

the tax is payable unless the Comr. of Taxation has reason to believe that there has been an avoidance of tax owing to fraud or attempted evasion does not apply to the making of alterations & additions before Sept. 26, 1925 the date when Income Tax Assessment Act, 1925, by which the proviso was enacted, received the royal assent.—**FEDERAL COMR. OF TAXATION v. REID** (1927), 40 C. L. R. 196.—AUS.

### PART IX. SECT. 2, SUB-SECT. 2.

600 i. **The hearing—Whether taxpayer entitled to be heard.**—In order to constitute a valid determination of the comr. under Income Tax Assessment Act, 1922, s. 21 (1), it is not necessary that the taxpayer shall have been heard.—**FEDERAL COMR. OF TAXATION v. AUSTRALIAN TESSERATED TILE CO. PROPRIETARY, LTD.** (1925), 36 C. L. R. 119; 31 Argus L. R. 218.—AUS.

sl. **"Determination."**—The word "determination" in Income Tax Assessment Act, 1922, s. 21 (1), implies a communication of the determination to the taxpayer.—**FEDERAL COMR. OF TAXATION v. AUSTRALIAN TESSERATED TILE CO. PROPRIETARY, LTD.**

**613a.** ———.—]—With the object of reducing the amount of income tax payable in respect of the occupation of land & the profits from dealing in cattle, a farmer & his sons, who lived with him, entered into an agreement of partnership. The terms of the agreement were not carried out, & the General Comrs. were of opinion that there had been no partnership in fact, & refused the relief claimed in respect of each alleged partner:—*Held*: there was evidence to support the finding of the comrs., which could not be set aside.—*DICKENSON v. GROSS* (1927), 137 L. T. 351; 11 Tax Cas. 614.

**618.** *Add. Annotation*:—*Refd.* *Owl Mill Co.* (1920), *Ltd. v. Croft, Elliott v. Duchess Mill* (1926), 95 L. J. K. B. 635.

**622.** *Add. Annotations*:—*Apld* *Pickford v. Quirke*, *Pickford v. I. R. Comrs.* (1927), 43 T. L. R. 659. *Refd.* *R. v. St. Marylebone Income Tax Comrs.*, *Ex p. Schlesinger* (1928), 13 Tax Cas. 746. *Mentd.* *R. v. L. C. C.*, *Ex p. Swan & Edgar* (1927), *Ltd.* (1929), 141 L. T. 590.

**625a.** ———.—]—*R. v. St. Marylebone Income Tax Comrs.*, *Ex p. Schlesinger* (1928), 13 Tax Cas. 746, C. A.

**629a.** ———.— *Discretion of court.*]—Under 1918 Act, s. 149, it is within the discretion of the High Ct. to remit a case to the Comrs. for re-hearing & decision without requiring that it be amended & returned for the decision of the ct. itself.—*EDWARDS v. "Old Bushmills" Distillery Co., Ltd.* (IN LIQUIDATION) (1926), 10 Tax Cas. 285, H. L.

*Annotation*:—*Refd.* *Aylmer v. Mahaffy* (1925), 10 Tax Cas. 594.

**630.** *Add. Citation*:—12 Tax Cas. 166.

**631a.** *Notice requiring commissioners to state & sign case—Must be in writing—Oral application to commissioners insufficient.*]—*R. v. Income Tax Comrs. for Edmonton*, *Ex p. Thompson*, [1929] 1 K. B. 220; 98 L. J. K. B. 201; 140 L. T. 380; 45 T. L. R. 91; *sub nom.* *R. v. Edmonton Income Tax Comrs.*, *Ex p. Thomson*, 14 Tax Cas. 313, D. C.

**632a.** *Transmission of case after "receiving"*

(1925), 36 C. L. R. 119; 31 Argus L. R. 218.—*AUS.*

#### PART IX. SECT. 2, SUB-SECT. 3.—A.

*sp. Jurisdiction of High Court—To hear appeal by commissioner from Board of Appeal.*]—*FEDERAL TAXATION COMR. v. MUNRO, BRITISH IMPERIAL OIL CO., LTD. v. FEDERAL TAXATION COMR.* (1926), 38 C. L. R. 153.—*AUS.*

*so.* ———.— *To review questions of fact.*]—*FEDERAL COMR. OF TAXATION v. CLARKE* (1927), 40 C. L. R. 246.—*AUS.*

*sg. (Conclusiveness of assessment.)*]—*Held*: assessments for Income Tax under Sched. D. of Income Tax Act, 1918, made upon a person who becomes bkpt., & from which no appeal had been taken, cannot be questioned by the official assignee upon proof of debts, & the Revenue Comrs. cannot be called upon to prove that the amounts assessed were just & proper, having regard to bkpt.'s income at the material times, the assessments being in default of appeal, "final & conclusive," under Income Tax Act, 1918, s. 195.—*Re QUINLAN*, [1928] L. R. 548.—*IR.*

*same.*]—After stating a case the comrs. sent it to the office of the person requiring it, the surveyor of taxes, at the office occupied by the latter at the time the appeal was before them, the address of which was on all the official documents in the appeal. The surveyor had left the office in the interval & gone to another one:—*Held*: the case had been "received" by the surveyor within 1918 Act, s. 149 (1) (d).—*GRAINGER v. SINGER*, [1927] 2 K. B. 505; 96 L. J. K. B. 917; 137 L. T. 692; 43 T. L. R. 591; 11 Tax Cas. 704.

**632b.** *Exchanging points of argument.*]—(1) It is not necessary to exchange points of argument, but either party may, not later than ten days before the argument, give to the other party notice in writing of any point intended to be made which would be likely to take the other party by surprise, in default of which the ct. may adjourn the argument on such terms as may be just.

(2) A case may be set down by either party subject to the same conditions in all respects as cases have heretofore been set down by the party at whose instance they have been stated.—*PRACTICE NOTE*, [1926] W. N. 250.

**632c.** ———.—]—*TARN v. SCANLAN, NIELSEN, ANDERSEN & Co. v. COLLINS, MULLER (W. H.) & Co. (LONDON) v. LETHAM, SAME v. INLAND REVENUE COMRS.*, No. 168a, *ante*.

**632d.** *Setting down case.*]—*PRACTICE NOTE*, No. 632b, *ante*.

**632e.** ———.—]—*TARN v. SCANLAN, NIELSEN, ANDERSEN & Co. v. COLLINS, MULLER (W. H.) & Co. (LONDON) v. LETHAM, SAME v. INLAND REVENUE COMRS.*, No. 168a, *ante*.

**632f.** *Remitting case to commissioners — For amendment—Grounds for granting or refusing application to remit.*]—*LAYTHORNTHWAIT & SONS, LTD. v. KELLY* (1927), 11 Tax Cas. 657, C. A.

**633a.** *On appeal against assessment on person carrying on non-resident's regular agency—Order for costs made against agent.*]—*WILCOCK v. PINTO & Co. (IN THE NAME OF KUMMER)* (1925), 10 Tax Cas. 415, C. A.

*- Held*: where an assessee seeks for a *mandamus* from the High Ct. against the Comr. of Income Tax requiring him to state a case on points of law different from those he had argued before the Comr. to state a case, his application cannot be entertained.—*A. K. A. C. T. V. CHETTYAR FIRM v. INCOME TAX COMR.* (1928), L. L. R. 6 Ran. 492.—*IND.*

#### PART IX. SECT. 2, SUB-SECT. 3.—D.

*sp. Evidence—Not limited to material before Board of Appeal.*]—*FEDERAL TAXATION COMR. v. LEWIS BERGER & SONS (AUSTRALIA), LTD.* (1927), 39 C. L. R. 468.—*AUS.*

*st. Burden of proof—On appellant—To establish right to benefit claimed.*]—*MOREAU v. FEDERAL TAXATION COMR.* (1926), 39 C. L. R. 65.—*AUS.*

#### PART IX. SECT. 3.

**634 i.** *Whether available—Not action for return of money—Assessment levied in default of return.*]—*DI. R. N. SINGHA v. SECRETARY OF STATE FOR INDIA IN COUNCIL* (1927), 1 L. R. 5 Ran. 825.—*IND.*

#### PART IX. SECT. 2, SUB-SECT. 3.—B.

**617 i.** *When case may be stated—Rehearing by Board of Referees not condition precedent.*]—*CARLAND (DAVID) & SONS, LTD. v. INLAND REVENUE COMRS.*, [1926] S. C. 870; 11 Tax Cas. 96.—*SCOT.*

#### PART IX. SECT. 2, SUB-SECT. 3.—C.

*ci.* ———.— *Where jurisdiction discretionary.*]—*MOHAMMAD FARID-MOHAMMAD SHAFI v. LAHORE INCOME TAX COMR.* (1927), 1 L. R. 9 Lah. 317.—*IND.*

*ci.* ———.— *To compel alteration of assessment.*]—The High Ct. will not, by *mandamus* or process of a like nature, compel the Federal Comr. of Taxation to exercise the power given him to make alteration in, or additions to, any assessment, where he does not think that such alterations or additions are necessary in order to insure the completeness & accuracy of the assessment.—*Ex p. CARPATHIA TIN MINING CO., LTD.* (1924), 35 C. L. R. 552; 31 Argus L. R. 22.—*AUS.*

*ci.* ———.— *To compel commissioner to state a case—Not on new points of law.*]—



## Part X.—Penal Provisions.

**642a. Penalties—Power to compound.**—Under 1918 Act, s. 222 (1), the comrs. may compound any penalties, which in their opinion have been incurred, without any proceedings to

enforce such penalties having been taken.—*A.-G. v. JOHNSTONE* (1926), 136 L. T. 31 10 Tax Cas 758.

## Part XI.—The Super Tax.

NOTE.—By the Finance Act, 1927 (c. 10), s. 38 (1) (b), *Super Tax* is replaced by *Sur-Tax* for the year 1929-30 & subsequent years.

**644. Add. Annotation:—As to (2) Refd.** *Re Armaghdale, Craig v. Armaghdale* (1928), 44 T. L. R. 239.

**646a. Party chargeable dying insolvent—Super tax due in respect of several years—To what years appropriation of payments made.**—*Re CAMPBELL, COMMERCIAL BANK OF SCOTLAND v. CAMPBELL* (1923), 10 Tax Cas. 585.

**648. Add. Annotations:—Apprvd.** *Whitney v. I. R. Comrs.*, [1926] A. C. 37. **Refd.** *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

**649. Add. Citation:—10 Tax Cas. 88.**

**Add. Annotations:—Refd.** *Birt, Potter & Hughes v. I. R. Comrs.* (1927), 12 Tax Cas. 976; *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

**654. Add. Annotations:—As to (1) Refd.** *Whitney v. I. R. Comrs.*, [1926] A. C. 37. **Generally, Refd.** *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, Gascoigne v. I. R. Comrs.*, [1927] 1 K. B. 591.

**661. Add. Citations:—**[1926] 2 K. B. 246; 95 L. J. K. B. 694; 134 L. T. 699; 11 Tax Cas. 181.

**Add. Annotation:—Refd.** *I. R. Comrs. v. Wright*, [1927] 1 K. B. 333.

**662. Add. Citations:—**134 L. T. 754; 10 Tax Cas. 351.

**662a. ————**—A co. having a sum consisting of accumulated profits standing to the credit of its reserve fund & being empowered so to do by its arts. of assocn., passed resolutions that its capital should be increased by the creation of new shares, & that it was desirable to capitalise the sum & make it available for distribution among the shareholders as capital free from income tax, & further resolutions pursuant to which the

sum was applied in payment up of the new shares, which were to be offered to the shareholders in proportion to their existing shares with an option to them either to accept the new shares so fully paid up, or to take their nominal value in cash. A shareholder having accepted the whole of the new shares offered to him as fully paid, was assessed to super tax in respect thereof. The Special Comrs. having discharged the assessment:—**Held:** so far as the question raised was a matter of fact, it was concluded against the revenue by the finding of the Comrs., & so far as it was a matter of law, it was concluded against the revenue by *Bouch v. Sproule* (1887), 12 App. Cas. 385, *Inland Revenue Comrs. v. Blott, Inland Revenue Comrs. v. Greenwood*, No. 663, & *Inland Revenue Comrs. v. Fisher's Executors*, No. 664, the co. being dominant for all purposes, & the shares not bearing the character of income.—**INLAND REVENUE COMRS. v. WRIGHT**, [1927] 1 K. B. 333; 95 L. J. K. B. 982; 135 L. T. 718; 11 Tax Cas. 181. C. A.; *reversg. S. C. sub nom. INLAND REVENUE COMRS. v. COKE, SAME v. WRIGHT*, [1926] 2 K. B. 246.

**Annotation:—Distd.** *Parker v. Chapman* (1928), 138 L. T. 729.

**662b. ——— On amalgamation of company.**—**Held:** part of resp.'s income.—**INLAND REVENUE COMRS. v. ROBERTS** (1927), 13 Tax Cas. 277, C. A.

**663. Add. Annotations:—Appld.** *I. R. Comrs. v. Fisher's Exors.*, [1926] A. C. 395; *I. R. Comrs. v. Wright* (1926), 95 L. J. K. B. 982. **Distd.** *Parker v. Chapman* (1928), 138 L. T. 729. **Refd.** *Whitmore v. I. R. Comrs.* (1925), 10 Tax Cas. 645; *Martin v. Lowry, Martin v. I. R. Comrs.*, [1926] 1 K. B. 550; *Baker v. Archer-Shee*, [1927] A. C. 844; *I. R. Comrs. v. Dalgety & Co.* (1929), 98 L. J. K. B. 542.

### PART X.

**j i. ——— Laying information.—Within what time.**—Criminal Code, s. 1142, applies to prosecutions under Income War Tax Act, 1917 (c. 28).—*R. v. DOWEN*, [1925] 1 D. L. R. 1141; [1925] 1 W. W. R. 567; 43 Can. Crim. Cas. 271; 34 Man. L. R. 597.—**CAN.**

**j ii. ———**—An information under Income War Tax Act, 1917 (c. 28), s. 8, for failing to make a return of income within thirty days after demand made therefor, must be laid within six months from the day or days as to which accused is charged with being in default, Criminal Code, s. 1142, being applicable thereto.—*R. v. MERRAN*, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819. 43 Can. Crim. Cas. 325.—**CAN.**

**j iii. ——— By "person who has not made return"—Who** being charged for failing to make a return after demand made therefor, accused satisfies the magistrate that he had made a return which it was first due, he is not a "person who has not made a return" within Income War Tax Act, 1917 (c. 28), s. 8, & is under no liability for failing to make another return upon the demand.—*R. v. BARRERS*, [1925] 1 D. L. R. 726; [1925] 1 W. W. R. 275; 35 Man. L. R. 146.—**CAN.**

**j iv. ——— Appeal—"Criminal cause."**—Resp. having pleaded guilty on an information laid for a breach of Income War Tax Act, 1917 (c. 28), s. 8, the magistrate decided that he could impose a lesser penalty than that imposed by sect. 9 (1), & his decision

was affirmed on appeal:—**Held:** special leave to appeal to the Supreme Ct. could not be granted, the proceeding being a "criminal cause" within Ct. Act, s. 36.—*R. v.* [1925] 2 D. L. R. 57; [1925] S. C. R. 59; 43 Can. Crim. Cas. 286.—**CAN.**

**sw. Proceedings under Income War Tax Act.—By whom instituted.**—*R. v. ED (N. B.)* (1926), 47 Can. Crim. Cas. 196.—**CAN.**

**sx. ——— Appeals—Costs.**—*R. v. ED (N. B.)*, [1927] 3 D. L. R. 826; 48 Can. Crim. Cas. 246.—**CAN.**

### PART XI. SECT. 1.

**sz. At what rate leviable.—Unincorporated association converted into company.**—**INCOME TAX COMR. v. WESTERN INDIA TURF CLUB** (1927), 55 L. R. Ind. 14.—**IND.**



664. *Add. Citations*:—[1926] A. C. 395; 95 L. J. K. B. 487; 134 L. T. 681; 10 Tax Cas. 302, H. L.

*Add. Annotations*:—*Folld. Whitmore v. I. R. Comrs.* (1925), 10 Tax Cas. 645. *Apld. I. R. Comrs. v. Wright* (1926), 95 L. J. K. B. 982.

664a. ————]—A limited co. appropriated for distribution among its ordinary shareholders as a capital bonus £200,000 undivided profits which had been carried to the credit of its reserve account, the amount to be applied (1) in subscribing for one hundred & fifty £1,000 4 per cent. debentures of the co., & (2) in paying up in full fifty thousand £1 unissued ordinary shares of the co. All the ordinary shares were held by one of the directors. The debentures, all of which were issued to this shareholder, were redeemable at one month's notice by the co. at any time, & at one month's notice by the holder after May 25, 1920. On Apr. 16, 1920, the whole of the £150,000 due on the debentures was paid by the co. to the holder, interest being waived by him, & the co. thereupon borrowed £72,500 from him at 6 per cent. interest, a liability reduced to £33,117 by June 30, 1920:—*Held*: the debentures constituted a capital receipt in the hands of the shareholder, & he was not assessable to super tax for the year 1920–21 in respect of the amount of the debentures.—*WHITMORE v. INLAND REVENUE COMRS.* (1925), 10 Tax Cas. 645.

*Add. Annotations*:—*Refd. I. R. Comrs. v. Fisher's Exors.*, [1926] A. C. 395; 1. R. Comrs. v. Wright (1926), 95 L. J. K. B. 982.

666. For the existing paragraph substitute the following paragraph:—

**Distribution of profits—Assets of company written up—Loans to directors written off.]—**

A partnership business was converted into a limited co. in 1916, practically the whole of the shares therein being held by two resps., the original partners, who were brothers, & were also the governing directors. The accounts showed profits of £117,000 for the three years ending Dec. 1919, but no dividends were declared or paid. The co., having power to lend money, granted loans amounting to £283,000 to resps. at 5 per cent. interest, against which the capital assets were increased in value by £226,000 & profits drawn upon to the extent of £57,000. The actual cash lent was mainly provided by a bank overdraft. At a later date resps. duly passed resolutions purporting to cancel the debt of £283,000 by writing it off against the general reserve fund. Resps. having been assessed to super tax upon £283,000:—*Held*: (1) the loans were genuine loans, which gave rise to no liability to super tax, even if cancelled, except as to the £57,000 taken from profit & loss account; (2) the purported release of the debt was wholly invalid & ineffectual, & resps. remained liable to the co. to repay the whole amount of the £283,000 but were not liable for any super tax thereon.—*HALL v. INLAND REVENUE COMRS.* (1926), 135 L. T. 759; 11 Tax Cas. 24, C. A.

————:—*As to* (1) *Consd. Perrin v. Dickson* (1929), 98 L. J. K. B. 683.

668. *Add. Citations*:—95 L. J. K. B. 465; 42

T. L. R. 239; 70 Sol. Jo. 366; 10 Tax Cas. 235.

*Add. Annotation*:—*Dbtd. I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, Gascoigne v. I. R. Comrs.*, [1927] 1 K. B. 594.

668a. ————]—**Part retained by trustees—For payment of death duties.]—***Appl't's* first husband, by his trust disposition & settlement, gave the whole of his property, real & personal, to trustees for payment of his debts, except those heritably secured on his real estate, his funeral expenses, & the management expenses of the trust, any legacies he might leave, & an annuity to a niece, & subject thereto, in the events which happened, the trustees were to hold the whole of his property on trust to pay out of the free income thereof an annuity to his sister, & subject to the implement of all prior purposes of the trust, the trustees were, as soon as convenient after his death, to convey all his lands & estates to *applt.* in life-rent during her life, with remainders over to a series of heirs, & to hold the whole of the residue of his property in trust for her in life-rent during her life & on her death to the person then entitled to the landed estates in fee. In addition to all powers competent to them by statute or common law, testator conferred on his trustees all powers of administration competent to a fee simple proprietor, & in particular, power to sell any part of his property & to grant leases of any part of the heritable property. On the death of testator in 1919, heavy death duties became payable on the heritable estates, which were already heavily mortgaged. The trustees elected to pay the duties by sixteen half-yearly instalments, of which the earliest were met out of the proceeds of sale of testator's stocks & shares. Pending the realisation of such part of the heritable estates as, after necessary reductions of the charges thereon, would be sufficient to meet the remaining instalments, the trustees retained the estates & the management thereof in their own hands, & paid *applt.* only the free annual income. On the footing that she was entitled to the life-rent of the estates from the date of her husband's death, *applt.* was assessed to super tax for the year 1923–24 on the whole annual value of the estates as assessed to income tax, Sched. A., for the previous year, & this assessment was upheld by the Special Comrs. on appeal:—*Held*: *applt.* was assessable to super tax for the year 1923–24 only on the amount of the free income actually receivable by her from the trustees for the preceding year, the trustees & not *applt.* being owners of the estates for the purposes of Sched. A. for that year.—*DE ROBECK (LADY) v. INLAND REVENUE COMRS.* (1928), 13 Tax Cas. 315, H. L.

*Annotation*:—*Distd. Shanks v. Inland Revenue Comrs.*, [1929] 1 K. B. 312.

670a. **Partnership—Payments to widow of deceased partner—For use of firm name.]—**A partnership deed provided that in the event of death of a partner the remaining partners might continue to use the firm's name, marks, & goodwill, paying to the exors. of the deceased partner for this privilege the sum of £500 quarterly for a period of five years, "after which it may be enjoyed

without further payment." One of the partners died, leaving one-half of his residuary estate in trust for his widow, applt. The value of deceased's share in the capital & income of the partnership was agreed & paid to the exors. in full discharge of all claims except the quarterly payments. These payments were duly made, at first in full, but later under deduction of income tax. Applt. was assessed to super tax for the year 1926-27 in respect of her half share of the four quarterly payments received in 1925-26 :—*Held* : the payments were income assessable to super tax.—*MACKINTOSH v. INLAND REVENUE COMRS.* (1928), 14 Tax Cas. 15.

**671a. Loans to controlling shareholder of private company—No dividends declared.**—Applt. was the controlling shareholder of five private limited cos. From time to time he withdrew from the business of each of the cos. sums which he used to finance the purchase in his own name of premises to be occupied by himself trading as a firm. The sums so withdrawn were described in the cos.' accounts as "loans" to applt. trading as such firm. Each of the cos. had power to advance money on loan, with or without security, but, while in some cases the loans shown in the accounts to have been made to applt. were subsequently approved formally in general meeting, no previous formal authorisation was given for any of the loans. The loans were not secured by any document, & no provision was made as to repayment or interest thereon. None of the cos. ever declared a dividend for any of the years material to the case. The Special Comrs. decided that the loans in question had not been made in the course of the businesses carried on by the cos., & that they were not genuine loans but constituted income of applt. for the purposes of super tax :—*Held* : there was ample evidence before the Comrs. to support their conclusion of fact.—*JACOBS v. INLAND REVENUE COMRS.* (1925), 10 Tax Cas. 1.

**672. Add. Citation** :—134 L. T. 408,

**672a. Arrears of interest received by purchaser of bonds.**—Where a taxpayer purchases bearer bonds, on which the interest for several years is in arrear, & his purchase confers upon him the right to the arrears, & several years' arrears are subsequently paid to him in one sum, the whole of that sum forms for the purpose of super tax, under 1918 Act, s. 5 (3) (c), part of his income for the year in which payment was received.—*LEIGH v. INLAND REVENUE COMRS.*, [1928] 1 K. B. 73; 96 L. J. K. B. 853; 137 L. T. 303; 43 T. L. R. 528; 11 Tax Cas. 590.

**673. Add. Citations** :—135 L. T. 272; *affd.* (1928),

#### PART XI. SECT. 3, SUB-SECT. 2.—C.

**sa. Income received by settlor under voluntary settlement—Deductions—Outgoings by trustees.**—*Held* : only the free income paid over to the settlor after payment of the outgoings by the trustees, with the appropriate addition for income tax, was his income for super tax purposes.—*INLAND REVENUE COMRS. v. HAMILTON (LORD) OF DALZELL* (1926), 10 Tax Cas. 406.—*SCOT.*

**sb. Free life rent use & enjoyment of house—All outgoings except tenant's**

*taxes paid by trustees.*—*Held* : the assessments made to include the outgoings paid by the trustees, as increased by the appropriate addition for income tax, were properly made.—*DONALDSON'S EXECUTORS v. INLAND REVENUE COMRS.* (1927), 13 Tax Cas. 461.—*SCOT.*

**sc. ———.**—*Held* : Testator conveyed his estate to trustees, & directed them, in the event, which happened, of his death without issue survived by his wife, to "hold & retain" his lands & estate of M., & out of the income of his

139 L. T. 26; 44 T. L. R. 420; 72 Sol. Jo. 239; 13 Tax Cas. 677, C. A.

**673a. Income received by executor before assent to legacy.**—Under the will of his father, who died in Aug. 1921, resp. was entitled to a specific legacy of certain shares in two cos. Owing to difficulties in administration the exors. did not assent to the legacy until June, 1924, & in the meantime dividends had been declared upon the shares in Feb. & Aug. 1923, & in Mar. 1924, which dividends were retained by the exors. until their assent in June, 1924. Resp. was assessed to super tax upon these dividends for the years ending Apr. 5, 1924, & Apr. 5, 1925, respectively, on the basis that they were his income for the years when such dividends were payable by the cos. Resp. contended that as he was not in a position to require payment of the dividends from the exors. until June, 1924, they were not his income or receivable by him until then, & that he was wrongly assessed :—*Held* : the doctrine of relation of the exor.'s assent to the date of the death applied, & resp. was rightly assessed.—*INLAND REVENUE COMRS. v. HAWLEY*, [1928] 1 K. B. 578; 97 L. J. K. B. 191; 138 L. T. 710; 13 Tax Cas. 327.

**673b. Income from share of residue—Administration not concluded.**—Applt. on attaining the age of twenty-five became entitled to a quarter share in the capital & income of the residue of his father's estate, which consisted mainly of real property heavily mtged. The will provided that the property was to be divided when the youngest child attained twenty-five, which happened in 1916, & not before, & that until then the exors. & trustees should apply the surplus income, after payment of legacies, annuities, etc., in reduction of the mtge. debts. In fact the exors. did not divide the property & continued, from 1916 to 1925, to apply the surplus income to reducing the mtges. All testator's debts other than the mtge. debts had been paid off before Mar. 1919, & payment of certain legacies & annuities was begun in Dec. 1919, but no payment was made to the residuary legatees until 1921, after which small annual payments were made. The delivery of a residuary account was not necessary in this case as no legacy duty was payable on the residue. Assessments to super tax for the years 1920-21 to 1925-26 were made upon the applt. to include one-fourth of the income from the property, less annual charges, but without deduction for repayment of mtges. :—*Held* : so long as the mtge. or other debts remained unpaid the exors. were entitled to retain any assets coming to their hands, the applt. did not enforce conveyance to himself of his share of the residue, & there-

estate generally to make various payments. He further directed them to allow his wife to "occupy & possess" during her lifetime, free of rent or taxes, both landlord's & tenant's, the mansion-house of M. :—*Held* : applt. was neither a proper liferenter, nor in a position analogous to that of a proper liferenter, of the lands, but had a mere right of personal occupation, & accordingly, that the annual value of the lands, did not form part of her income for super tax purposes.—*MILLER v. INLAND REVENUE*, [1928] S. C. (Ct. of Sess.) 819.—*SCOT.*

fore the income arising from his share was not his income for super tax purposes.—*DAW v. INLAND REVENUE COMRS.*, *DUFF-DUNBAR v. INLAND REVENUE COMRS.* (1928), 14 Tax Cas. 58.

**674a. Annual value of family mansion occupied under will.**—*Held*: the occupant of a family mansion, under the terms of a will by which trustees were given general powers of management of the real estate & a discretion to admit to the mansion the present occupant or certain members of his family during his lifetime, must be regarded as being in occupation under the will, & the profits & gains representing the annual value of the house formed part of his income for purposes of super tax.—*TOLLEMACHE v. INLAND REVENUE COMRS.* (1926), 96 L. J. K. B. 766; 136 L. T. 444; 43 T. L. R. 58; 11 Tax Cas. 277.

*Annotations*: *Consd.* *Shanks v. I. R. Comrs.*, [1929] 1 K. B. 342. *Apprvd.* *Sutton v. I. R. Comrs.* (1929), 45 T. L. R. 565.

**674b. Difference between net Schedule A. assessment & reduced rental paid under lease.**—*Resp.* negotiated for a lease of a house at a rent of £135 *per annum*, but it was eventually agreed that if *resp.* would pay £683, which was necessary to put the premises in a fit state for habitation, a lease would be granted at a rent of £35 *per annum*. The sum of £683 was paid before the execution of the lease. The circumstances in which the rent was fixed at £35 *per annum* were not set out in the lease, which was for a term of seven years, shortly afterwards extended for another year in consideration of *resp.* contributing £141 towards further repairs, but it was agreed therein that the rent under any new lease should be £140 *per annum*:—*Held*: the sums paid by *resp.* for repairs at the beginning of his tenancy were capital expenditure, & the difference between the net Schedule A. assessment on the house & the rent of £35 actually paid under the lease formed part of his total income for super tax purposes.—*INLAND REVENUE COMRS. v. FARGUS* (1926), 10 Tax Cas. 665.

*Annotation*: *Consd.* *Shanks v. I. R. Comrs.*, [1929] 1 K. B. 312.

**674c. Beneficial occupation—Right of residence in house rent free.**—*SHANKS v. INLAND REVENUE COMRS.*, No. 11a, *ante*.

**674d. Profits of partnership—Executor of deceased partner becoming partner.**—*Applt.* was the sole extrix. & residuary legatee of her late husband, who, until his death in 1916, was a partner in a firm. At the time of his death large sums were owing to the firm from residents in enemy countries, & by arrangement with the Inland Revenue these were allowed as bad debts, on the understanding that any sums received in respect of them should be brought into account for income

tax as profits of the firm of the year in which they were received. On her husband's death *applt.* became a partner in the firm. In 1921 a sum was received in respect of the enemy debts, in respect of which the firm was assessed to income tax in the year ended Apr. 5, 1923. By arrangement between the partners *applt.* bore a proportion of the assessment in respect of the sum so received proportionate to her late husband's share of the profits:—*Held*: no part of the sum received in respect of the enemy debts formed any part of *applt.*'s total income for super tax purposes.—*LASSEN v. INLAND REVENUE COMRS.* (1927), 138 L. T. 463; 13 Tax Cas. 229.

**674e. Undistributed profits of company—Finance Act, 1922 (c. 17), s. 21—“Reasonable time”—Termination by liquidation.**—The share capital of a limited co. registered in 1922 was held by four persons, & the co. was a co. to which above sect. applied. In Feb. 1924, the directors came to the conclusion that the prosperity of the business, which was speculative, might not continue. Accounts for the year to Mar. 31, 1924, were prepared, showing a profit of approximately £34,000, & were presented at the general meeting on May 14, 1924. No dividend was declared & at the same meeting a resolution for the voluntary winding-up of the co. was passed, & a liquidator appointed. The Special Comrs. issued a direction to the co. that for super tax purposes the co.'s income for the year ended Mar. 31, 1924, should be deemed to be the income of the four shareholders. This direction was discharged by the Special Comrs. on appeal, but was restored by the Board of Referees on a re-hearing. The contention of the co. was that above sect. had no application in the circumstances of the case, & that on the passing of the resolution for winding-up it had no power to declare a dividend:—*Held*: the co., by going into liquidation while the “reasonable time” contemplated by the Act was still running, terminated that reasonable time, & that in view of the intended liquidation it would have been reasonable for them to have distributed the whole of the available income.—*SUTCLIFFE (LIONEL), LTD. v. INLAND REVENUE COMRS.* (1928), 14 Tax Cas. 171.

**674f. Sums expended by trustees—Upkeep of trust property.**—*Applt.* was the tenant for life of a mansion & land under a will which provided that the trustees should pay all outgoings & expenses of keeping up the property. *Applt.* was assessed to super tax in respect of the sums so expended by the trustees:—*Held*: as *applt.* had had the benefit of the sums expended by the trustees, he was properly assessed to super tax in respect thereof.—*SUTTON v. INLAND REVENUE COMRS.* (1929), 45 T. L. R. 565, C. A.

#### PART XI. SECT. 3, SUB-SECT. 3.—A.

*st. Lump sum paid to retiring partner.*—One of the partners of a firm having retired, the partnership business was continued by the remaining partners, & the retiring partner received £1,500 “in full satisfaction of his whole share & interest in the profits of the year current at the date of dissolution of the original partnership,”

& it was further provided that there should be paid to him quarterly “out of the future profits of the business” sums amounting to £500 for the first year, & diminishing gradually to £100 for the fifth year:—*Held*: (1) the £1,500 was not a share of the profits of the firm, but the price or consideration paid for a discharge by the retiring partner of his claim to partici-

pate in the profits of the firm prior to his retirement, & the agreement did not affect the ascertainment of their share of the profits up to that date; (2) the quarterly payments “out of the future profits” did fall to be taken into account in estimating their profits after that date.—*LUTHERFORD v. INLAND REVENUE COMRS.*, [1924] S. C. 689; 10 Tax Cas. 683.—*SCOT*.

- sy.** *Allowance by father to son—Finance Act, 1922, s 20 (1).*] A father, who had paid a sum of money to his son, a married man, of full age, under a gratuitous bond by which he had bound himself to pay to the son an

annuity for a period of three years, claimed to deduct the sum in question in calculating the amount of his total income for super tax purposes, on the ground that above sect. (c) applied to the case. *Held*: the deduction was inadmissible, in respect that the income disposed fell exactly within

income to accumulate, the income that is being accumulated is "receivable" by the infant within 1918 Act, s. 5 (3) (c), & he is liable to be assessed to super tax in respect of it. But representative assessments to super tax cannot be made upon the trustees or the guardian of the infant beneficiary, either in respect of the actual total income of the infant, or in respect of a total income limited, as regards the particular trustee or guardian, to that income with which the trust or guardianship is concerned.—*INLAND REVENUE COMRS. v. LONGFORD (COUNTRESS), SAME v. PAKENHAM*, [1928] A. C. 252; 97 L. J. K. B. 438; 139 L. T. 121; 44 T. L. R. 410; 13 Tax Cas. 573, H. L.

- 691b. - Chargeability of guardian of minor.]—**  
 INLAND REVENUE COMRS. *v.* LONGFORD  
 (COUNTRESS), SAME *v.* PAKENHAM, No. 691a,  
*ante.*

- 696a.** ———.]—By his will testator bequeathed to his wife an annuity of such a sum as, after allowing for income tax at the highest rate for the time being & for super tax, would yield her, free of all such tax, a cumulative net yearly sum of £3,500, & directed that there should be no apportionment of super tax between the annuity & the rest of his wife's income, but that the whole of the super tax payable by his wife up to but not exceeding super tax on £3,500 a year, with the income tax thereon added to it, should be attributed to the annuity & paid by his trustees :—*Held* : the trustees were not liable to repay to the annuitant out of residue a sum arrived at on the footing that the annuity was to bear the highest rates of super tax payable on the annuitant's total income, but were liable for no more than what would be payable on a super taxable sum of £3,500 with the income tax added thereto, namely, at the present rate of income tax, £4,200. With the present exemption, from super tax, of the first £2,000 of the income, the trustees would thus have to pay the super tax payable on a total income of £6,200.—*Re ARMAGHDALE (LORD), CRAIG v. ARMAGHDALE (LADY)* (1928), 44 T. L. R. 239.

**Annulation.** **Refd.** Fleetwood - Hesketh v Fleetwood-Hesketh, [1929] 2 K. B. 55

- 697. Add. Annotations :-** Refd. *Whitney v. I. R. Comrs.*, [1926] A. C. 37; *I. R. Comrs. v. Pakenham*, I. R. Comrs. v. Longford (1927), 96 L. J. K. B. 882.

the description contained in above sect. (b), being for a period of less than six years, & it must accordingly be deemed to be the father's income for super tax purposes. —*GILLIES v. INLAND REVENUE COMRS.*, [1929] S. C. (C. of Sess.) 131. **SCOT.**



## INFANTS AND CHILDREN.

### Part III.—Civil and Legal Capacity and Disabilities.

42a. ———.]—*Re* KEANE, LUMLEY v. DESBOROUGH (1871), 1 L. R. 12 Eq. 115; 24 L. T. 780; 19 W. R. 1025; *sub nom.* *Re* KEANE; *Re* LUMLEY v. DESBOROUGH, 40 L. J. Ch. 617.

*Annotations*:—*Mentd.* Bulley v. Bulley (1878), 8 Ch. D. 479;

Charlton v. Charlton (1883), 52 L. J. Ch. 971; Groer v. Young (1883), 24 Ch. D. 545; *Re* Glanvill, Ellis v. Johnson (1886), 31 Ch. D. 532; Michell v. Michell, [1891] P. 166.

62. *Add. Annotation*:—*Refd.* *Re* L. A. & B. F. M., Official Receiver v. The Debtors (1926), 95 L. J. Ch. 258.

### Part V.—Contracts.

160a. *Contract for exchange of chattels.*]—A contract for the exchange of chattels entered into by an infant is a contract for goods supplied, &, if not for necessities, is absolutely void under Infants Relief Act, 1874 (c. 62), s. 1. But an action by an infant *pltf.* for the recovery of a specific chattel transferred to *deft.* under such a contract will not succeed, unless *pltf.* can show a total failure of consideration. The same principles apply in such an action as in an action for the recovery of money paid under a void agreement.—PEARCE v. BRAIN, [1929] 2 K. B. 310; 98 L. J. K. B. 559; 141 L. T. 264; 45 T. L. R. 501; 73 Sol. Jo. 402; 93 J. P. Jo. 380, D. C.

194. *Add. Annotation*:—*Refd.* Skipp v. Kelly (1926), 42 T. L. R. 258.

207. *Add. Annotation*:—*Apld.* Pearce v. Brain, [1929] 2 K. B. 310.

207a. ——— *Chattel transferred under void contract of exchange.*]—PEARCE v. BRAIN, No. 160a, *ante*.

209. *Add. Annotation*:—*Refd.* Pontypridd Union Grdns. v. Drew (1926), 90 J. P. 169.

210. *Add. Annotation*:—*Consd.* Pontypridd Grdns. v. Drew (1926), 95 L. J. K. B. 1030.

213. *Add. Annotation*:—*Refd.* Pearce v. Brain, [1929] 2 K. B. 310.

347. *Add. Citations*:—95 L. J. Ch. 258; [1926] B. & C. R. 19.

### Part VI.—Misrepresentation as to Age.

363a. S. P. BARTLETT v. WELLS (1862), 1 B. & S. 836; 31 L. J. Q. B. 57; 5 L. T. 607; 26 J. P. 228; 8 Jur. N. S. 762; 10 W. R. 229; 121 E. R. 924.

*Annotations*:—*Folld.* De Roo v. Foster (1862), 12 C. B. N. S. 272. *Consd.* Miller v. Blankley (1878), 38 L. T. 527. *Refd.* Brine v. G. W. Ry. (1862), 2 B. & S. 402; Saundrey

v. Mitchell (1863), 9 Jur. N. S. 968; Leslie v. Sheill, [1914] 3 K. B. 607.

373. *Add. Annotations*:—*Refd.* *Re* L. A. & B. F. M., Official Receiver v. The Debtors (1926), 95 L. J. Ch. 258. *Mentd.* *Re* Llanover S. E., [1926] Ch. 626.

#### PART V. SECT. 2.

38a. *Life insurance.*]—Under Saskatchewan Insurance Act, 1925, c. 20, of 1924–25, s. 175, a contract for life insurance entered into by an infant over 15 years old is fully binding on him, even though his promissory note is accepted as conditional payment of the first premium. He is not, however, liable on the note.—WESTERN LIFE ASSURANCE CO. v. ARMSTRONG, [1928] 2 W. W. R. 49.—CAN.

#### PART V. SECT. 3.

142 ii. ———.]—IMPERIAL BANK OF CANADA v. REID, [1928] 3 D. L. R. 198.—CAN.

k. *On appeal*, 28 Man. L. R. 229.

#### PART V. SECT. 4, SUB-SECT. 2.

183 vii. ———.]—SHEPARD v. BRUNER (1915), 19 D. L. R. 869; 31 W. L. R. 721.—CAN.

#### PART V. SECT. 4, SUB-SECT. 3.

b. *On appeal*, 15 O. L. R. 53.

#### PART VI. SECT. 1.

360 viii. ———.]—*Held*: a minor, who, by falsely representing himself to be a major, has induced a person to enter into a contract, is not estopped from pleading his minority to avoid the contract.—KHAN GUL v. LAKHA SINGH (1928), 1 L. R. 9 Lah. 701.—IND.

#### PART VI. SECT. 2, SUB-SECT. 2.

376 iii. ———.]—Where an infant has obtained an advantage by falsely stating himself to be of full age, equity will restore his illgotten gains & release the party deceived from obligations or acts in law induced by the fraud.—KUMAR GANGANAND SINGH v. MAHARAJAH SIR RAMESHWAR SINGH BAHADUR (1927), 1 L. R. 6 Pat. 388.—IND.

376 iv. ———.]—*Held*: a minor, who has entered into a contract by means of a false representation as to his age, though not liable under the contract, may, in equity, be required to return the benefit he has received by making a false representation as to his age, whether he be a *deft.* or *pltf.*—KHAN GUL v. LAKHA SINGH (1928), 1 L. R. 9 Lah. 701.—IND.

## Part VIII.—Property.

438. *Add. Annotation* :—**Mentd.** *Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.

454a. ———.]—**SALSBURY v. BAGOTT** (1877), as reported in 2 Swan. 603; 38 E. R. 745.

*Annotations* :—**Consd.** *Field v. Moore, Field v. Brown* (1855), 7 De G. M. & G. 691. **Mentd.** *Glumdaleltch d. Naunton v. Leman* (1775), 2 Wm. Bl. 993.

538a. ——— **Right to sell timber.**]—**MASON v. MASON** (1724), cited in Amb. at p. 371; Mos. at p. 224; 27 E. R. 246.

*Annotation* :—**Consd.** *Tullit v. Tullit* (1759), Amb. 370.

557. *Add. Annotation* :—**Refd.** *The Fagernes*, [1926] P. 185.

575. *Add. Annotation* :—**Mentd.** *Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.

657a. ———.]—**HASTINGS v. ORDE** (1840), 11 Sim. 205; 59 E. R. 853.

*Annotations* :—**Mentd.** *Evans v. Carrington* (1859), 1 John. & H. 598; *Moredyth v. Moredyth*, [1895] 1 P. 92.

## PART VII. SECT. 1.

sf. *General rule.*]—An infant is liable for his torts of all kinds, & the tenderness of his age is immaterial, except when the action is founded on malice or want of care.—**CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. v. MARK** (B. C.), [1926] 4 D. L. R. 707; [1926] 3 W. W. R. 428.—**CAN.**

381 i. *Tort independent of contract—Infant liable.*]—An infant who sells goods, of which he is in possession under a lien agreement, is liable in damages for the conversion, since it is not a wrong connected with the contract.—**MCCALLUM v. URCHAK** (Alta.), [1926] 1 W. W. R. 137.—**CAN.**

q i. ———.]—A father, who negligently left a shot gun & shells where they were accessible to his eleven-year-old son :—**Held** : liable in damages to infant pltf., who was injured by the discharge of the gun in the hands of the son. The fact that the mother of pltf. might have prevented the accident did not prevent recovery against the father & son by pltf.—**BLACK v. HUNTER**, [1925] 4 D. L. R. 285; [1925] 3 W. W. R. 393.—**CAN.**

q ii. ———.]—A father is not responsible at common law for the torts of his infant child, committed without his knowledge, consent or sanction, & not in the course of his employment of the child.—**BOBBY v. CHODKER**, [1928] 3 W. W. R. 392.—**CAN.**

sg. *Liability of stranger.*]—Pltf. was injured by a bullet from an air-rifle fired from a window in deft.'s house by a boy of fifteen years, a friend of deft.'s fourteen years old son :—**Held** : on the facts negligence on the part of deft. was not shown, & he could not be made liable for the wrongful act of the boy.—**MONTE-SANTO v. DI UBALDO**, [1927] 3 D. L. R. 1045; 60 O. L. R. 610.—**CAN.**

## PART VIII. SECT. 1, SUB-SECT. 1.—C. (a).

c i. ———.]—**Held** : the estate of an infant, being an estate tail in possession, could be sold under R. S. O. 1877, c. 137.—*Re GRAY* (1895), 26 O. R. 355.—**CAN.**

sh. *Execution of conveyance by infant—Application—By petition.*]—*Re MILLS, OWEN v. CAMPBELL* (1854), 4 Gr. 630.—**CAN.**

## PART VIII. SECT. 1, SUB-SECT. 1.—C. (b).

sj. *Power to order sale—On application of official guardian—In foreclosure action.*]—The rights of infants are protected & represented by the official guardian, who, in foreclosure actions, has the right to ask for a sale by the ct. In case he deems it in the interest of the infant, while in England no official is vested with the like powers.—**KEMP v. BEATTIE**, [1929] 1 D. L. R. 55; 63 O. L. R. 176.—**CAN.**

## PART VIII. SECT. 3, SUB-SECT. 1.

r i. ———.]—A conveyance of land or mtge. made by an infant is not absolutely void, but voidable.—**MILLS v. DAVIS** (1860), 9 C. P. 510.—**CAN.**

## PART VIII. SECT. 3, SUB-SECT. 2.

460 ii. ———.]—**L'HIRONDELE v. THE KING** (1917), 16 Exch. C. R. 196.—**CAN.**

## PART VIII. SECT. 4, SUB-SECT. 1.

472 i. *Person entering liable to account to infant—Whether applicable to tenant in common.*]—The general rule in equity, that an infant is entitled to treat a person, who takes possession of his estate, as his bailiff or agent, applies to a case where the party in possession is a tenant in common with the infant, although there has not been any ouster or exclusion of the infant, or any denial of his title.—**COURTIER**

*Add. Annotation* :—**Generally, Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

669a. **Covenant to disentail & resettle—Ineffective as resettlement.**]—**NIGHTINGALE v. FERRERS** (MARL.) (1733), 3 P. Wms. 206; 24 E. R. 1031.

*Annotation* :—**Refd.** *Varleton v. Liddell* (1851), 17 Q. B. 390.

685a. ——— **Not acceptance of jointure.**]—**LUCY v. MOORE** (1730), 4 Bro. Parl. Cas. 343; 2 E. R. 232, H. L.

731a. **Settlement with sanction of court—Effect of.**]—A settlement made with the sanction of the ct. on the marriage of an infant, of certain funds alleged to represent the infant's share under a will :—**Held** : not to operate as a confirmation of prior dealings by the trustees of the will.—**ZAMBACO v. C** (1871), L. R. 11 Eq. 439; 24 L. T. 770.

*Annotations* :—**Mentd.** *Dowbiggin v. Trotter, Trotter v. Trotter* (1872), 20 W. R. 791; *Thomson v. S. E. Ry., S. E. Ry. v. Thomson* (1882), 30 W. R. 537.

*v. COURTIER* (1879), 26 Gr. 307.—**CAN.**

## PART VIII. SECT. 4, SUB-SECT. 3.

sk. *Right to receive insurance moneys—Whether bond or security required.*]—A guardian, appointed or constituted by Domestic Relations Act, 1927, c. 5 (Alta.), is authorised to receive manage insurance moneys payable to the infant & to give a valid discharge therefor; & when such money or property is received without action, the guardian is not required to furnish a bond or other security, there being nothing in said Act authorising the ct. to require said guardian to give security. If, however, the guardian is forced to bring an action in order to obtain the money, the practice of the ct. would require the money to be paid into ct. subject to its order, & security would probably be required before the payment over to the guardian.—*Re DOMESTIC RELATIONS ACT, 1927, Re PULKABRIK*, [1928] 4 D. L. R. 821; [1928] 3 W. W. R. 323.—**CAN.**

## PART VIII. SECT. 8, SUB-SECT. 2.—B. (a).

sl. *By mother purporting to act as guardian—Rent accepted after infant attained majority.*]—Where a Hindu married woman with her two major sons & she purporting to act as guardian for her third son, an infant, granted a lease of a certain property of which she was in possession, for 21 years with a covenant for renewal for another term of 10 years, & the infant, after attaining majority, ratified the lease by accepting rent :—**Held** : the mother, who was not the guardian, could not enter into any contract on behalf of the infant which would be binding on him; & as the contract was void as regards the infant, it could not be made good by ratification.—**MAHENDRA NATH SUMANI v. KAILASH NATH DAS** (1927), 1. L. R. 55 Calc. 811.—**IND.**

## Part X.—Maintenance and Advancement.

- 810. Add. Annotations :—***Consd. Hyman v. Hyman*, [1929] A. C. 601. *Reid. H. v. H.* (1928), 97 L. J. P. 84.
- 831a. Ascertainment of period of twenty-one years.]—**Testator, who died in Nov. 1893, gave his net residue, subject to certain life annuities which did not exhaust the income, in trust for a bachelor's children who should attain twenty-one, with a gift over in default. In Mar. 1896, the judge ordered the surplus income to be accumulated for twenty-one years from testator's death, *i.e.*, until Nov. 6, 1914, or until the bachelor's previous death without leaving issue. During this twenty-one years' period the bachelor married & died leaving three children, two of whom were still living. Temporary orders for maintenance were made. In Nov. 1914, the judge declared that as from Nov. 6, 1914, the two children then living were entitled to maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), but that notwithstanding sub-sect. 2 any income not so applied passed as on an intestacy. In July, 1927, the elder child attained twenty-one, & her contingent moiety vested in possession. The question having arisen whether, having regard to Law of Property Act, 1925 (c. 20), s. 165, the order of Nov. 1914 ought still to be acted on with regard to the younger child's contingent moiety :—*Held* : (1) the effect of sect. 165 was that the years of minority accumulation, which commenced during the twenty-one years' period, were not to be reckoned in ascertaining that period, & the income of the younger child's contingent moiety must in the first place be applied for her maintenance under Conveyancing Act, 1881, s. 43 (1), & the balance could be validly accumulated under sub-sect. 2; (2) quite apart from sect. 165, the moment the elder child attained a vested interest as a member of the contingent class, there could be no question of intestacy as to any part of the capital or income.—*Re MABER, WARD v. MABER*, [1928] Ch. 88; 97 L. J. Ch. 101; 138 L. T. 318.
- 838. Add. Annotation :—***Reid. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.
- 935. Add. Annotation :—***Mentd. First Garden City, Ltd. v. Bonham-Carter*, [1928] Ch. 53.
- 1006a. — Whether limited to children living at date of will.]—***FREEMANTLE v. TAYLOR* (1808), 15 Ves. 363; 33 E. R. 791.
- 1059. Add. Annotation :—***Consd. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.
- 1066. Add. Annotations :—***As to (2) Follid. Re Stokes, Bowen v. Davidson*, [1928] Ch. 716. *Expld. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.
- 1074a. To enable business to be carried on— Giving guarantee for firm of which son was partner.]—***Held* : an advance to the son, within the description in a settlement of money advanced "to enable him to carry on his business."—*BERRY v. MORSE* (1847), 1 H. L. Cas. 71; 9 E. R. 678, H. L.

## Part XI.—Care and Custody.

- 1156a. — — —.]—**The welfare of a child is the paramount consideration guiding the ct. in making an order as to its custody. But it is not the only consideration, & the next consideration is the right of a parent, particularly of a parent whose conduct has not

### PART X. SECT. 1, SUB-SECT. 1.—A.

**757 ii. — — —.]** It is the father's duty to maintain & educate his children, who are incapable of supporting themselves, & although the law has always recognised this duty, civil cts. have no direct means of enforcing this obligation so as to compel him to maintain them out of property in which they have no interests.—*WALTER v. WALTER* (1927), 1 L. R. 55 Cade. 731.—*IND.*

### PART X. SECT. 1, SUB-SECT. 1.—C. (a).

**783 v. — — —.]** *Medical services rendered to stepson.*—*WILLIAMS v. CLARK* (1927), 30 W. A. L. R. 11.—*AUS.*

### PART X. SECT. 1, SUB-SECT. 2.—A.

**sm. Agreement by third party to maintain infant.]—**Where any person has expressly or impliedly undertaken to pay for the maintenance of a child, neither the child himself, nor, if he is dead, his estate is liable for such maintenance.—*McGUINNESS v. McGUINNESS*, [1925] N. Z. L. R. 456.—*N.Z.*

### PART X. SECT. 1, SUB-SECT. 2.—H. (c).

**934 i. One fund supplementary to other—Resort had to primary fund first.]**—Testator directed that sums of £3,000 should be invested & held for each of his children, & should be paid over to each of them at the age of twenty-five, & empowered his trustees, for marriage or equipment in business, to pay to a child, although not yet of that age, any portion of that sum. The residue of his estate he left in life interest to his wife & in fee to his children equally. In a question as to whether the wife's life interest or the income of the children's legacies was liable *primo loco* for the cost of maintaining & educating the children :—*Held* : as the children were vested in separate estate, the cost of their maintenance & education fell to be met in the first place out of the income of that estate.—*KER'S TRUSTEES v. KER*, [1927] S. C. 52.—*SCOT.*

### PART XI. SECT. 1.

**o i. Under Children's Protection Act, 1927—Effect of proceedings in magis-**

**trate's court.]—**Under Children's Protection Act, R. S. O. 1927, c. 279, s. 25, the fact that the proceedings in the magistrate's ct. do not prevent the judge of the Supreme Ct. from directing that the custody of the child be given to the parent, is recognised; but if the judge is of opinion that the parent has neglected & deserted the child, or has so conducted himself that in the opinion of the judge he ought not to be allowed to set up his *prima facie* right to the custody of the child, he may in his discretion decline to make the order.—*Re CHIEMELEWSKI*, [1928] 2 D. L. R. 49; 61 O. L. R. 651.—*CAN.*

**sn. Jurisdiction of Supreme Court—Of Ontario—Child adopted by defendant under Adoption Act, 1921—Effect of order of county court judge.]—***CULLEN v. KEMP*, [1925] 4 D. L. R. 579.—*CAN.*

### PART XI. SECT. 2, SUB-SECT. 1.

**p i. — In case of male child.]—**Where the question of the custody of an infant is involved between parents, it is preferable in all ordinary circumstances in the case of a male child that it should be brought up by & have the



been impeached, & effect will be given to a parent's right & desire for the custody of his child where the welfare of that child does not require a contrary decision. - *Re THAIN*.

THAIN v. TAYLOR, [1926] Ch. 676; 95  
L. J. Ch. 292, 135 L. T. 99; 70 Sol. Jo.  
634, C. A.

care & guidance of its father  
PARSONS v. PARSONS, [1928] N. Z. L. R.  
177.—N. Z.

**PART XI. SECT. 2, SUB-SECT. 4.—A.**

**1126 iv.** — — — — — **—J—** A child is further protected by Children's Protection Act, R. S. O. 1927, c. 279, s. 25 (3), which provides that when it has been abandoned or deserted, or has been allowed by the parent to be brought up by a Children's Aid Society, or by another person, in circumstances which show that the parent was un-mundful of his parental duties, the judge shall not give the child to the parent, unless satisfied that, having regard to the welfare of the child, he is a fit person to have the custody of it. When once a child has been taken from its parents & made a ward of a Children's Aid Society & then placed out with foster parents, the parents have forfeited their natural rights, & others have acquired rights. The words "having regard to the welfare of the child" indicate that the intention of the statute is that the judge, in determining whether the parent is a fit person to have the child restored to him, should contrast the situation of the child in the care of its foster parents with that which it would occupy if restored to its natural parents.—*Re CHIEMELEWSKI*, [1928] 2 D. L. R. 49: 61 O. L. R. 651.—**CAN.**

**1126 v.** — — — — —. — In exercising its jurisdiction, derived from the Ct. of Chancery, as to the custody of a child whom its parent has allowed to be brought up by another person as that person's expense, the duty & power of the K. B. of Saskatchewan is to decide the question of custody in accordance with the principle of equity that, the paramount consideration in such cases is the child's welfare in its widest sense is not limited or impaired by Infants' Act, R. S. S., 1920, c. 155, s. 7 (b). Therefore, although the Ct. concludes that the parent has not been "unmündful of his parental duties" within said section, it should not, nevertheless, order the child to be restored to him if in its opinion the child's welfare in the widest sense, i. e., its material, moral, religious & physical well being, requires that the order should be refused. — (R. ROSS, ROSS v. McNEILL & McNEILL, [1928] 3 D. L. R. 151; [1928] 2 W. W. R. 167; 22 Sask. L. R. 565. — CAN.

**r i.** — *Validity of agreement.* — CHISHOLM v. CHISHOLM (1908), 40 S. C. R. 115. — **CAN.**

**PART XI. SECT. 2, SUB-SECT. 4. —B.**

1141 ii. — — — — —. — Where a daughter, then being past fourteen years & eight months of age & not without adequate intelligence to make a reasonable choice, expressed her desire to remain with resp. with whom she had been living happily for seven years, the ct. refused a writ of *habeas corpus* to the mother. — MARSHALL v. FOURNELLE, [1927] 2 D. L. R. 173; [1927] S. C. R. 48. — CAN.

**PART XI. SECT. 4, SUB-SECT. 1.**

1151 xx. - —.] CODY v. CODY,  
[1927] 3 D. L. R. 349; [1927] 1  
W. W. R. 603; 21 Sask. L. R. 391.—  
CAN.

1154 iv. —.]—*Re* YOUNG, [1926]  
1 D. L. R. 511; 58 N. S. R. 372.—  
CAN.

**1154 v.** — [.]—*Re* GEHM, GEHM v. GATJENS (B. C.), [1927] 4 D. L. R. 382.—**CAN.**

J.B.

**1154 vi** - [.] -The test & paramount matter for the consideration of the ct. is the welfare of the child, which is not to be measured by money only or by physical comfort only, but is to be taken in its widest sense. The moral & religious welfare of the child must be considered, as well as its physical well-being, nor are ties of affection to be disregarded though they are not conclusive. **WALTER v. WALTER** (1927), 1, 1, R. 55 Cal. 731. **IND.**

**PART XI. SECT. 4, SUB-SECT. 2.- A.**

aa i. —.]-A father will not be deprived of the custody of his children, merely because his wife prefers to live away from him.— *Re Gray*, [1925] 1 D. L. R 381.—**CAN.**

aa in. S. P. M. v. M., [1926] S. C.  
778 —SCOT.

aa iii. —.]- Where a wife has deserted her husband & taken their children with her, but is unable to prove such conduct against him as would justify her in doing so, there is no just cause to deprive him of his legal right to the custody of the children. *Re Dziuz, Re Rozewicki* (Man.), [1927] 1 D. L. R. 1110; [1927] 1 W. W. R 380. — **CAN.**

aa iv. — } — A father has an unalienable right to the custody of his minor son, unless there are overwhelming circumstances to the contrary — **ABDUL AZIZ KHAN v. NAFEE KHAN** (1926), L. L. R. 49 All 332 — **IND.**

**aa v. ----.**] - *Re* SIMONSON, SIMONSON *r* SLAATEN (Sask.), [1927] 3 D. L. R. 513.—**CAN.**

aa vi. - 1—On an application by a father to obtain from the mother custody of an infant son from six to seven years old, where there were no allegations of moral impropriety on either person's part -- *Held* -- although from the point of view of the present happiness of the child, the ct. might hesitate to remove him from the custody of the mother, the paramount consideration of the future as well of the present welfare of the child, who was just approaching a time of life when a father's care & guidance would be all important, required that he should be in the custody of the father. -- *Re HYLTON*, [1928] N. Z. L. R. 115. -- N. Z.

## PART XI. SECT. 4, SUB-SECT. 2. G.

*o. Revsd.*, [1925] 1 D. L. R. 761;  
[1925] 1 W. W. R. 378, 19 Sask L. R.  
247.

o. i. 1.—Where a child, upon the death of its mother, had been placed temporarily by the father in the care of a near relative under an arrangement whereby he was to pay for its maintenance, but he had failed to keep up the payments, & upon his remarriage the relative refused the custody of the child to its father — *Held* : in the circumstance, the father had not surrendered his parental right over the child, nor had the *prima facie* presumption that it was for the child's benefit that it should be in the custody of its natural parent been displaced. — *Re Mills*, [1928] N. Z. L. R. 158. — N.Z.

**PART XI. SECT. 4, SUB-SECT. 3.--A.**

**sp. Child handed to father—& in custody of father's relations.]—**A wife, living apart from her husband, met him in the street, placed the younger child of the marriage, a girl aged five months & at that time in a delicate state of health, in his arms, & left the

child with him. The mother made no inquiries as to the provision which the father was able to make for its care, nor did she afterwards make any inquiries as to its welfare. The father having died, the mother brought an action for delivery of the child against relatives of the father, in whose care the child had been placed by him. Circumstances in which the Ct. ordered delivery of the child to the mother. *Seemle* : the mother had not abandoned the child within custody of Children Act, 1891 (c. 3) — *M'LEAN v. HARRIS*, [1927] S. C. 341 — *SCOT.*

**PART XI. SECT. 4, SUB-SECT. 3.--B.**

**b i. - .Adultery--Interest of child first consideration.** Adultery by a wife ought not to be regarded for all time & under all circumstances as sufficient to disentitle her to access to or even to the custody of the children. The ct. will have regard to the particular circumstances of each case, always bearing in mind that the benefit & the interest of the infant is the paramount consideration. -BOLTON v. BOLTON, [1928] N. Z. L. R. 173.- N.Z.

**PART XI. SECT. 7, SUB-SECT. 2. -A.**

1216 in - Right of court of  
appeal to interfere - *Re PAISLEY*, [1928]  
1 D. L. R. 103 CAN.

**1221 I. Infant to be freed from improper restraint** {—The writ of *habeas corpus* is the proper remedy of a mother who wishes to regain possession of her child illegally kept or detained from her. —STEVENSON & FLORANT, [1925] 4 D. L. R. 530, [1925] S. C. R. 532, *affd.*, [1927] A. C. 211; 96 L. J. P. C. 1; 136 L. T. 265; 13 T. L. R. 6. **CAN.**

**PART XI. SECT. 7, SUB-SECT. 2.**  
**B. (c).**

**1239** *1. Nurse* | The parents of a child placed it in the care of a nurse employed at an hospital shortly after its birth. The parents then had no home of their own, & were in poor circumstances, the mother was blind, & the father's sight seriously impaired. When the child was about three years old, the parents had a home of their own, & though the child was well treated at the hospital the parents did not have free access to him, & were losing touch with him. *Held*: the child should be handed over to the father. -*Re ROGERS* (1922), 19 Tas. L. R. 11. -**AUS.**

**sq.** *Relative* -Entrusted with custody  
by father & mother | -KIVENKO v  
YAGOD, [1928] 1 D. L. R. 955, [1928]  
S. C. R. 421 **CAN.**

**PART XI. SECT. 7, SUB-SECT. 4.**

**1252 i.** — *Husband against wife -*  
*Chancery of the jurisdiction.* Upon an  
application under Infants' Act, R. S. O.,  
c. 184, by the father of an infant, for  
an order for the custody of the infant,  
it was held as the infant was not at the  
time resident in Ontario, the Supreme  
Ct. of Ontario had no jurisdiction.  
As the procedure under Infants' Act  
is an alternative procedure to the  
procedure by writ of *habeas corpus*,  
the jurisdiction must be limited to cases  
where a writ would be granted, & a  
writ will not be granted where the  
person directed to be produced in ct.  
is without the jurisdiction. It is only  
in extraordinary circumstances that the  
ct. will appoint a guardian to an infant  
who resides abroad, & has no property  
in the jurisdiction; & in this case the  
circumstances were not so extra-  
ordinary as to call for the exercise of

## Part Xla.—Adoption.

See Adoption of Children Act, 1926 (c. 29), & cases *infra*.

## Part XII.—Religion and Education.

1272a. — — —.]—RADCLIFFE *v.* READETT (1852), 18 L. T. O. S. 316.

## Part XIII.—Guardianship.

1441a. ——— Necessity for citation of next-of-kin of minor.]—The ct. refused to appoint the paternal uncle guardian to a minor, for the purpose of instituting a suit on his behalf against the mother in reference to the validity of the will of the minor's father,

without first citing the mother to show cause why such an appointment should not be made.—*In the Goods of JENKINS* (1869), L. R. 1 P. & D. 690; 38 L. J. P. & M. 72; 21 L. T. 300; 33 J. P. 712.

this jurisdiction.—*Re SHAND*, [1928] 2 D. L. R. 981; 62 O. L. R. 145.—CAN.

### PART XI. SECT. 8, SUB-SECT. 3.

*e i.* ——— *Grounds for setting order aside—Order signed by two justices—Only one present at hearing.*—*Re MAILMAN*, [1927] 2 D. L. R. 529; 47 Can. Crim. Cas. 106; 59 N. S. R. 61; *subsequent proceedings*, [1927] 3 D. L. R. 1111; 59 N. S. R. 384.—CAN.

*e ii.* ——— *Mistrial.*—On appeals by a father from orders made on petitions under the Act respecting the Adoption of Children, R. S. B. C. 1924, c. 6, whereby his infant children were taken from his custody & control & given for adoption into the care & custody of the respective petitioners:—*Held*: there had been a mistrial & a new hearing was ordered.—*PAINTER v. McCABE, SHEPPARD v. McCABE*, [1928] 2 D. L. R. 13; [1928] 1 W. W. R. 149; 39 B. C. R. 249.—CAN.

### PART XIa.

*sr.* *Effect of—Under Adoption Act.*—*Re WARREN* (1926), 37 B. C. R. 322.

*st.* *By agreement.*—Under Child Welfare Act, C. A., 1924, c. 30, as amended in 1926, c. 4, s. 15, a person who, when a child within the said Act, was adopted under an agreement entered into prior to Sept. 1, 1921, between a person having his or her legal guardianship, & the adopting parent has the same status, including the right of inheriting from his or her foster parents dying after said amendment, except as to property expressly limited to heirs of the body, as if he or she were their child by natural birth, whether or not said adopted person was a "child" when the amendment came into force, & is, therefore, to be deemed the child of the foster parents for the purposes of Life Insurance Act, C. A., 1924, c. 99. The Act does not, however, create a new canon for the construction of wills. Therefore, where the adopted daughter was the niece of the foster father's wife, & his will, after making provision for said adopted daughter by name, gave part of the residue of his estate to his &

his wife's next-of-kin, the daughter took under the residuary bequest as his wife's niece & not as testator's child.—*Re SCOTT ESTATE*, [1928] 1 W. W. R. 168.—CAN.

*sv.* *Registration of adoption.*—An authority to adopt was presented for registration by the adoptive son's natural father, who was then his nearest male agnate, treating the son as having passed into the adoptive family. Registration was effected, the registering officer having satisfied himself, as required by sect. 41, that the person presenting was entitled to do so according to sect. 40, & it not having been objected that he was not so entitled.—*Held*: the document was duly registered, since the natural father, as the adoptive son's nearest male agnate, was the proper person to act as his natural guardian in the absence of any guardian judicially appointed; further, that any doubt upon the facts was removed by the certificate of the registering officer.—*VENKATAPATYA v. VENKATA RANGA RAO* (1928), 1 L. R. 52 Mad. 175.—IND.

### PART XII. SECT. 1, SUB-SECT. 2.

1265 vi. ——— *Unless prejudicial to child.*—*Re LATRIN* (1927), 60 O. L. R. 409.—CAN.

*k i.* ——— *Not interfered with—Effect of Child Welfare Act, C. A., 1924 (c. 30), ss. 2, 186.*—*Re SKALESKI, POPHAM v. BERTRAND*, [1927] 1 D. L. R. 781; [1927] 1 W. W. R. 355; 47 Can. Crim. Cas. 81; 36 Man. L. R. 221.—CAN.

### PART XIII. SECT. 1.

*sw.* *Infants Act, R. S. S., 1920 (c. 155), s. 20—Effect of.*—*Re NAKAUCHI ESTATE*, [1927] 3 D. L. R. 1087; [1927] 2 W. W. R. 607; 21 Sask. L. R. 673.—CAN.

*sx.* ——— *Re SHERWIN ESTATE, Re LANGLEY ESTATE*, [1927] 3 D. L. R. 1098; [1927] 2 W. W. R. 609; 21 Sask. L. R. 644.—CAN.

### PART XIII. SECT. 2.

*sy.* *Surviving parent.*—Although

Domestic Relations Act, 1927, c. 5 (Alta.), does not expressly provide that where only one parent is living that parent shall be the guardian, the obvious inference from its provisions is that so long as the surviving parent is a fit & proper person to have the guardianship, that parent is the "guardian appointed or constituted by the Act," & the power given by sect. 64 to the ct. to appoint a guardian does not arise.—*Re DOMESTIC RELATIONS ACT, 1927. Re PULKABREK*, [1928] 4 D. L. R. 821; [1928] 3 W. W. R. 323.—CAN.

### PART XIII. SECT. 5, SUB-SECT. 1.—B.

1413 iii. — —.]—Guardians & Wards Act, VIII. of 1890, clearly shows that the ct. can exercise its jurisdiction to appoint a guardian of the person of the minor even if he be possessed of no property.—*WALTER v. WALTER* (1927), 1 L. R. 55 Cal. 731.—IND.

*m i.* — —.]—Where the husband is domiciled in Alberta at the time an action for divorce is begun the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother even though they have been removed by the father to a foreign state & are residing therein at the time of the appln. for the order; & will where the merits warrant it make such an order provided it appears that under the laws of said state the order will be recognised as valid by the cts. thereof.—*GOFORTH v. GOFORTH*, [1929] 1 D. L. R. 58; [1928] 3 W. W. R. 483.—CAN.

*sz.* *Not infant having interest in property of undivided Mitashara family.*—*GHARIB-UL-LAH v. KHALAK SINGH* (1903), 19 T. L. R. 447, P. C.—IND.

### PART XIII. SECT. 5, SUB-SECT. 2.

*sa.* *Consent of official guardian—Withdrawal of.*—*Re ADMINISTRATION ACT, Re HADDON*, [1927] 2 D. L. R. 747; [1927] 1 W. W. R. 737; 38 B. C. R. 328.—CAN.

## Part XIV.—Legal Proceedings.

1548. *Add. Annotation*:—**Mentd.** York Glass Co. v. Jubb (1925), 134 L. T. 36.
- 1563a. ————]—**PRACTICE NOTE**, [1926] W. N. 8.
1695. *Add. Annotation*:—**Mentd.** Bennett v. Whitehead, [1926] 2 K. B. 380.
1698. *Add. Annotation*:—**Mentd.** Bennett v. Whitehead, [1926] 2 K. B. 380.
1751. *Add. Annotation*:—**Refd.** *Re* Clayton's Petn. (1927), 43 T. L. R. 659.
1841. For "Pltf.'s solr. ought to be appointed" read "Pltf.'s solr. ought not to be appointed."
1952. *Add. Annotation*:—**Appl.** Mansfield v. Robinson, [1928] 2 K. B. 353.
- 1961a. **Liability to solicitor employed by him—General rule.**—**MARNELL v. PICKMORE** (1796), 2 Esp. 472; 170 E. R. 424, N. P.
1993. *Add. Annotations*:—**Mentd.** *Re* Acklom, Oakeshott v. Hawkins, [1929] 1 Ch. 195; *Re* Patten, Westminster Bank, Ltd. v. Carlyon, [1929] 2 Ch. 276.

**PART XIV. SECT. 1, SUB-SECT. 1.**  
**sd. Consent or authority of next friend of infant plaintiff—Necessity for.**—**RYAN v. TRASK** (Alta.), [1926] 1 W. W. R. 772.—**CAN.**

**PART XIV. SECT. 1, SUB-SECT. 2.**—**G. (b).**

**1605 i. Power to compromise.**—*If for benefit of infant.*—Pltf., an infant, suing by his next friend, was given judgment in the county ct. for \$529 damages & costs. Deft. told the next friend that he, deft., was sure to win on the appeal, & proposed a settlement. The next friend being alarmed by deft.'s statement signed a settlement on the following day in the presence of deft. & the latter's solr., whereby, in consideration of the abandonment of the appeal, the judgment was reduced by \$150 & deft. was given time for its payment. On deft.'s appln. an order was made confirming the settlement & setting aside the execution. On appeal therefrom:—**Held**: the order should be set aside.—**TRUEN v. BOZYNSKI**, [1928] 3 D. L. R. 484; [1928] 2 W. W. R. 340; 37 Man. L. R. 363.—**CAN.**

**PART XIV. SECT. 1, SUB-SECT. 6.**  
**sf. General rule.**—Where a suit is brought by a minor pltf. to the knowledge of, & without objection from, deft., & pltf. becomes a major before the suit is heard & decided, it is not a nullity, & is maintainable.—**FUTU BIBI v. KHOKAI MONDAL** (1927), 1 L. R. 55 Calc. 712.—**IND.**

**PART XIV. SECT. 1, SUB-SECT. 10.**—**B. (d).**

**h. Revsd.**, 4 A. R. 449.  
**sg. Applications as to property.**—On applications respecting the property of infants costs must be kept down & the cheapest & most expeditious procedure adopted. Where there is a choice as to the manner of procedure & the more expensive procedure is taken, the solr. can recover only those costs which would have been allowed him had the cheaper procedure been followed.—**ROYAL TRUST Co. v. BONSALE**, [1925] 3 D. L. R. 141; [1925] 2 W. W. R. 103; 19 Sask. L. R. 513.—**CAN.**

**PART XIV. SECT. 2, SUB-SECT. 2.—A.**  
**1818 i. Necessity for separate repre-**

**sentation.**—**SHAIK ABDUL KARIM v. THAKURDAS THAKUR** (1928), 1 L. T. 55 Calc. 1241.—**IND.**

**PART XIV. SECT. 2, SUB-SECT. 2.**—**B. (a) i.**

**sh. Infant for whom appearance not entered.**—**Held**: It is competent to appoint a curator *ad litem*, to a pupil, called as defender in an action, for whom appearance has not been entered.—**DRUMMOND'S TRUSTEES v. PHELPS** (1929) S. C. (Ct. of Sess.) 484.—**SCOT.**

**PART XIV. SECT. 2, SUB-SECT. 2.**—**B. (a) ii.**

**sk. Guardian responsible for document or transaction on which action founded.**—**VENKATASOMESWARA RAO v. LAKSHMANASWAMI** (1928), 1 L. R. 52 Mad. 275.—**IND.**

**PART XIV. SECT. 2, SUB-SECT. 2.**—**B. (b).**

**1856 i. Power to consent.**—*To decree*!—**KUMAR GANGANAND SINGH v. MAHARAJAH SIR RAMESHWAR SINGH BAHADUR**, No. 1916 i, *post*.

**PART XIV. SECT. 2, SUB-SECT. 5.**

**1898 ii.** ————]—**HEWETT v. SMITH**, [1927] S. A. S. R. 338.—**AUS.**

**PART XIV. SECT. 2, SUB-SECT. 7. A.**

**1916 i.** ————]—*Where fraud or collusion can be alleged.*—A suit by a minor to set aside a consent decree, on the allegation that a fraud was practised not on the ct. but on himself, is maintainable.

It is the duty of a guardian *ad litem* to be as vigilant in guarding the interests of the minor as he would be expected to be if his own interests were involved, & the ct. will ordinarily relieve the minor from the effect of a consent decree & give him an opportunity to defend the suit, if the guardian did no more than put his signature to a petition of compromise without considering for himself the question of benefit to the minor. But the ct. will not allow a minor to avoid a consent decree, if, in the circumstances, it considers that the settlement was for the benefit of the minor.—**KUMAR GANGANAND SINGH v. MAHARAJAH SIR**

**RAMESHWAR SINGH BAHADUR** (1927), 1 L. R. 6 Pat. 388.—**IND.**

**g i.** ————]—*Negligence of guardian ad litem.*—"Gross negligence," which may be interpreted as culpable neglect of the interests of a minor deft., on the part of his guardian *ad litem* will entitle the minor to the avoidance of proceedings taken against him. The negligence must be such negligence as leads to the loss of a right which, if the suit had been defended with due care, must have been successfully asserted.—**BIJAJ RAJ v. RAM SARUP** (1925), 1 L. R. 48 All. 44.—**IND.**

**PART XIV. SECT. 2, SUB-SECT. 7.—B.**

**1922 ii.** ————]—**CLIBBORN v. FORSTALL** (1813), 5 L. Eq. R. 531.—**IR.**

**1922 iii.** ————]—A decree for a sale in a mortgage cause ought not to give the infant a day to show cause.—**CLINTON v. BERNARD** (1811), *Drury temp. Sug.* 287.—**IR.**

**1922 iv.** ————]—A day to show cause ought not to be given to the minor.—**HUTTON v. MAYNE** (1846), 3 Jo. & Lat. 586.—**IR.**

**1922 v.** ————]—A final order of foreclosure should reserve a day for infant deft. to show cause.—**LONDON & CANADIAN LOAN & AGENCY Co. v. EVERETT** (1881), 8 P. R. 489.—**CAN.**

**PART XIV. SECT. 2, SUB-SECT. 10.—B.**

**sm. Official guardian.**—*Defending as guardian ad litem.*—*Where legal guardian capable of safeguarding infant's rights.*—Although under Official Guardian Act, R. S. A. 1922, c. 22, the Official Guardian becomes a guardian *ad litem* on being served with the statement of claim in an action against an infant, yet, since by applying to the ct. he may be relieved of his position as guardian *ad litem* where there is a natural & legal guardian capable of safeguarding the infant's interests, he incurs the personal liability for costs of an ordinary guardian *ad litem* where, instead of applying to be so relieved, he sees fit to defend the action.—**SHEPPARD v. ROBINSON**, [1928] 3 D. L. R. 347; [1928] 2 W. W. R. 235; 23 Alta. L. R. 461.—**CAN.**

## Part XV.—Wards of Court.

2027. *Add. Annotation* :—**Apld.** Greenway v. A.-G. | Lanyon, Lanyon v. Lanyon (1927), 43 T. L. R.  
(1927), 44 T. L. R. 124. | 714.  
2167a. ————]—*Re* OLIVE (1863), 8 L. T.  
567 ; 11 W. R. 819.  
2030. *Add. Annotation* :—*As to* (1) **Refd.** *Re* | *See, also*, No. 735, *ante*.

## Part XVII.—Protection of Infants.

2196. *Add. Citation* :—28 Cox, C. C. 43.

## INJUNCTION.

## Part II.—Jurisdiction.

14. *Add. Annotation*:—As to (1) **Refd.** Price v. Corpn. D'Énergie De Montmagny, [1927] A. C. 363.
20. *Add. Annotation*:—**Apld.** Rex Co. & Rex Research Corpn. v. Muirhead & Comptroller-General of Patents (1926), 44 R. P. C. 38.
- 22a. —. —.]—**BEDDOW v. BEDDOW** (1878), 9 Ch. D. 89; 47 L. J. Ch. 588; 26 W. R. 570.
- Annotations*:—**Consd.** North London Ry. v. G. N. Ry. (1883), 11 Q. B. D. 30. **Refd.** Thomas v. Williams (1880), 11 Ch. D. 864; Quartz Hill Consolidated Gold Mining Co. v. Beall (1882), 20 Ch. D. 501; Bonnard v. Perryman, [1891] 2 Ch. 269; Jackson v. Barry Ry., [1893] 1 Ch. 238.
28. *Add. Annotation*:—**Mentd.** North Shipping Co. v. Rank (1926), 43 T. L. R. 82.
39. *Add. Annotation*:—**Refd.** Hughes v. Satchell (1925), 134 L. T. 93.
40. *Add. Annotation*:—**Refd.** Preston v. Raphael Tuck, [1926] Ch. 667.
47. *Add. Annotation*:—**Refd.** Salisbury & Ford- ingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.
54. *Add. Annotation*:—**Mentd.** Graigola Merthyr Co. v. Swansea Corpn., [1929] A. C. 341.

## Part III.—Interlocutory Injunctions.

92. *Add. Annotation*:—**Mentd.** Farnworth v. Manchester City Corpn., [1929] 1 K. B. 533.
- 105a. *S. P. GREAT WESTERN RY. CO. v. BIRMING- & GLOUCESTER RY. CO.* (1814), 3 L. T. O. S. 317, L. C.
- 113a. —. —.]—**NEW NIMROD CO., LTD. PERUVIAN PACIFIC RY., LTD., INTERNATIONAL**
- CONSTRUCTION & FINANCE SYNDICATE, LTD. & CRANKSHAW (1907), 51 Sol. Jo. 737.
173. *Add. Annotation*:—**Refd.** Page v. Scottish Insee. Corpn. (1929), 98 L. J. K. B. 308.
177. *Add. Annotation*:—**Folld.** Wall v. Exchange Investment Corpn., [1926] Ch. 143.

## PART I. SECT. 1.

9 i. *Where court cannot enforce performance.*—**LAW v. OTTAWA CITY SCHOOL BOARD**, [1928] 1 D. L. R. 483; 63 O. L. R. 1—**CAN.**

## PART II. SECT. 1.

58. *General rule*—The discretionary power to grant an injunction must be exercised reasonably & in harmony with well-established principles—**PRATT v. SCHEVECK (Sask.)**, [1926] 1 D. L. R. 1169; [1926] 3 W. W. R. 657—**CAN.**

13 iii. —.]—**KALBRACH v. BOYLAN** (1906), 1 E. L. R. 136.—**CAN.**

## PART III. SECT. 1, SUB-SECT. 1.

58 v. —. *Alternative method of operation possible.*—Defts. in the carrying out of certain building operations made use of mechanical drills, which caused a noise continuously during ordinary business hours, of so deafening a nature as to make it practically impossible for business to be carried on in a building owned by plff. co. Despite the protests of the co., no effort had been made by defts. to conduct their operations during hours when business would not be affected, or during ordinary business hours in some less noisy method. Such an alternative method could be used, though only at an increase in the cost & duration of the operations.—**Held**, defts. were bound to take, & had not taken, all reasonable precautions to minimise the nuisance created by them, & the injunction should be continued until the hearing of the suit to restrain the use of the drills during certain

specified hours—**DAILY TELEGRAPH CO., LTD. v. SPURAT** (1928), 28 S. R. N. S. W. 291; 15 N. S. W. W. N. 18.—**AUS.**

59 ii. —.]—**CLIMBERLAND COAL RY. CO. v. McDUGALL** (1911), 9 E. L. R. 201.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2. - B. k i. —.]—**PRATT v. SCHEVECK (Sask.)**, [1926] 1 D. L. R. 1169; [1926] 3 W. W. R. 657.—**CAN.**

## PART III. SECT. 1, SUB-SECT. 2. - C.

77 xxiv. —.] The Apateo, Ltd. gave a debenture to M. to secure a certain sum, constituting a floating charge over all the assets of the co. present or future, & prohibiting the creation of any mortgage or charge in priority to it. Afterwards the co. gave a debenture to W. to secure portion of the purchase-money of certain goods sold to it by W., & constituting a floating charge over the assets so sold. Subsequently, W. recovered a judgment against the co. for portion of the money secured by his debenture, & issued execution, under which the sheriff seized goods of the co. M. claimed the goods & the sheriff interpleaded. M. then instituted a suit to restrain the sale of the goods by the sheriff.—**Held**: an injunction should be granted to restrain the sale for seven days, with leave to either party to apply for the appointment of a receiver or receivers of the goods, to which they were respectively entitled till the hearing of the case—**MATHESON v. WAHLEN** (1928), 28 S. R. N. S. W. 189; 15 N. S. W. W. N. 47.—**AUS.**

PART III. SECT. 1, SUB-SECT. 2.—D. f i. —. *Injury to fishery.*—**MOORE, ETC. v. A.-G.**, [1927] 1 R. 569.—**IR.**

PART III. SECT. 1, SUB-SECT. 2.—E. 117 xvi. —.]—**MOORE, ETC. v. A.-G.**, [1927] 1 R. 569.—**IR.**

PART III. SECT. 1, SUB-SECT. 3. - B. (a).

sb. *Injunction involving continuance of illegal course of conduct.*—Water Clauses Consolidation Act, 1897, & subsequent legislation in lieu thereof, requires that grants of use of water thereunder shall be circumscribed in the manner in which the licences held by deft. co. are circumscribed; said licences provide that the territory within which the power to be generated by the use of the water thereby granted may be sold, bartered or exchanged is an area within 50 miles of Rossland. Therefore the continuance of an interim injunction restraining deft. co. from cutting off said power, which it had been supplying to a co. beyond such area, was refused, since it would require it to continue an illegal course of conduct.—**GRANBY CONSOLIDATED MINING, SMELTING & POWER CO. v. WEST KOOTENAY POWER & LIGHT CO.**, [1928] 4 D. L. R. 724; [1928] 3 W. W. R. 301.—**CAN.**

## PART III. SECT. 2.

194 i. *Whether granted after decision—To preserve property pending appeal.*—Injunction to preserve rights pending an appeal, granted.—**PREVEDOROS v. PREVEDOROS (B. C.)**, [1927] 3 W. W. R. 755.—**CAN.**



## Part VIII.—Effect of Conduct of Parties.

464. *Add. Annotation*:—*Refd.* Lynde v. Nash, [1928] 2 K. B. 93.
469. *Add. Annotation*:—*Refd.* A.-G. v. London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.
507. *Add. Annotation*:—*Refd.* Aldridge v. Wright, [1929] 2 K. B. 117.
- 511a. — *Encouragement by plaintiff.*—*COPLOVITCH v. WILLIAMS* (1929), 73 Sol. Jo. 484.
551. *Add. Annotation*:—*Refd.* Grant v. Derwent, [1928] Ch. 902.
568. *Add. Annotation*:—*Consd.* Marbé v. George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.
572. *Add. Annotation*:—*Consd.* Marbé v. George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.
579. *Add. Annotation*:—*Consd.* Hyman v. Hyman, [1929] A. C. 601.

## Part IX.—Against whom Injunction may be Granted.

- 585a. *Public official.*—*REX CO. & REX RESEARCH CORPN. v. MUIRHEAD & COMPTROLLER-GENERAL OF PATENTS*, No. 842a, *post*.
608. *Add. Annotation*:—*Refd.* The Jupiter (1927), 137 L. T. 333.

## Part X.—Matters in respect of which Injunction may be Granted.

- 638a. *Enforcement of contract contrary to terms thereof.*—Injunction refused. — *SAVAGE SOUTH AFRICA, LTD. v. LONDON EXHIBITIONS, LTD.* (1899), 43 Sol. Jo. 751.
649. *Add. Annotation*:—*Consd.* *Re* Wait, [1927] 1 Ch. 606.
674. *Add. Annotations*:—*Mentd.* Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108; *Price v. Corpn. D'Energie De Montmagny*, [1927] A. C. 363.
675. *Add. Annotation*:—*Refd.* Torbay Hotel v. Jenkins, [1927] 2 Ch. 225.
- 677a. — *Where a breach of a restrictive covenant causes substantial damage the ct. has no discretion to award damages in lieu of a mandatory injunction. This rule applies whether the covenant is broken by the original covenantor, or by an assignee with notice.*—*ACHILLI v. TOVELL*, [1927] 2 Ch. 243; 96 L. J. Ch. 493; 137 L. T. 805; 71 Sol. Jo. 745.
706. *Add. Annotations*:—*Refd.* Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108; *Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609; *Re* Wait, [1927] 1 Ch. 606.
713. *Add. Annotation*:—*Refd.* Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108.
716. *Add. Annotation*:—*Folld.* *Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609.
717. *Add. Annotation*:—*Refd.* Crediton Gas Co. v. Crediton U. C., [1928] Ch. 447.
720. *Add. Annotation*:—*Apprvd.* Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108.
722. *Add. Annotation*:—*Mentd.* The Penelope, [1928] P. 180.
724. *Add. Citations*:—95 L. J. P. C. 71; 134 L. T. 227; 31 Com. Cas. 80; 16 Asp. M. L. C. 585.
- Add. Annotations*:—*Distd.* Ontario Jockey Club v. McBride, [1927] A. C. 916. *Mentd.* Torbay Hotels v. Jenkins, [1927] 2 Ch. 225.

### PART X. SECT. 2, SUB-SECT. 2.

621 v. —.—]—*CHRISTIE v. FRASER* (1904), 10 B. C. R. 291.—CAN.

### PART X. SECT. 2, SUB-SECT. 3.—A.

a1. *Enforcement of agreement to deliver produce to company.*—By the arts. of assocn. of a co., whose business was to market the fruit grown by its members, it was provided that each member should deliver to the co. ninety-five per cent. of his fruit immediately after each variety thereof should be ready, suitable & fit for harvesting or picking but not later than a certain date in each year:

—*Held*: the obligation imposed on each member of the co. was not one in respect of which the ct. should at the instance of the co. grant an injunction. —*PAKENHAM UPPER FRUIT CO., LTD. v. CROSBY*, [1925] V. L. R. 27; 35 C. L. R. 386; 31 Argus L. R. 13.—AUS.

### PART X. SECT. 2, SUB-SECT. 3.—C. (b).

655 iv. —.— *Contract of agency.*—The contract in question which was between a fruit grower & certain assocns. for the marketing of the grower's crops was held by the ct. to be

nothing more than a contract of agency not to be specifically enforced by way of injunction or receivership. —*KELOWNA GROWERS' EXCHANGE & OKANAGAN UNITED GROWERS v. DE CAQUERAY* (1922), 70 D. L. R. 865; [1922] 3 W. W. R. 1115.—CAN.

655 v. —.—]—*ROSS v. CANADIAN NATIONAL RVRS.*, [1928] 2 D. L. R. 880; [1928] 1 W. W. R. 940; 37 Man. L. R. 279.—CAN.

### PART X. SECT. 4, SUB-SECT. 1.—A. (b).

n. *Add* " (1914), 20 B. C. R. 215."

- 730a.** ———.]—WILLIAMS v. WILLIAMS (1817), 3 Mer. 157; 36 E. R. 61, L. C.  
**Annotations.**—**Consd.** Morison v. Moat (1851), 9 Hare, 241. **Mentd.** Green v. Church (1823), 1 L. J. O. S. Ch. 203.
- 735.** **Add. Annotation.**—**Refd.** Behnke v. Bede Shipping Co., [1927] 1 K. B. 649.
- 750.** **Add. Annotation.**—**Consd.** A.-G. v. County of London Electric Supply Co., [1920] Ch. 542.
- 755.** **Add. Annotation.**—**Consd.** Salisbury & Ford- ingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.
- 785.** **Add. Annotation.**—**Refd.** R. v. Grain, Ex p. Wandsworth Grdns., [1927] 2 K. B. 205.
- 807.** **Add. Annotation.**—**Apld.** Wing v. Burn (1928), 44 T. L. R. 258.
- 808a.** ———.]**Cancellation of affiliation.]**—Injunction refused.—WING v. BURN (1928), 44 T. L. R. 258.
- 829.** **Add. Annotation.**—**Refd.** Putsmen v. Taylor, [1927] 1 K. B. 637.
- 829a.** ———.]**The first deft. entered the service of plffs. as a traveller under an agreement by which he agreed that he would not at any time thereafter "divulge or make known any of the trusts, secrets, accounts, or dealings of or relating to" plffs.' business. Upon leaving plffs.' service, he entered the service of the second defts., who knew of the terms of the above agreement, & he kept a list of plffs.' customers in the district in which he travelled & divulged to a considerable extent to the second defts. the terms upon which plffs. did business:—Held plffs. were entitled to an injunction against both defts., an order for delivery up of papers & books & damages.—SUMMERS (WILLIAM) & CO., LTD. v. BOYCE & KINMOND & CO. (1907), 97 L. T. 505; 23 T. L. R. 724.**
- 830a.** ———.]**In 1909, V. & Co., defts. in an action, were endeavouring to perfect a system known as the "C. A. V." system, for lighting motor cars by electricity, & the A. I. Ltd. who were plffs., were licencees of patents for a dynamo suitable for the electrical lighting of motor vehicles. The parties, with a view to utilising plffs. dynamo in connection with the "C. A. V." system, agreed for one year that plffs. should give defts. the "sole selling agency" for the dynamo, which was to be supplied at cost price; defts. were to use their best endeavours to introduce & sell the dynamo, & were not to become directly or indirectly interested in the sale of any other dynamo, & the parties were to mutually communicate improvements in such dynamo. Defts. were to be allowed a commission of 10 per cent. on cost price, & the ultimate profits were to be equally divided, but the agreement was not to create a partnership. Defts. during the pendency of the agreement received certain testimonials. After the termination of the agreement, plffs. brought an action to restrain**
- defts. from using or publishing these testi- monials, & moved for an interlocutory injunction:—Held:** defts. were sole purchasers or sole consignees of plffs.' goods upon special terms, that there could not be implied from the agreement a contract between the parties, that all information of which defts. became possessed during the pendency of the agreement should not afterwards be used by defts. for other purposes, & that a fiduciary relationship had not been established between the parties as would have existed had defts. been in fact plffs.' agents.—ACCUMULATOR INDUSTRIES, LTD. v. VANDERVELL (C. A.) & Co. (1912), 29 R. P. C. 391.
- 835a.** ———.]**Mining report.]**—NEW NIMROD Co., LTD. v. PERUVIAN PACIFIC Ry., LTD., INTERNATIONAL CONSTRUCTION & FINANCE SYNDICATE, LTD. & CRANKSHAW (1907), 51 Sol. Jo. 737.
- 842a.** ———.]**Against public official.]**—Where a public officer, e.g., the Comptroller-General of Patents, claims the right to disclose information to the public which plff. in an action is *prima facie* entitled to withhold from publicity, it is proper to restrain that public official from taking a step which would result in that information being disclosed.—REX Co. & REX RESEARCH CORPN. v. MUIRHEAD & COMPTROLLER-GENERAL OF PATENTS (1926), 96 L. J. Ch. 121; 136 L. T. 568; 44 R. P. C. 38.
- 852.** **Add. Annotation.**—**Mentd.** Lowther v. Harris, [1927] 1 K. B. 393.
- 904.** **Add. Annotation.**—**Refd.** Tolley v. Fry (J. S.) & Sons (1929), 46 T. L. R. 108.
- 906a.** ———.]**A society, composed mainly of architects, was formed into a co. limited by guarantee under Cos. Acts. By its arts. of assocn. membership of the society was open to persons qualified in certain ways approved by the council of the society, & paying a certain entrance fee & yearly subscriptions; & members were authorised to use the letters "M. S. A." as a professional designation. Deft., who was an architect, but had never been & was not a member of the society, used the letters "M. S. A." as a professional designation. The society brought an action against him for an injunction, which he did not defend, & by its statement of claim alleged, among other things, that the continuous & exclusive use of the letters by its members had given the letters a definite meaning & value in the minds of the public, & the use of them by unauthorised persons would damage the society. On motion for judgment in default of appearance:—Held:** plffs. were not entitled to an injunction.—SOCIETY OF ARCHITECTS v. KENDRICK (1910), 102 L. T. 526; 26 T. L. R. 433.
- 906b.** **Use of professional designation implying membership—Of professional institution.]**—

**PART X. SECT. 6.**

**sm.** To restrain director & employee from setting up rival business & for former customers 1. The fact that def. had been a director of employee of pft. co. held not to entitle t to an injunction restraining him, after he had resigned his employment, from trying on a rival business for himself from canvassing customers of the , with whom he became acquainted during such employment, where he had not taken away any written lists

or other materials pertaining to the co.'s business & obtained by him in the course of his employment, although he continued to hold in the mere legal sense his position as director.—**WAITE'S AUTO TRANSFER, LTD., v. WAITE**, [1928] 3 W. W. R. 619. —**CAN.**

**PART X, SECT. 8, SUB-SECT. 4.**

**b i. Land bought with notice of prior equity.]—**HOOPER v. SMITH & HAMILTON (1905), 7 Terr. L. R. 27; 2 W. L. R. 194.—**CAN.**

f i. S. P. CANADIAN PACIFIC RY. Co.  
v. CALGARY (1887), 5 Man. L. R. 37.—  
CAN.

**PART X, SECT. 14, SUB-SECT. 2.**

**906 i. Use of letters implying membership—Of professional institution—**  
**"U. A."—**INSTITUTE OF CHARTERED  
 ACCOUNTANTS OF MANITOBA v. BEL-  
 LAMY, [1927] 3 D. L. R. 1071; [1927]  
 2 W. W. R. 106; 36 Man. L. R. 453.—  
 CAN.



Pltf. society was incorporated in 1885, under Cos. Act, 1867, as a co. not for gain without the use of the word "limited" under licence of the Board of Trade. In 1886 pltf. society recommended its members to adopt as their professional designation the use after their names of the term "Incorporated Accountant." By 1905 that designation had come to mean to that section of the public who had dealings with accountants a member of the society, which, by its system of tests & examinations, had conferred upon its members the valuable privilege of a recognised status for ability & integrity. In that year deft. association was incorporated under the Cos. Acts as a co. limited by guarantee. Shortly after its incorporation its council recommended its members to adopt the designation "Incorporated Accountant" with the addition of the abbreviation "Lon. Assocn." In an action by pltf. society against deft. assocn. & G., one of its members, claiming (a) an injunction to restrain G. from using in connection with

business of accountant the designation "incorporated accountant," & (b) an injunction to restrain deft. society from holding out, by advertisements or otherwise, that its members were entitled to use such designation:—*Held*: the designation "incorporated accountant" was a fancy & not a descriptive term, & had come to denote membership of the society, & therefore, that the unauthorised use of it inflicted an injury on pltf. society, in respect of which it was entitled to maintain an action. Pltf. society had a pecuniary interest in preventing deft. assocn. from attempting, by representations & inducements held out to members of the professions, to reduce the status of pltf. society by conferring improperly an indication of that status. Pltf. society was entitled

to the injunctions which it claimed.—*SOCIETY OF ACCOUNTANTS & AUDITORS v. GOODWAY & LONDON ASSOCN. OF ACCOUNTANTS, LTD.*, [1907] 1 Ch. 489; 76 L. J. Ch. 384; 96 L. T. 326; 23 T. L. R. 286; 51 Sol. Jo. 248.

*Annotation*:—*Distd. Society of Architects v. Kendrick* (1910), 102 L. T. 526.

**906c.** ——— **After expulsion.**—Deft. took honours at the final examination for membership of the Institute of Chartered Accountants in England & Wales, but he was afterwards adjudicated a bkpt. & was excluded from membership under the provisions of the charter of the institute. After his exclusion deft. continued to use letter-paper headed "Honours Final, Institute of Chartered Accountants." In an action by the institute for an injunction the evidence was that this heading conveyed the impression that deft. was still connected with the institute:—*Held*: though deft. was entitled to state that he had obtained honours in the examination, the institute was entitled to an injunction against his making the statement in such a way as to lead to the belief that he was a member of the institute or was connected with it.—*INSTITUTE OF CHARTERED ACCOUNTANTS OF ENGLAND & WALES v. HARDWICK* (1919), 35 T. L. R. 312, C. A.

**923a.** — **Misrepresentations—As to what took place in court.**—*GILLETTE SAFETY RAZOR, LTD. v. PELLETT, LTD.* (1909), 26 R. P. C. 588.

**928.** *Add. Annotation*:—*Dbtd. R. v. Payne*, [1896] 1 Q. B. 577. In my opinion, in some instances, the cts. have gone rather too far (*LORD RUSSELL, C.J.*).

**929a.** **Publication by newspaper—Commenting on matters in dispute.**—*GUILDING v. MOREL BROTHERS, CORBETT & SONS, LTD.* (1888), 4 T. L. R. 198.

## Part XI. — Procedure.

**976.** *Add. Annotation*:—**Refd.** *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686.

**981.** *Add. Annotation*:—**Mentd.** *St. Nicholas Acons v. L. C. C.*, [1928] A. C. 469.

**986.** *Add. Annotation*:—**Mentd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.

**992.** *Add. Annotation*:—**Refd.** *Vanderpant v. Mayfair Hotels Co.* (1929), 27 L. G. R. 752.

### PART X. SECT. 27.

**937 vii.** — In 1883 W. being seized of certain lands, conveyed half thereof to G. in fee, describing the same by metes & bounds, & afterwards, died, having devised the other half to M. There was a house on the lands in question so situate that half of it was on the portion granted to G., half on the portion devised to M. No specific mention of the house was made either in the deed to G. or the will. M. now commenced, defiance of G.'s protests, to pull down the half of the house situate on the land devised to her, & G. applied in the present action for an injunction to restrain the same. *Held*: he was entitled to the relief claimed.—*WRAY v. MORRISON* (1885), 9 O. R. 180. — **CAN.**

**PART XI SECT. 1, SUB-SECT. 1.—A.**  
b. *Resd.*, 2 A. R. 226

**PART XI. SECT. 2, SUB-SECT. 2.**  
sp. *Plaintiff*—*Having only equitable interest.*—Injunction granted.—*BESINNETT v. WHITE*, [1926] 1 D. L. R. 95; *affg.*, [1925] 3 D. L. R. 560; 57 O. L. R. 171.—**CAN.**

st. — *Having mere interesse termin.*—Pltf. having a mere *interesse termin.* is not necessarily debarred from maintaining an action for injunction.—*MIDNAPUR ZAMINDARI CO., LTD. v. RAM KANAI SINGH DEO DARA SAHA* (1925), 1 L. R. 5 Pat. 80.

**XI. SECT. 2, SUB-SECT. 3.—C.**  
**1046 i.** *Urgency—Preservation of*

*property in dispute.*—*WILMOT v. MATLAND* (1851), 2 Gr. 556. — **CAN.**

**PART XI. SECT. 2, SUB-SECT. 7.**  
**1083 i.** *The*  
*for full disclosure of facts*—*YARMIE v. YARMIE*, [1925] 2 D. L. R. 1215.—**CAN.**

**PART XI. SECT. 3, SUB-SECT. 1.**  
d i. *S. P. DAVIDSON & VANCOUVER TERMINAL GRAIN CO. v. NORTH WESTERN DREDGING CO. & VANCOUVER* (1925), 35 B. C. R. 531. — **CAN.**

**PART XI. SECT. 5, SUB-SECT. 1.**  
sv. *Duration of injunction omitt.*  
*from order Right to amend.*—*Deft., who was employed by pltf., covenanted*

1134. *Add. Citation*:—2 R. P. C. 73.

*Add. Annotation*:—**Mentd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

1157. *Add. Annotation*:—**Mentd.** Reigate Corpn.

v. Surrey County Council, [1928] Ch. 359.

1208. *Add. Annotation*:—**Mentd.** Manchester Corpn. v. Farnworth (1929), 40 T. L. R. 85.

1216. *Add. Annotation*:—**Refd.** Horton's Estate v. Beattie (1926), 42 T. L. R. 701.

## Part XII.—Breach of Injunction and Remedies Therefor.

1346. *Add. Annotation*:—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.

## Part XIII.—Dissolution of Injunction.

1402. *Add. Annotation*:—**Mentd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

1430. *Add. Annotation*:—**Mentd.** Ellerman Lines v. Read, [1928] 2 K. B. 114.

## Part XIV.—Costs.

1477. *Add. Annotation*:—**Refd.** Vanderpant v. Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1540. *Add. Annotation*:—**Refd.** Donald Campbell v. Pollak, [1927] A. C. 732.

1553. *Add. Annotation*:—**Mentd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

that he would not, in the event of the termination of that employment, directly or indirectly solicit or influence customers in a certain district for a period of three years. He committed a breach of the covenant, & plff. brought an action claiming an injunction restraining deft. for three years. An interim order was made restraining deft. until a specified date, & subsequently, an order was made by consent whereby deft. was restrained from committing, or attempting to commit, any breach of the covenant, simpliciter, & without stating the period for which the order operated.—*Held*: the intention of the parties was to restrain deft. during the currency of the period

of prohibition stated in the covenant; & the ct. had jurisdiction to correct the judgment.—**WARREN** TEA CO., LTD. v. REINGLASS, [1928] S. R. Q. 29.—**AUS.**

### PART XI. SECT. 5, SUB-SECT. 10.—A.

f i. —[*Grounds for granting appeal.*]—**WINNIPEG LAUNDRY v. CAYERLEY** (Man.), [1927] 4 D. L. R. 528.—**CAN.**

### PART XII. SECT. 2, SUB-SECT. 1.—A. (a).

e i. —[*Breach doubtful.*]—**HOLDEN v. RYAN** (1913), 23 O. W. R. 961; 4 O. W. N. 668; 10 D. L. R. 90.—**CAN.**

### PART XIV. SECT. 5.

xx. *Taxation on Supreme Court scale.*—[In an action in the Supreme Ct. of Ontario for an injunction restraining deft. from carrying on or being concerned in any business similar to that of plffs. in whose business he had been employed, & for damages unspecified as to amount, the judge granted the injunction sought, but awarded no damages. He directed that plffs.' costs should be paid by deft., but did not give any special direction as to the scale of costs:—*Held*: plffs. were entitled to costs on the Supreme Ct. scale.—**DOMINION LOOSE LEAF CO. v. MANUEL**, [1925] 3 D. L. R. 426; 57 O. L. R. 84.—**CAN.**

## INNS AND INNKEEPERS.

## Part I.—In General.

1. *Add. Annotation* :—*Generally*, *Refd.* *Aria v. Bridge House Hotel (Staines) (1927)*, 137 L. T. 299.
3. *Add. Annotation* :—*Refd.* *Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.
40. In the "*Held*" paragraph for "(2) defts. were not entitled because," read "(2) defts. were not entitled to rely on Innkeepers Liability Act, 1863 (c. 4), s. 1, because."

## Part II.—Duties and Liabilities of Innkeepers.

67. *Add. Annotation* :—*Mentd.* *Albemarle Supply Co. v. Hind (1927)*, 43 T. L. R. 783.
- 116a. — *Hole in floor.*—Pltf. went to a public-house by appointment to meet a friend, & as his friend had not arrived, walked into the parlour, & there fell through a hole in the floor, which was being repaired. As far as appeared his only object in going to the house was to meet his friend. In an action against the landlord for negligence in not fencing the hole, & in which pltf. alleged that he was in the house as a guest, the jury found for pltf. The ct. refused a rule to enter a nonsuit, which was asked for on the ground that there was no evidence, either of negligence on the part of deft., or of pltf. being in the house as a guest.—*AXFORD v. PRIOR (1866)*, 14 W. R. 611.
125. *Add. Annotation* :—*Refd.* *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
151. *Add. Annotation* :—*Refd.* *Aria v. Bridge House Hotel (Staines) (1927)*, 137 L. T. 299.
- 151a. — *Motor car stolen from parking place.*—A guest at an hotel parked his motor car in the space adjoining the hotel as directed by the hall-porter of the hotel, & which space was commonly used for the purpose. While the guest was at dinner at the hotel the car was stolen:—*Held*: there had been no alteration in the law regarding the liability of an innkeeper for the loss of goods brought on his premises by a guest, & where the relationship of innkeeper & guest existed as regards eating & drinking, that relationship extended also to the vehicle of the guest brought by him to the inn, & the common law rule still applied & was not affected by Innkeepers' Liability Act, 1863 (c. 41).—*ARIA v. BRIDGE HOUSE HOTEL (STAINES), LTD. (1927)*, 137 L. T. 299.
- 177a. — *Chamier v. De Vere Hotels, Ltd. (1928)*, 72 Sol. Jo. 155.
201. *Add. Annotation* :—*Generally*, *Mentd.* *Stoney v. Eastbourne R. D. C.*, [1927] 1 Ch. 367.

## PART II. SECT. 2, SUB-SECT. 1.

118 i. *Reasonable care—Limited to rooms where guest likely to go.*—While a person in attendance at a banquet given by an assoc. in a hotel is an invitee of the hotel proprietor, & not a mere licensee, the extent of the invitation is of the utmost importance, & if an accident happens & the invitation did not extend to the time & place is circumstances of the accident, then the question whether the proprietor & liable is to be determined in view of

the duty which he owes to a mere licensee.

Where a guest at such a banquet in deft.'s hotel, after the conclusion thereof, met his death by falling into a private-service elevator shaft:—*Held*: deft. was not liable.—*KNIGHT v. GRAND TRUNK PACIFIC DEVELOPMENT CO.*, [1927] 1 D. L. R. 498; [1926] S. C. R. 674.—*CAN.*

123 i. *Invited visitor.*—In an action for damages for injuries resulting from a fall sustained when entering deft.'s hotel on a visit to one of the sample

rooms:—*Held*: the action must be dismissed, since the slope on which pltf. fell was not a "trap," & she had previous knowledge of it.—*WAY v. LELAND HOTEL CO. (B. C.)*, [1927] 3 W. W. R. 224.—*CAN.*

## PART III. SECT. 2, SUB-SECT. 2.—A. (a).

245 i. *Goods brought to inn by guest—Although value of goods greatly in excess of amount owing.*—*NEWMAN v. WHITEHEAD (1909)*, 9 W. L. R. 688; 2 Sask. L. R. 11.—*CAN.*

## INSURANCE.

## Part I.—General Principles.

3. *Add. Annotation*:—*As to* (2) **Refd.** *Greenhill v. Federal Insee.* (1926), 95 L. J. K. B. 717.
8. *Add. Annotation*:—**Mentd.** *Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.
- 11a. **Inconsistency between policy & proposal form—Policy prevails.**—**KAUFMANN v. BRITISH SURETY INSURANCE CO., LTD.**, No. 218a, *post*.
13. *Add. Annotation*:—**Refd.** *Greenhill v. Federal Insee.* (1926), 95 L. J. K. B. 717.
- 18a. **Type calculated to elude observation—Insurers refused benefit of clause.**—**Deft. co. insured** a quantity of leather, consigned *c.i.f.*, for a voyage from New York to Tunis, by a certificate of insurance which provided: "This certificate represents & takes the place of the policy & conveys all the rights of the original policy-holder as fully as if the property were covered by a special policy direct to the holder of this certificate." One of the conditions of the policy was in much smaller print than other parts of the policy & was as follows: "In case of loss or damage to the property hereby insured the loss shall be reported to the representatives of the co., or, if there be no representative of the co., to Lloyd's agent, as soon as the goods are landed or the loss is known or expected." On the day after the arrival of the goods at Tunis the consignee sold them to *pltf.*, who found them to have been damaged by salt water. In an action by *pltf.* on the certificate of insurance *deft. co.* contended, (1) that *pltf.* was not the right person to sue, & (2) that the clause in the policy as to giving notice within a limited time had not been complied with:—**Held**: the certificate, having been issued by *deft. co.* itself, enured to the benefit of *pltf.*, & since *pltf.* did not know of the condition as to notice, & since the clause as to notice was in such small print that it was not such as a reasonable man, reading with reasonable care, would regard as forming part of the contractual terms, *pltf.* was entitled to recover.—**KOSKAS v. STANDARD MARINE INSURANCE CO., LTD.** (1926), 42 T. L. R. 692; *affd.* (1927), 137 L. T. 165; 43 T. L. R. 169; 17 Asp. M. L. C. 240; 32 Com. Cas. 160, C. A.
- Annotation*:—**Consd.** *De Monchy v. Phoenix Insee. Co. of Hartford* (1928), 139 L. T. 703.
26. *Add. Annotation*:—**Refd.** *Lake v. Simmons* (1926), 95 L. J. K. B. 586.
29. *Add. Annotation*:—**Refd.** *Stumbles v. Whitley* (1929), 46 T. L. R. 37.
- 36a. —.—**KAUFMANN v. BRITISH SURETY INSURANCE CO., LTD.**, No. 218a, *post*.
52. *Add. Annotation*:—**Mentd.** *Re Wait*, [1927] 1 Ch. 606.
63. *Add. Citation*:—31 Com. Cas. 10.  
*Add. Annotation*:—**Mentd.** *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.
93. *Add. Annotation*:—**Mentd.** *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.
- 143a. **Valuation of property—Speculative prospect of appreciation.**—If in a proposal to effect an insurance upon property the value put upon the property by the assured is based upon what he believes to be a reasonable prospect of appreciation, he must make it plain to the insurer that the value stated is not immediate but speculative. If the assured does not make this disclosure to the insurer, the insurance will be void even though the statement of value by the assured does not amount to a conscious & deliberate overvaluation.—**HOFF TRADING CO. v. UNION INSURANCE SOCIETY OF CANTON, LTD.** (1929), 45 T. L. R. 466, C. A.
156. *Add. Annotation*:—*As to* (1) **Appld.** *Page v. Scottish Insee. Corpn.* (1929), 98 L. J. K. B. 308.
158. *Add. Annotation*:—**Consd.** *Page v. Scottish Insee. Corpn.* (1929), 98 L. J. K. B. 308.

## PART I. SECT. 3, SUB-SECT. 1.

**m i.** —.— *Duty of insurer.*—It is the duty of insurance cos. to make the policies issued by them accord with & not depart from the terms of their proposal form, & to express both documents in clear & unambiguous terms.—**BRAUND v. MUTUAL LIFE & CITIZENS ASSURANCE CO., LTD.**, [1926] N. Z. L. R. 529.—N.Z.

PART I. SECT. 3, SUB-SECT. 2.—B.  
g. Read now "18a i."

## PART I. SECT. 8.

**q i.** —.—**CLARKE v. UNION FIRE INSURANCE CO., CLAIM OF AGRICULTURAL FIRE INSURANCE CO. OF WATERTOWN, NEW YORK** (1881), 6 O. R. 640.—CAN.

**q ii.** —.—**QUEEN INSURANCE CO. OF AMERICA v. BRITISH TRADERS INSURANCE CO.** (1926), 37 B. C. 11, 202; *affd.*, *sub nom* **BRITISH TRADERS INSURANCE CO. v. QUEEN INSURANCE CO. OF AMERICA**, [1928] 2 D. L. R. 339; [1928] S. C. R. 9.—CAN.

## PART I. SECT. 9, SUB-SECT. 2.

**sa.** *Allegation of fraud—By insurers*

*against agent—Onus on insurers.*—*Pltfs.* produced at the trial an original policy & a renewal certificate covering the date in question. The insurers contended, nevertheless, that the renewal premium had not in fact been paid before the date of the accident, & attempted to establish their position by showing that their own agent had been guilty of a fraud, for the benefit of himself or the insured or both, in concocting evidence to show that the premium had been paid in time:—**Held**: the evidence was insufficient to support the finding of fraud & the insurers had, therefore, failed to meet the onus on them of meeting the *prima facie* case made out by the production of the policy & renewal receipt.—**WESTERN FINANCE CORPORATION, LTD. v. LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA**, [1928] 3 D. L. R. 592; [1928] 2 W. W. R. 454.—CAN.

## PART I. SECT. 9, SUB-SECT. 3.—A.

**sb.** *Second policy.*—**CRAWFORD v. WESTERN ASSURANCE CO.** (1873), 23 C. P. 365.—CAN.

## PART I. SECT. 9, SUB-SECT. 4.

**144 ix.** —.—**MUMA v. NIAGARA**

**DISTRICT MUTUAL INSURANCE CO.** (1862), 22 U. C. R. 214.—CAN.

**a i.** —.— *Verdict unsupported by evidence—Power of Court of Appeal.*—**BRODY v. DOM. LIFE ASS'CE. CO.**, [1928] 4 D. L. R. 529; *affd.*, [1928] 2 D. L. R. 211; 60 N. S. R. 116.—CAN.

## PART I. SECT. 11.

**157 iv.** —.—*Where in a contract of insurance a provision for subrogation contains no limitations or restrictions the insurer's right of subrogation should not be restricted within narrower limits than equity would have given him in the absence of the provision. A motion by the insurer under such a contract for an order compelling the insured to permit the former to use the latter's name in suing third parties was therefore allowed, where the insured pressed for the order because of its belief that the cause of the loss might eventually be found to have been the result of a tort rather than a breach of contract.*—**NORTHERN ASS'CE. CO. v. MANTOYA POOL ELEVATORS**, [1928] 3 W. W. R. 151.—CAN.

- 170.** *Add. Annotation :—As to (2) Apprvd. Newsholme v. Road Transport & General Insee., [1929] 2 K. B. 356.*
- 171a.** ————. | -- A proposal form for the insurance of a motor-bus was signed by the person wishing to effect the insurance, but the answers to the questions therein, which were warranted to be true & to form the basis of the contract, were filled in by the insurance co.'s agent, who, although told the true facts, wrote, for some unexplained reason, answers which were untrue in a material respect. The agent was not authorised by the insurance co. to fill in proposal forms, & it did not appear that the co. knew that he had in fact done so. His duties were to procure persons to effect insurances & to see, as far as he could, that proposal forms were correctly filled up ; he was not authorised to give a cover note or to enter into a policy of insurance. A policy was issued to the person who had signed the proposal form, & during its currency he made a claim under it, but the insurance co. repudiated liability on the ground of the untrue statements in the proposal form :  
*Held* : the agent of the insurance co. in filling in the proposal form was merely the amanuensis of the proposer, that the knowledge of the true facts by the agent could not be imputed to the insurance co., & therefore that the insurance co. was entitled to repudiate liability on the ground of the untrue statements in the proposal form.—NEWSHOLME BROS. v. ROAD TRANSPORT & GENERAL INSURANCE CO., LTD., [1929] 2 K. B. 356 ; 98 L. J. K. B. 751 ; 111 L. T. 570 ; 45 T. L. R. 573 ; 73 Sol. Jo. 465 ; 31 Com. Cas. 330, C. A.
- 177.** *Add. Annotations :—As to (1) Expld. Newsholme Bros. v. Road Transport & General Insee. Co., [1929] 2 K. B. 356. As to (2) Distd. Newsholme Bros. v. Road Transport & General Insee. Co., [1929] 2 K. B. 356.*
- 184.** *Add. Annotation :—As to (1) Apprvd. Newsholme Bros. v. Road Transport & General Insee. Co., [1929] 2 K. B. 356.*
- 192.** *Add. Annotation :—Distd. Newsholme v. Road Transport & General Insee. (1928), 45 T. L. R. 123.*
- 193a.** ————. | — NEWSHOLME BROS. v. ROAD

TRANSPORT & GENERAL INSURANCE CO.,  
LTD., No. 171a, *ante*.

- 200.** *Add. Annotation:* —As to (2) **Expld. & Dstd.**  
Newsholme Bros. v. Road Transport & General  
Insee. Co., [1929] 2 K. B. 356.

- 203. Add. Annotation : —Expld. Newsholme Bros.  
v. Road Transport & General Insee. Co.,  
[1929] 2 K. B.**

- 218a. Representation of underwriter—Estoppel of insurer.**—The claimant owned a motor car which he sometimes let out on hire & sometimes used himself for his own pleasure. He wished to insure the car, & instructed brokers to effect an insurance. The brokers interviewed the underwriter of resps., & he showed them a form of policy & said that it would cover both private pleasure & private hire by the insured. The claimant on being informed of this signed a proposal form for a policy & his broker stated in the form that the purpose for which the car would be used was "private hire"; the broker meant thereby that private hire would be the principal risk. Resps. then issued to the claimant a policy which in words covered "private pleasure or private hire," but which provided that the signed proposal form was incorporated with it & formed the basis of the contract. An accident occurred while the claimant was using the car for his own pleasure, & he made a claim under the policy. Resps. refused to pay, on the ground that as the proposal form was the basis of the policy & only related to the car while on hire an accident occurring while the car was not on hire was not covered. The dispute was referred to arbitration, & the arbitrator awarded in favour of the claimant, subject to the decision of a special case. On argument of the case :—*Held* : the arbitrator had acted rightly in admitting evidence of the interview between the brokers & the underwriter, & even apart from such evidence, as there was an inconsistency between the proposal form & the policy, the later document must prevail. On the facts, resps. were estopped from disputing the claim because their underwriter knew that the claimant had taken out the policy in reliance on his representation that it would cover private pleasure.—KAUFMANN *v.* BRITISH SURETY INSURANCE CO., LTD. (1929), 45 T. L. R. 399.

**PART I. SECT. 14, SUB-SECT. 1.**

m i. —.]—BINKLEY v. STEWART (1912), 22 O. W. R. 330; 3 O. W. N. 1427; 4 D. L. R. 150.—CAN.

**sd. Liability for unauthorised use of company's funds—On liquidation.** Two telegrams sent to the agent of a fire casualty insurance co. which were signed by the co. & its liquidator respectively read as follows: "Notice being prepared by liquidator to cancel all fire policies stop suggest to make arrangements for placing fire business only elsewhere." There was some question as to which of the telegrams the agent received:—*Held*: regardless of which one reached him, it did not authorise him to use the co.'s funds then in his hands for the purpose of placing insurance of its customers in another, & that he was liable to the liquidator for the amount so used. *NEWTON v. BRANDON*, [1928] 1 W. W. R. 28; 22 Sask. L. R. 221.—**CAN.**

**PART I. SECT. 14. SUB-SECT. 2.**

**170 iii.** ———— ]—BANKERS' & TRADERS' INSURANCE CO., LTD. v. JUMNA KHAN (1925), 27 S. R. N. S. W. 3.—AUS.

accept the policy:—*Held*: an action by the agent against appct., to recover the amount of the premium as money paid for deft. at his request, could not succeed.—*BILBROUGH v. DEMAEER*, [1927] 1 D. L. R. 542; [1927] 1 W. W. R. 133; 21 Sask. L. R. 239.—**CAN.**

e ii. *S. P. Hickey v. McGuinness* (Alta.), [1927] 3 W. W. R. 565.—**CAN.**

**PART I. SECT. 14, SUB-SECT. 4.**

k i.—.]—Applt., who was illiterate, went to the local office of resps. to insure his house & furniture against

fire, & at the request of the agent of resps., signed a proposal form, the agent saying that he would fix everything up. The agent, without asking applt. any questions, filled in the form, & inserted in it an untrue answer to one of the

L. R. 451; 43' N. S. W. W. N. '98. <sup>37</sup>  
AUS.

**PART 1, SECT. 14, SUB-SECT. 5.**

200 xix. . . .) To a claim by  
plfts., carrying on business in partner-  
ship, for the value of tobacco insured  
with defts. & destroyed by fire, defts.  
pleaded that it was a condition of the  
proposal for insurance that the tobacco  
should be the property of the firm  
only, whereas a portion was in fact the  
property of three of the members  
jointly. In their replication plfts.  
alleged that defts.' agents had know-

## Part II.—Marine Insurance.

231. *Add. Annotation:—Apld. Re National Benefit Assce., Ex p. English Insce.,* [1928] Ch. 74.
233. *Add. Annotation:—Distd. Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692.
236. *Add. Annotations:—Refd. Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692; *De Monchy v. Phoenix Insce. Co. of Hartford* (1928), 138 L. T. 703; *Tredegar v. Harwood*, [1928] Ch. 59. *Mentd. Sassoon v. International Banking Corp.,* [1927] A. C. 711.
- 237a. *Policy containing fire policy clause—Validity.]—SYMINGTON & Co. v. UNION INSURANCE SOCIETY OF CANTON, No. 855a, post.*
247. *Add. Annotation:—Refd. English Insce. v. National Benefit Assce.,* [1929] A. C. 114.
248. *Add. Annotation:—Refd. Cornish Mutual Assce. v. I. R. Comrs.,* [1926] A. C. 281.
- 252a. —. —.]—By an agreement between two insurance cos., the E. Co. & the N. Co., therein described as a participation agreement, it was (*inter alia*) provided that the N. Co. should be entitled to & accept a quota of a one-eighth of all risks accepted by the E. Co. through its marine department. The participation was fixed at 50 per cent. of the share retained by the E. Co. at its own risk of all marine assurances accepted on or after a specified date, with a maximum limit on any one ship. The liability of the two cos. was to commence automatically at the same time, the expressed intention being that the two cos. should participate *pari passu* in all marine insurances accepted by the E. Co. The N. Co. was to be entitled to a proportionate part of the net premiums & other benefits received by the E. Co., & was to bear its proportionate share of losses. The E. Co. was alone to settle all claims which might arise under its policies & the N. Co. was to be bound by the settlement. The E. Co. was to receive from the N. Co. commissions on the net premiums & on the profits derived by the N. Co. from the whole of the business under the agreement. By another clause in the agreement the N. Co. was absolutely bound in every case to follow the fortunes of the E. Co. No stamped policy of assurance was ever issued to the E. Co. by the N. Co. in respect of any risk coming within the
- agreement. The N. Co. having been ordered to be wound up by the ct., the E. Co. claimed to prove in respect of certain claims arising under the agreement. The liquidator disallowed the claim:—*Held*: the agreement was a contract for "sea insurance," & not being expressed in a duly stamped policy was invalid as not complying with the requirements of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41).—*ENGLISH INSURANCE CO. v. NATIONAL BENEFIT ASSURANCE CO. (OFFICIAL RECEIVER)*, [1929] A. C. 114; 98 L. J. Ch. 1; 44 T. L. R. 801; *sub nom. Re NATIONAL BENEFIT ASSCE. CO., LTD., Ex p. ENGLISH INSC. CO., LTD.*, 140 L. T. 76; [1928] B. & C. R. 67, H. L.
- Annotations:—Refd. Re Norske Lloyd Insce. Co., Ltd.*, [1928] W. N. 99; *Re Home & Colonial Insce. Co., Ltd.*, (1929), 45 T. L. R. 658.
253. *Add. Annotation:—Consd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
254. *Add. Annotation:—Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179
330. *Add. Annotation:—Mentd. A.-G. for Manitoba v. A.-G. for Canada.* [1929] A. C. 260.
459. *Add. Annotations:—Consd. Reckitt v. Barnett, Pembroke & Slater*, [1929] A. C. 176. *Mentd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
463. *Add. Annotation:—Consd. Aron v. Miall* (1928), 139 L. T. 562.
- 480a. —. —. —. *Before or after loss.]—A firm of sellers in Africa sold goods, which were resold by the purchasers to pltf. under a contract which required the second sellers to pass on to the second buyers the usual policy in the trade insuring against the usual risks. The goods were found to be damaged on delivery. A substantial part of the damage was caused at a time when pltf. were not interested in the goods covered by the insurance, but by an indorsement on the policy all claims under it were assigned to the holder of the policy:—Held: under Marine Insurance Act, 1906 (c. 41), s. 50, a marine policy was assignable, unless it contained terms expressly prohibiting the assignment, & it could be assigned either before or after loss. The*
- ledge of the above fact at the time the proposal was made & issued the policy notwithstanding such knowledge, & that defts. were estopped from denying liability under the policy:—*Held*: an exception to the replication, as bad in law & disclosing no cause of action, should be dismissed.—*PETREAS & Co. v. LONDON GUARANTEE & ACCIDENT CO., LTD.*, [1925] App. D. 371.—S. AF.
- 200 xx. —. —.]—L. & Co., agents of defts., who had no express power to do so, appointed M. as their local agent in a district, but did not inform defts., who neither approved of, nor ratified, the appointment. M. sent to L. & Co. particulars of a proposed insurance against fire for pltf. on his dwelling-house, & a policy was issued by defts. to pltf. The policy provided that if there was any misrepresentation as to any fact material to be known for estimating the risk, or any omission to state such fact, defts. should not be liable. Pltf. did not disclose the fact that his house had previously been
- burnt down & that an insurance co. had paid him in respect of that loss:—*Held*: (1) M. was not defts.' agent, & M.'s knowledge of the earlier fire, whenever acquired, could not be imputed to defts., & pltf. had concealed a material fact & thereby relieved defts. from all liability under the policy; (2) even if M. was defts.' agent, his knowledge acquired prior to his appointment as agent could not be imputed to defts.—*O'KEEFE v. LONDON & EDINBURGH INSURANCE CO., LTD.*, [1928] N. I. 85.—IR.
- PART I. SECT. 14, SUB-SECT. 6.
- a i. —. —.]—*PARSONS v. QUEEN INSURANCE CO.* (1882), 2 O. R. 45.—CAN.
- PART I. SECT. 14, SUB-SECT. 8.
- a f. *Right to renewal premiums paid after termination of agency.]—The question whether an insurance agent is entitled to commissions on renewal*
- premiums paid after the termination of his employment is governed by the terms of the contract between him & his co. If the contract between the agent & the insurance co. contains no provision on the subject, the agent is entitled. In case the agency is terminated by the co., without fault on his part, to the commissions on renewal premiums which the contract secures to him as part of his compensation, although such premiums may be paid after the termination of the agency.—*FINGARD v. MERCHANTS CASUALTY INSC. CO.*, [1928] 2 W. W. R. 609.—CAN.
- PART II. SECT. 5, SUB-SECT. 1.—E.
- 416 i. —. —. *By usage—Custom of Lloyd's—Custom not introduced into Upper Canada by 32 Geo. 3, c. 1.]—O'KEEFE & LYNCH OF CANADA, LTD. v. TORONTO INSURANCE & VESSEL AGENCY, LTD.*, [1926] 4 D. L. R. 477; 59 O. L. R. 235.—CAN.

effect of assigning the policy in the manner in which the policy was assigned, which was the ordinary manner in which policies were assigned in England, was to assign to the person holding the policy the right to sue on any claim which the assignor had on the policy, irrespective of the fact that at the time of the loss or damage the assignee was not interested in the subject-matter lost or damaged. Pltfs. were the assignees of the policy; the assignor of the policy had a right to make a claim in respect of the damage; that claim was assignable, & it was in fact assigned to pltfs., & they were entitled to sue the underwriters in respect of the damage.—*ARON (J.) & Co. v. MIALl* (1928), 98 L. J. K. B. 204; 139 L. T. 562; 34 Com. Cas. 18; 17 Asp. M. L. C. 529, C. A.

488. *Add. Annotation*:—**Consd.** *Aron v. Miall* (1928), 139 L. T. 562.

488a. ————].—*ARON (J.) & Co. v. MIALl*, No. 480a, *ante*.

497. *Add. Annotation*:—**Refd.** *Aron v. Miall* (1928), 139 L. T. 562.

505a. **Pontoon with crane fixed thereon.**—*Held*: not a "ship or vessel" within the rules of an indemnity assocn., on the ground that the quality of adaptability for navigation was not sufficiently present to bring it within the meaning of those words in the rules.—*MERCHANTS' MARINE INSURANCE CO., LTD. v. NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN.* (1926), 43 T. L. R. 107; 71 Sol. Jo. 82; 32 Com. Cas. 165, C. A.

527. *Add. Annotation*:—**Generally**, *Refd.* *Lind v. Mitchell* (1928), 98 L. J. K. B. 120.

585. *Add. Annotation*:—**Refd.** *Hoff Trading Co. v. De Rougemont* (1929), 34 Com. Cas. 291.

630. *Add. Annotation*:—**Mentd.** *The St. George*, [1926] P. 217.

651. *Add. Annotation*:—**Mentd.** *Re Wait*, [1927] 1 Ch. 606.

666. *Add. Annotations*:—*As to* (5) *Distd.* *Lind v. Mitchell* (1928), 98 L. J. K. B. 120. *Generally*, **Refd.** *Banco de Barcelona v. Union Marine Insce.* (1925), 134 L. T. 350. **Mentd.** *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534.

712a. **Effect of decrees of foreign State—On liability of foreign reinsurance company to discharge obligations.**—By virtue of decrees of the Soviet Govt., insurance business in Russia was declared to be the monopoly of the State, & financial transactions in Russia were regulated. In an action to determine the effect of the above decrees on treaties of reinsurance entered into between a Russian reinsurance co., having a branch office in London, & an English reinsurance co.:—*Held*: the decrees did not prevent the Russian co. from discharging their liabilities to the English co. under one of the treaties by a payment in London out of their assets outside Russia, or by means of a set-off against the liabilities of the English co. to them under the treaties.—*FIRST RUSSIAN INSURANCE CO. v. LONDON & LANCASHIRE INSURANCE CO.*, [1928] Ch. 922; 97 L. J. Ch. 445; 140 L. T. 337; 44 T. L. R. 583.

718. *Add. Annotations*:—**Consd.** *Sowerby v. Lindsay* (1928), 139 L. T. 545. **Refd.** *Excess Insce. v. Mathews* (1925), 31 Com. Cas. 43.

719. *Add. Annotations*:—**Consd.** *Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce.* (1927), 138 L. T. 108; *Merchants' Marine Insce. v. Liverpool Marine & General Insce.* (1928), 97 L. J. K. B. 589. **Refd.** *Excess Insce. v. Mathews* (1925), 31 Com. Cas. 43.

720. *Add. Annotation*:—**Consd.** *Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce.* (1927), 138 L. T. 108.

720a. ————].—Pltfs. insured a consignment of gunpowder on a voyage & reinsured with defts. Both the original policy & the reinsurance policies covered perils of the sea & jettison, & were expressed to be "warranted free from loss arising from . . . destruction . . . in a port of distress or otherwise." The original policy contained no admission of seaworthiness, but the reinsurance policies did contain such an admission, & they provided that defts. would "pay as paid thereon" & that the payment should be subject to the same terms as in the original policy. The vessel carried, in addition to the gunpowder, drums of sulphuric acid, & owing to heavy weather some of the drums burst & the acid disabled the machinery, with the result that the ship had to put in to a port of distress. There the required repairs could not be carried out with the gunpowder on board, & it was thrown overboard & became a total loss. Pltfs. paid the owners as for a total loss, & claimed to be reimbursed by defts.:—*Held*: as the way in which the sulphuric acid was stowed & loaded affected the safety of the ship & rendered her unseaworthy, pltfs. were under no liability on the original policy, & they could not recover from defts. on the reinsurance policies.—*FIREMAN'S FUND INSURANCE CO. v. WESTERN AUSTRALIAN INSURANCE CO., LTD.* (1927), 138 L. T. 108; 43 T. L. R. 680; 17 Asp. M. L. C. 529, C. A.

720b. "On a voyage."—Pltfs. insured a consignment of oranges from any port in Spain to Antwerp, & after the ship had left Valencia had been in wireless communication with Gibraltar, they reinsured with deft. by a slip, which referred to the fact that the ship had been in such communication with Gibraltar & which contained the words "on a voyage," meaning, according to the evidence, that the risk should attach only from a named port in the course of the voyage. The ship stranded before she reached Gibraltar, the oranges were damaged, & pltfs. had to pay on the policy. In an action on the contract of reinsurance:—*Held*: on the true reading of the slip, the intention was to limit the risk to the voyage from Gibraltar, & the action failed.—*EAGLE, STAR & BRITISH DOMINIONS INSURANCE CO., LTD. v. REINER* (1927), 43 T. L. R. 259; 71 Sol. Jo. 176.

720c. **Insured object in damaged condition at expiration of insurance—Continuation of risk for "immediate consequences" of such damage.**—Pltfs., reinsurers of a risk under a marine policy, reinsured that risk with defts. The policies were subject to the following conditions: "In the event of the vessel not being at the place of destination on the date of the expiration of the policy, the insurance shall continue in force till the end of the day when the vessel arrives at her first place of destination;" & "If the insured object

is in a damaged condition at the time when the insurance expires, the risk shall continue for the immediate consequences of such damage until the object without unnecessary delay has been repaired or sold." On the date of the expiration of the policy, the vessel had not arrived at L. Bay, her first place of destination, but before reaching it she grounded on a reef & was taken into L. Bay badly damaged. Temporary repairs having been effected, she continued her voyage, but as she began to leak again she had to be run ashore in order to prevent sinking, & was subsequently sold as a wreck. Pltfs. having paid the original insurers as for a total loss, claimed against defts. on their reinsurance policy:—*Held*: the loss was an immediate consequence of the damage done by the original stranding, & the risk covered by the policy continued, until the vessel was repaired with no unnecessary delay, for the immediate consequences of the original damage.—*MERCHANTS' MARINE INSURANCE CO. v. LIVERPOOL MARINE & GENERAL INSURANCE CO.* (1928), 97 L. J. K. B. 589; 139 L. T. 184; 44 T. L. R. 512; 17 Asp. M. L. C. 475; 33 Com. Cas. 294, C. A.

731. *Add. Annotation*:—*Generally*, *Refd.* Excess Insee. v. Mathews (1929), 31 Com. Cas. 43.

734. *Add. Annotation*:—*As to* (1) *Consd.* Firemen's Fund Insee. v. Western Australian Insee. & Atlantic Insee. (1927), 138 L. T. 108.

748. *Add. Annotation*:—*Refd.* Goole & Hull Steam Towing Co. v. Ocean Marine Insee. (1927), 44 T. L. R. 133.

763. *Add. Annotation*:—*Consd.* Hoff Trading Co. v. De Rougemont (1929), 34 Com. Cas. 291.

765. *Add. Annotation*:—*As to* (2) *Appld.* Hoff Trading Co. v. De Rougemont (1929), 34 Com. Cas. 291.

766. *Add. Annotation*:—*Consd.* Hoff Trading Co. v. De Rougemont (1928), 34 Com. Cas. 180.

782. *Add. Annotation*:—*Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.

784. *Add. Annotation*:—*Mentd.* Mancomunidad v. Royal Exchange Assee., [1927] A.

786. *Add. Annotation*:—*As to* (2) *Appld.* Kaufmann v. British Surety Insee. Co. (1929), 45 T. L. R. 399.

855a. *Effect of clause*.]—Claimants insured with defts. a quantity of cork from a port or place between Bordeaux & Nice to the United Kingdom. Claimants were cork growers & had a factory & warehouse near Algeciras, & they had sent from the factory to Algeciras quantities of cork for shipment, & had allowed it to accumulate on the jetty there until there should be enough for a cargo. While a quantity of cork was on the jetty awaiting shipment & before the policy was issued, a fire broke out on the jetty, & to prevent the fire spreading, the authorities jettisoned part of the cork & threw sea-water on the remainder, with the result that a large portion of the cork was lost or damaged. The policy, when issued, contained (*inter alia*) a marginal clause that the policy was not to enure to the benefit of any fire

insurance co., but loss reasonably attributable to fire was covered. It also contained a warehouse to warehouse clause. A claim under the policy was referred to arbns., & the arbitrator treated the marginal clause as non-existent, on the ground that it was not included, or stipulated for, in the slip which represented the true contract between the parties, & he also found that the loss was one reasonably attributable to fire:—*Held*: (1) the goods on the pier at Algeciras, having come in the ordinary course of transit from the shippers' manufactory at San Roque, were covered by the policy; (2) there being an existing fire & an imminent peril, the damage caused by water, used either to extinguish the fire or to prevent it from spreading, was a proximate consequence of fire, which could be recovered under the general words of the policy, as being *eiusdem generis* with fire; (3) the underwriters were not relieved from liability by the restraint of princes clause; (4) the case must be remitted to the arbitrator upon the question whether the policy issued, so far as it contained the fire policy clause, was or was not contrary to the usual form of marine insurance on goods.—*SYMINGTON & CO. v. UNION INSURANCE SOCIETY OF CANTON* (1928), 97 L. J. K. B. 646; 139 L. T. 386; 44 T. L. R. 636; 31 Com. Cas. 23, C. A.

906. *Add. Annotation*:—*As to* (2) *Refd.* Eagle, Star & British Dominions Insee. v. Reiner (1927), 43 T. L. R. 259.

985. *Add. Annotation*:—*Mentd.* Rio Tinto Co. v. Seed Shipping Co. (1926), 131 L. T. 761.

1099. *Add. Annotation*:—*Mentd.* Rio Tinto Co. v. Seed Shipping Co. (1926), 134 L. T. 764.

1203a. ———.]—*LITTLEDALE v. DIXON* (1805), 1 Bos. & P. N. R. 151; 127 E. R. 417.

*Annotation*:—*Refd.* Morrison v. Muspratt (1827), 12 Moore, C. P. 231.

1206. *Add. Annotations*:—*As to* (3) *Consd.* Greenhill v. Federal Insee. (1926), 95 L. J. K. B. 717; Hoff Trading Co. v. De Rougemont (1928), 34 Com. Cas. 180.

1220. *Add. Annotation*:—*Refd.* Glicksman Lancashire & General Assee., [1927] A.

1252. *Add. Annotation*:—*Consd.* Greenhill v. Federal Insee. (1926), 95 L. J. K. B. 717.

1265a. ———.]—In an action on a policy of marine insurance on a cargo of celluloid shipped from America to France, defts. pleaded that assured had wrongfully concealed certain facts material to be disclosed to them. The cargo had in fact been previously carried, partly on deck, in a protracted voyage from New York to Halifax, where, the vessel being unable to proceed further, it was unloaded & part put in a warehouse, & the rest left on the open quay, exposed to severe weather, for over two months:—*Held*: these facts were material to be disclosed to the underwriters, & as they were not disclosed, & there was no waiver of non-disclosure, the policy was vitiated.—*GREENHILL v. FEDERAL INSURANCE CO.*, [1927] 1 K. B. 65; 95 L. J.

PART II. SECT. 16, SUB-SECT. 3.—B. (g).

1 S. C. R. 110.—*CAN.* ———.]—*BOAK v. MERCHANTS' MARINE INSURANCE CO.* (1876), 10 N. S. R. (1 R. & C.) 2, 88; *affd.* (1877).



K. B. 717; 135 L. T. 244; 70 Sol. Jo. 565; 31 Com. Cas. 289; 17 Asp. M. L. C. 62, C. A.

*Annotation*:—**Consd.** Hoff Trading Co. v. De Rougemont (1929), 34 Com. Cas. 291.

**1308. Add. Annotations**:—*As to* (1) **Consd.** News-holme Bros. v. Road Transport & General Insee. Co., [1929] 2 K. B. 356. **Refd.** Collins v. Associated Greyhounds Racecourses (1929), 141 L. T. 529.

**1474a. Absence of panting beams.**—**Held**: the vessel was unseaworthy.—**LUND v. THAMES & MERSEY MARINE INSURANCE CO., LTD.** (1901), 17 T. L. R. 566.

**1515. Add. Annotation**:—**Mentd.** Reed v. Page & East, [1927] 1 K. B. 743.

**1557. Add. Annotation**:—**Consd.** Greenhill v. Federal Insee. (1926), 95 L. J. K. B. 717.

**1589. Add. Annotation**:—*As to* (2) **Dbttd.** Greenhill v. Federal Insee. (1926), 95 L. J. K. B. 717.

**1608a. What amounts to insurance against.**—A policy on a barge provided: "the insurance is against the risks of total &/or constructive &/or arranged loss including general average & salvage & damage to such vessel by collision with any other vessel or with any fixed floating or other object or by fire lightning stranding or sinking." The barge sank through general debility:—**Held**: the policy did not make the insurers liable for ordinary wear & tear, & therefore they were not liable although the word "sinking" was used in the policy.—**WADSWORTH LIGHTERAGE & COALING CO., LTD. v. SEA INSEE. CO., LTD.** (1929), 45 T. L. R. 597, C. A.

**1611a.** —.]—**PHENIX INSURANCE CO. OF HARTFORD v. DE MONCHY**, No. 2401a, *post*.

**1641. Add. Annotations**:—**Refd.** Banco de Barcelona v. Union Marine Insee. (1925), 134 L. T. 350. **Mentd.** Falcon v. Famous Players Film Co., [1926] 1 K. B. 393.

**1648. Add. Annotation**:—**Refd.** Clan Line Steamers v. Board of Trade, The Clan Matheson, [1929] A. C. 514.

**1650. Add. Annotations**:—**Consd.** Board of Trade v. Hain S.S. Co., [1929] A. C. 534; **Merchants' Marine Insee. v. Liverpool Marine & General Insee.** (1928), 97 L. J. K. B. 589. **Refd.** Mancomunidad del Vapor Frumiz v. Royal Exchange Assee. (1926), 43 T. L. R. 103; **Clan Line Steamers v. Board of Trade, The Clan Matheson**, [1929] A. C. 514.

**1660a.** —.]—A sailing ship, of which pltf. was mtgee., was insured by a policy, underwritten by deft., against perils of the sea & fire, &, as per Institute Time Clauses, clause 8, against loss of the vessel "caused through the negligence of master, mariners, engineers or pilots." The vessel was damaged by ice & she leaked badly, & the captain, expecting a gale in which he thought she would be lost, decided to abandon her, &

he set fire to her to prevent her from being a danger to navigation, & he & the crew then abandoned her. In an action by the mtgee. on the policy deft. did not allege any misconduct by the assured, by the mtgee., or by the managing owner, & there was no evidence that the abandonment was a wilful casting away of the ship by the master:—**Held**: on the facts the abandonment was unreasonable on the part of the master & constituted negligence, & this negligence, resulting in the continuing action of a previously existing peril of the sea, was covered by clause 8, & even apart from that clause, as the peril of the sea had endangered the ship & the negligence of the master resulted in proper measures not being taken to save her, pltf. was entitled to recover under Marine Insurance Act, 1906 (c. 41), s. 55 (2) (a).—**LIND v. MITCHELL** (1928), 98 L. J. K. B. 120; 140 L. T. 261; 34 Com. Cas. 81; 45 T. L. R. 54, C. A.

**1675. Add. Annotations**:—**Refd.** Firemen's Fund Insee. v. Western Australian Insee. (1927), 43 T. L. R. 680; **Clan Line Steamers v. Board of Trade** (1928), 97 L. J. K. B. 735.

**1684. Add. Annotation**:—**Refd.** Adelaide S.S. Co. v. A.-G., [1926] A. C. 172.

**1701. Add. Citations**:—31 Com. Cas. 145; 16 Asp. M. L. C. 579.

**1703. Add. Annotation**:—**Refd.** Mancomunidad Del Vapor Frumiz v. Royal Exchange Assee., [1927] 1 K. B. 567.

**1705. Add. Annotation**:—**Consd.** Mancomunidad Del Vapor Frumiz v. Royal Exchange Assee., [1927] 1 K. B. 567.

**1706. Add. Annotation**:—**Refd.** Mancomunidad Del Vapor Frumiz v. Royal Exchange Assee., [1927] 1 K. B. 567.

**1708a. "Collision with any object"**—**Bumping on rocks.**—A policy of marine insurance on the hull & machinery of a steamer covered the ordinary perils of the sea & contained the following clause: "Subject to the Institute 'Free of Particular Average absolutely' time clauses as annexed, but this insurance to include damage received by collision with any object (ice included) other than water." The ship, having stranded, bumped on the rocks & damaged her bottom plates:—**Held**: the contact with the rocks was a "collision with an object" within the policy.—**MANCOMUNIDAD DEL VAPOR FRUMIZ v. ROYAL EXCHANGE ASSURANCE**, [1927] 1 K. B. 567; 96 L. J. K. B. 229; 136 L. T. 537; 43 T. L. R. 103; 17 Asp. M. L. C. 205.

**1709. Add. Annotation**:—**Refd.** Adelaide S.S. Co. v. A.-G., [1926] A. C. 172.

**1710. Add. Annotation**:—**Refd.** Adelaide S.S. Co. v. A.-G., [1926] A. C. 172.

**1718. Add. Annotation**:—**Appld.** Symington v.

**PART II. SECT. 18, SUB-SECT. 3.—**  
**B. (b).**

**1349 i. Loss before departure from terminus a quo**—"From Quebec to Greenock vessel to go out in tow."—**Held**: towing from the loading berth to another part of the harbour was not a compliance with the warranty.—**PROVINCIAL INSURANCE CO. OF CANADA v. CONNOLLY** (1879), 5 S. C. R. 258.—**CAN.**

**PART II. SECT. 19, SUB-SECT. 1.—B**

**1555 i. Ship unseaworthy**—Ship rendered unseaworthy by charterer without privity of assured—Assured entitled to recover.—**PACIFIC COAST COAL FREIGHTERS, LTD. v. WESTCHESTER FIRE INSURANCE CO. OF NEW YORK, PACIFIC COAST COAL FREIGHTERS, LTD. v. WESTERN ASSURANCE CO. (B. C.)**, [1926] 4 D. L. R. 963; [1926] 3 W. W. R. 556; *affd.*, [1927] 2 D. L. R. 590; [1927] 1 W. W. R. 878; 38 B. C. R. 315.

**PART II. SECT. 20, SUB-SECT. 1.—A.**  
**1576 ii.** —.]—**MURRAY v. NOVA SCOTIA MARINE INSURANCE CO.** (1875), 10 N. S. R. (1 R. & C.) 24.—**CAN.**

**PART II. SECT. 20, SUB-SECT. 1.—E.**

**1607 i. What amounts to—Not sail torn as result of accident.**—**HILL v. UNION INSURANCE SOCIETY, CANTON, LTD.**, [1927] 4 D. L. R. 718; 61 O. L. R. 201.—**CAN.**

- Union Insee. Soc. of Canton (1928), 97 L. J. K. B. 646.
- 1719a. **Damage caused by water—To extinguish or check fire.**—*SYMINGTON & Co. v. UNION INSURANCE SOCIETY OF CANTON*, No. 855a, *ante*.
1727. **Add. Annotation:—Apld.** *Symington v. Union Insee. Soc. of Canton* (1928), 97 L. J. K. B. 646.
1732. **Add. Annotation:—Refd.** *Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll* (1928), 98 L. J. K. B. 282.
1736. **Add. Annotation:—Refd.** *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.
- 1750a. — **Action of port authority—Extinction of fire—Damage by water.**—*SYMINGTON & Co. v. UNION INSURANCE SOCIETY OF CANTON*, No. 855a, *ante*.
1766. **Add. Annotation:—Refd.** *Clan Line Steamers v. Board of Trade, The Clan Matheson*, [1929] A. C. 514.
1809. **Add. Citations:—**134 L. T. 350; 16 Asp. M. L. C. 604.
1817. **Add. Annotation:—Refd.** *Symington v. Union Insee. Soc. of Canton* (1928), 139 L. T. 386.
1838. **Add. Annotations:—Consd.** *Clan Line Steamers v. Board of Trade*, [1929] A. C. 514; *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534. **Refd.** *Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.
1846. **Add. Annotation:—Generally, Mentd.** *Falcon v. Famous Players Film Co.*, [1926] 1 K. B. 393.
1849. **Add. Annotation:—Consd.** *Clan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557.
1850. **Add. Annotations:—As to (1) Apld.** *Board of Trade v. Hain S.S. Co.*, [1929] A. C. 534. **Consd.** *Clan Line Steamers v. Board of Trade*, [1929] A. C. 514. **Generally, Refd.** *Adelaide S.S. Co. v. R.* (1925), 95 L. J. K. B. 213; *Cayzer, Irvine v. Board of Trade* (1926), 42 T. L. R. 731.
1851. **Add. Annotations:—Consd.** *Clan Line Steamers v. Board of Trade*, [1929] A. C. 514. **Refd.** *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534.
1854. **Add. Annotations:—Consd.** *Clan Line Steamers v. Board of Trade*, [1929] A. C. 514. **Refd.** *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.
1858. **Add. Annotations:—Consd.** *Clan Line Steamers v. Board of Trade* (1928), 97 L. J. K. B. 735; *Merchants' Marine Insee. v. Liverpool Marine & General Insee.* (1928), 97 L. J. K. B. 589; *Board of Trade v. Hain S.S. Co.*, [1929] A. C. 534. **Refd.** *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.
1860. **Add. Annotations:—Consd.** *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534; *Clan Line Steamers v. Board of Trade*, [1929] A. C. 514. **Refd.** *Board of Trade v. Cayzer, Irvine* (1927), 43 T. L. R. 625.
1876. **Add. Annotation:—Refd.** *Goole & Hull Steam Towing Co. v. Ocean Marine Insee.*, [1928] 1 K. B. 589.
1948. **Add. Annotation:—Refd.** *Mancomunidad Del Vapor Frumiz v. Royal Exchange Assee.*, [1927] 1 K. B. 567.
1965. **Add. Citation:—**[1904] P. 198, n. **Add. Annotations:—Refd.** *The Normandy*, [1904] P. 187; *Mancomunidad Del Vapor Frumiz v. Royal Exchange Assee.*, [1927] 1 K. B. 567.
1981. **Add. Annotation:—Apld.** *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637.
1982. **Add. Annotation:—Refd.** *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637.
- 2010a. — **Recovery of damages in collision action.**—*Defts. insured pltf's. steamer against the usual marine risks, the steamer being valued in the policy at £4,000. During the currency of the policy the steamer collided with another steamer. The ship was repaired at pltf's. cost, & a collision action by pltf's. against the owners of the other steamer was settled, & the owners of the other steamer paid over to pltf's. £2,500, as being half the damages. In an action against defts. pltf's. contended that, as the balance of their loss was £2,500 they were entitled to recover that amount, it being less than the value of £4,000 put on the steamer in the policy:—Held: defts. were liable only for £1,500, being the difference between £4,000 & £2,500, the amount recovered by pltf's. from the owners of the other ship.*—*GOOLE & HULL STEAM TOWING CO., LTD. v. OCEAN MARINE INSURANCE CO., LTD.*, [1928] 1 K. B. 589; 97 L. J. K. B. 175; 138 L. T. 548; 44 T. L. R. 133; 72 Sol. Jo. 17; 17 Asp. M. L. C. 409; 33 Com. Cas. 110.
- 2014a. **Loss less than amount paid into court.**—*Resps. insured applts.' tug boat by a policy of marine insurance, which provided that, on a claim for a constructive total loss, the insured value was to be taken as the repaired value, & that nothing was to be taken into account for the damaged value, & also that all claims were to be subject to English law & usage. The tug was sunk by collision, & applts. at once gave notice of abandonment. Salvors employed by resps. raised the tug in a few days, & the abandonment was not accepted. The salvors, without the knowledge of applts., made an offer to resps. for the tug, & resps. requested them to put it into writing, which they did. The appellate ct., considering the evidence as to the probable cost of repair, held that there had been only a partial loss to an amount less than that paid into ct.:—Held: (1) the sinking was not an actual total loss; (2) resps. were not precluded from denying that they had accepted the abandonment; (3) there had been no constructive total loss within Marine Insurance Act, 1906 (c. 41), s. 60 (2) (i), since even at the date of the abandonment it was not unlikely that the tug could be recovered, & it was unnecessary to consider whether the old rule, that the crucial moment was the commencement of the action, had been modified by sects. 61 & 62; (4) the appellate ct. was not bound to accept the highest estimate of the cost of repairs given*

## PART II. SECT. 22, SUB-SECT. 5.—C. (a).

1 i. — *By insurers—Subsequent sale of ship at profit—Rights of assured.*—*MEAGHER v. AETNA INSURANCE CO. HOME INSURANCE CO.* (1873), 20 Gr. 354—CAN.

by resps.' witnesses, & the ct.'s finding as to the sum necessary, being justified by the evidence & not being based upon any error of principle, could not be questioned.—CAPTAIN J. A. CATES TUG & WHARFAGE CO. v. FRANKLIN INSURANCE CO., [1927] A. C. 698; 96 L. J. P. C. 132; 137 L. T. 709; 17 Asp. M. L. C. 319, P. C.

2055a. ———.]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. v. FRANKLIN INSURANCE CO., No. 2014a, *ante*.

2074. *Add. Annotation*:—*Refd.* Lambert v. I. R. Comrs. (1927), 12 Tax Cas. 1053.

2087. *Add. Annotation*:—*Mentd.* Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

2110a. ———.]—*MAEBURN v. LECKIE* (1822), cited in Abbott's Merchant Shipping, 14th ed., p. 15.

*Annotation*:—*Consd.* Alcock v. Royal Exchange Assce. (1819), 13 Q. B. 292.

2145. *Add. Annotation*:—*Expld.* Captain J. A. Cates Tug & Wharfage Co. v. Franklin Insce., [1927] A. C. 698.

2152a. *Sunken ship—Recovery probable at date of abandonment.*]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. v. FRANKLIN INSURANCE CO., No. 2014a, *ante*.

2189. *Add. Annotation*:—*Refd.* Australia (Owners) v. Nautilus (Owners) (1926), 95 L. J. P. 145.

2259. *Add. Annotation*:—*Mentd.* The Massilia, [1926] P. 180.

2286a. ———.]—VACUUM OIL CO. v. UNION INSURANCE SOCIETY OF CANTON, LTD. (1920), 32 Com. Cas. 53, C. A.

2333a. ——— *Negotiations for ship between underwriters & third party.*]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. v. FRANKLIN INSURANCE CO., No. 2014a, *ante*.

2339. *Add. Annotations*:—*Consd.* Dec Conservancy Board v. McConnell, [1928] 2 K. B. 159. *Refd.* Sheppy Glue & Chemical Works v. Medway River Conservators (1926), 24 L. G. R. 457. *Mentd.* The Mostyn (1926), 135 L. T. 693; *Re* Ryder & Steadman's Contract, [1927] 2 Ch. 62.

2340. *Add. Annotations*:—*Consd.* Dec Conservancy Board v. McConnell, [1928] 2 K. B. 159. *Refd.* Whitney v. I. R. Comrs., [1926] A. C. 37. *Mentd.* Sheppy Glue & Chemical Works v. Medway River Conservators (1926), 24 L. G. R. 457; Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88; Clark v. Epsom R. D. C., [1929] 1 Ch. 287.

2341a. ——— *Damages for negligence in watching wreck.*]—*Defts.* & other underwriters insured pl'tfs.' steamship A. against total loss, & to the extent of three-quarters against damages which pl'tfs. might have to pay for collisions with other vessels. The A. was sunk in a river & in fact was a constructive total loss. Notice of abandonment was given & acceptance thereof refused. Pl'tfs. & defts. agreed without prejudice to their rights to take joint action to save the property. The master of the A. employed a tug to watch the wreck & warn other vessels. Owing to the negligence of the

crew of the tug the steamship S. came into collision with the A., & both vessels sustained damage. In an action brought, in the names of pl'tfs., by & for the benefit of defts., against the S., the owners of the S. counter-claimed & recovered judgment for the whole of their damages & costs, & the underwriters paid three-quarters of the damages & costs to the owners of the S.:—*Held*: the underwriters were jointly liable to indemnify pl'tfs. against the remaining one-quarter of the damages & costs of the S., the liability not arising under the policy but upon the contract of indemnity.—*SUART & STEAMSHIP ALLEGHANY OF LONDON, LTD. v. MERCHANTS' MARINE INSURANCE CO., LTD.* (1898), 14 T. L. R. 564; 3 Com. Cas. 312.

2346. *Add. Annotation*:—*Consd.* A.-G. v. Glen Line & Liverpool & London War Risks Insce. Asscn. (1929), 34 Com. Cas. 309.

2351. *Add. Annotation*:—*Consd.* A.-G. v. Glen Line & Liverpool & London War Risks Insce. Asscn. (1929), 34 Com. Cas. 309.

2352. *Add. Annotation*:—*Consd.* A.-G. v. Glen Line & Liverpool & London War Risks Insce. Asscn. (1929), 34 Com. Cas. 309.

2355. *Add. Annotations*:—*As to* (2) *Consd.* A.-G. v. Glen Line & Liverpool & London War Risks Insce. Asscn. (1929), 34 Com. Cas. 309; *Page v. Scottish Insce. Corpn.* (1929), 98 L. J. K. B. 308.

2356. *Add. Annotation*:—*Consd.* A.-G. v. Glen Line & Liverpool & London War Risks Insce. Asscn. (1929), 34 Com. Cas. 309.

2375. *Add. Annotation*:—*Refd.* A.-G. v. Glen Line & Liverpool & London War Risks Insce. Asscn. (1929), 34 Com. Cas. 309.

2379. *Add. Annotation*:—*Refd.* Goole & Hull Steam Towing Co. v. Ocean Marine Insce. (1927), 44 T. L. R. 133.

2404a. *Prosecution of claim—Condition limiting time for.*]—Pl'tfs. were interested in a certificate of insurance which was issued under two policies of marine insurance subscribed by defts. in respect of 100 barrels of pure gum turpentine shipped from Florida to Rotterdam. The policies provided for payment for "leakages from any cause in excess of 1 per cent. on each invoice." It was the practice of the trade, at the port of shipment, to gauge the barrels of turpentine & to express the result in gallons, & at the port of discharge to weigh it & to express the result in kilograms with an allowance for reduction on account of the varying temperature conditions of 3.25 kilograms to the gallon. The policies also contained a stipulation providing that no suit or action for the recovery of any claim should be maintainable in any ct. unless such suit or action be commenced within one year from the happening of the loss out of which the claim arose, but that limitation clause did not occur in the certificate. When the vessel was discharged a shortage in respect of the gallons of turpentine shipped was ascertained

PART II. SECT. 23, SUB-SECT. 4.—  
A. (e).

*sd. Provision as to survey—Application to total loss.*]—*HAMILTON v. MONTREAL ASSURANCE CO.* (1864), 23 U. C. R. 437.—CAN.

PART II. SECT. 23, SUB-SECT. 4.—  
C. (b).

2256 i. *Constructive total loss of ship.*—*Held*: there having been a constructive loss of the ship, the action of the underwriters in making repairs & earning the freight would not prevent the assured from recovering as for a

total loss of freight.—*TROOP & LEWIS v. MERCHANTS' MARINE INSURANCE CO.* (1886), 13 S. C. R. 506; 6 C. L. T. 386.—CAN.

PART II, SECT. 26, SUB-SECT. 1.—A.

n. Read now "2404a i."  
o. Read now "2404a ii."

to have taken place. Defts. having refused to pay upon the ground that there was no sufficient evidence of the loss & that the claim was not instituted within the year, the present claim was brought by the plffs. on the certificate:—*Held*: the limitation clause was not one which bound the certificate holder. The rights of the original policy holder, which were conveyed to the certificate holder, comprised the rights given by the policy qualified by all the conditions & warranties which affected the nature & extent of the insurance granted, but did not impose an obligation affecting only a limitation of time within which the rights so given were to be enforced; (2) an actual physical loss had been proved based upon the calculations, & there

was no ground for imputing that loss to any cause other than leakages.—*PHENIX INSURANCE CO. OF HARTFORD v. DE MONCHY* (1929), 141 L. T. 439; 45 T. L. R. 543, H. L.; *affirming S. C. sub nom. DE MONCHY v. PHENIX INSC. CO. OF HARTFORD* (1928), 138 L. T. 703, C. A.

2445. *Add. Annotation*:—*Refd.* Lothian v. Epworth Press (1926), 137 L. T. 582, n.

2463a. ———.—*A.-G. v. GLEN LINE, LTD. & LIVERPOOL & LONDON WAR RISKS INSC. ASSOCN., LTD.* (1929), 34 Com. Cas. 309, C. A.

2469. *Add. Annotation*:—*Generally, Mentd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K.B. 328.

## Part III.—Fire Insurance.

2537. *Add. Annotation*:—*Generally, Mentd.* A.-G. for Manitoba v. A.-G. for Canada, [1929] A. C. 260.

2548. *Add. Annotation*:—*As to* (1) *Refd.* Shell-Mex v. Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2560. *Add. Annotation*:—*As to* (1) *Consd.* Page v. Scottish Insc. Corpn. (1929), 98 L. J. K. B. 308.

2562. *Add. Annotation*:—*Consd.* Page v. Scottish Insc. Corpn. (1929), 98 L. J. K. B. 308.

2568. *Add. Annotation*:—*As to* (2) *Consd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.

2572. *Add. Citation*:—31 Com. Cas. 10.

*Add. Annotation*:—*Mentd.* Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

2610. *Add. Annotation*:—*Refd.* Stumbles v. Whitley (1929), 46 T. L. R. 37.

2635. *Add. Annotation*:—*As to* (2) *Apld.* Symington v. Union Insc. Soc. of Canton (1928), 97 L. J. K. B. 646.

2644. *Add. Annotation*:—*Generally, Mentd.* Pailin v. Northern Employers' Mutual Indemnity Co. (1925), 95 L. J. K. B. 25.

2657. *Add. Annotation*:—*Consd.* Looker v. Law Union & Rock Insc., [1928] 1 K. B. 554.

### PART II. SECT. 26, SUB-SECT. 2.—A. (b).

*st. Recovery of interest—Although action tried without jury.*—*PACIFIC COAST COAL FREIGHTERS, LTD. v. WESTCHESTER FIRE INSURANCE CO. OF NEW YORK, PACIFIC COAST COAL FREIGHTERS, LTD. v. WESTERN ASSURANCE CO. (B. C.),* [1926] 4 D. L. R. 963; [1926] 3 W. W. R. 356; *affd.*, [1927] 2 D. L. R. 590; [1927] 1 W. W. R. 878; 38 B. C. R. 315.—*CAN.*

### PART III. SECT. 1, SUB-SECT. 4.

*o i. — Meaning of "husband."*—In the proposals for insurance against fire in respect of a building & of furniture, etc., therein of the proponent, one of the printed questions was "Have you . . . or husband ever . . . had a fire?"—*Held*: the word "husband" there meant husband then living.—*BRADBURY v. THE LONDON GUARANTEE & ACCIDENT CO., LTD.* (1927), 40 C. L. R. 127.—*AUS.*

*o ii. — Alleged misstatement as to property in goods.*—*NORTH BRITISH & MERCANTILE INSURANCE CO. v. MCLELLAN* (1892), 21 S. C. R. 288.—*CAN.*

### PART III. SECT. 2, SUB-SECT. 2.

*t i. — Whether action by insurer Chancery or common law action.*—*ROYAL EXCHANGE ASSCE. CO. v. GRIMSHAW BROS., LTD.,* [1928] 2 D. L. R. 412; 62 O. L. R. 25.—*CAN.*

*t ii. — Liability of insured—Refusal to subrogate.*—*GLOBE & RUTGERS FIRE INSURANCE CO. v. THUDELL,* [1927] 2 D. L. R. 659; 60 O. L. R. 227.—*CAN.*

### PART III. SECT. 3, SUB-SECT. 2.—B.

*h* (p. 311) *i. —*—*CLARKE v. FIDELITY-PHOENIX FIRE INSURANCE CO. OF NEW YORK,* [1926] 1 D. L. R. 303; 58 O. L. R. 148.—*CAN.*

### PART III. SECT. 5.

*h i. — Covering note issued by broker—Loss before issue of policy—Broker not liable as insurer.*—*BROTT v. BENNIE S. COHEN & SON (N. S. W.), LTD.* (1926), 27 S. L. N. S. W. 29; 44 N. S. W. W. N. 44.—*AUS.*

*k i. —*—*SUN INSURANCE OFFICE v. ROY (CAN.),* [1927] 1 D. L. R. 17; 3 S. C. R. 8.—*CAN.*

### PART III. SECT. 7, SUB-SECT. 2.

2599 *i. Explosion—Grain-dust explosion.*—A policy of insurance against fire, which includes the condition that the co. shall make good loss or damage caused by the explosion of coal or natural gas in a building not forming part of gas works, & loss or damage by fire caused by any other explosion, covers loss caused by a grain-dust explosion, where, although the origin of the explosion cannot be positively proved, its most probable cause is found to have been the ignition of the particles of grain-dust suspended in the air.—*KIEBLE BREWERY, LTD. v. MERCHANTS FIRE ASSURANCE CORP. OF NEW YORK (MAN.),* [1926] 1 W. W. R. 497.—*CAN.*

*i i. —*—A policy of fire insurance upon a building contained the words "only while the premises are occupied as a private dwelling." The premises were vacant when a fire occurred. In an action upon the policy:—*Held*: the words quoted were part of the description of the property insured.—*COOPER v. TORONTO CASUALTY INSC. CO.,* [1928] 2 D. L. R. 1007; 62 O. L. R. 311.—*CAN.*

*sm. "Burning of prairie."*—*WEST RAND ESTATES, LTD. v. NEW ZEALAND INSURANCE CO., LTD.,* [1925] App. D. 245.—*S. AF.*

### PART III. SECT. 7, SUB-SECT. 3.

2629 *v. — — —*—A condition, that the insurer is not liable for loss "if any subsequent insurance is effected with any other insurer, unless & until the insurer assents thereto," is not applicable so as to defeat the insured's claim for loss, merely because, without the insurer's assent, he subsequently obtains from another co. a policy which never attaches by reason of the application of the condition therein, that "the insurer is not liable for loss if there is any prior insurance with any other insurer."—*HOME INSURANCE CO. OF NEW YORK v. GAVEL,* [1927] 3 D. L. R. 929; [1927] S. C. R. 481.—*CAN.*

*r* (p. 320) *i. — Loss between issue of cover note & policy—Whether conditions of policy applicable.*—*NICHOLSON v. THE SOUTHERN STAR FIRE INSURANCE CO., LTD.* (1927), 28 S. R. N. S. W. 124; 45 N. S. W. N. 35.—*AUS.*

*d* (p. 320) *i. — On change of nature of occupation on insured premises.*—*WEST RAND ESTATES, LTD. v. NEW ZEALAND INSURANCE CO., LTD.,* [1925] App. D. 245.—*S. AF.*

*ee i. —*—*MISSISSQUOI & ROUVILLE MUTUAL FIRE INSC. CO. v. EASTERN TOWNSHIPS TELEPHONE CO.,* [1928] 1 D. L. R. 526; 43 Que. K. B. 122.—*CAN.*

### PART III. SECT. 10, SUB-SECT. 1.

*l* (p. 333) *i. — Agreement to pay claim of mortgagee.*—*TAMSON v. PALATINE INSC. CO.,* [1928] 2 D. L. R. 867.—*CAN.*

*p* (p. 333) *i. — Insured arrested for arson.*—An insured under a policy of fire insurance was arrested for arson immediately after the fire & kept in custody, or under bail, for six months, when he was acquitted,

2718. *Add. Annotation* :—**Consd. Lake v. Simmons** (1926), 95 L. J. K. B. 586.
2740. *Add. Annotation* :—**Generally, Refd. Lake v. Simmons** (1926), 95 L. J. K. B. 586.
2767. *Add. Annotation* :—**Refd. Page v. Scottish Insee. Corpn.** (1929), 98 L. J. K. B. 308.

## Part IV.—Life Insurance.

- 2906.** *Add. Annotation :—Appl. Looker v. Law Union & Rock Insce., [1928] 1 K. B. 554.*

- 2907.** *Add. Annotation :—Apld.* Looker v. Law Union & Rock Insee., [1928] 1 K. B. 554.

- 2907a.** —.]—On July 10 L. sent to defts. a proposal for an insurance on his life, in which he stated that he was “now free from serious disease or ailment.” The proposal contained this declaration: “It is hereby declared that the above particulars are true, & it is agreed that this proposal & declaration shall be the basis of the contract of assurance.” On

& then endeavoured to comply with the insurer's requests for proof of loss. When the adjuster, who had been instructed to adjust the loss, learned of the criminal proceedings he had stayed his hand.—*Held*: the insured was relieved by reason of necessity & mistake from strict compliance with the conditions in the policy as to furnishing proofs of loss.—*QUON v. BRITISH & EUROPEAN INSNCE. CO., LTD.*, [1928] 3 W. W. R. 545.—**CAN.**

**PART III. SECT. 10, SUB-SECT. 2.**

m i. —.].—MATERGIO v. CANADA  
ACCIDENT & FIRE ASSURANCE CO,  
[1926] 1 D. L. R. 1092; 58 N. S. R.  
415.—CAN.

sn. *After recovery of judgment against railway company responsible for fire*—9 Edw. 7, c. 32, s. 9.]—BANTING D. WESTERN ASSURANCE CO., BANTING v. LAW UNION & CROWN MORTGAGE CO. (1911), 21 Man. L. R. 112.—CAN.

so. Expenses of adjuster—Right of insurer to deduct.] MORIE & CAMPBELL, WILSON & HORNE, LTD. v. WORLD FIRE & MARINE INSUR. CO., [1928] 1 D. L. R. 1010; [1928] 1 W. W. R. 718. CAN.

**PART III. SECT. 13, SUB-SECT. 2.—A.**

**2749** *il.* —.—.]—**SWIFT v. NEW ZEALAND INSURANCE CO., LTD.**, [1927] *V. L. R.* 249; 48 *A. L. T.* 182, [1927] *Argus L. R.* 194.—**AUS.**

**PART III. SECT. 13, SUB-SECT. 2.—B.**

*Purchaser of property subject to mortgage—Although fire before registration of transfer*—ROYAL INSURANCE CO., LTD. v. MYLIUS (1926), 38 C. L. R. 477; [1927] V. L. R. 1.—**AUS.**

1 ii. — *Delay in reinstatement — Right to claim loss of rent & profits.*— Pursuant to Imperial Acts Application Act, 1922, s. 49, pltf., as a person interested in or entitled to buildings which had been destroyed by fire, requested deft. insurance co. to cause the money for which such buildings had been insured to be laid out or expended as far as the same would go towards rebuilding or reinstating the buildings. Deft. failed to comply with the request within a reasonable time. Pltf., having established his right to compliance claimed to be entitled to damages for loss of rent & profits occasioned by deft.'s default. — *Held:* the sect. conferred on pltf. no right beyond that to have the money laid out or expended as far as it would go towards rebuilding or reinstating

the buildings.—**MYLIUS v. ROYAL INSURANCE CO., LTD.**, [1928] V. L. R. 126; [1928] Argus L. R. 98.—**AUS.**

**PART III. SECT. 15.**

**sp.** *Right to —Moneys made payable to third party in policy.*—*Re WILNER*, [1928] 2 D. L. R. 396.—**CAN.**

**PART IV. SECT. 4, SUB-SECT. 1.**

**2781 i. Application of statute—Insurance on own life—For benefit of another.]**—*Re* MORRIS, HATTER v. BOWMAN'S ELDERS. SUPPLIES (Ont.), [1927] 1 D. L. R. 805.—CAN.

**PART IV. SECT. 5.**

**W. I. —.** Under the Act to secure to wives & children the benefit of life insurance, R. S. O. 1887, c. 136, s. 6 (1), as amended by 51 Vict. c. 22, s. 3, & 53 Vict. c. 39, s. 6, the insured has no power to declare by his will that others than those for whose benefit he has effected the policy or declared it to be, shall be entitled to the insurance money, nor to apportion it among others than those for whose benefit he has effected the policy or declared it to be. —*Re GRANT* (1895), 26 O. R. 120. —**CAN.**

k ii. *Insurance for benefit of named wife & daughter—Death of wife—Second wife not designated.*—*L.* was insured by the society for \$2,000 payable to "my wife," naming her, "one-half," & the other half to his daughter. His named wife predeceased him, & he married again. His second wife & daughter both survived him. He made no change in the designation of beneficiaries:—*Held*, his second wife was entitled to the \$1,000 made payable to "my wife."—*Re* LLOYD & ANCIENT ORDER OF UNITED WORKMEN (1913), 29 O. L. R. 312; 5 O. W. N. 5.—*CAN.*

**r i. Insurance for benefit of intended wife—Followed by marriage—Valid.**—*Re WYTHIE*, [1927] 2 D. L. R. 1161; 60 O. L. R. 323.—**CAN.**

**sq. Insurance for benefit of six named children.—Death of three.—Alteration of will.**—A person insured his life for the benefit equally of six of his children, three of whom died without issue in his lifetime. By his will he altered the shares of the three survivors, giving a portion to another child & portions to four grandchildren, & caused the policies to be cancelled & re-issued payable to "his exors. in trust," & died in 1894, while R. S. O. 1887, c. 136, was in force:—*Held:*

July 15 defts. replied stating " The proposal made by you . . . has this day been accepted & if the health of the life proposed remains meanwhile unaffected, the policy will be issued on payment of the first premium. . . . The risk of the co. will not commence until receipt of the first premium, & the directors meanwhile reserve the power to alter or withdraw this acceptance." On July 21 L. began to feel ill, & on the next day a friend filled in a cheque for the first premium, which L. signed in bed. The cheque was not sent off till the evening of July 21, by which time L. was

the apportionments to the four children were valid, but those to the grand-children, while valid as legacies, were invalid as against creditors. — *McINTYRE v. SILCOX* (1898), 29 O. R. 593; *affil.* (1899), 30 O. R. 488 — **CAN.**

**PART IV. SECT. 9, SUB-SECT. 1. —B.**

**r i. ---.] -TURNER v. BRITISH COLUMBIA MUTUAL BENEFIT ASSOCN. (B. C.), [1927] 4. D. L. R. 511, [1927] 3 W. W. R. 311.--CAN.**

**PART IV. SECT. 9, SUB-SECT. 2.—D.**

**2906** *Material alteration in health.*—**A.**, after making a proposal for a policy of life insurance & undergoing, on Mar. 8, a medical examination, consulted a doctor the next day & on his advice was, on Mar. 16, operated upon for hydrocele. On Mar. 15 the premium had been paid & a provisional receipt given, & on Mar. 20 the co.'s acceptance of the risk was posted. **A.** died from heart failure on Mar. 24 :—**Held :** (1) non-disclosure of any material circumstances arising at any moment between the doctor & the consultation of the contract avoided the contract; (2) the consultation on Mar. 9 & the operation were material facts, which **A.** ought to have communicated to the co.—**WALL v. SOUTHERN CROSS ASSURANCE CO., LTD.**, [1927] N. Z. L. R. 106. **N.Z.**

**PART IV. SECT. 10.**

**sr. Lapse—Whether policy resus-**  
**citated.]—BIRKETT v. NORTHERN L.**  
**ASS'CE Co., [1927] 4 D. L. R. 91; 60**  
**O. L. R. 666.—CAN.**

**PART IV. SECT. 11, SUB-SECT. 1.**

2920 vil. ———— *Chèque*  
*accepted subject to completion of applica-*  
*tion for restoration—Alleged waiver of*  
*condition.]* -ROSS v. IMPERIAL LIFE  
 ASS'CE. CO., LTD. (Alta), [1928] 3  
 W. W. R. 593.—CAN.

**bi. — Indebtedness exceeding reserve value—Termination of policy.**—**TEAS-  
L. v. SUN LIFE ASSURANCE CO. OF  
CANADA,** [1927] 2 D. L. R. 502; 60  
O. L. R. 201.—**CAN.**

**PART IV. SECT. 11, SUB-SECT. 5.—A.**

**a i.** — *Drath in garage—Deceased working on motor vehicle while engine running—Deceased aware of danger from so doing.*—*Held:* on the evidence it was a case of suicide.—**LANG SHIRT CO.'S TRUSTEE v. LONDON L. INS. CO.,** [1927] 3 D. L. R. 89; 60 O. L. R. 476; *reversed*, [1928] 2 D. L. R. 419; 62 O. L. R. 83.—**CAN.**

seriously ill with pneumonia. On July 26 defts. received the cheque, & thereupon they sent to L. a certificate of that date stating that the proposal had been accepted, & that upon the payment of the first quarterly premium a policy would be issued in due course. On July 27 L. died. His administrators sued defts. for the sum insured:—*Held*: (1) the acceptance of the proposal by defts. was made in reliance upon the continued truth of the representations therein, & as the risk had been materially increased between proposal & acceptance, a condition which defts. had made a condition going to the root of the contract had not been fulfilled; (2) since contracts of insurance were contracts *uberrimæ fidei*, there was a duty of disclosure on the part of the assured to inform defts. of his change of health, which was a material change in the risk insured, & the position was here even stronger because defts. had inserted express terms in their documents to protect themselves.—*LOOKER v. LAW UNION & ROCK INSURANCE CO., LTD.*, [1928] 1 K. B. 554; 97 L. J. K. B. 323; 137 L. T. 648; 43 T. L. R. 691.

**2937a.** — Application of bonus to revive policy.] —*ROWAN v. ATLAS ASSURANCE CO., LTD.* (1928), 72 Sol. Jo. 285.

**2938.** *Add. Annotation*:—*Mentd.* Fisher v. Walters (1926), 90 J. P. 195.

**2939.** *Add. Annotation*:—*Distd.* Newsholme Bros. v. Road Transport & General Insce. Co., [1929] 2 K. B. 356.

**2950.** *Add. Citations*:—[1927] 1 Ch. 55; 95 L. J. Ch. 434; 135 L. T. 558; 42 T. L. R. 504, C. A.

*Add Annotation*:—*Refd.* Royal London Mutual Insce. Soc. v. Barrett, [1928] Ch. 411.

**2954.** *Add. Annotation*:—*As to* (1) *Distd.* Royal London Mutual Insce. Soc. v. Barrett, [1928] Ch. 411.

**2962a.** — — —.]—An assurance co. issued a policy containing the following condition: "5. Suicides, etc. The policy shall be void if the life assured dies by suicide or by the hands of justice. In any such case the directors may allow to the policy-holder such part of the sum assured as they shall think fit, & the policy shall remain in force to the extent of the pecuniary interest of third parties *bonâ fide* acquired for valuable consideration, satisfactory proof of which will be required, provided notice thereof in writing shall have been received & admitted by the directors at least one month prior to the date of death." The co. advanced money to the assured on a mtge. of leasehold property & on assignment to them of the policy by way of security. It was provided by a clause in the mtge. that the co. should satisfy themselves primarily out of the policy money. The assured committed suicide, & the co. commenced an action against his extrix, for the purpose of enforcing their security:—*Held*: upon the true construction of clause 5, the expression "third

parties" did not include the assurer, & the co. was entitled to proceed to enforce the security against the leasehold property, & the policy was void.—*ROYAL LONDON MUTUAL INSURANCE SOCIETY v. BARRETT*, [1928] Ch. 411; 97 L. J. Ch. 177; 139 L. T. 208; 44 T. L. R. 363; 72 Sol. Jo. 240.

**2963.** *Add. Annotation*:—*Mentd.* *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

**2966.** *Add. Annotation*:—*Consd.* Royal London Mutual Insce. Soc. v. Barrett, [1928] Ch. 411.

**2969.** *Add. Annotations*:—*Consd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179. *Refd.* James v. British General Insce., [1927] 2 K. B. 311; Perrin v. Dickson (1929), 98 L. J. K. B. 683.

**2993a.** *Extension of period of policy by insured—Effect of.*—By an insurance policy dated Aug. 13, 1925, an assurance co. agreed to pay the assured, his exors., administrators or assigns £1,000 in the event of his death on or before July 31, 1926. The assured assigned the benefit of the policy to deft. In July, 1926, the assured arranged for an extension of the period of insurance to Oct. 31, 1926, & this extension was given effect to by indorsing on the policy a declaration "that the sum assured shall be payable in the event of the death of the life assured on or before Oct. 31, 1926." No assignment was ever made of the benefit of this extension. The assured died on Oct. 1, 1926:—*Held*: (1) the extension of the period of the policy by indorsement was not a new contract of insurance, but a variation of the original contract of which the benefit was vested in deft., & she was entitled to recover the policy money by virtue of the assignment to her of the policy; (2) the effect of the transaction was that the assured entered into the contract for the extension of the policy for the benefit of deft. & as trustee for her, & deft. was, on that ground, entitled to the policy money.—*ROYAL EXCHANGE ASSURANCE v. HOPE*, [1928] Ch. 179; 97 L. J. Ch. 153; 138 L. T. 446; 44 T. L. R. 160; 72 Sol. Jo. 68, C. A.

**3050.** *Citations*:—For "*Ex p.* LANCASTER" read "*Re* JACOB'S ESTATE, LANCASTER v. GASELFE, *Ex p.* LANCASTER."

**3052a.** — — —.]—The grantee of an annuity effected a policy on the life of the grantor, at his own expense. The grantor had a power of redemption on payment of £2,500, & it was provided that in case the grantor should, "at the time of making such repurchase," by notice in writing, elect to take the policy, the grantee would assign to him any policy "then vested" in him, which might be effected in respect of the annuity; but it was declared that it should not be incumbent on the grantor to keep on foot any policy. The policy became valuable, & the grantor gave the month's notice of repurchase, & declared his election to take the policy:—*Held*: (1) the grantee had no right afterwards to surrender the policy for

**PART IV. SECT. 13, SUB-SECT. 1.—A.**

*o i.* — — — For mortgage—*Subrogation*.—*SIMPSON v. CHAMBERLAIN*, [1923] 2 D. L. R. 1033; 33 Man. L. R. 81; [1923] 2 W. W. R. 99.—*CAN.*

*o ii.* — — — To non-preferred beneficiary — *Validity*.—*Re* MURPHY

(P. E. I.), [1926] 4 D. L. R. 1136.—*CAN.*

**PART IV. SECT. 13, SUB-SECT. 1.—E.**

*m i.* — — —.]—*Re* BENJAMIN (1926), 59 O. L. R. 392.—*CAN.*

**PART IV. SECT. 14, SUB-SECT. 2.—B.**

*ss.* Deposit with insurers as collateral security for advances—*Protected policies—Marshalling—Protected fund primarily liable*.—*Re* HOLLAND, *Ex p.* HOLLAND (1928), 28 S. R. N. S. W. 369; 45 N. S. W. W. N. 88.—*AUS.*

his own profit. *Semble*: (2) although he might have let the policy drop, he was not, at any time, entitled to surrender it for his own.—*HAWKINS v. WOODGATE* (1844), 7 Beav. 565; 8 Jur. 743; 49 E. R. 1185.

**3052b.** — *Contract to redeem annuity—Whether insurance policy included.*—*MILWARD v. LYSONS* (1836), Donnelly, 51; 47 E. R. 220, L. C.

**3052c.** — *Annuity not redeemed by grantor.*—Upon the execution of a mtge. from A. to B. to secure an annuity, B. insured A.'s life, & wrote to A. a letter, stating that the policy was to be assigned to A. as soon as the annuity was redeemed & all arrears & expenses paid. A. died without having redeemed the annuity. B. paid all the premiums on the policy till A.'s death:—*Held*: B. was entitled to receive the policy money from the assurance co. & the bonuses

payable in respect thereof.—*BASHFORD v. CANN* (1863), 33 Beav. 109; 9 L. T. 43; 11 W. R. 1037; 55 E. R. 308.

*Annotation*:—*Refd.* Preston v. Neale (1879), 12 Ch. D. 760.

**3066.** *Add. Annotations*:—*Consd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179. *Refd.* Smith v. Wood (1928), 139 L. T. 250.

**3091.** *Add. Citations*:—95 L. J. Ch. 195; 135 L. T. 374.

**3097.** *Add. Annotation*:—*Generally*, *Refd.* Tredegar v. Harwood (1927), 44 T. L. R. 17.

**3104.** *Add. Citation*:—134 L. T. 557.

*Add. Annotation*:—*Refd.* Buerger v. New York Life Assce. (1927), 43 T. L. R. 601.

**3128.** *Add. Annotations*:—*Consd.* Home & Colonial Insee. v. London Guarantee & Accident Co. (1928), 45 T. L. R. 134. *Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.

## Part V.—Accident Insurance: Insurance against Liability for Accidents to Third Persons.

**3139.** *Add. Annotation*:—*As to* (2) *Apld.* News-holme v. Road Transport & General Insee. [1929] 2 K. B. 356.

**3141.** *Add. Annotation*:—*Apld.* Roberts v. Anglo-Saxon Insee. Asscn. (1927), 96 L. J. K. B. 590.

**3144.** *Add. Annotation*:—*As to* (1) *Apprvd.* News-holme Bros. v. Road Transport & General Insee. Co., [1929] 2 K. B. 356.

**3148.** *Add. Annotation*:—*Generally*, *Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.

**3155.** *Add. Annotation*:—*Refd.* Rowett, Leaky v. Scottish Provident Institution (1926), 95 L. J. Ch. 434.

**3157a.** — *"In charge of any vehicle."*—By a policy of insurance against death by accident the insurers undertook to pay £250 in case of death, "if the reader while a

pedestrian in a public thoroughfare be killed by accidental impact with a moving vehicle," provided that "the reader be not at the time of the accident in charge of any vehicle." An insured person, who was riding a bicycle, got off at the foot of a hill, & having pushed it some way, stopped to speak to another man & stood holding his bicycle, & an unattended motor-car came running down the hill & struck the insured person & caused his death:—*Held*: the word "vehicle" included a bicycle, & as the deceased man was "in charge of" the bicycle within those words in the policy, the insurers were not liable.—*HARPER v. ASSOCIATED NEWSPAPERS, LTD.* (1927), 43 T. L. R. 331.

**3157b.** *S. P. HANSFORD v. LONDON EXPRESS NEWSPAPER, LTD.* (1928), 44 T. L. R. 349; 72 Sol. Jo. 240.

### PART IV. SECT. 15, SUB-SECT. 2.

*n l.* — *Application for declaration as to—Who may apply—Ontario Insurance Act, 1924, s. 154 (2).*—*Re* TURNER & CANADIAN ORDER OF FORESTERS, [1926] 4 D. L. R. 793; 59 O. L. R. 348.—*CAN.*

*sq.* *Production of grant of probate—Necessity for.*—*NATIONAL LIFE INSURANCE CO. v. MCCOUBRAY*, [1926] 2 D. L. R. 650; [1926] S. C. R. 277.—*CAN.*

### PART V. SECT. 1, SUB-SECT. 4.—A.

**3158 iv.** — *]*—*MAGINN v. FIDELITY & CASUALTY CO. OF NEW YORK*, [1928] 3 D. L. R. 814.—*CAN.*

*st.* *Newspaper insurance—Finality of adjudication as to next of kin.*—*Held*: it was a condition precedent to payment, that the person claiming should produce the decision of the proprietors of the paper that he was the next of kin of deceased.—*LAW v. NEWNES, LTD.* (1894), 21 R. (Ct. of Sess.) 1027.—*SCOT.*

*sv.* — *]*—*Where deceased left three brothers & a sister, & the editor adjudged the sister next of kin & paid the money to her.*—*Held*: the brothers had no right to share in the sum so paid.—*HUNTER v. HUNTER* (1904), 7 F. (Ct. of Sess.) 136.—*SCOT.*

*sw.* *Condition against second insurance—Life insurance policy providing for partial prepayment for disability.*—*SOUTH BRITISH INSURANCE CO., LTD. v. WILLIAM BARCLAY NICOL*, [1928] S. R. Q. 53; 22 Q. J. P. 1.—*AUS.*

*sx.* *Husband & wife covered—Both killed in same accident—Whether liability limited.*—A policy of assurance, whereby the assurer indemnified the assured against certain risks with respect to his motor car & accidents arising out of use of the motor car, contained a clause reading: "Accidents to owner. This policy covers the assured & the assured's wife against personal accidents occurring to themselves while riding in, mounting, or dismounting from, any motor car to the following extent, & subject to the limits as set forth:—(a) Death.—The underwriters will pay to the assured's exors., administrators or assigns the sum of £1,000 in the event of death." The deceased & his wife were both killed in a collision between the assured's motor car & a train:—*Held*: the risks assured against were the death of the assured & his wife, but that the policy was limited in amount to one sum of £1,000.—*Re CAIRE, PUBLIC TRUSTEE v. HOOD*, [1927] S. A. S. R. 220.—*AUS.*

*sy.* *Defence to claim by insured—*

*Breach of law.*—An insured under an accident insurance policy accidentally discharged a shot-gun into his foot with the result that the foot had to be amputated. To an action on the policy the insurers set up the defence that the accident occurred while the insured was breaking the law by hunting & shooting ducks out of season in violation of Migratory Birds Convention Act (Dom.) & Game Act, 1924 (Sask.), & by carrying a loaded shot-gun in an automobile contrary to the latter Act:—*Held*: while the insured may have hunted ducks during the day of the accident, he was not in the act of doing so when he shot himself, the hunting being then over & abandoned; the evidence was insufficient to justify a finding that the gun was being carried loaded in the automobile.—*WESTERN FINANCE CORPN., LTD. v. LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA*, [1928] 3 D. L. R. 592; [1928] 2 W. W. R. 454.—*CAN.*

### PART V. SECT. 1, SUB-SECT. 4.—B.

**3161 v.** — *]*—*Pitt.* was insured with deft. co. under a policy which provided, *inter alia*, that if he sustained the loss of a foot, caused directly & solely by violent, accidental, external & visible injury, he should be entitled to receive £250, subject how-



3176. *Add. Annotation*:—**Refd.** Rowett, Leaky v. Scottish Provident Institution (1926), 95 L. J. Ch. 434.

3194a. ———.]—**JAMES v. BRITISH GENERAL INSURANCE CO., No. 3214a, post.**

3200. *Add. Annotation*:—**Refd.** Koskas v. Standard Marine Insee. (1926), 42 T. L. R. 692.

3202a. ——— **Condition against acting to detriment of insurer—Failure to raise defence of diplomatic privilege—By order of diplomatic superior.**—Deft., who was First Secretary of the Peruvian Legation, took out a policy of insurance against legal liability to members of the public in connexion with the driving of his motor-car, the policy providing that "the assured . . . shall not in any way act to the detriment or prejudice of the (insurance) co.'s interests," & that "the co. is entitled to take absolute control of all negotiations & proceedings." Pltf. brought an action for personal injuries against deft., & the latter served on the insurance co. a third-party notice claiming an indemnity. An appearance without protest was entered in the action on behalf of deft., & as the Peruvian Minister forbade deft. to raise the plea of diplomatic immunity, no such plea was inserted in the defence. The jury found a verdict for pltf. for damages, & the insurance co. repudiated liability on the ground that deft. had broken the conditions of the policy by insisting that the plea of diplomatic immunity should not be raised:—**Held**: the privilege of diplomatic immunity was waived by the entry of appearance without protest, & as deft. was bound to obey the direction of his Minister there was no breach of the conditions of the policy, & deft. was entitled to the indemnity claimed.—**DICKINSON v. DEL SOLAR** (1929), 45 T. L. R. 637.

3203a. **Insurer defending claim—Claim not covered by policy—Repudiation—Estoppel.**—**ETCHELLS, CONGDON & MUIR, LTD. v. EAGLE STAR & BRITISH DOMINIONS INSC. CO., LTD.** (1928), 72 Sol. Jo. 242.

ever, to the condition that the policy did not cover injuries arising from provoked assault, fighting or breach of the peace. During a family dispute pltf. was threatening his brother with an iron bar, when he was designedly shot in the leg by his father, & as the result of the injury his foot had to be amputated. The father was convicted of unlawfully wounding:—**Held**: the injury was accidental within the policy, but that it was the result of a provoked assault, & pltf.'s claim therefore failed.—**GRANT v. SOUTHERN CROSS ASSURANCE CO., LTD.** (1927), 30 W. A. L. R. 65.—**AUS.**

#### PART V. SECT. 2, SUB-SECT. 2.

n i. ——— **"Business of farmer"**  
—**What is.**—**CARR v. GUARDIAN ASSURANCE CO., LTD. & CRACKNELL & CRIMP,** [1928] N. Z. L. R. 108.—**N.Z.**

n ii. ——— **Notice to agent—Whether compliance with condition in policy.**—In an action against deft. co., pltf. claimed indemnity against a judgment recovered against him by one B. on account of bodily injuries sustained by B. as the result of the operation of pltf.'s motor car. The action was based upon a provision in the policy insuring pltf. against legal liability for bodily injuries sustained by any one in respect of the operation of his car. The defence relied upon pltf.'s failure to give written notice to the co. in the manner required by the policy. Pltf. had notified deft. co.'s agent on

the day following the accident by exhibiting to him the letter from the injured party's solr. threatening action unless the compensation claimed was paid. Evidence was given to show that on previous occasions verbal notice was given to the agent, & notices so given were recognised & acted upon by payment of claims:—**Held**: the agent was authorised to act for the co. notwithstanding the provision in the policy requiring the insured promptly to give written notice to the co.: verbal notice given was sufficient within the meaning of the contract & the defence of absence of written notice failed.—**DUNPHY v. SCOTTISH METROPOLITAN ASS'CE CO.,** [1928] 1 D. L. R. 420; 59 N. S. L. 476.—**CAN.**

**sw. Insurer interfering in litigation—Counterclaim asserted by insurer's solicitors.**—**MALLETT v. LUMBERMEN'S MUTUAL CASUALTY CO.,** [1928] 3 D. L. R. 150.—**CAN.**

#### PART V. SECT. 2, SUB-SECT. 3.

q i. ———.]—Pltf., a workman employed by the M. Co., was injured, & obtained an award for compensation under Workmen's Compensation Act, 1902. At the date of the award the M. Co. were being wound up. Pltf. alleged that the C. Co., were liable to indemnify the M. Co. against losses or liability under the award, & brought an action for a declaration that he had a first charge upon the money which the M. Co. were entitled to receive

3205. *Add. Annotation*:—**Apld.** Wales v. Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

3205a. **S. P. WALES v. IRON TRADES EMPLOYERS' ASSOCN., LTD.** (1928), 21 B. W. C. C. 316, C. A.

3205b. ———.]—A workman was employed by a co., which went into liquidation, & ceased to carry on business. The co. were insured at the time of an accident to the workman with an assocn., whose arts. formed the contract of insurance. By the arts. the assocn. undertook liability if compensation became payable for more than six months, so long as the insured co. remained a member of the assocn. Membership was to cease if the co. went into liquidation, or ceased to carry on business. The workman having applied for an award of weekly compensation as against both his employers & the assocn., on the ground that the rights of his employers against the assocn. had been transferred to him:—**Held**: on the contract, the undertaking of liability by the assocn. after compensation had been paid for more than six months did not vest that liability once & for all, but merely indemnified the co. during its continuance of membership, & membership having ceased, the contract of insurance lapsed, & the assocn. was under no liability to the workman.—**HINDMARCH v. CARTERTHORNE COLLIERY, LTD. & DURHAM COLLIERY OWNERS' MUTUAL PROTECTION ASSOCN.** (1928), 21 B. W. C. C. 44, C. A.

*Annotation*:—**Consd.** *Re* Beltside Coal Co. (1929), 45 T. L. R. 327.

3206. *Add. Annotations*:—**Distd.** Hindmarch v. Carterthorne Colliery Co. & Durham Colliery Owners' Mutual Protection Assocn. (1928), 21 B. W. C. C. 44. **Consd.** Wales v. Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

3210. *Add. Citation*:—95 L. J. K. B. 25.

*Add. Annotations*:—*As to* (1) **Distd.** Hindmarch v. Carterthorne Colliery Co. & Durham

from the C. Co., & for an order for payment. The C. Co. admitted that they had issued a policy which was valid & subsisting at the date of pltf.'s injuries, by which they agreed to indemnify the M. Co. against loss for damages on account of bodily injuries suffered within the period of the policy by any employee.—**Held**: pltf. had no status to maintain the action.—**DISOURDI v. SULLIVAN GROUP MINING CO. & MARYLAND CASUALTY CO.** (1910), 15 B. C. R. 305.—**CAN.**

q ii. ———.]—The words "Every such policy shall provide that the insurer shall, as well as the employer, be directly liable to any worker insured under such policy & in the event of his death, to his dependants, to pay the compensation for which an employer is liable, & that the insurer shall be bound by, & subject to, any order, decision or award made against the employer of such worker under the provisions of this Act," appearing in Workmen's Compensation Act, 1926, s. 18 (3), mean that when compensation has been assessed & awarded against the employer, the insurer as well as the employer is liable to pay it, & that the original proceedings for the establishment of the liability must be between the worker & his dependants on the one side, & the employer on the other.—**DEVINE v. DEVINE & QUEENSLAND INSURANCE CO., LTD.** (1928), 28 S. R. N. S. W. 503; 46 N. S. W. W. N. 140.—**AUS.**



Colliery Owners' Mutual Protection Assocn. (1928), 21 B. W. C. C. 44. *Generally, Consd. Wales v. Iron Trades Employers' Assocn.* (1928), 21 B. W. C. C. 316.

**3213a.** *S. P. WALES v. IRON TRADES EMPLOYERS' ASSOCN., LTD.* (1928), 21 B. W. C. C. 316, C. A.

**3214.** *Add. Annotations:—As to (1) Follid. James v. British General Insee., [1927] 2 K. B. 311. As to (3) Follid. James v. British General Insee., [1927] 2 K. B. 311.*

**3214a.** ————]—A policy of insurance provided that the insurance co. would indemnify the assured against all sums which he might be legally liable to pay for damages or compensation to any person for accidental bodily injury or accidental damage to property, where such injury or damage was caused by the driving of the insured's motor car, including law costs when incurred with the consent of the co. While the insured was driving his motor car a collision took place between it & a motor cycle, the result being that the driver of the latter vehicle was injured, a passenger thereon was killed, & both vehicles were damaged. At the time of the collision the insured was drunk through his own unpremeditated folly. The insured was convicted of the manslaughter of the deceased passenger. The injured driver brought an action for personal injuries against the insured, in which he was awarded damages & costs, & the insured incurred costs. The insured also incurred costs in repairing the vehicles, in attending an inquest on deceased, & in defending himself in the police ct. proceedings before his trial. In an action by the insured against the co. for indemnity against these damages & costs:—*Held*: (1) the policy covered liabilities of the insured for accidental bodily injury to any person or accidental damage to property caused by his negligence, even though gross & attended by criminal consequences; (2) the policy, by covering these liabilities, was not void as against public policy, & the insured was entitled to the indemnity which he claimed.—*JAMES v. BRITISH GENERAL INSURANCE CO., [1927] 2 K. B. 311; 96 L. J. K. B. 729; 137 L. T. 156; 43 T. L. R. 354; 71 Sol. Jo. 273.*

**3216a.** ————]—*JAMES v. BRITISH GENERAL INSURANCE CO., No. 3214a, ante.*

**3216b.** *Protection against criminal consequences.* —*JAMES v. BRITISH GENERAL INSURANCE CO., No. 3214a, ante.*

**3217a.** ———— *Actual driver also insured—Ratable contribution.*—G. took out with the M. co. a motor car insurance policy covering himself & any friend driving with G.'s consent, & providing as following: "Condition 6. The extension of the indemnity to friends or relatives of the insured is conditional upon such friend or relative being a licensed & competent driver & not being insured under any other policy. Condition 10. If at the happening of any accident, injury, damage, or loss covered by this policy there shall be subsisting any other insurance or indemnity of any nature whatever covering same, whether effected by insured or by any other person, then the co. shall not be liable to pay or contribute towards any such damage or loss more than

a ratable proportion of any sum payable in respect thereof for compensation." L., G.'s brother-in-law, took out with the G. co. a similar policy, providing that "insured will also be indemnified hereunder while personally driving a car not belonging to him provided that there is no other insurance in respect of such other car whereby insured may be indemnified," & that "if at the time of the occurrence of any accident, loss or damage there shall be any other indemnity or insurance subsisting whether effected by insured or by any other person the corp'n. shall not be liable to pay or contribute more than a ratable proportion of any sums payable in respect of such accident loss or damage." While L. was driving G.'s car with G.'s consent it had a collision, & L. had to pay damages. G., as trustee for L., claimed against the M. co., & L. on his own behalf claimed against the G. co.:—*Held*: in each policy the provision as to ratable contribution qualified the preceding clause, & each co. was liable to pay claimants half the amount claimed.—*GALE v. MOTOR UNION INSURANCE CO., LTD., LOYST v. GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPN., LTD., [1928] 1 K. B. 359; 96 L. J. K. B. 199; 138 L. T. 712; 43 T. L. R. 15; 70 Sol. Jo. 1140.*

**3217b.** *Action by repairer against insurers for repairs—Right of insurers to be subrogated to owner's rights against repairer.*—In an action by the repairer of a motor car against an insurance co. for repairs executed at their request, the co. contended that they were entitled to set-off, on the principle of subrogation, the claims of the assured, the owner of the car, against the repairer, who had been driving the car on the occasion of a collision. The insurance co. had commenced an action, in the name of the owner, against the repairer for the damage done to the car by his negligent driving, but, at the date of the commencement of the action by the repairer, certain claims of the assured under the policy in regard to third party risks, etc., were still unsettled:—*Held*: the fact that these claims were then unsettled prevented the insurance co. from being subrogated to the owner's rights against the repairer, & the co. were not entitled to rely on these as a set-off to the repairer's claim.—*PAGE v. SCOTTISH INSURANCE CORPN., FORSTER v. PAGE (1929), 98 L. J. K. B. 308; sub nom. PAGE v. SCOTTISH INSURANCE CORPN., FORSTER v. PAGE, 140 L. T. 571; 45 T. L. R. 250; 73 Sol. Jo. 157; 34 Com. Cas. 236, C. A.*

**3217c.** *Condition as to efficient condition of vehicle.*—The claimants were the holders of a policy by which resp. co. had undertaken liability for damage caused by or to a motor car. The policy contained a condition that "the insured shall take all reasonable steps to maintain such vehicle in efficient condition." & it provided that the observation of the conditions should be a condition precedent to the liability of the co. The claimants removed the foot-brake from the vehicle, leaving only a hand-brake, & in this state of affairs the vehicle caused damage, & was itself damaged, in an accident, but the exact cause of the accident could not be ascertained:—*Held*: the condition was a

condition precedent, & as it had been broken |  
the co. was not liable on the policy.—

JONES & JAMES v. PROVINCIAL INSURANCE  
Co., LTD. (1929), 46 T. L. R. 71.

## Part VII.—Insurance against Burglary and Theft.

3252. *Add. Citations*:—*affd.*, [1927] A. C. 140; 136 L. T. 263; 43 T. L. R. 46; 70 Sol. Jo. 1111; 32 Com. Cas. 62, H. L.
3256. *Add. Annotation*:—*Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
3257. *Add. Annotation*:—*Generally*, *Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
3258. *Add. Citations*:—*revsd.*, [1926] 2 K. B. 51; 95 L. J. K. B. 586; 135 L. T. 129; 42 T. L. R. 425; 70 Sol. Jo. 584; 31 Com. Cas. 271. O. A.; *revsd.*, [1927] A. C. 487; 96 L. J. K. B. 621; 137 L. T. 233; 43 T. L. R. 417; 71 Sol. Jo. 369; 33 Com. Cas. 16, H. L.
- 3260a. "Dishonesty"—Discounting bills of exchange subsequently dishonoured.]—Pltf. was insured by two policies, subscribed by deft., against loss or deprivation of bills of

exchange through theft & any other loss whatsoever through theft or other dishonesty. During the currency of the policies pltf. was induced by false representations to discount certain bills of exchange. The bills were dishonoured, & pltf. brought an action on the policies on the ground that he had suffered a loss through having dealt in the bills. Deft. contended that the above provision in the policies only covered accidental loss of documents or physical deprivation of the possession of documents:—*Held*: pltf.'s loss was caused by dishonesty within the policy.—WASSERMAN v. BLACKBURN (1926), 43 T. L. R. 95.

3269. *Add. Annotation*:—*Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.

## Part VIII.—Other Kinds of Insurance.

- 3279a. ——— To be used only for commercial travelling—Damaged whilst carrying passengers.]—*Held*: a statement in a proposal form that a motor car was to be used only for commercial travelling was a statement descriptive of the risk covered by the insurance, & the insurers were not liable for an accident which happened while the motor car was being used to carry passengers, carrying passengers not being within the

description.—ROBERTS v. ANGLO-SAXON INSURANCE ASSOCN. (1927), 96 L. J. K. B. 590; 137 L. T. 243; 43 T. L. R. 359, C. A.

3282. *Add. Annotation*:—*Refd.* Lake v. Simmons, [1927] A. C. 487.
3288. *Add. Annotations*:—*Refd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179; Perrin v. Dickson (1929), 98 L. J. K. B. 683.
3289. *Add. Citation*:—95 L. J. Ch. 24.

### PART VI. SECT. 1.

3220 iii. *S. P. VICTORY v. SASKATCHEWAN GUARANTEE & FIDELITY CO., LTD.*, [1927] 3 D. L. R. 617; [1927] 2 W. W. R. 577; 21 Sask. L. R. 551; *varied*, [1928] 2 D. L. R. 829; [1928] S. C. R. 264.—CAN.

### PART VI. SECT. 3.

3233 iii. ———  
RURAL MUNICIPALITY OF ENFIELD v. LONDON GUARANTEE & ACCIDENT CO., LTD. (Sask.), [1926] 4 D. L. R. 37; [1926] 2 W. W. R. 737.—CAN.

3233 iv. ———  
GRAIN CLAIMS BUREAU, LTD. v. CANADIAN SURETY CO. (No. 2), [1927] 3 W. W. R. 1; 37 Man. L. R. 76; *revsd.*, [1928] 1 D. L. R. 677; [1928] 1 W. W. R. 263; 37 Man. L. R. 235.—CAN.

3243 i. *Embezzlement*—Committed within twelve months prior to notice of discovery—*What amounts to.*—LONDON GUARANTEE & ACCIDENT CO., LTD. v. CITY OF HALIFAX, [1927] 1 D. L. R. 1129; [1927] S. C. R. 165.—CAN.

### PART VII. SECT. 1.

3248 i. *Commencement of risk*—*Covering note issued by broker*—*Loss before issue of policy*—*Broker not liable as insurer.*—BROIT v. BENNIE S. COHEN & SON (N. S. W.), LTD. (1926), 27 S. R. N. S. W. 29; 44 N. S. W. W. N. 44.—AUS.

### PART VII. SECT. 2.

sa. *Burglary from "safe or vault described in schedule."*—Where money stolen by burglars was, at the time of the burglary, in a vault so described, but was not in the safe in the vault:—

*Held*: the assurance was not confined to money in the safe.—WOODWARD'S, LTD. v. UNITED STATES FIDELITY & GUARANTEE CO., [1927] 2 D. L. R. 126; [1927] 1 W. W. R. 529; 38 B. C. R. 171.—CAN.

### PART VIII.

g i. ——— *Misstatements in proposal*—*What amount to.*—A motor vehicle in the possession of the purchaser under a hire-purchase agreement was destroyed by fire. An action was brought by the two parties to the hire-purchase agreement under a policy issued in the names of both parties. Defts. pleaded that all benefit under the policy had been forfeited through misstatements in the proposal. The proposal began "I we, the undersigned desire to insure my/our motor vehicle." After the words "owner's full name," was written the names of both pltf.s, "for their respective rights & interests." The question "Have you ever made a claim against any insurance co." was answered "No." The proposal was signed by only one pltf. Although pltf. who signed the proposal had never made a claim, the other had done so:—*Held*: a non-suit, on the ground that the evidence proved the plea, should be set aside.—MEYERS & PADDINGTON MOTOR SERVICE, LTD. v. DALGETY & CO., LTD. (1926), 26 S. R. N. S. W. 195; 43 N. S. W. W. N. 39.—AUS.

g ii. ———  
—A proposal for the insurance of a motor car contained the question, "Has any proposal for insurance, or any policy ever been withdrawn, declined or cancelled?" Pltf.'s answer was "No." Pltf. had held a policy over the car with another

co., but by arrangement, & to oblige pltf., this policy had been terminated:—*Held*: the word "cancelled" meant the determination of the policy by the unilateral act of the co., & the termination of the policy by mutual arrangement did not amount to a cancellation, & the answer to the question in the proposal was true.—WILLCOCKS v. NEW ZEALAND INSURANCE CO., [1926] N. Z. L. R. 805.—N.Z.

—*Held*: a statement that the motor car insured was a new one, whereas in fact it was a second-hand one, was a material representation which avoided the policy.—ABASS v. GLOBE & RUTGERS F. INS. CO., [1927] 1 D. L. R. 435; 59 N. S. R. 81.—CAN.

g iv. ——— *Driver under influence of drink*—*Whether assured entitled to recover*—*Construction of policy.*—BAIRNATH v. ATLAS ASSURANCE CO., LTD. (1927), 48 N. L. R. 467.—S. AF.

g v. ——— *Insurance not to be effective until payment of premium*—*Failure to pay premium.*—*Held*: the insurance co. was not entitled to sue the assured for a short period premium, as the contract was not complete until the premium was paid & accepted, & the handing over to the assured of the policy containing the proviso did not amount to a waiver of the condition.—SOUTH BRITISH INSURANCE CO., LTD. v. STENSON (1923), 1 L. R. 52 Bdm. 532.—IND.

g vi. ——— *Amount recoverable.*—On an appraisal of the value of an automobile which has been stolen & destroyed

## Part IX.—Wagering Policies.

3318. *Add. Annotation* :—**Refd.** Hoff Trading Co. v. De Rougemont (1929), 34 Com. Cas. 291.
3330. *Add. Annotations* :—**Refd.** Weddle, Beck v.

Hackett, [1929] 1 K. B. 321. **Mentd.** Ellesmere v. Wallace, [1929] 2 Ch. 1; Kennedy v. Thomassen, [1929] 1 Ch. 426.

## Part XI.—Mutual Insurance Associations.

3366. *Add. Annotations* :—**Refd.** Dominion Iron & Steel Co. v. Invernairn, [1927] W. N. 277. **Mentd.** I. R. Comrs. v. Westleigh Estates Co., I. R. Comrs. v. South Behar Ry., I. R. Comrs. v. Eccentric Club (1925), 12 Tax Cas. 657; *Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689; Frost v. Caslon, Frost v. Wilkins, [1929] 2 K. B. 138; Manchester Corpn. v. Buttle, [1929] 2 Ch. 390.
3367. *Add. Annotation* :—**Refd.** Cornish Mutual Assce. v. I. R. Comrs., [1926] A. C. 281.
3368. *Add. Annotations* :—**Refd.** Cornish Mutual Assce. v. I. R. Comrs., [1926] A. C. 281;

Greenberg v. Cooperstein, [1926] Ch. 657; *Re United General Commercial Insce. Corpn.*, [1927] 2 Ch. 51. **Mentd.** Thomas v. Evans, I. R. Comrs. v. South-West Lancashire Coal-Owners Asscn. (1926), 135 L. T. 673.

3396. *Add. Annotation* :—**Refd.** Brown v. Harrison (1927), 96 L. J. K. B. 1025.

3397. *Add. Annotation* :—**Consd.** Brown v. Harrison (1927), 96 L. J. K. B. 1025.

3398. *Add. Annotation* :—**Refd.** Brown v. Harrison (1927), 96 L. J. K. B. 1025.

by fire, the fact that the sound value & the replacement value are found to be the same is not error on the face of the award, but is only another way of saying there was a total loss.—SEARLE v. ALLIANCE INSURANCE CO (No. 3), [1926] 4 D. L. R. 1173; [1926] 3 W. W. R. 563; 36 Man. L. R. 110—CAN.

g vii. — Condition that car not operated by assured's son—Car driven at son's request—Son present.—A policy of insurance upon a motor car contained a term that it was not covered if the car was "operated" by assured's son (naming him). The car was taken out by the son without assured's consent, & against his express prohibition, & was destroyed by fire upon a highway. The fire occurred when the car was being driven by a friend of the son, at the son's request, the latter being in the car with the driver.—**Held**: the son was still "operating" the car within the prohibitive term, & an action by the assured upon the policy was dismissed.—O'REILLY v. CANADA ACCIDENT & FIRE ASS'CE CO., [1928] 4 D. L. R.

415; 62 O. L. R. 654; *reversd.*, 63 O. L. R. 413.—CAN.

g viii. — After returning from hire—Insured for "private personal use."—The owner of a motor car insured it against loss or damage by fire. Condition 3 of the policy was that it should apply "only to a car for private personal use," & that no liability should be incurred if & when it was being used otherwise; & condition 4 expressly excluded liability for loss or damage arising while the car was "let out for hire." The car was normally used in a private hiring business conducted by the owner, & was only rarely employed by him for private personal purposes. After returning from a hire late one night it was put in its garage, & was shortly afterwards destroyed by fire. The owner made a claim under the policy, but the co. denied liability.—**Held**: the co. was not liable, in respect that the risk to which the car was exposed while in the garage was incidental to its ordinary employment, i.e. in the hiring business, & accordingly, the loss was one which was excluded by the policy.—MURRAY

v. SCOTTISH AUTOMOBILE & GENERAL INSURANCE CO., LTD., [1929] S. C. 49.—SCOT.

g ix. — Condition rendering policy void if interest passed from insured to third party—Except by will or operation of law—Sub-hiring from hirer.—REILLY BROS. v. MERCANTILE MUTUAL INSURANCE CO., LTD. (1928), 30 W. A. L. R. 72 —AUS.

## PART X. SECT. 1.

p i. — —.—R. v. 1500 CLUB OF CALGARY (Alta.), [1926] 3 W. W. R. 468; 46 Can. Crim. Cas. 276.—CAN.

sd. Discrimination in rates charged—Investigation by Superintendent of Insurance under Ontario Insurance Act, 1924, s. 262—Position & duties of Superintendent.—*Re* GENERAL ACCIDENT ASSURANCE CO., [1926] 2 D. L. R. 390; 58 O. L. R. 479.—CAN.

## PART XI. SECT. 4, SUB-SECT. 1.

st. Provision for lien on ships insured for proportion of losses incurred—Validity.—*Re* TUCKER, *Ex p.* MARINE INSURANCE CLUB (1886), 7 Nfld. L. R. 123.—NFLD.

## INTERPLEADER.

## Part II.—Interpleader in the High Court.

10. *Add. Annotation* :—**Apld.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
42. *Add. Annotation* :—**Refd.** *The Jupiter* (No. 3) (1927), 137 L. T. 333.
88. *Add. Annotation* :—**Refd.** *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.
105. *Add. Annotation* :—**Mentd.** *Ellesmere (Earl) v. Wallace*, [1929] 2 Ch. 1.
- 173a. ———.]—The sheriff in possession of goods under a writ of *fi. fa.* being served with notice of an adjudication in bkpey. against debtor, & notice by the assignee to quit possession, the execution creditor obtained an order requiring the sheriff to make a return to the writ. The sheriff sold the goods :—**Held** : he was entitled to file a bill of interpleader against the assignee & the execution creditor, & the assignee was, on interpleader, entitled to the proceeds of the sale.—**CHILD v. MANN** (1867), 1 L. R. 3 Eq. 806 ; 16 L. T. 49.
- 178a. **Claim of equitable nature.**]—The sheriff having taken in execution goods which deft., who was one of the administrators of an intestate, had become possessed of under a sale from his co-administrator, was served with a notice from another party, that he & others were also entitled to shares in the goods, as next of kin to the intestate, & that, upon a bill filed by them in the Ct. of Ch. deft. had been restrained by injunction from selling, mortgaging, or disposing of the goods, & that they should hold the sheriff answerable for all loss & damage occasioned by the seizure :—**Held** : this was not such a claim as entitled the sheriff to apply for relief under Interpleader Act, 1831 (c. 58).—**ROACH v. WRIGHT** (1841), 8 M. & W. 155 ; 1 Dowl. N. S. 56 ; 10 L. J. Ex. 267 ; *sub nom.* **ROUCH v. WRIGHT**, 5 Jur. 755.
- Annotations* :—**Refd.** *Bird v. Crabb* (1861), 30 L. J. Ex. 318 ; *Richards v. Jenkins* (1886), 17 Q. B. D. 541.
324. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
433. **Sheriff not bound by estoppel affecting debtor.**]—A sheriff who comes to seize the goods of a debtor under a writ of execution is not bound by an estoppel, which might have prevented the debtor himself from claiming the goods.—**RICHARDS v. JOHNSTON** (1859), 4 H. & N. 660 ; 28 L. J. Ex. 322 ; 33 L. T. O. S. 206 ; 5 Jur. N. S. 520 ; 157 E. R. 1000.
- Annotation* :—**Apld.** *Richards v. Jenkins* (1887), 18 Q. B. D. 451.
- 443a. ———.]—On Aug. 20 the sheriff, under a *fi. fa.* against A., took possession of B.'s furniture in A.'s house. Both before & after seizure B. gave formal notice to the sheriff that the furniture was his, & on the 23rd issued a writ in an action against the sheriff for an injunction & damages. On the 25th the sheriff issued an interpleader summons, under which an issue was directed & an order made for the sheriff withdrawing from possession on payment of £100 into ct. & the sheriff withdrew from possession on Sept. 1. B.'s title was afterwards admitted by the judgment creditor, & the £100 paid out to B. B. having brought the action to trial against the sheriff for damages & costs :—**Held** : the sheriff had not exceeded the scope of his duty in retaining possession till ordered to withdraw under the interpleader order, & the action must be dismissed, but without costs, on the ground that the sheriff might have applied to the judge, under the interpleader order, to dispose of the matters in question between him & plff.—**AYLWIN v. EVANS** (1882), 52 L. J. Ch. 105 ; 47 L. T. 568.
447. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
- B. Appeal by Claimant* (Vol. XXIX., p. 494).
- NOTE.**—*Right to appeal with leave is given by a new r. 11 substituted by R. S. C. (No. 1). 1929,*
454. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
455. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
456. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**PART II. SECT. 3, SUB-SECT. 2.—C.**  
70 v. ———.]—**WESTERN CANADA LOAN & SAVINGS CO. v. COURT** (1877), 25 Gr. 151.—**CAN.**

**PART II. SECT. 3, SUB-SECT. 3.—C. (a).**

142 i *Necessity for notice of claim to execution creditor.*]—**FRASER v. EKSTRON & MASSEY** (1900), 7 Terr. L. R. 1.—**CAN.**

**PART II. SECT. 5, SUB-SECT. 1.—C.**  
sq. *Purchaser from agent—Whether vendor general agent within C. S. C.*, c. 59.]—**HAYS v. O'CONNOR** (1861), 21 U. C. R. 251.—**CAN.**

sd. *Assignee of judgment—d. circum-*

*tion creditor of assignor—Rights of assignee.*]—On an interpleader issue wherein the claimant contended that a certain judgment, on which moneys had been realised under execution, had been assigned to him in consideration of a debt owed him by the assignor, & deft. in the issue, an execution creditor of the assignor, contended that the assignment did not cover said judgment :—**Held** : for the purposes of the issue, the parties were in the same position as if the dispute as to the right to the money was being litigated between the claimant & the assignor, that is, the claimant could only assert, against the execution creditor, whatever claim he might have against his assignor, & the execution creditor stood, as against the claimant, exactly

in the shoes of the assignor.—**HYGUS v. ZAWITKOWSKI & ROSS**, [1928] 1 D. L. R. 521 ; [1928] 1 W. W. R. 332 ; 22 Sask. L. R. 305.—**CAN.**

**PART II. SECT. 5, SUB-SECT. 4.—C.**

248 i. *Necessity for—By claimant—Unless impracticable from circumstances.*]—**NICHOL v. SUGARMAN**, [1928] 3 D. L. R. 292.—**CAN.**

**PART II. SECT. 8, SUB-SECT. 4.**

a. *On appeal*, 11 P. R. 296

**PART II. SECT. 8, SUB-SECT. 7.**

d (p. 491) i. *On appeal*, 11 P. R. 296.

g (p. 491) i. ———.]—**FURLONG v. REID** (1886), 12 O. R. 607.—**CAN.**

SUB-SECT. 3.—SUMMARY DECISION OF DIVISIONAL COURT (Vol. XXIX., p. 495).

NOTE.—See note to Sub-sect. 2, B., ante.

462a. — With leave.]—Under R. S. C., Ord. 57, r. 11, an appeal lies by special leave from the decision of a judge sitting without a jury on the trial of an interpleader issue.—*REPUBLICA DE GUATEMALA v. NUNEZ*, [1927] 1 K. B. 669; 96 L. J. K. B. 441; 136 L. T. 743; 43 T. L. R. 187; 71 Sol. Jo. 35, C. A.

Annotation :—*Mentd.* Richardson v. Richardson, [1927] P. 228.

464. *Add. Annotation* :—*Apld.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

497a. — — —.]—*BOUCICAULT v. PONSFORD* (1886), 2 T. L. R. 646, D. C.

503a. *Whether entitled to costs.*]—*MORLAND v. CHITTY* (1833), 1 Dowl. 520.

503b. — — —.]—*DARBS v. HUMPHRIES* (1835), 1 Bing. N. C. 412; 3 Dowl. 377; 1 Hodg. 4; 1 Scott, 325; 4 L. J. C. P. 101; 131 E. R. 1176.

503c. — — —.]—*WEST v. ROTHERHAM* (1836), 2 Bing. N. C. 527; 1 Hodg. 461; 2 Scott,

## Part III.—Interpleader in County Courts.

595. *Add. Annotation* :—*Refd.* Conquer v. Boot, [1928] 2 K. B. 336.

### PART II. SECT. 11, SUB-SECT. 3.—B.

558 iv. — — — *Except where accurate division impossible.*]—While, where each party to an interpleader issue succeeds in part, the rule is that, where possible, each should receive that portion of the costs which is applicable to that part of the issue on which he has succeeded, yet, in the present case, the order of the trial judge that no costs should be allowed was held to have been the proper one since the nature of the case would not allow of an accurate division of the costs & the order did substantial justice.—*RYGUS v. ZAWITKOWSKI & ROSS*, [1928] 1 D. L. R. 521; [1928] 1 W. W. R. 332; 22 Sask. L. R. 305 —CAN.

### PART III. SECT. 1.

c i. — — —.]—*KELLINGTON v. ROSA* (Sask.), [1927] 2 W. W. R. 309 —CAN.

d 1. *Issues involving under \$800.*]—The district ct. has jurisdiction in interpleader matters where the value of the goods does not exceed \$800.—*KNOX v. SHAW*, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494; 21 Sask. L. R. 593; 8 C. B. R. 331. —CAN.

e i. — — —.]—A district ct. judge has no jurisdiction to deal with an interpleader issue which brings the title to land in question, although the issue is sought as a result of a seizure of land

by the sheriff under an execution under a district ct. judgment.—*FARMERS' MUTUAL HAIL INSURANCE CO. v. FOSTER*, [1925] 3 D. L. R. 746; [1925] 2 W. W. R. 515; 19 Sask. L. R. 587. —CAN.

sl. *To set aside bill of sale as fraud on creditors.*]—In an interpleader issue the district ct. has jurisdiction to set aside a bill of sale, on the ground that it is a fraud on creditors, as being relief ancillary to a matter falling within the jurisdiction of the ct. under District Courts Act, R. S. S., 1920 (c. 40), s. 27.—*KNOX v. SHAW*, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494; 21 Sask. L. R. 593; 8 C. B. R. 331. —CAN.

## Part I.—Definitions.

- 9a. — **Addition of quinine.**—Whether the addition of quinine to wine makes the mixture cease to be a wine within Licensing (Consolidation) Act, 1910 (c. 24), so as to exempt the seller from holding a justice's licence, depends on the proportion of the mixture.—**SHARP v. SPARKES** (1926), 70 Sol. Jo. 1069, D. C.
12. **Add. Annotation:**—**Refd.** **Lorden v. Brooke-Hitching**, [1927] 2 K. B. 237.

49. *Add. Annotations:—As to (2) Consd. R. v. Southampton County Confirming Committee, Ex p. Slade, [1929] 1 K. B. 263. Generally, Mentd. Brown v. Dagenham U. D. C., [1929] 1 K. B. 737.*
- 55a. ——— *Whether co-extensive with parish.*—
- R. v. SMETHWICK CONFIRMING AUTHORITY, Ex p. HOLT BREWERY CO., LTD., No. 366a, post.
92. *Add. Annotation:—Refd. Thomas v. Newington Licensing JJ. (1926), 136 L. T. 638.*

140. *Add. Annotation* :—**Refd.** *Thomas v. Newington Licensing J.J.* (1926), 136 L. T. 638.
141. *Add. Annotation* :—**Refd.** *Thomas v. Newington Licensing J.J.* (1926), 136 L. T. 638.
- 141a. ——— **Pending hearing of summons against applicant.**—Applts., the licensee & the owners of a public-house, applied to the licensing justices on Mar. 1 for a renewal of the licence, which was due to expire on Apr. 4. The justices, on the ground that summonses were pending against the licensee for supplying during non-permitted hours intoxicating liquor for consumption on the premises, adjourned the consideration of the application to the next transfer sessions to be held on Apr. 12. On Mar. 4 the licensee was convicted on the summonses, & on

sh. "Guest.")—A non-paying guest of a hotelkeeper may be a *bona fide* guest within Liquor Act, 1925.—R. v. HENDERSON (Sask.), [1926] 2 W. W. R. 430; 45 Can. Crim. Cas. 373.—CAN.

Apr. 12 the licensing justices refused the renewal:—*Held*: the adjournment did not amount to a refusal of the renewal.—*THOMAS v. NEWINGTON LICENSING JJ.* (1926), 136 L. T. 638; 43 T. L. R. 181; *sub nom. THOMAS v. NEWINGTON LICENSING JJ., MEUX'S BREWERY CO., LTD. v. NEWINGTON LICENSING JJ.*, 91 J. P. 37; 25 L. G. R. 109.

149. *Add. Annotation*:—*Appld.* *Frome United Breweries Co. v. Bath JJ.*, [1926] A. C. 586.

158. *Add. Annotations*:—*Refd.* *Maclean v. Workers' Union*, [1929] 1 Ch. 602; *R. v. Huntingdon Confirming Authority*, [1929] 1 K. B. 698.

202a. *Applicant's willingness to contribute to compensation fund.*—A question arose which of two adjacent licensed houses should be granted a renewal of its licence, & which should be suppressed. The owners of each house submitted to the licensing justices plans of proposed alterations, & the owners of one of the houses offered to pay £1.250 to the compensation fund if the alterations were sanctioned. The same licensing justices sat as compensation authority to consider the question of redundancy, & decided to renew the licence of the house whose owners had offered the contribution, it appearing from the evidence that that house, when altered, could be made the better of the two. They then, as licensing justices, approved the alterations to that house:—*Held*: (1) in considering the question of the contribution offered to the compensation fund the licensing justices had taken extraneous matter into account, & as this must necessarily have affected their minds as compensation authority, their decision must be quashed; (2) it was contrary to the spirit of the Licensing Acts, though it might be within the letter of them, that the powers of the compensation authority should be delegated to the licensing committee so that the two bodies were identical, it being clearly intended that they should be separate & independent bodies.—*R. v. SHEFFIELD JJ., Ex p. RAWSON (T.) & Co., LTD.* (1927), 138 L. T. 234; 91 J. P. 193; 44 T. L. R. 43; 25 L. G. R. 536, D. C.

206. *Add. Annotation*:—*Refd.* *Short v. Poole Corpn.*, [1926] Ch. 66.

234. *Add. Annotation*:—*Refd.* *R. v. Holborn Licensing JJ., Ex p. Stratford Catering Co.* (1926), 90 J. P. 159.

267. *Add. Annotations*:—*As to* (1) *Consd. R. v. Southampton County Confirming Committee, Ex p. Slade*, [1929] 1 K. B. 263. *Refd. R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

268. *Add. Annotation*:—*Expld. R. v. Southampton County Confirming Committee, Ex p. Slade*, [1929] 1 K. B. 263.

292a. —.]—Though licensing justices have no jurisdiction to make the grant of an ordinary

removal of a licence subject to any condition as to payment of monopoly value, they are entitled to refuse the removal upon the sole ground that it would confer a great pecuniary gain upon appet., & that he ought to apply for a new licence & pay monopoly value.—*R. v. SOUTHAMPTON COUNTY CONFIRMING COMMITTEE, Ex p. SLADE*, [1929] 1 K. B. 263; 98 L. J. K. B. 62; 140 L. T. 167; 93 J. P. 37; 45 T. L. R. 72; 72 Sol. Jo. 873, C.

293a. *Grounds for refusal of removal—Great pecuniary gain conferred on applicant.*—*R. v. SOUTHAMPTON COUNTY CONFIRMING COMMITTEE, Ex p. SLADE*, No. 292a, *ante*.

299. *Add. Annotation*:—*Appld. R. v. Holborn Licensing JJ., Ex p. Stratford Catering Co.* (1926), 90 J. P. 159.

299a. — — — *Security of tenure.*—On an application for the transfer of a licence the licensing justices may consider the security of tenure given to the proposed licensee as a matter affecting his "fitness or propriety." They may also adopt a certain standard length of notice as generally desirable, & if they do so, it is convenient that they should make it publicly known, provided that it is not made a hard & fast rule to be applied indiscriminately.—*R. v. HOLBORN LICENSING JJ., Ex p. STRATFORD CATERING CO., LTD.* (1926), 136 L. T. 278; 90 J. P. 159; 42 T. L. R. 778; 24 L. G. R. 509, D. C.

328. *Add. Annotation*:—*Refd. R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

339. *Add. Annotation*:—*As to* (2) *Folld. R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

340a. — — — *All relevant matters—Means of access to premises.*—Appets. desired to alter licensed premises in a manner requiring the consent of the licensing justices. The justices refused to sanction the proposed alterations, unless appetts. bricked up a door which was in the yard behind the premises, & which gave access to a site on which a public market place was being erected:—*Held*: the words of Licensing (Consolidation) Act, 1910 (c. 24), s. 71, which were descriptive of the alterations requiring the justices' consent, did not limit the justices to consideration of those named matters; & it was their duty to consider all relevant matters, of which the means of access to the premises might be one.—*R. v. WATFORD LICENSING JJ., Ex p. TRUST HOUSES, LTD.*, [1929] 1 K. B. 313; 98 L. J. K. B. 198; 140 L. T. 350; 93 J. P. 41; 45 T. L. R. 89; 72 Sol. Jo. 825; 27 L. G. R. 8, D. C.

342. *Add. Annotation*:—*Refd. R. v. Watford*

tution therein of the new premises for the destroyed premises.—*A.-G. (MACKEN) v. CAVAN*, [1928] 1 R. 98.—*IR.*

**PART IV. SECT. 2, SUB-SECT. 10.**  
*sl. Power to deal with costs—On reference of petition for inquiry.*—A licensing ct. has no jurisdiction to deal with costs on a reference to it of a petition for inquiry under Liquor (Amendment) Act, 1919, s. 6.—*Ex p. SOUTHERN, Re SOMERVILLE* (1927), 28 S. R. N. S. W. 185.—*AUS.*

**PART IV. SECT. 2, SUB-SECT. 2.**

*aj. Application not complying with statutory requirements—Adjournment of licensing court.*—A licensing ct., constituted under Liquor Acts, 1912 to 1926, has no jurisdiction to adjourn an appln. for a provisional certificate for a licensed victualler's license which does not comply with sect. 27 (a) & (b) of the Acts, or otherwise to deal with such an appln. than by dismissing it. The ct. may, however, by adjourning itself, enable such an appln. to be made,

after compliance with the statutory conditions as to notices, at an adjourned sitting.—*R. v. KNYVETT, Ex p. WEBER* (1928), 22 Q. J. P. R. 138.—*AUS.*

**PART IV. SECT. 2, SUB-SECT. 7.—D. (a).**

*ak. After destruction of premises—Removal to other premises—Excise Licences Act, 1825 (c. 81), s. 11.*—The above sect. does not contemplate the grant of a new licence, the existing licence being altered by the substi-

Licensing JJ., *Ex p. Trust Houses*, [1929] 1 K. B. 313.

355. *Add. Annotation*:—*Folld. R. v. Leicester JJ.*, *Ex p. Allbrighton*, [1927] 1 K. B. 557.

## Part V.—Confirmation of Justices' Licenses.

366. *Add. Annotation*:—*As to* (2) *Dbdd. R. Smethwick Confirming Authority*, *Ex p. Holt Brewery Co., Ltd.* (1929), 98 L. J. K. B. 678.

368a. — — — — —.]—(1) A confirming authority has jurisdiction to consider the adequacy of notices of an application for the provisional ordinary removal of a justices' license for the sale of intoxicating liquors, required by Licensing (Consolidation) Act, 1910 (c. 24), ss. 15, 26, 33, although no objection was taken to the adequacy of such notices at the hearing before the licensing justices.

(2) *Held*: the word "place" in Licensing (Consolidation) Act, 1910 (c. 24), s. 15 (1) (b), did not of necessity denote a lesser area or unit than the word "parish."—*R. v. SMETHWICK CONFIRMING AUTHORITY*, *Ex p. HOLT BREWERY CO.* (1929), 98 L. J. K. B. 678; 141 L. T. 586; 93 J. P. 233; 45 T. L. R. 530; 27 L. G. R. 544, D. C.

368a. — — — — — **Objection to condition by licensing justices—Duty to consider objection—In presence of parties.**—An application was made to licensing justices for a new license to premises at S. The application was opposed, but the license was granted unconditionally. The confirming authority, after hearing the case for & against the application, confirmed the license subject to two conditions. Notice of this decision was given to the licensing justices, who told the confirming authority that they did not agree to the second condition. At a further meeting of the confirming authority it was decided to confirm

the grant subject only to the first condition. No notice was given to the parties, & they had no opportunity of appearing at this meeting & arguing as to the variation of the conditions. A rule *nisi* for *certiorari* to quash the order of the confirming authority was obtained on the ground that the authority acted without jurisdiction in confirming the license:—*Held*: (1) as soon as the confirming authority had ascertained the views of the licensing justices it was their duty to sit judicially in the presence of the parties interested to determine whether or not the alterations made by the licensing justices should be accepted. As this had not been done, the order made by the confirming authority was a nullity, & the matter must go back to them to hear & determine it in the presence of the parties interested; (2) the meeting of the confirming authority ought to be constituted of the same members as were present at the original meeting.—*R. v. HUNTINGDON CONFIRMING AUTHORITY*, [1929] 1 K. B. 698; *sub nom. GEORGE & STAMFORD HOTELS, LTD. v. HUNTINGDON CONFIRMING AUTHORITY*, 98 L. J. K. B. 331; 141 L. T. 75; 45 T. L. R. 260; 73 Sol. Jo. 173; 27 L. G. R. 319; *sub nom. R. v. HUNTINGDON CONFIRMING AUTHORITY*, *Ex p. GEORGE & STAMFORD HOTELS, LTD.*, 93 J. P. 81, C. A.

368b. — — — — — **Constitution of meeting.**—*R. v. HUNTINGDON CONFIRMING AUTHORITY*, No. 368a, *ante*.

369. *Add. Annotation*:—*Apld. R. v. Huntingdon Confirming Authority*, [1929] 1 K. B. 698.

## Part VII.—Compensation.

381. For the existing paragraph substitute the following paragraph:—

— — — — — **Instructing solicitor to oppose.**—On an application to the licensing justices of a county borough for the renewal of an old on-licence the justices referred the matter to the compensation authority of the borough under Licensing (Consolidation) Act, 1910 (c. 24), s. 19, & at a further meeting they resolved that a solr. should be instructed to appear before the compensation authority & oppose the renewal on their behalf. The solr. duly appeared & opposed, & the compensation authority refused the renewal, subject to payment of compensation. Three of the justices who sat & voted as members of the compensation authority had been parties to the resolution of the licensing justices authorising a solicitor to appear on their behalf:—*Held*: the three justices were disqualified from sitting on the compensation tribunal on the ground of bias, & the decision

of the tribunal must be set aside.—*FROME UNITED BREWERIES CO. v. BATH JJ.*, [1926] A. C. 586; 95 L. J. K. B. 730; 135 L. T. 482; 90 J. P. 121; 42 T. L. R. 571; 24 L. G. R. 261, H. L.; *reversg. S. C. sub nom. R. v. BATH COMPENSATION AUTHORITY*, [1925] 1 K. B. 685, C. A.

*Annotation*:—*Distd. R. v. Leicester JJ.*, *Ex p. Allbrighton*, [1927] 1 K. B. 557.

381a. — — — — —.]—The mere fact that a licensing justice has originated an objection to the renewal of a licence, which, consequently, is referred by him & other justices to the compensation authority, does not disqualify him by reason of interest from sitting & adjudicating, as a member of that authority, upon the matter of that licence.—*R. v. LEICESTER JJ.*, *Ex p. ALLBRIGHTON*, [1927] 1 K. B. 557; 96 L. J. K. B. 310; 136 L. T. 635; 91 J. P. 31; 43 T. L. R. 183; 25 L. G. R. 149, D. C.

381b. **Delegation of powers to licensing justices—**



- Improper.**—*R. v. SHEFFIELD JJ., Ex p. RAWSON (T.) & Co., LTD., No. 202a, ante.*
394. *Add. Annotation*:—**Folld.** *R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.
416. *Add. Annotation*:—**Apld.** *R. v. Customs & Excise Comrs.*, [1928] A. C. 402.
424. *Add. Annotation*:—**Mentd.** *R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

## Part VIII.—Decisions of Licensing Justices.

463. *Add. Annotation*:—**Generally.** **Refd.** *R. v. Leicester JJ., Ex p. Allbrighton*, [1927] 1 K. B. 557.
543. *Add. Annotation*:—**Refd.** *Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.
548. *Add. Annotation*:—**Refd.** *R. v. Leicester JJ., Ex p. Allbrighton*, [1927] 1 K. B. 557.
- 553a. — **On appeal from licensing justices.**—Where, under Licensing (Consolidation) Act, 1910 (c. 24), s. 29 (1), there is an appeal to quarter sessions against the refusal of licensing justices to grant a renewal, transfer or special removal of a justices' licence, the judgment of quarter sessions, by sect. 29 (5), is final, & no appeal from it lies to the High Ct. by way of case stated.—*PIPER v. ST. MARKLEBONE LICENSING JJ.*, [1928] 2 K. B. 221; 97 L. J. K. B. 602; 139 L. T. 144; 92 J. P. 87; 44 T. L. R. 510; 26 L. G. R. 308, D. C.

## Part IX.—Hours of Sale.

- 575a. *Add. Citations*:—[1926] 2 K. B. 519; 96 L. J. K. B. 1; 90 J. P. 155; 24 L. G. R. 471

## Part XII.—Offences.

- 607a. **Sale of wine to which quinine added.**—*SHARP v. SPARKES*, No. 9a, *ante*.
708. *Add. Annotation*:—**Refd.** *Allen v. Whitehead* (1929), 45 T. L. R. 655.

### PART VIII. SECT. 3, SUB-SECT. 1.—B.

**sm.** *Person aggrieved—Licensing inspector—Formal objection lodged by inspector to application for license.*—A licensing inspector lodged notice of intention to object to an appln., for the grant of a licensed victualler's licence, &, on the hearing of the appln., stated that the objection was lodged as a mere formal objection, & that he did not desire to give or offer evidence or to address the ct., &, after the licence had been granted by the ct., treated the licence as being valid in subsequent proceedings before the licensing ct. He, subsequently, moved for a writ of *certiorari* to quash the grant of the licence.—**Held**: he was a person aggrieved, & competent to make the appln., but by his conduct he had disqualified himself from relief by way of *certiorari* & *certiorari* was withheld.—*R. v. THE LICENSING AUTHORITY AT DALRY, Ex p. KELLY*, [1928] S. R. Q. 151.—**AUS.**

### PART VIII. SECT. 3, SUB-SECT. 1.—C.

**sm.** *To quash conviction—Time for making application for.*—*Ex p. CROWLEY, Ex p. KENNETH STAPLES DRUG CO.*, [1928] 4 D. L. R. 561; 50 Can. Crim. Cas. 378.—**CAN.**

**so.** —.—*R. v. BEGIN, Ex p. (ARON)* (1928), 50 Can. Crim. Cas. 69.—**CAN.**

### PART XII. SECT. 1, SUB-SECT. 1.—A. (a).

**sp.** *Evidence of—Empty bottles found without Government labels.*—*R. v. McMILLAN* (1927), 49 Can. Crim. Cas. 350.—**CAN.**

**sq.** —.—*Purchase of more beer than income justified—Persons found on premises with empty glasses & bottles.*—*R. v. DZIURA*, [1928] 1 D. L. R. 828; 49 Can. Crim. Cas. 229.—**CAN.**

**sr.** —.—*Purchase of large quantities of liquor—No bottles found on premises.*

—*R. v. PATENAUDE* (1928), 49 Can. Crim. Cas. 384.—**CAN.**

**st.** —.—*No bottle of gin found in shed—No evidence of ownership.*—*R. v. LEE* (1928), 49 Can. Crim. Cas. 346.—**CAN.**

**sv.** *Conviction for sale to persons unknown—Amendment of.*—*YOUNG v. ALCHURCH*, [1927] S. A. S. R. 185.—**AUS.**

### PART XII. SECT. 1, SUB-SECT. 1.—A. (b) ii.

635 ii. —.—*Two offences not exactly of same kind.*—Under Liquor Act, 1925, 1924-25, c. 53, a person convicted for any one of the acts which sect. 78 declares to be offences & who is subsequently convicted for another of such acts is guilty of a second offence even though the two offences were not exactly of the same kind.—*R. v. POLLARD*, [1928] 4 D. L. R. 623; [1928] 3 W. W. R. 78; 50 Can. Crim. Cas. 157.—**CAN.**

### PART XII. SECT. 1, SUB-SECT. 3.—A.

656 ii. —.—*Where a few minutes to closing-time on a busy evening a drunken man entered a bar, where there were from fifty to seventy people, & the barman told him to get out, & the man having turned towards the door, the barman, thinking he had left the premises, took no further effective steps to see that he had done so, & a few minutes later the police found the man standing at another part of the bar-counter.*—**Held**: to constitute the offence of "permitting" drunkenness on licensed premises there must be evidence that the licensee, or his servants or agents, consented to, or consciously allowed, the drunken man to remain on the premises, & a "permission" in this sense had not been established.—*McFARLAND v. SPARKES*, [1926] N. Z. L. R. 689.—**N.Z.**

### PART XII. SECT. 1, SUB-SECT. 3.—B.

669 ii. —.—*Complaint charging licensee personally.*—In a prosecution under a complaint which charged an hotel-keeper that "you did supply" liquor to a person in a state of intoxication, it was proved that the liquor had not been supplied by accused, but by his son & assistant in the accused's absence. The accused was convicted of the offence charged:—**Held**: the complaint was not lacking in specification, in respect that, in a prosecution under Licensing Acts, it was unnecessary to state the name of the person through whom the offence had been committed, unless special circumstances required such a statement in fairness to accused dismissed.—*HALL v. BEGG*, [1928] S. C. (J.) 29.—**SCOT.**

### PART XII. SECT. 1, SUB-SECT. 5.—B.

**sw.** *Onus on Crown—To prove importation.*—Deft. was arrested, indicted & tried & convicted for harbouring a quantity of dutiable goods, to wit, spirituous liquors unlawfully imported into Canada, of the value of over \$200, whereon the duties lawfully payable had not been paid, in violation of Customs Act, Dominion Acts, 1907, c. 11. On the trial the evidence showed that the liquor in question was found in an automobile owned & driven by deft., & some evidence was offered by the Crown indicating unlawful importation. The trial judge instructed the jury that the burden of proof of lawful importation & payment of duty was upon deft., & the Crown was only bound to establish harbouring without lawful excuse:—**Held**: under the instructions given to them the jury would be likely to place the whole burden upon accused, whereas, under the wording of the statute, the necessity of proof by the Crown of importation was implied, &, consequently, there should be a new trial.—*R. v. SHELL*.

716. *Add. Annotation*:—*Expld. Allen v. Whitehead* (1929), 45 T. L. R. 655.

716a. ———.]—The proprietor of a refreshment-house, resp., was charged with harbouring prostitutes, contrary to Metropolitan Police Act, 1839 (c. 47), s. 44. It was proved that, though resp. received the profits of the business, he did not manage it, but left it in charge of a manager, to whom he had given express instructions not to allow prostitutes to assemble on the premises. Resp. only visited the premises once or twice a week, & there was no evidence that any offence had been committed in his presence or with his knowledge:—*Held*: having delegated all his authority to the manager & become a mere absentee, he was responsible for the acts of the manager, & was liable to conviction.—*ALLEN v. WHITEHEAD* (1929), 45 T. L. R. 655; 93 J. P. Jo. 512; 27 L. G. R. 652, D. C.

733a. ——— *Sale by unauthorised servant.*]—A boy of sixteen, employed by the holder of an off-licence solely as an errand boy, supplied bottles of whisky to a customer in his employer's absence, at a time when the premises were not open for business, & outside the permitted hours. He had never at any time been authorised to sell to or supply customers:—*Held*: he was not a servant or agent of the employer within Licensing Act, 1921 (c. 42), s. 4 (a), so as to make the employer liable under that sect. for supplying intoxicating liquor otherwise than during

the permitted hours.—*ADAMS v. CAMFONI*, [1929] 1 K. B. 95; 98 L. J. K. B. 40; 139 L. T. 608; 92 J. P. 186; 44 T. L. R. 822; 28 Cox, C. C. 538; 26 L. G. R. 542, D. C.

750. *Add. Annotation*:—*Consd. Evans v. Fletcher* (1926), 135 L. T. 153.

751. *Add. Annotation*:—*Refd. Evans v. Fletcher* (1926), 135 L. T. 153.

752. *Add. Annotation*:—*Folld. Evans v. Fletcher* (1926), 135 L. T. 153.

755a. ——— *During non-permitted hours.*]—Resp., the licensee of a public-house, was found drunk in the kitchen of the premises at 10.30 p.m. during non-permitted hours, the front door being wide open at the time, & he was summoned for being found drunk on licensed premises under Licensing Act, 1872 (c. 94), s. 12. The justices dismissed the summons on the ground that the time at which resp. was found drunk was after the hours when the sale of intoxicating liquor was permitted:—*Held*: since at the time in question the premises were open & there was nothing to prevent the sale of food & non-intoxicating liquor at that time, the justices ought to have convicted resp.—*EVANS v. FLETCHER* (1926), 135 L. T. 153; 90 J. P. 157; 42 T. L. R. 507; 24 L. G. R. 424; 28 Cox, C. C. 231, D. C.

757. *Add. Annotation*:—*Generally, Refd. Evans v. Fletcher* (1926), 135 L. T. 153.

764a. “*Drunk*”—*Question of fact.*]—Whether accused is “*drunk*” within Criminal Justice

MAN, [1928] 1 D. L. R. 657; *sub nom.* R. v. SCHILLMAN, 59 N. S. R. 535.—CAN.

**PART XII. SECT. 1, SUB-SECT. 6.—A. (a).**

xx. *Minor supplied with liquor—Evidence necessary to prove—Magistrate deciding from appearance of minor.*]—*R. v. WHITTEL* (1928), 50 Can. Crim. Cas. 343.—CAN.

**PART XII. SECT. 3, SUB-SECT. 1.**

sl. *Adding persons to commit offence of being found unlawfully on premises after closing hours.*]—Where persons are found unlawfully on licensed premises after closing hours, even though the licensee was not a consenting party to their original entry, & after their entry pressed them to depart, but showed looseness & lack of control not desirable in a licensee, & did not turn such persons out of the premises, the licensee is guilty of aiding & assisting such persons to commit the offence of being found unlawfully on licensed premises after closing hours.—*ARMSTRONG v. KELLERHER*, [1925] N. Z. L. R. 422.—N.Z.

**PART XII. SECT. 3, SUB-SECT. 2.—A.**

727 vi. ———.]—Liquor supplied on licensed premises, by way of gift, by the wife of the licensee to her guests, at a time when such persons were not lawfully entitled to be supplied:—*Held*: an offence under Licensing Act, 1908, s. 205 (c).—*WATERSON v. LOW*, [1926] N. Z. L. R. 751.—N.Z.

728 ix. ———.]—A resident in a licensed hotel was visited by three friends, who were non-residents. After the permitted hours for the sale or supply of liquor, he ordered & paid for three rounds of drinks, which were consumed by himself & his guests:—*Held*: the hotelkeeper had supplied the liquor to the resident's guests, & had been guilty of a contravention of Licensing Act, 1921 (c. 42), s. 4 (a).—*McBAIN v. MITCHELL*, [1927] S. C. (J.)

**57.—SCOT.**

el. ———.]—A licensee of a hotel, who was seated on a form outside the hotel, was asked to supply liquor to an unexcepted person. He went inside the hotel, came out & handed the liquor to the person, who paid him. There was a light in a room in the hotel described by witnesses as the saloon bar:—*Held*: an offence had been committed against Licensing Act, 1917, s. 185, & the ct. would take judicial notice of the fact that liquor was kept in a saloon bar.—*ALLCHURCH v. HEALEY*, [1927] S. A. S. R. 370.—AUS.

733a i. ——— *Sale by servant.*]—Where a servant supplies his own guests with liquor after closing hours without the knowledge of the licensee, the latter cannot be convicted of unlawfully allowing liquor to be consumed on his premises.—*O'CONNELL v. CLAUSEN*, *BURKE v. CLAUSEN*, [1928] N. Z. L. R. 227.—N.Z.

sm. *Proof that person making illegal sales licensee's agent—Takings from legal & illegal sales placed in same cash register.*]—*R. v. RICHARDSON* (Sask.) [1925], 45 Can. Crim. Cas. 142.—CAN.

sn. *Proclamation prohibiting sale during specified hours of named day—Validity of.*]—*Held*: the power conferred upon the Governor in Council by Liquor Act, 1912 (N. S. W.), s. 57 (1) (b), was a power to name a day during the whole of which licensed premises shall not be open for the sale of liquor & no power was given to direct that, during specified hours of a named day, licensed premises should not be open for the sale of liquor.—*DELANEY v. GANT* (1927), 40 C. L. R. 174.—AUS.

so. *Bye-law prohibiting sale on New Year's day—Sale to bond fide traveller.*]—A county licensing ct. issued a bye-law that all licensed premises within the district, including inns & hotels, except as regarded travellers & lodgers therein, should be closed wholly on New Year's day, & when New Year's

day fell on a Sunday, then on Monday, Jan. 2:—*Held*: under this bye-law a Monday falling on Jan. 2 must be treated as a Sunday, & accordingly, an hotel-keeper who had supplied a customer on such a Monday, outwith the permitted week-day hours, had not infringed his certificate where the customer was a *bond fide* traveller who could lawfully have been supplied on Sunday.—*HENDERSON v. ROSS*, [1928] S. C. (J.) 74.—SCOT.

**PART XII. SECT. 3, SUB-SECT. 2.—B.**

sp. *Light in bar.*]—*FRANCE v. HUMPHREYS*, [1926] S. A. S. R. 214.—AUS.

sq. *Customers leaving premises during prohibited hours—Carrying bottles.*]—A licensee was convicted upon an information alleging that a disposal of liquor unlawfully took place on his licensed premises during prohibited hours. The evidence for the prosecution was that during prohibited hours two men were seen coming out of deft.'s licensed premises, & that one of them was carrying six bottles of beer, & the other four bottles. No evidence was called by deft., who was convicted:—*Held*: no inference could be drawn from the evidence before the ct. that the beer in question was disposed of after closing time rather than before: the liquor was presumed to have been lawfully acquired until the contrary was shown, & the conviction should be quashed.—*WALSH v. MACKERRAS*, [1928] V. L. R. 186; [1928] Argus L. R. 67.—AUS.

**PART XII. SECT. 3, SUB-SECT. 3.**

sr. *What amounts to permitting.*]—A person “permits” the unlawful consumption of liquor on his licensed premises if this takes place with his knowledge or connivance or by his failure to use due diligence to prevent it.—*JOLLY v. VINGO*, [1927] S. A. S. R. 188.—AUS.

Act, 1925 (c. 86), s. 40 (1), is a question for the jury.—*R. v. PRESDEE* (1927), 20 Cr. App. Rep. 95, C. C. A.

# PART XII. SECT. 4, SUB-SECT. 1.— B (a).

st. *What constitutes offence.*—The mere fact of being drunk in a public place is not an offence under Criminal Code, s. 238 (f). It is the creating of a disturbance which is aimed at by that provision.—*R. v. OSJORM*, [1927] 3 D. L. R. 1018; [1927] 2 W. W. R. 708; 49 Can. Crim. Cas. 1; 22 Alta. L. R. 582.—CAN.

# PART XII. SECT. 4, SUB-SECT. 1.— B. (b).

764a i. "Intoxicated"—*What amounts to.*—In order to be guilty of driving a motor car while intoxicated, the driver's intoxication must be of that degree which renders his driving of the car a danger to the public.—*McRAE v. McLAUGHLIN MOTOR CAR CO., LTD.* (Alta.), [1926] 1 D. L. R. 372; [1926] 1 W. W. R. 161.—CAN.

## PART XII. SECT. 6.

b i. — *What must be proved.*—On a prosecution for unlawful possession of a still it must be proved that informant was an officer of the Inland Revenue Department or was authorised to take the proceedings, that accused's arrest was under warrant, & the liquor referred to in the certificate of analysis was that which was seized.—*R. v. MCKENZIE* (Man.), [1927] 1 W. W. R. 649; 45 Can. Crim. Cas. 137.—CAN.

b ii. — *Prior charge of hiding still dismissed—Autorefois acquit.*—*R. v. MCKENZIE* (Man.) (1926), 45 Can. Crim. Cas. 380.—CAN.

b iii. — *Penalty for—Jurisdiction of magistrates to mitigate fine.*—D. was summarily convicted by justices & fined £1 in respect of an offence under Illicit Distillation (Ireland) Act, 1831, s. 16. The prosecutor objected to this fine, on the ground that under sect. 39 of the same Act the justices could not reduce the penalty to a sum less than £5.—*Held:* the justices had jurisdiction under Finance Act, 1923, s. 13, to impose any penalty not exceeding £500, notwithstanding the fact that Illicit Distillation (Ireland) Act, 1831, s. 39, limited the power of mitigation by prescribing a minimum penalty of £5.—*R. v. ARMAGH J.J.*, [1929] N. I. 71.—IR.

b iv. — *Prosecution before police magistrate—Intervention of justice of peace.*—A justice of the peace, having intervened in a prosecution under Excise Act by assuming to adjourn the trial on the non-appearance of the police magistrate before whom the information was laid & who had issued a summons to defendant to appear before him, a conviction made on the adjourned date of trial by another police magistrate, before whom defendant refused to plead & to whose jurisdiction he objected, was quashed, since said intervention was in direct violation of sect. 134 of said Act.—*R. v. PYKE*, [1928] 1 W. W. R. 590; 49 Can. Crim. Cas. 186; 23 Alta. L. R. 341.—CAN.

b v. — *Right of accused to list of goods seized—Sufficiency of list.*—In order to comply with Excise Act, s. 82, the list of goods seized, a copy of which that section requires to be served on the party from whom they were taken, must include all the goods seized, & the preparation & service of a proper list is a condition precedent to the magistrate's jurisdiction.—*Re TESOSKI*, [1928] 1 W. W. R. 433; 49 Can. Crim. Cas. 343.—CAN.

c i. — *Proof of.*—*R. (WILLIAMS) v. YARISH* (Man.), [1926] 3 W. W. R. 586.—CAN.

# PART XII. SECT. 11.

r (p. 105) i. — *"Hall's wine."*—*R. v. AXLER* (1917), 40 O. L. R. 304.—CAN.

d (p. 105) i. — *Mens rea.*—*R. v. LAMBERT* (Ont.), [1926] 2 D. L. R. 362; 45 Can. Crim. Cas. 300.—CAN.

k (p. 105) i. — *Whether place must be specified.*—*R. v. IVAN* (Ont.), [1926] 45 Can. Crim. Cas. 237.—CAN.

p (p. 105) i. — *Sawczuk v. PADGETT*, [1927] 1 D. L. R. 819; 47 Can. Crim. Cas. 78; 59 O. L. R. 638.—CAN.

ppp (p. 105) i. — *Transportation by rail.*—*R. v. O'KEEFE'S BEVERAGES, LTD.*, [1926] 1 D. L. R. 520; 45 Can. Crim. Cas. 153; 58 O. L. R. 221.—CAN.

r (p. 106) i. — *Motor car which liquor for sale found.*—*R. MARCH* (Ont.), [1926] 46 Can. Crim. Cas. 92.—CAN.

a (p. 106) i. — *Discretion of magistrate to alter charge.*—*R. v. HEALEY* (P. E. I.), [1926] 46 Can. Crim. Cas. 296.—CAN.

b (p. 106) i. — *Grounds for allowing—Stenographer not sworn.*—*R. v. JACOBS* (Ont.) (1925), 45 Can. Crim. Cas. 260.—CAN.

d (p. 106) i. *Liquor Control Act (Ont.), 1927—Right of Province to prohibit keeping of intoxicating liquor within its bounds.*—Delt. was convicted by a police magistrate of an offence committed in Dec. 1927, against Liquor Control Act (Ont.), 17 Geo. 5, c. 70, s. 72 (2). The liquor which he was found to have had unlawfully in his possession was beer manufactured in the Province of Quebec, & was intoxicating liquor, within the Act, which delt had imported into Ontario.—*Held:* the Province had the right to prohibit the keeping of intoxicating liquor within its bounds for purposes other than those authorised by Dominion Legislature; s. 72 (2) should be viewed as a measure of control of the liquor traffic in the Province & enacted for the purpose of making control by the Province effective, & not as a prohibition of import.—*R. v. RUDDICK*, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 218.—CAN.

sr. *Carriage of Liquor Act (Ont.)—Not applicable to carriage on person.*—*R. v. TURCOTTE* (Ont.), [1926] 3 D. L. R. 138; 46 Can. Crim. Cas. 59.—CAN.

bb (p. 106) i. — *Service of summons—Sufficiency.*—*Re BROWN*, [1927] 2 D. L. R. 849; 47 Can. Crim. Cas. 314; 59 N. S. R. 303.—CAN.

cc (p. 106) i. *Temperance Act (N. S.), 1923—Charge of keeping liquor for sale—Previous conviction for harbouring same liquor—Under Customs Act, 1927.*—*Re WILNEFF*, [1928] 4 D. L. R. 869; 50 Can. Crim. Cas. 196.—CAN.

cc (p. 106) ii. — *Conviction for second offence under—Previous conviction more than limitation period for prosecutions before.*—*Re p. WOODS* (N. S.), [1928] 2 D. L. R. 771; 49 Can. Crim. Cas. 141.—CAN.

aaa (p. 106) i. *Temperance Act (Man.) 1924 (c. 118)—Second offence—First conviction more than six months previously—Conviction for second offence invalid.*—*R. v. ZAMPIER* (Man.), [1926] 2 W. W. R. 721; 46 Can. Crim. Cas. 76.—CAN.

aaa (p. 106) ii. — *Conviction for second offence valid.*—*R. v. McILWAIN*, [1927] 1 D. L. R. 1150; [1927] 1 W. W. R. 353; 47 Can. Crim. Cas. 261; 36 Man. L. R. 349.—CAN.

aaa (p. 106) iii. — *Whether under different section of Act.*—*R. v. SNARE* (Man.), [1927] 1 W. W. R. 138; 47 Can. Crim. Cas. 115.—CAN.

aaa (p. 106) iv. — *Act mandatory.*—*R. v. CHERRY*, [1927] 3 D. L. R. 455; [1927] 2 W. W. R. 290; 48 Can. Crim. Cas. 180; 36 Man. L. R. 565.—CAN.

aaa (p. 106) v. — *Notwithstanding 1927 (c. 33), s. 5.*—*R. v. GASPARD* (Man.), [1927] 3 W. W. R. 301; 48 Can. Crim. Cas. 358.—CAN.

aaa (p. 106) vi. — *Arrest—Without warrant—Failure to prove arrest by ZENICK* (Man.), [1927] 3 W. W. R. 424; 48 Can. Crim. Cas. 398.—CAN.

aaa (p. 106) vii. — *On Sunday—Arrest valid.*—*R. v. SMITH*, [1927] 2 D. L. R. 922; [1927] 1 W. W. R. 734; 47 Can. Crim. Cas. 315; 36 Man. L. R. 386.—CAN.

aaa (p. 106) viii. — *Keeping for sale.*—*R. v. NEPI*, [1927] 3 W. W. R. 353; 48 Can. Crim. Cas. 275; 37 Man. L. R. 5.—CAN.

aaa (p. 106) ix. — *Unlawful possession of liquor—Liquor on premises not private dwelling-house—Previous conviction in respect of same premises.*—*R. v. RICHARD*, [1927] 1 D. L. R. 777; [1927] 2 W. W. R. 591; 48 Can. Crim. Cas. 252; 37 Man. L. R. 1.—CAN.

aaa (p. 106) x. — *Trial—Whether local venue.*—*R. v. DEE* (Man.), [1927] 4 D. L. R. 1065; [1927] 3 W. W. R. 520; 49 Can. Crim. Cas. 57.—CAN.

aaa (p. 106) xi. — *Stay of proceedings—Crown entitled to stay proceedings.*—*R. (THOMPSON) v. HAMMATT* (Man.), [1926] 3 W. W. R. 350.—CAN.

aaa (p. 106) xii. — *Sentence—Imprisonment with hard labour—Invalid.*—*R. v. STEELE* (Man.), [1926] 2 W. W. R. 370; 45 Can. Crim. Cas. 259.—CAN.

aaa (p. 106) xiii. — *Power of court to amend.*—*R. v. HALE* (Man.), [1927] 2 W. W. R. 320; 49 Can. Crim. Cas. 253.—CAN.

aaa (p. 106) xiv. — *Fine—Amount—Offence by company.*—*R. v. SHEL'S WANNIPEG BREWERY, LTD.*, [1927] 3 W. W. R. 258; 48 Can. Crim. Cas. 322; 37 Man. L. R. 13.—CAN.

aaa (p. 106) xv. — *Appeal—Hearing by county court judge—Cannot be removed by certiorari.*—*R. v. CHAPMAN* (Man.) (1926), 45 Can. Crim. Cas. 266.—CAN.

aaa (p. 106) xvi. — *Costs—Of informant—Taration.*—*R. v. SIMONITCH* (Man.), [1927] 3 W. W. R. 568; 48 Can. Crim. Cas. 399.—CAN.

aaa (p. 106) xvii. — *Proprietor of hotel with bottle in hallway—Mens rea.*—*Mens rea* is an essential element of the offence, under Manitoba Temperance Act, of having intoxicating liquor in a place other than the dwelling-house in which accused resides, without the licence therefore required by the Act. Therefore, where a hotel proprietor charged with said offence was convicted mainly on the fact that he was found in the hallway of the hotel with an open bottle in his hand containing intoxicating liquor, his explanation of its possession being that he had picked it up in the hall, thinking it to be empty, & intending to remove it, it was held, on appeal, that the explanation was a reasonable one, & since if true, as it appeared to be, it established an absence of *mens rea* the conviction should be quashed.—*R. v. McHALE*, [1928] 2 D. L. R. 621; [1928] 1 W. W. R. 849; 49 Can. Crim. Cas. 320; 37 Man. L. R. 311.—CAN.

778. *Add. Annotation:—Mentd.* (1929), 46 T. L. R. 103.

788. To the cross-references following this case add  
 “—— Sale or supply in prohibited hours.]—  
 See No. 733a, *ante*.

**aaa** (p. 106) xviii. — *Proof of conviction under.*—A document headed “Certificate of Conviction” & purporting to be a copy of a conviction under Manitoba Temperance Act, 1924, is not proof under Govt. Liquor Control Act, 1928, s. 151 (4), of a conviction under the former Act.—*R. v. RICEBERG*, [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

**d** (p. 107) i. — *Offences under sect. 20 triable by single justice.*—*Ex p. LEVASSEUR* (N. B.), [1926], 46 Can. Crim. Cas. 126.—**CAN.**

**d** (p. 107) ii. *Indorcing Liquor Act* (N. B.), 1927—*Conviction under—Contents of affidavit on appeal from.*—*R. v. CHATEAU DISTIGOUCHIE*, [1928] 4 D. L. R. 292; 50 Can. Crim. Cas. 331.—**CAN.**

**d** (p. 107) iii. — *Sale of liquor by employee—Contrary to orders of corporation—Liability of corporation.*—*R. v. CHATEAU DISTIGOUCHIE*, [1928] 4 D. L. R. 292; 50 Can. Crim. Cas. 331.—**CAN.**

**d** (p. 107) iv. — *Appeal to county judge—Proof of service of notice of appeal.*—*R. v. CYR*, [1928] 4 D. L. R. 239; 50 Can. Crim. Cas. 316.—**CAN.**

**II** (p. 107) i. — *Appeal—Costs—Taxation.*—*R. v. BROWN* (Sask.), [1925], 45 Can. Crim. Cas. 268.—**CAN.**

**II** (p. 107) ii. — *Sale of beer—Judicial notice of nature of beer.*—Beer, being a spirituous & also a malt liquor, comes within the first of the three classes of liquor referred to in the definition of “liquor” in above Act, the Act in force at the time of the transaction in question herein, & falls within the absolute prohibitions of sects. 10 & 41 of said Act without any proof that it is intoxicating. Judicial notice of the fact that beer is both a spirituous & malt liquor may be taken once the liquor in question is shown to be beer.—*QUINN v. HUEL*, [1928] 3 W. W. R. 716.—**CAN.**

**II** (p. 107) iii. *Liquor Act* (Sask.), 1925 (c. 53)—*Affidavit of merits—Condition precedent to appeal—By corporation or association.*—*R. v. McDUGALL v. ARMY & NAVY VETERANS ASSOC. OF REGINA* (Sask.), [1926] 3 W. W. R. 695; 46 Can. Crim. Cas. 389.—**CAN.**

**II** (p. 107) iv. — *Unlawful possession of liquor—What amounts to.*—*R. v. HAGERUP* (Sask.), [1927], 48 Can. Crim. Cas. 95.—**CAN.**

**II** (p. 107) v. — *Second offence—First conviction more than six months previously—Increased penalty for second offence applicable.*—*R. v. MERRITT* [1927] 1 D. L. R. 940; [1927] 1 W. W. R. 53; 47 Can. Crim. Cas. 74; 21 Sask. L. R. 237.—**CAN.**

**II** (p. 107) vi. — *Conviction for purchasing greater quantity than allowed—Uncorroborated evidence of accomplice.*—The rule that it is dangerous to convict on the uncorroborated evidence of an accomplice applied in quashing, on appeal, a conviction for unlawfully purchasing from the Govt. Liquor Board a greater quantity of liquor than is allowed to be purchased on any one day. The witness held to have been an accomplice was a person whom the accused had asked to purchase the liquor for him as an agent & who knew that the accused had already purchased his lawful quantity.—*R. v. BEALE*, [1928] 2 D. L. R. 325; [1928] 1 W. W. R. 657; 49 Can. Crim. Cas. 292; 22 Sask. L. R. 293.—**CAN.**

**II** (p. 107) vii. — *Charge of selling liquor—Sale of beer proved—Onus of proof of right on accused.*—The word

“liquor” in Liquor Act, 1925, 1924–25, c. 53, includes “beer” unless the context otherwise requires. Therefore, where an accused is charged with selling liquor unlawfully, sect. 135, which places on a person so accused the burden of proving the right to sell it, covers the case where the evidence for the prosecution establishes a sale of “beer.”—*R. v. CURTIS*, [1928] 4 D. L. R. 581; [1928] 2 W. W. R. 377; 50 Can. Crim. Cas. 143; 22 Sask. L. R. 525.—**CAN.**

**rr** (p. 107) i. *Government Liquor Act* (B. C.), 1924 (c. 146)—*Keeping liquor in hotel—What is part of hotel—Question of fact.*—*R. (LITINGOE) v. LULEY* (B. C.), [1926] 2 W. W. R. 534.—**CAN.**

**rr** (p. 107) ii. — *In restaurant—Liquor found in place accessible to public—Conviction quashed.*—*R. v. LEE KAM WAY* (B. C.), [1927] 3 W. W. R. 143.—**CAN.**

**rr** (p. 107) iii. — *For sale—Liquor inside chocolates.*—*R. v. PURDY* [1927] 1 W. W. R. 880; 48 Can. Crim. Cas. 152; 38 B. C. R. 267.—**CAN.**

**rr** (p. 107) iv. — *Supplying liquor to infant—Mens rea not necessary.*—*R. v. McDONALD*, [1927] 1 W. W. R. 867; 48 Can. Crim. Cas. 208; 38 B. C. R. 238.—**CAN.**

**rr** (p. 107) v. — *Interdiction order—Conditions precedent.*—*R. v. GRANT* (B. C.), [1926] 4 D. L. R. 784; [1926] 3 W. W. R. 253; 46 Can. Crim. Cas. 182.—**CAN.**

**rr** (p. 107) vi. — *Burden of proof—On accused.*—*R. v. NEW DOMINION CLUB* (1925), 35 B. C. R. 502.—**CAN.**

**rr** (p. 107) vii. — *Accused entitled to benefit of reasonable doubt.*—*R. (ANDERSON) v. PERRI*, [1926] 1 W. W. R. 551; 46 Can. Crim. Cas. 86; 37 B. C. R. 289.—**CAN.**

**rr** (p. 107) viii. — *Trial—Whether local venue.*—*R. v. LYNCH*, [1927] 1 W. W. R. 502; 47 Can. Crim. Cas. 176; 38 B. C. R. 124.—**CAN.**

**a** (p. 108) i. — *—*—*—*—*R. v. WESTERN WINE & LIQUOR CO., R. v. WOOTTON* (Alta.), [1918] 1 W. W. R. 55; 39 D. L. R. 397; 29 Can. Crim. Cas. 307.—**CAN.**

**gg** (p. 108) i. — *Supplying liquor to infant—Ignorance of age immaterial.*—*R. v. MAINFROID*, [1926] 1 D. L. R. 1013; [1926] 1 W. W. R. 465; 45 Can. Crim. Cas. 204; 22 Alta. L. R. 17.—**CAN.**

**hh** (p. 108) i. — *No appeal from statutory judgment on filing of copy of conviction of corporation.*—*R. v. ST. ELMO HOTEL CO., LTD.* (Alta.), [1926] 4 D. L. R. 364; [1926] 3 W. W. R. 324; 46 Can. Crim. Cas. 301.—**CAN.**

**hh** (p. 108) ii. — *Local option areas—Creation.*—*Re Local Option Provision of Government Liquor Control Act of Alberta, Re HARDISTY & RIBSTONE*, [1927] 4 D. L. R. 83; [1927] 2 W. W. R. 711; 22 Alta. L. R. 592.—**CAN.**

**hh** (p. 108) iii. *Alcoholic Liquor Act* (Que.), 1925—*Necessity for notice of appeal—Right of justices to suspend sentence.*—*QUEBEC LIQUOR COMMISSION v. THIBAUDEAU* (1927), 50 Can. Crim. Cas. 434; 44 Que. K. B. 417.—**CAN.**

**st. Customs Act, R. S. C., 1906** (c. 48)—*Burden of proof—Of legal importation of goods—On accused.*—*Re R. v. MCKENZIE* (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—**CAN.**

**sv. S. P. Re R. v. BLANK, [1926] 1 D. L. R. 323; 45 Can. Crim. Cas. 82; 58 N. S. R. 294.—**CAN.****

**sw. —**—*Not on baillee.*—*R. v. LE BLANC* (N. B.), [1927] 2

D. L. R. 793; 47 Can. Crim. Cas. 302.—**CAN.**

**sx. —**—*Removal of liquor unlawfully imported into Canada.*—*R. v. BAIG*, [1927] 1 D. L. R. 896; 47 Can. Crim. Cas. 58; 59 N. S. R. 86.—**CAN.**

**sy. —**—*Appeal—Right of.*—*R. v. BAIG*, [1927] 1 D. L. R. 896; 47 Can. Crim. Cas. 58; 59 N. S. R. 86.—**CAN.**

**sz. —**—*Non-compliance with sect. 82.*—*R. v. ROCHE* (1927), 48 Can. Crim. Cas. 210; 59 N. S. R. 218.—**CAN.**

**sb. Inland Revenue Act, R. S. C., 1906** (c. 51)—*Unlawful brewing—Evidence.*—*R. v. SMITH* (Ont.), [1926] 3 D. L. R. 419; 46 Can. Crim. Cas. 218.—**CAN.**

*Prosecution under—Condition precedent—Giving of list of seized articles.*—*R. (WILLIAMS) v. YARISH* (Man.), [1926] 3 W. W. R. 586.—**CAN.**

**sd. —**—*Certificate of analysis—Contents.*—*R. (WILLIAMS) v. YARISH* (Man.), [1926] 3 W. W. R. 586.—**CAN.**

**se. —**—*Conviction—Form of.*—*R. (METCALFE) v. BAT*, [1926] 4 D. L. R. 829; [1926] 2 W. W. R. 582; 46 Can. Crim. Cas. 151; 20 Sask. L. R. 591.—**CAN.**

**sf. Excise Act, R. S. C., 1906** (c. 51)—*Possessing wash—Conviction—Form of.*—*R. v. DRAGAN*, [1927] 1 W. W. R. 914; 47 Can. Crim. Cas. 301; 38 B. C. R. 420.—**CAN.**

**sg. —**—*Brewing beer without licence.*—*R. (HANNA) v. ERNEST* (B. C.), [1927] 1 W. W. R. 961; 48 Can. Crim. Cas. 190.—**CAN.**

**sj. Excise Act, R. S. C. 1927, c. 60—***Unlawful possession under—Beer brewed for own use—After notice.*—*R. v. KOSTYNIUK* (1928), 50 Can. Crim. Cas. 374.—**CAN.**

**d** (p. 109) i. — *Form of.*—A conviction for an offence against the above Act omitted the provision in respect to the issuing of a warrant of distress, & the imposition of imprisonment in default:—*Held:* the conviction was bad.—*R. v. MCFARLANE* (1891), 24 N. S. R. (12 R. & G.) 54.—**CAN.**

**dddd** (p. 109) i. — *Suspension of operation by Province—Right of Governor-General to revoke suspending order.*—*SHERIAN v. SHAW*, [1928] 2 D. L. R. 468; 49 Can. Crim. Cas. 357.—**CAN.**

**dddd** (p. 109) ii. *Liquor Control Act, 1927—Reasons for judgment given by judge—Judgment effective without notice to accused.*—*Re R. v. GALBRAITH* (1925), 50 Can. Crim. Cas. 398.—**CAN.**

**dddd** (p. 109) iii. *Government Liquor Control Act, 1928—Previous conviction—Meaning of.*—“Previous conviction” in above Act, s. 178, means a conviction under that Act, & does not refer to convictions under prior Acts now repealed.—*R. v. RICEBERG*, [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

**dddd** (p. 109) iv. — *“Liquors which are intoxicating”—Whether “beer” & “wine” within words.*—The fact that a beverage with respect to which a charge is laid under Govt. Liquor Control Act, 1928, is called “beer” or “wine” is not sufficient to enable a magistrate to determine judicially that it is intoxicating. The Act does not deal with everything which goes under the name of “beer” or “wine,” whether it be intoxicating or not. The words “which are intoxicating” in sect. 2 (21), which defines “liquor,” refer to all classes of “liquor” dealt with by the Act.—*R. v. MOXLEY*, [1929] 1 D. L. R. 202; 50 Can. Crim.

## Part XV.—War Legislation.

843 *Add. Annotation:—Refd. Adams v. Camfoni* (1928), 139 L. T. 608.

Cas. 408; [1928] 3 W. W. R. 537, 576.  
—CAN.

dddd (p. 109) v. — *Unlawful possession of liquor—Home-made wine.* —*R. v. TILBURY*, [1928] 3 W. W. R. 127.—CAN.

c (p. 110) i. *Forfeiture of license—Right of municipal corporation—Where power to enforce bye-laws given by statute.* —The power given to municipal corps., under R. S. O. 1887, c. 184, s. 285, "to determine the time during which victualling licenses shall be in force," does not confer any power to forfeit such licenses, but merely to fix the duration of the license. The power to create a forfeiture of property is one which must be expressly given to a corp., by the Legislature, & such an extraordinary power is least of all to be inferred where the Legislature has provided other means of enforcing bye-laws by means of fine & amercement, as in this case.—*BANNAN v. TORONTO CORPN.* (1892), 22 O. R. 274.—CAN.

c (p. 110) ii. — *Conditions of.* —A publican's license is not subject to forfeiture under Licensing Act, 1917, s. 185, unless all three offences have been committed whilst deft. has been the holder of the same license.—*R. v. MUIRHEAD, Ex p. LYONS*, [1927] S. A. S. R. 116.—AUS.

dddd i. — — — *Mens rea necessary.* —*R. v. NADON* (1926), 46 Can. Crim. Cas.—CAN.

dddd ii. — — — — — *R. v. SIMON* (Ont.) (1927), 47 Can. Crim. Cas. 167.—CAN.

dddd iii. — *By druggist—Evidence.* —*Re CARROLL* (N. S.) (1926), 48 Can. Crim. Cas. 208; 59 N. S. R. 183.—CAN.

g (p. 111) i. — — — *Liquor seized not identified with sample analysed—Conviction quashed.* —*R. v. HYDE* (Ont.) [1926] 2 D. L. R. 998; 45 Can. Crim. Cas. 397.—CAN.

c (p. 111) i. *Conviction for second offence—Invalid—Where first conviction quashed.* —*R. v. WOODS* (N. S.) (1926), 46 Can. Crim. Cas. 171.—CAN.

f (p. 111) i. *Licensing Act, 1917—Exposure for sale—Sale from motor car*

—*Bottles not proved to be exposed to view.* —The holding of a publican's license does not exempt the holder from Licensing Act, 1917, s. 163. Where the holder of a publican's license was on a public road having a motor car loaded with bottles of liquor, two of which were sold to a constable, but were not proved to be exposed to view:—*Held*: the liquor had not been "exposed for sale." —*BADMAN v. ALLCHURCH*, [1927] S. A. S. R. 174.—AUS.

f (p. 111) ii. — *Carrying liquor about—Onus of proving not exposed for sale.* —The holder of a publican's license was on a public road having a motor car loaded with bottles of liquor. The licensee had carried the liquor in question, some of which was exposed to view, from his hotel to a road some hundreds of yards distant. Licensing Act, 1917, s. 280, provides that where liquor is carried about from one place to another the burden of proving that such liquor was not . . . exposed for sale shall be cast on the person exposing the same:—*Held*: the liquor had been carried about, & the onus under the statute had not been discharged by the licensee. —*BADMAN v. ALLCHURCH*, [1927] S. A. S. R. 171.—AUS.

sk. *Unlawful possession of liquor—Evidence.* —*R. v. HALL* (Sask.) (1925), 45 Can. Crim. Cas. 147.—CAN.

sl. — — — — — *Re COADY* (N. S.) (1926), 46 Can. Crim. Cas. 327.—CAN.

sm. — — — — — *R. v. DRUZ* (Ont.) (1927), 47 Can. Crim. Cas. 250.—CAN.

sn. — — — *Mens rea necessary.* —*R. v. CRAWFORD* (N. B.) [1927] 2 D. L. R. 565; 47 Can. Crim. Cas. 134.—CAN.

so. — — *What amounts to—Possession of undrinkable mash—Conviction quashed.* —*R. v. BOONE* (Ont.) (1925), 45 Can. Crim. Cas. 148.—CAN.

sp. — *Appeal—Extension of time—After sentence partly served—Application refused.* —*R. v. HENNEBERRY* (1926), 45 Can. Crim. Cas. 156; 58 N. S. R. 425.—CAN.

sq. *Improper use of label—Mens rea necessary.* —*R. v. SAVICH* (Ont.) (1927), 47 Can. Crim. Cas. 262.—CAN.

sr. *Certificate of analyst—Presumption arising from.* —*R. v. JOHNSTON* (Ont.) (1926), 46 Can. Crim. Cas. 360.—CAN.

ff (p. 111) i. — *Right of—By Crown.* —*R. v. HODGSON* (1927), 47 Can. Crim. Cas. 171; 59 N. S. R. 202.—CAN.

ff (p. 111) ii. — *To what court.* —*R. v. CLARK* (1879), 44 U. C. R. 385.—CAN.

ff (p. 111) iii. — *Power of appellate court—Cannot review order for destruction of liquor.* —*Re KHATTAR, Re THEBAULT*, [1927] 2 D. L. R. 647; 47 Can. Crim. Cas. 181; 59 N. S. R. 191.—CAN.

hh (p. 111) i. — *Effect of—Licence transferred—Intoxicating Liquor (General) Act, 1921 (No. 62 of 1921), ss. 16-18.* —*A. G. (Butler) v. HAN*, [1927] L. R. 546.—IR.

## PART XIII.

sx. *Interdiction order—Removal of—Applicant proved to have refrained from drunkenness for twelve months.* —When on an appln under Govt. Liquor Act, R. S. B. C. 1924, c. 116, s. 69 to a county ct. judge to set aside an interdiction order it is proved that appet. has refrained from drunkenness for at least twelve months it is obligatory on the judge to set the order aside.—*Re CORIANO*, [1928] 2 W. W. R. 695; 50 Can. Crim. Cas. 199.—CAN.

sy. — *Conditions of issue.* —Before a person can be interdicted under Govt. Liquor Act, R. S. B. C. 1924, c. 146, he must clearly be found to be within the class of persons who "by excessive drinking, etc." are subject to interdiction under sect. 66 of the Act. A magistrate or other interdiction official has no power to make the order without first giving the person against whom the order is sought an opportunity to show cause why it should not be made.—*R. v. ST. ELOI*, [1928] 2 W. W. R. 692.—CAN.

## PART XIV. SECT. 1, SUB-SECT. 2.

f i. — — — *Payment for customs dues.* —*PARKMAN v. BENOIT* (P. E. I.), [1926] 2 D. L. R. 975.—CAN.



184. *Add. Annotations* :—*As to* (1) **Refd.** *A.-G. for Ontario v. McLean Gold Mines*, [1927] A. C. 185; *Wigg v. A.-G. of Irish Free State*, [1927] A. C. 674. *As to* (2) **Apld.** *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437. **Generally, Mentd.** *A.-G. for Ontario v. McLean Gold Mines Co.* (1926), 95 L. J. P. C. 217.
185. *Add. Annotations* :—**Refd.** *Whitney v. I. R. Comrs.*, [1926] A. C. 37; *Wigg v. A.-G. of Irish Free State*, [1927] A. C. 674; *Grant v. Knaresborough U. C.*, [1928] Ch. 310.
- 187a. ———.]—**Held** : an action against the Air Council for a declaration that a patent was valid was not maintainable.—**ROWLAND v. AIR COUNCIL** (1923), 39 T. L. R. 228; 67 Sol. Jo. 365; 40 R. P. C. 87; *on appeal*, 39 T. L. R. 455, C. A.
- 187b. *S.P. ROWLAND & MACKENZIE-KENNEDY v. AIR COUNCIL* (1927), 96 L. J. Ch. 470; 137 L. T. 794; 43 T. L. R. 717; 44 R. P. C. 453, C. A.
190. *Add. Annotation* :—**Mentd.** *Fennell v. East Ham Corpn.*, [1926] Ch. 641.
198. *Add. Citation* :—12 Tax Cas. 166.
- 198a. ——— **Must enforce private right.**]—What weighs with me in the matter is that the right in question which pltf. seeks to have set up by a declaratory order is not a private right at all. Pltf. has no personal right to have sewers kept in proper condition. It is a matter, as LORD HALSBURY says, for the whole district; it is a matter committed to the special jurisdiction of a department which is a Government department, who have to act, not with regard to the interests of any particular individual, but with regard to the interests of the district generally. I am not aware that any ct. has ever in such a case made a declaration at the suit of a member of the public, & still less in a case where, as I have said, I am not satisfied that any real principle of justice requires the ct. to determine the matter (**MAUGHAM, J.**).—**CLARK v. EPSOM RURAL DISTRICT COUNCIL**, [1929] 1 Ch. 287; 98 L. J. Ch. 88; 140 L. T. 246; 93 J. P. 67; 45 T. L. R. 106; 27 L. G. R. 328.
199. *Annotations* :—Delete *Anderson v. Equitable Life Assce. Soc. of the United States* (1925), 42 T. L. R. 123.
- Add. Annotation* :—**Mentd.** *Public Trustee v. Elder*, [1926] Ch. 776.
201. *Add. Annotation* :—**Mentd.** *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437.
- 202a. **Right to proceed to trial—Notwithstanding default of defence.**]—Where pltf. could not have obtained a declaration of the nature sought (*see* **KATES & RATING**, No. 1158a, *post*), on a motion for judgment in default of defence without evidence, & he was clearly entitled to the declaration at the date of the writ, subject to his substantiating his case by proper evidence :—**Held** : he was entitled to proceed to trial for that purpose & obtain his declaration with costs.—**GRANT v. KNARESBOROUGH URBAN COUNCIL**, [1928] Ch. 310; 97 L. J. Ch. 106; 138 L. T. 488; 92 J. P. 30; 44 T. L. R. 221; 26 L. G. R. 165.
214. *Add. Citation* :—2 B. R. A. 779.
217. *Add. Annotations* :—**Mentd.** *Jones v. Harris* (1926), 43 T. L. R. 1; *Hart v. Riversdale Mill Co.*, [1928] 1 K. B. 176.
219. *Add. Annotation* :—**Refd.** *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437.
220. *Add. Annotations* :—**Refd.** *The W. H. Randall*, [1928] P. 41; *Horwood v. Statesman Publishing Co.* (1929), 98 L. J. K. B. 450.
222. *Add. Annotations* :—**Consd.** *Clark v. Epsom R. D. C.*, [1929] 1 Ch. 287. **Refd.** *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88. **Mentd.** *Sheppy Glue & Chemical Works v. Medway River Conservators* (1926), 24 L. G. R. 457; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
224. *Add. Annotation* :—**Refd.** *Salisbury & Ford- ingbridge District Drainage Board v. Southern Tanning Co.* (1920), *Ltd.*, [1927] 2 K. B. 566.
228. *Add. Annotation* :—**Mentd.** *Catton v. Ashwell & Nesbit*, [1928] Ch. 484.
230. *Add. Annotation* :—**Consd.** *Everett v. Ryder* (1926), 135 L. T. 302.
231. *Add. Annotations* :—**Apld.** *Groedel v. Hungarian Property Administrator* (1927), 44 T. L. R. 65. **Refd.** *Groebel v. Hungarian Property Administrator* (1925), 70 Sol. Jo. 345.
238. *Add. Annotation* :—**Mentd.** *Hardie & Lane v. Chiltern*, [1928] 1 K. B. 663.
239. *Add. Annotations* :—**Refd.** *Layzell v. Thompson* (1926), 43 T. L. R. 58; *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437. **Mentd.** *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686.
251. *Add. Annotation* :—**Consd.** *R. v. Grain, Ex p. Wandsworth Grdns.*, [1927] 2 K. B. 205.
257. *Add. Annotation* :—**Mentd.** *Gardner v. Cone*, [1928] Ch. 955.
- 260a. **As to validity of foreign judgment.**]—Circumstances (*see* **CONFLICT OF LAWS**, No. 1135a, *ante*) in which :—**Held** : the ct. had power to make the declaration asked for.—**ELLERMAN LINES, LTD. v. READ** (1927), 44 T. L. R. 7; *reversd.* on other points (1928), 44 T. L. R. 285, C. A.

PART II. SECT. 3, SUB-SECT. 5.

**r i.** ———.]—The rule that the cts. should not be called on to decide merely theoretical propositions applied to an appln. by the liquidator for the approval by the ct. of his action in not redeeming certain property of the co. from a tax sale.—*Re GREAT WEST PERMANENT LOAN CO.*, [1928] 3 W. W. R. 628.—**CAN.**

**sd.** *Declaratory Judgments Act*, 1908—*Discretion of court—Anticipatory con-*

*struction.*]—The jurisdiction of the ct. to give or make a declaratory judgment or order under sect. 3 of the above Act is discretionary, & the ct. will not give or make such judgment or order by way of anticipatory interpretation or construction of statutory powers in the abstract, without knowledge of the facts & circumstances under which such powers might be exercised, or without any certitude that many of the powers will ever be exercised. Neither will the ct. exercise its discretion to give or make any judgment or order on

a question of construction which, whichever way it is decided, does not necessarily put an end to the litigation.—**DAIRY PROPRIETARY ASSOCN. (INC.) v. NEW ZEALAND DAIRY PRODUCE CONTROL BOARD**, [1926] N. Z. L. R. 535.—**N.Z.**

**sf.** ——— *Whether binding on Crown.*]—The Crown is not bound by the above Act, in a case where the question raised involves a decision affecting a monetary claim against the Crown.—**McDOUGALL v. A.-G.**, [1925] N. Z. L. R. 104.—**N.Z.**

## Part IX.—Effect of Judgments and Orders.

282. *Add. Citation* :—[1925] B. & C. R. 265.

320. *Add. Annotation* :—**Refd.** *Knight v. Knight* (1925), 95 L. J. Ch. 33.

337. *Add. Citation* :—*reversg.* S. C. *sub nom.* *Re SNEYD*, *Ex p.* OXFORD (BP.), 52 L. J. Ch. 724.

## Part XIII.—Enforcement of Judgments and Orders.

366a. — — — — —.]—**GRIFFITHS v.** (1847), 16 M. & W. 809; 4 Dow. & L. 719; 2 New Pract. Cas. 231; 16 L. J. Ex. 176; 9 L. T. O. S. 57; 11 Jur. 313; 153 E. R. 1418.

366b. — — — — —.]—**GIBBS v. FLIGHT** (1853), 13 C. B. 803; 1 C. L. R. 329; 22 L. J. C. P. 256; 17 Jur. 1034; 138 E. R. 1417.

368a. — — — — —.]—A rule for taxation of costs, & an *allocatur* thereon, do not amount to a “rule” or “order” within the above sect., so as to be capable of being registered as

a judgment.—**SHAW v. NEALE** (1858), 6 H. L. Cas. 581; 27 L. J. Ch. 444; 31 L. T. O. S. 190; 4 Jur. N. S. 695; 6 W. R. 635; 10 E. R. 1422, H. L.; *reversg.* on other points (1855), 20 Beav. 157.

*Annotations* :—**Mentd.** *Beavan v. Oxford* (1855), 6 De G. M. & G. 492; *Turner v. Letts* (1855), 20 Beav. 185; *Hopkinson v. Rolt* (1861), 9 H. L. Cas. 514; *Menzies v. Lightfoot* (1871), L. R. 11 Eq. 459; *North v. Stewart* (1890), 15 App. Cas. 452; *Briscoe v. Briscoe*, [1892] 3 Ch. 543; *Re Knight, Knight v. Gardner*, [1892] 2 Ch. 368; *Meguerditchian v. Lightbound*, [1917] 2 K. B. 298.

371. After this case add “—**Order of Probate Division.**”—*See* EXECUTORS, Vol. XXIII., p. 281, No 3486.”

## Part XVI.—Interest on Judgments and Orders.

403. *Add. Annotation* :—**Mentd.** I. R. Comrs. v. *Fisher's Exors.*, [1926] A. C. 395.

407a. — — — — —.]—**Erroneous decree.**—**HAMILTON v. HOUGHTON** (1820), 2 Bli. 169; 4 E. R. 290. H. L.

*Annotations* :—**Consd.** *Bateman v. Margerison* (1853), 16 Beav. 477. **Mentd.** *Colclough v. Sterum* (1821), 3 Bli. 181. *White v. Parnter* (1829), 1 Knapp. 179.

419a. — — — — —.]—**Costs ordered to be charged on property.** *Held* : as the costs were an equitable charge, they bore interest at four per cent.—**IR.**

**PARD v. RICKETTS** (1872), L. R. 11 Eq. 291; 41 L. J. Ch. 595; 20 W. R. 898.

*Annotations* :—**Consd.** *Fardley v. Knight* (1889), 41 Ch. D. 537. **Apprvd.** *Re Drax, Savile v. Drax*, [1903] 1 Ch. 781.

422a. — — — — —.]—The ct. will give interest on costs payable out of a fund which cannot be immediately realised.—*Re CAMPBELL'S TRUSTS* (1871), 19 W. R. 427.

430. *Add. Citation* :—16 Asp. M. L. C. 524.

448a. *S. P.* **FOX v. CHARLTON, CHARLTON v. FOX** (1865), 6 New Rep. 352.

### PART IX. SECT. 2.

c i. — — — *Lands subject to mortgage* ] — Registered judgment binds only the interest of the debtors existing at the time of registration, & therefore cannot affect a mtgce already given by debtor before the judgment.—**YORKSHIRE GUARANTEE & SECURITIES CORPN. v. EDMONDS** (1900), 7 B. C. R. 348.—**CAN.**

c ii. — — — *Lands acquired by debtor subsequently to unsatisfied execution—Whether bound by judgment.*—**BENT v. BANKS** (1872), 9 N. S. R. (2 N. S. D.) 501.—**CAN.**

c iii. — — — *Entered on warrant of attorney—Executed by husband & wife—Whether valid against wife's real estate.*—When a woman, entitled to real estate, joined with her husband in executing a warrant of attorney on which a judgment was entered & recorded, in order to bind such real estate, the Ct. of Probate is not justified in treating the judgment as a nullity.—*Re NELSON'S ESTATE* (1856), 3 N. S. R. (2 Thom.) 1.—**CAN.**

c iv. — — — *Subsequent death of debtor insolvent—Right to issue execution against representative.*—Where a judgment has been duly recorded in the lifetime of a deceased party, & his estate has been declared insolvent by the Probate Ct., an execution may nevertheless be issued on such judgment,

on a proper suggestion of the facts on the record, against his exor. or administrator, but can be extended only on the land bound by such judgment.—**BURROWS v. LEVOR**, Cong. Dig. 670.—**CAN.**

### PART IX. SECT. 6.

336 i. *Effect of covenant to pay interest—Mortgage.*—By a mtgce. the mtgor. covenanted, by a separate covenant, to pay interest. The mtgee. obtained judgment against the mtgor. for the principal & interest due.—*Held* : the security of the mtgce. was not merged in the judgment.—**LOWRY v. WILLIAMS**, [1895] 1 L. R. 271.—**IR.**

### PART XIII. SECT. 1, SUB-SECT. 2.

sg. *Judgment in favour of legatee of one partner—Against other partner as executor—Previous judgments against same partner—By secured & simple contract creditors.*—**HARPER v. HARPER** (1890), 2 B. C. R. 15.—**CAN.**

sh. *Judgment obtained by default in Quebec—Defendant resident & served with writ in Ontario.*—Deft. who was resident & domiciled in the Province of Ontario, was served there with a writ of summons by which an action for the price of goods sold & delivered was commenced against him in the Superior Ct. of Quebec. The cause of action arose partly, at least, in

Ontario. He did not appear, & judgment was entered against him by default. In an action upon that judgment brought in a Division Ct. in Ontario by same plff. against same deft. the latter pleaded that the Quebec judgment was of no effect in Ontario, & that in truth he was not indebted to plff.—*Held* the provisions now found in Jud. Act, R. S. O. 1927, c. 88, ss. 51, 52, which were enacted by an Act of the Province of Canada in 1860, 23 Vict. c. 24, must be confined to actions upon judgments obtained in the Province of Quebec, which, according to the principles of international law, applicable as between the different Provinces of the Dominion, are entitled to extra-territorial recognition, i.e. to those cases in which the writ was served within the Province of Quebec upon a person domiciled & resident therein & who owed allegiance to the laws of Quebec.—**LUNG v. LEE**, [1929] 1 D. L. R. 130; 63 O. L. R. 194.—**CAN.**

sj. *Judgment against lands—Enforcement of—Necessity to sue out execution.*—**BANK OF UPPER CANADA v. BRATTY** (1862), 9 Gr. 321.—**CAN.**

### PART XIV.

sk. *Judgment not registered—Priority of mortgage.*—**MINERAL PRODUCTS CO. v. CONTINENTAL TRUST CO.** (1906), 37 S. C. R. 517.—**CAN.**



## Part XVII.—Judicial Decisions as Authorities.

492. *Add. Annotation* : **Mentd.** *Re Mason* (1927), 97 L. J. Ch. 321.

494. *Add. Annotation* :—**Mentd.** *Re Wait*, [1927, 1 Ch. 606.

495. *Add. Annotation* :—**Mentd.** *Johnson v. Clarke*, [1928] Ch. 847.

498a. ————]—(1) When any tribunal is bound by the judgment of another etc., either superior or co-ordinate, it is bound by the judgment itself : & if from the opinions delivered it is clear what the *ratio decidendi* was which led to the judgment, then that *ratio decidendi* is also binding. But if it is not clear, then it is not part of the tribunal's duty to spell out with great difficulty a *ratio decidendi* in order to be bound by it.

(2) If a decision of the House of Lords rests upon the special & peculiar circumstances of the case, the case does not bind the House, or any etc., by a general principle : but if the decision rests upon a general doctrine, it binds all etc. & the House, & that doctrine is part of the law of the land until the legislature be moved to interfere.—*GREAT WESTERN RY. CO. v. MOSTYN (OWNERS), THE MOSTYN*, [1928] A. C. 57, 97 L. J. P. 8 ; 138 L. T. 403 ; 92 J. P. 18 ; 44 T. L. R. 179 ; 26 L. G. R. 91 ; 17 Asp. M. L. C. 367, H. L.

*Annotations* :—**Generally**, **Mentd.** *Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756 ; *Dec Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

504. *Add. Annotation* :—**Generally**, **Mentd.** *G. W. K. v. Dunlop Rubber Co.* (1926), 42 T. L. R. 376.

506. *Add. Annotation* :—**Refd.** *Koskas v. Standard Marine Insee.* (1926), 42 T. L. R. 692.

506a. ————]—It is the duty of a judge to ascertain the construction of the instrument before him, & not to refer to the construction put by another judge upon an instrument, perhaps similar, but not the same. The only result of referring to authorities for that purpose is confusion & error, in this way, that if you look at a similar instrument, & say that a certain construction was put upon it, & that it differs only to such a slight degree from the document before you, that you do not think the difference sufficient to alter the construction, you miss the real point of the case, which is to ascertain the meaning of the instrument before you. It may be quite true that in your opinion the difference between the two instruments is not sufficient to alter the construction, but at the same time the judge who decided on that other instrument may have thought that that very difference would be sufficient to alter the interpretation of that instrument. You have, in fact, no guide whatever ; & the result, especially in some cases of wills, has been remarkable. There is, first, document A., & a judge formed an opinion as to its construction. Then came document B., & some other judge has said that it differs very little from the document A., not sufficiently to alter the construction, therefore, he construes

it in the same way. Then comes document C., & the judge there compares it with document B., & says it differs very little, & therefore, he shall construe it in the same way ; & so the construction has gone on until we find a document which is in totally different terms from the first, & which no human being would think of construing in the same manner, but which has by this process come to be construed in this manner (JESSEL, M.R.).

—*ASPDEN v. SEDDON* (1874), 10 Ch. App. 396, n. ; 44 L. J. Ch. 361, n. ; 31 L. T. 626 on appeal (1875), 10 Ch. App. 394, L. .

*Annotations* :—**Apld.** *Re Whiting, Ormond v. De Launay* (1913), 82 L. J. Ch. 309. **Mentd.** *Gill v. Dickinson* (1880), 5 Q. B. D. 159. *Dalton v. Angus* (1881), 6 App. Cas. 710 ; *Dixon, Ltd. v. White* (1883), 8 App. Cas. 833 ; *Mundy v. Rutland (Duke)* (1883), 23 Ch. D. 81 ; *Lowe v. Bell* (1884), 9 App. Cas. 286 ; *Hayles v. Pease & Partners*, [1899] 1 Ch. 567 ; *Westhoughton U. D. C. v. Wigan Coal & Iron Co.*, [1919] 1 Ch. 159.

506b. *Cases decided on demurrer.*]—Observations of SCRUTTON, L.J., as to the extent to which cases decided on demurrer are to be regarded as authorities.—*ST. ANNE'S WELL BREWERY CO. v. ROBERTS* (1928), 140 L. T. 1 ; 92 J. P. 180 ; 44 T. L. R. 703 ; 26 L. G. R. 638, C. A.

520. *Add. Annotations* :—**Mentd.** *Robertson v. S.S. Appalachee, Rovira v. Same* (1926)] 136 L. T. 488 ; *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446.

521. *Add. Annotation* :—**Mentd.** *Mergenthaler Linotype Co. v. Intertype Co.* (1926), 42 T. L. R. 682.

525a. ————]—In doubtful cases the etc. attach some importance to the fact that a decision has stood unchallenged for a considerable time, but neither the House of Lords nor the Ct. of Appeal has shown the slightest compunction in overruling cases of much higher authority than the decision in this case [*Birkenhead Guardians v. Brookes* (1906), 95 L. T. 359, decided by RIDLEY & DARLING, J.J.] if, when the matter is presented to them for consideration, they are of opinion that the decisions are wrong (SCRUTTON, L.J.).—*PONTYPEIDD UNION v. DREW*, [1927] 1 K. B. 214 ; 95 L. J. K. B. 1030 ; 136 L. T. 83 ; 90 J. P. 169 ; 42 T. L. R. 677 ; 70 Sol. Jo. 795 ; 24 L. G. R. 405, C. A.

526a. ————]—Great importance is to be attached to old authorities, on the strength of which many transactions may have been adjusted & rights determined. But where they are plainly wrong, & especially where the subsequent course of judicial decisions has disclosed weakness in the reasoning on which they were based, & practical injustice in the consequences that must flow from them, I consider it is the duty of this House to overrule them, if it has not lost the right to do so by itself expressly affirming them (LORD LOREBURN, C.).—*WEST HAM UNION v. EDMONTON UNION*, [1908] A. C. 1 ; 77 L. J. K. B. 85 ; 98 L. T. 1 ; 72 J. P. 9 ; 24 T. L. R. 108 ; 6 L. G. R. 39, H. L.

*Annotation* :—**Consd.** *Bourne v. Keane*, [1929] A. C. 815.

## PART XVII. SECT. 1.

494 i. *What part of decision binding*

—*Only ratio decidendi.*]—Only the principle upon which a case is decided is binding upon a court of co-ordinate

jurisdiction & inferior etc.—*Re MA MYA v. MA TREIN* (1926), 1 L. R. 1 Ran. 313.—IND.

- 529a. ——— Original construction erroneous.]—Originally, the Act of Parliament in question did not receive that construction which the language put seems to warrant; but we are bound by the weight of authority, & however we may regret that the true construction of the Act seems to have been departed from, we cannot now put that construction upon it which, unfettered by authority, we might be inclined to do (HULLOCK, B.).—BOOTH v. IBBOTSON (1827), 1 Y. & J. 354; 148 E. R. 707.
- Annotation*.—**Mentd.** Hamilton v. Pewtress (1830), 8 L. J. O. S. K. B. 331.
531. *Add. Annotation*.—**Mentd.** Hart v. Riversdale Mill Co. (1927), 96 L. J. K. B. 691.
542. *Add. Annotation*.—**Refd.** United States Shipping Board v. Strick, [1926] A. C. 545.
546. *Add. Annotation*.—**Mentd.** Boorne v. Wicker, [1927] 1 Ch. 667.
551. *Add. Citations*.—[1926] A. C. 545; 31 Com Cas. 357; 17 Asp. M. L. C. 40.  
*Add. Annotation*.—**Mentd.** Hogarth v. Cory (1926), 95 L. J. P. C. 204.
553. *Add. Annotation*.—**Mentd.** Re Cockerill, Mackaness v. Percival, [1929] 2 Ch. 131.
554. *Add. Annotation*.—**Mentd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
- 559a. *Affecting revenue*.—Tax cases ought not to be unsettled (LORD SUMNER).—SMITH (JOHN) & SON v. MOORE, [1921] 2 A. C. 13; 90 L. J. P. C. 149; 125 L. T. 481; 37 T. L. R. 613; 65 Sol. Jo. 492; 12 Tax Cas. 266, II. L.
- Annotations*.—**Fold.** Elliott v. Duchess Mill (1926), 95 L. J. K. B. 963. **Mentd.** Wankie Colliery Co. v. I. R. Comrs. [1922] 2 A. C. 51; Boase Spinning Co. v. I. R. Comrs. (1926), 135 L. T. 211; British Insulated & Helsby Cables v. Atherton, [1926] A. C. 205; I. R. Comrs. v. Newcastle Breweries (1926), 95 L. J. K. B. 936; I. R. Comrs. v. Northfleet Coal & Ballast Co. (1927), 12 Tax Cas. 1102; Thompson v. I. R. Comrs., I. R. Comrs. v. Thompson (1927), 12 Tax Cas. 1091; Mallett v. Staveley Coal & Iron Co., [1928] 2 K. B. 405.
569. *Add. Annotation*.—**Mentd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
- 569a. ———.]—Where a broad principle has been decided by the House of Lords it is very undesirable that it should be frittered away by fine distinctions (LORD CAVE, C.).—NEWTON v. GUEST, KEEN & NETTLEFOLDS, LTD. (1926), 135 L. T. 386; 70 Sol. Jo. 689; 19 B. W. C. C. 119, H. L.
- Annotations*.—**Apld.** Robertson v. S.S. Appalachee, Kovira v. S.S. Appalachee (1926), 136 L. T. 488; Moule v. Marmite Food Extract Co. (1927), 20 B. W. C. C. 446. **Mentd.** Howells v. Powell Duffryu Steam Coal Co., [1926] 1 K. B. 472; Anderson v. Hickman (H.) & Co., Ltd. (1923), 21 B. W. C. C. 369.
- 569b. ———.]—When a question of law has been clearly decided by the House of Lords, it is undesirable that the decision should be weakened or frittered away by fine distinctions (LORD CAVE, C.).—JONES v. SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN., [1927] A. C. 827; 96 L. J. K. B. 894; 137 L. T. 737; 43 T. L. R. 725; 71 Sol. Jo. 680; *sub nom.* THOMAS v. EVANS (RICHARD) & Co.; JONES v. SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN., 11 Tax Cas. 790, H. L.
- 569c. ———.]—GREAT WESTERN RY. Co. v. MOSTYN (OWNERS), THE MOSTYN, No. 498a, *ante*.
571. *Add. Annotation*.—**Mentd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
577. *Add. Annotations*.—**Refd.** Hart v. Riversdale Mill Co. (1927), 96 L. J. K. B. 691. **Mentd.** Small v. Easson (1920), 12 Tax Cas. 351; Bourne & Hollingsworth v. I. R. Comrs. (1921), 12 Tax Cas. 483; British Insulated & Helsby Cables v. Atherton, [1926] A. C. 205; Mitchell v. Noble, [1927] 1 K. B. 719; Green v. Gliksten (1928), 139 L. T. 12; Mallett v. Staveley Coal & Iron Co., [1928] 2 K. B. 405; Morley v. Lawford (1928), 45 T. L. R. 30; Rees Roturbo Development Syndicate v. I. R. Comrs., Same v. Ducker (1928), 13 Tax Cas. 366; Hagart & Burn-Murdoch v. Inland Revenue Comrs., [1929] A. C. 386; Salisbury House Estates, Ltd. v. Fry (1929), 98 L. J. K. B. 722.
- 588a. ———.]—A decision of the appellate ct. in a colony which is regulated by English law is not assumed to be wrong, because it conflicts with a decision of the Ct. of Appeal in England; it is otherwise if the conflict is with a decision of the House of Lords or of the Judicial Committee of the Privy Council.—ROBINS v. NATIONAL TRUST CO., [1927] A. C. 515; 96 L. J. P. C. 84; 137 L. T. 1; 43 T. L. R. 243; 71 Sol. Jo. 158, P. C.
- Annotation*.—**Refd.** Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.
- 588b. ———.]—GREAT WESTERN RY. Co. v. MOSTYN (OWNERS), THE MOSTYN, No. 498a, *ante*.
595. *Add. Annotation*.—**Mentd.** Re Ross, Ross v. Waterfield (1929), 46 T. L. R. 61.
- 595a. *Question of maritime law*.—A judgment of the House of Lords upon a proper maritime question, whether given in an English or in a Scottish appeal, is of equal authority in all the Admiralty Cts. of the kingdom.—CURRIE v. MCKNIGHT, [1897] A. C. 97; 66 L. J. P. C. 19; 75 L. T. 457; 13 T. L. R. 53; 8 Asp. M. L. C. 193, II. L.
- Annotations*.—**Refd.** Blaimore S.S. Co. v. Macredie, [1898] A. C. 593. **Mentd.** The Ripon City, [1897] P. 226; The Veritas, [1901] P. 304; The Burns, [1907] P. 137; The Tervacte, [1922] P. 259.
597. *Add. Annotations*.—**Consd.** Barton-upon-Irwell Union v. Wycombe Union, [1926] 2 K. B. 3. **Refd.** Wycombe Grdns. v. Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.
599. *Add. Annotations*.—**Mentd.** Sheppy Glue & Chemical Works v. Medway River Conservators (1926), 24 L. G. R. 457; Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88; Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159; Clark v. Epsom R. D. C., [1929] 1 Ch. 287.
600. *Add. Annotations*.—**Consd.** Re Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243. **Mentd.** Capel St. Mary, Suffolk v. Packard, [1927] P. 289.

## PART XVII. SECT. 4, SUB-SECT. 1.—B.

*sm.* On colonial court.—*Contrary decision of Privy Council*.—LOBB v. ROCKWOOD RURAL CREDIT SOCIETY, No. 603 II, *post*.—CAN.

*sn.* On Supreme Court of Canada.]—

The Supreme Ct. of Canada is not bound by or subject to the decisions of the House of Lords unless & until the Parliament of Canada shall so declare, that Parliament being now, as the result of the Imperial Conference of 1926, the only authority which has jurisdiction to make such a binding declaration upon the cts. of this nation; &

where a decision of the Supreme Ct. is now found to be in conflict with a decision of the House of Lords the law as declared by the former should be followed by the other cts. in Canada.—GEORGIA CONSTRUCTION CO. v. PACIFIC GREAT EASTERN RY. CO., [1929] 1 D. L. R. 77; [1928] 3 W. W. R. 466.—CAN.

601. *Add. Annotation*:—**Consd. *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.**
602. *Add. Annotations*:—**Refd. *Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928)*, 45 T. L. R. 57. *Mentd.* Capel St. Mary, Suffolk v. Packard, [1927] P. 289.**
603. *Add. Annotations*:—**Mentd. *Jones v. Waring & Gillow*, [1926] A. C. 670; *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294.**
604. *Add. Annotation*:—**Refd. *Venn v. Tedesco*, [1926] 2 K. B. 227.**
605. *Add. Annotation*:—**Consd. *Venn v. Tedesco*, [1926] 2 K. B. 227.**
608. *Add. Citations*:—95 L. J. K. B. 866; 90 J. P. 185; 42 T. L. R. 478; 24 L. G. R. 496.
609. *Add. Annotation*:—**Refd. *Venn v. Tedesco*, [1926] 2 K. B. 227.**
611. *Add. Annotation*:—**Mentd. *Koskas v. Standard Marine Insee*, (1926), 42 T. L. R. 692.**
- 614a. ———. **Colonial appellate court.**—**ROBINS v. NATIONAL TRUST CO., No. 588a, ante.**
621. *Add. Annotation*:—**Generally, Mentd. *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.**
626. *Add. Annotation*:—**Mentd. *Venn v. Tedesco*, [1926] 2 K. B. 227.**
- 628a. ———. (1) Where a Ct. of Appeal has before it a series of judgments of the Ct. of Appeal which do not appear to be consistent with each other, & the later judgment was given when the Lords Justices were not aware of some of the previous decisions, in such circumstances, as a matter of judicial comity, it is open to the ct. to consider all the previous decisions of the Ct. of Appeal & to form its own views as to which are the more accurate & which it shall follow.
- (2) A Ct. of Appeal consisting of three Lords Justices is not entitled to overrule a decision of a Ct. of Appeal expressed by two Lords Justices (ATKIN, L. J.).—**GLASKIE v. WATKINS**, [1927] 2 K. B. 181; 96 L. J. K. B. 469; 137 L. T. 132; 43 T. L. R. 314; 71 Sol. Jo. 192, C. A.
- 628b. ———. **Conflicting decisions.**—**GLASKIE v. WATKINS**, No. 628a, *ante*.
- 628c. ———. **Observations by SCRUTTON & SARGANT, L. J.J.**, where there were conflicting decisions of the Ct. of Appeal as to the construction of a rule of ct., on the right of the ct. to consider & decide the matter for itself.—**SMITH v. SCHILLING**, [1928] 1 K. B. 429; 97 L. J. K. B. 276; 138 L. T. 475; 44 T. L. R. 109, C. A.
- 629a. ———. **Court of Criminal Appeal.**—**PRACTICE NOTE** (1928), 20 Cr. App. Rep. 185.
631. *Add. Annotation*:—**Mentd. *Ellesmere v. Wallace*, [1929] 2 Ch. 1.**
- 631a. ———. **Colonial appellate court.**—**ROBINS v. NATIONAL TRUST CO., No. 588a, ante.**
632. *Add. Annotation*:—**Mentd. *Aldridge v. Wright*, [1929] 2 K. B. 117.**
642. *Add. Annotation*:—**Refd. *Lowther v. Clifford*, [1927] 1 K. B. 130.**
- 642a. ———. **Conflicting decisions.**—Where there are two previous decisions of the Div. Ct., one of which was decided by a ct. of two judges & the other by a ct. of three judges, the rule of the Div. Ct. is to respect the decision of the ct. of three judges.—**DE VRIES v. SMALLBRIDGE**, [1928] 1 K. B. 482; 97 L. J. K. B. 244; 138 L. T. 497, C. A.
- 642b. ———. **Observations**, where there were two inconsistent lines of authorities as to the construction of Rent Restriction Acts, on the duty of the ct. to consider & decide the matter for itself.—**RATKINSKY v. JACOBS**, [1929] 1 K. B. 24; 97 L. J. K. B. 566; 138 L. T. 739; 92 J. P. 142; 44 T. L. R. 548; 72 Sol. Jo. 354; 26 L. G. R. 380, D. C.
- Annotation*:—**Mentd. *Lloyd v. Cook, Goudge v. Broughton, Simson v. Muftt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B.**
643. *Add. Annotations*:—**Mentd. *United Billposting Co. v. Somerset County Council* (1926), 95 L. J. K. B. 899; *Everton v. Walker* (1927), 137 L. T. 594.**
653. *Add. Annotation*:—**Mentd. *Bernard v. Williams* (1928), 139 L. T. 22.**

## PART XVII. SECT. 4, SUB-SECT. 2.

603 ii. ———. **Contrary decision by House of Lords.**—While a decision of the Privy Council on a point actually decided by it is binding on a Canadian ct., even though there is a contrary decision on the same point by the House of Lords, yet where a statement of law cited from a judgment of the Privy Council is merely a dictum, the Canadian ct. is free to follow the House of Lords.—**LOBB v. ROCKWOOD RURAL CREDITS SOCIETY**, [1926] 2 D. L. R. 819; [1926] 2 W. W. R. 1; 35 Man. L. R. 499.—**CAN.**

603 iii. ———. **Courts in India.**—A decision of the Privy Council binds all the cts. in India, at any rate as soon as the decision is promulgated & comes to the knowledge of a ct. in India.—**NINGAPPA MARBASAPPA ARLESHVAR v. GYANAJI POURAJI MARWADI** (1926), 1 L. R. 51 Bom. 231.—**IND.**

603 iv. ———. **Decisions of the Privy Council are absolutely binding on all cts. in India.**—**Re MA MYA v. MA THEIN** (1926), 1 L. R. 4 Ran. 313.—**IND.**

## PART XVII. SECT. 4, SUB-SECT. 3.

624 iv. ———. **A decision of the Appellate Div. is binding on it & on trial judges within the province, unless & until it is overruled by a higher ct. The belief that a higher ct. would take**

a different view from that expressed by the Appellate Div., though founded on general reasoning in other cases decided by the higher ct., is not a sufficient reasoning for not following the decision of the Appellate Div.—**DOWSETT v. EDMUNDS (Alta)**, [1926] 4 D. L. R. 796; [1926] 3 W. W. R. 447; 46 Can. Crim. Cas. 330.—**CAN.**

624 iii. ———. **A decision of the Supreme Ct. of Canada & has not been departed from by the Privy Council or overruled by the House of Lords, is binding on the K. B. of Manitoba with respect to the interpretation of an Act in the same terms as those of the Act interpreted in the Ct. of Appeal's decision, even though that decision is contrary to one given by a Ct. of Appeal of another province.**—**LOWERY v. LAMONT (Man.)**, [1927] 1 D. L. R. 669; [1927] 1 W. W. R. 95.—**CAN.**

f i. ———. **DOWSETT v. EDMUNDS**, No. 624 iv, *ante*.—**CAN.**

f ii. ———. **Decisions of the highest ct. of a province are absolutely binding on all subordinate cts. in that province.**—**Re MA MYA v. MA THEIN** (1926), 1 L. R. 4 Ran. 313.—**IND.**

## PART XVII. SECT. 4, SUB-SECT. 5.

641 i. **On another Divisional Court—Court equally divided.**—The decision

of an equally divided Div. Ct. is binding on all Div. Cts.—**DRISCOLL v. COLLETTI**, [1926] 2 D. L. R. 428; 58 O. L. R. 444.—**CAN.**

## PART XVII. SECT. 4, SUB-SECT. 7.—A.

653 i. **General rule.**—Where cts. have co-ordinate jurisdiction the decisions of one such ct. are not regarded as binding another.—**Re MA MYA v. MA THEIN** (1926), 1 L. R. 4 Ran. 313.—**IND.**

so. **Application to High Court—Application previously refused by Supreme Court.**—An appln. pursuant to Service & Execution of Process Act, 1901–1924, s. 19, for leave to execute in Victoria a writ of attachment issued out of the Supreme Ct. of New South Wales having been refused by the Supreme Court of Victoria, an appln. under the same section was made for leave of a Justice of the High Ct. to execute the writ in any state other than New South Wales.—**Held**: the High Ct. ought not to make an order which had been refused by a ct. of co-ordinate jurisdiction in the matter on facts identical with those brought before the High Ct.—**JONES v. JONES** (1928), 40 C. L. R. 315; [1928] V. L. R. 112; [1928] Argus L. R. 45.—**AUS.**

661a. —.]—When there is the decision of a ct. of co-ordinate jurisdiction upon the point, unreversed by a ct. of error, we ought to consider ourselves bound by it (WILDE, C.J.). —BARKER v. STEAD (1847), 3 C. B. 946; 5 Ry. & Can. Cas. 45; 16 L. J. C. P. 160; 8 L. T. O. S. 390; 11 Jur. 90; 136 E. R. 379.

*Annotation* :—**Mentd.** Norris v. Cottle (1850), 2 H. L. Cas. 647.

679a. —.]—*Semble*: a decision of the Exchequer Chamber, where the judges were equally divided, will be regarded as binding on the Ct. of Appeal.—HART *v.* RIVERSDALE MILL CO., [1928] 1 K. B. 176; 96 L. J. K. B. 691; 137 L. T. 364; 91 J. P. 135; 43 T. L. R. 396; 71 Sol. Jo. 407, C. A.; *on appeal* from S. C. *sub nom.* RIVERSDALE MILL CO. *v.* HART, [1927] 1 K. B. 624, D. C.

680a. —.] If one authority were produced to me, & my own opinion were the other way, I would not follow that authority ; but if the authorities are numerous, I admit that I must be bound (JESSEL, M.R.).—*Re BETHLEM HOSPITAL* (1875). L. R. 19 Eq. 457 ; 44 L. J. Ch. 406 ; 23 W. R. 644.

*Annotations* :—**Refd.** *Ex p* St. Katherine Hospital (1881), 17 Ch. D. 378. **Mentd.** *Re* Gaselee, [1901] 1 Ch. 923.

885a. ———.]—Of course, if other judges have expressed different views as to the construction, & their decisions are binding on this ct., this ct. has simply to bow & submit, whatever its own opinion may be (JESSEL, M.R.).—*Re WRIGHT, Ex p. WILLEY* (1883), 23 Ch. D. 118; 52 L. J. Ch. 546; 48 L. T. 380; 31 W. R. 553. C. A.

*Annotations.*—**Consd.** Dashwood v Magniae, [1891] 3 Ch. 306. **Reid.** Bourne v Keane, [1919] A. C. 815. **Mentd.** *Re Hewitt* (1885), 15 Q. B. D. 159; *Jeffries v Tomlinson* (1886), 3 T. L. R. 193; *Re Aylmer, Ex p. Bischoffsheim* (1887), 19 Q. B. D. 33; *Hood-Barrs v. Heriot, Ex p. Blyth*, [1896] 2 Q. B. 338.

705. *Add. Annotations*:—**Mentd.** *Chesterman v. Federal Taxation Commr.*, [1926] A. C. 128; *I. R. Comrs. v. Falkirk Temperance Café Trust* (1926), 11 Tax Cas. 353; *I. R. Comrs. v. Glasgow Musical Festival Asscn.* (1926), 11 Tax Cas. 154; *I. R. Comrs. v. Peeblesshire Nursing Asscn.* (1926), 11 Tax Cas. 335; *Martin v. Lowry*, *Martin v. I. R. Comrs.*, [1926] 1 K. B. 550; *Scottish Woollen Technical College, Galashiels v. I. R. Comrs.* (1926), 11 Tax Cas. 139; *I. R. Comrs. v. Yorkshire Agricultural Soc.* (1927), 44 T. L. R. 59; *Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283; *General Medical Council v. I. R. Comrs.*, *English Branch of General Medical Council v. I. R. Comrs.* (1928), 97 L. J. K. B. 578; *Geologists' Asscn. v. Inland Revenue Comrs.* (1928), 14 Tax Cas. 271; *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557; *Adamson v. Melbourne & Metropolitan Board of Works*, [1929] A. C. 142.

**705a.** ——— ——— ——— **Tax cases.**—One ought, especially in tax cases, which apply equally in Scotland & in England, to pay the very greatest deference to decisions of the Scottish cts. (GREER, L.J.).—SHANKS *v.* INLAND REVENUE COMRS., [1929] 1 K. B. 342; 98 L. J. K. B. 341; 140 L. T. 157; 14 Tax Cas. 249. C. A.

*Annotation* :—**Mentd.** Sutton v. Inland Revenue Comrs.  
(1929) 45 T. L. R. 565

709a. ———.]—Decisions of the cts. in Ireland are not binding on an English ct., & if they conflict with decisions in England, or if they are not consistent with the ct.'s view of the English law, the ct. will decline to follow them.—*Re INMAN, INMAN v. INMAN*, [1903] 1 Ch. 241; 72 L. J. Ch. 120; 88 L. T. 173; 51 W. R. 188; 47 Sol. Jo. 92.

714. *Add. Citations*:—95 L. J. K. B. 936; 135 L. T. 618; 42 T. L. R. 609; 70 Sol. Jo. 734. C. A.; *affd. sub nom.* NEWCASTLE BREWERIES, LTD. v. INLAND REVENUE COMRS. (1927), 96 L. J. K. B. 735; 137 L. T. 426; 43 T. L. R. 476; 12 Tax Cas. 927. H. L.

*Add. Annotations:—Mentd.* Ford v. I. R. Comrs. (1926), 12 Tax Cas. 997; English Dairies v. Phillips, English Dairies v. I. R. Comrs. (1927), 11 Tax Cas. 597; Lambert v. I. R. Comrs. (1927), 12 Tax Cas. 1053; Bernhard v. Gahan, Bernhard v. Inland Revenue Comrs. (1928), 13 Tax Cas. 723.

**717.** *Add. Annotation:—Generally, Mentd. Lake*  
r. Simmons (1926), 95 L. J. K. B. 586.

**718.** *Add. Annotations:—***Refd.** *Buerger v. New York Life Assee.* (1927), 96 L. J. K. B. 930. **Mentd.** *Sassoon v. International Banking Corpn.*, [1927] A. C. 711.

**724.** *Add. Annotation* :—**Mentd.** N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay, [1927] A. C. 604.

**727. Add. Annotations :—***Mentd. Buerger v. New York Life Asce.* (1927), 96 L. J. K. B. 930 ; *Sassoon v. International Banking Corpn.*, [1927] A. C. 711.

728a. ——— **Shipping decisions.**]—American shipping decisions, while treated with great respect, do not necessarily control the shipping decisions of the English cts.—**GOSSE MILLARD v. CANADIAN GOVERNMENT MERCHANT MARINE.** [1928] 1 K. B. 717; 138 L. T. 421; 44 T. L. R. 143; 17 Asp. M. L. C. 385; 33 Com. Cas. 139. C. A.; *sub nom.* **GOSSE MILLARD v. CANADIAN GOVERNMENT MERCHANT MARINE, AMERICAN CANNING CO. v. CANADIAN GOVERNMENT MERCHANT MARINE,** 97 L. J. K. B. 193; *on* [1929] A. C. 223, II. L.

**Annotation :—***Mentd. Foreman & Ellams v. Federal Steam Navigation Co.*, [1928] 2 K. B. 421; *Silver v. Ocean S.S. Co.* (1929), 46 T. L. R. 78

**PART XVII. SECT. 4, SUB-SECT. 7.—**  
**D.**

693 ii. *S. P.* ROSS v. FISER, [1926] 3 D. L. R. 289; [1926] 2 W. W. R. 422; 20 Sask. L. R. 553.—CAN.

**PART XVII. SECT. 4, SUB-SECT. 13.**

st. India.]—The decisions of the Sudder Dewani Adawlat & the Sudder Nizamat Adawlat are not binding on the High Cts.—*Re* MA MYA v. MA THEIN (1926), I. L. R. 4 Ran. 313.—IND.

sv. —.]—Decisions of the highest  
cts. of a province are absolutely binding  
on all subordinate cts. in that province,  
& ordinarily decisions of a full bench of

a superior ct. are binding on benches other than full benches of that ct. & on all judges of that ct. sitting singly, & decisions of benches are binding on single judges.—*Re MA MYA v. MA THEIN* (1926), I. L. R. 4 Ran. 313.—**IND.**

**sw.** — *Burma—Chief Court of Lower Burma—Whether binding—On High Court.*—The High Ct. in the exercise of its ordinary original & appellate jurisdictions is not bound by decisions of the Chief Ct. of Lower Burma, although its decisions are conditional authorities of the highest value to which the greatest weight & respect must be attached.—*Re MA*

MYA v. MA THEIN (1926), I. L. R. 4  
Bam. 313.—IND.

**EX.** *On subordinate courts.*—On points where there is no decision of the High Ct., subordinate cts. in Lower Burma are still bound by the rulings of the Chief Ct., & subordinate cts. in Upper Burma are still bound by the decisions reported in Upper Burma Rulings. Under Govt. of India Act, s. 107, the High Ct. has power, if it so desires, to direct the subordinate cts. in Upper Burma to regard themselves as bound by the decisions of a bench of the Chief Ct. or even of a single judge of that ct.—*Re Ma MYA v. MA THEIN* (1920), I. L. R. 4 Ran. 313.—**IND.**

736. *Add. Annotation* :—**Mentd.** Wycombe Grdns. v. Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.

739a. **Discrepancy between reports.**]—Where a case was reported in 1893 both in the *Law Reports* & in the *Law Times*, & the reports differed both in the narrative of facts & in the words of the judgments, LORD BUCKMASTER assumed that in the *Law Reports* there was a revision by the judges of the judgments that they delivered & accepted that as an authoritative statement.—**FAIRMAN v. PERPETUAL INVESTMENT BUILDING SOCIETY**, [1923] A. C. 74 ; 92 L. J. K. B. 50 ; 128 L. T. 386 ; 87 J. P. 21 ; 39 T. L. R. 54, H. L.

*Annotations* :—**Mentd.** Cockburn v. Smith, [1924] 2 K. B. 119 ; Sutcliffe v. Chents Investment Co., [1924] 2 K. B. 746 ; Coleshill v. Manchester Corp., [1928], 1 K. B. 776

752a. — **Cooper's Reports.**]—I may observe, in passing, that *Sir George Cooper's* reports are not reports of the very highest authority, & though they are sufficiently accurate, it should be remembered that SIR W. GRANT did not correct his decisions in those reports, whilst he did his decisions reported in *Merivale* (STUART, V.C.).—**BAKER v. PECK**

(1860), 3 L. T. 656 ; 9 W. R. 186 ; *on appeal* (1861), 4 L. T. 3, L. C. & L. J.J.

*Annotation* :—**Mentd.** *Re Postlethwaite, Postlethwaite v. Rickman* (1888), 59 L. T. 58.

753a. — — —.]—**Mr. Dickens** was not a very accurate reporter (LEACH, M.R.).—**LIVESEY v. HARDING** (1830), as reported in *Taml.* 460 ; 48 E. R. 183.

782. *Add. Annotations* :—**Mentd.** *Hall v. Pim* (1927), 32 Com. Cas. 144 ; *Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535 ; *Riley v. Brown* (1929), 98 L. J. K. B. 739.

787a. — — —.]—Except on points of practice, the *Weekly Notes* should only be cited as interim reports of cases during the period required for their publication in the *Law Reports* (SWINFEN EADY, J.).—*Re SMITH'S SETTLEMENT, WILKINS v. SMITH* (1902), as reported in [1903] 1 Ch. 373.

*Annotations* :—**Mentd.** *Re Brydone's Settlement, Cobb v. Blackburne*, [1903] 2 Ch. 84 ; *Boyce v. Washbrough*, [1922] 1 A. C. 425.

789a. — — —.]—I do not think the *Weekly Notes* ought to be cited as authority on will cases (LORD COZENS-HARDY, M.R.).—*Re HOWELL, Re BUCKINGHAM, LIGGINS v. BUCKINGHAM*, as reported in [1915] 1 Ch. 241.

*Annotations* :—**Mentd.** *Re Booth, Hattersley v. Cowgill* (1917), 86 L. J. Ch. 270 ; *Re Chapman, Hales v. A.-G.*, [1922] 2 Ch. 479.

## JURIES.

## Part VII.—Juries of Issue and Assessment.

99. *Add. Annotations* :—*Generally*, *Mentd. R. v. Harris*, [1927] 2 K. B. 587; *R. v. Noble* (1928), 20 Cr. App. Rep. 191.

292. *Add. Annotations* :—*Mentd. R. v. Chesshire, Lucas & Bottom* (1927), 20 Cr. App. Rep. 47; *Statham v. Statham* (1928), 45 T. L. R. 127.

295a. *Death of judge.*—*Seemle* : a judge has no jurisdiction to continue the hearing of a case, in which witnesses have been called in ct. in the course of a trial before the jury & another judge.—*COLESHILL v. MANCHESTER CORPN.*, [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

295b. *Communications to judge—Right of counsel to inspect.*—*HOBBS v. TINLING, HOBBS v. NOTTINGHAM JOURNAL*, No. 304a, *post*.

301a. ————*]*—Where a jury, before hearing all the evidence for the defence, finds a verdict for pltf., it is in the discretion of the judge to decide whether the jury should be discharged or whether the case should be continued before the same jury.—*DE FREVILLE v. DILL* (1927), 43 T. L. R. 431; 71 Sol. Jo. 430, C. A.

*Annotation* :—*Refd. Hobbs v. Tinling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.

303. *Add. Annotation* :—*Mentd. De Freville v. Dill* (1927), 43 T. L. R. 431.

304a. ————*Whether ground for new trial.*—In an action for libel pltf. set out in his statement of claim the alleged libel, & in a separate paragraph alleged an innuendo which practically repeated, but somewhat extended, the statements in the alleged libel. Defts. did not plead justification or fair comment, but paid 20s. into ct. in respect of the alleged libel as sufficient damages; they made no payment into ct. in respect of the innuendo; & they gave notice under R. S. C. Ord. 36, r. 37, of their intention to give in evidence certain matters in mitigation of damages. At the trial pltf. gave evidence that save

for one lapse he was a man of unblemished reputation. Thereupon he was cross-examined as to specific incidents not mentioned in the libel or in the particulars served under R. S. C. Ord. 36, r. 37, it being suggested that he was a man of bad reputation. This line of cross-examination was objected to, but was allowed. Before the conclusion of the cross-examination the jury intervened with an intimation that they desired to find for the defts., which they then did without any summing up. On appeal :—*Held* : (1) the cross-examination was admissible as cross-examination to credit, but if the incidents were denied by pltf. no further evidence could be called to rebut pltf.'s denials, & the jury should have been told that while they were not bound to accept pltf.'s denials, those denials, though unaccepted, afforded no evidence that the incidents had taken place; (2) the cross-examination was not admissible to mitigate damages, & the jury ought to have been directed to this effect; (3) the jury should have been told that their intervention was premature, & they must hear the pltf.'s case to the end & be directed as to the issues they had to try; & (4) the trial having been in those respects unsatisfactory, there must be a new trial.

(5) Communications from the jury to the judge should be shown to the parties' counsel (*per SCRUTTON, L. J.*).

While the better practice is for communications from the jury to be shown to parties' counsel, the question whether they should be shown or not is one for the discretion of the judge (*per SANKEY, L. J.*).—*HOBBS v. TINLING, HOBBS v. NOTTINGHAM JOURNAL*, [1929] 2 K. B. 1; 98 L. J. K. B. 421; 141 L. T. 121; 45 T. L. R. 328; 73 Sol. Jo. 220, C. A.

327. *Add. Annotation* :—*Refd. Hobbs v. Tinling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.

## PART I.

6a. *Order granting—"Common" inadvertently inserted—Amendment of order.*—*Held* : the order should be amended by striking out the word "common".—*BRADSHAW v. B. C. RAPID TRANSIT*, [1927] 1 D. L. R. 599; 38 B. C. R. 64.—CAN.

## PART VII. SECT. 2.

72 iii. ————*]*—Accused, except in cases of trial for high treason or misprision of treason, has no right to inspect the jury panel.—*R. v. BAUM* (1927), 27 S. R. N. S. W. 401; 44 N. S. W. W. N. 136.—AUS.

6b. *Original panel inadequate—Power of judge to add to.*—Def. was arrested, indicted & tried & convicted for harbouring a quantity of dutiable goods, to wit, spirituous liquors unlawfully imported into Canada, of the value of over \$200, whereon the duties lawfully payable had not been paid, in violation of Customs Act, Dominion

Acts, 1907, c. 11. On the trial a number of jurors, previously summoned, were absent, & others were excused from serving & a new panel was summoned. The original panel was not discharged, but the names on both panels were thrown into one box, & the jury, impanelled for deft.'s trial, drawn from the names as so combined :—*Held* : the effect of the legislation Acts of 1919, c. 7, s. 41, was to give the trial judge authority to retain the panel summoned, & to increase the number by additions thereto, & the objection to the composition of the jury drawn for deft.'s trial failed.—*R. v. SHELLMAN*, [1928] 1 D. L. R. 637; *sub nom. R. v. SCHELLMAN*, 59 N. S. R. 535.—CAN.

PART VII. SECT. 5, SUB-SECT. 3.—C. (b) 1.

183 I. *Revsd.*, 34 S. C. R. 228.

PART VII. SECT. 5, SUB-SECT. 4.

6a. *Several actions tried together.*—

Five actions were brought by different pltf.s against two defts., & were by consent tried together before a judge & jury :—*Held* : the consent to try the actions together did not give a right to more than four peremptory challenges on each side.—*GAY CO., LTD. v. TRICK*, [1927] 1 D. L. R. 1091; 60 O. L. R. 8.—CAN.

## PART VII. SECT. 10, SUB-SECT. 4.

6d. *Agreement after further consideration for few minutes—No ground for setting verdict aside.*—*BARRY v. RUBENSTEIN* (N. B.), [1926] 1 D. L. R. 445.—CAN.

## PART VII. SECT. 10, SUB-SECT. 6.

6a. *Right to visit locus in quo privately—& communicate result to fellow-jurymen.*—Although a jurymen is entitled to apply to the subject before the jury the general knowledge which each man is supposed to have, he ought not to attempt to inform his mind as to the particular facts of a case from

421. *Add. Annotation* :—**Refd.** *Campbell v. Pollak*, [1927] A. C. 732.
- 423a. — **Jury finding verdict before all evidence given.**—*DE FREVILLE v. DILL*, No. 301a, ante.
- 423b. — **Jury informed that defendant insured.**—Where the established rule of practice, that in an accident case it should not be intimated to a jury that deft. is insured, has been violated, it is within the discretion of the judge to discharge the jury at the expense of the party whose advocate has violated the rule.—*GRINHAM v. DAVIES*, [1929] 2 K. B. 249; 98 L. J. K. B. 703; 139 L. T. 379; 44 T. L. R. 523; 72 Sol. Jo. 303, D. C.
443. *Add. Annotations* :—**Mentd.** *Broome v. Agar* (1928), 138 L. T. 698; *Lockhart v. Harrison* (1928), 139 L. T. 521.
472. *Add. Annotations* :—**Mentd.** *Aldridge v. Wright*, [1929] 2 K. B. 117; *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138.
475. *Add. Annotation* :—**Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.
476. *Add. Annotation* :—**Expld.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.
548. *Add. Annotation* :—**Mentd.** *Stumbles v. Whiteley* (1929), 46 T. L. R. 37.
- 571a. — — — — —.]—Where an action for damages, based on a breach of a statutory regulation made under Merchant Shipping Act, 1894 (c. 60), was tried by a judge with a jury, & several questions were left to the jury, which they answered :—**Held** : as the answers of the jury to the questions left to them were sufficient to determine the case, the judge was not entitled to ask them to reconsider their findings on the question of the effective cause of the accident, & the judge had thereby misdirected the jury.—*Dew v. UNITED BRITISH S.S. CO., LTD.* (1928), 98 L. J. K. B. 88; 139 L. T. 628; 17 Asp. M. L. C. 513, C. A.

outside sources. If he is personally acquainted with any material fact, he should submit to be sworn as to it :—**Held** : where a matter in dispute depended upon the condition of things existing at a certain locality, it was an improper & irregular proceeding for some of the jurymen to visit the locality privately, & a direction to the jury that they were entitled to take into consideration what might be told to them by any of their fellows as to what they had seen & observed for themselves was a wrong direction.—*WAY v. WAY* (1928), 28 S. L. N. S. W. 345; 45 N. S. W. W. N. 101.—**AUS.**

**PART VII. SECT. 10, SUB-SECT. 8.—**  
**B. (a).**

**sf. Discharge for misconduct.**—*How vacancy made good.*—Where a juror misconducts himself, he should be discharged, & either a new juror added, or the whole jury discharged & a fresh jury impanelled. Such juror may be taken from the persons present in the ct. room if there be none of the summoned jurors present.—*IREBATI MOHAN CHAKAVARTY v. EMPEROR* (1928), 1. L. R. 56 Cal. 150.—**IND.**

**PART VII. SECT. 10, SUB-SECT. 8.—**  
**B. (b).**

**q i.** — — — — —.]—The power given a trial judge by King's Bench Act, R. S. S., 1920 (c. 39), s. 47 (1), to dispense with a jury, although a jury has been claimed

by one of the parties, is one which should be exercised with judicial discretion, i.e., the judge must give some good reason for depriving the party of his right to a jury.—*BLOOMBERT v. DUNLOP* (Sask.), [1926] 4 D. L. R. 273; [1926] 2 W. W. R. 817.—**CAN.**

**q ii.** — — — — —.]—*Issue left to jury immaterial.*—In an action against a police officer for assault & battery, malicious prosecution & malicious arrest, the trial judge dispensed with the jury in the trial of the claim for assault & battery. He also ruled that in the trial of the claim for malicious prosecution it was his duty under Jud. Act, R. S. O. 1914, c. 56, s. 62, to decide all questions both of law & fact as to the existence of reasonable & probable cause; & he said that the jury would be called upon to try only the issues as to malice & damages. A jury was then called & sworn & the trial proceeded. The evidence being closed, & the jury having retired, the trial judge gave judgment, dismissing the claim for assault, & finding that there was reasonable & probable cause for the prosecution. He also held, on the facts, as a matter of law, that there was no foundation for the claim for malicious arrest. He, therefore, dismissed the whole action & discharged the jury :—**Held** : having regard to Jud. Act, R. S. O. 1927, c. 88, ss. 54-57, 63, the trial judge had a discretion to dispense with the jury, & his discretion was properly exercised.

OWENS v. MARTINDALE, [1928] 4 D. L. R. 932; 63 O. L. R. 87.—**CAN.**

**PART VII. SECT. 13, SUB-SECT. 1.**

**466 ii.** — — — — —.]—*MAYES CASE v. PRESCOTT* (1925), 52 N. B. R. 272.—**CAN.**

**PART VII. SECT. 13, SUB-SECT. 4.**

**551 i. Special matter.** *Statement of reasons.*—**Held** : the reasons could not be ignored.—*STUTTON v. SMITH*, [1927] 3 D. L. R. 1008; [1927] 2 W. W. R. 481; 38 B. C. R. 455.—**CAN.**

**PART VII. SECT. 15.**

**571 ii.** — — — — —.]—If an answer given by a jury to a question is not clear or sufficiently explanatory, it is a proper course for the trial judge to ask them to retire again & answer such supplementary questions as may be submitted to them for the purpose of further elucidation.—*PATTERSON v. SASKATCHEWAN CREAMERY CO., LTD.*, [1921] 3 W. W. R. 554; 62 D. L. R. 387; 14 Sask. L. R. 544.—**CAN.**

**571 iii.** — — — — —.]—Where a jury has given a general answer to a question & has been sent back to give a more definite answer & does answer more definitely, the last answer is its real answer & the one which must govern.—*BARLOW v. CANADIAN PACIFIC RY.*, [1926] 2 D. L. R. 956; [1926] 2 W. W. R. 11; 31 Can. Ry. Cas. 414, 35 Man. L. R. 517.—**CAN.**

## LAND IMPROVEMENT.

## Part III.—Under Settled Land Act, 1925.

72a. ———.]—*Re* SHERBORNE'S (LORD) SETTLED ESTATE, No. 79a, *post*.

79a. **Authorised improvements — Improvements executed before Settled Land Act, 1925 (c. 18).**—(1) A tenant for life of certain settled estates had expended on the settled property large sums of money for improvements, repairs & other works. Among the items of expenditure so incurred were certain electric light installations to the mansion house & the erection of batteries. These particular works had been carried out before the coming into force of above Act, & were therefore not "authorised improvements" under Settled Land Acts, 1882 to 1890, for which the ct. could have granted repayment to the tenant for life out of capital, although under the new Act of 1925 they would be "authorised improvements." On an application by the tenant for life to be recouped out of capital these sums so expended by him:—*Held*: notwithstanding the fact that these works were executed prior to above Act, there was, under the new Act, jurisdiction in the ct., if it thought fit, to order repayment of these sums to the tenant for life out of capital moneys; & consequently as these particular items were "authorised improv-

ments" under above Act, they could be repayable out of capital, notwithstanding the fact that they were incurred on works executed before Jan. 1. 1926. Having regard, however, to the fact that certain of the works had been carried out several years previously, there would have to be a rebate to allow for a diminished value.

(2) The tenant for life having further claimed that he should be repaid a proportion of the proceeds of sale of a part of the settled land, for tenant right valuation, on the ground that by his careful management before the sale he had enhanced its value:—*Held*: such a claim was really one to be repaid out of capital moneys, for an improvement not within Settled Land Acts, & the ct. had no jurisdiction to allow it.—*Re* SHERBORNE'S (LORD) SETTLED ESTATE, [1929] 1 Ch. 345; 98 L. J. Ch. 273; 141 L. T. 87.

79b. — **Electric lighting.**—*Re* SHERBORNE'S (LORD) SETTLED ESTATE, No. 79a, *ante*.

79c. ———.]—*Re* WELD-BLUNDELL ESTATE, MOWBRAY (LORD) *v.* WELD-BLUNDELL (1929), 73 Sol. Jo. 585.

88. *Add. Annotation*:—*Re* *Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662.

## Part IV.—Under Private Improvement Acts.

216a. **When effective.**—An improvement rent-charge imposed on land within the improvement area under London County Council (Improvements) Act, 1899, s. 61:—*Held*: not an effective charge on the land until after a resolution of the council approving the assessment, notwithstanding that the improvement itself had been completed at an earlier date; & if the land was contracted

to be sold free from incumbrances after the completion of the improvement but before the date of such resolution, the purchaser was not entitled to a conveyance of the land free from the improvement rentcharge.—*Re* FARRER & GILBERT'S CONTRACT, [1914] 1 Ch. 125; 83 L. J. Ch. 177; 110 L. T. 23; 58 Sol. Jo. 98, C. A.

## PART VI.

*sd.* *By locattee of Crown land—Basis of assessment.*—*HIGHLAND v. SHERRY* (1900), 32 O. R. 371.—**CAN.**



# LAND TAX.

12. *Add. Annotation :—*Refd. I. R. Comrs. v. Forth Conservancy Board, [1929] A. C. 213. | 116. *Add. Annotation :—*Refd. Parr v. A.-G., [1926] A. C. 239.

**SECT. 4, SUB-SECT. 4.** —JOWETT v. FEDERAL TAXATION COMR. (1926), 38 C. L. R. 325.—AUS. *Re LAND TAX ACTS, WILSON'S CASE.*  
*h i. — In ascertaining unimproved value—Land held under Crown leases.]* *h ii. — — — Licensed premises.]—* [1927] V. L. R. 399; 49 A. L. J. 54; [1927] Argus L. R. 328.—AUS.

## LANDLORD AND TENANT.

## Part I.—Relation of Landlord and Tenant.

1. *Add. Annotation*:—**Refd.** *Oakley v. Wilson*, [1927] 2 K. B. 279.
20. *Add. Annotation*:—**Mentd.** *Hart v. Riversdale Mill Co.*, [1928] 1 K. B. 176.
230. *Add. Annotation*:—**Apld.** *Weld v. Petre*, [1929] 1 Ch. 33.
243. *Add. Annotation*:—**Mentd.** *Anderson v. Equitable Life Assce. Soc. of United States* (1926), 134 L. T. 557.

## Part II.—Agreements for Lease.

296. *Add. Annotation*:—**Mentd.** *Newman v. Slade*, [1926] 2 K. B. 328.
- 330a. — — — — — **DOE d. HASTINGS v. WATERS** (1850) 16 L. T. O. S. 213.
362. *Add. Annotation*:—**As to** (1) **Refd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Française* (1926), 42 T. L. R. 735.
368. *Add. Annotation*:—**Refd.** *Keppel v. Wheeler*, [1927] 1 K. B. 577.
374. *Add. Annotation*:—**Mentd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Française* (1926), 42 T. L. R. 735.
- 396a. — — — — — **Letter purporting to enclose engrossment & engrossment.**—A prospective lessee having orally agreed to take a lease from a prospective lessor, a draft lease embodying the terms was approved by their respective solrs. By arrangement the engrossments of the lease & counterpart were then prepared by the lessee's solrs., who subsequently wrote to the lessor's solr. purporting to enclose the engrossment of the lease for his signature, & saying they had written to the lessee & expected to exchange parts shortly. By mistake the engrossment of the counterpart was enclosed to the lessor's solr., & the engrossment of the lease to the lessee, who

subsequently delivered it to the lessor's solr.'s messenger in exchange for the engrossment of the counterpart. Shortly after this the lessee, relying (*inter alia*) on Stat. Frauds, repudiated the oral contract:—**Held**: the lessee's solrs.' letter purporting to enclose the engrossment of the lease coupled with that engrossment, subsequently handed over by the lessee in person, constituted a sufficient memorandum of the oral contract.—**HORNER v. WALKER**, [1923] 2 Ch. 218; 92 L. J. Ch. 573; 129 L. T. 782.

463a. — — — — — **BOWERS v. CATOR** (1798), 4 Ves. 91 31 E. R. 47.

470a. — — — — — **Pltf. agreed to let certain premises to deft. for seven years, but no lease was ever granted. Deft. entered into possession, & subsequently, with pltf.'s consent, assigned his interest in the agreement & premises. Before the expiration of the term pltf. commenced an action against deft. for rent, the action being heard after the expiration of the seven years provided for by the agreement:—Held**: specific performance of the agreement could have been granted & the action was therefore maintainable.—**GILBEY v. COSSEY** (1912), 106 L. T. 607; 56 Sol. Jo. 363, D. C.

## PART I. SECT. 2, SUB-SECT. 2.—A.

29 i. *Definition*:—*Substitution of land-nd by tenant.*—Attornment is not a mere agreement in favour of a third party to pay rent, but has been defined as the act of the tenant in putting one person in the place of another as his landlord.—**JUGENDRA LAL SARKAR v. MOHESH CHANDRA SADIH** (1928), 1 L. R. 55 Cal. 1013.—**IND.**

## PART I. SECT. 2, SUB-SECT. 2.—B.

sa. *Under clause in agreement for sale.*—In deciding whether an attornment clause in an agreement for the sale of land created the relationship of landlord & tenant between the vendor & the purchaser (he. has to determine whether the parties introduced the clause *bona fide*, & this question must be determined on the circumstances of the particular case. Although the fact that the rental reserved is fluctuating is not usually of much point, yet it is a circumstance to be considered.—**BLOOMBAERT v. DUNLOP**, [1927] 3 D. L. R. 57; [1927] 1 W. W. R. 1014; 21 Sask. L. R. 424.—**CAN.**

## PART I. SECT. 3, SUB-SECT. 1.—A.

63 xxvi. — — — — — **VERTANNES v. ROBINSON** (1927), 1 L. R. 5 Kan. 427.—**IND.**

63 xxvii. — — — — — **MCDONALD v. ARBUCKLES** (1889), 22 N. S. R. 67.—**CAN.**

63 xxviii. — — — — — **BROCK v. BENNESS** (1898), 29 O. R. 468.—**CAN.**

63 xxix. — — — — — **In an action in ejectment by a landlord who put the tenant into possession, the tenant is estopped from denying the landlord's title at the point of time of the demise, & further cannot put forward in defence any adverse title to a portion of the demised premises acquired by him during the tenancy. The estoppel operates in the case of a tenant who remains in possession even after the termination of the tenancy by notice to quit.**—**MUJIBAR RAHMAN v. ISUB SCRATI** (1928), 1 L. R. 56 Cal. 15.—**IND.**

## PART I. SECT. 3, SUB-SECT. 1.—E.

1541. *Whether tenant estopped—While possession retained—After expiration of tenancy.*—In an action in ejectment by a landlord who put the tenant into possession, the tenant is estopped from denying the landlord's title at the point of time of the demise, & further cannot put forward in defence any adverse title to a portion of the demised premises acquired by him during the tenancy. The estoppel operates in the case of a tenant who remains in possession even after the termination of the tenancy by notice to quit.—**MUJIBAR RAHMAN v. ISUB SCRATI** (1928), 1 L. R. 56 Cal. 15.—**IND.**

## PART I. SECT. 3, SUB-SECT. 3.

sd. *Lease by life tenant to reversioner—Until death of lessor.*—A lease by a life tenant for a term certain to the reversioner, containing a covenant by the lessee to pay rent to the lessor, "her heirs & assigns," does not estop the lessee from showing that he has become owner on the lessor's death.—**THATCHER v. BOWMAN** (1889), 18 O. R. 265.—**CAN.**

## PART II. SECT. 4, SUB-SECT. 2.—C. (a) ii.

472 i. *Whether part performance—Entry & expenditure with acquiescence of lessor.*—Where there was a parol agreement between pltf. & deft. to the effect that pltf. would grant a permanent lease to deft. in respect of a piece of land, & where no lease was either executed or registered, but deft. was put into possession & erected structures thereon to pltf.'s knowledge, where it appeared that pltf. must have realised that deft. would not have constructed the same unless he was assured of the possession of a permanent right in the land, & that if the intention of pltf. was not to grant such a lease it might reasonably be expected that he would have objected to the construction of such a building:—**Held**: in a suit of ejectment by the lessor, deft., not having obtained a lease in conformity with Transfer of Property Act, s. 107, read

- 472a. ———.]—ANON. (1718), 2 Eq. Cas. Abr. 48; 22 E. R. 42, L. C.
499. *Add. Annotation*:—*Refd.* *Rye v. Purcell*, [1926] 1 K. B. 446.
501. *Add. Annotation*:—*Refd.* *Rye v. Purcell*, [1926] 1 K. B. 446.
- 503a. ———.]—ALLAN *v.* BOWER (1790), 3 Bro. C. C. 149; 29 E. R. 459, L. C.
- Annotations*:—*Distd.* *Brodie v. St. Paul* (1791), 1 Ves. 326. *Refd.* *Clayton v. A.-G.* (1834), 1 Coop. temp. Cott. 97.
547. *Add. Annotation*:—*Consd.* *Ladies' Hosiery & Underwear v. Parker* (1929), 46 T. L. R. 43.
600. *Add. Annotation*:—*Refd.* *Torbay Hotels v. Jenkins*, [1927] 2 Ch. 225.
637. *Add. Annotation*:—*Apld.* *Curtis Moffat, Ltd. v. Wheeler*, [1929] 2 Ch. 224.
639. *Add. Annotation*:—*As to* (2) *Apld.* *Curtis Moffat, Ltd. v. Wheeler*, [1929] 2 Ch. 224.
834. *Add. Annotation*:—*Refd.* *York Glass Co. v. Jubbs* (1925), 134 L. T. 36.
- 845a. ——— *Failure to perform condition precedent.*]  
—*FISCHER v. KAMALA NAICKER* (1860), 8 Moo. Ind. App. 170; 2 L. T. 94; 8 W. R. 655; 19 E. R. 495, P. C.
- Annotations*:—*Mentd.* *Ram Coonar Coondoo v. Ghunder Canto Mookerjee* (1876), 2 App. Cas. 186; *Re Cambrian Mining Co.* (1882), 48 L. T. 114; *Bradlaugh v. Newdigate* (1883), 11 Q. B. D. 1; *British Cash & Parcel Conveyors v. Lamson Store Service Co., Ltd.*, [1908] 1 K. B. 1006.
864. *Add. Annotation*:—*Refd.* *Re Gough* (1927), 71 Sol. Jo. 470.

## Part III.—Leases.

929. *Add. Annotation*:—*Mentd.* *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
981. *Add. Annotation*:—*Refd.* *Palmer v. Crone*, [1927] 1 K. B. 804.
- 1082a. ———.]—DUCK *v.* BRADYLL (1824), M'Cle. 217; 13 Price. 455; 147 E. R. 1017.
- Annotations*:—*Folld.* *Doe d. Kettle v. Lewis* (1830), 10 B. & C. 673. *Mentd.* *Darby v. Harris* (1841), 1 Q. B. 895; *Dyer v. Green* (1847), 1 Exch. 71; *Re Mackenzie, Ex p. Hertfordshire Sheriff*, [1899] 2 Q. B. 566.
- 1195a. ———.]—SUSSEX (COUNTRESS) *v.* WROTH (1582), Cro. Eliz. 5; 78 E. R. 272; *sub nom.* *SUSSEX (COUNTRESS) & WORTH'S CASE*, 4 Leon. 65.
- 1197a. ———.]—STOCOMB *v.* HAWKINS (1612), Yelv. 222; 80 E. R. 145; *sub nom.* *SHICOMB v. HAWKINS*, Cro. Jac. 318.
- Annotations*:—*Consd.* *Berry v. White* (1662), O. Bridg. 82. *Refd.* *Mun v. Baylies* (1673), Freem. K. B. 310; *Winter v. Loveday* (1697), 1 Com. 37.
- 1225a. ———.]—ANON. (1553), Bro. N. C. 95, pl. 437; 73 E. R. 895.
1258. *Add. Annotation*:—*Refd.* *Manchester Corp'n. v. Audenshaw U. C. & Denton U. C.*, [1928] Ch. 763.
1355. *Add. Annotation*:—*Refd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.
- 1372a. ——— *Destruction of premises—By fire.*]—  
Deft. demised to plffs. for three years a piece of land with a factory on it, & plffs. were to keep the inside of the factory in repair. The agreement said nothing as to the repair of the outside & as to insurance, but gave plffs. an option of purchase during the term. Deft. insured the factory against fire, & on the occurrence of a fire which almost completely destroyed it, he received compensation from the insurance co. Plffs. then gave notice of the exercise of their option of purchase & paid a deposit, but deft. declined to reinstate the walls & roof, & alleged that in exercising the option plffs. had to take the property as it was. In an action for a declaration that plffs. were not bound to proceed with the purchase, deft. counterclaimed for specific performance:—  
*Held*: since at the date of the exercise of the option plffs., to the knowledge of deft., thought that he was going to re-erect the factory, the parties were never *ad idem*, & plffs. were entitled to a return of their deposit, & the counterclaim for specific performance failed.—*LONDON HOLEPROOF HOSIERY CO., LTD. v. PADMORE* (1928), 44

1000 LAW UNION GUARDIANS, 10 L. L. 502.

1. L. L. 100, v. A.

resist ejectment only if the case could be brought within the range of one or other of those principles of equity which have been held to apply to this country.—*ARIFF v. JADU NATH MAJUMDAR* (1928), 1 L. R. 55 Calc. 1090.—IND.

### PART II. SECT. 8, SUB-SECT. 1.—C. (a).

*sf. Valuation of furniture.*—*WALKER v. KELLY* (1874), 24 C. P. 174.—CAN.

### PART II. SECT. 8, SUB-SECT. 1.—F. (p).

814 ii. ——— *Right of party to waive condition in his favour.*—*PARAMOUNT THEATRES, LTD. v. BRANDENBERGER*, [1928] 4 D. L. R. 573; 62 O. L. R. 579.—CAN.

### PART II. SECT. 8, SUB-SECT. 2.—A. (o).

*pi. — To set off money paid under agreement against damages.*—On the breach of a contract, forfeiture does not attach, in the absence of a stipulation

therefor, to money handed over, not as a deposit to bind the bargain, but merely as a part payment under the contract; but the party to whom the money was paid is entitled to have set off, as against the claim for the return thereof, whatever sum he may be entitled to as damages for the breach.—*ENG CHOW v. BALFOUR*, [1928] 3 D. L. R. 608; [1928] 2 W. W. R. 158; 22 Sask. L. R. 556.—CAN.

### PART III. SECT. 1, SUB-SECT. 6.

*sg. Unincorporated body—Effect of lease to.*—A lease cannot be made to an unincorporated body by name, & any attempt to do so is nugatory. The utmost effect that can be given to such an attempted lease is to construe it as a lease to the members of the body as the membership existed at the date of the agreement.—*HENDERSON v. TORONTO GENERAL TRUSTS CORPN.*, [1928] 3 D. L. R. 411; 62 O. L. R. 303.—CAN.

### PART III. SECT. 2, SUB-SECT. 1.

972 v. ———.]—*WILLIAMS MACHINE CO. OF WINNIPEG, LTD. v. WINNIPEG STORAGE, LTD. (Man.)*, [1926] 4 D. L. R. 1167; [1926] 3 W. W. R. 451; *revsd.*, [1928] 1 D. L. R. 12; [1927] 3 W. W. R. 665.

### PART III. SECT. 6.

*ni. ——— "Rights, liberties, privileges & appurtenances."*—*Held* to pass the right to advertise premises by means of a man standing with an advertisement board at the entrance to an arcade.—*HENRY, LTD. v. M'GLADE*, [1926] N. 144.—IR.

### PART III. SECT. 12, SUB-SECT. 1.—B. (a).

1373 i. *Presumption of exercise.*—*CAHUAC v. SCOTT, CAHUAC v. ERLE* (1872), 22 C. P. 551.—CAN.

PART III. SECT. 12, SUB-SECT. 1.—C. *g l. ——— "Balance to be arranged."*—An option given the lessee

## Part IV.—Underleases.

1469. *Add. Annotation*:—*Refd. Melzak v. Lilienfeld*, [1926] Ch. 480.

1470. *Add. Annotation*:—*As to (2) Refd. Melzak v. Lilienfeld*, [1926] Ch. 480.

1514. *Add. Citations*:—95 L. J. Ch. 305; 135 L. T. 145

1526a. — Underlessee of sub-term in mortgaged premises—Covenant for further assurance in mortgage—Underlessee entitled to conveyance of legal estate—*Law of Property Act, 1925 (c. 20), Sched. I., Part II., paras. 3, 6 (d).*—A. in 1926 had become entitled to a sub-term in certain mortgaged leasehold premises acquired by purchase by a predecessor in title from a mtgee. The original mtge. was made in 1848, & contained a covenant by the then mtgor. with the then mtgee. his exors. administrators & assigns (*inter alia*) for further assurance of the nominal reversion in the three outstanding days in the head lease, thereby mortgaged, if required. In the head lease were certain covenants by the lessee for repair of the premises. The freehold of the demised property ultimately became absolutely vested in pltf. for an estate in fee simple. A. had gone into possession of the mtged. premises, but relinquished such possession before the trial of the action. Pltf. alleged that there had been a breach of the covenant to

repair contained in the head lease & claimed (*inter alia*) damages against A. It appeared that the nominal reversion in the head lease had never been got in by any one, & A. denied that, as there was no privity of estate between him & pltf., he could be held liable under the repairing covenant contained in

reason of the covenant for further assurance contained in the mtge., was a person "entitled to require a legal estate to be conveyed to or otherwise vested in him" under *Law of Property Act, 1925 (c. 20), Sched. I., Part II., para. 3*, such legal estate, namely, the nominal reversion, vested in him by *Sched. II., Part II., para. 6 (d)*, & rendered him liable on the repairing covenants contained in the head lease:—*Held*: on the facts of the case, A. was liable by reason of the operation of *Sched. I., Part II., paras. 3 & 6 (d)*, as a person entitled to require a legal estate to be conveyed to or otherwise vested in him; & further, that he had not availed himself of the provisions of the *Sched.* to the *Law of Property (Amendment) Act, 1926 (c. 11)*, enabling persons to disclaim the vesting of any legal estate affected by onerous covenants.—*PEACHY v. YOUNG*, [1929] 1 Ch. 449; 98 L. J. Ch. 237; 140 L. T. 608.

## Part VI.—Licence.

1598. *Add. Annotations*:—*Mentd. Kursell v. Timber Operators & Contractors*, [1927] 1 K. B. 298; *Re Wait*, [1927] 1 Ch. 606; *First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922; *The Penelope*, [1928] P. 180; *May v. May*, [1929] 2 K. B. 386.

1643. *Add. Annotation*:—*Refd. L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.

1650. *Add. Annotation*:—*Refd. Chaplin v. Smith*, [1926] 1 K. B. 198.

1657. *Add. Annotation*:—*Refd. Johnson v. Clarke*, [1928] Ch. 847.

of a hotel to purchase it within a year for \$45,000; \$15,000 cash & "the balance to be arranged," held to be unenforceable because incomplete.—*McSOMLEY v. MURPHY*, [1928] 4 D. L. R. 790; [1928] 3 W. W. R. 589, 40 B. C. T. 403.—CAN.

### PART III. SECT. 13, SUB-SECT. 1.—A.

*sk. Premises no longer available for purposes contemplated.*] A fishery co. were the tenants of salmon fishings under a lease for nineteen fishing seasons. During the currency of the lease, the President of the An Council, acting under statutory powers, made bye-laws converting the greater part of the area occupied by the fishings into a danger zone for the purposes of aerial gunnery & bombing practice. The bye-laws provided that practice would take place within the zone four days a week throughout the year, & that, during practice, no person might enter the zone, or bring thereon any vehicle, animal, vessel, aircraft or thing, & penalties were imposed for contraventions of the bye-laws. The effect of a due observance of these bye-laws would be to render the fishings incapable of possession for the purposes of the lease, & although bombing &

firing practice had taken place only on a portion of the days reserved, the fishery co. had not attempted, since the bye-laws were promulgated, to exercise their right of fishing. In an action by the fishery co. against their landlord for declarator that they were entitled to abandon the lease:—*Held*: as the effect of the bye-laws was to cause total eviction from the fishings, the landlord could no longer maintain the pursuers in possession of the subjects of the lease, as he was bound to do, & accordingly, pursuers were entitled to abandon the lease.—*TAY SALMON CO. v. SPEEDIE*, [1929] S. C. (Cl. of Sess.) 593.—SCOT.

### PART III. SECT. 13, SUB-SECT. 2.

*sl. Terms introduced differing from terms of agreement—Lease executed under order for specific performance.*—Where a lease has been executed under an order of Ct. for the specific performance of an agreement, the party obtaining such lease is not estopped from proving that conditions & covenants have been introduced into it different from those which were contained in the original agreement.—*FREEMAN v. KENNY* (1817). 1 Nfld.

1s. R. 3.—NFLD.

### PART IV. SECT. 3, SUB-SECT. 1.

1435 iii. —.—[—*BEJOY LAL SEAL v. BENARASIDAS KHANDELWAL* (1927), 1 L. R. 54 Calc. 948.—IND.

### PART IV. SECT. 5, SUB-SECT. 2.

1471 i. *By what covenants underlessee bound—Usual covenants—Underlease of licensed premises.*—*McGARRITY v. CONDY* (1927), 27 S. R. N. S. W. 217 44 N. S. W. N. 61.—AUS.

### PART VI. SECT. 2, SUB-SECT. 2.

r i. —.—[—*NEW BRUNSWICK & NOVA SCOTIA LAND CO. v. KIRK* (1849), 6 N. B. R. (1 All.) 443.—CAN.

r ii. —.—[—*DUCONDU v. DUPUY* (1883), 9 App. Cas. 150; 53 L. J. P. C. 12; 50 L. T. 129, P. C.—CAN.

a i. —.—[—*JUTTER v. ORDE* (B. C.) (1918), 59 S. C. R. 658; 49 D. L. R. 691.—CAN.

a ii. —.—[—*ROYAL BANK OF CANADA v. I. C.* (1921), 62 S. C. R. 313; 68 D. L. R. 23.—CAN.

a iii. —.—[—*O'BRIEN v. R.*, [1927] 2 D. L. R. 1139.—CAN.

i. *Agreement to draw up adverti.*

1682. *Add. Annotation*:—**Refd.** *Messenger v. British Broadcasting Co.*, (1927), 97 L. J. K. B. 251.
1690. *Add. Annotation*:—**Mentd.** *Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.
1694. *Add. Annotation*:—**Consd.** *O'Cedar v. Slough Trading Co.*, [1927] 2 K. B. 123.
1705. *Add. Annotation*:—**Refd.** *Johnson v. Clarke*, [1928] Ch. 847.
1711. *Add. Annotation*:—**Refd.** *Salisbury House Estate v. Fry* (1929), 98 L. J. K. B. 722.
1728. *Add. Citation*:—2 C. L. R. 1449.
- 1758a. ———.]—**HUNT v. COLSON** (1833), 3 Moo. & S. 790.

## Part VII.—Premises Included in the Demise.

- 1783a. ——— **Garden not included.**]—**ANON.** (1561), Moore, K. B. 24, pl. 82; Dal. 29, pl. 5; 72 E. R. 415.
- 1810a. ——— **Liberty of passage for pipes—Extent of right.**]—**Deft. co.** were the lessees from a firm of architects for a determinable term of twenty-one years from June 24, 1923, & also occupiers of the first floor of a block of buildings known as I. Court under a lease which contained a reservation "excepting & reserving unto the lessors & the person or persons for the time being occupying the other parts of the building the passage of gas water & other pipes & electric wires through the demised premises & the free running of water & soil in & through the pipes connected with

the demised premises." In May, 1924, **ptff.** took a lease of the second floor of I. Court from the firm, subject to a similar reservation. In exercise of the right reserved to the lessors & persons occupying other parts of the premises **ptff.** conducted pipes from her premises through **deft. co.'s** part of the premises. **Deft. co.**, after the operations had proceeded for some time, alleged that great inconvenience would be caused to them, & cut the pipes:—**Held**: the reservation gave no right to the lessors or **ptff.** to introduce any new pipes or wires into the premises.—**TAYLOR v. BRITISH LEGAL LIFE ASSURANCE Co.** (1925), 94 L. J. Ch. 284; 133 L. T. 453; 23 L. G. R. 585, C. A.

## Part VIII.—Nature, Creation, and Duration of Tenancies.

1848. *Add. Annotation*:—**As to (2)** **Refd.** *Lowther v. Clifford*, [1927] 1 K. B. 130.
1967. *Add. Annotation*:—**Mentd.** *Lowe v. Bentley* (1928), 44 T. L. R. 388.
1968. *Add. Annotation*:—**Refd.** *Anchor Trust Co. v. Bell*, [1926] Ch. 805.
- 1975a. **Duty of tenant from year to year—To use premises in tenantlike manner.**]—A tenant from year to year is under an implied obligation to use the demised premises in a tenantlike manner & to yield them up so used at the end of the tenancy. The obligation continues as long as he continues tenant. If he alters the character of the premises, he commits a breach of the obligation, & is liable in damages for the injury to the reversion.—**MARSDEN v. EDWARD HEYES, LTD.**, [1927] 2 K. B. 1; 96 L. J. K. B. 410; 136 L. T. 593, C. A.
- 1978a. ——— **Option to take lease "for any term suitable to" occupier.**]—Where premises had been for some years in the occupation of R., who produced a letter addressed to him in 1915 & signed by the landlord, purporting to give R. an indefinite option of purchase, & alternatively an option to take a lease of the property for any term suitable to R., & an undertaking that so long as R. remained sole tenant the rent agreed on should not be increased:—**Held**: on the true construction of the agreement R. was merely a tenant from year to year.—**JOHNSON v. CLARKE**, [1928] Ch. 847; 97 L. J. Ch. 337; 139 L. T. 552; 72 Sol. Jo. 556.
2064. *Add. Annotation*:—**Mentd.** *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1.
2078. *Add. Annotation*:—**Refd.** *Lowther v. Clifford*, [1927] 1 K. B. 130.
2079. *Add. Annotation*:—**Refd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
2080. *Add. Annotation*:—**Refd.** *Lowther v. Clifford*, [1927] 1 K. B. 130.
2090. *Add. Annotation*:—**Refd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
2097. *Add. Citations*:—[1927] 1 K. B. 130; 90 J. P. 113; 24 L. G. R. 231.

*in movable frames on spaces in post offices.*—**Held**: not a lease, but a licence to use the spaces.—**U. K. ADVERTISING Co. v. GLASGOW BAG-WASH LAUNDRY**, [1926] S. C. 303.—**SCOT.**

### PART VI. SECT. 4.

1665 ii. ———.]—**MACLAREN Co. v. ELEC. REDUCTION Co. (Can.)**, [1926] 4 D. L. R. 593.—**CAN.**

### PART VI. SECT. 5, SUB-SECT. 1.

1669 iv. ———.]—**FILDER v. BANNISTER** (1860), 8 Gr. 257.—**CAN.**

### PART VII. SECT. 1, SUB-SECT. 2.—B.

1773 i. *What is appurtenant to house or message—Not space between shop-front & street.*—**REID v. MIMICO**, [1927] 1 D. L. R. 235; 59 O. L. R. 579.—**CAN.**

**PART VIII. SECT. 4, SUB-SECT. 1.—D.**  
1855 iii. ———.]—**DOE d. PURDY v. PETERS** (1838), 2 N. B. R. (Ber.) 530.—**CAN.**

### PART VIII. SECT. 4, SUB-SECT. 2.—C. (a) 1.

1884 vii. ———.]—A. having given to B. his bond in £2,500, conditioned, among other things, that C. & D. should reside on a certain lot of land so long as they conducted themselves in a manner agreeable to A.:—**Held**: no notice or demand was necessary before bringing ejectment.—**TISDALE v. TISDALE** (1860), 10 C. P. 106.—**CAN.**

### PART VIII. SECT. 5, SUB-SECT. 1.

1946 i. ——— *Purchaser under agreement for sale at price payable by instal-*

*ments—After forfeiture for non-payment.*—**PRINCE v. MOORE** (1861), 14 C. P. 349.—**CAN.**

### PART VIII. SECT. 5, SUB-SECT. 2.

sk. *Action for damages—Against landlord—Removal of roof by landlord.*—**Held**: damages not recoverable.—**HASTINGS v. LEONIDAS**, [1927] S. R. Q. 389; 21 Q. J. P. 156.—**AUS.**

### PART VIII. SECT. 6, SUB-SECT. 2.—B. (b).

2034 x. ———.]—**HAMBURG v. CAPE BRETON ELEC. Co.**, [1926] 4 D. L. R. 683; 58 N. S. R. 341.—**CAN.**

2034 xi. ———.]—**STURDEE v. MERHITT** (1848), 5. N. B. R. (3 Kerr.) 641.—**CAN.**

*Add. Annotation:—*Refd. *Mansfield v. Robinson*, [1928] 2 K. B. 353.

2101. *Add. Annotation:—*Refd. *Lowther v. Clifford*, [1927] 1 K. B. 130.

2115a. — — — — — *Tenant holding over—After termina-*

*tion of term of years—At rent payable weekly.]*

*—LADIES' HOSIERY & UNDERWEAR, LTD. v. PARKER* (1929), 46 T. L. R. 43.

2150a. *Demise to two & their children—Whether after-born children entitled.*—*STEVENS v. LAWTON* (1588), Cro. Eliz. 121; 78 E. R. 379.

## Part IX.—Renewal of Tenancies.

2182. *Add. Annotation:—*Mentd. *Public Trustee v. Elder*, [1926] Ch. 776.

2243. Before this case, for "*See, now, Law of Property Act, 1925 (c. 20), s. 145,*" read "*See, now, Law of Property Act, 1922 (c. 16), s. 145.*"

2263. *Add. Annotation:—*Refd. *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

2282a. ———.]—*STONE v. THEED* (1787), 2 Bro. C. C. 243; 29 E. R. 135, L. C.

*Annotations:—*Consd. *White v. White* (1804), 9 Ves. 551. *Expld. Allan v. Backhouse* (1813), 2 Ves. & B. 65. Consd. *Shaftsbury Earl v. Marlborough Duke* (1833), 2 My. & K. 111. *Refd. Bradford v. Brownjohn* (1868), 37 L. J. Ch. 198.

2282b. ———.]—*KEMPTON v. PACKMAN* (1790), cited in 7 Ves. at p. 176; 32 E. R. 72.

2286a. — — — — —.]—*KEIR v. ROBINS* (1838), 2 Jur. 773.

2287a. — — — — —.]—*GREENWOOD v. EVANS* (1841), 4 Beav. 44; 49 E. R. 254.

*Annotations:—*Apld. *Jones v. Jones* (1846), 5 Hare, 440. *Expld. Ludleston v. Whelpdale* (1852), 9 Hare, 775. *Refd. Hayward v. Pile* (1870), 22 L. T. 893; *Bute (Marquis) v. Ryder* (1884), 53 L. J. Ch. 1090.

### SECT. 5.—TENANCIES OF BUSINESS PREMISES.

*See* Landlord & Tenant Act, 1927 (c. 36).

2306a. *Application for new lease—Time for—Extension of time Jurisdiction of county court.*—Under the rules of procedure made under Landlord & Tenant Act, 1927 (c. 36), a county court judge has no jurisdiction to grant an extension of time to a tenant who desires to make application to the court for a new lease at a time later than the time prescribed by sect. 5 (1) of the Act.—

*DONEGAL TWEED CO., LTD. v. STEPHENSON* (1929), 98 L. J. K. B. 657; 141 L. T. 262; 45 T. L. R. 503; 73 Sol. Jo. 367; 93 J. P. Jo. 380, D. C.

2306b. ——— *Service of notice before Act in force—Effect of.*—A tenant whose tenancy expired on Mar. 25, 1929, sent on Mar. 23, 1928, a notice in the prescribed manner by registered post to his landlords requiring them under sect. 5 of above Act, which Act came into force on Mar. 25, 1928, to grant him a new lease of his premises in lieu of claiming compensation under sect. 4 of the Act. In the county ct. the judge took the objection that the notice having been served before the Act was in force, he had no jurisdiction. That decision having been affirmed by the Div. Ct., pltf. appealed:—*Held*: the landlord having in his possession on the day when the Act came into force a notice containing all the requisites for a proper claim, & that day being a day more than a year before the termination of the tenancy, the county ct. judge had jurisdiction to hear the claim.—*DOBBIN v. OGDEN* (1929), 98 L. J. K. B. 321; 141 L. T. 51; 45 T. L. R. 349; 73 Sol. Jo. 190, C. A.

2306c. *Grant of new lease—What included—Fishing rights.*—Where a hotel is let with fishing rights, & where on the termination of the tenancy the grant of a new tenancy is ordered by the tribunal under above Act, the tenant is entitled to have the fishing rights included in the new lease.—*STUMBLIES v. WHITLEY* (1929), 46 T. L. R. 37; 73 Sol. Jo. 782, C. A.

PART VIII. SECT. 6, SUB-SECT. 5.—A. sm. *Agreement to purchase—Agreement not carried out.*—*Held*: the tenancy was not determined.—*CROSKILL v. WORTMAN* (1863), 10 N. B. R. (5 All.) 648.—CAN.

PART VIII. SECT. 9, SUB-SECT. 3. sn. *Sub-lease for life & years.*—*Held*: the term of years was reversionary & not concurrent, & began to run when the life died.—*ADAMS v. M'GOLDRICK*, [1927] N. I. 127.—IR.

PART IX. SECT. 2, SUB-SECT. 1.—B. 2159 v. ———.]—A covenant to renew runs with the land, & can be specifically enforced by the assignee of a portion of the holding.—*SECRETARY OF STATE FOR INDIA IN COUNCIL v. VOLKART BROTHERS* (1926), 1 L. R. 50 Mad. 595.—IND.

PART IX. SECT. 2, SUB-SECT. 3. n i. ———.]—Where a renewal clause

in a lease confers on the lessee the right to obtain from the lessor on the expiry of the old term, but not until then, the grant of a new lease in present in continuation of the old, the lessor cannot, during the currency of the lease, though himself presently willing to grant a new lease, compel the lessee to accept it, even though the latter may have given notice of his intention to exercise his right of renewal.—*KENNEDY v. BERRYMAN*, [1925] N. Z. L. R. 178.—N.Z.

PART IX. SECT. 2, SUB-SECT. 5. 2181 v. ———.]—*SECRETARY OF STATE FOR INDIA IN COUNCIL v. VOLKART BROTHERS*, No. 2159 v. ante.—IND.

2184 i. *Representative of lessee—Executor.*—*NUGENT v. MOLELLAN*, [1927] 4 D. L. R. 845.—CAN.

p i. ———.]—*Not after transfer of leasehold interest to others.*—*JOGESH CHANDRA ROY v. ANNADA CHARAN CHAUDHURY* (1926), 1 L. R. 53 Cal. 590.—IND.

### PART IX. SECT. 2, SUB-SECT. 6.

sp. *Renewal by former partner.*—*Held*: the lease was held in trust for the partnership.—*PONG v. QUONG*, [1927] 3 D. L. R. 128; [1927] S. C. R. 271.—CAN.

### PART IX. SECT. 2, SUB-SECT. 9.—A.

2200 v. ———.]—*Agreement indefinite.*—*GEARY v. CLIFTON CO.*, [1928] 3 D. L. R. 64; 62 O. L. R. 257.—CAN.

r i. ———.]—A lease of a house & consulting-rooms contained a covenant for renewal & an option to purchase, under which the house was purchased:—*Held*: the covenant for renewal only applied to the entirety of the premises, & not to the consulting-rooms alone.—*MORRIS v. DUNSTONE*, [1925] S. A. S. R. 340.—AUS.

r ii. ———.]—*SECRETARY OF STATE FOR INDIA IN COUNCIL v. VOLKART BROTHERS* (1928), L. R. 55 Ind. App. 423.—IND.

## Part X.—Particular Properties.

- 2331.** *Add. Annotation:—Refd.* Bernard v. Williams (1928), 139 L. T. 22.
- 2361.** *Add. Annotation:—Refd.* A.-G. v. Leeds Corp., [1929] 2 Ch. 291.
- 2371.** *Add. Annotation:—As to (1) Refd.* O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
- 2375.** *Add. Annotations:—Apld.* Noble v. Harrison, [1926] 2 K. B. 332. *Refd.* Pontardawe Rural District Council v. Moore-Gwyn, [1929] 1 Ch. 656.
- 2381.** *Add. Annotation:—Refd.* Coleshill v. Manchester Corp., [1928] 1 K. B. 776.
- 2387.** *Add. Annotation:—Refd.* Coleshill v. Manchester Corp., [1928] 1 K. B. 776.
- 2390.** *Add. Annotation:—Refd.* Booth v. Thomas (1926), 95 L. J. Ch. 100.
- 2433.** *Add. Citation:—*134 L. T. 319.

## Part XI.—Covenants.

- 2573.** *Add. Annotation: Refd.* O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
- 2641.** *Add. Annotation:—As to (2) Follid.* Booth v. Thomas, [1926] Ch. 397.
- 2651.** *Add. Annotation:—As to (1) Consd.* Booth v. Thomas, [1926] Ch. 397.
- 2663.** *Add. Annotation:—Generally, Refd.* O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
- 2666.** *Add. Annotation:—Mentd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
- 2696.** *Add. Annotation:—Generally, Refd.* Metcalfe v. Boyce, [1927] 1 K. B. 758.
- 2697.** *Add. Annotations:—As to (2) Apld.* Booth v. Thomas, [1926] 2 Ch. 397. *As to (3) Refd.* Booth v. Thomas, [1926] Ch. 397.
- 2703.** *Add. Annotation:—Refd.* O'Cedar v. Trading Co., [1927] 2 K. B. 123.
- 2707.** *Add. Annotation: Refd.* O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
- 2719.** *Add. Annotation:—Apld.* Booth v. Thomas, [1926] Ch. 397.
- 2727a.** *Suit in equity.*—HUNT v. DANVERS (1680), T. Raym. 370; 83 E. R. 193.
- Annotations:—Refd.* Dennett v. Atherton (1872), L. R. 7 Q. B. 316; Tebb v. Cave (1900), 82 L. T. 11.
- 2741.** *Add. Annotations: Refd.* O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123; Aldridge v. Wright, [1929] 2 K. B. 117; Vanderpant v. Mayfair Hotel Co. (1929), 27 L. G. R. 752.
- 2760.** *Add. Annotation:—Refd.* Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

**PART X. SECT. 2, SUB-SECT. 3.—A.**  
*st. Land leased in lots by reference to plan.—Lessor not entitled to depart from plan.*—BURNS v. DILWORTH TRUST BOARD, [1925] N. Z. L. R. 488.—N.Z.

**PART X. SECT. 5, SUB-SECT. 1.**  
*sw. Common court.—Repair.—Extent of obligation.*—The wife of the tenant of a house in a tenement brought an action against the proprietors for damages in respect of injuries, which she alleged she had sustained in consequence of a fall caused by her foot catching in a depression in the pavement of a common court at the back of the tenement. Pursuer averred that the depression had been there, & the condition of the pavement had been defective & dangerous, for some years, & that the defective state of the pavement was open & obvious. She did not aver that she was unaware of the defect, or that she had ever complained of it to defenders, nor did she deny defenders' averment that she had lived in the tenement for years.—*Held:* pursuer's averments were not relevant to infer liability against defenders.—YOUNG v. CAMPBELL, [1924] S. C. 157.—SCOT.

**PART X. SECT. 5, SUB-SECT. 2.**  
**2380 viii.** ———.—*WATT v. ADAMS BROTHERS HARNESSE MANUFACTURING CO. (Alta.),* [1928] 1 D. L. R. 59; [1927] 3 W. W. R. 580.—CAN.

**PART X. SECT. 5, SUB-SECT. 4.**  
**2395 iv.** ———.—*CONNOR v. NELSON, MOATE & Co.,* [1925] N. Z. L. R. 123.—N.Z.

**PART X. SECT. 7, SUB-SECT. 3.—B. (a).**  
**1 i.** ———.—*Other trade carried on—*

*Consequent refusal of justices to renew.*—*Held:* as the tenant had brought about the refusal of the renewal of the licence by her own act, the lessor was entitled to recover possession of the premises & damages for breaches of covenants.—MAGUIRE v. DAY, [1926] N. 180.—IR.

**1 ii.** ———.—*Proposed transfer of license to other premises.—Leaving demised premises unlicensed.*—Pltfs. were the owners of certain premises to which a seven-day license was attached, & deft. was their lessee & the holder of the license. The lease contained a covenant by the lessee not to do, or suffer to be done, on the premises any act whereby the license might be forfeited or the renewal thereof withheld, & also a covenant that he would insure the license against forfeiture in the joint names of the lessors & the lessee in the sum of £500. The lessee further covenanted to deliver up the premises on the expiration of the lease in all respects in such condition as should be consistent with the due performance & observance of the said covenants. Defl., who was also the owner of other premises, situate in the same licensing area, & to which a six-day license was attached, served notice to have the seven-day license transferred to the premises to which the six-day license was attached.—*Held:* as the effect of the transfer would be that pltfs.' premises, to which the seven-day license was attached, would, for the purposes of Licensing (Ir.) Act, 1902, be statutorily deemed never to have been licensed, so that when the lease expired pltfs. would get back premises to which no license was attached, they were entitled, in view of the covenants in the lease, to an injunction to restrain deft. from exercising the right of transfer conferred on him by Intoxicating Liquor Act, 1927, s. 11 (1).—HEATHCOTE v. MAGUIRE,

[1929] I. R. 170.—IR.

### PART X. SECT. 14.

*sy. Lease of warehouse space.*—A lessee of warehouse space sued his lessor for damages caused by the freezing & bursting of a standpipe in the warehouse. There was no provision in the lease as to heating.—*Held:* the landlord was under no duty to prevent the standpipe from freezing.—SCYTHES v. GIBSON, LTD., [1927] 2 D. L. R. 831; S. C. R. 352.—CAN.

### PART XI. SECT. 5, SUB-SECT. 4.—A. (b) ii.

**2695 iii.** ———.—*Institution of action to enforce right of re-entry.*—*Held:* the institution by a lessor of legal proceedings against a lessee to enforce the lessor's alleged right to re-enter under the lease was not a breach of the lessor's covenant for quiet enjoyment, & did not give the lessee a right to equitable relief.—DAVID JONES, LTD. v. LEVENTHAL (1927), 40 C. L. R. 357; [1928] ARCTUS L. R. 49.—AUS.

### PART XI. SECT. 5, SUB-SECT. 4.—A. (b) vii.

**2720 iii.** ———.—*Failure to comply with order as to fire appliances.—Necessitating the closing of portion of premises.*—MCINTYRE v. THOMPSON, [1928] 1 W. W. R. 907.—CAN.

### PART XI. SECT. 5, SUB-SECT. 4.—A. (b) viii.

*ss. Eviction for breach of covenant.—After inadequate notice of breach.*—GORDON v. WILHELM (Sask.), [1926] 4 D. L. R. 1012; [1926] 3 W. W. R. 641.—CAN.

**PART XI. SECT. 5, SUB-SECT. 4.—D.**  
**2756 i.** *Varied.* [1926] 4 D. L. R. 527; [1926] 3 W. W. R. 11.

2776. After this case add "*See, now, Law of Property Act, 1925 (c. 20), s. 79.*"

2783. After this case add "*See, now, Law of Property Act, 1925 (c. 20), s. 79.*"

2792a. ———.]—By a lease dated July 21, 1926, *pltf.* demised to *deft.* certain premises at an annual rent of £1,100. The premises were demised to *deft.* in consideration of the sum of £1,000, of which the sum of £200 was paid on the execution of the lease, & the remainder was to be paid by instalments. The lease provided that, in the event of the term thereby granted being determined by re-entry, all the premium remaining unpaid at the date of such re-entry should become immediately payable. The lease gave the lessee an option to purchase the premises at any time during the first seven years of the term, at the price of £13,000, less the whole or such part of the premium of £1,000 as should have been paid. Before granting the lease to *deft.*, *pltf.* had mortgaged the demised premises, & on Oct. 12, 1926, the *mtgee.*, acting under a power contained in the *mtge.*, sold the premises to *deft.* for £8,350. The conveyance of Oct. 12, 1926,

to *deft.* was silent with regard to the premium reserved by the lease of July 21, 1926. *Pltf.* claimed to recover from *deft.* £800, being the balance of the premium of £1,000 reserved by the lease. *Deft.* contended that on the making of the conveyance of Oct. 12, 1926, all his obligations under the lease were finally determined. He also relied on Law of Property Act, 1925 (c. 20), s. 141:—*Held*: *deft.*'s liability to pay the premium was not discharged by his purchase of the demised premises on Oct. 12, 1926. The premium was to be paid for the granting of the lease & had to be paid if the lease was granted irrespectively of what happened to the lease afterwards & of the fact that the lessee purchased the reversion. The reservation of the premium was not a grant out of the subject-matter, but was a separate personal covenant to pay the premium because the lease was being granted. Law of Property Act, 1925 (c. 20), s. 141, did not apply. *Pltf.* was therefore entitled to recover.—*HILL v. BOOTH* (1929), 46 T. L. R. 50; 73 Sol. Jo. 782, C. A.

2802. *Add. Annotation*:—*Mentd. Busby v. Avghe-rino*. [1927] 2 Ch. 33.

## Part XII.—Restrictions on Use of Premises.

2872. *Add. Annotation*:—*Consd. Melzak v. Lilienfeld*, [1926] Ch. 480.

2909. *Add. Citations*:—95 L. J. Ch. 52; 135 L. T. 91.

2913a. ——— *Part of premises sublet*.]—In 1906 there was granted to K., as lessee a dwelling-house & premises for a term of ninety-nine years at a ground rent of £8 a year, & the lessee covenanted with the lessors that he would not, without the lessors' previous licence in writing, use the demised house, or any part thereof, "for any purpose whatsoever other than for the purpose of a private dwelling-house, wherein no business of any kind is carried on." There was a further covenant by the lessee that he would not do or suffer to be done in or on the demised premises anything which might, in the judgment of the lessors, be or grow to the injury or annoyance of the lessors or their tenants, or the occupiers of adjoining premises. In 1914 the lessee, without the knowledge of or licence from the lessors, sublet three rooms of the first floor of the demised house to a subtenant, whose tenancy expired in June, 1926. On July 19 the lessee, without any licence from the lessors, sublet the same three rooms to P. as a subtenant at a rent of £1 a week. In an action by the lessors against K. & P., & the *mtgees.* of K., claiming possession of the house as against all *defts.*, on the ground that the lease had been forfeited by reason of the breaches of the two covenants:—*Held*: (1) there had been a forfeiture of the lease by breaches of both the restrictive covenants, & the words in the first covenant, "wherein no business of any

kind is carried on," must be construed as adding to the stringency of the covenant that the house should be used as a private dwelling-house; (2) Rent Restriction Acts afforded no defence to the action, as K. was in actual possession of the whole of the dwelling-house in the interval between the two tenancies, & 1923 Act, s. 2 (1), came into operation, & the premises had become decontrolled.—*BARTON v. KEEBLE*, [1928] Ch. 517; 97 L. J. Ch. 215; 139 L. T. 136.

2922. *Add. Annotation*:—*Refd. Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689.

2929. *Add. Annotations*:—*Refd. Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689; *Frost v. Caslon*, *Frost v. Wilkins*, [1929] 2 K. B. 138.

2943a. *Covenant not to carry on trade of alehouse, beerhouse or tavern keeper or licensed victualler—Carrying on of restaurant*.]—A covenant in a lease that the trades or businesses of alehouse keeper, beerhouse keeper, tavern keeper, or licensed victualler should not be carried on on the demised premises, is not broken by the carrying on of a restaurant with a wine & beer on-licence subject to the condition that alcoholic liquor should only be served with meals.—*LORDEN v. BROOKE-HITCHING*, [1927] 2 K. B. 237; 96 L. J. K. B. 400; 137 L. T. 60; 91 J. P. 81; 43 T. L. R. 268; 71 Sol. Jo. 332.

2945. *Add. Annotation*:—*Refd. Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.

2952. *Add. Annotation*:—*Refd. Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.

2953. *Add. Annotation*:—*Refd. Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.

### PART XII. SECT. 3, SUB-SECT. 4.— B. (a).

#### 1. ——— *Tea & refreshment rooms*—

*Letting premises for use as tea-rooms only*.]—*Held*: a breach of covenant, & the person injured by the breach of covenant was entitled to an interdict

restraining such breach.—*SABEROLAY v. WOOLFSON*, [1925] App. D. 38.—**S. AF.**



2965. *Add. Annotation* :—**Mentd.** *Haskell v. Marlow*, [1928] 2 K. B. 45.
- 2981a. — **Subletting part of premises.**—*BARTON v. KEEBLE*, No. 2913a, *ante*.
2994. *Add. Citations* :—95 L. J. Ch. 1; 134 L. T. 56.
2997. *Add. Annotation* :—**Refd.** *Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.
2998. *Add. Annotation* :—**Refd.** *Ward v. Paterson*, [1929] 2 Ch. 396.
3002. *Add. Annotation* :—**Refd.** *Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.
3007. *Add. Annotation* :—**Refd.** *Shaw v. Public Trustee* (1929), 141 L. T. 465.
- 3026a. **Not to allow placards, posters or advertisements other than plates or other similar announcements—Illuminated sign.**—*Held* : a breach of the covenant.—*GIFFORD v. DENT* (1926), 71 Sol. Jo. 83.
3027. **In second catchword for “grantor” read “grantee.”**
3033. *Add. Annotation* :—**Refd.** *Richardson v. Moncrieffe* (1926), 43 T. L. R. 32.
- 3035a. — **Obligation of lessor as to adjacent premises.**—*O’CEDAR, LTD. v. SLOUGH TRADING CO.*, No. 5070a, *post*.
3067. *Add. Citations* :—[1926] Ch. 620; 95 L. J. Ch. 445; 135 L. T. 107.

## Part XIII.—Fitness of Premises.

3157. *Add. Annotation* :—**Consd.** *Haskell v. Marlow*, [1928] 2 K. B. 45.
3159. *Add. Annotation* :—**Refd.** *Fisher v. Walters* (1920), 90 J. P. 195.
3160. *Add. Citations* :—90 J. P. 195; 24 L. G. R. 327.
- 3160a. — — — — —.]—The tenant of an industrial dwelling-house, which, as regards rent, came within Housing Act, 1925 (c. 14), & Increase of Rent & Mtge. Interest (Restrictions) Act, 1920 (c. 17), & the rent of which had been increased under the latter Act, sought to recover from his landlords, deft. corp., his medical expenses & damages for loss of work incurred by reason of an accident suffered by him when, in opening one of the windows of the house, as soon as he had unlatched the top sash it fell owing to the breaking of the sash cord & severely crushed his hands. He based his claim on the alleged failure of the landlords to perform their statutory obligations under Housing Act, 1925, to keep the house “in all respects

reasonably fit for human habitation” &, alternatively, under Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, to keep the house in “good & tenantable repair” :—*Held* : (1) whatever was the effect of the above mentioned Acts upon a landlord’s responsibility for the condition or state of repair of houses coming within the scope of those Acts, upon which, as applied to the facts, the ct. was not unanimous, it was a condition precedent to the liability of the landlord that notice of latent, as well as of patent, defects should be given to him by the tenant, whether or not the landlord had a right of access to inspect the state of repair of the house, & the absence of such notice was fatal to pltf.’s claim. (2) Observations upon the meaning of the words “in all respects reasonably fit for human habitation” in Housing Act, 1925, s. 1.—*MORGAN v. LIVERPOOL CORPN.*, [1927] 2 K. B. 131; 96 L. J. K. B. 234; 136 L. T. 622; 91 J. P. 26; 43 T. L. R. 146; 71 Sol. Jo. 35; 25 L. G. R. 79, C. A.

### PART XII. SECT. 3, SUB-SECT. 7.—A.

2998 i. *Not to let for particular trade.—What amounts to breach.*—Where premises were let to a confectioner, & the landlord covenanted not to let any shop in the same block of buildings for a similar purpose, but subsequently let adjoining shops to a grocer & a greengrocer & fruiterer :—*Held* : there had been a breach of covenant by the landlord.—*SUTHERLAND v. DEVEREUX*, [1928] N. Z. L. R. 171.—N.Z.

2998 ii. — — — — —.]—In a lease to pltf., by deft. co.’s manager, of premises part of a hotel building for use as a store, the lessee agreed to use the store for the display & sale of certain specified kinds of goods, & lessor agreed “not to enter into any leases hereinafter during the term of this lease which shall be used for the purpose of selling any of the above-mentioned articles.” After the making of the lease, deft. co. made a renewal lease to G. of store premises immediately adjoining those leased to pltf., the business to be carried on therein by G. being that of selling precisely the same kind of goods that pltf. was to sell :—*Held* : the renewal of G.’s lease was

a breach of the agreement with pltf. not to enter into any such lease, & deft. co. was liable to pltf. in damages by reason of the breach.—*GEARY v. CLIFTON CO.*, [1928] 3 D. L. R. 64; 62 O. L. R. 257.—CAN.

### PART XIII. SECT. 3, SUB-SECT. 2.—D. (b) ii.

3151 ii. — *Defect of repair.*—*KELPON v. STEWART*, [1928] 3 W. W. R. 640.—CAN.

### PART XIII. SECT. 3, SUB-SECT. 2.—E.

3156 i. *Breach—What amounts to—Hot ashes left in yard.*—Defts. agreed for reward to provide board & lodging for infant pltf., who was injured while playing in the yard of the premises through coming in contact with some hot ashes placed there by one of defts. :—*Held* : defts. were liable.—*IRWIN v. HAMAL*, [1927] N. Z. L. R. 7.—N.Z.

### PART XIII. SECT. 3, SUB-SECT. 2.—F.

sc. *Room in building leased to unincorporated association—Injury to member of association—Failure to provide fire-escapes.*—A building in the city of L. was owned by deft. co. &

occupied by the co. & various tenants. It was four storeys in height, & on the fourth storey were two rooms fitted up & used as lodge-rooms. Delt. co. had leased one of these rooms to an unincorporated fraternal association or lodge, & the premises were occupied by the lodge under that lease. In Jan. 1927, when a fire broke out in the building, Pltf., a member of the lodge, was attending a meeting in the lodge-room at the time, & was severely injured in attempting to escape from the burning building. There were no fire-escapes, & the building was so constructed as to make it a fire-trap :—*Held* : pltf. was not an invitee, but a mere licensee, of defts., though an invitee of defts.’ tenant; he did not come upon defts.’ premises for any purpose in which he & defts. had a common interest, & there was no contractual relation between them.—*TAYLOR v. PEOPLE’S LOAN & SAVINGS CORPN.*, [1929] 1 D. L. R. 160; 63 O. L. R. 202.—CAN.

sd. *Theatre—Heating-plant inadequate.*—*DAVEY v. CHRISTOFF* (1915), 9 O. W. N. 291, 481; 35 O. L. R. 162.—CAN.

## Part XIV.—Fixtures.

3189. *Add. Annotation* :—*Generally, Mentd. Kur-*  
*sell v. Timber Operators & Contractors*, [1927]  
 1 K. B. 298.
3390. *Add. Citation* :—[1926] Ch. 877.
3483. *Add. Annotation* :—*Refd. Berry v. Berry*,  
 [1929] 2 K. B. 316.

## Part XV.—Rent.

3555. *Add. Annotation* :—*Mentd. Busby v.*  
*Avgherino*, [1928] A. C. 290.
3574. *Add. Annotation* :—*Refd. Berry v. Berry*,  
 [1929] 2 K. B. 316.
3590. *Add. Citations* :—*sub nom. WINSTON v.*  
*PINKNEY*, 3 Keb. 137; 2 Lev. 80; T. Raym.  
 222.
- Add. Annotation* :—*Refd. Brownlow v. Hewley*  
 (1696), 1 Ld. Raym. 58.
3635. *Add. Annotation* :—*Apld. Maine & New*  
*Brunswick Electrical Power Co. v. Hart*,  
 [1929] A. C. 631.
3751. *Add. Annotation* :—*Apld. Re Wells*, [1929]  
 2 Ch. 269.
3779. *Add. Annotation* :—*Refd. Rye v. Purcell*,  
 [1926] 1 K. B. 446.
3808. *Add. Annotation* :—*Distd. British & North*  
*European Bank v. Zalzstein*, [1927] 2 K. B.  
 92.
3812. *Add. Annotation* :—*Mentd. Re Pinto Leite &*  
*Nephews, Ex p. Des Oliveira (Visconde)*,  
 [1929] 1 Ch. 221.
3854. *Add. Annotation* :—*Refd. Re Pinto Leite &*  
*Nephews, Ex p. Des Oliveira (Visconde)*,  
 [1929] 1 Ch. 221.
3867. *Add. Annotation* :—*Refd. Tredegar v. Har-*  
*wood* (1928), 97 L. J. Ch. 392.
3930. *Add. Annotations* :—*Consd. Dalton v.*  
*Pickard* (1911), [1926] 2 K. B. 545, n.;  
*Richmond v. Savill*, [1926] 2 K. B. 530.
3958. *Add. Annotation* :—*Generally, Mentd. G. W.*  
*Ry. v. S.S. Mostyn, The Mostyn*, [1928] A. C.  
 57.

PART XIV. SECT. 2, SUB-SECT. 1.—  
A. (d).

*so. Boilers.*—*COLEMAN v. MONAHAN*  
 (N. B.), [1927] 2 D. L. R. 209.—CAN.

*sd. Manure lying in heaps.*—  
*Manure lying in heaps in a barn-yard*  
 is a chattel which may be taken away  
 by the outgoing tenant, even after his  
 tenancy has expired, & trover will lie  
 for it if held or taken away by the  
 landlord.—*FOSHAY v. BARNES* (1869),  
 12 N. B. R. (1 Han.) 450.—CAN.

PART XIV. SECT. 2, SUB-SECT. 2.—  
C. (b) ii.

3256 ii. ———.—*Re ROY WOLF*  
*BREWING Co. (Ont.)*, [1926] 2 D. L. R.  
 1002; 7 C. B. R. 625.—CAN.

3256 iii. ———.—On an inter-  
 pleader issue, between a judgment  
 creditor of the manager of a newspaper  
 & printing business & the latter's  
 father, who owned the business & the  
 premises in which it was carried on,  
 held that the printing presses were  
 the property of the father. The  
 evidence favoured the view that he,  
 & not the son, was then real purchaser;  
 & moreover, they were part of the  
 realty, since they were attached to the  
 building for the better enjoyment &  
 use thereof as a printing establishment,  
 & because their removal would dis-  
 figure & disturb the building itself.—  
*RICHARDSON v. HARDIE*, [1928] 2  
 W. W. R. 216.—CAN.

## PART XIV. SECT. 2, SUB-SECT. 2.—E.

3279 i. *Boiler & other machinery.*—  
*ROGERS v. ONTARIO BANK* (1891), 21  
 O. R. 416.—CAN.

PART XIV. SECT. 7, SUB-SECT. 2.—  
B. (b).

3434 vi. ———.—Fixtures which  
 a tenant is entitled to remove must be  
 removed during the tenancy or within  
 such time beyond the original term as  
 the tenant holds the premises under a  
 right still to consider himself a tenant.  
 This rule applies whether the lease  
 expired by effluxion of time or was  
 properly determined during its cur-  
 rency.—*NATIONAL TRUST Co., LTD.*  
*v. PALACE THEATRE, LTD.*, [1928] 1

W. W. R. 502, 805; [1928] 2 D. L. R.  
 59, 739; 23 Alta. L. R. 427.—CAN.

## PART XIV. SECT. 7, SUB-SECT. 4.

3461 iv. ———.—*GLOBE LAND Co. v.*  
*HEASLIP*, [1927] 3 D. L. R. 604; 60  
 O. L. R. 499.—CAN.

PART XIV. SECT. 7, SUB-SECT. 8.—  
B. (d).

*so. Covenant to deliver up personal*  
*property specified in lease—& additions*  
*thereto.*—A lease provided that "The  
 lessee will, at the expiration or other  
 sooner determination of the said term,  
 peaceably surrender & yield up unto  
 the said lessor the said demised  
 premises with the appurtenances  
 thereon & together with all buildings,  
 erections & fixtures thereon, & the  
 personal property included in Schedule  
 A hereto attached & any personal  
 property brought upon the demised  
 premises in addition thereto or in lieu  
 or in substitution therefor."—*Held*:  
 the personal property covered by the  
 covenant included all the personal  
 property in question herein brought  
 upon the premises for use in the theatre,  
 whether brought thereon by the lessor  
 or by the lessee; it being held that  
 such of said property as did not dis-  
 place any of the personal property  
 theretofore in the theatre was "in  
 addition thereto," within the meaning  
 of that phrase in the covenant, & such  
 of it as took the place of any property  
 theretofore in it was "in lieu of or in  
 substitution therefor."—*NATIONAL*  
*TRUST Co., LTD. v. PALACE THEATRE,*  
*LTD.*, [1928] 1 W. W. R. 502; [1928]  
 2 D. L. R. 59, 739; 23 Alta. L. R. 427.  
 —CAN.

## PART XIV. SECT. 8, SUB-SECT. 1.

*sd. Conversion—During continuance*  
*of term—Liquidator of tenant company*  
*permitting removal.*—*GEELONG CITY*  
*BUILDING PTY., LTD. v. BENNETT*,  
 [1928] V. L. R. 214; [1928] Argus  
 L. R. 138.—AUS.

PART XV. SECT. 3, SUB-SECT. 9.—  
B. (b) i.

3680 iv. ———.—A lease  
 provided that, on breach of any of  
 certain covenants, the lessees should

forfeit & pay unto the lessor a further  
 additional rent or sum of fifty pounds  
 sterling. The trial judge decided that  
 this additional yearly rent was not  
 in reality rent, but was in the nature  
 of a penalty; & taking as the measure  
 of the damages the injury to the  
 reversion, he assessed damages at one  
 shilling.—*Held*: the additional rent  
 was in the nature of a penalty, & the  
 damages had been assessed on a proper  
 basis.—*BRADSHAW v. LEMON*, [1929]  
 N. 1. 159.—IR.

PART XV. SECT. 4, SUB-SECT. 2.—  
C. (a).

3765 i. *General rule.*—*PEPPER v.*  
*BUTLER* (1875), 37 U. C. R. 253.—CAN.

## PART XV. SECT. 4, SUB-SECT. 3.

*sg. Assignee—Assignment after expiry*  
*of term—Lease containing covenant for*  
*renewal.*—*BENGAL NATIONAL BANK,*  
*LTD. v. JANAKI LATH ROY* (1927),  
 I. L. R. 54 Calc. 813.—IND.

## PART XV. SECT. 5, SUB-SECT. 1.—B.

*sh. Failure to keep premises in tenant-*  
*able repair.*—The landlord of a house  
 brought an action against the tenant  
 for decree for payment of the rent due.  
 In defence the tenant averred that the  
 landlord was in breach of his obligation  
 to keep the premises in tenantable  
 condition, in respect that he had failed  
 to renew certain piping which he knew  
 or ought to have known was defective,  
 with the result that a pipe burst &  
 defender's effects were damaged, &  
 she was compelled to leave the house.  
 Defender retained the rent, & also  
 counterclaimed for the damage suffered  
 by her.—*Held*: a landlord's claim for  
 rent was liquid only if he had fulfilled  
 his obligations under the mutual con-  
 tract of lease, & defender was entitled  
 to retain her rent, & also to counter-  
 claim for the damage she alleged she  
 had suffered.—*FINLAND & MITCHELL*  
*v. HOWIE*, [1926] S. C. 319.—SCOT.

PART XV. SECT. 6, SUB-SECT. 1.—  
B. (a).

*sj. Whether forcible expulsion*  
*necessary—Attornment by tenant to*  
*person with title paramount.*—To con-

3990. *Add. Annotation*:—*As to* (4) *Consd. Haskell v. Marlow*, [1928] 2 K. B. 45.

4105. *Add. Annotations*:—*Refd. Dalton v. Pickard* (1911), [1926] 2 K. B. 545, n.; *Richmond v. Savill*, [1926] 2 K. B. 530.

4116a. ————.]—A grantee of a rent reserved on a lease for years may sue the lessee for the rent where the lessee has attorned.—*GOODMAN v. PACKER* (1670), T. Jo. 1; *Freem. K. B. 1*; 84 E. R. 1116.

*Annotation*:—*Refd. Brownlow v. Howley* (1696), 1 Ld. Raym. 82.

4142a. ———— *Sufficiency of consideration*.]—A declaration set out an agreement in writing, whereby plff. agreed to let, & T. to take, a house, at a yearly rent, & deft. thereby also agreed to see the rent paid by T., or to pay it for him. Averment, that plff. let the house, & T. became tenant on the terms of the agreement. Breach,

that neither T. nor deft. paid the rent:—*Held*: the consideration for deft.'s promise was the letting of the house.—*CABALLERO v. SLATER* (1854), 14 C. B. 300; 23 L. J. C. P. 67; 2 W. R. 198; 139 E. R. 123; *sub nom. CAVALIERO v. SLATER*, 22 L. T. O. S. 243.

4157. *Add. Annotation*:—*Mentd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.

4162. *Add. Annotation*:—*Refd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

4163. *Add. Annotation*:—*Refd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.

4167a. *Rescission of purchase agreement determining tenancy*.]—*TURNER v. WATTS*, No. 6630a, *post*.

4262. *Add. Annotation*:—*Refd. Akt. Dampskibsselskab v. Pearson* (1927), 137 L. T. 533.

4276. *Add. Annotation*:—*Refd. Oakley v. Wilson*, [1927] 2 K. B. 279.

## Part XVI.—Rates and Taxes.

4357. *Add. Annotation*:—*Refd. Salisbury House Estate v. Fry* (1929), 98 L. J. K. B. 722.

4381. *Add. Annotation*:—*Refd. Perrin v. Dickson*, [1929] 98 L. J. K. B. 683.

4382. *Add. Annotation*:—*Refd. Shanks v. I. R. Comrs.*, [1929] 1 K. B. 312.

4397. *Add. Annotation*:—*As to* (2) *Refd. R. v. Customs & Excise Comrs.*, [1928] A. C. 402.

4416. *Add. Annotation*:—*Refd. Musmann v. Engelke* (1927), 96 L. J. K. B. 824.

4447. *Add. Annotation*:—*Refd. R. v. Customs & Excise Comrs.*, [1928] A. C. 402.

stitute eviction forcible expulsion is not necessary. It is not necessary that the tenant should go out of possession; & if, upon a claim being made by a person with title paramount, the tenant consents to an attornment to such person to change the title under which he holds, or enters into a new arrangement for holding under him, this will be equivalent to an eviction & a fresh taking.—*JOGENDRA LAL SARKAR v. MOHESH CHANDRA SADIH* (1928), 1 L. R. 55 Cal. 1013.—*IND.*

### PART XV. SECT. 6, SUB-SECT. 2.

*al. Application of rule to India*.]—*SUBIL KUMAR BISWAS v. RASANI KANTA CHAKRAVARTI* (1927), 1 L. R. 55 Cal. 689.—*IND.*

### PART XV. SECT. 6, SUB-SECT. 5.—C.

3984 i. *Lands inundated*.]—Unless there is any stipulation in the agreement of tenancy to the contrary, a tenant is not entitled to claim abatement of rent on the ground that the productive powers of the land have deteriorated by reason of its liability to inundation at high water. It is only when a part of the premises leased is entirely lost by inundation of the sea that an abatement of rent on that account can be claimed.—*VISHWANATH v. RANKRISHNA* (1925), 1 L. R. 50 Bom. 94.—*IND.*

### PART XV. SECT. 10, SUB-SECT. 2.—E. (e).

*sp. Some heirs or successors-in-interest*.]—A suit for rent is maintainable against some of the heirs or successors-in-interest of a deceased tenant, without bringing all the heirs or successors-in-interest on the record.—*JAGAN MOHAN SARKAR v. BROJENDRA KUMAR CHAKRAVARTI* (1925), 1 L. R. 53 Cal. 197.—*IND.*

### PART XV. SECT. 10, SUB-SECT. 2.—F. (d).

4154 i. *Validity of lease*.—*Lease by*

*statutory body*.—*Not in accordance with statute*.]—A. sued as clerk to comrs. exercising a public trust under an Act of Parliament, 3 Vict. c. 53, upon an alleged demise of tolls for a year, at a rent payable every fortnight in advance, sect. 27 of that Act requiring the rent to be made payable monthly. The lease stated in the declaration is said to be subject to the Act. *Held* on demurrer to the declaration, plff., as clerk to the comrs., could not be permitted to recover on such a contract, because it was a contract substantially different from the one which the comrs. were expressly directed by the statute to make.—*IRELAND v. NOBLE* (1817), 3 U. C. R. 235.—*CAN.*

4154 ii. — *Corporate seal of lessors not attached*.—*Tenant never in possession*.]—*NEWPORT INDUSTRIAL DEVELOPMENT CO. v. HUGHAN*, [1928] 3 D. L. R. 517; 62 O. L. R. 361.—*CAN.*

### PART XV. SECT. 10, SUB-SECT. 3.—C. (e).

*sq. Holding over after judgment in favour of landlord. No resumption of possession by landlord*.]—In an action to recover rent of premises leased by deft. from plff., deft. pleaded, *inter alia*, that the tenancy had been determined. The issue was decided in favour of plff., & judgment was entered in plff.'s favour & no appeal taken. No notice to quit was given, & there was no surrender of the premises, & no acceptance of surrender, & no resumption of possession by plff.:—*Held*: dismissing deft.'s appeal with costs, plff. was entitled to recover for rental of the premises for the time subsequent to the recovery of the previous judgment.—*GANNON v. FARQUHAR TRADING CO.* (1928), 60 N. S. L. 80.—*CAN.*

### PART XV. SECT. 10, SUB-SECT. 3.—C. (e).

4268 ii. — *Assignee of agreement for lease*.—*Lease granted to*

*original lessee*.] Where the assignee of an agreement for a lease enters upon the subject premises & exercises acts of ownership thereon & also pays money to the lessor in accordance with the amount mentioned as rent in the agreement for a lease, he is liable to the lessor in an action for use & occupation, even though after entry by him the lessor grants a lease of the premises to the original lessee under the terms of the agreement for a lease.—*OWEN v. BECHTER* (1928), 28 S. R. N. S. W. 527; 15 N. S. W. W. N. 67.—*AUS.*

### PART XVI. SECT. 1, SUB-SECT. 2.—B.

*sr. Agreement altering incidence of tax—What amounts to*.] A landlord & a tenant entered into a preliminary agreement for a lease of certain premises for £90 per week, the tenant to pay all taxes, including land taxes. Prior to the execution of the lease the lessor discovered that the provision that the tenant was to pay land tax was contrary to the terms of Federal & State Land Tax Acts. The landlord then required that the lease should provide for a rent of £100 per week, & promised that he would make a voluntary annual allowance to the lessee of an amount equal to the difference between the amount of the Federal & State land tax paid by the lessor in respect of the premises & £520, the latter sum being the annual amount of £10 per week. The lease was then executed, stipulating for a rent of £100 per week:—*Held*: the above facts did not disclose a "contract, agreement or arrangement . . . altering the incidence" of any land tax within Land Tax Act Assessment Act, 1910 1926, s. 63, or Land Tax Act, 1915, s. 68.—*Re LUCKS, LTD.*, [1928] V. L. R. 180; [1928] Argus L. R. 155.—*AUS.*

### PART XVI. SECT. 2, SUB-SECT. 4.—A.

h i. — *"Which now are."*]—*Deft.,*

**4457a. Right to deduct from rent—Under landlord's covenant to refund excess over specified sum.]**—The lease of a flat beginning at midsummer at a rent of £400 a year, payable in advance at the rate of £100 on each quarter day, contained a covenant by the lessors that, in case the total sum paid by the tenant in any one year of the term in respect of rates & taxes should exceed £125, the lessors would, on production of the relative receipts, refund to the tenant the difference between the total sum paid by him & £125. If this difference were not refunded by the lessors within fourteen days of demand the tenant was to be at liberty to deduct such difference from the next instalment of rent. The lease contained a

covenant by the tenant that he would duly & punctually pay & discharge all rates, taxes, duties, charges, assessments, & outgoings payable in respect of the demised premises. The tenant in a year of the tenancy between midsummer & midsummer paid three half-years' rates, amounting in all to over £125, & having demanded the refund of the excess from the landlords, & having failed to get payment of the same within fourteen days of the demand, deducted it from his next instalment of rent :—*Held* : under the landlords' covenant to refund, the tenant was entitled to make the deduction.—*SOWERBY v. LINDSAY* (1928), 139 L. T. 545; 44 T. L. R. 714, C. A.

## Part XVII.—Assessments, Charges, Outgoings, etc.

**4458. Add. Annotation :—Generally, Refd.** *Lowther v. Clifford*, [1927] 1 K. B. 130.

**4464. Add. Annotations :—Refd.** *Calder's Yeast Co. v. Stockdale* (1926), 96 L. J. Ch. 357; *Lowther v. Clifford*, [1927] 1 K. B. 130.

**4465. Add. Annotation :—Refd.** *Lowther v. Clifford* (1926), 135 L. T. 200.

**4467. Add. Annotation :—Refd.** *Lowther v. Clifford*, [1927] 1 K. B. 130.

**4468. Add. Annotation :—Refd.** *Lowther v. Clifford* (1926), 135 L. T. 200.

**4471. Add. Citations :—**[1927] 1 K. B. 130; 95 L. J. K. B. 576; 135 L. T. 200; 90 J. P. 113; 24 L. G. R. 231.

*Add. Annotation :—Refd.* *Mansfield v. Robinson*, [1928] 2 K. B. 353.

**4475. Add. Annotation :—Refd.** *Lowther v. Clifford*, [1927] 1 K. B. 130.

**4477. Add. Annotation :—Refd.** *Lowther v. Clifford*, [1927] 1 K. B. 130.

**4479. Add. Annotation :—Refd.** *Lowther v. Clifford*, [1927] 1 K. B. 130.

**4482a. Special expenses rate—Sewerage purposes.]**

—A special expenses rate levied for the purposes of sewerage is, like a poor rate, an outgoing for which the occupier, & not the owner, of a property is liable.—*CALDER'S YEAST CO. v. STOCKDALE*, [1928] Ch. 340; 96 L. J. Ch. 357; 136 L. T. 458; 91 J. P. 57; *sub nom.* *CALVER'S YEAST CO. v. STOCKDALE*, 25 L. G. R. 354, C. A.

**4489. Add. Annotation :—Appl.** *Lowther v. Clifford*, [1927] 1 K. B. 130.

**4503. Add. Annotation :—Refd.** *Lowther v. Clifford* (1926), 135 L. T. 200.

**4534a. To what tenancies applicable.]—Finance** (1909–10) Act, 1910 (c. 8), s. 46, does not apply to tenancies entered into after the passing of the Act.—*R. v. CUSTOMS & EXCISE COMRS.*, [1928] A. C. 402; 97 L. J. K. B. 771; 44 T. L. R. 775; *sub nom.* *R. v. CUSTOMS & EXCISE COMRS., Ex p. PEGLER*, 139 L. T. 617; 92 J. P. 173; 26 L. G. R. 587, H. L.

## Part XVIII.—Repairs.

**4568. Add. Annotation :—Consd.** *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.

**4569. Add. Citations :—**90 J. P. 195; 24 L. G. R. 327.

**4569a. ———.]—MORGAN v. LIVERPOOL CORPN.**, No. 3160a, *ante*.

**4578. Add. Annotations :—Refd.** *Fisher v. Walters*, [1926] 2 K. B. 315; *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.

**4582. Add. Annotations :—Consd.** *Griffin v. Pillet*, [1926] 1 K. B. 17. **Refd.** *Fisher v. Walters*, [1926] 2 K. B. 315; *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.

**4584. Add. Annotations :—Distd.** *Fisher v. Walters*, [1926] 2 K. B. 315. **Refd.** *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.

**4588. Add. Annotations :—As to (2) Consd.** *Fisher*

*v. Walters*, [1926] 2 K. B. 315; *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.

**4588a. ———.]—MORGAN v. LIVERPOOL CORPN.**, No. 3160a, *ante*.

**4609. Add. Annotation :—As to (1) Refd.** *Marsden v. Heyes*, [1927] 2 K. B. 1.

**4616. Add. Annotation :—Mentd.** *G. W. Ry. v. S.S. MOSTYN, THE MOSTYN*, [1928] A. C. 57.

**4638. For existing citations read “as reported in** 21 Ch. D. 18.”

**4662. Add. Annotation :—As to (2) Consd.** *Field v. Curnick*, [1926] 2 K. B. 374.

**4670. Add. Annotation :—Refd.** *Field v. Curnick*, [1926] 2 K. B. 374.

**4682. Add. Annotation :—Mentd.** *Haskell v. Marlow*, [1928] 2 K. B. 45.

in 1872, leased a farm from pltf. for a year from Sept. 27, 1872 :—*Held* : deft. was not liable for the taxes for 1872, for the words, “all rates, etc., which now are,” referred to the kind

or character of the taxes assessable against the land.—*MACNAUGHTON v. WIGG* (1874), 35 U. C. R. 111.—**CAN.**

**PART XVI. SECT. 2, SUB-SECT. 4.—C.** *st. Covenant to pay “any future land*

*tax” —Rate imposed under bridge Act not included.]—JONES (DAVID), LTD. v. LEVENTHAL* (1927), 27 S. R. N. S. W. 350; 44 N. S. W. W. N. 105.—**AUS.**

4694. *Add. Annotation*:—As to (1) **Refd. Haskell v. Marlow**, [1928] 2 K. B. 45.

4698. *Add. Annotation*:—**Refd. Haskell v. Marlow**, [1928] 2 K. B. 45.

4699. *Add. Annotation*:—**Refd. Haskell v. Marlow**, [1928] 2 K. B. 45.

4735. *Add. Annotation*:—**Refd. Manchester Corpn. v. Audenshaw U. C. & Denton U. C.**, [1928] Ch. 763.

4739. *Add. Annotation*:—**Refd. Haskell v. Marlow**, [1928] 2 K. B. 45.

4739a. — **Dilapidations—Neglect to repair.**—Testator devised a dwelling-house to his wife for her life, she “keeping same in good repair & condition, reasonable wear & tear excepted,” & after her death he directed that same should fall into his residuary estate, which was to be divided among his children in equal shares. Testator’s widow occupied the premises until her death, a period of forty-two years. She did nothing actively to injure the premises, but did nothing substantially to counteract the natural process of decay. Pltfs., the trustees of the will, alleged that she had neglected to keep the premises in good repair & condition in conformity with the terms of the will, & claimed from her exors. the cost of the necessary repairs:—**Held**: testator’s widow, having accepted & occupied the premises, was bound by the terms of the devise; the words of the exception were not to be treated as mere surplusage, & a reasonable meaning must be given to them, but having regard to the length of time during which no substantial repairs had been done to the premises, & to the extent of the damage thereby caused, the widow, as tenant for life, was not protected by the words of the exception, & her exors. were liable for the damage arising from the natural process of decay.—**HASKELL v. MARLOW**, [1928] 2 K. B. 45; 97 L. J. K. B. 311; 138 L. T. 521; 44 T. L. R. 171, D. C.

4749. *Add. Annotation*:—**Consd. Haskell v. Marlow**, [1928] 2 K. B. 45.

4750. *Add. Annotation*:—**Consd. Haskell v. Marlow**, [1928] 2 K. B. 45.

4757. *Add. Annotation*:—**Refd. Haskell v. Marlow**, [1928] 2 K. B. 45.

4760a. **To keep in good & proper order & condition—Ornamental waters—Removal of mud.**—Among the covenants in a lease was one by which deft. covenanted at all times during the term to maintain, keep, & leave “all pleasure grounds,” lawns, walks, borders, & shrubberies in good & proper order & condition. Included in the pleasure grounds

were ornamental waters consisting of two ponds & three lakes, which afforded boating & trout fishing. Pltf. complained of various breaches of the above covenant, particularly in respect of the accumulation of mud in the lodge lake & in a portion of the upper boat lake, thereby causing deterioration in the trout fishing, & required the lakes to be cleared of mud & weeds. Deft. had regularly cut the weeds in the lakes & kept in order the sluices & weirs, but repudiated liability to clean out any of the mud:—**Held**: in order to comply with the covenant which was absolutely unqualified in terms, deft. was liable to remove so much of the mud in the lodge lake, & also in a specified portion of the upper boat lake, as would leave a sheet of water of not less than 2 feet 6 inches in depth throughout.—**HORLICK v. SCULLY**, [1927] 2 Ch. 150; 96 L. J. Ch. 129; 137 L. T. 559; 71 Sol. Jo. 331.

4768. *Add. Annotation*:—**Refd. Bean v. Flaxton** R. D. C. (1928), 139 L. T. 320.

4775. *Add. Annotations*:—**Refd. Field v. Curnick**, [1926] 2 K. B. 374; **Marsden v. Heyes**, [1927] 2 K. B. 1.

4868. *Add. Annotation*:—**Refd. St. Anne’s Well Brewery Co. v. Roberts** (1928), 110 L. T. 1.

4869. *Add. Annotation*:—**Generally, Refd. St. Anne’s Well Brewery Co. v. Roberts** (1928), 110 L. T. 1.

4879. *Add. Annotation*:—**Distd. St. Anne’s Well Brewery Co. v. Roberts** (1928), 110 L. T. 1.

4882a. — — — — —. — [Defts. were the owners, but not the occupiers, of part of an ancient city wall, which also formed the back wall of an ancient inn owned by pltfs. The portion of the wall belonging to defts. collapsed, demolishing pltfs.’ inn:—**Held**: (1) the doctrine of *Rylands v. Fletcher* (1868), L. R. 3 H. L. 330, had never been applied to affect the liability of an owner who was out of possession at the time when the injury took place; though defts. did not erect the wall, they took it over when they bought the property as the boundary & retaining wall for their property, & they were only using that property in the ordinary ways in which property is used, so that they were outside the authority of that case; (2) there was no reason to suppose that when they let the property to their tenant it was in a ruinous condition, or that in the exercise of a reasonable diligence they should have ascertained that it was in a ruinous condition; & pltfs. failed to bring their case within the principle

**PART XVIII. SECT. 2, SUB-SECT. 2.—D. (a).**

**sv. Repairs creating trap—Liability of landlord to person residing with tenant.**—Where a landlord, in making repairs, creates a trap which is known to him, or should be known to him, & an injury is caused thereby to one who has a right to be on the premises & who is ignorant of the trap the landlord is liable.—**FRASER v. PEARCE**, [1928] 2 D. L. R. 54; 1 W. W. R. 837, 39 B. C. R. 338.—**CAN.**

**PART XVIII. SECT. 3, SUB-SECT. 2.—D. (a) vii.**

4726 i. **Rebuilding subsidiary part—Floors.**—A covenant to keep in repair involves an obligation to renew, where the thing affected is a subordinate part

of the whole structure, as in the case of a roof, floor, or wall.—**STAPLES & CO. v. BERRYMAN**, [1928] N. Z. L. R. 68.—**N.Z.**

4729 i. — **Wall.**—**STAPLES & CO. v. BERRYMAN**, No. 4726 i, *ante*.

**sw. — — Roof.**—**STAPLES & CO. v. BERRYMAN**, No. 4726 i, *ante*.

**PART XVIII. SECT. 3, SUB-SECT. 2.—D. (b) i.**

**sv. To yield up in good repair—Bridge—Washed away by flood.**—**RIDDIFORD, ETC. v. LYSAGHT**, [1927] N. Z. L. R. 563.—**N.Z.**

**sv. To leave premises in original state—Destruction by fire.**—Pltf. let his house to deft. co. to be used as liquor warehouse, deft. co. agreeing to make

the necessary structural alterations to suit their purpose, & to restore the house to pltf. at the end of the lease in its original state. During the period of the lease, one night, in the absence of a watchman, the liquor store-room & the whole house were destroyed by fire. In a suit by the lessor for damages:—**Held**, though, under a general covenant such as the above, a lessee would under the English law be liable for all damage including one arising from fire, yet, under Indian Transfer of Property Act, s. 108 (c), he is not liable for damage by fire in the absence of proof that the fire was due to his negligence.—**EAST INDIA DISTILLERIES v. MATHIAS** (1928), 1 L. R. 51 Mad. 994.—**IND.**

- of *Todd v. Flight*, No. 4879, *ante*.—*St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1; 92 J. P. 180; 44 T. L. R. 703; 26 L. G. R. 638, C. A.
- 4883.** *Add. Annotation* :—**Refd.** *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1.
- 4887.** *Add. Annotation* :—**Refd.** *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1.
- 4889.** *Add. Annotation* :—**Refd.** *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.
- 4891.** *Add. Annotation* :—**As to** (2) **Refd.** *Fisher v. Walters* (1926), 90 J. P. 195.
- 4900.** *Add. Annotation* :—**Refd.** *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.
- 4903.** *Add. Annotation* :—**Refd.** *Fisher v. Walters* (1926), 90 J. P. 195.
- ## Part XIX.—Waste.
- 4932.** *Add. Annotation* :—**Apld.** *Marsden v. Heyes*, [1927] 2 K. B. 1.
- 4943.** *Add. Annotation* :—**As to** (1) **Refd.** *Price v. Corpn. d'Energie de Montmagny*, [1927] A. C. 303.
- 4978a.** *Cutting down trees* [—**Excepted from lease.**] **CASE** (1585), *Gouldsb.* 1; 75 E. R. 955.
- 4985.** *Add. Annotation* :—**Generally.** **Mentd.** *G. W. Ry. v. S.S. Mostyn, The Mostyn*, [1928] A. C. 57.
- 4998.** *Add. Annotation* :—**Consd.** *Marsden v. Heyes*, [1927] 2 K. B. 1.
- 5003.** *Add. Annotation* :—**Refd.** *Marsden v. Heyes* (1926), 96 L. J. K. B. 410.
- 5006.** *Add. Annotation* :—**As to** (2) **Refd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
- 5016.** *Add. Annotation* :—**Consd.** *Haskell v. Marlow*, [1928] 2 K. B. 45.
- 5050.** *Add. Annotation* :—**As to** (1) **Refd.** *Marsden v. Heyes*, [1927] 2 K. B. 1.

## Part XIX.—Waste.

4932. *Add. Annotation* :—**Apld.** Marsden v. Heyes, [1927] 2 K. B. 1.
4943. *Add. Annotation* :—*As to* (1) **Refd.** Price v. Corpn. d'Energie de Montmagny, [1927] A. C. 363.
- 4978a. *Cutting down trees -Excepted from lease.* CASE (1585), Gouldsb. 1; 75 E. R. 955.
4985. *Add. Annotation* :—*Generally.* **Mentd.** G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57.
4998. *Add. Annotation* :—**Consd.** Marsden v. Heyes, [1927] 2 K. B. 1.
5003. *Add. Annotation* :—**Refd.** Marsden v. Heyes (1926), 96 L. J. K. B. 410.
5006. *Add. Annotation* :—*As to* (2) **Refd.** Rye v. Purcell, [1926] 1 K. B. 446.
5016. *Add. Annotation* :—**Consd.** Haskell v. Marlow, [1928] 2 K. B. 45.
5050. *Add. Annotation* :—*As to* (1) **Refd.** Marsden v. Heyes, [1927] 2 K. B. 1.

## Part XX.—Insurance and Damage by Fire.

- 5069a.** In named office "or in some other responsible insurance office to be approved by the lessor"—Duty of lessor.]—A covenant by a lessee to insure the demised premises in the joint names of the lessee & the lessor in a named insurance office, "or in some other responsible insurance office to be approved by the lessor," does not confer upon the lessee an alternative to be exercised at his volition; & under this covenant the lessee cannot properly tender an office which is not approved by the lessor.—*TREDEGAR v. HARWOOD*, [1929] A. C. 72; 97 L. J. Ch. 392; 139 L. T. 642; 44 T. L. R. 790, H. L.
- 5070a.** Not to do anything to impose heavier insurance burden on premises—Obligation of lessor as to adjacent premises.]—Lessees of factory premises for a term of twenty-one years covenanted to pay as additional rent such sums as the lessors might expend in effecting or maintaining the insurance of the demised premises against fire, & not to do or suffer anything on the demised premises which would render payable an increased or extra premium for the insurance of the demised premises or other premises adjacent thereto. The lessors covenanted to keep the demised premises insured against fire & that the lessees should have quiet enjoyment of them. Subsequently, the lessors let premises adjacent to the demised premises to another lessee, whose trade as a wood-worker rendered it impossible for the insurance of the demised premises to be effected except at considerably increased premiums:—*Held*: (1) the lessors, by dealing with the

**PART XVIII. SECT. 5, SUB-SECT. 1.—**  
**B. (c).**

**4887 iii.** —.]—Where a balcony common to all the tenants was in a defective condition & was unsafe, & the landlord was notified of such condition, but did not repair it, & thereafter a tenant fell from the balcony & was injured:—*Held*: the landlord was liable.—**AMIN v. EBRAHIM** (1926), 47 N. L. R. 1.—**S. AF.**

**PART XVIII, SECT. 5, SUB-SECT. 2.—**  
**A. (b).**

**4900 in.** — — —. [— Mule ptf. was tenant of a furnished apartment, which contained a gas heater used for heating water for use in the apartment & in the other apartments in the same house. The heater was defective to the knowledge of the landlord, & owing to an escape of burning gas from the heater female ptf. was seriously burned :—*Held*: the landlord was liable to both ptfs., for although the heater was not part of the demised premises, there was a positive agreement to keep it in repair, which gave rise to an action by the tenant for damages for breach of contract.—**HORNE v. MOULDS (Alta.)**, [1927] 2

D. L. R. 839 ; [1927] 1 W. W. R. 827.—  
CAN.

n i. -- .]—Where the owner of an hotel leased the premises, & the ptff. fell through an opening in a verandah.—*Held*: ptff. was not entitled to recover as against the owner, even if there were an express covenant by him to make outside repairs, as ptff. was a stranger to the covenant.—*MARCILLE v. DONNELLY* (1909), 14 O. W. R. 1044; 1 O. W. N. 195.—*CAN.*

n ii. -- - - - -] Premises, the property of deft., were let to W., who let different portions to sub-tenants, including an upstairs room to D. The letting to W. was within Rent Restriction Act, N. 1, 1925 (c. 12). Pltf., a district nurse, having visited D., descended the stairs, & whilst taking the last step on to the hall the floor gave way, & pltf. received serious injuries: — Held: pltf. could not succeed either in contract on the statutory obligation to repair implied in the letting, or in tort. — *O'REILLY v. DOHERTY*, [1923] N. 1. 32. — IR.

**PART XIX. SECT. 2, SUB-SECT. 1.—**  
**B.**

sa. Stones collected by tenant to

years covenanted to pay as additional rent such sums as the lessors might expend in effecting or maintaining the insurance of the demised premises against fire, & not to do or suffer anything on the demised premises which would render payable an increased or extra premium for the insurance of the demised premises or other premises adjacent thereto. The lessors covenanted to keep the demised premises insured against fire & that the lessees should have quiet enjoyment of them. Subsequently, the lessors let premises adjacent to the demised premises to another lessee, whose trade as a wood-worker rendered it impossible for the insurance of the demised premises to be effected except at considerably increased premiums:—*Held*: (1) the lessors, by dealing with the

*improve cultivation*.—*Property in.*].—A tenant who, for the purpose of clearing the land & rendering it more fit for cultivation, collects the stones therefrom, has the property in the stones, & the landlord has no interest in them, & is liable for their value if he disposes of them.--LEWIS v. GODSON (1888), 15 O. R. 252.—**CAN.**

**sb. Bushes cut along river.—Necessary for exercise of fishing rights.]**—*Pltf.*, by indenture under seal, leased to *def.* for a term of years, with the right to renew, *pltf.*'s land on the East River, G. County, for fishing purposes, with the right to enter & use the same in such a way as might be necessary for fishing in said river. Damages claimed by *pltf.* were for cutting bushes along the bank of the river.—*Held:* the burden of proof was upon *pltf.*, & the right to fish from the bank of the river involved the right to do such cutting as was necessary for that purpose.—**MCKEEN v. PATTILLO (1927), 59 N. S. R. 452.—CAN.**

so. *Cultivating waste land.*—A lessee who cultivates waste land of the colony is not to be presumed to have done so with the concurrence of his lessor, & for his benefit.—**NEWMAN v. GOFF** (1817), 1 Nfld. L. R. 26.—**NFLD**

adjoining premises in a way which was not unreasonable or unbusinesslike, which did not affect the originally demised premises physically & which had rendered it, not less easy or legal, but substantially more expensive to conduct on them the business for which they had been demised, had not so interfered with the purpose for which those premises had been demised as to have derogated from their own grant of them; (2) the covenant by the lessees not to do or

suffer anything on the originally demised premises which would render payable an increased or extra premium for the insurance of those, or adjacent, premises did not impliedly put the lessors under a similar obligation with regard to their user of adjacent premises.—*O'CEDAR, LTD. v. SLOUGH TRADING CO.*, [1927] 2 K. B. 123; 96 L. J. K. B. 709; 137 L. T. 208; 43 T. L. R. 382.

5075. *Add. Annotation*:—*Refd.* *Tredegar v. Harwood* (1927), 44 T. L. R. 17.

## Part XXI.—Assignment and Devolution of Leases.

5157. *Add. Annotation*:—*Generally, Mentd.* *Public Trustee v. Elder*, [1926] Ch. 776.

5192. *Add. Annotation*:—*Refd.* *Chaplin v. Smith*, [1926] 1 K. B. 198.

5204. *Add. Annotation*:—*Refd.* *Roe v. Russell*, [1928] 2 K. B. 117.

5226. *Add. Annotation*:—*Apld.* *Chaplin v. Smith*, [1926] 1 K. B. 198.

5239. *Add. Annotation*:—*Refd.* *Roe v. Russell*, K. B. 117.

5241. *Add. Annotation*:—*Apld.* *Chaplin v. Smith*, [1926] 1 K. B. 198.

5269a. *Effect of Landlord & Tenant Act, 1927 (c. 36), s. 19 (1)*.—(1) Where a landlord, who is also a brewer, consents to the assignment of the lease of a free public-house, but stipulates that, for the remainder of the term of the lease, the house shall be a tied house, such stipulation is a "fine" or benefit "in the nature of a fine" within Law of Property Act, 1925 (c. 20), s. 144.

(2) *Landlord & Tenant Act, 1927 (c. 36), s. 19 (1)*, does not apply to a breach of contract, which took place before the Act came into force.—*GARDNER & CO. v. CONE*, [1928] Ch. 955; 97 L. J. Ch. 491; 140 L. T. 72.

5272. *Add. Annotation*:—*Refd.* *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

5282. *Add. Annotation*:—*Distd.* *Farr v. Ginnings* (1928), 44 T. L. R. 249.

5282a. — *Covenant to repair*.—Where a lease contains a covenant by the lessee to repair, & a provision that the lessor's consent to an assignment by the lessee is not to be unreasonably withheld, the mere fact that the lessee is committing a continuing breach of the covenant to repair does not necessarily entitle

the lessor to refuse his consent to an assignment, at all events where the amount of disrepair is not very serious.—*FARR v.* (1928), 44 T. L. R. 249.

5284. *Add. Annotation*:—*Mentd.* *Lake v. Simmons* (1926), 95 L. J. K. B. 586.

5286. *Add. Annotation*:—*Dbtd.* *Tredegar v. Harwood*, [1929] A. C. 72.

5295a. — *Stipulation converting free public-house into tied house*.—*GARDNER & CO. v. CONE*, No. 5269a, *ante*.

5298. *Add. Annotation*:—*Apld.* *Gardner v. Cone*, [1928] Ch. 955.

5310. *Add. Annotation*:—*Refd.* *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

5321. *Add. Annotation*:—*Refd.* *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

5341. *Add. Annotation*:—*Refd.* *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

5361. *Add. Annotation*:—*Consd.* *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

5367. *Add. Annotation*:—*As to (2) Refd.* *Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

5450. *Add. Annotations*:—*Consd.* *Dalton v. Pickard* (1911), [1926] 2 K. B. 545, n.; *Richmond v. Savill*, [1926] 2 K. B. 530.

5454. *Add. Annotation*:—*Apld.* *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

5492. *Add. Annotation*:—*Refd.* *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.

5508. *Add. Annotation*:—*Refd.* *Akt. Dampskibs Steinstad v. Pearson* (1927 137 L. T. 533.

5636. *Add. Annotation*:—*As to (1) Consd.* *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.

## Part XXII.—Assignment and Devolution of Reversion.

5701. *Add. Annotation*:—*Refd.* *Rye v. Purcell*, [1926] 1 K. B. 446.

5714. *Add. Annotation*:—*Consd.* *Rye v. Purcell*, [1926] 1 K. B. 446.

5725. *Add. Annotation*:—*Refd.* *Booth v. Thomas*, [1926] Ch. 397.

5737. *Add. Annotation*:—*Apld.* *Rye v. Purcell*, [1926] 1 K. B. 446.

### PART XX. SECT. 2, SUB-SECT. 2.

5145 i. *Under covenant to rebuild—Extent of liability*.—*DUNKELMAN v. LISTER*, [1927] 4 D. L. R. 612; 61 O. L. R. 89.—*CAN.*

### PART XXI. SECT. 1, SUB-SECT. 2.—B. (a) iii.

sz. *General rule*.—Unless there is

a restriction against the alienation of any portion of the demised property, a restraint upon alienation of the demised premises does not prevent the alienation of a portion.—*CUTINHA v. SALVADORA MINAZES* (1926), 1 L. R. 50 Mad. 331.—*IND.*

### PART XXI. SECT. 10, SUB-SECT. 1. B.

5463 i. — *Express covenant by lessee for payment*.—Where a lease contains an express covenant to pay rent, the lessee continues liable on his covenant, although the lease is assigned over.—*McCROHAN v. EDWARDS (Alta.)* [1927] 1 D. L. R. 490; [1927] 1 W. W. R. 9.—*CAN.*

## Part XXIII.—Notice to Quit.

- 5788a. ———.]—DOE d. AUSTIN v. COWDEROY (1837), 1 Jur. 793.
5796. *Add. Annotations*:—*Refd.* Roe v. Russell, [1928] 2 K. B. 117. *Mentd.* Lovibond J. & Sons v. Vincent, [1929] 1 K. B. 687.
5833. After this case add:—  
Law of Property Act, 1925 (c. 20), s. 61.”
5840. *Add. Annotation*:—*Distd.* & N.F. Newman v. Slade, [1926] 2 K. B. 328.
5841. *Add. Citations*:—95 L. J. K. B. 894; 131 L. T. 640; 42 T. L. R. 607.
5866. *Add. Annotation*:—*As to* (2) *Apld.* Newmar v. Slade, [1926] 2 K. B. 328.
5879. After this case add:—  
“ See, now, Law of Property Act, 1925 (c. 20), s. 140 (1), (2); Law of Property (Amendment) Act, 1926 (c. 11), s. 2.”
5980. *Add. Citation*:—95 L. J. Ch. 49.

## Part XXIV.—Determination of Term.

6144. *Add. Annotations*:—*As to* (1) *Distd.* Turner v. Watts (1928), 138 L. T. 680. *As to* (2) *Consd.* Turner v. Watts (1927), 44 T. L. R. 105.
6192. *Add. Annotation*:—*Consd.* Richmond v. Savill, [1926] 2 K. B. 530.
6231. *Add. Annotation*:—*Consd.* Richmond v. Savill, [1926] 2 K. B. 530.
- 6307a. ——— *Agreement by tenant to pay arrears of rent & give up possession.*—The rent of premises being in arrear, the landlord

### PART XXIII. SECT. 1, SUB-SECT. 3.

*sm.* Lease subject to landlord's right to sell.—Whether term determined by *subc.*—A lease reserved to the landlord “the right to sell the land at any time, but the lessee shall have the right to reap any crop he has sown”:—*Held*: this clause did not sufficiently provide that on a sale the term would be determined *ipso facto*; but, at the most, only reserved the right to sell & to determine the term, & unequivocal notice of determination had to be given. —ERNEWEIN v. WELCH, [1928] 2 W. W. R. 265; 22 Sask. L. R. 522.—CAN.

### PART XXIII. SECT. 2, SUB-SECT. 1.

*so.* Must be reasonable.—Not necessarily determining lease at end of year of tenancy.—In the case of a lease not governed by Transfer of Property Act, 1882, s. 106, the notice to quit need not necessarily determine the lease at the end of the year of the tenancy, but it must be reasonable. It is, however, for the final et. of fact, in each case, to determine what is reasonable notice.—DAMODAR PRASAD TEWARI v. LACHMI PRASAD SINGH (1928), 1 L. R. 7 Pat. 496.—IND.

### PART XXIII. SECT. 2, SUB-SECT. 3.—A.

5817 ii. ———.]—In the case of a rural tenancy from year to year a year's notice to quit is not necessary, a reasonable notice only being required. Notice given in Jan. to quit at the end of the following June is reasonable.—TSHABALALA v. VAN DER MERWE (1926), 47 N. L. R. 75.—S. AF.

### PART XXIII. SECT. 2, SUB-SECT. 3.—D.

5837 iv. ———.]—Where tenant held over after termination of tenancy.—A weekly tenant, who, after the termination of his tenancy, holds over with the consent of his landlord, without any agreement other than that implied by law from the continuance in possession & acceptance of a weekly rent, continues to hold as a weekly tenant & is not entitled to one month's notice under Conveyancing Act, 1910, s. 127, for the determination of such tenancy.—BURNHAM v. CARROLL MUGGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1927), 28 S. R. N. S. W. 169; 45 N. S. W. W. N. 23.—AUS.

5837 v. ———.]—Week's rent pay-

*able in advance in arrear.*—Where in a weekly tenancy of a dwelling-house, there being no finding as to the area of the premises, it appeared that the rent was payable weekly in advance, & that, at the date of the service of notice to quit, a week's rent in advance was owing:—*Held*: the tenant was not entitled to the statutory notice of at least 28 days prescribed by Fair Rents Act of 1920, s. 14, in the case of a lessee who duly pays the rent of the dwelling-house leased by him & otherwise performs the conditions of his lease.—INNES v. ARUNDELL, *Ex p.* ARUNDELL (1928), 22 Q. J. P. 83.—AUS.

5840 i. What amounts to week's notice.—In order that a weekly tenancy may be determined by a notice to quit, the notice must be one which expires at the end of a periodic week from the commencement of the tenancy.—How v. MANSFIELD, [1923] N. Z. L. R. 91.—N.Z.

5842 vii. ———.]—HART v. NADEAU, HART v. HANSON (Alta.), [1927] 2 W. W. R. 318.—CAN.

### PART XXIII. SECT. 5, SUB-SECT. 1.—A.

*sf.* Whether demand for possession may be included.—A notice of determination of a lease & a demand for possession may be contained in the same document.—ERNEWEIN v. WELCH [1928] 4 D. L. R. 498; [1928] 2 W. W. R. 628.—CAN.

### PART XXIII. SECT. 5, SUB-SECT. 1.—B.

5945 ii. S. P. SANDISON v. ORDER OF ELKS (Alta.), [1927] 2 D. L. R. 1024.—CAN.

### PART XXIII. SECT. 6, SUB-SECT. 1.—A.

1 i. Lessor after agreement to sell leased land.—The fact that a landlord had agreed to sell the leased land to a third party did not render Landlord & Tenant Act, R. S. S. 1920, c. 160, inapplicable. He had the right under the terms of the lease to terminate it upon such a sale.—ERNEWEIN & WELCH, [1928] 4 D. L. R. 498; [1928] 2 W. W. R. 628.—CAN.

### PART XXIV. SECT. 1, SUB-SECT. 2.—A. (b) ii.

*sa.* Express right of non-payment for five days—Terms of lease misunder-

*stood by lessee.*—Upon an application for ejectment, the lessors set up the answer that they had mistaken the terms of the lease & were under the impression that the terms were similar to those of a previous lease, which gave them seven days' grace to pay the arrear rent:—*Held*: as the provision in the lease giving only five days' grace was clear & unambiguous, the answer was no defence.—ILLING v. MANNE & MANNE (1925), 46 N. L. R. 58.—S. AF.

### PART XXIV. SECT. 1, SUB-SECT. 3.

*sb.* Power given to lessor to cancel lease.—On breach of covenant to pay rent.—After giving notice to tenant.—Sufficiency of notice.—A wharfside site in the B. Harbour, E. London, had been leased to *appt.* by the Union of S. Africa, who was the owner of the site, & an action for ejectment had been brought by the S. African Ry. & Harbours. Clause 2 of the lease of the site provided that “should the lessees fail to pay the said rental on the day on which the same shall fall due, the administration, after posting written notice to the lessee's address, & receiving no payment within a further period of fourteen days, shall have the right to cancel this lease. The rent being in arrear the administration purported to give the notice required by clause 2 of the lease & thereafter to cancel the lease:—*Held*: a written notice to the effect that the rent was in arrear & calling upon the lessee to pay the same within 14 days from date was a sufficient compliance with the clause.—WINTER v. S. AFRICAN RYS. & HARBOURS, [1929] App. D. 100.—S. AF.

### PART XXIV. SECT. 1, SUB-SECT. 4.—B. (b) i.

6221 i. Re-letting.—To new tenant.—When following notice of forfeiture of *pltf.*'s lease the lessor executed a lease of the same premises to another lessee:—*Held*: there had been an effectual re-entry.—WINTER v. CAPILANO TIMBER CO., [1927] 4 D. L. R. 36; [1927] 2 D. L. R. 784; [1927] 1 W. W. R. 811; 38 B. C. R. 401.—CAN.

### PART XXIV. SECT. 1, SUB-SECT. 4.—C. (a) i.

6308 xiv. ———.]—GORDON v. WILHELM (Sask.), [1926] 4 D. L. R. 1042; [1926] 3 W. W. R. 641.—CAN.



obtained judgment against the tenant for possession of the premises. Subsequently a document was signed by the tenant, which provided that, if the landlord would withhold the writ of possession, the tenant would pay the rent & give up possession of the premises at the end of the quarter:—*Held*: the document was not inconsistent with the tenant's right to obtain relief against forfeiture under Jud. (Consolidation) Act, 1925 (c. 49), s. 46.—*NANCE v. NAYLOR*, [1928] 1 K. B. 263; 97 L. J. K. B. 39; 138 L. T. 165; 44 T. L. R. 11, C. A.

**6315a.** ——— **On payment of rent How rent calculated.**—*DOE d. HARCOURT v. ROE* (1813), 4 Taunt. 883; 128 E. R. 579.

**6352a.** **On person on premises.**—Where a notice addressed to the lessee is left with a person on the premises, & there are reasonable grounds for supposing that that person will pass it on to the lessee, the service is good within Law of Property Act, 1925 (c. 20), s. 196 (3).—*CANNON BREWERY CO., LTD. v. SIGNAL PRESS, LTD.* (1928), 139 L. T. 381; 44 T. L. R. 486; 72 Sol. Jo. 285.

**6356.** *Add. Annotations*:—*Refd.* *Field v. Curnick*, [1926] 2 K. B. 374; *Marsden v. Heyes*, [1927] 2 K. B. 1.

**6358.** *Add. Annotations*:—*Apld.* *Sedgwick, Collins v. Rossia Insce. of Petrograd* (1926), 136 L. T. 72. *Refd.* *Employers' Liability Assee. Corpn. v. Sedgwick, Collins*, [1927] A. C. 95.

**6388.** *Add. Annotation*:—*Refd.* *Tredegar v. Harwood* (1928), 97 L. J. Ch. 392.

**6391.** *Add. Annotation*:—*As to* (2) *Refd.* *Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

**6393.** *Add. Annotation*:—*Apld.* *Chaplin v. Smith*, [1926] 1 K. B. 198.

**6435.** *Add. Annotation*:—*Mentd.* *Busby Avgherino*, [1927] 2 Ch.

**6558.** *Add. Annotation*:—*Consd.* *Turner v. Watts* (1928), 97 L. J. K. B. 103.

**6573.** *Add. Annotations*:—*Apld.* *Turner v. Watts* (1927), 44 T. L. R. 105. *Refd.* *Turner v. Watts* (1928), 138 L. T. 680.

**6627.** *Add. Annotations*:—*Mentd.* *Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 187; *Smith v. Wood*, [1929] 1 Ch. 11.

**6636a.** **Substitution of licence or tenancy at will under purchase agreement—Rescission of agreement.**—By an agreement in writing dated Aug. 28, 1926, deft., the weekly tenant of a house to which Rent Restriction Acts applied, agreed to buy it from plff., the landlord, for £900. The agreement provided that deft. acknowledged owing plff. £63 11s. arrears of rent, & that plff. would accept £50 in settlement; that, until certain mtgs. had been transferred from plff. to deft., plff. should remain in absolute ownership of the premises; & that, until completion of the conveyance, deft., who was to remain in possession, should pay to plff. interest on the £950 at the rate of 6 per cent. with interest on interest dating from Sept. 1, 1926. Dft. also agreed to pay certain deposits, plff., on failure of such payments, to be entitled to rescind the agreement & enter into possession of the house. Dft. agreed to maintain the house in a good state of repair & to pay rates, taxes, & insurance. On Feb. 27, 1927, plff. rescinded the agreement under the powers reserved in it, but deft. refused to give him possession of the house:—*Held*: (1) the effect of the agreement, as indicating the intention of the parties, was to determine the weekly tenancy, & to substitute for it either a licence or a tenancy at will, which, in its turn, was revoked or determined by the rescission of the purchase agreement, & deft. had no contractual right to resist the claim for possession; (2) deft. was not protected by Rent Restriction Acts, & on Aug. 28, 1926, deft. remained in possession of the house by virtue of the contract of purchase, & not as a statutory tenant, & under that contract she was either a licensee or a tenant at will, & after its rescission, if she had been a licensee, she was not a tenant who had held over under the Acts, & if she had been a tenant at will, her tenancy had been at no rent, & by Increase of Rent & Mtge. Interest (Restrictions) Act, 1920 (c. 17), s. 12 (7), it must be ignored, with the result that the house was to be treated as untenanted & plff. had an unrestricted right to recover possession of it; (3) the rescission of the purchase agreement did not deprive plff. of his right to the arrears of rent which had accrued due to him before the agreement

**PART XXIV. SECT. 1, SUB-SECT. 4.**—**D. (a) i.**

**3322 viii.** ——— ] Where a grant of land to the congregation of S. provided that if the congregation should become united with any other congregation or cease to exist as a separate & independent congregation, the grant should become absolutely null & void, & a power of re-entry was reserved to the grantor, & the grantor served a notice demanding possession on the ground that the grant had become null & void by reason of the union of the congregations of C. & S.:—*Held*: a sufficient notice was a condition precedent to enforcing the forfeiture, & the notice given was not sufficient.—*WALSH v. WIGHTMAN*, [1927] N. L. T. 1R.

**PART XXIV. SECT. 1, SUB-SECT. 4.**—**D. (a) ii.**

**6334 i.** *Particulars of breach—Must be precise—Covenant to sell only goods authorised by lessor.*—*GORDON v. WILSON* (Sask.), [1926] 4 D. L. R. 1042; [1926] 3 W. W. R. 641.—*CAN.*

J. S.

**PART XXIV. SECT. 1, SUB-SECT. 4.**—**D. (e).**

**6396 i.** *Breaches excluded from relief Re entry on bankruptcy Lease of licensed house & other premises* ] *Held*: a lease of a licensed house & premises, with the out-offices, yard & garden & two small dwelling-houses at the rear was a lease of "a house used or intended to be used as a public-house or a beer-shop" within Conveyancing Act, 1892, s. 2 (3) (c), as the inclusion of the two small dwelling-houses in the lease did not exclude it from the sub-section.—*Re DREW* [1929] 1 R. 501—*IR.*

**PART XXIV. SECT. 1, SUB-SECT. 5.**—**A. (a).**

**6436 iii.** ——— *Covenant by landlord to supply goods—Landlord offering to supply goods after serving notice of breach of covenant—No waiver.*—*Re JACKSON (J. B.), LTD & GETTAS*, [1926] 2 D. L. R. 721; 58 O. L. R. 564.—*CAN.*

**PART XXIV. SECT. 1, SUB-SECT. 5.**—**A. (d).**

**6517 i.** *Where insufficient distress on*

*premises* ] In an action to recover possession of premises under a lease providing for forfeiture for non-payment of rent.—*Held*: the lessor must prove that he has distrained, & that no sufficient distress was to be found on the premises countervailing the rent, & an insufficient distress is not a waiver of the right of re-entry.—*HATVEY v. JOHNSTON* (1901), 8 Nfld. L. R. 191.—*NFLD.*

**PART XXIV. SECT. 2, SUB-SECT. 3.**—**B. (b) i.**

*sd. Agreement acted on by parties.* ]—The renunciation of an existing lease by the tenant, & the grant of a new lease by the landlord, can be inferred from a written obligation on the part of the landlord to grant a new lease followed by actings of parties amounting to *res interventus* & by possession on the part of the tenant, not only where the landlord is a fee-simple proprietor, but also where he is an heir of entail in possession; & a lease so constituted is binding upon succeeding heirs of entail.—*CAMPBELTOWN COAL CO. v. AINGYLL (DUKE)*, [1926] S. C. 126.—*SCOT.*

58

was made, but it did destroy deft.'s right to enforce the agreement with pltf. to accept a less sum than that which was in fact owing.—*TURNER v. WATTS* (1927), 97 L. J. K. B. 92; 44 T. L. R. 105; 26 L. G. R. 78, D. C. *Aff'd.* (1928), 97 L. J. K. B. 403; 138 L. T. 680; 92 J. P. 113; 44 T. L. R. 337; 26 L. G. R. 261, C. A.

**6656.** *Add. Annotation*:—*Refd. Metcalfe v. Boyce*, [1927] 1 K. B. 758.

**6674a.** —.]. In 1910, deft., a county police constable, became quarterly tenant of a house. In 1912 the county police authority, which had till then made a grant in aid of the rent of houses occupied by police constables, decided that for the future the chief constable should be the tenant of those houses, that the constables should occupy them as servants, that the chief constable should pay all rent, rates & taxes, & that a deduction should be made in respect thereof from the men's pay. Deft. knew of, & made no demur to, this arrangement, but no express notice to determine his tenancy was given. From 1912 onwards the demands for rent were sent to deft., addressed to the county authority. These deft. took to the police office, received the full amount due, & paid it at the estate office of the landlord, being given a receipt acknowledging payment by the county authority, which receipt he sent to the county treasurer. No demands for rates & taxes were made to deft. This course of business continued for fourteen years, deft. continuing to occupy the house & his name remaining on the estate books as tenant. There was no written surrender or assignment of the

tenancy:—*Held*: (1) there was evidence from which the inferences of fact could be drawn that in 1912 deft. agreed with the landlord that he would forthwith surrender his tenancy, that the landlord agreed with deft. to accept the surrender & accept the chief constable as his tenant, & that the deft. would in future occupy the house as a servant of the chief constable & not as a tenant, & on those facts there had been a surrender of the tenancy by operation of law; (2) deft. was in the circumstances estopped from denying that he had surrendered or assigned the tenancy.—*METCALFE v. BOYCE*, [1927] 1 K. B. 758; 96 L. J. K. B. 376; 136 L. T. 606; 91 J. P. 55; 43 T. L. R. 149, D.

**6715.** *Add. Annotations*:—*Consd. Metcalfe v. Boyce*, [1927] 1 K. B. 758. *Mentd. Layzell v. Thompson* (1927), 137 L. T. 106; *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686.

**6762.** *Add. Annotations*:—*Consd. Dalton v. Pickard* (1911), [1926] 2 K. B. 545, n.; *Richmond v. Savill*, [1926] 2 K. B. 530.

**6764.** *Add. Annotation*:—*As to* (2) *Consd. Richmond v. Savill*, [1926] 2 K. B. 530.

**6766.** *Add. Annotation*:—*Consd. Richmond v. Savill*, [1926] 2 K. B. 530.

**6767.** *Add. Citations*:—95 L. J. K. B. 1052, n.; 136 L. T. 21, n.

*Add. Annotation*:—*Consd. Richmond v. Savill*, [1926] 2 K. B. 530.

**6768.** *Add. Citations*:—95 L. J. K. B. 1042; 136 L. T. 15.

**6848.** *Add. Annotation*:—*Refd. Morris v. Harris*, [1927] A. C. 252.

## Part XXV.—Delivery and Recovery of Possession.

**6925.** *Add. Annotation*:—*As to* (1) *Refd. Marsden v. Heyes*, [1927] 2 K. B. 1.

**6945.** *Add. Annotation*:—*Mentd. Anchor Trust Co. v. Bell*, [1926] Ch. 805.

**6957a.** —.]. *Determination of tenancy by notice to quit "or otherwise"*—*Mortgagor attorning tenant*—*Provision for notice in mortgage deed*.—A mtge. deed contained a clause by which the mtgor. attorned tenant from year to year to the mtgees. at a nominal rent. It was also provided that, if the mtgor. made default in payments under the deed, the mtgees. might give to the mtgor. seven days' notice in writing to determine the

tenancy created by the deed. The mtgor. defaulted & the mtgees. served on him a notice to quit. The mtgor. refused to give up possession:—*Held*: the term or interest of the mtgor. in the mortgaged property had been "duly determined by a legal notice to quit or otherwise" within above Act, & therefore, justices had power to issue a warrant to give possession of the property to the mtgees.—*DUDLEY & DISTRICT BENEFIT BUILDING SOCIETY v. GORDON*, [1929] 2 K. B. 105; 98 L. J. K. B. 486; 141 L. T. 583; 93 J. P. 186; 45 T. L. R. 424; 27 L. G. R. 448, D. C.

**PART XXIV. SECT. 2, SUB-SECT. 3.**—C. (b) i.

k i. —.].—*LE CAIN v. WIELAND* (1862), 4 R. & G. 71, n.—CAN.

**PART XXIV. SECT. 2, SUB-SECT. 3.**—D. (b).

6688 iii. —.].—*PETROPOLIS v. CLARKE*, [1928] 1 D. L. R. 1012; 60 N. S. R. 22.—CAN.

p i. —.].—*Held*: retention of the keys & advertising the house for rent were ambiguous acts; they were, upon the evidence, referable to the lessor's promise to try to rent the house, & did not show an acceptance of a surrender.—*GREEN v. TREES* (1927), 60

O. L. R. 151.—CAN.

**PART XXIV. SECT. 3, SUB-SECT. 1.**—A.

6771 ii. —.].—*DALYE v. ROBERTSON* (1860), 19 U. C. R. 411.—CAN.

**PART XXIV. SECT. 6.**

6a. *Forfeiture clause—Object of*.—*Re STAVISS, ETC.* (1928), 66 Que. S. C. 474.—CAN.

**PART XXV. SECT. 2.**

6916 i. *Grounds for interference by court*.—Where, following a dispute, a settlement was made, by which the tenant was to quit the premises, & the

tenant vacated accordingly:—*Held*: the tenant's claim for damages for eviction & to set aside the agreement for settlement should be dismissed, as the tenant was not at such a disadvantage with the landlord as to call for the intervention of the ct. for his protection, & he must stand by the bargain he made.—*MCKAY v. SEXSMITH* (1914), 29 W. L. R. 210; 26 D. L. R. 986.—CAN.

q i. *Tenant holding over & paying rent—Subsequent non-payment of rent*.—Ejectment lies for non-payment of rent under *Consol. Stat.*, c. 83, s. 19, where the tenant continues in possession & pays rent after the expiration of the

## Part XXVII.—Rent and Mortgage Restriction Acts.

**7027a.** ——— Notwithstanding tenant ceasing personally to reside on premises—Members of tenant's family residing on premises.]—**KREITMAN v. VIDORSKY** (1927), 43 T. L. R. 335, D. C.

**7032.** *Add. Annotations* :—**Refd.** *Roe v. Russell*, [1928] 2 K. B. 117; *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B. 103.

**7036.** *Add. Annotations* :—*As to (2) Apprvd.* *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B. 103. **Refd.** *Catto v. Curry*, [1926] 1 K. B. 460.

**7037.** *Add. Citation* :—24 L. G. R. 321.

*Add Annotations* :—*As to (1) Dbtd.* *Brooks v. Liffen*, [1928] 2 K. B. 347. **Apprvd.** *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B. 103. **Apld.** *Ratkinsky v. Jacobs*, [1929] 1 K. B. 24. **Refd.** *Oakley v. Wilson*, [1927] 2 K. B. 279.

**7037a.** ———.]—**LLOYD v. COOK, GOUDGE v. BROUGHTON, SIMSON v. MIATT, BARTRAM v. BROWN, BARKER v. HUTSON**, No. 7352d, *post*.

**7037b.** *Rent-free tenancy.*]—The Rent Restriction Acts afford no protection to a tenant who is rent-free.—**BRACHY v. PALES**, [1927] 1 K. B. 818; 96 L. J. K. B. 305; 136 L. T. 282; 43 T. L. R. 69; 25 L. G. R. 156, D. C.

*Annotation* :—**Refd.** *Turner v. Watts* (1927), 44 T. L. R. 105.

**7037c.** ———.]—**TURNER v. WATTS**, No. 6636a, *ante*.

**7040.** *Add. Annotations* :—*As to (1) Distd.* *Leslie v. Cumming*, [1926] 2 K. B. 417; *Ebner v. Lascelles*, [1928] 2 K. B. 486. *As to (2) Apld.* *Ratkinsky v. Jacobs*, [1929] 1 K. B. 24. **Refd.**

*Thompson v. Rolls*, [1926] 2 K. B. 426; *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B. 103.

**7041.** *Add. Citations* :—95 L. J. K. B. 1007; 24 L. G. R. 315.

*Add. Annotations* :—*As to (1) Refd.* *Ebner v. Lascelles*, [1928] 2 K. B. 486. *As to (2) Refd.* *Thompson v. Rolls*, [1926] 2 K. B. 426.

**7041a.** ———.]—Where the tenant of an entire house within the limits of the Rent Restriction Acts sub-lets part as a dwelling-house & thereby becomes mesne tenant of the whole premises, the part sub-let remains under the protection of the Acts by reason of the proviso to 1923 Act, s. 2 (1).—**DOMENDIETTI v. RYAN** (1929), 111 L. T. 239; 93 J. P. 206; 45 T. L. R. 432; 73 Sol. Jo. 318; 27 L. G. R. 451, D. C.

**7047.** *Add. Citation* :—21 L. G. R. 147.

*Add. Annotations* :—**Distd.** *Cohen v. Gold*, [1927] 1 K. B. 865. **Apprvd.** *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B. 103. **Refd.** *Catto v. Curry*, [1926] 1 K. B. 460; *Oakley v. Wilson*, [1927] 2 K. B. 279.

**7049.** *Add. Annotations* :—**Consd.** *Jewish Maternity Soc. Trustees v. Garfinkle* (1926), 95 L. J. K. B. 766. **Distd.** *Barton v. Keeble*, [1928] Ch. 517. **Refd.** *Brooks v. Liffen*, [1928] 2 K. B. 347.

**7051.** *Add. Citations* :—135 L. T. 476; 24 L. G. R. 543.

**7057a.** ———.]—Certain premises, part of which was used as a shop, had been let to a tenant who resided on these premises. The landlord having served upon the tenant a notice to increase the rent, the tenant claimed to be

lease.—**DOMED. DEVEBER v. ROE** (1888), 27 N. B. R. 491.—**CAN.**

## PARTXXV. SECT. 4, SUB-SECT. 2.—D.

c i. ——— *When applicable—Not to land purchased at tax sale.*—**FYHR v. BURKE**, [1924] 4 D. L. R. 435; [1924] 3 W. W. R. 328; 19 Sask. L. R. 28.—**CAN.**

c ii. ——— *Not by purchaser under agreement for sale—No assignment of lease.*—**RE BERGEN & MOTT**, [1924] 1 D. L. R. 499; [1924] 1 W. W. R. 494; 18 Sask. L. R. 290.—**CAN.**

f i. ——— *Appeal—Order by judge in chambers.*]—No appeal lies to the Ct. of Appeal from an order made by a judge of the K. B. in chambers, on an appeal to him from an order made by a district ct. judge on an application under Landlord & Tenant Act for a writ of possession.—**CANADA TRUST CO. v. SCHULTZ** (Sask.), [1926] 4 D. L. R. 724; [1926] 2 W. W. R. 797.—**CAN.**

f ii. ——— *Proceedings for—Whether applicable in involved case.*]—Pltf. sold a property in Vancouver to defts. under agreement for sale for \$40,000. Defts. went into possession & after paying \$21,000 were in default. The parties then entered into a further agreement whereby the option to purchase was still in force, but the payments to be made were expressed in rent. After making further payments amounting to \$2,500, defts. were again in default, & pltf. applied

for & obtained a writ of possession under the overhanging sections of Landlord & Tenant Act:—**Held**: in a case so involved & in which if action had been brought relief against forfeiture might be considered, the section of Landlord & Tenant Act invoked did not apply. Summary remedy should not be invoked except in cases of the ordinary relationship of landlord & tenant.—**RAY v. HUBY HOU**, [1928] 1 D. L. R. 177; 39 B. C. R. 128.—**CAN.**

f iii. ——— *Injunction against enforcement of—Action pending to determine construction of lease.*]—**WEICH v. ERNEWEIN**, [1928] 3 W. W. R. 20.—**CAN.**

q i. ——— *Based on wrong decision—Irregularities in proceedings—Fatalities of order.*]—The fact that summary proceedings under Landlord & Tenant Act were not entitled in the ch., as provided by sect. 21 of the Act, & the fact that the papers were not served as provided in sect. 16 thereof, are irregularities which cannot be attacked except in the proceedings themselves or on an appeal.—**TOFTS v. THOMPSON**, [1928] 3 W. W. R. 666.—**CAN.**

## PART XXVII. SECT. 1, SUB-SECT. 1.

**7022 i.** *Application to premises—Letting not necessary.*]—The provisions of Rent & Mtgo. Restrictions Act, 1923 (No. 19 of 1923), relating to the restriction of rent, only apply as between landlord & tenant, & are applicable only to a house which is let.—**WALLACE v. FOGARTY**, [1926] 1 R. 255, 257.—**IR.**

## PART XXVII. SECT. 1, SUB-SECT. 2.

*Continuation of application of Acts—Sub-letting furnished of unfurnished house—Destruction of identity.*]

The widow of a tenant of a house let unfurnished sub-let the house furnished:—**Held**: the widow by sub-letting the house furnished made it cease to be a house to which Rent & Mtgo. Restrictions Act, 1923 (No. 19 of 1923), applied.—**KAVANAGH v. WHITTLE**, [1926] 1 R. 425, 428.—**IR.**

## PART XXVII. SECT. 1, SUB-SECT. 3.—A. (a).

**7045 ii.** ——— *Rent & Mortgage Restrictions Act, 1923 (No. 19 of 1923), s. 3 (1).*]—The words "let as a separate dwelling" apply to "a house," as well as to "a part of a house"—**WALLACE v. FOGARTY**, [1926] 1 R. 255, 257.—**IR.**

## PART XXVII. SECT. 1, SUB-SECT. 3.—A. (b).

**7055 i.** *Shop.*]—Premises in a country town were let to a tenant under a single contract of lease, & at an unapportioned rent of less than £70. The subjects consisted of a dwelling-house, & of a room used as a shop, & constructed to serve that purpose. The house & the shop had separate entrances from the street, but there was internal communication between them. The landlord having brought an action of removing from the shop:—**Held**: the unit of location was a complex one consisting in part of a dwelling-house

protected under the Rent Restriction Acts :—*Held* : as the tenant dwelt in the house & had a right to dwell there, the house was a dwelling-house, & the fact that part of it was used for business purposes did not prevent it being a dwelling-house to which 1920 Act, s. 12 (2), applied. —*Hicks v. Snook* (1928), 93 J. P. 55 ; 73 Sol. Jo. 43 ; 27 L. G. R. 175, C. A.

7061. *Add. Annotation* :—**Consd.** *Leslie v. Cumming*, [1926] 2 K. B. 417.

7062. *Add. Annotations* :—**Refd.** *Leslie v. Cumming*, [1926] 2 K. B. 417 ; *Ebner v. Lascelles*, [1928] 2 K. B. 486.

7063. *Add. Citations* :—95 L. J. K. B. 1 ; 131 L. T. 21 ; 24 L. G. R. 27.

*Add. Annotations* :—As to (1) **Folld.** *West Wales Joint Board for the Mentally Defective v. Evans* (1928), 139 L. T. 382. **Refd.** *Leslie v. Cumming*, [1926] 2 K. B. 417 ; *Thompson v. Rolls*, [1926] 2 K. B. 426 ; *Ebner v. Lascelles*, [1928] 2 K. B. 486.

7067a. — — **Dwelling-house taken for purpose of subletting.**—A dwelling-house consisted of a ground floor & basement. The tenant did not herself occupy the dwelling-house or any part of it, but sublet the ground floor furnished, & the basement unfurnished, to sub-tenants whose occupation ceased shortly before the end of the tenancy : *Held* : 1920 Act was not prevented from applying to the dwelling-house, so as to entitle the tenant to rely upon sect. 2 (3), because (1) the tenant took & used the dwelling-house only for the purpose of subletting it, inasmuch as the taking & user of premises only for that purpose did not make them business premises to which the Act did not apply ; (2) the tenant did not herself occupy the dwelling-house, & her sub-tenants ceased to occupy it before the end of the tenancy ; (3) the tenant had sublet the ground floor furnished to sub-tenants, who ceased to occupy it before the end of the tenancy. — *EBNER v. LASCELLES*, [1928] K. B. 486 ; 97 L. J. K. B. 497 ; 139 L. T. 140 ; 92 J. P. 111 ; 44 T. L. R. 460 ; 72 Sol. Jo. 363 ; 26 L. G. R. 295, D. C.

7090. *Add. Annotation* :—**Refd.** *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B. 103.

7091. *Add. Citation* :—24 L. G. R. 250.

*Add. Annotations* :—**Apld.** *Doulin v. Purcell* (1926), 136 L. T. 633. **Apprvd.** *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929]

1 K. B. 103. **Folld.** *Domendietti v. Ryan* (1929), 141 L. T. 239. **Refd.** *Oakley v. Wilson*, [1927] 2 K. B. 279.

7095. *Add. Citation* :—24 L. G. R. 321.

*Add. Annotations* :—**Dbtd.** *Brookes v. Liffen*, [1928] 2 K. B. 347. **Apprvd.** *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B. 103. **Consd.** *Ratkinsky v. Jacobs*, [1929] 1 K. B. 24. **Refd.** *Oakley v. Wilson*, [1927] 2 K. B. 279.

7097. *Add. Annotations* :—As to (1) **Distd.** *Lovibond (J.) & Sons v. Vincent*, [1929] 1 K. B. 687. **Generally, Refd.** *Roe v. Russell*, [1928] 2 K. B. 117.

7101. *Add. Annotations* :—**Distd.** *Ebner v. Lascelles*, [1928] 2 K. B. 486. **Consd.** *West Wales Joint Board for the Mentally Defective v. Evans* (1928), 139 L. T. 382.

7103a. — — **Application of 1920 Act, s. 2 (3).** — *EBNER v. LASCELLES*, No. 7067a, ante.

7103b. — — — — — Where there has been no default by a tenant under 1923 Act, s. 4, no order at all for possession or ejectment can be made in respect of premises protected by the Act, so long as they are lawfully occupied ; & the fact that a tenant has sublet the whole & does not occupy any part himself will not be a ground for an order for possession being made against either tenant or sub-tenant. — *WEST WALES JOINT BOARD FOR MENTALLY DEFECTIVE v. EVANS* (1928), 139 L. T. 382 ; 44 T. L. R. 565 ; 26 L. G. R. 417, D. C.

7105. *Add. Annotations* :—**Distd.** *Lovibond (J.) & Sons v. Vincent*, [1929] 1 K. B. 687. **Refd.** *Roe v. Russell*, [1928] 2 K. B. 117.

7107a. **Daughter of deceased tenant.**—*Deft.*'s father, who was the statutory tenant of a dwelling-house to which Rent Restriction Acts applied, died intestate & leaving no widow. *Deft.* was admittedly a member of her father's family, "residing with him at the time of his death," within 1920 Act, s. 12 (1) (g). When he died *deft.*'s father owed six months' rent to the landlord of the house :—*Held* : *deft.* was a statutory tenant of the premises, & had to observe all the terms & conditions of the contract of which her father had originally held, & her statutory tenancy had begun with her, & she was not liable to pay the arrears of rent owing by her father at the time of his death, they being a liability which had been incurred by a preceding tenant. — *TICKNER v. CLIFTON*, [1929] 1 K. B. 207 ; 98 L. J. K. B. 69 ; 140 L. T. 136 ; 93 J. P. 57 ; 45 T. L. R. 35 ; 72 Sol. Jo. 762, D. C.

& in part of a shop, the latter was not part of the dwelling-house, & accordingly Increase of Rent & Mortgage Interest (Restrictions) Act, 1920, did not apply to it ; & decree of removing granted. — *MCCLYMONT'S TRUSTEES v. ROSS*, [1929] S. C. (Cl. of Sess.) 585, — SCOT.

PART XXVII. SECT. 1, SUB-SECT. 3.—D.

c. For the word "hotel" in the catchwords substitute the word "house."

c i. — — — — — A farmhouse was let with a farm, the tenancy expiring at Martinmas 1923. In Mar. 1922, the tenant sub-let the house, garden, & certain offices at a rent of £20, the

ratable value of the garden & offices being less than one-quarter of that of the house. On the expiry of the farm tenancy at Martinmas 1923, the landlord let to the subtenant the house, garden, & offices, with the steading & farmyard, at a rent of £35. The ratable value of the garden, offices, steading, & farmyard was more than one-quarter of that of the house :—*Held* : as the value of the land & other premises let with the house since Martinmas 1923 exceeded one-quarter of that of the house, 1920 Act did not apply to the subjects, the addition of the farmyard & steading having altered the identity of the house, & thus elided sect. 12 (6) of the Act. — *HALDANE v. SINCLAIR*, [1927] S. C. 562, — SCOT.

PART XXVII. SECT. 2, SUB-SECT. 4.

7105 i. **Executor of tenant.**—*Held* : a tenant's rights under 1920 Act were altogether personal, & no interest in deceased's tenancy could devolve on heirs, as her exors. — *DRURY v. JOHNSTON*, [1928] N. I. 25, — IR.

sd. **Widow or member of deceased tenant's family.**—*Pltf.* was the owner of a dwelling-house subject to Increase of Rent & Mortgage Interest (Restrictions) Act, 1920. The premises had been let as a weekly tenancy, in or about 1923, to N., who was then in *pltf.*'s employment, at the rent of 5s. per week. N. died intestate in June, 1926, leaving *deft.* his widow, who up to the time of his death resided with him. On the death of her husband, *deft.*

**7112. Add. Annotation:—Apprvd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929], 1 K. B. 103.

**7125. Add. Annotation:—Refd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929], 1 K. B. 103.

**7132. Add. Annotation:—As to (2) Refd.** Leslie v. Cumming, [1926] 2 K. B. 417.

**7135. Add. Annotation:—As to (1) Consd.** Bracey v. Pales (1926), 43 T. L. R. 69.

**7145a. What amounts to increase.]**—By a local Act, the rates in S. were consolidated & became a comprehensive borough rate. In May 1927, by virtue of the Act, which provided that in certain cases owners might be rated instead of occupiers, the city council passed a resolution transferring the liability for the rate as regards premises of which the ratable value did not exceed £10. The resolution took effect on Oct. 5, 1927. The rate, which the owners became liable to pay, was calculated on the basis of nine-tenths

of the amount in the pound of the full consolidated rate previously payable by the occupier. The landlords of certain premises of a ratable value not exceeding £10 claimed that they were entitled to increase the rent of one of their tenants, under 1920 Act, by the amount of the full consolidated rate previously payable by the tenant:—*Held*: under sect. 2 (1) (b), the landlords were entitled to increase the rent, as there had been an increase in the amount of the rates for the time being payable by the landlords over the corresponding amount paid by them in the period specified by the sect.; but the amount of the permitted increase was an amount equivalent to nine-tenths of the full consolidated rate, & not the full amount of that rate.—HODGKINSON v. HEWITT (1928), 139 L. T. 101; 11 T. L. R. 691; 93 J. P. 23; 27 L. G. R. 210, D. C.

**7149. Add. Annotation:—Apld.** Hodgkinson v. Hewitt (1928), 139 L. T. 101.

**7150. Add. Annotation:—Refd.** Elvington Tenants v. Hatton (1928), 139 L. T. 211.

remained in occupation & entered into legal possession of the house under Increase of Rent, etc. (Restrictions) Act, 1920, s. 12 (1) (a). Deft. married again in Mar. 1928, & her second husband & his children came to reside in the house occupied by her. The landlord instituted ejectment proceedings against deft., who claimed the protection of Increase of Rent (Restrictions) Acts. Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, s. 12 (1) (a), provides that "the expression tenant includes the widow of a tenant dying intestate who was residing with him at the time of his death."—*Held*: the widow acquired a vested interest as tenant, & there was nothing in Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, which divested this interest on her second marriage.—APSELY v. BARR, [1928] N. I. 183.—IR.

**PART XXVII. SECT. 2, SUB-SECT. 7.**

**7108 1. "Separate" — Whether physically separate—Or partitioned off.]**—Pltf., the owner of a house consisting of four floors & a basement, erected in each of the back rooms on the first & second floors a partition, which converted each large back room into two rooms. He put electric fittings in each floor, & did other work in connection with the gas & water supply, & lot portion of the house to deft., describing it in the agreement as "consisting of a flat of three rooms & front basement on parlour floor." It had not a separate bath or separate sanitary accommodation, & there was no physical separation of it, as a residence, from the rest of the house.—*Held*: (1) the dwelling-house had not been "bond fide reconstructed by way of conversion into two or more separate & self-contained flats" within Rent & Mtge. Restrictions Act, 1923 (No. 19 of 1923).

The rent being in arrear, pltf. served notice to quit on deft., & instituted ejectment proceedings.—*Held*: (2) the letting was a new letting of portion of altered premises, so as to entitle pltf. to charge a rent without regard to the standard rent of the whole house; (3) deft.'s claim for apportionment of the rent must be dismissed; (4) pltf. was entitled to an order for possession, the ct. granting a stay for a limited period, the order for possession not to issue if the rent was paid within that period.—BOYLE v. FITZSIMONS, [1926] I. R. 378.—IR.

**7109 1. "Self-contained"—Whether complete residence—Necessity for partition.]**—BOYLE v. FITZSIMONS, No. 7108 1, ante.—IR.

**PART XXVII. SECT. 3, SUB-SECT. 2 — B. (c).**

**7128 i. House converted into flats — Whether rent at first letting as flat.]**—BOYLE v. FITZSIMONS, No. 7108 1, ante.—IR.

**sa. Rates previously paid by landlord Right to throw upon tenant.]** Apart from any question of special agreement, Increase of Rent & Mortgage Interest (Restrictions) Act, 1923, prevents a landlord of premises to which the Act applies, so long as he is not entitled to obtain possession, from throwing upon the tenant the burden of rates, which he, the landlord, habitually pays or allows, though his contract to pay the rates may be void in law.—MOORE v. DAVY, [1928] I. R. 316.—IR.

**PART XXVII. SECT. 3, SUB-SECT. 3. — C. (a).**

**sl. Service of notice Proof.]—Held:** (1) as 1920 Act required no particular formalities of solemnities to be observed in connection with the service of notices, service could be proved by evidence in the ordinary way; (2) upon the facts it must be inferred that notice had been received by the tenant.—GUTHRIE v. STEWART, [1926] S. C. 743.—SCOT.

**sm. Agreement for increased rent.]** Deft. resisted a claim on the ground that, as no notice to quit had been served, not any valid notice of increase of rent, the increase was irrecoverable under Increase of Rent & Mortgage Interest (Restrictions) Acts of 1920 & 1923, pltf. contending that the latter Act authorised an agreement for an increased rent, not exceeding the limits prescribed by the Act, although a notice to quit & a valid notice of increase of rent had not been served. The circuit judge gave a decree for the amount claimed.—*Held*: the decision must be affirmed.—LANGLEY v. POWER, [1928] I. R. 351.—IR.

**PART XXVII. SECT. 3, SUB-SECT. 3. — C. (b).**

**sn. Notice increasing rent during currency of lease.]** A notice to be a valid notice must be correct in substance as well as in form.

A notice is not valid which purports to increase the rent during the currency of the original term of years for which the tenant holds the premises.—SAMMON v. BYRNE, [1926] I. L. 411, 415.—IR.

**sp. Notice altering terms of tenancy.]**—A notice is not valid which purports

to alter the terms & conditions of the original contract of tenancy, by altering the liability for repairs.—SAMMON v. BYRNE, [1926] I. R. 411, 415.—IR.

**sq. Immaterial errors Effect of.]**—In an action for recovery of arrears of rent, the tenant maintained that a previous notice of intention to increase rent was invalid, in respect that (1) the notified increase of rates was inaccurate, & (2) a charge for stat gas had wrongly been included in the increased rates.—*Held*: as the tenant had suffered no prejudice, & as the notice did not contain any misleading in any material respect, & was as accurate as it could be in the circumstances at the time when it was given, the notice was not invalid.—CLYDEBANK INVESTMENT CO., LTD. v. MARSHALL, [1927] S. C. 860.—SCOT.

**PART XXVII. SECT. 3, SUB-SECT. 3. — C. (c).**

**sr. As to amount of rent.]**—A notice of intention to increase rent, which was in writing & in the statutory form, was objected to by the tenant as incompetent, on the ground that the landlord had stated, as the "rent payable," not the standard rent, but a higher amount which he was receiving at the date of the notice, & had further failed to set forth how the existing excess over standard rent had become due.—*Held*: as the tenant had already for some time been paying without objection rent at the figure stated in the notice, the onus was upon him to establish that the amount in excess of standard rent was not legally exigible, & as he had failed to do so, his objection fell to be repelled.—M'KEELAR v. M'MASTER, [1926] S. C. 754.—SCOT.

**7107 i. Amendment Made of.]**—A notice of intention to increase rent, which was in writing & in the statutory form, showed under the appropriate headings how the proposed increase was made up. As the rent of occupier's rates was subsequently found to have been overestimated, the original notice was amended by a corrective notice, sent by the landlord's factors & received by the tenant before any increased rent had become due.—*Held*: amendment of a defective notice was not restricted to the method prescribed by 1923 Act, s. 6, the primary purpose of which was to validate defective notices which had been acted on, & it was competent to amend the notice by the method adopted.—

7171. *Add. Annotation*:—**Refd.** *Roe v. Russell*, [1928] 2 K. B. 117.
7175. *Add. Annotation*:—**Refd.** *Roe v. Russell*, [1928] 2 K. B. 117.
- 7181a. **Decision of county court judge—Right of appeal to High Court.**—Landlords served on one of their tenants a notice of increase of rent, purporting to increase his rent on account of their liability for repairs & other grounds. The tenant ultimately disputed the increase on the ground of repairs only. The landlords applied to the county ct. under 1920 Act, s. 2 (6), to determine the question whether the notice of increase was valid, whether they were responsible for the whole of the repairs, & if not for what proportion they were responsible:—**Held**: although questions of law were involved in the matters submitted, the terms of the Act made the decision of the county ct. judge final, & no appeal lay from it.—*ELVINGTON TENANTS, LTD. v. HATTON* (1928), 139 L. T. 211; 92 J. P. 92; 44 T. L. R. 453; 72 Sol. Jo. 319; 26 L. G. R. 303, D. C.
- 7188a. **Necessity for apportionment—Onus of proof.**—The tenant of part of a dwelling-house to which the Rent Restriction Acts applied proved, on an application by him for an apportionment of the rent of the whole house to determine the standard rent of the rooms occupied by him, that the whole house was let on Aug. 3, 1914:—**Held**: he had established a *prima facie* case of necessity for an apportionment, & the onus was then cast on the landlord to show that the rooms occupied by the tenant were let as a separate dwelling-house on Aug. 3, 1914, & so had a standard rent of their own, an apportionment of the rent of the whole house being thus rendered unnecessary.—*PLATMAN v. FROHMAN*, [1929] 1 K. B. 376; 98 L. J. K. B. 351; 140 L. T. 105; 93 J. P. 134; 45 T. L. R. 181; 27 L. G. R. 150, D. C.
7195. *Add. Annotation*: *As to* (1) **Refd.** *Lloyd v. Cook*, *Goudge v. Broughton*, *Simson v. Miatt*, *Bartram v. Brown*, *Barker v. Hutson*, [1929] 1 K. B. 103.
7219. *Add. Annotation*:—**Refd.** *Re Keystone Knitting Mills Trade Mk.* (1928), 97 L. J. Ch. 316.
7225. *Add. Annotation*:—**Consd.** *Elvington Tenants v. Hatton* (1928), 139 L. T. 211.
- 7225a. — **Who is tenant—1920 Act, s. 12 (1).**—*TICKNER v. CLIFTON*, No. 7107a, *ante*.
- 7235a. — — — — — **]**—*BOND v. PETTLE* (1921), *Times*, Jan. 15, D. C.
- Annotations*:—**Distd.** *Lever Bros., Ltd. v. Caton* (1921), 37 T. L. R. 664. **Foldd.** *Murton v. Aldis* (1929), 141 L. T. 168.
- 7235b. — — — — — **]**—*MURTON v. ALDIS*, No. 7318b, *post*.
7237. *Add. Annotations*:—**Refd.** *Roe v. Russell*, [1928] 2 K. B. 117; *Lovibond J. & Sons v. Vincent* (1929), 98 L. J. K. B. 402.
- 7238a. — — — — — **]**—*DOMENDIETTI v. RYAN*, No. 7041a, *ante*.
7250. *Add. Annotation*:—**Refd.** *Turner v. Watts* (1927), 44 T. L. R. 105.
7254. *Add. Annotations*:—**Distd.** *Campbell v. Lill* (1926), 135 L. T. 26. **Consd.** *Roe v. Russell*, [1928] 2 K. B. 117. **Apld.** *Lovibond (J.) & Sons v. Vincent*, [1929] 1 K. B. 687. **Refd.** *Ebner v. Iascelles*, [1928] 2 K. B. 486.
- 7254a. — — **By will.**—The right of a statutory tenant under 1920 Act is a purely personal right, & cannot be transmitted by will.—*LOVIBOND (JOHN) & SONS, LTD. v. VINCENT*, [1929] 1 K. B. 687; 98 L. J. K. B. 402; 141 L. T. 116; 93 J. P. 161; 45 T. L. R. 383; 73 Sol. Jo. 252; 27 L. G. R. 471, C. A.
- 7254b. **Right to sublet.**—A statutory tenant of a dwelling-house, holding upon terms which do not prohibit subletting, may sublet part of the dwelling-house, provided the remainder is not already sublet. His power to sublet is subject to apportionment of the standard rent of the dwelling-house.
- The words “lawfully sublet” in 1920 Act, s. 15 (3), & in 1923 Act, ss. 2 (2), 4 (5), & 7 (1), do not apply exclusively to a dwelling-house of which the tenant is a contractual tenant, but apply also to a dwelling-house of which the tenant is a statutory tenant.—*ROE v. RUSSELL*, [1928] 2 K. B. 117; 97 L. J. K. B. 290; 138 L. T. 253; 92 J. P. 81; 44 T. L. R. 278; 26 L. G. R. 145, C. A.
- Annotation*:—**Consd.** *Lovibond (J.) & Sons v. Vincent*, [1929] 1 K. B. 687.
- — — — — **]**—*Sec. also*, Nos. 7041, 7237.
7261. *Add. Annotation*:—**Refd.** *Middlesex County Council v. Hall*, [1929] 2 K. B. 110.
7264. *Add. Annotation*:—**Consd.** *Roe v. Russell*, [1928] 2 K. B. 117.
7265. *Add. Annotations*:—**Expld.** *Lovibond (J.) & Sons v. Vincent*, [1929] 1 K. B. 687. **Refd.** *Roe v. Russell*, [1928] 2 K. B. 117.

M'KELLAR v. M'MASTER, [1926] S. C. 754.—SCOT.

7167 ii. — *Jurisdiction of court.*—Increase of Rent & Mgt. Interest (Restrictions) Act, 1926 (No. 21 of 1926), s. 14, has been framed to put the ct. into the position of being able to do substantial justice between landlords & tenants, & the power conferred goes far beyond the mere correction of clerical errors or the rectifying of mistakes of fact.—*HIGGINS v. WARREN*, [1927] 1 R. 558.—IR.

7167 iii. — *Effect of.*—The ct. made amendments in the notices on terms which appeared to the ct. to be just & reasonable, & gave judgment for the landlord for portion of the rent claimed:—**Held**: as a result of this procedure, the tenant, instead of holding continuously under her agreement, became a statutory tenant as from the date upon which the first of the amended notices was deemed

to have taken effect. *NOLAN v. GRAVES*, [1929] 1 R. 7.—IR.

PART XXVII. SECT. 3, SUB-SECT. 3. — D.

st. *As condition precedent to increase of rent—Agreement for increased rent.*—*LANGLEY v. POWER*, [1928] 1 R. 351.—IR.

PART XXVII. SECT. 3, SUB-SECT. 4. — B.

7189 i. *Where house reconstructed—Conversion into flats.*—*BOYLE v. FITZSIMONS*, No. 7108 i, *ante*.—IR.

PART XXVII. SECT. 5, SUB-SECT. 2. — B. (a).

7275 i. *Breach of covenant—Adjudication as bankrupt.*—Where a lease of premises contained a proviso that, on the bkpey. of the lessee, it should be lawful for the lessor to re-enter upon

the premises, & that, thereupon, the tenancy should absolutely cease, as the lessee had been adjudicated a bankrupt, the ct. granted the appl. of the lessor for the recovery of possession of the premises, made within a year of the bkpey. of the lessee, as, since Conveyancing Act, 1892, s. 2 (3) (c), applied, sub-sect. 2 of that section did not apply to the lease; & accordingly, the restrictions imposed by Conveyancing Act, 1881, s. 14 (1), did not apply to the lessor's right of re-entry. The term of years for which the lease was granted expired in 1924, but the lessee continued to remain in possession:—**Held**: the lessee was not entitled to the protection of Increase of Rent & Mortgage Interest (Restrictions) Act, 1923, as he had broken one of the conditions of his tenancy by allowing himself to be adjudicated bkpt., & therefore, he was no longer entitled to possession, even as a

**7280. Add. Annotations:—***Apld.* De Vries v. Sparks (1927), 137 L. T. 441. *Distd.* Turner v. Watts (1927), 44 T. L. R. 105.

**7281. Add. Annotations:—***Consd.* Standingford v. Bruce, [1926] 1 K. B. 466; De Vries v. Sparks (1927), 137 L. T. 441.

**7281a. Notice to quit—What amounts to.]—**An agreement made by a tenant with his landlord for good consideration to give up possession cannot constitute a notice to quit within 1920 Act, s. 5 (1) (c), as substituted for the original sect. by 1923 Act, s. 4, so as to entitle a landlord, who on the strength of the agreement has contracted to sell the premises, to recover possession of same.—*DE VRIES v. SPARKS* (1927), 137 L. T. 441; 43 T. L. R. 448; 25 L. G. R. 497, D. C.

**7291. Add. Citations:—**95 L. J. K. B. 901; 24 L. G. R. 531.

**7296. Add. Annotation:—***As to* (1) *Folld.* Hicks v. Snook (1928), 93 J. P. 55.

*c. Premises Required by Local Authority or for Statutory Undertaking* (Vol. XXXI., p. 581).

Add the words "*or for Purpose in Public Interest.*"

**7298a. "In public interest"—What is—Whether extension of trade.]—***GOOCH v. STRATMAN* (1927), 43 T. L. R. 475, D. C.

**7301a. ———.]—***WEST WALES JOINT BOARD FOR MENTALLY DEFECTIVE v. EVANS*, No. 7103b, *ante*.

**7302a. ———.]—***EBNER v. LASCELLES*, No. 7067a, *ante*.

**7307. Add. Citation:—**24 L. G. R. 141.

*Add Annotation:—**Refd.* De Vries v. Sparks (1927), 137 L. T. 441.

**7318. Add. Annotation:—***Dbtd.* Murton v. Aldis (1929), 141 L. T. 168.

**7318a. ———.]—***BOND v. PETTLE* (1921), *Times*, Jan. 15, D. C.

*Annotations:—**Distd.* Lever Bros., Ltd. v. Caton (1921), 37 T. L. R. 664. *Consd.* Murton v. Aldis (1929), 141 L. T. 168.

**7318b. ———.]—**On an application for possession of a cottage made before justices under Small Tenements Recovery Act, 1838 (c. 74), it was proved that M. worked for C. at certain gas works from Apr. 1920, till Jan. 1921. Adjoining the gas works was a cottage, the property of C., which was let to M. at the commencement & in consequence of his employment. In Jan. 1921, on the termination of his employment, M. received notice to quit the cottage, & was asked to pay a certain sum for rent. He applied to the county ct. & the rent was settled by the county ct. judge at 5s. per week. M. paid this rent up to Sept. 8, 1928. On June 1, 1928, C. having sold the gas works, including the cottage, to a limited liability co., conveyed

the same to the co. On Sept. 22, 1928, the co. served a notice to quit on M., who subsequently tendered the rent due from Sept. 8 to 22, which was refused. On Oct. 13, 1928, the statutory notice under the Act of 1838 was served by the co. on M. The cottage was reasonably required by the co. as a residence for a man engaged in their whole-time employment at the gas works. The existence of alternative accommodation was not proved by the landlord. The justices found that no new tenancy had been created & that there was no obligation on the co. to prove alternative accommodation. Accordingly they ordered that a warrant of ejectment should issue: *Held*: at the time ejectment was sought the cottage was not let to applt. in consequence of his employment, the tenancy then being held under an entirely new contract, & that there were no materials on which the justices could find that no new tenancy had been created. Accordingly, as resp. had not proved the existence of alternative accommodation, the order that a warrant of ejectment should issue must be quashed.—*MURTON v. ALDIS* (1929), 141 L. T. 168; 93 J. P. 184; 27 L. G. R. 509, D.

**7320. Add. Citation:—**24 L. G. R. 192.

**7322. Add. Annotation:—***Apld.* Middlesex County Council v. Hall, [1929] 2 K. B. 110.

**7322a. ———.]—**The alternative accommodation which must be offered to the tenant by an applicant for possession under the Rent Restriction Acts of premises used as a dwelling-house & also as business premises, need only be as regards their user as a dwelling-house, & not as regards their user as business premises.—*MIDDLESEX COUNTY COUNCIL v. HALL*, [1929] 2 K. B. 110; 98 L. J. K. B. 482; 141 L. T. 243; 93 J. P. 188; 45 T. L. R. 174; 73 Sol. Jo. 366; 27 L. G. R. 427, D. C.

**7342. Add. Annotation:—***Refd.* Sheffield Corpn. v. Lufford, Sheffield Corpn. v. Morrell, [1929] 2 K. B. 180.

**7346a. Dispute not on question arising under Rent Restriction Acts—Dispute as to renewal of lease.]—***Held*: 1920 Act, s. 17 (2), applied.—*BRANCH v. BENNETT'S DAIRIES, LTD.* (1928), 44 T. L. R. 605.

**7351a. ———.]—***Lessee at rent less than two-thirds of ratable value.]—**LLOYD v. COOK, GOUDGE v. BROUGHTON, SIMSON v. MIATT, BARTRAM v. BROWN, BARKER v. HUTSON*, No. 7352d, *post*.

**7351b. ———.]—***Assignee of lease.]—*In 1913 pltf. became the assignee of a lease of a house with twenty-six years unexpired. He went into occupation with his family & lived there until 1925, when he let three rooms on

statutory tenant.—*Re DREW*, [1929] 1 R. 504.—*IR.*

#### PART XXVII. SECT. 5, SUB-SECT. 2.— B. (b).

**7278 i. Premises used for immoral or illegal purpose—What amounts to—Offence against licensing laws.]—**A tenant of licensed premises was convicted of an offence against the licensing laws, but the conviction was not recorded on the licence.—*Held*: the tenant had been convicted of using the premises for an illegal purpose, & the ct., considering it reasonable to

do so, made an order for possession.—*FOLAN v. LEE*, [1926] 1 R. 87.—*IR.*

#### PART XXVII. SECT. 5, SUB-SECT. 2.— B. (d).

*sv. "Greater hardship"—Limited to tenant personally.]—*Where deft. was tenant of a house, which was occupied, not by him, but by his sister & her husband, & in proceedings for possession it was contended that the ct. should consider hardship to deft.'s sister & her family.—*Held*: "hardship" under Rent & Mtge. Restrictions Act, 1923 (No. 19 of 1923), s. 4 (1) (d), was

hardship to a tenant personally, & no hardship borne by third parties could be taken into consideration.—*COOLEY v. WALSH & COONEY*, [1926] 1 R. 239.—*IR.*

*sw. ———.]—**What amounts to.]—**KAVANAGH v. WHITTLE*, [1926] 1 R. 425, 428.—*IR.*

#### PART XXVII. SECT. 5, SUB-SECT. 5. —B.

*p. Read "7342 i." 7342 ii. ———.]—**BOYLE v. FITZ-SIMONS*, No. 7108 i, *ante*.—*IR.*



the ground floor to deft. on a weekly tenancy, the rooms constituting a separate dwelling-house within the Acts. He afterwards claimed to recover possession from deft., on the ground that 1923 Act, s. 2 (1), applied so as to decontrol the premises:—*Held*: the possession by plff. of the whole house at the passing of 1923 Act & up to the time of the letting to deft. (1) was not possession of the "dwelling-house" in question, (2) nor was it possession by him in the capacity of "landlord," & sect. 2 (1) did not apply so as to decontrol the premises.—*COHEN v. GOLD*, [1927] 1 K. B. 865; 96 L. J. K. B. 419; 136 L. T. 723; 43 T. L. R. 376; 25 L. G. R. 198, D. C.

*Annotations*.—*Overd.* Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. *N.F.* Ratkinsky v. Jacobs, [1929] 1 K. B. 24. *Consd.* Domendietti v. Ryan (1929), 111 L. T. 239. *Refd.* Barton v. Keeble, [1928] Ch. 517; Kingsley v. Adler, [1929] 1 K. B. 525.

**7352a.** — — — *Quarterly tenant.*—A quarterly tenant of a dwelling-house which he has sublet may be the "landlord" of the premises within 1923 Act, s. 2, so that, if he obtains possession of the whole of the dwelling-house after the passing of that Act, the house becomes decontrolled.—*OAKLEY v. WILSON*, [1927] 2 K. B. 279; 96 L. J. K. B. 783; 137 L. T. 479; 43 T. L. R. 521; 71 Sol. Jo. 409; 25 L. G. R. 316, D. C.

*Annotations*.—*Refd.* Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103; Ratkinsky v. Jacobs, [1929] 1 K. B. 24.

**7352b.** — — — *Mesne tenant*—*Part subsequently sublet.*—In Nov. 1922, P. became tenant of an entire house on a three years' lease from a superior landlord. In Nov. 1924, he sublet four of the rooms therein to D., who subsequently applied that the standard rent of his rooms should be fixed by an apportionment of the rent of the entire house:—*Held*: the opening words of the proviso to 1923 Act, s. 2 (1), were merely descriptive of the position at the time when the question of decontrol arose, & should be construed as "where part of a dwelling-house is or during the currency of this Act shall be lawfully sublet," & D.'s rooms were saved from decontrol by the proviso.—*DOULIN v. PARCELL* (1926), 136 L. T. 633; 43 T. L. R. 140; 25 L. G. R. 71, D. C.

*Annotations*.—*Apprvd.* Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. *Refd.* Oakley v. Wilson, [1927] 2 K. B. 279.

**7352c.** — — — *Tenant at rent less than two-thirds of ratable value.*—The tenant of a dwelling-house under a ninety-eight years' lease at a rent which was less than two-thirds of the ratable value of the house was in possession of the house at the passing of 1923 Act:—*Held*: notwithstanding 1920 Act, s. 12 (7), the tenant was not, as against the freeholders, to be deemed to be the landlord of the house for the purposes of 1923 Act, s. 2 (1), so as to cause the house to become decontrolled.—*BROOKES v. LIFFEN*, [1928] 2 K. B. 347; 138 L. T. 676; 92 J. P. 102; 44 T. L. R. 350; 26 L. G. R. 199, C. A.

*Annotations*.—*Consd.* Lloyd v. Cook, Goudge v. Broughton,

Simson v. Miatt, Bartram v. Brown, Barker v. Hutson [1929] 1 K. B. 103. *Apd.* Ratkinsky v. Jacobs, [1929] 1 K. B. 24. *Consd.* Domendietti v. Ryan (1929), 111 L. T. 239.

**7352d.** — — — — —.]—(1) The expression "landlord" in 1923 Act, s. 2 (1), is not to be construed in the strict sense as requiring a tenant & a contract of tenancy, but it must be used either in the looser sense of "owner," or in the still looser sense of a person who at a later stage is going to appear as a landlord contesting with a tenant the terms of his tenancy. Neither in 1920 Act, nor in 1923 Act, is the word "landlord" used in its technical sense of a person between whom & the tenant a contractual relationship of landlord & tenant exists.

Where a person who is a "landlord" within 1923 Act, s. 2 (1), can prove either that he was in possession of the whole of the dwelling-house at the date of the passing of 1923 Act, or at any time since that date, 1920 Act ceases to apply to that dwelling-house & to every part of it. The whole house & every part of it is decontrolled, & a subsequent letting of the dwelling-house, or of any part of it, cannot revive control.

(2) The expression "the tenant" in 1923 Act, s. 2 (2), refers to the sitting tenant, i.e. the person who is the tenant at the time when the lease referred to in the sub-sect. is granted.

(3) Where a lessee at a rent less than two-thirds of the ratable value is in actual possession of the dwelling-house after July 31, 1923, the dwelling-house is thereby decontrolled, because, under 1920 Act, s. 12, the lessee must be treated as the landlord, & a subsequent sub-letting of certain rooms forming part of that dwelling-house does not revive control.—*LOYD v. COOK, GOUDGE v. BROUGHTON, SIMSON v. MIATT, BARTRAM v. BROWN, BARKER v. HUTSON*, [1929] 1 K. B. 103; 97 L. J. K. B. 657; 139 L. T. 452; 92 J. P. 199; 44 T. L. R. 761; 72 Sol. Jo. 533; 26 L. G. R. 609, C. A.

*Annotation*.—*As to (1)* *Consd.* Ratkinsky v. Jacobs, [1929] 1 K. B. 24; Domendietti v. Ryan (1929), 111 L. T. 239. *As to (2)* *Fold.* Kingsley v. Adler, [1929] 1 K. B. 525.

**7358a.** — — — — —.]—Where, at the date of the passing of 1923 Act, a landlord was in possession of one part of a dwelling-house, & he had a tenant in possession of the other part, & the tenant subsequently gave up possession of his part:—*Held*: the house became decontrolled, & a subsequent tenant was not protected by Rent Restrictions Acts.—*RATKINSKY v. JACOBS*, [1929] 1 K. B. 24; 97 L. J. K. B. 566; 138 L. T. 739; 92 J. P. 142; 44 T. L. R. 548; 72 Sol. Jo. 354; 26 L. G. R. 380, D. C.

*Annotation*.—*Apprvd.* Lloyd v. Cook, Goudge v. Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103.

**7358b.** — — — — —.]—*BARTON v. KEEBLE*, No. 2913a, *ante*.

**7359a.** *By grant of lease to tenant—Who is tenant.*—*LOYD v. COOK, GOUDGE v. BROUGHTON, SIMSON v. MIATT, BARTRAM v. BROWN, BARKER v. HUTSON*, No. 7352d, *ante*.

**7359b.** — — — — —.]—Plff. was the landlord & deft.

gave notice of intention to remove at Whitsunday 1924. In Mar. 1924, the landlord let the house as from Whitsunday 1924 to a new tenant. At the Whitsunday term the old tenant removed from the house, & the new tenant entered into possession:—

*Held*: the landlord had not come into "actual possession" of the house within 1923 Act, s. 2, & 1920 Act continued to apply to the house.—*CALEDONIAN HERITABLE ESTATES, LTD. v. METIVEN*, [1927] S. C. 39.—*SCOT*.

# PART XXVII. SECT. 6.

**7355 i.** *By recovery of possession by landlord—What amounts to possession—Actual distinguished from notional possession.*—The tenant of a dwelling-house, to which the Acts applied,



the tenant of a dwelling-house, containing nine rooms. Subsequently plff. let to deft. part of the dwelling-house, consisting of six rooms, & forming a separate dwelling-house, for a period of four years terminating after June 24 1926 :—*Held* : that within 1923 Act, s. 2 (2), plff. was the landlord of the part of the dwelling-house let to the tenant, & deft. was the tenant, although at the time

the long lease was granted he was only the tenant of the whole house, & the part consisting of the six rooms was not in existence as a separate dwelling, & consequently, the said part of the dwelling-house was decontrolled. -KINGSLEY v. ADLER, [1929] 1 K. B. 525 ; 98 L. J. K. B. 218 ; 140 L. T. 138 ; 93 J. P. 107 ; 45 T. L. R. 226 ; 73 Sol. Jo. 93 ; 27 L. G. R. 220, D. C.

4. *Add. Annotations*:—**Refd.** *Broome v. Agar* (1928), 138 L. T. 698; *Lockhart v. Harrison* (1928), 139 L. T. 521.
18. *Add. Annotations*:—**Consd.** *Broome v. Agar* (1928), 138 L. T. 698. **Refd.** *Lockhart v. Harrison* (1928), 139 L. T. 521.
- 24a. **Limerick.** ]—**TOLLEY v. FRY J. S. & SONS, LTD.,** No. 167a, *post*.

- 41. Add. Annotations :—***As to* (1) **Consd.** Horwood v. Statesman Publishing Co. (1929), 98 L. J. K. B. 450. **Refd.** The W. H. Randall, [1928] P. 41.

- 53a. ———.]—**SOLOMONS v. MEDEX** (1816), 1 Stark. 191; 171 E. R. 443, N. P. 77. *Add. Annotations*:—**Apld.** *Cassidy v. Daily Mirror Newspapers*, [1929] 2 K. B. 331. **Refd.** *Thomson v. McNulty* (1927), 71 Sol. Jo. 744.
75. *Add. Annotation*:—*As to* (1) **Refd.** *Cassidy v. Daily Mirror Newspapers*, [1929] 2 K. B. 331.

- 121a. *Add. Annotation*:—*As to (1) Consd.* Lockhart v. Harrison (1928), 139 L. T. 521. *Generally, Consd.* Cassidy v. Daily Mirror Newspapers, [1929] 2 K. B. 331; Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.
135. *Add. Annotation*:—*Consd.* Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.
146. *Add. Annotation*:—*Apld.* Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.
- 167a. **Amateur sportsman—Imputation of professionalism.**—Pltf., an amateur golf champion, whose name was Tolley, claimed damages from defts., Fry & Sons, who were chocolate manufacturers, in respect of an alleged libel published by defts. & consisting of a caricature of pltf. playing a golf stroke while a caddie looked on. Below the picture appeared the following limerick:—  
The caddie to Tolley said: "Oh, Sir.  
Good Shot, Sir, that ball see it go, Sir.  
My word, how it flies.  
Like a cartet of Fry's;  
They're handy, they're good & priced low,  
Sir."  
Pltf. alleged that this advertisement meant
- that he had for gain agreed or permitted his portrait to be exhibited for the purpose of advertising defts.' chocolate. & had prostituted his reputation as an amateur golfer for advertising purposes. The jury returned a verdict for the pltf. assessing the damages at £1,000:—*Held*: as there was no evidence entitling the jury to attach a special defamatory meaning to words otherwise innocent the verdict must be set aside & judgment entered for defts.—*TOLLEY v. FRY J. S. & SONS, LTD.* (1929), 46 T. L. R. 108; 73 Sol. Jo. 818, C. A.
174. *Add. Annotation*:—*Consd.* Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.
188. *Add. Annotation*:—*Refd.* Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.
229. *Add. Annotation*:—*As to (1) Refd.* Watt v. Longsdon (1929), 98 L. J. K. B. 711.
292. *Add. Annotation*:—*Consd.* Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.
- 525a. **Candidate for seat in Parliament.**—Defamatory words, which are actionable in themselves, are not the less so because they are alleged to have been spoken of one as a

1 i. — — —.]—THOMSON & Co. v. McNULTY (1927), 71 Sol. Jo. 744, H. L. —SCOT.

n1. *Accusation of being spy.*—Pltf. alleged that he had been called a Nationalist spy, but alleged no special circumstances:—*Held*: the words were not *per se* defamatory.—*HARDAKER v. TJAABING* (1927), 48 N. L. R. 145.—**S. AF.**

240 i. — Dishonest trading.]—  
RAHIM BAKHSH v. BACHCHA LAL (1928),  
I. L. R. 51 All. 509.— IND.

**52. Stevedore—Misconduct as member of trade union.** 1.—Pltf., a wharf-labourer, had accused deft., the union secretary, of being short in his cash. A meeting of the union was called to consider

pltf.'s conduct, & thereat deft. called pltf. & others "dirty stinking scabs & parasites," & stated that they were the first three men, in the event of industrial trouble, the union would have to fight. After discussion, the meeting resolved that pltf. apologise to deft., or in default, should resign. Pltf. did not do either, & at a subsequent meeting, was expelled from the union for not abiding by a decision of the meeting. Deft. thereafter successfully objected to pltf. being employed

candidate to serve in parliament.—**HARWOOD v. ASTLEY** (1804), 1 Bos. & P. N. R. 47; 127 E. R. 375, Ex. Ch.

*Annotation*.—**Refd. Pankhurst v. Hamilton** (1887), 3 T. L. R. 500.

**541. Add. Annotation**.—**Refd. Broome v. Agar** (1928), 138 L. T. 698

**577. Add. Annotation**.—**Consd. Cassidy v. Daily Mirror Newspapers**, [1929] 2 K. B. 331.

**672a.** ———. ]—**PLUNKET v. GILMORE** (1725). *Fortes Rep.* 211; 8 *Mod. Rep.* 215; 92 E. R. 822.

#### SUB-SECT. 4.—IMPUTATION OF UNCHASTITY IN FEMALE.

**866a. Photograph of husband of plaintiff with another woman—Alleged to be engaged.**—(1) Defts. published in a newspaper a photograph of one C. & a Miss X. together with the words "Mr. C., the race-horse owner, & Miss X., whose engagement has been announced." Pltf. was, & was known among her acquaintances as, the lawful wife of C.; but defts. did not know this:—**Held**: the publication was capable of conveying a meaning defamatory of pltf. &, the jury having found that it conveyed to reasonably minded people an aspersion on her moral character, that she was entitled to damages.

It is impossible for the person publishing a statement which, to those who know certain facts, is capable of a defamatory meaning in regard to A., to defend himself by saying: "I never heard of A. & did not mean to injure him." If he publishes words reasonably capable of being read as relating directly or indirectly to A. & to those who know the facts about A., capable of a defamatory meaning, he must take the consequences of the defamatory inferences reasonably drawn from his words (**SCRUTTON, L. J.**). **CASSIDY v. DAILY MIRROR NEWSPAPERS**, [1929] 2 K. B. 331; 98 L. J. K. B. 595; 141 L. T. 404; 45 T. L. R. 485; 73 Sol. Jo. 318, C. A.

**883. Add. Annotation**.—**As to (1) Consd. Tolley v. Fry J. S. & Sons** (1929), 46 T. L. R. 108.

as a stevedore:—**Held**: the words were not applicable to pltf.'s conduct in his calling, & were not actionable *per se*.—**TAYLOR v. HAMILTON**, [1927] S. A. S. R. 314.—**AUS.**

#### PART IV. SECT. 2, SUB-SECT. 1.—E. (o) iii.

**525 i. Member of Parliament.**—The term "office" includes the position of a member of Parliament, whether or not such person holds an office in the strict common-law sense of the term.—**PRATTEN v. THE LABOUR DAILY, LTD.**, [1926] V. L. R. 115; 47 A. L. T. 147; [1926] *Argus L. R.* 152.—**AUS.**

#### PART IV. SECT. 2, SUB-SECT. 2.—A. (a).

**549 i. Description of crime in technical terms unnecessary.**—In order for words to be actionable *per se* as an imputation of the commission of a crime they need not describe the crime in technical language.—**BUREAU v. CAMPBELL**, [1928] 3 D. L. R. 907; [1928] 2 W. W. R. 535.—**CAN.**

#### PART IV. SECT. 2, SUB-SECT. 2.—B. (a).

**550 iii.** ———. ]—Words which impute, not the actual commission of a crime,

but merely that the person spoken of would, if given the opportunity, commit a particular crime are not slanderous *per se*.—**DOBORD v. LAMBERT**, [1928] 3 D. L. R. 538; [1928] 2 W. W. R. 529; 23 *Alta. L. R.* 191.—**CAN.**

#### PART IV. SECT. 2, SUB-SECT. 3.

**858 i. Charge of having had disease.**—An imputation of past infection is not actionable *per se*.—**HALLS v. MITCHELL** (1927), 59 O. L. R. 590; *consd. on other grounds*, [1928] 2 D. L. R. 97; [1928] S. C. R. 12.—**CAN.**

#### PART IV. SECT. 2, SUB-SECT. 4.

**h i.** ———. ]—In order to succeed in an action under Libel Act, it. S. M. 1913 (c. 113), s. 12, the words complained of must unequivocally charge adultery, etc.; the action does not lie for words which may bear both an innocent & injurious meaning.—**WILLIAMS v. BROWN**, [1927] 3 W. W. R. 305; 36 *Man. L. R.* 101.—**CAN.**

#### PART IV. SECT. 4, SUB-SECT. 1.

**867 vi.** ———. ]—**SCOTTER v. BROWN** [1926] *App. D.* 155.—**S. AF.**

**867 vii.** ———. ]—In arriving at the meaning of words alleged to be defamatory, the words must be con-

**885. Add. Annotations**.—**Refd. R. v. Denyer**, [1926] 2 K. B. 258; **Auto-Mart (London) v. Chilton** (1927), 43 T. L. R. 463; **Hardie & Lane v. Chilton** (1927), 98 L. J. K. B. 1040. **Mentd. Hardie & Lane v. Chilton**, [1928] 2 K. B. 306.

**900. Add. Annotations**.—**Consd. Broome v. Agar** (1928), 138 L. T. 698. **Appld. Cassidy v. Daily Mirror Newspapers**, [1929] 2 K. B. 331.

**907a.** ———. ]—**CASSIDY v. DAILY MIRROR NEWSPAPERS**, No. 866a, *ante*.

**931. Add. Annotation**.—**Refd. Tolley v. Fry J. S. & Sons** (1929), 46 T. L. R. 108.

**951.** For the existing paragraph substitute the following paragraph:—

— — — — —. ]—Pltf. complained of a statement published by defts., in which it was alleged that pltf., then Free State Minister of Labour & head of the Free State Military Secret Service, was responsible for the murder of L., & knew who were the men implicated in an attack on British troops at Queenstown. Defts., in their plea of justification, did not justify the allegation of murder nor the allegation that pltf. was a murderer. But they said: "It & in so far as the words complained of meant or were understood to mean or were capable of meaning that pltf. took no steps to bring to justice persons guilty of the death of L. or of the attack on the British troops at Queenstown, or that pltf. was unfit to hold any office of trust or responsibility, or of any kind, or that pltf. was a person with whom no honest or responsible man ought to have anything to do, such words were & are true in substance & in fact." Pltf. having obtained an order for particulars of the justification, defts. delivered particulars of seventy-two murders committed in Ireland over a period of five years with an allegation that pltf. had assisted to organise them or had employed people to organise them: **Held**: notwithstanding that defts., in their plea of justification had avoided justifying the allegations of murder, the particulars delivered by defts. were admissible.—**MACGRATH v. BLACK** (1926), 95 L. J. K. B. 951; 135 L. T. 594, C. A.

strued to have the meaning which a reasonable person reading them in their context would be likely to give them.—**JOHNSON v. RAND DAILY MAIL**, [1928] *App. D.* 190.—**S. AF.**

**875 v.** ———. ]—Def't. published of the directors of pltf's., an incorporated building society, in a newspaper, a notice stating, amongst other matters, that "certain persons representing themselves to be directors of the society had been self-appointed by the most despicable, foul, & fraudulent means, & in consequence, all business transacted by them . . . is wholly & entirely contrary to rules & regulations & law."—**Held**: the paragraph was capable of the meaning attributed to it, namely, that the business of the society was being illegally transacted, & as such it was defamatory of pltf's.—**OWEN SOUND BUILDING & SAVINGS SOCIETY v. MEIR** (1893), 24 O. R. 109.—**CAN.**

#### PART IV. SECT. 5, SUB-SECT. 2.—A.

**88.** *Words not ordinary English words.*—Where the words complained of are not ordinary English words, & pltf. adduces no evidence to show that they were understood in the sense alleged in the innuendo, he fails to

1006. *Add. Annotation* :— **Consd.** *Broome v. Agar* (1928), 138 L. T. 698.
1010. *Add. Annotations* :—*As to* (1) **Consd.** *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. R. 108. **Refd.** *Cassidy v. Daily Mirror Newspapers*, [1929] 2 K. B. 331. *Generally, Refd.* *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
1014. *Add. Annotation* :—**Refd.** *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. R. 108.
1019. *Add. Annotations* :—*As to* (1) **Consd.** *Broome v. Agar* (1928), 138 L. T. 698; *Lockhart Harrison* (1928), 139 L. T. 521.
1032. *Add. Annotation* :— **Consd.** *Broome v. Agar* (1928), 138 L. T. 698.
- 1045a. — — — — — **Plff.**, a chauffeur, brought an action for slander against his former mistress, complaining that she had falsely alleged that he gave "joy rides" in her motor car. **Def.** pleaded justification. The jury found that **def.** had uttered the words complained of, but that they were not defamatory of **plff.** :— **Held** : the question of libel or no

libel was peculiarly a question for the jury, & it was only in the most extreme cases that the judge should allow his view to overrule that of the constitutional tribunal.—**BROOME v. AGAR** (1928), 138 L. T. 698; 44 T. L. R. 339 C. A.

*Annotation* :—**Folld.** *Lockhart v. Harrison* (1928), 139 L. T. 521.

1045b. — — — — — **]**—In a libel action, where the words complained of are not of necessity defamatory, & the question of libel or no libel has been properly left to the jury, the verdict arrived at by them that the words were not defamatory must stand.

It is not true to say that a jury's verdict in these circumstances can never be assailed. A plain & obvious defamation incapable of any innocent explanation, if found by the jury to be non-libellous, would certainly be set aside (**LORD BUCKMASTER**).—**LOCKHART v. HARRISON** (1928), 139 L. T. 521; 44 T. L. R. 794, H. L.

## Part V.—Publication.

1069. *Add. Annotation* :—**Consd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
1084. *Add. Annotation* :— **N.F.** *More v. Weaver*, [1928] 2 K. B. 520.
1087. *Add. Annotations* :— *As to* (1) **Refd.** *Smith v. Schilling*, [1928] 1 K. B. 429. *Generally, Refd.* *Martin v. Benson*, [1927] 1 K. B. 771.
1177. *Add. Annotation* :— **Refd.** *The Fagernes*, [1926] P. 185.

## Part VI.—Defences.

1245. *Add. Annotation* : **Refd.** *Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.
- 1302a. *Imputation as to disclosure of confidential information By solicitor—Proof of disclosure of communications made by clients to solicitor.* —**MOORE v. TIERRELL** (1833), 1 B. & Ad. 870; 1 Nev. & M. K. B. 559; 110 E. R. 683.
1310. *Add. Annotation* : **Refd.** *Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

establish a cause of action.—**MEIER v. KLOTZ** (Sask.), [1928] 1 D. L. R. 91; [1927] 3 W. W. R. 716; *reversd.*, [1928] 1 D. L. R. 1; [1928] 2 W. W. R. 81, 22 S. L. R. 385.—**CAN.**

### PART IV. SECT. 6, SUB-SECT. 1.

964 ii. — — — — — **]**—**ROBINSON v. SUGARMAN** (1897), 17 P. R. 419. **CAN.**

### PART IV. SECT. 6, SUB-SECT. 2.—A.

979 ii. — — — — — **]**—**EVANS v. MARTYN**, [1926] 2 D. L. R. 698; 37 B. C. R. 231.—**CAN.**

### PART IV. SECT. 7, SUB-SECT. 1.—B.

1011 v. — — — — — **]**—Where the line can be clearly drawn between what are statements of fact & expressions of opinion, a judge may rule as a matter of construction that the words complained of are incapable of being anything but statements of fact.—**ST. LEDGER v. BRENNAN** (1927), 28 S. R. N. S. W. 23.—**AUS.**

1011 vi. — — — — — **]**—In a suit for damages for libel based upon an article published in **def.**'s newspaper, **plff.** alleged the article imputed to him the heinous crime of being a member of a terrorist organisation to murder a certain class of persons. **Def.**s pleaded privilege & fair comment in a matter of public interest :— **Held** : it is for the Ct. in such a case in the first place to rule whether or not as a

matter of law the article is capable of the construction suggested by **plff.**, & next to decide whether it is so as a question of fact, i.e. whether an ordinary man likely to read the article would understand it in the sense alleged by **plff.**—**SUBHAS CHANDRA BOSE v. KNIGHT & SONS** (1928), 1 L. L. R. 55 Cade 1121. **IND.**

### PART V. SECT. 1, SUB-SECT. 3.—A.

1106 iii. — — — — — **]**—**HARRIS v. DONEY** (1888), 17 O. R. 22. **CAN.**

### PART V. SECT. 1, SUB-SECT. 3.—C. (a) ii.

1134 iv. — — — — — **]**—**Prima facie** the person who is the "declared printer" of a newspaper is responsible for everything that is printed in it. He can, however, escape liability by showing that he was absent *bona fide*, that is, not with the purpose of evading responsibility, when a particular article complained of was printed. But if he does so, he is bound to give evidence as to who the actual printer of the paper in his absence was.—**HAR SWARI P. v. MUHAMMAD SHAI** (1928), 1 L. L. R. 50 All. 806. **IND.**

### PART V. SECT. 1, SUB-SECT. 4.—B. (b).

**sg. Notice under Libel & Slander Act, s. 8.**—**SENTINEL-REVIEW CO. v. ROBINSON**, [1927] 4 D. L. R. 232; 61 O. L. R.

62, *reversd* [1928] 3 D. L. R. 97; [1928] S. C. R. 852.—**CAN.**

### PART V. SECT. 4, SUB-SECT. 1.

q i. — — — — — **]**—**IRISH PEOPLE'S ASSURANCE SOCIETY v. DUBLIN CITY ASSURANCE CO., LTD.**, [1928] 1 I. R. 201; *on appeal* [1929] 1 I. R. 25.—**IR.**

### PART VI. SECT. 1, SUB-SECT. 2.—A.

sh. *Where libel divisible.*—**O'CALLAGHAN v. THOMSON D. C. & Co.**, [1928] S. C. (Ct. of Sess.) 532. **SCOT.**

### PART VI. SECT. 1, SUB-SECT. 3.—C.

sk. *Unreasonable verdict—Set aside.*—**]**—Where the jury found that the words complained of, if defamatory, were true, & on appeal it was admitted that some of the allegations were untrue—**Held** : the verdict was such an one "as no jury could have found as reasonable men," & should be set aside, & a new trial had.—**ROFF v. SMITH'S NEWSPAPERS, LTD.** (1927), 27 S. R. N. S. W. 313, 44 N. S. W. W. N. 37, P. C.—**AUS.**

### PART VI. SECT. 1, SUB-SECT. 4.—A.

k i. — — — — — **]**—If **def.** does not in his plea of justification state the specific facts or instances on which he relies, he must do so in his particulars.—**BARNES v. SYKES** (Man.), [1926] 3 W. W. R. 476.—**CAN.**

k ii. — — — — — **]**—**BURNES v. SYKES** (Man.), [1927] 1 D. L. R. 282.—**CAN.**

- 1313.** *Add. Annotation* :—**Consd.** *Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.
- 1317.** *Add. Annotation* :—**Apld.** *Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.
- 1329.** *Add. Annotation* :—*As to* (1) **Refd.** *More v. Weaver*, [1928] 2 K. B. 520.
- 1339.** *Add. Annotation* :—*As to* (3) **Refd.** *Collins v. Whiteway*, [1927] 2 K. B. 378.
- 1347.** *Add. Annotation* :—**Refd.** *Collins v. Whiteway*, [1927] 2 K. B. 378.
- 1347a.** *Court of referees—Under Unemployment Insurance Act, 1920 (c. 30).*—A ct. of referees, constituted under the above Act & the regulations thereunder for the purpose of deciding claims made upon the unemployment insurance funds, is a ct. discharging administrative duties only, & communications made to that ct. are not absolutely privileged, as would be the case if they were made to a judicial body in the discharge of its duties.—**COLLINS v. WHITEWAY (HENRY) & Co.**, [1927] 2 K. B. 378; 96 L. J. K. B. 790; 13 L. T. 297; 43 T. L. R. 532.
- 1351.** *Add. Annotation* :—**Mentd.** *Wisbech R. D. C. v. Ward* (1927), 91 J. P. 200.
- 1395.** *Add. Annotation* :—**Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
- 1407.** *Add. Annotation* :—**Refd.** *More v. Weaver*, [1928] 2 K. B. 520.
- 1429.** *Add. Citation* :—134 L. T. 286.
- 1446a.** ————]—To constitute a communication made on a privileged occasion there must be a legal, moral, or social duty to make the communication, as well as an interest in the recipient to receive it, & the question, which is for the judge & not the jury, whether such a duty exists depends on the circumstances, the nature of the information, & the relation of the recipient & the informant.—**WATT v. LONGSDON** (1929), 98 L. J. K. B. 711; 45 T. L. R. 619; 73 Sol. Jo. 544, C. A.
- 1455.** *Add. Annotation* :—*As to* (2) **Consd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1457a.** ————]—**WATT v. LONGSDON**, No. 1446a, *ante*.
- 1460.** *Add. Annotation* :—**Generally, Refd.** *Minter v. Priest*, [1929] 1 K. B. 655.
- 1466a.** ————]—**WATT v. LONGSDON**, No. 1446a, *ante*.
- 1489.** *Add. Annotation* :—*As to* (1) **Apld.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1500.** *Add. Annotation* :—**Consd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1520.** *Add. Annotation* :—**Consd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1521.** *Add. Annotations* :—**Consd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711. **Refd.** *Hardie & Lane v. Chilton* (1927), 96 L. J. K. B. 1040; *Tolley v. Fry J. S. & Sons, Ltd.* (1929), 46 T. L. R. 108.
- 1526.** *Add. Annotation* :—**Refd.** *Collins v. Whiteway*, [1927] 2 K. B. 378.
- 1539.** *Add. Annotation* :—**Consd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1545.** *Add. Annotations* :—**Consd.** *Minter v. Priest*, [1929] 1 K. B. 655; *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1550.** *Add. Annotation* :—*As to* (1) **Apld.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1579.** *Add. Annotations* :—**Expld.** *Minter v. Priest*, [1929] 1 K. B. 655. **Refd.** *More v. Weaver*, [1928] 2 K. B. 520.
- 1579a.** ————]—Communications passing between a solr. & his client, on the subject upon which the client has retained the solr., & which are relevant to that matter, are absolutely privileged. **MORE**, [1928] 2 K. B. 520; 110 L. T. 15; 44 T. L. R. 72 So. Jo. 556, C. A.
- Annotation* **Consd.** *Minter v. Priest*, [1929] 1 K. B. 655.
- 1592.** *Add. Annotation* :—**Generally, Refd.** *Collins v. Whiteway*, [1927] 2 K. B. 378.
- 1594a.** ————]—**Regarding solicitor employed by body.** **LAWRENCE v. HALL** (1928), 72 Sol. Jo. 87.
- 1608.** *Add. Annotations* :—*As to* (1) **Refd.** *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. R. 108. **Generally, Consd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1615.** *Add. Annotation* :—*As to* (1) **Refd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.
- 1626.** *Add. Annotation* :—**Consd.** *Watt v. Longsdon* (1929), 98 L. J. K. B. 711.

**PART VI. SECT. 2, SUB-SECT. 2. —**  
**A. (b).**

**m i.** ————]—*Under Municipal Act, R. S. O., 1911 (c. 192)* **NIXON v. O'CALLAGHAN** (1927), 60 O. L. R. 76.—**CAN.**

**PART VI. SECT. 2, SUB-SECT. 2. —**  
**A. (c) ii.**

**1358 v.** ————]—**NIRSO NARAYAN SINGH v. R.** (1926), 1 L. R. 6 Pat. 224.—**IND.**

**1358 vi.** ————]—**MIR ANWARUDIN v. FATHIM BAI ABIDIN** (1926), 1 L. R. 50 Mad. 687.—**IND.**

**1358 vii.** ————]—**M. BANERJEE v. ANUKUL CHANDRA MITRA** (1927), 1 L. R. 55 Calc. 85.—**IND.**

**PART VI. SECT. 3, SUB-SECT. 1.**

**1437 i. General rule.**—**SAPHIRO v. LEADER PUBLISHING CO.**, [1926] 3 D. L. R. 68; [1926] 2 W. W. R. 268; 20 Sask. L. R. 449.—**CAN.**

**PART VI. SECT. 3, SUB-SECT. 3. —**  
**A. (a).**

**1500 viii.** ————]—The underlying principle on which is founded protection for a communication otherwise actionable as defamatory, is "the

common convenience & welfare society." The communication is only protected when it is fairly warranted by some reasonable occasion of exigency, & when made in discharge of some public or private duty such as

ordinary intelligence & moral principles, or is fairly made in the legitimate defence of a person's own interests. It is not sufficient that the person making the statement believes, or is honestly warranted on the ground, that the duty or interest exists. There must, in fact, be such a duty or interest as, under all the circumstances, warrants the communication. **HALLS v. MITCHELL**, [1928] 2 D. L. R. 97, [1928] S. C. R. 123.—**CAN.**

**PART VI. SECT. 3, SUB-SECT. 3. —**

**A. (c) v.**

**1560 vi.** ————]—**KLEINHANS v. U.S.M.R.**, [1929] App. D. 121.—**S. AF.**

**PART VI. SECT. 3, SUB-SECT. 3. —**  
**A. (c) vii.**

**1580 iii.** ————]—A solr., in corresponding with third parties, is in no better position than his client. He is not free to write everything his client may suggest or state. He is

bound to exclude from his letter anything defamatory that is not relevant to the occasion.—**McKROGH v. O. MORAN**, [1927] 1 R. 348.—**IR.**

**PART VI. SECT. 3, SUB-SECT. 3. —**  
**A. (c) ix.**

**o i.** ————]—*By member.* A communication made to a city council by a member thereof while the subject of the policing of the city was discussed at a meeting of the council held, in an action for slander, to have been made on a privileged occasion.—**EDWARDS v. GATFMAN**, [1928] 3 D. L. R. 187, [1928] 2 W. W. R. 713.—**CAN.**

**PART VI. SECT. 3, SUB-SECT. 3. —**  
**A. (c) xii.**

**o i.** ————]—A public political meeting is not a privileged occasion.—**BUREAU v. CAMPBELL**, [1928] 3 D. L. R. 907; [1928] 2 W. W. R. 535.—**CAN.**

**PART VI. SECT. 3, SUB-SECT. 3. —**  
**A. (c) xiv.**

**sm.** *Statement as to minister's conduct*—*By one church office holder to another*—*Occasion privileged.*—**KNAPP v.** [1926] 2 D. L. R. 1083; 58 O. L. R. 605.—**CAN.**

## Cases 1638a—1948a. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

**1638a.** ———.]—THOMAS WITHERS & SONS, LTD. v. SAMUEL WITHERS & CO., LTD. (1926), 44 R. P. C. 19.

**1642.** *Add. Annotation* :—*Refd.* Watt v. Longsdon (1929), 98 L. J. K. B. 711.

**1699.** *Add. Annotation* :—*As to* (1) *Refd.* Mackenzie-Kennedy v. Air Council, [1927] 2 K. B. 517.

**1735.** *Add. Annotation* :—*Refd.* Broome v. Agar (1928), 138 L. T. 698.

**1739.** *Add. Annotation* :—*As to* (1) *Apld.* Burton v. Board, [1929] 1 K. B. 301.

**1744.** *Add. Annotation* :—*Mentd.* Nadan v. R., [1926] A. C. 482.

**1849a.** *Right to give particulars—Although no plea of justification.*]—Where deft. in an action for libel pleads that the words complained of are fair comment, made in good faith & without malice, on matters of public interest, he is entitled to give particulars of the facts upon which he based his comments, although those facts are defamatory of pltf. & there is no

plea of justification.—BURTON v. BOARD, [1929] 1 K. B. 301; 98 L. J. K. B. 165; 140 L. T. 289, C. A.

**1854a.** *Indemnity—& plea of justification—Separate trial of issue as to indemnity.*]—In a libel action defts. pleaded justification, & that pltf. had, in return for payment, undertaken in writing to indemnify them against any actions for libel. Pltf., in his reply, disputed his signature, & said that he was not bound by the alleged undertaking. Pltf. then applied for an order that the issue as to the alleged undertaking & its construction should be tried separately before the other issues :—*Held* : when pltf. asked for an order that one issue should be disposed of before the trial of the other issues, the order should be made only when there were special circumstances justifying it, & as there were none in the present case, the order must be refused.—BOTTOMLEY v. HURST & BLACKETT, LTD. & HOUSTON (1928), 44 T. L. R. 451, C. A.

## Part VII.—Malice.

**1868.** *Add. Annotations* :—*Consd.* Watt v. Longsdon (1929), 98 L. J. K. B. 711. *Refd.* Cassidy v. Daily Mirror Newspapers, [1929] 2 K. B. 331; Tolley v. Fry J. S. & Sons (1929), 46 T. L. R. 108.

**1910a.** *Accusation of incompetence—Whether proof of competence in other transactions admissible.*]—BRINE v. BAZALGETTE (1849), 3 Exch. 692; 18 L. J. Ex. 348; 154 E. R.

**1948a.** ———.]—Where deft. establishes a qualified privilege for a publication, &

pltf. fails to adduce any evidence of malice, the judge is not obliged then & there to withdraw the case from the jury, but, if deft. proposes to call evidence, may in his discretion defer ruling on the question of malice until he has heard the evidence for deft. In the exercise of this discretion the position of deft. who has to adduce evidence upon other issues in the action should be considered.—MARBÉ v. GEORGE EDWARDS (DALY'S THEATRE), LTD., [1928] 1 K. B. 269; 96 L. J. K. B. 980; 138 L. T. 51; 43 T. L. R. 809, C. A.

### PART VI. SECT. 3, SUB-SECT. 3.—B.

**1631 vi.** ———.]—To clothe an occasion with privilege on the ground of common interest, the common interest must be in the subject-matter of the communication complained of.—SAPIRO v. LEADER PUBLISHING CO., [1926] 3 D. L. R. 68; [1926] 2 W. W. R. 268; 20 Sask. L. R. 449.—CAN.

*sn. Statements reflecting on missionary appealing for funds—To committee formed to aid appeal.*]—HAYFORD v. ATON, [1927] S. C. 740.—SCOT.

### PART VI. SECT. 3, SUB-SECT. 3.—C.

**1649 xii.** ———.] HENN v. SMITH (1912), 11 E. L. R. 1; 6 D. L. R. 18.—CAN.

### PART VI. SECT. 3, SUB-SECT. 4.—B. (b).

*so. Publicly heard before a Court of Justice—Libel & Slander Act, R. S. O. 1914.*]—COWIE v. ROBINSON, [1928] 3 D. L. R. 776; 62 O. L. R. 351. CAN.

### PART VI. SECT. 3, SUB-SECT. 4.—B. (d).

*sp. Under Libel & Slander Act.*]—HANSEN v. NUGGET PUBLISHERS, LTD., [1927] 4 D. L. R. 791; 61 O. L. R. 239.—CAN.

*sq.* ———.]—SENTINEL-REVIEW CO. v. ROBINSON, [1927] 4 D. L. R. 232; 61 O. L. R. 62.—CAN.

### PART VI. SECT. 3, SUB-SECT. 4.—B. (e) i.

**1678 ii.** ———.]—HUGHES v. SUN

PUBLISHING CO. (1925), 35 B. C. R. 422.—CAN.

### PART VI. SECT. 3, SUB-SECT. 4.—B. (e) ii.

**1698 i.** ———.]—*Report of judgment alone.*]—DUNCAN v. ASSOCIATED SCOTTISH NEWSPAPERS, LTD., [1929] S. C. (Ch. of Sess.) 14.—SCOT.

### PART VI. SECT. 4, SUB-SECT. 2.

**1738 ii.** ———.]—The "rolled up plea" to an action for libel is a plea of fair comment only, & where there is no plea of justification, evidence is not admissible to prove the truth of defamatory allegations of fact, & the defence of fair comment is no answer to such allegations.—LEECH v. LEADER PUBLISHING CO., LTD., [1926] 2 D. L. R. 28; [1926] 1 W. W. R. 673; 20 Sask. L. R. 337.—CAN.

**1738 iii.** *S.P. BARNES v. SYKES* (Man.), [1926] 3 W. W. R. 476.—CAN.

**1738 iv.** ———.]—In an action for libel, under the "rolled up plea" deft. has the right, without pleading justification, to adduce evidence to establish the truth of allegations of fact upon which comment is based, as distinguished from comment itself.—BOYS v. STAR PRG. & PUB. CO., [1927] 3 D. L. R. 847; 60 O. L. R. 592.—CAN.

### PART VI. SECT. 4, SUB-SECT. 6.

**1848 i.** ———.]—*"Rolled up plea"—Plea of fair comment not justification.*]—LEECH v. LEADER PUBLISHING CO., LTD., No. 1738 ii, *ante*.—CAN.

**1848 ii.** *S.P. BARNES v. SYKES* (Man.), No. 1738 iii, *ante*.—CAN.

**st.** ———.]—Where the defence of fair comment is pleaded the comments must be warranted by the facts stated in the writing complained of, in the sense that the facts must afford a reasonable foundation for the comments, & it is not legitimate for defender, by the averment of new facts in his defences, to extend the limits of inquiry.—WHEATLEY v. ANDERSON & MILLER, [1927] S. C. 133.—SCOT.

### PART VI. SECT. 6.

*sv. No libel—Innuendoes covered.*]—DALY v. IRISH TRANSPORT & GENERAL WORKERS' UNION, [1926] 1 R. 118.—CAN.

### PART VII. SECT. 2, SUB-SECT. 2.—A.

**1875 xii.** ———.]—DUNNET v. NELSON, [1926] S. C. 764.—SCOT.

### PART VII. SECT. 2, SUB-SECT. 2.—B. (b).

**f i.** ———.]—Declining to give an apology is not evidence of malice.—HALL v. MITCHELL (1927), 59 O. L. R. 590.—CAN.

### PART VII. SECT. 2, SUB-SECT. 4.—A.

**1957 ii.** ———.]—COLE v. THE OPERATIVE PLASTERERS FEDERATION OF AUSTRALIA (N. S. W. BRANCH) & HUDSON (1927), 28 S. R. N. S. W. 62; 45 N. S. W. W. N. 33.—AUS.

## Part VIII.—Damages and Costs.

- 1988. Add. Annotations :—***Consd. Hobbs v. Tintling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1; *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. R. 108. **Mentd. Williams v. Barton**, [1927] 2 Ch. 9.
- 1989. Add. Annotations :—***Refd. Thomson v. McNulty* (1927), 71 Sol. Jo. 744; *Cassidy v. Daily Mirror Newspapers*, [1929] 2 K. B. 331.
- 1992. Add. Annotation :—***Refd. Hobbs v. Tintling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.
- 2020. Add. Annotation :—***As to (2) Consd. Hobbs v. Tintling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.
- 2037. Add. Annotation :—***Expld. Hobbs v. Tintling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.
- 2041a. ———. ]—**In an action for libel pltf. set out in his statement of claim the alleged libel, & in a separate paragraph alleged an innuendo which practically repeated, but somewhat extended, the statements in the alleged libel. Defts. did not plead justification or fair comment, but paid 20s. into ct. in respect of the alleged libel as sufficient damages; they made no payment into ct. in respect of the innuendo; & they gave notice under R. S. C. Ord. 36, r. 37, of their intention to give in evidence certain matters in mitigation of damages. At the trial pltf. gave evidence that save for one lapse he was a man of unblemished reputation. Thereupon he was cross-examined as to specific incidents not mentioned in the libel or in the particulars served under R. S. C. Ord. 36, r. 37, it being suggested that he was a man of bad reputation. This line of cross-examination was objected to, but was allowed. Before the conclusion of the cross-examination the jury intervened with an intimation that they desired to find for the defts., which they then did without any summing up. On appeal:—*Held*: (1) the cross-examination was admissible as cross-examination to credit, but that if the incidents were denied by pltf. no further evidence could be called to rebut pltf.'s denials, & that the jury should have been told that while they were not bound to accept pltf.'s denials, those denials, though unaccepted, afforded no evidence that the incidents had taken place; (2) the cross-examination was not admissible to mitigate damages, & the jury ought to have been directed to this effect.—*HOBBS v. TINTLING, v. NOTTINGHAM JOURNAL*, [1929] 2 K. B. 1; 98 L. J. K. B. 421; 141 L. T. 121; 45 T. L. R. 328; 73 Sol. Jo. 220, C. A.
- 2045. Add. Annotation :—***As to (1) Apprvd. Hobbs v. Tintling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1.
- 2174. Add. Annotation :—***Refd. Smith v. Schilling*, [1928] 1 K. B. 129.
- 2180. Add. Annotation :—***Refd. Martin v. Benson*, [1927] 1 K. B. 771.
- 2184. Add. Annotation :—***Refd. Campbell v. Pollak*, [1927] A. C. 732.
- 2195. Add. Annotation :—***As to (1) Refd. Martin*
- 2198a. ———. Consideration of all circumstances.]—**Where an action for defamation is tried by a judge with a jury, & pltf. recovers nominal damages only, the judge, in deciding whether there is "good cause" for depriving pltf. of costs, should take into consideration all the circumstances of the case, both before & after the issue of the writ. The smallness of the damages is only one element for consideration. The judge must exercise a discretion independent of any view expressed by the jury on the question of costs.—*MARTIN v. BENSON*, [1927] 1 K. B. 771; 96 L. J. K. B. 405; 137 L. T. 183; 43 T. L. R. 247.
- 2200. Add. Annotation :—***Refd. Martin v. Benson*, [1927] 1 K. B. 771.
- 2202. Add. Annotation :—***Refd. Martin v. Benson*, [1927] 1 K. B. 771.
- 2203. Add. Annotation :—***Refd. Martin v. Benson*, [1927] 1 K. B. 771.
- 2203a. ———. ]—***MARTIN v. BENSON*, No. 2198a, *ante*.
- 2206. Add. Annotations :—***Refd. Campbell v. Pollak*, [1927] A. C. 732; *Martin v. Benson*, [1927] 1 K. B. 771.
- 2207. Add. Annotation :—***Consd. Martin v. Benson*, [1927] 1 K. B. 771.

PART VIII. SECT. 1, SUB-SECT. 2.—  
B. (a).

**sw. Conduct of both parties.]—**Pltf. in opening his case to the jury, stated that he would be satisfied with an undertaking by deft. to publish an apology in their newspaper, & further stated that the defamatory article complained of by him was false from beginning to end. Deft. by his counsel, thereupon offered to give such an undertaking as asked for by pltf. This offer pltf. refused to accept. During the course of the trial, cross-examination was directed to show the truth of the article complained of, though the character of pltf. was not attacked in the article. Pltf. was awarded a verdict & damages were

assessed at one farthing: *Held*: the jury may take into consideration the conduct of both parties, even up to the moment when it returns its verdict.—*LEMAIRE v. SMITH'S NEWSPAPERS, LTD.* (1927), 28 S. R. N. S. W. 161.—**AUS.**

**PART VIII. SECT. 1, SUB-SECT. 3.—C.**  
**2080 vi. ———. ]—***SOLOMON v. ROBINSON & Co., LTD.* (1927), 48 N. L. R. 125.—**S. AF.**

**PART VIII. SECT. 1, SUB-SECT. 4.—B. (b).**

**2156 iv. ———. ]—**In libel it is not necessary to prove special damage, for the law presumes that some damage

will flow in the ordinary course of things from the mere invasion of pltf.'s rights, & the falsity of the imputation is presumed in favour of pltf.—*HALLS v. MITCHELL* (1927), 59 O. L. R. 590.—**CAN.**

**PART VIII. SECT. 2, SUB-SECT. 1.**  
**5x. Security for costs.—***Action against newspaper.]—**CARROLL v. NATIONAL PRESS, LTD. (Man.)*, [1927] 3 W. W. R. 683.—**CAN.**

**sy. ———. ]—***BAITMAN v. UKRAINIAN PUBLISHING CO. OF CANADA* [1927] 3 D. L. R. 478; [1927] 2 W. W. R. 308; 36 Man. L. R. 581.—**CAN.**

## Part IX.—Injunction.

2225. *Add. Annotation* :—**Refd.** *Broome v. Agar* (1928), 138 L. T. 698.  
 2263. *Add. Annotation* :—**Refd.** *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. L. 108.

2267. *Add. Annotation* :—**Mentd.** *Maclean v. Workers' Union*, [1929] 1 Ch. 602.

## Part X.—Pleading, Practice and Evidence.

- 2300a. ——— **Separate actions for same libel.**—Where two plffs. bring two separate actions against same defts. in respect of the same alleged libel, the ct. has jurisdiction to order consolidation of the two actions. Whether an order for consolidation should be made in

any particular case is in the discretion of the judge or the master.—**HORWOOD v. STATESMAN PUBLISHING Co.** (1929), 98 L. J. K. B. 450; 141 L. T. 54; 15 T. L. R. 237; 73 Sol. Jo. 110, C. A.

## Part XI.—Criminal Proceedings.

2307. *Add. Annotation* :—**Generally**, **Refd.** *Martin v. Benson*, [1927] 1 K. B. 771.  
 2441. *Add. Annotation* :—**Refd.** *Broome v. Agar* (1928), 138 L. T. 698.

2488. *Add. Annotation* :—**Refd.** *R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127.

## Part XII.—Slander of Title.

- 2528a. ———.]—**CRUSH v. CRUSH** (1605), Yelv. 80; 80 E. R. 55.

- 2536a. **Title need not be shown.**—**MARVIN v. MAYNARD** (1595), Cro. Eliz. 419; 78 E. R. 661.

- 2555a. ———.]—**NURSE v. POUNFORD** (1815), 14 L. J. Ch. 390; 14 E. R. 421.

- 2560a. ———.]—In slander of title for alleging that another had a lease for one thousand years of plff.'s land, it is no defence that such a lease was actually made, because deft. took upon himself the knowledge of the law.—**MILDMAY'S CASE** (1584), 1 Co. Rep. 175 a; Jenk. 247; 76 E. R. 379; *sub nom.* **MILDMAY v. STANDISH**, Cro. Eliz. 31; Moore, K. B. 144.

*Annotations* :—**Refd.** *Rowe v. Rouch* (1813), 1 M. & S. 304; *British Ry. & Traffic & Electric Co. v. C. R. C. Co., Ltd.* & L. C. C., [1922] 2 K. B. 260. **Mentd.** *Paquet's, Lord, Case* (1591), 1 And. 259; *Bedell's Case* (1607), 7 Co. Rep. 10 a; *Cross v. Faustenditch* (1608), Cro. Jac. 180; *Colt & Glover v. Coventry & Lichfield, Bp.* (1612), Hob. 140; *Harpur's Case* (1615), 11 Co. Rep. 23 a; *Howel v. Sambay* (1615), 1 Brownl. 179; *Miller v. Manwaring* (1635), Cro. Car. 397; *Bate v. Amherst* (1663), T. Raym. 82; *Foster v. Foster* (1661), 1 Keb. 349; *Gardner v. Sheldon* (1671), Vaugh. 259; *Smith v. Ashton* (1675), 1 Cas. in Ch. 263; *Ratcliffe's Case* (1720), 1 Stra. 267; *Goodtitle v. Petto* (1732), 2 Stra. 934; *Sargent v. Reed* (1745), 2 Stra. 1228; *Doe d. Milburn v. Salkeld* (1755), Willes, 673; *Clifford v. Turrell*

(1815), 14 L. J. Ch. 390; *Peover v. Hassel* (1861), 1 John. H. 341; *Poole v. Whitcomb* (1862), 12 C. B. N. S. 770.

- 2560b. ———.]—**MILLMAN v. PRATT** (1824), 2 B. & C. 486; 3 Dow. & Ry. K. B. 728; 107 E. R. 465.

- 2582a. ———.]—**JOHNSON v. SMITH** (1584), Moore, K. B. 187; 72 E. R. 522.

- 2587a. ———.]—If one hath colour of title to land, an action of the case will not lie against him for saying, I have better title to the land than you, though his title be not so good as the other's title is.—**ANON.** (1651), Sty. 411; 82 E. R. 823.

- 2591a. ———.]—Where a trade circular is issued *bonâ fide* an interim injunction will not be granted to restrain it unless it is in violation of some contract between plff. & deft., however much the balance of convenience may be in favour of granting.—**SOCIÉTÉ ANONYME DES MANUFACTURES DE GLACES v. TILGHMAN'S PATENT SAND BLAST Co.** (1883), 25 Ch. D. 1; 53 L. J. Ch. 1; 49 L. T. 451; 48 J. P. 68; 32 W. R. 71; *Griffin's Patent Cases* [1884–86], 209, C. A.

*Annotations* :—**Apld.** *Houshold & Roshier v. Fairburn & Hall* (1884), 51 L. T. 498. **Mentd.** *National Phonograph Co. Australia, Ltd. v. Menck*, [1911] A. C. 336, P. C.

## Part XIII.—Slander of Goods.

2599. *Add. Annotation* :—**Generally**, **Mentd.** *Dominion Iron & Steel Co. v. Invernairn*, [1927] W. N. 277.



## LIEN.

## Part II.—Legal or Possessory Lien Generally.

3. *Add. Annotation*:—**Mentd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.
21. *Add. Annotation*:—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
- 27a. ———.]—**MULLINER v. FLORENCE**, No. 193, *post*.
152. *Add. Annotations*:—**Refd.** *Lowther v. Harris*, [1927] 1 K. B. 393. **Mentd.** *Lloyds Bank v. Chartered Bank of India, Australia & China*, [1929] 1 K. B. 40.
180. *Add. Annotation*:—**As to** (3) **Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
184. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
193. To the existing paragraph add as follows:—  
“Distinction between a pledge & a lien discussed.”
- 208a. ———.]—**ROGERSON v. REID** (1830), 1 Knapp, 362; 12 E. R. 357, 11 L.

## Part IV.—Particular Lien.

321. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
322. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
- 322a. ——— **No authority to create lien.**—Pltfs. let three taxicabs to B. on hire-purchase agreements, which provided that B. should not have authority to create a lien on the taxicabs in respect of repairs. Up to May 1, 1925, the cabs, with the consent of pltfs., had been garaged at defts.' garage, & B. owed defts. the balance of a general account for garage rent, goods supplied, & washing, cleaning, & repairing the cabs. Defts. had never been aware of the terms of the agreements between B. & pltfs. On May 1, 1925, pltfs. terminated the agreements, as B. was in arrear with his payments, but defts. refused to hand them the cabs, asserting that they had a lien for repairs. In an action for the delivery up of the cabs & damages for their detention:—**Held**: the lien might attach notwithstanding the provision that B. should not have authority to create a lien, & although defts. did not have continuous possession of the cabs, yet since, in letting B. take them out to ply for hire, they parted with possession without any intention to abandon the right of lien, the action failed. —**ALBEMARLE SUPPLY CO., LTD. v. HIND & CO.**, [1928] 1 K. B. 307; 97 L. J. K. B. 25; 138 L. T. 102; 43 T. L. R. 783; 71 Sol. Jo. 777, C. A.
324. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652.

## PART I.

**sm.** *Origin of—Necessity for statutory authority—In clear & unambiguous language.* A lien is not to be considered to be imposed without a plain declaration of the intention of the Legislature to impose it, shown in clear & unambiguous language.—**Re HARDY**, [1929] 1 D. L. R. 300; *affg.*, 62 O. L. R. 367. **CAN.**

## PART II. SECT. 9, SUB-SECT. 4.—A.

178 i. *Claim of general lien—Waiver of tender—For amount of particular lien.*—Where the holder of goods detains them for different claims, as to one of which he has a lien & the other not, the owner must tender the proper amount, unless the holder either expressly or by fair implication dispenses with it.—**BUFFALO & LAKE HURON HY. CO. v. GORDON** (1858), 16 U. C. R. 283.—**CAN.**

## PART IV. SECT. 1.

11. — *Sale of building—Balance of proceeds after payment of sundry accounts paid into court.*—**KELLY BROS. & CO. v. TOURIST HOTEL CO.** (1910), 15 O. W. R. 29; 20 O. L. R. 267.—**CAN.**

m i. — *Merchant giving vessel to plater & undertaking to supply vessel for fishery—Failure of merchant to supply vessel.*—**Held**: the merchant's peculiar lien upon the profits of the vessel ceased to attach.—**GILL v. POWER** (1851), 3 Nfld. L. R. 197.—**NFLD.**

## PART IV. SECT. 2, SUB-SECT. 1.—B. (a).

322a i. *Order given by hire-purchaser—No authority to create lien.*—**Held**: the vendor was entitled to a return of the subject-matter of the agreement without payment of the cost of repairs ordered by the hire-purchaser.—**ALLIANCE FINANCE CO. & STANDARD MOTORS, LTD. v. SIMONS GARAGE & GOODCHAP** (1925), 36 B. C. R. 117.—**CAN.**

322a ii. ———.]—**Held**: the repairers had not acquired a lien, in respect that the hirer's title excluded the right to create a lien.—**LAMONBY v. FOULDS, LTD.**, [1928] S. C. 89.—**SCOT.**

322a iii. ———.]—Although in a hire-purchase agreement there may be a clause expressly negating any authority to create a lien, it does not prevent a lien arising for repairs done to the subject-matter of the agreement.—**MOYES v. MAGNUS MOTORS, LTD.**, [1927] N. Z. L. R. 906.—**N.Z.**

322a iv. ———.]—Where an agreement for the conditional sale of a motor car contained the following clause: “We shall not at any time (that is, the buyer) suffer or permit any charge or lien whether possessory or otherwise to exist against said automobile,” it was held that this clause negatived the idea that the buyer could authorise the doing of repairs in such a way as to give the repairer a lien.—**ALLIANCE FINANCE CO. & STANDARD MOTORS, LTD. v. SIMONS**, [1928] 3 W. W. R. 621.—**CAN.**

322a v. ———.]—An artificer's lien arises only when the work in respect of which the charges arose was done by the order or at the request of the owner or some person authorised by him. Where the owner of a motor car let it to another under a hire-purchase agreement, which provided that repairs to the car should be made by the owner's nominee only, & the hiree caused the car to be repaired by a person who was not the owner's nominee:—**Held**: the person who repaired the car was not entitled to a lien for his charges as against the owner.—**FISHER v. AUTOMOBILE FINANCE CO. OF AUSTRALIA, LTD.**, [1928] A. L. R. 363; [1928] V. L. R. 496.—**AUS.**

322a vi. ———.]—Deft sold an auto-truck, taking a lien agreement to secure the balance of the purchase price, which was duly registered. The owner having an accident, brought the truck to pltf., who made extensive repairs, & held the truck for the cost of the repairs. On the truck being taken for trial by an ostensible buyer, after the owner was in default under the lien agreement, it was seized by deft.'s bailiff under the lien agreement. In an action to recover the truck it was held that pltf. was entitled to hold the car subject to his lien:—**Held**: where the vendor had not taken possession & where there had been no default up to the time of repair, the purchaser had the right & duty to have the property repaired so as to give rise to a common law lien in favour

332. *Add. Annotation* :—*As to* (1) *Distd. Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652.

371. *Add. Annotation* :—*Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.

## Part V.—Equitable Lien.

454. *Add. Annotations* :—*Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179; *Smith v. Wood* (1928), 139 L. T. 250

493. *Add. Annotation* :—*Mentd. Re Wait*, [1927] 1 Ch. 606.

553a. ————]—*TOPHAM v. CONSTANTINE* (1829), *Taml.* 135; 48 E. R. 54.

560. *Add. Annotation* :—*Refd. Lowther v. Harris*, [1927] 1 K. B. 393.

of the person who did the work. — *GUREVITCH v. MELCHIOR* (1921), 29 B. C. R. 394.—CAN.

322a vii. ———— *Acquiescence of vendor*.—A motor car sold under a conditional sale agreement & lent by the buyer to a friend for his temporary use was damaged while in the latter's possession & left by him with a mechanic to be repaired. The agent of plff., the vendor's assignee, saw the car in the mechanic's garage while it was yet unrepaid &, without questioning the authority of the borrower of the car to order the repairs, which were obviously necessary, suffered it to remain there, merely asking the mechanic what the repairs would cost & how long it would take to make them, & requesting him to send in an account of his charges against the car:—*Held*: the agent had so conducted himself as to justify the mechanic in concluding that plff. expected him to make the repairs, &, therefore, whatever was the extent of the borrower's authority to order them, plff. could not be heard to say that the mechanic had no authority to make them; & the mechanic was, therefore, entitled to a lien for the repairs.—*STERLING SECURITIES CORPN., LTD. v. HICKS MOTOR CO., LTD.*, [1928] 4 D. L. R. 155; [1928] 2 W. W. R. 74; 22 Sask. L. R. 507.—CAN.

PART IV. SECT. 2, SUB-SECT. 1.—C. m. *Reesd.*, 15 S. C. R. 194.

so. *Manufacturer of bricks—For owner of brickyard*.—*ROBERTS v. BANK OF TORONTO* (1894), 25 O. R. 194; 21 A. R. 629.—CAN.

PART IV. SECT. 2, SUB-SECT. 4.

sp. *Wharfinger*.—It is not necessary that the proprietor of a wharf or quay upon navigable waters, used for the loading & unloading of vessels, should have a warehouse or shed or other convenience for the storage of goods & protection thereof from the weather; & as such wharfinger he is entitled to a lien on goods unloaded at his wharf, for money due to him for wharfage.—*HICKFORD* (1879), 26 Gr. 512.—CAN.

PART IV. SECT. 3.

f i. ———— *Excessive seizure*.—A threshing machine, under Threshers' Lien Act, 57 Vict. c. 36, maintain a lien on grain for the threshing of which he has been paid, to recover the price of a subsequent unpaid threshing.—*SIMPSON v. OAKES* (1902), 14 Man. L. R. 262; 23 C. L. T. 54.—CAN.

f ii. ———— *By assignee of lien*.—Plff.'s grain on his farm was seized by defts., purporting to be assignees of C., who had threshed the grain for plff. & who was, as defts. alleged, entitled to a lien on the grain under Threshers' Lien Ordinance. At the time of the seizure only \$38.89 was owing by plff. to C., & that sum was, by agreement between plff. & C., not then payable. The alleged assignment to defts. was after this agreement. It was a general assignment

of all earnings of a threshing machine used by C. in threshing plff.'s grain:—*Held*: defts. had no legal right to make the entry & seizure; &, defts.' seizure being for \$160, it was, at all events, for an excessive amount, & illegal.—*SEMPLE v. SAWYER-MASSEY CO.* (1910), 13 W. L. R. 428.—CAN.

f iii. ———— *Damages claimed from threshing for delay*.—Def't. on Sept. 9 agreed to thresh plff.'s crop as soon as he finished other threshing. He finished the other threshing in Oct., but, except for a few hours on Dec. 21, he failed to thresh for plffs. until May. Damages were held recoverable by plffs., as being fairly supposed to have been in contemplation of the parties, on several heads. When def't. finished threshing in May he seized under the Threshing Lien Act:—*Held*: as plffs.' existing claims, being for damages as above & a claim for teams supplied which should have been supplied by def't., were not in the nature of payment made on account of threshing, but in the nature of counterclaim the seizure was lawful & plffs. could not claim damages for conversion.—*FINLAYSON v. SILZER*, [1921] 1 W. W. R. 882; 14 Sask. L. R. 169.—CAN.

f iv. *Thresher's employee's lien—On earnings of employer—Nature & extent of*.—The "claim" which Thresher Employees Act, R. S. S. 1920, c. 209, s. 3, gives to a person employed on or about a threshing machine is not a mere right to make a demand but an actual charge on the earnings of the machine, which takes effect as soon as the wages are earned. The claim is restricted, however, to the amount of wages earned with respect to threshing done for the particular person in whose hands are the earnings against which the claim is asserted.—*STREIBSMAN v. CHIRNIK*, [1928] 2 W. W. R. 281.—CAN.

k i. ———— *Under Business Profits War Tax Act, 1916 (c. 11), s. 24—Necessity for registration*.—*CANADIAN PEERLESS JEWELRY CO. & ROYAL TRUST CO. v. R.* (1926), Q. R. 64 S. C. 574.—CAN.

k ii. ———— *Priority over subsequent mortgage*.—*Re ANDREW MOTHERWELL OF CANADA, LTD. (Ont.)*, [1927] 1 D. L. 80; 8 C. B. R. 58.—CAN.

k iii. ————]—*Re MCKENZIE CO.*, [1928] 1 D. L. R. 336.—CAN.

k iv. *For sale tax—Special War Revenue Act, 1922—Effect of*.—*R. v. JACK PINE LUMBER CO., LTD. & CANADIAN BANK OF COMMERCE*, [1928] 4 D. L. R. 976; [1928] 3 W. W. R. 419.—CAN.

k v. ———— *Effect of repeal of*.—*Re WILNER*, [1928] 2 D. L. R. 396.—CAN.

m i. ———— *Enforcement—By sale—Requisites of valid sale*.—*GILLIS v. SOUNDING CREEK*, [1927] 2 D. L. R. 136; [1927] 1 W. W. R. 481; 22 Alta. L. R. 546.—CAN.

sa. *For rates*.—*BURCHELL v. SYDNEY*

CORPN., [1927] 1 D. L. R. 486; 59 N. S. R. 94.—CAN.

sb. *Under Rural Credits Act, C. A., 1924 (c. 173)*.—A rural credit society's statutory lien under the above Act binds growing crops & crops to be grown, & takes priority over an execution which did not come into the sheriff's hands until after the making of the loan by the society.—*LOBB v. ROCKWOOD RURAL CREDITS SOCIETY*, [1926] 2 D. L. R. 819; [1926] 2 W. W. R. 1; 35 Man. L. R. 499.—CAN.

PART V. SECT. 3, SUB-SECT. 8.—A.

d i. ————]—*FLETCHER v. CHAGGETT*, [1927] 3 D. L. R. 751; [1927] 2 W. W. R. 362; 21 Sask. L. R. 682.—CAN.

d ii. ————]—*AUMANN v. MCKENZIE*, [1928] 3 W. W. R. 233.—CAN.

PART V. SECT. 3, SUB-SECT. 8.—C. (a).

438 iii. ————]—*FREEBURG v. FARMERS' EXCHANGE BANKERS*, [1922] 1 W. W. R. 845; 63 D. L. R. 142; 15 Sask. L. R. 318.—CAN.

PART V. SECT. 3, SUB-SECT. 20.

1 (p. 273) i. ———— *Person hiring out team for logging operations—Driven by employee of contractor*.—*MULLER v. SHIRLEY* (1908), 8 W. L. R. 42; 13 B. C. R. 343.—CAN.

1 (p. 273) ii. ———— *Person working with his own team*.—Plff. who had hauled poles with his own team under an agreement for payment at so much per lineal foot, & who did all the work himself except for some gratuitous help given him by his young son, held to have been, not a bare contractor, but a wage-earner entitled to a lien under the Woodmen's Lien for Wages Act, R. S. B. C. 1924, c. 276.—*SCHMIDT v. STUCKEY & PEARSE*, [1928] 2 D. L. R. 928; [1928] 1 W. W. R. 913.—CAN.

1 (p. 273) iii. ———— *Person hauling timber to place of shipment*.—*AIKENS v. O'BRIEN*, [1928] 2 D. L. R. 731.—CAN.

o (p. 273) i. ————]—*HENDSBREE v. SONORA TIMBER CO., LTD.*, [1928] 1 D. L. R. 642; 59 N. S. R. 467.—CAN.

p (p. 273) i. ————]—*BAXTER v. KENNEDY* (1900), 35 N. B. R. 179.—CAN.

t (p. 273) i. ———— *"Gipso contractor"*.—*BOYD & ANDERSON v. SUPERIOR SPRUCE MILLS, LTD. (B. C.)*, [1927] 2 W. W. R. 54.—CAN.

b (p. 273) i. ————]—*SHEETWASH v. DEER MOUNTAIN LUMBER CO.* (1925), 37 B. C. R. 418.—CAN.

b (p. 273) ii. ———— *Married woman—Engaged by husband to cook for crew of men engaged to get lumber*.—*PATTERSON v. BOWMASTER* (1904), 37 N. B. R. 4.—CAN.

d (p. 273) i. *Work for which woodman's lien attaches*.—*HAGLUND v. DEER* (1927), 38 B. C. R. 435.—CAN.

598. *Add. Annotation:—As to (2) Reidd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

611. *Add. Annotation:—Mentd. Re Stanton (F. & E.), [1929] 1 Ch. 180.*

e (p. 273) i. — *Deals & manufactured lumber.*—BAXTER v. KENNEDY (1900), 35 N. B. R. 179.—CAN.

aa (p. 273) i. *Filing woodman's lien—Affidavit—Sufficiency.*—NELSON v. PERSON (B. C.), [1927] 3 W. W. R. 161.—CAN.

aa (p. 273) ii. — *Time for—Within statutory period—When period begins.*—HEANEY v. LOBLEY (1909), 11 W. L. R. 545.—CAN.

aa (p. 273) iii. *Statement of claim for woodman's lien—Power of court to amend—As to location of logs.*—MONTREAL TRUST Co. v. CAN. LUMBER YARDS, LTD., [1928] 2 D. L. R. 37; [1928] 1 W. W. R. 509; 39 B. C. R. 325.—CAN.

oo (p. 273) i. — — — — —.]—ARNOLDI v. GOUIN (1875), 22 Gr. 314.—CAN.

n (p. 274) i. — — — — —.]—Employed at rate per hour.—DUNN v. SEDZIAK (1908), 17 Man. L. R. 484; 7 W. L. R. 563.—CAN.

b (p. 274) i. — — — — —.]—Workman for materialman.—ALLEN v. HARRISON (1908), 9 W. L. R. 198.—CAN.

d (p. 274) i. — — — — —.]—Sub-contractor supplying material.—MONTJOY v. HEWARD SCHOOL DISTRICT CORPN. (1908), 10 W. L. R. 282.—CAN.

d (p. 274) ii. — — — — —.]—Sub-contractor.—KEENAN BROS., LTD. v. LANGDON, [1928] 2 D. L. R. 849; [1928] S. C. R. 203; *reseq. sub nom.* LANGDON v. KING, 32 O. W. N. 407.—CAN.

bb (p. 274) i. — — — — —.]—Ross v. GORMAN (1908), 1 Alta. L. R. 516; 9 W. L. R. 319.—CAN.

bb (p. 274) ii. — — — — —.]—Installation of furnace.—MALLET v. KOVAR (1910), 14 W. L. R. 327.—CAN.

qq (p. 274) i. — — — — —.]—BEAVER LUMBER Co., LTD. v. KOROTKY (Sask.), [1927] 1 W. W. R. 945.—CAN.

qq (p. 274) ii. — — — — —.]—HOFFSTROM v. STANLEY (1902), 14 Man. L. R. 227; 22 C. L. T. 337.—CAN.

qq (p. 274) iii. — — — — —.]—CUNNINGHAM v. SIGFUSSEN, [1928] 1 D. L. R. 726; [1928] 1 W. W. R. 16; 22 Sask. L. R. 310.—CAN.

tt (p. 274) i. — — — — —.]—Work done with "privity or consent."—MICHAELIS v. RYAN MOTORS, [1923] 1 D. L. R. 1186; 16 Sask. L. R. 352; [1923] 1 W. W. R. 401.—CAN.

bbb (p. 274) i. — — — — —.]—Sale of property before lien filed—Draft drawn on vendors for part of lien.—MAKINS v. ROBINSON (1884), 6 O. R. 1.—CAN.

eee (p. 274) i. — — — — —.]—Sub-contractors claiming for work or material—Contractor fully paid though unable to complete.—GODDARD v. COUSION (1884), 10 A. R. 1.—CAN.

eee (p. 274) ii. — — — — —.]—TRAVIS v. BRECKENRIDGE—LUND LUMBER & COAL Co. (1910), 43 S. C. R. 59.—CAN.

eee (p. 274) iii. — — — — —.]—CANADIAN EQUIPMENT & SUPPLY Co. v. BELL & SCHIESEL (1913), 24 W. L. R. 415; 11 D. L. R. 820.—CAN.

eee (p. 274) iv. — — — — —.]—School board.—MALLET v. KOVAR (1910), 14 W. L. R. 327.—CAN.

eee (p. 274) v. — — — — —.]—Person entitled under agreement to purchase.—MONTJOY v. HEWARD SCHOOL DISTRICT CORPN. (1908), 10 W. L. R. 282.—CAN.

eee (p. 274) vi. — — — — —.]—Church created for unincorporated congregation.—ROHL v. PFAFFENROTH (1915), 31 W. L. R. 197.—CAN.

ooo (p. 274) i. — — — — —.]—SECURITY LUMBER Co. v. ANAKA, [1927] 2 D. L. R.

987; [1927] 1 W. W. R. 975; 21 Sask. L. R. 459.—CAN.

ooo (p. 274) ii. — — — — —.]—JACKSON WATER SUPPLY Co. v. BARDECK (1915), 31 W. L. R. 151; 8 W. W. R. 168.—CAN.

mmmm i. — — — — —.]—Single contract—Single lien may be filed.—COUTO v. JAMES (B. C.), [1926] 2 W. W. R. 87.—CAN.

mmmm ii. — — — — —.]—Whether lien claim divisible.—BARR & ANDERSON v. PERCY & Co. (1912), 21 W. L. R. 236.—CAN.

mmmm iii. — — — — —.]—LEE v. HILL (1909), 11 W. L. R. 611.—CAN.

nnnn i. — — — — —.]—Homestead.—RICHERT Co. v. LARKIN, [1928] 4 D. L. R. 861; [1928] 3 W. W. R. 305.—CAN.

h (p. 275) i. — — — — —.]—FITZGERALD v. APPERLEY (Sask.), [1926] 3 D. L. R. 734; [1926] 2 W. W. R. 689.—CAN.

h (p. 275) ii. — — — — —.]—BEAVER LUMBER Co., LTD. v. CURRY (Sask.), [1926] 4 D. L. R. 619; [1926] 3 W. W. R. 404.—CAN.

h (p. 275) iii. — — — — —.]—Whether lien defeated by sale—To purchaser without notice.—WANTY v. ROBINS (1888), 15 O. R. 474.—CAN.

q (p. 275) i. — — — — —.]—MAGURN v. MAGURN (1883), 10 P. R. 570.—CAN.

o (p. 275) i. — — — — —.]—RUSSELL v. ONTARIO FOUNDATION & ENGINEERING Co., [1926] 1 D. L. R. 760; 58 O. L. R. 260.—CAN.

aa (p. 275) i. — — — — —.]—IRWIN v. BEYNON (1887), 4 Man. L. R. 10.—CAN.

aa (p. 275) ii. — — — — —.]—HALL v. HOGG (1890), 20 O. R. 13.—CAN.

aa (p. 275) iii. — — — — —.]—VOKES HARDWARE Co. v. GRAND TRUNK RY. Co. (1906), 12 O. L. R. 344; 7 O. W. R. 537; 8 O. W. R. 24.—CAN.

aa (p. 275) iv. — — — — —.]—CLARKE v. MOORE & SIMPSON (1908), 8 W. L. R. 105, 111, 1 Alta. L. R. 49.—CAN.

aa (p. 275) v. — — — — —.]—SMITH v. BERNHART (1909), 11 W. L. R. 623.—CAN.

dd (p. 275) i. — — — — —.]—T. McAVITY & SONS, LTD. v. WALSH (B. C.), [1927] 1 W. W. R. 412.—CAN.

dd (p. 275) ii. — — — — —.]—BRIGGS v. LEE (1880), 27 Gr. 161.—CAN.

dd (p. 275) iii. — — — — —.]—Fraction of day.—CLARKE v. MOORE & SIMPSON (1908), 8 W. L. R. 105, 111; 1 Alta. L. R. 49.—CAN.

dd (p. 275) iv. — — — — —.]—Work done after period expired—For purpose of preserving lien.—SHERITT v. McCALUM (1910), 12 W. L. R. 637.—CAN.

dd (p. 275) v. — — — — —.]—For purpose of making plant efficient.—WHIMSTER v. CROW'S NEST PASS COAL Co. (1910), 13 W. L. R. 621.—CAN.

dd (p. 275) vi. — — — — —.]—Completion of contract—What is.—DAY v. CROWN GRAIN Co. (1907), 39 S. C. R. 258.—CAN.

ff (p. 275) i. — — — — —.]—LARSEN v. NELSON & FORT SHEPPARD RY. Co. (1895), 4 B. C. R. 151.—CAN.

ff (p. 275) ii. — — — — —.]—KNOTT v. CLINE & BECKWITH (1896), 5 B. C. R. 120.—CAN.

ff (p. 275) iii. — — — — —.]—Inclusion of claim for materials.—WELLER v. SHUPE (1897), 6 B. C. R. 58.—CAN.

ff (p. 275) iv. — — — — —.]—Misdescription of land—Application to amend

made *ex parte* after time for filing claim expired.—MCDONALD v. MCKENZIE (1914), 29 W. L. R. 890; 7 W. W. R. 601; 19 D. L. R. 418; 7 Alta. 435.—CAN.

ff (p. 275) v. — — — — —.]—Made by agent.—MCARTHUR & Co. v. FAGAN, [1928] 2 D. L. R. 875; [1928] 2 W. W. R. 6; 39 B. C. R. 554.—CAN.

rr (p. 275) i. — — — — —.]—MONAROH LUMBER Co. v. GARRISON (1911), 18 W. L. R. 686.—CAN.

aaa (p. 275) i. — — — — —.]—Effect of—Materialman—What payments subsequently made by owner valid.—MCBEAN v. KINNEAR (1892), 23 O. R. 313.—CAN.

aaa (p. 275) ii. — — — — —.]—In respect of more goods than delivered—How far valid.—RAT PORTAGE LUMBER Co., LTD. v. WATSON & ROGERS (1912), 17 B. C. R. 489.—CAN.

fff (p. 275) i. — — — — —.]—BAINES v. HARMAN, [1927] 2 D. L. R. 743; 60 O. L. R. 223.—CAN.

dddd (p. 275) i. — — — — —.]—Not limited to price of materials supplied within six years of beginning of action.—FITZGERALD v. APPERLEY (Sask.), [1926] 3 D. L. R. 734; [1926] 2 W. W. R. 689.—CAN.

dddd (p. 275) ii. — — — — —.]—Amount payable by owner to contractor—Right of owner to deduct damages for delay—& amount to satisfy wages lien.—MCBEAN v. KINNEAR (1892), 25 O. R. 313.—CAN.

dddd (p. 275) iii. — — — — —.]—LUNDY v. HENDERSON (1908), 9 W. L. R. 327.—CAN.

dddd (p. 275) iv. — — — — —.]—Contractor to receive half amount to be borrowed—Failure of owner to borrow on mortgage or to pay—Right of contractor to interest.—HURST v. DOWNARD (1921), 64 D. L. R. 279; 50 O. L. R. 35.—CAN.

sa. Amount due from owner to contractor paid into court—Claims of lienholder against contractor exceeding that sum—Owner granted costs against contractor—Right of owner to payment out of fund in court.—PATTEN v. LAIDLAW (1895), 26 O. R. 189.—CAN.

sb. Right of lienholder—To pay off unpaid purchase money on land affected by lien—& to add amount to lien.—RICHERT Co. v. LARKIN, [1928] 4 D. L. R. 861; [1928] 3 W. W. R. 305.—CAN.

sc. Sale under Farm Implement Act—Statutory provisions not complied with—New lien note given marked "renewal"—Whether Act still applicable.—PLOWMAN TRACTOR Co. v. ANDREWS, [1928] 1 D. L. R. 544; [1928] 1 W. W. R. 329.—CAN.

sd. Mechanics' Lien Act, B. C. 1893, c. 23—Whether applicable to Dominion railways.—LARSON v. NELSON & FORT SHEPPARD RY. Co. (1895), 1 B. C. R. 151.—CAN.

se. Workmen's Liens Acts, 1893 & 1896—Construction & application of.—PITT, LTD. v. GLENELG TOWN CORPN., [1927] S. A. S. R. 501.—AUS.

#### PART V. SECT. 3, SUB-SECT. 21.—A.

e. *Revsd.*, [1919] 3 W. W. R. 366.  
572 i. — — — — —.]—Tight in equity.—BAKER v. DEWEY (1869), 15 Gr. 668.—CAN.

#### PART V. SECT. 3, SUB-SECT. 21.—

B. (a) i.

sk. Land bought by several parties.—BOULTON v. GILLESPIE (1860), 8 Gr. 223.—CAN.

#### PART V. SECT. 3, SUB-SECT. 21.—

B. (a) ii.

sm. Payment of mortgage as part of purchase price.—HAMILTON PRO-

615. *Add. Annotation* :—*Mentd. Re* Reeves, Reeves v. Pawson, [1928] Ch. 351.

660. *Add. Annotation* :—*Mentd. Re* Wait, [1927] 1 Ch. 606.

761. *Add. Annotation* :—*Re*ld. Cohen v. Roche, [1927] 1 K. B. 169.

VIDENT LOAN & INVESTMENT CO. v. SMITH (1888), 17 O. R. 1.—CAN.

#### PART V. SECT. 4.

t (p. 289) i. — *As against mortgage*. — THOMSON v. HARRISON, [1927] 3 D. L. R. 526; 60 O. L. R. 484.—CAN.  
dd i. —.]—ROGERS LUMBER YARDS LTD. v. JACOBS, [1924] 3 D. L. R. 814; [1924] 2 W. W. R. 1128; 21 Alta. L. R. 56.—CAN.

dd ii. —.]—MANNERS v. CAIN, [1927] 3 D. L. R. 1054; 60 O. L. R. 644.—CAN.

ee i. —.]—INDEPENDENT LUMBER CO. v. BOZC (1911), 16 W. L. R. 316; 4 Sask. L. R. 103.—CAN.

ee ii. —.]—RICHARDS v. CHAMBERLAIN (1878), 25 Gr. 402.—CAN.

ee iii. —.]—REINHART v. SHUTT (1888), 15 O. R. 325.—CAN.

ee iv. —.]—KENNELLY v. HADLOW (1890), 19 O. R. 240.—CAN.

ee v. —.]—COOK v. BELSHAW (1893), 23 O. R. 545.—CAN.

ee vi. —.]—McDONALD v. CONSOLIDATED GOLD LAKE CO. (1902), 40 N. S. R. 363.—CAN.

ff i. —.]—*Value of property increased*. — NATIONAL TRUST CO. v. BATTLE (1916), 33 W. L. R. 738; 9 W. W. R. 1265.—CAN.

d (p. 290) i. —.]—TOLLEY v. GUERIN, [1926] 4 D. L. R. 625; [1926] S. C. R. 566.—CAN.

d (p. 290) ii. —.]—STEVENSON v. GREEN, [1926] 2 D. L. R. 667; 58 O. L. R. 546.—CAN.

d (p. 290) iii. —.]—*Abandonment of priority—What amounts to*. — BEAVER LUMBER CO., LTD. v. CURRY (Sask.), [1926] 4 D. L. R. 619; [1926] 3 W. W. R. 404.—CAN.

d (p. 290) iv. —.]—GOODING v. CROCKER, [1927] 1 D. L. R. 1072; 60 O. L. R. 60.—CAN.

sp. *As against purchaser in good faith for valuable consideration—Lien note unregistered*. — WILLIE v. DELISLE (1915), 30 W. L. R. 918; 21 D. L. R. 407.—CAN.

sq. *Lien for wages—Under Builders' & Workmen's Act, 1902—As against creditors*. — BRYSON v. ROSSER MUNICIPALITY (1909), 18 Man. L. R. 658.—CAN.

#### PART V. SECT. 5, SUB-SECT. 1.

g (p. 291) i. —.]—*Supreme Court*. — MARTIN v. RUSSELL & JOHNSON & THE BRITISH COLUMBIA PAPER MANUFACTURING CO., LTD. (1892), 2 B. C. R. 98.—CAN.

g (p. 291) ii. —.]—*County court—Claim for personal order to pay*. — FORT v. JONES (1892), 2 B. C. R. 250.—CAN.

g (p. 291) iii. —.]—FREEZE v. CAREY, MCKAY v. CAREY (1907), 7 W. L. R. 287; 1 Alta. L. R. 81.—CAN.

g (p. 291) iv. —.]—*Master in chambers—Setting aside judgment of official referee—On failure of defendant to appear*. — GUEST v. LINDEN (1912), 21 O. W. R. 303; 3 O. W. N. 750; 1 D. L. R. 908.—CAN.

bb (p. 291) i. —.]—BANK OF MONTREAL v. HAFFNER (1884), 10 A. R. 592.—CAN.

d (p. 292) i. —.]—HOWLETT & BELL v. DORAN & GALANT (1913), 24 W. L. R. 401; 4 W. W. R. 674; 11 D. L. R. 372.—CAN.

d (p. 292) ii. —.]—BUNTING v. BELL (1876), 23 Gr. 584.—CAN.

d (p. 292) iii. —.]—BLACK v. WIEBE (1906), 4 W. L. R. 218.—CAN.

d (p. 292) iv. —.]—MCIVER v. CROWN POINT MINING CO. (1900), 19 P. R. 335; 21 C. L. T. 127.—CAN.

d (p. 292) v. —.]—BAGSHAW v. JOHNSTON (1901), 3 O. L. R. 58; 22 C. L. T. 33.—CAN.

d (p. 292) vi. —.]—BRITISH COLUMBIA MILLS, TIMBER & TRADING CO. v. HORROBIN, HENSHAW & SENKLER (1907), 12 B. C. R. 426.—CAN.

e (p. 292) i. —.]—TOWNSLEY v. BALDWIN (1889), 18 O. R. 403.—CAN.

e (p. 292) ii. —.]—NELSON v. BREWSTER (1906), 7 Tett. L. R. 458; 3 W. L. R. 362.—CAN.

e (p. 292) iii. —.]—IMPERIAL ELEVATOR CO. v. WELCH (1906), 4 W. L. R. 51; 16 Man. L. R. 136.—CAN.

e (p. 292) iv. —.]—GIDNEY v. MORGAN (1910), 16 B. C. R. 18.—CAN.

e (p. 292) v. —.]—WHITMAN v. HARVEY (1910), 13 W. L. R. 287.—CAN.

o (p. 292) i. —.]—COOKE v. MOCROFT, [1926] 1 W. W. R. 827; 36 B. C. R. 393.—CAN.

o (p. 292) ii. —.]—CHRISTY v. MCKAY (1905), 15 Man. L. R. 612; 2 W. L. R. 303.—CAN.

o (p. 292) iii. —.]—HOVENDEY v. ELLISON (1877), 24 Gr. 448.—CAN.

o (p. 292) iv. —.]—McPHERSON v. GEDGE (1883), 4 O. R. 246.—CAN.

o (p. 292) v. —.]—HALL v. HOGG (1890), 14 P. R. 45.—CAN.

o (p. 292) vi. —.]—

BICKERTON v. DAKIN (1891), 20 O. R. 192, 695.—CAN.

o (p. 292) vii. —.]—GARDNER v. GORMAN, ROSS v. GORMAN (1908), 7 W. L. R. 630; 1 Alta. L. R. 106.—CAN.

o (p. 292) viii. —.]—LEIBROCK v. ADAMS (1908), 17 Man. L. R. 575.—CAN.

o (p. 292) ix. —.]—MC EWEN v. BOUCK, [1921] 3 W. W. R. 267.—CAN.

o (p. 292) x. —.]—ROGERS LUMBER CO. v. GRAY & HOSMER (1913), 23 W. L. R. 920; 10 D. L. R. 698; 4 W. W. R. 294.—CAN.

o (p. 292) xi. —.]—IMPERIAL LUMBER YARDS, LTD. v. McMANUS, [1928] 2 D. L. R. 150; [1928] 1 W. W. R. 409; 22 Sask. L. R. 278.—CAN.

r (p. 292) i. —.]—HOWLETT & BELL v. DORAN & GALANT (1913), 24 W. L. R. 401; 4 W. W. R. 674; 11 D. L. R. 372.—CAN.

r (p. 292) ii. —.]—HALL v. PILZ (1886), 11 P. R. 449.—CAN.

r (p. 292) iii. —.]—CORBAN MFG. CO. v. LAKE SIMCOE HOTEL CO. (1903), 23 C. L. T. 168; 5 O. L. R. 447; 2 O. W. R. 48, 310.—CAN.

a (p. 292) i. —.]—WAGNER v. O'DONNELL (1891), 14 P. R. 254.—CAN.

a (p. 292) ii. —.]—SHERLOCK v. POWELL (1899), 18 P. R. 312.—CAN.

a (p. 292) iii. —.]—GILLES SUPPLY CO. v. ALLAN (1910), 15 B. C. R. 375.—CAN.

cc (p. 292) i. —.]—*Interest*. — FITZGERALD v. APPERLEY (Sask.), [1926] 3 D. L. R. 734; [1926] 2 W. W. R. 689.—CAN.

cc (p. 292) ii. —.]—BEAVER LUMBER CO., LTD. v. CURRY (Sask.), [1926] 4 D. L. R. 619; [1926] 3 W. W. R. 404.—CAN.

cc (p. 292) iii. —.]—*Nature of action*. — HUTSON v. VALLIERS (1892), 19 A. R. 154.—CAN.

#### PART V. SECT. 7, SUB-SECT. 1.—A. (b) i.

sw. *By claim for rescission*. — RE MAINLAND PORTLAND CEMENT CO., [1927] 2 D. L. R. 742; 38 B. C. R. 417.—CAN.

#### PART V. SECT. 7, SUB-SECT. 1.—B. (b) i.

sx. *Waiver of mechanic's lien claim—Form of waiver signed by mistake*. — PALFREY v. BROWN (1915), 31 W. L. R. 535.—CAN.

## LIMITATION OF ACTIONS.

## Part I.—The Statutes of Limitation Generally.

8. *Add. Annotation*:—**Refd.** Harnett v. Fisher, [1927] A. C. 573.
15. *Add. Annotations*:—**Apprvd.** Ramdutt Ramkissendass v. Sassoon E. D. & Co. (1929), 98 L. J. P. C. 58. **Refd.** Board of Trade v. Cayzer, Irvine, [1927] A. C. 610.
16. *Add. Citations*:—[1927] 1 K. B. 269; 136 L. T. 7, C. A.; *affd. sub nom.* BOARD OF TRADE v. CAYZER, IRVINE & CO., [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43 T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.
- Add. Annotations*: **Consd.** Ramdutt Ramkissendass v. Sassoon E. D. & Co. (1929), 98 L. J. P. C. 58. **Mentd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
28. *Add. Annotation*:—**Refd.** Weld v. Petre (1928), 97 L. J. Ch. 399.
31. *Add. Annotation*:—**Refd.** Weld v. Petre (1928), 97 L. J. Ch. 399.
36. *Add. Annotation*:—**Refd.** Weld v. Petre (1928), 97 L. J. Ch. 399.
- ## Part II.—Simple Contract Debts and Personal Actions.
56. *Add. Annotation*:—**Consd.** Aylott v. West Ham Corp., [1927] 1 Ch. 30.
57. *Citation*:—For “20 J. P. 99” read “90 J. P. 99.”
59. *Add. Annotations*:—**Distd.** Aylott v. West Ham Corp., [1927] 1 Ch. 30. **Refd.** Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602; Royal Trust Co. v. A.-G. for Alberta (1929), 46 T. L. R. 25.
65. *Add. Citation*:—[1927] 1 Ch. 30. *Add. Annotations*:—**Refd.** Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602; Stevens v. Hampstead Borough Council, [1929] 2 Ch. 239.
73. *Add. Annotation*:—**Refd.** Mackenzie-Kennedy v. Air Council, [1927] 2 K. B. 517.
77. *Add. Annotation*:—**Refd.** Re Mason (1928), 97 L. J. Ch. 321.
78. *Add. Annotations*:—**Consd.** Re Mason (1928), 97 L. J. Ch. 321. **Refd.** Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.
79. *Add. Citations*:—[1927] 1 K. B. 269; 136 L. T. 7, C. A.; *affd. sub nom.* BOARD OF TRADE v. CAYZER, IRVINE & CO., [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43 T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.
- Add. Annotations*:—**Refd.** Ramdutt Ramkissendass v. Sassoon (E. D.) & Co. (1929), 98 L. J. P. C. 58. **Mentd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 T. L. 416.
84. *Add. Annotation*:—**Consd.** Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.
93. *Add. Annotation*:—**Refd.** Lowe v. Bentley (1928), 44 T. L. R. 388.
94. *Add. Annotation*:—**Consd.** Lowe v. Bentley (1928), 44 T. L. R. 388.
128. *Add. Annotation*:—**Refd.** Weld v. Petre (1928), 97 L. J. Ch. 399.
- 131a. **Assault.**—To an action of assault & battery a plea of no assault within six years, is bad; for Stat. Limitations limits it to four years, & the statute must be precisely, & not argumentatively pleaded.—**BLACKMORE v. TIDDERLEY** (1705), 2 Ld. Raym. 1099; 11 Mod. Rep. 38; 2 Salk. 423; 6 Mod. Rep. 240; 88 E. R. 869.
- 139a. — **Arbitration condition precedent.**—The Crown requisitioned appets.’ ship under a charterparty, which provided that any dispute under the charter should be referred to arbn. under Arbn. Act, 1889 (c. 49), & which concluded as follows: “& it is further mutually agreed that such arbn. shall be a condition precedent to the commencement of any action at law.” In July, 1917, the ship was lost, but appets. did not proceed to arbn. until Dec. 1923. The Crown contended that, as the arbn. was not commenced within six years of the loss, the claim was barred by Stat. Limitations, 1623 (c. 16):—*Illd.*

**PART I. SECT. 2, SUB-SECT. 1.**

**15 i. Submission to arbitration--Whether defence of limitation excluded.**—In a reference to arbn. it is an implied term of the contract that the arbitrators must decide the dispute according to the existing law of contract, & that every defence which would have been open in a ct. of law, including limitation, can be raised unless that defence has been excluded by agreement of the parties.—**RAM DUTT RAMKISHENDAS R. SARSON F. D. & Co. (1929), 56 L. R. Ind. App. 128.—IND.**

**PART II. SECT. 2, SUB-SECT. 1.**

47 iv. — — —.]—Plff. sued to recover balance on account of advances made to deft. pursuant to a contract of hypothecation. The agreement provided that the advances should be repaid on demand, & also provided for

repayment towards the advances by the sale proceeds of consignments of the goods hypothecated, & sent by deflt. to pltf. in Calcutta for sale—*Held*: the account was not a mutual open & current account, & Art. 59 of Limitation Act (IX. of 1908) applied.—**TEA FINANCING SYNDICATE, LTD. v. CHANDRA KAMAL BEZBROUH (1929), I. L. R. 56 Cal. 575.— IND.**

**PART II. SECT. 2, SUB-SECT. 5.—B.**

**b i.** — *Highway Traffic Act, 1923*  
(c. 48), ss. 43a, 54—*Effect of.*—**CARLINO v. ZIMBLARTE**, [1927] 2  
D. L. R. 945; 60 O. L. R. 269.—**CAN.**

**PART II. SECT. 2, SUB-SECT. 7.**

52. Note given under *Municipalities Seed Grain Act—Failure to observe conditions of Act.*—*CARMICHAEL RURAL MUNICIPALITY v. GILBERG*, [1929] 1

D. L. R. 124 ; [1928] 3 W. W. R. 151. --  
CAN.

**PART II. SECT. 2, SUB-SECT. 9.--A.**

**sb.** *Claim for injurious affection—Within Statute of Limitations (Nova Scotia), s. 2 (d).*—**MILLER v. R.**, [1927] Exch. C. R. 52.—**CAN.**

**PART II. SECT. 5, SUB-SECT. 1.**

**134 vi.** — [*Undischarged bankrupt.*] — Where a creditor, having obtained the leave of the Insolvency Court, sued an insolvent in an ordinary civil ct. to recover a debt, the adjudication being in force, the former was not entitled in computing the period of limitation for the suit, to exclude the time during which the insolvency proceedings were pending. — **MACHANEERI AHMED v. K. GOVINDA PHABHU** (1928), I. L. R. 51 Mad. 862. — **IND.**

under the arbn. clause no cause of action arose until the award was made, & time did not run until the making of the award, & the claim was not barred.—**BOARD OF TRADE v. CAYZER, IRVINE & Co.**, [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43 T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.; *affg.* S. C. sub nom. **CAYZER, IRVINE & Co. v. BOARD OF TRADE**, [1927] 1 K. B. 269, C. A.

*Annotations*:—**Consd.** *Ramduitt Itankissendass v. Sassoon* (E. D.) & Co. (1929), 98 L. J. P. C. 58. **Mentd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

**182. Add. Annotation**:—**Refd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602.

**193. Add. Annotation**:—**Mentd.** *Re Pinto Leite & Nephews, Ex p. Visconde Des Oliveira*, [1929] 1 Ch. 221.

**206. Add. Annotation**:—*As to* (1) **Apld.** *Re Mason* (1928), 97 L. J. Ch. 321.

**210. Add. Annotation**:—**Consd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602.

**217. Add. Annotation**:—**Refd.** *Douglass v. Lloyds Bank* (1929), 34 Com. Cas. 263.

**229. Add. Annotation**:—**Refd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602.

**238. Add. Annotation**:—**Mentd.** *Conquer v. Boot*, [1928] 2 K. B. 336.

**250. Add. Annotation**:—**Mentd.** *Conquer v. Boot*, [1928] 2 K. B. 336.

**PART II. SECT. 5, SUB-SECT. 2.—C. (a).**

**147 i. Date of making.**—Where a promissory note is payable with interest on demand, Stat. limitations begins to run from the date of the note.—**IMPERIAL BANK OF CANADA v. SIMPHON** (Man.), [1927] 3 W. W. R. 500.—**CAN.**

**PART II. SECT. 5, SUB-SECT. 2.—M. se.** *Money repayable "as soon as possible"*—*Time runs from date of ability to pay.*—**INGIERRETSSEN v. CHRISTENSEN**, [1927] 3 W. W. R. 135; 37 Man. L. R. 93.—**CAN.**

**PART II. SECT. 5, SUB-SECT. 2.—U.** **235 ii.** — *Proviso for compensation by will—Time does not run until death of employer.*—**HUNTER v. THOMPSON**, [1927] 2 D. L. R. 349; 60 O. L. R. 185.—**CAN.**

**PART II. SECT. 5, SUB-SECT. 3.—A. st.** *Statute barred claim for damages—Properly rendered useless by other causes.*—**THURGEON v. QUEBEC**, [1928] 2 D. L. R. 273; *affg.*, 40 Que. K. B. 453.—**CAN.**

**PART II. SECT. 5, SUB-SECT. 3.—B. fi.** — *KERR v. ATLANTIC & NORTH-WEST RY. Co.* (1895), 25 S. C. R. 197.—**CAN.**

**PART II. SECT. 8, SUB-SECT. 2. o i.** — *GANDA SINGH v. BHAG*

**SINGH-BHAGWAN SINGH, Mst. BHANI** (1926), 1 L. R. 7 Lab. 403.—**IND.**

**PART II. SECT. 8, SUB-SECT. 6.—A. 409 viii.** — *PHUL SINGH v. BHOTRAJ* (1927), 1 L. R. 49 All. 801.—**IND.**

**409 ix.** — *In order for a writing to be sufficient to take a case out of Stat. Limitations it must amount either to an express promise to pay the debt or to a clear & unqualified admission of a still-subsisting liability from which an express promise to pay the debt will be implied by law. A conditional promise will not suffice unless there be proof of the fulfilment of the condition, but, if such proof be offered, a promise either express or implied will be converted into an absolute one, & as such will support a claim alleging a promise to pay on request.*—**FREE v. THIEL**, [1928] 4 D. L. R. 72; [1928] 2 W. W. R. 115; 22 Sask. L. R. 495.—**CAN.**

**409 x.** — *MACBAIN v. MACBAIN*, [1929] S. C. (Cl. of Sess.) 213.—**SCOT.**

**PART II. SECT. 8, SUB-SECT. 6.—C. sh.** *Account stated—Effect of general acknowledgment.*—Where a chittha contained a series of items of debt, all taken by debt. from plif. with the dates of the loans mentioned therein, & in the end bore the following indorsement "Examined the account. It is

**256. Add. Citations**:—[1927] 1 K. B. 402; 96 L. J. K. B. 55, C. A.; *affd.*, [1927] A. C. 573; 96 L. J. K. B. 856; 137 L. T. 602; 91 J. P. 175; 43 T. L. R. 587; 71 Sol. Jo. 470; 25 L. G. R. 454, H. L.

**Add. Annotation**:—**Consd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.

**284. Add. Annotation**:—**Refd.** *Harnett v. Fisher*, [1927] A. C. 573.

**400a.** — *Retrospective operation.*—Above Act came into operation on Jan. 1, 1829:—*Held*: an action commenced in Hilary term, 1829, could not be maintained upon a verbal promise made before the passing of the Act.—**TOWLER v. CHATTERTON** (1829), 6 Bing. 258; L. & Welsb. 74; 3 Moo. & P. 619; 8 L. J. O. S. C. P. 30; 130 E. R. 1280.

*Annotations*:—**Expld.** *Moon v. Durden* (1848), 2 Exch. 22. **Consd.** *R. v. Leeds & Bradford Ry. Co.* (1852), 18 Q. B. 343; *Wright v. Hale* (1860), 6 H. & N. 227. **Refd.** *Paddon v. Bartlett* (1835), 3 Ad. & El. 884; *Batchelor v. Middleton* (1848), 6 Hare, 75; *R. v. Crowan* (Inhabitants) (1849), 13 Jur. 1099; *Leary v. Patrick* (1850), 11 Jur. 932; *Henshall v. Porter*, [1923] 2 K. B. 193. **Mentd.** *The Alexander* (1811), 1 Notes of Cases, 185.

**578. Add. Annotation**:—**Refd.** *Harnett v. Fisher*, [1927] A. C. 573.

**696. Add. Annotation**:—*Generally*, **Mentd.** *Smith v. Wood* (1928), 139 L. T. 250.

**746. Add. Annotation**:—**Mentd.** *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.

*correct*:—*Held*: each item was a separate debt in itself, & the indorsement was merely an acknowledgment of the existing debt, giving a fresh start to limitation in respect of such items only as were not, at the date of indorsement, barred by limitation.—**DEORAJ TEWARI v. INDRASAN TEWARI** (1929), 1 L. R. 8 Pat. 706.—**IND.**

**PART II. SECT. 8, SUB-SECT. 6.—D. 450 xi.** — *CHAPMAN v. PAULSON* (Man.), [1926] 4 D. L. R. 590.—**CAN.**

**PART II. SECT. 8, SUB-SECT. 6.—E. (b).**

**485 ii.** — *Re WAHN ESTATE*, [1927] 4 D. L. R. 440; [1927] 3 W. W. R. 138; 37 Man. L. R. 95.—**CAN.**

**PART II. SECT. 9, SUB-SECT. 5.—A. 740 ii.** — *When a creditor holds two promissory notes made by the same debtor a payment made generally on account prevents Stat. Limitations from running as against the whole debt. The fact that after such payments equalled the amount due on one of the notes the creditor handed it over to the debtor at the latter's request after crediting to it all the payments made up to that time cannot alter the character of the payments as of the date when each of them was made.*—**WOOD v. RICHMOND**, [1928] 3 W. W. R. 737.—**CAN.**

## Part III.—Specialties.

753. *Add. Annotations*:—**Consd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602. **Refd.** *Royal Trust Co. v. A.-G. for Alberta* (1929), 46 T. L. R. 25.
755. *Add. Annotation*:—**Refd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602.
757. *Add. Annotations*:—**Distd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602. **Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
758. *Add. Annotation*:—**Refd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602.
- 785a. — **In balance sheet.**—A balance sheet contained in an annual report sent by a

co. to its shareholders, & filed with the registrar of companies, & stating the total amount of the co.'s indebtedness under its debentures for principal & interest accrued thereon since their issue is, although not sent to the debenture-holders, a sufficient acknowledgment by the co. of its liability under the debentures to take the case out of the operation of Civil Procedure Act, 1833 (c. 42), s. 3.—*Re ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., BURNHAM (VISCOUNT) v. ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO.*, [1928] Ch. 836; 97 L. J. Ch. 369; 140 L. T. 18; 44 T. L. R. 702; 72 Sol. Jo. 598.

## Part IV.—Money Charged Upon or Payable out of Land or Rent, or Secured by a Judgment, and Legacies, and Personal Estates of Intestates.

819. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
834. *Add. Annotation*:—**Mentd.** *I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire* (1926), 136 L. T. 60.
848. *Add. Annotation*:—**Refd.** *Purnell v. Roche*, [1927] 2 Ch. 142.
873. *Add. Annotation*:—**Refd.** *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602.
915. *Add. Annotation*:—**As to** (1) **Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
- 964a. — **—**—**HORTON v. THOMPSON** (1855), 25 L. T. O. S. 292, L. J. J.
976. *Add. Annotations*:—**Refd.** *Re Lloyd, Lloyd v.*

*Lloyd*, [1903] 1 Ch. 385; *Lewis v. McKay, Algate v. Vugler, Clark v. Potter* (1924), 93 L. J. K. B. 840.

976a. — **—**—**—**—The allowance of interest upon a legacy charged upon real estate, & due upwards of six years, is to be calculated from the filing of the bill, & not from the date of the decree, though the bill is not filed by the legatee.—*CHAPPELL v. REES* (1852), 1 De G. M. & G. 393; 20 L. T. O. S. 57; 16 Jur. 415, 417; 42 E. R. 603, L. C.

*Annotations*:—**Refd.** *Re Lloyd, Lloyd v. Lloyd*, [1903] 1 Ch. 385; *Lewis v. McKay, Algate v. Vugler, Clark v. Potter* (1924), 93 L. J. K. B. 840. **Mentd.** *Petre v. Petre* (1853), 1 Drew. 371.

1011. *Add. Annotation*:—**Refd.** *Re Wait*, [1927] 1 Ch. 606.

### PART IV. SECT. 1, SUB-SECT. 1.—C.

d1. — **—**—**Re LING** (1908), 43 N. S. R. 60; 6 E. L. R. 264.—**CAN.**

q1. — **Receivership order.**—A receivership order based on a judgment does not become ineffective, when the remedy on the judgment becomes barred by Stat. Limitations.—*WILKINS v. MINER* (Alta.), [1927] 1 D. L. R. 286; [1926] 3 W. W. R. 778.—**CAN.**

s1. **How judgment kept alive—Revisor.**—Where a judgment is about to become barred by Stat. Limitations, twelve years having nearly run, it may be kept alive by applying for leave to enter on the judgment roll a suggestion reviving the judgment & allowing execution to be issued thereon. Pltf.'s alternative is to resume on the judgment.—*SECURITY LUMBER CO., LTD. v. KOSKIE*, [1924] 1 W. W. R. 548.—**CAN.**

### PART IV. SECT. 1, SUB-SECT. 1.—E.

852 ii. — **—**—**—**—A debt under a covenant in a mtge. executed under seal is a specialty debt, & the period of limitation applicable thereto is twelve years.—*INVESTORS MORTGAGE SECURITY CO. v. McDONALD & HENRY*, [1927] 1 W. W. R. 671; 21 Sask. L. R. 409.—**CAN.**

852 iii. — **In mortgage not under seal.**—An action on the personal covenant in a mtge., which is registered

against land in Alberta but which is not under seal, is an action on a simple contract debt, & the period of limitation applicable thereto is six years.—*SOCIETE BELGE D'ENTREPRISES INDUSTRIELLES IMMOBILIERES v. WEBSTER & MILL* (Alta.), [1928] 1 D. L. R. 465; 23 Alta. J. R. 129, [1927] 3 W. W. R. 817.—**CAN.**

852 iv. — **—**—**—**—Where land subject to a mtge. is transferred by a transfer which is not under seal the transferee's implied covenant with the mtgee. under Land Titles Act, R. S. A., 1922, c. 133, s. 54 (1), is a simple contract debt, even though the mtge. was under seal; & therefore, the period of limitation applicable to an action thereon by the mtgee. is six years.—*TRUSTS & GUARANTEE CO., LTD. v. McLEOD & BUXTON*, [1928] 4 D. L. R. 784; [1928] 3 W. W. R. 205.—**CAN.**

852 v. — **—**—**—**—*ASHIQ HUSAIN v. CHATARBHUI & AHMAD-ULLAH KHAN* (1927), 1 L. R. 50 All. 328.—**IND.**

ss. **Power of sale for arrears of interest under mortgage deed. Whether extending to repayment of principal.**—*JOSEPH v. JOSEPH* (1925), 1 L. R. 6 Rans. 771.—**IND.**

sl. **Breach of condition in mortgage deed.**—A simple mtge., executed on May 1, 1909, for a term of three years,

contained a stipulation to the effect that, if the mtgor. transferred the mortgaged property, the mtgee. should be at liberty to sue before the expiry of the term. On Mar. 8, 1911, the mtgor. stood surety for one A. in the amount of Rs. 50 & hypothecated a small share in the property covered by the deed of 1909. No actual notice of this transaction was given to the first mtgee. A suit was filed on the mtge. of 1909, on Mar. 27, 1924, & the plea of limitation was set up by defts.:—**Held**: the suit was within time.—*ASHIQ HUSAIN v. CHATARBHUI & AHMAD-ULLAH KHAN* (1927), 1 L. R. 50 All. 328.—**IND.**

### PART IV. SECT. 1, SUB-SECT. 1.—H.

sm. **Money due on covenant—In agreement for sale.**—*Real Property Limitation Act*, R. S. M., 1913 (c. 116), s. 24, applies to an action on a covenant in an agreement for sale for payment of the purchase-price.—*LOWERY v. LAMONT* (Man.), [1927] 1 D. L. R. 669; [1927] 1 W. W. R. 95.—**CAN.**

### PART IV. SECT. 1, SUB-SECT. 4.—B. (a).

ki. — **—**—**—**—*SERVAIS v. SIKHAR*, [1928] 1 D. L. R. 549; 61 O. L. R. 490.—**CAN.**

## Part V.—Land or Rent.

1029. *Add. Annotation*:—**Refd.** *Palmer v. Crone*, [1927] 1 K. B. 804.
1030. *Add. Annotation*:—**Generally**, **Mentd.** *Busby v. Avgherino*, [1928] A. C. 290.
1033. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
1041. *Add. Annotation*:—**As to** (1) **Refd.** *Purnell v. Roche*, [1927] 2 Ch. 142.
1088. *Add. Annotation*:—**Folld.** *Salisbury & Fordingbridge District Drainage Board v. Southern Tanning Co.* (1920), *Ltd.*, [1927] 2 K. B. 566.
1145. *Add. Annotation*:—**Refd.** *Harnett v. Fisher*, [1927] A. C. 573.
- 1190a. **Tenancy created before Act.**—**Real Property Limitation Act, 1833** (c. 27), s. 7, is not retrospective, & applies only to

tenancies at will, created after the passing of the Act, or at most to such tenancies at will as existed when it passed. Therefore, where B. became tenant at will to A. in 1817, & continued such tenant till 1832, when B. died:—**Held**: the right of A. was not to be deemed to have accrued in 1817, but in 1832, the statute in question having passed in 1833.—**DOE d. EVANS v. PAGE** (1844), 5 Q. B. 767; 1 Dav. & Mer. 601; 13 L. J. Q. B. 153; 2 L. T. O. S. 420; 8 Jur. 399; 114 E. R. 1439.

*Annotations*:—**Distd.** *Doe d. Jukes v. Sumner* (1845), 14 M. & W. 39; *Doe d. Dayman v. Moore* (1846), 9 Q. B. 555; *Doe d. Angell v. Angell* (1846), 9 Q. B. 328. **Apld.** *Doe d. Birmingham Canal Navigations (Proprietors) v. Bodd* (1847), 11 Q. B. 127. **Refd.** *Comill v. Hudson* (1857), 6 W. R. 37; *Devine v. Holloway* (1861), 14 Moo. P. C. C. 290; *Hogan v. Hand* (1861), 14 Moo. P. C. C. 310.

### PART V. SECT. 1.

c i. — *As against Crown.*—An adverse possession of land in Newfoundland for sixty years is a bar to the rights of the Crown, & the same kind of possession for seventy years will deprive the Crown of its right of entry upon those lands.—**R v. KOUEN** (1819), 1 Nfld. L. R. 172.—**NFLD.**

c ii. — *Statute of Limitations 1866*, s. 9.—**PATTERSON v. McPHERSON** (1875), 10 N. S. R. (1 R. & C.) 116.—**CAN.**

c iii. — *When question for jury* — *Rights of plaintiff.*—**DOE d. LYONS v. CHAWFORD** (1812), 6 O. S. 334.—**CAN.**

c iv. — *Re-entry by registered owner.*—Where a person has by uninterrupted possession of land for over twelve years acquired the right to exclusive possession thereof under Limitation of Actions Act, that right cannot be destroyed in favour of the registered owner merely by the latter retaining possession for a period less than the statutory one.—**SHIRTCLEFFE v. LEMON**, [1924] 1 W. W. R. 1059.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (a) i.

1057 v. — *—*—**NOBLE v. NOBLE** (1912), 27 O. L. R. 342; 4 O. W. N. 359; 9 D. L. R. 735.—**CAN.**

1057 vi. — *Tenant holding over.*—**DOE d. CHARLES v. COTTON** (1851), 8 U. C. R. 313.—**CAN.**

1057 vii. — *—*—**PIPER v. STEVENSON** (1913), 28 O. L. R. 379; 4 O. W. N. 961; 12 D. L. R. 820.—**CAN.**

1057 viii. — *—*—Where it is found by the trial judge, & the evidence supports such finding, that defts. & those under whom they claim have been in possession of the land in question, & exercising acts of ownership for a period of more than 20 years, & that plffs. & those under whom they claim have been out of possession for a corresponding period, Stat. Limitations bars any action by the latter against the former in respect to the ownership of the land.—**HALFAX POWER CO. v. CHRISTIE** (1915), 48 N. S. R. 264.—**CAN.**

1057 ix. — *—*—**SOULIS v. ARMSTRONG** (1917), 51 N. S. R. 315; 36 D. L. R. 778.—**CAN.**

i. — *—*—**WESTERN CANADA LOAN CO. v. GARRISON** (1888), 16 O. R. 81.—**CAN.**

ii. — *—*—**TOWNSHIP OF COLCHESTER SOUTH v. HACKETT**, [1927] 4 D. L. R. 317; 61 O. L. R. 77; *affd. sub. nom.* **HACKETT v. COLCHESTER SOUTH MUNICIPAL CORPN.**, [1928] 3 D. L. R. 107.—**CAN.**

iii. — *—*—**Re BELL** (1871), 3 Ch. Ch. 239.—**CAN.**

iv. — *—*—**CREIGHTON v. KUHN**, *Cass. Dig.* 2nd ed. 815.—**CAN.**

v. — *—*—**Held**: plff. had established an actual, visible, undisturbed, & continuous possession of a town lot, of which she or her husband or both had been in possession since 1891, by themselves or their tenants, & which had been used or cultivated as a garden, for more than twelve years; & she was entitled, under Imperial Real Property Limitation Act, 1874, to a declaration that all the rights of defts. in the lot had been extinguished in her favour.—**BRADSHAW v. PATTERSON** (1911), 18 W. L. R. 402; 4 Sask. L. R. 208.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (a) ii.

z i. — *Agreement for possession during life.*—**ROAN v. KRONSHAIN** (1886), 12 O. R. 197.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (b) i.

o i. — *Acts done with consent of owner.*—**Held**: the operation of Stat. Limitations in favour of the owner was not suspended.—**KAULBACH v. COOK** (1906), 39 N. S. R. 500.—**CAN.**

o ii. — *—*—**CLARKE v. BABBITT**, [1927] 2 D. L. R. 7; [1927] S. C. R. 148.—**CAN.**

d i. *Cutting wood on upland & grass on meadow.*—**Held**: not of very serious importance in establishing a title by occupation without more.—**DUNCANSON v. ATWELL** (1914), 14 E. L. R. 348.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (b) iv.

1089 i. *Adverse title may be acquired—Land acquired for public undertaking.*—A title by possession may be acquired as against a railway co. to land originally obtained by them for railway purposes.—**ERIE & NIAGARA RY. CO. v. ROUSSEAU** (1890), 17 A. R. 483.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (b) xii.

n i. — *Conflicting grants.*—**LAWSON v. WHITMAN** (1851), 1 N. S. R. (1 Thom.) 208.—**CAN.**

sg. *Isolated acts of trespass.*—**SHERREN v. PEARSON** (1887), 14 S. C. R. 581.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (b) xiii.

r i. — *—*—**CUNARD'S LESSEE v. IRVINE** (1853), 2 N. S. R. (James) 31.—**CAN.**

r ii. — *Tenant at will of remainder—Right of owner to enter.*—Where a party was allowed to enter on a lot of wilderness land, with the privilege of clearing & chopping a portion of it, but under such an arrangement as to the remaining portion as would make him a tenant at will of the whole; but the owner also entered from time to time & cut & disposed of the timber:—**Held**: Stat. Limitations did not run in favour of the tenant except as to the part exclusively occupied by him.—**Doe d. MCKENZIE v. MOSHER** (1874), 2 P.ug. 355.—**CAN.**

o i. — *—*—**MCKNISH v. MUNRO** (1875), 25 C. P. 290.—**CAN.**

f i. — *—*—**Re LINET** (1871), 3 Ch. Ch. 230.—**CAN.**

f ii. — *—*—**COSGROVE v. CORBELL** (1868), 14 Gr. 617.—**CAN.**

sn. *No occupation by anyone for nearly twenty years.*—**WALLBRIDGE v. GILMOUR** (1872), 22 C. P. 135.—**CAN.**

so. *Possession under conditional agreement—Failure of owner to observe condition.*—**BISHOP v. COX**, [1928] 2 D. L. R. 990.—**CAN.**

sp. *Willingness to pay rent—Adverse possession under order of court.*—**GOPIKA RAMAN ROY v. ATAL SINGH** (1929), 56 L. R. Ind. App. 119.—**IND.**

### PART V. SECT. 3, SUB-SECT. 1.—C.

ff i. — *Occupation of room in building.*—**IREDALE v. LOUDON** (1908), 40 S. C. R. 313.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 3.—A.

q i. — *—*—A decree against a Hindu widow in relation to her deceased husband's property is binding upon the reversioners although it is founded upon limitation; but under the Indian Limitation Act, 1908, Sched. I., Art. 141, a suit by the reversionary heir for possession of immovable property of the estate, as to which no decree had been made against the widow, is not barred by limitation if it is brought within twelve years of his estate falling into possession, even though deft. has been in adverse possession for twelve years at the date of the death of the widow.—**JAGGO BAI v. UTSAVA LAL** (1929), L. R. 56 Ind. App. 267.—**IND.**

r. *Revd.*, 2 O. L. R. 637.

### PART V. SECT. 6.

1247 iii. — *—*—**As guests.**—The owner of a house allowed his sisters to reside therein & contributed to their support. He paid the rent & taxes & executed all necessary repairs:—**Held**: the occupation was in the character of guests & not of tenants at will & Stat. Limitations



1284. *Add. Annotation*:—**Refd.** *Purnell v. Roche*, [1927] 2 Ch. 142.
- 1286a. ————]—**PURNELL v. ROCHE**, No. 1369a, *post*.
1298. *Add. Annotation*:—**Consd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
1310. *Add. Annotation*:—**Refd.** *Horlick v. Scully*, [1927] 2 Ch. 150.
- 1353a. ———— **Not by possession by permission of mortgagee.**]—**HALL v. DOE d. SURTEES** (1822), 5 B. & Ald. 687; 1 Dow. & Ry. K. B. 340; 106 E. R. 1342.
- Annotations*:—**Refd.** *Doe d. Corby v. Branston* (1835), 4 L. J. K. B. 166; *Heath v. Pugh* (1881), 6 Q. B. D. 345.
- 1369a. ———— **Subsequent disability of mortgagee.**]—In 1902 freehold hereditaments were assured to a mtgee. In Feb. 1907, the mtgee. became, & thenceforward continued to be, of unsound mind. The last payment in respect of interest before the date on which the mtgee. became of unsound mind was made on Jan. 30, 1907. In Mar. 1907, the husband of the mtgee. accepted, on behalf of the mtgee., a further payment on account of interest. Since that payment no further

payment of interest was made. On a summons for foreclosure issued in 1926 by the mtgee.:—**Held**: (1) the right to commence proceedings first accrued, at the latest, at the date fixed for the redemption of the mtgee., which was a date earlier than that on which the mtgee. became of unsound mind; (2) the foreclosure proceedings must be dismissed, inasmuch as, in view of the express words of Real Property Limitation Act, 1837 (c. 28), a disability beginning after the date when the right to bring the action first accrued, or must be deemed to have first accrued, would not entitle the mtgee. to the protection given by Real Property Limitation Act, 1874 (c. 57), s. 3.—**PURNELL v. ROCHE**, [1927] 2 Ch. 142; 96 L. J. Ch. 434; 137 L. T. 407; 71 Sol. Jo. 452.

1385. *Add. Annotation*:—**Refd.** *Purnell v. Roche*, [1927] 2 Ch. 142.
1436. *Add. Annotation*:—**Consd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
1494. *Add. Annotation*: **Mentd.** *Re Spencer & Hauser's Contract*, [1928] Ch. 598.

## Part VI.—Actions against Trustees.

1532. *Add. Annotation*:—**Consd.** *Irish Catholic Church Property Insee. v. I. R. Comrs.* (1918), 12 Tax Cas. 13.
1548. *Add. Annotation*:—**Refd.** *Windsor Steam Coal Co. (1901), Ltd.*, [1928] Ch. 609.
1551. *Add. Annotation*:—**Consd.** *Irish Catholic Church Property Insee. v. I. R. Comrs.* (1918), 12 Tax Cas. 13.
- 1568a. ————]—**Testatrix**, who died in 1890, gave her residuary real & personal

estate to two persons whom she appointed her exors. upon trust for sale & conversion, & out of the proceeds to set aside £2,000 upon trust to pay the income to L. during widowhood &, after L.'s death or marriage, to fall into residue & subject thereto gave the proceeds of sale of the residue to her six children in equal shares. L. died in 1916. An action was commenced in 1925 by persons interested in a share of residue against the personal representatives of the two exors.,

did not run as against the owner.—**PEAKIN v. PEAKIN**, [1895] 2 I. R. 359.—**IR.**

### PART V. SECT. 12, SUB-SECT. 1.—A. (a).

1350 iii. ————]—**DOE d. MCGREGOR v. HAWKE, DOE d. MCGREGOR v. CROW** (1837), 5 O. S. 496.—**CAN.**

1350 iv. ———— 6 Will. 4, c. 43, s. 2.]—**DOE d. CHIPMAN v. DEVERER** (1854), 8 N. B. R. (3 All.) 23.—**CAN.**

1350 v. ———— *Real Property Limitation Act, R. S. M., c. 89.*]—**STOVER v. MARCHAND** (1895), 10 Man. L. R. 322.—**CAN.**

sq. *Assignment under Insolvent Act, 1875.*]—**COURT v. WALSH** (1883), 9 A. R. 294.—**CAN.**

sr. *Right of equitable mortgagee to recover—Notwithstanding personal remedy barred.*]—**RE CONLAN'S ESTATE** (1892), 29 L. R. Ir. 199.—**IR.**

### PART V. SECT. 12, SUB-SECT. 1.—A. (b) i.

st. *Recovery of judgment in action of ejectment within twenty years before suit for foreclosure.*]—**Held**: Stat. Limitations was prevented from operating except from the judgment.—**McKEN v. MCKAY** (circa 1873), R. E. D. 121.—**CAN.**

### PART V. SECT. 12, SUB-SECT. 1.—C.

d i. ———— *Not possession by lessee of mortgagor.*]—**Re SHANTZ & HALLMAN**, [1927] 3 D. L. R. 658; 60 O. L. R.

543; *affd. sub. nom.* **MODERN REALTY Co. v. SHANTZ**, [1928] 2 D. L. R. 705; [1928] S. C. R. 213.—**CAN.**

### PART V. SECT. 12, SUB-SECT. 2.—A. (a).

1398 i. *Entry by mortgagee.*]—**DEDFORD v. BOUTON** (1878), 25 Gr. 561.—**CAN.**

1398 ii. ———— *Twenty years' delay after decree for redemption.*]—**Re LESLIE** (1893), 23 O. R. 143.—**CAN.**

sv. *Sale by mortgagee—Whether remainderman barred.*]—When a mtgee. has transferred possession of the mtged. property for a valuable consideration, a suit to redeem by a pltf. who at the date when the mtgee. transferred possession had a contingent interest in remainder in the property is governed by Art. 140 & not by Art. 134 of Indian Limitation Act, 1908, the suit consequently is not barred, if it is brought within twelve years from the date when pltf.'s estate falls into possession, even though it is brought more than twelve years after the date of the transfer under which deft. claims.—**SKINNER v. NAUNHAL SINGH** (1929), L. R. 56 Ind. App. 192.—**IND.**

### PART V. SECT. 12, SUB-SECT. 2.—B.

1483 v. ————]—Where of five tenants in common of a farm, three acquired a title against the other two by virtue of the Statute of Limitations:—**Held**: that the title so acquired by the

three tenants in common was a joint tenancy of the two-fifths, & they were then tenants in common of their original three-fifths, & joint tenants of the two-fifths so acquired.—**Re LIVINGSTONE** (1901), 21 C. L. T. 521; 2 O. L. R. 381.—**CAN.**

### PART V. SECT. 16.

c i. ————]—**COOK v. COOK** (1915), 8 W. W. R. 506.—**CAN.**

### PART VI. SECT. 1, SUB-SECT. 1.—D.

1571 i. *Interest in possession—Date of breach of trust.*]—**COUCH v. WESTERN TRUST Co.**, [1925] 3 D. L. R. 1117; [1925] 2 W. W. R. 678.—**CAN.**

### PART VI. SECT. 1, SUB-SECT. 2.

sa. *Payment into Treasury by trustee company—Order of court for payment out.*]—Where money has been paid into the Treasury pursuant to National Trustees, Executors & Agency Co. of Australasia Limited Act, s. 19, the power conferred by s. 20 of the Act on the Supreme Ct. or a judge thereof to order payment out to a claimant is, subject to the specified exceptions, limited to the period of six years after such payment in, whatever procedure is adopted.—**NELSON v. THE NATIONAL TRUSTEES, EXECUTORS & AGENCY Co. OF AUSTRALASIA, LTD., Re GIBBS**, [1928] V. L. R. 384; [1928] Argus L. R. 243.—**AUS.**

who were dead, claiming a declaration that certain sums of Consols & bank stock had been wrongfully expended or disposed of by or converted to the use of the exors., & an order that these sums should be replaced. Defts. alleged that these sums had been expended in 1894 in satisfying liabilities of testatrix, & pleaded the appropriate statute of limitation. The exors. had set aside sums to answer the £2,000 legacy in part, & on L.'s death payments of capital were from time to time made to the persons interested in remainder, the last payment being made in June, 1921. If the stock had been paid away in 1894, the statute of limitation afforded a good defence except in regard to the share of the £2,000 legacy, which only fell into possession in 1916:—*Held*: (1) as the claim was against exors. holding on express trusts, it was not a claim to recover a legacy within Real Property Limitation Act, 1874 (c. 57), s. 8, & the statute of limitation applicable was Trustee Act, 1888 (c. 59), s. 8, under which the period for which the statute had to run in order to afford a defence was only six years; (2) the payments relied on, being payments in respect of the part of testatrix's estate accounted for, did not constitute an acknowledgment of liability in regard to that part which the exors. were said to have misapplied; (3) the statute

afforded a good defence in regard to the share of the £2,000 legacy also.—*Re OLIVER, THEOBALD v. OLIVER*, [1927] 2 Ch. 323; 96 L. J. Ch. 496; 137 L. T. 788; 71 Sol. Jo. 710.

**1584a.** — Misapplication of fund—Payments in respect of sum accounted for.—*Re OLIVER, THEOBALD v. OLIVER*, No. 1508a, *ante*.

**1588a.** —.]—Stat. Limitations cannot be pleaded by trustees, in answer to a charge of breach of trust, to defend them from the consequences of neglecting their duty in having sold an estate charged with the payment of a sum of money, without satisfying that demand.—*MILNES v. COWLEY* (1817), 4 Price, 103; 146 E. R. 408; *subsequent proceedings* (1820), 8 Price, 620.

**1636.** *Add. Annotation*:—*Refd. Douglass v. Lloyds Bank* (1929), 34 Com. Cas. 203.

**1651.** *Add. Annotation*:—*Apld. Re A Debtor*, [1927] 1 Ch. 410.

**1653.** *Add. Annotation*:—*Refd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

**1665.** *Add. Annotation*:—*Refd. Re Mason* (1928), 97 L. J. Ch. 321.

**1674.** *Add. Annotation*:—*Refd. Re Mason* (1928), 97 L. J. Ch. 321.

**1677.** *Add. Annotation*:—*As to* (1) *Refd. Re Mason* (1928), 97 L. J. Ch. 321.

## Part VII.—Equity and the Statutes of Limitation.

**1687.** *Add. Annotation*:—*As to* (2) *Refd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

**1709.** *Add. Annotation*:—*Refd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

**1709a.** — — — —.]—In 1900 W. mortgaged shares to L. to secure a loan with interest. L. received dividends to clear the interest up to 1908, when they ceased & the shares became of practically no value, L. retaining them, but without foreclosing. In 1916 & thereafter the value of the shares increased enormously, & such large dividends were paid that by 1921 L. had received sufficient to pay off the capital of the loan & all interest in arrear. He died in 1923. Pltfs., who were entitled to the equity of redemption of the mtge., took out a summons claiming redemption, & also repayment of the excess of the amount of dividends received by L. or his exors. over & above the amount due under the mtge.:—*Held*: (1) equity ought not to deprive a mtgor. of his right to redeem if the debt had been or could be repaid, the

security were still available, & the position of the mtgee. had not been altered to his prejudice by the delay; (2) the limit of twelve years applicable by Real Property Limitation Act, 1874 (c. 57), in the case of a mtge. of realty would not, by equitable principles, be extended so as to support a plea of delay & laches & be made applicable to a mtge. of personalty.—*WELD v. PETRE*, [1929] 1 Ch. 33; 97 L. J. Ch. 399; 139 L. T. 596; 44 T. L. R. 739; 72 Sol. Jo. 569, C. A.

**1758.** *Add. Annotation*:—*Refd. Re Mason* (1928), 97 L. J. Ch. 321.

**1761.** *Add. Annotation*:—*Consd. Re Mason* (1928), 97 L. J. Ch. 321.

**1761a.** — — — —.]—Circumstances (*see DESCENT*, No. 336a, *ante*), in which:—*Held*: suppliants' petition was barred by Stat. Limitations, 1623 (c. 16).—*Re MASON*, [1929] 1 Ch. 1; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 603; 72 Sol. Jo. 545, C. A.

## Part VIII.—Fraud and the Statutes of Limitation.

**1791.** *Add. Annotation*:—*Mentd. A.-G. v. Goddard* (1929), 98 L. J. K. B. 743.

**1795.** *Add. Annotations*:—*Refd. Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610; *Ramdutt*

*Ramkissendass v. Sassoon E. D. & Co.* (1929), 98 L. J. P. C. 58.

**1813.** *Add. Annotation*:—*Refd. Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30.

**PART VIII. SECT. 1, SUB-SECT. 2.—B.** | *version*—From first intimation of person | **SEN.** (1928), L. R. 56 Ind. App. 93.—  
*sc. When time begins to run*—*Con-* | *in possession.*—*PUGH v. ASHUTOSH* | **IND.**

## Part IX.—Penal Actions and Other Proceedings.

**1837a.** —[.]—When a statute gives a penalty to the King & to the informer, & the informer does not sue within the year the King may sue for the whole penalty at any time within

two years.—*R. v. FRANKLIN* (1704), 6 Mod. Rep. 220; 2 Ld. Raym. 1038; 3 Salk. 351; 87 E. R. 971.

—*Mentd. R. v. Strong* (1757), 1 Burr. 251.

## Part XII.—Pleading and Practice.

**1948.** *Add. Annotation* :—**Apld.** *Cheang Thye Phin v. Lam Kin Sang*, [1929] A. C. 670.

**1969.** *Add. Annotation* :—**Distd.** *Re Wheater*, [1928] Ch. 223.

**1975.** *Add. Annotation* :—**Consd.** *Lowe v. Bentley* (1928), 44 T. L. R. 388.

**1976a.** *Counterclaim need not be barred when action brought.*—Stat. Limitations 1623 (c. 16), s. 3, bars a counterclaim on a cause of action which arose more than six years before

the delivery of the counterclaim, though less than six years before the issue of the writ in the action.—*LOWE v. BENTLEY* (1928), 44 T. L. R. 388; 72 Sol. Jo. 251.

**1977.** *Add. Annotation* :—**Refd.** *Lowe v. Bentley* (1928), 44 T. L. R. 388.

**2002.** *Add. Annotation* :—**Refd.** *Purnell v. Roche*, [1927] 2 Ch. 142.

**2016.** *Add. Annotation* :—**Refd.** *Campbell v. Pollak*, [1927] A. C. 732.

### PART IX. SECT. 1, SUB-SECT. 2.

**1838 i.** *Who is "party grieved"*—*Provincial Treasurer of Alberta.*—*R. v. CANADIAN NORTHERN RY. CO.*, [1923] A. C. 714; 93 L. J. P. C. 18; 39 T. L. R. 691.—**CAN.**

### PART XI. SECT. 1, SUB-SECT. 3.

**so.** *Writ out of time—Acceptance of service.*—When a solr. has accepted service of a writ which was issued more than twelve months prior to the date of the acceptance of service & which has not been renewed by order, the claim of plff. cannot be affected by the fact that the period limited by Stat. Limitations has run between the date of the issue of the writ & the date of the acceptance of service.—*MORRISON v. BENTALL* (No. 2), [1928] 3 W. W. R. 663.—**CAN.**

### PART XI. SECT. 2, SUB-SECT. 1.—C. (b).

**d i.** — *Reservation of rights under statute.*—In an action against defts. as makers of a promissory note defts. disclaimed personal liability on the ground that the note in question was given by them as trustees of school section 44, that the money was obtained & used by them for school purposes, that plff. was aware of the facts &

that at the time of action brought defts. had ceased to be trustees for the section :—*Held* : an order allowed, adding as parties the trustees of school section 44, should have been made only upon terms reserving defts.' rights under Stat. Limitations.—*DOUGLAS v. RAWDING*, [1928] 1 D. L. R. 463, 59 N. S. R. 519.—**CAN.**

### PART XI. SECT. 7.

**sw.** *Fieri facias—Sale under—Property bought in by defendant—Claim not revived.*—*JONES v. HUTTON* (1853), 11 U. C. R. 554.—**CAN.**

### PART XII. SECT. 2.

**r i.** —[.]—*PULSIFER v. KING*, [1926] 1 D. L. R. 1006; 58 N. S. R. 412.—**CAN.**

### PART XII. SECT. 3.

**1998 iii.** —[.]—[.]—In an action for trespass & conversion alleged to have been committed between certain dates by entering upon plff.'s land & cutting timber thereon, the combined effect of the statement of claim & of Stat. Limitations was to confine plff.'s right of redress to wrongs committed within the last seven months of the period alleged. The jury returned a general verdict in favour of plff. :—

*Held* : the evidence was such that the jury could not reasonably have found that a wrong had been committed within the period within which it must have been committed in order for plff. to succeed.—*HUGHES v. BEBAN LUMBER CO.*, [1928] 1 D. L. R. 244; [1928] 1 W. W. R. 35, 39 B. C. R. 132.—**CAN.**

**1998 iv.** —[.]—[.]—Def't. signed an authorisation to plff. to make use of his name as next friend in an action against him for damages, & so became liable to plff. for his account for legal services, unless there was an agreement to the contrary. Def't. & his mother swore that there was such an agreement, & the trial judge found against def't. :—*Held* : on appeal, it still remained for plff. to prove that his cause of action arose within six years, or, otherwise, that it was kept alive by payment, & the burden was not upon def't. to prove a negative, & there being clear proof that the cause of action did not arise within six years, def't.'s appeal must be allowed.—*FULLERTON v. BLEKNHORN*, [1928] 1 D. L. R. 109; 59 N. S. R. 491.—**CAN.**

### PART XII. SECT. 4.

**2005 ix.** —[.]—*CURTIS v. HARRIS*, [1928] 4 D. L. R. 317.—**CAN.**

## LITERARY AND SCIENTIFIC INSTITUTIONS.

### Part I.—Definitions and Nature.

5. *Add. Annotation* :—**Refd.** *Midland Counties Institution of Engineers v. I. R. Comrs.* (1928)  
14 Tax Cas. 285.

### Part II.—Property.

- |   |  |
|---|--|
| 10a. <b>Power to purchase—Statuary—Construction</b><br><b>of Chantrey bequest.]—</b> <i>Re CHANTREY'S WILL,</i> | <b>LEIGHTON v. HUGHES &amp; A.-G.</b> (1889), 5 T. L. R.<br>554, C. A. |
|---|--|

## LOAN SOCIETIES.

### PART I. SECT. 2.

**sa. Registration—Refusal of registrar to issue certificate—Mandamus.**—On appeal from the refusal of a prerogative writ of mandamus directed to the registrar of cos. compelling him to issue a certificate under Savings & Loan Association Act, 1927, c. 62, s. 80, to enable applt. to continue in business as an assocn. with guaranteed

shares :—*Held* : the conditions which, under s. 80, had to be fulfilled before the certificate could be obtained had not been complied with, & the certificate & the writ of mandamus had been rightly refused. *Re* PIONEER SAVINGS & LOAN SOC. & *Re* REGISTRAR OF COMPANIES, [1928] 1 D. L. R. 830 ; [1928] 1 W. W. R. 361 ; 39 B. C. R. 372.  
—CAN.

**sb. Membership—Whether question for arbitration.**—Savings & Loan Associations Act, 1926-27, c. 62, s. 20, does not remit to arbitration the question whether a person is or is not a member.—*FURNESS v. GUARANTEE SAVINGS & LOAN ASSOCN.*, [1928], 3 D. L. R. 175 ; [1928] 2 W. W. R. 337.  
—CAN.

## LOCAL GOVERNMENT.

## Part I.—The Ministry of Health.

1. *Add. Annotation*:—*Distd. A.-G. v. Sunderland Corpn.* (1929), 46 T. L. R. 10. | 5. *Add. Annotation*:—*Distd. A.-G. v. Sunderland Corpn.* (1929), 46 T. L. R. 10.

## Part II.—Local Authorities generally.

- 27a. ———.]—Pltf. sued deft. for a £50 penalty for acting as a comr. in the execution of a local Act without being qualified. Deft. proved that he was qualified in the particular manner specified by the Act, but did not prove that he had taken & subscribed the oath:—*Held*: a verdict was properly found for deft., since he was sued as acting as a comr. without being qualified, & not for acting as a comr. without having taken & subscribed the oath.—*TUPPER v. NEWTON* (1853), 14 C. B. 114; 2 C. L. R. 85; 22 L. T. O. S. 103; 17 J. P. 824; 2 W. R. 36; 139 E. R. 48.
- 27b. ———.]—A member of a local board, who having been concerned in a contract by the board has thereupon ceased to be such member by force of P. H. Act, 1875, Sched. II. r. 64, is a person disabled from acting as a member by a provision of the Act within r. 70, & if afterwards he does so act, he is liable to a penalty of £50.—*FLETCHER v. HUDSON* (1881), 7 Q. B. D. 611; 51 L. J. Q. B. 48; 46 L. T. 125; 46 J. P. 372; 30 W. R. 349, C. A.
- Annotation*:—*Apld. R. v. Rowlands*, [1906] 2 K. B. 292.
39. *Add. Annotation*:—*Refd. Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756.
- 48a. ——— Increase to meet cost of living.—*Whether war bonus—Construction of local superannuation Act.*] The ct. held that increases in remuneration granted during the war to an employee to meet the increased cost of living were not, for the purpose of a local superannuation Act, "war bonuses granted as such."—*CANNON v. SOUTHWARK BOROUGH COUNCIL* (1929), 45 T. L. R. 403.
49. *Add. Annotation*:—*Refd. Brown v. Dagenham Urban Council*, [1929] 1 K. B. 737.
50. *Add. Annotation*:—*Refd. Brown v. Dagenham Urban Council*, [1929] 1 K. B. 737.
- 52a. ——— After dismissal—*Remuneration accrued due.*]—*BROWN v. DAGENHAM URBAN COUNCIL*, No. 212a, *post*.
54. *Add. Annotation*:—*Consd. Brown v. Dagenham Urban Council*, [1929] 1 K. B. 737.
60. *Add. Annotation*:—*Refd. A.-G. v. Still* (1927), 44 T. L. R. 102.
68. *Add. Annotation*:—*Refd. R. v. North Worcestershire Assessment Committee, Ex p. Hadley*, [1929] 2 K. B. 397.
- 69a. *Resolutions contravening Trade Disputes & Trade Unions Act, 1927 (c. 22)—Duty of local authority.*]—Prior to above Act various committees of a local authority passed resolutions, which were confirmed by the council, to the effect that certain of their employees be required to become members of one of the trade unions in the resolutions referred to. By above Act it was provided that it should not be lawful for any local or other public authority to make it a condition of the employment, or continuance in employment, of any person that he should or should not be a member of a trade union; & that any such condition should be void. Shortly after the passing of above Act instructions were given by a committee that only men belonging to a specified trade union should be employed in respect of certain casual labour; & an employee, who was dismissed accordingly, obtained a declaration in the county court that his dismissal was illegal. A member of the council thereupon brought forward a motion having for its object that instructions should be given that the resolutions of the committees should cease to be operative; but the motion was defeated:—*Held*: in the circumstances the ct. should declare that it was not lawful for the local authority to require any person, as a condition of employment or continuance in employment, to become or to be a member of a trade union; *Seem*: it was not obligatory on the local authority upon the passing of the Act, to resolve that the resolutions of the committees were no longer to have effect.—*A.-G. v. BIRKENHEAD CORPN.* (1928), 93 J. P. 33; 27 L. G. R. 192.
- 77a. ——— *Audit (Local Authorities) Act, 1927 (c. 31)—Appeal to Minister of Health—Discretion of Minister as to costs.*]—The Div. Ct. having allowed an appeal on a case stated by the Minister of Health under above Act, raising the question whether or not resp., a district auditor, had rightly disallowed certain sums paid by appts., a local education authority, for paving the playgrounds of two non-

## PART II. SECT. 4.

sa. *Contract for public utilities—Charge of rates under.*]—*Ex p. MONCTON TRAMWAY ELECTRICITY & GAS CO.* (N. B.), [1927] 3 D. L. R. 1112.—*CAN.*

## PART II. SECT. 5, SUB-SECT. 1.—A.

sb. *Right to acquire—Under Ordinance 4, 1926.*]—Ordinance 4, 1926, does not expressly or impliedly authorise a Health Board to acquire immovable property.—*MAYVILLE LOCAL ADMINISTRATION & HEALTH BOARD v.*

*GIELINK* (1928), 49 N. L. R. 148.—*S. AF.*

## PART II. SECT. 6.

53 i. *Duration of office*—42 *Vict. c. 1, s. 66.*]—*LETTENEY v. DILLON* (1885), 18 N. S. R. (6 R. & G.) 146.—*CAN.*

provided schools:—*Held*: (1) on the construction of the provisions of sect. 2 of above Act, the questions of applts.' costs of the appeal & of resp.'s right to be paid his costs of the appeal out of the funds of applts., were in the discretion of the Minister of Health; (2) on the construction of these provisions, the ct. had power to grant resp. leave to appeal from its decision to the Ct. of Appeal.—LANCASTER (COUNTY PALATINE) COUNCIL *v.* CROWE (No. 2), [1929] 1 K. B. 604; 98 L. J. K. B. 358; 140 L. T. p. 560; 93 J. P. p. 40; 45 T. L. R. p. 173; 27 L. G. R. p. 102, D. C.

*Annotation*:—*Refd.* Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

77b. ——— **Appeal to Court of Appeal—Power of Divisional Court to grant leave.**—LANCASTER (COUNTY PALATINE) COUNCIL *v.* CROWE (No. 2), No. 77a. *ante*.

81. *Add. Annotation*:—*Apld.* A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

83. *Add. Annotations*:—*Apld.* Woolwich Corp'n. *v.* Roberts (1927), 96 L. J. K. B. 757. *Consd.* Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737. *Distd.* Field *v.* Poplar Corp'n., [1929] 1 K. B. 750. *Refd.* R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 96 L. J. K. B. 563; R. *v.* Health Minister, *Ex p.* Dore, [1927] 1 K. B. 765.

84. *Add. Citations*:—*affd.* (1927), 25 L. G. R. 347; *sub nom.* WOOLWICH BOROUGH COUNCIL *v.* ROBERTS, 91 J. P. 121; 43 T. L. R. 576; 71 Sol. Jo. 488, H. L.

91. *Add. Annotation*:—*As to* (1) *Consd.* Clarke *v.* Epsom R. D. C., [1929] 1 Ch. 287.

99. *Add. Annotation*:—*Consd.* Scammell *v.* Attlee, [1929] 1 K. B. 419.

105a. ——— **Action on contract—Statutory requirements not fulfilled.**—*Pltf.*, clerk to comrs. of a local lighting & watching Act, drew up a contract to be executed by defts., who had accepted a tender for work to be done according to certain proposals of the comrs., one of which was that the contract should be prepared by the solr. to the comrs., at the expense of the contractors. Defts., as contractors, offered to execute the contract, but refused to pay *pltf.* his charges for drawing it up, on the ground that they were unreasonable. By the local Act the contract, on the part of the comrs., was required to be signed by five or more of them, which was not done, & by the metropolitan general paving Act, the comrs. are entitled to sue or be sued in the name of their clerk:—*Held*: *pltf.* could not sue defts. for refusing to execute the contract in his capacity of clerk, as the contract on the part of the comrs. had not been signed by five or more of them, when tendered to defts., as required by the local Act, & as the charges made by *pltf.* on defts. for preparing the contract were due to him in his individual character, & not as clerk to the comrs.—*CURLING v. JOHNSON* (1833), 10 Bmg. 89; 3 Moo. & S. 496; 2 L. J. C. P. 261; 131 E. R. 839.

110. *Add. Annotation*:—*As to* (1) *Refd.* Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

## Part V.—The Urban District.

191. *Add. Annotation*:—*Refd.* A.-G. *v.* Leeds Corp'n., [1929] 2 Ch. 291.

196. *Add. Citations*:—[1927] 1 Ch. 128; 96 L. J. Ch. 38; 136 L. T. 235.

210. *Add. Annotation*:—*Consd.* Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

212a. ——— ——— ———.]—(1) Under P. H. Act, 1875, s. 189, an urban district council have power to remove their clerk from his office at pleasure & without cause or notice, & this power cannot be negated or impaired by any provision as to notice to be given to terminate the employment in any contract of service entered into between the parties. (2) The clerk can maintain an action against

the council for salary accrued due to him at the time of his removal from office.—*BROWN v. DAGENHAM URBAN COUNCIL*, [1929] 1 K. B. 737; 98 L. J. K. B. 565; 140 L. T. 615; 93 J. P. 147; 45 T. L. R. 281; 73 Sol. Jo. 144; 27 L. G. R. 225.

*Annotation*:—*Distd.* Field *v.* Poplar Corp'n., [1929] 1 K. B. 750.

220. *Add. Annotation*:—*Generally*, *Refd.* R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 1 K. B. 540.

230. *Add. Citations*:—[1927] 1 K. B. 765; 96 L. J. K. B. 322; 137 L. T. 30; 91 J. P. 45; 43 T. L. R. 263; 71 Sol. Jo. 160; 25 L. G. R. 166.

**PART II. SECT. 9, SUB-SECT. 1.**  
*sd. Debentures—Priority—Debentures issued by Lethbridge Northern Irrigation District.*—*HOME INVESTMENT & SAVINGS ASSOCN. v. LETHBRIDGE NORTHERN COLONISATION MANAGER*, [1927] 1 D. L. R. 437; [1927] 1 W. W. R. 1; 22 Alta. L. R. 338.—*CAN.*

*se.* ——— *To be held as collateral security—Rights of holder.*—*Held*: the debentures of *pltf.* municipal corp'n. issued & placed in the lands of *def.* commission were by Hydro-Electric Railway Act, 1914, 4 Geo. V. c. 31, s. 11 (2), to be held by the commission as collateral security to the commission's own bonds issued under sect. 6. This statutory duty was not interfered with by the subsequent legislation. Holding the debentures as collateral security implied making that use of them which was in practice

made of collateral security.—*ST. CATHERINES CORPN. v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO*, [1928] 3 D. L. R. 200; 62 O. L. L. 301. *CAN.*

**PART II. SECT. 9, SUB-SECT. 2.**

*o i.* ——— *Right to investigate payments made prior to period under audit.*—A clerk of a rural district council received, during the period from Mar. 1, 1920, to Sept. 30, 1925, a bonus in addition to his salary, & this bonus, he contended, had been duly granted to him. During that period the payments made to him were entered in the expenditure book & submitted to various inspectors of the Local Govt. Department, who passed them as correct, & such payments up to Oct. 1924, were audited by auditors of the said Department & certified as correct.

In Nov. 1925, B., an auditor of the said Department, commenced his audit of the council's accounts for the two half-years ending respectively Mar. 31, & Sept. 30, 1925. He informed the clerk that the legality of the payment of the bonus had been questioned in the Ministry of Local Govt. by reason of the clerk's claim for superannuation:—*Held*: B. had jurisdiction to investigate payments made prior to the period under audit.—*WALSH v. LOCAL GOVERNMENT & PUBLIC HEALTH MINISTER*, [1929] 1 K. B. 377.—*IR.*

**PART II. SECT. 10.**

*sf. Reference to arbitration—Under 12 & 13 Geo. 5, c. 140 (Ord.)—Arbitrators not entitled to submit questions for opinion of court except upon matters of law.* *Re TOWNSHIP OF YORK & TOWNSHIP OF NORTH YORK* (1925), 57 O. L. R. 644.—*CAN.*

## Part VII.—The Borough.

282. *Add. Annotation*:—*Refd.* Brown v. Dagenham Urban Council (1929), 98 L. J. K. B. 565.

303. *Add. Annotation*:—*Refd.* St. Nicholas Acons v. L. C. C., [1928] A. C. 469.

350. *Add. Annotation*:—*Distd.* R. v. Transport Minister, *Ex p.* H. C. Motor Works, [1927] 2 K. B. 401.

508a. *Senior sanitary inspector—Remuneration—Reduction—Conditions precedent.*—A borough council reduced the salary of the senior sanitary inspector. They had not dismissed him nor had he resigned, & he did not consent to the reduction. The council did not obtain the unconditional consent of the Minister of Health to the reduction:—*Held*: the council had no power to make the reduction.—*FIELD v. POPLAR CORPN.*, [1929] 1 K. B. 750; 98 L. J. K. B. 575; 140 L. T. 691; 93 J. P. 157; 45

T. L. R. 333; 73 Sol. Jo. 158; 27 L. G. R. 370.

550. *Add. Annotation*:—*Refd.* A.-G. v. Leeds Corpn., [1929] 2 Ch. 291.

557a. — *Improvement of navigation.*—The corpn. of N. restrained from soliciting, at the expense of the borough fund a bill in Parliament to enable them to improve the navigation of the river W.—*A.-G. v. NORWICH CORPORATION* (1851), 21 L. J. Ch. 139; 18 L. T. O. S. 58, L. JJ.; *previous proceedings* (1848), 16 Sim. 225.

*Annotations*:—*Consd.* Munt v. Shrewsbury & Chester Ry. Co. (1850), 13 Beav. 1. *Appld.* A.-G. v. Plymouth Corpn. (1853), 1 W. R. 445. *Refd.* A.-G. v. Wigan Corpn. (1854), Kay, 268.

569. *Add. Annotation*:—*Mentd.* A.-G. v. London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

662. *Add. Annotation*:—*Refd.* Brown v. Dagenham Urban Council, [1929] 1 K. B. 737.

## Part XII.—The County.

699. *Add. Annotation*:—*As to* (1) *Consd.* Collins v. Whiteway, [1927] 2 K. B. 378.

Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

718. *Add. Annotation*:—*Appld.* A.-G. v. London &

759. *Add. Annotation*:—*As to* (1) *Consd.* Aylott v. West Ham Corpn., [1927] 1 Ch. 30.

## PART VII. SECT. 2, SUB-SECT. 1.—A.

*sg. Jurisdiction*—When court may interfere.]—A municipal council is a legislative body having a limited & delegated jurisdiction. When it has acted within its jurisdiction, the ct. cannot interfere; the justness or fairness of its action cannot be questioned by the ct. When it goes beyond its jurisdiction, or when it is shown that members of the council are corruptly seeking to advance, by municipal legislation, their own ends, or those of some favoured individual, the ct. may interfere.—*Re HOWARD & TORONTO CORPN.*, *Re SWEET & TORONTO CORPN.*, [1928] 1 D. L. R. 952; 61 O. L. R. 563.—*CAN.*

## PART VII. SECT. 2, SUB-SECT. 1.—B. (a).

*sh. Implied power to insure—Power exercised for ulterior purpose—Whether contract valid.*—*QUEENSLAND INSURANCE CO., LTD. v. SURIACO MUNICIPALITY* (1927), 30 W. A. L. R. 32.—*AUS.*

## PART VII. SECT. 2, SUB-SECT. 1.—B. (c) i.

346 *iii.* ——. *R. v. COUNCIL OF THE TOWN OF CHARLEVILLE, Ex p. CORONES*, [1928] S. R. Q. 155.—*AUS.*

## PART VII. SECT. 2, SUB-SECT. 2.—B.

*q* (p. 63) *i.* ——. *R. (HARDING) v. BENNETT* (1896), 27 O. R. 314.—*CAN.*

*bb i.* — *Necessity for residence in ward—Candidate cannot be resident of two wards.*—*HOKANSON v. LAMPLE (Man.)*, [1927] 1 W. W. R. 725.—*CAN.*

## PART VII. SECT. 2, SUB-SECT. 2.—C. (e).

*f* (p. 66) *i.* ——. *R. (HARDING) v. BENNETT* (1896), 27 O. R. 314.—*CAN.*

*m* (p. 68) *i.* *S. P. ELLIOTT v. ST. CATHARINES MUNICIPAL CORPN.* (1908), 18 O. L. R. 57; 13 O. W. R. 89.—*CAN.*

## PART VII. SECT. 2, SUB-SECT. 4.—A.

447 *i.* *Qualifications—Business assessment—What amounts to assessment.*—*Re EDMONTON CHARTER, IT. (CLARK) v. BURY (Alta.)*, [1927] 1 D. L. R. 885; [1927] 1 W. W. R. 456.—*CAN.*

## PART VII. SECT. 3, SUB-SECT. 2.—D.

*sj. Secretary-treasurer—Appointment to run till successor appointed—Right to notice.*—*Pltf.* was appointed secretary-treasurer of deft. municipality under a bye-law which provided for the appointment of certain officials "for the year 1926, or until their successors be appointed." By another bye-law passed on Feb. 3, 1927, a successor to *pltf.* was appointed; but no notice of dismissal was given *pltf.*, & he sued for the salary for the month of Feb. 1927:—*Held*: the meaning of the bye-law appointing *pltf.* was that his hiring was for the whole of the year 1926 & thereafter until his successor was appointed; & therefore, his contract came to an end on the appointment of his successor, & he was entitled to be paid, with respect to Feb. only for the time during that month that he rendered services.—*BLAKELEY v. CHARLESWOOD RURAL MUNICIPALITY*, [1928] 2 D. L. R. 657; [1928] 1 W. W. R. 828; 37 Man. L. R. 331.—*CAN.*

## PART VII. SECT. 3, SUB-SECT. 3.

*qi.* ——. *A town council may dismiss its officers without notice & without cause.*—*NEWBY v. BROWNLEE* (1916), 34 W. L. R. 278; 10 W. W. R. 249.—*CAN.*

*q ii.* *S. P. WILSON v. YORK* (1881), 46 U. C. R. 289.—*CAN.*

*q iii.* ——. *LARKINS v. SUMMERSIDE*, [1928] 4 D. L. R. 841.—*CAN.*

*ri.* — *B. C. Municipal Act.*—*ZEIGLER v. VICTORIA CITY*, [1922] 1 W. W. R. 75; 70 D. L. R. 722; 30 B. C. R. 389.—*CAN.*

*si.* — *Validity of resolution.*—Where the necessary majority could only be obtained by including the vote

of an alderman who had attended meetings at which the question of dismissal had been considered, but who had not been present at a meeting at which important evidence was taken:—*Held*: the resolution of dismissal was null & void.—*FOSTER v. HALIFAX*, [1926] 1 D. L. R. 125; 57 N. S. R. 268.—*CAN.*

*a ii.* — *Right of Delegated by council to departmental heads.*—The municipal council of Sydney passed a resolution providing that the discharge or disrating or suspension of any employee should be left in the hands of the heads of the respective departments subject to appeal to the town clerk, whose decision was to be final. An employee who was subsequently dismissed by a departmental head brought an action against the council for wrongful dismissal:—*Held* the council had power to delegate its authority to discharge employee; the power given to departmental heads in that respect was revocable, & the council had not denuded itself of its authority & the dismissal was lawful.—*BATLY v. MUNICIPAL COUNCIL OF SYDNEY* (1927), 28 S. R. N. S. W. 149; 45 N. S. W. W. N. 40.—*AUS.*

## PART VII. SECT. 4.

*r i.* — *Funds in hand to meet payment—Refusal of corporation to accept goods.*—*NEPTUNE METER CO. v. HALIFAX CITY* (1909), 7 E. L. R. 2.—*CAN.*

## PART VII. SECT. 5, SUB-SECT. 1.—B. (a) ix.

*sk. Building prison.*—*R. v. NEW CASTLE JJ.* (1830), Dra. 214.—*CAN.*

## PART VII. SECT. 8, SUB-SECT. 1.

*n. Varied*, 9 Alta. L. R. 343.

## PART XII. SECT. 7.

*sl. Action for damage to bridge.*—The corpn. of a county can maintain an action for damages to, or destruction of, a bridge lying within its limits.—*WELLINGTON COUNTY CORPN. v. WILSON* (1865), 16 C. P. 124.—*CAN.*



## LUNATICS AND PERSONS OF UNSOUND MIND.

## Part I.—In General.

10. *Add. Annotation* :—**Refd.** *Re Belliss, Polson v. Parrott* (1929), 141 L. T. 245.
- 26a. “**Legally incapable**”—Issue of lunacy com-

mission.]—*WINTHROP v. WINTHROP* (1845), 1 Coop. temp. Cott. 196; 5 L. T. O. S. 325; 47 E. R. 815, L. C.; *subsequent proceedings* (1846), 15 L. J. Ch. 403, L. C.

## Part II.—Civil Capacity.

40. *Add. Annotation* :—**Mentd.** *Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.
- 186a. ———.]—Whenever a person did an act . . . which act if done by a person with a perfect mind would make him civilly or criminally responsible to the law, if the disease in the mind of the person doing the act was not so great as to make him unable to understand the nature & consequences of the act which he was doing, that was an act for which he would be civilly or criminally responsible (LORD ESHER, M.R.).—*HANBURY v. HANBURY* (1892), 8 T. L. R. 559, C. A.; *previous proceedings*, [1892] P. 222.
204. *Add. Annotation* :—**As to** (3) **Apld.** *Re Belliss, Polson v. Parrott* (1929), 141 L. T. 245.
- 204a. ———.]—Where a woman aged 93 executed an alleged will a few months before her death altering the principle of equal division of her property between her children, two married daughters, which had been followed in her previous testamentary dispositions & in family benefactions during her lifetime, it was held (a) that testatrix entertained an illusory belief that she had benefited one daughter far more than the other, & (b) that her memory had so far failed that she could no longer remember her past actions towards her daughters so as to displace illusory notions. Therefore she had not at the time of the making of the alleged will a disposing mind & understanding within the definition in *Banks v. Goodfellow*, No. 204, & the alleged will was pronounced against.—**Re BELLISS, POLSON v. PARROTT** (1929), 141 L. T. 245; 45 T. L. R. 452; 73 Sol. Jo. 628.
- 206a. ———.]—He [testator] had such a degree of knowledge & understanding as to . . . know pltf. quite well, to remember that pltf. & he had been engaged in preparing his will & to appreciate that he was asked to execute as his will the document which was then put before him . . . Applying the principle laid down in *Parker v. Felgate*, 8 P. D. 171, testator's execution of the will so far as it had been resolved upon while he had the capacity, was *pro tanto* good execution (LORD MERRIVALE, P.).—*THOMAS v. JONES* (1928), as reported in 139 L. T. 214; 44 T. L. R. 467.
- 264a. **Disposition valid**—**Capacity when instructions given.**]—Where a testator is of sound mind when he gives instructions for a will, but at the time of signature accepts the instrument drawn in pursuance thereof without being able to follow its provisions :—**Held** : he must be deemed to be of sound mind when it is executed.—**PERERA v. PERERA**, [1901] A. C. 354; 70 L. J. P. C. 46; 81 L. T. 371; 17 T. L. R. 389, P. C.
- Annotation* :—**Consd.** *Thomas v. Jones* (1928), 139 L. T. 214.
- 265a. ———.]—**Hoby v. Hoby** (1828), 1 Hag. Ecc. 146; 162 E. R. 537.
294. *Add. Annotation* :—**Refd.** *In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.
339. *Add. Annotation* :—**As to** (2) **Consd.** *Re Belliss, Polson v. Parrott* (1929), 141 L. T. 245.
341. *Add. Annotation* :—**Consd.** *Re Belliss, Polson v. Parrott* (1929), 141 L. T. 245.

PART II. SECT. 8, SUB-SECT. 4.—**B. (a).**

281 II. ———.]—The proof necessary to establish a will is not an absolute or conclusive one, but such proof as

would satisfy a prudent man. The burden of proof as to the execution & the testamentary capacity of testator, at the time of the execution of a will, lies upon its propounder, who has to

explain away the suspicious circumstances appearing in the case. **SURENDRA NATH CHATTERJI v. JAHNAVI CHARAN MUKHERJI** (1925), 1 L. L. 56 Calc. 390. —**IND.**

## Part III.—Presumptions and Proof of State of Mind.

469a. —[.]—WOODFORDE *v.* BURN (1834), 6 Nev. & M. 152, n.  
*Annotation* :—*Refd.* Doe d. Tatham *v.* Wright (1836), 1 Har. & W. 729.

## Part V.—Jurisdiction of Chancery Division of High Court of Justice.

498a. —[.]—NORRIS *v.* SANDFORD (1851), cited in 16 Beav. at p. 361; 51 E. R. 818;  
*sub nom.* MORRIS *v.* SANDFORD, 1 W. R. at p. 95.

*Annotation* :—*Refd.* Norris *v.* Stuart (1852), 16 Beav. 359.

512. *Add. Annotation* :—*Refd.* C. L. *v.* C. F. W., [1928] P. 223.

## Part VI.—Jurisdiction in Lunacy.

529a. Jurisdiction to direct settlement of lunatic's property—Change of circumstances—Causing party to "suffer an injustice"—Law of Property Act, 1925 (c. 20), s. 171 (1).—A lunatic not so found had been of unsound mind since 1882. She was a spinster aged eighty-one, & was possessed of personal property of the value of £2,000. From the time when she became of unsound mind she had lived under the care of an uncle & aunt, who had provided £2,076 towards her maintenance. The uncle died in 1885 & the aunt in 1907. By the will of the latter an annuity of £300 was bequeathed for the support of the lunatic. Upon the death of the aunt a sister of the lunatic was appointed receiver of her estate & acted until 1920, when she was relieved & a sister of appcts. was appointed in her place. On her death in 1925 one of appcts. was appointed & was receiver of the lunatic's estate. In 1880 before her reason left her the lunatic made a will, by which she bequeathed her property to her three sisters, all of whom were dead. On an application by appcts., the residuary legatees under the aunt's will & second cousins of the lunatic, to the ct. to exercise the powers vested in it by sect. 171 of the above Act, & to direct a settlement to be made of the property of the lunatic :—*Held*: (1) the phrase "suffer an injustice" in sect. 171 (1) (c) must not be rigidly confined to a deprivation of a strict legal right, since that would stultify the operation of the sect. altogether, but it must in its context include the destruction of a clear moral claim, or even the disappointment of a thoroughly legitimate & well founded expectation, & in the circumstances appcts. would "suffer an injustice" if the recent change in the law of intestacy were allowed to defeat the moral claim which they had to succeed to the estate of the lunatic, particularly in view of the continuous recognition, pecuniary & otherwise, which their side of the family had throughout shown of the obligations imposed on them by their kinship to the lunatic;

(2) there had been "a change of circumstances" within the sub-sect. since the execution by the lunatic of her will, by reason of the deaths of her three sisters to whom she had left her property; (3) the case was one in which the ct. ought to exercise the discretion vested in it by sect. 171, by directing the receiver to execute a settlement of the property of the lunatic, to be approved by the judge in lunacy, which must be subject during the life of the lunatic to her right to be maintained out of the income, & if & so far as might be necessary out of the capital thereof, & subject also to any effective disposition by will or deed which the lunatic might make should she recover.—*Re* FREEMAN, [1927] 1 Ch. 479; 96 L. J. Ch. 225; 136 L. T. 657; 71 Sol. Jo. 272, C. A.

*Annotation* :—*As to* (1) *Consd.* *Re* Greene, *Re* Whitworth, *Re* E. A., *Re* Fraser, *Re* Wood, [1928] Ch. 528.

529b. —[.]—Under a marriage settlement dated Oct. 16, 1879, personalty funds were settled by a husband & wife upon trusts under which, after the death of the husband in 1915, the wife was entitled to the income for life with a power of appointment by deed or will among the issue of the marriage, & in default of appointment the funds were settled in trust for the two surviving children, now aged forty-six & forty-four years, who by inquisitions in 1902 & 1910 had been certified to be of unsound mind. In default of children who attained twenty-one or being daughters married, the wife's fund would have passed to the wife absolutely & the husband's fund to the husband, who had given all his property to his wife. By his will the wife's father, who died in 1885, gave his residuary real & personal estate upon trusts under which, in the events which had happened, his daughter, the wife, received the income for her life with a power of appointment by deed or will amongst her issue. In default of appointment the residue was settled on trusts under which the wife's two children were the only beneficiaries. Neither of the children had made a will &

### PART V. SECT. 3, SUB-SECT. 1.

*sb.* To appoint person to convey—*Property of lunatic sold in partition action.*—Where in a partition action the ct. has sold lands the property of

a person of unsound mind not so found, a judge of the Ch. Div. exercising the jurisdiction conferred by Trustee Act, 1893, ss. 30, 31, 33, will appoint a person to convey the lands on behalf of the person of unsound mind.—

KEATING *v.* KEATING, [1918] 1 I. R. 453.—*IR.*

*sd.* — *Mortgages vested in two trustees.*—*Re* J. J. D., [1928] I. R. 538.—*IR.*

apart from their mother & an aunt aged eighty-two, who was a spinster of unsound mind, their next of kin were second cousins, so that if they survived their mother & aunt, the Crown would take on their deaths under an intestacy. In these circumstances the wife took out summonses under the above sect., asking the ct. to direct settlements of the children's personal property under the marriage settlement & her father's will, which should include trusts in her favour absolutely after the death of each child or, alternatively, a general power of appointment by will so as to enable her to benefit friends & charities in which the family had always been interested. Before the applications were heard an arrangement was come to between the wife & the Crown by which, subject to the approval of the ct., the Crown consented to the wife's having a general power of appointment over the whole of the marriage settlement funds & over the father's residuary personal estate to the extent of £21,140, being the amount provided by the wife out of her own money as a maintenance fund for the children, upon the wife's abandoning all claim to the rest of her father's residuary estate, valued at about £285,000, & agreeing to supplement the income of the maintenance fund for the benefit of the children as theretofore:—*Held*: there was no ground justifying the ct. in making a settlement in respect of the wife's father's residuary estate, for no injustice would be suffered by the wife within sect. 171 (1) (c), if each child's share of the property was allowed to devolve as on an intestacy on his or her death, nor ought the trusts to be altered under sect. 171 (1) (b); but as the Crown did not oppose a settlement of the marriage settlement funds, orders would be made for settlements of the two children's shares so as to give the wife a general power of disposal over the funds. The provision of the maintenance fund of £21,400 did not afford a ground for directing settlements under sect. 171, but the wife would remain free to apply for recoupment under Lunacy Act, 1890 (c. 5), s. 117, if so advised.

An application for a settlement was made by a widow, aged eighty-one years, & first

cousin of the patient, who was sixty-two years of age. The only other near relatives of the patient were two first cousins, who were born in 1847 & 1850 respectively & who were & always had been resident in South America. Appct. stated that by reason of her own great age & that of her two cousins in South America any settlement which the ct. might be pleased to direct would not be of any material benefit to the patient's next of kin, unless its scope were extended to include children of any deceased first cousins of the patient's mother:—*Held*: there was no sufficient ground shown for directing a settlement to be made.

A patient had made a will in 1887, by which he had disposed of his residuary estate equally between his wife & children as a class. The wife had since died, as had also one of patient's sons, leaving issue. The patient's family were desirous that the deceased son's issue should be in no worse position than they would have been if their father had survived the patient:—*Held*: the case was a proper one for the exercise by the ct. of its discretion under sect. 171, by directing a settlement.

The property of a patient was derived under the will of his maternal grandfather. It had been settled by the patient's mother on her marriage with his father, whom she had divorced in 1877, & who had not since been heard of. The object of an application for a settlement was to exclude any claim by the father or his family:—*Held*: a settlement ought to be directed.

A patient had made a will in 1922, leaving the whole of his property to his wife, & in 1925 became of unsound mind. The will had been lost. On an application by the wife for a settlement, evidence was produced which satisfied the ct. as to the fact of the loss & as to the contents of the will:—*Held*: a settlement carrying out the terms of the will ought to be directed.—*Re GREENE, Re WHITWORTH, Re E. A., Re FRASER, Re WOOD*, [1928] Ch. 528; 97 L. J. Ch. 378; 139 L. T. 152; 44 T. L. R. 449, C. A.

539. *Add. Annotation*:—As to (1) *Consd. Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.

## Part VII.—Judicial Inquisitions as to Lunacy.

681. *Add. Annotation*:—*Refd. Greenway v. A.-G.* (1927), 44 T. L. R. 124.

778a. — By natural daughter of bastard lunatic tenant for life—As check on remainderman.]

— *Re WEBB* (1846), 2 Ph. 116; 2 Coop. temp. Cott. 102; 17 L. J. Ch. 276; 41 E. R. 885, L. C.

820. *Add. Citation*:—*previous proceedings*, 2 L. T. O. S. 325, L. C.

## Part VIII.—Appointment of Receiver.

827a. — — — Committee infirm.]—*Re BIRCH* (1808), Shelford on Lunatics, 2nd ed. 187.

827b. — — — Committee resident at distance from estate.]—*Re SEAMAN* (1808), Shelford on Lunatics, 2nd ed. 187.

829. After this case add “On jurisdiction of other courts to enforce claims against lunatic's estate.”—*See HUSBAND & WIFE*, No. 5360a,

## Part X.—Judicial Powers over Estate.

980. *Add. Annotation* :—**Refd. Re Freeman**, [1927] 1 Ch. 479.
981. *Add. Annotation* :—**Refd. Re Freeman**, [1927] 1 Ch. 479.
- 1009a. —. —.]—*Re FISHER* (1850), 2 H. & Tw. 449; 19 L. J. Ch. 521; 14 Jur. 233; 47 E. R. 1759, L. C.
1012. *Add. Annotation* :—*As to* (1) **Refd. C. L. v. C. F. W.**, [1928] P. 223.
1069. *Add. Annotation* :—**Refd. C. L. v. C. F. W.**, [1928] P. 223.
1070. *Add. Annotation* :—**Refd. C. L. v. C. F. W.**, [1928] P. 223.
1091. After this case add “*See, also*, No. 1378a, *post*.”
1229. *Add. Annotation* :—**Refd. Re Price**, [1928] Ch. 579.
- 1336a. —. —. One of several trustees insane.]—Testator devised real estate to trustees, their heirs & assigns, upon certain trusts. The surviving trustee devised all estates vested in him as a trustee to three persons, one of whom, after proving his testator's will, became of unsound mind. A petition was presented for the appointment of new trustees, & for the appointment of a person to convey on behalf of the devisees of the surviving trustee:—*Held*: the petition was properly presented in Lunacy as well as in Chancery.—*Re MASON* (1875), 10 Ch. App. 273; 44 L. J. Ch. 678; 23 W. R. 737, L. J. J.
- Annotations* :—**Expld. Re Gardner's Trusts** (1878), 10 Ch. D. 29. **Consd. Re M.**, [1899] 1 Ch. 79. **Refd. Caswell v. Sheen** (1893), 69 L. T. 854.
- 1336b. Jurisdiction of Chancery Division—Sole trustee insane—& out of jurisdiction.]—A petition for the appointment of new trustees & for a vesting order, where the existing sole trustee is of unsound mind & out of the jurisdiction, need not be presented in Lunacy as well as in Chancery.—*Re GARDNER'S TRUSTS* (1878), 10 Ch. D. 29; 40 L. T. 52; 27 W. R. 164.
- Annotations* :—**Consd. Caswell v. Sheen** (1893), 69 L. T. 854; *Re M.*, [1899] 1 Ch. 79.
- 1336c. —. —. Not so found.]—The High Court has jurisdiction under the Trustee Act, 1893 (c. 53), to appoint a new trustee in the place of a sole surviving trustee who is a lunatic not so found.—*Re M.*, [1899] 1 Ch. 79; 68 L. J. Ch. 86; 47 W. R. 267; 15 T. L. R. 54; *sub nom. Re J. M.*, 79 L. T. 459; 43 Sol. Jo. 76.
- Annotation* :—**Consd. Re James' Mortgage Trusts**, [1919] 1 Ch. 61.
1349. *Add. Annotation* :—**Mentd. Evans v. Morgan**, [1928] 2 K. B. 527.
- 1378a. —. —.]—On May 26, 1927, the receiver of a lunatic's estate, who had been authorised to continue the lunatic's business, obtained an order from the master directing him to distribute £1,800 amongst certain scheduled creditors of the business whose debts had been incurred subsequently to the date of the receivership order. The scheduled creditors were not parties to the order. On May 29, three days after the order was pronounced & before it was completed, the lunatic died. The order was subsequently completed on June 14. In July the exors. of the lunatic's will applied for an order for payment out of ct. to them of the fund representing the lunatic's residuary estate, & on July 28 the master refused to make the order except upon the terms of effect being given to the order of May 26. Subsequently to the making of this order an order was made for the administration of the lunatic's estate:—*Held*: (1) the order of May 26 was a mere direction to the receiver to make the payments in question which might have been varied or rescinded at any time by the master before it was finally completed, & it gave the creditors no equitable charge on the £1,800 thereby ordered to be distributed among them; (2) the jurisdiction in lunacy ceased on the death of the lunatic, & the master had no jurisdiction to direct that effect should be given to the order of May 26; (3) the exors. were entitled to the fund in ct. without regard to the order of May 26, but inasmuch as an order had since been made for the administration of the lunatic's estate, the fund must be paid to the credit of the administration action.—*Re WHEATER*, [1928] Ch. 223; 97 L. J. Ch. 97; 138 L. T. 433; 44 T. L. R. 156; 72 Sol. Jo. 17, C. A.
- 1391a. —. —.]—*Re WHEATER*, No. 1378a, *ante*.

**PART X. SECT. 1, SUB-SECT. 1.—**  
**B. (a).**

r i. — Transfer of funds to—  
Lunatic not absolutely entitled—Inquiries  
ordered.]—Re CHARTERIS (1878), 25  
Gr. 376.—CAN.

t i. *Foreign committee—Recognition by court.*—*Re* HICKSON, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—**CAN.**

**PART X. SECT. 2, SUB-SECT. 3.--**  
**E. (b).**

**sd. Estate insolvent].**—A person of unsound mind had been placed in a private mental hospital at a fixed annual charge for maintenance & treatment, which had been sanctioned by an order of the ct. She died intestate, & her estate was insufficient to meet all claims:—*Held*: payment should be made in the following order of priority: (1) funeral expenses; (2) the lunacy "percentage"; (3) the committee's costs of dismissing the matter out of lunacy; (4) arrears due to the hospital

for maintenance. The assets were not sufficient to meet the payment next in priority, viz., the general costs of the committee.—*Re P.*, [1926] 1. R. 422.—*IR.*

**PART X. SECT. 2, SUB-SECT. 3.—I.**

See case in Sect. 2, sub-sect. 3, E.  
(b), *ante*.

**PART X. SECT, 5. SUB-SECT. 1.—A.**

**§ 1. Lunatic foreigner residing abroad**  
**Sale of land in Ontario—Power of**  
**court.]** A man residing in the State of  
 New York was declared a lunatic.  
 He was the owner, subject to a natc.,  
 of land in Ontario, & the foreign com-  
 mittee applied to the Supreme Ct. of  
 Ontario for an order declaring him a  
 lunatic, with a view to obtaining  
 authority to sell the land.—**Held:**  
 the ct. had power to declare the man to  
 be a lunatic, to appoint a committee  
 & to authorise & direct the committee  
 to sell the land, although the lunatic

was a foreigner in a foreign land, & under the care & custody of the law of that land.—*Re PIPER*, [1927] 4 D. L. R. 924; 61 O. L. R. 257.—**CAN.**

t ii. — — — — —.]—As regards land situate in Ontario, the provisions of Lunacy Act, authorising the sale of land, apply only where the lunatic has been so found by an Ontario ct.—*Re HICKSON*, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—CAN.

**PART X. SECT. 8, SUB-SECT. 1.—D.**

**1261** *1. Stock in name of joint trustees—Lunacy of one—New trustee appointed by deed containing vesting declaration—Form of order.*—*Re G. H. L.*, [1928] **I. R. 543.**—**IR.**

sl. Shares held in joint tenancy.—*Lunacy of one tenant.*—*Held:* the ct. had power under its statutory jurisdiction to sever such joint tenancy, & to realise the lunatic's share, if his interest & benefit so required.—*O'CONNELL v. HARRISON*, [1927] I. R. 330.—*IR.*

1404. *Add. Annotation* :—*As to* (1) **Apld. Re** Wheater, [1928] Ch. 223.  
 1411. *Add. Annotation* :—**Apld. Re** Wheater, [1928] Ch. 223.  
 1419. After this case add “**Whether deduction admissible for income tax purposes.**”—*See* INCOME TAX, No. 545d, *ante*.”

## Part XI.—Actions.

- 1459a. ———. ———. ———.] **CHARLTON v. WEST** (1861), 3 De G. F. & J. 156; 30 L. J. Ch. 815; 4 L. T. 455; 7 Jur. N. S. 614; 9 W. R. 511; 45 E. R. 837, L. J.J.  
 1466. After this case add “—— **Married woman.**”—*See* HUSBAND & WIFE, Nos. 2189, 2189a.”

## Part XII.—Costs.

1606. *Add. Annotation* :—**Consd. Re** Wheater, [1928] Ch. 223.  
 1657. *Add. Annotation* :—**Mentd.** Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.

## Part XIII.—Administration in Regard to Reception and Care of Lunatics.

- 1670a. ——— **When criminal information granted.**] *Ex p. Lowe* (1872), 36 J. P. Jo. 760.  
 1674. *Add. Annotation* :—**Mentd.** Brown v. Dagenham U. D. C., [1929] 1 K. B. 737.  
 1688. *Add. Annotation* :—**Refd.** Stoke Newington Borough Council v. Richards (1929), 45 T. L. R. 650.

## Part XIV.—Certification, Reception, Treatment and Discharge of Lunatics.

1852. *Add. Annotations* :—**Apld.** De Freville v. Dill (1927), 96 L. J. K. B. 1056. **Apprvd.** Harnett v. Fisher, [1927] A. C. 573.  
 1856a. ———.]—Pltf. was certified by deft., a medical man, to be a lunatic & a person to be detained under care & treatment :—**Held** : (1) deft., inasmuch as he undertook the statutory duty of certifying pltf. as a lunatic, owed a duty to him to exercise reasonable care; (2) since no reception order could have been made by a magistrate without the certificate of a doctor, & as the certificate was given by deft. with a view to the obtaining of such an order, the giving of the certificate was the direct cause of the order & of pltf.'s detention.—**HARNETT v. FISHER**, [1927] 1 K. B. 402; 96 L. J. K. B. 55; 135 L. T. 724; 42 T. L. R. 745; 70 Sol. Jo. 917. C. A.; *on appeal*, [1927] A. C. 573, H. L.  
*Annotations* :—*As to* (1) **Folld.** De Freville v. Dill (1927), 96 L. J. K. B. 1056. *As to* (2) **Folld.** De Freville v. Dill (1927), 96 L. J. K. B. 1056.  
 1856b. *S. P.* DE FREVILLE v. DILL (1927), 96 L. J. K. B. 1056; 138 L. T. 83; 43 T. L. R. 702.  
 1856c. **Effect of certificate.**]—**HARNETT v. FISHER**, No. 1856a, *ante*.  
 1856d. *S. P.* DE FREVILLE v. DILL, No. 1856b, *ante*.  
 1859. *Add. Annotation* :—**Refd.** De Freville v. Dill (1927), 96 L. J. K. B. 1056.  
 1862. *Add. Annotations* :—*As to* (1) **Apld.** De Freville v. Dill (1927), 96 L. J. K. B. 1056. **Refd.** Harnett v. Fisher, [1927] A. C. 573.  
 1863. *Add. Annotation* :—**Refd.** De Freville v. Dill (1927), 96 L. J. K. B. 1056.  
 1865. *Add. Annotation* :—**Refd.** De Freville v. Dill (1927), 96 L. J. K. B. 1056.  
 1867. *Add. Annotation* :—**Refd.** De Freville v. Dill (1927), 96 L. J. K. B. 1056.  
 1869. *Add. Annotations* :—**Refd.** De Freville v. Dill (1927), 96 L. J. K. B. 1056; Harnett v. Fisher, [1927] A. C. 573.

**PART XI. SECT. 6, SUB-SECT. 1.**  
 bi. ——— *Appointment of curator ad litem.*—**DAVIDSON v. SCOTT'S SHIP-BUILDING & ENGINEERING CO., LTD.**, [1926] S. C. 970.—**SCOT.**

**PART XIV. SECT. 1.**  
 1856 i. *Duty of doctor to act in good faith & with reasonable care.*]—Circumstances in which an application under Mental Diseases Act, R. S. A., 1922 (c. 223), s. 25, for the stay of an action

against a doctor for negligence in that pltf. had been committed to an asylum without a proper inquiry being held, was refused.—**HIBBERD v. JAMIESON (Alta)**, [1927] 4 D. L. R. 807, 1095; [1927] 3 W. W. R. 543.—**CAN.**

**Cases 1882a—1897. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.**

## **Part XV.—Offences, Penalties and Proceedings.**

**1882a.** — **Annoyance of receiver & lunatic.]—***Re* SEATON, [1928] W. N. 307 ; 166 L. T. Jo. 438.

## **Part XVI.—Mental Deficiency.**

**1897.** *Add. Annotation :—As to (2) Distd.* Woodward *v.* Oldfield (1927), 96 L. J. K. B. 796.

## MAGISTRATES.

## Part I.—The Office of Magistrate.

6. *Add. Annotation* :—Generally, *Mentd. Watt v. Longsdon* (1929), 98 L. J. K. B. 711.

## Part II.—Qualifications and Disqualifications.

45. *Add. Annotation* :—*Apld. R. v. North Worcestershire Assessment Committee, Ex p. Hadley*, [1929] 2 K. B. 397.

82a. *Interest as fellow trade unionist—No trade dispute involved.*—Upon a summons by the wife for a separation order on the ground of desertion under the Summary Jurisdiction (Separation & Maintenance) Acts, 1895 & 1925, the wife complained that her husband had refused to cohabit with her & treated her only as a servant, though they continued to live under the same roof & breakfasted & took their Sunday midday meal together. The justices dismissed the summons. The wife appealed, & submitted that as one of the sitting justices was a member of the same trade union as the husband, that justice must be regarded as an interested person, & therefore the decision was null & void :—*Held* : it would be stretching the law to say that a magistrate could not sit if one of the parties happened to be a member of the same trade union as he in a matter in which no trade dispute was involved.—*STEVENS v. STEVENS* (1929), 93 J. P. 120 ; 27 L. G. R. 362, D. C.

83. *Add. Annotation* :—*Distd. R. v. Leicester JJ., Ex p. Allbrighton*, [1927] 1 K. B. 557.

84. *Add. Annotation* :—*Refd. Maclean v. Workers' Union*, [1929] 1 Ch. 602.

97. *Add. Annotation* :—*Apld. R. v. Essex JJ., Ex p. Perkins*, [1927] 2 K. B. 475.

97a. *Clerk's firm acting against defendant in earlier proceedings.*—(1) *Certiorari* will issue to quash a maintenance order made by justices, when it is shown that the justices'

clerk is a member of a firm of solrs which acted for the wife at an earlier stage of the same proceedings, even though it is proved that the wife's business was conducted exclusively by a managing clerk in charge of a branch office, & that the justices' clerk was in fact quite unaware that his firm had ever acted for her. The test is not whether there is in fact bias, but whether a reasonable man concerned in the proceedings might think that the tribunal was not impartial.

(2) *Appet. for a certiorari* in such circumstances does not waive his right to take objection to the presence of the clerk by not having exercised it, when he does not know that he was entitled to it.—*R. v. Essex JJ., Ex p. PERKINS*, [1927] 2 K. B. 475 ; 96 L. J. K. B. 530 ; 137 L. T. 455 ; 91 J. P. 94 ; 43 T. L. R. 415 ; 28 Cox, C. C. 405, D. C.

102. *Add. Annotation* :—*Refd. Maclean v. Workers' Union*, [1929] 1 Ch. 602.

105. *Add. Annotation* :—*Refd. R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

109. *Add. Annotations* :—*Refd. Maclean v. Workers' Union*, [1929] 1 Ch. 602 ; *R. v. Huntingdon Confirming Authority*, [1929] 1 K. B. 698.

114. *Annotation* :—Insert "*Apld.*" before "*R. v. Middlesex JJ.*,"

119. *Add. Annotation* :—*Refd. R. v. North Worcestershire Assessment Committee, Ex p. Hadley*, [1929] 2 K. B. 397.

128. *Add. Annotation* :—*Refd. Maclean v. Workers' Union*, [1929] 1 Ch. 602.

150a. ————*R. v. Essex JJ., Ex p. PERKINS*, No. 97a, *ante*.

PART II. SECT. 2, SUB-SECT. 1.—  
A. (b) i.

d i. — *Magistrate insurance agent placing part of insurance on municipal property—Prosecution for breach of municipal bye-law.*—*R. (KINGSETT) v. McELHINNEY (Alta.)*, [1927] 3 D. L. R. 1189 ; [1927] 3 W. W. R. 284 ; 49 Can. Crim. Cas. 13.—CAN.

## PART VI. SECT. 2.

302 i. *Creature of statute—Offence must be strictly within statute.*—In order for a magistrate to have jurisdiction, under Criminal Code, Part XVI., to try a charge summarily without the consent of the accused it must plainly appear that the case is one with respect to which such jurisdiction is conferred.—*R. v. FRAY*, [1928] 3 D. L. R. 205 ; [1928] 1 W. W. R. 670 ; 49 Can. Crim. Cas. 316 ; 23 Alta. L. R. 344.—CAN.

305 i. *Matters not cognisable by justices under summary jurisdiction—Offence punishable by fine & imprisonment.*—*R. v. MANUEL*, [1928] 2 D. L. R. 755 ; 50 Can. Crim. Cas. 32.—CAN.

p i. ————*A police magistrate has no jurisdiction to try summarily without the consent of the accused a charge under Criminal Code, s. 295, of assault occasioning actual bodily harm, & therefore cannot have such jurisdiction over said offence conferred on him merely by the laying of the charge under sect. 274 for unlawfully wounding or inflicting grievous bodily harm.*—*R. v. LEFENDRE*, [1928] 3 W. W. R. 580 ; 50 Can. Crim. Cas. 419.—CAN.

sb. *Offence at time committed not triable summarily.*—*R. v. HEISLER*, [1928] 3 D. L. R. 221 ; 49 Can. Crim. Cas. 341.—CAN.

sd. *Disobedience of maintenance order—Information heard after order quashed.*—An order for maintenance made against deft. in 1923 was quashed in Feb. 1928. In May, 1928, an information for disobedience of the maintenance order prior to the date of quashing was heard, & an order was then made that deft. be imprisoned until the maintenance order should be complied with :—*Held* : the main-

tenance order having been quashed, the justices had no jurisdiction to inquire into any disobedience of the order alleged to have been committed before it was quashed, & consequently, the information ought to have been dismissed.—*GALLOWAY v. WATSON*, [1928] V. L. R. 308 ; [1928] Argus L. R. 201.—AUS.

## PART VI. SECT. 3.

st. *Action to recover debt—Failure of debtor to appear—Warrant issued to arrest party.*—*CLARKE v. PLUMMER & MARCELLUS*, [1928] 1 D. L. R. 941 ; [1928] 1 W. W. R. 234.—CAN.

sb. — *Contracted in district in which action brought.*—*Re LEWIS, Ex p. ELECTROLUX, LTD.* (1928). 28 S. R. N. S. W. 578 ; 45 N. S. W. W. N. 185.—AUS.

sj. ————*Action for rates.*—*BRISBANE CITY COUNCIL v. HODGE*, [1928] S. R. Q. 102 ; 22 Q. J. P. R. 63.—AUS.

## PART VI. SECT. 6.

p i. *In respect of violation of Customs Act—Whether limited by value of goods.*]

# Part VIII.—Procedure under Summary Jurisdiction.

432. *Add. Citation* :—2 B. R. A. 626.

433a. ——— **Omission in copy—Signature.**—Where a summons, issued by a magistrate at a metropolitan police ct., commanding a deft. to answer an information for breach of a nuisance order previously made against deft. in the ct., is in all respects in the proper form & duly signed by the magistrate, the omission through inadvertence from the copy of the summons which is served upon deft. of the signature of the magistrate or any signature is a mere defect in form which does not invalidate that copy of the summons or the service thereof.—*R. v. HAY HALKETT, Ex p. RUSH*, [1929] 2 K. B. 431; 98 L. J. K. B. 497; 141 L. T. 519; 93 J. P. 209; 45 T. L. R. 507; 27 L. G. R. 523, D. C.

448a. ——— **When power to take oath.**—OATH

BEFORE JUSTICES CASE (1611), 12 Co. Rep. 130; 77 E. R. 1405.

—:—*Appld. Banc v. Methuen* (1824), 2 L. J. O. S. C. P. 121.

500a. ——— **Not necessarily right of property.**—A local Act authorised the corpn. to make a bye-law prohibiting the playing of mechanical organs anywhere in the borough. In 1892 the corpn. made such a bye-law. The applt. was summoned for playing such an organ in the borough in breach of that bye-law on Apr. 7, 1928. He claimed a right so to play the organ by virtue of a licence which had been given to him by the lord of the manor, & contended that the jurisdiction of the justices was thereby ousted. The justices convicted him, & stated a case :—*Held* : the appeal must be allowed & the conviction quashed, because

— *R. v. BOUTILIER*, [1928] 2 D. L. R. 555; 49 Can. Crim. Cas. 312.—**CAN.**

## PART VII. SECT. 2.

kki. ——— *R. v. LEE SEW* (B. C.), [1922] 2 W. W. R. 208; 66 D. L. R. 146; 37 Can. Crim. Cas. 196.—**CAN.**

nn i. ——— *Where new trial ordered—Jury trial asked for in notice of appeal.*—*R. v. MATTEWS*, [1928] 4 D. L. R. 831; 50 Can. Crim. Cas. 285.—**CAN.**

rr i. ——— *R. v. NELSON* (1901), 8 B. C. R. 110.—**CAN.**

ggg i. *Proceedings under Opium & Narcotic Drug Act*, [1923].—*R. v. LEW HING LOY* (B. C.), [1926] 2 W. W. R. 543; 46 Can. Crim. Cas. 75.—**CAN.**

ggg ii. ——— *R. v. SAM HING*, [1926] 1 D. L. R. 1000; 45 Can. Crim. Cas. 202; 58 O. L. R. 370.—**CAN.**

ggg iii. ——— *R. v. DENIS* (Man.), [1927] 3 W. W. R. 400; 49 Can. Crim. Cas. 8.—**CAN.**

ggg iv. ——— *R. v. RUTHERFORD* [1927] 4 D. L. R. 434; 48 Can. Crim. Cas. 237; 60 O. L. R. 654.—**CAN.**

mmm i. ——— *Necessity for consent of accused.*—*LAMBERT v. R.* (1926), 47 Can. Crim. Cas. 159; Q. R. 42 K. B. 91.—**CAN.**

mmm ii. ——— *R. v. BONNIS* (1927), 47 Can. Crim. Cas. 193; 60 O. L. R. 189.—**CAN.**

mmm iii. ——— *R. v. JOHNSON* MCKENZIE (1927), 48 Can. Crim. Cas. 255; 59 N. S. R. 326.—**CAN.**

ooo i. ——— *R. v. DENIS* (Man.), [1927] 3 W. W. R. 400; 49 Can. Crim. Cas. 8.—**CAN.**

ooo ii. ——— *Opium & Narcotic Drugs Act.*—Under Opium & Narcotic Drugs Act, a magistrate may hear a charge summarily, without putting the accused to his election.—*VIAU v. OTIS* (1927), 44 Que. K. B. 406.—**CAN.**

sm. *Indictable offences triable summarily—Incest.*—The Juvenile Ct., or the magistrate presiding in that ct., has no jurisdiction to summarily try an adult for incest.—*LEBOUX v. R.*, [1928] 1 D. L. R. 299; 49 Can. Crim. Cas. 111; 44 Que. K. B. 308.—**CAN.**

## PART VIII. SECT. 1, SUB-SECT. 1.

d i. ——— *R. v. O'HARA* (N. B.) (1927), 48 Can. Crim. Cas. 231.—**CAN.**

so. *Information laid by telephone.*—C. signed an information for an offence against Canada Temperance Act, leaving the date & a place for the magistrate's name in blank, & mailed

it to magistrate J. He, being ill, handed the information to magistrate M. C. then requested magistrate M., over the telephone, to take the information & to issue a summons thereon. Summons was issued & at the hearing, after the evidence was all in, deft.'s counsel appeared & objected to the magistrate's jurisdiction, but took no further part in the proceedings :—*Held* : the information was improper, because not laid & signed before the magistrate & the magistrate acted without jurisdiction.—*R. v. MURRAY, Ex p. CORP* (1910), 40 N. B. R. 289; 9 E. L. R. 519.—**CAN.**

## PART VIII. SECT. 1, SUB-SECT. 4.

362 v. ——— *District Ct. Rules, r. 8*, which was made applicable to proceedings under Customs Acts by r. 58, provides that where it is intended that a summons only shall issue to bring a deft. before the ct., the information or complaint may be made either in writing or orally, as the district justice of the peace shall see fit :—*Held* : therefore, an information in writing required by Customs & Inland Revenue Act, 1879, was no longer a necessary preliminary to the issue of a summons charging an offence under Customs Acts.—*A.-G. v. HEALY*, [1928] 1 R. 460.—**IR.**

## PART VIII. SECT. 1, SUB-SECT. 5.—A. (a).

377 i. *What amount to separate offences.*—Not "having opium & cocaine."—*R. v. CHOW BEN* (1925), 45 Can. Crim. Cas. 152; 36 B. C. R. 319; [1926] 1 W. W. R. 384.—**CAN.**

## PART VIII. SECT. 1, SUB-SECT. 5.—A. (b).

387 vi. ——— *R. v. ISBELL*, [1928] 4 D. L. R. 322; 50 Can. Crim. Cas. 81; 62 O. L. R. 489.—**CAN.**

sp. *Necessity to state value of property—Nature of proceedings dependent on value.*—*R. v. THOMPSON*, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—**CAN.**

## PART VIII. SECT. 1, SUB-SECT. 6.—A.

sq. *Attorney-General—Where prosecution not instituted by minister, department of State or authorised person.*—A district justice raised a preliminary objection to the hearing of a summons charging an offence under Customs Act, viz.—that complainant was the Attorney-General, the district justice being

of opinion that under Customs & Inland Revenue Act, 1879, s. 11, an officer of the customs & excise must be the complainant :—*Held* : the objection was unsustainable as Criminal Justice Administration Act, 1924, s. 9 (2), authorised the A.-G. to prosecute in any ct. of summary jurisdiction in all cases in which a prosecution is not instituted by a minister, dept. of State, or authorised person.—*A.-G. v. HEALY*, [1928] 1 R. 460.—**IR.**

## PART VIII. SECT. 2, SUB-SECT. 2.—A.

sr. *Before whom returnable.*—Where a magistrate or justice with general jurisdiction, takes an information for an indictable offence under the Code, ss. 653, 654, & issues his warrant, that warrant is returnable before him or before any other "justice" having territorial jurisdiction at the place where the issuing justice had his jurisdiction, but subject to the right of the latter to direct that the accused person be brought before him, if convenient.—*R. v. ISBELL*, [1928] 4 D. L. R. 322; 50 Can. Crim. Cas. 81; 62 O. L. R. 489.—**CAN.**

## PART VIII. SECT. 4, SUB-SECT. 1.

sb. *Summary trial of indictable offence—Criminal Code, s. 884.*—*R. v. ROBERTS* (Sask.), [1928] 1 D. L. R. 260; [1927] 3 W. W. R. 844.—**CAN.**

## PART VIII. SECT. 4, SUB-SECT. 3.—B. (b) iii.

484 i. ——— *Further charge preferred.*—When accused is brought before a magistrate after being properly arrested he can be proceeded against on a fresh charge, although a summons commanding his appearance or warrant for arrest has not been issued thereunder.—*Re LAMN* (Man.), [1927] 1 W. W. R. 432; 47 Can. Crim. Cas. 277.—**CAN.**

## PART VIII. SECT. 4, SUB-SECT. 3.—B. (b) iv.

490 i. ——— *Objection taken at time of appearance.*—*R. v. MURRAY, Ex p. CORP* (1910), 40 N. B. R. 289; 9 E. L. R. 519.—**CAN.**

## PART VIII. SECT. 4, SUB-SECT. 5.

q i. ——— *R. v. McDONALD*, [1928] 2 D. L. R. 787; 50 Can. C. C. 65.—**CAN.**

## PART VIII. SECT. 4, SUB-SECT. 7.

so. *Power to order arrest of witness—Criminal Code, s. 675.*—*Ex p. COYLE* (P. E. I.), [1927] 4 D. L. R. 1129; 49 Can. Crim. Cas. 91.—**CAN.**



(a) the local Act expressly saved "all rights of a profitable or beneficial nature in, over or affecting the commons" that had been exercised before the passing of the Act; (b) the lord of the manor had, before 1890 & continuously until these proceedings, licensed the playing of such organs on the commons & had received between £300 & £400 annually in respect of such licence; (c) the applt. had played his organ on a part of the commons in pursuance of such a licence; & (d) the claim was not "impossible in law" & ousted the jurisdiction of the justices; *Semble*: there is no sufficient authority for the proposition that the right which alone will avail is the right of property. —ANDREWS v. CARLTON (1928), 93 J. P. 65, D. C.

503a. — Breach of bye-laws—Playing football in street—Open space intersected by public footpaths—Claim overruled.]—PEARSON v. WHITEFIELD (1888), 52 J. P. Jo. 708, D. C.

#### PART VIII. SECT. 4, SUB-SECT. 8.

sd. *Must be according to rules of evidence.*—R. v. DUNN (Ont.), (1926), 45 Can. Crim. Cas. 139.—CAN.

p i. —.]—A justice of the peace has no authority to administer an oath to accused, & examine him thereunder, after he has pleaded guilty.—R. (ALDRIDGE) v. BROWN, [1927] 3 W. W. R. 335.—CAN.

r i. —.]—R. v. STEPHENS, R. v. LAHAY (Ont.), (1926), 45 Can. Crim. Cas. 123.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 9.

545 ii. —.]—R. v. HENDERSON, *Ex p.* BRINDLE (N. B.), [1926] 2 D. L. R. 583; 45 Can. Crim. Cas. 310.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 10.

sf. *To call further evidence.*—It is within a magistrate's discretion to allow the prosecution to adduce further evidence after its case has been closed.—R. (PARKER) v. SMITH, [1927] 4 D. L. R. 410; [1927] 2 W. W. R. 722; 48 Can. Crim. Cas. 249; 21 Sask. L. R. 600.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 11.

556 iii. —.]—On a prisoner being brought before a magistrate for trial on the day of the arrest the magistrate was informed, both by the prisoner & by telegram from a counsel, that the latter had been retained for the defence & was requested by them to grant an adjournment to permit of the counsel's attendance.—*Held*: the refusal under such circumstances of a reasonable remand was a wrongful denial to the accused of the right given him by Criminal Code to make a full defence & have his counsel present. The discharge of the prisoner was, therefore, ordered.—R. v. HALCHUK, [1928] 1 D. L. R. 731; [1928] 1 W. W. R. 616.—CAN.

d (p. 345) i. —.]—R. v. DUTRAS, LTD., R. v. LATRAVERSE, [1927] 3 D. L. R. 399; 47 Can. Crim. Cas. 324.—CAN.

g i. — *Number of adjournments.*—MESSENGER v. PARKER (1885), 18 N. S. R. (3 R. & G.) 237; 6 C. L. T. 444.—CAN.

sl. *Effect of adjournment—Charge under Liquor Act—Whether magistrate deprived of jurisdiction.*—HALL v. TAYLOR, [1926] 3 D. L. R. 34; [1926] 2 W. W. R. 175; 46 Can. Crim. Cas. 50; 20 Sask. L. R. 463.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 13.

sb. *Charge not supported by evidence—*

*Substituted charge—Whether two charges.*—Justices cannot convict a man unless a legal offence is proved, & they cannot convict him of an offence with which he has not been charged, but, if he is properly before them on an information which discloses no offence, or which charges an offence which is not supported by the evidence, he may be orally charged with any other offence which the evidence is sufficient to support, & subject to being given a proper opportunity of meeting it, may be convicted of it. In such a case there are not two independent charges pending against appet, at the same time. *Re* SINGLETON, *Ex p.* WILLIAMS (1928), 28 S. R. N. S. W. 616; 45 N. S. W. W. N. 189.—AUS.

#### PART VIII. SECT. 5, SUB-SECT. 1.—A.

d i. —.] Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act:—*Held*: the conviction is the spoken pronouncement of the district justice, & the note in the justice's minute book of his decision, prescribed by District Ct. Rules, r. 50, stating the effect of the conviction is the record of that punishment. TANGNEY v. KERRY COUNTY DISTRICT JUSTICE, [1928] 1 R. 358.—IR.

#### PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

584 vi. —.]—R. v. BARRY (N. S.) (1926), 46 Can. Crim. Cas. 143.—CAN.

584 vii. —.]—R. v. RODGERS (Ont.), [1926] 4 D. L. R. 609; 46 Can. Crim. Cas. 372.—CAN.

#### PART VIII. SECT. 5, SUB-SECT. 1.—D. (a).

613 i. *Proper hearing of accused party.*—Criminal Code, s. 721, does not authorise any interrogation of prisoner by a magistrate other than the asking him whether he has any cause to show why he should not be convicted. This can be done by asking, "What does he say, guilty or not?" but if the reply be not a clear admission of all the elements of the crime, the magistrate must proceed to inquire into the charge without further questioning.—R. v. LEE, [1925] 2 W. W. R. 190; 45 Can. Crim. Cas. 280; 35 B. C. R. 401.—CAN.

613 ii. —.]—R. v. JOHNSON MCKENZIE (1927), 48 Can. Crim. Cas. 255; 59 N. S. R. 326.—CAN.

#### PART VIII. SECT. 5, SUB-SECT. 1.—D. (e).

f i. —.]—*Re* BAKER (1900), 20 C. L. T. 16.—CAN.

503b. — Auction held in street.]—A bye law made it an offence to sell goods, etc., by auction in any street of a city without the leave of the constable. C. being summoned for selling on a plot of ground, set up the defence that it was private property, & not part of a street:—*Held*: this was a *bonâ fide* claim of title, & the justices properly declined jurisdiction.—PHILLIPS v. CANHAM (No. 1) (1872), 36 J. P. 310.

593. *Add. Annotation*:—*Consd.* Pointon v. Cox (1926), 136 L. T. 506.

603. *Add. Annotation*:—*Consd.* Pointon v. Cox (1926), 136 L. T. 506.

642. *Add. Annotation*:—*Refd.* Pointon v. Cox (1926), 136 L. T. 506.

679. *Add. Annotation*:—*Refd.* Palmer v. Crone, [1927] 1 K. B. 804.

707. *Add. Annotation*:—*As to* (2) *Refd.* Gough v. Rees (1929), 46 T. L. R. 103.

#### PART VIII. SECT. 5, SUB-SECT. 1.—D. (d).

sc. *Conviction under Exercise Act, s. 180. Whether in respect of more than one offence.*—A conviction under Exercise Act, s. 180, for that the accused "unlawfully did conceal or keep, or allow, or suffer to be concealed or kept," etc., is not one in respect of two or more offences.—R. v. CHENG TO-IG SENG, [1928] 1 W. W. R. 33; 49 Can. Crim. Cas. 79; 39 B. C. R. 157.—CAN.

#### PART VIII. SECT. 5, SUB-SECT. 1.—D. (e).

644 i. *Joint trial—Separate convictions.*—A magistrate has no jurisdiction to hear separate offences against different persons together, even where the persons charged consent to the adoption of that course, & the proceedings in such cases are void *ab initio*.—RUSSELL v. BATES (1927), 27 S. R. N. S. W. 257; 44 N. S. W. W. N. 79; *restd.* 10 C. L. R. 209.—AUS.

#### PART VIII. SECT. 5, SUB-SECT. 1.—E.

n i. —.]—A magistrate may, before making the appropriate entry in the Criminal Record Book, alter his decision as to the quantum of punishment imposed; but if the alteration is made for a purpose which constitutes an improper exercise of his discretion in the matter of punishment, such alteration is irregular, & the detention of accused in pursuance thereof is illegal.—*Re* CAVENETT, [1926] N. Z. L. R. 755.—N.Z.

#### PART VIII. SECT. 5, SUB-SECT. 3.—A. (b) i.

705 iii. — Offence under *Opium & Narcotic Drug Act, s. 5A* (2) (c).—R. (WAUGH) v. WONG MAH, [1922] 1 W. W. R. 67; 66 D. L. R. 517; 36 Can. Crim. Cas. 319; 17 Alta. L. R. 363.—CAN.

p i. *Release on bail pending sentence—Subsequent appearance on another charge—Right of magistrate to sentence for previous charge.*—R. v. WEEDMARK (1928), 50 Can. Crim. Cas. 413.—CAN.

sm. *Substitution of new warrant—Term of imprisonment extended—New warrant invalid.*—R. WHETON (N. S.) (1926), 46 Can. Crim. Cas. 247.—CAN.

sn. *Duplicate warrant—Original warrant lost or destroyed.*—*Re* MOZELLE (1928), 50 Can. Crim. Cas. 44.—CAN.

#### PART VIII. SECT. 5, SUB-SECT. 3.—A. (e).

so. *Power to suspend sentence—Summary conviction under Criminal*

738. *Add. Annotation*:—**Mentd.** Bowker v. Woodroffe, Bowker v. Premier Drug Co. (1927), 96 L. J. K. B. 750.  
793. *Add. Annotations*:—**Refd.** Clark v. Epsom

R. D. C. [1929] 1 Ch. 287. **Mentd.** Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88; Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.

## Part X.—Clerks to Justices.

808. *Add. Annotation*:—**Consd.** R. v. Ely JJ., *Ex p.* Mann (1928), 45 T. L. R. 92.  
811a. **Should not act as solicitor for prosecution—At quarter sessions.**—It is highly undesirable that the clerk to county justices, who have committed a prisoner for trial at quarter sessions, should act at quarter sessions as solr. for the prosecution, &, if quarter sessions on proper materials come to the con-

clusion that he has done so, they are entitled, after prisoner has been convicted, to take that conclusion into consideration in deciding whether they should order the costs of the prosecution to be paid out of the county fund under Costs in Criminal Cases Act, 1908 (c. 15), s. 1.—R. v. ELY JJ., *Ex p.* MANN (1928), 93 J. P. 45; 45 T. L. R. 92; 72 Sol. Jo. 861; 27 L. G. R. 35, D. C.

## Part XI.—Quarter or General Sessions.

890. *Add. Annotation*:—**Refd.** Stoke Newington Borough Council v. Richards (1929), 45 T. L. R. 650.

## Part XII.—Jurisdiction of Quarter Sessions.

- 958a. — Under Levy of Fines Act, 1822 (c. 46).]—By above Act the ct. of quarter sessions are empowered to discharge a forfeited recognisance in those cases only where the party has been committed to gaol, or has given security to appear at the sessions, &, therefore, where a party, whose recognisance had become forfeited for not appearing to an indictment, & against whom process had issued, paid to the sheriff the sum mentioned in the recognisance, in order to prevent a sale of his goods, & the justices at sessions afterwards by an order mitigated the recognisance to a small sum, & directed the sheriff to discharge the residue from the recognisance:—**Held**: such order was void, & the party was not entitled to recover from the sheriff the sum which the justices had ordered to be discharged.—HAYNES v. HAYTON (1827), 7 B. & C. 293; 5 Man. & Ry. K. B. 307, n.; 5 L. J. O. S. M. C. 136; 108 E. R. 733; *subsequent proceedings*, 6 L. J. O. S. K. B. 231.

*Annotations*:—**Distd.** Harper v. Hayton (1829), 8 L. J. O. S. M. C. 129. **Expld. & Distd.** *Re* Thornton, *It. v.* West Riding of Yorkshire (1837), 7 Ad. & El. 583.

- 958b. — — —.]—Above Act empowers the ct. of quarter sessions to discharge a forfeited recognisance in cases where the sheriff has levied part of the amount, & the party has been committed to prison for the remainder; & if, in such a case, the sessions discharge the recognisance while the money so levied in part is in the hands of the sheriff, he must refund it to the party.—HARPER v. HAYTON (1829), 5 Man. & Ry. K. B. 305; 3 Man. & Ry. M. C. 13; 8 L. J. O. S. M. C. 129.

- 958c. — — —.]—Where a party bound in recognisance to keep the peace is subsequently convicted at petty sessions of an assault, & the

conviction is returned to the quarter sessions, the justices there are not authorised, under above Act, to order an estreat of the recognisance; but the proceeding for that purpose must be by *scire facias*, as before the statute.—R. v. WEST RIDING OF YORKSHIRE JUSTICES, *Re* THORNTON (1837), 7 Ad. & El. 583; 2 Nev. & P. K. B. 457; Nev. & P. M. C. 385; 112 E. R. 590; *sub nom.* R. v. WEST RIDING OF YORKSHIRE JUSTICES, *Ex p.* THORNTON, 7 L. J. M. C. 9.

*Annotation*:—**Distd.** R. v. Ely Justices (1855), 5 E. & B. 489.

- 958d. — — —.]—A party who had applied for a beer licence, under 9 Geo. 4, c. 61, which was refused, appealed against the refusal to the Oct. quarter sessions, & entered into a recognisance to try the appeal, abide the judgment of the ct., & pay such costs as the ct. might award. The appeal was dismissed; & the ct. ordered applt. to pay costs to resp., "forthwith." A blank was left in the order, as to the sums, which the clerk of the peace had not time to fix before the sessions adjourned. The sessions adjourned to the next November. Before the adjournment day, the clerk of the peace fixed the costs, & filled up the order. After the adjourned sessions had terminated, but before the next sessions, which were held on the next Jan., payment was demanded of applt., who did not pay. On affidavit of this, the sessions holden in Jan. estreated the recognisance:—**Held**: the sessions had power to estreat the recognisance, & that process might be taken upon it under above Act.—R. v. ELY JUSTICES (1855), 5 E. & B. 489; 25 L. J. M. C. 1; 26 L. T. O. S. 57; 20 J. P. 116; 1 Jur. N. S. 1017; 4 W. R. 5; 119 E. R. 563.

*Annotation*:—**Refd.** Rawnsley v. Hutchison (1871), L. R. 6 Q. B. 305.

*Code, Part XV.*—R. v. BROWNLEE, [1927] 4 D. L. R. 703; 48 Can. Crim. Cas. 218; 61 O. L. R. 28.—CAN.

### PART VIII. SECT. 5, SUB-SECT. 4.

as 1. — (*Under Liquor Act.*)—In

making a conviction under Liquor Act, 1925, 1924-25, c. 53, a justice of the peace has no authority to order that the costs be paid to him, & such a provision in the conviction cannot be treated as a nullity on an applt. for *habeas corpus*.—REX v. RABIUK, [1928]

1 W. W. R. 588; 50 Can. Crim. Cas. 348; 22 Sask. L. R. 479.—CAN.

*sp. Right of magistrate to see—Proceedings under Criminal Code, Part XVI.*—R. v. SERVETNYK (Sask.) (1926), 46 Can. Crim. Cas. 280.—CAN.

**1002a. Power to reduce charges—To found jurisdiction.]—**Charges of sufficient gravity should not be reduced merely to found the jurisdiction of petty or quarter sessions, but

should be committed to assizes.—*R. v. BENNETT* (1928), 20 Cr. App. Rep. 188, C. C. A.

## Part XIII.—Appeals from Courts of Summary Jurisdiction.

**1015. Add. Citations:—***sub nom.* *HARRUP v. BAYLEY*, 6 E. & B. 218; 25 L. J. M. C. 107; 2 Jur. N. S. 882; 119 E. R. 845; *sub nom.* *R. v. HARROSS*, 4 W. R. 461.

**1100. Add. Citation:—**2 B. R. A. 1135.

**1170. Add. Annotations:—***Refd.* *R. v. Edmonton Income Tax Comrs.*, *Ex p.* Thompson, [1929] 1 K. B. 220; *R. v. Newport (Salop) Justices*, *Ex p.* Wright, [1929] 2 K. B. 416.

**1175a. —.**—Where an information for a criminal offence has been dismissed by a ct. of summary jurisdiction, that ct. has jurisdiction, on the application of the unsuccessful prosecutor, to state a case on a question of law, & in the event of its refusal the High Ct. has jurisdiction to compel it to do so.—*R. v. NEWPORT (SALOP) JUSTICES*, *Ex p.* WRIGHT, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518, D. C.

**1176. Add. Annotation:—***As to* (2) *Refd.* *R. v. Newport (Salop) Justices*, *Ex p.* Wright, [1929] 2 K. B. 416.

**1215. Add. Annotation:—***Apld.* *R. v. Edmonton Income Tax Comrs.*, *Ex p.* Thompson, [1929] 1 K. B. 220.

**1219. Add. Citations:—**96 L. J. K. B. 49; 28 Cox, C. C. 261.

**1229. Add. Citations:—**[1927] 1 K. B. 315; 96 L. J. K. B. 115; 91 J. P. 14; 25 L. G. R. 35; *affd.*, [1927] 1 K. B. 853; 96 L. J. K. B. 383; 137 L. T. 10; 91 J. P. 64; 43 T. L. R. 326; 71 Sol. Jo. 293; 25 L. G. R. 188, C. A. *Add. Annotation:—**Distd.* *Lawrence v. Martin*, [1928] 2 K. B. 464.

**1229a. Appeal by clerk of urban district council - Recognisance entered into by clerk - Validity.]—**On the application of a clerk of an urban district council for a case to be stated for the opinion of the High Ct., the clerk

himself entered into the recognisance conditioned to prosecute the appeal, rendered necessary by Summary Jurisdiction Act, 1857 (c. 43), s. 3. On a preliminary objection at the hearing of the appeal, that the recognisance should have been entered into by the clerk on behalf of the council, so as to render their goods liable, for the reason that the council had by resolution authorised the clerk to lay the original information &, if unsuccessful, to carry the proceedings further, & that the clerk "duly authorised" had sworn the information, & entered into the recognisance "as principal":—*Held*: the recognisance was good, in that in fact the clerk as informant was applt., being at liberty by virtue of Public Health Act, 1875 (c. 55), s. 259 to institute & carry on any proceedings which the local authority was authorised to institute, & the above words of authorisation were surplusage. —*LAWRENCE v. MARTIN*, [1928] 2 K. B. 454; 97 L. J. K. B. 707; 139 L. T. 373; 92 J. P. 112; 44 T. L. R. 621; 26 L. G. R. 454.

**1236. Add. Annotation:—***Distd.* *Marsland v. Taggart*, [1928] 2 K. B. 447.

**1236a. — Death of one justice—Signature by surviving justices.]—**A complaint was heard by three justices, who unanimously dismissed it, but agreed to state a case for the opinion of the High Ct. Before the case was stated one of the justices died, & the case was signed by the surviving two justices only:—*Held*: as the obligation of the justice to sign the case was created by law & not by voluntary contract, & as his failure to fulfil that obligation was due to his death & not to any spontaneous act on his part, the Crown had jurisdiction to proceed with the matter. *MARSLAND v. TAGGART*, [1928] 2 K. B. 447; 97 L. J. K. B. 787; 139 L. T. 192; 92 J. P. 118; 44 T. L. R. 543; 26 L. G. R. 377; 28 Cox, C. C. 511, D. C.

**PART XIII. SECT. 1, SUB-SECT. 2.—A.**  
1 i. —. —*R. v. POOCK, R. v. ELLISON* (Ont.), [1927] 4 D. L. R. 1121; 49 Can. Crim. Cas. 95.—CAN.

**PART XIII. SECT. 1, SUB-SECT. 4.—G.**  
st. *Request for jury—Discretion to grant or refuse*—36 Vict. c. 58, s. 2.—*R. v. WASHINGTON* (1881), 46 U. C. R. 221.—CAN.

**PART XIII. SECT. 2, SUB-SECT. 2.—B. (a).**

**1173 ii. —**Where complainant failed to appear.]—The right of appeal given by Criminal Code, s. 749, against the dismissal of an information or complaint does not exist when the dismissal is due to the complainant's or informant's failure to appear.—*GHTTERMAN v. RALPH*, [1928] 2 W. W. R. 631; 50 Can. Crim. Cas. 282.—CAN.

**PART XIII. SECT. 2, SUB-SECT. 4.—B. (a).**

sw. *Annexation giving reasons for*

*decision—Whether authorised.] Held*: an annexation should not be made to a stated case giving reasons for the decision brought under review, there being no warrant for such an annexation in Summary Jurisdiction (Scotland) Act, 1908. —*COCKBURN v. GORDON*, [1928] S. C. (J.) 87.—SCOT.

**PART XIII. SECT. 2, SUB-SECT. 6.—A.**

**1294 ii. —**Under *Excise Act—Unauthorised intervention of justice.]—*A justice of the peace having intervened in a prosecution under *Excise Act* by assuming to adjourn the trial on the non-appearance of the police magistrate before whom the information was laid & who had issued a summons to deft. to appear before him, a conviction made on the adjourned date of trial by another police magistrate, before whom deft. refused to plead & to whose jurisdiction he objected, was quashed, since said intervention was in direct violation of sect. 134 of said Act.—*R. v. PYLE*, [1928] 1 W. W. R. 590; 49 Can. Crim. Cas. 186; 23 Alta. L. R. 341. CAN.

**5x. To inquire as to authority & jurisdiction of magistrate & as to manner in which authority exercised.]—**Upon a motion to quash an information & proceedings taken before a police magistrate or justice of the peace, the ct. may inquire as to his authority & jurisdiction, & as to whether his powers & authority were exercised in such a manner & in such place or places as to bring his acts within his jurisdiction territorial & otherwise.—*R. v. ISHELL*, [1928] 4 D. L. R. 322; 50 Can. Crim. Cas. 81; 62 O. L. R. 489.—CAN.

**5y. To set aside judgment—Irrelevant considerations introduced by magistrate —No opportunity given to applicant to explain.]—***BOUWER v. MASONDO* (1928), 49 N. L. R. 62. S. AF.

**PART XIII. SECT. 2, SUB-SECT. 6.—C.**

**1301 vi. —.**—*R. v. COWELL* (1928), 50 Can. Crim. Cas. 381.—CAN.

**1301 vii. —.**—*R. v. WIGGINS* (1928), 50 Can. Crim. Cas. 193.—CAN.



## MALICIOUS PROSECUTION AND PROCEDURE.

## Part I.—Distinguished from Trespass and False Imprisonment.

12. *Add. Annotation*:—**Mentd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
14. For existing citations read *MAGNAY v. BURT* (1843), Dav. & Mer. 652;

*sub nom.* *BIRT v. MAGNAY*, 7 Jur. 127; *on appeal, sub nom.* *MAGNAY v. BURT*, 5 Q. B. 381, Ex. Ch.

## Part III.—Malicious Abuse of Civil Proceedings.

- 100a. ——— **Omission to pass money through court.**—An order was made against plff. in a county ct. committing him to prison, but was suspended so long as he paid £1 a month into court. Def., the judgment creditor, asked him to pay him the £1 direct, & promised to pass it through the ct. Plff. paid the def. the money, but def. did not pass it through the ct. Plff. having been imprisoned was held entitled to damages.—*CHAPMANN v. MORLEY* (1891), 7 T. L. R. 257.

to him, informing him that he had such a warrant, the messenger not having it then with him, & desiring him to give bail; that he sent word that he would on the following day; & that he accordingly did so, giving a bail-bond at the officer's house; but never being actually detained:—*Held*: these facts did not amount to an arrest; &, therefore, the averment was not proved.—*BERRY v. Ry. K. B.* 558; 108 E. R. 516; *sub no* *BERRY v. SEMPRONIUS*, 5 L. J. O. S. K.

- 101a. ——— **No detention—Bail given.**—In an action for a malicious arrest, plff., in order to support an averment in his declaration, that he had been arrested, proved the writ; the warrant; that the officer sent a messenger

*Annotations*:—**Consd.** *George v. Radford* (1828), 3 C. & P. 461. **Apld.** *Reece v. Griffiths* (1829), 5 Man. & Ry. K. B. 120; *Amor v. Bloteld* (1832), 9 Bing. 91; *Bates v. Pilling* (1834), 2 Cr. & M. 374. **Refd.** *Brown v. Chapman* (1848), 6 C. B. 365.

## Part IV.—Essentials to Action.

148. *Add. Annotation*:—**Apld.** *Morris v. Winter* (1929), 45 T. L. R. 643.

365. *Add. Annotation*:—**Mentd.** *Hardie & Lane Chilton*, [1928] 2 K. B. 306.

## PART II. SECT. 1.

20 i. ———.]—The definition of "prosecution" is not confined to proceedings before a magistrate or a criminal ct. The proceedings relating to the granting of sanction to prosecute, though they may not lead to imposition of fine or imprisonment, render the person charged liable to fine or imprisonment, &, therefore, come within the meaning of the term "prosecution."—*RAHINDRA NATH DAS v. JOGENDRA NATH DEB* (1928), 1 L. R. 56 Cal. 432.—**IND.**

33 ii. ———.]—A suit for damages for malicious prosecution cannot proceed when the proceeding alleged to give rise to the cause of action had ended in the dismissal of the complaint under Code of Criminal Proceedings, 1898, s. 203, & no process had been issued against plff., & the mere fact that plff. had cross-examined the witnesses for complainant cannot alter the character of the proceedings.—*SULHAG CHAMAR v. NAND LAL SAHU* (1928), 1 L. R. 8 Pat. 285.—**IND.**

## PART III. SECT. 1.

78 vi. ———.]—*RAMA ROW v. SOMASUNDARAM ABARY* (1927), 1 L. R. 51 Mad. 642.—**IND.**

## PART IV. SECT. 1, SUB-SECT. 1.—A.

121 ii. ———.]—Plff. must prove that he was innocent, & that his innocence was pronounced by the

tribunal before which the accusation was made. Where a *nolle prosequi* is entered, although it establishes that the proceedings terminated in favour of plff., it does not establish his innocence.—*RICH v. FORMAN* (1927), 23 W. A. L. R. 13.—**AUS.**

## PART IV. SECT. 1, SUB-SECT. 2.

d i. *Discontinuance of proceedings.*—*DALLING v. MCKENDRICK* (P. E. I.), [1926] 2 D. L. R. 999.—**CAN.**

## PART IV. SECT. 2, SUB-SECT. 1.—B. (a).

205 xi. ———.]—In a suit to recover the price of goods sold, goods in a store were seized under an order of attachment. The suit failed as against A. F., who claimed to be the owner of the business, & the order of attachment was dissolved. A. F. then brought action for damages:—*Held*: the action was not maintainable either for maliciously suing out process, because of the absence of malice & the existence of reasonable & probable cause; or for trespass, because, even assuming A. F. was the owner of the goods, as to which the ct. was not satisfied, the seizure was under a valid attachment order.—*FEINSTEIN v. PAULIN-CHAMBERS CO., LTD.*, [1921] 1 W. W. R. 554; 59 D. L. R. 605.—**CAN.**

## PART IV. SECT. 2, SUB-SECT. 2.—A.

230 i. *Acting without just cause or*

*excuse.*—*MANNING v. NICKERSON* (B. C.), [1927] 3 D. L. R. 728; [1927] 2 W. W. R. 623.—**CAN.**

230 ii. ———.]—*PAULSON v. CLEMENTS* (Alta.), [1927] 3 D. L. R. 716.—**CAN.**

230 in. ———.]—Govt. Liquor Act, R. S. B. C. 1924, c. 146, has not changed the law with respect to malicious prosecution. Where in an action against a chief of police for malicious prosecution because of his applying for & the execution of a search warrant issued under sect. 73 (1) of said Act, the most charitable view that could be taken of his action was under the information given him by his informant he was requested to investigate &, instead of making a proper investigation, he immediately applied for the warrant, it was held that said view coupled with the finding already made of an absence of reasonable & probable cause would support a finding of malice.—*GRADY & GRADY v. DEVITT*, [1928] 1 W. W. R. 921.—**CAN.**

230 iv. ———.]—*NICKERSON v. MANNING*, [1928] 3 D. L. R. 494; [1928] S. C. R. 91.—**CAN.**

241 vi. ———.]—*HENDERSON v. BATTLE*, [1927] 3 D. L. R. 374; [1927] 2 W. W. R. 197; 36 Man. L. R. 519.—**CAN.**

## PART IV. SECT. 2, SUB-SECT. 2.—B.

m i. ———.]—*JONES v. ECKLEY*, [1928] 2 D. L. R. 943.—**CAN.**

## Part V.—Evidence.

574. *Add. Annotations* :—*Reid. Campbell v. Pollak*, [1927] A. C. 732 ; *Martin v. Benson*, [1927] 1 K. B. 771.

## Part VII.—Pleading and Practice.

586. *Add. Annotation* :—*Reid. La Radiotechnique v. Weinbaum* (1927), 137 L. T. 638.

## PART IV. SECT. 2, SUB-SECT. 4.—A.

284 xiv. ———.—*MECKLENBURG v. CANADIAN PACIFIC RY. CO.* (Alta.), [1926] 1 D. L. R. 706.—CAN.

284 xv. ———.—*MURRAY v. McLAUGHLIN MOTOR CAR CO., LTD.* (Alta.), [1926] 1 D. L. R. 372 ; [1926] 1 W. W. R. 161.—CAN.

*sa. Perseverance in prosecution*  
*After discovery that facts relied on are not true.*—A prosecution, even if commenced under a *bona fide* belief in the guilt of the accused, may become *malâ fide* by continuance after it is discovered that the facts upon which it was based are not true.—*RABINDRA NATH DAS v. JOGENDRA NATH DAS* (1928), 1 L. R. 56 Cal. 432.—IND.

## PART IV. SECT. 3, SUB-SECT. 2.—A.

362 v. ———.—*While, in an action*

for malicious prosecution, malice may be inferred from want of reasonable & probable cause, yet that inference cannot be drawn where all the facts & circumstances of the case would tend to show that there could be no malice in the sense of the initiation of proceedings in a malicious spirit, *i.e.* from an indirect & improper motive.—*O'LOUGHLIN v. GRANDJEAN*, [1929] 1 D. L. R. 198 ; [1928] 3 W. W. R. 740.—CAN.

*o i. ———.—Plaintiff about to leave jurisdiction.*—*DANSEY v. ORCUTT*, [1928] 4 D. L. R. 27.—CAN.

## PART IV. SECT. 3, SUB-SECT. 3.—E.

417 i. *Absence of probable cause not implied.*—*SHUBRATI v. SHAMS-UDDIN* (1928), 1 L. R. 50 All. 713.—IND.

## PART IV. SECT. 3, SUB-SECT. 4.—A.

432 vi. ———.—*OWENS v. MARTINDALE*, [1928] 4 D. L. R. 932 ; 63 O. L. R. 87.—CAN.

## PART IV. SECT. 3, SUB-SECT. 4.—B. (a).

436 xii. ———.—*PIDGEOON v. HOLMAN* (P. E. I.), [1926] 3 D. L. R. 480.—CAN.

## PART IV. SECT. 3, SUB-SECT. 4.—C. (a).

467 iv. ———.—*PIDGEOON v. HOLMAN* (P. E. I.), [1926] 3 D. L. R. 480.—CAN.

## PART V. SECT. 1, SUB-SECT. 2.

537 ix. ———.—*PIDGEOON v. HOLMAN* (P. E. I.), [1926] 3 D. L. R. 480.—CAN.

## MARKETS AND FAIRS.

### Part III.—Rights and Liabilities in connection with Markets and Fairs.

68. *Add. Annotation* :—**Refd.** *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

### Part IV.—Holding of Markets and Fairs.

103. *Add. Annotation* :—**Refd.** *Layzell v. Thompson* (1927), 137 L. T. 106.

### Part VII.—Disturbance.

312. *Add. Annotation* :—**Refd.** *Layzell v. Thompson* (1926), 91 J. P. 89.

339a. **Right to prevent sale in dwelling-house.**—*DUNSTABLE (PRIOR) v. B.* (1433), Y. B. 11 Hen. 6, fo. 19, pl. 13.

*Annotations* :—**Consd.** *London City Case* (1610), 8 Co. Rep. 121 b; *Hutchins v. Player* (1663), O. Bridg. 272. **Apld.**

*Moseley v. Chadwick* (1782), 3 Doug. K. B. 117; *Towksbury Corpn. v. Brucknell* (1809), 2 Taunt. 120. **Consd.** *Mosley v. Walker* (1827), 7 B. & C. 40. **Expld.** *Macclesfield Corpn. v. Chapman* (1813), 12 M. & W. 18. **Consd.** *Penryn Corpn. v. Best* (1878), 3 Ex. D. 292. **Expld.** *Manchester Corpn. v. Lyons* (1882), 22 Ch. D. 287. **Refd.** *Ballard v. Bonnet* (1759), 2 Burr. 775; *Llandaf & Canton District Market Co. v. Lyndon* (1861), 25 J. P. 295; *G. E. Ry. Co. v. Goldsmid* (1884), 9 App. Cas. 927.

### Part IX.—Sale in Market Overt.

430. *Add. Annotations* :—**Mentd.** *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28; *lake v. Simmons*, [1927] A. C. 487.

467. *Add. Annotation* :—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.

478. *Add. Annotation* :—**Mentd.** *Republica Guatemala v. Nunez*, [1927] 1 K. B. 669.

531. *Add. Annotation* :—**Folld.** *Edwards v. Wanstall* (1929), 46 T. L. R. 101.

#### PART II. SECT. 1.

sa. *Whether structure divided into shops forms private market—Goods displayed on pavement.*—*BOMBAY MUNICIPALITY v. YENKANNA ELLAPPA* (1928), 1 L. R. 52 Bom. 780.—**IND.**

#### PART II. SECT. 3, SUB-SECT. 1.

36 i. *Acquisition of site—Necessity for bye-law.*—*CITY OF EDMONTON v. MACDONALD (Alta.)* (1907), 7 W. L. R. 201.—**CAN.**

#### PART VII. SECT. 1, SUB-SECT. 3. C.

sf. *Buying goods outside market.*—Although no market tolls are chargeable by an owner of a market, buyers can disturb, in an actionable sense, the market by buying outside its limits.—*LOUGHREY v. DOHERTY*, [1928] 1 L. R. 103.—**IR.**

#### PART XI. SECT. 1, SUB-SECT. 1.—A.

501 ii. — *What amounts to.*—*R. v. THORNBERT*, [1925] 2 W. W. R. 175; 19 Sask. L. R. 429.—**CAN.**

#### PART XI. SECT. 1, SUB-SECT. 2.—A.

sk. *Sale by agent of company—Tax imposed by Corporations Taxation Act,*

*R. S. S.*, 1920 (c. 31), *paid by company.*—*It. v. AUNE*, [1925] 2 W. W. R. 539; 44 Can. Crim. Cas. 194; 19 Sask. L. R. 566.—**CAN.**

#### PART XI. SECT. 3.

q i. — *Offer of goods in exchange for trading stamps Whether sale or offering for sale.*—*Deft.*, arranged with various retail merchants that each should receive from him trading stamps the property in which, however, was to remain in him, & should pay him fifty cents per hundred stamps, & give one to each customer for every ten cents of cash purchases, while *deft.* should advertise the merchants in certain directories & otherwise. A blank space was left in these directories for pasting in such stamps, & every customer who brought to *deft.* one of the directories with a fixed number of stamps pasted in was entitled to receive in exchange any article he might select out of an assortment of goods kept in stock by *deft.* Apart from this the goods were not for sale :—*Held* : these transactions did not constitute a selling or offering for sale by *deft.* within a municipal bye-law, passed under R. S. O. 1897, c. 223, s. 583 (30), (31).—*R. v. LANGLEY* (1899), 31 O. R.

295; 20 C. L. T. 2. **CAN.**

t i. — — — *For principals assessed in municipality—Though non-resident.*—*It. v. MURRAY* (1903), 24 C. L. T. 183.—**CAN.**

t ii. — — — *For non-resident trader—Ostensibly acting for resident trader.*—*It. v. GIBB* (1928), 50 Can. Crim. Cas. 366.—**CAN.**

a i. — *Not company selling goods at premises rented for two months.*—*It. v. DOMINION GENERAL JOBBERS, LTD.*, [1925] 3 D. L. R. 570; [1925] 2 W. W. R. 289; 44 Can. Crim. Cas. 229; 35 Man. L. R. 57.—**CAN.**

h i. — — — *The conviction was for that *deft.*, being a transient trader, occupying a place of business in the town of M., did sell certain goods, wares & merchandise, contrary to a bye-law.*—*Held* : the want of an allegation in the conviction that *deft.* was a transient trader whose name had not been duly entered on the assessment roll for the current year was fatal.—*R. v. CATON* (1888), 16 O. R. 11.—**CAN.**

h ii. — *Proof of one sale—No proof that goods to be supplied by person doing business outside municipality.*—*It. v. OGLE* (1910), 15 W. L. R. 325.—**CAN.**

## MASTER AND SERVANT.

## Part I.—The Relationship.

8. *Add. Annotations*:—*As to* (1) **Consd.** Templeton v. Parkin Wm. & Co. (1929), 140 L. T. 519. **Refd.** Williams v. Larsen (1928), 21 B. W. C. C. 339.
13. *Add. Annotations*:—**Apld.** Williams v. Larsen (1928), 21 B. W. C. C. 339. **Consd.** Templeton v. Parkin Wm. & Co. (1929), 140 L. T. 519.
14. *Add. Annotation*:—**Refd.** Templeton v. Parkin Wm. & Co. (1929), 140 L. T. 519.
15. *Add. Annotations*:—**Consd.** Roberts v. Gardner (1928), 21 B. W. C. C. 154; Templeton v. Parkin Wm. & Co. (1929), 140 L. T. 519. **Refd.** Williams v. Larsen (1928), 21 B. W. C. C. 339.
20. *Add. Annotation*:—**Refd.** McGee v. Muir Wm. & Co. (1929), 140 L. T. 546.
- 25a. —.—.]—Where the general servant of a master is hired out to another for a particular employment, & while engaged in that employment, causes damage to his master, the servant is to be deemed, for anything done in the course of that employment, the servant of the hirer & the master is entitled to recover from the hirer for the damage caused to him. —**LEGGOTT (G. W.) & SON v. NORMANTON (C. H.) & SON** (1928), 98 L. J. K. B. 145; 140 L. T. 224; 45 T. L. R. 155, D. C.
27. *Add. Annotation*:—**Consd.** Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
29. *Add. Annotation*:—**Consd.** Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
44. *Add. Annotation*:—**Consd.** Templeton v. Parkin Wm. & Co. (1929), 140 L. T. 519.
46. *Add. Annotation*:—**Consd.** Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
49. *Add. Annotations*:—**Consd.** Bull v. West African Shipping, etc. Co., [1927] A. C. 686. **Refd.** Leggott (G. W.) & Son v. Normanton (C. H.) & Son (1928), 98 L. J. K. B. 145.
54. *Add. Annotation*:—**Consd.** Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
55. *Add. Annotation*:—**Consd.** Leggott (G. W.) & Son v. Normanton (C. H.) & Son (1928), 98 L. J. K. B. 145.
- 55a. **Lightermen hired with lighter.**]—Applts. let on hire to resps. a lighter manned by two native lightermen. The lighter was moored to resps.' ship, & was used by them during the day in loading the ship. During the night the lightermen negligently left the lighter, which got adrift, & owing to the absence of the lightermen, was carried out to sea, ran ashore, & broke up:—**Held**: the lightermen being under the orders & control of resps. during the night as well as during the actual loading, resps. were responsible for negligence & were liable to applts. in damages.—**BULL (A. H.) & Co. v. WEST AFRICAN SHIPPING, ETC. CO.**, [1927] A. C. 686; 96 L. J. P. C. 127; 137 L. T. 498; 43 T. L. R. 548; 17 Asp. M. L. C. 292, P. C.
- Annotation*:—**Fold**, Leggott (G. W.) & Son v. Normanton (C. H.) & Son (1928), 98 L. J. K. B. 145.
66. *Add. Citations*:—96 L. J. K. B. 170; 136 L. T. 377.
89. *Add. Annotation*:—**Refd.** Brooke v. Bool, [1928] 2 K. B. 578.

## Part II.—Particular Classes of Servants.

138. *Add. Annotations*:—**Apld.** *Re* Mackay, *Re* Rowland, *Re* Barry (1928), 44 T. L. R. 688. **Refd.** Birmingham Corpn. v. Labour Minister, *Re* Lee, *Re* Hudson (1927), 92 J. P. 17.
151. *Add. Annotation*:—**Mentd.** Hardie & Lane v. Chilton, [1928] 2 K. B. 306.

## PART I. SECT. 1.

a. *i. Hospital & nurses*.]—**NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD**, No. 52 II, *post*.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.—  
A. (b).

211. For “**CAN.**” read “**SHANG-HAI.**”

PART I. SECT. 2, SUB-SECT. 1.—  
B. (a).

52 ii. —.—.]—Hospital liable for the negligence of nurses after an operation.—**NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD**, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—**CAN.**

52 iii. —.—.] *Pltf.* entered defts.' hospital for the purpose of undergoing an operation, & owing to the fact that the regular nursing staff was not

sufficient to give her the care considered necessary by her physician a special nurse was employed & added temporarily to the regular staff but charged to *pltf.*:—**Held**: the special nurse so engaged was the employee of the hospital & not the mere assistant of *pltf.*'s physician, & the hospital was responsible in damages for negligence on her part resulting in severe injury to *pltf.*—**LOGAN v. COLCHESTER COUNTY HOSPITAL**, [1928] 1 D. L. R. 1129; 60 N. S. R. 62.—**CAN.**

PART I. SECT. 3, SUB-SECT. 5.—  
A. (d).

90 ii. —.—.]—**PIELAN v. MAIN ROADS BOARD** (1927), 30 W. A. L. R. 16.—**AUS.**

sb. *Power to veto employment & to insist on dismissal of any employee.*]—**Held**: in the circumstances, a brusher, engaged by a colliery co. to drive a

stonemane in one of their pits at a fathomage rate, & permitted by the contract to engage two miners to assist him in the work, was a servant, & not an independent contractor.—**PARK v. WILSONS & CLYDE COAL CO., HAGGERTY v. WILSONS & CLYDE COAL CO.**, [1928] S. C. 121; *affd.*, [1929] S. C. 38, H. L.—**SCOT.**

## PART II. SECT. 9.

sc. *Inspector appointed under Noxious Weeds Act.*]—Where a municipality appoints an officer to perform a public service in which the corpn. has no special interest, & from which it derives no special benefit in its corporate capacity, such officer is not the servant or agent of the municipality, & therefore, it is not liable for his negligence in the performance of his duties.—**MEAD v. MARQUIS RURAL MUNICIPALITY**, [1928] 2 D. L. R. 524; [1928] 1 W. W. R. 756.—**CAN.**



## Part III.—The Contract of Service.

- 212a. ——— **Pitman.**]—ORD. *v.* BURKUS (1843), 1 L. T. O. S. 35.
230. **Add. Annotation:—Refd. Marbé v. George Edwardes** (Daly's Theatre) (1927), 96 L. J. K. B. 980.
- 244a. ———.]—ELLIOTT *v.* HUNTER (1909), 128 L. T. Jo. 196.
252. **Add. Annotation:—Consd. Marbé v. George Edwardes** (Daly's Theatre) (1927), 96 L. J. K. B. 980.

## Part IV.—Duration and Termination of Contract.

262. **Add. Annotation:—Distd. Milsted v. Hamp & Ross & Glendinning** (1927), 71 Sol. Jo. 845.
- 262a. ———.]—Pltfs. agreed to employ deft., & deft. agreed to serve pltfs., for three years & thereafter from year to year subject to three months' notice by pltfs. Dft. was to devote the whole of his time to the business:—**Held:** the agreement was wholly one-sided & unenforceable.—**MILSTED (W. H.) & SON, LTD. v. HAMP & ROSS & GLENDINNING, LTD.** (1927), 71 Sol. Jo. 845.
296. After this case add  
"See, also, Nos. 387, 388, post."
387. **Add. Annotation:—Distd. Jacks Wm. & Co. v. Palmers Shipbuilding & Iron Co.** (1928), 98 L. J. K. B. 366.
388. **Add. Annotation:—Folld. Jacks Wm. & Co. v. Palmers Shipbuilding & Iron Co.** (1928), 98 L. J. K. B. 366.
- 414a. **Tutor.**]—The ct. held that in the circumstances pltf., a private tutor, was entitled to three months' salary in lieu of notice.—**WILSON v. UCELLI** (1929), 45 T. L. R. 395.
453. **Add. Annotation:—Refd. Brown v. Dagenham U. D. C.**, [1929] 1 K. B. 737.
502. **Add. Annotation:—Generally, Refd. A.-G. v. Goddard** (1929), 98 L. J. K. B. 743.
509. **Add. Annotation:—Refd. Brown v. Dagenham U. D. C.** (1929), 140 L. T. 615.
- 530a. **Driving motor car to common danger.**]—Pltf., a commercial traveller, was employed by defts. under an agreement which provided that pltf. was to use a motor car for the carriage of samples. Pltf. was convicted of driving the car to the common danger & was fined, & his driving licence was suspended for three months. Defts. terminated pltf.'s employment, on the ground that these facts constituted misconduct justifying dismissal. In an action for wrongful dismissal defts. also pleaded that, before the agreement was made, pltf. ought to have informed them that he had previously been convicted of being drunk when in charge of a motor car & been sentenced to imprisonment for driving it in a manner dangerous to the public:—**Held:** (1) there was no obligation on pltf. to disclose his previous conviction for a motoring offence; (2) the conviction during the currency of the agreement, even although pltf.'s licence was suspended, was not a ground for terminating the agreement, as pltf. could have got someone to drive the car.—**HANDS v. SIMPSON, FAWCETT & CO., LTD.** (1928), 44 T. L. R. 295; 72 Sol. Jo. 138.
540. **Add. Annotation:—Mentd. Hobbs v. Tinling, Hobbs v. Nottingham Journal.** [1929] 2 K. B. 1.
565. **Add. Annotation:—Apld. Hands v. Simpson, Fawcett** (1928), 44 T. L. R. 295.
- 565a. **What are material facts—Employment of commercial traveller—Not previous conviction for motoring offence.**]—**HANDS v. SIMPSON, FAWCETT & CO., LTD.**, No. 530a, ante.
594. Add the following paragraph:—  
Another replication to the same plea alleged that pltf. was an African & a negro, & that negroes were enslaved in divers States of the United States of America, & bought & sold as slaves by the citizens of the same States; that the captain of the C., before pltf. deserted, threatened to sell him as a slave to certain citizens of the United States; that San Francisco is in one of the said United States, to wit California; & pltf. had just & reasonable grounds for believing & did believe, that, on the arrival of the C. at San Francisco, the captain was about to carry his threat into execution; & thereupon pltf., in order to prevent the captain from selling him as a slave, deserted the C.:—**Held:** on demurrer, a bad replication, as not showing that California was a State in which pltf. could be sold as a slave.

## PART III. SECT. 5, SUB-SECT. 2.—B.

**sd. To prove value of services.**]—In an action brought on a *quantum meruit* for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years. It was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200:—**Held:** although the oral agreement was one to which Stat. Frauds was applicable, it was nevertheless admissible as evidence of the value of pltf.'s services.—**WARD v. GRIFFITHS BROS., LTD.** (1928), 28 S. R. N. S. W. 425; 45 N. S. W. W. N. 130.—**AUS.**

## PART IV. SECT. 2, SUB-SECT. 10.—

**B. (b) (i).**]—**MESSER v. BARRETT Co.**, [1927] 1 D. L. R. 284; 59 O. L. R. 566.—**CAN.**

## PART IV. SECT. 2, SUB-SECT. 11.—

**A. (a).**]—Where the dismissal of an employee is for cause, he is not entitled to any notice.—**VAILLANCOURT v. R.**, [1927] Exch. C. R. 21.—**CAN.**

**t ii.** ———.]—**ROSS v. WILLARDS (CHOCOLATES, LTD. (Man.))**, [1927] 2 D. L. R. 461.—**CAN.**

## PART IV. SECT. 2, SUB-SECT. 11.—

**A. (g) vii.**]—**548 ii.** ———.]—A native servant

addressed a remark of a grossly insolent & insulting nature to one of his employer's customers, a European, in the presence of a gang of native fellow servants:—**Held:** the master was justified in summarily dismissing him, & was not liable for salary for the unexpired portion of the month.—**GOGI v. WILSON & COLLINS** (1927), 48 N. L. R. 21.—**S. AF.**

## PART IV. SECT. 2, SUB-SECT. 11.—

**A. (j).**]—**566 v.** ———.]—**LUCAS v. PREMIER MOTORS, LTD.**, [1928] 4 D. L. R. 526; [1928] 3 W. W. R. 192.—**CAN.**

## Part V.—Remuneration.

- 628.** *Add. Annotations* :—**Distd.** *Stevens v. Hampstead Borough Council*, [1929] 2 Ch. 239. **Refd.** *Donnerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.
- 628a.** ————.]—**ADAMS v. LIVERPOOL CORPN.** (1927), 137 L. T. 396; 91 J. P. 106; 25 L. G. R. 359, C. A.
- Annotations* :—**Folld.** *Kelsey v. Birmingham Corpn.* (1927), 92 J. P. 12; *Stevens v. Hampstead Borough Council*, [1929] 2 Ch. 239.
- 628b.** ————.]—**KELSEY v. BIRMINGHAM CORPN.** (1927), 92 J. P. 12.
- 628c.** ———— **War bonus not included—Contract to pay “full regular pay.”**—A borough council passed a resolution that all employees volunteering for military service during the war should be paid “full regular pay,” less allowances by the Govt., & their positions should be kept open until their return. Pltff. enlisted in Nov. 1914, & served till July, 1919. Between those dates several increments of pay & war bonuses were awarded to the council’s employees :—**Held** : the “full regular pay” was the pay he had been receiving down to the date of enlistment & did not include any increases or bonuses.—**STEVENS v. HAMPSTEAD BOROUGH COUNCIL**, [1929] 2 Ch. 239; 98 L. J. Ch. 289; 45 T. L. T. 430; 93 J. P. Jo. 285; 27 L. G. R. 590.
- 629.** *Add. Annotations* :—**Distd.** *Adams v. Liverpool Corpn.* (1927), 137 L. T. 396. **Apld.** *Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30. **Distd.** *Stevens v. Hampstead Borough Council*, [1929] 2 Ch. 239.
- 630.** *Add. Annotations* :—**Apld.** *Adams v. Liverpool Corpn.* (1927), 137 L. T. 396. **Folld.** *Stevens v. Hampstead Borough Council*, [1929] 2 Ch. 239.
- 644.** *Add. Annotation* :—**Refd.** *Mellor v. Beardmore* (1927), 44 R. P. C. 175.
- 700.** *Add. Annotation* :—**Refd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.
- 701.** *Add. Annotation* :—**Refd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.
- 711a.** **Agreement to pay commission—Onus of proof.**—**HART v. BENNETT & Co.** (1928), 72 Sol. Jo. 285.
- 725.** *Add. Annotation* :—**Mentd.** *Houghton v. Not-hard, Lowe & Wills* (1927), 44 T. L. R. 76.

## Part VI.—Breach of Contract and Remedies Therefor.

- 739.** *Add. Annotation* :—**Mentd.** *Livock v. Pearson* (1928), 33 Com. Cas. 188.
- 782.** *Add. Annotation* :—**Refd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.
- 788.** *Add. Annotation* :—**Consd.** *Marbé v. George Edwardes (Daly’s Theatre)* (1927), 96 L. J. K. B. 980.
- 790.** *Add. Annotation* :—**Refd.** *Marbé v. George Edwardes (Daly’s Theatre)* (1927), 43 T. L. R. 400.

## Part VII.—Duties and Liabilities of Master.

- 880.** *Add. Annotation* :—**Refd.** *James v. British General Insee.*, [1927] 2 K. B. 311.

## Part VIII.—Duties and Liabilities of Servant.

- 883.** *Add. Annotation* :—**Mentd.** *The Jupiter* (No. 3) (1927), 137 L. T. 333.
- 890.** *Add. Citations* :—96 L. J. K. B. 152; 136 L. T. 271.
- 895.** *Add. Annotation* :—**Refd.** *Re A Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.
- 908.** *Add. Annotation* :—**As to** (2) **Consd.** *A.-G. v. Goddard* (1929), 98 L. J. K. B. 743.
- 928.** *Add. Annotation* :—**Refd.** *Putsman v. Taylor*, [1927] 1 K. B. 637.
- 938.** *Add. Annotation* :—**Refd.** *Boorne v. Wicker*, [1927] 1 Ch. 667.
- 941.** *Add. Annotation* :—**Refd.** *Putsman v. Taylor*, [1927] 1 K. B. 637.

## PART V. SECT. 2, SUB-SECT. 1.—G.

**648 vi.** ————.]—A farm labourer, hired for the season at so much per month, is entitled to payment of his wages at the end of each month, unless the contract provides to the contrary.—**COWAN v. EISLER**, [1927] 2 D. L. R. 713; [1927] 1 W. W. R. 776; 36 Man. L. R. 464.—**CAN.**

## PART V. SECT. 2, SUB-SECT. 6.—A. (b).

**o i.** ————.]—An infant, who has become emancipated from the control of his father, is entitled to recover wages earned by him by working for a stranger, even though he agreed, at the time of the hiring, that his wages should be credited on a debt due from his father to his employer.—**LEZETO v. METHERAL** (Sask.), [1927] 1 W. W. R. 990.—**CAN.**

**st. Against whom maintainable—Merchant supplying planter—Wages of planter’s servants.**—**DOOLEY v. BURKE & HACKETT** (1819), 1 Nfld. L. R. 190.—**NFLD.**

## PART V. SECT. 2, SUB-SECT. 6.—A. (e).

**s. Want of notice—Of shipping of servant—21 Vic. c. 9.**—**GORF v. BARRON** (1859), 4 Nfld. L. R. 286.—**NFLD.**

## Part IX.—Liability of Master to Third Persons.

- 962a. Authority to sell.**—*SENIOR v. WOLMER* (1923), Benl. 132; 73 E. R. 990; *sub nom.* SEIGNIOR & WOLMER'S CASE, Godb. 360.
- 966. Add. Annotation:**—*Refd. Bull v. West African Shipping, etc. Co.*, [1927] A. C. 686.
- 970a.** ———.]—*Respondent superior* extends to civil matters only.—*R. v. LEVER* (1746), Barnes, 34; 94 E. R. 793.
- 987. Add. Annotations:**—*Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.
- 991. Add. Annotations:**—*Consd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd. Britt v. Galmoye & Nevill* (1928), 44 T. L. R. 294; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
- 996. Add. Annotations:**—*Consd. Poland v. Parr*, [1927] 1 K. B. 236. *Refd. Britt v. Galmoye & Nevill* (1928), 44 T. L. R. 293.
- 1005. Add. Annotation:**—*Distd. Addie R. & Sons (Collieries) v. Dumbreck*, [1929] A. C. 358.
- 1011. Add. Annotations:**—*Consd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd. Fenton Textile Assocn. v. Thomas* (1929), 45 T. L. R. 261.
- 1018. Add. Annotation:**—*Mentd. Brown v. Harrison, Hourani v. Harrison* (1927), 137 L. T. 549.
- 1093. Add. Annotation:**—*Distd. Britt v. Galmoye & Nevill* (1928), 44 T. L. R. 294.
- 1100a.** ———.]—*A.*, who had *B.* in his employment as a van-driver, lent him his private

motor car, after the day's work was finished, to take friends to a theatre. *B.* by his negligent driving injured plff.:—*Held:* as the journey was not on the master's business & the master was not in control, he was not liable for his servant's act.—*BRITT v. GALMOYE & NEVILL* (1928), 44 T. L. R. 294; 72 Sol. Jo. 122.

- 1117. Add. Annotation:**—*Mentd. Jebarra v. Ottoman Bank*, [1927] 2 K. B. 254.
- 1143. Add. Annotations:**—*Consd. William v. Larsen* (1928), 21 B. W. C. C. 339; *Templeton v. Parkin Wm. & Co.* (1929), 140 L. T. 519.
- 1145a.** ———.]—*THE ENTERPRISE, STRONG v. TAYLOR* (1853), 9 L. T. 302.
- 1173a.** ———.]—*R. v. LEVER*, No. 970a, *ante*.
- 1178. Add. Annotation:**—*Consd. Allen v. Whitehead* (1929), 15 T. L. R. 655.
- 1231. Add. Annotation:**—*Refd. Silverman v. Imperial London Hotels* (1927), 137 L. T. 57.
- 1234. Add. Annotation:**—*Refd. Brooke v. Bool*, [1928] 2 K. B. 578.
- 1255. Add. Annotation:**—*Refd. Brooke v. Bool*, [1928] 2 K. B. 578.
- 1266. Add. Annotation:**—*Refd. Brooke v. Bool*, [1928] 2 K. B. 578.
- 1267. Add. Annotation:**—*Consd. Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
- 1271. Add. Annotation:**—*Refd. Brooke v. Bool*, [1928] 2 K. B. 578.
- 1274. Add. Annotation:**—*Consd. Reigate Corpn. v. Surrey County Council*, [1928] Ch. 359.
- 1275. Add. Annotation:**—*Refd. Brooke v. Bool*, [1928] 2 K. B. 578.
- 1276. Add. Annotation:**—*Refd. Brooke v. Bool*, [1928] 2 K. B. 578.

## PART IX. SECT. 3, SUB-SECT. 1.

**964 ii.** ———.]—*ANDERSON v. ROYER*, [1928] 3 D. L. R. 248. —**CAN.**

**964 iii.** ———.]—*A* master is liable for the conduct of his servant whom he selects & puts in his place or discharge the duty he has undertaken, & this law is applicable in a case of bailment. The conduct of the servant is then the conduct of the master, & the master is liable to the bailor. —*VAN GEEL v. WARRINGTON*, [1929] 1 D. L. R. 94; 63 O. L. R. 143. —**CAN.**

## PART IX. SECT. 3, SUB-SECT. 4.—A.

**981 xxi.** ———.]—*ESTATE VAN DER BYL v. SWANEPOEL*, [1927] App. D. 141.—**S. AF.**

**981 xxii.** ———.]—*BURRIS v. DARTMOUTH TOWN* (1927), 59 N. S. R. 227.—**CAN.**

**981 xxiii.** ———.]—*Dog shot by servant.*—*SWABEY v. PALMER* (1869), (1900-1911) 1 Can. Dig. 51.—**CAN.**

**981 xxiv.** ———.]—*Where a co. holding a miner's prospecting licence sent employees into the wilderness to prospect for it under conditions which made it necessary for them to cook their own food & supplied them with the cooking utensils:—Held:* the employees in making a fire to cook breakfast preparatory to their day's work were acting within the scope of their employment, & the co. was, therefore, liable for damages caused by their negligence in failing to put out the

fire.—*MURDOCH v. CONSOLIDATED MINING SMELTING & POWER CO.*, [1928] 1 D. L. R. 853; [1928] 1 W. W. R. 578; 39 B. C. R. 386.—**CAN.**

**985 i.** ———.]—*Servant acting for master's benefit.*—*WING KEE v. BUTT* (B. C.), [1927] 2 D. L. R. 641.—**CAN.**

## PART IX. SECT. 3, SUB-SECT. 4.—C.

**997 iii.** ———.]—*McINTOSH v. CAMERON*, [1929] S. C. (Cl. of Sess.) 44.—**SCOT.**

## PART IX. SECT. 3, SUB-SECT. 13.—B. (e).

**1115 iii.** ———.]—*Applt. employed a man to take his horse from his business premises to a paddock. Without the authority of applt., the man entrusted this duty to a young boy, who rode the horse so recklessly that resp. was knocked down & injured:—Held:* applt. was not liable. —*THOMSON v. HAMILTON*, [1927] N. Z. L. R. 11.—**N.Z.**

## PART IX. SECT. 3, SUB-SECT. 13.—E.

**sj. Negligence in effecting arrest.**—*Where a co. has statutory power to employ & practically, to appoint constables, & a constable so appointed acts negligently in attempting to effect an arrest in the course of his employment by the co., he renders the co. liable for the damage caused thereby.*—*VIGNITCH v. BOND*, [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 435.—**CAN.**

## PART IX. SECT. 6, SUB-SECT. 2.—A.

**1216 viii.** ———.]—*Defts., a railway co., being authorised to construct a line of railway, entered into a contract with A. for that purpose. The contractors, in order to get ballast to complete the road, laid down a track across plff.'s land, leading to a gravel pit, & used it for the transportation of gravel to the railway:—Held:* defts. were not liable for the acts of the contractors, the trespass having been committed without their authority, & being merely collateral to the work which they had agreed with A. to perform. —*PAYNE v. FREDERICTON RY. CO.* (1871), (1825-1897) N. B. Dig. 753.—**CAN.**

**1240 i.** ———.]—*NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD*, No. 52 ii, *ante*.—**CAN.**

## PART IX. SECT. 6, SUB-SECT. 2.—B. (c) ii.

**sk. Duty to give warning of danger.**—*Persons lawfully doing a work which interferes with a public right, e.g. contractors working on a highway, must use reasonable care not to injure persons lawfully exercising that right, & therefore, must take reasonable precautions to warn such persons of dangers created by the doing of the work which the latter could not with reasonable care discover.*—*McCULLOCH v. STAR CONSTRUCTION CO.*, [1928] 1 D. L. R. 970; [1928] 1 W. W. R. 211; 22 Sask. L. R. 231.—**CAN.**

## Part X.—Rights of Master against Third Persons.

**1306a.** —.] — v. *PIKE* (1373), Y. B. 47 Edw. 3, fo. 14, pl. 15.

*Annotation* :—**Consd.** *Lumley v. Gye* (1853), 2 E. & B. 216.

**1306b.** —.] — *ANON.* (1469), Y. B. 9 Edw. 4, fo. 31, pl. 4.

**1306c.** —.] — *ADAMS & BAFEALDS CASE* (1591), 1 Leon. 240; 74 E. R. 219.

*Annotation* :—**Consd.** *Lumley v. Gye* (1853), 2 E. & B. 216.

**1307.** *Add. Annotation* :—**Refd.** *Scammell G. & Nephew v. Hurley*, [1929] 1 K. B. 419.

**1320.** *Add. Annotation* :—**Refd.** *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

## Part XI.—Liabilities of the Servant to Third Persons.

**1513.** *Add. Annotation* :—**Consd.** *Scammell G. & Nephew v. Hurley*, [1929] 1 K. B. 419.

**1539.** *Add. Citation* :—*sub nom.* *MARKWETH v. REYNOLDS & WESTWOOD*, 2 Barn. K. B. 327.

## Part XII.—Rights of the Servant against Third Persons.

**1553.** *Add. Annotation* :—**Refd.** *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

**1565.** *Add. Annotations* :—**Consd.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57; *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 138 L. T. 286. **Apld.** *Compania Mexicana*

*de Petroleo "El Aguila" v. Essex Transport & Trading Co.* (1929), 141 L. T. 106. **Consd.** *The Hayle*, [1929] P. 275. **Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.

**1572.** *Add. Annotation* :—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.

## Part XIII.—Liability of Master in Case of Accident or Death.

**1657.** *Add. Annotations* :—*As to* (1) **Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628. *Generally, Mentd.* *Lloyd v. Cook, Goudge v. Broughton, Simson v. Miall, Bartram v. Brown, Barker v. Hutson* (1928), 97 L. J. K. B. 657.

**1725.** *Add. Annotation* :—**Consd.** *Bull v. West African Shipping, etc. Co.*, [1927] A. C. 686.

**1787.** *Add. Annotations* :—**Consd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776. **Refd.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57.

### PART X. SECT. 2, SUB-SECT. 1.—A.

b. i. — *Not in absence of enticement or promise.*—An action for seduction does not lie where the intercourse did not result from enticement or promises on the part of deft.—*CLINE v. BATTLE*, [1928] 4 D. L. R. 189; [1928] 3 W. W. R. 11. —CAN.

### PART XI. SECT. 2, SUB-SECT. 2.

1508 ii. —.] — *ANANAPUR DISTRICT BOARD (PRESIDENT) v. ISMAIL SAHIB* (1927), 1 L. R. 51 Mad. 512. —IND.

### PART XIII. SECT. 1, SUB-SECT. 1.—B.

1613 vii. —.] — *Held*: the contract between employer & employed involved on the part of the former the duty of taking reasonable care to provide proper appliances, & to maintain them in a proper condition, & so to carry on his operations as not to subject those employed by him to unnecessary risk.—*HURLEY v. BOYCE*, [1928] 1 D. L. R. 1053; 61 O. L. R. 618. —CAN.

sl. *Permitting servant to act in contravention of bye-law*—*Liability of master.*—A bye-law of Toronto provided that no vehicle should be driven upon any street in the city in charge of any driver less than sixteen years old.—*Held*: the prohibition of the bye-law was not for the protection of the public; & the breach of it by the employer of a boy under sixteen, in

permitting the boy to drive a horse on public streets, did not give the boy a cause of action against his employer for injury sustained while so driving.—*MILLIGAN v. THORN* (1914), 32 O. L. R. 195; 7 O. W. N. 310. —CAN.

1623 i. *Duty to maintain premises*—*Free from concealed danger.*—Circumstances in which.—*Held*: the master was not liable.—*SIGERSETH v. PEDERSEN*, [1927] 2 D. L. R. 651; S. C. R. 342. —CAN.

### PART XIII. SECT. 1, SUB-SECT. 1.—D.

1624 v. *Varied*, 14 D. L. R. 575.

### PART XIII. SECT. 1, SUB-SECT. 3.—B.

h. i. —.] — *Pltf.*, a chambermaid, after making up a room at the end of a corridor on a Dec. afternoon, left the room, & after taking a few steps, fell over a man lying on the floor, & was injured. The corridor was fairly dark at the time & was not lighted. The man pltf. fell over disappeared immediately after the accident. The jury found defts. were negligent in not having the corridor properly lighted.—*Held*: the verdict should not be disturbed.—*BOOTH v. FORD & SHAW* (1927), 38 B. C. R. 279. —CAN.

### PART XIII. SECT. 1, SUB-SECT. 3.—C.

1658 vii. —.] — *ARMSTRONG v. CANADIAN NORTHERN RY. (Man.)*, [1917] 3 W. W. R. 219; 35 D. L. R. 568. —CAN.

### PART XIII. SECT. 1, SUB-SECT. 3.—D. (a).

n. i. —.] — *SIGERSETH v. PEDERSEN*, No. 1623 i, *ante.* —CAN.

sm. *Plant let with crew to third party*—*Plant unfit for required purpose*—*Owner of plant not informed as to required purpose.*—*Held*: the owner was not liable for damages for the death of one of the crew.—*DUBE v. ALGOMA STEEL CORPN., LTD.* (1916), 35 O. L. R. 371; 9 O. W. N. 389. —CAN.

sn. *Amount of damages recoverable.*—*BELLAMY v. GREEN*, [1927] 2 D. L. R. 327; 38 B. C. R. 182. —CAN.

### PART XIII. SECT. 1, SUB-SECT. 5.—C. (a).

1697 xviii. —.] — *M'EWAN v. EDINBURGH & DISTRICT TRAMWAYS Co.* (1899), 6 S. L. T. 400. —SCOT.

o. i. —.] — *In Nova Scotia, the Crown is entitled to raise the defence of common employment.*—*CONROD v. R.* (1913), 14 Exch. C. R. 472. —CAN.

### PART XIII. SECT. 1, SUB-SECT. 5.—C. (d) iv.

1770 iv. —.] — *M'CARTAN v. BELFAST HARBOUR COMRS.*, [1911] 2 I. R. 143, H. L. —IR.

### PART XIII. SECT. 1, SUB-SECT. 5.—C. (d) v.

1782 ii. —.] — *SWITZER v. OTTAWA*, [1928] 4 D. L. R. 991; 63 O. L. R. 168. —CAN.

1802. *Add. Annotation*:—**Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.

1815. *Add. Annotations*:—**Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628;

*Scammell G. & Nephew v. Hurley*, [1929] 1 K. B. 419.

1818. *Add. Annotation*:—**Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.

## Part XIV.—Workmen's Compensation Acts.

2045. *Add. Annotation*:—**Refd.** *Roberts v. Gardner* (1928), 21 B. W. C. C. 154.

2057. *Add. Citations*:—136 L. T. 322; 20 B. W. C. C. 139.

*Add. Annotation*:—**Refd.** *Watson v. Government Instructional Centre* (Birmingham) (1928), 97 L. J. K. B. 596.

2057a. — **Unemployed youth undergoing industrial training—In Government instructional centre.**—*Held*: not a workman within Workmen's Compensation Acts.—*WATSON v. GOVERNMENT INSTRUCTIONAL CENTRE, BIRMINGHAM* (1926), 97 L. J. K. B. 596; 139 L. T. 290; 44 T. L. R. 576; 72 Sol. Jo. 384; 21 B. W. C. C. 174, C. A.

2079a. — **Not born within normal period of gestation.**—A claim for compensation in respect of such a child:—*Held*: rightly rejected.—*RACE v. WARDSEND STEEL CO.* (1927), 20 B. W. C. C. 260, C. A.

2086. *Add. Citations*:—96 L. J. K. B. 135; 136 L. T. 290; 19 B. W. C. C. 457.

2111. *Add. Annotation*:—**Folld.** *Bloor v. Ship Sutton* (1926), 20 B. W. C. C. 12.

2114. *Add. Annotations*:—**Consd.** *Fife Coal Co. v. M'Arthur* (1926), 96 L. J. K. B. 330. **Expld.** *Welsh Navigation Steam Coal Co. v. Evans*, [1927] A. C. 834.

2115. *Add. Annotations*:—**Consd.** *Fife Coal Co. v. M'Arthur* (1926), 96 L. J. K. B. 330; *Welsh Navigation Steam Coal Co. v. Evans*, [1927] A. C. 834.

2117. *Add. Annotation*:—**Consd.** *Welsh Navigation Steam Coal Co. v. Evans*, [1927] A. C. 834.

2118. *Add. Annotations*:—*As to* (1) **Refd.** *Welsh Navigation Steam Coal Co. v. Evans*, [1927] A. C. 834. *As to* (2) **Refd.** *Welsh Navigation Steam Coal Co. v. Evans*, [1927] A. C. 834. *As to* (4) **Refd.** *Nugent v. Londonderry Collieries* (1929), 141 L. T. 619.

2120a. — — — — —.]—The expression "ordinary necessities of life" in Workmen's Compensation Act, 1925 (c. 84), s. 4, indicates food,

clothing, & shelter, but does not extend to such a thing as savings out of the surplus in earnings.—**WELSH NAVIGATION STEAM COAL CO. v. EVANS**, [1927] A. C. 834; 96 L. J. K. B. 906; 137 L. T. 775; 43 T. L. R. 730; 71 Sol. Jo. 694; 20 B. W. C. C. 537, H. L.; *reversg.* *S. C. sub nom. EVANS v. WELSH NAVIGATION STEAM COAL CO.* (1926), 96 L. J. K. B. 290, C. A.

2127a. **Probability of future support.**—A cab-driver was regularly employed at £2 5s. per week but, on the death of that employer, remained out of work for eighteen months. At the end of that time he obtained occasional employment driving to funerals, but his wages at this form of work only averaged 5s. a week. On returning from driving to a funeral he fell from the seat of his cab, & died from a fracture of the skull. At the time of his death he was wholly, & his widow mainly, dependent on a son's assistance. On a claim for compensation brought by the widow, as a dependant, the county ct. judge, in making an award in favour of the employer, said that he must be satisfied that there was a partial dependency at the time of death before he could speculate as to what the future might or might not bring forth. The dependant appealed: *Held*: the probability of the workman, if he had lived, regaining full employment, & once more supporting the dependant being a factor to be considered in deciding whether there was dependency, & it being doubtful whether this factor had been taken into account, the case must go back to the county ct. judge to consider such a probability. —*LEE v. MUNRO* (1928), 98 L. J. K. B. 49; 140 L. T. 129; 72 Sol. Jo. 779; 21 B. W. C. C. 401, C. A.

*Annotation*:—**Consd.** *Nugent v. Londonderry Collieries* (1929), 141 L. T. 619.

2128a. **Probability of increase in earnings.**—*Held*: in deciding whether dependency existed at the death the probability that but for the

### PART XIII. SECT. 2, SUB-SECT. 3.—D. (b).

1887 i. *Need not be in employer—Ship's machinery or plant.*—A labourer, employed by stevedores, brought actions for damages, on account of personal injuries sustained by him through the fall of a stanchion when engaged in discharging cargo, against the shipowners & his own employers:—*Held*: (1) the action against the shipowners was relevant; (2) the action against the stevedores fell to be dismissed as irrelevant, in respect that the stevedores were under no duty of inspecting the vessel to see to its safety for their servants.—*M'LACHLAN v. THE PEVERILL S.S. CO., LTD. & MACGREGOR & FERGUSON* (1896), 23 IL (Ct. of Sess.) 753; 33 Sc. L. R. 634; 4 S. L. T. 19.—**SCOT.**

### PART XIV. SECT. 1.

—*NIELSEN v. DORATY*, [1927] 1 D. L. R. 358; [1927] 1 W. W. R. 20; 21 Sask. L. R. 228.—**CAN.**

ii. — — — — —.]—A motor truck is not a "factory" within Workmen's Compensation Act, R. S. S. 1920, c. 210, s. 5, which provides that "factory means a building, workshop or place where machinery driven by steam, water or other mechanical power is used. . . ."—*READER v. MOORE J W CARTAGE CO.*, [1928] 3 D. L. R. 532; [1928] 2 W. W. R. 404; 22 Sask. L. R. 395.—**CAN.**

*sp. Benevolent interpretation.*—*CLARKE v. WENTWORTH STORES, LTD.*, [1928] 2 D. L. R. 796.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 1.—A. i. — — — — —.]—*LYNCH v. LIMERICK*

COUNTY COUNCIL, [1926] I. R. 176.—**IR.**  
ci. — *Nurse.*—*Held*: not within Act 25, 1914.—*LOWE v. BRUCE* (1926), 47 N. L. R. 459.—**S. AF.**

### PART XIV. SECT. 2, SUB-SECT. 2.—A.

2086 i. — *Of widow of workman—Workman not the father.*—*Held*: the word "child" includes illegitimate children of the worker, but does not include other people's children to whom he stands *in loco parentis*.—*CLARKSON v. CORRIMAL BALGOWNIE COLLIERIES, LTD.* (1928), 28 S. L. N. S. W. 583; 45 N. S. W. W. N. 184.—**AUS.**

### PART XIV. SECT. 2, SUB-SECT. 2.—C. (a).

2100 iii. — — — — —.]—*CASEY v. GREY COUNTY COUNCIL*, [1929] N. Z. L. R. 125.—**N.Z.**

accident the deceased's earnings would have increased between the date of the accident & the date of his death may be taken into account.—*NUGENT v. LONDONDERRY COLLIERY LTD.* (1929), 141 L. T. 619; 45

2134. *Add. Annotation* :—As to (2) **Consd.** *Athey v. Pickering* (1926), 96 L. J. K. B. 250.

2143. *Add. Annotations* :—**Refd.** *M'Arthur v. Fife Coal Co.* (1926), 19 B. W. C. C. 669; *Lee v. Munro* (1928), 98 L. J. K. B. 49; *Brazewell v. Emmott & Wallshaw* (1929), 140 L. T. 603; *Nugent v. Londonderry Collieries* (1929), 141 L. T. 619.

2143a. **Motive of marriage immaterial—Marriage while in dying condition.**—In 1913, the sister of the wife of a workman came to live with both of them. In 1915 the wife died & the sister-in-law stayed on as the workman's housekeeper, becoming entirely dependent on him for her support. In Dec. 1925, the workman was operated on for scrotal epithelioma, but resumed work in June, 1926. In Mar. 1928, he was certified as suffering from an industrial disease & underwent another operation. In Apr. he went to hospital, but was discharged after four days on the ground that his case was incurable, & it was then thought that he was in a dying condition. On June 7, he married his sister-in-law with the view of making her a dependant within the Act. On July 21, 1928, he died. At the time of his death he was in receipt of a weekly payment of compensation from his employers. The widow claimed compensation on the ground of total dependency. The county ct. judge found that the widow would not have been a dependant at the time of his death but for the accident, & therefore, refused compensation. The widow appealed:—**Held**: *appet.* having proved that, if the workman had not been incapacitated from earning wages, she would at the time of his death have been totally dependent upon him, & having also proved that at that time she was in fact his wife, she was entitled to an award. The fact that she married him after he had become incapacitated was immaterial, & any motive she may have had for marrying him was irrelevant.—*BRAZEWELL v. EMMOTT & WALLSHAW, LTD.* (1929), 140 L. T. 603; 45 T. L. R. 194; 73 Sol. Jo. 126; 22 B. W. C. C. 152, C. A.

*Annotation* :—**Apld.** *Nugent v. Londonderry Collieries, Ltd.* (1929), 141 L. T. 619.

2146. *Add. Annotation* :—**Refd.** *Lee v. Munro* (1928), 98 L. J. K. B. 49.

2151. *Add. Annotation* :—**Refd.** *Lee v. Munro* (1928), 98 L. J. K. B. 49.

2166a. ————**]**—A workman, when on shore, which was about three months in a year, lodged with his married sister & paid her 30s. a week, & he also paid her £1 a week whilst at sea, out of which, after paying the expenses of his keep, she made a profit. The county ct. judge found that the sister was partially dependent on his earnings:—**Held**: it was a question of fact, & there

was evidence to support the finding, & no misdirection.—*BLOOR v. SUTTON (OWNERS)* (1926), 20 B. W. C. C. 12, C. A.

2167. *Add. Citation* :—19 B. W. C. C. 394.

*Add. Annotation* :—**Fold.** *Shotts Iron Co. v. Curran*, [1929] A. C. 409.

2173. *Add. Annotation* :—As to (1) **Distd.** *Lee v. Breckman* (1928), 138 L. T. 610.

2179a. ————**Expenses.**—*Applt.*, a traveller employed by resps., had been engaged at a salary of £450 a year, but subsequently resps. by a letter agreed at his request to show his remuneration as being £150 salary & £300 for expenses. *Applt.* met with an accident & applied for compensation. The county ct. judge found that the agreement in the letter was a thing done for income tax purpose, & that *applt.*'s earnings must be treated as £450 a year, & that he was not a workman within Workmen's Compensation Acts:—**Held**: as there was no evidence as to what *applt.*'s expenses in fact were, the judge's decision was right.—*SKIDMORE v. BULLOCK, LADE & CO., LTD.* (1928), 44 T. L. R. 575; 21 B. W. C. C. 199, C. A.

2212. *Add. Annotation* :—**Distd.** *Templeton v. Parkin Wm. & Co.* (1929), 140 L. T. 519.

2213a. ————**Jobbing glazier—Supplying own tools.**—**Held**: there was evidence to support the finding of the county ct. judge that *appt.* was an independent contractor.—*WILLIAMS v. LARSEN, LTD.* (1928), 21 B. W. C. C. 339, C. A.

2216. *Add. Citation* :—*subsequent proceedings*, 15 B. W. C. C. 257, C. A.

*Add. Annotations* :—**Consd.** *Templeton v. Parkin Wm. & Co.* (1929), 140 L. T. 519. **Refd.** *Williams v. Larsen* (1928), 21 B. W. C. C. 339.

2220. *Add. Annotation* :—**Consd.** *Roberts v. Gardner* (1928), 21 B. W. C. C. 154.

2220a. ————**]**—A co., who carried on the business of manufacturing cutlery, let out the grinding of knives to one T. on a verbal agreement, terminable by a month's notice on either side. Under this agreement T. occupied a part of the co.'s premises, for which he paid rent, & was provided with power, water, light, & coal. He on his part provided the necessary labour, grinding wheels & other accessories. He could employ & dismiss what men he liked, & the co. could not object to any workman he employed except by terminating the agreement. Work was given out to him by the co.'s foreman at agreed prices & he made his profit out of the prices. He was allowed to do the work in his own way & in his own hours. He was not paid overtime, & had a key of the room in which he worked. The co. had first claim on his time & their foreman frequently came to see how the work progressed, but gave no directions. If the work had to be finished in a certain time, he was bound to finish it in that time, the co., if necessary, directing him to work overtime or get extra assistance. When work was slack, he was allowed to take in work for other firms, but the co.'s

PART XIV. SECT. 3, SUB-SECT. 2.—A. t i. ————*Nurse.*—**Held**: employed to perform work of a casual nature.—*LOWE v. BRUCE* (1926), 47 N. L. R. 459.—S. AF.

PART XIV. SECT. 3, SUB-SECT. 5. e i. ————**]**—*Pltf.* engaged with deft. to sink a well at an agreed rate per foot. Deft. exercised no control or direction over *pltf.* in the execution

of the work, *pltf.* being an expert well-sinker:—**Held**: *pltf.* was an independent contractor.—*DELOW v. BELL*, [1927] N. Z. L. R. 140.—N.Z.

work continued to take precedence. His National Health Insurance cards were stamped by the co. In 1919 he had been paid compensation by the co. for an accident. In Oct. 1927, he ceased working regularly & on Jan. 24, 1928, he was certified as suffering from silicosis. On a claim for compensation, the county ct. judge held on these facts that T. was employed under a contract of service & was a workman entitled to compensation. The co. appealed:—*Held*: there was no evidence of any right on the part of the co. to control & direct how the work was to be done. The man was an independent contractor & not a workman within the meaning of the Act.—*TEMPLETON v. PARKIN WM. & Co., LTD.* (1929), 140 L. T. 519; 22 B. W. C. C. 110, C. A.

**2229. Add. Annotation:—***Distd. Watson v. Government Instructional Centre* (Birmingham) (1928), 97 L. J. K. B. 596.

**2238. Add. Annotation:—***Refd. Geddes v. Dunfermline District Committee* (1927), 20 B. W. C. C. 815.

**2256. Add. Annotation:—***Refd. Geddes v. Dunfermline District Committee* (1927), 20 B. W. C. C. 815.

**2261. Add. Annotations:—***Consd. McFarlane v. Hutton* (Stevedores) (1926), 96 L. J. K. B. 357. *Refd. Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

**2264. Add. Annotations:—***Apld. McFarlane v. Hutton* (Stevedores) (1926), 96 L. J. K. B. 357; *Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741. *Refd. Flanagan v. Ackers Whitley* (1926), 19 B. W. C. C. 399; *Raeburn v. Lochgelly Iron & Coal Co.* (1926), 20 B. W. C. C. 637; *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274; *Wiles v. Ellerman's Wilson Line* (1928), 21 B. W. C. C. 194; *Brown v. Aveling & Porter* (1929), 22 B. W. C. C. 165.

**2276. Add. Annotation:—***Refd. Raeburn v. Lochgelly Iron & Coal Co.* (1926), 20 B. W. C. C. 637.

**2284. Add. Annotation:—***Refd. Raeburn v. Lochgelly Iron & Coal Co.* (1926), 20 B. W. C. C. 637.

**2297. Add. Annotation:—***Distd. Lee v. Breckman* (1928), 138 L. T. 610.

After this case add "*See, also, Nos. 2586–2589a, post.*"

#### PART XIV. SECT. 4, SUB-SECT. 1.

**a i.**—(*Grantor of a right to take timber.*)—An agreement whereby a landowner grants to another the right of access to his land to take timber therefrom for which the grantee pays a royalty is not a contract or "part of or a process in the trade or calling" of a farmer within Workers' Compensation Act, s. 13, & consequently the landowner is not a principal & cannot be made jointly & severally liable with the grantee pursuant to the provisions of that sect.—*MICHALIUK v. MCGREGOR*, [1929] N. Z. L. R. 245.—N.Z.

**2232 i. Foreigner resident abroad—***Accident to workman in this country.*—*SCANLON v. HARTLEPOOL SEATONIA S.S. Co., LTD.* (No. 1), [1929] I. R. 96.—IR.

#### PART XIV. SECT. 4, SUB-SECT. 3.—B.

**o i.**—(*Erecting electric cable for railway company.*)—*ITABIA v. GREAT*

*INDIAN PENINSULAR RY.* (1928), I. L. R. 53 Bom. 203.—IND.

#### PART XIV. SECT. 4, SUB SECT. 3.—D.

**aa.** *Workman receiving weekly payments from contractor.—Workman son of contractor.*—*Held*: although the contractor explained that he would not have made the payments but for the fact that the workman was his son, the facts justified the arbitrator in finding that the son had elected to take his father as his debtor in the obligation to pay compensation, & he was barred from claiming against the principal.—*GEDDES v. DUNFERMLINE DISTRICT COMMITTEE*, [1927] S. C. 797; 20 B. W. C. C. 815.—SCOT.

#### PART XIV. SECT. 5, SUB-SECT. 1.—C. (a).

**2282 ia.** *S. P. BRESNAH v. NORTHERN S.S. Co., LTD.*, [1928] N. Z. L. R. 461.—N.Z.

**2299. Add. Annotation:—***Consd. Lee v. Breckman* (1928), 138 L. T. 610.

**2300. Add. Annotations:—***As to (2) Consd. Lee v. Breckman* (1928), 138 L. T. 610. *Generally, Mentd. Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 97 L. J. Ch. 371.

**2304. Add. Annotations:—***As to (2) Refd. Raeburn v. Lochgelly Iron & Coal Co.* (1926), 20 B. W. C. C. 637; *Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

**2308. Add. Annotations:—***As to (1) Apld. Raeburn v. Lochgelly Iron & Coal Co.* (1926), 20 B. W. C. C. 637. *Refd. Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

**2309. Add. Annotations:—***Consd. Cole v. L. & N. E. Ry.* (1928), 21 B. W. C. C. 87. *Refd. Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

**2310. Add. Annotations:—***Consd. Cole v. L. & N. E. Ry.* (1928), 21 B. W. C. C. 87. *Refd. Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

**2310a.**—*Anthracosis.*—A platelayer employed by a railway co. worked in tunnels on an average of two days a week. From May 10 to Aug. 2, 1924, he was at work continuously in a long tunnel where a considerable amount of work was being done, & the full train service was running. On Aug. 2, he coughed up a lump of black stuff, & consulted a doctor, who, on Oct. 1, certified that he was suffering from anthracosis, a form of dust disease. He obtained light work as a gardener, but abandoned that on Oct. 9, 1925, & did no further work. No notice of any accident was given, nor was any claim made, until he commenced proceedings for an award some three years after he had given up work as a platelayer. The county ct. judge held *appet.* had not discharged the burden of proving that his past or present incapacity was due to injury by accident which arose out of or in the course of his employment by resps.:—*Held*: the judge was bound in law to come to the conclusion to which he did, & there was no misdirection.—*COLE v. LONDON & NORTH EASTERN RY. Co.* (1928), 21 B. W. C. C. 87, C. A.

**2316. Add. Annotations:—***Apld. Flanagan v. Ackers Whitley* (1926), 19 B. W. C. C. 399. *Consd. McFarlane v. Hutton* (Stevedores)

#### PART XIV. SECT. 5, SUB-SECT. 1.—C. (d).

**ab.** *Heart failure caused by strain—No evidence of excessive strain—Whether injury by accident.*—A workman, who was employed as a brusher in a mine, began a shift at 11 p.m. on Dec. 30. It was the last shift of the year, & the man worked more vigorously than usual in order to finish early for his own purposes. About 12.20 a.m. on Dec. 31, he complained of a pain in his side. He collapsed while at work about ten minutes later, & died shortly afterwards. Death was due to heart failure, caused by the strain of the whole work of the shift operating upon a diseased condition of the heart. There was no proof of any particular or exceptional strain, & it was not proved that the extra vigour with which the deceased had been working caused his death:—*Held*: the arbitrator was entitled to hold that the workman's death was not caused by injury by "accident" within Workmen's Compensation Acts.—*MILLAR v. COLTHERS IRON CO., LTD.*, [1929] S. C. (Ct. of Sess.) 429.—SCOT.

(1926), 96 L. J. K. B. 357. **Distd.** Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741; Muscroft v. Stewarts & Lloyds (1928), 21 B. W. C. C. 274.

**2317. Add. Annotations:—Apld.** McFarlane v. Hutton (Stevedores) (1926), 96 L. J. K. B. 357. **Distd.** Muscroft v. Stewarts & Lloyds (1928), 21 B. W. C. C. 274. **Refd.** Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741.

**2317a. Workman with heart disease—Death from strain.**—A workman, employed in a mine, exerted himself in the ordinary course of his employment in lifting & replacing the wheels of a tub which had left the rails. He immediately complained of pain. He went to work the following day, & on his way home fell dead. Death was due to the bursting of the right auricle, owing to the walls of the heart having steadily become thinner over a period of years. Medical evidence was given to the effect that the strain of lifting would tend to make the workman's condition more critical & so lead to the collapse. The county ct. judge held the workman's death was caused by an accident, & he awarded compensation:—**Held:** it was a question of fact, as to which there was evidence to support the finding.—**FLANAGAN v. ACKERS WHITLEY & Co.** (1926), 19 B. W. C. C. 399, C. A.

— — — — —]—A stevedore, who for many years had done his work without ailing, while employed unloading a ship had to fill a tub with iron ore, & at a certain point in the transit of the tub to deflect it so as to allow it to clear an obstacle. While pulling the tub into the right position he suddenly said "Oh!" & ceased work for a moment, but, recovering, put some iron ore into the tub, when he again felt ill & stopped. He lay down, & within half an hour from his saying "Oh!" was dead. On a *post mortem* examination it was found that he suffered from coronary disease of the heart, which sooner or later would have caused death:—**Held:** death resulted from a strain incurred in the ordinary exercise of the man's work, & this amounted to an accident, as to establish an accident it was not necessary to find a sudden or special strain, & an award should be made in favour of the dependant.—

**v. HUTTON BROTHERS (DORES), LTD.** (1926), 96 L. J. K. B. 357; 136 L. T. 547; 20 B. W. C. C. 222, C. A.

**Annotations:—Consd.** Muscroft v. Stewarts & Lloyds (1928), 21 B. W. C. C. 274. **Apld.** Hore v. General Steam Navigation Co. (1929), 22 B. W. C. C. 100.

**PART XIV. SECT. 5, SUB-SECT. 1.—**  
C. (f) iv.

**st. Facial paralysis—Resulting from chill.**—Award in workman's favour upheld.—**BURT v. BROKEN HILL SOUTH, LTD.** (1926), 26 S. R. N. S. W. 307; 43 N. S. W. W. N. 69.—**AUS.**

**sk. Disease proceeding from bacilli.**—A disease proceeding from bacilli may be a personal injury by accident.—**SIMPSON v. FINLAYSON** (1926), 26 S. R. N. S. W. 280; 43 N. S. W. W. N. 60.—**AUS.**

**sl. Infective jaundice.**—**Held:** there was evidence on which the arbitrator was entitled to hold the contracting of the disease was an accident, & the workman's death resulted from an injury by accident.—**RAEBURN v. LOCHGELLY IRON & COAL CO., LTD.**, [1927] S. C. 21.—**SCOT.**

**2327. Add. Annotations:—As to (1) Refd.** Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741.

**2331a. — — — — —]**—A workman, employed as a ripper, was subject to the disease of osteo-periostitis, rendering his bones brittle & even liable to a spontaneous fracture, but he was able to do his work, & in 1919, by an accident whilst so employed, suffered a fracture of his right femur. He received compensation, but in 1920 resumed work, & continued so to work until 1924, when the seam on which he was employed was shut down & he ceased to work. In Aug. 1925, he was out for a walk, & after walking two or three miles & while standing still his right tibia suddenly snapped, & he claimed compensation for the injury, on the ground that it was attributable to the accident suffered by him in 1919. The medical theory advanced was that, after the injury suffered from the accident in 1919, the muscles of the leg became inelastic, & if he slipped his power of recovering himself would be affected. There was no evidence that he did slip when the tibia snapped in Aug. 1925. The county ct. judge held the injury was due to the first accident in 1919, & awarded compensation:—**Held:** there was no evidence to support the finding, & the award must be set aside.—**WERRIN v. UNITED NATIONAL COLLIERIES, LTD.** (1926), 20 B. W. C. C. 166, C. A.

**2336. Add. Annotations:—Distd.** Lawrence v. Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758. **Consd.** Lee v. Breckman (1928), 138 L. T. 610.

**2339. Add. Annotations:—As to (1) Refd.** Moule v. Marmite Food Extract Co. (1927), 20 B. W. C. C. 446. **As to (2) Consd.** Gorman v. Barclay Curle (1925), 19 B. W. C. C. 561. **Refd.** Robertson v. S.S. Appalachee, Rovira v. Same (1926), 136 L. T. 488.

**2340a. — — — — —]**—**PRUCE v. DAVEY**, No. 2460b, *post*.

**2342. Add. Annotation:—Consd.** Howells v. G. W. Ry. (1928), 97 L. J. K. B. 183.

**2342a. — — — — —]**—A dock labourer was employed to load cargo into a steamer in a dock. He could have reached the shed where he worked by a provided route over a metalled road, but as this was a long way round he took a shorter cut, which involved his crossing a number of railway lines on the level, & while doing so was knocked down & killed by a light engine. The county ct. judge found that deceased could have used the

**PART XIV. SECT. 5, SUB-SECT. 2.—A.**

**2332 ii. — — — — —]**—Where it cannot be said that it was part of the workman's duty to hazard, to suffer or to do the act which was the cause of his injury, it follows that the accident was not one "arising out of" the employment, within Workmen's Compensation Act, R. S. S. 1920, c. 210, s. 4.—**KILGREN v. BROWNING RURAL MUNICIPALITY**, [1928] 3 W. W. R. 699.—**CAN.**

**p i. — — — — —]**—**Fighting with fellow-workman.**—Appet. was employed in a room of resp.'s factory with instructions, he alleged, to prevent employees from other rooms from loitering there. An employee from another room having entered, appet. ordered him to leave, following which blows ensued between this employee & appet., & appet. received facial injuries:—**Held:** the

accident to appet. did not arise out of or in the course of his employment.—**BROWN v. ALBANY BELL, LTD.** (1927), 29 W. A. L. R. 132.—**AUS.**

**2337 i. — — — — —]**—**"In the course of the employment."**—**WELLS v. MORGAN**, [1928] 3 W. W. R. 710.—**CAN.**

**q i. — — — — —]**—**RALLI BROS. v. PERUMAL** (1929), 1 L. R. 52 Mad. 747.—**IND.**

**PART XIV. SECT. 5, SUB-SECT. 2.—**  
B. (a) i.

**t i. — — — — —]**—**HOLDING v. SOUTH AUSTRALIAN RAILWAYS COMR.**, [1925] S. A. S. R. 92.—**AUS.**

**c i. — — — — —]**—**Partly due to wilful misconduct of workman.**—**BAKER v. NEW SOUTH WALES RAILWAY COMRS.** (1927), 28 S. R. N. S. W. 50; 45 N. S. W. W. N. 21.—**AUS.**



provided way through the docks, but as he did not do so, but used an unauthorised route, albeit one commonly used to the knowledge & with the implied permission of the co.'s officials by a large number of workmen, & as at the time when the accident happened he was not doing anything which he was under any obligation to do, the accident did not arise in the course of the employment:—*Held*: this was a misdirection. On the facts, the workman was on the employers' premises, proceeding to work over an accustomed & permitted, though not a provided, route, & the accident arose out of & in the course of the employment.—*Howells v. Great Western Ry. Co.* (1928), 97 L. J. K. B. 183; 138 L. T. 544; 21 B. W. C. C. 18, C. A.

*Innotation*:—*Distd.* *Black v. Hesperides S.S. Owners* (1929), 22 B. W. C. C. 295.

**2347. Add. Annotation**:—*Refd.* *Anderson v. Hickman H. & Co.* (1928), 21 B. W. C. C. 369.

**2348. Add. Annotation**:—*Refd.* *Iye v. British & Argentine Meat Co.* (1923), Ltd. (1927), 20 B. W. C. C. 341.

**2355. Add. Annotation**:—*Refd.* *Black v. Hesperides S.S. Owners* (1929), 22 B. W. C. C. 295.

**2356. Add. Annotations**: *Refd.* *Morrison v. S.S. Aboukir, Woods v. Same* (1928), 21 B. W. C. C. 163; *Black v. Hesperides S.S. Owners* (1929), 22 B. W. C. C. 295.

**2357. Add. Annotation**:—*Consd.* *Howells v. G. W. Ry.* (1928), 97 L. J. K. B. 183.

**2360. Add. Annotations**:—*Apld.* *Howells v. G. W. Ry.* (1928), 97 L. J. K. B. 183. *Folld.* *Anderson v. Hickman H. & Co.* (1928), 21 B. W. C. C. 369.

**2364. Add. Annotations**:—*Apld.* *M'Pherson v. Reid M'Farlane* (1926), 19 B. W. C. C. 575; *Pruce v. Davey* (1926), 136 L. T. 601; *Robertson v. S.S. Appalachee, Rovira v. Same* (1926), 136 L. T. 488. *Consd.* *Iye v. British & Argentine Meat Co.* (1923), Ltd. (1927), 20 B. W. C. C. 341; *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446; *Howells v. G. W. Ry.* (1928), 97 L. J. K. B. 183; *Black v. Hesperides S.S. Owners* (1929), 22 B. W. C. C. 295. *Refd.* *Anderson v. Hickman H. & Co.* (1928), 21 B. W. C. C. 369.

**2366. Add. Annotations**:—*Apld.* *Robertson v. S.S. Appalachee, Rovira v. Same* (1926), 136 L. T. 488; *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446. *Refd.* *Anderson v. Hickman H. & Co.* (1928), 21 B. W. C. C. 369.

**2368a. — No obligation to use conveyance.**—Employers used female labour for the picking of potatoes on their farm. In order to induce women to come from a distance they provided a horse lorry to convey them to & from their homes, but the women were under no obligation to use the lorry. The usual course was for the women, when they had finished their work, to walk back to the employers' yard, where the lorry was waiting. On a particular day the worker, having finished her work, was standing in the yard with her fellow-employees, & the employers' foreman told them to load up on the lorry. The women sat as usual with their legs dangling over the side of the lorry. As the lorry left the yard one of the worker's legs was crushed between the lorry & a gate-post. The county

ct. judge held that the worker was not in the yard under any express or implied term of her contract of service, that the yard was not within the ambit of her work, & that it was unnecessary for her to be there either for the performance of her duties or for the purpose of going home, & made an award in favour of the employers. The worker appealed:—*Held*: the case was covered by authority, & the accident arose out of & in the course of the worker's employment. It is sufficient for a workman to show that an accident occurs when he is on his employer's premises & travelling by a permitted route.—*Anderson v. Hickman H. & Co., Ltd.* (1928), 21 B. W. C. C. 369, C. A.

**2369. Add. Annotation**:—*Refd.* *Robertson v. S.S. Appalachee, Rovira v. Same* (1926), 136 L. T. 488.

**2370. Add. Annotation**:—*Refd.* *Robertson v. S.S. Appalachee, Rovira v. Same* (1926), 136 L. T. 488.

**2370a. — Different boat used by workman.**—*Robertson v. Appalachee (Owners), Rovira v. Same*, No. 2552a, post.

**2372. Add. Annotation**:—*Consd.* *Gorman v. Barclay Curle* (1925), 19 B. W. C. C. 564.

**2381. Add. Annotation**:—*Distd.* *Standen v. Smith* (1927), 20 B. W. C. C. 305.

**2384a. —**—A butcher's boy was allowed to go home for his tea, for which there was not a fixed time, & generally he was told to deliver or take orders from customers on his way there or back. If he had orders to deliver, he rode a bicycle, & on Dec. 17, 1926, he was told he might go for his tea, & was to deliver an order on the way, & take two orders coming back. He delivered the order, had his tea, & was bicycling back, but before he had called for the two orders he was knocked down by a motor lorry & injured. The county ct. judge found that at the time of the accident the boy was engaged on his own affairs in returning from tea, & that the accident did not arise out of & in the course of his employment:—*Held*: there was evidence to support the finding, & no misdirection.—*Lye v. British & Argentine Meat Co.* (1923), Ltd. (1927), 20 B. W. C. C. 341, C. A.

**2384b. —**—A workman employed on a night shift was permitted to leave the premises to get his supper. There was no necessity for this, & he could do as he pleased. He did in fact leave the premises for his supper & met with an accident in a public street:—*Held*: the accident did not arise out of & in the course of the employment, because at the time of the accident the workman was not doing anything in discharge of a duty which he owed to his employers.—*Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446, C. A.

**2388a. —**—A watchman was employed on an estate in which sewers were being constructed in a trench by the side of a highway. He could go anywhere on the estate, but had to give special attention to the open trench & to look after the red lights at night-time. He was provided with a watchman's box & a coke brazier. During one of his watches, which was twenty-four hours in length, he took the brazier into a workman's day shelter

on the estate, but 300 yards from the trench, covered the shelter completely over with a tarpaulin, took his boots off, & lay down to sleep. He was later found dead in this situation, having been suffocated by the fumes from the coke brazier. On a claim by the widow the county ct. judge held that, as the deceased was on his employer's premises in pursuance of his duty, the accident arose out of & in the course of the employment. The employers appealed:—*Held*: there was, on the evidence, no causal connection between the employment & the death, & therefore, the accident did not arise out of & in the course of the employment.—*BUCKLAND v. FRENCH (W. & C.) (1929)*, 45 T. L. R. 193; 22 B. W. C. C. 132, C. A.

**2401. Add. Annotations:—***Consd. Durie v. Anchor-Donaldson Line (1925)*, 19 B. W. C. C. 512. *Appld. Gorman v. Barclay Curle (1925)*, 19 B. W. C. C. 564.

**2407. Add. Annotation:—***Refd. Altobelli v. Ellis (1926)*, 136 L. T. 602.

**2409. Add. Annotation:—***Refd. Stephen v. Cooper, [1929] A. C. 570.*

**2415. Add. Annotations:—***Consd. Altobelli v. Ellis (1926)*, 136 L. T. 602; *Edwards v. Gwauncae-gurwen Colliery Co., James v. Same, Jenkins v. Same (1926)*, 96 L. J. K. B. 337; *James v. Penderyn Limestone Quarries (Hirwain) (1926)*, 20 B. W. C. C. 27; *Jardine v. Steel Co. of Scotland (1926)*, 19 B. W. C. C. 726; *Clarke v. Southern Ry. (1927)*, 96 L. J. K. B. 572; *Stephen v. Cooper, [1929] A. C. 570. Appld. Davison v. Holmside & South Moor Collieries, Napper v. Lambton, Hetton & Joicey Collieries (1929)*, 140 L. T. 511. *Refd. Durie v. Anchor-Donaldson Line (1925)*, 19 B. W. C. C. 512.

**2425. Add. Annotations:—***Consd. Edwards v. Gwauncae-gurwen Colliery Co., James v. Same, Jenkins v. Same (1926)*, 96 L. J. K. B. 337; *Clarke v. Southern Ry. (1927)*, 96 L. J. K. B. 572. *Appld. Howells v. G. W. Ry. (1928)*, 97 L. J. K. B. 183; *Stephen v. Cooper, [1929] A. C. 570.*

**2426a. — Alighting from train in motion.]—***ALTOBELLI v. JOHN ELLIS & SONS, LTD., No. 2574a, post.*

**2430a. — Taking short cut through danger area.]**—The deceased workman was a general labourer employed by resps. as a stand-by man around a mechanical navvy to assist the engine-driver. During a short interval when he was not required at the navvy, he went away to a neighbouring kiln to warm his hands or to warm himself, which he was entitled to do. He returned to his proper place for his work by taking a "short cut" which brought him under the bucket of the navvy. This he had been warned by his

employers not to do. As he was proceeding back to work by this "short cut," the engine-driver's foot slipped off the controls, with the result that the bucket fell on the workman's head & killed him:—*Held*: the workman was performing the work which he was employed to do in a way in which he was warned not to do it, but he was, nevertheless, doing something for the purposes of his employment. The case therefore came within Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), & the widow was entitled to compensation.—*BROTHERTON v. JACKSON (J. & A.) (1928)*, 98 L. J. K. B. 76; 140 L. T. 271; 21 B. W. C. C. 382, C. A.

**2437. Add. Annotations:—***Consd. Altobelli v. Ellis (1926)*, 136 L. T. 602; *Clarke v. Southern Ry. (1927)*, 96 L. J. K. B. 572. *Refd. Davison v. Holmside & South Moor Collieries, Napper v. Lambton, Hetton & Joicey Collieries (1929)*, 140 L. T. 511.

**2439a. Farm hand adjusting mower.]—**A workman employed as a harvest hand on a farm was engaged in driving a two-horse mower with a cutting-blade for cutting the corn, & had occasion to replace a chain which had become detached from the back-band of one of the horses. He did not put the cutting-blade out of gear, but stood up from his seat on the machine & attempted to walk out on the pole between the horses in order to reach the detached chain. There was no express prohibition against walking on the pole, but the customary & proper method of replacing a chain was to stop the mower, put the cutting-blade out of gear, fasten the reins, dismount from the machine & walk to the horses' heads. The weight of the workman on the pole caused the horses to start, setting the cutting-blade in motion. He fell on to the blade & was seriously & permanently injured. In a claim for compensation the arbitrator found that the injury sustained was not due to an accident arising out of the employment. On appeal by the workman it was held by the Second Division of the Ct. of Session that there was evidence on which the arbitrator could make that finding. The workman again appealed:—*Held*: the accident arose from an added peril to which the workman had voluntarily exposed himself & consequently did not arise out of his employment.—*STEPHEN v. COOPER, [1929] A. C. 570*; 98 L. J. P. C. 97; 141 L. T. 300; 45 T. L. R. 413; 73 Sol. Jo. 268; 22 B. W. C. C. 339, II. 1.

**2440. Add. Annotation:—***Consd. Poland v. Parr, [1927] 1 K. B. 236.*

**2446. Add. Annotation:—***As to (1) Refd. James v. Penderyn Limestone Quarries (Hirwain) (1926)*, 20 B. W. C. C. 27.

**2447. Add. Annotations:—***Appld. Painter v. C. & S. L. Ry. (1926)*, 20 B. W. C. C. 157. *Refd.*

PART XIV. SECT. 5, SUB-SECT. 2.—  
D. (b) i.

RY. Co. v. KASHINATH OHIMAJI (1927),  
1 L. R. 52 Bom. 45.—IND.

CARMICHAEL, [1929] S. C. (Ct. of Sess.)  
200.—SCOT.

himself to any greater risk than that to which an ordinary traveller in the train would have been exposed, & the accident had arisen out of his employment.—*GREAT INDIAN PENINSULAR*

PART XIV. SECT. 5, SUB-SECT. 2.—  
D. (b) ii.

g. i. — *Workman urinating by stationary truck—Without preliminary inquiry as to shunting.]—M'INTOSH v.*

ap. *Workman employed to water sheep & look after & bring in horses—Death through accidental discharge of gun—Use of gun expressly forbidden.]—Held*: the accident did not arise out of deceased's employment.—*DORIZZI v. MACKEY (1925)*, 27 W. A. L. R. 93.—AUS.

*Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram* (1927), 96 L. J. K. B. 490.

**2448a.** ———.]—A porter, after a gate of a train had been shut, got on to the small piece of platform outside the gate to talk to the gateman, & as the train gathered speed very quickly, was carried into the tunnel & seriously injured. He acknowledged that the only time a porter had a right to be on the platform of a train was for the purpose of removing luggage. There was also a regulation forbidding any porter to do what he was doing at the time of the accident. The county ct. judge held the accident did not arise out of the employment, & as the act that caused it was not done for the purposes of & in connection with the employers' trade or business, the accident was not to be deemed to have arisen out of the employment:—*Held*: there was evidence to support the award, & no misdirection.—*PAINTER v. CITY & SOUTH LONDON RY. CO.* (1926), 20 B. W. C. C. 157, C. A.

**2452.** *Add. Annotations*:—*Refd.* *Durie v. Anchor-Donaldson Line* (1925), 19 B. W. C. C. 512; *Gorman v. Barclay Curle* (1925), 19 B. W. C. C. 564.

**2456.** *Add. Annotations*:—*Consd.* *Pruce v. Davey* (1926), 136 L. T. 601; *Robertson v. S.S. Appalachee, Rovira v. Same* (1926), 136 L. T. 488; *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446.

**2460a.** *Farm labourer—Carting turf to own cottage.*]—Applt. was employed by resp., his cousin, as a farm labourer. He had all his meals in the farmhouse & was paid 10s. a week. Resp. allowed him to cut turf & use it for his own purposes, & also allowed him to have the use of a horse & cart to cart the turf to his cottage. While so carting it, he was run into by a motor car & received serious injuries:—*Held*: the accident did not arise out of & in the course of applt.'s employment.—*STANDEN v. SMITH* (1927), 20 B. W. C. C. 305, C. A.

**2460b.** *Leaving premises to purchase provisions.*]—Deceased was employed as the only shop assistant in a shop, & used to have his tea in the shop & went to fetch the milk for his tea from across the road. The shop was left open during his tea hour if he liked. While crossing the road to get the milk, he was knocked down by a motor cyclist, & was killed. Deceased paid for his own milk for his tea, & if he chose to might have got his tea out:—*Held*: the injury having occurred at the time when deceased had left the place of & the course of his employment to get the milk for his tea at his own cost for his own purposes, the accident did not arise out of & in the course of his employment, as he was not within the test laid down in *Parker v. Black Rock (Owners)*, No. 2456, & by *LORD ATKINSON* in *St. Helens Colliery Co., Ltd. v. Hewitson*, No. 2364.—*PRUCE v. DAVEY* (1926), 136 L. T. 601; 20 B. W. C. C. 237, C. A.

**2472.** *Add. Annotation*:—*Consd.* *Edwards v. Gwauncaegurwen Colliery Co., James v.*

*Same, Jenkins v. Same* (1926), 136 L. T. 494.

**2479a.** ———.]—A young girl was injured while cleaning a machine for pulping cheese. She was employed to dust bottles & sweep the floors & not to do any work in connection with the machine, & permission to help on the machine had been refused:—*Held*: as the girl was injured when doing something entirely different in kind from what she was employed to do, the accident did not arise out of or in the course of her employment, & *Workmen's Compensation Act, 1923* (c. 42), s. 7, did not apply to such a case.—*DENNISON v. KEILLER, LTD.* (1926), 19 B. W. C. C. 409, C. A.

**2483.** *Add. Annotation*:—*Refd.* *Clarke v. Southern Ry.* (1927), 96 L. J. K. B. 572.

**2486.** *Add. Citation*:—136 L. T. 208.

**2488a.** *Riding on engine.*]—The duty of C., a workman in the employ of the S. Railway, required him to go from point A. to point B. on their premises. Instead of going by a public road he proceeded to walk along the permanent way, a shorter route, in disregard of an emphatic prohibition. It was a common practice, acquiesced in by the railway's responsible officers, though forbidden by their rules, for workmen passing between A. & B. to travel on an engine if one happened to be running at a convenient time. When C. had walked about three-quarters of the distance along the line an engine going in the same direction passed him at a low speed, & to save himself the trouble of completing the journey on foot, he attempted to mount the engine in motion, with the result that he was seriously & permanently injured. The county ct. judge found that, although the prohibition was a very real one, C. was entitled to compensation, as he was acting "for the purposes of & in connection with" the railway's business within *Workmen's Compensation Act, 1925* (c. 84), s. 1 (2):—*Held*: the above sub-sect. did not extend compensation to workmen who were not in their employment at all, & as C. in going into a definitely prohibited area, had gone outside his sphere of employment, he could not recover.—*CLARKE v. SOUTHERN RY. CO.* (1927), 96 L. J. K. B. 572; 137 L. T. 200; 20 B. W. C. C. 309, C. A.

*Annotation*:—*Distd.* *Brotherton v. Jackson* (1928), 98 L. J. K. B. 76.

**2489.** *Add. Annotations*:—*Consd.* *Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337; *Jardine v. Steel Co. of Scotland* (1926), 19 B. W. C. C. 726; *Clarke v. Southern Ry.* (1927), 96 L. J. K. B. 572. *Apld.* *Stephen v. Cooper*, [1929] A. C. 570.

**2492a.** ———.]—Some miners had been conveyed from their work at the face to the shaft in a train of tubs provided by the employers. Some conveyance was necessary in order to enable the men to leave the pit within the limit of seven hours permitted for each shift. Subsequently the employers provided a "spake," i.e., a train of special vehicles containing seats. On the occasion of the accident the driver in charge of the spake, for

some purpose of his own, did what he had sometimes done before, namely, instead of using the spake used a train of tubs for conveying the miners, who knew that riding on tubs was prohibited, but did not complain. The train of tubs broke & overturned, & two of the miners were killed, & one was slightly injured:—*Held*: the prohibition was of the class that dealt with conduct within the sphere of the employment, & Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), applied. It was necessary for the employers that the men should leave within a specified time, & the act was done for the purposes of the employers' trade or business, & compensation should be awarded to the dependants of the two miners who were killed, but not to the slightly injured miner, who was, for that reason, not covered by sect. 1 (2).—*EDWARDS v. GWAUNCAEGURWEN COLLIERY CO., JAMES v. SAME, JENKINS v. SAME* (1926), 96 L. J. K. B. 337; 136 L. T. 494; 20 B. W. C. C. 75, C. A.

*m*.—*Consd.* Brotherton v. Jackson (1928), 98 L. J.

**2494. Add. Annotations:—***As to* (1) *Refd.* James v. Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Stephen v. Cooper, [1929] A. C. 570.

**2494a. —**—A shunter was employed to accompany a short train & to get down to open gates, through which the train had to pass, & also to do the necessary shunting. He should have ridden in the front waggon, but used to ride by means of his coupling stick on the buffer so as to enable him to get off & on more easily. Whilst so engaged the train went over a stone & jolted him off, & the injury he received resulted in the loss of a leg. Riding on a waggon by means of a coupling pole was prohibited:—*Held*: the prohibition was not one defining the sphere of the man's employment, though the breach of it, apart from Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), would have prevented the accident arising out of the employment. There was evidence to support the finding of the county ct. judge that the act done was for the purposes of & in connection with the employers' trade or business, & the accident, by sect. 1 (2), was to be deemed to arise out of the employment.—*JAMES v. PENDERYN LIMESTONE QUARRIES (HIRWAIN), LTD.* (1926), 20 B. W. C. C. 27, C. A.

*Annotations:—**Apld.* Davison v. Holmside & South Moor Collieries, Napper v. Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511. *Refd.* Stokoe v. Mickley Coal Co. (1928), 138 L. T. 566.

**2496. Add. Annotation:—***As to* (1) *Refd.* Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 96 L. J. K. B. 337.

**2499. Add. Annotations:—***As to* (1) *Consd.* Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 96 L. J. K. B. 337; *Apld.* McCorquindale v.

Carnbroe Coal Co. (1926), 20 B. W. C. C. 689. *Consd.* Clarke v. Southern Ry. (1927), 96 L. J. K. B. 572. *Distd.* Wood v. Garscube Colliery Co. (1927), 20 B. W. C. C. 837; Brotherton v. Jackson (1928), 98 L. J. K. B. 76. *Refd.* Dennison v. Keiller (1926), 19 B. W. C. C. 409. *As to* (2) *Apld.* Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 96 L. J. K. B. 337. *Consd.* James v. Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Carter v. British Thomson-Houston Co. (1927), 137 L. T. 329. *Apld.* Stokoe v. Mickley Coal Co. (1928), 138 L. T. 566. *Refd.* Clarke v. Southern Ry. (1927), 96 L. J. K. B. 572. *Generally, Refd.* Davison v. Holmside & South Moor Collieries, Napper v. Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511.

**2501. Add. Annotations:—***Consd.* Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 96 L. J. K. B. 337. *Distd.* Carter v. British Thomson-Houston Co. (1927), 137 L. T. 329. *Refd.* James v. Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Stokoe v. Mickley Coal Co. (1928), 138 L. T. 566

**2506. Add. Annotations:—***Consd.* Stokoe v. Mickley Coal Co. (1928), 138 L. T. 566. *Refd.* Guest v. Gaston, [1927] 1 K. B. 1.

**2506a. —**—S., a stoneman, was employed by resps. driving a drift through rock by shotfiring & was found dead within three yards of the working face, his body being very badly damaged & his left arm practically blown off, he being a left-handed man. The drill & ratchet were found burnt, broken, & twisted a few yards from the working face, & the standard some way from the face & undamaged. The drill & ratchet together with the standard were used for drilling holes to put the shots in, but if a shot misfired & the stemming was drilled out the standard was not used. S. was a licensed shot firer, & his duty would be to deal with the case of a misfire, but the use of a hole in which a shot had misfired was prohibited, as also the drilling out of it the stemming in order to put in another charge, it being directed that a fresh hole must be bored not less than a foot from the old hole. There was no evidence that there had been any attempt to drill a fresh hole. The county ct. judge held the man was killed whilst doing a prohibited act, but, as his motive was to save himself the trouble of drilling a fresh hole, he was not at the time of the accident doing an act for the purposes of & in connection with the employers' trade or business within Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), & his dependant was not entitled to recover compensation:—*Held*: the personal motive of the man in doing the prohibited act was not a criterion as to whether he was doing it for the purposes

PART XIV. SECT. 5, SUB-SECT. 2.—  
E. (b) iii.

**2498 iii. —**—*Firing shots—Shot firer connecting cable with charge—Premature firing by miner.*—*Held*: the shot firer was entitled to compensation.—*WOOD v. GARS\_CUBE COLLIERY CO., LTD.,* (1927) S. C. 877; 20 B. W. C. C. 837.—*SCOT.*

*b i. —*Fireman converting electric detonator into fuse detonator.—*Held*:

the workman, when injured, was doing an act not within the scope of his employment, & even assuming it was done for the purposes of the employer's business, it was not an act to which Workmen's Compensation Act, 1923 (c. 42), s. 7, applied.—*MCORQUINDALE v. CARNBROE COAL CO., LTD.,* [1927] S. C. 14.—*SCOT.*

*d i. —*Allowing burning material to lie about mine.—*Held*: (1) a smouldering

cigarette was "burning material" within Coal Mines General Regulations, 1913, r. 12; (2) there was evidence on which the arbitrator was entitled to hold that the workman had been guilty of serious & wilful misconduct, in respect that the facts showed that he had created a dangerous situation as a result of a deliberate act of the will.—*SMITH v. WEMYSS COAL CO.,* [1928] S. C. 180.—*SCOT.*

of & in connection with the employers' trade or business, & as the man was engaged at the working face within the sphere of his employment he must be deemed to have acted for the purposes of & in connection with the employers' trade or business, & though doing a prohibited act, he was brought back within sect. 1 (1), & compensation was payable as for an accident arising out of & in the course of the employment.—**STOKOE v. MICKLEY COAL CO., LTD.** (1928), 138 L. T. 566; 21 B. W. C. C. 70, C. A.

*Annotation*:—**Refd.** *DAVISON v. HOLMSIDE & SOUTH MOOR COLLIERIES, NAPPER v. LAMBTON, HETTON & JOICEY COLLIERIES* (1929), 140 L. T. 511.

**2511. Add. Citations**:—96 L. J. P. C. 17; 136 L. T. 66.

*Add. Annotations*:—*As to* (2) **Consd.** *JAMES v. PENDERYNN LIMESTONE QUARRIES (Hirwain)* (1926), 20 B. W. C. C. 27. **Apld.** *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566. **Refd.** *DAVISON v. HOLMSIDE & SOUTH MOOR COLLIERIES, NAPPER v. LAMBTON, HETTON & JOICEY COLLIERIES* (1929), 140 L. T. 511.

**2512a.** —.—*DAVISON v. HOLMSIDE & SOUTH MOOR COLLIERIES, LTD., NAPPER v. LAMBTON, HETTON & JOICEY COLLIERIES, LTD.* (1929), 140 L. T. 511; 45 T. L. R. 188; 22 B. W. C. C. 51, C. A.

**2512b. Riding on journey of trams.** A miner & his son, working on the same shift, had to return to the pit shaft by the main drift along which journeys of trams were being hauled. While they were returning, the cable of a journey of trams broke & ran back some twenty yards. The son was then found to be pinned underneath the corner of an overturned tram & the father was found lying across another derailed tram, holding the signal rope & seriously injured. The boy died immediately & the father died two days later. The widow claimed compensation on behalf of herself & her surviving children. The county ct. judge found that the workman had been riding on the journey of trams contrary to the prohibition contained in Coal Mines Act, 1911 (c. 50), s. 43 (2), & consequently was not acting in the course of his employment at the time of the accident. He therefore made an award in favour of the employers. The dependants appealed: *Held*: there was evidence to support the finding & no misdirection.—**EDWARDS v. OCEAN COAL CO., LTD.** (1929), 22 B. W. C. C. 254, C. A.

**2515a. Workman entering prohibited place by mistake.**—A series of cubicles for electrical works were in course of being fitted up, some of which had been completed & contained live electrical machinery, & were locked. There was an express order to the workmen not to enter the completed cubicles. The cubicles being worked upon were quite close to those finished, being in the same series. The workman, a very competent man at his job, was very short-sighted, & was found electrocuted in one of the completed cubicles, he having unlocked the others. The county ct. judge drew the inference that the workman had entered a completed cubicle by mistake, & was there for the purposes of his employers' trade or business, & that the accident arose out of & in the course of his employment: —*Held*: there was evidence to support this inference of fact, & although the workman

was acting contrary to a prohibition, the accident must be deemed to arise out of & in the course of the employment.—**CARTER v. BRITISH THOMSON-HOUSTON CO., LTD.** (1927), 137 L. T. 329; 20 B. W. C. C. 331, C. A.

**2535. Add. Annotation**:—**Refd.** *EDWARDS v. GWAUNCAEGURWEN COLLIERY CO., JAMES v. SAME, JENKINS v. SAME* (1926), 96 L. J. K. B. 337.

**2547. Add. Annotation**: *As to* (2) **Refd.** *DURIE v. ANCHOR-DONALDSON LINE* (1925), 19 B. W. C. C. 512.

**2548. Add. Annotations**: **Apld.** *MORRISON v. S.S. ABOUKIR, WOODS v. SAME* (1928), 21 B. W. C. C. 163. **Refd.** *BLACK v. HESPERIDES S.S. OWNERS* (1929), 22 B. W. C. C. 295.

**2552a. Drowned when using boat not provided by employer.**—Five sailors got leave to go on shore. The bo'sun said that they were not bound to be back in the ship until 6.15 a.m. A launch had been provided to take the sailors on leave to the shore & back again, & the captain told the men that the last journey to the ship by the launch would be made at 8 p.m., & that if they came back later than that, they would have to find some other means of returning to the ship. The men desired to enjoy their leave till later than 8 p.m., & tried to arrange with the man who worked the launch to come for them at 10 p.m., offering to pay him 2s. each, but the launch never came for them at 10 p.m., so they got into the first boat handy, a dinghy, & borrowed a scull with which they propelled the dinghy from the stern. The dinghy, though the men were unaware of it, was rotten & sank, the result being that three of the five men were drowned: —*Held*: there was no contractual obligation on the deceased men to return to their ship by the boat they used, which was not provided by the employers, & as no such duty was on the men to use that boat, the accident by which they lost their lives was not in the course of performing some duty arising out of their contract of service, or, in other words, in the course of their employment.—**ROBERTSON v. APPALACHEE (OWNERS), ROYRA v. SAME** (1926), 136 L. T. 188; 20 B. W. C. C. 57, C. A.

*Annotations*:—**Consd.** *MORRISON v. S.S. ABOUKIR, WOODS v. SAME* (1928), 21 B. W. C. C. 163; *BLACK v. HESPERIDES S.S. OWNERS* (1929), 22 B. W. C. C. 295.

**2552b. Standing up in boat to take hold of gangway—Boat sinking.**—M. & W. were members of the crew of a ship lying in a river about twenty-five feet from the wharf. The ship provided no boat for the purpose of going to or from the shore. A game of football was being played on shore, at which the captain & some of the officers were present & in which M. took part. On returning to the wharf after the game M. hailed W., who got into a canoe at the foot of the gangway & fetched M. When M. got up to take hold of the gangway, the canoe filled, & both men were drowned. The county ct. judge held the accident was occasioned by a reasonable attempt to get hold of the gangway, & such attempt involved more than an ordinary risk of navigation to which any passenger would be exposed, & was an act specifically connected with his employment on the ship, & he made an award in favour of the dependants in both cases, on the

ground that both men had been drowned in an accident arising out of & in the course of their employment:—*Held*: there was evidence to support the finding.—*MORRISON v. ABOUKIR (OWNERS), Woods v. SAME* (1928), 21 B. W. C. C. 163, C. A.

**2559. Add. Annotations:—***As to (3) Apld. Howells v. G. W. Ry.* (1928), 97 L. J. K. B. 183. *Refd. Jardine v. Steel Co. of Scotland* (1926), 19 B. W. C. C. 726.

**2561a. Seaman crossing barges instead of using boat.**—A sailor who was on shore on leave from his ship returned to the ship by walking over barges which lay between it & the quay, & while doing so, fell into the water & was drowned. The employers had provided a boat & boatman for the members of the crew to get from & to the ship, but most of the crew used the way over the barges, & that was acquiesced in by the officers:—*Held*: the sailor being under no obligation or duty to his employers to return by this means, was not in the course of his employment in so doing, & therefore the accident did not arise in the course of the employment.—*BLACK v. HESPERIDES S.S. OWNERS* (1929), 22 B. W. C. C. 295, C. A.

**2569. Add. Annotation:—***Refd. Gorman v. Barclay Curle* (1925), 19 B. W. C. C. 564.

**2572. Add. Annotations:—***Expld. Edwards v. Gwauncaeagurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337. *Consd. Clarke v. Southern Ry.* (1927), 96 L. J. K. B. 572. *Refd. James v. Penderyn Limestone Quarries (Hirwain)* (1926), 20 B. W. C. C. 27; *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566; *Davison v. Holmside & South Moor Collieries, Napper v. Lambton, Hetton & Joicey Collieries* (1929), 110 L. T. 511.

**2573. Add. Annotations:—***Consd. Dennison v. Keiller* (1926), 19 B. W. C. C. 409. *Apld. Stephen v. Cooper* (1928), 21 B. W. C. C. 543; *Davison v. Holmside & South Moor Collieries, Napper v. Lambton, Hetton & Joicey Collieries* (1929), 140 L. T. 511. *Refd. James v. Penderyn Limestone Quarries (Hirwain)* (1926), 20 B. W. C. C. 27; *Brotherton v. Jackson* (1928), 98 L. J. K. B. 76.

**2574a. —**—*J.*—Deceased was a mosaic worker employed by applt., who had a flooring contract at K., & deceased was carrying out at K. mosaic work for the purposes of the contract. It was the duty of deceased to travel by train from L. to K. daily, & he was paid by applt. for the time occupied in so travelling, & his railway ticket was also paid for by applt. Deceased, having gone to sleep, got out of the train whilst it was in motion leaving K. & slipped on the platform as he landed, fell heavily on his back, his head striking the platform violently, & died of the injuries received:—*Held*: though deceased was in the course of his employment while travelling in the train, he was com-

sphere of the employment, & his widow was entitled to compensation.—*ALTOBELLI v. JOHN ELLIS & SONS, LTD.* (1926), 136 L. T. 602; 20 B. W. C. C. 190, C. A.

**2578. Add. Annotations:—***Apld. Lye v. British & Argentine Meat Co.* (1923), Ltd. (1927), 20 B. W. C. C. 341; *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446. *Refd. Puce v. Davey* (1926), 136 L. T. 601.

**2579. Add. Annotations:—***Consd. Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446. *Refd. Gorman v. Barclay Curle* (1925), 19 B. W. C. C. 564; *Puce v. Davey* (1926), 136 L. T. 601.

**2582. Add. Annotation:—***Consd. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

**2583. Add. Annotation:—***Refd. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

**2589a. —**—*J.*—A porter employed by furniture & upholstery makers claimed compensation for injury by accident arising out of an assault committed upon him in the course of his employment. Whilst engaged in loading furniture into a railway van outside resp.'s premises an altercation arose between appt. & the van driver in consequence of a suggestion made to the driver that he should assist in expediting the work. The driver struck appt. in the face, & so injured one of his eyes that it had to be removed. The county ct. judge dismissed the application, finding that though the assault was an accident, it was not one of the risks of appt.'s employment that he should be assaulted, & it was not the result of doing anything of service to his employer, & it was not an accident arising out of the employment:—*Held*: the decision was right, as there was evidence upon which the judge could support his decision, & no misdirection.—*LEE v. BRECKMAN (S. & L.) & Co.* (1928), 138 L. T. 610; 44 T. L. R. 235; 72 Sol. Jo. 154; 21 B. W. C. C. 32, C. A.

**2602a. —**—*J.*—A ship's fireman was found injured at midnight at the bottom of a roped-in hold, after having been helped on board three hours earlier in a hopelessly drunken condition. The accident happened when he was engaged in carrying food, it being no part of his duty to do so, on that night. The county ct. judge found that the workman must have crawled through the ropes round the hold without having any duty whatsoever to do so, & held the accident arose neither out of nor in the course of his employment:—*Held*: the judge could have come to no other conclusion on the evidence, & there was no misdirection.—*WATSON v. ALEPPO (OWNERS)* (1927), 20 B. W. C. C. 634, C. A.

**2604. Add. Annotation:—***As to (2) Refd. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

*Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

**2612a. Splinter in finger—Workman making packing-cases.**—A workman engaged in making wooden packing-cases complained to a welfare worker in his employers' works that he had a splinter in the little finger

which did not arise out of the employment, but under the above sect. it must be deemed to arise out of & in the course of the employment as having been done in pursuance of & for the purposes of the employers' trade or business, & the act done was not so contrary

of his right hand, but she could find nothing except a small black speck. It was a frequent occurrence for a workman to request the welfare worker to remove a splinter from a finger, & this particular workman had done so on several occasions. The finger became red & swollen, & five days later a doctor found a small bleb on it containing pus. The workman was feverish & was sent to hospital, where he died of septic pneumonia ten days after his complaint to the welfare worker. In his evidence the house-surgeon of the hospital said, "There was no sign of a foreign body. In my view there must have been some injury or crack at place of bleb. Crack might be microscopical or it might be a foreign body entering there. The latter is the most usual." There was no evidence that the workman did any work at home which might cause a similar injury. On a claim by the dependants, the county ct. judge found the following facts: (a) sepsis was due to the entry of a foreign body, the point of entry being indicated by the bleb. (b) deceased had previously got splinters in his hand, such as led to festering, (c) such a splinter would be likely to produce the condition of deceased's finger. From these facts he drew the inference that the deceased was infinitely more likely to get a splinter at work than elsewhere, & that he, therefore, died from an accident arising out of & in the course of his employment. The employers appealed:—*Held*: there was evidence to support the findings of fact, & the county ct. judge was entitled to draw from those facts the inference which he did.—*HURST v. WALTER'S PALM TOFFEE CO., LTD.* (1929), 22 B. W. C. C. 215, C. A.

**2618a. Scratches—Furniture remover.**—A workman, employed to drive a lorry & move furniture, frequently received scratches in the course of his work, but usually took no notice of them. On returning from his work one evening he showed his wife that his fingers were scratched. He suffered great pain under the arm during the night & died within seven days of septic poisoning. He had no hobby or occupation at home which exposed him to scratches. The county ct. judge found that death was due to an injury arising out of the employment. The employers appealed:—*Held*: there was evidence to support the finding & no misdirection.—*PIPER v. DE'ATH BROS.* (1929), 22 B. W. C. C. 73, C. A.

**2619. Add. Annotations:—Apld.** *Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758. *Consd.* *Lec v. Breckman* (1928), 138 L. T. 610.

**2619a. ———.**—A commercial traveller was killed by a falling tree while motor-cycling upon his employers' business. The fall of the tree was apparently caused by a gale of unusual force:—*Held*: as deceased was brought into a danger zone by reason of his employment, the accident arose "out of the employment" within Workmen's Compensation Act, 1925

(c. 84), s. 1, & the question as to what caused the fall of the tree was irrelevant.—*LAWRENCE v. MATTHEWS* (1924), Ltd., [1929] 1 K. B. 1; 97 L. J. K. B. 758; 140 L. T. 25; 44 T. L. R. 812; 21 B. W. C. C. 345, C. A.

**2627. Add. Annotations:—As to (1) Refd.** *Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758. *As to (2) Refd.* *Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

**2646. Add. Annotation:—Consd.** *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

**2647. Add. Annotation:—Refd.** *Hurst v. Walter's Palm Toffee Co.* (1929), 22 B. W. C. C. 215.

**2649. Add. Annotations:—Apld.** *Stroud v. Bath Gas Light & Coke Co.* (1927), 137 L. T. 623. *Consd.* *Stokoe v. Mickleby Coal Co.* (1928), 138 L. T. 566. *Apld.* *Edwards v. Ocean Coal Co.* (1929), 22 B. W. C. C. 251.

**2652. Add. Annotation:—Refd.** *Stroud v. Bath Gas Light & Coke Co.* (1927), 137 L. T. 623.

**2653a. ———.**—A workman in charge of a coke-conveyor was found entangled in the machinery, & died shortly after being released. There was no explanation of how he met with the accident, but when last seen shortly before he was acting in the course of his duty. The county ct. judge drew the inference from the facts before him that the workman was acting in the course of his employment:—*Held*: the county ct. judge was entitled to draw the inference he did, & there was no misdirection.—*STROUD v. BATH GAS LIGHT & COKE CO.* (1927), 137 L. T. 623; 20 B. W. C. C. 496, C. A.

*Annotation:—Consd.* *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

**2656. Add. Annotations:—As to (1) Consd.** *Jones v. Cory* (1926), 20 B. W. C. C. 251; *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

**2658. Add. Annotation:—Apld.** *Edwards v. Ocean Coal Co.* (1929), 22 B. W. C. C. 251.

**2660. Add. Annotation:—Refd.** *Gill v. Perrott* (1928), 21 B. W. C. C. 9.

**2665. Add. Annotations:—Consd.** *Racburn v. Lochgelly Iron & Coal Co.* (1926), 20 B. W. C. C. 637. *Refd.* *Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C.

**2666. Add. Annotations:—Consd.** *Cole v. L. & N. E. Ry.* (1928), 21 B. W. C. C. 87. *Refd.* *Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

**2668a. ——— Dispenser—Scratch.**—Appet. was employed by two doctors in partnership as a dispenser, her duties being to fill medicine bottles & clean instruments. On Nov. 9, 1926, at 10.30 a.m., whilst so employed, she noticed that her right thumb was bleeding, but was not sure how the scratch which caused the bleeding had occurred, & she had not felt pain. She inferred that she must have knocked it at the time on a rough bit of wood at the side of the sink or on the edge of a cork box. She applied iodine, but as the bleeding did not stop she went to the assistant, who bandaged her thumb, & she

PART XIV. SECT. 5, SUB-SECT. 4.—A.

**2642 viii. ———.**—*HETHERINGTON v. DUBLIN & BLESSINGTON STEAM TRAMWAY CO.*, [1927] L. 75; 20 B. W. C. C. 852.—IR.

PART XIV. SECT. 5, SUB-SECT. 4.—B. (a).

**2652 ii. ———.** *Workman's finger crushed by mangle—Pain wrongfully attributed by workman to prick from thorn.*—*BRIDSON v. PERTH DIOCESAN TRUSTEES* (1925), W. A. L. R.

96.—AUS.

PART XIV. SECT. 5, SUB-SECT. 4.—B. (d).

*sw. Claim unsuccessful—Origin of infection unexplained.*—*OAKES v. HOLLDAY*, [1927] N. Z. L. R. 263.—N.Z.



continued at work until 11.30, when she went to one of the partners, who dressed the wound. On Nov. 16 she felt too unwell to go to work, & subsequently was in the infirmary until Jan. 18, 1927, suffering from septic poisoning:—*Held*: (1) there were sufficient facts proved before the county ct. judge to enable him to draw an inference one way or the other, so that there was no necessity for surmise, conjecture, or guess; (2) the employers had had knowledge of the accident, & notice was not necessary.—*GILL v. PERROTT* (1928), 21 B. W. C. C. 9, C. A.

2668b. — **Workman moving gutters with sharp edges.**—On May 16 a workman was employed as a labourer in moving semi-circular rain gutters with somewhat sharp edges, & returned home with a slight wound in his right shoulder. On the following day he told a fellow-workman that he was "feeling his shoulder," but he continued at work until May 21. A doctor was called in on May 23, but the workman rapidly grew worse & died on May 25 from septicæmia. The widow spoke to the employers' time-keeper of the death & gave formal notice on June 11. The county ct. judge held he was entitled to infer an injury resulting from an accident which arose out of & in the course of the employment, & also held the employers were not prejudiced by any delay in giving notice:—*Held*: there was evidence to support the findings, & no misdirection.—*Fletcher v. Sinclair Iron Co., Ltd.* (1928), 21 B. W. C. 62. C. A.

**2681. Add. Annotation:—**Refd. *Stroud v. Bath Gas Light & Coke Co.* (1927), 137 L. T. 623.

2690a. ——— **Chronic glaucoma.**]—A stoker, who was already blind in his left eye, complained that he had become completely blind. He alleged that a foreign body had entered his right eye, but at the time of the alleged accident he made no complaint of anything having entered his right eye. A doctor, who examined him, diagnosed the case as one of chronic glaucoma. The county ct. judge found that the workman was at all material times suffering from chronic glaucoma, & that there was no injury by accident arising out of or in the course of his employment:—*Held*: there was evidence to support the finding, & no misdirection.—**WARSAWA v. WATNESS (OWNERS)** (1921), 21 B. W. C. C. 85. C. A.

**2691.** *Add. Annotation* :—As to (1) **Consd. Johnson**  
v. Warren (F.) & Co. (1928), 21 B. W. C. C.  
411.

**2693. Add. Annotations:—****Apld.** Stroud v. Bath Gas Light & Coke Co. (1927), 137 L. T. 623. **Consd.** Stokoe v. Mickley Coal Co. (1928), 138 L. T. 566. **Apld.** Edwards v. Ocean Coal Co. (1929), 22 B. W. C. 254.

**2706. Add. Annotations:—****Consd.** Muscroft v. Stewarts & Lloyds (1928), 21 B. W. C. C. 274. **Refd.** Gill v. Perrott (1928), 21 B. W. C. C. 9.

**2710. Add. Annotation :—**Consd. *Muscroft v. Stewarts & Lloyds* (1928), 2 B. W. C. C. 274.

21108. — J. A. HIGGIE, who was known to be suffering from valvular disease of the heart, returned to work against his doctor's advice. His condition was such that he was liable to collapse or sudden death at any moment. He went down the mine at 10.30 p.m., & was alive & well at 3 o'clock. At 4 o'clock he was found dead in his stall, lying back as though asleep. There was no evidence of any fall of roof, & he had no pick in his hand. He was alone at the time of his death, & there was no evidence of what the man was actually doing:—*Held*: there was no evidence that the man's death was caused by any strain at work, & no evidence that death resulted from any injury by accident arising out of the employment.—*MUSCROFT v. STEWARTS & LLOYDS, LTD.* (1928), 140 L. T. 64; 21 B. W. C. C. 274, C. A.

**2713. Add. Annotation :—***Reid. Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

**2714. Add. Annotation:—****Consd.** Flanagan v. Ackers Whitley (1926), 19 B. W. C. C. 399.

**2734a.** — [—]— A miner was about to insert a fuse in a detonator in the course of his duties when the detonator exploded & injured him. The sheriff-substitute held that the cause of the explosion was not proved &, the workman having discharged any onus laid on him by proving that the explosion caused the injury, found that the accident arose out of the employment & made an award in his favour. The employers appealed. The First Division of the Ct. of Session by a majority affirmed the award. The employers appealed to the House of Lords:—*Held*: it followed from the facts of the case that the accident arose out of & in the course of the employment.—*LOCHGILLY IRON & COAL CO., LTD. v. LANDORES* (1929), 22 B. W. C. C. 376, 11. 1.

2735a. — Seaman stooping in course of duty — Burst blood-vessel.]—The chief officer of a vessel, fifty-eight years old, while on duty on the bridge, stooped to get some string out of a cupboard in the course of his duty & then stated to the captain that he felt queer, sat down, & later fell unconscious on the bridge. He recovered consciousness in five minutes, but died about eight hours afterwards. There was no inquest or *post mortem*. At the hearing of a claim by the widow the doctors on both sides agreed that he died very probably from cerebral hæmorrhage. His own doctor, who had attended him for twenty-five years, said he was a healthy man, & there was no evidence of anything wrong with his heart. The county ct. judge found that the cause of death was the breaking of some blood-vessel due to the stooping which caused the fall which subsequently led to the death, but held that he would not be justified in making an award for the dependant. The dependant appealed :—*Held* : on the finding that death was due to the stooping, it followed that death resulted from injury by accident arising out of the employment. — *HORE v. GENERAL STEAM NAVIGATION Co.* (1929), 22 B. W. C. C. 100, C. A.



2742. *Add. Annotation*:—**Refd.** *Smith v. Wemyss Coal Co.* (1927), 21 B. W. C. C. 483.
2747. *Add. Annotation*:—**Refd.** *Wood v. Garscube Colliery Co.* (1927), 20 B. W. C. C. 837.
2751. *Add. Annotation*:—**Mentd.** *Wood v. Garscube Colliery Co.* (1927), 20 B. W. C. C. 837.
2757. *Add. Annotation*:—**Refd.** *Wood v. Garscube Colliery Co.* (1927), 20 B. W. C. C. 837.
2759. *Add. Annotation*:—**As to (2)** **Refd.** *Gilmour v. Garrallan Coal Co.* (1926), 19 B. W. C. C. 683.
2766. *Add. Annotation*:—**As to (2)** **Consd.** *Young v. Keeble* (1928), 21 B. W. C. C. 294.
2768. *Add. Annotation*:—**Apld.** *Thorpe v. Sadler, Sadler v. Thorpe* (1927), 20 B. W. C. C. 488.
- 2768a. ———.]—A workman was struck on the elbow while passing through a swing door. He suffered great pain & had to see a doctor. At the end of a week symptoms of osteomyelitis showed themselves. The arm gradually grew worse & was finally amputated. The county ct. judge held the incapacity was due to the accident:—**Held**: there was evidence to support the finding, & no misdirection.—**VINCE v. ABEL & JMRAY** (1928), 21 B. W. C. C. 151, C. A.
2783. *Add. Annotation*:—**Apld.** *Gilmour v. Garrallan Coal Co.* (1926), 19 B. W. C. C. 683.
2787. *Add. Annotation*:—**Consd.** *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshaw* (1927), 96 L. J. K. B. 664.
2790. *Add. Annotations*:—**Consd.** *Evans v. Gilbie* (1926), 96 L. J. K. B. 117; *Wagstaff v. Gutta Percha Co.* (1927), 20 B. W. C. C. 430; *Williams v. Tredegar Iron & Coal Co.* (1927), 96 L. J. K. B. 722; *Stevens v. Birmingham Corpn.* (1929), 22 B. W. C. C. 311; *Wilsons & Clyde Coal Co. v. Burrows* (1929), 141 L. T. 594.
2793. *Add. Annotation*:—**Refd.** *Stevens v. Birmingham Corpn.* (1929), 22 B. W. C. C. 311.
2795. *Add. Annotation*:—**Refd.** *Gilmour v. Garrallan Coal Co.* (1926), 19 B. W. C. C. 683.
2799. *Add. Annotation*:—**Consd.** *Werrin v. United National Collieries* (1926), 20 B. W. C. C. 166.
2803. *Add. Annotations*:—**Consd.** *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshaw* (1927), 96 L. J. K. B. 664. **Distd.** *Ruddy v. L. M. & S. Ry.* (1929), 22 B. W. C. C. 138. **Refd.** *Williams v. Cwmaman Coal Co.* (1927), 20 B. W. C. C. 476; *Lyon v. Taylor Bros.* (1928), 21 B. W. C. C. 415.
2811. *Add. Annotation*:—**Refd.** *Fyfe v. Fife Coal Co.* (1926), 20 B. W. C. C. 548.
- 2811a. ———.]—Where an award was made terminating weekly payments, on the grounds that refusal to undergo certain treatment was unreasonable, & that the *onus* lay on the workman to prove that the proposed operation would not have cured him & that he was reasonable in refusing the operation:—**Held**:

the *onus* lay on the employers to show that the workman would have recovered if he had undergone the treatment.—**INDIA RUBBER, GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. v. CHAPMAN** (1926), 20 B. W. C. C. 184, C. A.

2815. *Add. Annotation*:—**Refd.** *Cauldon Potteries v. Johnson* (1926), 20 B. W. C. C. 42.

2822a. ——— **Whether refusal unreasonable.**]—The question whether the refusal of a workman to undergo treatment is reasonable or unreasonable, is one of fact.—**FYFE v. FIFE COAL CO., LTD.** (1927), 138 L. T. 65; 20 B. W. C. C. 548, H. L.

- 2823a. ———.]—A workman strained the

five months. He also suffered from septic teeth. Acting on their doctor's certificate his employers stopped compensation & the workman filed a request for arbn. The employers answered that, if the workman was still incapacitated, the incapacity was due to natural causes. The workman's doctor had advised him to have his teeth out, as their condition retarded his recovery, but he had refused to have this done, & at the hearing the county ct. judge was advised by the medical assessor that the condition of the teeth had perpetuated the injury. The county ct. judge found that the workman had acted unreasonably in not having his teeth removed, as by that means he would probably have fully recovered by the time that the employers had stopped compensation. He found "that appet. had failed to prove that his continued incapacity was due solely to the accident." He made an award of a penny a week, allowing the workman the costs of the arbn. The workman appealed from the award of a penny a week, & the employers cross-appealed on the question of costs:—**Held**: the county ct. judge was justified in awarding only a penny a week, because he found that he could not otherwise assess the quantum of incapacity due to the accident so long as the effect of the septic teeth remained, also the award as to costs could not be disturbed because he had found that there was some incapacity due to the accident.—**RUDDY v. LONDON, MIDLAND & SCOTTISH RY.** (1929), 22 B. W. C. C. 138, C. A.

2831. *Add. Annotation*:—**Refd.** *Johnson v. Warren (F.) & Co.* (1928), 21 B. W. C. C. 111.

2831a. ———.]—A miner received an injury to the spine, which caused paralysis of the lower part of the body. An operation was unsuccessful, & the injury was classed as incurable. The miner was taken to his home & suffered great pain. He committed suicide by cutting his femoral artery, & left a letter addressed to his wife explaining his act. The county ct. judge held the man was not insane when he committed suicide, & death had not resulted from the injury:—**Held**: it

**PART XIV. SECT. 5, SUB-SECT. 5. —A.**

2740 iii. *Onus of proof on workman.*]—**WILSON v. W. WINN & CO., LTD.** (1928), 28 S. R. N. S. W. 470; 45 N. S. W. W. N. 115.—**AUS.**

**PART XIV. SECT. 5, SUB-SECT. 5. —B. (b).**

xx. *Workman on railway track.*]—Contributory negligence on the part of the employee does not exonerate J.S.

the employer from liability to compensate the employee if the accident could have been avoided by deft. by the exercise of ordinary care & diligence. Where therefore, the finding of the comr. was that the workman was passing along a railway track contrary to the rules framed by deft. co., & was run over by an engine which was going faster than the prescribed speed:—**Held**: the accident was not

directly attributable to the wilful disobedience of the workman within Workmen's Compensation Act, 1923, s. 3 (1) (b) (ii).—**URMILA DASI v. PATA IRON CO.** (1928), L. R. 8 Pat. 21.—**IND.**

**PART XIV. SECT. 6, SUB-SECT. 1.**

ay. *Possibility of future injury.*—**Whether court may consider.**—**SAMSON v. WILLIAM BAIRD & CO.,** [1929] S. C. (Ct. of Sess.) 21.—**SCOT.**

was a question of fact, as to which there was evidence to support the finding, & there was no misdirection.—*BEVAN v. LANCASTERS STEAM COAL COLLIERIES* (1927), 20 B. W. C. C. 241, U. A.

**2833. Add. Annotations :—***As to (2) Refd. Bevan v. Lancasters Steam Coal Collieries (1927), 20 B. W. C. C. 241. Generally, Consd. Johnson v. Warren (F.) & Co. (1928), 21 B. W. C. C. 411.*

**2836. Add. Annotation :—****Refd. Johnson v. Warren**  
(F.) & Co. (1928), 21 B. W. O. C. 411.

**2836a.** —.]—A workman while leading a horse was badly injured by the animal falling on him. He did no work for two years, & then committed suicide. He had received medical attention throughout the two years. On a claim made by the widow for compensation, the county ct. judge found that the workman was not insane when he committed suicide, & that death did not result from the injury, & made an award in favour of the employers. The widow appealed:—*Held*: there was evidence to support the finding of fact & no misdirection.—*JOHNSON v. WARREN (F.) & Co.* (1928), 21 B. W. C. C. 411, C. A.

**2839.** *Add. Annotation* :—**Consd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshaw (1927), 96 L. J. K. B. 604.

**2840.** *Add. Annotation:—*Refd. Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshaw (1927), 96 L. J. K. B. 664.

**2849a. Contents—All injuries need not be specified.]**  
—The mere fact that notice has to be given does not imply that all injuries must be specified.

A workman gave notice of an accident, in which he complained of injury to his ribs, & his employers paid him compensation. He returned to work after two months. He then began to suffer with his hip, & eventually had to cease work on that account. His employers resisted a second claim for compensation, on the ground that no injury to the hip was specified in the notice of the accident. The county ct. judge found that the injury to the hip was due to the original accident, that the employers had not been prejudiced by any failure to mention the hip in the notice of accident, as they had paid compensation to the workman after an examination by their own doctor:—*Held*: there was evidence to support the findings, & no misdirection.—**WILES v. ELLERMAN'S WILSON LINE** (1928), 21 B. W. C. 194, C. A.

2858a. ———.]—A workman cut his finger slightly. He continued at work for about a month, when his thumb became swollen & he had to go to the infirmary, where a week later he died of blood-poisoning. Notice of the accident was not given to the employers until a month after the workman's death. The county ct. judge found that notice of the accident had not been given as soon as practicable, & that the employers were prejudiced by the want of notice:—

**Held:** it was a question of fact, as to which there was evidence to support the finding.—**EVANS v. SIMPSON (JAMES) & SON** (1926), 19 B. W. C. C. 407, C. A.

2856b. -----.]—On Jan. 31, 1927, a workman suffered an accident to his right thumb. He left work as a result of the accident, & a week later, on Feb. 7, notice of the accident was given to the employers on his behalf. The county ct. judge found that the notice was not given as soon as practicable after the accident, but he also found that the employers were not prejudiced in their defence by such want of notice:—*Held*: there was evidence to support the findings, & no misdirection.—*HINKS v. RISCOE (JAMES) & SONS (1927)*, 96 L. J. K. B. 1068; 20 B. W. C. C. 558, C. A.

2885a. ———.]—GILL v. PERROTT, No. 2668a,  
*ante.*

**2890a.** — — —.]—When notice of an accident has not been given as soon as practicable after the accident, it is a question of fact for the county ct. judge whether the employer is or is not prejudiced in his defence by the want of such notice, & if there was evidence upon which the judge could so decide, the ct. will not interfere.—**DERRY v. GREAT WESTERN RY. Co.** (1926), 19 B. W. C. C. 405, C. A.

2890b. ———.] -EVANS v. SIMPSON (JAMES)  
& SON, No. 2856a, *ante*.

2890c. — — — —.]— HINKS v. RISCOE (JAMES) & SONS, No. 2856b, *ante*.

**2890d.** ————.]—**FLETCHER v. SINCLAIR IRON Co., LTD.,** No. 2668b, *ante*.

**2917.** *Add. Annotation* :—As to (1) **Consd.** Piper v. De'ath Bros. (1929), 22 B. W. C. C. 73.

**2921. Add. Annotations:—**Refd. *Drewitt v. Britannic Assee.* (1927), 137 L. T. 511; *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

**2925.** *Add. Annotation :—***Reid.** *Brown v. Aveling & Porter* (1929), 22 B. W. C. C. 165.

**2930. Add. Annotations;—** *Consd. Drewitt v. Britannic Assee.* (1927), 137 L. T. 511; *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011. *Apld. Brown v. Aveling & Porter* (1929), 22 B. W. C. C. 165.

2949a. ———.]—WILES v. ELLERMAN'S WILSON LINE, No. 2849a, *ante*.

**2956. Add. Annotation :—****Consd. Telephone Manufacturing Co. v. Abel** (1928), 21 B. W. C. C. 289.

**2958. Add. Annotation:—***As to (2) Consd. Telephone Manufacturing Co. v. Abel (1928), 21 B. W. C. ~ ~ ~*

2968a. — — —.]—An injured workman was treated in hospital by a consultant of the hospital. She returned to work, but ceased work again owing to the injury. She was then requested by her employers to submit to an examination by the same consultant acting as their medical adviser. She refused, on the ground that he would be a necessary witness on her behalf in any arbn. pro-

ceedings. The employers applied for suspension of weekly payments until the examination had taken place. The county ct. judge granted the application, on the ground that the reason given for the refusal was itself unreasonable:—*Held*: to find that the refusal was unreasonable merely because the workman objected to being examined, at the instance of the employer, by a consultant at the hospital at which she had been treated, was not sufficient. The matter must be further inquired into to ascertain (1) whether this consultant was the only medical adviser available to the workman, & (2) whether the woman's case, if it went to arbn., would be imperilled by reference to this particular consultant.—*TELEPHONE MANUFACTURING CO., LTD. v. ABEL* (1928), 21 B. W. C. C. 289, C. A.; *subsequent proceedings* (1929), 22 B. W. C. C. 84, C. A.

**2968b. — Reasonableness of refusal.**—An injured workman was treated in hospital by a consultant of the hospital. She returned to work, but ceased work again owing to the injury. She was then requested by her employers under Workmen's Compensation Act, 1925 (c. 84), s. 18, to submit to an examination by the same consultant acting as their medical adviser. She refused on the ground that he would be a necessary witness on her behalf in any arbn. proceedings. On an appln. by the employers under sect. 18 to suspend the weekly payments, the county ct. judge held that her refusal was unreasonable & granted the appln. On appeal the case was remitted for further inquiry to ascertain (a) whether this consultant was the exclusive adviser of the workman, (b) whether the workman's case, if it went to arbn., would be imperilled in any way by reference to this particular consultant, & (c) whether the employers' request that the workman should be examined by this consultant was reasonable. The county ct. judge found in favour of the employers on all points. The workman appealed:—*Held*: on the evidence the workman was reasonable in refusing to submit to examination by this consultant at the instance of the employer, & the county ct. judge's findings could not be supported. *TELEPHONE MANUFACTURING CO., LTD. v. ABEL* (No. 2) (1929), 22 B. W. C. C. 84, C. A.

**2983. Add. Annotations:—Refd.** *Drewitt v. Britannic Assee.* (1927), 137 L. T. 511. **Mentd.** *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

**2999. Add. Annotation:—Consd.** *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

**3005. Add. Annotation:—Consd.** *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

**3006. Add. Annotation:—Consd.** *Drewitt v. Britannic Assee.* (1927), 137 L. T. 511.

**3013. Add. Annotations:—Refd.** *Drewitt v. Britannic Assee.* (1927), 137 L. T. 511; *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

**3016. Add. Annotations:—Consd.** *Drewitt v. Britannic Assee.* (1927), 137 L. T. 511; *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

**3020. Add. Annotation:—As to (2) Consd.** *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

**3025a. —.]—A** workman, who had been employed by the same employers for thirty-nine years, received a jerk while helping to pull a barrow through loose sand on Jan. 5, 1926. He felt pain & reported that he thought he had ruptured himself, but he continued at work until June 17, 1927, when he became very ill after attempting to lift a heavy article & went to bed. On the following day he was found to have a hernia. He made a claim for compensation on Aug. 3, 1927, giving the date of the accident as Jan. 5, 1926. The employers contended that no claim had been made within six months of the alleged accident. The county ct. judge held that there was reasonable cause for failing to make a claim within six months, because the workman believed that the pain was temporary, & that he would soon recover. The employers appealed:—*Held*: there was misdirection, & the workman had shown no reasonable cause for failing to make a claim within six months. — *BROWN v. AVELING & PORTER, LTD.* (1929), 22 B. W. C. C. 165, C. A.

**3029. Add. Annotation:—Refd.** *Drewitt v. Britannic Assee.* (1927), 137 L. T. 511.

**3030. Add. Annotations:—Refd.** *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011; *Brown v. Aveling & Porter* (1929), 22 B. W. C. C. 165.

**3031. Add. Annotation:—Apld.** *Drewitt v. Britannic Assee.* (1927), 137 L. T. 511.

**3031a. —.]—On** Apr. 16, 1926, a workman fell & injured his knee. He was paid full wages, although incapacitated, until Sept. 3, when he was summarily dismissed from employment for misconduct. In the hope of being reinstated, he threatened to bring an action for wrongful dismissal, but made no claim under Workmen's Compensation Act, 1925 (c. 84), until two days after the statutory six months had expired. The county ct. judge found that the workman never intended to claim within the necessary period of six months, & there was no reasonable cause for the delay, & he refused to award compensation:—*Held*: the evidence supported the findings, & there was no misdirection.

When the workman knows that the injury he suffers from was occasioned by an accident giving him a right to compensation, & fails to make a claim within six months, if that failure was prompted by his own interests, & was not induced by any action of the employer which would lead him to believe he could get compensation without making a claim, he shows no reasonable cause (*SCRUTTON, L.J.*).—*DREWITT v. BRITANNIC ASSURANCE CO., LTD.* (1927), 137 L. T. 511; 20 B. W. C. C. 434, C. A.

*Annotation:—Apld.* *Brown v. Aveling & Porter* (1929), 22 B. W. C. C. 165.

**3033a. Expectation of compensation without necessity of making claim.**—In Apr. 1925, a chef severed the ligaments of his right hand in handling a dish which broke, but he continued his work at his full wages. His employers knew of the accident, but were not aware the chef could not do his full work. In July, 1926, he was dismissed, & in that month made a claim for compensation. The county ct. judge found that the workman did not refrain

from making a claim because he formed the view that he would receive compensation should incapacity supervene in the future without the necessity of making a claim, & that the employers did nothing to encourage such a view, & there was no reasonable cause for not making the claim within six months of the accident:—*Held*: there was evidence to support the findings, & no misdirection.

There would be reasonable cause for not making a claim within six months, if the workman could prove that there was a tacit understanding that the employers knew all about the possibility of a claim & were prepared to give him compensation, even though his claim might fall outside the six months (LORD HANWORTH, M.R.).—*SOYER v. JOHNSON, MATTHEY & Co.* (1927), 96 L. J. K. B. 1011; 20 B. W. C. C. 504, C. A.

**3035.** *Add. Annotations*:—*As to* (1) *Consd.* *Drewitt v. Britannic Assee.* (1927), 137 L. T. 511. *Fold.* *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011. *Refd.* *Brown v. Aveling & Porter* (1929), 22 B. W. C. C. 165.

**3044.** *Add. Annotation*:—*Apld.* *Delahunt v. Moody* (1927), 21 B. W. C. C. 588.

**3045.** *Add. Annotation*:—*Apld.* *Delahunt v. Moody* (1927), 21 B. W. C. C. 588.

**3047.** *Add. Annotation*: *Refd.* *Woodrow v. Trawlers (White Sea) & Grimsby* (1929), 141 L. T. 676.

**3055.** *Add. Annotation*:—*Apld.* *Pullen v. Enthoven* (1927), 20 B. W. C. C. 248.

**3056a.** —.]—Appct. was in receipt of a weekly payment on account of injuries received in the course of his employment. The employers gave notice of termination of the weekly payment, on the ground of recovery as certified by their doctor. The workman replied with a counter-certificate of his doctor. The matter was submitted to the medical referee, who certified that the man was fit for most forms of work. The employers ceased making the weekly payments, & the workman appealed to the county ct. judge as to the effect of the certificate. The judge, sitting with the same medical referee as assessor, who explained his certificate as being one of complete recovery, held the man was fit for work on the date when compensation ceased, but awarded compensation from the date of cessation of the weekly payment to the date of his award:—*Held*: (1) compensation was not payable after incapacity had ceased; (2) the certificate of the medical referee was sufficient & conclusive.—*PULLEN v. ENTHOVEN & SON* (1927), 20 B. W. C. C. 248, C. A.

**3056b.** —.]—In a reference to a medical referee made under Workmen's Compensation Act,

1925 (c. 84), s. 19 (2), the medical referee certified that the workman was fit to resume his ordinary occupation, but described it as being something different from what in fact it had previously been. The county ct. judge refused to treat the certificate as conclusive, & received evidence as to the nature of the respective occupations, the parties having objected to the certificate being sent back to the medical referee for explanation or correction:—*Held*: the certificate being ambiguous was not conclusive, & the parties having refused the opportunity of the ambiguity being explained by the medical referee, the judge was entitled to hear the evidence tendered & act upon it.—*AUSTIN v. PARTINGTON STEEL & IRON CO., LTD.* (1928), 21 B. W. C. C. 1, C. A.

**3056c.** —.]—A stoneman in a colliery was certified by a medical referee to be suffering from miners' nystagmus, & unable to do work which involved stooping. The county ct. judge, after hearing evidence, interpreted that certificate as meaning that the workman was unable to do work which involved continuous stooping, such as his old employment necessitated, & made an award on the basis of partial incapacity:—*Held*: the judge had properly treated the certificate as conclusive, & interpreted it rightly, & was justified in hearing evidence as to the amount of stooping that would incapacitate the man in order to make an award for the proper compensation.—*TAYLDER v. LAMBTON, HERTON & JOICEY COLLIERIES, LTD.* (1928), 21 B. W. C. C. 115, C. A.

**3056d.** — *As to possibility of recurrence.*—A medical referee, to whom a dispute as to the condition of a workman who had sustained injuries by accident arising out of & in the course of his employment had been referred under Workmen's Compensation Act, 1925 (c. 84), s. 19, after giving two certificates of partial recovery, certified that in his opinion the workman had completely recovered from the accident & was fit for his ordinary work:—*Held*: the medical referee must be taken to have directed his mind, not merely to the condition of the workman at the moment, but to the possibility of a recurrence of incapacity, & that his certificate was final & conclusive.

Where, therefore, upon an application by the employer to end the compensation, the workman lodged a minute informing the ct. that skiagrams taken since the last certificate of the medical referee had disclosed conditions not apparent on external examination, & that there was a reasonable probability of a recurrence of incapacity:—*Held*: it

#### PART XIV. SECT. 9, SUB-SECT. 1.

f i. —.]—The Workmen's Compensation Board has no jurisdiction over rights of action or proceedings in the Exchequer Ct. in Admty.—*DAGLAND v. S.S. CATALA*, [1927] 4 D. L. R. 426; [1927] 3 W. W. R. 97; 38 B. C. R. 440.—*CAN.*

#### PART XIV. SECT. 9, SUB-SECT. 3.

**3044** i. *Position of judge*—*Sits as arbitrator.* —]—*DELAHUNT v. MOODY*, [1928] J. R. 208.—*IR.*

#### PART XIV. SECT. 9, SUB-SECT. 5.

**3053** xv. —.]—*M'CREADIE v.*

*DOULTON & Co.*, [1928] S. C. 29.—*SCOT.*

**3057** i. *Ambiguous report*—*Duty of judge to clear.*—]Employers, who had been paying compensation to a labourer in respect of an injury to his eye, served upon him a medical certificate to the effect that he had recovered; & no counter-certificate having been received from him, they stopped payment of compensation on Apr. 5, 1927. In a subsequent application by the workman to have a memorandum of agreement recorded, the arbitrator, on the application of the employers, made a remit to a medical referee. On Feb. 2, 1928, the referee reported that the workman's condition was such

that he was not "at present" debarred from doing labouring work. The arbitrator granted warrant to record the memorandum, but suspended compensation as from Apr. 5, 1927, until the further orders of the Ct.:—*Held*: the arbitrator was not entitled, on the evidence before him, to suspend compensation as from Apr. 5, 1927, & in view of the circumstances disclosed, the capacity of the workman as between Apr. 5, 1927, & Feb. 2, 1928, should be inquired into by the arbitrator rather than by a further remit to the medical referee.—*M'LELLAN v. THORNBURN & SON*, [1929] S. C. (Ct. of Sess.) 34.—*SCOT.*

was not competent to the arbitrator, or, failing him, to the appellate ct., to direct an inquiry into the facts set forth in the minute, & that the only course open to the arbitrator was to end the compensation.—*WILSONS & CLYDE COAL CO. v. BURROWS*, [1929] A. C. 651; 98 L. J. P. C. 151; 141 L. T. 594; 45 T. L. R. 615, H. L.

**3057a.** ——— **What amounts to ambiguity.**—*EVANS (RICHARD) & CO., LTD. v. GILBIE*, No. 3541a, *post*.

**3057b.** ——— **—**—*AUSTIN v. PARTINGTON STEEL & IRON CO., LTD.*, No. 3056b, *ante*.

**3057c.** ——— **What amounts to.**—A medical referee certified that a workman was fit for work as a stevedore, or at any other form of unskilled labour, but that occasionally in actions where a particularly strong grip was necessary he would be working at a small disadvantage as compared with his condition before the accident. The county ct. judge, contrary to his own opinion that the man was not fit for work as a stevedore, held that the certificate was conclusive against the workman: *Held*: the certificate was unambiguous & there was no misdirection.—*MONTGOMERY v. GENERAL STEAM NAVIGATION CO., LTD.* (1929), 22 B. W. C. C. 48, C. A.

**3059.** *Add. Annotations*:—**Consd.** *Somerville v. Barclay Curle* (1925), 19 B. W. C. C. 536; *Penman v. Caprington & Auchlochan Collieries* (1926), 19 B. W. C. C. 604. **Refd.** *Lafferty v. Darnagvil Coal Co.* (1926), 20 B. W. C. C. 671; *Catton v. Ashwell & Nesbit*, [1928] Ch. 484. **Mentd.** *Akers v. J. & N. E. Ry.* (1926), 20 B. W. C. C. 195.

**3061.** *Add. Annotation*:—**Refd.** *Lewis v. Tredegar Iron & Coal Co.* (1929), 22 B. W. C. C. 268.

**3061a.** ——— **—**—A miner was certified in Dec. 1925, as suffering from miner's nystagmus, & was paid compensation. In Aug. 1926, the employers stopped compensation after serving notice under Workmen's Compensation Act, 1925 (c. 84), s. 12, on the ground that the workman no longer suffered from the disease. A counter-notice having been served, the issue was referred by the registrar to the medical referee, who certified that the workman was totally incapacitated, but that such incapacity was due to other causes than nystagmus. On an application by the workman for an arbitration in Jan. 1929, evidence was tendered that nystagmus had once more become active, but the employers raised the preliminary objection that the medical referee's certificate was conclusive against the workman, & destroyed the effect of the certifying surgeon's certificate of Dec. 1925. The county ct. judge upheld the objection & made an order dismissing the application for arbitration. The workman appealed:—*Held*: the certificate of a medical referee being only conclusive as to the matters therein certified, & miner's nystagmus being a recurrent disease, the certificate was not of itself a bar to the claim of the workman for compensation, & it was for the county ct. judge to decide whether there had been in fact any recrudescence of the original disease.—*LEWIS v. TREDEGAR IRON & COAL CO.* (1929), 22 B. W. C. C. 268, C. A.

**3068.** *Add. Annotation*:—**Distd.** *Parker v. London*

*Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

**3081.** *Add. Annotations*:—*As to* (1) **Apld.** *Dodd v. Oceanic Steam Navigation Co.* (1928), 21 B. W. C. C. 118; *Tempus Shipping Co. v. Trott* (1929), 141 L. T. 19. **Refd.** *Robinson v. Vickers-Armstrong* (1929), 22 B. W. C. C. 171; *Ruddy v. L. M. & S. Ry.* (1929), 22 B. W. C. C. 138; *Mockbill v. Homer City S.S. Owners* (1929), 22 B. W. C. C. 260. *As to* (2) **Refd.** *Lafferty v. Darnagvil Coal Co.* (1926), 20 B. W. C. C. 671. *Generally*, **Refd.** *Howarth v. Singleton* (1926), 20 B. W. C. C. 136.

**3086.** *Add. Annotation*:—**Consd.** *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

**3091.** *Add. Annotation*:—*As to* (1) **Folld.** *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

**3096.** *Add. Annotation*:—**Distd.** *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

**3097.** *Add. Annotation*:—**Folld.** *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

**3098.** *Add. Annotation*:—**Folld.** *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

**3098a.** ——— **—**—An infant workman lost his left arm below the elbow as a result of an accident. The employers admitted liability, & paid full compensation. On Nov. 5, 1926, the workman signed a receipt for payments in the form of an agreement, by which he agreed that the payments were to be continued only so long as he was totally disabled, but that the amount of payment in respect of any subsequent partial incapacity should be settled if & when the question arose. In Jan. 1927, he applied for registration of an agreement in the terms of Form 24, that the weekly payments should continue during partial or total incapacity or until the same should be ended or diminished in accordance with 1925 Act. The employers objected to that agreement being recorded, on the ground that the terms of the real agreement of Nov. 5, 1926, were not therein correctly stated, & thereupon the workman filed a request for arbn. on Feb. 23, 1927. The boy obtained work as a messenger boy on Feb. 11, 1927. The county ct. judge ordered the document of Nov. 5 to be recorded as the agreement between the parties, & dismissed the request for arbn.:—*Held*: a totally incapacitated workman in receipt of full compensation under an admission of liability was entitled, either to a recorded memorandum of agreement stating his rights in the terms of Form 24, or, if the employers objected to that, he was entitled, on the question so raised, to apply in arbn. proceedings for the judge to grant an award in such terms; the document of Nov. 5 did not give the workman his full rights as expressed in Form 24, & was not binding on the workman, being an infant, & when the employers objected to the recording of a memorandum in the terms of Form 24 a question was raised fit for arbn., & an award should have been made having regard to the terms of Form 24, & there was no power on the proceedings to order a memorandum of agreement to be recorded,

& the case must be remitted for the proper award to be made to suit the circumstances of the workman having actually returned to work.—*PARKER v. LONDON BRICK CO. & FORDERS, LTD.* (1927), 97 L. J. K. B. 42; 20 B. W. C. C. 573, C. A.

3099. *Add. Annotation* :—*Distd.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3100. *Add. Annotation* :—*Folld.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3129a. ————.]—Deceased, on leaving off work, remarked to a fireman that he had been hit by a fall of rock. He died the next day. The *post mortem* examination showed he was suffering from heart & other diseases, & might have died at any moment. The county ct. judge rejected the remark as evidence of an accident, & after hearing all the evidence, found that no accident had occurred :—*Held* : the statement was inadmissible as evidence of an accident, & the finding, being one of fact, & there being no misdirection, could not be disturbed.—*JONES v. CORY BROTHERS & Co., LTD.* (1926), 20 B. W. C. C. 251, C. A.

3129b. ————.]—*WOLSEY v. PETHICK BROTHERS*, No. 3897, *post*.

3140. *Add. Annotations* :—*Distd.* *Rees v. Imperial Navigation Coal Co.* (1926), 20 B. W. C. C. 287. *Refd.* *Broome v. Minister of Labour* (1926), 136 L. T. 322.

3140a. ————.]—An infant workman lost a little finger while handling a machine. He was paid varying amounts of compensation for some months, & when this was stopped asked for an award. The county ct. judge allowed the employers to give evidence as to the scope of the workman's employment, & found as a fact that he was not employed to touch or handle any machinery :—*Held* : the employers were not estopped by previous payments of compensation from putting the true facts of the workman's employment before the judge, & his finding thereon was purely a question of fact.—*NOMERACSKY v. CANTERBURY DRESSING WORKS* (1928), 21 B. W. C. C. 41, C. A.

. *Add. Annotations* :—*Refd.* *Delahunt v.*

*Moody* (1927), 21 B. W. C. C. 588; *Woodrow v. Trawlers (White Sea) & Grimsby* (1929) 141 L. T. 676.

3162a. ————.]—Where conflicting medical evidence was given, & the county ct. judge followed the view expressed by the medical assessor, who was sitting with him :—*Held* the county ct. judge must form his own opinion on the facts as proved & then accept advice given by the medical assessor as to the scientific inference to be drawn from those facts, & having entirely founded his award on the opinion formed by the medical assessor his award could not stand.—*FOX v. PRICE* (1926), 20 B. W. C. C. 160, C. A.

3165. *Add. Annotation* :—*Appld.* *Fox v. Price* (1926), 20 B. W. C. C. 160.

3169. *Add. Annotation* :—*Refd.* *Maxwell v. Keun, Lane, Bodley Head & Butler & Tanner, Maxwell v. Keun, Jonathan Cape & Butler & Tanner* (1927), 44 T. L. R. 100.

3172a. ———— Pending arbitration—Application for leave to issue execution for arrears.]—*LEWIS v. DOBSON STEAM FISHING CO., LTD.* (1929), 73 Sol. Jo. 483.

3184a. ————.]—A workman, whose right arm was injured, was for some time paid compensation on the basis of total incapacity. The employers then applied for a review on the ground that he had partially recovered. At the hearing the workman was not called, but the county ct. judge examined his arm. The only evidence given was that of two doctors, one called by each side, who agreed that the workman was suffering from a 40 per cent. incapacity. The judge made an award diminishing the compensation payable, in which he said that he was unable to find on the evidence that the workman was either an "odd lot" or came within Workmen's Compensation Act, 1925 (c. 84), s. 9 (4). The workman appealed on the ground that no sufficient evidence had been given that he had regained sufficient capacity to work to take him out of the category of "odd lot," & that, therefore, the onus was upon the employers of proving that there was in fact work available at which the man could earn wages which onus had not been discharged :—*Held* : taking into consideration

#### PART XIV. SECT. 11, SUB-SECT. 1.

3101 I. *Jurisdiction of court of district where accident happened*—*Accident in Ireland—Employer resident in England.*—*SCANLON v. HARTLEPOOL SEATONIA S.S. CO., LTD.* (No. 1), [1929] I. R. 96.—IR.

#### PART XIV. SECT. 11, SUB-SECT. 3.

sy. *Statement of claim—Action under Workmen's Compensation Act, R. S. S., 1920 (c. 210)—Date of accident.*—*LIEB v. DRACON*, [1927] 3 D. L. R. 332; [1927] 2 W. W. R. 173; 21 Sask. L. R. 485.—CAN.

#### PART XIV. SECT. 11, SUB-SECT. 5.

sz. *Joint committee—Consideration of extraneous matters on hearing of application—Effect of.*—*Workmen's Compensation (Broken Hill) Act, Sched., Part II.*, provides that awards of compensation shall be made by the joint committee to a mine-worker, whom the medical authority has certified to be

suffering from pneumoconiosis &/or tuberculosis to such a degree that he should not be re-engaged. Upon an application for compensation by a mine-worker, whom the medical authority had certified to be suffering from pneumoconiosis & tuberculosis to the degree mentioned in the schedule, the joint committee, refused to make an award upon the ground, amongst others, that the mine-worker had received compensation in respect of his disablement through lead poisoning under Workmen's Compensation Act, 1916 :—*Held* : the receipt of compensation by a mine-worker under Workmen's Compensation Act, 1916, was a matter outside the ambit of the jurisdiction of the joint committee, & the action of the joint committee in taking into consideration extraneous matters which were outside its jurisdiction, amounted in law to a failure to hear & determine the application, & a writ of mandamus should issue.—*Re ATKINSON, Ex p. ROWE* (1928), 28 S. R. N. S. W. 601; 45 N. S. W. W. N. 194.—AUS.

#### PART XIV. SECT. 11, SUB-SECT. 6.—A.

sa. *Power to refuse application "without prejudice."*—Where a circuit ct. judge ordered an application to be "refused without prejudice" :—*Held* : the refusal of compensation was final, & as the refusal could not be treated as a nullity, nor as a mere adjournment of the application, the judge had no jurisdiction to entertain a second application.—*DELAHUNT v. MOODY*, [1928] I. R. 208.—IR.

sb. *Power to grant decree for expenses in name of agent-disburser.*—*Held* : although Workmen's Compensation Act, 1925, did not in terms authorise the sheriff, sitting as arbitrator, to allow decrees for expenses to go out in the name of the agent-disburser, such a power, not being expressly excluded, was to be inferred, there being no reason, on grounds of equity or expediency, for refusing to the sheriff, as a statutory arbitrator, a power which he possessed in his ordinary judicial capacity.—*COAKLEY v. SMITH*

the judge's power to use his own knowledge of the local labour conditions, there was evidence to support the finding & no misdirection.—*GLADSTONE SPINNING Co. v. NANGLE* (1928), 98 L. J. K. B. 161; 140 L. T. 171; 21 B. W. C. C. 394, C. A.

**3188. Add. Annotation:—***As to (1) Follid. Cauldon Potteries v. Johnson* (1926), 20 B. W. C. C. 42.

**3192a. ————]—*CAULDON POTTERIES, LTD. v. JOHNSON*, No. 3821a, *post*.**

**3208. Add. Annotation:—***Distd. Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

**3224. Add. Annotation: Consd.** *Evans v. Ebbw Vale Steel Iron & Coal Co.* (1929), 22 B. W. C. C. 274.

**3226a. ————]—Where a workman injured his left hand, but the county ct. judge found that there was no incapacity resulting from the accident & no probability of any:—*Held*: the evidence supported the findings, & there was no misdirection.—*WAGSTAFF v. GUTTA PERCHA Co.* (1927), 20 B. W. C. C. 430, C. A.**

**3226b. ————]—A workman earned £9 9s. a week as a stone contractor under a contract at a fixed price, upon which he himself worked, & also employed others. While so working he was injured by an accident. The county ct. judge said that he did not accept the evidence which had been given as to the inability of the workman to do the full work of a contractor, & refused compensation:—*Held*: it was a question of fact, as to which there was evidence to support the finding, & no misdirection.—*JONES v. GARFORTH COLLIERIES, LTD.* (1926), 20 B. W. C. C. 109, C. A.**

*Annotation:—**Refd. Dodd v. Oceanic Steam Navigation Co.* (1928), 21 B. W. C. C. 118.

**3226c. ————]—In July a seaman caught his left hand in the cogs of a windlass, & in Aug. had the little finger amputated. He was paid compensation until Dec. He claimed compensation as for total incapacity, with a declaration of liability. The county ct. judge made an award in favour of the employers:—*Held*: there was abundant evidence to support the award.—*BARRY v. PORTHLEVEN SHIP OWNERS* (1928), 21 B. W. C. C. 219, C. A.**

**3227a. ————]—A workman suffered an injury to his finger by an accident arising out of & in the course of his employment, with the**

result that the finger had to be amputated. Compensation was paid, but was determined upon the certificate of the employer's doctor that the workman was no longer incapacitated. In proceedings instituted by the workman medical evidence was given on his behalf that his grip was weakened, that the muscles were still tender, & that he was still partially incapacitated. The doctor called on behalf of the employers agreed that the grip was weak, but stated that the workman was capable of doing some work which would be beneficial. The county ct. judge found that the workman had fully recovered, & made a declaration of liability only:—*Held*: there was no evidence to support the finding, & the case must be remitted for compensation to be assessed.—*BUCK v. DENNING* (1926), 19 B. W. C. C. 388, C. A.

**3228. Add. Annotations:—***As to (2) Consd. Williams v. Tredegar Iron & Coal Co.* (1927), 96 L. J. K. B. 722; *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 617; *Tannoch v. Brownieside Coal Co.*, [1929] A. C. 642. *Appl. Stevens v. Birmingham Corpn.* (1929), 22 B. W. C. C. 311. *Generally. Refd. Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3230. Add. Annotations:—***Consd. Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664. *Refd. Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3232. Add. Annotations:—***Consd. Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 661. *Refd. Cushion v. Tredegar Iron & Coal Co.* (1927), 20 B. W. C. C. 454; *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3235a. ————]—The amount of the average weekly earnings of a workman before accident was 50s. After the accident he returned to lighter work, but was paid at exactly the same rate as before the accident. He, however, only earned an average weekly amount of 37s. 8d., owing to slackness of trade. He brought a claim for compensation at the rate of 6s. 2d. a week, being one-half the difference between his pre-accident & post-accident earnings. The county ct. judge made a declaration of liability only on the ground that he found no loss of earning capacity**

*MERLEE IRON Co., LTD.*, [1929] S. C. (Ct. of Sess.), 182.—*SCOT*.

**PART XIV. SECT. 12, SUB-SECT. 1.**  
**3215 i. ————]—*MOORE v. NIMMO*, [1929] S. C. (Ct. of Sess.), 607.—*SCOT*.**

**PART XIV. SECT. 12, SUB-SECT. 3.**  
**3228 iii. ————]—A workman was awarded compensation in respect of total incapacity in Feb. 1925. On May 13, 1926, he became fit for light work. He made efforts to obtain such work, but, owing to abnormal economic conditions, he was unable to do so. If he had obtained light work the effects of his injury would have worn off, & he would have recovered full capacity by Sept. 13, 1926. Owing, however, to his failure to obtain light work he was still partially incapacitated at the latter date. Apart from this failure to obtain work, his condition was not due to any failure on his part to take**

reasonable measures to promote the recovery of capacity. The arbitrator having suspended payment of compensation as from Sept. 13, 1926:—*Held*: the continuance of incapacity, not being due to any unreasonable conduct on the workman's part or to the intervention of any new cause apart from economic circumstances, was still attributable to the original accident: &, accordingly, that the arbitrator was not entitled to suspend payment of compensation.—*KENNEDY v. STOTT'S IRON CO.*, [1929] S. C. (Ct. of Sess.), 29.—*SCOT*.

**PART XIV. SECT. 12, SUB-SECT. 4.**  
**3235 i. Whether incapacity within the Acts—Slackness of work.]**—A workman, employed as a drawer in a mine, who had been injured, was paid compensation first as for total, & later as for partial, incapacity. He then obtained work with the same employers

as a pump engineman at wages higher than he had earned as a drawer, & compensation was suspended by agreement. The pit in which he was employed as a pump engineman having been closed, the workman was thrown out of employment. He was unfit, owing to his injury, for his former work as a drawer, but he was fit for various jobs, including that of pump engineman, at which he could earn his former wage. He was unable to find work owing to the state of the coal mining industry & not owing to his injury. The arbitrator having ended compensation in the meantime as at the date when the workman obtained work as a pump engineman:—*Held*: as the workman was fit for work at which he could earn as high wages as he had earned as a drawer, he was not entitled to compensation.—*INVERARITY v. EDINBURGH COLLIERIES, LTD.*, [1929] S. C. (Ct. of Sess.), 338.—*SCOT*.



due to the accident since the return to work. The workman appealed:—*Held*: the loss of earnings after the accident being entirely due to labour conditions & not to the fact that the workman was injured, the decision of the county ct. judge was right.—*LYON v. TAYLOR BROS.* (1928), 21 B. W. C. C. 415, C. A.

**3238.** *Add. Annotation*:—As to (1) *Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3239.** *Add. Citations*:—96 L. J. K. B. 295; 136 L. T. 427; 19 B. W. C. C. 475.

*Add. Annotation*:—*Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3239a.** ———.]—A miner who, in Apr. 1926, had the symptoms of nystagmus, on Apr. 30 went on strike until Dec. 2. On July 13, he obtained a certificate that he was disabled by the disease as from June 14. The county ct. judge held, although totally incapacitated from June 14, the workman would not, in any case, have been at work owing to the strike, & refused compensation:—*Held*: if a workman was totally incapacitated by an accident, it was immaterial that he might also have been prevented from earning money by some other cause.—*WILLIAMS v. CWMAMAN COAL CO., LTD.* (1927), 20 B. W. C. C. 476, C. A.

**3240.** *Add. Annotation*:—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3241.** *Add. Annotation*:—*Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3243a.** ——— *Cesser of work obtained in lieu of compensation.*]—When a workman, partially incapacitated by an accident during the course of his employment, obtains work in lieu of compensation, the cesser of that work entitles him to an award, even in cases where the cesser is due to the state of the labour market & would have resulted in his being unemployed in any event.—*LEWIS v. GUEST, KEEN & NETTLEFOLDS, LTD., WATKINS v. SAME, TUCKER v. SAME, INGRAM v. CRAWSHAY BROTHERS*, [1928] 1 K. B. 20; 96 L. J. K. B. 664; 137 L. T. 386; 43 T. L. R. 436; 71 Sol. Jo. 388; 20 B. W. C. C. 359, C. A.

*Annotations*:—*Apld.* *Williams v. Cwmaman Coal Co.* (1927), 20 B. W. C. C. 476; *Lyon v. Taylor Bros.* (1928), 21 B. W. C. C. 415. *Refd.* *Cushion v. Trodegar Iron & Coal Co.* (1927), 20 B. W. C. C. 454; *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3243b.** ———.]—A coal miner, who had worked for many years underground, became, by reason of an attack of nystagmus, only able to do surface work at a lower wage. This work was unavailable, owing to the state of the labour market, though the workman, but for the nystagmus, would probably have been able to obtain employment underground:—*Held*: the effect of Workmen's Compensation Act, 1923 (c. 43), s. 16, which was re-enacted as Workmen's Compensation Act, 1925 (c. 84), s. 9 (4), was necessarily to exclude the idea that the words "able to earn" in Workmen's Compensation Act, 1906 (c. 58), Sched. I., applied to any cir-

cumstances not personal to the workman himself. It dealt expressly with the case of the man who could not find work, & it set the criterion whether the failure to find work was due wholly or mainly to the accident, but failure to find work due solely to the state of the labour market was expressly excluded by the sect., & it was impossible to say that *Cardiff Corpn. v. Hall*, No. 3284, *post*, when applied to a case after the passing of 1923 Act, was wrong.—*BEVAN v. NIXON'S NAVIGATION CO., LTD.*, [1929] A. C. 44; 139 L. T. 647; 44 T. L. R. 805; 21 B. W. C. C. 237, H. L.

*Annotations*:—*Apld.* *Lyon v. Taylor Bros.* (1928), 21 B. W. C. C. 415. *Expld.* *Tannoch v. Brownieside Coal Co.*, [1929] A. C. 642. *Distd.* *Evans v. Elbbw Vale Steel, Iron & Coal Co.* (1929), 22 B. W. C. C. 274. *Consd.* *Statham v. Oxcroft Colliery Co.* (1929), 22 B. W. C. C. 330. *Refd.* *Gladstone Spinning Co. v. Nangle* (1928), 98 L. J. K. B. 161; *Wemyss Coal Co. v. Walker* (1929), 22 B. W. C. C. 366.

**3247a.** ———.]—A blacksmith was injured while at work by a splinter of iron entering an eye, & impairing its vision by one-half. He returned to work for a short period, but did not do overtime, & threw up the work on the ground that it was unsuitable. He was nervous of losing the sight of the other eye. The employers called medical evidence that he was fully able to do his work. The county ct. judge made an award in favour of the workman on the basis of partial incapacity. The employers appealed:—*Held*: there was evidence to support the finding & no misdirection.—*COLQUITT v. UNITED STEEL CO., LTD.* (1928), 21 B. W. C. C. 409, C. A.

**3251a.** ———.]—A workman lost an eye in the course of his employment. He refused to follow medical advice & wear a glass eye, but brooded over his accident, & got into a nervous state. The county ct. judge held the nervous condition caused incapacity & was directly due to the accident:—*Held*: it was a question of fact, as to which there was evidence to support the finding, & no misdirection.—*HODSON v. STAR PAPER MILLS, LTD.* (1927), 20 B. W. C. C. 265, C. A.

**3261.** *Add. Annotation*:—*Consd.* *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3264.** *Add. Annotation*:—*Consd.* *Statham v. Oxcroft Colliery Co.* (1929), 22 B. W. C. C. 330.

**3269a.** ———.]—A collier suffered a succession of accidents, but was given work with partial compensation until, in 1921, he left the colliery & became a club steward at higher wages. In 1922 he was granted a declaration of liability against the colliery co. In 1928 he was dismissed from his position of club steward & failed at three clubs where there were vacancies to obtain the position of a club steward. He claimed that he was unfit to work as a collier at the coal face, & his old employers refused to employ him otherwise. He therefore made a claim for compensation against his old employers in the form of a review of the declaration of liability. The county ct. judge made an award in his favour of 7s. 6d. a week on the grounds that, although he could do surface work, he was unable to work at the coal face, & that the job of a club steward was not a well-known branch of the labour market, & should therefore be disregarded:—*Held*: there was no evidence on which the county



ct. judge could find that the work of a club steward was exceptional; it was a well-known class of employment in which the man was capable of working. The case must be remitted for a rehearing, taking this fact into consideration.—*STATHAM v. OXCROFT COLLIERY CO., LTD.* (No. 2) (1929), 22 B. W. C. C. 330, C. A.

**3269b.** — *After retirement.*—A workman lost the use of an eye by accident & wore a shade over it in consequence. Liability being admitted he received full compensation until he was able to do his ordinary work again. An agreement was recorded whereby the employers undertook to provide the workman with employment, & admitted their liability to pay compensation "as & when their liability shall arise." The workman continued doing his work without compensation until having reached the age of sixty-six he was compulsorily retired under his employers' superannuation scheme, but at the same time became entitled thereunder to a pension of 10s. per week. After his retirement the workman filed a request for arbitration, claiming to be entitled to be paid full compensation as from the date of his retirement. He gave evidence that he had tried to obtain work since his retirement but had failed. The county ct. judge held that although the workman was physically capable of performing his old work with his old employers, his age & the loss of the eye prevented him getting fresh work in the labour market. He made an award in his favour of 10s. a week. He found the workman's average weekly earnings before the accident to be £3 5s. & his post-accident earnings £2 2s. The first figure included payment for overtime & the second did not. Furthermore there had been a fall in the rate of wages since the accident. The employers appealed on the grounds that the workman was not incapacitated, & that, if he was, compensation had been calculated on the wrong basis, because the judge had not taken into consideration the question of overtime & fall in the rate of wages:—*Held*: there was evidence on which the county ct. judge could find that the workman was partially incapacitated, but, in arriving at the amount of compensation payable he had not taken into account the high rate of pre-accident wages & overtime. Also the question of pension must be considered.—*STEVENS v. BIRMINGHAM CORPN.* (1929), 22 B. W. C. C. 311, C. A.

**3274a.** — —.—A workman, whose left eye was defective, suffered, in 1919, an injury to his right eye while working as a miner, for which compensation was received until the beginning of 1924, when he was given work underground. This was found to be unsuitable, & he was given surface work on the screens, & was paid compensation for partial incapacity. He left this work at the commencement of the stoppage due to a dispute in the coal trade in 1926, but was not re-employed at the conclusion of the stoppage, in Dec. 1926. In Feb. 1927, the workman applied to have his compensation increased, on the ground that the work on which he had been employed was a special kind of surface work found for him by his employers. The county ct. judge held *resps.* were not liable to pay compensation as claimed on

the grounds set out in their particulars. The particulars referred to in *resps.* answer contained the allegation that the workman was not incapacitated from doing ordinary surface work:—*Held*: the award must be taken to mean that the judge had found as a fact that the workman was capable of doing ordinary surface work, & there was evidence to support such a finding.—*CUSHION v. TREDEGAR IRON & COAL CO., LTD.* (1927), 20 B. W. C. C. 454, C. A.

**3275a.** — —.—A miner, in 1916, lost his right eye by accident, & received compensation. He subsequently returned to work at the face, but in June, 1924, had another accident through which his left eye was injured, & he was paid compensation. In Mar. 1925, he returned to light work, receiving also a weekly sum by way of compensation. On July 1, 1925, the employers applied for a review & termination of the weekly payments. The workman stated in evidence that he was afraid to work below ground again, & the county ct. judge held work at the coal face was not suitable, & the man's refusal to do it was reasonable:—*Held*: the case must go back for the judge to decide whether the unsuitability of the work resulted from the first accident or the second, or both, & to assess the compensation payable only in regard to incapacity from the second accident.—*ASTON COAL CO., LTD. v. STANCIL* (1926), 20 B. W. C. C. 198, C. A.

**3282.** *Add. Annotation*:—*Consd. Evans v. Ebbw Vale Steel, Iron & Coal Co.* (1929), 22 B. W. C. C. 274.

**3283.** *Add. Annotation*:—*Refd. Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927),

**3283a. Accident to infant Inability to do work of employer on becoming adult.**—An infant employed by a railway co. lost his left foot in an accident while at work. He was fitted with an artificial foot & given suitable employment until he came of age. His employers, being then unable to find him work in an adult grade, dismissed him. The workman claimed compensation as a totally incapacitated adult worker, but the employers refused to pay except on the basis of partial incapacity. The county ct. judge held that the workman was not entitled to be treated as totally incapacitated either as an "odd lot" or under Workmen's Compensation Act, 1925 (c. 84), s. 9 (1). The workman appealed:—*Held*: there was evidence to support the finding & no misdirection.—*BARNES v. LONDON & NORTH EASTERN RY. CO.* (1929), 22 B. W. C. C. 205, C. A.

**3284.** *Add. Annotations*:—*Consd. Hamilton v. Shelton Iron, Steel & Coal Co., Leigh v. Same, Timmis v. Same* (1926), 136 L. T. 427; *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664; *Rhodes v. Digby Colliery Co., [1927] 1 K. B. 152. Apprvd. Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 617. *Consd. Gladstone Spinning Co. v. Nangle* (1928), 98 L. J. K. B. 161; *Barnes v. L. & N. E. Ry. Co.* (1929), 22 B. W. C. C. 205; *Evans v. Ebbw Vale Steel, Iron & Coal Co., Ltd.* (1929), 22 B. W. C. C. 274. *Apld. Wemyss Coal Co., Ltd. v. Walker*

(1929), 22 B. W. C. C. 366. **Refd.** Cushion v. Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454; Tannoch v. Brownieside Coal Co., [1929] A. C. 642; Statham v. Oxcroft Colliery Co. (1929), 22 B. W. C. C. 330.

**3286. Add. Annotation:—****Refd.** Bevan v. Nixon's Navigation Co. (1928), 139 L. T. 647.

**3287. Add. Annotation:—****Refd.** Bevan v. Nixon's Navigation Co. (1928), 139 L. T. 647.

**3289a. Unable to find former employment.]**

—A miner who had lost the sight of his right eye in an accident recovered sufficiently to be fit to resume his old work. Although he had taken all reasonable steps to obtain work as a miner or quarryman, he failed to obtain any. The sheriff-substitute found that the workman's failure to obtain employment was mainly a consequence of the injury & treated his incapacity as total under sect. 9 (1). On appeal to the First Division of the Ct. of Session the decision of the sheriff-substitute was reversed on the ground that sect. 9 (1) did not apply to a case where the workman had recovered sufficiently to be fit for his former employment. The workman appealed to the House of Lords:—**Held:** the words "employment of a certain kind," in sect. 9 (1) are applicable although the employment which the workman is fit for & is attempting to obtain is his pre-accident employment.—**TANNOCH v. BROWNIESIDE COAL CO.**, [1929] A. C. 642; 98 L. J. P. C. 156; 141 L. T. 599; 45 T. L. R. 599; 73 Sol. Jo. 499; 22 B. W. C. C. 383, H. L.

**3290a. —.**—[In May, 1923, a miner suffered a permanent injury by accident to his left foot & was paid compensation. In May, 1924, he was given by his employers light employment as a signaller, together with compensation for partial incapacity, & he continued to do the work satisfactorily until the general stoppage in 1926. His services were then dispensed with, & he was unable to obtain employment elsewhere. At the hearing it was proved that the workman could not do work which involved activity of the feet. The sheriff-substitute found that the workman was fit only for a special & limited class of work which he would have no chance of obtaining in the competitive labour market, & awarded him compensation for total incapacity. On appeal this decision was affirmed by the First Division of the Ct. of Session. The employers again appealed:—**Held:** there was ample evidence to support the finding of the arbitrator.—**WEMYSS COAL CO., LTD. v. WALKER** (1929), 22 B. W. C. C. 366, H. L.

**3295. Add. Annotation:—****Consd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshaw (1927), 96 L. J. K. B. 664.

**3295a. —.**—[In 1911, a workman lost his right arm as a result of an accident. From 1913 to 1922 his employers engaged him on light work. In 1922 it was agreed that he should in the future be paid 7s. 6d. a week compensation in respect of the estimated difference between what he could earn at light work & what he would have been earning if he had not been injured. After 1924 he was given the work of record-keeping. On

Dec. 24, 1927, he was discharged, the works being closed on account of trade difficulties. On Jan. 9, 1928, after sixteen days, he was re-engaged on light work on the terms of the 1922 agreement. The workman received unemployment benefit for the period he was unemployed & also the weekly compensation of 7s. 6d., & did not try to obtain other employment. On May 13, 1928, he filed an application for arbitration, claiming an increase of compensation during the period he was unemployed on the basis of total incapacity. It was agreed that the amount recoverable in these proceedings, if successful, was 55s., being two sums of 35s. a week less the two payments of 7s. 6d. The arbitration was begun in Aug. 1928, & continued in Oct. In his evidence the workman said that he was "a storekeeper plus messenger," & that he could act as a watchman-gatekeeper. At the hearing in Oct. the county ct. judge intimated that he was prepared to accept the argument put forward on behalf of the workman that he was an "odd lot," but again adjourned the case to Feb. 1929, for further consideration. In Feb., after hearing further argument, the county ct. judge found that the workman was partially incapacitated, that there were classes of employment in which he could earn his pre-accident wages, & that 7s. 6d. was sufficient compensation during the two weeks in question. The workman appealed:—**Held:** the findings of the county ct. judge amounted to a finding of fact that the workman was not an "odd lot," & there was evidence to support such a finding & no misdirection.—**EVANS v. EBBW VALE STEEL, IRON & COAL CO., LTD.** (1929), 22 B. W. C. C. 274, C. A.

**3302. Add. Annotation:—****Refd.** Bevan v. Nixon's Navigation Co. (1928), 139 L. T. 647.

**3305. Add. Annotations:—****Consd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshaw (1927), 96 L. J. K. B. 664; Barnes v. L. & N. E. Ry. Co. (1929), 22 B. W. C. C. 205; Evans v. Ebbw Vale Steel, Iron & Coal Co. (1929), 22 B. W. C. C. 274. **Refd.** Cushion v. Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454.

**3315a. —.**—[A workman was employed as a seaman on a fishing-boat at £3 a week. On Feb. 11, 1926, his finger was cut by a rope, & he was paid compensation until July 2, when he was certified fit for light work. He then obtained a situation on a trawler, until Sept., payment being on a profit-sharing basis, & his share of the profits being £21. He next worked on another trawler until Feb. 1927, payment being on the same basis, but there were no profits. On Nov. 5, 1926, he filed a request for arbn. claiming half the difference between his pre-accident wages & what he was able to earn on the trawlers on the profit-sharing basis. The county ct. judge assessed his weekly earning capacity since July 2, 1926, at £2 5s., & awarded him 7s. 6d. a week compensation:—**Held:** (1) there was no evidence that the workman suffered any loss of earnings by reason of his injury, & no evidence to support the award; (2) the workman had not discharged the *onus* of showing a reasonable probability that incapacity would ensue in the future, &

was not entitled to a declaration of liability.  
**MCLEOD v. BLACK** (1927), 20 B. W. C. C. 530, C. A.

**3325. Add. Annotation:—**As to (1) **Consd.** Gardner v. Vickers (1928), 44 T. L. R. 563.

**3329. Add. Annotation:—**Generally, **Refd.** Gardner v. Vickers (1928), 44 T. L. R.

**3341. Add. Citations:—**[1927] A. C. 126; 96 L. J. K. B. 284; 136 L. T. 258; 19 B. W. C. C. 416.

**Add Annotation:—****Refd.** Curran v. Kays, [1928] 2 K. B. 469.

**3354. Add. Annotation:—**As to (1) **Refd.** Nugent v. Londonderry Collieries (1929), 141 L. T. 619.

**3355. Add. Annotations:—****Consd.** Welsh Navigation Steam Coal Co. v. Evans, [1927] A. C. 831; Nugent v. Londonderry Collieries (1929), 141 L. T. 619.

**3357. Add. Annotations:—****Consd.** Campbell v. Portland Colliery Co. (1926), 19 B. W. C. C. 591; Shotts Iron Co. v. Curran, [1929] A. C. 409.

**3359a. ———. ]—**Where a workman who had been killed by an accident arising out of & in the course of his employment left his mother & several brothers & sisters under the age of fifteen partially dependent on his earnings:—**Held:** the brothers & sisters were entitled to the children's allowance.  
**SHOTTS IRON CO. v. CURRAN**, [1929] A. C. 409; 98 L. J. P. C. 73; 141 L. T. 65; 17 T. L. R. 251; 22 B. W. C. C. 1, H. L.

**3359b. ———. Brother under fifteen.]—****SHOTTS CO. v. CURRAN**, No. 3359a, *ante*.

**3359c. How calculated.—Period of calculation — Posthumous child.]—**A workman having been killed by accident arising out of his employment, his widow claimed compensation for herself & her posthumous child born some ten weeks after the workman's death. The employers paid a sum of money into ct. in respect of the child's allowance based on 15 per cent. of £2 a week for 780 weeks or fifteen years:—**Held:** the child was entitled to a sum calculated by taking 15 per cent. of £2 a week over a period from the death of the workman to the date when the child in fact would attain the age of fifteen, which, in this case, was some ten weeks more than fifteen years.—**ATHEY v. PICKERINGS, LTD.** (1926), 96 L. J. K. B. 250; 136 L. T. 535; *sub nom. Re ATHEY, PICKERINGS, LTD.'S APPLICATION*, 20 B. W. C. C. 215, C. A.

**3359d. ———. Amount of lump sum.]—**A workman died as the result of an accident, having previously received from his employers £65 5s. 5d. in weekly payments as compensation. On his death his employers paid into

ct. £534 14s. 7d., made up of £234 14s. i.e., £300 less £65 5s. 5d., for the lump sum payable to the widow, & £300 for children's allowance. The total amount to which the children would have been entitled, if not limited in any way, was calculated to be £617 14s. The county ct. judge decided that the amount paid in was reasonable &, at the request of the widow, made an order for payment out of part of the amount:—**Held:** (1) the amount paid into ct. by the employers was insufficient, & the dependants were entitled to the full £600, since if the lump sum calculated under Workmen's Compensation Act, 1925 (c. 84), s. 8 (2), was reduced below £300, then, if the figures warranted it, the children's allowance under sect. 8 (3) might exceed £300, provided that the lump sum & the children's allowance together did not exceed £600; (2) the widow was not deprived of her right of appeal by having accepted payment of part of the amount paid in, because, although she might have approbated the order on her own behalf, she had reprobated it in the interests of her children. (3) *Semble:* a request for arbn., & not an appeal, was the proper procedure for the widow. **MALCOLM v. BARBER, WALKER & CO., LTD.** (1927), 137 L. T. 470; 20 B. W. C. C. 516, C. A.

**3359c. ———. One child over fifteen partially dependent.]—**A workman died as a result of an accident leaving a widow & two children under fifteen all wholly dependent, & also one daughter over fifteen partially dependent. The county ct. judge held the presence of the daughter over fifteen, & only partially dependent, required him to calculate the children's allowance on the basis of partial dependency:—**Held:** the children's allowance must be calculated on the basis of their being wholly dependent, & the existence of another member of the family over fifteen, who happened to be only partially dependent, did not affect the calculation.—**GREEN v. PREMIER GLYNRHONY SLATE CO., LTD.**, [1928] 1 K. B. 561; 97 L. J. K. B. 32; 138 L. T. 90; 20 B. W. C. C. 563, C. A.

**3364. Add. Annotation:—****Consd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (1927), 96 L. J.

**3366. Add. Annotations:—****Consd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (1927), 96 L. J. K. B. 664. **Refd.** Bevan v. Nixon's Navigation Co. (1928), 139 L. T. 647; Barber, Walker & Co. v. Flint (1928), 98 L. J. K. B. 83.

**3371a. ———. ]—****STEVENS v. BIRMINGHAM CORPN.**, No. 3269b, *ante*.

**3373. Add. Annotations:—****Consd.** Hamilton v.

#### PART XIV. SECT. 13, SUB-SECT. 1.— C. (b).

**3349 ii. ———. ]—**Appls., being the father, mother, brothers, & sisters of deceased, claimed compensation under Workers' Compensation Act, 1912-1924, on the ground that they were partially dependent on deceased. Appls. & deceased had resided together, & deceased, who was an infant, had been in receipt of a wage of 12s. 6d. per week at the time of his death, which, or most of which, he was in the habit of contributing towards the expenses

of the household of which he was a member. The magistrate found that the cost of the keep of deceased came to more than the amount which he paid into the family & that appls. were not dependent on him:—**Held:** the magistrate was entitled to find that appls. were not dependent on deceased.—**EDMONSTONE v. GREAVES** (1926), 29 W. A. L. R. 83. **AUS.**

**ii. ———. Incapacity of wage-earning father — Result of son's accident.]—**A workman who was killed by an accident arising out of his employ-

ment, left his mother & sister partially dependent upon his earnings. His father, a wage-earner & not dependent, was totally incapacitated by the news of his son's death. The arbitrator took the loss of the father's earnings into consideration in assessing the lump sum payable to the dependants. The employers appealed:—**Held:** the loss of the father's wage-earning capacity was irrelevant to the assessment of the compensation.—**SWAN v. COLTNESS IRON CO., LTD.** (1928), 21 B. W. C. C. 567.—**SCOT**

**c. Reversd.**, 19 B. W. C. C. 461.

Shelton Iron, Steel & Coal Co., Leigh v. Same, Timmins v. Same (1926), 96 L. J. K. B. 295; Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshaw (1927), 96 L. J. K. B. 664. **Refd.** Bevan v. Nixon's Navigation Co. (1928), 139 L. T. 647.

3389. *Add. Annotation* :—**Refd.** Stevens v. Birmingham Corp'n. (1929), 22 B. W. C. C. 311.

3390. *Add. Annotation* :—**Refd.** Colquitt v. United Steel Co. (1928), 21 B. W. C. C. 409.

3399. *Add. Annotations* :—**Consd.** Nixon v. A.-G. (1929), 46 T. L. R. 31. **Refd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243. **Mentd.** Wigg v. A.-G. for Irish Free State, [1927] A. C. 674.

3420. *Add. Annotation* :—**Distd.** McGee v. Muir Wm. & Co. (1929), 140 L. T. 546.

3423a. **Payments received under part-time agency agreement.**—A workman was employed as a fitter by a firm of engineers, & at the same time was acting under an agreement with a benefit society as their part-time agent. Under this agreement he agreed to obey the orders of the society & perform all his duties in accordance with official instructions. He was to be paid a weekly salary calculated on a percentage basis. The workman suffered an accident in the course of his employment as a fitter. The county ct. judge, in order to compute his average weekly earnings, added together the weekly payments received from both sources. The employers appealed on the ground that the relationship between the society & the workman was that of principal & agent, & not master & servant, & that his payments under the agreement should not be taken into account:—**Held**: the judge had rightly construed the agreement as establishing the relationship of master & servant between the society & the workman.—**ROBERTS v. GARDNER (WILLIAM) & SONS** (1928), 21 B. W. C. C. 154, C. A.

3423b. **Payments out of public funds.—Compensation for loss of wages.—Workman sitting on Court of Referees.**—The earnings which are to be taken as the basis of the compensation payable to an injured workman under Workmen's Compensation Act, 1925 (c. 84), are the earnings in his employment, & do not include other earnings such as payments to the workman from public funds to make up loss of wages for days when instead of working he sits as workmen's representative on the Ct. of Referees of a local employment committee.—**McGEE v. MUIR W. & Co., LTD.** (1929), 140 L. T. 546; 45 T. L. R. 202; 73 Sol. Jo. 109; 22 B. W. C. C. 193, C. A.

3433. *Add. Annotations* :—**As to (1)** **Refd.** Hamilton v. Shelton Iron, Steel & Coal Co., Leigh v. Same, Timmins v. Same (1926), 96 L. J. K. B. 295. **As to (5)** **Refd.** Bevan v. Nixon's Navigation Co. (1928), 139 L. T. 647. **Generally**, **Refd.** Lewis v. Guest, Keen & Nettlefolds,

Watkins v. Same, Tucker v. Same, Ingram v. Crawshaw (1927), 96 L. J. K. B. 664.

3455a. ——— **Overtime.**—**STEVENS v. BIRMINGHAM CORPN.**, No. 3269b, *ante*.

3455b. **Pension.**—**STEVENS v. BIRMINGHAM CORPN.**, No. 3269b, *ante*.

3466. *Add. Annotation* :—**As to (1)** **Consd.** Templeton v. Parkin Wm. & Co. (1929), 140 L. T. 519.

3469. *Add. Annotations* :—**As to (1)** **Refd.** Templeton v. Parkin Wm. & Co. (1929), 140 L. T. 519. **As to (3)** **Consd.** Roberts v. Gardner (1928), 21 B. W. C. C. 154. **Refd.** Williams v. Larsen (1928), 21 B. W. C. C. 339.

3472. *Add. Annotation* :—**Folld.** McGee v. Muir Wm. & Co. (1929), 140 L. T. 546.

3475. *Add. Annotations* :—**Apld.** Gardner v. Vickers (1928), 44 T. L. R. 563; *Re Unemployment Insurance Act, 1920, Re Leeds Corp'n. & Chadwick* (1928), 92 J. P. 192.

3482a. ——— **Causing temporary unemployment.**—Appl't., who was employed by resps. as a riveter on piecework, received notice, on Sept. 3, 1926, owing to the coal strike of that year, that there was no more work available for him. He accordingly ceased to work till Dec. 8, when he was re-employed by resps. On Jan. 11, 1927, he met with an accident causing total incapacity. On an application for compensation, the county ct. judge held the interruption was a normal incident & there was no break in the employment, & he awarded compensation on the basis of appl't.'s earnings for the twelve months prior to the accident:—**Held**: the interval was not one of the incidents of a discontinuous employment, & there was a break in the employment, & the case must go back to the judge to assess compensation on that basis.—**GARDNER v. VICKERS, LTD.** (1928), 44 T. L. R. 563; 21 B. W. C. C. 129, C. A.

3491. *Add. Annotation* :—**Refd.** Marchant v. Char Steam Trawling Co. (1929), 22 B. W. C. C. 217.

3493a. **Promotion due to illness.**—A workman, who had been employed as a deck-hand, was promoted boatswain of a steam trawler, owing to the illness of one of the vessel's officers just before she left harbour. Within twenty-four hours of putting to sea, the workman suffered an accident. In the course of subsequent proceedings regarding the payment of compensation, an issue was raised between the parties as to whether the weekly payment should be calculated on the earnings of a boatswain or a deck-hand. The county ct. judge held that at the time of the accident the workman was employed in the grade of a boatswain, & awarded compensation on that basis. The employers appealed:—**Held**: the judge had rightly directed himself as to the grade of the workman at the date of the

PART XIV. SECT. 13, SUB-SECT. 2.—C. (a).

3374 i. ——— **Offer of suitable work.—As non-union worker.**—**Held**: as the employers had not discharged the onus of proving that acceptance of the condition in their offer would not have made the workman's position materially worse than it had been under the old contract, the arbitrator was not entitled to refuse compensation.—

MCDONALD v. OUTRAM (GEORGE) & CO., LTD., [1927] S. C. 333.—**SCOT**

PART XIV. SECT. 13, SUB-SECT. 3.—A. (a).

sa. **Amount he is actually earning.**—**Held**: as the workman was employed & there was no other employment open to him at which he could earn higher wages, the proper figure to take in assessing compensation was the

amount he was actually earning.—**DYKES v. BAIRD**, [1929] S. C. (Ct. of Sess.) 555.—**SCOT**.

PART XIV. SECT. 13, SUB-SECT. 3.—B. (a).

3432 viii. ———.—**DUNSTONE v. FERRARI**, [1926] V. L. R. 155; 47 A. L. T. 141; [1926] *Argus* L. R. 133.—**AUS**.

accident.—*MARCHANT v. CHAR STEAM TRAWLING CO., LTD.* (1929), 22 B. W. C. C. 249, C. A.

3511. *Add. Annotation* :—*Consd. Niddrie & Benhar Coal Co. v. Dee*, [1927] A. C. 299.

3521. *Add. Annotation* :—*Apld. Williams v. Crawshaw Bros. (Cyfarthfa)* (1929), 22 B. W. C. C. 223.

3530a. ———.]—On a finding that a workman has fully recovered & there is no evidence of any probability of future incapacity, the judge has no power to order a declaration of liability to be recorded.—*PORTER v. WHITBYS, LTD.* (1926), 19 B. W. C. C. 414, C. A.

3530b. *Admission by employer of partial incapacity.*

—On Sept. 26, 1926, a workman was kicked on the knee by a horse & injured. He was paid full compensation until May 5, 1927, when the employers gave notice of their intention to reduce the weekly compensation to 10s., & did in fact so reduce it. The workman applied for 30s. to be continued. The employers in their answer submitted to an award of 10s. a week to continue. The county ct. judge found that the man was able to do his full work on May 5, 1927, but ordered that compensation should be paid at 30s. up to July 4, 1927, & then terminate altogether :—*Held* : the award was inconsequent, & the case must be sent back to the judge for a rehearing.—*SHEAY v. TITE (B. W.) & SONS* (1927), 20 B. W. C. C. 616, C. A.

3531a. ———.]—*Onus of proof on workman.*—Where the county ct. judge found that employers were not liable to pay compensation, as the workman was not incapacitated from doing his ordinary work at his ordinary wages :—*Held* : the judgment of the county ct. judge involved a finding that the workman was not entitled to a declaration of liability, & the evidence supported the finding, in that the workman had failed to show that there was a reasonable probability of an ensuing incapacity.—*WILLIAMS v. TREDEGAR IRON & COAL CO., LTD.* (1927), 96 L. J. K. B. 722, 137 L. T. 464 ; 20 B. W. C. C. 180, C. A.

3531b. ———.]—*McLEOD v. BLACK*, No. 3315a ante.

3541a. ———.]—*After termination of compensation.*—

(1) Where a county ct. judge, upon a certificate of a medical referee that a workman who has been injured has entirely recovered & is fit for his usual employment not containing any suggestion of the possibility of a recurrence of incapacity due to the injury at a future date, makes an order terminating the compensation, there is no jurisdiction to make a declaration of liability. (2) The fact that the certificate does not refer, one way or the other, to the possibility of future recurrence or complications, does not make it in any way ambiguous. "Recovery" *prima facie* means that there is no liability of a recurrence of illness & consequent incapacity.—*EVANS (RICHARD) & CO., LTD. v. GILBIE* (1926), 96 L. J. K. B. 117 ; 136 L. T. 93 ; 19 B. W. C. C. 375, C. A.

*Annotations* :—*As to (1) Consd. McLeod v. Black* (1927), 20

B. W. C. C. 530 ; *Wagstaff v. Gutta Percha Co.* (1927), 20 B. W. C. C. 430 ; *Williams v. Tredegar Iron & Coal Co., Ltd.* (1927), 96 L. J. K. B. 722.

3543. *Add. Annotations* :—*As to (1) Consd. Williams v. Tredegar Iron & Coal Co.* (1927), 96 L. J. K. B. 722. *As to (2) Consd. McLeod v. Black* (1927), 20 B. W. C. C. 530.

3545a. *Order giving liberty to apply.*—Employers having paid a workman full compensation for some months for an accident in their employment, applied for a review of the weekly payment & for termination, but offered to accept a declaration of liability. The county ct. judge held they were not entitled to terminate the weekly payments, as the workman was still partially incapacitated, but such payments should cease, & no such payments should be made so long as they employed & continued to employ the workman at a wage equivalent to his pre-accident wages, with liberty to either party to apply. He also ordered the employers to pay the costs :—*Held* : (1) the order was a right order, as liberty to apply carried out the effect of a declaration of liability ; (2) the employers having failed to establish their right to termination of the weekly payments, the judge rightly exercised his discretion in ordering that the employers should pay the costs.—*SIDNEY LEE (EXETER), LTD. v. JAMES* (1928), 21 B. W. C. C. 220, C. A.

3548. *Add. Annotations* :—*As to (1) Refd. Evans v. Gilbie* (1926), 96 L. J. K. B. 117 ; *Williams v. Crawshaw Bros. (Cyfarthfa)* (1929), 22 B. W. C. C. 223 ; *Wilson & Clyde Coal Co., Ltd. v. Burrows* (1929), 141 L. T. 591. *As to (2) Consd. McLeod v. Black* (1927), 20 B. W. C. C. 530 ; *Wagstaff v. Gutta Percha Co.* (1927), 20 B. W. C. C. 430. *Apld. Williams v. Tredegar Iron & Coal Co.* (1927), 96 L. J. K. B. 722. *Consd. Ruddy v. L. M. S. Ry.* (1929), 22 B. W. C. C. 138. *As to (3) Consd. Drewitt v. Britannic Assce.* (1927), 137 L. T. 511. *Distd. Soyler v. Johnson, Matthew* (1927), 96 L. J. K. B. 1011. *Generally, Refd. Lee (Exeter) v. James* (1928), 21 B. W. C. C. 220.

3559. *Add. Annotations* :—*As to (1) Consd. Barnes v. L. & N. E. Ry. Co.* (1929), 22 B. W. C. C. 205 ; *Evans v. Ebbw Vale Steel, Iron & Coal Co.* (1929), 22 B. W. C. C. 274. *Refd. Williams v. Tredegar Iron & Coal Co.* (1927), 96 L. J. K. B. 722. *As to (2) Refd. Evans v. Gilbie* (1926), 96 L. J. K. B. 117.

3559a. ———.]—A workman having been injured, the employers entered into an agreement with him, which was duly recorded. This agreement gave the workman 30s. a week for total or partial incapacity "or until same shall be ended, diminished, increased or redeemed." Later the workman returned to work at his old wages, on the express agreement contained in correspondence that his rights under the registered agreement were kept alive, & that if the work was not continued & old wages paid, he should go back to such rights. As he was able to continue at work, the employers applied for a review to diminish or terminate the payments pay-

**PART XIV. SECT. 14, SUB-SECT. 2.**

3513 i. *Validity of Jurisdiction of arbitrator.*—An arbitrator ought not to make a prospective award.—*LAUER v. BRIGGS* (1926), 26 S. R.

N. S. W. 275 ; 13 N. S. W. W. N. 84.—*AUS.*

**PART XIV. SECT. 16, SUB-SECT. 1.**

r i. ———.]—*Withdrawal of.*—It is com-

petent to withdraw an application for the recording of a memorandum if it is done timely.—*M'GINLEY v. FARMER COAL CO.*, [1927] S. C. 149 ; 20 B. W. C. C. 725.—*SCOT.*

able under the registered agreement. The workman claimed that he had not been paid his full old rate of wages under the second agreement & was entitled to have them made up to the old rate, & further, that by reason of this agreement the employers had no power to review the payments payable under the registered agreement. The county ct. judge held the employers' application to review was in breach of the agreement in the correspondence, & dismissed the application:—*Held*: the employers had expressly reserved their rights under the registered agreement to have the weekly payment reviewed. The workman's attempt at work having been successful, the employers' application to review was a proper one, & the judge was wrong in dismissing it. The right order on the facts was to discharge the registered agreement & direct a declaration of liability to be recorded.—*HITCHENS & Co., LTD. v. HART* (1927), 20 B. W. C. C. 609, C. A.

**3571a. Consideration for agreement—Sufficiency.]**

—An underground colliery workman left his employment in Mar. 1921, on account of illness. On July 18, 1922, he was certified to be suffering from nystagmus, the disablement, according to the certificate, being deemed to commence on that day. The workman applied for compensation, & the employers paid full compensation for total incapacity for four years, & then ceased payment. In proceedings for an award, instituted by the workman, the case was treated by both parties on the basis of an agreement to pay compensation as for total incapacity having been made, but the county ct. judge held there had been no consideration on the part of the workman for the agreement, & as the workman was not entitled to any compensation since he had not been employed by resps. during twelve months prior to the date of the certificate, the agreement was outside Workmen's Compensation Act, 1925 (c. 84), & could not give jurisdiction within the Act:—*Held*: there had been good consideration, inasmuch as the workman had forborne to take steps, either by applying to the certifying surgeon, or by appeal to the medical referee, to get the date of the certificate of disablement altered, & the agreement was binding upon resps., & the workman was entitled to an award.—*REES v. IMPERIAL NAVIGATION COAL CO., LTD.* (1927), 20 B. W. C. C. 287, C. A.

**3657. Add. Annotation:—Consd. Paterson v. Ardrossan Harbour Co. (1926), 10 B. W. C. C. 621.**

**3659a. Grounds for removal—Allegation by workman that scope of agreement not understood by him.]—Circumstances in which:—*Held*:**

an order for removal of a memorandum from the record was wrong, & must be discharged. — *QUARRELL v. LAMPFORD & HOIT* (1928), 21 B. W. C. C. 112, C. A.

**3676. Add. Annotation:—As to (2) Consd. Vickers v. Miners Thames Steam Tug & Lighterage Co. v. Ingram (1927), 96 L. J. K. B. 490.**

**3688a. — Liability of insurer must exist at date of winding-up.]—*Held*:** Workmen's Compensation Act, 1925 (c. 84), s. 7, applied only where at the date of the winding-up there was some liability of insurers the benefit from which was capable of being transferred to the workmen, & it could not apply to a case where the liability had come to an end before that date.—*Re BEESIDE COAL CO., LTD.* (1929), 45 T. L. R. 327; 22 B. W. C. C. 239.

**3690. Add. Annotation:—*Re*fd. Catton v. Ashwell & Nesbit, [1928] Ch. 484.**

**3692. Add. Citations:—96 L. J. P. C. 143; 136 L. T. 609; 20 B. W. C. C. 1.**

*Add. Annotations:—Apld. Macauley v. Baird* (1927), 20 B. W. C. C. 802; *Catton v. Ashwell & Nesbit*, [1928] Ch. 484. *Consd. Anchor Donaldson v. Crossland*, [1929] A. C. 297. *Re*fd. *Woodrow v. Trawlers (White Sea) & Grimsby* (1929), 141 L. T. 676.

**3697. Add. Citations:—[1927] 1 K. B. 152; 96 L. J. K. B. 127; 136 L. T. 134.**

*Add. Annotations:—Consd. Tempus Shipping Co. v. Trott* (1929), 141 L. T. 19. *Re*fd. *Robinson v. Vickers-Armstrong* (1929), 22 B. W. C. C. 171.

**3698a. — Notice of intention to end payments—**

**Validity.]—A workman was injured by accident arising out of & in the course of his employment. Resps.' doctor gave his certificate that the man had partially recovered, & resps. served notice on the workman in pursuance of Workmen's Compensation Act, 1923 (c. 42), s. 14, that they would cease payment of compensation within ten days. No counter-certificate by the workman's doctor was served in pursuance of the sect., but the workman filed a request for arbn. The county ct. judge awarded 8s. a week on the basis of partial incapacity from the date of the hearing in the county ct., & not from the date of termination of the weekly payment, on the ground that the workman had not complied with sect. 14, & was not entitled to compensation from that date:—*Held*: the notice was bad, in that it purported to end compensation when the workman was certified to be partially recovered only, & the compensation of 8s. a week for partial incapacity was payable from the date the employers ceased payment of compensation.—*HOWARTH v. SINGLETON (J. E.) & SONS* (1926), 20 B. W. C. C. 136, C. A.**

**PART XIV. SECT. 16, SUB-SECT. 3.—A.**

**3614 il. — — —.]—It is the duty of the sheriff-clerk to consider the question whether he ought or ought not to refuse to record the memorandum on the ground of inadequacy of compensation, & thereafter, according as his decision is in the affirmative or in the negative, to refer the matter to the sheriff or to record the memorandum.—*TONNER v. WILLIAM BAIRD & Co., LTD., GALLACHER v. WILLIAM BAIRD & Co., LTD.*, [1927] S. C. 870.—*SCOT*.**

**PART XIV. SECT. 18, SUB-SECT. 1.**

**3673 i. Effect of payment in—Money not subject to arrestment.]—*WILLIAM BAIRD & Co. v. CAMPBELL*, [1928] S. C. 314.—*SCOT*.**

**PART XIV. SECT. 18, SUB-SECT. 3.—A.**

**3686 i. Limit of preferential payment—Under Workmen's Compensation Act, 1906, s. 5 (3)—Not where liability accrued prior to liquidation.]—*Held*: the workman was entitled to the whole**

of the amount due to him for compensation as a preferential debt, without any limitation to £100 as mentioned in s. 5, sub-s. 3, Workmen's Compensation Act, 1906, the liability for such compensation having accrued before the receivers were appointed or took over possession of the assets of the co., & whether or not the accident occurred before Jan. 1, 1924 (i.e. the date on which the Workmen's Compensation Act (N. I.) came into operation).—*GRAHAM v. MARKELL & SMYLLIE*, [1928] N. I. 187.—*IR*.

**3698b.** ———.]—In pursuance of Workmen's Compensation Act, 1925 (c. 84), s. 12 (3), resps. served a workman with notice that they would end the weekly payments, or alternatively would take him back to work, & they ceased to pay him compensation on a date which was two days short of the ten clear days required. The workman filed a request for arbn. claiming (*inter alia*) a declaration of liability, alleging that he was still incapacitated. Resps. offered to accept an award of a declaration of liability, & before the hearing offered the sum by which the weekly payments fell short of the proper amount that was due in respect of the two days. The county ct. judge was satisfied the workman had recovered & was able to do his work, & held, payment for the two days having been offered, there was no further liability on resps., & made the declaration of liability offered:—*Held*: the notice was good, & was not invalidated because the payments were not made for the full period of ten days from the date thereof.—**COOPER v. COLLINS ELECTRICAL, LTD.** (1926), 20 B. W. C. C. 152, C. A.

**3698c.** ——— **Jurisdiction of registrar—Limited to matters relating to sums paid into court.**] Where proceedings for ending or diminishing weekly payments have been commenced under sect. 12 & prosecuted as far as to obtain a certificate of a medical referee, but no money is paid into ct. by the employers under sect. 12 (ii), any questions arising on certificate are not for the registrar but for the judge, either on review under sect. 11 or on original arbitration under sect. 21, the jurisdiction conferred on the registrar by sect. 12 (ii) being limited to determine the destination of sums paid into ct. under sect. 12 (ii).—**TEMPUS SHIPPING CO., LTD. v. TROTT** (1929), 141 L. T. 19; 45 T. L. R. 201; 22 B. W. C. C. 181, C. A.

**3700.** *Add. Citations*:—[1927] 1 K. B. 435; 96 L. J. K. B. 261; 136 L. T. 88.

**3701.** For the existing paragraph substitute the following paragraph:—**Power to terminate payments—Incapacity ceased.**]—On Oct. 17, 1923, a workman contracted miners' nystagmus in the course of his employment, & by voluntary agreement the employers paid him a weekly sum by way of compensation until Sept. 3, 1925, when they stopped the weekly payments, on the ground that the man had completely recovered. After the employers had commenced proceedings for a review, the workman admitted that the incapacity had ceased on Sept. 3, but claimed compensation up to the date of the award:—*Held*: the county ct. judge had no jurisdiction under Workmen's Compensation Act, 1923 (c. 42), s. 14, to award any payment after the incapacity had ceased, & he ought to make a retrospective award terminating the weekly payments as from the date of recovery.—**OCEAN COAL CO. v. DAVIES**, [1927] A. C. 271; 96 L. J. K. B. 364; 136 L. T. 449; 43 T. L. R. 108; 70 Sol. Jo. 1219; 19 B. W. C. C. 429, H. L.; *reversg.* (1926), 96 L. J. K. B. 255, C. A.

*Annotations*:—**Consd.** Macaulay v. Baird (1927), 20 B. W. C. C. 802; Niddrie & Benhar Coal Co. v. Dee, [1927] A. C. 299; Thorpe v. Sadler, Sadler v. Thorpe (1927), 20 B. W. C. C. 488. **Appld.** Lowe v. Essex County Council (1927), 20 B. W. C. C. 452; Pullen v. Enthoven (1927), 20 B. W. C. C. 248. **Consd.** Catton v. Ashwell &

[1928] Ch. 481; Dodd v. Oceanic Steam Navigation Co. (1928), 21 B. W. C. C. 118; Anchor Donaldson v. Crossland, [1929] A. C. 297; Mockhill v. Homer City S.S. Owners (1929), 22 B. W. C. C. 260. **Appld.** Lewis v. Dobson Steam Fishing Co. (1929), 73 Sol. Jo. 483. *Refd.* Akers v. L. & N. E. Ry., (1926), 20 B. W. C. C. 195; Howarth v. Singleton (1926), 20 B. W. C. C. 136; Parker v. London Brick Co. & Forlors (1927), 20 B. W. C. C. 573; Woodrow v. Trawlers (White Sea) & Grimshy (1929), 141 L. T. 676.

**3701a.** ———.]—**PULLEN v. ENTHOVEN & SON**, No. 3056a, *ante*.

**3701b.** ———.]—A workman was injured by an accident & was paid compensation by his employers for total incapacity. On receipt of their doctor's report that the workman was fit for light work, the employers made two offers of light work to the workman at the same rate of wages as before his accident. After the second refusal, the employers ceased to pay compensation. The county ct. judge held the workman was unreasonable in refusing the offers of light work &, applying *Ocean Coal Co. v. Davies*, No. 3701, *ante*, the employers were entitled to stop payment of compensation when they did:—*Held*: the evidence supported the findings, & the judge had correctly applied *Ocean Coal Co. v. Davies*, No. 3701, *ante*.—**LOWE v. ESSEX COUNTY COUNCIL** (1927), 20 B. W. C. C. 452, C. A.

**3701c.** **Failure by workman to adopt procedure—Application for review—Right to amend.**]—Employers, using the machinery provided by Workmen's Compensation Act, 1925 (c. 84), s. 12, stopped weekly payments to a workman on their doctor's certificate. The workman did not avail himself of sect. 12, but began fresh proceedings for an arbn. by way of review, asking for an order that the weekly payments should be continued. At the arbn. the employers, at the close of the workman's case, objected to the method adopted by the workman & submitted that there was no case to answer. The workman applied for leave to amend, to turn the proceedings into an original appln. under sect. 21 of the Act, but the county ct. judge refused to allow this, & upheld the employers' objection, making an award in favour of the employers. The workman appealed: *Held*: the county ct. judge should have allowed the amendment, so that the case could have been considered on its merits.—**ROBINSON v. VICKERS-ARMSTRONG, LTD.** (1929), 22 B. W. C. C. 171, C. A.

**3702a.** ———.]—A workman met with an accident, which he alleged caused an inguinal swelling. He was paid full compensation until Sept. 20, 1926, when the payments were reduced. The workman filed an application claiming compensation at the old rate, & the employers filed a counter-application for termination of compensation. The county ct. judge found that the workman had entirely recovered on Sept. 20, 1926, & that the swelling from which he suffered at the date of the trial was not a result of the accident, & made an award for the employers on both applications:—*Held*: the employers, by paying compensation, were not estopped from saying that the injury was not caused by the accident, & there was evidence to support the judge's findings, & no misdirection.—**THORPE v. SADLER (A. L.) & SON, SADLER (A. L.) & SON v. THORPE** (1927), 20 B. W. C. C. 488, C. A.



**3702b.** ——.]—On May 15, 1927, a trimmer met with an accident on board a liner causing hernia. He received compensation until Nov. 12. On receipt of a medical report that he was fit to resume work, his employers gave notice on Nov. 2, that the weekly payments would be terminated. The workman did not obtain a counter-certificate, but, on Nov. 24, his solrs. wrote suggesting that he had not been examined for hernia, that an operation would be necessary, & that the notice of Nov. 2 should be cancelled. The employers thereupon requested the workman to present himself for further examinations, & as a result of these examinations again repudiated liability to pay compensation. The county ct. judge found that there was no incapacity on Jan. 7, 1928, but he made an award of compensation for eight weeks from Nov. 12, 1927, on the ground that compensation was not properly terminated on that date, in that the employers by subjecting the workman to further examinations had shown that they did not rely on their first medical report. He estimated the period during which the employers were satisfying themselves after Nov. 12 as to the workman's condition at eight weeks:—*Held*: the workman had not discharged the *onus* of proving incapacity after Nov. 12, 1927. The judge, in awarding compensation to the workman, in fact, for the trouble he had been put to by the employers after notice of termination had been given, had misdirected himself.—*DODD v. OCEANIC STEAM NAVIGATION CO., LTD.* (1928), 21 B. W. C. C. 118, C. A.

**3702c. Action for declaration—Of breach of statutory duty by employer—Whether maintainable.]**—Pltf., a workman in the employment of defts., was injured by an accident, & defts. admitted liability & made a weekly payment of compensation. Ultimately a doctor reported that pltf. had recovered, & defts. stopped the payments & applied for a review thereof, & paid into ct., with a denial of liability, the amount of the weekly payments up to that date. While the county ct. proceedings were still pending, pltf. brought an action, alleging that he had not recovered from his injury, & claiming (1) a declaration that under Workmen's Compensation Act, 1925 (c. 84), s. 12, defts. had committed a breach of their duty by stopping the payments otherwise than in pursuance of an agreement or arbn., & (2) an injunction restraining a continuance of the breach:—*Held*: under sect. 21 the only tribunal to determine the question of incapacity was the county ct., & as that question had not yet been determined by that tribunal, pltf. could not show that his incapacity was continuing since the date when defts. stopped the weekly payments, & the action failed.—*CATTON v. ASHWELL & NESBIT, LTD.*, [1928] Ch. 484; 47

L. J. Ch. 199; 139 L. T. 34; 44 T. L. R. 422; 72 Sol. Jo. 317; 21 B. W. C. C. 97, C. A.

*Annotations*:—*Consd.* *Anchor Donaldson v. Crossland*, [1929] A. C. 297. *Refd.* *Robinson v. Vickers-Armstrong* (1929), 22 B. W. C. C. 171; *Woodrow v. Trawlers (White Sea) & Grimsby* (1929), 141 L. T. 676.

**3702d. Power to make interim award—Payment into court.]**—A workman suffered injuries through an accident arising out of & in the course of his employment, & his employers paid him weekly compensation until a certain date. They then terminated the payment, on the ground that his incapacity had ceased, but there was no award or recorded agreement. The workman had not returned to work, & his employers had not served on him a notice under Workmen's Compensation Act, 1925 (c. 84), s. 12 (3). On the termination of the payments the workman, on the ground that his incapacity was still continuing, applied for an award of weekly compensation & for an interim award of weekly compensation until the question of the liability of his employers should be decided. The arbitrator made an interim award of a weekly payment, & authorised the employers to pay the money into ct. instead of paying it to the workman:—*Held*: under sect. 12 the workman was entitled to an interim award, & the arbitrator had no power to authorise the employers to pay the money due thereunder into ct. instead of paying it to the workman.—*ANCHOR DONALDSON, LTD. v. CROSSLAND* [1929] A. C. 297; 98 L. J. P. C. 7; 140 L. T. 282; 45 T. L. R. 97; 21 B. W. C. C. 448, H. L.

*Annotations*:—*Distd.* *Mockbill v. Homer City S.S. Owners* (1929), 22 B. W. C. C. 260. *Fold.* *Woodrow v. Trawlers (White Sea) & Grimsby* (1929), 141 L. T. 676.

**3702e.** ——.]—Where employers, on receiving a certificate of the workman's doctor that he is fit for work, stop the payment of the weekly sums to him for compensation for an accident arising out of & in the course of his employment, but are informed that the certificate was no admission of recovery having regard to the fact that it was made on a National Health Insurance form, which did not admit of stating a man is fit for light work only, & subsequently the workman's doctor reports that he is only fit for light work, on an application by the workman for an interim award that the employers should continue to pay the compensation until the hearing of the arbitration, the county ct. judge, sitting as an arbitrator, has a power inherent in him under Workmen's Compensation Act, 1925 (c. 84), s. 12, to make such an interim award in order that the provisions in the section shall be made effective.—*WOODROW v. TRAWLERS (WHITE SEA) & GRIMSBY, LTD.* (1929), 141 L. T. 676, C. A.

**3704a. Under recorded agreement—Effect of supplemental unrecorded agreement.]**—*HITCHENS & CO., LTD. v. HART*, No. 3559a, *ante*.

**3708. Add. Annotation**:—*Refd.* *Curran v. Kays*, [1928] 2 K. B. 469.

#### PART XIV. SECT. 19.

**3702d 1. Power to make interim award—Withdrawal by employers of application for medical reference.]**—*Held*: an interim award fell to be refused, in respect that the employers, having applied for a medical reference, were entitled to the protection of consignment until the settlement of the dispute.—*MACAULAY v. WILLIAM BAIRD*

& Co., [1927] S. C. 788; 20 B. W. C. C. 802.—*SCOT*.

**sc. "Weekly payment"—What is.]**—In order to make a payment a "weekly payment under the principal Act" within Workmen's Compensation Act, 1923 (c. 42), s. 14, it must be shown (a) that there was an admission, express or implied, of liability under the Act, & (b) that the payment was made in

respect of that admission.

Where employers paid a sum of money to a workman, who signed a receipt bearing that the payment was made without an admission of liability on their part:—*Held*: as it did not appear that the payment complied with the above requirements, sect. 14 did not apply.—*LAFFERTY v. DARN-GAVIL COAL CO., LTD.*, [1927] S. C. 60; 20 B. W. C. C. 671.—*SCOT*.



**3710a.** —[.]—A miner was certified on Nov. 22, 1919, as suffering from nystagmus & received compensation. After some years the employers requested a review, on which the county ct. judge terminated the weekly payments as from Aug. 21, 1925, the date of his award, on the ground that the workman had recovered from his disablement & was able to do his ordinary work as a miner. There was no appeal by the workman from this award. Three years later, on June 12, 1928, the workman obtained from a certifying surgeon a certificate to the effect that he was suffering from nystagmus, & thereby disabled from earning full wages at his old employment. The date of the commencement of disablement not appearing on this certificate, the workman went to the medical referee, who issued a certificate confirming the certificate of the certifying surgeon, & fixing Nov. 22, 1919, as the date of the commencement of disablement. The medical referee also certified that the workman was only fit for surface work. On that the workman commenced arbn. proceedings, claiming compensation for partial incapacity as from 1925 & a declaration of liability. The employers contended that the matter was *res judicata*, & this contention was accepted by the county ct. judge. The workman appealed:—*Held*: the award of Aug. 21, 1925, was final between the parties & could not be affected by the certificate of the medical referee. —**WILLIAMS v. CRAWSHAY BROS. (CYFARTIFA), LTD.** (1929), 22 B. W. C. C. 223, C. A.

**3718.** *Add. Annotations*:—**Dlst.** Thorpe v. Sadler, Sadler v. Thorpe (1927), 20 B. W. C. C. 488. **Consd.** Curran v. Kays, [1928] 2 K. B. 496.

**3725.** *Add. Annotation*:—**Refd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (1927), 96 L. J. K. B. 664.

**3726.** *Add. Citation*:—136 L. T. 129.

**3731.** *Add. Annotations*:—**Consd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (1927), 96 L. J. K. B. 664. **Refd.** Cushion v. Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454.

**3733.** *Add. Annotation*:—*As to* (2) **Refd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (1927), 96 L. J. K. B. 664.

**3734a.** **Workman generally more fit for work.**—A colliery repairer had a series of hernia & operations for hernia commencing in 1922. In 1927, on the workman's appln. for compensation, the county ct. judge found as a fact that he was not fit to do the work of repairer, & awarded compensation. In 1928, the employers applied to terminate the weekly payment, & the matter was referred by the judge to the medical referee, who reported that the workman was fit for his former work as a repairer. The judge said that, on this occasion, he accepted the evidence of the employers' doctors which he had rejected at the former hearing & made an award terminating the weekly payments. The workman appealed on the ground that the judge had merely reversed his first decision without any change of circumstances. In view of this argument, the judge was written to & asked what change of circumstances he found which justified him in coming to his decision in

1928. In reply the judge said he had found that the workman was generally more fit for work:—*Held*: there was evidence that the man was fitter generally, & there had been, therefore, such a change of circumstances as justified the later award.—**PARTRIDGE, JONES & PATON JOHN, LTD. v. SULWAY** (1928), 21 B. W. C. C. 423, C. A.

**3737.** *Add. Annotations*:—**Consd.** Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (1927), 96 L. J. K. B. 664; Bevan v. Nixon's Navigation Co. (1928), 139 L. T. 647. **Refd.** Cushion v. Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454; Barber, Walker & Co. v. Flint (1928), 98 L. J. K. B. 83.

**3737a.** —[.]—The principles laid down in *Bevan v. Energlyn Colliery Co.*, No. 3306, *ante*, for computing the weekly payment in cases of partial incapacity, where there has been a fluctuation of wages since the accident, have been incorporated in Workmen's Compensation Act, 1925 (c. 84), to a limited extent by sect. 11 (3). Apart from that sect. the principle does not apply to cases under the Act, the provisions of Workmen's Compensation Act, 1906 (c. 58), Sched. I. (3), with regard to partial incapacity, having been repealed by Workmen's Compensation Act, 1923 (c. 42).—**CALOW v. SHELTON IRON, STEEL & COAL CO., LTD.** (1928), 21 B. W. C. C. 125, C. A.

**3737b.** — **General fall in wages.**—A collier being partially incapacitated by an accident arising out of & in the course of his employment, entered into an agreement with his employers by which, after reciting that the workman's average weekly earnings for twelve months before the accident were £3 19s. 4d., it was agreed that the employers should find him suitable employment & pay him the wages which he could earn therein &, in addition to those wages in each week, half the difference between his said average weekly earnings & the wages he could earn at the said employment by working while the pit was at work, but not in any case exceeding £1. After weekly payments under the agreement had been made for some years, the rate of wages having fallen, the employers applied to have the payments reviewed under Workmen's Compensation Act, 1906 (c. 58), Sched. I., s. 16:—*Held*: a change in the rate of wages, being one of the events contemplated & provided for by the agreement, was not such a change in the circumstances as entitled either party to have the weekly payments reviewed.—**BARBER, WALKER & CO. v. FLINT**, [1929] 1 K. B. 256; 98 L. J. K. B. 83; 140 L. T. 154; 21 B. W. C. C. 428, C. A.

**3745a.** —[.]—A workman, who was paid compensation for the loss of three fingers, & who had returned to light work, was discharged owing to the closing down of his employers' works. He registered with the Labour Exchange & for some months received unemployment benefit, together with a proportionate amount of compensation from his late employers. When the unemployment benefit ceased he claimed full compensation, proving that he had made genuine attempts to obtain work but had failed owing to his injury. The county ct. judge awarded a sum.

less than the full compensation, to date from the application for review & not from the cessation of the unemployment benefit:—*Held*: the workman was entitled to compensation on the basis of total incapacity as from the date when the unemployment benefit ceased.—**KING v. BRITISH STEEL CORPN., LTD.** (1928), 21 B. W. C. C. 37, C. A.

**3749. Add. Annotation**:—*As to* (1) **Apld.** Gladstone Spinning Co. v. Nangle (1928), 98 L. J. K. B. 161.

**3753a. — Effect of Workmen's Compensation Act, 1926 (c. 42).**—A workman, being a minor, who met with an accident arising out of & in the course of his employment before the above Act came into force, is, if he was still under twenty-one years of age when the Act came into force, entitled to obtain a review during the extended period permitted by the amending Act.—**EDWARD CURRAN & CO. v. KAYS**, [1928] 2 K. B. 469; 97 L. J. K. B. 806; 139 L. T. 294; 21 B. W. C. C. 203, C. A.

**3766a. Particulars—Contents of.**—Upon an application by an employer to review a weekly payment & diminish it, or terminate or diminish it, the appropriate form is Form 5, under which certain particulars are to be given. These do not include particulars of the extent to which diminution is asked for, but the county ct. judge has a discretion to order or to refuse such further particulars under r. 29 (2). His decision on the point is not a decision on a question of law, & there is no appeal therefrom. *Semble*: such particulars ought to be sparingly ordered, & not with the object of compelling the county ct. judge to give costs to one side or the other, & there is much greater reason for asking for particulars of the extent of diminution of a weekly payment where termination is not asked for, than where the employer is asking for termination or diminution.—**VICKERS, LTD. v. MINERS, THAMES STEAM TUG & LIGHTERAGE CO. v. INGRAM** (1927), 96 L. J. K. B. 490; 137 L. T. 226; 71 Sol. Jo. 350; 20 B. W. C. C. 269, C. A.

**3775. Add. Annotation**:—*As to* (1) **Consd.** Curran v. Kays, [1928] 2 K. B. 469.

**3781. Add. Annotation**:—*As to* (2) **Refd.** Curran v. Kays, [1928] 2 K. B. 469.

**3799. Add. Annotation**:—*As to* (1) **Apld.** Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637.

**3801a. — Scheme inapplicable where employment occasional—What is occasional work.**—By Metal Grinding Industries (Silicosis) Scheme, clause 2, the scheme is made to apply to all workmen employed in the grinding of metal by mechanical power or in glazing, when such glazing is carried on in the same room as the grinding, but by proviso (a) thereof the scheme is not to apply, if such employment is occasional only, & for not more than eight hours in any week. A workman, employed by knife-blade manufacturers, superintended the girls in the glazing shop, & also worked on the processes of glazing known as rebufing & whitening.

In the course of his work he used an abrasive wheel in the whitening shop, whitening involving the raising of silica dust. He became totally disabled from silicosis & was certified accordingly. The county ct. judge found that the work done by the workman in rebufing & whitening was "occasional only & for not more than eight hours in any week," & was, therefore, within the above proviso, & that he was thereby precluded from the benefit of the scheme. The workman appealed:—*Held*: for the employment to fall within the proviso it must be both "occasional only" & "for not more than eight hours in any week." In this case the workman was called on, under his ordinary employment, to do the work, & therefore, such work was not "occasional only."—**MAKIN v. NERDHAM, VELL & TYZACK, LTD.** (1929), 22 B. W. C. C. 76, C. A.

**3801b. Order extending Workmen's Compensation Act, 1906 (c. 58), s. 8, to Ironworkers' cataract—Construction of Order.**—*Held*: the proviso to Workmen's Compensation (Ironworkers' Cataract) Order, 1925, was not governed by the operative words in par. 2 which contained the absolute limit of six months in all, & where the incapacity was continuing, compensation could be allowed for the continuing incapacity. *Semble*: the absence of a bed in a ward or a vacancy in a place for an operation would be a good medical reason for the non-performance of an operation within the four months.—**DAVIES v. BALDWIN, LTD.** (1926), 136 L. T. 462; 20 B. W. C. C. 116, C. A.

**3802. Add. Annotation**:—**Apld.** Young v. Keeble (1928), 21 B. W. C. C. 294.

**3805. Add. Annotation**:—**Consd.** O'Neil v. Wilsons & Clyde Coal Co. (1926), 19 B. W. C. C. 656.

**3807. Add. Annotation**:—**Refd.** O'Neil v. Wilsons & Clyde Coal Co. (1926), 19 B. W. C. C. 656.

**3810. Add. Citations**:—[1927] A. C. 461; 96 L. J. K. B. 608; 137 L. T. 257; 71 Sol. Jo. 429; 20 B. W. C. C. 391.

**Add. Annotation**:—**Refd.** M'Dougall v. Summerlee Iron Co. (1927), 20 B. W. C. C. 419.

**3814. Add. Citations**:—[1928] 1 K. B. 291; 96 L. J. K. B. 347; 137 L. T. 26; 91 J. P. 43; 21 B. W. C. C. 226.

**3816. Add. Annotations**:—*As to* (2) **Consd.** Cauldon Potteries v. Johnson (1926), 20 B. W. C. C. 42, **Apld.** Young v. Keeble (1928), 21 B. W. C. C. 294.

**3818a. — — — — —**—A french polisher had suffered intermittently from dermatitis since 1925, while working for different employers. The medical referee issued a certificate on Jan. 30, 1928, in which he certified that on Jan. 30, 1928, appct. was no longer disabled by dermatitis. On Mar. 10, 1928, appct. was examined by the certifying surgeon, who on that date certified that she was suffering from dermatitis & had been disabled thereby since Sept. 29, 1927. On a claim by the workman for compensation based on the certifying surgeon's certificate of Mar. 10, 1928, the

**PART XIV. SECT. 20, SUB-SECT. 6.**

**3763 i. Whether original arbitration or review appropriate—Payment of compensation under unrecorded agreement.**—**HARRIS v. MANOR POWIS**

**COAL CO., LTD.**, [1926] S. C. 972.—**SCOT.**

**PART XIV. SECT. 22, SUB-SECT. 3.—B.**

**ss. Failure to show disablement due**

to disease—Omission of word "thereby."—*Held*: fatal.—**BROKEN HILL ASSOCIATED SMELTERS PROPRIETARY, LTD. v. VELLA**, [1927] S. A. S. R. 49.—**AUS.**

county ct. judge held the two certificates being inconsistent, the certificate of the medical referee must prevail to the effect that the workman was not disabled after Jan. 30, 1928:—*Held*: there was no vital inconsistency between the two certificates, bearing in mind the intermittent character of dermatitis, & the certificate of Mar. 10 was consistent with dermatitis having broken out again.—*MACY v. CORK MANUFACTURING Co., LTD.* (1928), 21 B. W. C. C. 306, C. A.

*Annotation*:—*Consd.* *Williams v. Crawshaw Bros. (Cyfarthfa)* (1929), 22 B. W. C. C. 223.

**3819a. Certificate incomplete—Death of certifying surgeon—Subsequent certificate by successor—Validity.**—On July 12, 1926, eighteen months after the workman had left his employment, Dr. S., the certifying surgeon of the district, certified that the workman was suffering from lead poisoning. The certificate did not comply with the regulations as no date of disablement was filled in, nor were the words "I certify that the disablement commenced on the day of " struck out. Before the workman could see Dr. S. to have the omission put right the doctor died. After Dr. F. had been appointed in his place the workman, on Aug. 12, 1926, obtained a certificate from him in which the date of disablement was filled in as Nov. 23, 1924. In answer to the workmen's request for arbn., based on Dr. F.'s certificate, the employers denied liability to pay compensation on the ground that, as Dr. S.'s certificate did not specify the date of disablement, such date was deemed to be the date of the certificate, & was final & conclusive, & Dr. F.'s certificate was accordingly invalid, & as the workman had not been in their employment for more than twelve months prior to that date of disablement, he could not recover compensation. The county ct. judge upheld that contention:—*Held*: the first certificate was incomplete in that it had not dealt with the date of disablement in either manner provided by the regulations & was invalid, & the workman, not being able by reason of the death of Dr. S. to have the matter put in order, was entitled to rely on the second certificate. *POWELL v. CAULDON POTTERIES, LTD.* (1926), 96 L. J. K. B. 245; 136 L. T. 532; 20 B. W. C. C. 16, C. A.

**3820. Add. Annotations**:—*Apld.* *Cauldon Potteries v. Johnson* (1926), 20 B. W. C. C. 42. *Consd.* *Davies v. Baldwins* (1926), 136 L. T. 462. *Apld.* *Young v. Keeble* (1928), 21 B. W. C. C. 294.

**3821a. ———.**—A certificate was given by the certifying surgeon that a workman was suffering from lead poisoning. A leading symptom of the disease was stated on the form to be dupuytren's contraction. Full compensation was paid until an application by the employers to review the weekly payments. The workman was still incapacitated

by dupuytren's contraction. The county ct. judge refused to treat the certificate as conclusive as to dupuytren's contraction being a symptom of lead poisoning, &, on contradictory medical evidence given at the hearing, & also on knowledge he had acquired some years before while sitting on a commission to consider industrial diseases, including dupuytren's contraction, held the symptoms, though still the same as those set out in the certificate, were not due to the certified disease, & reduced the compensation to 1d. a week. The case involved a point of law, &, early in the hearing, counsel called attention to that fact, but the judge omitted to take any notes of the proceedings:—*Held*: (1) the certificate that the symptoms were due to the certified disease was conclusive, & evidence to the contrary was inadmissible, & there was no evidence of any new factor or new disease to support an award in reduction of compensation. (2) Observations on the judge's duty to take a note. *CAULDON POTTERIES, LTD. v. JOHNSON* (1926), 20 B. W. C. C. 42, C. A.

*Annotation*:—Is to (1) *Apld.* *Young v. Keeble* (1928), 21 B. W. C. C. 294.

**3821b. As to cause of death or incapacity.**—A workman, employed as a painter, was from July to Sept. 1927, laid up with an ulcer on his ankle & with heart trouble. From Oct. 19 onwards he became unfit for further work with loss of power in his left arm & leg, he became mentally incapable, his memory failed, & his heart got worse. On Nov. 15 he was admitted to hospital, where the medical superintendent found that he had long-standing disease of the heart caused by kidney trouble. On Nov. 23, the certifying surgeon visited the hospital, & on Nov. 28 certified that the workman was suffering from lead poisoning or its sequelae, & had been disabled as from Oct. 19. The medical superintendent was ignorant both of the visit & of the certificate of the certifying surgeon &, when the workman died on Dec. 23, certified that the cause of death was cerebral haemorrhage caused by valvular disease of the heart. The county ct. judge held he was not bound to find that death was due to the disease certified by the certifying surgeon, & refused to make an award in favour of the dependants, on the ground that they had not discharged the *onus* of proving that lead poisoning either caused, contributed to, or accelerated death:—*Held*: there was evidence to support the finding, & no misdirection.—*YOUNG v. KEEBLE, LTD.* (1928), 21 B. W. C. C. 294, C. A.

**3821c. ———.**—An odd job man in spinning mills was certified as suffering from epitheliomatous ulceration of the skin due to mineral oil. He died five months later. The county ct. judge held the certificate of the certifying surgeon was conclusive & debarred him from hearing any evidence on behalf of the employers, which tended to show that he had

#### PART XIV. SECT. 22, SUB-SECT. 3.—C.

*st. As to date of commencement of disease.*—A miner, who had previously suffered from miner's nystagmus, obtained work from new employers. Shortly after entering this employment he obtained from a certifying surgeon

a certificate that he was disabled owing to miner's nystagmus, & that disablement had commenced on a date since he entered his new employment. An appeal by the employers against the certificate was dismissed by the medical referee. In an arbn. the arbitrator, after a proof, held that the disablement had commenced on a date earlier than

that certified by the certifying surgeon, & more than twelve months before the workman entered his new employment & refused compensation:—*Held*: the date of disablement stated in the certificate of the certifying surgeon was conclusive.—*TENNENT v. MOORE (A.-G.) & Co., LTD.*, [1929] S. C. (Ot. of Sess.) 7.—*SCOT.*

not contracted the disease in their employment & that death did not result from the disease:—*Held*: the judge was not entitled to refuse to hear the evidence, & the case must be remitted for rehearing.—**NEEDHAM v. ACE MILL, LTD.** (1928), 21 B. W. C. C. 189, C. A.

- 3825.** *Add. Annotations*:—**Consd. Rees v. Imperia Navigation Coal Co.** (1926), 20 B. W. C. C. 287  
**Refd. Powell v. Cauldon Potteries.** (1926), 96 L. J. K. B. 245; **Williams v. Crawshaw Bros.** (Cyfarthfa) (1929), 22 B. W. C. C. 223

**3829a.** *What amounts to decision.*—A medical referee, in his certificate, said that it was impossible for him to give a certificate either agreeing with or against that given by the certifying surgeon, as it was outside his province as an ophthalmic surgeon. The county ct. judge having held the certificate of the certifying surgeon was conclusive:—*Held*: there had been no decision by the medical referee, & the case must go back for the appointment of a fresh medical referee.—**JONES v. WILLIAM MUIRHEAD MACDONALD WILSON & Co., LTD.** (1926), 19 B. W. C. C.

- 3831.** *Add. Annotation*:—**Distd. Macy v. Cork Manufacturing Co.** (1928), 21 B. W. C. C. 306.

**3834.** *Add. Citations*:—*affd. sub nom.* **EVANS (RICHARD) & Co., LTD. v. SCAHILL** (1927), 137 L. T. 161; 20 B. W. C. C. 348, H. L.

*Add. Annotation*:—**Apld. Lewis v. Tredegar Iron & Coal Co.** (1929), 22 B. W. C. C. 268.

**3834a.** —.—.]—**MACY v. CORK MANUFACTURING Co., LTD.**, No. 3818a, *ante*.

**3842.** *Add. Annotation*:—**Refd. Lewis v. Tredegar Iron & Coal Co.** (1929), 22 B. W. C. C. 268.

**3843a.** *Recurrence after settlement & return to work.*—**M'DUGALL v. SUMMERLEE IRON Co., LTD.** (1927), 20 B. W. C. C. 419, H. L.

**3847.** *Add. Annotation*:—**Apprvd. Blatchford v. Staddon & Founds.** [1927] A. C. 461.

**3858.** *Add. Annotations*:—*As to* (1) **Consd. Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram** (1927), 96 L. J. K. B. 490. *As to* (2) **Refd. Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram** (1927), 96 L. J. K. B. 490.

**3860a.** *Effect of agreement for compensation—Facts as to agreement not presented in county court.*—On an application for review & redemption of weekly payments a workman alleged that he had negotiated with persons representing a new co. which had taken over the business of his employers, & the new co. had agreed to pay him £650 in full settlement

of his claims. The county ct. judge had previously decided in a similar case that the workman could not rely upon such an agreement with the new co., as such agreement was only with a third party, & not with his employers. The parties treated the case as governed by that decision, & the question of the agreement was not gone into at the hearing. The application was then proceeded with as an application for review & the judge held the workman had recovered, & by his award stopped further weekly payments. The workman appealed, on the ground that the judge could not terminate the payments in view of the agreement:—*Held*: (1) the ct. could not entertain an appeal as to the effect of the agreement, as the facts as to that agreement had not been presented in the county ct., & there were no materials before the ct. on which they could come to a decision; (2) the question whether the workman had recovered was a question of fact, as to which there was evidence to support the finding, & there was no misdirection.—**EAST KENT COLLIERY Co. v. HEATH** (1926), 20 B. W. C. C. 97, C. A.

**3881a.** —.—.]—Employers applied to review weekly payments being made on the basis of total incapacity. They called a doctor who said he thought the man might do watchman's work or wash motor cars. Two doctors called on behalf of the workman said he was unfit for anything lightest form of work sitting down without bending. The judge found the man was only partially incapacitated, & consequently reduced the compensation:—*Held*: it was purely a question of fact, & there was evidence to support the finding.—**MEARS BROS. v. DAVIES** (1929), 22 B. W. C. C. 292, C. A.

**3885a.** —.—.]—*Held*: the question whether an injured workman was, at the time of the accident, acting within the sphere of his employment, though in a manner contrary to a statutory regulation, is a question of fact for the county ct. judge.—**DAVISON v. HOLMSIDE & SOUTH MOOR COLLIERIES, LTD., NAPPER v. LAMBTON, HETTON & JOICEY COLLIERIES, LTD.** (1929), 140 L. T. 511; 45 T. L. R. 188; 22 B. W. C. C. 51, C. A.

**3891a.** —.—.]—**MALCOLM v. BARBER, WALKER & Co., LTD.**, No. 3359d, *ante*.

**3896a.** *Hearing unsatisfactory—Rehearing ordered.*—**HUCKNALL v. MANCHESTER CORPN.** (1928), 21 B. W. C. C. 8, C. A.

#### PART XIV. SECT. 22, SUB-SECT. 4.

*sg. False representation—Whether made "at time of entering employment."*

—A minor who had previously suffered from miner's nystagmus, an industrial disease, obtained employment at his trade in Apr. 1927. In May, 1927, he wilfully & falsely made a representation in writing that in Apr. 1927, he had not previously suffered from the disease. For a period of three weeks in Aug. 1927, he was unemployed, after which he again obtained employment under the same employers. He continued in their employment until Nov. 1927, on which date he was certified by the certifying surgeon to be incapacitated by nystagmus from earning full wages:—*Held*: he was not barred by the provisions in sect. 43 (1) (b) from recovering compensation, in respect that the written representation was not made "at the

time of entering the employment."—**JOHNSTONE v. MOUNT VERNON COLLIERY Co., LTD.**, [1929] S. C. (Ct. of Sess.) 227.—**SCOT.**

#### PART XIV. SECT. 22, SUB-SECT. 5.

**3843a i. Recurrence after settlement & return to work.**—*Held*: when a workman who had suffered from nystagmus was certified as being no longer disabled by the disease, compensation must be ended, & that, on any recurrence of the disease, a fresh application must be made to the certifying surgeon.—**BROWN v. WILLIAM DIXON, LTD.**, [1929] S. C. (Ct. of Sess.) 206.—**SCOT.**

#### PART XIV. SECT. 23, SUB-SECT. 2.—B. (a).

**3865 iv.** —.—.]—On the hearing before the Workers' Compensation Commission of a claim by a workman

for compensation it was submitted that there was no evidence to support the claim, but the commission overruled the submission & an award was made in favour of the claimant. Thereafter, at the request of resp., the chairman stated a case asking the opinion of the Supreme Ct. whether there was evidence to justify the finding of the commission:—*Held*: after the making of the award the question could not be submitted to the ct. unless the commission had decided to reconsider the matter; the mere fact that the chairman had stated a case did not establish that it had so decided, & therefore it was not competent for the ct. to entertain the matter.—**ROBERTS v. JONES** (1928), 28 S. R. N. S. W. 543; 45 N. S. W. N. 156.—**AUS.**

**3865 v.** —.—.]—**BATHURST v. WORKMEN'S COMPENSATION BOARD**, [1928] 1 D. L. R. 114.—**CAN.**

**3897. Add. Annotation:—***Refd. Jones v. Cory* (1926), 20 B. W. C. C. 251.

**3901a. ———.]—**A workman, who had suffered an injury to his knee, was paid compensation by his employers for a time. He underwent a successful operation & his compensation was stopped. He later suffered another injury to the same knee, & brought proceedings for further compensation. After hearing evidence, the county ct. judge came to the conclusion that he was not satisfied as to any further injury after the cessation of compensation. The county ct. judge then considered the question of a declaration of liability &, while doing so, asked a medical man, who happened to be present in ct., whether there was any probability of further injury to the workman. The opinion of the medical man was not given as evidence on oath nor was he called by consent of the parties. The county ct. judge then made an award to the effect that the workman had recovered from his injury on the date when compensation was stopped, but granted a declaration of liability by consent. The workman appealed:—*Held*: although the procedure followed with regard to the doctor was undesirable & irregular, it had not been detrimental to the workman, because the county ct. judge had already made up his mind on the main question before him. There was ample evidence to support his finding on the question.—*RANSOM v. FULHAM FOOTBALL & ATHLETIC CO., LTD.* (1928), 21 B. W. C. C. 375, C. A.

**3904a. ———.]—**A workman, whose compensation had been stopped, claimed a continuance of compensation on the basis of total incapacity, & it was argued on his behalf that he was entitled to be paid on this basis under Workmen's Compensation Act, 1925 (c. 84), s. 9 (4). The county ct. judge found as a fact that the workman was partially incapacitated as a result of the accident but had, since the payment ceased, been doing work which he did before the accident. He held that sect. 9 (4) did not apply, but gave no reasons for so holding beyond stating that the workman refused work offered him on the ground that he could not do it when in fact he could have done it. He, therefore, refused to find total incapacity but gave a declaration of liability. On the appeal by the workman it was argued that, the county ct. judge having found partial incapacity, the case should be remitted to him to assess the amount of such incapacity:—*Held*: although the finding of the county ct. judge on the point was not too clear, the case had been argued & dealt with under sect. 9 (4) alone. The issue as to partial incapacity, not having been raised on the claim, in the ct. below, or in the notice of appeal, could not be taken in the Ct. of Appeal.—*PLUMB v. RALEIGH CYCLE CO.* (1928), 21 B. W. C. C. 378, C. A.

**3927a. Date of termination of incapacity.]—**A fireman had to have his right thumb amputated as the result of an accident in the stokehold of a ship. On Nov. 5, 1928, his employers obtained a certificate to the effect that he was fit to return to his work, & thereupon gave notice to terminate the weekly payments on Nov. 15. The weekly payments

were stopped on that day although a certificate had been furnished by the workman which stated that he was not fit to resume his old occupation, but also stated that there was plenty of other work he could do. The workman applied for an arbn. The arbn. took place on Jan. 29, & Feb. 5, 1929. On Mar. 1, the county ct. judge made his award in which he found as a fact that the workman was able to earn his pre-accident wages, & that up to the date of the hearing there was a dispute whether he had recovered. He did not give a finding as to the date on which the workman had become able to earn his pre-accident wages, but ordered the employers to continue to pay the full amount of weekly payments as from Nov. 15, 1928, to Feb. 5, 1929. The employers appealed:—*Held*: the judge should have found in fact the date when incapacity ceased. If by fixing Feb. 5, 1929, as the date down to which compensation must be paid, he intended to hold that incapacity continued to that date, there was no evidence to support such a finding. *MOCKBULL v. HOMER CITY S.S. OWNERS* (1929), 22 B. W. C. C. 260, C. A.

**3927b. Whether workman within Workmen's Compensation Act, 1925 (c. 84), s. 9 (4).]**—An employer having reduced a workman's compensation to 12s. 3d. a week, the workman applied for an arbn. on the ground that, although he was only partially incapacitated, he was unable to earn anything. At the hearing the workman said that it was impossible to say what he could earn if he could get light work. On that evidence it was submitted on his behalf that he was brought within sect. 9 (4). The county ct. judge made an award in favour of the employer that the workman was only entitled to 12s. 3d. a week as from the date of reduction. An appln. was subsequently made to the county ct. judge on behalf of the workman for an amendment of his note, or for a new trial, on the ground that sect. 9 (4) had not been properly considered at the hearing. The county ct. judge refused to grant a new trial, but said that he had not considered sect. 9 (4) until the end of the case. The workman appealed from the award & from the refusal to grant a new trial:—*Held*: the appln. was clearly made under sect. 9 (4), & the county ct. judge must be taken to have realised that fact in making the award which he did.—*STORER v. MORRIS* (1929), 22 B. W. C. C. 177, C. A.

**3954a. Acceptance of money paid into court—Appeal as to costs.]—**On the hearing of a claim for compensation applt. agreed to accept £10 paid into ct. on Jan. 7, 1927, the date of the answer filed by resp., in full satisfaction of the claim. Under the award, the £10 was to be paid to applt. with a declaration of liability, but resp. were given costs after the date of filing of their answer. Applt. appealed from so much of the order as directed costs to be so paid:—*Held*: applt. could not take the benefit of the award & appeal from a part of it to which she objected, & there was no right of appeal.—*WALDEN v. GRAMOPHONE CO., LTD.* (1927), 20 B. W. C. C. 346, C. A.

**3954b. — By widow—Appeal as to amount of**

children's allowance.]—MALCOLM v. BARBER, WALKER & Co., LTD., No. 3359d, *ante*.

3967. *Add. Citations*:—96 L. J. K. B. 254; 20 B. W. C. C. 198.

3969a. —[—An infant workman having obtained an award, the employer appealed. Pending the appeal the employer agreed to withdraw the appeal, provided a lump sum was accepted by those acting on behalf of the infant:—*Held*: the proper order was to remit the case to the county ct. judge to consider the sufficiency of the amount offered in view of the chances of appeal being successful, & on the approval of the judge being given, the appeal should stand dismissed with liberty to apply.—MARSHALL v. KIDDLE (1927), 20 B. W. C. C. 614, C. A.

3981. *Add. Annotations*:—*Refd.* Middleton Estate & Colliery Co. v. Finan (1926), 20 B. W. C. C. 207; Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram (1927), 96 L. J. K. B. 490.

3983. *Add. Annotation*:—*Refd.* Middleton Estate & Colliery Co. v. Finan (1926), 20 B. W. C. C. 207.

3988a. —[—RUDDY v. LONDON, MIDLAND & SCOTTISH RY., No. 2823a, *ante*.

3990. *Add. Annotation*:—As to (1) *Refd.* Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram (1927), 96 L. J. K. B. 490.

3993a. —[—Denial of liability.]—A workman having been injured by accident, his employers applied for a reference to a medical referee under Workmen's Compensation Act, 1925 (c. 84), s. 19, on the ground that there was a dispute as to whether he was fit for his employment & as to whether any incapacity from which he might be suffering was due to the accident. Four days later the workman filed an objection to the reference on the ground that, as the employers were refusing to admit that the accident arose out of & in the course of the employment, the matter should be dealt with by arbn. & not by reference. On the same day he filed his appln. for arbn. The sheriff-clerk allowed the reference to the medical referee & his decision was not appealed from. The employers filed an answer to the workman's appln. for arbn., in which they objected to the arbn. proceedings on the ground that the matter had already been referred to a medical referee, & further alleged that the workman was not entitled to any compensation because the accident had not arisen out of & in the course of the employment. The medical referee reported that the workman was partially incapacitated, & two days later the parties arrived at an agreement for settlement. On argument as to the costs the sheriff-substitute held that the workman's appln. for arbn. was premature, unwarranted & unnecessary, & while awarding no costs

on the reference to the medical referee, gave the costs of the alleged abortive arbn. proceedings to the employers. On appeal it was held by the Second Division of the Ct. of Session that the sheriff-substitute was wrong in depriving the workman of the costs of the arbn. proceedings on the ground stated by him, & remitted the question of costs to him for further argument. The employers appealed:—*Held*: the medical referee having no power to decide whether the accident arose out of or in the course of the employment, it was perfectly proper for the workman to take the earliest opportunity of getting that point determined by arbn., & was entitled to act as he had done.—BARR & HIGGINS, LTD. v. GREEN (1928), 98 L. J. P. C. 17; 140 L. T. 441; 21 B. W. C. C. 439, H. L.

4009. *Add. Annotation*:—*Refd.* Campbell v. Pollak, [1927] A. C. 732.

4012a. —[—Employer ordered to pay costs.]—SIDNEY LEE (EXETER), LTD. v. JAMES, No. 3545a, *ante*.

4013. *Add. Annotation*:—*Refd.* Middleton Estate & Colliery Co. v. Finan (1926), 20 B. W. C. C. 207.

4014a. —[—On an application to review weekly payments the employers received a letter from the workman's solrs., asking what was the exact amount of diminution they claimed, & replied that they intended to ask for a reduction of the 15s. a week to 2s. 6d. a week or to such other sum as the ct. should hold proper. The county ct. judge reduced the weekly payment to 10s., & ordered the employers to pay the costs:—*Held*: on the correct reading of the letter stating the diminution claimed the employers were successful on the award given, & the order as to costs should be set aside, & by consent of the employers, each party was ordered to pay their own costs.—MIDDLETON ESTATE & COLLIERY CO., LTD. v. FINAN (1926), 20 B. W. C. C. 207, C. A.

4019. *Add. Annotation*:—*Consd.* Campbell v. Pollak, [1927] A. C. 732.

4032a. *Workman's expenses in getting to medical referee's house.*—The ct. has no power to make an order that a workman, who is ordered to attend before a medical referee to determine whether he is entitled to continue in the receipt of a weekly payment for compensation, shall be paid a sum for his expenses in getting to the medical referee's house.—RICHARDS v. UNITED NATIONAL COLLIERIES, LTD. (1927), 96 L. J. K. B. 716; 137 L. T. 467; 71 Sol. Jo. 490; 20 B. W. C. C. 465, C. A.

4034a. *Taxing fee—Liability of workman to refund to employers.*—Notwithstanding Workmen's Compensation Act, 1925 (c. 84), Sched. I. (12), where a workman has brought unsuccessful

PART XIV. SECT. 24, SUB-SECT. 1.—A.

3979 H. S. P. M'ARDLE v. HOWIE (J. & R.), LTD., [1927] S. C. 779; 20 B. W. C. C. 790.—SCOT.

PART XIV. SECT. 24, SUB-SECT. 1.—J.

sk. *Remit to medical referee—Fee of referee—By whom payable.*—The person liable for payment of the fee under

Workmen's Compensation Act, 1923 (c. 42), s. 25 (1), is the person applying for registration at the time when the remit to the medical referee is made.—EASTON v. NIDRIE & BENHAR COAL CO., LTD., [1927] S. C. 3; 20 B. W. C. C. 652.—SCOT.

PART XIV. SECT. 24, SUB-SECT. 1.—K.

sl. *Set-off—Costs of separate decrees.*

—*Held*: as both decrees were steps in the statutory adjustment of liability for compensation in respect of the same accident, & therefore *partes ejusdem negotii*, the employers should not be deprived of their right to set off the one decree for expenses against the other.—BYRNE v. BAIRD & Co., [1929] S. C. (Ct. of Sess.) 624.—SCOT.

proceedings against his employers, & has been ordered to pay their costs, he may also be made to refund to them the taxing fee which they have paid for having those costs taxed.—*ELWELL v. CRANE FOUNDRY CO.* [1929] 1 K. B. 88; 97 L. J. K. B. 641; 139 L. T. 300, C. A.

**4042a.** —[—]*KNIGHT v. SKINNER* (1928), 21 B. W. C. C. 344, C. A.; *subsequent proceedings*, 21 B. W. C. C. 368, C. A.

**4055a.** —Owing to subsequent decision of appellate court.—Where a county ct. judge's award was according to the law as interpreted at the date of the hearing, but such interpretation, owing to a subsequent decision of the House of Lords, was proved since to have been wrong:—*Held*: his order giving costs to the successful workman must be set aside, & applts. the employers, must have their costs both in the county ct. & in the Ct. of Appeal.—*AKERS v. LONDON & NORTH EASTERN RY. CO.* (1926), 20 B. W. C. C. 195, C. A.

**4068.** *Add. Citation*:—96 L. J. K. B. 268.

**4076.** *Add. Annotations*:—*As to* (1) *Distd. Adair v. Colville* (1926), 20 B. W. C. C. 702. *Refd.* *Delahunt v. Moody* (1927), 21 B. W. C. C. 588.

#### SECT. 27.—REPAYMENT OF POOR RELIEF.

*See Workmen's Compensation Act, 1925 (c. 84), s. 41.*

#### PART XIV. SECT. 24, SUB-SECT. 2.—B.

**4062 i.** *Jurisdiction to vary order as to costs—Judgment specifically dealing with costs.*—An award was made by an arbitrator under Workmen's Compensation Act, 1916, in favour of a workman who was allowed a certain weekly payment & the costs of the arbitration. From this award the workman appealed, & that appeal was dismissed with costs. Subsequently an application was made on behalf of resp. employer for an order that the costs incurred by him in the appeal should be made costs in the arbitration:—*Held*: although the order asked for might have been made on the hearing of the appeal, the Ct. had now no jurisdiction to make it.—*LAUER v. BRIGGS* (1928), 28 S. L. N. S. W. 389; 45 N. S. W. N. 110.—*AUS.*

#### PART XIV. SECT. 25, SUB-SECT. 1.—A.

**f i.** —[—].—The fact that pltf., who was suing in Admiralty, for damages resulting from a collision which caused the death of her husband, had accepted benefits under Workmen's Compensation Act:—*Held*: not to bar her, under the principle of election, from proceeding against the ship.—*DAGSLAND v. S.S. CATALA*, [1927] 4 D. L. R. 426; [1927] 3 W. W. R. 97; 38 B. C. R. 440; *revid. sub nom.* *THE CATALA v. DAGSLAND*, [1928] 3 D. L. R. 334; *Ex. C. R.* 83.—*CAN.*

**r i.** —[—].—A workman who

has suffered injury owing to the negligence of his employer is not debarred by Workers' Compensation Act, 1926, s. 63, from bringing an action at common law against his employer to recover damages for the injury so sustained unless he has made a claim under the Act & obtained a decision thereon.—*CONNELL v. UNION STRAMSHIP CO.* (1928), 28 S. L. N. S. W. 212; 45 N. S. W. N. 62.—*AUS.*

#### PART XIV. SECT. 25, SUB-SECT. 1.—B.

**4075 iv.** —[—].—*Whether award open to review.*—*MC CAFFERTY v. MACANDREWS & CO.*, [1929] S. C. (Ct. of Sess.) 529.—*SCOT.*

**4077 i.** —[—].—*Deduction of costs of unsuccessful action.*—*ADAIR v. COLVILLE & SONS, LTD.*, [1927] S. C. 116; 20 B. W. C. C. 702.—*SCOT.*

**h i.** —[—].—*ADAIR v. COLVILLE & SONS, LTD.*, [1927] S. C. 116; 20 B. W. C. C. 702.—*SCOT.*

**“ ”** —[—].—A workman, who has brought an action against his employer, founded solely upon the employer's liability at common law, & who has obtained a judgment in his favour, is not entitled, if that judgment be subsequently set aside upon appeal, to have compensation assessed in the action under Workmen's Compensation Act, 1906 (c. 58).—*WARD v. DEVLIN*, [1927] 1 R. 299.—*IR.*

#### PART XIV. SECT. 25, SUB-SECT. 2.—A.

**4083 iii.** —[—].—On Jan. 22, 1926, a workman sustained injury by accident

**4137a.** *When right arises—Payment by guardians pending settlement of claim By arbitration or agreement.*—In an action brought by debenture holders against a co. to realise their security receivers were appointed of the assets comprised in the debentures. At the date of their appointment there were a number of workmen in receipt of weekly payments from the co. as compensation for accidents suffered by them causing total or partial incapacity. These payments having ceased on the appointment of the receivers, the workmen were paid outdoor relief by the guardians. On an application by the guardians under Workmen's Compensation Act, 1925 (c. 84), s. 41, for repayment of the money so expended by them:—*Held*: the words “pending the settlement of his claim” in sect. 41 did not refer to the settlement of the workman's claim by the payment of a lump sum, but to the settlement of compensation by an award or by agreement between the workman & the employer; therefore, as the claims of the workmen in the present case had long since been settled by the co. by the weekly sums, the guardians were not entitled to the repayment they claimed.—*Re LEWIS MERCHYR CONSOLIDATED COLLIERIES, LLOYDS BANK v. THE CO.* (No. 2), [1929] 1 A. H. 589; 98 L. J. Ch. 77; 140 L. T. 356; 93 J. P. 105; 45 T. L. R. 159; 73 Sol. Jo. 92; 27 L. G. R. 184; 22 B. W. C. C. 31; [1928] B. & C. R. 149, C. A.

arising out of & in the course of his employment. On Feb. 4 his wife received from his employers £3 as compensation for two weeks, & on Feb. 13 she received 30s. as compensation for a further week. She had no authority from the workman to apply for or obtain compensation, & while he knew that she had received the payment of £3, he did not know that it had been paid as compensation. He knew, however, that the payment of 30s. made to his wife on Feb. 15 was a payment of compensation, & he allowed her to retain & use the money. The workman having subsequently brought an action against a third party to recover damages in respect of his injuries:—*Held*: he was barred from suing for damages, in respect that he had already recovered compensation within sect. 30 (1) of the 1925 Act.—*REID v. STEVENSON*, [1928] S. C. (Ct. of Sess.) 799.—*SCOT.*

**n i.** —[—].—*From contractor.*—*GEDDES v. DUNFERMLINE DISTRICT COMMITTEE*, [1927] S. C. 797; 20 B. W. C. C. 815.—*SCOT.*

**sm.** “*Recover*” damages.—*What amounts to.*—The phrase “to recover” damages in Workmen's Compensation Act, 1925 (c. 84), s. 30 (1), means “to receive payment of” damages, & where a workman has been unable to obtain payment under a common law judgment in his favour against a third party, he is entitled to claim compensation from his employers.—*CUMBERLAND v. LANARKSHIRE TRAMWAYS CO.*, [1927] S. C. 407; 20 B. W. C. C. 780.—*SCOT.*

## MAYOR'S AND CITY OF LONDON COURT.

### Part II.—Jurisdiction.

- 21a. **Specific performance.**—This [specific performance] being an equitable right appearing incidentally in the course of the cause, the recorder was bound to give effect to it (*per* CUR.).—WILLIAMS *v.* SNOWDEN, [1880] W. N. 124.
31. *Add. Annotation* :—**Dlstd.** Lake *v.* Cronin, Hunt *v.* Cronin, [1929] 1 K. B. 31.

### Part III.—Practice and Procedure.

58. *Add. Annotation* :—**Refd.** *Re* Keystone Knitting Mills Trade Mk. (1928), 97 L. J. Ch. 316.



# MEDICINE AND PHARMACY.

## Part I.—Physicians and Surgeons.

15. *Add. Annotation* :—**Distd.** *Way v. Bishop*, [1928] Ch. 647.

## Part II.—The General Medical Council and Similar Bodies in the Dominions.

21a. **Removal from register—On application—Discretion of Council.**—Where a registered medical practitioner applies to the General Medical Council for the removal of his name from the register at his own request, & accompanies his application by the prescribed statutory declaration that he is not aware of any proceedings, or of any reason for any proceedings, for the penal removal of his name, the Council is not bound to accede to the application without making inquiries, & if it comes to the conclusion that the declaration was not true or that appet. ought to have been aware of matters which might lead to the institution of proceedings, the

Council may refuse the application, & on proof of the necessary matters may, under Medical Act, 1858 (c. 90), s. 29, direct appet.'s name to be removed penally.—*R. v. GENERAL MEDICAL COUNCIL*, *Ex p. KYNASTON* (1929), 45 T. L. R. 631.

24. *Add. Annotations* :—*As to* (2) *v. Workers' Union*, [1929] 1 Ch. 602. *Generally, Mentd. R. v. Leicester JJ., Ex p. Allbrighton*, [1927] 1 K. B. 557.

30. *Add. Annotations* :—*As to* (2) *Apld. Maclean v. Workers' Union*, [1929] 1 Ch. 602. *Generally, Mentd. R. v. Leicester JJ., Ex p. Allbrighton*, [1927] 1 K. B. 557.

## Part III.—Medical Practitioners.

72. *Add. Annotation* :—**Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.

103a. — **Work performed before operative date of Medical Act.**—The Medical Act, 1858 (c. 90), has not a retrospective effect, so as to prevent a person who is not registered under it from maintaining an action for medical or surgical advice given, or medicine supplied, before the Act came into operation.—*WRIGHT v. GREENROYD* (1861), 1 B. & S. 758; 31 L. J. Q. B. 4; 5 L. T. 317; 26 J. P. 118; 8 Jur. N. S. 98; 121 E. R. 896.

105. *Add. Annotation* :—**Folld.** *Macnaghten Douglas*, [1927] 2 K. B. 292.

106. For the existing paragraph substitute the following paragraph:—

— [—]—Medical Act, 1858 (c. 90), s. 32, does not apply to an osteopath, so as to prevent him from recovering at law fees charged for treatment as distinct from diagnosis or advice.—*MACNAGHTEN v. DOUGLAS*, [1927] 2 K. B. 292; 96 L. J. K. B. 738; 137 L. T. 518; 91 J. P. 143; 43 T. L. R. 525; 71 Sol. Jo. 409, D. C.

### PART II. SECT. 2.

o i. — **Must be specified in report of discipline committee.**—*CHURCH v. COLLEGE OF PHYSICIANS & SURGEONS*, [1927] 2 D. L. R. 957; [1927] 2 W. W. R. 9; 47 Can. Crim. Cas. 297; 22 Alta. L. R. 560; *varying*, [1927] 2 D. L. R. 701.—**CAN.**

a i. — **Jurisdiction of discipline committee.**—*Re McLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS*, [1927] 2 D. L. R. 953; [1927] 2 W. W. R. 4; 47 Can. Crim. Cas. 290; 22 Alta. L. R. 553.—**CAN.**

b i. — **Power of appellate court—To set aside order of council made without jurisdiction.**—*Re McLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS*, [1927] 2 D. L. R. 953; [1927] 2 W. W. R. 4; 47 Can. Crim. Cas. 290; 22 Alta. L. R. 553.—**CAN.**

b ii. — **To refer matter back to discipline committee for reconsideration.**—*CHURCH v. COLLEGE OF PHYSICIANS & SURGEONS*, [1927] 2 D. L. R. 957; [1927] 2 W. W. R. 9; 47 Can. Crim. Cas. 297; 22 Alta. L. R. 560; *varying*, [1927] 2 D. L. R. 701.—**CAN.**

b iii. — **To mitigate punishment.**—Where applt.'s conduct was such as to bring him within the disciplinary powers of the council & it was right in punishing him therefor, but in all the circumstances of the case the punishment imposed was too severe: *Held*: his name should be restored to the register on Dec. 31, 1927.—*Re McLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS (Alta.)*, [1927] 3 D. L. R. 225; [1927] 2 W. W. R. 388; 48 Can. Crim. Cas. 148.—**CAN.**

### PART III. SECT. 1, SUB-SECT. 2.

sa. **Practice—Whether time spent in study of profession.**—Time put in in the study of a science or profession cannot be considered as time spent in the "practice" of it as that term is commonly understood.—*JENNIS v. SATCHWELL*, [1928] 3 D. L. R. 624; [1928] 2 W. W. R. 638; 23 Alta. L. R. 495.—**CAN.**

### PART III. SECT. 3, SUB-SECT. 1.—H.

86 iv. — **Hospital liable for the negligence of nurses after an**

operation.—*NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD*, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—**CAN.**

— [—]—*Pltf. entered defts.' hospital for the purpose of undergoing an operation, & owing to the fact that the regular nursing staff was not sufficient to give her the care considered necessary by her physician, a special nurse was employed & added temporarily to the regular staff but charged to pltf.:—Held*: the special nurse so engaged was the employee of the hospital, & not the mere assistant of pltf.'s physician, & the hospital was responsible in damages for negligence on her part resulting in severe injury to pltf.—*LOGAN v. COLORADO COUNTY HOSPITAL*, [1928] 1 D. L. R. 1129; 60 N. S. R. 62.—**CAN.**

### PART III. SECT. 7, SUB-SECT. 2.—B. (o).

t i. — [—]—*HORSEMAN v. NAIRN*, [1926] S. A. S. R. 1.—**AUS.**

t ii. — [—]—*O'CONNELL v. CULLEY*, [1927] V. L. R. 502; 49 A. L. T. 92; [1927] Argus L. R. 423.—**AUS.**

t iii. — [—]—*Held*: *deft., an*

## Part VI.—Dentists.

**205a.** ——— **Non-payment of annual retention fee.**—Dentists Act, 1921 (c. 21), s. 7 (1), impliedly authorises the Dental Board to provide for non-retention on, or removal from, the register in default of payment of the annual retention fee.—**TATTERSALL v. SLADEN**, [1928] Ch. 318; 97 L. J. Ch. 145; 138 L. T. 577; 44 T. L. R. 237; 26 L. G. R. 217.

**205b.** ——— **Conviction for misdemeanour.**—The word "misdemeanour" in Dentists Act, 1878 (c. 33), s. 13, is not confined to

indictable misdemeanours.—**PICKUP v. UNITED KINGDOM DENTAL BOARD**, [1928] 2 K. R. 459; 97 L. J. K. B. 604; 139 L. T. 607; 92 J. P. 147; 44 T. L. R. 544; 72 Sol. Jo. 369; 28 Cox, C. C. 536; 26 L. G. R. 393, D. C.

**206.** *Add. Annotation* :—**Mentd. R. v. Leicester JJ.**, *Ex p. Allbrighton*, [1927] 1 K. B. 557.

**223.** *Add. Annotation* :—**Refd. Albemarle Supply Co. v. Hind**, [1928] 1 K. B. 307.

**224.** *Add. Annotation* :—**Refd. Dominion Press v. Customs & Excise Minister**, [1928] A. C. 340.

## Part IX.—Drugs.

**242.** *Add. Citation* :—28 Cox, C. C. 303, D. C.

**242a.** ——— **Prosecution under Dangerous Drugs Act, 1925 (c. 74)—Act not in operation.**—

Conviction quashed.—**R. v. KYNASTON** (1926), 19 Cr. App. Rep. 180, C. C. A.

osteopath, holding the degree of Doctor of Osteopathy, used the word "Doctor" in advertisements, in conjunction with "osteopath," as an occupational designation relating to the treatment of human ailments, & was therefore guilty of an infraction of Ontario Medical Act, s. 49 (1925). The addition of the word "osteopath" after the words "Doctor Pocock" in his advertisements, simply indicated the method which he, professing to be a doctor, in the sense in which that word is ordinarily understood, used in the treatment of human ailments. **R. v. Pocock**, [1928] 2 D. L. R. 937; 50 Can. Crim. Cas. 75; 62 O. L. R. 113.—**CAN.**

### PART VI. SECT. 1.

**a i.** ———.—The rule as to the skill required of a dentist is the same as that with regard to the skill of a member of any other branch of the therapeutic art. Where he is registered & injury results from his treatment, the presumption is that he is competent & that the treatment was correct, until the contrary is shown.—**MCTAGGART v. POWERS**, [1927] 1 D. L. R. 28; 36 Man. L. R. 73; [1926] 3 W. W. R. 513.—**CAN.**

### PART VI. SECT. 2.

**207 iv.** ———.—*Ex p.* **KEENE** (1926), 26 S. R. N. S. W. 463; 43 N. S. W. N. 136.—**AUS.**

**sc.** *Application for registration*—"Entered on a definite course of training"—*What amounts to.*—From 1905 to Mar 1910, appt. pursued a course of practical instruction in the various branches of a dentist's work under the direction of a qualified & practising dentist. From Mar. 1910, onwards, until the Medical (Dentists) Act, 1927, came into operation, he acted as assistant to different qualified & practising dentists, performing the mechanical & surgical work in the practice of dentistry.—*Held*: the words "entered on a definite course of training," in s. 14 (1) (b) of the Act were satisfied by the applicant entering on a defined & continuous course of practical instruction in dental surgery & dentistry.—**DENTAL BOARD**

OF VICTORIA **v. DENISON**, [1928] V. L. R. 371; [1928] Argus L. R. 253.—**AUS.**

**sd.** *Registration—Graduate—Meaning of.*—The word "graduate" in Dentistry Act, R. S. B. C. 1921, c. 66, s. 22 (b), does not import that appt. must have gone through a course of training prior to graduation.—**Re NEFF & COLLEGE OF DENTAL SURGEONS** [1928] 4 D. L. R. 839; [1928] 3 W. W. R. 299.—**CAN.**

### PART VI. SECT. 3.

**q i.** ———.—Appt. a registered dentist had agreed to manage for resp., who was not a dentist, a dental practice which had been carried on by resp.'s former husband. In answer to an action by resp. to restrain appt. from practising in a certain specified locality in terms of a covenant to such effect contained in the agreement, appt. pleaded the illegality of the agreement.—*Held*: a person carries on a business who employs a servant to work for him though he may take no practical part in it; & the agreement in the present case was illegal, as constituting the carrying on of the "practice of dentistry" by a person who was not a registered dentist in contravention of Dentists Amendment Act, 1921-22, ss. 2, 3.—**SCOTT v. WATKINS**, [1928] N. Z. L. R. 628.—**N.Z.**

**q ii.** ———.—A person who for gain takes impressions of patients' mouths & subsequently fits the plates into their mouths, performs functions specially belonging to the calling of a dentist, within sect. 5 of Act 21, 1899 (Natal).—**R. v. ROBERTSON**, [1929] App. D. 10.—**S. AF.**

### PART IX. SECT. 1.

**242 i.** *Dangerous drugs—Procuring drugs for unlicensed or unauthorised person—Doctor supplying wife with orders on chemist.*—A complaint, which charged a medical practitioner with procuring dangerous drugs for his wife, in contravention of Dangerous Drugs Act, 1920 (c. 46), s. 7, & Dangerous Drugs Regulations, 1921, reg. 4, libelled that accused had delivered to his wife five order forms of different

dates, signed by him, in which he pretended that the drugs specified in the orders were required by him for professional use only, "while you well knew that the order forms were granted by you for the purpose of enabling your wife to obtain the drugs for her own use, she not being a person licensed or otherwise authorised to be in possession of the drugs," & that his wife presented the order forms to certain chemists & thereby obtained the drugs.—*Held*: the complaint relevantly charged an offence against the Act & regulation libelled, in respect that (1) the order forms, inasmuch as they bore to be "for professional use only," were not prescriptions; (2) the procedure alleged to have been followed negatived the view that accused was dispensing his own medicine; (3) the wife was not a messenger on behalf of her husband, but a person obtaining drugs on her own behalf & for her own use.—**STRATHERN v. ROSS**, [1927] S. C. (J.) 70.—**SCOT.**

### PART IX. SECT. 2.

**246 i.** "Held out or recommended to public"—*Necessity for notice or advertisement to be affixed—Tonic food.*—Manufacturers & vendors of a preparation known as "Zomogen," on which the duty had not been paid, were charged with a contravention of the Act. It was proved that no skill in chemistry was needed or used in the process of manufacture of the preparation. It was composed mainly of ox blood & marrow. Its predominant constituent as a health preserving & restoring commodity was hemoglobin, an article which was frequently recommended by medical men to supply deficiencies of red blood corpuscles in their patients, & was used especially in cases of anemia. It was advertised & sold to the public as a tonic food, & the labels on the bottles stated that medical men from every part of the world described it as a marvellous success in the immediate restoration of health:—*Held*: the method in which the preparation was manufactured, used, & sold rendered it liable to duty under the Act.—**ADAM v. ZOMOGEN FOOD PRODUCTS, LTD.** [1929] S. C. (J.) 22.—**SCOT.**

## Part X.—Poisons.

257. *Add. Annotation*:—**Refd.** R. v. Cory, [1927] 1 K. B. 810.**PART X. SECT. 1.**

**h i.** ———.—**R. v. SMITH**, [1921] 4 D. L. R. 427; 55 O. L. R. 549.—**CAN.**

**h ii.** ———. *Conviction under amended Act—Amendment not in operation.*—**Held**: the conviction was bad.—**R. v. Soo Gong**, [1927] 2 D. L. R. 269; [1927] 1 W. W. R. 669; 47 Can. Crim. R. 321.—**CAN.**

**PART X. SECT. 2.**

**258 iii.** ———.—**Held**: a complaint, which set forth that a duly registered chemist on a specified date did keep an open shop for retailing poisons, contrary to Pharmacy Act, 1868 (c. 121), ss. 1, 15, as amended by Poisons & Pharmacy Act, 1908 (c. 55), s. 3 (1), & stated that accused, "not being personally present & *bonâ fide* conducting the sale," did sell to a person named, by the hand of an assistant who was not a duly registered chemist,

certain poisons, did not relevantly charge a contravention of the statutes libelled, in respect that the alleged transaction, being merely an isolated sale when the registered chemist did not happen to be present, was not an offence under the statutes, & particularly was not an offence under 1908 Act, s. 3 (1).—**LINSTEAD v. SIMPSON**, [1927] S. C. (J.) 101.—**SCOT.**

**sm. Opium & Narcotic Drugs Act—Jurisdiction of magistrate under**—**YAU v. O'NEIL** (1927), 41 Que. K. B. 255.—**CAN.**

**sn. Opium—Furnished by physician to addict—Onus of proof on physician.**—While under Opium & Narcotic Drug Act, 1923, a physician may furnish a "drug" for self-administration to an addict or habitual user who is suffering from a diseased condition caused otherwise than by the excessive use of any

"drug," yet, even in such a case, an accused physician must nevertheless bring himself within the requirements of sect. 6 of the Act by showing that the "drug" was required for medicinal purposes or was prescribed for the medical treatment of a person under professional treatment by such physician. Where a diseased condition is proved, or the medical evidence is such that the physician be given the benefit of the doubt on the point, the question whether one of the other two conditions which permit of the furnishing of the "drug" existed is not to be decided by accepting the physician's own judgment & evidence as conclusive, but the ct. must determine each case on its own facts as disclosed by all the evidence.—**R. v. GORDON**, [1928] 2 D. L. R. 315; [1928] 1 W. W. R. 678, 49 Can. Crim. Cas. 272.—**CAN.**

## METROPOLIS.

### Part III.—The London County Council.

8. *Add. Annotation* :—**Refd.** *Collins v. Whiteway*, [1927] 2 K. B. 378.

### Part VII.—Officers of Metropolitan Authorities.

29a. “**Emoluments**” —**Annual allowances in respect of superannuation.**]—**KIDDIE v. PORT OF LONDON AUTHORITY**, *DURRANT v. SAME* (1929), 45 T. L. R. 430; 93 J. P. 203; 27 L. G. R. 398.

29b. ——— **Fees of town clerk acting as registration officer.**]—*Held*: the fees received by the town clerk of a metropolitan borough in respect of his duties as registration officer are “**emoluments of his office**” as town clerk & properly included in calculating the super-

annuation allowance payable to him under Superannuation (Metropolis) Act, 1866 (c. 3), s. 4. —**STOKE NEWINGTON BOROUGH COUNCIL v. RICHARDS** (1929), 45 T. L. R. 650; 27 L. G. R. 660; 93 J. P. Jo. 512, D. C.

29c. **Transfer of existing officer to borough council —Right to remuneration for additional duties — London Government Act, 1899 (c. 14), ss. 8 (3), 30 (1).**]—**GRAY v. HACKNEY BOROUGH COUNCIL** (1904), 2 L. G. R. 429.

### Part XI.—Metropolitan Building Legislation.

81. In lieu of the paragraph following the catch-words substitute as follows :—

The comrs. under Metropolitan Building Act, 1855 (c. 122), having incurred expense under sect. 73 of the Act, demanded payment of the owner of the structure, who refused to pay :—*Held*: the six months, within

which a complaint was to be made, were to be reckoned from the demand & refusal, not from the incurring of the expense.

*Add. Annotation* :—**Appld.** *Ashby-de-la-Zouch Grdns. v. Summers*, [1928] 2 K. B. 397.

92. For “ 8 L. T. 369 ” read “ 89 L. T. 369.”

### Part XIV.—Customs of London.

143. *Add. Annotation* :—**Mentd.** *Campbell v. Pollak*, [1927] A. C. 732.

# MINES, MINERALS AND QUARRIES.

## Part I.—In General.

12. *Add. Annotation*:—As to (1) **Consd.** South Staffordshire Mines Drainage Comrs. v. Elwell (1927), 91 J. P. 113.
26. *Add. Annotation*:—Generally, **Mentd.** A.-G. v. Blackpool Corpn. (1928), 92 J. P. 50.
27. *Add. Annotation*:—**Mentd.** Glenboig Union Fireclay Co. v. I. R. Comrs. (1922), 12 Tax Cas. 427.

## Part III.—Amalgamation and Absorption Schemes.

- 180a. ———.]—Observations on the meaning of the expression “national interest” in sect. 7 (2) (a) of the above Act. —*Re AMALGA-*

ANTHRACITE COLLIERIES, LTD.’S APPLICATION (1927), 43 T. L. R. 672.

## Part IV.—Right to work Mines and Quarries.

233. *Add. Annotation*:—**Mentd.** Horlick v. Scully, [1927] 2 Ch. 150.
263. *Add. Annotation*:—**Refd.** Glenboig Union Fireclay Co. v. I. R. Comrs. (1922), 12 Tax Cas. 427.
- 277a. ——— **Damages for unworkable coal & payments for unworked coal.**—*Re CANNER, BURY v. CANNER* (1923), 155 L. T. Jo. 211.
292. *Add. Annotations*:—**Mentd.** Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 216; Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48.
315. *Add. Annotation*:—**Refd.** A.-G. v. Leeds Corpn., [1929] 2 Ch. 291.
- 327a. ———.]—In considering whether it is in the national interest to grant ancillary rights to facilitate the proper & efficient working of minerals under Mines (Working Facilities & Support) Act, 1923 (c. 20) the Railway & Canal Commission is entitled to take into account not only difficulties which physically obstruct the getting & carrying away of minerals, but also economic

difficulties which militate against their effective marketing.

The expressions “carrying away” in sect. 1 (2), & “conveyance of minerals” in sect. 3 (2) (b), of the Act are to be construed not in a technical sense, but broadly as entitling the person to whom ancillary rights are granted under the Act to transport the minerals from the land where they have been won for sale elsewhere.

The Railway & Canal Commission made an order granting to a colliery co. the ancillary right under the Act to construct an aerial ropeway over the land of other persons from their colliery to Dover, a distance of seven miles, which would enable them to transport their minerals more cheaply & more conveniently than by other means:—**Held**: the Railway & Canal Commission had jurisdiction to make this order. —*Re THIMANSTONE (KENT) COLLIERIES, LTD.*, [1928] 1 K. B. 599; 97 L. J. K. B. 169; 138 L. T. 452; 44 T. L. R. 167; 19 Ry. & Can. Tr. Cas. 26, C. A.

## Part V.—Powers Incidental to Ownership.

- 335a. ———.]—*Re* MERCHANTS’ TRUST & NEW BRITISH IRON CO. (1894), 38 Sol. Jo. 253.
- 335b. ———.]—*Re* THOMAS’S TRUSTS (1895), 40 Sol. Jo. 98.
- 335c. ———.]—*Re* STAMFORD & WARINGTON EARL TRUSTS (1896), 40 Sol. Jo. 771.
384. *Add. Annotation*:—**Mentd.** Mallet v. Staveley Coal & Iron Co. (1927), 138 L. T. 201.

### PART I. SECT. 4, SUB-SECT. 2.

ss. Upper basalt.]—*Re* WOODSIDE’S ESTATE, [1929] N. I. 75.—**IR.**

### PART IV. SECT. 1.

ss. (p. 620) i. ———.]—*Not misleading record of claim.*—If the description of a mining claim as recorded is so erroneous as to mislead parties locating other claims in the vicinity, the error is not cured by a certificate of work done by the first locator on land not included in such description & covered by the subsequent claims.—**COLFEN v. CALLAHAN** (1899), 30 S. C. R. 555.—**CAN.**

n (p. 621) i. ———.]—*Power to cancel claim.*—**RE COLE & KNOWLES**, [1927] 3 D. L. R. 950; 60 O. L. R. 638.—**CAN.**

bb (p. 621) i. ———.]—*Variance between located ground & plan.*—Position of

location posts binding.]—**McCALLUM v. CENTRAL MANITOBA MINES, LTD.** (Man.), [1928] 1 D. L. R. 119; [1927] 3 W. W. R. 556.—**CAN.**

sd. *Claims recorded through fraud & inadvertence.*—Set aside.—**WEKUSKO MINES, LTD. v. MAY**, [1927] 1 W. W. R. 383; 36 Man. L. R. 351.—**CAN.**

se. *Adverse claim.—Extension of time for action on—Minerals Act.*—*Re* “GOOD FRIDAY,” ETC., MINERAL CLAIMS (1896), 4 B. C. R. 496.—**CAN.**

sf. *Prospecting & mining.—Right to exclude lands from by proclamation.*—**IL. v. NOLTE**, [1928] App. D. 377.—**S. AF.**

### PART IV. SECT. 2, SUB-SECT. 2. — C. (a).

sh. *Partnership as distinguished from*

co-owners.]—**DAVIES v. SCHULLI**, [1928] 4 D. L. R. 132; [1928] 3 W. W. R. 158.—**CAN.**

### PART V. SECT. 2, SUB-SECT. 2.— B. (a).

sk. *Covenant for renewal.—Whether court may sanction.*—Where it is proposed to grant a mining lease pursuant to the provisions of Settled Land Act, 1908, & its amendments, the ct. has no power to approve of the insertion in such lease of a covenant for renewal, even although it is agreed in such covenant that the rental payable under the renewed lease shall be fixed by arbn. **McKINNON v. GLEN AFTON COLLIERIES, LTD.**, [1929] N. Z. L. R. 202.—**N.Z.**

## Part VI.—Rights Incidental to Ownership.

476. *Add. Annotation*:—**Mentd.** *Price v. d'Energie de Montinagny Corp'n.*, [1927] A. C. 363. | 492. *Add. Annotation*:—**Mentd.** *Metcalf v. Boyce*, [1927] 1 K. B. 758.

## Part VII.—Contracts.

576. *Add. Annotation*:—**Refd.** *Arseculeratne v. Perera*, [1928] A. C. 173. | well Park Colliery Co., *Field v. Sandwell Park Colliery Co.*, [1929] 1 Ch. 277.
584. *Add. Annotation*:—*As to* (1) **Refd.** *Re Sand-* | 623. *Add. Annotation*:—**Consd.** *Re Wait*, [1927] 1 Ch. 606.

## Part IX.—Mortgages.

658. *Add. Annotations*:—*Generally*, **Mentd.** | 1 K. B. 246; *Liggett (Liverpool) v. Barclays* | *Houghton v. Nothard, Lowe & Wills*, [1927] | Bank (1927), 137 L. T. 443.

## Part XI.—Leases.

673. *Add. Annotation*:—*As to* (2) **Refd.** *Glenboig Union Fireclay Co. v. J. R. Comrs.* (1922), 12 Tax Cas. 427.

### PART VI. SECT. 2, SUB-SECT. 5.— A. (d).

552 i. *Value of minerals at pit's mouth—Less costs of severance & bringing to bank.*—*BAITLETT v. NOVA SCOTIA STEEL CO.* (1906), 1 E. L. R. 226.—CAN.

### PART VI. SECT. 2, SUB-SECT. 5.— A. (h).

so. *Damage to future working of claim.*—*HILDITCH v. YOTT* (1908), 90 W. L. R. 53. CAN.

### PART VII. SECT. 2, SUB-SECT. 1.

sp. *Sale of land subject to gas lease—Where gas treated as chattel.*—*TILBURY TOWN GAS CO. v. MAPLE CITY OIL & GAS CO.*, *MAPLE CITY OIL & GAS CO. v. TILBURY TOWN GAS CO.* (1915), 7 O. W. N. 786, 9 O. W. N. 301; 35 O. L. R. 186.—CAN.

### PART VII. SECT. 3, SUB-SECT. 1.

ci. — *For sale of option to purchase mining claims.*—*GORDON v. EARLE* (Man.), [1927] 3 D. W. R. 242.—CAN.

sr. *Contract to pay for mineral claim on sale thereof—Claim allowed to lapse—Measure of damages.*—*McGEE v. CLARKE*, [1927] 1 W. W. R. 593; 38 B. C. R. 156.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 2.

650 iii. —.—*STUART v. CALGARY & EDMONTON RY. CO.* (Alta.), [1928] 1 D. L. R. 24; [1927] 3 W. W. R. 678; *varrington*, [1927] 2 D. L. R. 271; [1927] 1 W. W. R. 639.—CAN.

### PART X.

a i. — *For sublease of petroleum rights—Obligations of parties under agreement.*—*OSLSON v. WEISS* (Alta.), [1927] 3 D. L. R. 24; [1927] 2 W. W. R. 25.—CAN.

### PART XI. SECT. 3, SUB-SECT. 1.

st. *Chattels appurtenant to lease—What are.*—*Pltf.* obtained an option on several mining leases. The ground

had previously been worked by one H., who constructed a water system for washing the gravel, but after operating for a time abandoned the property, leaving certain chattels used in connection with the water system on the ground. Upon *pltf. co.* commencing operations it purchased the chattels from H.'s estate & used them until it in turn abandoned the properties. The owners took possession & refused to give up the chattels, claiming that the water licences authorising *pltf.* to use water were together with all works constructed appurtenant to the lease, & could not be separated from the property:—*Held*: *defts.* had not satisfied the burden of proof which was upon them to show that these chattels were in fact to be regarded as part of the works which are appurtenant to the leases. They were in fact parts of the mining machinery & appliances for recovering the gold, not of the water system, & were quite separate & distinct from those works, & not attached in any way to them or to the soil.—*ENNIS GOLD MINING CO. v. HENDERSON* (1927), 39 B. C. R. 76.—CAN.

sv. *Lease of right to win oil—Discovery of natural gas—Rights of parties.*—*Applt.*, the owner of oil sites & grantees from Govt. of the right to win oil therefrom, leased the sites & the right to win oil for twenty-five years to *resps.*, who agreed to pay royalties on oil won by them. In sinking wells, which did not produce oil in commercial quantities, *resps.* found natural gas. They tapped the gas by pipes & for six years used it for their own purposes:—*Held*: *applt.* was not entitled to compensation for the gas so taken since

(a) that right was not included in the right to royalties upon the oil won; & (b) the lease on its true construction was not merely a lease for the purpose of winning oil, & *applt.* having no property in the gas, *resps.* were entitled to reduce into possession & use it, provided they did so without injury to the leased property.—*U PO NAING v. BURMA OIL CO., LTD.* (1929), L. R. 56 Ind. App. 140.—IND.

### PART XI. SECT. 6, SUB-SECT. 2.

d i. *Fine in lieu of forfeiture.*—A warden of mines having recommended the forfeiture of a mineral lease on account of default, without reasonable cause, in compliance with the covenant with regard to the expenditure of money, the Mining Board imposed a fine of £200 in lieu of forfeiture.—*HILL v. THE TASMANIAN METALS EXTRACTION CO., LTD.* (1925), Tas. L. R. 38.—AUS.

### PART XI. SECT. 7.

t i. —.—*Re MCGREGOR*, [1927] 2 D. L. R. 588; 59 N. S. R. 231.—CAN.

sm. *By impossibility of performance—What amounts to.*—*FIRTH v. HAL-LORAN* (1926), 38 C. L. R. 261.—AUS.

### PART XII. SECT. 1, SUB-SECT. 2.

d i. — *Assignment.*—*SHAW v. ROBINSON* (1910), 8 E. L. R. 557.—CAN.

### PART XII. SECT. 2, SUB-SECT. 3.

sa. *Licence to bore for oil—Royalties payable under—Whether recoverable.*—*Pltf.* sought to recover from *defts.* under a certain deed granting oil-boring rights a sum reserved by the deed by way of rental in the following terms: "Provided further that if after the expiration of the said first 5 years as aforesaid the co., the predecessor in title of present *defts.*, shall commence & regularly & punctually continue to pay to the grantors, the predecessors in title of *pltf.*, for & in respect of the said lands mentioned in the said schedule by equal monthly payments at the rate of . . . then this grant or licence shall remain in full force & effect".—*Held*: the deed amounted merely to a qualified grant of the rights conferred, depending for its continuance on *defts.* regularly paying the rentals or royalties therein specified, & implied no covenant by *defts.* to keep up such payments, which were accordingly not recoverable.—*BLOOMFIELD v. LYSNAR*, [1928] N. Z. L. R. 285.—N.Z.

## Part XIII.—Easements and Rights affecting Mines.

981. *Add. Annotation* :—**Mentd.** *Conquer v. Boot*, [1928] 2 K. B. 336.
1067. *Add. Annotation* :—**Refd.** *Pontardawe Rural Council v. Moore-Gwyn*, [1929] 1 Ch. 656.
1071. *Add. Annotation* :—**As to** (2) **Consd.** *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1.
1077. *Add. Annotation* :—**Refd.** *Conquer v. Boot*, [1928] 2 K. B. 336.
1089. *Add. Annotations* :—**Distd.** *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1. **Consd.** *Pontardawe Rural District Council v. Moore-Gwyn*, [1929] 1 Ch. 656. **Refd.** *Charville v. Sutton* (1927), 44 T. L. R. 98; *G. W. Ry. v. S.S. Mostyn*, [1928] A. C. 57.

## Part XIV.—Statutory Regulation of Mines.

1104. *Add. Annotation* :—**As to** (2) **Refd.** *Calton v. Ashwell & Nesbit*, [1928] Ch. 484.
- 1106a. **Wages agreement—Decision of chairman of conciliation board—Whether award.**—By a Conciliation Board agreement provision was made for the payment of a subsistence allowance to low-paid colliery workers in South Wales, & the parties having failed to agree as to the amount & conditions of payment, the matter came before the independent chairman of the board, & he gave a decision. The parties failed to agree as to the interpretation of the decision, & representative workmen then brought an action against representative employers for declarations, (a) that on the true construction of the decision the subsistence allowance ought to be calculated for each shift separately, & (b) as to the method of reckoning overtime for the purpose of calculating subsistence allowance. The judge in chambers, on the grounds that the wages agreement incorporating the conciliation agreement amounted to a submission to arbitration, & that the chairman's decisions were awards, made an order that the action be adjourned & that the awards be remitted to the chairman to deal with the two questions raised by the pleadings. The Ct. of Appeal set aside the order of the judge & granted the declarations claimed :—**Held** : the chairman had decided both questions in favour of plffs. & they were entitled to the declarations claimed.—**CARDIFF COLLIERIES, LTD. v. MEREDITH** (1929), 45 T. L. R. 321, H. L.; *affg.* S. C. *sub nom.* *CHARLES v. CARDIFF COLLIERIES, LTD.* (1928), 44 T. L. R. 448, C. A.
- 1117a. ---- **Validity—Failure to give notice to all persons entitled to appoint.**—(1) A checkweigher in a mine appointed by a majority, ascertained by ballot, of the persons employed in the mine, & paid according to the mineral gotten, & acting as such checkweigher, is entitled to payment of a proportionate part of his wages from all persons so employed & paid, & it is no defence to such claim against any one of these persons that another checkweigher has been appointed, during the material period, by ballot, but not by a majority as aforesaid, to act as checkweigher on his behalf.
- (2) A notice convening a meeting to appoint a checkweigher addressed to a part of those entitled to appoint is bad, & the appointment of a person chosen by the subsequent meeting is invalid.—**BELL v. BENNETT**, [1928] 2 K. B. 206; 97 L. J. K. B. 713; 139 L. T. 70; 92 J. P. 106; 44 T. L. R. 424; 72 Sol. Jo. 284; 26 L. G. R. 249, D. C.
- 1120a. **Who entitled to recover—Co-existence of majority & minority checkweighers.**—**BELL v. BENNETT**, No. 1117a, *ante*.
1133. *Add. Annotation* :—**Generally.** **Refd.** *Pockney v. Atkinson* (1929), 45 T. L. R. 639.
1159. *Add. Annotations* :—**Mentd.** *R. v. Edmonton Income Tax Comrs., Ex p. Thompson*, [1929] 1 K. B. 220; *R. v. Newport (Salop) Justices, Ex p. Wright*, [1929] 2 K. B. 416.
1188. *Add. Annotation* :—**Refd.** *Edwards v. Gwauncaeurgurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337.
1192. For “—” read “**Prohibiting order by Secretary of State—Application of order.**”]

### PART XIV. SECT. 1, SUB-SECT. 2.—B.

**r i.** — *Deduction for indebtedness on account of purchased goods—Invalid.*—**IL. v. DOMINION COAL CO.** (1907), 41 N. S. R. 137.—**CAN.**

### PART XIV. SECT. 1, SUB-SECT. 9.—A.

**sp.** *Statutory defence—Nature of.*—**Observations on the nature of the statutory defence competent to mine-owners under Coal Mines Act, 1911 (c. 50), s. 102 (8).**—**PARK v. WILSONS & CLYDE COAL CO., HAGGERTY v. WILSONS & CLYDE COAL CO.**, [1928] S. C. 121.—**SCOT.**

### PART XIV. SECT. 1, SUB-SECT. 9.—B. (d).

**sq.** *Coal Mines Act, 1911, s. 55—Meaning of dangerous machinery.*—**Held** : the question whether a part of

the machinery in a mine was “dangerous” within Coal Mines Act, 1911, was always one of degree, & sect. 55 did not apply to machinery which, in normal conditions & circumstances, was not a source of danger, & which became dangerous only in the extraordinary & exceptional circumstances of a general breakdown.—**TOMRICK v. HALLIDAY**, [1928] S. C. (J.) 61.—**SCOT.**

### PART XIV. SECT. 1, SUB-SECT. 9.—B. (j).

**st.** *Duty to inspect every part of mine in which work is carried on.*—**Held** : a disused cut through was part of a mine, in respect of which inspection was necessary.—**Ex p. DELLACA** (1927), 27 S. R. N. S. W. 61; 44 N. S. W. W. N. 39.—**AUS.**

### PART XIV. SECT. 1, SUB-SECT. 10

**sw.** *Penal Act Where no penalty*

*imposed.—Construction.*—**Held** : a contravention of the amendment to sect. 4 of Coal Mines Regulations Act, prohibiting the employment of Chinamen was not made an offence under the Act for which any penalty is imposed, & the penal Act should not be extended beyond the reasonable construction which the words used would bear.—**R. v. LITTLE** (1898), 6 B. C. R. 78; 1 M. M. Cas. 220.—**CAN.**

### PART XIV. SECT. 2, SUB-SECT. 4.

**r i.** — *Mining Act of Ontario, R. S. O., 1914 (c. 32), s. 164.*—**DOYLE v. FOLEY-O'BRIEN, LTD.** (1915), 7 O. W. N. 780; 8 O. W. N. 362; 34 O. L. R. 42.—**CAN.**

**r ii.** — *—*—**HULL v. SENECA SUPERIOR SILVER MINES, LTD.** (1915), 8 O. W. N. 391; 34 O. L. R. 557; 24 D. L. R. 251.—**CAN.**

## Part XV.—Quarries.

**1228.** *Add. Annotations* :—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776. **Mentd.** *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.



# MISREPRESENTATION AND FRAUD.

## Part I.—Representations Generally.

12. *Add. Annotation*:—**Refd.** *Re Wait*, [1927] 1 Ch. 606. *Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.
24. *Add. Annotation*:—*As to* (1) **Refd.** Public

## Part III.—What Constitutes Misrepresentation.

113. *Add. Annotation*:—**Apld.** *Hands v. Simpson* | 119. *Add. Annotation*:—*As to* (2) **Refd.** *Collins v.*  
*Fawcett* (1928), 44 T. L. R. 295. *Associated Greyhounds Racecourses* (1929),  
141 L. T. 529.

## Part IV.—Fraudulent and Innocent Misrepresentation.

185. *Add. Annotations*:—*As to* (2) **Refd.** *Greer v.*  
*Downs Supply Co.*, [1927] 2 K. B. 28.  
**Generally, Mentd.** *Horwood v. Statesman*  
*Publishing Co.* (1929), 141 L. T. 51.
219. *Add. Annotation*:—**Refd.** *Torbay Hotel v.*  
*Jenkins*, [1927] 2 Ch. 225.
254. *Add. Annotation*:—**Generally, Mentd.** *H. v.*  
*H.*, [1928] P. 206.
325. *Add. Annotation*:—**Refd.** *Trading Co. L. &*  
*J. Hoff v. De Rougemont* (1928), 34 Com.  
Cas. 291.

### PART I. SECT. 2, SUB-SECT. 3.

19 i. *Distinguished from representation.*—A collateral promise to do some act, though it may effectively induce the promisee to enter into a contract, is not, properly speaking, a representation at all.—*LALA HIRA LAL v. MUNSHI JAGATPATI SAHAI* (1928), 1 L. R. 8 Pat. 2.—**IND.**

### PART I. SECT. 4.

32 ii. ———. ]—Since the law is presumed to be equally within the knowledge of both parties to a contract, a misrepresentation of law does not render a contract voidable by the party misled thereby, unless there are special circumstances.—*ITTLE v. PAIS*, [1928] 3 D. L. R. 295; [1928] 2 W. W. R. 123, 22 Sask. L. R. 514.—**CAN.**

32 iii. ———. ]—A false representation as to a point of law will not support an action for damages.—*KAVANER v. BOWHEY*, [1928] 4 D. L. R. 907; [1928] 3 W. W. R. 267.—**CAN.**

### PART I. SECT. 6.

53 i. *Effect—Contents misdescribed—To one unable to read.*—*J. R. WATKINS Co. v. MINKE*, [1928] 3 D. L. R. 557; [1928] S. C. R. 414.—**CAN.**

53 ii. ———. ]—*Printed contract—Where misleading.*—**INTERNATIONAL TRANSPORTATION ASSOCN. INCORPORATED v. CAPITAL STORAGE CO.**, [1928] 4 D. L. R. 480.—**CAN.**

### PART I. SECT. 7.

g i. ———. ]—*LAMB v. WALTERS*,

[1926] App. D. 358.—**S. AF.**

g ii. ———. ]—An honest expression of value, even if erroneous, is not a misrepresentation of fact; but a statement of value which is known to the representor not to be the true value cannot be deemed the expression of an honest opinion.—*BERGE v. GREW*, [1928] 1 D. L. R. 361, 23 Alta. L. R. 281; [1927] 3 W. W. R. 811.—**CAN.**

### PART III. SECT. 2, SUB-SECT. 2.

#### A. (a).

123 i. *Whether amounting to misrepresentation.*—Where, although representations, inducing the making of a contract, are true so far as they go, they do not cover the whole truth, the non-disclosure, whether fraudulent or innocent, may, according to circumstances, so relate to the essence of the contract as to entitle the representee to rescission.—**CANADIAN FARM IMPLEMENT CO., LTD. v. ALBERTA FOUNDRY & MACHINE CO., LTD.** (Alta.), [1927] 2 D. L. R. 871; [1927] 1 W. W. R. 1025.—**CAN.**

123 ii. ———. ]—*FRIEHT v. SCHECK* (1865), 10 Gr 251.—**CAN.**

### PART III. SECT. 2, SUB-SECT. 2.—

#### A. (b).

m i. ———. ]—*Fiduciary relationship*—*PICKFORD v. THOMPSON* (1902), 10 N. S. R. 632.—**CAN.**

### PART IV. SECT. 1, SUB-SECT. 2.—

#### B. (a).

173 ii. ———. ]—*MACFARLANE v.*

*DAVIS* (Sask.) (1911), 18 W. L. R. 498.—**CAN.**

sd. ———. ]—*Pleading*—Where a declaration alleged that representations were made by deft. falsely & fraudulently, to induce pltf. to act upon them, but did not contain any allegation that deft. knew the representations so made by him to be false.—*Held*: the declaration was sufficient.—*McKAY v. CAMPBELL* (1871), 8 N. S. R. (2 G. & O.) 475.—**CAN.**

so. ———. ]—The declaration alleged that deft. before the committing of the grievance, etc., was a carrier & express agent; that pltf. delivered to one W. a sum of money to be handed to deft., to be carried & delivered to S., & that deft. falsely & fraudulently represented to pltf. that W. had delivered said money to him, whereby pltf. was satisfied of the fact, whereas in truth it had not been so delivered, but appropriated by W. to his own use; & by reason of such false & fraudulent representation W. obtained time to & did abscond, & pltf. lost said money, which he would otherwise have recovered from W.:—*Held*: it was unnecessary to allege that deft. knew the representations to be false, the words falsely & fraudulently being equivalent to knowingly.—*YOUNG v. VICKERS* (1872), 32 U. C. R. 385.—**CAN.**

### PART IV. SECT. 1, SUB-SECT. 8.—C.

d i. ———. ]—*Conversation with third party.*—*FITZPATRICK v. MICHEL* (1928), 28 S. R. N. S. W. 285; 45 N. S. W. W. N. 69.—**AUS.**

## Part V.—Inducement, Materiality, and Alteration of Position.

389. *Add. Annotations* :—**Mentd.** *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28; *Horwood v. Statesman Publishing Co.* (1929), 141 L. T. 54.
392. *Add. Annotation* :—**Mentd.** *Horwood v. Statesman Publishing Co.* (1929), 98 L. J. K. B. 450.
396. *Add. Annotation* :—*As to* (2) **Apld.** *Clark v. Urquhart, Stracey v. Urquhart* (1929), 141 L. T. 641.
- 434a. ———. ———. ———. *HUTCHINSON v. MORLEY* (1839), 2 Arn. 2; 7 Scott, 341; 3 Jur. 288.
439. *Add. Annotation* :—**Refd.** *Lake v. Simmons*, [1927] A. C. 487.
- 445a. ———. ———. ———. Pltf. desired to be present at the first performance of a play at a theatre. He knew that, in consequence of his having made certain serious & unfounded charges against some members of the theatre staff, an application for a ticket in his own name would be refused. He therefore obtained a ticket through the agency of a friend, who

bought the ticket at the theatre without disclosing that it was for pltf. By order of deft., the managing director of the theatre, pltf. was refused admission to the theatre on the night in question. Pltf. claimed damages from deft. for maliciously procuring the proprietors of the theatre to break a contract for the admission of pltf. to the theatre, alleged to have been made by them with pltf. by the sale of the ticket :—**Held** : the non-disclosure of the fact that the ticket was bought for pltf. prevented the sale of the ticket from constituting a contract as alleged, the identity of pltf. being in the circumstances a material element in the formation of the contract, & the action failed.—**SAID v. BUTT**, [1920] 3 K. B. 497; 90 L. J. K. B. 239; 124 L. T. 413; 36 T. L. R. 762.

*Annotations* :—**Consd.** *Dyster v. Randall*, [1926] Ch. 932. **Apld.** *Scammell v. Hurley*, [1929] 1 K. B. 419.

455. *Add. Annotation* :—**Refd.** *James v. British General Insce.*, [1927] 2 K. B. 311.

## Part VI.—Who are deemed Parties to the Representation.

464. *Add. Annotation* :—**Refd.** *Konskier v. Goodman*, [1928] 1 K. B. 421.

## Part VII.—Remedies for Misrepresentation.

SUB-SECT. 3.—INJUNCTION (Vol. XXXV., p. 52).

For “**Passing off action.**”—*See* **TRADE & TRADE UNIONS**” read “**Passing off action.**”—

*See* **TRADE MARKS**, Vol. XLIII., pp. 26 *et seq.*”

509. *Add. Annotation* :—**Refd.** *Houghton v. Not-hard, Lowe & Wills* (1927), 44 T. L. R. 76.

## Part IX.—Proceedings for Rescission.

637. *Add. Annotation* :—**Mentd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.
649. *Add. Annotation* :—**Refd.** *Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.
695. *Add. Annotations* :—**Refd.** *Hyman v. Hyman*,

*Hughes v. Hughes* (1928), 139 L. T. 416; *May v. May* (1929), 98 L. J. K. B. 770.

739. *Add. Annotation* :—**Mentd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
748. *Add. Annotation* :—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.

**PART VIII. SECT. 1, SUB-SECT. 2.—A.**  
531 iv. ———. ———. ———. *IRVING v. MERYGOLD* (1847), 5 U. C. R. 272.—**CAN.**

531 v. ———. ———. ———. *ADAIR v. T* [1928] 4 D. L. R. 183; [1928] 3 W. W. R. 92.—**CAN.**

**PART VIII. SECT. 1, SUB-SECT. 5.—B.**  
572 i. *Damage must be natural result of representation.*—*GOSSE-MILLERD, LTD. v. DEVINE*, [1928] 2 D. L. R. 869; [1928] S. C. R. 101.—**CAN.**

**PART VIII. SECT. 1, SUB-SECT. 5.—C.**  
583 iii. ———. ———. ———. *BLOIS v. CITY OF HALIFAX* (1921), 51 N. S. R. 207; 56 D. L. R. 239.—**CAN.**

**PART VIII. SECT. 1, SUB-SECT. 5.—D.**  
588 viii. ———. ———. ———. In an action for damages for deceit, pltf. alleged false representations by deft. in regard to land in B. C. which deft. had conveyed to pltf. in exchange for land in A. ———. **Held** : deft. made no knowingly false representations as to the situation of

the western boundary of the land, or as to the amount of timber upon the land; but deft. did represent to pltf. that there were two springs upon the land, which was not the truth, as he knew, & that this misrepresentation was material, was relied upon by pltf., & constituted fraud & deceit which rendered deft. liable in damages. The true measure of damages was the difference between the value of the land, without the springs & its value assuming the springs to be on it as represented.—**PERRY v. DOWNS** (1913), 24 W. L. R. 407; 11 D. L. R. 670.—**CAN.**

593 i. *Date of ascertainment of value — Date of purchase.*—**HARDMAN v. MCLEOD** (1926), 26 S. L. N. S. W. 578; 43 N. S. W. W. N. 194.—**AUS.**

**PART IX. SECT. 1, SUB-SECT. 2.—B.**  
639 ii. ———. ———. ———. Where a party to a contract seeks to vitiate it for fraud he is under the burden of pleading & establishing facts sufficient for that purpose. The burden of proof cannot

be shifted until he has established a *prima facie* case.—**LARRY v. JOHNSON & SIGMETH**, [1928] 4 D. L. R. 956; [1928] 3 W. W. R. 447.—**CAN.**

**PART IX. SECT. 1, SUB-SECT. 2.—C.**  
642 iv. ———. ———. ———. **WHEELER v. ATKINSON** (1926), 28 W. A. L. R. 12.—**AUS.**

**PART IX. SECT. 2, SUB-SECT. 1.**  
703 v. ———. ———. ———. **CANADIAN CREDIT MEN'S TRUST ASS'N v. BUNGALOW CONSTRUCTION CO.**, [1928] 2 D. L. R. 81.—**CAN.**

**PART IX. SECT. 2, SUB-SECT. 4.—A.**  
708 i. *When ordered.*—**HESS v. ROSS** (Sask.) (1912), 22 W. L. R. 742; 3 W. W. R. 251; 8 D. L. R. 798.—**CAN.**

**PART IX. SECT. 2, SUB-SECT. 5.—C.**  
722 i. *General rule.*—**KLEYNHAUS BROTHERS v. WESSELS' TRUSTEE**, [1927] App. D. 271.—**S. AF.**

**PART IX. SECT. 3, SUB-SECT. 6.**  
742 ii. ———. ———. ———. **CARRIQUE v. CATTS**

## Part X.—Misrepresentation as a Defence.

774. *Add. Annotation* :—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

## Part XI.—Effect of Fraud on Innocent Parties.

783. *Add. Annotation* :—**Mentd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

(1914), 7 O. W. N. 500 ; 32 O. L. R. 548—**CAN.**

### PART IX. SECT. 3, SUB-SECT. 9.

757 vii. ———.] In proceedings for curial rescission of a contract to take shares, the shareholder's claim for rescission may be barred by laches or delay on the ground that equity will not lend its aid to those who sleep on their rights.—*Re* LUCKS, LTD. (SERPENT'S CASE), [1928] V. L. R. 166, [1928] Argus L. R. 288.—**AUS.**

757 viii. ———.] —CHILL *v.* NICHOLLS, [1929] 1 D. L. R. 239.—**CAN.**

### PART X. SECT. 3, SUB-SECT. 1.

773 ii. ———.]—A doctor sold his practice for £500. The purchaser paid two instalments of the price, but, when sued for the balance of the price, he stated in defence that he had been induced to enter into the contract by the false & fraudulent misrepresentations of the seller. *Held*: the pur-

chaser's claim of damages, being illiquid, & based not upon the contract of sale but upon deceit, could not constitute a relevant defence to the action, & could not be dealt with as a counter-claim in that action.—*SMITH v. WILKINSON*, [1928] S. C. 383.—**SCOT.**

### PART XI.

*cf.* *S. P. RUTLEDGE v. ANDERSON* (1914), 27 W. L. R. 75 ; *affd.* (1915), 28 W. L. R. 393 ; 20 D. L. R. 97 ; 21 Man. L. R. 103.—**CAN.**

## Part I.—Nature of Mistake.

## Part II.—Mistake of Law.

### Part III.—Mistake of Fact.

- ## Part V.—Relief in Cases of Mistake.

- 363 iii. — [—]—Even in a common-law action on a written contract, the defence of mutual mistake may be raised, & parol evidence admitted to support it, although deft. does not claim rectification or rescission of the contract.—CLARK v. APPELEY, [1928] 2 D. L. R. 95; [1928] 1 W. W. R. 784.—CAN.

## Part VI.—Recovery of Money Paid under Mistake.

458. *Add. Annotation* :—**Apld.** *Home & Colonial Insce. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134.
463. *Add. Annotation* :—**Mentd.** *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.
- 464a. **Mistake must have been cause of payment.**—Where an action was brought for money paid under a mistake of fact, & pltf.'s evidence showed that if he had known of the fact, his ignorance of the law would still have led him to pay :—**Held** : as knowledge of the fact would not have affected his conduct the action failed.—**HOME & COLONIAL INSURANCE CO., LTD. v. LONDON GUARANTEE & ACCIDENT CO., LTD.** (1928), 45 T. L. R. 134 ; 73 Sol. Jo. 60 ; 34 Com. Cas. 163.
- Annotation* :—**Mentd.** *Re Home & Colonial Insce. Co.* (1929), 45 T. L. R. 658.
470. *Add. Annotation* :—**Mentd.** *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
487. *Add. Annotation* :—**As to (2) Apld.** *Home & Colonial Insce. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134.
511. *Add. Annotation* :—**Consd.** *Re Mason* (1928), 97 L. J. Ch. 321.
533. *Add. Annotations* :—**As to (2) Dlst.** *Reckitt v. Barnett, Pembroke & Slater* (1927), 44 T. L. R. 63. **Generally, Refd.** *Home & Colonial Insce. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134. **Mentd.** *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
536. *Add. Annotation* :—**Consd.** *Re Mason* (1928), 97 L. J. Ch. 321.
537. *Add. Annotation* :—**Refd.** *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
540. *Add. Citations* :—[1927] 2 K. B. 92 ; 96 L. J. K. B. 539 ; 137 L. T. 127 ; 43 T. L. R. 299.
562. *Add. Citations* :—137 L. T. 533 ; 17 Asp. M. L. C. 305.
- Add. Annotation* : **Expld.** *Smith Hogg v. Bamberger* (1928), 97 L. J. K. B. 458.

## PART VI. SECT. 2, SUB-SECT. 1.

456 v. —.]—**MAXWELL F. J., LTD. v. BANK OF NOVA SCOTIA**, [1928] 4 D. L. R. 490 ; 62 O. L. R. 660. **CAN.**

**sg. Extent of onus of proof.**—In order to succeed in an action to recover back money paid under a mistake of fact pltf. must prove, not only the mistake of fact which induced him to part with the money, but also that under the particular circumstances the law is able to impute to defl. the fiction of a promise to repay it. The conditions under which the law will impute such a promise cannot, it

seems, be reduced to a common formula. **GARDEN RIVER RURAL MUNICIPALITY v. MONTREAL**, [1928] 3 W. W. R. 22.—**CAN.**

## PART VI. SECT. 2, SUB-SECT. 2.

475 xix. —.]—**CANADIAN MORTGAGE ASSOCN. v. R.**, [1917] 1 W. W. R. 1130 ; 10 Sask. L. R. 30 ; 33 D. L. R. 43. **CAN.**

## PART VI. SECT. 2, SUB-SECT. 5.

488 iv. —.]—Money honestly paid under a mistake of fact can be recovered back even though the person paying it did not avail himself of the

means of knowledge which he possessed.—**ST. ROSE RURAL MUNICIPALITY v. ROYAL BANK OF CANADA**, [1928] 1 W. W. R. 663. **CAN.**

## PART VI. SECT. 3, SUB-SECT. 1.

4 i. —.]—**FISHER v. LUKE**, [1926] V. L. R. 190 ; 47 A. L. T. 167.—**AUS.**

562 i. **Effect of change in understanding of law—Subsequent declaration of law by court.**—Money voluntarily paid at a time when the law is in favour of the payee cannot be recovered, if a subsequent judicial decision reverses the former understanding of the law.—**JULIAN v. AUCKLAND (MAYOR, ETC.)**, [1927] N. Z. L. R. 453. **N.Z.**

## MONEY AND MONEY-LENDING.

## Part I.—Money.

8. *Add. Annotation*:—**Refd.** *Anchor Donaldson v. Crossland*, [1929] A. C. 297. 10. *Add. Annotation*:—**Refd.** *Re Wait*, [1927] 1 Ch. 606.

## Part II.—Currency and Rate of Exchange.

12. *Add. Annotation*:—**As to** (1) **Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. 52. *Add. Annotation*:—**Refd.** *Richardson v. Richardson*, [1927] P. 228. 63. *Add. Citations*:—96 L. J. K. B. 930; 137 L. T. 431.

## Part III.—Interest.

- 101a. ———.]—**SWEETLAND v. SMITH** (1833), 1 Cr. & M. 585; 3 Tyr. 491; 2 L. J. Ex. 190; 149 E. R. 532. 114. *Add. Annotation*:—**Folld.** *Maine & New Brunswick Electrical Power Co. v. Hart*, [1929] A. C. 631. 119. *Add. Annotation*:—**Refd.** *Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 31. 123. *Add. Annotations*:—**Refd.** *Maine & New Brunswick Electrical Power Co. v. Hart*, [1929] A. C. 631; *Simpson v. Maurice's Exors.* (1929), 45 T. L. R. 581. 125. *Add. Annotations*:—**Apprvd.** *Maine & New Brunswick Electrical Power Co. v. Hart*, [1929] A. C. 631. **Refd.** *Shell Mex, Ltd. v. Elton Cop Dyeing Co., Ltd.* (1928), 34 Com. Cas. 39. 145. *Add. Annotation*:—**Mentd.** *Lala Indar Prasad v. Lala Jagmohan Das* (1927), 43 T. L. R. 536. 219. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399. 224. *Add. Citation*:—136 L. T. 114. 243. *Add. Annotation*:—**Consd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.

## Part IV.—Money-Lending.

286. *Add. Annotations*:—**Generally**, **Refd.** *Glaskie v. Watkins*, [1927] 2 K. B. 181. **Mentd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367. 301. *Add. Annotation*:—**Mentd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367. 294. *Add. Annotation*:—**Generally**, **Mentd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367. 302. *Add. Annotations*:—**Refd.** *Glaskie v. Watkins*, [1927] 2 K. B. 181. **Mentd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.

## PART II. SECT. 2, SUB-SECT. 1.

sa. "Gold" bond issue by Toronto company—Holder of interest coupons resident in Belgium—Currency of payment.]—**DERWA v. RIO DE JANEIRO TRAMWAY, LIGHT & POWER CO.**, [1928] 4 D. L. R. 542; 62 O. L. R. 669.—**CAN.**

## PART II. SECT. 3, SUB-SECT. 1.

sb. Winding-up of partnership—Payment to assignee of partner—Rule at date of realisation of assets.]—**As regards the rate of conversion of dollars into British Indian currency, to which the assignee was entitled, the rate prevailing at the date on which the winding-up of the partnership was completed & the assets were realised is the proper rate to be allowed to the assignee.**—**VEERAPPA CHETTY v. MUTHIAH CHETTY** (1929), 1 L. R. 52 Mad. 509.—**IND.**

## PART III. SECT. 2, SUB-SECT. 1.—A.

rc. *Revsd.*, 64 S. C. R. 396.

## PART III. SECT. 2, SUB-SECT. 1.—B.

95 vi. ———.]—**DUNN v. R.** (1901), 1 Cout. Ing. 728.—**CAN.**

## PART III. SECT. 2, SUB-SECT. 2.—A.

117 v. ———.]—When an instrument provides for future payments, but the time for payment, & the amount, if any, payable, both depend upon contingent events, there is not "a sum certain payable by a written instrument at a certain time" so as to enable interest to be allowed under sect. 24, sub-sect. 1, of the New Brunswick Jud. Act, 1909, the language of which is not distinguishable from that in the English Civil Procedure Act, 1833, s. 28.—**MAINE & NEW BRUNSWICK ELECTRICAL POWER CO. v. HART, [1929] A. C. 631.—**CAN.****

## PART III. SECT. 2, SUB-SECT. 2.—C.

fi. ———.]—**THE CUSTODIAN v. BLUCHER, [1927] 3 D. L. R. 40; [1927] S. C. R. 420.—**CAN.****

sd. *Under Crown Suits Act*, 1898 62 Vict. No. 9, W. A.)—**Whether payable by Crown.**—**R. v. McNEIL**, [1927] A. C. 380; 96 L. J. P. C. 41; 136 L. T. 646.—**AUS.**

## PART III. SECT. 2, SUB-SECT. 3.—A.

sk. *Money obtained by threat.*—**FURPHY v. NIXON** (1925), 37 C. L. R.

161; 26 S. R. N. S. W. 380.—**AUS.**

sl. *Rescission of contract & return of purchase-money.*]—Where the ct. gives a purely equitable relief as in the case of rescission of a contract & repayment of the money paid by the purchaser, the moneys will carry interest from the date of the payment until the date of repayment, whenever repayment takes place, but will not carry interest as a judgment.—**SKINNER v. JAMES SYMPHONIC VISIBLE MEASURES, LTD.** (1927), 28 S. R. N. S. W. 20.—**AUS.**

## PART III. SECT. 6, SUB-SECT. 1.

261 v. ———.]—**CLYDE NAVIGATION TRUSTEES v. KELVIN SHIPPING CO., LTD.**, [1927] S. C. 622.—**SCOT.**

sm. *Rule in India.*]—In India compound interest is common, & often may be necessary & proper upon a borrowing for necessity.—**SUNDER MULL v. SATYA KINKER SAHAYA** (1927), L. R. 55 Ind. App. 85.—**IND.**

## PART IV. SECT. 1, SUB-SECT. 1.—A.

282 i. *Question of fact.*]—In each case it is a question of fact whether a person is carrying on the business of money-

303. *Add. Annotation*:—*Consd. Re Mason* (1928), 97 L. J. Ch. 321.
304. *Add. Annotation*:—*Consd. Pirie v. Richardson*, [1927] 1 K. B. 448.
316. *Add. Annotation*:—*Refd. Merz v. South Wales Equitable Money Soc.*, [1927] 2 K. B. 366.
343. *Add. Annotation*:—*Refd. Merz v. South Wales Equitable Money Soc.*, [1927] 2 K. B. 366.
345. *Add. Annotation*:—*Refd. Merz v. South Wales Equitable Money Soc.*, [1927] 2 K. B. 366.
346. *Add. Annotation*:—*As to (1) Refd. Merz v. South Wales Equitable Money Soc.*, [1927] 2 K. B. 366.
- 346a. — *Company registered as money-lender—Security payable to secretary.*—*Deft. society became incorporated as a limited co. & began to carry on business as money-lenders & were registered as such, & they made an advance to plffs., who signed a promissory note agreeing to pay the amount to the secretary of deft. society, which was mentioned by name in the note as the society of which he was secretary. In an action for a declaration that the transaction was void, on the ground that defts. had taken a security in a name other than their registered name, contrary to Money-lenders Act, 1900 (c. 51), s. 2 (1) (c):—Held: as no one could sue on the note except the secretary, the security had been taken in a name other than defts.' registered name, & plffs. were entitled to the declaration claimed.*—*MERZ v. SOUTH WALES EQUITABLE MONEY SOCIETY, LTD.*, [1927] 2 K. B. 366; 96 L. J. K. B. 1020; 137 L. T. 626; 43 T. L. R. 456, C. A.

SUB-SECT. 5.—RESTRICTIONS ON CONTRACTS.

See *Money-lenders Act, 1927* (c. 21), ss. 6, 8.

- 353a. *Note or memorandum signed by borrower—Contract contemplating security—Whether contract must set out terms of security.*—*Semble*: when the contract contemplates a promissory note as security & there is a promissory note in the ordinary form not contradicting the contract, the fact that the contract does not set out the terms of the promissory note will not invalidate the contract, though it may be otherwise if the security contains an onerous term not contained in the contract.—*READING TRUST, LTD. v. SPERO* (1929), 46 T. L. R. 117, C. A.
- 353b. — *Date of loan inaccurately stated.*—If the memorandum required by *Money-lenders Act, 1927* (c. 21), s. 6, states the date of the loan incorrectly, the contract is unenforceable, even although the inaccuracy has caused no deception & is due merely to a clerical error.—

*GASKELL, LTD. v. ASKWITH* (1929), 45 T. L. R. 566; 73 Sol. Jo. 465, C. A.

- 353c. *Duty of money-lender to supply information—Application to proceedings on judgment summons.*—*PRACTICE NOTE* (1929), 45 T. L. R. 476.
366. *Add. Annotation*:—*Refd. Humphrey v. Wilson* (1929), 141 L. T. 469.
377. *Add. Annotation*:—*As to (1) Refd. Crossingham v. Park* (1927), 96 L. J. K. B. 1036.
- 377a. *Before proceedings taken by money-lender for recovery of money lent.*—(1) A county ct. has jurisdiction under *Money-lenders Act, 1900* (c. 51), s. 1 (2), to entertain an application by a borrower from a registered money-lender to reopen a money-lending transaction, only when the amount of the money lent, whether repayable by instalments or otherwise, without the addition of any claims arising under any agreement to pay interest or an amount charged for "expenses, inquiries, fines, bonus, premium, renewals, or any other charges," is within the jurisdiction of the county ct.
- (2) If this condition is fulfilled, the ct. may entertain the application, although the money-lender has not taken any proceedings to recover the money lent, & although the time has not come for taking such proceedings.—*CROSSINGHAM v. PARK*, [1928] 1 K. B. 330; 96 L. J. K. B. 1036; 137 L. T. 651; 43 T. L. R. 617, D. C.
- 379a. *Jurisdiction of county court—Amount of money lent over £100.*—*CROSSINGHAM v. PARK*, No. 377a, *ante*.
- 381a. — — — — — (1) In order that there should be a contravention of *Money-lenders Act, 1927* (c. 21), s. 5 (3), it is not necessary that a person acting as agent or canvasser for the purpose of inviting the public to borrow money from a money-lender should be employed by the money-lender, & the transaction will be illegal if the money-lender, although not having employed that person, nevertheless has consented to or connived at his acting in that capacity.
- (2) Interest at forty-eight per cent. *per annum* for a loan amply secured by a bill of sale is excessive, & the transaction is harsh & unconscionable within sect. 10 of the above Act.—*VERNER-JEFFREYS v. PINTO*, [1929] 1 Ch. 401; 98 L. J. Ch. 337; 140 L. T. 360; 45 T. L. R. 163, C. A.
409. *Add. Annotation*:—*Apprvd. Reading Trust v. Spero* (1929), 46 T. L. R. 117.
- 410a. — — — — — *VERNER-JEFFREYS v. PINTO*, No. 381a, *ante*.
434. *Add. Annotation*:—*As to (2) Refd. Glaskie v. Watkins*, [1927] 2 K. B. 181.
- 434a. *Remitting action to county court—Whether*

*lending.*—*KERR v. LOUISSON*, [1928] N. Z. L. R. 154.—N. Z.

PART IV. SECT. 2, SUB-SECT. 1.—A.

301 II. — — — — —.]—Where a person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, & does any of those acts within the Irish Free State, he must, in order to make his contracts legal & enforceable within the Irish Free State, comply in the Irish Free State with the provisions as to registration contained in *Money-*

*lenders Act 1900*, s. 2 (1) (a).—*LONDON FINANCE & DISCOUNT CO., LTD. v. BUTLER*, [1929] 1 L. R. 90.—IR.

PART IV. SECT. 2, SUB-SECT. 3.

324 I. *What amounts to—Question of fact.*—*GOLDSTEIN v. CRAFT* (1926), 26 S. R. N. S. W. 354; 43 N. S. W. W. N. 13.—AUS.

PART IV. SECT. 3, SUB-SECT. 1.—B.

so. *Onus of proof.*—*NELSON v. CAMPBELL*, [1928] V. L. R. 361; [1928] *Argus* L. R. 221.—AUS.

PART IV. SECT. 7, SUB-SECT. 1.—F. (a).

sp. *Bill in favour of money-lender—“Summary diligence.”* *Money-lenders Act, 1927*, s. 18 (h).—*Held*: “summary diligence” in sect. 18 (h) means the execution of diligence & not the obtaining of the summary warrant on which it proceeded; & accordingly, an arrestment executed after Jan. 1, 1928, on a bill in favour of a money-lender was incompetent, although the warrant on which the arrestment proceeded was obtained before that date.—*MURRAY v. M’GUIRE*, [1928] S. C. (Cl. of Sess.) 647.—SCOT.

claim founded on contract—County Courts Act, 1919 (c. 73), s. 1.]—Pltf., a borrower from a money-lender, issued a writ claiming to have re-opened a money-lending transaction between pltf. & deft., a declaration that the interest charged therein was excessive & the transaction harsh & unconscionable, accounts & inquiries, payment of the sum found due to pltf. & other & necessary relief under Money-lenders Acts. Pltf. having applied to have the action remitted to the county ct. for trial, the claim being restricted to £100 :—*Held* : pltf.'s claim was founded on contract within County Cts. Act, 1919 (c. 73), s. 1, & could be remitted to the county ct. under that sect. for hearing.—*WHITE v. SMITH* (1927), 96 L. J. K. B. 397; 137 L. T. 48; 43 T. L. R. 288; 71 Sol. Jo. 191, C. A.

442. For “Party seeking relief—Ordered to pay costs” read “Costs—Party seeking relief—Ordered to pay costs.”]

442a. ——— Action by money-lender—Judgment for reduced amount—Discretion to deprive plaintiff of costs.]—In an action by money-lenders in the county ct. for money lent

interest, where the judge is satisfied that the transaction was harsh & unconscionable & the interest excessive, & where, after reopening the transaction, he gives judgment for pltf. for a reduced amount, he has a discretion to deprive pltf. of costs.—*TEMPERANCE LOAN FUND v. ERWOOD* (1927), 137 L. T. 449; 43 T. L. R. 530, D. C.

445. *Add. Annotation* :—**Consd.** *Glaskie v. Watkins*, [1927] 2 K. B. 181.

446. *Add. Annotations* :—**Refd.** *Glaskie v. Watkins*, [1927] 2 K. B. 181. **Mentd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.

447. *Add. Annotations* :—**Consd.** *Crossingham v. Park* (1927), 96 L. J. K. B. 1036. **Refd.** *Glaskie v. Watkins*, [1927] 2 K. B. 181.

448. *Add. Annotation* :—**N.F.** *Glaskie v. Watkins*, [1927] 2 K. B. 181.

449. *Add. Citations* :—[1927] 2 K. B. 181; 96 L. J. K. B. 469; 137 L. T. 132; 71 Sol. Jo. 192, C. A.

456a. **Employment of agent or canvasser—Money-lenders Act, 1927 (c. 21), s. 5 (3).**—*VERNER-JEFFREYS v. PINTO*, No. 381a, *ante*.



## MORTGAGE.

## Part I.—Nature of Mortgage.

4. *Add. Annotations*:—*Refd.* *Weld v. Petre* (1928), 97 L. J. Ch. 399; *Dennerley v. Prestwich* U. D. C. (1929), 141 L. T. 602.
- 72a. *S. P. RATCLIFF v. DAVIS* (1610), 1 Bulst. 29; *Cro. Jac.* 244; *Yelv.* 178; *Noy*, 137; 80 E. R. 733.
- Annotations*:—*Consd.* *Ryall v. Rolle* (1749), 1 Atk. 165. *Refd.* *Kinsey v. Heyward* (1699), 1 Ld. Raym. 132; *Donald v. Suckling* (1866), L. R. 1 Q. B. 585.
- 78a. ————]—Ordinarily by the common law, although a mtge. may be given

without delivering possession, yet a mere pledge cannot be given without the delivery of the possession of the goods (MELLISH, L.J.).

— *AYERS v. SOUTH AUSTRALIAN BANKING CO.* (1871), L. R. 3 P. C. 548; 7 Moo. P. C. C. 432; 19 W. R. 860; 17 E. R. 163; *sub nom.* *AYRES v. SOUTH AUSTRALIAN BANKING CO.*, 40 L. J. P. C. 22, P. C.

*Annotations*.—*Mentd.* *Batson v. London School Board* (1903), 67 J. P. 457. *Refd.* *Burdick v. Sewell* (1883), 10 Q. B. D. 363.

## Part II.—Classification of Mortgages.

260. *Add. Annotation*:—*Refd.* *Re Wain*, [1927] 1 Ch. 606.
305. *Add. Annotation*:—*As to* (1) *Consd.* *Weld v. Petre* (1928), 97 L. J. Ch. 399

## PART I. SECT. 4, SUB-SECT. 2.

37 v. ————]—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtge. is inadmissible in evidence.—*MAUNG SHWE PHOO v. MAUNG TUN SHIN* (1927), 1 L. R. 5 Kan 644. —IND.

## PART I. SECT. 6, SUB-SECT. 1.

51 xvii. ————]—*HERRON v. MAYLAND* (Alta.), [1927] 4 D. L. R. 171; [1927] 2 W. W. R. 768, *affd.* [1928] 2 D. L. R. 858; [1928] S. C. R. 225.—CAN.

51 xviii. ————]—*BHAGWAN SAHAI v. BHAGWAN DIN* (1890), 1 L. R. 12 All. 387; L. R. 17 Ind. App. 98.—IND.

## PART II. SECT. 1.

sq. *Form of—Whether statutory form essential.*—*IMPERIAL ELEVATOR & LUMBER CO. v. OLIVE* (1914), 29 W. L. R. 339; 6 W. W. R. 1562; 19 D. L. R. 248.—CAN.

## PART II. SECT. 2, SUB-SECT. 1.

91 v. ————]—Pltf., as administrator, sued upon deft.'s alleged promise to execute a mtge. to testator on certain land, in consideration that testator would discharge a mtge. which he then held thereon, so as to enable deft. to give a first mtge. on the land to one L.:—*Held*: the alleged promise required to be in writing, as relating to an interest in land.—*STODDART v. STODDART* (1876), 39 U. C. R. 203.—CAN.

## PART II. SECT. 2, SUB-SECT. 2.—A.

e i. ————]—*LEYS v. HOLLINGHEAD* (1878), 29 C. P. 66.—CAN.

## PART II. SECT. 2, SUB-SECT. 2.—B.

109 i. *Specific performance.*—*JEWAN LAL DAGA v. NILMANI CHAUDHURI* (1927), L. R. 55 Ind. App. 107.—IND.

## PART II. SECT. 2, SUB-SECT. 5.—A.

so. *Necessity for good faith—Effect of laches.*—*Re AYLWARD*, *Ex p.*

*McMILLAN* (P. E. I.), [1927] 4 D. L. R. 305; 8 C. B. R. 352.—CAN.

## PART II. SECT. 2, SUB-SECT. 5.—B.

sd. *Transfer in blank & certificate of title.*—*Re HANS C. CHRISTENSEN, LTD., TOM F. EVERETT*, [1928] 1 D. L. R. 668; [1928] 3 W. W. R. 311.—CAN.

## PART II. SECT. 2, SUB-SECT. 5.—I.

se. *Property as it stands at date of sale or foreclosure.*—For the purpose of creating an equitable mtge. of a share in an indigo concern it is quite sufficient to deposit the title deeds under which that share was acquired. Where such a share is mortgaged the parties must be taken to intend that when foreclosure or sale takes place, at some subsequent date, the share shall pass to the purchaser as it stands at the date of the foreclosure or sale, & not merely as it existed at the date of the various title deeds when it was acquired.—*TOOMLA v. BHUPENDRA NATH BOSE* (1928), 1 L. R. 7 Pat. 520.—IND.

## PART II. SECT. 2, SUB-SECT. 6.

sf. *Agreement giving rights over building to creditor.*—*CUTTERBUCK v. IMPERIAL LUMBER CO.*, [1928] 3 W. W. R. 123.—CAN.

## PART II. SECT. 3, SUB-SECT. 1.—A.

n i. ————]—An instrument of transfer lodged for registration under Transfer of Land Act, 1915, expressed the consideration for the transfer to be "the sum of £200, this day lent to me by M., which sum is to be repaid within two years from the date hereof, together with interest at the rate of 46 per cent. *per annum* in the meantime." The transaction between the parties to the transfer was, to the knowledge of the registrar of titles, a mtge. transaction. The registrar refused to register the transfer.—*Held*: the registrar was justified in refusing to register the transfer.—*PUTZ v. REG-*

*ISTRAR OF TITLES*, [1928] V. L. R. 348; [1928] ARGIS L. R. 224.—AUS.

b i. *Certificate of registry—Requisites of*—*Re BRADSHAW & SIMCOE COUNTY REGISTRAR* (1867), 26 U. C. R. 464.—CAN.

bb i. ————]—*How ascertained.*—*Re LAND TITLES ACT* (1921), 65 D. L. R. 770.—CAN.

hh i. ————]—*Proceedings for foreclosure—Who has jurisdiction.*—A mtge. of land, under a new system, operates as a security only, & not as a transfer of the land or of any estate or interest therein. *Real Property Act*, s. 100; & proceedings for foreclosure can be taken only before the district registrar, as provided for in sects. 113, 114 of the Act, & the ct. of K. B. has no jurisdiction to make a final or other order of foreclosure in respect of such a mtge., in the absence of all events of a special agreement between the parties raising equities as to title or for a conveyance of an estate in the land.—*Re ALAIRE & FROCHETTE* (1913), 25 W. L. R. 618.—CAN.

sl. *Necessity for affidavit in Form E—Land Titles Act, 1917, s. 100.*—*Re LAND TITLES ACT* (Sask.), [1919] 1 W. W. R. 713.—CAN.

sm. ————]—*Re LAND TITLES ACT, CANADA'S LIFE ASSURANCE CO.'S CASE* (Sask.), [1919] 2 W. W. R. 47.—CAN.

sn. *Registration fees—By whom payable.*—A purchaser who, to secure a balance of purchase-money, has given a mtge. to the ct., must pay the fees for registration of his mtge.—*SWEETNAM v. SWEETNAM* (1873), 6 P. R. 83.—CAN.

## PART II. SECT. 6, SUB-SECT. 3.

293 i. *Validity—Omission of penal sum in obligatory clause.*—*Held*: the omission did not render the bond uncertain & ineffectual.—*GREAT WEST LIFE ASSURANCE CO. v. CAMPBELL* (Man.), [1928] 1 D. L. R. 263; 37 Man. L. R. 164; [1927] 3 W. W. R. 645.—CAN.

## Part III.—Parties to Mortgages.

368a. Cost of purchasing adjoining land—Maintenance of value of trust property.]—*Re HAIG* (1912), cited in Underhill's Law of Trusts & Trustees, 8th ed., p. 231.

371. *Add. Annotation* :—Generally, *Refd. Pirie v. Richardson*, [1927] 1 K. B. 448.

383a. ————]—As a general rule long terms of years do not answer the description of "real securities," within the meaning of a power for trustees to lend on mortgage of "real securities."—*Re BOYD'S SETTLED ESTATES* (1880), 14 Ch. D. 626; 49 L. J. Ch. 808; 43 L. T. 348.

385a. ——— Fourteen years.]—Trustees being empowered under a settlement to invest trust moneys upon mtge. of freehold, copyhold, or leasehold estate, invested upon mtge. of leaseholds, with only fourteen years to run, the ct. directed the mtge. to be called in, without prejudicing any question as to the liability of the trustees in the event of a loss. —*PINCE v. BEATTIE* (1863), 2 New Rep. 546; 32 L. J. Ch. 734; 9 L. T. 315; 27 J. P. 804; 9 Jur. N. S. 1119; 11 W. R. 979.

385b. ———.]—*BOURNE v. MOLE* (1843), 1 L. T. O. S. 12; *subsequent proceedings* (1845), 8 Beav. 177; 50 E. R. 70.

389a. Real security in Scotland—Power forbidding investment on real security in Ireland.]—Trustees of the will of a testator, who died

in 1845, had power to invest on "real securities in England or Wales, but not in Ireland." The ct. declined advising the trustee to invest, under the powers contained in the 22 & 23 Vict. c. 35, s. 32, on a mtge. of Scottish estate.—*Re MILES' WILL* (1859), 27 Beav. 579; 29 L. J. Ch. 47; 1 L. T. 122; 23 J. P. 805; 5 Jur. N. S. 1236; 8 W. R. 54; 54 E. R. 229.

389b. House property—Value dependent on covenants.]—An investment by trustees of £2,183, trust funds, which they were empowered to lend on real security, in a mtge. of house property in a town, occupied for commercial purposes & valued at £2,800, a value also in some measure dependent on the performance of covenants, held not to be justified.—*PHILLIPSON v. GATTY, GATTY v. PHILLIPSON* (1848), 7 Harc. 516; 12 L. T. O. S. 445; 13 Jur. 318; 68 E. R. 213.

*Annotations* :—*Apld. Norris v. Wright* (1851), 14 Beav. 291. *Refd. Re Massingberd's Settlement, Clark v. Trelawny* (1890), 63 L. T. 296.

415a. Investment improvident owing to nature of property.]—*Re SALMON, PRIEST v. UPPEBY* (1889), 42 Ch. D. 359; 62 L. T. 270; 38 W. R. 150; 5 T. L. R. 583, C. A.

*Annotations* :—*Consd. Exploring Land & Minerals Co. v. Kolckmann* (1905), 94 L. T. 234. *Refd. Blyth v. Fladgate, Morgan v. Blyth, Smith v. Blyth*, [1891] 1 Ch. 337; *Re Turner, Barker v. Ivimey*, [1897] 1 Ch. 536; *Head v. Gould*, [1898] 2 Ch. 250; *Re Lako, Ex p. Howe, Trustees*, [1903] 1 K. B. 439.

## Part IV.—Form and Contents of Mortgage.

488. *Add. Annotation* :—*Distd. Sowerby v. Lindsay* (1928), 44 T. L. R. 501.

490. *Add. Annotation* :—As to (1) *Consd. Sowerby v. Lindsay* (1928), 44 T. L. R. 501.

501. In the catchwords for "charged" read "changed."

501a. ————]—*JACKSON v. INNES* (1819), 1 Bli. 104; 4 E. R. 38, H. L.

*Annotations* :—*Apld. Clark v. Burgh* (1845), 2 Coll. 221. *Consd. Whitbread v. Smith* (1854), 3 De G. M. & G. 727. *Apld. Heather v. O'Neill* (1857), 4 Jur. N. S. 181. *Consd. Atkinson v. Smith* (1858), 3 De G. & J. 186. *Apld. Hastings v. Astley* (1861), 30 Beav. 260. *Expld. Dawson v. Bank of Whitehaven* (1877), 6 Ch. D. 218. *Distd. Jones v. Davies* (1878), 8 Ch. D. 205. *Refd. Reeve v. Hicks* (1825), 2 Sim. & St. 403; *Hipkin v. Wilson* (1850), 15 L. T. O. S. 559; *Plowden v. Hyde* (1852), 2 De G. M. & G. 684; *Eddleston v. Collins* (1853), 3 De G. M. & G. 1; *Walker v. Armstrong* (1856), 21 Beav. 284; *Heather v. O'Neill* (1858), 27 L. J. Ch. 512; *Plomley v. Fleton* (1888), 14 App. Cas. 61.

## PART III. SECT. 1, SUB-SECT. 1.

i. ————]—Under Act Respecting Homesteads, s. 2, the registrar cannot register a mtge. of homestead land if the same is not signed by mtgor's wife, although in a paper attached to the mtge. she purports to have relinquished her homestead rights in favour of mtgor.—*Re LAND TITLES ACT*, [1919] 1 W. W. R. 711.—CAN.

sp. Mortgage by alleged absolute owner—Third party in possession.]—*GREY v. COUCHNER* (1868), 15 Gr. 419.—CAN.

## PART III. SECT. 3, SUB-SECT. 1.

ii. ————]—*What estate passes.*—*BANQUE PROVINCIALE DU CANADA v. CAPITAL TRUST CORPN.*, [1928] 4

D. L. R. 390; 62 O. L. R. 458.—CAN.

## PART III. SECT. 3, SUB-SECT. 2.—A. (a) i.

343 i. *Whether mortgagee concerned with application of money.*—*PLACE v. SPAWN* (1859), 7 Gr. 406.—CAN.

sr. Power given by testator to mortgage "my estate"—Property subject to life interest of wife.]—*PURDUM v. NORTHERN LIFE ASS'CE CO. OF CANADA*, [1928] 4 D. L. R. 679; 63 O. L. R. 12.—CAN.

## PART IV. SECT. 1, SUB-SECT. 1.

483 iv. ————]—There is an implied covenant on the part of a mtgor. to repay the mtgo. money, even though

505a. ————]—A mtge. of property does not alter the existing limitations affecting it, except for the purpose of the mtge., unless an express intention be shown to resettle it.—*HASTINGS (LORD) v. ASTLEY* (1861), 30 Beav. 260; 8 Jur. N. S. 225; 10 W. R. 73; 54 E. R. 888.

583a. ————]—On a mtge. of a public house the goodwill is not included unless expressly mentioned.—*Re BENNETT, CLARKE v. WHITE*, [1899] 1 Ch. 316; 68 L. J. Ch. 104; 47 W. R. 406.

587. *Add. Annotations* :—*Refd. Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.

the bond contains no express promise to repay it.—*CHHATH LALSAH KALWAI v. BINDERHWART PRANAD SAHU* (1928), 1 L. R. 8 Pat. 16.—IND.

## PART IV. SECT. 5, SUB-SECT. 3.—A. (a).

517 iv. ————]—*DOMINION TRUST CO. v. MUTUAL LIFE ASSURANCE CO., BRITISH CANADIAN SECURITIES v. MUTUAL LIFE ASSURANCE CO.*, [1917] 3 W. W. R. 941.—CAN.

## PART IV. SECT. 7, SUB-SECT. 1.

620 ii. ————]—*Security for future advances—Construction of Stamp Act*, 1891 (c. 39), ss. 15 (1), 88 (1) (2).—*O'SULLIVAN v. LOUGHNAN*, [1927] 1 R. 493.—IR.

ance.]—*Held*: a mtge. for £1,500, with covenants for payment of the yearly premium & other costs & charges of an insurance of £1,000 upon a particular life for seven years, required a £25 stamp.—*HALSE v. PETERS* (1831), 2 B. & Ad. 807; 1 L. J. K. B. 2; 109 E. R. 1342.

*Annotations*:—*N.F. Doe d. Mercer v. Bragg* (1838), 8 Ad. & El. 620. *Consd. Richards v. Macchelsfield, Cocks v. Edwards* (1841), 10 L. J. Ch. 329. *Distd. Wroughton v. Turtle* (1843), 1 Dow. & L. 473. *Dbtd. Lawrance v. [?]*, 21 L. J. Ch. 309.

**625a.** — Second mortgage—Covenant to pay sum secured by first mortgage—First mortgage duly stamped.]—A second mtge. of freehold property subject to an existing first mtge. contained a covenant by the borrower to

pay by instalments (a) a sum equivalent to the amount of the loan, the subject of the first mtge., (b) a sum equivalent to the amount of the loan, the subject of the second mtge., & (c) a sum equivalent to the interest on the amounts remaining unpaid under both mtges. There was a proviso for redemption on payment of the amount of the second mtge. & interest thereon. The first mtge. had been duly stamped with the appropriate duty on the amount thereby secured:—*Held*: the second mtge. was liable to stamp duty in the aggregate of the two sums secured by the two mtges., the covenant contained in the second mtge. to pay the amount secured by the first mtge. being an additional covenant made with a different covenantee.—*MUTUAL PROPERTY INSURANCE CO., LTD. v. INLAND REVENUE COMRS.* (1926), 136 L. T. 351.

## Part VI.—Rights and Liabilities of the Mortgagor.

**633.** *Add. Annotation*:—*Refd. Purnell* [1927] 2 Ch. 142.

**732a.** *Service of notice to quit—Whether Small Tenements Recovery Act, 1838 (c. 74), applicable.*—A mtge. deed contained a clause by which the mtgor. attorned tenant from year to year to the mtgees. at a nominal rent. It was also provided that, if the mtgor. made default in payments under the deed, the mtgees. might give to the mtgor. seven days' notice in writing to determine the tenancy created by the deed. The mtgor. defaulted & the mtgees. served on him a notice to quit. The mtgor. refused to give up possession:—*Held*: the term or interest of the mtgor. in the mortgaged property had been "duly determined by a legal notice to quit or otherwise" within sect. 1 of above

Act, & therefore, justices had power to issue a warrant to give possession of the property to the mtgees. *DUDLEY & DISTRICT BENEFIT SOCIETY v. GORDON*, [1929] 2 K. B. 105; 98 L. J. K. B. 186; 111 L. T. 583; 93 J. P. 186; 15 T. L. R. 421 L. G. R. 118, D. C.

**737.** *Add. Annotation*: *Apld. Dudley & District Benefit Building Society v. Gordon*, [1929] B. 105.

**739.** *Add. Annotation*: *Refd. Re Wait*, [1927] 1 Ch. 606.

**772a.** — — — *KING v. BIRD*, No. 774, *post*.

**845.** *Add. Annotation*: *Refd. The W. H. Randall*, [1928] P. 41.

**846.** *Add. Annotation*: *Refd. Torbay Hotel v Jenkins*, [1927] 2 Ch. 225.

## Part VII.—Equity of Redemption.

**910.** *Add. Annotation*:—*Mentd. Richards v. Pryse*, [1927] 2 K. B. 76.

**984.** *Add. Annotation*:—*Consd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

### PART VI. SECT. 3, SUB-SECT. 7.

**665 iv.** — — — — —.]—A mtgor. in possession is entitled to cut timber on the land & to give third persons a licence to do so, unless it is shown that the security is thereby impaired. The onus is on the party seeking to establish impairment to plead & offer proof of it.—*REID v. GALBRAITH*, [1927] 2 D. L. R. 857; [1927] 1 W. W. R. 780; 38 B. C. R. 287; *varying*, [1926] 4 D. L. R. 814; [1926] 3 W. W. R. 500; 38 B. C. R. 36.—CAN.

### PART VI. SECT. 4, SUB-SECT. 2.—D.

**g i.** — — — *Position of mortgagor.*]—Where a mtgee. leases the land to the mtgor., the latter does not take the lease in his character as mtgor., but in his individual capacity only, & as such he stands in the same position as a stranger to the mtge.—*MARLEY & HARRIS CO. v. MANLEY*, [1927] 1 D. L. R. 464; [1927] 1 W. W. R. 35; 21 Sask. L. R. 256.—CAN.

### PART VI. SECT. 4, SUB-SECT. 3.—A.

**h. Revsd.**, [1924] 1 W. W. R. 1233; 18 Sask. L. R. 269.

**sk. Effect of Landlord & Tenant Act, R. S. O., 1914 (c. 155), s. 3.]**—*KENNEDY v. AGRICULTURAL DEVELOPMENT BOARD*, [1926] 4 D. L. R. 717; 59 O. L. R. 374.—CAN.

**sl. Effect of Land Titles Act, s. 117.]**—*MATTHEWSON BROTHERS & MATHEWSON v. GOOD*, [1927] 3 D. L. R. 122; [1927] 1 W. W. R. 728; 21 Sask. L. R. 103.—CAN.

### PART VI. SECT. 7.

**c i.** — — — *Mortgage overdue.*—*Right of possession in mortgage.]*—Ejectment cannot be sustained by a mtgor. against a stranger where the mtge. is overdue & unsatisfied, & the fee & right of possession being in the mtgee.—*DOE d. McBERNIE v. LUNDY* (1814), 1 U. C. R. 186.—CAN.

**sn. Payment into court of amount due on mortgage.]**—*Application for order under Mortgage Act, R. S. O., 1914 (c. 112)—Mode of application.*—*Re APPLETON & ROSS*, [1927] 4 D. L. R. 1125; 61 O. L. R. 338.—CAN.

### PART VII. SECT. 3, SUB-SECT. 8.

**so. Under decree for sale.—What is incident to land.—Manure in heaps on**

*land.]* Manure in heaps on land, not the produce thereof, does not pass to the purchaser of the equity of redemption under a decree of sale, as an incident to the land; & if he uses it, it is a conversion, for which the mtgor. may recover in trover without a demand.—*THOMSON v. WALSH* (1852), 2 All. 369.—CAN.

### PART VII. SECT. 4, SUB-SECT. 2.—A.

**968 iv.** — — — — —.]—*TOORBY v. GUNTHER* (1927), 28 S. R. N. S. W. 229; 45 N. S. W. W. N. 11.—AUS.

### PART VII. SECT. 4, SUB-SECT. 1.

**q i.** — — — *Permanent lease.]*—Permanent leases executed by the mtgor. in favour of the mtgee. subsequent to the mtge. constitute a clog on the equity of redemption & are null & void.—*PANSHARAM YESHWANTSHET v. LAXMIBAI* (1928), 1 L. R. 53 Bom. 360.—IND.

**sp. Covenant creating right of pre-emption in favour of mortgagee.—Limited to life of parties.]**—A covenant in a mtge. deed creating a right of

1024. *Add. Annotation*:—*Refd.* *Ideal Films v. Richards*, [1927] 1 K. B. 374.
1025. *Add. Annotation*:—*Refd.* *Ideal Films v. Richards*, [1927] 1 K. B. 374.
1049. For the existing catchwords read “———.”
1085. *Add. Annotation*:—*Refd.* *Smith v. Wood* (1928), 139 L. T. 250.
- 1091a. ——— *Claim for repayment of excess received by mortgagee over amount due under mortgage.*—Where shares in a co. were mortgaged

to secure a loan with interest, & the value of the shares increased enormously so that the mtgee. received dividends sufficient to pay off the loan & interest, & a summons was subsequently taken out claiming redemption, & also repayment of the excess of the amount of dividends received by the mtgee. over & above the amount due under the mtge.:—*Held*: an order for payment of the excess claimed against the mtgee. could, by R. S. C., Ord. 55, r. 5A, be obtained upon originating summons.—*WELD v. PETRE*, [1929] 1 Ch. 33; 97 L. J. Ch. 399; 139 L. T. 596; 44 T. L. R. 739; 72 Sol. Jo. 509, C. A.

## Part VIII.—Assignment and Devolution of Mortgage.

1177. *Add. Annotation*:—*Refd.* *Bonham v. Maycock* (1928), 138 L. T. 736.
- 1279a. *Sale on bankruptcy of mortgagor of mortgage of settled premises*—*Effect of*—*Right of purchaser to hold mortgage as first charge on estate.*—*SIMPSON v. O'SULLIVAN* (1840), 7 Cl. & Fin. 550; West, 332; 7 E. R. 1179.
1305. *Add. Annotation*:—*Mentd.* *Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.
- 1324a. ————*]*—The legal estate in property vested in a testator by way of mtge. does not pass under the description of “securities for money,” or “money invested on any

security.”—*Re GORRETT'S TRUST, Ex p. PRICE* (1850), 19 L. J. Ch. 173; 14 Jur. 53.

1326a. ————*]*—Testator, who was a mtgee., devising all the rest & residue of his freehold, leasehold, & copyhold estates in possession or reversion, together with all his goods, chattels, etc. mtges. & debts to a legatee, subject to the payment of his debts, etc., & also appointing the legatee exor. of his will:—*Held*: not to have thereby devised the legal estate in the mortgaged premises to such legatee.—*SILVESTER v. JARMAN* (1822), 10 Price, 78; 147 E. R. 248, Ex. Ch.

*Annotations*:—*Refd.* *Galliers v. Moss* (1829), 9 B. & C. 267; Doe d. Guest v. Bennett (1851), 6 Exch. 892; *Re Field's Mortgage* (1851), 15 Jur. 1004.

## Part IX.—Rights and Liabilities of the Mortgagee.

1352. To the existing paragraph, after the last words “toll gates,” add as follows:—  
(3) he was entitled to have a receiver appointed.

1362a. ————*]* Trespass will not lie against the occupier of land at the suit of the mtgee., who has never been in actual possession or been seised of the land, & has not obtained

pre-emption in favour of the mtgee., the operation of which is not meant to extend beyond the lifetime of the parties, is neither a clog on the equity of redemption nor obnoxious to the rule against perpetuities.—*MATURA SUBBA RAO v. SURENDRANATH SAHU* (1928), 1 L. R. 8 Pat. 243.—IND.

### PART VII. SECT. 5.

1013 i. *Amount appearing in receipt clause—How far conclusive.*—A bill alleged that a mtge. was executed by W. to deft. in consideration of \$450; that deft. advanced only \$150 thereon, & W. being entitled to receive the balance assigned such right & conveyed his equity of redemption to plft.; that deft. refused to pay the balance & claimed to hold the mtge. as security for \$450. The prayer was for specific performance or, in the alternative, a declaration of the above facts, & for general relief:—*Held*: upon the facts alleged in the bill, namely, that the mtge. was being held for more than had been advanced thereon, & therefore, to that extent had formed a cloud on the title, plft. would be entitled to a declaration to that effect, & appropriate relief.—*CALVERT v. BURNHAM* (1881), 6 A. J. 620.—CAN.

a i. ————*]*—*FREDERIKSEN v. WESTERN CAN. INV. CO.* (Sask.), [1927] 1 D. L. R. 804.—CAN.

### PART VII. SECT. 6, SUB-SECT. 1.

sq. *Statute for Sale of Equities of Redemption—When applicable.*—*FITZGIBBON v. DUGGAN* (1865), 11 Gr. 188.—CAN.

### PART VII. SECT. 6, SUB-SECT. 2.

o i. ————*Assignee not barred by twenty years' possession of assignor claiming under mortgagor.*—*COLLINS v. REID* (1866), 6 N. S. R. (2 Old.) 252.—CAN.

### PART VII. SECT. 8, SUB-SECT. 4.—B.

sr. *By motion for judgment—Proceedings by action—Limitation of costs recoverable.*—*MALKOVICH v. GENIK*, [1928] 3 W. W. L. 65.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 1.

sa. *Executor—Necessity for proof of probate.*—An assignment of a mtge. by an exor. is not admissible in evidence without proof of the probate.—*DOE v. HANSON* (1857), 8 N. B. R. (3 All.) 427.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 4.—F.

1. *Revd.*, 19 Gr. 59.

### PART VIII. SECT. 1, SUB-SECT. 15.

sb. *Effect of transfer on lease by mortgagee in possession.*—*Semble*: an assignment of a mtge. is not by itself effective to transfer a lease given by

the mtgee. in possession.—*KONKIN v. CANADIAN BANK OF COMMERCE* (Sask.), [1927] 3 W. W. R. 123.—CAN.

### PART VIII. SECT. 3, SUB-SECT. 1.

b i. ————*]*—*GARRETT v. SAUNDERS* (1876), 23 Gr. 566.—CAN.

### PART IX. SECT. 1, SUB-SECT. 2.—D.

a. *Varied.*, [1927] 2 D. L. R. 857; [1927] 1 W. W. R. 780; 38 B. C. R. 287.

### PART IX. SECT. 1, SUB-SECT. 2.—E.

sc. *Seizure & sale of mortgaged goods.*—A mtgee. may maintain an action against a person seizing & selling the property mtgd. the right of possession of the goods at the time of such sale being rightfully in the mtgor., & the reversionary estate in plft. as mtgee.—*MCLEOD v. MERCER* (1856), 6 C. P. 197.—CAN.

### PART IX. SECT. 2, SUB-SECT. 1.

sv. *Whether possession by lessee of mortgage—Under lease made after mortgage.*—*Re SHANTZ & HALLMAN*, [1927] 3 D. L. R. 658; 60 O. L. R. 543; *affd. sub. nom.* *MODERN REALTY CO. v. SHANTZ*, [1928] 2 D. L. R. 705; [1928] S. C. R. 213.—CAN.

### PART IX. SECT. 2, SUB-SECT. 2.—A.

ol. ————*Against lessee—Under Land*

a judgment in ejectment, either by default or by verdict; & therefore he cannot, in such case, waive the tort, & maintain an action of use & occupation.—*TURNER v. CAMERON'S COALBROOK STEAM COAL CO.*

(1850), 5 Exch. 932; 20 L. J. Ex. 71; 16 L. T. O. S. 285; 155 E. R. 407.

*Annotations*:—*Mentd.* Neate v. Harding (1851), 6 Exch. 349; Blatchford v. Cole (1858), 5 Jur. N. S. 112; Harrison v. Blackburn (1864), 10 Jur. N. S. 1131; Phillips v. Hounfray (1883), 21 Ch. D. 439; Wallis v. Hands, [1893] 2 Ch. 75.

## Part XII.—Priority of Mortgagees.

2019a. —. —.]—*MANCHESTER & COUNTY BANK, LTD. v. MONK* (1929), 73 Sol. Jo. 465.

2038. *Add. Annotation*:—*Consd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

2044. *Add. Annotation*:—*Appld. Manchester & County Bank v. Monk* (1929), 73 Sol. Jo. 465.

## Part XIII.—Remedies of Mortgagee.

2258. *Add. Annotation*:—*Consd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

2299a. *Personal representative of transferee of mortgagee*.—*SALOWAY v. STRAWBRIDGE* (1855), 7 De G. M. & G. 591; 25 L. J. Ch. 121; 1 Jur. N. S. 1194; 4 W. R. 31; 44 E. R. 232, L. J. 1.

*Annotations*:—*Consd.* Ashton v. Wood (1857), 30 L. T. O. S. 85. *Refd.* *Re Rumney & Smith*, [1897] 2 Ch. 351.

*Acts*.—*MUNGALL v. MANN, Ex p. MANN* (1928), 22 Q. J. P. R. 66.—*AUS.*

### PART IX. SECT. 7, SUB-SECT. 1.—A.

*sw. Validity of lease—Non-compliance with Land Titles Act, R. S. S., 1920 (c. 67), s. 108*.—*MASSEY-HARRIS CO. v. MANLEY*, [1927] 1 D. L. R. 461; [1927] 1 W. W. R. 35; 21 Sask. L. R. 256.—*CAN.*

### PART IX. SECT. 14.

*sq. Right to indemnity—Mortgage of shares*.—*MASTERS v. McLELLAN* (1889), (1825-97), N. B. Dig. 316.—*CAN.*

### PART XII. SECT. 1, SUB-SECT. 3.—A.

*m i. Charge on land—Whether priority given over registered assignment—Dealing only with estate which assignor then had*.—*CANAHAAN PORT HURON CO. v. BURNETT* (1907), 17 Man. L. R. 55.—*CAN.*

### PART XII. SECT. 1, SUB-SECT. 4.—C.

*f (p. 458) i.* —.]—*THOMSON v. HARRISON*, [1927] 3 D. L. R. 526; 60 O. L. R. 484.—*CAN.*

*f (p. 458) ii.* —.]—*CARROLL v. ROGERS* (1900), 2 N. B. Eq. Rep. 159; 21 C. L. T. 96.—*CAN.*

*o (p. 458) i.* —.]—*What amounts to caveat interest*.—By an agreement, one C., the owner of certain land, agreed to "allow" resp. an equal third share of the "net profits" which C. might make on the resale of this land. The land was sold at a considerable profit. On the completion of the purchase, a mtge. was given by the purchasers to applt. for £1,800, which purported to be a loan by applt., but, in fact, part of this amount was the balance of the purchase-money which applt. was to hold in trust for C., subject to a charge for money advanced. Resp. entered a caveat against dealings with the mtge. —*Held*: applt. had, at most, a claim against C. under his contract to an account, & for payment of any moneys found due thereon, & accordingly, had no caveat interest.—*SHEPHERD v. HOGSTON*, [1927] S. A. S. R. 144.—*AUS.*

*sz. Effect of omission from memorial of addition of witness*.—*Held*: under

9 Vict. c. 31, registry in accordance with the Act was imperative, & a deed registered upon a memorial in which the addition of the witness to the deed was omitted was, therefore, fraudulent & void as against a subsequent mtgee. *ROBINSON v. WADDELL* (1865), 24 U. C. R. 571.—*CAN.*

*sy. Postponement of mortgage—Power of registrar to register*.—*Re WINDOVER & GREAT WEST LIFE ASSURANCE CO. (Alta.)*, [1927] 3 D. L. R. 329; [1927] 2 W. W. R. 111.—*CAN.*

*sz. Right to registration—Duplicate certificate in hands of mortgagee*.—*Re TORR & CASE, J. W. THIRSHING MACHINE CO.* (1910), 11 W. L. R. 701; 3 Sask. L. R. 270.—*CAN.*

### PART XII. SECT. 13, SUB-SECT. 1.—A. (a).

1995 iii. —.]—*KIRK v. HARVEY* (1917), 26 W. L. R. 717; 5 W. W. R. 980; 15 D. L. R. 488; 18 B. C. R. 615.—*CAN.*

1995 iv. —.]—*COLLITS v. SHERWOOD (Alta.)*, [1927] 3 D. L. R. 7.—*CAN.*

### PART XII. SECT. 13, SUB-SECT. 3.—B. (b).

2170 i. *Mortgagee parting with deeds to mortgagee—Failure to return—Laches of mortgagee*.—G., a customer, deposited the title deeds of immovable property with debt bank to secure an overdraft. Subsequently G. obtained possession of the title deeds on a misrepresentation to debt bank that he wanted them for inspection by an intending purchaser, & deposited the deeds with pltt. bank to secure a loan.

*Held*: by the conduct of debt bank pltt. bank had priority of charge over the mortgaged property.—*LLOYDS BANK v. GUZDAR & CO.* (1929), 1 L. R. 56 Cal. 868.—*IND.*

### PART XII. SECT. 13, SUB-SECT. 4.

*sa. Priority of mortgage over lien of lender—Of advance on reduction of mortgage*.—*Held*: the lender could not claim priority for his advance.—*IMPERIAL LOAN & INVESTMENT CO. v. O'SULLIVAN* (1879), 8 P. R. 162.—*CAN.*

*sb.* —. *Of advance on payment of purchase money*.—*Held*: the lender

2312a. —.]—Property comprised in a mtge. was sold by the mtgee. by public auction, & at the sale the mtgee.'s solr. became the purchaser: *Held*: the purchase by the solr. was invalid, & must be set aside.—*LAWRANCE v. GALSWORDY* (1857), 30 L. T. O. S. 112; 3 Jur. N. S. 1019.

*Annotation* — *Refd.* *Nutt v. Easton* (1899), 80 L. T. 353.

could not claim priority in respect of his lien for unpaid purchase money.—*WATSON v. DOWSER* (1881), 28 Gr. 478.—*CAN.*

*sc. Prior mortgagee purchasing rights of junior mortgagee*.—*FATEH ALI v. GHINA* (1927), 1 L. R. 9 Lah. 88.—*IND.*

### PART XIII. SECT. 1, SUB-SECT. 1.

2190 i. *Application of rule—Foreclosure—Proceedings on bond*.—*Re CHANDLER'S ESTATE* (1883), 17 N. S. R. (5 R. & G.) 78.—*CAN.*

### PART XIII. SECT. 2, SUB-SECT. 1.—B. (b) i.

*sd. Length of i.* —*Held*: (1) in enacting Property Law Amendment Act, 1927, the Legislature must be presumed to have intended the repeal of Mortgages Final Extension Act, 1921, s. 70; (2) until the mtgee. took some active step towards availing himself of the protection granted him he acquired no right which survived the repeal of the protecting Act, & the mtgee. was, therefore, entitled to exercise his power of sale without giving three months' notice of his intention to do so.—*MATHIESON v. HALL*, [1929] N. Z. L. R. 333.—*N.Z.*

### PART XIII. SECT. 2, SUB-SECT. 1.—D.

*se. Sale of two properties subject to mortgages—Sale by mortgagee of one property on default by purchaser—Rights of purchaser of other property against mortgagee & defaulting purchaser*.—*NORRIS v. MEADOWS* (1882), 7 A. R. 237.—*CAN.*

### PART XIII. SECT. 2, SUB-SECT. 3.—D.

*sf. Sale under Land Titles Act—Jurisdiction to stay proceedings*.—*Re LAND TITLES ACT, Re FIELDING & NORTH v. SCOTLAND MTGE. CO.* [1927] 3 D. L. R. 690; [1927] 2 W. W. R. 423; 22 Alta. L. R. 575.—*CAN.*

### PART XIII. SECT. 2, SUB-SECT. 5.—A.

*k i. Order permitting purchase at price fixed by court—With leave to recover deficiency—Whether foreclosure*.—*SECURITY TRUST CO., LTD. v. SAYRE &*



2897b. ———.]—A suit was instituted by a mtgee. against the trustee for sale of the property & exor. of the mtgor. for a foreclosure:—*Held*: the persons beneficially interested in the equity of redemption were not necessary parties to the suit. —*WILKINS v. REEVES* (1855), 3 Eq. Rep. 494; 24 L. T. O. S. 337; 3 W. R. 305.

2928a. ———.]—A surviving trustee & extrix., who was also tenant for life of mortgaged property, was made sole deft. to a bill for foreclosure or sale:—*Held*: the parties interested in remainder were sufficiently represented. —*MARRIOTT v. KIRKHAM* (1862), 3 Giff. 536;

31 L. J. Ch. 312; 6 L. T. 17; 8 Jur. N. S. 379; 10 W. R. 340; 66 E. R. 521.

2991. *Add. Annotation*:—*Refd.* Friern Barnet U. C. v. Adams, [1927] 2 Ch. 25.

3378. *Add. Citations*:—*sub nom.* *Re CLAYTON & BARCLAY'S CONTRACT*, [1895] 2 Ch. 212; 64 L. J. Ch. 615; *sub nom.* *CLAYTON v. BARCLAY*, 72 L. T. 764; 59 J. P. 489; 43 W. R. 549; 11 T. L. R. 415; 39 Sol. Jo. 503; 13 R. 556. *Add. Annotations*:—*Refd.* London & County Contract v. Tallack (1903), 51 W. R. 408; Official Receiver v. Cooke, [1906] 2 Ch. 661; *Re Kent County Gas Light & Coke Co.*, [1909] 2 Ch. 195.

## Part XIV.—Discharge of Mortgages.

3427. *Add. Annotation*:—*Refd.* Bonham v. Maycock (1928), 138 L. T. 736.

3433. *Add. Annotation*:—*Apld.* Bonham v. Maycock (1928), 138 L. T. 736.

3434. *Add. Annotation*:—*Apld.* Bonham v. Maycock (1928), 138 L. T. 736.

3436a. ———.]—In the absence of express authority or holding out, the mere receiving of interest on a mtge. by the mtgee.'s solr. does not imply authority to receive the principal. The solr. is, for this purpose, agent of the mtgor. & not of the mtgee.—*BONHAM v. MAYCOCK* (1928), 138 L. T. 736; 44 T. L. R. 387; 72 Sol. Jo. 254.

3453a. ———.]—*RICHARDS v. SYMS* (1740), Barn. Ch. 90; 2 Eq. Cas. Abr. 617; 27 E. R. 567, L. C.

*Annotations*:—*Consd.* Hassell v. Tynte (1756), Amb. 318; Cross v. Sprigg (1819), 6 Haro. 552. *Refd.* Duffield v. Elwes (1827), 1 Bl. N. S. 197.

3495a. *Jurisdiction to stay - Terms.*]—In an ejectment on a forfeiture in not paying mtge. money, deft. is entitled to have proceedings stayed under Mortgage Act, 1733 (c. 20), upon payment of the principal & interest due on the mtge. deed, with the costs incurred, without paying any bygone interest not included in the mtge. deed or the expense of preparing the mtge. deed or any assignment of it.—*Doe d. BLAGE v. STEEL* (1832), 1 Dowl. 359.

### PART XIII. SECT. 7, SUB-SECT. 2.—B. (a).

*sv. Mortgagee executor de son tort—Sufficient assets of deceased mortgagor—No right to foreclose.*]—*KENNY v. KENNY* (1825-1897), N. B. Dig. 311.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 4.—D. (b).

*sw. Widow of intestate mortgagor Application for widow to represent estate.*]—*Held*: an application under K. B. Rule 205 should be refused, since Surrogate Cts. Act made ample provision for the requirements of the mtgee.—*Re GREAT WEST LIFE ASSURANCE CO., Re CHRISTIE ESTATE (Man.)*, [1927] 3 W. W. R. 302.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 4.—H. 2945 iv. ———.]—KAULBACH v. TAYLOR (1880), R. E. D. 400.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 6.—B. (a).

*sa. Questions of mixed law & fact involved—Defendant though not appearing filing notice disputing amount claimed.*]—*RAPELMAN v. KIPROFF*, [1928] 4 D. L. R. 310; 62 O. L. R. 629.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 6.—C. (b) 1.

*sc. Inclusion of injunction against waste by mortgagor in possession.*]—*CAWTHRA v. MCGUIRE* (1859), C. L. J. O. S. 142.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 6.—D. (b) 1.

*sf. Provision that sale be subject to reserve bid.*]—In Saskatchewan an order for sale in a mtge. action should

not provide that the sale be subject to a reserve bid.—*Bk. TORONTO v. MATHESON & MCCASKILL*, [1928] 2 D. L. R. 991; [1928] 1 W. W. R. 816; 22 Sask. L. R. 467.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 6.—D. (b) ii.

*q 1. — To postpone sale*]—*MURDOCK v. LAWSON* (1874), 9 N. S. R. 454.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 6.—E. (a).

3169 i. ———. *On default of defence.*]—*ANGELICAN SYNOD v. RUSSELL & MAY* (1927), 38 B. C. R. 400.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 6.—E. (c) i.

*g i. ———. ———.]—W., having a "charge" on lands duly recorded in the land titles office, alleging that the charge was in arrear, began foreclosure proceedings in the Supreme Ct. of Ontario, which resulted in a decree & final order for foreclosure:—*Held*: the master should record W. as owner of the land if he found that all persons having claims subsequent to the charge were foreclosed by the decree & order. It is not the duty of the master of titles to review the proceedings in the ct.; he must give the orders of the ct. their full effect without going behind them in any way. He is entitled to ask for proof that there has been no appeal or application to open the foreclosure; but not for proof that the proceedings leading up to the decree & final order were regular & sufficient.—*Re WEST*, [1928] 1 D. L. R. 937; 61 O. L. R. 540.—CAN.*

### PART XIV. SECT. 1, SUB-SECT. 2.—C. (b).

3389 i. *Creditors of testator.*]—*Re HOLLAND, Et p. HOLLAND* (1928), 28 S. R. N. S. W. 369; 15 N. S. W. N. 88.—AUS.

### PART XIV. SECT. 2, SUB-SECT. 1.—A.

d (p. 603) i. ———.]—*CAMPBELL v. RAYNOR*, [1926] 4 D. L. R. 686; 59 O. L. R. 466.—CAN.

*sx. Payments on account—Whether mortgage discharged.*]—*Held*: the transactions which had taken place discharged the mtge. debt.—*BUCHANAN v. KERRY* (1855), 5 Gr. 332.—CAN.

*sy. ———.]—Held*: the circumstances were sufficient to show that the mtge. was intended to cover a floating balance, & was not satisfied.—*RUSSELL v. DAVEY* (1858), 7 Gr. 13.—CAN.

3423 i. *Set-off.*]—*DICK v. SCHWARTZ (Man.)*, [1926] 3 D. L. R. 894.—CAN.

b (p. 604) i. ———.]—*Defects in.*]—The absence of the residence & occupation of the subscribing witness to a certificate of discharge of mtge., on the face of the certificate, though stated in the affidavit:—*Held*: clearly no objection, being cured by 36 Vict. c. 17, s. 8 (O.). —*STODART v. STODART* (1876), 39 U. C. R. 203.—CAN.

d (p. 604) i. ———.]—*EWART v. DRYDEN* (1867), 13 Gr. 50.—CAN.

*sz. Payment to mortgagor's nominee—Nominee absconding—Mortgagor liable.*]—*CORSINI v. PALM* (1925), 35 B. C. R. 417.—CAN.

### PART XIV. SECT. 2, SUB-SECT. 1.—B.

p i. ———.]—*ROWE v. JOHNSON*, [1928] V. L. R. 515; 49 A. L. T. 311.—AUS.

### PART XIV. SECT. 2, SUB-SECT. 2.

*sm. Discharge of mortgage on execution & performance of agreement.*]—*WEST*

## Part XVI.—Accounts.

3698. *Add. Annotations*:—**Refd.** *Royal Exchange Assce. v. Hope*, [1928] Ch. 179; *Smith v Wood* (1928), 139 L. T. 250.

## Part XVII.—Interest on Mortgages.

3950. *Add. Annotation* :—As to (1) **Consd.** Sowerby v. Lindsay (1928), 44 T. L. R. 501. | 3990. *Add. Annotation* :—**Consd.** Weld v. Petre (1928), 97 L. J. Ch. 399.

## Part XVIII.—Costs, Charges, and Expenses.

**4054.** *Add. Annotations:—***Refd.** *Campbell v. Pollak*, [1927] A. C. 732; *Thomas v. Jones*, [1928] P. 162.

**4061a.** —.—.— In 1897 the trustees of the will of J. & Mrs. J. executed a consolidating mtg. to B. upon certain securities to secure a certain amount. In 1924 & 1926 B. made further advances to Mrs. J., who was the owner in fee, upon the same securities. Mrs. J. died in 1926. In Jan. 1927 her trustees applied for & were granted a further advance on the same securities by B., whose solrs. had attended to the previous transactions. The deed secured an immediate advance, & it also secured all the previous existing securities, although the old securities had been kept on foot for the purpose of preserving priorities, & there was a new proviso for redemption. B.'s solrs. carried in a bill for taxation, the

charges being according to the scale in Sched. I., Part I., of the General Order under Solrs.' Remuneration Act, 1881 (c. 44), for "investigating title & preparing & completing deed of security." The taxing master took the view that Sched. I. did not apply, & taxed the bill accordingly:—*Held*: there had been an "investigation of title" within Sched. I., & the matter must be referred back to the taxing master. —*Re* COWARD, CHANCE & Co., [1928] Ch. 379; 97 L. J. Ch. 234; 139 L. T. 113; 72 Sol. Jo. 225.

**4391.** *Add. Annotation:—***Refd.** Campbell v. Pollak, [1927] A. C. 732.

**4392.** *Add. Annotation: --***Refd.** Campbell v.  
Pollak, [1927] A. C. 732.

4393. *Add. Annotation:—***Refd.** Campbell v. Pollak, [1927] A. C. 732.

v. ACCIDENTAL FIRE INSURANCE CO.  
(Sask.), [1927] 3 D. L. R. 260. --CAN.

**PART XIV. SECT. 3, SUB SECT. 1.**

**n i. —** [.]— Pltf. was the assignee of a mtge., & defts., the purchasers of the equity of redemption from R., the mtgr., covenanted to assume the incumbrances on the land, & pltf., in consideration of the assignment to him of that covenant of indemnity, released R. from all liability upon his personal covenant contained in the mtge.—**Held:** the mtge. debt was not wiped out by the release, & pltf. was entitled to enforce the covenant of indemnity.—**LESSER v. PRITZKER,** [1926] 2 D. L. R. 645; 58 O. L. R. 537.—**CAN.**

**11. Statutory discharge executed by one of two executors of deceased mortgagee.]** - *Held*: effective, when registered, as a reconveyance of the land. - *Re A. & B.*, [1927] 3 D. L. R. 1070; 60 O. L. R. 647. - **CAN.**

**sb.** *Right of mortgagee to release portion of mortgaged property—To purchaser of that portion—Bond given by purchaser to mortgagee for payment of proportion of debt.*—BANK OF MONTREAL v. HOPKINS (1864), 2 E. & A. 458.—CAN.

**PART XIV. SECT. 4. SUB-SECT. 2.—E.**

**ni.** — **CLARY** v. BOULAY, [1928]  
2 D. L. R. 141.—**CAN.**

3573 xv. — — —.] -In order that a subsequent mtgee., who has paid off a prior mtgee., should have priority over the rest, it is sufficient to show that the parties intended that the mtgee. should have the first & only

charge, & it is immaterial whether there was any intention to keep alive the prior mtg.—PANDIT DURGA MISHR v. BALNATH SARAN (1928), I. L. R. 8 Pat. 360.—IND

**PART XIV. SECT. 4, SUB-SECT.**

**3605 xi.** --.|-An owner of land who has paid off a mortgage, thereon is deemed to have extinguished the mortgage, unless it appears from the circumstances of the transaction that he intended to keep it alive for his own benefit.—HOPPS v. BOROWSKI, [1928] 2 D. L. R. 72; [1928] 1 W. W. R. 545; 22 Sask. L. R. 431.—**CAN.**

**PART XV.**

**SC.** *License granted over unpatented land*—*Transfer to third party—Patent issued to third party on payment of arrears.*—**NORTHWEST THRESHER CO. v. BOURDIN** (1910), 15 W. L. R. 181.—**CAN.**

**PART XVI. SECT. 2, SUB-SECT. 3.—B.**

**3770 i. Improvements by mortgagee—Occupation rent not increased—Unless improvements allowed.]—DONOVAN "HANNA. [1926] N. Z. L. R. 883.—N.Z.**

**PART XVI. SECT. 2, SUB-SECT. 4.—A.**

*sl. Mortgagees carrying on business with mortgagor in their employ—Payment of wages—Value of goodwill.*—VAN VOLKENBERG v. WESTERN CANADA RANCHING Co. (1898), 6 B. C. R. 284.—CAN.

**PART XVI. SECT. 2, SUB-SECT. 4. —C.**  
**n l. ———.]—FOSTER v. MORDEN**  
**(1881), 29 G. R. 25.—CAN.**

PART XVII. SECT. 1.

3907 i. *A charge on mortgaged property.*]—MANGHI v. DIAL CHAND (1926), I. L. R. 7 Lah. 559.—IND.

**PART XVII. SECT. 4. SUB-SECT. 2.**

3964 x. ---. | *Re* BROWN, [1928]  
1 D. L. R. 1125; 61 O. L. R. 602.-  
CAN.

PART XVII. SECT. 16.

sm. *Effect of consent to variation of rate of interest.*—MORTLEMAN v. PUBLIC TRUSTEE, [1927] N. Z. L. R. 642.—N.Z.

PART XVIII. SECT. 3, SUB-SECT. 4. —  
G.

**50. Right of mortgagee to set off amount of taxes paid against liability for costs—Parties entitled to costs not liable for taxes.]—FRIESEN v. SASKATCHEWAN MORTGAGE & TRUST CORPN., [1924] 2 D. L. R. 1246; [1924] 2 W. W. R. 608. CAN.**

**PART XVIII. SECT. 13.**

**4398 i. Costs of appeal --How borne. --***Right to payment forthwith.*—A mtgor. & pursue mtgee. having appealed unsuccessfully from an order setting aside the registrar's certificate & directing a new account to be taken.—*Held:* the mtgee. was entitled to have the usual rule, that the cost of an unsuccessful appeal are payable forthwith, adhered to.—CANADA PELEMENT MORTGAGE CORP. v. DALGLEISH, [1928] 3 D. L. R. 59; [1928] 1 W. W. R. 922.—CAN.



## NAME AND ARMS.

### Part I.—Name.

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| <p><b>62a. Costs of compliance.</b>—The tenant for life under a will must pay the expenses of taking testator's name &amp; arms as directed by the will. —<i>Re</i> MERCER, DREWE-MERCER <i>v.</i> DREWE-MERCER (1889), 6 T. L. R. 95.</p> | <p><b>64.</b> <i>Add. Citations</i> :—96 L. J. Ch. 9 ; 136 L. T. 23 ; <i>subsequent proceedings</i>, [1927] 1 Ch. 593.</p> <p><b>64a.</b> — —.]—<i>SEMPLE v. HOLLAND</i> (1863), 33 Beav. 94 ; 55 E. R. 302.</p> |
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## NEGLIGENCE.

## Part I.—General Principles.

- 4a. ———.]—HARGROVE v. BURN (1929), 46 T. L. R. 59.
7. *Add. Annotation*:—**Refd.** Manchester Corpn. v. Farnworth (1929), 46 T. L. R. 85.
9. *Add. Annotation*:—**Refd.** Oliver v. Sadler & Co., [1929] A. C. 584.
12. *Add. Annotations*:—**Consd.** *Re* Munton, Munton v. West, [1927] 1 Ch. 262. **Refd.** *Re* Windsor Steam Coal Co. (1901) Ltd., [1929] 1 Ch. 151.
21. *Add. Annotation*:—**Mentd.** Manchester & County Bank v. Monk (1929), 73 Sol. Jo. 465.
38. *Add. Annotation*:—**Refd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776.
53. *Add. Annotation*:—**Distd.** Oliver v. Sadler & Co., [1929] A. C. 584.
59. *Add. Annotation*:—**Consd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776.
- 59a. ———.]—In Mar. 1926, debts. carried out demolition work on premises adjoining other premises, called X., under a limited licence given by the owners of premises X. One of the conditions of the licence was that debts. should make good all damage done to premises X. by reason of the demolition operations. In the course of the operations debts. allowed debris to drop on an inaccessible part of the roof of premises X. & did not remove all the debris therefrom when the demolition work was completed. In July pltf. became the occupier of premises X. under a lease. In Sept. a heavy storm of rain washed the debris which had been left by debts. on the roof of premises X. into the gutters on the roof, & a gully was choked & the basement of premises X. was flooded, & goods which pltf. kept there were damaged. In an action by pltf. claiming damages for debts.' negligence:—**Held**: there could be no negligence, as there was no duty on the part of debts. towards pltf.—**KONSKIER v. GOODMAN (B.), LTD.**, [1928] 1 K. B. 421; 97 L. J. K. B. 263; 138 L. T. 481; 44 T. L. R. 91, C. A.
- 59b. ———.]—HARGROVE v. BURN (1929), 46 T. L. R. 59.
85. *Add. Annotations*:—**Refd.** Silverman v. Imperial London Hotels (1927), 137 L. T. 57; Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
91. *Add. Annotation*:—**Generally, Mentd.** De Freville v. Dill (1927), 96 L. J. K. B. 1056.
128. *Add. Annotation*:—**Refd.** De Freville v. Dill (1927), 96 L. J. K. B. 1056.
- 131a. ———.]—HARGROVE v. BURN (1929), 46 T. L. R. 59.
143. *Add. Annotation*:—**As to (2) Refd.** Pontardawe Rural District Council v. Moore-Gwyn, [1929] 1 Ch. 656.
151. *Add. Annotation*:—**Refd.** Compania Mexicana De Petroleo El Aguila v. Essex Transport & Trading Co. (1929), 141 L. T. 106.
156. *Add. Annotation*:—**Refd.** S.S. Singleton Abbey v. S.S. Paludina, [1927] A. C. 16.
161. *Add. Annotation*:—**Refd.** II. v. H., [1928] P. 206.
162. *Add. Annotation*:—**Consd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.

## PART I. SECT. 2, SUB-SECT. 1.

33 xxv. ———.]—An action of damages was brought against a firm of ginger beer manufacturers on behalf of two children who had been injured through drinking a bottle of ginger beer, manufactured by defenders, which contained the decayed body of a mouse. The bottle was bought from a retailer, but the mouse, unknown to the manufacturers, was in the bottle when it left their factory. It was possible for mice to enter empty bottles at a factory, but the manufacturers' system of cleansing & inspecting the bottles before filling was the best system known in the trade. There was no affirmative proof of carelessness by any of the manufacturers' servants in carrying out the system:—**Held**: defenders fell to be absolved: on the ground that, as defenders neither knew that the contents of the bottle were dangerous, nor were dealers in articles *per se* dangerous, they owed no duty to the consumers, who had not contracted with them.—**MULLEN v. BARR & CO., LTD.**, *McGowan v. Barr & Co., Ltd.*, [1929] S. C. (Cl. of Sess.) 461.—**SCOT.**

## PART I. SECT. 2, SUB-SECT. 3.—A.

73 iv. ———.]—**PACIFIC STAGES, LTD.**

v. JONES, [1928] 2 D. L. R. 897; [1928] S. C. R. 92.—**CAN.**

## PART I. SECT. 2, SUB-SECT. 3.—C.

77 ii. ———.]—**ARMAND v. CARR & CARR & WILCOX**, [1926] 3 D. L. R. 592; [1926] S. C. R. 575.—**CAN.**

## PART I. SECT. 2, SUB-SECT. 3.—D. (a).

80 xxii. ———.]—**ZEIDEL v. WINNIEPEG ELEC. CO.**, [1928] 3 D. L. R. 570; [1928] 2 W. W. R. 601; 34 Can. Ry. Cas. 267; 37 Man. L. R. 412.—**CAN.**

80 xxiii. ———.]—Even though a motor car is travelling on the right-hand side of the road, the driver is not justified in holding to his course regardless of the consequences, but is bound to exercise reasonable care to avoid injuring others, & owes this duty to the driver of an approaching car even if the latter has not yet complied with the statutory provision requiring him to turn out to the right of the centre of the highway.—**AUDERT v. WETSCH**, [1928] 3 W. W. R. 655.—**CAN.**

82 vii. ———.]—Persons lawfully doing a work which interferes with a public right, *e.g.* contractors working on a highway, must use

reasonable care not to injure persons lawfully exercising that right, & therefore, must take reasonable precautions to warn such persons of dangers created by the doing of the work which the latter could not with reasonable care discover.—**MCCULLOCH v. STAR CONSTRUCTION CO.**, [1928] 1 D. L. R. 970; [1928] 1 W. W. R. 211; 22 Sask. L. R. 231.—**CAN.**

## PART I. SECT. 2, SUB-SECT. 3.—F.

93 i. *Carriers*.]—A motor vehicle owned by two debts. was being driven by one of them, L., & pltf. was injured in a collision which followed:—**Held**: pltf., though not a passenger for hire, could maintain an action for damages for his injuries, want of ordinary & reasonable care on the part of L. being shown.—**PARLOV v. LOZINA & ITAOLOVICH** (1920), 47 O. L. R. 376; 18 O. W. N. 139.—**CAN.**

## PART I. SECT. 4, SUB-SECT. 2.—A.

132 iv. *Revsd.*, [1919] 1 W. W. R. 806.

## PART I. SECT. 4, SUB-SECT. 3.—B.

171 iv. ———.]—**STEPHEN v. McNEILL**, [1928] 4 D. L. R. 172; [1928] 3 W. W. R. 182.—**CAN.**

## Part II.—Negligence in regard to Property.

208. *Add. Annotations* :—**Consd.** *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 138 L. T. 681. **Apld.** *Compania Mexicana De Petroleo El Aguila v. Essex Transport & Trading Co.* (1929), 141 L. T. 106. **Refd.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57; *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776; *The Hayle*, [1929] P. 275.
209. *Add. Annotation* :—**Refd.** *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
213. *Add. Annotation* :—**Refd.** *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
217. *Add. Annotations* :—**Refd.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57; *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
219. *Add. Annotation* :—**Refd.** *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
223. *Add. Annotations* :—**As to** (1) **Consd.** *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776; *Addie (R.) & Sons (Collieries) v. Dumbreck*, [1929] A. C. 358. **As to** (2) **Consd.** *Compania Mexicana De Petroleo El Aguila v. Essex Transport & Trading Co.* (1929), 141 L. T. 106. **Generally, Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
256. *Add. Annotations* :—**As to** (1) **Consd.** *Addie R. & Sons (Collieries) v. Dumbreck*, [1929] A. C. 358. **Refd.** *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681. **Generally, Refd.** *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
261. *Add. Annotations* :—**Refd.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
- 267a. **Proprietor of Turkish baths—Dangerous insects.**—**Circumstances** (*see* *CONTRACT*, No. 5168a, *ante*), in which :—**Held** : apart from contract, debts, were under an obligation to a person using their premises to abstain from negligence, & if they, knowing of the danger, did not take sufficient precautions & such person were injured, he could recover.—**SILVERMAN v. IMPERIAL LONDON HOTELS, LTD.** (1927), 137 L. T. 57; 43 T. L. R. 260.
291. *Add. Annotations* :—**Consd.** *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776. **Refd.** *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.
304. *Add. Annotation* :—**As to** (1) **Consd.** *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.
309. *Add. Annotation* :—**Consd.** *Addie R. & Sons (Collieries) v. Dumbreck*, [1929] A. C. 358.
321. *Add. Annotation* :—**Refd.** *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
322. *Add. Citations* :—136 L. T. 681; 91 J. P. 69; 25 L. G. R. 91.  
*Add. Annotation* :—**Distd.** *Colleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.

## Part III.—Negligence in relation to Highways.

396. *Add. Annotation* :—**Apld.** *Brooke v. Bool*, [1928] 2 K. B. 578.
- 421a. **Parties—Defendant Insured—Institution of third party proceedings against insurer.**—

### PART II. SECT. 1, SUB-SECT. 2.—B. (a).

247 xi. ———.]—**GUILFOIL v. McAVITY (T.) & SONS, LTD.** (N. B.), [1927] 3 D. L. R. 672.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 2.—B. (f).

sb. *Public Library Board.*—**Held** : liable for injury sustained by pltf., by a fall upon an icy step of the public library building, which she was leaving after exchanging books in the library.—**NICKELL v. CITY OF WINDSOR**, [1927] 1 D. L. R. 379; 59 O. L. R. 618.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 2.—C.

268 iv. ———.]—**Pltf.**, looking for employment, came by permission of lefts. foreman upon their premises during the erection thereon of a building, & spoke to the foreman at the foot of a stair. The foreman told him to wait there, or wait where he was & he would see about him. Pltf. was injured by a piece of wood, part of an open hoist, which some time afterwards fell upon him when he was in another part of the premises.—**Held** : although pltf. was an invitee, the invitation to remain was limited, & did not justify him in leaving the place indicated & going to another part of the premises where there was danger; he had no right to be where he was when struck & debts. In the circumstances owed him no duty.—**I. D. L. R. 233; 61 O. L. R. 416.—CAN.**

### PART II. SECT. 1, SUB-SECT. 3.—A.

285 ii. ———.]—*Children walking along track.*—**ACADIA COAL CO. v. McNEIL**, [1927] 3 D. L. R. 871, [1927] S. C. R. 497; 33 Can. Ry. Cas. 49.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 3.—B. (a).

286 xiii. ———.]—**ACADIA COAL CO. v. McNEIL**, [1927] 3 D. L. R. 871, [1927] S. C. R. 497, 33 Can. Ry. Cas. 49.—**CAN.**

### PART II. SECT. 3, SUB-SECT. 2.—A.

342 xvi. ———.]—**Deft.**, who set fire to orchard prunings & brush which he had piled up on his land, held to have been negligent in failing to take proper precautions to see that the fire did not get beyond his control to the injury of pltf.'s adjoining property.—**MARTIN v. HUTTON**, [1928] 2 W. W. R. 33.—**CAN.**

342 xvii. ———.]—**McRURY v. DOMINION COAL CO., LTD.** (1896), 40 N. S. R. 89.—**CAN.**

### PART III. SECT. 9, SUB-SECT. 1.—B.

g (p. 59) i. ———.]—**Driving in fog.**—The driver of a tramcar when driving in a fog should keep his car under such control that he may stop it within the limits of his vision.—**VANCOUVER ICE & STORAGE CO. v. BRITISH COLUMBIA ELECTRIC RY. CO.**, [1927] 1 W. W. R. 631; 38 B. C. R. 234.—**CAN.**

h (p. 60) i. ———.]—The driver of a motor vehicle upon city streets may be grossly negligent if his car is travelling at the permitted speed of

20 miles per hour, or even at a much lower rate of speed; what is an excessive rate must depend upon the circumstances of each case. In this case, where there was a collision of motor vehicles at the intersection of two city highways :—**Held** : the driver of the vehicle on the right had not such a clear view of approaching traffic as made it safe to approach the intersection at the rate at which his vehicle was travelling—15 miles an hour or more.—**MARTIN v. POWELL, POWELL & MARTIN**, [1928] 1 D. L. R. 149; 62 O. L. R. 436.—**CAN.**

1 i. ———.]—**COLLINS v. GENERAL SERVICE TRANSPORT CO. (B. C.)**, [1927] 2 D. L. R. 353.—**CAN.**

1ii. ———.]—**SCHONBERNER v. BARRON (Alta.)**, [1927] 3 D. L. R. 708, [1927] 2 W. W. R. 417.—**CAN.**

386 x. ———.]—**SOLOMON v. MURRETT & BRIGHT, LTD.**, [1926] App. D. 427.—**S. AF.**

386 xi. ———.]—A motor truck proceeding westerly upon a highway was about 5 feet from the south kerb, when, as it approached an intersecting highway, it struck a boy riding a bicycle & injured him. In an action to recover damages for the injury from the owner of the truck alleging negligence of the driver, the trial judge directed the jury as a matter of law that they were entitled to find the driver negligent, from the one circumstance that he was on the wrong side of the highway :—**Held** : misdirection, & a new trial was ordered.—**ALLEN v.**

(1) As a general rule, in the absence of special circumstances, the insurance co. which has issued a motorist's insurance policy should not be brought in as a third party at the hearing of an action for damages by the injured party against the motorist.

(2) It is a well established rule of practice at the Bar, enforced by the judges, that in an action against a motorist the jury should not be informed that deft. is insured.—

GOWAR v. HALES, [1928] 1 K. B. 191; 96 L. J. K. B. 1088; 137 L. T. 580, C. A.

Annotations:—As to (1) *Reid*, Grinham v. Davies (1928), 139 L. T. 379. As to (2) *Appl.* Grinham v. Davies (1928), 139 L. T. 379.

421b. ————]—LOTHIAN v. EPWORTH PRESS (1926), [1928] 1 K. B. 199, n.; 96 L. J. K. B. 1092, n.; 137 L. T. 582, n., C. A.

Annotation:—*Distd.* Gowar v. Hales, [1928] 1 K. B. 191.

## Part VII.—Children.

450. *Add. Annotation:—Expld.* Addie R. & Sons (Collieries) v. Dumbreck, [1929] A. C. 358.

457. *Add. Annotation:—Apprvd.* Addie R. & Sons (Collieries) v. Dumbreck, [1929] A. C. 358.

457a. — .]—A boy four years of age was killed by being crushed in the terminal wheel of a haulage system belonging to a colliery co. The system, which was used for depositing ashes on a bing situated in a field adjoining the colliery, consisted of an endless wire cable operated from time to time, as might be necessary, from the pithead by an electric motor, while at the other end of the system, which was not visible from the pithead, there was a heavy horizontal iron wheel round which the cable passed & returned. The field was surrounded by a hedge, which was quite inadequate to keep out the public, & it was, to the knowledge of the colliery

co., used as a playground by young children. The colliery officials at times warned children out of the field, but their warnings were disregarded. The wheel was dangerous & attractive to children, & at the time of the accident it was insufficiently protected. The accident occurred owing to the wheel being set in motion by the colliery servants without taking any precaution to avoid accident to persons frequenting the field. The boy had been warned by his father not to go near the field or the wheel. In an action for damages by the father against the co.:—*Held*: the boy was a trespasser & went on the colliery premises at his own risk, & the co. owed him no duty to protect him from injury.—ADDIE R. & SONS (COLLIERIES) v. DUMBRECK, [1929] A. C. 358; 98 L. J. P. C. 119; 140 L. T. 650; 45 T. L. R. 267; 34 Com. Cas. 214, H. L.

LORD, [1928] 4 D. L. R. 62; 62 O. L. R. 433.—CAN.

*se. Failure to give signal.—Of intention to turn.*—It is incumbent upon the driver of a vehicle, who desires to change his course & to turn into another street, to give a warning to that effect, & to turn the corner at a pace which will give him complete control over his vehicle.—UYS v. UYS, [1927] App. D. 394.—S. AF.

*st. Lack of sufficient control.*—The driver of an automobile should have his car under such control that he is able to come to a stop in the space which he sees clear ahead.—MACGILL v. HOLMES (1927), 39 B. C. R. 65.—CAN.

PART III. SECT. 9, SUB-SECT. 1.—C.

*Vehicle driven by third party.—With owner's permission.*—*See* AGENCY, Nos. 2317 H a-1, *ante*.

PART III. SECT. 9, SUB-SECT. 1.—D.

401 i. *Duty of driver to give place to pedestrian.*—ELLIOTT v. JOHNSON, [1929] 1 D. L. R. 208; [1928] S. C. R. 408.—CAN.

402 i. *Injury must be attributable to negligence of driver.—Effect of contributory negligence of pedestrians.—Effect of bye-law against "jay-walking."*—CHESTER v. KINNEAR (Alta.), [1927] 1 D. L. R. 47; [1926] 3 W. W. R. 601.—CAN.

402 ii. ———— *Duty of tramcar*

*drivers.*—SYMONS v. WINNIPEG ELECTRIC CO. (Man.), [1928] 1 D. L. R. 159; [1927] 3 W. W. R. 650.—CAN.

402 iii. ————]—HOARE v. INVERARITY (1926), 29 W. A. L. R. 67.—AUS.

PART III. SECT. 9, SUB-SECT. 2.

413 i. *Defective steering gear of motor car.—Knowledge of defect.*—MOIR v. HILL (1927), 30 W. A. L. R. 56.—AUS.

PART VII. SECT. 1.

433 i. *Liability dependent on breach of duty.—Public park close to railway.*—*Held*: there was no obligation on the corpn. owning the park to build a fence to separate it from the railway.—RICHARDSON v. CANADIAN NATIONAL RY. CO., [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—CAN.

PART VII. SECT. 2, SUB-SECT. 2.—B.

445 i. *Duty to guard against—Trap or lure.—Moving freight train.*—PINKAS & PINKAS v. CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 321.—CAN.

PART VII. SECT. 2, SUB-SECT. 2.—C.

450 vii. ————]—HAYMAN v. CITY PROPERTY INVESTMENT TRUST CORPN., LTD., [1929] S. C. (H. L.) 65.—SCOT.

PART VII. SECT. 2, SUB-SECT. 3.

454 x. ————]—PINKAS & PINKAS v.

CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 321.—CAN.

458 i. *Licensee.*—ACADIA COAL CO. v. McNEIL, [1927] 3 D. L. R. 871; [1927] S. C. R. 497; 33 Can. Ry. Cas. 49.—CAN.

458 ii. ————]—EDWARDS v. LONDON MIDLAND & SCOTTISH RY. CO., [1928] S. C. (Ct. of Sess.) 471.—SCOT.

PART VII. SECT. 4, SUB-SECT. 1.

469 iii. ————]—A woman went with her child two & a half years old to the defts.' shop to buy clothing for both. While there a mirror fixed in the wall, & in front of which the child was, fell & injured him:—*Held*: It was a question for the jury whether the mirror fell without any active interference on the child's part; if so, that in itself was evidence of negligence; but if not, the question for the jury would be whether defts. were negligent in having the mirror so insecurely placed that it could be overturned by a child; & if that question was answered in the affirmative, the child, having come upon defts.' premises by their invitation & for their benefit, would not be debarred from recovering by reason of his having directly brought the injury upon himself.—SANGSTER v. EATON (T.) & CO., LTD. (1894), 25 O. R. 78; *affd.* (1894), 21 A. R. 624; *affd.* (1895), 24 S. C. R. 708.—CAN.

## Part VIII.—Liability of Persons Jointly Interested.

### 473a. Liability of party in control of proceedings.]

—Circumstances (*see* AGENCY, No. 2318b, *ante*) in which:—*Held*: the landlord was liable for the damage, on the grounds (*inter alia*) of (a) control of the proceedings, & (b) a joint tortious enterprise, & (c) that, having undertaken the examination, he was

under a duty to take reasonable care to avoid damage resulting from it, & could not escape liability by getting some one else to make the examination or part of it for him.—*BROOKE v. BOOL*, [1928] 2 K. B. 578; 97 L. J. K. B. 711; 139 L. T. 376; 44 T. L. R. 531; 72 Sol. Jo. 354, D. C.

## Part IX.—Proof of Negligence.

501. *Add. Annotation*:—*Mentd.* Campbell Pollak, [1927] A. C. 732.

565. *Add. Annotation*:—*Refd.* Broome v. Agar (1928), 138 L. T. 698.

578. *Add. Annotation*:—*Refd.* Manchester Corpn. v. Farnworth (1929), 46 T. L. R. 85.

### PART VIII.

474 i. *Joint liability*—*Co-owners of vehicle*—*Negligent driving*.—*McEwen v. ARMOUR*, [1928] 2 D. L. R. 958.—CAN.

477 i. *What defendants may be joined*—*Separate torts*.—*ENDERBY v. SCOTT & WANGANUI CITY*, [1928] N. Z. L. R. 407.—N.Z.

### PART IX. SECT. 1, SUB-SECT. 1.

sg. *Wilful neglect*—*A question of law*.]—The term "wilful neglect" has a special significance in law, as established by judicial decisions, & the question whether facts established in the case amounted to "wilful neglect" is a question of law & not of fact.—*SECRETARY OF STATE v. GHANAYA LAL-SRI KISHAN* (1928), 1 L. R. 10 Lah. 329.—IND.

### PART IX. SECT. 1, SUB-SECT. 2.—A.

sh. *Non-suit*—*Based upon answers to interrogatories*—*Effect of defendants tendering no further evidence*.] *KIRBY v. PALMER*, [1928] 1 W. W. R. 968, 37 Man. L. R. 277.—CAN.

### PART IX. SECT. 1, SUB-SECT. 2.—B.

485 i. *General rule*.]—While the general rule of law is that a judge may withdraw an action for negligence from the jury & non-suit plff., where, on the undisputed facts of the case, it appears that the accident was directly caused by plff.'s own negligence, although there may have been, on the facts, some negligence on the part of defts., yet this power should not be exercised unless the evidence is so strong that it would be wholly unreasonable for the jury to find that plff. had not caused the accident by his own negligence.—*ERICKSON v. CANADIAN PACIFIC RY.*, [1928] 3 W. W. R. 694; *affg.*, 22 Sask. L. R. 299.—CAN.

### PART IX. SECT. 1, SUB-SECT. 3.

544 xxii. —.—.]—*Held*: there being a dispute as to the facts from which the inference of contributory negligence was to be drawn, the question was properly left to the jury by the trial judge for the jury to decide.—*ANSON v. BLACK & WHITE CABS, LTD.*, *BLACK & WHITE CABS, LTD. v. ANSON*, [1928] N. Z. L. R. 321.—N.Z.

### PART IX. SECT. 1, SUB-SECT. 4.—A.

554 iii. —.—.]—*HOYT'S PROPRIETARY*

*LTD. v. O'CONNOR*, [1928] V. L. R. 222; [1928] Argus L. R. 117, 10 C. L. R. 566. AUS.

554 iv. —.—.]—*Non-direction* is a ground for granting a new trial only when it produces a verdict against the evidence.—*MOUTAIN v. EDMONTON CITY*, [1928] 1 D. L. R. 697; [1928] 3 W. W. R. 270. CAN.

### PART IX. SECT. 1, SUB-SECT. 4.—B.

561 ii. —.—.] *HARRIS v. HEALING A. G. & Co. PTY., LTD.*, [1927] S. A. S. R. 131. AUS.

### PART IX. SECT. 1, SUB-SECT. 4.—C.

565 xiv. —.—.]—*DAVISON v. CONRAD* (1924), 58 N. S. R. 218.—CAN.

565 xvi. —.—.]—*ANSON v. BLACK & WHITE CABS, LTD.*, [1928] N. Z. L. R. 321.—N.Z.

565 xlvii. —.—.]—*DALGETTY v. RUDAL ELECTRIC RY. CO.* (1928), 62 O. L. R. 613. CAN.

### PART IX. SECT. 1, SUB-SECT. 4.—D.

hi. —.—.]—*Inconclusive*.] *MARSHMAN v. McDOWELL*, [1928] S. R. Q. 308. AUS.

ri. —.—.]—*PEDLOW v. CANADIAN NATIONAL RY. CO.*, [1928] 1 D. L. R. 776, 62 O. L. R. 181. CAN.

sj. *Damages assessed on wrong principle*.]—Where damages have been assessed on a wrong principle a new trial will be ordered.—*DRYDEN v. ORR* (1928), 28 S. R. N. S. W. 216, 15 N. S. W. W. N. 14.—AUS.

### PART IX. SECT. 2, SUB-SECT. 1.—A.

573 xxvi. —.—.] *CHIPPENDALE v. WINNIPEG ELECTRIC CO.*, [1928] 1 D. L. R. 920; [1928] 1 W. W. R. 238; 37 Man. L. R. 207.—CAN.

### PART IX. SECT. 2, SUB-SECT. 1.—B.

581 xxi. —.—.]—*BLACKER v. WATERS* (1928), 28 S. R. N. S. W. 406; 15 N. S. W. W. N. 111.—AUS.

### PART IX. SECT. 4, SUB-SECT. 1.

589 xiii. —.—.]—*Tooth in patient's lung after extraction of teeth*.—*Held*: the maxim *res ipsa loquitur* did not apply.—*McTAGGART v. POWERS*, [1927] 1 D. L. R. 28; 36 Man. L. R. 73; [1926] 3 W. W. R. 513.—CAN.

580a. —.—.]—*MARGROVE v. BURN* (1929), 40 T. L. R. 59.

601. *Add. Annotation*:—*Refd.* Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Same, [1927] 2 K. B. 432.

589 xiv. —.—.]—*Fault possibly due to action of third party*.]—Observations upon the applicability of the maxim *res ipsa loquitur* in cases where there is a possibility that the fault may be due to the action of a third party.—*MACGREGOR*, [1927] S. C. 816.—SCOT.

589 xv. —.—.]—*HENDERSON v. MAIR*, [1928] S. C. 1.—SCOT.

589 xvi. —.—.]—*Dangerous article thrown from train*.]—*HOFFMAN v. NIELSEN*, [1928] S. R. Q. 361; 22 Q. J. P. R. 117.—AUS.

589 xvii. —.—.]—*SEREDITUK v. POSNER*, [1928] 1 D. L. R. 618; [1928] W. W. R. 258, 37 Man. L. R. CAN.

596 i. *Sparks from a* there being evidence justify the jury in drawing the inference that the fire was occasioned by a spark from the engine, it was not necessary for plff. to show negligence in the operation of the engine. *MORWICK v. PROVINCIAL CONTRACTING CO., LTD.* (1923), 35 O. L. R. 71.—CAN.

gi. —.—.] *BUENSIDE v. REID*, [1928] 2 D. L. R. 303. CAN.

sk. *Rebuttal of presumption*.]—*Held* assuming the maxim *res ipsa loquitur* applied, defender would still be entitled to succeed in respect (1) that he had offered several reasonable explanations of the accident, & so had discharged the *onus* laid upon him by the application of that maxim, & (2) that, in any event, he had definitely disproved negligence on his part.—*HENDERSON v. MAIR*, [1928] S. C. 1.—SCOT.

### PART IX. SECT. 4, SUB-SECT. 2.

sl. *Application of maxim*.]—There being no evidence showing how an accident happened: *Held*: the maxim *res ipsa loquitur* did not apply. *RICHARDSON v. CANADIAN NATIONAL RY. CO.*, [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—CAN.

sm. —.—.]—The distinction between cases in which the maxim *res ipsa loquitur* applies & those in which the cause of the accident is unknown, referred to.—*McCLINTOCK v. WINNIPEG ELECTRIC CO.*, [1927] 3 D. L. R. 519; [1927] 2 W. W. R. 226; 33 Can. Ry. Cas. 39. 36 Man. L. R. 497.—CAN.

## Part X.—Defences.

- 628.** *Add. Annotation* :—**Refd.** Cleghorn v. Oldham (1927), 43 T. L. R. 405.
- 633.** *Add. Annotations* :—**Refd.** Dew v. United British S.S. Co. (1928), 139 L. T. 628. **Mentd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hudson [1929] 1 K. B. 103.
- 636a.** ———.—**Pltfs.**, stevedores at the port of Tampico, in Mexico, undertook to load a steamship of defts., the Essex Isles, with kerosine & gasoline. The cargo being of a dangerous character, **pltfs.**, who had had much experience in handling such cargoes, stipulated that they should have entire control of the loading. While the loading was in progress an explosion occurred, which killed & injured many of the workmen engaged & destroyed the ship. There was no direct evidence as to the cause of the explosion. **Pltfs.** brought an action against defts. for damages, & it was found as a fact that the explosion was caused by a spark made by a beam which fell into the hold, the fall of the beam being caused by a blow from a tray which was being hoisted by **pltfs.** men from the hold. **Pltfs.** contended that if the beam had been properly secured by bolts it would not have fallen, & they said that defts. had been negligent in leaving the beam unbolted. Defts. contended that the proximate cause of the explosion was the negligence of **pltfs.** in not hoisting the tray with proper care, & they counter-claimed for the loss of their ship :—**Held** : on the facts the ship-owners had not been guilty of negligence in leaving the beam unbolted, or that if they had been guilty of negligence in so leaving it **pltf.** stevedores knew, or ought to have known, that the beam was unbolted, & took the risk ; & the stevedores themselves had been negligent in failing to use proper care in hoisting the tray.—*COMPANIA MEXICANA DE PETROLEO EL AGUILA v. ESSEX TRANSPORT & TRADING CO., LTD.* (1929), 141 L. T. 106 ; 34 Com. Cas. 198, C. A.
- 658.** *Add. Annotation* :—**Consd.** Brooke v. Bool, [1928] 2 K. B. 578.
- 662a.** ———.—**A firm** of stevedores employed by a shipowner & a portage co. employed by the consignee of the ship's cargo were engaged in unloading a ship. The cargo consisted of bags of maize, which were made up into loads by the stevedores & held together by rope slings provided by the stevedores, & the bags were then raised by the stevedores from the hold to a steelyard on the deck. The stevedores' duty ended with the deposit of the bags on the steelyard, from which they were transported to the dock by the portage co. by means of a dock crane. The stevedores gratuitously permitted the portage co. to use their slings, which were already round the bags, for the transport of the bags to the dock, & it was a matter of mutual convenience that the same slings should be used throughout. The stevedores employed a servant specially charged with the duty of inspecting the slings, & as the stevedores knew, the porters relied on the care of the stevedores for the safety of the slings. A sling broke while the bags were being transported from the steelyard to the dock, & the bags fell & killed a servant of the portage co. In an action of damages brought by his dependants against the stevedores :—**Held** : in the special circumstances of the case the firm of stevedores owed a duty to the porters to see that the sling was in a fit condition to take the weight of the load entrusted to it, & on the facts, the finding of the Lord Ordinary that they had failed to discharge that duty ought not to be disturbed.—*CHAPMAN OR OLIVER v. SADDLER & CO.*, [1929] A. C. 584 ; 98 L. J. P. C. 87 ; 141 L. T. 305 ; 45 T. L. R. 456 ; 34 Com. Cas. 277, H. L.
- 667.** *Add. Annotation* :—**Apld.** Brooke v. Bool, [1928] 2 K. B. 578.
- 674.** *Add. Annotation* :—**Refd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
- 695.** *Add. Annotations* :—**Refd.** G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57 ; *St. Anne's Well Brewery Co. v. Roberts* (1928), 140 L. T. 1.
- 703.** *Add. Annotation* :—**Dbtd.** G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57.
- 704.** *Add. Annotation* :—**Dbtd.** G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57.
- 705.** *Add. Annotations* :—**Consd.** G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57. **Refd.** Witham Outfall Board v. Boston Corpn. (1926), 136 L. T. 756 ; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159. **Mentd.** Tolley v. Fry (J. S.) & Sons (1929), 40 T. L. R. 108.
- 706.** *Add. Citations* :—**Revsd. sub. nom.** GREAT WESTERN RY. CO. v. MOSTYN (OWNERS), THE MOSTYN, [1928] A. C. 57 ; 97 L. J. P. 8 ; 138 L. T. 403 ; 92 J. P. 18 ; 44 T. L. R. 179 ; 72 Sol. Jo. 16 ; 20 L. G. R. 91 ; 17 Asp. M. L. C. 367, H. L.
- Add. Annotations* :—**Refd.** Witham Outfall Board v. Boston Corpn. (1926), 136 L. T. 756 ; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
- 722.** *Add. Annotations* :—**Consd.** Forbes, Abbot & Lennard v. G. W. Ry. (1927), 138 L. T. 286 ; G. W. Ry. v. Durnford (1928), 139 L. T. 145. **Refd.** Marbe v. George Edwardes (Daly's Theatre) (1927), 138 L. T. 51 ; *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57 ; *Livock v. Pearson* (1928), 33 Com. Cas. 188. **Mentd.** Marbé v. George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460 ; *Wallem's Rederij A./S. v. Muller, Batavia*, [1927] 2 K. B. 99 ; *Gaze W. H. & Sons v. Port Talbot Corpn.* (1929), 93 J. P. 89 ; *Great Western Ry. v. Monmouthshire County Council* (1929), 93 J. P. 142.

## PART X. SECT. 1, SUB-SECT. 2.—A.

622 ix. ———.—**REID v. MIMICO**, [1927] 1 D. L. R. 235 ; 59 O. L. R. 579.—**CAN.**

## PART X. SECT. 8.

719 i. ———.—*Professional assistance called in—Local authority providing medical attention.*—**Hospital liable for**

the negligence of nurses after an operation.—*NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD*, [1927] 1 D. L. R. 969 ; [1927] S. C. R. 226.—**CAN.**

## Part XI.—Contributory Negligence.

- 726.** *Add. Annotation* :—**Apld.** *Service v. Sundell* (1929), 45 T. L. R. 569.  
**729.** *Add. Annotations* :—**Apld.** *Service v. Sundell* (1929), 45 T. L. R. 569. **Consd.** *Cooper v. Swadling* (1929), 46 T. L. R. 73.  
**731.** *Add. Annotation* :—**Refd.** *The Vectis*, [1929] P. 204.  
**735.** *Add. Annotation* :—**Apld.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.  
**736a.** **Jury unable to decide liability.**—In an action for damages for personal injuries alleged to have been caused by deft.'s negligent driving of a motor car, the jury found that there was negligence on both sides, but they were unable to agree on the question whose negligence was really responsible for the accident :—**Held** : on this verdict judgment could not be given for either party.—**SERVICE v. SUNDELL**, (1929), 46 T. L. R. 12 ; 73 Sol. Jo. 729, C. A.  
*Annotation* :—**Expld.** *Cooper v. Swadling* (1929), 46 T. L. R. 73.  
**743.** *Add. Annotations* :—**Dbtd.** *Service v. Sundell* (1929), 45 T. L. R. 569. **Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.  
**745.** *Add. Annotation* :—**Refd.** *Hargrove v. (1929)*, 46 T. L. R. 59.  
**751.** *Add. Annotations* :—**Apprvd.** *Cooper v. Swadling* (1929), 46 T. L. R. 73. **Apld.** *Hargrove v. Burn* (1929), 46 T. L. R. 59. **Refd.** *The Vectis*, [1929] P. 204.  
**765a.** —.]—The fact that a man was killed while endeavouring to cross in front of an electric tramcar at the intersection of two streets in a town, at a place where the rules of the tramway co. laid down that " the speed must be reduced & the car kept carefully under control," is not evidence of recklessness on his part amounting to contributory negligence sufficient to free the co. from liability for the accident, the jury having found that the driver of the tramcar was in fault.—**TORONTO RY. CO. v. KING**, [1908] A. C. 260 ; 77 L. J. P. C. 77 ; 98 L. T. 650, P. C.  
**770a.** —.]—**HARGROVE v. BURN** (1929), 46 T. L. R. 59.  
**781.** *Add. Annotations* :—**Distd.** *Compania Mexicana De Petroleo El Aguila v. Essex Transport & Trading Co.* (1929), 141 L. T. 106. **Apld.** *Service v. Sundell* (1929), 45 T. L. R. 569. **Consd.** *Cooper v. Swadling* (1929), 46 T. L. R. 73 ; *Hargrove v. Burn* (1929), 46 T. L. R. 59.  
**781a.** —.]—**HARGROVE v. BURN** (1929), 46 T. L. R. 59.  
**781b.** —.]—In an action for damages under Lord Campbell's Act brought by pltf. in respect of the death of her husband, who had been killed in a collision between his motor bicycle & deft.'s motor car, the judge directed the jury that, if they found that the accident was due to the negligence of both parties substantially, there would be contributory negligence on the part of the deceased man & both would be to blame, & the jury would have to find for deft. :—**Held** : the jury should have been directed that if the deceased man was guilty of negligence, but deft. could by exercising reasonable care have avoided the collision, they were still entitled to find for pltf. **COOPER v. SWADLING** (1929), 46 T. L. R. 73, C. A.  
**782.** *Add. Annotations* :—**Consd.** *The Vectis*, [1929] P. 201. **Mentd.** *The Backworth*, [1927] P. 256.  
**783.** *Add. Annotation* :—**Refd.** *The Vectis*, [1929] P. 204.  
**784.** *Add. Annotation* :—**Refd.** *Cooper v. Swadling* (1929), 46 T. L. R. 73.  
**784a.** —.]—**HARGROVE v. BURN** (1929), 46 T. L. R. 59.

**PART XI. SECT. 1, SUB-SECT. 1.**

- 726 ix.** —.—.] KENZIE v. HAIR  
(Sask.), [1927] 3 D. L. R. 839.—**CAN.**
- 726 x.** —.—.] JOHNSTON v. MCORM-  
RAN (B. C.), [1927] 4 D. L. R. 335;  
[1927] 3 W. W. R. 37.—**CAN.**
- 726 xi.** —.—.] PEACOCK v. STEPHENS  
(Sask.), [1927] 4 D. L. R. 1057; [1927]  
3 W. W. R. 570.—**CAN.**
- 732 lxviii.** —.—.] McLAUGHLIN v.  
LONG, [1927] 2 D. L. R. 186; [1927]  
S. C. R. 303; *varying*, [1926] 3 D. L. R.  
918.—**CAN.**
- 732 lix.** —.—.] The statutory *onus*  
on the driver of a motor car of showing  
that loss or damage resulting from its  
use did not arise from his negligence  
does not operate to compel the ct.  
to hold to be negligence that which  
would not otherwise be negligence or  
to refuse to give effect to the defence  
of contributory negligence where the  
evidence supports it, but merely goes  
to the burden of proof.—HUDEN R.  
FOXON, [1928] 3 W. W. R. 245.—**CAN.**

**PART XI, SECT. 1, SUB-SECT. 2.—A.**

- 744 xxxii. —.]—DAVIDE v. JOHN-  
SON & McDONALD, LTD. (1926), 59  
N. S. R. 76.—CAN.
- 744 xxxiii. —.]—BALLANTINE v.  
INTERNATIONAL RY. CO., [1927] 4  
D. L. R. 951; 61 O. L. R. 273.—CAN.
- 744 xxxiv. —.]—Where in an  
action for damages arising out of

the collision of two motor cars at the crossing of two roads it was proved that deft. had been negligent in not keeping a proper look out, but it was also proved that the driver of pltf.'s car had seen deft.'s car at a considerable distance from the crossing, but had ignored it, considering as he was on the main road & had the right of way he could continue his course.

*Weld*: the driver of pltf.'s car had not acted reasonably in ignoring the approaching car on the assumption that deft. would respect his right of way, & he had been guilty of contributory negligence which disentitled pltf. from succeeding. *ROBINSON BROS. v. HENDERSON*, [1928] App D. 138.

**744 xxxv.** .] TREVOR-SMITH v. WALTERS (1928), 19 N. L. R. 351. S. AF.

744 xxxvi. — .] The fact that the gates at a railway crossing have been left open does not excuse a person approaching the track from taking reasonable precautions before crossing it in order to discover whether a train is coming. — MICHALINSKI v. CANADIAN PACIFIC RAILWAY CO., [1928] 3 W. W. R. 238. CAN.

**PART XI. SECT. 1, SUB-SECT. 2.—B.**

- 771 xxxix. *Subsequent proceedings.*  
[1923] 4 D. L. R. 727 ; [1923] S. C. R.  
730 : [1923] 3 W. W. R. 938.

driver of the tramcar was in fault.—TORONTO  
RY. CO. v. KING, [1908] A. C. 260; 77 L. J.  
P. C. 77; 98 L. T. 650, P. C.

**770a.** ———. —HARGROVE *v.* BURN (1929), 46  
T. L. R. 59.

**781. Add. Annotations :—****Distd.** *Compania Mexicana De Petroleo El Aguila v. Essex Transport & Trading Co.* (1929), 141 L. T. 106. **Apld.** *Service v. Sundell* (1929), 45 T. L. R. 569. **Consd.** *Cooper v. Swadling* (1929), 46 T. L. R. 73; *Hargrove v. Burn* (1929), 46 T. L. R. 59.

**781a.** —.] —HARGROVE v. BURN (1929), 46  
T. L. R. 59.

**781b.** ---.]- In an action for damages under Lord Campbell's Act brought by plff. in respect of the death of her husband, who had been killed in a collision between his motor bicycle & deflt.'s motor car, the judge directed the jury that, if they found that the accident was due to the negligence of both parties substantially, there would be contributory negligence on the part of the deceased man & both would be to blame, & the jury would have to find for deflt.:—*Held*: the jury should have been directed that if the deceased man was guilty of negligence, but deflt. could by exercising reasonable care have avoided the collision, they were still entitled to find for plff. *COOPER v. SWADLING* (1929), 46 T. L. R. 73, C. A.

**782.** *Add. Annotations* :—**Consd.** The Vectis, [1929] P. 201. **Mentd.** The Backworth, [1927] P. 256.

**783.** *Add. Annotation :—***Refd.** The Vectis, [1929] P. 204.

**784.** *Add. Annotation :- Refd. Cooper v. Swadling*  
(1929), 46 T. L. R. 73.

**784a.** ———.] —HARGROVE v. BURN (1929), 46  
T. L. R. 59.

771 lv. ---.]—HEALING (A. G.) & CO. PROPRIETARY, LTD. v. HARRIS (1927), 39 C L R. 560; [1927] Argus L. R. 386.—AUS.

771 *lvi.* —.]—*PENROSE v. BARR*  
(B. C.), [1927] 4 D. L. R. 407; [1927]  
3 W. W. R. 104.—CAN.

771 Ivil. .] —HAMILTON v. PAL-  
LISER HOTEL AUTO & TAXI CO., LTD.,  
[1928] 4 D. L. R. 962, [1928] 3  
W. W. R. 497.—CAN.

**PART XI. SECT. 2.**

782 xvi. —.]—HOARE v. IN-  
VERARFFY (1926), 28 W. A. L. R. 125.—  
AUS.

**782 xvii.** — [.] **ERICKSON v. CAMP-**  
**BELL'S, LTD.** (1928), 39 B. C. R. 472.—  
**CAN.**

**h i. Contributory Negligence Act, 1925**  
**---Application of.** In applying above Act, the questions which the trial judge should ask himself are: "By whose fault was the accident caused? By one of the parties only, or by both parties, & if so, in what proportions?"  
**HAUPER v. McLEAN, [1928] 2 D. L. R. 220; [1928] 1 W. W. R. 444; 39 B. C. R. 426- C.AN.**

h il. -- -- -- Costs.]-HARPER v. McLEAN, [1928] 2 D. L. R. 986; [1928] 1 W. W. R. 912; 39 B. C. T. 480.-CAN.  
50. Where negligence continuous.]-COMMISSIONER OF RAILWAYS v.

- 790a. Stevedores loading dangerous cargo—Stipulation for sole control of loading.]—COMPANIA MEXICANA DE PETROLEO EL AGUILA v. ESSEX TRANSPORT & TRADING Co., LTD., No. 636a, *ante*.
791. *Add. Annotation*:—*Refd.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
792. *Add. Annotation*:—*Refd.* Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
798. *Add. Citation*:—17 Asp. M. L. C. 117.  
*Add. Annotation*:—*Refd.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
803. *Add. Annotation*:—*Refd.* Hargrove v. Burn (1929), 46 T. L. R. 59.
807. *Add. Annotation*:—*Generally*, *Refd.* The Vectis, [1929] P. 204.

## Part XII.—Damages.

810. *Add. Annotation*:—*Mentd.* Conquer v. Boot, [1928] 2 K. B. 336.
842. *Add. Annotation*:—*Consd.* Grinham v. Davies (1928), 139 L. T. 379.
- 842a. ———.]—GOWAR v. HALES, No. 421a, *ante*.
- 842b. ———.]—It is an established rule of practice that, in an accident case, it should not be intimated to a jury that deft. is insured &, where this rule has been violated, it is within the discretion of the judge to discharge the jury, at the expense of the party whose advocate has violated the rule.—GRINHAM v. DAVIES, [1929] 2 K. B. 249; 98 L. J. K. B. 703; 139 L. T. 379; 44 T. L. R. 523; 72 Sol. Jo. 303, D. C.
- 842c. ———.]—ELLIS v. MAYHEW (M.), LTD. (1926), cited in [1929] 2 K. B. at p. 252; 98 L. J. K. B. at p. 705.  
*Annotation*:—*Consd.* Grinham v. Davies, [1929] 2 K. B. 249.

## Part XIII.—Negligence causing Death.

896. *Add. Annotation*:—*Mentd.* Thompson v. L. M. & S. Ry. Co. (1929), 98 L. J. K. B. 615.
910. *Add. Annotation*:—*Appld.* Dew v. United British S.S. Co. (1928), 139 L. T. 628.

SKINNER (1927), 30 W. A. L. R. 45. — AUS.

### PART XI. SECT. 3.

785 vii. ———.]—In an action of damages against a corp., as the statutory authority charged with the duty of providing light in common stairs within the city during the hours of darkness, defenders moved that the action should be dismissed as irrelevant, in respect that upon her own averments pursuer was guilty of contributory negligence in going down a stair which she knew to be in darkness without first obtaining a light:—*Held*: pursuer's averments did not disclose contributory negligence on her part such as to warrant dismissal of the action.—JACKSON v. GLASGOW CORPN., [1928] S. C. 37.—SCOT.

785 viii. ———.]—Knowledge alone of the dangerous condition of premises is not a bar to a claim by an invitee against an invitor in respect of an injury resulting therefrom. Such knowledge is relevant to the question of the extent of the duty of care owed by the invitor; & it is relevant also where there is a defence of *volenti non fit injuria* or of contributory negligence.—HOY v. AUCKLAND HARBOUR BOARD, [1928] N. Z. L. R. 716.—N.Z.

788 i. ———.]—*Entering vehicle when driver perceptibly drunk*.—In an action against the driver of a motor car to recover damages for injuries sustained in a collision caused by the driver's negligence, *pltf.* is not entitled to succeed where such negligence was due to the intoxicated condition of *deft.*, of which condition *pltf.* was aware at the time that he accepted the invitation to travel in the car.—FINNIE v. CARROLL (1927), 27 S. R. N. S. W. 495; 44 N. S. W. W. N. 182.—AUS.

### PART XI. SECT. 4.

791 i. ———.]—A man who, by another's want of care, finds himself in a position of imminent danger can-

not be held guilty of negligence merely because in that emergency he does not act in the best way to avoid the danger.—THORNTON v. FISHER, [1928] App. D. 398.—S. AF.

t i. ———.]—PATTERSON v. GOODERHAM, [1928] 1 D. L. R. 131.—CAN.

### PART XI. SECT. 5.

803 iv. ———.]—The contributory negligence of the driver of a vehicle who is not the servant or agent of a passenger therein is no defence to an action by the latter for damages for personal injuries caused by the negligence of another person.—McCULLOCH v. STAR CONSTRUCTION CO., [1928] 1 D. L. R. 970; [1928] 1 W. W. R. 211; 22 Sask. L. R. 231.—CAN.

### PART XII. SECT. 3, SUB-SECT. 1.

a i. *Sum sufficient to give annuity equal to annual earnings*.—*Whether awarded on wrong principle*.—BLODOFF v. CANADIAN NATIONAL RAILWAY (Sask.), [1928] 4 D. L. R. 29; [1928] 2 W. W. R. 619.—CAN.

st. *Loss of limb*.—Damages to be allowed to *pltf.*, who has sustained the loss of part of his leg through the negligence of *deft.*, discussed.—CLARK v. WILSON, [1926] S. A. S. R. 342.—AUS.

### PART XII. SECT. 4.

sv. *Mitigation*.—*Whether contributory negligence of plaintiff may go in*.—In an action for negligence if *pltf.* is held entitled to succeed he cannot be deprived of part of the damages which he has proved or of his costs, on the ground that he was guilty of contributory negligence.—BARRY v. WINNIFRIG ELECTRIC CO., [1926] 2 W. W. R. 791; 36 Man. L. R. 27.—CAN.

sw. ———.]—*Payment under insurance policy*.—In an action by *pltf.* to recover damages for the destruction of his dwelling-house & a quantity

of chattel property caused by sparks emitted from *deft.*'s steam tug through *deft.*'s negligence:—*Held*: *deft.* was not entitled to deduct from the amount of damages found to have been sustained by *pltf.* an amount paid to *pltf.* by an insurance co. under an insurance on the property.—BROWN v. McRAE (1889), 17 O. R. 712.—CAN.

sx. ———.]—FARMER v. GRAND TRUNK RY. CO. (1891), 21 O. R. 299.—CAN.

### PART XII. SECT. 6.

842 i. *Defendant insured against liability—Whether court informed thereof*.—WALSH v. PEAT (N. B.), [1927] 2 D. L. R. 1120.—CAN.

842 ii. ———.]—Although it is, as a general rule, improper for counsel for *pltf.*, when cross-examining *deft.*, to ask whether *deft.* is entitled to an indemnity from an insurance co., yet special circumstances may justify the judge in not withdrawing the case from the jury.—WILSON v. KENT (GEORGE) & SONS, LTD., [1928] N. Z. L. R. 166.—N.Z.

### PART XIII. SECT. 2, SUB-SECT. 2.

865 i. *Child—Adopted child—Fatal Accidents Act, R. S. O., 1914 (c. 151), s. 2 (a)*.—HOWIE v. LAWRENCE, [1927] 1 D. L. R. 477; 59 O. L. R. 641.—CAN.

g i. ———.]—Sisters of deceased are not entitled, as such, to the benefits of Fatal Accidents Act, 1920 (c. 29); & the mere allegation that they were dependent on him does not bring them within the Act.—SHITZ v. CANADIAN NATIONAL RY. CO., [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—CAN.

### PART XIII. SECT. 2, SUB-SECT. 3.

o i. ———.]—W. was injured by falling into a gullet, which was in a street under the care of an urban district council. W. brought no action in his



943. *Add. Annotation* :—*Refd. Carling v. Lebbon*, [1927] 2 K. B. 108.
944. *Add. Citations* :—[1927] 2 K. B. 108; 96 L. J. K. B. 515; 137 L. T. 255; 43 T. L. R. 454.

After this case add :—

" ——— ——— ———.]—*Sec. now, Widows', Orphans' & Old Age Contributory Pensions Act, 1929 (c. 10), s. 22.*"

lifetime, & died within six months after the accident, & in consequence thereof. An action was instituted by the widow under Lord Campbell's Act, 1846 (c. 93), more than six months after the accident, & more than eight months from the death of W. :—*Held* : plff. was entitled to maintain the action.—*WALSH v. BALLINA URBAN DISTRICT COUNCIL* (1921), 55 L. L. T. 140.—*IR.*

**PART XIII. SECT. 2, SUB-SECT. 7.—B.**

907 ix. ———.]—A claim for damages by a widow or the minor children of a person, whose death is alleged to have been caused by the negligence of deft., is not barred by the fact that the death was caused by the combined negligence of the latter & deceased.—*UNION GOVERNMENT (MINISTER OF RAILWAYS) v. LEE*, [1927] App. D. 202.—*S. AF.*

**PART XIII. SECT. 2, SUB-SECT. 8.—E.**

*h i.* ———.]—The dependants of a person who has lost his life through the negligence of deft. are entitled to compensation only for the material loss caused to them by the accident, & not for mental suffering or distress, or to improve their material prospects.—*SMART v. S. AFRICAN RYS. & HARBOURS* (1928), 49 N. L. R. 361.—*S. AF.*

*sa.* *Fine imposed under Penal Code in respect of accident—Taken into account.*—*NATHU RAM v. CHAND KUAR* (1927), 1 L. L. R. 50 All. 408.—*IND.*

**PART XIII. SECT. 2, SUB-SECT. 8.—F.**

*e i.* ———.]—*YOUNG v. CANADIAN PACIFIC RY. CO. (No. 2)* (Sask.), [1927] 3 W. W. R. 175.—*CAN.*

**PART XIII. SECT. 2, SUB-SECT. 9.**

953 i. *Verdict not set aside—If evidence in support.*—*FLYNN v. IRISH SUGAR MANUFACTURING CO.*, [1928] 1 R. 525.—*IR.*

*f i.* ———.] *FITZPATRICK v. SCHRAM*, [1928] 1 W. W. R. 751.—*CAN.*

*g i.* ——— *Sufficiency.*—*SHTITZ v. CANADIAN NATIONAL RY. CO.*, [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—*CAN.*

*sb.* *Fatal Accidents Act, 1920, s. 7—Neglect to file affidavit under.*—An order dispensing with the filing of the affidavit required under above act. should not be made when the result of making it would be to prejudice a right of deft. which has accrued since the commencement of the action.—*SWINDELL v. NORTHERN ELEVATOR CO., LTD.*, [1928] 4 D. L. R. 982; [1928] 3 W. W. R. 133.—*CAN.*

NOTARIES.

PART II. SECT. 2, SUB-SECT. 1.

**sa.** *Who may appoint—Whether local judge.*—BRITISH COLUMBIA LAW SOC. v. STEWART, [1928] 4 D. L. R. 572.—CAN.

## NUISANCE.

### Part I.—Definition, Nature and Characteristics.

1. *Add. Annotation* :—**Refd.** *Vanderpant v. Mayfair Hotel Co.* (1929), 27 L. G. R. 752.
8. *Add. Annotation* :—**Consd.** *Pontardawe Rural District Council v. Moore-Gwyn*, [1929] 1 Ch. 656.
18. *Add. Annotation* :—**As to** (3) **Refd.** *The Carlgarth, The Otarama*, [1927] P. 93.
31. *Add. Annotation* :—**Consd.** *Vanderpant v. Mayfair Hotel Co.* (1929), 27 L. G. R. 752.
66. *Add. Annotation* :—**As to** (2) **Refd.** *Vanderpant v. Mayfair Hotel Co.* (1929), 27 L. G. R. 752.

### Part II.—Nuisances in respect of Particular Matters.

76. *Add. Annotation* :—**Refd.** *Great Western Ry. v. Monmouthshire County Council* (1929), 93 J. P. 142.
77. *Add. Annotation* :—**Consd.** *Farnworth v. Manchester City Corpn.*, [1929] 1 K. B. 533.
- 98a. **Hotel kitchen.**—The making or causing of such a noise on premises as materially interferes with the ordinary physical comfort of a neighbour constitutes an actionable nuisance; & it is no answer to say that the best known means have been taken to reduce or prevent the noise complained of or that the cause of the nuisance is the exercise of a business or trade in a reasonable & proper manner. In accordance with these principles an injunction was granted in an action by the occupier of a house abutting on a highway to restrain the owners of a neighbouring hotel from causing a nuisance to plff. by noise arising from the hotel kitchen.—**VANDERPANT v. MAYFAIR HOTEL CO., LTD.** (1929), 27 L. G. R. 752.
- 121a. —.]—**VANDERPANT v. MAYFAIR HOTEL CO., LTD.**, No. 98a, *ante*.
- 134a. **Manure manufacture.**—**CARDELL v. NEW QUAY LOCAL BOARD** (1875), 39 J. P. Jo. 742.
- 134b. **Rag & bone business.**—P. set up a business of a rag & bone merchant without leave. The bones were stored in bags & removed weekly. The justices having found as a fact that the business was noxious & *ejusdem generis* with those specified, convicted P. :—**Held**: the conviction was right.—**PASSEY v. OXFORD LOCAL BOARD** (1879), 43 J. P. 622, D. C.
152. *Add. Annotation* : **Refd.** *Manchester Corpn. v. Farnworth* (1929), 46 T. L. R. 85.
212. After this case add :—  
“ —.]—*See, also*, **PUBLIC HEALTH**, Vol. XXXVIII., p. 198, Nos. 337, 341.”
- 223a. —.]—**WALLIS v. UNITED FRENCH-POLISHERS’ LONDON SOCIETY** (1905), *Times*, Nov. 28th.
- 232a. **Meaning of premises—Overhanging rock.**—**RURAL COUNCIL v. GWYN**, No. 361a.

### Part III.—Neighbouring Owners.

302. *Add. Annotation* :—**Refd.** *Bull v. West African Shipping, etc. Co.*, [1927] A. C. 686.
311. *Add. Annotations* :—**Distd.** *St. Anne’s Well Brewery Co. v. Roberts* (1928), 140 L. T. 1. **Consd.** *Pontardawe Rural District Council v. Moore-Gwyn*, [1929] 1 Ch. 656. **Refd.** *Glanville v. Sutton* (1927), 44 T. L. R. 98; *G. W. Ry. v. S.S. Mostyn, The Mostyn*, [1928] A. C. 57.
- 316a. —. **Confined to owners in possession.**—The doctrine of *Rylands v. Fletcher*, No. 311, *ante*, has never been applied to affect the liability of an owner, who was out of possession at the time when the injury took place.—**ST. ANNE’S WELL BREWERY CO. v. ROBERTS** (1928), 140 L. T. 1; 92 J. P. 180; 44 T. L. R. 703; 26 L. G. R. 638, C. A.
332. *Add. Annotation* :—**Generally**, **Refd.** *Scammell v. Hurley*, [1929] 1 K. B. 419.
353. *Add. Annotation* :—**Refd.** *Pontardawe Rural District Council v. Moore-Gwyn*, [1929] 1 Ch. 656.
356. *Add. Annotation* :—**Refd.** *St. Anne’s Well Brewery Co. v. Roberts* (1928), 140 L. T. 1.
357. *Add. Annotation* :—**Refd.** *O’Cedar v. Slough Trading Co.*, [1927] 2 K. B. 123.

#### PART II. SECT. 9, SUB-SECT. 1.

91 i. *Building operations—Mechanical drills.*—**DAILY TELEGRAPH CO., LTD. v. STUART** (1928), 28 S. L. N. S. W. 291; 45 N. S. W. W. N. 48.—**AUS.**

95 i. *Dairy—Noisy churns.*—**McKELVEY v. INVERCARGILL MILK SUPPLY CO., LTD.**, [1928] N. Z. L. R.

#### 223.—N.Z.

95 ii. —.]—**DUCHMAN v. OAKLAND DAIRY CO.**, [1929] 1 D. L. R. 9; 63 O. L. R. 111. **CAN.**

#### PART II. SECT. 13, SUB-SECT. 4.

sd. *Hospital.*—**SHUTTLEWORTH v. VANCOUVER GENERAL HOSPITAL**, No.

673 iv, *post*.—**CAN.**

#### PART III. SECT. 2, SUB-SECT. 2.—B. (i).

d i. —.]—**McARTNEY v. MILLER** (1905), 7 Terr. L. R. 367; 2 W. L. R. 87.—**CAN.**

d ii. —.]—**BETTSCHER v. TURNER** (Sask.) (1913), 25 W. L. R. 136.—**CAN.**

359. *Add. Annotation* :—**Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.
363. *Add. Annotations* :—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.
364. *Add. Annotation* :—**Consd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.
- 364a. **Maintaining overhanging rock.**—The owner of land on which there is an outcrop of rock overhanging a steep slope is not liable for damage caused by reason of portions of that rock breaking away & falling down the slope if the break is due to natural causes, such as weathering, & the owner has used his land in an ordinary way, without any mining or quarrying operations. Rocks in such a position, though they may become dangerous are not "premises in such a state as to be a nuisance" within Public Health Act, 1875 (c. 55), s. 91.—**PONTARDAWE RURAL COUNCIL v. MOORE-GWYN**, [1929] 1 Ch. 656; 98 L. J. Ch. 242; 141 L. T. 23; 93 J. P. 141; 45 T. L. R. 276; 27 L. G. R. 493.
372. *Add. Annotation* :—**As to** (1) **Refd.** Manchester Corp'n. *v.* Farnworth (1929), 46 T. L. R. 85.
374. *Add. Annotation* :—**Consd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.
376. *Add. Annotations* :—**Refd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.
386. *Add. Annotations* :—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.
389. *Add. Annotation* :—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

## Part IV.—Remedies.

438. *Add. Annotation* :—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
439. *Add. Annotation* :—**As to** (1) **Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
444. *Add. Annotations* :—**As to** (1) **Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226. **Generally**, **Refd.** The Carlgarth, The Otarama, [1927] P. 93.
445. *Add. Annotation* :—**Consd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
447. *Add. Annotation* :—**As to** (1) **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.
465. *Add. Annotation* :—**Consd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
549. *Add. Annotations* :—**Refd.** Coleshill *v.* Manchester Corp'n., [1928] 1 K. B. 776. **Mentd.** Oldham *v.* Sheffield Corp'n. (1927), 136 L. T. 681.
550. *Add. Annotation* :—**Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.
- 567a. ———.]—**SHORT v. TAYLOR** (1709), 2 Eq. Cas. Abr. 522; 22 E. R. 441.
- Annotation* :—**Apld.** Williams *v.* Jersey (1841), Cr. & Ph. 91.
608. *Add. Annotation* :—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
609. *Add. Annotation* :—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
612. *Add. Annotation* :—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
613. *Add. Citation* :—25 L. G. R. 1.
626. *Add. Annotation* :—**Refd.** Manchester Corp'n. *v.* Farnworth (1929), 46 T. L. R. 85.
660. *Add. Annotation* :—**Refd.** Farnworth *v.* Manchester City Corp'n., [1929] 1 K. B. 533.
681. *Add. Annotation* :—**Refd.** Graigola Merthyr Co. *v.* Swansea Corp'n., [1928] Ch. 235.
738. *Add. Annotation* :—**Mentd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.
740. *Add. Annotation* :—**Generally**, **Mentd.** Friern Barnet U. D. C. *v.* Adams (1927), 136 L. T. 649.
793. *Add. Annotation* :—**Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.
799. *Add. Annotation* :—**Refd.** Manchester Corp'n. *v.* Farnworth (1929), 46 T. L. R. 85.

### PART III. SECT. 2, SUB-SECT. 2.—C. (f).

60. Sparks from machine used by defendant on another's land causing fire on plaintiff's land.—**PETT v. SIMS PAVING & ROAD CONSTRUCTION CO. PRY., LTD.**, [1928] V. L. R. 247; [1928] Argus L. R. 213.—**AUS.**

### PART IV. SECT. 1, SUB-SECT. 2.—B. (a).

442 ii. ———.] **McLOUGHLAN v. MARTIN** (1864), 5 Nfld. L. R. 44.—**NFLD.**

### PART IV. SECT. 2, SUB-SECT. 2.—B. sg. Liability of joint contributors.]—

Where two or more persons contribute in part only to the creation of a nuisance, each is severally liable. Each may be restrained from doing the act which contributes to that which becomes, in the aggregate, a nuisance.—**L'ESTRANGE v. THE BRISBANE GAS CO.**, [1928] S. R. Q. 180.—**AUS.**

### PART IV. SECT. 2, SUB-SECT. 6.—A. (e).

673 iv. ———.]—In a *quia timet* action for an injunction restraining the establishment of a hospital, on the ground that it will constitute a nuisance to pltf., he must prove a strong probability almost amounting to moral

certainty that the hospital will be an actual nuisance.—**SHUTTLEWORTH v. VANCOUVER GENERAL HOSPITAL**, [1927] 2 D. L. R. 573; [1927] 1 W. W. R. 476; 38 B. C. R. 300.—**CAN.**

673 v. ———.]—Pltfs. moved for an injunction to prevent a nuisance, which they feared would arise from noise & vibration caused by the establishment of a factory then in course of erection :—**Held** : as it had not been established that the damage apprehended was imminent & of a substantial character, the claim was premature.—**ROBERTSON v. DUTHIE STEEL CASEMENT CO., LTD.**, [1927] N. Z. L. R. 826.—**N.Z.**

# OPEN SPACES AND RECREATION GROUNDS.

## Part I.—General Rights of Public.

1. *Add. Annotations* :—**Refd.** *Hue v. Whiteley*, [1929] 1 Ch. 110. **Mentd.** *Trafford v. Thrower* (1929), 15 T. L. R. 502.

## Part III.—Powers of Regulation and Management.

- 24a. **Power of Public Trustee—To sell—Law of Property Act, 1925 (c. 20), Sched. I, Part V. (2).**—The expression “an open space of land” in the above par. means any land that is unbuilt upon.

A small yard & ashes place at the rear of two houses in a town was, immediately before the commencement of the Act, held in undivided shares by the owners of the houses

with rights of access & user over same :—*Held* : the yard & ashes place were an open space within the par. & had vested in the Public Trustee. Leave given to the Public Trustee to sell same.—*Re BRADFORD CITY PREMISES*, [1928] Ch. 138 ; 138 L. T. 517 ; *nom. Re BRADFORD CITY PREMISES*, *SCAIFE v. PUBLIC TRUSTEE*, 97 L. J. Ch. 84.

## Part IV.—User of Open Spaces.

35. *Add. Annotation* :—**Distd.** *A.-G. v. Sunderland Corpn.* (1929), 46 T. L. R. 10.
38. *Add. Annotations* :—**Refd.** *I. R. Comrs. v. Yorkshire Agricultural Soc.* (1927), 44 T. L. R. 59. **Mentd.** *General Medical Council v. I. R. Comrs.*, *English Branch Council of General Medical Council v. I. R. Comrs.* (1928), 139 L. T. 225.
39. *Add. Annotation* :—**Consd.** *A.-G. v. Sunderland Corpn.*, [1929] 2 Ch. 136.

## PARLIAMENT.

## Part I.—Nature and Powers.

- 2a. ———.]—It is not the practice in Acts of Parliament to attempt to restrain future Parliaments in their enactments; & the Legislature could not have intended to suggest such an object without expressing it in very distinct terms (WILDE, C.J.). — *BODEN v. SMITH* (1849), 18 L. J. C. P. 121; 12 L. T. O. S. 377; 13 J. P. 153; 13 Jur. 428.

*Annotations* :—*Refd.* *R. v. Smith* (1873), L. R. 8 Q. B. 116; *Jenkins v. Grout Central Ry. Co.*, [1921] 1 K. B. 1.

- 2b. ———.]—The exemption is in general terms. It may have been intended to include all taxes & assessments whatsoever, present

or future, then imposed or to be imposed by any future Act of Parliament. But even if the exemption had been enacted in those very terms, it is plain that such an enactment could not have bound future Parliaments (CHANNELL, J.). — *ASSOCIATED NEWSPAPERS, LTD. v. LONDON CITY CORPN.*, [1913] 2 K. B. 281; 82 L. J. K. B. 928; 108 L. T. 789; 77 J. P. 273; 11 L. G. R. 554; *on appeal*, [1914] 2 K. B. 603, C. A. *sub nom.* *LONDON CITY CORPN. v. ASSOCIATED NEWSPAPERS, LTD.*, [1915] A. C. 674, H. L.

*Annotations* :—*Mentd.* *Bank of England v. London City Corpn.* (1915), 85 L. J. K. B. 47; *Whimman v. Clark* [1916] 1 K. B. 91.

## Part II.—The House of Lords.

4. *Add. Annotation* :—*Refd.* *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
22. *Annotation* :—Delete *Wycombe Grdns. v. Barton-upon-Irwell Grdns.* (1926), 43 T. L. R. 89.
23. *Add. Annotation* :—*Mentd.* *Green v. Green*, [1929] P. 101.
27. *Add. Annotation* :—*Mentd.* *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
37. *Add. Annotation* :—*Consd.* *Campbell v. Pollak*, [1927] A. C. 732.
38. *Add. Citations* :—[1927] A. C. 732; 96 L. J. K. B. 1093; 137 L. T. 656.  
*Add. Annotations* :—*Refd.* *The Young Sid*, [1929] P. 190; *Clark v. Urquhart*, *Stracey v. Urquhart* (1929), 141 L. T. 641. *Mentd.* *Brown v. Dagenham U. D. C.* (1929), 98 L. J. K. B. 565.
39. *Add. Annotation* :—*Consd.* *Campbell v. Pollak*, [1927] A. C. 732.
41. *Annotation* :—For “As to (1) *Mentd.*” read “As to (1) *Refd.*”  
*Add. Annotation* :—As to (3) *Refd.* *Campbell v. Pollak*, [1927] A. C. 732.
59. *Add. Annotation* :—*Mentd.* *Curran v. Kays*, [1928] 2 K. B. 469.
99. *Add. Annotation* :—As to (1) *Refd.* *Campbell v. Pollak*, [1927] A. C. 732.
107. *Add. Annotation* :—*Mentd.* *Campbell v. Pollak*, [1927] A. C. 732.
115. *Add. Annotation* :—*Mentd.* *James v. British General Insee.*, [1927] 2 K. B. 311.
116. *Add. Annotation* :—*Mentd.* *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
126. *Add. Annotation* :—*Mentd.* *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.
- 135a. ———.]—In an action by an agent for a claim for commission from the purchaser on the sale of a business, the trial judge found on the facts that the agent had earned his commission, & his decision was affirmed by the appellate ct. :—*Held* : the concurrent findings of the cts. below ought not to be disturbed.—*Bow's EMPORIUM, LTD. v. BRETT (A. R.) & Co., LTD.* (1927), 44 T. L. R. 194, H. L.
- 155a. In Admiralty actions—Collision cases—Both vessels to blame.]—*CANTON (OWNERS) v. RHESUS (OWNERS)*, [1928] W. N. 214; *sub nom.* *THE CANTON*, 31 Lloyd, L. R. 289, H. L.  
*Annotation* :—*Refd.* *The Young Sid*, [1929] P. 190.
162. *Add. Annotation* :—*Consd.* *Campbell v. Pollak*, [1927] A. C. 732.
166. *Add. Annotations* :—*Mentd.* *Cushion v. Tredgar Iron & Coal Co.* (1927), 20 B. W. C. C. 454; *Lewis v. Guest, Keen & Nettlefolds*, *Watkins v. Same*, *Tucker v. Same*, *Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.
190. *Add. Annotation* :—*Consd.* *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.

## PART II. SECT. 2, SUB-SECT. 1.

18 i. *Appeals from Scottish courts*—From *Lords of Session*—From *interlocutory order*.]—*ROSS v. ROSS*, [1927] S. C. (H. L.) 4. —SCOT.

## PART II. SECT. 2, SUB-SECT. 7.—C.

85 1. *Not admitted*.]—*PORTLAND (DUKE) v. WOOD'S TRUSTEES*, [1927] S. C. (H. L.) 1.—SCOT.

## Part III.—The House of Commons.

215. *Add. Annotation* :—**Mentd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.      217. *Add. Annotation* :—**Mentd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

## Part V.—The Legislative Work of Parliament.

- 256a. — **Metropolis Gas Act, 1860 (c. 125).**—  
**WYATT v. METROPOLITAN BOARD OF WORKS**  
 (1862), 11 C. B. N. S. 744 ; 31 L. J. C. P. 217  
 142 E. R. 988.  
*Annotations* :—**Apld.** *Re Skegness & St. Leonard's Tram. Co.*,  
*Ex p. Hanly* (1888), 41 Ch. D. 215. **Refd.** *Re Kent Tram.*  
*Co.* (1879), 12 Ch. D. 312.  
*See, also*, COMPANIES, Vol. X., p. 1113, No.  
 7830.  
 261. *Add. Citations* :—*sub nom.* *Re PETERSON*,  
 2 Ch. 398 ; 79 L. J. Ch. 53 ; 101 L. T.  
 180 ; 73 J. P. 461.  
 263a. — **Metropolis Gas Act, 1860 (c. 125).**—  
**WYATT v. METROPOLITAN BOARD OF WORKS**  
 (1862), 11 C. B. N. S. 744 ; 31 L. J. C. P.  
 217 ; 142 E. R. 988.  
*Annotations*. — **Apld.** *Re Skegness & St. Leonard's Tram. Co.*,  
*Ex p. Hanly* (1888), 41 Ch. D. 215. **Refd.** *Re Kent*  
*Tram. Co.* (1879), 12 Ch. D. 312.

## Part VII.—Privileges of Parliament.

365. *Add. Annotation* :—**Refd.** *Re*  
*Civil Servants (Ireland) Compensation*, [1929]  
 A. C. 243.      437. *Add. Annotation* : **Refd.** *Re* *Transferred*  
*Civil Servants (Ireland) Compensation*, [1929]  
 398. *Add. Annotation* :—**Mentd.** *More v. Weaver*  
 [1928] 2 K. B. 520

**PART VIII.**  
 m (p. 295) i. — *Canadian senate -*  
*Eligibility of women.*—The words

“ qualified persons ” in British North  
 America Act, 1867, s. 24, include women,  
 & therefore, women are eligible for  
 membership of the Senate of Canada.  
*EDWARDS v. A-G. FOR CANADA* (1929),  
 16 T. L. R. 1. — **CAN.**

# PARTITION.

## Part III.—Partition by Agreement.

35a.— — — —.]—ANON. (1820), 4 Bro. C. C. 57. *Add. Annotation* :—**Mentd.** *Turner v. Watts*  
(Belt's edn.), 284 n. ; 29 E. R. 894, L. C. (1927), 44 T. L. R. 105.  
*Annotation* :—**Consd.** *Bradshaw v. Fane* (1856), 4 W. R. 422.

### PART I.

h (p 299) i. — — —.]—It is  
essential for the maintainability of a  
suit for partition that pltf. should be

in actual or constructive possession of  
the properties.—**SABJAN BIBI v. ASH-**  
**ANULLA BEPARI** (1926), I. L. R. 54  
Calc. 524.—**IND.**

### PART III. SECT. 9.

sa. *Agreement to pay amount in*  
*equalisation—Evidence.*]—**PHERRILL v.**  
**PHERRILL** (1867), 13 Gr. 476.—**CAN.**



## PARTNERSHIP.

### Part I.—Partnership Generally.

8. *Add. Annotations*:—**Refd.** Dominion Iron & Steel Co. v. Inverairn, [1927] W. N. 277. **Mentd.** Frost v. Caslon, Frost v. Wilkms, [1929] 2 K. B. 138; Manchester Corpn. v. Buttle, [1929] 2 Ch. 390.
9. *Add. Annotation*:—**Mentd.** Collaroy Co. v. Giffard, [1928] Ch. 114.
21. *Add. Annotation*:—**Mentd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.

### Part II.—Tests of Partnership.

43. *Add. Annotation*:—**Refd.** Arseculeratne v. Perera, [1928] A. C. 173.
44. *Add. Annotation*:—**Refd.** Arseculeratne v. Perera, [1928] A. C. 173.
77. *Add. Annotation*:—**Refd.** English Insce. Co. v. National Benefit Assee. Co. (Official Receiver), [1929] A. C. 114.
107. *Add. Annotation*:—*As to* (2) **Refd.** Watson v. Haggitt (1927), 44 T. L. R. 90.
171. *Add. Annotation*:—**Refd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.
177. *Add. Annotation*:—**Mentd.** Lowther v. Harris, [1927] 1 K. B. 393.

### Part III.—Creation and Duration of Partnership.

210. *Add. Annotation*:—**Refd.** Foster v. Driscoll, Lindsay v. Atfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.
213. *Add. Annotation*:—**Refd.** Humphery v. Wilson (1929), 111 L. T. 169.

### Part IV.—Relations between Partners and Third Parties.

442. *Add. Annotation*:—**Mentd.** Houghton v. Nothard, Lowe & Wills (1927), 44 T. L. R. 76.
449. *Add. Annotation*:—**Mentd.** H. v. H., [1928] P. 206.
520. *Add. Annotation*:—**Refd.** Smith v. Wood (1928), 139 L. T. 250.
- 556a. — **Contract for work & labour.**—**Pltf.** was directed by the captain of a vessel to repair it, & also to repair the fitting-up of the cabins for passengers; afterwards there was an agreement come to between the parties to the effect that deft. & the captain should become partners in the ultimate profits; deft. did not hold himself out that he would be liable for these repairs:—**Held**: deft. was not liable for the repairs to the vessel or to the cabin fittings. **ELLIS v. STEELE** (1855), 25 L. T. O. S. 183.
592. *Add. Annotation*:—**Mentd.** Hardie & Lane v. Chiltern (1927), 96 L. J. K. B. 773.
605. *Add. Annotation*:—**Mentd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
609. *Add. Annotation*:—**Mentd.** Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 652.
- 631a. — **CAMPBELL v. BAILLIE** (1823), Coop. Pr. Cas. 503; 17 E. R. 622.
662. *Add. Annotation*:—**Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 718a. **Action by partnership**—**In respect of goods supplied to partner before creation of partnership.**—**Defts.** contracted in writing with first pltf. to supply him with all the brass ashes produced at their mill at a certain fixed price, the ashes being agreed to be equal to a certain sample. Some ashes were delivered, & then pltf. took co-pltfs. into partnership, & ashes were delivered by

#### PART I. SECT. 2.

d. i. S. P. BROJO LAL SAHA BANIKYA v. BUDH NATH PYARULAL (1927), 1 L. R. 55 Calc. 551.—**IND.**

#### PART II. SECT. 3, SUB-SECT. 2.

43 iii. — *Co-owners of coal leases.*—**DAVIES v. SCHUTILL**, [1928] 1 D. L. R. 132, [1928] 3 W. W. R. 158.—**CAN.**

#### PART II. SECT. 5, SUB-SECT. 2.

91 xxi. — *Lotbiniere Lbr. Co. v. Fortin*, [1927] 4 D. L. R. 167.—**CAN.**

#### PART II. SECT. 5, SUB-SECT. 4.

110 iv. — *Raghunandan Nanu Kothare v. Hornasjee Bezonzjee Ramjee* (1926), 1 L. R. 51 Bom. 342.—**IND.**

J.S.

#### PART III. SECT. 3, SUB-SECT. 2.—B.

237 iii. *S. P. Archibald v. McNerhanie* (1899), 29 S. C. R. 561. **CAN.**

#### PART IV. SECT. 1, SUB-SECT. 1.—D.

sa. *Disclaimer*—*Whether alternative plea permissible*—**CHHATTOO LAL MISSEER v. NARAIN DAS BAIJNATH PRASAD** (1928), 1 L. R. 56 Calc. 701.—**IND.**

#### PART IV. SECT. 2, SUB-SECT. 3.—B. (b).

581 ii. — *Liability of retired partner.*—*When after a dissolution of partnership the business is continued in the same firm name, a partner who has retired at the dissolution is liable upon a contract made by the new firm*

with a person who has previously dealt with the old firm, unless that person has received notice of the dissolution, even though public notice by advertisement has been given. **JWALADUTT R. PILLANI v. BANSILAL MOTILAL** (1929), L. R. 56 Ind. App. 174.—**IND.**

#### PART IV. SECT. 3, SUB-SECT. 1.

sl. *Insurances effected by firm—Firm turned into limited company.*—**Held**: there was such a change of interest as to invalidate the insurances, in the absence of notification of the change to, & assent by, the insurance co.—**PEUCHEN Co. v. CITY MUTUAL FIRE INSURANCE Co.** (1891), 18 A. R. 446.—**CAN.**

defts. to the firm without any new or special contract. Neither the ashes supplied before the formation of the partnership nor those supplied afterwards were equal to sample, & plffs. commenced an action to recover damages in respect of the breach of agreement:—*Held*: plffs. could not recover in respect of the deliveries of ashes which took place prior to the formation of the partnership,

but they could do so in respect of those which took place afterwards.—*BOUNTY v. HEATON* (1865), 13 L. T. 238.

858. *Add. Annotations*:—*Refd.* *Cumberland v. Lanarkshire Tram. Co.* (1927), 20 B. W. O. C. 780; *Jenkins v. Jenkins*, [1928] 2 K. B. 501.

859. *Add. Annotation*:—*Refd.* *Pirie v. Richardson*, [1927] 1 K. B. 448.

## Part V.—Relations of Partners inter se.

945a. — *Of interest in partnership effects & profits.*—*WARTNABY v. SHUTTLEWORTH & TAYLOR* (1837), 1 Jur. 469, L. C.

952a. — *—*—*—*—A deed of partnership provided that each original partner could, by will or codicil, nominate a qualified person as a new general partner; that the admission to the partnership was to be subject to the consent, not to be unreasonably withheld, of the general partners; & that a general partner or the qualified nominee, if of opinion that the consent to admission had been unreasonably withheld, could require the matter to be referred to arbn. An original partner nominated by will F., a qualified person, as a new general partner. After the death of the nominator the general partners refused to admit F. into the partnership. F. made an application under Arbn. Act, 1889 (c. 49), s. 5, asking that some fit & proper person might be appointed to act as arbitrator:—*Held*: only a party to the submission could make an application under sect. 5, & F. was not such a party.—*Re FRANKLIN & SWATHLING'S ARBITRATION*, [1929] 1 Ch. 238; 98 L. J. Ch. 101; 140 L. T. 403.

955. *Add. Annotation*:—*Distd. Re Franklin & Swathling's Arbitration*, [1929] 1 Ch. 238.

1127. *Add. Annotation*:—*Consd.* *Naval Colliery Co. v. I. R. Comrs.* (1928), 138 L. T. 593.

1211. *Add. Annotation*:—*Mentd.* *Livock v. Pearson* (1928), 33 Com. Cas. 188.

1242. *Add. Annotation*:—*Consd.* *Manley v. Sartori*, [1927] 1 Ch. 157.

1370. *Add. Annotation*:—*Refd.* *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll* (1928), 98 L. J. K. B. 282.

1397. *Add. Annotation*:—*As to* (1) *Refd.* *Green v. Weatherill*, [1929] 2 Ch. 213.

1459a. *Foreign firm.—Branch office in England.*—Partnership Act, 1890 (c. 39), s. 23, applies to a foreign firm having a branch house of business in England.—*BROWN, JANSON & Co. v. HUTCHINSON & Co.*, [1895] 1 Q. B. 737; 64 L. J. Q. B. 359; 73 L. T. 437; 43 W. R. 533; 11 T. L. R. 291; 14 R. 354, C. A.; *subsequent proceedings*, [1895] 2 Q. B. 126.

1480a. — *—*—(1) Where it is not the object of a suit to obtain the dissolution of a partnership, but, on the contrary, to continue the partnership, it is not according to the practice of the ct. in the course of that suit to grant a receiver & manager. (2) Cases, however, may arise in which the conduct of deft. being such as to endanger the existence of the partnership concern, the ct. will appoint an

### PART IV. SECT. 6, SUB-SECT. 1.—B.

737 ii. — *—*—*Held*: a partner with whom a contract has been personally made is entitled to sue upon that contract in his own name, without joining the co-partners as plffs., although the benefit of the contract will result to the partnership firm.—*KAPURJI MAGNIRAM v. PANAJI DERICHBOY* (1928), 1 L. R. 53 Bom. 110.—*IND.*

### PART IV. SECT. 6, SUB-SECT. 2.—D.

799 ii. *Action in firm name.—Whether representatives of deceased partner necessary parties.*—In a suit against a firm in the firm name, the firm having been dissolved to plff.'s knowledge before the institution of the suit by reason of the death of a partner, the suit as so framed does not include the legal representatives of the deceased partner, & it is necessary to add them as parties in order to obtain judgment against the private estate of the deceased partner, as opposed to mere judgment against the partnership assets.—*MATHURDAS CANJI MATANI v. EBHRAHIM FAZALBHROY* (1927), 1 L. R. 51 Bom. 986.—*IND.*

### PART IV. SECT. 2, SUB-SECT. 2.—A.

r i. — *—*—*COLE v. REED* (1911), 29 W. L. R. 786.—*CAN.*

r ii. — *Construction of agreement.*—*DAVIS v. LOWRY* (1912), 20 W. L. R. 839; 3 D. L. R. 157.—*CAN.*

### PART V. SECT. 2, SUB-SECT. 3.

917 ii. — *—*—Where a partner during the partnership, which was about to expire, received an offer for himself to negotiate for the renewal of a lease enjoyed by the partnership.—*Held*: he was under no obligation to accept the offer for the benefit of the partnership.—*WEIZEL v. KAIN* (1926), 27 S. R. N. S. W. 140; 44 N. S. W. W. N. 17.—*AUS.*

### PART V. SECT. 7, SUB-SECT. 1.

c i. — *Does not belong to individual partners.*—*SAWYER-MASSEY v. SCHLEY* (1914), 29 W. L. R. 454.—*CAN.*

### PART V. SECT. 8, SUB-SECT. 3.—C. (e).

sd. *Whether bound by settlement of accounts.—After date of assignment.*—The assignee of the interest of a partner is not bound by a settlement of accounts of the partnership, made behind his back after the date of the assignment.—*VEERAPPA CHETTY v. MUTHIAH CHETTY* (1929), 1 L. R. 52 Mad. 509.—*IND.*

### PART V. SECT. 9, SUB-SECT. 1.

1091 i. *Right of contribution.*—*WALKER v. CORNELL*, *Cass. Dig.* (2nd edn.) 595.—*CAN.*

### PART V. SECT. 11, SUB-SECT. 1.—B. (a).

so. *Profits on sale of portion of individual share.*—*MITCHELL v. GORMLEY* (1885), 9 O. R. 139; *affd.* (1886), 14 A. R. 55.—*CAN.*

### PART V. SECT. 12, SUB-SECT. 3.—C.

1213 i. *Production of partnership documents.—Grounds for refusal.—Denial of partnership.*—*HARNAM SINGH v. KAPOOR SINGH* (1927), 39 B. C. R. 485.—*CAN.*

### PART V. SECT. 13, SUB-SECT. 5.—H. (b).

1366 ii. — *—*—*MOMPLE v. MOMPLE* (1927), 48 N. L. R. 374.—*S. AF.*

### PART V. SECT. 13, SUB-SECT. 5.—H. (d).

1378 i. *Denial of partnership.—Onus of proof.*—*WONG v. HOU*, [1928] 1 W. W. R. 480; 39 B. C. R. 425.—*CAN.*

### PART V. SECT. 13, SUB-SECT. 8.—C. (a).

sg. *Where existence of partnership disputed.*—There is no rule of practice that, where in a suit for dissolution of a partnership the existence of the alleged partnership is denied, the ct. will not appoint an interim receiver unless the assets are in danger.—*TATK v. BARRY* (1928), 28 S. R. N. S. W. 380; 45 N. S. W. W. N. 83.—*AUS.*

interim receiver & manager.—*HALL v. HALL* (1850), 3 Mac. & G. 79; 20 L. J. Ch. 585; 17 L. T. O. S. 11; 15 Jur. 363; 42 E. R. 191, L. C.

*Annotation*:—*As to* (1) *Refd.* *Medwin v. Ditcham* (1882), 47 L. T. 250.

1496a. ———.—*]*—*HALL v. HALL*, No. 1480a, *ante*.

1604. *Add. Annotation*:—*Consd.* *Farey v. Cooper*, [1927] 2 K. B. 384.

1610. *Add. Citation*:—*sub nom.* *CARL BROS., LTD. v. WEBSTER*, 52 W. R. 113.

1614. *Add. Citations*:—96 L. J. Ch. 361; 137 L. T. 409.

## Part VI.—Dissolution.

1654a. **Death of partner sending notice before notice received—Date of dissolution of partnership.**—Where a partner sends by post a notice to the other partner to determine the partnership as from the date of the notice, & dies before the other partner receives the notice, the partnership is dissolved, not by the notice, but by the death of the partner sending it, inasmuch as the statutory dissolution by notice is not brought about until receipt of the notice. In such a case the surviving partner has the rights which by the terms of the partnership he is to have on the death of a partner during the partnership. — *MCLEOD v. DOWLING* (1927), 43 T. L. R. 655.

1670a. **Partner sending notice of intention to dissolve partnership—Death before notice received by other partner.**—*MCLEOD v. DOWLING*, No. 1654a, *ante*.

1835. *Add. Citations*:—96 L. J. Ch. 65; 136 L. T. 238.

1841a. — — For share of “net profits” —**Dissolution by death.**—*Applt.* & H. entered into partnership, the arts. providing that each partner was entitled to a salary & half the “net profits” during the term of the partnership, & that if either partner died the surviving partner was for five years to pay to the exors. a third of the “net annual profits.” H. died, & the partnership was thereby dissolved:—*Held*: the expression “net profits” was not necessarily to be interpreted as having the same meaning in every part of the arts., & *applt.*, in calculating the share of the net profits payable to the exors., was not entitled to deduct any salary for himself.—*WATSON v. HAGGITT*, [1928] A. C. 127; 97 L. J. P. C. 33; 138 L. T. 306; 44 T. L. R. 90; 71 Sol. Jo. 963, P. C.

1845. *Add. Annotation*:—*Consd.* *Manley v. Sartori*, [1927] 1 Ch. 157.

### PART VI. SECT. 1, SUB-SECT. 3.

sl. *Death of partner intestate—Disposal of interest in partnership assets*—*FRY v. SESSIONS* (1869), 2 Ch. Ch. 360.—*CAN.*

### PART VI. SECT. 1, SUB-SECT. 8.

sm. *Transfer of partnership assets—Subject to payment of existing liabilities.*—*KERR v. BRADFORD* (1876), 26 C. P. 318.—*CAN.*

### PART VI. SECT. 4.

sp. *Registration of memorandum of dissolution—Under Partnership Registration Act, R. S. O., 1914 (c. 139)—Effect of.*—*DOMINION SUGAR CO. v. WARELL*, [1927] 2 D. L. R. 198, 60 O. L. R. 169.—*CAN.*

## PATENTS AND INVENTIONS.

## Part III.—“True and First Inventor.”

39. *Add. Citations* :—41 T. L. R. 545; *affd.* (1927), 96 L. J. Ch. 470; 137 L. T. 794; 43 T. L. R. 717; 44 R. P. C. 453, C. A.  
*Add Annotation* :—**Refd.** Mackenzie-Kennedy v. Air Council (1927), 138 L. T. S.
48. For “86 L. J. Ch. 468” read “86 L. J. Ch. 486.”
63. *Add. Annotation* :—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.

## Part IV.—Subject-Matter of Patent.

82. *Add. Annotations* :—**Mentd.** Palmolive Co. (of England) v. Freedman (1927), 44 T. L. R. 86; English Hop Growers v. Dering, [1928] 2 K. B. 174.
109. *Add. Annotations* :—**Refd.** *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407; *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.
116. *Add. Annotation* :—**Refd.** *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.
117. *Add. Annotations* :—*As to* (2) **Consd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 707. **Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.
134. *Add. Annotation* :—**Refd.** Adelmann & Ham Boiler Corpn. v. Llanrwst Foundry Co. (1928), 45 R. P. C. 413.
138. *Add. Annotations* :—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105; Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
142. *Add. Annotation* :—**Refd.** British United Shoe Machinery Co. v. Gimson Shoe Machinery Co. (1928), 45 R. P. C. 290.
147. *Add. Annotation* :—**Refd.** Parkes Samuel & Co., Ltd. v. Cocker Bros. (1929), 46 R. P. C. 241.
149. *Add. Annotation* :—*As to* (3) **Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
162. *Add. Annotations* :—*As to* (3) **Consd.** British Thomson-Houston Co. v. Metropolitan Vickers Electrical Co. (1928), 45 R. P. C. 1. **Refd.** Pope Appliance Corpn. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.
163. *Add. Annotation* :—**Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
187. *Add. Annotation* :—*As to* (2) **Refd.** Rondo Co., Ltd. v. Gramophone Co. (1929), 46 R. P. C. 378.
192. *Add. Annotations* :—**Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153; Heap Samuel & Son v. Bradford Dyers' Assocn. (1929), 46 R. P. C. 254.
- 210a. —. ]—*Held* : the patentee had obtained a result superior to any other at the date of the patent, & there was good subject-matter & the patent was valid.—Rondo Co., Ltd. v. Gramophone Co., Ltd. (1929), 46 R. P. C. 378.
- 222a. —. ]—The claim was as follows : “In a coin-controlling vending machine of the kind set forth, means for arresting the legend displaying wheels independently of the automatic stop mechanism, wherein the usual, automatically operated, locking pawl is divided intermediately of the length of its normally upright end position, the two parts being pivoted together about a transverse axis, stops being provided on the pawl lever so as to limit the pivotal movement of the outer portion, & wherein said outer portion is connected by lever, or link & lever, mechanism with a key or other handle outside the mechanism so as to be adapted when said key is depressed, to engage with the teeth of the star wheel.” In an action for infringement of the patent it was contended on behalf of plffs. that the patented invention, when incorporated in a known type of machine, changed a game of chance into a

## PART III. SECT. 1.

13 iii. S. P. DAVIS LOG & RAFT PATENTS Co. v. GATHELS (B. C.), [1927] 4 D. L. R. 95; [1927] 2 W. W. R. 753.—CAN.

## PART III. SECT. 2, SUB-SECT. 2.

1. *Varied*. [1927] S. C. 597; 44 R. P. C. 175.

## PART IV. SECT. 1, SUB-SECT. 3.—C. (a).

k i. —. ]—A patented process to be valid must denote ingenuity of invention. It is not enough, in order to constitute invention, to disclose something which has been but dimly seen before. —ELECTROLYTIC ZINC PROCESS Co. v. FRENCH'S COMPLEX ORE

REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94.—CAN.

ss. *Not mere mechanical skill*.—*Held* : the lantern in question was new & useful, & the changes made in the ventilation in the lantern to control the quantity & direction of the air currents was not the result of mere mechanical skill, but required thought, study & an inventive mind, & constituted invention.—ADAMS & WESTLAKE Co. v. E. T. WRIGHT, LTD., [1928] Exch. C. R. 112.—CAN.

## PART IV. SECT. 1, SUB-SECT. 3.—C. (b).

133 iii. —. ]—GUETTLER v. CANADIAN INTERNATIONAL PAPER CO., [1928]

2[D. L. R. 801; [1928] S. C. R. 438; *affy.*, [1927] 4 D. L. R. 517; [1928] Ex. C. R. 21.—CAN.

## PART IV. SECT. 1, SUB-SECT. 5.—A.

193 vii. —. ]—GUETTLER v. CAN. INTERNAT'L PAPER CO., [1927] 4 D. L. R. 517.—CAN.

193 viii. —. ]—Where a specific machine already exists producing certain effects, & additions have been made to such machine to produce the same effect in a better manner :—*Scmble* : a patent cannot be taken for the whole machine, but for the improvement only. —SHERBROOKE MACHINERY CO., LTD. v. HYDRAULIC CO., LTD., [1927] Exch. C. R. 114.—CAN.

- game of skill, & that defts. had used a modified form of pltf's. invention :— *Held* : the patentees' idea was not new, & no problem had had to be solved in carrying it into effect, & that all that the patentees had done was to effect a perfectly natural & ordinary workshop alteration in a known machine, & that the patent was bad for want of subject-matter. —LENNARDS PERFECT SKILL CONTROL CO., LTD. v. HOLLOWAY & SAMPSON NOVELTY CO., LTD. (1929), 46 R. P. C. 353.
231. *Add. Annotation* :—*Refd.* Mellor v. Beardmore (1927), 44 R. P. C. 175.
246. *Add. Annotation* :—*Refd.* Parkes Samuel & Co. v. Cocker Bros. (1929), 46 R. P. C. 241.
284. *Add. Annotation* :—*Generally*, *Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
299. *Add. Annotation* :—*Refd.* Boyce v. Morris Motors (1927), 44 R. P. C. 105.
302. *Citation* :—For “ 14 L. R. 187, II. L.,” read “ 14 T. L. R. 187, H. L.”
- 308a. —.—]—*Held* : the applying to a ham boiler of a rack & catch was the addition of something which in itself had no novelty, & the patent was invalid for want of subject-matter.—ADELMANN & HAM BOILER COGN. v. ILANRWST FOUNDRY CO. (1928), 45 R. P. C. 413.
- 308b. —.—]—*Held* : (1) the first claim as to an apparatus was so vague as to be bad ; (2) a combination claimed in the second claim did not produce a new result, & was merely the use successively of two pieces of apparatus, neither of which was patentable, & did not constitute a patentable combination, but was mere juxtaposition. —HANKS v. COOMBS (1928), 45 R. P. C. 237, C. A.
- 308c. —.—] — JOHN WRIGHT & EAGLE RANGE, LTD. v. GENERAL GAS APPLIANCES, LTD. (1928), 46 R. P. C. 169, C. A.
315. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
325. *Add. Annotation* :—*Refd.* Hanks v. Coombs (1928), 45 R. P. C. 237.
327. *Add. Annotation* :—*Refd.* Hanks v. Coombs (1928), 45 R. P. C. 237.
329. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
336. *Add. Annotation* :—*Refd.* Jones & Atwood v. National Radiator Co. (1928), 45 R. P. C. 71.
339. *Add. Annotation* :—*Refd.* *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 130.
346. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
349. *Add. Annotation* :—*Refd.* Safveaus Akt. v. Ford Motor Co. (England) (1926), 44 R. P. C. 49.
351. *Add. Annotation* :—*Refd.* *Re* Carpmael's Application (1928), 46 R. P. C. 321.
361. *Add. Annotations* :—*Consd.* Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269. *Refd.* Boyce v. Morris Motors (1927), 44 R. P. C. 105 ; Mellor v. Beardmore (1927), 44 R. P. C. 175 ; Wright (John) & Eagle Range v. General Gas Appliances (1928), 46 R. P. C. 169.
365. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
372. *Add. Annotation* :—*Generally*, *Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
383. *Add. Annotation* :—*Refd.* *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.
390. *Add. Annotations* :—As to (1) *Consd.* Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269. *Generally*, *Refd.* Mellor v. Beardmore (1927), 44 R. P. C. 175.
- 391a. —.—]—*Held* : the specification claimed the process of mercerising the cotton in a mixed fabric of cotton & cellulose acetate silk by applying for that purpose the old familiar process of mercerisation ; that it was only discovery for the patentee to find that an application of the old process to the particular mixed fabric did not occasion deleterious effect to the cellulose acetate artificial silk, & the patent was invalid for want of subject-matter.—HEAP (SAMUEL) & SON, LTD. v. BRADFORD DYERS' ASSOCN., LTD. (1929), 46 R. P. C. 254.
402. *Add. Annotation* :—*Generally*, *Refd.* Mellor v. Beardmore (1927), 44 R. P. C. 175.
409. *Add. Annotation* :—*Consd.* Wright & Eagle Range v. General Gas Appliances (1928), 45 R. P. C. 346.
412. *Add. Annotation* :—*Refd.* Wright John & Eagle Range v. General Gas Appliances, Ltd. (1928), 46 R. P. C. 169.
- 412a. —.—]—Where a known apparatus is first used for a particular purpose, a presumption of patentable subject-matter is raised by novelty in the mode of use, as distinguished from novelty of purpose. New mode of use may be based on advantage in treatment of particular materials. —*Re* SIMON-CARVIES, LTD. & ROBINSON'S PATENT (1928), 45 R. P. C. 407.
423. *Add. Annotation* :—*Generally*, *Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
434. *Citations* :—For “ 44 R. P. C. 69,” read “ 44 R. P. C. 367 ; *affd.* 45 R. P. C. 153, C. A.”
435. *Add. Annotation* :—*Consd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

PART IV. SECT. 1, SUB-SECT. 5.—B.  
250 iv. *affd.*, [1928] 2 D. L. R. 448 ;  
[1928] S. C. R. 8.—CAN.

PART IV. SECT. 1, SUB-SECT. 7.—A.  
270 xx. —.—]—CANADIAN  
GENERAL ELECTRIC CO., LTD. v. PADA  
RADIO, LTD., [1927] 2 D. L. R. 911 ;  
[1927] Exch. C. R. 134.—CAN.

PART IV. SECT. 1, SUB-SECT. 9.—A.  
352 viii. *affd.*, [1928] 2 D. L. R. 448 ;  
[1928] S. C. R. 8.—CAN.

352 x. —.—]—BERGEON v. DE  
KERMOR ELECTRIC HEATING CO., LTD.,  
[1927] 3 D. L. R. 99, [1927] Exch.  
C. R. 181.—CAN.

352 xi. —.—]—DETROIT RUB-  
BER PRODUCTS INC. v. REPUBLIC  
RUBBER CO., [1927] 4 D. L. R. 724 ;  
*affd.* [1928] 3 D. L. R. 81.—CAN.

352 xii. —.—]—NIEBLO MANU-  
FACTURING CO. v. STANDARD CO.,  
[1927] 4 D. L. R. 785.—CAN.

457. *Add. Annotation*:—**Consd.** Sharpe & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

459a. ———.]—**WHITE v. TODD OIL BURNERS, LTD.** (1929), 46 R. P. C. 275.

472a. ———.]—It is not enough to show that an apparatus described in an earlier specification alleged as an anticipation could have been used to produce a certain result; it must also be shown that the specification contains clear & unmistakable directions so to use it. **BRITISH THOMSON-HOUSTON CO., LTD. v. METROPOLITAN-VICKERS ELECTRICAL CO., LTD.** (1928), 45 R. P. C. 1, H. L.: *affq.* S. C. *sub nom.* **METROPOLITAN-VICKERS ELECTRICAL CO., LTD. v. BRITISH THOMSON-HOUSTON CO., LTD.** (1925), 43 R. P. C. 76, C. A.

*Annotation*:—**Consd.** Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.

502a. ———.]—**BIRTWHISTLE v. SUMNER ENGINEERING CO., LTD.** (1928), 46 R. P. C. 59.

517. *Add. Annotation*:—**Refd.** Wright John & Eagle Range v. General Gas Appliances, Ltd. (1928), 46 R. P. C. 169.

518. *Add. Annotations*:—**Consd.** British Thomson Houston Co. v. Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1. **Refd.** Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269; Wright John & Eagle Range v. General Gas Appliances, Ltd. (1928), 46 R. P. C. 169.

556. *Add. Annotations*:—**Refd.** Sharpe & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153; Pope Appliance Corp. v. Spanish River Pulp & Paper Mills (1929), 98 L. J. P. C. 50.

559. *Add. Annotations*:—**Refd.** Mellor v. Beardmore (1927), 44 R. P. C. 175; Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.

560. *Add. Annotations*:—**Refd.** Mellor v. Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

561. *Add. Annotation*:—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.

574. *Add. Annotation*:—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.

585. *Add. Annotations*:—**Consd.** Wright John & Eagle Range v. General Gas Appliances (1928), 46 R. P. C. 169. **Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.

593. *Add. Annotations*:—*As to* (3) **Refd.** British Thomson-Houston Co. v. Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1; Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.

598. *Add. Annotation*:—**Refd.** Jones & Attwood v. National Radiator Co. (1928), 45 R. P. C. 71.

625. *Add. Annotations*:—**Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153. **Mentd.** Parkes Samuel & Co. v. Cocker Bros. (1929), 46 R. P. C. 241.

636. *Add. Annotation*:—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

640. *Add. Annotation*:—**Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

659. *Add. Citation*:—*Affd. sub nom.* **BRITISH THOMSON-HOUSTON CO., LTD. v. METROPOLITAN-VICKERS ELECTRICAL CO., LTD.** (1928), 45 R. P. C. 1, H. L.

*Add. Annotation*:—**Consd.** Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.

680a. ———.]—In an action for infringement defts. denied infringement, & alleged that the patent was invalid by reason of (*inter alia*) want of utility. Pltfs. proved the utility of their invention:—**Held**: the patent was valid, & had been infringed.—**BRITISH UNITED SHOE MACHINERY CO., LTD. v. LAMBERT HOWARTH & SONS, LTD. & GIMSON SHOE MACHINERY CO., LTD.** (1927), 44 R. P. C. 511; *subsequent proceedings* (1929), 46 R. P. C. 315.

680b. **S. P. BRITISH UNITED SHOE MACHINERY CO., LTD. v. GIMSON SHOE MACHINERY CO., LTD.** (1928), 45 R. P. C. 290, C. A.

680c. **S. P. PARKES S. & CO., LTD. v. COCKER BROS., LTD.** (1929), 46 R. P. C. 241, C. A.

688a. ———.]—**ROSE STREET FOUNDRY & ENGINEERING CO., LTD. v. INDIA RUBBER GUTTA PERCHA & TELEGRAPH WORKS CO., LTD.** (1929), 46 R. P. C. 294, C. A.

**PART IV. SECT. 2, SUB-SECT. 1.**

436 xii. ———.]—**ELECTROLYTIC ZINC PROCESS CO. v. FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD.**, [1927] Exch. C. R. 94.—**CAN.**

436 xiii. ———.]—There must be a substantial exercise of the inventive power, though it may in some cases be very slight, to sustain a grant for a patent for invention. Slight alterations may produce important results & may disclose great ingenuity.—**CANADIAN GENERAL ELECTRIC CO., LTD. v. FADA RADIO, LTD.**, [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

**PART IV. SECT. 2, SUB-SECT. 2.—**  
**B. (b) ii.**

523 iii. ———.]—**GEORGESON v. URWIN & CO.**, [1928] N. Z. L. R. 207.—**N.Z.**

o i. ———.]—**POPE APPLIANCE CORPN. v. SPANISH RIVER PULP & PAPER MILLS**, [1929] A. C. 269.—**CAN.**

o ii. ———.]—“Not known or used by any other person.”—**Held**: though, as decided in *Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, Ltd.*, the public use or sale for more than a year previously to the applica-

tion must be public use or sale in Canada, yet the words “which was not known or used by any other person before his [appet.‘s] invention thereof,” are not qualified by the words “in Canada,” & accordingly, if it can be shown that the invention was known or used by any other person in any part of the world before the invention in Canada, that fact alone would render the patent invalid.—**CANADIAN GENERAL ELECTRIC CO., LTD. v. FADA RADIO, LTD.** (1929), 46 T. L. R. 18.—**CAN.**

**PART IV. SECT. 2, SUB-SECT. 2.—**  
**B. (b) v.**

s j. “On sale”.—*Within Patent Act—What amounts to.*—**SEMET-SOLVAY CO. v. COMR. OF PATENTS**, [1927] 3 D. L. R. 385; [1927] Exch. C. R. 218.—**CAN.**

**PART IV. SECT. 2, SUB-SECT. 2.—**  
**C. (a).**

594 ii. ———.]—**CANADIAN GENERAL ELECTRIC CO., LTD. v. FADA RADIO, LTD.**, [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

594 iii. ———.]—**MAUNDER v. WANGANUI SASH & DOOR FACTORY & TIMBER CO., LTD.**, [1928] N. Z. L. R.

566. **N.Z.**

**PART IV. SECT. 2, SUB-SECT. 2.—**  
**C. (e).**

615 iii. ———.]—**CANADIAN GENERAL ELECTRIC CO., LTD. v. FADA RADIO, LTD.**, [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

**PART IV. SECT. 3, SUB-SECT. 1.**

664 ii. *affd.*, [1928] 2 D. L. R. 418; [1928] S. C. J. 8.

683 i. *Degree of utility necessary to support patent.*—**Held**: a definite amount of utility is not required by law to sustain an invention; a slight amount of utility being sufficient. Commercial utility is the very essence of a patent, & a favourable reception by the purchasing public is strong evidence of that degree of utility required by law.—**PRENTICE v. DOMINION RUBBER CO., LTD.**, [1928] Exch. C. R. 196.—**CAN.**

**PART IV. SECT. 3, SUB-SECT. 2.**

690 i. *Effect of non-user.*—**ELECTROLYTIC ZINC PROCESS CO. v. FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD.**, [1927] Exch. C. R. 94.—**CAN.**

## Part V.—Application for Patent.

- 700a. Effect of.]—**Samples & indorsements thereon, deposited under Patents & Designs Act, 1907 (c. 29), s. 2 (5), can be relied on in aid of the interpretation of the specification, & as effective prior publication against a subsequent claim.—**NOTES OF OFFICIAL RULINGS 1928 (B) (1928) 45 R. P. C. App. iv.**
- 704. Add. Annotation :—****Refd. *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.**
- 709a. Power to modify forms.]—**The Comptroller may only modify patents forms so as to adapt them for some purpose akin to the purpose for which they are primarily intended.—***Re* SALLES' APPLICATION (1927), 45 R. P. C. 61.**
- 717. Add. Annotation :—*****As to* (1) Refd. *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.**
- 721a. — Order for discovery.]** An appeal from an order for discovery, made by the Comptroller-General of Patents on an opposed application for letters patent, lies to the law officer & not to a judge of the High Ct.—***Re* ROBERTSON'S APPLICATION (1929), 46 T. L. R. 17.**
- 727. For the existing paragraph substitute the following paragraph:—**  
**Injunction to restrain acceptance — Lawful ground of objection.—“ Secret processes.”**—Where an injunction had been granted to restrain *appet.* for a patent from disclosing processes derived from *plff. co.*, or from doing any act which might cause same to become public or commonly known, & the Comptroller-General refused to undertake

when he should receive an application for the acceptance of a complete specification to consider such injunction a “ lawful ground of objection ” to the acceptance of the complete specification within Patents & Designs Act, 1907 (c. 29), s. 7 (3), objecting to his duty prescribed by the Patent Acts being in any way interfered with by the *ct.*, the *ct.* granted an injunction restraining the Comptroller-General from accepting the complete specification, as under sect. 9, on such acceptance, the matter would be thrown open to public inspection, the specification being concerned with some of the processes which, as between *plff. co.* & *appet.*, *appet.* had been restrained from disclosing, & because the Comptroller-General might accept the complete specification on the footing that the injunction against *appet.* would not constitute a lawful ground of objection within sect. 7 (3). On appeal the S.-G. on behalf of the Comptroller-General undertook that the injunction granted against *appet.* would be properly considered in deciding whether the specification should be accepted as being something which might constitute “ a lawful ground of objection ” to such acceptance, & by consent the order against the Comptroller-General was discharged, notice of discontinuance to be served upon him. *Appet.* was also further restrained from proceeding with his application in addition to the injunction granted against him in the *ct. below.*—***Itex Co. & Rex Research Corp. v. Muirhead & Comptroller General of Patents (1926), 96 L. J. Ch. 121 ; 136 L. T. 568 ; 44 R. P. C. 38, C. A.***

## Part VI.—Specifications.

- 773. Add. Annotation :—****Refd. *Re* Dreyfus' Applns. (1927), 44 R. P. C. 291.**
- 776. Add. Annotation :—****Mentd. *Rondo Co. v. Gramophone Co. (1929), 46 R. P. C. 378.***
- 795. Add. Annotation :—****Refd. *Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.***
- 796a. —.]—****ROSE STREET FOUNDRY & ENGINEERING CO., LTD. *v.* INDIA RUBBER GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. (1929), 46 R. P. C. 294, C. A.**
- 804. Add. Annotations :—****Consd. *Hanks v. Coombes (1928), 45 R. P. C. 237 ; Rose Street Foundry & Engineering Co. v. India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294.***
- 804a. As to apparatus.]—****HANKS *v.* COOMBES, No. 308b, ante.**
- 810a. —.]—*****Re* CHEMISCHE FABRIK AUF ACTIEN (VORM E. SCHERING) PATENT (1928), 45 R. P. C. 403.**
- 814. Add. Annotation :—****Refd. *Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.***
- 843. Add. Annotation :—****Refd. *Re* Chemische Fabrik auf Actien (Vorm E. Schering) Patent (1928), 45 R. P. C. 403.**
- 894a. Suitable drawings— What are.]—*****Re* STANDARD TELEPHONES & CABLES, LTD.'S APPLICATION (1928), 46 R. P. C. 183.**
- 910. Add. Annotations :—*****As to* (3) Refd. *Boyce v. Morris Motors (1927), 44 R. P. C. 105. Generally, Refd. *Parkes Samuel & Co. v. Cocker Bros. (1929), 46 R. P. C. 241.****
- 918. Add. Annotations :—****Refd. *Mellor v. Beardmore (1927), 44 R. P. C. 175. Mentd. *Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.****
- 921. Add. Annotations :—*****As to* (1) Refd. *Mellor v. Beardmore (1927), 44 R. P. C. 175 ; Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153 ; Re Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.***

## PART VI. SECT. 4, SUB-SECT. 2.—A. (b).

**sm. As to process.]—**The specifica-

tion of a patent for a process must point out clearly the method by which the process is to be performed so as to accomplish the object in view.—

**ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94.—CAN.**

- 996.** *Add. Annotations :—***Apld.** *Hanks v. Coombes* (1928), 45 R. P. C. 237. **Consd.** *Rose Street Foundry & Engineering Co. v. India Rubber Gutta Percha & Telegraph Works Co.* (1929), 46 R. P. C. 294.
- 1040.** *Add. Annotation :—***Consd.** *Rose Street Foundry & Engineering Co. v. India Rubber Gutta Percha & Telegraph Works Co.* (1929), 46 R. P. C. 294.
- 1205a.** ----- **Order of Court of Appeal in action for infringement.]—****DOUGLAS PACKING CO. (INCORPORATED), DOUGLAS PECTIN CORPN. &**

## Part VII.—Grant of Patent.

- 1352a.** — — — — — *Re A. B.'s APPLICATION*  
(1902), 19 R. P. C. 403.
- 1363a.** — — — — — The manufacturer of a particular article may be regarded as interested in commercial processes for making such article marketable; but an opposition is not necessarily admissible, merely because it is not frivolous, vexatious or blackmailing. — *Re CLAVEL's APPLICATION* (1928), 45 R. P. C. 222.
- 1364.** *Add. Annotation :—Refd. Re Clavel's Appln.*  
(1928), 45 R. P. C. 222.
- 1369.** *Add. Annotation :—Consd. Re Clavel's Appln.*  
(1928), 45 R. P. C. 222.

## Part VIII.—Register of Patents.

- 1522a. - **Agreement as to ownership.**—*Re* SMITH'S (H. E.) PATENT (1929), 46 R. P. C. 400.

**PART VI. SECT. 4. SUB-SECT. 4.**

**955 i. Whether necessary to distinguish novelty or improvement.—General rule.**—A patentee, in a patent for an improvement on a known device, must not throw his net so wide as to omit to disclose honestly what belongs to the prior art as distinct from his new claim.—**BERGEE v. DE KERMOR ELECTRIC HEATING CO., LTD.,** [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181.—**CAN.**

**PART VI. SECT. 5, SUB-SECT. 1.**

**989 i. Necessity for claim.]—(1)** A patentee must define & limit with precision what he claims to have invented, & everything not clearly claimed becomes *publici juris*.  
**(2)** A patentee must clearly set forth the various steps in a process claimed, & if designedly or unskillfully he makes it ambiguous, vague or indefinite, the patent is bad.—**ELECTROLYTIC ZINC PROCESS Co. v. FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94.—CAN.**

989 ii. —. —.]—Anything disclosed in the specifications of a patent, & for which no claim is made, becomes *publici juris*.—BERGEON v. DE KERMOR ELECTRIC HEATING CO., LTD., [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181.—CAN.

992 i. *Necessity for clear statement.*].—ELECTROLYTIC ZINC PROCESS CO. v. FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., No. 989 i, *ante.*—CAN.

**ki. Failure to claim advisable addition as necessary element of invention.]—**Where in the specification in a patent for an oven the patentee states that a certain device or addition is advisable or preferable, but does not claim it as a necessary element of the invention, any oven so constructed as to represent the invention patented, but without such additional device, will be an infringement of the patent.—**SEMET-SOLVAY Co. v. COMR. OF PATENTS, [1927] 3 D. L. R. 385; [1927] Exch. C. R. 218.—CAN.**

**PART VI. SECT. 6, SUB-SECT. 1.—A.**

**1059 i. General rule—Question for judge.** *Identity of two inventions.* [—*Held.* the construction of the language of the specification of a patent is a question of law for the ct., & pltf. co.'s specification covered not merely the precise mechanism described, but the attainment of a novel result at which, according to the arbitrator's findings, deft.'s machine was designed to arrive by means of a process substantially equivalent to that disclosed in pltf. co.'s specification, such findings in consequence establishing what is in law an infringement of pltf. co.'s patent.—*FARMER'S MILKING MACHINE CO., LTD. v. KNAPP*, [1928] N. Z. L. R. 501.—**N.Z.**]

**PART VI. SECT. 6, SUB-SECT. 2.- C.**

**1105 i. General rule.**—The language in a patent should be liberally construed with a view to maintaining its validity.—**DAVIS LOG & RAFT PATENTS Co. v. GATHELS (B. C.), [1927] 4 D. L. R. 95; [1927] 2 W. W. R. 753.—CAN.**



## Part X.—Assignment and Devolution of Patents.

- 1534a. Agreement for assignment**—Whether representation that grantee was “original inventor” material misrepresentation.]—*Held*: it had not been proved that a material misrepresentation had been made.—**THOMPSON v. JEFFERSON** (1928), 45 R. P. C. 309, P. C.
- **Construction.**]—*See* Nos. 1555–1557a, *post*.
- 1537. Add. Annotations**:—**Mentd.** English Hop Growers v. Dering, [1928] 2 K. B. 171; **Papadopoulos v. Papadopoulos** (1929), 46 T. L. R. 44.
- 1546. Add. Annotations**:—**Refd.** Palmolive Co. (of England) v. Freedman (1927), 41 T. L. R. 86. **Mentd.** English Hop Growers v. Dering, [1928] 2 K. B. 174.
- 1557a.** — — — **Of all patents in relation to preparation & application of gutta percha**—**What patents within agreement.**]—**BEWLEY v. HANCOCK** (1856), 6 De G. M. & G. 391; 26 L. T. O. S. 261, 2 Jur. N. S. 289; 4 W. R. 334; 43 E. R. 1285, L. C.
- **By joint owners of patents**—**Assignments to “contain covenants by vendors” that patents valid**—“& such other covenants as may be reasonably required.”]—*See* **CONTRACT**, Vol. XII., pp. 29, 30, No. 73.
- 1557b. Assignment of all assignor’s interest in patent**—**Passes right to apply for extension of term.**]—*Re* **BEARD & SCOTT’S PATENT, Re SCOTT & BEARD’S PATENT** (1927), 45 R. P. C. 31.
- 1562. Add. Annotation**:—*As to* (3) **Apld.** **The W. H. Randall**, [1928] P. 41.

## Part XI.—Licences.

- 1590. Add. Citation**:—28 R. P. C. 229.
- Add. Annotation**:—**Refd.** **Lacteosote v. Alberman**, [1927] 2 Ch. 117.
- 1651a.** — — — — — ]—*Held*: the phrase “the public interest” was to be construed in its widest meaning, & not simply with regard to the purchasing public.—*Re* **BROWNIE WIRELESS CO. OF GREAT BRITAIN, LTD.** (1929), 45 T. L. R. 584; 46 R. P. C. 457.
- Annotation**:—**Refd.** *Re* **Loewe Radio Co.’s Application** (1929), 46 R. P. C. 479.
- 1652. Add. Annotation**:—**Generally, Consd.** *Re* **Brownie Wireless Co. of Great Britain** (1929), 45 T. L. R. 584.
- 1655a.** — — — — — ]—*Re* **BROWNIE WIRELESS CO. OF GREAT BRITAIN, LTD.** (1929), 45 T. L. R. 584; 46 R. P. C. 457.
- Annotation**:—**Refd.** *Re* **Loewe Radio Co.’s Application** (1929), 46 R. P. C. 479.
- 1656a.** — **Question of degree.**]—*Re* **LOEWE RADIO CO., LTD.’S APPLICATIONS FOR THE GRANT OF COMPULSORY LICENCES** (1929), 46 R. P. C. 479.
- 1665. Add. Annotation**:—**Refd.** *Re* **Brownie Wireless Co. of Great Britain** (1929), 45 T. L. R. 584.
- 1665a.** — — — **Undertakings to Comptroller-General**—**Should not be required.**]—*Re* **LOEWE RADIO CO., LTD.’S APPLICATIONS FOR THE GRANT OF COMPULSORY LICENCES** (1929), 46 R. P. C. 479.
- 1669. Add. Annotation**:—*As to* (1) **Refd.** **Constantinesco v. R.** (1927), 11 Tax Cas. 730.
- 1673a.** — — — — — ]—(1) No action for a declaration of the validity of a patent, or for compensation for user of the invention by the Crown, against the Govt. department concerned is competent or open to the patentee under Patents & Designs Act, 1919 (c. 80), s. 8, if the Crown do not consent to its being dealt with in proceedings under sect. 8, but the remedy is by petition of right or by originating notice of motion addressed to the department. The true effect of sect. 8 is to give merely a right of compensation to the patentee against the Crown for the use by its officers of his invention for the purposes of the Crown, & it does not give any right in itself to sue the department concerned.
- (2) A claim for a declaration of the validity of the patent is not a claim in tort because the Crown has the right to use the patent on the statutory terms set out in sect. 8.
- An action in which such a declaration was claimed against the Air Council, dismissed on the above grounds.—**ROWLAND & MACKENZIE-KENNEDY v. AIR COUNCIL** (1927), 96 L. J. Ch. 470; 137 L. T. 794; 43 T. L. R. 717; 41 R. P. C. 453, C. A.
- Annotation**:—**Generally, Refd.** **Mackenzie-Kennedy v. Air Council** (1927), 138 L. T. 8.

### PART X. SECT. 3.

**1545 i. Covenant for payment of royalties by assignees**—**Covenant to “warrant & defend” by assignor.**]—**GREEN v. WATSON** (1884), 10 A. R. 113.—**CAN.**

### PART XI. SECT. 1, SUB-SECT. 6.

**sp. Sub-assignment**—**Position of parties.**]—**HILL v. MOISAN**, [1927] 2

D. L. R. 1089—**CAN.**

### PART XI. SECT. 1, SUB-SECT. 8.

**h l. — Invalidity of patent**]—**CHANNELL v. O’CEDAR CORPN.** (1927), 60 O. L. R. 525; *reversed* [1928] 3 D. L. R. 813; [1928] S. C. R. 512—**CAN.**

### PART XI. SECT. 2, SUB-SECT. 2.

**1662 i. Grant of licence**—**On what terms granted**—**Licence fee**—**How calculated.**]—

—**CONSOLIDATED WAFER CO., LTD. v. INTERNATIONAL CONE CO., LTD.**, [1927] 1 D. L. R. 402, [1927] S. C. R. 300.—**CAN.**

**st. Appeal**—**From Exchequer Court**—**Proceedings under Patent Act, 1923** (c. 23), s. 10—**Jurisdiction of Supreme Court of Canada.**]—**CONSOLIDATED WAFER CO., LTD. v. INTERNATIONAL CONE CO., LTD.**, [1927] 1 D. L. R. 402; [1927] S. C. R. 300.—**CAN.**

## Part XII.—Term of Patent.

- 1681a.** — Being beneficial owner.]—*Re WHITE & GRAY'S PATENT* (1927), 45 R. P. C. 119.
- 1684a.** — Interests of foreign shareholders acquired by Public Trustee Patents & Designs Acts, 1907–1919, s. 18 (6).]—*Re STIRLING'S PATENT, Re STIRLING & SCHMIDT'S SUPER-HEATING CO.* (1910), LTD.'S PATENT (1928), 46 R. P. C. 133.
- 1687a.** Joinder of grantee—Application by assignee.]—Where a grantee declines to join in an application for the extension of the term of a patent & lodges notice of opposition, it is necessary to join such grantee as a party to the summons.—*Re BEARD & SCOTT'S PATENT, Re SCOTT & BEARD'S PATENT* (1927), 45 R. P. C. 31.
- 1687b.** — Discretion of court to dispense with.]—*Re DRESSLER'S PATENTS* (No. 2) (1928), 46 R. P. C. 165.
- 1687c.** — — — —.]—*Re SMITH'S (E. J.) PATENTS* (1928), 46 R. P. C. 166.
- 1687d.** — — — —.]—*Re ALLEN & BENNETT BROS., LTD. PATENTS* (1929), 46 R. P. C. 397.
- 1687e.** Assignor.]—*Re OWEN'S PATENT* (1928), 46 R. P. C. 333.
- 1706a.** — — — —.]—*Re BEARD & SCOTT'S PATENT, Re SCOTT & BEARD'S PATENT*, No. 1557b. *ante*.
- 1883a.** — — — —.]—*Re LAKE'S PATENTS* (1928), 46 R. P. C. 135.
- 1931.** *Add. Annotation:—Mentd. Re Mellinger's Patent, Re Automatic Telephone Manufacturing Co.* (1928), 46 R. P. C. 4.
- 1997a.** — Irregularity in service of advertisements—Excused.]—*Re PANICALI & BRENNI'S PATENT* (1927), 44 R. P. C. 509.
- 2021.** *Add. Annotation:—Refd. Re Chambers' Patent* (1927), 44 R. P. C. 332.
- 2021a.** — — — —.]—*Re BOUYER'S PATENT* (1928), 45 R. P. C. 268.
- 2023a.** — Six months after expiry.]—*Re HORSTMANN, HORSTMANN & EDGAR'S PATENT* (1928), 46 R. P. C. 1.
- 2029a.** — — — —.]—*Re MORF'S PATENT* (1929), 46 R. P. C. 335.
- 2031.** *Add. Annotation:—Refd. Re Higginson & Arundel's Patent* (1927), 44 R. P. C. 430.
- 2036a.** — — — —.]—*Re BRITISH THOMSON-HOUSTON CO., LTD.'S PATENT* (1929), 46 R. P. C. 367.
- 2044a.** — — — —.]—*Re WADE'S PATENT, Re DOUGLAS' PATENT* (1929), 46 R. P. C. 518.
- 2060a.** — — — —.]—*Re CLYDE & DOBBIE MCINNIS, LTD. PATENTS* (1929), 46 R. P. C. 429.
- 2062a.** — — — —.]—*Re GILBERT'S PATENTS* (1927), 44 R. P. C. 527.
- 2062b.** — — — —.]—*Re WESTERN ELECTRIC CO., LTD.'S PATENTS* (1927), 45 R. P. C. 117.
- 2064a.** — — — —.]—Loss partly made good by subsequent profits.]—An application for an extension of the term of a patent was opposed on the ground (*inter alia*) that sales lost during the war had been balanced by accumulated deferred sales after the war:—*Held*: there had been a loss which had been in part, but not wholly, made good by a subsequent gain, & an extension of two & a half years should be granted.—*Re HIGGINSON & ARUNDEL'S PATENT* (1927), 44 R. P. C. 430.
- 2064b.** — — — —.]—*Held*: in order to show that a loss had been counterbalanced by subsequent gains, it should be established that, as the result of the cessation of hostilities, those who had been holding up their demands had loosed them, so that, in the post-war years, the arrears of orders had been executed in addition to the work which would normally have been done in the normal development of the patent.—*Re BATES & UNITED SHOE MACHINERY CO., LTD.'S PATENT, Re BATES RICHARDS & UNITED SHOE MACHINERY CO., LTD.'S PATENT* (1928), 45 R. P. C. 270.
- 2064c.** — — — —.]—*Re BOUYER'S PATENT* (1928), 45 R. P. C. 268.
- 2077a.** Illness of patentee owing to war.]—*Re EVANOVITCH'S PATENT* (1928), 46 R. P. C. 168.
- 2090a.** — — — —.]—*Re ENFIELD CYCLE CO., LTD. & SMITH'S PATENT* (1927), 44 R. P. C. 526.
- 2094.** *Add. Annotation:—Refd. Re Chambers' Patent* (1927), 44 R. P. C. 332.
- 2105a.** — — — —.]—*Re SPENGLER'S PATENT* (1929), 46 R. P. C. 331.
- 2112.** *Add. Annotation:—Refd. Re Chambers' Patent* (1927), 44 R. P. C. 332.
- 2127a.** — — — —.]—*Re MELLINGER'S PATENT, Re AUTOMATIC TELEPHONE MANUFACTURING CO., LTD.* (1928), 46 R. P. C. 4.
- 2130a.** — — — —.]—*Re HOGG & CARR'S PATENTS* (1927), 45 R. P. C. 120.
- 2130b.** Three years' difference in grant—Adjournment.]—*Re EDUCATIONAL SUPPLY ASSOCN., LTD.'S PATENTS* (1928), 46 R. P. C. 330.

## Part XIII.—Revocation.

- 2174a.** Prior publication.]—In the case of an application for the revocation of a patent already granted, appct. must establish his case in the clearest possible manner, & where prior publication is relied on, it is necessary to point to a clear & specific disclosure of something which can fairly be stated to be the patentee's invention.—*Re LOWNDES' PATENT* (1927), 45 R. P. C. 48.
- 2251a.** — — — —.]—*Re KOERNER'S PATENT* (1928), 45 R. P. C. 442.

## Part XIV.—Infringement.

- 2312. Add. Annotations:—**Refd. *Sharpe & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153; *Pope Apphance Corp. v. Spanish River Pulp & Paper Mills* (1929), 98 L. J. P. C. 50.
- 2389. Add. Annotation:—**Refd. *Re Higginson & Arundel's Patent* (1927), 44 R. P. C. 430.
- 2411. Add. Annotation:—**Mentd. *Rose St Foundry & Engineering Co., Ltd. v. India Rubber Gutta Percha & Telegraph Works Co.* (1929), 46 R. P. C. 294.
- 2479. Add. Annotation:—**As to (1) Refd. *Rondo Co., Ltd. v. Gramophone Co.* (1929), 46 R. P. C. 378.
- 2556. Add. Annotation:—**Refd. *The Jupiter* (No. 3) (1927), 137 L. T. 333.
- 2560. Citations:—**For "47 Sol. Jo. 365" read "67 Sol. Jo. 365."
- Add. Annotation:—**Refd. *Mackenzie-Kennedy v. Air Council* (1927), 138 L. T. 8.
- 2587. Add. Annotation:—**Mentd. *Rondo Co., Ltd. v. Gramophone Co.* (1929), 46 R. P. C. 378.
- 2606a. — — — — —**LEKTOPHONE CORPN. v. BROWN (S. G.), LTD. (1929), 46 R. P. C. 203; *affd.*, 46 R. P. C. 439, C. A.
- 2614. Add. Annotations:—**Apld. *Heap Samuel & Son v. Bradford Dyers' Assoc.* (1929), 46 R. P. C. 254. Refd. *British United Shoe Machinery Co. v. Gimson Shoe Machinery Co.* (1928), 45 R. P. C. 85.
- 2652. Add. Annotation:—**Mentd. *Rondo Co. v. Gramophone Co.* (1929), 46 R. P. C. 378.
- 2664a. — — — — —**Objection of want of conformity between provisional & complete specifications.—Where deft. in a patent action objects to the validity of plff.'s patent on the ground that there is a want of conformity between the provisional & complete specifications, it is not sufficient for him to state in his particulars of objection that the invention described in the complete specification is not the same as the invention described in the provisional specification: he must state in what the difference consists. *ANGLO-AMERICAN BRUSH ELECTRIC LIGHT CORPN. v. CROMPTON* (1886), 31 Ch. D. 152; 56 L. J. Ch. 167; 55 L. T. 722; 35 W. R. 125; 3 T. L. R. 136; (1884-1886), *Griffin's Patent Cases* 34, C. A.
- 2697a. — — — — —**BIRTWHISTLE v. SUMNER
- ENGINEERING CO., LTD. (1928), 46 R. P. C. 59.
- 2761. Add. Annotation:—**Generally, Refd. *Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
- 2781a. — — — — —**BRITISH THOMSON-HOUSTON CO., LTD. v. HENRY (P.) & CO., LTD. (1928), 45 R. P. C. 218, C. A.
- 2824. Add. Annotation:—**Mentd. *Rose St. Foundry & Engineering Co. v. India Rubber Gutta Percha & Telegraph Works Co.* (1929), 46 R. P. C. 294.
- 2848a. — — — — —**MARSHALL & THE LACE WEB SPRING CO., LTD. v. THE CROWN BEDDING CO., LTD. (1929), 46 R. P. C. 267.
- 2944. Add. Annotation:—**Generally, Refd. *Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
- 2963. Add. Annotation:—**Refd. *Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
- 2967. Add. Annotation:—**Refd. *Re Chemische Fabrik auf Actien (Vorm E. Schering) Patent* (1928), 45 R. P. C. 403.
- 3081a. — — — — —**To date of amendment of specification. *BRITISH UNITED SHOE MACHINERY CO., LTD. v. GIMSON SHOE MACHINERY CO., LTD.* (No. 2) (1928), 46 R. P. C. 137.
- 3092. Add. Annotation:—**Mentd. *Parkes Samuel & Co. v. Cocker Bros.* (1929), 46 R. P. C. 211.
- 3093. Add. Annotation:—**Consd. *Mellor v. Beardmore* (1927), 41 R. P. C. 175.
- 3098. Add. Annotations:—**Mentd. *Boyce v. Morris Motors* (1927), 41 R. P. C. 105; *Parkes Samuel & Co. v. Cocker Bros.* (1929), 46 R. P. C. 211.
- 3108a. Refusal to grant certificate that validity in question Whether appeal lies to Court of Appeal:—**No appeal lies to the Ct. of Appeal under Jud. Act, 1873 (c. 66), s. 19, against the decision of a ct. or a judge in an action for infringement of a patent granting a certificate under Patents, Designs & Trade Marks Act, 1883 (c. 57), s. 31, that the validity of the patent came in question.—*HASLAM FOUNDRY & ENGINEERING CO., LTD. v. HALL* (1888), 20 Q. B. D. 491; 57

## PART XIV. SECT. 1, SUB-SECT. 6.—A.

**2377 i. Sale in breach of limited licence:—**Necessity for knowledge of limitation.—In a suit by a patentee of articles against a vendor of them for infringement of plff.'s patent by selling them contrary to conditions imposed by the patentee, it is necessary to allege in the statement of claim that deft. acquired the patented articles with knowledge of those conditions.—*COLUMBIA GRAMOPHONE CO., LTD. v. FORSEY* (1927), 27 S. R. N. S. W. 216; 14 N. S. W. W. N. 87.—AUS.

## PART XIV. SECT. 2, SUB-SECT. 1.—A.

**2536 iii. — — — — —**CHANNELL v. O'CEDAR CORPN. (1927), 60 O. L. R. 525; *varied* [1928] 3 D. L. R. 843; [1928] S. C. R. 542.—CAN.

## PART XIV. SECT. 2, SUB-SECT. 3.—C. (a).

**2621 i. Patent irregularly obtained—**

*Untruth in affidavit verifying petition for patent* [FADA RADIO, LTD. v. CANADIAN GENERAL ELECTRIC CO., LTD.] [1927] 3 D. L. R. 922, [1927] S. C. R. 320.—CAN.

**2621 ii. — — — — —***Absence of affidavit in support of petition for re-issue of patent.* [FADA RADIO, LTD. v. CANADIAN GENERAL ELECTRIC CO., LTD.] [1927] 3 D. L. R. 922, [1927] S. C. R. 320.—CAN.

## PART XIV. SECT. 2, SUB-SECT. 3.—C. (b).

**sa. Defendant cannot impeach patent by counterclaim** [NIBRO MANUFACTURING CO. v. STANDARD CO.] [1927] 2 D. L. R. 813, [1927] Exch. C. R. 82.—CAN.

## PART XIV. SECT. 2, SUB-SECT. 9. C.

**2986 ii. — — — — —**[DAVIS LOG & RAFT PATENTS CO. v. GATHELS (B. C.)] [1927] 4 D. L. R. 95, [1927]

2 W. W. R. 753.—CAN.

## PART XIV. SECT. 2, SUB-SECT. 9.—D.

**sb. Evidence discoverable at time of trial.** *Held:—*the evidence which it was sought to adduce having been discoverable for the hearing before the Supreme Ct., & no special grounds having been advanced for the granting of the application, the motion should be dismissed, notwithstanding any injury which applt. might suffer from the evidence not having been adduced at the hearing. *KNAPP v. FARMERS' MILKING MACHINE CO., LTD.*, [1928] N. Z. L. R. 308.—N.Z.

## PART XIV. SECT. 2, SUB-SECT. 10.—D. (a).

**sc. Expiration of patent.**—An action for damages for infringement of a patent will lie, although the patent has expired.—*JENYNS v. JENYNS*, [1927] S. R. Q. 313.—AUS.

- L. J. Q. B. 352 ; 59 L. T. 102 ; 36 W. R. 407 ;  
4 T. L. R. 350 ; 5 R. P. C. 144, C. A.  
*Annotation* :—**Refd.** Acetylene Illuminating Co. v. United Alkali Co., [1902] 1 Ch. 491.
- 3120a.** ————.]—In an action for infringement, the ct. held defts. had not infringed, & the action was dismissed with costs. A certificate, that the validity of the patent had come into question, was granted.—TECALEMIT, LTD. v. WAKEFIELD (C. C.) & Co., LTD. (1927), 44 R. P. C. 471.
- 3120b.** ————.]—In an action for infringement, the ct. held defts. had not infringed, & the action failed. A certificate of particulars of objections was granted to defts., & a certificate of validity to plffs.—TECALEMIT, LTD. v. EWARTS, LTD. (1927), 44 R. P. C. 488.
- 3137a.** ————.]—**ENTICKNAP E. G. & ENTICKNAP CONCRETE MACHINES, LTD. v. HUMBYS, LTD.** (1929), 46 R. P. C. 351.
- 3150.** *Add. Annotation* :—**Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
- 3152a.** — — **Sale of patented articles below price fixed by licence—Plaintiff awarded costs.**—COLUMBIA PHONOGRAPH CO., GENERAL v. REGENT FITTINGS CO. (1913), 30 R. P. C. 484.
- 3174.** *Add. Annotations* :—**Refd.** British Thomson-Houston Co. v. Metropolitan-Vickers Elec-
- trical Co. (1928), 45 R. P. C. 1 ; Pope Appliance Corp. v. Spanish River Pulp & Paper Mills, [1929] A. C. 269.
- 3177.** *Add. Annotation* :—**Generally, Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
- 3184.** *Add. Annotation* :—**Mentd.** Rose Street Foundry & Engineering Co. v. India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294.
- 3185.** *Add. Annotation* :—**Refd.** Mellor v. Beardmore (1927), 44 R. P. C. 175.
- 3200.** *Add. Annotation* :—**Refd.** White v. Todd Oil Burners (1929), 46 R. P. C. 275.
- 3212a.** ——— **Plaintiff falling on issue of infringement.**—TECALEMIT, LTD. v. EWARTS, LTD., No. 3120b, *ante*.
- 3232.** *Add. Annotation* : **Mentd.** Rondo Co. v. Gramophone Co. (1929), 46 R. P. C. 378.
- 3261.** *Add. Annotation* :—**Mentd.** Rose Street Foundry & Engineering Co. v. India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294.
- 3283.** *Add. Annotations* :—**Refd.** Mellor v. Beardmore (1927), 44 R. P. C. 175 ; Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153 ; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

## Part XV.—Legal Proceedings.

- 3312a.** ——— **Stay of proceedings—Pending determination of action between other parties.**—MULTIPLE UTILITIES CO., LTD. v. SOUCH (1929), 46 R. P. C. 402, C. A.
- 3343a.** ——— **Question of fact—Threat may be implied from words used.**—LUNA ADVERTISING CO., LTD. v. BURNHAM & Co. (1928), 45 R. P. C. 258.
- 3353a.** ————.]—TIBO PRODUCTS CO., LTD. v. SALT (1929), 46 R. P. C. 451.

## Part XVI.—International and Colonial Arrangements.

- 3432.** *Add. Annotation* :—**Generally, Refd.** Sharpe & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
- 3434.** *Add. Annotation* :—**Generally, Refd.** Tattersall v. Sladen, [1928] Ch. 318.

## Part XVII.—Patent Agents.

- 3442a.** ——— **Inference from correspondence.**—THOMPSON v. BETTINGER (No. 2) (1928), 46 R. P. C. 189.
- 3443.** *Add. Annotation* :—**Refd.** Maclean v. Workers' Union, [1929] 1 Ch. 602.

### PART XVI.

**3426 i.** *To whom patent granted under International Convention—Assignee of foreign inventor.*—The right of a foreign inventor, who had applied for protection in his own country, to apply under Patents Act, 1903–1909, s. 121,

for a patent for his invention in priority to other applicants, is purely personal, & could not have been exercised by his assignees in their own names prior to Patents Act, 1921.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. v. DAVID JONES, LTD. (1928), 28 S. R. N. S. W. 355 ; 45 N. S. W. N. N.

### 96.—AUS.

**p. Revsd.,** [1924] 4 D. L. R. 484.

### PART XVII.

**st.** *Registration of patent agents—Solicitor in Irish Free State.*—O'NEILL v. BRADLEY, [1929] I. R. 422.—**IR.**

## PAWNS AND PLEDGES.

### Part II.—Pawns at Common Law.

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| <p>30. <i>Add. Annotations</i> :—<b>Refd.</b> Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 652 ; Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.</p> <p>138. <i>Add. Annotation</i> :—<b>Consd.</b> Weld v. Petre (1928), 97 L. J. Ch. 399.</p> | <p>146. <i>Add. Annotation</i> :—<b>Refd.</b> Lowther v. Harris, [1927] 1 K. B. 393.</p> <p>168. <i>Add. Annotation</i> :—<b>Consd.</b> Lake v. Simmons, [1927] A. C. 487.</p> <p>171. <i>Add. Annotation</i> :—<b>Refd.</b> Lowther v. Harris, [1927] 1 K. B. 393.</p> |
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### Part III.—Pawns under Pawnbrokers Acts.

178. *Add. Annotation* :—**Refd.** Foster v. Driscoll, Lindsay v. Attheld, Lindsay v. Driscoll, [1929] 1 K. B. 470.

**PART II. SECT. 1, SUB-SECT. 2.—A.**

**o i.** —.]—In the case of the pledge of an instrument creating or evidencing a right the thing pledged must be taken

to be both the instrument & the right, not the bare instrument without the right nor the mere right without the instrument. ROYAL BK. OF CANADA

v. TALBOT, [1928] 3 D. L. R. 157, [1928] 2 W. W. R. 190, 31 Alta. L. R. 395.—**CAN.**

## PEERAGES AND DIGNITIES.

## Part I.—Peerage.

7. *Add. Annotation* :—**Mentd.** James v. British General Insee., [1927] 2 K. B. 311.
68. *Add. Annotations* :—**Refd.** Edwards v. A.-G. for Canada (1929), 46 T. L. R. 4. **Mentd.** Farnworth v. Manchester City Corpn., [1929] 1 K. B. 533.
69. *Add. Annotation* :—**Refd.** Edwards v. A.-G. for Canada (1929), 46 T. L. R. 4.
- 89a. — — — — —. | - Deft. having voted at the election of Scotch peers : *Held* : as a Scotch peer, entitled to be discharged from arrest, although his vote had been protested against,
- his claim to the title disputed, & never recognised by the House of Lords or at ct.—**DIGBY v. STIRLING (Lord)** (1831), 8 Bing. 55; 1 Dowl. 248; 1 Moo. & S. 116; 131 E. R. 321; *sub nom.* **DIGBY v. ALEXANDER**, 1 L. J. C. P. 12.
- Annotation* : - **Refd.** Smart v. Johnstone (1837), Murp. & H. 351.
268. *Add. Annotations* :—*Generally*, **Mentd.** Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930; R. v. Moscovitch (1927), 138 L. T. 183.

## PERPETUITIES.

## Part I.—The Rule Against Perpetuities.

2. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
- 19a. ———.]—**CLEMENTI v. FIELDING** (1848), 12 L. T. O. S. 309.
29. *Add. Annotation* :—**Refd.** *I. R. Comrs. v. Bone* (1927), 13 Tax Cas. 20.
53. *Add. Citation* :—*sub nom.* **ALFORD'S CASE**, O. Bridg. 584, L. C.  
*Add. Annotations* :—**Refd.** *Howard v. Norfolk (Duke)* (1681), 3 Cas. in Ch. 14; *Goodtitle d. Gurnall v. Wood* (1740), Willes, 211; *Thellusson v. Woodford* (1798), 1 Ves. 227.
54. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
56. *Add. Annotation* :—*As to* (2) **Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
58. *Add. Citation* :—*subsequent proceedings* (1788), 2 Term Rep. 241; 2 Bro. C. C. 344, L. C.  
*Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
64. *Add. Annotation* :—**Refd.** *Re Lanyon, Lanyon v. Lanyon*, [1927] 2 Ch. 261.
66. *Add. Annotation* :—**Apprvd.** *Re Villar, Public Trustee v. Villar*, [1929] 1 Ch. 243.
- 66a. ———— **Survivor of Queen Victoria's descendants living.**]—By his will dated June 14, 1921, & confirmed by a codicil of Feb. 2, 1926, testator, who died on Sept. 6, 1926, gave his property to his trustees upon certain trusts as to income & capital for his participating issue as therein defined, using a well known common form so as to tie it up in such a way that the capital was not to vest until the expiration of "the period ending at the expiration of twenty years from the day of the death of the last survivor of all the lineal descendants of Her late Majesty Queen Victoria who shall be living at the time of my death":—*Held*: though the existing lives selected were very numerous & it would be extremely difficult & expensive in the future to ascertain the date of the survivor's death, it could not be said to be so impracticable or beyond the scope of the ordinary legal testimony probably then available as to avoid the trust *ab initio* for uncertainty or perpetuity, & the trust was valid.—*Re VILLAR, PUBLIC TRUSTEE v. VILLAR*, [1929] 1 Ch. 243; 98 L. J. Ch. 223; 140 L. T. 90; 45 T. L. R. 13; 72 Sol. Jo. 761, C. A.
67. *Add. Annotations* :—*As to* (4) **Apld.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471. *Generally, Refd.* *Re Villar, Public Trustee v. Villar* (1928), 45 T. L. R. 13.
70. *Add. Annotation* :—*As to* (1) **Consd.** *Athey v. Pickering* (1926), 96 L. J. K. B. 250.
138. *Add. Annotation* :—**Refd.** *Re Cockerill, Mackaness v. Percival*, [1929] 2 Ch. 131.
- 166a. ———.]—**OAKES v. CHALFONT** (1674), Poll. 38; 86 E. R. 504; *sub nom.* **CHALFONT v. OAKES**, 1 Cas. in Ch. 239.  
*Annotation* **Refd.** *Smith v. Clever* (1688), 2 Vern. 59.
175. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1929] 1 Ch. 243.
181. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1929] 1 Ch. 243.
274. *Add. Annotation* :—**Mentd.** *Johnson v. Clarke*, [1928] Ch. 817.
275. *Add. Annotation* :—**Mentd.** *Manchester Corpn. v. Audenshaw U. C. & Denton U. C.*, [1928] Ch. 763.
276. *Add. Annotations* :—**Mentd.** *Hardie & Lane v. Chiltern*, [1928] 1 K. B. 663; *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.
277. *Add. Annotation* :—**Refd.** *Re Gwyon, Public Trustee v. A.-G.* (1929), 46 T. L. R. 96.
293. *Add. Annotation* :—**Refd.** *Re Chardon, Johnston v. Davies*, [1928] Ch. 461.
295. *Add. Annotation* :—**Refd.** *I. R. Comrs. v. Bone* (1927), 13 Tax Cas. 20.
302. *Add. Annotation* :—**Mentd.** *Re Davies, Thomas v. Thomas-Davies*, [1928] Ch. 24.
346. *Add. Annotations* :—*As to* (1) **Consd.** *Re Payne, Taylor v. Payne*, [1927] 2 Ch. 1. **Refd.** *Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197; *Re Marshall, Graham v. Marshall*, [1928] Ch.
372. *Add. Annotation* :—*As to* (1) **Refd.** *Re Lanyon, Lanyon v. Lanyon*, [1927] 2 Ch. 261.
397. *Add. Annotations* :—**Apld.** *Re Marshall, Graham v. Marshall*, [1928] Ch. 661. **Refd.** *Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197; *Re Payne, Taylor v. Payne*, [1927] 2 Ch. 1.
- 402a. **First person becoming adult tenant in tail in possession.**]—Testator gave his real personal estate to trustees as to the personal estate upon trusts for conversion & investment & upon trust to pay the income thereof to the person, if any, who under the trusts or limitations thereafter contained should for the time being be tenant for life of or otherwise entitled to the possession or receipt of the rents & profits of his real estate until such real estate should become vested in some person who should become adult tenant in tail thereof in possession, & from & after the happening of such last-mentioned event then as to both capital & income upon trust for such last-mentioned person absolutely; & as to his real estate upon trust for his brother during his life, & from & after his death upon trust for the first & every other son of his said brother successively in remainder one after another according to their respective seniorities in tail general:—*Held*: the trust of the personal estate in favour of the person who should become adult

## PART I. SECT. 2, SUB-SECT. 3.—B.

191 i. *Discretionary trust*—*For maintenance.*—*Re ANTROBUS, FENDERSON v. SHAW & MORTON*, [1928] N. Z. L. R. 394, N. Z.

## PART I. SECT. 2, SUB-SECT. 4.—D.

206 ii. ———.]—**KALACHAND MUKHERJI v. JAYENDRA MOHAN BANERJI** (1928), 1 L. R. 56 Cal. 487, IND.

## PART I. SECT. 3, SUB-SECT. 1.

290 i. *General rule*—*No remoteness after vesting.*]—*Re CRUGHTON ESTATE* (1913), 25 W. L. R. 18; 4 W. W. R. 1188; 13 D. L. R. 169; 23 Man. L. R. 391, CAN.

tenant in tail in possession could not be construed as applying to a tenant in tail by purchase only, & was therefore void for remoteness.—*Re ATKINSON, ATKINSON v. ATKINSON*, [1916] 1 Ch. 91; 85 L. J. Ch. 159; 114 L. T. 14; 60 Sol. Jo. 190.

408. *Add. Annotation: Generally, Mentd. Re* Chardon, *Johnston v. Davies*, [1928] Ch. 464.

408a. **Interest in personality analogous to determinable fee—Gift to cemetery so long as graves maintained.**—Testator gave £200 to his trustees on trust to invest it, & to pay the income thereof to a cemetery co. "during such period as they shall continue to maintain & keep" two specified graves "in the cemetery in good order & condition with

flowers & plants thereon, as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned:—*Held*: the gift did not infringe the rule against perpetuities.—*Re CHARDON, JOHNSTON v. DAVIES*, [1928] Ch. 464; 97 L. J. Ch. 289; 139 L. T. 261.

453. *Add. Annotation:—Refd. Re* Villar, *Public Trustee v. Villar*, [1928] Ch. 471.

466. *Add. Annotation:—Expld. Re* Silva, *Silva v. Silva*, [1929] 2 Ch. 198.

545. *Add. Annotation:—Consd. Re* Payne, *Taylor v. Payne*, [1927] 2 Ch. 1.

## Part II.—The Rule Prohibiting Limitations to Issue of Unborn Persons.

576. *Add. Annotation: Refd. Re* Villar, *Public Trustee v. Villar*, [1928] Ch. 471.

## Part III.—Restriction of Accumulation.

610. *Add. Annotation:—As to (3) Apld. Re* Villar, *Public Trustee v. Villar*, [1929] 1 Ch. 243.

646. *Add. Annotation:—As to (1) Refd. Athey v. Pickering* (1926), 96 L. J. K. B. 250.

652a. **Commencement during twenty-one years from testator's death.**—Testator, who died in 1893, gave his net residue, subject to certain life annuities which did not exhaust the income, in trust for a bachelor's children who should attain twenty-one with a gift over in default. On Mar. 11, 1896, the surplus income was ordered to be accumulated for twenty-one years from testator's death, i.e., until Nov. 6, 1914, or until the bachelor's previous death without leaving issue. During this twenty-one years' period the bachelor married & died leaving three children, two of whom were still living. Temporary orders for maintenance were made. On Nov. 12, 1914, it was declared that as from Nov. 6, 1914, the two children then living were entitled to maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1) but that notwithstanding sect. 13 (2) any income not so applied passed as on an intestacy. On July 20, 1927, the elder child attained twenty-one, & her contingent

moiety vested in possession. The question having arisen whether, having regard to Law of Property Act, 1925 (c. 20), s. 165, the order of Nov. 12, 1914, ought still to be acted on with regard to the younger child's contingent moiety:—*Held*: (1) the effect of sect. 165 was that the years accumulation, which commenced during the twenty-one years' period, were not to be reckoned in ascertaining that period, the income of the younger child's contingent moiety must in the first place be applied for her maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), & the balance could be validly accumulated under sect. 43 (2); (2) quite apart from sect. 165, the moment the elder child attained a vested interest as a member of the contingent class, there could be no question of intestacy as to any part of the capital or income.—*Re MABEL, WARD v. MABEL*, [1928] Ch. 88; 97 L. J. Ch. 101; 138 L. T. 318.

679. *Add. Annotation:—As to (2) Consd. Re* Chartres, *Farman v. Barrett*, [1927] 1 Ch. 466.

721. *Add. Annotation:—Apld. Re* Knapp, *Spreckley v. A.-G.*, [1929] 1 Ch. 341.

### PART I. SECT. 4, SUB-SECT. 5.—B.

466 i. *Power changing nature of interests—Outside limit of rule.*—*DAVIS v. SAMUEL* (1926), 28 S. R. N. S. W. 1.—**AUS.**

### PART III. SECT. 2, SUB-SECT. 1.

612 ii. — — — — —.]—When a direction to accumulate contained in an *inter vivos* deed comes into operation in the lifetime of the grantor, the only

period during which the accumulation can, under above Act, be lawfully continued is the lifetime of the grantor. —*UNION BANK OF SCOTLAND, LTD. v. CAMPBELL*, [1929] S. C. (Ct. of Sess.) 143.—**SCOT.**



## PERSONAL PROPERTY.

### Part I.—Definitions and Enumeration.

9. *Add. Annotation* :—**Refd.** *Re Mason* (1928), 97 L. J. Ch. 321.

### Part III.—Ownership.

94. For “—Mutual wills by husband & wife—**Agreement not to revoke**” read “—**Mutual wills—By husband & wife—Agreement not to revoke.**”

94a. ———.—Leasehold property was given to two sisters as joint tenants, & they mutually agreed to bequeath it in trust for

each other for life, & for their nieces after the death of the survivor :—*Held* : the agreement between the sisters, carried out by the making of mutual wills, severed the joint tenancy.—*Re WILFORD'S ESTATE, TAYLOR v. TAYLOR* (1879), 11 Ch. D. 267 ; 48 L. J. Ch. 243 ; 27 W. R. 455.

*Annotation* : —**Refd.** *In the Estate of Heys, Walker v. Gaskill*, [1914] P. 192.

### Part IV.—Alienation.

114. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

121a. **Contract for exchange by infant -Void.** - A contract for the exchange of chattels entered into by an infant is a contract for goods

supplied, & if not for necessities, is absolutely void under Infants Relief Act, 1874 (c. 62), s. 1.—*PEARCE v. BRAIN*, [1929] 2 K. B. 310 ; 98 L. J. K. B. 559 ; 141 L. T. 264 ; 45 T. L. R. 501 ; 73 Sol. Jo. 402 ; 93 J. P. Jo. 380, D. C.

#### PART III. SECT. 4, SUB-SECT. 1.—B.

**r i.** — - Murder of one joint tenant by the other. *Whether right of survivorship operates.*—*Re BARROWCLIFF, ELDER'S TRUSTEE & EXECUTOR CO., LTD. v. KENNY*, [1927] S. A. S. R. 147.

#### ---AUS.

#### PART III. SECT. 4, SUB-SECT. 2.

**sd.** *How arising*—Joint purchase of shares.—*Held* : even if the shares were purchased out of money con-

tributed in equal amounts, & though transferred into the joint names of the purchasers, the shares were held by them in equity as tenants in common.—*O'CONNELL v. HARRISON*, [1927] T. R. 330 --**IR.**

## POLICE.

### Part II.—Police Forces.

4. *Add. Citation* :—1 B. R. A. 500.

### Part IV.—Duties, Powers, and Privileges of Constables.

92. *Add. Annotation* :—**Refd.** *Vanderpant v. Mayfair Hotel Co.* (1929), 27 L. G. R. 752.

### Part V.—Legal Proceedings by and against Police.

97. *Add. Annotation* :—**Consd.** *Sheffield Corpn. v. Kitson*, [1929] 2 K. B. 322.

—**PROCEEDINGS AGAINST POLICE**  
(Vol. XXXVII., p. 189).

100. *Add. Annotation* :—**Refd.** *R. v. Ely JJ., Ex p. Mann* (1928), 45 T. L. R. 92.

**Civil proceedings—Acceptance of bribes.**—*See* AGENCY, p. 57, No. 1608b, *ante*.

### Part VII.—Superannuation and Other Allowances.

136. *Add Annotation* :—**Apld.** *Piper v. St. Mary-lebone Licensing JJ.*, [1928] 2 K. B. 221

142. After this case add :—  
“ **Compensation for loss of office.**—*See* PUBLIC AUTHORITIES, p. 1071, No. 1048a, *post*. ”

#### PART I.

a i. — *Power of Commissioner of Police.*— *Power v. R.*, [1929] N. Z. L. R. 267. **N.Z.**

sa. *Policeman— Meaning of—Railway Act (Dom.)*, s. 351.]— *R. v. CANADIAN PACIFIC RY. CO. & CANADIAN NATIONAL RY.*, [1928] 2 D. L. R. 386; [1928] 1 W. W. R. 785; 34 C. R. C. 292; 23 Alta. L. R. 401.—**CAN.**

#### PART VII.

132 i. *Computation of pension—Based on annual pay—What included therein—Allowance for special duties.*—*MARTIN v. R.* (1928), 40 C. L. R. 162; [1928] V. L. R. 38; [1928] Argus L. R. 17.—**AUS.**

## POOR LAW.

### Part I.—Poor Law Authorities.

SECT. 4.—OVERSEERS (Vol. XXXVII., p. 204).

**24a. Overseer becoming transferred officer—Removal—Powers of rating authority.]—**By Local Government Act, 1894 (c. 73), s. 5 (1), the power of appointing & revoking the appointment of an assistant overseer for any rural parish having a parish council is transferred to & vested in the parish council.—An assistant overseer so appointed by a parish council which was subsequently transformed into an urban district council, became a “transferred officer” under the Rating & Valuation Act, 1925 (c. 90). He was summarily dismissed by the urban district council as the rating authority:—*Held*: the council could dismiss the officer without notice or cause, & without affording

him a hearing, provided that in so dismissing him they did not act dishonestly, corruptly, or in bad faith.—*BROWN v. DAGENHAM URBAN COUNCIL*, [1929] 1 K. B. 737; 98 L. J. K. B. 565; 140 L. T. 615; 93 J. P. 147; 45 T. L. R. 284; 73 Sol. Jo. 144; 27 L. G. R. 225.

*Annotation*:—*Distd. Field v. Poplar Corpn.*, [1929] 1 K. B. 750.

**31. Add. Citations**:—96 L. J. K. B. 711; 137 L. T. 558; 25 L. G. R. 267.

**41. Add. Annotation**:—*Mentd. Harnett v. Fisher*, [1927] A. C. 573.

**87. Add. Annotation**:—*Refd. Brown v. Dagenham Urban Council*, [1929] 1 K. B. 737.

**105. Add. Annotation**:—*Refd. R. v. Grain, Ex p. Wandsworth Grdns.*, [1927] 1 K. B. 540.

### Part II.—Poor Law Areas.

**157. Add. Annotation**:—*Consd. Stoke Newington Borough Council v. Richards* (1929), 45 T. L. R. 650.

### Part IV.—Relief of the Poor.

**188. Add. Annotation**:—*As to* (3) *Consd. R. v. Grain, Ex p. Wandsworth Grdns.*, [1927] 2 K. B. 205.

**225a. Within what time proceedings must be taken.]—**Appls., a board of guardians, in 1926 gave relief, by way of loan, to resp. under Poor Law Amendment Act, 1834 (c. 76), s. 58. In Feb. 1927 applts. made a written application to resp. for repayment, & in Aug. 1927 summonses were issued against resp. & against his employers to recover the amount due. The justices held, as more than six months had elapsed since the date when the last instalment of the loan was advanced, they had no jurisdiction by reason of Summary Jurisdiction Act, 1848 (c. 43), s. 11, & they dismissed the summons:—*Held*:

the matter of complaint did not arise until the application for repayment was made.—*ASHBY-DE-LA-ZOUCH GUARDIANS v. SUMMERS*, [1928] 2 K. B. 397; 97 L. J. K. B. 397; 139 L. T. 46; 92 J. P. 72; 44 T. L. R. 406; 72 Sol. Jo. 241; 26 L. G. R. 245; 28 Cox, C. C. 404, D. C.

**225b. In what court proceedings must be taken.]—**A ct. of summary jurisdiction is not a “county ct. or other ct. for the recovery of small debts” within Poor Law Act, 1927 (c. 14), s. 46 (1), & under that sub-sect. relief granted by way of loan by the guardians to a poor person cannot be recovered therein.—*EVANS v. MORGAN*, [1928] 2 K. B. 527; 97 L. J. K. B. 703; 139 L. T. 612; 92 J. P. 146; 44 T. L. R. 544; 26 L. G. R. 386, D. C.

### Part V.—Settlement.

**327. Add. Citations**:—[1927] 2 K. B. 511; 96 L. J. K. B. 793; 137 L. T. 524.

**335. Add. Citations**:—96 L. J. K. B. 511; 137 L. T. 98; 91 J. P. 41; 25 L. G. R. 21, H. L.

**415. Add. Annotation**:—*Refd. Norwich Union v. Henstead Union*, [1927] 2 K. B. 511.

**436. Add. Annotation**:—*As to* (2) *Consd. Norwich Union v. Henstead Union*, [1927] 2 K. B. 511.

#### PART IV. SECT. 1.

**r. i. ———.]—***BUTTS v. SYDNEY MINES*, [1927] 1 D. L. R. 546; 59 N. S. R. 90.—*CAN.*

#### PART V. SECT. 3, SUB-SECT. 3.—A.

**339 i. ———.]—***Derivative settlement.*—*OLD KILPATRICK PARISH COUNCIL v. KILMARNOCK PARISH COUNCIL*, [1929] S. C. (Ct. of Sess.) 651. *SCOT.*

#### PART V. SECT. 4, SUB-SECT. 2.—B. (a).

**433 i. Whether relegated to birth settlement where mother's settlement derivative Settlement derived from subsequent marriage.]—***ROTHES PARISH*

482a. — Nurse—Sent to training establishment.]  
—On July 20, 1920, A. signed an agreement at C. in the parish of F., by which she was to undergo a year's free training in nursing under the C. Nursing Assocn. & thereafter to remain in their employment for three years. She was sent to D. on the same day for her training & returned to C. on July 9, 1921. She remained at C. under her contract till July 2, 1924, on which day she was allowed to go on holiday, & had no intention of returning, as her three years expired during her holiday. She subsequently became chargeable as a pauper lunatic:—*Held*: since she had not resided

physically in the parish of F. for three complete years when she left on July 2, 1924, & had then no *animus revertendi*, she had not acquired a settlement there, there being no evidence that she resided there between July 20, 1920, & July 9, 1921.—*FARNHAM UNION v. CAMBRIDGE UNION*, [1929] 1 K. B. 307; 98 L. J. K. B. 177; 140 L. T. 377; 93 J. P. 21; 45 T. L. R. 73, D. C.

498. *Add. Annotation*:—*Apld.* *Farnham Union v. Cambridge Union*, [1929] 1 K. B. 307.

720. *Citations*:—For “(1733), Cun. 76; 2 Sess. Cas. K. B. 245,” read “(1734), Cun. 76; 1 Sess. Cas. K. B. 251.”

## Part VII.—Vagrancy.

1616. *Add. Annotation*:—*Refd.* *R. v. Grain, Ex p. Wandsworth Grdns.*, [1927] 2 K. B. 205.

## Part VIII.—Old Age Pensions.

1672a. *Statutory conditions—Widow's pension—Husband's “entry into insurance.”*—The expression “entry into insurance” in Widows', Orphans', & Old Age Contributory Pensions Act, 1925 (c. 70), s. 5, means “last entry into insurance.”—*WADSWORTH v.*

*MINISTER OF HEALTH* (1927), 138 L. T. 519; 44 T. L. R. 159, D. C.

1672b. — *Contributions—Payments made after appointed day—Widows', Orphans', & Old Age Contributory Pensions Act, 1925 (c. 70), s. 8.*—*TAYLOR v. MINISTER OF HEALTH*, [1928] W. N. 244, D. C.

PARISH COUNCIL, [1928] S. C. (Cl. of Sess.) 918. *SCOT.*

PART V. SECT. 5, SUB-SECT. 3.—A.

493 i. *Capacity of child to acquire independent settlement* 1—Where, while a child is living with its own parents as a member of the family under a foster agreement made with them by the Comr. of Child Protection, they

change their residence to another municipality, & the child continues to so live with them therein for six months, it then, if one year of age or older, “belongs” to said municipality within Child Welfare Act, 1927, c. 60, s. 28 (2).—*Re BALASANOVICH (OR BAILEY) v. RURAL MUNICIPALITY OF INSSINGER*, [1928] 4 D. L. R. 127; [1928] 2 W. W. R. 448.—*CAN.*

PART VII. SECT. 1, SUB-SECT. 1.  
p. i. — *Restaurant*.—*R. v. BENSON*, [1928] 3 W. W. R. 605; 50 Can. Crim. Cas. 426. *CAN.*

PART VII. SECT. 4.  
5a. *Vagrancy—Allegation of—Criminal Code, s. 238.*—*R. v. ROSENFELD*, [1928] 3 W. W. R. 67; 50 Can. Crim. Cas. 305.—*CAN.*

## POST OFFICE.

### Part II.—Constitution.

1. *Add. Annotation:—***Refd.** Mackenzie-Kennedy v. Air Council, [1927] 2 K. B. 517

## POWERS.

## Part II.—Creation of Powers.

17. *Add. Annotation* :—As to (1) *Apld. Re Graham, Graham v. Graham*, [1929] 2 Ch. 127.

## Part III.—Construction of Powers.

28. *Add. Annotation* :—*Refd. Re Mathieson*, [1927] 1 Ch. 283.

133a. Power to appoint part of share—Whether including accrued shares.]—*Re HUTCHINSON'S*

SETTLEMENT, *Ex p. DUNN* (1852), 5 De G. & Sm. 681; 17 Jur. 59; 64 E. R. 1297.

145. *Add. Annotation* :—As to (1) *Refd. Re Gooch, Gooch v. Gooch*, [1929] 1 Ch. 740.

## Part IV.—Exercise of Powers.

164. *Add. Annotation* :—*Mentd. Ormond Investment Co. v. Betts*, [1928] A. C. 143.

187a. — Appointment on "protective trusts."]  
—Testator, in exercise of a power of appointment among children & issue contained in his marriage settlement, bequeathed specific property to his son W., & directed his trustees to hold the income of the remainder of the trust property upon protective trusts for the benefit of his son O., & subject thereto to hold the remainder of such property in trust for his granddaughter M. :—*Held* : as the appointment upon "protective trusts," as defined by Trustee Act, 1925 (c. 19), s. 33, gave a discretion to the trustees to apply the income in the event of a forfeiture for the benefit either of O. or of his wife or children, it was to that extent void, both as being (1) a delegation of the power & (2) in excess of it, & the clause contained in sect. 33 (1) (ii) must be struck out of the will for all purposes; (3) there was no interval of time during which the income of the appointed fund was undisposed of, but there was a valid appointment to O. for life or until an event should happen depriving him of the right to receive the income, & subject thereto for the granddaughter M. absolutely.—*Re BOULTON'S SETTLEMENT TRUST, STEWART v. BOULTON*, [1928] Ch. 703; 97 L. J. Ch. 243; 139 L. T. 288.

208. *Add. Annotations* :—*Refd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641; H. & H., [1928] P. 206.

299a. —.]—*ELLIS v. ATKINSON* (1792), 3 Bro. C. C. 565; 2 Dick. 759; 29 E. R. 701, L. C. *Annotations* :—*Refd. Socket v. Wray* (1793), 4 Bro. C. C. 483; *Guise v. Small* (1794), 1 Anst. 277; *Whistler v. Newman* (1798), 4 Ves. 129; *Sperling v. Rochfort* (1803), 8 Ves. 164; *Parkes v. White* (1805), 11 Ves. 209; *Richards v. Chambers* (1805), 10 Ves. 580; *Francis v. Wigzell* (1816), 1 Madd. 258. *Mentd. Pybus v. Smith* (1791), 3 Bro. C. C. 340.

351a. Limitation to more restricted class in default of appointment.]—Testator gave his widow E. full & complete control in the disposal of

the principal moneys of his estate, at such times & in such proportions as she might see fit, whether by will or otherwise, for the benefit of his children or grandchildren; but in the event of E.'s marriage or death, the trustees of the will were to divide the estate ratably amongst testator's children share & share alike. E. executed a deed poll appointing a portion to a child, a portion to a grandchild, & a further portion to trustees in trust for the child :—*Held* : all these appointments were valid executions of the power.—*JOB v. JOB* (1853), 2 W. R. 25.

360. *Add. Annotation* :—*Mentd. Re Brooks, Public Trustee v. White*, [1928] Ch. 214.

521a. — Subsequent confirmation by codicil.]—  
(1) Testatrix in her will expressed an intention to exercise a power to appoint a life interest in certain trust funds or other property to her husband, but at the date of the will no such power had been created. Subsequently, a power was created whereby she was given a power to appoint a life interest in certain trust funds to her husband, & subsequently to the creation of such power, the testatrix made a codicil confirming her will in respect *inter alia* to the exercise of such power :—*Held* : there was a valid exercise of the power of appointment of such life interest in favour of her husband.

(2) Subsequently to the date of the codicil another power was created, whereby the testatrix was given a power to appoint a life interest in other trust funds to her husband, but before her death she made no other will or codicil nor executed any other instrument whereby she exercised such other power :—*Held* : there had been no valid appointment of such life interest in such other trust funds in favour of her husband.—*Re BOWER, BOWER v. MERCER* (1929), 141 L. T. 639.

521b. — No subsequent exercise of power.]—*Re BOWER, BOWER v. MERCER*, No. 521a, *ante*.

637a. —.]—*GUINAN v. NAISH* (1845), 6 L. T. O. S. 18; 9 Jur. 703.

## PART III. SECT. 8.

sd. Power to donee to pass corpus as well as income.]—*SHAW v. SHAW* (1927), 59 N. S. R. 349.—CAN.

748. *Add. Annotation* :—*Consd. Re Chartres, Farman v. Barrett*, [1927] 1 Ch. 486.

768. *Add. Annotation* :—*Refd. Re Mathieson*, [1927] 1 Ch. 283.

783. *Add. Annotation* :—*Refd. Re Bower Williams, Ex p. Trustee*, [1927] 1 Ch. 441.

## Part V.—Appointment Not in accordance with Terms of Power.

830a. ——— *Appointment to trustees of child's marriage settlement—Share settled.*]—A daughter being entitled under the marriage settlement of her father & mother to such share & interest in land & money as the surviving mother should appoint, provided by her own marriage settlement that all such share & interest to which she should become entitled, under her mother's settlement, should be vested in trustees to the use of her intended husband for life, remainder to herself for life, remainder to the children of the

marriage. Four years after the marriage the mother appointed a sum to be paid to the trustees of the daughter's settlement, upon the uses therein expressed, in satisfaction of the daughter's share & interest under the marriage settlement of the father & mother :—*Held* : this was substantially an appointment to the daughter, & valid.—*LIMBERT v. GROTE* (1832), 1 My. & K. 1; 39 E. R. 581; *sub nom. LAMBARD v. GROTE*, 2 L. J. Ch. 10.

## Part VI.—Excessive, Defective, and Fraudulent Appointments.

872a. ——— *Appointment on "protective trusts."*]—*Re BOULTON'S SETTLEMENT TRUST, STEWART v. BOULTON*, No. 187a, *ante*.

887. *Add. Annotation* :—*Consd. Re Payne, Taylor v. Payne*, [1927] 2 Ch. 1.

891. *Add. Citation* :—*subsequent proceedings*, 2 Bro. C. C. 344, L. C.

1051. *Add. Annotation* :—*As to* (1) *Refd. Re Lanyon, Lanyon v. Lanyon*, [1927] 2 Ch. 264.

1052. *Add. Annotation* :—*Mentd. Re Chardon, Johnston v. Davies*, [1928] Ch. 464.

## Part VIII.—Extinguishment and Suspension of Powers.

1105a. *Mutual wills—Wife expressly refraining from exercising power.*]—Where by her will the wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it, & confined the operation of her will to her own property, & there was nothing in the husband's will, which either put the wife to her election or

put her in the position of seeking at the same time to approbate & to reprobate its provisions :—*Held* : she was in no way precluded from exercising her power of appointment by a subsequent will.—*GRAY v. PERPETUAL TRUSTEE Co.*, [1928] A. C. 391; 97 L. J. P. C. 85; 139 L. T. 469; 44 T. L. R. 654, P. C.

### PART IV. SECT. 10, SUB-SECT. 2.—B. (a).

683 ii. ———.]—In execution of the powers reserved by a marriage settlement, a revocable appointment was made by deed whereby the appointors, husband & wife, directed the trustees to hold the net purchase-money already received & to be received in respect of a certain contract of sale upon trust, on the death of the survivor of the appointors, as to three several sums of £15,000 for each of three of their daughters, & as to £12,500 for their fourth daughter, & as to the "remainder" one moiety to each of their two sons. The contract of sale referred to was for a sum of £100,000, of which £20,000 had already been paid. The

contract of sale was subsequently rescinded on the purchaser paying a further sum of £20,000 :—*Held* : in the events which had happened, the principle that, where a person disposing of a sum among different persons acts on the assumption that he is dealing with a fund of specific amount, & gives part of the fund to one or more persons & the residue to another, if the fund falls short, all the gifts abate proportionately, would not apply, & the sons would get nothing under the gift of the "remainder."—*A'BECKETT v. TRUSTEES, EXECUTORS & AGENCY Co.* (1908), 5 C. L. R. 512.—*AUS.*

### PART V. SECT. 3.

sa. *Appointment to issue of child—*

*Where not among objects of power.*]—*MOUBRAY'S TRUSTEES v. MOUBRAY*, [1929] S. C. (Ct. of Sess.) 251. *SCOT.*

### PART VI. SECT. 1, SUB-SECT. 2.—A.

i. ———.]—Where the exercise of a power, in so far as it purported to reduce the right of fee conferred on the objects of the power to a life rent, was *ultra vires* & invalid :—*Held* : as it was impossible to separate the valid from the invalid portions of the appointment without dislocating the whole scheme of division contemplated by the trust, the whole exercise of the power fell to be disregarded.—*MACKENZIE'S TRUSTEES v. MACKENZIE*, [1927] S. C. 424.—*SCOT.*

## Part IX.—Powers in the Nature of Trusts.

1135. *Add. Citation* :—*on appeal, sub nom.* WALTER v. MAUNDE (1815), 19 Ves. 424, L. C.  
*Add. Annotations* :—**Refd.** *Re* Sinclair's Settlement, Crump v. Leicester (1886), 56 L. T. 83.  
**Mentd.** Christian v. Foster (1846), 2 Ph. 161.
1213. *Add. Annotation* :—**Refd.** *Re* Blackwell, Blackwell v. Blackwell, [1929] A. C. 318.
- 1233a. ———.]—DAVIE v. HOOPER (1711), 6 Bro. Parl. Cas. 51; 2 E. R. 926; *sub nom.* DAVY v. HOOPER, 2 Vern. 665; 1 Eq. Cas. Abr. 336, pl. 6, H. L.
- Annotations* :—**Refd.** Bellasis v. Uthwatt (1737), West temp. Hard. 273; Cholmondeley v. Meyrick (1758), 1 Eden, 77.



## PRESS AND PRINTING.

### Part II.—Printers and Publishers.

12. *Add. Annotation* :—**Mentd.** Dominion Press v. Customs & Excise Minister, [1928] A. C. 340.

### Part III.—Editors, Authors, and Journalists.

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| <p>36. <i>Add. Annotation</i> :—<b>Refd.</b> Tolley v. Fry J. S. &amp; Sons (1929), 46 T. L. R. 108.</p> <p>40. <i>Add. Annotation</i> :—<b>Refd.</b> Messenger v. British Broadcasting Co. (1928), 97 L. J. K. B. 251.</p> | <p>42. <i>Add. Annotation</i> :—<b>Mentd.</b> Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.</p> <p>44. <i>Add. Annotation</i> :—<b>Refd.</b> Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.</p> |
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### Part IV.—Newspapers.

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| <p>83. <i>Add. Annotation</i> :—<b>Refd.</b> Cope v. Evans (1875), 30 L. T. 292.</p> <p>90. <i>Add. Annotation</i> :—<b>Refd.</b> Sinanide v. La Maison Kosmeo (1928), 139 L. T. 365.</p> <p>102a. <b>Plumber &amp; Decorator, Gas &amp; Sanitary Engineering Journal—Plumbing &amp; Decorating,</b></p> | <p><b>Sanitary, Water, &amp; Gas Engineering Chronicle.]</b><br/> <i>—Held</i> : there was no such close resemblance of title between these titles as would justify the ct. in granting an injunction restraining the publication of the latter journal.—<br/> <b>DALE, REYNOLDS &amp; Co. v. GENERAL NEWS-PAPER Co.</b> (1884), 1 T. L. R. 177, D. C.</p> |
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### Part IX.—Stationery Office.

140. After this case add :—  
 “——.”—*See, also*, COPYRIGHT, Vol. XIII., pp. 198, 199, Nos. 333–343.”

<p><b>PART II. SECT. 1.</b>  <i>sa. Liability—In general.</i>—<b>HAR</b>  <b>SWARUP v. MUHAMMAD SIRAJ</b> (1928),</p>	<p>J. L. R. 50 All. 806.—<b>IND.</b></p> <p><b>PART III. SECT. 3.</b>  <i>sc. Duty to become acquainted with his</i></p>	<p><i>duties &amp; liabilities.</i>—<b>K. E. v. MAUNG TU SAW</b> (1927), 1 L. R. 6 Ran. 39.  <b>—IND.</b></p>
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# PRISONS.

## Part II.—Prison Officers.

8a. ——— Detention after receipt of remission marks.]—MORRISS v. WINTER, No. 34b, *post*.

## Part III.—Prisoners.

34a. Receipt of remission marks.]—MORRISS v. WINTER, No. 34b, *post*.

SUB-SECT. 2.—ON EARNING REMISSION (Vol. XXXVII., p. 561).

34b. No legal right to discharge.]— Remission marks obtained by a prisoner do not give him any legal right to an earlier discharge, & such discharge, if granted, is an act of grace & not a legal obligation.—MORRISS v. WINTER (1929), 45 T. L. R. 643.

### PART III. SECT. 1, SUB-SECT. 1.

8a. Irregular removal of prisoner—  
Under Police & Prisons Regulation  
Act—Release by *habeas corpus*.]—  
Police & Prisons Regulation Act,

R. S. B. C. 1924, c. 91, s. 33, cannot  
be invoked to support the A.-G.'s  
removal from one gaol to another of  
a prisoner who has been committed for  
an offence under the Criminal Code.  
Where a prisoner convicted under the

Code was so removed under said section  
after serving part of his sentence an  
order for his release was made under  
*habeas corpus*.—R. v. TARCHUK, [1928]  
3 W. W. R. 577; 50 Can. Crim. Cas.  
423.—CAN.

# PRIZE LAW AND JURISDICTION.

## Part III.—Enemy Character.

176. *Add. Annotation* :—*Refd. Sassoon v. International Banking Corpn.*, [1927] A. C. 711.

## Part VII.—Contraband.

780. *Add. Annotation* :—*Refd. Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll*, [1929] 1 K. B. 470. | 866. *Add. Annotation* :—*Generally, Refd. Sassoon v. International Banking Corpn.*, [1927] A. C. 711.

## Part X.—Claims.

1177a. ——.]—*THE ANNA CHRISTIANA* (1778), Hay & Marr. 161 ; 165 E. R. 37. | 1189a. ——.]—*THE VROUW HENRIETTA* (1803), 5 Ch. Rob. 75, n. ; 165 E. R. 702. *Annotation* :—*Apld. The Roland* (1915), 81 L. J. P. 127.

## Part XI.—Procedure.

1302a. — Ship formerly enemy property— | *THE HOCKING, THE GENESEE* (1917), 8 Lloyd, Pr. Cas. 74, P. C.  
Transfer of ownership.]—*THE KANKAKEE*,

PART V. SECT. 4, SUB-SECT. 3.—A.  
571 i. *Liability for wrongful capture.*  
—*THE ZODIACK* (1812), Stewart, 333,—  
CAN.

PART VI. SECT. 4, SUB-SECT. 6.  
f. *Revsd.*, Stewart, 38, n.  
PART VI. SECT. 7.  
n. *Revsd.*, Stewart, 38, n.

PART VII. SECT. 6, SUB-SECT. 4.  
r. *Revsd.*, Stewart, 122, n.

## PUBLIC AUTHORITIES, BODIES AND OFFICERS.

## Part I.—Acts of State.

11. *Add. Annotation*:—**Consd.** Musmann Engelke, [1928] 1 K. B. 90.
14. *Add. Annotations*:—**Apld.** Engelke v. Musmann, [1928] A. C. 433. **Mentd.** Dickinson v. Del Solar (1929), 45 T. L. R. 637.
16. After the cross-reference following this case add "**Status of person claiming diplomatic privilege.**"—*See* CONSTITUTIONAL LAW, No. 418a."
47. *Add. Annotation*:—**Refd.** *R. v. Mason* (1928), 97 L. J. Ch. 321.
66. To the cross-references following this case add "**Decrees of Russian Soviet Government—Effect of.**"—*See* No. 13, *ante*; COMPANIES, Nos. 8523, 8524, 8527a; CONSTITUTIONAL LAW, No. 387a; INSURANCE, 712a."
- 66a. ———.]—The English cts. will not inquire into the validity of acts done by a recognised foreign Govt. against its own subjects in respect of property situate in its own territory.

respect of property situate in its own territory.

In 1918 a section of Russian revolutionaries took & retained possession of movables in Russia belonging to pltf. against her will. The act of those revolutionaries was subsequently adopted by the Soviet Republic, which was recognised in 1924 by the British Government as the *de jure* Govt. of Russia. In 1928 the movables in question were sold in Russia by the Soviet Republic to defts., who brought them to England. In an action by pltf. to recover those movables or damages for their detention or conversion:—**Held**: the action failed, as the ct. could not inquire into the validity of the acts of a foreign sovereign Power which had been recognised by the Govt. of this country.—**PALEY OLGA PRINCESS v. WEISZ**, [1929] 1 K. B. 718; 98 L. J. K. B. 465; 141 L. T. 207; 45 T. L. R. 365; 73 Sol. Jo. 283, C. A.

## Part III.—Exercise of Statutory Powers, Duties, etc.

- 84a. Acquiescence in wrongful exercise—What amounts to.]—Pltf. does not acquiesce in the wrong-doing of a local authority by simply standing by & assuming that the local authority is acting within its statutory powers.—**PIGGOTT v. MIDDLESEX COUNTY COUNCIL**, [1909] 1 Ch. 134; 77 L. J. Ch. 813; 99 L. T. 662; 72 J. P. 461; 52 Sol. Jo. 698; 6 L. G. R. 1177.
- Annotations*:—**Mentd.** *Wild v. Woolwich Borough Council* (1909), 78 L. J. Ch. 633; *Jolly v. Brown*, [1914] 2 K. B. 109.
90. *Add. Annotation*:—**Consd.** *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
105. *Add. Annotation*:—**Refd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
114. *Add. Annotation*:—**Refd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
127. *Add. Annotation*:—**Consd.** *Manchester Corpn. v. Farnworth* (1929), 46 T. L. R. 85.
132. *Add. Annotation*:—**Refd.** *Manchester Corpn. v. Farnworth* (1929), 46 T. L. R. 85.
137. *Add. Annotation*:—**As to** (3) **Consd.** *Manchester Corpn. v. Farnworth* (1929), 46 T. L. R. 85.
147. *Add. Annotation*:—**Refd.** *St. Anne's Well Brewery Co. v. Roberts* (1928), 92 J. P. 180.
178. *Add. Annotation*:—**Refd.** *Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 235.
209. *Add. Annotation*:—**As to** (5) **Consd.** *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
220. *Add. Annotation*:—**Generally**, **Mentd.** *R. v. L. C. C., Ex p. Swan & Edgar* (1927) (1929), 141 L. T. 590.
244. *Add. Annotation*:—**Generally**, **Refd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
256. *Add. Annotation*:—**Consd.** *Manchester Corpn. v. Farnworth* (1929), 46 T. L. R. 85.
- 263a. ———. **Fumes from power station.**]—Pltf., who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corpn. under Parliamentary powers, & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by pltf. In an action for a nuisance:—**Held**: the Electric Lighting (Clauses) Act, 1899 (c. 19), did not

**PART III. SECT. 4, SUB-SECT. 1.**  
aa. Delete this case.

**PART III. SECT. 4, SUB-SECT. 3.**  
n. *Revsd.*, [1923] S. C. R. 397.

**PART III. SECT. 5, SUB-SECT. 1.**  
192 xiv. *Revsd.*, 31 S. C. R. 61.

**PART III. SECT. 6, SUB-SECT. 1.—A.**  
228 i. ———. *Flooding.*]—**SECRETARY OF STATE FOR INDIA IN COUNCIL v. ALJADIN** (1928), 1 L. R. 51 All. 291.—**IND.**

228 ii. ———.]—**BIFROST RURAL MUNICIPALITY v. STADNICK**, [1928] 3 D. L. R. 103; [1928] S. C. R. 304.—**CAN.**

228 iii. ———.]—**STEWART v. SPRINGFIELD & TACHE RURAL MUNICIPALITIES**, [1928] 4 D. L. R. 593; [1928] 3 W. W. R. 198; 37 Man. L. R. 453.—**CAN.**

228 iv. ———. *In handling of wheat—Delivered under Wheat Harvest Acts—Right of indorsee of certificates.*]—**When an owner of wheat who has delivered**

it to the Govt. of South Australia under Wheat Harvest Acts, 1915–17, indorses & delivers the certificate for supplementary advances issued to him, there passes to the transferee, not only the right to receive the advances, but also the right of the owner to sue the Govt. for damages for negligence in the care & handling of the wheat so delivered for the year whereby the amount payable under the certificates is diminished.—**ROBINSON v. STATE OF SOUTH AUSTRALIA**, [1929] A. C. 469.—**AUS.**

- expressly make defts. liable for a nuisance, but as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers pltf. was entitled to an injunction & damages.—**MANCHESTER CORPN. v. FARNWORTH** (1929), 93 J. P. Jo. 780; 46 T. L. R. 85; 73 Sol. Jo. 818; 27 L. G. R. 709, H. L.; *affirming*, S. C. *sub nom.* **FARNWORTH v. MANCHESTER CORPN.**, [1929] 1 K. B. 533, C. A.
- 268.** *Add. Annotation*:—**Consd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
- 273.** *Add. Annotation*:—**Refd.** *Manchester Corpn. v. Farnworth* (1929), 46 T. L. R. 85.
- 282.** *Add. Annotations*:—*As to* (1) **Consd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533. **Refd.** *Manchester Corpn. v. Farnworth* (1929), 46 T. L. R. 85.
- 288.** *Add. Annotation*:—**Apld.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
- 317.** *Add. Annotation*:—**Refd.** *Scammell v. Hurley*, [1929] 1 K. B. 419.
- 318.** *Add. Annotation*:—**Refd.** *Clark v. Epsom R. D. Co.*, [1929] 1 Ch. 287.
- 330.** *Add. Annotation*:—**Refd.** *Scammell v. Hurley*, [1929] 1 K. B. 419.

## Part IV.—Exemptions from Liability.

355. *Add. Annotation* :—**Refd.** A.-G. v. Goddard (1929), 98 L. J. K. B. 743.
387. *Add. Citation* :—138 L. T. 8.
391. *Add. Annotation* :—**Refd.** Constantinesco v. R. (1927), 11 Tax Cas. 730.
401. *Add. Annotation* :—**Folld.** Morriss v. Winter (1929), 45 T. L. R. 643.
- 402a. ——— **Detention after receipt of remission marks.**—**MORRIS** v. **WINTER** (1929), 45 T. L. R. 643.

**PART III. SECT. 6, SUB-SECT. 2.—B.**

**268 i. General rule.]—SURATTEE, BARA BAZAAR CO., LTD. v. MUNICIPAL CORPN. OF RANGOON (1927), I. L. R. 5 Ran. 722.—IND.**

**283 i. Exemption from Liability—Obstruction of highway.**—The Legislature of Ontario has not given the municipalities of the Province authority to permit telephone cos. to occupy the streets & highways within their poles & wires for a longer period, at one time, than five years. An agreement by a municipality to permit, by irrevocable licence, a telephone co. to occupy the streets with poles & wires is *ultra vires*.—**CORBIT CORPN. v. TEMISKAMING TELEPHONE CO. (Ont.)** (1919), 59 S. C. R. 62; 47 D. L. R. 301.—**CAN.**

**PART III. SECT. 7.**

296 xxiii. — — —.]—McSORLEY v. ST. JOHN CORP'N. (1882), 6 S. C. R. 531.—CAN.

296 xxiv. —.]—Where a municipality, in obedience to an Act of the Legislature, appoints an officer to perform a public service in which the corp'n. has no special interest, & from which it derives no special benefit in its corporate capacity, such officer is not the servant or agent of the municipality, & therefore, it is not liable for his negligence in the performance of his duties.—MEAD v. MARQUIS JOURNAL MUNICIPALITY, [1928] 2 D. L. R. 524 : [1928] 1 W. W. R. 756.—CAN.

**PART III. SECT. 9, SUB-SECT. 1.**

**ER. Injunction.—***Claim to take more land than necessary.*—Def't, corp'n. issued to plt'f. notice of its intention to take the whole of her land for a certain public work, although it admitted that the area was larger than that actually required for the contemplated work. It also refused plt'f.'s application for a permit to build on the land, on the ground of its intention to take same for the work:—*Held:* granting an injunction restraining the corp'n. from taking the whole of the land, it had no power under Public Works Act, 1908, to take a larger area than it actually required for the public work: & further it was not legally justified in refusing the appl'n. for a permit to build on the ground of its intention to take the land, & a writ of *mundamus* should issue compelling it to hear & determine the appl'n.—QUINNAN v. l.

WELLINGTON CORPN., [1929] N. Z.  
L. R. 491. N. Z.

**PART III. SECT. 9, SUB-SECT. 2.**

316 i. *Whether general jurisdiction of courts ousted.* 1. Deft. corp. erected power-house, & plff. claimed damages against the corp. for the escape of grit & smoke from the power-house, & asked for an injunction to restrain the corp. from using the power-house as it was being used. *Held* - plff. must be nonsuited, as his only remedy must be determined in the manner provided by Public Works Act, 1908. - *O'BRIEN v. WELLINGTON CITY CORPN.*, [1928] N. Z. L. R. 215. -

**PART IV. SECT. 3, SUB-SECT. 1.—A.**

**b i.** ——— *Agreement made for ulterior purpose.*—QUEENSLAND INSURANCE Co., LTD. v. SUBIACO MUNICIPALITY (1927), 30 W. A. L. R. 32. —AUS.

**o i. — Secretary of State for India in Council.**—In order that a contract may be binding upon the Secretary of State for India in Council, it must be made in strict conformity with the provisions laid down in the statutes governing the matter.—**KESORAM, PODDAR & Co. v. SECRETARY OF STATE FOR INDIA** (1926), 1. L. R. 54 Cal. 969.—**IND.**

o ii. — *Minister of Agriculture*.] — On the proper construction of Dried Fruits Act, 1924, in acquiring under that Act dried fruits on behalf of His Majesty, the Minister of Agriculture acts merely as the instrument of the Crown. The obligation to pay for the fruits is upon the Crown & not upon the Minister as such, & therefore, is not subject to attachment by garnishee proceedings.—*MILDURA CO-OPERATIVE FRUIT CO., LTD. v. NOYCE, Re NOYCE, Ex p. MINISTER OF AGRICULTURE*, [1928] V. L. R. 390; (1928), *Argus* L. R. 234.—*AUS.*

**344** 1. *Personal liability*—*Question of fact.*]—BOCZ v. HUGONNARD (1899), 4 Terr. L. R. 69.—**CAN.**

**st. Indemnity Act, 1920 (c. 48)—***Effect of.*—Indemnity Act, 1920, s. 1 (1), does not apply to actions to enforce the implement by Govt. Departments of their wartime contracts. The saving of actions in respect of "rights under, or alleged breaches

of, contract " contained in sect. 1 (1) (b) applies to cases in which rights under a contract have been interfered with, or a contract has been directly breached, by the exercise of some prerogative power.—*GREENOCK CORPN. v. THE ADMIRALTY*, [1928] S. C. 227.—**SCOT.**

**PART IV. SECT. 3, SUB-SECT. 2.—A.**

366 ii. —.] A servant of the Crown is liable for his own wrongful acts.—*MORTON v. BARTLETT* (1874), 15 N. B. R. (2 Pug.) 215.—**CAN.**

373 xii. — *Trespass by pathmaster.* 1  
— In *trespass* against a municipal corp.,  
for the act of their pathmaster,  
in causing statute labour to be performed  
on certain land of ptt., alleged by  
defts. to be an original allowance for  
road, it appeared that the pathmaster  
acted under an order written by the  
clerk, by the direction of the council  
while in session: — *Held*: sufficient to  
render the corp. liable, & a bye-law  
was not necessary. — NEVILLE v. ROSS  
TOWNSHIP CORPN. (1872), 22 C. P.  
487. — CAN.

**PART IV. SECT. 3, SUB-SECT. 2.—**  
**B. (a).**

**378 xviii.** —. —.] The Land Settlement Board, created by Land Settlement & Development Act, R. S. B. C. 1924, c. 128, is a department of the Govt., & there being nothing in said Act or other statutes which gives it a right to sue or be sued, no action lies against it for acts done in its official capacity.—**HATTENBURY v. LAND SETTLEMENT BOARD, [1928] 3 D. L. R. 382; [1928] 2 W. W. R. 475, 39 B. C. L. 523; affd., [1929] 1 D. L. R. 242.—CAN.**

**PART IV. SECT. 3, SUB-SECT. 4.—B.**

t. *Revsd.*, [1927] 1 D. L. R. 969;  
[1927] S. C. R. 226.

**sg. Inspectors appointed under Noxious Weeds Act.**—Inspectors appointed by a municipality under Noxious Weeds Act, 1924, c. 20, are not employees or agents of the municipality, but are public officers performing public services for the benefit, not of the municipality in its corporate capacity, but of its inhabitants & those of the Province generally.—MEAD v. MARQUIS RURAL MUNICIPALITY, [1928] 2 D. L. R. 524, [1928] 1 W. W. R. 756.—CAN.

- 436a. — Failure to record appearance—Officer of court.]—FINCH v. RISTLEY (1593), cited Poph. 25; 79 E. R. 1145.  
*Annotation*:—*Mentd.* Doe d. Hayne v. Redfern (1810), 12 East, 96.  
 483. *Add. Annotation*:—*Refd.* L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.  
 541. *Add. Annotation*:—*Consd.* Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.  
 601. *Add. Annotation*:—*Consd.* More v. Weaver, [1928] 2 K. B. 520.  
 604. *Add. Annotation*:—*Consd.* More v. Weaver, [1928] 2 K. B. 520.  
 686. In the third line of the existing paragraph read "1813" for "1913."  
 698. *Add. Annotation*:—*Consd.* Wisbech R. D. C. v. Ward (1928), 138 L. T. 308.  
 701. *Add. Citations*:—[1928] 2 K. B. 1; 97 L. J. K. B. at p. 59; 138 L. T. 308; 26 L. G. R. 10.  
 708. *Add. Annotation*:—*As to* (2) *Refd.* Brown v. Dagenham U. D. C., [1929] 1 K. B. 737.

## Part V.—Interest or Bias of Judicial and Quasi-Judicial Bodies.

719. *Add. Annotation*:—*Generally.* *Refd.* Maclean v. Workers' Union, [1929] 1 Ch. 602.  
 721. *Add. Annotations*:—*Refd.* Maclean Workers' Union, [1929] 1 Ch. 602; R. v. Huntingdon Confirming Authority, *Ex p.* George & Stamford Hotels, Ltd., [1929] 1 K. B. 698.

## Part VI.—Statutory Protection—Public Authorities Protection Act.

733. *Add. Annotation*:—*As to* (1) *Consd.* Scammell v. Hurley, [1929] 1 K. B. 419.  
 736. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corpn. (1928), 138 L. T. 465.  
 739a. *S. P.* MOSS v. SALFORD CORPN. (1908), 72 J. P. Jo. 341.  
 766. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corpn., [1929] A. C. 344.  
 777a. *Duty to prosecute.*]—*Held*: the duty to prosecute for an offence is not a "public duty" within Public Authorities Protection Act, 1893 (c. 61), s. 1.—HARTIN v. LONDON COUNTY COUNCIL (1929), 141 L. T. 120; 93 J. P. 160; 45 T. L. R. 318; 27 L. G. R. 497.  
 784. *Add. Annotations*:—*Refd.* Scammell v. Hurley, [1929] 1 K. B. 419; Graigola Merthyr Co. v. Swansea Corpn., [1929] A. C. 344.  
 795. *Add. Annotation*:—*Refd.* Scammell v. Hurley, [1929] 1 K. B. 419.  
 800. *Add. Annotations*:—*Refd.* Scammell v. Hurley, [1929] 1 K. B. 419. *Mentd.* The Harkaway, [1928] P. 199.  
 803. *Add. Annotation*:—*Apld.* Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.  
 804. *Substitute Citations.*—[1929] A. C. 344; 98 L. J. Ch. 233; 140 L. T. 505; 93 J. P. 121; 45 T. L. R. 219; 73 Sol. Jo. 109; 27 L. G. R. 243, H. J.  
 839. *Add. Annotation*:—*Consd.* Scammell v. Hurley, [1929] 1 K. B. 419.  
 854. *Add. Annotation*:—*As to* (1) *Refd.* Scammell v. Hurley, [1929] 1 K. B. 419.  
 854a. —.]—Where deft. appears to be acting as a member of a public body under statutory authority & pleads the six months' limitation imposed by Public Authorities Protection Act, 1893 (c. 61), as the period within which an action must be brought in respect of his acts, pltf. can defeat that claim by proving, on sufficient evidence, that deft. was not really intending to act in pursuance of his statutory authority, but was using his pretended authority from some improper motive, such as spite or for a purpose entirely outside statutory justification.  
 Where defts. are found purporting to execute a statute, the burden of proof is on pltf. to prove the existence of such a dishonest motive & the absence of any honest desire to execute the statute, & such existence & absence should be found only on strong & cogent evidence.—SCAMMELL G. & NEPHEW,

PART IV. SECT. 4, SUB-SECT. 1.  
 543 ii. —. —. —.]—*Re* O'CONNOR v. LEMIEUX, [1927] 3 D. L. R. 831; 60 O. L. R. at p. 374.—CAN.

PART IV. SECT. 4, SUB-SECT. 6.—  
 B. (b).

sh. Failure to return conviction—*Form of action.*]—DRAKE v. PRESTON (1873), 34 U. C. R. 257.—CAN.

PART IV. SECT. 5, SUB-SECT. 2.—  
 B. (o).

g i. — Board of Public Utility Commissioners—Public Utilities Act,

1923 (c. 53), s. 137 (2).]—*Re* STANTON & GORDON, [1927] 1 D. L. R. 273; [1926] 3 W. W. R. 769; 22 Alta. L. R. 387.—CAN.

### PART VI. SECT. 2.

739 iii. —. —. —.]—*Harbour trustees.*]—The mere fact that bodies such as harbour trustees administer their undertakings under Acts of Parliament is not sufficient to entitle them, as successful defenders, to expenses as between agent & client under Public Authorities Protection Act, 1893 (c. 61), s. 1 (b). They must base their motion upon such of the enactments regulating

their constitution & functions as are relevant to the question whether the action was "for an act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority."—LIVINGSTONIA S.S. Co., Ltd. v. CLYDE NAVIGATION TRUSTEES, [1928] S. C. 270.—SCOT.

### PART VI. SECT. 3, SUB-SECT. 2.

f i. — Negligence—Claim under Fatal Accidents Act.]—APPELBE v.

- ITD. v. HURLEY*, [1929] 1 K. B. 419; 98 L. J. K. B. 98; 140 L. T. 236; 93 J. P. 99; 27 L. G. R. 53; *sub nom.* SCAMMELL G. & NEPHEW, *ITD. v. ATTLEE*, 45 T. L. R. 75; 73 Sol. Jo. 12, C. A.
861. *Add. Annotation*:—*Refd.* R. v. L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.
863. *Add. Annotation*:—*Apld.* Graigola Merthyr Co. v. Swansea Corp., [1929] A. C. 344.
864. *Add. Annotation*:—*Consd.* Graigola Merthyr Co. v. Swansea Corp., [1928] Ch. 235.
869. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corp., [1929] A. C. 344.
870. *Add. Annotation*:—*Consd.* Graigola Merthyr Co. v. Swansea Corp., [1928] Ch. 235.
876. *Add. Annotation*:—*Refd.* Scammell v. Hurley, [1929] 1 K. B. 419.
- 882a. ———.] —*Certiorari* is not a “proceeding” within Public Authorities Protection Act, 1893 (c. 61), s. 1.—*R. v. LONDON COUNTY COUNCIL, Ex p. SWAN & EDGAR* (1927), *LTD.* (1929), 141 L. T. 590; 45 T. L. R. 512, D. C.
884. *Add. Annotation*:—*Refd.* R. v. L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.
885. *Add. Annotation*:—*Refd.* R. v. L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.
886. *Add. Annotation*:—*Refd.* R. v. L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.
887. *Add. Annotation*:—*Refd.* R. v. L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.
888. *Add. Annotations*:—*Refd.* R. v. L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590. *Mentd.* Pickford v. Quirke, Pickford v. I. R. Comrs. (1927), 138 L. T. 500; *R. v. St. Marylebone Income Tax Comrs., Ex p. Schlesinger* (1928), 13 Tax Cas. 716.
931. *Add. Annotation*:—*Consd.* Morriss v. Winter (1929), 45 T. L. R. 643.
953. *Add. Annotation*:—*Refd.* Morriss v. Winter (1929), 45 T. L. R. 643.
955. *Add. Annotations*:—*Consd.* Graigola Merthyr Co. v. Swansea Corp., [1928] Ch. 235. *Refd.* Morriss v. Winter (1929), 45 T. L. R. 643.
966. *Add. Annotation*:—*Consd.* Graigola Merthyr Co. v. Swansea Corp., [1929] A. C. 344.

## Part VIII.—Tenure and Compensation for Abolition of Office.

1037. *Add. Annotation*: *Apld.* Stoke Newington Borough Council v. Richards (1929), 45 T. L. R. 650.
1046. *Add. Annotation*:—*Consd.* Stoke Newington Borough Council v. Richards (1929), 45 T. L. R. 650.
1047. *Add. Annotation*:—*Consd.* Kiddie v. Port of London Authority (1929), 93 J. P. 203.
- 1048a. For loss of salary—Meaning of salary—Constabulary (Ireland) Act, 1922 (c. 55).]—

In above Act, by which compensation on the basis of salary is payable to the members of the disbanded Royal Irish Constabulary, the word “salary” means wages or pay, & does not include allowances, such as allowances for lodging, house-rent, & servant.—*EGAN v. A.-G.* (1929), 46 T. L. R. 41, C. A.

1057. *Add. Annotation*:—*Consd.* Stoke Newington Borough Council v. Richards (1929), 45 T. L. R. 650.

WEST CORK BOARD OF HEALTH, [1929] 1. R. 107.—IR.

### PART VI. SECT. 5, SUB-SECT. 1.

*sm.* Admiralty proceedings in Exchequer Court of Canada—Act not applicable.—*SYDNEY, CAPE BRETON & MONTREAL S.S. CO. v. MONTREAL HARBOUR COMRS.* (1913), 15 Exch. C. R. 1; 20 D. L. R. 828.—CAN.

### PART VI. SECT. 5, SUB-SECT. 3.

*sp.* Continuing trespass—Action not barred by Towns Incorporation Act, 1895 (c. 4).—*ARCHIBALD v. TRURO CORPN.* (1900), 33 N. S. R. 401.—CAN.

### PART VI. SECT. 6, SUB-SECT. 1.—A.

*h i.*—Release of insurance company by corporation from liability for accident.]—On an appln. under The Town Act, 1927, s. 566, for leave to bring an action against a town for injuries sustained, more than three months previously, owing to alleged defective wiring belonging to the town.—*Held*: the fact that the town had released an insurance co. from further liability with respect to the accident did not prejudice it in such a manner as to lead the ct. to refuse to exercise its discretion under said section to allow the action to be brought.—*Re RUTH & ESTEVAN TOWN*, [1928] 4 D. L. R. 509; [1928] 2 W. W. R. 686.—CAN.

### PART VI. SECT. 6, SUB-SECT. 6.

*n* (p. 133) i. —Where action in

respect of want of repair caused by misfeasance.]—*PRENTICE v. SAULT STE. MARIE*, [1927] 4 D. L. R. 800; 61 O. L. R. 246; *revid.* [1928] 3 D. L. R. 364; [1928] S. C. R. 309.—CAN.

*e* (p. 134) i. ———.—*McGREGOR v. R.*, [1929] 1 D. L. R. 181.—CAN.

*e* (p. 134) ii. —As to injuries.]—*MILLS v. CITY OF LETHBRIDGE (Alta.)*, [1927] 4 D. L. R. 1019; [1927] 3 W. W. R. 421.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 2.

*h i.* —Notwithstanding contract for term certain—Contract *ultra vires*.—*LARKINS v. SUMMERSIDE*, [1928] 4 D. L. R. 841.—CAN.

*k i.* Appointment until successor appointed.—Appointment of successor—Right to salary in lieu of notice.]—*BLAKELEY v. CHARLEWOOD RURAL MUNICIPALITY*, [1928] 2 D. L. R. 657; [1928] 1 W. W. R. 828; 37 Man. L. R. 331.—CAN.

*i i.* —Of weights & measures.]—*Held*: (1) the office of inspector was a freeshold public office tenable during life or good behaviour; (2) an inspector was not liable to dismissal at the pleasure of the Governor in Council as the holder of a public office under the Govt., but could only be removed from office by the justices in petty sessions for good cause, & after being called upon to show cause against his removal; (3) the acceptance of a salary did not affect the tenure of his

office, or render him liable to dismissal by the Govt. as a public servant.—*Ex p. EVANS* (1909), 10 S. R. N. S. W. 1; 26 N. S. W. W. N. 389; 9 C. L. R. 140.—AUS.

*st.* Delegation of authority to departmental heads.]—The municipal council of Sydney passed a resolution providing that the discharge or disrating or suspension of any employee should be left in the hands of the heads of the respective departments subject to appeal to the town clerk, whose decision was to be final. An employee who was subsequently dismissed by a departmental head brought an action against the council for wrongful dismissal.—*Held*: the council had power to delegate its authority to discharge employee.—*BAYLY v. SYDNEY MUNICIPAL COUNCIL* (1927), 28 S. R. N. S. W. 149; 45 N. S. W. W. N. 40.—AUS.

### PART VIII. SECT. 2, SUB-SECT. 2.

*n.* For “Wigg v. COCHRANE & A.-G.” [1927] 1. R. 285 read “Wigg v. A.-G. of IREISH FREE STATE, [1927] A. C. 674; 96 L. J. P. C. 88; 137 L. T. 460; 43 T. L. R. 457.”

*See, further, DEPENDENCIES*, Nos. 714b, 714c.

### PART VIII. SECT. 2, SUB-SECT. 3.

*sw.* Calculated on years of actual service.—Addition of years under county scheme.]—*O’SULLIVAN v. LIMERICK C. C., NAUGHTON v. LIMERICK C. C.*, [1928] 1. R. 193.—IR.

## PUBLIC HEALTH AND LOCAL ADMINISTRATION.

## Part III.—Control by Ministry of Health.

9. *Add. Annotation*:—*Refd.* A.-G. v. Sunderland Corpn. (1929), 46 T. L. R. 10.
20. *Add. Annotation*:—*As to* (1) *Consd.* Crediton Gas Co. v. Crediton U. C., [1928] Ch. 447.
23. *Add. Annotation*:—*Refd.* Clark v. Epsom R. D. C., [1929] 1 Ch. 287.
- 29a. ————]—The duty of a local authority under 1875 Act, s. 15, to keep sewers in repair cannot be enforced by an
38. *Add. Annotation*:—*Apld.* Clark v. Epsom R. D. C., [1929] 1 Ch. 287.
- action by a private person for a mandatory injunction. The proper remedy is a complaint to the Minister of Health under sect. 299 of the Act.—CLARK v. EPSOM RURAL DISTRICT COUNCIL, [1929] 1 Ch. 287; 98 L. J. Ch. 88; 140 L. T. 246; 93 J. P. 67; 45 T. L. R. 106; 27 L. G. R. 328.

## Part V.—Bye-Laws.

120. *Add. Annotation*:—*Refd.* Bean v. Flaxton R. D. C. (1928), 139 L. T. 320.
- 121a. ————]—Pltfs., a firm of builders who had, as a private enterprise of their own,

## PART I.

82. *Power to acquire land*—[*For offices.*] MAYVILLE LOCAL ADMINISTRATION & HEALTH BOARD v. GIELINK (1928), 49 N. L. R. 148.—S. AF.

## PART II. SECT. 3.

c i. — *Order for abatement of nuisance made on report of*—[*Effect of report of Department of Health.*] LEATHER v. DOOLITTLE CO., LTD., [1928] 2 D. L. R. 805; 62 O. L. R. 162. CAN.

## PART V. SECT. 1.

a (p. 156) i. — *By Railway & Municipal Board*—Does not validate invalid bye-law.—*Re* CASA LOMA, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—CAN.

a (p. 156) ii. — — — *Leave to appeal from Board*—[*Grounds for granting.*]—*Re* CASA LOMA, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—CAN.

ee (p. 156) i. — — — *Re* MCCUTCHEON & TORONTO CORPN. (1863), 22 U. C. R. 613.—CAN.

## PART V. SECT. 2, SUB-SECT. 1.

ooo (p. 157) i. — *Bye-law prohibiting keeping of animals*—[*Except with consent of council*—*Conditions under which consent given not set out.*]—MILLER v. BRIGHTON CITY, [1928] V. L. R. 375; [1928] Argus L. R. 209.—AUS.

ddd (p. 157) i. — — — *Re* FOX-CROFT & LONDON, [1927] 4 D. L. R. 684; 61 O. L. R. 209; *revid.* [1928] 1 D. L. R. 849; 61 O. L. R. 553.—CAN.

aa (p. 158) i. — — — *Re* HOWARD & TORONTO CORPN., *Re* SWEET & TORONTO CORPN., [1928] 1 D. L. R. 952; 61 O. L. R. 563.—CAN.

## PART V. SECT. 2, SUB-SECT. 2.

54 iii. — — — *Re* DUNLOP & TOWNSHIP OF DOURO (1859), 18 U. C. R. 227.—CAN.

ee (p. 160) i. — *Bye-law creating lien*—[*For unpaid water rates*—*Ultra vires.*]—BURCHELL v. SYDNEY CORPN., [1927] 1 D. L. R. 486; 59 N. S. R. 94.—CAN.

h (p. 161) i. — — — *Re* BOYLAN & TORONTO CORPN. (1887) 15 O. R. 13.—CAN.

m (p. 161) i. — — — *New*

*Year's Day.*]—A county licensing ct. issued a bye-law that all licensed premises within the district including inns & hotels, except as regarded travellers & lodgers therein, should be closed wholly on New Year's Day, & when New Year's Day fell on a Sunday, then on Monday, Jan. 2. *Held*: under this bye-law a Monday falling on Jan. 2 must be treated as a Sunday, & accordingly, that an hotel-keeper who had supplied a customer on such a Monday outwith the permitted week-day hours had not infringed his certificate where the customer was a *bona fide* traveller, who could lawfully have been supplied on Sunday.—HENDERSON v. ROSS, [1928] S. C. (J.) 74.—SCOT.

t (p. 161) i. — — — *Rate likely to produce less money than required.*]—*Held*: the ct. would not interfere.—*Re* GILCHRIST & SULLIVAN CORPN. (1879), 44 U. C. R. 588.—CAN.

e (p. 161) i. — — — *Street not yet opened.*]—A bye-law provided for the construction of side walks on a street to be opened.—*Held*: as the street shown on the plan was not yet & might never be a public street, the council exceeded its authority in passing the bye-law, which should therefore be quashed; the discretion of the ct. should not be exercised in favour of the bye-law.—*Re* CHAFFUS & LA SALLE TOWN, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—CAN.

e (p. 161) ii. — — — *Bye-law authorising improvement of street*—[*Passed before land acquired.*]—*Re* CHAFFUS & LA SALLE TOWN, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—CAN.

e (p. 161) iii. — — — *Bye-law regulating width of streets on laying-out building sites*—[*Whether applicable to roads giving access to building estate.*]—*Re* ROSE v. SYDENHAM LOCAL ADMINISTRATION & HEALTH BOARD (1928), 49 N. L. R. 203.—S. AF.

dd (p. 161) i. — — — *Fee imposed on every truck delivering merchandise*—[*Whether applicable to trucks belonging to owner outside municipality.*]—Municipal Act, R. S. B. C. 1924, c. 179, s. 290 (34), as enacted by 1925, c. 35, s. 28, which empowers a municipality to impose a licence fee on "the owner or driver of every truck plying for hire

or used for the delivery of wood, coal, merchandise or other commodity," authorises it to demand the fee from every owner of a truck used for the delivery of merchandise within the municipality, even though the owner is an outsider.—NORTH VANCOUVER v. F. R. STEWART & CO., [1928] 1 W. W. R. 586; 49 Can. Crim. Cas. 216; 39 B. C. R. 401.—CAN.

dd (p. 161) ii. — — — *Bye-law requiring vehicles licensed by town council to obtain additional county licence.*]—SCOTTISH MOTOR TRACTION CO., LTD. v. LANARKSHIRE COUNTY COUNCIL, [1928] S. C. (Cl. of Sess.) 909.—SCOT.

dd (p. 161) iii. — — — *Bye-law prohibiting use of vehicle in jitney bus service without licence*—[*Jitney licences no longer issued.*]—*Re* SHAWRA, [1929] 1 D. L. R. 321; 50 Can. Crim. Cas. 267; 63 O. L. R. 158.—CAN.

dd (p. 161) iv. — — — *Bye-law prescribing parking areas for vehicles*—[*Whether bye-law regulating traffic—Right to charge for use of parking areas.*]—SCHILLING v. MELBOURNE CITY, [1928] V. L. R. 302; [1928] Argus L. R. 203.—AUS.

h (p. 162) i. — — — *Bye-law restricting the carrying-on of restaurants.*]—*Re* BYE-LAW NO. 304 OF MINNEDOSA TOWN, WONG SING v. MINNEDOSA, [1928] 3 W. W. R. 181.—CAN.

o (p. 162) i. — — — *Power to sweep chimneys confined to chimney inspectors.*]—*Re* R. v. JOHNSTON (1876), 38 U. C. R. 549.—CAN.

so. — *Regulation of botanic park*—*Bye-law prohibiting meetings without consent of governors*—[*Valid.*]—FOX v. ALLCHURCH, [1926] S. A. S. R. 384; *affd.* 40 C. L. R. 135.—AUS.

sf. — *Licensing taverns.*]—*Re* BROHIE & BOWMANVILLE CORPN. (1876), 38 U. C. R. 580.—CAN.

sg. — *Bye-law increasing service tax*—[*Invalid.*]—HARDY v. EDMONTON CORPN. (Alta.), [1925] 1 D. L. R. 256; [1924] 3 W. W. R. 936.—CAN.

sh. — *Bye-law regulating the housing of motor trucks & apparatus used in truck cartage business*—[*Construction.*]—*Re* STRONACH, [1928] 3 D. L. R. 216; 49 Can. Crim. Cas. 336; 61 O. L. R. 636.—CAN.



built a number of houses upon land situate within the jurisdiction of defts., had not complied with defts.' bye-laws as to the drainage, with the result that differences arose between the parties. Subsequently, by agreement, defts. appointed a sub-committee to settle all outstanding matters, & an agreement was arrived at between plffs. & the sub-committee. One of the terms of that agreement was that plffs.' drainage scheme should remain, although it was contrary to defts.' bye-laws. Defts. having repudiated the agreement to which their sub-committee was a party, plffs. brought an action claiming specific performance :—*Held* :

as it had not been established that the building of the houses by plffs. was, or formed part of, a housing scheme to which Housing Act, 1925 (c. 14), s. 99, applied, the verbal contract made by the sub-committee was not binding on defts., for the reason that defts. could not confer upon the sub-committee a power of entering into any such contract. Neither had the Minister power under sect. 99 to relax the bye-laws in a private building scheme. *WILLIAM BEAN & SONS, LTD. v. FLAXTON RURAL DISTRICT COUNCIL*, [1929] 1 K. B. 450; 98 L. J. K. B. 20; 139 L. T. 320; 92 J. P. 121; 26 L. G. R. 335, C. A.

## Part VI.—Legal Proceedings.

- 137a. — — — **Town Police Clauses Act, 1847 (c. 89).**—A corpn. was convicted upon an information preferred on behalf of a limited co. under sect. 47 of above Act, by one of its directors, for permitting a motor omnibus to be used as a hackney carriage within the prescribed area, without having obtained the necessary licence under the Act :—*Held* : that P. II. Act, 1875, s. 253, takes the place of Town Police Clauses Act, 1847 (c. 89), s. 73, which enabled "any person" to recover penalties for offences against that

Act, & therefore except in the case of information by a party aggrieved or the local authority for the district, the consent of the A.G. is now a condition precedent to proceedings for the recovery of penalties under the Town Police Clauses Act, 1847 (c. 89). — *SHEFFIELD CORPN. v. KITSON*, [1929] 2 K. B. 322; 98 L. J. K. B. 561; 93 J. P. 135; 45 T. L. R. 515; 73 Sol. Jo. 348; 27 L. G. R. 533, D. C.

139. *Add. Annotation* : —*N.F. Sheffield Corpn. v. Kitson*, [1929] 2 K. B. 322.

## Part VII.—Particular Provisions.

199. *Add. Annotation* : —*Refd. Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662.  
200. *Add. Annotation* : —*Refd. Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662.  
286. *Add. Annotation* : —*As to (3) Apld. Bean v. Flaxton R. D. C.* (1928), 139 L. T. 320.  
308. *Add. Annotation* : —*Apld. Bean v. Flaxton R. D. C.* (1928), 139 L. T. 320.

- 333a. **Relaxation of bye-law—Under Housing Act, 1925 (c. 14), s. 99.**—*WILLIAM BEAN & SONS, LTD. v. FLAXTON RURAL DISTRICT COUNCIL*, No. 121a, *ante*.

339. *Add. Annotation* : —*Generally, Refd. Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 325.  
341. *Add. Annotation* : —*Mentd. Graigola Merthyr Co. v. Swansea Corpn.*, [1929] A. C. 344.

### PART V. SECT. 4.

1 i. — *Attorney-General.*—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.G. may sue in respect of its breach. —*A.G. & LUMLEY v. T. S. GILL & SON PTY., LTD.*, [1927] V. L. R. 22; [1927] *Argus* L. R. 223.—**AUS.**

### PART VI. SECT. 2.

sk. *Keeping marine store without licence—In whose name action lies.*—*HALIFAX CITY v. O'CONNOR* (1882), 15 N. S. R. (3 R. & G.) 190.—**CAN.**

### PART VI. SECT. 5, SUB-SECT. 1.

sl. *Powers of arbitrator—Assessment of compensation—Where corporation had no power to appropriate claimant's land.*—*Re ST. MICHAEL'S COLLEGE & TORONTO CORPN.*, [1928] 3 D. L. R. 710; 62 O. L. R. 410.—**CAN.**

### PART VII. SECT. 2, SUB-SECT. 1.

ki. — *Requiring licence—Valid.*—*WROBLEWSKI v. McLAREN* (1927), 29 W. A. L. R. 24.—**AUS.**

### PART VII. SECT. 5, SUB-SECT. 2.—O.

sn. "Addition" to building—*What J.S.*

amounts to—*Not new gambrel roof in lieu of old pitch roof.*—*DANBY VILLAGE OF WAKAW & KRAUS* (Sask.), [1927] 3 W. W. R. 107.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 4. A.

so. *What is public building—Club premises used for dances—Liability of club secretary.*—*LISTER v. HUMPHRIES*, [1928] V. L. R. 106; [1928] *Argus* L. R. 27.—**AUS.**

### PART VII. SECT. 5, SUB-SECT. 4.—B.

sp. *Who are owners—County court house.*—*R. v. TYRONE COUNTY JJ.*, [1928] N. I. 103.—**IR.**

### PART VII. SECT. 5, SUB-SECT. 9.—B. (a).

sq. *Bye-law providing for formation of residential area—Permitting erection of shops in specified streets.*—*BARNES v. COBURG CITY*, [1928] V. L. R. 334; [1928] *Argus* L. R. 197.—**AUS.**

### PART VII. SECT. 5, SUB-SECT. 9.—C.

329 i. *Continuing offence—Erection of building without approval of plans—No notice of disapproval served by council.*—*Held* : the contravention of the bye-laws was a continuing offence.

—*PORTSTEWART URBAN DISTRICT COUNCIL v. HAMILL*, [1927] N. I. 181.—**IR.**

### PART VII. SECT. 6, SUB-SECT. 1.—B.

352 ii. — — — *Employer—Evidence of contract for medical & surgical care of employees.*—*QUEEN VICTORIA MEMORIAL HOSPITAL v. BOOTH, LTD.*, [1927] 4 D. L. R. 1016; 61 O. L. R. 293.—**CAN.**

352 iii. — — — *Patient admitted as resident of city—But having legal settlement elsewhere.*—On the certificate of her physician that she was a resident of the City of Sydney, G. was admitted to the Sydney hospital as a patient for treatment. It was discovered some time later that G. had a legal settlement at Glace Bay, & she was removed there & accepted. In the meantime there was due to the Sydney hospital the sum of \$191.5 for hospital services, including drugs & medicines. The amount due was admitted :—*Held* : the City of Sydney, paying the claim of the hospital, was entitled to indemnity against deft., & judgment should be entered in favour of plff. for the amount claimed with costs.—*SYDNEY CITY v. GLACE BAY TOWN* [1928] 1 D. L. R. 729; 59 N. S. R. 448.—**CAN.**

- 529 i. *Petroleum for light vehicles--Locomotives on Highways Act, 1896, c. 36, s. 5--Application to Scotland of regulations made by Home Secretary.*]--**GALLOWAY v. ANDERSON**, [1928] S. C. (J.) 70.—**SCOT.**

**556a. Registration Removal from register - Grounds for.]**—Pltfs. were the owners of premises which had been used for a long period prior to Mar. 1924, as a slaughter-house in connection with their business as meat salesmen, & were a registered slaughter-house within Towns Improvement Clauses Act, 1847 (c. 34), s. 126. By a resolution passed by the City Council on July 22, 1926, pltfs.' slaughter-house was removed from the register upon the ground that no slaughtering had been done on the premises between

Mar. 1924, & July, 1926:—*Held*: upon the evidence, these premises had throughout the period in question been continuously occupied by pltfs. as a slaughter-house & used as such. The local authority were therefore not entitled under sect. 126 to remove the name from the register, even although there had been a breach of the regulations on the part of pltfs. —*WOOLLISCROFT v. STROKE-ON-TRENT CORPN.* (1928), 92 J. P. 150; 26 L. G. R. 522, C. A.

**607. Add. Annotation:—***Refd. Grant v. Derwent*, [1929] 1 Ch. 390.

**PART VII. SECT. 14, SUB-SECT. 4.**

**h i. ——— Negligence.]**—*FORREST v. METROPOLITAN MEAT INDUSTRY BD.* (1928), 28 S. R. N. S. W. 621; 45 N. S. W. W. N. 193. **AUS.**

**h ii. ——— Bye-law depriving owners of animals slaughtered of portion of offal—Whether reasonable.]**—A bye-law, made by a controlling authority of an abattoir, in pursuance of Slaughter & Inspection Act, 1908,

s. 18, & sect. 3 of the Amendment Act, 1910, is *intra vires* & reasonable notwithstanding that its operation deprives the owners of animals slaughtered of a proportion of the offal & effects a confiscation of same — *SMITH v. BLENDHEIM BOROUGH COUNCIL*, [1928] N. Z. L. R. 536. —**N.Z.**

**PART VII. SECT. 20, SUB-SECT. 1. —A.**

**xx. Depositing refuse so as to be**

*nuisance.*] Health Act, 1919, s. 32 (2), makes it unlawful for a private citizen, as well as for a municipal council, to deposit refuse or rubbish in any place where it may be a nuisance. A deposit contributing to a continuing nuisance held sufficient to support a conviction under the section. — *PAINTER v. O'CONNELL*, [1928] V. L. R. 259; [1928] Argus L. R. 159. —**AUS.**

## RAILWAYS AND CANALS.

## Part I.—Railway Companies Generally.

31a. ———.]—EDINBURGH, PERTH & DUNDEE RY. CO. v. PHILIP, No. 855, *post*.

## Part II.—Construction and Repair of Railways.

118. *1dd. Annotation* :—*Refd. Farnworth v. Manchester Corpn.* (1929), 98 L. J. K. B. 224.

136. *Add. Annotation* : *Consd. Manchester Corpn. v. Audenshaw U. C. & Denton U. C.*, [1928] Ch. 763.

197a. ———.]—A railway co. agreed with a landowner, through whose estate the railway would pass, to construct & maintain a siding connected with their railway at B., together with all necessary approaches thereto for public use, & for the reception & delivery of goods :—*Held* : (1) specific performance could be decreed of the agreement to construct the siding & approaches, without

decreeing the co. to maintain them when made ; (2) the agreement did not bind the co. to erect sheds, or to keep one of their servants in attendance at the siding, but it obliged them to construct a proper siding, with approaches & a wharf or raised platform for the loading & unloading of goods ; (3) “ necessary approaches ” meant “ proper approaches.” —*LYTTON v. GREAT NORTHERN RY. CO.* (1856), 2 K. & J. 394 ; 27 L. T. O. S. 42 ; 2 Jur. N. S. 436 ; 4 W. R. 441 ; 69 E. R. 836.

265. *Add. Annotation* :—*Refd. Manchester Corpn. v. Audenshaw U. C. & Denton U. C.*, [1928] Ch. 763.

## Part III.—Equipment and Working of Railways.

316. *Add. Annotation* :—*As to* (1) *Refd. Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686.

## PART I. SECT. 4, SUB-SECT. 1.

*sb. Power of federal railway to sell its assets—Necessity for sanction of Governor-General in Council.*—*OTTAWA VALLEY RY. CO. v. CENTRAL RY. CO., LTD.* (1926), Q. R. 42 K. B. 284.—CAN.

*sc. Power to carry on business reasonably incidental to operation of railway Sale of souvenirs, photographs & refreshments.*—*QUEEN VICTORIA NIAGARA FALLS PARK COMRS. v. INTERNATIONAL RY. CO.*, [1928] 4 D. L. R. 755 ; 63 O. L. R. 49.—CAN.

## PART I. SECT. 4, SUB-SECT. 3.

*n* (p. 253) i. ———.]—*None to Supreme Court of Canada.*—*CEDAR RAPIDS MFG. & POWER CO. v. LACOSTE*, [1927] 2 D. L. R. 83.—CAN.

*sd. Right to alienate lands taken*—*PRATT v. GRAND TRUNK RY. CO.* (1884), 8 O. R. 499.—CAN.

*se. Acquisition from tenant for life.*—*MIDLAND RY. OF CANADA v. YOUNG* (1893), 22 S. C. R. 190.—CAN.

## PART I. SECT. 4, SUB-SECT. 6.

*p* (p. 254) i. ———.]—*When demurrage chargeable.*—*J. BROWNLEE & CO. v. CANADIAN NATIONAL RY.* (1926), 32 Can. Ry. Cas. 291.—CAN.

*p* (p. 254) ii. ———.]—*CONSOLIDATED RENDERING CO. v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 294.—CAN.

*uu i.* ———.]—*Application of stop-off charge.*—*DOMINION MILLERS' ASSOCN. v. CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS.* (1925), 33 Can. Ry. Cas. 6.—CAN.

*uu ii. Dressing in transit—Application of stop-off.*—*NEILSON MAGANN LUMBER CO. v. CANADIAN PACIFIC RY. CO.* (1926), 32 Can. Ry. Cas. 286.—CAN.

*oo* (p. 256) i. ———.]—*CANADIAN LUMBERMEN'S ASSOCN. v. CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS.* (1927), 33 Can. Ry. Cas. 1.—CAN.

## PART II. SECT. 3, SUB-SECT. 1.—C.

*i* i. ———.]—*WINDSOR CORPN. v. CANADIAN PACIFIC RY. CO. (WYANDOTTE STREET BRIDGE CASE)* (1926), 32 Can. Ry. Cas. 26.—CAN.

*st. Liability to reconstruct private bridge as highway bridge.*—*LEDUC v. CANADIAN PACIFIC RY. CO.* (1927), 33 Can. Ry. Cas. 24.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.

*sg. Claim for damage—Three months'*

*notice of claim.*—*Re ST. ANDREW'S CHURCH TRUSTEES & GREAT WESTERN RY. CO.* (1862), 12 C. P. 399.—CAN.

## PART II. SECT. 6, SUB-SECT. 4. — B. (b).

*aa. Revsd.*, 31 S. C. R. 155.

## PART II. SECT. 6, SUB-SECT. 4.— C. (a).

215 xiv. ———.]—*JAMES v. GRAND TRUNK RY. CO.* (1900), 31 O. R. 672.—CAN.

## PART II. SECT. 8.

*p* i. ———.]—*IL. v. SMITH* (1878), 43 U. C. R. 369.—CAN.

*sh. Laying down of railway in public street—Necessity for consent—Who proper authority.*—*PORT ADELAIDE CITY CORPN. v. SOUTH AUSTRALIAN RYR. COMRS.*, [1927] S. A. S. R. 197.—AUS.

## PART III. SECT. 9.

*sk. " Policemen travelling on His Majesty's service "—Whether Provincial policemen included.*—*J. v. CANADIAN PACIFIC RY. CO. v. CANADIAN NATIONAL RY.*, [1928] 2 D. L. R. 386 ; [1928] 1 W. W. R. 785 ; 34 C. Ry. Cas. 292 ; 23 Alta. L. R. 401.—CAN.

## Part IV.—Level Crossings.

361. *Add. Annotations* : — **Dlstd.** Compania Mexicana De Petroleo " El Aguila " v. Essex Transport & Trading Co. (1929), 141 L. T. 106. **Consd.** Hargrove v. Burn (1929), 46 T. L. R. 59. **Refd.** Service v. Sundell (1929), 45 T. L. R. 569 ; Cooper v. Swadling (1929), 46 T. L. R. 73.

## Part V.—Arrangements between Railway Companies.

371. *Add. Annotation:—As to (1) Distd. Crediton Gas Co. v. Crediton U. D. C., [1928] Ch. 447.* | 475. *Add. Annotation:—As to (1) Consd. A.-G. v. Leeds Corpn., [1929] 2 Ch. 291.*

## Part VI.—Relations between Railway Companies and the Public.

554. *Add. Annotation* :—**Refd.** Manchester Corpn.  
v. Farnworth (1929), 46 T. L. R. 85.
557. *Add. Annotation* :—**Refd.** Manchester Corpn.  
v. Farnworth (1929), 46 T. L. R. 85.
558. *Add. Annotation* :—**Consd.** Manchester Corpn.  
v. Farnworth (1929), 46 T. L. R. 85.
564. *Add. Annotation* :—**Refd.** Manchester Corpn.  
v. Farnworth (1929), 46 T. L. R. 85.

## Part VII.—Railway Companies and their Servants.

- 598a. Injury to ganger--Duty to provide look-out man--Prevention of Accidents Rules, 1902, r. 9.]**—The foreman of a gang in the employ of a railway co. was employed to repair some signalling apparatus on the permanent way, & took with him a member of his gang to assist him. Whilst engaged in working on the down line he with his fellow workman stepped off the line on the up line to avoid a down train & both men were killed by an up train. In an action by the widow of the foreman for damages against the co. for

**PART IV. SECT. 1.**

**sj. Extent of duty—Effect of Railway Act, 1919 (c. 68).]**—**COLEBOURNE v. HARROP** (Ont.), [1927] 1 D. L. R. 116; 32 Can. Ry. Cas. 208—**CAN.**

**324 I. — CAN.**—SCOTT v. WINNIPEG ELECTRIC Co., [1927] 2 D. L. R. 686; [1927] 1 W. W. R. 739; 32 Can. Ry. Cas. 397; 36 Man. L. R. 357; *affd.* [1928] 2 D. L. R. 420; [1928] S. C. R. 52; 34 C. Ry. Cas. 260.—**CAN.**

324 ii. — *Power to remove planks—From farm crossing.*—MACDONALD v. CANADIAN PACIFIC RY. Co. (Que.) (1927), 33 Can. Ry. Cas. 60.—CAN.

m i. — *Effect of accident causing death or injury—Application of "slow order."*—*Re RAILWAY ASSOCN. OF CANADA & SLOW ORDERS* (1926), 32 Can. Ry. Cas. 238.—CAN.

m ii. —.]—CANADIAN NATIONAL RYS. v. HYDRO ELECTRIC POWER COMMISSION & DEPARTMENT OF HIGHWAYS FOR ONTARIO (WESTHILL CROSSING CASE) (1926), 32 Can. Ry. Cas. 297.—CAN.

**I** (p. 309) i. ———.]—MONTREAL  
CORPN. v. CANADIAN PACIFIC RY. CO.  
(GOUIN BOULEVARD CROSSING CASE)  
(1926), 32 Can. Ry. Cas. 245.—**CAN.**

**f** (p. 309) ii. ———.] --SPRINGFIELD (VILLAGE) v. MICHIGAN CENTRAL RY. CO. (1926), 32 Can. Ry. Cas. 254.—**CAN.**

**1** (p. 309) iii. — — —.]—MONTREAL CORPN. v. CANADIAN NATIONAL RYS. (1927), 33 Can. Ry. Cas. 29.—CAN.

**f** (p. 309) iv. — — — — —.]—CANADIAN NATIONAL RYS. v. MONTREAL TRAMWAYS (GUY ST. CROSSING CASE) (1927), 33 Can. Ry. Cas. 32.—CAN.

**I** (p. 309) v. — — — — —,]—SHER-  
BROOKE CORPN. v. CANADIAN PACIFIC  
RY. CO. (1927), 33 Can. Ry. Cas. 35.—  
**CAN.**

**PART IV. SECT. 2. SUB-SECT.**

**sm. Gate left open.**—Obligation on person crossing track to take reasonable precautions.—The fact that the gates at a railway crossing have been left open does not excuse a person approaching the track from taking reasonable precautions before crossing it in order to discover whether a train is coming.—**MICHALINSKI v. CANADIAN PACIFIC RY. CO.** [1928] 3 W. W. R. 238. **CAN.**

**PART IV, SECT. 2, SUB-SECT. 2.**

a (p. 311) i. — *Whether gate wilfully left open--Gate wilfully opened by stranger.*]—BROWN v. GREAT NORTHERN RY. CO., [1927] 2 D. L. R. 316; [1927] 1 W. W. R. 516; 32 Can. Ry. Cas. 326, 38 B. C. R. 115.—CAN.

**PART IV. SECT. 3.**

22 (p. 314) I. ———. — SMART v. SOUTH AFRICAN RYS. & HARBOURS (1928), 49 N. L. R. 129. —S. AF.

**p** (p. 315). *Revsd.*, [1927] 3 D. L. R. 888; [1927] S. C. R. 505; 33 Can. Ry. Cas. 55.

p (p. 315) i. --- - ---. |---TREMBLAY  
v. CANADIAN PACIFIC RY. CO. (1927),  
Q. R. 65 S. C. 406.—CAN.

r (p. 315) f. - - - - - }- Where the Railway Administration has used a particular warning to announce the approach of a train at a level crossing, thereafter, upon an occasion when

such warning is not given, a collision occurs between an engine & a vehicle crossing the line, the ct. in deciding whether the driver of the vehicle took reasonable care in approaching the crossing will take into account the fact that the driver may have been thrown off his guard by the absence of the usual form of warning—

MANCHO v. SOUTH AFRICAN RYS. & HARBOURS, [1928] App. D. 89. — S. AF.

q (p. 316). *Revsd.*, [1923] S. C. R.  
397.

**c** (p. 316) **i.** *Defective approach to crossing.*—RASPBERRY v. (CANADIAN NATIONAL RY. CO., [1928] 3 D. L. R. 831, 62 O. L. R. 106.—CAN.

o (p. 317). *Revsd.*, 48 S. C. R. 561.

**PART V. SECT. 4. SUB-SECT. 2.**

t. *Revsd.*, 1 O. L. R. 575, 594.

**PART VI. SECT. 5. SUB-SECT. 3. A.**

80. *Damage to timber Failure to patrol right of way Defects in locomotive.*—MID-LAKES TIMBER CO. v. CANADIAN PACIFIC RY. CO., [1928] 4 D. L. R. 922, [1928] 3 W. W. R. 745.—CAN.

**sp.** *Death due to fire caused by sparks from engine*--Claim by dependants--Where enforceable--Meaning of "losses."--**VICTORIAN RYS. COMRS. v. SPEED**, [1928] V. L. R. 150, [1928] **ARGUS L. R.** 77; 40 **C. L. R.** 434.  
**--AUS.**

**PART VII. SECT. 1.**

**K. Revd., 47 S O R. 634**

breach of statutory duty, the judge directed the jury that a regulation of the co. under which the foreman of a gang was entrusted with the duty of seeing that a look-out man was provided whenever he or any of his gang were at work upon the line was a compliance with r. 9. The jury found that the co. had not omitted to perform their statutory duty of providing a look-out man, & that the foreman's death was caused by the negligence of one or the other or both of the men, & judgment was entered for the co. :—*Held* : (1) a motion for a new trial, on the grounds of misdirection & that the verdict was against the weight of evidence, must be refused ; (2) the rule does not require the look-out man

provided to be some one who is not a member of the gang itself, but is appointed additionally. (3) *Seemle* : the duty of the railway co. under the rule in any case of danger is an absolute duty to provide a look-out man & to see that he is instructed to act. The co. does not comply with the rule by merely making regulations under which the foreman of a gang is entrusted with the duty of appointing a look-out man ; & if the foreman fails in that duty, the co. may be made liable for injury happening to a member of the gang other than the foreman himself.—*VINCENT v. SOUTHERN RY. CO.*, [1927] A. C. 430 ; 96 L. J. K. B. 597 ; 136 L. T. 513 ; 71 Sol. Jo. 34, H. L.

## Part X.—Railway Tribunals.

**703.** *Add. Annotations* :—*Appld.* R. v. St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746. *Refd.* R. v. Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 138 L. T. 230.

**755.** *Add. Annotation* :—*Refd.* Rowson, Drew & Clydesdale v. G. W. Ry., L. M. & S. Ry., L. & N. E. Ry. & Southern Ry. (1928), 19 Ry. & Can. Tr. Cas. 235.

**756a.** *Adjustment of charges to revenue—Railway carrying on subsidiary business—Railways Act, 1921 (c. 55), s. 58.*—In dealing with the subject of dock undertakings belonging to railway cos. the Railway Rates Tribunal accepted the division between "railway" & "dock" set out in the railway cos.' estimates, by which all receipts & expenses in respect of railways, sidings & warehouses, whether they were within the area of a dock or not, were treated as "railway" receipts & expenses, & all receipts & expenses in respect of "docks" other than those entered as "railway" receipts & expenses, were treated as "dock" receipts & expenses :—*Held* : (1) this division of receipts & expenditure between railways & docks could not be supported, as

it involved the exclusion from consideration of charges at dock warehouses or storage spaces where none of the goods stored therein used railways, & all charges in respect of the conveyance on railways in docks in whatever circumstances the rails were laid or charges were made for their use ; (2) (*BANKES, L.J.*) under sect. 58 (1) of the above Act the Tribunal has to take into consideration the different operations which go to make up the business of a dock undertaking, for which operations separate & distinct charges are made ; (3) *Seemle* (*SCRUTTON, L.J.*) : warehousing on a dock undertaking goods exported or imported, storing such goods in the open on dock lands, the use of transit sheds, & services such as cooping, are dock & not railway charges.—*MANCHESTER SHIP CANAL CO.'S & DOCK & HARBOUR AUTHORITIES ASSOCN.'S APPLICATIONS*, [1927] 2 K. B. 154 ; 96 L. J. K. B. 421 ; 137 L. T. 39 ; 43 T. L. R. 301 ; *sub nom.* *STANDARD CHARGES (DOCKS HARBOURS & PIERS)*, 19 Ry. & Can. Tr. Cas. 75, C. A.

**756b.** ————[*STANDARD CHARGES (COLLECTION & DELIVERY-WAREHOUSING)* (1925), 19 Ry. & Can. Tr. Cas. 53.

### PART X. SECT. 3.

a (p. 375) i. ———— *Over street railway incorporated by provincial legislature—Work for general advantage of Canada.*—Where a street railway co. operating within a province was originally incorporated by a provincial legislature, but its undertaking is subsequently declared by a Dominion Act to be a work for the general advantage of Canada, the execution of its powers is within the jurisdiction of the Board of Railway Comrs. for Canada.—*QUEBEC RAILWAY, LIGHT & POWER CO. v. MONTCALM LAND CO.*, [1928] 1 D. L. R. 143 ; [1927] S. C. R. 545.—*CAN.*

a (p. 375) ii. ———— *Under Railway Act, ss. 345, 351.*—*PROVINCES OF BRITISH COLUMBIA & ALBERTA v. CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS. (FARES FOR PROVINCIAL POLICE CASES)* (1927), Can. Ry. Cas. 322.—*CAN.*

d (p. 375) i. ———— *Or to employ servants in inferior position.*—*DEATH v. NEW SOUTH WALES RAILWAY COMRS.* (1927), 27 S. R. N. S. W. 187 ; 44 N. S. W. W. N. 63.—*AUS.*

e (p. 375) i. ————[*ST. BRIGID'S PARISH, IDERVILLE COUNTY, P.Q. v. CANADIAN NATIONAL RYS.* (1927), 33 Can. Ry. Cas. 15.—*CAN.*

oo (p. 375) i. ———— *As to effect of order of Board.*—*Re ROLAND & CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 127.—*CAN.*

occc i. ———— *Prevention of alteration in routing of traffic.*—*BOARD OF TRADE OF HALIFAX, ST. JOHN & SACKVILLE, N.B., CANADIAN LUMBERMEN'S ASSOCN. v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 37.—*CAN.*

t (p. 376) i. ———— *Transit rate—With stop-over privileges—Refusal to order.*—*ROSS LEAF TOBACCO CO., LTD. v. CANADIAN FREIGHT ASSOCN.* (1927), 32 Can. Ry. Cas. 320.—*CAN.*

oo (p. 376) i. ————[*STANDARD HARDWOOD LUMBER CO. v. CANADIAN PACIFIC RY. CO. & CANADIAN NATIONAL RYS. (COAL & COKE RATES CASE)* (1926), 32 Can. Ry. Cas. 282.—*CAN.*

qq (p. 376) i. ————[*CANADIAN SHIPPERS' TRAFFIC BUREAU v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 3.—*CAN.*

yy (p. 376) i. ———— *Goods of same description.*—*HARDY'S, LTD. v. NEW SOUTH WALES RAILWAY COMRS.* (1928), 28 S. R. N. S. W. 318 ; 45 N. S. W. W. N. 32.—*AUS.*

yy (p. 376) ii. ———— *Compulsory reduction—Application of Maritime Freight Rates Act, 1927.*—*CANADIAN NATIONAL RY. CO. v. NOVA SCOTIA PROVINCE*, [1928] 1 D. L. R. 369 ; [1928] S. C. R. 106 ; 34 Can. Ry. Cas. 223.—*CAN.*

ccc (p. 376) i. ———— *Refusal of facility involving violation of established principle.*—*PARISH OF LANCASTER, ST. JOHN, N.B. v. DOMINION EXPRESS CO. & CANADIAN NATIONAL EXPRESS CO.* (1926), 32 Can. Ry. Cas. 33.—*CAN.*

mmm (p. 376) i. ————[*MULDOON v. CANADIAN PACIFIC RY. CO.* (1927), 33 Can. Ry. Cas. 13.—*CAN.*

rrr (p. 376) i. ————[*Re CANADIAN PACIFIC RY. CO., GRAND FIRES, P.Q.* (1926), 32 Can. Ry. Cas. 1.—*CAN.*

hh (p. 377) i. ———— *Restoration of train services—Refusal to order.*—*ANNAPOLIS MUNICIPALITY, N.S. v. CANADIAN NATIONAL RY.* (1926), 32 Can. Ry. Cas. 257.—*CAN.*

pp (p. 377) i. ———— *Refusal to fix responsibility for future accidents.*—*CANADIAN NATIONAL RYS. v. TOWN-*

## Part XIII.—Canals.

888. *Add. Annotation*:—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons, [1929] 1 Ch. 686.

925. *Add. Annotation*:—**Refd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776.

948a. ——— **Pumping from one level to another.**—**ELLWELL v. BIRMINGHAM CANAL NAVIGATION PROPRIETORS** (1852), 3 H. L. Cas. 812; 10 E. R. 323, H. L.

970. *Add. Annotation*:—**Mentd.** Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.

978. *Add. Annotation*:—**Apld.** Great Western Ry. v. Monmouthshire County Council (1929), 93 J. P. 142.

978a. ——— **]**—A railway co., as owners of a canal, were under a statutory obligation to keep it open for navigation. By agreement with the co. a county council pulled down an old bridge crossing the canal & substituted a new one, covenanting "well & sufficiently to maintain & repair" the bridge. The bridge, canal & towing path were, as both parties knew, situate in a mining area liable to subsidences. Later, sub-

sidences occurred, resulting in the headway between the bridge & the towpath level being so reduced as to render the latter useless, & thereby preventing the navigation of the canal. The railway co. contended that the county council were liable to restore the old headway:—**Held**: (1) the construction of the bridge did not afford any evidence of an intention to provide for the raising or jacking-up of the bridge if it subsided; (2) the covenant to "maintain" did not impose upon the council an obligation to raise the bridge so as to restore the proper headway.—**GREAT WESTERN RY. v. MONMOUTHSHIRE COUNTY COUNCIL** (1929), 93 J. P. 142; 27 L. G. R. 295; *affirmed*, 27 L. G. R. 569, C. A.

980. Add the following paragraph:—

The right to navigate the dredged channel is confined to vessels paying dues to enter or leave the canal, & the right of navigation does not include a right to ground on the bank (*per Cur.*).—

1032. *Add. Annotation*:—**Refd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776.

**SHIP OF STAMFORD** (1926), 32 Can. Ry. Cas. 252.—**CAN.**

**qq** (p. 377) i. ——— *Power to order substitution of private crossing.*—**CALHOUN v. CANADIAN NATIONAL RYS.** (1926), 32 Can. Ry. Cas. 236.—**CAN.**

**vv. Revsd.**, [1912] A. C. 224.

**vv i.** ——— *Use of railway bridge for vehicular traffic.*—**SANKATHEWAN**

**DEPARTMENT OF HIGHWAYS v. CANADIAN NATIONAL RYS.** (1926), 32 Can. Ry. Cas. 23.—**CAN.**

**ccc** (p. 377) i. *Action against commissioners—When triable in Supreme Court.*—**M. B. RAIL ANCHOR, LTD. v. VICTORIAN RYS. COMRS.**, [1928] V. L. R. 339; [1928] **AUGUS L. R.** 114.—**AUS.**

**g** (p. 378) i. ——— **]**—*Re CASA*

**LOMA**, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—**CAN.**

### PART XIII. SECT. 2, SUB-SECT. 4.

**sz.** *Repair of railway embankment—Liability for consequent damage—Limitation of action*—**PUNJAB COTTON PRESS CO. v. SECRETARY OF STATE** (1927), 1 L. R. 10 Lah. 161. **IND.**

### Part I.—Liability to be Rated.

5. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
14. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
15. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
16. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
17. *Add. Annotation* :—**Expld.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
36. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
- 37a. —. —. —. Defts. were the overseers of a parish. Within the parish was a building, the property in which was vested in pltfs., managed by them in the early part of 1926 as an industrial school. After Mar. 1926 the building was no longer used as an industrial school & pltfs. removed their stores furniture. The removal was completed in Apr. 1926, except that a caretaker was left in possession with a few articles of furniture for his use. In Mar. 1927 pltfs. decided to use the premises partly as an elementary school & partly for other purposes. Defts. rated pltfs. in respect of the building for the two periods ending Sept. 30, 1926, & Mar. 31, 1927, & it was admitted that the rate was duly made & confirmed. Pltfs. objected that the rate was invalid, as there was no beneficial occupation by them. Upon their refusing to pay, defts. complained to the justices, who issued a distress warrant, & defts. seized a tramcar belonging to pltfs. Pltfs. did not appeal to quarter sessions, but took proceedings in replevin :—**Held** : (1) pltfs. were not in beneficial occupation during the relevant period, & were not ratable; (2) the jurisdiction of the justices to grant a distress warrant depended on the question of actual occupation within the parish & not on that of beneficial occupation, & as pltfs. had failed to show that the distress was unlawful, the action of replevin failed.—**LONDON COUNTY COUNCIL v. HACKNEY BOROUGH COUNCIL**, [1928] 2 K. B. 588; 97 L. J. K. B. 694; 139 L. T. 407; 92 J. P. 138; 44 T. L. R. 592; 26 L. G. R. 366.
65. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
66. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
69. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
86. —. —. —.
87. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
122. *Annotations* :—Delete “ **Consd.** *Jones v. I. R. Comrs.*, *Sweetmeat Automatic Delivery Co. v. I. R. Comrs.*, [1895] 1 Q. B. 484.”
160. *Add. Annotation* :—**Refd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
218. *Add. Annotation* :—**As to (3) Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
235. *Add. Annotation* :—**Refd.** *Engelke v. Musmann*, [1928] A. C. 433.

**m. i.** — *Building also used for receipt of rent.*—*Id.*: a building which is used or occupied for religious teaching is “solely” used or occupied for that purpose within Metropolitan Water, Sewerage & Drainage Act, s. 88 (1) (h), notwithstanding that rent for land of the owner, other than the land which is occupied by & used in connection with the building, is payable & is paid in the building.—**ROMAN CATHOLIC ARCH-BISHOP OF SYDNEY v. METROPOLITAN**



281. *Add. Annotation* :—**Consd.** Metropolitan Meat Industry Board *v.* Sheedy (1927), 97 L. J. P. C. 1.

286. *Add. Annotation* :—*As to* (3) **Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

327. *Add. Annotation* :—**Refd.** Metropolitan Meat Industry Board *v.* Sheedy (1927), 97 L. J. P. C. 1.

444. *Add. Annotation* :—**Consd.** R. *v.* London County Council, *Ex p.* Swan & Edgar (1927) (1929), 45 T. L. R. 512.

503. *Add. Annotations* :—**Consd.** General Medical Council *v.* L. R. Comrs., English Branch Council of General Medical Council *v.* L. R. Comrs. (1928), 97 L. J. K. B. 578; Midland Counties Institution of Engineers *v.* Inland Revenue Comrs. (1928), 14 Tax Cas. 285.

580. *Add. Annotation* :—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

669. *Add. Annotation* :—**Refd.** Musmann *v.* Engelke, [1928] 1 K. B. 90.

675a. **House let out in apartments or lodgings—Representation of the People Act, 1867 (c. 102), s. 7.**—By Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7, where the owner is rated at the passing of this Act to the poor rate in respect of a dwelling-house situate in a parish wholly or partly within a parliamentary borough, instead of the occupier, his liability to be rated for the future shall cease; & after the passing of this Act no owner of any dwelling-house so situate shall be rated to the poor rate instead of the occupier, except as hereinafter mentioned. . . . When the dwelling-house shall be wholly let out in apartments or lodgings, not separately rated, the owner of such dwelling-house shall be rated to the poor rate.

Appl't. & five other persons each occupied a room in a six-roomed dwelling-house in a parish within a parliamentary borough, & had the use in common of the street door, passage, staircase & domestic conveniences; the owner did not occupy any part of the premises, nor retain any control over the tenants, each of whom had the exclusive possession of his own room. At the time of the passing of above Act the owner was rated in respect of the whole house, instead of the occupiers, by virtue of Small Tenements Act, 1850 (c. 99). After the passing of above Act, the overseers

of the parish made a rate, in which each of the six occupiers was separately rated :—**Held** : the owner of the house, & not the several occupiers, was rateable : for that the house came within the exception in sect. 7.—**STAMPER v. SUNDERLAND OVERSEERS** (1868), L. R. 3 C. P. 388; 37 L. J. M. C. 137; 18 L. T. 682; 32 J. P. 439; 16 W. R. 1063.

*Annotations* :—**Consd.** Thompson *v.* Ward (1871), L. R. 6 C. P. 327; Booth *v.* Howard (1874), L. R. 9 C. P. 277; Bradley *v.* Baylis (1881), 8 Q. B. D. 195; White & Hales *v.* Islington Corp'n., [1909] 1 K. B. 133. **Folld.** Griggs *v.* Stevens (1909), 101 L. T. 950. **Consd.** R. *v.* Roberts, *Ex p.* Stepney Borough Council (1915), 84 L. J. K. B. 1,577. **Refd.** Mason *v.* Bennett (1868), L. R. 4 C. P. 502; Barnes *v.* Peters (1869), L. R. 1 C. P. 539; Cull *v.* Austin, Austin *v.* Cull (1872), L. R. 7 C. P. 227.

675b. ---. ---. ---. Resp. was rated & assessed to a general rate in respect of a house which was situate in the parish of H., which was, at the date of the passing of Representation of the People Act, 1867 (c. 102), & had ever since been, situate in a parliamentary borough. Resp. did not occupy or reside in or exercise any supervision or control over the house, which was a private dwelling-house consisting of a basement, a ground floor & two other floors, & was let by resp. to, & was occupied by, three tenants. The rateable value of each of the tenements was under £20. Each tenant had a separate letting & a separate key, & had the exclusive use & occupation of the rooms let to him or her. On an appl'n. for a distress warrant against resp., it was contended on behalf of appl't. that the borough council were entitled to rate resp. under Representation of the People Act, 1867 (c. 102), s. 7, inasmuch as the house was wholly let out in apartments or lodgings not separately rated. It was contended on behalf of resp. that the house was not wholly let out in apartments or lodgings not separately rated within the meaning of that section, & that the demand was bad, as no allowance, abatement or deduction had been made to resp. under Poor Rate Assessment & Collection Act, 1869 (c. 41). The justices were of opinion that the house was not in point of law a dwelling-house wholly let out in apartments or lodgings within the meaning of sect. 7. & they dismissed the summons :—**Held** : on the authority of *Stamper v. Sunderland*

WATER, SEWERAGE & DRAINAGE BOARD (1928), 40 C. L. R. 472, [1928] Argus L. R. 162.—**AUS.**

**PART I. SECT. 4, SUB-SECT. 10. — C.**

**sf. Liability before issue of patent.**—**RUDDELL v. GEORGESON** (1873), 9 Mun. L. R. 407.—**CAN.**

**sg. —.**—O'GRADY *v.* McCaffray (1882), 2 O. R. 309.—**CAN.**

**sh. —.**—*Half-breed lands.*—**Re** (1891), 7 Man. L. R. 434.—**CAN.**

**sj. Whether lessee of Commonwealth land liable.**—The lessee of land leased by a private individual from the Commonwealth of Australia, the owner of the land, is not liable to be rated by a local authority, the land itself not being rateable land.—**COALDRAKE v. BRISBANE CITY COUNCIL** (1928), 22 Q. J. P. R. 34.—**AUS.**

**PART I. SECT. 4, SUB-SECT. 12. — A. (a).**

**sk. Agreement with municipality exempting taxpayer from taxes—School taxes collected separately by school**

*trustees—Whether exemption applies to school taxes.*—**Ex p. BATHURST CO.**, [1928] 4 D. L. R. 65.—**CAN.**

**PART I. SECT. 4, SUB-SECT. 20. — A.**

**ti. —.**—*Loading pier & equipment for shipment of coal.*—**Re ACADIA COAL CO.'S ASSESSMENT**, [1925] 1 D. L. R. 1179; 58 N. S. R. 17.—**CAN.**

**PART I. SECT. 4, SUB-SECT. 24. — K.**

**432 ii. —.**—**J. ESTCOURT CORPN. v. UNITED GOVERNMENT** (1929), 50 N. L. R. 21.—**S. AF.**

**PART I. SECT. 4, SUB-SECT. 24. — L.**

**sn. Land leased to commissariat officer & occupied by troops.**—**Held** : exempt. —**PRINCIPAL SECRETARY OF STATE FOR WAR v. TORONTO CORPN.** (1863), 22 U. C. R. 551.—**CAN.**

**PART I. SECT. 4, SUB-SECT. 24. — Q.**

**a i. —.**—**Re HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO & THOROLD & PETHAM TOWNSHIPS** (1924), 55 O. L. R. 431.—**CAN.**

**PART I. SECT. 4, SUB-SECT. 34.**

**g (p. 512) i. —.**—*Fee still in Crown.*—Where the fee still remains in the Crown, the interest of the holder of a homestead claim is not subject to taxation by a municipality, although the holder personally is.—**R. v. MATSQUI MUNICIPALITY** (1901), 8 B. C. R. 289.—**CAN.**

**so. Property temporarily in district—Rolling stock & machinery of railway company.**—**Re EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO. & McLELLAN SCHOOL DISTRICT**, [1928] 2 W. W. R. 684.—**CAN.**

**sp. —.**—*Machine used for digging reservoir.*—**Re MANNIX & WALVERN & McLENNAN SCHOOL DISTRICT**, [1928] 2 W. W. R. 686.—**CAN.**

**PART I. SECT. 5.**

**sq. Mortgage—Of leasehold interest in land.**—**Held** : not a mtgee. of "rateable property" within **Rating Act, 1925, s. 70.**—**WAITOMO COUNTY COUNCIL v. MILES**, [1928] N. Z. L. R. 22.—**N.Z.**

**sr. Colliery company letting houses**

*Overscers*, No. 675a, *ante*, the council were entitled to rate resp. under sect. 7 of the Act of 1867, & the appeal must be allowed.—*GRIGGS v. STEVENS* (1909), 101 L. T. 950; 74 J. P. 67; Konst. & W. Rat. App. 154; 8 L. G. R. 63, D. C.

**675c. ——— Effect of Poor Rate Assessment & Collection Act, 1869 (c. 41).—**

Resp. was the owner of a tenement situate in a borough which in the year 1867 was, & ever since had been, a parliamentary borough. The tenement was wholly let out in apartments or lodgings not separately rated within Representation of the People Act, 1867 (c. 102), s. 7. Purporting to act under that sect., the rating authority rated resp. as owner, instead of the occupiers of the tenement, without allowing him any commission, abatement or deduction:—*Held*: the Act under which resp. was rateable as owner instead of the occupiers was not Representation of the People Act, 1867 (c. 102), but was Poor Rate Assessment & Collection Act, 1869 (c. 41), & he was entitled to the commission, abatement or deduction specified in sect. 3 or sect. 4 of the later Act.—*DAVIS v. WALLIS*, [1908] 2 K. B. 134; 77 L. J. K. B. 432; 98 L. T. 411; 72 J. P. 165; 24 T. L. R. 350; 6 L. G. R. 493, D. C.

*Annotations*:—*Consd.* *Griggs v. Stevens* (1909), 101 L. T. 950. *Overd.* *White & Hales v. Islington Corp.*, [1909] 1 K. B. 133. *Refd.* *Nokes v. Strong*, [1909] 2 K. B. 625.

**675d. ———.**—*Applts.* were the owners of tenements situate in a borough which in the year 1867 was, & ever since had been, a parliamentary borough. The tenements were wholly let out in apartments or lodgings not separately rated within Representation of the People Act, 1867 (c. 102), s. 7. Purporting to act under that sect., the rating authority rated applts. as owners, instead of the occupiers of the tenements, without allowing them any commission, abatement or reduction:—*Held*: applts. were properly rated as owners, instead of the occupiers, under Representation of the People Act, 1867 (c. 102), s. 7, & were, therefore, not entitled to any commission, abatement or reduction from the amount of the rate. That portion of Representation of the People Act, 1867 (c. 102), s. 7, which provides for the rating of owners of houses wholly let out in apartments or lodgings not separately rated has not been repealed by implication by Poor Rate Assessment & Collection Act, 1869 (c. 41), or otherwise.—*WHITE & HALES v. ISLINGTON CORPN.*, [1909] 1 K. B. 133; 78 L. J. K. B. 168; 73 J. P. 44; 25 T. L. R.

121; 2 Konst. Rat. App. 798; 7 L. G. R. 133; 53 Sol. Jo. 97; *sub nom.* *HALES v. ISLINGTON BOROUGH COUNCIL*, 100 L. T. 22, C. A.

*Annotations*:—*Consd.* *Griggs v. Stevens* (1909), 101 L. T. 950. *Follid.* *Nokes v. Strong*, [1909] 2 K. B. 625. *Consd.* *R. v. Roberts*, [1914] 1 K. B. 369; *R. v. Carson Roberts*, *Ex p. Stepany Corp.*, [1915] 3 K. B. 313. *Refd.* *Kent v. Pittall*, [1911] 2 K. B. 1102.

**675e. ——— Who may be liable—Agent.]—**

An agent who is employed by the owner of a dwelling-house, situate in a parliamentary borough, & wholly let out in apartments, to collect the rents on his behalf is not liable to be rated as owner under above Act.—*NOKES v. STRONG*, [1909] 2 K. B. 625; 78 L. J. K. B. 1041; 101 L. T. 318; 73 J. P. 417; 7 L. G. R. 876, D. C.

*Annotation*:—*Consd.* *Metropolitan Water Board v. Brooks* (1910), 79 L. J. K. B. 705.

**675f. ——— To what boroughs applicable.]—**

The council of a metropolitan borough, which became a parliamentary borough some years after the passing of Representation of the People Act, 1867 (c. 102), rated the owners of two dwelling-houses which were wholly let out in apartments or lodgings not separately rated, & allowed them the commissions or abatements authorised by Poor Rate Assessment & Collection Act, 1869 (c. 41). The local govt. auditor at his audit made a surcharge on the rate collector in respect of the amount of these abatements:—*Held*: the words "all boroughs" in Representation of the People Act, 1867 (c. 102), s. 7, extended to all boroughs which had since the passing of that Act become parliamentary boroughs, & were not limited to boroughs which were in existence as parliamentary boroughs at the date of its passing; the owners ought to have been rated under that sect. & were therefore not entitled to any commission, abatement or deduction from the amount of the rate; & the surcharge was, therefore, rightly made by the auditor.—*R. v. ROBERTS*, [1914] 1 K. B. 369; *sub nom.* *R. v. ROBERTS*, *Ex p. BATTERSEA BOROUGH COUNCIL*, 83 L. J. K. B. 146; 109 L. T. 466; 77 J. P. 403; 57 Sol. Jo. 644; 1 B. R. A. 121; 11 L. G. R. 913, C. A.; *revsg.* (1912), 108 L. T. 64, D. C.; *subsequent proceedings*, *sub nom.* *ROBERTS v. BATTERSEA METROPOLITAN BOROUGH* (1914), 110 L. T. 566, C. A.

*Annotation*:—*Refd.* *Crow v. Hillary* (1912), 11 L. G. R. 226.

**676. After this case add "Sec, also, LANDLORD & TENANT, Nos. 4353, 4354.**

## Part II.—Basis of Assessment.

**705. Add. Annotation**:—*Consd.* *Consett Iron Co., Ltd. v. Durham County Assessment Committee for the North-Western Area* (1929), 46 T. L. R. 53.

**726. Add. Annotation**:—*Consd.* *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.

**735. Add. Annotation**:—*Apld.* *Consett Iron Co., Ltd. v. Durham County Assessment Committee for the North-Western Area* (1929), 46 T. L. R. 53.

**769. Add. Annotation**:—*Refd.* *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.

*to workmen during employment.*—*BUCKHAVEN & METHIL CORPN. v. WEMYSS COAL CO.*, [1928] S. C. 66.—*SCOT.*

### PART II. SECT. 1, SUB-SECT. 1.

*st. Agreement for fixed assessment value*  
—*Basis of valuation—Construction of*

*agreement.*—*CITY OF OTTAWA v. CANADIAN NATIONAL RYS.*, [1925] 3 D. L. R. 762; [1925] S. C. R. 494.—*CAN.*

920. *Add. Annotation*:—As to (3) **Consd. Consett Iron Co., Ltd. v. Durham County Assessment Committee for the North-Western Area** (1929), 46 T. L. R. 53.

1057a. ————]—Owing to depression in the coal trade, applts.' collieries had at the material date been for some time worked at a loss, & no one would have entered into a tenancy of them at any rent whatever except on the basis that his tenancy would continue for a term of years during which conditions might be expected to improve so as to show a profit on the average. In these circumstances applts., on appeal to Quarter Sessions against their assessments, contended

that the assessments ought to be reduced to nil, or a nominal value. Quarter Sessions rejected that contention:—*Held*: in so holding Quarter Sessions had applied no wrong principle. The test was what a hypothetical tenant would give "from year to year," which was a very different thing from a letting "for one year & no more." Quarter Sessions were right in not excluding possibilities of improvement, & there were materials on which they were entitled to find that these collieries had a substantial value.—**CONSETT IRON CO., LTD. v. DURHAM COUNTY ASSESSMENT COMMITTEE FOR NO. 5 OR NORTH-WESTERN AREA** (1929), 93 J. P. Jo. 755; 46 T. L. R. 53. D. C.

## Part III.—Special Rate.

1123. *Add. Citation*:—[1928] Ch. 340.

## Part IV.—The Assessment.

1146. *Add. Citation*:—97 L. J. K. B. 10.

1146a. ———— **Rating & Valuation Act, 1925** (c. 90), Sched. I., provisions 11, 12.]—By provision 12 of Sched. I. to the Rating &

Valuation Act, 1925: "No person who is a member of any committee to which the duties of the rating authority with respect to the preparation of the valuation list are

**PART II. SECT. 1, SUB-SECT. 2.—A.**  
dd i. ————]—**EDINBURGH ASSESSOR v. CAIRA & CROLLA**, [1928], S. C. 398.—**SCOT.**

dd ii. ————]—**HERITABLE SECURITIES & MTGE. INVESTMENT ASSOCN., LTD. v. GLASGOW ASSESSOR**, [1928] S. C. 401.—**SCOT.**

ev. *Farm let by father to son—Whether rent conditioned as fair annual value.*]—**MARSHALL v. WIGTOWNSHIRE ASSESSOR**, [1929] S. C. (Cl. of Sess.) 333.—**SCOT.**

**PART II. SECT. 1, SUB-SECT. 2.—B.**  
fi. ————]—**RANGOON CITY CORPN. v. DAWOODJEE** (1928), I. L. R. 6 Ran. 669.—**IND.**

gi. ————]—**RANGOON TURF CLUB v. RANGOON CORPN.** (1927), I. L. R. 6 Ran. 75.—**IND.**

**PART II. SECT. 2, SUB-SECT. 3.—A. (a).**

ti. ————]—*Extraordinary cost of constructing reservoir during war.*]—**FIFE ASSESSOR v. DUNFERMLINE DISTRICT COMMITTEE**, [1929] S. C. (Cl. of Sess.) 304.—**SCOT.**

**PART II. SECT. 2, SUB-SECT. 3.—B.**  
ei. ————]—*Houses occupied by employees—Showroom for sale of gas appliances.*]—**CHIEFF GAS LIGHT CO., LTD. v. PERTSHIRE ASSESSOR, KELTY GAS CO. v. FIFE ASSESSOR**, [1928] S. C. (Cl. of Sess.) 455.—**SCOT.**

**PART II. SECT. 2, SUB-SECT. 6.—A.**  
di. ————]—**COUSIN v. EDINBURGH ASSESSOR**, [1928] S. C. 392.—**SCOT.**

**PART II. SECT. 2, SUB-SECT. 7. A.**  
ni. *Whether houses let to miners entitled to deduction as being used for purposes of working mine.*]—**CADZOW COLLIERY CO., LTD. v. LANARKSHIRE ASSESSOR**, [1928] S. C. (Cl. of Sess.) 444.—**SCOT.**

**PART II. SECT. 2, SUB-SECT. 13.**  
n (p. 574) i. ————]—**QUEENSLAND DEPOSIT BANK, LTD. v. BRISBANE CITY COUNCIL**, [1928] S. R. Q. 13.—**AUS.**

dd (p. 574) i. *Bridge over international river—Whether doctrine of "ad medium flum" applies.*]—**LE FORT ERIE VILLAGE & BUFFALO & FORT ERIE PUBLIC BRIDGE CO.**, [1928] I. D. L. R. 723, 61 O. L. R. 502.—**CAN.**

n (p. 575) i. *Lands converted from "dry" to "wet."*]—**SECRETARY OF STATE FOR INDIA v. RAMANUJACHARIAR** (1928), I. L. 55 Ind. App. 289.—**IND.**

sw. *Deduction in respect of—Works used for manufacture of steel—What are—Not works preparing scrap metal for sale to steel manufacturers.*]—**JOHN JACKSON & CO. (IRON MERCHANTS), LTD. v. GLASGOW ASSESSOR**, [1928] S. C. 416.—**SCOT.**

sx. ————]—*Works for refining crude oil—What are—Works for refining tar.*]—**JAMES ROSS & CO. (LIME WHARF), LTD. v. STIRLINGSHIRE ASSESSOR**, [1928] S. C. 420.—**SCOT.**

sy. ————]—*Manufactory—What is—Not cellars & warehouse used for "quieting," "fining," bottling & maturing beer.*]—**WHITBREAD & CO., LTD. v. EDINBURGH ASSESSOR**, [1928] S. C. 425.—**SCOT.**

sz. ————]—*Not warehouse, stores & workshops of whisky blender.*]—**JOHN WALKER & SONS, LTD. v. KILMARNOCK ASSESSOR**, [1928] S. C. 430.—**SCOT.**

sb. *Distillery—Bonded warehouses apart from distillery—Whether whole entitled to deduction as manufactory.*]—**DISTILLERS CO., LTD. v. EDINBURGH ASSESSOR**, [1928] S. C. (Cl. of Sess.) 435.—**SCOT.**

so. ————]—*Bonded warehouse forming integral part of distillery—Whether whole entitled to deduction as manufactory.*]—**LANARKSHIRE ASSESSOR v. DISTILLERS CO., LTD.**, [1928] S. C. (Cl. of Sess.) 439.—**SCOT.**

sd. ————]—*Erected on ground rented by manufacturer—Whether works & ground entitled to deductions.*]—**LONDON & NORTH-EASTERN RY. CO. v. GLASGOW ASSESSOR**, [1929] S. C. (Cl. of Sess.) 325.—**SCOT.**

st. *Grandstand & buildings erected for greyhound racing track.*]—**SCOTTISH GREYHOUND RACING CO., LTD. v. GLASGOW ASSESSOR**, [1929] S. C. (Cl. of Sess.) 285.—**SCOT.**

sh. *Manufactory—Part of process carried on at separate works—Whether whole entitled to deduction.*]—**GLASGOW ASSESSOR v. SCOTTISH TUBE CO., LTD.**, [1928] S. C. (Cl. of Sess.) 466.—**SCOT.**

sk. ————]—*Stores, warehouses or other subjects associated with but not forming integral part of manufactory—Whether whole entitled to deduction.*]—**JOHN LENG & CO., LTD. v. DUNDEE ASSESSOR, DUNDEE ASSESSOR v. DON BROS. BUIST & CO., LTD., DUNDEE ASSESSOR v. CAIRD (DUNDEE), LTD., BELL & STME v. DUNDEE ASSESSOR, DISTILLERS CO., LTD. v. GLASGOW ASSESSOR**, [1929] S. C. (Cl. of Sess.) 315.—**SCOT.**

sl. ————]—*Premises used for cold storage & manufacture of ice—Whether premises entitled to deduction.*]—**MILNE, WILLIAM, LTD. v. GLASGOW ASSESSOR, UNION COLD STORAGE CO., LTD. v. GLASGOW ASSESSOR**, [1929] S. C. (Cl. of Sess.) 296.—**SCOT.**

sm. *Combined iron & steel works—Whether to be treated as unum quid for purposes of deductions.*]—**COLVILLE DAVID & SONS, LTD. v. Ayrshire ASSESSOR**, [1928] S. C. (Cl. of Sess.) 460.—**SCOT.**

so. *Carting contractor's premises—Comprising stables, workshops, etc.—Capable of being let for separate occupation—Whether whole to be treated as unum quid.*]—**COWAN & CO. v. EDINBURGH ASSESSOR, COWAN & CO. v. GLASGOW ASSESSOR**, [1928] S. C. (Cl. of Sess.) 450.—**SCOT.**

**PART IV. SECT. 2, SUB-SECT. 1.**

n (p. 580) i. ————]—**VARSON v. TOWN OF VEGHEVILLE** (1916), 34 W. L. R. 501.—**CAN.**

ii (p. 580) i. ————]—*Error as to ownership.*]—**KRUMM v. SHEPARD (Alta.)**, [1927] 3 D. L. R. 354; [1927] 2 W. W. R. 330, *affd.* [1928] 3 D. L. R. 887; [1928] S. C. R. 187.—**CAN.**

i (p. 581) i. ————]—*Ex p. CALHOUN* (1863), 10 N. B. R. (5 All.) 454.—**CAN.**

q (p. 582) i. ————]—*"Parcel"—Whether is.*]—**McBRIDE** (1927), 38 B. C. R. 431.—**CAN.**

98 L. J. K. B. 605 ; 141 L. T. 557 ; 93 J. P.  
199 ; 45 T. L. R. 525 ; 27 L. G. R. 458, D. C.

**1146b. — Jurisdiction of High Court—Prohibition.]—R. v. NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE, *Ex p.* HADLEY, No. 1146a, *ante*.**

**1158a. Return required by rating authority—Form—Validity.**—Defts. for the purpose of making a new valuation list under Rating & Valuation Act, 1925 (c. 90), s. 40, having served a notice on pltf. requiring him to make a return of certain particulars, including "gross takings & outgoings" of his licensed premises & other particulars not contained in Rating & Valuation Act (Returns) Rules, 1926, Sched., pltf. commenced an action for a declaration that the form of returns required was illegal, unauthorised & *ultra vires*, & called evidence to prove that the offending requisitions were not "reasonably required for the purpose of carrying out this Act" within the above sect.:—*Held*: pltf. had proved his case & was entitled to the declaration claimed.—**GRANT v. KNABESBOROUGH URBAN COUNCIL**, [1928] Ch. 310; 97 L. J. Ch. 106; 138 L. T. 488; 92 J. P. 30; 44 T. L. R. 224; 26 L. G. R. 165.

**1164.** *Add. Annotation :-* - **Consd.** Kingston Mill, Stockport v. Owen (1928), 141 L. T. 161.

SECT. 2.—AMENDMENT OF RATE (Vol. XXXVIII., p. 585).

**1184a. Duty of rating authority to alter "then current rate"---On alteration of valuation list by assessment committee.]**---Applts., in Jan. 1927, gave notice of objection to the valuation list, & relief was refused by the assessment committee. In Nov. 1927 the new assessment committee which came into being on Apr. 1, 1927, reconsidered applts.' objection & granted relief, as from Apr. 1, 1926. They altered the valuation list accordingly, but the rating authority refused to alter the rate book, on the ground that the assessment committee could not make their recon-

sidered decision relate back to the earlier rating period in which the objection had been originally taken & decided:—*Held*: it was the duty of the rating authority to alter their “then current rate” on receipt of notice from the assessment committee, & “then current rate” meant the rate current at the date of the objection.—**KINGSTON MILL, STOCKPORT, LTD. v. OWEN** (1928), 141 L. T. 161; 93 J. P. 58; 45 T. L. R. 107; 27 L. G. R. 12, D. C.

**1193.** *Add. Annotation :—***Refd.** A.-G. v. Leeds Corpn., [1929] 2 Ch. 291.

**1225. Add. Annotation:** *Apld. A.-G. v. London & Home Counties Joint Electricity Authority*, [1929] 1 Ch. 513.

**1309.** For "*affq*" read "*revsq.*"

**1332. Add. Annotation:—****Consd** Embleton v. Norwich Union Life Insee. Soc., Norwich Union Life Insee. Soc. v. Embleton (1927), 11 Tax Cas. 681.

**PART V, SECT. 4, SUB-SECT. 1.**

sb. *Erpense of aqueduct.*—ST. HYACINTHE (ŒUVRE DU PATRONAGE DE) v. ST. HYACINTHE CITY (1926), Q. R. 41 K. B. 496.—CAN.

**PART VI. SECT. 1, SUB-SECT. 1.**

b (p. 600) i. ---.]—Observations upon the impropriety of members of a valuation committee taking part in the decision of a case, in which they

have a personal interest.—LANARK-SHIRE ASSESSOR v. O'HARA, [1928] S. C. 391.—SCOT.

b (p. 600) ii. — *To report to municipal council.*]—COLQUHOUN v. DRISCOLL (1894), 10 Man. L. R. 254.—CAN.

**b (p. 600) iii.** — *Appeal against equalised assessment*—Under Public Schools Act.]—On an appeal against the equalised assessments made under

**1392a. Next sessions after date of rate—Not date of realisation of grievance—County Rate Act, 1852 (c. 81), s. 22.]—The appeal given by above sect., to a parish which is "aggrieved by any rate or assessment" made upon the**

Public Schools Act, s. 133, as amended by 1928, c. 48, s. 13, the only question for the judge to decide is whether the equaliser has done what the statute as amended requires him to do, i.e., made his equalisation on the basis of the equalisation made by the Manitoba Tax Commission.—*Re PUBLIC SCHOOLS ACT, R. BEAUREGARD SCHOOL DISTRICT, [1928] 3 W. W. J. 310.*—**CAN.**

b (p. 600) iv. ——— *Board of Revision*

county rate basis to "the next quarter sessions of the peace after such cause of appeal shall have arisen" must be brought to the next practicable quarter sessions after the parish is in fact aggrieved by the rate; the appeal is not to the next practicable quarter sessions to be held after the parish finds out that it is aggrieved.

A county rate which affected the parish of M. was made in Oct. 1904. In Jan. 1905, as the result of an appeal by a railway co. against their assessment to the poor rate in the parish of M., the rateable value of the parish for the purpose of the county rate basis or standard was reduced by a considerable sum. On Apr. 17, 1905, the parish council of M. gave notice of appeal to the next quarter sessions against such part of the basis or standard as affected that parish, & also against

the rate existing upon that basis or standard, they alleging that they only knew of the result of the appeal by the railway co. & its effect on the county rate basis on Mar. 28:—*Held*: the parish council had not appealed against the county rate to the next quarter sessions after the "cause of appeal" had arisen within above sect., & therefore the quarter sessions had no jurisdiction to entertain the appeal against the rate.—*WEST RIDING OF YORKSHIRE COUNTY COUNCIL v. MIDDLETON PARISH COUNCIL*, [1906] 2 K. B. 157; 75 L. J. K. B. 485; 94 L. T. 785; 70 J. P. 326; 22 T. L. R. 493; 4 L. G. R. 621, D. C.

*Annotations*:—*Consd.* Glamorgan County Council v. Barry Overseers, [1912] 2 K. B. 603; R. v. Carnarvonshire J.J. *Ex p.* Carnarvon County Council, [1918] 1 K. B. 280.

## Part VIII. — Recovery of Rate.

1464. After this case in cross-reference "Poverty of ratepayer."—See Rating & Valuation Act, 1925 (c. 90), s. 1" read "s. 2 (3), (4)" for "s. 4."

1477a. — Depends on actual occupation.]—

& Valuation. To state case.—*Question of Inc.*—*Re* WINNIPEG CHARTER, [1928] 1 W. W. R. 613.—CAN.

bb (p. 601) i. — Lands Valuation Appeal Court.—*Appeal not involving question of value.*—GLASGOW ASSESSOR v. GLASGOW CORPN., [1929] S. C. (Cl. of Sess.) 291.—SCOT.

tt (p. 601) i. — *Re* FRASER'S APPEAL, *Re* WINNIPEG CHARTER, [1927] 4 D. L. R. 213; [1927] 2 W. W. R. 600; 36 Man. L. R. 597.—CAN.

so. Whether barred where appellant has furnished statement of value.]—*Held*: when a person has, under Lands Valuation (Scotland) Act, 1854, s. 7, furnished the assessor with a written statement of value, he is not thereby barred from appealing, under sect. 9 of the Act, against that value as excessive.—*COWDENBATH PUBLIC-HOUSE SOCIETY, LTD. v. FIFE ASSESSOR*, [1929] S. C. (Cl. of Sess.) 280.—SCOT.

### PART VI. SECT. 1, SUB-SECT. 7.

a i. — Time for bringing action.]—*BARISH & Co. v. GAP NO. 3 RURAL MUNICIPALITY & BISS*, [1925] 3 D. L. R. 738; [1925] 2 W. W. R. 518; 19 Sask. L. T. 560.—CAN.

### PART VIII. SECT. 1.

e (p. 621) i. — What defences available.]—*VILLAGE OF HAGERSVILLE v. HAMBLETON*, [1927] 4 D. L. R. 1044; 61 O. L. R. 327.—CAN.

e (p. 621) ii. In summary way.—*Impost sanctioned under Water Act, 1912.*—The impost sanctioned in Water Act, 1912, s. 88 (1), is a rate & may be recovered in a summary way in accordance with the procedure prescribed by sect. 89 (3) of that Act.—*Re JAMESON, Ex p. CHRISTIAN* (1928), 28 S. L. N. S. W. 275.—AUS.

n (p. 621) i. — *CLARY v. BOULAY* (Ont.), [1928] 2 D. L. R. 144.—CAN.

n (p. 621) ii. — *Lessee.*—*HEYDEN v. CASTLE* (1888), 15 O. R. 257.—CAN.

p (p. 621) i. — *Mayor.*—*GREENSTREET v. PARIS* (1874), 21 Gr. 229.—CAN.

q (p. 621) i. — *Receiv.*—*TOTTEN v. TRUAX* (1889), 16 O. R. 490.—CAN.

bb (p. 621) i. — *TETRAULT v. VAUGHAN* (1899), 12 Man. L. R. 457.—CAN.

bb (p. 621) ii. — *BARNATYNE v. PRITCHARD* (1906), 16 Man. L. R. 407; 5 W. L. R. 478.—CAN.

bb (p. 621) iii. — *Agricultural co-operative association.*—*MEASNER v. BENGERT*, [1927] 3 D. L. R. 938; [1927] 2 W. W. R. 713; 21 Sask. L. R. 572; *varying*, [1927] 3 D. L. R. 205.—CAN.

bb (p. 621) iv. — *Life tenant*—*Whether rights of remainderman defeated.*—A life tenant cannot by defaulting in the payment of taxes & then acquiring the tax-sale title, instead of redeeming, defeat the remainderman's rights.—*MAYO v. LEITOVSKI*, [1928] 1 W. W. R. 700.—CAN.

dd (p. 621) i. — *CONNOR v. MCPHERSON* (1871), 18 Gr. 607.—CAN.

ff (p. 621) i. — *GEMMEL v. SINCLAIR* (1885), 1 Man. L. R. 85.—CAN.

kk (p. 621) i. — *Lots on plan in registry not duly certified by surveyor.*—*ASTON v. INNIS* (1878), 26 Gr. 12.—CAN.

kk (p. 621) ii. — *Pictures—Buildings & machinery.*—Buildings erected by the owner of land for use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They therefore became the property of deft., who became registered owner of the land in pursuance of the purchase thereof at a tax sale under Assessment Act. Certain machinery in said buildings was also held part of the realty.—*McCUTCHESON v. LIGHTFOOT*, [1928] 2 W. W. R. 240.—CAN.

ll (p. 621) i. — *Re* HENDERSON (1891), 7 Man. L. R. 481.—CAN.

LONDON COUNTY COUNCIL v. HACKNEY BOROUGH COUNCIL, No. 37a, *ante*.

1488. *Add. Annotation*:—*Refd.* L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.

ll (p. 621) ii. — *Re* CAREY & LOT 65, SUB-DIVISION OF LOT 39 E., ST. JOHN (1893), 9 Man. L. R. 483.—CAN.

ll (p. 621) iii. — *RUSH v. PEMBINA* (Alta.), [1927] 1 D. L. R. 394; [1927] 1 W. W. R. 215.—CAN.

qq (p. 621) i. — *How far deed conclusive.*—*ARCHIBALD v. YOVILLE* (1891), 7 Man. L. R. 473.—CAN.

qq (p. 621) ii. — *SCHULTZ v. ALLOWAY* (1894), 10 Man. L. R. 221.—CAN.

tt (p. 621) i. — *WEEDMAN v. MCDIARMID* (1862), 12 C. P. 499.—CAN.

vv i. — *LOUNT v. WALKINGTON* (1868), 15 Gr. 332.—CAN.

e (p. 622) i. — *Whether seal valid.*—*MCKRAE v. CORBETT* (1890), 6 Man. L. R. 426.—CAN.

e (p. 622) ii. — *NANTON v. VILLENEUVE* (1894), 10 Man. L. R. 213.—CAN.

e (p. 622) iii. — *Deed not in duplicate.*—*NANTON v. VILLENEUVE* (1894), 10 Man. L. R. 213.—CAN.

e (p. 622) iv. — *Injunction to restrain issue of deed—No bye-law passed.*—*JAMES v. BELL*, 11 C. L. T. Occ. N. 57.—CAN.

e (p. 622) v. — *Amendment of Tax Recovery Act, 1919 (c. 20), s. 44a.*—*THACKER v. SMOKY LAKE MUNICIPAL DISTRICT, SHEARER v. SMOKY LAKE MUNICIPAL DISTRICT, A-G. OF ALBERTA v. SMOKY LAKE MUNICIPAL DISTRICT, PELLETIER v. OPAL MUNICIPAL DISTRICT* (Alta.), [1924] 3 W. W. R. 929.—CAN.

n (p. 622) i. — *DOE d. UPPER v. EDWARDS* (1849), 5 U. C. R. 591.—CAN.

n (p. 622) ii. — *DONOVAN v. HOGAN* (1888), 15 A. R. 432.—CAN.

dd (p. 622) i. — *Notice to mortgagee of application for title sent to wrong address & not delivered.*—*HOWE v. KIFE*, [1927] 3 D. L. R. 1048; [1927] 2 W. W. R. 522; 21 Sask. L. R. 637.—CAN.

**5a. Effect of compounding allowance**—On proceedings for recovery under Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 2.—Where owners are rated instead of the occupiers, the fact that the owners are entitled to an allowance if the rate is paid by a certain date does not preclude the rating authority from enforcing at an earlier date

payment of so much of the rate as is recoverable at one time under Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 2.—LOWERY & HULL CORPN. (1929), 93 J. P. Jo. 755  
46 T. L. R. 57; *sub nom.* LOWERY & KINGSTON-UPON-HULL CORPN., 73 Sol. Jo. 819, D. C.

### Part IX.—Rates and Rating in the Metropolis.

**1603.** *Add. Annotation:—Consd.* Lewis v. Elgy (1927), 11 Tax Cas. 728.

**1616a. Time for hearing appeal.**—When it is impossible for justices to dispose of their list by Mar. 31, they have jurisdiction after that date to hear an appeal of which notice was given at the proper time, & if the parties are not ready for trial as soon as the justices

are able to hear the appeal, the justices have a discretion to postpone the hearing, so that they may have proper materials before them.

—*R. v. LONDON COUNTY J.J., Ex p. LOCKE LANCASTER & JOHNSON (W. & P. LOCKE & SONS, LTD., [1929] 1 K. B. 81; 98 L. J. K. B. 44; 139 L. T. 609; 92 J. P. 183; 44 T. L. R. 728; 72 Sol. Jo. 584; 26 L. G. R. 519, D. C.*

II (p. 622). *Revsd.*, [1927] 1 D. L. R. 1063; [1927] S. C. R. 50.—CAN.

**gg** (p. 622) i. ----- [1927] 1  
RUSH v. PEMBINA (Alta.), [1927] 1  
D. L. R. 394 ; [1927] 1 W. W. R. 215.  
--CAN.

kk (p. 622) i. -- ] - DONOVAN v. HOGAN (1888),  
15 A. R. 432. ---CAN.

oo (p. 622) i. ———— *Effecture attempt to remedy failure.*]—WHITE v. INGA MUNICIPAL DISTRICT & PIDGEON (Alta.), [1928] 3 D. L. R. 829; [1928] 3 W. W. R. 251.—**CAN.**

--- SUMMERLAND DEVELOPMENT CO.,  
LTD. c. SUMMERLAND, [1928] 4 D. L. R.  
258; [1928] 3 W. W. R. 145.—CAN.

mm (p. 622) i. ———  
 ———] —HILL v. MACAULAY (1884), 6  
 O. R. 251.—CAN.

mmm (p. 622) ii. ————  
 ————.]—REED v. SMITH (1884), 1  
 Man. L. R. 341.—CAN.

mmm (p. 622) iii. ————  
 ————.]—TETRAULT v. VAUGHAN (1899),  
 12 Man. L. R. 457.—CAN.

rrr (p. 622) i. ———.]—  
GREENSTREET v. PARIS (1874), 21 Gr.  
229.—CAN.

tit (p. 622) i. ———.]—  
WOOD v. BIRTLE (1887), 4 Man. L. R.  
415.—CAN.

k (p. 623) i. — — — —.]—  
 McDONALD v. ROBILIARD (1863), 23  
 U. C. R. 105.—CAN.

r (p. 623) i. ——— *Whether sale conducted in fair, open & proper manner.*—DONOVAN v. HOGAN (1888), 15 A. R. 432.—CAN.

r (p. 623) ii. ———.]—  
MORAE v. CORBETT (1890), 6 Man.  
L. R. 426.—CAN.

r (p. 623) iii. — — — — —.]—  
SCOTT v. IMPERIAL LOAN CO. (1896),  
11 Man. L. R. 190.—CAN.

dd (p. 623) i. ——— *Right to recover damages against municipality—Assessment Act, R. S. M. (c. 101), s. 192.*]—*CLEMONS v. ST. ANDREWS* (1896), 11 Man. L. R. 111.—**CAN.**

oo (p. 623) i. ———— *Property not sufficiently defined or described.*  
—TOWNSEND v. ELLIOTT (1861), 11  
C. P. 217.—CAN.

oo (p. 623) ii. ————  
TOWNSEND v. ELLIOTT (1862), 12 C. P.  
217.--CAN.

oo (p. 623) iii. ————.]  
—DOMANISKY v. FITZGERALD (1921),  
62 D. L. R. 524; 55 N. S. R. 1.—  
CAN.

pp (p. 623) i. ———— *Issued under repealed statute.*]—NANTON v. VILLENEUVE (1894), 10 Man. L. R. 213.—CAN.

nnn (p. 623) i. ——— *Burden of proof—(Of invalidity.)*—McRAE v. CORBETT (1890), 6 Man. L. R. 426.—CAN.

non (p. 623) li. — — — — — (of validity.) — ALLOWAY v. CAMPBELL (1891), 7 Man. L. R. 506.—CAN.

ooo (p. 623) i. — — — *Bidding more than amount due for taxes and costs —Effect of.*—*Re DUNN & EXPROPRIA-*

**TION ACT (1898), 12 Man. L. R. 78.—**  
**CAN.**

ooo (p. 623) ii. ——— Mortgagee—  
Taking assignment of tax sale certificate  
& obtaining title—Extinguishment of

*mortgagor's rights.*—FARROW v. MASSEY-HARRIS CO., LTD., [1927] 3 D. L. R. 997; [1927] 2 W. W. R. 539; 21 Sask. L. R. 610.—CAN.

ooo (p. 623) iii. ——— Statement  
in certificate of title that title subject to  
existing leases—Effect of.]—SHEWCHUK

v. SEAFRED, [1927] 3 D. L. R. 280 ;  
[1927] 2 W. W. R. 207 ; 36 Man. L. R.  
469.—CAN.

ooo (p. 623) iv. ——— Issue of  
certificate of title—Effect of—On judg-  
ment for alimony filed against land.]—  
Re SMITH, Re LAND TITLES ACT,

[1925] 2 D. L. R. 556; [1925] 1 W. W. R. 1057; 19 Sask. L. R. 577.—  
**CAN.**

k (p. 624) i. ——— Time for  
bringing.]—GREENSTREET v. PARIS  
(1874), 21 Gr. 229.—CAN.

k (p. 624) ii. ——— Costs—  
*Liability of purchaser.*—BLANCHARD  
 v. SCANLAN (1885), 3 Man. L. R. 13.—  
**CAN.**

d (p. 624) i. ———— .]—  
*Re LEWIS & PHALEN* (N. W. T.) (1905),  
 1 W. L. R. 36.—CAN.

e (p. 624) 1. ———— *Meaning of "sale."*—*Held:* the word "sale," as used in Tax Recovery Act, 1922, c. 122, s. 21 (1), did not mean the knocking-down at the auction of the land to the highest bidder, but meant a sale completed by payment & conveyance.—*STANDARD TRUST Co. v. STEWART*, [1928] 4 D. L. R. 802; [1928] 3 W. W. R. 409. —*CAN.*

1 (p. 624) 1. ——— Purchaser  
of land sold under decree.]—**TURRILL v.**  
**TURRILL** (1877), 7 P. R. 142.—**CAN.**

П (p. 624) i. — — — — —.  
 FONSECA v. SCHULTZ (1891), 7 Man.  
 L. R. 458.—CAN.

kk (p. 624) i. ——— Whether adequate remedy.]—SCHULTZ v. ALLOWAY (1894), 10 Man. L. R. 221.—CAN.

**kk** (p. 624) ii. ——— *Salc by purchaser—Whether waiver of right to tender.*—**NEW BRUNSWICK LAND & INVESTMENT CO. v. SIME**, [1928] 4 D. L. R. 214.—**CAN.**

oo (p. 624) i. — Rates owing to local authority—Incorporated with municipality before payment.]—BRISBANE

CITY COUNCIL v. HODGE, [1928]  
S. R. Q. 102; 22 Q. J. P. R. 63.—AUS.  
800 (p. 624) i. ———— When

*proceedings taken to collect tax.*—*Re*  
**McKENZIE H. D. Co.**, [1928] 1 D. L. R.  
336; 8 C. B. R. 509.—**CAN.**

# REAL PROPERTY AND CHATTELS REAL.

## Part I. In General.

39. *Add. Annotation: Mentd. I. R. Comrs. v. 55. Add. Annotation: - Mentd. Re Reeves, Reeves*  
*Forth Conservancy Board, [1929] A. C. 213. v. Pawson, [1928] Ch. 351.*

## Part II.—Estates and Interests in Real Estate.

**159a.** — —.]- -A leasehold for hves being settled on A. for life, with remainder to B., as *quasi* tenant in tail, with remainders over : - *Held* : the *quasi* tenant in tail could not, by fine or otherwise, during the life of A., bar the subsequent remainders without the con-

currence of A.—SLADE v. PATTISON (1835),  
5 L. J. Ch. 51.

*Annotations* - **Reid**, *Edwards v. Champion* (1853), 3 De G. M. & G. 202; *Pickersgill v. Grey* (1862), 30 Beav. 352.

183a. Cestui que vie dead & death concealed.]

L. J. Ch. 219.

**PART I. SECT. 1.**

3 ii. — — — — — HUNTER v.  
FARRELL (N. B.) (1913,) 13 E. L. R.  
354; 14 D. L. R. 556.—CAN.

**PART I. SECT. 3. SUB-SECT. 1.**

¶ 1. — *Right to build.*] The right to build a house on another man's land is not an incorporeal hereditament. Such a right is a mark of title & of exclusive enjoyment, & is not an easement or *profit à prendre*.—PITMAN v. NICKERSON (1891), 40 N. S. R. 20.—CAN.

**PART I. SECT. 6.**

**c1. - - - - - Erections by purchaser under instalment agreement.]** — What may be only a chattel if erected by a tenant for years may well become part of the soil if erected by a purchaser of the land under an agreement for sale.

chance, and an agreement to lease the land, containing a clause, forbidding the lessee to erect or complete by the aft, while he occupied the land, previously rented to him, as purchaser under an instalment agreement made with the Crown held to have become part of the soil, &c., therefore, to have passed to the Crown when deft. gave up the agreement & surrendered all his interest in the land to the Crown, & to have become subsequently the property of pltf. when he purchased the land from the Crown. — LAROCHELLE v. MARCHAND, [1928] 3 W. W. R. 731. — CAN.

**§ 11.**—On the question whether articles affixed to land have become part of the realty, the intention of the person who affixed them is material. In no case can be presumed from the degree & object of the annexation. Buildings erected by the owner of land for use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They, therefore, became the property of debt., who became registered owner of the land in pursuance of the purchase thereof at a tax sale under Assessment Act. Certain machinery in said buildings was also held part of the realty.—**MCCUTCHEON v. LIGHTFOOT**, [1928] 2 W. W. R. 240.—**CANT.**

1 i. *Printing press*.]—RICHARDSON v. HARDIE, [1928] 2 W. W. R. 246. —CAN.

m. (p. 663) i. *How far English law of fixtures applicable in Canada—As between original vendor & subsequent vendee.*]—*TRAVIS-BARKER v. REED* (1922), 66 D. L. R. 426; 17 Alta.

**PART I. SECT. 7.**

**o.** --- When presumed -After long possession.] **DOE** d. **McKAY** v. **ALLEN** (1851), 7 N. B. R. (2 All.) 191.

**PART II. SECT. 3, SUB-SECT. 1.**

**A. (b).**  
**a i. —** *To grantee "fo*  
 TRUST & LOAN CO. v. CLARKE (1878),  
 3 A. R. 429. **CAN.**

**a ii.** — “ & the heirs of his body for twenty-one years or the term of his life fully to be completed.” — Held, on Oct. 13, 1852, granted the land in question to one S. to hold “ to the said S. & the heirs of his body for twenty-one years, or the term of his natural life, from Apr. 1, 1853, fully to be completed & ended ” — *Held*: by the lease S. took a life estate, in which the term merged, & he, therefore, had no interest which the sheriff could sell under the *fi. fa.* against goods.

DAVE R. ROBERTSON (1860), 19 U. C. R. 411. **CAN.**

**PART II. SECT. 5.**

pp (p. 679) i. ——— ———.|—  
CAMPBELL v. ROYAL CANADIAN BANK  
(1872), 19 Gr. 334. CAN.

o (p. 680) i. ———.] -*Re*  
LESPERANCE, [1927] 4 D. L. R. 391;  
61 O. L. R. 91. **CAN.**

**WILLIAMS** (1903), 24 C. L. T. 91; 7 O. L. R. 156; 3 O. W. R. 251. —  
**CAN.**

t (p. 680)i. — — —.]—*Re* TIERNEY,  
[1927] 3 D. L. R. 943; 60 O. L. R.  
652.—CAN.

qq (p. 680) f. --- *Lands passing to husband under intestacy of father—Husband dying intestate.*—Re ARCHIBALD (1908), 5 E. L. R. 510.—CAN.

aaa (p. 680) i. ——— *What is.* —  
 IRONSIDES v. GREEN (Man.), [1927]  
 3 D. L. R. 168; [1927] 2 W. W. R.  
 59.—CAN.

aaa (p. 680) ii. --- [---] ---  
*Re RUPSTEIN ESTATE* (Man.), [1927] 3  
 W. W. R. 791.—CAN.

FROSTAD v. LIBBEK, [1927] 3 D. L. R. 916; [1927] 2 W. W. R. 550; 21 Sask. L. R. 603.—CAN.

aaa (p. 680) iv. --- - - Effect of  
adultery - Neither at common law  
nor under Dower Act does adultery  
constitute a wife to dower, although it  
is a circumstance to be taken into  
account by the judge in deciding  
whether it is fair & reasonable to order  
that her consent to the disposition of  
the homestead be dispensed with under  
sect. 8. Except, however, by her  
consent or under such an order her  
right to dower in the homestead  
cannot be denied her. *Re MILLER*,  
[1929] 1 D. L. R. 147; [1928] 3  
A. W. R. 613. CAN.

**occ** (p. 680) 1. — *Land purchased subject to mortgage—Registration of conveyance before discharge of mortgage by vendor.*—*Re KUNTZ & HODGINS*, [1927] 4 D. L. R. 1009; 61 O. L. R. 298. — **CAN.**

**ddd** (p. 680) **i.** -- *Lands in which testator had any estate of freehold by virtue of any mortgage.*—Low v. SPARKS (1863), 11 C. P. 25. — **CAN.**

**ddd (p. 680) i.** — *Lands assigned by husband for benefit of creditors & released by wife from dower. Subsequent reassignment to husband.* *Re IRVINE, [1928] 3 D. L. R. 268; 62 O. L. R. 319.—CAN.*

ddd (p. 680) iii. - - Land granted by Crown subject to mineral rights—*Whether land granted as mining land.*—*Re IRVINE, [1928] 3 D. L. R. 268, 62 O. L. R. 319. - CAN.*

**ddd** (p. 680) **iv.** — *Land comprised in offer to purchase Accepted by husband — Acceptance not posted till after husband's death.* — **Re** **IRVINE**, [1928] 3 D. L. R. 268; 62 O. L. R. 319. — **CAN.**

McLENNAN v. GRANT (1868), 15 Gr. 65.  
—CAN.

LEYS v. TORONTO GENERAL TRUSTS  
Co. (1892) 22 O R 603—CAN.

**SABINE v. WOOD** (1910), 9 E. L. R. 169.  
- CAN.

Testator, after bequeathing certain legacies, devised his lands to his sons, charging them, however, with the legacies & also with an annuity of \$100 to his widow, to whom he also bequeathed his furniture, apartments in his dwelling-house, & sundry other things. The estate was sufficient to answer all legacies, & also the widow's dower:—*Held*: the widow was not

**297a. Whether court will supply word "of."—** By a voluntary settlement A. & his cousin limited certain gavelkind lands to a relative, C., for life, with remainder to her issue, & for default of such issue "to the use of the right heirs of E., deceased, & J.," who was then living, "the two sisters of the said A., their heirs & assigns, as tenants in common for ever":—*Held*: the ct. declining to read the limitation as a limitation to "the right heirs of E., deceased, & of J.," J. herself took a vested remainder in fee simple in a moiety of the property expectant on the death of C., without issue; & accordingly on the death of C., who survived J., & died without issue, the moiety passed to J.'s co-heirs in gavelkind.—*HAWES v. HAWES* (1880), 14 Ch. D. 614; 43 L. T. 280.

*Annotation*:—*Follid. Re Featherstone's Trusts* (1882), 22 Ch. D. 111.

**389. Add. Annotation**:—*Mentd. Verner-Jeffreys v. Pinto*, [1929] 1 Ch. 401.

**438. Add. Annotation**:—*Mentd. Re Cockerill, Mackaness v. Percival*, [1929] 2 Ch. 131.

**509a.** ———. ]—*WILLIAMS v. WATERS* (1845), 14 M. & W. 166; 5 L. T. O. S. 130; 153 E. R. 434.

*Annotation*:—*Follid. Re Watson & Morrison's Contract, Watson v. Kerr* (1900), 44 Sol. Jo. 529.

**520a.** ———. ]—*CAIN v. TEARE* (1843), 4 Moo. P. C. C. 249; 7 Jur. 567; 13 E. R. 297, P. C.

**536a.** ———. ] *BARCLAY v. COLLETT* (1838), 4 Bing. N. C. 658; 1 Arn. 287; 6 Scott, 408; 7 L. J. C. P. 235; 132 E. R. 942.

**537a.** ———. ]—He who has occasion to use a deed is legally entitled to the custody of it; & where several are equally interested in it, either having possession may retain it against

the others.—*FOSTER v. CRABB* (1852), 12 C. B. 136; 21 L. J. C. P. 189; 16 Jur. 835; 138 E. R. 853; *subsequent proceedings*, 12 C. B. 379.

*Annotations*:—*Refd. Taylor v. Sparrow* (1863), 4 Giff. 703; *Leathes v. Leathes* (1877), 36 L. T. 646; *Wright v. Robotham* (1886), 33 Ch. D. 106.

**584a.** ———. ]—*WARMAN v. SEAMAN* (1677), *Cas. temp. Finch*, 279; 23 E. R. 153.

*Annotations*:—*Refd. Ex p. Wynch* (1854), 5 De G. M. & G. 188; *Roddy v. Fitzgerald* (1858), 6 H. L. Cas. 823.

**592a.** ———. **Addition of "& if more children than one."**—By a marriage settlement estates were limited to the wife & the husband for their lives, with remainder to the heirs of the body of the husband on the body of the wife, & their heirs, & if more children than one, equally to be divided among them as tenants in common, & for default of such issue to the wife & her heirs:—*Held*: the husband did not take an estate in tail special, but for life only, & the children took by purchase as tenants in common in fee in remainder.—*NORTH v. MARTIN* (1833), 6 Sim. 266; 58 E. R. 593.

*Annotations*.—*Consd. Jordan v. Adams* (1861), 9 C. B. N. S. 483. *Refd. Gummoe v. Howes* (1857), 23 Beav. 184.

**628a. Limitation to particular persons.**]—*WAKER v. SNOWE* (1622), *Palm.* 359; 81 E. R. 1123.

*Annotations*:—*Refd. Saver v. Masterman* (1757), *Amb.* 344; *Doe d. Long v. Laming* (1760), 2 Burr. 1100. *Winter v. Perratt* (1813), 9 Cl. & Fin. 606; *Tarleton v. Liddell* (1851), 17 Q. B. 390.

**663a.** ———. **Death of protectors.**]—The trustees of the real estate under a will were appointed also protectors of the estates tail created by the will. They all died, & new trustees of the real estate were appointed by the ct.:—*Held*: the tenant for life had become protector of the settlement, & he & the first tenant in

put to her election as between the will & her dower.—*WILSON v. WILSON* (1883), 7 O. R. 177.—*CAN.*

*iii* (p. 681) v. ———. ———. ]—A will bequeathing to a wife the dwelling-house for her natural life, the household goods, & an annuity of \$300 secured to her out of the estate:—*Held*: not to put the widow to her election.—*Re BIGGAR, BIGGAR v. STINSON* (1884), 8 O. R. 372.—*CAN.*

*i* (p. 682) i. ———. ———. ]—*EVANS* (1856), 13 U. C. R. 456.—*CAN.*

*f* (p. 682) ii. ———. ———. ]—Where a will in express terms makes provision for the testator's wife in lieu of dower, thus bringing directly to her mind that she cannot have dower & the benefits of the will as well, a much slighter dealing with the property left to her will evidence an election on her part to take under the will, than would be sufficient in the absence of such express provision.—*Held*: there being such provision, the evidence set out in the report of the case was sufficient to establish an election to take under the will, though, otherwise, it would not have been.—*NIXON v. ASHTENHURST* (1884), 7 O. R. 664.—*CAN.*

*ooo* (p. 682) i. ———. ———. ]—*HILL v. GREENWOOD* (1864), 23 U. C. R. 404.—*CAN.*

*k* (p. 683) i. ———. ———. ]—Where a wife of her own consent leaves the society of her husband & then commits adultery, she is barred of her action for dower.—*WHIMBEY v. HYDE*, [1927] 3 D. L. R. 237; 60 O. L. R. 399.—*CAN.*

*co* (p. 683) i. ———. *Lapse of time.*]—*PRYATT v. MCKEE* (1883), 3 O. R. 151.—*CAN.*

*oo* (p. 681)

*of wife as witness. Action by husband d. wife.*]—In an action for dower by husband & wife, the wife is a competent witness.—*CADMAN v. STRONG* (1813), 10 U. C. R. 591.—*CAN.*

*kkk* (p. 681) i. ———. *Claim admitted—Award by commissioners. Right of court to disturb.*]—*ROBINET v. PICKERING* (1879), 41 U. C. R. 337.—*CAN.*

*l* (p. 685) i. *Application for order under Dower Act, R. S. O., 1897 (c. 164), s. 12—Duty of court.*]—*Re KING* (1899), 18 P. R. 365.—*CAN.*

**PART II. SECT. 6, SUB-SECT. 1.—**  
**D. (b).**

*r i.* ———. *Admission of parol evidence.*]—*TAN CHEW HOE NEO v. CHEE SWEE CHENG* (1928), L. R. 56 Ind. App. 112.—*IND.*

**PART II. SECT. 6, SUB-SECT. 1.—**  
**D. (c).**

*o i.* ———. ]—*Re WHITE*, [1928] 1 D. L. R. 846.—*CAN.*

**PART II. SECT. 6, SUB-SECT. 1.—**  
**E. (a).**

*sd. General rule.*]—*CHANDRA KISHORE CHAKRAVARTY v. BISESWAR PAL* (1927), 1 L. R. 55 Calc. 396.—*IND.*

**PART II. SECT. 6, SUB-SECT. 1.—**  
**E. (b) i.**

*394 ii.* ———. *Method of accounting.*]—*SIROULE v. CLEMENTS* (B. C.), [1927] 3 D. L. R. 955; [1927] 2 W. W. R. 825.—*CAN.*

**PART II. SECT. 6, SUB-SECT. 2.**

*g i.* ———. ]—*HARKESH SINGH v. HARDEVI* (1927), 1 L. R. 49 All. 763.—*IND.*

**PART II. SECT. 10, SUB-SECT. 1.**

*sa. Real Chattle's Act, 1834—Effect of.*]—*DOE d. EVANS v. DOYLE* (1860), 4 Nfld. L. R. 432.—*NFLD.*

**PART II. SECT. 10, SUB-SECT. 4.—E.**

*p i.* ———. ]—It is, at least, doubtful whether a mortgage in fee by a tenant in tail in possession bars the entail; & whether, upon a discharge being executed, the mortgagee does not take back his original estate.—*Re DOISEN* (1872), 4 Ch. Ch. 36.—*CAN.*

**PART II. SECT. 13, SUB-SECT. 2.—B.**

*1 i.* ———. ]—*BABBITT v. CLARKE*, [1925] 3 D. L. R. 55; 57 O. L. R. 60.—*CAN.*

*1 ii.* ———. ]—The statement that possession is evidence of seisin in fee means that there is some evidence that the title to the land has come to the person claiming possession in one of the following ways, namely: by Crown grant, sixty years' possession adverse to the Crown, conveyance from a prior owner, devolution or by twenty years' adverse possession.—*NOLAN v. THOMPSON* (1928), 28 S. R. N. S. W. 479; 45 N. S. W. W. N. 141.—*AUS.*

*so. How far possession extends—Occupation of small portion of wild land.*]—When a referee finds in favour of a title acquired by adverse possession against the legal paper title, his certificate must show of what portion of the lot the claimant has been in possession, for by the occupation of one or more acres of a wild lot of land a party will not acquire title to the whole lot.—*Low v. MORRISON* (1868), 14 Gr. 192.—*CAN.*

*sd. Possession under agreement—Subject to performance of condition—Possession for ten years after time fixed*



tail could convey.—(LARKER v. HAMBERTON (1880), 16 Ch. D. 176; 29 W. R. 415.

677. For “(1841)” read “(1830).”

761a. ————]—SMITH v. RISLEY (1639),

(Cro. Car. 529; 79 E. R. 1058; *sub nom.* GERMAN v. RISLEY, W. Jo. 418.

Annotation:—*Refd.* Barker v. Keete (1678), Freem. K. B. 249.

## Part III.—Transfer of Land inter vivos.

**885a. Effect of memorial—Evidence of contents of deed.**—The registered memorial of a deed conveying lands in Middlesex is secondary evidence of the contents of such deed against the personal representatives of the party by whom such deed is registered.—WOLLASTON v. HAKEWILL (1841), 3 Man. & G. 297; 3 Scott, N. R. 593; 10 L. J. C. P. 303; 133 E. R. 1157.

Annotations:—*Mentd.* Beardman v. Wilson (1868), L. R. 4 C. P. 57; Rendall v. Andrie (1892), 61 L. J. Q. B. 630.

for performance.]—BISHOP v. COX, [1928] 2 D. L. R. 990.—CAN.

### PART III. SECT. 1.

**834 i. Grant must not commence in futuro.**—*Re* SMITH & DALE (1920), 46 O. T. R. 403.—CAN.

**b i. — Assigned by husband alone—Subsequent abandonment of homestead—Right of wife to oppose validity of assignment.**—After a homestead under Homesteads Act has ceased to be such owing to its permanent abandonment as a place of residence, the wife has no status under said Act to oppose the validity of an assignment of the land executed by her husband prior to said date, although the assignment was not executed, as the Act requires it to be, by her: & her husband is in no better position in this respect than she is.—DOUGLAS v. ADDIE, [1928] 4 D. L. R. 167; [1928] 3 W. W. R. 37.—CAN.

**b ii. — Order dispensing with consent of wife—Under Dover Act, 1922—Husband's conduct conducing to adultery of wife.**—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—CAN.

**b iii. — Without wife's consent—Void.**—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—CAN.

### PART III. SECT. 3, SUB-SECT. 2.

**e i. — Effect of 26 Geo. 3, c. 3.]—DOE d. WILT v. JARDINE (1836), 2 N. B. R. (Ber.) 245.—CAN.**

### PART III. SECT. 3, SUB-SECT. 4.

**a f. Crown leaseholds—Duty of transferor to obtain consent.]—MAY v. DALY, [1927] S. A. S. R. 428.—AUS.**

### PART III. SECT. 4.

**865 i. What words operate as grant—“Demise.”**—*SPEARS v. MILLER* (1882), 32 C. P. 661.—CAN.

### PART III. SECT. 6, SUB-SECT. 2.

**r (p. 746) i. — Portion of land acquired for improvement of road—Not sub-divided.]—The D. County Council acquired, in order to lay out, maintain & keep a new road or an improvement of an existing road, the use of a portion of a holding subject to a land purchase annuity, without the consent of the Ministry of Finance:—*Held*: the county council were entitled to have registered under the Act as a burden the use of portion of the holding, as no “sub-division” of the holding within Northern Ireland Land Act, 1925, s. 30 (1), had been effected.—*Re* LENNON, [1928] N. I. 195.—IR.**

**k (p. 747) i. S.P. WATERLOO v. BARNARD (Man.) (1915), 33 W. L. R. 223; 9 W. W. R. 870.—CAN.**

**k (p. 747). ii. — What ts.]—BOURQUE v. CHAPPEL (1900), 21 C. L. T. 132; 2 N. B. Eq. Rep. 187.—CAN.**

(p. 747) i. ————]—SPEARD v. KENNEDY (1884), 10 P. R. 212.—CAN.

**n (p. 747) ii. — Subsequent discontinuance of action—Whether filing of lis pendens constitutes cause of action.]—COWAN v. MACMULAY (1897), 5 B. C. R. 495.—CAN.**

**n (p. 747) iii. — Discharge of.]—GRAHAM v. CHALMERS (1866), 2 Ch. Ch. 53.—CAN.**

**n (p. 747) iv. — By plaintiff in creditors' action.]—BREYCKWAY v. SCHNEIDER (1893), 3 B. C. R. 90.—CAN.**

**sk. Final order for cancellation of agreement for sale.]—*Re* LAND TITLES ACT, AVEISGAARD'S CASE (Sask.). [1918] 2 W. W. R. 916.—CAN.**

**sl. Judgment—Registration of as mortgage—Sufficiency of affidavit.]—*Re* MURPHY, [1928] I. R. 179.—IR.**

### PART III. SECT. 6, SUB-SECT. 4.

**aa (p. 747) i. — Upon registration of transfer—Whether certificate should be clear of subsequent executions.]—QUEBEC BANK v. ROYAL BANK (1916), 34 W. L. R. 137; 10 W. W. R. 218.—CAN.**

**q (p. 748) i. — Executor of estate entitled to lands as devise—Whether execution to be registered as against executor personally.]—*Re* GALLOWAY (1898), 3 Terr. L. R. 88.—CAN.**

**bb (p. 748) i. — As against claimant by adverse possession.]—WASHINGTON & G. N. TOWNSHIP CO. v. HOLBROOK, [1924] 1 D. L. R. 818; [1924] 1 W. W. R. 511; 33 B. C. R. 388.—CAN.**

**bb (p. 748) ii. — On sale by owner of two adjoining lots to separate purchasers—Alleged arrangement between vendor & purchaser of one lot.]—CANADIAN BIRKBECK INVESTMENT & SAVINGS CO. v. RYDER (1905), 12 B. C. R. 92; 2 W. L. R. 158.—CAN.**

**bb (p. 748) iii. — Transfer by administrators to one of themselves entitled only as life tenant—Claim by remainderman.]—BRENNER v. TRUSTS & GUARANTEE CO., [1928] 1 D. L. R. 913; [1928] 3 W. W. R. 415.—CAN.**

**bb (p. 748) iv. — Issued to municipality—Failure to offer land for sale—Rights of former owner.]—SHAW v. YOUNGSTOWN, [1928] 3 D. L. R. 404; [1928] 2 W. W. R. 310.—CAN.**

**bb (p. 748) v. — Duty of registrar when issuing.]—*Re* CANADIAN PACIFIC RY. CO. (1899), 4 Terr. L. R. 227.—CAN.**

**bb (p. 748) vi. — Under Quieting Titles Act—Title acquired by adverse possession—Costs.]—LOW v. MORRISON (1868), 14 Gr. 192.—CAN.**

**bb (p. 748) vii. — Certificate of sheriff—Form of.]—Where the petitioner's title was acquired within**

two years before the filing of the petition, the sheriff's certificate was required as to executions against the prior owner, as any such executions, if duly renewed, might bind the land.—*Per p.* LYONS (1869), 2 Ch. Ch. 357.—CAN.

**bb (p. 748) viii. —**—*Re* HARDING (1871), 3 Ch. Ch. 232.—CAN.

**bb (p. 748) ix. — Necessity for production.] A certificate from the sheriff of no executions against petitioner must be produced.—*Re* RUNDEL (1872), 4 Ch. Ch. 71.—CAN.**

**bb (p. 748) x. — Certificate from county treasurer—Form of.]—*Re* HARDING (1871), 3 Ch. Ch. 232.—CAN.**

**bb (p. 748) xi. — Title derived through hands of trustee to pay creditors' notices & advertisements necessary.]—*Re* RUNDEL (1872), 4 Ch. Ch. 71.—CAN.**

**bb (p. 748) xii. — Affidavit in proof—By whom made.]—*Re* RUNDEL (1872), 4 Ch. Ch. 71.—CAN.**

**ff (p. 748) i. — Not executor of administratrix.]—PUBLIC TRUSTEE v. REGISTRAR—GENERAL OF LAND, [1927] N. Z. L. R. 839.—N.Z.**

**hh (p. 748) i. — Under Quieting Titles Act—Not purchaser selling before completion of contract.]—*Re* BROWN (1871), 3 Ch. Ch. 158.—CAN.**

**hh (p. 748) ii. — Purchaser under sale by order of court—In foreclosure action.]—CANADIAN PACIFIC RY. CO. v. MANG (1908), 8 W. L. R. 774; 1 Sask. L. R. 219.—CAN.**

**hh (p. 748) iii. — Executrix of Scottish will—Rescued in British Columbia.]—*Re* CLAZY, [1928] 2 D. L. R. 971; [1928] 1 W. W. R. 974.—AUS.**

**hh (p. 748) iv. — Purchaser from trustee in bankruptcy—Selling with permission of inspectors.]—The proper conclusion from the provisions of Land Titles Act, R. S. O. 1927, c. 158, ss. 66, 69 (5), having regard to Bankruptcy Act, R. S. C. 1927, c. 11, s. 27, is that when land, vested in a trustee in bkpy., has been transferred by the trustee with the permission in writing of the inspectors, the transferee, upon proper proof of the fact, is entitled to have himself registered as owner.—*Re* PACEY, [1928] 4 D. L. R. 425; 62 O. L. R. 616.—CAN.**

**mm (p. 748) i. — Filed by registrar—Form of—Necessity for affidavit.]—HAMILTON & WRAGGE v. STOKES, [1921] 2 W. W. R. 921; 62 D. L. R. 282; 30 B. C. R. 65.—CAN.**

**q (p. 749) i. — Minister of Agriculture—In respect of claim under Live Stock Encouragement Act, R. S. A., 1922, c. 65.)—*IL v.* RUMSEY & MORTHEM No. 551 MUNICIPAL DISTRICT (Alta.), [1926] 2 D. L. R. 792; [1926] 2 W. W. R. 34.—CAN.**

## Part IV.—Extinguishment of Title.

921. Add. Annotation:—Apld. *Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.

d (p. 749) i. ——— *Person claiming partnership interest in land—Claim not founded on written document.*—*Re MACCULLOUGH & GRAHAM (Alta.)* (1912), 21 W. L. R. 349; 5 D. L. R. 834.—CAN.

e (p. 749) i. ——— *Husband having interest under Dower Act, C. A., 1924 (c. 53).*—*SHINBANE v. MINUK*, [1927] 3 D. L. R. 11; 550; [1927] 2 W. W. R. 121; 36 Man. L. R. 530.—CAN.

e (p. 749) ii. ——— *Rural municipality—Against Crown lands for money advanced for seed grain.*—*Re LAND TITLES ACT*, [1918] 3 W. W. R. 13.—CAN.

e (p. 749) iii. ——— *Claimant to part proceeds of sale of land.*—*SHERHERD v. HOUSTON*, [1927] S. A. S. R. 114.—AUS.

e (p. 749) iv. ——— *Person entitled to benefit of restrictive covenant.*—*WANEK v. THOLS*, [1928] 2 D. L. R. 793; [1928] 1 W. W. R. 903.—CAN.

e (p. 749) i. ——— *On failure to file evidence of commencement of proceedings—Whether applicable to caveat filed by registrar.*—*HAMILTON v. STOKES*, [1921] 2 W. W. R. 921.—CAN.

dd (p. 749) i. ——— *Lis pendens on file.*—Land Registry Act, s. 49 (8), does not require that the *lis pendens*, or other evidence, of a caveat shall be filed during the currency of the caveat; the words "have filed" are to be construed as meaning "have on file."—*CROFT v. WHITING* (1910), 14 W. L. R. 634.—CAN.

ff (p. 749) i. ——— *Appeal from order for discharge—Registration of order pending appeal.*—*Re MCINNIS*, [1927] 1 D. L. R. 481; [1927] 1 W. W. R. 209; 21 Sask. L. R. 309.—CAN.

ff (p. 749) ii. ——— *Claim under agreement for sale—No proof of agreement.*—*BABITT v. BOILEAU* (1907), 7 Terr. L. R. 481; 6 W. L. R. 260.—CAN.

ff (p. 749) iii. ——— *Where caveator does not assert rights actively—How made.*—*Re MACDONALD*, [1921] 2 D. L. R. 802.—CAN.

o (p. 750) i. ——— *Leng v. Smith* (1902), 14 Man. L. R. 258.—CAN.

oc (p. 750) i. ——— *McKay v. McDougall*, [1921] 3 W. W. R. 833; 63 D. L. R. 247; 15 Sask. L. R. 24; *affd.* (1921), 68 D. L. R. 245.—CAN.

oc (p. 750) ii. ——— *Bishop v. Western Trust Co. (Sask.)*, [1922] 3 W. W. R. 818; 70 D. L. R. 151.—CAN.

ii (p. 750) i. ——— *When maintainable.*—*PENDLETON v. PENDLETON*, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—CAN.

qq (p. 750) i. ——— *Filed before registration of transfer—Interest of caveator purchased by transferor—Right of transferee.*—*BENNETT v. GILMOUR* (1906), 4 W. L. R. 196; 16 Man. L. R. 304.—CAN.

m (p. 751) i. ——— *Sub-division of parcel into lots under unregistered plan.*—*Re RYAN & VANCOUVER DIS-*

TRICT REGISTRAR OF TITLES (B. C.) (1914), 26 W. L. R. 982.—CAN.

gg (p. 751) i. ——— *To accept caveat based on mortgage before registration of grant from Crown.*—*Re LAND TITLES ACT, CANADA LIFE ASSURANCE CO.'S CASE*, (Sask.), [1919] 2 W. W. R. 47.—CAN.

gg (p. 751) ii. ——— *Transfer for executory consideration—Right to mandamus on refusal to register.*—*Re REGISTRAR OF TITLES. Ex p. MOSS*, [1928] V. L. R. 411; [1928] Argus L. R. 293.—AUS.

gg (p. 751) iii. ——— *After foreclosure decree.*—*Re WEST*, [1928] 1 D. L. R. 937; 61 O. L. R. 540.—CAN.

nn (p. 751) i. ——— *HALL v. YORKTON LAND REGISTRATION DISTRICT (REGISTRAR) (1911)*, 16 W. L. R. 568.—CAN.

ooo (p. 751) i. ——— *To decide as to status of person applying to amend plan.*—*Re CHISHOLM & OAKVILLE TOWN CORP.*, (1885), 12 A. R. 225.—CAN.

ooo (p. 751) ii. ——— *To pay over proportion of fees to treasurer—After deducting disbursements—Whether court can review inspector's decision as to disbursements.*—*SIMCOE COUNTY v. SANDERSON*, [1923] 1 D. L. R. 1185; 51 O. L. R. 239.—CAN.

ooo (p. 751) iii. ——— *Registration under Real Property Act, 1913—Effect of.*—*CANADIAN BANK OF COMMERCE v. WINNIPEG DISTRICT REGISTRAR*, [1928] 3 W. W. R. 630.—CAN.

a (p. 752) i. ——— *Land not described in assignment—Effect of affidavit made for purposes of registration.*—*Re ASTON & WHITE* (1920), 48 O. L. R. 168; 18 O. W. N. 5.—CAN.

ee (p. 752) i. ——— *PUTZ v. TITLES REGISTRAR*, [1928] V. L. R. 318; [1928] Argus L. R. 224.—AUS.

sd. *Application under Quieting Titles Act—Jurisdiction of court—To grant certificate.*—*Ex p. CHAMBERLAIN* (1869), 2 Ch. Ch. 352.—CAN.

so. ——— *To waive irregularity—In advertisement.*—*Re HARRIS* (1888), 12 P. R. 430.—CAN.

sp. *Liability of county council—To pay for books supplied to registrar.*—*READ v. KENT COUNTY MUNICIPAL COUNCIL* (1857), 13 U. C. R. 572.—CAN.

sq. ——— *To furnish offices, vaults, etc.*—*Re NORTHUMBERLAND & DURHAM COUNTIES CORPN.* (1861), 10 C. P. 526.—CAN.

sr. *Liability of city council—To pay for statement of titles—Furnished by registrar of county—To registrar of city separated from county.*—*DURAND v. KINGSTON CITY* (1864), 14 C. P. 139.—CAN.

## PART III. SECT. 6, SUB-SECT. 5.

q (p. 753) i. ——— *"Fraud" under Land Titles Act, 1917, ss. 59, 174 & 194, means actual fraud.*—*DOMINION FIRE-BRICK & CLAY PRODUCTS, LTD. v. POLLOCK (Sask.)*, [1919] 2 W. W. R. 245.—CAN.

r (p. 753) i. ——— *ANNABLE v. COVENTRY* (1912), 22 W. L. R. 254; 5 D. L. R. 661; 2 W. W. R. 816.—CAN.

aa (p. 753) i. ——— *L'ARAMOUNT THEATRES, LTD. v. BRANDENBERGER*, [1928] 4 D. L. R. 573; 62 O. L. R. 579.—CAN.

kk (p. 753) i. ——— *CANADIAN PROVINCIAL POWER CO., LTD. v. NOVA SCOTIA POWER COMMISSION*, [1927] 2 D. L. R. 475; 59 N. S. R. 234.—CAN.

r (p. 754) i. ——— *HALL v. PEIMADULLA VALLEY TEA & RUBBER CO.* (1929), 98 L. J. P. C. 174.—IND.

aaa (p. 754) i. ——— *Conveyance by registered owner—Judgment registered against registered owner after date of conveyance.*—*Re MURPHY*, [1928] L. R. 479.—IR.

h (p. 755) i. ——— *THOMAS v. GUAY*, [1927] 2 D. L. R. 1146.—CAN.

cc (p. 755) i. ——— *Rights of purchaser from ostensible owner.*—*P. L. T. A. L. CHETTYAR FIRM v. MUNG KYAING* (1929), 1 L. R. 7 Han. 276.—IND.

mm (p. 755) i. ——— *Right of owner of land sold for taxes to sue under Land Titles Act, s. 110—Delay in bringing action.*—*BLACKSTOCK v. NORTH ALBERTA LAND REGISTRATION DISTRICT REGISTRAR (Alta.)*, [1917] 2 W. W. R. 938.—CAN.

rr (p. 755) i. ——— *Conveyance of Crown land by squatter.*—*ROBIN, COLLAS & CO., LTD. v. THERIAULT* (1904), 25 C. L. T. 68; 3 N. B. Eq. Rep. 14.—CAN.

ooo (p. 755) i. ——— *Right of purchaser of one lot on building estate—As to roads.*—*Re MCLIMMURRAY & JENKINS* (1895), 22 A. R. 398.—CAN.

ggg (p. 755) i. ——— *Restrictive covenants.*—*Re ROWAN & EATON*, [1927] 2 D. L. R. 722; 60 O. L. R. 245.—CAN.

## PART III. SECT. 6, SUB-SECT. 6.

h i. ——— *Equitable interest subsequently acquired by transferor.*—A transfer of land, in the form provided in Real Property Act, made by the registered owner, and without any special covenants or recitals, does not operate as an estoppel and does not vest in the transferee an equitable interest subsequently acquired by the transferor in the absence of any fraud or misrepresentation by the latter.—*BENNETT v. GILMOUR* (1906), 16 Man. L. R. 304.—CAN.

h ii. ——— *On registration of transfer—Previous transfer without consideration—Transferor subsequently becoming of unsound mind.*—*Re RATTIGAN v. REGAN*, [1929] 1 R. 342.—IR.

## PART III. SECT. 6, SUB-SECT. 8.—A.

st. *Lis pendens—Dismissal of bill—Order discharging lis pendens unnecessary.*—*DEXTER v. COSFORD* (1858), 1 Ch. Ch. 22; 5 C. L. J. O. S. 67.—CAN.

## PART IV. SECT. 3, SUB-SECT. 1.

e. *Revd.*, [1927] 3 D. L. R. 1; [1927] S. C. R. 403.

## Part V.—Action for Recovery of Land.

111. *Ad. Annotation:—Mentid. lte* Cockerill, 1064. *Ad. Annotation:—Distd. Dudley & District*  
*Mackness v. Percival*, [1929] 2 Ch. 131. *Benefit Building Soc. v. Gordon*, [1929] 2

K. B. 105.

## PART V. SECT. 1.

sa. *Duty of court*—To decide upon legal rights of parties.—A judge sitting at nisi prius & hearing an action of ejectment has only to decide upon the legal rights of the parties, & if plff. makes out a legal title to the property he is entitled to recover, even though deft. may be entitled to relief in equity.—*DOE d. MOFFATT v. THOMPSON* (1877), 1 P. & B. 516.—CAN.

## PART V. SECT. 3, SUB-SECT. 2.

f (p. 766) i. *Claimant by adverse possession*—Against Crown grantee.—*DOBER v. JENNINGS*, [1928] 1 D. L. R. 736; [1928] 1 W. W. R. 348; 23 Alta. L. R. 306.—CAN.

so. *Lessor*—Said to obtain possession for lessee.—A landlord, though he has given a lease to a third person, is entitled, for the purpose of putting his lessee in possession, to maintain a suit to eject a trespasser.—*DAMODAR PRASAD TEWARI v. LACHMI PRASAD SINGH* (1928), 1 L. R. 7 Pat. 196. IND.

sl. *Trustees of church*—Unincorporated body.—*DOE d. GALT PRESBYTERIAN CHURCH TRUSTEES v. BAIN* (1817), 3 U. C. R. 198.—CAN.

## PART V. SECT. 3, SUB-SECT. 3.—A.

t i. ———.—*LOUNT v. SMITH* (1818), 5 U. C. R. 302.—CAN.

f i. — *Wife living apart from husband*—Circumstances precluding presumption of being husband's agent.—Where a wife, living apart from her husband, is in possession of land, under such circumstances as precludes the presumption of her being agent of her husband, she must be made a deft. in ejectment for the land.—*WOODWARD v. CUMMINGS* (1873), 6 P. R. 110.—CAN.

sg. *Tenants in one house*—Occupying separate tenements.—Where several tenants occupied different apartments in one house, as several tenements:—*Held*: a single action might be brought for the premises, serving each tenant with a copy & notice.—*DOE d. BELL v. BEE* (1831), 3 O. S. 61.—CAN.

sh. *Whether sub-tenants necessary parties*.—In an action by a landlord for possession of the premises, it is not necessary to make sub-tenants in actual possession parties deft., & a judgment for possession may be given against the tenant under which the sub-tenants must go out.—*INCORPORATED SYNOD OF TORONTO v. FISKEN* (1898), 29 O. R. 738.—CAN.

## PART V. SECT. 4.

b i. — *Tenancy terminable by either party*.—*BECKHARDT v. RABY* (1861), 20 U. C. R. 158.—CAN.

b ii. — *Defendant put into possession by lessor of plaintiff*—*Jenral of lessor's title*.—*DOE d. BOUTER v. FRAZER* (1835), 4 O. S. 80.—CAN.

b iii. — *Defendant put into possession by devisee for life*—*Right of remainderman*.—*DOE d. FIELDS v. MCKAY* (1844), 4 N. B. R. (2 Kerr) 435.—CAN.

o (p. 770) i. — *Action dismissed for failure to give*—*Right to bring second action after making demand*.—Where an appln. for a writ of possession was dismissed because no notice of determination of the lease had been given:—*Held*: the landlord was not thereby barred from making another appln. after giving such notice.—*Re ERNE-*

WEIN & WELCH, [1928] 4 D. L. R. 198; [1928] 2 W. W. R. 628.—CAN.

## PART V. SECT. 7, SUB-SECT. 2.—B.

1076 iii. — *Affidavit of service*—*Contents of*.—*Affidavit* of service of declaration by fixing a copy to the door of house should state the name of the tenant from whom the rent is due.—*DOE d. WHITE v. ROE* (1841), 4 N. B. R. (2 Kerr) 360.—CAN.

## PART V. SECT. 8.

sm. *Claim under paper title*—*Defendant settling up right under lease from plaintiff*—*Right of defendant to rely upon forfeiture of lease*—*Though not pleaded*.—*FEITHGREW v. DOYLE* (1867), 17 C. P. 459.—CAN.

## PART V. SECT. 10.

1125 i. — *Title of plaintiff defective*.—*DOE d. MUNRO v. HANSON* (1831), (1825 1897) N. B. Dig. 293.—CAN.

r (p. 777) i. ———.—*TOWNSHIP OF COLCHESTER SOUTH v. HACKETT*, [1927] 4 D. L. R. 317, 61 O. L. R. 77. *affd. sub nom. HACKETT v. COLCHESTER SOUTH MUNICIPAL CORPN.*, [1928] 3 D. L. R. 107.—CAN.

r (p. 777) ii. ———.—*Act of Limitations*—*Effect of possession by tenant in common*.—*DOE d. WILLIAMS v. LEAVITT* (1813), 1 N. B. R. (2 Kerr) 83.—CAN.

r (p. 777) iii. ———.—*Against plaintiff taking forcible possession*.—*Possession short of twenty years is a sufficient title in ejectment against a party, who, without any show of title, comes & takes forcible possession of land*.—*DOE d. FRENCH v. DUNN* (1839), 4 Nfld. L. R. 401.—NFLD.

r (p. 777) iv. ———.—*SOTAN LAL v. MOHAN LAL* (1928), 1 L. R. 50 All. 986. IND.

aa (p. 777) i. ———.—*Title acquired through person who entered by permission of plaintiff*.—In an action to recover possession of land, defts. limited their defence to a portion of the land claimed, & as to that portion depended upon title acquired from H., who entered by permission of plff.:—*Held*: both defts. & H. were estopped from denying plff.'s title.—*LAKEVIEW MINING Co. v. MOORE* (1903), 36 N. S. R. 333.—CAN.

o (p. 778) i. ———.—*MILNER v. RINGWOOD* (circa 1875), R. E. D. 123.—CAN.

o (p. 778) ii. ———.—*Possession obtained by exchange from plaintiff's father*.—*BELL v. CARICUTTERS* (1869), 2 N. S. D. 1.—CAN.

o (p. 778) iii. ———.—*Agreement by plaintiff to grant perpetual lease*—*Performance of acts referable to agreement*.—*ARIFF v. JADU NATH MAJUMDAR* (1928), 1 L. R. 55 Calc. 1090.—IND.

t (p. 778) i. ———.—*Purchase at sale under writ of execution*—*Judgment irregular to purchaser's knowledge*.—*Held*: the sheriff's deed could not defeat plff.'s right to recover.—*HAMILTON v. LIGHTBODY* (1870), 21 C. P. 126.—CAN.

t (p. 778) ii. ———.—*Colour of title*.—*BOYD v. MILLETT* (1873), 9 N. S. R. 292.—CAN.

t (p. 778) iii. ———.—*McDONALD v. McISAAC* (1905), 38 N. S. R. 163; *affd. sub nom. McISAAC v. McDONALD*, 39 S. C. R. 157.—CAN.

t (p. 778) iv. ———.—*Defendant in possession as tenant of plaintiff*.—*FISHER v. JOHNSTON* (1866), 25 U. C. R. 616.—CAN.

t (p. 778) v. ———.—*Transfer to plaintiff made by party not in possession*.—*GAMMON v. JODREY* (1877), 11 N. S. R. (2 L. & C.) 311.—CAN.

t (p. 778) vi. ———.—*Tenant of mortgagee*—*Title of mortgagee*—*Against holder of equity of redemption*.—*DOE d. SMITH v. SNARR* (1877), 17 N. B. R. (1 P. & B.) 56.—CAN.

t (p. 778) vii. ———.—*Defendant tenant from year to year*—*No notice to terminate tenancy*.—*LAPORIE v. WILSON* (1913), 24 O. W. R. 543.—CAN.

t (p. 778) viii. ———.—*Defendant in possession under conveyance from plaintiff*—*Error in conveyance*—*Boundaries agreed between vendor & purchaser*.—*McDONALD v. KNUTSEN*, [1928] 3 D. L. R. 242; [1928] 2 W. W. R. 577.—CAN.

## PART V. SECT. 11, SUB-SECT. 1.

d i. — *Sufficiency of evidence*.—*ALLISON v. SMITH* (1877), 1 P. & B. 199.—CAN.

aa (p. 779) i. ———.—*In a suit for ejectment, although plff. may not be able to establish any title in himself, he is entitled to succeed if he can prove that he was in possession of the property in dispute until he was forcibly ousted by deft., provided deft. does not establish a better title in himself*.—*RANJEET SINGH PRINCE v. JHORI SINGH* (1928), 1 L. R. 8 Pat. 351. IND.

sd. *Ejectment for non-payment of rent*—*Motion for judgment against casual ejector*—*Tenant in possession not lessee*—*Whether necessary to show how tenant holds*.—*DOE d. ST. JOHN CORPN. v. ROE* (1885), 25 N. B. R. 149.—CAN.

se. *Unregistered lease*—*Prior in date to Crown grant*—*Whether admissible to prove right of tenant*.—*NORTH PACIFIC LUMBER Co. v. BRITISH AMERICAN TRUST Co.* (1917), 23 B. C. R. 332.—CAN.

## PART V. SECT. 11, SUB-SECT. 2. A.

1134 i. *Plaintiff recovers on own title*.—*CLARKE v. HANEY & DUNLOP* (1899), 8 B. C. R. 130, 1 M. M. Cas. 281.—CAN.

1140 i. *Plaintiff claiming as purchaser under writ of execution*—*Proof of judgment & writ*.—*PERRY v. PIQUOTT* (1855), 12 U. C. R. 372.—CAN.

o (p. 780) i. ———.—*PENNINGTON v. BROWNLEE* (1868), 28 U. C. R. 189.—CAN.

aa (p. 780) i. ———.—*Proof of judgment unnecessary*.—*HALSTON v. HUGHSON* (1867), 17 C. P. 364.—CAN.

aa (p. 780) ii. ———.—*JEN v. HICKS* (1876), 39 U. C. R. 606.—CAN.

n (p. 781) i. ———.—*Loan to be paid off by instalments*—*Date of expiration of mortgage uncertain*—*Release of mortgage by mortgagee after action brought*.—*ASHFORD v. McNAUGHTON* (1854), 11 U. C. R. 171.—CAN.

q (p. 781) i. ———.—*Not registered*—*Admissible where no registered instrument*.—An unregistered Crown grant is admissible in evidence where it is not sought to set it up against a registered instrument.—*DORRELL v. CAMPBELL* (No. 2), [1917] 1 W. W. R. 500; 23 B. C. R. 500.—CAN.

c (p. 781) i. ———.—*Purchaser for value without notice*—*Defendant in possession*—*Claim by adverse possession*.—*CANADA PERMANENT LOAN & SAVINGS Co. v. MCKAY* (1881), 32 C. P. 51.—CAN.

# ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

ff (p 781) i. *Title acquired pendente lite.*—*Held: insufficient.*—ADAMSON v. ADAMSON (1878), 25 Gr. 550.—**CAN.**

hh (p 781) i. — *Question for jury.*—EADES v. MAXWELL (1859), 17 U. C. R. 173. **CAN.**

sm. *Claim by executrix under mortgage from defendant. Right to show mortgage to testator.*—SKEAHON v. WHELAN (1864), 24 U. C. R. 174. **CAN.**

sn. *Evidence that ancestor of plaintiff's lessors had cut wood off land.*—McDONALD v. CHISHOLM (1858), 3 N. S. R. (2 Thom.) 401. **CAN.**

so. *Claim by devisee. Land mortgaged by testator—Foreclosure—Land sold under decree of court.*—KEARNEY v. GRIELMAN (1886), 14 S. C. R. 33. **CAN.**

sp. *Title derived from foreclosure in equity suit—Property mortgaged by remainderman. Defendant in possession as tenant for life.*—COLONIAL INVESTMENT & LOAN Co. v. DEMERCHANT (1908), 38 N. B. R. 431; 4 E. L. R. 546. **CAN.**

## PART V. SECT. 13.

sy. *Nature of action.*—An action for mesne profits is in origin an action of trespass, & is regulated by the broad principles applicable to actions

for damages against wrongdoers.—KAMALA PROSAD SUKUL v. KISHORI MOHAN PRAMANIK (1927), 1. L. R. 55 Calc. 666.—**IND.**

p i. —.—*HERR v. WESTON* (1872), 32 U. C. R. 402.—**CAN.**

q i. —.—*Right to costs of ejectment Before taxation.*—In an action for mesne profits, after judgment by default in ejectment, it is not necessary that the costs of the ejectment should be taxed before they can be recovered.—BANK OF UPPER CANADA v. ARMSTRONG (1843), (1823-1900), 1 Ont. Dig. 2158. **CAN.**

q ii. —.—*Necessity for proof of payment.*—DOE v. CAHILL (1853), 2 All. 650.—**CAN.**

## PART V. SECT. 14.

e i. *Decision of master in chambers. On originating notice. Whether valid.*—A master in chambers has no power to make an order, upon originating notice, for the delivery up of possession of land by an overholding tenant.—MACDONALD v. GEORGIADIS (1916), 34 W. L. R. 961.—**CAN.**

sq. *Motion for Plaintiff's case not conclusively made out.*—COOK v. LEMIEUX (1885), 10 P. R. 577. **CAN.**

sr. *Verdict entered for plaintiff by consent. Enforcement conditional on certain payments—Judgment entered on verdict before payments made—Right of defendant to damages.*—WATSON v. KETCHUM (1882), 2 O. R. 237.—**CAN.**

## PART V. SECT. 15.

p i. —.—*Notice to quit as to part given too late.*—Ejectment for a house & small lot of land adjoining. It appeared that, as to the house, notice to quit had been given too late, but that plff. was entitled to the land. It was ordered that unless plff. would confine his judgment to the land, defl. should have a new trial.—CONLEY v. LEE (1855), 12 U. C. R. 456.—**CAN.**

st. *Rebuttal of plaintiff's evidence—Defendant in actual adverse occupation for twenty years.*—DOE d. McMACKIN v. DEVINE (1811), 3 N. B. R. (1 Kerr) 411.—**CAN.**

## PART V. SECT. 17.

sv. *Death of lessor of plaintiff before trial—Whether scire facias necessary.*—In ejectment under the old form, where the lessor of the plff. died before the trial:—*Held: no sc. fa.* was necessary, but that judgment might be entered, & a writ of possession obtained.—DOE d. HAY v. HUNT (1855), 12 U. C. R. 625.—**CAN.**

## RECEIVERS.

### Part II.—Appointment by Court.

- 106a.** ———.]—An *interim* appointment of a receiver of property in the possession of, & claimed by, deft. in the suit should be made only if there is a well-founded fear that, in the absence of protection, the property will be dissipated or irreparably injured. —BEVOY KRISHNA MUKHERJEE v. SATISH CHANDRA GIRI (1927), 55 L. R. Ind. App. 131.
- 233a.** ———.]—A receiver appointed to collect in assets, & to bring actions in the name of an extrix., must give security to indemnify the extrix. on account of such actions. —TAYLOR v. ALLEN (1741), 2 Atk. 213; 26 E. R. 532, L. C.
- Annotations:—***Refd.** Anon. (1806), 12 Ves. 4; Pemberton v. Chapman (1857), 7 E. & B. 210.
- 233b.** ———.]—**SNARE v. BAKER, BEASLEY v. SNARE** (1849), 13 Jur. 203.
- 403.** *Add. Annotation:—***Generally, Refd. Re Pinto Leite & Nephews, Ex p. Visconde Des Olivaeas,** [1929] 1 Ch. 221.
- 451a.** ———.]—**HALL v. JENKINSON** (1813), 2 Ves. & B. 125; 35 E. R. 266, L. C.
- 571.** *Add. Annotation:—***Apld. A.-G. v. Glen Line, Ltd. & Liverpool & London War Risks Insee. Assocn., Ltd.** (1929), 31 Com. Cncl. 309.

### Part III.—Effect of Appointment.

- 682.** *Add. Annotation:—***Refd. Re A Debtor,** [1929] 1 Ch. 170.

### Part IV.—Rights, Powers and Duties.

- 755.** *Add. Annotation:—***Apld. Re Debtor No. 76 of 1929,** [1929] 2 Ch. 146.

### Part VI.—Interference with Receiver.

- 895a.** ———.]—A libel on the business carried on by a receiver & manager appointed by the ct. is a contempt of ct., & may be punished by committal of the offender. —**HELMORE v. SMITH** (No. 2) (1886), 35 Ch. D. 419; 56 L. J. Ch. 145; 56 L. T. 72; *sub nom.* **HELMORE v. SMITH, Ex p. SMITH,** 35 W. R. 157; 3 T. L. R. 139, C. A.
- Annotations:—***Consd. Re Gent, Gent-Davis v. Harris** (1892), 40 W. R. 267. **Apld. King v. Dopson** (1911), 56 Sol. Jo. 41. **Refd. Re Evelyn, Ex p. General Public Works & Assets Co.,** [1891] 2 Q. B. 302; **Robb v. Green** (1895), 61 L. J. Q. B. 593; **R. v. Davies,** [1906] 1 K. B. 32; **R. v. Daily Mail Editor, Ex p. Farnsworth** (1921), 90 L. J. K. B. 871.

**PART II. SECT. 1, SUB-SECT. 2.—A.**  
h i. *Master.*]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution. —**BAIRD v. MURPHY,** [1928] 1 L. R. 125.—**IR.**

**PART II. SECT. 6, SUB-SECT. 2.—N.**  
n i. ———.]—In an action by a vendor of land for specific performance an order may be made, before the land is sold, for the appointment of a receiver of the rents & profits of the land. —**KNOWLES v. JENKINS** (Alta.), [1923] 1 W. W. R. 1279.—**CAN.**

**PART III. SECT. 1.**  
n i. ——— *Possession of receiver is*

*possession of court. For benefit of person entitled thereto.*]—**BISHESHWAR PRATAP NARAYAN SAHI v. CHANDRESHWAR PRASAD NARAYAN SINGH** (1928), 1 L. R. 7 Pat. 319.—**IND.**

**PART III. SECT. 5, SUB-SECT. 5. B.**  
685 viii. ———.]—**NATIONAL TRUST Co. v. DOM. IRON & STEEL Co. (N. S.),** [1927] 3 D. L. R. 1063.—**CAN.**

**PART IV. SECT. 4.**  
p (p. 66) i. ———.]—*Against receiver—Effect of order.*]—An order of the ct. giving leave to a party to sue its receiver does not amount to a relinquishment of possession of the properties by that ct., & an order of

decree against the receiver cannot be enforced in execution as against him without leave of the ct. appointing him. —**SRIMATI JUGAL KISHORE DEVI v. DEVA PRASANNA MUKHERJI** (1928), 1 L. R. 7 Pat. 684.—**IND.**

**PART X. SECT. 5.**  
sa. *Stipulation that receiver to sign bond—Failure to sign.*]—Where a surety on a receiver's bond executes the bond on the distinct understanding that it is also to be executed by the receiver himself, the failure to secure the signature of the receiver thereto discharges said surety. —**LARSONNE v. SHORE,** [1928] 2 D. L. R. 977, [1928] 2 W. W. R. 8; 39 B. C. R. 508. **CAN.**

ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

# REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS.

## PART III.

sh. "*Indians in province of Natal*"--*Includes only Indian immigrants*—Act 17, 1923, ss. 6, 42 (1).—*Ex p. BADAT* 1927), 48 N. L. R. 435.—**S. AF.**

# RENTCHARGES AND ANNUITIES.

## Part I.—Nature.

23. *Add. Annotation* :—**Mentd.** *Re* Adelm, Oakshott v. Hawkins, [1929] 1 Ch. 195.
52. *Add. Annotation* :—**Refd.** Bristol Corpn. v. Virgin, [1928] 2 K. B. 622.
54. *Add. Annotation* :—**Consd.** *Re* Alington & L. C. C. Contract (1927), 138 L. T. 131.

## Part II.—Creation of Rentcharges and Annuities.

104. *Add. Annotation* :—**Mentd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

## Part III.—Alienation of Rentcharges and Annuities and Estates Charged Therewith.

246. *Add. Annotation* :—**Refd.** *Re* Reeves, Reeves v. Pawson, [1928] Ch. 351.
247. *Add. Annotation* :—**Apld.** Kennedy v. Thomassen, [1929] 1 Ch. 426.
- 247a. —.—.—Under the will of her then husband made in 1902 & a separation deed & settlement made in 1903 V. was entitled to two annuities of £200 each. Testator, who was also the settlor, died in 1913, & V. afterwards married a Dutch subject, & for the remainder of her life resided in Holland. In 1927 the trustees of the will offered to redeem both annuities, & after some negotiations were informed by V.'s solrs. that they would advise her to accept £6,000 for redemption, the annuities to be paid in full up to the date of redemption. The trustees sent the solrs. a draft release for their approval. V. having informed her solrs. that she would accept the offer of £6,000, they sent her the release engrossed for her execution, & she executed it on Jan. 12, 1928. On Jan. 17 she died, but no notification of her death was received by her solrs. in London until Jan. 31. In the meantime, the trustees having been informed by V.'s solrs. on Jan. 24 that she had accepted the £6,000, on Jan. 30 paid the money to them, being in ignorance of V.'s death :—**Held** : there was no concluded contract for the sale & purchase of the annuities, as the purchasers could not have intended their offer to be accepted by the vendor merely executing a document. But even assuming there was a concluded contract, there was a total failure of consideration, owing to the death of the annuitant before completion, & the trustees were entitled to recover back the £6,000.—KENNEDY v. THOMASSEN, [1929] 1 Ch. 426; 98 L. J. Ch. 98; 140 L. T. 215; 45 T. L. R. 122.
- 254a. —.—.—Sale to raise charge paramount to annuities—Annuitants necessary parties to conveyance.]—SULLIVAN v. SULLIVAN (1860), 28 Beav. 102; 54 E. R. 304.
- Annotation* :—**Refd.** Thompson v. Raine (1873), 28 L. T. 362.

## Part IV.—Rights as Affected by Various Forms of Limitation.

- 292a. —.—.—A. devises to his nephew £5 *per annum*, without saying to his exors. or administrators, to be paid him during his, the testator's, wife's life, whom he made executrix, on condition that he demeaned himself civilly to her. By his death the £5 *per annum* is determined. NEAL v. HANBURY (1701), Prec. Ch. 173; 24 E. R. 83; *sub nom.* ANON., 2 Eq. Cas. Abr. 362.
- Annotation* :—**Refd.** Savery v. Dyer (1752), Amb. 139.
296. *Add. Annotation* :—**Refd.** *Re* Fitch's Will Trusts, Public Trustee v. Nives (1928), 139 L. T. 556.
- 336a. Bequest to several—No words of survivorship.]—A bequest of an annuity to several persons during their lives, without words of survivorship, is a bequest to each of them of a separate annuity for an aliquot share of the whole, & upon the death of each his separate annuity ceases.—*Re* EVANS, THOMAS v. THOMAS (1908), 77 L. J. Ch. 583; 99 L. T. 271.
- 336b. During continuance of fund.]—Testator having bequeathed annuities issuing out of a leasehold estate, to some annuitants for

### PART I. SECT. 1.

11 i. —.—.—Devise of land subject to annuity.]—Testator devised a half

interest in land to his son & two daughters "subject to the payment" of an annuity.—**Held** : the annuity

was charged upon the half interest.—PEARCE v. WRIGHT (1926), 30 C. L. R. 16. AUS.

life, to some during the continuance of the fund, & to others indefinitely, with a general provision for an increase or diminution of the annuities, in proportion to the increased or diminished income of the estate; & a particular provision that, on the death of some of the annuitants for life, their portions should be paid to the survivors; the annuities given

indefinitely are payable during the continuance of the fund.—*HACK v. TUCK* (1818), 3 Swan. 270; 36 E. R. 858.

353. *Add. Annotations* :—*Refd. Re Nelson, Norris v. Nelson* (1918), 140 L. T. 371, n.; *Re Smith, Public Trustee v. Aspinall* (1928), 140 L. T. 369.

## Part V.—Rights as Affected by Insufficiency of Grantor's Estate.

511a. —.].—A. gave by will an annuity of £1,000 to his widow, & directed that in case of his estate being insufficient to make up her income from all sources to that amount, a sufficient part of the *corpus* to make up the deficiency should from time to time be sold. B. subsequently by will gave her an annuity of £200, & directed that it should not be taken into account in regard to any other income, it being his express will & desire that it should be a clear beneficial addition to her income :—*Held* : the widow was not bound to include the £200 annuity in her computation of income, & was entitled to have a sufficient amount of the *corpus* sold to make up her income, independently of that annuity to £1,000.—*Re HEDGES' TRUST ESTATE* (1874), L. R. 18 Eq. 419; 44 L. J. Ch. 116; 31 L. T. 160; 22 W. R. 819.

525a. —.].—A testator directed his trustees, of whom his wife was one, to permit his wife to receive the rents & profits of his real estates, & thereout in the first place to retain to herself an annuity of £400 a year, & to pay annuities of £100 a year to each of his daughters :—*Held* : these words did not give a priority to the wife in respect of her annuity over the daughters.—*JENKINS v. BRIANT* (1834), 6 Sim. 603; 3 L. J. Ch. 169; 58 E. R. 719; *subsequent proceedings* (1836), 5 L. J. Ch. 348.

*Annotations* :—*Mentd. Jenkins v. Briant, Jenkins v. Cross* (1815), 6 L. T. O. S. 273; *Morse v. Tucker* (1846), 5 Hare 79; *Patch v. Shore* (1862), 11 W. R. 142; *Coope v. Cresswell* (1866), L. R. 2 Eq. 106.

548. *Add. Annotation* :—*As to* (2) *Refd. Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622.

## Part VI.—Payment of Rentcharges and Annuities.

590. *Add. Annotation* :—*Refd. Re Armaghdale, Craig v. Armaghdale* (1928), 44 T. L. R. 239.

593. *Add. Annotations* :—*Consd. Re Armaghdale,*

*Craig v. Armaghdale* (1928), 44 T. L. R. 239; *Fleetwood-Hesketh v. Fleetwood-Hesketh*, [1929] 2 K. B. 55.

## Part VII.—Forfeiture and Extinguishment of Rentcharges and Annuities.

810. After this case add “ **Money paid in ignorance of death of annuitant—Recovery of.**”—*See CONTRACT, No. 3081a.*”

814. *Add. Citation* :—138 L. T. 131.

*Add. Annotation* :—*Refd. Re Draycott S. E.*, [1928] Ch. 371.

821. *Add. Annotation* :—*Refd. Hyman v. Hyman, Hughes v. Hughes*, [1929] P. 1.

### PART VI. SECT. 3, SUB-SECT. 1.

k1. —. —. —. ] *UNION BANK OF SCOTLAND, LTD. v. CAMPBELL*, [1929] S. C. (Cl. of Sess.) 143.—*SCOT.*



## REVENUE.

## Part IV.—Duties on Land Values.

55a. — **What amounts to.**—*Re WINDSOR STEAM COAL Co. (1901), LTD. (1928), 165 L. T. Jo. 32.*

61. For "[1914] 2 K. B. 102" read "[1914] 3 K. B. 192."  
*Add. Annotation:—Refd. Simbro Trading Co. v. Posograph Parent Corpn. [1929] 2 K. B. 266.*

## Part VI.—Excise Duties.

SUB-SECT. 1.—**BETTING DUTY** (Vol. XXXIX., p. 232).

Add the following case:—

93a. **Who liable to duty—Club—Managing totalisator.**—A limited co. was the proprietor of a club formed for social intercourse. Upon the club premises betting on horse races was transacted through the instrumentality of two machines, called totalisators, owned by the co. & worked by the co.'s servants. Any member desiring to use these machines for the purpose of backing horses applied to join the club pool, & if elected as a pool member, he became entitled on payment of a small subscription to operate, & for this purpose he was supplied with credit vouchers of varying amounts. Under the rules of the pool 10 per cent. of the gross amount of the stakes on each race was retained by the co. in respect of the facilities provided & the expenses of management, & the balance was divided among the backers, called in the rules "investors," of the winning horse in the proportion of their stakes. The winnings for each week were paid by the co. from its own funds irrespective of any possible loss owing to dishonour of the vouchers. The rules provided that the club acted simply as a distributing agent. Upon an information preferred by the A.-G. against the co. alleging that the co. was liable to pay betting duty in respect of wagers on horse races made by members of the club by means of these machines, it was admitted that the co. was a bookmaker & that the transactions in question were bets

within Finance Act, 1926 (c. 22), s. 15:—*Held*: the bets were not made with the co., but by the members *inter se*, & the claim of the Crown failed.—*A.-G. v. LUNCHEON & SPORTS CLUB, LTD.*, [1929] A. C. 400; 98 L. J. K. B. 359; 141 L. T. 153; 45 T. L. R. 291, H. L.

93b. — **Employee of bookmaker.**—A bookmaker, who held a bookmaker's certificate & also an entry certificate in respect of certain premises, had in his service at the premises an employee, who received a weekly salary & was the only person employed there. The employee had sole charge of the premises in the absence of the bookmaker, who attended race meetings in other towns during the flat racing season, & had on one occasion been absent from the premises for ten days consecutively. Although the employee had no authority to open new accounts in the absence of his employer, he could accept personal bets & bets over the telephone, & he had said that he had no responsibility, but answered the telephone & recorded messages. On a certain date the employee when in sole charge of the premises was seen to take two or three bets on the telephone & enter them upon a slip, he himself not holding a bookmaker's certificate. On proof of these facts: *Held*: the employee carried on business as a "bookmaker" within Finance Act, 1926 (c. 22), s. 18 (1).—*LAKE v. CRONIN, HUNT v. CRONIN*, [1929] 1 K. B. 31; 98 L. J. K. B. 47; 140 L. T. 118; 92 J. P. 191; 44 T. L. R. 819; 72 Sol. Jo. 546; 28 Cox, C. C. 554; 26 L. G. R. 568, D. C.

PART II. SECT. 2, SUB-SECT. 2.—  
D. (b) ii.

39 ii. — **Seizure outside three mile limit.**—*MASON v. COFFIN*, [1928] 2 D. L. R. 263; 49 Can. Crim. Cas. 276.—CAN.

PART V. SECT. 1, SUB-SECT. 1.

bb i. — **Meaning of.**—"Value for duty" wherever used in the Customs Act & amendments has reference to the basis on which the true amount of duty *ad valorem* is payable, & to nothing else.—*R. v. CORNER*, [1928] 2 D. L. R. 767; 49 Can. Crim. Cas. 200; 61 O. L. R. 583.—CAN.

sc. **Goods transferred within territorial waters.**—Where goods are transferred within the territorial waters of Canada, without the intention of fraudulently relanding or bringing the same back into Canada, no offence is committed under Customs Act.—*COOK v. R.*, [1928] Exch. C. R. 49.—CAN.

PART V. SECT. 1, SUB-SECT. 2.

c i. — **—**—*MORIN v. R.* (1927), 49 Can. Crim. Cas. 231; 43 Que. K. B. 192.—CAN.

PART V. SECT. 1, SUB-SECT. 4.

ss. **For failure to answer questions—By master of vessel.**—*Held*: the delivery of the report required by Customs Act, s. 96 (1), to the Customs officer by the master was not the "answer of questions demanded of him" referred to in Customs Act, s. 246.—*PARKER v. R.*, [1928] Exch. C. R. 36.—CAN.

st. **Power of election as to penalty—Whether power exercisable by Revenue Commissioners or by Attorney-General.**—*Held*: by the High Ct., on a case stated, the power of election which is conferred upon the Revenue Comrs., as the successors of the Comrs. of Customs, as to which of the two penalties prescribed by Customs Con-

solidation Act, 1876, s. 186, shall be imposed for any offence under that section, must be exercised by them, & not by the A.-G.—*A.-G. v. PERCY*, [1929] 1 R. 514.—IR.

PART VI. SECT. 4, SUB-SECT. 1.

sh. **On what bets exigible—Ready-money office-betting.**—*SMITH v. ADAM*, [1929] S. C. (J.) 33 SCOT.

PART VI. SECT. 4, SUB-SECT. 6.

e. **Affid. sub nom. DOMINION PRESS, LTD. v. CUSTOMS & EXCISE MINISTER**, [1928] A. C. 340; 97 L. J. P. C. 91; 139 L. T. 338.

n i. — **Imported goods—Change in form on coming out of bond.**—*Held*: where goods imported are so changed before taking them out of the bonded warehouse for consumption that they take on a form altogether different from that in which they were imported, the sales tax, under the

## Part VII.—Excise Licences.

104. *Add. Citation* :—97 L. J. K. B. 36.

128. *Add. Annotation* :—*Appld.* *Dennis v. Leonard* (1929), 141 L. T. 94.

140a. **Petrol-electric vehicle**—Whether “electrically-propelled.”—A vehicle commonly known as a “petrol-electric” motor derived its primary motive power from an ordinary internal combustion engine; that engine was connected with an electric dynamo, & the electricity generated in the dynamo was transmitted to an electric motor, which drove the rear wheels of the car through a cardan shaft & differential gear:—*Held*: the vehicle was an “electrically-propelled” vehicle within Finance Act, 1926 (c. 22), Sched. I., para. 5.—*TILLING-STEVENS MOTORS v. KENT COUNTY COUNCIL*, [1929] A. C. 354; 98 L. J. Ch. 198; 140 L. T. 624; 93 J. P. 146; 45 T. L. R. 249; 27 L. G. R. 261, H. L.

143. *Add. Annotation* :—*Distd.* *Gough v. Rees* (1929), 46 T. L. R. 103.

## SUB-SECT. 6.—GUN LICENCES.

For “Pistols Act, 1903 (c. 18), ss. 3, 8” read “Firearms Act, 1920 (c. 43).”

302a. **Finance Act, 1920 (c. 43), s. 12 (1)**—What is “firearm”—**Air pistol**.—An air pistol is not *per se* a firearm within the definition of “firearm” in above sect., but it is an “air gun or air rifle” within the proviso, which empowers a Secretary of State to make rules declaring certain types of air guns & air rifles to be specially dangerous, & if it is so declared, it is to be deemed to be a firearm.—*SAINT v. HOCKLEY* (1925), 41 T. L. R. 555; 69 Sol. Jo. 575.

302b. — What is “air gun or air rifle”—**Air pistol**.—*SAINT v. HOCKLEY*, No. 302a, *ante*.

## Part VIII.—Drawbacks and Excise Allowances.

360. *Add. Annotation* : *Refd.* *Fenton Textile Assn. v. Lodge*, [1928] 1 K. B. 1.

## Part IX.—Stamp Duties.

435. *Add. Annotation* :—*Mentd.* *Chaney v. Maclow*, [1929] 1 Ch. 461.

440a. **Voluntary disposition inter vivos**—Property disposed of including stock exempt from stamp duty.—A deed of settlement, which operated as a voluntary disposition *inter vivos*, was

made of certain stocks, shares, marketable securities & policies of life insurance, including certain Govt. stocks. The settlement operated as a transfer of the policies of life insurance, but the stocks, shares & marketable securities were subsequently transferred

Special War Revenue Act, 1915, should be calculated on the sale price of the goods after such change, & not upon the duty-paid value thereof as imported in bulk.—*R. v. DOMINION DISTILLERY PRODUCTS CO.*, [1928] Exch. C. R. 170. **CAN.**

*o. affd. sub nom.* *BRADSHAW v. MINISTER OF CUSTOMS & EXCISE*, [1928] 2 D. L. R. 352; [1928] S. C. R. 54. **CAN.**

*o. i.*—*Exemption of goods exported* (*Onus of proof*).—*Held*: the Act being a taxing statute, must be construed strictly, & the *onus* was upon the Crown to show that debts came within the taxing provisions, but the exemption of goods “exported” being in the nature of a proviso, it was incumbent upon debts, to plead it, & the *onus* was upon them to show that they came within it.—*R. v. GOODERHAM & WORTS, LTD.*, [1928] 3 D. L. R. 109; 82 O. L. R. 218. **CAN.**

*o. ii.*—*Government charge on assets of person indebted for sales taxes*—*Meaning of assets*.—In 12 & 13 Geo. V., c. 47, s. 17, which sect. gave the Crown a first charge on the assets of a person indebted for sales taxes, the word “assets” was not intended to include any other assets than such as were the property of the debtor at the time his assets were sought to be administered or distributed.—*R. v. HYDE*, [1928] 2 W. W. R. 253. **CAN.**

*o. iii.*—*Inability of purchaser of goods not subject to tax*.—*R. v. JACK PINE LUMBER CO. & CANADIAN BANK OF COMMERCE*, [1928] 4 D. L. R. 976; [1928] 3 W. W. R. 419. **CAN.**

*o. iv.*—*Effect of repeal on lien of Crown for taxes*.—*Re WILNER*, [1928] 2 D. L. R. 396. **CAN.**

*o. v.*—*Goods manufactured by contractor for company*.—*R. v. DOMINION PRESS CO.*, [1928] Exch. C. R. 122. **CAN.**

## PART VII. SECT. 3, SUB-SECT. 5.

*sl.* **Finance Act, 1926**—*Whether applicable to street bookmaker*.—*Held*: the provision of the Finance Act, 1926, which imposes a penalty on any one carrying on business as a bookmaker without having in force the certificate required by the Act, applies not only to a bookmaker carrying on his business legally, but also to a street bookmaker carrying on his business in contravention of Street Betting Act, 1906.—*McCOLL v. HYNDMAN, COOKRON v. MACKIE, HERLIHY v. KELLY*, [1928] S. C. (J.) 17. **SCOT.**

*sm.* **Registration—Continuation of certificate of suitability—Conditions of**.—*SCOTT v. MCCARTHY*, [1928] 1 R. 611. **IR.**

## PART VII. SECT. 4, SUB-SECT. 1.

*so.* **Invalid condition—What is**.—

Where a municipal corpn. is empowered to collect a licence fee “from any retail trader, not exceeding twenty dollars, for every six months,” the licence to be granted “so as to terminate on the 15th day of July or the 15th day of Jan.,” the corpn. may not stipulate that appct. shall confine his trading to week days only of the period of the licence, & may not withhold the licence if he refuses to subscribe to such a condition. *VASILATOR v. VICTORIA CORPN.* (1910), 15 B. C. R. 153. **CAN.**

*sp.* **Licence for delivery trucks—Delivery within municipality—Owner outside**.—*NORTH VANCOUVER v. STEWART F. R. & Co.*, [1928] 1 W. W. R. 586; 49 Can. Crim. Cas. 216; 39 B. C. R. 401. **CAN.**

## PART VII. SECT. 4, SUB-SECT. 3.—C.

*sr.* **Person using vehicle**.—*COCKBURN v. GORDON*, [1928] S. C. (J.) 87. **SCOT.**

## PART VII. SECT. 4, SUB-SECT. 3.—D.

*so.* **“Weight unladen”**—*How ascertained—Loose equipment*.—Movable shelving, fitted to slide on brackets in a baker’s van, & used to facilitate the delivery of goods to customers, is loose equipment within Roads Act, 1920 (c. 72), s. 7 (6), & does not fall to be included in the weight unladen of the vehicle.—*DARLING v. BURTON*, [1928] S. C. (J.) 11. **SCOT.**

to the trustees of the settlement by separate transfers. *Ad valorem* "voluntary disposition" duty under Finance (1909-10) Act, 1910 (c. 8), s. 74, was subsequently paid or assessed, without dispute, in respect of the stocks, shares & marketable securities & policies of life insurance, with the exception of the Govt. stocks, which were exempt from duty on transfer by the General Exemptions from all Stamp Duties in the First Schedule to Stamp Act, 1891 (c. 39). The comrs. held that the settlement was also chargeable with *ad valorem* "settlement" duty on the value of the Govt. stocks included in it. The settlor, however, contended that no duty was payable in respect of those stocks, as they were included in the settlement with other stocks in respect of which *ad valorem* transfer duty & not settlement duty was payable under Finance (1909-10) Act, 1910 (c. 8), s. 74 (4).—*Held*: the Govt. stocks were distinct matters, within Stamp Act, 1891 (c. 39), s. 1 (a), from the other property dealt with by the settlement, & therefore, the settlement could be separately charged, as if it were a separate instrument, with settlement duty in respect of the Govt. stock.—*ANSSELL v. INLAND REVENUE COMRS.*, [1929] 1 K. B. 608; 98 L. J. K. B. 384.

482. Add the following paragraph:—  
*Seemle*: such a charterparty must be stamped with an impressed & not an adhesive stamp.

After this case add:—

— — — — —]—*See, now*, Stamp Act, 1891 (c. 39), ss. 49-51.

550. *Add. Annotations*:—*Mentd.* *Ellesmere v. Wallace*, [1929] 2 Ch. 1; *Kennedy v. Thomassen*, [1929] 1 Ch. 426; *Weddle, Beck v. Hackett*, [1929] 1 K. B. 321.

667. *Add. Citations*:—[1928] 1 K. B. 703; 97 L. J. K. B. 116; 138 L. T. 171.

*Add Annotation*:—*Fold. Stanforth v. Inland Revenue Comrs.* (1929), 98 L. J. K. B. 764.

- 669a. — **Whether overriding powers of revocation & reappointment to be considered.**—*Appts.*, as the trustees of the P. settled estates, submitted to the comrs. a deed of resettlement dated Sept. 16, 1911, for their opinion as to the stamp duty with which it was chargeable. Owing to difficulties & events which had happened in the P. family there had been unavoidable delay. The comrs. on Feb. 12, 1929, assessed the stamp duty at £19,907. By the resettlement of 1911, which followed a settlement of the property made in 1870, by which powers of revocation & new appointment were reserved, freeholds in L., M. & D. were conveyed subject to (a) certain family charges & power of charging; (b) the prior life estates of the second & third Viscounts P., & the estate

in tail male in the first & other sons of the latter; & (c) to the powers of revocation & new appointment contained in the deed of 1911 by reference to the prior deed of 1870. The comrs., in valuing the property, conveyed by the resettlement for the purpose of arriving at the stamp duty payable under Finance (1909-10) Act, 1910 (c. 8), s. 74, made an allowance in respect of items (a) & (b), but said that the powers of revocation & new appointment given by item (c) ought to be disregarded as an overriding factor, & valued the property at £1,990,700, the agreed value of the estates as a whole being £7,454,200. Exercising their powers under 1910 Act, sect. 74 (5), they found that the resettlement conferred a substantial benefit on the persons who took interests thereunder in remainder expectant on the determination or failure of the uses, & that consequently the deed fell within sect. 74 (1), & became chargeable to stamp duty as if it were a conveyance on sale with the substitution of the value of the property conveyed for the amount of the consideration for the sale. *Appts.* contended that the resettlement being subject to the overriding powers of revocation & new appointment was an ambulatory document, & was not a disposition within the meaning of sect. 74, also that in valuing the property conveyed the overriding powers of revocation & new appointment had to be taken into account, & such powers reduced the value of the property conveyed to a nominal sum, & that the *ad valorem* duty under sect. 74 should be assessed at 10s.:—*Held*: the comrs. had not in fact disregarded altogether the powers of revocation & new appointment, but meant that they did not consider that such powers were an overriding factor in arriving at the value of the property conveyed by the resettlement. *Westmorland (Earl) v. Inland Revenue Comrs.*, No. 667, bound the Ct. to hold that the fact of the existence of such powers in the deed to be stamped ought to be estimated, & not treated as an overriding consideration, & that equally applied in the case as here, where the powers were to be found outside of the deed in question. The comrs. were right in so deciding, & also in their method of reaching the true value of the property conveyed by reference to the value of the estate in possession after deducting the value of the incumbrances & of the life estates.—*STANFORTH v. INLAND REVENUE COMRS.* (1929), 98 L. J. K. B. 764; 141 L. T. 373; 73 Sol. Jo. 483, C. A.

670. *Add. Annotations*:—*Appld.* *Westmorland v. I. R. Comrs.*, [1928] 1 K. B. 703. *Refd.* *Stanforth v. Inland Revenue Comrs.* (1929), 98 L. J. K. B. 764.

#### PART IX. SECT. 6, SUB-SECT. 3.—B.

sl. *Assignment*.]—There is no necessity for an assignment to be stamped, unless it is in the special form of an order, & possibly also unless it is directed to the persons having control of the money in question in such circumstances as to lead to the conclusion that they hold to the order of the person assigning it.—*LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. v. HARTLEY & FORD*, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] *Argus* L. R. 417.—*AUS.*

#### PART IX. SECT. 6, SUB-SECT. 18.—A. (a).

631 i. *Partnership property*.—*Transfer of share by partner's creditors*.—*DUCKETT v. COLLECTOR OF IMPOSTS*, [1927] V. L. R. 457; 49 A. L. T. 82; [1927] *Argus* L. R. 379.—*AUS.*

so. *Land*.—*Undivided share*.]—A transfer of an undivided share of land is, for the purposes of Stamp Act, 1915, a transfer of land. A transfer of land may be dutiable as a transfer

of land on a sale thereof, though the sale includes both land & personal property.—*DUCKETT v. COLLECTOR OF IMPOSTS*, [1927] V. L. R. 457; 49 A. L. T. 82; [1927] *Argus* L. R. 379.—*AUS.*

#### PART IX. SECT. 6, SUB-SECT. 35.

h i. — — — — —]—*NEW SOUTH WALES STAMP DUTIES COMRS. v. THOMSON* (1928), 40 C. L. R. 394; [1928] *Argus* L. R. 30.—*AUS.*

673. *Add. Annotation*:—**Mentd.** Ladies' Hosiery & Underwear v. Parker (1920), 46 T. L. R. 43.

737. *Add. Annotation*:—**Mentd.** Midland Motor Showrooms v. Newman, [1929] 2 K. B. 256.

## Part X.—Corporation Duty.

780. *Add. Annotations*:—**Distd.** General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. I. R.

Comrs. (1928), 97 L. J. K. B. 578. **Consd.** Midland Counties Institution of Engineers v. I. R. Comrs. (1928), 14 Tax Cas. 285.

## Part XIII.—Recovery of Revenue Duties and Penalties.

799. *Add. Annotation*:—**Apld.** Chowood, Ltd. v. Lyall, [1929] 2 Ch. 406.

811a. **Order of Inland Revenue Commissioners—When necessary—Prosecution under Railway Passenger Duty Act, 1842 (c. 79), s. 13.**—An information was preferred by a police officer against the conductor of a motor omnibus, alleging that he had allowed the omnibus to carry at one time a greater number of passengers than it had been constructed to carry, contrary to Railway Passenger Duty

Act, 1842 (c. 79), s. 13. **Held**: the prosecution was not a proceeding for the recovery of a fine or penalty under an Act relating to inland revenue within Inland Revenue Regulation Act, 1890 (c. 21), s. 21 (1), & it could, therefore, lawfully be commenced without an order of the Inland Revenue Comrs.—**KIRKBY v. MINTY**, [1929] 2 K. B. 165; 98 L. J. K. B. 733; 141 L. T. 515; 93 J. P. 176; 15 T. L. R. 427; 27 L. G. R. 438, D. C.

## Part XIV.—Expenditure of the Revenue.

837. *Add. Annotations*:—**Folld.** Nixon v. A.-G. (1920), 46 T. L. R. 31. **Refd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.

839. *Add. Annotations*:—**Folld.** Nixon v. A.-G. (1929), 46 T. L. R. 31. **Refd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.

841a. **Right to pension—Not enforceable at law.**—A civil servant's expectation of superannuation allowance is not a legal right, & cannot be enforced by legal proceedings.—**NIXON v. A.-G.** (1929), 46 T. L. R. 31.

843a. **Savings Certificates—Nomination to—Validity.**—*War Savings Certificates Regula-*

tions, 1919, although they do not expressly mention Savings Banks Act, 1887 (c. 40), are not *ultra vires*, because they modify, & incorporate & apply as modified, the rules as to nominations contained in that Act. Thus, they make it possible for any holder of War Savings Certificates to nominate recipients of the certificates held, & any such nomination may include certificates held in excess of the authorised maximum, notwithstanding that certificates so held are liable to be forfeited.—**Re KIMBER, VALE v. ROCKMAN** [1928] Ch. 749; 97 L. J. Ch. 430; 139 L. T. 550; 72 Sol. Jo. 545.

853. *Add. Annotation*:—**Apld.** Green v. Weatherill, [1929] 2 Ch. 213.

**PART XIII. SECT. 1, SUB-SECT. 1.**  
**st. Trial of issue** To determine fact essential to defence—**Amendment of defence.**—**R. v. MUTUAL FIRE ASSOCN. OF CANADA, LTD.** (1926), 58 N. S. R. 420.—**CAN.**

**PART XIII. SECT. 1, SUB-SECT. 2.—A.**  
**806 iv.** — **R. v. CHENG TONG SENG**, [1928] 1 W. W. R. 33; 19 Can. Crim. Cas. 79; 39 B. C. R. 157.—**CAN.**

**806 v.** — **R. v. BOUTHER**, [1928] 2 D. L. R. 555; 49 Can. Crim. Cas. 312.—**CAN.**

**806 vi.** — **R. v. MANUEL**, [1928] 2 D. L. R. 755; 50 Can. Crim. Cas. 32.—**CAN.**

**806 vii.** — **Railway Passenger Duty Act, 1842.** **Held**: under Burgh Police Act, sect. 454, the burgh magistrate had no jurisdiction to entertain the complaint, in respect that, while the duties imposed by the Act of 1812 had been repealed, & other duties substituted therefor, a contravention of sect. 13 was still an offence against an Inland Revenue or Customs Act, within the meaning of Burgh Police Act, s. 454.—**CAMERON v. SWERNLEY**, [1928] S. C. (J.) 31.—**SCOT.**

**811a i. Order of Inland Revenue Commissioners—When necessary—Prosecution under Railway Passenger Duty Act, 1842 (c. 79), s. 13.**—**HORN v. DUCKETT**, [1929] S. C. (J.) 63.—**SCOT.**

**sv. Improper adjournment—Effect of.**—A justice of the peace having intervened in a prosecution under the Excise Act by assuming to adjourn the trial on the non-appearance of the police magistrate before whom the information was laid, & who had issued a summons to deft. to appear before him, a conviction made on the adjourned date of trial by another police magistrate, before whom deft. refused to plead & to whose jurisdiction he objected, was quashed.—**R. v. PYKE**, [1928] 1 W. W. R. 590; 49 Can. Crim. Cas. 186; 23 Alta. L. R. 311.—**CAN.**

**sw. Information in writing—By whom laid.**—Since only inland revenue officers can lay an information for an offence under Excise Act, such an information must state that the person laying the information is an inland revenue officer.—**R. v. WITSIEWICZ**, [1928] 2 W. W. R. 19; 49 Can. Crim. Cas. 330.—**CAN.**

**sx. ——— Whether necessary.**—**Held**: an information in writing required by Customs & Inland Revenue Act, 1879, is no longer a necessary preliminary to the issue of a summons charging an offence under the Customs Acts.—**A.-G. v. HEALY**, [1928] 1 R. 460.—**IR.**

**PART XIII. SECT. 1, SUB-SECT. 2.—C.**

**ni. ———.**—**Held**: where goods alleged to have been smuggled are found & seized in the possession of any person, the *onus*, under Customs Act, s. 264, is upon such person to explain how the goods had come into his possession or how they had been imported into Canada, & if so, to prove that the duty upon them was paid.—**WEISS v. R.**, [1928] Exch. C. R. 106.—**CAN.**

**ti. ———.**—**R. v. MOYLE** (1928), 49 Can. Crim. Cas. 375.—**CAN.**

**PART XIV. SECT. 1.**

**sz. Right of Crown to fix amount.**—**KIDD v. R.**, [1924] Exch. C. R. 29.—**CAN.**

## ROYAL FORCES.

### Part I.—The Royal Navy.

**33a. Right to indemnity—For expenses in case of damage to ship or stores.]—**A Govt. steamer assisted a merchantman, on a stipulation to reimburse all expenses arising from damage to the steamer or the stores :—*Held* : such stipulation was no bar to salvage compensation.—*THE LUSTRE* (1834), 3 Hag. Adm. 154 ; 166 E. R. 363.

*Annotations :—***Consd.** *The Ewell Grove* (1835), 3 Hag. Adm. 209. **Refd.** *The Lord Dufferin* (1849), 7 Notes of Cases Supp. xxxiii.

**56a. — Ship “specially equipped with salvage plant.”—**A cable ship belonging to the Admiralty, & in the employ of the Post Office rendered salvage services to a vessel, which had lost her propeller & required towage

assistance. The cable ship was fitted with grappling ropes & other salvage gear, & was specially constructed for laying & repairing submarine telegraph cables :—*Held* : even assuming the equipment constituted “salvage plant,” the vessel was not “specially equipped with salvage plant,” which meant plant of a kind that a vessel would not be equipped with except for the purpose of rendering salvage services, & the Admiralty were not entitled to claim salvage remuneration in respect of the services of the vessel under Merchant Shipping (Salvage) Act, 1916 (c. 41).—*THE MORGANA*, [1920] P. 412 ; 89 L. J. P. 232 ; 124 L. T. 254 ; 36 T. L. R. 717 ; 15 Asp. M. L. C. 160.

### Part V.—The Regular Army.

**139. Add. Annotation :—****Mentd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.

### Part IX.—Matters Common to Navy, Army and Air Force.

**265. Add. Annotation :—****Consd.** *Mackenzie-Kennedy v. Air Council* (1927), 138 L. T. 8.

**PART V. SECT. 3, SUB-SECT. 2.**  
**sa. Pension act of grace only.]—**  
Pensions are an act of grace & bounty

of the Crown which must be left to the discretion of the Govt. ; & there can be no review of the discretion of the

Pensions Board by the Ct. *THOMAS v. R.*, [1928] 2 D. L. R. 535 ; [1928] Exch. C. R. 26.—**CAN.**

# SALE OF GOODS.

## Part. I The Contract of Sale Generally.

9. *Add. Annotation*:—**Refd.** *Dominion Press v. Customs & Excise Minister*, [1928] A. C. 340. | 44. *Add. Annotation*:—**Refd.** *Dominion Press v. Customs & Excise Minister*, [1928] A. C. 340.

## Part II.—Formation of Contract.

200. *Add. Citations*:—138 L. T. 154; 72 Sol. Jo. 14; 33 Com. Cas. 101.
341. *Add. Annotation*: **Refd.** *Royal Exchange Assee. v. Hope*, [1928] Ch. 179.
380. *Add. Annotations*:—**Consd.** *Gaze W. H. & Sons v. Port Talbot Corpn.* (1929), 93 J. P. 89. **Refd.** *Re Windsor Steam Coal Co.* (1901) (1928), 140 L. T. 80.
- 403a. — **Perishing of only part of goods.**—Sale of Goods Act, 1893 (c. 71), s. 6, applies where there is a contract for the sale of specific goods & a part, but not the whole, of the goods has, without the knowledge of the parties to the contract, already ceased to exist. — **BARROW, LANE & BALLARD, LTD. v. PHILLIP PHILLIPS & CO., LTD.**, [1929] 1 K. B. 574; 98 L. J. K. B. 193; 140 L. T. 670; 45 T. L. R. 133; 72 Sol. Jo. 871; 34 Com. Cas. 119.
424. *Add. Annotation*:—**Refd.** *Shell-Mex v. Elton Cop Dyeing Co.* (1928), 34 Com. Cas. 39.
- 430a. “Current prices.” By an agreement dated July 12, 1927, plffs. & defts. agreed that plffs. were to deal with defts.’ entire output of Jarrow pig iron available for delivery in Scotland, plffs. undertaking to push the sale of the same in Scotland in preference to any other brand. They were to base their prices on the current prices for Middlesbrough pig iron, free on truck makers’ works or l.o.b. makers’ wharf, excluding Tees dues, & to pay cash on Mondays for the previous weeks’ shipments. Disputes having arisen between the parties about the prices which plffs. ought to charge for the pig iron which they sold, defts. notified plffs. that they terminated the agreement as from Apr. 22, 1928. Plffs. brought an action for breach of contract, because, as they alleged, defts. refused to supply them at “the current prices for the Middlesbrough pig iron.” Defts. contended that the phrase “current prices” were the list prices which were published every week in a trade newspaper by a group or combine of iron foundries in Middlesbrough, but plffs. contended that “current prices” meant the price at which pig iron was actually being sold in Scotland by the sole agent of the combine:—**Held**: the expression “current prices” in the agreement meant the list prices which were published every week by the combine in Middlesbrough, & did not mean the price at which pig iron was actually being sold in Scotland by the sole agent of the combine.—**JACKS & CO. v. PALMER’S SHIPBUILDING & IRON CO.** (1928), 98 L. J. K. B. 366; 140 L. T. 473; 34 Com. Cas. 107, C. A.
- 433a. **Minimum price—Construction of standard contract.**—The ct. held, on the construction of a standard contract for the sale of sugar-beet by the growers thereof to manufacturers of beet-sugar at a price depending on variable factors, there being a provision for a sliding scale minimum price & for a tonnage bonus, that the manufacturers were entitled to include the tonnage bonus in the minimum price, & the bonus applied only if it would bring the contract price above the minimum. — **BROWN & SONS v. LINCOLNSHIRE BEET SUGAR CO., LTD.** (1929), 45 T. L. R. 199, D. C.
434. *Add. Annotation*:—**Refd.** *Ellesmere (Earl) v. Wallace*, [1929] 2 Ch. 1.
462. *Add. Annotation*:—**Refd.** *Shell-Mex v. Elton Cop Dyeing Co.* (1928), 34 Com. Cas. 39.
472. *Add. Annotation*:—**Consd.** *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.

### PART I. SECT. 6.

sd. *Shares in company.*—“Goods,” as defined in the Indian Contract Act, 1872, comprise every kind of movable property, including shares in a co. **DOMINGO v. DE SOUZA** (1928), 1 L. R. 50 All. 695.—**IND.**

### PART II. SECT. 4, SUB-SECT. 7.—B. (a).

sd. *Marginal note—Giving power to vary or confirm option.*—**Held**: the contract form containing the marginal note constituted a memorandum sufficient to satisfy Stat. Frauds.—**J. B. ROGERS, LTD. v. HARRY LESNIE, LTD.** (1927), 27 S. R. N. S. W. 127; 44 N. S. W. W. N. 149.—**AUS.**

### PART II. SECT. 4, SUB-SECT. 7.—C. (b) i.

sd. *Place of delivery.* A verbal agreement, made at the business premises of the purchaser of goods, included a term that the vendor should deliver the goods at the purchaser’s premises. Immediately afterwards a written order was signed on behalf of the purchaser, & handed to the vendor’s representative, which contained the names of the parties, particulars of the goods, & the price, & also the words “Please supply us with the following goods,” but which did not contain any further reference to the place at which the goods were to be delivered:—**Held**: giving the ordinary business meaning to the words quoted, & having

regard to the fact that the parties were business men, & to the circumstances in which the document was written, the document indicated with sufficient clearness where the place of delivery of the goods was to be, & constituted a sufficient note or memorandum of the agreement within Goods Act, 1915, s. 9 (1).—**WISKIN v. TERNICH BROS. LTD., LTD.**, [1928] V. L. R. 387; [1928] Argus L. R. 212.—**AUS.**

### PART II. SECT. 4, SUB-SECT. 9.

339 x. ———.—PAGE v. PROCTOR (1884), 5 O. R. 238.—**CAN.**

346 i. ———.—By execution of contract.—**COOLIN v. COOLIN** (Sask.), [1920] 3 W. W. R. 812.—**CAN.**

## Part III.—Conditions and Warranties.

512. *Add. Annotation* :—**Refd.** *Morelli v. Fitch & Gibbons*, [1928] 2 K. B. 636.

527a. ———.]—A quantity of Finnish timber was sold to buyers in London by a contract providing that the goods were to be properly seasoned for shipment, & that in the event of a dispute the buyers should not reject the goods but should accept or pay for them against shipping documents. Owing to bad weather the sellers were unable to season part of the goods properly :—**Held** : the provision as to seasoning was not a condition but only a warranty, & therefore the buyers were not entitled to reject the goods, but could only claim an allowance off the price.—**MEYER** (MONTAGUE L.), LTD. v. KIVISTO (1929), 16 T. L. R. 60.

539a. *Omission of usual trade description in invoice.*—**STOPP v. HILL & SONS** (1928), 72 Sol. Jo. 122.

553. *Add. Citations* :—**affd.** (1928), 138 L. T. 663 ; 44 T. L. R. 297 ; 17 Asp. M. L. C. 428 ; 33 Com. Cas. 213. C. A.

564. *Add. Annotation* :—**Refd.** *Finlay v. N. V. Kwik Hoo Tong*, [1929] 1 K. B. 400.

619a. *Sale of wine of particular brand.*—**Pltf.** asked for a bottle of S.'s ginger wine at the licensed premises of defts. While **pltf.** was endeavouring to draw the cork with a cork-screw, the bottle broke at the neck & injured him :—**Held** : the sale was one by description, & the bottle was not of merchantable quality, & the condition that it was of such quality implied under Sale of Goods Act, 1893 (c. 71), s. 14 (2), had been broken, & **pltf.** was entitled to damages. **MORELLI v. FITCH & GIBBONS**, [1928] 2 K. B. 636 ; 97 L. J. K. B. 812 ; 110 L. T. 21 ; 44 T. L. R. 737 ; 72 Sol. Jo. 503. D. C.

621. *Add. Annotation* : **Refd.** *Barker v. Agius* (1927), 33 Com. Cas. 120.

643a. ———.]—**MELLISH v. MOTTEUX** (1792), Peake 156 ; 170 E. R. 113, N. P.

*Annotations* :—**N.F.** *Baglehole v. Walters* (1811), 3 Camp. 154. **Refd.** *Pickering v. Dowson* (1813), 1 Taunt. 779.

643b. ———.]—If a ship is sold "with all faults," the seller is not liable to an action in respect of latent defects which he knew of without disclosing at the time of the sale, unless he used some artifice to conceal them from the

purchaser.—**BAGLEHOLE v. WALTERS** (1811), 3 Camp. 154 ; 170 E. R. 1338, N. P.

*Annotations* :—**Apld.** *Pickering v. Dowson* (1813), 4 Taunt. 779 ; *Bywater v. Richardson* (1831), 1 Ad. & EL. 508. **Apprvd.** *Ward v. Hobbs* (1879), 18 L. J. Q. B. 281. **Refd.** *Gorton v. Macintosh* (1882), 31 W. L. R. 232.

643c. ———.]—Although a ship be sold "to be taken with all faults," the vendor cannot avail himself of that stipulation, if he knew of secret defects in her, & used means to prevent the purchaser from discovering them, or made a fraudulent representation of her condition at the time of the sale. — **SCHNEIDER v. HEATH** (1813), 3 Camp. 506 ; 170 E. R. 1162, N. P.

*Annotations* **Consd.** *Ward v. Hobbs* (1877), 3 Q. B. D. 150. **Refd.** *Cornfoot v. Fowke* (1810), 6 M. & W. 358.

682. *Add. Annotation* :—**Refd.** *London Holeproof Hosiery Co. v. Padmore* (1928), 14 T. L. R. 199.

744a. *Effect of Sale of Goods Act, 1893 (c. 71), s. 14 (1).*—**MEDWAY OIL & STORAGE CO., LTD. v. SILICA GEL CORPN.** (1928), 33 Com. Cas. 195, H. L.

780a. ———.]—**Bottle—For wine.**—**MORELLI v. FITCH & GIBBONS**, No. 619a, *ante*.

782. *Add. Annotation* :—**Refd.** *Morelli v. Fitch & Gibbons*, [1928] 2 K. B. 636.

788. *Add. Annotation* :—**Refd.** *Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll*, [1929] 1 K. B. 170.

852. *Add. Annotation* : **Mentd.** *Konskier v. Goodman*, [1928] 1 K. B. 421.

885a. *Date of shipment—In bill of lading—C. i. f. contract.*—**JAMES FINLAY & CO. v. N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ**, No. 1814a, *post*.

893. *Add. Annotation* : **Refd.** *Lavock v. Pearson* (1928), 33 Com. Cas. 188.

926. *Add. Citation* :—33 Com. Cas. 120.

995. *Add. Annotations* :—**Consd.** *Re Hall & Pim's Arbitration* (1928), 139 L. T. 50. **Refd.** *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.

996. *Add. Annotation* : **Apld.** *Barker v. Agius* (1927), 33 Com. Cas. 120.

1016. *Add. Annotation* :—**Refd.** *Finlay v. N. V. Kwik Hoo Tong*, [1929] 1 K. B. 400.

**PART III. SECT. 4, SUB-SECT. 2.—A.**  
623 vi. ———.]—**FOXTON v. HAMILTON STEEL & IRON CO., LTD.** (1901), 21 C. L. T. 286 ; 1 O. L. R. 393.—**CAN.**

623 vii. ———.]—**MADER v. JONES** (1875), 10 N. S. R. (1 R. & C.) 82.—**CAN.**

**PART III. SECT. 5, SUB-SECT. 1.**  
681 viii. ———.]—**MURRAY v. REEVES SUPPLY CO.**, [1928] 2 D. L. R. 873.—**CAN.**

**PART III. SECT. 5, SUB-SECT. 2.—B. (a).**

**sf. Proof that purpose known—Notwithstanding warranty limiting liability.**—**CRUSS v. ALEXANDER** (1928), 28 S. R. N. S. W. 297 ; 45 N. S. W. W. N. 76.—**AUS.**

**PART III. SECT. 5, SUB-SECT. 3.—A.**  
765 v. ———.]—**WINSLEY BROS. v.**

**WOODFIELD IMPORTING CO.**, [1929] N. Z. L. R. 480.—**N.Z.**

**PART III. SECT. 17, SUB-SECT. 2.**  
**sg. Sale of seed flax.**—The representation by a farmer selling seed flax that it was good seed flax held to be a warranty.—**UTILE v. KROEGER**, [1928] 1 D. L. R. 97 ; 37 Man. L. R. 154 ; [1927] 3 W. W. L. R. 636.—**CAN.**

**PART III. SECT. 18, SUB-SECT. 1.**  
**c. Revsd.** on the facts, 59 S. C. R. 118.

**PART III. SECT. 18, SUB-SECT. 2.**  
**k. Revsd.**, 43 S. C. R. 614.

**PART III. SECT. 19, SUB-SECT. 1.—B.**  
**d. Revsd.** on the facts, 59 S. C. R. 118.

**PART III. SECT. 19, SUB-SECT. 2.—D. (a).**

**sh. Nominal damages.**—**SMITH v. WARD**, [1928] 4 D. L. R. 850 ; [1928] 3 W. W. L. R. 311 ; 37 Man. L. R. 528.—**CAN.**

**sj. F.o.b. contract—Damages at date of delivery.**—**BRONSTONE v. BURDETT**, [1928] 1 D. L. R. 877.—**CAN.**

**PART III. SECT. 19, SUB-SECT. 2.—D. (b).**

**gi. ———.]—Circumstances in which.**—**Held** : **pltf.** was not entitled to damages for the loss alleged to have been sustained by him by his inability to carry out contracts into which he alleged he had entered.—**McKENNY v. DRUMMOND & DVORETSKY** (1927), 29 W. A. L. R. 6.—**AUS.**

**al. Return of purchase-money.**—**McKENNY v. DRUMMOND & DVORETSKY** (1927), 29 W. A. L. R. 6.—**AUS.**

1024. *Add. Annotations* :—**Apld.** *Silver v. Ocean Steamship Co.* (1929), 46 T. L. R. 78. **Refd.** *Evans v. Webster* (1928), 45 T. L. R. 136.

1025. *Add. Annotation* :—**Refd.** *Finlay v. N. V.*

*Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.

1026. *Add. Annotation* :—**Apld.** *Finlay (James) & Co. v. N. V. Kwik Hoo Tong*, [1929] 1 K. B. 400.

## Part IV.—Effects of the Contract.

1089. *Add. Citations* :—*affd.* (1928), 138 L. T. 663; 44 T. L. R. 297; 17 Asp. M. L. C. 428; 33 Com. Cas. 213, C. A.

1089a. —. ] *SHELL-MEX, LTD. v. ELTON COP DYEING CO., LTD.* (1928), 34 Com. Cas. 39.

1261. *Add. Annotation* :—**Refd.** *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.

1268. *Add. Annotation* :—**Refd.** *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.

1272. *Add. Annotation* :—**Refd.** *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.

1376a. — — **Delivery order not in accordance with contract—Agreement for delivery order “from bond”—Delivery order of goods in bond.**—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565; F. advanced £256 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky at 27s. 6d. a case free on board at Leith or Glasgow to be delivered ex warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26 & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on

the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks, including seizure or confiscation, & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000, & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage. Delay having occurred in naming a liner to take delivery of the whisky & in equipping the steamer for the adventure, L. gave to D. & M. a delivery order addressed to the keepers of the bonded warehouse where the whisky was in store. D. & M. immediately pledged the whisky for £500. F. hearing of this paid off the loan & took a transfer of the delivery order:—*Held*: L. by giving the delivery order to D. & M. had not committed a breach of the agreement, & if he had, F. could not complain of the breach after having himself taken a transfer of the delivery order.—*FOSTER v. DRISCOLL, LINDSAY v. ATTEFIELD, LINDSAY v. DRISCOLL*, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 140 L. T. 479; 45 T. L. R. 185, C. A.

1399. *Add. Annotation* :—**Refd.** *English Hop Growers v. Dering*, [1928] 2 K. B. 171.

1403. *Add. Annotation* :—**Apld.** *Palmolive Co. (of England) v. Freedman*, [1928] Ch. 264

1404. *Add. Citations* :—[1928] Ch. 264; 138 L. T. 274.

1409. *Add. Annotation* :—**Consd.** *Palmolive Co. (of England) v. Freedman*, [1928] Ch. 264.

1417. *Add. Annotation* :—**Refd.** *Shell-Mex v. Elton Cop Dyeing Co.* (1928), 34 Com. Cas. 39.

1421. *Add. Annotation* :—**Refd.** *Shell-Mex v. Elton Cop Dyeing Co.* (1928), 34 Com. Cas. 39.

1435. *Add. Annotation* :—**Refd.** *Barker v. Agius* (1927), 33 Com. Cas. 120.

## Part VI.—Performance of the Contract.

1516. *Add. Annotation* :—*As to* (1) **Refd.** *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

1569. *Add. Annotation* :—**Refd.** *Shell-Mex v. Elton Cop Dyeing Co.* (1928), 34 Com. Cas. 39.

### PART IV. SECT. 1, SUB-SECT. 1.

1032 xii. —. —. ]—*MARCUS CLARK (AUSTRALIA), LTD. v. BROWN* (1928), 40 C. L. R. 540; [1928] V. L. R. 293; [1928] Argus L. R. 189.—**AUS.**

### PART IV. SECT. 1, SUB-SECT. 3.— B. (b) ii.

1081 xii. —. —. ]—*COFFEY v. QUEBEC BANK* (1869), 20 C. P. 110.—**CAN.**

### PART IV. SECT. 1, SUB-SECT. 5.—C.

1209 iv. —. —. —. ]—Where on a sale of stacks of hay the buyer agreed to have it pressed & the seller undertook to load it when baled into the cars:—*Held*: the latter undertaking was a supplementary obligation distinct from the essentials of the contract of sale, & that the property in the hay had passed although the hay had not yet been so loaded by the seller.—

*MARCO v. BERTHOLET*, [1928] 2 D. L. R. 691; [1928] 1 W. W. R. 843; 37 Man. L. R. 307.—**CAN.**

### PART VI. SECT. 1, SUB-SECT. 2.

1476 v. —. —. ]—*WEBB & HENDERSON v. CUPPLES*, [1928] S. R. Q. 316.—**AUS.**

### PART VI. SECT. 1, SUB-SECT. 3.

1498 iii. —. —. ]—*C.i.f. contract*.—Under a c.i.f. contract providing for



**1686a.** ———.]—**TAMVACO v. LUCAS** (1859), 1 E. & E. 581, 592; 120 E. R. 1027, 1032; *sub nom.* **TANVACO v. LUCAS**, 28 L. J. Q. B. 150, 301; 1 L. T. 161; 5 Jur. N. S. 731, 1258; 7 W. R. 568.

*Annotations*:—**Consd.** *Shipton, Anderson & Co. v. Weil Bros. & Co.*, [1912] 1 K. B. 571. **Refd.** *Ireland v. Livingston* (1866), L. R. 2 Q. B. 99.

**1811.** *Add. Annotation*:—**Refd.** *Foreman & Ellams v. Blackburn*, [1928] 2 K. B. 60.

**1812.** *Add. Annotation*:—*As to* (2) **Consd.** *Foreman & Ellams v. Blackburn*, [1928] 2 K. B. 60.

**1812a.** ——— **Shipment of goods before contract—Ship visiting other ports before issue of bill of lading.**]—A contract, dated July 2, provided for the sale of frozen rabbits & their shipment from Sydney c.i.f. Liverpool by a named steamer to sail during Aug. The bill of lading, which was dated Aug. 17, stated that the goods had been shipped by the steamer, then lying in Sydney. The steamer shipped the goods, or the bulk of them, at Sydney on June 25, when she proceeded to Queensland ports, thereafter returning to Sydney, & finally sailing from that port for Liverpool on Aug. 17. The buyers declined to take delivery of the goods, & the sellers claimed damages from them for breach of contract:—**Held**: the sellers were not entitled to recover, inasmuch as they had themselves committed breaches of the contract, by supplying goods the shipment of which had already taken place before the date of the contract of sale, & by tendering a bill of lading the issue of which had been delayed for so long as seven weeks after the shipment, the steamer having in the meantime visited other ports several hundred miles from the port of shipment. **FOREMAN & ELLAMS, LTD. v. BLACKBURN**, [1928] 2 K. B. 60; 97 L. J. K. B. 355; 139 L. T. 68; 33 Com. Cas. 359; 17 Asp. M. L. C. 461.

**1813.** *Add. Annotation*:—**Refd.** *Finlay (James) & Co. v. N. V. Kwik Hoo Tong* (1928), 98 L. J. K. B. 251.

**1814a.** ——— **Date of shipment incorrectly stated.**]—The seller under a c.i.f. contract tendered to the buyer a bill of lading which stated, not fraudulently, but contrary to the fact, that the shipment had taken place in the contract month. Being unaware of this fact at the time of the tender, the buyer accepted the shipment, & entered into sub-contracts for the sale of a portion of the goods, those sub-contracts containing a clause that “the bill or bills of lading shall be conclusive evidence of the date of shipment.” The sub-purchasers refused to take delivery, alleging that the shipment had not been made during the contract month. The buyer under the original contract having then ascertained that the goods had not been shipped during the contract month:—**Held**: (1) he was entitled to damages for the breach by the seller of his obligation to deliver a bill of lading stating the date of shipment correctly, the measure of damages being the difference between the market price & the contract price of the goods; (2) the buyer was not bound to enforce, for the purpose of minimising the damages, the contracts with the sub-purchasers, as to do so, after he knew that the shipment date was incorrect, might seriously injure his commercial reputation.—**FINLAY (JAMES) & Co. v. N. V. KWIK HOO TONG** H. M., [1929] 1 K. B. 400; 98 L. J. K. B. 251; 140 L. T. 389; 45 T. L. R. 149; 34 Com. Cas. 143, C. A.

**1816.** *Add. Annotations*: **Refd.** *De Monchy v. Phoenix Insee. of Hartford* (1928), 138 L. T. 703; *Tredeggar v. Harwood*, [1928] Ch. 59.

**1850.** *Add. Annotation*: **Refd.** *De Monchy v. Phoenix Insee. of Hartford* (1928), 138 L. T. 703.

**1858.** *Add. Annotation*:—**Distd.** *Aronson v. Mologa Holzindustrie A/G Leningrad* (1927), 138 L. T. 470.

**1897.** *Add. Annotation*:—**Apld.** *Barrow, Lane & Ballard v. Phillip, Phillips & Co.*, [1929] 1 K. B. 574.

## Part VII. —Rights of Unpaid Seller Against Goods.

**2384.** *Add. Annotation*:—**Apld.** *A.-G. v. Pritchard* (1928), 97 L. J. K. B. 561.

After this case add:—“As regards hire-

purchase agreements generally, *see* **BAILEMENT**, Vol. III., p. 96, Nos. 257, 258.”

**2388.** *Add. Annotation*:—**Distd.** *A.-G. v. Pritchard* (1928), 97 L. J. K. B. 561.

payment against documents the purchaser is under no obligation to take up documents that do not in fact relate to goods of the description contracted for, & a refusal to take up a draft does not necessarily prove that the buyer was not ready & willing to perform the contract.—**HENRY DEAN & SONS (SYDNEY), LTD. v. P. O'DAY PROPRIETARY, LTD.** (1927), 39 C. L. R. 330; [1927] *Argus*, L. R. 233.—**AUS.**

**PART VI. SECT. 3, SUB-SECT. 1.**  
*sp. Retention of goods—With knowledge of mistake by vendor—Acceptance implied.*—**ACKERMAN v. MORRISON** (1911), 45 N. S. R. 185; 9 E. L. R. 307.—**CAN.**

### PART VI. SECT. 3, SUB-SECT. 2.

**1866** i. *Whether implied*] **SCOTIA FLOUR & FEED CO. v. STRONG**, [1928] 4 D. L. R. 678; [1928] S. C. R. 319.—**CAN.**

*sr. Special contract—“Inspection acceptance Winnipeg.”*—**SCOTT v. ROGERS FRUIT CO.**, [1928] 1 D. L. R. 201; 37 Man. L. R. 145; [1927] 3 W. W. R. 628.—**CAN.**

### PART VI. SECT. 3, SUB-SECT. 3.— B. (a).

**1887** vii. ——.]—**WESTWORTH ORCHARD CO., LTD. v. MERCHANTS CONSOLIDATED, LTD.** (Man.), [1922] 1 W. W. R. 291; 68 D. L. R. 227. **CAN.**

### PART VI. SECT. 4, SUB-SECT. 4.— C. (a).

**r. i.** ——.]—E. who had been for some time selling & delivering carcasses of beef for cash to a meat co., delivered four carcasses at the co.'s shop, whereupon the manager who was then busy asked him to call back for his cheque. The seller thereupon left the shop & came back a few hours later for the cheque, but in the meantime a garnishee order had been served on the manager by a creditor of the seller:—**Held**: by his conduct the seller had agreed to give credit to the buyer. **COLPLAND v. ELMORE**, [1928] 2 D. L. R. 308; [1928] 1 W. W. R. 380.—**CAN.**

## Part VIII.—Breach of the Contract.

- 2427.** *Add. Annotation:—Refd. Shell-Mex v. Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.*
- 2473.** *Add. Citation: revsq. S. C. sub nom. STEWARDS & CO., LTD. v. R. (1900), 17 T. L. R. 111, C. A.*
- 2487.** *Add. Annotation:—Refd. Shell-Mex v. Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.*
- 2493a.** ———. ]—*STURGE v. PHILPOTTS (1839), 8 L. T. 30.*
- 2519a.** *Failure of seller to deliver correct bill of lading—Measure of damages.]—JAMES FINLAY & CO. v. N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ, No. 1814a, ante.*
- 2569.** *Add. Annotation:—Distd. Re Hall & Pim's Arbitration (1928), 139 L. T. 50.*
- 2570.** *Add. Annotation:—As to (2) Consd. Finlay (James) & Co. v. N. V. Kwik Hoo Tong, [1929] 1 K. B. 400.*
- 2571.** *Add. Annotations:—Consd. Finlay (James) & Co., Ltd. v. N. V. Kwik Hoo Tong, [1929] 1 K. B. 400, C. A. Mentd. Kaufmann v. British Surety Insee. Co. (1929), 45 T. L. R. 399.*
- 2575.** *Add. Citations:—97 L. J. K. B. 60; 33 Com. Cas. 60.*
- 2585.** *Add. Annotation:—As to (1) Refd. Shell-Mex v. Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.*
- 2590.** *Add. Annotation:—Refd. Kasler & Cohen v. Slavovski, [1928] 1 K. B. 78.*
- 2612.** *Add. Citations:—revsd. (1928), 139 L. T. 50; 33 Com. Cas. 324, H. L.*
- Add. Annotations:—Consd. Finlay (James) & Co. v. N. V. Kwik Hoo Tong, [1929] 1 K. B. 400. Refd. The York, [1929] P. 178.*
- 2618.** *Add. Annotation:—Refd. Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.*
- 2644.** *Add. Citation:—[1927] B. & C. R. 140.*
- Add Annotation:—As to (2) Apld. Shell-Mex v. Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.*
- 2687.** *Add. Citation:—138 L. T. 470.*
- 2699a.** ———. *Loss of freight—C.l.f. contract—Policy not in accordance with contract—Refusal of insurer to pay.]—A quantity of copra was sold for shipment from Australasia to London on the terms of cost, freight, & insurance, & the contract provided: "Insurance including war risk on free from particular average terms to be effected by sellers at the contract price plus 5 per cent. on the net shipping weight. . . . Such insurance to cover the copra until delivered in the ordinary course of transit into warehouse at the port of destination." In policies taken out by the sellers the goods & the freight were valued separately, & there was a "freight contingency clause," as follows: "On freight payable at destination . . . being increased value of copra through payment of freight or from such time as freight becomes due at destination, this insurance being deemed to be part of the total amount insured on the copra valued at such total amount." By the bill of lading the freight was payable only if the vessel arrived at the place of destination. The vessel took fire on the voyage & with her cargo became a total loss. The insurance co. paid to the buyers the insurance on the goods, but refused to pay the insurance on the freight on the ground that it had never become covered. The buyers then claimed damages from the sellers on the ground that the policies did not comply with the contract:—*LODERS & NUCOLINE, LTD. v. BANK OF NEW ZEALAND (1929), 45 T. L. R. 203.**

### PART VIII. SECT. 2, SUB-SECT. 2.—A.

*h i. — Shipmen f.o.b.]—VIBOND v. SISCO (1913), 29 O. L. R. 200; 4 O. W. N. 1498.—CAN.*

### PART VIII. SECT. 3, SUB-SECT. 2.—B. (a).

*st. Sale of fishing tackle—No licence to fish—Failure of seller to procure licence.]—To a claim for damages for delay in the delivery of fishing-net equipments sold by plff. to deft. the seller set up the defence that the buyer had no licence to fish on the days for which he claimed damages:—*Held*: since the seller had undertaken to obtain the licence for the buyer & had neglected to do so for several months, he could not rely on its absence as a defence, unless the buyer was guilty of wrongdoing of a character which the ct. could not overlook.—*JONASSON v. DUBINAK, [1928] 3 D. L. R. 501; [1928] 2 W. W. R. 588; 37 Man. L. R. 430.—CAN.**

### PART VIII. SECT. 3, SUB-SECT. 2.—C. (a).

*sv. Self-elected measure.]—BURKARD & CO., LTD. v. WAHLEN (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—AUS.*

### PART VIII. SECT. 3, SUB-SECT. 4.

**2656 i.** *Whether granted?—Where specific performance would not be decreed.]—The ct. will not grant an injunction*

*to restrain the breach of a contract for the sale & delivery of future chattels, expressed in an affirmative form, even though the contract so expressed involves a negative in substance, in a case where damages would be a complete remedy, where the contract is of such a nature that it cannot be specifically enforced, & where payment for the goods in question has not been made.—*WOOD v. CORRIGAN (1928), 28 S. R. N. S. W. 492; 45 N. S. W. W. N. 134.—AUS.**

### PART X.

*ii (p. 689) i. ———.]—NATIONAL DISCOUNT CORPN. v. FRECH & JACKSON, [1928] 2 D. L. R. 256, 61 O. L. R. 659.—CAN.*

*mm (p. 690) i. ———. Authority to resell.]—E., a dealer in automobiles, sold, or went through the form of selling, an automobile to C. under a conditional sale agreement, taking a promissory note for a part of the price. This note he took to defts., an automobile financing co., & discounted it, at the same time transferring the agreement to defts. who duly filed it in accordance with Conditional Sales Act. The automobile was left in the possession of E. who dishonestly sold it to plff.:—*Held*: the real owner of the car being E. or C. or both, E. had authority to dispose of his security, the conditional sale agreement, to defts., & defts. were*

*thereafter the owners in law of the automobile.—*BENDER v. NATIONAL ACCEPTANCE CORPN., LTD., [1929] 1 D. L. R. 222; 63 O. L. R. 215.—CAN.**

*nn (p. 690) i. ———.]—In order to hold a buyer under a conditional sale agreement who has defaulted thereunder liable for the deficiency on a resale of the goods by the seller the notice to the buyer of said resale must be in strict accordance with the requirements of Conditional Sales Act, R. S. B. C. 1924, c. 44, s. 10 (3), notwithstanding that the agreement provides that the seller can exercise the power of resale "by public or private sale with or without notice."—*MARSH v. SIMPSON [1928] 1 W. W. R. 956.—CAN.**

*nn (p. 690) ii. ———.]—So long as the buyer under a conditional sale agreement has five days' notice of the intended resale, whether he gets it as the result of personal service or because it is left at his place or sent to him by registered mail, the Conditional Sales Act, R. S. A. 1922, c. 150, s. 11, is complied with.—*MINNEAPOLIS STEEL & MACHINERY CO. v. PAULEROU (No. 2), [1928] 1 W. W. R. 976.—CAN.**

*nn (p. 690) iii. ———. Sufficiency—Onus of proof.]—Where, in an action by a vendor, under a conditional sale agreement for the balance of the purchase-price after he*

has repossessed & resold the goods, the defence is raised that the Act has not been complied with, the burden of proving compliance rests on the vendor. — *THOMPSON v. SHOLINDER*, [1928] 1 W. W. R. 386. — **CAN.**

**nn** (p. 690) **iv.** — — — — —  
— **[-]** Notice is not required to be given the buyer in a case where the seller merely exercises his right under the contract of repossessing the goods on the buyer's default & continues to hold them without a resale or without making any use of them for his own purposes. — *WATKINS GARAGE, LTD. v. MCKORYK*, [1928] 3 W. W. R. 129. — **CAN.**

**nn** (p. 690) **v.** — — — — —  
— **[-]** — *MOTOR CAR LOAN Co. v. BONSER*, [1928] 3 D. L. R. 875; [1928] 1 W. W. R. 801. — **CAN.**

**c** (p. 692) **i.** — — — — — *Pleading.* — *GREAT WEST SADDLERY Co. v. PRIME*, [1928] 3 W. W. R. 705. — **CAN.**

**aa** (p. 692) *affd.*, [1928] 3 D. L. R. 175; [1928] S. C. R. 200. — **CAN.**

**cc** (p. 692) **i.** — — — — — **[-]** — **Where an agreement for the conditional sale of a motor car contained the following clause: "We shall not at any time, that is the buyer, suffer or permit any charge or lien whether possessory or otherwise to exist against said automobile": Held** this clause negatived the idea that the buyer could authorise the doing of repairs in such a way as to give the repairer a lien. *ALLIANCE FINANCE Co. & STANDARD MOTORS, LTD. v. SIMONS*, [1928] 3 W. W. R. 621. — **CAN.**

**hh** (p. 692) **i.** — — — — — *To claim goods After judgment for balance owing.* — *RUSSELL v. REID*, [1928] 1 D. L. R. 628. — **CAN.**

**bb** (p. 693) **i.** — — — — — **[-]** —

Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement.

Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom the deft. had sold them. The authority of the exor. *de son tort* to take the chattels & so bind the administrator was established by a prior decision in an action by deft. herein against the buyer from him. There was no evidence herein as to what the exor. *de son tort* did with the chattels. *Held*: the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of the Conditional Sales Act as to retention of the chattels & notice of then sale was on plff herein, the administrator. — *NATIONAL TRUST Co., LTD. v. LARSON*, [1928] 3 W. W. R. 723. — **CAN.**

**ee** (p. 693) **i.** — — — — — **[-]** — **Where a conditional sale agreement does not provide that the goods shall be at the risk of the buyer during the continuance of the lien the loss falls on the seller in case the goods are damaged or destroyed before the property passes.** — *BURKE v. WEIR*, [1928] 1 D. L. R. 837. [1928] 3 W. W. R. 257. — **CAN.**

**ff** (p. 693) **i.** — — — — — *What amounts to delivery.* — *REAR v. MCGILLOUGH*, [1928] 2 D. L. R. 131. [1928] 1 W. W. R. 716. 22 Sask. L. R. 446. — **CAN.**

**hh** (p. 693) **i.** — — — — — **[-]** — **Under Farm Implement Act, R. S. S. 1920, c. 128, the contract in Form C for the sale of a second-hand implement on credit constitutes the entire contract between the parties; & therefore, where no warranties have been stated thereon, evidence of alleged oral**

warranties is not admissible, nor can it be added to or varied by introducing the provisions of the Sale of Goods Act as to implied warranties. — *HAYG & SONS v. STACK*, [1928] 1 D. L. R. 987. [1928] 3 W. W. R. 113. — **CAN.**

**d** (p. 691) **i.** — — — — — **[-]** — **Where a contract for the sale of a large implement within Farm Implement Act, R. S. S. 1920, c. 128, omits from par. 1 thereof, as prescribed by Form A, which provides for the length of time repairs are to be kept available by the vendor, the words "for a period of ten years from the date of this order," the contract is invalid, since said Act provides that no contract for the sale of such an implement shall be valid unless it is worded in accordance with said form, & said omission cannot be said to constitute a "slight deviation."** — *WATERLOO MFG. Co., LTD. v. WOOPPELL*, [1928] 2 D. L. R. 191. [1928] 1 W. W. R. 765. — **CAN.**

**k** (p. 691) **i.** — — — — — *Proof.* — **An affidavit which meets the requirements of Farm Implement Act, R. S. S. 1920, c. 128, s. 18 (2), is conclusive proof that sub-sect (1) of said sect., which requires a contract for the sale of a "large implement" to be read over & explained to the purchaser in a language which he understands, if he does not understand English, was complied with.** — *PELLETER v. MINNEAPOLIS THRESHING MACHINE Co.*, [1928] 3 W. W. R. 163. — **CAN.**

**cc** (p. 694) **i.** — — — — — **[-]** — **Under SAWYER-MASSEY Co. LTD. v. STURTELL, [1928] 1 D. L. R. 213; [1928] 1 W. W. R. 23. 22 Sask. L. R. 321. — **CAN.****

**d** (p. 695) **i.** — — — — — *Novation.* — **Plowman Tractor Co. v. ANDREWS, [1928] 1 D. L. R. 511. [1928] 1 W. W. R. 329. — **CAN.****

## SALE OF LAND.

### Part I.—The Contract of Sale.

28. *Add. Annotation* :—**Consd.** *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.
- 28a. ————]—**CURTIS MOFFAT v. WHEELER**, No. 2175a, *post*.
87. *Add. Annotation* :—**Consd.** *Farr, Smith v. Messers*, [1928] 1 K. B. 397.
104. *Add. Annotation* :—**Refd.** *Reading Trust v. Spero* (1929), 46 T. L. R. 117.
128. *Add. Annotation* :—**Refd.** *Re Howden & Hyslop's Contract*, [1928] Ch. 479.
133. *Add. Annotation* :—**Generally, Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.
195. *Add. Annotation* :—**Mentd.** *Houghton v. Nothard, Lowe & Wills*, [1928] A. C. 1.
198. *Add. Annotation* :—**As to (1) Refd.** *Chaney v. Maclow*, [1929] 1 Ch. 461.
214. *Add. Annotation* :—**Refd.** *Arseculeratne v. Perera*, [1928] A. C. 173.
- 228a. ———— **Of part of property.**]—There being a parol agreement for the purchase of a farm & farm house, the possession of the farm by the purchaser will be held an act of part performance sufficient to authorise the ct. to execute the contract, even though the house should have been occupied adversely to him.—**KING v. TURNER** (1824), 3 L. J. O. S. Ch. 58.
283. *Add. Annotation* :—**Apld.** *Johnson v. Clarke*, [1928] Ch. 847.
330. After this case add "**In lease.**"—*See LANDLORD & TENANT*, Vol. XXX., pp. 472–477."

### Part III.—Sale by the Court.

- 334a. — **Reversionary Interest.**]—**NUNN v. HANCOCK** (1871), 6 Ch. App. 850; 40 L. J. Ch. 700; 25 L. T. 469; 19 W. R. 1041, L. J. J.
- Annotations* :—**Refd.** *Debenham v. Sawbridge* (1901), 49 W. R. 502; *Re Wells, Boyer v. Maclean*, [1903] 1 Ch. 818.
- 420a. ————]—**YOUNG v. TREGEAR** (1872), 21 W. R. 215.

## Part IV.—Conditions of Sale, Particulars and Special Stipulations.

585. *Add. Annotation* :—**Refd.** *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.
634. *Add. Citations* :— 97 L. J. Ch. 4; 138 L. T. 26. *Add. Annotation* :—**Mentd.** *Coles v. White City Manchester Greyhound Assocn.* (1928), 45 T. L. R. 125.
636. *Add. Annotation* :—**Consd.** *Bernard v. Williams* (1928), 139 L. T. 22.
- 771a. ————]—At a sale by auction of property belonging to deft. pltf. became the purchaser of a freehold cottage, subject to the National Conditions of Sale, clause 10 of which provided that no error, misstatement or omission in the particulars should annul the sale, nor should any compensation be allowed by either party in respect thereof. The particulars stated that the cottage was let to a tenant whose notice to quit had determined, but who had been allowed to remain in occupation on sufferance, & that the premises would be sold with vacant possession on completion. The statement was misleading, as the premises were in fact in the occupation of a sub-tenant, who claimed to be entitled to remain on as a statutory tenant under Increase of Rent & Mortgage Interest (Restriction) Acts, & refused to vacate them. The purchaser refused to complete without vacant possession, with which he could have resold the property at a profit, & sued the vendor for damages for

#### PART I. SECT. 8, SUB-SECT. 4.— B. (a).

149 iii. ————]—A receipt for a deposit paid on an agreement for the sale of land which omits reference to a term of the agreement providing for the deferring of the payment of the remainder of the purchase-money is not a memorandum sufficient to satisfy Stat. Frauds.—**LESUR v. SCHNEIDER**, [1917] 2 W. W. R. 747; 36 D. L. L. 598.—**CAN.**

#### PART I. SECT. 9, SUB-SECT. 2.— A. (a).

191 iii. ————]—**BROWN v. HARROWER**

(1886), 3 Man. L. R. 441.—**CAN.**

198 ii. ————]—**MORRIS v. WHITING** (1913), 26 W. L. R. 494; 5 W. W. R. 936; 15 D. L. R. 254; 24 Man. L. R. 56.—**CAN.**

#### PART I. SECT. 9, SUB-SECT. 2.—E.

259 i. *Whether collateral agreement binding—Condition to detriment of party seeking to enforce agreement.*]—**KIRBLEWHITE v. GARLAND**, [1928] N. Z. L. R. 135.—**N.Z.**

260 ii. ————]—**KITCHEN v. BOON** (1876), 24 Gr. 195.—**CAN.**

#### PART III. SECT. 8, SUB-SECT. 2.—A. k. *Revd.*, 7 A. R. 282.

#### PART IV. SECT. 2, SUB-SECT. 7.— A. (b) i.

r i. ———— *When time begins to run—From delivery of proper abstract.*]—**SHENSTONE v. HEWSON** (1927), 28 S. R. N. S. W. 53.—**AUS.**

#### PART IV. SECT. 2, SUB-SECT. 7.— B. (i).

n i. ————]—**LOUGH v. PAPER AVENUE LAND CO.**, [1928] 3 D. L. R. 620; [1928] S. C. R. 518.—**CAN.**

breach of contract:—*Held*: the action failed. There was no breach of contract, the statement in the particulars being an error or misstatement within clause 10 of the conditions in respect of which the purchaser could claim no compensation.—*CURTIS v. FRENCH*, [1929] 1 Ch. 253; 98 L. J. Ch. 29; 140 L. T. 133; 45 T. L. R. 15; 72 Sol. Jo. 762.

838a. ———.—*Re* BELCHAM & GAWLEY'S CONTRACT, [1929] W. N. 186.

895. *Add. Annotation*:—*Expld.* *Bernard v. Williams* (1928), 139 L. T. 22.

912. *Add. Annotations*:—*Consd.* *Re Sandwell Park Colliery Co., Field v. The Co.*, [1929] 1 Ch. 277. *Refd.* *Bernard v. Williams* (1928), 93 L. T. 22.

913. *Add. Annotation*:—*Refd.* *Bernard v. Williams* (1928), 139 L. T. 22.

916. *Add. Annotation*:—*Refd.* *Bernard v. Williams* (1928), 139 L. T. 22.

925. *Add. Annotation*:—*Refd.* *Bernard v. Williams* (1928), 139 L. T. 22.

1016a. Condition to indemnify purchaser—"Local land charge of which vendor has had notice"—Apportionment under Private Street Works Act, 1892 (c. 57)—Effect of Law of Property Act, 1925 (c. 20), s. 198.—*Re* MIDDLETON & YOUNG'S CONTRACT, [1929] W. N. 70.

1017. *Add. Annotation*:—*Refd.* *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.

## Part V.—Vendor's Title.

1078. *Add. Annotation*: *Distd.* *Turner v. Watts* (1928), 138 L. T. 680.

1104a. Sale by vendor in specified capacity.]—Where, in a vendor & purchaser contract, it is stated that the vendor will make title in a specified capacity, the contract does not amount to a warranty that he will make title in a particular manner. The warranty is no more than a warranty that a good title shall be made; & the purchaser can be forced to accept such good title, even though made by the vendor in a capacity other than that specified.

By special conditions of sale, subject to which two houses were sold by auction, it was stated that the vendors were selling as "trustees for sale" under the will of A. On examination of the title by the purchasers, it appeared that no trust for sale was contained in the will:—*Held*: the above statement did not affect the powers of the vendors to make a good title as the legal personal representatives of A. *Re* SPENCER & HAUSER'S CONTRACT, [1928] Ch. 598; 97 L. J. Ch. 335; 139 L. T. 287; 72 Sol. Jo. 336.

1115. *Add. Annotation*: *Generally, Refd.* *Re Sandwell Park Colliery Co., Field v. The Co.*, [1929] 1 Ch. 277.

1151. *Add. Annotation*:—*Folld.* *Re* Spencer & Hauser's Contract, [1928] Ch. 598.

1152. *Citation*:—For " [1928] W. N. 135 " read " No. 1104a, *ante*."

1219. *Add. Annotation*:—*Refd.* *Re* Spencer & Hauser's Contract, [1928] Ch. 598.

1259. *Add. Annotation*:—*Generally, Refd.* *Manchester & County Bank v. Monk* (1929), 73 Sol. Jo. 465.

1275. *Add. Annotation*:—*Refd.* *Re* Sandwell Park Colliery Co., *Field v. The Co.*, [1929] 1 Ch. 277.

1416a. ——— Subsequent purchase by solicitor from client.]—A solr., who has been employed to advise on a title, cannot, on purchasing the land himself of his client, set up an objection, which he did not think of any importance when advising his principal.—*BEEVOR v. SIMPSON* (1829), *Tam.* 69; 48 E. R. 28.

1458a. *S. P. FLOOD v. PRITCHARD* (1879), 40 L. T. 873.

## Part VI.—Position of Parties Pending Completion.

1488a. ———.—It is sometimes said that under a contract for the sale of an interest in land the vendor becomes a trustee for the purchaser of the interest contracted to be sold subject to a lien for the purchase-money; but however useful such a statement may be as illustrating a general principle of equity,

it is only true if & so far as a ct. of equity would under all the circumstances of the case grant specific performance of the contract (*per* CUR.).—*HOWARD v. MILLER*, [1915] A. C. 318; 84 L. J. P. C. 49; 112 L. T. 403, P. C.

*Annotation*:—*Refd.* *Central Trust & Safe Deposit Co. v. Snider*, [1916] 1 A. C. 266.

### PART IV. SECT. 2, SUB-SECT. 10.—B.

r (p. 118) i. ———.—*SHERRIN v. WIGGINS*, [1917] 2 W. W. R. 895; 27 *Man. L. R.* 572.—CAN.

### PART IV. SECT. 2, SUB-SECT. 10. C. (a).

aa. Interest on unpaid purchase-money to be added to principal.]—Where, by a contract for sale of land, it was stipulated that, in the event of interest on the unpaid purchase-money being unpaid at the end of each year, the same should be added to the principal, the ct. refused to decree specific performance by the vendor on payment

of the principal & simple interest only, or except upon payment of the interest according to the agreement.—*HENDERSON v. DICKSON* (1862), 9 *Gr.* 379.—CAN.

### PART V. SECT. 2, SUB-SECT. 2

n i. ———.—*Re* THOMPSON & JENKINS [1928] 4 D. L. R. 564; 63 O. L. R. 33.—CAN.

### PART V. SECT. 3.

so. Sale by company.—After removal from register.]—A co. incorporated in N. S. W. was registered in Tasmania as a foreign co. It acquired certain land in Tasmania. On Aug. 14, 1924,

the co. filed a notice that it had ceased to carry on business in Tasmania, & the registrar thereupon removed its name from the register. On May 16, 1925, the co. contracted to sell the said land to B. —*Held*: the land in question was still vested in the co., & there would be a declaration that it could show a good marketable title.—*Re* LABOR PAPERS, LTD. & BUTTON'S CONTRACT (1925), 21 *Tas. L. R.* 35.—AUS.

### PART V. SECT. 5, SUB-SECT. 8.—B.

ad. Proof of charge.—Note of execution on abstract of title.]—*HIND v. WESBROOK* (1900), 7 *Terr. L. R.* 10.—CAN.

- 1509a. —.—.]—PUDDICOMBE v. BYTHESEA (1823), 1 L. J. O. S. Ch. 186.  
 1594. Add. Annotation :—**Refd.** Page v. Scottish Insce. Corp'n. (1929), 98 L. J. K. B. 308.  
 1597a. —.—.]—PINCKE v. CURTEIS (1793), 4 Bro. C. C. 333, n.; 29 E. R. 920.  
 1640. Add. Citation :—[1928] Ch. 340.  
 1786. Add. Citation :—[1927] B. & C. R. 137.

## Part VII. —Vendor and Purchaser Summons.

1823. Add. Annotation :—**Refd.** Johnson v. Clarke, [1928] Ch. 847.  
 1863. Add. Annotation :—**Generally, Mentd.** Johnson v. Clarke, [1928] Ch. 847.

## Part VIII.—Remedies under an Uncompleted Contract.

- 1944a. S. P. WESTERMAN v. PANTLIN (1900), 3 Seton on Judgments & Orders 7th ed. 2218.  
 Annotation :—**Fold.** Olde v. Olde, [1904] 1 Ch. 35.  
 2006. Add. Annotation :—**Refd.** Wilson v. Balfour (1929), 45 T. L. R. 625.  
 2009a. —.—.]—BERNARD v. WILLIAMS, No. 2182, *post*.  
 2013. Add. Annotation :—**Dbtd.** Bernard v. Williams (1928), 139 L. T. 22.  
 2014. Add. Annotation :—**Refd.** Bernard v. Williams (1928), 139 L. T. 22.  
 2049. Add. Annotation :—**Refd.** Re Sandwell Park Colliery Co., Field v. The Co., [1929] 1 Ch. 277.  
 2061. Add. Annotations :—**Consd.** Re Sandwell Park Colliery Co., Field v. The Co., [1929] 1 Ch. 277. **Refd.** Bernard v. Williams (1928), 139 L. T. 22.  
 2087. Add. Annotation :—**Refd.** Curtis Moffat v. Wheeler, [1929] 2 Ch. 224.  
 2151. Add. Annotation :—**Refd.** Re Sandwell Park Colliery Co., Field v. The Co., [1929] 1 Ch. 277.  
 2153. Add. Annotation :—**As to (1) Consd.** Re Sandwell Park Colliery Co., Field v. The Co., [1929] 1 Ch. 277.  
 2182. To the existing paragraph add as follows :—  
*Seem* : if time had not been of the essence, pltf. would not, in an action for recovery of deposit, have been entitled to rely on the absence of any memorandum in writing of the contract.  
 Add. Citation :—139 L. T. 22.  
 2242a. —.—.]—**Part of purchase-money & money spent on improvements.**—(CORNWALL v. WILLIAMS (1701), Colles, 117; 1 E. R. 209, H. L.  
 2287. Add. Annotation :—**Refd.** Curtis Moffat v. Wheeler (1929), 98 L. J. Ch. 374.  
 2306. Add. Annotation :—**Refd.** Curtis Moffat v. Wheeler, [1929] 2 Ch. 224.

**PART VI. SECT. 1, SUB-SECT. 2.—A.**  
*st. What amounts to possession—Actual occupation of part.*—MCKINNON v. McDONALD (1867), 13 Gr. 152.—CAN.

**PART VI. SECT. 1, SUB-SECT. 5.**  
*g i. — Taxes—Composition with revenue authorities—Effect of.*—KEILL v. HUNTER (1928), 39 B. C. R. 396.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 1.—A.**  
*k (p. 221) i. — Requisites of valid cancellation notice.*—BROWN v. ROBERTS (1912), 17 B. C. R. 16.—CAN.

*o (p. 223) i. — — — — —.*—HAMILTON v. TAYLOR (1919), 47 N. B. R. 145.—CAN.

*sm. Vendor unable to give title—Through purchaser's acts—Liability of purchaser under contract.*—WILKIN v. BROWN (Alta.), [1927] 2 D. L. R. 87.—CAN.

**PART VIII. SECT. 2, SUB-SECT. 3.—C. (b).**

*o. Revsd.,* 33 O. L. R. 78.

**PART VIII. SECT. 2, SUB-SECT. 3.—C. (h).**

*sn. Deposit paid—Provision for payment of further sum on fixed date—Failure of purchaser to pay.*—**Held** : although the vendor had neither executed nor offered to execute a conveyance he was entitled to sue before completion, inasmuch as the contract fixed a definite date for the payment & did not postpone it until completion or until after completion.—PERPETUAL

TRUSTEE Co. v. UNION TRUSTEE Co. (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—AUS.

**PART VIII. SECT. 2, SUB-SECT. 3.—E.**

*f i. — — — — —.*—Where the ct. gives a purely equitable relief as in the case of rescission of a contract & repayment of the moneys paid by the purchaser, the moneys will carry interest from the date of the payment until the date of repayment, whenever repayment takes place, but will not carry interest as a judgment.—SKINNER v. JAMES SYPHONIC VISIBLE MEASURES, LTD. (1927), 28 S. R. N. S. W. 20.—AUS.

**PART VIII. SECT. 2, SUB-SECT. 3.—G.**

*sp. Form of action.*—CLARKE v. ANDERSON (1839), 4 Ont. Dig. 7210.—CAN.

**PART VIII. SECT. 3.**

*m (p. 242) i. — — — — —.*—When a contract of sale & purchase is put an end to by the vendor on the purchaser's default, & it is silent as to the right in that event to retain or recover back instalments of the purchase-money already paid, the purchaser can recover them from the vendor subject to the deduction of the amount of such loss as the vendor has suffered through the purchaser's failure to complete.—STEPHENSON v. BROMLEY, [1928] 4 D. L. R. 737; [1928] 3 W. W. R. 370; 37 Man. L. R. 487.—CAN.

*o (p. 242) i. — — — — —.*—HAGEN v. FERRIS (1915), 31 W. L. R. 661; 8 W. W. R. 1039.—CAN.

*m (p. 243) i. — Repudiation by purchaser.*—Where an agreement for the sale of land is silent as to what is to become of instalments of purchase-money already paid on the cancellation of the contract, the purchaser is not entitled to recover them from the vendor where the purchaser has repudiated or voluntarily abandoned the contract.—GREAT WEST LIFE ASS'CE Co. v. PRAIRIE DEVELOPMENTS, LTD., [1928] 3 W. W. R. 601.—CAN.

*sr. On cancellation—Necessity for express agreement.*—CRONHOLM v. COLE [1928] 3 D. L. R. 321.—CAN.

**PART VIII. SECT. 4, SUB-SECT. 1.**

*a i. — Failure of vendor to perform condition—Condition to leave bond on property.*—FREEMAN v. MAXWELL, [1928] S. C. (Ct. of Sess.) 682.—SCOT.

**PART VIII. SECT. 4, SUB-SECT. 3.—A. (a).**

*st. Vendor unable to give title—Public Works Act, 1908, s. 116.*—UPHAM v. BARDESS, [1927] N. Z. L. R. 722.—N.Z.

**PART VIII. SECT. 4, SUB-SECT. 3.—D. (a).**

*p. Revsd.,* 15 Sask. L. R. 410.

**PART VIII. SECT. 7, SUB-SECT. 4.—A. (c).**

*2335 i. Revsd.,* 10 Alta. L. R. 478.

## Part IX.—The Conveyance.

**2366.** *Add. Annotation*.—**Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.

**2367.** *Add. Annotation*.—**Refd.** *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

**2379a.** ———. ]—**Re** *DURRANT & STONER* (1881), 18 Ch. D. 106; 45 L. T. 363; 30 W. R. 37, C. A.

*Annotations*.—**Refd.** *Re Newton's Trusts* (1882), 23 Ch. D. 181; *Miller v. Collins*, [1896] 1 Ch. 373.

**2382.** *Add. Annotation*.—**Refd.** *General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 139 L. T. 225.

**2475.** *Add. Annotation*.—**Refd.** *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

**2475a.** ———. **Consent in favour of specified nominee.**—On a sale of leaseholds by an original lessee, completion in favour of a solvent nominee of the purchaser can be enforced, unless it is shown that the sale was granted upon considerations purely personal to the purchaser, but the purchaser must join in the assignment for the purpose of guaranteeing the performance of the covenants.

Pltf. co. agreed to purchase from deft. property of which deft. was under-lessee. Her underlease contained a covenant not to assign without the under-lessor's consent, not to be withheld in the case of a responsible assignee. The under-lessor refused a licence to assign to pltf. co., but deft.'s solrs. were

informed that a licence would be granted to complete in favour of a specified nominee. The licence was in fact available, but deft. never formally applied for it; & ultimately her solrs. returned the deposit paid by pltf. co., who thereupon brought this action for specific performance. **Held**: deft. could be compelled to complete in favour of the specified nominee.

LORD CAIRNS indeed seems to have considered that, if the phrase [subject to the title being approved by our solrs.] meant what the Ct. of Appeal thought it meant, it would follow that the purchaser was at liberty through the medium of his solr. to decline the title from mere caprice; but none of the judges accepted this extreme view. It is reasonable, they thought, to imply good faith as a necessary ingredient. On the other hand, it seems to be putting an undue strain on the words to construe them, when used by a layman, as connoting not the approval of his own solr., which is their plain, ordinary meaning, but the decision of a Ct. of justice after an unknown delay & at an unascertainable cost (MAUGHAM, J.).—*CURTIS MOFFAT, LTD. v. WHEELER*, [1929] 2 Ch. 224; 98 L. J. Ch. 374; 141 L. T. 538.

**2530a.** **Right to give directions as to application of purchase-money—Application of Law of Property Act, 1925 (c. 20), s. 27.**—**Re** *WIGHT & BEST'S BREWERY CO., LTD.'S CONTRACT* (1928), 73 Sol. Jo. 76.

## Part XI.—Position of Parties after Completion.

**2623a.** **Covenant for joint user of cistern—Construction.**—**HEY v. APPELYARD** (1855), 24 L. T. O. S. 310.

**2656.** *Add. Annotation*.—**Mentd.** *Graigola Merthyr Co. v. Swansea Corpn.*, [1929] A. C. 344.

**2683a.** ———. ]—**STEVENS v. WILLING & CO., LTD.**, [1929] W. N. 53.

## PART IX. SECT. 1.

**sv. What passes by conveyance.**—Buildings erected by the owner of land for use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They therefore became the property of deft. who became registered owner of the land in pursuance of the purchase thereof at a tax sale under the Assessment Act. Certain machinery in said buildings was also held part of the realty.—*MCCUTCHEON v. LIGHTFOOT*, [1928] 2 W. W. R. 240.—**CAN.**

**sw. ———.**—Wire fencing & fence posts erected or completed by the deft. while he occupied land, previously rented to him, as purchaser under an instalment agreement made with the Crown held to have become part of the soil, & therefore, to have passed to the Crown when the deft. gave up the agreement & surrendered all his interest in the land to the Crown, & to have become subsequently the property of the pltf. when he purchased the land from the Crown.—*LAROCHELLE v. MARCHAND*, [1928] 3 W. W. R. 731.—**CAN.**

**PART IX. SECT. 5, SUB-SECT. 1.**—**E. (a).**

**sx. Description by reference to monu-**

**ments.**—Apart from special statutory provisions, the description in a conveyance of land is to be construed by reference to the monuments on the ground.—*McDONALD v. KNUDSEN*, [1928] 3 D. L. R. 242; [1928] 2 W. W. R. 577.—**CAN.**

**PART IX. SECT. 8, SUB-SECT. 3.—A.**

**sy. Crop-payment plan—Conversion of crop—Liability of purchaser.**—*GROVES v. HULL* (Alta.), [1926] 2 D. L. R. 640; [1926] 1 W. W. R. 910.—**CAN.**

**sz. Agreement by purchaser to pay a certain sum & to take over a loan of specified amount—Loan of smaller amount—Subsequent agreement by purchaser to pay difference—Action for balance of purchase price.**—*LONGOBARDI v. LARKIN* (1928), 28 S. R. N. S. W. 248; 45 N. S. W. W. N. 64.—**AUS.**

**PART IX. SECT. 8, SUB-SECT. 3.—B. (c) ii.**

**2532 i. Authority to receive purchase-money.**—Where the vendor's solicitor appropriated the purchase-money to his own use:—**Held**: the solr. was agent for the vendor, who must bear the loss.—*CY ESEMAN v. COREY* (1913), 13 E. L. R. 469; 15 D. L. R. 445.—**CAN.**

**PART IX. SECT. 8, SUB-SECT. 3.—D. (a).**

**sa. Conveyance to trustee—Agreement for sale by holders of equitable estate—Party entitled to purchase-money.**—*DRAPER v. RADENHURST* (1892), 21 S. C. R. 714.—**CAN.**

**PART XI. SECT. 2, SUB-SECT. 1.**

**q. affd.** [1928] 3 D. L. R. 491; [1928] 2 W. W. R. 307; 23 Alta. L. R. 474.—**CAN.**

**PART XI. SECT. 2, SUB-SECT. 3.—B. n i.**—**Covenant for supply of water.**—*ROSAMUND v. FORGIE* (1871), 18 Gr. 370.—**CAN.**

**PART XI. SECT. 2, SUB-SECT. 4.—B.**

**2666 viii.** ———. ]—*WANEK v. THOLM*, [1928] 2 D. L. R. 793; [1928] 1 W. W. R. 903.—**CAN.**

**PART XI. SECT. 2, SUB-SECT. 4.—C. (a) i.**

**d i.** ———. ]—**"Sunroom"**—*Whether verandah or porch*—*Re CAMPBELL & COWDY*, [1928] 1 D. L. R. 1031; 61 O. L. R. 545.—**CAN.**

**d ii.** ———. ]—**"Duplex house"**—*Whether detached residence.*—*Re TORONTO GENERAL TRUSTS CORPN. & CROWLEY*, [1928] 4 D. L. R. 609; 62 O. L. R. 593.—**CAN.**

- 2698.** *Add. Annotation:—Consd. Sunderland & South Shields Water Co. v. Hilton* (1928), 97 L. J. K. B. 516.
- 2700.** *Add. Annotation:—Distd. Sunderland & South Shields Water Co. v. Hilton* (1928), 97 L. J. K. B. 516.
- 2701a.** **Covenant against building bungalow—Meaning of “bungalow.”**—A conveyance contained a covenant by the purchaser “not to erect more than one bungalow” on the piece of land conveyed:—*Held*: a bungalow was a building of which the walls, with the exception of any gables, were no higher than the ground floor, & of which the roof started at a point substantially not higher than the top of the wall of the ground floor, & that it was immaterial in what way the space in the roof of the building so constructed was used. —*WARD v. PATERSON*, [1929] 2 Ch. 396; 45 T. L. R. 519; 98 L. J. Ch. 446; 141 L. T. 683.
- 2705a.** — [.] —Plff. & deft. both derived title to their respective properties from a common predecessor, who on his own purchase of both properties in 1876 covenanted with his vendors not to erect any dwelling-house at a less cost price than £800, or any pair of semi-detached villas at a less cost price than £1,200. In 1927 deft. built houses at prices exceeding these amounts, but the houses, owing to the great increase of building prices since 1876, were not of the type indicated by the prices of that date:—*Held*: deft. had not broken the 1876 covenants, which, on construction, related to the building prices ruling at the time the houses were actually erected.—*GRANT v. DERWENT*, [1929] 1 Ch. 390; 98 L. J. Ch. 70; 140 L. T. 330; 93 J. P. 113; 73 Sol. Jo. 59; 27 L. G. R. 179, C. A.
- 2757.** *Add. Annotation:—Refd. Shaw v. Public Trustee* (1929), 141 L. T. 465.
- 2776.** *Add. Annotation:—Apld. Coplovitch v. Williams* (1929), 73 Sol. Jo. 484.
- 2779.** *Add. Annotation:—Refd. Grant v. Derwent*, [1928] Ch. 902.
- 2807a.** **Action to enforce restrictive covenant—What included—Exercise of power of re-entry of leasehold premises.**—An action by a reversioner to recover possession of leasehold land, under a power of re-entry, for breach of a restrictive covenant contained in the lease is not a “proceeding by action . . . to enforce a restrictive covenant” within Law of Property Act, 1925 (c. 20), s. 84 (9). The ct. therefore will not stay such an action to enable the deft. to apply to the authority referred to in the section for an order modifying or discharging the restriction which is the subject of the action.—*IVEAGH v. HARRIS*, [1929] 2 Ch. 142; 98 L. J. Ch. 280; 141 L. T. 508; 45 T. L. R. 319.
- 2972.** *Add. Annotation:—Mentd. Weld v. Petre* (1928), 97 L. J. Ch. 399.
- 3040.** *Add. Annotation:—Mentd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

**PART XI. SECT. 2, SUB-SECT. 4. -**  
**C. (a) ii.**

**82. Covenant to erect "house" —**  
**Garage.**—Pltf. & another sold certain property to deft. subject to the condition that deft. erect a house of certain dimensions, hereof, which would be within less than six feet from the west side of the lot so sold; *Heft.* the word "house" as so used included the ordinary outbuildings, & therefore, pltf. was entitled to an injunction restraining deft. from proceeding with the building of a garage. —**MILLIKEN v. YOUNG, [1928] 3 W. W. R. 547. — CAN.**

**PART XI. SECT. 2, SUB-SECT. 4.—**  
C. (a) iv.

n i. ————,]— Re EGLINTON

& BEDFORD PARK PRESBYTERIAN  
CHURCH, [1928] 1 D. L. R. 354; 61  
O. L. R. 430.—CAN.

PART XI. SECT. 2, SUB-SECT. 4.—  
D. (a).

**§§. Notice under Property Law Act, 1908, s. 94.**—**McCONNELL v. McCORMICK**, [1929] N. Z. L. R. 560. —**N.Z.**

**PART XI. SECT. 2, SUB-SECT. 5.—A.**

80. *What amounts to—Security bond undertaking to compensate purchaser if land taken—(Covenant of indemnity—Not covenant for title.)—NATESA VANNIYAN v. GOPALASWAMI MUDALIAR (1927). I. L. R. 51 Mad. 688.—IND.*

**PART XI. SECT. 2, SUB-SECT. 5.—**  
**B. (d).**

f i. — — — —. — VANDERBURGH v.  
VANAISTINE (1837), 5 O. S. 451.—  
CAN.

**PART XI, SECT. 4, SUB-SECT. 1.**

sd. Execution - Whether "liquid assets" within Land Titles Act, s. 94.) - NORTH v. LAUWERYSSEN (Alta.), [1927] 2 D. L. R. 758; [1927] 1 W. W. R. 687. - CAN.

**PART XI. SECT. 4, SUB-SECT. 4.—**  
**A. (b) i.**

**2978** iv. ——. —.—.]—HARILAL DALSUKHRAM v. MULCHAND (1928), I. L. R. 52 Bom. 883. —**IND.**



## SET-OFF AND COUNTERCLAIM.

## Part I.—Set-Off.

2. *Add. Annotation* :—**Mentd.** Aktieselskabet Ocean v. Harding, [1928] 2 K. B. 371.
48. *Add. Annotation* :—**Refd.** Ellesmere (Earl) v. Wallace, [1929] 2 Ch. 1.
117. *Add. Annotation* :—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde des Oliveira, [1929] 1 Ch. 221.
192. *Add. Annotations* :—**Refd.** Cottage Club Estates v. Woodside Estate Co., Amersham (1927), 97 L. J. K. B. 72; Earle v. Hemsworth R. D. C., [1928] 140 L. T. 69.
193. *Add. Annotation* :—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde des Oliveira, [1929] 1 Ch. 221.
290. *Add. Annotation* :—**Mentd.** Shell-Mex v. Elton Cop Dyemg Co. (1928), 34 Com. Cas. 39.

## Part II.—Counterclaim.

307. *Add. Annotation* :—**As to** (1) **Refd.** Lowe v. Bentley (1928), 44 T. L. R. 388.
314. *Add. Annotation* :—**Refd.** Lowe v. Bentley (1928), 44 T. L. R. 388.
319. *Add. Annotation* :—**Refd.** Aktieselskabet Ocean v. Harding, [1928] 2 K. B. 371.
322. *Add. Annotations* :—**Mentd.** Finlay James & Co. v. N. V. Kwik Hoo Tong, [1929] 1 K. B. 400; Kaufmann v. British Surety Insce. Co. (1929), 45 T. L. R. 399.
327. *Add. Citation* :—72 Sol. Jo. 254.
372. *Add. Annotation* :—**Mentd.** Crossingham v. Park, [1928] 1 K. B. 330.
379. *Add. Annotations* :—**Refd.** Lowe v. Bentley (1928), 44 T. L. R. 388. **Mentd.** Vanderpant v. Mayfair Hotel Co. (1929) 27 L. G. R. 752.

## Part III.—Pleading and Practice.

535. *Add. Annotation* :—**Refd.** Medway Oil & Storage Co. v. Continental Contractors [1929] A. C. 88.
550. *Add. Annotation* :—**Consd.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
555. *Add. Annotation* :—**Consd.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
562. For existing paragraph substitute :—  
Where a claim & counterclaim are both dismissed with costs, upon the taxation of the costs, the true rule is that the claim should be treated as if it stood alone, & the counterclaim should bear only the amount by which the costs of the proceedings have been increased by it. No costs not incurred by reason of the counterclaim can be costs of the counterclaim. In the absence of special directions by the ct. there should be no apportionment. The same principle applies where both the claim & the counterclaim have succeeded. MEDWAY OIL & STORAGE CO. v. CONTINENTAL CONTRACTORS, [1929] A. C. 88; 98 L. J. K. B. 148; 110 L. T. 98; 45 T. L. R. 20. H. L.; *reversing* S. C. *sub nom.* CONTINENTAL CONTRACTORS v. MEDWAY OIL & STORAGE CO., [1928] 1 K. B. 238, C. A.
568. *Add. Annotation* :—**Distd.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
569. *Add. Annotation* :—**Folld.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
570. *Add. Annotation* :—**Refd.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
571. *Add. Annotation* :—**Apprvd. & Folld.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
574. *Add. Annotation* :—**As to** (3) **Consd.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.

**PART I. SECT. 3, SUB-SECT. 1.**  
38 xvi. —.]—CLARKSON v. ALLISTON CORPN., [1928] 2 D. L. R. 715; 62 O. L. R. 149.—CAN.

**PART I. SECT. 4, SUB-SECT. 1.**  
p. *Revsd.*, [1913] A. C. 160.  
k (p. 377). For “(1867), 3 Agra, 43” read “(1868), 4 Agra, 43.”

**PART II. SECT. 2, SUB-SECT. 1.**  
317 vi. —.]—THOMAS v. WORDEN, [1928] 1 D. L. R. 217.—CAN.

321 x. —.]—To allow a counterclaim or set-off the ct. must as a condition precedent be vested with the jurisdiction of hearing both the action & the counterclaim or set-off.—R. v. COSGRAVE EXPORT BREWING CO., LTD., R. v. JOHN LABATT, LTD., [1928] Ex. C. R. 103.—CAN.

**PART II. SECT. 2, SUB-SECT. 5.**  
r (p. 414) i. —] *Counterclaim for fraudulent misrepresentation.*—**Held**: the counterclaim being based not upon the contract but upon delict, could not be dealt with in the action on the contract.—SMART v. WILKINSON, [1928] S. C. 383.—SCOT.

**sa. Action for alimony.—Counterclaim for divorce.**—A claim for divorce may be set up by a counterclaim to an action for alimony.—SCHEERER v. SCHEERER, [1928] 1 W. W. R. 305; 22 Sask. L. R. 302.—CAN.

**PART III. SECT. 1, SUB-SECT. 2.**  
p. For “Q. R. 29 S. C. 516,” read “*revsd.*,” 29 S. C. R. 516.”

**PART III. SECT. 2, SUB-SECT. 4.—**  
C. (a).

**so. Statute of Limitations.**—With

respect to the application of Stat. Limitations to a counterclaim it is sufficient for plff. to prove that the counterclaim was barred when it was pleaded.—REED v. THREL, [1928] 4 D. L. R. 72; [1928] 2 W. W. R. 115; 22 Sask. L. R. 495.—CAN.

**so. Res judicata.**—DAVIS v. DAVIS, [1928] 3 D. L. R. 69; [1928] 2 W. W. R. 130; 23 Alta. L. R. 355.—CAN.

**PART III. SECT. 2, SUB-SECT. 9.—**  
B. (a).

552 xvii. —.]—STARK v. BATCHELOR, [1928] 1 D. L. R. 815; 63 O. L. R. 135.—CAN.

**PART III. SECT. 2, SUB-SECT. 9.—**  
B. (b).

**sg. Discretion of judge.**—AUSTIN v. O'KEEFE, [1928] V. L. R. 485; [1928] Argus L. R. 374.—AUS.

## SETTLEMENTS.

## Part II.—Creation and Construction of Settlements.

17a. — — — To be settled at attainment of majority.]—*LAING v. LAING* (1839), 10 Sim. 315; 9 L. J. Ch. 48; 3 Jur. 1119; 59 E. R. 636.

74a. Express estate given not enlarged by implication.]—*TIEEBRIDGE v. KILBURN* (1751), 2 Ves. Sen. 233; 28 E. R. 150, L. C.

Annotations:—*Consd.* *Campbell v. Harding* (1831), 2 Russ. & M. 390; *Verulam Earl v. Bathurst* (1843), 13 Sim. 371. *Refd.* *Lyons v. Mitchell* (1816), 1 Madd. 467.

83a. Gift followed by proviso against absolute vesting.—Subsequent trusts not exhausting absolute interest.]—Where there was an absolute gift, followed by a proviso against absolute vesting & for retention of the funds by the trustees, & the subsequent trusts did not exhaust the absolute interest, but there was a failure of those trusts:—*Held*: the proviso only had the effect of cutting down the absolute interests to the extent to which it was necessary to give effect to the trusts & no further, & the absolute gift accordingly remained. *Re COHEN, COHEN v. COHEN* (1915), 60 Sol. Jo. 239.

86a. — — — Ambiguity.]—*GARNER v. GARNER* (1860), 29 Beav. 114; 3 L. T. 396; 7 L. T. 182; 54 E. R. 570.

134a. "For default of such issue."—*DOE d. LEES v. FORD* (1853), 2 E. & B. 970; 2 C. L. R. 654; 23 L. J. Q. B. 53; 22 L. T. O. S. 184; 18 Jur. 420; 118 E. R. 1029.

140a. "My own heirs whatsoever."—*GORDON v. GORDON* (1882), 7 App. Cas. 713, H. L.

146a. "Any husband who might survive her"—Whether applicable to divorced husband.]—A woman beneficiary under a settlement was given a power of appointment "for the benefit of any husband who might survive her." The beneficiary married, & she exercised the power of appointment in favour

of her husband in the event of his surviving her. Afterwards she divorced her husband, & she died without having been remarried, leaving her divorced husband surviving her:—*Held*: the power could be exercised only in favour of a person who was the beneficiary's husband at the time of her death, & therefore the divorced husband did not take under the exercise of the power.—*BOSWORTHICK v. CLEGG* (1929), 45 T. L. R. 438.

Annotation:—*Apprvd.* *Re Williams' Settlement, Greenwell v. Humphries*, [1929] 2 Ch. 361.

146b. — — —.]—Under a marriage settlement made in 1902 of property belonging to the wife, power was reserved to her in the event, which happened, of there being but one child of the then intended marriage, to revoke the trusts of the settlement as to three-quarters of the settled funds & to resettle the same for the benefit of any husband who might survive her, but so that he should not take more than a life interest therein, & any child or other issue of a future marriage. The wife, having been divorced, remarried in 1908, & exercised the power in favour of her second husband. In 1923 the second marriage was dissolved upon the husband's petition, & the wife again remarried. She died in 1928, leaving her first, second & third husbands surviving her:—*Held*: the second husband, although he survived his former wife, was not entitled to any interest under the appointment of 1908, as he had ceased to be her husband on the dissolution of the marriage.—*Re WILLIAMS' SETTLEMENT, GREENWELL v. HUMPHRIES*, [1929] 2 Ch. 361; 98 L. J. Ch. 358; 141 L. T. 579; 45 T. L. R. 541; 73 Sol. Jo. 384, C. A.

Annotation:—*Apld.* *Bosworthick v. Clegg* (1929), 45 T. L. R. 438.

## Part III.—Contracts for Settlements.

165. *Add. Annotation*:—*Refd.* *Chaney v. Maclow* (1928), 97 L. J. Ch. 349.

180. *Add. Annotation*:—*Mentd.* *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.

203. *Add. Annotation*:—*As to* (2) *Apld.* *Re Marshall, Graham v. Marshall*, [1928] Ch. 661.

204a. — — —.]—*JOHNSTONE v. MAPPIN* (1891), 60 L. J. Ch. 241; 64 L. T. 48.

291. *Add. Annotation*:—*Mentd.* *Re Price*, [1928] Ch. 579.

386a. — — —.]—*OTWAY v. BRAITHWAITE* (1679), Cas. Temp. Finch, 405; 23 E. R. 221.

533. *Add. Annotation*:—*Refd.* *Re Smith, Franklin v. Smith*, [1928] Ch. 10.

535. *Add. Annotation*:—*Apld.* *Re Smith, Franklin v. Smith*, [1928] Ch. 10.

583. *Add. Annotation*:—*Refd.* *Re Brooks, Public Trustee v. White*, [1928] Ch. 214.

## PART II. SECT. 3, SUB-SECT. 3.—E.

sa. *The right heir.*—A settlement provided that in certain events the

settled lands should revert to "the right heir of (the settlor) & his or her heirs & assigns for ever":—*Held*: the words "the right heir" designated

the next of kin of settlor.—*Re MACDONALD'S SETTLEMENT, O'CALLAGHAN v. O'CALLAGHAN*, [1928] V. L. R. 421; [1928] Argus L. R. 148.—*AUS.*

## Part V.—Consideration for Settlements.

**736.** *Add. Annotation:—Refd.* *Papadopoulos v. Papadopoulos* (1929), 46 T. L. R. 44.

**740a.** ———. ] —*E. v. E.* (1893), 37 Sol. Jo. 250.

**740b.** *Cohabitation without marriage for several years.*—By a settlement executed in 1877, in consideration of a then intended marriage, it was declared that a sum of stock, the property of the intended wife, which had been transferred by her to two trustees, should be held by them on trust for the benefit of the intended wife, the intended husband, & the issue of the intended marriage. The marriage was not solemnised, but the parties cohabited without marriage, & three children were born. In 1883 an action was brought by the father & mother against the trustees of the settlement, to obtain a transfer of

the fund to the mother:—*Held*: the contract to marry had been absolutely put an end to, & the ct. could order the stock to be transferred to the lady. *ESSERY v. COWLAND* (1884), 26 Ch. D. 191; 53 L. J. Ch. 661; 51 L. T. 60; 32 W. R. 518.

*Annotation:—Appl. E. v. E.* (1893), 37 Sol. Jo. 250.

**770.** *Add. Annotation:—Mentd.* *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

**803a.** ———. ] —*BURROWS v. GREENWOOD* (1840), 4 Y. & C. Ex. 251; 5 Jur. 384; 160 E. R. 999.

**803b.** ] —The trustees & *cestui que trust* under a voluntary settlement cannot compel the settlor to perform any further act than he has already done to render such a settlement operative. *DENING v. WARE* (1856), 22 Beav. 184; 4 W. R. 523; 52 E. R. 1078.

## Part VI.—Rectification and Variation of Settlements and Articles.

**875.** After this case add:—

*Effect on construction of referential trusts.*—*See TRUSTS*, No. 493a, *post*.

## Part VII.—Revocation and Avoidance of Settlements.

**897a.** ———. *By subsequent sale of settled property.* ] —*Held*: the selling out of the settled stock did not amount to a virtual revocation of the settlement.—*BLACKWELL v. WOOD* (1831), 1 L. J. Ch. 35.

**913a.** ———. ] —*GUY v. DORMER* (1677), T. Raym. 295; 83 E. R. 152.

*Annotations.—Consd. Doe d. Nowell v. Roake* (1825), 2 Bing. 497. *Refd. Bath & Mountague's Case* (1693), 3 Cas. in Ch. 35.

**938a.** ———. ] —*LAMPERT v. LAMPERT* (1789), 1 Ves. 20; 30 E. R. 210.

## Part VIII.—Beneficial Interests in Personalty.

**1011a.** ———. ] —By the second clause of marriage articles, it was agreed, that a sum should be settled on the wife, not stating how, & the husband renounced his marital right over it during the coverture. The fourth clause provided that, in case of her death leaving issue, it should belong to the husband & children successively; the fifth gave her a power of appointment, if she died without issue; & the sixth provided that the income should, “in all cases,” belong to the husband during his life. There was no express life estate given to the wife:—*Held*: the wife,

by implication, took an immediate life estate to her separate use.—*BYAM v. BYAM* (1854), 19 Beav. 58; 24 L. J. Ch. 209; 1 Jur. N. S. 79; 3 W. R. 95; 52 E. R. 270.

*Annotation:—Mentd. Re Smith, Eastick v. Smith*, [1904] 1 Ch. 139.

**1054.** *Add. Annotation:—Appl. Re Gooch*, *Gooch v. Gooch*, [1929] 1 Ch. 740.

**1059a.** ———. *Application of accumulations during minority.* ] —Certain property was vested in the Public Trustee under a settlement, whereby the settlor directed him after her decease

## PART V. SECT. 5, SUB-SECT. 3.

**768 i.** ———. *Settlor must do everything necessary to transfer property.* ] —In order to constitute a valid & effective voluntary settlement binding upon the settlor, he must have done everything which, according to the nature of the property comprised in the settlement,

was necessary to be done to transfer the property either to the persons for whom he intends to provide, or to a trustee for the purposes of the settlement, or have declared that he himself holds it in trust for such purposes: & the expression of a mere executory intention to create a trust, or voluntary agreement to do so is insufficient for

such purpose. *HAMILTON v. IZARD*, [1929] N. Z. L. R. 498. N.Z.

## PART VI. SECT. 1, SUB-SECT. 4.

*m i. ———. Mistake. Sufficiency of evidence.* ] *GOODWIN v. ROYAL TRUST CO.*, [1928] 1 D. L. R. 309; 39 B. C. R. 113. CAN.

to pay the income to the tenants for life therein mentioned, & directed that after the death of any tenant for life the share of that tenant for life should be held in trust for the grandchildren of the settlor in manner therein mentioned. One of the tenants for life died in the lifetime of the settlor. A summons was taken out by the Public Trustee for the direction of the ct. as to the application of the accumulations of income of the share of the tenant for life who died in the lifetime of the settlor, having regard to the facts that (a) no grandchild of the settlor had attained the age of twenty-one years, or being female had married, at the death of the settlor; (b) one of the grandchildren of the settlor was born after the dates, when two of such grandchildren had attained the age of twenty-one years, & (c) a grandchild of the settlor, who survived the settlor, died under the age of twenty-one years: *Held*: (1) the property from which the accumulated income arose must be regarded as the share to which the infant

would become ultimately entitled, even though that share might be reduced by reason of other members of the class coming into existence; (2) the share of the grandchild, who had died under the age of twenty-one years, which had been provisionally assigned to that grandchild, ought to be treated as not having been properly assigned, & that portion of the money which had accrued while the infant was a member of the class, & which had not been applied in the maintenance & education of the infant, ought to be reassigned amongst the other persons who were at that time members of the class; (3) observations on the method of dealing with accumulations of income provisionally assigned to infant members of a class, having regard to Conveyancing Act, 1881 (c. 41), s. 43, & Trustee Act, 1925 (c. 19), s. 31.—*Re KING. PUBLIC TRUSTEE v. ALDRIDGE*, [1928] Ch. 330; 97 L. J. Ch. 172; 138 L. T. 641.

1071a. — — — — —.] *PECK v. PARROT* (1749), 1 Ves. Sen. 236; 27 E. R. 1004, L. C.

## Part IX.—Beneficial Interests in Realty.

1260. *Add. Annotations*:—*Distd. Re Williams' Settlement*, *Greenwell v. Humphries*, [1929] 2 Ch. 361.

1526a. ——— *Sale of lands charged to pay debts—Charge on other lands of settlor.*—*LEGH v. LEGH* (1846), 15 Sim. 135; 60 E. R. 568. *Annotation*:—*Reid. Re Saunders-Davies*, *Saunders-Davies v. Saunders-Davies* (1887), 56 L. J. Ch. 492.

1604a. — — — — —.]—*STAWELL v. AUSTIN* (1677), 2 Rep. Ch. 125; 21 E. R. 635.

1779a. ———.]—*WARMAN v. SEAMAN* (1675), 2 Cas. in Ch. 209; *Freem. Ch.* 306; *Poll.* 112; *Cas. temp. Finch*, 279; 22 E. R. 914; *sub nom. SEAMAN v. WARMAN*, *Freem. K. B.* 306; 3 Keb. 544.

*Annotations*:—*Reid. Lyon v. Mitchell* (1816), 1 Madd. 467; *Re Wynch Trusts, Ex p. Wynch* (1854), 5 De G. M. & G. 188; *Roddy v. Fitzgerald* (1858), 6 H. L. Cas. 823.

1786a. — — — *Conditional gift.*—By marriage settlement, C., the husband, in consideration of the intended marriage & of the fortune of S., the wife, to which C. was to become entitled on the marriage, released land to the use of himself in fee until the marriage; & after the marriage, to the use of himself for life; remainder to trustees to preserve contingent remainders; & after the decease of C., in case S. should survive him, to the use of S. for life; remainder to trustees to preserve contingent remainders; & after the decease of the survivor of C. & S., in case there should be only one child of the marriage, then living,

& no other child then dead leaving issue, to the use of such child in fee; but, in case there should happen to be more than one such child living at the decease of the survivor of C. & S., or any child or children then dead leaving issue, then to the use of all such children of C. & S. & such children's children, respectively, for such estates as C. & S. should jointly appoint, & in default of such appointment, as the survivor should appoint: & in default of such appointment, to the use of all the children of the marriage as tenants in common & of the heirs of their respective bodies, with cross remainders; & "for default of all such issue," to the use of four brothers & sisters of S. as tenants in common in fee. S. survived C.: there were two children of the marriage, of whom both died, without leaving issue, in the lifetime of S. No appointment was made:—*Held*: the remainder to S.'s brothers & sisters took effect, as it was not a limitation in remainder after the determination of the estates given to the children as tenants in common in tail by the limitation immediately preceding, but was an independent limitation to take effect in case there were, at the time of the death of the survivor of C. & S., no issue in whom any of the previous limitations could vest.—*DOE d. LEES v. FORD* (1853), 2 E. & B. 970; 23 L. J. Q. B. 53; 22 L. T. O. S. 184; 18 Jur. 420; 2 C. L. R. 654; 118 E. R. 1029.

## Part X.—Tenant for Life and Remainderman.

1869. *Add. Annotations*:—*As to* (2) *Appld. Re Robins*, *Holland v. Gillam*, [1928] Ch. 721. *Reid. Re Conquest*, *Royal Exchange Assurance v. Conquest*, [1929] 2 Ch. 353; *Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662.

1872. *Add. Annotations*:—*As to* (1) *Reid. Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662. *As to* (2) *Distd. Re Robins, Holland v. Gillam*, [1928] Ch. 721. *Expld. Re Conquest, Royal Exchange Assurance v. Conquest*, [1929] 2 Ch. 353.

**1873.** For the existing paragraph substitute the following paragraph:—

— — — — —.]—Testator, who died in 1871, devised his real estate to his trustees upon trust to divide the income during a long period, namely during the joint lives & the life of the survivor of a large class of persons, amongst another class of persons, their respective exors., administrators & assigns; & declared that, on cesser of the period, the land should be sold, & the net proceeds of sale divided amongst a third class of persons only then ascertainable, & he gave his trustees a power of sale until the trust for sale arose. Immediately before the commencement of Law of Property Act, 1925 (c. 20), all the *cestuis que vie* were dead except one, & all the original participants in income were also dead except one, & the income for many years had been distributed amongst their respective estates or assigns:—*Held*: (1) the land was held in undivided shares within Law of Property Act, 1925, Sched. I., Part IV., par. 1.

The trustees having received, through their surveyor, a notice from the local authority that certain premises, forming part of the trust estate, were in a defective condition, carried out the necessary repairs, & temporarily paid the cost thereof out of the rents of the trust estate:—*Held*: (2) the trustees having asked the ct. for directions, the ct. was free to determine how the expenses ought to be borne; (3) the expenses should be borne by capital.—*Re ROHNS, HOLLAND v. GILLAM*, [1928] Ch. 721; 97 L. J. Ch. 417; 139 L. T. 393.

*Annotations*:—*As to* (1) *Apld. Re House, Westminster Bank v. Everett*, [1929] 2 Ch. 166. *As to* (3) *Refd. Re Conquest, Royal Exchange Assce. v. Conquest*, [1929] 2 Ch. 353; *Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662.

**1873a.** — — — — — **Effect of Law of Property Act, 1925 (c. 20), s. 28 (1).**—The effect of above sub-sect. is (a) to give to trustees for sale powers of management of land, including the repair & rebuilding of houses, the cost of which, by virtue of sub-section 3 of Settled Land Act, 1925 (c. 18), s. 102, is payable out of income, & (b) to give power to trustees to make improvements which, under Settled Land Act, 1925 (c. 18), s. 84, coupled with the provisions of Sched. III. thereto, can be paid for out of capital. Therefore where trustees have a choice of powers under above sub-sect., they should be guided in their choice by the equitable principles laid down & applied in *Re Hotchkys, Freke v. Calmady*, No. 1869, & the language of the judgment in *Re Gray, Public Trustee v. Woodhouse*, No. 1872, is not to be construed as an authority for the contrary proposition.—*Re CONQUEST, ROYAL EXCHANGE ASSCE. v. CONQUEST*, [1929] 2 Ch. 353; 98 L. J. Ch. 441; 141 L. T. 685.

**1878a.** — — — — — **Permanent structural repairs.**—Dangerous structure notices were served by a local authority on trustees in respect of houses forming part of a trust estate. The necessary work involved pulling down, rebuilding, & reinstatement of the houses:—*Held*: the work involved structural reconstruction of a permanent nature, & that therefore the cost was to be provided for out of capital.—*Re WHITAKER, ROOKE v. WHITAKER*, [1929] 1 Ch. 662; 98 L. J. Ch. 312; 141 L. T. 28.

*Annotation*:—*Apld. Re Conquest, Royal Exchange Assce. v. Conquest*, [1929] 2 Ch. 353.

**1878b.** — — — — —.]—*Re SMITH, VINCENT v. SMITH*, [1929] W. N. 173.

**1884a.** — — — — —.]—Devise to A. & others on trust to apply the rents in payment of certain debts, then to apply them for the benefit of A. for life with remainders over, with a direction that A. should be allowed to occupy the premises, keeping them in repair, & paying £100 *per annum*, or such other rent as the trustees should think reasonable. A. was the only acting trustee. He continued to occupy the premises after testator's death. They were afterwards burnt down:—*Held*: A. was bound to reinstate the premises, & to pay £100 a year during the occupation after the fire.—*GREGG v. COATES, HODGSON v. COATES* (1856), 23 Beav. 33; 2 Jur. N. S. 964; 4 W. R. 735; 53 E. R. 13.

*Annotations*:—*Apld. Re Williams, Andrew v. Williams* (1883), 54 L. T. 105; *Re Bradbrook, Lock v. Willis* (1887), 56 L. T. 106. *Refd. Woodhouse v. Walker* (1880), 5 Q. B. D. 401; *Batthvany v. Walford* (1886), 33 Ch. D. 624.

**1891.** *Add. Annotation*:—*Refd. Re Weld-Blundell Estate, Mowbray (Lord) v. Weld-Blundell* (1929), 73 Sol. Jo. 585.

**1960a.** — — — — — **Vested legacy fund—Payment postponed.**—(1) The income of a fund set apart to answer a legacy vested but not payable until a future date falls into the residue as capital, & must, as between the tenant for life & the remainderman of the residue, be invested, & the income only arising from such investment paid to the tenant for life.

(2) The unapplied income of a fund set apart to answer an annuity payable at the discretion of trustees belongs to the tenant for life of the residue as income.—*Re WHITEHEAD, PRACOCK v. LUCAS*, [1891] 1 Ch. 678; 63 L. J. Ch. 229; 70 L. T. 122; 42 W. R. 491; 38 Sol. Jo. 183; 8 R. 142.

*Annotation*:—*Generally, Refd. Re Hawkins, White v. White*, [1916] 2 Ch. 570.

**1975a.** — — — — —.]—In 1838 property was demised for a term determinable on the dropping of three lives, reserving a yearly rent & a heriot payable on the dropping of each life, with a covenant for perpetual renewal at a specified fine on the dropping of each life. In 1869 the persons who had then become absolute owners subject to the lease settled the property in strict settlement, giving to a trustee ample powers of management, with powers to grant leases with or without covenants for renewal, & to perform any covenant for renewal previously entered into by any previous owner, or by the trustee for the time being, so that in every such appointment, lease or demise the best rent be reserved without taking any fine or premium. During the continuance of a tenancy for life under this settlement two lives dropped, & on each occasion a heriot was paid & the lease renewed by the trustee at a fine in pursuance of the covenant:—*Held*: the powers given to the trustee did not affect the question, & the fines & heriots were casual profits payable to the tenant for life.—*BIGSTOCKE v. BIGSTOCKE* (1878), 8 Ch. D. 357; 47 L. J. Ch. 817; 38 L. T. 760; 26 W. R. 761, C. A.

*Annotation*:—*Refd. Re Rodes, Sanders v. Hobson*, [1909] 1 Ch. 815.

**1976.** *Add. Annotation*:—*Mentd. Mallett v. Staveley Coal & Iron Co.* (1927), 138 L. T. 201.

**2007.** *Add. Annotation*:—*Apld. Re Bates, Moun-tain v. Bates*, [1928] Ch. 682.

**2009a.** —[—The directors of a co. owning & operating steam trawlers, having sold some of their vessels for sums largely exceeding the values at which they stood in the co.'s balance sheet, carried the proceeds to a suspense account & afterwards distributed them as cash bonuses to the shareholders, with a covering letter stating that such bonuses were capital payments not liable to income tax or super tax:—*Held*: not having been capitalised by the issue of bonus shares increasing the total capital, the payments were income receivable by the tenant for life during his life.—*Re BATES, MOUNTAIN v. BATES*, [1928] Ch. 682; 97 L. J. Ch. 240; 139 L. T. 162; 72 Sol. Jo. 468.

**2020a.** —[—*CALTHORPE'S LORD WILL CASE* (circa 1795), cited in 14 Ves. at p. 77; 33 E. R. 450.

*Annotations* —*Distd.* *Barelay v. Wainwright* (1807), 14 Ves. 66. *Refd.* *Re Bouch, Sproule v. Bouch* (1885), 29 Ch. D. 635.

**2035.** *Add. Annotations* :—*Distd.* *Re Bates, Mountain v. Bates*, [1928] Ch. 682; *Parker v. Chapman* (1928), 138 L. T. 729.

**2090.** *Add. Annotation* :—*Refd.* *Re Sullivan, Dunkley v. Sullivan* (1929), 45 T. L. R. 590.

**2127.** Add the following paragraph :—

If that sum had been six months' interest paid by the mtgor. instead of six months' notice before repayment of the mtge. moneys, then it would have been payable to the tenant for life (NORTH, J.).

**2131a.** *Repayment of income tax.* —*Re FULFORD, FULFORD v. HYSLOP*, [1929] W. N. 188.

**2157a.** *Benefits gained by compromise of claim against estate of testator.* —A claim made against the estate of testator was compromised by the payment of a large sum several years after testator's death:—*Held*: the amount due for principal & interest at testator's death must be treated as a debt due from his estate, & the corpus thereof reduced by that amount; & any benefit gained to the estate by the compromise must, as between the persons entitled to the corpus & income thereof, be apportioned in the ratio of the amount due from testator at the day of his death, to the further amount calculated to have been due from his estate at the time when the compromise was effected.—*MACLAREN v. STAINTON* (1867), L. R. 4 Eq. 448; 15 W. R. 974.

**2157b.** *Insufficiency of assets—Sums received on realisation.* —Testator bequeathed a legacy of £10,000 with interest from his death at 4 per cent. *per annum*, to trustees upon trust to pay the income to certain persons during the life of one of them, & after her death upon trust for other persons. Testator's estate was insufficient for payment in full of his legacies, & the realisation of his assets occupied several years:—*Held*: moneys from time to time received by the trustees & applicable to the legacy were divisible rateably between capital & income, so as to attribute to income £4 per cent. from testator's death on the amount attributed to capital.—

*Re TINKLER'S ESTATE* (1875), L. R. 20 Eq. 456; 45 L. J. Ch. 135.

*Annotation* :—*Refd.* *Re Foster, Lloyd v. Carr* (1890), 45 Ch. D. 629.

**2197a.** *Cost of rendering accounts for succession duty.* —*Held*: (1) the expense of fencing waste lands granted to a trustee for the benefit of the estate must be paid out of capital; (2) the costs of rendering accounts for the succession duty, payable for the first equitable tenant for life, must be paid out of income.—*COWLEY EARL v. WELLESLEY* (1866), L. R. 1 Eq. 656; 35 Beav. 635; 14 L. T. 245; 14 W. R. 528; 55 E. R. 1043.

*Annotations* :—*Generally*, *Mentd.* *Honywood v. Honwood* (1874), L. R. 18 Eq. 306; *Brigstocke v. Brigstocke* (1878), 8 Ch. D. 357; *Ellas v. Snowdon Slate Quarries Co.* (1879), 4 App. Cas. 454; *Dashwood v. Magniac*, [1891] 3 Ch. 306. *Re Kemeys Tynte, Kemeys Tynte v. Kemeys Tynte*, [1892] 2 Ch. 211; *Re Maynard's Settled Estates*, [1899] 2 Ch. 347.

**2197b.** *Calls on shares.* —Testator bequeathed residuary personality to trustees upon trust, either to continue existing investments or sell any part of the estate, & invest in certain stocks, shares & bonds. He directed calls, if any, which, at or after his death, might be or become due in respect of shares for the time being constituting part of his residuary personal estate, to be paid out of income:—*Held*: the direction applied to calls on railway shares held by testator at his death, but not to such shares acquired by the trustees.—*BEVAN v. WATERHOUSE* (1876), 3 Ch. D. 752; 46 L. J. Ch. 331.

**2202.** *Add. Annotation* :—*As to* (1) *Refd.* *Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662.

**2203.** *Add. Annotation* :—*Refd.* *Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662.

**2204.** *Add. Annotation* :—*Refd.* *Re Whitaker, Rooke v. Whitaker*, [1929] 1 Ch. 662.

**2205a.** *Enlargement of canal, docks & harbour.* —*Held*: the expenditure was a charge on the corpus of the estates comprised in the term.—*Re BUTE (MARQUESS), BUTE (MARQUESS) v. RYDER* (1884), 27 Ch. D. 196; 53 L. J. Ch. 1090; 32 W. R. 996.

*Annotation* :—*Mentd.* *Re Slade, Watson v. Witham* (1918), 87 L. J. Ch. 536.

**2205b.** *Cost of fencing waste lands.* —*COWLEY (EARL) v. WELLESLEY*, No. 2197a, *ante*.

**2207a.** *Liability for performance of covenants in lease.* —Testator, who had assigned during his life certain leasehold property, bequeathed by his will other leaseholds & the residue of his property to tenants for life, with remainders over. The assignees of the leaseholds became bkpt., & the exors. of testator took a reassignment of those leaseholds. Liabilities having arisen under the covenants in the original lease, it was held that those liabilities must fall upon the corpus, & not upon the income, of testator's estate.—*ALLEN v. EMBLETON* (1858), 4 Drew. 226; 27 L. J. Ch. 297; 4 Jur. N. S. 79; 6 W. R. 272; 62 E. R. 87.

*Annotations* :—*Apld.* *Re Owen, Slater v. Owen*, [1912] 1 Ch. 519. *Mentd.* *Pitt v. Pitt* (1872), 26 L. T. 827.

**2209a.** —[—*Re LORIMER* (1850), 12 Beav. 521; 19 L. J. Ch. 524; 16 L. T. O. S. 406; 14 Jur. 1126; 50 E. R. 1160.

- 2209b.** ————.]—A sum of money having been paid into court under Trustee Relief Act, a petition was presented by the tenant for life for payment of the dividends :—*Held* : the *corpus* of the fund was not liable to bear the costs of the appln.—*Re* BANGLEY'S TRUST (1852), 21 L. J. Ch. 875 ; 19 L. T. O. S. 269 ; 16 Jur. 682.
- 2209c.** ————.]—*Re* BUTLER'S TRUST (1859) 18 T. 224.
- 2222.** For "*Re* WOOD'S ESTATE, No. 2311, *post*," substitute the following : "*Re* WOOD'S TRUSTS (1870), L. R. 11 Eq. 155 ; 40 L. J. Ch. 179 ; 23 L. T. 586 ; 19 W. R. 227."
- Annotation* :—*Consd.* *Re* Evans' Trusts (1872), 26 L. T. 682.
- 2243a.** ————.]—*POWYS v. BLAGRAVE* (1854), 4 De G. M. & G. 418 ; 2 Eq. Rep. 1204 ; 24 L. J. Ch. 142 ; 24 L. T. O. S. 17 ; 2 W. R. 700 ; 43 E. R. 582. L. C.
- Annotations* :—*Consd.* *Re* Hotchkys, *Froke v. Caluady* (1886), 32 Ch. D. 408. *Refd.* *Barnes v. Dowling* (1881), 44 L. T. 809 ; *Re* Williams, *Andrew v. Williams* (1881), 52 L. T. 41 ; *Re* Cartwright, *Avis v. Newman* (1889), 41 Ch. D. 522 ; *Re* Freeman, *Diamond v. Newburn*, [1898] 1 Ch. 28. *Mentd.* *Warren v. Rudall, Ex p. Godfrey* (1860), 1 John. & H. 1 ; *Blackmore v. White*, [1899] 1 Q. B. 293.
- 2243b.** ———— **Opposition to Bill in Parliament.**]  
—*Re* ORMEROD'S SETTLED ESTATE, [1892] 2 Ch. 318 ; 61 L. J. Ch. 651 ; 66 L. T. 845 ; 10 W. R. 190 ; 36 Sol. Jo. 427.  
*Annotations* :—*Refd.* *Re* Bristol's (Marquis) Settled Estates, [1893] 3 Ch. 161 ; *Re* L. C. C., *Ex p. Pennington* (1901), 81 L. T. 808.
- 2254a.** ————.]—*HAWKINS v. HAWKINS* (1836), 6 L. J. Ch. 69.  
*Annotation* :—*Distd.* *Makings v. Makings* (1860), 1 De G. F. & J. 357.
- 2297a.** **Annuity fund Unapplied income.**]—*Re* WHITEHEAD, PEACOCK *v.* LUCAS, No. 1960a, *ante*.
- 2319a.** **Temporary investment—Apportionment of loss.**]—A sum of money appointed to be laid out in a purchase to the use of A. for his life, remainder to his eldest son, subject to : for the provision of younger children ; money to be let out in any public fund, till a convenient purchase found : if a loss happens before the purchase, it must be born in an average.—*CHAMBERS v. CHAMBERS* (1730), Fitz-G. 127 ; 1 Eq. Cas. Abr. 115 ; Mos. 333 ; 94 E. R. 684, L. C.  
*Annotations* :—*Expld.* *Oke v. Heath* (1748), 1 Ves. Sen. 135. *Consd.* *Booth v. Allington* (1866), 6 De G. M. & G. 613.

## Part XI.—Custody of Title Deeds.

- 2358a.** ————.] *GARROD v. MOOR* (1846), 8 L. T. O. S. 270. | **2363.** *Add. Annotation* :—*Mentd.* *Thomas v.* [1928] P. 162.

## Part XII.—Express Powers in Instruments.

- 2396.** *Add. Annotation* :—*Refd.* *Johnson v. Clarke*, [1928] Ch. 847.
- 2398a.** ———— **Sale to tenant for life.**]—Where the trustees of lands in strict settlement have a power to sell, with the consent of the tenant for life, a sale by the trustees to the tenant for life will be held good. *HOWARD v. DUCANE* (1823), Turn. & R. 81 ; 1 L. J. O. S. Ch. 85 ; 37 E. R. 1025, L. C.  
*Annotations* :—*Expld.* *Eland v. Baker* (1867), 29 Beav. 137. *Apld.* *Dicconson v. Talbot* (1870), 6 Ch. App. 32. *Refd.* *Grover v. Hurrell* (1827), 3 Russ. 428 ; *Greenlaw v. King* (1841), 10 L. J. Ch. 129 ; *Beaden v. King* (1852), 9 Hare. 499 ; *Bevan v. Habgood* (1860), 1 John. & H. 222. *Mentd.* *Cooper v. Emery* (1840), 10 Sim. 609.
- 2399a.** ————.]—*EISDELL v. HAMMERSLEY* (1862), 31 Beav. 255 ; 6 L. T. 706 ; 54 E. R. 1136.  
*Annotations* :—*Apprvd.* *Alexander v. Mills* (1870), 6 Ch. App.
124. *Consd.* *Re* Cooper, *Cooper v. Slight* (1884), 27 Ch. D. 565 ; *Hardaker v. Moorhouse* (1884), 26 Ch. D. 417. *Apld.* *Re* Bedingfield & Hemmes' Contract, [1893] 2 Ch. 332. *Refd.* *Par v. A.-G.*, [1926] A. C. 239.
- 2399b.** **Power to sell under subsequent settlement—Reference to former settlement—"Ulterior to limitations therein."**]—*Held* : the expression "ulterior to the limitations therein" meant ulterior in point of position in the deed, & not ulterior in point of time. — *MORGAN v. RUTSON* (1848), 16 Sim. 234 ; 17 L. J. Ch. 419 ; 11 L. T. O. S. 238 ; 12 Jur. 813 ; 60 E. R. 863.
- 2476.** *Add. Annotation* :—*Mentd.* *Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.
- 2570.** *Add. Annotation* :—*Refd.* *A.-G. v. Tasker* (1928), 92 J. P. 157.

already received.—*Re* PLUMB (1896), 27 O. R. 601.—CAN.

### PART XII. SECT. 3.

n i. ———— *Power to retain non-trustee securities.*]—*Fogo v. Fogo's Trustees*, [1929] S. C. (Cl. of Sess.) 516 SCOT.

### PART X. SECT. 8, SUB-SECT. 1.—B.

**2320 II.** ————.]—Where a loss occurs under a mtgo. of trust funds, the income of which is payable to a life tenant, the loss should be apportioned between the tenant for life & the remainderman by adding the amount actually realised from the

security to the amount of interest theretofore received by the tenant for life & dividing the whole sum between the latter & the remainderman in the proportion in which they would have been entitled to share if the security had been paid in full, the tenant for life giving credit for the amounts

## Part XIII.—Statutory Powers in Relation to Settled Property.

**2579.** *Add. Annotation:—Generally. Refd. Re Austen, Collins v. Margetts, [1929] 2 Ch. 155.*

**2596.** *Add. Annotation:—Refd. Re Draycott Settled Estate, [1928] Ch. 371.*

**2597.** For the existing paragraph substitute the following paragraph:—

— **Settled Land Act, 1925 (c. 18), ss. 1, 2.**—Land was, on Dec. 31, 1925, held by two persons under a devise contained in a will, made in 1888, as joint tenants in fee simple absolutely, subject to a charge for £1,000 created in 1869 in consideration of marriage:—*Held:* (1) the land was settled land within Settled Land Act, 1925, ss. 1 (1) (v) & 2, & it was excepted from the application of Law of Property Act, 1925 (c. 20), s. 36 (1); (2) there was nothing in the context to give to the words “settled land” in Law of Property Act, 1925, s. 36 (1), any other meaning than that given by sect. 205 (1) (xxvi).—*Re GAUL & HOULSTON'S CONTRACT, [1928] Ch. 689; 97 L. J. Ch. 362; 139 L. T. 473, C. A.*

**2598.** *Add. Citations:—97 L. J. Ch. 193; 139 L. T. 59.*

**2600a.** Land subject to payment of perpetual annuity—**Settled Land Act, 1925 (c. 18), s. 1 (1) (v).**—A perpetual annuity, created voluntarily, is a payment of a periodical sum for the “benefit” of the person receiving it within Settled Land Act, 1925 (c. 18), s. 1 (1) (v). Therefore land subject to such a charge became, on Jan. 1, 1926, settled land.—*Re AUSTEN, COLLINS v. MARGETTS, [1929] 2 Ch. 155; 98 L. J. Ch. 384; 141 L. T. 325.*

**2602.** *Add. Annotation:—N.F. Re Parker's Settled Estates, Parker v. Parker, [1928] Ch. 247.*

**2619.** *Add. Annotation: Refd. Re Patten, Westminster Bank v. Carlyon, [1929] 2 Ch. 276.*

**2632.** *Add. Annotation:—As to (2) Apld. Re Alston-Roberts-West's Settled Estates, [1928] W. N. 41.*

**2648.** *Add. Annotation:—Consd. Re Patten, Westminster Bank v. Carlyon, [1929] 2 Ch. 276.*

**2652.** *Add. Annotation:—Refd. Re Acklom, Oakeshott v. Hawkins, [1929] 1 Ch. 195.*

**2676.** *Add. Annotation:—Consd. Re Robins, Holland v. Gillam, [1928] Ch. 721.*

**2679.** *Add. Annotation:—As to (2) Distd. Re Stevens & Dunsby's Contract, [1928] W. N. 187.*

**2679a.** — **Trust for accumulation of income for payment of mortgages.**—*Re STEVENS & DUNSBY'S CONTRACT, [1928] W. N. 187.*

**2732.** *Add. Annotations:—Consd. Re Patten, Westminster Bank v. Carlyon, [1929] 2 Ch. 276. Refd. Re Acklom, Oakeshott v. Hawkins, [1929] 1 Ch. 195.*

**2738a.** **Restriction on power of letting.**—Testator by his will, dated Nov. 22, 1927, directed his trustees to retain £3,000 & to apply the interest yearly in payment of the taxes, rates & repairs of his freehold house, & he desired that his aunt should “have the use of it & my furniture free of cost for her occupation during her life or so long as she may require them, but without the power to

sub-let the same or any part thereof. On the termination of her occupation the house is to be sold,” & from the proceeds, added to the above £3,000, certain specific legacies were given. He also directed that when the house had been sold, his nephew, G. P., should have the furniture:—*Held:* (1) the provision forbidding the tenant for life to sub-let was void under Settled Land Act, 1925 (c. 18), s. 106 (1), & the provision requiring the house to be sold & the gift over of the proceeds of sale upon the termination of her occupation was also avoided by that sub-sec., so far as that provision would operate in the event of her exercising any of her powers as tenant for life; (2) the gift over of the £3,000 was a provision which tended to induce her to abstain from exercising her powers of leasing as a tenant for life, & was void, therefore, in so far as it had that tendency; & that it should be read to take effect only upon her ceasing to reside for any reason other than the exercise of her powers of leasing as a tenant for life; (3) in the event of her selling the house she would not be entitled to be paid any part of the income of the £3,000; (4) she was entitled to the furniture during her life or until she ceased to occupy the house for any reason other than the exercise of her powers as tenant for life.—*Re PATTEN, WESTMINSTER BANK v. CARLYON, [1929] 2 Ch. 276; 98 L. J. Ch. 419; 141 L. T. 295; 45 T. L. R. 504.*

**2739.** *Add. Annotation:—As to (2) Refd. Re Acklom, Oakeshott v. Hawkins, [1929] 1 Ch. 195.*

**2739a.** — — — — —.]—By this will dated Jan. 4, 1918, the testator bequeathed his leasehold house, garden & grounds, W. Ct., together with the fixtures & fittings & all his furniture, pictures (except some), china, plate, linen, grand piano, & all chattels & other effects therein, to his trustees upon trust to permit his sister, E., to reside there after his death, if she should wish to do so, & to have the use & enjoyment thereof during her life free of rent or other payment, & he gave to his sister the use & enjoyment of his said house, garden, & grounds, & everything contained therein, for her life accordingly, & he directed his trustees after her death or during her life if she should not wish to reside or continue to reside there to sell the same (except certain articles therein), with power to postpone such sale as they might think proper, & divide the proceeds between certain charities. He died on June 26, 1918, & the lady entered into possession thereof immediately. In 1925 she went abroad temporarily for the benefit of her health, the place being left in charge of servants, & she paid the Sched. A. tax. In 1926, owing to severe illness, she was prevented from returning to England, & the house was let by her from time to time, & she still paid Sched. A. tax thereon. In 1927 she sold the house as tenant for life or a person having the powers of a tenant for life, & shortly after the contents, other than the excepted articles, were sold by the trustees. On a summons taken out by the trustees asking whether she had



any, & if any, what interest in the proceeds of sale of the leasehold property & the income thereof:—*Held*: on the evidence, it must be deemed that those powers were properly exercised by her. The power of sale in the trustees never arose, nor did they purport to exercise it. She had not therefore forfeited her interest in the proceeds of sale of the leasehold property or the income thereof. —*Re ACKLOM, OAKESHOTT v. HAWKINS*, [1929] 1 Ch. 195; 98 L. J. Ch. 44; 140 L. T. 192; *sub nom. Re ADELOM, OAKSHOTT v. HAWKINS*, 72 Sol. Jo. 810.

**2747a.** — *Of proceeds of settled land.*—*Re PATTEN, WESTMINSTER BANK v. CARLYON*, No. 2738a, *ante*.

**2772.** *Add. Annotation*:—*Generally, Mentd. Re Austen, Collins v. Margetts*, [1929] 2 Ch. 155.

**2798.** *Add. Annotation*:—*Refd. Re Price*, [1928] Ch. 579.

**2819.** *Add. Annotation*:—*As to (2) Folld. Re Patten, Westminster Bank v. Carlyon*, [1929] 2 Ch. 276.

**2829.** *Add. Annotation*:—*Folld. Bernhard v. Galsworthy*, [1929] 1 Ch. 549.

**2950.** *Add. Annotation*:—*Folld. Re Weld-Blundell Estate, Mowbray (Lord) v. Weld-Blundell* (1929), 73 Sol. Jo. 585.

**2950a.** — *Express provision for proper preservation.*—*Re WELD-BLUNDELL ESTATE, MOWBRAY (LORD) v. WELD-BLUNDELL* (1929), 73 Sol. Jo. 585.

**3032a.** — *Re WATSON, BRAND v. CULME-SEYMOUR*, [1928] W. N. 309; 166 L. T. Jo. 439.

**3032b.** *Architect's fees—Short occupation lease.*—*Re WATSON, BRAND v. CULME-SEYMOUR*, [1928] W. N. 309; 166 L. T. Jo. 439.

**3032c.** *Solicitors' fees—Obtaining short occupation lease.*—*Re WATSON, BRAND v. CULME-SEYMOUR*, [1928] W. N. 309; 166 L. T. Jo. 439.

**3046.** *Add. Annotations*:—*As to (1) Apld. Re Catchpool, Harris v. Catchpool*, [1928] Ch. 429. *Consd. Re Gaul & Houlston's Contract*,

[1928] Ch. 689. *Refd. Re Parker's Settled Estates, Parker v. Parker*, [1928] Ch. 247.

**3047.** *Add. Citation*:—97 L. J. Ch. 161.

*Add. Annotations*:—*As to (1) Refd. Re Gaul & Houlston's Contract*, [1928] Ch. 689; *Re Norton, Pinney v. Beauchamp*, [1929] 1 Ch. 84.

**3047a.** — *On Dec. 31, 1925, certain land stood limited to the use of A. for life, & after his death, subject to certain jointure rentcharges for life, & subject to certain portions which had been charged upon the estate, & which had been further secured by the limitation of a legal term, to the use of trustees upon trust for sale. The settlement under which the land so stood limited was a compound settlement, consisting of various documents, including two deeds of 1911 & 1913. In due course a vesting deed was executed in favour of A. A. died on Dec. 4, 1926, & probate, limited to the settled land, was granted to the trustees of the compound settlement as his special representatives, on the footing that that settlement did not come to an end on his death. There were separate trustees of the two deeds of 1911 & 1913. Clause 11 of the 1911 deed gave to the trustees thereof all the powers conferred on a tenant for life by Settled Land Acts, 1882 to 1890:—*Held*: (1) the whole legal estate, the subject-matter of the settlement, was not held upon trust for sale; (2) in view of clause 11 of the 1911 deed the trustees of the two deeds of 1911 & 1913 were persons on whom Settled Land Act, 1925 (c. 18), s. 23 (1), conferred the powers of a tenant for life, & they were statutory owners under the compound settlement; & when they sold the land they would sell it as statutory owners & not as trustees for sale, & they must pay over the proceeds of sale to the trustees of the compound settlement.—*Re NORTON, PINNEY v. BEAUCHAMP*, [1929] 1 Ch. 84; 98 L. J. Ch. 219; 140 L. T. 348.*

**3048.** *Add. Annotation*:—*Folld. Re Shelton's Settled Estates*, [1928] W. N. 27.

## Part XIV.—Trustees of Settlements.

**3098.** After this case add:—*Jurisdiction of court—To appoint trustees of*

*settled land in Ireland.*—*See COURTS*, Vol. XVI., p. 104, No. 42.

## Part XV.—Land Held in Undivided Shares.

**3138.** For the existing paragraph substitute the following paragraph:—

— *Settled land.*—By the will of testator, who died in 1884, his real estate was devised to trustees upon trust to permit his widow to receive the rents thereof during her life, & after her decease upon trust to pay same to or for the benefit of such of his two daughters, E. & M., as should be then living & should for the time being be single & unmarried in equal shares if more than one, & when both should be married upon trust as to both capital as well as income for all testator's children in equal shares. Testator's

widow died in 1889, & on the death of E., in 1927, questions arose as to the respective interests of E. & M. & testator's children in the income & capital of the real estate. The ct. having decided that E. & M. were entitled to the income of the real estate during their joint lives in equal shares, & upon the death of E. her sister M. became entitled to the whole of the income during her spinsterhood, & upon her marriage or death the whole estate would become divisible in equal shares between the children of testator, the further question arose whether, on Law of Property Act, 1925 (c. 20), coming into force,

the devised real estate vested in the then surviving trustee of the will upon the statutory trusts under Sched. I., Part IV., par. 1 (1), or in her or the Public Trustee under par. 1 (3):—*Held*: (1) as the purposes of the trusts of testator's will were such as might continue beyond the life of his widow, the real estate devised by the will was, at the date of Law of Property Act, 1925, coming into force, by the effect of Wills Act, 1837 (c. 26), s. 31, vested in the then surviving trustee of the will in fee simple in trust for E. & M., who were then beneficially interested in equity until one of them should marry or die in undivided shares vested in possession; (2) although their interests were not absolute interests, the case fell within Sched. I., Part IV., par. 1 (1), & the real estate thereupon vested in the trustee of the will upon the statutory trusts; (3) when a case fell within par. 1 (1) it did not become necessary to consider whether it fell within any of the subsequent sub-paragraphs. *Re DAWSON'S SETTLED ESTATES*, [1928] Ch. 421; 97 L. J. Ch. 343; 139 L. T. 94.

*Annotations*:—As to (2) *Fold*. *Re Barrat, Body v. Barrat*, [1929] 1 Ch. 336. *Refd.* *Re Robins, Holland v. Gillam*, [1928] Ch. 721.

**3138a.** — — — — —.]—Testator, who died on June 16, 1881, leaving a widow & eight children, by his will gave all his estate to his wife & four children, whom he appointed exors. & trustees, upon trust to pay his debts, etc., & bequeathed the remainder of his personal effects to his wife & the income of his freeholds & leaseholds, subject to certain payments, & after her decease to pay such income to his four sons & daughters in certain shares, which were to cease at death, with a proviso as to four quarterly payments to widows of sons, & subject thereto, gave his estate to the longest liver of his children absolutely. The widow died in 1900, & on the coming into force of the Law of Property Act, 1925, the deft. & daughter, who had since died, were the surviving trustees. All parties interested in the estate now desired a sale, & the question raised by this summons was first, whether pltf. & deft. R., the surviving trustee, were together tenant for life for the purposes of the Settled Land Act. Secondly, if it be not settled land, whether the entirety was now vested in the surviving trustee, or in the Public Trustee on the statutory trusts:—*Held*: Law of Property Act, 1925 (c. 20), Sch. I., Pt. IV., para. 4, added by the amending Act of 1926, was not applicable to the case; & secondly, having regard to Wills Act, 1837 (c. 26), s. 31, & following *Re Dawson's Settled Estates*, No. 3138, the entirety was now vested in the surviving trustee under para. 1 (1), upon the statutory trusts.—*Re BARRAT, BODY v. BARRAT*, [1929] 1 Ch. 336; 98 L. J. Ch. 74; 140 L. T. 328.

**3138b.** — — — — —.]—*Re COLLINS, TOWERS v. COLLINS*, [1929] 1 Ch. 201; 140 L. T. 223; 72 Sol. Jo. 779; *sub nom.* *Re COLLINS, JOWERS v. COLLINS*, 98 L. J. Ch. 47.

**3139.** *Add. Citation*:—72 Sol. Jo. 86.

*Add. Annotations*:—*Consd.* *Re Robins, Holland v. Gillam*, [1928] Ch. 721. *Refd.* *Re Dawson's S. E.*, [1928] Ch. 421.

**3139a.** — — — — —]—Land held under one & same settlement—Vesting in trustees—Who are trustees.]—

Where immediately before the coming into operation of Law of Property Act, 1925 (c. 20), the entirety of the land is settled land held under one & the same settlement, it vests in the trustees, if any, of the settlement under the old law as joint tenants upon the statutory trusts. If there are no such trustees then, pending their appointment, the land vests in the Public Trustee upon the statutory trusts.—*Re CATCHPOOL, HARRIS v. CATCHPOOL*, [1928] Ch. 429; 97 L. J. Ch. 181; 139 L. T. 17; 72 Sol. Jo. 226.

**3140.** *Add. Annotations*:—As to (1) *Refd.* *Re Robins, Holland v. Gillam*, [1928] Ch. 721. As to (2) *Refd.* *Bernhardt v. Galsworthy*, [1929] 1 Ch. 549; *Re House, Westminster Bank v. Everett*, [1929] 2 Ch. 166.

**3143.** *Citation*:—For the existing citation read "No. 1873, *ante*."

**3143a.** — — — — —]—Only one trustee—Vesting of land in Public Trustee.]—Under & by virtue of the will of a testator who died in 1921, & of subsequent dispositions, acts in the law & events, the legal estate in certain freehold land was, immediately before the commencement of the Law of Property Act, 1925, vested in two persons for their lives share & share alike, the legal estate in remainder expectant upon the lives of those persons & the life of the survivor of them being vested in a single trustee upon trust after the death of the surviving tenant for life to sell the land & divide the proceeds between the testator's nephews & nieces. Upon a summons by the tenants for life, who were desirous of selling the land, to have it determined in whom, upon the coming into force of the Law of Property Act, 1925, the land was vested:—*Held*: (1) as immediately before the commencement of that Act the land was held at law & in equity in undivided shares, vested in possession, & the entirety thereof was settled land, Law of Property Act, 1925 (c. 20), Sched. I., Part IV., para. 1, sub-para. 3, would apply, if there were more than one trustee of the settlement constituted by the will, in whom the land could vest as joint tenants; but that, as there was only one trustee, the land vested, under clause (i) of the proviso to that sub-para., in the Public Trustee upon the statutory trusts; (2) if, before the Public Trustee accepted the trust, the present trustee (who before the commencement of the Law of Property Act, 1925, was the trustee of the settlement constituted by the will for the purposes of the Settled Land Acts then in force) appointed an additional trustee or trustees of that settlement, the land would vest in the trustees of the settlement as joint tenants upon the statutory trusts.—*Re PRICE, PRICE v. PRICE*, [1929] 2 Ch. 400; 98 L. J. Ch. 417; 141 L. T. 511.

**3143b.** — — — — —]—Appointment of additional trustee—Before acceptance by Public Trustee.]—*Re PRICE, PRICE v. PRICE*, No. 3143a, *ante*.

**3143c.** — — — — —]—Immediately before the commencement of the Law of Property Act, 1925 (c. 20), the legal estate in land was outstanding in the personal representatives of the settlor & held upon the trusts of a marriage settlement which, in the events which had then happened, were for two daughters of the settlor in undivided shares absolutely:—

*Held*: as the personal representatives then held the land in trust for the daughters in undivided shares vested in possession, they held it, after the Act came into force, upon the statutory trusts, by virtue of Sched. L. Part IV., sub-para. 1 (b) of the Act, with the result that the settlement trustees were not entitled, as, but for Part IV., they would be to call for a conveyance of the legal estate; but the personal representatives held the land on trust for sale & were entitled to sell the same, unless the daughters elected to call for a conveyance.—*Re FORSTER, SOMERVILLE v. OLDHAM*, [1929] 1 Ch. 146; 98 L. J. Ch. 27; 140 L. T. 277; 72 Sol. Jo. 761.

— **Conversion.** — *See* EQUITY, p. 661. No. 817a. *ante*.

**3146.** *Add. Annotations*: —**Folld.** *Re Robins, Holland v. Gillan*, [1928] Ch. 721. **Apid.** *Re House, Westminster Bank v. Everett*, [1929] 2 Ch. 166. **Refd.** *Re Barrat, Body v. Barrat*, [1929] 1 Ch. 336.

**3148.** *Add. Citations*: 97 L. J. Ch. 197; 138 L. T. 735.

**3151a.** **Application of Law of Property Act, 1925 (c. 20), s. 34—Land settled upon trust for sale—After specified period.** —The trustees of a will, which came into operation after the commencement of the Law of Property Act, 1925 (c. 20), were directed to stand possessed of testator's residuary real & personal estate

upon trust to pay out of the income thereof four life annuities, & while any annuity remained payable to divide the surplus income amongst such of testator's grandchildren as should be living for the period during which any annuity remained payable; & on cesser of all the annuities, to stand possessed of the residuary estate in trust for his grandchildren & the issue then living of any then dead, as tenants in common according to the stocks. By a codicil power was conferred upon the trustees after the expiration of five years from the testator's death to sell his residuary estate or any part thereof by public auction but not by private contract. Upon a summons raising questions, whether the trustees or the persons entitled to the surplus income until cesser of the annuities were the proper persons in whom the land ought to be vested by the exor.; & if the trustees were the proper persons, whether the annuitants were persons whose wishes ought to be given effect to by the trustees for sale:—*Held*: (1) the land was held in equity in undivided shares; (2) the land was devised in undivided shares within Law of Property Act, 1925 (c. 20), s. 34 (3), with the result that it was devised to the trustees, who were trustees for the purposes of the Settled Land Act, 1925, upon the statutory trusts; (3) those trustees were the persons in whom the land ought to be vested.—*Re HOUSE, WESTMINSTER BANK v. EVERETT*, [1929] 2 Ch. 166; 98 L. J. Ch. 381; 141 L. T. 582.

## Part XVI. — Resettlements.

**3171.** *Add. Annotation*: — *Generally*, **Refd.** *Re Parker's Settled Estates, Parker v. Parker*, [1928] Ch. 247.

## SEWERS AND DRAINS.

## Part I.—Sewers and Drains for Sanitary Purposes.

19. *Add. Annotation* :—*Distd. Clark v. Epsom R. D. C.*, [1929] 1 Ch. 287.

19a. ———.]—Pltf. was the owner of a house & grounds on the X. estate, a leaseholder in 1900 & freeholder since 1920. Down to 1912 there was no drainage system for the estate, but in that year a system was established, which so far as affected this property was called "the northern system," by the then owners of the estate with an effective outfall, but without any reference to the local authority, which was maintained since 1920 by means of contributions from property owners to the owner of the part where the disposal works were situated. From these works the effluent passed into the river M., but owing to the filter bed ceasing to function, pollution of the river occurred, & this outfall being stopped by the action of the Thames Conservancy, the effluent was now carried over the adjoining land. In an action by pltf. for a declaration that the system vested in defts. & that they were liable to maintain it:—*Held*: the line of pipes which communicated with the disposal works was a sewer which vested in the local authority, but the remedy of pltf. was to appeal on behalf of the whole of the persons in the district to the Ministry of Health under P. H. Act, 1875 (c. 55), s. 299.—*CLARK v. EPSOM RURAL COUNCIL*, [1929] 1 Ch. 287; 98 L. J. Ch. 88; 140 L. T. 246; 93 J. P. 67; 45 T. L. R. 106; 27 L. G. R. 328.

107. *Add. Annotation* :—*Refd. Clark v. Epsom R. D. C.*, [1929] 1 Ch. 287.

148. *Add. Annotation* :—*Refd. Clark v. Epsom R. D. C.*, [1929] 1 Ch. 287.

158. *Add. Annotation* :—*Refd. Clark v. Epsom R. D. C.*, [1929] 1 Ch. 287.

181a. ———.]—*CLARK v. EPSOM RURAL COUNCIL*, No. 19a, *ante*.

197a. ———. *Sewer laid above ground*.—By private owner—Maintenance by local authority.]—Defts., who were the urban sanitary authority, served notices, under Public Health Act, 1875 (c. 55), ss. 23, 36, upon the owners of a row of houses within the district requiring them within a certain time to provide water-closets in the houses & to connect the same with the main sewer. By arrangement among the owners the work was carried out by the owner of two of the houses, one of which was occupied by pltf. A six-inch earthenware pipe was laid through the gardens at the backs of the houses to receive the drainage of each house & to discharge into the main sewer. This pipe was laid underground until it came to the garden of the house in which pltf. lived, where, owing to a fall in the land half the pipe appeared above the ground. About three years after the pipe was laid pltf. in going

down her garden slipped on the pipe & was injured. In an action against the urban district council to recover damages for the personal injuries so sustained, the pipe being a "sewer" which was vested in them, the jury found that the sewer was constructed so as to be dangerous to the occupants of the house, that defts. had notice of its dangerous condition, & were negligent in not obviating the danger:—*Held*: as deft. council would have been entitled, if they had themselves constructed the sewer, to lay it above ground, they were not guilty of any breach of duty in maintaining the sewer in the same condition as it was when laid, & were therefore not liable to pltf.—*MORRIS v. MYNYDDISLWYN URBAN COUNCIL*, [1917] 2 K. B. 309; 86 L. J. K. B. 1094; 117 L. T. 108; 81 J. P. 261; 15 L. G. R. 453, C. A.

250. *Add. Citation* :—26 L. G. R. 174.

304a. *Reconstruction of drain*—What amounts to.]—The L. C. C. made a bye-law that a person who should entirely or partially reconstruct any pipe or drain communicating with a sewer should deposit plans of the proposed work, with the proviso that plans should not be required in the case of any repair which did not involve the entire reconstruction of the pipe or drain; & another bye-law as to ventilation, which was to apply to every person who should reconstruct in an existing building any pipe or drain communicating with a sewer. Premises situate in the metropolis were drained at the rear by a line of pipes which took the surface water drainage of the premises through two gullies in the yard & which communicated with a sewer. This line of pipes was not laid upon concrete & was not ventilated, & the drain having become a nuisance, notice was served on the owner to abate the same. The owner opened up the ground, took up the pipes, most of which were defective or broken, & relaid the drain in the same line upon a foundation of concrete. He put in four new lengths of pipes & a new gully & connection, replacing in the drain one old pipe & gully only, & leaving in the ground an old pipe which was not defective:—*Held*: the work done to the drain was a "reconstruction" of the drain, & not merely a "repair" of it, & that the bye-laws applied.—*AGAR v. NOKES* (1905), 93 L. T. 605; 69 J. P. 374; 3 L. G. R. 1168, D. C.

319. *Add. Annotation* :—*Distd. Grant v. Derwent*, [1928] Ch. 902.

319a. ———. *Liability of owner requesting local authority to lay connecting pipe*.]—Subject to the rights of a corpn. as highway & sewer authority, pltf. owned the soil of a public road with a sewer therein. Deft.'s property

abutted on this road, as well as on another sewer road, & he was entitled under Public Health Act, 1875 (c. 55), s. 21, to cause his drains to empty into the corpn.'s sewers, on giving proper notice & complying with regulations. At deft.'s request & acting under their local Act, the corpn. connected deft.'s combined drain with the sewer in pltf.'s road, carrying the connecting pipe through a small portion of pltf.'s subsoil:—*Held*: the corpn.'s acts were fully

justified by the local Act, even if not by Public Health Acts, & whatever right for compensation pltf. might have against the corpn. for damage sustained by reason of the exercise of their statutory powers, he had no cause of action against deft. for requesting the corpn. to exercise those powers.—*GRANT v. DERWENT*, [1929] 1 Ch. 390; 98 L. J. Ch. 70; 140 L. T. 330; 93 J. P. 113; 73 Sol. Jo. 59; 27 L. G. R. 179, C. A.

### Part III.—Sewers under Commissioners of Sewers.

351. *Add. Annotation*:—**Mentd.** Ormond Investment Co. v. Betts, [1928] A. C. 143.

403. *Add. Annotation*:—**Refd.** Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.

### Part IV.—Sewers Rate.

447. *Add. Annotation*:—**Mentd.** R. v. Southampton County Confirming Committee, *Ex p.* Slade, [1929] 1 K. B. 263.

457. *Add. Citations*:—97 L. J. K. B. 13; 138 L. T. 72.

#### PART III. SECT. 1, SUB-SECT. 2.

b i. ————[*McKillop* TOWNSHIP CORPN. v. *LOGAN TOWNSHIP CORPN.* (Ont.) (1899), 29 S. C. R. 702. —**CAN.**

c i. ————[*Time for making ditch.*] —*MURRAY v. DAWSON* (1867), 17 C. P. 588.—**CAN.**

#### PART III. SECT. 1, SUB-SECT. 3.

d i. ————[*ANDERTON TOWNSHIP v.*

*MALDEN & COLCHESTER SOUTH TOWNSHIPS* (1912), 23 O. W. R. 320; 4 O. W. N. 327; 8 D. L. R. 812. —**CAN.**

d ii. ————[*Re BRIGHT & SARNA, WILSON & SARNA* (1913), 21 O. W. R. 817; 4 O. W. N. 1535; 12 D. L. R. 848.—**CAN.**

sb. *Appeal from fence viewer.*—*Re McDONALD & GATTANACH* (1870), 30 U. C. R. 432.—**CAN.**

se. ————[*Re BOWKER & RICHARDS* (1905), 1 W. L. R. 194.—**CAN.**

se. *Award under Ditches & Water-courses Act. Who may enforce.*—[The purchaser of land from an owner who was a party to proceedings under "Act in respect of that land is entitled to enforce the award.—*DALTON v. TOWNSHIP OF ASHFIELD* (1898), 26 A. R. 363. —**CAN.**

## SHERIFFS AND BAILIFFS.

## Part V.—Powers, Duties, and Liabilities.

- 639a. ————[.] An attorney, who is arrested |  
 on a writ of *capias*, cannot maintain an action |  
 of trespass against pltf. & the officer for such |  
 arrest: his only remedy is an action on the |  
 case.—NOEL v. ISAAC (1835), 1 Cr. M. & R. 753; 5 Tyr. 376; 4 L. J. Ex. 56; 149 E. R. 1284.  
 tation :—**Refd.** Newton v. Constable (1841), 6 Jur. 317.

## PART II. SECT. 3.

sa. *Special bailiffs—Jurisdiction confined to county where residing.*—DEVINE v. CARSON & Co., [1929] N. I. 26.—**IR.**

## PART V. SECT. 6, SUB-SECT. 7.—J. (a).

e i. ————[.]—HIGGINS v. MACDONALD, [1928] 4 D. L. R. 241; [1928] 3 W. W. R. 115; 50 Can. Crim. Cas. 353.—**CAN.**

## SHIPPING AND NAVIGATION.

## Part I.—In General.

30. *Add. Annotation* :—**Mentd.** Smith, *Hogg v. Bamberger* (1928), 97 L. J. K. B. 725.

## Part II.—Ownership and Control of Ships.

177. *Add. Annotation* :—**Refd.** Aron *v.* Miall (1928), 139 L. T. 562.

194. *Add. Annotation* :—**Mentd.** *Re Stanton, F. & E., Ltd.*, [1929] 1 Ch. 180.

384. *Add. Annotation* :—*As to* (2) **Refd.** News-holme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

493. *Add. Annotation* :—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

## Part III.—Master, Officers and Crew.

614a. **Protection of open hatchways—Breach of statutory duty—Effect of contributory negligence.**—Pltf. was a coal trimmer, & in proceeding to his work on defts.' ship along a passage-way which he was entitled to go along, he stumbled & fell down an open hatchway into one of the holds of the ship, & was injured. He sued defts. for damages, basing his action on a breach of a statutory regulation made under 1894 Act, which provided for the fencing & protection of open hatchways on ships:—*Held*: pltf.'s own contributory negligence was an answer to his claim against defts. based on a breach of statutory duty.—*Dew v. UNITED BRITISH S.S. Co., LTD.* (1928), 98 L. J. K. B. 88; 139 L. T. 628; 17 Asp. M. L. C. 513, C. A.

685. *Add. Annotations* :—*As to* (3) **Refd.** First Russian Insce. *v.* London & Lancashire Insce. [1928] Ch. 922. *As to* (4) **Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *Generally, Refd.* The Penelope, [1928] P. 180. **Mentd.** May *v.* May, [1929] 2 K. B. 386.

932a. ———.—*R. v. WALL* (1890), 112 C. C. Ct. Cases, 880.

932b. ———.—*R. v. PHILLIPS, ETC.* (1891), 113 C. C. Ct. Cases, 622.

935a. ———.—**Whether condition precedent to hearing of complaint.**—A complaint was made before justices by the master of a British ship against six seamen for continuing to neglect duty, contrary to 1894 Act, s. 225 (1) (c). No entry of the offence had been made in the official log-book, & the justices dismissed the complaint on this ground for want of jurisdiction:—*Held*: the making of the entry in the official log-book was not a condition precedent to the hearing of the complaint. Even where no entry of an offence had been made, & there had consequently been default under the section, the Court was not without jurisdiction to proceed. The effect of 1894 Act, s. 228 (d), was to confer on the ct. in such a case a discretion either to receive other evidence or to refuse to do so & dismiss the complaint.—*PATTERSON v. ROBINSON*, [1929] 2 K. B. 91; 98 L. J. K. B. 457; 141 L. T. 165; 93 J. P. 165; 27 L. G. R. 422, D. C.

## Part V.—General Statutory Provisions for Safety of Ship and Cargo.

1596. *Add. Citation* :—17 Asp. M. L. C. 303.

## PART III. SECT. 4, SUB-SECT. 9.

797 i. *Advance note—Liability on.*—Deft. gave a seaman's advance note to B. a seaman for a one-half month's wages at V., payable five days after the sailing of the M. from B.C. Pltf. cashed the note for B., who then joined his ship before sailing to Victoria, where the ship (being a rum runner) was held

by the authorities for breach of customs regulations, & not allowed to leave B.C. Deft. was duly notified that pltf. held the note:—*Held*: deft.'s conduct was the sole cause of the impossibility of performance, & having by his own conduct made it impossible for the ship to leave B.C. he was liable on the note.—*IMPERIAL*

*VETERANS IN CANADA v. EASTERN FREIGHTERS, LTD.* (1927), 39 B. C. R. 17.—**CAN.**

## PART III. SECT. 4, SUB-SECT. 12. --D.

847 i. *Appeal—From sheriff substitute—Does not lie.*—*BAIN v. ORMISTON*, [1928] S. C. (Ct. of Sess.) 764.—**SCOT.**

## Part VII.—Carriage of Goods.

1682. *Add. Annotation* :—**Refd.** *A.-G. v. Blackpool Corpn.* (1928), 92 J. P. 50.

1715. *Add. Annotations* :—**Distd.** *Frenkel v. McAndrews & Co.*, [1929] A. C. 545. **Refd.** *Kaufmann v. British Surety Insee. Co.* (1929), 45 T. L. R. 399.

1723a. “**Approved commercial bills on London**”—**Trade usage—Ninety day bills.**—*GRIPAPOS v. WALLIS (KAHI) & Co., LTD.* (1928), 45 T. L. R. 161.

1731a. **Payment of stevedores at “current rates.”**—*BRITAIN S.S. CO., LTD. v. BUNGE & Co., LTD.* (1929), 46 T. L. R. 40; 73 Sol. Jo. 818.

1780a. **Breach of duty—Broker assuming to charter vessel to himself—Ratification of wrongful act.**—*Pltfs., owners of the D., instructed H., a broker, to procure a charterparty for their ship. H. being minded, in breach of his duty as a broker, to make use of the ship for his own ends, purported to effect a charterparty dated Aug. 9, 1926, between pltfs. & an export co. of Danzig “& others” as charterers. This document was signed by H. “as agent only” for the owners & by H. “on behalf of the charterers as per separate chartering notes.” By one of the clauses of the document the shipowners were to have a lien for all dead freight & demurrage at the port of loading. H. had no authority to act on behalf of the export co., who knew nothing about the transaction. Defts., timber merchants in London, bought from S. & Co., shippers in Danzig, red wood at a price including cost, freight & insurance from Danzig to London. S. & Co. engaged cargo space for the wood on board the *D.*, by means of chartering notes signed by H. purporting to act “by order of the owners,” but without their authority, & the wood was shipped on board the *D.* at Danzig under bills of lading signed by H. purporting to act for & on behalf of & with the authority of the master. Each bill of lading incorporated the terms, conditions & clauses of the so-called charterparty of Aug. 9, among which was the above lien clause. The bills of lading were indorsed by S. & Co. & tendered under the contract of sale to defts., who accepted them & paid S. & Co. for the goods. The *D.* left Danzig without a full cargo several days after the lay days had expired. When she arrived in London the master deposited the wood with wharfingers subject to a lien in favour of pltfs. for dead freight & demurrage, & pltfs. brought an action against defts. for a declaration that they were entitled to the lien :—**Held** : the lien clause in the document of Aug. 9 was incorporated in the bills of lading, on the grounds that (1) pltfs., by taking the cargo on board their ship & issuing bills of lading in respect of it after they knew of H.’s breach of duty in assuming to charter*

their vessel to himself, had ratified his act & so validated the charterparty, & (2) the incorporation of the lien clause was not in any way dependent or contingent upon the charterparty being a valid or effective document, for in the absence of a condition to the contrary, one document, or part thereof, might be incorporated in another, although the first document had, of itself, no legal effect whatever; (3) defts. could not support a plea in avoidance of circuitry of action, because it was essential to that plea that the amount recoverable by deft. pleading it from pltf. in the action in which it was pleaded should be the exact amount recoverable by pltf. from him; & as S. & Co. were not parties to the action, it could not be averred that the damages, if any, recoverable by defts. from S. & Co. for breach of the contract of sale would be the same in amount as the sum recoverable by pltfs. from defts. under the terms of the bills of lading, & it did not appear that S. & Co. had any cause of action against pltfs., whose liabilities depended upon the bills of lading.—**AKT. OCEAN v. HARDING (B.) & SONS, LTD.**, [1928] 2 K. B. 371; 97 L. J. K. B. 684; 139 L. T. 217; 33 Com. Cas. 277; 17 Asp. M. L. C. 465, C. A.

1796. *Add. Annotation* :—**As to** (1) **Refd.** *The Penelope*, [1928] P. 180.

1958. *Add. Annotation* :—**As to** (4) **Refd.** *Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

2006. *Add. Annotation* :—**Refd.** *Gaze W. H. & Sons v. Port Talbot Corpn.* (1929), 93 J. P. 89.

2104a. — **Damage sustained before making of charterparty.**—*A time charterparty contained the following cesser clause: “In the event of loss of time from deficiency of men or stores, breakdown of machinery, whether partial or otherwise, collision, stranding, fire in ship & (or) cargo, damage or interference by authorities preventing the working of the vessel for more than twelve running hours, the payment of hire shall cease until she be again in an efficient state to resume her service at the place where the accident occurred. . . .” After the steamer came on hire she went into dry dock for four days to repair damage which she had sustained in collision before coming on hire. The owners allowed the charterers four days’ hire, & claimed to recover the amount so allowed from the defts. in the collision action :—**Held** : the above cesser clause applied to damage arising before as well as after the making of the charterparty; the charterers were entitled to deduct four days’ hire; & the owners were entitled to recover the amount so deducted from the defts. as damages for loss of use of their steamer.—**THE ESSEX ENVOY** (1929), 141 L. T. 432.*

### PART VII. SECT. 2, SUB-SECT. 3.

1781 i. *Necessity for authority by deed.*—*HICKMAN & Co., LTD. v. ERNST SHIPBUILDING Co., LTD.*, [1928] 2 D. L. R. 229; 60 N. S. R. 100.—**CAN.**

### PART VII. SECT. 2, SUB-SECT. 22.—C.

2115 i. *Duration.*—*The pltf.*

chartered his boat to the deft. for fishing in the north for 60 days or longer if required. At the end of the 60 days deft. informed pltf. personally at V. that deft. would not require the boat any longer, & undertook to notify his cannery manager to that effect, but the notification did not reach the latter before the boat had left for

another of deft.’s canneries, & on arrival there the manager told the captain, & also the engineer who was representing pltf., that he would not release the boat & that they should fish at a certain place. Fishing was carried on for another 30 days :—**Held** : the charterparty had been put



- 2129. Add. Annotations:—****Consd.** First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922; Hyman v. Hyman, Hughes v. Hughes, [1929] 1 K. B. 1. **Refd.** The Penelope, [1928] P. 180; May v. May, [1929] 2 K. B. 386.
- 2136. Add. Annotations:—***As to (1)* **Refd.** The Penelope, [1928] P. 180; May v. May, [1929] 2 K. B. 386. *As to (2)* **Consd.** First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922. **Generally, Refd.** Hyman v. Hyman, [1929] P. 1.
- 2212. Add. Annotation:—***As to (2)* **Consd.** Foreman & Ellams v. Blackburn, [1928] 2 K. B. 60.
- 2230a. —**—Defts. bought timber to be shipped to Liverpool, & it was shipped in pltf.'s steamer along with the cargo of other shippers. The bill of lading was a clean bill, stating that a specified quantity had been shipped in good condition, & incorporating the terms of the charterparty, which provided that the statements in the bill of lading as to the goods having been shipped in good condition, & as to the aggregate number of pieces delivered to the steamer, should be conclusive evidence against the shipowner. At the time of signing the bill of lading the master signed a protest stating that part of defts.' goods was in bad condition. Defts. were indorsees of the bill of lading, & after the arrival of the steamer pltf. informed them that part of the cargo had been damaged before shipment. There being nothing to indicate to defts. that the damaged part belonged to them, defts. accepted the bill of lading, when presented, & they paid for the timber. On delivery they found that the timber was defective, & that the quantity was less than the specified quantity. The shipowner sued defts. for balance of freight, & defts. counterclaimed for damages for delivering part of the goods in a damaged condition, & for failing to deliver part of the goods shipped:—**Held:** as the information of defts. was not of such a nature as to justify them in rejecting the bill of lading, pltf. was estopped from disputing the statements in it, & defts. were entitled to succeed on their counterclaim.—**EVANS v. JAMES WEBSTER & BROTHERS, LTD.** (1928), 45 T. L. R. 136; 73 Sol. Jo. 60; 34 Com. Cas. 172.
- 2249. Add. Citation:—**17 Asp. M. L. C. 307.
- 2254. Add. Annotations:—***As to (2)* **Apld.** Silver v. Ocean Steamship Co. (1929), 46 T. L. R. 78. **Refd.** Evans v. Webster (1928), 45 T. L. R. 136.
- 2257. Add. Annotations:—***As to (2)* **Apld.** Silver v. Ocean Steamship Co. (1929), 46 T. L. R. 78. **Refd.** Evans v. Webster (1928), 45 T. L. R. 136.
- 2257a. —**—Where a shipowner issues a bill of lading acknowledging the receipt of goods "in apparent good order & condition," he cannot afterwards prove, as against a holder or indorsee of the bill of lading, that the goods were damaged before shipment, if such damage would have been apparent on reasonable inspection; nor can he rely on the exception of insufficiency of packing within Carriage of Goods by Sea Act, 1924, Art. IV., r. 2 (n), if the insufficient packing was apparent on reasonable inspection.—**SILVER v. OCEAN STEAMSHIP CO., LTD.** (1929), 46 T. L. R. 78; 73 Sol. Jo. 849, C. A.
- 2257b. Collateral protest as to damage signed by master.]—**Defts. bought in Nova Scotia timber to be shipped to L., & it was shipped in pltf.'s steamer along with the cargo of other shippers. The bill of lading was a clean bill, stating that a specified quantity had been shipped in good condition, & incorporating the terms of the charterparty, which provided that the statements in the bill of lading as to the goods having been shipped in good condition & as to the aggregate number of pieces delivered to the steamer should be conclusive evidence against the shipowner. At the time of signing the bill of lading the master signed a protest, stating that part of defts.' goods was in bad condition. Defts. were indorsees of the bill of lading, & after the arrival of the steamer pltf. informed them that part of the cargo had been damaged before shipment. There being, however, nothing to indicate to defts. that the damaged part belonged to them, defts. accepted the bill of lading, when presented, & they paid for the timber. On delivery they found that the timber was defective & that the quantity was less than the specified quantity. The shipowner sued defts. for balance of freight, & defts. admitted the claim & counterclaimed for damages for delivering part of the goods in a damaged condition & for failing to deliver part of the goods shipped:—**Held:** as the information of defts. was not of such a nature as to justify them in rejecting the bill of lading, pltf. was estopped from disputing the statements in it, & defts. were entitled to succeed on their counterclaim.—**EVANS v. WEBSTER JAMES & BROS., LTD.** (1928), 45 T. L. R. 136; 73 Sol. Jo. 60; 34 Com. Cas. 172.
- 2259. Add. Annotation:—****Distd.** Evans v. Webster (1928), 45 T. L. R. 136.
- 2262a. Damage before shipment.]—****EVANS v. JAMES WEBSTER & BROTHERS, LTD., No. 2230a, ante.**
- 2286. Add. Annotation:—****Refd.** Silver v. Ocean Steamship Co. (1929), 46 T. L. R. 78.
- 2287. Add. Annotation:—****Refd.** Evans v. Webster (1928), 45 T. L. R. 136.
- 2288. Add. Annotation:—***As to (1)* **Apld.** Silver v. Ocean Steamship Co. (1929), 46 T. L. R. 78.
- 2450. Add. Annotation:—****Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
- 2479. Add. Annotation:—***As to (2)* **Refd.** News-holme Bros. v. Road Transport & General Insce. Co., [1929] 2 K. B. 356.
- 2515. Add. Annotation:—****Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
- 2526. Add. Annotation:—****Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

an end to at the expiration of the 60 days.—**PETERSON v. MILLERD PACKING Co.**, [1928] 4 D. L. R. 833; [1928] 3 W. W. R. 279.—**CAN.**

**PART VII. SECT. 3, SUB-SECT. 4.—A.**

*o. Reved.*, 30 S. C. R. 473.

**PART VII. SECT. 4, SUB-SECT. 6.—A.**

*sb. Effect of unseaworthiness.]—*A consignment of goods placed aboard ship was damaged by the admission of sea-water to the hold of the ship through corrosion of the ship's plates from the inside, arising without negligence on the part of the ship-

owner, but rendering the vessel unseaworthy:—**Held:** the proximate cause of the damage being the unseaworthiness of the ship, it could not be regarded as a loss arising from "danger of the sea" within Sea Carriage of Goods Act, 1924, s. 3.—**WANGANUI HERALD NEWSPAPER CO.**

2580. *Add. Annotation* :—**Refd.** Goodwin, Ferreira & Co. v. Lamport & Holt (1929), 141 L. T. 194.
2609. *Add. Annotation* :—**Apld.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.
2620. *Add. Annotation* :—**Refd.** Compania Mexicana De Petroleo "El Aguila" v. Essex Transport & Trading Co. (1929), 141 L. T. 106.
2642. *Add. Annotation* :—**Refd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.
2655. *Add. Annotation* :—*As to* (3) **Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
2680. *Add. Annotation* :—*As to* (1) **Refd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.
2683. *Add. Annotations* :—**Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424. **Apld.** Gosse Millard v. Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.
2700. *Add. Annotation* :—**Refd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.
2711. *Add. Annotations* :—**Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424. **Apld.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717. **Refd.** Gosse Millard v. Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223; The Touraine, [1928] P. 58.
2712. *Add. Annotations* :—**Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424; Gosse Millard v. Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.
2714. *Add. Annotation* :—**Consd.** Gosse Millard v. Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.
2720. *Add. Citation* :—17 Asp. M. L. C. 294. *Add. Annotations* :—*As to* (1) **Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424; Gosse Millard v. Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.
2721. *Add. Citations* :—*reversd. sub nom.* GOSSE MILLARD, LTD. v. CANADIAN GOVERNMENT MERCHANT MARINE, LTD., THE CANADIAN HIGHLANDER, [1929] A. C. 223; 98 L. J. K. B. 181; 140 L. T. 202; 45 T. L. R. 63; 34 Com. Cas. 94; 17 Asp. M. L. C. 549, H. L. *Add. Annotations* :—**Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424; Silver v. Ocean Steamship Co. (1929), 46 T. L. R. 78.
2722. *Add. Citations* :—44 T. L. R. 204; 17 Asp. M. L. C. 413.
2724. *Add. Citation* :—33 Com. Cas. 70.
2725. *Add. Citations* :—[1928] 2 K. B. 424; 72 Sol. Jo. 103; 17 Asp. M. L. C. 447; 33 Com. Cas. 168.
2777. *Add. Citation* :—17 Asp. M. L. C. 265. *Add. Annotation* :—*Generally*, **Refd.** Silver v. Ocean Steamship Co. (1929), 46 T. L. R. 78.
- 2777a. "Insufficiency of packing"—*Not confined to packing of goods damaged.*—GOODWIN, FERREIRA & CO., LTD. v. LAMPORT & HOLT, LTD., No. 3649a, *post*.
- 2777b. — *Insufficiency apparent to reasonable inspection.*—SILVER v. OCEAN STEAMSHIP CO., LTD., No. 2257a, *ante*.
2796. *Add. Annotation* :—**Refd.** Silver v. Ocean Steamship Co. (1929), 46 T. L. R. 78.
2800. *Add. Annotations* :—**Refd.** The Hayle, [1929] P. 275. **Mentd.** Belfour v. Mace (1928), 13 Tax Cas. 539.
2856. *Add. Citations* :—[1928] P. 180; 97 L. J. P. 127; 139 L. T. 355; 72 Sol. Jo. 557; 17 Asp. M. L. C. 486.
2962. *Add. Annotation* :—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.
2974. *Add. Annotation* :—*As to* (1) **Apld.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.
3045. *Add. Annotation* :—**Apld.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.
3054. *Add. Citation* :—17 Asp. M. L. C. 311.
3056. *Add. Annotation* :—**Consd.** The Hayle, [1929] P. 275.
- 3089a. — *Sailing without mate.*—BURNARD & ALGERS, LTD. v. PLAYER, RICHARD & CO. (1928), 72 Sol. Jo. 503.
3100. *Add. Annotations* :—**Refd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424; Gosse Millard v. Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.
3107. *Add. Annotations* :—**Refd.** The Hayle, [1929] P. 275. **Mentd.** Belfour v. Mace (1928), 13 Tax Cas. 539.
3118. *Add. Annotation* :—**Apld.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.
3124. *Add. Annotation* :—**Refd.** The Touraine, [1928] P. 58.
3170. *Add. Annotation* :—*As to* (2) **Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
3172. *Add. Annotation* :—**Refd.** Frenkel v. McAndrews & Co., [1929] A. C. 545.
3175. *Add. Annotation* :—**Folld.** Frenkel v. McAndrews & Co., [1929] A. C. 545.
3176. *Add. Annotation* :—**Consd.** Frenkel v. McAndrews & Co., [1929] A. C. 545.
3177. *Add. Citations* :—*affd.* [1929] A. C. 545; 98 L. J. K. B. 389; 141 L. T. 33; 45 T. L. R. 311; 34 Com. Cas. 241, H. L.
3188. *Add. Annotation* :—*As to* (1) **Apld.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
3224. *Add. Annotations* :—**Refd.** Vlassopoulos v. British & Foreign Marine Insce. Co., [1929] 1 K. B. 187. **Mentd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.

v. COASTAL SHIPPING CO., [1929] N. Z. L. R. 305.—N.Z.

PART VII. SECT. 4, SUB-SECT. 12.

m l. —.—]—BURNS JOHN & CO. v. S.S. CANADIAN EXPLORER, [1928] N. Z. L. R. 767.—N.Z.

PART VII. SECT. 5, SUB-SECT. 3.—C. (a).

b. *Reversd.*, 27 L. C. J. 39 n. P. C.

PART VII. SECT. 5, SUB-SECT. 5.—A.

2979 l. —.—]—*Construction of charterparty.*—ROBIN LINE STEAMSHIP CO. v. CANADIAN STEVEDORING CO.,

SEAS SHIPPING CO. v. CANADIAN STEVEDORING CO., [1928] 3 D. L. R. 856; [1928] S. C. R. 423.—CAN.

PART VII. SECT. 6, SUB-SECT. 1.—B.

3039 v. —.—]—BURJOR F. B. JOSHI v. ELLERMAN CITY LINES, LTD., (1927), 1 L. R. 52 Bom. 327.—IND.

**3236. Add. Annotation :—***Generally, Mentd.* Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.

**3293. Add. Annotation : Refd.** The Vectis, [1929] P. 204.

**3604. Add. Annotations :—***Distd.* Dampelskab Svendborg v. L. M. & S. Ry. Co. (1929), 141 L. T. 521. *Refd.* Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.

**3620. Add. Annotation :—***Consd.* Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.

**3624. Add. Citation :—**17 Asp. M. L. C. 305. *Add. Annotation :—**Refd.* Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.

**3634a. Charges for work done beyond “delivering cargo”**—*Meaning of delivery.*—By a charterparty for the carriage of a cargo of timber from the B. to G. it was provided (*inter alia*) as follows: clause 15: “For any work done by the vessel at the port of discharge beyond delivering cargo at the ship’s rail if delivered by hand, or within reach of the ship’s tackle or of the shore crane tackle, if thereby discharged, the consignees shall pay to the shipowner the cost thereof plus 15 per cent.”—*Held*: upon the true construction of clause 15 of the charterparty the vessel had not delivered the cargo until it had lowered it into wagons & released the attachment to the crane which lowered it. *DAMPSELSKAB SVENDBORG v. LONDON MIDLAND & SCOTTISH RY. CO.* (1929), 141 L. T. 521; 45 T. L. R. 591; *sub nom.* SVENDBORG v. LONDON MIDLAND & SCOTTISH RY. CO., 34 Com. Cas. 359, C. A.

**3635. Add. Annotation :—***Consd.* Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.

**3642. Add. Annotation :—***Refd.* Lambert v. I. R. Comrs. (1927), 12 Tax Cas. 1053.

**3643. Add. Annotations :—***Mentd.* The W. H. Randall, [1928] P. 41; Horwood v. Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

**3649a. ——— No other goods to be discharged.**—Certain cotton goods were carried from L. to B., where they were discharged into a lighter. Certain other iron goods, packed in a wooden case, were being lowered into the same lighter when the case broke & the iron goods fell out into the lighter & holed it. Sea-water entered & damaged the cotton goods. Under the contract of carriage ligherage was to be at the risk of the owners. The provisions of the Carriage of Goods by Sea Act, 1924 (c. 22), were also incorporated. The owners of the cotton goods claimed damages from the owners of the ship:—*Held*: (1) if the sea transit had ended when the goods were placed in the lighter, defts. were protected by the terms of the bill of lading. The sea transit, however, had not ended: the discharge into the lighter was part of the operation of discharge from the ship & was not complete as long as there were other goods to be discharged into the lighter; (2) the exception relating to loss due to insufficiency

of packing in Carriage of Goods by Sea Act, 1924 (c. 22), Art. IV. (2) (n), was wide enough to cover the case of the packing of other goods, though primarily it would apply to the goods themselves that were lost or damaged; (3) on the evidence defts. had shown no negligence on the part of themselves or their servants & were therefore exempt from liability under Art. IV. (2) (g).—*GOODWIN, FERREIRA & CO., LTD. v. LAMPORT & HOLT, LTD.* (1929), 141 L. T. 494; 45 T. L. R. 521; 73 Sol. Jo. 402.

**3665a. “Reversible” working days**—*How interpreted.*—Pltf., the owner of a motor-schooner, chartered her to defts. to make a number of voyages with cargoes of bricks from R., in Belgium, to London. The charterparty provided: “The cargo to be loaded & discharged together within five reversible working days, time to commence from first high water at or off loading or discharging berth. Charterer is entitled to keep the vessel on demurrage not exceeding ten days at the rate of 1s. per net register ton per day payable day by day.” On a claim by the owner against the charterers, for demurrage—*Held*: the word “reversible” did not entitle the charterers to set off days saved on one voyage against days lost on another voyage under the same charter.—*VERREN v. ANGLO-DUTCH BRICK CO. (1927), LTD.* (1929), 45 T. L. R. 556; 73 Sol. Jo. 451, C. A.

**3801. Add. Annotation :—***Refd.* Akt. Ocean v. Harding, [1928] 2 K. B. 371.

**3816. Add. Annotation :—***As to (2) Apld.* Finlay, James & Co. v. N. V. Kwik Hoo Tong, [1929] 1 K. B. 400.

**3836. Add. Citation :—**17 Asp. M. L. C. 245.

**3920a. ——— “Per working hatch.”**—A charterparty on a modified Form A of the Chamber of Shipping Welsh Coal Charter, 1896, provided that a coal cargo was to be taken from alongside by consignees at the port of discharge at “the average rate of 125 tons per working hatch per day.” A marginal note or memorandum stated that consignees were not obliged to take cargo at a higher rate than 500 tons per day. Despatch money was to be payable at the rate of £15 per day. The cargo, which consisted of about 4,800 tons of coal, was loaded in unequal portions in four holds. In a dispute between the shipowners & charterers as to the method of calculating the lay days & the consequential payment or non-payment of despatch money:—*Held*: the term in the charterparty “working hatch” denoted a hatch which could be worked because there was cargo in the hold underneath it waiting to be discharged; the charterparty provided for discharge at the average rate of 125 tons per each working hatch per available day & not 500 tons per day for the whole ship; when in the ordinary course one hold became empty the rate of discharge from the remaining holds remained at 125 tons & was not proportionately increased; & the lay days were in the circumstances easily ascertainable

PART VII. SECT. 7, SUB-SECT. 5.—  
C. (a).

*o. Revsd.* [1928] V. L. R. 188; [1928] Argus L. R. 152.—**AUS.**

PART VII. SECT. 7, SUB-SECT. 6.

3652 i. *Revsd.*, 30 S. C. R. 473.

PART VII. SECT. 7, SUB-SECT. 9.—**A.**  
*so. Defences—Practice as to delivery at port of destination.*—*KEANE v. AUSTRALIAN STEAMSHIPS' PRY., LTD.*, [1928] V. L. R. 522; [1928] Argus L. R. 369.—**AUS.**

by simply dividing by 125 the number of tons of coal in the hatch which contained the largest quantity of cargo.—**THE SANDGATE** (1929), 46 T. L. R. 116, C. A.

**3975. Add. Annotation:—Apld.** Verren v. Anglo-Dutch Brick Co. (1927) (1929), 45 T. L. R. 404.

**3989. Add. Annotation:—Refd.** Verren v. Anglo-Dutch Brick Co. (1927) (1929), 45 T. L. R. 404.

**4001a. ——— Whether lien clause incorporated in bill of lading.**—**AKT. OCEAN v. HARDING (B.) & SONS, LTD.,** No. 1780a, *ante*.

**4126a. Validity of charterparty.—Breach of duty by broker procuring charterparty—Ratification of wrongful act.**—**AKT. OCEAN v. HARDING (B.) & SONS, LTD.,** No. 1780a, *ante*.

**4221. Add. Annotation:—Refd.** Symington v. Union Insce. Soc. of Canton (1928), 97 L. J. K. B. 646.

**4248a. ———**—**Resps.** insured claimant's steamer by a policy providing that general average was to be adjusted according to the York-Antwerp Rules of 1924. The ship was chartered to go to Bordeaux to load for Cardiff, the charterparty also providing that average, if any, should be settled according to those rules. During loading at Bordeaux the foremast broke, & damage was done to the ship. For the purpose of repair she was moved to another dock within the port, & the shipowners incurred expenses as follows: wages & provisions of crew, cost of handling & discharging cargo for the purpose of repairs, cost of coal consumed in going in & out & keeping steam up, expense of towing in & out & mooring & port expenses, & cost of coal consumed in shifting the vessel. While staying at Bordeaux the ship was in no danger. On completion of repairs & loading she left for Cardiff, & while she was at sea she fouled some wreckage without any negligence of those on board her, & though there was no immediate danger she was made unfit to encounter the ordinary perils of the sea, & the master put into Cherbourg, as a port of refuge, & had repairs effected. The expenses at Cherbourg were similar to those at Bordeaux:—**Held:** (1) the cost of repairs in each case was recoverable as particular average; (2) the other expenses at Bordeaux could not be claimed as general average, since no danger was in operation there; (3) the other expenses at Cherbourg could be claimed as general average since, though there was no immediate danger, the vessel was not fit, without repair, to encounter the perils of the sea.—**VLASSO-**

**POULOS v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD.,** [1929] 1 K. B. 187; 98 L. J. K. B. 53; 140 L. T. 44; 44 T. L. R. 725; 72 Sol. Jo. 612; 34 Com. Cas. 65; 17 Asp. M. L. C. 544.

**4253a. ———**—**VLASSOPOULOS v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD.,** No. 4248a, *ante*.

**4260. Add. Annotations:—Generally, Refd.** Vlassopoulos v. British & Foreign Marine Insce. Co., [1929] 1 K. B. 187. **Mentd.** Gosse Millard v. Canadian (Government Merchant Marine, [1928] 1 K. B. 717.

**4260a. ———**—**VLASSOPOULOS v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD.,** No. 4248a, *ante*.

**4283a. ——— Cost of shifting ship.**—**VLASSOPOULOS v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD.,** No. 4248a, *ante*.

**4363. Add. Annotations:—Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458; Dampelskab Svendborg v. L. M. & S. Ry. Co. (1929), 141 L. T. 521.

**4372. Add. Annotation:—Distd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

**4392. Add. Annotation:—Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.

**4394. Add. Annotations:—Distd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725. **Consd.** Dampelskab Svendborg v. L. M. & S. Ry. Co. (1929), 141 L. T. 521. **Refd.** Finlay, James & Co., Ltd. v. N. V. Kwik Hoo Tong, [1929] 1 K. B. 400.

**4440. Add. Annotation:—Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.

**4449. Add. Annotation:—Consd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.

**4452. Add. Annotation:—Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.

**4470. Add. Citations:—**[1929] 1 K. B. 150; 97 L. J. K. B. 725; 139 L. T. 575; 72 Sol. Jo. 435; 34 Com. Cas. 47; 17 Asp. M. L. C. 505. **Add. Annotation:—Refd.** Dampelskab Svendborg v. L. M. & S. Ry. Co. (1929), 141 L. T. 521.

**4472. Add. Annotations:—Consd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725. **Refd.** Dampelskab Svendborg v. L. M. & S. Ry. Co. (1929), 141 L. T. 521.

**4475. Add. Annotation:—As to (1) Consd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.

**4485. Add. Annotations:—Distd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725. **Refd.** Dampelskab Svendborg v. L. M. & S. Ry. Co. (1929), 141 L. T. 521.

PART VII. SECT. 15, SUB-SECT. 1.

4339 i. *Revsd.*, 33 S. C. R. 1

4357 i. *Revsd.*, 33 S. C. R. 1.

PART VII. SECT. 15, SUB-SECT. 4.—E.

r. *Revsd.*, 30 S. C. R. 473.

## Part VIII.—Freight.

- 4521.** *Add. Annotation* :—**Refd.** A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn. (1929), 34 Com. Cas. 309.
- 4604.** *Add. Annotation* :—**Apld.** A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn. (1929), 34 Com. Cas. 309.
- 4650.** *Add. Annotation* :—**As to** (1) **Apld.** A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn. (1929), 34 Com. Cas. 309.
- 4761.** *Add. Annotation* :—**Refd.** A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn. (1929), 34 Com. Cas. 309.
- 4837.** *Add. Annotations* :—**Generally.** **Refd.** Shell-Mex v. Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39; **Maine & New Brunswick Electrical Power Co. v. Hart**, [1929] A. C. 631.
- 4882.** *Add. Annotation* :—**Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
- 4931.** *Add. Annotation* :—**Refd.** Perry v. Equitable Life Assce. Society of U.S.A. (1929), 15 T. L. R. 468.
- 4945.** *Add. Annotation* :—**Refd.** A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn. (1929), 34 Com. Cas. 309.

## Part XI.—Contract of Towage.

**5130.** *Add. Citations* :— 44 T. L. R. 110; 17 Asp. M. L. C. 344.

## Part XII.—Collisions.

- 5194.** *Add. Annotation* :—**As to** (3) **Refd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
- 5354.** *Add. Annotation* :—**Refd.** The Vectis, [1929] P. 204.
- 5359.** *Add. Annotation* :—**Consd.** The Vectis, [1929] P. 204.
- 5400.** *Add. Annotation* :—**Folld.** The Harkaway, [1928] P. 199.
- 5400a.** ——— ——— ———.]—**Defts.** sailing barge came to anchor in a river. She was lying on the mud anchored with fifteen fathoms of chain leading from her bows on to the mud & thence to the anchor lying in the channel, which at low water was a mere gut-way thirty feet wide. **Pltfs.** motor boat, drawing 5 feet 3 inches aft & with about one foot of water under her, coming up the river in the deepest water there was at the time, went over one of the flukes of the anchor projecting up out of the mud at the bottom of the river, & was holed & sank :—**Held** : having regard to the shallowness of the water the anchor ought to have been buoyed or some other warning given of its position, & **defts.** were liable to **pltfs.** for the damage sustained.—**THE HARKAWAY**, [1928] P. 199; 97 L. J. P. 113; 139 L. T. 615; 44 T. L. R. 649; 17 Asp. M. L. C. 503.
- Annotation* :—**Refd.** Burley C. v. Lloyd Edw. (1929), 45 T. L. R. 626.
- 5517a.** ——— ——— ———.]—**THE DAGMAR**, No. 5608a, *post*.
- 5521.** *Add. Annotation* :—**Apld.** The Palembang, [1929] P. 246.
- 5528.** *Add. Annotation* :—**As to** (1) **Consd.** The Palembang, [1929] P. 246.
- 5573.** *Add. Annotation* :—**Refd.** The Tovarisch, [1929] P. 293.
- 5592.** *Add. Annotation* :—**As to** (1) **Refd.** The Tovarisch, [1929] P. 293.
- 5608a.** ——— ——— ———.]—**Other vessel moored.**—A dumb hopper made fast by forward moorings to a moored vessel, & swinging with the tide, is herself a moored vessel, & not a vessel under way within the Port of London River bye-laws. The *M.*, a dumb hopper loaded with spoil, had been moored alongside a dredger in Blackwall Reach, River Thames. Her after moorings were cast off, & she commenced to swing with the tide, being still made fast forward by her forward moorings. She was exhibiting one white riding light forward & one white riding light aft. In these circumstances the *D.*, a steamship bound up-river, came into collision with the *M.* :—**Held** : (1) the *M.* was not a vessel under way; (2) in any case the *M.* was probably a "lighter" within the meaning of the Port of London River bye-laws 1914–26, & was not required to carry side lights when under way, & no lights were laid down by the bye-laws for her to carry; (3) the *M.*, being moored to the dredger, which was moored to buoys, was herself moored & bound to exhibit two white riding lights in accordance with bye-law 14; (4) the *D.* was alone to blame for the collision.—**THE DAGMAR** (1929), 141 L. T. 271; 45 T. L. R. 303.

## PART VIII. SECT. 3, SUB-SECT. 3.—B.

**sm.** *Stipulation for payment of difference in freight between steamships & first-class sailing ships—Construction.*—**COULSON v. GZOWSKI** (1862), 22 U. C. R. 33.—**CAN.**

## PART IX. SECT. 2, SUB-SECT. 1.

**c. i.** ——— ———.]—At the trial of the

owner of a motor boat for a contravention of 1894 Act, s. 271 (1), the evidence adduced was that on a certain occasion the boat carried a party of more than twelve persons, gratuitously, on a pleasure excursion on the Clyde, without a Board of Trade certificate :—**Held** : that the expression "passenger steamer" did not necessarily include every ship which on any occasion carried

persons other than the owner & his family, & the master & crew; & accordingly, that it was not established that the motor boat was a passenger steamer, & that the sheriff substitute who heard the case was entitled to find the accused not guilty of the charge.—**YOUNG v. DOUGHERTY, YOUNG v. KYLE**, [1929] S. C. (J.) 57.—**SCOT.**

**5608b.** — **Dumb barge.**—Pltfs.' steamship *S.* was lying moored at a tier on the south side of the River Thames. Defts.' dumb barge *P.* was lying inside of the *S.* & attached to her by ropes fore & aft. When the work of receiving cargo from the *S.* ceased for the day the *P.* was left alongside the *S.* unlighted & unattended. The *S.* was exhibiting the usual anchor light. During the night some unknown craft came into collision with the *P.* & she filled & sank, & as the tide ebbed, the *S.* rested on the submerged hull of the *P.* & both vessels were damaged. Under bye-law 14 of the Port of London River Bye-laws, a vessel under 150 feet in length "when at anchor or moored" by night must exhibit a riding light; but by proviso (a) to the bye-law: "Where masted vessels are lying made fast at the moorings in the tiers, only the outermost off shore of such vessels in each tier shall be required to exhibit the riding light"; & by proviso (c), "... Lighters made fast at wharves, piers or jetties or alongside vessels thereat, shall not be required to exhibit the riding light":—**Held:** (1) it was not negligent to leave the *P.* unattended; but (2) not being a masted vessel nor made fast to a vessel at a wharf, pier or jetty, the *P.* could not bring herself within either proviso (a) or (c); accordingly there was nothing to take her out of the obligation imposed upon her under the main part of the bye-law to exhibit a riding light; (3) as defts. could not prove that the absence of the light was not a cause of the collision with the unknown craft, they failed to discharge the *onus* upon them, & there must be judgment for pltfs.—**THE PRINCESS**, [1929] P. 287; 98 L. J. P. 158; 45 T. L. R. 627.

**5617.** **Add. Annotation:**—**Consd.** *The Palembang*, [1929] P. 246.

**5630a.** **Meaning of flare.**—The phrase "flare-up light" in the Sea Regulations, 1910, article 12, means a light produced by setting fire to something which will burn with an ordinary flame & does not include coloured flames. The exhibition, therefore, of a green pyrotechnic light is not authorised by article 12. **THE TOVARISCH**, [1929] P. 293; 98 L. J. P. 161; 141 L. T. 611; 45 T. L. R. 645.

**5648a.** — **Vessel under way—Meaning of "under way."**—Under bye-law 28 (e) of the Port of London River Bye-laws, 1914-1926, in fog, a steam vessel under way about to turn & whilst turning round shall sound at intervals of not more than two minutes four short blasts in rapid succession, followed, if turning with her head to . . . port, by two short blasts." Bye-law 5 provides that "in these bye-laws . . . unless there be something in the subject or context repugnant to such construction . . . the expression 'under way' when used in relation to a vessel means when she is not at anchor . . . & includes a vessel dropping up or down the river with her anchor on the ground." In order to come to anchor on account of fog pltfs.' vessel *Pakeha*, bound up-river on the flood tide, sounded the appropriate signal under bye-law 28 (e), hard-a-starboarded her helm, &

put her engines full speed astern. When she had swung two or three points the anchor was let go with thirty fathoms of chain & was reported to be holding. Her navigation lights were then switched off, the anchor lights switched on & the bell commenced to be rung for fog. The engines had then to be worked half ahead & full speed ahead for about a minute & a half to avoid a small vessel at anchor, & were then put full speed astern for about a minute & then stopped. About ten minutes after the anchor had been let go, & when the *Pakeha* had nearly swung head to tide, she was run into by defts.' steamship. Defts. alleged (*inter alia*) that the *Pakeha* was a vessel under way & turning in the river, & required, therefore, to continue sounding the signal of four short blasts followed by two:—**Held:** following the criterion laid down in *The Esk*, *The Cilana*, No. 5521, as the *Pakeha* was holden by under the control "of her anchor during all the time in question, she was not "under way," & was right in ringing her bell, the appropriate signal for a vessel at anchor in a fog.—**THE PALEMBANG**, [1929] P. 246; 98 L. J. P. 129; 141 L. T. 399; 45 T. L. R. 495.

**5657.** **Add. Annotation:**—**Distd.** *The Palembang*, [1929] P. 246.

**5660.** **Add. Annotation:**—**Generally, Refd.** *Canton Owners v. Rhesus Owners*, [1928] W. N. 214.

**5748a.** —**Held:** to comply with the direction to "stop" & then "navigate with caution" a vessel should run her way off & bring herself as nearly as possible to a standstill; & a vessel which alleged that, on hearing the fog whistle of the other vessel, she went dead slow by stopping her engines & then putting them slow ahead, & so continued alternately stopping & going slow ahead, was not complying with art. 16.—**THE UNION**, [1928] P. 175; 97 L. J. P. 126; 139 L. T. 448; 17 Asp. M. L. C. 483.

**5757.** **Add. Annotation:**—**Generally, Refd.** *The Young Sid*, [1929] P. 190.

**5818.** **Add. Annotation:**—**Mentd.** *Re Transferred Civil Servants (Ireland) Compensation*, [1929] A. C. 243.

**5925.** **Add. Annotations:**—**Refd.** *The Tovarisch*, [1929] P. 293. **Mentd.** *Canton Owners v. Rhesus Owners*, [1928] W. N. 214; *The Young Sid*, [1929] P. 190.

**5977.** **Add. Annotation:**—**Refd.** *The Vectis*, [1929] P. 204.

**6050a.** **Navigable channel divided into two fairways.**—**THE ZILLAH**, No. 6064a, *post*.

**6064a.** —**A collision occurred between pltfs.' & defts.' steamships in a part of Queenstown Harbour known as the inner man-of-war anchorage, where the navigable fairway is bisected by a line of Admiralty battleships' mooring buoys, thus forming a northern & a southern channel. The two vessels were navigating, pltfs.' steamship up & defts.' steamship down, the northern channel, & the collision was found by the ct. to have taken place on the south side of the said channel. By virtue of their powers under**

**PART XII. SECT. 3, SUB-SECT. 5—C. (f) i.**

**st. Bare storage way.**—**EASTERN S.S. CO., LTD. v. CANADA ATLANTIC TRANSIT CO.**, [1928] Exch. C. R. 129.—**CAN.**

**PART XII. SECT. 3, SUB-SECT. 5.—D. (e) v.**

**5961 i.** *Vessel entering or leaving dock.*—**RINFRET v. CANADIAN S.S. LINES, LTD.**, [1928] Exch. C. R. 165.—**CAN.**

Dockyard Ports Regulation Act, 1865 (c. 125), the Lords Comrs. of the Admiralty exercise authority over Queenstown Harbour as a dockyard port, but by Order in Council of Aug. 10, 1903, it was provided that a fairway would be kept through the inner man-of-war anchorage, & in 1909 the Cork Harbour Comrs., "in pursuance of the powers vested in them by the Cork Harbour Acts, 1820-1903," issued with the approval of the Board of Trade & the consent of the Admiralty, required by sect. 60 of the Cork Harbour Act, 1903, bye-laws for the regulation of navigation in Queenstown Harbour. By bye-law 41: "Any regulations for preventing collisions at sea for the time being in force, under the provisions of the Merchant Shipping Acts, shall be deemed to apply to the port, & shall be construed as if the following bye-laws, Nos. 42 to 52 (inclusive), were added thereto & the entire fairway shall be deemed to be a narrow channel." By bye-law 53: "The foregoing bye-laws, where they refer to any part of the man-of-war anchorages or any other part of the dockyard port, shall apply to any merchant ships that may be temporarily using such parts of the port." The interpretation clause prefixed to the said bye-laws defined "fairway" as "the space within the port for the time being reserved as a highway for vessels in motion." In 1916 the Harbour Comrs. issued a "Description of Fairway," para. 6 of which was as follows: "From the eastern limit of the inner man-of-war anchorage to the White Point Buoy there are two fairways—the northern fairway & the southern fairway. The northern fairway is bounded on the north by an imaginary line from 20 fathoms south of Copper Point Buoy to the western end of Queenstown Deep-water Quay, & thence towards White Point House until Rushbrooke Church bears N.W. by W.  $\frac{1}{2}$  W., & thence to White Point Buoy showing fixed white light, & on the south by the line of Admty. battleships' mooring buoys. The southern fairway is bounded on the north by the line of Admty. battleships' mooring buoys, & on the south by the line of Admty. torpedo-boat & other mooring buoys along the north of Spit Bank & Haul-bowline":—*Held*: subject to the general overriding jurisdiction of the Lords Comrs. of the Admiralty, the Harbour Comrs. have power to reserve space within the port as a highway for vessels in motion, & that the effect of the bye-laws, as explained by the

reservation contained in the "Description of Fairway," was to constitute in the inner man-of-war anchorage two separate fairways, divided by the line of mooring buoys, in either of which vessels, whether proceeding up or down the harbour, were entitled to navigate, & plts.' vessel was alone in fault for the collision for failing to keep on her own starboard side of the northern fairway, in compliance with art. 25.—*THE ZILAH*, [1929] P. 266; 98 L. J. P. 124; 141 L. T. 174; 45 T. L. R. 440.

**6080. Add. Annotation: Mentd.** *The Young Sid*, [1929] P. 190.

**6104a. Right to give signal—Vessel without steerage way.**—(*CLAN LINE STEAMERS, LTD. (OWNERS OF THE "CLAN STUART") v. USKSID STEAMSHIP CO., LTD. (OWNERS OF THE "USKHAVEN")*), [1929] S. C. (H. L.) 69, H. L.

**6115. Add. Annotation:—Refd.** *The Vectis*, [1929] P. 204.

**6174. Add. Citation:—17 Asp. M. L. C.** 289.

**6176. Add. Annotation:—Mentd.** *Hoff Trading (L. & J. Hoff) Co. v. De Rougemont* (1929), 34 Com. Cas. 291.

**6195. Add. Annotation:—Expld.** *The Vectis*, [1929] P. 204.

**6240a. ————.]—"BARON VEENON" S.S. v. S.S. "METAGAMA"**, [1928] S. C. (H. L.) 21, H. L.

**6241. Add. Annotation:—Consd.** *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.

**6248. Add. Annotation:—Apld.** *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.

**6255. Add. Annotation:—As to (1) Apld.** *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.

**6256. Add. Annotation:—Refd.** *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.

**6267. Add. Annotation:—Refd.** *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T.

**6377a. ————.]—"THE PRINCESS, No. 5608b,** *ante*.

**6414. Add. Annotations:—Consd.** *Service v. Sundell* (1929), 45 T. L. R. 569. **Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.

**6417. Add. Annotations:—Consd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628; *The Vectis*, [1929] P. 204. **Refd.** *Service v. Sundell* (1929), 45 T. L. R. 569.

**PART XII. SECT. 3, SUB-SECT. 5.—**  
E. (a).

**sj. Negligent navigation -- What amounts to.]—"WENCHITA" v. BECH-BAY,** BECHBAY S.S. Co. v. "WENCHITA," [1928] Exch. C. R. 178.—CAN.

**sk. Duties of masters.]—Held:** when two vessels are meeting in a narrow channel, careful watch must be kept by the masters of each vessel over the movement of the other vessel, & they must be prompt to signal in case of emergency resulting from their manoeuvres. Carelessness or neglect to so act, if damage results therefrom, is negligence for which each vessel offending is liable.—*EASTERN STEAMSHIP CO. v. "ALICE," J. P. PORTER & SONS, LTD. v. "WARREN,"* [1927] Exch. C. R. 228.—CAN.

**PART XII. SECT. 3, SUB-SECT. 5.—**  
E. (d)

**ni. ———.]—UNITED STATES SHIPPING BOARD v. THE SHIP ST. ALBANS** (1928), 28 S. R. N. S. W. 129; 45 N. S. W. W. N. 104.—AUS.

**PART XII. SECT. 3, SUB-SECT. 5.—**  
G. (a).

**6121 iii. ———.]—In narrow channel—Check signal.]—Where a vessel is overtaking another in a narrow channel such as the Wolland Canal & signifies her desire to pass by blowing one blast, but receives no reply, she is bound to wait, & not attempt to go forward so as to affect the overtaken vessel until permission is obtained. Rule 29 of the Rules of the Road for the Great Lakes is imperative, & overrides the General Rules which deal with con-**

ditions not covered expressly by said Rule.

The "check" signal is not recognised by the Great Lakes Rules, & its meaning & effect can only be determined by the circumstances under which it is given & received.—*SINCENNES-McNAUGHTON LINES v. "STEEL CHEMIST,"* [1928] Exch. C. R. 182.—CAN.

**PART XII. SECT. 5, SUB-SECT. 5.—A.**

**6413 xviii. ———.]—SINCENNES-McNAUGHTON LINE, LTD. v. "BRULIN" S.S.,** [1928] Exch. C. R. 45.—CAN.

**PART XII. SECT. 5, SUB-SECT. 5.—B.**

**q i. ———.]—Held:** where vessels are meeting in narrow channels or areas & improper signals by whistle are exchanged, rules 22 & 23 being violated by both vessels, liability for negligence which causes a collision

6429. *Add. Annotation* :—**Expld.** *The Vectis*, [1929] P. 204.

6430. *Add. Annotation* :—**Consd. & Expld.** *The Vectis*, [1929] P. 204.

6433a. ———.]—**Pltfs.**, as owners of the barge *H.*, brought an action in the Mayor's & City of London Ct. against the owners of the barge *V.* in respect of damage sustained by the *H.* in Milton Creek, River Swale, through coming in contact with the *V.*'s anchor, which was admittedly being carried in an improper position, with the stock projecting over the bows, in breach of one of the Milton Creek bye-laws. But for the position of the anchor, the use of fenders would have avoided damage to either vessel. The judge held that the master of the *H.* knew of the position of the anchor & took the risk of coming in contact with the *V.* when the rush of the flood tide swung the *H.*, which was aground, athwart the creek & into contact with the *V.* lying moored on the opposite bank. He found that the master of the *H.* was negligent in not taking measures to avoid coming in contact with the *V.*, & on the authority of *The Monte Rosa*, No. 6430, which he thought was in conflict with *The Dunstanborough*, No. 6429, gave judgment for **defts.** **Pltfs.** appealed :—**Held** : **defts.** had not established either knowledge of the position of the anchor or negligence on the part of the master of the *H.*, & the appeal succeeded.—**THE VECTIS**, [1929] P. 204 ; 98 L. J. P. 135 ; 140 L. T. 563 ; 45 T. L. R. 384.

6437a. ———.]—A steamer having stopped but not having, as she should have done, reversed immediately before a collision, though the ct. found as a fact that her not having done so did not affect the collision, & having thus infringed rule 14 of the Thames Rules :—**Held** : she was nevertheless not to blame, for the Thames Rules do not fall within the operation of Merchant Shipping Act, 1873 (c. 85), s. 17.—**THE HARTON** (1884), 9 P. D. 44 ; 53 L. J. P. 25 ; 50 L. T. 370 ; 5 Asp. M. L. C. 213 ; 32 W. R. 597.

6441. *Add. Annotations* :—**As to** (2) **Consd.** *The Vectis*, [1929] P. 204. **As to** (3) **Consd.** *The Vectis*, [1929] P. 204.

6451. *Add. Annotation* :—**Consd.** *The Vectis*, [1929] P. 204.

6465. *Add. Annotation* :—**Refd.** *The Young Sid*, [1929] P. 109.

6499. *Add. Annotation* :—**Consd.** *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

6501. *Add. Annotation* :—**Refd.** *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

6503. *Add. Annotations* :—**Mentd.** *A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn.* (1929), 34 Com. Cas. 309 ;

*Page v. Scottish Insee. Corpn.* (1929), 98 L. J. K. B. 308.

6504. *Add. Annotation* :—**Consd.** *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

6562. *Add. Annotations* :—**Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628 ; *Service v. Sundell* (1929), 45 T. L. R. 569.

6591. *Add. Annotation* :—**Apld.** *Brooke v. Bool*, [1928] 2 K. B. 578.

6594a. ———.]—“**HARVEST HOME**,” **THE**, No. 5217, *ante*.

6624. *Add. Annotation* :—**Consd.** *Strathfillan S.S. Owners v. Ikala S.S. Owners, The Ikala*, [1929] A. C. 196.

6627. *Add. Annotation* :—**Apld.** *A.-G. v. Glen Line & Liverpool & London War Risks Insee. Assocn.* (1929), 34 Com. Cas. 309.

6628a. ——— **Detention due to collision—Owner unable to use ship owing to contract during period of detention.**]—On Mar. 12, 1927, **resps.**’ steamship suffered damage by a collision with **appls.**’ steamship, for which the **appls.** admitted liability. The damage did not render **resps.**’ vessel unseaworthy, & she continued trading without effecting repairs. While she was so trading her owners by a memorandum of agreement dated Dec. 21, 1927, contracted to sell her. The agreement set forth that the vessel was “due London on Dec. 24, thence **H. & A.**, expected ready for delivery between, say, Jan. 10 & Jan. 31, & to be delivered to buyer at Antwerp or a U.K. port at seller’s option, but not later than Feb. 25, 1928, subject to buyer’s approval afloat & to bottom examination in dry dock, as specified in Clauses 4 & 5 of this contract . . . 4. The buyer shall commence the inspection of the steamer afloat within twenty-four hours of receiving notice of steamer’s readiness for inspection, & if on superficial inspection the buyer is satisfied with the general condition of the steamer, seller shall at his own risk & expense open up the engines, boilers & tanks for the inspection of the steamer afloat by the buyer. . . . The buyer shall declare acceptance or refusal of the steamer in writing within twenty-four hours after completion of such inspection afloat . . . 5. For examination of bottom &/or other water parts &/or tailend shaft, seller agrees to put the vessel into dry dock. . . .” The steamship arrived at Antwerp on Jan. 10, 1928, & her owners gave notice to the buyer of her readiness. On Jan. 16 they proceeded to open up the vessel’s engines, boilers & tanks for inspection, & while the vessel was in that condition & therefore unable to trade, they took the opportunity to effect the repair of the collision damage, which was of such a nature

must be determined by the weight of evidence after consideration of the action of each vessel, having regard to rule 37.—“**MANLEY**” S.S. (**OWNERS OF**) *v.* “**HECTOR**” S.S. (**OWNERS OF**) & **THE NORTHERN CONSTRUCTION CO.**, [1928] Exch. C. R. 42.—**CAN.**

**PART XII. SECT. 5, SUB-SECT. 6.—C. (a).**

6447 i. *Rules of Common Law & Admiralty distinguished.*]—Where the negligence of **deft.** is not the sole cause of the damage different principles

for assessing liability are applicable at common law from those to be applied in Admiralty, for at common law the suit will fail, whereas in Admiralty where the damage is caused by the combined default of two or more vessels, the liability is to be apportioned.—“**RABENFELS**,” **THE** (1929), 1 L. R. 56 Calc. 763.—**IND.**

**PART XII. SECT. 6, SUB-SECT. 4.**

sl. *Effect of Maritime Conventions Act, 1914, s. 9.*]—The present action is one *in rem* against the tug *S.* for damages to **pltf.**’s canal boat, when in

tow of the *S.*, as a result of a collision between the said canal boat, a dumb tow, & the wall of the inner basin of the harbour of Quebec, which collision was alleged to be due to the negligent navigating of the *S.* :—**Held** : sect. 9 was not limited in its application solely to actions for damages due to collision between vessels, & the present action not having been commenced within two years from the date when the damages or loss or injury was caused should be dismissed.—“**SPRAY**” *v.* **ST. CLAIR**, [1928] Exch. C. R. 56.—**CAN.**



that it could be repaired while the ship was afloat. The repairs admittedly occupied four days, & were completed on Jan. 24. Subsequently the vessel was put into dry dock for bottom examination. On the reference to assess the damage caused by the collision resps. claimed (*inter alia*) loss & expenses in respect of four days' detention while their ship was undergoing repairs:—*Held*: inasmuch as resp. shipowners had entered into contractual obligations which prevented them from trading with the vessel & earning profits during the time when the repair of the collision damage was being executed, they had not suffered any loss by the detention of their vessel in consequence of the collision, & were therefore not entitled to recover from the wrongdoer.—*THE YORK*, [1929] P. 178; 98 L. J. P. 147; 141 L. T. 215, C. A.

6656. *Add. Annotation*:—*Consd.* *The York*, [1929] P. 178.

6659. *Add. Annotation*:—*Refd.* *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.

6663. *Add. Annotation*:—*Refd.* *The Ikala*, [1928] P. 86.

6671. *Add. Annotation*:—*Apld.* *The York*, [1929] P. 178.

6674. *Add. Annotation*:—*Apld.* *The York*, [1929] P. 178.

6677. *Add. Citations*:—*affd. sub nom. STRATHFILLAN S.S. OWNERS v. IKALA S.S. OWNERS, THE IKALA*, [1929] A. C. 196; 98 L. J. P. 49; 140 L. T. 177; 17 Asp. M. L. C. 555, H. L.

*Add. Annotation*:—*Consd.* *The York*, [1929] P. 178.

6678. *Add. Annotation*:—*Refd.* *The Young Sid*, [1929] P. 190.

6706. *Add. Annotation*:—*Apld.* *A.-G. v. Glen Line & Liverpool & London War Risks Insce. Asscn.* (1929), 31 Com. Cas. 309.

6708. *Add. Annotation*:—*Apld.* *A.-G. v. Glen Line & Liverpool & London War Risks Insce. Asscn.* (1929), 31 Com. Cas. 309.

6736a. *Allowance to charterer under cesser clause.*—*THE ESSEX ENVOY*, No. 2101a, *ante*.

6742. *Add. Annotation*:—*Refd.* *The Point Breeze*, [1928] P. 135.

6758. *Add. Annotation*:—*Refd.* *Engelke v. Musmann*, [1928] A. C. 433.

## Part XIV.—Wreck.

6794. *Add. Annotation*:—*As to* (2) *Consd.* *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

6796. *Add. Annotation*:—*Consd.* *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

6797. *Add. Annotation*:—*Apld.* *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

6807. *Add. Annotations*:—*As to* (1) *Consd.* *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159; *G. W. Ry. v. S.S. Mostyn*, [1928] A. C. 57.

6809a. ———— *J.*—A ketch belonging to defts. sank, owing to their negligence, in a river, of which first plffs. were the conservators, & thereby obstructed the navigation of the river & second plffs.' wharf & the approaches thereto. Immediately after

the sinking of the ketch, & before any expenses were incurred in removing her, defts. abandoned her. Plffs. jointly incurred expenses in removing the obstruction, & sued to recover the amount from defts.:—*Held*: (1) the ketch having sunk through the negligence of defts., they became liable at common law for the damage caused by the obstruction to the navigation of the river & the blocking of the approach to the wharf, & they could not escape liability for that damage by abandoning the wreck; (2) the damages recoverable were the reasonable cost of removing the obstruction.—*DEE CONSERVANCY BOARD v. MCCONNELL*, [1928] 2 K. B. 159; 97 L. J. K. B. 487; 138 L. T. 656; 92 J. P. 54; 26 L. G. R. 204; 17 Asp. M. L. C. 433, C. A.

## Part XV.—Salvage.

7056. *Add. Annotation*:—*As to* (2) *Refd.* *Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

## Part XVI.—Pilotage.

8002. *Add. Citation*:—17 Asp. M. L. C. 338.

8030. *Add. Annotation*:—*Distd.* *Humber Con-*

*servancy Board v. Federated Coal & Shipping Co.*, [1928] 1 K. B. 492.

## Part XVII.—Shipping Casualties.

8057. *Add. Annotation*:—*Refd.* *The Royal Star* (1927), 97 L. J. P. 49.

### PART XIII. SECT. 2.

h i. ——— *Bridge.*—*A.-G. FOR BRITISH COLUMBIA v. "PACIFIC FOAM"*, [1928] 2 D. L. R. 877; [1928] 1 W. W. R. 965.—*CAN.*

## Part XVIII.—Limitation of Liability of Owners and Others.

8083. *Add. Citation* :—17 Asp. M. L. C. 270.

*Add. Annotations* :—**Consd.** *The Ruapehu* (No. 2), [1929] P. 305. **Refd.** *Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Same*, [1927] 2 K. B. 132.

8104a. **Dock owner with controlling interest in second dock**—Whether second dock included in “the area” for purpose of calculating liability.—*Pltfs.*, a limited co., owned docks at B., in one of which *defts.* vessel *R.* received damage. The *R.* was the largest vessel which had been in those docks within the statutory period, but *pltf.*s. also had a controlling interest in docks at F. owned by another limited co. in which a larger vessel than the *R.* had been docked :—**Held** : even assuming *pltf.*s. exercised any power over the F. docks within 1900 Act, s. 2 (1), those

docks were not within “the area” contemplated by the sect., namely, the area containing within it the particular dock in which the damage was caused; & *pltf.*s. were entitled to a limitation decree based on the tonnage of the *R.*—**THE RUAPEHU**, No. 2, [1929] P. 305; 98 L. J. P. 167; 45 T. L. R. 657.

8121a. **Whether Merchant Shipping Act, 1906 (c. 48), s. 69, retrospective.**—Above sect., with reference to the calculation of the tonnage of a steamship for the purposes of limitation of liability, is not retrospective so as to apply to a collision occurring before the Act came into operation, though the limitation of liability action was commenced after the Act came into operation.—**THE LANGDALE** (1907), 76 L. J. P. 154; 23 T. L. R. 683.

## Part XIX. Liens on Ship, Freight and Cargo.

8200. *Add. Annotation* :—**Mentd.** *The Point Breeze*, [1928] P. 135.

8213. *Add. Annotation* : **Mentd.** *Engelke v. Musmann*, [1928] A. C. 433.

8215. *Add. Annotation* :—**Consd.** *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

8216. *Add. Annotation* : **Refd.** *G.W. Ry. v. N.S. Mostyn*, [1928] A. C. 57.

8288. *Add. Annotation* :—**Mentd.** *Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll*, [1929] 1 K. B. 470.

8366. *Add. Annotation* :—**Mentd.** *Re Stanton F. & E., Ltd.*, [1929] 1 Ch. 180.

8384. *Add. Annotation* :—**Mentd.** *The Point Breeze*, [1928] P. 135.

## Part XXI. Harbours, Docks and Piers.

8534. *Add. Citation* :—26 L. G. R. 1.

8546. *Add. Annotation* : **Refd.** *Busby v. Avgherino*, [1928] A. C. 200.

8564a. **Exemption—Abolition of.**—**Held** : the exemption claimed having been shown to be in existence for over one hundred years, the ct. would endeavour to find a legal origin for it, but, assuming the exemption to have been proved, it was abolished by Shipping Dues Exemption Act, 1867 (c. 15).—**NEWPORT CORPN. v. ISLE OF WIGHT FARMERS' TRADING SOCIETY, LTD.** (1928), 92 J. P. 109.

8575. *Add. Annotation* :—**Mentd.** *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.

8629a. ——— **No duty to disclose condition of berth.**—*Pltf.*s. steamship was damaged by lying in an uneven berth at a wharf owned by

*defts.*, a railway co. *Defts.* harbour master at the wharf acted as ship's agent for *pltf.*s. for the limited purposes of reporting the ship at the Custom House, paying the pilot, & providing the master with funds to pay the labourers discharging the cargo. Before *pltf.*s. arranged to send the vessel to the wharf the harbour master had in writing informed them that the berths were “perfectly safe for steamers to lie aground.” *Defts.* alleged that the vessel came to the wharf subject to printed conditions, known to the harbour master, whereby the railway co. did not represent, warrant or guarantee that the berths alongside the wharf were safe or suitable for the accommodation of vessels, & all vessels brought alongside remained at the sole risk of their owners &

### PART XVIII. SECT. 5, SUB-SECT. 4.

**sn. Onus of proof.**—**Held** : the onus was on petitioners of showing that the damage did not arise on distinct occasions; they must therefore establish that the second collision was caused by the same mistake as caused the first.—**THE “LUCULITE” v. THE “R. MACKAY.”** [1929] S. C. (Ct. of Sess.) 401.—**SCOT.**

### PART XIX. SECT. 1, SUB-SECT. 1.

**so. Whether assignable.**—**Held** : in an action for damages by collision, the sale of one of the ships by the owner

does not disentitle him from enforcing a maritime lien on the other ship. Such a lien is in general, & in such a case as this is unassignable.—**DUFF v. THE “PROGRESS,”** [1928] Exch. C. R. 157.—**CAN.**

### PART XXI. SECT. 1.

**sp. Lease of wharf—Ejectment.**—Where a wharftide site in the B. Harbour, E. London, had been leased to applt. by the Union of S. Africa, who was the owner of the site, & an action for ejectment had been brought by the S. African Ry. & Harbours :—**Held** : as *pltf.* was the Governor-

General in Council, who in railway & harbour matters sued in the name of the S. African Ry. & Harbours as directed by sect. 85 of Act 22 of 1916, & who owned the wharftide site, a contention that *pltf.* was not the owner of the site could not be sustained.—**WINTER v. S. AFRICAN RYS. & HARBOURS**, [1929] App. D. 100.—**S. AF.**

### PART XXI. SECT. 7.

**sr. Liability of caretaker of buoys—Damage to individual.**—**HARKINS v. BENSON** (1895), 33 N. B. R. 93.—**CAN.**

on the terms that the co. should "in no event whatever be liable for any damage . . . however caused to or suffered by any such vessel." The harbour master did not in fact know that the berth was defective:—*Held*: (1) even if the harbour master ought to have known of the defective condition of the berth, which was doubtful, it was not his duty to impart to plffs. information, acquired as harbour master, which would be against the interests of defts. & of the harbour master to disclose; (2) the notice did not form part of the contract between plffs. & defts., & afforded defts. no defence; & accordingly plffs. were entitled to judgment.—*THE HAYLE*, [1929] P. 275; 141 L. T. 429; 45 T. L. R. 560.

**8643.** *Add. Annotations*:—*Generally*, *Refd.* *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159. *Mentd.* *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. R. 108.

**8645.** *Add. Citations*:—92 J. P. 18; 14 T. L. R. 179; 72 Sol. Jo. 16; 26 L. G. R. 91; 17 Asp. M. L. C. 367.

*Add. Annotation*:—*Consd.* *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

**8661.** *Add. Citations*:—*affd.* (1927), 138 L. T. 382; 26 L. G. R. 1; *sub nom.* *BOSTON CORPN. v. WILHAM OUTFALL BOARD*, 92 J. P. 1, H. L.

**8665.** *Add. Annotation*:—*Consd.* *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

**8688a.** ——.] *THE HAYLE*, No. 8629a, *ante*.

**8700.** *Add. Annotation*:—*Refd.* *Oliver v. Sadler & Co.*, [1929] A. C. 584.

**8711a.** ——.]—*THE HAYLE*, No. 8629a, *ante*.

**8715.** *Add. Citations*:—138 L. T. 286; 17 Asp. M. L. C. 347; 33 Com. Cas. 79.

*Add. Annotations*:—*As to* (1) *Folld. Wickett v. Port of London Authority* (1928), 138 L. T. 668. *Refd.* *The Hayle*, [1929] P. 275.

**8715a.** ——.]—Pltf., a lighterman, was in charge of a barge, which was being taken from a dock through a lock. The dock & lock were both the property of defts. While pltf. was navigating the barge under the orders & directions of defts., a rope attached to the barge broke & struck pltf., causing him personal injuries. Pltf. had no option to refuse to take the rope on board. Defts. relied on the terms of a notice, exhibited on the pierhead of the lock, to the effect that lightermen availing themselves of the facilities & assistance of defts.' servants must do so at their own risk, & upon the understanding that no liability whatsoever should attach to defts. or their servants for any injury from whatever cause arising to or by the craft or to or by any person on board thereof:—*Held*: the words of the above notice were *prima facie* adequate to exempt defts. from liability for the negligence of their servants, & the fact that pltf. was compelled to regulate the barge according to the directions of the dockmaster was in no way inconsistent with the fact that he was in the circumstances "availing himself of the facilities & assistance" of defts., & did not deprive defts. of the exemption afforded by the notice.—*WICKETT v. PORT OF LONDON AUTHORITY*, [1929] 1 K. B. 216; 98 L. J. K. B. 222; 138 L. T. 668.

## Part XXIII.—Pleasure Yachts.

**8732a.** *Survey by Lloyd's Register—Liability of individual surveyor—Negligence.*—Pltf., who was the owner of a yacht, requested the society known as Lloyd's Register to make a special survey of the yacht for classification. The society stipulated for freedom from liability, & the survey was conducted by two of the society's surveyors. Deflt., who was one of these two surveyors, was responsible for the mainmast. The society certified that the yacht had been reported to be in a good & efficient state & that she had been classed as

A1. In fitting out the yacht for sea pltf. found that the mainmast was rotten in places & wholly unfit for use, & he claimed damages from deflt. for negligence & breach of duty:—*Held*: there was no privity of contract between pltf. & deflt., & that independently of contract deflt. owed to pltf. no duty of care or skill with regard to the survey, & therefore the action failed.—*HUMPHREY v. BOWERS* (1929), 45 T. L. R. 297; 73 Sol. Jo. 191; 34 Com. Cas. 189.

## Part XXV.—Requisition of Ship by Government.

**8733.** *Add. Annotation*:—*As to* (2) *Distd.* *Ensign Shipping Co. v. I. R. Comrs.* (1928), 139 L. T. 111.

**8749.** *Add. Annotation*:—*Consd.* *Glan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557.

**8750.** *Add. Annotations*:—*Consd.* *Glan Line Steamers v. Board of Trade* (1928), 140 L. T. 33; *The Clan Matheson*, [1929] C. A. 514. *Refd.* *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534.

**8751.** *Add. Annotations*:—*Consd.* *Hain S.S. Co.*

### PART XXV. SECT. 2.

*h. i.*—*Value at time of requisition.*—*The S.* was requisitioned by the Canadian Government in 1918. In 1924 the claimant was notified of the release of the vessel. At that time

she was lying partly submerged, at Kingston, a derelict hulk of no value, & claimant refused to take delivery thereof:—*Held*. on the facts, the question of hire disappeared, & that the controversy resumed itself into a question of compensation for the value

of the vessel so appropriated, as at the date of the requisition thereof, & not for the profits that could have been made out of the vessel during the period of requisition.—*MACKEY v. R.*, [1928] Exch. C. R. 149.—*CAN.*



# SMALL HOLDINGS, SMALL DWELLINGS AND ALLOTMENTS.

## PART I. SECT. 5.

sa. *Agreement to quit before expiry of lease—Subsequent demand for renewal—Small Landholders (Scotland) Act, 1911, s. 32.*—A statutory small tenant, under a lease terminating at Whit Sunday, 1929, entered into an agreement with his landlord to quit the holding at

Martinmas 1926, the landlord undertaking to buy the straw produced at the threshing of that year's crop, & to pay certain compensations. On the faith of the agreement the landlord advertised the farm for sale with entry at Martinmas 1926, & the farm was sold. The tenant, who knew of these

proceedings, refused to remove when the term arrived, & some days later took up the position that he was entitled to a renewal of his lease under above sect. (4).—*Held*: above sect. did not apply to the circumstances of the case.—CHRYNER PATTERSON, [1929] S. C. (Ct. of Sess.) 119—SCOT.

## SOLICITORS.

## Part II.—Admission and Registration.

6. *Add. Annotation* :—*Re*fd. *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.

## Part IV.—Solicitor and Client.

813. *Add. Citation* :—*affd.* (1929), 45 T. L. R. | 904a. ————.]—*LUCK v. MEYJER* (1928), 72 Sol. Jo. 337.

## Part VI.—Remuneration of Solicitors—Costs.

1207. *Add. Annotation* :—*As to* (1) *Consd. Re Debtor*, [1929] 2 Ch. 146.

## PART IV. SECT. 1, SUB-SECT. 3.

*t i.* ————.]—Where a solr. has undertaken legal business without a written retainer, & afterwards has a dispute with the client as to the authority conferred thereby, & there is nothing but assertion against assertion, the ct. must accept the client's denial as against the affirmation of the solr.—*ECCLES v. RUSSELL*, [1928] 3 W. W. R. 765.—CAN.

## PART IV. SECT. 1, SUB-SECT. 7.—F.

*ss.* *Joint retainer—Denial of liability*—“Reasonably necessary services.”—*NORTHERN LIFE ASS'CE CO. OF CANADA v. McMASTER*, [1928] 3 D. L. R. 497; [1928] S. C. R. 512. *affg.* S. C. sub nom. *Re SOLICITORS*, 33 O. W. N. 175.—CAN.

## PART IV. SECT. 2, SUB-SECT. 2.—A. (c).

*t i.* ————.]—*Liability of solicitor*.—*MORAN v. SCHERMERHORN* (1858), 2 P. R. 261.—CAN.

## PART IV. SECT. 2, SUB-SECT. 2.—B. (d).

*ss.* *Submission to judgment*.—*DUBUC v. MARSTON CORPN.*, [1928] 1 D. L. R. 225; [1927] S. C. R. 526.—CAN.

## PART IV. SECT. 3, SUB-SECT. 3.—B.

*r i.* ————.]—The same considerations which apply to a purchase by a solr. from his client apply also to a sale by a solr. to his client; & the obligations of a clerk in the service of a solr., to whom the solr. has delegated a matter, or to whom the solr.'s client goes direct, are no less in the matter upon which the clerk proceeds than are the obligations of the solr. himself. In such circumstances the solr.'s clerk will stand in a fiduciary relation to the client, although there be no privity of contract between himself & such client; & before selling his own property to the client he will be bound to make full disclosure to such client of his interest in such property.—*BLAIR v. MARTIN*, [1929] N. Z. L. R. 225.—N.Z.

## PART VI. SECT. 5, SUB-SECT. 1.—B.

*ss.* *Arbitrators—Public Works Act*, R. S. B. C. 1924, s. 24.]—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any par-

ticular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of preparation was reasonably necessary.—*Re GALT BROS. & BURNABY ARBITRATION*, [1928] 1 W. W. R. 798; 39 B. C. R. 470.—CAN.

## PART VI. SECT. 5, SUB-SECT. 1.—D. (b).

*ss.* *Whether solicitor entitled—On withdrawal of general retainer*.—A solr. was retained by C. to conduct proceedings in an action against S. The retainer was not disputed. The solr. conducted the action until the judgment of the trial judge was given. C. decided to appeal & commenced proceedings for an appeal. From that time he took over from the solr. the conduct of & control of the proceedings & of the appeal, & thereafter the solr. merely performed such services as C. from time to time required of him. The solr. then delivered his bill of costs, & in due time obtained on *præcipe* an order for its taxation pursuant to Solicitors Act, s. 33 (c).—*Held*: C., by taking over the conduct & control of the proceedings put an end to the general retainer, as he had a right to do, & the solr. was thereupon entitled to claim payment of his costs, & in the absence of “special circumstances,” to have a *præcipe* order for taxation of his bill.—*Re SAVIGNAC*, [1928] 4 D. L. R. 433; 62 O. L. R. 589.—CAN.

## PART VI. SECT. 5, SUB-SECT. 10.—E. (a).

*sh.* *To ascertain “costs in the cause.”*—*McLEAN v. RATEKIN*, [1928] 3 W. W. R. 592.—CAN.

## PART VI. SECT. 5, SUB-SECT. 11.—B.

*o i.* ————.]—*Jurisdiction of court to extend*.—*Re GENT ONE, Ex p. PRATT* (1927), 27 S. R. N. S. W. 48.—AUS.

## PART VI. SECT. 5, SUB-SECT. 11.—D. (a).

2371 v. ————.]—A taxing officer's ruling as to whether any particular item should be allowed or excluded ought rarely to be interfered with on appeal, if it appears he understood the governing principle.—*CANADIAN EDUCATIONAL FILMS, LTD. & GOODART PICTURES INCORPORATED v. HORAN & NICHOLS THEATRES, LTD.* (1928), 39 B. C. R. 424.—CAN.

2371 vi. ————.]—*NOBLE v. BROMLEY*, [1928] 2 D. L. R. 605; [1928] 1 W. W. R. 899; 39 B. C. R. 518.—CAN.

## PART VII. SECT. 1, SUB-SECT. 1.

*sl.* *Solicitor to executor*.—“General counsel fee.”—The practice which has been followed in Saskatchewan of allowing the solr. for an exor. a “general counsel fee” in addition to the amount of his specific charges is without legal justification.—*Re ROEMER ESTATE, Re MOTT & ROEMER*, [1928] 3 D. L. R. 860; [1928] 2 W. W. R. 566.—CAN.

## PART VII. SECT. 1, SUB-SECT. 4.—B. (c).

*sm.* *Investigation of title—Of assignee of equity of redemption—On extension of mortgage—Whether covered by scale fee*.—It is a question whether a ts. are so sufficiently connected with the extension of the mtge. as to be comprised within the scale fee for effecting such extension. The investigation of the title of the assignee of an equity of redemption is not so connected, & the costs of such investigation are not covered by the scale fee.—*Re RUSS* (1927), 28 S. R. N. S. W. 7.—AUS.

## PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

*ss.* *Attendances before registrar to settle judgment*.—*MAIR v. DUNCAN LUMBER CO., LTD.* (No. 2), [1928] 1 W. W. R. 431; 39 B. C. R. 399.—CAN.

## PART VIII. SECT. 3, SUB-SECT. 5.—B.

3192 iii. ————.]—*Deft.* was given costs against the three plffs. One of plffs. had recovered a judgment against *deft.* for a much larger sum in a previous action to which the other two plffs. were not parties, & claimed the right to set-off *deft.*'s costs against that judgment. *Deft.* argued that the set-off would defeat the lien of his solr. The ct. allowed the set-off, & an appeal from the order was dismissed.—*INLAY HARDWOOD FLOOR CO., LTD. v. DIERSSEN*, [1928] 2 D. L. R. 560; [1928] 1 W. W. R. 897; 39 B. C. R. 514.—CAN.

## PART VIII. SECT. 4, SUB-SECT. 6.

*sq.* *Protection of lien by declaratory judgment—Jurisdiction of court*.—*CASBURY v. STUART*, [1928] 3 D. L. R. 879; 62 O. L. R. 371.—CAN.

## Part IX.—Solicitor's Remedies for Costs.

3451a. —.].—HORNER v. CREW (1928), 72 Sol. Jo. 103.

## Part XI.—Solicitors and Third Persons.

4177a. —.].—In trespass by A. against B. for false imprisonment, B. pleaded that J. recovered a judgment against A. in the sheriffs' ct., London, that A. was summoned, & appeared before the judge of that ct., who ordered the sum recovered to be paid by instalments, that the first instalment was demanded & not paid; that the judge duly, by warrant under his hand & seal according to 8 & 9 Vict. c. 127, ordered the officer of the ct. to take A., & convey him to prison for forty days; & that B. as the attorney of J. delivered the warrant to the officer, who took A. Replication, that, by this order, it

was not directed that A. should be committed, *modo et forma*:—*Held*: deft., having acknowledged actual participation in the act of trespass, by pleading in confession & avoidance, could not protect himself, upon this issue, by showing that he had acted merely as the attorney of J.—KINNING v. BUCHANAN (1849), 8 C. B. 271; 7 Dow. & L. 169; 18 L. J. C. P. 332; 13 L. T. O. S. 546; 13 Jur. 812; 137 E. R. 513; *subsequent proceedings* (1850), 15 L. T. O. S. 305.

*Annotations*: —*Apld.* Abley v. Dale (1850), 10 C. B. 62. *Mentd.* Garton v. G. W. Ry. Co. (1859), 5 Jur. N. S. 1214.

## Part XII.—Partnership between Solicitors.

4278. *Add. Annotation* :- *Apld.* Stoke Newington Borough Council v. Richards (1929), 45 T. L. R. 650.

## Part XIV.—Discipline and Removal from Roll.

4437a. Misconduct while practising abroad—Investigation by coroner & attorney of the

court.]—*Re* SOLICITOR (1928), 72 Sol. Jo. 570, D. C.

**PART XIV. SECT. 2, SUB-SECT. 9.**  
**sr. Issuing valueless cheques.**—Where a practitioner had drawn & passed to persons not clients of his several

valueless cheques without any reasonable expectation that they would be met on presentation, & had not paid the amounts for which they were drawn

—*Held*: he had been guilty of unprofessional conduct, & should be struck off the rolls.—*Re* R. (No. 2), [1927] S. A. S. R. 448. —**AUS.**

## SPECIFIC PERFORMANCE.

## Part II.—Limits of Jurisdiction.

105. *Add. Annotation* :—*Refd. Re Sandwell Park Colliery Co., Field v. The Co.*, [1929] 1 Ch. 277.

## Part III.—Defences to Claim for Specific Performance.

206. *Add. Annotation* :—*Mentd. Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

282a. Agreement subject to "model form of conveyance specially prepared"—Absence of model form.]—Where one or more of the material terms of an alleged contract cannot be determined, either by interpretation or as being of a kind which the law will supply, there is no contract, even though there has been an act of part performance, & the ct. can grant neither specific performance nor damages.

Pltf. signed an agreement, in the form of a letter prepared on behalf of deft., to purchase certain premises subject to the conditions indorsed thereon, & to take the conveyance "in the model form of conveyance specially prepared" for use in relation to the same. The conditions stated (*inter alia*) that the property sold was subject to restrictions appearing in the model form, & that if the purchaser should not after notice withdraw any objection which the vendor could not or would not remove, the vendor might by notice in writing annul the agreement. The premises were part of property conveyed to deft. by three conveyances, among others, dated respectively 1908, 1910 & 1911. They were comprised in the 1908 conveyance, & were part of what was known in deft.'s agent's office as block 4, other parts of the property being there known as blocks with other numbers. Most of the property had come to deft. subject to restrictions against user for trade purposes. At the date of the agreement the restrictions were obsolete in regard to blocks 4, 7 & 9; but in all dealings with property comprised in those blocks deft. had imposed like restrictions. No model form had been prepared for use in dealings with block 4, & through a mistake of deft.'s

agent, pltf. received one appropriate to block 8. Pltf. took possession before completion, & soon raised the question of turning the premises into a shop. After long negotiations, during which the question of restrictions was thoroughly discussed, deft. refused permission, maintaining that, despite his agent's mistake in sending the wrong model form, the restrictions against trade ought to stand; & a new draft conveyance, incorporating such restrictions, was prepared on his behalf. Pltf. refused to execute it, & sought by this action to enforce the original agreement subject only to restrictions in one of the schedules to the conveyance of 1908, & thus free from restrictions on trading:—*Held*: there was no enforceable contract, as by reason of the non-existence of the appropriate model form of conveyance there were missing from the original agreement material terms which the ct. could not supply, & also that damages could therefore not be assessed.—*STIMSON v. GRAY*, [1929] 1 Ch. 629; 98 L. J. Ch. 315; 141 L. T. 456.

285. *Add. Annotation* :—*Refd. Stimson v. Gray*, [1929] 1 Ch. 629.

285a. —.]—*STIMSON v. GRAY*, No. 282a, *ante*.

314a. —.]—*LANDSDOWN'S LORD CASE (circa 1786)*, cited in 16 Ves. at p. 310; 33 E. R. 1002.

*Annotation* :—*Consd. Moody v. Walters* (1809), 16 Ves. 283.

703. *Add. Annotation* :—*Refd. Curtis Moffat v. Wheeler*, [1929] 2 Ch. 224.

768. *Add. Annotation* :—*Consd. Re Sandwell Park Colliery Co., Field v. The Co.*, [1929] 1 Ch. 277.

801. *Add. Annotation* :—*Refd. Hyman v. Hyman*, [1929] A. C. 601.

829. *Add. Annotation* :—*Consd. Grant v. Derwent* (1928), 140 L. T. 330.

## PART II. SECT. 8, SUB-SECT. 1.

127 iv. —.]—*RAMJI v. RAO KISHOREESINGH* (1929), L. R. 56 Ind. App. 280.—*IND*.

## PART III. SECT. 1, SUB-SECT. 1.

191 iv. —.]—Defts. were in business as land agents, & were the agents of G. for the sale of certain lots. Pltf. made an offer to defts. for the lots & paid them \$100 as a deposit. There was nothing in writing, & the oral offer & deposit were accepted by defts. subject to confirmation by G. The offer was submitted to G., who notified defts. of his acceptance. Defts. then, without informing pltf., obtained from G. an agreement to sell to themselves, & paid him a portion of the purchase-money. They then refused to make

the sale to pltf., & returned his \$100 :—*Held*: there being no contractual, fiduciary, or other relationship between pltf. & defts., pltf. was not entitled to any relief against them.—*ARMSTRONG v. BASTEDO* (Sask.) (1913), 24 W. L. R. 87; 4 W. W. R. 481; 11 D. L. R. 241.—*CAN*.

191 v. —.]—*CREAGHAN (J. D.) Co., LTD. v. DAVIDSON*, [1928] 3 D. L. R. 632.—*CAN*.

## PART III. SECT. 2, SUB-SECT. 2.—A.

235 viii. —.]—An option given the lessee of a hotel to purchase it within a year for \$45,000, \$15,000 cash & "the balance to be arranged":—*Held*: unenforceable because incomplete.—*McSORLEY v. MURPHY* (B. C.),

[1928] 4 D. L. R. 790; [1928] 3 W. W. R. 589.—*CAN*.

235 ix. —.]—*GEARY v. CLIFFON Co.*, [1928] 3 D. L. R. 64; 62 O. L. R. 257.—*CAN*.

## PART III. SECT. 13, SUB-SECT. 2.

p 1. —.]—*Resale by plaintiff under conditions inconsistent with completion of original contract.*—*NEW SOUTH WALES PUBLIC TRUSTEE v. GAVEL* (1927), 40 C. L. R. 169.—*AUS*.

## PART III. SECT. 15, SUB-SECT. 3.

*sd. Agreement for sale of licensed premises—Subsequent loss of licence.*—*SUMMERS v. COCKS*, [1928] A. L. R. 107; 40 C. L. R. 321.—*AUS*.



## Part IV.—Particular Contracts.

933. *Add. Annotation* :— **Mentd.** *Re Debtor*, [1929] 1 Ch. 302.

941. *Add. Annotation* :— **Mentd.** *Papadopoulos v. Papadopoulos* (1929), 46 T. L. R. 44.

951. *Add. Annotation* :— **Consd.** *Re Franklin & Swathling's Arbn.*, [1929] 1 Ch. 238.

## Part V.—Proceedings for Specific Performance.

1519a. — **On adjournment into court Liability for costs of adjournment.** *RAMPTON v. MORLEY*, [1928] W. N. 268; 66 L. Jo. 427.

### PART IV. SECT. 26.

**sf.** *Agreement for possession & devise or conveyance in return for services*].— Under an oral agreement between plff. & defts. the latter were to have exclusive possession of a parcel of plff.'s land in return for personal services to be rendered by them to her during her lifetime or until she sold or disposed of her adjoining property, & she also agreed to leave them said parcel by her will or, in the event of the sale of the adjoining property & the removal of her residence therefrom, to convey it to them. Defts. took up their residence on the land & built a house & other improvements thereon refer-

able only to said agreement. Plff. brought an action to recover possession, & defts. counterclaimed for specific performance. The ct. dismissed the action & declared that defts. were entitled to specific performance on the death of plff. or upon her removing from the neighbourhood. *Held* on appeal, the dismissal of the action ought to be sustained, but the decree of specific performance was premature. — *LYELL v. CORMACK*, [1928] 1 D. L. R. 902; [1928] 3 W. W. R. 281 CAN.

### PART V. SECT. 2.

a l. — *J. BURBELL v. WATT &*

*HARDINGE*, [1928] 3 D. L. R. 505; [1928] 2 W. W. R. 482.— CAN.

### PART V. SECT. 6, SUB-SECT. 6.

**sg.** *Whether court will consider— Where claim to specific performance abandoned.*— *LEVY v. NORTON-CULHANE* (1928), 28 S. R. N. S. W. 302; 45 N. S. W. W. N. 51. AUS.

### PART V. SECT. 6, SUB-SECT. 11.—A.

**sn.** *Amendment of claim When allowed.*— *MAMA v. SARSOON* (1928), L. R. 35 Ind. App. 360.— IND.

## STATUTES.

## Part I.—In General.

15. *Add. Annotation* :—**Mentd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.

## Part II.—Classification and Framework.

52. *Add. Annotations* :—**Refd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533. **Mentd.** *Graigola Merthyr Co. v. Swansea Corpn.*, [1929] A. C. 344.
64. *Add. Annotations* :—**Mentd.** *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602 ; *R. v. North Worcestershire Assessment Committee, Ex p. Hadley*, [1929] 2 K. B. 397.
70. *Add. Annotation* :—**Mentd.** *A.-G. v. Leeds Corpn.*, [1929] 2 Ch. 291.

## Part III.—Interpretation.

104. *Add. Annotation* :—**Mentd.** *Erie Beach Co. v. A.-G. for Ontario* (1929), 46 T. L. R. 33.
105. *Add. Annotation* :—**Generally, Mentd.** *Tolley v. Fry J. S. & Sons* (1929), 46 T. L. R. 108.
134. *Add. Annotation* :—**Consd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
135. *Add. Annotation* :—**Refd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
137. *Add. Annotation* :—**Generally, Mentd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
143. *Add. Annotation* :—**Apld.** *Stumbles v. Whitley* (1929), 46 T. L. R. 37.
151. *Add. Annotations* :—*As to* (1) **Consd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4. **Generally, Mentd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
217. *Add. Annotation* :—**Mentd.** *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.
233. *Add. Annotation* :—**Mentd.** *Salisbury House Estates v. Fry* (1929), 98 L. J. K. B. 722.
277. *Add. Annotation* :—**Refd.** *Shaw v. Public Trustee* (1929), 141 L. T. 465.
289. *Add. Annotation* :—**Refd.** *Leitch v. Emmott*, [1929] 2 K. B. 236.
- 342a. —. —.]—The words “charitable institution” in any legislative Act should be given their technical legal sense, unless a contrary intention appears from the context.—**ADAMSON v. MELBOURNE & METROPOLITAN BOARD OF WORKS**, [1929] A. C. 142 ; 98 L. J. P. C. 20 ; 140 L. T. 107 ; 45 T. L. R. 3, P. C.
376. *Add. Annotation* :—**Refd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
409. *Add. Annotation* :—**Mentd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
418. *Add. Annotations* :—**Mentd.** *Bevan v. Nixon's Navigation Co.*, [1929] A. C. 44 ; *Tannoch v. Brownieside Coal Co.*, [1929] A. C. 642 ; *Stevens v. Birmingham Corpn.* (1929), 22 B. W. C. C. 311.
433. *Add. Annotation* :—**Mentd.** *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.
475. *Add. Annotation* :—**Mentd.** *Templeton v. Parkin Wm. & Co.* (1929), 140 L. T. 519.
497. *Add. Annotation* :—**Refd.** *Allen v. Whitehead* (1929), 45 T. L. R. 655.
498. *Add. Annotation* :—**Mentd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
518. *Add. Annotation* :—**Mentd.** *Sheffield Corpn. v. Luxford, Same v. Morrell*, [1929] 2 K. B. 180.
543. *Add. Annotations* :—**Mentd.** *Muscroft v. Stewarts & Lloyds* (1928), 140 L. T. 64 ; *Brown v. Aveling & Porter* (1929), 22 B. W. C. C. 165.
563. *Add. Annotations* :—**Generally, Mentd.** *Geologists' Assocn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271 ; *Adamson v. Melbourne & Metropolitan Board of Works*, [1929] A. C.

## PART I.

a i. —. —.]—The general rule that before a law or any regulation or bye-law having the force of a law can become operative, it must be duly promulgated, must be read subject to the qualifications that the word “law” in the rule must not be given too wide a connotation, & that the enabling enactment must be looked to in order to see whether the necessity for promulgation is or is not excluded.—**BYERS v. CHINN**, [1928] App. D. 322.—S. AF.

## PART III. SECT. 1, SUB-SECT. 2.—B.

126 ix. —. —.]—*Held* : in interpreting a statute, reference cannot be made to the debates in the Legislative Council, or the report of the Select Committee.—**GURDIAL SINGH v. SRI DARBAR SAHIB**

**AMRITSAR (CENTRAL BOARD LOCAL COMMITTEE)** (1928), 1 L. R. 9 Lah. 689.—IND.

## PART III. SECT. 2, SUB-SECT. 2.—A.

153 xxii. —. —.]—In construing an Indian Act words should be given their widest possible meaning consistent with the context unless there is something in the Act itself to indicate that they are intended to be used in the artificial & technical sense which they have acquired in English law or in any other restricted sense.—**HAJI RAHIM-BUX ASHAN KARIM v. CENTRAL BANK OF INDIA** (1928), 1 L. R. 56 Calc. 367.—IND.

## PART III. SECT. 2, SUB-SECT. 4.—A.

376 xxii. —. —.]—A lien is not to be considered to be imposed without a

plain declaration of the intention of the legislature to impose it, shown in clear & unambiguous language.—**RE HARDY**, [1929] 1 D. L. R. 300 ; 63 O. L. R. 246.—CAN.

376 xxiii. —. —.]—Where the legislature has prohibited the making of a contract, & has expressly provided, or, having regard to the language in which the Act is couched, has manifested its intention, that the contract should be void for all purposes, such contract is utterly null & void.—**MURSHIDABAD NAWAB v. BILAS ROY CHOUDHURI** (1928), 1 L. R. 56 Calc. 252.—IND.

## PART III. SECT. 2, SUB-SECT. 6.

479 iv. —. —.]—*Re* SECT. 24 OF BRITISH NORTH AMERICA ACT, [1928] 4 D. L. R. 98 ; [1928] S. C. R. 276.—CAN.

- 142; *Re Grove-Grady*, *Plowden v. Lawrence*, [1929] 1 Ch. 557.
604. *Add. Annotation*:—*Refd.* *Farnworth v. Manchester Corp.*, [1929] 1 K. B. 533.
625. *Add. Annotation*:—*Generally*, *Mentd.* *Dennerley v. Prestwich U. D. C.* (1929), 141 L. T. 602.
638. *Add. Annotation*:—*Mentd.* *Manchester Corp. v. Farnworth* (1929), 46 T. L. R. 85.
709. *Add. Annotation*:—*Mentd.* *Midland Counties Institution of Engineers v. I. R. Comrs.* (1928), 14 Tax Cas. 285.
765. *Add. Annotation*:—*Mentd.* *Leeming v. Jones* (1929), 141 L. T. 472.
766. *Add. Annotation*:—*Mentd.* *Fry v. Burma Corp.* (1929), 98 L. J. K. B. 693.
782. *Add. Annotations*:—*Mentd.* *Re Barclay, Gardner v. Barclay, Steuart v. Barclay*, [1929] 2 Ch. 173; *Blackwell v. Blackwell*, [1929] A. C. 318.
795. *Add. Annotation*:—*Apld.* *R. v. Southampton County Confirming Committee. Ex p. Slade*, [1929] 1 K. B. 263.
816. *Add. Annotation*:—*Mentd.* *Perrin v. Dickson* (1929), 98 L. J. K. B. 683.
867. *Add. Annotations*:—*Generally*, *Mentd.* *Proctor v. Ryall, Ryall v. Proctor* (1928), 14 Tax Cas. 201; *Fry v. Burma Corp.* (1929), 98 L. J. K. B. 693; *I. R. Comrs. v. Dalgety & Co.* (1929), 98 L. J. K. B. 542; *Leeming v. Jones* (1929), 141 L. T. 472.
927. *Add. Annotation*:—*Refd.* *Farnworth v. Manchester Corp.*, [1929] 1 K. B. 533.

## Part IV.—Operation.

1058. *Add. Annotations*:—*Mentd.* *I. R. Comrs. v. Forth Conservancy Board*, [1929] A. C. 213; *Salisbury House Estates v. Fry* (1929), 98 L. J. K. B. 722.
1116. *Add. Annotation*:—*As to* (1) *Refd.* *Gardner & Co. v. Cone* (1928), 140 L. T. 72.
1217. *Add. Annotations*:—*Apld.* *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686; *Farnworth v. Manchester Corp.*, [1929] 1 K. B. 533.
1222. *Add. Annotation*:—*Mentd.* *Manchester Corp. v. Farnworth* (1929), 46 T. L. R. 85.
1244. *Add. Annotations*:—*Apld.* *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686. *Refd.* *Farnworth v. Manchester Corp.*, [1929] 1 K. B. 533.
- 1248a. — *Unless contrary construction clearly intended.*—There is a well-known canon of construction applicable to private Acts of Parliament that if the words used by the statute are ambiguous, the meaning that is most favourable to the public should be adopted; but I do not think that this has the effect of preventing the ct. from saying that if, when the whole of the statute in question is considered, it appears by necessary intendment that the privilege claimed was intended to be granted, the ct. should refuse to draw this inference because the Act does not contain express words creating the privilege claimed (*GREEN, L.J., in a dissenting judgment*).—*BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. v. HARVEY & SONS*, [1929] 1 Ch. 686; 98 L. J. Ch. 118; 110 L. T. 415; 93 J. P. 129; 27 L. G. R. 264, C. A.
1329. *Add. Annotation*:—*Mentd.* *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686.
1334. *Add. Annotation*:—*Refd.* *Farnworth v. Manchester Corp.*, [1929] 1 K. B. 533.
1351. *Add. Annotation*:—*Generally*, *Refd.* *Sheffield Corp. v. Luxtord, Same v. Morrell*, [1929] 2 K. B. 180.
- 1364a. — — — — —.]—"May" always means may. "May" is a permissive or enabling expression; but there are cases in which, for various reasons, as soon as the person who is within the statute is entrusted with the power it becomes his duty to exercise it. One of those cases is where he is applied to to use the power which the Act gives him in order to enforce the legal right of appet. (*TALBOT, J.*).—*SHEFFIELD CORPN. v. LUX-*

### PART III. SECT. 2, SUB-SECT. 8.—D.

m i. —.—.]—Marginal notes to sections of an Act can be referred to for the purpose of interpretation if they can be regarded as inserted by, or under the authority of, or assented to by the legislature.—*RAM SARAN DAS v. BHAGWAT PRASAD* (1928), 1 L. R. 51 All. 411.—*IND.*

### PART III. SECT. 2, SUB-SECT. 13.—A.

774 m. —.—.]—Where there is a doubt as to the meaning of a statute, or an award made thereunder, a construction placed thereon & long acquiesced in by all parties will not be departed from.—*GAUSSEN v. LOWER BARN NAVIGATION TRUSTEES*, [1929] N. I. 11.—*IR.*

### PART III. SECT. 6, SUB-SECT. 2.

sa. *Workmen's Compensation Acts.*—*CLARKE v. WENTWORTH STORES, LTD.*, [1928] 2 D. L. R. 796.—*CAN.*

### PART III. SECT. 9.

981 i. *Doctrine of contemporanea expositio.*—When the construction of

a statute is doubtful, it is accepted as a canon of interpretation that a useful exposition of the statute may be that which it has received from contemporary authority *DINKEL v. UNION GOVT.*, [1929] App. D. 150 *S. AF.*

### PART IV. SECT. 5, SUB-SECT. 1.

p i. —.—.] A statute is not to be construed so as to have a greater retrospective effect than its language renders necessary.—*KIRPA SINGH v. AJAIPAL SINGH* (1928), 1 L. R. 10 Lah. 165.—*IND.*

### PART IV. SECT. 5, SUB-SECT. 2.—B. (b).

1099 x. —.— *Res judicata.*—*Hong Kong Ordinance 20 of 1908* by its retroactive effect gave a right of action for criminal conversation committed prior to its enactment.—*Held*: without explicit words to that effect it did not avail the respondent, whose cause of action was barred as *res judicata* by a final judgment prior to the Ordinance & founded on the then

existing law.—*LEMM v. MITCHELL*, [1912] A. C. 400.—*HONG KONG.*

### PART IV. SECT. 5, SUB-SECT. 6.

1146 xxvi. —.—.]—*METROPOLITAN ABATTOIRS BOARD v. SCHOLE*, [1927] S. A. S. R. 444.—*AUS.*

1146 xxvii. —.—.]—Alterations in procedure are always retrospective unless there be some good reason against it.—*Re WICKS & ARMSTRONG*, [1928] 2 D. L. R. 210; 49 Can. Crim. Can. 281; 61 O. L. R. 667.—*CAN.*

1146 xxviii. —.—.]—Where a statute deals with practice & procedure only, it applies, unless the contrary is expressed, to actions begun before it came into force.—*HAFFNER v. WESTON & DETCHON*, [1928] 1 D. L. R. 711; 22 Sask. L. R. 203; [1927] 3 W. W. R. 839.—*CAN.*

### PART IV. SECT. 6, SUB-SECT. 1.

1169 xiii. —.—.]—*ST. CATHERINES CORPN. v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO*, [1928] 3 D. L. R. 200; 62 O. L. R. 301. *CAN.*

FORD, SAME *v.* MORRELL, [1929] 2 K. B. 180; 98 L. J. K. B. 512; 141 L. T. 265; 93 J. P. 235; 45 T. L. R. 491, D. C.

1386. *Add. Annotation* :—**Consd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1408. *Add. Annotation* :—**Apld.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

1419. *Add. Annotation* :—**Mentd.** R. *v.* Edmonton Income Tax Comrs., *Ex p.* Thompson, [1929] 1 K. B. 220.

1452a. ————.]—**Pltf.**, who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had

been erected by deft. corpn. under Parliamentary powers & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by pltf. In an action for a nuisance :—**Held** : Electric Lighting (Clauses) Act, 1899, did not expressly make defts. liable for a nuisance, but as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers plaintiff was entitled to an injunction & damages.—**MANCHESTER CORPN. v. FARNWORTH** (1929), 93 J. P. Jo. 780; 46 T. L. R. 85; 73 Sol. Jo. 818; 27 L. G. R. 709, H. L.; *affirming S. C. sub nom. FARNWORTH v. MANCHESTER CORPN.*, [1929] 1 K. B. 533, C. A.

## Part V.—Criminal and Penal Statutes.

1508. *Add. Annotation* :—**Mentd.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1.

1539. *Add. Annotation* :—**Refd.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

1548. *Add. Annotation* :—**Mentd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

## Part VI.—Fiscal and Revenue Statutes.

1572. *Add. Annotations* :—**Mentd.** Leeming *v.* Jones (1929), 141 L. T. 472; Perrin *v.* Dickson (1929), 98 L. J. K. B. 683.

1577. *Add. Annotation* :—**Consd.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

1578. *Add. Annotation* :—**Consd.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

1584. *Add. Annotation* :—**Mentd.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693.

1591. *Add. Citations* :—[1929] A. C. 354; 98 L. J. Ch. 198; 140 L. T. 624; 93 J. P. 146; 27 L. G. R. 261.

1612. *Add. Annotations* :—**Generally, Mentd.** Proctor *v.* Ryall, Ryall *v.* Proctor (1928), 14 Tax Cas. 204; Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693; I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542; Leeming *v.* Jones (1929), 141 L. T. 472.

## Part VII.—Local, Personal and Private Statutes.

1617. *Add. Annotations* :—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1621. *Add. Annotation* :—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

1638. *Add. Annotation* :—**Mentd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

1659. *Add. Annotations* :—**Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1674. *Add. Citations* :—[1929] 1 Ch. 686; 98 L. J. Ch. 118; 140 L. T. 415; 93 J. P. 129; 27 L. G. R. 264; *subsequent proceedings* (No. 2), 93 J. P. Jo. 496.

### PART V. SECT. 3, SUB-SECT. 2.

1543 ii. ————.]—In so far as it deals with the disqualification of a candidate for a corrupt practice the Ontario Election Act is a penal statute, & the

charge against the candidate must be proved beyond a reasonable doubt before such disqualification is ordered.—*Re S. BRUCE PROVINCIAL ELECTION, JOHNSTON v. McCALLUM*, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—CAN.

### PART VII. SECT. 4.

1682 iii. ————.]—**VANCOUVER CITY v. RICHMOND**, [1928] 4 D. L. R. 506; [1928] 3 W. W. R. 166.—CAN.

## Part VIII.—Enforcement.

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| <p><b>1726.</b> <i>Add. Annotation</i> :—<b>Refd.</b> Clark v. Epsom R. D. C., [1929] 1 Ch. 287.</p> <p><b>1757.</b> <i>Add. Annotation</i> :—<b>Refd.</b> Clark v. Epsom R. D. C., [1929] 1 Ch. 287.</p> <p><b>1812.</b> <i>Add. Annotation</i> :—<b>Refd.</b> Minter v. Priest, [1929] 1 K. B. 655.</p> | <p><b>1846.</b> <i>Add. Annotation</i> :—<b>Mentd.</b> Dennerley v. Prestwich U. D. C. (1929), 141 L. T. 602.</p> <p><b>1859.</b> <i>Add. Annotation</i> :—<b>Mentd.</b> Foster v. Driscoll, Lindsay v. Attfield, Lindsay v. Driscoll, [1929] 1 K. B. 470.</p> |
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## Part IX.—Repeal.

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| <p><b>1983.</b> <i>Add. Annotation</i> :—<b>Mentd.</b> Graigola Merthyr Co. v. Swansea Corpn., [1929] A. C. 341.</p> <p><b>1989.</b> <i>Add. Annotation</i> :—<b>Refd.</b> Farnworth v. Manchester Corpn., [1929] 1 K. B. 533.</p> | <p><b>1990.</b> <i>Add. Annotation</i> :—<b>Refd.</b> Farnworth v. Manchester Corpn. (1929), 98 L. J. K. B. 224.</p> |
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## Part XI.—Codifying and Consolidating Statutes.

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| <p><b>2094.</b> <i>Add. Annotation</i> :—<b>Consd.</b> Shotts Iron Co. v. Curran, [1929] A. C. 409.</p> | <p><b>2100.</b> <i>Add. Annotation</i> :—<b>Mentd.</b> Manchester Corpn. v. Farnworth (1929), 16 T. L. R. 85.</p> |
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## Part XII.—Statutory Rules and Orders.

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| <p><b>2117.</b> <i>Add. Annotation</i> :—<b>Mentd.</b> Manchester Corpn. v. Farnworth (1929), 46 T. L. R. 85.</p> <p><b>2128.</b> <i>Add. Annotation</i> :—<b>Mentd.</b> Brown v. Dagenham U. D. C., [1929] 1 K. B. 737.</p> | <p><b>2146.</b> <i>Add. Annotation</i> :—<b>Mentd.</b> Trading Co., Hoff L. &amp; J. v. De Rougemont (1929), 34 Com. Cas. 291.</p> |
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### PART VIII. SECT. 3, SUB-SECT. 1.

**1734 xxv.** —.—.—]—Where a liability not existing at common law is created by a statute which at the same time gives a special & particular remedy for enforcing it, the remedy provided by the statute must be followed.—**FR. FRANCES PULP CO. v. SPANISH RIVER**

**PULP CO.**, [1928] 1 D. L. R. 753; 61 O. L. R. 512.—**CAN.**

### PART IX. SECT. 1, SUB-SECT. 2.—G. (b).

**1983 vii.** —.—.—]—**R. v. RUDNICK**, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 248.—**CAN.**

### PART XII. SECT. 2.

**2126 iii.** —.—.—]—**BYERS v. CHINN**, [1928] App. D. 322.—**S. AF.**

**2126 iv.** —.—.—]—*Not when in conflict with statute.*—**R. v. WRIGHT**, [1928] 1 D. L. R. 701; 59 N. S. R. 443.—**CAN.**

## STOCK EXCHANGE.

## Part III.—Relation between Parties to Stock Exchange Transactions.

101. *Add. Citations* :—[1929] 1 K. B. 321 ; 98 L. J. K. B. 243 ; 73 Sol. Jo. 13.

## Part VII.—Illegality and Fraud.

430. *Add. Annotations* :—As to (1) **Consd.** Weddle, Beck & Co. v. Hackett, [1929] 1 K. B. 321. **Refd.** Ironmonger & Co. v. Dyne (1928), 44 T. L. R. 497.
432. *Add. Annotations* :—**Consd.** Ironmonger & Co. v. Dyne (1928), 44 T. L. R. 497. **Refd.** Ellesmere Earl v. Wallace, [1929] 2 Ch. 1 ;
- Weddle, Beck & Co. v. Hackett, [1929] 1 K. B. 321.
433. *Add. Annotations* :—**Refd.** Ellesmere (Earl) v. Wallace, [1929] 2 Ch. 1 ; Weddle, Beck & Co. v. Hackett, [1929] 1 K. B. 321.
450. *Add. Annotation* :—**Refd.** Ellesmere (Earl) v. Wallace, [1929] 2 Ch. 1.

## PART VI. SECT. 3.

52. *Differences payable from one stockbroker to another—Whether divisible among stock exchange creditors only on insolvency.*—KAIKUSHROO TALVAR—KHAN v. BAI GULAB (1928), 1. L. R. 53 Bom. 508.—**IND.**

## STREET AND AERIAL TRAFFIC.

## Part I.—Regulation of Traffic.

3. *Add. Annotation*:—**Folld.** *Edwards v. Wanstall* (1929), 46 T. L. R. 101.

3a. ————.]—Under sect. 21 of above Act, a local authority is not confined to making orders for special occasions, but may make an order of a general character restricting traffic of certain kinds in certain streets between specified hours daily, & such order is valid without being confirmed as a bye-law under Public Health Act, 1875 (c. 55), s. 184.—**EDWARDS v. WANSTALL** (1929), 93 J. P. Jo. 756; 46 T. L. R. 101, D. C.

3b. ———— **Whether confirmation of order necessary—Under Public Health Act, 1875 (c. 55), s. 184.**—**EDWARDS v. WANSTALL**, No. 3a, *ante*.

5a. **Acquisition of land for parking places—Public Health Act, 1925 (c. 71), s. 68—Objection—When appeal lies.**]—Where a local authority has given notice under sect. 68 (2) of above Act, of a proposal to acquire land in order to provide parking places for vehicles,

& has given a decision against an objection duly made thereto under sub-sect. 3, the objector, being entitled to make the objection, is a "person . . . aggrieved" by the decision, & may accordingly appeal therefrom under the provisions of sub-sect. 3, although he alleges no grounds of objection personal to himself, but such only as are common to himself & other ratepayers & inhabitants.—**SEVENOAKS URBAN DISTRICT COUNCIL v. TWYNAM**, [1929] 2 K. B. 440; 98 L. J. K. B. 537; 141 L. T. 566; 93 J. P. 189; 45 T. L. R. 508; 73 Sol. Jo. 334; 27 L. G. R. 525, D. C.

5b. ———— **To what land applicable—Land acquired for street widening.**]—*Held*: where land may be lawfully applied for the purpose of street widening, a local authority can, pursuant to its powers under sect. 68 (1) of above Act, use it as a parking place for motor cars.—**A.-G. v. SUNDERLAND CORPN.**, [1929] 2 Ch. 136; 93 J. P. Jo. 480; 45 T. L. R. 618; *affirmed*, 46 T. L. R. 10, C. A.

## Part II.—Traffic Nuisances and Offences.

34. *Add. Annotation*:—**N.F.** *Sheffield Corpn. v. Kitson*, [1929] 2 K. B. 322.

34a. **Proceedings under Town Police Clauses Act, 1847 (c. 89), s. 47—Consent of Attorney-General.**]—A corpn. was convicted upon an information preferred on behalf of a limited co. under above sect. by one of its directors, for permitting a motor omnibus to be used as a hackney carriage within the prescribed area, without having obtained the necessary licence under the Act:—*Held*: Public Health Act, 1875 (c. 55), s. 253, takes the place of Town Police Clauses Act, 1847 (c. 89), s. 73, which enabled "any person" to recover penalties for offences against that Act, & therefore except in the case of information by a party aggrieved or the local authority for the district, the consent of the A.-G. is now a condition precedent to proceedings for the recovery of penalties under the Town Police

Clauses Act, 1847 (c. 89).—**SHEFFIELD CORPN. v. KITSON**, [1929] 2 K. B. 322; 98 L. J. K. B. 561; 93 J. P. 135; 45 T. L. R. 515; 73 Sol. Jo. 348; 27 L. G. R. 533, D. C.

## SUB-SECT. 21. RINGING DOOR BELLS.

*See* Town Police Clauses Act, 1847 (c. 89), s. 28.

50a. **Offence by tradesman—Delivery of newspapers.**]—The mere fact of a man being instructed to deliver papers at the house of a third person is no answer to a complaint against him under Town Police Clauses Act, 1847 (c. 89), s. 28, charging him with having "wilfully & wantonly" disturbed the party & his family by violently knocking & ringing at the door at an unreasonable hour of the night.—**CLARKE v. HOGGINS** (1862), 11 C. B. N. S. 545; 142 E. R. 909.

## PART I. SECT. 1.

sa. **"Parking" of vehicles—Whether regulation of traffic.**—**SCHILLING v. MELBOURNE CITY**, [1928] V. L. R. 302; [1928] Argus L. R. 203.—**AUS.**

## PART I. SECT. 2, SUB-SECT. 1.

si. ————.]—**WIMBLE F. T. & Co. v. GUILLESSEN**, [1928] S. R. Q. 20; 22 Q. J. P. R. 38.—**AUS.**

mi. ————.]—It is the duty of

traffic on a side road to give way to that on the main road, but the traffic on the main road is not entitled to continue its course & speed without regard to traffic from the side roads.—**RENNIE v. FREMANTLE MUNICIPAL TRAMWAYS & ELECTRIC LIGHT BOARD** (1927), 29 W. A. L. R. 150.—**AUS.**

mi. ————.]—**BURNS & Co., LTD. v. CORRY**, [1928] 1 W. W. R. 889; *sub nom.* **BURNS & Co. v. CARLTON HOTEL**, [1928] 2 D. L. R. 845.—**CAN.**

m.iii. ————.]—The fact that the driver of a motor car has the right of way with respect to the driver of a car on an intersecting street does not entitle him to recover for damage resulting from a collision where the real cause of the damage was the excessive speed of his car & his failure to take precautions to avoid the collision.—**RADIO TAXICAB CO., LTD. v. AYERBACK**, [1928] 1 W. W. R. 685.—**CAN.**

## Part III.—Lights on Vehicles.

**55a. Effect of Road Transport Lighting Act, 1927 (c. 37), s. 11 (2)—On powers of Minister of Transport under Roads Act, 1920 (c. 72), s. 12 (1).—***Held*: the words "or other authority" in Road Transport Lighting Act, 1927 (c. 37), s. 11 (2), did not include the Minister of Transport, & his power to make regulations under the powers conferred upon him by Roads Act, 1920 (c. 72), s. 12 (1), had not been revoked by Road Transport

Lighting Act, 1927 (c. 37), s. 11 (2), & therefore a regulation which the Minister of Transport made on June 12, 1928, requiring a lamp to be carried on vehicles on the road at night for the illumination of the identification plate, was not *ultra vires*.—*SWAITS v. ENTWISTLE*, [1929] 2 K. B. 171; 98 L. J. K. B. 648; 93 J. P. 232; 45 T. L. R. 483; 73 Sol. Jo. 366; 27 L. G. R. 540, D. C.

## Part IV.—Hackney and Stage Carriages.

**76. Add. Annotation:—***Consd.* *White v. Cubitt* (1929), 46 T. L. R. 99.

**86. Add. Annotation:—***Apld.* *A.-G. v. Sharp* (1929), 45 T. L. R. 628.

**86a. ———.**—*Deft.*, who was licensed to ply for hire with motor omnibuses in two districts connected by roads through M., but who had no licence to ply for hire in M., had garages in M., & his omnibuses stopped outside them to take up persons who had bought tickets in the garages:—*Held*: *defts.* omnibuses were plying for hire in M.—*A.-G. v. SHARP* (1929), 45 T. L. R. 628; 27 L. G. R. 764.

**92. Add. Citations:—**98 L. J. K. B. 209; 140 L. T. 194; 93 J. P. 61; 27 L. G. R. 39.

**94a. ——— Private ground—Separated from highway by stone setts.**—A motor car stood on a piece of private ground belonging to a public-house at Barnes & separated from the highway only by a line of level stone setts, which offered no obstruction to the passage either of the motor car or of persons desiring to enter it from the highway. There members of the public entered the car, which was licensed as a hackney carriage for revenue

purposes, but which was not licensed to ply for hire within the Metropolitan Police District, & on payment of 6d. to the driver were driven to the Richmond Park Golf Club:—*Held*: the motor car was plying for hire in a "public street, road, or place" within Metropolitan Public Carriage Act, 1869 (c. 115).—*WHITE v. CUBITT* (1929), 93 J. P. Jo. 757; 46 T. L. R. 99; 73 Sol. Jo. 863, D. C.

**116. Add. Citation:—**28 Cox, C. C. 515.

**117a. ——— Overcrowding—Liability of employer for aiding & abetting.**—The conductor of an omnibus was convicted of permitting the omnibus to be overloaded contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13, which, by sect. 15, imposed a penalty for this offence on the "driver, conductor, or guard." His employer was not present at the time:—*Held*: the employer was liable to be proceeded against for "aiding & abetting, counselling & procuring" the commission of the offence.—*GOUGH v. REES* (1929), 93 J. P. Jo. 756; 46 T. L. R. 103, D. C.

**117b. ——— Commencement of proceedings—**

### PART IV. SECT. 1.

**56 iv. ———.**—Railway Passenger Duty Act, 1842, ss. 13 & 15, contain regulations for the prevention of overcrowding in any "stage carriage." The Act contains no definition of the term "stage carriage":—*Held*: a motor omnibus, which had been chartered by the secretary of a football club to convey a party of club supporters to a match at a fixed fare per passenger, was not a stage carriage on the occasion in question, in respect that it was not plying for hire from one stage to another, but was engaged in the performance of a private contract; & conviction of the conductor for overcrowding accordingly quashed.—*McKEE v. WEIR*, [1929] S. C. (J.) 14.—*SCOT*.

### PART IV. SECT. 2, SUB-SECT. 1.

**50. Licence fee for trucks plying for hire—Liability of owners outside municipality.**—*NORTH VANCOUVER v. STEWART F. R. & CO.*, [1928] 1 W. W. R. 586; 49 Can. Crim. Cas. 216; 39 B. C. R. 401.—*CAN.*

**5d. Omnibus licensed by town council plying for hire in county—By-law requiring additional licence to be taken out—Whether valid.**—*SCOTTISH MOTOR TRACTION CO., LTD. v. LANARKSHIRE COUNTY COUNCIL*, [1928] S. C. (Ct. of Sess.) 909.—*SCOT*.

### PART IV. SECT. 2, SUB-SECT. 3.

**50. Omnibus—Agreement to carry**

passengers on specified journey for lump sum—Whether licence necessary.—*BLYTH v. HUDSON*, [1928] V. L. R. 587; [1928] Argus L. R. 397.—*AUS.*

### PART IV. SECT. 3.

**5h. Overcrowding—Whether mens rea necessary—Dublin Carriage Act.**—*Held*: the prohibitions contained in this regulation were absolute, & accordingly, in the case of a summons charging an offence under the regulation the absence of *mens rea* was no defence.—*M'ADAM v. DUBLIN UNITED TRAMWAYS CO.*, [1929] I. R. 327.—*IR.*

**5k. Passengers standing on cars.**—*GLASGOW CORPN. v. STRATHERN*, [1929] S. C. (J.) 5.—*SCOT*.

**5l. Permitting omnibus to be overcrowded—Whether offence against Inland Revenue & Customs Acts.**—A complaint was brought in a burgh police ct., which set forth that the accused was the conductor of a motor omnibus, in which a greater number of passengers were conveyed than the omnibus was constructed to carry, in contravention of Railway Passenger Duty Act, 1842, s. 13:—*Held*: under Burgh Police Act, s. 454, the burgh magistrate had no jurisdiction to entertain the complaint, in respect that, while the duties imposed by the Act of 1842 had been repealed, & other duties substituted therefor, a contravention of sect. 13 was still an offence against an Inland

Revenue or Customs Act, within Burgh Police Act, s. 454.—*CAMERON v. SWKENEX*, [1928] S. C. (J.) 34.—*SCOT*.

**5m. ———.**—*HORN v. DUCKETT*, [1929] S. C. (J.) 63.—*SCOT*.

**5n. Summary proceedings—Limitation of time.**—*ORR v. STRATHERN*, [1929] S. C. (J.) 30.—*SCOT*.

### PART IV. SECT. 4, SUB-SECT. 1.

**5p. Motor Omnibus Act—Minimum fares prescribed by Order in Council—Liability of owner.**—*DICKENS v. MITCHELL*, [1928] V. L. R. 506; [1928] A. L. R. 323.—*AUS.*

### PART V. SECT. 3, SUB-SECT. 2.

**d i. ———.**—*BULLOCK v. HANSEN*, [1928] 2 W. W. R. 528; 37 Man. L. R. 450.—*CAN.*

**f i. ——— Person "using."**—*COCKBURN v. GORDON*, [1928] S. C. (J.) 87.—*SCOT*.

**n (p. 869) i. ——— New car using number plates of old car.**—Although under Vehicles Act, 1924, c. 42, where a registered car has been disposed of & another one obtained the number plates on the former are to be used on the latter car, the new car must first be registered before the owner is entitled to drive it on public highways with the old plates on it.—*BUNK v. BOUFFARD*, [1928] 3 W. W. R. 219.—*CAN.*



**Whether order of Commissioners of Inland Revenue necessary.]**—An information was preferred by a police officer against the conductor of a motor omnibus alleging that he had allowed the omnibus to carry at one time a greater number of passengers than it had been constructed to carry, contrary to Railway Passenger Duty Act, 1912 (c. 79), s. 15 :—*Held* : the prosecution was not a proceeding

for the recovery of a fine or penalty under an Act relating to inland revenue within Inland Revenue Regulation Act, 1890 (c. 21), s. 21 (1), & it could, therefore, lawfully be commenced without an order of the Inland Revenue Comrs.—*KIRKBY v. MINTY*, [1929] 2 K. B. 165; 98 L. J. K. B. 733; 141 L. T. 515; 93 J. P. 176; 45 T. L. R. 427; 27 L. G. R. 438, D. C.

## Part V.—Locomotives and Motor Cars.

**180a. Liability for damage to bridges—Locomotive Act, 1861 (c. 70), s. 7—To what bridges applicable—County bridge.]**—*Held* : above sect. does not apply to a county bridge. *R. v. KITCHENER* (1873), L. R. 2 C. C. R. 88; 43 L. J. M. C. 9; 29 L. T. 697; 38 J. P. 134; 22 W. R. 134; 12 Cox, C. C. 522, C. C. R.

*Annotations* :—*Reid. R. v. Dorset Inhabitants* (1881), 45 L. T. 308; *Sharpness New Docks & Gloucester & Birmingham Navigation Co. v. Worcester Corpn.*, A.-G. v. *Sharpness New Docks & Gloucester & Birmingham Navigation Co.*, [1913] 1 K. B. 422.

**185. Add. Annotation :—Apld. Dennis v. Leonard** (1929), 141 L. T. 94.

**185a. — Steam tractor.]**—*CARPENTER v. FOX*, No. 232a, *post*.

**185b. — Petrol-driven tractor.]**—An “Austin” petrol-driven tractor was driven on a public highway. Upon an information under Locomotives on Highways Act, 1896 (c. 36), s. 7, for breach of Motor Cars (Use & Construction) Order, 1904, Article II., clause 3, the justices held that the vehicle in question was not a motor car within the meaning of that order & Act, stating that the tractor type of vehicle was never contemplated when the order of 1904 was made :—*Held* : that the tractor was such a motor car.—*DENNIS v. LEONARD* (1929), 141 L. T. 94, D. C.

**186. Add. Citations :—**[1929] A. C. 354; 98 L. J. Ch. 198; 140 L. T. 624; 93 J. P. 146; 27 L. G. R. 261.

**192. Add. Citation :—**28 Cox, C. C. 498.

**207a. Motor coach—Schedule necessitating excessive speed—Liability of employer for aiding & abetting.]**—Resps. owned a motor coach

which was a heavy motor car fitted with pneumatic tyres, & was restricted under Heavy Motor Car Order, 1904, to a maximum speed limit of twelve miles per hour. The vehicle was driven by a servant of the resps. between L. & P. Resps. advertised times of departure & arrival which necessitated an average speed of eighteen miles per hour without allowing for stops. While driving the coach at thirty-five miles per hour on one of the scheduled journeys, resps.’ servant was stopped by the police, & the resps. were summoned for counselling, procuring, aiding & abetting the commission of the offence :—*Held* : resps. ought to have been convicted of counselling & procuring.—*NEWMAN v. OVERINGTON, HARRIS & ASH, LTD.* (1928), 93 J. P. 46; 27 L. G. R. 85, D. C.

**223. Add. Annotation :—Apld. Gough v. Rees** (1929), 46 T. L. R. 103.

**232a. Leaving car so as to obstruct highway—To what vehicles applicable—Steam tractor.]**—*Held* : (1) Motor Cars (Use & Construction) Order, 1904, Article IV., clause 2, does not apply to a steam tractor weighing 13 tons unladen, which while being driven on the highway caused an obstruction, inasmuch as it is not a motor car; (2) although the above tractor was in motion, being driven along the highway at the time of the commission of the offence, it was “standing” thereon within the meaning of Article IV., clause 2.—*CARPENTER v. FOX*, [1929] 2 K. B. 458; 98 L. J. K. B. 779; 93 J. P. 239; 45 T. L. R. 571; 27 L. G. R. 601, D. C.

**232b. — What amounts to standing.]**—*ENTER v. FOX*, No. 232a, *ante*.

### PART V. SECT. 3, SUB-SECT. 4.—A. (a).

**198 i. — Speedo-meter.]**—Instruments such as, & including, speedometers, may be presumed to function accurately, unless the contrary is shown.—*PETERSON v. HOMES*, [1927] S. A. S. R. 419.—AUS.

**sr. Motor fire engine—Whether exempt from regulations.]**—The fact that a motor vehicle operated by a fire department is answering a fire alarm does not exempt its driver from the obligations of the Motor Vehicle Act, even though it has the right of way.—*LAWTON v. WINNIPEG & INTERURBAN SERVICES, LTD.*, [1928] 4 D. L. R. 887; [1928] 3 W. W. R. 354; 37 Man. L. R. 468.—CAN.

### PART V. SECT. 3, SUB-SECT. 4.—A. (b).

**210 ii. — Speed of car—Possibility of control.]**—*R. v. DURAND*, [1928]

2 D. L. R. 703; 49 Can. Crim. Cas. 217; 60 N. S. R. 54.—CAN.

### PART V. SECT. 3, SUB-SECT. 4.—A. (c.)

**sv. Intoxicated person driving or having control of car.]**—*R. v. HIGGINS*, [1929] 1 D. L. R. 269; 50 Can. Crim. Cas. 381; 63 O. L. R. 101.—CAN.

### PART V. SECT. 3, SUB-SECT. 4.—B.

**sw. Motor Vehicles Act—Penal provisions—Liability of owner.]**—*R. v. DOYLE* (1928), 50 Can. Crim. Cas. 233.—CAN.

### PART V. SECT. 3, SUB-SECT. 5.

**ss. Motor Traffic Regulations—Passing stationary tramcar—Whether evidence of negligence.]**—*LANE v. NORTON* (1927), 28 S. R. N. S. W. 143; 45 N. S. W. W. N. 38.—AUS.

c (p. 879) i. —————.]—CHORBA

*v. KIMBRIE*, [1928] 3 D. L. R. 718; [1928] 2 W. W. R. 386; 22 Sask. L. R. 602.—CAN.

c (p. 879) ii. — *Liability of owner for damages caused by third party driving his car without permission.]*—Motor Vehicle Act, C. A. 1924, c. 131, s. 41, prohibits the driving of a motor car in the absence of the owner without the owner’s consent, & sect. 52 provides penalties for breach of any of the provisions of the Act. Therefore, where sect. 41 is violated the owner is within the proviso to sect. 63, which provides that he shall not be liable for an injury caused by the car at a time when it “had been stolen from him or otherwise wrongfully taken out of his possession or out of the possession of any person entrusted by him with the care thereof”; & is therefore not under the statutory liability imposed by said sect. 63.—*BOBBY v. CHODKER* (Man.), [1928] 3 W. W. R. 392.—CAN.

## TELEGRAPHS AND TELEPHONES.

### Part IX.—Compensation.

53. *Add. Annotation* :—**Refd.** Kiddie *v.* Port of London Authority (1929), 93 J. P. 203.

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### Part XIV.—Rateability of Property occupied for Telegraphic Purposes.

74. *Add. Annotation* :—**Refd.** Kiddie *v.* Port of London Authority, Durrant *v.* Same (1929), 45 T. L. R. 430.

# THEATRES AND OTHER PLACES OF ENTERTAINMENT.

## Part I.—Theatres.

1. *Add. Annotation* :—**Mentd.** R. v. Newport (Salop) Justices, *Ex p.* Wright, [1929] 2 K. R. 416. | 64a. ——— “**Formal contract to be signed in due course.**” —RONALD FRANKAU PRODUCTIONS, LTD. v. BELL (1927), 65 L. Jo. 33 ; 164 L. T. Jo. 504.

### PART I. SECT. 1, SUB-SECT. 1.

**52a.** *Greenock Corporation Act*, 1909, s. 251—*Theatre*—*Whether picture house included.*—*Held* : a building, which it was proposed to erect for use as a picture house, was not a “theatre” within the meaning of, & subject to the regulations of, above sect., in respect that its general character, as disclosed

by the plans before the ct., was that of a picture house rather than of a theatre, & that the sect., as it imposed a restriction on a right of property, must be strictly construed ; & according to *contemporanea expositio*, the expression “theatre” in the sect. did not include a building devoted to the exhibition of cinematograph films.

SCOTTISH CINEMA & VARIETY THEATRES, LTD. v. RITCHIE, [1929] S. C. (Ct. of Sess.) 350. SCOT.

### PART III. SECT. 2, SUB-SECT. 3.—A.

**151 i.** *Discretion of justices*—*Bona fides in exercise.*—R. v. CHARLEVILLE TOWN COUNCIL, *Ex p.* CORONES, [1928] S. R. Q. 155.—AUS.

## TIME.

### Part II.—Sundays and Holidays.

**131a. London County Council (General Powers) | Act, 1927—Sale of vegetables on Sunday—Invalidity of licence.]**—Under London County Council (General Powers) Act, 1927, there is no power to grant a licence for the sale of vegetables in the streets on Sunday, as such

sale is a contravention of Sunday Observance Act, 1677 (c. 7).—**CLIFTON v. HOLBORN BOROUGH COUNCIL** (1929), 93 J. P. 196; 45 T. L. R. 633; 73 Sol. Jo. 500; 27 L. G. R. 658, D. C.

### Part III.—Computation of Time.

**319. Add. Annotation :—Refd. Legge v. Legge** (1928), 45 T. L. R. 157.

**330a. - - -.]**—For the purposes of the statutory

notice of appeal Sunday is not a *dies non*.—**R. v. GREVILLE** (1929), 21 Cr. App. Rep. 108, C. C. A.

#### **PART II. SECT. 2, SUB-SECT. 1.**

**sa. Sale of food, drink & cigarettes.]**—**R. v. NINOS** (1928), 50 Can. Crim. Cas. 155.—**CAN.**

#### **PART III. SECT. 3, SUB-SECT. 1.**

**239 i. Construed to effectuate intention**

*of parties.*—Where, under a building | contract work was to be completed by "Nov. 31" under penalty of damages: *Held*: this must be construed to mean Nov. 30. —**MCBEAN v. KINNEAR** (1892), 23 O. R. 313.—**CAN.**

#### **PART III. SECT. 5.**

**g i. - - — Adjournment to day of legal holiday.]**—The fact that a motion is adjourned to a statutory holiday does not render the notice of motion void.—**ROSA v. KELLINGTON**, [1928] 3 D. L. R. 562; [1928] 2 W. W. R. 399; 22 Sask. L. R. 505.—**CAN.**

# TORT.

## Part II.—Liability for Torts.

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| <p><b>67.</b> <i>Add. Annotations:—Mentd.</i> Tolley v. Fry (J. S.) &amp; Sons (1929), 46 T. L. R. 108<br/>Watt v. Longsdon (1929), 98 L. J. K. B. 711.</p> <p><b>83.</b> <i>Add. Annotations:—Mentd.</i> Tolley v. Fry (J. S.) &amp; Sons (1929), 46 T. L. R. 108; Watt v. Longsdon (1929), 98 L. J. K. B. 711.</p> <p><b>88.</b> <i>Add. Annotation:—Refd.</i> Fenton Textile Assocn. v. Thomas (1929), 45 T. L. R. 264.</p> | <p><b>92.</b> <i>Add. Annotation:—Consd.</i> Clark v. Urquhart Stracey v. Urquhart (1929), 141 L. T. 641.</p> <p><b>131.</b> <i>Add. Annotation: Mentd.</i> Davies v. Property &amp; Reversionary Investments Corp., [1929] 2 K. B. 222.</p> <p><b>148.</b> <i>Add. Annotation:—Consd.</i> Horwood v. Statesman Publishing Co. (1929), 98 L. J. K. B. 450.</p> |
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### PART II. SECT. 8, SUB-SECT. 7.

[95 vi. — — —.]—ESTEN v. ROSEN, [1929] 1 D. L. R. 275, 63 O. L. R. 210.—CAN.

# TRADE AND TRADE UNIONS.

## Part I.—Definitions.

10. *Add. Annotation*:—*As to* (2) **Apld.** *Frost v. Caslon, Frost v. Wilkins*, [1929] 2 K. B. 138.
- 10a. —.]—I can find nothing in the Act to prevent me giving to the word “business” one of its ordinary meanings—namely, work or occupation (**RUSSELL, L.J.**).—**FROST v. CASLON, FROST v. WILKINS**, [1929] 2 K. B. 138; 98 L. J. K. B. 523; 141 L. T. 281; 93 J. P. 192; 45 T. L. R. 417; 73 Sol. Jo. 333; 27 L. G. R. 480, C. A.
19. *Add. Annotations*:—**Consd.** *Fry v. Burma Corpn.* (1929), 98 L. J. K. B. 693. **Refd.** *Proctor v. Ryall, Ryall v. Proctor* (1928), 14 Tax Cas. 204.
29. *Add. Annotation*:—**Mentd.** *A.-G. for Manitoba v. A.-G. for Canada*, [1929] A. C. 260.

## Part V.—Restraint of Trade by Agreement.

323. *Add. Annotation*:—**Refd.** *Re Brownie Wireless Co. of Great Britain* (1929), 45 T. L. R. 584.
705. *Add. Annotation*:—**Refd.** *Papadopoulos v. Papadopoulos* (1929), 46 T. L. R. 44.

## Part VII.—Trade Unions.

957. *Add. Annotation*:—*As to* (1) **Apld.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.
1044. *Add. Annotation*:—**Refd.** *Woodrow v. Trawlers (White Sea) & Grimsby* (1929), 141 L. T. 676.
1046. *Add. Citations*:—98 L. J. Ch. 293; 141 L. T. 83; 73 Sol. Jo. 190.  
*Add. Annotation*:—**Apld.** *Lamberton v. Thorpe* (1929), 45 T. L. R. 420.
1047. *Add the following paragraph & citations*:—  
Prior to the passing of the 1927 Act, various committees of a local authority passed resolutions, which were confirmed by the council, to the effect that certain of their employees be required to become members of one of the trade unions in the resolutions referred to. By that Act it was provided that it should not be lawful for any local or other public authority to make it a condition of the employment, or continuance in employment, of any person that he should or should not be a member of a trade union, & that any such condition should be void. Shortly after the passing of the Act instructions were given by a committee that only men belonging to a specified trade union should be employed in respect of certain casual labour; & an employee, who was dismissed accordingly, obtained a declaration in the county court that his dismissal was illegal. A member of the council thereupon brought forward a motion having for its object that instructions should be given that the resolutions of the committees should cease to be operative; but the motion was defeated:—**Held**: in the circumstances the ct. should declare that it was not lawful for the local authority to require any person, as a condition of employment or continuance in employment, to become or to be a member of a trade union.—**A.-G. v. BIRKENHEAD CORPN.** (1928), 93 J. P. 33; 27 L. G. R. 192.
1086. *Add. Citations*:—98 L. J. Ch. 401; 141 L. T. 294.
1087. *Add. Citations*:—[1929] 2 Ch. 58; 98 L. J. Ch. 323; 141 L. T. 178; 73 Sol. Jo. 206.

### PART III. SECT. 2, SUB-SECT. 2.

**n i.** —.]—**MACEWAN v. TORONTO GENERAL TRUSTS CORPN.** (Ont.) (1917), 54 S. C. R. 381; 28 Can. Crim. Cas. 387.—**CAN.**

### PART V. SECT. 1.

132 i. *Who may enter into agreement* — *Vendor & purchaser of goodwill*.—**SPENCER v. MCKENZIE** (1926), 29 W. A. L. R. 95.—**AUS**

### PART V. SECT. 7.

**n i.** — *Whether extinguished by withdrawal from service*.—Under a contract covering a certain period between a travelling salesman & his

employer, the pltf., the salesman, agreed to give his whole time to his employer's service, & that he would not sell or offer for sale any goods other than those of the employer. The contract placed no restriction on him after the date of the expiry of the contract, nor did it expressly restrict him from selling other goods if before that date he should be discharged for cause under a clause stipulating a cause for his discharge. The salesman, after working under the contract, left the service & entered that of a concern selling competing goods; & his withdrawal was accepted by the pltf. as a breach of contract:—**Held**: the restriction was not intended to govern the

salesman after termination of the contract by breach, & that, if so intended, it was so wide, & general as to be unreasonable & unenforceable.—**GERLACH-BARKLOW CO. v. MACPHERSON**, [1928] 3 W. W. R. 150.—**CAN.**

### PART V. SECT. 8, SUB-SECT. 1.— A. (b).

t (p. 52). *varied* [1928] 1 D. L. R. 1009; 61 O. L. R. 558.—**CAN.**

### PART V. SECT. 8, SUB-SECT. 2.—A.

**sa.** *Correction of judgment—Jurisdiction of court*.—**WARREN TEA CO., LTD. v. REINGLASS**, [1928] S. R. Q. 29.—**AUS.**

1092. *Add. Annotation*:—**Refd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

1122. *Add. Annotation*:—*As to* (1) **Refd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

1122a. — **Not individual members—Where proceedings intra vires.**—*COTTER v. NATIONAL UNION OF SEAMEN*, No. 1087, *ante*.

1127. *Add. Annotation*:—*As to* (1) **Refd.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

1295. *Add. Annotation*:—*As to* (1) **Apld.** *Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

1298. *Add. Annotation*:—**Consd.** *Horwood v. Statesman Publishing Co.* (1929), 98 L. J. K. B. 450.

**PART V. SECT. 9, SUB-SECT. 13.**

**m l.** — *Five years—Twenty miles.*]  
—When a contract in restraint of trade is severable as to the areas covered thereby it may be recoverable & valid as to one part of the total area & unreasonable & invalid as to the remainder. *Pltf.*, a physician practising in Nanaimo, who contracted to give professional service to certain miners there, engaged *deft.* to assist him in that work under an agreement which provided that on its termination *deft.* would not, for five years, practise in the city of Nanaimo or within a radius of 20 miles thereof. The agreement having been terminated, *deft.* commenced practice at Ladysmith, 16 miles from Nanaimo:—*Held*: that the restriction was valid as to the city of Nanaimo & invalid as to the area outside of it.—*HALL v. MORRIS*, [1928] 1 D. L. R. 1028; [1928] 1 W. W. R. 100; 39 B. C. R. 346.—**CAN.**

**PART VII. SECT. 2, SUB-SECT. 2.—A.**

**sb.** *International labour union.*—In an action by an unincorporated international labour union against an incorporated society of manufacturers to enforce an agreement in writing in the nature of a collective bargain, made in 1925 by way of settlement of disputes between local manufacturers & local labour unions, it was held the international labour union was an

illegal society incapable because of its illegality of maintaining this action or any civil action in an Ontario Ct.—*POLAKOFF v. WINTERS GARMENT CO.*, [1928] 2 D. L. R. 277; 62 O. L. R. 40.—**CAN.**

**PART VII. SECT. 5, SUB-SECT. 2.—A.**

**c i.** — *Claim based on arbitration decree.*—The rules of a master plumbers' assocn. provided that members who tendered successfully for contracts should pay a percentage on these contracts to the funds of the assocn. A claim made by the assocn. against a member in terms of the rules was disputed by him, & a minute of reference was entered into by the parties referring the matter to arbitration & agreeing to abide by & implement the arbitrator's decree, & consenting to registration & execution. The arbitrator decreed in favour of the assocn. Thereafter the member was sequestered, & the assocn., founding on the decree-arbitral, lodged a claim in the sequestration, which his trustee in bankruptcy rejected, in respect that, under Trade Union Act, 1871, s. 4, it was unenforceable:—*Held*: while the original claim could not have been entertained in a Ct. of law in respect that it was based on an agreement affected the claim here in question, which was a claim based upon a new

& independent agreement by the parties to arbitrate & to implement the arbitrator's decision.—*EDINBURGH MASTER PLUMBERS' ASSOCN. v. MUNRO*, [1928] S. C. (Cl. of Sess.) 565.—**SCOT.**

**PART VII. SECT. 5, SUB-SECT. 3.**

1123 *iv.* — *—*].—*BRENTALL v. HET- RICK*, [1928] N. Z. L. R. 788.—**N.Z.**

**PART VII. SECT. 8, SUB-SECT. 1.**

1237 *x.* — *—*].—Three *defts.*, officials of a union, were charged with doing an act in the nature of a strike, in that they instigated certain employees to do an act in the nature of a strike, namely, to discontinue their employment in pursuance of an agreement made by the said employees to compel their employer, *M.*, to comply with a demand by the employees to dismiss certain non-unionists.—*Held*: as there was no evidence that the agreement between the employees was entered into with intent to compel or induce the employer to comply with a demand made by the employees that non-unionists should be dismissed, the offence was not proved.—*In Re MULLER & WILLIAMS*, [1927] S. A. S. R. 353.—**AUS.**

**PART VII. SECT. 8, SUB-SECT. 2.**

**f i.** — *Criminal liability*—*R. v. HOLOWARKAWA* (1913), 21 O. W. R. 397; 24 Can. Crim. Cas. 224.—**CAN.**

## TRADE MARKS, TRADE NAMES AND DESIGNS.

## Part I.—Trade Marks.

5. *Add. Citation* :—[1929] 1 Ch. 113.
20. *Add. Annotation* :—*As to* (2) **Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
53. *Add. Annotation* :—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
67. *Add. Annotation* :—*As to* (2) **Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
- 77a. ———.]—The Liverpool Electric Cable Co., Ltd., applied to register the words "Liverpool Cables" in Parts A. & B. of the register in respect of electric cables. The applications were refused on the grounds that, although evidence went to show that those words indicated to the trade the co.'s electric cables, the word "Liverpool" was not *primâ facie* capable of distinguishing those cables or of becoming distinctive of them; that Liverpool was one of a class of geographical names which were of such importance that the names ought not to be registered to any one trader; that the word "Liverpool" describes the common characteristic of vast quantities of goods, namely that they come from Liverpool, & that phrase "Liverpool cables" therefore meant, not the cables of the applicant co., but cables manufactured or dealt in at Liverpool:—**Held**: the Registrar had proceeded upon the right grounds, & that his decisions were correct; the Registrar is not bound to accept an application in Part B. to register upon proof of user or that the mark is in fact distinctive; it is part of his duty to consider as a judicial officer applications put before him: he may refuse registration if not satisfied that the proposed mark is capable of distinguishing; in considering whether a geographical name is registrable, both the locality & the goods must be taken into consideration; & the name of such an important commercial centre as Liverpool, even though it may in fact be distinctive of the goods in respect of which it is sought to register it, is not registrable.—*Re* LIVERPOOL ELECTRIC CABLE CO. LTD.'s APPLICATIONS (1928), 46 R. P. C. 99, C. A.
79. *Add. Annotation* :—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
99. *Add. Annotation* :—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
114. *Add. Annotation* :—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
138. *Add. Annotation* :—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
248. *Add. Annotation* :—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
- 285a. **Duty of Registrar—To impose conditions—When possibility of deception or confusion.**—NOTES OF OFFICIAL RULINGS (1929) A (1929), 46 R. P. C. App. i.
- 326a. ———.]—J. & J. Colman, Ltd., applied to register in Part A. of the register in class 42 a label in respect of semolina. The registrar refused the application, on the ground that semolina & mustard prepared for use as food were goods of the same description, & appcts. refused to agree to the association of the mark with earlier marks in respect of mustard. Appcts. appealed to the ct.:—**Held**: mustard falls under the description of a condiment & semolina under the description of a cereal & the goods are not of the same description, & the registrar should be directed to reconsider the question as to what association with the cereal group only should be required.—*Re* COLMAN J. J. LTD.'s APPLICATION (1929), 46 R. P. C. 126.
331. *Add. Annotations* :—*As to* (1) **Refd.** Champagne Heidsieck et Cie Monopole Societe Anonyme v. Buxton (1929), 46 T. L. R. 36. *As to* (3) **Refd.** *Re* Proctor & Gamble Co.'s Petition, Proctor & Gamble Co. v. Pugsley Dingman & Co. (1929), 46 R. P. C. 421.
337. *Add. Annotation* :—*As to* (1) **Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.
- 339a. ———.]—*Re* LIVERPOOL ELECTRIC CABLE CO. LTD.'s APPLICATIONS, No. 77a, *ante*.
414. *Add. Citations* :—[1929] 1 Ch. 92; 140 L. T. 9.
- 414a. **Prevention of deception—Not right to control conditions of resale.**—The registration of a trade mark does not enlarge the right of the proprietor to prevent deception as to the origin of goods of his production into a right

## PART I. SECT. 2, SUB-SECT. 11.

sa. *Meaning of*.—To be a fancy term & not a descriptive term, a mark applied to goods must be obviously intended to be non-descriptive. Where words are *primâ facie* descriptive, the fact that the article to which they are applied does not answer the description imported by them, will not make them fancy words.—ORANGE CRUSH (AUSTRALIA) LTD. v. GARTRELL (1928), 28 S. R. N. S. W. 392; 45 N. S. W. W. N. 98.—AUS.

## PART I. SECT. 3, SUB-SECT. 2.

so. *Security for costs—Whether ordered.*—**Held**: a petitioner in a proceeding before this ct. for an order entitling him to register a trade mark is a pltf., & when residing abroad may be compelled to give security for costs.—ENERGINE REFINING & MANUFACTURING CO. v. IRVING, [1927] Exch. C. R. 235.—CAN.

## PART I. SECT. 4, SUB-SECT. 2.

418 i. *Mark registered under specific*

*mark—Use only in respect of one article in class—Whole class not protected.*—*Re* PROCTOR & GAMBLE CO.'s PETITION, PROCTOR & GAMBLE CO. v. PUGSLEY DINGMAN & CO., LTD. (1929), 46 R. P. C. 421.—CAN.

## PART I. SECT. 5, SUB-SECT. 1.—A.

426 i. *Removal—Grounds for—Prior user by applicant.*—GOLD MEDAL CAMP FURNITURE MFG. CO. v. GOLD MEDAL MFG. CO., [1928] 2 D. L. R. 819.—CAN.



to control dealing in the goods otherwise than upon such conditions as he may choose to impose with regard to resale, price, & area of market.—**CHAMPAGNE HEIDSIECK ET CIE MONOPOLE SOCIÉTÉ ANONYME v. BUXTON** (1929), 46 T. L. R. 36.

**465. Add. Annotation :—Appld. Re Inescourt's Trade Mark** (1928), 46 R. P. C. 13.

**558. Add. Citation :—**140 L. T. 19.

**629a. ———.]—Pltfs.,** who were proprietors of a trade mark, consisting of the word "Nildé," registered in class 48 in respect of face powders & similar toilet articles, brought an action for infringement of the mark & for passing off against defts., who carried on business as ladies' hair-dressers under the name "Ernaldé, Ltd.," at premises which were nearly opposite to those of pltfs. Pltfs. alleged (*inter alia*) that defts.' shop front was identical with that of pltfs., save in colour & the substitution of the name "Ernaldé" for "Nildé":—*Held*: the name "Ernaldé" was not adopted with the intention of deceiving, & did not in fact deceive, the public, & there had been no

infringement of the trade mark.—**SOCIÉTÉ LA PARFUMERIE NILDÉ v. ERNALDÉ, LTD. & FRYER** (1929), 46 R. P. C. 453.

**655. Add. Annotation :—Refd. Re Inescourt's Trade Mark** (1928), 46 R. P. C. 13.

**684. Add. Citation :—subsequent proceedings** (1929), 46 R. P. C. 406, C. A.

**684a. ———.]—STONE J. B. & Co., LTD. v. STEELACE MANUFACTURING CO., LTD.** (1929), 46 R. P. C. 406, C. A.

**686. Add. Annotations :—Mentd. Stone J. B. & Co. v. Steelace Manufacturing Co.** (1929), 46 R. P. C. 192; **Champagne Heidsieck et Cie Monopole Societe Anonyme v. Buxton** (1929), 46 T. L. R. 36.

**694. Add. Annotation :—Mentd. Champagne Heidsieck et Cie Monopole Societe Anonyme v. Buxton** (1929), 46 T. L. R. 36.

**696a. Striking out statement of claim—Res judicata.]—JAEGER CO., LTD. v. JAEGER** (1929), 46 R. P. C. 336, C. A.

**818a. ——— Possibility of confusion.]—EDISON ACCUMULATORS, LTD. v. EDISON STORAGE BATTERIES, LTD.** (1929), 46 R. P. C. 432.

## Part III.—False Marks and False Trade Descriptions.

**877. Add. Annotation :—Refd. Allen v. Whitehead** (1929), 45 T. L. R. 655.

## Part V.—Trade Names and Passing Off.

**1019. Add. Annotations :—As to (1) Appld. Stone J. B. & Co. v. Steelace Manufacturing Co.** (1929), 46 R. P. C. 192. *Generally, Refd. Champagne Heidsieck et Cie Monopole Societe Anonyme v. Buxton* (1929), 46 T. L. R. 36.

**1041. Add. Citation :—subsequent proceedings, sub nom. JAEGER CO., LTD. v. JAEGER** (1929), 46 R. P. C. 336, C. A.

**1103. Add. Annotation :—Refd. Stone J. B. & Co. v. Steelace Manufacturing Co.** (1929), 46 R. P. C. 406.

**1105. Add. Annotation :—Refd. Re Liverpool Electric Cable Co.'s Applications** (1928), 46 R. P. C. 99.

**1106. Add. Annotation :—Refd. Stone J. B. & Co. v. Steelace Manufacturing Co.** (1929), 46 R. P. C. 406.

**1120a. ——— Misleading trade circular by successor to business.]—Pltfs. & defts. carried on business of a similar description. On the expira-**

tion of the term in a lease of certain works to pltfs., where they had carried on their business, defts., fifteen months afterwards, had procured a lease of the same works, with the exception of certain mines of clay. Defts. issued a circular & card tending to lead the public to suppose that defts. had succeeded to the business of pltfs., & were working the same material as pltfs. had formerly used:—*Held*: although the words of the circular & card might be literally true, yet, if they tended to mislead the public, the ct. would restrain them from further circulating or issuing such or any similar circular or card.—**HARPER v. PEARSON** (1860), 3 L. T. 547.

**1120b. ——— Representation as to edition prescribed for examination.]—Pltfs. were the publishers of, & owners of the copyright in, a book entitled "Hazlitt's Selected Essays," edited by George Sampson, which included thirteen**

### PART I. SECT. 7, SUB-SECT. 2.—B.

**614 xiii. ———.]—MALUMBAR & Co. v. FINLAY & Co.** (1929), 1 L. R. 7 Ran. 169.—IND.

### PART IV. SECT. 1.

**sd. Industrial design.]—Held**: as Trade Mark & Design Act does not define what industrial designs are within the meaning of the Act, the word "design" therein must be taken to be used in its ordinary, & not in an artificial, sense.—**CLATWORTHY & SON, LTD. v. DALE DISPLAY FIXTURES, LTD.**, [1928] Exch. C. R. 159.—CAN.

### PART V. SECT. 2, SUB-SECT. 3.

**1046 i. What constitutes default—Inaccurate description of business.]—An Arakanese carried on a money-lending business in his own name until his death. His widow continued the business as sole proprietress, in the name of her husband, adding to that name the words "& Co." She lent moneys to resps. on a mtge., which was taken in her business name. She then registered the business under Burma Registration of Business Names Act, but erroneously entered herself as well as her children as partners. She then sued resps. in the name of the business,**

for the mtge. debt:—*Held*: sect. 3 (6) of the Act applied without qualification in this case, & that her particulars being inaccurate, there was no proper registration under the Act, & her suit failed under sect. 5 (1) of the Act.—**MAUNG THA NYO v. MA UN MA PRU** (1929), 1 L. R. 7 Tan. 296.—IND.

**1052 ii. ———.]—M'LACHLAN (J. J. & P.) Petitioners,** [1929] S. C. (Ct. of Sess.) 357.—SCOT.

**1052 iii. ———.]—SMITH v. FINCH.** (1906), 12 B. C. R. 186; 3 W. L. R. 476.—CAN.

essays & notes on the essays. In 1927 & 1928 the book was prescribed by the London University as one on which candidates for matriculation would be examined. One of defts. published & sold the other defts. sold a book entitled "Hazlitt's Selected Essays, Edition Hollingworth," containing twenty of such essays, including the thirteen selected by Sampson. Pltfs. commenced an action against defts., alleging that defts. had passed off the Hollingworth edition as & for the Sampson edition of pltfs. by representing that the Hollingworth edition was that prescribed for the London Matriculation Examination, & also alleging infringement of copyright in their selection of essays:—*Held*: if the fact were that a purchaser had been misled into thinking that defts.' book had been prescribed for a certain examination, that was simply a representation as to quality & would give pltfs. no right of action, there had been no passing off of defts.' book as pltfs.' & there was no infringement of copyright.—CAMBRIDGE UNIVERSITY PRESS v. UNIVERSITY TUTORIAL PRESS (1928), 45 R. P. C. 335.

**1120c.** — Goods sent in reply to order by plaintiff. — Pltfs., who had for some time used the device of a swan with the word "white" on labels on porcelain enamelled baths of their manufacture, applied on two occasions to register the device, first in class 1 in relation to enamel, secondly in class 13 in relation to baths & the like. Both applications were refused. On Jan. 25, 1926, the B. W. Assocn. registered under sect. 62, in respect of a standardised brass tap approved by the Ministry of Health, the device of a swan with the letter B. W. A. The attention of pltfs. was drawn to the sale by defts. of one of these standardised taps in Feb.; & later, upon ordering "3-in. brass globe cocks Ministry of Health pattern swan," pltfs. received a like tap from defts. Pltfs. thereupon brought this action to restrain defts. from passing off, & at the same time moved to rectify the register by removing therefrom the B. W. Assocn.'s standardisation mark:—*Held*: pltf.'s device of a swan was known to the trade as indicating, not taps, but porcelain baths of pltfs.' manufacture or merchandise enamelled with a particular characteristic enamel; the presence on the register of resps.' standardisation make, & the use of it upon brass taps made to the Ministry of Health specification was not calculated to deceive the trade into believing that such taps were merchandise or manufacture of pltfs.; the sending of one of such taps by defts. in response to pltfs.' order was a reasonable response to that order: pltfs. had proved neither that the device of a swan indicated their taps to the trade, nor passing off by defts.; & both the action & the motion failed.—WILSON'S & MATHIESON'S, LTD. v. MEYNELL & SONS, LTD., *Re* WILSON'S &

MATHIESON'S LTD.'S APPLICATION (1929), 46 R. P. C. 80.

**1212a.** — — — — — Pltf. co. was a public co. with a large capital incorporated in Feb. 1924, for the purpose of carrying on the business of English & foreign chemists & druggists, wholesale & retail, & had a number of retail shops in the West End of London, their most outlying shop being in Knightsbridge. Deft. co. was incorporated in Nov. 1928, with a nominal capital of £1,000 for the purpose of carrying on the business of a high-class dispensing chemist in the neighbourhood of Barons Court, London, & had one shop in that district. Deft., I. J. Eppel, took medical degrees & was a qualified chemist in Dublin in 1912, & carried on there the business of a chemist's shop until 1923. Deft., I. J. Eppel, having formed deft. co., pltf. co. sought an injunction to restrain deft. co. from trading under the name of Eppels, Ltd.:—*Held*: on the evidence there was no ground on which deft. co. could effectively resist the injunction.—HEPPELS, LTD. v. EPPELS, LTD. & EPPEL I. J. (1928), 46 R. P. C. 96.

**1215a.** — — — — — SOCIÉTÉ LA PARFUMERIE NILDÉ v. ERNALDÉ, LTD. & FRYER, No. 629a, *ante*.

**1350a.** — — — — — WILSON'S & MATHIESON'S, LTD. v. MEYNELL & SONS, LTD., *Re* WILSON'S & MATHIESON'S LTD.'S APPLICATION, No. 1120c, *ante*.

**1415a. Particulars — When ordered.** — Where a paragraph of the defence admitted the selling by defts. of certain articles, an order for further particulars of goods of which pltfs. complained was refused on the ground that defts. must be presumed to have had knowledge of what they were selling. Where pltfs. alleged that the carrying on of a trade over a long period of years by defts. was calculated to deceive, & that defts. had in fact deceived, particulars of the acts of actual passing off which pltfs. intended to rely on at the trial were ordered to be given.—JEYES SANITARY COMPOUNDS CO., LTD. v. PHILADELPHUS JEYES & CO., LTD. (1929), 46 R. P. C. 236.

**1442. Add. Annotation:—***Re* Stone J. B. & Co. v. Steelace Manufacturing Co. (1929), 46 R. P. C. 192.

**1557a.** — — — — — Resps. had used for many years in India a ticket containing a picture of a lotus flower & also a combination of three marks, one of which also contained a picture of a lotus flower. Appls. had adopted a ticket with a different picture, but also including a lotus flower, & a combination of three marks similar in general appearance to resps.' three marks, but with a rose instead of a lotus flower. The ct. at Allahabad found that appls. had adopted these marks fraudulently, & that they were calculated to lead to passing off, & granted an

**PART V. SECT. 5, SUB-SECT. 4.—**  
B. (b).

**1271 ii.** — — — — — Where goods are ordinarily sold by retail, a mere general resemblance with pltf.'s goods at a distance is not enough to entitle him to succeed in a passing-off suit. The test which the ct. will apply is the probability of confusion at that distance which would ordinarily intervene

between the purchaser & the seller, or between the purchaser & the goods if they were placed upon the counter.—ESDAILE v. MATTHEWS THOMPSON, LTD. (1927), 28 S. R. N. S. W. 15.—AUS.

**PART V. SECT. 5, SUB-SECT. 5.—**  
C. (b) i.

**1313 iv.** — — — — — WHITWORTH HERBERT, LTD. v. JAMNADAS LEMCHAND

MERTA (1927), I. L. R. 52 Bom. 228.—IND.

**PART V. SECT. 6, SUB-SECT. 6.—**  
E. (b).

**1460 i. Use of letters REG.—***Whether bar to relief.*—ANGELIDES v. JAMES STEDMAN HENDERSON SWEETS, LTD. (1927), 40 C. L. R. 43.—AUS.

injunction & damages. No case of actual deception was proved. The estimate of damages in particulars to the plaint which was verified by affidavit was Rs.25,000. The ct. awarded damages on the following basis: applts. were proved to have sold cloth bearing the marks complained of to the value of Rs.3,200,000; the ct. assumed that, if offered without these marks, only 40 per cent. of this quantity would have been sold, & gave as damages 9 per cent. as profit on the remaining 60 per cent., i.e. Rs.172,800. Applts. appealed:—*Held*: the

injunction was rightly granted, but the damages must be calculated by estimating the trade lost to resps. by reason of the use of applts.' marks, & the damages should be reduced to Rs.87,000.—JUGGI LAL-KAMLAPAT & JUGGILAL-KAMLAPAT MILLS OF CAWNPORE v. SWADESHI Co., LTD. (1928), 46 R. P. C. 74, P. C.

1570. *Add. Annotations*:—*Apld.* The Young Sid, [1929] P. 190. *Refd.* Brown v. Dagenham U. D. C. (1929), 98 L. J. K. B. 565; Clark v. Urquhart, Stracey v. Urquhart (1929), 141 L. T. 641.

PART V. SECT. 6, SUB-SECT. 7.—F. (c).

1559 iii. —.—.]—JUGGI LAL-KAMLAPAT v. SWADESHI MILLS Co., LTD. (1928), L. R. 56 Ind. App. 1.—IND.

# TRAMWAYS AND LIGHT RAILWAYS.

## PART I. SECT. 4, SUB-SECT. 3.

m i. — *What amounts to breach.* — GLASGOW CORPN. v. STRATHERN, [1929] S. C. (J.) 5. — SCOT.

## PART IV.

h (p. 365) i. — — — — —.] — A street railway company operating within a province, originally incorporated by a provincial legislature, but whose undertaking was subsequently declared by a Dominion Act to be a work for the general advantage of Canada, is not subject to the jurisdiction of a public service commission created by the province, but the execution of its powers is, by the provisions of the Railway Act, within the jurisdiction of the Board of Railway Comrs. for Canada. — QUEBEC RY. LIGHT & POWER CO. v. MONTCALM LAND CO., [1928] 1 D. L. R. 143; 34 Can. Ry. Cas. 275; [1927] S. C. R. 545. — CAN.

n (p. 366) i. — — — — —.] — SYMONS v.

WINNIPEG ELEC. CO., [1928] 1 D. L. R. 159; 37 Man. L. R. 170; [1927] 3 W. W. R. 650. — CAN.

aaa (p. 366) i. — — — — —.] — A street railway co. operating cars along a public highway is under a common law duty to exercise reasonable care in the operation of its cars to discover the presence of persons who are on its right of way as part of the highway, & to avoid injuring them. This duty is not discharged with respect to a car operated at night unless its speed is governed according to the power of its headlight, so that when a person is seen on the track the car can be stopped in time to avoid an accident. — PRONER v. WINNIPEG SELKIRK & LAKE WINNIPEG RY. CO., [1928] 2 D. L. R. 725; [1928] 1 W. W. R. 857; 34 Can. Ry. Cas. 261; 37 Man. L. R. 320. — CAN.

hh (p. 367) i. — *Slippery step.* — CHIPPENDALE v. WINNIPEG ELEC. CO., [1928] 1 D. L. R. 920; [1928] 1 W. W. R.

238; 37 Man. L. R. 207. — CAN.

hh (p. 367) ii. — *Displacement of platform on street.* — ZEIDEL v. WINNIPEG ELECTRIC CO., [1928] 3 D. L. R. 570; [1928] 2 W. W. R. 601; 34 Can. Ry. Cas. 267; 37 Man. L. R. 412. — CAN.

ll (p. 367). *Affid. sub nom.* WINNIPEG ELECTRIC CO. v. SCOTT, [1928] 2 D. L. R. 420; [1928] S. C. R. 52; 34 Can. Ry. Cas. 260. — CAN.

oo (p. 367). *Recesd. sub nom.* WINNIPEG ELECTRIC CO. v. ODEGAARD, [1928] 2 D. L. R. 297; [1928] S. C. R. 192. — CAN.

tt (p. 367) i. — — — — —.] — SOUTH AUSTRALIAN RAILWAYS COMRS. v. BARNES (1927), 40 C. L. R. 179. — AUS.

sa. *Agreement between street railway & municipality — Not enforceable by private individual.* — *Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1928] 1 D. L. R. 332. — CAN.

## TRESPASS.

## Part I.—In General.

50. *Add. Citations* :—*sub nom.* BIGGS v. GREENFIELD & BENDER, 8 Mod. Rep. 217 ; *sub nom.* BRIGGS v. GREINFELD & BENDER, 1 Stra. 610.

## Part II.—Trespass to Land.

162. *Add. Annotation* :—*Mentd.* Salisbury House Estates v. Fry (1929), 98 L. J. K. B. 722.
- 247a. — *Holding public meeting on private land.*—Pltf. co. was formed to acquire & did in fact acquire land at H. to be laid out as a garden city under & by virtue of powers conferred by a private Act of Parliament. The roads in the garden city were vested in the pltf's. & were to remain so vested until made up & taken over by the highway authority. Deft. gave notice that he intended to hold an open air meeting in the neighbourhood of a church on pltf's' property at the junction of two roads. These roads were not barred, but notices had been posted upon them announcing that they were private roads. They were not dedicated to the public, nor had they been taken over by the highway authority. Pltf's. having sought an injunction :—*Held* : it being clear that there was no public right of way along the roads in question, it was unnecessary to discuss the question about any right of holding a meeting at the junction of the roads, & pltf's. were entitled to an injunction. — *HAMPSTEAD GARDEN SUBURB TRUST, LTD. v. DENBOW* (1913), 77 J. P. 318.
258. *Add. Annotation* :—*Refd.* Grant v. Derwent, [1929] 1 Ch. 390.

## Part III.—Trespass to Goods.

551. *Add. Citations* :—*sub nom.* BIGGS v. BENDER, 2 Ld. Rayn. 1372 ; *sub nom.* BRIGGS v. GREINFELD & BENDER, 1 Stra. 610.

**PART II. SECT. 3, SUB-SECT. 4.—A.**  
*sa. Locatee of Crown lands.*—*HAMM v. KROCKBACK & Co., BALL v. KROCKBACK & Co.* (1928), 34 O. W. N. 81 ; *affg.* [1928] 2 D. L. R. 389.—*CAN.*

**PART II. SECT. 5, SUB-SECT. 6.—B.**  
 1 i. ———.—On an appeal from a judgment whereby pltf. in an action for trespass was awarded vindictive damages in addition to special damages, held that, in view of deft.'s persistence in trespassing in defiance of pltf.'s requests to desist, his violent & abusive conduct towards pltf., & the particularly injurious & malicious manner in which certain of the trespasses were committed, the allowance of vindictive damages was justified & the amount thereof should not be reduced. — *SPENCER v. GRANT*, [1928] 1 D. L. R. 820 ; [1928] 1 W. W. R. 190 ; 22 Sask. L. R. 365.—*CAN.*

**PART II. SECT. 6, SUB-SECT. 2.—B.**  
*sa. Possession of mother.*—The possession of a mother will not be considered tortious as against the heir, being her own child, but will rather be treated as the possession of a guardian.

— *DOE d. HOAK v. EMPEY* (1834), 3 O. S. 488.—*CAN.*

**PART II. SECT. 6, SUB-SECT. 3.—B.**  
*sd. Long possession of easement.*—*BROWN v. STREET* (1844), 1 U. C. R. 124.—*CAN.*

**PART II. SECT. 6, SUB-SECT. 6.**  
 o i. ———.—The moneys payable under an agreement for the sale of land were assigned to deft. bank, & the purchaser, who was in possession & had defaulted in his payments, agreed with the bank to pay over to it the proceeds of the crop on the part of the land which had been broken but had not been summer-fallowed for several years, & also agreed to summer-fallow it without delay. He, however, having neglected to summer-fallow it, although the bank told him that if he did not do so it would ; & having failed to carry out a promise given by him to the weed inspector to plough under the weeds, one C., acting under instructions from the bank, entered on the land & had ploughed under the weeds on a part of it when he

was ordered off by the purchaser :—*Held* : the bank & C. were liable to the purchaser for damages for trespass. The bank was not in the position of a person who has a right to abate a nuisance with or without notice even if a nuisance existed ; nor, in the absence of a contract giving it a right of entry, had it a right to enter on the principle that it was entitled to preserve its security or prevent its impairment ; & the evidence did not support a finding that the entry was by leave & licence. — *ROYAL BANK OF CANADA v. BENJIKSEN & IRELAND*, [1928] 2 W. W. R. 27.—*CAN.*

**PART II. SECT. 6, SUB-SECT. 9.**  
*sf. Mistake as to land entered upon.*—*MUNRO v. PINDER LUMBER & MILLING Co.* (1925), 52 N. B. R. 487.—*CAN.*

**PART III. SECT. 5, SUB-SECT. 3.—B.**  
 q i. ———.—In an action for negligence causing damage to goods the measure of damages is the depreciation in the value of the goods as the result of the accident. — *COPLEY v. FINKELSTEIN*, [1928] 3 D. L. R. 671 ; [1928] 3 W. W. R. 89.—*CAN.*

## Part IV.—Trespass to the Person.

733a. ————.]—If A., having no right to apprehend B., direct a police officer to take B., & he do so, B. may maintain an action for false imprisonment against A.; but if A. merely make a statement to the officer, leaving it to him to act or not as he thinks proper, & the officer then take A., B.'s remedy against A. is, if any, by action

on the case.—HOPKINS v. CROWE (1836), 7 C. & P. 373; 173 E. R. 166, N. P.; *subsequent proceedings*, 4 Ad. & El. 774.

*Annotations* :—*Distd.* Hudson v. Howard (1837), 1 Jur. 658. *Refd.* Kine v. Evershed (1847), 10 Q. B. 143; Read v. Coker (1853), 13 C. B. 850; Derecourt v. Corbishley (1855), 1 Jur. N. S. 870.

## PART IV. SECT. 1, SUB-SECT. 7.

k i. ———— *Provocation to assault.*] —On appeal from a judgment for plff. in an action for assault the damages were reduced to \$10, the assault having been merely a technical one, which apparently had been courted by plff.

with a view to an action for damages.—HODGKINSON v. MARTIN, [1928] 3 W. W. R. 763.—CAN.

## PART IV. SECT. 2, SUB-SECT. 2.

731 i. ———— *Charge made to police officer*—No further action by

*defendant.*]—MANN v. RASMUSSEN, [1928] 3 D. L. R. 319; [1928] 2 W. W. R. 278; 23 Alta. L. R. 515.—CAN.

731 ii. ———— *Incorrect repetition of statement made by defendant causing arrest.*]—SPARKS v. JOSEPH (1858), 7 C. P. 69.—CAN.

## TROVER AND DETINUE.

### Part II.—Liability for Conversion and Detinue.

**102. Add. Annotation :—**Consd. *Fenton Textile Assocn. v. Thomas* (1929), 45 T. L. R. 264.

**200a. Bill indorsed to agent for account of plaintiff—Deposit by agent to secure advances.]**

—*TREUTTEL v. BARANDON* (1817), 8 Taunt. 100; 1 Moore, C. P. 543; 129 E. R. 320.

**Annotations :—**Apld. *Evans v. Kymer* (1830), 1 B. & Ad.

528. **Refd.** *Wookey v. Pole* (1820), 4 B. & Ald. 1; *Sigourney v. Lloyd* (1828), 8 B. & C. 622; *Bank of Bengal v. Macleod* (1849), 5 Moo. Ind. App. 1.

**245. Add. Annotation :—**Refd. *Re Mason*, [1929] 1 Ch. 1.

### Part III.—Enforcement of Liability.

**400. Add. Annotation :—**Mentd. *Foster v. Driscoll*, *Lindsay v. Attfield*, *Lindsay v. Driscoll*, [1929] 1 K. B. 470.

**488. Add. Annotation :—**Refd. *Smart Bros. v. Holt*, [1929] 2 K. B. 303.

**653a. What must be proved.]—***MILLS v. GRAHAM* (1804), 1 Bos. & P. N. R. 140; 127 E. R. 413.

**Annotations :—**Refd. *Gledstane v. Hewitt* (1831), 1 Tyr. 445; *Whitehead v. Harrison* (1844), 6 Q. B. 423. **Mentd.**

*Stikeman v. Dawson* (1847), 1 De G. & Sm. 90; *Danby v. Lamb* (1861), 11 C. B. N. S. 423; *R. v. Macdonald* (1885), 1 T. L. R. 465.

**653b. Proof of taking—What amounts to.]—**Trover for bricks. Evidence that men fetched them away, saying they were ordered by deft., & evidence that the cart they took them in had on it the same name as deft.'s, is not evidence to go to the jury that deft. took them away.—*EVEREST v. WOOD* (1824), 1 C. & P. 75; 171 E. R. 1108, N. P.

#### PART II. SECT. 1, SUB-SECT. 2.— A. (b).

**131 i. Intermeddling with goods distrained.]—***MORT v. BARNES*, [1928] V. L. R. 56.—**AUS.**

#### PART II. SECT. 1, SUB-SECT. 2.—B. 5a. Unjustifiable detention by police

*officer.]—**BARRETT v. GALLAGHER* (1928), 28 S. R. N. S. W. 549; 45 N. S. W. W. N. 154.—**AUS.**

#### PART III. SECT. 3, SUB-SECT. 1.— C. (b) i.

**574 iv. — — .]**—Where pltf. has the immediate right to the possession

of goods, the proper measure of damages in an action against the sheriff for wrongfully taking them is the value of the goods at the time of the conversion, though they were taken under an execution against a person who had performed labour upon them, & for which pltf. would be bound to account to such person.—*RANKIN v. MITCHELL* (1869), 12 N. B. R. (1 Han.) 495.—**CAN.**

## TRUSTS AND TRUSTEES.

## Part I.—Trusts.

89. *Add. Annotation* :—**Refd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
94. *Add. Annotation* :—**Consd.** *Re Franklin & Swathling's Arbitration*, [1929] 1 Ch. 238.
165. *Add. Annotation* :—**Refd.** *Perrin v. Dickson* (1929), 45 T. L. R. 621.
305. *Add. Annotations* :—**Generally, Mentd.** *Geologists' Assn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271; *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.
325. *Add. Annotation* :—**Mentd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
- 401a. "On the understanding."—Where a will which named no exor. nor trustee directed that the estate, under £300, should be given to testator's wife in trust for two children "on the understanding" that testator's father provided for the wife so long as she retained her present name, the ct. held on motion that the condition had no testamentary value, & made the grant of letters of administration with the will annexed to the widow as beneficially entitled.—*Re DULSON* (1929), 140 L. T. 470; 45 T. L. R. 228.
- 409a. —.]—Testator, being entitled to two leasehold houses situate at P. & at R. respectively, directed his trustees to allow his wife to occupy his house at P. or at R. as she should elect, for her life, without the payment of any rent :—**Held** : the widow must elect between the two houses, & could not enjoy both.—*HARRY v. MOORE* (1880), 3 L. T. 209; 6 Jur. N. S. 883.
415. *Add. Annotation* :—**Refd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
428. *Add. Citation* :—140 L. T. 369.
438. *Add. Annotation* :—**Apld.** *Re Villar, Public Trustee v. Villar*, [1929] 1 Ch. 243.
451. *Add. Annotation* :—**Refd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
453. *Add. Annotation* :—**Consd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
460. *Add. Citations* :—*affd.* [1929] A. C. 318; 98 L. J. Ch. 251; 140 L. T. 444; 45 T. L. R. 208; 73 Sol. Jo. 92, H. L.
461. *Add. Annotation* :—**Consd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
462. *Add. Annotation* :—**Consd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
463. *Add. Annotation* :—**Folld.** *Blackwell v. Blackwell*, [1929] A. C. 318.
464. *Add. Annotation* :—**Distd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
465. *Add. Annotation* :—**Refd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
478. *Add. Annotation* :—**Refd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
479. *Add. Annotation* :—**Consd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
480. *Add. Annotation* :—**Consd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
484. *Add. Annotation* :—**Refd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
487. *Add. Annotation* :—**Refd.** *Blackwell v. Blackwell*, [1929] A. C. 318.
- 493a. — **After variation of original settlement.**—Testator bequeathed his residuary estate upon trust for his children in equal shares & declared that as to the share of his son E. a moiety thereof should be held upon trust to pay & make over the same to the trustees of a settlement dated Sept. 23, 1916, to be held by them upon the trusts of such settlement, so far as the same should be then applicable & capable of taking effect. By the settlement so referred to, which was made after the marriage of E. with his wife G., a certain fund was vested in the trustees thereof under which E. took the first life interest & upon his death G. took an interest during her widowhood with remainders over upon trusts for E.'s children by his wife G. or any future wife. Testator died in 1917, & in 1928 the marriage was upon G.'s petition dissolved, & an order was made under which the trusts of the settlement were varied; the effect of this variation being to deprive E. of any interest under the original trusts thereof, to give G. an immediate life interest, & to vest the settlement fund after her death in P., the only child of her marriage with E. :—**Held** : upon the proper construction of testator's will, the share of E. in his father's residuary estate ought to be held upon the trusts of the settlement as originally framed without regard to the order varying those trusts.—*Re GOOCH, GOOCH v. GOOCH*, [1929] 1 Ch. 740; 98 L. J. Ch. 285; 141 L. T. 150.
495. *Add. Annotation* :—**Refd.** *Re Gooch, Gooch v. Gooch*, [1929] 1 Ch. 740.
- 544a. —.]—Testator directed by his will that his residuary real & personal estate should, after the death of his widow, be "equally divided amongst & settled for their own &

PART I. SECT. 3, SUB-SECT. 1.—  
A. (a).

37 xv. —.]—Parties taking a deed from a person standing in a fiduciary relation acquire no title if the circumstances should have put them upon inquiry. Neither the Registry of Deeds Act nor Statute of Frauds, requiring certain trusts to be in writing, apply to such a case.—*MILLER & CO. v. HALIFAX POWER CO.* (1915), 48 N. S. R. 370.—CAN.

PART I. SECT. 3, SUB-SECT. 1.—  
A. (c).

61 iv. —.]—*CLARKE v. EBY* (1867), 13 Gr. 371.—CAN.

61 v. —.]—*SMITH v. BENOR* (1913), 24 O. W. R. 521; 4 O. W. N. 985; 10 D. L. R. 824.—CAN.

PART I. SECT. 3, SUB-SECT. 3.—  
H. (b).

t i. —.]—Testator after devising & bequeathing to his wife "all my personal property, monies, securities, everything that I now possess & may

possess at the time of my decease," then added "& this is my wish (her being free to use her own judgment) for her, S. K., to will at her death" in favour of several objects :—**Held** : the will did not create a precatory trust.—*Re KEYES ESTATE, KEYES v. GRANT*, [1928] 3 D. L. R. 558; [1928] 2 W. W. R. 295.—CAN.

PART I. SECT. 3, SUB-SECT. 5.—  
B. (b).

g. For "[1918] N. Z. L. R. 364" read "[1928] N. Z. L. R. 364."



sole use upon my dear children, & should they marry the husband to have no control over their property." Testator left him surviving three daughters only:—*Held*: the expression in the will of testator was not sufficiently precise to raise an executory trust.—*Re BANNISTER, HEYS-JONES v. BANNISTER* (1921), 90 L. J. Ch. 415; 125 L. T. 54.

561. *Add. Annotation*:—*Mentd. Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.

688. *Add. Annotation*:—*Mentd. Papadopoulos v. Papadopoulos* (1929), 46 T. L. R. 44.

761. *Add. Annotation*:—*Consd. A.-G. v. Goddard* (1929), 98 L. J. K. B. 743.

769a. *Agreement to convey to creditor.*—W. being indebted to C., agreed by deed to convey his estate to C., upon trust to sell the same, & to pay off certain debts of W. due to other persons, & then the debt due from W. to C., & to pay over the surplus, if any, to W. No conveyance was executed. C. being after-

wards in possession of the estate under a *fi. fa.* issued on a judgment upon a warrant of attorney given by W., agreed with W.'s agent to purchase the estate. W. ratified the contract, but subsequently impeached it as one made by a trustee for his own benefit & against the interest of the *cestui que trust*:—*Held*: C. was not a trustee for W., but was a creditor holding a security for his debt; & the contract of sale was valid.—*WATERS v. GROOM* (1844), 11 Cl. & Fin. 684; 8 E. R. 1262, H. L.; *affg. S. C. sub nom. CHAMBERS v. WATERS* (1833), *Coop. temp. Brough*. 91, L. C.

*Annotation*:—*Refd. Helling v. Lumley* (1858), 28 L. J. Ch. 249.

876. *Add. Annotation*:—*Mentd. Re Binns, Public Trustee v. Ingle*, [1929] 1 Ch. 677.

903. *Add. Annotation*:—*Refd. Perrin v. Dickson* (1929), 98 L. J. K. B. 683.

977. *Add. Annotation*:—*Refd. Verner-Jeffreys v. Pinto*, [1929] 1 Ch. 401.

## Part II.—Trustees.

1434a. *Equitable estate of beneficiary becoming legal estate.*—On July 5, 1802, B. & another trustee who predeceased him were admitted to certain copyhold plots upon trust out of the rents & profits to raise & pay an annual rent of £7 10s. to L. & his heirs & subject thereto in trust for W. & his heirs. Many years after B.'s death his customary heir C., since deceased, was admitted to two plots, but no one was admitted to the third; so that on Dec. 31, 1925, the best right to admittance was in the customary heirs of C. & B. On the same date the equitable title to the land stood vested in T. & X. as joint tenants in fee, subject to the equitable rentcharge then vested in Y., subject to proof of his title. On Jan. 1, 1926, the Law of Property Acts came into operation & the copyhold plots were enfranchised. The ct. being asked to determine in whom the legal estates in the land & the rentcharge vested:—*Held*: on the rentcharge becoming a legal rentcharge the trustees became bare trustees with no longer any active duties to perform.—*Re KING'S THEATRE SUNDERLAND, DENMAN PICTURE HOUSES v. THOMPSON & COLLINS ENTERPRISES*, [1929] 1 Ch. 483; 98 L. J. Ch. 109; 140 L. T. 463.

1499a. *Acquisition from married woman trustee—In order to defeat judgment.*—Where the ct.

in giving judgment against a married woman, who is a defaulting trustee, orders that the judgment be satisfied out of her separate estate, & execution proves useless, it is not open to pltf., in a new action, to obtain against her judgment in a different form for payment of the moneys into court. As against her the matter is *res judicata*. But if it appear that she has transferred the moneys to a person with knowledge of the proceedings against her, action will lie against the transferee as constructive trustee. Pltf. obtained against the first deft., a married woman, judgment for payment out of her separate estate of the sum in dispute & costs. Evidence disclosed that the first deft. had parted with the whole of the sum, having transferred most of it to her sister, the second deft., who was not a party to the proceedings but knew of them at the time. Execution in respect of the judgment thus proving useless, pltf. now brought this action, alleging that the first deft. had paid the money to the second deft. in order to defeat any judgment for the pltf., & that the second deft. received the money as constructive trustee:—*Held*: judgment could be given against the second deft., who had received the moneys as constructive trustee.—*GREEN v. WEATHERILL*, [1929] 2 Ch. 213; 98 L. J. Ch. 369; 45 T. L. R. 494.

### PART I. SECT. 12, SUB-SECT. 1.

sa. *Effect of non-acceptance by beneficiaries.*—*Re B., CANADA TRUST CO. v. GARDINER*, [1928] 1 D. L. R. 501.—CAN.

### PART I. SECT. 14, SUB-SECT. 3.—B.

so. *Company—Application for shares.*—*Re FADA (AUSTRALIA) LTD., Ex p. A. L. BROWN*, [1927] S. A. S. R. 590.—AUS.

### PART II. SECT. 2, SUB-SECT. 1.—A.

sd. *Persons resident in Great Britain—Tenant for life resident in England.*—*Re BAILLIE, WHITING v. CAVENDISH*, [1928] V. L. R. 171; [1928] *Argus* L. R. 12.—AUS.

J. S.

### PART II. SECT. 2, SUB-SECT. 2.—

B. (c).

sf. *Jurisdiction of court to vary power of appointment.*—Trustee Act, 1925, s. 81, enables the ct. to do any administrative act in the administration of a trust, & empowers the ct. in a proper case to vary a power of appointment of new trustees.—*Re MAYNE* (1928), 28 S. R. N. S. W. 157; 45 N. S. W. W. N. 46.—AUS.

### PART II. SECT. 2, SUB-SECT. 2.—

C. (d).

sg. *"Desire" for not less than three trustees—Whether mandatory or directory.*—Testator by his will declared that the statutory power of appointing new trustees should be exercisable if

any of his trustees should go to reside out of the Australian States, but expressed a "desire" that the number of trustees of the will should always be not less than three. One of the three trustees was dead:—*Held*: it was mandatory on such retirement to appoint no less than three trustees.—*Re MAYNE* (1928), 28 S. R. N. S. W. 157; 45 N. S. W. W. N. 46.—AUS.

### PART II. SECT. 7, SUB-SECT. 1.—

C. (b) i.

sh. *Property subject to existing contract—Trusts Ordinance, 1917, s. 93, of Ceylon—When registration necessary.*—*HALL v. PELMADULLA VALLEY TEA & RUBBER CO., LTD.*, [1929] A. C. 662.—CEYLON.

## Part III.—Administration of Trusts.

**2033a.** — Misapplication of trust funds—Payment to wrong person.]—The indemnity conferred on trustees by Trustee Act, 1925 (c. 19), s. 30 (1), does not apply where a trustee, even though as the result of an honest mistake, has misapplied trust funds by paying them to the wrong person.

The selling agents of a colliery co., which had sold its undertaking & was being voluntarily wound up, claimed £19,088 damages for alleged breach by the co. of the agency agreements. There had in fact, as the ct. held, been no breach of the agreements. The liquidator consulted the solrs. of a large shareholder, who was opposed to the claim, & they said they had advised their client that there was a valid claim but that the amount of damages was uncertain. Without taking further advice or obtaining the opinion of the ct., a course the liquidator had recognised to be open to him, the liquidator settled the claim for £15,000. A summons was taken out by a contributory to obtain repayment of this sum to the co., on the ground that the liquidator had been guilty of misfeasance, & the liquidator, whose *bona fides* was not in question, claimed the benefit of the indemnity given to trustees by Trustee Act, 1925 (c. 19), s. 30 :—*Held* :

without deciding whether the liquidator was a trustee within the meaning of the Act, even if he were : (1) he was not entitled to indemnity under sect. 30 (1), because that sub-sect. does not extend to a case where a trustee had misapplied trust funds coming to his hands ; (2) he was not, on the facts, entitled to relief under sect. 61.

Even if a liquidator is a trustee within Trustee Act, 1925, he is, as a paid trustee, disentitled to relief under sect. 61 (*per cur.*). —*Re WINDSOR STEAM COAL CO. (1901), LTD.*, [1929] 1 Ch. 151 ; 98 L. J. Ch. 147 ; 140 L. T. 80, C. A.

**2220.** *Add. Annotation* :—*Mentd. A.-G. v. Goddard* (1929), 98 L. J. K. B. 743.

**2269.** *Add. Annotation* :—*Consd. Re Raine, Tyerman v. Stansfield*, [1929] 1 Ch. 716.

**2273a.** Voluntary settlement in accordance with unexecuted will—Failure to include trust for maintenance — Remedy of beneficiary.] — *LANGDON v. BLAKE* (1865), 12 L. T. 202 ; 11 Jur. N. S. 762.

**2357.** *Add. Annotation* :—*Consd. Hyman v. Hyman*, [1929] A. C. 601.

**2362.** *Add. Annotation* :—*Mentd. Cotter v. National Union of Seamen*, [1929] 2 Ch. 58.

## Part IV.—Duties of Trustees.

**3112.** *Add. Annotations* :—*Mentd. Hobbs v. Tinling, Hobbs v. Nottingham Journal*, [1929] 2 K. B. 1 ; *Todley v. Fry & Sons* (1929), 46 T. L. R. 108.

**3118a.** —.]—*REYNOLDS v. BROWN* (1852), 1 W. R. 50.

**3142.** *Add. Annotation* :—*Distd. Re Sullivan, Dunkley v. Sullivan* (1929), 45 T. L. R. 590.

## Part V.—Powers and Discretions of Trustees.

**3160.** *Add. Annotation* :—*Mentd. Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.

**3417.** *Add. Annotation* :—*Mentd. Re Sandwell Park Colliery Co., Field v. The Co.*, [1929] 1 Ch. 277.

**3450.** *Add. Annotation* :—*Distd. Re Stevens & Dunsby's Contract*, [1928] W. N. 187.

**3475a.** — —.]—In an administration action in which a decree had been made, & which was still pending, a receiver had been

### PART II. SECT. 8, SUB-SECT. 3.

s]. *Death of trustee.*—*Re CATLIN & REID* (1923), 54 O. L. R. 1.—*CAN.*

### PART II. SECT. 8, SUB-SECT. 5.

s]. *Grant of administration for purpose of conveying.—Invalid appointment of trustees.*—Three new trustees of a will had been appointed in 1875, & the trust estate vested in them. Two of these trustees died prior to 1907, & the third, R., being desirous of retiring from the trust, C. & W. were in that year appointed new trustees. This appointment was subsequently discovered to be invalid. The legal estate was never divested from E., who died intestate in the U.S. in 1915, & no representation had been raised to his estate. The ct. gave liberty to a person, who represented some of the beneficiaries, to apply for a grant limited to conveying the legal estate & without citing the next of kin.—*Re ECCLES*, [1929] N. 1. 58.—*IR.*

### PART III. SECT. 3, SUB-SECT. 4.—A.

2136 xxvi. —.]—C. had mortgaged certain of his property to a bank. He became mentally defective, & allowed the payments to fall into arrear. The applicants mortgaged their own property, & paid off the bank. At their request, the bank offered C.'s property for sale, & there being no bid, transferred it to the applicants, who sold the property to advantage. They claimed commission as trustees :—*Held* : commission or remuneration could only be allowed for services rendered in the course of the administration of a trust, & that as the services had all been rendered before appcts. became trustees, no allowance could be made.—*Re COMMANK*, [1927] S. A. S. R. 238.—*AUS.*

### PART III. SECT. 4, SUB-SECT. 3.—B.

2206 iv. —.]—The rule that a trustee for sale is incapable of purchasing the trust property applies

to a person to whom under the terms of the trust agreement the trustee was required to, & did, give the sole charge & general management of the trust property.—*McLENNAN v. NEWTON*, [1928] 1 D. L. R. 189 ; 37 Man. L. R. 201 ; [1927] 3 W. W. R. 684.—*CAN.*

### PART III. SECT. 10, SUB-SECT. 2.—B.

2655 viii. —.]—*BRYDEN v. BRYDEN (GRIERSON)* (1833), 6 Wils. & S. 354 ; *affg.* 9 S. 457.—*SCOT.*

### PART IV. SECT. 9.

3087 xi. —.]—*HAMILTON v. YORK & BALDHY* (1913), 24 W. L. R. 579 ; 4 W. W. R. 859.—*CAN.*

### PART V. SECT. 7, SUB-SECT. 2.—B.

s]. *Whether power of sale given—By discretion to dispose of real estate.*—*WESSELS v. CARSCALLEN* (1860), 10 C. P. 215.—*CAN.*

appointed, who was receiving the rents & profits & distributing them amongst various persons. On the coming into force of Law of Property Act, 1925 (c. 20), the statutory trusts under Sched. I., Part IV., of the Act came into operation, & the trustee, in whom the legal estate was vested, became invested with the statutory trusts for sale:—*Held*: the trustee could exercise the statutory trusts without the sanction of the ct. in the still pending suit.—*BERNHARDT v. GALS-WORTHY*, [1929] 1 Ch. 549; 98 L. J. Ch. 284; 140 L. T. 685.

**3475b. Persons beneficially interested in possession—Annuities.**—The trustees of a will, which came into operation after the commencement of Law of Property Act, 1925 (c. 20), were directed to stand possessed of the testator's residuary real & personal estate upon trust to pay out of the income thereof four life annuities, & while any annuity remained payable to divide the surplus income amongst such of testator's grandchildren as should be living for the period during which any annuity remained payable; & on cesser of all the annuities to stand possessed of the residuary estate in trust for his grandchildren & the issue then living of any then dead, as tenants in common according to the stocks. By a codicil power was conferred upon the trustees after the expiration of five years from testator's death to sell his residuary estate or any part thereof by public auction but not by private contract. Upon a summons raising questions, whether the trustees or the persons entitled to the surplus income until cesser of the annuities were the proper persons in whom the land ought to be vested

by the exor.; & if the trustees were the proper persons, whether the annuitants were persons whose wishes ought to be given effect to by the trustees for sale:—*Held*: the annuitants were persons beneficially interested in possession within Law of Property Act, 1925 (c. 20), s. 26 (3), whose wishes should be consulted by the trustees for sale.—*Re HOUSE, WESTMINSTER BANK v. EVERETT*, [1929] 2 Ch. 166; 98 L. J. Ch. 381; 141 L. T. 582.

**3477. Add. Annotation:—Mentd. *Re* Whitaker, *Rooke v. Whitaker*, [1929] 1 Ch. 662.**

**3489. Add. Annotation:—Distd. *Re* White, *Pitman v. White* (1929), 46 T. L. R. 30.**

**3489a. — With consent of tenant for life.**—By a settlement made in 1882 certain undivided shares in land were assured to the trustees upon trust either to retain them or with the consent of the tenant for life during her life to sell them & invest the proceeds, & after the death of the tenant for life to sell the same at the discretion of the trustees. The settlement contained various powers to the trustees for managing & dealing with the property in question as real estate:—*Held*: the lands now representing the undivided share were settled land & not held upon trust for sale.—*Re WHITE, PITMAN v. WHITE* (1929), 46 T. L. R. 30.

**3490. Add. Annotations:—Consd. *Re* Whitaker, *Rooke v. Whitaker*, [1929] 1 Ch. 662. Refd. *Re* Conquest, *Royal Exchange Assurance v. Conquest*, [1929] 2 Ch. 353.**

**3611. Add. Annotation:—Mentd. *Re* Grove-Grady, *Plowden v. Lawrence*, [1929] 1 Ch. 557.**

## Part VII.—Breaches of Trust.

**3996a. —**—*Re* WINDSOR STEAM COAL CO. (1901), LTD., No. 2033a, *ante*.

**4050. Add. Annotation:—Refd. *Re* Houlder**, [1929] 1 Ch. 205.

**4162. Add. Annotation:—Refd. *A.-G. v. Goddard*** (1929), 98 L. J. K. B. 743.

**4356. Add. Annotation:—Consd. *Re* Windsor Steam Coal Co. (1901)**, [1929] 1 Ch. 151.

**4360. Add. Annotation:—As to (1) *Appld. Re* Windsor Steam Coal Co. (1901)**, [1929] 1 Ch. 151.

### PART VI. SECT. 7, SUB-SECT. 2.—F. (a).

**p 1. — Failure to invest—Reliance on counsel's opinion.**—Trustees were asked by a beneficiary to invest certain moneys, most of which were admittedly due to the beneficiary pending settlement of the account. At the same time the trustees were told that a claim for interest would be made against them if the moneys continued to lie idle. The trustees, acting on the erroneous opinion of counsel that they were not entitled to invest, omitted to do so:—*Held*: the proper course was for the trustees to invest as requested, but having referred what was a matter of law to competent counsel for his opinion & having acted on it, they were not guilty of wilful neglect & default so as to make them accountable for the loss.—*PERPETUAL TRUSTEE CO. v. WATSON* (No. 2) (1927), 28 S. R.

N. S. W. 43; 45 N. S. W. W. N. 3.—AUS.

### PART VII. SECT. 1, SUB-SECT. 1.

**3928 II. —**—*JOHNSTON v. SMITH & NELSON*, [1928] 4 D. L. R. 774; [1928] 3 W. W. R. 495.—CAN.

### PART VII. SECT. 3, SUB-SECT. 2.—B. (a).

**4100 i. — Trustee paying money to wrong person.**—*CHEANG THYE PHIN v. LAM KIN SANG*, [1929] A. C. 670.—STRAITS SETTLEMENTS.

### PART VII. SECT. 6, SUB-SECT. 2.—A.

**4651 i. Form of proceeding.**—The ct. may entertain upon an originating summons a claim for relief framed on a breach of trust.—*PERPETUAL TRUSTEE CO. v. WATSON* (No. 1) (1927),

28 S. R. N. S. W. 39; 45 N. S. W. W. N. 1.—AUS.

**so. Whether right to jury exists.**—Defts., as exors. of a will, were directed by the will to sell lands of testatrix, & distribute the proceeds among her children & a grandchild. In this action, plffs., two of the children, alleged that defts., exors., had committed a breach of trust by selling the lands at a gross undervalue. Plffs. gave a notice for trial by jury, & the action was tried with a jury, & judgment entered upon its findings in favour of plffs. for the recovery of damages:—*Held*: the action being one which, before Administration of Justice Act, could have been brought only in the Ct. of Ch., plffs. had no right to give a jury notice, & the notice should have been struck out by the trial judge.—*DAVIES v. NELSON*, [1928] 1 D. L. R. 254; 61 O. L. R. 457.—CAN.

## VALUERS AND APPRAISERS.

### PART II. SECT. 1.

**22. Liability for loss—Valuation *bonâ fide*.]**—Deft., a paid valuator, estimated the value of a certain property at \$4,980, stating in the certificate of value that he held himself "responsible to you," plffs., "for the correctness of this report & valuation," which was enclosed in a letter stating "the houses

are unfinished, & my valuation of \$4,980 is on the supposition that they will be finished in a manner similar to those adjoining. A final inspection should, I think, be made." The houses never were finished similarly to those adjoining, nor was the deft. ever called upon to make any final or other inspection, & at a subsequent sale the property, which had been taken possession

of by the mtgees. & allowed to become greatly out of repair, realised only \$1,800:—*Held*: under these circumstances, there being no *mala fides* imputable to the appraiser, that he was not answerable for the loss sustained by the lender.—SCOTTISH AMERICAN INVESTMENT Co. v. HOPE (1879), 26 Gr. 430.—CAN.

## WATER SUPPLY.

### Part I.—Supply by Local Authorities.

41. *Add. Annotation* :—**Apld.** *A.-G. v. London & Home Counties Joint Electricity Authority*, [1929] 1 Ch. 513.

### Part III.—Powers, Duties and Liabilities of Undertakers.

99. *Add. Annotations* :—**Refd.** *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686; *Farnworth v. Manchester City Corp.*, [1929] 1 K. B. 533.
111. *Add. Annotation* :—**Mentd.** *Edwards v. A.-G. for Canada* (1929), 46 T. L. R. 4.
116. *Add. Annotation* :—**Consd.** *Farnworth v. Manchester City Corp.*, [1929] 1 K. B. 533.
150. *Add. Annotation* :—**Apld.** *Manchester Corp. v. Buttle*, [1929] 2 Ch. 390.
161. *Add. Annotation* :—**Consd.** *Manchester Corp. v. Buttle*, [1929] 2 Ch. 390.
165. Add the following paragraph & citations :—  
Under a local Act no person was entitled to require, nor was the corp. bound to supply, any dwelling-house in the borough with water, otherwise than by meter or special agreement, where any part of such dwelling-house is used for any trade or business purposes :—**Held** : the residence of a dentist where he practised the profession of dentistry was a dwelling-house used in part for business purposes, & therefore the corp. was entitled to demand & be paid an annual sum in addition to the ordinary domestic & public water rates charged in respect of dwelling-houses not so used, although the water supplied was used for domestic purposes within the meaning of another local Act.—**MANCHESTER CORPN. v. BUTTLE**, [1929] 2 Ch. 390; 98 L. J. Ch. 394; 45 T. L. R. 568; 93 J. P. Jo. 450; 27 L. G. R. 748.
- 176a. **Right to use fire-plugs for purposes other than extinction of fires.**—Hydrants, fire-plugs, & other apparatus, provided by a metropolitan waterworks co., pursuant to the Metropolitan Fire Brigade Act, 1865 (c. 90), s. 32, & Metropolis Water Act, 1871 (c. 113), s. 34, for supply of water in case of fire, may be used by the waterworks co. for purposes other than the supply of water for extinguishing fires, cleansing sewers & drains, cleansing & watering streets, or supplying public pumps, baths, & washhouses, without the consent of the London County Council, & may, by permission of the co., be used by persons other than the co.—**LONDON COUNTY COUNCIL v. EAST LONDON WATERWORKS CO.**, [1900] 1 Q. B. 330; 69 L. J. Q. B. 304; 82 L. T. 268; 48 W. R. 252; 16 T. L. R. 141; 44 Sol. Jo. 395, D. C.
270. *Add. Annotation* :—**Refd.** *Grant v. Derwent*, [1929] 1 Ch. 390.

#### PART III. SECT. 2, SUB-SECT. 7.

**sa.** *Supply for irrigation.*—A land co., which had bought land to which a water record was appurtenant, sold part of the land to the deft. & agreed to supply him with water for irrigation purposes at a rate not to exceed a certain amount per acre. The land co., & a water co. which it had caused to be formed & which had constructed an

irrigation system for the purpose of supplying water to the land co.'s covenantees, sold all their rights in the water to the plff. municipality which assumed the obligations of the land co. The municipality then obtained from the Water Board an order under the Water Act increasing the rates chargeable for water for irrigation purposes beyond those fixed by said agreement between deft. & the land co. :—**Held** :

the municipality was entitled to recover the increased rates from deft.—**PENTICTON CORPN. v. SUTHERLAND**, [1928] 2 W. W. R. 145.—**CAN.**

#### PART III. SECT. 2, SUB-SECT. 9.

##### A. (a)

**p. restd. sub nom.** *HALIFAX CITY v. READ*, [1928] 4 D. L. R. 461.—**CAN.**

## WATERS AND WATERCOURSES.

### Part I.—Rights and Obligations in Respect of Water.

99. *Add. Annotation* :—**Refd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
281. *Add. Annotation* :—**Expld.** *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138.
339. *Add. Annotation* :—**As to (1)** **Refd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
388. *Add. Annotation* :—**Refd.** *Farnworth v. Manchester Corpn.*, [1929] 1 K. B. 533.
430. *Add. Annotation* :—**Refd.** *Manchester Corpn. v. Farnworth* (1929), 46 T. L. R. 85.

### Part II.—The Sea and the Seashore.

479. Add the following paragraph & citation :—  
The doctrine of accretion has no appln. to a non-tidal sheet of more or less stagnant water such as one of the Norfolk Broads. It is limited to the seashore & land abutting on rivers of running water & does not extend to canals, lakes or ponds.—**TRAFFORD v. THROWER** (1929), 45 T. L. R. 502.
640. *Add. Annotation* :—**As to (1)** **Apld.** *A.-G. & Public Trustee v. Metropolitan Borough of Woolwich Council* (1929), 93 J. P. 173.

### Part III.—Rivers, Lakes and Pools.

747. *For citation substitute* “No. 479, ante.”

### Part IV.—Ports, Harbours, Docks, Piers and Wharves.

828. *Add. Annotations* :—**Mentd.** *Gaze (W. H.) & Sons v. Port Talbot Corpn.* (1929), 93 J. P. 142; *Great Western Ry. v. Monmouthshire County Council* (1929), 93 J. P. 142.

#### PART I. SECT. 2, SUB-SECT. 1.

k (p. 7) l. ——— *To change point of diversion.*—**BUONAPARTE RANCH v. SCHNEIDER**, [1928] 2 D. L. R. 993; [1928] 2 W. W. R. 106.—**CAN.**

#### PART I. SECT. 4, SUB-SECT. 3.—B. (b).

d i. ———.]—Pltfs. & defts. occupy lands very near each other, the land of a third party intervening between. Defts. had been taking water, flowing through an artificial channel, into their land, for the purpose of irrigation, for nearly 32 or 35 years without interruption, every monsoon, through the land of the third person, by cutting the ridge (all) of a plot of land, belonging to pltfs., in one place. Pltfs. sued for permanent injunction to restrain defts. from cutting the all.—**Held**: defts. had acquired a prescriptive right to take water by cutting the all.—**BIPIN BEHARI GHATAK v. RAMNATH GHATAK** (1929), 1 L. R. 56 Cal. 151.—**IND.**

#### PART I. SECT. 5, SUB-SECT. 2.

266 v. ———.]—Where by digging a ditch a proprietor of land causes surface water to flow therefrom on to lower-lying land he is liable for the damages caused thereby through the flooding of the lower land.—**QUALLEY v. DAY**, [1928] 3 D. L. R. 56; [1928] 1 W. W. R. 961; 22 Sask. L. R. 442.—**CAN.**

t. *reversd.* [1928] 3 D. L. R. 725; [1928] S. C. R. 522.—**CAN.**

#### PART II. SECT. 3, SUB-SECT. 3.—A.

476 ii. ———.]—It is an essential condition of the operation of the doctrine which adds to riparian lands the increment which is caused by accretion that the accretion should be natural, i.e. occasioned in the ordinary course of the operations of nature, & so gradual as to be in a practical sense imperceptible in its course & progress as it occurs.—**CLARKE v. EDMONTON CITY**, [1928] 2 D. L. R. 154; [1928] 1 W. W. R. 553; 23 Alta. L. R. 233.—**CAN.**

#### PART II. SECT. 3, SUB-SECT. 4.—B. (b) i.

n i. ———.]—Pltf. received a grant from the Provincial Govt. of the shore of a narrow cove or creek at St. Margaret's Bay. The cove or creek was one of a number of small inlets abounding on the shores of the bay not having the name or character of a public harbour, but had been used on several occasions by small vessels for the purpose of loading lumber.—**Held**: no title passed under the grant.—**FADER v. SMITH** (1885), 18 N. S. R. (6 R. & G.) 433; 6 C. L. T. 536.—**CAN.**

sb. *Grant of licence of occupation—Identification of subject-matter of grant.*—**BARTLET v. DELANEY** (1913), 29

O. L. R. 426; 5 O. W. N. 200.—**CAN.**

#### PART III. SECT. 2, SUB-SECT. 2.

d i. ——— *International waters.*—The common law doctrine of *ad medium flum* has never been applied to international waters.—**Re FORT ERIE VILLAGE & BUFFALO & FORT ERIE PUBLIC BRIDGE Co.**, [1928] 1 D. L. R. 723; 61 O. L. R. 502.—**CAN.**

#### PART IV. SECT. 1, SUB-SECT. 2.

sd. *Harbour Commissioners—Power to resume possession of land vested in them—Whether of land subject to lease.*—**FLETCHER W. & R., LTD. v. GEELONG HARBOUR TRUST COMRS.**, [1928] V. L. R. 12.—**AUS.**

#### PART IV. SECT. 2, SUB-SECT. 1.

st. *Expropriation of water lots for improvement of wharf—Basis of valuation.*—The basis or starting point for the valuation of water lots, expropriated by the Crown for the purpose of wharf improvements, may be had from a municipal assessment of the property, taking into consideration the higher assessable value of the land owing to its location, & the advantage afforded to the owners as a result of the improvements.—**R. v. ADVENTURERS OF ENGLAND, GOVERNOR & Co.** (1916), 17 Exch. C. R. 441; 42 D. L. R. 181.—**CAN.**

## Part V.—Navigation of Tidal and Natural Inland Watercourses.

833. *Add. Annotation* :—**Refd.** *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138.
896. *Add. Annotation* :—**Mentd.** *Bournemouth-Swanage Motor Road & Ferry Co. v. Harvey & Sons*, [1929] 1 Ch. 686.
903. *Add. Annotation* :—**Mentd.** *Brown v. Dagenham U. D. C.*, [1929] 1 K. B. 737.
929. *Add. Annotation* :—**Generally, Mentd.** *R. v. L. C. C., Ex p. Swan & Edgar* (1927) (1929), 141 L. T. 590.
- 961a. — **Construction of local act.**—By Milton Creek Conservancy Act, 1899, s. 7, “No person shall . . . make or form any recess dock . . . or other work or drive any piles . . . in or upon the bed or shores of Milton Creek below high-water mark so as to impede or interfere with the navigation of the creek . . . without in every case the licence of the Conservators.” Defts., under a licence from the Conservators, erected in the creek, which was a navigable channel, a pumping plant which was concealed at high tide, & pltfs.’ barge, without any negligence on the part of the master, collided with the plant & was damaged. In an action for a nuisance the ct. found that defts. had failed to give adequate warning of the existence of the obstruction :—**Held** : the sect. did not confer upon a licensee a right to create an obstruction causing damage to members of the public & the action succeeded.—*BURLEY C., LTD. v. LLOYD EDW., LTD.* (1929), 45 T. L. R. 626.
969. *Add. Annotation* :—**Mentd.** *Scammell G. & Nephew v. Hurley*, [1929] 1 K. B. 419.
1007. *Add. Annotation* :—**Mentd.** *Clark v. Epsom U. D. C.*, [1929] 1 Ch. 287.

### PART V. SECT. 1, SUB-SECT. 3.—A.

- sg. *Works of navigation—Liability to maintain.*—*GAUSSEN v. LOWER BANN NAVIGATION TRUSTEES*, [1929] N. I. 11.—**IR.**

## WEIGHTS AND MEASURES.

### Part II.—Standards of Weights and Measures.

26. *Add. Citation* :—28 Cox, C. C. 550.



## WILLS.

## Part I.—Nature of a Will.

19. *Add. Annotation* :—*Refd. Re Bund, Cruikshank v. Willis*, [1929] 2 Ch. 455.

## Part II.—Power of Disposition by Will.

131. *Add. Annotation* :—*Consd. Re Franklin & Swathling's Arbn.*, [1929] 1 Ch. 238.
- 239a. *Creation of estate tail—Death after commencement of Law of Property Act, 1925 (c. 20)—Necessity for.*—Under Law of Property Act, 1925 (c. 20), s. 130, the power to create an entailed interest in personal estate can be exercised by will only in the case of a testator who dies after the commencement of the Act. Therefore, where testator, who died in 1912, by his will settled certain chattels including three family portraits to be held upon trusts which should as nearly as the rules of law & equity permitted correspond with the limitations of real estate in tail, & set out such limitations at length, but settled no real estate upon the same limitations :—*Held* : testator had attempted to create an entailed interest in the chattels but had not succeeded, & therefore the trustees of his will had no power to sell them under sect. 130 (5). But the ct., deeming it in the circumstances expedient, would make an order authorising the sale of the portraits by the trustees under Trustee Act, 1925 (c. 19), s. 57.—*Re HOPE'S WILL TRUST, HOPE v. THORP*, [1929] 2 Ch. 136 ; 98 L. J. Ch. 249 ; 141 L. T. 509.
265. *Add. Annotation* :—*Distd. Re Sullivan, Dunkley v. Sullivan* (1929), 45 T. L. R. 590.
- 299a. *Disclaimer by donee—Intestacy—Application of Administration of Estates Act, 1925 (c. 23), ss. 33 (5), 46, 49.*—Testator who owned certain musical copyrights, & who died in 1928, by his will gave the residue of his estate, including the copyright royalties, on trust for his wife for life & afterwards for his children, & directed that the royalties should be treated as capital. Testator left a widow but no children :—*Held* : as there was a partial intestacy, namely, as to the capital of the residue, the direction would not apply if the widow disclaimed her life interest under the will, & the result of the disclaimer would be that the widow would take a life interest in the residue, including the royalties.—*Re SULLIVAN, DUNKLEY v. SULLIVAN* (1929), 45 T. L. R. 590.

## Part IV.—Capacity to Benefit under Will.

454. *Add. Annotation* :—*Consd. Re Belliss, Polson v. Parrott* (1929), 141 L. T. 245.
504. *Add. Annotation* :—*Mentd. Perrin v. Dickson* (1929), 98 L. J. K. B. 683.
511. *Add. Annotation* :—*Mentd. Re Villar, Public Trustee v. Villar*, [1929] 1 Ch. 243.

## Part V.—Formalities of Will or Codicil.

587. *Add. Annotation* :—*Mentd. Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.
- 597a. ——— *Execution prevented by death.*—Instructions for a will containing the fixed,

PART I. SECT. 4, SUB-SECT. 1.  
104 i. For " S. AF. " read  
" CEYLON. "

## PART I. SECT. 4, SUB-SECT. 2.

106 viii. ———.—The fact that a husband & wife have simultaneously made mutual wills, giving each to the other a life interest with similar provisions in remainder, is not in itself evidence of an agreement not to revoke the wills ; in the absence of a definite agreement to that effect there is no implied trust precluding the wife from making a fresh will inconsistent with her former will, even though her husband has died &

she has taken the benefits conferred by his will.—*GRAY v. PERPETUAL TRUSTEE CO., LTD.*, [1928] A. C. 391 ; 40 C. L. R. 558 ; [1928] Argus L. R. 238.—*AUS.*

## PART V. SECT. 3, SUB-SECT. 1.

a i. ———.—Testator in his trust-disposition & settlement directed his trustees " to pay, implement & fulfil any legacies or bequests which I may leave or bequeath by any writing under my hand, however informally the same may be expressed or executed. " Some time prior to his death he delivered to his law agents, who had custody of his trust-disposition & settlement, a sealed

envelope bearing the following holograph endorsement : " To be placed with my Last Will & Testament—T. R. " After his death the envelope was found to contain three documents of a testamentary character, all holograph of the testator. Only one was signed. One of the unsigned documents began in these terms : " I T. R. desire to make the following alterations & additions to my last Will & Testament, namely. " Certain directions followed, & the document concluded with these words : " Written by my own hand at L. A. the 17th day of October 1921 " :—*Held* : the trustees were bound to give effect to the directions contained in the unsigned

& final, intentions of the deceased are valid, if the formal execution is prevented by death; & if there is no evidence of insanity, at the time of giving the instructions, the commission of suicide, three days afterwards will not invalidate the paper by raising an

inference of previous derangement.—*BURROWS v. BURROWS* (1827), 1 Hagg. Ecc. 109; 162 E. R. 524.

*Annotation*.—*Re*ld. *Godman v. Godman*, [1920] P. 261.

1074. *Add. Annotation*.—*Generally*, *Re*ld. *Blackwell v. Blackwell*, [1929] A. C. 318.

## Part X.—Revocation, Revival and Republication.

1569. *Add. Annotation*.—*Mentd. Re* *Bund, Cruikshank v. Willis*, [1929] 2 Ch. 455.

1651a. —.]—A will & codicil made by testatrix in 1893 were revoked by a will made in 1907. In 1911 testatrix made a codicil to the will of 1907 declaring that a share in her estate thereby given to a son should be held upon protective trusts. In 1921 testatrix executed a third codicil, which referred only to the will & codicil of 1893, altered some of the provisions of the will & otherwise confirmed it:—*Held*: the effect of the codicil of 1921 was to revoke both the will of 1907 & the codicil of 1911, & to revive the will & codicil of 1893.—*Re* *BAKER, BAKER v. BAKER*, [1929] 1 Ch. 688; 98 L. J. Ch. 174; 141 L. T. 29.

1671. *Add. Annotation*.—*Consd. Re* *Bund, Cruikshank v. Willis*, [1929] 2 Ch. 455.

1707a. —.]—B., by his will, after appointing his sister W. & one S. exors. & trustees thereof, & after giving certain legacies & exercising certain powers of appointment therein more particularly referred to, appointed & devised his mansion house, lands, cottages & hereditaments known as Wick Episcopi unto & to the use of his trustees upon trust after payment thereof as therein mentioned to pay the residue of the rents & income thereof to his sister the said W. for her life, & after her death upon the trusts therein mentioned. After a further bequest of jewellery, plate & portraits so as to devolve as heirlooms with the said mansion house so far as the rules of law would permit by (*sic*) the person or persons for the time being entitled to the possession or receipt of the rents of the same mansion house, testator thereby further gave, appointed, devised & bequeathed all the rest & residue of his real & personal estate unto & to the use of his trustees to such uses, upon such trusts, & for such ends intents & purposes as the Wick estate might, under the trusts of his will for the time being be held so far as the rules of law would permit. By a codicil dated

August 4, 1927, after reciting that he was desirous of giving to his stepdaughter C. (pltf.) a residence in England, testator appointed, devised & bequeathed to her for her life his said house Wick Episcopi & all the furniture, books, linen, plate & effects therein or belonging thereto & also the land he occupied therewith. After testator's death in 1928 pltf. C. took out an originating summons to determine (*inter alia*) the question whether pltf. was entitled for her life to the whole or any & if so what part of the rents, profits & income arising out of the residuary real & personal estate of the testator or of the income of the proceeds of sale thereof, or whether deft. W. was entitled during her life to the said rents, profits & income or to some & what part thereof, or to whom the same were payable:—*Held*: testator intended by the codicil only to give certain defined property to pltf. for her life for the definite purpose, namely, the provision of a house in England, mentioned in the codicil & that the codicil could only be read as interpolating into the will an interest in favour of pltf. in respect of the property specifically mentioned in the codicil; & therefore deft. W. was entitled during her life to the rents profits & income of testator's residuary real & personal estate, & the proceeds of sale thereof. Further, the jewellery, plate, etc., included in the gift of heirlooms contained in testator's mansion house at the date of his death, were in the events that had happened, to be enjoyed by deft. W. during her life; & the excepted articles of plate were to be enjoyed by pltf. during her life.—*Re* *BUND, CRUIKSHANK v. WILLIS*, [1929] 2 Ch. 455.

1915. *Add. Annotation*.—*Consd. In the Estate of* *Birkby* (1929), 73 Sol. Jo. 556.

1967. *Add. Annotation*.—*Generally*, *Re*ld. *Blackwell v. Blackwell*, [1929] A. C. 318.

2008a. —. —. —.]—*Re* *BAKER, BAKER v. BAKER*, No. 1651a, *ante*.

document, on the ground that the facts connected with the document, taken in conjunction with the directions in the trust-disposition & settlement, showed that testator intended it to be read along with his formal settlement, of which he had effectually made it a part.—*RONALDS' TRUSTEES v. LYLE*, [1929] S. C. (Ct. of Sess.) 104.—*SCOT*.

PART V. SECT. 3, SUB-SECT. 5.—B.

p. 1. —. —.]—*In the Will of* *MORONEY* (1928), 28 S. R. N. S. W. 553; 45 N. S. W. W. N. 147.—*AUS*.

PART V. SECT. 3, SUB-SECT. 5.—D.

sa. *Signature appearing as endorsement*.—*Re* *DYTRYCH*, [1928] V. L. R.

144; [1928] *Argus* L. R. 88.—*AUS*.

PART V. SECT. 3, SUB-SECT. 6.—C.

871 III. —. —.]—In an action to establish a testamentary document as the last will of H. deceased, the only question for decision was, whether the will had been properly executed. The evidence was conflicting, but the trial judge found that one of the persons attesting the document signed before testator signed, that the other attesting witness signed after testator, & the first witness did not resubscribe the will:—*Held*: the document was not executed in the manner prescribed by Wills Act, s. 12 (1), & could not be admitted to probate. The signature of testator must be written or acknowledged by him in the actual presence

of both witnesses together before either of them attests & subscribes the will.—*CHESLINE v. HERMISTON*, [1928] 4 D. L. R. 786; 62 O. L. R. 575.—*CAN*.

PART X. SECT. 3, SUB-SECT. 2.—C. (a).

2047 I. *General rule*.—If a codicil framed to amount to a republication of a will is to have that effect, it is necessary that it should refer in its body to the will to which it is a codicil, & the fact that it appears in the same paper as the will itself to which it is sought to make it a codicil is not sufficient.—*In the Will of* *ERSON* (1927), 28 S. R. N. S. W. 119; 45 N. S. W. W. N. 6.—*AUS*.

## Part XI.—Codicils.

2194. *Add. Annotation*:—*Re*fd. *Re* Bund, *Cruikshank v. Willis*, [1929] 2 Ch. 455. 2196a. ———.]—*Re* BUND, *CRUIKSHANK v. WILLIS*, No. 1707a. *ante*.

## Part XII.—Legal Incidents of a Gift by Will.

2335. *Add. Annotations*:—*Mentd. Re* Conquest, *Royal Exchange Assce. v. Conquest*, [1929] 2 Ch. 353; *Re* Whitaker, *Rooke v. Whitaker*, [1929] 1 Ch. 662. 2425. *Add. Annotation*:—*Mentd. Re* Patten, *Westminster Bank v. Carlyon*, [1929] 2 Ch. 276.

## Part XIII.—Conditions.

- 2732a. ———.]—Testator, by his will, devised land to P. subject to the payment of certain annuities, of road-making charges for which testator was liable, & of estate & other death duties, & subject also to the proviso that if within twenty years of testator's death P. should desire to sell the land, he was to give the Governors of the N. Grammar School the option of purchasing the land at the price of £300 an acre, such offer to be subject to the payment by the Governors of the said annuities & road charges, & acceptance to be notified within three months. The land, of about 22 acres in area, was in fact worth £670 an acre at the date of testator's death. In accordance with the condition P. offered it to the School Governors at £300 an acre, & the offer was duly accepted & the land sold & conveyed to the Governors for £6,688. The value of the land for the purposes of death duties was assessed at £14,720. On a summons being taken out to determine whether the Governors were liable to pay a rateable proportion of the estate & succession duties levied upon the value of the property:—*Held*: the condition being one in restraint of alienation except to a particular purchaser was void for repugnancy, & not binding upon the devisee. The death duties payable must therefore be borne entirely by P., the devisee.—*Re* COCKERILL, *MACKANESS v. PERCIVAL*, [1929] 2 Ch. 131; 98 L. J. Ch. 281; 141 L. T. 198.
2689. *Add. Annotation*:—*Re*fd. *Re* Knapp, *Spreckley v. A.-G.*, [1929] 1 Ch. 341.
2713. *Add. Annotation*:—*Apld. Re* Cockerill, *Mackaness v. Percival*, [1929] 2 Ch. 131.
2727. *Add. Annotation*:—*Distd. Re* Cockerill, *Mackaness v. Percival*, [1929] 2 Ch. 131.
2730. *Add. Annotation*:—*Distd. Re* Cockerill, *Mackaness v. Percival*, [1929] 2 Ch. 131.
2731. *Add. Annotation*:—*Apld. Re* Cockerill, *Mackaness v. Percival*, [1929] 2 Ch. 131.

## Part XIV.—Lapse.

3117. *Add. Annotation*:—*Apld. Re* Graham, *Graham v. Graham*, [1929] 2 Ch. 127.
3120. *Add. Annotation*:—*Apld. Re* Graham, *Graham v. Graham*, [1929] 2 Ch. 127.
- 3131a. ———.]—By her will, after giving life interests to her parents, a testatrix devised & bequeathed her real & personal estate to her husband, but if he should have predeceased both her parents, then to her husband's children, whether by herself or his first wife. The husband survived both the parents, but predeceased testatrix. Testatrix left no issue of her own, but at her death there were six children of her husband's first marriage living:—*Held*: there was no implication of a gift over to those children on failure of the gift to the husband by lapse in any event, & therefore the residuary estate of testatrix was undisposed of & passed to her next of kin.—*Re* GRAHAM, *GRAHAM v. GRAHAM*, [1929] 2 Ch. 127; 98 L. J. Ch. 291; 141 L. T. 197.

## PART XII. SECT. 5, SUB-SECT. 2.—A.

2356 vi. ———.]—A specific legacy of the proceeds of an agreement for sale of land is adeemed by the acceptance by the testator of a quit-claim deed from the purchaser.—*Re* CALVERT, [1928] 3 W. W. R. 42.—CAN.

## PART XII. SECT. 5, SUB-SECT. 2.—B. (a).

2373 ii. ———.]—By the devise of an estate, which testator has previously mortgaged in fee, nothing passes at law.—*JW* WEBER *v.* ANDREWS (1845),

## 4 N. B. R. (2 Kerr) 604.—CAN.

## PART XIII. SECT. 3, SUB-SECT. 8.—D.

*so. Condition as to confirmation.*—A will provided for the payment of certain legacies on the legates becoming twenty-five years old, & also provided that the legacies should not be paid until the legates had been confirmed as members of the Church of England, & that, should any of them attain the age of twenty-five years without having been so confirmed, then his legacy should be divided between the others who had been so confirmed & another legatee:—

*Held*: the condition as to being confirmed was a condition precedent; & that, if it was a condition subsequent, it was one which should not be disregarded as being against public policy, or, under the facts of the case, on the ground that its performance was impossible. Moreover, the fact that the legatee in question was so confirmed when thirty-one years old was not a substantial compliance with the condition.—*Re* FORBES, *HARRISON v. COMMIS*, [1928] 3 D. L. R. 22; [1928] 1 W. W. R. 880; 22 Sask. L. R. 473.—CAN.

## Part XVI.—Construction.

3502. *Add. Annotation*:—*As to* (4) *Refd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
3554. *Add. Annotation*:—*Refd.* *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
3571. *Add. Annotation*:—*Generally*, *Refd.* *Re* Villar, Public Trustee v. Villar, [1929] 1 Ch. 243.
3592. *Add. Annotation*:—*As to* (3) *Consd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
3593. *Add. Annotation*:—*Mentd.* *Re* Gwyon, Public Trustee v. A.-G. (1929), 46 T. L. R. 96.
3609. *Add. Annotations*:—*As to* (2) *Apld.* *Re* Smalley, Smalley v. Scotton, [1929] 2 Ch. 112. *As to* (3) *Apld.* *Re* Smalley, Smalley v. Scotton, [1929] 2 Ch. 112. *As to* (4) *Apld.* *Re* Smalley, Smalley v. Scotton, [1929] 2 Ch. 112.
3624. *Add. Annotation*:—*Refd.* *Re* Cockerill, Mackaness v. Percival, [1929] 2 Ch. 131.
3625. *Add. Annotation*:—*Mentd.* *Re* Grove-Grady, Plowden v. Lawrence, [1929] 1 Ch. 557.
3741. *Add. Annotation*:—*As to* (1) *Refd.* *Re* Bund, Cruikshank v. Willis, [1929] 2 Ch. 455.
3781. *Add. Annotation*:—*Refd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
3962. *Add. Annotation*:—*Generally*, *Mentd.* *Re* Ross, Ross v. Waterfield (1929), 46 T. L. R. 61.
3976. *Add. Annotation*:—*Consd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
4049. *Add. Annotations*:—*Consd.* *Re* Gates, Gates v. Cabell, [1929] 2 Ch. 420. *Refd.* *Re* Emerson, Morrill v. Nutty, [1929] 1 Ch. 128; *Re* Mellor, Porter v. Hindsley, [1929] 1 Ch. 446.
4054. *Add. Annotation*:—*Consd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
4184. *Add. Annotation*:—*Refd.* Blackwell v. Blackwell, [1929] A. C. 318.
4417. *Add. Annotation*:—*Mentd.* Farnworth v. Manchester City Corp., [1929] 1 K. B. 533.
4432. *Add. Annotation*:—*As to* (3) *Consd.* *Re* Smalley, Smalley v. Scotton, [1929] 2 Ch. 112.
4443. *Add. Annotation*:—*Refd.* *Re* Gates, Gates v. Cabell, [1929] 2 Ch. 420.
4619. *Add. Annotation*:—*Refd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
4708. *Add. Annotation*:—*Consd.* *Re* Smalley, Smalley v. Scotton, [1929] 2 Ch. 112.
4911. *Add. Annotation*:—*Consd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
4923. *Add. Annotation*:—*Mentd.* *Re* Patten, Westminster Bank v. Carlyon, [1929] 2 Ch. 276.
5227. *Add. Annotation*:—*Generally*, *Refd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
5450. *Add. Annotation*:—*Refd.* Shaw v. Public Trustee (1929), 141 L. T. 465.
5520. *Add. Citation*:—*affd. sub nom.* SHAW v. PUBLIC TRUSTEE (1929), 141 L. T. 465, H. L.
- 5625a. “Furniture”—Wireless cabinet.]—The Ct. held that a wireless set contained in an oak cabinet would pass under a bequest of “furniture.”—*Re* WILLEY, GOULDING v. SHIRTCLIFFE (1929), 45 T. L. R. 327.
5696. *Add. Annotation*:—*Expld.* *Re* Gates, Gates v. Cabell, [1929] 2 Ch. 420.
- 5696a. ———.]—In a will the word “money” has its strict legal meaning of cash, unless there is some context to enlarge the meaning so as to include things such as investments or other personal estate.—*Re* PUTNER, PUTNER v. BROOKE (1929), 45 T. L. R. 325.
5699. *Add. Annotation*:—*Apld.* *Re* Putner, Putner v. Brooke (1929), 45 T. L. R. 325.
- 5708a. ——— *Direction to pay debts.*]—By a home-made will of 1928 testator, after expressly directing payment of his debts & giving (*inter alia*) a limited interest in his (freehold) residence to his housekeeper, gave “the remainder of any monies” to nine legatees including the housekeeper. There was no other residuary gift:—*Held*: having regard to the express direction to pay debts the gift of “the remainder of any monies” could not be construed in the strict sense of the

### PART XVI. SECT. 4, SUB-SECT. 4.—A. (a).

3594 xiv. ———.]—*Re* RUMNEY'S ESTATE (1925), 21 Tas. L. R. 3.—AUS.

### PART XVI. SECT. 9, SUB-SECT. 1.—A.

3823 i. *Will construed to avoid intestacy*—Property not acquired at date of will.]—*Re* GRAZEBROOK, CHASE v. LAYTON, [1928] V. L. R. 75.—AUS.

### PART XVI. SECT. 10, SUB-SECT. 6.

i i. ——— *Clerical error.*]—In construing a will the Ct. goes far to discover the intention of the testator, & if it can be discovered from the will itself & the surrounding circumstances a clerical error will be treated as such & the apparent intention given effect to.—*Re* ZUROWSKI, [1928] 1 D. L. R. 357; 22 Sask. L. R. 249; [1928] 3 W. W. R. 745.—CAN.

### PART XVI. SECT. 14, SUB-SECT. 4.

4537 i. ——— *To translate words of will.*]—In determining the meaning of expressions in a will written in a language other than English, preponderating weight should be given to the evidence of persons who are not merely skilled in the use of that language, but have presumably a sounder

judgment of the verbal nuances of that tongue under the conditions of life of the testator, with which they are familiar, than can be imputed to conclusions from the study of dictionaries.

“*Arriere neveux*,” as used in the will in question herein, held to mean both grand-nephews & grand-nieces, & not posterity or descendants generally.—*Re* BRUIE, [1928] 1 W. W. R. 308.—CAN.

4537 ii. ——— *Incorrect translation filed.*]—Where a will is in a foreign language the probate copy of which is an incorrect translation, the Ct. of Equity will not look at the correct translation in order to construe the will, the proper course being to apply to the Probate Ct. to have the translation corrected.—*Re* KLEINSANG (1928), 28 S. R. N. S. W. 455; 45 N. S. W. N. 123.—AUS.

### PART XVI. SECT. 15, SUB-SECT. 14.—G. (g).

sd. “*Promissory notes*”—*Debenture bonds.*]—By a codicil to his will testator gave to his four daughters & his son, in equal shares, “all mitges., promissory notes, money in bank . . . & cash in hand.” The will contained a residuary gift to the son. At the

time of his death testator had two “debenture bonds” of a loan co. made payable to him “his exors., administrators or registered assigns”:—*Held*: these bonds did not pass by the codicil as “promissory notes,” they did not come within the strict & primary meaning of those words, & there was nothing in the will or the circumstances to indicate that a secondary meaning should be given to them.—*Re* GEE, [1928] 3 D. L. R. 54; 62 O. L. R. 184.—CAN.

### PART XVI. SECT. 15, SUB-SECT. 14.—L. (a).

5697 iv. ———.]—Testatrix made the following will: “This being my last will & testament, I bequeath the interest of all my money on trust to my second husband G. until my child becomes twenty-one years of age. When the child reaches the age of twenty-one the whole of my money is to be his. If G. dies before the child is twenty-one years old G.’s children are to have ten pounds each out of the estate & also all his funeral expenses are to be paid out of the estate.”—*Held*: the word “money” as used in the will comprised “the whole of the assets in the estate of testatrix, both real & personal.”—*PUBLIC TRUSTEE v. HORTON*, [1929] N. Z. L. R. 83.—N.Z.

word "monies," but must include all property liable to the payment of debts. Therefore, the residuary property both real & personal passed by the gift either (a) on the ground that under Administration of Estates Act, 1925 (c. 23), real & personal estate were now *pari passu* liable to the payment of debts, or (b) because when once it was clear that the word "monies," was not used in its strict sense the ct. could give effect to testator's manifest intention to include the whole of his property in the gift.—*Re MELLOR, PORTER v. HINDSLEY*, [1929] 1 Ch. 446; 98 L. J. Ch. 209; 140 L. T. 469.

**5714.** *Add. Annotation*:—*Refd. Re Gates, Gates v. Cabell*, [1929] 2 Ch. 420.

**5720a.** —.]—Testator made his will in the following terms: "I leave all my money to A. B." His estate included cash in the house, in his solrs.' hands & on current account at his bankers, furniture, stocks & shares, & an equity of redemption in freehold property:—*Held*: in the absence of any context the word "money" must be construed in its strict sense, & that the will therefore only passed the cash in the house, in his solrs.' hands & on current account at his bank.—*Re GATES, GATES v. CABELL*, [1929] 2 Ch. 420; 98 L. J. Ch. 360; 141 L. T. 392; 45 T. L. R. 522; 73 Sol. Jo. 429, C. A.

**5734a.** —.]—*Re GATES, GATES v. CABELL*, No. 5720a, *ante*.

**5737.** *Add. Annotations*:—*Consd. Re Emerson, Morrill v. Nutty*, [1929] 1 Ch. 128. *Apld. Re Gates, Gates v. Cabell*, [1929] 2 Ch. 420. *Apld. Re Mellor, Porter v. Hindsley*, [1929] 1 Ch. 446.

**5773.** *Add. Annotation*:—*Consd. Re Mellor, Porter v. Hindsley*, [1929] 1 Ch. 446.

**5783.** *Add. Annotation*:—*Distd. Re Gates, Gates v. Cabell*, [1929] 2 Ch. 420.

**5793.** *Add. Annotation*:—*Consd. Re Gates, Gates v. Cabell*, [1929] 2 Ch. 420.

**5808.** *Add. Annotation*:—*Consd. Re Gates, Gates v. Cabell*, [1929] 2 Ch. 420.

**5811a.** —.]—*Re MELLOR, PORTER v. HINDSLEY*, No. 5708a, *ante*.

**5844.** *Add. Annotation*:—*Mentd. Re Ross, Ross v. Waterfield* (1929), 46 T. L. R. 61.

**5965.** *Add. Annotation*:—*Mentd. Re Bund, Cruikshank v. Willis*, [1929] 2 Ch. 455.

**6006.** *Add. Annotation*:—*Refd. Re Emerson, Morrill v. Nutty*, [1929] 1 Ch. 128.

**6447.** *Add. Annotation*:—*Mentd. Re Austen, Collins v. Margetts*, [1929] 2 Ch. 155.

**6669.** *Add. Annotation*:—*Refd. Re Smalley, Smalley v. Scotton*, [1929] 2 Ch. 112.

**6822.** *Add. Annotation*:—*Refd. Re Smalley, Smalley v. Scotton*, [1929] 2 Ch. 112.

**6840.** *Add. Annotation*:—*Refd. Re Smalley, Smalley v. Scotton*, [1929] 2 Ch. 112.

**6959.** *Add. Annotation*:—*Mentd. Blackwell v. Blackwell*, [1929] A. C. 318.

**7297.** *Add. Annotations*:—*Apld. Re Williams' Settlement, Greenwell v. Humphries*, [1929] 2 Ch. 361. *Refd. Bosworthick v. Clegg* (1929), 45 T. L. R. 438.

**7304.** *Add. Annotation*:—*Apld. Re Smalley, Smalley v. Scotton*, [1929] 2 Ch. 112.

**7307a.** —.]—Testator by his will gave all his property to "my wife E. A. S." Testator left a lawful wife M. A. S. & children by her & contributed to their support, but about five years before his death had contracted a bigamous marriage with a widow E. A. M., who lived with him & was known as E. A. S., & believed she was, & was reputed to be, his wife. The will was produced by E. A. M.:—*Held*: the will, taken in connection with the surrounding circumstances, indicated that the testator intended to benefit E. A. M., she being in a secondary sense & by repute his "wife," & therefore she was entitled, although not his wife nor bearing his surname.—*Re SMALLEY, SMALLEY v. SCOTTON*, [1929] 2 Ch. 112; 98 L. J. Ch. 300; 141 L. T. 158; 45 T. L. R. 396; 73 Sol. Jo. 234, C. A.

**7309.** *Add. Annotation*:—*Consd. Re Smalley, Smalley v. Scotton*, [1929] 2 Ch. 112.

**7314.** *Add. Annotations*:—*Distd. Re Williams' Settlement, Greenwell v. Humphries*, [1929] 2 Ch. 361. *Refd. Bosworthick v. Clegg* (1929), 45 T. L. R. 438.

**7347.** Add the following paragraph & citations:—

Testator, by his will, bequeathed a share of his residuary estate upon trust for G. for life, & after his death for his children in equal shares, & in case he died without children upon trust for the person or persons who under the statutes for the distribution of intestate estates would on his decease have been entitled as his next of kin, in case he had then died possessed thereof intestate. Testator died in 1875, & G. died without leaving children in Mar. 1927:—*Held*: the share was divisible among the persons entitled under the Statutes of Distribution in force at the date of testator's death, there being no contrary intention expressed in the will to exclude the operation of those statutes, so as to introduce the rules of distribution contained in Administration of Estates Act, 1925 (c. 23).—*Re SUTCLIFFE, SUTCLIFFE v. ROBERTSHAW*, [1929] 1 Ch. 123; 98 L. J. Ch. 140 L. T. 135; 72 Sol. Jo. 384.

#### PART XVI. SECT. 15, SUB-SECT. 14.— L. (b) ii.

**5728 v.** —.]—*PUBLIC TRUSTEE v. LITCH* (1928), 28 S. R. N. S. W. 313; 45 N. S. W. N. 85.—*AUS.*

#### PART XVI. SECT. 16, SUB-SECT. 1.

**5977 ii.** —.]—Testator died survived by his wife, & by a son & daughter. By his trust-disposition & settlement, in which he stated that he had already by *inter vivos* deed made sufficient provision for his daughter, he directed his trustees, after payment of his debts, testamentary & funeral expenses, & certain legacies, to make

over the "free residu" of his estate in equal shares to his wife & son. The son & daughter claimed & were paid their *legitim*, the son forfeiting, in terms of the will, its provisions in his favour. A question having arisen as to whether "free residue" fell to be ascertained before or after deduction of the *legitim* fund:—*Held*: "free residue" primarily meant residue after deduction (*inter alia*) of the *legitim* fund, & that there was nothing in the language of the trust-disposition & settlement to indicate that the testator had intended to give these words any other than their ordinary meaning.—*SAMSON v. RAYNOR*, [1928] S. C. (Ct. of Sess.) 899.—*SCOT.*

#### PART XVI. SECT. 17, SUB-SECT. 3.— C. (c).

**6255 v.** For "[1918] N. Z. L. R. 364" read "[1928] N. Z. L. R. 364."

#### PART XVI. SECT. 17, SUB-SECT. 11.— J. (a).

**p. 1.** —.]—*Re YOUNG*, [1928] 2 D. L. R. 966; 62 O. L. R. 275.—*CAN.*

#### PART XVI. SECT. 17, SUB-SECT. 11.— J. (d) i.

**7365 v. revd. sub nom. MCQUARRIE v. EASTERN TRUST CO.**, [1928] 1 D. L. R. 239; [1928] S. C. R. 13.—*CAN.*

7386. *Add. Annotation* :—**Mentd.** *Shaw v. Public Trustee* (1929), 141 L. T. 405.

7456. *Add. Annotation* :—**Mentd.** *Re Cockerill, Mackaness v. Percival*, [1929] 2 Ch. 131.

7581. *Add. Annotations* :—**Mentd.** *Geologists' Assocn. v. I. R. Comrs.* (1928), 14 Tax Cas. 271; *Re Barclay, Gardner v. Barclay*, *Steuart v. Barclay*, [1929] 2 Ch. 173.

7637a. — **Confined to wages in cash.**—The ct. held that a bequest to a servant of "one year's wages" was confined to wages in cash, & did not include various other benefits to which the servant was entitled.—*Re PEACOCK, PUBLIC TRUSTEE v. BIRCHENOUGH* (1929), 45 T. L. R. 301; 73 Sol. Jo. 220.

7673. *Add. Annotation* :—**Refd.** *Shaw v. Public Trustee* (1929). 141 L. T. 465.

7911a. — *Re SLEEMAN, CRAGOE v. SLEEMAN*, [1929] W. N. 16.

8002. *Add. Annotation* :—**Mentd.** *Re Silva, Silva v. Silva*, [1929] 2 Ch. 198.

8217. *Add. Citation* :—140 L. T. 369.

8553a. — *Re PROSSER, PROSSER v. GRIFFITH*, [1929] W. N. 85.

8696. *Add. Annotation* :—**Mentd.** *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557.

8698a. — *Testator executed a codicil to his will whereby he revoked the appointment of an executor & appointed another in his place, revoked a specific devise & bequest & declared certain other trusts of the property comprised therein, gave certain directions to his trustees, bequeathed pecuniary legacies additional to those in his will & declared that the power of appointing new trustees should*

be exercised by the surviving & continuing trustees, & in other respects confirmed his will. On the same day he executed another codicil in almost identical terms, the only material difference being that a blank left in the amount of a legacy in one codicil was filled in in the other. The two codicils were attested by the same witnesses & placed in one envelope, which was sent to a bank for custody. The testator at a later date executed another, which he described as a "third" codicil to his will, & referred therein to his will & codicils:—**Held**: the two codicils of even date were duplicates of one & the same instrument, & that the legacies thereby given were substitutional & not cumulative. — *Re MICHELL, THOMAS v. HOSKINS*, [1929] 1 Ch. 552; 98 L. J. Ch. 197; 140 L. T. 686; 45 T. L. R. 243.

9015. *Add. Annotation* :—**Refd.** *Re Alston-Roberts-Weasts' Settled Estates*, [1928] W. N. 41.

9016. *Add. Citations* :—*affd.* [1929] A. C. 318; 98 L. J. Ch. 251; 140 L. T. 444; 45 T. L. R. 208; 73 Sol. Jo. 92, H. L.

9071a. — *Testator bequeathed a sum of stock to trustees, upon trust, during sixty years from his death, if the law should allow, or, if not, then during the lives of his two sons, & of the survivor, & twenty-one years after his death, to lay out the dividends in repairing & insuring the houses, etc., on his farms, called H. & S., it being his desire, that, upon no account, should the timber of such farms be cut down during the said term of sixty years, on pain that the person so cutting such timber should lose all interest*

7385 ix. — *Re CAMPBELL*, [1928] 4 D. L. R. 797; 63 O. L. R. 36.—**CAN.**

**PART XVI. SECT. 17, SUB-SECT. 11.—**  
**J. (d) iii.**

7389 i. *Ascertainment at death of testator.*—By his will testator, after a certain bequest to his wife, gave her a life estate in the whole of his residuary real & personal estate, & then provided that, after the death of his wife, all his real & personal estate should be converted into money, & such money should be handed over to my then living nearest of kin.—**Held**: the persons who were entitled in remainder on the death of the life tenant were such of testator's nearest blood relations ascertained at his death as were living at the date of the expiration of the life estate.—*Re McRAE, McDONALD v. CREER* (1928), 28 S. R. N. S. W. 447; 45 N. S. W. W. N. 93.—**AUS.**

**PART XVI. SECT. 19, SUB-SECT. 6.—**  
**A. (a).**

a. *affd.* [1928] 3 D. L. R. 773; [1928] S. C. R. 329.—**CAN.**

**PART XVI. SECT. 19, SUB-SECT. 6.—**  
**A. (i) i.**

q. i. — *Re BROOKSTEAD*, [1928] 4 D. L. R. 666; 62 O. L. R. 690.—**CAN.**

**PART XVI. SECT. 19, SUB-SECT. 8.—**  
**F. (b).**

8164 i. *Whether first donee takes absolutely.*—*Residue of my estate that may be remaining over at her death.*—*A mortis causa* settlement, by which testator conveyed his whole estate to his stepdaughter E., whom he also appointed his sole extrix., contained this provision: "In the event of T. surviving his sister, the said E., the revenue of the residue of my estate

that may be remaining over at her death shall fall to the said T., but in liferent for his liferent use alienary, & at his death to my own heirs whomsoever in fee." E. survived testator, & died leaving a general settlement by which she bequeathed her whole estate to her brother T., who survived her. At the date of her death she still retained in her possession, in their original forms, certain securities which had belonged to the testator, & a deposit receipt representing heritage belonging to him which she had sold. In a question between T., as his sister's universal legatee, & testator's heirs whomsoever regarding the right of these funds:—**Held**: the effect of the provision above quoted was to restrict the absolute gift originally made by testator to E. to a right of consumption of testator's estate during her lifetime; & accordingly, as the funds in question were at her death still capable of identification as part of testator's estate, they passed in terms of his settlement, as residue of his estate, in fee to his heirs whomsoever, subject to a right of liferent in favour of T.—*HEAVYSE v. SMITH*, [1929] S. C. (Ot. of Sess.) 68.—**SCOT.**

**PART XVI. SECT. 19, SUB-SECT. 9.—**  
**A. (b).**

8200 ii. — *Re PEARCE, PEARCE v. PEARCE*, [1927] S. A. S. R. 397.—**AUS.**

8202 ii. — *Public Trustee v. WEIR*, [1928] N. Z. L. R. 800.—**N.Z.**

**PART XVI. SECT. 19, SUB-SECT. 10.—**  
**A. (a).**

8256 x. — *C. gave his real & personal estate to his wife, J. "for the use & benefit of herself & our dear daughter, E." & upon the death of his wife the whole of his estate was "to revert to my dear daughter, E. afore-*

said for her sole use & benefit," & he appointed his wife sole executrix. Testator died in 1904 & E. died in 1911:—**Held**: the gift created a joint tenancy, & J. took the whole gift by survivorship.—*Re CHAMBERS* (1925), 21 Tas. L. R. 26.—**AUS.**

**PART XVI. SECT. 19, SUB-SECT. 10.—**  
**C. (b) i.**

8545 ii. — *Re CROSSBY* (1925), 21 Tas. L. R. 20.—**AUS.**

**PART XVI. SECT. 20, SUB-SECT. 3.—**  
**B. (b).**

9103 ix. — *Testator's will, after providing for collection & payment of debts & for certain specific legacies, provided for sale of certain property, comprising the residue of his estate, & investment of the proceeds & payment of the interest for the maintenance of his wife & daughter A. until A., who, however, predeceased testator, attained 21 years of age, & on A. attaining 21 years of age or dying, for payment of \$400 of interest to his wife annually during her life, & then provided that "any money remaining after the payment of said \$400 shall be equally divided among my children. The issue of any deceased child to take parent's share. On the death of my wife the whole of my property shall be divided between my children (the issue of any deceased child shall be entitled to parent's share) said division to be in equal shares":—**Held**: the estate of any deceased child of testator who died in the lifetime of testator's widow & left no issue him surviving was not entitled to share in the income from the said residue or in the corpus when divided on the widow's death.—*BUSCH v. EASTERN TRUST CO.*, [1928] 3 D. L. R. 834; [1928] S. C. R. 479.—**CAN.***

in the said estates, as if he were dead, & upon trust to pay the surplus, if any, of the said dividends, equally among the persons for the time being in possession of the estates under his will, during the continuance of the said trust; & immediately after the expiration thereof, to transfer one moiety of the said stock to the person then in possession of the H. farm, such person being one of his sons, or a descendant of a son; but if not, then to the descendants of testator's brothers & sisters, & to pay the other moiety in like manner to the person in possession of the S. farm. Testator devised the H. farm to the same trustees, in fee, upon trust for his son J., for ninety-nine years, if he should so long live, remainder to the use of his first & other sons in tail, with divers remainders over. Testator devised the S. farm in like manner for the benefit of his son H. & his issue. J. & H., & their eldest sons, barred the entail in remainder in the said farms & resettled the same, & the stock having been transferred into ct. under Trustee Relief Act, petitioned for the payment out of the fund to them:—*Held*: the fund being intended for the benefit of the sons & the issue, the period for the enjoyment of the capital had been accelerated by barring the entail, which had determined the restriction against cutting down timber.—*Re COLSO'S TRUSTS* (1853), Kay, 133; 2 Eq. Rep. 257; 23 L. J. Ch. 155; 22 L. T. O. S. 183 2 W. R. 111; 69 E. R. 57.

9340. *Add. Annotation*:—*Distd. Ganapathy Pillay v. Alamaloo*, [1929] A. C. 462.

9571a. ———.]—A will provided that at the expiration of twenty-one years from the

death of testator a trust fund should be divided into five shares, that one of such shares should be paid to each of testator's four sons, & that, in the event of any of the sons dying before the period expired leaving a child or children, such child or children should take the share to which such son would have been entitled if he had survived, & in default of issue of any son, the share of such son should be payable to the surviving sons equally:—*Held*: the child of a son who died before the expiration of the period was entitled only to the one-fifth share which his father would have taken, & was not entitled to participate in the share of a son who died before the expiration of the period without issue.—*GANAPATHY PILLAY v. ALAMALOO* [1929] A. C. 462; 98 L. J. P. C. 109; 141 L. T. 43, P. C.

9849. *Add. Annotation*:—*Folld. Re Graham, Graham v. Graham*, [1929] 2 Ch. 127.

9973. *Add. Annotation*:—*Mentd. Shaw v. Public Trustee* (1929), 141 L. T. 465.

10,165. *Add. Annotation*:—*As to (1) Distd. Re Graham, Graham v. Graham*, [1929] 2 Ch. 127.

10,175. *Add. Annotation*:—*Folld. Re Graham, Graham v. Graham*, [1929] 2 Ch. 127.

10,177. *Add. Annotation*:—*Folld. Re Graham, Graham v. Graham*, [1929] 2 Ch. 127.

10,205. *Add. Annotation*:—*Folld. Re Graham, Graham v. Graham*, [1929] 2 Ch. 127.

10,943. *Add. Annotation*:—*Refd. Ganapathy Pillay v. Alamaloo*, [1929] A. C. 462.

10,983. *Add. Annotation*:—*Refd. Re Graham, Graham v. Graham*, [1929] 2 Ch. 127.

PART XVI. SECT. 20, SUB-SECT. 3.—  
F. (a).

9335 v. ———.]—Testator, after devising a life estate to his wife in a certain property, directed that upon her death same should be sold, & the proceeds, along with those from the sale of another property, invested, & the principal & interest divided equally between named grandchildren "or the survivors of them in equal shares as soon as the youngest surviving one shall have attained the age of twenty-one years":—*Held*: a grandchild dying before the youngest surviving grandchild attained the age of twenty-one years was not entitled to a share.—*PUBLIC TRUSTEE v. BOWYEN*, [1929] N. Z. L. R. 438.—N.Z.

PART XVI. SECT. 20, SUB-SECT. 3.—  
L.

1 i. ——— *Bequest to such daughters "as shall be spinsters."*—*Re GOODGER* (1925), 21 Tas. L. R. 17.—AUS.

PART XVI. SECT. 23, SUB-SECT. 3.—  
B.

9752 xxv. ———.]—*Re MAYBELLE Fox v. EQUITY TRUSTEES, EXECUTORS & AGENCY CO., LTD.*, [1928] V. L. R. 86; [1928] Argus L. R. 65.—AUS.

PART XVI. SECT. 25, SUB-SECT. 2.—  
A. (c).

10,073 i. *Death in lifetime of tenant for life.*—Testator dying in 1998 gave to his daughter-in-law the use of a property for life, with the right to the exors. to sell the property & to pay her during her life the interest on the proceeds of sale, & after her decease to divide the principal among the children born to her & his son, & in any event after the death to sell . . .

such property . . . & to divide the proceeds among such children, the child or children of any such child or children of theirs ceased to receive in equal parts the portion of such deceased parents' share." The daughter-in-law, D., died in 1926, her husband having predeceased her. Five children were born of the marriage, three of whom survived. Two sons predeceased her, each leaving a widow but no issue, & each dying testate:—*Held*: at the death of testator in 1898 a vested estate was created in any child then born to his son & subject to be divested in part as other children were born; & the widows' personal representatives of the son who died before D. would take the husband's share unless there was issue, in which case the issue could be substituted for the father; the gift to the child of D. was determinable only in the event, their death leaving issue, an event which did not happen.—*Re SMITH*, [1928] 1 D. L. R. 179; 61 O. L. R. 2.—CAN.

PART XVI. SECT. 25, SUB-SECT. 2.—  
C.

10,355 i. *Contrary intention of testator.*—*Re WALKER, CRICK v. PENNY*, [1928] S. R. Q. 163.—US.

PART XVI. SECT. 25, SUB-SECT. 4.

10,720 i. *Whether case of personal liability.*—Testator willed all his real & bequeathed his residuary personal estate to his trustees in trust to sell the same & divide the proceeds into eleven parts, & one of such parts to his widow & each of his ten children. The will recited: "I declare that the share of any child of mine in my residuary estate shall be subject to deduction, from of any sum or sums owing by or to him or me at my death or any . . . or sums

payable by me upon any guarantee made or to be made by me or my exors. on her or his behalf." Testator had guaranteed the overdrawn bank account of R. one of his children, & at the time of testator's death this account was overdrawn to the extent of £1,396 0s. 10d. The exors. of testator paid off this sum to the bank in accordance with the said guarantee:—*Held*: the declaration operated as a gift to R. of the whole of his indebtedness to the estate.—*In the Will of ANTHONY HEADLAM* (1925), 21 Tas. L. R. 27.—AUS.

PART XVII.

b (p. 1289) 1. ——— *Real property situated outside State.*—Testatrix died leaving real estate in New South Wales & also property in Queensland:—*Held*: the authority of the ct. to make an order did not, & could not, directly or indirectly be made to extend to the real property of the testatrix situated in New South Wales.—*Re OSBORNE*, [1928] S. R. Q. 129.—AUS.

1 i. ——— *To redraw will.*—On an application for relief under Testator's Family Maintenance Act, R. S. B. C. 1924, c. 256, the ct. has no power to redraw the will & dispose of the estate as it may think right & just.—*Re ELWORTHY ESTATE, ELWORTHY & HALE*, [1928] 2 D. L. R. 421; [1928] 1 W. W. R. 737; 39 B. C. R. 474.—CAN.

1 i. ———.]—Where provision was made in a will for the maintenance of two of testator's children J. & M., & further, special provision was made for the sharing of the estate by J. & M., & no provision was made for a third child, W., born after the date of the will:—*Held*: the power of the ct. was limited to ordinary "maintenance & support," & on the facts, that one-

## ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

third of the net income from the estate from the date of the marriage of the testator's widow was a reasonable allowance.—*In the Estate of LADY* (1925), 21 Tas. L. R. 13.—AUS.

1 ii. ——— *Power to rescind or alter order—Whether increase in benefit authorised.*—The power conferred upon the ct. by Testator's Family Maintenance & Guardianship of Infants Act,

1916, s. 6 (4), to "rescind or alter" any order making provision under that Act, does not extend to authorising an increase to any benefit that has been awarded to an appet. upon an original application.—*Re MOLLOY* (1928), 28 S. R. N. S. W. 546; 45 N. S. W. W. N. 142.—AUS.

1 i. ——— *Children domiciled outside jurisdiction.*—Benefits under

Testator's Family Maintenance Act, 1916, are available to children domiciled outside the jurisdiction of the ct.—*Re DONNELLY* (1927), 28 S. R. N. S. W. 34; 45 N. S. W. W. N. 5.—AUS.

e (p. 1290) i. ———.—FRENCH v. PERPETUAL TRUSTEES, EXECUTORS & AGENCY CO. OF TASMANIA, LTD. (1925), 21 Tas. L. R. 6.—AUS.



## WORK AND LABOUR.

## Part II.—Statutory Determination of Minimum Rates of Wages.

63. *Add. Annotation*:—*Folld. Pockney v. Atkinson* (1929), 45 T. L. R. 639.

63a. —.]—An employer engaged a worker in agriculture for a period from Dec. 4, 1927, to Nov. 23, 1928, & agreed to pay him on the completion of that term a lump sum which, with his board & lodging, was equivalent to the minimum rate of wages prescribed under the Agricultural Wages (Regulation) Act, 1924 (c. 37). Before the completion of the term, the worker refused to obey a lawful order of the employer & left the employment without notice:—*Held*: the Agricultural Wages (Regulation) Act, 1924 (c. 37), did not prevent the making of an agreement for employment for a fixed term with payment of a lump sum equivalent to the prescribed rate at the end of the term, & the Act did not entitle a worker who had broken his contract to demand any wages for the period during which he was in fact employed.—*POCKNEY v. ATKINSON* (1929), 45 T. L. R. 639; 93 J. P. Jo. 480; 27 L. G. R. 645, D. C.

64. Add the following paragraph:—

By an order of the Agricultural Wages Board, embodying orders of a wages committee: "Where a whole-time male worker is employed by the week or any longer period & the hours of work agreed between the

worker & the employer in any week (excluding hours of overtime employment) are less than 50 in summer & 48 in winter, the rate of wages applicable to that worker shall be such as to secure to the worker the wages which would have been payable if the agreed hours had been 50 in summer or 48 in winter as the case may be." *Appls.* employed one T. as an agricultural labourer by the week of 50 hours at 30s. per week. On Good Friday, T., according to custom, was not required by the appellants to work, & in consequence they refused at the end of the week to pay him his full weekly wages, deducting the portion appropriate to that day, but gave him, according to their custom, a small bonus instead:—*Held*: the above order was *intra vires*, & that T. was entitled to be paid 30s. for the Good Friday week.—*SEABROOK & SONS, LTD. v. JONES*, [1929] 1 K. B. 335; 98 L. J. K. B. 169; 140 L. T. 497; 93 J. P. 47; 45 T. L. R. 139; 72 Sol. Jo. 874; 27 L. G. R. 47, D. C.

64a. Breach of contract by worker—Whether entitled to wages for period employed.]—*POCKNEY v. ATKINSON*, No. 63a, *ante*.

68. *Add. Citation*:—28 Cox, C. C. 518.

73. *Add. Citations*:—*affd.* [1929] A. C. 496; 98 L. J. K. B. 373; 140 L. T. 673; 45 T. L. R. 306; 27 L. G. R. 249, H. L.

## Part V.—National Health Insurance.

149. *Add. Citation*:—93 J. P. 35.

## PART I. SECT. 4, SUB-SECT. 1.

sa. *Lease of land for term of years Agreement for payment for summer following on cancellation of lease.*—*MANTEI v. HIMOUR*, [1928] 3 W. W. R. 390.—CAN.

## PART I. SECT. 4, SUB-SECT. 2.—A.

d i. —. *Evidence of value of services.*—In an action brought on a *quantum meruit* for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years. It was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200:—*Held*: although the parol agreement was one to which the provisions of Stat. Frauds were applicable, it was nevertheless admissible as evidence of the value of pltf.'s services.—*WARD v. GRIFFITHS BROS., LTD.* (1928), 28 S. R. N. S. W. 425; 45 N. S. W. W. N. 130.—AUS.

d ii. —.]—Where there is a contract to do specified work for a fixed sum, with a proviso for payment of proportionate amounts, equal to eighty

per cent. of the fixed sum, as the work is done, & the balance of twenty per cent. in thirty days after completion & acceptance, completion is a condition precedent to the right to payment, & where the work is not completed there is no right to recover for the portion done as upon a *quantum meruit*.—*SHERLOCK v. POWELL* (1899), 26 A. R. 407.—CAN.

sc. *Agreement to pay bonus on estimated saving in cost of production—Depreciation of plant.*—A lumber co. agreed with the superintendent of its logging operations to pay him as a bonus to his salary such amount as he could save the co. in cutting & hauling poles on the net cost of production, taking as a basis the figures set out in the schedule of the agreement:—*Held*: depreciation of the plant & equipment used in the operations was a proper item to include in the cost of production.—*ARKIN v. BAXTER & CO.*, [1928] 3 W. W. R. 142.—CAN.

sd. *Necessary repairs to automobile in excess of order.*—An automobile, deft. co.'s property, was sent to pltf. to have certain repairs made. Pltf. at the same time made certain other repairs which he thought necessary & for

which he claimed payment. Evidence was given to show that on previous occasions repairs of a similar character were ordered & other work done, & that the accounts rendered were paid without question:—*Held*: pltf. entitled to recover.—*CALKIN v. WOLFVILLE FRUIT CO.* (1927), 59 N. S. R. 499.—CAN.

## PART I. SECT. 4, SUB-SECT. 3.

56 iii. —.]—*SIMPLEX MACHINE CO. v. MCLELLAN, McFEELY & CO.*, [1928] 3 W. W. R. 255.—CAN.

56 iv. —.]—*COOPER v. PENNINGTON*, [1928] 2 D. L. R. 878.—CAN.

## PART II. SECT. 3.

se. *Industrial Arbitration Act—Meaning of "industry."*—*PARKER & SON v. AMALGAMATED SOCIETY OF ENGINEERS* (1926), 29 W. A. L. R. 90.—AUS.

## PART V. SECT. 8.

sg. *Dispute between approved society & member—Refusal of referees to state a case—Application to court.*—*McNAMARA v. SCOTTISH CATHOLIC INSURANCE SOCIETY*, [1929] S. C. (Ct. of Sess.) 55.—SCOT.

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